

**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.,**

**PLAINTIFF'S NOTICE OF FILING EXHIBITS TO OMNIBUS MOTION
FOR FINAL JUDGMENTS AGAINST DEFENDANTS JOSEPH LAFORTE,
LISA MCELHONE, JOSEPH COLE BARLETA, AND MICHAEL FURMAN**

Plaintiff Securities and Exchange Commission hereby files the below exhibits to the April 15, 2022 Omnibus Motion For Final Judgments:

1. Prejudgment Interest Report for Joseph Cole Barleta
2. Prejudgment Interest Report for Michael Furman
3. Prejudgment Interest Report for Joseph LaForte and Lisa McElhone
4. Joseph Cole Barleta's June 2, 2021 Deposition Transcript.
5. 12/7/21 Trial Transcript.
6. 12/8/21 Trial Transcript.
7. 12/9/21 Trial Transcript.
8. 12/10/21 Trial Transcript.
9. 12/13/21 Trial Transcript.
10. 12/14/21 Trial Transcript.
11. Furman's Response to Interrogatories
12. Letter from Jeffrey L. Cox regarding Furman's Sworn Accounting
13. LaForte's Objections and Responses to Interrogatories
14. LaForte's Response to Request for Production
15. McElhone's Response to Interrogatories
16. McElhone's Response to Request for Production
17. Cole's Response to Request for Production
18. Deposition of Lisa McElhone
19. Declaration of Receiver Ryan K. Stumphauzer

April 15, 2022

Respectfully submitted,
By: s/ Amie Riggle Berlin
Amie Riggle Berlin, Esq.
Senior Trial Counsel
Florida Bar No. 630020
Direct Dial: (305) 982-6322
Email: berlina@sec.gov
Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154



**U.S. Securities and Exchange Commission
Prejudgment Interest Report**

Joseph Cole Barleta

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$13,247,011.00
09/01/2020-09/30/2020	3.00%	0.25%	\$32,574.62	\$13,279,585.62
10/01/2020-12/31/2020	3.00%	0.75%	\$100,141.14	\$13,379,726.76
01/01/2021-03/31/2021	3.00%	0.74%	\$98,973.32	\$13,478,700.08
04/01/2021-06/30/2021	3.00%	0.75%	\$100,813.29	\$13,579,513.37
07/01/2021-09/30/2021	3.00%	0.76%	\$102,683.44	\$13,682,196.81
10/01/2021-12/31/2021	3.00%	0.76%	\$103,459.90	\$13,785,656.71
01/01/2022-03/31/2022	3.00%	0.74%	\$101,976.09	\$13,887,632.80
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
09/01/2020-03/31/2022			\$640,621.80	\$13,887,632.80





**U.S. Securities and Exchange Commission
Prejudgment Interest Report**

Furman

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$1,834,000.00
09/01/2020-09/30/2020	3.00%	0.25%	\$4,509.84	\$1,838,509.84
10/01/2020-12/31/2020	3.00%	0.75%	\$13,864.17	\$1,852,374.01
01/01/2021-03/31/2021	3.00%	0.74%	\$13,702.49	\$1,866,076.50
04/01/2021-06/30/2021	3.00%	0.75%	\$13,957.23	\$1,880,033.73
07/01/2021-09/30/2021	3.00%	0.76%	\$14,216.15	\$1,894,249.88
10/01/2021-12/31/2021	3.00%	0.76%	\$14,323.64	\$1,908,573.52
01/01/2022-03/31/2022	3.00%	0.74%	\$14,118.22	\$1,922,691.74
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
09/01/2020-03/31/2022			\$88,691.74	\$1,922,691.74





**U.S. Securities and Exchange Commission
Prejudgment Interest Report**

LaForte and McElhone PJI

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$226,471,877.00
09/01/2020-09/30/2020	3.00%	0.25%	\$556,898.06	\$227,028,775.06
10/01/2020-12/31/2020	3.00%	0.75%	\$1,712,020.27	\$228,740,795.33
01/01/2021-03/31/2021	3.00%	0.74%	\$1,692,055.20	\$230,432,850.53
04/01/2021-06/30/2021	3.00%	0.75%	\$1,723,511.46	\$232,156,361.99
07/01/2021-09/30/2021	3.00%	0.76%	\$1,755,483.72	\$233,911,845.71
10/01/2021-12/31/2021	3.00%	0.76%	\$1,768,758.07	\$235,680,603.78
01/01/2022-03/31/2022	3.00%	0.74%	\$1,743,390.77	\$237,423,994.55
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
09/01/2020-03/31/2022			\$10,952,117.55	\$237,423,994.55



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3
4 SECURITIES AND EXCHANGE)
5 COMMISSION,)
6)
7 Plaintiff,)
8)
9 v.) Case No.
10) 20-CV-81205-RAR
11 COMPLETE BUSINESS SOLUTIONS)
12 GROUP, INC. d/b/a PAR)
13 FUNDING, et al.,)
14)
15 Defendants, and)
16)
17 L.M.E. 2017 FAMILY TRUST,)
18)
19 Relief Defendant.)
20 _____)
21)
22)
23)
24)
25)

16 REMOTE VIDEOTAPED DEPOSITION OF JOSEPH COLE BARLETA,
17 called by the Plaintiffs for examination, taken by
18 and before Ann Medis, Registered Professional
19 Reporter and Notary Public in and for the
20 Commonwealth of Pennsylvania, via Webex
21 videoconference, on Wednesday, June 2, 2021,
22 commencing at 10:09 a.m.
23
24
25

1

1 A P P E A R A N C E S (Continued)
2 On behalf of Defendant Lisa McElhone
3 THE LAW OFFICES OF ALAN S. FUTERFAS
4 BY: ALAN S. FUTERFAS, ESQUIRE
5 565 Fifth Avenue, 7th Floor
6 New York, New York 10017
7 212.684.8400
8 asfuterfas@futerfaslaw.com
9
10 BACHNER & WEINER PC
11 BY: MICHAEL F. BACHNER, ESQUIRE
12 39 Broadway, Suite 1610
13 New York, New York 10006
14 917.639.5370
15 mb@bhlawfirm.com
16
17 On behalf of Defendant Perry S. Abbonizio
18
19 MARCUS NEIMAN RASHBAUM & PINEIRO
20 BY: JEFFREY D. MARCUS, ESQUIRE
21 JASON MAYS, ESQUIRE
22 BRANDON FLOCH, ESQUIRE
23 One Biscayne Tower
24 2 South Biscayne Boulevard, Suite 2530
25 Miami, Florida 33131
26 305.434.4941
27 jmarcus@mnrlawfirm.com
28 jmays@mnrlawfirm.com
29 bfloch@mnrlawfirm.com
30
31 On behalf of Defendant Dean J. Vagnozzi
32 AKERMAN LLP
33 BY: BRIAN P. MILLER, ESQUIRE
34 Three Brickell City Centre
35 98 Southeast Seventh Street
36 Miami, Florida 33131
37 305.374.5600
38 brian.miller@akerman.com
39
40
41
42
43
44
45

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1 A P P E A R A N C E S
2 (Participants appeared via Webex videoconference)
3 On behalf of Plaintiff
4 UNITED STATES SECURITIES AND EXCHANGE
5 COMMISSION
6 BY: AMIE RIGGLE BERLIN, ESQUIRE
7 801 Brickell Avenue, Suite 1800
8 Miami, Florida 33131
9 305.982.6300
10 berlina@sec.gov
11
12 On behalf of Defendant Joseph W. LaForte
13
14 FRIDMAN FELS & SOTO
15 BY: ALEJANDRO O. SOTO, ESQUIRE
16 2525 Ponce de Leon Boulevard, Suite 750
17 Coral Gables, Florida 33134
18 305.569.7701
19 asoto@ffslawfirm.com
20 KOPELOWITZ OSTROW FERGUSON WEISELBERG
21 GILBERT
22 BY: DAVID LAWRENCE FERGUSON, ESQUIRE
23 1 W. Las Olas, Suite 500
24 Fort Lauderdale, Florida 33301
25 954.525.4100
26 ferguson@kolawyers.com
27 KOPELOWITZ OSTROW FERGUSON WEISELBERG
28 GILBERT
29 BY: Joshua R. Levine, Esquire
30 1 W. Las Olas, Suite 500
31 Fort Lauderdale, Florida 33301
32 954.525.4100
33 levine@kolawyers.com
34
35
36
37
38
39
40
41
42
43
44
45

2

1 A P P E A R A N C E S (Continued)
2 On behalf of Defendant Joseph Cole Barleta
3 LAW OFFICES OF BETTINA SCHEIN
4 BY: BETTINA SCHEIN, ESQUIRE
5 565 Fifth Avenue, 7th Floor
6 New York, New York 10017
7 212.880.9417
8 bschein@bettinascheinlaw.com
9
10 On behalf of the Receiver Ryan K. Stumphauzer
11 STUMPHAUZER FOSLID SLOMAN ROSS &
12 KOLAYA, PLLC
13 BY: TIMOTHY ANDREW KOLAYA, ESQUIRE
14 2 South Biscayne Boulevard, Suite 2550
15 Miami, Florida 33131
16 305.371.9686
17 tkolaya@sfsllaw.com
18
19 Also present
20
21 Joseph LaForte
22 Dean Vagnozzi
23 Tim Hunter, videographer
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<p>1 * I N D E X *</p> <p>2 WITNESS: EXAMINATION PAGE</p> <p>3 JOSEPH COLE BARLETA</p> <p>4 BY MS. BERLIN 7</p> <p>5</p> <p>6 * I N D E X O F E X H I B I T S *</p> <p>7 NO. DESCRIPTION PAGE</p> <p>8 (No deposition exhibits were marked.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">5</p>	<p>1 on behalf of the Receiver, Ryan K. Stumphauzer.</p> <p>2 MR. MILLER: Brian Miller from Akerman on</p> <p>3 behalf of the defendant Dean Vagnozzi.</p> <p>4 MR. MARCUS: Jeff Marcus on behalf of</p> <p>5 Perry Abbonizio along with Jason Mays and Brandon</p> <p>6 Floch.</p> <p>7 MR. BACHNER: Michael Bachner on behalf of</p> <p>8 Lisa McElhone. Sorry to interrupt.</p> <p>9 MR. LEVINE: Josh Levine and David</p> <p>10 Ferguson, also co-counsel for Joseph LaForte.</p> <p>11 JOSEPH COLE BARLETA,</p> <p>12 having been first duly sworn, was examined</p> <p>13 and testified as follows:</p> <p>14 EXAMINATION</p> <p>15 BY MS. BERLIN:</p> <p>16 Q. Do you sometimes go by the name Joe Cole?</p> <p>17 A. Yes. I often go by the name Joe Cole.</p> <p>18 Q. Okay. Do you have a preference today</p> <p>19 whether I should call you Mr. Cole or Mr. Barleta?</p> <p>20 A. I prefer Joe Cole. Yeah, Mr. Cole would</p> <p>21 be great.</p> <p>22 Q. Okay.</p> <p>23 A. Thank you.</p> <p>24 Q. Okay. Thank you. Are you currently</p> <p>25 employed?</p> <p style="text-align: center;">7</p>
<p>1 P R O C E E D I N G S</p> <p>2 -----</p> <p>3 THE VIDEOGRAPHER: Here begins the</p> <p>4 videotaped deposition of Joseph Cole Barleta in the</p> <p>5 matter of SEC versus Complete Business Solutions</p> <p>6 Group, Inc. This case is being heard in the United</p> <p>7 States District Court, Southern District of Florida,</p> <p>8 Case No. 20-CV-812205-RAR.</p> <p>9 This deposition is being held via Webex.</p> <p>10 Today's date is June 2, 2021. The time on the</p> <p>11 record is 9:28 a.m. -- I'm sorry -- 10:28 a.m. My</p> <p>12 name is Tim Hunter. I'm your legal videographer.</p> <p>13 Our court reporter today is Ann Medis.</p> <p>14 Counsel, would please state introduce</p> <p>15 yourselves and state whom you represent for the</p> <p>16 record starting with noticing counsel. And the</p> <p>17 witness will be sworn.</p> <p>18 MS. BERLIN: This is Amie Riggle Berlin on</p> <p>19 behalf of the U.S. Securities and Exchange</p> <p>20 Commission.</p> <p>21 MS. SCHEIN: Bettina Schein, counsel for</p> <p>22 Joseph Cole Barleta.</p> <p>23 MR. SOTO: This is Alex Soto, counsel for</p> <p>24 Joseph LaForte.</p> <p>25 MR. KOLAYA: Good morning. Timothy Kolaya</p> <p style="text-align: center;">6</p>	<p>1 A. No, I am not.</p> <p>2 Q. Were you employed by a company called</p> <p>3 Complete Business Solutions Group previously?</p> <p>4 A. Yes, I was.</p> <p>5 Q. During what time period were you employed</p> <p>6 by Complete Business Solutions Group?</p> <p>7 A. I was employed from October of 2012 until</p> <p>8 December 31st of 2016.</p> <p>9 Q. Okay. And then in December of 2016, why</p> <p>10 did you stop working for Complete Business Solutions</p> <p>11 Group?</p> <p>12 A. I started working the following day or</p> <p>13 month in Full Spectrum Processing in Philadelphia.</p> <p>14 Q. And why was your employment changed from</p> <p>15 Complete Business Solutions Group to Full Spectrum</p> <p>16 Processing?</p> <p>17 A. There was a restructure in the company per</p> <p>18 guidance of our tax accountants and starting in</p> <p>19 2017, Philadelphia operations would operate out of</p> <p>20 an entity Full Spectrum Processing. So I was then</p> <p>21 employed into that entity.</p> <p>22 Q. And beginning in 2017, Full Spectrum was</p> <p>23 operating Complete Business Solutions Group; is that</p> <p>24 right?</p> <p>25 A. That's right. They were providing</p> <p style="text-align: center;">8</p>

1 services and processing for Complete Business
 2 Solutions Group.
 3 **Q.** Okay. What was your title when you worked
 4 at Complete Business Solutions Group during 2016?
 5 **A.** My title was chief financial officer.
 6 **Q.** And what was your title at Complete -- I'm
 7 sorry -- at Full Spectrum?
 8 **A.** It was also chief financial officer.
 9 **Q.** What were your duties as the chief
 10 financial officer with respect to Complete Business
 11 Solutions Group?
 12 **A.** My duties for Complete Business Solutions
 13 Group included management of their accounting
 14 departments, payroll, human resources for the
 15 service staff providing services to Complete
 16 Business Solutions Group, and also discussions of
 17 company financials and taxation information with
 18 third parties.
 19 **Q.** Who did you report to when you were an
 20 employee of Complete Business Solutions Group?
 21 **A.** I reported to Lisa McElhone.
 22 **Q.** Did you report to anyone other than
 23 Ms. McElhone?
 24 **A.** No.
 25 **Q.** And what about when you were at Full

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1 Spectrum, who did you report to when you were at
 2 Full Spectrum?
 3 **A.** I only reported to Lisa.
 4 **Q.** Did you ever report to Joseph LaForte?
 5 **A.** No.
 6 **Q.** Between 2012 and 2016, how often were you
 7 communicating with Lisa McElhone?
 8 **A.** I would communicate with Lisa every
 9 business day.
 10 **Q.** And through what means?
 11 **A.** I would send her regular financial
 12 reporting and also phone calls on occasion.
 13 **Q.** So were you emailing Lisa McElhone?
 14 **A.** Yes, mostly emails.
 15 **Q.** What was your email address between 2012
 16 and 2016?
 17 **A.** It was JoeCole@parfunding.com.
 18 **Q.** Is that the email address that you used to
 19 you communicate with Lisa McElhone from 2012 through
 20 2016?
 21 **A.** Yes.
 22 **Q.** Did you use any other email address to
 23 communicate with her?
 24 **A.** Yes.
 25 **Q.** And what was that?

10

1 **A.** I also had a JoeCole@fastavancefunding.com
 2 email address.
 3 **Q.** So from 2012 through 2016, which those two
 4 email addresses would you typically be emailing
 5 Ms. McElhone with?
 6 **A.** Most of my emails went through the Par
 7 Funding email.
 8 **Q.** During this time period, 2012 through
 9 2016, did you also meet with Ms. McElhone in person
 10 concerning Complete Business Solutions Group?
 11 **A.** Yes, I did.
 12 **Q.** How often approximately?
 13 **A.** It was more often towards the start of my
 14 employment and less frequent as time went on.
 15 **Q.** So at the beginning of your employment
 16 approximately -- like approximately how often?
 17 **A.** A few times a week at least.
 18 **Q.** Okay. And when did it change?
 19 **A.** As the company grew bigger, we had more
 20 employees and fewer communications between myself
 21 and Lisa.
 22 **Q.** So approximately what year would it have
 23 been that you stopped meeting with her about three
 24 times a week in person?
 25 **A.** I'd say around 2017.

11

1 **Q.** While you were at Full Spectrum, how often
 2 or would you -- I'm sorry. When you were at Full
 3 Spectrum, would you meet with Ms. McElhone in
 4 person?
 5 **A.** At that time when I started working at
 6 Full Spectrum, it was reduced to a few times a
 7 month.
 8 **Q.** And what was the reason for that change?
 9 **A.** We had more people and handling a lot of
 10 the day-to-day functionalities. So it's fewer
 11 people and fewer hats being worn by the same people.
 12 And that also includes myself and Lisa. So it's
 13 less hands-on working in the business and more
 14 managing the business and managers that we hired to
 15 run the business.
 16 **MR. SOTO:** This is Mr. Soto. I'm going to
 17 object to the form of the last question and just ask
 18 Ms. Berlin if she can specify the reason for the
 19 meetings. In other words, when you're asking how
 20 often they met, are you referring to meetings with
 21 respect to a particular entity or at all?
 22 **BY MS. BERLIN:**
 23 **Q.** The meetings that you just described
 24 having with Ms. McElhone, were those with respect to
 25 Complete Business Solutions Group or with respect to

12

1 other entities?
2 **A.** Both. It was Complete Business Solutions
3 Group as well as other entities that Full Spectrum
4 Processing provided services to.
5 **Q.** Okay. It is my understanding you would
6 meet about once a month with her during the time
7 that you were at Full Spectrum to discuss Complete
8 Business Solutions Group and other entities. Is
9 that what accurate?
10 **A.** Some times of the year we're meeting more.
11 Sometimes we're meeting less. It depends if there's
12 issues. You need to clarify what you mean by once a
13 month. It's probably more frequent than that
14 depending on what's going on.
15 **Q.** Okay. Well, on average during your time
16 when you were working at Full Spectrum -- so that
17 would be 2017, '18, '19, '20 -- on average how often
18 would you meet with Ms. McElhone?
19 **A.** Couple times, few times a month. Maybe
20 two or four times, something like that. Again, it's
21 less frequent as time went on. So it was more so
22 towards 2017 and less frequently in '19 and '20.
23 **Q.** Where did Ms. McElhone have an office?
24 **A.** Ms. McElhone had an office in Florida at
25 the CBSG offices.

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1 **Q.** So was she working out of the Florida
2 office on a daily basis?
3 **A.** No.
4 **Q.** Where was she working --
5 MS. SCHEIN: Amie, objection. Could you
6 set forth a timeframe?
7 MS. BERLIN: Sure.
8 BY MS. BERLIN:
9 **Q.** Mr. Cole, you can just explain. If I ask
10 you a question and in order to make it true, you
11 need to like add some detail, you can do that.
12 So during the time period that you worked
13 at Complete Business Solutions Group, where did
14 Ms. McElhone do her work for Complete Business
15 Solutions Group? Was she in the same office as you,
16 or was she working from elsewhere?
17 **A.** I'm sorry. You're saying from what time
18 period?
19 **Q.** Sure. And you can break it down. So
20 let's say 2012, where was she working?
21 **A.** 2012 she was working at the same office as
22 I was on Cherry Street.
23 **Q.** Was she working in the Complete Business
24 Solutions Group office?
25 **A.** Yes.

14

1 **Q.** Okay. And was Joseph LaForte -- did he
2 also have an office in the Complete Business
3 Solutions Group space?
4 **A.** Yes.
5 MR. SOTO: Objection. Form.
6 BY MS. BERLIN:
7 **Q.** What about 2013, was Ms. McElhone working
8 out of the Complete Business Solutions Group office?
9 **A.** I don't recall when we moved offices. We
10 had a place from Cherry Street to Liberty One on
11 Market Street in Philadelphia.
12 But to answer your question, she wasn't
13 always working in the office. She would often work
14 either from home or on the road depending on what
15 she was doing.
16 **Q.** Okay. And what about Joseph LaForte, was
17 he working out of the Complete Business Solutions
18 Group office in 2013?
19 **A.** Yes.
20 MR. SOTO: Objection. Form.
21 THE WITNESS: Yes, he was.
22 BY MS. BERLIN:
23 **Q.** Okay. So am I understanding correctly, in
24 2013 Ms. McElhone had -- did she have an office at
25 Complete Business Solutions Group, but she sometimes

15

1 worked outside of the office?
2 **A.** She had a space. It wasn't just her own
3 office. There's a lot of shared space in our floor
4 plan.
5 **Q.** What about 2014, did Ms. McElhone work out
6 of the Complete Business Solutions Group office?
7 **A.** I'm sorry?
8 MR. SOTO: This is Alex Soto. I'm sorry.
9 The sound is muffled. We couldn't quite hear you,
10 that last question.
11 MS. BERLIN: Thanks.
12 BY MS. BERLIN:
13 **Q.** What about the following year? We'll just
14 go year by year. In 2014 did Ms. McElhone have an
15 office in the Complete Business Solutions Group
16 office space?
17 **A.** She didn't have her own office though she
18 did have a desk available in the office.
19 **Q.** Okay. And did she sometimes work from
20 that desk?
21 **A.** Yes.
22 **Q.** Okay. And sometimes would she work for
23 Complete Business Solutions Group but outside of the
24 office?
25 **A.** Yes.

16

1 Q. Okay. And what about Joseph LaForte, did
 2 he have an office? Did he work in the Complete
 3 Business Solutions Group office?
 4 MR. SOTO: Objection to form.
 5 THE WITNESS: He never had his own office.
 6 I'm trying to illustrate that this was a lot of
 7 shared desk space with other employees. So by
 8 office, I'm saying that he didn't have his own
 9 specific room. We're saying that there's a desk
 10 available for them to work.
 11 BY MS. BERLIN:
 12 Q. Okay. In 2014, was Mr. LaForte working in
 13 that office space for Complete Business Solutions
 14 Group?
 15 A. He didn't work for Complete Business
 16 Solutions Group. He worked for Recruiting and
 17 Marketing Resources, which was using the same office
 18 space.
 19 Q. Okay. And did the situation where
 20 Ms. McElhone has a desk and work space at the
 21 office, but she is sometimes working for Complete
 22 Business Solutions Group remotely, did that continue
 23 through 2016?
 24 A. Yes, it did.
 25 Q. Okay. And did Mr. LaForte's situation as

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1 you've described it for 2012 through 2014, did that
 2 continue on through 2016?
 3 A. Yes, it did.
 4 Q. Okay. And for Ms. McElhone, did she
 5 continue having a place to work and working for
 6 Complete Business Solutions Group sometimes in the
 7 office and sometimes remotely through June 2020?
 8 A. Through June 2020? In 2020 she already
 9 had the office in Florida. But she would work on
 10 occasion in the offices in Philadelphia, Full
 11 Spectrum offices.
 12 Q. Okay. And was Mr. LaForte, still through
 13 June 2020, was his office or his workspace still in
 14 the Complete Business Solutions Group -- I'm
 15 sorry -- in Full Spectrum workspace where you
 16 worked?
 17 A. In the Full Spectrum workspace he had a
 18 desk along with the Recruiting and Marketing
 19 Resources deskspace in the same building.
 20 Q. What was Ms. McElhone's title when you
 21 first began working at Complete Business Solutions
 22 Group in 2012?
 23 A. Ms. McElhone's title was president.
 24 Q. Did her title ever change?
 25 A. No, not to my understanding.

18

1 Q. Okay. So from 2012 through 2020, her
 2 title was president?
 3 MR. SOTO: Objection to form.
 4 THE WITNESS: Yes, I believe so.
 5 BY MS. BERLIN:
 6 Q. Okay. And of what company?
 7 A. You're referring to Complete Business
 8 Solutions Group; right?
 9 Q. I'm just asking. You said her title was
 10 president. So I'm asking of what company?
 11 A. It's Complete Business Solutions Group.
 12 Q. Okay. And was she running the day-to-day
 13 operations of Complete Business Solutions Group
 14 during the entirety of your work, so from 2012
 15 through 2020?
 16 A. No. In 2012 to 2016 operations were ran
 17 by Lisa and other employees and myself in the
 18 company. From 2017 onward, we had Full Spectrum
 19 Processing running the day-to-day operations in
 20 conjunction with sales entities that we worked with.
 21 If you're referring to corporate affairs,
 22 Lisa has always handled that, which means executive
 23 management of the business.
 24 Q. So from 2012 through 2016, who in addition
 25 to Lisa McElhone was managing Complete Business

19

1 Solutions Group?
 2 MR. SOTO: Objection to form.
 3 THE WITNESS: It depends on the year and
 4 what you mean by "managing." Are you talking about
 5 the departments?
 6 BY MS. BERLIN:
 7 Q. Yeah. We can break it down by year.
 8 Actually, let's back up for a moment.
 9 How did it come about that you began
 10 working at Complete Business Solutions Group?
 11 A. I was looking for work in Philadelphia,
 12 and I found this opportunity through an
 13 advertisement online. Lisa was hiring an accountant
 14 or a director of finance to run the accounting for
 15 her businesses.
 16 Q. Did you interview before getting the job?
 17 A. Yes.
 18 Q. Who did you interview with?
 19 A. I interviewed with Joe LaForte.
 20 Q. Did you interview with Lisa McElhone?
 21 A. No, I did not.
 22 Q. Did you meet Lisa McElhone before you were
 23 hired?
 24 A. Yes, I did.
 25 Q. And so in addition to Joseph LaForte, did

20

1 anyone else interview you?
2 **A.** Not that I can recall.
3 **Q.** Who made you the offer of employment?
4 **A.** I believe the offer was discussed during
5 the interview with Joe LaForte.
6 **Q.** What was your salary when you first began
7 working at Complete Business Solutions Group?
8 **A.** I believe then it was \$46,000 per annum.
9 **Q.** Was there any other compensation other
10 than the \$46,000 salary when you were hired in 2012?
11 **A.** No.
12 **Q.** Did your salary amount change during the
13 time you were employed by Complete Business
14 Solutions Group from 2012 through 2016?
15 **A.** Yes, it did.
16 **Q.** And how so?
17 **A.** It increased over time.
18 **Q.** Can you tell me the amount of salary that
19 you made each year that you were employed by
20 Complete Business Solutions Group?
21 **A.** I believe I made the starting salary I had
22 until approximately 2015. It went up to 60 -- I
23 forget the specific number -- 60-some-odd thousand.
24 And then into '17 I was making 94,000 per year.
25 **Q.** And why was there an increase?

21

1 **A.** I'd like to think I was doing a good job
2 and the company was doing well in the capacities I
3 was responsible for.
4 **Q.** Did your salary remain the same during the
5 entire time you were employed by Full Spectrum?
6 **A.** Yes. My salary since 2017 has been
7 \$94,000 per year.
8 **Q.** Did you receive any other -- during the
9 time that you worked at Complete Business Solutions
10 Group from 2012 through 2016, did you receive any
11 compensation other than your salary?
12 **A.** Yes. I was also paid a Christmas bonus at
13 the end of the year.
14 **Q.** Okay. And approximately how much was that
15 each year?
16 **A.** I don't recall the precise amount. It was
17 something around 5 to 10 percent of my salary.
18 **Q.** Okay. From 2012 through 2016, did you
19 receive any other compensation in connection with
20 Complete Business Solutions Group?
21 **A.** Yes, I did.
22 **Q.** Okay. And what was?
23 **A.** I had an apartment that the company paid
24 for for I believe it was two years.
25 **Q.** Okay. Anything else?

22

1 **A.** That's it. They brought pizza in on
2 Fridays. I don't think that counts as compensation
3 though.
4 **Q.** Okay. Did you receive compensation in
5 connection with Complete Business Solutions Group
6 from 2012 through 2016 in any manner other than that
7 which you've already testified to?
8 **A.** 2016, no, I don't believe so.
9 **Q.** Okay. Now, when your employment switched
10 to Full Spectrum, did you receive any compensation
11 other than your salary with respect to work done for
12 Complete Business Solutions Group?
13 **MS. SCHEIN:** Objection, Amie. Could you
14 set forth the timeframe?
15 **MS. BERLIN:** Sure.
16 **BY MS. BERLIN:**
17 **Q.** So from 2017 through 2020, during your
18 employment with Full Spectrum, did you receive any
19 compensation other than your salary for work that
20 you did in connection with Complete Business
21 Solutions Group?
22 **A.** I'm sorry. You're saying through the end
23 of '17?
24 **Q.** From 2017 through 2020, you were employed
25 by Full Spectrum; right?

23

1 **A.** That's right.
2 **Q.** And while you were employed at Full
3 Spectrum, you were doing work in connection with
4 Complete Business Solutions Group; is that accurate?
5 **A.** Yes.
6 **MR. SOTO:** Objection to form.
7 **BY MS. BERLIN:**
8 **Q.** I'm sorry. I didn't catch your answer.
9 **A.** Yes.
10 **Q.** Okay. So during that period, from 2017
11 through 2020, did you receive any compensation other
12 than your Full Spectrum salary for the work that you
13 did in connection with Complete Business Solutions
14 Group?
15 **A.** Yes, I did.
16 **Q.** Okay. So can you tell me what additional
17 compensation you received for each of the years? We
18 can start with 2017.
19 **A.** You're asking for the amount paid each
20 year?
21 **Q.** Well, you can tell me like the source, I
22 received a bonus and it was approximately X amount,
23 or if you want to take it piece by piece, I can ask
24 the questions. It's entirely up to you.
25 **So in 2017, what additional compensation**

24

1 did you receive in connection with the work you did
 2 for Complete Business Solutions Group?
 3 **A.** If you can take it year by year, I think
 4 that would be easier. So in 2017, I had a
 5 consulting agreement with my consulting entity Beta
 6 Abigail, which was receiving quarterly payments from
 7 profit of Complete Business Solutions. And this
 8 came in usually in the first week after the end of
 9 the quarter.
 10 **Q.** When did you begin the Beta Abigail
 11 company?
 12 **A.** I believe this was in 2017.
 13 **Q.** Okay. And why did you form it?
 14 **A.** I agreed to a consulting agreement with
 15 Lisa and for tax reasons would take it through an
 16 entity, per advice of our tax accountants. And I
 17 would receive the compensation there.
 18 **Q.** Who did you negotiate the consulting
 19 agreement with?
 20 **A.** I don't recall.
 21 **Q.** Did you conduct any negotiations with
 22 Joseph LaForte for that consulting agreement?
 23 **A.** Not that I can recall.
 24 **Q.** Okay. And what about Lisa McElhone, did
 25 you negotiate with her in connection with the

25

1 consulting agreement?
 2 **A.** I don't recall negotiating.
 3 **Q.** Okay. But am I understanding correctly
 4 Lisa McElhone was the person who asked you to enter
 5 into the consulting agreement?
 6 **A.** Yeah. She signed the consulting agreement
 7 I have with her.
 8 **Q.** Okay. And who asked you to enter into
 9 this sort of consulting agreement structure where
 10 you would get paid through Beta Abigail?
 11 **A.** I don't recall.
 12 **Q.** So how much did you receive approximately
 13 through Beta Abigail for your work in connection
 14 with Complete Business Solutions Group in 2017?
 15 **A.** In 2017, I believe I received
 16 approximately \$1-1/2 million.
 17 **Q.** Did you receive any other compensation in
 18 2017 in connection with Complete Business Solutions
 19 Group?
 20 **A.** Well, I still had that 94,000 a year
 21 salary from Full Spectrum which provided services to
 22 CBSG.
 23 **Q.** Okay. Other than your salary and the
 24 consulting fee that you testified about, did you
 25 receive any other compensation in connection with

26

1 Complete Business Solutions Group in 2017?
 2 **A.** I still had that apartment.
 3 **Q.** Where was the apartment located?
 4 **A.** The apartment was located in Philadelphia.
 5 **Q.** Do you remember the address?
 6 **A.** I don't remember the address, but it was
 7 on Chestnut and Ninth.
 8 **Q.** During what years did you have this
 9 apartment that Complete Business Solutions Group was
 10 paying for?
 11 **A.** I believe that was from '14 through '17,
 12 for three years.
 13 **Q.** Okay. So in 2017, did you receive any
 14 compensation in connection with Complete Business
 15 Solutions Group other than the apartment, the
 16 consulting through Beta Abigail, and the salary?
 17 **A.** Not that I can recall.
 18 **Q.** Did your duties change in 2017 with
 19 respect Complete Business Solutions Group?
 20 **A.** I'm not sure what you mean by duties. Can
 21 you elaborate on that?
 22 **Q.** Sure. So did your job duties change in
 23 2017?
 24 **A.** I still don't know what you mean by
 25 duties. Are you talking about on a day-to-day basis

27

1 or the departments?
 2 **Q.** Did what you did as your job, did your
 3 work change in any way in 2017?
 4 **A.** Yes. It changed.
 5 **Q.** Okay. And how so?
 6 **A.** It became more focused on managing the
 7 managers and supervisors of the business and doing
 8 less of the work hands-on myself.
 9 **Q.** Okay. So you took a greater management
 10 role in 2017; is that accurate?
 11 **A.** That's right.
 12 **Q.** Okay. And did your job change in any
 13 other way in 2017 other than, of course, now your
 14 employer was Full Spectrum?
 15 **A.** Are you talking about in respect to
 16 duties?
 17 **Q.** Well, I think you testified you were
 18 confused by what duties meant. So in 2017, other
 19 than your employer officially changing from Complete
 20 Business Solutions Group to Full Spectrum and you
 21 taking on more of a management role than a hands-on
 22 direct role with respect to Complete Business
 23 Solutions Group, was there any other change in what
 24 you did for work in connection with Complete
 25 Business Solutions Group in 2017?

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1 **A.** I managed the same departments. I'm
2 really still struggling with trying to understand if
3 you're talking about granular day-to-day processes
4 or the scope of the companies that Full Spectrum was
5 providing services to. I can say that that changed
6 as far as the number of work -- or how much work we
7 were doing, yes.

8 **Q.** Okay. So how did your work change in
9 2017?

10 **A.** To put it succinctly, there was a lot more
11 of it. We were managing more of Lisa's entities and
12 a lot of -- the procedures, again, we had managers
13 handling. So it was more meetings and interactions
14 with our tax accountants and less about handling the
15 day-to-day, you know, operations like printing out
16 vendor checks, for example.

17 **Q.** You would agree with me that your income
18 in connection with the work you did for Complete
19 Business Solutions Group changed significantly
20 between 2016 and 2017?

21 **A.** Yes. My income, yes, it changed
22 substantially from that time period onward.

23 **Q.** Okay. And why did your income change from
24 2016 where you were making a salary with a small
25 bonus and making less than a hundred thousand

29

1 dollars to making -- or making around a hundred
2 thousand dollars to making more than a million
3 dollars in 2017?

4 **A.** During that time period, CBSG along with
5 other companies that Full Spectrum provided services
6 to had a large amount of growth, and it
7 commensurated with the new growth the business had
8 and obviously the management of more employees and
9 more clients, the merchants that CBSG would be
10 funding.

11 **Q.** From 2012 to 2016, were you doing any work
12 for any company other than Complete Business
13 Solutions Group?

14 **A.** Do you mean under the capacity of Full
15 Spectrum Processing or myself personally?

16 **Q.** In any way. Like regardless of who your
17 employer was, in 2012 through 2016, were you doing
18 work for any company other than Complete Business
19 Solutions Group?

20 **A.** Yes, I was.

21 **Q.** Okay. And what companies were you doing
22 work for during that time period from 2012 through
23 2016?

24 **A.** I was doing work for Fast Advance Funding,
25 Capital Source 2000, Lacquer Lounge, Metro Physical

30

1 Therapy Group, Recruiting and Marketing Resources,
2 Dog Prep Solutions, and there may have been other
3 entities that Lisa had me do some work for, but I
4 don't recall. Those are the major ones.

5 **Q.** Okay. From the period 2017 through 2020,
6 when you moved over to Full Spectrum, did you
7 continue doing work for all of the entities you just
8 listed?

9 **A.** Yes. Under the advice of our tax
10 accountants, Full Spectrum Processing would have
11 operating agreements for those entities. So it was
12 much of a better structure to handle the work and
13 the day-to-day operations for these companies and
14 allowed us to handle things more efficiently.

15 **Q.** Okay. And so between 2016 and 2017, I
16 guess I'm just trying to understand and maybe you
17 can -- I'm going to ask that you elaborate more on
18 specifically how your work changed.

19 For example, were you doing work for a lot
20 of other companies in addition to the ones you
21 already testified to?

22 **A.** That's right. It expanded. Full Spectrum
23 Processing had additional clients that it was
24 providing services to, and we had to give obviously
25 consideration in the management and operations of

31

1 those businesses.

2 **Q.** During the time period that you worked at
3 Complete Business Solutions Group, so up through
4 2016, did Perry Abbonizio work at Complete Business
5 Solutions Group?

6 **A.** I'm sorry. Which time period?

7 **Q.** During the time period that you were
8 working for Complete Business Solutions Group, which
9 would be the time period up until you switched to
10 Full Spectrum. So until 2016, did Perry Abbonizio
11 work for Complete Business Solutions Group?

12 **A.** Yes, but he did so through his company.

13 **Q.** And what company was that?

14 **A.** I believe the name of the company was ES
15 Equity.

16 **Q.** And when did Mr. Abbonizio begin doing
17 work for Complete Business Solutions Group?

18 **A.** I don't remember the specific date, but I
19 believe it was in 2016.

20 **Q.** And what was his role with respect to
21 Complete Business Solutions Group?

22 **A.** His role was to discuss the sale of
23 promissory notes and have third parties lend money
24 to the business.

25 **Q.** Did you participate in the hiring process

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1 of Mr. Abbonizio?
 2 MR. SOTO: Objection to form.
 3 THE WITNESS: Perry was never hired. We
 4 had a consulting agreement with his company.
 5 BY MS. BERLIN:
 6 Q. Did you participate at all in any
 7 discussions about the decision to enter into a
 8 consulting agreement with Mr. Abbonizio's company?
 9 A. Yes, I did.
 10 Q. And who did you participate in those
 11 discussions with?
 12 A. I spoke with counsel and Lisa.
 13 Q. What counsel was that?
 14 A. The firm that was preparing the consulting
 15 agreement for Perry was DLA Piper in Philadelphia.
 16 The lawyer I worked with at the firm was Lisa
 17 Jacobs.
 18 Q. Was DLA Piper the attorney for Complete
 19 Business Solutions Group?
 20 A. Yes. She was representing Complete
 21 Business Solutions Group.
 22 Q. Did Joseph LaForte participate in the
 23 discussions concerning the consulting agreement with
 24 Mr. Abbonizio's firm?
 25 A. Not that I can recall.

33

1 Q. So it was just you, Lisa McElhone and the
 2 attorneys from DLA Piper; is that true?
 3 A. It was just myself, Lisa McElhone and Lisa
 4 Jacobs from DLA Piper. And I believe she also had
 5 another lawyer helping out with the contract that
 6 worked on those documents, yes.
 7 Q. Why was Mr. Abbonizio's consulting firm --
 8 I'll just ask why was Mr. Abbonizio -- and when I'm
 9 referring to him, I'm referring to him and like his
 10 consulting firm. Do you understand?
 11 A. Yes.
 12 Q. Mr. Cole?
 13 A. I said "Yes."
 14 Q. Sorry. I couldn't hear. I'm sorry. I
 15 didn't hear.
 16 Why did Complete Business Solutions Group
 17 decide to retain the services of Mr. Abbonizio?
 18 A. We decided to retain Perry and his
 19 services because of connections and prior experience
 20 that he had with parties to potentially lend money
 21 to Complete Business Solutions Group.
 22 Q. Was Mr. Abbonizio -- were his services
 23 retained by Complete Business Solutions Group in
 24 order to help Complete Business Solutions Group
 25 offer and sell the promissory notes that Complete

34

1 Business Solutions Group was issuing?
 2 A. I don't know what you mean by sell. The
 3 promissory note reflects a loan agreement between
 4 CBSG and its creditors.
 5 Q. Okay. So Mr. Abbonizio, were his services
 6 retained by Complete Business Solutions Group in
 7 order to help offer those promissory notes to
 8 potential investors?
 9 MR. SOTO: Objection to form.
 10 THE WITNESS: It was to discuss the
 11 promissory notes.
 12 BY MS. BERLIN:
 13 Q. I'm sorry. I didn't hear.
 14 A. It was to discuss the promissory notes.
 15 And you used the word investors. They're
 16 noteholders and lenders to the business. There's no
 17 interest or equity being purchased with any of these
 18 promissory notes.
 19 Q. Okay. When I refer to investors today,
 20 I'm referring to people who entered into promissory
 21 notes with Complete Business Solutions Group. Do
 22 you understand?
 23 A. I do.
 24 Q. Okay. So were the services of
 25 Mr. Abbonizio retained by Complete Business

35

1 Solutions Group in order to help them offer the
 2 promissory notes Complete Business Solutions Group
 3 was issuing?
 4 A. Yes.
 5 Q. Did Complete Business Solutions
 6 Group -- I'm sorry. During what specific timeframe
 7 again was Mr. Abbonizio retained to do that work by
 8 Complete Business Solutions Group?
 9 A. I don't recall the specific time period,
 10 but he started working in 2016.
 11 Q. When did Complete Business Solutions Group
 12 begin issuing promissory notes?
 13 A. I believe the promissory notes were in
 14 place even before when I started with the company.
 15 Q. So why in 2016 did Complete Business
 16 Solutions Group retain someone to help with the
 17 offer of the promissory notes?
 18 A. It was to explore the opportunity with
 19 additional lenders for the business.
 20 Q. During the time period that you worked at
 21 Complete Business Solutions Group, so from 2012
 22 through 2016, did you participate or did you do any
 23 work at all in connection with the Complete Business
 24 Solutions Group promissory notes?
 25 A. I'm not sure what you mean by that.

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1 Q. During the time that you worked at
 2 Complete Business Solutions Group, so 2012 to 2016,
 3 did you ever do any work at all concerning the
 4 promissory notes that Complete Business Solutions
 5 Group issued?
 6 A. Yes.
 7 Q. And what did you do?
 8 A. I would email the notes and scan them in
 9 and keep track of them. I would also discuss it
 10 with lawyers. And later on, I was ending up being
 11 the counter-signer for CBSG as a corporate
 12 representative.
 13 Q. When did you start signing the notes?
 14 A. I don't recall. Lisa signed them. I
 15 signed them. I signed -- I think around 2016
 16 onward, it was a mix between myself and Lisa, and I
 17 ended up being the predominant signatory for the
 18 company going forward. Maybe '17. I don't recall
 19 specifically.
 20 Q. Okay. And did that continue once your
 21 employer changed to Full Spectrum in 2017?
 22 A. Yes.
 23 Q. When you said you would email the notes,
 24 who would you email them to?
 25 A. I would email them to the related parties

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1 meaning the noteholders. I would also email it to
 2 our office workers to file and print.
 3 Q. During the time period of 2012 through
 4 2016 when you worked at Complete Business Solutions
 5 Group, did you ever participate at all in meetings
 6 or discussions with potential investors of the
 7 promissory notes?
 8 A. I'm not sure what you mean by
 9 participated. Do you mean if I was there with them
 10 to discuss the company?
 11 Q. Well, I mean "participate" is pretty
 12 broad. Do you want me to look up the definition of
 13 that word for you? It's just a general question.
 14 And then, if you would like -- then I'm going to ask
 15 you specifically -- if you answer yes, you
 16 participated, I'll ask you exactly what you did.
 17 But the question pending is whether you
 18 participated in any meetings or discussions with
 19 potential investors of the Complete Business
 20 Solutions Group promissory notes from 2012 through
 21 2016.
 22 A. Sure. Under the broad definition of
 23 participated, I participated with the parties
 24 lending money and discussion of these promissory
 25 notes to CBSG.

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1 Q. Okay. And can you tell me specifically
 2 what you did?
 3 A. I would typically present company
 4 financial information including key performing
 5 indicator reports, the number of deals, payment
 6 schedules, things like that, related to accounting.
 7 Q. And so you would present that information
 8 to potential investors?
 9 A. Yes. We would share the information and
 10 discuss it and talk about it with them.
 11 Q. Okay. And did Lisa McElhone ever
 12 participate in any of those discussions with you and
 13 the potential investors of the Complete Business
 14 Solutions Group's promissory notes?
 15 A. Yes, she did.
 16 Q. Who else would attend those -- I don't
 17 want to say meetings because I'm not sure. Are
 18 these in-person meetings? What type of
 19 communication was this typically? In person or
 20 electronic?
 21 A. For meetings, it was always in person.
 22 Q. Was that at Complete Business Solutions
 23 Group's office?
 24 A. It depends on the time you're speaking
 25 about.

39

1 Q. Okay. Well, we're talking about the time
 2 period of 2012 through 2016. So did the meetings
 3 that occurred with potential investors, did those
 4 meetings occur at Complete Business Solutions
 5 Group's offices?
 6 A. Yes.
 7 Q. Did they occur anywhere else?
 8 A. Not that I can recall.
 9 Q. Would they also occur by telephone?
 10 A. Not that I can recall.
 11 Q. Okay. Other than you and Ms. McElhone,
 12 did anyone else ever attend these meetings with
 13 potential investors of the Complete Business
 14 Solutions Group's promissory notes during the time
 15 period of 2012 through 2016?
 16 A. Yes.
 17 Q. Who would attend those?
 18 A. Perry Abbonizio and other employees of --
 19 Q. Anyone else?
 20 A. Sorry. And also other employees of CBSG.
 21 Q. Okay. And can you identify who would
 22 attend?
 23 A. I don't remember every employee, but there
 24 were generally the managers and personnel
 25 responsible for certain functions of CBSG and the

40

1 sales entity Armar.
 2 **Q.** Would Joseph LaForte attend those
 3 meetings?
 4 **A.** Yes.
 5 **Q.** So you, Lisa McElhone, Perry Abbonizio and
 6 Joseph LaForte would meet with potential investors
 7 at Complete Business Solutions Group's offices
 8 during the time period of 2012 through 2016; is that
 9 accurate?
 10 **A.** Not for every meeting, but it was a mix of
 11 different employees. And it's not just limited to
 12 that, but we had other managers of the business.
 13 **Q.** Okay. I understand. But during the time
 14 period of 2012 to 2016, is it accurate to say there
 15 were occasions where you, Perry Abbonizio, Joseph
 16 LaForte, Lisa McElhone would meet together with
 17 potential investors of Complete Business Solutions
 18 Group's promissory notes?
 19 **A.** Yes.
 20 MR. SOTO: Objection to form.
 21 BY MS. BERLIN:
 22 **Q.** Approximately how many of those meetings
 23 did you attend between 2012 and 2016?
 24 MR. SOTO: Objection to form.
 25 THE WITNESS: I don't recall how many

41

1 meetings. They were very infrequent though.
 2 BY MS. BERLIN:
 3 **Q.** During the meetings that Lisa McElhone
 4 attended with the potential investors during the
 5 time period of 2012 through 2016, generally, what
 6 would she discuss with the potential investors?
 7 **A.** She would discuss the background of the
 8 business, how she got started, the current
 9 operations, the people that would be working in the
 10 business and her projected course for the business,
 11 where we're going, the kind of business we're in,
 12 and obviously the aspirations of the business to
 13 grow and to prosper.
 14 **Q.** Would Ms. McElhone convey to the potential
 15 investors that the company was going to be
 16 successful and that she would be able to make
 17 payments on the promissory notes?
 18 MR. SOTO: Objection to form.
 19 THE WITNESS: I'm sorry. Are you asking
 20 if she's saying that the company can afford to pay
 21 the payments on the promissory notes?
 22 BY MS. BERLIN:
 23 **Q.** Yeah. During these meetings, I'm not
 24 asking if she used these verbatim words, but did she
 25 convey to potential investors that the company would

42

1 be able to make the payments under the promissory
 2 notes?
 3 **A.** Yes. The understanding is that the
 4 company would be paying the promissory notes per the
 5 terms as described on them.
 6 **Q.** Did Ms. McElhone -- did she tell potential
 7 investors that the company was anticipated to be
 8 successful or profitable so that she could make the
 9 payments?
 10 **A.** We had an optimistic outlook of the
 11 business, yes. I believe that was what was
 12 conveyed.
 13 **Q.** Okay. And so during these meetings,
 14 generally what was Mr. Abbonizio's role? And this
 15 is during the time period 2012 through 2016.
 16 **A.** Mr. Abbonizio --
 17 **Q.** I apologize. Hold on just a moment.
 18 Mr. Abbonizio began with the company in 2016. So I
 19 guess during the period in 2016, what was
 20 Mr. Abbonizio's role in these meetings with
 21 potential investors?
 22 **A.** He would introduce the company to -- and
 23 you'll call them investors. I'll call them
 24 noteholders. But he would introduce the company to
 25 these noteholders to look at the business and the

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1 people running it.
 2 **Q.** And what do you mean the people running
 3 it? What information would he provide about that to
 4 the potential investors in 2016?
 5 **A.** He would introduce them, I mean physically
 6 go into the office, meet with certain -- you know,
 7 like what we were just describing, sitting down with
 8 certain folks that were running the business, have
 9 them answer questions about how the business
 10 operated, getting a really comfortable understanding
 11 of what it was doing and how it was making its
 12 money.
 13 **Q.** So who was running the company in 2016?
 14 **A.** In 2016 the company was run by numerous
 15 managers including myself.
 16 **Q.** And who else?
 17 **A.** Are you talking about the specific
 18 managers for each department?
 19 **Q.** I'm asking who was running CBSG in 2016.
 20 **A.** I was asking if you wanted me to get
 21 granular and talk about specific managers, or do you
 22 mean from an executive level? I'm not sure.
 23 **Q.** It's up to you in how to answer it. Only
 24 you know the answer. You testified that
 25 Mr. Abbonizio would introduce the potential

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1 noteholders to the people running Complete Business
 2 Solutions Group.
 3 And so I'm asking: In 2016, who were the
 4 individuals who were running Complete Business
 5 Solutions Group?
 6 **A.** So that I'm answering your question as
 7 accurately as possible, you're saying by running,
 8 these are the guys basically doing the daily pass in
 9 the operations of the business, right? And I would
 10 assume you mean managers of the business.
 11 **Q.** I don't necessarily mean managers of the
 12 business or that they have a specific title or
 13 anything else.
 14 I'm asking as a practical matter in 2016,
 15 please identify the names of the individuals who
 16 were running Complete Business Solutions Group.
 17 **A.** Sure. Myself, Lisa McElhone, Jamie
 18 McElhone, Susan Grazer, Kenneth Calcagnini. I'm
 19 struggling to remember some of the other managers'
 20 names. But those are some of the major players.
 21 **Q.** Anyone else?
 22 **A.** No, not that I can remember.
 23 **Q.** At any time between 2012 and 2020 that you
 24 were doing work in connection with Complete Business
 25 Solutions Group, did Joseph LaForte run -- was he

45

1 one of the people who was making decisions for
 2 Complete Business Solutions Group?
 3 **MR. SOTO:** Objection to form.
 4 **THE WITNESS:** In 2017 Full Spectrum
 5 Processing would do the operational duties for CBSG.
 6 So the personnel of that company would be the ones
 7 effectively running the business.
 8 Are you saying the people that were
 9 running the business from a day to day, or are you
 10 referring to executive management and directors of
 11 the business?
 12 **BY MS. BERLIN:**
 13 **Q.** In any way. It would be up to you to
 14 decide how to answer the question. Only you know
 15 how to answer these questions honestly and know the
 16 facts that I'm asking about.
 17 My question is: At any time from 2012
 18 through 2020, did Joseph LaForte have any role in
 19 running any operations in connection with Complete
 20 Business Solutions Group?
 21 **A.** Yes.
 22 **MR. SOTO:** Objection to form.
 23 **THE WITNESS:** Did you hear what I said?
 24 **BY MS. BERLIN:**
 25 **Q.** No, I didn't.

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1 **A.** I said, "Yes."
 2 **Q.** Okay. And can you tell me about that?
 3 Can you elaborate please?
 4 **A.** Sure. As I mentioned, near the beginning
 5 of the business we had fewer employees wearing a lot
 6 of hats. So myself, Lisa, Jamie, her sister, we'd
 7 be handling a lot more than we did later down the
 8 road with Full Spectrum and especially towards 2020
 9 when we had a lot more employees at Full Spectrum
 10 running several different departments.
 11 So Joe had some managerial
 12 responsibilities towards the beginning. This
 13 included interviewing me and hiring me and other
 14 staff. I believe Lisa put a lot of trust in his
 15 ability to be a good judge of character. But this
 16 wasn't his primary responsibility. This is
 17 something that he helped out with.
 18 He primarily worked out of Recruiting and
 19 Marketing Resources to generate deals for CBSG to
 20 fund. And as time went on, you know, those roles
 21 became more diminished. His responsibility
 22 specifically really focused on the sales and
 23 communication with the underwriting departments and
 24 credit committee to help determine the worthiness of
 25 these MCA deals that CBSG would end up funding

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1 through the efforts of the folks at Full Spectrum
 2 Processing.
 3 **Q.** Did you ever report to Joseph LaForte?
 4 **A.** What do you mean by report?
 5 **Q.** In connection with any work you did with
 6 Complete Business Solutions Group or in connection
 7 with Complete Business Solutions Group between 2012
 8 and 2020, did you ever report to Joseph LaForte?
 9 **A.** Did I ever --
 10 **MR. SOTO:** Objection to form.
 11 **THE WITNESS:** -- send information or
 12 reports or did you mean did I answer to him for any
 13 sort of authority? I'm not sure what you mean by
 14 the word "report."
 15 **BY MS. BERLIN:**
 16 **Q.** Sure. So did you ever check with Joseph
 17 LaForte before engaging in any work?
 18 **MS. SCHEIN:** Objection. It's a vague
 19 question.
 20 **BY MS. BERLIN:**
 21 **Q.** I'm going to stick with my original
 22 question, Mr. Cole. I think you know what the word
 23 "report" means.
 24 Did you ever report to Joseph LaForte?
 25 And if you need me to, I can look up the definition

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1 of that word for you and explain to you what report
2 means on the record. But I think that you know or
3 you should know what the word "report" means. But
4 if you don't, let me know, and I will pull up the
5 definition of the word for you.

6 MR. SOTO: This is Mr. Soto. Standing
7 objection on this question.

8 THE WITNESS: Oh, certainly I know what
9 the word report means. I just want to answer this
10 as truthfully and as accurately in the manner that
11 you're describing it. I don't want it to get
12 misconstrued.

13 By report if you mean did I have to get
14 his approval on anything or make decisions based on
15 approvals, absolutely not. I would report some of
16 the numbers and issues going on with the business.

17 I would copy Lisa on daily cash reports, for
18 example, and copy Joe so the sales group and
19 underwriting team knew what sort of dollars we were
20 working with in the bank, for example.

21 So if you're speaking about report in
22 terms of authority, he had no legal authority or
23 functional authority over my departments or my
24 person. That was only Lisa.

25 But if you mean report in the sense that I

1 Q. Did Lisa McElhone use an email in her
2 correspondence with you that included the name of
3 Joseph LaForte or Joe or Joe LaForte as the email
4 address?

5 A. Not that I can remember.

6 Q. Did Joseph LaForte oversee the
7 underwriting group that did work in connection with
8 Complete Business Solutions Group at any time?

9 A. What do you mean by oversee?

10 Q. Well, why don't I do this. Why don't you
11 tell me what work did Mr. -- what was Mr. LaForte's
12 role -- you testified earlier that he did work in
13 connection with the underwriting group and other
14 groups at Complete Business Solutions Group.

15 Please elaborate and tell me what
16 Mr. LaForte's role was with respect to the
17 underwriting group.

18 MS. SCHEIN: Could we have a timeframe?
19 BY MS. BERLIN:

20 Q. I'm asking generally. And then you can
21 either provide the timeline if it changed over time,
22 or I can ask you in a follow-up. I'm asking what
23 his role was period during the entire time period.
24 We're not going to go month by month.

25 Mr. Barleta, you can provide the time

1 copied him on discussions in the business or
2 information regarding the financials, I certainly
3 sent him information, yes.

4 BY MS. BERLIN:

5 Q. Did you ever take direction from Joseph
6 LaForte in connection with the work you did for
7 Complete Business Solutions Group?

8 A. Not that I can remember.

9 Q. When you would email Lisa McElhone, what
10 email address did you use for her?

11 A. Lisa had a few email addresses. I don't
12 recall which ones I emailed all the time, but there
13 was as Par one and a Gmail one as well.

14 Q. Did her email addresses include her name,
15 or were they email addresses that looked like they
16 were Joseph LaForte's, meaning it would be like
17 JosephLaForte@CompleteBusinessSolutionsGroup, or was
18 it clear that you were emailing Lisa McElhone from
19 the email address?

20 A. Are you saying if I had any ambiguity to
21 whom I was sending emails to?

22 Q. Yes.

23 A. No. I believe I knew who I was emailing
24 whenever I sent those emails in regards to Lisa or
25 anyone else.

1 periods if they changed. But the question pending
2 is: Please explain to me what Mr. LaForte's role
3 was in connection with the underwriting that was
4 done with respect to Complete Business Solutions
5 Group.

6 A. Sure. Starting from the beginning, as I
7 mentioned, we had fewer employees wearing many hats.
8 Joe worked in the sales capacity with his company
9 Recruiting and Marketing Resources to provide leads
10 and deals that CBSG would fund as part of its MCA
11 factoring agreement.

12 In connection with providing those deals,
13 he would also communicate with underwriting and, as
14 a part of the credit committee, review the
15 worthiness of those files and determine whether or
16 not CBSG should fund those merchants. He had some
17 limited -- I'm sorry?

18 Q. I apologize. I didn't mean to interrupt
19 you.

20 A. Okay. I'll keep going. He had some
21 limited managerial capabilities including the
22 interviews and some of the communications in the
23 office. This diminished over time.

24 And going into Full Spectrum in 2017, he
25 spent the majority of his time working in the sales

1 department with Recruiting and Marketing Resources
 2 forwarding over deals, spending time talking to
 3 merchants, conveying terms of these factoring
 4 agreements, and negotiating on behalf of CBSG
 5 through his function as an ISO, which is an
 6 independent sales organization.
 7 And he would still continue to communicate
 8 with the credit committee to determine the
 9 worthiness of these fundings and communicate that to
 10 personnel related to that function. And this became
 11 heavily concentrated in terms of his work
 12 responsibilities at the end of 2019 and into 2020.
 13 I would assume he's using most of his day doing
 14 this.
 15 MS. SCHEIN: Amie?
 16 MS. BERLIN: Yes.
 17 MS. SCHEIN: Can we take a break, say five
 18 minutes or less?
 19 MS. BERLIN: Yeah, of course.
 20 MS. SCHEIN: Okay.
 21 MS. BERLIN: Yeah, of course. Any time
 22 anyone needs a break, just let me know. Why don't
 23 we come back on in about five minutes.
 24 MS. SCHEIN: Thanks.
 25 MS. BERLIN: Okay. Let's go off the

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1 or not a factoring agreement should be funded for
 2 any of these merchants.
 3 Q. When did the use of credit committees
 4 commence in connection with Complete Business
 5 Solutions Group?
 6 A. The credit committee was there before I
 7 started employment. Lisa was already looking and
 8 obviously making decisions to whether or not fund
 9 these factoring agreements.
 10 Q. Was Lisa McElhone ever on the credit
 11 committee?
 12 A. She started it. It's her committee.
 13 Q. So she was on the credit committee?
 14 A. Yes.
 15 Q. Okay. And during what years was Lisa
 16 McElhone on the credit committee?
 17 A. To my understanding, she was on the credit
 18 committee for the first few years, maybe until 2015
 19 or '16. We had additional underwriters that were
 20 promoted and managers that would assist with that
 21 decision-making process.
 22 Q. Who was on the credit committee between
 23 2015 and 2020?
 24 A. There was a lot of people on the credit
 25 committee. Members included Susan Grazer, Victoria

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1 record.
 2 THE VIDEOGRAPHER: We're going off the
 3 record at 11:42 a.m.
 4 (Recess from 11:42 a.m. to 11:52 a.m.)
 5 THE VIDEOGRAPHER: And we're back on the
 6 record at 11:52 a.m.
 7 BY MS. BERLIN:
 8 Q. Mr. Cole, when you testified about
 9 Mr. LaForte and you mentioned sales, were those
 10 sales of merchant cash advance loans?
 11 A. The merchant cash advance -- the merchant
 12 cash advance that CBSG provides are not loans. They
 13 are factoring agreements. And, yes, I'm talking
 14 about as an ISO, an independent sales organization.
 15 ISOs that CBSG works with all have the
 16 task of providing merchants interested in working
 17 with the company to do these merchant cash advance
 18 factoring agreements for receiving operating capital
 19 to the respective businesses.
 20 Q. You testified about the credit committee.
 21 What was the credit committee in connection with
 22 Complete Business Solutions Group?
 23 A. So the credit committee that Lisa started
 24 consists of senior underwriters and people taking a
 25 look at the deal one last time to determine whether

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1 Villarose, Alek Shlepin, Frank Scarpati. I believe
 2 Wendy Furman was also part of it or she participated
 3 in some of these discussions along with Joe LaForte.
 4 Q. Were you ever on the credit committee?
 5 A. I was never on the credit committee, no.
 6 Q. During what years was Mr. LaForte on the
 7 credit committee?
 8 A. Joe was more active in the credit
 9 committee towards the beginning. There has always
 10 been some sort of communication with the sales arm
 11 through Armar regarding the deals, especially the
 12 ones that they would provide to CBSG. So he's
 13 always had input with the credit committee and,
 14 again, more so in the beginning and less so towards
 15 2020.
 16 Q. Was he on the credit committee in 2015?
 17 A. Yes.
 18 Q. In 2016?
 19 A. Yes.
 20 Q. In 2017?
 21 A. Yes.
 22 Q. In 2018?
 23 A. Yes.
 24 Q. In 2019?
 25 A. Yes.

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1 Q. In 2020?
 2 A. Yes.
 3 Q. When was the last year that Lisa McElhone
 4 was on the credit committee?
 5 A. I don't know if there was ever a last
 6 year. Lisa always has corporate oversight and can
 7 participate if she wanted to, especially with
 8 discussions with her sister Jamie, who is right by
 9 the credit committee. So I think she always had a
 10 level of input with regards to the deals funded.
 11 Q. Did Lisa McElhone have decision-making
 12 authority on behalf of Complete Business Solutions
 13 Group during the entirety of your work in connection
 14 with CBSG, so, in other words, from 2012 through
 15 2020?
 16 A. Yes, she did.
 17 Q. Did she share that decision-making
 18 authority with anyone else at any time?
 19 A. Not that I know of.
 20 Q. We talked earlier about the meetings with
 21 potential investors or noteholders through 2016.
 22 Did you also participate in meetings with potential
 23 investors/potential noteholders between the time
 24 period 2017 through 2020?
 25 A. Yes.

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1 Q. During that time period of 2017 through
 2 2020, did the meetings occur the same way you
 3 testified about them for the period 2012 through
 4 2016?
 5 A. You mean how I was involved with these
 6 meetings?
 7 Q. Yeah, that you were involved in and what
 8 your role was in those meetings and what Lisa
 9 McElhone would do in those meetings.
 10 A. Yes. My involvement was the same. I
 11 would provide information, typically the financial
 12 information and some of the operations of the
 13 business, especially with regards to the change in
 14 2017 when Full Spectrum Processing took over
 15 handling the day-to-day operations of CBSG.
 16 Q. Did Lisa McElhone continue to attend some
 17 of the meetings with potential investors during the
 18 2017 to 2020 time period?
 19 A. I believe she did.
 20 Q. And when she attended those meetings
 21 during the 2017 through 2020 timeframe, would she
 22 discuss the same things you testified she would
 23 discuss during the earlier time period?
 24 A. That's right, the same things.
 25 Q. With respect to Full Spectrum during the

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1 time period 2017 through 2020, who ran the
 2 day-to-day operations?
 3 A. Who ran the day-to-day operations of CBSG?
 4 Q. Who ran the day-to-day operations of Full
 5 Spectrum during the time period of 2017 through
 6 2020?
 7 A. We had several managers of the business.
 8 Lisa and I have always been the sort of figureheads
 9 of the business, but we had several departments run
 10 by numerous managers. For example, I mentioned
 11 before Tori was in charge of the underwriting. I
 12 believe I discussed that.
 13 We also had Jim Klenk and Aida Lau who
 14 worked as supervisors and managers of the accounting
 15 department. We had Kevin Young who was in charge of
 16 IT. Anthony Fazio was in charge of collections.
 17 Wendy Furman was in charge of processing. There
 18 were a couple of different lawyers in the business
 19 acting as general counsel in charge of the legal
 20 department.
 21 We also had personnel that worked in the
 22 HR department. I had a couple of different HR
 23 managers handling that. So those were the folks
 24 that were in charge of the day-to-day operations
 25 (indecipherable).

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1 COURT REPORTER: It's really garbled.
 2 MR. SOTO: Just a suggestion. I think
 3 Alan Futerfas' microphone is on. I'm assuming you
 4 guys are in the same room. If Alan could mute, that
 5 might help.
 6 THE WITNESS: Okay. Did you guys want me
 7 to talk about that again?
 8 BY MS. BERLIN:
 9 Q. Yes. We couldn't make out what you were
 10 saying.
 11 A. Sorry. Let me get into that. So just
 12 walking through the departments that were being run
 13 at Full Spectrum Processing for the benefit of CBSG,
 14 individuals included Jim Klenk and Aida Lau who
 15 handled supervision for the accounting and payroll
 16 departments. Kevin Young handled IT. We had
 17 various lawyers working in the legal department
 18 acting as general counsel.
 19 We had Anthony Fazio in charge of
 20 collections, Wendy Furman in charge of the
 21 processing department. We also had Davin Kane who
 22 was in charge of the HR department at the end of --
 23 in 2020. There were other HR guys in there before.
 24 And obviously we have Perry Abbonizio who's in
 25 charge of talking to these noteholders and third

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1 parties lending money to CBSG.
 2 **Q.** Who had ultimate decision-making authority
 3 for Full Spectrum during the period 2017 through
 4 2020?
 5 **A.** Lisa. Lisa is the owner of the business.
 6 **Q.** During the time period of 2017 through
 7 2020, did Joseph LaForte attend any of the meetings
 8 with potential investors in the Complete Business
 9 Solutions Group notes?
 10 **A.** Did he attend the meetings that we had
 11 with the noteholders? Yes, on occasion he did.
 12 **Q.** Okay. What was his role during those
 13 meetings?
 14 **A.** It was the same as the prior period that
 15 you were describing. It was to provide information
 16 about the business typically from his end, which is,
 17 again, with the sales end that he manages and the
 18 origination of deals. He may get into some of the
 19 aspects of the underwriting process as far as what
 20 the underwriters were looking for from the deals
 21 that he would forward over.
 22 **Q.** During meetings with potential investors
 23 of the Complete Business Solutions Group promissory
 24 notes, what names did Joseph LaForte use?
 25 **A.** The meetings with the noteholders? I

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1 believe he used his proper name, Joseph LaForte.
 2 **Q.** Did he ever use the name Joe Mack or
 3 Joseph Mack in the meetings with potential
 4 noteholders?
 5 **A.** Not that I can recall.
 6 **Q.** Did you know Joseph LaForte to use names
 7 other than Joseph LaForte?
 8 **A.** Yes, I did.
 9 **Q.** What names did you know him to use?
 10 **A.** I believe he used the name Joe Mack.
 11 **Q.** Any other names?
 12 **A.** Not that I can remember.
 13 **Q.** Are you aware of him using the name Joe
 14 Macki?
 15 **A.** I think that was -- I'm remembering it was
 16 like the same name. But, yeah, I think that's a
 17 variation of Joe Mack, yes.
 18 **Q.** Okay. So Joe Mack and Joe Macki?
 19 **A.** Yes.
 20 **Q.** And what about Joe McElhone?
 21 **A.** No. I don't recall him using that name.
 22 **Q.** When did you first become aware that
 23 Joseph LaForte used the name Joe Mack or Joe Macki?
 24 **A.** It was near the start of my employment
 25 with CBSG in 2012.

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1 **Q.** Did you have any understanding of why
 2 Mr. LaForte sometimes used a different name?
 3 **A.** Yes, I do.
 4 **Q.** And what was your understanding?
 5 **A.** From the capacity of sales and sometimes
 6 collections from deals that were forwarded over from
 7 his sales entity to CBSG, I believe that the use of
 8 an alias or an incomplete name was due to the
 9 anonymity and safety of employees working in those
 10 capacities.
 11 **Q.** Just one moment, please.
 12 **A.** Sure.
 13 **Q.** Can you elaborate on what you mean by --
 14 can you elaborate on your answer a bit and explain
 15 what you mean by you thought he was using the alias.
 16 **A.** What I'm talking about with the anonymity
 17 and safety of our employees?
 18 **Q.** Yeah.
 19 **A.** Sure. In various sales capacities and
 20 collections, you know, for example, we worry about
 21 any sort of retaliation. Let's say a deal didn't
 22 get funded or potentially if we're collecting on a
 23 merchant who is behind and they may express some
 24 hostility toward the collectors, an employee may use
 25 an alternate name to protect their actual identity

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1 so they're not going to get harassed maybe on social
 2 media. They might get some angry emails or, God
 3 forbid, in person.
 4 So, for example, we had Ken Calcagnini who
 5 I told you was the collections manager, he'd go by
 6 the alias Ken Jenkins. Emily Gray may just
 7 abbreviate her own name to Emily and just the last
 8 initial of her name. So you're not finding out who
 9 these people actually are and potentially holding
 10 them personally accountable for collections issues
 11 or perhaps a denial of funding.
 12 It's important that that's respected for
 13 our employees due to the safety guidelines and
 14 compliance.
 15 **Q.** Was Mr. LaForte involved in collection
 16 efforts on behalf of Complete Business Solutions
 17 Group?
 18 **A.** It wasn't his primary function, but he
 19 would help collect on deals that were forwarded over
 20 from his sales entity.
 21 **Q.** So was there any other reason that
 22 Mr. LaForte used an alias other than in connection
 23 with the anonymity and safety based on the fact that
 24 he was engaged in collections work?
 25 **A.** Not that I know of.

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1 Q. Did there come a time when you learned
 2 that Joseph LaForte had a criminal record?
 3 A. Yes.
 4 Q. When did you learn that?
 5 A. I don't remember the specific time, but
 6 this was near the start of my employment with CBSG
 7 in 2012.
 8 Q. And how did you come to learn about it?
 9 A. I believe he discussed it with me just for
 10 the sake of gaining comfort in working with the
 11 business.
 12 Q. What did he tell you?
 13 A. I didn't go into specifics and ask a lot
 14 of questions, but it was a criminal conviction
 15 related to some sort of mortgage company that he
 16 worked in in Florida like 15 years ago or something
 17 like that.
 18 Q. Did you come to understand at any time
 19 that Mr. LaForte had been incarcerated for engaging
 20 in criminal activity?
 21 A. Yes. That was my understanding from his
 22 explanation to me, yes.
 23 Q. Did you ever have an understanding that
 24 Mr. LaForte used an alias because if people knew his
 25 real name, they might find out about his criminal

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1 record?
 2 A. No, not to my understanding.
 3 Q. During the meetings you attended with
 4 potential investors of Complete Business Solutions
 5 Group's promissory notes, did you ever hear Joseph
 6 LaForte tell a potential investor about his criminal
 7 record?
 8 A. I'm sorry. That broke up. Can you repeat
 9 that, please?
 10 Q. Sure. Have you ever heard Mr. LaForte
 11 tell a potential investor in Complete Business
 12 Solutions Group's promissory notes that he had a
 13 criminal record?
 14 A. I don't remember a specific time that he
 15 discussed that, though I would say that most of
 16 these noteholders generally knew about it. He was
 17 generally very transparent about that matter.
 18 Q. So why do you believe that the noteholders
 19 knew about Mr. LaForte's criminal record?
 20 A. It was pretty common knowledge in the
 21 company. It's not some sort of secret. And it was
 22 discussed openly on occasion, although obviously
 23 isn't a primary focus when talking to third parties
 24 lending money to the company.
 25 Q. So my question is: Did you ever hear

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1 Mr. LaForte tell a potential investor that he had a
 2 criminal record?
 3 MR. SOTO: Objection to form.
 4 THE WITNESS: I can't recall.
 5 BY MS. BERLIN:
 6 Q. Did you ever hear anyone associated with
 7 Complete Business Solutions Group tell a potential
 8 investor that Joseph LaForte had a criminal record?
 9 A. Did I hear anyone talk about his criminal
 10 record?
 11 Q. Did you ever hear anyone associated with
 12 Complete Business Solutions Group or Full Spectrum
 13 tell a potential investor of Complete Business
 14 Solutions Group that Joseph LaForte had a criminal
 15 record?
 16 A. Not specifically, but I believe it was
 17 discussed during some of these meetings.
 18 Q. Do you recall it being discussed at the
 19 meetings with potential investors?
 20 A. Yes. I recall the topic being discussed,
 21 but I don't recall a specific instance of when.
 22 Q. Who discussed it at these meetings with
 23 potential investors?
 24 A. I don't remember. You're talking about a
 25 wide period of time and a lot of meetings. It's

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1 just generally understood that it was brought up. I
 2 remember that it was a point of discussion on
 3 occasion.
 4 Q. Can you recall a specific single incident
 5 where someone told a potential investor that Joseph
 6 LaForte had a criminal record?
 7 MR. SOTO: Objection to form.
 8 THE WITNESS: Can I recall a specific
 9 incident?
 10 BY MS. BERLIN:
 11 Q. Do you recall a single specific instance
 12 where someone told a potential investor of Complete
 13 Business Solutions Group that Joseph LaForte had a
 14 criminal record?
 15 A. No. I can't remember a specific instance.
 16 It's all blurring together. I'd be guessing if I
 17 tried.
 18 Q. Did you ever tell a potential investor
 19 that Joseph LaForte had a criminal record?
 20 A. I have discussed with these noteholder
 21 purchasers, but I don't recall it being initiated by
 22 me or being brought up. Certainly we're very open
 23 about discussing the matter. It's a sensitive issue
 24 obviously. But I don't recall a specific instance
 25 where I told someone, no.

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1 Q. Do you recall any specific potential
2 investor or investor whom you told about Joseph
3 LaForte's criminal record?

4 A. That I told I don't know. But I remember
5 discussing it with other noteholders for sure.

6 Q. Can you recall the name of any noteholder
7 that you told?

8 A. If you're saying if I was the person to
9 introduce that fact, I don't recall. But I do
10 recall discussing the topic. I don't recall if I
11 was the person to tell them initially about the
12 matter.

13 Q. Okay. Who do you recall discussing it
14 with? And we're talking about potential
15 noteholders.

16 A. That means they have not purchased any
17 promissory notes from CBSG yet; right?

18 Q. Correct.

19 A. I don't recall talking to anyone before
20 the purchase of the notes. It wasn't really my
21 capacity before purchasing. I typically talked
22 about accounting and finance, not people's
23 background. So that's not the focus of my
24 discussion with any potential purchasers of these
25 promissory notes from CBSG.

1 Joseph, Ezra, Isaac, Albert. Also their CFO who was
2 also a noteholder, that was Chuck Frey. Also the
3 CPA they had do the audit of our company in 2016,
4 his name was Jeffrey Kaufman. He subsequently
5 became a noteholder after the audit.

6 I remember discussing this with Alan
7 Kandall and Patrick Gibbons. I can't recall every
8 single person.

9 Q. Can you spell that name?

10 A. I'm sorry?

11 Q. Could you spell Patrick's last name?

12 A. Yes, Gibbons, G-I-B-B-O-N-S.

13 Q. Okay. Who else?

14 A. I mean, these are a few. I'm trying to
15 remember specific guys. There's a lot of different
16 parties. Matthew Szkotak was one of them.

17 Q. Can you spell his last name for the court
18 reporter?

19 A. Yeah. I believe it's spelled
20 S-Z-K-O-T-A-K.

21 Q. Okay. Who else?

22 A. I'm really struggling to remember a lot of
23 these discussions. It's so many different, you
24 know, people and times. Did I mention Scott
25 Pollack?

1 Q. Okay. So you didn't tell any of the
2 potential noteholders about Joseph LaForte's
3 criminal record; correct?

4 A. Not that I can recall.

5 Q. And what about after the investment was
6 made, did you discuss Joseph LaForte's criminal
7 record with any noteholder?

8 A. I don't remember it being a topic of
9 discussion. Obviously, it's not the focus of the
10 discussions. We're usually talking about the
11 performance of the business and my capacity in
12 reporting numbers and financials.

13 So I can't remember that it was broached
14 by me. I certainly remember that it was discussed
15 on occasion with these parties.

16 Q. Who did you discuss it with? Which
17 noteholders specifically did you discuss Joseph
18 LaForte's criminal record with?

19 A. You want me just to start naming people
20 that I believe I discussed it with?

21 Q. I'm asking for the name of noteholders
22 that you discussed Joseph LaForte's criminal record
23 with.

24 A. Off the top of my head, I would say
25 members from the Chehebar family. That includes

1 Q. How do you spell his last name?

2 A. Pollack is spelled P-O-L-L-A-C-K.

3 Q. Do you recall discussing it with any other
4 noteholders?

5 A. No. Again, it was a really wide frame of
6 time, and it's a lot of different meetings. It's
7 really kind of a blur at this point. So I'm trying
8 to name ones that I had a lot of discussions with
9 and that were parties that I spoke with more
10 frequently than others. But I would be struggling
11 or guessing to remember if I had it with additional
12 noteholders.

13 Q. Did Complete Business Solutions Group or
14 Full Spectrum have any marketing material in
15 connection with the promissory notes that Complete
16 Business Solutions Group was offering?

17 A. I'm sorry. I didn't understand that.

18 Q. Sure. Were there any marketing materials
19 that were utilized in connection with the Complete
20 Business Solutions Group promissory notes?

21 A. Not that I know of.

22 Q. Were there any brochures, for example,
23 that were utilized in connection with the offer of
24 Complete Business Solutions Group's promissory
25 notes?

1 A. Not that I know of.
 2 MR. SOTO: Objection to form. Can you
 3 give us a time period?
 4 BY MS. BERLIN:
 5 Q. Just one moment, please.
 6 I'm sorry. Can you repeat what you just
 7 said? I didn't hear it.
 8 A. I'm sorry. The last thing I said was "not
 9 that I know of."
 10 Q. Okay. What about PowerPoint
 11 presentations, were there any PowerPoint
 12 presentations in connection with the offer of the
 13 Complete Business Solutions Group promissory notes?
 14 A. I believe there were some PowerPoints
 15 discussing some of the notes and backgrounds of the
 16 company. I don't recall the use of those
 17 PowerPoints. It was more of like a general
 18 operational PowerPoint.
 19 Q. Did you have any involvement in the
 20 creation of those PowerPoints?
 21 A. Not that I recall.
 22 Q. Was there a brochure for Complete Business
 23 Solutions Group?
 24 MR. SOTO: Objection to form.
 25 THE WITNESS: I'm not sure what brochure

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1 A. I don't recall. I believe Lisa hired a
 2 couple -- I'm sorry. I'll just add on. I believe
 3 Lisa hired a couple different marketing people, too.
 4 So there are some instances of the website, and it's
 5 changed over time. The version I'm referring to is
 6 probably the most recent version. And I don't
 7 recall who generated the copy for that.
 8 Q. What merchant was that?
 9 A. I don't remember the merchant. There's
 10 other parties that provided web content and copy for
 11 the website. Lisa retained a few different vendors
 12 for this purpose.
 13 Q. Do you remember the name of any entity
 14 that provided website services in connection with
 15 Complete Business Solutions Group?
 16 A. Let me think. I believe one of these
 17 companies was called Octo Design Group. So they're
 18 like a CSS developer. They didn't provide the
 19 hosting. That was done on our domain with our IT
 20 department. But I believe they did some of the
 21 graphics design and copy as part of the content for
 22 the website.
 23 Q. And who had final decision or approval
 24 over the website and its content?
 25 A. As I mentioned, they usually run this

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1 you're referring to. Do you mean just a general --
 2 BY MS. BERLIN:
 3 Q. Any brochures, yes.
 4 A. I believe there was a brochure explaining
 5 it to our merchants, just a general overview of the
 6 company and the product.
 7 Q. Did you ever attend any events where
 8 brochures were distributed that discussed Complete
 9 Business Solutions Group?
 10 A. Not that I know of.
 11 Q. Did Complete Business Solutions Group
 12 maintain a website?
 13 A. It was ParFunding.com. That's the d/b/a
 14 for CBSG.
 15 Q. Okay. Did you have any involvement in the
 16 content of the website?
 17 A. I worked with IT closely in setting it up
 18 and mostly the back end, troubleshooting the
 19 logistics with the server.
 20 As far as content, I believe that was more
 21 on legal's end. We had our in-house counsel review
 22 content to be produced on there. That really wasn't
 23 my bailiwick.
 24 Q. Well, who provided the information about
 25 the content of the company for the website?

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1 stuff through the legal department and verifying
 2 that what was being posted on there, it made sense
 3 and is legally accurate.
 4 So to my understanding, general counsel
 5 would be the final authority on giving a green light
 6 to posting or updating the content on
 7 ParFunding.com.
 8 Q. What counsel?
 9 A. It varies. Lawyers served as general
 10 counsel throughout the years. So it depends on what
 11 time period you're referring to.
 12 Q. Okay. But it would have been the in-house
 13 general counsel who would have made the final
 14 decision on the website content; is that accurate?
 15 A. Yeah, that provided the approval, more or
 16 less, of the content and whatever copy specifically.
 17 If we're talking about language, that the copy was
 18 acceptable.
 19 Q. Did you review the contents of the website
 20 before it was published?
 21 A. I looked at it, but, again, my standpoint
 22 is more from the technical aspect. I wanted to make
 23 sure that the client portal worked when people were
 24 logging in, that the web pages were displaying
 25 properly on different platforms, like mobile or web,

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1 you know, different devices would be able to display
2 it in a coherent manner.

3 We also had some pop-up features that were
4 somewhat complicated and forms used by the website.
5 So I wanted to make sure that it was running
6 smoothly for our merchants, especially with the
7 amount of web volumes that we had from people
8 logging into their payment histories and online
9 client portals for them every day.

10 **Q.** Did Lisa McElhone have the ultimate
11 decision making with respect to the website and its
12 contents?

13 **A.** I mean, to some extent, Lisa has the
14 authority for any final decision. She's still the
15 president of CBSG. The authority granted by CBSG to
16 Full Spectrum Processing as part of its operating
17 agreement certainly granted some of those powers to
18 the folks working on the website.

19 Later on, and you're somewhat jogging my
20 memory, we actually had a couple web developers
21 employed in the IT department of Full Spectrum
22 Processing, and they had some of the input. So it's
23 going to be a combination of those folks developing
24 the copy and updating the website, running it by
25 in-house counsel and Lisa's authority to ultimately

1 Business Solutions Group could decide whatever
2 content they wanted to put on the website without
3 Lisa's knowledge and approval; is that accurate?

4 **A.** No, it's not.

5 **Q.** Okay. So did she have approval over
6 ultimate content on the website?

7 **A.** (Indecipherable).

8 **Q.** Mr. Cole, we can't understand what you're
9 saying. I don't know if someone else has their
10 speaker on. But if everyone else could be muted.

11 Can you answer again. We couldn't make
12 out what you were saying.

13 **A.** Sure. You said CBSG. There's no one else
14 at CBSG because Full Spectrum Processing is
15 providing the operational services for CBSG.

16 At Full Spectrum Processing, the authority
17 and review of the content posted on the websites
18 went through legal, and started off with the IT
19 development team, the folks that are working in that
20 department, right, so that ultimately the authority
21 to post something on the website would fall in the
22 lap of general counsel and the other members of the
23 legal team. We had a few different lawyers there.

24 **Q.** I understand that. My question is: Did
25 Lisa McElhone have any involvement in the process of

1 have -- you know, if she wanted to take the website
2 down, she could take it down if she didn't like the
3 layout or something.

4 She's not quite that tyrannical about
5 content, but at the end of the day, she could,
6 right.

7 **Q.** With respect to Full Spectrum, did Lisa
8 McElhone have ultimate authority over Full Spectrum
9 between 2017 and 2020?

10 **A.** She did.

11 **Q.** So I understand that different people
12 worked on the website, provided content for the
13 website. But would the ultimate approval for the
14 website come from Lisa McElhone?

15 **MR. FUTERFAS:** It's Peter Futerfas. I'm
16 going to lodge an objection. Asked and answered
17 about three times. Thank you.

18 **BY MS. BERLIN:**

19 **Q.** Go ahead, Mr. Cole.

20 **A.** At the end of the day, she would not make
21 the decision about posting content on the website.

22 **Q.** Did you just say she would not make the
23 decision?

24 **A.** She would not make the decision; correct.

25 **Q.** Okay. So other people at Complete

1 reviewing or approving what went on the Par Funding
2 website?

3 **A.** No.

4 **Q.** What about Joseph LaForte?

5 **A.** No, not to my knowledge.

6 **Q.** Perry Abbonizio?

7 **A.** No, not to my knowledge.

8 **MS. BERLIN:** Okay. Let's take a break for
9 lunch. We'll go off the record. And we can come
10 back on at 1:00. Does that give everyone enough
11 time to grab something to eat?

12 **MR. LEVINE:** Can we do 1:15?

13 **MS. BERLIN:** Sure. 1:15. We'll go off
14 the record and resume at 1:15.

15 **THE VIDEOGRAPHER:** We're going off the
16 record at 12:34 p.m.

17 (Recess from 12:34 p.m. to 1:22 p.m.)

18 **THE VIDEOGRAPHER:** And we're back on the
19 record 1:22 p.m.

20 **BY MS. BERLIN:**

21 **Q.** In connection with ALB Management, did you
22 do any work that was different for CBSG than that
23 which you were doing prior to 2017?

24 **A.** ALB, which is the entity subsequent to
25 Beta Abigail, was the same work.

1 Q. And so for ALB Management and Beta
 2 Abigail, were you doing the same work in connection
 3 with Complete Business Solutions Group that you were
 4 doing prior to 2017?
 5 A. Yes.
 6 Q. I'm sorry. If you answered, I didn't hear
 7 it.
 8 A. I said, "Yes."
 9 Q. What was ABL Management, Inc. exactly?
 10 A. It's the same consulting entity and
 11 function as Beta Abigail.
 12 Q. So why did you create ABL Management?
 13 A. I was given advice from tax accountants to
 14 restructure it. So I stopped using Beta Abigail and
 15 started using that company instead. It was for tax
 16 purposes.
 17 Q. What was New Field Ventures, LLC?
 18 A. I believe New Field Ventures is Perry
 19 Abbonizio's consulting entity.
 20 Q. And did you have any ownership interest in
 21 New Field Ventures?
 22 A. None whatsoever.
 23 Q. Did you have any interest of any kind in
 24 New Field Ventures?
 25 A. No.

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1 Q. Did you receive money either directly or
 2 through one of your consulting companies from New
 3 Field Ventures?
 4 A. No, I did not.
 5 Q. Did you have any ownership interest in the
 6 Complete Business Solutions Group at any time?
 7 A. No, I did not.
 8 Q. Did you have any profit-sharing agreement
 9 in connection with Complete Business Solutions
 10 Group?
 11 A. Only the consulting agreement that I had
 12 through my entities.
 13 Q. And what did that provide for?
 14 A. I'm sorry. What does that mean?
 15 Q. What did those agreements provide for?
 16 What did you receive?
 17 A. I received consulting fee payments through
 18 that agreement to my entities.
 19 Q. Right. But the consulting fee agreements
 20 you received were based on a certain percentage; is
 21 that correct?
 22 A. That's right. We had a basis determining
 23 the consulting fee amounts from the prior quarter's
 24 MCA funding volume. So, for example, if we funded
 25 \$90 million in MCA deals, we would take a percentage

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1 of that to determine how much would be paid as
 2 consulting fees to the parties with these agreements
 3 in place.
 4 Q. So what percentage of the funding amount
 5 did you receive?
 6 A. It depends on the quarter. So sometimes
 7 we would take nothing. For example, in Q1 2020 with
 8 the onset of COVID, we said it wouldn't be prudent
 9 for us to take any sort of consulting fees. So
 10 while we typically use a basis of 10 percent of the
 11 funding, we decided not to pay ourselves anything
 12 then.
 13 Sometimes we'll reduce it. I believe in
 14 2018 there was a quarter where we decided that we
 15 should only do 2-1/2 percent in the discussion with
 16 the other consultants and Lisa. We have an ability
 17 per that consulting agreement to adjust it. But it
 18 never went over 10 percent of the funding amount for
 19 all the consultants in the quarter, meaning that if
 20 we use that \$90 million example, we would not pay
 21 more than \$9 million in the subsequent quarter for
 22 the funding that we did in that prior quarter.
 23 Q. I understand. But I was asking about you
 24 and your companies. What percentage did you receive
 25 of the 10 percent of funding amount?

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1 A. So from that 10 percent, my specific
 2 agreement had a 10 percent agreement with CBSG. So
 3 the consulting entities I had for the respective
 4 time periods would receive 10 percent of that.
 5 So in the example I provided, if we had
 6 \$90 million funded in the prior quarter and we used
 7 10 percent as the basis, I would receive 10 percent
 8 of that, which would be \$900,000.
 9 Q. And the 10 percent that was paid out to
 10 you and other consultants was based on the amount
 11 funded and not the amount that Complete Business
 12 Solutions Group collected; is that correct?
 13 A. That's precisely correct. That's entirely
 14 based on the amount of MCA deals the company would
 15 be funding. It wouldn't make any sense to take it
 16 from, you know, the amount lent to the company or
 17 something like that.
 18 Q. Okay. So it's based on -- the amount that
 19 the consultants including yourself received was
 20 based on the amount of money that Complete Business
 21 Solutions Group gave to merchants under the MCA
 22 agreement; is that correct?
 23 A. Specifically the cash out, not any sort of
 24 reloaded volume or anything like that, just the
 25 amount wired out that I would calculate for a

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1 quarter to be paid in a subsequent period.
2 **Q.** So the consultants including yourself
3 would get a percentage of the amount of money that
4 Complete Business Solutions Group wired out to
5 merchants; is that accurate?

6 **A.** Yes.

7 **Q.** And you testified that the percentage the
8 consultants would split would vary from time to
9 time; correct?

10 **A.** Correct. So the default basis is
11 10 percent. But as I mentioned, you know, we've
12 taken this down to zero or 2-1/2 percent for a
13 quarter depending on what's occurring that quarter.
14 There could be extraneous factors, like the COVID
15 pandemic, that says you know what, we got to be
16 prudent. We can't pay ourselves. We have the
17 ability to make that nothing if we so see fit. We
18 don't have to take it.

19 It is not an operational income of the
20 business. It's not necessary to keep the business
21 funding. It's purely a mechanism that we are
22 allowed to take profits out of the business.

23 **Q.** Right. But you're taking a percentage of
24 the money that's going out the door from Par Funding
25 or CBSG to the merchants; correct?

1 **Q.** Now, as far as the cash flow, the money
2 that came in from the noteholders or investors in
3 CBSG's notes was put into the same bank account as
4 money coming back in from the merchants; is that
5 correct?

6 **A.** Not always. It depends on the time
7 period, and it depends what banks. Typically
8 deposits from merchants would come into the
9 operating account from our ACH processors. And
10 excess funds that the company didn't need to cover
11 liabilities would be transferred into capital
12 accounts, which may be the same accounts that we
13 receive noteholder loans into.

14 But it really depends on the period of
15 time and, you know, what bank accounts you're
16 talking about.

17 **Q.** Oh, yeah. Let's talk about it. How about
18 let's start with 2015. Which account did the
19 merchant payments on the MCAs go into?

20 **A.** I'm sorry. For which year?

21 **Q.** 2015.

22 **A.** 2015, the merchant payments were
23 predominantly processed with a processor called of
24 Codapay, and these came into at the time either
25 Beneficial Bank, Republic Bank or TD Bank. I

1 **A.** No, that's incorrect. It's not a
2 percentage of the funds going out the door.
3 Remember, this happens in the subsequent period from
4 when the dollars went out.

5 The basis for it is tied to the amount
6 funded in the prior quarter, but the actual cash
7 flows come in from the merchant deposits, the
8 funding revenue of the business coming back in.

9 So if I draw the line on December 31 and
10 call it the last three months, the funding made from
11 October 1 to December 31 would be calculated as the
12 basis. And in January of the following year, from
13 the deposits we receive back from our merchants from
14 the repayment of these factoring agreements, those
15 are the monies used to pay the consulting fees based
16 on the determination as a mechanism of the
17 consulting agreement.

18 **Q.** But my question was a little different. I
19 was just confirming that the amount that is
20 calculated, the calculation of the amount that the
21 consultants receive is based on the amount of money
22 that Par Funding or CBSG sends out the door to the
23 merchants; right?

24 **A.** Yes. The calculation, not the cash flow
25 for it, correct.

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

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

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

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

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

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

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

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

1 **A.** There were bank accounts used for the
2 collection of these loan proceeds from the
3 noteholders.
4 **Q.** Okay. And those were separate bank
5 accounts from the accounts that CBSG used to receive
6 the money from the MCAs payments?
7 **A.** Correct. That's a different bank account
8 than where the MCA payments came in.
9 **Q.** What bank account was that?
10 **A.** It depends on the period of time. I
11 mentioned a few of the banks from 2015.
12 **Q.** Yes, for 2015.
13 **A.** I mentioned TD Bank, Republic Bank and
14 also Beneficial Bank.
15 **Q.** So is it your testimony that they were the
16 same banks, but they were in completely separate
17 bank accounts?
18 **A.** I'm trying to describe the cash flow to
19 better answer your question. The banks would
20 typically have an operating account that these
21 deposits would go in through from the ACH processor
22 and also a capital account which the noteholder
23 funds would be deposited into and used for the
24 merchant cash advance funding.
25 **Q.** Okay. And was that the same for all

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1 years, 2015 through 2020?
2 **A.** The general structure that there's an
3 operating account and a capital account has always
4 persisted. This was with different banks that CBSG
5 worked with. And when Lisa set up these accounts,
6 she would have them have the multiple accounts so
7 we're able to allocate our deposits separate from
8 merchants.
9 We had a very meticulously managed ledger
10 to keep track of the noteholder funds and to make
11 sure that we're able to identify on a daily basis
12 what deposits were made from merchants and to
13 reconcile their balances with the company records,
14 right.
15 **Q.** Who maintains this meticulously maintained
16 ledger?
17 **A.** It would be the accounting department.
18 **Q.** Anyone in particular in the accounting
19 department?
20 **A.** Several personnel from the accounting
21 department had their hands in this.
22 **Q.** Okay. Did Aida Lau?
23 **A.** No, not to my recollection.
24 **Q.** What about Wendy Furman?
25 **A.** Wendy Furman is not in the accounting

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1 department.
2 **Q.** Okay. So who were the people in the
3 accounting department that maintained the
4 meticulously managed ledger?
5 **A.** It depends on the period of time.
6 **Q.** Okay. So tell me the different people by
7 year. You can start with 2015 and go through 2020.
8 **A.** So in 2015 -- and you're only referring to
9 the noteholder deposits, you're not referring to the
10 MCA deposits?
11 **Q.** You testified about a meticulously managed
12 ledger that was maintained --
13 **A.** Sorry. I can't understand what you're
14 saying.
15 **Q.** -- actively maintained that meticulously
16 managed ledger that you testified about.
17 **A.** Sorry. That was incoherent. I couldn't
18 understand what you said.
19 **Q.** You testified about a meticulously managed
20 ledger. And I'm asking you who maintained that
21 meticulously managed ledger that you testified about
22 in 2015, 2016, '17, '18, '19 and '20.
23 **A.** This was managed by the accountants in the
24 department. We had lots of different accountants
25 come in and go. Some of them stuck around longer

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1 than others. In 2015 -- I mean, do you just want me
2 to just name accountants that were in the
3 department?
4 **Q.** You testified about a meticulously managed
5 ledger. So I'm asking you to identify who
6 maintained that ledger. And if you can't identify
7 anyone, that could be your answer. But I'm just
8 asking you to identify who maintained this ledger
9 you testified about.
10 **A.** Well, the ultimate responsibility of the
11 ledger falls on me. I'm in charge of the
12 department. The final review, scrutiny and how
13 these ledgers were booked in QuickBooks falls on me.
14 Now, as far as the folks entering the data
15 and updating the accounting system to keep track of
16 the ledger, it varied. It depended on who was
17 bookkeeping in that time period. If someone was on
18 a vacation day, they're not going to be the one to
19 update it. So it's a department effort.
20 And that's why I'm asking you if you want
21 me to start naming folks in the department. There's
22 a lot of different employees. We had over a dozen
23 accountants by the time this thing was shut down.
24 So it's hard for me to identify specific accountants
25 when there's a group effort here.

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1 Q. I understand. Going back briefly to the
 2 percentage that would fluctuate that was taken in
 3 from the company to pay the consultants, who would
 4 make the decision on when those fluctuations
 5 occurred and the percentage? Who would make that
 6 decision? Was that Lisa McElhone, or was that
 7 someone else?
 8 A. It would be the managers of the business,
 9 myself included, Lisa and other consultants. We
 10 would have a discussion about that.
 11 Q. Who else? Can you name the people who
 12 would make the decision?
 13 A. The other consultants who would assist in
 14 making decisions would be Perry Abbonizio, Lisa
 15 McElhone, Isaac Chehebar, Joseph Chehebar, and we
 16 provided -- we got some feedback from their CFO,
 17 Chuck Frey, too. He certainly had input.
 18 Q. Just one moment, please. I apologize. I
 19 had someone ringing my door bell. I'm so sorry for
 20 that.
 21 A. No problem.
 22 Q. Did Joseph LaForte participate in those
 23 discussions about the percentage that would be paid
 24 to the consultants?
 25 A. Sometimes we ran it by him, yes.

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1 Q. Why would you run it by him?
 2 A. Because he's married to Lisa, and it's a
 3 major piece for their family I would imagine.
 4 Q. So did you run it by like Perry
 5 Abbonizio's wife as well?
 6 A. No. We didn't run it by his wife,
 7 although I don't know what they discussed regarding
 8 those fees.
 9 Q. Was Joseph LaForte the only spouse of
 10 someone -- you mentioned the people who would make
 11 the decision. Was Joseph LaForte the only person
 12 that -- the only spouse that you consulted with when
 13 deciding the percentages?
 14 MR. SOTO: Objection to form.
 15 THE WITNESS: The spouse of a person that
 16 has a consulting agreement with the company?
 17 BY MS. BERLIN:
 18 Q. Well, you testified you consulted Joseph
 19 LaForte because he was the spouse of Lisa McElhone
 20 and the percentage that was taken affected their
 21 family.
 22 So my question is: Did you consult anyone
 23 else's spouse who was one of these decision makers,
 24 or was Joseph LaForte the only person you consulted
 25 based on the fact that he was married to one of the

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1 decision makers?
 2 MR. SOTO: Objection to form.
 3 THE WITNESS: No.
 4 BY MS. BERLIN:
 5 Q. I'm sorry. No, you didn't consult any
 6 other spouses?
 7 A. We did not consult any other spouses.
 8 Q. So approximately during the lifetime of
 9 Par Funding -- I'm sorry -- Complete Business
 10 Solutions Group, approximately how much money did it
 11 fund in the merchant cash advance agreements?
 12 A. You're talking about gross cash provided
 13 to third-party merchants as part of these MCA deals?
 14 Q. Yes.
 15 A. The approximate amount is \$1.3 billion
 16 from the beginning of 2013 through July of 2020.
 17 Q. And how much like on average was the
 18 interest rate on the MCA agreements?
 19 A. There was no interest rate on MCAs. It's
 20 based on a factor fee.
 21 Q. Right. Did you compute the factor fee and
 22 calculate sort of a percentage of how much interest
 23 ultimately Complete Business Solutions Group would
 24 be getting on its money?
 25 A. No. It's not calculated as interest.

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1 There's no amortized time value to the factor fee.
 2 Q. Did you ever calculate what percentage you
 3 expected as a profit on the amount of money that
 4 Complete Business Solutions Group funded to the
 5 merchants?
 6 A. Yes. If you mean as a profit, something
 7 like an internal rate of return or either a
 8 percentage of gross revenues in proportion to the
 9 amount funded, yes, I've calculated that before.
 10 Q. Okay. And what did you determine in your
 11 calculation? Like what was the expectation?
 12 MS. SCHEIN: Could you give a timeframe?
 13 BY MS. BERLIN:
 14 Q. In your answer, Mr. Cole, when you talked
 15 about the calculations you did, please explain what
 16 timeframe your calculations were done for.
 17 A. I meant this in general. Yeah, this was
 18 calculated. I mean, I looked at the revenues from
 19 the business for each year. I don't think there's a
 20 single year where I didn't calculate how much
 21 revenue we would make.
 22 Q. So you funded about 1.3 billion. And was
 23 all of that 1.3 billion in principal paid back by
 24 the merchant to Complete Business Solutions Group?
 25 A. You broke up during that one.

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1 Q. Sorry. Of the \$1.3 billion funded to
 2 merchants, how much did merchants pay back to
 3 Complete Business Solutions Group?
 4 A. For the same time period, merchants paid
 5 back approximately close to \$1.3 billion, not
 6 including the funds still outstanding from the
 7 receivables.
 8 Q. I'm not talking about the money
 9 outstanding that hasn't been paid back. I'm just
 10 asking about --
 11 A. You mean for the end of the period the
 12 amount of cash flow from the MCA deposits?
 13 Q. Correct. The 1.3 billion goes from
 14 Complete Business Solutions Group to the merchant
 15 borrowers or merchants. We'll call them merchants.
 16 Right?
 17 A. Um-hum.
 18 Q. So I'm asking about how much in actual
 19 cash, not receivables or anticipated money that
 20 might come in, but how much did the merchants
 21 actually pay back to Complete Business Solutions
 22 Group during that same timeframe of 2013 through
 23 July 2020?
 24 A. It was close to the amount funded out. It
 25 was approximately also 1.3 billion.

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1 reduction in deposits. So I'm asking: What do you
 2 mean by deposits?
 3 A. The reduction in merchant payments during
 4 COVID at the start of it, which was mid 2020,
 5 merchant deposits -- as you can imagine, everyone
 6 gave the excuse that they were concerned about their
 7 businesses and there would be a slowdown in the
 8 economy.
 9 So we experienced a slowdown with
 10 merchants and had to discuss either reduced payment
 11 schedules with some of them or plans in the future
 12 to increase the payments back to their normal levels
 13 as things stabilized from the onset of the COVID
 14 crisis.
 15 Q. When did the reduction in merchant
 16 deposits begin?
 17 A. It was toward the tail end of March. I
 18 would say everything up until the middle of the
 19 month was pretty normal. In response to the news
 20 and this thing becoming a big deal in the
 21 mainstream, we had some merchants causing concern.
 22 Now, there were a lot of guys without
 23 reductions. A lot of guys were fine and not asking
 24 for any reduced payments. So it's a subset of
 25 merchants. But we started receiving some reduced

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1 Q. Did there ever come a time when Complete
 2 Business Solutions Group was insolvent?
 3 A. No, never a time.
 4 Q. Did Complete Business Solutions Group tell
 5 Dean Vagnozzi that Complete Business Solutions Group
 6 was insolvent?
 7 A. Not to my understanding.
 8 Q. Prior to the Securities and Exchange
 9 Commission filing this case against you, were you
 10 aware of the fact that noteholders were told that
 11 Complete Business Solutions Group was insolvent?
 12 A. I was not aware of that.
 13 Q. Did COVID-19 impact the amount of money
 14 that Complete Business Solutions Group was receiving
 15 from borrowers?
 16 A. Yes. At the initial onset, there was a
 17 reduction of deposits which caused concern, and we
 18 also reduced funding at the time just to see how it
 19 would shake out.
 20 Q. How much were the deposits -- when you say
 21 deposits, I assume you're talking about the money
 22 coming from merchants to Complete Business Solutions
 23 Group?
 24 A. Merchant deposits.
 25 Q. You just testified that there was a

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1 payments towards the end of March.
 2 Q. So at the end of March 2020, how much did
 3 the merchant deposits decrease by, like what
 4 percentage?
 5 A. Based on the contractually obligated
 6 amounts on the portfolio from the factoring
 7 agreement, I believe it was approximately 20 to
 8 25 percent at the time.
 9 Q. And did that continue into April 2020?
 10 A. Yes. That continued into April. We had
 11 the highest cause for concern towards the middle of
 12 April. Merchant deposits declined a little bit
 13 further, and we were shoring up cash basically to
 14 weather the storm to see what was going on with the
 15 business and obviously the greater pandemic at hand.
 16 Q. And did the merchant deposits continue to
 17 be about 25 percent less than usual from like the
 18 end of March 2020 until July 2020 when the SEC filed
 19 its case?
 20 A. It started coming back up the next month,
 21 at the end of April. It was a very fortunate
 22 turnaround. A lot of these guys were able to
 23 respond. You would be surprised at the ingenuity of
 24 the American small business owner. They figured how
 25 to do the socially distance normal. They started

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1 repaying their deals. We also started funding guys
 2 more regularly again, obviously to the best of our
 3 ability depending on the different regions.
 4 And things started going back to normal
 5 for the funding pipeline towards the start of May
 6 and into June. We felt very confident at the end of
 7 May into June that we'd be okay and we wouldn't have
 8 to be as careful as we were reacting to the COVID
 9 pandemic.
 10 **Q.** In about April of 2020, Complete Business
 11 Solutions Group modified its promissory notes to
 12 offer less interest and for the return of principal
 13 at a later period of time; is that correct?
 14 **A.** That's right.
 15 **Q.** And who made the decision at Complete
 16 Business Solutions Group to modify the promissory
 17 notes?
 18 **A.** We discussed that with counsel and
 19 understood it as a viable strategy to ensure that we
 20 wouldn't be overextending the interest payments in
 21 proportion to the amount of cash that we were
 22 funding our merchants.
 23 **Q.** Okay. So what counsel was it discussed
 24 with?
 25 **A.** Fox Rothschild took over as general

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1 **Q.** I'm asking you to identify the names of
 2 the people at Complete Business Solutions Group who
 3 made the decision.
 4 **A.** That's myself, Lisa. We had some input
 5 from Perry as well in this.
 6 **Q.** Anyone else?
 7 **A.** No.
 8 **Q.** So once the merchant deposits went back up
 9 at the end of April 2020, after that time, did
 10 Complete Business Solutions Group decide to go back
 11 to the original promissory notes that had been
 12 offered?
 13 **A.** No. We did not revert the notes back.
 14 **Q.** And why is that?
 15 **A.** Because it was still the prudent decision
 16 to make at the time based on our discussions with
 17 counsel and the accountants. Just because we had a
 18 month where the merchants were coming back, we had
 19 concerns about a potential second wave.
 20 If you remember, during the time, no one
 21 knew what was going to happen long term with this
 22 COVID. So we were really kind of playing in the fog
 23 of the future as far as what would happen with the
 24 business and cash flows. We could only forecast to
 25 what we could ascertain in the next couple months

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1 counsel for the company in February of that year.
 2 And it was members of their team, particularly
 3 through Brett Berman that we had discussed this and
 4 prepared those documents accordingly.
 5 We also had advice of our securities
 6 counsel, who is Phil Rutledge with Bybel Rutledge
 7 out of Harrisburg, who acted as special counsel to
 8 help with updating those offers and those agreements
 9 to our merchants or to the noteholders.
 10 **Q.** Who participated in those discussions from
 11 CBSG other than you?
 12 **A.** I spoke with Brett, Phil, Lisa, couple of
 13 the fund managers. I discussed this with Perry, Joe
 14 LaForte. I discussed this with a couple of the
 15 noteholders directly and also our in-house financial
 16 controller and tax accountants.
 17 **Q.** Just one moment.
 18 **A.** Sure.
 19 **Q.** I apologize for that delay.
 20 **A.** No problem.
 21 **Q.** Who at Complete Business Solutions Group
 22 made the decision to modify the promissory notes?
 23 **A.** This was a joint conclusion made by
 24 management in discussion with counsel and the tax
 25 accountants.

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1 and make sure that we have sufficient cash on
 2 reserve to handle cash flow requirements for the
 3 foreseeable future.
 4 **Q.** Which fund managers -- you testified that
 5 you discussed the modified promissory notes in 2020
 6 with fund managers. Which fund managers did you
 7 discuss it with?
 8 **A.** I recall discussing this with Dean
 9 Vagnozzi. I'm trying to remember the other guys,
 10 but it really was kind of a blur. I can't recall
 11 anyone else that I had discussions with, but there
 12 were certainly other parties it was discussed with.
 13 And also, they were not fund managers but
 14 direct noteholders of the business using their own
 15 capital. And that was members of the Chehebar
 16 family as well.
 17 **Q.** Okay. With respect to Dean Vagnozzi, what
 18 did you tell him with respect to these modified
 19 notes?
 20 **A.** So in discussion with counsel, they
 21 advised that we let them know very transparently the
 22 concerns that we had as part of the business, which
 23 were added on as concerns with the modified notes.
 24 So we put together company management
 25 emails letting the noteholders know of these

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1 concerns and our expected outcome that we could
 2 anticipate based on the way that the pandemic was
 3 happening at the time. This is in March 2020. And
 4 communications with Dean Vagnozzi surrounded those
 5 concerns.
 6 **Q.** Who put together -- you said we put
 7 together an email. Who did that at Complete
 8 Business Solutions Group or Full Spectrum? Who
 9 prepared those emails messages?
 10 **A.** I worked with counsel to draft the email.
 11 I put together the physical email itself and the
 12 management account to send it from. But that was
 13 providing input with our third-party counsel at Fox
 14 Rothschild. And they made sure that it was
 15 sufficient to convey our concerns at the time that
 16 we sent the email out.
 17 **Q.** Okay. Was that Brett Berman?
 18 **A.** Yes. Brett Berman serves as our general
 19 counsel. He took over the position from the
 20 in-house guys that Full Spectrum employed.
 21 **Q.** My question was -- you testified that you
 22 spoke with attorneys at Fox Rothschild about the
 23 email that you sent out concerning -- that was for
 24 the noteholders about the status of Complete
 25 Business Solutions Group.

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1 deposits went, you know, there was concerns that the
 2 slowdown can affect these payments. So we wanted to
 3 make sure that that wasn't a concern.
 4 So the result was that renegotiation of
 5 the rate still providing 5 percent annual rate of
 6 return to the noteholders was the best plan of
 7 attack to prudently protect their capital.
 8 We absolutely can take a haircut on
 9 income, but absolutely don't want to touch a penny
 10 with any of the principal from these loans that
 11 these folks lent us. And the objective there was to
 12 really protect that capital.
 13 We don't want to, per the advice of
 14 counsel, put anyone at risk by aggressively repaying
 15 those notes. People were losing their shirt on Wall
 16 Street, all sorts of other deals. We wanted to make
 17 the best, most prudent strategy that we could use
 18 from the lawyers that we had on hand.
 19 **Q.** Okay. My question was a little different.
 20 It was: Who come up with the idea for this?
 21 Could you list the names of the people at
 22 Complete Business Solutions Group or elsewhere who
 23 came up with the idea to modify the note?
 24 **A.** I have nothing to add. It's the same
 25 people I just mentioned.

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1 And my question is: Was it Brett Berman
 2 at Fox Rothschild that you spoke with?
 3 **A.** Berman, amongst other lawyers.
 4 **Q.** Who were the other lawyers?
 5 **A.** Off the top of my head, we spoke with
 6 their securities specialist, Lauren Taylor. We also
 7 spoke with a corporate M&A guy named Steven Cohen.
 8 We also spoke with third-party counsel, our
 9 securities guy, Phil Rutledge. And there's probably
 10 maybe two or three others that I can't remember the
 11 names of copied on these communications, that we
 12 spoke about the situation and the creation of the
 13 new modified note agreements.
 14 **Q.** Whose idea -- at Complete Business
 15 Solutions Group, whose idea was it to modify the
 16 promissory notes?
 17 **A.** The modification came out of a discussion
 18 that the managers of the business had, so, again,
 19 the same people I just talked about. The proposal
 20 came as sort of an organic consideration of what
 21 could we do.
 22 On one hand, you could continue with the
 23 notes as they were and potentially face running out
 24 of cash, although we had cash enough for at least
 25 three to four months. But depending on how merchant

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1 **Q.** Okay. Can you please mention them again?
 2 So I guess, was it you, Lisa McElhone and Perry
 3 Abbonizio who came up this idea?
 4 **A.** In discussion with counsel at Fox
 5 Rothschild and also securities counsel at Bybel
 6 Rutledge.
 7 **Q.** Okay.
 8 **A.** The idea formed from our discussions with
 9 third-party counsel and our internal discussions.
 10 **Q.** So I'm just asking for the names of the
 11 people at Complete Business Solutions Group who came
 12 up with the idea.
 13 So is it correct that the people at
 14 Complete Business Solutions Group, not anywhere
 15 else, the people at Complete Business Solutions
 16 Group who came up with this idea were you, Lisa
 17 McElhone and Perry Abbonizio?
 18 MS. SCHEIN: I'm going to object to the
 19 question, Ms. Berlin, because he's already answered
 20 it three times, and you have the answer. And
 21 perhaps the reporter can read back his answer. He's
 22 answered it three times already.
 23 BY MS. BERLIN:
 24 **Q.** Mr. Cole, can you answer the question,
 25 please.

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1 **A.** Yes. It's the same people that I just
2 mentioned, Lisa, myself and Perry from Complete
3 Business Solutions Group.
4 **Q.** And the ultimate decision to reissue
5 the -- to issue modified notes in 2020, was that
6 decision ultimately made by Lisa McElhone?
7 **A.** She's the president of the business and
8 has ultimate authority to move forward with any
9 decisions.
10 **Q.** I understand. But I'm asking whether or
11 not she was the person who actually in the end made
12 the ultimate decision on this particular issue of
13 issuing modified notes.
14 **A.** We came to a consensus as a group with our
15 lawyers. So I don't think any one person was
16 responsible for determining the implementation of
17 those modified notes.
18 **Q.** Okay. And the consensus was reached as
19 far as CBSG employees -- and when I say CBSG, I'm
20 referring to Complete Business Solutions Group. Do
21 you understand that?
22 **A.** Yes, I do.
23 **Q.** Okay. So just to confirm, the consensus
24 and the decision to issue modified notes was made by
25 you, Lisa McElhone and Perry Abbonizio at CBSG; is

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1 that correct?
2 **MS. SCHEIN:** I'm going to object. That's
3 misstating the witness' answer.
4 **BY MS. BERLIN:**
5 **Q.** Mr. Cole?
6 **A.** Yes. Again, I'm just reiterating what
7 I've already just said. This is a consensus
8 decision that's not just one person making the final
9 call. The lawyers and the accountants and everyone
10 described what was going on, and this was a
11 consensus decision from the group.
12 **Q.** Understood. So my question is, and I'm
13 not talking about anyone external to CBSG. I'm
14 talking about at CBSG or Full Spectrum.
15 Am I correct in understanding that the
16 ultimate decision to reissue the promissory notes in
17 2020 was made by a consensus decision by you, Lisa
18 McElhone and Perry Abbonizio?
19 **MS. SCHEIN:** Objection. Asked and
20 answered four times now.
21 **THE WITNESS:** Yes.
22 **BY MS. BERLIN:**
23 **Q.** Okay. In connection with the modified
24 promissory note offering in 2020, did Complete
25 Business Solutions Group provide any financial

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1 information to Dean Vagnozzi either directly or
2 through his counsel?
3 **A.** No, we did not. The only thing we
4 provided to noteholders on a regular basis is our
5 monthly KPI report. It's titled The Funding
6 Analysis. But this does not include company
7 financials.
8 **Q.** Did Complete Business Solutions Group
9 provide any sort of financial statement to Dean
10 Vagnozzi or his counsel in connection with the
11 exchange offering in 2020?
12 **A.** Not that I know of.
13 **Q.** Did Complete Business Solutions Group
14 prepare any sort of financial spreadsheet or
15 financial statement or financial report of any kind
16 to provide to Dean Vagnozzi or his counsel in
17 connection with the exchange offering?
18 **A.** No, it did not.
19 **Q.** So if Mr. Vagnozzi told investors that
20 Complete Business Solutions Group was insolvent, do
21 you know where he would have obtained that
22 understanding?
23 **MR. SOTO:** Objection to form.
24 **MR. MILLER:** Mr. Miller. I join.
25 **THE WITNESS:** No, I do not.

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1 **BY MS. BERLIN:**
2 **Q.** In your conversations with Mr. Vagnozzi,
3 did he ever ask you whether or not Complete Business
4 Solutions Group was insolvent?
5 **MS. SCHEIN:** Object to form.
6 **THE WITNESS:** I don't recall.
7 **BY MS. BERLIN:**
8 **Q.** Did Mr. Vagnozzi's counsel, John Pauciolo,
9 ever ask you whether or not Complete Business
10 Solutions Group was insolvent?
11 **MR. SOTO:** Objection to form.
12 **THE WITNESS:** I don't recall.
13 **BY MS. BERLIN:**
14 **Q.** Did you ever attend any events that were
15 organized for purposes of soliciting people to
16 invest money in connection with an investment
17 related to Complete Business Solutions Group?
18 **A.** No, I have not.
19 **Q.** Did you ever attend any events organized
20 by Dean Vagnozzi or his company relating to Complete
21 Business Solutions Group?
22 **A.** Yes, I have.
23 **Q.** What events did you attend?
24 **A.** The one that comes to mind is an event
25 November of 2019.

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1 Q. And are you referring to the event that
 2 the SEC filed the transcript and the recording for
 3 that event?
 4 A. I'm not aware of any transcript or
 5 recording, but I believe you're probably referring
 6 to the same event.
 7 Q. Was this an event that you attended in
 8 2019 in Pennsylvania?
 9 A. Yes.
 10 Q. And what was the purpose of that event?
 11 A. Dean was having a function to describe
 12 products for his funds. I listened in. We were
 13 providing some updated numbers to creditors that
 14 were present of Dean's fund. And we also were there
 15 to discuss the prospect that myself and my business
 16 partner, Bill Bromley, were looking into going in in
 17 Texas for the purchase of a bank.
 18 Q. And during the November 2019 event, you
 19 spoke to the audience about Complete Business
 20 Solutions Group; correct?
 21 A. Were provided a brief slide show letting
 22 parties know, to my understanding, who were already
 23 creditors or participants in Dean's fund, know about
 24 how (indecipherable).
 25 Q. I'm sorry. You broke up.

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1 A. -- towards the end of the year.
 2 Q. I'm not sure if you broke up for the court
 3 reporter as well.
 4 COURT REPORTER: I didn't get it either.
 5 THE WITNESS: Oh, really? Sorry. Can you
 6 ask the question. I have to reframe my mind.
 7 BY MS. BERLIN:
 8 Q. Sure. The question was whether or not you
 9 discussed Complete Business Solutions Group at this
 10 November 2019 event in Pennsylvania.
 11 A. Yes, we did. We had a brief slide show
 12 provided to update parties in the audience who we
 13 understood were already participants in Dean's fund,
 14 to provide updated numbers about the company towards
 15 the end of the year.
 16 Q. Who prepared the slide show?
 17 A. The slide show was prepared by my team in
 18 the accounting department, and I reviewed it prior
 19 to it being sent over.
 20 Q. And during this November 2019 event, were
 21 members of the audience encouraged to participate in
 22 an offering with Mr. Vagnozzi's company that was
 23 related to Complete Business Solutions Group?
 24 A. Not that I remember.
 25 Q. So why did you think you were at this

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1 November 2019 event in Pennsylvania that
 2 Mr. Vagnozzi hosted?
 3 A. As I just mentioned, it was for two
 4 purposes, to provide updates to anyone that was
 5 already a part of Dean's fund. It's my
 6 understanding they wanted to hear about the company.
 7 And I provided Dean with a slide show and a brief
 8 description of the figures on the slide show to
 9 those members.
 10 And the other function was to have myself
 11 and my business partner, Bill Bromley, discuss the
 12 acquisition of a bank that we were working on in
 13 Texas.
 14 Q. Did you see any of the materials that were
 15 being distributed to the audience members during the
 16 November 2019 event?
 17 A. No, I did not.
 18 Q. Did you attend any other events that Dean
 19 Vagnozzi hosted?
 20 A. No. That was the one event.
 21 Q. You mentioned earlier -- you used the word
 22 creditors. When you use the word creditors, are you
 23 referring to individuals who have purchased a
 24 promissory note?
 25 A. Yes, only individuals that purchased a

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1 promissory note with CBSG.
 2 Q. Okay. So is it your testimony that the
 3 November 2019 event was the only event you ever
 4 attended with respect to where the audience was an
 5 investor or a potential investor of a promissory
 6 note related to Complete Business Solutions Group?
 7 A. My understanding, they were already
 8 creditors to Dean's fund. This was not to talk to
 9 anyone that wasn't already in the fund.
 10 Q. My question is, and I'll repeat it, is the
 11 November 2019 event that you've testified about
 12 today the only time you ever spoke at any event to
 13 people who were either investors or potential
 14 investors in a promissory note related to Complete
 15 Business Solutions Group?
 16 A. No. It's not the only time.
 17 Q. Please tell me about the other times.
 18 A. Your question said specifically an event
 19 hosted by Dean Vagnozzi. This was the only time
 20 with regards to an event hosted by Dean Vagnozzi.
 21 But we have also discussed the company to folks who
 22 were already either purchasers of Dean's PPM fund or
 23 direct noteholders of the company on other
 24 occasions.
 25 I don't know specifically what you mean as

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1 far as event. If you count having meetings in our
 2 office in Philadelphia or other locations as events,
 3 I can't count how many events that I've been
 4 participating in. But if you mean events hosted by
 5 Dean Vagnozzi specifically, that was the only event
 6 that I had participated in, in November 2019.
 7 **Q.** Okay. So the question that I just asked
 8 though was about events. It didn't have any
 9 restriction on who organized it. And it sounds from
 10 your testimony that you did attend other events.
 11 And just so you understand, event could be -- I'll
 12 just ask.
 13 Did you ever attend any dinners where you
 14 discussed Complete Business Solutions Group with
 15 people who were either investors or potential
 16 investors of promissory notes issued in connection
 17 with Complete Business Solutions Group?
 18 **A.** I'm still not sure about your definition
 19 of event and now the word dinners. Are you
 20 indicating where folks would be eating dinners or
 21 would I have to be eating dinner with someone that
 22 would be a potential note purchaser?
 23 **Q.** Well, you just testified that you were
 24 confused about what I meant by the word event. So I
 25 was trying to add more info.

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1 I'm just going to make it a very general
 2 question you to, and I'm going to ask you to provide
 3 all the details. Please tell me about all the
 4 different times that you met, whether it was an
 5 event, a dinner, a one on one, a meeting or any
 6 other communication that was face to face, with an
 7 investor or potential investor of an investment that
 8 was related to Complete Business Solutions Group.
 9 **MR. SOTO:** Objection to form.
 10 **THE WITNESS:** That's really general. And
 11 over the course of eight years, there have been
 12 discussions with several individuals who were
 13 already and not yet creditors of CBSG. So I
 14 wouldn't be able to specify given the very general
 15 description of event or dinner or participation in
 16 the group.
 17 **BY MS. BERLIN:**
 18 **Q.** Okay. Let me try to help you then. So
 19 what types of -- you said you had over the course of
 20 eight years many discussions. So was one of them
 21 meetings in the office?
 22 **A.** We've had meetings in the office, yes.
 23 **Q.** Okay. Was another type having a dinner
 24 with an investor or potential investor?
 25 **A.** Yes. I've had dinner with someone that's

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1 lent money to the business or could potentially.
 2 **Q.** Okay. So other than meetings in the
 3 office at Complete Business Solutions Group and
 4 having a meal or dinner with an investor or
 5 potential investor, was there any other type of
 6 occurrence where you spoke with an investor or
 7 potential investor?
 8 **A.** The one you're describing about Dean with
 9 the event in November of 2019, I would say that's
 10 the third type. The type of event you were
 11 describing in November of 2019, I would say that's
 12 the third type.
 13 **Q.** What about golf, did you ever meet people
 14 for golf to discuss your investors or potential
 15 investors?
 16 **A.** Not that I can remember.
 17 **Q.** Did you ever go to anyone's home?
 18 **A.** Not that I can remember.
 19 **Q.** Did you ever go to meetings to speak with
 20 potential investors or investors at Dean Vagnozzi's
 21 office?
 22 **A.** No. I've never been to Dean Vagnozzi's
 23 office.
 24 **Q.** Okay. What about at a hotel?
 25 **A.** The event in King of Prussia was at a

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1 hotel in November of 2019.
 2 **Q.** Okay. What about at a convention?
 3 **A.** Not at a convention, no.
 4 **Q.** What about at a conference?
 5 **A.** No.
 6 **Q.** What about Zoom?
 7 **A.** Zoom, no, not that I can remember.
 8 **Q.** What about any other sort of online video
 9 platform?
 10 **A.** Not that I can remember.
 11 **Q.** What about the radio?
 12 **A.** No.
 13 **Q.** What about email?
 14 **A.** Not that I can remember.
 15 **Q.** Okay. So it sounds like the interaction
 16 you had with investors or potential investors was
 17 exclusively through three things, meetings at
 18 Complete Business Solutions Group's office, over a
 19 meal, or at the one November 2019 event hosted by
 20 Dean Vagnozzi; is that accurate?
 21 **A.** Yes, I believe so.
 22 **Q.** Okay. So let's talk about the meetings in
 23 the office. Approximately how many times did you
 24 meet with an investor or potential investor of any
 25 investment related to Complete Business Solutions

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1 Group?
2 **A.** It depends on the period of time.
3 **Q.** Between 2015 and 2020 when the SEC brought
4 its case.
5 **A.** You're asking the frequency or how many in
6 total?
7 **Q.** My question was how many times.
8 Obviously, I'm asking for an estimate of
9 approximately how many times did those meetings
10 occur.
11 **A.** So from the period of 2015 to the end of
12 20 -- when we were running the business in July of
13 2020, if I have to give you an approximate amount,
14 it would be three or four dozen times.
15 **Q.** Would anyone in particular ask you to
16 attend those meetings?
17 **A.** Sometimes Perry would ask me to discuss
18 with a potential purchaser of the note.
19 **Q.** Okay. Anyone else other than Perry ask
20 you to meet with them?
21 **A.** The CFO of the Chehebars was really big on
22 that. He wanted to go over the numbers of the
23 business.
24 **Q.** The CFO of the Chehebars would ask you to
25 meet with him, the CFO?

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1 **A.** Yes. And in my experience, they were the
2 most involved. Probably a quarter of all those
3 meetings were with regards to their group, including
4 an audit that their CPA performed for their
5 business.
6 **Q.** And what was the name of the CFO who had
7 all of these meetings with you?
8 **A.** Robert Frey.
9 **Q.** Did Robert Frey have any relationship with
10 Complete Business Solutions Group other than being
11 the CFO of the Chehebars?
12 **A.** Yes. He had two other relationships.
13 **Q.** What were those?
14 **A.** He was also a noteholder providing capital
15 to the company, and he also held a consulting
16 agreement.
17 **Q.** And what did he do under the consulting
18 agreement?
19 **A.** He would review the accounting information
20 and basically look out for the wellbeing of the
21 business for his employers, which was the Chehebar
22 family.
23 **Q.** And Complete Business Solutions Group paid
24 Robert Frey to do that?
25 **A.** Yes.

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1 **Q.** Did CBSG pay Mr. Frey directly or through
2 one of his companies?
3 **A.** I believe it was paid through one of his
4 companies.
5 **Q.** Now, at a certain point, did CBSG cancel
6 the consulting agreement with Robert Frey?
7 **A.** Yes.
8 **Q.** Why was that?
9 **A.** There was a legal issue he had that was in
10 breach of the consulting agreement provisions.
11 **Q.** Was it because Mr. Frey had a criminal
12 record?
13 **A.** I believe it was something related to
14 that, yes, and that he did not disclose to the
15 company or our lawyers.
16 **Q.** So when did you find out or did there come
17 a time when you found out that Mr. Frey had a
18 criminal record?
19 **A.** I don't recall the specific time, but this
20 was sometime in 2019.
21 **Q.** Did you know about Mr. Frey's criminal
22 record prior to the time?
23 **A.** No, I did not.
24 **Q.** Who at Complete Business Solutions
25 Group -- so I'm not talking about third parties or

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1 lawyers. I'm asking at Complete Business Solutions
2 Group who made the decision to cancel the consulting
3 agreement with Mr. Frey?
4 **A.** I don't recall.
5 **Q.** At a certain time period, did Complete
6 Business Solutions Group utilize people to find
7 individuals who would invest funds in the promissory
8 notes that Complete Business Solutions Group was
9 offering?
10 **A.** Yes.
11 **Q.** During what time period was that?
12 **A.** I believe this was around 2016 and '17.
13 **Q.** Who at Complete Business Solutions Group
14 made the decision to utilize these finders?
15 **A.** I don't recall.
16 **Q.** Did Joseph LaForte have any involvement in
17 deciding to use finders?
18 **A.** I don't recall.
19 **Q.** Did you participate in the decision to
20 utilize finders?
21 **A.** Yes, I did.
22 **Q.** Did you discuss that with Lisa McElhone?
23 **A.** I don't recall.
24 **Q.** Did you discuss it with Joseph LaForte?
25 **A.** I don't recall.

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1 Q. So what was your involvement?
 2 A. I would sign the finders agreements the
 3 lawyers put together as a counter-signatory for the
 4 company.
 5 Q. How did Complete Business Solutions Group
 6 go about identifying people who would be finders?
 7 A. These were from relationships of existing
 8 parties that we had.
 9 Q. So how did it come about these people were
 10 finders? For example, did Complete Business
 11 Solutions Group ask them to be finders? How did it
 12 come about?
 13 A. Part of it was discussing the idea. So,
 14 for example, Chuck Frey who we met through Perry
 15 Abbonizio, we already knew him. We discussed the
 16 idea and we formed the agreements from discussion of
 17 the idea with those individuals. We told him that
 18 the company is doing well. We could use more
 19 capital to expand the pipeline of funding that we
 20 had and that would only contribute to the greater
 21 bottom line of the business.
 22 So we came up with the proposal that we
 23 should pay points, a percentage of the amount of
 24 capital brought in from any parties who purchased
 25 these notes and lent the company money.

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1 Q. Did Complete Business Solutions Group
 2 reach out -- I imagine that people didn't just
 3 intuit that Complete Business Solutions Group might
 4 want you to use finders.
 5 Did Complete Business Solutions Group
 6 reach out to individuals it had a relationship with
 7 and ask them if they wanted to be finders? Is that
 8 how it came about?
 9 MR. SOTO: Objection to form.
 10 THE WITNESS: We had normal discussions
 11 with third parties, and obviously at this point in
 12 2016, we've been paying consistent interest payments
 13 to other noteholders. So folks that we repaid or
 14 guys that still had notes with us, we discussed this
 15 as a system to bring in other potential folks who
 16 would want to lend money to CBSG for a rate of
 17 return.
 18 BY MS. BERLIN:
 19 Q. You just testified we discussed this. Who
 20 are you referring to when you say "we"?
 21 A. I meant the management of the business,
 22 myself, Lisa, Perry.
 23 Q. Did anyone in particular at Complete
 24 Business Solutions Group have responsibility for
 25 sort of overseeing the finders that were working in

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1 connection with Complete Business Solutions Group in
 2 2016 and 2017?
 3 A. I kept track of all the fees. So I would
 4 do the calculations and follow up with these
 5 individuals, also for remittance information, you
 6 know, wire address, the 1099s we had to have them
 7 fill out. So in regards to that, I was in charge of
 8 it.
 9 Perry also spoke with these guys being
 10 that a lot of these were from his connections in his
 11 network. So there was a couple of different people
 12 discussing the finder's fees and keeping track of
 13 all of them. It was group effort.
 14 Q. Did Complete Business Solutions Group
 15 provide any information about Complete Business
 16 Solutions Group to the finders to assist them in
 17 locating investors or potential investors?
 18 A. Yes. The big piece that we used
 19 consistently to keep everyone abreast on how the
 20 company is performing is that KPI report I would
 21 issue every month. I would prepare this typically
 22 in the first two weeks of the month for the prior
 23 month's period and then subsequently email it to
 24 some of these noteholders, including Perry, who, to
 25 my understanding, would further distribute that

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1 report.
 2 Q. And what about any sort of written
 3 materials about Complete Business Solutions Group or
 4 its business operations?
 5 A. Not that I can recall.
 6 Q. So at a certain point, Complete Business
 7 Solutions Group stopped using finders and started
 8 issuing its notes directly to what I'm going to
 9 refer to as agent fund managers. Would you agree
 10 with me?
 11 A. Not necessarily. We would also have
 12 individual noteholders, not just agent fund
 13 managers, that were still in existence both before
 14 and after we stopped paying finder's fees.
 15 Q. Okay. For how long did Complete Business
 16 Solutions Group continue to have individual
 17 noteholders and agent fund managers?
 18 A. There were individual noteholders all
 19 through the end of July 2020.
 20 Q. And when was the last time an individual
 21 who was not an agent fund manager acquired a
 22 promissory note in Complete Business Solutions
 23 Group?
 24 A. The last promissory note the company did
 25 was in March of 2020. I don't recall if that was to

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1 fund managers or individuals or maybe both.
 2 **Q.** In 2020, was Complete Business Solutions
 3 Group continuing to issue promissory notes to
 4 individuals who weren't agent fund managers?
 5 **A.** Yes. We still had relationships with
 6 individuals. Not everyone was an agent fund
 7 manager. And keep in mind these notes are only 12
 8 months. So they had the option of taking the money
 9 out and getting the loan repaid or providing the
 10 capital to the company for another year to have an
 11 additional year's worth of interest paid for that
 12 capital.
 13 **Q.** Was there someone at Complete Business
 14 Solutions Group who would reach out to those
 15 individual noteholders when the maturity date was
 16 coming up to see if they wanted to receive their
 17 principal back or roll it over into another note?
 18 **A.** We typically would still repay the
 19 principal just as a habit of form, not just rolling
 20 it over as you're describing.
 21 So let's say a noteholder had half a
 22 million dollars come due. We would typically wire
 23 that back. And then they would subsequently wire
 24 the note per the terms of the new note issued for
 25 the subsequent period. And I would communicate some

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1 of this with some of the noteholders, especially the
 2 direct noteholders, with the Chehebar family and a
 3 couple other guys that have been around since
 4 earlier in the company's life, from 2014, '15
 5 onward.
 6 **Q.** Okay. Other than the Chehebars, who else
 7 did you have those discussions with?
 8 **A.** I would have discussions with, and this is
 9 a couple guys I mentioned earlier, Patrick Gibbons,
 10 Alan Kandall, Matt Szkotak, Scott Pollack. David
 11 Wiggins was another guy. There's a few different
 12 individuals. And I can't remember every single one,
 13 off the top of my head, but those are a couple of
 14 the regular guys that I would communicate with.
 15 **Q.** So would you agree with me that at some
 16 point, Complete Business Solutions Group stopped
 17 using finders?
 18 **A.** Yes, absolutely.
 19 **Q.** Okay. And that was at some point in 2017?
 20 **A.** The last finder's fee I believe was paid
 21 out either at the end of '17 or the first month of
 22 '18, right at the end of the year. So, yeah, right
 23 around there.
 24 **Q.** Why did Complete Business Solutions Group
 25 stop using finders?

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1 **A.** We received a subpoena from the PA DOB in
 2 regards to information about these finder's fees
 3 paid. And at the recommendation of Bybel Rutledge,
 4 Phil Rutledge is the lawyer that we had handle this
 5 for us, he said you should immediately cease payment
 6 of any finder's fees in his communication with the
 7 state, and he would come back and determine guidance
 8 for us to follow going forward to make sure that we
 9 were in compliance with any sort of federal or state
 10 regulations.
 11 **Q.** Who at Complete Business Solutions Group
 12 decided to -- made the ultimate decision to stop
 13 using finders?
 14 **A.** I don't recall if there was any one
 15 individual. Again, we listened to our lawyers. So
 16 it would have been a consensus thing. I don't think
 17 anyone was in disagreement with Phil Rutledge's
 18 decision.
 19 **Q.** Okay. So the consensus agreement at
 20 Complete Business Solutions Group, who was part of
 21 that consensus agreement at Complete Business
 22 Solutions Group?
 23 **A.** I was part of it and Lisa McElhone.
 24 **Q.** Anyone else?
 25 **A.** Not that I can remember.

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1 **Q.** Did you have an understanding in 2017 when
 2 you received the subpoena from the Pennsylvania
 3 securities regulators as to what had prompted their
 4 investigation?
 5 **A.** No, I did not.
 6 **MR. MILLER:** It's Mr. Miller. Object to
 7 the form.
 8 **BY MS. BERLIN:**
 9 **Q.** In 2017 or 2018, did you ever review the
 10 subpoena and the materials that were sent by the
 11 Pennsylvania regulators to Complete Business
 12 Solutions Group?
 13 **A.** Are you asking if I reviewed the subpoena
 14 that was sent?
 15 **Q.** I'm asking if you received -- it was a
 16 subpoena, but it's sort of like a packet that
 17 includes the subpoena. Did you review that or
 18 receive it in 2017 or '18?
 19 **A.** Yes. It was forwarded over to me by our
 20 general counsel.
 21 **Q.** Did you receive then the explanation, the
 22 written explanation from the Pennsylvania securities
 23 regulators stating that they had received a
 24 complaint about Dean Vagnozzi?
 25 **A.** I don't recall that.

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1 Q. So at a certain point, Complete Business
 2 Solutions Group started utilizing -- I'm going to
 3 refer to it as agent fund managers. Do you agree
 4 with me and understand?
 5 A. Yes. At some point we started working
 6 with agent fund managers.
 7 Q. Okay. And whose idea was it to use agent
 8 fund managers?
 9 A. I don't remember who brought the idea up
 10 originally. This was something we had discussed
 11 with Dean Vagnozzi before, but I don't know who came
 12 up with the idea.
 13 But in the discussion of how the company
 14 would operate going forward with respect to these
 15 noteholders or anyone else interested in receiving a
 16 return on any loans made to the company, we
 17 discussed with Phil Rutledge that it would be
 18 appropriate to do so.
 19 Q. So when did Complete Business Solutions
 20 Group begin using agent fund managers?
 21 A. I don't remember the specific date, but I
 22 believe it was towards the end of 2018.
 23 Q. I'm sorry. So am I understanding
 24 correctly that your testimony is that Complete
 25 Business Solutions Group stopped using finders at

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1 the end of 2017 or early 2018 and then began using
 2 agent fund managers at the end of 2018?
 3 A. Yes. To the best of my recollection, I
 4 think it was around then that the agent fund
 5 managers were starting and we were working with
 6 them.
 7 Q. So from early 2018 until late 2018, is it
 8 accurate that there were no finders and there were
 9 no agent fund managers for that time period?
 10 A. It might have been earlier in the year. I
 11 honestly don't recall the specific date.
 12 Q. Who was the primary contact at CBSG with
 13 Phil Rutledge?
 14 A. I believe it was Norman Valz, our general
 15 counsel. And subsequently it was Cynthia Clark who
 16 replaced Norman Valz in late 2018.
 17 Q. Who else was the primary contact? Like
 18 where did Norman Valz and the other in-house or the
 19 other general counsel of the company get their
 20 information? Was it from you or Lisa McElhone or
 21 others?
 22 A. It depends on what information.
 23 Q. Well, with respect to the use of agent
 24 funds, did Phil Rutledge know you were going to be
 25 using agent funds?

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1 A. We keep Phil Rutledge apprised of the
 2 system going forward, and he would introduce
 3 additional documentation for us to use with the
 4 company in relation to the purchasers.
 5 Q. Did you tell Phil Rutledge that you were
 6 going to use agent fund managers before the
 7 Pennsylvania securities regulator's investigation
 8 had concluded?
 9 A. No. We discussed the strategy after the
 10 response to the subpoena was filed. We filed that
 11 in, I believe, February of 2018, and we discussed
 12 our procedures going forward both with respect to
 13 existing noteholders and new noteholders down the
 14 road. So that onset of funds managers along with
 15 the existing noteholders that we had were discussed
 16 with him very candidly. And he gave us counsel on
 17 how to proceed with that.
 18 Q. Okay. I understand. But my question is a
 19 little different. So during the time that the
 20 securities regulator's investigation was opened, so
 21 before there was an agreed order entered against
 22 Complete Business Solutions Group at the end of
 23 2018, did you tell Phil Rutledge that CBSG was
 24 paying any agent fund manager?
 25 MR. FUTERFAS: It's Alan Futerfas. I

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1 object to the form of the question.
 2 THE WITNESS: Just to repeat your question
 3 back to you and make sure I'm understanding this
 4 correctly --
 5 BY MS. BERLIN:
 6 Q. I can just ask you again. Prior to the --
 7 first of all, are you aware of the fact that there
 8 was an order, an agreed order entered with respect
 9 to Complete Business Solutions Group by the
 10 Pennsylvania securities regulators in late 2018?
 11 A. In late 2018, yeah, we had agreed to --
 12 basically as a result of the subpoena, we agreed to
 13 a fee in that entire order, yes.
 14 Q. So prior to the time that that order was
 15 entered where CBSG would pay the fee, did you tell
 16 Phil Rutledge that you CBSG was paying agent fund
 17 managers?
 18 A. We told Phil Rutledge that prior to the
 19 order, that we paid finder's fees through 2017 and
 20 possibly the first month of '18 and we were no
 21 longer paying any finder's fees for any fund
 22 managers or noteholders or finders.
 23 Q. And how do you know that that's what was
 24 represented to Phil Rutledge? Did you participate
 25 in those communications?

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1 **A.** Yes, I did. I spoke and emailed regularly
2 including Norm Valz and Lisa regarding this matter.
3 **Q.** So approximately from -- like throughout
4 the time period from the beginning of the time that
5 Complete Business Solutions Group was offering
6 promissory notes until the SEC brought its case,
7 approximately how much money did Complete Business
8 Solutions Group receive from investors in promissory
9 notes related to Complete Business Solutions Group?
10 **A.** Are you asking for the total volume or
11 just the total amount that we would have reflected
12 on our balance sheet at any one point in time?
13 **MS. SCHEIN:** Amie, could you state the
14 timeframe?
15 **BY MS. BERLIN:**
16 **Q.** I asked for the entire time period that
17 Complete Business Solutions Group was receiving
18 investor funds. So from the very beginning all the
19 way until the SEC filed its case, approximately how
20 much money came in to Complete Business Solutions
21 Group from the offer or entry of a promissory note
22 in connection with Complete Business Solutions
23 Group?
24 **A.** I'm trying to understand your question.
25 Do you mean the total volume of cash in and out? So

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1 if someone provided a million dollars and then they
2 renewed it again for another million dollars for the
3 subsequent year, would you count that as 2 million,
4 or would you count the amount of volume at any one
5 point in time that the company had in debt, meaning
6 what someone's debt it carried at a single point in
7 time?
8 **Q.** I'm asking about how much cash came in.
9 **MR. FUTERFAS:** Alan Futerfas. I object to
10 the form of the question, particularly unless you
11 have documents to show the witness.
12 **THE WITNESS:** I'm having a hard time
13 answering your question.
14 **BY MS. BERLIN:**
15 **Q.** I'm asking for an approximate figure. One
16 of your jobs was -- I mean, you were the CFO of the
17 company; correct?
18 **A.** That's right.
19 **Q.** Okay. So I'm just asking for an
20 approximate figure of how much was -- how much money
21 came in from investors. I'm not talking about like
22 an accounting basis where you might be counting
23 money twice because it's rolled over. I'm actually
24 talking about like cash in.
25 **MR. FUTERFAS:** Again, I'm going to renew

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1 my objection. I'm sorry.
2 **THE WITNESS:** Sorry, Amie. I'm really
3 trying to help you here, but the way you're phrasing
4 the question makes it impossible to ask -- or to
5 answer because I don't know if you're counting
6 monies that were provided and then renewed or if
7 you're talking about the volume total of cash at any
8 one point in time that the company carried in debt.
9 I really want to answer this for you and as
10 accurately as possible.
11 **BY MS. BERLIN:**
12 **Q.** I'm not talking about the amount carried
13 as debt which would include the interest rate. I'm
14 actually talking about how much money flowed into
15 the Complete Business Solutions Group bank account
16 that was from these promissory notes.
17 **MR. FUTERFAS:** Object to the form.
18 **BY MS. BERLIN:**
19 **Q.** I'm not asking about the interest rate.
20 I'm asking like how much money approximately flowed
21 into the CBSG account that was derived from the
22 promissory notes.
23 **MR. FUTERFAS:** I object to the form.
24 **THE WITNESS:** So hear me out for a second.
25 I'm not including interest when I'm describing the

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1 total volume of debt. And to help answer the
2 question, when I'm describing the total volume of
3 debt, obviously cash flows come in from note
4 purchasers. We have a balance of debt. We receive
5 \$10 million. We owe \$10 million. We receive
6 another \$20 million from someone else. Now we owe
7 30.
8 But when you're asking the total volume of
9 cash flow or how much monies came in -- let's say
10 the first \$10 million came back in the subsequent
11 period. Am I counting that as two separate deposits
12 of cash into the business even though those funds
13 were repaid back to the noteholder and then
14 subsequently put back in?
15 In that case, my answer would be
16 \$40 million because 10 million came from the same
17 party twice despite the fact it's going back. Or
18 are you asking the total amount of cash, meaning any
19 monies from these different parties that were kept
20 in the company at any given point in time?
21 Because as you can understand, it's a
22 dynamic balance sheet. There's a lot of monies
23 coming and going and being repaid throughout the
24 history. And in that example, I would say the
25 company would have \$30 million in debt. Does that

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1 make sense?
 2 **Q.** Yes. So I'm asking you -- yes. I
 3 understand the confusion. My second question is
 4 going to be how much went back to investors.
 5 So my question is: How much money came in
 6 to Complete Business Solutions Group in connection
 7 with the promissory notes, whether or not it was
 8 from an investor who reinvested money that had been
 9 returned? So how many dollars actually came in?
 10 And then I'm going to ask you
 11 approximately how much went back out.
 12 **A.** I think we're getting to the bottom of it.
 13 Let me try to answer both questions in one
 14 explanation because it's related.
 15 **Q.** Okay. Great.
 16 **A.** The amount of capital that has come in
 17 from individual parties through the history of CBSG
 18 from 2012 to 2020 has been approximately \$460
 19 million not counting the same capital being
 20 reloaded. The amount that has been repaid from that
 21 amount has been approximately \$180 million.
 22 The most debt the company ever had at any
 23 given point in time was approximately \$384 million,
 24 and this was in March of 2020. And during that
 25 time, we repaid another \$15 to \$20 million back to

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1 noteholders. And that was approximately leaving the
 2 company with a total liability position of \$365
 3 million in debt at the time.
 4 **Q.** And that's \$365 million in debt to the
 5 noteholders; correct?
 6 **A.** That is correct.
 7 **Q.** The consulting fees that you received from
 8 Complete Business Solutions Group, was that money
 9 that was money from the merchants repaying the MCA,
 10 or was it money that was from noteholders?
 11 **A.** The monies that would be paid for
 12 consulting fees came exclusively from merchant
 13 deposits coming into the business.
 14 **Q.** And how do you know that?
 15 **A.** So operationally we have our noteholder
 16 deposits come in twice a month. And in 2019, '18
 17 and onward, we would have this done on the 10th and
 18 23rd. So if you take into consideration -- and I'm
 19 being general here just to paint the picture -- that
 20 the company received a billion three in cash flows
 21 from merchant deposits and approximately let's call
 22 it \$460 million in investor note deposits, you have
 23 about a little bit more than two-thirds, maybe
 24 towards three-fourths of capital coming in from
 25 merchants deposits.

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1 So in at any given month, if we fund \$30
 2 million or if we receive \$30 million in deposits, we
 3 would have less than \$15 million coming in from
 4 noteholders. And if you split that up into the two
 5 days, that's about \$7-1/2 million per month. And
 6 remember when I said that the consulting fees were
 7 paid the week after the end of the quarter when we
 8 calculate how much funding the company provided.
 9 By the time we would send that wire out
 10 for the consulting payments, and let's say that's
 11 the 5th or 6th, whatever the business day is
 12 available for us to make that wire, we would have
 13 had approximately seven days since that last deposit
 14 of investor or noteholder funds into the business,
 15 which would have been on the 23rd.
 16 And being that the company in that point
 17 in time would be funding about \$2, \$3 million per
 18 day, all the deposits from the noteholders would
 19 have already gone out to merchant funding. And all
 20 subsequent cash flow to be received by the company,
 21 which was about \$2, \$2-1/2 million per day at the
 22 time, would have been used in the cash flow balances
 23 that the company had to pay the consulting fees in
 24 the two weeks later after the last investor or
 25 noteholder deposits were received into our accounts.

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1 **Q.** Okay. So in addition to the consulting
 2 fees, what about all of the other like operating
 3 expenses of Complete Business Solutions Group, what
 4 was the source of money used to pay all of the
 5 operating expenses?
 6 **A.** It also came from merchant MCA deposits.
 7 **Q.** So is it your testimony that investor
 8 money was used solely for funding MCA agreements?
 9 **A.** Yes.
 10 **Q.** Excuse me?
 11 **A.** Yes.
 12 **Q.** Who prepared the Complete Business
 13 Solutions Group tax returns?
 14 **A.** It depends on the period of time, but from
 15 2014 onward, the firm we worked with was Rod Ermel
 16 Associates out of Colorado Springs.
 17 **Q.** And who was the main contact at CBSG for
 18 Rod Ermel?
 19 **A.** I was the main point of contact along with
 20 Lisa.
 21 **Q.** Were the tax returns that CBSG had filed
 22 with the IRS like ultimately approved by anyone at
 23 CBSG before filing?
 24 **A.** I believe Lisa discussed this with the
 25 accountants before the final decision was made to

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1 file. I would sign off and say that I agreed from
 2 the accounting side, that they made sense. But Lisa
 3 was the main person on the account that would
 4 ultimately approve these.
 5 **Q.** Did you review and sign off on the tax
 6 returns for every year that you were with Complete
 7 Business Solutions Group?
 8 **A.** If you're asking if I saw the tax returns
 9 as far as review, I'm not a CPA. I'm not a tax
 10 expert. So I'm not saying I'm making any decisions
 11 on the calculations. But I certainly looked at them
 12 before they were filed by our CPAs at Rod Ermel
 13 Associates.
 14 **Q.** Did you sign off on them as the CFO?
 15 **A.** I confirmed that they looked good based on
 16 our accounting, yes. But I did not sign off in
 17 regards to any sort of calculations or methodologies
 18 being used. We relied on them to make sure that
 19 that was done in the best possible manner.
 20 **Q.** Did you believe that every one of those
 21 Complete Business Solutions Group tax returns during
 22 your period of work with Complete Business Solutions
 23 Group and Full Spectrum, so from 2012 through 2020,
 24 did you believe that each of the CBSG tax returns
 25 was true?

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1 **A.** I didn't review tax returns prior to Rod
 2 Ermel's involvement. From 2012 to 2014 I had very
 3 limited review or analysis of those tax returns.
 4 For the ones I did review prepared by Rod Ermel
 5 Associates subsequent 2014, I believe that they were
 6 done correctly and accurately per the discussions I
 7 had with our tax accountants and my own knowledge of
 8 tying out the information provided from our
 9 accounting system.
 10 **Q.** As part of the materials that CBSG
 11 provided to noteholders or potential noteholders,
 12 there was financial information that was provided
 13 about the merchant cash advance returns. Is that
 14 true?
 15 **A.** I don't know what you mean by merchant
 16 cash advance return.
 17 **Q.** So as part of the information that was
 18 provided to investors and potential investors of
 19 Complete Business Solutions Group, there was a chart
 20 that was specifically called CBSG Funding Analysis.
 21 Would you agree with me?
 22 **A.** Yes. You're referring to the monthly KPI
 23 report that we would send out.
 24 **Q.** And what did KPI stand for?
 25 **A.** That's key performing indicators.

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1 **Q.** Who would prepare the CBSG funding
 2 analysis?
 3 **A.** That would be prepared by members of my
 4 accounting staff and reviewed by me before being
 5 sent out.
 6 **Q.** Okay. Did you have the final say on the
 7 CBSG funding analysis document before it was
 8 finalized?
 9 **A.** Yes.
 10 **Q.** Mr. Cole, if you answered, I didn't hear
 11 you.
 12 **A.** Yes. I said, "Yes."
 13 **Q.** Okay. Thank you. I didn't hear it.
 14 So what was the purpose of the CBSG
 15 funding analysis? Like why was that prepared each
 16 month?
 17 **A.** The funding analysis, as you would
 18 anticipate from key performing indicators, would
 19 select the metrics that we felt most pertinent in
 20 keeping track of the performance of the company's
 21 portfolio.
 22 So the Full Spectrum accountants would put
 23 together the numbers for the amount wired, the
 24 number of deals for every month or year, the total
 25 amount of receivables that we had at the end of the

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1 period, the exposure from the defaults written off
 2 for a period of time, the total amount of payments
 3 collected from merchants and the amount of return
 4 payments as a percentage and a number from the
 5 payments we processed that came back.
 6 There's a lot of useful information that
 7 you can derive from this, such as are we getting
 8 consistent payments from our merchants, are our
 9 funding amounts reasonable in proportion to the
 10 deals, the terms of the factoring agreement that
 11 we're negotiating with these MCA merchants, are they
 12 in line. And you can also analyze trends. This is
 13 like the back of the baseball card stats for the
 14 player. You really want to know how valuable these
 15 performing indicators are, right.
 16 **Q.** Was the information in the funding
 17 analysis, this payment information, that was
 18 utilized to prepare CBSG's financial statements?
 19 **A.** Yes. It was the exact same information.
 20 **Q.** And was the same information utilized in
 21 the preparation of the CBSG tax returns?
 22 **A.** Yes, it was, although not everything on
 23 there would be reflected on the tax return. I don't
 24 think the IRS cares how many deals we funded in the
 25 last month.

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1 Q. Is that the only thing that wasn't
 2 reflected in the tax returns that was on the funding
 3 analysis?
 4 MR. FUTERFAS: Object to the form.
 5 THE WITNESS: Well, if you think about it,
 6 very minimal would be reflected on the tax returns
 7 from the funding analysis. The IRS doesn't care how
 8 many deposits we had or the return payments from our
 9 ACH processors. They will care about the defaults
 10 and the recognition of bad debts under GAAP. But
 11 they won't care about the exposure, for example, and
 12 the amount of cash loss from those deals.
 13 I think they're going to be a lot more
 14 concerned on the revenue side. And as part of your
 15 schedule A or M-3 schedule on the 1120 tax return,
 16 you may have a consideration for the amount on the
 17 balance sheet. And as a part of the balance sheet,
 18 you have the AR total from the respective period
 19 you're reporting for.
 20 So when you're doing the final tax returns
 21 or having your CPA prepare the tax returns, you'll
 22 want to sign off on that being an accurate total as
 23 reported for the 1120s.
 24 Q. Did you provide the funding analysis, the
 25 monthly funding analysis documents to Rod Ermel for

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1 preparation of the tax returns?
 2 A. Yes. I regularly provided this every
 3 month to Rod Ermel Associates for review.
 4 Q. Did you ask them to -- did you ask Rod
 5 Ermel to review the CBSG funding analysis each
 6 month?
 7 A. That's right. In addition, Lisa hired
 8 them in 2016 to perform an audit on that specific
 9 report. They issued an agreed upon letter procedure
 10 where they verified for a week. Two of their CPAs
 11 flew out to the office. They verified the deals we
 12 had reported on the report were accurate and that
 13 they were indeed funded per the terms of the
 14 agreement.
 15 And they would also contact our merchants
 16 to verify the terms to issue that letter verifying
 17 that the information provided on the KPI report was
 18 indeed factual as stated.
 19 Q. So my question was a little different.
 20 Did you ask like -- you said you sent or you
 21 testified that you sent the CBSG funding analysis to
 22 Rod Ermel each month; correct?
 23 A. That's right.
 24 Q. Okay. When you sent Rod Ermel the funding
 25 analysis, were you asking Rod Ermel each month to

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1 verify whether or not the information in the funding
 2 analysis was accurate?
 3 A. Are you asking if I asked them to verify
 4 it each month?
 5 Q. Yes.
 6 A. No. I did not ask them to verify it each
 7 month.
 8 Q. Okay. So did you tell Rod Ermel that CBSG
 9 was distributing the funding analysis document to
 10 potential investors of promissory notes in
 11 connection with Complete Business Solutions Group?
 12 A. No. I didn't tell them that.
 13 Q. Did there come a time when you learned
 14 that Complete Business Solutions Group provided the
 15 CBSG funding analysis document to potential
 16 investors in connection with the CBSG-related
 17 promissory notes?
 18 A. Yes. I believe this was reviewed by
 19 potential noteholders. And I remember on occasions
 20 speaking about this report with anyone that would
 21 ask about it.
 22 Q. Did you sometimes have phone calls with
 23 potential investors about the funding analysis?
 24 A. Yes. I would occasionally have phone
 25 calls about that report.

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1 Q. Okay. And what types of questions were
 2 they asking about it?
 3 A. Can you explain the metrics on the report?
 4 Can you explain your historic trends and projected
 5 trends going forward? What are the methodologies
 6 used to determine the various columns, the
 7 calculations, and explaining the footnotes on how
 8 these numbers were derived.
 9 There's a lot of information on there, and
 10 there were a lot of different questions.
 11 Q. Okay. Would you sometimes explain to the
 12 potential investors what the exposure percentage
 13 meant?
 14 A. Yes, absolutely.
 15 Q. Okay. And how would you explain that?
 16 A. The exposure percentage is a dynamic
 17 number that's calculated each month. It reflects
 18 the cash-over-cash exposure for deals that were
 19 written off for that respective period of time in
 20 proportion to the amount of funding for that
 21 respective period of time.
 22 Q. So was it sort of like the amount that
 23 Complete Business Solutions Group had funded? Like
 24 was it based on the amount that Complete Business
 25 Solutions Group had funded minus the amount that it

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1 had collected on those merchant cash advances?
 2 **A.** No.
 3 **Q.** How was it calculated? Can you explain it
 4 to me?
 5 **A.** Sure. So let's say, for example, in a
 6 given month you have a blend of merchants that you
 7 are writing off in default. There's a blend of a
 8 receivables total and then there's the exposure on
 9 those receivables. Your receivables is going to be
 10 the amount that was provided to the merchant plus
 11 revenue minus repayments.
 12 So let's say we wired out half a million
 13 dollars and we had a 130 factor rate attached to
 14 that. Well, we would have \$650,000 repayable from
 15 that \$500,000 in total RTR. And let's say that
 16 blend of merchants repays back \$250,000.
 17 Well, from that example, I would have a
 18 total of \$400,000 in receivable left to collect just
 19 for that group of deals, but I would have an
 20 exposure of \$250,000 because I would receive 250,000
 21 against the 500,000 originally provided for the
 22 transaction.
 23 So your two columns, your AR that's
 24 totally being written off for that month would be
 25 400,000. But your exposure for those deals would

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1 only be a quarter million dollars. And then in
 2 proportion to that amount, that quarter million
 3 dollars, that would be the numerator over the
 4 funding total for the month. That would be your
 5 denominator.
 6 So that let's say you only funded
 7 \$25 million for that month. \$250,000 over \$25
 8 million would reflect a 1 percent ratio for your
 9 exposure in proportion to your funding. I would
 10 explain this to anyone that asked me a question
 11 regarding the calculation.
 12 **Q.** Okay. And is that how you would explain
 13 it to the potential investors, the way you just
 14 explained it to me in your testimony?
 15 **A.** The operative word there is always
 16 cash-over-cash losses.
 17 **Q.** And did the rate take into consideration
 18 like -- let me back up for a second. In your
 19 testimony you mentioned defaults.
 20 How did Complete Business Solutions Group
 21 identify or define a merchant cash advance that was
 22 in default?
 23 **A.** It depends on the period of time.
 24 **Q.** Okay. So when you first started at the
 25 company in 2012, how did it determine default?

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1 **A.** Our tax accountants would prepare a loss
 2 provision based on the amount of outstanding
 3 receivables and anticipated losses from that. So it
 4 would factor in the total amount of deals written
 5 off. And I'm assuming this is for tax purposes, not
 6 for accounting purposes.
 7 The amount that would be requested as a
 8 writeoff on the tax return would be the amount of
 9 the expected losses not just from the actual losses,
 10 but also from the projected losses on the
 11 consistent -- on the ongoing portfolio.
 12 **Q.** So am I understanding correctly then in
 13 2012, the accountants would determine which merchant
 14 cash advance agreements were in default?
 15 **A.** They would not determine which merchant
 16 cash advance agreements were in default. That is a
 17 function of collections and legal.
 18 They would determine the revenue
 19 recognition loss methodology as used for tax
 20 returns, which is a very different thing.
 21 **Q.** Yeah. I was going to say I'm asking
 22 something a little different.
 23 So in your testimony, you mentioned
 24 merchant cash advances in default. So I'm asking:
 25 How did CBSSG determine which merchant cash advances

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1 were in default?
 2 **A.** Well, the employees at Full Spectrum
 3 providing services for these default merchants, they
 4 would determine which deals were written off based
 5 on the frequency of payment and if there were
 6 existing agreements in place with the merchants in
 7 arrears, meaning that our provision -- and this is
 8 getting into the future, so if you don't want to
 9 talk about taxes -- taxes is part of the
 10 conversation when it comes to GAAP losses. But I'm
 11 trying to be general.
 12 But in general, you would have to consider
 13 the last payment from the merchant and whether or
 14 not you had an agreement or negotiations in place
 15 for the repayment or some sort of modification to
 16 the existing factoring agreement.
 17 And the length of time the company would
 18 use is about six weeks. So if someone didn't pay us
 19 a dollar on the thousand dollar payment, after six
 20 weeks, the company would recognize that as a default
 21 unless there were some sort of negotiation or legal
 22 agreement pending to the resolution of that balance
 23 in arrears.
 24 **Q.** Okay. So what if during those six weeks
 25 on the thousand dollar merchant cash advance the

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1 merchant did pay a dollar? Then what would happen?
 2 Would the merchant cash advance not be deemed in
 3 default?
 4 **A.** It wouldn't be a dollar.
 5 **MR. FUTERFAS:** Objection to form.
 6 **THE WITNESS:** It would have to be
 7 proportionate to the amount. Obviously, the company
 8 isn't going to come to an agreement of only taking a
 9 dollar for someone that has a thousand dollar
 10 obligation to repay. It would have to be a
 11 reasonable repayment obligation.
 12 Otherwise, the legal team would exercise
 13 all rights and remedies to rectify the factoring
 14 agreement that they were in breach of.
 15 **Q.** Okay. So was there a set percentage or
 16 set amount that a merchant would have to pay in
 17 order to not be deemed in default?
 18 **A.** No. There's no set percentage. I'll get
 19 into this a little bit because your question is
 20 getting into it, but under GAAP allowances that we
 21 had from our audit in 2017 onward, we were under
 22 FASB 356 guidance from the accounting standards
 23 court that we would determine the methodologies for
 24 writeoffs are contingent upon management's decision
 25 to determine those writeoffs and that the writeoffs

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1 used then were using that methodology as its
 2 consistent methodology for writing off per our
 3 actual accounting function, so a period of six weeks
 4 with no negotiation or any sort of agreement with
 5 these merchants.
 6 **Q.** But I'm trying to understand like how much
 7 negotiation or how much payment would have to be
 8 made in order for the merchant not to be deemed in
 9 default. You said if they paid zero, if they didn't
 10 pay a dollar on a thousand dollar merchant cash
 11 advance, after six weeks, they'd be deemed in
 12 default.
 13 How much would a merchant have to pay on
 14 that \$1,000 merchant cash advance to not be in
 15 default at the end of the six weeks?
 16 **MR. SOTO:** Objection to form.
 17 **THE WITNESS:** There's no set percentage if
 18 that's what you're asking.
 19 **BY MS. BERLIN:**
 20 **Q.** Who ultimately makes the decision as to
 21 whether or not a merchant cash advance is in
 22 default; right?
 23 **A.** This would be under the collections and
 24 legal department.
 25 **Q.** But my question is who.

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1 **A.** It would be the managers of the collection
 2 and legal department. It depends on the point in
 3 time you're referring to.
 4 **Q.** Okay. So go back to 2012. Who were the
 5 people making those decisions in 2012?
 6 **A.** Lisa was making the decisions back in
 7 2012.
 8 **Q.** Okay. And so when did Lisa stop making
 9 the decisions?
 10 **A.** Let me think. The collections department
 11 and counsel, from '14 onwards, Norm Valz was a big
 12 component in the determination of those defaults.
 13 That was our general counsel. He started off as
 14 third party and would assist in seeing the viability
 15 of negotiations with these merchants.
 16 It's extremely nuanced, so a lot of the
 17 times, the collections personnel would be the ones
 18 engaged with discussing these with the merchants.
 19 In 2014 and '15, we had our collections
 20 manager, whose name was Kenneth Calcagnini, in
 21 charge of that. Subsequent to him, we had
 22 additional collections staff that would work with
 23 negotiations with those merchants. So ultimately if
 24 they were able to come to a deal, they would not be
 25 put into default.

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1 But at the end of the month, a review
 2 would be performed by the department as a whole, and
 3 the collections with participation from the legal
 4 team would determine what deals would be written
 5 off. And they would confirm this with my department
 6 in accounting to book the official change in
 7 receivables from the deals being written off for
 8 that period of time, which is the data I'm using for
 9 the KPI report with that exposure that we just spoke
 10 of.
 11 **Q.** So default meant that a loan had been
 12 written off?
 13 **A.** Other factoring agreements, not loans,
 14 yeah.
 15 **Q.** I'm sorry. A default meant that a
 16 merchant cash advance had been written off; is that
 17 accurate?
 18 **A.** Yes. It would be recognized as a loss for
 19 that period of time that they were being written
 20 off.
 21 **Q.** Okay. And during the time period when
 22 Norm Valz was the person who decided which loans
 23 were in default, how did he communicate which ones
 24 were in default? How did he tell CBSG that?
 25 **A.** This is an ongoing communication between

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1 the collections and legal team. So they would have
2 phone calls and emails and even in-person meetings
3 to discuss the deals.

4 **Q.** Did you or Lisa McElhone, like, have
5 ultimate decision making as to which loans were
6 considered in default -- I'm sorry -- which merchant
7 cash advances were deemed in default or written off?

8 MS. SCHEIN: Object to the form.

9 THE WITNESS: No. I think at the
10 beginning, Lisa made some of these decisions, but
11 later on we weren't the ones making a decision on
12 whether or not the deals would be written off. We
13 mainly relied on counsel and the collections team
14 staff including the collections manager.

15 BY MS. BERLIN:

16 **Q.** Okay. So in 2020, who were the
17 decision-makers for deciding whether or not an MCA
18 was written off or was in default?

19 **A.** This would be with Brett Berman. We had a
20 few different employees in collections. Anthony
21 Fazio was one of the managers there along with Tim
22 Meyers. And they would come to a decision on what
23 deals were to be written off based on the feedback
24 received from their collections teams.

25 **Q.** And would those decisions about which

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1 everyone's name. This is like over a year ago.

2 **Q.** Did you receive the list?

3 **A.** Yeah. I received the list. I'm always
4 copied on the list. I have the final review before
5 it's booked. There's a lot of moving parts, a lot
6 of entries to be made in QuickBooks and our related
7 spreadsheets. Jim Klenk was also copied on that
8 report.

9 **Q.** Who else would send the list to you?

10 **A.** I don't recall who sent the list. I
11 believe it was someone from the collections team.

12 **Q.** And you would receive it by email?

13 **A.** Yes. This would usually come in by email.

14 **Q.** Okay. So if the merchant cash advance
15 borrower had been sued by Complete Business
16 Solutions Group for failure to pay a merchant cash
17 advance, were they included on the list of defaulted
18 merchant cash advances?

19 **A.** Not necessarily. Typically the ones in
20 litigation were, but like I just said, if you had a
21 negotiation or some kind of modification you were
22 working on, it wasn't necessarily already going to
23 be written off for that period of time.

24 It's when it's deemed it's uncollectible,
25 that there's no hope, that we're getting, you know,

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1 merchant cash advances were in default, would that
2 be communicated to you in 2020?

3 **A.** Yes. I just get the final list. So I'd
4 get that sent over. And by me, I mean my department
5 would receive the final list. And the folks who
6 prepared that list would come to that decision
7 before providing that list for my team to go and
8 book the changes in the receivables to reflect the
9 defaults.

10 **Q.** So who on your team would receive that
11 list of merchant cash advances that were deemed in
12 default?

13 **A.** This would be my accounting team. It
14 depends on the period of time, but there's a few
15 different people copied on that email. It's a large
16 process.

17 **Q.** 2020.

18 **A.** There's a lot of different deals.
19 Obviously, there's lots of work to do in order to
20 book those deals.

21 **Q.** In 2020 who would get the list?

22 **A.** In 2020 the deposit log team was Zoe Lou,
23 Milad -- I forget how to say his last name. Just
24 call him Milad F. There's Megan. I'm trying to
25 really remember. I'm sorry. I can't remember

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1 no phone calls or any communication even with
2 counsel on the other end that we have to really move
3 forward with it.

4 **Q.** So it's really only deemed in default once
5 it's ultimately deemed uncollectible, and that
6 decision would be made by Brett Berman and the
7 collections group; is that accurate?

8 **A.** They're the ones in charge of negotiation
9 with these merchants and talking to counsel on the
10 other side. So they have to keep in mind, okay,
11 when is the last time they paid? When is the last
12 time you guys came to a consensus that you would
13 make some kind of payment or agreement? Or was this
14 contingent upon, you know, some kind of sale of
15 assets, whatever the issue was.

16 They would handle the very diverse nuances
17 of negotiating with these merchants. And even
18 though it's only a small part of the portfolio, a
19 lot of these merchants had complex issues that can't
20 be easily resolved. Even if they were in
21 bankruptcy, for example, they might still be making
22 payments. But we'd still have worry and may file
23 preemptive legal action in consideration for
24 something like that.

25 So I want to say it's very nuanced and

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1 complex, and that's why there were so many people
 2 involved with having to deal with these and see
 3 merchants potentially going into default.
 4 **Q.** My question was just who made the ultimate
 5 decision that there was no chance of collection and,
 6 therefore, it should be written off? I was just
 7 trying to confirm it was Brett Berman and the
 8 collections group. Is that accurate?
 9 **A.** Yeah. It's consistent with what I just
 10 said about who handles these and works these. It's
 11 the same folks.
 12 **Q.** Okay. And before Brett Berman -- Brett
 13 Berman came in in what year?
 14 **A.** Brett Berman did work for the company
 15 prior to taking over as general counsel in February
 16 of 2020. I forget the period of time --
 17 **Q.** What time --
 18 **A.** I'm sorry?
 19 **Q.** During what time period did Brett Berman
 20 determine which of the merchant cash advances were
 21 in default?
 22 **A.** This would have to be after he assumed
 23 being general counsel for the company. That would
 24 be after early 2020.
 25 **Q.** Okay. And so before early 2020 when Brett

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1 collections group?
 2 **A.** Right. I can't stress enough that the
 3 collections team had a lot of input in this because
 4 they were more hands-on. You're not going to have
 5 your expensive lawyer talk to every one of the
 6 merchants. A lot of the heavy lifting will be done
 7 by the collection staff.
 8 **Q.** Okay. So what about before Ms. Clark was
 9 doing it?
 10 **A.** Her predecessor was Norman Valz.
 11 **Q.** Okay. During what time period was he
 12 deciding which merchant cash advances were in
 13 default?
 14 **A.** Norman worked, I believe, from '14 to '17.
 15 **Q.** So who on the collections team was making
 16 these decisions?
 17 **A.** The same people. There were the managers.
 18 **Q.** The collections managers were making the
 19 decisions?
 20 **A.** Yes. They would talk to their team and
 21 they would come to a consensus.
 22 **Q.** And who were the collections managers
 23 between 2014 and 2020?
 24 **A.** Just those couple guys I threw out, Tim
 25 Meyers, Anthony Fazio, Ken Calcagnini. They had

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1 Berman was doing it with the collections unit, who
 2 was making the decisions as to which merchant cash
 3 advances were in default?
 4 **A.** It was still the collections team and
 5 whoever was general counsel at the time. His
 6 predecessor was Peter Mulcahy, although Peter had
 7 two other lawyers working underneath him in Full
 8 Spectrum Processing.
 9 **Q.** And what years was Peter Mulcahy part of
 10 the decision-making team about the merchant cash
 11 advances in default?
 12 **A.** Peter was there in 2019 and a part of
 13 2020.
 14 **Q.** Okay. So what about before Mr. Mulcahy,
 15 who was making the decisions with the collections
 16 team about which merchant cash advances were in
 17 default?
 18 **A.** His predecessor was Cindy Clark.
 19 **Q.** And during what years was Cindy Clark
 20 making the decision on which merchant cash advances
 21 were in default?
 22 **A.** I believe she was there in '18 and '19.
 23 **Q.** Okay. And during that time, she was
 24 making the decisions about which merchant cash
 25 advances were in default working together with the

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1 some other senior collectors on their team, too,
 2 that were certainly influential, although probably
 3 didn't make the final call about it.
 4 **Q.** Okay. Who were the senior members of the
 5 team who were influential?
 6 **A.** I don't recall their names. I'm sorry. I
 7 didn't work in collections.
 8 **Q.** And it sounds like -- am I correct in
 9 saying the decision about which merchant cash
 10 advances would be deemed in default was largely a
 11 subjective decision and there was no like specific
 12 criteria in place?
 13 **A.** No. I wouldn't classify it as subjective.
 14 Six weeks is a very finite amount of time. And
 15 whether or not a merchant is in negotiations to come
 16 to an agreement is also an objective thing to
 17 determine.
 18 If a collector told me, yeah, we're going
 19 to get into negotiations with this merchant, there's
 20 no way that that would comply with the fault loss
 21 methodology determined by our financial auditing
 22 firm. So that would have to be included.
 23 **Q.** So what were the -- was there some sort of
 24 policy in place for determining when a merchant cash
 25 advance is going to be deemed in default?

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1 A. Yes. There's a policy in place --
 2 Q. Go ahead.
 3 A. Are you done?
 4 Q. Yes.
 5 A. The policies were put into place after our
 6 2017 audit under GAAP and further refined to reflect
 7 the actual flow of the defaults going into
 8 receivables.
 9 Q. And who put the policy into place?
 10 A. The policy was put into place with
 11 cooperation from the auditing firm, Friedman, LLP,
 12 rod Ermel Associates who would take that information
 13 to use for the tax returns, and legal, in-house
 14 legal which drafted some of the language as part of
 15 that policy.
 16 Q. Who specifically drafted the language that
 17 was part of the policy?
 18 A. I don't remember whom. We had Cynthia
 19 working there before and Norm. It was likely one of
 20 them, but I'm not going to make assumptions or
 21 guesses.
 22 Q. Okay. And so the policy on when to deem a
 23 merchant cash advance in default, that was actually
 24 written into a policy somewhere?
 25 A. It was described as part of the piece that

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1 someone would pay.
 2 And so they would convene and discuss it.
 3 And if they didn't think someone was going to pay
 4 and they hadn't made a sufficient payment by the end
 5 of six weeks, then it was seemed in default.
 6 MR. SOTO: Object to form.
 7 MS. SCHEIN: Object to form.
 8 BY MS. BERLIN:
 9 Q. Did I understand you correctly, Mr. Cole?
 10 A. That's a lot of different things you're
 11 explaining. At the end of day --
 12 Q. You said there was no -- that it wasn't
 13 subjective and that there was a set policy, but you
 14 also -- can you explain how that gels with the idea
 15 that -- you also testified that a merchant wouldn't
 16 have to pay a specific amount or even a specific
 17 percentage in determining whether or not they were
 18 in default.
 19 So I guess I'm just trying to understand
 20 like what specifically was the objective policy that
 21 was followed for identifying merchant cash advances
 22 in default.
 23 MR. SOTO: Objection to form.
 24 MS. SCHEIN: It's been asked and answered.
 25

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1 Jim Klenk ended up finalizing and working with our
 2 accountants. That's the official policy that Full
 3 Spectrum followed for the determinations of CBSG's
 4 losses.
 5 Q. What's the name of the policy?
 6 A. I don't know if it has a proper name. I
 7 would describe it as the audit work papers or just
 8 the methodologies or policies from the audit. I'm
 9 sure it has a proper file name and they refer it. I
 10 just don't recall what they called it. It might be
 11 accounting policies and procedures or something to
 12 that effect.
 13 Q. What exactly were the guidelines like for
 14 determining whether or not a merchant cash advance
 15 was in default?
 16 A. That's the thing that I was describing,
 17 yeah.
 18 Q. Well, what I understood you to say is that
 19 if someone didn't pay a dollar on a \$1,000 loan,
 20 after six weeks, it would be deemed in default and
 21 that there was no set percentage of how much someone
 22 would have to pay on a merchant cash advance to
 23 determine whether or not they were in default and
 24 that the lawyers together with collections had a
 25 sense from their interactions as to whether or not

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1 BY MS. BERLIN:
 2 Q. Go ahead, Mr. Cole.
 3 A. I'm sorry, Amie. I have nothing to add.
 4 I've already explained this.
 5 Q. Mr. Cole, did you hear my question? I'm
 6 having like a technical issue. Did you hear the
 7 question?
 8 A. I did. I responded.
 9 Q. I didn't hear your response. Can you
 10 answer it?
 11 A. Sorry. I said I already explained it and
 12 I don't have anything else to add to that.
 13 Q. So let me ask you some hypotheticals. So
 14 if a merchant cash advance -- if a merchant received
 15 100,000 from Complete Business Solutions Group and
 16 then had not made payments for six weeks, but agreed
 17 to pay \$1,000, would that merchant cash advance be
 18 deemed in default by Complete Business Solutions
 19 Group?
 20 MR. SOTO: Objection to form.
 21 THE WITNESS: I wouldn't be able to make
 22 the determination. That would have to be determined
 23 by the managers of collections and legal.
 24 BY MS. BERLIN:
 25 Q. You testified that there was objective

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1 criteria that they followed. Can you tell me what
 2 that specific criteria was that was followed by
 3 them?
 4 **A.** That's what I'm referring to.
 5 **Q.** So what was the objective criteria that
 6 the collections group and the counsel utilized to
 7 determine whether or not a merchant cash advance was
 8 in default?
 9 **MR. SOTO:** Objection to form.
 10 **THE WITNESS:** I described the policies and
 11 procedures. The determination is that six weeks of
 12 nonpayment, unless a negotiated amount or
 13 modification to the factoring agreement was in
 14 process. The objective is within six weeks and
 15 whether or not it's being negotiated or worked on by
 16 the collection department.
 17 You're asking me in the example would that
 18 be accepted? I can't make an opinion to that
 19 because I'm not the one negotiating those accepted
 20 terms. I'm not Brett Berman, and I'm not going to
 21 say, hey, Brett, does this deal sound good. That's
 22 not my job.
 23 My job is to record what the collections
 24 and the legal department determine.
 25

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1 **BY MS. BERLIN:**
 2 **Q.** So was it determined by the legal and
 3 collections department based on their personal
 4 judgment from your interactions with the merchants
 5 or the merchant's counsel? Is that fair to say?
 6 **MS. SCHEIN:** Object to form.
 7 **THE WITNESS:** Yes. That's fair to say.
 8 **BY MS. BERLIN:**
 9 **Q.** Okay. So you testified that just because
 10 a merchant cash advance was in a lawsuit and was
 11 being sued by Complete Business Solutions Group for
 12 payment, that that didn't necessarily mean that the
 13 merchant cash advance was in default.
 14 I wonder if you can explain that. Under
 15 what circumstances would it be deemed in default and
 16 under what circumstances would that merchant cash
 17 advance in litigation not be deemed in default?
 18 **MR. SOTO:** Objection to form. Are you
 19 asking him to answer a question about a deal that
 20 might be in default without explaining the terms of
 21 the deal? You're just asking him to guess, Amie.
 22 **BY MS. BERLIN:**
 23 **Q.** Mr. Cole, you can answer. I'm asking you
 24 to just explain. And maybe I wasn't clear. You
 25 testified earlier that just because a merchant cash

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1 advance is the subject of litigation and that CBSG
 2 has sued the merchant to recover for the merchant
 3 cash advance, that that doesn't necessarily mean
 4 that the merchant cash advance is in default.
 5 Do you recall testifying to that, or did I
 6 understand you correctly?
 7 **MS. SCHEIN:** Object to form. This has
 8 been gone over for quite some time. Asked and
 9 answered.
 10 **MS. BERLIN:** Okay.
 11 **BY MS. BERLIN:**
 12 **Q.** Mr. Cole, go ahead.
 13 **MS. SCHEIN:** The record will reflect he
 14 already answered a number of times.
 15 **BY MS. BERLIN:**
 16 **Q.** Mr. Cole, if you answered, I didn't hear
 17 you.
 18 **A.** I didn't answer. I think we're going
 19 around in circles asking the same thing over and
 20 over. I'm not in collections. I have no way of
 21 determining the hypothetical deal that you propose
 22 if it's in collections or not.
 23 If you're asking me for interpretation of
 24 default, the IRS wouldn't take this definition.
 25 That would be completely different, because they're

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1 a lot more stringent. They won't let us write off
 2 something over a six-week period.
 3 A lot of people feel that that's very
 4 aggressive. Most companies would probably write it
 5 off over a year. But we take an aggressive approach
 6 to our loss methodologies.
 7 But I can't make an opinion in regards to
 8 what methodology a lawyer or a seasoned collector
 9 would determine in conjunction with negotiations
 10 with a merchant and whether or not a deal is viable.
 11 I'm not a collector.
 12 **Q.** Let me ask you a different way. I'll ask
 13 you a different way. Earlier today you testified
 14 that just because a merchant cash advance is in
 15 litigation doesn't necessarily mean that it's in
 16 default. I wonder if you can explain why you
 17 believe that just because it's in litigation doesn't
 18 mean that it's in default.
 19 **MS. SCHEIN:** Object to form.
 20 **THE WITNESS:** Just because a deal is in
 21 litigation and counsel is exercising their relief or
 22 whatever legal ability they have to recover those
 23 funds for our portfolio doesn't mean that the client
 24 isn't making payments. Think about the objective
 25 definition I provided you. Have they made a

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1 payment.
2 If a lawyer wants to use litigation as a
3 negotiation tactic to collect a payment, that sounds
4 like a good strategy to me if it gets them to get
5 the payment back. Remember, we have a lot of money
6 out there and a lot of good folks who lent money to
7 this company.

8 So by using litigation as a tool to
9 recover any kind of receivables and if it's within
10 that six-week period that they made the collection
11 or if they have a negotiated agreement in hand or
12 are working on it, then it doesn't objectively
13 fulfill the definition of default under the policies
14 and procedures that we had per our financial audit.

15 BY MS. BERLIN:

16 Q. So if I understand you correctly, whether
17 or not something is in litigation doesn't matter.
18 Ultimately, it's the same process that's used where
19 the lawyer, whether it be Brett Berman or one of his
20 predecessors, together with the collections staff
21 make a decision about whether a merchant cash
22 advance is in default based on their interactions
23 with the merchant and merchant's attorney. Is that
24 fair to say?

25 MR. SOTO: Objection to form, Amie. This

1 Business Solutions Group, that doesn't mean it's in
2 the default because ultimately the same process is
3 utilized for making that decision, namely, Brett
4 Berman or one of his predecessors together with the
5 collections unit makes a decision about which
6 merchant cash advances are in default based on,
7 among other things, their interactions with the
8 merchant and the merchant's attorney; is that
9 correct?

10 MR. SOTO: Objection to form.

11 MS. SCHEIN: Object to form.

12 THE WITNESS: I think I understand where
13 our disconnect is, Amie. As a lawyer, you're
14 looking at this as a breach of the factoring
15 agreement as far as what qualifies as a default,
16 meaning if a merchant hasn't made payments per the
17 provisions in their factoring agreement, they would
18 be in default.

19 BY MS. BERLIN:

20 Q. Mr. Cole --

21 MR. SOTO: Amie, he should be allowed to
22 finish his answer.

23 BY MS. BERLIN:

24 Q. That's fine. You can also say anything
25 you'd like at the end, and you can talk and I'm not

1 has been asked so many times and now you're
2 mischaracterizing what he said. He didn't say
3 litigation doesn't matter. At some point, it's
4 improper, Amie.

5 MS. BERLIN: Please don't testify. Please
6 don't testify. I asked him if I understood --

7 MR. SOTO: Amie, at some point it is
8 improper to keep asking him -- I'm sorry to speak
9 over you. But at some point it's just improper to
10 ask him the same question 800 times just because you
11 don't like the answer.

12 MS. BERLIN: Mr. Soto, I'll ask you not to
13 make speaking objections and to let me move on with
14 the deposition.

15 BY MS. BERLIN:

16 Q. Mr. Cole, can you answer the question,
17 please?

18 A. Can you restate it?

19 Q. Sure. I was just trying to make sure I
20 understood you correctly, that your testimony is
21 that regardless of whether or not a merchant cash
22 advance is in collections -- I'm sorry -- not in
23 collections. Let me start again.

24 Regardless of whether a merchant cash
25 advance is the subject of litigation by Complete

1 going to stop you. But I just want to let you know
2 that that's not the question I posed.

3 MR. SOTO: That's fine, Amie, but he
4 should be allowed to finish his answer.

5 MS. BERLIN: Mr. Soto, I just told the
6 witness that he can finish his answer, and he also
7 will have time at the end to say anything he'd like
8 on the record. I'm sure Your Honor is reviewing
9 this, and that the transcript will reflect that he's
10 not answering the question that I posed. Because it
11 is almost 4:00, I'm just trying to identify that for
12 the witness.

13 BY MS. BERLIN:

14 Q. But, Mr. Cole, you can talk about anything
15 you want, but I'm just going to ask you the same
16 question because you're not answering.

17 MS. SCHEIN: I'm going to object to your
18 characterization of what my client said on the
19 record. The record will reflect what he said.
20 You're mischaracterizing it. And you've asked --
21 this question has been asked and answered numerous
22 times already.

23 MR. SOTO: Yes. And I just want to state
24 also that he doesn't have to wait until the end of
25 this deposition to answer your questions. He can

1 answer you question and he needs to answer your
 2 question when the question is asked and it's your
 3 determination that he's answering something
 4 different, that doesn't make it so.
 5 You've interrupted him. He needs to be
 6 given an opportunity to finish his answer. And
 7 that's it. You've asked him the same question 15
 8 times. That's why it's 4:00.
 9 MS. BERLIN: We're going to continue and
 10 I'm going to continue to ask, and I'll ask that
 11 counsel not make speaking objections.
 12 I'm going to ask Mr. Cole to please answer
 13 the question that I asked.
 14 THE WITNESS: Sorry. I forgot where we
 15 left off. Can you repeat the question?
 16 BY MS. BERLIN:
 17 Q. Yeah, absolutely. My question was just
 18 this: Am I correct in understanding that regardless
 19 of whether or not a merchant cash advance is in
 20 litigation and has been sued by Complete Business
 21 Solutions Group to collect funds, that the same
 22 process is utilized where Brett Berman and the
 23 collections group or Mr. Berman's predecessor and
 24 the collections group ultimately make the decision
 25 about whether that merchant cash advance is in

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1 a manner that answers your question.
 2 The default legally, and they're allowed
 3 to litigate and pursue the merchant for whatever
 4 breach of the factoring agreement that they're
 5 entitled to, doesn't constitute that as being a
 6 default merchant if that merchant has not qualified
 7 under the accounting definition of the default per
 8 the financial audit done by Friedman and the
 9 procedures that were created from that audit.
 10 The six-week time period and the
 11 negotiations in place that are described with
 12 collections managers and legal are a separate
 13 mechanism from that legal definition of default that
 14 they're able to litigate and seek remedies.
 15 That's independent of the definition of
 16 default. So when you ask if litigation
 17 automatically assumes that a merchant is in default,
 18 from an accounting perspective, my answer would be
 19 no. From a legal perspective, they're definitely in
 20 breach of their factoring agreement and would,
 21 therefore, be in default. Does that answer the
 22 question?
 23 BY MS. BERLIN:
 24 Q. No. I didn't ask you whether litigation
 25 means someone is automatically in default. Let me

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1 default based in part on their interactions with the
 2 merchant and that merchant's attorney.
 3 MR. FUTERFAS: Alan Futerfas. I object to
 4 the form of the question because the word "default"
 5 is vague. Are you using default in a litigation
 6 context or an accounting context? And I think that
 7 is confusing, and I think you should clarify that
 8 for the witness.
 9 BY MS. BERLIN:
 10 Q. Mr. Cole, you've been testifying. You
 11 mentioned default, and I've been asking about your
 12 reference to default in your answer for a very long
 13 time now. But I think it's clear what you say you
 14 understand since you were the one who raised default
 15 yourself.
 16 So if you could just answer the question.
 17 If you don't understand the question, just let me
 18 know, and I can restate it for you.
 19 MS. SCHEIN: Object to form.
 20 THE WITNESS: This is what I was trying to
 21 answer earlier before everyone got all riled up
 22 about this. The definition of default in terms of
 23 the contract are different than the accounting
 24 definition of default. And I think that's our
 25 disconnect. I'm sincerely trying to explain this in

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1 try it a different way.
 2 You've been testifying for a long time
 3 about the fact Mr. Berman and your collections unit
 4 and before that Mr. Berman's predecessors and the
 5 collections unit decide which merchant cash advances
 6 are in default and send you a list of those.
 7 Do you remember that?
 8 A. Yes, I do.
 9 Q. Do you remember that testimony? Okay.
 10 Great. So you then testified about how Mr. Berman
 11 and that collections group decide whether the
 12 merchant cash advance is in default.
 13 Do you remember your testimony on that?
 14 A. Yes, I do.
 15 Q. Great. So is it the same process that
 16 occurs for the merchant cash advance whether or not
 17 that merchant cash advance is the subject of
 18 litigation?
 19 MR. FUTERFAS: I object to form. I don't
 20 know what the word "process" means. I'm sorry.
 21 BY MS. BERLIN:
 22 Q. Mr. Cole, you remember. You've testified
 23 for a long time about the process that was used and
 24 how they would speak. Do you understand what I'm
 25 asking, Mr. Cole, or do you need me to explain or

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1 have your testimony read back?
 2 **A.** No. I understand what you're saying.
 3 **Q.** Okay. So can you answer the question?
 4 **A.** Yeah. I just did. And my answer was no.
 5 **Q.** Okay. So how is it different?
 6 **A.** It would have been my answer explaining
 7 the difference between a contract default and an
 8 accounting recognition of default.
 9 **Q.** So the decision on whether to put a
 10 merchant cash advance onto that list that's sent to
 11 you by the collections group, am I understanding
 12 correctly that the decision of whether or not to
 13 include a merchant cash advance on that list is
 14 affected by whether or not the merchant cash advance
 15 is in litigation?
 16 **MR. SOTO:** Object to the form.
 17 **THE WITNESS:** No.
 18 **BY MS. BERLIN:**
 19 **Q.** Okay. So then is it the case that the
 20 decision on whether to include a merchant cash
 21 advance on that list of defaulted loans that you've
 22 testified about at length today, that the process is
 23 unaffected by the fact that the merchant cash
 24 advance is the subject of litigation; is that
 25 correct?

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1 **MS. SCHEIN:** Object. Can you define
 2 "default rate"?
 3 **MS. BERLIN:** Well, I'm asking -- I think
 4 the question is clear. Mr. Cole has testified he
 5 had discussions with potential investors where they
 6 discussed the default rate. And so I'm asking
 7 Mr. Cole to testify as to how he explained the
 8 default rate to potential investors.
 9 **THE WITNESS:** If I can clarify your
 10 question, Amie, can you tell me if you're referring
 11 to the exposure from the KPI report as being
 12 characterized as a default rate, or are you talking
 13 about default rate under GAAP or taxes? Because my
 14 response, it depends on whom I'm speaking with.
 15 **BY MS. BERLIN:**
 16 **Q.** We're talking about potential investors.
 17 Did you ever discuss -- did you ever have a
 18 conversation with a potential investor where the
 19 phrase "default" was used?
 20 **A.** My answer is yes, but it really depends on
 21 the investor and what are we talking about. It
 22 really depends on the context of what default means.
 23 And with respect specifically for accounting and
 24 GAAP, that's a whole different conversation than
 25 talking about another definition of default.

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1 **A.** That is correct.
 2 **Q.** Okay. Great.
 3 **MS. BERLIN:** Let's take a ten-minute
 4 break. We'll go off the record.
 5 **THE VIDEOGRAPHER:** And we're going off the
 6 record at 4:00 p.m.
 7 (Recess from 4:00 p.m. to 4:15 p.m.)
 8 **THE VIDEOGRAPHER:** And we're back on the
 9 record at 4:15 p.m.
 10 **BY MS. BERLIN:**
 11 **Q.** Mr. Cole, when you spoke with potential
 12 investors on the promissory notes related to
 13 Complete Business Solutions Group, did you describe
 14 the default rate to them?
 15 **A.** Rates of default? Are you referring to an
 16 actual default rate or the KPI cash exposure?
 17 **Q.** Well, did you ever discuss the default
 18 rate with any potential investor?
 19 **MS. SCHEIN:** Object to form.
 20 **THE WITNESS:** Yes. I occasionally talked
 21 about the default rate.
 22 **BY MS. BERLIN:**
 23 **Q.** Okay. And so can you tell us what would
 24 you tell or what did you tell investors about the
 25 default rate? How did you explain it to them?

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1 **Q.** Well, absolutely. And so my question is:
 2 What definition would you provide to potential
 3 investors in connection with the Par Funding-related
 4 promissory notes?
 5 **A.** For the most part, I'm not providing
 6 financials or default information under GAAP or
 7 accountancy for the taxes that were prepared with
 8 our CPAs. So I don't typically provide default
 9 under GAAP.
 10 I will discuss defaults if -- for example,
 11 like the Chehebars sending the CPA into the office
 12 and we start getting into the nuances of GAAP and
 13 deferred revenue and all the mechanisms as part of
 14 that default. But it's not a regular thing that we
 15 would discuss. That's above and beyond most
 16 people's understanding of how defaults are
 17 calculated.
 18 **Q.** So how many different definitions of
 19 default were there in existence? You were asking me
 20 which definition of default am I talking about. How
 21 many different ones are there? Can you identify
 22 them that you would have discussed with a potential
 23 investor?
 24 **A.** Well, we were talking about GAAP, which is
 25 going to be the default under your accounting

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1 provisions including a loss provision. We were
2 describing GAAP or defaults for taxation purposes as
3 what would be reported on the 1120. We were talking
4 about default in legal, such as when these merchants
5 are breaching a factoring agreement, but not
6 necessarily written off just like we went over
7 before the break.

8 And then we would occasionally discuss the
9 cash or cash losses from exposure on deals that were
10 written off, which to us was probably the most
11 useful metric because it shows you actual cash
12 losses.

13 But those would be some, and I mean this
14 very seriously, this is only some of the definitions
15 of default, because it really has to factor in the
16 context that you're trying to determine it, if it's
17 from an IRS perspective, from a GAAP perspective,
18 from a non-GAAP adjusted financial perspective, from
19 a cash exposure perspective, or the investor's
20 definition of what default could be.

21 There has to be a lot of context
22 explained, and we have to clarify that before I can
23 give you a really black and white answer on what's
24 conveyed with these potential note purchases with
25 CBSG.

1 application of the term default you're using.

2 **Q.** Okay. But you were present when, for
3 example, Perry Abbonizio told investors and
4 potential investors that there was a roughly
5 1 percent default rate; correct?

6 **A.** I don't recall.

7 **Q.** Do you recall being present when anyone
8 connected to Complete Business Solutions Group told
9 an investor or potential investor that there was a
10 1 percent default rate?

11 **A.** No. I don't recall.

12 **Q.** Did any investor or potential investor
13 contact you after speaking with an agent fund
14 manager or Mr. Abbonizio to ask you for more detail
15 about the 1 percent default rate?

16 **A.** I don't recall.

17 **Q.** Did you ever tell any investor or
18 potential investor about the regulatory actions
19 against Complete Business Solutions Group?

20 **A.** You're talking about the PA DOB regulatory
21 action from the subpoena in 2018?

22 **Q.** Yeah. We can take them one by one. Did
23 you ever tell any investor or potential investor
24 about the Pennsylvania securities regulatory action
25 concerning Complete Business Solutions Group?

1 **Q.** So I'm asking about your conversations
2 with the potential investors excluding the
3 Chehebars -- you testified about them already -- but
4 others.

5 Did you discuss any of the default rates
6 you've just identified with any potential investor?

7 **A.** Yes.

8 **Q.** So which investors did you discuss it
9 with?

10 **A.** I don't recall specific individual
11 parties. It's kind of a blur at this point.

12 **Q.** Okay. And which definition of default
13 would you explain to them?

14 **A.** So typically we'd go over the
15 cash-over-cash analysis on the exposure on their KPI
16 report. I would say that's the most common analysis
17 we're discussing. But we're also very careful to
18 provide the context of what that number represents
19 and not to characterize it as a default rate.

20 In any explanation I provided, the term
21 cash over cash is really driven home because we
22 don't want that to be misconstrued as potentially a
23 rate of default, which for what I just explained can
24 come in many different interpretations and
25 calculations depending on what jurisdiction or

1 **A.** Yes. I've discussed that before.

2 **Q.** Okay. Which investors or potential
3 investors did you tell?

4 **A.** There's a few different investors I've
5 discussed that with.

6 **Q.** And please identify them by name.

7 **A.** I've discussed this with the Chehebar
8 group. I've discussed this with Scott Pollack. I
9 don't really remember the specific individual
10 discussions. It's similar to what I described
11 earlier as contact with investors I talk to
12 regularly. So it would be the same people.

13 **Q.** Same group of people that you testified to
14 earlier?

15 **A.** Yes, yes.

16 **Q.** Can you go ahead and just identify them
17 again for the record. You have the Chehebar group,
18 Scott Pollack. Alan Kandall?

19 **A.** I believe I said Alan Kandall, Patrick
20 Gibbons, Matt Szkotak, Dave Wiggins, some of the PPM
21 managers like Dean Vagnozzi. I can't really
22 remember all the different guys I spoke with about
23 this, but that's amongst the group of people that I
24 spoke to regularly and would have discussed this
25 matter with.

1 Q. Okay. And approximately when did you tell
 2 Dean Vagnozzi about the Pennsylvania regulatory
 3 matter?
 4 A. Well, Dean was -- Dean we told about this
 5 pretty early on because he was one of the parties
 6 they requested the subpoena on. So we spoke about
 7 the fees that were paid to him. But this wasn't in
 8 the capacity as a fund manager because he wasn't a
 9 fund manager at the time. He was solely a finder.
 10 Q. So did you tell Mr. Vagnozzi about it
 11 shortly after receiving the subpoena from the
 12 Pennsylvania regulators?
 13 MR. MILLER: Object to the form.
 14 THE WITNESS: Yes. I don't think too much
 15 time passed before we talked to Dean about that.
 16 BY MS. BERLIN:
 17 Q. Okay. And what did you tell him?
 18 A. I don't remember the specifics of what was
 19 conveyed, but just the issue at hand with the state
 20 in regards to the finder's fees that were paid to
 21 him.
 22 Q. Did you tell him that documents had been
 23 subpoenaed that related to him?
 24 A. No. I don't recall specifically what we
 25 told him, the subpoena included documents or him.

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1 Q. Did you just tell him there was an
 2 investigation by the Pennsylvania regulators, or
 3 what did you tell him?
 4 A. We told him at least that, that there was
 5 an investigation, but I don't recall any specific,
 6 you know, items conveyed or discussed as part of the
 7 communication.
 8 Q. Did you ever tell Mr. Vagnozzi that
 9 Mr. LaForte had a criminal record?
 10 A. I don't recall discussing that with him.
 11 Q. What about the New Jersey regulatory
 12 action against Complete Business Solutions Group,
 13 did you tell Mr. Vagnozzi about that?
 14 A. I don't recall.
 15 Q. Did you tell any investor or potential
 16 investor about the New Jersey regulatory action?
 17 A. Don't recall.
 18 Q. What about the Texas regulatory action
 19 filed in February 2020, did you tell any investors
 20 or potential investors about that?
 21 A. We were discussing that with the Chehebar
 22 group, but I don't recall discussing it with any
 23 other parties.
 24 Q. How much did the Chehebar group have
 25 invested in Complete Business Solutions Group?

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1 MS. SCHEIN: Ms. Berlin, we're just having
 2 an electronic issue here. If you'll give my client
 3 a moment, he has to start charging his computer.
 4 MS. BERLIN: Sure. No problem. Just let
 5 me know when he's ready to proceed.
 6 MS. SCHEIN: All right. Give us a minute.
 7 Thanks.
 8 MS. BERLIN: We'll go off the record and
 9 just let us know when you're ready.
 10 MS. SCHEIN: We're working on it. Thanks.
 11 THE VIDEOGRAPHER: And we're going off the
 12 record at 4:29 p.m.
 13 (Recess from 4:29 p.m. to 4:36 p.m.)
 14 THE VIDEOGRAPHER: And we're back on the
 15 record at 4:36 p.m.
 16 BY MS. BERLIN:
 17 Q. After the Securities and Exchange
 18 Commission filed its action against you, did you
 19 take possession of any documents, whether electronic
 20 or in hard copy, from Complete Business Solutions
 21 Group or Full Spectrum?
 22 A. I was advised by our lawyers to preserve a
 23 copy of company documents and made a backup to my
 24 local laptop.
 25 Q. Okay. And what were you asked to make a

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1 backup of?
 2 A. Any company documents for CBSG and Full
 3 Spectrum Processing that I had available.
 4 Q. Who asked you to do that?
 5 A. This was asked by Brett Berman.
 6 Q. And was that after you all became aware of
 7 the SEC's case?
 8 A. Yes, that's right.
 9 Q. Did Mr. Berman ask you to do anything else
 10 with respect to Complete Business Solutions Group or
 11 Full Spectrum materials?
 12 A. No. He said keep a copy for use so that
 13 they could have it just in case. He didn't ask me
 14 to do anything with those documents.
 15 Q. Did you access the electronic system or
 16 any database of Complete Business Solutions Group
 17 other than downloading those documents after the SEC
 18 filed its case?
 19 A. Sorry. To clarify, we learned about the
 20 case before it was filed. We learned about it the
 21 Friday before the case -- the Complaint was filed.
 22 So I downloaded files over the weekend.
 23 And the Tuesday that the offices were
 24 taken over, I had no longer made any attempts or
 25 tried to download anything else from my files.

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1 Q. Okay. At a certain point, the receiver
 2 asked you for the return of materials; correct?
 3 A. Yes.
 4 Q. And did you give them back right away?
 5 A. I listened to counsel to cooperate with
 6 the receiver, and I met with them providing the
 7 laptop that I had the copies of documents on. This
 8 was done a couple of weeks after they had taken over
 9 the offices.
 10 Q. So why didn't you return the materials
 11 when the receiver -- like immediately after the
 12 receiver requested them?
 13 A. I returned the materials as soon as
 14 counsel advised me that I should.
 15 MS. SCHEIN: I would object.
 16 Attorney/client privileged conversation.
 17 BY MS. BERLIN:
 18 Q. Did Complete Business Solutions Group
 19 transfer funds for the purposes of acquiring real
 20 property?
 21 A. Is that your question?
 22 Q. Yes. And by real property, I mean real
 23 estate or land.
 24 A. I'm sorry. I understand it. I'm just
 25 considering the question. No, it did not.

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1 Q. Were any funds transferred from Complete
 2 Business Solutions Group's bank account either
 3 directly or indirectly through another entity for
 4 purposes of acquiring property?
 5 A. Yes.
 6 MS. SCHEIN: Could we have a timeframe,
 7 please?
 8 BY MS. BERLIN:
 9 Q. When did that occur?
 10 A. I don't recall.
 11 Q. Okay. Can you please tell me about those
 12 transfers?
 13 A. There were payments as part of the
 14 consulting agreement made for the benefit of
 15 Heritage Business Consulting and Eagle Six that were
 16 used to purchase properties as part of that
 17 consulting agreement that it had with CBSG.
 18 Q. Okay. And when paying Heritage and Eagle
 19 Six, who was the individual behind those two
 20 entities? Was that Lisa McElhone?
 21 A. Heritage originally was Lisa McElhone. I
 22 believe it was under her trust per advice of
 23 counsel. And Eagle Six was under the trust as well
 24 to my understanding.
 25 Q. So why were the funds -- the consulting

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1 agreements do not discuss the transfer of funds for
 2 purposes of buying real estate. Would you agree
 3 with me?
 4 A. Yes.
 5 Q. Okay. So how did these transfers come
 6 about?
 7 MR. SOTO: Objection to form.
 8 THE WITNESS: The transfers were typically
 9 done through wires. We kept track of the transfers
 10 and booked it as consulting fees in our accounting
 11 system to apply it towards the consulting agreement
 12 as (indecipherable).
 13 BY MS. BERLIN:
 14 Q. Did the transfers come about because Lisa
 15 McElhone requested that the transfers be made?
 16 MR. SOTO: If I could just interrupt for a
 17 second, I'm having a very hard time hearing
 18 Mr. Cole. I think whatever connection you're on now
 19 is breaking up quite a bit. I'm not sure if anybody
 20 else is having the issue.
 21 MS. SCHEIN: Yes. I am as well.
 22 THE WITNESS: I'm sorry. I'm going to
 23 move over to counsel's computer if that will help.
 24 MR. SOTO: Perfect. Thank you.
 25 THE WITNESS: You got it.

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1 BY MS. BERLIN:
 2 Q. Who directed that these transfers be made?
 3 A. Hold on. I'm moving over. Just give me a
 4 second, Amie.
 5 Q. Oh, sure. Sorry.
 6 A. I'm on Bettina's machine.
 7 Q. The question I asked was: Who directed
 8 the transfers?
 9 A. The transfers were directed by Lisa
 10 McElhone.
 11 Q. Did anyone else direct the transfers, or
 12 was it exclusively Lisa McElhone?
 13 MR. SOTO: Objection to form.
 14 THE WITNESS: Not to my understanding.
 15 BY MS. BERLIN:
 16 Q. So to be clear, only Lisa McElhone
 17 directed the transfers?
 18 MR. SOTO: Objection to form.
 19 THE WITNESS: To my understanding, yes.
 20 BY MS. BERLIN:
 21 Q. What was the source of money that was
 22 utilized for those transfers that ultimately
 23 acquired property?
 24 MR. SOTO: Objection to form.
 25 THE WITNESS: Like the other consulting

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1 agreements, the source of the capital is the
 2 merchant cash advance deposits we received from
 3 clients at CBSG.
 4 BY MS. BERLIN:
 5 Q. Other than merchant cash advance deposits
 6 and investors funds from the promissory notes, did
 7 CBSG have any other source of funds at any time?
 8 A. Yes, it did.
 9 Q. What were those and when?
 10 A. The when is over a long period of time,
 11 but these were related to syndication agreements
 12 that CBSG had with other MCA companies where they
 13 would charge fees for syndicating on CBSG's
 14 portfolio. And this was from -- the course of time
 15 had to have been from 2015 to 2020.
 16 Q. Did CBSG also pay these syndicates, or did
 17 they pay these same entities money?
 18 A. I'm sorry. Who do you mean by "they"?
 19 Q. Why don't you go ahead and identify the
 20 names of the companies you're talking about that
 21 paid CBSG fees.
 22 A. One of this was Capital Source 2000.
 23 Another one was Eagle Funding. There were a couple
 24 others, but I don't recall the names.
 25 Q. Okay. And so those entities, Capital

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1 Source 2000, Eagle Funding and the others you can't
 2 remember the names for but that paid CBSG syndicate
 3 fees, did CBSG also pay those same entities money?
 4 A. Yes. They were paid -- I'm sorry. Can
 5 you clarify what you mean by "pay"? Do you mean the
 6 conveyance of cash, or do you mean payments pursuant
 7 to the agreement we had with them?
 8 Q. I mean transferring funds.
 9 A. Yes. There were fund transferred to those
 10 entities as well.
 11 Q. Okay. So what name would you give these
 12 entities that were paying the syndicate fees just so
 13 we can talk about them and make sure we're both
 14 referring to the same? Like what would you call
 15 them?
 16 A. We can use the term joint funding partners
 17 or syndication partners.
 18 Q. Okay. So the joint funding partners,
 19 between 2015 and 2020, approximately how much did
 20 they contribute to Complete Business Solutions
 21 Group?
 22 A. Are you referring to income received from
 23 those partners or solely the cash flow received from
 24 those partners?
 25 Q. Well, your testimony was that in addition

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1 to MCA deposits and investor funds, there was
 2 another source of revenue for CBSG, and it was from
 3 joint funding partners.
 4 So how much was that revenue into CBSG
 5 that you were testifying about earlier?
 6 A. I don't know the precise amount. It would
 7 be around \$5 million of revenue with about maybe \$40
 8 to \$50 million of cash flow.
 9 Q. And what do you mean by -- what was the
 10 \$40 to \$50 million of cash flow versus the \$5
 11 million in revenue? Can you explain that?
 12 A. So revenue is the function of income for
 13 the cash flow provided, similar to like a factoring
 14 fee we would charge our merchants at CBSG. So CBSG
 15 would charge a fee to syndication partners as a fee
 16 to provide a syndication participation on MCA deals
 17 that CBSG had in its portfolio.
 18 So, for example, Capital Source 2000 would
 19 be charged 15 percent of every deal that they wanted
 20 to syndicate on. They would receive a \$15,000
 21 payment of revenue for a hundred thousand dollar
 22 syndication participation. And then Capital Source
 23 2000 would receive the remainder of the capital plus
 24 any factoring revenues received for their portion of
 25 that transaction.

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1 Q. So how much money was ultimately
 2 transferred from the joint funding partners to CBSG?
 3 A. I would estimate around the \$40 to \$50
 4 million figure I provided.
 5 Q. During that same time period, which I
 6 think is 2015 to 2020, how much did CBSG transfer to
 7 the joint funding partners?
 8 A. I believe it transferred approximately
 9 maybe \$15 to \$20 million, but I'm kind of guessing
 10 here. That's a very approximate estimate I'm
 11 providing to you.
 12 Q. And what was the source of funds used to
 13 pay or to transfer money from CBSG to the joint
 14 funding partners?
 15 A. This is from the MCA deposits as part of
 16 their agreement on the syndication with CBSG.
 17 Q. So other than the joint funding partners,
 18 the investor funds and the merchant cash advance
 19 deposits, were there any other sources of funds
 20 received by Complete Business Solutions Group during
 21 the time that you were affiliated with the entity
 22 from 2012 through 2020?
 23 A. Not that I can remember.
 24 Q. Did you understand Joseph LaForte to be a
 25 founder of Complete Business Solutions Group?

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1 A. Yes.
2 Q. And when did you have that understanding?
3 A. My understanding was during my interview
4 and initial on boarding with the company.
5 Q. Is it something you learned when
6 Mr. LaForte interviewed you back in 2012?
7 A. I don't recall specifically when I learned
8 about that, but it was near the start.
9 Q. And did you ever understand Joseph LaForte
10 to be the president of Complete Business Solutions
11 Group?
12 A. No.
13 Q. Did you ever hear Mr. LaForte identify
14 himself as the president of Complete Business
15 Solutions Group or Par Funding?
16 A. I don't recall.
17 Q. Did you ever meet with any potential
18 investor together with Joseph LaForte?
19 A. Yes.
20 Q. Approximately how many times?
21 A. I don't recall.
22 Q. Was it more than a dozen times?
23 A. I'm not sure.
24 Q. Did Complete Business Solutions Group
25 provide any compensation to the agent fund managers?

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1 A. Are you considering interest payments
2 compensation?
3 Q. I mean, potentially. But did Complete
4 Business Solutions Group understand that the
5 interest payments it paid to the agent fund managers
6 was a form of compensation?
7 A. I'm not sure what you mean by that.
8 Q. I'll go back to my original question. Did
9 Complete Business Solutions Group compensate any of
10 the agent fund managers?
11 MR. MILLER: Mr. Miller. Object to the
12 form.
13 THE WITNESS: No, it did not.
14 BY MS. BERLIN:
15 Q. Did you understand the -- let me back up
16 for a moment. The complete Business Solutions Group
17 promissory notes issued to agent funds were
18 typically providing about 20 percent interest; is
19 that correct?
20 A. That's an approximate amount of interest
21 under the notes, yes.
22 Q. And approximately how much were the agent
23 fund managers offering to investors under the notes
24 that they were issuing?
25 A. I do not know what they offered members of

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1 their funds.
2 Q. Just one moment, please.
3 Did CBSG receive copies of the promissory
4 notes that the agent funds were issuing to
5 investors?
6 A. Not to my knowledge.
7 Q. Did Complete Business Solutions Group
8 receive information from the agent funds or from,
9 either directly or through, Perry Abbonizio about
10 how much the agent funds were raising from
11 investors?
12 A. Not to my knowledge.
13 Q. Do you know who Eric Husebo is?
14 A. The name doesn't ring a bell to me.
15 Q. Do you recall ever speaking with an
16 individual named Eric Husebo?
17 MS. BERLIN: And that's spelled for the
18 court reporter H-U-S-E-B-O.
19 THE WITNESS: No. I do not recall
20 speaking to that person.
21 BY MS. BERLIN:
22 Q. Did you review the filings that Complete
23 Business Solutions Group made with the Securities
24 and Exchange Commission prior to their filing?
25 A. Yes, I did.

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1 Q. Did you approve those filings before they
2 were made?
3 A. Yes, I did.
4 Q. Did you make a decision not to include
5 Perry Abbonizio on the Complete Business Solutions
6 Group Form D filing?
7 A. No, I did not.
8 Q. Why wasn't he included?
9 A. Filings were prepared and filed per advice
10 of counsel. This was through Phil Rutledge at Bybel
11 Rutledge and our in-house counsel, Cynthia Clark.
12 Q. Who provided the information to counsel
13 that they utilized to prepare the Form D filings?
14 A. Information was provided by the legal
15 department at Full Spectrum Processing, and I
16 provided some of the information pertinent to the
17 amounts as requested as part of the form.
18 Q. Did you tell the legal department or
19 anyone who prepared those Form D filings that you
20 had received funds from Complete Business Solutions
21 Group prior to the filing?
22 A. Yes. In-house counsel and our third-party
23 counsel at Bybel Rutledge were cognizant of the
24 facts that consulting payments were being paid and
25 all the relevant materials as part of that form in

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1 the filing.
 2 **Q.** Did you ask them for any advice as to
 3 whether or not you needed to indicate the monies
 4 that you had received on the Form D filing?
 5 **A.** I don't recall if I asked them that.
 6 **Q.** Did anyone provide you any legal advice
 7 about that?
 8 **A.** Yes. The bulk of the work done to prepare
 9 those filings was done by Phil Rutledge and Cynthia
 10 Clark. They provided copious advice in discussions
 11 regarding that filing and carefully considered all
 12 the facts being provided before making the filing.
 13 **Q.** But my question was whether or not they
 14 actually provided you with legal advice about the
 15 specific issue as to whether or not you needed to
 16 disclose the amounts you had received from Complete
 17 Business Solutions Group, which is a little bit
 18 different from whether they prepared the filings and
 19 had the information.
 20 I'm asking about legal advice. So who
 21 gave you the legal advice exactly?
 22 **A.** The bulk of the legal guidance provided as
 23 part of filing was from Phil Rutledge.
 24 **Q.** And what advice did he give specifically
 25 in connection with the disclosure of the amounts

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1 that you had received?
 2 **A.** I don't recall specifically with regards
 3 to that disclosure the amounts we received.
 4 **Q.** But you testified that he gave -- did he
 5 give you legal advice specifically about the
 6 disclosure of the amount you received on that Form D
 7 filing?
 8 **A.** Yes. We discussed it. I just don't
 9 remember the specifics.
 10 **Q.** Well, generally what advice did he give
 11 you?
 12 **A.** Generally I don't remember the specifics.
 13 **Q.** I'm not asking for specifics, but you
 14 testified that he gave you legal advice. So what is
 15 it that you're remembering that makes you testify
 16 under oath that you know for a fact that he gave you
 17 legal advice about this very issue? Like what do
 18 you recall?
 19 **A.** I provided the information to Phil
 20 Rutledge regarding compensation for executives,
 21 parties with consulting agreements and the nature of
 22 the notes. We reviewed this. We discussed the
 23 filing of this form and that specific language, and
 24 he deemed it compliant and necessary to file it as
 25 he did.

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1 **Q.** Did you explain to Mr. Rutledge that the
 2 merchant cash advance deposits and the investor
 3 funds were in the same bank account?
 4 **A.** I don't recall.
 5 **Q.** I don't have any further questions for
 6 you, Mr. Cole.
 7 **A.** Okay.
 8 MS. SCHEIN: Amie, we're going to take a
 9 moment and see if we have any questions.
 10 MS. BERLIN: Okay. Sounds good. I'll go
 11 on mute and we'll go off the record. Just let us
 12 know when you're ready to go back on the record.
 13 MS. SCHEIN: All right. Give us five
 14 minutes. Thanks.
 15 MS. BERLIN: Sure.
 16 THE VIDEOGRAPHER: Going off the record
 17 5:04 p.m.
 18 (Recess from 5:04 p.m. to 5:07 p.m.)
 19 THE VIDEOGRAPHER: We're back on the
 20 record at 5:07 p.m.
 21 MS. SCHEIN: Thank you. Amie, I don't
 22 have anything to add at this moment.
 23 MS. BERLIN: Does anyone else have any
 24 cross-examination?
 25 Okay. I'm not hearing anyone. So I guess

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1 we are ready to conclude.
 2 MS. SCHEIN: Thank you.
 3 THE VIDEOGRAPHER: And this concludes
 4 today's videotape deposition of Joseph Cole. Going
 5 off the record at 5:08 p.m.
 6 (Whereupon, at 5:08 p.m., the taking of
 7 the instant deposition ceased.)
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1 COMMONWEALTH OF PENNSYLVANIA)
 2 COUNTY OF ALLEGHENY) SS:
 3 C E R T I F I C A T E
 4 I, Ann Medis, Registered Professional
 5 Reporter, Certified Livenote Reporter and Notary
 6 Public within and for the Commonwealth of
 7 Pennsylvania, do hereby certify:
 8 That JOSEPH COLE BARLETA, the witness
 9 whose deposition is hereinbefore set forth, was duly
 10 sworn by me and that such deposition is a true
 11 record of the testimony given by such witness.
 12 I further certify the inspection, reading
 13 and signing of said deposition were not waived by
 14 counsel for the respective parties and by the
 15 witness.
 16 I further certify that I am not related to
 17 any of the parties to this action by blood or
 18 marriage and that I am in no way interested in the
 19 outcome of this matter.
 20 IN WITNESS WHEREOF, I have hereunto set my
 21 hand this 10th day of June, 2021.
 22
 23
 24 _____
 25 Notary Public

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1 CERTIFICATE OF WITNESS
 2
 3
 4 I, JOSEPH COLE BARLETA, do hereby declare under
 5 penalty of perjury that I have read the entire
 6 foregoing transcript of my deposition testimony,
 7 or the same has been read to me, and certify that
 8 it is a true, correct and complete transcript of
 9 my testimony given on June 2, 2021, save and
 10 except for changes and/or corrections, if any, as
 11 indicated by me on the attached Errata Sheet, with
 12 the understanding that I offer these changes and/or
 13 corrections as if still under oath.
 14 _____ I have made corrections to my deposition.
 15 _____ I have NOT made any changes to my deposition.
 16
 17 Signed: _____
 18 JOSEPH COLE BARLETA
 19
 20 Dated this _____ day of _____ of 20____.
 21
 22
 23
 24
 25

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1 ERRATA SHEET
 2 Deposition of: JOSEPH COLE BARLETA
 3 Date taken: JUNE 2, 2021
 4 Case: SEC v. COMPLETE BUSINESS SOLUTIONS GROUP, et al.
 4 PAGE LINE
 5 _____ CHANGE: _____
 5 REASON: _____
 6 _____ CHANGE: _____
 6 REASON: _____
 7
 7 _____ CHANGE: _____
 8 REASON: _____
 9 _____ CHANGE: _____
 9 REASON: _____
 10
 10 _____ CHANGE: _____
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 12 _____ CHANGE: _____
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 19 _____ CHANGE: _____
 20 REASON: _____
 21 _____ CHANGE: _____
 21 REASON: _____
 22
 22 _____ CHANGE: _____
 23 REASON: _____
 24
 24 Signed _____
 25 Dated _____

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1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF ALLEGHENY) SS:

3 C E R T I F I C A T E

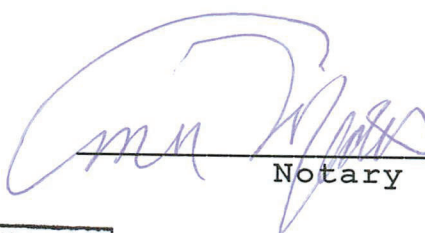
4 I, Ann Medis, Registered Professional
5 Reporter, Certified Livenote Reporter and Notary
6 Public within and for the Commonwealth of
7 Pennsylvania, do hereby certify:

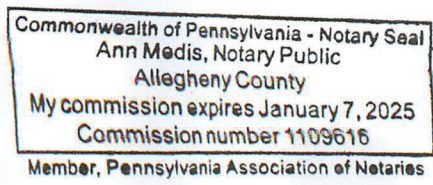
8 That JOSEPH COLE BARLETA, the witness
9 whose deposition is hereinbefore set forth, was duly
10 sworn by me and that such deposition is a true
11 record of the testimony given by such witness.

12 I further certify the inspection, reading
13 and signing of said deposition were not waived by
14 counsel for the respective parties and by the
15 witness.

16 I further certify that I am not related to
17 any of the parties to this action by blood or
18 marriage and that I am in no way interested in the
19 outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 10th day of June, 2021.

22
23
24 
Notary Public



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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**
Plaintiff **December 7, 2021**
vs.
**COMPLETE BUSINESS SOLUTIONS
GROUP, INC, et al,**
Defendants.

TRIAL DAY 2
BEFORE THE HONORABLE **RODOLFO A. RUIZ, II,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **AMIE RIGGLE BERLIN, ESQ**
SECURITIES AND **ALISE M. JOHNSON, ESQ**
EXCHANGE COMMISSION U.S. Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANT: **ZACHARY P. HYMAN, ESQ**
MICHAEL C. FURMAN Millennial Law
501 E. Las Olas Blvd, Ste. 200/308
Ft. Lauderdale, FL 33301
(954) 271-2719
Zach@millenniallaw.com

ELROY M. JOHN, JR., ESQ
Florida Justice Law Firm, PLLC
101 NE 3rd Avenue, Ste. 1500
Fort Lauderdale, FL 33301
(954) 637-2767
Elroy@onlyforjustice.com

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JEREMY I. KNIGHT, ESQ
Knight Law, PA
4624 Hollywood Blvd, Ste. 203
Hollywood, FL 33021
(786) 480-0045
Yirmi@knightlawfl.com

REPORTED BY: GIZELLA BAAN-PROULX, RPR, FCRR
United States Court Reporter
400 North Miami Avenue, Suite 8S32
Miami FL 33128
(305) 523-5294
gizella_baan-proulx@flsd.uscourts.gov

Also present: Victoria Jacqmein, Kevin Robinson

I N D E X

Witness	Direct	Cross	Redirect	Recross
BRADLEY SHARP	55	120	129	
MARK REIKES	133	147	151	
PERRY ABBONIZIO	157	176	194	209

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G O V E R N M E N T E X H I B I T S

Exhibit	Marked	Admitted
5	166	167
19	73	75
20	76	77
43	88	89
45	89	90
64	86	87
86	90	91
176	91	93
205	64	68
270	79	80
572	114	118
574	82	85
576	133	136
578	137	138

D E F E N S E E X H I B I T S

(None)

P R O C E E D I N G S

(The following proceedings were held in open court.)

1
2
3 **THE COURT:** This is only going to take a moment. I
4 call everyone's attention to what we're doing right now. The
09:57 5 reason why we're not starting yet is because we're waiting for
6 one of our jurors. We have seven of the eight. The juror that
7 just called us, I believe it is -- let me make sure I got the
8 name right. I believe it would be Sean Shaddick who was seated
9 in seat 6, right? Mr. Shaddick.

09:57 10 **THE COURTROOM DEPUTY:** Yes.

11 **THE COURT:** So Mr. Shaddick got a flat tire this
12 morning and somewhere on Copans Road and has called for a tow
13 truck. He just called the chambers. So I'm, quite frankly,
14 not interested in waiting for what I expect to be hours. I
09:58 15 don't know how long that's going to take for him to go ahead
16 and get here.

17 So I just want to let everyone know that my intention
18 is to call him and get started with the seven I have, unless I
19 have both sides extremely concerned about proceeding with
09:58 20 seven. He was the younger man in the middle row. So he's not
21 technically an alternate, but that's why we have two.

22 So let me hear from the SEC if there's any concern or
23 objection. Obviously we could wait, but he thinks he's going
24 to be a little bit of time. Obviously we don't want to lose a
09:58 25 half a day waiting for him.

1 MS. BERLIN: We agree, Your Honor. And it's a short
2 trial, so I don't think we should --

3 THE COURT: Yeah, it's not like he originally was --
4 if I was dealing with something in January, I would be more
09:58 5 worried about losing alternates on day 1, but we need to keep
6 it going.

7 THE COURTROOM DEPUTY: Yes.

8 THE COURT: So we still have another alternate. So
9 I'm not stressed out about it. Any major objections?

09:58 10 MR. HYMAN: No objection, Your Honor.

11 THE COURT: Let me go ahead and call him back so that
12 I can go ahead and let him know he can get on the tow truck and
13 go home. He will be excused. And then let me now pivot over
14 to any technical issues.

09:59 15 I hear, Andre, a little bit of feedback for myself.
16 Anybody else hear that?

17 MS. BERLIN: Yes. It's reverberating.

18 THE COURT: It's reverberating. So I don't know, is
19 theres any way to mute whatever speakers are producing that?
09:59 20 It could be my own. I don't know. Let me see. Maybe it is.
21 All right.

22 All right. No, it's not coming from this. So it's
23 coming from somewhere else over here. I still hear it myself.
24 Is the same feedback coming out of the lawyer areas'
09:59 25 microphone?

1 MS. BERLIN: So it sounds a little echoey for me.

2 IT TECHNICIAN: All the mics except two or three.

3 MR. HYMAN: I'm hearing a slight reverberation but not
4 one from the Zoom at last, Your Honor.

10:00 5 THE COURT: We want to make sure -- we got to get this
6 fixed now because once it gets ready to go, it will be going
7 through the whole trial.

8 Do you have a sense of what it is?

9 MR. HYMAN: Your Honor, while we deal with the
10:00 10 technical issue, I'd like to just make a substantive -- or just
11 a position for purposes of preserving the record.

12 THE COURT: Okay.

13 MR. HYMAN: I'd like to start before I make this
14 position by stating that I'm not asking the Court to reconsider
10:00 15 any prior rulings or otherwise reconsider any positions that
16 have previously been taken. However, during the course of
17 yesterday's hearing, Your Honor said basically as a bright-line
18 rule, any failure to abide by a particular deadline would not
19 be excused under any circumstances.

10:00 20 THE COURT: Did I say that?

21 MR. HYMAN: You said that a few times.

22 MS. BERLIN: No, you did not, Your Honor.

23 THE COURT: Don't put words in the Court's mouth. I
24 would never make a bright-line rule under any circumstances
10:01 25 whether it's civil, criminal or otherwise. Everything is

1 case-specific. I would never make such a pronouncement.

2 What I think we said yesterday is there was no good
3 cause shown for me to depart under existing case law from the
4 depo designation deadline. I did not say there's a bright-line
10:01 5 rule. You have to be very careful because that would be an
6 abuse of discretion. So understanding because no good cause
7 was shown in the deposition designation, go ahead and continue
8 to make your point. Go ahead.

9 MR. HYMAN: Thank you very much, Your Honor. And it
10:01 10 wasn't, by any means, to kind of imply that. It was my
11 understanding, at least in this case, that was in general, but
12 we can always deal with it on an issue-by-issue basis.

13 Part of the reason why at least I think it's important
14 from both the policy and a substantive due process perspective
10:01 15 to raise the following kind of issue in circumstances with
16 respect to this case as well as our sub-involvement in it in a
17 low bono capacity.

18 Obviously when this case was commenced, and
19 Your Honor's well aware of the arguments that were previously
10:02 20 raised under the Rule 41 motion, all of Mr. Furman's
21 substantive assets were seized. He was allowed to release some
22 money for counsel which in my view didn't really do him much
23 justice, but that's neither here nor there.

24 And substantively, when we came into this case, I came
10:02 25 on in an extremely low retainer with the explicit understanding

1 that other the defense counsel would end up taking the lion's
2 share of the work with us joining in some limited motion
3 practice and co-defense counsel also carrying the majority of
4 the burden with respect for -- of costs and other issues.

10:02 5 As Your Honor may recall, and to also add to this
6 fact, in June of 2021, Mr. Furman was first referred to the
7 volunteer lawyer's program. From there through August 31st of
8 2021, no lawyer actually answered the call for a period of over
9 three months and Mr. Furman represented himself on a pro se
10:03 10 basis.

11 At that time I came in on the limited capacity, as
12 previously stated, while having another jury trial with a very,
13 very significant client of mine. After Your Honor stated on
14 the record basically that I had a right to withdraw without
10:03 15 entering per the Court order, I put in a lot of thought and I
16 worked very diligently to try to help Mr. Furman secure
17 alternative counsel and at that time we had -- this was in
18 about the first week of November, with one month of -- until
19 trial left, and at that time I reached out to about 30
10:03 20 different attorneys.

21 The only attorney that was willing to actually
22 consider taking on the case with Mr. John, who's a personal
23 injury attorney with a visual disability which prohibits him
24 from being able to review documents and prepare them as quickly
10:03 25 as most other lawyers.

1 Given that circumstance, we also reached out to the
2 Court to ask if there's any lawyers that we could get the names
3 of to try to bring them in so we can bring them up to speed
4 before trial. However, we were simply told that the only
10:04 5 option we had was to withdraw and throw Mr. Furman essentially
6 to the deep end of the pool and hope to God that somebody would
7 come in to allow him to otherwise have adequate defense.

8 In light of those circumstances and otherwise, I made
9 the decision -- not based on finance, but based on the fact
10:04 10 that it was the right thing to do -- to obviously walk away
11 from the hundreds of thousands of dollars that I would have
12 made in trying the other case because my other client had
13 competent co-counsel that was doing a, in my view, excellent
14 job of representing him, to represent Mr. Furman because
10:04 15 sometimes doing the right thing is what is appropriate.

16 As time went on, obviously, we were placed in a
17 position where at the last minute, all of the other defendants
18 were essentially out of the case. And as a result of that, we
19 went from being in a position where there would be a minimal
10:05 20 financial burden to ourselves as counsel to one where we've had
21 to put all of our clients -- or at least I've had to put all of
22 my clients to the side, have been unable to otherwise kind of
23 make money. And also more importantly, we don't even have the
24 ability to -- otherwise, we would have been advancing costs for
10:05 25 Mr. Furman on our own.

1 We're in the process of trying to, obviously, work
2 with the receiver, who he and his counsel are here, even though
3 we don't understand why since the receivership entities have
4 consented to judgment, and it doesn't otherwise (inaud.) -- so
10:05 5 we have to give value to the state, but we're still going to
6 try to meet and confer with them to get to a point where we can
7 try to release some funds.

8 However, when it comes to considering at least the
9 issues, the deadlines and the discretion the report has, we
10:05 10 think from the substantive purpose that that should be
11 considered. And more importantly, Your Honor, from a public
12 policy perspective, it's something that should be considered or
13 given a little bit of extra weight, not to say that we're
14 trying to ask you to rule in our favor or otherwise reconsider
10:06 15 things, but if you think about it, where you're kind of just a
16 young lawyer, you're faced with an opportunity to come in and
17 help the low guy in the totem pole, the understanding that
18 everybody else is going to be doing most of the work and he
19 still needs represent him and create a distinction to then kind
10:06 20 of hold us strictly or to the extent possible to all the other
21 deadlines, and in those circumstances could result in some
22 degree of prejudice to our client. And we just wanted to at
23 least state that for the record just to preserve the public
24 policy argument as well as the due process position as well.

10:06 25 **THE COURT:** Let me just -- thank you. Just to be

1 clear, I think we have allowed -- you asked for the record, the
2 Eleventh Circuit has repeatedly emphasized that even those who
3 represent themselves on a pro se basis are required to hear the
4 Court deadlines. And so there is no such thing as relaxing the
10:07 5 Florida Rules of Civil Procedure or work deadlines simply
6 because we have an individual who is being represented as a low
7 bono or an a volunteer basis.

8 At this point we treat the pro se litigant the same
9 way we treat any other individual that's coming into court to
10:07 10 argue. We ask simply that everyone adhere by the deadlines and
11 the Court's scheduling order. We cannot create a situation
12 whereby an individual who may have less financial resources is
13 somehow held to a lesser burden when it comes to procedural
14 requirements, even if he were representing himself, especially
10:07 15 when the relaxing of standards would generate substantial
16 prejudice on the eve of trial against the plaintiff.

17 And so I'm not exactly sure what is being argued
18 anymore in this case. We have discussed this, I think, a
19 couple of times. To the extent you simply wanted to make a
10:08 20 record as to the difficulties of getting this case ready for
21 trial due to the late resolution of matters by codefendants and
22 the fact that the budget here has not been extensive, I
23 understand that. I know that that has been an issue in the
24 case. But it has been an issue known to the parties at least
10:08 25 for 60 days, if not longer, since it was raised before me at a

1 status conference well in advance of everybody settling out
2 except for Mr. Furman.

3 So at this point he will get all of the courtesy that
4 is required of any litigant, but I cannot sit here and say that
10:08 5 because of these unique economic circumstances, that somehow
6 we're going to change the calculus on the hearings of
7 deadlines. So that's not something that the case law supports,
8 nor is it something we do. I think he's represented by counsel
9 which is far and above -- you know, better than going at it
10:08 10 alone and he has competent counsel assisting him that knows the
11 issues engaged on motion practice on his behalf.

12 So I think he's been thoroughly represented given his
13 financial condition. So we're going to continue on as we were
14 with any other trial. The Court's not going to be able to make
10:09 15 any sort of exceptions for him because there's been a little
16 bit of a rapid preparation or ramp up for trial. So, I mean,
17 that's just the reality of things.

18 It's not a great position to be in. I understand he
19 wishes he perhaps had more resources. I see my public
10:09 20 defenders do it every day with little or no resources against a
21 very powerful adversary, the United States government, and
22 sometimes with less prep time in this case and that's in a
23 criminal matter no less, not a civil enforcement action.

24 So we have to understand that these deadlines are not
10:09 25 aspirational. There's a reason for them, and we're not talking

1 about a prejudice analysis or something that was filed on
2 November 23rd and was due November 22nd. Depo designations
3 were filed well outside the Court's deadline of November 22nd
4 on the eve of trial, essentially December 6th.

10:10 5 So it just gets to the point where cannot make
6 accommodations that would create such prejudice. So I want to
7 be very clear that any insinuation in a civil matter where
8 someone is being represented that he's somehow facing a due
9 process conundrum or problem, I think it's vastly overstated
10:10 10 given the preparation that he's had in this case.

11 MR. HYMAN: I understand, Your Honor, and to be clear,
12 we were not asking you to reconsider any orders or any issues.
13 We're obviously simply preserving our record, and obviously we
14 incorporate to a certain degree the issues that were previously
10:10 15 raised in the Rule 41 motion which resulted in the freezing and
16 seizure of Mr. Furman's assets, but from there, beyond that,
17 it's simply to preserve the record and not to otherwise
18 question or insinuate --

19 THE COURT: Sure. And I think you've done that, and
10:10 20 if the Eleventh Circuit feels that there's a concern here from
21 a due process consideration under the Rule 41, I think we have
22 got enough of a record to support that. Okay?

23 All right. So with that being said, I think we should
24 be ready to go. We're going to go ahead and if we haven't done
10:11 25 so, I excuse Mr. Shaddick who is Juror Number 3 in the revised

1 list, and we're going to proceed with the seven individuals we
2 have.

3 The one thing I will just ask: How long does each
4 side expect to take for opening statements?

10:11 5 **MS. BERLIN:** I think mine is between 30 and 40
6 minutes.

7 **THE COURT:** All right. If we can stay closer to 30,
8 that would be great. Is that okay on the defense side?

9 **MR. JOHN:** Probably less than 30 minutes, Your Honor.

10:11 10 **THE COURT:** Okay, perfect. Thank you, guys. We can
11 get that done.

12 Everybody within an hour, I think, that's a fair
13 estimate. Okay. All right.

14 Yes, anything else housekeeping wise?

10:11 15 **MS. BERLIN:** Yes, Your Honor. We wonder -- we wanted
16 to invoke the rule and wonder -- you know, because we have some
17 witnesses watching by Zoom and we've told the witnesses that
18 perhaps it would be helpful if the Court could maybe say
19 something when we all go on, that if anyone is a witness and
10:12 20 hasn't testified, they shouldn't be.

21 **THE COURT:** Yeah. That's a good point. And so I
22 will -- to the extent I have everybody here watching today and
23 I want to be clear that we have a live stream for the benefit
24 of the investors and the investors shared those, log on, be
10:12 25 able to see counsels' tables, they will be able to see the

1 witness and they'll be able to see me. Obviously the jury will
2 not be broadcast on the stream -- the live stream.

3 But I just want the understanding that anyone is
4 watching that may be called as a witness in this case that the
10:12 5 rule of sequestration has been invoked. And so for those
6 listening, I want to direct anyone that may be a witness in
7 this case, that they are not to be essentially present in the
8 courtroom by way of virtually watching the proceedings. And
9 should the Court become aware of a violation of that court
10:12 10 order, which I'm imposing at this time, it may lead to
11 sanctions and/or the striking of witnesses. So I want to make
12 sure that we're abundantly clear on that. That, of course,
13 includes any of the parties that may be called.

14 Off the top of my head, I know that that would include
10:13 15 Vagnozzi, Abbonizio, and other individuals, and it implies with
16 equal force for plaintiff and defense. So if I have any
17 witnesses that plaintiff intends on calling, they also are
18 similarly prohibited from being on the Zoom feed so that they
19 can somehow be given access to ongoing testimony. So let's
10:13 20 make sure -- and if either side becomes aware of that, please
21 let me know. Okay.

22 MS. BERLIN: Thank you, Your Honor.

23 THE COURT: Yes, absolutely.

24 MS. BERLIN: And I wonder, is the Court going to
10:13 25 remind -- I'm not sure if the Court is already going to do

1 this, reminding the jurors that we can't speak with them
2 because we've obviously run into them in the restroom.

3 **THE COURT:** I told them yesterday before we broke, but
4 I'm going to let them know again just to remind them, because
10:13 5 I'm going to do my preliminary instructions, so I'll remind
6 them too.

7 **MS. BERLIN:** Thank you so much. I know it was done
8 yesterday, I just didn't know --

9 **THE COURT:** Yes, it's good to remind them every day.
10:14 10 And I'm going to let them know, so everyone knows, just because
11 I think in the abundance of caution they should be aware that
12 there is a Zoom component to the trial, but I need to let them
13 know that they're never going to appear on it. They don't need
14 to worry about. I just want them to be comfortable. So you're
10:14 15 going to hear me say something about that too, just so that
16 they're all aware. Okay?

17 **MS. BERLIN:** Thank you, Your Honor. And one little
18 thing. Right before the judge came out, we -- we had shown our
19 opening PowerPoint, so we don't have any objections, there was
10:14 20 one slide we were just making a minor replacement on and I
21 wonder if I can just check that it's been done before we start?

22 **THE COURT:** Yes, go ahead and check. We've got time.
23 It's going to take me 20 minutes anyway to get through my
24 opening stuff.

10:14 25 Did you guys get a chance to review it then, Mr. Hyman

1 whatever their issues were?

2 MR. HYMAN: We did. There was one minor issue, which
3 I think has been resolved voluntarily by the parties.

4 MS. BERLIN: I was going to show him, if that's okay.

10:14 5 THE COURT: Yes, yes. I'm going to get my jurors now
6 anyway, so you've got a few minutes.

7 MS. BERLIN: Great.

8 THE COURT: Did you guys have anything you needed to
9 show?

10:14 10 MR. JOHN: I have a question, Your Honor. As far as
11 the Court's restriction on moving, are we latched in the --

12 THE COURT: No. As long as you guys don't cross, if
13 you wanted to pretend there's an imaginary line where that
14 table is, where the plaintiff's table is, I just don't need
15 you -- yeah, pretty much almost where counsel is. Just you
16 could go beyond the podium. Just don't go any more closer than
17 that. It's more for social distancing. I just don't want
18 anybody to be, you know, too close to the jurors in the
19 abundance of caution, that's all, even though I know everyone
10:15 20 is vaccinated. But you guys can move around. You don't have
21 to be tethered to that. Okay?

22 MR. JOHN: One other thing. I did tell Ms. Johnson I
23 did have some -- I didn't realize who it was. It was a
24 substantive contact, but a juror was sitting next to me, not in
10:15 25 this area but in the area just over there.

1 THE COURT: Sure.

2 MR. JOHN: She asked me to watch her purse while she
3 was in the bedroom.

4 THE COURT: Oh, watch her purse? I think we'll be
10:15 5 okay.

6 MR. JOHN: I don't think she knew.

7 THE COURT: She probably didn't know. I'm going to
8 remind them again. They do it innocently. And I appreciate
9 you letting me know. I'll start off by reminding them again
10:15 10 because they're going to be bumping -- you know, it's a narrow
11 passageway here, I don't want anybody to be bumping into
12 anybody, but thank you. All right.

13 MS. BERLIN: Thank you.

14 THE COURT: Gracie, are we ready to go?

10:16 15 For the record, we're going to formally excuse, and by
16 agreement of all parties, Mr. Shaddick. Okay. So Mr. Shaddick
17 will no longer be with us for this trial. Please let him know
18 and we'll reach out to him and tell him what the next steps
19 are. And if you have the other seven, let's go ahead and get
10:16 20 them ready. Yeah.

21 (Thereupon, the jury entered the courtroom.)

22 THE COURT: Please be seated, everyone. Good morning.
23 Good morning, ladies and gentlemen of the jury. How are you
24 all doing? Everyone doing okay, I hope.

10:18 25 All right. You can reposition yourself a little bit

1 because you're not in the corner anymore. Thank you. And you
2 guys are free to keep these seats or change it up at any point
3 you want. So again, thank you, you all, for joining us this
4 morning. You'll note that we are one individual shy. We're
10:18 5 going to be proceeding without him. So I don't want anyone to
6 be concerned about that. You continue to be my core group here
7 going forward. And please, everyone, can be seated.

8 So what I want to do this morning is begin by giving
9 you all some preliminary instructions on what to expect as the
10:18 10 trial begins today. First and foremost, I want to remind
11 everybody that we are all sharing space out here in front of
12 the courtroom. And the lawyers have to avoid you guys. So
13 please take no offense by that. I know sometimes we forget and
14 we may be sitting next to one of the attorneys and they may
10:19 15 forget and then they're going to see them realize you're a
16 juror and go running in the other direction. I don't want
17 anyone to take offense by that, please. Just keep in mind that
18 you cannot make any contact with any attorneys at any point,
19 nor will that may contact with you. All right. Take no
10:19 20 offense if they steer clear of you as they are supposed to do
21 under the ethics rules that govern their behavior during the
22 trial.

23 Now, another thing I wanted to share with you all, and
24 I don't want anyone to be uncomfortable with us, you're going
10:19 25 to see a lot of tech, a lot of screens here that are going on.

1 You guys obviously have screens in front of you and that's how
2 you're going to see exhibits that are put up and blown up.
3 You're also going to be able to see witnesses testify through
4 those screens.

10:19 5 Now, today we won't have anyone testifying remote.
6 There's no Zoom witnesses today. It's all live. You're going
7 to see them on the witness stand.

8 But one thing we are doing, which is a little unusual
9 in today's day and age is, we are actually streaming this trial
10:20 10 right now. I want you all to know that at no point during this
11 trial will a camera ever go anywhere near you guys. Right now
12 the only camera feeds that are being operated are one on me,
13 one on the lawyers and one on whoever testifies. That's it. I
14 just want you guys to feel comfortable that no one is going to
10:20 15 see your faces or be looking at you. The reason we're doing
16 that is, if you remember the statement of the claim yesterday,
17 remember that we talked about all the investors that were part
18 and parcel of everything that happened with Par Funding? Well,
19 a lot of them wanted to come to court, and I can't have all of
10:20 20 those people come in just because of COVID, it's just not safe.

21 So what I did was, since it's a public proceeding and
22 I have to give them a chance to watch, I designed this so that
23 everybody could watch live. So I just wanted to let you guys
24 know what's going on. It shouldn't interrupt anything you're
10:20 25 doing, but so you're all aware of it. Okay?

1 Now, let's talk a little bit about what to expect.

2

3

INSTRUCTIONS

4

10:20

5 **THE COURT:** Now that you've been sworn, I need to
6 explain some basic principles about a civil trial and your duty
7 as jurors. And these are preliminary instructions. I'm going
8 to give you guys more detailed instructions at the end of the
9 trial.

9

10:21

10 Now what is your job? What is your duty? Well, it's
11 your duty to listen to the evidence, decide what happened, and
12 apply the law to the facts.

12

10:21

13 It's my job to provide you with the law you must
14 apply. And you must follow the law even if you disagree with
15 it. Now, what is the evidence and what is evidence? You must
16 decide the case only on the evidence presented in the
17 courtroom. Now, evidence can come in many forms, as we
18 discussed yesterday. It could be testimony about what someone
19 saw, heard or smelled. It could be an exhibit or a photograph.
20 It can be someone's opinion.

10:21

21 Now, some evidence may prove a fact indirectly. Let's
22 say a witness saw wet grass outside. Okay. And people walking
23 into the courthouse seeing wet umbrellas. All right. This may
24 be indirect evidence that it rained. Even though the witness
25 didn't personally see it rain.

10:21

25 Now, indirect evidence is also called circumstantial

1 evidence, and that simply means a chain of circumstances that
2 is likely to prove a fact. All right.

3 Now, as far as the law is concerned, it makes no
4 difference whether the evidence is direct or indirect. You may
10:22 5 choose to believe or disbelieve either kind. Your job is to
6 give each piece of evidence whatever weight you guys think it
7 deserves.

8 Now, during the trial you're going to hear certain
9 things that are not evidence and you should not consider it as
10:22 10 such. First, the lawyers' statements and arguments are not
11 evidence. In their opening statements, which will happen in
12 just a moment, and the closing arguments at the end of the
13 case, the lawyers are going to discuss the case. Their remarks
14 may help you follow each side's arguments and presentation of
10:22 15 evidence. But the remarks from the lawyers themselves are not
16 evidence. And they should not play a role in your
17 deliberations.

18 Now, second, the lawyers' questions and objections
19 aren't evidence. Only the witnesses' answers are evidence.
10:22 20 Don't decide that something is true just because a lawyer's
21 questions suggests that it's true. For example, a lawyer may
22 ask a witness: You saw Mr. Jones hit his sister, didn't you?

23 That question is not evidence of what the witness saw
24 or what Mr. Jones did. Unless, of course, the witness were to
10:23 25 agree with that question.

1 Now, there are rules of evidence that control what the
2 Court can receive into evidence. When a lawyer asks a witness
3 a question or presents an exhibit, the opposing lawyer may
4 object if he or she thinks the rules of evidence don't permit
10:23 5 it.

6 So you guys have probably seen this on TV, right?
7 You're going to have a witness here. Someone is going to ask a
8 question and one of the lawyers is going to jump up and go:
9 Objection, Your Honor. They're going to state an evidentiary
10:23 10 basis, right? I'm going to have to say one of two things;
11 "overruled," which means, witness, answer the question, or
12 "sustained," which means, witness, don't answer the question.
13 If I overrule the objection, then, of course, the witness can
14 answer, and I may be available to receive the exhibit.

10:23 15 Now, if I sustain the objection, which means the
16 witness can't answer and I don't receive the exhibit, I need
17 you guys to ignore the question. And not guess what the answer
18 might have been. Basically it's a nonissue. If I sustain it,
19 we don't think about it, we move on.

10:24 20 Sometimes I may disallow evidence. That's also called
21 the striking of evidence. I may ask you guys to disregard it
22 or ignore it. That means please do not consider the evidence
23 when you're deciding the case.

24 I may also allow evidence to come in for a limited
10:24 25 purpose only. When I instruct you that I've admitted a piece

1 of evidence for a limited purpose, you should only consider it
2 for that purpose and no other reason.

3 Now, when you guys are debating and trying to reach a
4 verdict, you're going to have to decide which testimony to
10:24 5 believe and which testimony not to believe. You may believe
6 everything a witness says, part of it or none of it. When
7 considering a witness's testimony, you may take into account
8 certain things. We review this at the end of the case, but I
9 want you guys to think about this because we're going to be
10:24 10 listening to a lot of people testifying in this case. Okay?
11 You should think about the witness's opportunity, and the
12 ability to see, hear or know the things that the witness is
13 testifying about, the witness's memory, the witness's manner
14 when testifying, any interest the witness has in the outcome of
10:25 15 the case, any bias or prejudice the witness may have, any other
16 evidence that contradicts the witness's testimony, the
17 reasonableness of the witness's testimony in light of all the
18 evidence, and any other factors affecting believability. At
19 the end of the trial I'll give you guys additional guidelines
10:25 20 for determining a witness's credibility.

21 Now, we all have reviewed what this case is about, and
22 in just a moment the opening statements will, once again,
23 explain it you to.

24 We'll talk a little bit about what the SEC's case is,
10:25 25 and Mr. Furman will also get an opportunity to remind you again

1 of his defense. The important thing I want to make sure you
2 guys remember is to decide whether any fact has been proven,
3 you're going to apply that preponderance of the evidence
4 standard. Remember, that is the idea of balancing scales. One
10:25 5 side carries the burden must tip that in their favor.

6 I want you guys to remember that unless I instruct you
7 otherwise, consider the testimony of all witnesses regardless
8 of who called them and all the exhibits that I allow into
9 evidence regardless of who produced them. After considering
10:26 10 all the evidence, if you decide a claim or fact is more likely
11 true than not, then that claim or fact has been proven by a
12 preponderance of the evidence.

13 And remember, of course, that to the extent Mr. Furman
14 has an affirmative defense such as an exception or an exemption
10:26 15 to the securities laws, he will carry the burden of proof on
16 that defense.

17 Now, remember that while serving on the jury, you may
18 not talk with anyone about anything related to the case. You
19 may tell people you're a juror, you can give them information
10:26 20 about when you've got to be in court, but you must not discuss
21 anything about the case with anyone. You shouldn't even talk
22 about the case with each other until you begin your
23 deliberations.

24 You want to make sure you've heard everything, all the
10:27 25 evidence, the lawyers's closing arguments, and my instructions

1 on the law to all of you before you guys begin deliberations.
2 You should keep an open mind until the end of the trial.
3 Premature discussions will lead to premature decisions.

4 In this age of technology, I want to emphasize again
10:27 5 that in addition to not talking face to face with anyone about
6 the case, you must not communicate with anyone about the case
7 by any other means. This include e-mails, text messages, phone
8 calls and the internet, including social networking websites
9 and apps such as Facebook, Instagram, Snapchat, YouTube and
10 Twitter.

11 You may not use any similar technology on social
12 media, even if I have not specifically mentioned it here. You
13 must not provide the information about the case by any means
14 whatsoever, and that includes posting information about the
10:27 15 case or what you're doing on the case on any device or internet
16 site, including blogs, chat rooms or social websites.

17 You shouldn't Google or search online or off ine for
18 any information about the case, the parties, or the law. Don't
19 read or listen to any news accounts about this case, visit any
10:28 20 places related to this case, or research any fact, law or issue
21 related to the case.

22 The law forbids you all as jurors to talk with anyone
23 else about the case and forbids anyone else to talk to you guys
24 as jurors about the case. It's very important that you guys
10:28 25 understand why these rules exist and why I repeat them, and I

1 will keep repeating them every day. It's because they're very
2 important.

3 You have to base your decision only on the testimony
4 and evidence presented here in the courtroom. It's not fair to
10:28 5 the parties if you base your decision on any way -- in any way
6 on information you acquire outside of the courtroom. For
7 example, the law on uses words and phrases in special ways. So
8 it's important that any definitions you hear come only from me
9 and not from any other source.

10:28 10 Only you as jurors can decide the verdict in this
11 case. The law sees only you seven as fair and only you have
12 promised to be fair. No one else is so qualified.

13 Now, did you all get notepads? Yes. Let me -- brief
14 word about taking notes. If you guys wish, you may take notes
10:29 15 to help you remember what the witnesses said. If you do take
16 notes, please don't share them with anyone until you go to the
17 jury room at the end to decide the case.

18 And don't let note-taking distract you all from
19 carefully listening to and observing the witnesses. If you get
10:29 20 too caught up taking notes on everything, you might miss some
21 of the things I told you you may consider in determining
22 credibility.

23 Now, when you leave the courtroom, if you are on a
24 short break, I'll have you leave them on your chair. If you're
10:29 25 on a long break, I'll have you leave it inside the secure jury

1 room. Never take them from the courtroom. Okay?

2 And whether or not you guys decide to take notes, you
3 should rely on your own memory of the testimony. The notes are
4 only designed to help your memory. They are not entitled to
10:29 5 greater weight than your memory or impression of the testimony.
6 It's very important that you keep that in mind.

7 One of the things I recommend is that on the first
8 page, you want to write your name, your juror number. And then
9 start notes on the second page. Then at the end of the case, I
10:30 10 want you to all know that we shred and destroy all the notes.
11 So you can write whatever you want on there without fear of
12 anybody else taking a look at it.

13 Now what's going to happen? Let's walk through the
14 trial. In just a moment each side is going to make an opening
10:30 15 statement. They don't have to, but each side has elected to do
16 so here. Remember, the opening statement is not evidence.
17 It's not supposed to be argumentative. It's an outline of what
18 each side believes the evidence is going to show you guys over
19 the coming days. So keep that mind open as you listen to this
10:30 20 blueprint each side is going to put forth before you.

21 After that the SEC will begin presenting their case in
22 chief. They're going to call witnesses to testify, either live
23 or on Zoom. After the SEC's lawyers ask the questions of those
24 witnesses, then Mr. Furman's lawyers will get to ask questions.
10:30 25 That is known as cross-examination. Right? Then after that,

1 the government gets to do a redirect examination.

2 Once we get through all of the SEC's witnesses, then
3 Mr. Furman is able to put on any witnesses he wants to put on
4 and the same thing applies. He asks the questions, first the
10:31 5 direct examination. Then the SEC will proceed with their
6 cross-examination. And then Mr. Furman's lawyers will get
7 their redirect examination.

8 You, again, should base your decision on all the
9 evidence regardless of who is calling these witnesses and what
10:31 10 party presents it. After all the evidence is in, then I will
11 give you instructions on the law. I want to go over what the
12 law is together in packets. I'll make copies for all of you.

13 Then after that, what I'll go ahead and do is turn it
14 over to the lawyers who will make closing arguments. And then
10:31 15 after that, you guys get to go in the jury room with the
16 instructions on the law, closing arguments done, all the
17 evidence in front of you to begin your deliberations. Okay?
18 That's the way the whole trial is going to work from a thousand
19 foot view. Okay?

10:31 20 So the important thing, folks, again, is we will try,
21 whenever possible, to take breaks for your comfort. If at any
22 point you guys need a break or anything, you can flag down
23 Ralph or myself. I'll try to keep an eye out for restroom
24 breaks, et cetera.

10:32 25 And one thing I want to mention is -- and it's an

1 interesting thing, people are not aware of this -- but when we
2 start calling witnesses, you're permitted to ask questions in a
3 civil proceeding of witnesses. A brief word about jury
4 questions. Once the examination is complete as to each
10:32 5 witness, I'm going ask you: Anybody have any questions from
6 the witness?

7 You can write the question on a page from your
8 notepads. Okay? And then you're going to hand it to my
9 courtroom security officer, and he's going to bring it to me.

10:32 10 A word about this: 99.9 percent of the time the lawyers will
11 ask every possible question you're going to need. So I expect
12 to have very few questions, if anything. But, sometimes jurors
13 are unclear about something or they want to ask some follow-up.

14 So the way it works is I will prompt you to see if
10:32 15 there's a jury question. You will write it down on a piece of
16 paper. Don't say it out loud. Fold it and it's brought to --
17 I will review it at sidebar outside of your presence here with
18 the lawyers to make sure that we can ask the question.

19 There are evidentiary rulings that you guys are not
10:33 20 aware of and rules of evidence that prevent me from asking
21 certain things. I don't want anybody to get offended. You may
22 ask a great question, but the rules of evidence may not let me
23 ask it. And if I can ask it, I will be the one to ask the
24 witness the question that you have posed. And then I may let
10:33 25 the lawyers do a little bit of follow up. Okay?

1 But again, if I don't ask your question, okay, I don't
2 want you guys to draw any conclusions from that fact or
3 speculate what the answer would have been, and I may even
4 modify some of your questions so that I can ask them under the
10:33 5 rules of evidence. But again, no pressure for any of you.
6 It's just an option, okay, if you guys want.

7 And I will just remind you again. Remember to send me
8 your questions in writing. Don't ask them out loud. You're
9 not going to be able to recall a witness, meaning, once a
10:34 10 witness is done and they're excused, that's it. So if you have
11 a question, that's the time to ask, when I prompt you.

12 And because you should remain neutral and open-minded,
13 if you're going to ask a question, try to phrase it in a way
14 that doesn't express your opinion about the case or the
10:34 15 witness, please. We need you to keep an open mind until you
16 hear all the evidence, the closing arguments, and the final
17 instructions on the law.

18 With that being said, there may be other standard
19 instructions I read you throughout the case, especially if we
10:34 20 use any recorded conversations, any depositions or testimony
21 outside the Court that has been designated, or, for example, if
22 we had anybody that needs a translation. If those issues come
23 up, I will give you guidance.

24 But you now have the toolkit you need to have an open
10:34 25 mind and know what to expect from the lawyers and how the trial

1 secure. He told investors that government regulators had
2 praised the investment and, quote/unquote, loved it. He told
3 investors that this investment was so good, he and the owner of
4 the company had invested 50 million dollars in Par Funding.

10:38 5 The evidence will show that these were lies that the
6 defendant told as part of his scheme to conceal the truth from
7 investors and to raise money for Par Funding so that he could
8 make money himself. We will learn that in truth, the defendant
9 was working with Par Funding from the very beginning. In
10:39 10 truth, a twice convicted felon was operating Par Funding, and
11 in truth, government regulators in three states didn't say they
12 loved it. They issued orders against Par Funding to sanction
13 them and to stop them from offering this investment in a way
14 that was violating the securities laws. In truth, the owner of
10:39 15 Par Funding will tell you that he did not invest 50 million
16 dollars of his own money. And in truth, the defendant did not
17 invest a dime.

18 Par Funding was barely breaking even. And the
19 evidence will show that the defendant kept these facts a secret
10:39 20 from investors, or at best, didn't even care enough to confirm
21 or examine whether these representations were true or false.
22 He just recklessly said whatever he needed to say to get people
23 to part with their retirement money. And that is just the tip
24 of the iceberg.

10:40 25 The defendants and lies, his scheme to raise money for

1 Par Funding is the reason we're here today. The federal
2 securities laws require those who offer investments to operate
3 in the light of day to protect investors to keep things fair
4 and to make sure that investors know the truth when investing
10:40 5 their money so that investors can make educated decisions about
6 whether or not to spend their money on an investment. But the
7 evidence will show that Mr. Furman operated in the shadows and
8 did not disclose important information to investors.

9 The evidence will show that Mr. Furman, the defendant,
10:41 10 raised millions of dollars from investors here in South Florida
11 through his scheme and that he himself profited as well to the
12 tune of hundreds of thousands of dollars in just a short period
13 of time.

14 My name is Amie Riggle-Berlin. I'm senior trial
10:41 15 counsel with the U.S. Securities and Exchange Commission, which
16 is also known as the SEC. The SEC is a civil federal
17 government agency, and so, as the judge has explained, this is
18 not a criminal case. It is a civil case. And so we will not
19 be speaking to you during this trial about finding anyone
10:41 20 guilty beyond a reasonable doubt.

21 Instead, during this trial, we will open a vault of
22 evidence that holds the secrets that Michael Furman kept from
23 investors. A vault of evidence that holds the defendant's
24 lies. The evidence will show how the defendant and Par Funding
10:42 25 began working together and how the defendants lured investors

1 to South Florida to invest in Par Funding, to trust their
2 retirement money with Michael Furman until the SEC brought it
3 to a halt last year.

4 So when and how does it begin? It begins in 2017, in
10:42 5 the fall of 2017. And you will hear evidence in this case that
6 during the first week of November 2017, Michael Furman flew to
7 Philadelphia, Pennsylvania. He had seen an advertisement about
8 a way to make money from selling something called an
9 alternative investment. And once he got to Philadelphia,
10:43 10 you'll hear that he met at Par Funding's office and he met with
11 Joseph LaForte, the owner of Par Funding, Perry Abbonizio, the
12 principle, and Dean Vagnozzi, the investor sales agent. And
13 Perry Abbonizio will testify you to and tell you about that
14 meeting, as well Mr. Furman.

10:43 15 Joseph LaForte, the owner of Par Funding, was a twice
16 convicted felon. He was the founder of Par Funding, the owner.
17 He ran the day-to-day operations. He ran the business. And
18 his convictions for money laundering, grand larceny and illegal
19 gambling schemes were never disclosed by Mr. Furman to any of
10:43 20 the investors, even though he knew this information when he was
21 soliciting.

22 So what is Par Funding? Well, you'll hear evidence
23 from Perry Abbonizio, a former executive there, as well as Brad
24 Sharp, a consultant who is currently running Par Funding, and
10:44 25 they'll describe it to you generally. Par Funding would loan

1 money out to small businesses. It's called a merchant cash
2 advance, and in exchange they would receive the money back from
3 the merchants with interest. So that's where the profit would
4 come from.

10:44 5 And Par Funding would get this money that it loaned
6 out by raising it from investors, including the investors that
7 Mr. Furman found for them. So they would, in exchange for
8 investor money, offer something called a promissory note. And
9 you will hear in this case that a promissory note is a security
10:44 10 and it's like an IOU. It's a promise to pay an investor back
11 their money with interest. And so in exchange for their money,
12 Par Funding and Mr. Furman would offer promissory notes to
13 investors, investor money would go from the investor to
14 Mr. Furman to Par Funding, and then on to the merchant
10:45 15 borrowers who would send it back with more money and some of
16 that would be passed along to the investors as their profits.

17 So Par Funding used a series of sales agents located
18 coast to coast to raise the money that they needed to run their
19 business. And you will hear from Perry Abbonizio, the former
10:45 20 investor relations director at Par Funding, that Michael Furman
21 was one of these people. He was the person in South Florida
22 raising money for Par Funding. And Mr. Furman sent more than
23 10 million dollars to Par Funding of investor money. He would
24 seek it, collect it, bundle it, and forward it onto Par Funding
10:45 25 in exchange for Par Funding promissory notes.

1 About ten days after this meeting in Philadelphia
2 where he met Joseph LaForte and Perry Abbonizio and the other
3 executives, you'll hear that Mr. Furman hit the ground running.
4 He immediately started searching for investors and soliciting
10:46 5 them. And you'll see e-mails like this one from just ten days
6 after he returned showing him reaching out to investors and
7 trying to sell them these Par Funding or MCA promissory notes.
8 And you'll also see attached with Mr. Furman's own e-mails that
9 he was successful and he started selling these promissory notes
10:46 10 to people in about March of 2018.

11 First, he was using a company called ABFP and getting
12 promissory notes from them. And later on he created his own
13 company, because Par Funding wanted there to be a pass through.
14 Mr. Furman had to have his own company to just pass the money
10:46 15 through on up to Par Funding. And so we'll see that he did
16 that with two different named companies, ABFP and Fidelis, and
17 you'll see the e-mails and promissory notes showing you that.

18 So in January 2018, when Mr. Furman learned that he
19 needed a company to raise money for Par Funding, he started
10:47 20 one, and Par Funding helped him do it. So Perry Abbonizio, the
21 former Par Funding executive, will testify to you that he
22 helped Mr. Furman, Par Funding helped him create the company so
23 he could raise money by selling these securities. They paid
24 his attorney to create a PPM, which is an offering document
10:47 25 that tells investors information about the investment, and

1 Par Funding was with him every step of the way, beginning from
2 the very beginning when he created his own company.

3 So how did Mr. Furman find these investors in South
4 Florida? The evidence is going to show he did it five ways,
10:47 5 and we're going to examine all five types of evidence during
6 this trial. So to briefly give you a sense of what to
7 experience, you're going to see internet brochures, radio ads,
8 one-on-one meetings and sales events.

9 So for the internet where Mr. Furman would advertise,
10:48 10 you're going to see his own websites where he's advertising
11 this MCA investment. He's encouraging people to call his
12 company, he has videos online describing the investment, and
13 he's encouraging people to contact him for more information.

14 He also reached out to the public through brochures.
10:48 15 So he would hand out brochures, like this one. This is one of
16 the exhibits you'll see with Mr. Furman's business card inside
17 and he would hand this out. It's a Par Funding brochure.

18 He would also have sales events where he would invite
19 people to restaurants for free dinners and other events where
10:48 20 he could tell them all about the Par Funding investment and
21 solicit them. And you will hear from investors who attended
22 those events who are going to tell you what Mr. Furman said
23 during those sales presentations and how he described the
24 investment.

10:49 25 And most importantly, what he did not tell them when

1 he was soliciting them while he was touting the management, he
2 was not disclosing that the owner was a convicted felon, for
3 example, and other failures to disclose.

4 The other kind of evidence we're going to hear in this
10:49 5 trial is radio ads. So Mr. Furman plays radio ads in South
6 Florida and we'll hear some of those.

7 We should be hearing one of those.

8 (AUDIO PLAYING)

9 MS. BERLIN: And you'll hear from investors who heard
10:50 10 these radio ads, called Par Funding, went to these events where
11 they were solicited to invest in Par Funding. So the radio is
12 just another way that he reached out to the public.

13 Also there are these one-on-one meetings, and you'll
14 hear from investors, they're going to testify and tell you what
10:50 15 was said during those one-on-one meetings, what Mr. Furman said
16 about the investment and how he pitched it. And finally you'll
17 hear about sales events, and investors will describe them to
18 you. We're going to look together at the PowerPoint brochure
19 that he would show during those sales events, and you'll see
10:50 20 his advertisements in the newspaper.

21 So through these advertising measures that's how he
22 went out and found people. And then you're going to hear
23 evidence about what he communicated to investors about this
24 investment. So overall, the defendant would assure investors
10:51 25 that they were getting the full story, that there was

1 transparency, that he had done a lot of due diligence. He
2 would highlight this as an investment where he had gone to meet
3 the owners and what a unique thing that is, and that investors
4 would have all the information that they would need to invest,
10:51 5 it would be fully transparent.

6 But we're going to see that the evidence shows that
7 that was not true. For example, as I stated before, you're
8 going to hear evidence, and that's not disputed, meaning the
9 defendant and the SEC agree, that Mr. LaForte was a
10:51 10 twice-convicted felon, and investors are going to testify that
11 they were never -- this information was never disclosed, you
12 won't see it in any marketing brochure. It was kept a secret
13 throughout the offering.

14 We're also going to see Mr. Furman's website where
10:52 15 he's telling investors that the Par Funding merchant cash
16 advance loans have a 1.2 percent default rate, and we're going
17 to hear and see evidence that that was not true at all. That
18 in reality, Par Funding had more than 2,000 lawsuits against
19 merchants that had borrowed money and were in default, were not
10:52 20 paying back. And none of this was disclosed to investors
21 either, which was important because investors are supposed to
22 get paid on their promissory notes based on the success of
23 these loans. So if a lot of them are in default or they're not
24 making money then that obviously affects the amount that
10:52 25 investors can make.

1 In addition to that, there were secrets that were
2 maintained about the government actions against Par Funding,
3 and we're going to see evidence and we're going to hear from
4 state regulators. We will have agents coming and testifying to
10:53 5 you from Zoom from Pennsylvania government agencies, New Jersey
6 government agencies and Texas government agencies. They're
7 going to testify that each of their agencies filed cases
8 against Par Funding, or ABFP, the company that was helping
9 manage Mr. Furman's entity, or Par Funding's executives for
10:53 10 violating the securities laws over and over again. There are
11 three of them. And all of this was known to Mr. Furman. It
12 would have been a red flag for any investor, information that
13 was completely concealed, and they were kept in the dark about
14 it. And you will hear that not only was this information not
10:53 15 disclosed but Mr. Furman went a step further.

16 (AUDIO PLAYING)

17 **MS. BERLIN:** That's an audio recording from an FBI
18 recording with an undercover posing as a potential investor.
19 And you are going to hear these audio recordings, the FBI will
10:54 20 testify and authenticate them, and this is an excerpt from
21 Mr. Furman's representations to a woman he thought was a
22 potential investor, telling her that the State of New Jersey
23 had looked at Par Funding, loved it, retracted their order,
24 thought everything looked good. And we are going to hear from
10:54 25 the New Jersey regularity testifying to you that that never

1 happened and this is just simply false.

2 And there were more lies. In addition to telling
3 investors that the investment was blessed by New Jersey
4 regulators, we'll hear that Mr. Furman also failed to disclose
10:55 5 other facts and lied about their being insurance, which was in
6 his brochure, on all of these merchant cash advances, and also
7 in his brochure would tell the potential investors that there
8 was always an onsite inspection, that before they loaned money
9 they would go out to the merchant and check out the business
10:55 10 and make sure it was legitimate and they knew who they were
11 loaning money to, and you're going to hear from two of the
12 Par Funding employees in charge of underwriting there who are
13 going to tell you that that was not the case. Sometimes they
14 would do an onsite inspection, but oftentimes they absolutely
10:55 15 did not. Instead they'll testify that they would loan money
16 based on a Google search of the name of a borrower. Completely
17 contrary to what was represented.

18 In addition to these lies, we're also going to see
19 that Mr. Furman filed statements with the Securities and
10:56 20 Exchange Commission, and in those statements, we'll look
21 through those together, and the evidence is going to show that
22 he also lied to the SEC in his filings with the SEC about the
23 investments he was offering, when it began and how much he
24 personally was taking. And that while he told the SEC he was
10:56 25 taking zero, he had, in fact, taken hundreds of thousands of

1 dollars.

2 In addition to that, we're going to hear, as I told
3 you at the beginning, that Mr. Furman told investors in black
4 and white in his own e-mails, you will see, him representing to
10:56 5 investors that an owner of the company, Perry Abbonizio,
6 invested 50 million dollars in Par Funding, because he really
7 believed in it. And Perry Abbonizio is going to testify and
8 tell you that that is patently false and he never told
9 Mr. Furman that either.

10:57 10 The evidence will show that through these lies and
11 secrets and by telling investors this was a great investment
12 that was safe and not discussing these risks or issues, the
13 defendant raised millions of dollars from people in South
14 Florida. Working out of West Palm Beach, he primarily touted
10:57 15 this and solicited people for investing their retirement funds
16 and so you will hear from investors about the fact that they
17 invested their retirement money in Par Funding.

18 Lying to investors, concealing the truth, and scheming
19 to defraud, these are called -- this is called securities fraud
10:57 20 under the civil federal securities laws. And also
21 participating in these offerings of Par Funding's promissory
22 notes and the ABFP promissory notes that we showed you, that's
23 also a violation of another federal securities law that
24 requires companies to file and register with the SEC before
10:58 25 they start soliciting investors so that it's registered and

1 it's in the light of day. And instead, Mr. Furman completely
2 operated in the shadows with these investments.

3 So what will Mr. Furman tell you? Well, we anticipate
4 that Mr. Furman will mention that he had a lot of lawyers and
10:58 5 he had a couple of lawyers. And those lawyers are going to
6 tell you that they did not give him the advice he's going to
7 claim they did. And instead, the evidence is going to show
8 that he lied to his own lawyers too.

9 In addition, Mr. Furman is going to tell you that his
10:58 10 investors were accredited, meaning that he solicited people
11 with a lot of money. But there's -- you're not going to hear
12 about any exception under the law that makes it okay to lie to
13 people just because they have more money in their retirement
14 account or less.

10:59 15 He's also going to tell you, we anticipate, that
16 everyone else is to blame, that it's not him. He might point
17 the finger. He might point the finger at the SEC, that it's
18 somehow our fault for what he said or other people at
19 Par Funding, but the evidence is going to show and what we're
10:59 20 going to show you are his own e-mails, investors who met with
21 him directly based on what Mr. Furman told them, the marketing
22 brochures that he handed out, his radio advertisements and the
23 FBI undercover recordings of him speaking.

24 So the evidence will show that's just another way to
10:59 25 avoid take any blame. And you'll also, we anticipate, tell you

1 that he only lies sometimes. Sometimes he tells the truth, but
2 a lie is a lie. And finally, that -- we believe he'll tell you
3 that he's not Par Funding. He's just someone who is not
4 affiliated with them at all. But you're going to see through
11:00 5 all the evidence that Mr. Furman is helping to bundle investor
6 money in South Florida and then sending it to Par Funding in
7 exchange for promissory notes and a preconceived and
8 preengineered process.

9 And you're going to hear about that from
11:00 10 Perry Abbonizio, the former executive. You're going to hear
11 about that from the investors as well, and you're going to see
12 it. He's handing out Par Funding brochures with his business
13 card, and he's holding seminars and raising money for
14 Par Funding. And you'll also hear Mr. Furman testify about
11:00 15 that himself as well.

16 So he'll try to distance himself from Par Funding, but
17 this case isn't about what Par Funding did. This case is about
18 Mr. Furman's interactions and solicitations of investors. As
19 the judge explained yesterday, it's not a criminal case. We
11:01 20 won't be asking you anything or mentioning beyond a reasonable
21 doubt. Instead, we'll only be talking about a preponderance of
22 the evidence and whether it reflects this.

23 So at the end of the case, after we show you the
24 evidence and we listen to the audio, show you a lot of emails,
11:01 25 and you'll hear from at least four investors witnesses as well

1 and at least three former Par Funding employees, three state
2 government regulators who entered these orders, and an FBI
3 agent, as well as the consultant who took over Par Funding and
4 Mr. Furman's company, when the SEC stepped in last year.

11:01 5 We'll speak again at the end of the case, and I'll
6 explain to you why we believe, the SEC believes that the
7 evidence that we have presented shows that Mr. Furman was
8 reckless in failing to disclose the full truth to investors.
9 Thank you.

11:02 10 **THE COURT:** Thank you, Ms. Berlin.

11 Mr. Hyman on behalf plaintiff Mr. Furman.

12 **MR. HYMAN:** Actually, Mr. John is going to do that.
13 However, Your Honor, I'd like to a quick sidebar to address
14 very brief issues.

11:02 15 (Thereupon, there was a side-bar conference outside
16 the presence and hearing of the jury.)

17 **MR. HYMAN:** First, Your Honor, we're going to object
18 to any newly raised fraud claims based on the alleged
19 misstatements and the Reg D filings. That was not in the
11:02 20 complaint. It wasn't anywhere. The first time we're hearing
21 of any of this was in the opening statement. So we'd ask that.

22 And second, Your Honor, you previously ruled in limine
23 that the jury wasn't going to hear about how people were
24 investing from their retirement funds. That was mentioned
11:02 25 three times during Ms. Berlin's opening. It doesn't give rise

1 to the level of prejudice. However, we'd ask that you caution
2 her to cease that and also prohibit her from mentioning any of
3 the alleged misstatements in the Reg D filings.

4 **THE COURT:** Okay. So let's take it in turn. I don't
11:03 5 recall anything that played upon the sympathies of the jury as
6 to the investing public. So there was nothing there that would
7 have raised at least a red flag for me.

8 But in the abundance of caution, Ms. Berlin, obviously
9 we won't necessarily emphasize the elderly or anybody losing
11:03 10 their money, just so that we know.

11 **MS. BERLIN:** I'm not going to mention anyone losing a
12 dime during this trial, but they all invested retirement money
13 and that's how it was advertised. So --

14 **THE COURT:** That's why I'm fine with that. I think --
11:03 15 I don't think counsel understands that wasn't even close to the
16 level of running afoul of the motion in limine or any rulings.
17 I just want to be in an abundance of caution. The other thing
18 is this regular issue, you want to respond to that?

19 **MS. BERLIN:** Yeah, absolutely. So they're raising
11:03 20 their Form D for -- if I had a list, which that's not really
21 what we have charged, but if they want to and their arguing (d)
22 lying in your registration with the SEC where you're saying
23 we're exempt from (d), if that document you file with is a lie,
24 then you're not entitled to any exemption. We're arguing
11:04 25 obviously and saying that they participated in the Par Funding

1 offering. But they want to argue 506(c), but Fidelis
2 offering --

3 **THE COURT:** Correct.

4 **MS. BERLIN:** So they have made it fair game in they
11:04 5 want to argue that and one of the exhibits is the 506(c), then
6 I'm putting to the jury that that document has three lies in
7 it.

8 **THE COURT:** The important thing is not so much as
9 independent but rebuttal of the raising of the exemption of
11:04 10 506, correct.

11 **MS. BERLIN:** Thank you, Your Honor. That's true.

12 **THE COURT:** That's what it's raised for. It's not
13 that they're bringing it.

14 **MR. HYMAN:** Fair enough. It's --

11:04 15 **THE COURT:** It's only fair game. We have talked about
16 it as a feature in the case.

17 **MR. HYMAN:** Understood. I can only understand the
18 concern when you hear he lied on this and lied on that.

19 **THE COURT:** But that's it's something that's been in
11:05 20 put in blame. Thank you.

21 (Thereupon, the side-bar conference was concluded.)

22 **THE COURT:** All right, folks. We're going to turn it
23 over now to the defense team to make their argument. Give them
24 one second while they get their computer set up and we're going
11:05 25 to start in just a moment.

OPENING STATEMENT

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11:08

MR. JOHN: Members of the jury, the government is right, we're going to tell you that Mr. Furman is not Par Funding because he's not.

THE COURT: Let me get you a microphone, Mr. John. I want to get you a microphone. I just want to make sure that my court reporter makes a clean record. Let me get that to you. Please feel free to remain where you are. I just want to get you a handheld.

All right. You may proceed.

MR. JOHN: What the evidence is going to show by the end of this trial is that Mr. Furman was never part of any scheme, but he is now being a scapegoat. You just got a preview of the government's case. They're going to talk to you about Par Funding, and they're going to tell you it's not about Par Funding, it's about Mr. Furman. The government is going to try to convince you through their evidence that Mr. Furman really isn't Mr. Furman, that his company, Fidelis, isn't really a company, that it, just like Mr. Furman, are just extensions of Par Funding.

But what you're going to discover through the evidence is that Mr. Furman was never even an employee of Par Funding, much less in any position to have insider knowledge, to exercise any authority or management over Par Funding. He never had access, most importantly, to the full scope of

1 Par Funding's internal financials.

2 The evidence is going to demonstrate that

3 Michael Furman and his company, Fidelis, were separate and

4 distinct entities from Par Funding. It will show that

11:09 5 Mr. Furman made diligent efforts to obtain as much information
6 as he could about Par Funding's internal financials and that
7 while his company Fidelis did issue promissory notes, it did so
8 only to accredited investors.

9 What you're going to learn is that when it comes to

11:09 10 those accredited investors and what Mr. Furman may or may not
11 have said to them is that he provided the information that was
12 given to him from Par Funding. He relied on Par Funding to
13 provide that information so that he could pass it onto his
14 investors.

11:09 15 You're going to learn that Mr. Furman relied on advice
16 of his attorneys, the people he hired to help make sure that he
17 was operating properly. Of course he followed their advice.
18 That's why he hired them.

19 Members of the jury, what you're going to learn

11:10 20 through the evidence is that Mr. Furman acted reasonably under
21 the circumstances. Michael Furman played by the rules, but now
22 the government is changing the game.

23 You're going to hear from Mr. Furman during the course

24 of this trial. He's going to talk to you about how he started
11:10 25 up. Shortly after college, he worked briefly for Prudential

1 and then set out on his own. He always wanted to build
2 something that helped people. That's what he'll tell you.

3 So he started his business, and he'll tell you how
4 hard he worked to build up a stellar reputation in West Palm
11:10 5 Beach, where his office is located, and to build that business
6 up. And he will explain to you that his company offered more
7 than just promissory notes. They offered a range of financial
8 services and products for the people that relied on him.

9 You're going to hear from Mr. Furman's mother, who has
11:11 10 managed his office ever since he started his business. She's
11 going to talk to you about the protocols and the processes that
12 Fidelis, Mr. Furman's company, had in place to ensure that they
13 were only marketing to accredited investors. She's going to
14 talk to you about those investment seminars you heard a little
11:11 15 bit about and how they instituted sign-in sheets and other
16 verifications to ensure that no nonaccredited investors were
17 slipping through.

18 You'll hear from Mr. Furman's administrative assistant
19 in his office who works closely with him. She's going to talk
11:11 20 to you about how they developed the advertising materials and
21 the marketing pieces to make sure that they were obviously
22 directed only to accredited investors. And through the
23 evidence, you're going to understand why that's important.

24 Now, you've heard the government already describe
11:12 25 Mr. Furman's company's, Fidelis, promissory notes as

1 unregistered securities. What you'll learn under the law is
2 that because Mr. Furman through Fidelis was playing by the
3 rules and only issuing notes to accredited investors, he was
4 entitled to an exemption under the rule that governs trade in
11:12 5 unregistered securities.

6 You are going to learn that through his attorneys, he
7 submitted the necessary paperwork to claim that exemption. And
8 just like they did during their opening, the government is
9 going to tell you that doesn't matter, ignore that, that's
11:13 10 wrong, literally moving those loopholes right in front of you,
11 changing the game.

12 You're also going to hear from Joseph Cole Barletta.
13 Mr. Cole is the former CFO, chief financial officer, of
14 Par Funding. And Mr. Cole, as he is known, is going to talk to
11:13 15 you a little bit about that merchant cash advance industry you
16 heard about. He's going to explain to you that the industry is
17 innovative and it's different, allowing businesses that
18 otherwise would not be able to access traditional loans to get
19 the cash that they need to continue operating.

11:13 20 More importantly, he's going to talk to you about
21 those default rates that you heard about from the government.
22 They have suggested to you that Mr. Furman should have known --
23 knew or should have known about this two thousand or some odd
24 lawsuits that Par Funding had filed against defaulted
11:14 25 customers, customers who had defaulted on their cash advance

1 contractors.

2 But what you're going to learn through the evidence
3 and through Mr. Cole's testimony is that that is not the
4 customary way to calculate default rates in the merchant cash
11:14 5 advance industry. And even if it was, he will advise you that
6 that information was never provided by Par to Mr. Furman about
7 the litigation against the customers or even how many customers
8 they had. He did not have that information.

9 And yet, the government is going to ask you to impose
11:14 10 an unreasonable standard on Mr. Furman, that somehow, some way,
11 he should have been crawling all over the court dockets
12 throughout the country, presumably, daily, to keep up with what
13 lawsuits Par Funding may have been filing.

14 He played by the rules. And now they are changing the
11:15 15 game. And you saw a preview of some of the evidence that the
16 government is going to suggest to you represents misstatements
17 or omissions by Mr. Furman made. You heard about .5 seconds of
18 a tape recording of that undercover FBI agent they talked
19 about.

11:15 20 Now, this person was sent out to contact Mr. Furman
21 and to inquire about investments. That's what they did. You
22 are never going to actually see that person come in here and
23 testify before you. The government is not going to submit that
24 false investor to cross-examination for context of those calls.
11:16 25 And context matters.

1 There's a reason you only heard a brief snippet of
2 that call and the rest of it was told to you by the government.
3 That's going to be how that goes with that type of evidence.
4 You're going to be presented with what Mr. Furman actually says
11:16 5 and then how the government tells you to interpret it.

6 For instance, you heard about how certain regulatory
7 actions that were recorded on the FBI calls in New Jersey and
8 Pennsylvania. Just taking the New Jersey action as an example,
9 it's true. On that call he did say things like the regulators
11:16 10 think it's good and they're backing off. But what you weren't
11 told by the government is that he also informed that false
12 investor that New Jersey had fined Par Funding, issued a fine
13 against them. He disclosed that.

14 Why wouldn't they tell you that? That's how that
11:17 15 evidence is going to be presented. And you're going to be left
16 to decide one thing, what should we know, what you hear or what
17 the government tells you to hear?

18 Mr. Furman, through Fidelis invested. Fidelis was an
19 investment company. Mr. Furman served the investors. Those
11:17 20 investors relied on him to provide them with information, and
21 he relied on Par Funding to provide him with information that
22 he could give to them.

23 What the evidence is going to lead you to conclude is
24 that everyone was relying on Par Funding to get it right. And
11:18 25 they didn't. That's not in dispute. But now the government is

1 asking you to hold Mr. Furman accountable for that failure. He
2 played by the rules and now they are changing the game. They
3 tell you this is not about Par Funding, but what the evidence
4 will show is that they are trying to make Mr. Furman
11:18 5 indistinguishable from that entity. They will ask you to hold
6 him accountable for Par Funding's actions. And we are asking
7 you to reject that unreasonable request and instead find
8 Mr. Furman not liable on all counts. Thank you.

9 THE COURT: Thank you very much.

11:19 10 SEC's first witness.

11 MS. BERLIN: The SEC will call Mr. Bradley Sharp.

12 THE COURT: All right.

13 Thereupon,

14 BRADLEY SHARP,

15 having been duly sworn by the court reporter, testified as
16 follows:

17 MR. HYMAN: We'd just like to renew our prior
18 objection that -- on the motion in limine for purposes of
19 preserving the record, Your Honor.

11:19 20 THE COURT: Okay. Understood.

21 You may proceed.

22

23 DIRECT EXAMINATION

24 BY MS. JOHNSON:

11:19 25 Q. Good morning, Mr. Sharp.

1 A. **Good afternoon.**

2 Q. Alise Johnson from the SEC. We've never met in person.

3 Could you briefly tell the jury about your educational
4 background since high school?

11:20 5 A. **I have a bachelor of science in accounting with emphasis in**
6 **business computer information systems from Colorado Mesa**
7 **University in Grand Junction, Colorado.**

8 **THE COURT:** I know it's tough. Get a little closer to
9 the microphone. There you go. I just want to make sure our
11:20 10 court reporter can hear you and we have some audio issues.

11 Thank you so much.

12 Go ahead.

13 **BY MS. JOHNSON:**

14 Q. Okay. And anything after? Any post graduate degrees?

11:20 15 A. **No. Just my bachelor's degree.**

16 Q. Do you have any licenses or -- any licenses?

17 A. **No.**

18 Q. And where are you currently employed?

19 A. **I work for Development Specialists, Inc., also known as**
11:20 20 **DSI.**

21 Q. And what do you do at DSI?

22 A. **I'm the president and chief executive officer.**

23 Q. And what is DSI's relationship, if anything, to the
24 Par Funding company?

11:20 25 A. **DSI was engaged as the financial advisor and operating**

1 consultant by the receiver, Ryan Stumphauzer.

2 Q. And what did you do in that role as consultant and advisor?

3 A. Really, two things. First, from an operational standpoint
4 we actually managed the day-to-day operations of Par Funding
11:21 5 and have custody of the books and records and things of that
6 nature.

7 Second, as a financial advisory, we provide the
8 receiver with any financial analysis, or forensic accounting
9 that he would request.

11:21 10 Q. And do you have any operational role with Par Funding?

11 A. Yes, we manage the business.

12 Q. As part of your duties as a consultant, have you had access
13 to Par Funding's books and records?

14 A. Yes.

11:21 15 Q. Have you reviewed those books and records?

16 A. Yes, we have.

17 Q. Have you interviewed any Par Funding employees?

18 A. Yes, we have.

19 Q. Do you -- have you retained any of those Par Funding
11:22 20 employees or has the receiver that you oversee any of the
21 former employees?

22 A. Yes.

23 Q. I'm sorry, when did you start your role as -- with
24 Par Funding?

11:22 25 A. End of July 2020, beginning of August.

1 Q. And what kind of company is Par Funding?

2 A. **Par Funding is a finance company, they make merchant cash**
3 **advances to businesses.**

4 Q. If we call those merchant cash advances MCA, will you be
11:22 5 familiar with what I'm talking about?

6 A. **Yes.**

7 Q. Okay. And how does Par Funding make money?

8 A. **The goal is for Par Funding to purchase receivables or cash**
9 **flow from a business at a discount and then get paid back a**
11:23 10 **higher percentage, and that is supposed to yield profit.**

11 Q. Okay. And where did Par Funding get the money to advance
12 to these companies?

13 A. **From investors.**

14 Q. In what format would they get that money? Did they sell
11:23 15 stock? Can you explain briefly how that worked?

16 A. **They essentially issued notes to investors, promissory**
17 **notes.**

18 Q. What did those notes state? What was the basis of those
19 notes?

11:23 20 A. **You know, they were usually a 12-month promissory note with**
21 **interest paid monthly.**

22 Q. To the investors?

23 A. **To the investors.**

24 Q. And how did Par Funding find individuals -- individual
11:24 25 investors?

1 **MR. HYMAN:** Your Honor -- foundation, Your Honor.

2 **THE COURT:** Overruled.

3 You may answer.

4 A. There were various, I guess, agents that would find
11:24 5 investors for them, financial planners, things of that nature.

6 **BY MS. JOHNSON:**

7 Q. And where were these agents located?

8 A. Across the country.

9 Q. And based on your review of Par Funding's records prior to
11:24 10 your involvement with them, who were the people that controlled
11 Par Funding?

12 **MR. HYMAN:** Your Honor, objection, hearsay.

13 **THE COURT:** Overruled.

14 You may answer.

11:24 15 A. The primary person was Joe LaForte, also known as Joe Mack,
16 Joe Cole, who was the CFO, and Lisa McElhone.

17 **BY MS. JOHNSON:**

18 Q. Okay, thank you. Now, were they sales agents or -- were
19 they sales agents? I'll keep it at that.

11:25 20 A. I don't believe so.

21 Q. Okay. And how did the sales agents work in relation to
22 raising money for Par Funding?

23 **MR. HYMAN:** Foundation, Your Honor.

24 **THE COURT:** Overruled.

11:25 25 You may answer.

1 A. A couple of ways. One is finding individual investors.
2 And then two, they were -- they created agent funds where a
3 fund was created, raised money from individual investors, then
4 that fund would make a loan to Par Funding. So there was kind
11:25 5 of a fund in between Par Funding and the individual investors.
6 We called those agent funds.

7 BY MS. JOHNSON:

8 Q. Okay. So if I refer to those as "agent funds," you'll know
9 what I'm talking about?

11:26 10 A. Yes.

11 Q. Are you familiar with a company called A Better Financial
12 Plan or ABFP?

13 A. Yes.

14 Q. And how are you familiar with that company?

11:26 15 A. It is one of the entities that is in the receivership. It
16 is an agent fund.

17 MR. HYMAN: Foundation and hearsay, again, Your Honor.

18 THE COURT: Overruled.

19 MR. HYMAN: And lack of -- well, foundation and

11:26 20 hearsay.

21 THE COURT: Overruled.

22 BY MS. JOHNSON:

23 Q. Have you reviewed the records of A Better Financial Plan?

24 A. Yes.

11:26 25 Q. Do you have any responsibilities in relation to A Better

1 Financial Plan as part of your role as consultant?

2 A. Yes.

3 Q. And what are those?

4 A. As another entity that is in the receivership, we are
11:26 5 tasked by the receiver with any management of any operations,
6 custody of the books and records and any accounting or forensic
7 accounting that is needed to be done.

8 Q. And what was A Better Financial Plan's relationship to
9 Par Funding?

11:26 10 A. They were an agent fund. They raised money --

11 MR. HYMAN: Objection, hearsay, Your Honor.

12 THE COURT: Overruled.

13 BY MS. JOHNSON:

14 Q. Can you repeat that? I didn't hear it. I'm sorry.

11:27 15 A. They were an agent fund. They raised money from investors
16 and then made loans to Par Funding.

17 Q. I'm sorry if I've asked this, do you have records -- A
18 Better Financial Plan's records?

19 A. Yes.

11:27 20 Q. And have you reviewed those records?

21 A. Yes.

22 Q. And based on your review, who controlled A Better financial
23 Plan before the receiver's involvement?

24 A. Dean Vagnozzi.

11:27 25 Q. Are you familiar with a company called United Fidelis

1 Group?

2 A. **Yes.**

3 Q. How are you familiar with that company?

4 A. **It was a financial planner that was involved in setting up**
11:27 5 **an agent fund.**

6 Q. Do you have any duties in relation to United Financial
7 Group?

8 A. **Yes.**

9 Q. And what are those?

10 A. **United Fidelis is also an entity that is in receivership,**
11 **so our duties are the same with that entity.**

12 Q. And the same as you've previously discussed?

13 A. **Correct.**

14 Q. Okay. Have you had access to United Fidelis's books and
11:28 15 records?

16 A. **Yes.**

17 Q. And have you had a chance to review those?

18 A. **Yes.**

19 Q. What records of United Fidelis have you reviewed?

11:28 20 A. **Well, United Fidelis -- not a lot -- there's not a lot of**
21 **records there, primarily tax records.**

22 Q. Okay. What about a company called Fidelis Financial
23 Planning, are you familiar with them?

24 A. **Yes.**

11:28 25 Q. How are you familiar with them?

1 A. They are another entity in the receivership. They are an
2 agent fund. They've raised money from investors.

3 Q. And do you have access to their records?

4 A. Yes.

11:28 5 Q. What records have you reviewed of theirs, if any?

6 A. Again, not a lot, mostly tax records and records of
7 investors.

8 Q. And who controlled United Fidelis and Fidelis Financial
9 Planning before you were involved?

11:29 10 A. Michael Furman.

11 Q. Where were those two companies located?

12 A. West Palm, in South Florida.

13 Q. What services did Fidelis provide to Par Funding?

14 A. As I said, they were an agent fund. They raised money from
11:29 15 investors and then loaned that money to Par Funding.

16 MR. HYMAN: Objection, Your Honor.

17 THE COURT: Overruled.

18 BY MS. JOHNSON:

19 Q. Based on your review of Par Funding's records, can you tell
11:29 20 us how much money was -- Fidelis raised for Par Funding?

21 A. Yes, about 12.1 million dollars.

22 Q. And what was the purpose of the money that was sent from
23 Fidelis to Par Funding?

24 A. To be used in Par Funding's business to make MCAs.

11:30 25 Q. MCAs being the cash advances to other businesses?

1 A. **Correct.**

2 Q. Based on your review of Par Funding records, do you know
3 how much money Par Funding sent back to the Fidelis companies?

4 A. **About 6.4 million dollars.**

11:30 5 Q. Does Par Funding still owe the Fidelis companies any
6 outstanding monies?

7 A. **Yes.**

8 Q. What were those for?

9 A. **That's the remaining that has not been paid, depending upon**
11:30 10 **how the 6.4 million is characterized as principal or interest,**
11 **there's remaining cash due of 5.6 million dollars.**

12 Q. That's what's owed back to the Fidelis companies or their
13 investors? What is that number?

14 A. **That's the 5.6 million that Par Funding owes to Fidelis.**

11:31 15 Q. I want to show you what's been previously marked as
16 Plaintiff's Exhibit 205. Let me know if you want a paper
17 version.

18 May I approach?

19 **THE COURT:** You may.

11:31 20 (Thereupon, the exhibit was marked for identification.)

21 **BY MS. JOHNSON:**

22 Q. Do you recognize this exhibit?

23 A. **Yes.**

24 Q. And what, is it?

11:31 25 A. **This is a schedule of the individual investors into the**

1 **Fidelis fund.**

2 **MR. HYMAN:** Your Honor, we're going to object. We'll
3 give it a minute, but we're going to object to this hearsay.
4 It's not Bates-stamped. Lack of authentication and this is
11:32 5 going into the role of expert testimony, Your Honor.

6 **THE COURT:** Overruled as to all of those objections.
7 If you want to lay the proper predicate, please go ahead.

8 **BY MS. JOHNSON:**

9 Q. Do you know who prepared this chart?

11:32 10 A. I don't know who prepared it. It was in the ABFP records.

11 Q. So this is one of the records that you have access to in
12 your role as the consultant for Par Funding?

13 A. Correct.

14 Q. And what does this chart reflect?

11:32 15 A. This reflects the individual investors into Fidelis. It
16 shows what their amount, the source of the cash, the rate on
17 the note, the amount of money per month that CBSG was paying to
18 the Fidelis fund, how much of that payment went to the
19 investor, how much of that was revenue left over after the
11:33 20 investor payment, so basically the CBSG payment less the
21 investor payment.

22 And then there was another column that listed the ABFP
23 Management fee. The fee was due to ABFP for processing.

24 **MS. JOHNSON:** Your Honor, is it okay if I publish this
11:33 25 for the jury?

1 THE COURT: I think we need a little more of a
2 business record exception for this. I'm not certain he has no
3 underlying knowledge. He found it in ABFP records. I have
4 heard nothing else, other than what is regularly kept in the
11:33 5 course of those records. Anything other than that? That's
6 insufficient.

7 MS. JOHNSON: Okay. I'll keep laying the predicate
8 then.

9 THE COURT: Yeah.

11:33 10 BY MS. JOHNSON:

11 Q. Was this kept as a part of ABFP's records?

12 MR. HYMAN: Foundation, Your Honor.

13 THE COURT: Overruled. He has a foundation. We have
14 already heard he's working inside the company, but I need to
11:34 15 understand how he came into contact with these documents and
16 how he knows that they're a part of the regularly kept business
17 records of ABFP or any other entity that he was put in charge
18 of.

19 Go ahead.

11:34 20 A. Yes.

21 BY MS. JOHNSON:

22 Q. Have you had a chance to review this record prior to your
23 testimony today or being asked to come in to testify today?

24 A. Yes.

11:34 25 Q. And was that part of your running the operations of ABFP, A

1 Better Financial Plan company?

2 A. It's part of our task as an operations and our financial
3 advisory task to the receiver.

4 Q. And what did you use this record for?

11:34 5 A. This record is utilized to get an understanding of what
6 investors are due from Fidelis. So we understand what was due
7 from Par to Fidelis. Now we need to understand what is due
8 from Fidelis down to the individual investor.

9 MS. JOHNSON: Your Honor, I would move to publish this
11:35 10 to the jury.

11 THE COURT: Sir, have you done any diligence on checks
12 these records and these am in the spreadsheet.

13 THE WITNESS: Not as of yet, Your Honor. We're just
14 now starting the claims process.

11:35 15 THE COURT: All right. What was the objection?

16 MR. HYMAN: Same lack of foundation. He's not --
17 they've not established the predicate, they've not established
18 that it was made at or around the time of the event, who made
19 it, how it's been made or anything else beyond the fact that
11:35 20 that it's a document he happened to find.

21 THE COURT: That's going to be overruled. The Court's
22 going to find that there's enough trustworthiness given the
23 work that he's done with the company to allow that document to
24 be admitted at this time as a business record of ABFP. You
11:35 25 play publish it to the jury.

1 MS. BERLIN: I'll move it into the record.

2 THE COURT: That will be admitted. Let me get a
3 number specifically as to what that is. I know it's been
4 Bates-labeled --

11:35 5 MS. BERLIN: P 205.

6 THE COURT: 205.

7 MR. HYMAN: Your Honor, it has not been Bates-labeled.

8 THE COURT: At this point, Bates-labeled or not
9 Bates-labeled, if it's going to be identified, so that we have
10 a clean record, it will be 205; is that correct? Plaintiff's
11 205?

12 MS. JOHNSON: Yes, Your Honor.

13 THE COURT: That will be admitted at this time over
14 defense objection. You may publish that to the jury.

11:36 15 (Thereupon, the exhibit was admitted into evidence.)

16 THE COURT: And as that's getting published, does this
17 document have any familiarity with other documents that have
18 been found as to your diligence, meaning is this a common or
19 typical document regarding some of the loans being made?

11:36 20 THE WITNESS: This is the best answer to that is this
21 is a document in ABFP and also in the files of Fidelis.

22 THE COURT: Okay so.

23 THE WITNESS: So it was a shared document.

24 MR. HYMAN: Then, Your Honor, given the lack of
11:37 25 verification --

1 THE COURT: We have already heard your objection.
2 It's been preserved for the record. It's been preserved for
3 the record. It's been overruled.

4 MR. HYMAN: I just want to add unduly prejudicial.

11:37 5 THE COURT: Understood. All right. Let's move on,
6 please. You can publish it whenever you're ready. Go ahead.

7 MS. JOHNSON: Okay. Great.

8 THE COURT: Ladies and gentlemen of the jury, can you
9 see that? All right. Go ahead.

11:37 10 BY MS. JOHNSON:

11 Q. Can you walk us through the top, what each of the column
12 shows starting with the left-hand column with note date?

13 A. Certainly. So this is a schedule of each individual
14 investor note. You'll see the first column is the date of the
11:37 15 note. The next column is the last name of the investor. Then
16 the first name, then the amount of the investor. The next is
17 accredited or not accredited, are they an accredited investor.
18 The CAMA account, it is a shared account. So that handles
19 transactions for an IRA. And you'll see the next is cash --

11:38 20 Q. I was going to ask you about that. I'll take it one by
21 one.

22 When you said CAMA and related to an IRA, can you
23 explain that?

24 A. My understanding is it's a clearing account to manage
11:38 25 investments from an IRA because they can't be given to the

1 individual. They have to be in third-party custody to maintain
2 the tax shelter.

3 Q. And then the next column, CBSG rate, what is that?

4 A. That is the rate of the note paid by CBSG to Fidelis.

11:38 5 Q. And then CBSG payment?

6 A. That's the monthly interest on that amount of note at that
7 rate, and that's the monthly interest. So that would be what
8 CBSG would pay Fidelis.

9 Q. And CBSG, when we refer to that, I call it Par Funding,
11:39 10 just because it's less of a mouthful. Can we have that
11 understanding that we'll call CBSG Par Funding?

12 A. Correct. Par Funding is a DBA of CBSG.

13 Q. And investor interest payments, what is that?

14 A. That's the amount of interest per month that gets paid to
11:39 15 that investor from the Fidelis fund.

16 Q. And then revenue after investor payment, what is that?

17 A. So that's the interest paid by Par Funding less the amount
18 that has to go to the investor. So that is the profit to
19 Fidelis, the excess interest.

11:39 20 Q. Okay. And then the ABFP Management fee, what is that?

21 A. That's the fee that ABFP received in order to administer
22 this process.

23 Q. And if we just walk through one of these, we'll start with
24 the first one, how much was Par Funding getting out of this?

11:40 25 It says CBSG payment. How much was that represented in that

1 column for the 5-25-2018 date?

2 **MR. HYMAN:** We're going to object to this. This is
3 going into expert witness testimony. He's testifying as to the
4 substance and what the document means when he's done no
11:40 5 verification to understand the business records and trying to
6 seek its admission, but the document speaks for itself.

7 **THE COURT:** Overruled.

8 Go ahead.

9 **A. So I'm sorry, are we talking about the column that says**
11:40 10 **CBSG payment?**

11 **BY MS. JOHNSON:**

12 **Q. Yes, there's an amount represented there, \$3,466?**

13 **A. Sorry. That's different than the first page on this**
14 **screen.**

11:40 15 **Q. The very top column, 5-25-2018?**

16 **A. That's not -- I'm on a different page.**

17 **Q. So let's start with the first one under CBSG payment.**
18 **There's a number for \$3,466.**

19 **What does that number represent?**

11:41 20 **A. Payment from Par Funding to the Fidelis fund.**

21 **Q. And who was in charge of the Fidelis fund?**

22 **A. Michael Furman.**

23 **Q. And then the next column, where it says \$2,080, what does**
24 **that number represent?**

11:41 25 **A. That represents the -- that month's -- a month's interest**

1 payment from the Fidelis fund to that particular investor, the
2 Bernardo revocable trust.

3 Q. And was that to come out of the \$3,466?

4 A. Correct.

11:42 5 Q. And then the next column, where it says \$1,386, what does
6 that represent?

7 A. That's the net that's left over. If you receive 3,466, you
8 pay out 2,080, you would have left \$1,386.67.

9 Q. And where did that -- who got that money?

11:42 10 A. That would stay in the Fidelis fund.

11 Q. The next one has \$346. What does that represent?

12 A. That represents a management fee due to ABFP for managing
13 the investor process and payments to investors.

14 Q. So these three columns that we just went over are the split
11:42 15 of the \$3,466?

16 A. Correct.

17 Q. It's how it got divvied up.

18 If you look at the next three entries for 6-10-2018,
19 there's three entries there: Palm Beach, Sandoval, and Zehren.

11:43 20 A. Yes.

21 Q. But it's a one note date. Why is that? Do you know?

22 A. The -- and I have not verified. That would equate to a
23 note from Fidelis to Par Funding.

24 Q. So one note with three?

11:43 25 A. With three investors.

1 Q. Okay. And if we look at that one, if we look at the
2 investor interest payment, there's an amount of \$2,250?

3 A. **Correct. That's the total.**

4 Q. And that's what the investors were being paid at these
11:44 5 three notes?

6 A. **Correct.**

7 Q. And that was on a monthly basis?

8 A. **Yes.**

9 Q. And then how much was the revenue after that? How much was
11:44 10 Fidelis retaining?

11 A. **\$2,333.33.**

12 **MS. JOHNSON:** I'm going to show you what's been
13 previously marked -- you can take that down -- as Exhibit 19,
14 P 19.

11:45 15 (Thereupon, the exhibit was marked for identification.)

16 **BY MS. JOHNSON:**

17 Q. I'm showing you what's been marked as Plaintiff's
18 Exhibit -- premarked as Plaintiff's Exhibit 19.

19 Do you recognize that document?

11:45 20 A. **I do.**

21 Q. What is it?

22 A. **It is a promissory note from ABFP Income Fund to Russell
23 Meyer, his IRA.**

24 Q. And have you -- in your role as consultant to ABFP, have
11:45 25 you seen this record or similar records before?

1 A. Yes.

2 Q. And in what capacity? What did you do?

3 A. This is a --

4 MR. HYMAN: We'll let her go through the predicate,
11:46 5 but we already know where we're going, Your Honor.

6 THE COURT: Please have a seat.

7 Go ahead.

8 A. This is one of the promissory notes that we are reviewing
9 as a part of the claims process to understand what investors
11:46 10 are owed.

11 BY MS. JOHNSON:

12 Q. And was this note or similar notes kept as business records
13 by ABFP?

14 A. Yes.

11:46 15 Q. Where would you -- where were they kept?

16 A. I don't recall exactly where they were kept. A lot of
17 these were electronic.

18 Q. So they're part of ABFP's electronic records?

19 A. Correct.

11:46 20 Q. And how do you use these notes? You said you've been
21 reviewing them as part of your claims process.

22 Can you explain a little bit about that?

23 A. Sure. One of the things we're going to be tasked with is
24 understanding what was owed to each individual investor. You
11:47 25 know, there -- was there truly a promissory note? Are they --

1 is ABFP obligated to repay that particular investor?

2 So we want to match up the notes to the electronic
3 books and records.

4 Q. Are there other records that also reflect what the
11:47 5 promissory notes -- the information in the promissory notes
6 that you've reviewed?

7 A. Correct, there's schedules of investors.

8 Q. But this would be the primary source that you would refer
9 to, or would it be?

11:47 10 A. It is a verification process to ensure that each -- there's
11 an a note due to each investor.

12 MS. JOHNSON: Your Honor, I'd ask that Exhibit 19 be
13 allowed into evidence.

14 THE COURT: Objection for the record?

11:47 15 MR. HYMAN: Yes, Your Honor for purposes of going
16 forward, just to speed things up, can we --

17 THE COURT: You have a standing objection to what? Go
18 ahead.

19 MR. HYMAN: Obviously lack of foundation, personal
11:48 20 knowledge, improper expert testimony, as well as hearsay, not
21 business records.

22 THE COURT: Okay. Thank you. That's overruled. That
23 will be admitted as P 19 at this time.

24 (Thereupon, the exhibit was admitted into evidence.)

11:48 25 BY MS. JOHNSON:

1 Q. This note -- what is the date of the -- that the note was
2 dated?

3 A. **March 10th, 2018.**

4 Q. And I think you've already testified to this, this is a --
11:48 5 who was the issuer of the note?

6 A. **The -- it's due from ABFP Income Fund to Russell Meyer's**
7 **IRA.**

8 Q. And if you turn -- who signed it on behalf of ABFP?

9 You have to turn to the very -- second to last page.

11:49 10 A. **Dean Vagnozzi.**

11 Q. Thank you.

12 I'm going to ask you to look at P -- what's been
13 previously identified as P 20.

14 (Thereupon, the exhibit was marked for identification.)

11:49 15 **BY MS. JOHNSON:**

16 Q. Do you recognize what this is?

17 A. **Yes.**

18 Q. What is it?

19 A. **This is an additional note from ABFP to the Russell Jamison**
11:49 20 **Meyer IRA, same date, different amount.**

21 Q. And how do you recognize this? Is this the same --

22 A. **I've reviewed it previously, yes.**

23 Q. Under what circumstances did you review it previously?

24 A. **As part of my review of the records of ABFP.**

11:49 25 **MS. JOHNSON:** Your Honor, we'll move to publish this

1 one for the same background as P 19, it's almost identical.

2 **THE COURT:** Same objection?

3 **MR. HYMAN:** Same objection, Your Honor.

4 **THE COURT:** Objection overruled.

11:50 5 That will be published. P 20 will be admitted at this
6 time.

7 (Thereupon, the exhibit was admitted into evidence.)

8 **BY MS. JOHNSON:**

9 Q. And what was the note of this -- what was the date of this
11:50 10 note when it was issued?

11 A. **Also March 10th of 2018.**

12 Q. And who was the borrower of the note, borrower/issuer?

13 A. **ABFP Income Fund, LLC.**

14 Q. And this was to -- who was the lender?

11:50 15 A. **Russell Jamison Meyer IRA.**

16 Q. When they say "lenders," is that the investor's name?

17 A. **Correct.**

18 Q. And similarly, who signed this document on behalf of ABFP
19 Management?

11:50 20 A. **Dean Vagnozzi.**

21 **MS. JOHNSON:** I'll move that P 20 into evidence.

22 **BY MS. JOHNSON:**

23 Q. Based on your review of Par Funding records, can you tell
24 the jury how much money Par Funding advanced or loaned to
11:51 25 merchants prior to your coming on board?

1 **MR. HYMAN:** Objection, relevance, Your Honor.

2 **THE COURT:** Overruled.

3 **A.** About a billion one hundred million dollars.

4 **BY MS. JOHNSON:**

11:51 5 **Q.** And based on your review of Par Funding records, can you
6 tell the jury how much money Par Funding was repaid by those
7 merchants that it advanced the money to when you came on board?

8 **A.** About 39 million more than that, so about a billion 139.

9 **Q.** So the difference was 39 million?

11:52 10 **A.** 39 million. That's through the receivership date of 2020.

11 **Q.** And the source of all that money that it lent out, what was
12 Par Funding's source of cash to make those -- I'm going to call
13 them loans instead of advances because I don't think anybody in
14 the regular world calls them advances, but can we have the
11:52 15 understanding that loans means advances?

16 **MR. HYMAN:** Objection, Your Honor, calls for a legal
17 conclusion, improper expert testimony. Also we're going to
18 object to the foregoing questions, lack of foundation and
19 hearsay.

11:52 20 **THE COURT:** Overruled.

21 You may answer.

22 **A.** I'd prefer to use the word "advance."

23 **BY MS. JOHNSON:**

24 **Q.** Okay. I will use the word advance.

11:52 25 So what was the primary's source of money for

1 Par Funding to make the advances to the companies?

2 A. **Funding was from investors, either directly from individual**
3 **investors or through the agent funds.**

4 Q. I'm going to show you what's been previously marked as
11:53 5 exhibit -- Plaintiff's Exhibit 270, and ask you to take a look
6 at it.

7 (Thereupon, the exhibit was marked for identification.)

8 **BY MS. JOHNSON:**

9 Q. Do you recognize this document?

11:53 10 A. **I do.**

11 Q. How do you recognize it?

12 A. **This is an audit performed by Freedman LLP on CBSG and its**
13 **affiliates, dated December of 2017.**

14 Q. Okay. Is this a record that you reviewed as part of your
11:53 15 duties in relation to CBSG, doing business as Par Funding?

16 A. **Yes.**

17 Q. And did you review this as part of your duties in
18 relationship to Par Funding?

19 A. **Yes.**

11:54 20 Q. And who was Freedman LLP?

21 A. **Freedman LLP were the former auditors of Par Funding.**

22 Q. And what year was this? Was this related to a particular
23 year or overall?

24 A. **Yes, it's for the year ended December of 2017.**

11:54 25 Q. Were there any other audited financials in any other years

1 for Par Funding that you found in your records?

2 A. **Not that I have located.**

3 Q. Do you know of any others that were done for any other
4 years?

11:54 5 A. **No.**

6 **MS. JOHNSON:** Your Honor, I would move P 270, I'd ask
7 to publish it to the jury.

8 **THE COURT:** Same objection?

9 **MR. HYMAN:** Also it's not a business record of
11:54 10 Par Funding, it's a business record of the auditor and is
11 otherwise an expert report from them, Your Honor.

12 **THE COURT:** Okay. That will be admitted, P 270 over
13 defense objection.

14 (Thereupon, the exhibit was admitted into evidence.)

11:55 15 **MR. HYMAN:** And also relevancy. Mr. Furman has not
16 alleged he would be involved in this at that time.

17 **THE COURT:** Overruled.

18 **BY MS. JOHNSON:**

19 Q. Without going through this long document line through line,
11:55 20 what is this report?

21 A. **This is a standard audit of Par Funding. It's got an**
22 **audited balance sheet, income statement and cash flow with**
23 **notes from the auditor.**

24 Q. If we could go to page 3. If I could direct you to look at
11:55 25 page 3. I think you said this reflects the assets. Just tell

1 us generally what this page reflects.

2 A. This is the balance sheet, so it reflects the assets,
3 liabilities and the stockholders' equity as of that particular
4 date.

11:56 5 Q. And it's dated December 31st, 2017?

6 A. Correct.

7 Q. And if we turn to page 4, can you walk us through the --
8 what that reflects and the numbers there, starting with net
9 revenues.

11:56 10 A. Yeah, this is the income statement. So it starts with the
11 revenue that Par Funding earned, which is basically factoring
12 fees of 63 million, operating expenses of about 57.7 million.
13 So they had a positive income from operations of about 5.5
14 million. Then they had interest expense, which were basically
11:57 15 the interest paid to investors, of about 13.7 million. So they
16 had a net loss before taxes of 8.2 million. The tax benefit is
17 because you have a loss you can apply for refund or use that
18 loss, so there's a benefit of 1.5 million. That serves to
19 reduce the loss to be 6.7 million. And then there's a loss
11:57 20 that's attributed to a subsidiary of 24 thousand. So the net
21 loss attributable to Par Funding is 6.7 million dollars for the
22 year-ended December 31, 2017.

23 Q. So they had an operating net loss of 27 -- as of
24 December 31st, 2017 of how much?

11:58 25 A. Their net loss was 6.7 million.

1 MR. HYMAN: Again, same objections, Your Honor.

2 THE COURT: Overruled.

3 MS. JOHNSON: Thank you, Your Honor. If I haven't
4 moved, I would move to admit this into evidence.

11:58 5 THE COURT: 270 has been admitted already, over
6 defense objection.

7 MS. JOHNSON: Thank you. All right.

8 BY MS. JOHNSON:

9 Q. I'm going to direct you to what's been previously marked as
11:58 10 Plaintiff's Exhibit 574.

11 (Thereupon, the exhibit was marked for identification.)

12 BY MS. JOHNSON:

13 Q. Do you recognize what's been previously marked as
14 Plaintiff's 574?

11:59 15 A. Yes.

16 Q. And what is it and how do you recognize it? I'll first
17 start with, how do you recognize it?

18 A. This is a listing that we have used -- we received from the
19 courts in Philadelphia to provide a listing of the judgments
11:59 20 that Par Funding was pursuing against individual merchants.

21 MR. HYMAN: Your Honor, may I approach on this one?

22 THE COURT: No. We can move on.

23 MR. HYMAN: Okay. However, we would -- well, we'll
24 get there in a second, but --

11:59 25 THE COURT: All right. Then when we get there, please

1 rise. Let's have a seat.

2 Please, go ahead.

3 **BY MS. JOHNSON:**

4 Q. I'm sorry, you said this was something -- a court record
12:00 5 that you requested. Can you tell me about that?

6 A. The -- I have to give a little background. For Par Funding
7 to collect from merchants it pursued judgments against its --
8 the individual merchants through the Philadelphia court of
9 common pleas. We needed to keep track of everything that was
12:00 10 out there, so we asked the Court for a listing of everything
11 that they had.

12 Q. So these are -- you said you moved court findings against
13 merchants. These are merchants who have not paid all or part
14 of their advance back to Par Funding?

12:00 15 A. Correct.

16 Q. And so what would be the result of that? You said for them
17 to get to collect, what would they do?

18 A. So in the case where the advance needed to be collected, we
19 would pursue a judgment. It's a called a confession of
12:00 20 judgment. So essentially the merchant agrees at the time they
21 get the advance to a judgment against them, should they default
22 under the agreement. This is a listing of all of the merchants
23 where Par Funding is seeking to enforce that judgment against
24 them through the Philadelphia court system.

12:01 25 Q. Are there other confessions of judgments and other -- did

1 they always bring them in Philadelphia or are there other
2 states that you would pursue or that the company would pursue?
3 Par Funding would pursue?

4 **A. Par Funding also pursued some in New York and New Jersey.**

12:01 5 **Q. How many confessions of judgments?**

6 **MR. HYMAN:** Objection, Your Honor, hearsay. And also
7 they're trying to back door an inadmissible document that's not
8 a business record.

9 **THE COURT:** Is this a public record that has been
12:01 10 procured from the court system in Union County in Philadelphia?

11 **MS. JOHNSON:** Yes.

12 **MR. HYMAN:** It does not appear to be a public record.

13 **THE COURT:** I'm not asking you for your input right
14 now. I'm asking the SEC. And I would ask can we get an
12:02 15 explanation from the witness as to how he procured this
16 document. He said it was provided by the Court system. Can
17 you maybe ask some questions to see if under 803 sub 8, who
18 qualify as public records so I don't have to deal with
19 unnecessary objections, please?

12:02 20 **MS. JOHNSON:** Yes.

21 **BY MS. JOHNSON:**

22 **Q. Yes. Is this a publically available court record --**

23 **THE COURT:** I'm asking you, Mr. Sharp. Maybe I'll
24 streamline this. Can you please let the Court know, for
12:02 25 purposes of admissibility, how you came into contact with this

1 record? Did you guys request this from the Clerk of Court from
2 the Philadelphia County? I need to get some information on
3 that.

4 **THE WITNESS:** Yes, Your Honor, that's exactly what we
12:02 5 did. In order to deal with the litigations stay that was in
6 place, we needed to find out what cases had been opened through
7 counsel in Philadelphia. We reached out to the clerk who was
8 kind enough to provide us a listing of the open cases so that
9 we could apply the blanket stay to those and as necessary, lift
12:03 10 the stay on an individual basis. So this was received from the
11 clerk's office in the court in Philadelphia.

12 **MR. HYMAN:** Your Honor, under 988 F.2d 573, Johnson v.
13 Ford Motor Company, the Fifth Circuit --

14 **THE COURT:** I don't need -- first of all, you've got
12:03 15 to rise. Number 2, I don't need standing objections.
16 Overruled. You can make a record. The Court finds there's
17 been sufficient predicate laid and finds this is a public
18 record and if we can proceed with these questions. I'd also
19 like to get to the relevancy of why I'm spending so much on
12:03 20 defaulted issues being chased in Philadelphia, please.

21 **MS. JOHNSON:** I'd like to move it into evidence and
22 publish it.

23 **THE COURT:** That will be admitted at this time and
24 published.

12:03 25 (Thereupon, the exhibit was admitted into evidence.)

1 **BY MS. JOHNSON:**

2 Q. How many confessions of judgment when you came on were
3 outstanding in the court of Philadelphia?

4 A. **1,715.**

12:04 5 Q. And you said that they had also filed similar actions in
6 New York.

7 How many were pending in New York when you came on?

8 A. **From memory, about another 350.**

9 Q. On the Pennsylvania, on document 270, do you have a dollar
12:04 10 amount? Do you know how much money was outstanding and owed to
11 Par Funding?

12 A. **Off the top of my head, it was north of 60 million dollars.**

13 Q. And I'm going to show you what's been previously marked as
14 Exhibit 64.

12:05 15 (Thereupon, the exhibit was marked for identification.)

16 **BY MS. JOHNSON:**

17 Q. And ask you if you recognize it and if so, how do you
18 recognize it?

19 A. **This is a Form D filed by CBSG with the SEC.**

12:05 20 Q. And have you -- as part of your duties as consultant for
21 Par Funding, have you had a chance to review these records --
22 this record filed by Par Funding?

23 A. **Yes.**

24 Q. And what was the circumstance where you reviewed this
12:05 25 record?

1 A. Trying to understand what documents had been filed by
2 Par Funding.

3 Q. And what is the record? What does it reflect?

4 A. It's a notice of exempt offering of securities.

12:06 5 MS. JOHNSON: Your Honor, I'd like to publish P 64 for
6 the jury.

7 THE COURT: Any objection?

8 MR. HYMAN: Relevance, Your Honor.

9 THE COURT: Okay. That's overruled.

12:06 10 We'll admit P 64.

11 (Thereupon, the exhibit was admitted into evidence.)

12 BY MS. JOHNSON:

13 Q. And if we look at the top -- if we go to the second page,
14 we're at the top. It says: Form D notice of exempt offering
12:07 15 of securities?

16 A. Yes.

17 Q. Now, you said you were reviewing this. Why did you review
18 the Form Ds?

19 A. To understand what has been filed by CBSG with the SEC.

12:07 20 Q. And what is your understanding of why this was filed?

21 A. Based on the form they were seeking to sell securities that
22 were exempt based on Rule 506(b).

23 Q. And if we go to the last page, it says: Please verify the
24 information. Starting with that paragraph, it says: In

12:08 25 submitting this notice, each issuer named above is notifying

1 the SEC and each state in which this notice is filed of the
2 offering of securities described and undertaking to furnish
3 them upon written request in accordance with applicable the
4 information furnished to offerees.

12:08 5 Right? That's what they're telling the SEC?

6 A. **Correct.**

7 Q. And who was the entity? Who was the issuer that this was
8 filed on behalf of?

9 A. **Complete Business Solutions Group Inc.**

12:08 10 Q. Thank you. Now, by filing for the Form D, does that mean
11 that they were exempt? You're not opining that they were
12 exempt from the securities registration, are you?

13 **MR. HYMAN:** Objection, Your Honor.

14 **THE COURT:** Overruled.

12:09 15 A. **I'm not expressing an opinion.**

16 **BY MS. JOHNSON:**

17 Q. I'll show you what's been previously marked as
18 Plaintiff's Exhibit 43.

19 (Thereupon, the exhibit was marked for identification.)

12:09 20 **BY MS. JOHNSON:**

21 Q. And do you recognize this document?

22 A. **Yes.**

23 Q. And what is it?

24 A. **It's also a notice of exempt offering of securities, but**
12:10 25 **the issuer is ABFP Income Fund 2, L.P.**

1 Q. And similar to the other one, did you have occasion as part
2 of your duties as to the consultant to review this Form D
3 record?

4 A. Yes.

12:10 5 Q. And why did you review it?

6 A. To determine what has been filed by ABFP with the SEC.

7 MS. JOHNSON: Your Honor, I'd like to admit
8 Plaintiff's Exhibit 43 into evidence.

9 THE COURT: Any objection?

12:10 10 MR. HYMAN: The relevancy as well as hearsay.

11 THE COURT: Overruled.

12 MR. HYMAN: The same objections we have been raising
13 all afternoon, Your Honor.

14 THE COURT: Overruled.

12:11 15 (Thereupon, the exhibit was admitted into evidence.)

16 BY MS. JOHNSON:

17 Q. We're in the home stretch. Five more minutes.

18 I'd like to show you what's been previously marked as
19 Plaintiff's 45. Can you look at it?

12:11 20 (Thereupon, the exhibit was marked for identification.)

21 BY MS. JOHNSON:

22 Q. And do you recognize this exhibit?

23 A. Yes.

24 Q. And what is it?

12:11 25 A. It is also a notice of exempt offering of securities, but

1 **the issuer is ABFP Income Fund LLC.**

2 Q. And similar to my two prior questions, the other Form Ds is
3 how you recognize it and how you reviewed it, would your answer
4 be similar?

12:11 5 A. **Yes.**

6 **MS. JOHNSON:** We'd like to publish this to the jury
7 and make it part of the -- enter it into the record.

8 **THE COURT:** That will be admitted at this time. And I
9 want to make sure you get the number right again. Was it P 45?

12:12 10 **MS. JOHNSON:** Yes, Your Honor.

11 **THE COURT:** That will be admitted.

12 (Thereupon, the exhibit was admitted into evidence.)

13 **BY MS. JOHNSON:**

14 Q. I'm going to show you what's been previously marked as
12:12 15 Plaintiff's Exhibit 86.

16 (Thereupon, the exhibit was marked for identification.)

17 **BY MS. JOHNSON:**

18 Q. And ask you to look through it. And do you recognize what
19 this is?

12:12 20 A. **Yes. This is a note from CBSG.**

21 Q. And is this one of the records you would have reviewed as
22 part of your duties as a consultant to Par Funding?

23 A. **Correct.**

24 Q. And have you reviewed this and/or similar records, similar
12:13 25 notes as part of your duties as Par Funding?

1 A. Yes.

2 Q. And who is the maker of the note?

3 A. The maker is Complete Business Solutions Group Inc.

4 Q. Doing business as Par Funding?

12:13 5 A. It just has the name.

6 Q. And what was the date that this note was issued according
7 to the date on the document?

8 A. The note is dated October 28th, 2016.

9 MS. JOHNSON: Your Honor, we would move document 86
12:13 10 into evidence.

11 THE COURT: That will be admitted at this time over
12 defense objection.

13 MR. HYMAN: There's also no tie to Mr. Furman there,
14 Your Honor.

12:13 15 THE COURT: That is overruled.

16 (Thereupon, the exhibit was admitted into evidence.)

17 BY MS. JOHNSON:

18 Q. I'll turn now to Exhibit 43. I already did this one.

19 I'll now show you what's been previously marked as
12:14 20 Exhibit 176.

21 (Thereupon, the exhibit was marked for identification.)

22 BY MS. JOHNSON:

23 Q. First, I'll ask you if you recognize it, and then I'll ask
24 you how you recognize it.

12:15 25 A. Yes, I do recognize it.

1 Q. And how do you recognize it?

2 A. **I have reviewed this previously.**

3 Q. And what was the circumstances of your previous review?

4 A. **To understand liens filed against Par Funding.**

12:15 5 Q. Was this a record of Par Funding when you came in or was
6 this something you requested? How did you come to review it?

7 A. **Yeah, this is a UCC search. So this is a public records
8 search to show what liens have been filed.**

9 Q. As of what -- does this have a date? I'm sorry. I can't
12:15 10 see.

11 A. **This is a date of July of 2020.**

12 Q. So is this something that you had requested or is this
13 something that you found when you came into Par Funding?

14 A. **This is something I have reviewed. I did not request it.**

12:15 15 Q. But it was something you reviewed -- was a Par Funding
16 business record?

17 A. **No, I don't believe so.**

18 Q. Is it something you requested? You said you came to review
19 it because you wanted to know the liens, right?

12:16 20 A. **Correct. But this was dated before my employment with the
21 receivership.**

22 Q. Okay. Do you recall how you came to review it, how it came
23 across your desk?

24 A. **In discussions with counsel.**

12:16 25 Q. And what does this reflect?

1 A. So this is a listing of UCC filings against CBSG.

2 Q. And can you explain what a UCC filing is for those of us
3 not in the legal UCC world?

4 A. The -- a UCC filing is if you're making a loan to somebody,
12:16 5 somebody owes you money, you have to put a public notice in
6 order to perfect your interest in any collateral you have,
7 again, depending upon the type of collateral. So if somebody
8 had a lien against CBSG they would have to file a UCC filing to
9 put everybody on notice that they claim a lien in whatever
12:17 10 collateral they then describe in the filing. So anybody who
11 wants to understand the lien against an entity can do a UCC
12 search, access the public records, and it shows a list of who
13 claims what collateral.

14 Q. And as of this date, 7-8-2020, if my eyes are correct, did
12:17 15 Par Funding have liens --

16 A. Yes.

17 Q. -- against them?

18 A. Yes.

19 MS. JOHNSON: I'd like to move Plaintiff's Exhibit 176
12:17 20 into evidence.

21 MR. HYMAN: Hearsay, foundation, improper expert
22 testimony.

23 THE COURT: Overruled. That will be admitted.

24 (Thereupon, the exhibit was admitted into evidence.)

12:18 25 MR. HYMAN: And also best evidence rule.

1 THE COURT: That will be admitted.

2 BY MS. JOHNSON:

3 Q. Did Fidelis file any liens against Par Funding?

4 A. No.

12:18 5 Q. What about Mr. Furman, Michael Furman, did he file any
6 liens against Par Funding?

7 A. No.

8 MS. JOHNSON: I think that might be it. Let me just
9 have a moment with counsel.

12:18 10 THE COURT: Sure.

11 BY MS. JOHNSON:

12 Q. Mr. Sharp, how many merchants did Par Funding -- how
13 many -- number of merchants, how many did they loan to?

14 A. They advanced to about 75 hundred merchants from the
12:19 15 beginning.

16 Q. And we saw earlier the Pennsylvania, I think, confessions
17 of judgment. I'll just call them the Pennsylvania cases
18 seeking money. Do you know how many of that? I think you said
19 there was --

12:20 20 A. 17 hundred.

21 Q. And that's different merchants?

22 A. Correct.

23 Q. When you came in, how many loans were more than 30 days --
24 sorry, advances were more than 30 days past due? A dollar
12:20 25 amount, I'm sorry.

1 **MR. HYMAN:** Objection. This is going to into
2 foundation, lack of predicate.

3 **THE COURT:** Overruled.

4 A. **About 68 million dollars. They were over 35. That's --**

12:20 5 Q. Over 35 days, is that the cutoff?

6 A. **That was the cutoff.**

7 Q. And what was the date that you took over operations?

8 A. **That was as of July 28th, 2020.**

9 **MS. JOHNSON:** Thank you, Your Honor. I have nothing
12:21 10 further -- oh, one moment. I spoke too soon.

11 **BY MS. JOHNSON:**

12 Q. This is a clarification question. You said 68 million
13 dollars loaned was past due more than 35 days. Out of how much
14 loans? I guess I'll ask this way. I'll break it down.

12:21 15 How much was outstanding in loans in July of 2020 to
16 how many advances -- how much was outstanding as the advanced
17 loans to different merchants?

18 A. **As of that same date there was -- the books and records**
19 **reflected about 416 million outstanding. So the over 35 was**
12:21 20 **about close to 17 percent of the portfolio.**

21 Q. So the over 35 days was 68 million. So how much of the
22 portfolio?

23 A. **A little over -- close to 17 percent.**

24 Q. Okay.

12:22 25 **MS. JOHNSON:** I think with that clarification, we'll

1 let Mr. Hyman --

2 **THE COURT:** Let's do this, we're going to take a
3 recess now since it is 12:30, and we'll pick up -- we're at a
4 natural breaking point now -- with the cross-examination of
12:22 5 Mr. Sharp after lunch.

6 I would ask that everybody please be available just a
7 little bit over an hour, if I can have everyone back in the
8 jury room by 1:45, it's about an hour and 15, we'll have
9 Mr. Sharp retake the stand and we'll begin the
12:22 10 cross-examination.

11 Please, while you're in the jury room, do not discuss
12 the case with one another. Make sure you leave your notepads
13 in the jury room if you go out to lunch. Remember that you're
14 going to avoid the lawyers and they must avoid you. Take no
12:22 15 offense from that. Okay. And do not go on social media or do
16 any independent research, especially based upon some of the
17 testimony you have now heard.

18 With that being said, have a good lunch, everybody.
19 We'll see you in the jury room by 1:45. You are excused.

12:23 20 (Thereupon, the jury exited the courtroom.)

21 **THE COURT:** You may be excused, Mr. Sharp. We'll get
22 you back on the stand in a little over an hour. We're in
23 recess.

24 **MS. BERLIN:** What time should we return?

12:23 25 **THE COURT:** By 1:45. 1:40, something like that.

1 MS. BERLIN: Thank you very much.

2 Oh, Your Honor, one more question, can I bring a cup
3 of coffee or a Diet Coke in or is it water only?

4 THE COURT: No, you may bring a cup of coffee or
12:23 5 something.

6 MS. BERLIN: Thank you.

7 THE COURT: Sure.

8

9 (Thereupon, a luncheon recess was taken.)

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A F T E R N O O N S E S S I O N

02:03 15 THE COURT: Please be seated, everyone. All right.

16 You can all be seated. So we have all our jurors present and
17 accounted for and we're going to pick up where we left off with
18 Mr. Sharp. The Court felt compelled, because we seem to be
19 getting repeated objections to Mr. Sharp's testimony, to put

02:04 20 some more specific findings on the record, before I get my
21 jurors back in here. I think that the majority of the exhibits
22 that were admitted through Mr. Sharp, specifically I think it
23 would be P 205, P 19, P 20, I want to say also I think, if my
24 memory serves me right, maybe 76, I think was a number that I
02:04 25 had in there. Did I get that right? Was 76 a number that you

1 had.

2 MS. JACQMEIN: 176.

3 THE COURT: That's right. 176. There was repeated
4 objections as to Mr. Sharp's ability to lay a predicate. And
02:04 5 this is record exceptions. I would just read a passage from a
6 case in re: Intern Management Associates, LLC, that's 781 F.3d
7 1262, 2015 case from the Eleventh Circuit. It comes out of the
8 bankruptcy context, but the reason why I read it is because the
9 case talks about trustee testimony and the trustee, very
02:05 10 similar to what we're dealing with here, essentially acting as
11 the custodian and the receiver type scenario, so very similar
12 to what Mr. Sharp's role has been in this case.

13 Can you have a seat, please.

14 Very similar to what Mr. Sharp has been doing in this
02:05 15 case, given that he's an arm of the receiver, hired by the
16 receiver with an entity that is in receivership, the trustee
17 and the Intern Management Associates case had a similar role.
18 And I would just read a passage from the case so that we can
19 put, I think, some of the hearsay arguments to bed as to, at
02:05 20 least the first litany of exhibits. And I'm going to read
21 specifically from the opinion. I'm at 12 -- pin cite 1266 or
22 so.

23 The trustee's testimony needed to show two things to
24 establish that the business records exception applied. First,
02:06 25 we needed to show that the underlying documents are authentic,

1 and that's on 901 and 902, the Rules of Evidence.

2 Second, it needed to show that they met the
3 requirements at 803, subsection 6, and both of those prongs
4 need to be satisfied in order for the underlying documents to
02:06 5 be admitted into evidence.

6 The first burden, which hasn't really been contested
7 here, but so we're clear on the record with the exhibits that
8 have been moved, is an authentication burden. And at this
9 point I think there is ample evidence to establish a prima
02:06 10 facie case that the spreadsheets and documents regarding what
11 was going on with ABFP and the loans, et cetera, were what
12 Mr. Sharp claims they were under 901(A). And really all you
13 need under 901 is enough evidence for the jury to conclude that
14 the document is authentic.

02:07 15 And my recollection from Mr. Sharp's testimony earlier
16 today is that most of these underlying documents were found at
17 the offices of CBSG or Par Funding. And that the information
18 that was sent in those documents substantially matched the
19 records kept by the financial institutions and clients with
02:07 20 which ABFP and/or CBSG had transacted.

21 So that is identical to what happened in the Intern
22 Management case. The trustee came forward and essentially is
23 being put in charge of doing an investigation of the entity in
24 receivership, came forward with documents that they had
02:07 25 procured within the company and had essentially cross-checked

1 them or tried to ascertain whether they accurately represented
2 what was going on in the company. And therefore, in this case,
3 as in the Management Associates case, it was reasonable for the
4 Court, and here it will be for the jury to conclude from an
02:08 5 admissibility standpoint that the 901 part of the analysis, the
6 fact that it needs to be true and authentic records of the
7 underlying business, in this case Par Funding or A Better
8 Financial Plans business, has been satisfied.

9 But if we move on to the business record exception, we
02:08 10 know that, as we always know under 803(6)(A) through (C), has
11 to be made at or near the time by or from information
12 transmitted by someone with knowledge, if it was kept in the
13 course of regularly kept activity, and if making the record was
14 a regular practice of that activity.

02:08 15 And we know, as they point out in the management case,
16 that the trustee, or in this case, Mr. Sharp, as an arm of the
17 receiver, can establish those requirements. And the key here
18 is whether or not the methods or circumstances of preparation
19 of the spreadsheet in 205 and the documents in P 19 and P 20
02:08 20 indicate a lack of trustworthiness, which the Court has found
21 that they do not under 803(6)(E), thereby permitting their
22 admissibility.

23 What happens in this management case is exactly what's
24 happening here, and I'm reading from the case: As the
02:09 25 underlying businesses' court appointed receiver, the trustee

1 was the custodian of the underlying documents.

2 He testified about his investigation into the
3 providence and reliability of the documents he seized at IMA's
4 office. He testified about his interview with one of the
02:09 5 principals during which he learned that the officer team who
6 created those documents based on its interactions with
7 financial institutions and clients. He testified about the
8 reconciliation of those documents with corresponding files held
9 by financial institutions. His testimony evidences that
02:09 10 someone with personal knowledge created the documents. And
11 therefore, the Eleventh Circuit had no problem concluding that
12 the underlying documents were routinely made as part of
13 regularly conducted activity near the time of the activity by
14 someone with personal knowledge of their contents and were
02:10 15 admissible under the business records exception.

16 The Court goes on to point out the fact that simply
17 because he gleaned information from his diligence in the
18 company and spoke to others, which in this appeal was argued to
19 be a foundational problem, and hearsay was rejected by the
02:10 20 Eleventh Circuit, because from a -- from the very beginning the
21 fact that Mr. Sharp has spoken or been dealing with the due
22 diligence in the company to glean the information that forms
23 the basis of his testimony really on these business records is
24 absolutely permitted even though that is in and of itself
02:10 25 hearsay. The Courts are able to consider hearsay when

1 determining whether underlying documents are admissible under
2 the business records exception. And so we know here that
3 someone was knowledgeable about the procedures used to create
4 the alleged business records must testify and that knowledge,
02:10 5 okay, does not have to be firsthand. Mr. Sharp does not have
6 to know the exact contents of the record firsthand, their
7 authors or even their preparation, and there's a litany of
8 cases from the Eleventh Circuit that support that. Doesn't
9 mean he's not qualified. A qualified one, under 803(6) is one
02:11 10 who can explain the system of record keeping and vouch that the
11 requirements of 803(6) are met. As long as Mr. Sharp is able
12 to present enough circumstantial evidence to establish the
13 trustworthiness of the underlying documents, he doesn't need to
14 present any testimony from the person who actually prepared
02:11 15 them, his own testimony suffices.

16 This is pretty much exactly what is happening here. I
17 would have liked the predicate to have been done better by the
18 SEC, and I would urge the SEC going forward that we need to do
19 a better and cleaner job of laying an appropriate predicate,
02:11 20 but it's clear to the Court, in large part because of my work
21 with this case for over the last two years, I know what
22 Mr. Sharp is doing, I understand what's going on because I've
23 been in charge of putting the receiver in place, and he has
24 been preparing reports for the Court.

02:11 25 I think that the predicate needed to be a little

1 cleaner, but after I asked followup, it was clear how he's
2 figured out these documents fit into the bigger picture. And
3 because of that, I think they satisfy the trustworthiness.

4 So I just want the record to reflect that even though
02:12 5 it's been a repeated objection, the Eleventh Circuit, I think,
6 would back my determination thus far of the admissibility of
7 those records.

8 Now, the last thing I will say is, the second set of
9 records, which really are the list of defaults that were
02:12 10 obtained from Philadelphia, I think that's P 270, and then the
11 UCC documents and the exemption documents filed with the SEC, I
12 think that was P 64 and perhaps also 86.

13 One thing I failed to mentioned is -- and I would ask
14 the SEC to confirm this, so my memory is not off. But those
02:12 15 forms regarding exemptions were filed by Mr. Furman, were they
16 not?

17 **MR. HYMAN:** They did not introduce the ones filed by
18 Mr. Furman.

19 **THE COURT:** The one that was the exemption that was
02:12 20 filed, which one was that filed on behalf of? I can't remember
21 off the top of my head.

22 **MS. JOHNSON:** There was two -- actually three, but one
23 was Par Funding, and the other two were A Better Financial Plan
24 1 and 2.

02:13 25 **THE COURT:** Okay. So a Better Financial Plan 1 and 2,

1 and Par Funding were the ones that signed off on the forms that
2 went in for the exemption?

3 MS. JOHNSON: Exactly.

4 THE COURT: Okay. Got it. So my issue on that is,
02:13 5 it's probably a little bit less than an 803(6) issue because
6 public record exemptions can be a little bit problematic, but
7 there's an alternative basis for it, which was my initial
8 reaction, at the very least when it comes to 270, which was the
9 list of defaults. And that is that these are court records
02:13 10 under 201 that really you can ascertain their veracity just by
11 reviewing them. It's a list. It's a list of records.

12 Testimony of Mr. Sharp is that they were procured by contacting
13 the clerk's office and that there was a list of them produced
14 reflecting what is on the state court records in Philadelphia.

02:13 15 And so to me, there is not really a problem that we
16 need to worry about 803(6) in so much as I think we can
17 certainly rely on Rule 201 that these court records, which by
18 the way, court records in particular are almost uniformly
19 recognized as a document that a court can take judicial notice
02:14 20 of. In fact, they're often attached to other pleadings and
21 courts in many contexts can look at them and essentially
22 ascertain what they are from the very beginning. And rely on
23 them.

24 And so I'm speaking specifically about the taking
02:14 25 judicial notice of documents under 201(b) of the Federal Rules

1 of Evidence which allow a court to take judicial notice of the
2 a fact that it's not subject to reasonable dispute because it
3 is generally known in the trial Court's territorial
4 jurisdiction or can accurately and readily be determined from
02:14 5 sources which accuracy cannot reasonably be questioned.

6 Court documents from a prior proceeding are matters of
7 public record and are capable of accurate and ready
8 determination by resort to sources whose accuracy could not
9 reasonably be questioned, and therefore, judicial notice of
02:15 10 them is appropriate. There's the case that stands for that.
11 Horne v. Potter, 392 Fed.Appx. 800, 802, the Eleventh Circuit
12 in 2010. And so to me, the minute I saw anything that would
13 indicate a litany of default proceedings in the Court of Common
14 Pleas in Philadelphia procured from the Clerk of Court, the
02:15 15 Court obviously is not concerned that there's an evidentiary
16 problem to that.

17 Can I hear perhaps from the SEC what, if anything,
18 would be a concern that you should address as to the remaining
19 UCC statements or really the UCC probably a little less, but
02:15 20 SEC records. I don't have it off the top of my head any case
21 law that would allow me to hang my hat on a public record kind
22 of analysis for the SEC filings. There may -- I didn't get a
23 chance to search it, there may very well be a case law on that
24 point, but I did want to get the SEC's view on why I shouldn't
02:16 25 be worried about any sort of hearsay concerns with those last

1 few exhibits. Can you advance any argument? Because I don't
2 think that necessarily -- I guess one could argue that they
3 could fall under business records as well if they are found in
4 the records of Par Funding.

02:16 5 It's different, right, because the list of defaults
6 Mr. Sharp went out and got that to figure out what he was going
7 to do with the litigation injunction.

8 Were all the other documents documents found in the
9 records of ABFP and Par Funding so that the same business
02:16 10 records analysis that I did earlier would apply to those
11 documents?

12 **MS. JOHNSON:** I believe that was Mr. Sharp's
13 testimony, and I believe he also testified that he reviewed
14 those as part of his review -- overall review --

02:16 15 **THE COURT:** As a custodian or an extension of the
16 reefer, correct?

17 **MS. JOHNSON:** Yes.

18 **THE COURT:** Okay. So it's important then that I want
19 to make sure we're very clear because the Court understood for
02:16 20 a minute that it would be coming under public records under
21 803, I believe 803 sub 8.

22 **MS. JOHNSON:** Well, it's that one too, they're
23 available online.

24 **THE COURT:** I agree. There are some wrinkles under
02:17 25 803 that I'd rather not have to deal with, and that's why I

1 bring this up. And just so that we have clear record, because
2 it's been objected to consistently. I think the way to frame
3 this is, the analysis the Court has put on the record, the
4 803(6), given his role as an arm of the receiver and
02:17 5 essentially a consultant of the receiver coming in and
6 ascertaining all the documents in the records of the company
7 he's now really doing due diligence on would fall under 803(6).

8 I think the right way to say it is that every
9 document -- correct me if I'm wrong -- that has been admitted
02:17 10 into evidence has been a document in existence in the records
11 of the entities where he is acting at the behest of the
12 receiver except for the list of defaults that he got from
13 Philadelphia; is that right?

14 **MS. JOHNSON:** Yes.

02:17 15 **THE COURT:** Okay. So that means -- so that we don't
16 have any issue on the record -- that the Court is satisfied
17 that 803(6) would apply to all of those records given -- and I
18 want to ask Mr. Sharp just under oath. I think I had gotten
19 it, but I didn't get a chance to ask you this. I know this
02:18 20 from my background in the case, but it's not on the record in
21 this trial yet.

22 Am I to understand that when you went in as part of
23 DSI's work with the receiver, that you have -- is my
24 recollection -- is interviewed individuals within the companies
02:18 25 so that you have a better sense of not only the business model

1 but the records thrown throughout the company?

2 **THE WITNESS:** Yes, that's correct, Your Honor.

3 **THE COURT:** That was my understanding. So it's
4 exactly the same thing. He's done the due diligence on the
02:18 5 ground. So he has enough knowledge for trustworthiness, these
6 records are prepared in the ordinary course because these are
7 individuals working in these entities that have been preparing
8 these documents, filing away the UCC statements, filing the
9 exemptions. So all of these things are records kept in the
02:18 10 ordinary course of underlying entities that he's working with
11 right now. Right?

12 **MS. BERLIN:** Judge, that's correct. And, in fact,
13 prior to today, we sent, just because I anticipated this issue,
14 to defense counsel a case SEC versus Nutmeg.

02:19 15 **THE COURT:** Put that one on the record too. That's
16 another one I can rely on.

17 **MS. BERLIN:** Yes. It's helpful for a few different
18 things that might come up during the trial too.

19 **THE COURT:** Sure.

02:19 20 **MS. BERLIN:** It's 09-cv-1775. It is 2017 Westlaw
21 154721, SEC versus Nutmeg. And it's a case that involves a
22 receiver being permitted to testify about facts. It discusses
23 the distinction between fact and opinion expert testimony,
24 involving exactly what Mr. Sharp was testifying about. And, in
02:19 25 fact, we made sure to tailor based on this order.

1 **THE COURT:** And that would, I think, Ms. Berlin,
2 address the issue that there's been an objection as to him
3 crossing from fact to opinions as well which I overruled,
4 right?

02:19 5 **MS. BERLIN:** Yes. And this case is clear that -- I
6 mean, and here there was an accountant can testify about
7 numbers and an investigation in things they learned without
8 crossing over into giving an expert opinion that requires that
9 additional level of expertise, but we have an extra copy if
02:20 10 you'd like me to pass it up.

11 **THE COURT:** Sure, if you want to approach, I'll take
12 it, and if you have an extra copy for counsel, that would be
13 great. I would also ask, not knowing the case off the top of
14 my head, does it include any of the analysis of 803(6) in terms
02:20 15 of business records or is it more about fact versus opinion
16 testimony?

17 **MS. JOHNSON:** The latter.

18 **THE COURT:** More about fact versus opinion, okay.
19 So I think that -- would you add that to my analysis
02:20 20 prior, covers pretty much all the key objections. Thanks,
21 Ralph.

22 And the only thing I can think of that isn't covered
23 is the judicial records issue that I mentioned under 201 when
24 it comes to his documents that he's procured from the Clerk of
02:20 25 Court in Philadelphia.

1 But I wanted to mention all that for the record
2 because I think we have a bit of a misunderstanding about why
3 he's qualified, and it's not proper to do that in the presence
4 of the jury. So I want my ruling to be very clear why all of
02:21 5 his testimony earlier today made these documents admissible,
6 and I don't want to misstate reliance on 803(8) for public
7 records which truthfully has other glitches in its
8 applicability that we don't need to worry about because all of
9 this stuff is found in the records of the company where he's
02:21 10 acting on the receiver.

11 So it would all fall under 803(6) in my view, and then
12 as pointed out, this Nutmeg case, excuse me, would address some
13 of the other issues regarding fact versus opinion testimony.
14 All right. So that's what I needed to put on the record.

02:21 15 Anything else you wanted to put on the record,
16 Counsel?

17 **MR. HYMAN:** Yes, Your Honor. We'll try to be quick.
18 First of all, it's our view that Mr. Sharp, there's no
19 testimony concerning the fact that the records at issue were
02:21 20 made at or near the time they were created or either at least
21 during his before Your Honor questioned him, that he had
22 interviewed specific people.

23 His testimony was I talked to some people generally,
24 and therefore, it's our position that he did not meet the
02:21 25 proper predicate as it relates to the SEC Form Ds. We objected

1 to those more on relevancy ground because they don't relate to
2 Fidelis, and the SEC's position is that they're not seeking an
3 integration-based claim or they're not otherwise going to try
4 to claim this is an integrated offering, and as a result, it's
02:22 5 our position that the registration of these entities is not
6 currently relevant.

7 Similarly, Your Honor, as it relates to the public
8 records, first of all, the documents at issue were not part of
9 something that you can just pull up from anywhere. Mr. Sharp
02:22 10 testified that he had to contact the Clerk of Court himself to
11 get ahold of those records, which means that there was a
12 special chart created for purposes of this litigation as
13 opposed to kind of simply a list or other documents with
14 reliability.

02:22 15 And in Johnson versus Ford, 988 F.2d 573, the Eleventh
16 Circuit held that similar charts of pending litigation
17 constitutes inadmissible hearsay. As a result, that is the
18 primary base of our objection as it relates to that lawsuit
19 issue, and also that's relevancy too.

02:23 20 **THE COURT:** Okay. I think relevancy is an easier --
21 and the amount of discretion given to the trial court is vast
22 in both business record analysis and in issues of relevancy,
23 (inaud.) some are intensive to prove or disprove a material
24 fact is sufficient. I'm not really worried about relevancy
02:23 25 here, and you have more than enough opportunity down the road

1 in your case to point out why that's inapplicable to
2 Mr. Furman.

3 As to this being something that is amalgamation of
4 multiple cases, I don't see any difference between this and
02:23 5 running a search in a docket entry online and getting any
6 actions that are related to Par Funding or CBSG. That, to me,
7 is more akin to what we saw here.

8 And I will just point out that my understanding is
9 that he has done diligence within the company to ascertain the
02:23 10 nature of these records, and the case law I read pretty much
11 makes it clear that that's going to be sufficient for business
12 record exemption purposes.

13 So all the objections are overruled, but they're duly
14 noted for the record. The Court has laid a little bit more in
02:24 15 the way of findings analysis so that we understand exactly why
16 all of these things are well supported by case law as to their
17 admissibility.

18 Okay. So with that being done, let's go ahead and --

19 **MS. JOHNSON:** Wait, Judge. One more.

02:24 20 **THE COURT:** Yes. You have something else?

21 **MS. JOHNSON:** Before we bring the jury in, I just have
22 one more document and maybe three more questions for Mr. Sharp
23 that I should have asked him before I tendered him over.

24 **THE COURT:** I'll go ahead and allow that, and we'll go
02:24 25 straight to cross.

1 **MR. JOHN:** I just wanted to bring to the Court's
2 attention, the co-counsel, Jeremy Knight is here.

3 **THE COURT:** Okay. Welcome, sir. Good to have you
4 here.

02:24 5 **MR. HYMAN:** While we're waiting for the jury, bringing
6 them back in, we'll just renew our objection based on the
7 discovery issues referenced in the motions in limine.

8 **THE COURT:** Okay. Let's go, Ralph.
9 Thank you so much. We'll get them back in here.

02:25 10 **MS. JOHNSON:** I'll try to not to get into the
11 investigation, our expert. I'm walking a fine line here.

12 **THE COURT:** Just a little cleaner so that we go
13 through our nuts and bolts on a business records level. Are we
14 moving in a couple of other exhibits now?

02:25 15 **MS. JOHNSON:** Just one more exhibit. It's going to be
16 572.

17 **MR. HYMAN:** Your Honor, if you'd like, we can just go
18 basically through the same objections real quick. I don't
19 think at this point we can dispute it. We'll preserve the
02:26 20 objection. Beyond that, as long as our rights are reserved, we
21 don't object to them just introducing it into evidence without
22 anything else.

23 **THE COURT:** So we have done it outside of the record,
24 with that objection being preserved for the record and being
02:26 25 the same ground, and I'm assuming it would also be business

1 record-based. Is that right?

2 **MS. JOHNSON:** Yes, Your Honor.

3 **THE COURT:** So obviously go through the requisite
4 predicate for the record, but the objection is noted. The
02:26 5 Court will overrule it provided you lay the predicate as we
6 have discussed, and then we can move it straight in. And it
7 was 572, you said?

8 **MS. JOHNSON:** Yes, Your Honor, Plaintiff's 572.

9 (Thereupon, the exhibit was marked for identification.)

02:27 10 **THE COURT:** Can you proffer to me, Counsel. I have
11 your zip drive. That's how I am going through the exhibits
12 faster. Not your zip drive. Your flash drive. I don't see
13 572, P 572, but maybe I'm not finding it. What is it?

14 **MS. JOHNSON:** It's a merchant cash advance, their
02:27 15 contract with the people they advanced money to, with the
16 merchants.

17 **MR. HYMAN:** We object based on relevancy, but --

18 **THE COURT:** Okay. I'll overrule the relevancy
19 objection.

20 **MS. JACQMEIN:** I think what happened is he got the
21 flash drive before some of those exhibits, the last group, were
22 added. So he does not have them electronically.

23 **MS. BERLIN:** Your Honor, we had a longer exhibit list,
24 and then when it became Mr. Furman, I went through and tried to
02:27 25 very quickly cut our list. And afterwards, I think it was

1 after we gave you the flash drive, I realized that I was over
2 eager in my cutting, and we added a few back, which we put into
3 your binders, but they might not be on that flash drive. So I
4 wonder if it will be helpful for us to bring in a new flash
02:28 5 drive tomorrow.

6 MS. JACQMEIN: Or do you want a copy?

7 THE COURT: Can just give it back to you? Let's just
8 add whatever else you need. Let's just do that.

9 MS. BERLIN: That's a good idea.

02:28 10 THE COURT: Because I have the other ones. It's just
11 that one for some reason is missing.

12 MS. JACQMEIN: Which one does it stop at?

13 THE COURT: That's a good question. It stops at 571,
14 just short.

02:28 15 MS. JACQMEIN: And we have about six more. If you
16 give it to me --

17 THE COURT: Perfect. I'll do that. That's fine. Not
18 a problem. Everything else is on there.

19 (Thereupon, the jury entered the courtroom.)

02:28 20 THE COURT: Thank you for your patience. We just
21 needed to clear up a couple of evidentiary issues to streamline
22 things as we continue on with Mr. Sharp. So we're going to
23 pick up where we left off. I hope that those of you who wanted
24 a copy got a copy, and then we sent some back there, and it
02:29 25 should give you enough caffeine here for the afternoon. So if

1 you need anything else, let me know.

2 So we're going to go ahead actually and let the SEC
3 ask a couple of follow-up questions that they meant to ask
4 before we broke, and just a few after that, we'll turn it back
02:29 5 over to the defense. Okay? Go ahead, Counsel.

6 MS. JOHNSON: Thank you, Your Honor.

7 BY MS. JOHNSON:

8 Q. Mr. Sharp, I'm showing you what's been previously marked as
9 Exhibit 572.

02:29 10 Do you recognize that document?

11 A. Yes, I do.

12 Q. And how do you recognize it?

13 A. This is the agreement with merchants to document the
14 approval and then the terms of funding a merchant cash advance
02:29 15 with a particular merchant.

16 Q. And whose agreement? Who uses this agreement?

17 A. This is a Par Funding agreement.

18 Q. And were these agreements kept at Par Funding?

19 A. Yes.

20 Q. Where?

21 A. These were all in the Converge Hub, which is our contact
22 management system. So the documents are scanned in online.

23 Q. So they were kept as part of Par Funding's books and
24 records?

02:30 25 A. That's correct.

1 Q. Did you get a chance to review the merchant advance
2 contracts prior to coming here tray?

3 A. I reviewed many of them. I don't know if I've reviewed
4 this particular one.

02:30 5 Q. And under what circumstances did you review those
6 contracts?

7 A. As we're understanding the documents where the merchant
8 actually agreed to repay the advance and as a part of the
9 collection process, as we're trying to go out and collect these
02:30 10 advances, I reviewed many of these.

11 Q. And what do they reflect that you're looking for?

12 A. This reflects the understanding between Par Funding and the
13 merchant on the amount that was advanced and the repayment
14 terms.

02:30 15 Q. And did you speak with any Par Funding employees about the
16 merchant cash advance contracts and how they operated?

17 A. Yes.

18 Q. And who did you speak with about that?

19 A. I spent quite a bit of time talking to the collections
02:31 20 department and the head of compliance.

21 Q. And who was that?

22 A. Ben Mannes.

23 MS. JOHNSON: Your Honor, I would offer P 572 in
24 evidence and ask that it be published to the jury.

02:31 25 THE COURT: Subject to objections that are being

1 overruled, yes, that will go ahead and be published. 572 is in
2 evidence.

3 (Thereupon, the exhibit was admitted into evidence.)

4 **BY MS. JOHNSON:**

02:31 5 Q. Mr. Sharp, if could you just turn to page 8 of this
6 agreement, and read number 10. Under number 10 it says:
7 Events of default, any of the following shall constitute an
8 event of default under this purchase agreement.

9 What does that mean?

02:31 10 A. It means the list of items on the following page, which is
11 A through P, each of those items represents a default. So if
12 the merchant does any of the things that are listed there, then
13 this is a default under the agreement.

14 Q. And what is letter H say?

02:32 15 A. Merchant seller's failure to make any payment required
16 under this purchase agreement.

17 Q. What does that mean to you?

18 A. It means if the merchant did not make any of the payments
19 that are required and specified on page 3.

02:32 20 Q. And what are those payments?

21 **MR. HYMAN:** Your Honor, this is crossing the territory
22 of expert testimony, calls for a legal conclusion.

23 **THE COURT:** Overruled.

24 Continue.

02:32 25 A. In this particular one, the daily specified amount, which

1 is the amount that is to be pulled from the merchant's bank
2 account, is \$442.86.

3 BY MS. JOHNSON:

02:32 4 Q. I was asking more of a broader question. When it says if
5 you don't make a payment, what are they talking about? Who's
6 not making the payment?

7 A. If the merchant doesn't make the payments required under
8 the agreement, that's a default.

9 Q. And who would they be making the payments to?

02:33 10 A. Par Funding.

11 Q. One last question. Were the merchant cash advances covered
12 by insurance?

13 A. No.

14 MS. JOHNSON: Thank you.

02:33 15 MR. HYMAN: And, Your Honor, for that last one, move
16 to strike, lack of foundation, no predicate.

17 THE COURT: Overruled. Again, the record has shown
18 that Mr. Sharp is working on behalf of the receiver and
19 management company. Sufficient evidence exists given his
02:33 20 review of the records and documents for him to indicate what is
21 going on with these instruments, so that will be overruled.
22 Okay?

23 All right. With that being said, we'll turn it over
24 for cross-examination. Go ahead.

02:33 25

CROSS EXAMINATION

1

2 **BY MR. JOHN:**

3 Q. Good afternoon.

4 A. **Good afternoon.**

02:33 5 Q. Sir, you work for DSI, correct?

6 A. **Yes.**

7 Q. DSI is being paid by the receiver in this case?

8 A. **Yes.**

9 Q. You yourself charge about \$750 an hour on behalf of DSI,
02:34 10 correct?

11 A. **That is my normal hourly rate. In this case we've agreed**
12 **to a blended cap.**

13 Q. Okay. You're charging that amount right now to be here,
14 right?

02:34 15 A. **Subject to the agreement where we have a blended cap.**

16 Q. Okay. Within the past year, year-and-a-half, DSI has
17 billed more than 6 million dollars to the receiver; isn't that
18 correct?

19 A. **I believe that's correct.**

02:34 20 Q. And no matter what happens today, you expect to continue
21 working for DSI and billing the receiver, right?

22 **MS. JOHNSON:** Your Honor, I just want to object,
23 relevance to these questions.

24 **THE COURT:** Overruled.

02:34 25 **BY MR. JOHN:**

1 Q. Let me repeat the question. No matter what happens today,
2 sir, you expect to continue for DSI and billing the receiver in
3 this case, right?

4 A. **Yes.**

02:34 5 Q. Okay. I want to turn to something you said on your direct
6 examination. You told the judge in reference to a document
7 that you hadn't had a chance to do due diligence yet for that
8 document.

9 Am I correct in understanding that means you may not
02:35 10 be able to speak to the accuracy of all the data in that
11 document?

12 A. **That's correct.**

13 Q. Is that true for all of the documents that were entered
14 during your direct examination?

02:35 15 A. **No.**

16 Q. Some of them you were able to do due diligence on?

17 A. **Yes, some of them were earlier in the process on --**

18 Q. Okay. But at least some of the documents that were entered
19 during your direct examination, as you sit here today, you're
02:35 20 not certain as to the accuracy of the data in those documents,
21 right?

22 A. **Correct.**

23 Q. Okay. During your direct examination you spoke about some
24 default records that you were able to identify. Do you
02:35 25 remember that?

1 A. **Yes.**

2 Q. You have access, in your role at DSI, to Par Funding's
3 internal records, right?

4 A. **Yes.**

02:35 5 Q. And am I correct that it was through an inspection of those
6 internal records that you were able to identify the Clerk of
7 Court to contact to obtain that list of default records?

8 A. **That through counsel who's assisting.**

9 Q. Who are you referring to when you say "counsel who's
10 assisting"?

11 A. **Gaetan Alfano, who is counsel in Philadelphia who is**
12 **assisting. They have a contact at the clerk's office.**

13 Q. Well, let me ask you this. Before you inspected the
14 internal records of Par Funding, did you have any idea what
02:36 15 Clerk of Court to contact in regards to defaults for
16 Par Funding?

17 A. **No.**

18 Q. And when you inspected the internal records of Par Funding
19 you didn't actually find any listing of actual defaults, right?

02:36 20 A. **That's not correct.**

21 Q. How is it not correct?

22 A. **We -- there is a listing of defaults, a listing in the**
23 **Par Funding books and records that show confessions of judgment**
24 **they are seeking to obtain or have obtained. There are several**
02:37 25 **schedules of those.**

1 Q. Okay. But I guess to clarify my question, you didn't know
2 what county or what jurisdiction before you inspected those
3 records that litigation related to those defaults may be taking
4 place, right?

02:37 5 A. **I'm not sure I understand your question.**

6 Q. Before you inspected Par Funding's internal records, you
7 didn't know where Par Funding litigation might be taking place
8 as far as to defaulted merchant cash advance contracts, right?

9 A. **I don't -- I don't recall. You know, this was through the**
02:37 10 **Philadelphia court of common pleas and that's where they all**
11 **would be. So, you know, unless there was some specifics that**
12 **they were pursuing in New York, which were few, the vast**
13 **majority of them were in the Philadelphia Court of Common**
14 **Pleas. So I don't think the Par Funding books and records gave**
02:37 15 **me any more information on that.**

16 Q. Well, you just told me that you didn't know what Clerk of
17 Court to contact until you looked into the records, right?
18 That's what I heard you say, right?

19 A. **I'm sorry, I didn't know the name of the person.**

02:38 20 Q. So you knew where all of Par Funding's litigation was
21 happening before you inspected Par Funding's records?

22 A. **No, I knew where to start.**

23 Q. Okay. Let me ask you a question. Regarding the litigation
24 list that you received, the data that you received on that list
02:38 25 was not reflected inside of Par Funding's records, correct?

1 A. **No, that's not correct.**

2 Q. How is it not correct?

3 A. **Par Funding has records that indicate where they are**

4 **pursuing or have pursued a confession of judgment. The**

02:38 5 **information we got from the clerk is obviously much easier to**

6 **use than some of the internal information and is a good process**

7 **check to make sure that the Court records were clear with what**

8 **the Court has on their records.**

9 Q. Did you find litigation for any other areas inside the

02:38 10 Par Funding records, besides Pennsylvania?

11 A. **Yes.**

12 Q. Where else did you find?

13 A. **New York and New Jersey.**

14 Q. Did you know about litigation in the New York and New

02:39 15 Jersey for Par Funding, the specific records, before you

16 searched the internal Par Funding records?

17 A. **I don't recall.**

18 Q. Had you made a request to any clerk of court in New York or

19 New Jersey before you entered into Par Funding's internal

02:39 20 records?

21 A. **No.**

22 Q. As far as Pennsylvania is concerned, before you entered

23 Par Funding records, had you made a request to any clerk of

24 court for records on Par Funding defaults?

02:39 25 A. **No, I wasn't involved at that time.**

1 Q. Do you know whether or not DSI had made any request to the
2 State of Pennsylvania for default records for Par Funding
3 before you searched the internal records?

02:39 4 A. **And I'm sorry. I need to clarify. What you do mean by**
5 **"default records"?**

6 Q. The litigation records that you obtained from the State of
7 Pennsylvania had to do with cash advance default litigation,
8 right?

02:39 9 A. **It had to do with Par Funding pursuing judgments upon a**
10 **default. That's it.**

11 Q. Okay. All right. The records that you pursued regarding
12 judgments on defaults, do you know whether DSI had pursued any
13 of those through Clerk of Court in the state of Pennsylvania
14 prior to you searching internal records?

02:40 15 A. **No.**

16 **MR. HYMAN:** Your Honor, can I get access to the
17 screen, please?

18 **THE COURT REPORTER:** (Complies.)

19 **BY MR. JOHN:**

02:40 20 Q. Mr. Sharp, there should be an image on your screen at this
21 point. Do you see it?

22 A. **I see the desk top.**

23 **MR. JOHN:** One moment, Your Honor. Technical
24 difficulties.

25 **BY MR. JOHN:**

1 Q. Mr. Sharp, there should be an image on your screen now of a
2 document, hopefully. Do you see it?

3 A. **I do.**

4 Q. That is Plaintiff's 56. Do you recognize that document?

02:41 5 A. **Yes.**

6 Q. What is it?

7 A. **If we could look at the next page.**

8 Q. Okay. (Complies.)

9 A. **That's a notice of exempt offering of securities. The**
02:41 10 **issuer is Fidelis Financial Planning.**

11 Q. Okay. How do you recognize that as the notice of exemption
12 for Fidelis?

13 A. **Because it says on the document.**

14 Q. Have you seen this document before?

02:42 15 A. **I believe so.**

16 Q. You're not sure?

17 A. **Not as I sit here.**

18 Q. Okay. Would you have reviewed any exemption forms for
19 Fidelis in your role for DSI?

02:42 20 A. **I would like to, yes.**

21 Q. Have you already?

22 A. **I don't recall.**

23 Q. So earlier in your direct examination, however, you were
24 able to identify three other exemption forms; is that correct?

02:42 25 A. **Correct.**

1 Q. Two of them were for A Better Financial Plan?

2 A. **Correct.**

3 Q. And one was for Par Funding?

4 A. **Correct.**

02:42 5 Q. And you agree with me that none of those have anything to
6 do with that exemption form, right?

7 A. **Correct.**

8 Q. Okay. Mr. Sharp, another document should have populated on
9 your screen. Do you see it?

02:43 10 A. **Yes.**

11 Q. Do you recognize that document?

12 A. **Yes.**

13 Q. What is it?

14 A. **That is the document we discussed earlier today, which is a**
02:43 15 **listing of investors and notes and the payments.**

16 Q. How do you recognize the document on your screen as a
17 listing of investors?

18 A. **Because I recognize the investors.**

19 Q. Did you review that particular document during your review
02:43 20 of your role as -- for DSI?

21 A. **Yes.**

22 Q. And those are investors for Fidelis?

23 A. **I believe so.**

24 Q. Let me ask you something. Any of those -- to your
02:43 25 knowledge, none of the investors listed on that document

1 invested in Par Funding, correct?

2 A. **They invested in Fidelis.**

3 Q. Right. Let me repeat my question. The document in front
4 of you, none of the investors listed on that document invested
02:44 5 in Par Funding, correct?

6 A. **I'm not sure I agree with you.**

7 Q. Okay. Explain to me why you don't agree with me.

8 A. **Because the payment to the investors was dependant on
9 payments from Par Funding.**

02:44 10 Q. How were you aware of that? Where do you draw that
11 information from, sir?

12 A. **I'm aware of how Par Funding managed its business and dealt
13 with the agent funds and dealt with its investors.**

14 Q. To your knowledge, did any of the investors on that list
02:44 15 execute any notes for Par Funding?

16 A. **I do not know.**

17 Q. The document on your screen, is it a fair and accurate
18 representation of the document you previously reviewed?

19 A. **I don't know. I'd have to compare it.**

02:45 20 Q. Would you agree that the document in front of you shows
21 that no one investor lost any money?

22 **MS. JOHNSON:** Objection, outside the scope and motion
23 in limine.

24 **THE COURT:** I know. But it's overruled.

02:45 25 If you can answer.

1 A. There's no -- there's not sufficient information on this to
2 be able to judge.

3 MR. JOHN: One moment to confer, Your Honor?

4 THE COURT: Yep.

02:45 5 MR. JOHN: No further questions from this witness,
6 Your Honor.

7 THE COURT: Any redirect?

8 MS. JOHNSON: Just a little.

9

10 **REDIRECT EXAMINATION**

11 **BY MS. JOHNSON:**

12 Q. Mr. Sharp, has the SEC paid you any money for your services
13 for Par Funding?

14 A. No.

02:46 15 Q. Is the SEC paying you to be here today?

16 A. No.

17 Q. And where is Par Funding located, what state?

18 A. Pennsylvania.

19 Q. So is that one of the reasons why you went to Pennsylvania
02:46 20 to look for court records?

21 A. Yes.

22 Q. If somebody was going to execute -- that was part of your
23 reasonable due diligence, correct, to look up what lawsuits
24 were pending in Pennsylvania about Par Funding?

02:46 25 A. Yes.

1 Q. And those are available publically to anybody that wanted
2 to look up the public records?

3 A. Yes.

02:46 4 Q. And earlier today, just before -- after the lunch break, I
5 asked you about document 572, the merchant cash advance
6 contract. Do you recall that? We went over what ws a default
7 according to the contract. And do you recall that in your
8 testimony?

9 A. I do.

02:47 10 MR. HYMAN: Asked and answered, Your Honor.

11 THE COURT: Overruled.

12 BY MS. JOHNSON:

13 Q. If you go to page 17 of that document, do you recognize
14 what that is?

02:47 15 A. Yes, I do. It's a confession of judgment.

16 Q. And what is that? Explain again what the confession of
17 judgment is.

18 MR. HYMAN: This is going beyond the scope of cross.

19 THE COURT: Overruled.

02:47 20 A. So as I mentioned previously, when Par Funding would do a
21 merchant cash advance, they would ask the merchant to agree to
22 a confession of judgment. So basically, the merchant would
23 agree that if there was a default, Par Funding had the right to
24 file a judgment without having to go through filing a lawsuit.

02:48 25 BY MS. JOHNSON:

1 Q. And in this contract, where was the confession of judgment
2 to be filed? Does it have a court or a state where it would be
3 filed?

4 A. Yeah. It's the Court of Common Pleas, Philadelphia County.

02:48 5 Q. So if you had a copy of this contract, you would know where
6 to look if there was a confession of judgment?

7 A. Yes.

8 Q. Have you ever raised money from investors for Par in your
9 role?

02:48 10 A. No.

11 Q. Did you ever make any pitch to investors in your role now
12 at Par Funding?

13 A. No.

14 MR. HYMAN: Relevance, Your Honor.

02:48 15 THE COURT: Overruled.

16 BY MS. JOHNSON:

17 Q. If you had pitched this to an investor, would you have gone
18 to any court records to look to see if there were any suits
19 against Par Funding?

02:49 20 MR. HYMAN: Objection. Your Honor, calls for
21 speculation.

22 THE COURT: Overruled.

23 You may answer if you know.

24 MS. JOHNSON: I'll make simple.

02:49 25 BY MS. JOHNSON:

1 Q. Would you have done due diligence on the company?

2 A. Yes.

3 Q. And what would that consist of?

4 A. You would want to verify any of the representations that
02:49 5 were made to see if the portfolio was actually performing.

6 MR. HYMAN: Move to strike expert testimony.

7 THE COURT: Overruled.

8 Anything else?

9 MS. JOHNSON: Nothing.

02:50 10 THE COURT: Ladies and gentlemen of the jury, any of
11 you have any questions for Mr. Sharp before I excuse him?

12 Okay. Thank you very much.

13 Mr. Sharp, you're excused.

14 Your next witness.

02:50 15 MS. BERLIN: Your Honor, we call Mark Reikes. May I
16 go out and get him?

17 THE COURT: Yes.

18 Thereupon,

19 MARK REIKES,

20 having been duly sworn by the court reporter, testified as
21 follows:

22 THE COURT: Grab a seat, speak right into the
23 microphone. Thank you.

24 You may proceed when ready.

02:51 25

DIRECT EXAMINATION

1

2 **BY MS. BERLIN:**

3 Q. Good afternoon.

4 A. **Good afternoon.**

02:51 5 Q. I wonder if you could just introduce yourself to the jury.

6 A. **I'm Mark Reikes. And I don't know, I'm over 21, I guess,**
7 **or as they say I am.**

8 Q. And, Mr. Reikes, could you just tell us a little bit about
9 your educational and work history?

02:52 10 A. **I've got a bachelor's in business with an emphasis in**
11 **accounting. And I'm retired out of the Florida Department of**
12 **Corrections as a correctional probation officer.**

13 Q. And how long ago did you retire?

14 A. **Six, seven years ago.**

02:52 15 Q. Have you ever heard of an investment opportunity called
16 Par Funding?

17 A. **Yes.**

18 Q. And approximately how long ago did you first hear about
19 that?

02:52 20 A. **About four years, give or take.**

21 Q. And I wonder if I could please show you what we have marked
22 as P 576.

23 (Thereupon, the exhibit was marked for identification.)

24 **MS. BERLIN:** Your Honor, I wonder if I can approach
02:53 25 the witness because it might be easier for him to see things on

1 paper.

2 THE COURT: Sure. Whatever is easier.

3 MS. BERLIN: Thank you.

4 BY MS. BERLIN:

02:53 5 Q. Mr. , have you seen this before, the document that's
6 labeled as P 576?

7 A. Yes, I have.

8 Q. All right. When did you see it? How do you know what it
9 is?

02:53 10 A. How do I know what it is? It's got my handwriting on it.

11 Q. Is that your handwriting, where it says Michael Furman?

12 A. Yes, that is my handwriting.

13 Q. And is P 576 your own document that you wrote on?

14 A. It looks like it is.

02:54 15 Q. And did you give this document P 576 to the SEC?

16 A. I'm assuming so, if you guys have it.

17 Q. Hold on a second.

18 Would it be helpful to see a declaration that you
19 executed under oath a couple of years ago about this P 576

02:54 20 document?

21 A. I can, yes.

22 MS. BERLIN: Your Honor, may I approach?

23 THE COURT: You may.

24 MS. BERLIN: Thank you.

02:54 25 BY MS. BERLIN:

1 Q. You can look at that and then turn it over. Just to
2 refresh.

3 A. Okay. That was me.

4 Q. Does that refresh your recollection?

02:55 5 A. Yes, that was mine.

6 Q. So is P 576 an advertisement that you provided the SEC?

7 A. Yes, it is.

8 Q. And it has your handwriting on it?

9 A. Yes, it does.

02:55 10 MS. BERLIN: Your Honor, I'd like to introduce P 576
11 as an exhibit.

12 THE COURT: Any objection?

13 MR. HYMAN: Yes, Your Honor. Hearsay. And his
14 recollection is refreshed. He can try to testify as to
02:55 15 substance without having it be introduced.

16 THE COURT: That will be overruled. We'll admit that.
17 And the number again for the record?

18 MS. BERLIN: 576.

19 MR. HYMAN: I apologize. I had that confused with the
02:55 20 declaration.

21 THE COURT: The declaration.

22 MR. HYMAN: No objection as to the 576.

23 THE COURT: 576 is what I'm looking at on the screen,
24 is it not?

02:56 25 MR. HYMAN: It is, Your Honor.

1 THE COURT: It's just the advertising.

2 MS. BERLIN: It is an advertisement.

3 THE COURT: So that's - the objection has been
4 withdrawn. That will be admitted at this time.

02:56 5 (Thereupon, the exhibit was admitted into evidence.)

6 MS. BERLIN: Thank you.

7 BY MS. BERLIN:

8 Q. So looking at P 576, is this an advertisement that you saw?

9 A. Yes, it is.

02:56 10 Q. And did -- I see Michael Furman's name on it. Why did you
11 write his name on P 576?

12 A. I have a habit of when I -- if I call someplace or
13 something like that, I want to know who I'm speaking to, so
14 that I can call them by name. That's all.

02:56 15 Q. Okay. So after seeing this advertisement, this P 576, you
16 called. Did you call the number on there and get the name
17 Michael Furman?

18 A. I called the number on there to make an appointment,
19 whether -- yes.

02:57 20 Q. Okay. And did you end up -- if you look at P 576, do you
21 see where it says it's an advertisement for -- it's says:
22 Alternative investment lunch event. Wednesday, March 6th at
23 1:00 o'clock at The Regional. And it looks like it's The
24 Regional restaurant in West Palm Beach. Limited seating, open
02:57 25 discussion, meet the owner. I've just read some of the

1 language on there, but do you see that?

2 A. Yes, I do.

3 Q. Did you go to an event for Par Funding?

4 A. Yes, I did.

02:57 5 Q. You can set this exhibit aside. We're finished with it.

6 MS. BERLIN: And I'm going to mark -- Your Honor, it's
7 P 578. And I wonder if I can approach the witness with a hard
8 copy?

9 THE COURT: Sure.

02:58 10 MS. BERLIN: Thank you.

11 (Thereupon, the exhibit was marked for identification.)

12 BY MS. BERLIN:

13 Q. Mr. Reikes, would it be easier -- I have a color copy, the
14 original color copy of this as well if that's easier.

02:58 15 A. That's probably easier.

16 MS. BERLIN: Your Honor, may I give him the --

17 THE COURT: Yes.

18 MS. BERLIN: It's the same, but just the original
19 brochure that we got. Is that okay, Your Honor?

02:58 20 THE COURT: Yes, that's fine.

21 MS. BERLIN: Thank you. Just a little easier to read.

22 BY MS. BERLIN:

23 Q. Does this look familiar, P 578?

24 A. Yes, it does.

02:59 25 Q. And what is this?

1 A. This looks like it's the brochure and an overview of the
2 information about Par Funding.

3 Q. And is this the brochure that you gave to the Securities
4 and Exchange Commission?

02:59 5 A. Yes, it is.

6 MS. BERLIN: Your Honor, I would like to introduce P
7 578.

8 THE COURT: Any objection?

9 MR. HYMAN: Hearsay, but --

02:59 10 THE COURT: Overruled.

11 (Thereupon, the exhibit was admitted into evidence.)

12 MS. BERLIN: Okay. Thank you.

13 If we can put that on the screen. Thank you, Kevin.

14 BY MS. BERLIN:

02:59 15 Q. All right. So we're looking at -- do you see on the front
16 page it says, Par Corporate overview?

17 A. Yes.

18 Q. And the hard copy in front of you is the same as the black
19 and white version on the screen, so whichever is easiest for
03:00 20 you to look at.

21 A. Okay.

22 Q. And where did you receive this brochure that we see as P
23 578? Did someone give it to you or did you find it?

24 A. I think -- I think I received -- I received it at the
03:00 25 luncheon that we had previously spoke about.

1 Q. Okay. So when you went to the event with --

2 A. **When I went to the event that they were speaking.**

3 Q. Okay. So if I understand correctly, you saw the
4 advertisement, P 576, we looked at the newspaper ad, you went
03:00 5 to an event, and when you were at the event you received this
6 brochure that we see as P 578, correct?

7 A. **Correct. Yes, ma'am.**

8 Q. Okay. And was Michael Furman at this event?

9 A. **Yes, he was.**

03:00 10 Q. And was he one of the hosts of this event?

11 A. **Yes, he was.**

12 Q. Okay. If we could just look on the first page, do you see
13 it says: Who we are?

14 A. **Yes.**

03:01 15 Q. And this is a brochure, it's about Par Funding is what it
16 says?

17 A. **Yes, it is.**

18 Q. And when you invested, did you -- or let me just stop.

19 Did you ultimately invest in Par Funding?

03:01 20 A. **Yes, I did.**

21 Q. And did you --

22 **MR. HYMAN:** Objection, Your Honor.

23 **THE COURT:** Overruled.

24 **BY MS. BERLIN:**

03:01 25 Q. Did you invest in Par Funding through Mr. Furman?

1 A. Yes, I did.

2 MR. HYMAN: Objection, Your Honor.

3 THE COURT: Overruled.

4 BY MS. BERLIN:

03:01 5 Q. Okay. I wonder if we could just turn to page 3, please, of
6 the brochure. Do you see where it says: Industry overview?

7 A. Yes, it is.

8 Q. And it's talking about the merchant cash advance industry,
9 generally?

03:01 10 A. Yes, I guess. Yes.

11 Q. So you understood at the time that you were investing in a
12 merchant cash advance business?

13 A. Yes. Yes.

14 Q. Okay.

03:02 15 And if you could turn to page 6. Thank you.

16 Do you see the number 4 on the right side of the page?
17 It has a circle around it.

18 A. Yes.

19 Q. And do you see underneath it says: Our staff manages the
03:02 20 business relationship from underwriting through repayment to
21 reduce nonperformance to the lowest possible levels.

22 Do you see that?

23 A. Yes.

24 Q. Okay. So did you understand from this brochure that
03:02 25 Par Funding was engaged in some sort of due diligence with

1 respect to the loans?

2 A. **Yes. Yes.**

3 Q. And did you read this brochure that you sent the SEC, the P
4 578, you read through this?

03:03 5 A. **Yes, I did read through it.**

6 Q. And when you were at the event, was any presentation given
7 or were -- did you just walk in and you were handed some
8 materials?

9 **MR. HYMAN:** Leading, Your Honor.

03:03 10 **MS. BERLIN:** I'm sorry, I can --

11 **THE COURT:** It's all right.

12 Overruled.

13 **MS. BERLIN:** Okay, thank you.

14 **THE COURT:** You may answer, sir.

03:03 15 A. **There was a presentation. There was offered or given.**

16 **BY MS. BERLIN:**

17 Q. Okay. And do you remember -- and I realize this is a while
18 ago, but do you remember approximately how many people were at
19 the event, like roughly? Was it just you? Was to a thousand
03:03 20 people? Like any idea?

21 A. **Somewhere between myself and a thousand people.**

22 **MR. HYMAN:** Objection.

23 **THE COURT:** Overruled.

24 Go ahead, sir.

03:03 25 A. **Somewhere between myself and a thousand people. There were**

1 several people there, but a small group, not hundreds, but I
2 don't know exactly how many.

3 BY MS. BERLIN:

4 Q. Okay. But it wasn't just you?

03:04 5 A. No, it was not just me.

6 Q. Okay. And was Michael Furman one of the people who
7 presented during the event?

8 A. Yes, he was.

9 Q. And during the event was there any discussion about onsite
03:04 10 inspections, if you remember?

11 A. As far as Par Funding's business?

12 Q. Yes.

13 A. Yes, there was.

14 Q. And do you remember generally what you learned from the
03:04 15 presentation about onsite inspections?

16 A. That they had gone through, they did an onsite inspection
17 to make sure it was a real business going on there. It was,
18 let's say, like a construction business that they had equipment
19 and things like that, if the stuff was in working order. They
03:05 20 talked to the people about the owners of the companies and some
21 of the people that might be working there.

22 Q. Was there any discussion with Mr. Furman about the success
23 of Par Funding or the people who were running it and managing
24 it, that they were doing a good job?

03:05 25 MR. HYMAN: Objection, leading.

1 THE COURT: Overruled.

2 A. I do not remember if there was a specific about how they
3 were doing from that point.

4 Q. Okay. Did anyone -- or did Mr. Furman tell you that the
03:05 5 person who was running the merchant cash advance business was a
6 convicted felon?

7 A. I did not know that.

8 MR. HYMAN: Objection, leading.

9 THE COURT: Overruled.

03:06 10 BY MS. BERLIN:

11 Q. So Mr. Furman didn't tell you that, right?

12 MR. HYMAN: Objection, leading.

13 THE COURT: Overruled.

14 A. No, he did not.

03:06 15 BY MS. BERLIN:

16 Q. Did Mr. Furman tell you that -- now, let me just go back to
17 your advertisement, because this event was in March of 2000- --
18 looks like March 2019.

19 A. Correct.

03:06 20 Q. So when you went to this event in March of 2019, did
21 Mr. Furman tell you about any cases where state governments had
22 filed lawsuits or actions against Par Funding or people
23 involved with Par Funding for violating securities laws?

24 MR. HYMAN: Objection, leading, compound.

03:06 25 THE COURT: Overruled.

1 A. I did not know of any improprieties or any investigations
2 at that time, no.

3 Q. Okay. So Mr. Furman didn't mention that to you?

4 A. He did not.

03:07 5 MR. HYMAN: Leading.

6 MS. BERLIN: Okay.

7 MR. HYMAN: Your Honor, may I just have a standing
8 objection as it relates to this to facilitate the process?

9 THE COURT: Yes, please do.

10 MR. HYMAN: Thank you.

11 THE COURT: For the record -- and for the record, most
12 of this is not hearsay. This is state of mind for an
13 individual and what he believed it to be, which is why these
14 objections are routinely overruled.

03:07 15 MR. HYMAN: Your Honor, the objection was based on --

16 THE COURT: I didn't ask you to engage with me. I'm
17 just making a record. Your standing objections are overruled
18 as to this witness and the testimony as offered regarding these
19 materials.

03:07 20 Please continue.

21 MS. BERLIN: Thank you, Your Honor.

22 BY MS. BERLIN:

23 Q. Thank you, Mr. Reikes.

24 Mr. Reikes, I wonder if I can just come up and get

03:07 25 my -- one of those exhibits that I gave you?

1 A. Yes, ma'am.

2 Q. Thank you.

3 So you did -- or did you ultimately invest? I think
4 you said you did, right?

03:08 5 A. Yes, I did.

6 Q. And do you remember about how much you invested?

7 A. I think it was about a hundred thousand.

8 Q. And was any of that -- were those -- when you made your
9 investment, did you sign any contracts or agreements?

03:08 10 A. Yes, there was an agreement signed.

11 Q. And did you enter -- did you do that paperwork with
12 Mr. Furman or with someone else?

13 A. I think it was with Mr. Furman that it was done.

14 Q. Before you invested in Par Funding, had you ever invested
03:09 15 in, like, a merchant cash advance business or a business like
16 Par Funding in the past?

17 A. No, I had not.

18 MR. HYMAN: Compound.

19 THE COURT: Overruled. (Inaud.)

03:09 20 MS. BERLIN: Just one moment, I think I might be
21 finished.

22 THE COURT: Sure.

23 MS. BERLIN: One last question.

24 BY MS. BERLIN:

03:10 25 Q. We didn't meet before today, right?

1 A. **No. I have not.**

2 Q. And did I tell you what questions I was going to ask you?

3 We did go to lunch together, right?

4 A. **We did go to lunch together.**

03:10 5 Q. Kind of lunch because --

6 A. **At least I had a bottle of water.**

7 Q. We're both picky.

8 But did I tell you what I was going to -- did I ask
9 you -- did we rehearse your questions or answers in any way?

03:10 10 A. **No, we did not.**

11 Q. And what did we mostly discuss?

12 A. **We discussed kind of -- you gave me suggestions to review a
13 couple of sheets, but not anything specific. And then it was
14 general everyday conversation that I probably have with anybody
03:10 15 in here.**

16 Q. And mostly cat jokes?

17 A. **Some cat jokes and things like that, yes.**

18 Q. Okay. And have you ever testified in a federal court
19 before?

03:10 20 A. **No, I have not.**

21 Q. This is your first time?

22 A. **This is my first time.**

23 Q. Thank you.

24 **MS. BERLIN:** I have no further questions, Your Honor.

03:11 25 **THE COURT:** Thank you. Cross-examination?

CROSS EXAMINATION

1

2 BY MR. JOHN:

3 Q. Good afternoon, Mr. Reikes.

4 A. Good afternoon.

03:11

5 Q. I just want to clarify something. During your direct
6 examination you spoke about investing in Par and hearing about
7 Par Funding. Are you familiar with a company called Fidelis?

8 A. Yes, I am.

9 Q. How are you familiar with Fidelis?

03:11

10 A. They were part of -- or actually they were representing
11 Par Funding at the time I started investing.

12 Q. So is it possible that the company that you actually made
13 investments with was Fidelis?

03:12

14 A. It's possible, but most of the time when they act as a
15 broker they take the funds and move them to specific companies.
16 So in this case they would move it to Par Funding.

17 Q. Okay. Let me ask you a question. You said you went to an
18 event for Par. Is it possible the event was actually hosted by
19 Fidelis rather than Par?

03:12

20 A. It could have been. It was both Fidelis and Par Funding
21 were kind of mixed together at that point. So exactly who
22 put -- who did put it on specifically or not, I know the flyer
23 that we had looked at a few minutes ago listed it as Fidelis.
24 But exactly who put it to bills and everything, I do not know.

03:12

25 Q. You said you first heard about Par about four years ago.

1 Is it possible you actually first heard about the offering in
2 March of 2019?

3 A. I thought I had heard about it before that time, but I
4 don't remember specifically.

03:13 5 Q. Is it fair to say you're not certain?

6 A. I'm not certain specifically what I heard, yes.

7 Q. Let me ask you a question. At the time you went to the
8 event in March of 2019, were you an accredited investor?

9 MS. BERLIN: Objection, Your Honor. Outside of the
03:13 10 scope.

11 THE COURT: Overruled. Overruled.

12 MS. BERLIN: I'm not sure if it can at least be
13 defined.

14 THE COURT: I think if he believes he's one, he would
03:13 15 be able to explain it.

16 So go ahead, sir.

17 BY MR. JOHN:

18 Q. Let me just repeat the question for you, sir.

19 When you went to the event in 2019, were you an
03:13 20 accredited investor?

21 A. What do you mean by "accredited investor"?

22 Q. I would ask you, do you know what an accredited investor
23 is?

24 A. No, I do not.

03:13 25 Q. Had you invested prior to March of 2019?

1 A. I have invested in other things, yes.

2 Q. At the time that you invested, possibly with Fidelis, had
3 you done any research yourself on Par Funding?

4 MS. BERLIN: Objection, Your Honor, motion in limine.

03:14 5 THE COURT: Sustained.

6 MR. HYMAN: Your Honor.

7 THE COURT: Move on. Sustained. Next question.

8 BY MR. JOHN:

9 Q. Mr. Reikes, before you invested with Fidelis, did you do
03:14 10 any research on the investment itself?

11 MS. BERLIN: Objection, same objection. You just
12 sustained it.

13 THE COURT: Sustained.

14 BY MR. JOHN:

03:14 15 Q. Mr. Reikes, on your direct examination, you mentioned that
16 you had invested about a hundred thousand dollars in this
17 particular investment; is that correct?

18 A. Yes.

19 Q. And did the investment itself generate any income for you?

03:14 20 A. For me, I got the interest and I got my funds back.

21 Q. I just want to go back to one thing. At the time you
22 invested in March of 2019, do you recall what your net worth
23 was at that time?

24 A. Not specifically.

03:15 25 Q. Would it be fair to say it was more than \$2,000,000?

1 A. Yes.

2 Q. Would it be fair to say that your annual income was over
3 \$200,000 a year at that time?

4 A. I'm not sure what my annual income was at that time.

03:16 5 Q. Okay. You advised that you went to an event in March of
6 2019 and you saw Mr. Furman speak; is that correct?

7 A. Yes.

8 Q. Are you familiar with someone named Perry Abbonizio?

9 A. Vaguely remember the name. But remember, it's been four
03:16 10 years. So...

11 Q. Or possibly two, right?

12 A. No. The event was four years ago, in '19 -- wait a minute.
13 '18, '19, yeah, two years, whatever it was.

14 Q. Do you recall whether or not Mr. Perry Abbonizio spoke at
03:17 15 the event that you went to?

16 A. I don't recall. If he was there, then he probably did
17 speak, but I don't remember.

18 Q. Okay.

19 MR. JOHN: Moment to confer?

03:17 20 BY MR. JOHN:

21 Q. When you were working with Mr. Furman, was he responsive to
22 your calls about your investment?

23 A. When I did call, I did get answers, yes.

24 Q. Did you feel he took care of you as an investor?

03:18 25 MS. BERLIN: Objection, Your Honor, motion in limine.

1 THE COURT: Overruled. I'll allow it.

2 MR. JOHN: I'll just repeat the question, sir.

3 BY MR. JOHN:

4 Q. Do you feel that Mr. Furman took care of you as an
03:18 5 investor?

6 A. When I called, I got the answers I needed or -- I got the
7 answers to the questions I had asked, yes.

8 Q. Did you ever reach out to Par Funding directly about your
9 investment?

03:18 10 A. No, I did not.

11 Q. You exclusively communicated with Mr. Furman?

12 A. Yes.

13 MR. JOHN: I have no further questions for this
14 witness at this time.

03:18 15 THE COURT: Redirect?

16 MS. BERLIN: Very brief. Thank you.

17 THE COURT: Sure.

18

19

REDIRECT EXAMINATION

03:18 20 BY MS. BERLIN:

21 Q. When you invested in Par Funding, you talked about your net
22 worth and the amounts you invested, about a hundred thousand?

23 A. Yes.

24 Q. Were you investing -- was that net worth in the amount that
03:19 25 you invested, was that from your retirement?

1 MR. HYMAN: Objection, Your Honor.

2 THE COURT: Overruled. Door was opened on that.

3 Go ahead.

4 A. Yeah. I would say so. It would be money that I would be
03:19 5 living off of, yes.

6 BY MS. BERLIN:

7 Q. Because your career was in the Bureau of Corrections?

8 A. I worked for the Department of Corrections, yes.

9 Q. And you were asked about whether or not you thought
03:19 10 Mr. Furman was responsive to your questions and provided
11 information.

12 Do you remember that?

13 A. Yes.

14 Q. So did Mr. Furman -- I mean, I guess because --

03:19 15 MS. BERLIN: Your Honor, I think the door was opened.
16 I think this was the subject of the motion in limine, but since
17 the door was opened --

18 THE COURT: What's the question? I'll let you know.

19 MS. BERLIN: Thank you.

03:19 20 BY MS. BERLIN:

21 Q. So that you relied on -- did you rely on what Mr. Furman
22 told you about the investments?

23 A. Some on that and some on the meeting, what I found with the
24 brochures and things like that, not specifically from one
03:20 25 individual or --

1 Q. So a combination of what Mr. Furman said and the brochure,
2 like the written materials he gave you?

3 A. **Whatever else I had found or got my hands on, yes.**

4 Q. Okay. And did you trust what Mr. Furman was telling you
03:20 5 about Par Funding? Like, when he told you about Par Funding,
6 did you -- he never -- we covered he never told that you anyone
7 at Par Funding was a convicted felon, for example, right?

8 A. **I did not know that.**

9 **MR. HYMAN:** Asked and answered.

03:20 10 **THE COURT:** Overruled.

11 **BY MS. BERLIN:**

12 Q. And he didn't tell you about any of the government cases
13 either, correct?

14 A. **No, I did not know of any of those.**

03:21 15 Q. That wasn't in any of the brochures or written materials?

16 A. **If it was, I do not remember it.**

17 Q. Is that something that you would remember, Mr. Furman -- if
18 Mr. Furman had told you that the person you were giving your
19 money to was a convicted felon?

03:21 20 A. **I probably would have remembered that, especially coming
21 out of a correctional business.**

22 Q. Especially given your background?

23 A. **Yes.**

24 **MS. BERLIN:** Well, thank you so much. We don't have
03:21 25 any further questions, Mr. Reikes. I hope you have a safe

1 drive home.

2 MR. HYMAN: Your Honor, before Mr. Reikes is excused,
3 may we have a quick sidebar? Mr. John has an argument he would
4 like to raise.

03:21 5 THE COURT: One moment, please.

6 Does anybody in my jury have any questions for the
7 witness? No.

8 Sidebar.

9 (Thereupon, there was a side-bar conference held outside the
03:22 10 presence and hearing of the jury.)

11 MR. JOHN: I need you to sustain two objections when I
12 asked about his independent exploration, research about
13 Par Funding. I believe the door was just opened when asked
14 what he relied on. He said --

03:22 15 THE COURT: He relied on a brochure and -- he said his
16 brochure and what was represented to him by Furman.

17 MR. JOHN: And what he found.

18 THE COURT: And what he found.

19 MS. BERLIN: All right. So let me be clear. Reliance
03:22 20 is not an element. If you have a trial where you're talking
21 about reliance, which is only relevant to appeal SRA case,
22 there will be an appeal. I objected when you brought it up.
23 It was the subject of a motion in limine for precisely this
24 reason. If we have a trial -- I checked --

03:22 25 THE COURT: You opened the door and allowed her to ask

1 that because you specifically got into that issue about what
2 he's relying on. His state of mind, if it's misleading or not,
3 he's allowed to testify about that, which is why I allowed that
4 question to be asked without objection, because we had opened
03:23 5 the door about what he's looking at and what he's relying on.
6 You guys asked him about anything else independent of that, to
7 try to essentially, I believe, show that he wasn't somehow
8 mislead or that he had enough independent information even
9 though we know from motions in limine, my recollection is that
03:23 10 what he may have done independently is of no moment.

11 Because at the end of the day, as long as it's
12 misleading and he's confused by it, it's not like we hold an
13 investor to a standard of investigation or their own diligence.
14 That's not a defense, almost like an uninformed investor
03:23 15 defense. I don't believe that's an issue. That's why in
16 limine we stayed away from this, because it's not going to make
17 a difference. We can't have a jury find that something is
18 misleading but it doesn't matter because he should have known
19 better. That's my concern.

03:23 20 **MR. JOHN:** That's actually not why I'm asking the
21 question. I believe, based on his answer, he can demonstrate
22 that the information that they claim Mr. Furman should have
23 known was not easily accessible to anyone. It wasn't available
24 by a cursory review. Mr. Sharp just testified he had to go
03:24 25 into records to find who to contact for litigation materials.

1 I believe this witness is going to say when he went looking,
2 whatever he found wasn't any of the information that's supposed
3 to be easily accessible to anyone like Mr. Furman.

4 **THE COURT:** I would believe that that would be a good
03:24 5 inquiry for Furman and maybe on Furman about his ability to
6 disclose what he knew.

7 But this guy, that doesn't matter to him. It might
8 matter to Furman to figure out if he has the scienter to do
9 this, because he says he could never find it, I'll let you do
03:24 10 that. But it's not going to come in through this guy because
11 it's going to impact his mental state, and it's not really a
12 defense. So that's why I can't let it in with this guy, but
13 that's fine. Bring it in with Furman.

14 **MR. JOHN:** I don't. It's just the idea that it's not
03:24 15 readily accessible information, that's the relevancy.

16 **THE COURT:** Yeah, but the relevancy is through Furman.
17 What he can and cannot find is of no moment. Even if it was,
18 let's say, plastered on a billboard somewhere, I still wouldn't
19 allow you to ask it. Because the whole point is, it doesn't
03:25 20 matter what he knows or not knows. It's whether what he was
21 fed was materially misleading.

22 And if Furman can find out, if Furman says, look, I
23 did what I did, there's no way I can be charged with this, I
24 had not idea this was out there, that's fine, but not on him.
03:25 25 I think it's inappropriate for the investor. So I'll let you

1 do it when Furman gets up. That makes more sense, not on him.

2 **MS. BERLIN:** Thank you, Your Honor.

3 (Thereupon, the side-bar conference was concluded.)

4 **THE COURT:** All right. Thank you very much, sir.

03:25 5 You're excused. Thank you.

6 **JUROR:** I need a break.

7 **THE COURT:** Okay. Take five minutes.

8 (Thereupon, a brief recess was taken.)

9 (Thereupon, the jury entered the courtroom.)

03:40 10 **THE COURT:** Okay. So I believe the SEC has got their
11 next witness ready to go.

12 **MS. BERLIN:** Yes, Your Honor. Perry Abbonizio.

13 **THE COURT:** Let's go ahead and get Mr. Abbonizio on,
14 please.

15 Thereupon,

16 **PERRY ABBONIZIO,**

17 having been duly sworn by the court reporter, testified as
18 follows:

19

20 **DIRECT EXAMINATION**

21 **BY MS. BERLIN:**

22 Q. Good afternoon, Mr. Abbonizio.

23 A. How are you, Ms. Berlin?

24 Q. I'm fine. Thank you.

03:40 25 Have you ever heard of a company called Par Funding?

1 A. **Yes, I have.**

2 Q. And did you ever work there?

3 A. **Yes, I did.**

4 Q. During what years?

03:41 5 A. **April of 2016 through July of 2020.**

6 Q. What was your title at Par Funding?

7 A. **Principal of investor relations.**

8 Q. So safe to assume investor relations were part of your job?

9 A. **Yes. That was my sole job.**

03:41 10 Q. Have you ever heard of the phrase "agent fund"?

11 A. **Yes, I have.**

12 Q. And does your work at Par Funding involve working with
13 agent funds?

14 A. **Yes, it did.**

03:41 15 Q. And were agent funds the people who were raising money for
16 Par Funding?

17 **MR. HYMAN:** Leading, Your Honor.

18 **THE COURT:** Overruled.

19 A. **Yes, they were.**

03:41 20 **BY MS. BERLIN:**

21 Q. Was there an -- one of these agents was -- did Par Funding
22 have one of these agents here in South Florida in West Palm
23 Beach?

24 **MR. HYMAN:** Leading.

03:42 25 **THE COURT:** Overruled.

1 **MR. HYMAN:** Your Honor, would it be faster and easier
2 just to have a standing objection again for all of the leading
3 questions?

4 **THE COURT:** Sure. You believe they're leading.
03:42 5 That's fine. They're overruled.

6 Go ahead.

7 **MS. BERLIN:** Thank you, Your Honor.

8 A. I'm sorry. If you could repeat that, please.

9 **THE COURT:** Absolutely.

03:42 10 **BY MS. BERLIN:**

11 Q. Absolutely. Did Par Funding have an agent in South
12 Florida, and specifically in West Palm Beach?

13 A. Yes, we did. When I say, did we have one? Yes, there was
14 an individual in West Palm that raised money with Par, yes.

03:42 15 Q. And what was the name of that individual?

16 A. Michael Furman.

17 Q. And how did you know that Michael Furman was one of these
18 agents for Par Funding?

19 A. Well, we received distributional monies from his private
03:42 20 placement. I would come down and visit and do marketing
21 related activities with Michael, and that's how I've known him
22 about three years.

23 Q. Did Mr. Furman provide updates to you about his efforts to
24 raise money from investors for Par Funding?

03:43 25 A. Yes, he did.

1 Q. Would you also speak with him and get updates that way?

2 A. **I would speak frequently with Michael, yes.**

3 Q. And about when was it that you first met Michael Furman?

4 A. **I believe it was November of 2017, at an event held in King**
03:43 5 **of Prussia, Pennsylvania.**

6 Q. Is that near Philadelphia?

7 A. **Suburbs of, yes. About 30 minutes outside of Philadelphia.**

8 Q. And during that trip, when you met Mr. Furman, did you all
9 also meet -- or did he also meet with Joseph LaForte?

03:44 10 A. **He did briefly, yes, he did.**

11 Q. At Par Funding?

12 THE COURT: I'm sorry, I can't hear.

13 MR. HYMAN: Leading and compound.

14 THE COURT: All right. Overruled.

03:44 15 Go ahead.

16 **BY MS. BERLIN:**

17 Q. And was that at Par Funding's office?

18 A. **Yes, it was. We had an orientation there, and we met him**
19 **there.**

03:44 20 Q. And Par Funding's office was in Philadelphia; is that
21 right?

22 A. **Yes, it was.**

23 Q. And you say you had an orientation there. What was an
24 orientation for?

03:44 25 A. **The event was held in King of Prussia by A Better Financial**

1 Plan, and on day one it was just a general overview of the
2 nature of what A Better Financial Plan did.

3 On day two, I believe it was, we transported people
4 down so they could walk through our physical offices and get a
03:44 5 tour.

6 Q. And when you say "transported people down," do you mean to
7 Par Funding's office?

8 A. To Par Funding's office in Philadelphia, yes.

9 Q. So was it an orientation that was for people who might
03:45 10 become, like, sales agents or agent fund managers for
11 Par Funding?

12 MR. HYMAN: Objection, leading.

13 THE COURT: Overruled.

14 A. Yes. Again, the intent of the event that Dean Vagnozzi
03:45 15 hosted was to orientate various managers throughout the --
16 insurance agents on a myriad of products, one being merchant
17 cash advance, and that's how they came to Par.

18 BY MS. BERLIN:

19 Q. Okay. So one of the things that they were having
03:45 20 orientation about to be sales agents was Par Funding and then
21 there were other things also, right?

22 A. Yes, absolutely.

23 Q. Okay. So during what years, approximately, did Mr. Furman
24 raise money for Par Funding?

03:45 25 MR. HYMAN: Leading.

1 THE COURT: Overruled.

2 A. I believe formally started in the spring of 2018 through
3 2020, July, when we were put in a receivership. Par was put in
4 a receivership.

5 BY MS. BERLIN:

6 Q. And would Mr. Furman receive any compensation from
7 Par Funding in connection with raising money?

8 A. Yes, he would. Yes, he would.

9 Q. And would Mr. Furman receive compensation from Par Funding
03:46 10 if he did not send investor money to Par Funding?

11 A. No, he would not.

12 Q. So he would only get paid by Par Funding if he brought in
13 investor money?

14 A. Yes, that's correct.

03:46 15 Q. Did you personally invest 50 million dollars in
16 Par Funding?

17 A. No, I did not.

18 Q. Did you ever tell Mr. Furman that you did?

19 A. No, I don't believe I did that, no.

03:46 20 Q. Now, have you ever heard of a person Joseph LaForte?

21 A. Yes, I have.

22 Q. Okay. And did Joseph LaForte have any role in the
23 operations of Par Funding's merchant cash advance business?

24 A. He ran sales for RMR, Recruiting and Marketing Resources,
03:47 25 which was the sales end of the business, as well as he had some

1 supervisory duties being married to Lisa McElhone, the
2 president, of general underwriting and credit related
3 supervision. So yes.

03:47 4 Q. And was Par Funding sort of structured so that it was,
5 like, a triangle where it was Lisa McElhone, Joseph Cole as the
6 CFO, and then Joseph LaForte with the MCA business and
7 underwriting?

8 A. Yes, that's a pretty good parallel to make, yes. I would
9 agree with that.

03:47 10 Q. Do you remember testifying that it was a triangle in your
11 deposition?

12 A. Yes, I do.

13 Q. I didn't come up with that on my own.

14 MR. HYMAN: Objection.

03:48 15 THE COURT: Overruled.

16 BY MS. BERLIN:

17 Q. Did you and Mr. Furman ever discuss Joseph LaForte having a
18 criminal record?

19 A. Yes, we did. Yes, we did.

03:48 20 Q. And do you know approximately when that was?

21 A. Well, Michael and I spoke frequently. And I would say it
22 was probably at the latter part of 2018 or early in 2019 after
23 it was made widely known on Google, I believe.

24 Q. So Mr. Furman was aware of the criminal record by late 2018
03:48 25 or early 2019, based on your conversation with him?

1 MR. HYMAN: Objection.

2 THE COURT: Overruled.

3 A. I would say, yes.

4 BY MS. BERLIN:

03:49 5 Q. Okay. Did you ever tell Michael Furman that New Jersey
6 regulators had found that Par Funding was doing things right or
7 had retracted or taken back any order entered against
8 Par Funding?

9 MR. HYMAN: Leading, compound.

03:49 10 THE COURT: Overruled.

11 MR. HYMAN: And hearsay.

12 THE COURT: Overruled.

13 A. I don't believe I used the word "retracted." If I did use
14 that, I used it in error. That which I would have told Michael
03:49 15 as well as others was that was resolved in relatively short
16 order and through an additional filing to the state. There
17 were no fines and penalties and we were allowed to proceed in
18 operation. So if I used that word, I used it incorrectly.

19 BY MS. BERLIN:

03:49 20 Q. Okay. But there was an order by the government -- by the
21 state Pennsylvania securities regulators against Par Funding.
22 Do you agree with me on that?

23 A. Pennsylvania or New Jersey?

24 Q. I'm sorry, New Jersey.

03:50 25 A. Yes, there was. There was a cease and desist issue. Yes.

1 Q. And did you ever tell Michael Furman that the New Jersey
2 regulators that issued the cease and desist order had come back
3 and decided that Par Funding was doing things right or that the
4 New Jersey regulators loved the Par Funding investment?

03:50 5 MR. HYMAN: Compound, hearsay.

6 THE COURT: Overruled.

7 A. I don't -- I don't know if I would have used that language.
8 I would have perhaps just stayed with, the issue has been
9 resolved through additional filings by Martin Hewitt, who was
03:50 10 hired to resolve the issue, and that there were no fines and we
11 were able to proceed doing business in the State of New Jersey.

12 BY MS. BERLIN:

13 Q. So you didn't tell him that the State of New Jersey loved
14 the investment or decided that the investment was being done
03:50 15 correctly. If I understand correctly, you told him that a
16 cease and desist order had been entered and that Par Funding
17 had resolved it and it was proceeding; is that correct?

18 MR. HYMAN: Objection, leading, asked and answered.

19 MS. BERLIN: I'll withdraw it. I'm withdrawing it.

03:51 20 THE COURT: I've given you plenty of leeway, but you
21 need to start asking questions in a direct examination.

22 MS. BERLIN: I'm withdrawing it.

23 THE COURT: Yeah, let's withdraw it.

24 MS. BERLIN: Thank you.

03:51 25 THE COURT: But please, I've given you some leeway, we

1 need to ask these questions in a non-blatantly leading fashion.

2 MS. BERLIN: Absolutely.

3 BY MS. BERLIN:

4 Q. Did you help Michael Furman create -- did you or
03:51 5 Par Funding help Michael Furman create his agent fund?

6 A. Yes, I did.

7 Q. How so?

8 A. I helped subsidize the initial payment with his attorney.
9 I don't recall the exact amount, but I did participate in
03:51 10 helping that get formed, yes.

11 Q. So you paid -- when you say subsidized, do you mean you
12 paid part of his --

13 A. I would have paid a portion of it. I don't know what the
14 exact was. \$7,500, \$8,000, something like that.

03:52 15 Q. And was that to an attorney named Erik Weingold?

16 A. Yes, it was. I believe that's correct.

17 MS. BERLIN: Your Honor, I'd like to show the witness
18 a document that we've premarked as P 5.

19 THE COURT: Sure, you may approach.

20 MS. BERLIN: Thank you.

21 (Thereupon, the exhibit was marked for identification.)

22 BY MS. BERLIN:

23 Q. Does the document P 5, that we've marked as P 5, does this
24 look familiar? Have you seen it before?

03:53 25 A. I don't believe I've seen it in this order, Ms. Berlin.

1 Q. Well, I think on the front page it has a certification from
2 a state government; do you see that?

3 A. Yes, I do.

4 MS. BERLIN: Your Honor, actually I'd like to just
03:53 5 admit this and display it as a government record.

6 THE COURT: Any objection?

7 MR. HYMAN: I mean --

8 THE COURT: What's the number again?

9 MS. BERLIN: It's P 5. There's a government
03:53 10 certification from the State of New Jersey on the top.

11 THE COURT: All right.

12 Any objection?

13 MR. HYMAN: None at this time, Your Honor.

14 THE COURT: All right. That will be admitted at this
03:53 15 time. We'll admit P 5. It can be published.

16 (Thereupon, the exhibit was admitted into evidence.)

17 MS. BERLIN: Thank you.

18 BY MS. BERLIN:

19 Q. So, Mr. Abbonizio, we're showing you Exhibit P 5. And do
03:54 20 you see, if you turn to page 2, it's a cease and a summary
21 cease and desist order issued by the State of New Jersey,
22 Bureau of Securities. Do you see that?

23 A. Yes, I do.

24 Q. And is this the order that you were referencing in your
03:54 25 testimony a bit ago?

1 A. **Yes, I believe it is.**

2 Q. And under findings of fact, it should be the second page of
3 your exhibit but the first page of the order, do you see
4 paragraph 1?

03:54 5 A. **Uh-huh. (Nodding.)**

6 Q. Where it reads that CBSG, which is also Par Funding, right?

7 A. **Uh-huh. (Nodding.) That's correct, yes.**

8 **MR. HYMAN:** And leading, Your Honor.

9 **THE COURT:** Overruled.

03:55 10 **BY MS. BERLIN:**

11 Q. I'm just going to read from the document Mr. Abbonizio. So
12 do you see at paragraph 1, where it states: CBSG, a purported
13 small business funding company, sold and continues to offer to
14 sell unregistered securities? Do you see that?

03:55 15 A. **Yes, I do.**

16 Q. And then if you could just turn to page 3 of the order,
17 which is page 4 of the exhibit labeled P 5.

18 Do you see where it says "Conclusions of Law"?

19 A. **I'm sorry. What page are you on, Ms. Berlin? Please**
03:55 20 **forgive me.**

21 Q. Of course. It's page 3. It has a 3 at the bottom of the
22 order. Because there's an extra page added to this exhibit on
23 top, it's like the fourth page of the exhibit. You can also
24 look on your screen if that's easier.

03:56 25 A. **No, this is fine. I'm fine here. Page 3, Conclusions of**

1 Law.

2 Q. Yes. And so do you see there that in the Conclusions of
3 Law, that this is an order concerning the unregistered
4 securities of Par Funding?

03:56 5 A. Yes, I do.

6 Q. And if you just continue onto the next page, do you see the
7 order was entered December 27th, 2018?

8 A. Yes, I do.

9 Q. And in paragraph 21, the CBSG is ordered to cease and
03:56 10 desist from offering for sale any security in New Jersey until
11 it's registered?

12 A. Yes, I do.

13 Q. And it continues from there?

14 MR. HYMAN: Leading, Your Honor, all of these
03:56 15 questions.

16 THE COURT: Overruled.

17 BY MS. BERLIN:

18 Q. Do you see paragraph 21(b), where it says Par Funding is
19 ordered to cease and desist from acting as agents in New Jersey
03:56 20 until they're registered?

21 A. Yes, I do.

22 Q. And then you see paragraph 21(c). It says they're ordered
23 to cease and desist from violating any provisions of the
24 securities laws and any rules in this -- in the sale of
03:57 25 securities in New Jersey?

1 A. Yes, I do.

2 Q. You can set it aside.

3 A. Okay.

4 Q. So I just wanted to make sure I understood correctly. So
03:57 5 when you testified earlier about the Par -- the New Jersey
6 order, P 5 is what you were referring to?

7 A. I believe that's correct.

8 Q. And am I understanding correctly that because this order
9 directed Par Funding to cease and desist from doing certain
03:57 10 things in New Jersey, that -- did you -- I mean, you tell me.
11 Did you tell Mr. Furman that -- or was it your understanding
12 that Par Funding had stopped doing this in New Jersey? Can you
13 explain --

14 MR. HYMAN: Leading, compound, Your Honor.

03:57 15 THE COURT: Overruled.

16 Let's go ahead. And yeah, that's fine.

17 BY MS. BERLIN:

18 Q. Can you explain what you meant?

19 THE COURT: Go ahead. You may answer.

03:57 20 A. Based on the time of this filing, which I believe was at
21 the end of December, and things happened in a very succinct
22 manner, I believe, at the advice of counsel, first and foremost
23 at Par, I didn't day one tell anyone anything. We were working
24 through it. They engaged Martin Hewitt. Martin Hewitt was
03:58 25 going to attempt to resolve the issue, and it was my

1 understanding during short duration, the issue was resolved.

2 And that it was at that time, generally speaking, when I would
3 have shared with Michael Furman or any other agent exactly how
4 it was resolved.

03:58 5 BY MS. BERLIN:

6 Q. Okay. And did you ever attend any of the sales events that
7 Mr. Furman held?

8 A. Yes, I did.

9 Q. And during those sales of events, what was your role? How
03:59 10 did you come about attending those?

11 A. Well, they were generally like others, oriented to a number
12 of topics. Merchant cash would have been one. And I'd rather
13 call them marketing-oriented as opposed to sales. It was
14 education-based. Michael was proficient with that. And he
03:59 15 would talk on a -- probably four or five different product were
16 disciplines of investing. Merchant cash would have been one.

17 Q. Okay. So at these events, Michael Furman would discuss,
18 among other things, the Par Funding investment; is that
19 correct?

03:59 20 A. Yes. Yes, he would.

21 Q. And he would invite -- who would invite the people to these
22 events that he would host? Were you the person inviting them
23 or was Mr. Furman?

24 A. No, it was all handled by Michael's firm. They were his
03:59 25 clients, prospects, and his firm made all the arrangements.

1 Q. And did you ever meet one on one with any of Mr. Furman's
2 clients? By "clients," I mean someone he had solicited about
3 someone who had invested in Par Funding. Did you ever also
4 meet with that person yourself?

04:00 5 A. Yes.

6 MR. HYMAN: Compound, Your Honor, leading.

7 THE COURT: Overruled. You may continue.

8 A. Yes, I would. Frequently I would come in a day-and-a-half
9 or so and afford some time pre or post the event to do exactly
04:00 10 that. And Michael was very diligent and always was able to
11 schedule a few appointments that he and I could -- I could have
12 an opportunity to expound on what I had said the night before
13 or what I was -- you know, give someone a prelude as to what I
14 was going to say later that evening, depending on when they
04:01 15 came in.

16 BY MS. BERLIN:

17 Q. And with agent fund managers, because in addition to
18 Mr. Furman, you worked with others around the country; is that
19 correct?

04:01 20 A. That's correct, yes.

21 Q. And with Mr. Furman, in particular, who was making -- were
22 you responsible or did you have any division with him of who
23 was responsible for telling his investors about the risk of the
24 investment or the issues with the investment? Whose
04:01 25 responsibility was that?

1 MR. HYMAN: Leading, compound, Your Honor.

2 THE COURT: Overruled.

3 A. Generally the intent of these events were to -- if you
4 likened it to dining out, they were the appetizer. They were
04:01 5 there to pique one's interest and to entice them to order an
6 entree, at which time Michael and his team could spend more
7 time on the area of focus. And it would be at that time that
8 Michael -- not I -- I gave a very high level 15-minute overview
9 of the nature of merchant cash, an orientation to our company,
04:02 10 what we did, how we perhaps differentiated ourselves, but then
11 Michael, which he was very proficient at, would spend a
12 considerable one-on-one time with the individual should they
13 have desired a more in-depth overview.

14 BY MS. BERLIN:

04:02 15 Q. Okay. Did you ever get an understanding -- and I'm almost
16 finished, by the way. Just a couple more questions.

17 Did you ever gain any understanding of how important,
18 if at all, underwriting these loans would be for the success of
19 the merchant cash advance loans and therefore, like, the
04:03 20 generation of profits for investors?

21 A. Well, yes. You obviously read through my deposition if you
22 remembered the triangle, and the foundational building block
23 for my representation with investors was that underwriting was
24 the foundational building block. And I stressed that if we as
04:03 25 a company didn't do a proficient job, Par Funding, of taking

1 investor capital and placing it in the hands of merchants that
2 would abide by the terms of the agreement they have with
3 Par Funding, if enough of them didn't honor those, the company
4 wouldn't be profitable. And it could get to the point where it
04:03 5 would impede the ability to pay back investors their capital.
6 Luckily, that never occurred. In eight years we had an
7 exemplary track record. So yes, underwriting was critical,
8 Ms. Berlin.

9 Q. And what about the onsite inspections, was that -- that was
04:04 10 something that --

11 A. It was one component of underwriting. And yes, it was a
12 very valuable component in that.

13 Q. And what would happen -- would investors be impacted if the
14 merchant cash advance loans had not been successful or if there
04:04 15 were issues with the underwriting? Like, would that impact
16 what the profits were of the company and therefore, what the
17 investment returns were?

18 MR. HYMAN: Object to form, speculation.

19 THE COURT: Overruled.

04:04 20 A. Again, it's very general, the nature of your question. And
21 again, if enough of them didn't honor their obligations, it
22 could be troublesome, Ms. Berlin, if enough of them. You're
23 asking a very general question. I'm trying to make it
24 specific.

04:05 25 We were in business to do it proper and thorough

1 underwrite to protect investor capital and grow our business.

2 I want to answer it that way. I don't want to be evasive with
3 you. It's just so general that --

4 **BY MS. BERLIN:**

04:05 5 Q. Yes. And do you remember -- would you tell them -- you
6 know, did you believe that it was important to -- let me ask
7 you a different way, Mr. Abbonizio.

8 Investor returns were supposed to be generated from
9 the loans. I think we have established that, right?

04:05 10 A. Well, the returns were fixed and they helped prosper the
11 company.

12 Q. And that was the only business of Par Funding, was the
13 merchant cash advance loans?

14 A. That's correct.

04:05 15 Q. So if the merchant cash loans are not successful, then
16 business is not successful. Fair to say?

17 A. Fair to say. Very fair to say.

18 Q. All right. And then finally, I just wanted to go back very
19 briefly to the New Jersey order.

04:06 20 A. Okay.

21 Q. So I was just trying to understand this a little better.

22 Was it your understanding that the order was still in
23 effect but that Par Funding had figured out a way to still
24 operate in New Jersey that complied with the cease and desist

04:06 25 order?

1 A. Keyword that you just mentioned, comply. It was my
2 understanding that through Martin Hewitt, the law firm's
3 efforts, in providing an additional registration or filing, we
4 had met the requirements of the State of New Jersey which
04:07 5 allowed us to continue in compliance operating within that
6 state.

7 Q. Okay. I think. So it sounds like yes?

8 A. Yes. Yes.

9 Q. Just wanted to make sure. Now I understand.

04:07 10 MS. BERLIN: Thank you so much. I don't have any
11 further -- let me -- just one moment. Let me check with my
12 colleague.

13 I don't have any further questions. Thank you so
14 much.

04:07 15 THE WITNESS: Thank you. Thank you.

16 THE COURT: Cross-examination.

17

18 CROSS EXAMINATION

19 BY MR. HYMAN:

04:07 20 Q. Good afternoon, Mr. Abbonizio.

21 A. Good afternoon to you.

22 Q. How was your flight down from Pennsylvania?

23 A. It's been a long couple of days. I've been dressed since
24 7 o'clock this morning, just waiting to talk with you.

04:07 25 Q. That's exciting, I guess. That makes one of us.

1 So earlier you testified about how Mr. Furman was paid
2 by Par Funding. Do you recall that testimony?

3 A. Yes, I do.

4 Q. Did Par Funding ever pay Mr. Furman a check?

04:08 5 A. No.

6 Q. Did it ever wire Mr. Furman any money?

7 A. No. It would have at that time gone through Mr. Vagnozzi's
8 firm, A Better Financial Plan, I believe, and better financial
9 plan would have paid Michael Furman.

04:08 10 Q. Do you know what A Better Financial Plan actually was
11 paying towards Mr. Furman? You don't, do you?

12 A. Are you asking me or telling me?

13 Q. Sorry. Let me rephrase.

14 A. That's okay.

04:08 15 Q. Isn't it true that you don't know what or whether A Better
16 Financial Plan was paying Mr. Furman, isn't it?

17 A. That's a good way to ask that because generally speaking, I
18 didn't get that granular. I know that we had limits on what we
19 paid the managers, if you will. But I couldn't get descriptive

04:08 20 invoice for invoice how much Mr. Furman was making no, I
21 couldn't.

22 Q. So you have no idea, sitting here today, as to whether or
23 not Par Funding was actually paying Mr. Furman for finding
24 investors; is that correct?

04:09 25 A. No. I would hasten to say that -- I don't have it in my

1 presence -- A Better Financial Plan had very good accounting
2 and I believe -- and I more than believe -- Mr. Furman was
3 working from 2018 in April to January or so of 2020, a year and
4 a half or longer, under that structure with A Better Financial
04:09 5 Plan.

6 And if for some reason he didn't get the compensation
7 he deserved, I most surely would have heard about it, sir. So
8 I'm not saying I did or I didn't, but I would err to think that
9 Mr. Furman was routinely getting paid through A Better
04:09 10 Financial Plan from Par Funding.

11 Q. Well, let's be a little more clear about the relationship.

12 Do you know what the relationship was between A Better
13 Financial Plan and Fidelis?

14 A. I had a general understanding. Again, within arm's reach,
04:10 15 yes, I do.

16 Q. And it's true that A Fetter Financial Plan was handling
17 kind of the back office mainly for Fidelis, correct?

18 A. Yes, that's correct.

19 Q. And so in terms of the payments, do you know what the
04:10 20 nature of these payments were? Was it just a return on
21 interest or --

22 A. Well, he got paid over -- I believe Mr. Vagnozzi's firm was
23 paid a small percentage and over a 12-month period, the agent
24 would get one-twelfth of their commission, if you will, paid
04:10 25 monthly, I believe.

1 Q. You call it a commission, but do you know why -- why do you
2 rephrase it as a commission, Mr. Abbonizio?

3 A. Well, it wasn't so much a commission, that's a good point.
4 The money was paid to Vagnozzi as a net, A Better Financial
04:11 5 Plan, and Vagnozzi's portion was designated and the remaining
6 portion didn't go to investors and we didn't dictate generally
7 what Mr. Furman or any other agent would give to investors,
8 that was their business. But whatever was left from that net,
9 I presume went to Mr. Furman.

04:11 10 Q. And that was part of also his management of Fidelis; is
11 that correct?

12 A. Yes, I believe so. Yes. It went to the Fidelis fund,
13 correct.

14 Q. You also testified -- are you familiar with the term
04:11 15 "retained earnings"?

16 A. Yes, I am.

17 Q. Did you tell investors that you had substantial retained
18 earnings in Par Funding?

19 MS. BERLIN: Objection, Your Honor, outside of the
04:11 20 scope.

21 THE COURT: Overruled. I'll allow it.

22 Go ahead.

23 A. I probably -- in my tenure, yes, I did speak of retained
24 earnings, yes.

04:12 25 BY MR. HYMAN:

1 Q. What are retained earnings, Mr. Abbonizio?

2 A. Again, I'm not an accountant, sir, but the way it explained
3 to me, it's looking at your accounts receivable, adding your
4 cash to that, taking that figure and subtracting your credit or
04:12 5 liabilities, which in our case were upwards of 4 hundred
6 million, 365 to 4 hundred million. And generally speaking,
7 those retained earnings were in a 50 to 100 million category.

8 Q. And those were your retained earnings, correct?

9 A. They were the company owner's. I was not an owner of the
04:12 10 company, sir.

11 Q. And you told investors that the owners had this retained
12 earnings in the company; is that correct?

13 MS. BERLIN: Objection, Your Honor. We're veering
14 outside of the scope.

04:12 15 THE COURT: Overruled. I'll give him a little bit of
16 bandwidth.

17 Go ahead.

18 A. Yes. Typically I would state that we did have retained
19 earnings. And the significance of those was that from an
04:12 20 investor's perspective I would stress that it was paramount
21 that we did a very good job underwriting and protecting their
22 money. Because in the event that we didn't, we -- Par Funding,
23 rather, the owners, would lose -- have to lose their retained
24 earnings before investors ever lost their money. And I
04:13 25 undoubtedly, sir, would have put it in the context that working

1 16 hours a day, they had no interest in relinquishing that
2 Delta, the retained earnings that they had or grown. So that's
3 how I would present it.

4 BY MR. HYMAN:

04:13 5 Q. And that could be construed as putting your own money into
6 the business, too, couldn't it?

7 A. Or keeping it there.

8 Q. Yeah.

9 A. Keep keeping it there, yes. Yes.

04:13 10 Q. Earlier you testified about flying down to Florida with
11 respect to a series of investor meetings. Do you recall that
12 testimony, sir?

13 A. Yes, I did.

04:14 14 Q. And with respect to your flights down to Florida, did you
15 bring materials with respect to Par Funding there?

16 A. Yes, I did.

17 Q. And would these materials comprise of PowerPoint
18 presentations or slide deck for a PowerPoint?

04:14 19 A. Anyone that knows me, sir, I'm not technologically
20 oriented, so typically Michael would have the slides and I
21 would bring the -- counselor, should I proceed or no?

22 Q. Please continue.

23 A. Not at all.

04:14 24 Typically I would bring marketing brochures, which was
25 my bandwidth, and anything technology oriented, Michael would

1 facilitate that on his own.

2 Q. And did your daughter send slides?

3 A. Yes, my daughter. Thank you for mentioning her, yes.

4 Q. So I'm handing you, I believe it was previously marked as

04:15 5 an exhibit --

6 I apologize, Your Honor, may I approach?

7 THE COURT: You may.

8 BY MR. HYMAN:

9 Q. And handing you what I believe was marked as an exhibit --

04:15 10 MS. BERLIN: For the record, it's 578.

11 THE COURT: 578.

12 MS. BERLIN: Yes.

13 BY MR. HYMAN:

14 Q. -- what's been marked as Exhibit 578.

04:15 15 A. Uh-huh. (Nodding).

16 Q. Did Mr. Furman have any involvement with the preparation of
17 that?

18 A. No, he did not.

19 Q. And was that prepared by your office at Par Funding?

04:15 20 A. The materials are Par Funding. Did his staff help collate
21 them, possibly, but he certainly didn't create the brochure, if
22 that's what you're asking.

23 Q. And who was involved in the creation of that brochure, sir?

24 A. It actually predated my tenure with the company. I joined
04:16 25 in 2016 and the foundation of it was already in place at that

1 time. And typically it would be updated on an annual,
2 semiannual basis to reflect more current data.

3 Q. And did Mr. Furman's office print that brochure?

4 A. No, they did not.

04:16 5 Q. Your office did?

6 A. No. My office did not either. A print shop near my
7 office.

8 Q. Print shop but it was at your office's direction, correct?

9 A. That's correct.

04:16 10 Q. And this is a sample of a brochure that you would have
11 brought down to Florida?

12 A. Yes, it is, sir.

13 Q. So there's a page in it that references insurance.

14 A. Yes, indeed.

04:16 15 Q. Were you authorized by Par Funding to put that in there?

16 A. Well, I didn't put it in there. So when you say was I
17 authorized --

18 Q. Did management at Par Funding know that that language was
19 placed in the brochure?

04:16 20 A. Well, it came -- the way these brochures would typically --
21 the short answer is, yes. It's a Par Funding brochure
22 reflective of the management. The longer answer is, department
23 by department edits the material and updates what is
24 appropriate. So it's tough for me to ascertain who exactly
04:17 25 authorized that to be included, but continue with your thought.

1 I don't see it as we're speaking what you're referencing, but
2 perhaps I will.

3 Q. Well --

4 A. Yes, I do. I see it. Go ahead, sir.

04:17 5 Q. Did you review that with anybody within the Par Funding
6 underwriting department?

7 MS. BERLIN: Objection, Your Honor. We're really
8 outside of the scope, and he's not a defendant in the case.

9 THE COURT: Understood, but I'll allow it. Overruled.

04:17 10 A. Admittedly, yes, I had some general discussion with some
11 and --

12 MS. BERLIN: Your Honor, it's hearsay. I'm sorry.
13 Objection to hearsay.

14 THE COURT: We'll move on. That's going to be
04:18 15 sustained.

16 A. Your question again, sir? Did I review --

17 THE COURT: It's all right. Let him get another
18 question, Mr. Abbonizio. I'm going to sustain that.

19 Go ahead.

04:18 20 BY MR. HYMAN:

21 Q. Did you review that with management prior to its being
22 printed as part of the brochure?

23 A. I would say, no, I didn't. Not to the best of my
24 knowledge, no.

04:18 25 Q. And at the time did you know whether or not there was, in

1 fact, insurance?

2 A. Yes, I did.

3 Q. And was there insurance?

4 A. It was real estate, yes.

04:18 5 Q. And the reference to insurance there, what does that mean?

6 A. That Par Funding had placed insurance on riskier advances.

7 We took out a policy 75 to 100 million to insure riskier from

8 an underwriting perspective advances. The merchants weren't

9 aware that they were being insured. It was simply to add

04:19 10 additional protection, much like utilizing collateral real

11 estate would in securing an advance.

12 Q. And going through that brochure, did you disclose anywhere

13 in there the New Jersey regulatory actions?

14 A. No, I did not.

04:19 15 Q. Why not?

16 A. Legal never authorized it and I just -- we never included

17 it.

18 Q. So by legal never authorized it, what do you mean by that,

19 Mr. Abbonizio?

04:19 20 A. Well, generally speaking, as this went to department heads,

21 they would update and provide the data that they thought was

22 respectful and appropriate, and wasn't there, and no one gave

23 it to me to put in.

24 Q. Did you ask for authorization to put it in?

04:20 25 A. I can't opine on that. I don't recall.

1 Q. And within there, there is also language touting the
2 expertise and -- so you added the insurance part to it into the
3 slide deck without authorization from management. Why didn't
4 you add the disclosure about New Jersey?

04:20 5 A. **Don't have an appropriate answer for that.**

6 Q. And did you disclose any information about Mr. LaForte's
7 criminal background?

8 A. **No, I did not. Absolutely not. And I did that solely on
9 legal determination from internal legal. That I did check with
04:20 10 long before New Jersey and it wasn't deemed appropriate for me
11 to have to do that.**

12 Q. Why is that?

13 A. **Because Mr. LaForte is not an owner or an employee of
14 Par Funding.**

04:20 15 Q. Okay. So he's not an owner or an employee of Par Funding.
16 And, in fact, he didn't have any control over the management of
17 Par Funding, did he?

18 A. **He was not the president, and not an employee of
19 Par Funding. He ran sales for recruiting and marketing
04:21 20 resources.**

21 Q. You testified earlier about the orientation, as you called
22 it --

23 A. **Yes.**

24 Q. -- with Dean Vagnozzi. Was that, in fact, an orientation
04:21 25 or was it an educational seminar?

1 A. I guess it's semantics. Orientation, education, I'll take
2 either word.

3 Q. Okay. So with respect to the programming, do you know if
4 other investments were offered or advertised at that event?

04:21 5 A. Well, they were certainly offered, yes, as I said earlier.
6 Several of the products that he would have marketed were
7 offered and -- were, you know, he educated people. Good word.

8 Q. So it was an educational program, not a recruitment
9 training seminar, correct?

04:22 10 A. Well, yes. But let's be clear. People travel from far
11 distances, as evident by Mr. Furman. His hope, Mr. Vagnozzi,
12 would be that people would travel, like the turnkey model that
13 he was trying to put together, certain aspects of it, and would
14 utilize or want to utilize some of the products and services
04:22 15 that he was offering.

16 Q. And with respect to the turnkey model you just referenced,
17 did that involve using a particular lawyer, Mr. Pauciulo?

18 A. Yes, it did.

19 Q. Do you know whether or not Mr. Furman used Mr. Pauciulo?

04:22 20 A. I don't believe Mr. Furman did.

21 Q. In fact, he used Mr. Weingold, correct?

22 A. That's correct.

23 MS. BERLIN: Your Honor, we're going way outside the
24 scope. He's not on their witness list.

04:23 25 THE COURT: That's all right. Let's move on.

1 **MR. HYMAN:** Your Honor, actually we did list all
2 defendants in this action. He also testified that he paid --

3 **THE COURT:** We're not having argument right now. I
4 just said, let's move on from this arena, please.

04:23 5 **MR. HYMAN:** Okay.

6 **BY MR. HYMAN:**

7 Q. And did you have other discussions with Mr. Weingold?

8 A. **Regarding, sir?**

9 Q. You testified earlier that you paid for part of

04:23 10 Mr. Furman's attorneys' fees. Do you recall the testimony?

11 A. **Yes, I do.**

12 Q. And do you recall having discussions with that attorney
13 before?

14 A. **Before?**

04:23 15 Q. Or just about Mr. Furman?

16 A. **Not about Mr. Furman. My discussions with Mr. Weingold**
17 **would be very concise and to the point generally. I met**
18 **Mr. Weingold in and around the time that Michael Furman**
19 **established his PPM in the spring of 2018. So I would haven't**
04:23 20 **talked about Michael Furman before Michael Furman and I talked**
21 **to him.**

22 Q. And with respect to discussions, do you recall Mr. Furman
23 asking you in a -- via text message in May of 2020 to have a
24 call with Mr. Weingold because disclosures he felt were not
04:24 25 sufficient with respect to certain documents?

1 MS. BERLIN: Objection, hearsay.

2 THE COURT: Sustained.

3 BY MR. HYMAN:

4 Q. Do you recall offering to call Mr. Weingold on Mr. Furman's
04:24 5 behalf in 2020?

6 A. Forgive me. That was a tumultuous time, but certainly it's
7 not unreasonable to think that I wouldn't have helped Michael
8 in any way that I could have.

9 Q. Okay. And I'm just going to show you this document to
04:24 10 refresh your recollection.

11 MS. BERLIN: I'm sorry, that's not proper refreshing,
12 and we'd like to see whatever was just handed.

13 THE COURT: First, it needs to be shown to the
14 plaintiff anyway.

04:25 15 MS. BERLIN: I think you're supposed to ask.

16 BY MR. HYMAN:

17 Q. So do you recall having an offering in 2020 --

18 MS. BERLIN: Just a moment, Your Honor.

19 THE COURT: Let's go ahead. Why don't we first take
04:25 20 that back and ask a question before we --

21 MS. BERLIN: This is not. We would need a sidebar.

22 THE COURT: Oh, it's a text message?

23 MS. BERLIN: Yes.

24 THE COURT: Yeah, let's first -- why don't we first
04:25 25 ask a question before we even approach with anything that the

1 Court is has not seen and it looks like it might not be --

2 **MR. HYMAN:** I apologize.

3 **THE WITNESS:** It's okay.

4 **BY MR. HYMAN:**

04:25 5 Q. Do you recall offering or agreeing to call Mr. Weingold on
6 Mr. Furman's behalf?

7 A. I believe I just answered that. I would have -- I surely
8 would have done anything I could have to help Michael or any
9 other agent in regards to the formation of especially amended
04:25 10 notes. That was a very volatile time for -- in this country
11 and within the company and for the investors.

12 Q. And going back again to -- and do you recall whether or not
13 there was a need or what Mr. -- strike that question. I'll
14 move on for a minute.

04:26 15 As it relates to Mr. LaForte, do you know when he was
16 convicted of a crime, what year?

17 A. I believe there were two periods, 2007 and 2009.

18 Q. And do you recall having a discussion with Mr. Furman about
19 that situation?

04:26 20 A. I recall at a certain period having that discussion with
21 Mr. Furman and many of his counterparts, yes.

22 Q. And do you recall what you said to them?

23 A. Various iterations, but yes, I do.

24 Q. And what was that?

04:26 25 A. That Mr. LaForte had an occurrence in 2007, 2009, he had

1 paid his debts to society, and he's moving on. And we're
2 moving on. And I'm here and obliging that I've looked at the
3 company, every segment of the company, and it's not a
4 one-person company. It's a 70-employee company that works 70
04:27 5 hours a week, week in, week out, and trust in the execution of
6 the company. That's what I did.

7 Q. So it was a great company, wasn't it, Par Funding that is?

8 A. Yes, it was.

9 Q. And with respect to the defaults or the default rate, do
04:27 10 you recall preparing or distributing the brochures that touted
11 the default rate?

12 MS. BERLIN: Objection, Your Honor. No questions were
13 asked about this.

14 THE COURT: No. Overruled. Overruled. I'll allow
04:28 15 it.

16 A. Yes, I do.

17 BY MR. HYMAN:

18 Q. And do you know what the default rate is defined as within
19 those presentations or the context of what is being referenced
04:28 20 by the term "default rate"?

21 A. Yes. I hope I do, sir, yes.

22 Q. And what is being referred to as the default rate within
23 the context of the brochure that you're looking at?

24 A. It's a cash-over-cash default rate, meaning it provides a
04:28 25 measure of the cash that we put into merchants' hands. Of

1 that, how much do we lose over a certain period. And through
2 an eight-year period, our metrics shows that we have a 1.2
3 percent default rate. Cash over cash.

04:29 4 Q. And was using the number of lawsuits filed an effective way
5 to calculate the "default rate"?

6 A. No, it is not.

7 Q. Why is that?

8 A. Because lawsuits --

04:29 9 MS. BERLIN: Objection, Your Honor. We didn't get
10 into accounting or any of this on direct.

11 THE COURT: Understood. But I'm going to allow a
12 little bit of leeway here. Overruled.

13 MS. BERLIN: Okay.

04:29 14 A. Lawsuits are relevant to what is known as a right to
15 return. They don't define "default rate." Truly, default rate
16 is taking your factoring losses into the amount that we -- that
17 Par Funding put in the hands of merchants. So just to do some
18 simple math, 1.2 billion in eight years was put into 17
19 thousand transactions, if you will, and 14 million of that was
04:29 20 unrecovered. That's 1.2. That's actual cash that was not
21 recovered. That's a 1.2 cash rate, default rate.

22 BY MR. HYMAN:

23 Q. And with respect to Mr. Furman and Fidelis, did Par Funding
24 have any ability to control what he was doing?

04:30 25 A. I'm not sure I understand your question. Did we control

1 Mr. Furman? No, not in any way, shape, or form.

2 Q. He was completely independent of Par Funding?

3 A. Yes, he was.

4 Q. And was his funds simply an investor in Par Funding?

04:30 5 A. Yes, it was.

6 Q. And do you recall a time when Mr. Furman split with

7 A Better Financial Plan?

8 A. Yes, I do.

9 Q. And do you recall whether or not there was any issue or

04:30 10 problem with him doing so on the account of Par Funding?

11 A. No. I supported Michael and Par supported whatever had --

12 Michael and Mr. Vagnozzi had worked out, we supported it.

13 Q. It's because you guys didn't really have any involvement
14 with what these subfunds were doing, isn't it?

04:31 15 A. Well, that's a very general question you're asking. Did we
16 have any control? No, nor did we want it. The whole intent of
17 having agents like Mr. Furman set up their own individual PPMs,
18 private placements, is that they could have autonomy from
19 Par Funding, so yes.

04:31 20 Q. And it wasn't all one in the same. It wasn't all part and
21 parcel, correct?

22 A. Absolutely not.

23 MR. HYMAN: Let me pause for one moment. No further
24 questions, Your Honor.

04:32 25 THE COURT: Redirect?

1 MS. BERLIN: Thanks.

2

3

REDIRECT EXAMINATION

4 BY MS. BERLIN:

04:32 5 Q. On cross-examination you were asked about a BFP. Do you
6 remember that?

7 A. Yes.

8 Q. Okay. Do you know a company ABFP Management?

9 A. I hope I do, yes.

04:32 10 Q. Okay.

11 A. I hope I won't disappoint.

12 Q. Can you speak a little bit louder into the microphone?
13 Because I'm having a hard time hearing you.

14 A. No, that's okay.

04:32 15 Q. Thank you so much.

16 And ABFP was Vagnozzi's company?

17 A. That's correct, A Better Financial Plan.

18 Q. Great. And did ABFP, was one of its roles within the
19 offering that it managed many of the agent funds and like the
04:33 20 movement of money between those funds and Par Funding?

21 A. So let me be fair to your question. Was it his role? No.
22 His role specifically to himself, not us, was to raise money
23 for his company. We were one instrument.

24 Q. I understand. So let me ask it a different way.

04:33 25 ABFP Management or ABFP, you testified about work that

1 they did with Mr. Furman's company. I'm just trying to ask,
2 was ABFP a company that had managed -- that had management
3 agreements --

4 A. Oh, yes.

04:33 5 Q. -- with many of these agent funds?

6 A. Yes, they did. Indeed they did, yes.

7 Q. And then you were asked also on cross-examination about the
8 money movement between Fidelis and ABFP. Do you recall that?

9 A. Yes, I do.

04:33 10 Q. And I wonder if I can show you what's already been admitted
11 as P 205.

12 MS. BERLIN: Your Honor, may I approach the witness
13 with a hard copy? It's a little easier.

14 THE COURT: Yes, you may.

04:34 15 BY MS. BERLIN:

16 Q. So I'm showing you what's already been admitted into
17 evidence as an ABFP document --

18 A. Uh-huh. (Nodding).

19 Q. -- showing the Fidelis notes that were purchased from
04:34 20 Par Funding. So if you look here, do you see that June 10th,
21 2018 note?

22 A. Yes, I do.

23 Q. Actually, let's look down a little further.

24 Do you see the October 25th, 2018 note near the bottom
04:34 25 of page 1?

1 A. **Yes, I do.**

2 Q. And you see these three names: DeLucco, Khoury and
3 Pancoast?

4 A. **Yes.**

04:35 5 Q. So you were asked on cross-examination about Mr. Furman and
6 his company and buying things through Par Funding.

7 Does this chart reflect that -- is it your
8 understanding that the way the agent funds work is they raise
9 and gather investor money, bundle it, and then send it up to
04:35 10 Par Funding in exchange for a promissory note?

11 A. **That is correct.**

12 Q. So when we look at this chart and we see where it says
13 October 25th, 2018 at the bottom, you see that?

14 A. **Yes.**

04:35 15 Q. And there are three investors above it, right?

16 A. **Yes.**

17 Q. And so it looks like DeLucco contributes 50 grand, Khoury
18 contributes \$100,000, and Pancoast contributes \$50,000.

19 Do you see that?

04:35 20 A. **Yes, I do.**

21 Q. And so Mr. Furman would raise that money, collect it,
22 bundle it, and then send it to Par Funding for a \$200,000 note
23 on October 25th, 2018?

24 A. **That is correct.**

04:36 25 Q. And then when we look down across, just to understand how

1 ABFP functions in this, do you see where it says Monthly? It
2 might be easier with the hard copy. If you look at a little
3 more than halfway across the page, there's a title that says
4 Monthly?

04:36 5 A. Yes, I do. I see it.

6 Q. Okay.

7 MR. HYMAN: Your Honor --

8 THE COURT: Yes.

9 MR. HYMAN: -- may we have a very brief sidebar?

04:36 10 THE COURT: No. Move on.

11 BY MS. BERLIN:

12 Q. Do you see where it says CBSG payment, \$3,333? It's in
13 light blue box under Monthly.

14 A. Yes, I do.

04:36 15 Q. And then do you see that in the three columns to the right,
16 it showing how that amount is broken down?

17 A. Revenue after investor payment, correct?

18 Q. Yes. Do you see he that?

19 A. Yes, I do.

04:37 20 Q. So we see that the \$3,333 coming back from CBSG on the
21 October 25th note, that about \$1,583 goes to the investor.

22 Do you see that?

23 A. Yes, I do.

04:37 24 Q. So that would go to those three investors we saw: DeLucco,
25 Khoury, and Pancoast?

1 A. **Yes.**

2 Q. That's how it was supposed to be operating?

3 A. **Yes.**

4 Q. And the revenue after investor payment of a little more
04:37 5 than that, \$1,750. Do you see he that?

6 A. **Yes, I do.**

7 Q. That would be the compensation for Mr. Furman and his
8 company, Fidelis?

9 A. **I presume so, yes.**

04:37 10 Q. But that's how this was supposed to be operating?

11 A. **Again, I did not get granular or intimately involved with**
12 **bookkeeping at A Better Financial Plan, but I can see from the**
13 **form, as I said earlier to the gentlemen, that there had to be**
14 **some orchestration of it, because I know the accounting**
04:37 15 **department at ABFP was very formalized and I'm seeing that**
16 **here.**

17 Q. Yeah. So what would happen is, Par Funding -- Mr. Furman
18 would send up a certain amount of money and Par Funding would
19 issue a promissory note to him in exchange for the investor
04:38 20 money of 20 percent; is that correct?

21 A. **Seems -- yes, that's correct.**

22 Q. And then Mr. Furman would use some of those proceeds to pay
23 the investors whose money he had sent up to Par Funding and he
24 would take the remainder for himself and ABFP, correct?

04:38 25 A. **That sounds viable, yes, it does.**

1 Q. Yes. And do you see under monthly where it says: Revenue
2 after investor payment, and we see the 1,750?

3 A. Yes, I do.

04:38 4 Q. And then to the right we see ABFP Management fee, do you
5 see that?

6 A. Yes, I do.

7 Q. And that's showing the \$437.50 that was going to ABFP when
8 it sort of functioned in this management role to help your
9 agent funds with their administrative paperwork and other
04:39 10 things; is that right?

11 A. That's correct.

12 Q. Okay. And so basically at Par Funding, Fidelis, ABFP,
13 they're all sort of working together in this offering,
14 everybody has a little bit of a different job in the overall
04:39 15 structure; would you agree with me?

16 A. With a few caveats. We're working together insofar as
17 there's a hierarchy of what you've just displayed. Key point
18 is, everybody is only doing what's in their best self interest.
19 I need to be responsible and clear on the part of Par Funding.
04:39 20 We're not orchestrating --

21 Q. Well, we're not asking -- let me show you, we're not asking
22 about Par Funding and we don't want to go into Par Funding.

23 My question was more general. It was, do you agree
24 with me that Par Funding works with Fidelis and Michael Furman
04:39 25 and ABFP --

1 A. **Yes, I do.**

2 Q. -- and not getting into the granular detail of what these
3 entities do that are not parties to this case?

4 A. **Yes, we had a relationship. Yes, we did.**

04:40 5 Q. Okay. And you didn't have any involvement in preparing any
6 of the Par Funding promissory notes or the documents, correct?

7 A. **No, I did not.**

8 Q. Okay. And so when you were testifying earlier about, like,
9 brochures and marketing pieces and other things that existed
04:40 10 before you came on and testified at other times, you did not
11 draft those, right?

12 A. **No, I did not.**

13 Q. Okay. So were you -- like, to the extent you testified
14 about what was and wasn't in there, were you sort of
04:40 15 speculating about what the drafter of those documents was doing
16 when they wrote it?

17 A. **Well, no. Specifically I was indicating that I didn't
18 write it.**

19 Q. Oh, okay. I just wanted to make sure because I thought I
04:40 20 heard you explaining why certainly things --

21 A. **Well, of course, I tried to explain, as I do on all the
22 pages, what someone else has provided me with. But I didn't
23 write it myself.**

24 Q. You did not write it. Okay.

04:41 25 Now, you testified on cross-examination that you spoke

1 with Mr. Furman about some of these issues about the New Jersey
2 case and about Mr. LaForte's criminal record. Do you remember
3 testifying about that generally?

4 A. Yes.

04:41 5 Q. And in sort of discussing these things with him and letting
6 him know about them, did you understand that he might then be
7 telling his own investors, just as you were sharing it with
8 him?

9 A. Well, yes. That's ordinarily -- that was the whole point
04:41 10 of the agent funds. They were their clientele and it was for
11 them to educate, make them a customer if they were a prospect
12 and comply with telling them whatever they had to tell them.
13 Yes.

14 Q. And just a couple more things.

04:41 15 A. Sure.

16 Q. Sorry.

17 A. No, not at all.

18 Q. And that insurance, at a certain point in time do you
19 recall that you were advised at Par Funding to sort of not be
04:42 20 promoting the insurance as much because there was an issue with
21 respect to the insurance coverage?

22 MR. HYMAN: Your Honor, we're going to object.
23 Hearsay.

24 THE COURT: Overruled.

04:42 25 Go ahead.

1 A. Your question, was I told not to --

2 BY MS. BERLIN:

3 Q. I'll ask it another way.

4 Did you gain an understanding at some point -- you
04:42 5 testified that there was insurance.

6 A. Yes.

7 Q. So my question is, at a certain point in time, were you
8 advised that there was any issue with the insurance, you
9 personally?

04:42 10 A. Yes. In the, I believe, fourth quarter of 2019, there were
11 some differences in philosophy between the carrier and what
12 our -- Par Funding's expectations were of the policy. And --
13 go ahead -- and they were working through those differences.

14 Q. Okay. Did you ever -- no, that's all. I was just curious.

04:43 15 So you understood there were some issues with the
16 insurance at a certain point in time?

17 A. Yes, philosophical issues. Yes.

18 Q. Well, did you ever -- are you aware of any issues with the
19 actual insurance coverage?

04:43 20 Or let me ask a question. Because the -- with respect
21 to Mr. Furman's clients, did you ever tell any of Mr. Furman's
22 clients or investors that there was insurance on any of these
23 notes?

24 A. No. Mr. Furman's PPM was not one of the three that were
04:43 25 insured by the coverage that we had. So it wasn't truly

1 germane to Mr. Furman. Over time it could have because had we
2 stayed with the insurance and stayed in business longer, our
3 goal would have been to expand it over the whole portfolio to
4 provide, you know, but we didn't get there. So to your point,
04:44 5 no, it wasn't germane to Mr. Furman, per se.

6 Q. Right. Because his agent fund never had any -- never had
7 the insurance; is that right?

8 A. **That's correct.**

9 Q. Okay. And then on cross-examination you testified about
04:44 10 Mr. LaForte not being an owner of the company. Do you remember
11 that?

12 A. **Yes.**

13 Q. Okay. So you understood that Mr. LaForte was one of -- and
14 his wife, Lisa McElhone, were amongst the founders of
04:44 15 Par Funding?

16 A. **Correct.**

17 Q. And you understood -- and just to clarify this issue, one,
18 that the owner of Par Funding was a trust, correct?

19 A. **The LME Trust, yes.**

04:44 20 Q. Right. So it was called the 2017 LME Trust?

21 A. **Yes.**

22 Q. Sounds about right?

23 A. **Right.**

24 Q. It's a long name.

04:45 25 And did you -- you understood that the people who were

1 the trustees and grantors of that trust, that that was -- the
2 LME is Lisa McElhone and her husband, Joseph LaForte, they were
3 the grantors of that trust?

04:45 4 A. **Certainly, Lisa. And yes -- yes. I'm not specific with**
5 **the legalese as to Joe being included but that could be.**

6 Q. Okay. And you would -- you introduced -- I mean
7 Mr. LaForte was introduced by you to people as, like, a
8 president of the company or an owner of the company, correct?

04:46 9 A. **I don't recall using "owner." I do on occasion because of**
10 **his supervisory and hard work, I had respect for what he did.**
11 **And if I referred to him as the president, it was probably a**
12 **respectful term. But in reality, he was not the president.**
13 **His wife was the president of the company.**

14 Q. Okay. Oh, like her official title was president?

04:46 15 A. **Yes.**

16 Q. But then on a practical level, on a day-to-day basis, Lisa
17 was the -- she had the title of president, and Joseph Cole had
18 the title of chief financial officer, and Joseph LaForte, Lisa
19 McElhone's husband's role was doing the day-to-day operations,
04:46 20 sales related activities to fund deals, which was the business
21 that Par Funding was in, correct?

22 A. **Yes, indeed. Right.**

23 Q. And Joseph LaForte led the sales for Par Funding with
24 oversight into collections and underwriting, correct?

04:47 25 **MR. HYMAN: Leading.**

1 THE COURT: Overruled.

2 A. Again, I'll stress that he ran the sales arm of Par Funding
3 and other companies. He could raise capital to go to companies
4 other than Par Funding, if they didn't fit our underwriting
04:47 5 models. And based on logistics of where he sat, each of those
6 departments, underwriting and collections, had their own
7 management supervision. But again, he was married to the
8 president of the company, and the owner. And he got involved
9 and made sure from a supervisory position, if something needed
04:47 10 to be handled, he would step in and handle it, from cleaning
11 bathrooms to handling intricate issues, yes.

12 BY MS. BERLIN:

13 Q. Okay. And at some of these agent fund events you would
14 attend in Pennsylvania and elsewhere, with -- were educational
04:48 15 seminars with potential seminars, Joseph LaForte would present
16 to him and discuss his company, Par Funding, to them with you
17 present and introducing him, correct?

18 A. Yes, he had done that on occasion. Yes.

19 Q. And you would also have conference calls with the agent
04:48 20 fund managers and Mr. LaForte on the line where you would
21 introduce him as --

22 A. Correct.

23 Q. -- an executive and officer of the company and he would be
24 the one providing the updates to the agent fund managers; isn't
04:48 25 that right?

1 A. **He and members of his staff, yes.**

2 Q. Yes. Mr. Shlepin?

3 A. **Alex Shlepin, yes.**

04:48 4 Q. Shlepin. Alex Shlepin. So he and Alex Shlepin would have
5 conference calls from time to time with you and Mr. Furman and
6 other agent fund managers where Mr. LaForte and Mr. Shlepin
7 would provide them the updates about the merchant cash advance
8 business and Par Funding, correct?

9 A. **That's correct, yes.**

04:49 10 Q. Okay. And during those conference calls, Mr. LaForte was
11 the one primarily giving the updates with assistance from
12 Mr. Shlepin; would you agree with me?

13 A. **I interjected on a few occasions too.**

14 Q. Yes, you did.

04:49 15 A. **Three of us, generally speak.**

16 Q. Okay. So my final question is --

17 **THE COURT:** You're standing.

18 **MR. HYMAN:** Yes, we have an objection. We just --
19 there's no ties to Furman, at least from what I can tell, so
04:49 20 relevance is the issue.

21 **THE COURT:** We don't need a speaking objection.

22 Relevancy, overruled.

23 Continue.

24 **MS. BERLIN:** Thank you.

04:49 25 **BY MS. BERLIN:**

1 Q. And finally, back to -- we talked about the New Jersey
2 order and the LaForte criminal record, and you were asked about
3 default rates and underwriting and all of these things at the
4 company. And was I correct in understanding you in your
04:50 5 cross-examination that you would discuss those updates and
6 those things with Mr. Furman?

7 A. Yes. Michael and I spoke frequently. We had a very good
8 working relationship. I had a lot of respect for the way he
9 conducted his practice. And yes, we spoke about a lot of
04:50 10 things.

11 Q. And he was, I think you said he was very good at raising
12 investor money for Par Funding?

13 A. He was very good with client contact in a world where you
14 invest 5 cents and they give you 4 back. Michael would spend
04:50 15 five and he'd give you 10 back. He was very giving of his time
16 and interest. So yes, I have respect for him, very much in
17 that regard.

18 Q. Well, not -- I mean, we -- not really, we just looked at
19 the amounts that he made. Did you mean literally or was that a
04:50 20 figure of speech?

21 A. From a time perspective, interest with people. Forgive me.
22 I talk in parables.

23 Q. I apologize. Thought you meant dollars. And I was like
24 actually that's not --

04:51 25 A. No, no, no, no, no. He afforded people -- he would take a

1 lot of time and interest working with people.

2 Q. I understand. Thank you.

3 A. Thank you.

04:51 4 Q. I'm sorry. So when you were sharing this information with
5 Mr. Furman, who is sort of, you know, one of those agent fund
6 managers around America that you're interacting with, and
7 discussing these aspects of the investment, was it because you
8 understood that those were important things to be talking about
9 with someone who was raising investor money? And did you
04:51 10 assume that he was sharing whatever needed to be shared with
11 his own clients?

12 MR. HYMAN: Compound, calls for speculation.

13 THE COURT: Overruled.

14 A. Yes. Yes. Exactly. He was a professional. I gave him
04:51 15 the tools that he needed as a professional.

16 BY MS. BERLIN:

17 Q. So you assumed that he would use them and he would disclose
18 the things that he knew and conduct his due diligence about the
19 company that he was selling and collecting investor money for;
20 is that fair?

21 A. Yes, it is. He managed a fund, and everything germane to
22 managing that fund was his responsibility, right.

23 MS. BERLIN: Thank you. I have no further questions.

24 I hope you have a safe flight home?

04:52 25 MR. HYMAN: Your Honor, may we have brief three or

1 four questions? They went beyond the cross there.

2 THE COURT: You're going to get a very limited
3 recross. Go ahead.

4 MS. BERLIN: And Your Honor, just a moment. Not on
04:52 5 his witness list.

6 THE COURT: If it opens up the issue, that's fine.
7 It's not on his witness list, but for the sake of my jurors'
8 time, I'm giving him the opportunity so we don't recall the
9 witness. So we don't have to bring Mr. Abbonizio back a second
04:52 10 time.

11

12

RECROSS EXAMINATION

13 BY MR. HYMAN:

14 Q. So you've been shown what has been marked as Exhibit 205
04:52 15 there. It lists these investors?

16 A. Yes.

17 Q. Prior to the SEC coming in, did Par Funding ever miss a
18 payment to any of its agent funds?

19 MS. BERLIN: Your Honor, not relevant, motion in
04:52 20 limine.

21 THE COURT: That's going to be sustained.

22 BY MR. HYMAN:

23 Q. So with respect to this overall fund, you'll see how
24 Ms. Berlin asked you about payments that were being made to
04:53 25 Mr. Furman, correct?

1 A. Yes.

2 Q. And there were investors also making money as you can see
3 there?

04:53 4 MS. BERLIN: Your Honor, again objection, motion in
5 limine.

6 THE COURT: Sustained.

7 MR. HYMAN: Your Honor, they opened the door.

8 THE COURT: Not to this issue, not by what's already
9 been allowed by both sides. So that's sustained.

04:53 10 BY MR. HYMAN:

11 Q. If you turn to page 2, you'll notice a Russell Meyer?

12 A. Yes.

13 Q. Do you recall having any interactions with Mr. Meyer?

04:53 14 MS. BERLIN: Objection, Your Honor, outside of the
15 scope.

16 THE COURT: I'll allow that one. Go ahead if you
17 recall.

18 A. That name I do remember. Why? I'm sure you'll tell me
19 soon, but I do remember Russ Meyer, yes.

04:53 20 BY MR. HYMAN:

21 Q. Do you recall having conversations with him in 2017?

22 A. 2017? Give me more, Counselor.

23 MR. HYMAN: Would you mind putting up 104 on the
24 screen, please.

04:54 25 MS. JOHNSON: Is it Plaintiff's 104?

1 MR. HYMAN: Yeah, Plaintiff's 104.

2 BY MR. HYMAN:

3 Q. So I'm showing you on the screen an e-mail correspondence
4 between you and Mr. Furman.

04:54 5 MS. BERLIN: Objection, Your Honor. Not admitted into
6 evidence.

7 THE COURT: It's not in evidence. Okay. I thought
8 104 was admitted.

9 MR. HYMAN: It's to refresh his recollection,
04:54 10 Your Honor.

11 THE COURT: Well, you're not going to put it up on the
12 screen.

13 BY MR. HYMAN:

14 Q. You see that document, sir?

04:55 15 A. Yes, I do.

16 THE COURT: Ladies and gentlemen of the jury, you're
17 not seeing anything on your screens, correct?

18 THE JURY: (Shaking head).

19 THE COURT: That's fine.

04:55 20 A. Okay, I've read it, yes.

21 BY MR. HYMAN:

22 Q. Seeing that e-mail, does that refresh your recollection
23 about the Meyers?

24 A. Yes. I believe they were in a transitional period between
04:55 25 agent funds and finders that we had done away with. So

1 continue. Yes, I do recall.

2 Q. And what were your interactions with the Meyers?

3 A. I can't -- beyond recalling this and knowing that there was
4 an inordinate amount of time that they had entrusted money to
04:56 5 Michael, and it wasn't being paid interest because it was
6 dormant while things were getting formally set up, we were
7 trying to work a resolution. That's all -- I don't know how we
8 actually resolved it. Hopefully we resolved it appropriately,
9 but I do recall it.

04:56 10 Q. And do you recall whether or not --

11 A. Vagnozzi?

12 Q. Yeah, Vagnozzi was involved with any of this?

13 MS. BERLIN: Your Honor, outside of the scope. I
14 don't even know if it's relevant.

04:56 15 THE COURT: Relevancy also comes into play, but that's
16 going to be sustained. Let's move on from that.

17 BY MR. HYMAN:

18 Q. And with respect, I guess the last question I have is: Was
19 Fidelis required to invest exclusively with Par Funding?

04:56 20 A. No, not at all.

21 Q. And it could invest in other MCA funds if it chose to?

22 A. Oh, yes. Absolutely.

23 MR. HYMAN: No further questions.

24 MS. BERLIN: One last question, Your Honor.

04:57 25 THE COURT: I'll permit it. Go ahead.

FURTHER REDIRECT EXAMINATION

1

2 **BY MS. BERLIN:**

3 Q. Did Fidelis invest in any other cash advance other than
4 Par Funding?

04:57 5 A. I wouldn't have the answer to that, Ms. Berlin.

6 Q. Are you aware of anything other than Par Funding that
7 Fidelis has?

8 A. Not that I could state definitively, no.

9 **MS. BERLIN:** Okay. Thank you. No further questions.

04:57 10 **THE COURT:** Ladies and gentlemen of the jury, do I
11 have any questions for Mr. Abbonizio before I excuse him? No?
12 Okay. Thank you, folks.

13 Thank you very much, sir. You're excused.

14 **THE WITNESS:** Thank you, Your Honor.

04:57 15 **MS. BERLIN:** Your Honor, I wonder if this is a good
16 breaking point for the day. It's 5 o'clock and we finished a
17 witness. It's perfect.

18 **THE COURT:** Yeah. Ladies and gentlemen of the jury,
19 at this time, given that it's 5 o'clock, we're in a natural
04:58 20 breaking point. So we're going to be done for the day. A bit
21 of instruction for tomorrow.

22 So tomorrow we will once again begin at 9:30. Please
23 remember of course that if for whatever reason you're running a
24 little bit behind, call my chambers, let me know. We will not
04:58 25 start until all of you are present and accounted for.

1 Obviously you've now heard from three witnesses today, you've
2 heard opening statements from lawyers. You've seen a bit of
3 evidence already.

04:58 4 I want to let you all know that anything that has been
5 admitted into evidence, such as the spreadsheets you see on the
6 screen and some of the other documents, they will go back with
7 you into the jury room for you guys to look over them more
8 carefully. I know that they're up for very short amounts of
9 time and it's hard to follow.

04:58 10 So I don't want anyone to stress if they haven't been
11 able to examine some of the exhibits you've seen on your
12 screen. You're all going to get a set of all admitted evidence
13 at the end. So you guys can pour over it, you can discuss it
14 amongst yourselves.

15 Please remember, of course, when you go home this
16 evening, you may have family or friends that are going to
17 naturally inquire about what's going on in the case and they're
18 want to know the subject matter of the case. You cannot
19 discuss it. Tell them the judge has prevented you from doing
04:59 20 so. You can only do it at the end the case once you have been
21 discharged and your services come to an end.

22 Now, of course you can tell them scheduling. My hope
23 is tomorrow will be something almost identical to today, a 9:30
24 start, or thereabouts, with a break around 12:30, and then
04:59 25 probably finishing somewhere between 5:00 and 5:30. So we'll

1 go for the same schedule tomorrow.

2 Remember also, of course, when you go home this
3 evening, you've heard some technical terms. You have got a lot
4 more context and information about certain issues in the case.

04:59 5 I need to make sure none of you go online and research any
6 people, places or things related to this case.

7 Do not do any sort of internet research regarding any
8 of the financial issues that you've heard about thus far. Of
9 course stay off social media, which you guys have all done.

05:00 10 Please continue to keep doing so throughout your service.

11 When you arrive tomorrow, should you see the lawyers
12 outside or coming in, please remember that you must ignore
13 them. Take no offense if they head in the other direction, as
14 they must in under ethical guidelines. So again, you'll be
05:00 15 able to come straight to the room back there. When you're all
16 here, I'll bring you guys out by 9:30. Make sure you leave
17 your notepads in the jury room. We will close it up for the
18 evening, and you'll be able to pick them up tomorrow morning.
19 With that being said, I hope everyone gets home safe. We'll

05:00 20 see you all tomorrow at 9:30. You're all excused.

21 (Thereupon, the jury exited the courtroom.)

22 **THE COURT:** All right. Please be seated, everyone.

23 Just by way of brief housekeeping, anything that needs
24 to be raised for the Court to address now before we break?

05:01 25 We'll be back tomorrow. Perhaps I can get a sense from the SEC

1 who we have lined up for tomorrow, and more so, if I have any
2 Zoom tomorrow because I just want to make sure that if I do, my
3 tech guys are ready to go on that.

4 MS. BERLIN: Thank you.

05:01 5 MS. JOHNSON: We're going to start with Mr. Murray,
6 our FBI agent.

7 THE COURT: Okay.

8 MS. BERLIN: And that's live.

9 THE COURT: That's live. Right. And I would assume
05:01 10 that Mr. Murray would be the conduit by which the tape is
11 played.

12 MS. BERLIN: Yes, Your Honor.

13 MR. HYMAN: We're willing to stipulate to at least the
14 admission of the recordings as to Mr. Furman just to streamline
05:01 15 the process instead of dealing with them having to lay the
16 predicate.

17 THE COURT: I mean, we could have done that when we
18 had the motions in limine and you argued it against it, an
19 entire motion, 48 hours ago.

05:01 20 MS. BERLIN: We have now flown in this agent and
21 prepped him.

22 THE COURT: Yeah, of course. So no. I mean, you guys
23 will bring in your agent and have your agent do it the
24 old-fashioned way. He won't get up and object, that's fine.
05:02 25 But I'm not going to go ahead and redo the entire order just so

1 we publish it and I agree to the stipulation. Let's just go
2 ahead and go as it is. I'm sure he's already scheduled to show
3 up tomorrow morning, so that's fine.

4 **MR. HYMAN:** Just to be clear, Your Honor, the basis of
05:02 5 our objection wasn't authenticity or hearsay. It was relevancy
6 because --

7 **THE COURT:** Correct. And when I ruled on relevancy,
8 you could have easily said to me, "Since now you have ruled on
9 relevancy, we'll stipulate to not needing a predicate, and
05:02 10 we'll bring it in and stipulate -- "

11 **MS. BERLIN:** Right in their opening said, "They're not
12 going to have an FBI agent here."

13 **THE COURT:** I mean, again, you made an objection. It
14 was overruled. You could have at that point said given the
05:02 15 Court's ruling, we'll stipulate. So we don't need the agent.
16 So you decided now. I'm not going to change up the SEC's
17 presentation. But I will say if you come up with any other
18 stipulations between now and the end of the trial, I'm sure the
19 lawyers would love to hear it, so would my jurors and I would
05:02 20 because it would save us all a lot of time.

21 So you guys should probably look at your trial
22 strategy to figure out if you're going to streamline the
23 presentation of other evidence, because if we don't have to
24 call up extra people to bring in evidence, that would be great.
05:03 25 We can stipulate as to authenticity and admissibility, and I'll

1 admit it before the jurors come in. So you should just check.
2 We just can't make changes at the eleventh hour. So I've got
3 the FBI agent, right?

4 MS. BERLIN: Yes.

05:03 5 THE COURT: Who else do I have?

6 MS. JOHNSON: We're going to have an investor in --
7 all of the witnesses are live unless we're super fast tomorrow.

8 THE COURT: That's the number one thing I wanted to
9 know, is if we needed to get the Zoom ready to go. And so how
05:03 10 many Zoom do we have lined up tomorrow, just in the best case
11 scenario we get rid of our live witnesses?

12 MS. JOHNSON: We have an investor, Mr. Renner, and
13 another investor.

14 THE COURT: Okay.

05:03 15 MS. BERLIN: How many total?

16 THE COURT: So the FBI agent on the recording.

17 MS. BERLIN: I think we have six.

18 MS. JOHNSON: Five.

19 MS. BERLIN: Five witnesses and --

05:03 20 THE COURT: Five witnesses total, a couple of
21 investors, an FBI agent, and I don't know who else is on there.

22 MS. BERLIN: Yes. And we are exactly on track. Our
23 plan was today to get through these three witnesses, and
24 because we started a little late, we expedited what we were
05:04 25 doing to cut to the chase so we could finish those three. So

1 we're very committed to staying on track.

2 **THE COURT:** Excellent.

3 **MS. BERLIN:** And I anticipate no problem. I mean,
4 hopefully we get through five witnesses tomorrow.

05:04 5 **THE COURT:** I bet that will be a very solid move. If
6 we can get through -- let's bank on that.

7 **MS. BERLIN:** Yeah.

8 **THE COURT:** And quite honestly and similar to today,
9 if we end up at 4:45, we'll stop. I mean, that's it. If we
05:04 10 can get to 5:00 tomorrow, that would be ideal for the Court.
11 We don't have the delay of the one juror that we had this
12 morning, we don't have openings. So we can probably get
13 through the straight five tomorrow and then plan on Thursday
14 being a day where we introduce it. I'm fine with that.

05:04 15 **MS. BERLIN:** Yeah. And we're very nimble. I mean, if
16 it turns out we start late, we start early, we are nimble and
17 able to work around that. So --

18 **THE COURT:** I don't expect any delays tomorrow. I
19 think that was just a little bit of a glitch because of our one
05:04 20 juror, and I think everyone else was on time. So we should be
21 fine.

22 **MS. BERLIN:** But just in case. And we do that because
23 we have -- you know, all of our witnesses are kind of on a
24 schedule, most are traveling, and by Zoom, but we do --

05:05 25 **THE COURT:** Right. People are flying, so I want to

1 avoid, you know, unnecessary delays if you jeopardize their
2 attendance or travel plans. But if we can target the five
3 tomorrow, I think that would be extremely productive. It will
4 keep us on pace and keep the presentation moving. That sounds
05:05 5 very good to the Court. We can work for that. So we'll shoot
6 for that starting at 9:30.

7 **MS. BERLIN:** Thank you, Your Honor.

8 **THE COURT:** Anything else on the SEC side or is that
9 pretty much it?

05:05 10 **MS. BERLIN:** No, that's all. And can we leave our
11 things again tonight?

12 **THE COURT:** Same thing.

13 **MS. BERLIN:** Thank you.

14 **THE COURT:** Tomorrow, again, I do not believe I have
05:05 15 any sentencing or anyone coming in. And any hearings I have
16 similar today are being done telephonically in chambers. No
17 one will be in here except for you guys, so you can leave it as
18 it is.

19 **MS. BERLIN:** Thank you very much.

05:05 20 **THE COURT:** Housekeeping, anything I need to be
21 addressing?

22 **MR. HYMAN:** Nothing we need to address. I just want
23 to be clear, which was, shortly after the hearing on the motion
24 in limine, we did reach out to the SEC and offer to stipulate
05:05 25 to Mr. Murray, I did not want you to think that we're just

1 dropping this on them on the eve of trial, they declined the
2 stipulation at that time. We're just reiterating our position
3 to try to streamline things now.

05:06 4 **THE COURT:** All right. Anything else on the defense
5 side?

6 We're all set? We're good?

7 Okay. All right. I'll see everybody at 9:30
8 tomorrow. We're in recess. We'll get you the zip drive. I'm
9 going to disconnect it. Let me have my law clerk, who is
05:06 10 savvier than I, come out and pull that out, and then you can
11 just load up whatever is left and give it back to me tomorrow
12 morning, that would be perfect.

13 **MS. JACQMEIN:** I will do that.

14 **THE COURT:** All right. Thank you. Just give me one
05:06 15 second.

16 **MS. BERLIN:** Thank you, Your Honor, are we free to
17 leave?

18 **THE COURT:** Yes, absolutely. We're in recess until
19 tomorrow.

05:06 20

21

22 (Thereupon, the above portion of the trial was concluded.)

23

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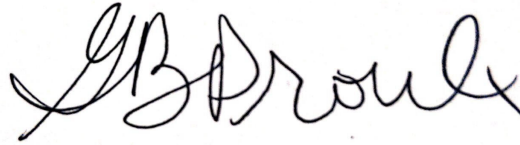
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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



12/08/2021

DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

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		<p>zach@millenniallaw.com [1] - 1:20 ZACHARY [1] - 1:17 Zehren [1] - 72:19</p>	

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**
Plaintiff **December 8, 2021**
vs.
**COMPLETE BUSINESS SOLUTIONS
GROUP, INC, et al,**
Defendants.

TRIAL DAY 3
BEFORE THE HONORABLE **RODOLFO A. RUIZ, II,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **AMIE RIGGLE BERLIN, ESQ**
SECURITIES AND **ALISE M. JOHNSON, ESQ**
EXCHANGE COMMISSION U.S. Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANT: **ZACHARY P. HYMAN, ESQ**
MICHAEL C. FURMAN Millennial Law
501 E. Las Olas Blvd, Ste. 200/308
Ft. Lauderdale, FL 33301
(954) 271-2719
Zach@millenniallaw.com

ELROY M. JOHN, JR., ESQ
Florida Justice Law Firm, PLLC
101 NE 3rd Avenue, Ste. 1500
Fort Lauderdale, FL 33301
(954) 637-2767
Elroy@onlyforjustice.com

1 REPORTED BY: **GIZELLA BAAN-PROULX**, RPR, FCRR
2 United States Court Reporter
3 400 North Miami Avenue, Suite 8S32
4 Miami FL 33128
(305) 523-5294
gizella_baan-proulx@flsd.uscourts.gov

03:05 5 Also present: Victoria Jacqmein, Kevin Robinson
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12 I N D E X

13	Witness	Direct	Cross	Redirect	Recross
14	AGT. JOHN MURRAY	31	31	31	
15	ROBERT RENNER	103	113	129	
16	HENRY BARTH	178	208	212	
17	LORI BOYOGUENO	221	230		

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G O V E R N M E N T E X H I B I T S

Exhibit	Marked	Admitted
51	199	200
110	31	31
112	31	31
113	31	31
124	31	31
125	31	31
126	31	31
127	31	31
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D E F E N S E E X H I B I T S

(None)

P R O C E E D I N G S

(The following proceedings were held in open court.)

1
2
3 **THE COURT:** Please be seated, everyone. Okay. We
4 just got our last juror in and accounted for, so we have all
09:58 5 seven in. She was running a little bit late. Fortunately, she
6 just arrived.

7 So before we resume with trial, any housekeeping
8 issues that the Court needs to address?

9 **MS. JOHNSON:** Yes, Your Honor.

09:58 10 **THE COURT:** Okay. Tell me what's going on.

11 **MS. JOHNSON:** A few things. First, we just learned
12 that Zoom has been broadcasting our conversations at the table.
13 We weren't aware of that. So we would ask that it not start
14 until court's in session.

09:58 15 **THE COURT:** Sure. Absolutely. We shouldn't be having
16 any sort of discussions or really arguments broadcast. It
17 should only be when trial testimony is ongoing. I'll see if I
18 can mute it. I thought we were convenient. I was trying to do
19 my best to mute it. Maybe there have been pieces where I
09:59 20 haven't muted. So I will do everything I can --

21 **MS. JOHNSON:** Not that we have any great secrets,
22 but --

23 **THE COURT:** No, but -- and I don't want people to get
24 piecemeal stuff and get confused. Just for the sake of the
09:59 25 proceedings, I'll see what I can do to mute it. I'll talk to

1 my IT folks, but thanks for letting me know. Okay.

2 MS. JOHNSON: And then we have Agent Murray ready to
3 go. And you'll be happy to hear that we have reached a
4 stipulation with defendants about the recordings, that we can
09:59 5 play them without having to go through the whole chain of
6 custody authentication, you know, did you send this MP3 to us
7 on such and such a date.

8 THE COURT: Seal it or pack it or whatever it is,
9 right. Okay.

09:59 10 MS. JOHNSON: Yeah, exactly. So we plan to do that.
11 We do plan to ask a few background questions about the date,
12 but that raises an issue that these were made with a undercover
13 agent. She's still undercover with the organized crime
14 division, and while we will have him say she's undercover and
10:00 15 her alias is this, when they hear the tape, they know who the
16 person is.

17 Our fear is that the defendants, as they said in their
18 opening, are going to say -- ask the Agent Murray more about
19 that, why isn't she here, who is she, and if asked, he would
10:00 20 say, "I cannot divulge her name. I cannot divulge why." And
21 then, in fact, you know, and in response the motion in limine,
22 we said we were not going to go there and cannot go into the
23 investigation. So we would just like an instruction on that
24 that the defendants --

10:00 25 MR. HYMAN: We weren't even going to go there,

1 Your Honor, so that's a nonissue.

2 THE COURT: Yeah, let's just make sure -- I think to
3 give some context so that we're not confusing the jury,
4 generalized statements about her not being present because
10:00 5 she's currently undercover and that she's here to testify as to
6 the tape is fine.

7 MS. JOHNSON: Okay.

8 THE COURT: So we won't get into any follow-up as to
9 why is she here or not here or the nature of undercover work
10:01 10 and in the abundance of caution, we don't need to burn an
11 undercover. So I think that's probably the best way to do it,
12 so we won't touch on that.

13 MS. JOHNSON: And then there was one exhibit that they
14 do object to. It's Exhibit 110. I don't know if you want to
10:01 15 talk about it now or wait until it comes up.

16 THE COURT: I can take a look. This is P 110?

17 MS. JOHNSON: Yes, sir.

18 THE COURT: Let me see. Because I know I have the new
19 updated drive here, so the USB. So I can take a look.

10:01 20 MS. JOHNSON: Here is a hard copy.

21 THE COURT: I've been looking at them online.

22 MS. JOHNSON: Need some late night reading to go to
23 bed?

24 THE COURT: Is it 110?

10:01 25 MS. JOHNSON: 110, yes, it's a promissory note that

1 was sent to the agent by Par Funding.

2 THE COURT: Okay. Okay. I see it here. P 110. So
3 this was the -- just so I get some context, this is the note
4 that was sent to the agent at after the conversation he had
10:02 5 with Mr. Furman?

6 MS. JOHNSON: Well, there was a step in between. The
7 agent met -- I wasn't going to go into this. The agent met --
8 went to Par Funding's offices and met with Joe Cole and the
9 other defendants. And following that meeting, they e-mailed
10:02 10 her this note.

11 THE COURT: Got it. What's the concern on the note?

12 MR. HYMAN: Obviously, Your Honor, the note is hearsay
13 for which there's no exception that applies.

14 THE COURT: Is the note being offered for the truth of
10:02 15 the matter asserted?

16 MS. JOHNSON: No, it's not.

17 MR. HYMAN: Also, Your Honor --

18 THE COURT: Hold on. I'm asking you, is the note
19 being offered for the truth of the matter asserted? Because I
10:02 20 don't believe that anybody is trying to advance the truth of a
21 nonnegotiable terms of the promissory note. In fact, this
22 would just, I think, further the -- probably give us a little
23 bit of explanation on how these notes were offered, the notes
24 themselves were physically offered and transferred. But maybe
10:03 25 the SEC can just tell me a little bit more about what this note

1 is seeking to show as opposed to the contents of the note being
2 advanced for the truth of what these notes say.

3 **MS. JOHNSON:** Right. It's not for the truth of the
4 matter asserted. It's just to show that Mr. Furman connected
10:03 5 this investor with Par Funding, and in return, they sent her a
6 note in Par Funding.

7 **THE COURT:** That's important because again, we're not
8 going to consider it for its contents, but this is -- for one
9 way of putting it, it would be that Mr. Furman is a conduit to
10:03 10 Par Funding notes. So to the extent that it's been a theory of
11 defense and the SEC is alleging, not that it's part and parcel
12 of the operation, but that he was indeed offering these notes
13 in Par Funding. So that's what it would be shown for. So we
14 don't really have a hearsay problem with it. So I can take
10:04 15 that off the table. What are the other arguments against the
16 admissibility of --

17 **MR. HYMAN:** First of all, Your Honor, this is the
18 truth of the matter because the note is -- essentially they're
19 saying the note was offering her an opportunity to invest in
10:04 20 Par Funding. The note says there was investment in
21 Par Funding. That's the first basis. Second, Your Honor,
22 there's no --

23 **THE COURT:** I vehemently disagree with that, that it's
24 not -- that's not correct. It's not for the truth. We're not
10:04 25 actually trying to show anyone that these are accurate

1 statements in the note. For example, this note is not being
2 advanced to show default rate misrepresentations or contents of
3 the note. If it were, then you would be correct. If there was
4 substance in the note that was trying to be advanced to show a
10:04 5 misrepresentation, I would agree with you. But this is simply
6 shown or being admitted to show that Mr. Furman cannot distance
7 himself in the eyes of the SEC from Par Funding offerings
8 because he facilitated this offer. So it's the actual
9 transmission of the note is what matters. It's not what's in
10:05 10 the note. So that's incorrect. So it's not truth of the
11 matter asserted. So what is the other argument?

12 **MR. HYMAN:** There's none of the connecting e-mails or
13 documents. It's just the note. There's no testimony or
14 there's no party.

10:05 15 **THE COURT:** It sounds like wonderful fodder for
16 cross-examination that you should explore to show why a jury
17 should not believe that this note is connected to Mr. Furman.
18 That's not a reason to keep out the exhibit.

19 **MR. HYMAN:** Your Honor, part of it is that obviously
10:05 20 the e-mail from whoever, which Mr. Furman wasn't copied on or
21 even a party to, is not being sought to be introduced.

22 **THE COURT:** You don't need it. But let me explain
23 something, Mr. Hyman. As far as I can tell the proffer, the
24 proffer is fairly straightforward. An FBI undercover had a
10:05 25 discussion with Mr. Furman. Mr. Furman made representations,

1 party admissions, so we don't get anymore problems with that,
2 on a tape that's being to be admitted. And he said: Here is
3 the offering that I can tell get you.

4 Then they go to the office, and at the office, the
10:05 5 offer that is being represented by Mr. Furman is ultimately
6 transmitted by Mr. Cole. I think one would venture a guess
7 that the undercover didn't show up at Par Funding unannounced
8 and just started giving a note. He was -- I'm presuming; I
9 don't know the tape -- maybe directed to go to the Par Funding
10:06 10 offices or something that to effect. But a connection he is
11 going to be shown, I would assume the SEC will get that from
12 the tape, that this note was ultimately offered to him because
13 he was directed -- or the undercover was directed to seek to
14 obtain the note by Mr. Furman. Right?

10:06 15 So to the extent that you're going to argue that,
16 that's fine for cross. You could say: Well, there's no
17 evidence to show that this statement that Mr. Furman made is
18 directly related to the offering of the note. It could be that
19 the undercover decided to go and investigate Par Funding
10:06 20 independent of Mr. Furman and got the note. And then the jury
21 can decide. I mean, that's what we should be letting them do.

22 **MR. HYMAN:** There's two issues we have. First,
23 they're introducing the notes that came from Par Funding.
24 That's for the truth of the matter asserted.

10:06 25 Second, Your Honor, there's no linking testimony or

1 proffer of testimony to link the undercover agent visiting the
2 Par Funding offices that is not otherwise hearsay or
3 inadmissible evidence. The proffer that was given was the
4 undercover agent, who's not here to testify, who otherwise
10:07 5 there's no record of her going to that office. It's not part
6 of the recordings. It's not part of what happened. And
7 Mr. Murray otherwise lacks personal knowledge to testify as to
8 the fact that she went there, met with these people and this
9 occurred, nor is there any document showing it -- that on the
10:07 10 exhibit list or of record.

11 **MS. JOHNSON:** There is an audio tape of the meeting
12 and the transcript of it, and we will play it if we need to. I
13 didn't want to go there, but if you think that would be --

14 **THE COURT:** There's an audio tape. And just to be
10:07 15 clear, which meeting? So Mr. Hyman understands what we're
16 talking about.

17 **MS. JOHNSON:** A July 9 meeting, 2020.

18 **THE COURT:** And it's where this note was offered or
19 it's handed over.

10:07 20 **MS. JOHNSON:** It's not handed over. They meet with
21 LaForte and Cole. This is July 9th. They get the note the
22 same day.

23 **THE COURT:** So why don't we address the question that
24 I'm being told that the SEC isn't able to put forth any
10:08 25 evidence that would show how this note got into the possession

1 of the undercover or explain how that happened. And we're
2 going to have someone here from the FBI that has no personal
3 knowledge, and no audio will indicate how this note would even
4 come into play. That's the argument being made by Mr. Hyman.

10:08 5 Can you address that so that we can try to move on from this?

6 **MS. JOHNSON:** I was simply going to ask the FBI agent
7 if they met. But we do have the e-mails where Cole sends these
8 notes to the undercover, and I can present that if there's an
9 issue with the chain of custody or how we got them.

10:08 10 **THE COURT:** So, Mr. Hyman, if we have an e-mail to the
11 undercover, that has these attached so we know how the
12 undercover got them, that seems to cure some of the chain of
13 custody concerns. And again, we could argue or you could argue
14 that there's a gap between Furman's representations and whether
10:09 15 or not he was actually -- the undercover was directed to go in
16 the e-mail or get an e-mail from Cole as to the note. I would
17 assume that the audio -- and I haven't heard the audio -- would
18 explain a little bit of this way away.

19 But, again, I'm -- the objection here is to P 110
10:09 20 coming in. And so I've already noted it's not coming in for
21 the truth of the matter asserted, and it's not coming in other
22 than to show a connection between Mr. Furman and Par Funding.
23 I mean, that's really what's being advanced for, right?

24 **MR. HYMAN:** I'm not seeing this e-mail from Mr. Cole
10:09 25 that they're referencing by exhibit number in the exhibit list.

1 I just --

2 MS. BERLIN: Your Honor, if I may.

3 THE COURT: Yeah, Ms. Berlin. Why don't you step in
4 and you're familiar with the record.

10:10 5 MS. BERLIN: Sure. Thank you.

6 THE COURT: Can we clean this up? Because I think we
7 need to walk Mr. Hyman through the way in which this is going
8 to come in so I can rule on this. Go ahead.

9 MS. BERLIN: Let's do it. Okay. So we have multiple
10:10 10 recordings. We were going to use two with Mr. Murray. We will
11 now add because of your concerns. So you have the two phone
12 calls with the undercover who goes by [REDACTED]. Then you
13 have the subsequent meeting with Perry Abbonizio and
14 [REDACTED]. That's -- and we'll be establishing throughout --
10:10 15 today we're authenticating. We'll be establishing through
16 Mr. Furman and his own e-mails how Mr. Abbonizio came about
17 having that meeting.

18 Then you have another meeting that we'll add because
19 of your concerns today showing Mr. Abbonizio, Mr. LaForte and
10:10 20 Mr. Cole all meeting with [REDACTED] after the meeting with
21 Mr. Abbonizio. So these are all TR0 exhibits. No surprise.
22 We have the transcript, the video, and they're on our exhibit
23 list as well.

24 Finally, concern about the promissory note, easily
10:11 25 resolved. That exhibit was currently in our exhibit binder. I

1 removed it from the e-mail because I didn't think the e-mail
2 was relevant. But we can add it right back to that note. It's
3 the original document. It's the e-mail with that note
4 attached. It goes from Cole to Furman -- I mean, to [REDACTED], and
10:11 5 it's a TR0 exhibit. So again, no surprises.

6 The TR0 motion, in fact, lays all of this out, how it
7 came about. Two calls with Furman, subsequent meeting with
8 Abbonizio. We'll establish through Mr. Furman and his own
9 e-mails how that came about, and then the subsequent meetings
10:11 10 to close the deal, which we'll authenticate today. And when we
11 examine Mr. Furman, we'll use his own documents to show how he
12 was the origin of this.

13 Today we're just trying to get these in authenticated.
14 We'll argue how they fit together in closing.

10:11 15 **THE COURT:** And my point is, I don't think that
16 there's any concern about authentication with the chain of
17 custody that's been proffered that these are the notes that we
18 claim they are, especially they're attached as e-mails,
19 et cetera. And we know that we're going to have the agent able
10:12 20 to lay a predicate and we've all but stipulated as to the
21 authenticity and admissibility of the recording -- the
22 recordings.

23 So I mean, looking at this and recognizing that this
24 is, again, a simply being shown to connect Mr. Furman to
10:12 25 Par Funding note offerings, which is one -- you know, the phase

1 one of the whole allegations, right? This is really part and
2 parcel of that phase one offering before we went in to the
3 Fidelis phase two. So this is -- that's what this is shown
4 for. There's nothing in this that's being advanced for any
10:12 5 representation in the notes themselves, correct?

6 **MS. BERLIN:** Correct. All we're doing here is showing
7 Mr. Furman, the way his -- what his role was in this offering
8 and the way he participated.

9 **THE COURT:** Right.

10:12 10 **MS. BERLIN:** So sometimes he is helping Par Funding
11 sell directly to an individual. And [REDACTED], the
12 undercover, is an example of that. She goes to him, he sets
13 the ball in motion, all of these appointments happen
14 thereafter, and we see it culminate. So it goes beginning,
10:13 15 phone calls with Furman. The end culmination, promissory note
16 sent to her.

17 **THE COURT:** Right.

18 **MS. BERLIN:** And then with Mr. Furman, I'll be showing
19 his involvement in that link, and we'll argue it in closing.
10:13 20 But today we're just trying to get in those videos so we can
21 make the arguments and address it with Mr. Furman when we call
22 him.

23 **THE COURT:** Okay. All right. So I guess, Mr. Hyman,
24 with that proffer that we're going to understand how they
10:13 25 intend on linking it, doesn't mean, of course, you can't expose

1 what you believe are breakdowns in chain of connecting Furman
2 to the note at issue. But I don't really see anything in P 110
3 that's going to raise cause for concern.

4 Again, if they proffer it, if they lay it the way
10:13 5 they've just explained it, I think we would clearly be able to
6 bring this in. If you're worried about gaps, they have the
7 audio on that and we could always play that to make it clear
8 for the jury.

9 But what else do you need to address on this before we
10:13 10 move on?

11 **MR. HYMAN:** The dates, Your Honor. The dates matter
12 here because the SEC was not being entirely accurate with the
13 representation as to the dates. The conversations with
14 ██████████ occurred in 2019, 2020. That was phase two, not
10:14 15 phase one.

16 During a time Fidelis had been created, Mr. Furman was
17 only involved in investments with respect to Fidelis. And
18 similarly, Your Honor, as well we think that even if the SEC,
19 as they've stated, they can get it in through other sources,
10:14 20 that Mr. Murray is not the proper witness to lay the predicate.

21 **THE COURT:** It's their case, Mr. Hyman. Listen, let's
22 be well aware of the rules of evidence. And it's their case.
23 They can bring it in, as long as it's appropriate, with anyone
24 they want. The dates are issues for cross. We're talking
10:14 25 about whether or not this can be brought in. And I'm hearing a

1 proffered chain of custody that would allow it.

2 Ms. Berlin, do you want to respond to the date issue?

3 **MS. BERLIN:** Yeah, sure. So I think some
4 clarification is helpful. Phase one/phase two, I've explained
10:14 5 this a few times. I'm going to say it again. Those are
6 phrases I used in the complaint to help provide a roadmap for
7 the Court and the defendants. No one ever calls it phase one
8 and phase two, other than Amie Riggle-Berlin in the complaint.

9 If you look at the complaint, you will see that it
10:15 10 says that they were selling notes directly to investors until
11 we stepped in. And I actually cite these meetings with the
12 undercover as the example of that direct offering.

13 I also allege in the complaint, or the SEC alleges in
14 the complaint that starting in 2018, agent fund managers are
10:15 15 also soliciting people to raise money for Par Funding by using
16 their own funds.

17 At the end of the day, our view is that it's all part
18 of the Par Funding offering and sale of notes. Mr. Furman is
19 either helping sell them, like he is with [REDACTED] and
10:15 20 others, or he's buying them using investor money. So that's
21 all laid out in the complaint, and we very clearly allege it
22 continuous and, in fact, these meetings are alleged in detail,
23 Your Honor, in the complaint.

24 **THE COURT:** No, no, they're in there.

10:16 25 **MS. BERLIN:** I allege the dates, what happened, who

1 they met with, how it comes about. We will examine Mr. Furman
2 and we will show through him, and if he -- you know, we might
3 have to -- we can also call people that we have on stand by to
4 impeach or rebut, because we have the e-mails showing what
10:16 5 happened and how this all came about.

6 Today, we're -- that's putting the cart before the
7 horse. We're just trying to authenticate so we can then use
8 these exhibits with the subsequent witnesses.

9 **THE COURT:** Correct. Look, I don't -- I think the
10:16 10 issue here was there's an objection, the Court has overruled it
11 on P 110 for the reasons that I've already stated on the
12 record. And based on the proffer, I don't see a problem with
13 this coming in, provided that we get the testimony laid here
14 from our agent and we have the appropriate audio and video and
10:16 15 transcripts and everything that's going to come in so that we
16 have these undercover calls, establish it, and we can get a
17 little bit of explanation via e-mail of how the note get
18 transmitted.

19 But from what I'm seeing, there's no concern with
10:17 20 P 110 running afoul of any evidentiary issues based on the
21 proffer. So the Court will overrule any objection to that.
22 We'll allow this to be presented as the SEC has indicated, and
23 then, of course, we will have any necessary cross-examination
24 that there's gaps in the SEC's version of events that could be
10:17 25 addressed at cross.

1 **MR. HYMAN:** Very well, Your Honor. There's three very
2 quick things. First, for the subsequent recording that were
3 just mentioned, we're not willing to stipulate to the chain of
4 custody as to those. The others one we are with Mr. Furman.
10:17 5 Separate issues we don't have time to really review or address
6 those issues.

7 Second, Your Honor, just to be clear for purposes of
8 the record, we are not consenting by any means to trial on the
9 integration issue, which the SEC has already stipulated there's
10:17 10 an issue that they --

11 **THE COURT:** Why am I litigating this right now?

12 **MS. BERLIN:** I don't know.

13 **THE COURT:** Why am I litigating this right now? Why
14 am I wasting jury time to talk about integration? It's not an
10:17 15 issue with this witness, it's not going to come up. The word
16 hasn't even been used by anyone at any point in this case.
17 It's just not been a feature.

18 **MR. HYMAN:** Your Honor, I was just preserving a
19 record --

10:18 20 **THE COURT:** There's no record for you to preserve,
21 Mr. Hyman. There's not an even argument made on this point.
22 You're wasting the Court's time with these arguments that have
23 no bearing on the issues, which is -- we're going to call a
24 witness now. You stipulated to the admissibility and
10:18 25 authenticity of the audio. I've overruled P 110, but I cannot

1 engage any further in arguments on breaks like this with the
2 jury waiting that have no bearing on what is the immediate
3 issue before the Court.

4 When integration is raised -- we can argue
10:18 5 integration, if it's even raised. You heard Ms. Berlin say
6 multiple times, they're not even going to go with the
7 integration theory, so much so that the Court took great pains
8 in my order on summary judgment not to mention the integration
9 theory because I didn't want to inject an issue in the case
10:18 10 that was not in the record.

11 So that is something that you raised in your response
12 in opposition. And I note that, I mentioned at our last
13 hearing, but I don't know why on earth we're spending time
14 talking about waiver of stipulation or argument regarding
10:18 15 integration. It's not a feature. It's just not.

16 **MR. HYMAN:** I simply wanted to make the one-sentence
17 statement as to that, Your Honor. I apologize.

18 **THE COURT:** Yes, I think we need to read the room.
19 When you have an objection, I want to address it, but it's not
10:19 20 an open free-for-all to tell me all of the feelings about the
21 case until they're at issue for the Court.

22 So with all of that being said --

23 **MS. JOHNSON:** Your Honor, one more.

24 **THE COURT:** Yes. Go ahead.

10:19 25 **MS. JOHNSON:** Judge, Agent Murray has asked that when

1 we play the recordings that they not be broadcast on Zoom,
2 especially the new ones that were --

3 **THE COURT:** Okay. Absolutely. And what I will do is,
4 I'm going to unmute myself here at some point, because I don't
10:19 5 want anyone to think that the audio cut out. So I'm going to
6 be let them know there will be proceedings played today that,
7 for security reasons, cannot be broadcast over the air.

8 **MS. JOHNSON:** And he doesn't want anybody taping them
9 and --

10:19 10 **THE COURT:** I couldn't agree more. I think that's not
11 a bad point. And so I will make a statement on that.

12 So are we comfortable that I can let things play until
13 the tape is played? I want to make sure. Or do we want to not
14 have any part of his testimony broadcast? I do not want to run
10:20 15 afoul of any ongoing investigation. You tell me.

16 **MS. JOHNSON:** Well, let's ask him, because we're
17 dealing with things under seal right now. And they're under
18 seal for a reason.

19 **THE COURT:** Can you ask him out there before you bring
10:20 20 him in and then let me know?

21 **MS. BERLIN:** Yes.

22 **THE COURT:** Okay.

23 **MS. BERLIN:** I'm going to do that. And because what I
24 know is that any -- that's why we kept everything under seal.

25 **THE COURT:** Right.

1 **MS. BERLIN:** Her voice, her appearance would
2 jeopardize -- I asked, would it risk her life? He said, it
3 would put her life at risk and jeopardize a lot of
4 investigations.

10:20 5 **THE COURT:** Yeah.

6 **MS. BERLIN:** So let me go ask him about whether --

7 **THE COURT:** Can you ask him real quick? Because I'm
8 not interested in having any of this at risk. I'm going to say
9 something on the Zoom and then put the audio off. Okay?

10:20 10 **MS. JOHNSON:** It might just be simpler.

11 **THE COURT:** Yes, I think I'm just probably just going
12 to keep the audio off, but I'm going to say something before we
13 call him just so everybody knows. Because I think people are
14 wondering why the audio is off.

10:21 15 **MR. KOLAYA:** Good morning. Tim Kolaya on behalf of
16 the receiver. Your Honor, I just wanted to note that yesterday
17 we had concerns about audio from the Zoom. You were loud and
18 clear, but apparently counsel and the witness, in particular,
19 were very difficult to hear on the Zoom.

10:21 20 **THE COURT:** Okay. We should -- I mean, we have got to
21 get -- I think what I'm going to do is get people to speak
22 right into the microphone. It's the only thing we can do.

23 **THE COURTROOM DEPUTY:** I set it up on the audio system
24 now. So it should be fine.

10:21 25 **THE COURT:** It should be better? Can you let us know,

1 Mr. Kolaya, if you keep getting the feedback? Because I've got
2 to keep tweaking it, but hopefully today is better.

3 **MR. KOLAYA:** Absolutely. We'll let you know, for
4 sure. Thank you.

10:22 5 **THE COURT:** And so we note for the court reporter, for
6 Gigi, she was indicating to me that sections of the trial that
7 need to be under seal, I want her to formally know. So is it
8 fair it say that this entire witness will be under seal, this
9 portion of the trial?

10:22 10 **MS. JOHNSON:** Let's do it. There's no reason for it
11 to be --

12 **THE COURT:** There's no reason. We can always move to
13 unseal it later.

14 So, Gigi, when we get this next witness, we're going
10:22 15 to be under seal until I indicate otherwise, okay?

16 **THE COURTROOM DEPUTY:** You're going to let them
17 know --

18 **THE COURT:** I'm going to say something to them now as
19 to why they're going see people talking but hear nothing.

10:22 20 Okay?

21 **THE COURTROOM DEPUTY:** Because they're complaining
22 right now. Give me one second.

23 **THE COURT:** Let me know when it's unmuted.

24 **THE COURTROOM DEPUTY:** Yes.

10:22 25 **THE COURT:** Am I unmuted? Okay. Give me one second,

1 Ms. Berlin.

2 MS. BERLIN: Yeah.

3 THE COURT: Okay. Just so that we're clear, this is
4 Judge Ruiz, and I'm going to turn on my video so folks can see
10:22 5 me here in just a moment. All right. So this is for the
6 vesting public and those who may be watching the Zoom, as
7 everybody has indicated, you are correct, the proceedings have
8 been muted up until this point. There are concerns the Court
9 has regarding some witnesses and testimony that will be
10:23 10 presented this morning. And due to some of the security
11 concerns we have, we will not be permitted to be broadcasting
12 some of the testimony this morning as we've done yesterday.

13 Unfortunately, this is just an issue of security and
14 the Court is required to go ahead and prevent any recordings,
10:23 15 audio, visual or otherwise, that could be done via Zoom, and
16 therefore, although you will all be seeing us here as you have,
17 of course you will not be seeing the witnesses, you will not be
18 seeing the jury. You will see the lawyers. I have to inform
19 everyone that you are not having audio issues.

10:23 20 The Court will be muting this morning's testimony up
21 until a certain point. You are all free to continue to watch
22 the proceedings, even though there will be no audio, and I want
23 everyone to understand that we expect that the majority of
24 today will be with open audio. It is just this morning's
10:24 25 testimony that we cannot permit to be done in that fashion. So

1 I wanted everyone to understand that.

2 I also have received word from receiver's counsel that
3 some folks had some issues yesterday on the audio, not so much
4 from the court but from the witness and from defense counsel.

10:24 5 We have attempted to fix that today. My courtroom deputy and I
6 have changed up the audio.

7 I am certain that if it's still not working to the
8 public's satisfaction, that you will inform the receiver's
9 counsel. I'd ask that he let me know. But I just want to let
10:24 10 everyone know that hopefully today you will hear things better.
11 So with that, I'm going to be silencing the audio this morning
12 and I will unmute the audio when I can. And I appreciate
13 everyone's understanding. These are court security and
14 judicial administration issues, and I cannot have these things
10:24 15 broadcast due to the sensitive nature of the material this
16 morning.

17 So with that being said, Gracie, if we can mute,
18 please.

19 **THE COURTROOM DEPUTY:** Done.

10:25 20 **THE COURT:** And just to be clear, none of this is
21 being transmitting right now. The Zoom is not playing. Okay.
22 All right.

23 **MS. BERLIN:** Your Honor, we'll need a moment because
24 we have now had to add a couple of hours worth of audio based
10:25 25 on this. So it's going to be very long. And we're just having

1 to pull that e-mail. So I apologize. I just --

2 THE COURT: It's okay. It's okay. Let me ask you, on
3 the audio that we'd originally planned on playing which is was
4 stipulated to, that audio in particular, how long is that audio
10:25 5 that we expect to only play?

6 MS. BERLIN: So we were just going to -- that's 50
7 minute.

8 THE COURT: 50?

9 MS. BERLIN: 5-0. So maybe while Ms. Johnson is
10:25 10 playing that, I can be working on compiling this.

11 THE COURT: That's what I was thinking.

12 MS. BERLIN: And if we haven't finished, I might ask
13 if we can take a brief break to excuse the jury, but I'll be
14 working diligently on getting that done.

10:26 15 THE COURT: Okay. Let's go ahead and do that, and if
16 we could, I'll bring him in, and we'll bring in our witness,
17 our agent to lay the predicate so we can start playing that.
18 And then once that's playing, we can do what we need to do.
19 We'll let the jury listen to it.

10:26 20 MS. BERLIN: Yeah, and I'll just be busy back here to
21 get it done. I should be able to get it done in 50 minutes.

22 THE COURT: That works. And as we're doing that, you
23 know, I would urge, because we're just going to be playing the
24 audio, if the parties can maybe meet and confer and we can be
10:26 25 certain that we need to be playing the rest of this before we

1 do that exercise.

2 Yes, Counsel.

3 **MS. JOHNSON:** That's it.

4 **THE COURT:** We're ready to go?

10:26 5 **MS. JOHNSON:** Can I get my exhibit back?

6 **THE COURT:** Yes. Here you go.

7 Gracie, can you give that back to counsel?

8 Okay. Anything else before I bring in our agent and
9 we can start playing the audio?

10:26 10 **MS. BERLIN:** Not from us.

11 **THE COURT:** All right. Anything else on the defense?

12 Because I'm going to bring my agent and we're going to

13 essentially move -- as you stated, it's been stipulated. So

14 there will be no issues with me just getting him on, getting a

10:27 15 little bit of background and throwing on the audio because the

16 defense has agreed to this portion of the tape. So is there

17 anything else you guys need to raise before I bring in the

18 agent?

19 **MR. HYMAN:** No, Your Honor.

10:27 20 **THE COURT:** And are you guys still insisting, before I

21 have Ms. Berlin spend time and energy on additional hours of

22 testimony, that you had not had issue with or did not meet up

23 until moments ago, are you guys still insisting that now we go

24 through the academic exercise of laying ridiculous predicate

10:27 25 for two-and-a-half hours of audio? I just want to make sure.

1 Because what I don't want to happen is what happened yesterday,
2 which is I heard argument on one day and then stipulation the
3 next. We need to make sure you need this before I make them go
4 through the exercise.

10:27 5 **MR. HYMAN:** We'll withdraw the objection as it relates
6 to the chain of custody issue but not the audio themselves --
7 or recordings themselves and the need to play them.

8 **THE COURT:** Let me understand. So if you withdraw the
9 chain of custody concern, then I don't think we need the
10:28 10 additional audio.

11 **MR. HYMAN:** No. To be clear, the chain of custody was
12 with respect to them playing the audio. So we maintain our
13 objection as it relates to that based on the promissory note
14 and the other issues, which is why the audio, according to the
10:28 15 SEC needs to come in. However, when it comes to Mr. Murray
16 authenticating and testifying as to the chain of custody with
17 respect to the recordings themselves, we don't plan on making
18 the SEC go through that additional exercise.

19 **THE COURT:** Okay. So if I understand it correctly,
10:28 20 then I believe, Ms. Berlin, that they are going to raise this
21 issue. Again, they're not necessarily objecting to it. It's
22 really up to the SEC. If the SEC feels they can lay enough
23 predicate through questioning, perhaps some of this audio may
24 not even be needed until you do a redirect, if it's even
10:28 25 brought up. It might not even be an issue until redirect

1 really.

2 MS. BERLIN: I agree. And I have an idea that could
3 alleviate their concerns and address, I think, everything --

4 THE COURT: Okay.

10:28 5 MS. BERLIN: -- without us listening to hours of
6 additional testimony.

7 THE COURT: Yes. I'm just trying to avoid that.

8 MS. BERLIN: Me too. So we can just add Mr. Murray
9 and his testimony after he authenticates the videos. We can
10:29 10 just ask him because we have his -- were there subsequent
11 meetings and on what dates were those and who were they with
12 and where did those occur. And he can just state: This date,
13 here is who was present, those are recorded and --

14 THE COURT: And it would be coming in as business
10:29 15 records, right? He's reviewed them?

16 MS. BERLIN: Yeah.

17 THE COURT: He's aware of them? He could testify as
18 to them?

19 MS. BERLIN: Yeah.

10:29 20 THE COURT: And --

21 MS. BERLIN: We don't have to play them.

22 THE COURT: You don't have to necessarily play them
23 all.

24 MS. BERLIN: We don't have to play them all. He did
10:29 25 that on the TRO. And then we could say: Okay, so you had this

1 meeting, this meeting, this meeting. And then: What is this?
2 That's the e-mail that happened on July 6th. Thank you, no
3 further questions.

4 **THE COURT:** That may be easier. That way we don't
10:29 5 necessarily have to play a bunch of audio, which I don't think
6 benefits either side.

7 **MS. BERLIN:** It's not relevant to anything in this
8 case other than just showing -- like the only thing this is
9 relevant for is to show Mr. Furman's position in the overall
10:30 10 thing. And those -- and that the lies in the phone calls.

11 The hours and hours of other people, not defendants,
12 meeting with her is a waste of time. They don't even talk
13 about Par Funding the whole time. At one point they go out to
14 a nightclub. The one recording is eleven hours. I'm not
10:30 15 kidding. It's eleven hours. It's all of them in Florida,
16 going to dinner, then going to a nightclub. There's cross
17 chatter. I had to listen to the whole thing, so I know. Your
18 Honor, it would be a disaster.

19 **THE COURT:** No. I think you can get an explanation of
10:30 20 the linkage through this witness after playing the initial
21 audio of 50 minutes, which is the critical audio, given the
22 SEC's allegations, and we can go from there. And then we'll
23 allow cross-examination to explore any gaps. And then the SEC
24 can respond in kind. All right? That should be the easiest
10:30 25 way to do it, so we don't play unnecessary audio or video for

1 hours. Okay.

2 MR. HYMAN: So long as the SEC doesn't try to backdoor
3 what was said during those meetings and just who was there.

4 MS. JOHNSON: We have tried to avoid that.

10:31 5 THE COURT: All right. That's fine. Understood.
6 You'll object if something comes up. So that works. All
7 right. Let's go ahead, if we could, please, and bring our
8 jurors in.

9 (Thereupon, the jury entered the courtroom.)

10:32 10 THE COURT: Thank you, guys, for your patience. We're
11 getting everything set up for this morning. So don't worry;
12 we're still on schedule, as we have been from the moment we
13 started. We're going to now continue with the SEC's case and
14 have them call their next witness. So with that being said,
10:32 15 I'll turn it over to counsel.

16 MS. JOHNSON: Thank you, Your Honor. The SEC would
17 call Agent John Murray.

18 THE COURT: Okay. And we'll go ahead and get
19 Agent Murray, please.

20

21

22 *THEREUPON, THE SEALED PORTION OF THE TRANSCRIPT WAS EXTRACTED*

23

24

** FOR ATTORNEYS' EYES ONLY **

25

1 **THE COURT:** Okay. In general, what I'm going to do is
2 because it just makes sense because we're so close to the lunch
3 hour, about 11:45, I'm going to ask everybody to come back into
4 the jury room if they could by 1:00 o'clock. Let's go ahead
11:43 5 and give you guys about an hour and 15 to take a lunch break.

6 We're still going to be moving through a number of
7 witnesses this afternoon. This was one that we needed to make
8 sure that we played for you all. It took a little longer. But
9 we're going to keep this train moving this afternoon and get
11:43 10 through a few other individuals.

11 So I want to go ahead and let you guys take a break
12 now so that we don't unnecessarily start. There's really is no
13 advantage to taking a witness for 45 minutes until the lunch
14 hour. So 1:00 o'clock in the jury room. Make sure you leave
11:43 15 your notes in there, please. You're all excused. Have a great
16 break.

17 (Thereupon, the jury exited the courtroom.)

18 **THE COURT:** Please be seated everyone. For the
19 record, we are now no longer under seal. The Court will go
11:44 20 ahead and make sure that the audio is turned back on for the
21 Zoom, and I'll let my CRD know now.

22 And I just -- just for the sake of my court reporter,
23 the agent's name has always been on all witness lists without
24 any sort of redaction. Correct? So there's no issue with his
11:44 25 name being identified as a witness.

1 MS. BERLIN: That's correct, Your Honor.

2 THE COURT: So again, we will no longer be under seal
3 transcript-wise at this time, and we can go ahead and identify
4 him by name in the transcript, even though that portion is
11:44 5 under seal.

6 All right. So 1:00 o'clock is we're going to pick up
7 where we left off. Our plan today was five witnesses. We got
8 one down. I know Furman is in that lineup. I recall investors
9 being in the lineup. I suppose that investors may be fairly
10 straightforward, as one was yesterday. I don't think it's
11 going to take too long.

12 Am I expecting then at 1:00 o'clock one of those
13 investors? Who is the lineup for the afternoon?

14 MS. BERLIN: That's right. So at 1:00 o'clock we'll
11:45 15 have Robert Renner, an investor. He's already here.

16 THE COURT: Great.

17 MS. BERLIN: We thought we would be -- you know, we
18 thought we'd already be in our second witness. But we're going
19 to try to catch up. We're going to do it. And then we have
11:45 20 another investor, Henry Bart. Following that, it depends on
21 the timing because we have people kind of scheduled on Zoom and
22 breaks from work and life.

23 THE COURT: Sure.

24 MS. BERLIN: But we may have Wendy Lyman or Wendy
11:45 25 Furman would be next. And then Mr. Furman. We might change

1 the order in that because we want to get through as many. So
2 depending on what the time looks like, we might just call
3 Mr. Furman. We might put the Zoom witness in. Basically,
4 we're just going to try to use the time efficiently with
11:46 5 whoever is available.

6 **THE COURT:** Very good. That works for the Court.

7 Gracie, do I have audio back? Okay. All right.

8 Okay. So for those that are watching on our Zoom

9 feed, the Court has once again turned the audio back on and

11:46 10 expects this that this afternoon, all proceedings will continue
11 as they did yesterday with fully accessible audio, so everyone
12 is free to listen in.

13 And we will be resuming trial at 1:00 o'clock with

14 several investors that will be heard from and potentially

11:46 15 Mr. Furman. And we will see how things play out in the
16 afternoon.

17 So anything else on behalf of the SEC before we take
18 our break?

19 **MS. BERLIN:** No, thank you, Your Honor.

11:46 20 **THE COURT:** You're welcome.

21 Anything else on behalf of the defense before we take
22 our break?

23 **MR. HYMAN:** Just to the extent Your Honor has been

24 frustrated with our efforts to preserve the record, we

11:46 25 apologize.

1 **THE COURT:** Not a worry. I understand you guys are
2 fighting for your client and I appreciate that. And I know
3 Mr. Furman does as well.

4 So with that being said, we'll take our break at this
11:47 5 time. We'll see everybody at 1:00 o'clock. All right. We're
6 in recess. We can go off record at this time.

7

8 (Thereupon, a luncheon recess was taken.)

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A F T E R N O O N S E S S I O N

14 **THE COURT:** Please be seated, everyone. All jurors
01:37 15 are now present and accounted for.

16 Rita, will you do me a favor and round them up for me,
17 please.

18 **THE COURTROOM DEPUTY:** You got it.

19 **THE COURT:** Let's unmute. Are we unmuted now?

01:38 20 **THE COURTROOM DEPUTY:** Yes, Judge.

21 (Thereupon, the jury entered the courtroom.)

22 **THE COURT:** Please be seated, everyone. All right.
23 Ladies and gentlemen of the jury, we will pick up where we left
24 off by turning to the SEC so they can call their next witness.

01:39 25 Counsel.

1 MS. JOHNSON: Hi. We will call Mr. Robert Renner.

2 THE COURT: Come on up, Mr. Renner. Take your time.

3 Thereupon,

4 ROBERT RENNER,

5 having been duly sworn by the court reporter, testified as

6 follows:

7

8 DIRECT EXAMINATION

9 BY MS. JOHNSON:

01:40 10 Q. Hi, Mr. Renner. Could you state your name for the record.

11 A. Robert Renner.

12 Q. And are you currently employed?

13 A. Retired.

14 Q. And what did you do before you retired?

01:40 15 A. I was a managing supervisor of a fuel company.

16 Q. And where do you live? What city do you live in?

17 A. I live in West Palm Beach now.

18 Q. And are you familiar with the defendant, Michael Furman?

19 A. Yes.

01:40 20 Q. And how are you familiar with him?

21 A. I invested money with his company.

22 Q. And how did you first hear about Mr. Furman?

23 A. On a radio commercial.

24 Q. What did the radio commercial say?

01:41 25 A. Basically he said, If you're interested in earning above

1 current interest rates and you have at least 50 thousand
2 dollars to invest for at least a year, and then the phone
3 number to call.

4 Q. And did you call that phone number?

01:41 5 A. Yes, I did.

6 Q. And did you ever meet with Mr. Furman?

7 A. Yes. I talked to him on the phone and then I met with him
8 after that phone call.

9 Q. And was that in the fall of 2019?

01:41 10 A. Approximately.

11 Q. And where did you meet him?

12 A. At his office in West Palm Beach.

13 Q. And what did you discuss with him in that meeting?

14 A. The investment.

01:41 15 Q. One investment or several investments?

16 A. Well, I was interested in one that he had talked about. He
17 had a couple of investments, but some involved real estate
18 investments or nursing home and it was a payout of partial
19 interest and principal during the life of that loan. But I was
01:42 20 only interested in a straight debt investment with a solid
21 monthly income distribution.

22 Q. So you were interested in a fixed income investment that
23 paid interest monthly; is that correct?

24 A. Exactly.

01:42 25 Q. Okay. Did he talk to you about an investment in a company

1 called Par Funding?

2 A. That was the company that I eventually invested in.

3 Q. Okay. What did he tell you about the company Par Funding?

01:42 4 A. They were in a factoring business debt. And it was a well
5 run established company he had done business with and hadn't
6 any default or problem with payment.

7 Q. Did he tell you how the company made money?

8 A. I believe he told me that it would fund debt from various
9 retail businesses.

01:43 10 Q. And you said he told you it was a well run company. What
11 did he say?

12 A. I'm sorry?

13 Q. You had said he told you it was a well run company. What
14 did he say about that?

01:43 15 A. It was a well run company that he had done business with in
16 the past and never had a problem.

17 Q. Did he tell you anything about the management of the
18 company?

19 A. No.

01:43 20 MR. JOHN: Objection, Your Honor, relevance.

21 THE COURT: Overruled.

22 BY MS. JOHNSON:

23 Q. Did he tell you that anyone at Par Funding had a criminal
24 background, anyone running Par Funding?

01:44 25 A. Absolutely not.

1 Q. Did he tell -- explain to you the risk of investing in
2 that -- in Par Funding?

3 A. **No. It was supposed to be a straight fixed income debt
4 obligation to be paid back within a year.**

01:44 5 Q. Did you ask him any questions about the note, about
6 Par Funding or the investment?

7 A. **No. Just if they were reliable and if he had done business
8 with them in the past. Which is --**

9 Q. What did he tell you?

01:44 10 A. **Yes, he had done business with them for some time and they
11 had always been reliable and on time with both principal and
12 interest payments.**

13 Q. Did he tell you anything about Par Funding having any
14 issues any state regulators, any securities issues?

01:45 15 A. **No.**

16 Q. Did he tell you anything about Par Funding's underwriting
17 practices?

18 A. **No.**

19 Q. Did he tell you anything about Par Funding's default rates?

01:45 20 A. **He said that he had no defaults with them.**

21 Q. Anything else that you recall him talking about when
22 talking about the Par Funding notes?

23 A. **No. That's about all we talked about.**

24 Q. And did you end up investing in those notes after that
01:45 25 meeting?

1 A. **Yes, I did. I invested \$50,000.**

2 Q. After that meeting?

3 A. **Yes.**

4 Q. So in the fall of 2019?

01:45 5 A. **Correct.**

6 Q. Do you remember the interest -- did you end up signing any
7 documents memorializing that investment, any contracts?

8 A. **Yes.**

9 Q. And did the contracts set forth what interest rate you were
01:46 10 to receive?

11 A. **9 percent.**

12 Q. And where did that \$50,000 that you invested come from?

13 A. **It was part of a family state inheritance distribution.**

14 Q. And did you tell Mr. Furman where you were getting that
01:46 15 money from?

16 A. **No. Subject never came up.**

17 Q. And when you -- who did you write the check to when you
18 invested in that \$50,000 note?

19 A. **United Fidelis.**

01:46 20 Q. And what was your understanding of what United Fidelis was
21 going to do with that check?

22 A. **Well, my understanding was I paid United Fidelis,
23 United Fidelis then forwarded the funds to the debtor.**

24 Q. To Par Funding?

01:46 25 A. **Yes.**

1 Q. So it was your understanding that you wrote a check to
2 United Fidelis, they sent the money to Par Funding. And then
3 what were they going to do with that money?

4 A. **Handle it to run their business and then they would in turn**
01:47 5 **make the monthly interest payments back to Fidelis who**
6 **distributed it to me.**

7 Q. So it was your understanding you were investing in
8 Par Funding?

9 A. **That's what I understood, yes.**

01:47 10 Q. Did you talk to Mr. Furman after that investment? After
11 that initial investment did you have any calls with him?

12 A. **Yes. Later I received another distribution from my trust**
13 **and I called him to -- wondering about further investing since**
14 **I had been receiving prompt payments during the time of my**
01:47 15 **investment.**

16 Q. So you were happy with the investment, you got another
17 distribution --

18 A. **Yes.**

19 Q. -- and you wanted to make another investments?

01:47 20 A. **I had additional funds to invest, so I called him.**

21 Q. Was that around January of 2020?

22 A. **2020, yes, January.**

23 Q. Early 2020?

24 A. **Yeah.**

01:48 25 Q. Okay. And did you call him on the phone? How did you

1 contact him?

2 A. **I contacted him at his office. By phone.**

3 Q. And what did you discuss with him on that call?

01:48 4 A. **Initial investment -- an additional investment to the one I**
5 **had already made.**

6 Q. So you discussed making another investment in Par Funding;
7 is that correct?

8 A. **Yes.**

01:48 9 Q. Did you have any discussions with him about how Par Funding
10 was doing, how the company was operating, during that call?

11 A. **No. I didn't discuss it. Only because I had been paid**
12 **every month on time.**

13 Q. During that call, did Mr. Furman offer you any additional
14 information about Par Funding?

01:48 15 A. **No.**

16 Q. And after that call, did you decide to make another
17 investment in Par Funding?

18 A. **Yes, I did.**

19 Q. And what was that investment?

01:49 20 A. **\$100,000 at 10 percent.**

21 Q. When you say "at 10 percent," you were to receive 10
22 percent monthly interest from the \$100,000?

23 A. **Well, 10 percent annual yearly -- annually, which would**
24 **breakdown to -- 10 percent of 10 thousand dollars divided by 9**
01:49 25 **would be the monthly payment.**

1 Q. Right. And was that in March of 2020 when you made that
2 second investment?

3 A. **March. Yes.**

4 Q. And did you begin to receive investment payments --
01:49 5 interest payments on that?

6 A. **Yes, I did.**

7 Q. Did there come a time when those interest payments stopped?

8 A. **I forget the date, but I received a -- I think three
9 payments each -- monthly interest payments, and then on the
01:50 10 fourth, the fifth payment was due, I never received anything.
11 So I called his office.**

12 Q. Mr. Furman's office?

13 A. **Mr. Furman's office, and he said they had a problem -- this
14 was right at the time that COVID was very active and a lot of
01:50 15 its customers were in the restaurant business and had to close
16 and they were unable to make their payments to Par Funding,
17 which then defaulted on its payments to me.**

18 Q. Did you ask Mr. Furman what to do now that you weren't
19 getting your interest payments?

01:50 20 A. **Yeah. I asked him what the default remedy would be to his
21 default and he said that contemplating suing them in court, but
22 they were first going to try to renegotiate the debt to a lower
23 interest rate for a longer period of time. Because if we sued,
24 we wouldn't be able to recover less than 20 percent of the
01:51 25 investment.**

1 Q. So you asked him if you should sue them and he said --

2 A. I asked him if -- if he was going to sue them, and he said
3 they were first going to try to renegotiate the debt.

4 Q. Okay. And what did you understand that to mean, when he
01:51 5 said he was going to try to renegotiate? How did he explain
6 it?

7 A. He had to get all the investors to agree to a new
8 arrangement approved by Par and then they would start -- after
9 they sign new documentation, then they would start to pay
01:52 10 interest at the lower rate.

11 Q. Okay. He said he was going to try to renegotiate the debt
12 and so the investors, instead of getting the 9 or 10 percent,
13 would get a lower rate?

14 MR. HYMAN: Leading.

01:52 15 THE COURT: Overruled.

16 A. Yes.

17 BY MS. JOHNSON:

18 Q. And what rate was he offering as part of the renegotiation?

19 A. I believe it was 4 percent.

01:52 20 Q. Did he suggest any other alternatives to entering into a
21 renegotiated instrument?

22 A. No.

23 Q. Did you enter into an agreement to renegotiate your
24 interest rate?

01:52 25 A. Yes, I did.

1 Q. And when was that? Do you remember the time period, the
2 month?

3 A. I believe it was a few months after that. It took a while
4 for it to get organized.

01:52 5 Q. And was that note given to you by Mr. Furman, the
6 renegotiated note?

7 A. Yes.

8 Q. Did Mr. Furman ever offer to introduce you to any people
9 representing Par Funding?

01:53 10 A. No.

11 Q. Did Mr. Furman tell you he would invite you to any meetings
12 with Par Funding representatives?

13 A. Yes. After I made the second investment, he told me that
14 the management from Par Funding comes down to his area from
01:53 15 time to time, and the next time the meeting was set up, he
16 would have me invited to that meeting.

17 Q. Did Mr. Furman at any of these times that you talked to
18 him, either in his office or on the phone, either in your first
19 investment, your second, or your renegotiated one, ever tell
01:53 20 that you Pennsylvania had filed a regulatory case against
21 Par Funding?

22 A. No.

23 Q. Did he ever tell you that New Jersey regulators had ever
24 filed a case against Par Funding?

01:53 25 A. No.

1 Q. Did he ever tell you that the Texas regulators had ever
2 filed a case against Par Funding?

3 A. No.

4 Q. Did he ever tell you that Pennsylvania had filed a case
01:54 5 against an individual who worked at Par Funding named
6 Dean Vagnozzi?

7 MR. HYMAN: Leading, Your Honor.

8 THE COURT: Overruled.

9 A. No.

01:54 10 BY MS. JOHNSON:

11 Q. And did he ever tell you that Pennsylvania has filed a case
12 against a company called A Better Financial Plan?

13 A. No.

14 Q. Had you ever heard of A Better Financial Plan?

01:54 15 A. No, I haven't.

16 MS. JOHNSON: That's all I have, Your Honor.

17 THE COURT: Cross-examination.

18

19 CROSS EXAMINATION

01:54 20 BY MR. JOHN:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Mr. Renner, during your direct examination, you mentioned
24 that you wrote a check to United Fidelis. Is it possible that
01:54 25 you actually wrote that check to Fidelis planning?

1 A. I didn't hear you say it again.

2 Q. During your direct examination the government you said that
3 you wrote a check to United Fidelis. Is it possible that you
4 actually wrote that check out to Fidelis Planning?

01:55 5 A. At this time I'm not positive. I thought I recognized it
6 was United Fidelis, but...

7 Q. Well, let me ask you this: You only dealt with Mr. Furman
8 regarding this investment, right, these two investments that
9 you just testified about?

01:55 10 A. I'm sorry. I didn't hear you.

11 Q. The investments that you just spoke about during your
12 direct examination, you only dealt with Mr. Furman; is that
13 correct?

14 A. That's correct.

01:55 15 Q. When you called Mr. Furman, he was pretty responsive to
16 you?

17 A. Did I what?

18 Q. Whenever you called -- did you ever call Mr. Furman on the
19 phone to discuss your investments?

01:55 20 A. Yes.

21 Q. When you called, was he responsive?

22 A. He was always responsive until they defaulted on the debt.

23 Q. And that was in 2020, you said?

24 A. Yes.

01:55 25 Q. You never called anyone from Par Funding, correct --

1 A. **No.**

2 Q. -- to discuss investments?

3 A. **No.**

4 Q. And you never met with anyone from Par Funding --

01:56 5 A. **No.**

6 Q. -- regarding investments; isn't that correct?

7 A. **That's correct.**

8 Q. When you met with Mr. Furman regarding your initial
9 investment with him, you were married at that time, right?

01:56 10 A. **Let me see. What date was that? I was divorced in 2012.**

11 **So...**

12 Q. So you were single when you met with him?

13 A. **Yes, I was.**

14 Q. And you had to disclose certain information about your
01:56 15 income to Mr. Furman, right?

16 A. **Well, I was retired, but I did have to -- we did talk about
17 what my net worth was and so forth.**

18 Q. He asked you -- well, strike that.

19 At the time you met with Mr. Furman, you had a gross
01:56 20 income of over \$200,000; isn't that correct?

21 A. **No.**

22 Q. You did not have that?

23 A. **Nope. I was retired.**

24 Q. What was your net worth at the time that you met with
01:56 25 Mr. Furman?

1 A. You approximately \$500,000.

2 Q. When you met with Mr. Furman -- strike that.

3 You called Mr. Furman regularly about your
4 investments, right?

01:57 5 A. No. I called him about the initial investment and only if
6 I had a problem receiving money, payment after that.

7 Q. You signed a promissory note for your investment with
8 Mr. Furman, right?

9 A. They signed a promissory note to me. I didn't promise.

01:57 10 Q. Right. With Fidelis, correct?

11 A. Yes.

12 MR. JOHN: Your Honor, can we have the screen to put
13 up an exhibit?

14 THE COURT: Has this been admitted?

01:58 15 Has this been admitted?

16 MR. JOHN: Just to him.

17 (Thereupon, the exhibit was introduced into evidence.)

18 BY MR. JOHN:

19 Q. Mr. Renner, I just put a document up on the screen in front
01:58 20 of you. Do you see it?

21 A. Let me see.

22 Q. Is there a document on your screen right now?

23 A. Yes.

24 Q. Take a moment to look at it, and let me know if you
01:58 25 recognize this document.

1 A. No, I don't.

2 BY MR. JOHN:

3 Q. You did have a promissory note with Fidelis, correct?

4 Mr. Renner?

01:58 5 A. They had one with me. I was the investor.

6 MS. JOHNSON: Your Honor, we didn't get this exhibit.

7 THE COURT: Okay. Meaning it has not been -- this
8 exhibit has not been exchanged at all? He hasn't shown it to
9 the other side. Can you show it to him to make sure what it

01:59 10 is?

11 MS. JOHNSON: Can we go to sidebar?

12 (Thereupon, there was a side-bar conference outside
13 the presence and hearing of the jury.)

14 MR. HYMAN: Your Honor, first of all, they were asking
01:59 15 Mr. Renner questions about this exhibit and part of it in this
16 document was actually in their exhibit list. We can show it as
17 well the accredited --

18 THE COURT: I'll take this in turn.

19 MS. BERLIN: Let's take turns.

01:59 20 THE COURT: He just said that this was your exhibit.

21 MR. HYMAN: I said that part of the document is in
22 their exhibit list, but we'll let them --

23 MS. BERLIN: So we recognize a lot of their exhibits
24 we never got. The FBI and the receiver got Mr. Furman's

02:00 25 laptop.

1 THE COURT: Right.

2 MS. BERLIN: He wouldn't turn over his password. Then
3 they gave him back his laptop. So apparently they're turning
4 up an exhibit, but we never had access because he didn't give.

02:00 5 It doesn't have a Bates stamp. It wasn't produced in
6 discovery. Mr. Furman made no production in discovery, refused
7 to give us his password, and the SEC could not hack it, could
8 not crack it open. So a lot of the exhibits we let them know
9 stuff Mr. Furman held until today.

02:00 10 THE COURT: So none of this has been produced.

11 MS. BERLIN: We don't have this. So --

12 THE COURT: Is it on an Exhibit list.

13 MS. BERLIN: It's on their exhibit list, 23 some
14 documents. We tried to get through as many as we could, but I
02:00 15 let them know for each I have to search because they don't have
16 Bates numbers. This is a document that we don't have in our
17 system. And we're going to have to do it. If you want to show
18 us in advance before each witness, I can let you know, but
19 otherwise we'd have to go one by one because.

02:01 20 THE COURT: Sure. Right.

21 MS. BERLIN: I try to do my best. I got through 11
22 hundred but --

23 MR. HYMAN: So, Your Honor, first of all, we were
24 making the same objections about the Bates stamp.

02:01 25 THE COURT: Let's move on from the Bates stamp because

1 my bigger concern is not Bates stamp, it's prejudice because
2 she haven't seen it.

3 **MR. HYMAN:** If you look at the Plaintiff's exhibit
4 list, they have part of that document already attached to it.
02:01 5 They only had basically not Appendix A, B and C.

6 Second, this was produced attached to Mr. Furman's
7 declaration.

8 Third, we e-mailed correspondence confirming for
9 Mr. Kolaya as well as Ms. Berlin that they had successfully
02:01 10 completed a complete forensic scan of Mr. Furman's computer.
11 It's a business record of Fidelis that has been produced by
12 these parties.

13 **THE COURT:** Well, the easier thing is he's not going
14 to be able to authenticate because he doesn't even know what --

02:02 15 **MS. JOHNSON:** He doesn't have (inaud.) --

16 **MS. BERLIN:** We have never seen this. We asked for
17 this in discovery. He didn't turn it over this. The receiver
18 might have gotten into his computer but --

19 **THE COURT:** This is very simple. For purposes of
02:02 20 going forward, we are going to have to exchange and show
21 them -- anything you guys plan on introducing is to be produced
22 to the SEC before so that I can hear arguments on this without
23 having it happen in the middle of witness testimony, number
24 one. Number two, this is not going to be admitted to this
02:02 25 witness. He doesn't even recognize the document.

1 MR. HYMAN: He will recognize the signature.

2 THE COURT: Let's ask them what the questions are. He
3 doesn't recognize -- he just said, "I don't even know what this
4 is."

02:02 5 MS. BERLIN: And we have not seen it. So it wasn't
6 produced during discovery. It can't be like, oh, you threw it
7 on an exhibit list. The rules still apply.

8 THE COURT: Whether it has a signature or not, if he
9 doesn't recognize it, you're not getting it in. So it doesn't
02:02 10 matter what you show him. If he doesn't recognize it, he
11 doesn't recognize his signature, it's not going to be admitted
12 anyway. So go ahead and ask him what you want to ask him and
13 move on. And for all future exhibits you plan on using for any
14 of these investors, you better turn it over before the next
02:02 15 one.

16 MS. BERLIN: If he does recognize his signature --

17 THE COURT: We'll deal with it then.

18 MS. BERLIN: -- we'll deal with it then.

19 THE COURT: I don't think he's going to. But maybe he
02:03 20 does. Let me see what he says. I don't know.

21 MS. BERLIN: Who knows.

22 THE COURT: I don't know. I don't know what he's
23 going to say. I don't know if he recognizes it.

24 MS. BERLIN: Thank you.

02:03 25 (Thereupon, the side-bar conference was concluded.)

1 **THE COURT:** All right. You may resume when you're
2 ready.

3 **BY MR. JOHN:**

4 Q. Mr. Renner, I want to turn your attention back to the
02:03 5 document on your screen. Do you see a signature on that
6 document? Any signatures?

7 A. Yes.

8 Q. Do you recognize any of those signatures as your own?

9 A. Yes, I believe the third line from the top is my signature.

02:03 10 Q. Okay. So do you believe this is a document that you
11 signed?

12 A. Yes.

13 Q. Having looked at the document now, has your memory been
14 refreshed as to this document? Is this something that you
02:04 15 recognize?

16 A. Well, right now all I can see is the signing page. I can't
17 see the -- okay.

18 Q. Going to scroll back through the document for you, sir.

19 **THE COURT:** Is there a visible copy, a printout of
02:04 20 this document that you guys have --

21 **MR. JOHN:** Yes, Your Honor.

22 **THE COURT:** -- to put it before the witness so that he
23 can actually look at it? It might be easier for him to see it
24 printed.

02:04 25 **MR. JOHN:** Actually, no, Your Honor, we don't have the

1 physical. We have only the electronic copy.

2 **THE WITNESS:** I can read this part now.

3 **THE COURT:** I guess the issue is -- if you can go
4 through it, sir. I'm trying to go through it with you. I

02:04 5 don't have the whole thing in front of me at one time. So it's
6 hard to see.

7 **MR. JOHN:** Mr. Renner, just take a moment. We'll
8 scroll through it, and when you're ready, let me know if you
9 recognize the document.

02:05 10 A. I recognize the top that describes the investment.

11 **BY MR. JOHN:**

12 Q. You said you do recognize it?

13 **THE COURT:** The top part he's asking.

14 A. The top part, where it (inaud.) --

02:05 15 **BY MR. JOHN:**

16 Q. We're going to scroll it some more for you.

17 Do you recognize the portion that's in front of you
18 now?

19 A. It's my handwriting, yes.

02:05 20 Q. So has your memory been refreshed as to this document? Do
21 you recognize it now, sir?

22 A. Yes.

23 Q. What is the document that's in front of you on your screen
24 right now?

02:05 25 A. Fidelis Planning.

1 Q. I'm sorry, sir, can you speak up for me? What is --

2 A. **It says Fidelis Planning, LLC.**

3 Q. Do you recognize this document as a promissory note that
4 was issued to you by Fidelis?

02:06 5 A. **Yes.**

6 Q. And is the document that you're looking at right now, is it
7 pretty fairly and accurately represent the document that you
8 signed?

9 A. **Yes.**

02:06 10 **MR. JOHN:** Your Honor, at this time I would move the
11 Fidelis note into evidence as Defendant's 2215.

12 **MS. JOHNSON:** We'll object for the same reasons we
13 talked about at sidebar.

14 **THE COURT:** Yeah, that's going to be sustained. So
02:06 15 you may ask him questions about the note to refresh, but this
16 is not going to be admitted at this time.

17 **MR. JOHN:** Understood, Your Honor.

18 **BY MR. JOHN:**

19 Q. Mr. Renner, during your direct examination you mentioned
02:06 20 that you had been receiving regular monthly payments after
21 investigating with Fidelis; isn't that correct?

22 A. **Yes. The initial investment, regular monthly payments.**

23 Q. So it's fair to say that you did receive income on that
24 initial investment, right?

02:07 25 A. **Yes.**

1 Q. You made a second investment with Fidelis, correct?

2 A. **Correct.**

3 Q. And you testified during your direct examination that you
4 also generated income from that investment; isn't that correct?

02:07 5 A. **Correct.**

6 Q. That was up until, I think you said until January of 2020;
7 is that correct?

8 A. **Correct.**

9 Q. It's around the time COVID hit, right?

02:07 10 A. **Excuse me?**

11 Q. That's around the time that COVID hit; isn't that correct?

12 A. **That's correct.**

13 Q. And when you spoke to Mr. Furman about the investments, had
14 he talked to you about why they had -- the payments had
02:07 15 stopped?

16 A. **Yes.**

17 Q. And did he mention it was in part due to COVID?

18 A. **Yes, he did.**

19 Q. I want you to take a look at the document one more time for
02:07 20 me, where it references accredited investor. Do you see that?

21 A. **Yes.**

22 Q. And it has the net worth on there?

23 **MS. JOHNSON:** I would renew the objection. It's not
24 in evidence.

02:08 25 **THE COURT:** I know. We've got to be careful about

1 back-dooring in any exhibit that's been kept out. He's
2 refreshed his recollection. You're permitted to ask him
3 questions about his net worth now that it's been refreshed,
4 anything about his accreditation or being sophisticated. So we
02:08 5 don't need to include this exhibit to ask him those questions.
6 I'm not going to have him read it. So ask him questions. All
7 right.

8 **MR. JOHN:** Sure, Your Honor.

9 **BY MR. JOHN:**

02:08 10 Q. Looking at the document in front of you, Mr. Renner, does
11 it --

12 **MS. JOHNSON:** Again, I'm going to object.

13 **THE COURT:** Understood. That's overruled. I'm going
14 to let him ask some questions and refresh the recollection with
02:08 15 the document without admitting it.

16 Go ahead.

17 **BY MR. JOHN:**

18 Q. Earlier when I began you told me that you had a net worth
19 of \$500,000 when you met with Mr. Furman; is that correct?

02:08 20 A. **Correct.**

21 Q. Looking at the document -- looking at the document in front
22 of you, does it refresh your memory as to actually what your
23 net worth was at that time?

24 A. **Based on what's printed on the page it said --**

02:09 25 **MS. JOHNSON:** I object, Your Honor.

1 **THE COURT:** Again, it's your recollection, sir. Do
2 you recollect your net worth at the time having reviewed that
3 document now?

4 A. I recollect it as being 500 thousand.

02:09 5 **BY MR. JOHN:**

6 Q. Let me ask you this, Mr. Renner: Is it possible that you
7 told Mr. Furman that you had a different net worth than
8 \$500,000 when you met him?

9 A. No.

02:09 10 Q. It's not possible that you told him you had a net worth of
11 over a million dollars?

12 **MS. JOHNSON:** Object.

13 **THE COURT:** Overruled.

14 A. No.

02:09 15 **BY MR. JOHN:**

16 Q. So if you signed a document to that effect, Mr. Renner,
17 you're saying that would not be correct, that -- a document
18 stating that you had a net worth of over a million dollars?

19 **MS. JOHNSON:** Again, I'm going to object.

02:09 20 **THE COURT:** That's sustained. Move on.

21 **BY MR. JOHN:**

22 Q. During your direct examination you were asked about certain
23 regulatory actions in the states of New Jersey and
24 Pennsylvania. Do you remember that?

02:10 25 A. Yes.

1 Q. You said that Mr. Furman did not disclose that to you
2 during your conversations with him, correct?

3 A. **Correct.**

4 Q. When did you first learn about the regulatory actions in
02:10 5 New Jersey and Pennsylvania?

6 A. **After the default occurred, an FBI agent called me to ask
7 me questions involving around this investment. And he's the
8 one that told me that Par Funding and its offices were under
9 FBI investigation for these problems.**

02:10 10 Q. So it wasn't until really proceedings for this case began
11 that you learned about the regulatory actions in New Jersey and
12 Pennsylvania, right? Is that true?

13 A. **It was after the default that I learned about it.**

14 Q. Okay.

02:11 15 **MR. JOHN:** Moment to confer, Your Honor?

16 **THE COURT:** Yeah.

17 **MR. JOHN:** Just a couple more questions, Mr. Renner.

18 **BY MR. JOHN:**

19 Q. Do you recall sending Mr. Furman documents to confirm your
02:11 20 net worth?

21 A. **No.**

22 Q. You never sent him any documents confirming net worth?

23 A. **No, I didn't.**

24 **MR. JOHN:** Moment to confer, Your Honor?

02:11 25 **MR. HYMAN:** Would you mind, Your Honor, taking us off

1 the screen for a moment, please.

2 THE COURT: Yes.

3 THE COURT REPORTER: (Complies.)

4 MR. JOHN: One moment, Your Honor, we're having a bit
02:12 5 of technical difficulties.

6 Your Honor, can we have the screen again just for
7 Mr. Renner?

8 THE COURT: Sure.

9 THE COURT REPORTER: (Complies.)

02:13 10 BY MR. JOHN:

11 Q. Mr. Renner, I just put a --

12 MS. JOHNSON: We see what --

13 THE COURT: Impeachment material.

14 MR. JOHN: Just for Mr. Renner, Your Honor.

02:13 15 THE COURT: I know. I know. I'm just saying, I know
16 it's coming, but it's impeachment.

17 Go ahead.

18 BY MR. JOHN:

19 Q. Mr. Renner, I just put a document on your screen. Do you
02:13 20 see it?

21 A. Yes.

22 Q. Looking at that document, does it refresh your memory as to
23 what you -- as to whether or not you sent documents to
24 Mr. Furman regarding your net worth?

02:13 25 MS. JOHNSON: I'm going to object, Your Honor. He's

1 mischaracterizing --

2 A. I see a document, but I did not -- I did not represent an
3 IRA exceeding over a million dollars.

4 BY MR. JOHN:

02:14 5 Q. I'm sorry, say it one more time.

6 A. I see a document, but I did not specify that I had an IRA
7 that exceeded a million dollars.

8 Q. Okay.

9 MR. JOHN: No further questions for this witness at
02:14 10 this time. No further questions for this witness, Your Honor.

11 THE COURT: Redirect, please.

12 MS. JOHNSON: Sure.

13

14 REDIRECT EXAMINATION

02:14 15 BY MS. JOHNSON:

16 Q. Defense counsel asked you whether you wrote a check to
17 Fidelis or United Fidelis. Regardless of who you wrote the
18 check to, was it your understanding that that check was going
19 to Mr. Furman to send to Par Funding for an investment?

02:15 20 A. Yes.

21 Q. And you vested \$150,000 in the Par Funding notes, correct?

22 A. Two separate payments, one of 50 and one of 100.

23 Q. Are you still owed that \$150,000 in principal?

24 MR. JOHN: Objection, Your Honor, relevance.

02:15 25 THE COURT: Overruled.

1 MS. JOHNSON: You opened the door.

2 THE COURT: Overruled.

3 You may answer. Is that a yes, sir?

4 BY MS. JOHNSON:

02:15 5 Q. Are you still owed that money?

6 A. Yes, I'm still owed the principal of \$150,000.

7 MS. JOHNSON: Thank you.

8 THE COURT: Anything further? Was there anything
9 further from the SEC?

02:15 10 MS. JOHNSON: No, Your Honor. Thank you.

11 THE COURT: Any members of the jury have any questions
12 for the witness? No. Okay.

13 MR. JOHN: May we approach briefly?

14 THE COURT: Sidebar.

02:16 15 (Thereupon, there was a side-bar conference outside
16 the presence and hearing of the jury.)

17 MR. JOHN: Your Honor, I think the door was just
18 opened to -- as to why he doesn't have the money. It was just
19 left hanging out there as to where the money is. It's still
02:16 20 tied up in the receiver litigation. I just want to ask him
21 about that.

22 THE COURT: No, because the money is frozen, but it's
23 not been returned. I mean, I can't -- I'm not going to open
24 the door and go tit-for-tat now. The money is in for return
02:16 25 because there are completely unfrozen under my orders. If we

1 start getting into that, there's no turning back. The key is,
2 he has not been made whole. He hasn't not been gotten his
3 return in investment.

4 **MR. JOHN:** But it's because of this litigation.

02:16 5 **THE COURT:** Well, you guys opened the door to him
6 making his investments. I have to make it clear that he
7 doesn't have his money back. I mean, I'm not going to open the
8 door now and talk about why doesn't he have it. He wouldn't
9 get it even if it was unfrozen.

02:16 10 It would still be sitting there until we get the
11 disclosure anyway, so that's misleading. It's not because of
12 the freeze. He still wouldn't get it until we started all of
13 the claims. It's been in litigation. I can't do that. That's
14 going to make it very messy. It's going to insinuate that it's
02:17 15 not because of Mr. Furman and his business that the money is
16 not there, but somehow because the Court has frozen it, and
17 that could generate all sorts of misinterpretations. I think
18 it's too slippery a slope under 403. I can't do it. All
19 right.

02:17 20 Can we help the witness, please?

21 Thank you so much. You're excused, sir.

22 And while we're excusing the witness, Rita, could you
23 assist me.

24 Ladies and gentlemen of the jury, I need a moment to
02:17 25 speak to the lawyers for the next witness. Leave your notepads

1 in your chairs. This will not take more than ten minutes, but
2 let me go ahead and excuse you all for just a moment, please.

3 (Thereupon, the jury exited the courtroom.)

4 **THE COURT:** Okay. Let me just deal with a little
02:19 5 housekeeping here because I'm not a fan of surprises and I'm
6 not really sure what is going on with the exchange of these
7 exhibits. That last witness, that was a bit cumbersome and
8 although I allowed the defense to get into some of the theory
9 of the case without bringing in the exhibit, we have a couple
02:19 10 more investors and I strongly suspect we're going to get more
11 of the same for the next few.

12 So here is at least my understanding of what I think
13 has just transpired, and you can correct me if my summary is
14 inaccurate or if I made a mistake. One of the main defenses
02:19 15 that is being advanced by Mr. Furman is that he is excused or
16 exempt because he has offered these instruments to individuals
17 who are accredited investors and at least, as far as I can
18 tell, have a certain level of net worth that is part and parcel
19 of trying to at least gain that accreditation status so that
02:20 20 then he is in a position where he is able to avail himself of
21 the exemption.

22 That is at least the way I understand the defendant's
23 belief in the use of 506(c), if my memory is right. So what is
24 being advanced now are waivers, if you will, or forms that
02:20 25 Mr. Furman purportedly advanced to some of these investors

1 whereby he requested that they sign off on representations
2 regarding the net worth of a million dollars or more and that
3 they were essentially accredited or had the requisite baseline
4 knowledge to get into this type of investment obligation and
02:20 5 this kind of opportunity.

6 What was shown to the last witness was a form that he
7 didn't recall but did acknowledge signing that seemed to have a
8 check mark or an initial by his net worth, although it's a
9 little unclear if that net worth was pre or post divorce. It
02:21 10 was because it was a net worth of him and his spouse. But be
11 that as it may, he checked that. And then there was a separate
12 section on that that was referenced about providing financial
13 documentation. An e-mail was then shown to him. The e-mail
14 seemed to suggest that if he had backup information for an IRA
02:21 15 account next to the million, that he should provide that
16 information.

17 He declined to do so because he stated he did not have
18 an IRA account that had that kind of value. So he wouldn't
19 have -- at least in his view, I gleaned that he wouldn't have
02:21 20 responded to that e-mail because he didn't qualify for that
21 and, therefore, didn't provide any backup. I think that
22 summarizes what happened.

23 The objection at sidebar was that these documents that
24 are being used, I don't necessarily know. They weren't really
02:22 25 used for impeachment. The only reason why the e-mail I allowed

1 to go forward is -- and did not need to be disclosed, is it was
2 an exhibit used for impeachment.

3 But in the beginning, he refreshed his recollection,
4 the defense did, with this form. I'm told now that this is the
02:22 5 first time the SEC ever saw that form, which should be
6 obviously problematic for court administration purposes and
7 scheduling orders and exchanging exhibits.

8 The retort to that was the defense did provide it. It
9 is in their 2,000-some exhibits, and if they did not provide
02:22 10 it, it was actually part of an existing SEC exhibit, but
11 attachments to an exhibit that they already have.

12 I think I've summarized what has happened just now.
13 So there's a couple of issues at play going forward. Number
14 one, we need to know -- with the few investors we have left
02:22 15 coming forward, if I'm expecting that a similar form is going
16 to be presented to each of them in indicating their net worth.
17 I don't know if it is, but I'm going to assume that that's
18 something that we're going to get. So can the defense proffer,
19 are the next couple of investors going to be presented with a
02:23 20 document similar to the one that was just shown to the last
21 witness?

22 **MR. HYMAN:** Yes, Your Honor. For purposes of clarity,
23 the document that we showed him was the promissory note that he
24 signed. The accredited investor portion of it is an exhibit to
02:23 25 every single one of these appendix to these promissory notes

1 that these investors signed. That's --

2 **THE COURT:** That's what I've been told. So let me
3 hear from the SEC.

4 The SEC has not seen these attachments to the
02:23 5 promissory notes. I would assume that for purposes of avoiding
6 any prejudice, if they are on a disclosure list of exhibits,
7 this doesn't sound like it's a needle in a haystack one. It
8 sounds like it's one the SEC would be aware of.

9 **MS. BERLIN:** Well, there's a big difference. First of
02:23 10 all, for us, we don't know how many times we can say this. No
11 jury is going to be asked to find if the Fidelis offering was
12 unregistered, which is what he's claiming. He's claiming a
13 506(c) exemption on the Fidelis offering. We didn't charge
14 that. So for us, it's like having a trial about the accredited
02:24 15 issue on the Fidelis offering is irrelevant because the SEC
16 didn't charge it.

17 **THE COURT:** Well, let's talk about that.

18 **MS. BERLIN:** We understand they want to have a trial
19 about it.

02:24 20 **THE COURT:** No, no, but -- I don't care what they want
21 to have a trial about. It's what I'm going to permit there be
22 a trial about without confusing the issues. So it's important
23 that we address this now. Because before I get into a whole
24 sideshow over a nonexistent charge or claim, we should address
02:24 25 it. There has been thrown around the 506(c), and I want to be

1 very clear so that we don't mislead the jurors.

2 The initial Par Funding offering, meaning the notes
3 that Furman is alleged to have peddled, Par Funding ones, not
4 the Fidelis ones, this 506(c), I don't believe at any point is
02:24 5 attached to that work that he did on behalf of Par Funding,
6 right?

7 MS. BERLIN: He can argue anything he wants. Let me
8 be clear.

9 THE COURT: Well, they can't argue anything that's
02:24 10 irrelevant. That's going to confuse my jury.

11 MS. BERLIN: I think it's all irrelevant. If I can
12 just stand here.

13 THE COURT: Yeah. What I'm trying to figure out is
14 can you answer --

02:25 15 MS. BERLIN: Yes.

16 THE COURT: I need answers to my questions. I need to
17 understand. This entire argument which is the attachments to
18 the promissory notes are for the Fidelis notes, right? Can we
19 all agree on that? This is the Fidelis notes.

02:25 20 MS. BERLIN: It looked like that one would have been.

21 THE COURT: Let's take it step by step.

22 MS. BERLIN: The one we saw was a Fidelis note
23 offering.

24 THE COURT: So the SEC is not alleging -- or you tell
02:25 25 me -- that there's any concern with the offering of the Fidelis

1 notes when it comes to this exemption? Walk me through that
2 part.

3 **MS. BERLIN:** Absolutely. So for Mr. Furman, the
4 charge is that -- because a Section 5 claim is transaction by
02:25 5 transaction, meaning offer by offer, meaning every investor,
6 it's a charge. It's note an overall offering over years. It's
7 deal by deal.

8 So for Mr. Furman, the allegation is that he violated
9 Section 5 not by being the issuer but by being the necessary
02:26 10 participant, a substantial participant in the Par Funding
11 offering because -- and that's why we showed that big chart
12 that's color-coded -- he would gather people's money -- this
13 was, like, prearranged, like he was their agent. He gathers
14 people's money, he sends it to Par Funding, he buys the note.
02:26 15 If you hear the definitions of the securities laws of offer and
16 sale, he doesn't have to be the person who's issuing. That's
17 different.

18 You can participate directly or indirectly as a
19 substantial participant, which is a different test from the
02:26 20 test that applies to an issuer, where an issuer is obviously
21 directing. If they don't issue the note, there can be no
22 offers or sale. So there's always a but for.

23 So for Mr. Furman, the allegation is that he is
24 participating in the unregistered Par Funding offering which he
02:27 25 did two ways. One, in 2017 he solicits investors to buy

1 Par Funding notes directly, and he does that same thing again
2 at least with [REDACTED] in 2020.

3 The other way he participates in the Par Funding
4 offering -- so each of -- either of those would be a Section 5
02:27 5 if the jury finds he did either of those offers.

6 Then the other way he participates in the Par Funding
7 offering is by gathering investors' money and using it -- it's
8 like preplanned. You know, I'm going to gather your money and
9 I'm going to send it up to Perry in exchange for a note that
02:27 10 pays me for doing this.

11 So he's a substantial participant, and in every one of
12 those times that he buys a note from Par Funding using investor
13 money, that's a Section 5 violation. He's buying unregistered
14 Par Funding note, he's using other people's investor money.
02:28 15 He's basically like the catalyst, like the person who's
16 siphoning -- we call it funneling money up to the issuer.

17 Now, the other way that we charge a Section 5 is
18 because of ABFP, and we're going to get there, like with
19 Mr. Furman when we take his testimony. You haven't heard about
02:28 20 that much during the trial. A little bit.

21 In 2017, that first deal he did with Renee Meyers,
22 which we talked about, yesterday, he offers a note to her in a
23 November e-mail in Par Funding. Then he ends up -- when he
24 finds out you have to have a company to do this deal with
02:28 25 Par Funding, he uses his friend, Dean Vagnozzi's fund to siphon

1 the money through.

2 And instead of buying a Par Funding note that time, he
3 bundles the investor money to buy an ABFP note from
4 Dean Vagnozzi. The ABFP note is unregistered, has never been
02:29 5 registered. So basically, the same thing he does with
6 Par Funding, where he's just bundling investor money to buy an
7 unregistered note, he does it with ABFP.

8 There is no charge -- I mean, we're happy to because I
9 don't think they can show that all these guys were -- it would
02:29 10 be his burden to show that they're all accredited. He would
11 have to do that for every single person that he offered it to.
12 We know he offered it on the radio and events to the public.

13 But -- and that would be fine, but I'm limited by what
14 the SEC charged, obviously, what the commissioners at the SEC
02:29 15 decide what cases to bring, and I litigate them. And this case
16 is that Mr. Furman violated as a necessary or substantial
17 participant in the Par Funding offering -- either way I just
18 described -- through the ABFP offering.

19 Those offerings, you would have to show, for a 506(c),
02:30 20 that all of those investors -- and we know there were like
21 thousands of investors in Par Funding -- that they were all
22 accredited, and then -- which Par Funding never even claimed.
23 They didn't claim that exemption.

24 And they would have also have to show the same thing
02:30 25 for ABFP. They show that both of those are not registered but

1 entitled to a 506(c). That was his affirmative defense, was
2 506(c). That's not what either of those companies ever even
3 argued during this case.

4 We have never argued -- like, even on summary
02:30 5 judgment, we don't even talk about Fidelis. We're like
6 Par Funding is a security, ABFP is a security. Neither are
7 registered. That's the issue.

8 So even if we have a trial about Fidelis and whether
9 it was registered, unregistered, people are accredited, it was
02:30 10 a general offering, all the many, many ways that that could be
11 a Section 5, at the end of the day, the jury is not going to be
12 asked to find the Section 5 involving Fidelis.

13 **THE COURT:** Correct. But isn't it correct -- again,
14 this is at least the way I understand the theory, that they're
02:31 15 attempting to advance a theory that upon buying -- at least an
16 ABFP, maybe not the Par Funding, but that upon getting the
17 money they were pooling or the money they were funneling, that
18 they procured that money by seeking a sign-off as to
19 accreditation by those giving the money so that somehow they
02:31 20 could avail themselves of the exemption as they follow the
21 money up. Does that make sense? That's what I think they're
22 attempting to do, but I want to know legally what the SEC's
23 position is on that.

24 **MS. BERLIN:** So that's really interesting. An
02:31 25 exception from registration tacks to the issuer and the note

1 that's at issue. So here, what exemption applies, you don't
2 look at a person. Right? You have to look at the --

3 **THE COURT:** Instrument.

4 **MS. BERLIN:** -- the instrument. So here, the
02:31 5 instruments being charged are the Par Funding and the ABFP
6 note. So you have to look at what exemptions apply to them.
7 So for those, if they wanted to step into the shoes of those
8 two companies -- which those two companies filed with the
9 SEC -- like, we're going to get to that. They didn't claim a
02:32 10 506(c) because they can't.

11 You would have to show that all of those investors --
12 Dean Vagnozzi solicited, Par Funding solicited -- were
13 accredited. So showing one or two, you know, people are
14 accredited for Fidelis, that's -- that's not get to get you
02:32 15 there. You'd have to show that every -- you know, to get a
16 506(c) note, everybody is accredited and they shared financial
17 statements. There's a lot. You have to go through 502.
18 There's several, like, steps. We haven't gotten the jury
19 instructions on a 506(c), but when we do, we can address that.
02:32 20 There are multiple steps, but it talks to the instrument.

21 So going through with individual investors and then
22 offering that we did not charge as a Section 5, it's just not
23 relevant to any claim. Let's say every person -- we're going
24 to call four investors -- or five now that Mr. DeLucco is out
02:33 25 of the hospital. Let's say they're all like, yeah, I was

1 accredited at the time, if they know what that means. But if
2 they were accredited, that's five down, 2000 to go. Where are
3 those two thousand people? I can't be sure they're all
4 accredited. They don't have that witness list or even that
02:33 5 evidence to present.

6 **THE COURT:** I guess the point is there is relevancy to
7 attempting to show that there is accreditation or that there
8 are accredited investors on the few that are here. The legal
9 impact of that will be discussed in closing and in jury
02:33 10 instructions, but it's not something that is -- at least in
11 their view -- wholly relevant, because they, I believe,
12 continue to maintain that if they can show some sort of
13 accreditation by these investors, they're going to get up at
14 the end of the case and say that they're entitled to -- and
02:34 15 I'll go have to give an instruction on this -- under 506(c) to
16 seek an exemption because the investors were accredited, and
17 when they went ahead and did that accreditation through
18 Fidelis, that is -- at least in the view of the defense, I take
19 it -- tantamount to getting in on ABFP and Par Funding. Again,
02:34 20 I'm surmising that position, but that's the only thing that
21 would make sense.

22 **MS. BERLIN:** They're not investors. As the defendant
23 keeps pointing out -- and I love it -- that these investors,
24 they're giving their money to Mr. Fidelis -- or I'm sorry,
02:34 25 Mr. Furman, who has Fidelis. He's like the middleman, right?

1 So for Par Funding, they're not on a promissory note. So like
2 when you're doing a 506(c) analysis, you'd have to look at the
3 investors. The person who is buying that particular note --

4 **THE COURT:** Not the direct investors.

02:34 5 **MS. BERLIN:** Right.

6 **THE COURT:** Fidelis itself buying the note is it
7 not --

8 **MS. BERLIN:** Yeah, using --

9 **THE COURT:** Fidelis bought it using investors' money,
02:35 10 but Fidelis buys it.

11 **MS. BERLIN:** Right. They funnel it up. So it's
12 like -- a Section 5 is not like such a big complicated
13 (inaud.). it's like if you're participating in offering or
14 selling of any security, it has to be registered with the SEC,
02:35 15 period, unless there's one of these unique situations. And
16 because the instrument here that we charged is not Fidelis --
17 although we are happy to -- I think we could seek to amend our
18 pleadings to conform with the evidence.

19 We could do that trial. But that's -- we could. I'm
02:35 20 not saying it facetiously. I'm saying we would not be close to
21 that, but I'm just being fair. Like, that's not the case that
22 was charged. So the accreditation of these people isn't
23 relevant to what? Like --

24 **THE COURT:** That's why -- that's literally why I'm
02:35 25 having this discussion, because part of the challenge is before

1 I get into any sort of ruling on the exhibits that either were
2 not disclosed or are misleading or something to that effect,
3 I'm just trying to get to the bottom of the theory of the
4 defense to try to show that in the Fidelis documentation and
02:36 5 the promissory notes -- and again, they're Fidelis promissory
6 notes, right? That's what's happening here.

7 But the Fidelis notes themselves are not at the heart
8 of the SEC's case. The money procured from the Fidelis
9 promissory notes is funneled up to either by ABFP notes or
02:36 10 Par Funding notes, I believe, or maybe -- I think that -- maybe
11 not even the Par Funding part. It may be just ABFP.

12 **MS. BERLIN:** We're going to show tomorrow.
13 Mr. Abbonizio, he's an accountant and obviously it's not like I
14 get to prep him. It's not a lot of time, right? He's a former
15 defendant.

16 So we're going to have -- we're going to put those
17 notes on and we'll show that -- we have Mr. Klenk coming.
18 Par Funding -- and Mr. Furman will testify because he's the one
19 buying them, he buys them directly from Par Funding. Like, the
02:37 20 money comes from him to Par Funding.

21 He gets -- there is someone at ABFP who he puts on as
22 a signatory on his Fidelis account, but then he'll send the 25
23 percent cut to Vagnozzi afterwards. So he sends the money to
24 Fidelis. We've got the bank records. We have his own e-mails
02:37 25 too. I don't think that's an issue in dispute. I think maybe

1 there was --

2 **THE COURT:** Well, I think that -- so then let's turn
3 to the remaining investors that we have. And the fact that
4 these documents are going to be, as proffered, shown to all of
02:37 5 these investors in an attempt to show that they are accredited
6 in their view of the evidence or theory that that's going to
7 give them a safe harbor.

8 Your concerns on this disclosure, they're telling me
9 that these are part of the attachments to the Fidelis notes and
02:37 10 therefore, from a prejudice angle, it's nonexistent. This is
11 not as if these were slipped into an exhibit list and anybody
12 had no idea what they are. I'm asking the position -- and I'll
13 ask this: Unless I'm missing something, these instruments are
14 legitimately being introduced for -- specifically for the truth
02:38 15 of the matter asserted. They're attempting to introduce them
16 based upon an ability or an attempt to show valuation of the
17 individual investor to hit the million, and as well as any
18 sign-off on accreditation. So this isn't a records custodian.
19 I don't know how these individuals can be the conduit to get in
02:38 20 that hearsay because it won't get under 803(6), so they have an
21 inadmissibility called. Period. They'd have to get someone up
22 here, maybe it's for the record, maybe Furman himself could
23 come up and say --

24 **MS. BERLIN:** It would have to be the receiver
02:38 25 probably.

1 **THE COURT:** The receiver, right, in the regular course
2 of business. These are the documents. So they could ask the
3 question, but for purposes of any sort concern about being
4 sandbagged on an exhibit, these don't come into evidence
02:38 5 through any of these investors, many of which don't even
6 remember signing it. And so it's -- it may not be a big issue.

7 They can refresh the recollection all they want ask
8 these guys if they remember signing off on this, but they're
9 not going to get in a single one of these attachments through
02:39 10 an investors. So that is not as much a problem, but I guess I
11 just want to make sure I understand the SEC's concern as an
12 objection pro forma about the exhibit being shown to him at
13 all, right, because you guys have raised that. Maybe it's not
14 as big a deal. I don't know.

02:39 15 **MS. BERLIN:** I think the issue was, you know, you
16 can't show someone a document to refresh their recollection,
17 leave it on the screen --

18 **THE COURT:** Correct. (Cross-talk) -- you're
19 back-dooring it in.

02:39 20 **MS. BERLIN:** And then ask them questions about it.

21 **THE COURT:** I agree. I agree.

22 **MS. BERLIN:** That's not really proper.

23 But the other issue I have is -- and I raised it --
24 you know, I tried to kind of predict, you know, I can see sort
02:39 25 of where some of the issues will be, and, you know, you can --

1 I like to go fast. Our plan is 14 witnesses in four days and a
2 morning. Okay. So we're getting bogged down on stuff like
3 this --

4 **THE COURT:** Correct.

02:39 5 **MS. BERLIN:** -- and I had asked, can I please just
6 get -- you don't have to, but if you show it to me in advance,
7 I can let you know if there's an issue.

8 **THE COURT:** Well, that's why I'm doing this, because I
9 have three more investors I want to get through and I don't
02:40 10 want to have interruptions. So I guess I'm hearing a proffer
11 that the defense intends on showing a similar attachment for
12 each of the investors that they either purportedly signed or at
13 least acknowledged.

14 I don't think I'm hearing a problem other than your
02:40 15 point, which I agree about not letting backdoor admissibility
16 by letting them read it, but I don't think there's a problem if
17 each one of them is shown to refresh a recollection, anything
18 regarding a sign-off of their net worth or anything of that
19 nature, and then they can be refreshed and they can testify
02:40 20 about it as to whether they produced documents, for example.
21 They can testify about it if it's impeachment. That's a little
22 bit different, but I think that's fine.

23 I think the defense understands that they wouldn't be
24 able to admit them through the investors, but is the SEC at
02:40 25 least from an objection standpoint, other than back-dooring,

1 can the SEC live with that method of questioning without it
2 becoming a concern about this being something off the exhibit
3 list? Because that was the initial concern, that it was like
4 this came out of left field type of thing.

02:41 5 **MS. BERLIN:** Exactly. The way I view a document, I
6 think it's improper for us to have to permit any document that
7 wasn't produced during discovery.

8 **THE COURT:** Correct.

9 **MS. BERLIN:** So we have discovery -- like, this is not
02:41 10 a brand new case, we're not on a rocket docket. We're all
11 sharing things. Because we do that in administrative
12 proceedings, we're getting documents as we go along. It's not
13 for a trial in federal court.

14 **THE COURT:** What do you make of this argument that
02:41 15 these are either on the list or part of attachments on your
16 list?

17 **MS. BERLIN:** So one of the pieces of -- there is a
18 piece of that -- for example, the last document that was just
19 shown, a piece of it is attached to a document we have.

02:41 20 Is that right, Alise?

21 I think we have -- I'm trying to remember -- we have
22 documents --

23 **THE COURT:** I know it was a lot.

24 **MS. JOHNSON:** (Cross-talk) -- what he was showing
02:41 25 them, the accreditation form --

1 MS. BERLIN: We don't have that.

2 MS. JOHNSON: What we got was what they had shown
3 Mr. Renner, which was just the signed note.

4 THE COURT: Okay. So the attachments are not
02:41 5 documents, and we've already heard sidebar the explanation
6 about what was produced, not produced --

7 MS. BERLIN: He produced zero. He produced zero.

8 THE COURT: Okay.

9 MS. BERLIN: So then -- that's right, he produced
02:42 10 zero. But as I said to them, like, you give me an exhibit list
11 of 2,300 documents, and they're not Bates -- most are
12 Bates-stamped or -- and we asked them, can you just take the
13 label off because if you have a Bates number, I can put it in
14 my system and let you know for sure if I got it --

15 THE COURT: Let me streamline this because I don't
16 want to belabor --

17 MS. BERLIN: -- but they can't -- just to help. I'm
18 just trying to help them.

19 THE COURT: Listen, I don't want to belabor this too
02:42 20 much because I want to get the investors on the stand.

21 MS. BERLIN: Yeah. Thanks, Your Honor.

22 THE COURT: So the important thing for me is the
23 following: As far as I can tell, these are defense exhibit
24 list, understandably, along with thousands of other documents.
02:42 25 So in order to streamline the remaining investors with this

1 document, I want to make sure that the defense understands.

2 I'm not prohibiting you guys from using documents to
3 refresh recollection, provided you show it to Ms. Berlin or her
4 co-counsel before bringing it up, so that there's nothing that
02:42 5 they've never seen or that they just want to make sure that you
6 refresh it with something that's appropriate. And provided
7 that you refresh their recollection and not have them read the
8 document in evidence or attempt to show the document up on the
9 screen to walk them through testimony, there's not going to be
02:43 10 a problem with you talking about their accreditation and
11 whether or not they represented their net worth or provided
12 documents as to net worth. I'm letting you guys do what you're
13 attempting to do for each investor, but it's not appropriate.
14 Number one, it cannot be a foundation laid to get it in through
02:43 15 these investors, evidentiary-wise.

16 And number two, that will really moot any prejudice
17 that's being argued about this being a last minute filed
18 exhibit because you guys are getting what you need out of it
19 without necessarily putting it into evidence because you don't
02:43 20 have the proper predicate, you don't have anybody that could
21 bring them in at this point.

22 So I guess let me -- and I think my question is, can
23 the SEC live with the Court's ruling as to you guys see it
24 before it's brought to the investor, understanding that they
02:43 25 can't move it through these investors and they can only use it

1 to refresh recollection? Is that something that we can handle?

2 I think we can do that.

3 **MS. BERLIN:** Absolutely. They can refresh and --
4 those things can be done.

02:43 5 **THE COURT:** Okay. So I just want to -- and again, we
6 can talk about the relevancy later, but it's easier for us to
7 just get through this and then the SEC, at some point through
8 other testimony, can make the arguments or closing that what it
9 shown through these investors is insufficient to procure the
02:44 10 exemption. We can get to that later.

11 **MS. BERLIN:** Well, that's their burden.

12 **THE COURT:** I don't want to stall the testimony now.

13 So let me hear from the defense. You guys are going
14 to be permitted to show these forms to the -- excuse me, to the
02:44 15 investor, to the remaining investors, to try to elicit
16 testimony that they were accredited, they represented that they
17 were accredited and in many cases, maybe they willingly tell
18 you they were accredited.

19 If they do, you may not need to show anything. But if
02:44 20 they do not remember, you can show them, they can look at it,
21 they can review it and then you can ask followup on it without
22 admitting it, and that will let you explore the accreditation
23 part of it. It will let you talk about the fact that they may
24 have represented the net worth of a million or higher, and then
02:44 25 that should take care of this issue in a way that doesn't

1 backdoor in something in appropriately or try to admit
2 something that they can lay a predicate for. I think that
3 should take care of it.

4 **MR. HYMAN:** Your Honor, part of the difficulty is that
02:45 5 the documents we're trying to introduce are the very instrument
6 that the SEC is using to charge Mr. Furman. Every single
7 investor that's come up here today did not invest in
8 Par Funding, they invested in Fidelis. Every single one of
9 them testified that they signed a promissory note to Fidelis.

02:45 10 The only thing we're trying to do is after these
11 people were questioned about the promissory notes, which by the
12 way, the SEC then kind of is trying to play a little bit of
13 a -- I don't know, games or something by eliciting through
14 testimony instead of the promissory notes themselves. Did you
02:45 15 sign a note with the Fidelis? Did you think it was actually
16 invested in Par Funding?

17 Every single investor here invested in Fidelis.
18 Mr. -- well, his wife invested in Fidelis, Mr. Renner invested
19 in Fidelis. And the instruments they signed is what we are
02:45 20 trying to show them to ask them questions about. So --

21 **THE COURT:** Am I correct that every investor so far
22 has testified, number one, as to a number of things they were
23 not aware of regarding the difficulties that Par Funding had?
24 So meaning that as part of the Fidelis offer -- Fidelis
02:46 25 offering and that money being pooled, even the last investor

1 said he knew it was going to Par Funding. What he did not know
2 was the number of issues Par Funding was having, whether we
3 want to talk about regulatory concerns or prior record of
4 principles of Par Funding or default rates.

02:46 5 All of these things are issues that each investor has
6 stated, as far as I know, they were not made aware of as part
7 of the Fidelis offerings. So even if that money was being
8 pooled to go up to Par Funding, at no point were some of the
9 underlying concerns with Par Funding that the SEC maintains
02:46 10 were material or the omissions related to Par Funding properly
11 disclosed to these investors. That's kind of the over-arching
12 problem.

13 And then you go a step further and that is that I
14 don't think any investor was aware that the way in which this
02:46 15 was being pooled was a little unique. It was being pooled in a
16 way that Fidelis and Furman got a higher rate of return
17 promissory note. When he exchanged, then they did, something
18 they probably would have wanted to know. I mean, that's the
19 problem.

02:47 20 So my point is, all of this accredited -- let me try
21 to make it very simple, at least how I think a jury will
22 probably see this. A jury is not going to worry so much about
23 whether they're accredited or not because no representation of
24 being accredited somehow negates an omission. An omission is
02:47 25 an omission is an omission. If it's material, it doesn't

1 matter what you get or don't get. They can't go into it eyes
2 wide open under disclosure regime. So a lot of this -- I mean,
3 this is a preview of what's going to happen when you guys get
4 to closing. They're going to get up there and go, who cares?
02:47 5 Every single one of you could have been accredited. They could
6 be billionaires. Not even a billionaire somehow means that you
7 don't have to get disclosures.

8 So the issue is, did he disclose or did he not
9 disclose, did he omit and was it material, would investors have
02:47 10 wanted to know these things before giving money that they knew
11 was making its way to Par Funding, an investment that was
12 problematic.

13 So I'm letting you guys bring in this, but I just want
14 everyone to kind of understand the legal ramification of this
02:48 15 is at closing, or when this all gets synthesized through the
16 witness, none of these exemptions mean that you do not have to
17 make material disclosures. They are not mutually exclusive. I
18 think that's -- I think that's very clear.

19 **MS. BERLIN:** That's completely different.

02:48 20 **MR. HYMAN:** It's two different issues, Your Honor.
21 They're currently charging Mr. Furman with the alleged sale of
22 unregistered security, as well as the 10b-5. The response to
23 the unregistered security is the offering. And as Ms. Furman
24 herself said, offering is on an instrument-by-instrument basis.

02:48 25 **THE COURT:** Ms. Berlin, yeah.

1 **MR. HYMAN:** And therefore, when you look at the
2 registration requirements, you look at what the instruments
3 were that were executed and whether or not a particular
4 exemption would or would not apply. Every investor that has
02:48 5 come up here today so far has --

6 **THE COURT:** Wait a minute, that's the instrument. Not
7 the investor. So what are you putting on to show that the
8 instrument, which I found to be a security, is exempt from
9 letting him or requiring them to make disclosures?

02:49 10 **MR. HYMAN:** It's not the disclosure issue, Your Honor,
11 that we're dealing with in terms of the accredited investor.
12 The accredited status deals with the unregistered securities
13 and the 506(c) exemption.

14 **THE COURT:** So you believe that an -- okay. For a
02:49 15 minute. You believe -- let's assume that you think that there
16 is a 506(c) exemption to allowing the securities to be sold in
17 an unregistered fashion.

18 **MR. HYMAN:** Correct.

19 **THE COURT:** And do you believe that in an unregistered
02:49 20 securities offering, you can still make material omissions or
21 misstatements? Because the last time I checked, they're
22 mutually exclusive.

23 **MR. HYMAN:** Correct, Your Honor.

24 **THE COURT:** It doesn't matter -- let's assume they
02:49 25 don't need to be registered. Just because you're not

1 registered doesn't mean you can lie about an unregistered
2 offering either.

3 **MS. BERLIN:** Absolutely. You could be registered.
4 You can be offering a stock on the Stock Exchange. It is
02:49 5 registered, it is highly regulated, and if you lie, it's the
6 same fraud it is here.

7 **THE COURT:** But that's what I'm trying to understand.
8 So why would it matter?

9 **MR. HYMAN:** Because they're charging Mr. Furman with
02:50 10 the sale and solicitation of unregistered securities, and the
11 response is the exemption applies. If they drop their
12 unregistered securities claim and proceed on the fraud claim,
13 then the accredited status is no longer relevant, neither is
14 what Mr. Furman did to verify their accredited investor status.

02:50 15 **THE COURT:** Can you respond to this briefly? Again,
16 unless -- I am by no means an expert in securities regulation,
17 but I feel like I have familiarized myself with the last year
18 with enough issues that this argument doesn't make any sense.
19 I literally do not understand the argument that -- this is
02:50 20 apples and oranges.

21 **MS. BERLIN:** Yes.

22 **THE COURT:** You have charged the material
23 misrepresentations and omissions related to these ABFP and
24 Par Funding offers, these purchases, everything that was done
02:50 25 with these investors. The fact that an investor is somehow

1 accredited doesn't mean that you can sidestep or make omissions
2 regarding these two offerings.

3 **MS. BERLIN:** That's absolutely correct.

4 **THE COURT:** They're not the same.

02:51 5 **MS. BERLIN:** That's absolutely right. They're not the
6 same. They're completely different. We have tried -- we
7 haven't -- I guess I haven't done a great job of explaining it
8 to defense counsel. But there is no application, there is no
9 law, there is no connection. The 506(c) is part of something
02:51 10 called Reg D, and that's part of the securities laws that apply
11 to when you're exempt from a registration. It has nothing to
12 do -- you could be doing a registered or unregistered offering
13 and be lying or telling the truth. They're mutually exclusive.

14 **THE COURT:** That's what I'm saying. Even if you guys
02:51 15 show that it falls under Reg D 506(c), the allegations are in
16 the offering. Registered or unregistered, there were omissions
17 or material misstatements. That's the allegation.

18 **MR. HYMAN:** I don't disagree with that. The issue is
19 that there's different counts that have been charged to
02:51 20 Mr. Furman. They're -- in addition to -- they're charging him
21 with a 10b-5 violation, the fraud --

22 **THE COURT:** Hold on a second. Is it every single
23 thing that Mr. Furman is charged with dealing with either an
24 omission or a material misrepresentation, all of them --

02:52 25 **MR. HYMAN:** No.

1 **THE COURT:** No? Well, you better figure that out
2 because --

3 **MR. HYMAN:** They're also charging him with the sale of
4 unregistered securities.

02:52 5 **THE COURT:** Ms. Berlin, why don't we take into
6 account -- clearly I don't think that they -- the defense --
7 there's seven counts, as far as I can recall.

8 **MS. BERLIN:** There are seven counts. Let's walk
9 through them. There are seven counts. Six of these charges
02:52 10 are fraud counts.

11 **THE COURT:** Correct. Which have nothing do it with
12 this. Correct.

13 **MS. BERLIN:** They have nothing to do with registered
14 or unregistered, and hopefully the defense counsel agrees.
02:52 15 It's the law. But you never know.

16 **THE COURT:** There's six of those.

17 **MS. BERLIN:** Six of those. And then there is one
18 charge that Mr. Furman participated in the Par -- the
19 unregistered offering of Par Funding promissory notes.

02:52 20 **THE COURT:** Not Fidelis.

21 **MS. BERLIN:** Not Fidelis. And that he participated in
22 the unregistered offering of those ABFP notes. Again, not
23 Fidelis.

24 **THE COURT:** And, again, to put to a pause in that,
02:53 25 there is no theory of this case, nor has Par Funding tried in

1 their documents to establish that they are permitted to be
2 unregistered.

3 **MS. BERLIN:** That's absolute -- no one is. The law is
4 you must register unless you can prove an exception.

02:53 5 Par Funding and ABFP, they're -- on the registration issue,
6 they filed with the SEC. As we put in -- I think we put that
7 in yesterday with Mr. Sharp. They filed saying that they
8 thought they were entitled to a 506 -- did we put that in with
9 him -- with a 506(b) exemption. A 506(b) exemption is not (c),
02:53 10 obviously.

11 **THE COURT:** Correct.

12 **MS. BERLIN:** And it's totally different. You can't
13 have a general solicitation. Obviously this is a general
14 solicitation. Mr. Abbonizio testified that they used sales
02:53 15 agents around the country to raise money.

16 **THE COURT:** But they're not even arguing this.

17 **MS. BERLIN:** They're not arguing it.

18 **THE COURT:** They're using the defense under 506(c),
19 that it's exempt on registration requirements.

02:53 20 **MS. BERLIN:** They've never argued it, and they never
21 would because that would be -- a 506(c) is for a very small
22 group of people who are accredited, like friends and family,
23 you have a small batch of people.

24 **THE COURT:** But let's take a step back from that. The
02:54 25 count that you are maintaining on the unregistered offering is

1 the Par Funding note. It's not the Fidelis note.

2 **MS. BERLIN:** Right.

3 **THE COURT:** So even if you were to show that the
4 Fidelis offering is a 506(c), that's not being brought forth.

02:54 5 It's irrelevant because the 506(c) argument is not being
6 applied to Par Funding.

7 **MS. BERLIN:** Correct.

8 **THE COURT:** So that's what I'm trying to figure out,
9 that as much of an issue as you guys make on the Fidelis
02:54 10 offering, remember, the Fidelis, yes, it is pooled and
11 ultimately the Par Funding note is purchased down the line or
12 an ABFP note is purchased. But if the count is that he was
13 involved with Par Funding and you guys are not advancing, for
14 example, forms signed by these investors that would evidence
02:54 15 that Par Funding notes can go forward as unregistered
16 offerings, then it's of no moment.

17 **MS. BERLIN:** It's no moment at all.

18 **THE COURT:** You understand what I'm saying? Why does
19 that even make a dent in it, because Fidelis, when it's a
02:55 20 separate promissory note, not the Par Funding, which is what's
21 been alleged as Par Funding.

22 **MR. HYMAN:** If the SEC is limiting its essentially
23 unregistered securities to just what happened with the Meyers
24 as well as [REDACTED], then what --

02:55 25 **THE COURT:** Let me not put it by witness. They're

1 limiting it to Par Funding. The only allegation -- the only
2 count -- remember, you've got to feed six fraud counts. All
3 right. Listen, let's call it what it is, you guys. Come on.
4 Like everybody else that decided this wasn't a good idea and
02:55 5 cut a deal before they got here.

6 I respect Mr. Furman's opportunity to fight, but he's
7 got six fraud counts that he's got to favor in order to win or
8 not get hit on one of them. And he has one tag-along account
9 that you are spending all your time fighting, which truthfully
02:55 10 is not the thrust of the government's case, and that count has
11 nothing do with Fidelis. It only has to do with Par Funding.

12 And what is going to happen is we will not at the end
13 of the case give jurors an instruction that somehow says if you
14 find that Fidelis notes were permissible 506(c) unregistered
02:56 15 offerings, that somehow that imputes to Par Funding, that they
16 are separate instruments.

17 So don't worry about the investor, right? Worry about
18 what it is they've charged. They only focused on Par Funding
19 notes. So you have to show Par Funding, and no one has
02:56 20 maintained that at any point they're exempt. No one has,
21 including the guys that actually did Par Funding. Because
22 Furman sold those, but he didn't play a role in the
23 organization. He's not LaForte. He's not McElhone. I know
24 where he is downstream.

02:56 25 So I don't think you guys are putting the emphasis on

1 what the key issues are in the case with all of these
2 investors, and I need to understand what the charge is. So I
3 don't know if you guys appreciate the fact that the Fidelis
4 issues just don't reflect or really make an impact on
02:56 5 Par Funding.

6 I have no problem with you guys asking each one of
7 these witnesses if they're accredited. Again, I think that
8 there could be argument made that it is not relevant in the
9 slightest and misleading and confusing to a jury, I will be
02:57 10 allow that to be sorted out at closings or through the
11 testimony of other witnesses.

12 I'll let you guys keep asking this of these remaining
13 investors, but I just need everyone to understand what we're
14 dealing with here because I believe -- I'm noticing that I
02:57 15 don't think we have -- I believe we have a fundamental
16 misunderstanding with the underlying counts.

17 And I need Mr. Furman to hear it from me, and I need
18 his lawyers to hear it from me. I don't want to have anybody
19 feel like they're litigating against a moving target. We know
02:57 20 what the theory is. It's six counts of material misreps and
21 omissions as to things like the default rate, the underlying
22 regulatory actions and the criminal records. That's the bulk
23 of this case. That's what you heard them ask the investor.

24 The fact that they are accredited, which doesn't have
02:57 25 any relevance to the one remaining count, I don't want you guys

1 to put all your eggs in a basket that's not going to go
2 anywhere. That's just the point. He needs to hear it from a
3 Court, because quite honestly, out of fairness to the
4 defendant -- I know this isn't a criminal matter; it's a civil
02:58 5 matter -- but I don't need him to be misled into thinking that
6 somehow this 506(c) thing is a silver bullet. It doesn't
7 eliminate six of seven counts. It has nothing to do with him.
8 You're going to have to convince these jurors either that you
9 disclosed it or that these jurors don't believe it's material,
02:58 10 and you're going to have to do that six times.

11 **MR. HYMAN:** Well, Your Honor, there's also other
12 defenses. There's the reliance on counsel, there's good faith.

13 **MS. BERLIN:** No, no, no, Your Honor.

14 **THE COURT:** But listen, lack of scienter relies -- at
02:58 15 least I can understand those even a little bit more than what
16 we're dealing with 506. But you have to remember, we're
17 spending a lot of time on accredited investors, and I don't
18 think necessarily that's going to be a key. He may have a
19 scienter argument, but he didn't know -- I know that's a big
02:58 20 theory here. Right? Mr. Furman is saying he at no point knew
21 about these details because they're not widely or publically
22 available.

23 He couldn't have known about the New Jersey
24 registration or regulatory actions. He couldn't have known
02:59 25 about the criminal records or he was misled. So the scienter

1 has been an issue. I agree 100 percent. There can be an
2 advice of counsel issue that we're dealing with. That's fine
3 too.

02:59 4 But what I'm trying to do is streamline at least this
5 part of the case, because this to me is kind of a side part of
6 the case. It's not really relevant to the core of the case.

7 Did you want to add just briefly on the issue that you
8 mentioned you wanted to add, so on the scienter or the other
9 issue about advice of counsel?

02:59 10 **MS. BERLIN:** Thank you so much for noticing that,
11 Your Honor. Two things. Summary Judgement, my response, you
12 should read it. Okay? My reply is accredited, not accredited,
13 doesn't matter. That's not what we charged. I'm trying to
14 help defense counsel.

02:59 15 Number two, just so everybody is also on the same
16 page, reliance on counsel, good faith, those are not defenses
17 to a Section 5. It's not up for debate. It's in the Eleventh
18 Circuit pattern jury instruction. There is no scienter.
19 There's no scienter element.

02:59 20 **THE COURT:** It's not in there.

21 **MS. BERLIN:** And so there's no reliance. And actually
22 the notes, it specifically says, reliance on advice counsel,
23 it's not a defense. Good faith is not a defense.

24 **THE COURT:** So let's back it up just to stay on this,
03:00 25 because I want everyone to go in understanding what exactly is

1 at stake here. Of the six counts under Section 5, scienter and
2 advice of counsel legally are not valid defenses. The only
3 issue is are they material and were they omitted -- or were
4 they omissions that were material. Correct?

03:00 5 MS. BERLIN: No.

6 THE COURT: I want to make sure. I want him to hear
7 it from the SEC. I want Mr. Furman to hear it from the SEC
8 also.

9 MS. BERLIN: The reliance on advice of counsel defense
03:00 10 and good faith, those are not defenses on the Section 5 claim,
11 meaning the claim that they have spent most of their time on
12 with accredited investors and what they told Mr. Furman about
13 themselves, there is no scienter or negligence claim. It's
14 like running a traffic light.

03:00 15 THE COURT: Correct.

16 MS. BERLIN: And the Eleventh Circuit pattern is clear
17 on that.

18 Now, on reliance on advice of counsel on the fraud,
19 the six fraud charges --

03:01 20 THE COURT: Correct.

21 MS. BERLIN: -- Mr. Furman could -- I mean, there's
22 enough affirmative defenses, it is not a complete defense to a
23 securities charge. So it is something if he proves his
24 affirmative defense, the lawyer, and there are four elements he
03:01 25 would have to prove --

1 THE COURT: Correct.

2 MS. BERLIN: -- only then would the jury even be able
3 to consider it as one of the things that could factor in on
4 scienter. It was not a complete defense --

03:01 5 THE COURT: It's not a dispositive issue.

6 MS. BERLIN: It is not a dispositive -- so it's not an
7 affirmative defenses. It's a traditional --

8 THE COURT: Correct. It's a factor -- right. It's a
9 factor that they can consider. But I flipped it, just so we're
03:01 10 clear.

11 MS. BERLIN: Yes.

12 THE COURT: We have two -- I guess we have two
13 theories here. We have on the fraud counts, there's an advice
14 of counsel, scienter, tied defense on the other one remaining
03:01 15 count, which is unregistered count for Par Funding, which we've
16 gone over now ad nauseam about the confusion with Fidelis,
17 there they're attempting to do the 506(c). The important thing
18 is none of the scienter defenses for the fraud counts apply to
19 that unregistered offering count, correct?

03:02 20 MS. BERLIN: Right. They're really separate.

21 THE COURT: Right. The fraud -- the unregistered
22 count that we've been talking about under 506(c), that defense
23 that I just went through is just on that count, but none of the
24 scienter issues and the advice of counsel does not apply to the
03:02 25 unregistered security count, the one that remains. It applies

1 to the other six.

2 **MS. BERLIN:** So the reliance on advise, the good faith
3 applies only to the group of six if he can meet his burden and,
4 you know, we'll go down that road.

03:02 5 The Section 5, think of it as like a totally separate
6 little side little piece.

7 **THE COURT:** Correct. It's only one of the seven
8 counts.

9 **MS. BERLIN:** Just like a little -- like a little piece
03:02 10 that's over here that has to do with Par Funding and ABFP,
11 that's pretty simplified facts. Were those registered? If not
12 -- because we know he participated. We're going to see his --
13 the promissory notes he bought from them. Because you can be a
14 buyer or a seller for Section 5.

15 **THE COURT:** Right.

16 **MS. BERLIN:** So we know he participates. We know that
17 they're not registered. So he would have to show that those
18 were exempt.

19 **THE COURT:** Correct.

03:03 20 **MS. BERLIN:** Meaning Par Funding and Fidelis.

21 **THE COURT:** And that's where we got a little
22 disconnect there. That's why we're talking about 506 because
23 that relates to the Par Funding offering, not the Fidelis, and
24 that's why there's confusion.

03:03 25 **MS. BERLIN:** That's right. That's exactly right.

1 **THE COURT:** Okay. So, gentlemen, the issue is, going
2 back to why we had the sidebar, number one, which in any event
3 has been important because it eliminates unnecessary theories
4 here and makes sure everyone understands what the score is as
03:03 5 we continue to try this case about what's going to need to be
6 shown and what is the SEC's theories are so that there's no
7 confusion and everyone goes in eyes wide open. I don't want
8 anyone putting forth evidence they believe shows something it
9 does not.

03:03 10 And so now we have this clean discussion. For these
11 remaining investors I just -- I will repeat the prior ruling.
12 If -- we're not going to be admitting these documents through
13 them because cannot under evidence rules. We can refresh
14 recollection of investors, you can talk about them being
03:04 15 accredited or uncredited. But I just want everyone to
16 understand that there is a bit of difficulty in -- even if you
17 get that testimony having it mean anything, if indeed it's only
18 related to Fidelis as opposed to Par Funding, that 506(c)
19 theory may not fly when it comes down to closings and we
20 summarize the evidence.

21 But I'm willing to let you guys go through that
22 exercise with these investors provided, again that you don't
23 read through them, the notes and the attachments to the notes.
24 You've got to ask them, after you refresh their recollection,
03:04 25 as to their net worth, as to signing off on anything and then

1 you can move on. But I think you can streamline this without
2 having a problem about these exhibits and letting you guys use
3 them to refresh, but you can't admit them in any way under
4 these witnesses. So that's going to happen with the rest of
03:04 5 the investors. Okay?

6 MR. JOHN: Let me just briefly put one thing on the
7 record, Your Honor.

8 THE COURT: Yeah.

9 MR. JOHN: Paragraph 289 of the amended complaint
03:04 10 specifically alleges --

11 THE COURT: You need to share a mic. I'm sorry.
12 Paragraph what?

13 MR. JOHN: Paragraph 289 of the amended complaint
14 specifically alleges violations of both 506 A and C that's why
03:04 15 we're responded in that way.

16 I understand they're alleging that we need to respond
17 to Par Funding's notes. Our defense is that we don't. We
18 qualify under 506(c), that's why we're addressing it. It's in
19 their complain. That's why we have to respond to it.

03:05 20 MS. BERLIN: Your Honor, we charged them with 506(c)
21 at A and C. Okay? The issue is, you all seem to think that --
22 and I'm not, like, being critical, I hope that --

23 THE COURT: No, that's fine.

24 MS. BERLIN: You all seem to believe or want this case
03:05 25 to be that the SEC is claiming that Mr. Furman's Fidelis

1 unregistered offering is this -- is the 506 A and C. That is
2 not the case. That is not the charge and that's no what the
3 jury is going to be asked to find. So as a courtesy I told --

4 **THE COURT:** Listen, that's why I'm doing this now
03:05 5 because I'm not going to have a situation where I get to
6 charging instructions and I have the defense team look at me
7 like they've been litigating a case that's not the case the SEC
8 is trying to prove.

9 That's why I'm doing this now. Because I've seen
03:06 10 enough that the theory of defense needs to be clear, and the
11 SEC's allegations to be clear, and I don't want anyone to shape
12 or craft their theory or put on testimony or forget to put on
13 testimony that might be material to them if you misunderstand
14 what they're pursuing. So I think we all know now that this is
03:06 15 more about Par Funding and that's where the violation lies as
16 to registration/unregistration, and therefore, any argument
17 that really focuses more on Fidelis offerings being made to
18 credit investors, in the SEC's view does not carry any water
19 because at the end of the day it's not about that Fidelis
03:06 20 offering, it's about the Par Funding offering. And at no point
21 has Par Funding, in its notes, ever has been subject to a
22 506(c) exemption. Am I correct?

23 **MR. JOHN:** It's our position --

24 **THE COURT:** Am I just correct in my statement there?
03:06 25 That's all I need to know.

1 **MR. JOHN:** I don't believe so, Your Honor. The count
2 does not clearly make that delineation. That's the problem.

3 **THE COURT:** Okay. Well, I'm doing it now. I'm doing
4 it now. So you have to conform the evidence to the pleadings,
03:07 5 I'm doing it now. I'm saying to you guys, in fact, what I'm
6 making clear is, I think you guys believe that maybe they were
7 trying to advance it on both Par Funding and Fidelis, they're
8 making it clear to me now it's only being brought as to the
9 Par Funding notes.

03:07 10 **MS. BERLIN:** And the ABFP notes.

11 **THE COURT:** I'm sorry. Correct.
12 (Voices overlap.)

13 **THE COURT:** But not Fidelis.

14 **MS. BERLIN:** Then we've never argued from the TR0
03:07 15 through today we have always argued this. We've explained it.
16 If you look at our summary judgment, we asked for summary
17 judgment against Mr. Furman. I went through -- the Par Funding
18 is unregistered. ABFP is unregistered. And here is how he
19 participates. I gave, like, five examples. This is very brief
03:07 20 because that's all we need. He did this, he did this, he did
21 this.

22 **THE COURT:** Correct.

23 **MS. BERLIN:** It was based on the Par Funding and
24 Fidelis. That's what we said -- or Par Funding and ABFP.

03:07 25 (Voices overlap.)

1 **THE COURT:** So what's -- so you guys understand now,
2 the Fidelis notes are not in play. So there's no allegation
3 the Fidelis notes have violated anything. So you can show
4 accreditation on the Fidelis notes, but that's not what the SEC
03:08 5 is going to bring up. The SEC is going to point out very
6 clearly, it's the ABFP and the Par Funding that is at issue.
7 That's what they're telling you. That's what we're taking it
8 to the bank. That's the theory.

9 **MR. HYMAN:** The other issue is that the advertisements
03:08 10 for Fidelis shouldn't be part of their case because obviously
11 he was only advertising Fidelis notes.

12 **THE COURT:** But the problem is, Counsel, that goes
13 also to the fraud.

14 **MS. BERLIN:** Yes.

03:08 15 **THE COURT:** That's the problem. The Fidelis offering
16 is because we know that the Fidelis monies were bundled and
17 funneled to Par Funding offering. So misrepresentations can be
18 gleaned from the Fidelis advertisements because that's not
19 being offered for the issue of the 506(c). It's relevant to
03:08 20 omissions as to where the money was going and how it was being
21 used. That's where they're offering the Fidelis ads for.
22 That's really where -- it's for the fraud count.

23 **MR. HYMAN:** Because it is part of where the confusion
24 comes is, in the opening the big advertisement, the newspaper
03:09 25 advertisement they showed, which they introduced through

1 Mr. Reikes as well, was just a general "come to a luncheon free
2 night at Fidelis."

3 And part of their argument is, is that Mr. Furman was
4 prohibited from issuing advertisements to public at large, to
03:09 5 being involved in this kind of general advertising effort with
6 all of the advertisings were for Fidelis.

7 **THE COURT:** But the point is, that's not a relevancy
8 issue. The Fidelis advertisements and the Fidelis lunches were
9 a way to facilitate, in the SEC's view, the driving of fund
03:09 10 raising for Par Funding, which would stand to reason that any
11 money that was being drummed up through a Fidelis luncheon or
12 advertisement that was being invested in Par Funding, the
13 argument is that that investment should have come with it a
14 necessary disclosure about the true nature of what was going on
03:09 15 at Par Funding. And that's what the theory has been.

16 So it is relevant because the whole point is, they
17 have to show that even though he marketed it as Fidelis, that
18 money didn't stay with just Fidelis. That money traveled up to
19 Par Funding and ABFP. That's why they have to start there.

03:10 20 But I don't think the ads have anything to do --
21 remember, Fidelis is the vehicle for the money to finance with
22 Par Funding, that's why these ads are relevant.

23 My issue is, I'm letting you bring in 506(c) arguments
24 on the Fidelis, but you have to remember, they only pertain to
03:10 25 really one count, and the relevance to that count is severely

1 limited, if not nonexistent, because as you've heard, they're
2 never saying that the Fidelis notes themselves were subject to
3 an exemption. They're saying that it is Par Funding and ABFP
4 notes that are in play. That's the reality.

03:10 5 And so look, we need to get this back on the road. So
6 we're going to go ahead and call our next investor in a moment
7 and we're going to get our jury and make the most of the
8 remaining hours so we don't fall behind schedule.

9 But I hope this is the last time that we have to kind
03:10 10 of breakdown what this case is all about that's been litigated
11 for quite some time already, because I can just tell the more I
12 hear throughout the last few days, the more I can see that
13 there is a fundamental disconnect, I think, between both sides
14 about what this case is all about at its core, and so I don't
03:11 15 want anyone in here to have some sort of a surprise when we
16 close and we summarize the evidence thinking that they have
17 been defending against something that wasn't there, or that
18 they didn't get a chance to defend against something that was
19 there.

03:11 20 And so now we all know where we stand. I don't expect
21 there to be any more confusion. As to this limited issue of
22 the exhibit, for using it to refresh recollection. You're not
23 going to bring it in any way because you can't bring it through
24 these investors. But I just don't want us to parrot it and I
03:11 25 think we need to make a fundamental -- really recognize --

1 fundamental differentiation between the Fidelis notes
2 themselves and the Par Funding and ABFP notes, which are the
3 ones that the SEC has maintaining in that one count. That's
4 the reality of it. Okay?

03:11 5 MS. BERLIN: Yes.

6 THE COURT: So anything else? I don't need much more.
7 I think we've covered it. But what did you want to add,
8 Ms. Berlin, the ads.

9 MS. BERLIN: On the ads, our point, and the evidence
03:12 10 we're putting in is, if he puts an ad, you call the number, you
11 get invited to a lunch and at the lunch you are given this
12 brochure, which is for Par Funding with his business card in
13 it. You -- they always --

14 THE COURT: The vehicle for Par Funding, that's why --
03:12 15 (Voices overlap.)

16 MS. BERLIN: That's what he's doing.

17 THE COURT: That was my understanding of the evidence.
18 That's why Fidelis' advertising materials are coming in because
19 they're all -- it goes back to the idea of it being funneled.

03:12 20 MS. BERLIN: Yes.

21 THE COURT: All of this is making its way to be
22 funneled ultimately to Par Funding. And that is where the
23 misrepresentation counts come into play. There is six. That's
24 where it lies.

03:12 25 MR. HYMAN: Got it. And, Your Honor, just to kind of,

1 at least give you a little bit of comfort in terms of the
2 defense issues and otherwise, obviously we can't beat up some
3 of these elderly investors who are coming in about what they do
4 and don't remember, which is part of why I kind of -- the
03:12 5 questioning for them is about their accredited status.
6 Obviously that goes into a degree of it all, but we haven't had
7 the opportunity to put on our case in chief.

8 And as it relates to some of these misrepresentations,
9 obviously we do have defenses to those parts of the claim that
03:13 10 we'll deal with as we go. However, just to the extent that
11 there was that issue. Obviously, as you can imagine, there's a
12 layer of confusion as the SEC is saying Mr. Furman's engaged in
13 sale of unregistered securities, at least to the extent it's
14 this -- through these investors, if it's clear that these
03:13 15 investors who invested in Fidelis aren't part of the
16 unregistered offering, we're good.

17 **THE COURT:** I'll leave it up to you. But I just want
18 everyone to understand what was going on here and what the
19 issues are so that we don't find ourselves litigating the wrong
03:13 20 matters. And I think that we made have a very clear record
21 that helps everyone in going forward.

22 So let's do this: I need to get back on track. I
23 want to get through the people we want to get through. And I
24 want to get these investors in and out. They've been waiting
03:13 25 patiently. This had to be done now or else we're going to end

1 up finding ourselves with more sidebars and argument about what
2 this case is really about. And it just makes for a muddy
3 record. So I think this has been valuable for all parties to
4 go in eyes wide open for the remainder of the trial.

03:14 5 Let me go ahead and get my --

6 MS. BERLIN: Can we take a five-minute --

7 THE COURT: Yes.

8 MS. BERLIN: -- personal break real quick?

9 THE COURT: Yes. Very brief.

10 MS. BERLIN: Of course.

11 THE COURT: Very brief so that I can get my next
12 investor. Very brief.

13 And I can go ahead, Rita, and already start bringing
14 in my jurors. Let's go ahead and start getting them in,
03:14 15 please.

16 (Thereupon, a brief recess was taken.)

17 (Thereupon, the jury entered the courtroom.)

18 THE COURT: Please be seated, everyone. Thank you
19 guys for your patience. We did a little bit of homework here
03:22 20 together to try to streamline issues in the long run, so we can
21 try to stay focused. So don't worry, we're going to get things
22 going. But it was important for us to do some legal work
23 outside of the presence of the jury. So we'll turn it back to
24 the SEC and get our next witness on the stand.

03:22 25 MS. BERLIN: Henry Barth, Your Honor.

1 THE COURT: Let's get him on up, please.
2 Come on up. And if you are fully vaccinated, you're
3 free to take off your mask.

4 Thereupon,

5 HENRY BARTH,
6 having been duly sworn by the court reporter, testified as
7 follows:

8

9 DIRECT EXAMINATION

03:23 10 BY MS. BERLIN:

11 Q. Good afternoon, Mr. Barth.

12 A. Good afternoon.

13 Q. I wonder if you could begin by just telling our jury a
14 little bit about your background.

03:23 15 A. Sure. Let's see. I retired from NextEra Energy Florida
16 Power and Light in June of 2017. I'm not sure how much detail
17 you want to go into there. I was interested in some fixed
18 index annuities. And I had some information from JD Mellberg
19 company, and their local representative was Mr. Furman. I
03:24 20 contacted him and set up a meeting with him in early August of
21 2017 to discuss some fixed index annuities, which we entered
22 into in the following months.

23 He also had some private equity investments. Those
24 are -- I guess you can look at them like CDs, if you think
03:24 25 about it that way, but they paid much higher interest, 7, 8

1 percent. They were one-year notes. They would go from 1 to 5
2 years. Now they had no go from the backing, so they were at
3 risk.

4 So in the fall of 2017, once I had funds available
03:24 5 after I had retired, the money was available, we entered into
6 some of the annuities that I mentioned, and some of these
7 private equity notes.

8 So continue along, I met with Mr. Furman several times
9 in early 2018 as we withdrew some funds from the annuities, and
03:25 10 then I would say in the fourth quarter of 2018, I started to
11 see advertisements in the local paper for what you would call
12 is merchant cash, private equity notes with returns ranging
13 from -- I think it was 9 percent to 15 percent.

14 Q. And I'm sorry, Mr. Barth. Thank you so much. You're doing
03:25 15 my job for me. It's wonderful. Thank you.

16 So I think you just brought us all the way through the
17 chronology up through the fourth quarter of 2018?

18 A. The fall of 2018, yes.

19 Q. And you just -- I think I just heard you testify that
03:26 20 Mr. Furman brought up a merchant cash advance company. Did I
21 hear you correctly?

22 A. That is correct.

23 Q. And what was the name of the merchant cash advance company?

24 A. It's called Par Funding.

03:26 25 Q. And what did Mr. -- or did Mr. Furman tell you anything

1 about this company, Par Funding?

2 A. Sure. The advertisements in the paper just mentioned the
3 return, didn't mention any company. It actually mentioned
4 United Fidelis. When I met with Mr. Furman, we had brochures
03:26 5 that were basically Par Funding brochures that described
6 exactly what merchant cash was, how they structured it, you
7 know, all the particular ways that they went about it and why
8 it was advantageous, why the returns could be so attractive.

9 Basically, I guess it was easy to say I was sold on
03:26 10 the concept on the fall of '18. I didn't have any available
11 capital then. The note I had entered into a year or so before
12 wasn't going to mature until early 2019. So I was all set to
13 move the funds that I had into merchant cash.

14 Not Par Funding directly. It would have been with
03:27 15 United Fidelis. That's the way it was being structured. And
16 that's basically what I did in early April of 2019. From
17 there -- stop me at any time.

18 Q. Thank you so much. I wonder -- I heard you say something
19 about you got brochures, and I wonder if I can approach you. I
03:27 20 was going to show you --

21 A. Certainly.

22 Q. -- what we have already introduced into evidence as
23 Exhibit 578.

24 MS. BERLIN: And if we could pull that up on the
03:27 25 screen.

1 Your Honor, may I approach the witness with a hard
2 copy.

3 THE COURT: Yeah.

4 A. You said on the screen.

03:28 5 BY MS. BERLIN:

6 Q. Oh, it will also be on your screen, but if it's easier --

7 A. Doesn't matter.

8 Q. If you have a preference?

9 A. Oh, they'll see it. Yes, this is it.

03:28 10 Q. We just like to make it as convenient as possible. If you
11 want the hard copy, it's there. So I see you're looking at the
12 hard copy. That's the same as what everybody is seeing on the
13 screen.

14 MS. BERLIN: It's not on the screen. We'll have it up
03:28 15 in just a second.

16 THE WITNESS: I don't need it.

17 MS. BERLIN: Thank you.

18 IT TECHNICIAN: No worries.

19 BY MS. BERLIN:

03:29 20 Q. All right. So now we have it on the screen as well,
21 Exhibit 578.

22 A. Yes.

23 Q. And so is -- what I handed you, the hard copy and what you
24 have on your screen, does that look familiar to you?

03:29 25 A. Yes, this is it. I have it at home.

1 Q. Okay. So is Exhibit 578 a copy of the materials that you
2 received?

3 A. Yes. Yes. It's a duplicate, the same, the folder,
4 business card and whatever you want to call, this spreadsheet.

03:29 5 Q. And whose business card is in there?

6 A. Mr. Furman's.

7 Q. Okay. And who gave you your copy that you have at home of
8 Exhibit 578?

9 A. When I was at his office.

03:30 10 Q. Mr. Furman gave it to you?

11 A. Yes, ma'am.

12 Q. And that was -- if you could just turn to -- looking at the
13 brochure that says "Corporate Overview"?

14 A. Okay. (Complies.) Yes.

03:30 15 MS. BERLIN: Your Honor, can I approach the witness?

16 THE COURT: Yes, you may.

17 BY MS. BERLIN:

18 Q. I'm going to give you this one so we're looking at the same
19 thing.

03:30 20 A. All right. Go ahead.

21 Q. So taking a look at the corporate overview in Exhibit 578,
22 if we look at page 2 --

23 A. All right. Yes.

24 Q. -- it's a little crooked on our version, but you see it
03:31 25 says "Who we are" at the top?

1 A. Yes.

2 MS. BERLIN: Hold on just one moment, Mr. Barth,
3 because we have a color copy of this. I'm going to see if we
4 can -- I have a hard time with the black and white.

03:31 5 BY MS. BERLIN:

6 Q. And it says "Who we are. " And do you see where it says on
7 page 2: Par Funding is a direct provider of merchant cash
8 advances?

9 On page 2?

03:31 10 A. At the very top, yes, uh-huh. (Nodding.) Yes.

11 Q. And so you talked -- I think you were testifying about how
12 during the event, you learned about what a merchant cash
13 advance is and how it operated?

14 A. That's correct.

03:31 15 Q. Is the information that you learned reflected generally in
16 this brochure that we see as 578?

17 A. Yes.

18 Q. And did Mr. Furman -- other than Par Funding, did he tell
19 you about any other merchant cash advance company or --

03:32 20 A. No.

21 Q. So it's only Par Funding?

22 A. That is correct.

23 Q. And did he -- if we can just turn to page -- it's going to
24 be Pdf page 8. Thanks.

03:32 25 And if you could turn in your brochure, it says at the

1 top, Mr. Barth, "collateral and insurance"?

2 A. **I see it.**

3 Q. Oh, perfect.

4 And so do you see on this page of this Par Funding
03:32 5 brochure Mr. Furman gave you, it talks about Par Funding and
6 this being insured? Do you see that?

7 A. **Yes, I do.**

8 Q. Is that something that Mr. Furman discussed with you?

9 A. **Yes, we did talk about the loans being insured.**

03:33 10 Q. And if you turn the page to page 9.

11 A. **Yes, I'm there.**

12 Q. Do you see at the top, it says: How our model works, it
13 all starts with underwriting?

14 A. **Correct.**

03:33 15 Q. It's page 9.

16 A. **Uh-huh. (Nodding.)**

17 Q. Hold on just one second. We have a color version. I'm
18 just going to see if we can swap it out so we can see it a
19 little bit better.

03:33 20 **THE COURT:** Okay.

21 **MS. BERLIN:** Thank you, Vicki. So Exhibit P 4115, if
22 we can bring that up on the screen.

23 **BY MS. BERLIN:**

24 Q. So Mr. Barth, what we're doing is we're just replacing that
03:34 25 black and white version that was hard to see on your screen

1 with the color version. That looks more like what you're
2 holding in your hand.

3 And so looking at Exhibit 415, which shouldn't be on
4 the screen available to jurors yet because I haven't admitted
03:34 5 it, is the document that you see at P 415 on your screen, is
6 that the brochure or does that look like the brochure that you
7 received that you have at home?

8 A. **It's not on my screen.**

9 **MS. BERLIN:** Can you put it on the witness's screen.
03:34 10 Or I can approach the witness, Your Honor? Is that
11 okay?

12 **THE COURT:** You may approach.

13 (Thereupon, the exhibit was introduced into evidence.)

14 **BY MS. BERLIN:**

03:35 15 Q. So I'm just going to ask you, this photocopy is the same as
16 that.

17 A. **Oh. Like it looks the same.**

18 **BY MS. BERLIN:**

19 Q. So, Mr. Barth, I've handed you what we have premarked as
03:35 20 415, and my question is just whether --

21 A. **It's 8 in here.**

22 Q. I'm sorry?

23 A. **Page 8 starts with How Our Model Works.**

24 Q. Yes.

03:35 25 A. **Page 8 here. Page 9 there. Sorry. Go ahead.**

1 Q. So does P 415 look like the Par Funding brochure that you
2 have at home?

3 A. Sure. Yes.

4 MS. BERLIN: Your Honor, we want to introduce P 415.

03:35 5 THE COURT: Any objection?

6 MR. HYMAN: None, Your Honor.

7 THE COURT: All right. We'll move in P 415.

8 (Thereupon, the exhibit was admitted into evidence.)

9 BY MS. BERLIN:

03:35 10 Q. And you can go back to looking at the original if you want
11 that's on your table. And so in your hard copy, it's going to
12 say -- it's going to be page 9. And in the version that's on
13 the screen, so we can show it to the jury, I think it's page 8,
14 How Our Model Works.

03:36 15 Do you see it says: It all starts with underwriting?

16 A. Yes.

17 Q. Did Mr. Furman discuss the underwriting or onsite
18 inspections or efforts --

19 A. Sure.

03:36 20 Q. Can you tell us a little bit about what he said?

21 A. Basically, we went over, you know, what the Par people did
22 in terms of reviewing the people's business, looking up their
23 financials, checking on the credit, how, because of the models
24 that they had built, they were able to do it very quickly, much
03:36 25 faster than a bank would do it -- much faster than a bank would

1 do it, you know, how it didn't take them long. Banks would
2 take much longer. That's one of the benefits of dealing with
3 them. Onsite inspections. That's pretty much what's captured
4 on this page.

03:37 5 Q. Okay. So I was asking, did Mr. Furman -- so set aside the
6 brochure for a second. You and Mr. Furman also spoke. In
7 addition to him giving you brochures about Par Funding, did you
8 also speak with him?

9 A. Sure. In the fourth quarter, when we talked, it was
03:37 10 basically I had seen the advertisements in the paper, and I
11 had -- when I met with him in his office probably on other
12 matters, I had seen the brochures. We talked about this. He
13 provided the brochures to me. Probably had some extras in case
14 I ran across someone else I wanted to share it with. And so we
03:37 15 went through the details.

16 Q. And did Mr. Furman, when he was telling you the details,
17 was it the details about Par Funding?

18 A. Yes.

19 Q. And when you -- did you have an understanding whether, if
03:38 20 you invested in this, where your profits were going to come
21 from? Like, how your profits would be generated that would
22 result in you getting paid back on your investment?

23 A. Well, Par Funding wouldn't make the money they're making.
24 They would pay Mr. Furman and he would distribute it to his
03:38 25 investors.

1 Q. And could you look at -- in the brochure that -- the hard
2 copy --

3 A. **Yes.**

4 Q. -- it's going to be page 11.

03:38 5 And, Kevin, in the one that we have on the screen,
6 it's going to be Pdf page 10.

7 A. **Using social media to expand?**

8 Q. Exactly.

9 A. **Yes. I'm there.**

03:38 10 Q. So do you see at the top it says -- I was going to just ask
11 you: Using social media to expand underwriting intelligence.

12 And underneath do you see the green box that says --

13 I don't know, Kevin, if we can Zoom in on that green
14 box --

03:39 15 A. **There's no substitute for personal onsite merchant
16 inspection.**

17 Q. Yes.

18 A. **I see it.**

19 Q. And do you see that in this -- there's sort of this green
03:39 20 blowup box in the Par Funding brochure that talks about the
21 onsite inspections that Par Funding does of the merchants that
22 borrowing money. Do you see that?

23 A. **Yes.**

24 Q. So in addition to giving you a brochure about that process,
03:39 25 did you -- is that something that you and Mr. Furman also spoke

1 about?

2 A. Yes. And when we talked about it, you know, that's another
3 benefit, besides just having the people apply, going over their
4 financials. Actually visiting the facility to make sure it's
03:39 5 real and it's not just some old building that someone applied
6 based on and, you know, that's really have somebody there. I
7 just got the impression that they actually had people that
8 worked for them throughout the country and could go quickly and
9 visit the facility and see that it's real.

03:40 10 Q. Yeah. And did -- when you and Mr. Furman were speaking,
11 did Mr. Furman ever talk to you about whether Fidelis or him
12 were a reliable source of information or trustworthy source?
13 Did that subject generally ever come up?

14 A. No.

03:40 15 Q. Did you ever see any advertisements or information from
16 Mr. Furman about putting your trust in him so he would get you
17 information about things that he was going to invest your money
18 in?

19 A. We had developed a relationship over the previous year,
03:40 20 year-and-a-half, I guess, with the things we had done, that I
21 had established a trusted relationship with him.

22 Q. And were you relying on Mr. -- I'm sorry, I don't want to
23 ask you about your reliance.

24 Question: Did Mr. Furman ever tell you that in
03:41 25 reality Par Funding was making loans to merchants based on,

1 like, searching them on Google, like, just doing a Google
2 search?

3 A. **No. No. Because you added the word "just," then I have to**
4 **say no. No, it was a much more in-depth search of the**
03:41 5 **particular business of their financial records, their banks.**

6 Q. And it included this onsite inspection component?

7 A. **Definitely.**

8 Q. And did Mr. Furman tell you that one of the managers at
9 Par Funding in charge of this merchant cash advance business
03:41 10 was a convicted felon?

11 A. **No.**

12 **MR. HYMAN:** Leading.

13 **MR. JOHN:** Objection, mischaracterization.

14 **THE COURT:** Overruled.

03:41 15 Go ahead.

16 **BY MS. BERLIN:**

17 Q. But you -- I mean, you testified earlier today that you
18 understood that the profits from your investment were going to
19 come from the success of those merchant cash advance loans
03:42 20 being collected on?

21 A. **That is correct.**

22 Q. Did Mr. Furman ever tell you about any state governments
23 filing actions or cases against Par Funding for violating a
24 law?

03:42 25 A. **No.**

1 Q. Did Mr. Furman ever tell you that any state government had
2 issued a cease and desist order against Par Funding for
3 violating the laws that have to be followed when soliciting
4 investors?

03:42 5 A. **No.**

6 Q. And did Mr. Furman give you any sense -- and you can look
7 at the brochure. Your color copy. If you would turn back to
8 that.

9 Did Mr. Furman ever -- I'll take you to the page in a
03:43 10 minute, though, while I'm looking.

11 Did Mr. Furman ever talk to you at all about the
12 default rate or the number of merchants that were getting money
13 that just failed to pay back their loans to Par Funding?

14 A. **It was a much lower rate than other merchant cash**
03:43 15 **businesses had, and you could see in some of the figures on the**
16 **spreadsheet how it was between, I think 1 and 2 percent.**

17 Q. Okay. So Mr. Furman provided you a spreadsheet and he told
18 you that that rate was between 1 and 2 percent?

19 A. **It was part of the package and you could see the data**
03:43 20 **yourself.**

21 Q. But part of a physical, like a piece of paper that he gave
22 you?

23 A. **Oh, yes. Yes.**

24 Q. Okay. Did Mr. Furman ever give you any audited financial
03:44 25 statements for Par Funding?

1 A. **No.**

2 Q. And just to be clear, if -- at the time that you made this
3 investment, you were -- you know when an accredited investor
4 means?

03:44 5 A. **I do.**

6 Q. And you were an accredited investor when you invested?

7 A. **Yes.**

8 Q. Okay. Now, at a certain point in the fall of 2018, you
9 testified you invested in Par Funding by giving your money to

03:44 10 Mr. Furman?

11 A. **No, not then. The funds were tied up at the time. It**
12 **wasn't until April of 2019.**

13 Q. That's right. So -- thank you.

14 So in April of 2019, how much money did you give?

03:44 15 A. **\$230,000.**

16 Q. Did any of that -- was that your retirement money or was
17 any of that money --

18 A. **You could say -- it came out of my 401(k).**

19 **MR. HYMAN:** Your Honor, objection.

03:45 20 **THE COURT:** Overruled.

21 **BY MS. BERLIN:**

22 Q. So you started investing in April of 2019. And was that a
23 one-year investment where you were supposed to get your
24 principal back at the end of the year with interest over the

03:45 25 course of the year?

1 A. Well, it was a one-year investment. It paid the interest
2 monthly. And then at the end of the year, I guess you could
3 get your principal back. But we just rolled it over.

4 Q. But then in the eleventh month, so in, I don't know, it was
03:45 5 about like March or so, or April of 2020 --

6 A. I invested in April of '19.

7 Q. Okay.

8 A. Interest starts in May of '19. And I got eleven months of
9 interest, and the last one was early, mid-March of 2020.

03:45 10 Q. And so in --

11 A. So eleven months of interest. Sorry.

12 Q. Okay. And in mid-March of 2020, you were -- and just to be
13 clear, so we're all on the same page.

14 A. Yes.

03:46 15 Q. You received the interest, which was what, 12 percent?

16 A. Well, it's 12 percent an annual basis. So you can think of
17 1 percent a month. So I received that \$2,300 that month.

18 Q. So you received 1 percent interest on your investment
19 amount every month?

03:46 20 A. Correct.

21 MR. HYMAN: Objection, leading.

22 THE COURT: Overruled.

23 BY MS. BERLIN:

24 Q. And then at the end of 12 months, so that would have
03:46 25 been -- so in May of 2020, how much were you supposed to get

1 that month?

2 A. Oh, well, let's see, in April of 2020, I would have gotten
3 another \$2,300. And then if I wasn't going to renew it, okay,
4 then I would have gotten the \$230,000 back.

03:46 5 Q. Got it. So did something happen in March or April? Did
6 something happen before you got your \$230,000 principle back?

7 A. COVID-19.

8 Q. Okay. And after COVID-19 happened, did Mr. Furman approach
9 you about changing your investment with Par Funding?

03:47 10 A. In, I guess it started late March of 2020, when it was
11 obviously -- the economy was closing down, businesses were
12 closing down, it might actually be late March, early April,
13 Mr. Furman was relaying to people, basically through e-mails, I
14 don't think there was much direct conversation, that indeed
03:47 15 Par Funding was in trouble. That the businesses they were
16 lending to were in trouble.

17 And I'll try to be brief. It looked like our
18 alternatives were -- or Par Funding's alternatives were either
19 to declare bankruptcy or they would attempt to restructure.

03:48 20 The thought was the economy was going to recover in the not too
21 distant future. And that what they would do is they would
22 restructure the notes and they would begin paying 4 percent
23 interest on an annual basis, starting hopefully in June of
24 2020.

03:48 25 Now, there's a scheme associated with that. It would

1 continue at that rate and possibly go up, I don't remember the
2 details, for a couple of years, for five years. And then in a
3 year or two they would start to pay back your principal. And
4 it was pretty much, we needed to agree to that or decide we
03:48 5 were going to litigate, and pretty much all the investors that
6 were involved in this had to agree. We did in late -- I'm
7 guessing late April, maybe it was early May.

8 And then in June and July, I received interest
9 payments at the 4 percent rate. And then they stopped after
03:49 10 that.

11 Q. Okay. And so when -- let me just make sure -- I'm just
12 going to go back because there was a lot, so I can make sure I
13 understood.

14 A. Sure.

03:49 15 Q. So in March or April of 2020 --

16 A. Yes.

17 Q. -- am I right in understanding you were asked to change the
18 terms of your investment?

19 A. That's correct.

03:49 20 Q. Okay. And it went from before you had 12 percent total, it
21 was going to be 4 percent?

22 A. That's correct.

23 Q. And instead of getting your principal of \$230,000 back,
24 in -- which was due to you in April of 2020, you would instead
03:49 25 receive over time that amount, over the course of the next

1 seven years; is that correct?

2 A. **Something like that. It might have been five or six, yeah.**

3 **And it would start a year or two later.**

4 Q. So you wouldn't get your principal back -- you wouldn't
03:50 5 have your principal back for seven years, but at the time you
6 were supposed to get your principal back, like, the following
7 month?

8 A. **That's correct.**

9 Q. Okay. And in connection with presenting that offering to
03:50 10 you, did you have to sign new paperwork?

11 A. **Yes.**

12 Q. And did Mr. Furman ask you to sign that paperwork?

13 A. **He basically asked all the borrowers, you know, we all**
14 **needed to be on board or it wasn't going to work. And through**
03:50 15 **various e-mails I provided the information and the offerings of**
16 **what they would offer to do and I agreed. I assume the rest**
17 **agreed because it went through.**

18 Q. And all of this, having to exchange and not get your money
19 back for seven more years instead of one month, that was all
03:51 20 because of -- Mr. Furman told you it was all because of
21 Par Funding and that their business was impacted by COVID?

22 **MR. HYMAN:** Leading, compound.

23 **THE COURT:** Let's go ahead. I'm going to sustain
24 that.

03:51 25 **BY MS. BERLIN:**

1 Q. I believe you testified earlier, but if you could just
2 clarify. The reason for having to get your principal back
3 after seven more years at 4 percent interest instead of getting
4 it back in one month at 12 percent interest, what reason was
03:51 5 given to you for that change?

6 A. **Because of what COVID did to the economy. And just an**
7 **expectation, it was going to take a while to get back on their**
8 **feet. They needed to restructure their business, get back in**
9 **business, wait for the economy to come back. They insist they**
03:51 10 **need to borrow again. And it wasn't going to be back a hundred**
11 **percent immediately, and it was going to take time.**

12 Q. Now when you say -- in your answer you were just saying
13 "they" had to get their business back on track and --

14 A. **Par Funding.**

03:52 15 Q. Okay. Thank you.

16 A. **Sorry.**

17 Q. No, that's all I was trying to get.

18 So it was about Par Funding's business?

19 A. **Correct.**

03:52 20 Q. And the impact it had on Par Funding?

21 A. **Absolutely.**

22 Q. And at any time -- now, when you were investing with
23 Mr. Furman into Par Funding, did you receive any sort of
24 written disclosures?

03:52 25 A. **What do you mean?**

1 Q. Like PPM, it's called like a private placement memorandum?

2 A. I received a document with United Fidelis that showed the
3 \$230,000 in total. It was actually, I think, 4.6 units at
4 \$50,000 each.

03:53 5 Q. No. I understand. But when you were investing, did
6 Mr. Furman ever give you any sort of written document or
7 brochure about the risks of the investment or what you
8 were investing?

9 A. An initial prospectus?

03:53 10 Q. Yes, or a private placement memorandum, anything like that?

11 A. I don't believe so. Now I understand what you're asking
12 now. Yes, I've seen those before. I know what you mean. I
13 don't believe so.

14 Q. And what about at the time you did -- when you exchanged
03:53 15 your initial investment for this new one in spring -- we'll
16 call it spring of 2020 --

17 A. Yes.

18 Q. -- did you receive any sort of information from Mr. Furman,
19 like any financial support or research that showed the impact
03:54 20 on Par Funding of COVID?

21 A. No, not to my memory. All we got was here's how it would
22 play out in terms of the interest rate and the repayment
23 scheme. Let's say 5 percent to start, then 10, then 15. I
24 remember the scheme that added to 100.

03:54 25 Q. I wonder if I can show you a document we have premarked as

1 P 51.

2 (Thereupon, the exhibit was introduced into evidence.)

3 MS. BERLIN: Your Honor, may I approach?

4 THE COURT: You may.

03:54 5 MR. HYMAN: May we have a quick sidebar.

6 THE COURT: No. Let's proceed, please.

7 BY MS. BERLIN:

8 Q. Have you ever seen -- now this is a document we're not
9 publishing yet because it hasn't been admitted into evidence
03:55 10 yet.

11 Have you ever seen this document that's P 51 before?

12 A. Yeah, this is it. This is -- this is the original
13 agreement that I would have entered into for my initial
14 \$230,000 investment, I believe. I have to be careful. I
03:55 15 believe that the percentages, that 9 percent to 15 percent are
16 correct, and the difference classes of offering reflect the
17 interest rates that you receive based on the amount of money
18 you invested. Yes. Offering price, \$50,000 per unit, and at
19 \$230,000, I would have been 4.6. I would have had a document
03:56 20 that was -- probably not too much further in, said 4.6.

21 MS. BERLIN: Your Honor, I wonder if we can --

22 THE COURT: No.

23 BY MS. BERLIN:

24 Q. P 51, is this a document that you have seen before, that
03:56 25 you have received?

1 A. Yes. I have it at home.

2 Q. So is this a document that you received from Mr. Furman?

3 A. Correct.

4 MS. BERLIN: Your Honor, if -- I would like to
03:56 5 introduce it. And let me check with them. I don't know that
6 there's even a dispute about authenticity.

7 THE COURT: Go ahead and meet and confer.

8 MS. BERLIN: Yeah.

9 MR. HYMAN: We obviously object for the same reasons
03:56 10 that were discussed at the earlier sidebar, Your Honor. What's
11 good for the goose is good for the gander.

12 THE COURT: Let move on.

13 MS. BERLIN: Absolutely.

14 BY MS. BERLIN:

03:56 15 Q. So you have to set that aside. I'm so sorry.

16 MR. HYMAN: I'm sorry. We'll withdraw the objection.
17 I'm sorry.

18 THE COURT: So are we still seeking to admit this?

19 MS. BERLIN: Yes, please.

03:56 20 THE COURT: That will be admitted without objection.

21 (Thereupon, the exhibit was admitted into evidence.)

22 MS. BERLIN: Thank you. Can we show it on the screen?
23 It's P 51 Thank you, Your Honor.

24 BY MS. BERLIN:

03:57 25 Q. The very first page, if you can look at the front page?

1 A. **Sure.**

2 Q. And so P 51, I think you just testified you have a copy of
3 this at home, right?

4 A. **Correct.**

03:57 5 Q. Who gave it to you?

6 A. **Mr. Furman.**

7 Q. And what is it called? Do you see at the top?

8 A. **Confidential Offering Memorandum.**

9 Q. Yes.

03:57 10 A. **Yes.**

11 Q. And it's for -- it says it's for Fidelis?

12 A. **Yes.**

13 Q. Was that Mr. Furman's -- did you have an understanding of
14 who owned Fidelis based on your interactions?

03:57 15 A. **Yes, that is correct.**

16 Q. Who was it?

17 A. **It's him, Mr. Furman.**

18 Q. Okay.

19 A. **If you page further inside, you'll see that. Sorry.**

03:57 20 Q. Thank you. We should switch places.

21 So when you're going through the document, I wonder if
22 we can look at this section in P 51 that's about the risks.
23 And so we're going to just turn to page 8, if we can turn to
24 that.

03:58 25 **MS. BERLIN:** And, Kevin, because it starts with Roman

1 numerals, it's not going to be Pdf page 8. You're going to
2 have to look at the bottom right-hand corner.

3 **BY MS. BERLIN:**

4 Q. So that's 14?

03:58 5 A. **You're on Roman VIII.**

6 Q. It should be about --

7 A. **Roman VIII. That's on the screen.**

8 Q. Page 8 with a number. And at the top it says "the
9 company," and then under that it says "risk factors."

03:59 10 All right. Perfect. Thank you.

11 So do you see at the top, it's -- this is a document
12 about the -- it says it's about the company. Do you see that?

13 A. **Yes.**

14 Q. And it's -- this section is about -- we just looked on the
03:59 15 title page. This is a packet about Fidelis Financial Planning?

16 A. **Correct.**

17 Q. Mr. Furman's company?

18 A. **Yeah. Yes.**

19 Q. And this document is a disclosure document in connection
03:59 20 with the investment and Par Funding or investing in Par Funding
21 by giving Mr. Furman money; is that right?

22 A. **Yes.**

23 Q. So if we look at the risk factors on page 8, and if we just
24 look here at the -- it lists -- do you see it lists several
04:00 25 risks on the first page -- on page 8 under "Risks"?

1 A. **Yes. It's highlighted language.**

2 Q. We can look through. It's page 8 and 9. I just wanted to
3 look with you really briefly or maybe you remember. Was there
4 anything disclosed to you in this risk section about -- it
04:00 5 looks like the risks go on all the way -- so we're not going to
6 go page by page. It goes all the way through -- oh, my
7 goodness -- from page 8 through page 20.

8 Do you see he that?

9 A. **That is correct.**

04:00 10 Q. Can you just scroll through? It lists risk, after risk,
11 after risk, after risk of investing in this MCA, merchant cash
12 advance company.

13 Do you see that in front of you?

14 A. **I do.**

04:00 15 Q. And are any of these risks that you see from page 8 to 20,
16 are any of them disclosing to you about the risk of the MCA
17 company, Par Funding?

18 A. **It was never mentioned.**

19 Q. And anything about the risk of the company -- investor
04:01 20 money being managed by a convicted felon?

21 **MR. HYMAN:** Objection, Your Honor, leading, calls for
22 speculation, facts not in evidence.

23 **THE COURT:** Overruled as to all of those grounds.

24 Go ahead.

04:01 25 A. **I'd have -- it's been a long time since I read it. So I'd**

1 have to reread it to answer that.

2 **BY MS. BERLIN:**

3 Q. Okay. I don't want you to have to do that. We can look at
4 the document.

04:01 5 A. I'm going to say if I had -- when I read it, if I had
6 noticed that, it would have rang a bell.

7 Q. Okay. And same thing. We talked before about government
8 cases against Par Funding to cease and desist from offering
9 investments to people and breaking the securities laws.

04:02 10 Do you remember ever reading anything about that in
11 any of the materials Mr. Furman gave you, whether it was this
12 P 51 risk disclosure or anything else he gave you?

13 A. No.

14 Q. Is that something that would you remember, do you think?

04:02 15 A. Oh, if I had it, yes.

16 Q. And then when you invested -- when you did this exchange of
17 your investment for the new one with lower or less money in the
18 spring of 2020, did you receive any sort of revision to your
19 note?

04:03 20 A. A similar document that would have outlined the new terms.

21 MS. BERLIN: May I approach the witness with what we
22 have marked as P 526?

23 THE COURT: Yes.

24 MS. BERLIN: It's not in evidence yet.

04:03 25 (Thereupon, the exhibit was introduced into evidence.)

1 **BY MS. BERLIN:**

2 Q. And I'm showing you -- have you seen anything like this
3 before that sort of -- another written disclosure about the MCA
4 investment that you -- through Fidelis that you received in
04:03 5 2020?

6 A. **Yes. This is it. It outlines the payment terms I was**
7 **alluding to before.**

8 Q. And so similarly, we get like a second batch of disclosures
9 about the risks of this investment about one year into your
04:04 10 investment, correct?

11 A. **That is correct.**

12 Q. And Mr. Furman gives that to you?

13 A. **Yes.**

14 Q. And does he disclose to you at that time the second round
04:04 15 of disclosures?

16 **MR. HYMAN:** Your Honor, she's having him read from a
17 document that has not yet been introduced into evidence.

18 **MS. BERLIN:** I'm not asking him to read.

19 **THE COURT:** He can use it to refresh his recollection,
04:04 20 but these are questions. That's overruled.

21 **BY MS. BERLIN:**

22 Q. So excuse me, just so we can avoid objections, do you mind
23 putting the document down? You can just put it down. Sorry.

24 A. **Go ahead.**

04:04 25 Q. And during this second round, so the second round of risk

1 disclosures is made by Mr. Furman in the spring of 2020. At
2 that time, when he does the second round, does he disclose to
3 you then that Par Funding is managed by a convicted felon?

4 A. No.

04:04 5 Q. Does he disclose to you at that time that the default rate
6 is higher than the 1 to 2 percent?

7 A. No. Well, I mean, at that time COVID-19 had come and
8 default was tremendous.

9 Q. Does he disclose to you at that time that until COVID-19
04:05 10 and until that moment, that the default rate had been higher
11 than 1 to 2 percent?

12 A. No.

13 Q. Does he disclose to you during this second round of risk
14 disclosures that Par Funding wasn't really going and doing
04:05 15 onsite inspections of the merchant borrowers?

16 A. No.

17 MR. HYMAN: Leading.

18 THE COURT: Overruled.

19 BY MS. BERLIN:

04:05 20 Q. Does Mr. Furman disclose to you during this second round of
21 disclosures, does he tell that you Par Funding is involved in
22 thousands of lawsuits against merchants for not paying?

23 MR. HYMAN: Leading.

24 THE COURT: Overruled.

04:05 25 A. Yes. That I had heard.

1 BY MS. BERLIN:

2 Q. And did you --

3 A. They were involved in thousands of lawsuits against
4 merchants who weren't paying.

04:05 5 BY MS. BERLIN:

6 Q. And did Mr. Furman tell you that during the COVID period?

7 A. No. Post COVID.

8 Q. Okay. So after COVID, Mr. Furman told you that?

9 A. Yes.

04:06 10 Q. So --

11 A. Due to COVID.

12 Q. I'm sorry?

13 A. Due to COVID.

14 Q. Due to COVID.

04:06 15 So am I correct in understanding that in the spring --
16 or you said it was around April May --

17 A. Yes.

18 Q. -- of 2020, Mr. Furman tells you at that time, there are
19 thousands of lawsuit, but they are due to COVID?

04:06 20 A. Yes.

21 MR. HYMAN: Leading, compound.

22 THE COURT: Overruled.

23 BY MS. BERLIN:

24 Q. Does Mr. Furman disclose to you that, in fact, for the
04:06 25 years prior Par Funding had always been involved in thousands

1 of lawsuits against merchants for defaulting?

2 A. No.

3 MR. HYMAN: Leading, foundation.

4 THE COURT: Overruled.

04:06 5 BY MS. BERLIN:

6 Q. And that this was nothing new?

7 A. No.

8 Q. And he instead told you that it was a new development that
9 was caused by COVID?

04:06 10 A. Correct.

11 Q. And in the spring of 2020, when the second round of risk
12 disclosures is done, does Mr. Furman at that time tell you
13 about any of the government lawsuits against Par Funding for
14 violating the securities laws?

04:07 15 MR. HYMAN: Objection.

16 THE COURT: Overruled.

17 A. No.

18 MS. BERLIN: I have no further questions. Thank you
19 so much.

04:07 20 THE COURT: Cross-examination.

21

22 CROSS EXAMINATION

23 BY MR. HYMAN:

24 Q. Good afternoon, Mr. Barth. How are you doing today?

04:07 25 A. Good afternoon.

1 Q. So approximately how many times have you had a conversation
2 with Mr. Furman?

3 A. **Conversation versus e-mail exchanges?**

4 Q. Conversations, sir.

04:07 5 A. **During what time period?**

6 Q. Throughout the entire course of your dealings -- or we'll
7 start from, when did you first meet Mr. Furman?

8 A. **August of 2017.**

9 Q. And at that time did you invest in Fidelis?

04:07 10 A. **At that time? No.**

11 Q. When is it that you first invested in Fidelis?

12 A. **April 2019.**

13 Q. So for the first two years beforehand, how often did you
14 speak to Mr. Furman?

04:08 15 A. **That period? Every few months. Actually speak to? Every
16 few months.**

17 Q. Are you sure it wasn't more frequently than that?

18 A. **It's possible.**

19 Q. And after -- during those conversations, did you ever
04:08 20 discuss the fact that Fidelis was involved in the MCA industry
21 or the other investments that Mr. Furman was involved in?

22 A. **Mr. Fidelis was involved in merchant cash? Itself? No.**

23 **Well, we talked about, you know, when we get to the fall of**

24 **2018 we talked about the merchant cash industry and that this**

04:08 25 **Par Funding was involved in it. And there were some potential**

1 **attractive returns associated with it.**

2 Q. And, in fact, you testified earlier that pre-COVID you were
3 paid \$2300 a month; that's correct?

4 A. **That is.**

04:09 5 Q. And that's a 12 percent return on your investment, correct?

6 A. **Correct.**

7 Q. And earlier today -- or how many times since everything has
8 started have you had discussions with the SEC?

9 A. **Just the SEC? Just the SEC? Before today?**

04:09 10 Q. Yes, sir.

11 A. **We talked in the lobby several times. Two or three.**

12 Q. You talked in the lobby with the SEC the day before you
13 came to testify?

14 A. **Yes they came out to keep me apprised of the status of me**
04:09 15 **coming in.**

16 Q. Talked about anything else with them?

17 A. **What they were going to ask, which we had already discussed**
18 **on the phone.**

19 Q. Gotcha. And how many times had you had those discussions
04:10 20 with the SEC about what they were going to ask you and what you
21 were going to say?

22 A. **Four or five.**

23 Q. In fact, you have a financial interest in seeing Mr. Furman
24 being held liable, don't you?

04:10 25 A. **Of course.**

1 Q. In fact, you have a liable by the SEC that is?

2 A. **I honestly don't know the answer to that.**

3 Q. Well, you're suing them, aren't you?

4 A. **I am involved in a class action lawsuit.**

04:10 5 Q. In fact, have you reviewed the complaint that you filed in
6 the class action lawsuit?

7 A. **Not since it was filed a year ago.**

8 Q. But do you recall the allegations that you included in the
9 complaint at that time, sir?

04:10 10 A. **I haven't reviewed it recently.**

11 Q. Isn't it true that you do not allege any omissions
12 concerning any alleged felons in that complaint, sir?

13 A. **If that's what it said, it's correct.**

14 Q. Isn't it true that you do not allege that Mr. Furman in
04:10 15 your class action complaint that he failed to tell you about
16 the New Jersey or Pennsylvania or cease and desist orders?

17 **MS. BERLIN:** Objection, Your Honor. If he could show
18 the document.

19 **THE COURT:** Overruled.

04:11 20 A. **If that's what it said, that's correct.**

21 **BY MR. HYMAN:**

22 Q. So you don't know what you put in the complaint September,
23 right?

24 A. **It was over a year ago. I don't remember. I have -- in**
04:11 25 **preparation for today I did not review that.**

1 Q. So then how do you expect the jury to believe you -- that
2 you know or have a good memory of what Mr. Furman did or didn't
3 tell you?

4 A. The things I'm telling you today are true.

04:11 5 MR. HYMAN: No further questions.

6 THE COURT: Redirect.

7 MS. BERLIN: Real quick.

8

9

REDIRECT EXAMINATION

04:11 10 BY MS. BERLIN:

11 Q. I'm glad Mr. Hyman brought up your class action lawsuit
12 against Mr. Furman.

13 When the -- now, how many times have you and I spoken
14 before today when I go to the lobby to tell you the status?

04:11 15 A. Before today? I think we only spoke on the phone once.

16 Q. Yeah. And when you talk about, like, talking to the SEC
17 four or five times, are you talking about, like, state SEC --
18 are you talking about me or Alise or --

19 A. You're the SEC, right?

04:12 20 Q. Yes, I am the SEC. Well, not me personally.

21 MR. HYMAN: Leading.

22 THE COURT: Overruled.

23 A. I'd have to think of a second time. Yes, you and I had a
24 conference call. Did we have any other calls? I texted some
04:12 25 of your staff coordinating today's meeting. That was really a

1 timing issue. And I don't -- and I think outside of
2 coordinating the phone call we had in the last week or so, just
3 to hear my story, there were no other conversations. If we go
4 back more than two weeks there were none.

04:12 5 BY MS. BERLIN:

6 Q. None. It was just the call that you and I had, and then
7 our office keeping you apprised of what time to be here
8 today --

9 A. Yes.

04:12 10 Q. -- fair to say?

11 Okay. So those were the conversations with the SEC?

12 A. That's correct.

13 Q. And one last question. On the class action that you filed,
14 was that affected by the SEC filing this case at all? Like,
04:13 15 was that case stayed by this case?

16 A. Can you rephrase or elaborate?

17 Q. Sure. The private lawsuit that you filed against
18 Mr. Furman --

19 A. That I'm a part of, yes.

04:13 20 Q. Yeah.

21 -- is that case on hold right now?

22 A. I believe, yes, it is. That's what they've told me.

23 Q. And that's because the SEC filed this case, right?

24 A. Correct.

04:13 25 Q. And unfortunately this case -- the SEC filing this case

1 forces your case to be put on ice?

2 A. **That's the way I understand it.**

3 Q. Okay. So you're not really helped -- your lawsuit is not
4 helped by our case being filed. In fact, our case freezes
04:13 5 yours in its tracks; is that true?

6 **MR. HYMAN:** Leading, Your Honor.

7 **THE COURT:** Overruled.

8 A. **Yes, that's what they told me.**

9 **MS. BERLIN:** Okay. Thank you so much. I don't have
04:13 10 any further questions. I hope you have a safe trip home.

11 **THE COURT:** Ladies and gentlemen, any questions for
12 our investor? No. Okay.

13 Thank you very much, sir. You are excused.

14 **MS. BERLIN:** Your Honor, we have of our first Zoom
04:14 15 witness --

16 **THE COURT:** Okay.

17 **MS. BERLIN:** -- Lori Boyogueno from the State of
18 Pennsylvania, Securities Bureau. And so --

19 Thank you so much.

04:14 20 **THE COURT:** Let me get my CRD to come on in and double
21 check. She's going to need one second to make sure the Zoom is
22 ready to go. So just give us a second.

23 **MS. BERLIN:** Absolutely. And if we could have a
24 second to contact the Pennsylvania Bureau and tell them to join
04:14 25 the Zoom for witnesses.

1 THE COURT: Yes. Go ahead and reach out to them.

2 MS. BERLIN: Thank you.

3 MS. JACQMEIN: Two minutes?

4 THE COURT: Yes. We'll give you a couple of minutes.

04:14 5 Is everybody okay? Does anybody need a restroom break
6 or anything?

7 All right. Just hang in there for a second. I just
8 want get this tech working and then we'll get started, guys.

9 Go ahead and step out and make a phone call.

10 MS. BERLIN: Thank you. We'll do that.

11 THE COURT: We're going to set it up right now.

12 MS. BERLIN: Thank you very much.

13 MS. JOHNSON: While we're working on that, Your Honor,
14 I have one exhibit that they've agreed can be admitted.

04:17 15 THE COURT: What's the number?

16 MS. JOHNSON: Plaintiff's 4.

17 MR. HYMAN: We've stipulated to the admission of the
18 Pennsylvania ruling.

19 THE COURT: Okay. So at this time Plaintiff's Exhibit
04:18 20 4 will be admitted.

21 (Thereupon, the exhibit was admitted into evidence.)

22 MR. HYMAN: Yes. And for the record, we offered to
23 stipulate to --

24 (Thereupon, counsel confer.)

04:21 25 MS. BERLIN: And, Your Honor, while we're waiting for

1 the Zoom connection to happen, based on the time, I think we're
2 going to get through Lori Boyogueno and then be finished for
3 the -- it makes sense to pause there. I think that's going to
4 take us until 5:00, right, realistically.

5 THE COURT: Okay.

6 MS. BERLIN: And then we were going to try to finish
7 by 5:00. We think we're going to be done by 5:00.

8 THE COURT: Okay.

9 MS. BERLIN: And then we would start in the morning
04:21 10 with the new witness. And hopefully we'll finish -- we're
11 going to try to finish before 5:00. And that would be -- our
12 idea would be then to have that as our breaking point, if
13 that's okay. If not, we have other witnesses we can start.

14 THE COURT: You're saying for tomorrow?

04:21 15 MS. JOHNSON: We think this will be our last witness
16 of the day. I think we'll probably finish a little bit before
17 5:00.

18 THE COURT: That's fine. I mean, unless there was
19 some other witness that was extremely brief after this. But if
04:21 20 there's not and this goes past 5:00 then we're better off
21 starting tomorrow.

22 MS. JOHNSON: This is our shortest witness, so that's
23 why --

24 MS. BERLIN: Yeah.

04:22 25 THE COURT: Okay.

1 MS. BERLIN: We think she's 15 minutes.

2 THE COURT: All right. We'll take care of this
3 witness and we'll be done for the day.

4 MS. BERLIN: Thank you.

04:22 5 THE COURT: You guys all see the screen over there?
6 You can all see, right? Okay.

7 I'm sure you're all enjoying the comments as much as I
8 am.

9 MR. HYMAN: I almost want to ask them if I should keep
04:23 10 the man bun or lose it.

11 THE COURT: Don't interact with them.

12 THE COURTROOM DEPUTY: She should be able to speak.

13 THE COURT: She's connecting now.

14 THE COURTROOM DEPUTY: She is.

04:23 15 MS. JOHNSON: Want to do a test run?

16 THE COURT: We're just going to give her the
17 opportunity because since it's Web-Ex, without interaction
18 live, we're trying to give her permission to be able to speak.
19 That's what we're doing now. So just one second here.

04:24 20 MR. HYMAN: Your Honor, perhaps it would make sense
21 to -- never mind.

22 MS. JOHNSON: When I read, I read fast. I will try to
23 be slow.

24 THE COURT: Ladies and gentlemen who are participating
04:25 25 in the Zoom and watching the proceedings, we are going to have

1 our first witness appear over Zoom to testify. So I am
2 directing that any participants that are going to be watching
3 this next witness, everyone needs to cease engaging in the chat
4 function.

04:25 5 If the Court sees another chat appear which -- so
6 everyone understands, not only is it visible to the Court, but
7 it is visible to the jurors and could have an impact on the
8 evidence in this case. I'm doing this out of a courtesy to
9 investors so they can participate and watch.

04:25 10 If the chats come up while I'm getting testimony from
11 this next witness, you will be removed from the Zoom, you will
12 not be permitted to participate or watch any other court
13 proceedings, similar to an outburst that would happen if you
14 were live in my courtroom, and I will have a United States
04:25 15 Marshal remove you from the courtroom.

16 So I'm advising everyone that is currently on the chat
17 function to cease any engagement in conversation at a minimum
18 until we have this Zoom witness finished. This is not going to
19 be the first time that we have a witness appear on Zoom. So
04:26 20 I'm going to admonish everyone not to engage in the chat
21 function again whenever we have our next Zoom witness.

22 If the parties wish to speak on Zoom through the chat
23 function, you're free to do so when we do not have a witness
24 testifying. The problem is that all of these communications
04:26 25 are visible to jurors who share the screen when someone appears

1 by Zoom.

2 So again, I will remind everyone that if you are
3 chatting regardless of whatever the subject matter may be, the
4 Court will feel compelled to remove you. Okay?

04:26 5 I would ask if the witness can hear me. I need her
6 video to be turned on, please. She should be able to hear me,
7 ma'am, but I would like to see if you can turn on your video.

8 **THE WITNESS:** I can hear you, and my video is on.

9 **THE COURT:** Okay. Well, you are a black box for us.
04:26 10 So unless I'm missing something, please double check your
11 settings. I will look and see, but I'm not sure, it's not a
12 video that I am able to manipulate from my end, I don't
13 believe. We're working on it, but can you please double check
14 and make sure there's no video or stop video clicked?

04:27 15 **THE WITNESS:** I don't see that.

16 **MR. HYMAN:** Your Honor, at least with this witness, I
17 don't think there's any credibility issues. So at least from
18 the defense end, we wouldn't object if due to technical
19 issues --

04:27 20 **THE COURT:** She can't turn on the camera?

21 **MR. HYMAN:** Correct, Your Honor.

22 **THE COURT:** Did we lose her? No. She disconnected.
23 This is her issue, not ours.

24 **MS. BERLIN:** We think --

04:28 25 **THE COURT:** Do you want to try to - tell her to

1 reconnect. She's going to have to testify over the phone or
2 over the Zoom without video. We'll go by it that way.
3 Obviously there's no defense objection, and it's a very
4 straightforward witness. Let's at least get that done if we
04:28 5 can. She's reconnecting now.

6 **MS. BERLIN:** I was just checking to see -- as the
7 Court knows, one features of Zoom -- there she is.

8 **THE COURT:** She's now present. She might have had to
9 restart to get the video to work.

04:28 10 Now you're muted, ma'am. So let me unmute you.

11 **MS. BERLIN:** Thank you, Your Honor.

12 **THE COURT:** Can you hear me?

13 **THE WITNESS:** I can hear you.

14 **THE COURT:** Okay. Very good. So sometimes it needs
04:28 15 to be connect, disconnect, and we'll reconnect and the video is
16 there. So we can see you.

17 So ladies and gentlemen of the jury, can you see the
18 next witness on there?

19 **THE JURY:** Yes.

04:28 20 **THE COURT:** All right. So what I'm going to ask you,
21 ma'am, sometimes it's a little weird with the audio. Just
22 speak as loud as you can into whatever your microphone is on
23 your computer so that all my jurors can hear you. They're
24 watching you live as well. Okay?

04:29 25 **THE WITNESS:** Yes.

1 **THE COURT:** Very good. So with that being said, we'll
2 go ahead and administer an oath.

3 I don't know if you can -- Gracie, if you can hear me,
4 Gracie, please go ahead and come on with your video and
04:29 5 administer the oath to the witness.

6 **MS. BERLIN:** And, Your Honor, the chat is still going.

7 **THE COURT:** Yes. I believe that someone isn't hearing
8 me. So this individual will unfortunately be removed from the
9 chat momentarily. So let go ahead and get started.

04:29 10 Gracie, can you please administer the oath?

11 **THE COURTROOM DEPUTY:** Yes, Your Honor.

12 Thereupon,

13 **LORI BOYOGUENO,**

14 having been duly sworn by the courtroom deputy, testified as
04:29 15 follows:

16 **THE COURT:** Thank you, Gracie.

17 And I think we should no longer have any feedback.

18 And let's go ahead and get started.

19

20 **DIRECT EXAMINATION**

21 **BY MS. JOHNSON:**

22 Q. Could you state your name for the record, please.

23 A. **Lori Boyogueno.**

24 Q. Thank you. And where are you currently employed?

04:30 25 A. **Pennsylvania Department of Banking and Securities.**

1 Q. And how long have you been with the department?

2 A. **Twelve years.**

3 Q. And what do you do at the department?

04:30 4 A. **I'm the regional chief of the Bureau of Compliance and**
5 **Examinations.**

6 Q. And what is the function of the Bureau or the department?

7 What is your mission there?

8 A. **We regulate -- we enforce and regulate our securities**
9 **(inaud.) Securities Act and enforce the regulations and protect**
04:30 10 **the investors.**

11 Q. And is that a government agency?

12 A. **It is. It's a Pennsylvania state.**

13 Q. Pennsylvania state government agency?

14 A. **Yes.**

04:31 15 Q. And I'm going to show you what's been introduced into
16 evidence as Plaintiff's Exhibit 4. It's the consent agreement
17 and order. Okay.

18 Give us a minute and we'll put it on the screen,
19 unless you have the copy in front of you?

04:31 20 A. **I do have a copy in front of me.**

21 Q. Okay. Great. We'll start with that, but we'll also put it
22 on the screen.

23 **MS. JOHNSON:** We're just waiting on permission to
24 screen share.

04:32 25 **THE COURT:** Let me make sure we grab that permission.

1 Has it been requested? You guys requested it now?

2 **IT TECHNICIAN:** I did.

3 **THE COURT:** Gracie is going to connect it. Give me
4 one second.

04:32 5 **BY MS. JOHNSON:**

6 Q. While we're waiting, can you describe what this is?

7 A. **This is a consent order agreement.**

8 Q. And who is it -- who filed this?

9 A. **I'm sorry. I couldn't hear you.**

04:32 10 Q. Who -- did your agency file this?

11 A. **Yes, they did. It's from the Commonwealth of Pennsylvania,**
12 **Department of Banking and Security.**

13 Q. And who is it filed against?

14 A. **Par Funding Complete Business Solutions.**

04:32 15 Q. And what was the date that this was filed?

16 A. **November 28th, 2018.**

17 Q. And if you look at the first paragraph -- this is when
18 we'll need it.

19 **THE COURT:** Are you connected to the Zoom?

04:33 20 **IT TECHNICIAN:** I am.

21 **THE COURT:** What name are you under? For some reason
22 my courtroom deputy can't --

23 **IT TECHNICIAN:** (Inaudible.)

24 **THE COURT:** It's not showing up on there.

25 **IT TECHNICIAN:** Maybe I'm in the wrong Zoom?

1 THE COURT: We don't have you connected, because I
2 don't see you, so I can give you sharing privileges.

3 MS. BERLIN: I know there was two Zoom, one for
4 witnesses and one for the public. And I don't know if they're
04:33 5 in two different ones.

6 THE COURT: I don't know. If you can try to reconnect
7 here to it. We don't see anybody else on here. So you should
8 be able to connect. I'm trying to see if I spot you as a
9 participant on the right.

04:35 10 IT TECHNICIAN: Same thing. I'm in, but I'm not in.

11 MS. JOHNSON: Are you able to publish this to the
12 jury?

13 MS. BERLIN: Your Honor, can we do that.

14 MS. JOHNSON: If we can just publish it to the jury,
04:35 15 she has a written copy that I can direct her.

16 THE COURT: Sure. I think the only problem is they're
17 looking at the screen. So I am not sure how you're going to
18 publish that and have a double feed in there. We're all
19 sharing this particular screen. So I don't know how we're
04:35 20 going to override -- we only have one screen.

21 So the only thing we can do is we can old-school
22 publish. There is a printed copy and they can pass it around.
23 They can start looking at it while she discusses it. That
24 might be the easiest thing to do. That doesn't seem to be
04:35 25 another way to --

1 MS. JOHNSON: You know what, I'll -- I don't need to
2 do that. I'll just ask her questions, and she can testify --

3 THE COURT: It can be moved in later, and then it can
4 be put in front of the jurors after she's testified. So that
04:36 5 may be the easiest way.

6 MS. JOHNSON: We already moved it in.

7 THE COURT: If it's already moved in, so let's ask
8 some questions and maybe we can show them later.

9 And if that's a copy, why don't we go ahead and
04:36 10 publish that to the jury. Why don't we hand that.

11 Ladies and gentlemen of the jury, this is just old
12 school. You can hand it around to each other so we don't delay
13 any further, and you can look at it while she's talking. Let's
14 continue please, so we can finish up with this witness.

04:36 15 BY MS. JOHNSON:

16 Q. All right. If you look at the first paragraph -- if you
17 look at the first paragraph, it says that the Commonwealth of
18 Pennsylvania, acting through the Department of Banking and
19 Securities, Bureau of Securities Compliance and Examinations,
04:36 20 has conducted an investigation of certain securities-related
21 activities of complete business solutions doing business as Par
22 and based on the results of the investigation, that the Bureau
23 has concluded that CBSG has engaged in certain
24 securities-related activities in violation of the Pennsylvania
04:37 25 Securities Act.

1 Were you involved in that investigation?

2 A. **Yes, I was.**

3 Q. And did this consent agreement and order come out as a
4 result of that investigation?

04:37 5 A. **Yes.**

6 Q. And if you look at the first paragraph, or under
7 Background, it says: Number 1, the Department is -- the
8 Commonwealth of Pennsylvania's administrative agency authorized
9 and empowered to administer and enforce the 1972 Security Act.

04:37 10 And then number two: The Bureau is primarily
11 responsible for administering and enforcing the 1972 act for
12 the department.

13 Is that basically what you told us, as part of your
14 mission, that the Bureau is charged with doing for the State of
04:38 15 Pennsylvania?

16 A. **That is correct.**

17 Q. Okay.

18 **MS. BERLIN:** Your Honor, one moment. Is it okay if
19 we -- it's already happening. We were just going to put our
04:38 20 laptop up there with the document on it.

21 **THE COURT:** That's fine. Maybe put it in there
22 towards the middle. That's fine. Sure.

23 **MS. BERLIN:** I just wanted to make sure.

24 **THE COURT:** Yeah.

04:38 25 **MS. JACQMEIN:** They have three copies. They're

1 sharing it.

2 MS. BERLIN: And then the computer.

3 THE COURT: And then the computer. Everyone's sharing
4 and looking at one.

04:38 5 MS. BERLIN: Thank you, Your Honor. I just wanted to
6 make sure we were okay.

7 BY MS. JOHNSON:

8 Q. All right. And if you turn to page 2 under Violations.
9 Under number 8, it says: By engaging in acts and conduct set
04:38 10 forth in paragraphs 1 through 5 above, CBSG employed at least
11 one unregistered agent in violation of Section 30(b) of the
12 1972 act.

13 Is that what -- can you explain what that violation
14 means, what they violated?

04:39 15 A. They were not registered to sell securities. So they were
16 in violation of doing so.

17 Q. And under number 9 on the following page, page 3, it states
18 what relief that they -- department was asking for. And it
19 says: Within 30 days of the effective date of this order as
04:39 20 defined by paragraph 19, CBSG shall pay the department an
21 administrative assessment in the amount of \$499,000.

22 Was that the requested relief that you had installed
23 against Par Funding?

24 A. It is.

04:39 25 Q. Just going to walk you through a few more things here.

1 And on page 5 -- oops, I'm sorry, go back to page 4,
2 under number 16 it says: This is the entire agreement. The
3 order contains the entire agreement between the department and
4 CBSG. There are no other items, obligations, covenants,
04:40 5 representations of any kind whatsoever concerning this order.

6 Can you explain what that paragraph means?

7 A. **There were no other actions taken against CBSG.**

8 Q. Was this the entirety of the agreement between CBSG or
9 Par Funding and the Bureau?

04:41 10 A. **I'm sorry, could you repeat that?**

11 Q. I'll rephrase.

12 Were there any other agreements other than this one
13 between the Bureau and Par Funding?

14 A. **No.**

04:41 15 Q. Was this order ever retracted by the Bureau?

16 A. **No.**

17 Q. Was this order -- is this order still in effect?

18 A. **Yes.**

19 Q. Is this order publically available?

04:41 20 A. **Yes.**

21 Q. How would a member of the public find this order if they
22 wanted to find it, if they wanted to view it?

23 A. **They would just have to go onto our website, Pennsylvania**
24 **Department of Banking and Securities under Enforcements, and it**
04:41 25 **would be right there.**

1 Q. Did the Bureau ever have subsequent conversations with
2 Par Funding indicating that it approved of Par Funding's
3 business model?

4 A. No.

04:42 5 Q. Did they ever tell Par Funding that they loved them?

6 A. No.

7 Q. How about that they blessed the business, Par Funding's
8 business?

9 A. No. No.

04:42 10 Q. So no other subsequent agreements or conversations
11 concerning the Par Funding business other than what's contained
12 in this order?

13 A. No.

14 **THE COURT:** By the way, if we wish at this point, we
04:42 15 have given access to you on the Zoom, so you should be able to
16 share -- screen share. We fixed that. Okay. So going forward
17 for any other witnesses on Zoom, that should be taken care of.
18 You might just want to leave it as it is for now, but for the
19 future.

04:42 20 **BY MS. JOHNSON:**

21 Q. Now, we talked the order violation under the filing that
22 there was a registration violation of Par Funding. Why is that
23 important?

24 A. Because the consumers could not do their research and find
04:43 25 out about any investments that they're investing in if they're

1 not registered.

2 MS. JOHNSON: Thank you. That's all I have,
3 Your Honor.

4 THE COURT: Okay. Cross-examination.

04:43 5 MR. HYMAN: Of course.

6

7

CROSS EXAMINATION

8 BY MR. HYMAN:

9 Q. Good afternoon. As I start, because I'm not the best at
04:43 10 pronouncing names, would you mind pronouncing your name for me?
11 Is it Ms. Boyogueno?

12 A. No. Boyogueno.

13 Q. Boyogueno.

14 How is the weather up in Pennsylvania, Ms. Boyogueno?

04:43 15 A. Cold.

16 Q. It's unfortunate you couldn't come down to Florida.

17 So prior to the entry of this consent order that was
18 entered, did the department conduct an investigation as to
19 Par Funding or CBSG's books and records?

04:44 20 A. Yes.

21 Q. Did the department find that there were any issues with
22 respect to Par Funding's books and records or --

23 MS. JOHNSON: Before you answer.

24 Objection, Your Honor.

04:44 25 THE COURT: Overruled.

1 You can answer.

2 MS. BERLIN: Your Honor, objection.

3 A. Under confidentiality, I cannot.

4 BY MR. HYMAN:

5 Q. Okay.

6 THE COURT: There you go.

7 BY MR. HYMAN:

8 Q. If the department found that there was a problem or a risk
9 of investors losing money, would it have taken further action
04:44 10 beyond the consent order?

11 MS. JOHNSON: Again, same objection.

12 THE COURT: Let's move on from that, given the
13 constraints that she has testified about those pending matters.

14 Go ahead.

04:44 15 BY MR. HYMAN:

16 Q. So after this order was entered, was CBSG allowed to
17 operate in the Commonwealth of Pennsylvania provided -- sorry,
18 that was it.

19 THE COURT: I think you'll have to restate that
20 question.

21 MR. HYMAN: Sorry.

22 BY MR. HYMAN:

23 Q. After entry of this order, was CBSG allowed to operate in
24 Pennsylvania?

04:45 25 A. They should not have been doing what they were doing, no.

1 Q. Okay. Isn't it true that no further action has been taken
2 after this order was entered?

3 MS. JOHNSON: I'll object, Your Honor.

4 MS. BERLIN: Object on the same grounds.

04:45 5 THE COURT: That's going to be sustained.

6 MR. HYMAN: No further questions.

7 THE COURT: Okay. Any redirect?

8 MS. JOHNSON: No, Your Honor.

9 THE COURT: Okay. Any questions from the jurors for
04:45 10 the witness on the Zoom? Okay.

11 Thank you so much, ma'am, for making yourself
12 available and connecting with us this afternoon. Have a great
13 rest of your day. You are excused.

14 THE WITNESS: Okay, thank you.

04:46 15 THE COURT: Ladies and gentlemen of the jury, if you
16 would do me a favor, go ahead and leave your notepads on your
17 chairs. Just give me about ten minutes to discuss schedule
18 with the lawyers and when I bring you guys back out, I'll give
19 you a preview of tomorrow. Okay?

04:46 20 (Thereupon, the jury exited the courtroom.)

21 THE COURT: Please be seated, everyone. Okay. I just
22 want to go ahead and do some housekeeping before tomorrow to
23 make sure that we have our game plan. We're ending a little
24 early and we lost quite a bit of time today, although I'd like
04:46 25 to think that it was necessary for the benefit of all parties

1 going forward to understand exactly what's at stake, what the
2 issues are, and truthfully, actually the Court was concerned
3 that we needed to make everything clear so that Mr. Furman and
4 his team knew exactly what the SEC's theory was and that the
04:47 5 SEC similarly clarified their theory and so there will be no
6 confusion for the record. And so I think that case management
7 was necessary and it was to the benefit of both sides.

8 So tomorrow, who am I going to hear from? I expect,
9 based upon my notes, we're still going to have to two investors
04:47 10 that are going to be testifying; is that correct? Two more?

11 **MS. BERLIN:** Yes. So we have Mr. Nash and we also --
12 Frank Nash. And then also, Your Honor, you know, we mentioned
13 that we have the -- an investor who just was in the hospital,
14 he's out.

04:47 15 **THE COURT:** Correct.

16 **MS. BERLIN:** But I'm not sure -- we also have an issue
17 with him because he's also, like, deaf or extremely hard of
18 hearing, so we're doing it -- we have someone going to his
19 house. We're not sure if we're going to have -- if it's going
04:48 20 to be tomorrow. He just got out of the hospital. Or if we're
21 going to have to do him Friday morning. We have mentioned
22 that. I just wanted to let you know. He's a moving -- we're
23 being flexible on him.

24 But we do have that investor. Then we have James
04:48 25 Klenk, he's the comptroller of Par Funding.

1 THE COURT: Correct.

2 MS. BERLIN: William Mitchell, he's the Texas
3 regulator.

4 THE COURT: Okay. Is that going to be similar, what
04:48 5 we just heard from New Jersey?

6 MS. BERLIN: Yes.

7 THE COURT: So over Zoom, probably be brief?

8 MS. BERLIN: 15 minutes.

9 THE COURT: Okay.

04:48 10 MS. BERLIN: We also have a Alexis Abbonizio.

11 THE COURT: Right. Which we know her testimony is
12 possibly limited to just explaining how she would go ahead and
13 take care of some of the movement that Mr. Perry Abbonizio
14 would do, just kind of work with him on e-mail and follow
04:48 15 directions and things like that.

16 MS. BERLIN: Sending notes, what Mr. Furman would send
17 to her, what she would send back. They never even met. It's
18 all -- yeah.

19 THE COURT: That's should be fairly brief too.

04:49 20 MS. BERLIN: It's going to be brief, 30 minutes.

21 THE COURT: And she's also on Zoom, right?

22 MS. BERLIN: Yeah.

23 THE COURT: Okay.

24 MS. BERLIN: Then we have Wendy Furman.

04:49 25 THE COURT: Right. She's a Zoom witness. Okay.

1 MS. BERLIN: And Mr. --

2 THE COURT: Furman, of course.

3 MS. BERLIN: -- Furman, of course.

4 THE COURT: Right.

04:49 5 MS. BERLIN: And I think that will be the day. And I
6 mean, if we don't finish Mr. Furman -- hopefully we finish
7 Mr. Furman. If we don't, we'll start him Friday morning.

8 And then our last witness for Friday morning will be
9 Steven Bouchard from the New Jersey regulators. He's a little
04:49 10 bit longer than what you just heard. He's got a couple of
11 additional things.

12 THE COURT: Also Zoom; is that right? Or no?

13 MS. BERLIN: Yes, sir. He is Zoom.

14 THE COURT: All right. So let me summarize so that we
04:49 15 understand. What I'm trying to do here is see -- I want to land
16 the SEC's plane by the end of Friday. So that's the whole
17 point. So I've got 48 hours to get your case done.

18 So here's what I got, the line up. I have the short
19 witnesses appear to be Mitchell, Furman and Abbonizio -- Alexis
04:49 20 Abbonizio via Zoom. Those all seem pretty streamlined. And
21 possibly the one investor over Zoom as well, who has recently
22 been discharged.

23 I expect that Nash and the investor will be probably
24 within an hour, based upon what I've seen from other investors,
04:50 25 give or take. And then we're looking at the longest witnesses

1 that remain would be -- I don't think Bouchard from the New
2 Jersey regulator's office is going to be that long.

3 **MS. BERLIN:** 30 minutes.

4 **THE COURT:** 30, that's not bad at all. And so really,
04:50 5 other than Mr. Furman and Mr. Klenk, most witnesses here are
6 inside an hour it looks like. Is that fair?

7 **MS. BERLIN:** Oh, absolutely. I thought all of our
8 witnesses were going to be inside an hour, except for
9 Mr. Furman.

04:50 10 **THE COURT:** It may be. It may be. I don't know. I'm
11 just --

12 **MS. BERLIN:** That's our hope.

13 **THE COURT:** That's my hope. But my point is, I think
14 that we are without a problem, especially given what the Court
04:50 15 did today and that we streamlined a number of these issues
16 already, I expect that we should have no problem with this
17 lineup in the next two days. I really don't see an issue. In
18 fact, if things go smoothly without any sort of issues, we
19 might even be ending a littler earlier on Friday, if we can
04:51 20 keep it moving.

21 **MS. BERLIN:** Our plan was to be finished Friday
22 morning.

23 **THE COURT:** Right. Now, it's probably going to be
24 Friday afternoon because we lost --

04:51 25 **MS. BERLIN:** It might be.

1 THE COURT: You never know. That's true.

2 MS. BERLIN: We can make up time. We're good like
3 that. We're going to really try to finish Friday morning.
4 It's our goal.

5 THE COURT: Okay.

6 MS. BERLIN: It depends on how things -- you can't
7 predict, right, but that's our plan.

8 THE COURT: Well, look, we've had issues with our
9 jurors. I mean, we had a juror that has been having some
04:51 10 issues at home. That ate up 30 minutes. An hour here or
11 there. So that's part of it, too, so I'm fine. But the
12 important thing is, I think this lineup, especially because
13 Zoom was successful today and now we have tech support ready to
14 go on that with privileges to share a screen, I know that these
04:51 15 witnesses should be very quick. I don't think there's much in
16 the way of cross-examining them, so we're not going to have a
17 problem. We should be able to finish this on the SEC's side.
18 Sets it up for very natural breaks, so that any defense issues
19 on their case can begin on Monday. So this is a good schedule.
04:52 20 I can work with this.

21 All right. I just want to let -- I want to let my
22 jurors know what the expectation is. I don't want them to be
23 nervous because I'm sure they've seen some delay. So I would
24 like to represent to them that we are still on schedule to have
04:52 25 the SEC conclude their case this week. And I think that's a

1 very fair assessment. And my plan is to allow the defense to
2 put on their case early next week and still closing by the
3 middle of next week.

4 **MS. BERLIN:** Yes.

04:52 5 **THE COURT:** I think that's the goal, and it seems like
6 we're going to be quite all right with that. Okay.

7 **MS. BERLIN:** I agree.

8 **THE COURT:** So again, tomorrow will be the same
9 routine, the 9:30 start. And we'll hopefully get everyone here
04:52 10 on time and that should help us out.

11 Okay. So anything else? I mean, I just want to let
12 the jury go. Anything else on scheduling that I need to be
13 aware of?

14 **MS. BERLIN:** No, not at all I think we're making great
04:52 15 time.

16 **THE COURT:** Even with some delays. I agree.

17 **MS. BERLIN:** We kind of built that in. We try to be
18 flexible, but I think we're definitely on track.

19 **THE COURT:** Great. Great.

04:53 20 How about on the defense side, any scheduling issues
21 just before I bring the jury back in and let them go?

22 **MR. HYMAN:** I don't believe there's any scheduling
23 issues. There's one separate side thing. But I prefer to let
24 the jury go.

04:53 25 **THE COURT:** Yes. We're not going to waste the jury's

1 time with that. This is just to see what their expectations
2 are. We'll address housekeeping issues amongst ourselves after
3 they're gone. Let's bring them in. Thank you.

4 (Thereupon, the jury entered the courtroom.)

04:54 5 **THE COURT:** Please be seated, everyone. So just to
6 give you guys a little preview, I've talked over some
7 scheduling with the lawyers. So we're done for the day. We're
8 going to do our usual routine. We'll start tomorrow at 9:30.

9 I want to let everyone know our plan. We're on pace
04:54 10 for the SEC to finish their case on Friday. So I just want
11 everyone to know we're not behind schedule in the slightest.
12 The goal that I had was to get the SEC's case done this week.
13 They're adhering to that goal. Tomorrow they expect to have
14 numerous witnesses, shorter witnesses on Zoom. So we'll be
04:54 15 doing that tomorrow.

16 We still have a couple of live witnesses, but we do
17 expect that sometime middle of Friday afternoon, we'll be done
18 with the SEC's case, which means they will rest. That puts us
19 at a very natural breaking point. So if you guys go into the
04:55 20 weekend and then when we return on Monday, we'll hear the
21 defense's case. They will be able to put on their witnesses.

22 It puts us on schedule to be closing with this case by
23 the middle of next week, which is what I wanted to do. As I
24 said, we need your availability through next week, but we're
04:55 25 going to beat that. We're going to stay inside two weeks for

1 sure. So I just want to let you guys know because we have had
2 some unforeseen delays, that it's not changing our schedule to
3 the slightest or your commitment to the trial.

4 As per usual, let me know if anything is going down
04:55 5 tomorrow when you guys are coming in, running behind a little
6 bit. Let me know. We won't start until you're all here. I
7 know that we've heard a lot of testimony over the last two days
8 and I haven't repeated again today, but it's incumbent that I
9 do so now before I let you go.

04:55 10 Remember to tell family and friends you can't discuss
11 the case, what you've seen and what you've heard until you are
12 done with your service. You can't talk to each other about
13 what you're seeing, what you're reading until you're
14 deliberating.

04:55 15 Stay off social media. No discussion about this case
16 or any form whatsoever: Facebook, Instagram, Twitter,
17 et cetera.

18 Make sure you do no research regarding any of the
19 things that you've heard in this case, any of the document
04:56 20 you've seen. Nothing should be looked up on any sort of search
21 engine or anything of that kind.

22 Remember, the lawyers will continue to avoid you as
23 they must when you come in tomorrow and any kind of a lunch
24 break. When you go to leave, leave your notepads in the jury
04:56 25 room. Don't take them with you. We'll secure the jury room as

1 per usual, and we'll get everybody in here tomorrow at 9:30 and
2 get started with our next witness. All right?

3 So with this being said, we'll get you out of here a
4 few minutes before 5 o'clock. Have a great evening, everyone.

04:56 5 Tomorrow, 9:30, we'll see you in the room. Thank you.

6 (Thereupon, the jury exited the courtroom.)

7 **THE COURT:** Okay. Please be seated, everyone. Let me
8 just -- because I wanted to make a record on it. We have been
9 moving pretty fast and furious on some of the issues that have
04:57 10 been flying around here. We continue to have a lot of
11 evidentiary objections or objections generally.

12 We obviously withdrew the objection to the Fidelis
13 disclosure or memorandum that -- and I'm going to forget the
14 number right now, but it was basically the same document that
04:57 15 was advanced by -- it's okay. They can listen. Basically the
16 same document that was advanced by the defense, except of
17 course the defense had filled out Appendix A, B and C. These
18 were without those appendices on them. It was obviously
19 withdrawn, but I just want to make sure that we're not
04:57 20 conflating any issues or having any concerns.

21 I would presume that that document -- although the
22 initial objection was obviously withdrawn, I'm not certain if
23 we're going to go under an 801 party admission given how it was
24 framed or if it's really shown less for the contents of the
04:58 25 actual document and the interest rates that were testified to

1 and more about the fact that there was actually -- I don't want
2 to call it a prospectus because it's not. It's an offer
3 memorandum, I think is the title.

4 **MS. BERLIN:** It's called a private placement
04:58 5 memorandum. So the difference between that and what we were
6 shown before is the other one had documents attached to it that
7 were supposedly signed by an investor. But we have issues. We
8 think that will come out as we develop the case or as we show
9 the case.

10 **THE COURT:** I just want to -- all I care --

11 **MS. BERLIN:** It's a different -- it didn't have the
12 appendixes, and that was our issue with those attachments to
13 it. But yes, the PPM is relevant because that is a written --
14 it's just another place for scienter, where he's got 8 pages of
04:58 15 "here's all the risks" and he doesn't disclose any of the risks
16 that are known to him. That's what we will argue on cross.

17 **THE COURT:** I guess the important thing here is I'm
18 talking strictly from an evidentiary standard that the offering
19 of that -- I want to make it clear on the record so we don't
04:59 20 have issues down the road on any objections -- is the basis for
21 the admission of that that it is not offered for the truth of
22 the matter asserted in the memorandum but actually offered
23 simply to show a lack of disclosure, meaning that it's -- it
24 does not have a complete list of what the SEC believes were
04:59 25 known risks by Furman; is that right?

1 **MS. BERLIN:** That's right. And that document --
2 there's a second point too, which is that document also says
3 Fidelis is investing in an MCA, and it talks about -- like what
4 we're arguing that he's raising money for an MCA. And we'll
04:59 5 get out later that there's only one MCA and it's Par Funding.

6 So it's relevant to that, and the disclosures are the
7 critical piece that I use as a scienter basis. If you spent --
8 you draft 10 pages of all the risks and you don't include the
9 ones that exist, it goes to a scienter. So it's admissible for
05:00 10 that.

11 **THE COURT:** So -- but, I mean, admissibility in that
12 case, I think you would agree with me, there's two arguments
13 there. One would be the fact that you're omitting things.
14 It's less for the contents of the document and more about what
05:00 15 is not disclosed, and that I think has its own non-hearsay
16 issue. But the content, to the extent they show that Fidelis
17 is funneling money or investing in MCAs, that is being shown
18 for that representation and that truth. So I assume that that
19 would come in essentially as a party admission by Furman. I'm
05:00 20 trying to figure out what the hearsay exception is to that
21 content.

22 **MS. BERLIN:** Right. So today what we -- I admitted it
23 today with this witness. I only asked him about what was
24 disclosed. So basically, I think would be -- like, it's not
05:00 25 whether what's written there is true. Whether those risks are

1 true. That's what I showed him, only the section about the
2 risks.

3 **THE COURT:** And to show that there's some risks that
4 were not disclosed.

05:00 5 **MS. BERLIN:** Not disclosed. So it was only -- it
6 wasn't about whether these risks were true or whether what's
7 written is accurate. I didn't have him read those risks. It
8 was jus: This is what you were told. What did you get from
9 that? Did he disclose to you these things? Not whether the
05:01 10 document itself is true. So today we didn't use it for the
11 truth of the matter asserted. I will be using it with another
12 witness at that time. We can address it further if you --

13 **THE COURT:** I want to get ahead of it, because it may
14 not necessarily be -- it could be under 801, I believe, (d)(2),
05:01 15 but it could be a party admission issue, if it's Furman
16 representing it.

17 But I think for purposes of today, again, I don't want
18 to be overly academic. There's no objection. You don't have
19 an objection.

05:01 20 **MS. BERLIN:** Okay.

21 **THE COURT:** You don't have an objection. But
22 generally, I just want for my own sake to make sure we don't
23 have a tit-for-tat or a battle on some of these documents.

24 **MS. BERLIN:** Oh, no.

05:01 25 **THE COURT:** I just want to make sure that we all

1 understand there was an objection. It was withdrawn. I think
2 we know it why it was offered. For my own edification, I want
3 to be clear that it was simply for the absence of disclosure
4 more than anything else, not for the contents and therefore
05:02 5 there's no hearsay.

6 Trust me, look, you guys may want to make all sorts of
7 objections. My job is to protect the record should this matter
8 go beyond this district court proceeding. So I'm just
9 concerned because we've had pretty much every pro forma
05:02 10 objection raised on almost every question or every single piece
11 of evidence.

12 When that happens, whether or not we think we're
13 making a record or laying land mines, I don't like it. So what
14 I do is I diffuse them because I don't want my overruling
05:02 15 repeatedly of objections that I think are not well taken to not
16 give expansion in terms of logic on the record.

17 So I wanted that one to kind of just get out there
18 because we had just fought over that same document, but we need
19 to be clear why I sustained an objection to it and they
05:02 20 withdraw it on yours, but when you objected to theirs, we did
21 not have anything in that appendix in your draft.

22 **MS. BERLIN:** That's correct.

23 **THE COURT:** They had appendices. They had the
24 appendices were being used for the truth of the matter asserted
05:03 25 regarding representations as to their net worth and value.

1 That is why that was a problem and then the evidentiary
2 perspective. So I just need to be clear why the Court would
3 ever overrule one, let in another one, and I just want that to
4 be very clear.

05:03 5 The other thing that needs to be stated on the record
6 is we have had a number of e-mails and communications that were
7 flying around during the investors at different points. The
8 Court overruled routinely pro forma hearsay objections that
9 have been raised. My understanding for doing so, number one,
05:03 10 has been that a lot of the e-mail traffic behind the principals
11 and Par Funding, ABFP, and the like, is again, by the SEC to
12 show the nature of funneling and ongoing communication, not the
13 contents of the e-mail. It's about showing the relationships
14 between the parties, and that is why the Court has been
05:03 15 allowing these exhibits to come in over the defense objection,
16 because I don't feel they're being shown for the contents of
17 the matter asserted but for those relationships and for state
18 of mind, which is continuously an issue and a scienter issue
19 with a case like this.

05:04 20 So I wanted that to be clear because that has come
21 in -- there's been a lot of --I think it was a couple of
22 witnesses ago, there was a lot of e-mail traffic that was
23 shown, there was a lot of objections which I overruled. I did
24 not get an opportunity, nor did I want to kind of belabor that
05:04 25 in front of jury.

1 But did you want to add something to that, Ms. Berlin?
2 I wanted to make clear why these objections -- again, I'm only
3 saying this because it's been a constant objection to every
4 single question. He's entitled to make his record, but at some
05:04 5 point it becomes cumulative. And if I see that much, I'm not
6 going to leave a naked record without explaining why it's being
7 overruled all the time.

8 So did you want to add something to that? Anything
9 else on those? I don't know what else was there because we
05:04 10 have moved in a lot, but I remember distinctly the line of
11 e-mails being brought up, and I wanted to mention that.

12 **MS. BERLIN:** So it was a couple of things. One, it
13 was exactly what the Court just stated. And then also we
14 had -- we admitted them as business records. So for some of
05:05 15 those. So, for example, the e-mail traffic that was entered
16 through Agent Murray, those were -- those came in as business
17 records and they were authenticated as business records. So it
18 was that and --

19 **THE COURT:** That was easier. That was 803(6). I got
05:05 20 that.

21 **MS. BERLIN:** But other things, yes, because it was not
22 for the truth of the matter asserted. It's to show the state
23 of mind, the way things worked and what was happening, and I
24 thought that was clear. When we asked the witnesses about
05:05 25 these documents, we were clearly eliciting. That's what we

1 were asking about, not whether the things in those documents
2 actually occurred.

3 **THE COURT:** Well, it's important because I think we
4 have -- right. It has to be that way.

05:05 5 **MS. BERLIN:** It was.

6 **THE COURT:** The reason why there were objections, a
7 lot of those investors, they're not records custodians, there
8 will be some difficulty in terms of business record exceptions
9 on those. Not because of regularity or anything like that, but
05:06 10 their familiarity with the ongoing e-mails and documents. So
11 it wouldn't have been an 803(6) issue. Most of it was because
12 it was offered for non-hearsay purposes, and that is why it was
13 routinely overruled.

14 And then I also know that I haven't -- and I can't
05:06 15 offhand remember, but so the record is clear, there also --
16 there also have been party admission issues that can come in in
17 many forms, in e-mails and documents, from Mr. Furman and so
18 some of that also comes into play in the Court's rulings. But
19 again, I just want to be clear on that because when we see a
05:06 20 lot of objections, I do not want to think we're running
21 roughshod over the evidence code. We're doing this because a
22 lot of these things are exempt and not applicable from a
23 hearsay perspective. So this --

24 **MS. BERLIN:** Agreed. I think it's -- yes, I agree.

05:06 25 **THE COURT:** Okay. Yes, you wanted to add something?

1 **MR. HYMAN:** First of all, with the initial business
2 records exception it was hearsay within hearsay. There was no
3 exception that applied. But --

4 **THE COURT:** 803(6) applies to all levels of hearsay --
05:07 5 (Voices overlap.)

6 **MR. HYMAN:** I'm at this point, though, your ruling was
7 your ruling. I'm not trying to contest it as it relates to an
8 e-mail through Par Funding that was introduced through an FBI
9 agent.

05:07 10 Right now, however, we were introducing the language
11 of these loan agreements because, number one, the FBI was
12 having -- or the SEC was having these witnesses testify about
13 the fact that executed these loans, which means that we would
14 be entitled to show it.

05:07 15 Number two is that we're not bringing them in to show
16 the truth of the matter asserted, but under 506(c), it showed
17 that Mr. Furman took reasonable steps to assure that these
18 investors were accredited, which is not to show that these
19 people were, in fact, accredited or not, because that's not the
05:07 20 what standard is.

21 **THE COURT:** Well, I guess the reason why I had a
22 concern is because it seems to me that you're using a document
23 from an evidentiary perspective to show the truth of their
24 accreditation, which means that by checking it and by checking
05:07 25 it, that would mean that they were accredited. That's at

1 least --

2 **MS. BERLIN:** You would have to check that, but there
3 was no question asked even of whether the witness checked that
4 on the document.

05:08 5 **THE COURT:** No, it just appeared checked. But my
6 point is, again, it goes to my other point --

7 **MS. BERLIN:** Truth of the matter asserted.

8 **THE COURT:** That was my view -- (cross-talk)
9 respectfully, the problem I'm having is, I don't see a state of
05:08 10 mind issue. If you're trying to say that he believed that they
11 were accredited, well then that's different. Then you could
12 show ostensibly those documents to Mr. Furman and try to show
13 his state of mind as to why he thought he was entitled to
14 something. But showing an investor to say, were you not
05:08 15 accredited? You checked there. That's the truth of the
16 document. That's why.

17 So I understand what you're saying, but perhaps that
18 question is better left to Mr. Furman because it is his
19 understanding of what's going on. Do you understand what I
05:08 20 mean?

21 **MR. HYMAN:** Yes. And it's also the reasonable steps
22 he took to assure the accredited status.

23 Similarly, Your Honor, based on the colloquy with the
24 Court earlier, I have a very serious concern as it relates to
05:08 25 the 506(c) and the unregistered securities claim, and I'd ask

1 Your Honor to provide the jury with at least a curative
2 instruction. Because throughout the course of this, there's
3 this unregistered securities claim, and Your Honor looked at us
4 and said, you know, we seem to be confused because the Fidelis
05:09 5 offering is not part and parcel of this.

6 However, during the course of their questioning, the
7 SEC asked every witness, did you believe that you were
8 investing in Par Funding, and they said yes.

9 According to Ms. Berlin when we were discussing the
05:09 10 issue, because obviously there's, you know -- you have to go
11 note by note, instrument by instrument, then we said the
12 concern we had was that, you know, for the unregistered
13 securities claims, we're showing basically the 506(c)
14 exemption, which according to Ms. Berlin is not what she's
05:09 15 dealing with in terms of books, so where these investors -- and
16 instead Ms. Berlin was saying, well, the statements that
17 Fidelis was investing in Par Funding go to the fraud claims to
18 show that the omissions or statements from -- or failure to
19 make statements, alleged failure, of course, about Par Funding
05:10 20 were material because Fidelis was investing in Par Funding.

21 The problem was -- is that based on those statements
22 and those arguments, there was a reasonable likelihood of
23 confusion in terms of the unregistered or sale of unregistered
24 securities in that it could be easily conflated that although
05:10 25 these investors were actually paying for Par Funding -- or

1 sorry, we're investing in Fidelis, that they were, in fact,
2 investing in Par Funding, when again, it's an
3 instrument-by-instrument basis with respect to the sale of
4 unregistered securities.

05:10 5 And so we just ask that the Court clarify that at
6 least the statements by these investors and Fidelis, because
7 there has not been a single investor put up who actually
8 invested in Par Funding. There hasn't. They invested in
9 Fidelis. Their money went to Fidelis. Whether the money went
05:10 10 from Fidelis to Par Funding only mattered, according to the
11 SEC, for its underlying fraud claims based on its failure to
12 disclose. So as a result, we would ask that Your Honor just
13 provide a simple curative instruction saying or explaining,
14 look, with the 506(c) issues, it's about whether or not these
05:11 15 people were investing kind of, with the investors, that their
16 statements that they believe they're investing in Par Funding
17 only related to the other fraud claims as opposed to the
18 unregistered securities claims.

19 **THE COURT:** A couple of things. One, curative
05:11 20 instruction would be an appropriate way to do it. Jury
21 instructions would be the way to fix it. I mean, when we
22 charge conference this case, we'll probably need to sit down
23 and work out a very clean way to describe what the claims are.
24 That's really the way to do it.

05:11 25 Right now there's nothing really to cure -- it's not

1 like anyone said something erroneous. The way to do it would
2 be to just really streamline it in the jury instructions and,
3 of course, I will read the instructions before closing. So it
4 will give you an opportunity to frame your closing argument
05:11 5 accordingly so that there's no confusion. That's step one.

6 The other step, not to belabor it, because we've heard
7 a lot of argument on this, is I continue to believe there's a
8 disconnect between what an investor knows or doesn't know about
9 this one claim regarding unregistered. Because that's not
05:12 10 really -- what they know or what they're doing is not so much
11 relevant as is what Furman is doing with the money that he's
12 drumming up through Fidelis and funneling to ABFP and
13 Par Funding notes. That's really the relationship that matters
14 for that one count of the seven.

05:12 15 I don't know why the investors, and what they think
16 about Fidelis, has any bearing on whether or not those two note
17 offerings, if you ultimately engage in, fall under the
18 unregistered concerns that the SEC has raised. I don't think
19 that there's a connection there. So --

05:12 20 **MS. BERLIN:** There's not.

21 **THE COURT:** -- that's why I -- I get what you're
22 saying, but I don't think it applies -- for example, you're
23 saying that something needs to be cured, which I've said we
24 would do at jury instruction. But questions about what an
05:12 25 investor knew or didn't know about where the money was going.

1 What they need to know is, they all said, I think, they knew
2 the money was going to Par Funding. They almost all uniformly
3 said that that's what they knew the money was going to do.
4 That's the MCA business it was going to.

05:13 5 They've all also said they were unaware of certain
6 things that the SEC believes that were material, that they may
7 have been very concerned about Fidelis investing in Par Funding
8 had they known, you know, some of the issues. That really goes
9 to the six claims of the fraud. Right?

05:13 10 The one claim on what is unregistered is nothing to do
11 with what an investor thinks or doesn't think. That's more
12 about what's happening with the nature of that note and is it
13 or not susceptible to 506(c). We've heard really that
14 Par Funding notes and ABFP notes have never represented
05:13 15 themselves to be excused from registration. That they're
16 not -- there's never been an argument as to that raised by
17 them.

18 MS. BERLIN: That's correct. So they've never raised
19 it and the only affirmative defense Mr. Furman made was 506(c),
05:13 20 and I've been trying to explain this for a year, so I don't
21 want it to be like, "Oh, they were confused and now we're
22 changing everything." We've been saying this for a year. The
23 affirmative defense is inapplicable to the charge. I've tried
24 to say it over and over again -- I've tried to say it, I
05:14 25 don't -- we're not responsible for explaining -- we've done it

1 over and over in our filings --

2 THE COURT: Listen, we don't need to belabor the
3 point. It is --

4 (Voices overlap.)

05:14 5 MS. BERLIN: I agree with what the Court said.

6 THE COURT: It is what it is. The Court has already
7 engaged, I think really to -- for the benefit of all parties
8 and particularly the defense, which has made a lot of issues
9 about purported due process since the beginning of the trial.
05:14 10 So if you want due process, find yourself a district judge and
11 spend an hour explaining all of the claims so that no one walks
12 in with their eyes shut. I mean, that's what I just did. And
13 I did it because I don't want anybody to walk in and be
14 surprised. That's why I don't want you guys to say, wait a
05:14 15 minute, the sand is shifting beneath our feet.

16 You've got to remember, this is one count of 506(c)
17 thing. I've let you guys bring in anything you wanted about
18 what the investors knew, didn't know, saw. I didn't let you
19 admit it because there was no predicate, there was no
05:15 20 foundation, there was no evidentiary basis to admit those
21 attachments for the reasons that you wanted to bring them in.
22 You might be able get some of that in through Mr. Furman's own
23 testimony. That's why I made the evidentiary ruling. But this
24 entire argument, really I just want to point out, again, 506(c)
05:15 25 and its applicability to Fidelis is not an issue. It's just

1 not. That's the --

2 MR. HYMAN: The problem that we have is Ms. Furman --

3 THE COURT: Ms. Berlin.

4 MR. HYMAN: Sorry.

05:15 5 Ms. Berlin has kept on trying to basically backdoor
6 this integration argument by saying because the money went to
7 Fidelis, then it went up to Par Funding you have to collapse
8 the transaction into one. We've consistently objected to that
9 argument because that is what she's essentially -- appears to
05:15 10 be arguing. If they're saying, look, we're not trying to
11 collapse it all into a single transaction, which is basically
12 an uncharged claim that we've consistently objected to having
13 heard, then at that point the only issue is where and how
14 Mr. Furman was involved in some of the investing with
05:16 15 Par Funding, which means there should be either a note or
16 whatever it is between Par Funding and the investor or ABFP and
17 the investor. And without that, then that's kind of where we
18 have this difficulty. Because I understand the distinction
19 between the fraud claims and the unregistered securities
05:16 20 claims, but the area where they get conflated is this
21 continuous argument that's made by the SEC that because it went
22 to Fidelis and because Fidelis funded money to Par Funding,
23 it's all one offer.

24 THE COURT: First of all, I know you really are
05:16 25 committed to this integration theory that's not raised in the

1 pleadings, but I think you would agree with me that if it was
2 so easy as to offer something like Fidelis and hide behind
3 Fidelis when the money is floated up to Par Funding and ABFP,
4 you would circumvent registration requirements that way. So it
05:16 5 doesn't work like that. That's the problem. You can't simply
6 say, well, I did it under the Fidelis name, so now I don't have
7 to worry about violating the regulatory restrictions. It's
8 kind of what you're saying. It's not integration. It's saying
9 everybody knew that Fidelis had one purpose, and it was to
05:17 10 funnel money to the notes that are the subject of that count.
11 So again, I know that you want to raise that --

12 **MR. HYMAN:** That is what the definition -- it's not an
13 integration theory we're trying to raise. That is integration,
14 Your Honor. That's the issue is that it's unpled integration
05:17 15 theory that we keep objecting to having --

16 **THE COURT:** Can you give me one case, one -- I want to
17 see -- give me one case, any case from any district that stands
18 for any of the proposition you're arguing that this is an
19 unpled integration offering that it should not be permitted.
05:17 20 You're not going to find one because I wrote the order and I
21 remember seeing a single thing.

22 Can you show me anything other than your bold
23 assertion this is somehow an unpermitted integration? They put
24 in there not anything about integration. They said he had a
05:17 25 role in putting forth those notes, Par Funding and ABFP. It's

1 simple. That's all they argued. That's all it said. How they
2 did it, they did it through this Fidelis instrument, but that's
3 what they have alleged since the beginning.

4 So your theory is he never had any skin in the game
05:18 5 with Par Funding and ABFP. That's going to be hard to show
6 because every investor said they knew that Fidelis was
7 literally a conduit to those two notes. So again, this whole
8 idea of well, we are sheltered behind Fidelis under some theory
9 of integration so cannot be held liable for offering notes or
05:18 10 putting money in notes that are unregistered, there's just
11 nothing to support that legally.

12 **MR. HYMAN:** Your Honor, that's why the integration
13 statute exists, to prevent people from using -- playing the
14 shell games and using different entities to do it.

05:18 15 **THE COURT:** I understand your theory. Maybe tomorrow
16 morning you can bring me a single case that would stand for the
17 proposition that the SEC has somehow circumvented pleading
18 requirements or run afoul of an integration statute because
19 they have --

05:18 20 **MR. HYMAN:** (Cross-talk) -- well, essentially,
21 Your Honor the key is going to be it goes back to your basic
22 kind of corporate law. Each corporation is treated as a
23 separate entity unless there's a basis to collapse it into
24 another corporation or entity. Fidelis is one entity.
05:19 25 Par Funding is another entity. Fidelis did not issue --

1 Fidelis's investors only were investing in Fidelis, not in
2 Par Funding.

3 For them to collapse these two entities into one, you
4 have to essentially have the finding, as you said, that Fidelis
05:19 5 was an alter ego or a conduit of Par Funding. That is
6 essentially what integration ends up being as a definition.
7 That's my understanding of the statute. That's what all the
8 other defense attorneys have explained to me.

9 I may not say that, you know, I'm a security expert
05:19 10 because I'm not, and I will do the research into it. However,
11 what we're saying to you is that you can't just simply say
12 because they were sending money up, as at least the main
13 investment at the time, which was not, by the way, because
14 Fidelis was a conduit, it's because Par Funding was by far the
05:20 15 best investment in MCA fund and provided the best returns,
16 which you'll hear about when Mr. Furman testifies, that he
17 chose to continue to invest in Par Funding as opposed to
18 looking at the other litany of MCA funds that he was looking at
19 while running Fidelis.

05:20 20 And I understand Your Honor's inclination at least
21 here. But I just -- you can't collapse all of these
22 transactions into one without properly pleading that it should
23 be a collapsed or integrated transaction.

24 **THE COURT:** Okay. And you never moved to dismiss any
05:20 25 of these counts on any grounds, you never moved for any of this

1 at any point. You're raising this now as a pleading
2 deficiency.

3 MR. HYMAN: No. Well, Your Honor, we are raising it
4 as an evidentiary deficiency because the SEC --

05:20 5 THE COURT: Who is going to decide that? You? Me?
6 That's the jury's call.

7 MS. BERLIN: We didn't bring a charge under that
8 statute.

9 THE COURT: You can bring that up in front of the jury
05:20 10 that they have not shown that this is not sufficiently
11 connected to Par Funding or ABFP.

12 MR. HYMAN: Your Honor, the issue is is that here the
13 SEC has the obligation to show whatever evidence they have. We
14 thought that the unregistered securities for the most part was
05:21 15 based on them to say, you know what, the 506(c) exemption
16 doesn't apply because, according to Ms. Berlin, Mr. Furman
17 checked the X box (inaud.) and had zero next to it.

18 That's what we thought was her whole basis to continue
19 with these claims against him based on her repeated
05:21 20 representations to the Court that she wasn't pursuing
21 integration. Plus, also, there was the one Ross and Dawn
22 Meyers that they allege invested in ABFP and also [REDACTED].

23 So the two bases that we thought -- or that it's my
24 understanding that they're still pursuing, which would
05:21 25 otherwise have to be dealt with. But according to Ms. Berlin,

1 all of the Fidelis investors, they're not claiming were engaged
2 in the sale of unregistered security.

3 **THE COURT:** May I ask real quick, Ms. Berlin? Am I
4 correct that some of the evidence in this case before
05:21 5 Fidelis -- let's just forget Fidelis.

6 **MS. BERLIN:** Forget it.

7 **THE COURT:** Let's forget Fidelis. Do we not have
8 evidence in this case that the SEC put forth about his direct
9 involvement offering Par Funding notes?

05:22 10 **MS. BERLIN:** That's right, we do.

11 **THE COURT:** Let me ask you this -- let's assume for
12 the sake of argument that you're right on any of this
13 integration stuff. What is that going to do, if anything, to
14 arguments at closing that before he decided that he couldn't do
05:22 15 it himself because of the organization, what was happening,
16 that he had to do it through his own fund --

17 **MS. BERLIN:** Exactly.

18 **THE COURT:** -- he has to do it through Fidelis in the
19 second phase, but before he got there, he was doing it himself.

05:22 20 **MS. BERLIN:** He was doing it himself.

21 **THE COURT:** Right. So directly him to Par Funding.
22 What do we make about -- that's evidence that they're putting
23 forth before the jury. What would you say as to that?

24 **MR. HYMAN:** What we would say is to that is first of
05:22 25 all, there's not actually going to be any evidence to show that

1 Mr. Furman was directly putting investors into Par Funding.
2 The only investors there's the allegation of is the Meyers
3 family. We'll see the evidence when that plays out.

4 **THE COURT:** But you understand -- whatever evidence
05:22 5 you think you have, you do understand that all of the argument
6 under integration has is no defense and has no bearing if the
7 jury believes the evidence that they are attempting to advance
8 that he played a role in directing people to invest in
9 Par Funding, even assuming he did -- forget Fidelis, not
05:23 10 through Fidelis, not through any sort of theory that you're
11 concerned about of collapsing corporate entities or the
12 corporate form, but that they have advanced evidence and a
13 theory that he has directly -- because my understanding is the
14 ABFP was also -- really done more through Fidelis later on.
05:23 15 But I think --

16 **MS. BERLIN:** Sort of.

17 **THE COURT:** But there -- let put it this way: There
18 is at least a bit of evidence that I -- my understanding will
19 be in the record that he engaged in the Par Funding offering,
05:23 20 that he was part and parcel of that to investors without
21 involving it being funneled through Fidelis; is that correct?

22 **MS. BERLIN:** Yeah, because -- well, at the beginning,
23 when he doesn't have Fidelis yet. Hold on just a minute. And
24 our entire case is -- our case is and has been that creating a
05:23 25 shell -- like Mr. Furman is a sales agent. He's out there

1 selling Par Funding notes. He's trying to solicit people.

2 To avoid detection from regulators, he's offering
3 pitching. To avoid detection by the regulators who had just
4 told them all to stop this practice, all of their sales agents
05:24 5 just sort of enshrined themselves in a company name so they can
6 continue operating the exact same way but using a company.

7 **THE COURT:** Right, to create distance from themselves.

8 **MR. HYMAN:** That's integration.

9 **MS. BERLIN:** That's part of the fraud. That's not
05:24 10 integration. Read the integration statute. So what Mr. Hyman
11 is basically saying is the SEC shouldn't have brought this as a
12 Section 5. The defendant thinks that we -- wishes, I guess,
13 that we had filed this under the provisions of the securities
14 laws that prohibit an integrated offering. We did not. That's
05:24 15 a completely different kind of case. I mean, there are dozens
16 and maybe dozens of securities law, and all they keep saying
17 is: Had the SEC filed this, under the provision of the
18 security laws dealing with integration, then if they had, maybe
19 we would have won.

05:24 20 And we have said over and over and again: Read the
21 integration statute. Look at the complaint. We did not allege
22 that. That is not a count. Integration is typically -- for
23 the record, Mr. Hyman, when you have an issuer and once they
24 get up to a certain number -- I'm just giving one example of
05:25 25 the way it works.

1 They get to a certain number of accredited investors.
2 So they don't want to register, and so they just create
3 something called -- we have it kind of here, ABFP 2. And then
4 they reach up to total number of accredited. Okay, now we're
05:25 5 going to be ABFP 3. So the issuer just continues operating
6 like opening a new offering and issuing a new PPM. It's all
7 the same. The issuer adds new ones.

8 Now, I don't -- I'm happy to give a lesson. I've done
9 this since 1999. If we want to talk about integrated
05:25 10 offerings, it's interesting. It's interesting. It's a law
11 review article. I haven't looked at it in a while, but it
12 wasn't charged here. We're not going to ask for that.

13 The SEC commissioners decide what cases to bring.
14 Integration, fraud -- integration charges under the
05:26 15 Securities Act is a separate cause of action not charged, won't
16 be argued, won't go to a jury, and despite their request that
17 we essentially amend our complaint to add it or they argue
18 against it as a straw man, it's improper, it's confusing. I'm
19 confused. I don't think they understand it's a completely
05:26 20 separate violation. It is not what we charged.

21 **MR. HYMAN:** And, Your Honor, that's the -- she just
22 described with integration what she's alleging our client did.

23 **MS. BERLIN:** The SEC did not charge that, Your Honor.
24 Period.

05:26 25 This is not a trial on integration.

1 **MR. HYMAN:** That is why we have consistently
2 maintained and questioned, at least as it relates to this, that
3 it goes to the pre-Fidelis stuff and the ABFP stuff, which
4 is -- still goes to the jury, still doesn't affect the
05:27 5 underlying alleged fraud claims, but all of the Fidelis
6 offerings, that's what she's saying, that they couldn't comply
7 with the registration, so they kept creating subfunds either
8 based on the number of accredited investors.

9 Whatever the reason is, that is the argument they're
05:27 10 making, and that's why we have consistently objected to that
11 argument because they're trying to backdoor it.

12 **MS. BERLIN:** I'm sorry, the undercover's name has just
13 been said twice during this time, and we just got a complaint
14 to sort of -- I don't know if everyone can be reminded not to
05:27 15 say the name. We went to great lengths to prevent that from
16 going on a record. If we could just not say her name, please.
17 And if it could be redacted from any transcript, Your Honor.

18 **MR. HYMAN:** My understanding is at least the
19 transcripts of the undercover were already --

05:27 20 **MS. BERLIN:** They're under seal and remained so for
21 that reason.

22 **THE COURT:** They will be remaining under seal at the
23 direction of the Court.

24 **MR. HYMAN:** I apologize, Your Honor.

05:27 25 **THE COURT:** Let's not make that mistake again. I

1 understand the argument here. Quite honestly, I don't really
2 see any concern with integration in terms of the pleadings.
3 You're more than welcome to bring the Court any sort of
4 examples that would justify any kind of either special
05:28 5 instruction at the conclusion of the evidence during jury
6 selection -- or excuse me -- during the charging conference, or
7 if we had any other issue that you believe is being misled or
8 pled in the alternative inappropriately, we can address it if I
9 have case law to support it.

05:28 10 But right now I don't see this to be an integration
11 theory. It's not advances in integration theory. It's not
12 being pled in name only. This is essentially funneling -- an
13 allegation of funneling money through Fidelis up through
14 Par Funding, and quite honestly, that was at one point done
05:28 15 pre-Fidelis anyway.

16 So again, and I just go back to my other point. We're
17 dealing -- I know that it is a count, that it is, again, one
18 count of seven counts. The bulk of this case is focused on
19 allegedly material misrepresentations, misstatements and
05:29 20 omissions, and I think we should not lose sight of that as we
21 continue on in the trial, because that's really the thrust of
22 the entire case, the majority of the case. It's not this one
23 ancillary final count. And I just don't want everybody to get
24 so caught up in this count that they lose sight of the forest
05:29 25 through the trees.

1 To my earlier point, it's simply that the Court,
2 again, makes clear that we feel -- at least I feel based upon
3 the proffers, what I've seen, that all of the evidence that was
4 allowed in through the investors in large part, if not
05:29 5 exclusively, came in for non-hearsay purposes, and that's why
6 hearsay objections in that regard had been routinely overruled.
7 And when it has not come in as a non-hearsay issue, it's come
8 in simply because it's qualifying under 803(6) as a business
9 record which we have already dealt with quite a bit with our
05:30 10 agent, and I expect we will deal with other witnesses going
11 forward.

12 And thirdly, if it's not one of those two grounds,
13 it's coming in as party admission under 801. So there have
14 been multiple evidentiary grounds under the code. To the
05:30 15 extent there's any hearsay that we have been able to circumvent
16 that, there is no argument here about double hearsay. Anything
17 that has been included in these documents is covered by the
18 business record exception at all levels.

19 And again, I think a lot of what we're dealing with
05:30 20 are the investors. And part of the problem I'm having is
21 absent the one document that is come in without objection --
22 and there may be others, so we don't have to belabor it --
23 these investors are not necessarily, at least in my view, tools
24 for bringing in documents.

05:30 25 These investors -- and I just want to get that out.

1 Because we only have a couple left and we got caught up on that
2 today. These investors are not in a position to talk about net
3 worth and accredited investors based upon documentation
4 attached that they claim is true, so truth of the matter,
05:30 5 that's not what they're here to do. They're not here to lay
6 business records because they have no knowledge of these
7 underlying records. They have no familiarity with them. They
8 can't even speak about anything other than they remember them
9 vaguely. And so I just want to make sure that when we go
05:31 10 forward with the final investors, we can ask some questions,
11 what were they told? What were they not told? Those are party
12 admissions. So those are out-of-court statements for the truth
13 of the matter asserted by Furman himself who either did or did
14 not disclose material issues in the view of the SEC. And that
05:31 15 is why I've also overruled any of those. Although I think
16 defense counsel has understood properly that's 801, and has not
17 at least objected, I think en masse to those types of
18 questions.

19 But I want everyone to just try to take a step ahead
05:31 20 because I don't think that we need to be objecting pro forma.
21 We want to make sure that we have a true basis for an objection
22 that is supported by case law and runs afoul of the evidence
23 code and the rules of evidence. So that is something I wanted
24 to put on the record because it was happening too much for my
05:31 25 taste, and I don't like my court of appeals thinking that we

1 are not thinking through every single time we overrule an
2 objection, in the abundance of caution.

3 Okay. So we'll put a pin in that.

4 The Court may independently, if I have time, just
05:32 5 maybe look up some of this integration case law because I would
6 love to be able to put a bullet in the head of this argument,
7 quite honestly, so that we don't seem to have this cloud,
8 anything, because we're going to deal with it again at charge
9 conference, so I will -- the parties have enough work to do to
05:32 10 prepare for the examinations. Let me go ahead and take care of
11 it. If I need anyone to bring it up later, I'll ask you all
12 for submissions. But for now I'm just going to do the
13 research. I am not persuaded this is even an issue in the
14 case. I think I've done the best I can to explain it to
05:32 15 everybody as I see, but I will look it up anyway just to make
16 sure that I'm not missing anything about this concern of the
17 defense team. And I'll look into it again independently of
18 what I've been briefed. But just no need to worry about this
19 anymore. I would rather us focus on getting the SEC's case in
05:33 20 chief across the finish line in the next 48 hours. That's the
21 priority. The rest of this can be dealt with when we approach
22 charge conference.

23 **MS. BERLIN:** Thank you so much, Your Honor.

24 **THE COURT:** Let's not belabor it. All right.

05:33 25 **MR. HYMAN:** The only side comment is that we at least

1 view it as kind of a piercing the corporate veil, integration,
2 however you want to frame it, that's the big issue. That it's
3 not dealt with that way.

4 **MS. BERLIN:** It's not charged that way. This is just
05:33 5 a Section 5 claim, Your Honor. We are not bringing a piercing
6 of a corporate veil. We're not bringing an integration claim.
7 We -- the SEC decides what segments --

8 **THE COURT:** You're the master of your own case.

9 **MS. BERLIN:** That's we charged.

05:33 10 **THE COURT:** And again, this is not -- I want to repeat
11 again, I know that all this energy is being spent on something
12 that has zero bearing on six counts. Zero bearing on six
13 counts dealing with material misrepresentations, which should
14 honestly be, in my humble view, the focus of the defense as
05:33 15 well as the prosecution.

16 **MS. BERLIN:** Yes.

17 **THE COURT:** So I just mention that again because I
18 think we're getting -- we're much to do about nothing. This
19 one count is not the thrust of the case, so I think the defense
05:34 20 team understands that and I hope that most of the strategy on
21 the defense case in cross is being spent trying to establish
22 that these were not omissions or, as you've heard in opening,
23 that these are things that somehow Mr. Furman was unaware of,
24 did not know, could not have found in the open source, as we
05:34 25 heard from our regularity in New Jersey, even though she

1 believes otherwise, that's the kind of stuff that I expect to
2 hear from the defense team, not getting ourselves too stuck
3 with 506(c). So with that being said, we'll be in recess until
4 tomorrow at 9:30 a.m. and we'll pick up with the first witness.

05:34 5 Whose the lead off tomorrow? Do you know, Ms. Berlin,
6 who's going to be? Is it going to be Nash maybe or is it going
7 to be --

8 MS. BERLIN: No.

9 THE COURT: No.

05:34 10 MS. BERLIN: We have Nash to come --

11 THE COURT: Is it a Zoom -- that's probably -- the
12 question is, is it Zoom or --

13 MS. BERLIN: I think it's going to be Klenk. He's
14 live. And then -- this is what we think it's going to be.

05:35 15 Then Mitchell, Zoom. Wendy Furman, Zoom. Then we think that
16 that will be lunchtime. This is, you know, anticipatory. Then
17 Nash, Zoom. Then Michael Furman -- oh, I'm sorry, Nash is
18 live, I apologize.

19 THE COURT: Nash is live, yeah.

20 MS. BERLIN: Nash is live.

21 Furman. And then Alexis Abbonizio, Zoom. That's our
22 plan.

23 THE COURT: That works. So really, the important
24 thing is more so my team knows to be Zoom ready after Klenk. I
05:35 25 just want to make sure my IT guys know that we've got to be

1 ready to go once Klenk is done, to get Mitchell on Zoom. And
2 then we'll go from there. If Wendy Furman is on, we can have a
3 remote on right her. That's fine.

4 **MS. BERLIN:** Yes. And we might have to -- once we let
05:35 5 Lori -- we might have an -- we might have -- we might have the
6 need for another witness tomorrow, but we're going to
7 brainstorm tonight and see if we can just find a way to get
8 this in. It's a public document. We're going to try to do it
9 without a witness --

10 **THE COURT:** Let me know in the morning --

11 **MS. BERLIN:** And we're happy to ask these ay investors
12 if they're accredited, like I did today, I asked the guy in the
13 hallway, hey, by the way, are you accredited? Just to put this
14 to bed and not have any objections. I did that with the last
05:36 15 witness when I saw the defendants cared about it so much. So
16 we're happy to even ask it in our direct case, if it will move
17 the case along and get us through and on the right path.

18 **MR. HYMAN:** The other thing we'll say for the record,
19 Your Honor, is, these directs aren't directs. Almost every
05:36 20 question is, in fact, leading. I know you don't agree with
21 me --

22 **THE COURT:** Well, I sustained several where I thought
23 it crossed the line. And I did it in the last examination and
24 I did in the prior examination where I did agree with you that
05:36 25 it did cross the line. It's crossed THE line a couple of times

1 and I sustained the objection.

2 MR. HYMAN: I don't know if -- it's not worth --
3 whatever.

4 THE COURT: Okay.

05:36 5 MS. BERLIN: Your Honor, thank you.

6 THE COURT: Tomorrow there is only one -- there's one
7 sentencing tomorrow, just so everyone is aware. It will be at
8 1:30. So just so we can plan ahead, the Court will prefer to
9 try to get to 12:30 before we break. So you can plan ahead.
05:37 10 12:30, and then we will resume at 2:00. So that's kind of the
11 lunch break, because the sentencing should take me about 30
12 minutes, and it's at 1:30. So you can leave everything now
13 where it is, just be aware you probably want to clear counsel's
14 table before lunch, because we're going to have prosecutors and
05:37 15 public defendants in here. All right.

16 MR. JOHN: We're starting at 9:30.

17 MS. BERLIN: Thank you, Your Honor. Thank you. Good
18 night.

19 THE COURT: We're in recess tonight.

20 (Thereupon, the above portion of the trial was concluded.)

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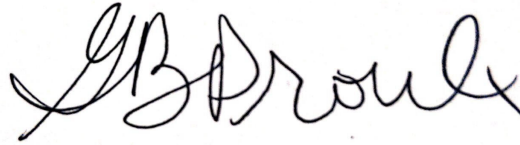
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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



12/10/2021

DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

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<p>year ^[19] - 104:2, 106:4, 156:17, 179:1, 180:11, 189:19, 189:20, 192:23, 192:24, 192:25, 193:1, 193:2, 195:3, 196:3, 205:9, 211:7, 211:24, 254:20, 254:22 year-and-a-half ^[1] - 189:20 yearly ^[1] - 109:23 years ^[11] - 137:6, 179:2, 195:2, 196:1, 196:5, 196:19, 197:3, 207:25, 209:13, 222:2 yesterday ^[8] - 22:16, 24:12, 25:3, 28:1, 100:10, 101:11, 138:22, 159:7 yourself ^[3] - 191:20, 232:11, 255:10</p>	
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<p>zach@millenniallaw.com ^[1] - 1:20 ZACHARY ^[1] - 1:17 zero ^[6] - 149:7, 149:10, 260:17, 270:12 Zoom ^[50] - 4:12, 21:1, 22:9, 22:17, 22:19, 24:6, 24:15, 25:21, 99:21, 100:21, 101:3, 101:8, 188:13, 214:14, 214:21, 214:25, 216:1, 217:25, 218:1, 218:11, 218:18, 218:19, 218:21, 218:22, 219:1, 220:2, 220:7, 223:19, 223:25, 224:3, 229:15, 229:17, 232:10, 234:7, 234:21, 234:25, 235:12,</p>	

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**
Plaintiff **December 9, 2021**
vs.
**COMPLETE BUSINESS SOLUTIONS
GROUP, INC, et al,**
Defendants.

TRIAL DAY 4
BEFORE THE HONORABLE **RODOLFO A. RUIZ, II,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **AMIE RIGGLE BERLIN, ESQ**
SECURITIES AND **ALISE M. JOHNSON, ESQ**
EXCHANGE COMMISSION U.S. Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANT: **ZACHARY P. HYMAN, ESQ**
MICHAEL C. FURMAN Millennial Law
501 E. Las Olas Blvd, Ste. 200/308
Ft. Lauderdale, FL 33301
(954) 271-2719
Zach@millenniallaw.com

ELROY M. JOHN, JR., ESQ
Florida Justice Law Firm, PLLC
101 NE 3rd Avenue, Ste. 1500
Fort Lauderdale, FL 33301
(954) 637-2767
Elroy@onlyforjustice.com

1 REPORTED BY: GIZELLA BAAN-PROULX, RPR, FCRR
2 United States Court Reporter
3 400 North Miami Avenue, Suite 8S32
4 Miami FL 33128
(305) 523-5294
gizella_baan-proulx@flsd.uscourts.gov

03:05 5 Also present: Victoria Jacqmein, Kevin Robinson
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11 I N D E X

12	Witness	Direct	Cross	Redirect	Recross
13	JAMES KLENK	26	40	44	
14	WILLIAM MITCHELL	48	56	61	
15	STEPHEN BOUCHARD	65	81	86	
16	FRANK NASH	98	119	134	
17	VICTORIA	137	150	151	
18	VILLAROSE				
19	ALEXIS ABBONIZIO	154	180		

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G O V E R N M E N T E X H I B I T S

Exhibit	Marked	Admitted
5	62	62
36	46	46
103	170	171
0259	36	37
288	29	29
410	156	157
483	26	113
552	162	163
558	173	174
560	168	169
567	70	73

D E F E N S E E X H I B I T S

(None)

P R O C E E D I N G S

(The following proceedings were held in open court.)

1
2
3 **THE COURT:** Please be seated, everyone. Okay. All of
4 our jurors are now present and accounted for. We were waiting
10:04 5 for one juror who is running a little bit behind, again, due to
6 some child care issues, but everyone is here now. Before I
7 bring my jurors in, any housekeeping issues on behalf of either
8 side starting with the SEC?

9 **MS. BERLIN:** Yes. Two quick things. One, Mr. Hyman
10:04 10 just stepped out. He has state court. Just had to appear in
11 state court briefly.

12 **THE COURT:** Mr. John is here. So I'm okay.

13 **MS. BERLIN:** Yeah. He's going to be right back. I
14 just wanted to let you know. The other thing is we have a
10:04 15 modification. We think that will help, we hope, move things
16 faster. So as the Court might recall, we spoke last week about
17 the request for admission and the Fifth Amendment issue.

18 **THE COURT:** Right.

19 **MS. BERLIN:** And I believe it would be beneficial for
10:04 20 that to be squarely addressed before Mr. Furman is called. Not
21 only -- I mean, obviously we're not going to ask him about the
22 things that are sticking with the RFA, but also, you know,
23 because we have a jury, if we ask him something and he starts
24 talking, it could raise issues.

10:05 25 So we think -- our thought, Your Honor, just for your

1 consideration, is that we now have all of our witnesses
2 prepared to go today.

3 THE COURT: Right.

4 MS. BERLIN: Except remember Mr. DeLucco who just got
10:05 5 out of the hospital and has the hearing impairment, he might be
6 tomorrow morning.

7 THE COURT: Got it.

8 MS. BERLIN: Our hope, our thought is we finish as
9 quickly as we can, maybe 3:30, 4:00. We could then let the
10:05 10 jury go and use that time afterwards to address and to
11 determine once and for all the RFA issue. We gave -- defense
12 counsel, as the Court instructed us, we gave him a list of the
13 RFA with all of the items highlighted --

14 THE COURT: Okay.

10:05 15 MS. BERLIN: -- that we believe --

16 THE COURT: Are fair game to ask.

17 MS. BERLIN: They're absolutely still in effect.

18 THE COURT: Right.

19 MS. BERLIN: We haven't heard back.

10:06 20 THE COURT: Okay.

21 MS. BERLIN: I think we should just solidify that list
22 before we call Mr. Furman. That was our thought. If the Court
23 doesn't want to, we could move forward with Mr. Furman today.
24 That was just an idea that I had to maybe help us, and we could
10:06 25 call Furman in the morning after we have addressed all of this

1 and be done.

2 THE COURT: Yes, I don't have a problem. Why don't we
3 take care of all the witnesses that are really nonissues today,
4 all right? We have a number of witness that are nonissues.

10:06 5 MS. BERLIN: We would call six.

6 THE COURT: Six. Yeah. Could we possibly get to a
7 situation where we call everybody but Furman and DeLuco?

8 MS. BERLIN: That's exactly what our plan is.

9 THE COURT: I think that's a great idea. If we do
10:06 10 that and we get everybody else done and then we let everyone go
11 and then it ends with Furman tomorrow and DeLuco -- or DeLuco
12 in the beginning and then Furman probably, then I can use
13 whatever time I have left today to do housekeeping so we don't
14 have any issues with his testimony tomorrow. I think that's
10:06 15 fine.

16 Let's go ahead and advance the ball the best we can
17 with everybody else, and then we'll meet and confer about what
18 we're going to do with Mr. Furman's testimony. That works for
19 me and it gives everybody a chance to kind of walk through now
10:07 20 that you've given him the document. That's fair.

21 MS. BERLIN: Okay. Great. Thank you.

22 THE COURT: That puts us ahead of schedule, honestly.

23 MS. BERLIN: It does. And we're going to try to get
24 through six. It depends on you.

10:07 25 THE COURT: I gotcha.

1 MS. BERLIN: We think we can do it.

2 THE COURT: We'll do the best we can. I had my IT guy
3 check out everything. It should be working pretty swiftly
4 today. If we don't have any unforeseen delays, we should be
10:07 5 good.

6 MS. BERLIN: Yeah, then the jury might be -- if we're
7 on track, the jury can leave early.

8 THE COURT: Correct. If we end up early today, I
9 think no matter what, if we can get through our lineup today
10:07 10 and all we have left is due to medical issues DeLucco and
11 Furman, that would be a solid day. We don't need to be more
12 than that today. We could do the afternoon just housekeeping
13 issues. And we should bank on that, being what we have
14 tomorrow.

10:07 15 And then I can also check in with the defense.
16 Perhaps there's some minor witness they want to knock out
17 tomorrow afternoon if we have some time that they could do, and
18 that way we're a little ahead of schedule.

19 MS. BERLIN: Okay. Good. Thank you.

10:08 20 THE COURT: That works. Any issues, Mr. John, on
21 behalf of the defense before I kind of bring my jurors in?

22 MR. JOHN: Just one briefly. I want to preface this
23 by saying this is not a request for relief and I know this
24 point has been somewhat belabored --

10:08 25 THE COURT: So you were saying that there was there

1 wasn't a request for relief. But go ahead. I'm sorry.

2 MR. JOHN: I do believe there needs to be a record.
3 This needs to be put on the record for the Court's awareness,
4 especially if we're going to do deal with the RFA issue this
5 afternoon, Your Honor.

6 As recently as yesterday, the SEC once again
7 represented to the Court that Mr. Furman had responded with
8 zero to his production request -- to their production request
9 and went a step further at sidebar. I believe it was stating
10:08 10 that although they had access his computer and his phone, he
11 had refused to provide passwords.

12 Your Honor, we have e-mails from Mr. Furman's attorney
13 providing the password directly to them, Your Honor. And we
14 confirmed Mr. Kolaya today that there had been discussions
10:09 15 afterward to make sure that they were able to gain access, and
16 if not, to provide additional information if needed.

17 A secondary to that, as recently as Mr. Abbonizio's
18 testimony, when we attempted to authenticate and get into
19 evidence text message conversations between him and Mr. Furman,
10:09 20 specifically, I believe that's plaintiff's -- the SEC objected
21 that they had never received that, they were prejudiced, and we
22 were limited to refreshing his memory with that particular
23 exhibit.

24 Turns out that item, along with multiple other
10:09 25 exhibits, could only have come from Mr. Furman's data files,

1 actually in their exhibit list, Your Honor. So I only put this
2 on the record to say that I believe a fairly critical decision
3 was made by the Court. It was impacted by representations made
4 by the SEC that they had been prejudiced because they hadn't
10:10 5 received documents as well as the proximity to trial, and it
6 appears that at least one major part of that argument is not
7 correct, Your Honor.

8 **MS. BERLIN:** We'd love to see that e-mail with the
9 password, the SEC. We also have the Office of Financial
10:10 10 Regulation for the State of Florida can also tell you not able
11 to get into the laptop. I wish they had brought this up with
12 me. If there's an e-mail that we missed, that's to me given me
13 the password, that would have been great. Maybe in the
14 millions of e-mails -- can we see it right now?

10:10 15 **THE COURT:** Let's do this: Why don't we go ahead and
16 when we get on a break or a recess later this morning or this
17 afternoon, let's go and have -- Mr. John, that e-mail exchange
18 that you believe indicates they had access, show it to the SEC
19 and you guys meet and confer on that and see what this it is.

10:10 20 I think it's important to recognize that to the extent
21 the Court's rule was based solely on nonproduction, that's
22 actually not true. The Court did not admit -- number one, the
23 text message issue was something I didn't even look at. All I
24 know is that there was a concern I had on hearsay on that, and
10:11 25 I don't know necessarily if that was going to constitute a

1 party admission. That was the first thing.

2 There was also going to be a problem, I think, on the
3 text messages, arguably. We didn't get that far. But there
4 was going to be a problem on authentication there without us
10:11 5 being able to get a better sense of the time and date and all
6 that stuff.

7 But that was the text messages issue. The other issue
8 about the sidebar with the documents really was the appendices
9 that were put onto the forms, the Fidelis forms. And there, as
10:11 10 I stated earlier, there would have been a problem laying the
11 predicate to admit those because I do believe it's the truth of
12 the matter asserted. They wouldn't have been business records.
13 And truthfully, I don't think the predicate could have been
14 laid with the investors themselves.

10:11 15 So I don't want to make it seem that the consideration
16 was that it was late production, but the Court's ruling really
17 was based on the absence of hearsay exceptions to those. I
18 mean, that just -- I just want that to be clear. You're not
19 wrong, though, to make a record to say that they never got it.
20 I agree there.

21 I don't want the impetus for not letting these in is
22 not because of a violation of the standing order of the Court.
23 That really wasn't my big concern. It was more about
24 evidentiary issues more than anything else, but so that we
10:12 25 don't spend too much time, I want to make sure that you meet

1 and confer. You can see whatever --

2 MS. BERLIN: We would love to see it. Can they give
3 it to us? If an e-mail was sent to me and a password and I
4 missed it, I mean, there are other agencies that have been
10:12 5 waiting on that password for a year and a half. Do you have
6 the e-mail?

7 THE COURT: Maybe we can just have it forwarded to you
8 while you guys -- and maybe co-counsel or your paralegal can
9 take a look at it while we get started with the next witness.

10:12 10 MR. JOHN: Just to clarify, Your Honor, I just wanted
11 to be clear. The decision I'm talking about specifically, I
12 understand that the decision regarding our request to amend
13 wasn't just about the lack of production. It was also because
14 of proximity to trial. But a feature of their argument was
10:13 15 that they received zero production in discovery. It was
16 repeated yesterday, and again, the idea that they were never
17 provided --

18 THE COURT: So, Mr. John, I think to be clear, the
19 reason that you're re-raising it is because you're addressing
10:13 20 some issue on production when they objected to the leave to
21 amend the request for admissions.

22 MR. JOHN: The main feature of their argument was that
23 Mr. Furman had provided zero in production.

24 THE COURT: Correct. Well, I will take a step back.
10:13 25 I think the main feature of the argument was the proximity to

1 trial to change course as to the request for admission.
2 Whether or not there was a production problem, I think I was
3 very concerned about an amendment to the request for admissions
4 on the eve of trial. That was really the prejudice that would
10:13 5 have been caused even if they had access might have been
6 somewhat alleviated but not really because the whole theory of
7 the case and the indication of the Fifth would be materially
8 disturbed by a change to the request for admissions right on
9 the beginning of trial.

10:14 10 So I don't know -- let me put it this way: I don't
11 know that any of this would have any impact on the Court's
12 ultimate ruling, but I do understand your point that these are
13 issues raised by the SEC to establish some prejudice and you're
14 pointing out that they have had access to some of these things,
10:14 15 and we'll get to the bottom of that.

16 MR. JOHN: And they are, Your Honor. And I understand
17 the Court's argument regarding other foundation exhibits, but
18 the objections that are coming up first from the SEC is that
19 they have not received the documents.

10:14 20 THE COURT: You're right. It's one of the grounds. I
21 agree with 100 percent.

22 MS. BERLIN: Absolutely.

23 MR. HYMAN: Your Honor, the other issue just to
24 briefly reference, is during the SEC's case in chief, we
10:14 25 objected to the introduction of documents -- we objected to the

1 admission of documents because they weren't Bates-stamped and
2 asked for an opportunity to see if they had been produced in
3 the same way the SEC's placing that burden on us. And
4 Your Honor summarily overruled that objection.

10:15 5 **THE COURT:** Okay.

6 **MS. BERLIN:** We would point out, Your Honor, just so
7 it's helpful for everyone, we have explained to the defense
8 counsel a couple of times. The first couple hundred or so of
9 our exhibits, no Bates stamp. Why? Simple. TRO exhibits.
10:15 10 They were filed on the docket.

11 So we explained to the defendants that if they have
12 any question about those, if they look at DE E 14, they will
13 see them on the docket. When we filed our TRO motion, we
14 weren't in discovery. So we weren't Bates-stamping. So there
10:15 15 are exhibits that don't have a Bates stamp. There are also
16 others, because they're produced in a native format, they don't
17 have a stamp.

18 So we have said it from the beginning and we'll
19 reiterate it, any document that they're concerned about,
10:15 20 whether it was produced or not, we're happy to answer any
21 question if they let us know.

22 **THE COURT:** And I will just point out that the Court
23 in no way, shape, or form has kept that an exhibit because
24 there was no Bates stamp. In fact, I did it to both sides
10:16 25 because objections have been raised to both sides about no

1 Bates stamp. The Court does not exclude exhibits based upon
2 the absence of a Bates stamp. It's summarily denied because it
3 was a baseless objection. Okay. So that's why.

4 So I'm not here to do the record keeping for anybody,
10:16 5 okay. I've done enough homework for both sides in this case.
6 You guys do your own job and you guys figure out if there's
7 some sort of access regarding this e-mail and what that's going
8 to do for the rest of the case. I do not know if it's accurate
9 or not that they had access, but at this point the Court does
10:16 10 not have any material change to its prior rulings if, indeed,
11 there has been some access to this.

12 I think that the bottom line is most of these
13 evidentiary objections were dealt with on those grounds alone
14 and it's less about prejudice because of late production or
10:16 15 lack of production that at least raised a concern for the
16 Court, but I'm sure if something changes and you're actually
17 able to access it, I would like an update later today from the
18 SEC once you get that e-mail to see if it's accurate that that
19 was lost, only because it would just be good to know that there
10:16 20 is access to some of these documents, even in advance of
21 Mr. Furman who could be testifying tomorrow, it might be very
22 material. So I just want to make sure that if there is access
23 and everyone's got it, that we know by the end of today.

24 MS. BERLIN: I agree. And mistakes happen, so if they
10:17 25 sent it to me and we missed it, you know, I would like to see

1 it. Because we do have e-mail access right now through Alise
2 Johnson's e-mail while we're in the courtroom, if defense
3 counsel could right now forward that, please, we're still
4 waiting on it. The e-mail to me --

10:17 5 **THE COURT:** Forward whatever you guys got. Anything
6 that shows access and that it was provided, so we can get to
7 the bottom of it.

8 **MS. BERLIN:** Absolutely.

9 **MR. JOHN:** We'll definitely show it to them,
10:17 10 Your Honor. As far as e-mail, I think we're having trouble
11 with the internet, so we'll try --

12 **THE COURT:** See what you can do --

13 **MS. BERLIN:** (Cross-talk) Or if you have a
14 printout --

10:17 15 **THE COURT:** We do have a WiFi network. I don't know
16 how good works today, but hopefully you guys have signal and
17 you can jump on it. If you need any information, my CRD can
18 get it to you to get on the network, but there should be one
19 available.

10:17 20 **MS. BERLIN:** Thank you so much. All right. I look
21 forward to seeing that.

22 **MR. HYMAN:** One other quick housekeeping issue. It's
23 my understanding that during argument, the Zoom microphones
24 have been turned off. We think it's part of the open access to
10:18 25 court that when there's legal argument, notwithstanding the

1 rule of sequestration, that the Zoom should not be muted to
2 that part. Obviously the rule of sequestration is intended to
3 prevent witnesses from hearing each other's testimony, and
4 obviously everybody on the Zoom has been instructed that if
10:18 5 they are witnesses, they can't be on, so to the extent
6 possible, we would request that argument also not be muted.

7 **MS. BERLIN:** Your Honor, it's no requirement that
8 federal cases be broadcast by Zoom.

9 **THE COURT:** There is absolutely no requirement. In
10:18 10 fact, what the Court has done in this case is somewhat
11 unorthodox. A camera access or video access to the courtroom
12 is something that is left to the Court's discretion.

13 I want to point out yesterday that my court reporter
14 and I meeting and conferring this morning noted that both sides
10:18 15 mentioned the names of individuals that should not have been
16 named about nine items times in the presence of the Zoom feed.
17 So I think my concerns about ongoing investigations and the
18 reason why I mute it are very well taken. So we're not
19 operating Court TV here. I can do the best I can with the
10:19 20 witnesses, but I may, in my discretion, decide that some of the
21 argument, again, even if we are advising people of the rule of
22 sequestration, the Court's ability to govern that is severely
23 hampered because it's not like when I have people in my
24 courtroom and I can control them. I have to hope that
10:19 25 individuals here -- and you guys have seen that people are

1 coming on and off in droves. I can't really control that much
2 of a sequestration concerns I may have. And I just don't want
3 any testimony shaped by people having access to some of the
4 argument. Or more importantly, it could pose a risk for my
10:19 5 jurors. I have to be very cognizant of the fact that I want to
6 give everybody access, but I do want to make sure that my
7 jurors are in no way, shape, or form exposed to information
8 that could be seeping out when we have proceedings broadcast
9 and argument that they are not to consider as part of their
10:19 10 deliberations. So I will do my best to continue to keep an
11 open feed.

12 And, in fact, there were large portions of yesterday's
13 argument -- in fact, I think the majority of yesterday's
14 argument was permitted on Zoom. The part that I was most
10:20 15 concerned about was everything surrounding the morning's
16 argument because of the restrictions and things that were done
17 under seal. So I will continue to exercise my discretion in
18 that regard.

19 I can say that all witness testimony has been
10:20 20 broadcast, except for the few individuals that we couldn't, and
21 so everyone has been able to see what the actual evidence has
22 shown, openings were broadcast, closings will be broadcast, and
23 I predict that probably jury instructions as well. I can
24 imagine that perhaps charging conferences and other things, I
10:20 25 may ultimately take it off Zoom because it's of no moment for

1 the investing public. But the concern is duly noted. We will
2 deal with it as the day unfolds. Most of our witnesses today
3 are on Zoom, so people will be able to watch all of that. All
4 right.

10:20 5 Any other housekeeping issues before I bring in my
6 jury?

7 **MS. BERLIN:** No, thank you, Your Honor.

8 **THE COURT:** All right. Anything else on the defense
9 side?

10:21 10 **MR. HYMAN:** No, Your Honor.

11 **THE COURT:** All right. If you could, please bring our
12 folks in.

13 Our first witness is live, correct?

14 **MS. BERLIN:** Yes. And it's not the SEC -- (inaud.).

10:22 15 (Thereupon, the jury entered the courtroom.)

16 **THE COURT:** Good morning, everyone. Please be seated.

17 Good to see you all. I believe my court reporter was kind
18 enough to get you some doughnuts back there. She was kind
19 enough to bring me one. Those things were huge. I had to cut
10:22 20 it with a knife. But I hope you guys enjoyed that. So that we
21 can give you guys a little pick me up here. And we'll bring
22 you coffee this afternoon as per usual.

23 So today, you know, I don't know if anybody is a golf

24 fan, but, you know, they always say that Saturdays in PGA

10:22 25 tournaments are moving days. Meaning that if you're going to

1 make a move on the leader board, you've got to really -- you've
2 got to really put your pedal to the metal.

3 Today is kind of our moving today. We're targeting
4 about six witnesses today to cover. The majority, at least
10:23 5 half, I think, are going to be on Zoom. And they may not be
6 very long. But our goal today is to try to knock out these
7 witnesses, and no matter what time we're at when we get there,
8 we're going to be done for the day. My hope is maybe it's
9 before 5:00. If it gets to 5:00, we'll do so. But that puts
10:23 10 us on pace, really, to have, again, the SEC concluding their
11 case early tomorrow. And so that's going to be our goal today.
12 So I ask you guys, as you've done from the very beginning of
13 your service, to continue to give us your undivided attention,
14 make sure you take notes, if you feel that's necessary. I'll
10:23 15 keep prompting you guys. If anyone have has a question for a
16 witness, I'll let you know.

17 I do understand that the bathrooms in the jury room
18 are a little bit off right now. Something is going on with
19 them. We've already called our maintenance folks, but we need
10:23 20 to make sure that we don't interact with our lawyers and
21 witnesses. So we will be instructing our attorneys, if they're
22 going to use the restroom, to maybe go to another floor or at
23 least make sure that we don't have you guys bumping into them
24 unnecessarily. So we may need to give you guys another option
10:24 25 since we're having some issues in the jury room.

1 Again, please continue to abide by all the Court
2 protocol that we've been discussing, social media, staying off
3 of it, not talking to each other about the case as it unfolds
4 and making sure you keep an open mind. Making sure that, of
10:24 5 course, you guys do not do any independent research and go on
6 any websites or look up any people, places or things in the
7 case.

8 So with that being said, I will turn it back over to
9 the SEC so they can call their next witness. All right.

10:24 10 **MS. BERLIN:** Thank you, Your Honor. We call James
11 Klenk.

12 Thereupon,

13 **JAMES KLENK,**

14 having been duly sworn by the court reporter, testified as
10:25 15 follows:

16 **THE COURT:** Thank you, Mr. Klenk. Grab a seat. And
17 if you're fully vaccinated, you're free to take off your mask.
18 And just make sure, and Rita will tell you, it's a little odd,
19 but the chair doesn't move much and the mic doesn't move, so
10:25 20 you're going to have lean in and try your very best at --

21 **THE WITNESS:** Gotcha.

22 **THE COURT:** -- speaking in the microphone and as much
23 as you can. All right?

24 **THE WITNESS:** Thank you.

25 **THE COURT:** You're very welcome.

1 You may proceed when ready.

2

3

DIRECT EXAMINATION

4 **BY MS. BERLIN:**

10:25 5 Q. Good morning, Mr. Klenk.

6 A. **Good morning.**

7 Q. What is your educational background?

8 A. **I have a BBA from Temple University.**

9 Q. Do you hold any professional licenses?

10:25 10 A. **I'm a certified public accountant.**

11 Q. And where do you work?

12 A. **I work for Full Spectrum Processing.**

13 Q. And in connection with Full Spectrum Processing, do you
14 work for Par Funding?

10:25 15 A. **Yes. Par Funding is one of our affiliated companies. We
16 do all the back-end office support.**

17 Q. And do you work in Philadelphia?

18 A. **I do.**

19 Q. And is your office in the same office as the Par Funding
10:26 20 office space?

21 A. **There were two office spaces in Philadelphia. I was in the
22 Arch Street office and the 20 North Third Street office. I was
23 in the Arch Street office.**

24 Q. Okay. And the Arch Street office is --

10:26 25 **THE REPORTER: I'm not hearing you.**

1 A. I can repeat it if you'd like.

2 THE COURT: Yes, go ahead and repeat it.

3 A. Par Funding had two offices in the City of Philadelphia,
4 one was on Arch Street and another one was on North Third
10:26 5 Street, 20 North Third Street. I worked out of the Arch Street
6 office.

7 BY MS. BERLIN:

8 Q. So am I correct in understanding that your employer -- so
9 the name on your paycheck would be Full Spectrum Processing,
10:27 10 but that you were doing work for Par Funding as a Full Spectrum
11 employee?

12 A. Correct.

13 Q. And did you have a title?

14 A. I'm a financial controller.

10:27 15 Q. And are you still working there?

16 A. Yes.

17 Q. When did you begin?

18 A. February 2018.

19 Q. And then you continued working for Par Funding -- doing
10:27 20 work for Par Funding after the receiver was appointed last
21 year?

22 A. Yes, the receiver called me back to work at Par Funding.

23 Q. And you're still there today?

24 A. Correct.

10:27 25 Q. In connection with your work acting as a comptroller for

1 Par Funding, are you familiar with what Par Funding's business
2 was?

3 A. Yes, I am.

4 Q. You just tell us generally what it did?

10:28 5 A. Par Funding provided merchant cash advances to customers in
6 need of funding.

7 Q. And so Par Funding would give a merchant money and the
8 merchant would pay that money back to Par Funding with
9 additional monies on top of it. Is that right?

10:28 10 A. Correct.

11 MR. HYMAN: Leading.

12 THE COURT: Overruled, but let's keep that in mind

13 Ms. Berlin, moving forward.

14 MS. BERLIN: Okay. Yes, thank you.

10:28 15 A. Correct.

16 MR. HYMAN: Compound, Your Honor.

17 THE COURT: Overruled.

18 Go ahead.

19 BY MS. BERLIN:

10:28 20 Q. Are you familiar with the merchant cash advance contracts
21 that Par Funding would enter into with merchants?

22 A. I have seen them, yes.

23 MS. BERLIN: And, Your Honor, this has already been
24 introduced as an exhibit. It's P 572. I wonder if we could

10:28 25 pull that up on the screen. And may I approach the witness

1 with a hard copy?

2 THE COURT: You may.

3 THE WITNESS: Does the screen work or no? Is it --

4 THE COURT: It will pop up in a minute. Let us know
5 if you don't see it, okay?

6 THE WITNESS: No problem.

7 MR. HYMAN: We're going to object to this line of
8 testimony as cumulative, Your Honor.

9 THE COURT: Okay. That's going to be overruled.

10:29 10 You may proceed.

11 MS. BERLIN: Thank you.

12 THE WITNESS: There it goes.

13 BY MS. BERLIN:

14 Q. So I'm showing you what's already been admitted as P 572,
10:29 15 which is a merchant cash advance agreement. And I wonder if we
16 can please turn to page 8 of 29.

17 A. Okay.

18 Q. Does the Par Funding -- do Par Funding merchant cash
19 advance agreements identify what a default is?

10:30 20 A. Yes.

21 Q. And if you could look on the bottom of page 8 of 29, it
22 says: Number 10, events of default.

23 Do you see that?

24 A. I do.

10:30 25 Q. And if we could turn the page there's a list. If we could

1 turn the page to page 9.

2 And do you see item -- it has a list of the things
3 that are default and do you see item H?

4 A. Yes.

10:30 5 Q. It says: Merchant seller's failure to make payment
6 required under this purchase agreement?

7 A. I see it.

8 Q. And the merchant seller, that's the merchant whose getting
9 money from Par Funding?

10:30 10 A. Correct, the customer.

11 Q. So if that customer -- if that merchant getting money from
12 Par Funding doesn't make a required payment under the purchase
13 agreement, then that's a default; is that right?

14 A. Correct.

10:31 15 MR. HYMAN: Objection, legal conclusion.

16 THE COURT: Overruled.

17 A. Correct. In case you didn't hear me.

18 BY MS. BERLIN:

19 Q. Thank you.

10:31 20 MS. BERLIN: Your Honor, we are going to show P 483.
21 I'm just confirming whether it's been admitted.

22 MS. JACQMEIN: No.

23 MS. BERLIN: It hasn't been. May I approach the
24 witness with the hard copy?

10:31 25 THE COURT: Yes, you may.

1 (Thereupon, the exhibit was introduced into evidence.)

2 THE WITNESS: Am I done with this?

3 MS. BERLIN: Yes.

4 BY MS. BERLIN:

10:31 5 Q. Yes. Thank you.

6 A. Thank you so much.

7 Q. Have you seen the item we have remarked as P 483 before?

8 A. I have never seen this document.

9 Q. Okay. All right. Let me get that back from you.

10:32 10 A. That's fine. I'm just glancing at it. I do see the
11 information on the inside. I know what it is.

12 Q. Let me get that back. I'm going to have you hold it for a
13 moment.

14 A. Yes.

10:32 15 Q. Do you see --

16 A. Just to clarify, I never saw the brochure.

17 Q. If I could ask you to look at P 483, and if you open that
18 document to the third page, you see a chart that says something
19 in the top left?

10:32 20 A. Yes. **CBSG funding analysis.**

21 Q. Have you seen this document before?

22 A. Yes, I have.

23 Q. You're familiar with it from your time at Par Funding?

24 A. Yes, I am.

10:33 25 Q. And this is a bit blurry, but does this look like a true

1 and correct copy of the Par Funding, CBSG funding analysis?

2 A. It's difficult to read, but it does look like it is a true
3 and accurate copy.

4 MS. BERLIN: Your Honor, may I approach the witness
10:33 5 with the original?

6 THE COURT: You may.

7 BY MS. BERLIN:

8 Q. So I've handed you a clearer copy of the original. Can
9 you -- is this a --

10:33 10 A. It's much better.

11 Q. Is the chart a true and correct copy of the Par Funding
12 funding analysis chart?

13 A. Yes, yes.

14 MS. BERLIN: Your Honor, I'd like to introduce -- it's
10:33 15 a composite exhibit. I wonder if we can just take out this
16 page and introduce it separately.

17 THE COURT: Yeah, if you want to remove that what he's
18 identified.

19 What's the number on that again?

10:34 20 MS. BERLIN: Sure. It's P 483, and it's going to be
21 pages 2 and 3 of your pdf, Your Honor.

22 MR. HYMAN: We're going to object on hearsay grounds.

23 THE COURT: Okay. That's going to be admitted given
24 the predicate laid of 306.

10:34 25 MR. HYMAN: That's the business records exception,

1 Your Honor?

2 THE COURT: Yes, it is.

3 MS. BERLIN: We'll only show those two pages on the
4 screen.

10:34 5 THE COURT: Right, where he laid the predicate.

6 THE WITNESS: Now you know why I couldn't read it.

7 MS. BERLIN: Yeah.

8 BY MS. BERLIN:

9 Q. Mr. Robinson, could you go to the next page. Thank you.

10:35 10 MS. BERLIN: Your Honor, we're going to get a copy
11 that we can display electronically that's easy for everyone to
12 read. This looks like a bad scan. We apologize for that.

13 THE COURT: We can barely see that.

14 MS. BERLIN: Yeah. We're just going to get a nice
10:35 15 version.

16 Your Honor, may I use the ELMO?

17 THE COURT: Yes. That's fine.

18 BY MS. BERLIN:

19 Q. Mr. Klenk, do you see on the screen in front of you? If
10:37 20 could you look at the screen in front of you, do you see -- can
21 you see this clearly where it says CBSG funding analysis?

22 A. You lost it again.

23 Q. Can you see funding analysis?

24 A. It's off the screen again. You might want to stand back
10:37 25 and go through it.

1 **THE COURT:** There's some wires there. You guys have
2 been moving that down there, and it's obviously somewhat
3 sensitive. So probably it's getting somewhat disconnected
4 there.

10:38 5 **MS. BERLIN:** Your Honor, we're just going to go with a
6 different -- we have several copies. I apologize for that.

7 Can we pull up P 288, Mr. Robinson? And only show
8 to --

9 (Thereupon, the exhibit was introduced into evidence.)

10:38 10 **MR. HYMAN:** We don't object to the KPI report being
11 published to the jury, Your Honor.

12 **THE COURT:** Okay.

13 **MS. BERLIN:** Okay. So we can go ahead and we'd like
14 to admit P 288, Your Honor?

10:38 15 **THE COURT:** Yep, that will be admitted.

16 (Thereupon, the exhibit was admitted into evidence.)

17 **MR. HYMAN:** We'll preserve the prior objections.

18 **THE COURT:** Okay. Those are overruled.

19 **BY MS. BERLIN:**

10:39 20 Q. So we'll have to zoom in a bit so everyone can see the
21 numbers, but is P 288 a copy of -- the true and correct copy.
22 This a CBSG, a Par Funding document?

23 A. **Correct.**

24 Q. And it says funding analysis. Do you see that in the top
10:39 25 left?

1 A. **I do.**

2 Q. Now, we talked a minute ago about what the default -- what
3 a default is on the merchant cash advance, and we looked at the
4 agreement.

10:39 5 Do you recall that?

6 A. **Yes.**

7 Q. Does this document P 288, does it show what the default
8 rate is or what the number of Par Funding MCAs that are in
9 default, does -- is information shown on P 288?

10:40 10 A. **No. It's not.**

11 Q. Okay. What is -- P 288, what is this chart commonly? Does
12 it have a phrase that's used to refer to this kind of chart?

13 A. **This type of chart?**

14 Q. Yeah, or this chart at Par Funding. Have you ever heard of
10:40 15 the phrase "KPI report"?

16 A. **I knew it as defunding analysis, but later I came to find
17 out that Joe Cole was using it as a KPI report.**

18 Q. So you have heard that some people refer to it as a KPI
19 report, but you don't?

10:41 20 A. **Yes.**

21 Q. So we can take it down.

22 So that document doesn't show what number of loans or
23 merchant cash advances are in default?

24 A. **No, it does not.**

10:41 25 Q. Okay. And it doesn't claim to?

1 A. No.

2 Q. In fact, can we just put it back up.

3 If we look at the column headings here, none of them
4 say default, correct?

10:41 5 A. Correct.

6 Q. Those headings are really small on the screen but --

7 MS. BERLIN: Thank you, Mr. Robinson.

8 BY MS. BERLIN:

9 Q. And where we see -- you see the column. It's the Fifth
10:41 10 from the right. It says "exposure percentage"?

11 A. Yes.

12 Q. And we see -- now what -- is exposure percentage, is that
13 the default rate?

14 MR. HYMAN: Objection, Your Honor.

10:42 15 THE COURT: Overruled.

16 You may answer if you understand, Mr. Klenk, in your
17 experience.

18 A. I understand. The exposure percentage is not a default,
19 no.

10:42 20 BY MS. BERLIN:

21 Q. And generally, what is an exposure percentage?

22 A. What this is representing, exposure -- funding exposure is
23 cash in versus cash out, what you receive back. So if you
24 advance a customer a hundred thousand dollars and you only get
10:42 25 \$90,000 back, you have an exposure of 10 thousand of your

1 original principal that you haven't returned.

2 Q. Now, Mr. Klenk, does the chart that we see as P 288, does
3 this actually reflect what the bank records would show as far
4 as how much is loaned out and how much comes back, or does it
10:43 5 reflect what management decided to report in their discretion?

6 A. Can you rephrase that a little bit?

7 Q. Sure. So do you see -- let's just look at the definition.
8 Do you see number 4, footnote 4?

9 A. Yes.

10:43 10 Q. Do you see it references the exposure is the transactions
11 written off.

12 Do you see that?

13 A. It says: Factoring losses realized in respect to equal to
14 AR balance for transactions written off against factoring the
10:43 15 loss reserve.

16 Q. So do you see the phrase "written off"?

17 A. Yes.

18 Q. So exposure percentage the amount that management in its
19 discretion decides to write-off?

10:43 20 MR. HYMAN: Leading.

21 THE COURT: Overruled.

22 A. The exposure percentage, yes, it's subjective to what
23 management wanted to write-off.

24 BY MS. BERLIN:

10:43 25 Q. It's what management decided to write-off its books?

1 A. **Correct.**

2 Q. Hypothetically -- this is a hypothetical. You could have a
3 hundred percent of a loan never paid back, but if management in
4 its discretion decides it's not going to write any of that off,
10:44 5 it wouldn't even appear in the exposure percentage; is that
6 accurate?

7 **MR. HYMAN:** Objection, leading, calls for speculation.

8 **THE COURT:** I'm going to sustain it. Let's restate
9 that, please.

10:44 10 **MS. BERLIN:** Thank you.

11 **BY MS. BERLIN:**

12 Q. So exposure percentage is, I think you testified, is based
13 purely on management's discretion what they want to write
14 there?

10:44 15 A. **Correct.**

16 **MR. HYMAN:** Leading.

17 **THE COURT:** Overruled.

18 A. **I'll slow down my answers, sorry.**

19 **BY MS. BERLIN:**

10:44 20 Q. And so -- and when we talk about write-off, I want to make
21 sure you and I are talking about the same thing. When I am
22 referencing writing off a number, I'm talking about writing it
23 off in the books or records. Like, whatever journal or
24 electronic or in paper format, that management at Par Funding
10:44 25 would keep. Do you understand what I'm referring to as

1 "written off"?

2 A. I do.

3 MR. HYMAN: Leading and compound, Your Honor.

4 THE COURT: Overruled.

10:45 5 BY MS. BERLIN:

6 Q. And when you answered my questions about the exposure
7 percentage reflecting the number that management in its
8 discretion to write-off, was your answer consistent with the
9 definition I just gave?

10:45 10 MR. HYMAN: Objection, asked and answered, leading,
11 compound.

12 THE COURT: Overruled.

13 A. Yes.

14 BY MS. BERLIN:

10:45 15 BY MS. BERLIN:

16 Q. So at Par Funding --

17 MS. BERLIN: We can take down this exhibit.

18 BY MS. BERLIN:

19 Q. So if -- did Michael Furman ever ask you about this chart
10:45 20 that we just looked at together as P 288?

21 A. No.

22 Q. So if Michael Furman had ever asked you about P 288, would
23 you have explained it to him the way you explained it here
24 today?

10:46 25 MR. HYMAN: Objection, calls for speculation, leading.

1 THE COURT: Overruled.

2 BY MS. BERLIN:

3 Q. But he never asked?

4 A. I never spoke with him.

10:46 5 Q. He never called you? He never asked questions?

6 A. No.

7 MR. HYMAN: Leading.

8 THE COURT: Overruled.

9 BY MS. BERLIN:

10:46 10 Q. When you're working at Par Funding, prior to a receiver
11 being appointed, who was the boss there?

12 A. Joe LaForte.

13 Q. He also goes by Joseph LaForte?

14 A. Yes.

10:46 15 Q. Are you generally familiar with Par Funding's use of agents
16 to raise investor money for Par Funding?

17 A. I'm aware of it, yes.

18 Q. You're familiar with, as a comptroller of Par Funding,
19 familiar with Par Funding's records that show the amounts that
10:47 20 are invested in Par Funding and promissory notes that are
21 issued?

22 A. Yes.

23 Q. Did Par Funding --

24 MS. BERLIN: Or actually, Your Honor, may I approach
10:47 25 the witness with an exhibit?

1 THE COURT: You may.

2 MS. BERLIN: We've marked -- defendants marked this as
3 D 0259.

4 (Thereupon, the exhibit was introduced into evidence.)

10:47 5 THE COURT: You may. Go ahead.

6 BY MS. BERLIN:

7 Q. Are you familiar with this document that we've just shown
8 you? It says -- do you see at the top it says it's Par Funding
9 note?

10:48 10 A. Yes.

11 Q. And this is the type -- you just testified, you're familiar
12 with the notes Par Funding would issue?

13 A. Yes.

14 Q. And does this appear to be a true and correct copy of a
10:48 15 Par Funding record?

16 A. From what I can see, yes.

17 Q. And if you flip to the last page you'll see a signature.

18 A. Yes.

19 MS. BERLIN: Your Honor, I'd like to introduce this
10:48 20 exhibit as an exhibit.

21 THE COURT: Any objection?

22 MR. HYMAN: Hearsay, lack of authentication.

23 THE COURT: Overruled. All predicates has been laid
24 under a business record. That will be admitted at this time.

10:48 25 What is the number again?

1 IT TECHNICIAN: 0259.

2 THE COURT: 0259 is hereby admitted.

3 You may proceed.

4 MS. BERLIN: Thank you.

10:48 5 (Thereupon, the exhibit was admitted into evidence.)

6 BY MS. BERLIN:

7 Q. And so is this a Par Funding promissory note?

8 A. Yes, it is.

9 Q. It's issued to Mr. Furman and his company Fidelis?

10:49 10 A. Yes.

11 Q. So did Par Funding promise to pay Mr. Furman or Fidelis
12 anything for the investor money that he raised and sent to
13 Par Funding?

14 MR. HYMAN: Objection, predicate.

10:49 15 THE COURT: Overruled.

16 A. He was to receive interest payments.

17 BY MS. BERLIN:

18 Q. And what percent interest was that?

19 A. Up until roughly March of 2020 it was 20 percent.

10:49 20 Q. And is that promise to pay Mr. Furman and his company
21 Fidelis in exchange for investor money, is that memorialized or
22 reflected in any written document?

23 MR. HYMAN: Leading, states facts not in evidence.

24 THE COURT: Overruled.

10:50 25 A. It states here that the principal managers would be paid.

1 BY MS. BERLIN:

2 Q. And I just want to make sure you're talking about the D
3 0259 exhibit in front of you?

4 A. Yes, it's states in 2.02.

10:50 5 Q. So in Section 2.02 of D 0259 we see the memorialization
6 where it's written that he'll get 20 percent; is that correct?

7 A. Well, it says interest and the principal. I'm looking
8 here. I don't see where it says the 20 percent on this one.
9 I'm just glancing at it off the top of my head.

10:50 10 MS. BERLIN: May I approach the witness?

11 THE COURT: You may.

12 BY MS. BERLIN:

13 Q. May I see that?

14 A. Sure.

10:50 15 Q. I'm going to take it and show it on your screen.

16 A. Sure.

17 Q. So just for example, to give you a hypothetical, if
18 Mr. Furman had sent Par Funding a hundred thousand dollars, how
19 much did Par Funding promise to pay him?

10:51 20 MR. HYMAN: Objection, calls for speculation.

21 THE COURT: Overruled.

22 MR. HYMAN: Improper expert witness testimony.

23 THE COURT: It's a hypothetical. It's overruled.

24 You may answer.

10:51 25 BY MS. BERLIN:

1 Q. Go ahead.

2 A. They would pay him back a total of \$120,000 principal plus
3 interest.

4 Q. So that 20 percent interest?

10:51 5 A. Correct.

6 MR. HYMAN: I'll also object to relevancy, Your Honor.

7 THE COURT: Overruled.

8 BY MS. BERLIN:

9 Q. And you're familiar with Par Funding's bank records?

10:52 10 A. I am.

11 Q. And Par Funding's -- the promissory notes that were issued?

12 A. I am familiar with them.

13 Q. And typically the promissory note that we just looked at
14 would have a subscription agreement with it?

10:52 15 MR. HYMAN: Objection, leading.

16 MS. BERLIN: One moment, Your Honor, we'll just show
17 the document.

18 THE COURT: Go ahead and show the document. It is
19 sustained, though. You can restate that.

10:53 20 MS. BERLIN: Let me restate it.

21 BY MS. BERLIN:

22 Q. That's okay. We will -- we won't make you sit there and
23 wait while we hunt for the hard copy to show you.

24 But you're familiar with the bank records of

10:53 25 Par Funding. I showed you the promissory note Par Funding

1 issued to Fidelis; do you recall that?

2 A. Yes.

3 Q. And were those -- did Par Funding continue to issue those
4 to Mr. Furman for the investor money he set up until what month
10:53 5 was it?

6 A. He -- Par Funding did have additional notes up until, if I
7 remember correctly, up until about February or March of 2020,
8 and they did make payments on a regular basis.

9 Q. So they paid Mr. Furman?

10:53 10 A. Yes.

11 MS. BERLIN: Okay. I don't have any further
12 questions. Thank you, Your Honor.

13 Thank you, Mr. Klenk.

14 THE COURT: Cross-examination?

10:54 15 THE WITNESS: Do you want your exhibit back?

16 THE COURT: You may want to hold on to it until we're
17 done. Thank you, Mr. Klenk.

18

19

CROSS EXAMINATION

10:54 20 BY MR. HYMAN:

21 Q. Good morning, Mr. Klenk.

22 A. Good morning.

23 Q. Isn't it true that you don't currently work for
24 Par Funding?

10:54 25 A. I work for Full Spectrum Processing. I never worked for

1 **Par Funding.**

2 Q. But you're not currently answering to anybody associated
3 with Par Funding today, are you?

4 A. **No, I'm not.**

10:54 5 Q. You're, in fact, answering to the receiver. He's your boss
6 today, isn't he?

7 A. **Correct.**

8 Q. And he answers to the SEC?

9 A. **Correct.**

10:54 10 **MS. BERLIN:** Objection, Your Honor. It calls for a
11 hearsay and it's not relevant.

12 **THE COURT:** If he knows. Okay, if he knows. Again,
13 I'm going to overrule that.

14 You're free to answer, Mr. Klenk, to the extent that
10:55 15 you understand.

16 A. **So just so you know the hierarchy right now, in the office**
17 **the receiver has hired DSI to help. I report to DSI who**
18 **reports to the receiver, but I also have communication with the**
19 **receiver.**

10:55 20 **BY MR. HYMAN:**

21 Q. And how often do you communicate with the SEC?

22 A. **I -- with the SEC directly?**

23 Q. Yeah.

24 A. **I've only -- never directly. I've answered questions for**
10:55 25 **them maybe on three occasions.**

1 Q. So you weren't talking to Ms. Berlin right outside of the
2 courtroom today?

3 A. **As I said, just about on three occasions.**

4 Q. Do you know how often the receiver's counsel speaks with
10:55 5 the SEC?

6 **MS. BERLIN:** Objection, Your Honor, calls for hearsay
7 and relevance.

8 **THE COURT:** Yes. Well, that's fine as to the
9 relevance, but I'm going to overrule it.

10:55 10 I doubt you know, Mr. Klenk, but if you can answer it.

11 A. **I have no idea how often.**

12 **BY MR. HYMAN:**

13 Q. And who signs your pay checks, sir?

14 A. **My paycheck is signed by the receiver.**

10:55 15 Q. How often did you interact with Mr. Joe LaForte?

16 A. **Very seldom. I reported to Joe Cole who was the CFO.**

17 Q. And so why would you say that Mr. LaForte was your boss if
18 you rarely dealt with him?

19 A. **Joe LaForte was the person who was in charge of everything.**

10:56 20 **Joe Cole reported to Joe LaForte, but they had a very strict**
21 **pecking order that Cole ran the accounting and finance area and**
22 **LaForte didn't interfere with anything he was doing.**

23 Q. Do you recall seeing the exhibit that was marked as Exhibit
24 288?

10:56 25 A. **Can you put it back up? Just -- is that the one we just**

1 had?

2 Q. Yes, it was a KPI report.

3 A. Okay. I'm familiar with that, yes. I have it in front of
4 me then.

10:56 5 Q. Have you seen that report before?

6 A. I have.

7 Q. And did you review that report before it was given out to
8 investors?

9 A. No, I never reviewed it.

10:56 10 Q. Did you -- have you had any opportunity to test or verify
11 any of the contents of that report?

12 A. I tested about two or three times in 2018, but this report
13 was prepared for Joe Cole. He prepared it and he had help from
14 Aida Lau, who was the accounting manager. She submitted it to
10:57 15 him.

16 Q. And when you tested in 2018 was the information in it
17 accurate?

18 A. I tested -- I traced it back to the original documents and
19 it tied back, yes, at that time.

10:57 20 Q. And similarly, doesn't that document reflect that
21 Par Funding made approximately 179 million dollars in gross
22 profit in 2019?

23 A. On this document it doesn't show anything like that.

24 Q. Sorry about that.

10:57 25 So you never dealt with Mr. Furman?

1 A. I've never spoken with him, no.

2 Q. Have you ever spoken with any of the agent fund managers?

3 A. I'm trying to think. I spoke to Dean Vagnozzi probably
4 about four or five times.

10:57 5 Q. Speak to anybody else?

6 A. Not that I'm aware of.

7 Q. Isn't it true that the number of lawsuits that's filed
8 isn't an accurate way to determine default?

9 MS. BERLIN: Objection, Your Honor, outside of the
10:57 10 scope. We didn't even discuss that.

11 THE COURT: Relax. Overruled.

12 You may answer.

13 A. Can you repeat that, please?

14 BY MR. HYMAN:

10:58 15 Q. Isn't it true that the number of lawsuits filed is an
16 inaccurate way to determine the default rate?

17 A. That's out of my expertise. I don't know.

18 MR. HYMAN: No further questions.

19 MS. BERLIN: Just real briefly.

10:58 20 THE COURT: Yes.

21

22 **REDIRECT EXAMINATION**

23 BY MS. BERLIN:

24 Q. You were asked about the receiver, Mr. Klenk. Are you
10:58 25 familiar -- or do you understand that the receiver was

1 appointed by the Court and not the SEC?

2 A. I do.

3 THE COURT: You opened it. Sit down. Overruled.

4 Preempted. Go ahead.

10:58 5 MS. BERLIN: Thank you, Your Honor.

6 BY MS. BERLIN:

7 Q. And when we spoke, you were asked about our conversation

8 outside in the hallway. Did I give you -- did I tell you

9 anything about how you should testify today?

10:59 10 A. You told me to testify honestly.

11 Q. That's all. Anything else?

12 A. No. You just briefly went over some of the questions that
13 you were going answer just so I was prepared.

14 Q. And other than telling you to testify truthfully, anything
10:59 15 else?

16 A. Not that I remember. I got a short attention span.

17 MS. BERLIN: All right. Thank you. I don't have any
18 further questions. So have a safe trip back.

19 THE WITNESS: Thank you.

10:59 20 THE COURT: Ladies and gentlemen of the jury, does
21 anybody have any questions for Mr. Klenk? Okay.

22 Thank you, Mr. Klenk. You're excused. You can hand
23 those materials back on your way out. Thank you.

24 THE WITNESS: Thank you very much.

10:59 25 THE COURT: SEC's next witness.

1 MS. JOHNSON: We are going to call William Mitchell
2 from the State of Texas. He's on Zoom.

3 THE COURT: He's standing by. Does he have the
4 information? Let's see if we can get him to connect here
10:59 5 without issue.

6 MS. JOHNSON: Can we get the same instruction on the
7 chat?

8 THE COURT: It's already been disabled. The Court
9 took care of that this morning. There's no more chat function
11:00 10 anymore in the Zoom. So we don't have to get any running
11 commentary.

12 (Thereupon, the exhibit was introduced into evidence.)

13 MS. JOHNSON: Your Honor, we're going to introduce
14 Plaintiff's 36 into evidence. There's no objection. I have
11:00 15 hard copies today for the jury in case --

16 THE COURT: Regulatory documentation from Texas.

17 MS. JOHNSON: Yes.

18 THE COURT: Any objection for the record?

19 MR. HYMAN: No, Your Honor.

11:00 20 THE COURT: Let go ahead and that will be published
21 and distributed to the jury so they have something to look at.
22 If you have any problems having this witness connecting, let me
23 know. I assume he's trying to do so now.

24 (Thereupon, the exhibit was admitted into evidence.)

11:02 25 THE COURT: Has he indicated he's on already? Because

1 I don't see him yet.

2 **IT TECHNICIAN:** No.

3 **MS. BERLIN:** I have him on e-mail saying he's in
4 there.

11:05 5 (Thereupon, there was a brief discussion off the record.)

6 **THE COURT:** Mr. Mitchell, if you can hear me, you can
7 go ahead and try to connect here and turn on your video. We
8 don't have video feed yet.

9 **THE WITNESS:** Can you hear me?

11:05 10 **THE COURT:** There you are. Can you see us,
11 Mr. Mitchell?

12 **THE WITNESS:** Yes, I can.

13 **THE COURT:** Excellent.

14 **THE WITNESS:** I apologize about that. I was hearing
11:05 15 everything that was going on, and it wouldn't allow me to put
16 my full name in, only my e-mail. So I understand. Sorry about
17 that.

18 **THE COURT:** I changed it for you. Is the spelling
19 correct underneath your window?

11:05 20 **THE WITNESS:** Yes, that is correct.

21 **THE COURT:** I've done that. We have investing public
22 that's watching. So I have controls over who can participate
23 so that we don't disrupt proceedings. So now I've given you
24 panelist permission. So you should be fine. I'm going to turn
11:06 25 it over to my courtroom deputy who is going to swear you in.

1 So if you want to raise your right hand, she's going to
2 administer an oath at this time.

3 Thereupon,

4 **WILLIAM MITCHELL,**

5 having been duly sworn by the courtroom deputy, testified as
6 follows:

7 **THE COURT:** All right. So we're going to proceed.

8 You can see the feed there with the counsel for the SEC. She's
9 at the podium. And I'll turn it over to you all to begin
10 questioning. Everybody in my jury can see. Correct? Very
11 good. You may proceed.

12

13

DIRECT EXAMINATION

14 **BY MS. JOHNSON:**

11:06 15 Q. Good morning, Mr. Mitchell.

16 A. Good morning.

17 Q. Where do you work?

18 A. I work with the Texas State Securities Board in Austin,
19 Texas.

11:06 20 Q. And how long have you worked there?

21 A. Now going on eleven years.

22 Q. And is the Texas Securities Board, is that a state agency?
23 What is it?

24 A. Correct. It's a state agency appointed underneath the
11:07 25 governor inside the state of Texas, yes. It's a state agency

1 that is (inaud.).

2 Q. Can you repeat that? We had a little interference.

3 A. **It's a state agency appointed underneath the governor**
4 **within the state of Texas.**

11:07 5 Q. Thank you. And what is the mission of the agency? What is
6 your function?

7 A. **Our mission basically is to protect the investing public in**
8 **regards to the Texas Securities Act.**

9 Q. I'm sorry. Can you repeat that last part? I caught "to
11:07 10 protect the investing public," but I didn't hear the last part
11 of your sentence.

12 A. **Within the realms of the Texas Securities Act, protecting**
13 **investing public.**

14 Q. So it has responsibility for enforcing Texas securities
11:08 15 laws?

16 A. **Yes.**

17 Q. And what do you do there?

18 A. **I'm an investigator in the enforcement division of the**
19 **Texas State Security Board.**

11:08 20 Q. And I'm going to show you on the screen, and I think you
21 have it at home, what's been marked as exhibit -- Plaintiff's
22 Exhibit 36. And it's been admitted into evidence.

23 Can you tell me what that is?

24 A. **Yes. Let me -- bear with me one moment here. Exhibit 36,**
11:08 25 **I see here, is one of our orders issued by the Texas Securities**

1 Board in the matter of Senior Asset Protection DBA Encore
2 Financial Solutions, Merchant Growth & Income Funding, LLC,
3 ABetterFinancialPlan.com LLC, a.k.a., A Better Financial Plan,
4 Complete Business Solutions Group, Incorporated, DBA
11:09 5 Par Funding, Gary Neal Beasley and Perry Abbonizio.

6 Q. You got it. You did it right.

7 And are -- those parties that you just read, are those
8 the individuals and companies that this Texas cease and desist
9 order were entered against?

11:09 10 A. That is correct, yes, ma'am.

11 Q. And if we go to page 3, we'll see the title where it says
12 Emergency Cease and Desist Order.

13 Can you tell us --

14 A. That is correct.

11:09 15 Q. What is a cease and desist order? What is the purpose of
16 that?

17 A. So if you read here, a cease and desist order is an
18 official notice of an issuance by the securities commissioner
19 of the state of Texas, and pursuant to 23.2 of the Securities
11:10 20 Act, the enforcement division of the Texas State Securities
21 Board has presented such evidence that it must declare a cease
22 and desist upon the respondent.

23 Q. And would respondents have received notice of this when it
24 was issued?

11:10 25 A. I'm sorry. Can you repeat that again?

1 Q. Of course.

2 Would the respondents have received notice of this
3 order when it was issued?

4 A. That is correct yes, ma'am.

11:10 5 Q. And what is the date that this was issued?

6 A. (Inaud.)

7 Q. It's on the last page of the order?

8 A. Yeah, I believe it is February 25th of 2020.

9 Q. That's correct. Would the cease and desist have been
11:11 10 publically available to others in the respondents at that time?

11 A. Once the order is issued and delivered to the respondents,
12 yes, our orders are made public.

13 Q. And how do you make them public?

14 A. We post them on our website as with the Texas State
11:11 15 Security Board. We also do our diligence in terms of
16 reaching -- giving it out to other securities regulators.
17 They're a nonprofit organizational group that helps us focus on
18 securities laws. They also get information related to the
19 order as well.

11:11 20 Q. Do you know whether it's still available on your website?

21 A. Did you ask if the order is still available?

22 Q. Yes. Is the order still available on the Texas website?

23 A. Yes. It should be. Yes.

24 Q. And if we go to -- I think it's page 12 of the order. In
11:12 25 the middle of the page, where it says "order" under number 1,

1 it says: It is therefore ordered that respondents immediately
2 cease and desist from offering for sale any security in Texas
3 until the security is registered with the securities commission
4 or is offered for sale pursuant to an exemption.

11:12 5 What is that? Can you explain that paragraph, what
6 it's ordering there?

7 A. Correct. So under the Texas Securities Act, any sale or
8 offer for sale of securities beforehand are required to be
9 registered under the Texas Securities Act with our securities
11:13 10 commissioner. So under Section 7 and under Section 12, that
11 refers to the dealer agent or investment advisor, and the
12 security itself must be registered in order for it to be
13 offered in Texas with the investing public.

14 Q. Why is it important for a company to be registered? Why do
11:13 15 Texas securities laws require that?

16 A. Well, for one, it's required under our Texas Securities Act
17 which goes back to again, you know, protecting investing
18 public, but also more in deeper terms in terms of why it's
19 required, it's also there for transparency.

11:13 20 Q. Transparency for whom?

21 A. Transparency for not only the company, but also
22 transparency for the investing public, much like purchasing a
23 publically traded stock. All the information must be
24 presented.

11:14 25 Q. Okay. I just want to touch on a few highlights of the

1 order. If you'd look at page 7, this is in the middle where it
2 talks about the Pennsylvania enforcement action, paragraph 36
3 of the order.

4 **A. Hold on one second. You said page 7?**

11:14 5 Q. Yes. Are you able to see what we're posting here on your
6 screen?

7 **A. Yes. Yes, I can see it.**

8 Q. We'll use that. That will be a little easier.

9 Paragraph 36, it's titled The Pennsylvania Enforcement
11:14 10 Action and it says: Respondents, Par Funding, A Better
11 Financial Plan, and has some others, Abbonizio, are not
12 disclosing the Department of Banking and Securities for the
13 Commonwealth of Pennsylvania that they conducted an
14 investigation of respondent Par Funding.

11:15 15 And number 37, it: Says on November 28th, based on
16 the results of the investigation, the agency entered a consent
17 order. And it's styled Commonwealth of Pennsylvania versus
18 Securities Bureau -- Securities Compliance versus Complete
19 Business Solutions Group. Correct?

11:15 20 **A. That is correct, yes. Paragraph 36 and 37.**

21 Q. So this was a finding of your department that these
22 respondents were not disclosing the Pennsylvania enforcement
23 action. Did I characterize that correctly?

24 **A. That is correct. Yes.**

11:15 25 Q. And why was that an important -- why was that included in

1 your order?

2 A. Well, because, without going into too much detail, in the
3 scope of our investigation, during the time that the offer was
4 being presented in an undercover capacity, the information
11:16 5 regarding the Pennsylvania order was not disclosed. And again,
6 that kind of ties back to protecting the investing public. All
7 information, all disclosures must be acknowledged before
8 someone decides to invest, much like going back to purchasing a
9 publically traded stock, all the information must be presented
11:16 10 and disclosed. And it's mainly up to the investor whether or
11 not it's relevant.

12 Q. And then if we go down -- there's a similar title. If we
13 go down to right above paragraph 41, on that same page it says:
14 The New Jersey enforcement action.

11:16 15 And 41 and 42 talk about a New Jersey enforcement
16 action, and similar to the Pennsylvania it says: Respondents
17 are not disclosing the New Jersey Bureau of Securities
18 conducted an investigation of respondent, Par Funding, and that
19 on December 27th, 2018, based on the results of the
11:17 20 investigation, that the agency entered a cease and desist
21 order.

22 Is that there for the similar reasons that you just
23 talked about with the Pennsylvania enforcement action?

24 A. Yes, ma'am, it is.

11:17 25 Q. All right. And if we skip ahead to two more pages, it's

1 page 10 of the document. I know they're not numbered so it's
2 hard. But under the Fraud and Deceit Concealment of
3 Pennsylvania order under number 62 -- paragraph 62. I'll
4 direct your attention there, and 63.

11:17 5 It says: As described herein, the Department of
6 Banking and Securities for the Commonwealth of Pennsylvania
7 entered into a consent agreement and order that ordered the
8 respondents, Par Funding, to pay an administrative assessment
9 in the amount of \$499,000.

11:18 10 And then under 63 it says: In connection with the
11 offer of the investments described herein, respondents,
12 Par Funding, and A Better Financial Plan and Abbonizio are
13 intentionally failing to disclose the consent agreement.

14 Is that similar to what we just talked about, why it's
11:18 15 included in the order, similar to the Pennsylvania action that
16 you've already described?

17 A. **Yes, ma'am.**

18 Q. Does this order remain in effect in Texas?

19 A. **This order does remain in effect, yes, it does.**

11:18 20 Q. Were there any subsequent orders to this between
21 Par Funding and A Better Financial Plan by the State of Texas?

22 A. **I'm sorry, can you repeat that again.**

23 Q. Have there been any orders after this entered by your
24 agency involving Par Funding or A Better Financial Plan or

11:19 25 Mr. Abbonizio?

1 A. There was a more recent -- there was a more recent order
2 that was issued. But essentially what it was was just an
3 affirming of the original order. There was -- within the State
4 of Texas there was a contesting done by one of the parties and
11:19 5 the ALJ --

6 Q. I would stop you there. I don't want to get you too far.
7 I understand that was by a party that wasn't -- it
8 wasn't Par Funding or A Better Financial Plan, correct?

9 A. No. No. It was not. That was the only thing that we had.

11:19 10 Q. But that order affirmed this cease and desist order
11 ultimately?

12 A. Correct. Yes, it does.

13 MS. JOHNSON: I think we're done, Your Honor.

14 Thank you, Mr. Mitchell. Now defendant's counsel is
11:20 15 going to ask you some questions.

16 THE COURT: All right, Mr. Mitchell, we'll turn it
17 over to defense counsel for cross-examination, okay?

18 THE WITNESS: Okay.

19

20 **CROSS EXAMINATION**

21 BY MR. JOHN:

22 Q. Good morning.

23 A. Good morning.

24 Q. During your direct examination, you testified that your
11:20 25 office did publish this order to your department website,

1 correct?

2 A. **Yes. That is correct.**

3 Q. You also said that oftentimes you will publish an order or
4 communicate an order to other regulatory agencies; is that

11:20 5 correct?

6 A. **Yes. That is correct. We have a -- we have a division
7 that handles that.**

8 Q. In 2020 what other regulatory agencies did you communicate
9 this particular order to?

11:21 10 A. **I don't know -- I don't know that they --**

11 Q. As you sit here today, can you say with any certainty that
12 this was order was communicated to any other regulatory
13 agencies?

14 A. **I'm sorry, can you repeat that again?**

11:21 15 Q. Sure. As you sit here today, or on Zoom rather, can you
16 say with any certainty that this order was communicated to any
17 other regulatory agencies?

18 A. **Yes. Yes, I can.**

19 Q. How is that?

11:21 20 A. **Just with the number of organizational groups that I know
21 our agency is tied to, and I know that our division always does
22 a due diligence in terms of reaching out to other states, other
23 state regulators. One of those is known to be an
24 organizational group FINRA, which basically ties a lot of state
11:21 25 security regulators.**

1 Q. So if I understand your testimony correctly, it is your
2 understanding that your agency communicates regularly and
3 you're assuming it was done this time as well, correct?

4 **MS. JOHNSON:** Objection, Your Honor.

11:22 5 **THE COURT:** Overruled.

6 You may answer.

7 **BY MR. JOHN:**

8 Q. Let me repeat that question, sir.

9 Am I understanding your testimony correctly that
11:22 10 you're saying to me your agency normally communicates these
11 orders and you're assuming it was done as well this time,
12 right?

13 A. Yes. That is correct.

14 Q. You said that your organization also communicates these
11:22 15 type of orders to nonprofit organizations, right?

16 A. Well, FINRA is a -- FINRA is a -- for example, is a
17 nonprofit organization, it's my understanding, but yes.

18 Q. I'm sorry. I thought during your direct examination you
19 said that your agency often communicates orders like these to
11:22 20 numerous nonprofit organizations. Did I misunderstand that?

21 A. Well, not numerous. Only a few in particular. But again,
22 I'm -- I don't know that specifics. I don't know exactly
23 the -- I don't exactly know the logistics and how all of that
24 is handled.

11:23 25 Q. But you're assuming it was done this time, right?

1 A. Yes. I would assume so.

2 Q. Okay. During the course of your investigation, before the
3 order was -- strike that.

4 You conducted an investigation before the cease and
11:23 5 desist order was published in this case, right?

6 A. That is correct. Our division conducted an investigation.

7 Q. And during that investigation you communicated with the
8 respondents, right?

9 A. That is correct.

11:23 10 Q. Did you -- other than the respondents and anyone internal
11 to your agency, did you communication with anyone else about
12 the investigation?

13 MS. JOHNSON: I'm going to object about going into the
14 investigative privilege.

11:23 15 THE COURT: Yeah, I'm going to go ahead and sustain
16 that.

17 BY MR. JOHN:

18 Q. Sir, you've never had contact with Mr. Furman, the
19 defendant in this case, correct?

11:24 20 MS. JOHNSON: Again, I think --

21 THE COURT: That I will permit.

22 BY MR. JOHN:

23 Q. You've never had communication directly with Mr. Michael
24 Furman in this case, correct?

11:24 25 A. I'm sorry. Hold on. Let me raise this volume.

1 Q. Sure. It may be me. You want me to repeat the question?

2 A. Repeat that again. Sorry.

3 THE COURT: Repeat it. Go ahead and repeat it.

4 BY MR. JOHN:

11:24 5 Q. You have never had communication with Mr. Michael Furman,
6 correct?

7 A. No.

8 Q. You never directly sent notice of this order to Mr. Michael
9 Furman, correct?

11:24 10 A. No.

11 MR. JOHN: One moment to confer, Your Honor?

12 THE COURT: Sure.

13 BY MR. JOHN:

14 Q. Mr. Mitchell, I just want to communicate to clarify your
15 last answer. You said, no.

16 That means you never sent notice to Mr. Michael Furman
17 of this order, correct?

18 A. That is correct. I never sent notice.

19 Q. Did anyone else from your office send notice to Mr. Furman
11:25 20 of this order?

21 A. I cannot answer that. I don't know.

22 MR. JOHN: No further questions for this witness,
23 Your Honor.

24 THE COURT: All right. Any direct?

11:25 25

REDIRECT EXAMINATION

1
2 **BY MS. JOHNSON:**

3 Q. Hi, Mr. Mitchell. I just wanted to clarify two things.
4 When you were discussing -- when you testified that your agency
11:26 5 sends these orders on a regular basis to nonprofits, you were
6 including FINRA as a nonprofit when you made that statement,
7 correct?

8 A. Yes, that's correct.

9 Q. And you stated that this was made publically available. Is
11:26 10 it still publically available on the Texas website?

11 A. Yes, ma'am, it should be. Yes.

12 **MS. JOHNSON:** All right. Thank you.

13 **THE COURT:** Any questions for Mr. Mitchell from the
14 jury? All right.

11:26 15 Thank you very much, Mr. Mitchell. You're excused.
16 You may disconnect at this time.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** All right. Is the next witness also on
19 Zoom or is the next witness live?

11:26 20 **MS. JOHNSON:** I think we're going to have to do a
21 Zoom. It's going to be the New Jersey regulator.

22 **THE COURT:** That makes sense. We can go right to the
23 next regulator. If you want to go ahead and let me know when
24 that regulator connects, I'll give them the same privileges
11:27 25 here and we can let them have access.

1 MS. BERLIN: Thank you. I stepped out to just make
2 that happen, so hopefully he will be on in just a moment.

3 THE COURT: Sure.

4 (Thereupon, the exhibit was introduced into evidence.)

11:27 5 MS. JOHNSON: Your Honor, we would like to do the
6 same --

7 THE COURT: Moving in the regulatory documents for the
8 New Jersey proceedings?

9 MS. JOHNSON: Yes, Your Honor. We'd like to move in
11:27 10 P 5.

11 THE COURT: P 5. Any objection?

12 MR. HYMAN: No, Your Honor.

13 THE COURT: All right. P 5 will be admitted at this
14 time.

11:27 15 (Thereupon, the exhibit was admitted into evidence.)

16 THE COURT: You may publish to the jury copies of the
17 regulatory documents.

18 MS. BERLIN: Your Honor, the witness will be on in
19 just a moment, and the phone number, if it appears that way,
11:28 20 will start 973.

21 (Thereupon, there was a brief discussion off the record.)

22 MS. BERLIN: Your Honor, he's in and it should be area
23 code 973.

24 THE COURT: Okay. He's been giving privileges. He
11:32 25 should be coming on momentarily.

1 And if you can hear me, Mr. Bouchard, you can go ahead
2 turn on your audio and turn on your video.

3 **THE WITNESS:** I can hear you.

4 **THE COURT:** Excellent. All right. Very good. Okay.

11:32 5 So what we're going to do --

6 **THE WITNESS:** Excuse me. Can my counsel be admitted
7 as a panelist?

8 **THE COURT:** Yes, I can admit him as well. If he would
9 raise his hand again, I can go ahead and admit him. There we
11:32 10 are.

11 And, Counsel, you should be given access now in just a
12 moment and you'll also be coming in.

13 And, Counsel, I think you can just leave your -- if
14 you want to leave your video off, I don't know if you want to
11:33 15 have it on, it's up to you. Whatever is easier, okay.

16 **MR. SHOWELL:** I'll just leave it on, Judge. If
17 there's an objection made, (audio distortion) I'll make it.

18 **THE COURT:** Very good. Okay.

19 So what we're going to do, Mr. Bouchard, is we're
11:33 20 going to swear you in in just a moment. You're going to hear
21 the voice of my courtroom deputy. When you testify, just so
22 that we can really make it clear for the sake of my court
23 reporter and the jurors, just project as much as you can in
24 whatever microphone that's near your computer so that we can
11:33 25 hear you clearly.

1 So with that being said, Gracie, do you want to swear
2 in the witness, please.

3 **THE WITNESS:** Do you think I should use a headset?

4 **THE COURT:** I can hear you pretty well, so I think we
5 can try go with that as it stands right now. If there are any
6 problems, we'll let you know. Okay? But thank you for that.

7 **THE WITNESS:** Okay.

8 **THE COURT:** All right. Go ahead, Gracie.

9 Thereupon,

10 **STEPHEN BOUCHARD,**

11 having been duly sworn by the courtroom deputy, testified as
12 follows:

13 **THE COURT:** And for the record, before you state your
14 name, Mr. Bouchard, can I get counsel on behalf of Mr. Bouchard
11:34 15 to state his name for the record. I know that he is appearing
16 over Zoom, although, of course, not testifying but as counsel
17 for Mr. Bouchard.

18 Go ahead, sir.

19 **MR. SHOWELL:** Your Honor, Evan A. Showell, deputy
11:34 20 attorney general for the New Jersey division of law on behalf
21 of Mr. Bouchard.

22 **THE COURT:** All right. With that being said, we'll
23 turn it over.

24 And ladies and gentlemen of the jury, you see
11:34 25 everybody clearly, right? Okay. Very good.

1 All right. You may proceed.

2 MS. JOHNSON: Thank you, Your Honor. Good morning,
3 Mr. Bouchard.

4

5 DIRECT EXAMINATION

6 BY MS. JOHNSON:

7 Q. Can you tell us where you work?

8 A. I'm -- I work at the New Jersey Bureau of Securities.

9 Q. And if I refer to that as "the Bureau," is that the correct
10 lingo?

11 A. Yes.

12 Q. And how long have you worked at the Bureau?

13 A. Ten years next month.

14 Q. And is the Bureau a state agency?

11:35 15 A. Yes, it is.

16 Q. And what the is function of the Bureau?

17 A. The mission of the Bureau is to protect investors from
18 investment frauds and to regulate the securities industry in
19 the State of New Jersey.

11:35 20 Q. And what do you do for the Bureau?

21 A. I'm a supervising investigator and the director of the
22 examinations unit.

23 Q. And I'm going to show what's been admitted into evidence as
24 Plaintiff's Exhibit 5, which is the cease and desist order.

11:35 25 Are you familiar with this document?

1 A. **Yes, I am.**

2 Q. And what does this document -- what is it?

3 A. **It was a summary cease and desist order entered by the**
4 **Bureau chief in --**

11:36 5 Q. (Cross-talk)

6 A. **-- December 2018.**

7 Q. The date was late 2018?

8 A. **December 27th, 2018.**

9 Q. And who was it against?

11:36 10 A. **It was against Complete Business Solutions Group doing**
11 **business as Par Funding.**

12 Q. And at the time it was issued in December of 2018, would it
13 have been made available to the public?

14 A. **Yes, it was.**

11:36 15 Q. How would it have been made available to the public?

16 A. **It would have been posted on a -- on the Bureau's website.**
17 **In addition, the New Jersey Office of Attorney General issued a**
18 **press release and the press release would have contained a link**
19 **to the order.**

11:37 20 Q. I'll get back to the press release, but let's talk about
21 the order right now.

22 Would it have been made available to Par Funding?

23 A. **Yes. I believe it was served by mail and also on the**
24 **registered agent for Complete Business Solutions Group, Inc.**

11:37 25 Q. And that would have happened in the -- late 2018?

1 A. Yes, ma'am.

2 Q. Let's just walk through this a little bit. We'll start
3 with the findings of fact on the first page. Number one, CBSG
4 a purported small business funding company, sold and continues
11:38 5 to offer and sell unregistered securities.

6 What does that mean?

7 A. The entity was raising money by selling securities to the
8 public.

9 Q. And the securities --

11:38 10 A. And the securities were not registered with the Bureau.

11 Q. Why would that -- why would the Bureau care whether they
12 were registered or not?

13 A. Well, to protect the public from securities fraud or
14 noncompliance, securities sold within the State of New Jersey
11:38 15 need to be either registered or covered securities which would
16 include 34, you know, securities SEC reporting companies and
17 Stock Exchange listed companies or available for an exemption
18 registration.

19 Q. Thank you. And then we go onto number 2, the second
11:39 20 finding by the Bureau was that the CBSG securities were sold by
21 unregistered agents who received commissions which varied
22 between 5 and potentially as high as 25 percent, depending on
23 the amount of interest that would be paid to the investors, and
24 as a result, millions of dollars of commissions were paid to
11:39 25 unregistered agents, including agents in New Jersey.

1 Why would that finding -- why would that be important
2 to the Bureau to make it a finding in this order?

3 A. Well, one of the ways the Bureau regulates the securities
4 industry in New Jersey is by registering broker/dealers and
11:39 5 their agents, and through that registration process, we were
6 able to discern and assure that the people are both qualified
7 and not have any disciplinary or disqualifying criminal
8 background.

9 Q. And on number 3, you talk about -- the order says on
11:40 10 November 28th, 2018, that CBSG and the Pennsylvania Department
11 of Banking and Securities entered into a consent order
12 concluding that Pennsylvania -- the Pennsylvania securities
13 laws had been violated and that Pennsylvania had ordered CBSG
14 to pay a financial fine of close to \$500,000.

11:40 15 Why is that included in a New Jersey order?

16 A. Fairly typical for the Bureau orders to include relevant
17 disciplinary or regulatory actions and enforcement actions
18 against the same subject or respondent. And it reinforced the
19 conclusions reached in our investigation that were the subject
11:41 20 of the order.

21 Q. All right. And then if we look at number 11 on page 3,
22 again you say in the findings that the CBSG securities are not
23 registered with the Bureau, not federally covered, and not
24 exempt from registration.

11:41 25 Can you explain what you mean -- what the Bureau meant

1 by that number 11?

2 A. Sure. So if -- there are three ways that securities can be
3 legally sold within the State of New Jersey. They can be
4 registered with the Bureau which involves a review process by
11:41 5 our regulatory unit for compliance with applicable disclosure
6 obligations. They can be federally covered, which includes
7 securities of companies that are registered and reporting
8 companies under the Securities and Exchange Commission's laws.

9 That generally includes Stock Exchange, New York Stock
11:42 10 Exchange (audio distortion) securities and NASDAQ national
11 market (audio distortion) securities, and the last is there are
12 various exemptions from registration that they can qualify for,
13 some of which require a notice filing with the Bureau.

14 Q. In fact, if you look at your conclusions of law, and number
11:42 15 15, you found that Par Funding is offering and selling
16 securities that aren't registered with the Bureau, not
17 federally covered and not exempt from registration, and then
18 number 17, that CBSG employed unregistered agents in violation
19 of the New Jersey Security Act; is that correct?

11:43 20 A. That's correct.

21 Q. Just one more under the order on page 4, under number 21,
22 what is the Bureau ordering CBSG to do?

23 A. We're ordering them to cease and desist from offering for
24 sale in New Jersey any security unless and until the security
11:43 25 is either registered or offered and sold pursuant to a valid

1 exemption. And this would conclude continuing sales to current
2 investors, rollover of any outstanding securities or any
3 extension of the security date for those securities.

4 Q. Did the Bureau ever lift the cease and desist order?

11:43 5 A. No, I did not.

6 Q. Is the order still in effect today?

7 A. Yes, it is.

8 Q. Do you know if the order is still available on the Bureau's
9 website?

11:44 10 A. Yes, it is. I believe so.

11 Q. When was the last time you looked to see if it was
12 available?

13 A. I think I looked last week, when you and I spoke and just
14 printed it off.

11:44 15 Q. I'm going to show you -- I'm going to refer you to what's
16 been previously marked as P 567.

17 (Thereupon, the exhibit was introduced into evidence.)

18 MS. JOHNSON: Don't publish it.

19 MR. HYMAN: We have not consented to 567 into evidence
11:44 20 yet, Your Honor.

21 THE COURT: You want to show him 567. Again, we're --
22 we don't want to have it on screen. The jurors need to block
23 it out.

24 MS. JOHNSON: I had previously sent you 567. Do you
11:45 25 have a hard copy in front of you so we don't have to put it up

1 on the screen yet?

2 THE COURT: Yeah.

3 BY MS. JOHNSON:

4 Q. Mr. Bouchard, do you have 567 --

11:45 5 MS. JOHNSON: Can I tell him what it is?

6 THE COURT: Yes.

7 BY MS. JOHNSON:

8 Q. It's the press release in front of you, so we don't have to
9 put it up on the screen and publish it.

11:45 10 A. Yes, I do.

11 Q. Can you explain what this is? Do you recognize this?

12 A. Yes, I do.

13 Q. And what is it?

14 A. It's a press release issued by the New Jersey Office of the
11:45 15 Attorney General's division of consumer affairs. The Bureau of
16 Security is part of the division of the consumer affairs in the
17 New Jersey Attorney General's Office.

18 Q. And how do you recognize that, to be that?

19 A. Because it's -- I mean, I recall when it was issued, but
11:45 20 also, it's on our website.

21 Q. And how do you know it's on the website?

22 A. The division's website or the attorney general's website.

23 Q. And how do you know that, that it's on the website?

24 A. I -- again, I checked last week.

11:46 25 MS. JOHNSON: I'd like to offer this into evidence.

1 **THE COURT:** Lay a better predicate. Is this regularly
2 issued? Come on guys.

3 **MR. HYMAN:** And also, Your Honor --

4 **THE COURT:** I don't need a speaking objection. Lay a
11:46 5 better predicate.

6 **BY MS. JOHNSON:**

7 Q. When was this press release issued originally?

8 A. **It was issued on the day that the cease and desist order as**
9 **to Complete Business Solutions Group was entered by the Bureau**
11:46 10 **chief.**

11 Q. And is this part of the Bureau's regular business records
12 that they would keep in their records and on their website?

13 A. **Yes, it is.**

14 Q. Again, I --

11:46 15 A. **One caveat is, you know, it's ultimately the decision of**
16 **the main office of the attorney general as to whether and when**
17 **to issue a press release.**

18 **THE COURT:** Do you have another objection you want to
19 raise?

11:47 20 **MR. HYMAN:** The document has not been issued by the
21 New Jersey Bureau of Securities.

22 **THE COURT:** Correct. It's not been issued by the
23 Bureau of Securities. It's issued by the AG's office in
24 conjunction with the Bureau of Securities who provides the
11:47 25 information.

1 Am I correct in that, Mr. Bouchard?

2 **THE WITNESS:** Yes. The Bureau is part of the
3 New Jersey Attorney General's Office.

4 **THE COURT:** Correct. All right. What did you want to
11:47 5 ask? Go ahead.

6 **BY MS. JOHNSON:**

7 Q. I was going to say: Does the agency or the Bureau -- does
8 the AG's office regularly issue these press releases?

9 A. Yes, it does.

11:47 10 Q. Is that part of the routine work of the Bureau that keys up
11 into the AG's office?

12 A. Yes, it is, particularly when the purpose of the press
13 release is to alert the public as to the underlying conduct,
14 it's not properly in compliance with the New Jersey Uniform
11:48 15 Securities Law.

16 Q. And is the Bureau a division of the AG's office?

17 A. Yes, it is.

18 **MS. JOHNSON:** All right. Your Honor, with that I'd
19 take to offer P 567 into evidence.

11:48 20 **THE COURT:** P 567 will be admitted at this time.

21 (Thereupon, the exhibit was admitted into evidence.)

22 **BY MS. JOHNSON:**

23 Q. Without reading the press release, what does this press
24 release say about the cease and desist order?

11:48 25 A. Well, it explains the reasons for the cease and desist

1 **order and explains what would have to be done to comply with**
2 **this order.**

3 Q. And is this -- I think you've testified to this, but I just
4 want to make it clear if you haven't. When was the last time
11:48 5 you saw this press release on the website?

6 A. **In the last week or early this week, but in the last few**
7 **days.**

8 Q. And does the press release have any links attached?

9 A. **Yes, it has a link to the actual order.**

11:49 10 Q. And a few more questions about the order.

11 Does the order state that Par Funding was doing things
12 right?

13 A. **No, it does not.**

14 Q. Is there any subsequent orders or communications with
11:49 15 Par Funding saying that the New Jersey Bureau thought that
16 Par Funding was doing things right?

17 A. **Not to the best of my knowledge, nor would that be a**
18 **typical statement for the Bureau or its representatives to make**
19 **to a respondent.**

11:49 20 Q. Does the order state that all of Par Funding's books and
21 records are good?

22 A. **No, it does not.**

23 Q. Does the Bureau subsequently enter any order or
24 communications with Par Funding stating that the books and
11:50 25 records were good?

1 A. **No, it has not done so.**

2 Q. Does the order state that the Bureau loves the Par Funding
3 offering?

4 A. **Absolutely not.**

11:50 5 Q. Did the Bureau ever enter into such an order or
6 communications with Par Funding saying they loved them or were
7 giving them their blessing?

8 A. **Absolutely not.**

9 Q. Did New Jersey fine CBSG for the conduct described in this
11:50 10 order?

11 A. **No, it did not.**

12 Q. Was this order ever retracted?

13 A. **No. It is still a final order.**

14 Q. Does this order state anywhere that Par Funding was paying
11:51 15 its agents improper referral fees?

16 A. **Well, it explains that it was paying commissions that were
17 officially, I think, called finders' fees.**

18 Q. Does the order state that Par Funding had resolved its
19 issues and could begin selling securities in New Jersey again?

11:51 20 A. **No, it does not.**

21 Q. I'd like to play for you what has been previously admitted
22 into evidence. It's P 124, just a part of that.

23 **THE COURT:** P 124 is which exhibit?

24 **MR. HYMAN:** Audio recording Mr. Furman. We're going
11:51 25 to object, lack of personal knowledge, predicate, and it's the

1 jury's province to assess basically the testimony of this
2 witness.

3 **THE COURT:** It's overruled.

4 What is it -- was is the clip again?

11:52 5 **MS. JOHNSON:** This is the clip of Mr. Furman with the
6 undercover when he talks about the New Jersey order. It's the
7 transcript page 125, line 17, through page 18, line 22.

8 **THE COURT:** All right. You can play that part.
9 You're going to show him the transcript or are you going to
11:52 10 play the audio of it?

11 **IT TECHNICIAN:** I'm going to do both.

12 **MR. HYMAN:** I'm going to object also to the best
13 evidence rule, Your Honor.

14 **THE COURT:** Okay. It wouldn't be a best evidence rule
11:52 15 if you're asking the opinion of the regulator who's going to be
16 shown testimony, I presume, that is directly related to
17 regulatory actions he oversaw in New Jersey.

18 **MS. JOHNSON:** This is the part of the clip where he
19 talks about the New Jersey order.

11:52 20 **THE COURT:** Correct. It's fine. You're going to give
21 him the predicate for him to make a determination whether this
22 statement was a truthful statement or not as well, correct?

23 **MS. JOHNSON:** Exactly.

24 **MR. HYMAN:** Can we have a sidebar, please?

11:52 25 **THE COURT:** No. You're not going to have a sidebar.

1 There is absolutely no need. This is a very straightforward
2 evidentiary issue. We've ruled. Okay? We've ruled.

3 MR. HYMAN: Can I please state my objection for the
4 record?

11:52 5 THE COURT: You can state it when we're on recess.
6 I'll give access to the record. You made enough of a record
7 already. Okay?

8 Let's go ahead and play it, please.

9 MR. HYMAN: Your Honor, there's a side issue with the
11:53 10 undercover's name.

11 THE COURT: Well, I would expect that anything
12 regarding that is going to be redacted or not appearing in that
13 section.

14 MR. HYMAN: The transcript, Your Honor, is still on
11:53 15 the screen.

16 MS. JOHNSON: The witness has this part of the
17 transcript, so I'm not going to publish it because it still has
18 the undercover's alias.

19 THE COURT: I don't see anything -- I don't see a
11:53 20 transcript on the screen anymore.

21 MS. JOHNSON: Thank you.

22 THE COURT: Give us one second, Mr. Bouchard. We're
23 going to try to put this up so that you can see it. Okay?

24 THE WITNESS: Okay.

11:54 25 IT TECHNICIAN: I don't know why the sound isn't

1 coming through. Maybe it's because it's muted, possibly.

2 MS. BERLIN: Your Honor, maybe we can unmute
3 Mr. Robinson's.

4 THE COURT: Let see if I can control that and see if
11:54 5 maybe that's what's happening.

6 MS. JOHNSON: One second, Mr. Bouchard.

7 THE COURT: I don't see him muted. Is there anything
8 preventing an exhibit that has already been admitted into
9 evidence from being read by counsel to the witness? I
11:55 10 understand you'd like the effect of playing the audio, but if
11 it has been admitted and you're reading it verbatim and
12 eliminating any information in there not for completeness
13 purposes but for undercover purposes, I don't know why we
14 couldn't just read a line and page and statement and see if he
11:55 15 confirms that that's accurate. I don't know. I understand
16 we'd like to play the audio, but we can figure this out without
17 the audio.

18 MS. JOHNSON: We'll do that.

19 THE COURT: Yeah. You have a copy of the transcript.
11:56 20 Mr. Bouchard, I'm expect the SEC's counsel will be
21 reading in some transcript lines and if you listen carefully,
22 this has been admitted into evidence as testimony earlier in
23 the trial. And then you can go ahead and confirm that. It
24 might be easier, since I don't believe you can put the
11:56 25 transcript on the screen without disclosing information at this

1 point. So I think this the easiest thing to do.

2 THE WITNESS: I understand.

3 THE COURT: Yeah. Okay.

4 MS. BERLIN: We have figured it out, Your Honor.

11:56 5 THE COURT: Okay. It looks like they're going to be
6 able to play it, Mr. Bouchard, so let's see if it works. Okay?

7 MS. BERLIN: We'll just use the transcript,
8 Your Honor.

9 MS. JOHNSON: Okay, thanks.

11:57 10 BY MS. JOHNSON:

11 Q. All right. I'm going to read to you from a transcript
12 that's been previously entered into evidence.

13 So Mr. Furman says: And so I like that the state
14 actually fined them, to be honest with you, because then
11:57 15 New Jersey came out -- well, New Jersey fined them because they
16 sat there watching them. And I'm like, well, I like that
17 people would be watched because that way, you know, a lot of
18 money.

19 And then the agent says: Because it's eating into
11:57 20 your money.

21 And Mr. Furman says: Exactly.

22 Agent. Yeah.

23 And Mr. Furman says: That's a lot of money, but I
24 want them to be watched in a good way. So, you know, make sure
11:57 25 everything is running smoothly.

1 The agent says: Right. Exactly.

2 And Mr. Furman says: So the state has their eye on
3 them. They actually backed off and said: Everything is --

4 And then the agent says: Especially if it's a product
11:58 5 that not everyone understands, you know.

6 Mr. Furman: Exactly.

7 Agent. Yeah.

8 Mr. Furman. Yeah. They see the fine from
9 Pennsylvania and go, We don't like that. I'm like, well, look,
11:58 10 New Jersey came in and fined them. And then they said: You're
11 doing it right. And all of your books are good and we love it.
12 We went through them, you know. They retracted it. And said
13 you're good. We're not, you know, you don't have any fines,
14 you don't have any penalties, nothing.

11:58 15 Was Mr. Furman's statements about what New Jersey did
16 that I just read to you correct?

17 A. **Not at all.**

18 Q. They're false?

19 **MR. HYMAN:** Objection, calls for a legal conclusion.

11:58 20 **THE COURT:** Does not call for a legal conclusion. It
21 calls for a common sense, human conclusion. That's overruled.

22 **BY MS. JOHNSON:**

23 Q. Do you want to then answer that, Mr. Bouchard?

24 **THE COURT:** You may answer, Mr. Bouchard. Were those
11:59 25 statements false was the question.

1 A. They were false.

2 MS. JOHNSON: That's all I have, Your Honor.

3 THE COURT: Okay. All right, Mr. Bouchard, we're

4 going to do a cross-examination now, so hang in here with us.

11:59 5 We'll turn it over to counsel for Mr. Furman.

6 You may proceed when you're ready.

7

8

CROSS EXAMINATION

9 BY MR. HYMAN:

11:59 10 Q. Good afternoon, Mr. Bouchard. How is the weather up in
11 New Jersey?

12 A. Cold.

13 Q. Always is.

14 So in the cease and desist order, could you please

11:59 15 look at paragraph 24. Do you mind reading that to the jury
16 whenever you see it?

17 A. Okay. Read it?

18 Q. Yes, please.

19 A. Nothing in its order shall preclude Complete Business

11:59 20 Solutions Group from paying interest and/or principal to the
21 owners of the CBSG securities pursuant to the terms of the CBSG
22 securities.

23 Q. So what does that paragraph mean?

24 A. It means that CBSG can continue to pay interest on and

12:00 25 principal on the notes pursuant to their existing terms.

1 Q. And isn't it true that so long as CBSG stayed in compliance
2 with that order it could continue to operate in the State of
3 New Jersey?

4 A. **No. There are other matters -- other things that they**
12:00 5 **would have to do to be able to continue to sell. This only**
6 **allows for them to continue to service the existing obligations**
7 **that they sold.**

8 Q. And what they had to do -- isn't it true that what they had
9 to do to be able to sell was set forth in the order?

12:00 10 A. **Yes. Either register or properly comply with an exemption**
11 **from registration.**

12 Q. So then earlier when you said if they complied with the
13 order, they could not break New Jersey, that wasn't accurate,
14 was it?

12:01 15 A. **I don't understand the question.**

16 Q. Earlier you testified that if CBSG complied with the order
17 it couldn't comply with the -- or it couldn't operate in
18 New Jersey.

19 Do you recall that testimony, sir?

12:01 20 A. **I don't believe I ever used those exact words.**

21 Q. But you're using those words because you're here to assist
22 the SEC, aren't you?

23 A. **I'm here to give truthful testimony about the Bureau of**
24 **Securities' actions in this matter.**

12:01 25 Q. And how many times before today did you meet with the SEC?

1 A. I think briefly one day last week. Other than to --
2 additional communications just to coordinate this appearance.

3 Q. And has the New Jersey Division of Consumer -- or taking
4 back to the cease and desist, does that have any impact of
12:02 5 CBSG's ability to operate in states outside of New Jersey?

6 A. No.

7 Q. And has the division had any communications with
8 Mr. Furman?

9 A. No.

12:02 10 Q. Has the division had any communications with Fidelis about
11 this cease and desist order?

12 A. I'm aware of that name. I believe it's the business
13 through which Mr. Furman operates, but we've never had
14 communications with him.

12:02 15 Q. And the only reason why you know about Mr. Furman's
16 existence is because of the SEC, right?

17 A. I think I first -- I'm not sure I can answer that question
18 without sharing confidential, investigative, or delivered it
19 (audio distortion) processed information, which is --

12:03 20 Q. But you can testify about --

21 A. The simple answer is, no, that's not the first time I've
22 heard of Fidelis.

23 Q. Okay. And in connection with the cease and desist order,
24 isn't it true that the State of New Jersey reviewed the books
12:03 25 and records of Par Funding, a/k/a CBSG?

1 **THE COURT:** We're not able to hear. I think, Counsel,
2 you're speaking but we cannot hear you very clearly. Let me go
3 ahead and attempt to -- I think you were going to go ahead and
4 weigh in on his ability to answer. Did you want to say
12:03 5 something?

6 Speak up a lot because you're very, very faint. I can
7 barely hear you.

8 **MR. SHOWELL:** That's correct. I would like to object
9 on the basis of the protection the legally of Bureau of
10 Securities --

11 **THE COURT:** You're super --

12 **MS. JOHNSON:** I think I know where he's going.

13 **THE COURT:** No, no. I know where he's going. I need
14 a record.

12:04 15 The objection -- I understand -- I can make out what
16 you're saying, Counsel, that there's an objection pursuant to
17 statute regarding the ongoing investigation. I just want to be
18 sure I can get it heard on the record. I don't know if the
19 audio is just too far away from where you are. Can you try to
12:04 20 maybe do your best to speak into whatever microphone as loud as
21 you can, just so I can preserve your objection?

22 **MR. SHOWELL:** Your Honor, I will do that.

23 **MR. HYMAN:** I think the SEC has also lodged the
24 objection for them and, Your Honor, the response is that the
12:04 25 SEC has opened the door by asking them questions about the

1 statements to Par Funding, and he answered questions about
2 that.

3 **THE COURT:** Okay. Go ahead, sir. You wanted to make
4 your objection as counsel. Go ahead.

12:04 5 **MR. SHOWELL:** Yes, Your Honor, by statute, the
6 investigations that are conducted by the New Jersey Bureau of
7 Securities are private and also confidential as a matter of
8 law. Accordingly, Mr. Bouchard is unable to answer questions
9 about specific investigative steps that may or may not have
12:05 10 been taken during the course of the Bureau's investigation of
11 Par Funding, and I'm going to direct this Mr. Bouchard not
12 answer the questions relating to investigative processes,
13 procedures, (inaud.) methods, et cetera.

14 **THE COURT:** Understood. The Court's going to go ahead
12:05 15 and sustain that objection that you have made and has been also
16 raised by the SEC. So we can move on to the next question.

17 **MR. HYMAN:** So you can answer questions about what you
18 said when the SEC asks them to you, but you can't answer them
19 when we do, correct?

12:05 20 **THE COURT:** I think, first of all, that's not a
21 question and an inappropriate one also. So I think we are
22 going to strike and disregard that. There's a big difference
23 between asking generalized questions as to the preliminary
24 basis for this investigation and getting into details that
12:05 25 would run afoul of the law and existing statutes for privilege.

1 Do you have any other questions of merit?

2 **MR. HYMAN:** Not at this time, Your Honor.

3 **THE COURT:** Yeah, grab a seat.

4 Let's go ahead and have you guys come on up, please,
12:06 5 and have you come in on redirect.

6 I would again ask the members of the jury to disregard
7 any statement regarding privilege on an ongoing investigation
8 being used as a sword and a shield by the SEC. The Court can
9 permit some questions for background, but we cannot jeopardize
12:06 10 an ongoing investigation. So you're going to disregard that
11 last statement by counsel.

12 Go ahead.

13

14 **REDIRECT EXAMINATION**

12:06 15 **BY MS. JOHNSON:**

16 Q. Mr. Bouchard, are you here under a subpoena that was sent
17 to your agency by the SEC?

18 A. **Yes, I am. It was actually issued to me personally.**

19 Q. I imagine there's places you would rather be than
12:06 20 testifying here today.

21 **MS. JOHNSON:** That's all I have, Your Honor.

22 **THE WITNESS:** Part of the job.

23 **THE COURT:** Ladies and gentlemen of the jury, does
24 anybody have a question for Mr. Bouchard before I excuse him?

12:06 25 Okay. Mr. Bouchard and Counsel, you're both free to

1 disconnect at this time. Thank you very much for being with us
2 here this morning.

3 **MR. SHOWELL:** Thank you.

4 **THE COURT:** You're welcome. All right.

12:07 5 With that being said, it's about 12:10 and we're
6 through three witnesses of the six that we're still aiming for;
7 is that correct, Ms. Berlin?

8 **MS. BERLIN:** That's right. We're right on time.

9 **THE COURT:** So ladies and gentlemen of the jury, we're
12:07 10 going to go ahead and take a recess now for lunch. I'm going
11 to give you guys until 2 o'clock. You are going to have a
12 little more time, about an hour and 45 because I'm conducting a
13 completely unrelated criminal proceeding at 1:30 in the
14 courtroom. So I don't want to waste you guys -- your time, and
12:07 15 have you rush back from lunch because we will have until about
16 2 o'clock. I expect that I'll be done with my proceeding
17 within 20 minutes.

18 Now, when you guys go to lunch, of course I've already
19 double checked, by the way, the restroom should be fixed. So
12:07 20 everything should be working in the jury room. You can go
21 ahead and use them. And that way you guys don't run afoul of
22 bumping into any of the lawyers.

23 Make sure that you leave your notepads in your jury
24 room, and if you should see a lawyer at a lunch establishment
12:08 25 and they avoid you, take no offense from that. Let me again

1 remind you all not to speak with anyone about the case, whether
2 family, friends, social media or with one another. So with
3 being said, everyone have a good lunch break. We're about
4 halfway done with the testimony of the day. We'll see you
12:08 5 around 2 o'clock in the jury room. You're excused.

6 **THE JURY:** Jury out.

7 **THE COURT:** What is the line up again this afternoon
8 so that I know the last three witnesses? I just want to make
9 sure that I have my list right.

12:09 10 **MS. BERLIN:** Absolutely. So we are going to have
11 investor Frank Nash live.

12 **THE COURT:** Nash. Live, okay.

13 **MS. BERLIN:** Then by Zoom, we're going to do Victoria
14 Villarose. She can go at that time instead of Wendy Furman.
12:09 15 And then Alexis Abbonizio will be last.

16 **THE COURT:** So are we going to call Furman, Wendy
17 Furman?

18 **MS. BERLIN:** Of no relation, by the way.

19 **THE COURT:** Yeah, I know. It's a compound name.

12:09 20 **MS. BERLIN:** It's actually not. Lyday was like her
21 ex-husband's name. So she hasn't been Lyday in a very, very
22 long time. Her legal name is Furman. We're going to try to do
23 everything through Ms. Villarose. That's my plan. We're not
24 going to call her.

12:10 25 We're going to try to do it all through Ms. Villarose,

1 and that would be our -- that would be it. Those would be the
2 six witnesses. Then we would turn to that Fifth Amendment
3 issue on the request for admission and then take up Mr. Furman
4 in the morning. We haven't gotten -- we checked. We haven't
12:10 5 seen that e-mail where we were supposed to be given the
6 password.

7 **THE COURT:** So let me make sure my list is right. We
8 have Nash live and then Villarose and Abbonizio both on Zoom.

9 **MS. BERLIN:** Yes, Your Honor.

12:10 10 **THE COURT:** So that will take care of it. That sets
11 us up for having our one investor, who I know is recovering,
12 and Mr. Furman to be the last two witnesses for tomorrow,
13 right?

14 **MS. BERLIN:** Yes.

12:10 15 **THE COURT:** So the issues, then -- I think we'll
16 probably have enough time to address any Fifth Amendment
17 arguments and all that this afternoon with Mr. Furman when
18 we're done with Alexis Abbonizio. So I don't want to do that
19 now, but as you just stated, if I could have any e-mails or
12:11 20 communications that were referenced by Mr. John earlier
21 regarding production and discovery, have those been --

22 You just stated, Ms. Berlin, that those were sent to
23 you or they were not? I want to be sure.

24 **MS. BERLIN:** No. We have not received them unless
12:11 25 they're stuck --

1 **MR. HYMAN:** When we get internet access, we'll address
2 that issue. We also sent the e-mail from the receiver stating
3 that the SEC had a forensic copy of all of Mr. Furman's e-mails
4 over the weekend, but -- yes, we did.

12:11 5 **MS. BERLIN:** We see Mr. Kolaya.

6 **THE COURT:** I'm looking at my counsel for my receiver
7 who is -- does not appear to agree with that statement either.

8 **MR. HYMAN:** It was --

9 **THE COURT:** You know what you need to do, before you
12:11 10 throw stuff on the record, you need to take the next two hours
11 and have a very solid sit-down with your records, the SEC and
12 receiver's counsel because we don't want to get into a back and
13 forth over this. We have to make sure we have these things
14 because I'm going to ask for them and you're going to have to
12:12 15 show them to me. So make sure that all the things you think
16 were exchanged were. I don't want to have any mistakes here.

17 So I'm going to go ahead and let you guys have your
18 break. You have to meet and confer to figure this out. To the
19 extent that it has any relevancy on what could be admitted
12:12 20 later, we will discuss that, but first I'd like to see what it
21 is you guys purport to have that the SEC has not seen or the
22 receiver's counsel as an option.

23 **MR. HYMAN:** As it relates to the Fifth Amendment, I
24 understand the SEC's position. Our view is at least that when
12:12 25 they are going to be calling Mr. Furman to testify, which they

1 plan to do, to the extent that they wish to ask him any
2 questions, they can't use the Fifth Amendment as both a sword
3 and a shield.

4 **THE COURT:** Let me explain to you what the
12:12 5 Fifth Amendment issue is so I can streamline it. The issue is
6 they have provided -- as far as I can tell, they have given you
7 guys essentially areas of inquiry that they believe where the
8 door was opened in his deposition. That are fair game because
9 he didn't use the Fifth on those.

12:12 10 **MS. BERLIN:** I did the other way around.

11 **THE COURT:** That works to. That might be actually
12 easier.

13 **MS. BERLIN:** I thought it was.

14 **THE COURT:** So you've given him arenas where you have
12:12 15 essentially said: We understand they're off limits, we
16 understand they're protected by the Fifth. So the key now is I
17 need the defense team for Furman to look at the SEC's list, and
18 if there is an arena that is not listed on that list that you
19 believe or not included on the list that you believe is
12:13 20 protected by the Fifth Amendment, we have got to let Ms. Berlin
21 know so that tomorrow she doesn't wade into an area where we
22 have to see Mr. Furman stuck with the Fifth in front of the
23 jury. We're trying to avoid putting him in bad spot. I think
24 this is perfect, but you got to look at what she said that she
25 prepared.

1 I think you already transmitted it to them?

2 MS. BERLIN: I sent it last week. It's the list for
3 request for admissions. I highlighted in a yellow each of the
4 things that we did not touch upon in the deposition.

12:13 5 THE COURT: You mentioned that last week.

6 MS. BERLIN: Yes.

7 MR. HYMAN: (Cross-talk) -- specific line and page
8 cites to the deposition to show that they actually, in fact,
9 had touched upon those issues in the deposition. The other
12:13 10 issue as well, as it relates to an adverse inference is in our
11 view, where the SEC similarly refused to testify by testimony
12 about a particular area of inquiry as well, that it's not
13 reasonable to also kind of hold Mr. Furman or prevent him from
14 answering questions about it.

12:14 15 And for purposes of clarity, we're willing to allow
16 Mr. Furman to testify about any area of inquiry today at trial
17 that the SEC wishes to ask him about. It's just to the extent
18 that there may be alleged prejudice the SEC argues, but to us,
19 if they want to ask any questions, he's not going to plead the
12:14 20 Fifth in response to any questions asked by the SEC.

21 THE COURT: Hold on. Because we have dealt with this
22 argument, and I'm not supposed to be wasting time with this
23 now. This was supposed to be done after my next three
24 witnesses. But just so I fully understand, we're not going to
12:14 25 permit at this stage of the game, like we argued last week, for

1 there now to be a decision to weigh the Fifth Amendment as to
2 all arenas to avoid the repercussions of invoking it earlier in
3 the case so as to stall out or prevent certain things from
4 being discovered or revealed in advance of trial.

12:14 5 That is exactly what I've ruled on already. That is
6 prevented. Honestly, that be would the use of the Fifth as a
7 sword and a shield and now opening up the door to areas that he
8 was not willing to answer and that were avoided by him invoking
9 the Fifth through sequestered admissions which formed the basis
12:15 10 of designing the contours of the scope of the deposition.

11 So that's not going to happen. So what's going to
12 happen now is he's going to live by his invocation of the
13 Fifth, and we will debate the adverse inference issue after
14 everyone has put on their cases.

12:15 15 But for purposes of tomorrow, what's going to happen
16 now is their areas, that because he invoked the Fifth in the
17 RFA, the SEC didn't ask about it at depo and wants to make sure
18 does not touch on them on his examination so that he doesn't
19 look like he's dodging questions to his detriment on the stand.

12:15 20 So I need you guys to look at whatever it is that the
21 SEC has provided and confirm that these are arenas that you
22 guys have, previous to the trial, invoked the Fifth and that
23 were not covered in the depo. The easy thing to do is look at
24 it and see, did you talk about it in the depo. If you believe
12:16 25 that Ms. Berlin put something on there that was covered in the

1 depo, let her know, because then you're saying that was never
2 an area we sought the Fifth Amendment protection on. That's
3 all we need to do with that list. Because she's going to stay
4 away from those areas. That's all she's going to do.

12:16 5 **MR. HYMAN:** With the exception of one modification or
6 response, we have already responded to that with specific
7 deposition citations to the SEC.

8 **MS. BERLIN:** That's great to hear. We didn't get it.
9 So it sounds like we should have a discussion. Let's have a
12:16 10 talk. We'll talk.

11 **THE COURT:** There has been a response.

12 **MS. BERLIN:** (Cross-talk) I didn't see it. So we'll
13 talk to them and --

14 **THE COURT:** Go ahead and take a look at that. Because
12:16 15 I guess what they've done is they have pointed out areas where
16 they do believe some of these thing -- the door was opened on
17 some of these. And that way you'll be able to modify your
18 areas of inquiry.

19 So I will endeavor to get through these witnesses
12:16 20 starting at 2:00 then I'll probably -- if you haven't met and
21 conferred by then, I'll take a little break at that point after
22 Abbonizio to let you guys meet and confer before I come out and
23 we make any final rulings that will shape Furman's testimony
24 for tomorrow.

12:17 25 **MS. BERLIN:** That sounds really good. Yeah, I think

1 it's going to be definitely some sort of hearing, because I
2 imagine, based on the discussions that we've had within the
3 last 24 hours in this courtroom, that there's going to be a
4 very big difference of opinion on whether a question in a
12:17 5 request for admission touches upon, is the phrase they use,
6 something in a deposition. It has to be more than "touching
7 upon." It has to be actually inquired about and testified
8 about. But we will confer with them so we come to this Court
9 having narrowed the issues, Your Honor.

12:17 10 **THE COURT:** And give me a copy, if you could, of
11 whatever it is you exchanged for areas of inquiry.

12 **MS. BERLIN:** Yes.

13 **THE COURT:** Might want to also have -- make sure I
14 have -- and I probably already have one from your paralegal, a
12:17 15 copy of the deposition, so I can cross-reference it. I'm going
16 to need a copy of the request for admissions. You might as
17 well prepare this for me so I have it ready.

18 **MS. BERLIN:** Yes.

19 **THE COURT:** So it will be a copy of the depo, a copy
12:17 20 of a request for admissions, and a copy of whatever the defense
21 response has been with the line and page numbers to the areas
22 of inquiry you sent. If I have those things, I can make
23 rulings on --

24 **MR. HYMAN:** And just for purposes of preserving the
12:18 25 record, we'd also like to reiterate that the SEC, in our view,

1 did misrepresent the nature of the questioning of Mr. Furman to
2 the Court when it said they're tiptoeing around the Fifth, but
3 obviously I know Your Honor's view and you're not willing to
4 readdress that issue.

12:18 5 **THE COURT:** Well, I think I've heard it maybe four or
6 five times. The Court doesn't pay for the same real estate
7 that many times. Okay. So I think we've covered it.

8 We'll go ahead and see everybody back here at
9 2 o'clock. Make sure you clear the tables for my sentencing at
12:18 10 1:30.

11 **MS. BERLIN:** One quick question, Your Honor.

12 **THE COURT:** Yes.

13 **MS. BERLIN:** It's been about three hours since they
14 brought up this e-mail where they sent me the password and
12:18 15 we're still waiting on that. Can we just get a deadline for
16 it?

17 **MR. HYMAN:** We don't have internet access.

18 **THE COURT:** You've got plenty. You've been checking
19 your phone the whole time. You can send an e-mail if you want
12:18 20 to send it. Go outside. Send it now before you go to lunch.
21 Send it now. If you're going to make a representation like
22 that, you have to send that e-mail so I can get to the bottom
23 of it. We're in recess.

24 (Thereupon, a luncheon recess was taken.)

25

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A F T E R N O O N S E S S I O N

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THE COURT: Please be seated, everyone. Okay. So we are back on record in SEC versus Furman. We are planning on having Mr. Nash next, and then, as we discussed, Ms. Villarose and Mr. Abbonizio via Zoom after. Anything related to these witnesses I'm going to call now, so I can kind of get these witnesses on the stand and let my jury listen, and then ultimately we have other things I'm sure we'll have to deal with but we can do it after the witnesses.

Anything pressing for these witnesses?

MS. BERLIN: No, Your Honor. There's nothing pressing at all. We have -- Mr. Nash is live. As you know, the other two are by Zoom.

THE COURT: Right.

MS. BERLIN: We've asked everybody to let us know, like, the phone number and to do the hand raise.

THE COURT: Perfect.

MS. BERLIN: So we can find them, if that's okay.

THE COURT: Yeah, that's the best way to do it. Yeah. If not they're, like, buried in a crowd in Zoom.

MS. BERLIN: Yeah, it's a little unusual. So I think we're ready. Mr. Nash is here and ready to go.

THE COURT: Okay. Great. Defense ready to go? So you can get Mr. Nash on there.

MR. JOHN: Yes, Your Honor.

1 (Thereupon, the jury entered the courtroom.)

2 THE COURT: Please be seated, everyone. Were we able
3 to get you guys some coffee, if you needed it? Yes? Okay,
4 great. With that being said, we're going to turn it over to
02:33 5 the SEC so they can call their next witness.

6 MS. JOHNSON: Hi. The SEC calls Frank Nash.

7 THE COURT: All right. Let's get Mr. Nash.
8 We're going to swear you in. And if you are fully
9 vaccinated, when you take a seat on the stand you can take off
02:34 10 your mask.

11 Thereupon,

12 FRANK NASH,
13 having been duly sworn by the court reporter, testified as
14 follows:

02:35 15

16 DIRECT EXAMINATION

17 BY MS. BERLIN:

18 Q. Good afternoon, Mr. Nash.

19 A. Good afternoon.

02:35 20 Ladies and gentlemen of the jury, too.

21 Q. I wonder if you could just briefly tell the jury your
22 educational and work experience.

23 A. Well, thank you. I'll give you the Reader's Digest
24 version. I grew up in Miami, born and raised here. Went to
02:35 25 school -- went to college during the Vietnam war, and I was

1 getting my degree in geology and got that. And then I started
2 with FIU in '72. And '72 was an important year because I had
3 jobs before that cutting grass, security guard, non-union
4 construction work, delivering pizzas on my (inaud.).

02:36 5 Actually, here in Fort Lauderdale I did Bell Electric
6 air conditioning.

7 In '72 my wife changed and got hired by Eastern
8 Airlines to be a cleaner from midnight to 8 on big L-1011s.
9 They were brand new, big jumbo jet. And I went in the cockpit
02:36 10 one night and I go, this looks more exciting than rocks. Then
11 I met a pilot one day. He came out and I asked him, how are we
12 doing? And he said, you've got to go in the military.

13 So I quit FIU and I went to the University of Miami
14 ROTC, because I was going to be in Vietnam. I'd rather be in
02:36 15 an F-4 than in a rice paddy. No disrespect to our ground
16 people.

17 At which point, I stayed at Eastern for 17 years,
18 sweeping floors and scrubbing toilets, went into the Air Force
19 Reserves, flying super sonic jets. Now, I got to fly for
02:37 20 Eastern, and that lasted 17 years.

21 And then they went out of business in '89, bankruptcy.
22 I got on with American Airlines, started all the way down as an
23 engineer co-pilot back to captain, and that lasted about 26
24 years.

02:37 25 After 9/11, I lost my captain job. I had to go back

1 and be a co-pilot. After 9/11, we also had to be trained in
2 hand-to-hand combat for a future hijacking. I was not very
3 good at hand-to-hand. In fact, my 12-year-old daughter knocked
4 me off my feet with my hand-to-hand that they taught me. So I
02:37 5 put in for being an air marshal. Took over a year of
6 background checks, security checks, because they were going to
7 give me a pistol to go in my cockpit to protect my airline, my
8 crew, and my passengers. And they wanted to make sure I was a
9 pretty stable person. And so I did that training.

02:37 10 And, you know, American came along and I did that.
11 And then I ended up getting some medical issues. I retired
12 early and I've been home ever since.

13 Q. So you were -- started out cleaning the airplanes and then
14 when you retired you were the person in the cockpit who was the
02:38 15 pilot and also the air marshal?

16 A. Exactly. I was an international captain for American. And
17 I carried my gun. My jurisdiction was only my airplane. If I
18 was going down 95 and I saw people shooting stuff, I was not
19 legally allowed to use my badge or my weapon. So I had the
02:38 20 smallest little jurisdiction, was basically the footprint of an
21 airplane. But I took pride in it and it was a nice chapter. I
22 had a lot of good chapters. Some short, some long. It's just
23 how life is.

24 Q. And in what year did you retire from American?

02:38 25 A. I officially retired -- I'm trying to do the math real

1 quick because -- it must have been '16. You could fly
2 originally for 60. I was born in '51, so that would be 2011,
3 65 they moved up to there, so yeah, 2016.

4 Q. And at a certain point, did you come to know Michael
5 Furman?

6 A. I did. I had seen an ad on TV and I called and they
7 referred me to Michael Furman. And I had a pretty nice
8 investment account, my IRA money and my 401(k) was a big sum of
9 x-amount of dollars. I don't know if you all need to know or
02:39 10 not. But it was large.

11 So I met Michael Furman. He saw the -- you want me to
12 keep going on with that a little bit?

13 Q. Go ahead. Yeah. Sure.

14 A. I met Michael Furman at a big, beautiful penthouse office.
02:39 15 Plaques, letters, certificates. It looked pretty nice and
16 format.

17 He looked at a spreadsheet that I had from another
18 financial planner for 20-plus years. And he said: Oh, no, I
19 can do better than this. I can do better here. So being a
02:40 20 pilot -- I will admit, being a military pilot you trust your
21 wing man, he trusts you or you die. In the airlines, you trust
22 your captain or you trust your co-pilot or you're going to be a
23 second behind when you hit a mountain.

24 So I've been in 44 years of trusting people with my
02:40 25 life and them trusting me with their lives. And I guess I put

1 that same trust in Michael Furman. I believe when he was
2 telling me about this paperwork I had that wasn't quite so
3 good, and that he could do better for me. I trusted him at a
4 chance to take my funds and invest them in his way of doing
02:40 5 investing.

6 Q. And at a certain point in time did you come to learn about
7 an investment in Par Funding?

8 A. I did. I was pretty much --

9 MR. HYMAN: Objection, misstates the testimony.

02:40 10 THE COURT: Overruled.

11 Go ahead.

12 A. Yeah. In the very beginning, he saw what I had. I had a
13 annuities, I had bonds, I had stocks. I was well diversified
14 from this other investor for 20 years.

02:41 15 He said: I've got better products for you that you
16 won't have to lose something in the market that goes up and
17 down.

18 It actually turned out to be annuities, and I had
19 heard about them. But we got started investing in that. And
02:41 20 then he had all these ads here how you could earn 14, 15
21 percent on your money.

22 And so he was pointing it out, and asked him, I said:
23 So what's that all about?

24 And he said: Oh, these are some really safe, secure
02:41 25 investments that I have. My friends and other relatives have

1 and it's a one-year, you put your money up, and after that you
2 get all your money back and you get nice interest, safe and
3 secure.

4 And I said: Maybe we'll do that.

02:41 5 So I figured he would not do something to my
6 retirement money that was risky or not, because when you're in
7 this age, 70-plus years old, you're supposed to be careful with
8 your retirement money, and I was trusting Michael to be careful
9 with my retirement money.

02:42 10 BY MS. BERLIN:

11 Q. And did Mr. Furman tell you about the Par Funding
12 investment? Did he describe it to you?

13 A. He described it that it was a group of people up in
14 Philadelphia area. You know, it was a family run business for
02:42 15 a while. Now they're starting to let other investors from
16 outside their family come in and invest, and it was short-term
17 business loans.

18 One example was, say, for instance, a company has an
19 opportunity to put on some roads and they need some extra
02:42 20 equipment, and the traditional bank will take months to get the
21 loan approved, but he needs to start right away to get this
22 extra contract. So they would get the loan through this
23 Par Funding group and they could close the loan in as little as
24 one or two days, and that they could get their money and we got
02:42 25 extra money because they were paying more interest. But they

1 were going to have a bigger paycheck sooner, quicker than if
2 they had to wait for banks. And it seemed like a logical
3 investment.

4 Q. Did Mr. Furman -- in discussions with you about
02:43 5 Par Funding, did he ever discuss with you, like, whether he
6 personally had any sort of connection to Par Funding?

7 MR. HYMAN: Leading.

8 THE COURT: Overruled.

9 A. He acted -- or he portrayed to me -- I was even invited to
02:43 10 go to Philadelphia with him and meet the owners of Par Funding,
11 see their building, see their operation. They've gone and
12 fact-checked these people who would have borrowed money to make
13 sure they -- (inaud.) that someone with money in Texas, there's
14 a big trucking company. But when the fact checkers went out
02:43 15 there, it was an empty building and it was just a deserted
16 place.

17 So they said, we wouldn't invest our money there and
18 possibly lose your money, your investment.

19 And I said, oh, that sounds good.

02:43 20 And at that point also, he was good friends with these
21 people because he would fly up there. I was invited to go with
22 him on a couple of different occasions to actually meet -- and
23 my schedule -- I just -- after retiring from airplanes, I like
24 to stay home at this point in my life. But it seemed like
02:44 25 everything was very legitimate, up front, that he knew the

1 owner very well or the owners, and that I had no cares or
2 worries. And again, I, now in retrospect, kind of wish I went
3 up there. I don't know if that would help me or not. Now I'm
4 looking in the rear-view mirror.

02:44 5 Q. So did you understand from your conversations with
6 Mr. Furman that Par Funding had any sort of representative in
7 South Florida?

8 MR. HYMAN: Objection to form, leading.

9 THE COURT: Overruled.

02:44 10 A. The South Florida -- because when I first called to
11 JD Mellberg, Michael Furman was supposed to be their top agent,
12 and when it came down to Par Funding, Michael says, I'm the
13 only one you can get this -- these offerings from. You can't
14 go back to your old guy, you can't go to Chase Bank, you can't
02:45 15 go to -- not JD Mellberg -- Raymond James or something. It was
16 a product that only he had to offer us, and that only select
17 people could actually get it. You had to have lots of money,
18 you know.

19 And I said: Well, you know, I've got my retirement
02:45 20 account. There's a lot of money there. It's nearly a million
21 dollars. So I mean, that was my life savings, you know, I was
22 hoping to live on. So I was feeling secure about what he was
23 telling me about Par Funding, that his mother has it, that
24 other people that I knew, my tax guy has it. So it didn't seem
02:45 25 like it was anything to worry about.

1 BY MS. BERLIN:

2 Q. Did Mr. -- or did you have any understanding or did
3 Mr. Furman ever represent to you whether or not he worked with
4 or for Par Funding?

02:45 5 MR. HYMAN: Leading, compound, relevance.

6 THE COURT: Overruled.

7 You may answer.

8 A. Actually, he did. He was saying that he was our, like,
9 main man, especially for South Florida. And that there were a
02:46 10 few other people, I guess scattered around the country, but he
11 had basically all of Florida. That was his domain or district.
12 Like when you're given a territory.

13 Let me think what it's called. I guess territory or
14 district. I mean, it's like, say, for instance, you know, you
02:46 15 can only buy -- I don't know. My expertise is flying jets and
16 stuff like that. So the financial stuff -- I guess territory
17 would be the best way, if that makes sense to you all.

18 BY MS. BERLIN:

19 Q. And you were giving -- you testified a few minutes ago
02:46 20 about this example of going out to a location for a merchant to
21 see if the Par Funding would go and physically visit a merchant
22 to see if the business was intact.

23 Who told you about that?

24 MR. HYMAN: Leading, compound.

02:47 25 THE COURT: "Who told you about that" is not leading.

1 MR. HYMAN: It was the first part. She led up to it.
2 Do you recall talking about all of these things and --

3 THE COURT: The question is: Who told you about it?
4 So that's overruled.

02:47 5 A. Michael Furman told me about it. He told me that they had
6 a very low uncollectable rate, that their loans were like 1 or
7 2 percent that defaulted. And that sounded pretty good. He
8 said -- because he would go out and preexamine the area first.

9 Say for instance, I have a farming business and I need
02:47 10 some new equipment for my trees or something like that. So
11 that group, whoever they -- the Par Funding group, they had --
12 people that would go out and check these businesses or these
13 individuals or these -- there are customers to ensure that they
14 would be able to pay their debts and that the loans would not
02:48 15 go uncollected and that we as investors would have our money
16 and Par Funding as the lending company would have their money.

17 And yes, the rates might have been higher than what
18 some banks might have charged, although that's not my forte, is
19 it was going to give them their money a lot quicker than a bank
02:48 20 or lending institution, and they realized that (inaud.)
21 sometimes pay for quick loans. And I know when I got a
22 mortgage on my house, it took a long time. And I can only
23 imagine.

24 BY MS. BERLIN:

02:48 25 Q. Did you ever attend any events that Mr. Furman hosted?

1 A. I went to one event. That event was in Palm Beach at
2 Ruth's Chris Steak House, and that evening it was raining a
3 lot. So we had to valet park. We couldn't park and walk
4 across.

02:49 5 And in there, there's a lot of different people,
6 investors like myself. I actually -- when I -- he had already
7 invested my money into my -- retirement money into a
8 Par Funding account, I had just recently sold my mother's
9 estate down in Kendall where I grew up. It was on an acre and
02:49 10 a quarter, two bed, one bath house from 1951, and I had some
11 extra money and I was thinking maybe I'll put that into
12 Par Funding since -- you know, my retirement money.

13 And while I was in there, I met a gentleman from
14 Par Funding. Actually, there was a couple that were from
02:49 15 Philadelphia. And Michael said, Here, this is Frank. And I
16 told him I had some bad luck because I went through not one but
17 two divorces in my career. He said, Your money is safe with
18 us. What we pay, you'll make the money back that you lost in
19 your divorce -- which was an interesting temptation, I have to
02:50 20 admit -- and that everything is fine.

21 And I went there basically to get the free dinner
22 because I already had my money the first time in Par Funding,
23 but now I got to meet actually the owners, the people that were
24 running it. And they all seemed legitimate. They seemed like
02:50 25 businessmen and they're helping us other people out.

1 BY MS. BERLIN:

2 Q. So at this event, at Ruth's Chris Steak House that
3 Mr. Furman hosted, am I correct in understanding that there
4 were -- you said there were owners there.

02:50 5 Owners of what company did you understand them to be?

6 A. The owners of Par Funding from Philly. They said they flew
7 in from Philly. Actually, the guy that did my income tax and
8 Emmanuel was there too, because he's part of that group of
9 Fidelis. And he was saying how great it is. And everyone
02:51 10 obviously - I guess if it was a way to raise money, they're not
11 going to say we're no good. So in retrospect -- but I felt
12 comfortable because they would look me in the eye and they
13 said, We have been doing this for several years, actually
14 decades.

02:51 15 And then they're just now -- like about two or three
16 years before I got in, they started letting the public come in,
17 that it was all before just family money, family, and it grew
18 bigger and bigger over the years and at which point they were
19 letting us street people, so to speak, sort of commoners, not a
02:51 20 family -- we were just regular investors.

21 Q. Did Mr. Furman ever tell you why you couldn't invest -- or
22 let me ask you another way.

23 Did you understand that you could invest in
24 Par Funding directly in instead of investing in Par Funding
02:51 25 through Mr. Furman?

1 MR. HYMAN: Leading.

2 THE COURT: Overruled.

3 A. I had to go through Michael Furman. He said he was the
4 only representative - that's what I was saying, that he has the
02:52 5 territory. He was the only one from Florida down to the Keys.
6 This was his territory. I couldn't go to Smith and Barney and
7 say I want to go into Par Funding. He was the only
8 representative from my understanding. And as I mentioned
9 before, a couple scattered around the country, one up in
02:52 10 Philadelphia and maybe someone out West, but those names I
11 can't recall exactly.

12 BY MS. BERLIN:

13 Q. Did you understand -- did you have an understanding of why
14 couldn't you just write a check directly to Par Funding or wire
02:52 15 money directly to Par Funding if that's what you were
16 ultimately investing in? Why did you need to go through
17 Mr. Furman?

18 A. Okay.

19 MR. HYMAN: Compound, leading. The questioner is
02:52 20 testifying there.

21 THE COURT: Overruled.

22 A. The reason I couldn't wire it to Par Funding, Michael
23 Furman said at that time I was getting in with \$300,000 per
24 entry. There was different graduations of 50 thousand, a
02:53 25 hundred thousand. The top is 500. At each time I had around

1 300 that I could invest. And he said I couldn't directly
2 invest because he has to pull it together. He doesn't give it
3 all at 300 thousand. He waits until he get a couple million or
4 5 million and we all go in like a little pie as an investor
02:53 5 group, although we'll get a separate account. They'll put down
6 in paper I have about \$300,000, and I'll get X amount of
7 interest and paychecks. But the others -- he had to put at
8 least somewhere around 2 million. I don't remember exactly,
9 but it was like there had to be a group fund, and then he was
02:53 10 in charge of it.

11 BY MS. BERLIN:

12 Q. So was that -- I mean, was there just -- I'm trying to
13 understand -- correct me if I'm wrong -- am I understanding
14 correctly that you personally weren't investing enough for
02:53 15 Par Funding to accept, that it had to go with other investors?

16 A. It was going to be tied together to get a certain amount.
17 The exact dollar amount, I don't know if he told me the exact
18 number. But it had to be larger than -- but this guy and that
19 guy had some.

02:54 20 Q. So Mr. Furman explained to you that the only way for you to
21 invest to in Par Funding was if you gave your money to
22 Mr. Furman, he added it together with some other investors and
23 he sent up that larger amount to Par Funding; is that right?

24 MR. HYMAN: Leading, compound.

02:54 25 THE COURT: Overruled.

1 A. That's what I understood and I almost think that's kind of
2 what I said before too.

3 BY MS. BERLIN:

4 Q. I'm sorry. I couldn't hear that.

02:54 5 A. I kind of thought I mentioned that, kind of, yes. You
6 summed it better than I sometimes.

7 Q. I just want to make sure I understood correctly.

8 MS. BERLIN: I wonder, Your Honor, if I may approach
9 the witness. It's with a document -- an exhibit that's been
02:54 10 marked not admitted, P 483.

11 THE COURT: 483, yeah, you may approach.

12 BY MS. BERLIN:

13 Q. Does the document you've marked at P 483, does this look
14 familiar to you?

02:55 15 A. Yeah. I have one at home. This is what he gave me.

16 Q. So this is a copy of the -- where did you get this -- your
17 copy that you have at home, where did you get it?

18 A. Michael Furman's office.

19 Q. And --

02:55 20 MS. BERLIN: Your Honor, I think that we can seek to
21 introduce it at this point.

22 THE COURT: Not for the context, I'm assuming, not for
23 representations in there, simply to advance that was provided
24 this material to begin with.

02:55 25 MS. BERLIN: He was provided this material to begin

1 with and what he understood from what was written in it.

2 **THE COURT:** I'll allow that in, 483. Any objection?
3 This is the overview of Par Funding. Is there an objection for
4 the record?

02:55 5 **MR. HYMAN:** Hearsay, and also that the questioner did
6 not lay the predicate.

7 **THE COURT:** Like I just said, we're not using it for
8 that purpose for the truth of the contents. We'll admit that.

9 (Thereupon, the exhibit was admitted into evidence.)

02:56 10 **MS. BERLIN:** Thank you.

11 **BY MS. BERLIN:**

12 Q. And do you have a copy? I also gave you the original
13 there.

14 A. This is what mine looks like. Obviously it was a copy.

02:56 15 Usually they say I talk to loud.

16 **THE COURT:** No, no. Louder is better.

17 A. You poor things.

18 No. I have one that is at home exactly. So --

19 **BY MS. BERLIN:**

02:56 20 Q. And that's identical to -- this is just a photocopy?

21 A. Yeah, no, I see that. I realize that.

22 Q. Okay. So P 483 is a marketing folder that you got from
23 Mr. Furman?

24 A. Yes. Yes, ma'am.

02:56 25 Q. And if you open it up --

1 MS. BERLIN: Can we go ahead and show it on the
2 screen? It's now been admitted.

3 BY MS. BERLIN:

4 Q. Mr. Nash, just give us one moment. We're just putting it
02:57 5 on the screen. All right. Can we turn to page 2, or if you
6 you're looking at -- why don't you look at the hard copy. It's
7 easier to read.

8 A. Thank you very much.

9 Q. And we see -- if we turn to pages 2 and 3 and it goes onto
02:58 10 4, and the original in yours is just a really long document
11 that we had to cut into three pieces.

12 Do you see it in the left-hand pocket?

13 A. Yes, ma'am.

14 Q. Can you take that out?

02:58 15 A. (Complies.)

16 Q. And what does it say in the top left is the name of this
17 document, this chart?

18 A. The AR change?

19 Q. Yeah. Do you see at the top where it says "CBSG funding
02:58 20 analysis"?

21 MS. BERLIN: Your Honor, may I approach the witness?

22 THE COURT: Yeah, directing him to where you're
23 pointing.

24 A. I didn't have it open all the way. I really did fly jets.

02:58 25 Okay? I'm sorry.

1 BY MS. BERLIN:

2 Q. Do you see in the upper left -- yeah, you have to open it;
3 it's a very big piece of paper -- that it says "CBSG funding
4 analysis"?

02:58 5 A. Yes, ma'am.

6 Q. And did Mr. Furman give you a chart like this, a funding
7 analysis?

8 A. Oh, yes, ma'am.

9 Q. And what was the -- what did Mr. Furman tell you about the
02:59 10 chart generally, if you recall?

11 A. That they -- basically, this is what they have been making
12 money with for all of these years and how those little -- so
13 little when they don't pay forfeitures, I guess or --

14 Q. Default?

02:59 15 A. Default. Thank you. And that my money was very safe and
16 secure and look, it's all been going like this for so many
17 years, that why wouldn't you get into it.

18 Q. Did Mr. Furman tell you that this chart, this CBSG funding
19 analysis, that it reflected the default rate of the merchant
02:59 20 cash advance loans?

21 A. Oh, yeah. That's why they were so low. I think it was 1.6
22 percent or something. It was very low.

23 Q. And did he use -- if you look at the chart in front of you,
24 do you see a column heading at the top that says "Exposure
03:00 25 Percentage"? It should have parentheses and written around it?

1 A. **Yes.**

2 Q. Do you see that exposure percentage?

3 A. **Yes, ma'am, I do.**

03:00 4 Q. And what number does it show, if you look all the way down
5 to the bottom?

6 A. **Oh.**

7 Q. **Circled?**

8 A. **1.4 percent.**

03:00 9 Q. Did Mr. Furman tell you that this column, this exposure
10 percent column reflected the default rate?

11 A. **Yes, it did. Not trying to brag, but I think I said --**
12 **when I just said before looking at it, 1.6. So I guess my**
13 **memory still serves me.**

03:00 14 Q. Well, did you get a different one of these charts like
15 every month over time and they changed or did you only get one?

16 A. **Only got the one.**

17 Q. Oh, okay. So you got one from Mr. Furman when he was
18 introducing you to Par Funding?

19 A. **Yeah, in the very first time.**

03:00 20 Q. Okay. And this particular one we're looking at, it's
21 probably for an exhibit, this chart is through December 31st,
22 2019. Do you see that in the top left corner under CBSG
23 Funding Analysis?

24 A. **To beg to differ, this one says 01 -- 01/01/13 to 12/31/18.**

03:01 25 Q. Oh, 2018?

1 A. No disrespect. I thought I heard '19.

2 Q. Thanks for correcting me. So this one goes through
3 December 31st, 2018. Do you see that?

03:01 4 A. Yes. And what is good with this is, when I first started
5 with Michael Furman in August of 2018, that's when we first met
6 and I was first introduced to this. So I guess after I got
7 into this, I didn't need any further ones.

8 Q. In your -- in the brochure or in your discussions or the
9 dinner at Ruth's Chris, any of those places, did Mr. Furman
03:02 10 ever tell you that the owner or one of the managers of
11 Par Funding was a convicted felon?

12 A. Absolutely, positively never.

13 MR. HYMAN: Leading, compound, by the way.

14 THE COURT: Overruled.

03:02 15 BY MS. BERLIN:

16 Q. In any of these discussions at Ruth's Chris that you
17 testified about, or the one-on-one meetings or any other
18 communication with Mr. Furman or any brochure, anything at all,
19 did Mr. Furman ever tell you that Pennsylvania state regulators
03:02 20 had brought a case against Par Funding to cease and desist from
21 violating the state securities laws?

22 MR. HYMAN: Leading, compound.

23 THE COURT: Overruled.

24 A. No, they did not. And I'm going to interject just for a
03:03 25 minute. And it will probably keep your counsel for trying to

1 overrule you.

2 When I got in with this, it seemed so nice, clear in
3 context, until August 2020, when I was in my house and I got a
4 call from the FBI asking me questions: Did you know that this
03:03 5 was with these -- about the -- oh, geez. About being a felon,
6 about -- in the Security Exchange (inaud.), and it was like
7 someone just punched me so hard that I saw my whole life almost
8 fade in front me. From my inheritance for my children, the way
9 I live for the rest of my life.

03:03 10 So I don't mean to say that, but I didn't want you
11 getting overruled, but that's the first time I knew about that
12 this was not good stuff.

13 BY MS. BERLIN:

14 Q. Thank you, Mr. Nash. So you never knew about any state
03:04 15 agency bringing any case against Par Funding; is that fair to
16 say?

17 A. Absolutely. And if they did, I would not be here now
18 because I would never put my money in that. I'm a very law
19 abiding citizen. I'm with a military field grade officer for
03:04 20 20 years, retired pilot from the Air Force. I live my life
21 with dignity and pride. I don't do anything that would ever
22 jeopardize, and this is just -- like I said, it's been over a
23 year-and-a-half, and this is why I gained 50 pounds, and my
24 blood pressure is through the roof. This has basically
03:04 25 destroyed me. I'm sorry.

1 MS. BERLIN: Mr. Nash, thank you so much for driving
2 in today. I'm going to turn it now to defense counsel to ask
3 you some questions. Thank you.

4 THE COURT: Thank you. Cross-examination?

03:05

5

6

CROSS EXAMINATION

7 BY MR. HYMAN:

8 Q. Good afternoon, Mr. Nash.

9 A. Good afternoon.

03:05

10

Q. So you testified earlier that you spoke with a gentleman by
11 the name of Frank with Par Funding.

12

Do you recall his last name?

13

A. I don't recall exactly the last name. If I go home -- I
14 keep a little ledger. And I wouldn't say a diary, but I have
03:05 15 day planner to know when I've got a doctor's appointment, when
16 I've got an appointment with Michael Furman at his office, and
17 I probably have it written down in there. So I didn't bring it
18 because I didn't realize I might be asked that question.

19

If you'd like, I can go home, look at my ledger and
03:05 20 see what that gentleman's name. He reported to me -- or he
21 portrayed to me that he was the owner of Par Funding, and
22 another man or two was also with him. But again, names is one
23 of my -- I wouldn't say weakness, but it doesn't stick like in
24 some people.

03:06

25

Q. Got it. And do you recall telling Mr. Furman that you

1 ended up getting divorced because you had an affair?

2 MS. BERLIN: Objection, Your Honor, irrelevant.

3 MR. HYMAN: Your Honor --

4 MS. BERLIN: Objection.

03:06 5 THE COURT: That's sustained. That's sustained.

6 BY MR. HYMAN:

7 Q. Isn't it true that you currently have annuities invested
8 with Mr. Furman today?

9 A. I do. And I've been trying to get them out because his
03:06 10 name is still on there. And JD Mellberg keeps sending
11 people -- if you listen to my phone calls, you will find 20
12 messages of, hey, investor, and this and that, and I cannot get
13 out -- his name is on there and I want out so bad.

14 Q. So you're sure you only attended --

03:06 15 MR. HYMAN: And, Your Honor, by the way, can we
16 sidebar for a moment?

17 THE COURT: No.

18 MR. HYMAN: Okay. Very well.

19 BY MR. HYMAN:

03:07 20 Q. So you're sure you only attended one dinner with
21 Mr. Furman?

22 A. To the best of my knowledge, that's the one that stuck out
23 is when I met these men from Philadelphia, the ones that were
24 supposed to be the owner. And because it was raining so hard
03:07 25 and I didn't have any money for the valet parking and this guy

1 brought out a handful of \$20 bills and said, here, take some
2 tip money.

3 And I go, Wow, this guy has lots of money.

4 Q. You testified earlier about how you were a law abiding
5 citizen of good moral character.

6 Have you done anything that would otherwise be uncouth
7 or viewed as in that way?

8 MS. BERLIN: Objection, Your Honor, to the extent that
9 if he's done anything uncouth.

03:07 10 THE COURT: I'm going to sustain that as well.

11 MR. HYMAN: Your Honor, he put his character at issue.

12 THE COURT: Come sidebar.

13 You know what? Ladies and gentlemen of the jury, go
14 ahead and take --

03:08 15 MS. BERLIN: Should we ask the witness to step out?

16 THE COURT: Would you step down?

17 Yeah, it's okay. Let him remain there until we get
18 our jurors out.

19 (Thereupon, the jury exited the courtroom.)

03:09 20 THE COURT: Can I get a proffer before I allow any
21 questions that would impugn our character that may not at all

22 be relevant? I'm not sure where we are, but we're getting

23 ourselves a little far afield here, but obviously I'm really

24 concerned. There was no reason to ask any questions about an

03:09 25 affair. That's very problematic nor is that relevant. And the

1 last time I checked, if you're going to attempt to tell me that
2 there's some sort of moral turpitude argument that would
3 support a question like that, and then I'd like you to show me,
4 please, a case that would ever permit such a line of
03:09 5 questioning, but I'm not even certain what was coming next. I
6 presume you wanted a sidebar to get clearance on these issues
7 if you're planning on somehow getting into his background. I
8 don't even know what a question that asks if he's ever done
9 anything uncouth would even be referencing. So can you perhaps
03:09 10 proffer to the Court where you're going with this line of
11 questioning? Because I really cannot allow this to continue
12 before the jury.

13 **MR. HYMAN:** Okay. Well, Your Honor, I think at this
14 point, part of the issue is that there are certain statements
03:10 15 that he made to, first of all, the jury in a way to almost get
16 sympathy or otherwise about how he's never done anything wrong
17 in his entire life, he's this great character of high moral
18 standing, almost as a way to garnish sympathy. And there's at
19 least a few instances where he told Mr. Furman about having
03:10 20 multiple girlfriends. Also about having one of them move out
21 at the same day as the other.

22 We're just asking if you recall making statements
23 based on the fact that he otherwise opened the door by dealing
24 with that. However, in light of Your Honor's view of it, we're
03:10 25 happy to move on.

1 **THE COURT:** I don't know if it's my view. I think
2 it's the Eleventh Circuit's view of it which is the problem. I
3 don't know if you understand the problem with that line of
4 questioning. This is not as if you're impeaching someone with
03:10 5 a prior criminal record or a misdemeanor or lying or something
6 that would be a baseline for credibility. He made a statement
7 generally that he feels uncomfortable because he believes he's
8 a law abiding citizen and he got a call from the FBI. I do not
9 believe that his statement in that regard is somehow furnishing
03:11 10 his character that elicits sympathy. He expressed concern.

11 And then, as far as I can tell, we're not going to be
12 able, through any case law I've ever seen, to allow that
13 comment in isolation with everything else to generate opening a
14 door to talk about whether he's had affairs or he's made
03:11 15 statements out of court that, quite honestly, would be under
16 403, so unnecessary and above and beyond prejudicial that it
17 would never be permitted anyway, even if that was supported by
18 case law. So it's not my view of it. It's my concern that
19 we're going to enter into an arena where these kinds of
03:11 20 questions are wholly inappropriate.

21 Do I have any response from the SEC?

22 **MS. BERLIN:** I would just asked that it be stricken
23 from the record. I mean, when we ask people to come here as
24 investors and talk about what happened to them, he did not
03:11 25 testify, Your Honor, about whether he's ever been loyal to his

1 wife or loyal to a woman. It is so out of left field, it has
2 nothing to do with anything that he discussed. The last thing
3 I know, his sexual --

4 **THE COURT:** (Cross-talk) -- I don't remember his
03:12 5 character -- his comment about this has kept me up at night and
6 I'm a law-abiding guy, I've never gotten involved in a
7 legalities case. If you want to go ahead and cross-examine him
8 and tell me, are you a convicted felon or, you know, if we had
9 -- that is a proper -- maybe there credibility is an issue and
03:12 10 we could -- that may even be a stretch, but in that situation
11 if you're going to argue that he put his character at issue, I
12 could understand that level of impeachment. That's not what
13 it's going to be --

14 **MS. BERLIN:** -- that's not what it is.

03:12 15 **THE COURT:** He didn't (inaud.) conversations about
16 possibly not being loyal to his spouse or having an affair --

17 **MS. BERLIN:** And broadcast on Zoom. The man brought
18 up nothing about his sexual history, whether he was loyal to an
19 ex-wife, the treatment -- with the proffer about the treatment
03:12 20 of ex-girlfriends and women is completely improper and
21 irrelevant --

22 **THE COURT:** It's not just what relevancy --

23 **MS. BERLIN:** (Cross-talk) -- it's not proper
24 impeachment.

03:13 25 **THE COURT:** It's not proper impeachment.

1 MS. BERLIN: It's not proper impeachment.

2 THE COURT: And that's why I need to have a brief
3 break because I cannot allow you to get up here, the cat's out
4 the bag with questions like that, that are impugning his
03:13 5 character and they're in appropriate, and I can't unring that
6 bell if you do it again. So do I have any valid argument that
7 you can point to that will support any line of questions like
8 the one you just tried to engage on? Because I don't think he
9 has any prior record, anything of that nature, that we're going
03:13 10 to be bringing up here, right?

11 MR. HYMAN: The only issue, aside from certain
12 misstatements that we can deal with, is he also would call
13 Mr. Furman asking him not to provide information to -- or if
14 his girlfriends called. But we'll move on with the line of
03:13 15 questioning at this point, Your Honor.

16 THE COURT: You do understand -- listen, I don't -- I
17 don't want to belabor it. I think you understand. But you do
18 understand just from a legal perspective that this is not an
19 appropriate line of questioning, right? Are you getting me on
03:14 20 that front? Like, you understand that you are not able -- this
21 is not impeaching with a prior conviction or dealing with
22 credibility or a crime of lying or misrepresentations where you
23 would have to lay a certain predicate and we'd have to
24 (inaud.). But going after a witness who's coming in as an
03:14 25 investor by trying to bring up any sort of sorted misleads or

1 sexual history or perhaps that he has an affair is not only
2 under 403 problematic, but it also just has no bearing for
3 proper impeachment.

03:14 4 You understand that? I want to be clear that this
5 isn't a difference of opinion. It's what the law requires. I
6 just want to make sure we're on the same page that you, as a
7 member of the bar, understand that that's just not how
8 impeachment works with this witness. You understand what I
9 mean, right? This is not proper impeachment.

03:14 10 Like, from a fundamental perspective, you understand
11 wherever you're getting your line of questioning and sources
12 from, there is no support for this line of questioning. This
13 isn't a difference of opinion. This is legal fact. This is
14 not something you can do with proper impeachment.

03:15 15 I just want to make sure you fully understand that
16 this is not a line you should ever engage, not in this trial,
17 not in your next trial, or not in a trial 20 years from now.
18 It's not proper impeachment. But I feel like you think this is
19 a ruling of discretion. This is pretty-well established that
03:15 20 you can't go into this line of questioning.

21 **MR. HYMAN:** Well, Your Honor, I understand what you're
22 saying. I would prefer at this point to just tread lightly and
23 not really deal with it. I will agree not to go into this line
24 of questioning here, and also not it to address it later. In
03:15 25 our view, at least, he opened the door as it relates to a lot

1 of those issues, but from there we'll move on --

2 **THE COURT:** I get -- you don't understand what I'm
3 talking about. So I think what I'll do is, I'll go ahead and
4 maybe I can find some case law that I can provide just so that
03:15 5 we use this as a learning experience going forward. But for
6 now, I think you understand, this would not be an appropriate
7 way, under any circumstances, to impeach this individual.

8 So stay up with questions that have to do with
9 Par Funding, that have to do with Fidelis, that have to do with
03:16 10 (inaud.) Furman and issues regarding his memory and perhaps he
11 doesn't remember certain things, that's fine. You're asking
12 those questions, that's fine. But anything beyond that, that
13 is intending to impugn his character without a foundation or
14 proper impeachment is wholly inappropriate. Okay? So when we
03:16 15 bring him in, I will give a quick curative, because I don't
16 want to draw too much attention to it, and then we'll go from
17 there.

18 Rita, can we go ahead and get our jurors back in here,
19 and can we go ahead and get Mr. Nash back on the stand, please.
03:16 20 Thank you.

21 (Thereupon, the jury entered the courtroom.)

22 **THE COURT:** All right. Please be seated, everyone.
23 We're going to pick up where we left off and then we'll
24 continue the cross-examination of Mr. Nash.

03:18 25 Counsel, you may proceed.

1 MR. HYMAN: Thank you, Your Honor.

2 BY MR. HYMAN:

3 Q. Mr. Nash, you testified earlier that there are two or three
4 people from Par Funding at the dinner you were at; is that
03:18 5 correct?

6 A. To the best of my understanding, they represent themselves
7 as being from Par Funding. If they did not really be from
8 Par Funding, I wouldn't be adjudged to that. But to me, they
9 portrayed themselves as being from Philadelphia and being part
03:18 10 of the company.

11 Q. Would you recall what their names were?

12 A. I think I already told you I couldn't recall name. It
13 would be in my book back in my house. If you'd like, when I
14 get home, I'll gladly call you.

03:18 15 Q. You weren't prepared to testify to that, were you?

16 A. I didn't know what I was supposed to do. I was called in
17 here, and no one talked to me about what to expect or what
18 questions I might be asked. They told me nothing. So I came
19 down here. If you want to bring me back next week or
03:19 20 something, I'll be glad to.

21 Q. And in addition to that, do you recall bringing Mr. Furman
22 gifts to his office?

23 A. Absolutely. Because of his mother. I have a farm in
24 Jupiter Farms. After Hurricane Andrew my house, my Air Force
03:19 25 base away almost 30 years ago, I got transferred up to Cocoa

1 Beach, which is near Patrick Air Force base. I was driving
2 back and forth to Packard three or four times a month, a
3 four-plus hour drive while still working at Miami International
4 Airport like I did for 44 years of my life.

03:19 5 And I stumbled upon a house at Jupiter Farms that I
6 bought, and I ended up planting lychee trees. I have a hundred
7 Lychee trees with little red fruits. I have star fruit, I have
8 chickens. And so I have bees. I have honey bees. And
9 Michael Furman's mom was at the office and brought to my
03:19 10 attention that she liked honey.

11 And so I said, I'm a generous person. I'll bring you
12 a jar of honey. So I would bring some honey or I would bring
13 some stuff. They never paid me for. It's a gift. I'm a
14 generous person. That's the way I live my life. Do unto
03:20 15 others as you'd like them to do unto you. So yes, I brought
16 him gifts. If that's what you're trying to imply, yes, I did.

17 Q. And how many times did you meet with Mr. Furman's mother?

18 A. Probably six times.

19 Q. And when you met with Mr. Furman's mother, was Mr. Furman
03:20 20 also there?

21 A. Yes.

22 Q. And you were present when Mr. Furman was talking to you
23 about -- or was Ms. Furman present as well when you were
24 talking to Mr. Furman about your investment in Fidelis?

03:20 25 A. You mean his mom?

1 Q. Yes.

2 A. **No. She stayed outside.**

3 Q. Did you ever actually invest in Par Funding?

4 A. **Did I actually ever invest?**

03:20 5 Q. In Par Funding, correct.

6 A. **I was led to believe that when I gave all that money.**

7 Q. Did you invest in Mr. Furman's company or did you invest in
8 Par Funding?

9 A. **I was led to believe that it was Par Funding. Maybe he had
03:21 10 an investment company, but no, I'm not really sure.**

11 Q. Do you recall whether or not you signed a document with
12 Par Funding?

13 A. **He had me sign different things. I can't recall.**

14 Q. So you don't recall what documents you signed?

03:21 15 A. **I'm sorry, say again?**

16 Q. You don't recall what documents you did or didn't sign?

17 A. **He just would shuffle papers very quickly, and he said we
18 need to sign this we need to sign that. It's just for
19 whatever. I was under the impression when I saw these license
03:21 20 sand these things all up on the wall that I was dealing with a
21 trained accountant certified by the State of Florida and
22 whatnot, and that whatever he was doing was legal and what I
23 had signed. Yes, maybe I didn't spend all that time because I
24 trusted him.**

03:21 25 Q. Did Mr. Furman ever tell you he was an accountant?

1 A. He never said that. He said he was a class 7 securities
2 exchange registered agent.

3 Q. Did he tell you that he was also a financial planner?

4 A. He said he was everything. Financial planner. That -- he
03:22 5 didn't do my taxes. Like the other guy did taxes and
6 financial, that I had to go see Emanuel, Roland Emanuel, or
7 Emanuel Roland. He portrayed himself to be God's gift to
8 JD Mellberg and the whole financial world.

9 Q. And again, sitting here today, you don't know who or what
03:22 10 documents you signed, correct?

11 A. I'm sure I probably have some at the house. I mean, a lot
12 of times you went in there, his computer wasn't working, his
13 printer wasn't working. He was having a problem with this --
14 the machine. It was like all the bells and whistles and smoke,
03:22 15 and after a while, like I said, when the FBI called me and
16 brought it to my attention that oh, by the way, those investors
17 were with the Gambino family. And like I said, my whole world
18 came upside down.

19 The only saving grace ws I had to look for papers for
03:23 20 the FBI. And I went through a lot of my paperwork and files,
21 and about five years before that, I had to go in for open heart
22 surgery. And I signed some papers for a friend of mine that
23 was going to be like my power of attorney. And luckily we
24 found those papers.

03:23 25 That person changed my will and all my stuff so that

1 everything went to her and her kids. My children, my family,
2 my house everything went to her. And so that was a saving
3 grace of having this issue with Par Funding, that I didn't lose
4 that also. But I still have my house and I still have my
03:23 5 children, you know.

6 But yeah it was an unusual time, but I'm sure I have
7 some papers. Again, I was not prepped as to what to bring or
8 what questions or what have you. So I came. I made the drive
9 down today. I got here, thankfully, with no one running into
03:24 10 me and I'm here. If you want more papers or something, I'll be
11 glad to bring them to you because I have no reason to lie. I'm
12 a man of character, and I don't like that (inaud.) at all what
13 occurred to me different.

14 Q. You testified earlier you saw a sign in Mr. Furman's office
03:24 15 saying he's a CPA; is that correct?

16 A. There was certain signs, yes.

17 Q. And also, similarly, how is it that this woman was able
18 to -- or do you have any recollection as to how this woman was
19 able to make these transfers, the power of attorney?

03:24 20 MS. BERLIN: Objection, Your Honor, about this woman.

21 THE COURT: We're going a little far afield here.
22 That's going to be sustained.

23 BY MR. HYMAN:

24 Q. And how many -- again, how many events did you go to with
03:24 25 Par Funding or with --

1 A. I can remember the one very distinctly at Ruth's Chris
2 Steak House in Okeechobee, around Palm Beach Lakes Boulevard,
3 in that are near the -- where they had -- right across the
4 treat is some center where they have events. And I really
03:25 5 don't get out much from my farm anymore. There was events he
6 might have had that I couldn't participate in, and this was the
7 one to make up for the ones that I had missed. That's the one
8 that I can remember. If there was another one, I would have to
9 look at my records and see. This goes back to 2018. And today
03:25 10 is almost 2022. I'm lucky to remember what I had for dinner
11 last week.

12 Q. So it's true your memory is not too great nowadays?

13 A. It's great. If I had my book when I wrote things down, no,
14 I have a very good memory.

03:26 15 Q. But you didn't bring any of the paperwork today?

16 A. I was not instructed to. Maybe you didn't hear it the
17 three times I said so.

18 Q. And did you meet with the SEC before you came here today
19 before you testified?

03:26 20 A. I met them outside.

21 MR. HYMAN: No further questions.

22 THE COURT: Redirect.

23 MS. BERLIN: Thank you.

24

25

REDIRECT EXAMINATION

1

2 BY MS. BERLIN:

3 Q. Did you show up today because the SEC sent you a subpoena?

4 A. Exactly. I was subpoenaed to be here. I follow the law.

03:26

5 Q. And how much did you invest in Par Funding?

6 A. Par Funding, \$640,000 total.

7 Q. And all of that through Mr. Furman?

8 A. All through Mr. Furman.

9 Q. And did you trust Mr. Furman with your financial

03:26

10 investment?

11 A. I did initially, until this case came about. And I had

12 these other annuities looked at by people I knew in the field

13 and trusted. And they were shocked to see that he invested

14 most of my money one annuity after another annuity, four

03:27

15 annuities in less than a month's time where he got \$50,000

16 commission, and I can't get hardly more than 2 or 3 percent out

17 of those annuities for ten years.

18 Q. Did you trust Mr. Furman was doing due diligence on the

19 company that -- on Par Funding that he was recommending to you?

03:27

20 A. I had thought he had, and I obviously put my money and my

21 investments with him, but I can see that obviously I was wrong.

22 MS. BERLIN: I have no further questions. I hope you

23 have a safe trip back. Thank you for coming.

24 THE COURT: Does the jury have any questions for

03:27

25 Mr. Nash? No.

1 All right. Thank you, Mr. Nash. You are excused.

2 **THE WITNESS:** May I thank the jurors?

3 **THE COURT:** Sure. Absolutely.

4 **THE WITNESS:** I have been on many juries. I cannot
03:28 5 tell you how many people tell you say this to get out or tell
6 them this or that. I thank you as a fellow citizen of this
7 country, and I feel it's our duty and I really want to thank
8 you.

9 **THE COURT:** Thank you, Mr. Nash. We appreciate that.

03:28 10 **THE WITNESS:** The reason I'm so slow with my knee, my
11 daughter nicknamed me Grease Lightning.

12 **THE COURT:** Take your time. Take your time. Can you
13 help him out?

14 **THE WITNESS:** Grease Lightning is out of here.

03:28 15 **THE COURT:** We have of our next witness, I believe,
16 coming in on Zoom, right?

17 **MS. BERLIN:** Yes, Your Honor, Victoria Villarose.

18 **THE COURT:** Has she attempted to call in yet? I just
19 want to be ready and try to help give her access. I know she's
03:29 20 coming in. I don't see her name spelled out, but she may be
21 coming in by way of a phone number or something.

22 **MS. BERLIN:** She is coming in through the number that
23 looks like area code 484.

24 **THE COURT:** 484. Okay. 484, her name. Okay. Let me
03:29 25 know if she says she's on because I'm waiting to see her

1 connect.

2 Ladies and gentlemen of the jury, we have two
3 witnesses left for the day and we're done. And they should be
4 both on Zoom. And they should be fairly straightforward.

03:30 5 Are we showing her exhibits by any chance?

6 **MS. BERLIN:** We are not.

7 **THE COURT:** I just needed to give him access.

8 **MS. BERLIN:** We're going to keep it simple. No
9 exhibits.

03:30 10 **THE COURT:** Okay.

11 **MS. BERLIN:** We understand she's logging in right now,
12 Your Honor.

13 **THE COURT:** Great. I'm just waiting for her to give
14 her access.

03:32 15 All right. So Ms. Villarose, I believe you can
16 probably hear me. If you want to go ahead and take the mute
17 off. There we are. I see you clearly. Can you hear me,
18 ma'am?

19 **THE WITNESS:** I can.

03:32 20 **THE COURT:** Okay. We're going to need you to project
21 as loud as you can, speak as loud as you can. We have a little
22 bit -- our connection is strong, but we sometimes get a little
23 bit of an echo. And we want to make sure that my court
24 reporter can hear you clearly. And I also want to see a voice
03:33 25 peaking out of the dark. So the next thing is I'm going to

1 have my courtroom deputy swear you in, and you see her there in
2 the witness box. So we're going to administer an oath and then
3 turn to the attorney. Okay?

4 THE WITNESS: Okay.

03:33 5 THE COURT: Go ahead, Gracie.

6 Thereupon,

7 VICTORIA VILLAROSE,

8 having been duly sworn by the courtroom deputy, testified as
9 follows: (Victoria Villarose)

03:33 10 THE COURT: All right. Very good. Thank you,
11 Ms. Villarose.

12 We're going to turn it over to the lawyer to begin
13 asking you questions.

14 Go ahead, Counsel.

03:33 15

16 DIRECT EXAMINATION

17 BY MS. BERLIN:

18 Q. Hi, Ms. Villarose. Good afternoon.

19 A. Hello.

03:33 20 Q. Hi. I wonder if you've ever heard of a company called
21 Par Funding?

22 A. Yes.

23 Q. And how so?

24 A. I've worked there for almost five years.

03:33 25 Q. And what was your title there?

1 A. **The head of underwriting.**

2 Q. And in what years did you work at Par Funding as the head
3 of underwriting?

4 A. **I was the head of underwriting from 2018 to 2020. I was**
03:34 5 **with the company from 2015 to 2020.**

6 Q. And when we talk about underwriting today, I'm going to use
7 that word -- like, I understand that what I'm talking about is
8 checking into or investigating a merchant to make sure that
9 they have the ability to pay.

03:34 10 Do you understand the definition I'm giving the word
11 "underwriting"?

12 A. **Yes.**

13 Q. And do you agree that -- I mean, do you agree that's a good
14 definition for the word "underwriting," if we use that word?

03:34 15 A. **For further clarification, it's -- it's more about their**
16 **qualifications based off of their bank statement history and**
17 **credit history, if they qualified for an advance.**

18 Q. Okay. But I mean, when I'm using the word "underwriting,"
19 is part of what your underwriting group did would get
03:35 20 information about companies that were applying to Par Funding
21 to receive money through merchant cash advances?

22 **MR. HYMAN:** Leading.

23 **THE COURT:** Well, it's part of it, yeah, that's the
24 question. That's fine. Overruled.

03:35 25 A. **Can you repeat that? I'm sorry.**

1 **BY MS. BERLIN:**

2 Q. Sure. I'm just trying to get underwriting. The general
3 concept of underwriting. As the head of underwriting, did your
4 department go out and try to collect information about
03:35 5 companies that were trying to get money from Par Funding
6 through merchant cash advances?

7 **A. Yes. We received the information from the merchant and**
8 **then further investigated the report.**

9 Q. Okay. I was just trying to establish what the word
03:36 10 "underwriting" means, because not everybody is familiar with
11 that word.

12 **A. Right.**

13 Q. So as a head of underwriting, at Par Funding, are you
14 familiar with the underwriting practices of Par Funding during
03:36 15 the time period of 2018 to 2020?

16 **A. Yes.**

17 Q. And from 2015 until you became the head of underwriting in
18 2018, were you working with the underwriting department for
19 Par Funding at that time as well?

03:36 20 **A. Yes.**

21 Q. So are you familiar with the underwriting at Par Funding
22 for that period of 2015 until, I think it's about July of 2020?

23 **A. Yes.**

24 Q. During that five-year period, did Par Funding -- did they
03:37 25 send someone out to visit every single merchant Par Funding

1 gave them a merchant cash advance (inaud.) --

2 MR. HYMAN: (Cross-talk) -- leading, compound.

3 THE COURT: Overruled.

4 BY MS. BERLIN:

03:37 5 Q. So my question is: Did -- I'll ask it again. I know
6 sometimes --

7 THE COURT: Make the question short. Just for your
8 own benefit and for the witness. Okay?

9 MS. BERLIN: Sure. Yes.

03:37 10 BY MS. BERLIN:

11 Q. Ms. Villarose, did Par Funding send someone out to visit
12 every single borrower who wanted a merchant cash advance?

13 A. No.

14 Q. And were there certain categories of borrowers or contracts
03:38 15 where there was not a physical inspection of a borrower's
16 business location?

17 A. So from 2015 to about 2018, we scheduled an onsite for
18 every file. After Alex Shlep in came in, there was an
19 adjustment to any deal that was smaller than \$25,000, we would
03:38 20 not schedule an onsite, a physical onsite.

21 Q. And when you say "onsite," are you referring to the
22 practice of sending someone physically out to a location to
23 check out the business in person?

24 MR. HYMAN: Leading, compound.

03:38 25 THE COURT: Overruled.

1 **BY MS. BERLIN:**

2 Q. Is that what you mean by an onsite?

3 A. **That was the original practice, yes.**

4 Q. So if the merchant cash advance was less than \$25,000, then
03:39 5 starting in 2018 there was no onsite inspection; is that right?

6 A. **Yes. We would request pictures in its place.**

7 Q. And instead of an onsite inspection, would the underwriting
8 department do Google searches of the borrower, or Yahoo?

9 A. **Yes. Every underwrite has pretty extensive internet
03:39 10 searches to try to validate the business.**

11 Q. Okay. And the company that Par Funding used for onsite
12 inspections was called Metro Inspections; is that right?

13 A. **That was one of them, yes.**

14 Q. And Par Funding stopped working with these onsite
03:40 15 inspection companies in 2019; is that correct?

16 **MR. HYMAN:** Leading.

17 **THE COURT:** Overruled.

18 A. **No. We never stopped working with Metro.**

19 **BY MS. BERLIN:**

03:40 20 Q. Did Metro Inspections do onsite inspections after 2019?

21 A. **Yes.**

22 Q. Hold on one second.

23 I realize this was a few years ago that this happened.
24 But -- with you at Par Funding. But do you remember me taking
03:41 25 your deposition in August of this year?

1 A. Yes.

2 Q. Do you remember testifying by Zoom on August 31st, 2021?

3 A. Yes.

4 Q. And do you remember during your deposition that I asked you
03:41 5 the question -- and on page 78, line 18: And Metro Inspections
6 was a company who did the inspections of some of the merchants?

7 And you answered: Up to January of 2020, yes.

8 And then I asked you the question: Okay. And why did
9 that stop in 2020 -- in January of 2020?

03:42 10 And you answered: Because we found a new product
11 called Tru epic.

12 Do you remember that?

13 A. Yeah.

14 MR. HYMAN: Your Honor, improper impeachment.

03:42 15 THE COURT: Overruled.

16 If you guys have a problem with the Court's rulings,
17 you can let me know outside the presence of the jury. But I do
18 not need either physical reactions every time your objections
19 are overruled or a mumbling after those objections are
03:42 20 overruled. So let's try to put an end to that, please.

21 Go ahead, your next question.

22 MS. BERLIN: Sure.

23 BY MS. BERLIN:

24 Q. So was it the case that Par Funding worked with Metro
03:43 25 Inspection until January of 2020?

1 A. **Am I allowed to answer outside the scope of yes and no?**

2 Q. Well, I'm asking you directly --

3 **THE COURT:** Ms. Villarose, you're allowed to explain
4 any answer you give. I'm happy with you answering yes or no
03:43 5 and then explain. You have all the ability to explain what you
6 need.

7 **BY MS. BERLIN:**

8 Q. Yes. Yes.

9 A. **Okay, great.**

03:43 10 Q. I was just asking, did -- but yes, of course. And I'm
11 going to ask you -- I'm actually going to then ask you if you
12 can explain, because I just want to make sure we get it right.

13 So Metro Inspection was a company that did the
14 inspections until January 2020; would you agree with me on
03:43 15 that?

16 **MR. HYMAN:** Leading.

17 **THE COURT:** Listen, you got to clean this up,
18 Ms. Berlin. I cannot continue on with you just scripting it.
19 So direct questions, leading questions, you can pick it up on
03:44 20 your direct. Okay. Come on.

21 **MS. BERLIN:** Oh, I'm sorry.

22 **BY MS. BERLIN:**

23 Q. We just looked at your deposition testimony.

24 Was the testimony that you gave in August of 2021, was
03:44 25 that accurate that I just read to you?

1 A. Yes. But what you originally asked me here was 2019. So
2 we stopped using Metro Inspections for underwriting in January
3 of 2020. But we never severed our contract because we also use
4 them as -- in our collections department to verify businesses
03:44 5 still being opened.

6 Q. Thank you so much for the clarification.

7 So to make sure I understand. The onsite inspection
8 company, the Metro Inspection, was used for underwriting until
9 January of 2020. Is that right?

03:44 10 MR. HYMAN: Leading.

11 MS. BERLIN: Your Honor, I just want to clarify that I
12 understand her testimony.

13 THE COURT: Yeah, I've given you unbelievable amounts
14 of rope on this, and at some point you've got to ask direct
03:44 15 questions.

16 MS. BERLIN: I'll ask it direct.

17 BY MS. BERLIN:

18 Q. I'll ask you directly. Ms. Villarose, we're going to
19 summarize, but I'm going to have you do it. You tell me, when
03:45 20 did Par Funding stop using Metro Inspections for its
21 underwriting? What month?

22 A. January of 2020.

23 Q. Thanks. And you said collections. It only used it for
24 collections after that time.

03:45 25 Does collections come before or after or during -- can

1 you tell me, when does collections happen with Par Funding and
2 the MCA loan process?

3 **A. After a merchant either defaults, stops paying or starts**
4 **returning.**

03:45 5 Q. So is it fair to say it's after Par Funding has already
6 made the advance?

7 **MR. HYMAN:** Leading.

8 **A. Correct.**

9 **THE COURT:** That will be overruled. That's fine.

03:46 10 **BY MS. BERLIN:**

11 Q. And then you're familiar with a company called Tru epic?

12 **A. Yes.**

13 Q. And when did Par Funding start using Truepic?

14 **A. January of 2020.**

03:46 15 Q. And at some point did Par Funding -- instead of onsite
16 inspections, was there ever a time where merchants taking their
17 own photos was used as -- instead?

18 **A. Yes. Yes. We have had FaceTime walk-throughs, we have had**
19 **photos of -- sent by the merchant of signage, the area -- even**
03:46 20 **home-based businesses would take a picture of their work area.**
21 **Which is essentially what Truepic was. It was to verify the**
22 **pictures were real.**

23 Q. Okay. So my question was, did merchants sometimes just
24 send a picture of themselves to Par Funding? Was that part of
03:47 25 underwriting at some point, instead of the onsite inspection

1 where you would send a third party there?

2 A. **(Cross-talk) -- picture.**

3 Q. Pictures taken by whom?

4 A. **The merchant.**

03:47 5 Q. Okay. So the merchant would take their own picture and
6 send it to Par Funding; is that right?

7 A. **Yes.**

8 Q. And Truepic -- was Truepic involved in that?

9 A. **Yes.**

03:47 10 Q. So Truepic is not -- Truepic is a company that's involved
11 not with the onsite inspections by third parties, but with the
12 practice of merchants taking selfies.

13 Am I understanding you correctly?

14 **MR. HYMAN:** Leading.

03:47 15 A. **They're not selfies.**

16 **THE COURT:** Overruled.

17 It's okay, Ms. Villarose, you can explain.

18 A. **Because they're not selfies. They're a pictures of the
19 business facility that are verified through software by**

03:48 20 **Truepic. So instead of a person physically going out there and
21 having to meet the merchant, a link is sent to the merchant
22 where they can take and upload these pictures, and they're
23 verified for their authenticity.**

24 **BY MS. BERLIN:**

03:48 25 Q. Understood. So I used the word "selfies." I'm just not

1 technologically hip.

2 I guess what I mean by "selfies" is a picture of the
3 merchant took themselves of their business; is that right?

4 The Truepic process involved the merchant taking a
03:48 5 photo of their business by themselves, correct?

6 MR. HYMAN: Leading.

7 MS. BERLIN: Your Honor, I'm just trying to clarify
8 because I think --

9 THE COURT: I understand. You've got to figure out a
03:48 10 way to do this without the amount of leading you're doing.

11 MS. BERLIN: I'm sorry.

12 THE COURT: I can only tolerate it up to a certain
13 point. But Mr. Hyman is absolutely right. I know you want to
14 move through this witness, but if takes a little longer to get
03:49 15 there, you're going to have to do that right way. That's
16 sustained.

17 MS. BERLIN: Sure. Absolutely.

18 BY MS. BERLIN:

19 Q. I'm going to ask you to tell me. Truepic --

03:49 20 THE COURT: What is it?

21 MS. BERLIN: She already testified about that,
22 Your Honor.

23 THE COURT: What, who, where, when and why would be
24 direct examination questions. Let's work with those words.

03:49 25 MS. BERLIN: She already testified about what Truepic

1 is.

2 **BY MS. BERLIN:**

3 Q. Ms. Villarose, who would take the pictures that were sent
4 to Par Funding after January of 2020 for the underwriting
03:49 5 process?

6 A. **The merchant.**

7 Q. Okay. Now, prior to January 2020, which is when you -- the
8 time period you established they stopped using
9 Metro Inspections, prior to that time, did Par Funding have any
03:50 10 sort of process in place for instances where a merchant did not
11 want to permit an onsite inspection?

12 **MR. HYMAN:** Leading.

13 **THE COURT:** No. That's overruled. That's fine.

14 A. **I'm sorry, can you repeat?**

03:50 15 **BY MS. BERLIN:**

16 Q. Sure.

17 Prior to January 2020, when Par Funding stopped using
18 the onsite inspection company, so prior to January 2020, was
19 there any sort of process in place at Par Funding for occasions
03:50 20 where a merchant did not want to allow a third-party inspector
21 to come onto the premises?

22 A. **Yes. We had merchants that were uncomfortable with the
23 process, where they just weren't available there. So we would
24 accept pictures from the merchant.**

03:51 25 Q. In addition to not doing the onsite inspection if the deal

1 was less than \$25,000, or if the merchant wasn't comfortable
2 with them coming onto the property, were there any other
3 circumstances where Par Funding would use other methods to
4 verify a business than an onsite inspection?

03:51 5 A. I'm not sure if I understand what you're asking.

6 Q. Okay. So you testified that there wouldn't be an onsite
7 inspection if it was less than 25 thousand or if a merchant
8 wasn't comfortable on the property, having a third party come.
9 Do you remember that?

03:52 10 MR. HYMAN: Leading.

11 A. Yes.

12 THE COURT: Overruled.

13 BY MS. BERLIN:

14 Q. Were there other occasions where Par Funding would use
03:52 15 methods other than an onsite inspection to verify the merchant?

16 A. Do you mean outside of the pictures that they take that I
17 mentioned?

18 Q. Yes.

19 A. We also did the Google searches and things like that to
03:52 20 verify pictures that we would receive.

21 Q. And now, were there any rules at Par Funding that -- about
22 whether or not an onsite inspection would occur based on
23 whether a merchant cash advance was short-term versus longer
24 term?

03:52 25 A. I don't know the answer to that question.

1 Q. Okay. So was there any waiver at Par Funding for onsite
2 inspections if a deal was short-term, meaning it was 50 to 75
3 days, instead of the standard 88 to 120 days?

4 A. I think so, yes. They were called fast-funding deals or
03:53 5 something like that. They were typically small sized deals
6 with short-term. So they were would not need an onsite.

7 MS. BERLIN: I think that's it. Hold on just one
8 moment, Ms. Villarose.

9 THE WITNESS: Okay.

03:54 10 MS. BERLIN: We don't have any more questions. Thank
11 you. I'll turn it over to defense counsel.

12 THE COURT: Cross-examination, please.

13

14 CROSS EXAMINATION

03:54 15 BY MR. JOHN:

16 Q. Good afternoon, Ms. Villarose.

17 A. Hello.

18 Q. Ms. Villarose, do you know Mr. Michael Furman, the
19 defendant in this case?

03:54 20 A. I don't.

21 Q. Have you ever communicated --

22 A. I don't know if I actually know him. I've heard his name
23 before, but I can't actually confirm if I've ever met him.

24 Q. Gotcha. Had you ever communicated with Mr. Michael Furman
03:54 25 during your time at Par Funding?

1 A. I can't remember.

2 Q. Would it be normal for you or anyone in your office to
3 transmit underwriting information to the agent fund managers?

4 A. Not that I know of.

03:55 5 Q. Had you ever transmitted underwriting information to any
6 agent fund manager?

7 A. I don't think so.

8 Q. All right.

9 MR. JOHN: Moment to confer, Your Honor.

03:55 10 THE COURT: Yeah.

11 MR. JOHN: No further questions, Your Honor.

12 THE COURT: Redirect.

13 MS. BERLIN: Yeah, just one quick question.

14

15 **REDIRECT EXAMINATION**

16 BY MS. BERLIN:

17 Q. I just have one question for you, Ms. Villarose. If
18 Mr. Furman had ever called you as the head of underwriting to
19 ask you whether Par Funding did an onsite inspection every
03:55 20 single time for every single merchant, would you have told him
21 no and explained to him what you explained to the jury today?

22 MR. HYMAN: Objection, calls for speculation.

23 THE COURT: Overruled.

24 You may answer if you know, ma'am.

03:56 25 A. If he called and asked if we did an onsite for every deal,

1 I would say the same thing as I did to you, which is there are
2 special situations in which we would accept other forms of
3 verification.

4 **BY MS. BERLIN:**

03:56 5 Q. And that includes what you talked about today, which is if
6 the deal was one of those fast-funding deals, right?

7 A. Yes.

8 Q. Or if it was less than \$25,000?

9 A. Yes.

03:56 10 Q. And if the merchant wasn't comfortable with having someone
11 come onto their property?

12 A. Yes.

13 Q. And if it was after January 2020?

14 A. You mean for the physical onsite, when somebody goes there?

03:56 15 Q. Yes.

16 A. Yes.

17 **MS. BERLIN:** I don't have any more questions. Thank
18 you so much.

19 **THE COURT:** Any questions for the witness from the
03:57 20 jury?

21 Thank you, Ms. Villarose. You're free to disconnect
22 at this point.

23 **THE WITNESS:** Thank you.

24 **THE COURT:** Ladies and gentlemen of the jury, you guys
03:57 25 all good to hang in there for the next witness? It's the last

1 one for the day. I think it should be fairly brief.

2 The next witness that we're going to be calling?

3 **MS. BERLIN:** Alexis Abbonizio, Your Honor.

4 **THE COURT:** Is she dialing in right now?

5 **MS. BERLIN:** We're going to find out. We just told
6 the witness to log in. Because they are not supposed to see
7 the prior witness, we don't have them --

8 **THE COURT:** Yeah, I don't want them in until it's
9 time.

03:57 10 **MS. BERLIN:** It's someone on Zoom calling from 215 and
11 we are asking her to raise their hand.

12 **THE COURT:** There's someone -- Bill. Could it be that
13 she's identified coming in under Bill?

14 **MS. BERLIN:** We're going to find out.

03:58 15 **THE COURT:** Okay. Just don't want to give panel
16 access to a random investor for obvious reasons.

17 It wasn't this other individual whoever that was.

18 So we're going to swear you in. You can see in the
19 screen that says "witness box," my courtroom deputy is going to
03:59 20 swear you in, and she's going to be asked by an attorney at the
21 podium. And we're going to make sure that when you answer -- I
22 hear you very well, but just make sure that you project loud so
23 that we can make a clean record. We have a court reporter here
24 and we have to make sure that we can hear what you're saying.

03:59 25 Okay?

1 THE WITNESS: Of course. Thank you so much.

2 THE COURT: You're welcome.

3 Gracie, can we swear her in.

4 Thereupon,

5 ALEXIS ABBONIZIO,

6 having been duly sworn by the courtroom deputy, testified as

7 follows:

8 THE COURT: Thank you, Ms. Abbonizio. We're going to
9 turn it over to the lawyer. Okay?

03:59 10 You may proceed whenever you're ready.

11

12

DIRECT EXAMINATION

13 BY MS. BERLIN:

14 Q. Hi, Ms. Abbonizio. I'm Amie Riggle-Berlin with the SEC.

04:00 15 How are you?

16 A. Good. How are you, Amie?

17 Q. Thank you. I'm doing okay.

18 Are you here today pursuant to a subpoena?

19 A. Yes, I am.

04:00 20 Q. Are you familiar with the a company called Par Funding?

21 A. Yes, I am.

22 Q. Have you ever done any work in connection with Par Funding?

23 A. Yes.

24 Q. During what years?

04:00 25 A. Starting in 2017 to 2020.

1 Q. And during that time, what were your responsibilities --
2 like generally, what were your responsibilities there?

3 A. **Administration role for the investor relation team.**

4 Q. And as part of that work, what types of things did you do?

04:01 5 A. **I would prepare the security agreement, promissory note
6 agreement, the note purchase agreement, and forward executed
7 agreements and countersigned agreements between the PPM
8 managers and Joe Cole.**

9 Q. And was one of those -- you referred to it as a PPM
04:01 10 manager. Was one of those people Michael Furman?

11 A. **Yes.**

12 Q. And so what types of communications would you have with
13 Mr. Furman?

14 A. **The same. I would do his agreements as well as forward
04:01 15 marketing material at each stage.**

16 Q. So would you forward Mr. Furman Par Funding marketing
17 materials?

18 A. **Yes.**

19 Q. And Par Funding brochures?

04:01 20 A. **Yes.**

21 Q. Would Mr. Furman communicate with you?

22 A. **Me and the A Better Financial Plan team.**

23 Q. And what types of things would Mr. Furman communicate with
24 you about?

04:02 25 A. **He would just send over his signed agreements.**

1 Q. And when you say "signed agreements," were those promissory
2 notes?

3 A. Yes. The promissory notes and security agreement.

4 Q. And what would you do with those when you received them?

04:02 5 A. I would send them over to Joe Cole for execution and then
6 make sure that our financial plan and Michael Furman would get
7 the fully executed copy once they were signed.

8 Q. And so what was Joe Cole's job title at Par Funding?

9 A. CFO.

04:02 10 Q. We're going to show you some documents on the screen. And
11 just let us know if you want us to scroll up or down.

12 MS. BERLIN: Your Honor, none of these have been
13 admitted yet. So can we take them off the jurors' screens?

14 THE COURT: Yeah.

04:03 15 So we need just only Ms. Abbonizio. She's going to be
16 shown documents by Mr. Robinson so the predicate can be laid.
17 So I need the jurors not to be able to see the screens until we
18 can lay that foundation. All right. I think we're all good at
19 this point.

04:04 20 You guys don't have your screens on, right?

21 You may proceed.

22 MS. BERLIN: Thank you.

23 I wonder if we can please show Ms. Abbonizio the
24 document that we prelabeled P 410.

04:04 25 (Thereupon, the exhibit was introduced into evidence.)

1 **BY MS. BERLIN:**

2 Q. If we can go to the first page, please.

3 **MS. BERLIN:** Thanks, Mr. Robinson. There we go.

4 **BY MS. BERLIN:**

04:05 5 Q. Ms. Abbonizio, do you see at the top?

6 A. **Yes.**

7 Q. Looking at this, do you -- is this -- do you know what this
8 document is?

9 A. **That was the initial marketing material.**

04:05 10 Q. Is this your e-mail that we're looking at, P 410?

11 A. **Yes.**

12 Q. And it's an e-mail that you sent?

13 A. **Yes.**

14 **MS. BERLIN:** Your Honor, I'd like to introduce P 410.

04:05 15 **MR. HYMAN:** Hearsay and relevance.

16 **THE COURT:** That's overruled.

17 That will be admitted.

18 (Thereupon, the exhibit was admitted into evidence.)

19 **MS. BERLIN:** Thank you. So can we publish this to the
04:05 20 jury then?

21 **THE COURT:** P 410 is now admitted. You may now
22 publish that.

23 **MS. BERLIN:** Thank you.

24 **BY MS. BERLIN:**

04:05 25 Q. Ms. Abbonizio, can you see the exhibit still on your

1 screen?

2 A. **Yes, I can.**

3 Q. Okay, great. And this is -- do you see at the top it says,
4 this is from May 19th, 2017?

04:06 5 A. **Yeah.**

6 Q. And it says it's CBSG marketing deliverables.

7 Do you see that?

8 A. **Uh-huh. (Nodding.)**

9 Q. And it's an e-mail to Joe Mack. Who is that?

04:06 10 A. **That was personnel of Par Funding.**

11 Q. Does he go by a different name?

12 A. **Joe Mack and Joe LaForte.**

13 Q. So if it says on -- so we're going to look at other
14 e-mails. For any that say "Joe Mack" on the to or from line, I

04:06 15 have the e-mail address, Joe@parfunding.com, is that Joe
16 LaForte?

17 A. **Yes.**

18 **MS. BERLIN:** Mr. Robinson just lost access to Zoom.

19 **THE COURT:** All right. I'll add him back.

04:07 20 **MS. BERLIN:** Thank you.

21 **THE COURT:** You're still on, Mr. Robinson, just raise
22 your hand. I don't see you on.

23 **IT TECHNICIAN:** It says it's loading. Or connecting.

24 **MS. BERLIN:** Just one moment, we're trying to get the

04:07 25 exhibit back on the screen, Ms. Abbonizio.

1 THE WITNESS: Okay. Take your time.

2 IT TECHNICIAN: It's not letting me.

3 MS. BERLIN: Let's see what we can do without the
4 exhibits, so that we don't wait. And if we need them,
04:10 5 Your Honor, we'll just circle back, if that's permissible.

6 THE COURT: You guys can't (inaud.). Let's go.

7 MS. BERLIN: Of course, Your Honor.

8 THE COURT: Go ahead.

9 MS. BERLIN: Just trying to keep us moving.
04:10 10 Mr. Robinson, can you let me know when you're in.

11 BY MS. BERLIN:

12 Q. All right. So the e-mail that we were just looking at that
13 you sent to Mr. LaForte with -- it was P 410, the marketing
14 materials. Let me ask you another way.

04:10 15 Would you e-mail marketing materials to any of the
16 agent fund managers as well?

17 A. Yes, I would.

18 Q. And would you e-mail them to Mr. Furman?

19 A. Yes, I did.

04:10 20 Q. Was part of your job responsibility handling paperwork
21 associated with CAMA?

22 A. Yes.

23 Q. And what is CAMA?

24 A. CAMA is an IRA company. However, I -- towards when we had
04:11 25 the funds started, I would relieved myself of that role and A

1 **Better Financial Plan handled that paperwork.**

2 Q. And how is CAMA related to Par Funding, if at all? Why
3 did -- why would you interact with CAMA at all?

4 A. The clients that had IRAs would use CAMA Plan as a third
04:11 5 parties to establish that account.

6 **MR. HYMAN:** Relevance, Your Honor.

7 **THE COURT:** Overruled.

8 **BY MS. BERLIN:**

9 Q. So would Par Funding be -- ever receive funds from CAMA?

04:12 10 A. Yes.

11 Q. And under what circumstances?

12 A. When there was individual investors, before the funds had
13 been established, the PPM manager's letter, single clients that
14 would invest via CAMA.

04:12 15 Q. And would you provide information, like CAMA account
16 applications, or other forms to Mr. Furman for use with his
17 investor -- with -- for use with raising investor money?

18 **MR. HYMAN:** Leading.

19 **THE COURT:** Overruled.

04:12 20 A. I believe in the past. I don't recall specifically.
21 However, he had used an IRA company, yes, in the past. But as
22 previously mentioned, A Better Financial Plan had taken over
23 that role towards the end.

24 **BY MS. BERLIN:**

04:12 25 Q. Okay. And so under circumstances where an account was

1 created at CAMA, could you just explain to us, like, how CAMA
2 fits into the process of getting money from Mr. Furman, or one
3 of his customers, up to Par Funding?

4 MR. HYMAN: Leading.

04:13 5 THE COURT: Overruled.

6 A. So in the past, if there was a client before they
7 established a PPM, (inaud.) finders, clients would have an IRA,
8 and they would wire funds over from the IRA to Par Funding.

9 However, when they established the PPM, I was not a part of
04:13 10 that process, so I don't know how funds were received.

11 BY MS. BERLIN:

12 Q. And so in that process that you were just talking about
13 where they used an IRA, was there a connection between CAMA and
14 the IRA? Is CAMA a bank? Can you just explain that connection
04:13 15 a little bit more so it's clear for us.

16 A. As far as I know, I was limited to the information. It was
17 just the third party via (inaud.). I would establish a
18 connection for them to talk to them and walk them through that
19 process.

04:14 20 Q. And using CAMA is the entity through which Par Funding
21 could receive IRA money?

22 A. Yes.

23 Q. While you were working at Par Funding, were there certain
24 days a month when you were more likely to hear from one of the
04:14 25 agents raising money for Par Funding?

1 A. Agents would wire funds on the 10th and 25th. So days that
2 are closer to those two dates, I would actually have more
3 interaction with fund managers.

4 Q. So on the 10th and 25th is when, like, the agents would
04:15 5 send any money up to Par Funding that they had collected?

6 A. Exactly.

7 Q. And is that something that Mr. Furman would do?

8 A. Yes.

9 MS. BERLIN: Let me see if we've had any luck getting
04:15 10 into Zoom. So I'd like to show you this exhibit. Just a
11 moment. We're in.

12 THE COURT: Hold on. Did you get disconnected?

13 (Thereupon, there was a brief discussion off the record.)

14 MS. BERLIN: Thanks, Kevin.

04:15 15 I'd like to just show to the witness, because it
16 hasn't been admitted yet, an exhibit we have preidentified as P
17 552.

18 (Thereupon, the exhibit was introduced into evidence.)

19 BY MS. BERLIN:

04:16 20 Q. Ms. Abbonizio, can you see a document that has a P 552
21 sticker on it?

22 A. Yes.

23 MS. BERLIN: And it's the tinniest writing. I wonder
24 if we can just Zoom in a little bit so Ms. Abbonizio can see
04:16 25 the top of this page.

1 BY MS. BERLIN:

2 Q. Is the item we've marked as P 552, is that -- do you
3 recognize this document?

4 A. Yes.

04:17 5 Q. And what is it?

6 A. That must have been information I had needed with help for
7 funding for CAMA planner.

8 Q. And do you recognize P 552 as an e-mail from you?

9 A. Yes.

04:17 10 MS. BERLIN: And, Your Honor, we'd like to introduce P
11 552.

12 MR. HYMAN: Hearsay, Your Honor.

13 THE COURT: That will be admitted.

14 (Thereupon, the exhibit was admitted into evidence.)

04:17 15 MS. BERLIN: So if we can -- can we publish this to
16 the jury, please?

17 THE COURT: You may publish.

18 MS. BERLIN: So we'll zoom in a bit, maybe, because
19 it's really very small font. But if we could please turn to
04:18 20 the end of this document. We'll start at the end. Can we zoom
21 in a bit on that last e-mail, Mr. Robinson, from -- we're just
22 going to be zooming in and moving up it quickly.

23 BY MS. BERLIN:

24 Q. So, Ms. Abbonizio, if you can see at the bottom of this
04:18 25 exhibit it's -- do you see that in the same e-mail string it's

1 from Dean Vagnozzi? It says, cc Anita. And it's: Hey,
2 everyone. I have another round of agent training like the one
3 you attended already, set for Wednesday night, January 24th,
4 and Thursday, the 25th.

04:19 5 Do you see that?

6 A. Yes.

7 Q. And who is Anita.

8 A. Anita was an associate of A Better Financial Plan.

9 Q. And if we just look up -- and that's Dean Vagnozzi's
04:19 10 company?

11 A. Yes.

12 MS. BERLIN: Can we just scroll up on the same exhibit
13 where it says: Hi, Alexis. Or I'm sorry, Dean. From
14 Michael Furman to Dean. It's right above it, and just zoom in.
04:19 15 Thanks.

16 BY MS. BERLIN:

17 Q. So do you see, it's from Michael Furman to Dean Vagnozzi
18 copying Anita? Do you see that message?

19 A. Yes.

04:20 20 Q. And it says: Dean, I have been out of this office and am
21 on the road today but have my phone with me. My clients and I
22 have funded the CAMA plan account with \$201,000, so we need to
23 make sure that we get the direct note for the merchant set up
24 and wanted to make sure you knew and could help with the next
04:20 25 steps.

1 I'm calling Ryan at CAMA Plan now since my client
2 still doesn't see it on his account, but it was wired in, so
3 might take a day to show up. But I wanted to make sure you
4 know it's there and he's eager to get it set up. Please let me
04:20 5 know what would be the next step for this case.

6 Do you see that?

7 MR. HYMAN: Leading.

8 A. Yes.

9 THE COURT: Overruled.

04:20 10 BY MS. BERLIN:

11 Q. And so in this message, we see a reference to CAMA Plan.
12 Is that the CAMA that you were testifying about earlier today?

13 A. Yes.

14 Q. And this is December 29th, 2017?

04:21 15 MR. HYMAN: Leading.

16 THE COURT: Overruled.

17 A. I can't see the date.

18 MS. BERLIN: Can we zoom in on that part? We're
19 trying to figure out a way to make this a little faster to make
04:21 20 it look bigger so we can scroll through it quickly.

21 That's super. Thank you.

22 BY MS. BERLIN:

23 Q. Can you see where it's -- that e-mail we just looked at was
24 dated Friday, December 29th, 2017. Do you see that?

04:21 25 A. Yes.

1 Q. Okay. And right above that it looks like this is where it
2 goes to you. Do you see where Anita is forwarding it to you
3 and it says: Hi, Alexis, I'm ccing Michael Furman on this
4 e-mail. Michael has a client, Russell Meyer, investing in NCA.

04:22 5 Do you see that?

6 MR. HYMAN: Leading.

7 THE COURT: Overruled.

8 A. Yeah.

9 BY MS. BERLIN:

04:22 10 Q. And it's referencing that: The funds have been wired to
11 CAMA and will be available next week once all the paperwork is
12 received.

13 Do you see that?

14 MR. HYMAN: Leading.

04:22 15 THE COURT: Overruled.

16 A. Yes.

17 BY MS. BERLIN:

18 Q. So why would you be receiving this information about
19 Mr. Furman having a client whose money has been put into CAMA?

04:22 20 A. **Because at that time I was preparing those agreements with**
21 **the client's information.**

22 Q. And this is for -- is this part of the process for
23 ultimately obtaining a Par Funding promissory note?

24 A. Yes.

04:22 25 Q. If we can just go up to the next portion, do you see

1 Michael Furman's e-mail to you of Friday, December 29th, 2017,
2 at 1 o'clock p.m.?

3 A. You can zoom in just a bit.

4 Q. Yeah, we're trying do that.

04:23 5 A. Yes, I can.

6 Q. And do you see where Mr. Furman writes to you: Good day,
7 Alexis. Thank you for the introduction, Anita. Alexis, this
8 one will be the monthly income to my client. I'm in my car for
9 the next three to four hours. So if you would like to call me
04:23 10 today on my cell, that is fine. And then he goes on from
11 there.

12 Do you see that?

13 MR. HYMAN: Leading.

14 A. Yes, I do.

04:23 15 THE COURT: Overruled.

16 By the way, she's reading (inaud.). They're not
17 questions. It's not leading.

18 But go ahead.

19 BY MS. BERLIN:

04:23 20 Q. So why -- at this part in December of 2017, did you have an
21 understanding of why Mr. Furman was providing you with this
22 information about the funds being monthly income for his
23 client?

24 A. Yes.

04:24 25 Q. And why is that?

1 A. So I would be -- know how to properly prepare these
2 agreements.

3 Q. So you would be -- I'm sorry. You would probably be able
4 to prepare the promissory note?

04:24 5 A. To prepare his clients' -- yes.

6 Q. And would that be -- a promissory note issued by who, by
7 what company?

8 A. Par Funding.

9 MS. BERLIN: We can set this exhibit aside. I wonder
04:24 10 if we could please show P 560.

11 (Thereupon, the exhibit was introduced into evidence.)

12 MS. BERLIN: Can we Zoom in on the top so

13 Ms. Abbonizio can see it better? Thanks.

14 BY MS. BERLIN:

04:25 15 Q. Ms. Abbonizio, can you make out the top of this document?

16 There we go. Zoomed in.

17 A. Yeah.

18 Q. And do you recognize this document?

19 A. Yes, I do.

04:25 20 Q. And generally, what is P 560? How do you recognize it?

21 A. This is just an e-mail I received from Anita letting us
22 know there's the next step ready to go -- or from Michael
23 Furman, rather. I apologize. I saw the CC first.

24 Q. And it's from Mr. Furman to you?

04:26 25 A. Yes.

1 Q. And if you look beneath it, is this your e-mail string
2 between you and Mr. Furman?

3 A. Yes.

4 MS. BERLIN: Your Honor, I'd like to introduce P 560.

04:26 5 THE COURT: Any objection?

6 MR. HYMAN: To this portion, no, but the other chains
7 that are not authored by Mr. Furman, we object to as hearsay.

8 THE COURT: That will be admitted at this time.

9 (Thereupon, the exhibit was admitted into evidence.)

04:26 10 MS. BERLIN: Can we publish it, please?

11 BY MS. BERLIN:

12 Q. Do you see at the top of the page Mr. Furman's message to
13 you?

14 A. Yes.

04:27 15 Q. And it's from December 29th, 2017?

16 A. Yes.

17 Q. And it says -- Mr. Furman writes to you: Thank you.

18 Please e-mail me the next steps as I need to update my client,

19 and I have several more next week that I will be bringing up

04:27 20 the next few weeks. So I want to get this one done ASAP and

21 move on to the next.

22 Do you see that?

23 MR. HYMAN: That's not a question.

24 A. Yeah.

04:27 25 MR. HYMAN: Just reading from the exhibit. Objection.

1 THE COURT: Overruled.

2 BY MS. BERLIN:

3 Q. And so what did you understand Mr. Furman was communicating
4 to you in that message?

04:27 5 A. That he just wanted to make sure his client was funded so
6 he could move on to work on the other others.

7 Q. And is that all -- like, did you understand this is all in
8 connection to what? Clients and what?

9 A. Clients and CBSG or Par Funding rather.

04:27 10 Q. And the promissory notes?

11 A. Yes.

12 MS. BERLIN: We can take this exhibit down. Thank
13 you. I wonder if we can show to the witness P 103, only to the
14 witness, though. It's not admitted yet.

15 (Thereupon, the exhibit was introduced into evidence.)

16 MS. BERLIN: All right. Can we zoom in so
17 Ms. Abbonizio can see it? Thank you.

18 BY MS. BERLIN:

19 Q. Do you recognize this document that we have as P 103?

04:29 20 A. Yes.

21 Q. Okay. Is this your e-mail from you?

22 A. Yes.

23 Q. And it appears that P 103 is your e-mail string. Does this
24 appear to a true and correct copy of your e-mail string with

04:29 25 Mr. Furman?

1 A. Yes.

2 MS. BERLIN: Your Honor, we'd like to introduce P 103
3 as an exhibit.

4 MR. HYMAN: Hearsay.

04:29 5 THE COURT: Overruled. That will be admitted at this
6 time.

7 (Thereupon, the exhibit was admitted into evidence.)

8 BY MS. BERLIN:

9 Q. And so can we begin at the bottom of this Exhibit P 103 on
04:29 10 the Bates page BFP 061450.

11 Ms. Abbonizio, can you see that on the screen or do
12 you want us to zoom in on it?

13 A. No, that's perfect.

14 Q. Okay. Great. What is this e-mail? It's from -- it looks
04:30 15 like from you to KahunaFL@BellSouth, ccing Michael Furman,
16 dated January 3, 2018.

17 Can you explain to us what we're looking at?

18 A. This an e-mail I sent to Michael Furman's client, which
19 attached to paperwork and outlined what needed to be signed and
04:30 20 completed in order to have a note with Par Funding or CBSG.

21 Q. And so does this page which is Pdf page 2 of P 103, does
22 this e-mail kind of reflect what would typically happen in the
23 course of interactions with Mr. Furman?

24 A. Yes.

04:31 25 Q. You would send his client the paperwork for the Par Funding

1 investment and copy him?

2 MR. HYMAN: Leading.

3 THE COURT: Overruled.

4 A. Yeah.

04:31 5 BY MS. BERLIN:

6 Q. And how would you know to send an e-mail like this? Like
7 this one is to KahunaFL@BellSouth.net. How would you know to
8 send KahunaFL@BellSouth.net an e-mail sending him the
9 Par Funding promissory note and security agreement?

04:31 10 MR. HYMAN: Compound and leading.

11 THE COURT: Overruled.

12 You can answer. Go ahead.

13 A. Michael would provide the information about his client for
14 me to directly contact.

04:31 15 BY MS. BERLIN:

16 Q. Michael Furman would?

17 A. Yes.

18 Q. And would he provide that to -- what method of
19 communication would he use to provide that to you, meaning by
04:32 20 phone, e-mail?

21 A. E-mail.

22 Q. By e-mail.

23 And then you would e-mail out the notes?

24 A. Yes.

04:32 25 Q. And once you received the -- an executed agreement, what

1 would happen next in the process?

2 A. A fully executed agreement would be sent to the client with
3 Michael Furman cc'd as well as A Better Financial Plan would
4 get the executed agreement for the record.

04:32 5 Q. And how would you deliver that note that fully executed
6 promissory note once you received it?

7 A. Via e-mail.

8 MS. BERLIN: I wonder if we could show the witness
9 P 558. It's not yet in evidence.

04:33 10 (Thereupon, the exhibit was introduced into evidence.)

11 BY MS. BERLIN:

12 Q. Ms. Abbonizio, is this your e-mail? Does it appear to be a
13 true and correct copy?

14 A. Yes, it is. Yes.

04:33 15 MS. BERLIN: Your Honor, we'd like to introduce P 558
16 as an exhibit.

17 THE COURT: Any objection?

18 MR. HYMAN: Hearsay authentication predicate.

19 THE COURT: That will be overruled.

04:33 20 Ladies and gentlemen of the jury, I just want to make
21 sure understand every single one of these e-mails is being
22 admitted into evidence over the defendant's objection because
23 these e-mails are not being advanced for the truth of the
24 matter asserted, and by that I mean when you're looking at
04:33 25 these e-mails in the jury room admitted into evidence, we are

1 not introducing them and they're not being put forth before you
2 so that you can scrutinize the contents and figure out, for
3 example, in this e-mail the phones are right or the clients are
4 right. These are all being admitted for purposes of
04:34 5 establishing or attempting to establish the relationship
6 between Par Funding, Fidelis, and Mr. Furman.

7 You should only be considering for that connection,
8 not for any of the contents of the e-mails. Do you all
9 understand why that's being admitted? Is that a yes? Okay.

04:34 10 I just want to make sure that you understand because I
11 don't want anyone being confused as to scrutinizing of the
12 contents. It is for the relationship only.

13 It is essentially for the chronology and how these
14 events played out and the relationship between the parties.

04:34 15 Okay.

16 Let's go forward, please.

17 (Thereupon, the exhibit was admitted into evidence.)

18 **BY MS. BERLIN:**

19 Q. Ms. Abbonizio, in the last e-mail we just looked at, you
04:34 20 saw the e-mail of yourself e-mailing Mr. Furman's client a copy
21 of the promissory note and security agreement.

22 Do you remember that?

23 A. Yes.

24 Q. And is that something that you actually did, like send out
04:34 25 promissory notes and agreements to Mr. Furman's client?

1 A. Yes, it is.

2 Q. Okay. And let's look at P 558. Tell us what we're looking
3 at here. This is your e-mail to Mr. Furman, correct?

4 A. This is an e-mail from Michael Furman to me.

04:35 5 Q. From Michael Furman to you. And in it, what's happening
6 here in P 558?

7 A. He was giving me the information I would need to proceed
8 with preparing agreements.

9 MS. BERLIN: Am I understanding that we're treating
04:35 10 all of these as hearsay, Your Honor?

11 THE COURT: On the contrary.

12 MS. BERLIN: I just want to make sure.

13 THE COURT: They're not hearsay.

14 So they understand, they should not be looking at the
04:35 15 contents of the e-mail. That's not what they're being
16 introduced.

17 MS. BERLIN: Thank you so much.

18 THE COURT: That's why the objections are being
19 overruled. I want my jurors to understand that they're not to
04:36 20 be focusing on the truth of the contents of the e-mail.

21 They're meant to explain the relationship the SEC is trying to
22 put on.

23 Am I correct on that?

24 MS. BERLIN: Yes, absolutely.

04:36 25 THE COURT: That's why they're being offered, and

1 that's why the hearsay objections are being routinely
2 overruled. I want them to understand the limited purpose from
3 which the evidence is being offered, which is part of the
4 cautionary instruction I'm giving them.

04:36 5 **MS. BERLIN:** Thank you so much.

6 **BY MS. BERLIN:**

7 Q. So, Ms. Abbonizio, here we see in P 558 Mr. Furman sending
8 you -- it says: Legal name of client, Russell Jamison Meyer.
9 Date of agreement. Do you see that? ASAP?

10 A. **Yes.**

11 Q. Let us know if you need it zoomed in at any time.

12 A. **No, this is good here.**

13 Q. This says: Distribution: Annual or monthly? Paid out
14 monthly. Rate of return, 12.5 percent. Client's address,
04:36 15 client's phone number, client's e-mail.

16 Do you see that?

17 A. **Yes.**

18 Q. So is this the type of information Mr. Furman would send up
19 to you?

04:37 20 A. **Yes.**

21 Q. And what's the purpose of Mr. Furman's sending you the name
22 of a client, the date of an agreement, when that agreement
23 should be paid and what the rate of return is?

24 A. **So that I would have the appropriate information to**
04:37 25 **complete agreements.**

1 Q. And when you say "agreements," do you mean a Par Funding a
2 promissory note?

3 A. **A Par Funding promissory note and security agreement.**

4 Q. And so what would you do -- when you received information
04:37 5 from Mr. Furman, like what we're seeing in this exhibit that
6 lists the interest rate, and the name of a client, what would
7 you do with that information once you received it for
8 Mr. Furman?

9 A. **Prepare an agreement.**

04:37 10 Q. So you would prepare an agreement and then would you get it
11 executed by anyone at Par Funding?

12 A. **I would have it signed by the client first, and then that**
13 **client would send me the agreement, and then I would have it**
14 **fully executed by Par Funding.**

04:38 15 Q. And would the client send it to you directly or would
16 Mr. Furman or the agent send it to you?

17 A. **I believe the client would send it to me directly with**
18 **Michael Furman cc'd.**

19 Q. So Mr. Furman -- I think we looked before. Mr. Furman
04:38 20 would provide you the contact information for the client, and
21 then that's -- you would use all that information to fill out
22 the agreement and to e-mail it out, copying Mr. Furman; is that
23 correct?

24 **MR. HYMAN: Leading.**

04:38 25 A. **Yes.**

1 THE COURT: Sustained.

2 If you can restate that.

3 MS. BERLIN: Sure.

4 BY MS. BERLIN:

04:38 5 Q. Why don't you tell us the process once Mr. Furman provided
6 you the information that we see on the screen right now telling
7 you the name, the address, et cetera, you just testified you
8 would put that into a promissory note. Did I understand you
9 correctly?

04:39 10 A. Yes.

11 Q. And then tell us the next step? Where would it go next?

12 A. Once -- it would go to the client to be countersigned, and
13 then the client would then send me the agreement. Which then I
14 would forward to Joe Cole to fully execute the agreement. And
04:39 15 then once the agreement was fully executed, I would then give
16 the client, via e-mail, a copy of that fully executed agreement
17 for the record with Michael Furman and A Better Financial Plan
18 cc'd.

19 Q. And when you were -- all of the steps you were just
04:39 20 discussing that you were sending it, was that -- were you --
21 what means of delivery were you using for each of those steps?

22 A. E-mails.

23 Q. And the reason you were sending -- when you say "the
24 client," whose client was that? Like, what do you mean?

04:40 25 A. Michael Furman.

1 Q. So Michael Furman's client?

2 A. Yeah.

3 Q. And where were would you get the -- just to be clear in my
4 understanding, you would get the client's information and all
04:40 5 of the details for the note from who?

6 A. Michael Furman.

7 Q. And he would tell you that information using what means of
8 delivery?

9 A. E-mail.

04:40 10 Q. Thank you.

11 MS. BERLIN: I wonder if we could please take down
12 this exhibit.

13 I wonder if we could please show the witness P 415. I
14 believe it's already in evidence.

04:41 15 THE COURT: I believe this has been admitted already.

16 MS. BERLIN: Yes.

17 BY MS. BERLIN:

18 Q. Ms. Abbonizio, have you seen P 415 before?

19 A. Yes.

04:41 20 Q. And this is a Par Funding brochure?

21 A. Yes.

22 Q. And did you ever do anything with the Par Funding
23 brochures?

24 A. I would e-mail them to PPM managers.

04:41 25 Q. And what about Mr. Furman?

1 A. Yes. It would be e-mailed to him.

2 Q. And what was the purpose of e-mailing the brochure to
3 Mr. Furman?

4 A. So he can use it with his clients.

04:42 5 Q. Okay.

6 MS. BERLIN: We can take down this exhibit, please.

7 BY MS. BERLIN:

8 Q. Just one moment, Ms. Abbonizio.

9 Would you ever send marketing brochures through any
04:43 10 means other than e-mail?

11 A. Yes. At times I would send marketing brochures via mail
12 and other.

13 Q. Did you -- do you remember if you ever mailed any to
14 Mr. Furman?

04:43 15 A. I do not recall specifically, but I may have in the past.

16 MS. BERLIN: Just one moment, Your Honor.

17 THE COURT: Yep.

18 MS. BERLIN: Thank you. And thank you for your
19 patience, and Your Honor's with our technology issues. We
04:44 20 don't have anymore questions.

21 THE COURT: All right. Cross-examination?

22

23 CROSS EXAMINATION

24 BY MR. HYMAN:

04:44 25 Q. Good afternoon, Ms. Abbonizio. How are you doing today?

1 A. Good. How are you?

2 Q. Fantastic. Thank you.

3 So you recall Exhibit 415, the Par Funding brochure
4 that you distributed?

04:44 5 A. Yes.

6 Q. As far as you know, was everything within that brochure
7 accurate?

8 A. I was just an administration role. My job was to e-mail
9 it.

04:44 10 Q. Earlier you also testified about receiving promissory notes
11 from investors.

12 Do you recall that testimony?

13 A. Yes.

14 Q. So within the ordinary course of your duties, there should
04:45 15 be a promissory note executed for each of Mr. Furman's
16 investors between CBSG and that investor; is that correct?

17 A. Yes.

18 MR. HYMAN: No further questions.

19 THE COURT: Any redirect?

04:45 20 MS. BERLIN: We have no redirect. Thank you.

21 THE COURT: Any questions for the witness from the
22 jurors?

23 All right, Ms. Abbonizio, let me go ahead so you can
24 see me. We will -- there we are. We will go ahead and let you
04:45 25 go. Thank you so much for your testimony. All right. You are

1 excused. You may disconnect.

2 **THE WITNESS:** Thank you so much, Your Honor.

3 **THE COURT:** You're welcome.

4 Okay. I believe that that should conclude the SEC's
04:45 5 testimony for today?

6 **MS. BERLIN:** It does, Your Honor.

7 **THE COURT:** Okay. All right. Do you have something
8 you wanted to add?

9 **MR. HYMAN:** No, no, I'm sorry. I thought the jury was
04:45 10 leaving.

11 **THE COURT:** Don't worry. We'll ask you to rise when
12 they leave.

13 All right. So ladies and gentlemen of the jury, that
14 concludes today, and that is the plan that we had. We got
04:45 15 through our six witnesses.

16 So tomorrow, here's what we're looking at: We expect
17 to have two witnesses that the SEC is going to call, and that
18 the SEC intends, tomorrow, assuming no unforeseen delays, to
19 rest their case in chief. Once the SEC rests, I will have a
04:46 20 little more instructions for you all about what to expect into
21 next week when we allow the defense to put on a case. So
22 that's where we're at.

23 Obviously we are well into the testimony in this case.
24 You've heard from a lot of witnesses over the last three days.
04:46 25 The SEC has a few left to go. You must continue to keep an

1 open mind through, not only the rest of their case, but until
2 the defense has had an opportunity to put on their witnesses as
3 well. So please remember that. And, of course, until you get
4 my instructions on the law and you get closing arguments from
04:46 5 the lawyers, it will be almost impossible to put all of this
6 evidence together. So you need to continue to keep your ears
7 and eyes open and listen carefully and attentive to all of the
8 evidence, which you all have done since you began your service.
9 And I know, on behalf of the lawyers, I thank you again for
04:47 10 your attention and all the scrutiny that you're paying to the
11 documents you're seeing and everything else that is going to go
12 back in evidence with you all.

13 So when you get home tonight remember, family may ask
14 you about how things are going. Other than discussing
04:47 15 scheduling, I have to make sure that you all are reminded not
16 to talk about this case with family or with friends. Do not
17 talk about the case with one another until the deliberations at
18 the end of the case.

19 Continue to please stay off any sort of social media
04:47 20 during your service. Do not post anything on any sort of
21 social media site, Instagram, Twitter, Facebook, about your
22 jury service. And very important, of course, that you do not
23 do any independent research on any of the people, places or
24 things that you've heard thus far in this case.

04:47 25 Again, we are nearing almost the end of pretty much

1 the first significant phase of the case and close to finishing
2 up the SEC's case in chief, so we're making very good progress
3 according to the trial schedule that we're on during your
4 service.

04:47 5 So tomorrow what I'd like to do is, I'm going to give
6 everybody a little bit of extra time, since it's Friday and we
7 only have two witnesses, we can all be here at 10:00, not 9:30,
8 so that gives you guys an extra 30 minutes here, so that leaves
9 a little more breathing room with traffic and everything else
04:48 10 coming in. I truthfully believe tomorrow will not be a full
11 day. I think we're going to get you guys out of here, at the
12 latest, by mid-afternoon, and we'll do our best to do that,
13 okay, so we can let you guys go on off and enjoy your weekend
14 and be with your family and friends.

04:48 15 So with that being said, of course, let me know if
16 anyone is running late. But you've got to make sure you leave
17 those notepads in the room before you leave, and we'll see
18 everybody in the jury room tomorrow morning at 10:00 a.m. You
19 are all excused.

04:48 20 (Thereupon, the jury exited the courtroom.)

21 **THE COURT:** Okay. Everyone, please be seated. Let's
22 just do some housekeeping here and see where we're at on a
23 number of issues before we break for the evening. Again, we
24 expect for Mr. Furman to be the first witness or we're going to
04:49 25 try to have our one investor who came out of the hospital

1 first? What do we think? I don't know how that investor is
2 doing.

3 **MS. BERLIN:** Yeah, the update that we got is he might
4 need a few more days. And so we're -- we were just asking if
04:49 5 maybe we can be flexible with him. If we need to, maybe we
6 even can just call him in rebuttal. So we don't know. We have
7 figured out, though, the issue with his hearing loss and how to
8 communicate. It's going to be interesting, I'll let the Court
9 know now. It will require us to type the questions and --
04:49 10 because he can speak, he'll then speak the answers. So that is
11 how it works.

12 **THE COURT:** So you type -- you type the questions to
13 him? This gentleman is appearing live or over Zoom?

14 **MS. BERLIN:** Zoom.

04:50 15 **THE COURT:** Okay. You guys need this witness? I
16 mean, I'm not saying that facetiously. You've got three
17 investors you've marched in that have been (inaud.). Do I need
18 a fourth one that has this many disability issues? I'm being
19 frank. This is not a witness that's going to advance your
04:50 20 cause, and it's going to be such a belabored process for one
21 more guy. I've got to ask you, you have three already,
22 arguably you can say it's somewhat cumulative. Why don't you
23 need him? I'm asking. I just can't figure out -- something
24 tells me that this gentleman is not going to be the valuable
04:50 25 witness you may think he is just by disability and limitation

1 only that's going to be hard.

2 MS. BERLIN: I know. No, I agree, Your Honor. And
3 so, you know, I do agree.

4 THE COURT: (Cross-talk) -- I mean, I'll give you a
04:50 5 chance to think about it. And I'm not saying I'm going to drag
6 him in tomorrow, but we can always call him out of turn next
7 week, but if you're telling me it's in the a medical issue,
8 it's just a hard of hearing issue --

9 MS. BERLIN: No, no, it's a medical. It's medical.

04:51 10 THE COURT: But I'm saying I don't know if it's going
11 away any time soon, it sounds like, not before the end of
12 trial. I'm just worried -- we have problems on Zoom with
13 witnesses who have no disabilities. I'm worried about typing
14 it and it really being choppy. I would just ask him -- you
04:51 15 don't have to make a decision now, but I would ask you guys to
16 seriously consider whether or not you need this witness --

17 MS. BERLIN: (Cross-talk) We are. We agree. And we
18 are. We're considering that. And we're, you know, trying to
19 look at the options and if we really need him, and of course,
04:51 20 communicating with him. Because I mean, he wanted to testify
21 from his hospital bed, we had to say no. No. Of course, we
22 said no. As the Court knows, we discussed that last week. So
23 we're going to consider that, and we're probably not going to
24 do that.

04:51 25 THE COURT: But in either way -- either way let's

1 tomorrow we know you're calling Mr. Furman.

2 MS. BERLIN: Yes.

3 THE COURT: And so we can focus on that. We'll make
4 the most of our time. And I will not require the SEC to put
04:51 5 him on tomorrow, so he has more time for recovery, but I would
6 just urge that the SEC seriously consider whether putting him
7 on at all is necessary, and you guys can let me know on Monday
8 when you check in with him as to what his status is.

9 I just think -- there's also a bit of a concern -- I
04:52 10 mean, I don't really know how bad his situation is, but, you
11 know, we could get to the point where the sympathy starts to
12 outweigh any probative value for a gentleman like this coming
13 out of a hospital bed. And I already have a lot of investors
14 marching in here that are physically limited, they're older --

04:52 15 MS. BERLIN: We didn't choose the clients.

16 THE COURT: They're retirement age, so you've heard me
17 overrule any concerns on that. But this gentleman sounds even
18 more so --

19 MS. BERLIN: Mr. Furman chose these people as his
04:52 20 clients. We're just presenting the people that he solicited.

21 THE COURT: I understand. I just think at this point,
22 again --

23 MS. BERLIN: Cumulative.

24 THE COURT: -- cumulative nature, but that's the
04:52 25 part -- I've had three of them.

1 MS. BERLIN: We understand, Your Honor.

2 THE COURT: So I haven't really decided yet if I'm
3 going to permit him, giving all of the limitations. I'd rather
4 give you guys the flexibility to decide yourselves if you
04:53 5 really want him or not and then you let me know on Monday,
6 okay?

7 MS. BERLIN: I appreciate that, Your Honor. We hear
8 you loud and clear.

9 THE COURT: We have a lot of witnesses.

04:53 10 MR. JOHN: Your Honor, very quickly. I'm sorry to
11 interrupt. It's something time-sensitive that developed during
12 lunch. I know we're approaching 5 o'clock. Mr. Furman had a
13 bridge issue, and he was able to get an appointment for 5:15.

14 THE COURT: He's absolutely -- as long as we have some
04:53 15 other things to do, but he doesn't have to stay. He is excused
16 if he can make his appointment.

17 MR. JOHN: He wanted to leave at 5 o'clock.

18 THE COURT: Whenever you want to leave. That's more
19 important. We're going to mostly do some housekeeping issues.
04:53 20 I mean, your lawyer is already on a position on some of these
21 Fifth Amendment things. I don't want to hold you back. So
22 that's fine.

23 All right. So we're going to have Mr. Furman testify
24 tomorrow, and that may very well be the end of the SEC's case
04:53 25 in chief. And if the SEC makes a decision as to that investor

1 tomorrow, then let me know because then I can at least explain
2 to the jury one way or the other that they may expect the SEC
3 to call that second witness out of turn so that they're not
4 wondering what's going on with that.

04:54 5 **MS. BERLIN:** I appreciate that. Thank you.

6 **THE COURT:** All right. So the issue then in
7 preparation for tomorrow is we have been talking a little bit
8 about the Fifth Amendment concerns for Mr. Furman. Just to
9 recap, the SEC had presented a list of areas that they believed
04:54 10 they were prevented from asking them questions about
11 specifically because those areas were in some way, shape or
12 form covered by the request for admissions within which
13 Mr. Furman invoked the Fifth Amendment, and there has been
14 argument that because of that, these questions were never asked
04:54 15 at deposition, those areas of inquiry were honored and Fifth
16 Amendment protected. So we don't want to have a situation
17 where Mr. Furman is on the stand tomorrow and is asked a line
18 of questions that has already been protected by the Fifth
19 Amendment.

04:55 20 So do we have an update from the parties on where we
21 are on this issue? Maybe the SEC can tell me and I'll hear
22 from defense.

23 **MS. BERLIN:** So we received from them their notes to
24 the things they believe were covered and not that he didn't
04:55 25 assert the Fifth to. I think these will be pretty quick and

1 easy without even looking at transcript.

2 THE COURT: Okay.

3 MS. BERLIN: So the first one -- and I don't know if
4 defense counsel has a copy of that that they were going to
04:55 5 provide to the Court. They gave us --

6 THE COURT: (Cross-talk) -- if we have one, that's
7 great. If not --

8 MS. BERLIN: (Cross-talk) -- easier.

9 THE COURT: -- I'll do it ore tenus, I guess.

04:55 10 MS. BERLIN: We can do it ore tenus.

11 So the first one is the SEC says admit that you,
12 Michael Furman, were a signatory on the Fidelis bank accounts
13 at all times prior to July 2020. They believe that testimony
14 regard -- that Mr. Furman testified that he let ABFP access the
04:55 15 bank accounts and other things about that. Somehow is
16 testimony about what we ask. I mean, I think for all of these,
17 Your Honor, we can short-circuit it.

18 Our view is if he took the Fifth on it and he wasn't
19 asked it, then that's it. The Fifth Amendment still sticks. I
04:56 20 think what they're trying to do is say, well, you asked about
21 whether other people had access and therefore, intuitively
22 that's not the Fifth or something. I don't know.

23 I think once we set a clear rule, if that's the same
24 thing obviously, it's his testimony because it is it. But if
04:56 25 he wasn't asked about it and he didn't testify to it, then the

1 Fifth Amendment stands. So it looks, to me, from looking at
2 the defendant's list, that their view is if he took the Fifth
3 on subject A and he later testified about subject B, but
4 intuitively, we should have known these two things were linked
04:57 5 or something, then the Fifth Amendment shouldn't apply.

6 I think if the Court just gives a clear explanation to
7 defense counsel about the ruling that was made last week, it
8 would address all of these issues, frankly.

9 **THE COURT:** Okay. I mean, I think that the easiest
04:57 10 way I can think of doing it - and I don't want to necessarily
11 split hairs, but anything that is part and parcel of the
12 request for admission, whether it's identified that you were
13 signatory or provide us with documents evidencing this fact,
14 right, because they have a request for production attached to a
04:57 15 request for documents, that is an arena that he has invoked the
16 Fifth, and therefore, we shouldn't be asking about that.

17 It's tough for me to try to divine if something is
18 just a little bit different than a request for admission but
19 was not asked at the deposition, so therefore it's arcane. I
04:58 20 think we're in that kind of space.

21 **MS. BERLIN:** I don't know how I would know. I want to
22 be clear. I think I know a lot about -- I only see what I see
23 in evidence. But I cannot divine how certain things are
24 connected. I mean, I'm only looking at the evidence in our
04:58 25 case and what's collected, and I don't I think that's the

1 responsibility either of us.

2 I mean, what I propose is that we take our list --
3 there's nothing that they identified that we said it's the
4 Fifth Amendment, he asserted the Fifth, and that they claim
04:58 5 that he actually testified about that same exact thing that I'm
6 seeing on their list.

7 **THE COURT:** Okay. Can you guys explain? Maybe you
8 guys can give me what your proposed solution is so I can
9 understand it.

04:58 10 **MR. HYMAN:** First of all, Your Honor, that's not
11 accurate. For example, the first question that Ms. Berlin
12 asked -- where Mr. Berlin said, hey, he testified that ABFP was
13 a signatory. There's at least three or four different
14 questions during Mr. Furman's deposition as to who was
04:59 15 signatories on his bank account.

16 Similarly, Mr. LaForte's criminal background,
17 Ms. Berlin spent a good 30, 45 minutes going through each
18 person and saying: Who did you discuss about this criminal
19 background with Mr. LaForte. Same thing with the New Jersey
04:59 20 regulatory issues. Who did you discuss the New Jersey
21 regulatory issues with? And started going into details about
22 those lines of questions.

23 Similarly, Your Honor, at one point during the
24 deposition which we have referenced, Ms. Berlin started saying,
04:59 25 as she was going through investor by investor: What did you

1 say to this investor? What did you say to that investor?

2 She said: You know what, I'm going to go get the list
3 of investors, and I'm going to go through that list in its
4 entirety. Which meant she was on notice, was prepared to go
04:59 5 through that list. Mr. Furman did not respond by asserting the
6 Fifth, did not take an issue with it.

7 There was a break. After the break Ms. Berlin said:
8 You know what, I'm not going to go through what you said to
9 each and every single investor because it's not worth the time,
05:00 10 we're not going to finish up today.

11 As it relates to kind of the underlying issue of
12 either prejudice or otherwise, Your Honor noted that there
13 would be latitude in terms of areas of inquiry in terms of the
14 request for admission in the deposition questions. Because
05:00 15 obviously what you're saying, admit that, for example, Dean
16 Vagnozzi prepared your advertising materials, she's saying that
17 unless I said did Dean Vagnozzi prepare your advertising
18 materials, that the Fifth Amendment stands. However, during
19 the deposition she said: Who prepared your advertising
05:00 20 materials? Did Par Funding send you the advertising materials?
21 How are these materials sent?

22 And when you're looking at whether or not to allow a
23 witness to testify when he sat for deposition for 8 plus hours,
24 then, Your Honor, it's about kind of fairness. And in our
05:00 25 view, more importantly too, is this is a point where we're not

1 trying to call Mr. Furman as our witness to put up evidence or
2 testimony on these issues.

3 And to the extent the SEC wants to ask him, did you
4 file these requests for admissions, did you plead the Fifth in
05:01 5 response to this request for admission, they're welcome to do
6 that, and from there he can testify about those issues that
7 they choose or not to open the door to those questions.

8 The real issue, as I understand the kind of Fifth
9 Amendment issue, is the sword and shield, which means that we
05:01 10 cannot say, hey, look, we're going to refuse to answer the
11 question on a request for admission but then afterwards have us
12 put him on the stand to answer the questions that he refused to
13 answer based on the Fifth.

14 To the extent the SEC chooses or not to ask him
05:01 15 questions and he chooses or not in response to each question to
16 answer or testify as to that, I think that's the SEC's
17 strategic decision to make as opposed to Mr. Furman's. And if
18 he chooses to invoke the Fifth when they're questioning him,
19 the jury will hear that and then get the adverse inference.

05:01 20 **MS. BERLIN:** I think the Court made a ruling on this
21 already. I think we have already been there, done that for a
22 long time last week. I think we have moved beyond this and
23 we're at phase 2.

24 Phase 2, Your Honor, is we discussed coming up with a
05:02 25 simple list so everyone's on the same page. Mr. Furman knows

1 what he can't testify about, defense counsel knows what they
2 can't ask about. And the SEC knows. We're all on the same
3 page.

4 As I said, we gave a list to Mr. Furman's counsel.
05:02 5 They came back with what they -- cites to the deposition. Each
6 of the cites they gave is like a cite with a long discussion of
7 how it could relate to what I asked, and what I'm saying is and
8 perhaps, Your Honor, I think it's going to be very clear when
9 Your Honor sees it that it's not the same thing. And they're
05:02 10 not even claiming it is.

11 Perhaps the SEC should file that list of what we plan
12 to do tomorrow with the Fifth Amendment. It takes me a while
13 to get home from here. I'll probably get home -- maybe do it
14 by 8:00 when I get home. Mr. Hyman could then provide his
05:03 15 written response and we can file -- and file the excerpts of
16 the deposition that he believes link up to each one. And we
17 could discuss it at 9:30.

18 Because I personally believe it's going to go in
19 circles. I'm going to give you an example. We asked the
05:03 20 question: Admit that you, Mr. Furman, were a signatory on a
21 Fidelis bank account at all times prior to July 27th, 2020. In
22 response, Mr. Furman has given us something, talking about how
23 he testified that ABFP was allowed to access his records. No.
24 ABFP is not what we asked about.

05:04 25 **THE COURT:** It's not responsive.

1 **MS. BERLIN:** Thank you. And I think they're all just
2 like that, Your Honor. And I believe that if -- just -- I'm
3 just trying to make it easier for the Court. I'm even happy to
4 take this and put it into a notice so I don't have to have my
05:04 5 defense counsel do work and file it for the Court with the
6 deposition transcript or just those excerpts so the Court could
7 look at it. I think it would help streamline things. Whatever
8 you want, Your Honor.

9 **THE COURT:** Let me ask this: If you have those areas
05:04 10 of inquiry that you believe are within the scope of your
11 deposition, right, and you go ahead and you conduct your direct
12 examination the way you believe is compliant with his Fifth
13 Amendment, right?

14 **MS. BERLIN:** Yes.

05:04 15 **THE COURT:** I don't think there's going to be a
16 problem, right? I don't think there will be an objection.
17 Probably not. Suddenly they want to weigh the Fifth across the
18 board anyway. But I think you can try to do your direct
19 examination the way you see fit based upon what you've asked at
05:05 20 the depo and based upon what was protected by the Fifth
21 Amendment invocation on requests for admission.

22 And then I think the only thing beyond that would then
23 be I'd have a copy of the request for admissions, and then if
24 on cross-examination a question is asked that touches on any
05:05 25 one of those, I will sustain an objection.

1 MS. BERLIN: Oh, that's great.

2 THE COURT: I don't know any other way. That seems a
3 lot easier to me than trying to figure out -- I don't know.
4 I'm trying to think of another way.

05:05 5 MS. BERLIN: I think it's a great idea.

6 THE COURT: Because if I have the areas -- quite
7 frankly, if I have the request for admissions in front of me
8 when you do your direct, I should be able to divine whether or
9 not anything you're touching on is any one of those areas or at
05:05 10 least distinct from it because there's not anything about this
11 depo that I'm worried about. It's about the RFAs. Right?
12 That's what matters. What matters is that I don't allow a
13 question to change under the RFA --

14 MS. BERLIN: (Cross-talk) -- that's it.

05:06 15 THE COURT: Yeah. So if I have the request for
16 admissions in front of me with those questions, I should be
17 able to monitor the questioning. And if one of the questions
18 that's asked of him by either party runs, in my view, too close
19 to one of those issues then I'm going to sustain the objection.
05:06 20 That might be the best way to do it.

21 MS. BERLIN: I like it, Your Honor. Thank you so
22 much.

23 THE COURT: I just don't know an easier way to do it.
24 I'm sure you probably have an extra copy somewhere.

05:06 25 MS. BERLIN: We put one in your binder.

1 **THE COURT:** That seems so much easier then I can just
2 say -- because the whole point of my ruling was, we can't
3 invoke the Fifth and then later on disassociate ourselves from
4 it on the eve of trial. If I just look at the request for
05:06 5 admissions and I make sure that we don't deviate in testimony
6 or questioning from the invocation of the Fifth in those
7 areas -- and you're right, there may be some that I say, you
8 know what, close but doesn't touch that third rail, doesn't
9 touch that issue, you can answer it. But I think I've just got
05:06 10 to patrol based upon that and that's the only way to do it.

11 **MR. HYMAN:** The side issue, Your Honor, and this is
12 part of where, at least in my view, because I've been getting
13 smarter on the Fifth Amendment case law and the issue. The
14 issue of what happens and how the Court is supposed to treat
05:07 15 the invocation of the Fifth Amendment when someone asserts it
16 in response to their request for admissions or otherwise, is
17 essentially a balancing test where Your Honor's -- the courts
18 are supposed to balance a kind of right of a person to assert
19 the Fifth, and especially in a case like this where Mr. Furman
05:07 20 was subsequently deposed and responded to interrogatories as
21 well.

22 **THE COURT:** Let me (cross-talk) -- wait a minute.
23 You're arguing a motion again now because you've studied up on
24 some of the case law and that's great, but I'm not going to
05:07 25 change my ruling.

1 Now, on the adverse inference analysis, we will
2 discuss that at charge conference because that is a different
3 episode. Look at SEC vs. Monterosso and some of the cases that
4 talk about adverse inferences.

05:07 5 And Gig, that's 746 F.Supp. 2nd 1253.

6 But the adverse inference analysis I've got to get to
7 later. That is still up for discussion. We have to talk about
8 whether or not adverse inference structure might be
9 appropriate, how we're going do them, et cetera, based upon an
05:08 10 indication of the Fifth and request for admission. That's a --

11 **MS. BERLIN:** On a question-by-question basis and only
12 as to the ones that the SEC even requests. So that's for
13 later.

14 **THE COURT:** That's for later, and it depends on your
05:08 15 question and then I'm going to hear argument so that issue I
16 think is definitely still something we'll iron out later.

17 But for purposes of the Court's prior ruling, the
18 Court has held fairly clearly at this point, unequivocally,
19 that despite all the circumstances surrounding Mr. Furman's
05:08 20 representation, his lack thereof, his unwillingness to testify,
21 he unequivocally invoked the Fifth on request for admission.
22 On the eve of trial he decided he wanted to answer everything.
23 The prejudice caused by that on the eve of trial where the SEC
24 has been, at least under the impression, that these areas were
05:08 25 off limits for trial prep purposes for a long time, that to me

1 is already been exactly what you mentioned just now, Mr. Hyman,
2 the analysis has to be done.

3 I conducted that analysis last week, and I found that
4 the balances that need to be undertaken there was problematic
05:09 5 towards the SEC to allow him to change his position because it,
6 in my view, materially impacted the nature of the deposition
7 that was taken and the areas of inquiry that were touched on
8 based upon the SEC's concern that he was not unequivocal in his
9 dissociation or withdrawal of the Fifth Amendment in his RFAs,
05:09 10 partly because he was without counsel so they were even more
11 concerned about walking him into admission that he had invoked
12 the Fifth Amendment on before.

13 So to your point, yes, it's a balancing test, the
14 Court conducted it, and I think by any measure, one of the most
05:09 15 important things that has to be considered is the timing of the
16 withdrawal, and that's what matters here. Had, at some point,
17 you decided well in advance of trial that he was going to sit
18 down and take the remaining issues off the table, we might have
19 had time for a followup depo, we might have had time -- you
05:10 20 know, there were all sorts of things we could have done.

21 The problem is it happened literally on the eve of
22 trial with the motion to amend or request admissions filed, I
23 believe it was either the Sunday before or the Friday before.
24 So that -- that's why the prejudice is uncurable given the
05:10 25 trial prep angle, and that's why we have to do it this way.

1 That's been the Court's ruling now a couple of times, and I do
2 think the balancing test is a record that's been laid (inaud.)
3 I don't want to really re-litigate that.

4 **MR. HYMAN:** I'm not trying to, Your Honor. My
05:10 5 understanding of Your Honor's ruling is that to the extent that
6 he was questioned during his deposition, we can show the area
7 of inquiry was covered during the deposition, and it was
8 otherwise kind of like the investor example, which we can deal
9 with in the morning. But to the extent it was covered in his
05:10 10 deposition, then we can do the comparison and he can testify
11 to. That was my interrogatories. And so long as that's the
12 case, we're perfectly fine with Your Honor's ruling. I thought
13 you were saying earlier that whatever you put in the RFAs
14 stands, notwithstanding the deposition testimony, as opposed to
05:11 15 that he can testify to the scope of his depo.

16 **THE COURT:** So the SEC understands, this is a problem.
17 You're flipping it, and you have to be very careful. I'm not
18 agreeing with the way you want to do it. What you're doing is
19 almost impossible for the Court to manage. You want to say, if
05:11 20 I touched on it at any point in the depo, it's fair game now.

21 **MS. BERLIN:** I don't.

22 **THE COURT:** No, no, no, that's what Mr. Hyman is
23 asking. He wants it to be conducted by the depo not the RFA.
24 That is the opposite way to do it. The RFA is what attacks his
05:11 25 Fifth amendment that's the question and it's the area I have to

1 worry about not switching. I'm not going to sit there and say
2 this is close enough to what was asked in a deposition a
3 deposition by the way of 8 hours with tops of line and page
4 numbers is the court is not able to effective secure a
05:11 5 deposition transcript to find out if what you asked is close
6 enough.

7 The way to could it is look at categories of Fifth
8 Amendment protection where it's been invoked so go find RFAs
9 and if I see either side touch on a question that is too close
05:12 10 one of the requests then that won't be asked. It's the inverse
11 of that is just a lot easier to do. Your argument has been you
12 believe that he has been asked questions that were in the RFAs
13 and he has subsequently weighed that.

14 I understand that in the SEC's view, they took great
05:12 15 pains not to touch on those things. (Inaud.) It's very
16 difficult though but the Court it not sit here and manage the
17 Fifth Amendment privilege by looking at the depo transcript it
18 would be too difficult.

19 The best thing I can do is quite honestly, I think the
05:12 20 best scenario is work off the request for admissions, and if at
21 some point there becomes a situation where you have a line and
22 page -- and what I would recommend that be done tomorrow is
23 that I get tomorrow morning a copy of the RFA and a copy the
24 deposition in front of me and if at some point tomorrow there
05:13 25 is an RFA where I sustain an objection and you can point to me

1 a line and page that is so opening the door that that waiver
2 took place in the depo, then I can at least reconsider it. I
3 mean, that's the best I can do.

4 So I think that we should start with the presumption
05:13 5 that I'm going to patrol the RFAs, and then if something went
6 into that arena, show me the line and page. But I'm going to
7 start with the presumption that the RFA areas are off limits.
8 It's the only way I can do it effective because if not, I'm
9 going to be getting objections and it's going to be a mess. It
05:13 10 should be line and page issues constantly during the Furman
11 inquiry, and that's going to be problematic.

12 I will say this: I don't believe, and I don't see a
13 situation where the SEC is going to be facing a lot of
14 objections because you guys really are -- feel like Furman
05:13 15 should be allowed to answer everything. They're going to
16 self-police because they don't want to go ahead and open up the
17 door when you guys go forward.

18 That may be the bigger problem because I expect that
19 you gentlemen are going to attempt to ask questions that you
05:14 20 think he waived the Fifth Amendment privilege on in his depo,
21 and that's where I'm going have to have you guys point to me a
22 line and page and say, yeah, Judge, RFA number 3 has a Fifth
23 Amendment indication, but page 15 line 17 through 20, he
24 absolutely waived that by answering a question that was the
05:14 25 same as the RFA. That's the best I can script it. I won't

1 know until I see the questions play out. But it's got to work
2 off the RFA. If not, it's going to be too problematic.

3 Your concept of working off the depo isn't wrong, but
4 I'm just cautioning you that I'm not going to be scouring the
05:14 5 depo; I'm going to be watching the RFA. You know what I mean?
6 That's --

7 **MR. HYMAN:** (Cross-talk) Yes, Your Honor. And
8 perhaps what may make the most sense from a practical
9 perspective is we move forward. Obviously, if the SEC wants to
05:14 10 call our client as a witness, that's fine. And then whenever
11 it gets there, as it gets closer to the point where we would
12 call Mr. Furman to testify, we can have a much-more
13 comprehensive or easier digest of those issues for Your Honor,
14 so that way we don't have to waste or spend jury time dealing
05:14 15 with it.

16 **THE COURT:** What do you mean? You mean when you
17 recall Furman in your case in chief? Is that what you're
18 talking about?

19 **MR. HYMAN:** Yes, Your Honor.

05:15 20 **THE COURT:** So I mean, I think that the key will be
21 when you recall him and you're doing the direct examination, I
22 can't imagine that I wouldn't start doing the same exercise.
23 I'm still going to have RFAs on one hand and I'm going to have
24 depo transcripts on the other.

05:15 25 It doesn't matter who is asking the questions. What's

1 going to happen -- I don't need a crystal ball.

2 What's going to happen here -- and I'm sure the SEC is
3 -- you can just tune in with me here for a second. What's
4 going to happen and what I'm worried about is that either in
05:15 5 the cross-examination -- really, it's an adverse witness, so
6 I'm going to let you lead a little more than what you've
7 already been leading for that. But when you get into the
8 rehabilitation portion of it by the defense -- because it's
9 their client -- I expect that there may be a question asked by
05:15 10 the defense that you believe they can't answer because he's
11 invoked the Fifth.

12 Conversely, when they put on Furman, there's going to
13 be a direct -- they're going to ask and you're going to say
14 they can't ask because the problem is you've maintained it's
05:16 15 going to be a cat in the bag that no one knew until the day of
16 trial because he pled the Fifth.

17 **MS. BERLIN:** Yes, that's what's going to happen.

18 **THE COURT:** I know it's going to happen. I hate to
19 say it. I have faith in everyone, but I know it's going to
05:16 20 happen. So the challenge for me is going to be, I have to have
21 the depo at the ready so that if there's an objection when you
22 guys ask, you guys have to be ready, because you guys need to
23 have a line and page number ready to go.

24 So if you know that Ms. Berlin is going to say,
05:16 25 objection, that's off limits or however she wants to word it,

1 maybe she doesn't obviously say Fifth Amendment. She's going
2 to say something to the extent of motion in limine, objection.
3 You guys have to say, Your Honor, page 13, line 12 through 15,
4 so I can quickly look at it and say, wait a minute, no, no, no,
05:16 5 he opened the door to that in the depo. Keep asking.

6 That's the only way I can do it. And that's fine,
7 because you've got to be ready, though, to point me to it,
8 because if I don't see it, I can't overrule it unless I see
9 where -- (cross-talk)

05:16 10 MS. BERLIN: (Cross-talk) -- and Your Honor?

11 MR. HYMAN: (Cross-talk) -- and we can brief it a
12 little more.

13 THE COURT: That's the only way to do it.

14 MS. BERLIN: There's one other issue. So if
05:17 15 Mr. Furman thinks that he testified about in the deposition,
16 that -- and it's -- I want to be clear on one thing, just to
17 give a primer.

18 In the deposition -- keep in mind we only ask him
19 about the Fidelis notes and his codefendants, right? The RFP
05:17 20 is broken down and maybe when the Court looks at it, the first
21 section is about the Par Funding note, which are not Fidelis
22 note.

23 THE COURT: Right.

24 MS. BERLIN: The second section is about the ABFP
05:17 25 notes, and the third section of it is the Fidelis notes. And

1 so we're highlighting for you right now -- because we went
2 through the deposition -- things I asked him in the deposition,
3 the things that touched upon it, we're not highlighting. The
4 things we're highlighting are the things that we believe he
05:17 5 still asserted the Fifth to.

6 **THE COURT:** The things you are highlighting?

7 **MS. BERLIN:** Yes.

8 **THE COURT:** So anything in the depo transcript you
9 highlighted is off limits, right?

05:18 10 **MS. BERLIN:** Anything we highlight in the RFP is off
11 limits. We're going to give you a copy of that right now with
12 the deposition transcript so you have both.

13 **THE COURT:** Okay.

14 **MS. BERLIN:** And then, you know, because Mr. Furman
05:18 15 took the Fifth in his RFAs, his request for admission, he
16 asserts the Fifth. He might later testify, but he never amends
17 his RFA. So in my view, that's fair game.

18 If he testified at his deposition, he never corrected
19 his RFA, we can ask him. Now, when you were first asked this
05:18 20 question you asserted the Fifth Amendment, because he did. And
21 he still hasn't even -- I mean, that was a year ago. I'm
22 sorry. I know they wanted to --

23 **MR. HYMAN:** (Cross-talk) -- we have no objection to
24 that, Your Honor.

05:18 25 **MS. BERLIN:** So we might do that. But otherwise --

1 **THE COURT:** (Cross-talk) -- I think that's fair.
2 When they put him on, and -- I mean, well, it could come up
3 also. Look, I'm sure there will be rehabilitation and explain
4 why at the time he invoked the Fifth, you guys are going to
5 explain why that happened, you know, without counsel, with
6 counsel. He wasn't sure. Since then he's now figured out that
7 he was either misadvised or he wasn't clear. In fact, he
8 thought at the depo that he planned on talking and talked about
9 all these things.

05:19 10 Because I could see a jury deciding that you know
11 what, why if someone was so concerned about the Fifth would
12 they go sit for a depo? So they may generally believe that
13 Furman fully intended to waive all of this when he went into a
14 deposition. So they're going to have to decide is he playing
05:19 15 around with the Fifth or is he actually trying to --

16 **MS. BERLIN:** No. But why would we do that,
17 Your Honor? I kind of disagree with that.

18 **THE COURT:** Well, you can impeach him on it.

19 **MS. BERLIN:** No, but we could have. We're trying to
05:19 20 compromise with the defendants. Because what I told them
21 initially was -- and what we would be perfectly within our
22 right to do, and as the rule states, the Federal Rules of
23 Evidence state that request for admission stands. Let's say he
24 went in and he waived his rights and he testifies, but he never
05:20 25 goes back --

1 THE COURT: And amend them.

2 MS. BERLIN: -- they would be admitted.

3 THE COURT: Correct.

4 MS. BERLIN: We're not -- so allowing it to be like
05:20 5 oh, well, that rule doesn't apply and now he gets to explain
6 his RFAs, no, no, no.

7 THE COURT: Listen, you know and I know, we all
8 understand what's going to happen here. If you -- let's just
9 play it out. If he says something and you confront him with
05:20 10 the fact that three months ago or four months ago he invoked
11 the Fifth Amendment, they're going to ask about that. And
12 they're going to say: Well, you invoked the Fifth Amendment
13 privilege back then. Why did you do that?

14 And a he's going to say: Well, I wasn't sure. You
05:20 15 know, I was nervous. I'm sure he's going to give an
16 explanation. It doesn't change the fact that that's his sworn
17 answer, but I'm telling you, I don't think I can stop him from
18 explaining why would he have changed and suddenly come and
19 speak with you and feel so comfortable if he invoked the Fifth
05:20 20 back then. But I agree with you. It doesn't change -- he
21 can't run away from that admission. He invoked it, and it will
22 be part of the record.

23 MS. BERLIN: And we're requesting a jury instruction
24 on it.

05:21 25 THE COURT: (Cross-talk.)

1 MS. BERLIN: On the adverse inference and the
2 admission, because for an instruction on the admissions are
3 admissions.

4 THE COURT: No, I don't disagree with you, but I just
05:21 5 think that we all need to understand that on rehabilitation, I
6 expect -- I mean, it makes common sense. They're going to want
7 to have try to explain why he would do that, and it doesn't
8 mean the jury doesn't say we don't believe you and ultimately
9 take an adverse inference, which they can do. We're going to
05:21 10 talk about that.

11 MS. BERLIN: But it won't come up if we -- we're not
12 going to ask anything that's on that list.

13 THE COURT: I don't think it's going to come up on
14 your direct.

05:21 15 MS. BERLIN: No.

16 THE COURT: I can only see it coming up on a cross
17 tomorrow --

18 MS. BERLIN: Yes.

19 THE COURT: -- which I think is before or in their
05:21 20 direct examination on Monday or whenever they call him. So I
21 just have to -- I have it now. I have this is the depo. So I
22 want to make sure I have everything. This is --

23 MS. BERLIN: (Cross-talk) The long document --

24 THE COURT: (Cross-talk) Is the response to this
05:21 25 pretty short?

1 MS. BERLIN: That's the depo. It's short.

2 THE COURT: I think this is the depo of Villarose.

3 MS. BERLIN: Oh, no. Did we give you the wrong one?

4 THE COURT: Yeah. I want the Furman one.

05:22 5 MS. BERLIN: That was my mistake.

6 THE COURT: This is Villarose. What I do have -- what
7 I do have in front of me is his responses to the RFA which I
8 did need.

9 MS. BERLIN: Thank you, Your Honor.

05:22 10 THE COURT: And let me make sure I got the right
11 thing. And here it is. And is this the one that you
12 highlighted then, the one I have here?

13 MS. BERLIN: The RFA is highlighted, yeah.

14 THE COURT: Let me just see. Okay.

05:22 15 MS. BERLIN: I think it starts with number 6.

16 THE COURT: Yeah.

17 MS. BERLIN: And there were some things that were
18 basic that I didn't highlight because, you know, he testified
19 about it or it was, you know, something that at this point I
05:22 20 think --

21 THE COURT: Got it.

22 MS. BERLIN: It wouldn't be really be fair. They
23 don't like the way we're doing things. He's the president of
24 Fidelis and things like that.

05:22 25 THE COURT: Are these documents that are with it?

1 MS. BERLIN: Yeah.

2 THE COURT: Are they the ones he produced or didn't
3 produce?

4 MS. BERLIN: Oh, we have an update on that too,
05:22 5 Your Honor.

6 THE COURT: I'm talking about this. Is this part of
7 the production?

8 MS. BERLIN: That's it. That is my request for
9 admissions to him asking him about those documents.

05:23 10 THE COURT: You produced this?

11 MS. BERLIN: I gave it to him, yes.

12 THE COURT: I wasn't sure.

13 MS. BERLIN: Asking for admissions about certain
14 Fidelis records from investors. I got them from a host of
05:23 15 sources.

16 THE COURT: Got it. So again, it's pretty straight
17 forward. I have the RFAs here right in front of me, and I can
18 just watch them, and these are things you referenced in your
19 RFAs. I just want to separate them as I glean through them.
05:23 20 Is this possible that I can mess with these documents? Is this
21 my copy?

22 MS. BERLIN: That's your set. Yes. And one thing
23 just to make it easier, because I've been living with that
24 document for a while and it's long because it has his answers
25 each time, I wonder if it would be helpful for the Court if we

1 took those RFAs out and put it on one sheet of paper.

2 **THE COURT:** I think I might be okay.

3 **MS. BERLIN:** You can let us know.

4 I have my own that's on one sheet because it's easier
5 for me to review.

6 **THE COURT:** So you're able to squeeze all of the
7 questions on the one sheet?

8 **MS. BERLIN:** Yeah. I just made two columns for me
9 when I'm examining him.

10 **THE COURT:** I can make a rule faster.

11 **MS. BERLIN:** I thought so. I'll bring you a copy of
12 what I made for myself.

13 **THE COURT:** All 95 questions?

14 **MS. BERLIN:** Yeah, it's not even 95. It's only the
15 ones that I highlighted. So I just put it into a couple of
16 columns. So I have my own roadmap and I'll share that.

17 **THE COURT:** So you will take the highlighted questions
18 that you believe are off limits and put them into one document.

19 **MS. BERLIN:** Yeah, yeah.

20 **THE COURT:** That's fine. I can work with that.

21 **MS. BERLIN:** Just so you have it in one place. That's
22 easier.

23 **THE COURT:** I can work with that. I have that.

24 **MS. BERLIN:** We have an update too, Your Honor.

25 **THE COURT:** Yes, so what is the update?

1 **MS. BERLIN:** Remember that e-mail which was supposedly
2 sent to me with a password? It doesn't exist. They have now
3 admitted that.

4 **THE COURT:** Remind me. Was that in response to an
5 argument made that they did produce documents? Is that where
6 it came from? I'm trying to remember.

7 **MS. BERLIN:** They came in this morning, and the first
8 thing that happened was they came to the Court and told the
9 Court over Zoom and for everyone to watch that I lied to you
10 and that, in fact, they gave me the password for Mr. Furman's
11 laptop.

12 **THE COURT:** Right.

13 **MS. BERLIN:** And the Court -- and I said I am not
14 aware of that. And they said they had an e-mail. The Court
15 directed them to provide it to me.

16 **THE COURT:** Right.

17 **MS. BERLIN:** They never did. We spoke with them
18 during the lunch break and -- correct me if I'm wrong, guys,
19 but I believe that they're going to tell you that they
20 misspoke.

21 **THE COURT:** Okay.

22 **MS. BERLIN:** And that they never gave me a password to
23 Mr. Furman's laptop. And, in fact, we looked -- and Mr. Kolaya
24 is here. He had the laptop. So the FBI seized the laptop. We
25 sent it to our forensics lab at the SEC in Arlington, our

1 forensics lab. We couldn't get into it because we couldn't get
2 the password. We showed them the e-mails from Mr. Furman's
3 prior counsel telling the FBI and Mr. Kolaya that Mr. Furman
4 could not remember his password. Both agencies as well as the
5 OFR, which is present here today and will tell you the same
6 thing --

7 **THE COURT:** Right.

8 **MS. BERLIN:** -- tried to get Mr. Furman's password
9 over the course of -- what was it a year? -- a year with a
10 search warrant. He wouldn't give us his password, Your Honor.
11 We were never able to get into the laptop. The SEC, OFR, the
12 FBI and Mr. Kolaya is here to say the same. I don't know if
13 the defense wants to confirm that.

14 **THE COURT:** Tell me what happened. So we never had an
15 e-mail -- or we never had a password?

16 **MR. HYMAN:** To be clear is what Ms. Berlin was talking
17 about the laptop, we didn't realize it was the physical
18 computer itself. Mr. Furman provided the password for his
19 OneDrive, his iCloud, his iPhones which were turned over, and
20 all of the basically electronic versions his computer.

21 And as we understand it, based on what Mr. Furman told
22 us, we also had worked with Mr. Stumphauzer to provide him with
23 BitLocker. There was some sort of BitLocker code to the laptop
24 that somehow didn't work, but the reality is that the SEC
25 produced more than 2 million pages of documents --

1 MS. BERLIN: From other people.

2 MR. HYMAN: -- from Fidelis. These were all produced
3 as a result of them taking and having access to Mr. Furman's
4 iCloud and Fidelis's business records as part of this. I mean,
5 that's what happened.

6 MS. BERLIN: Can you explain -- Your Honor, that's not
7 true. I'm sorry. I was giving you an out.

8 THE COURT: Maybe I can get -- Mr. Kolaya, on behalf
9 of the receiver, did you want to tell me what the latest is so
10 I know exactly what's happening on behalf of my receiver?

11 MR. KOLAYA: I will do my best. Timothy Kolaya on
12 behalf of the receiver, Ryan Stumphauzer. Ms. Berlin is
13 correct that originally the FBI came in and seized the devices.
14 Those devices were ultimately turned over to the SEC for
15 imaging. The laptop computer has never been fully processed.
16 The reason is because there were two issues: A password and a
17 BitLocker encryption.

18 And we never had the information for that. There were
19 extensive communications with Jeff Cox, former counsel for
20 Mr. Furman. But we were never able to get access to that.

21 THE COURT: Do you have, by any chance -- Gigi, I am
22 having difficulty searching the realtime. Can you help me find
23 the realtime this morning so I can read back what was said to
24 me by defense counsel? I want to read it exactly what was said
25 to me about this password. Can you help me find that?

1 I want to make sure I understand. Because when I
2 heard it this morning, I thought it was representation that
3 full access to the laptop had been given and a password had
4 been turned over so that the SEC could not maintain an argument
5 that they were provided all documents in this case. That's
6 what I thought was said this morning.

7 **MS. BERLIN:** They brought it up out of the blue
8 talking about how I misrepresented to the Court and that I did,
9 in fact, get the password and that they had an e-mail that was
10 supposedly going to prove this to the Court. And if you
11 remember, I said: Oh, my gosh. If I had the password -- all
12 these people have been waiting on the password. Maybe I made a
13 mistake and maybe I got the e-mail. So I asked him over and
14 over: Can you show me this e-mail where I supposedly was given
15 the password? And they never could. And it doesn't exist
16 because it never happened.

17 **MR. JOHN:** Can I -- because I'm the one that said it.

18 **MS. BERLIN:** Look at the record to see what was said.

19 **THE COURT:** I'm going to pull up the record anyway
20 just to make sure. I want to make sure I got it corrected. If
21 I don't do it today, I'll do it tomorrow morning.

22 But, yeah, go ahead, Counsel.

23 **MR. JOHN:** Your Honor, what I said this morning was,
24 we have an e-mail demonstrating that we provided them with the
25 password for his -- for his -- access to his document

1 information. That's how they were able to get the information
2 to us.

3 **THE COURT:** Which information, though?

4 **MR. JOHN:** I'm about to explain. The e-mail we'll
5 admit, I interchangeably used the receiver with them because
6 it's my understanding they got the documents from the receiver.
7 So to the extent that's a misstatement, I acknowledge that.
8 But what I was sayings was, Ms. Berlin came in and said, when
9 we were making those original arguments regarding RFAs, that
10 she had received zero production from Mr. Furman. And I led
11 saying that it's -- that is a misstatement and it's misleading
12 for two reasons. One, he couldn't produce in the traditional
13 sense because they had his laptop, they had his phone and would
14 not release it to him until he was able to -- until they were
15 able to image the devices.

16 That e-mail shows they had access to his iCloud, which
17 Mr. Furman confirmed to us is the backup for his laptop.
18 That's why in their exhibit list there are documents that they
19 are objecting saying they didn't have.

20 **THE COURT:** Let me hear from my receiver. Something
21 about -- I mean, yeah.

22 Mr. Kolaya, they're telling me now that you may have
23 had access to the laptop, but somehow they turned over the
24 access to the iCloud account. Was there anything on the
25 laptop?

1 **MR. KOLAYA:** Your Honor --

2 **MS. BERLIN:** (Cross-talking) from the SEC, Your Honor,
3 which is not the receiver.

4 **MR. KOLAYA:** The receiver, when he took over
5 United Fidelis, obtained passwords for a OneDrive account.

6 Now, some of the files on the OneDrive account were a
7 mirror of some documents on a laptop. It's not the entire
8 laptop. And the issue, I think, today is that there are
9 potentially are other documents on that laptop that were not on
10 the OneDrive and not made available to the SEC or the receiver,
11 because we didn't have a password to access that laptop.

12 **THE COURT:** Yeah. Okay. All right. So that -- I
13 guess the bottom line is, one way or the other, any
14 representations by the defense that the universe of documents
15 has been produced in this case is blatantly false.

16 **MR. JOHN:** That wasn't the representation, Your Honor.
17 It was a representation they made that no documents -- they
18 came in and said no documents --

19 **THE COURT:** Guys, guys. Both of you guys need to
20 tread -- I've said it already. You've got to tread lightly.
21 You're in a Federal Court, you're making representations. This
22 is your reputation, both of you, 2017 grad, four years out,
23 eight years out, okay, you guys are young guys, you don't need
24 to start off your careers getting into hot water with
25 misrepresentations like this. I'm warning both of you.

1 I'm hearing from my receiver's counsel that not the
2 universe was produced. You came in this morning and accused
3 the SEC of misrepresenting something to me that they sat on
4 evidence. You cannot throw those statements around lightly.
5 And you guys are up and coming and you're working hard, and I
6 don't want you to guys to come out of a trial like this, taking
7 a hit on your reputation by making those kinds of statements.

8 The reality is, not all of it was produced. Your
9 client, whatever he's telling you, maybe take it with a grain
10 of salt, okay, so you guys understand, because all of that
11 wasn't provided to the receiver's counsel. And I'm worried
12 because you guys are coming in with these kind of definitive
13 statements and that's a universe of documents.

14 And remember, it's not even worth that argument
15 because at the end of the day, even if some was produced to the
16 OneDrive, it is not fully responsive to the SEC's outstanding
17 request. And that has been the reason why the Court can't sit
18 here and say, it doesn't matter you invoke the Fifth because
19 the SEC has the whole universe, and this is no prejudice.

20 It's false. You cannot invoke the Fifth, produce
21 nothing, give a partial production, hide behind that and then
22 say, no one is prejudiced. If it's not fulsome then you can't
23 come in here and say, we have turned it all over, they've had
24 it all from day one. That wasn't accurate. And I'm just
25 telling you guys, you know, we have evidence of this. This has

1 been longstanding. This is not like it's new. We've been
2 trying to get access, I'm told, to this laptop for a while, and
3 he hasn't been able to provide it. And whatever he did provide
4 is selective.

5 So the problem here is, if it's selective and he, in
6 the middle of his testimony, (inaud.) Fifth Amendment and drops
7 a bomb on something that no one has seen because he hasn't
8 turned it over in his laptop, that's prejudice. And if that
9 happens in trial, I can't put the genie back in the bottle. It
10 completely upends trial preparation. And that's why I can't,
11 again, go ahead and let you guys amend the RFAs or amend the
12 Request For Production at this stage of the game. But I'm just
13 telling you guys, it's not accurate.

14 And I, quite honestly, I understand everyone's
15 frustrated, but we've got to be very careful when we're talking
16 about forensic imaging and documents produced, because this is
17 not accurate. What's happening is not accurate, and this has
18 been a problem from the beginning of this case and throughout
19 this case. So be very careful with what's been produced and
20 what's been said. We don't need to argue about this anymore.
21 Okay?

22 If you guys misstated it and you misrepresented it,
23 I'll take it as it is, but going forward, dealing with
24 Mr. Furman tomorrow and his testimony, you guys have got to be
25 careful with these issues. Okay? That's all I'm going to say.

1 **MR. HYMAN:** I have one very, very brief statement,
2 Your Honor. I apologize to Ms. Berlin, to the Court and others
3 to the extent that there was perceived -- or that there's these
4 issues that have occurred.

5 **THE COURT:** All right, that's fine. Like I said, it's
6 not worth it, to get caught up on this. Look at the Court's
7 ruling. You guys already have a lot of latitude with the
8 questioning of Furman, both in cross and in your case in chief.
9 So I think a lot of this is somewhat overblown, you know.

10 You've got to work with the deck you're handed. And
11 you guys walked into this case late in the game, and it's not
12 an enviable position. But you've got to do the best of what
13 you've got and you have enough here to mount a defense and try
14 to explain Mr. Furman's role and position on some of these
15 things. So let's focus on that. Let's not focus on, you know,
16 rereading what was produced, you know, three months ago or
17 never produced. I just think it's not a good use of resources.

18 **MR. HYMAN:** I hold myself accountable for our errors,
19 and again, we apologize.

20 **THE COURT:** That's fine. It's accepted. I don't want
21 you guys to hurt yourself. That's all I'm saying. All right.

22 **MR. HYMAN:** Thank you, Your Honor.

23 **MS. BERLIN:** I wanted to flag one thing about the --
24 some of the documents -- some of the exhibits, so it's on the
25 radar of everyone -- and we've explained this to defense

1 counsel. We have numerous e-mails -- Mr. Furman couldn't
2 recall his password. He wouldn't give his password. He
3 couldn't remember his password is what they wrote.

4 Then we returned the laptop to him having never gotten
5 into it. Exhibits have appeared in their exhibits. We believe
6 they came from that laptop. We will be objecting as those
7 are -- if they attempt to introduce -- and I just want it say
8 this: If any documents from that laptop that supposedly he did
9 not know a password for are introduced, we will object. I have
10 gone through all of their exhibits.

11 **THE COURT:** Why don't we do this so that we don't have
12 a concern. Tomorrow, guys, at some point, if we can go ahead
13 and have even a brief recess, or ideally, it's early, it's not
14 even 5:35, perhaps you guys could send over or identified by
15 label what you guys are going to be showing Mr. Furman so that
16 if there's argument, I hear it in the morning. I think that's
17 the safest thing. Because we could have a major situation that
18 you bust out a document that he's been sitting on in a laptop
19 for six months. I mean, I'm telling you, I mean, it also hurts
20 you because then I'm going to have more adverse inferences.

21 I don't want to have to sanction anybody. I want to
22 get ahead of it. So why don't you guys look at the universe of
23 exhibits you believe are fair game. And at least show them --
24 if you want to do it tomorrow morning early, I don't care. But
25 I just want to avoid a situation where something that you

1 believe has been produced was in that laptop and was never
2 shown. That's -- because there's a lot of exhibits, and I can
3 see something making its way out there that we weren't
4 expecting.

5 **MS. BERLIN:** Is it possible to get a list of the
6 exhibits they have that came from the laptop -- came from the
7 laptop? Because then we know it's at issue and we can take you
8 at your word for it.

9 **THE COURT:** I don't know if they know what's coming
10 from where.

11 **MR. HYMAN:** That's the biggest problem we have,
12 Your Honor, because the exhibit --

13 **MS. BERLIN:** I was talking.

14 **THE COURT:** One at a time. One at a time.
15 Just let me hear what he was going to say.

16 **MS. BERLIN:** Okay. Sure.

17 **MR. HYMAN:** The exhibit list was originally, as you
18 recall, 2500 documents, which approximately, I think like 30 to
19 50 were Furman documents. We can happily identify on the
20 exhibit list the Furman based documents that were added, the
21 ones that we kind of added ourselves to the list. And from
22 there we can try to narrow the universe. The rest of them were
23 just -- the other defendants put them in.

24 **MS. BERLIN:** Well, did the other defendants have
25 access to the laptop? If they didn't --

1 **THE COURT:** I don't know that they know and I don't
2 know.

3 **MR. HYMAN:** We all know --

4 **MS. BERLIN:** Mr. Hyman has been on this case for a
5 while. I mean --

6 **THE COURT:** Did you know?

7 **MS. BERLIN:** -- (cross-talking) he just came on the
8 case.

9 **THE COURT:** So there's nothing -- there should be
10 nothing in the exhibit list that came from the laptop no one
11 has seen. So you've got to double check that. I don't want
12 you to say -- if you don't know, it's okay.

13 **MR. HYMAN:** The answer is, I don't believe so.
14 However, it's easy to solve because there's only about 50
15 documents that came. On the 50, maybe, a hundred documents
16 that came from the laptop or from there Furman.

17 **THE COURT:** I think -- yeah. Be careful, because I
18 don't think if they came from a laptop. They came from
19 Mr. Furman. I don't know where they came from.

20 **MR. HYMAN:** Whether or not, we can check the drive of
21 SEC production.

22 **MS. BERLIN:** Just ask Mr. Furman, where did you get
23 this? Is it from your laptop? And if so, why don't we just
24 come into tomorrow morning having everybody know what's from
25 the laptop. Because what we've been going is through 2300

1 exhibits and trying to figure out what we don't have, which is
2 ridiculous when they can just ask Mr. Furman, Hey, what did you
3 give us as a trial exhibit that came from your laptop?

4 **THE COURT:** Well, it sounds like the exhibits that are
5 even relevant to Furman are about 40 to 50. I mean, that's
6 what I'm hearing. I don't know if that's accurate. So I think
7 it's not too bad that if you take the 30 to 50 out and we check
8 with him and you cross-reference it, then we can find out are
9 these documents that came from the OneDrive that everybody
10 knows about, or these came from the laptop, and that way if
11 there's maybe one or two documents in there that no one has
12 ever seen, we can make sure that the SEC sees it. And then I
13 can make a ruling so that there's no surprise. That's all.
14 It's just more to protect a clean record when he gets up there,
15 it's not chopped up with something and then I have to give an
16 instruction.

17 **MS. BERLIN:** I just want to be clear, the OneDrive
18 they produced to the receiver. We -- they got -- I don't even
19 know if we ever got it.

20 **THE COURT:** I'm sorry. I misspoke then. I thought
21 that the OneDrive was something that we had all seen. I'm
22 sorry.

23 **MS. BERLIN:** The receiver got to check. They are not
24 the same -- you know, the receiver --

25 **THE COURT:** Understood. But, Mr. Kolaya, I don't want

1 to misstate it. So the OneDrive I know you guys did get access
2 to, right? The receiver did.

3 MR. KOLAYA: We obtained access. When we took over
4 United Fidelis, we were able to gain access to the OneDrive.
5 And that is something -- we have a forensic copy as of July
6 27th, 2020. But just to be clear, that was not necessarily
7 produced to all parties. It wasn't requested from us.

8 THE COURT: From you guys. Okay.

9 MR. KOLAYA: Just one other clarification.
10 Mr. Furman, to the best of my knowledge, has not produced any
11 documents. To the extent that some documents were made
12 available, it was the receiver taking control over the computer
13 systems of United Fidelis.

14 MS. BERLIN: He's produced zero.

15 THE COURT: Right. So that's another thing that we
16 need to make sure we understand that Mr. Furman's own
17 production -- which has been stated, that's been stated since
18 the beginning of the case, that Mr. Furman himself has not
19 produced anything.

20 What has been made available is because there's been
21 the receiver's involvement in seizing things that had Furman
22 documents. And that's how these things have gotten out there.
23 Again, all the more reason why if there are documents Furman
24 gave you guys, they could very easily not be documents in the
25 control of the receiver or documents that anyone has ever seen.

1 So we need to be very careful tomorrow. I think the
2 best situation is to take whatever 30 or 50 documents you guys
3 have referenced and make sure that you go through them, check
4 with Furman about where they came from, and honestly confer
5 with the SEC beforehand so that the document that I've never
6 seen -- I just -- I really think we should be able to avoid the
7 scenario where you guys attempt to introduce a document that no
8 one has ever seen. That's all I'm trying to avoid.

9 If you show me something and we can argue about it
10 beforehand and I can make a ruling, that's much better than
11 having it come up in the middle of Furman's testimony, then I
12 have to take a recess, excuse the jury, and we have to argue
13 about it.

14 So the best thing we can do to have clean production
15 is do the 30 to 50 and then I can rule, overrule the use of
16 those documents, guys. You have to go through it and make sure
17 that you know exactly what's there, because if you relied on
18 Furman, I don't know where they could have come from. They
19 could come from other sources than Mr. Furman. So that's the
20 problem.

21 **MS. BERLIN:** His laptop.

22 **THE COURT:** Or his laptop. You have to check. I
23 don't know.

24 **MR. HYMAN:** The only caveat, Your Honor, is that
25 Mr. Furman is currently having dental surgery. So we will do

1 our best to assess and verify the source of the documents, but
2 obviously if -- and we understand that we don't have them ready
3 or discussed with the SEC beforehand, that we have got to live
4 and die by that situation. That's fine. I just wanted to --

5 **THE COURT:** No, listen, you've got to do your best to
6 try to communicate with him before tomorrow morning. We have a
7 little bit of extra time. We're not going to start until
8 10:00, but I urge everybody that what I don't want to have
9 happen is we find out that we have 25 documents that no one has
10 ever seen and they appear, and I can only tell you that I'm
11 going to have no choice but to prevent their admission.

12 And that's all I'm going to be able to do. So I don't
13 want you guys to be surprised if I say none of this stuff is
14 inadmissible because I've made rulings on it now, we have
15 rulings in the scheduling orders, we have exchange of exhibit
16 protocols. If these things come out of nowhere, I'm not
17 letting them in.

18 So it could really damage your ability to put on a
19 successful cross or direct next week. So your best bet is to
20 try to get as much confirmation from Mr. Furman about these
21 documents.

22 And I would quite honestly think that -- I know that
23 you guys may think you're avoiding the element of surprise or
24 rehabilitation, but I strongly believe that trying to meet and
25 confer with the SEC on these documents is the best course so

1 that we don't have anything blow up during the examination.

2 **MR. HYMAN:** I don't even think there's going to be
3 that many documents that aren't already on the SEC's list
4 anyway.

5 **THE COURT:** I can't think of that many things either
6 because we have a lot of the notes in there and we have talked
7 about the Fidelis offering. So hopefully it's pretty
8 streamlined, but you never know. I don't know exactly what's
9 on the list. Okay. So we have a fairly clean game plan. You
10 guys have some homework to do on the exhibits. The Court's got
11 both transcript -- I'm going to get an abridged little cheat
12 sheet here for the RFAs.

13 **MS. BERLIN:** Yes.

14 **THE COURT:** And I have of course the full set with the
15 documents here. I don't think I need anything else.

16 Can I get just for scheduling purposes, obviously, if
17 we finish with Furman tomorrow and we ultimately don't call the
18 individual, other than recalling Furman, does the defense have
19 a sense of how many witnesses you plan on calling next week in
20 your case? Just ballpark. I'll trying to think ahead more for
21 my trial schedule and for jurors' time for next week.

22 What do we think we have in terms of volume, even if
23 you give me a range?

24 **MR. HYMAN:** I think we'll probably maybe four to
25 seven.

1 **THE COURT:** Okay. All right.

2 **MR. HYMAN:** You know, I'd have to go back to see what
3 happened and see what's kind of in the case or not in the case
4 when we go, and then we'll deal with it from there.

5 **THE COURT:** But that gives me enough guidance. Four
6 to seven to me probably indicates that we're closing on
7 Wednesday. I think at the outside range, that sounds about
8 right. I think that we should target that. And quite
9 honestly, if you call less than that and we finish early, we're
10 still going to need -- at least I estimate, I don't know --
11 maybe an hour or two, probably at least two to get through
12 charging conference to get these instructions because they're
13 lengthy and we're going to have issues on adverse inference.
14 So we can use the time.

15 So let's say you call six and I'm done by noon on
16 Tuesday. I still expect to go through all the jury
17 instructions and let you guys close on Wednesday. But I wanted
18 to get ahead of it so we all kind of know what the schedule is.
19 I think Wednesday is a realistic target is what I'm hearing.

20 **MS. BERLIN:** I think so too. And I think with the
21 jury instructions, I believe that both sides were still working
22 on edits. So we'll get that to the work.

23 **THE COURT:** You don't have to worry about that now.
24 But if I could by Monday or Tuesday get a revised in Word, then
25 I can -- and I can see where the objections are -- because I

1 know that you guys are going to agree at least some of the
2 preliminary stuff, the statement of claims and all of that.

3 **MS. BERLIN:** Mostly they're patterned jury
4 instructions.

5 **THE COURT:** Most of them are pattern. Almost all of
6 them are pattern. So it shouldn't be that hard just making
7 sure that we get the right set, but I think for purposes of
8 scheduling, targeting a Wednesday closing is probably the best
9 case scenario. And it sounds like we're going to be able to
10 get there no problem.

11 **MS. BERLIN:** And is Mr. Furman calling -- I mean, I
12 imagine, because we're not going all day tomorrow. We'll
13 finish and then I assume they'll start with their first
14 witness.

15 **THE COURT:** Yes, that was the next important question
16 I had. Sorry. So settlement. So tomorrow afternoon, who do
17 we have that you can call in the afternoon to make the most of
18 our time? Because we'll probably -- I can almost guarantee I
19 won't have you call anybody until after lunch, because Furman
20 will probably take the morning.

21 So can I get -- at least of this four to seven, can we
22 knock out one or two maybe shorter witnesses in the afternoon?

23 **MR. HYMAN:** The only reason why we would prefer not
24 to --

25 **THE COURT:** I know what you would prefer. Listen, I

1 know what you would prefer. I need to hear -- do you have a
2 witness standing by or available that could be called tomorrow?

3 **MR. HYMAN:** We'll check. But also, you told the jury
4 you're letting them out early on Friday afternoon.

5 **THE COURT:** You really --

6 **MS. BERLIN:** Come on, Your Honor. We're going to be
7 finished by 11:00.

8 **THE COURT:** I don't think you get my sense of humor at
9 all, do you? Or maybe the lack of humor that I have when I
10 discuss scheduling around my courtroom. You need to really try
11 to listen to what I'm saying here. This isn't a game. I'm not
12 going to -- you're going to tell me that I'm going to leave
13 them to go early? Going early doesn't mean leaving at noon. I
14 could get a witness knocked out from one of your lists. Who do
15 you have? Do you have anybody on Zoom that I could call? You
16 don't have anybody on standby on Zoom?

17 **MR. HYMAN:** I can check, Your Honor. Let us confer,
18 see who we want to call as our first witness, then go from
19 there.

20 **THE COURT:** Let me put it this way: You better have
21 at least one witness available tomorrow. You better have one
22 or you may be closing tomorrow. Or you'll put on Furman again
23 in your case in chief. You'll have him testify in the morning,
24 and you'll call him again. You are going to call Furman,
25 right. So I can make it simple for you.

1 Here is your option for tomorrow: You have one of two
2 options. Either you get me a witness to call tomorrow
3 afternoon or you're going to call your own witness. He'll
4 testify for them in the morning. They'll rest. And then
5 you're going to call Furman, and Furman will testify all day.
6 And I'll knock out Furman tomorrow. He's here. I know he's
7 available. So you figure out how you want to do it.

8 And you know what, I bet the jury will be so thankful
9 that even if I don't leave them out early, that I've advanced
10 the ball a little bit. So I strongly recommend you get me at
11 least one witness available in the afternoon. It could be a
12 short one. But I'd like to knock out one on my list so that at
13 least if I let him go, I'm letting him go 4 o'clock, 3 o'clock,
14 but not wasting a whole half day.

15 Because I really think Furman will be done in the
16 morning. I think from 10:00 to 12:30 is more than enough time
17 to get Furman done. I can't imagine the direct is even that
18 long.

19 **MS. BERLIN:** We're brief. We hit -- I think we moved
20 through our witnesses very quickly. So there's no way he's an
21 all day witness. We don't want to lose a half a day. That's
22 absurd.

23 **THE COURT:** I'm not asking for them to put on six
24 guys. I'm saying get me a witness to make some use of that
25 empty time.

1 **MS. BERLIN:** Can they let us know by 9 o'clock tonight
2 who they are calling tomorrow so we can prepare? We did that
3 the day before too.

4 **THE COURT:** I think that's fair. So you guys have
5 until 9 o'clock tonight to decide who you're going to call in
6 the afternoon.

7 **MR. HYMAN:** Yes, Your Honor.

8 **THE COURT:** Anything else housekeeping-wise before we
9 wrap up? I think we have a game plan for tomorrow.

10 **MS. BERLIN:** We do. Thank you.

11 **THE COURT:** See you all tomorrow at 10:00 a.m. We're
12 all in recess.

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15 (Thereupon, the above portion of the trial was concluded.)

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C E R T I F I C A T E

This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of reporting remotely.

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



12/10/2021
DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**
Plaintiff **December 10, 2021**
vs.
**COMPLETE BUSINESS SOLUTIONS
GROUP, INC, et al,**
Defendants.

TRIAL DAY 5
BEFORE THE HONORABLE **RODOLFO A. RUIZ, II,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **AMIE RIGGLE BERLIN, ESQ**
SECURITIES AND ALISE M. JOHNSON, ESQ
EXCHANGE COMMISSION U.S. Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANT: **ZACHARY P. HYMAN, ESQ**
MICHAEL C. FURMAN Millennial Law
501 E. Las Olas Blvd, Ste. 200/308
Ft. Lauderdale, FL 33301
(954) 271-2719
Zach@millenniallaw.com

ELROY M. JOHN, JR., ESQ
Florida Justice Law Firm, PLLC
101 NE 3rd Avenue, Ste. 1500
Fort Lauderdale, FL 33301
(954) 637-2767
Elroy@onlyforjustice.com

1 REPORTED BY: GIZELLA BAAN-PROULX, RPR, FCRR
2 United States Court Reporter
3 400 North Miami Avenue, Suite 8S32
4 Miami FL 33128
(305) 523-5294
gizella_baan-proulx@flsd.uscourts.gov

03:05 5 Also present: Victoria Jacqmein, Kevin Robinson
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10 I N D E X

11	Witness	Direct	Cross	Redirect	Recross
12	MICHAEL FURMAN	20			

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18 G O V E R N M E N T E X H I B I T S

19	Exhibit	Marked	Admitted
20	18	107	107
21	52	95	95
22	56	91	91
23	96	185	186
24	103	142	143
25	104	141	141

1	143	170	171
2	144	170	171
3	192	119	120
4	215	127	127
5	218	125	125
6	326	165	166
7	327	167	167
8	389	173	173
9	424	144	144
10	549	145	146
11	550	148	148
12	551	148	148
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DEFENSE EXHIBITS

(None)

P R O C E E D I N G S

(The following proceedings were held in open court.)

1
2
3 **THE COURT:** Good morning, everyone. Please be seated.
4 Okay. Before we begin this morning, I did receive the SEC's
10:13 5 list of areas that they are going to navigate around in terms
6 of questioning. So I do have a copy of that here. As we
7 discussed yesterday, our plan this morning is to call
8 Mr. Furman. He is one of the remaining witnesses in the SEC's
9 case in chief. All the jurors are present and accounted for,
10:13 10 and I believe we're going to get access. We're going to try to
11 figure that out. I don't think I have you in.

12 **IT TECHNICIAN:** I don't think I need it this time, do
13 I?

14 **THE COURT:** I don't know. You may not. I don't know
10:13 15 if you need it for the next witness. If you don't, then don't
16 worry, but I just wanted to let you know that I'm getting that
17 set up.

18 **IT TECHNICIAN:** Okay.

19 **THE COURT:** So let's just do a little housekeeping if
10:14 20 we could before we bring our jury out. Anything new that the
21 Court needs to be aware of with Mr. Furman or anything
22 regarding the Fifth Amendment issues that we have been
23 discussing? What's the latest?

24 **MS. BERLIN:** Here is the latest: We conferred with
10:14 25 defense counsel, and on our list we agree with them that

1 number 48 and number 72 should come out of our list.

2 THE COURT: Okay. 48 and 72. I'll strike those now.

3 MS. BERLIN: And then our plan, we have the request
4 for admissions as one of our exhibits.

10:14 5 THE COURT: Okay.

6 MS. BERLIN: We redacted everything that's not on the
7 same chart that the judge has.

8 THE COURT: Got it.

9 MS. BERLIN: And then we will go through those as an
10:14 10 exhibit with Mr. Furman. What we would like to do, but it
11 could be problematic because we -- you'll understand when I saw
12 it. We -- the SEC sent our deposition designations to defense
13 counsel and -- twice, October and November, by the deadline in
14 the scheduling order. We never got back counter-designations,
10:15 15 so we didn't file them because we never heard back.

16 But because -- it was just an idea that I had.
17 Because we know those deposition excerpts don't cross the line
18 with the Fifth Amendment portion and we sent it to them, it
19 would be helpful if we could show those excerpts. Now, we did
10:15 20 not file -- the scheduling order requires us to exchange them,
21 get their counter-designations and file it.

22 We did step one. We did it twice. We sent it to them
23 two times, but we -- but because we never got counters, we
24 never filed it, Your Honor. So if we can't use it, we
10:16 25 understand because we didn't file it. But as far as them

1 having notice and knowing what we would use, they've had it.
2 So I just wanted to put that out there and also let the Court
3 the shortcoming of us using it and for disgorgement.

4 **THE COURT:** Was the plan -- so I understand, you were
10:16 5 seeking to hopefully file the deposition transcript or you were
6 just seeking to -- what did you intend on doing had there been
7 counter-designations that had been filed? You wanted to admit
8 it as an exhibit for the jury?

9 **MS. BERLIN:** Yes. Well, we wanted to present -- we
10:16 10 could use his deposition testimony for any purpose. It was
11 videotaped --

12 **THE COURT:** Okay.

13 **MS. BERLIN:** -- and so we would show that video. And
14 the way we planned on presenting it -- and I didn't realize
10:16 15 that we never -- I guess it just didn't get filed because we
16 didn't get the counters back, but our plan was to introduce the
17 request for admission but redacted so they don't see this
18 e-mail. He's not prejudiced.

19 **THE COURT:** Right.

10:17 20 **MS. BERLIN:** Go through those with him, not have him
21 assert the Fifth, like, but to say, you took the Fifth to this,
22 you took the Fifth to this and walked through with the
23 exhibits.

24 **THE COURT:** Okay.

10:17 25 **MS. BERLIN:** And then to show the deposition excerpts

1 on video, which is a video, which would be his testimony. And
2 then we had a few other areas of inquiry that weren't covered
3 in either. But they're not, like, so extensive. So it was
4 sort of a three-part plan. The RFA, the depositions, so I
10:17 5 could make sure I wasn't overlapping, and then the additional
6 questions we would have at the end that would be sort of live
7 and in the courtroom with Mr. Furman.

8 But again, I didn't realize when we filed our pretrial
9 materials that they weren't filed, and Vicki correctly pointed
10:17 10 out -- she was like, Well, you only file them once we get the
11 counter-designations. So they never got -- we didn't file
12 them.

13 **THE COURT:** If you don't use -- I mean, obviously I
14 think the redacted RFAs is not a problem. Right? That first
10:18 15 phase is fine. If you don't have the deposition excerpts on
16 video, I would presume you're comfortable going forward through
17 regular questioning knowing that we have the kind of
18 guardrails, right?

19 **MS. BERLIN:** Absolutely. And what I would do just to
10:18 20 make sure I stay within the guardrails, Your Honor, is I
21 would -- I have the excerpts highlighted so that if we need
22 to -- like, my plan is to make sure that I'm staying within
23 this range, and if we need to impeach, we would turn to the
24 video --

10:18 25 **THE COURT:** Right.

1 MS. BERLIN: -- which we already have synched, and
2 then my additional questions, which there aren't that many, you
3 know, those weren't too hard to make sure they don't go into
4 the Fifth.

10:18 5 THE COURT: And that may work the best. I mean, we
6 have the excerpts for impeachment purposes. We already have
7 the RFA. We have the areas of inquiry with the highlights. I
8 have a copy of the transcript. I think if we do it that way,
9 that's probably the safest way.

10:18 10 MS. BERLIN: Okay. Yeah.

11 THE COURT: Is there any concern -- so that we're
12 clear on the defense side, court is not going to have the depo
13 excerpts played in the direct examination. I just think, quite
14 honestly, taking aside for a minute just the issue of
10:19 15 non-filing and some of the problems there, I think it's
16 probably easier that those be reserved for impeachment purposes
17 only, and if we have an RFA that's been redacted and we have
18 all the areas of inquiry, you guys have had a chance now to
19 review it, and we've made necessary edits to it. On the
10:19 20 defense side, do we feel comfortable with going forward this
21 way for Mr. Furman's questioning?

22 MR. HYMAN: The only side issue, obviously, is that I
23 think the SEC's obviously more than welcome to ask whatever
24 types of questions they want within the context of the RFAs. I
10:19 25 think we'll probably before -- when we present our case in

1 chief, we'll have to have a more fulsome discussion about what
2 was or wasn't covered in the deposition, because obviously the
3 SEC can ask whatever they want to, opening or waiving whatever
4 objections they have by asking those questions. So
10:20 5 obviously -- and they can use excerpts of his deposition for
6 cross-examination without the purpose, but beyond that, we
7 don't have any real issues with the process.

8 **MS. BERLIN:** I just heard a possible issue,
9 Your Honor. What I'm hearing is let the SEC go ahead and
10:20 10 proceed as if these RFAs on our double-sided chart are the
11 Fifth Amendment and those ideas are off the table, and then
12 after we present, Mr. Furman -- I'm sorry -- Mr. Hyman wants
13 the Court to then decide -- we would have then lost an
14 opportunity. Let's say the Court decides, you know what, I
10:20 15 think this one is fair game. Then I would have asked about it.
16 I mean, you know, I would have asked.

17 So I think it's important and that's what we were
18 trying to do by sending the highlighted list last week and
19 bringing it up over and over was so we didn't have this happen
10:21 20 in the way it was just proposed.

21 **THE COURT:** And just so I'm clear, also, I want to
22 make sure, so we're all operating under the same assumption,
23 the idea, at least the Court had yesterday, was that this list
24 would be kind of a guideline for everybody, right? I mean, the
10:21 25 exhibit list was a guideline for everybody, meaning that all of

1 these are topics that were in the RFA when the Fifth Amendment
2 was invoked so you can't essentially change the position on
3 everything that's here. That's always been the idea.

4 So to the earlier point, if the SEC is going to be
10:21 5 guided by this, it applies equally to the defense. The defense
6 cannot get up now and somehow deviate and start answering all
7 the RFAs in live testimony. That's the whole reason why we've
8 ruled this way, is because then that would be extreme prejudice
9 in that the SEC has not been able to get direct answers to
10:21 10 these topics and the amendment that was proposed was done on
11 the eve of trial.

12 So if for some reason questioning Mr. Furman in the
13 defendant's case turned into a free-for-all on all areas, what
14 that would do is that would be essentially the same thing as
10:22 15 circumventing the Court's prior ruling. It would just allow
16 the RFA to be amended on the fly, if you will, because he could
17 start changing his answers.

18 So everyone needs to understand that everything that's
19 here he invoked the Fifth on. So if it's not on here, then
10:22 20 there's not problem. But if it is on here, he is stuck with
21 his invocation, the Fifth. That's how I explained it for the
22 last few days. So I just wanted to make sure we all are guided
23 by the same understanding, and that is, again, the SEC's
24 understanding as well, right?

10:22 25 **MS. BERLIN:** That's our understanding and that's how

1 we prepared. We did confer with them. We did hear back from
2 them this morning right before the judge came out, and they had
3 an issue with three on our double-sided list. We reviewed
4 two -- we reviewed all three and on two of them, you know, I
10:23 5 think it's questionable. But look, fine, you know, we're
6 trying to be helpful.

7 **THE COURT:** One at a time. Hold on a minute. That
8 was 48.

9 **MS. BERLIN:** 48 and 72.

10:23 10 **THE COURT:** Hold on a second. So what's the response
11 I guess to the parameters?

12 **MR. HYMAN:** We had responded substantive to almost
13 every single one of the 48 or so or 70 different areas of
14 inquiry to explain with deposition cites as to where and how
10:23 15 there was testimony or topic area or inquiry as to particular
16 subject matter. We're in the process of pulling this morning.
17 Obviously the SEC didn't provide us this abridged list until
18 about 8:30 this morning.

19 We had the full length request for admissions which we
10:23 20 copied and pasted and responded to with specific cites. They
21 clearly did not go through that when they sent this because a
22 lot of them were pretty obvious. For example, one of them said
23 at no point did you tell or disclose Mr. LaForte's financial
24 records or criminal background.

10:24 25 I showed them the page and line where they said: Who

1 did you tell Mr. LaForte about this? Similarly, they go
2 through: Did you tell potential investors about New Jersey and
3 Pennsylvania? We have the page and lines for those that they
4 asked those questions. We're going through this morning kind
10:24 5 of pulling those up with the understanding that the SEC could
6 read whatever request for admission into the record and that
7 where his deposition was -- or addressed a issue on point, then
8 we could obviously raise that and explain and have the Court
9 decide on a question-by-question basis where the deposition
10:24 10 testimony actually did cover one of these areas of inquiry that
11 was otherwise covered in the request for admission.

12 This morning, when we got the list, we thought the SEC
13 would have narrowed it down or at least acknowledged for some
14 of the obvious ones, you know, what -- this one doesn't work.
10:24 15 And Ms. Johnson came in about 9:50, 9:55. So I started trying
16 to go through them one at a time with her.

17 Unfortunately, we didn't have enough time to
18 completely go through and say, look, here is the page and line,
19 here's where we are, this is what was said. And they didn't
10:25 20 otherwise respond to the substantive request we sent them last
21 Sunday.

22 We followed up again I think before this issue came up
23 on either Tuesday or Wednesday and said, Hey, I want to discuss
24 some of these issues. And from there now, they're saying that
10:25 25 we conferred and said there's three of them we agreed to, when,

1 in fact, the majority of these were covered or are issues that
2 we don't otherwise dispute.

3 **THE COURT:** Okay. So I -- so nothing has been done?

4 Essentially let me summarize. Since yesterday, you've done
10:25 5 nothing, meaning, you have come into court today and both sides
6 have not narrowed the issues. You don't have any of these
7 issues now. He's just told me essentially that you guys are
8 handcuffing yourselves; that he didn't agree with anything of
9 you what you have done here.

10:26 10 He just told me right now that he believes he pointed
11 line and page numbers for each of these items that will show
12 that these issues were covered in the deposition. The only
13 thing that I can think of at this point -- because again, this
14 was an exercise to have been done before court today, and quite
10:26 15 honestly, it could have even been done back when I ruled on
16 this last week, because I tried to take this issue off the
17 table right up front so that we would all understand even
18 though it's been re-litigated, the ruling of the Court hasn't
19 change.

10:26 20 I guess my question to the SEC is at this point is --
21 and this is the only one that I can think of, Ms. Berlin, that
22 would allow us to move forward -- is if you go forward guided
23 by what we have here in your direct and anything is opened in
24 cross, right, if I get a cross-examination follow-up from
10:26 25 defense counsel that goes outside the scope of these things,

1 then, I mean, it's going to be cumbersome. That's my fear.

2 But I think we're going to have to then have you
3 object, and then I'm going to have to figure out what line and
4 page would support this. So defense is going to have to at the
10:27 5 ready a line and page number every time that there's an
6 objection to show me why, for example -- I'm just going to give
7 you a random example. Point 34: You have known since no later
8 than February 2017 that Joseph LaForte is a convicted felon?
9 That's just a perfect example, right?

10:27 10 Let's say that he asks in cross-examination, isn't it
11 true that you knew this and you disclosed it? You're going to
12 object because you didn't touch on that at the deposition and
13 he invoked the Fifth as to that. And then they're going to
14 then say to me, but, Your Honor, he waived the Fifth and it was
10:27 15 touched on in the depo. And this is how, I think it's going
16 to -- that's what I think is going to happen.

17 **MS. BERLIN:** Going to happen.

18 **THE COURT:** Right. That's going to happen.

19 **MS. BERLIN:** And if I could just respond to some of
10:27 20 the things that were stated. And if I could just, please, have
21 it uninterrupted.

22 **THE COURT:** Yeah, go ahead.

23 **MS. BERLIN:** We sent -- when we had a hearing,
24 Your Honor, last week and this issue was raised, we told the
10:27 25 Court we would send them the list. We sent it on December 4th

1 at 10:22 a.m. We sent the list. The same exact thing that the
2 Court is holding, we sent that to defense counsel on -- I'm
3 sorry?

4 What you're holding now -- we gave them the RFA, the
10:28 5 actual RFA, highlighted, the same thing we handed up to the
6 Court yesterday. What you're holding in front of you, I just
7 took out the sentences and put them all on one document front
8 and back. We gave them the highlighted RFA six days ago. Not
9 this morning. Six days ago, highlighted, 10:22 a.m. by e-mail.
10:28 10 Tried to resolve this.

11 I explained to the Court yesterday when we finished
12 that I had a concern because we'd gotten from defense counsel a
13 response -- we got it yesterday. I'm not sure when exactly we
14 got it. It doesn't matter. We got a list from them where they
10:28 15 thought certain things had been waived in the deposition. I
16 provided an example, and I explained to the Court --

17 **THE COURT:** Listen, hold on. Let me just do this. I
18 get it.

19 **MS. BERLIN:** (Cross-talking) -- six days.

10:29 20 **THE COURT:** Listen, I can sit here and we can argue
21 over all of the exchanges and the timeline for hours. We don't
22 have that kind of time. We have a jury waiting. We have to
23 move. And I've already discussed this issue a lot. So this is
24 very inefficient. I'm proactive, I want to figure out how I'm
10:29 25 going to fix this and I've got to work it's not wishing what

1 had been done, but it's the best we got. And so the only thing
2 I can think of now, as I stated, is why don't we go ahead and
3 see how this plays out, if it becomes unmanageable, right? If
4 it becomes unmanageable at cross-examination then I will have
10:29 5 to take a recess and figure this out. But for now, I think the
6 best thing to do is go ahead and allow you to ask your direct
7 with these guidelines in place.

8 And then when you object, Ms. Berlin, as I know you
9 will, if they go outside the scope, I'm going to ask that --
10:29 10 and I think we have a team here ready to go, I'm going to ask
11 that the defense point me to the deposition where they believe
12 that there's an answer. I'm a quick study and a quick read.
13 So if you go on asking questions about certain of these topics
14 and you believe they were covered in the depo, you just have to
10:30 15 be immediately ready to tell me, Judge, line and page, and I
16 can do that with the jury present, and I can quickly check, and
17 if indeed it was covered and it's open season on that question,
18 you can ask it on cross-examination. That's the only way I can
19 think about it. And my hope is that I'll have at least
10:30 20 familiarized myself with enough of the depo and all the
21 objections that when you call Mr. Furman in your case in chief,
22 I'm going to be able to do the same thing when the SEC goes up
23 and does their cross-examination or when they object to
24 questions in direct.

10:30 25 I mean, I just don't know any other way to do this. I

1 mean, and this is the only way we can do this at this point.
2 We can't sit here and try to figure out any other way. It's
3 the only way I can figure it out.

4 **MS. BERLIN:** I agree. It's just -- I just want the
10:30 5 Court to know, we tried. We provided it six days ago. We
6 tried to do this.

7 **THE COURT:** Listen, the whole point was to avoid this,
8 but I guess we couldn't get it done. And so we'll do our best
9 to navigate this on what we've got. This is our primary
10:31 10 objective today, to get this testimony in the morning from
11 Mr. Furman. I think I can do enough with what I have to try to
12 make the contemporaneous rulings. My hope is that it doesn't
13 get too chopped up. You know, we'll go from there.

14 **MS. BERLIN:** I think what we'll do then is, we're
10:31 15 going to do a slight deviation. We're going to put in the RFA
16 unredacted because he still took the Fifth then --

17 **THE COURT:** Okay.

18 **MS. BERLIN:** -- and then we'll only present
19 substantive testimony about the things that he -- that we asked
10:31 20 about in our deposition. So yeah, that's --

21 **THE COURT:** (Cross-talk) -- that's the same thing.
22 That's fine. Okay.

23 **MS. BERLIN:** Yeah. Okay. I just wanted to let them
24 know what the plan was, so they're aware as a courtesy. Thank
10:31 25 you, Your Honor.

1 **THE COURT:** That's fine. That's fine.

2 Does defense have any other issues? I think we have
3 the game plan. I just need you guys to be ready that if there
4 is an objection from Ms. Berlin that he is now changing his
10:31 5 Fifth Amendment indication on the fly, in violation of my prior
6 ruling, that you guys point to where it is in the depo that I
7 have in front of me that he actually talked about that, and
8 that way I can make a quick ruling. That's the best way to do
9 it.

10:31 10 **MR. HYMAN:** That's fine, Your Honor.

11 **THE COURT:** That's the only way I can't think of it.
12 I mean, I can't think of any other way to do it in an effective
13 way. And so if you guys can't point me to a depo area that
14 would touch on it, then I'm going to be stuck, and I'm going to
10:32 15 have to go ahead and sustain objections. So you have to show
16 me where you covered it, so I know that you have an ability to
17 ask the question.

18 **MR. HYMAN:** Very well, Your Honor. The only thing I
19 can say, just because Your Honor has expressed frustration with
10:32 20 my team in general throughout the course of trial, that we did
21 respond to the SEC the following day, on December 6th, after
22 they sent us the (inaud.).

23 **THE COURT:** All right. So let's go ahead and get our
24 jury.

10:32 25 If you could, Rita, let's go ahead and bring them in,

1 please.

2 MS. BERLIN: Your Honor, as we go through the request
3 for admission -- we have an extra hard copy.

4 THE COURT: You know what, I have it. I have a copy,
10:33 5 I have it here that you gave me yesterday. It should be P 553,
6 right?

7 MS. BERLIN: Is it okay if I just put it on the
8 witness stand now, so he has it handy?

9 THE COURT: Yes, that's fine. I do have it in front
10:33 10 of me.

11 (Thereupon, the jury entered the courtroom.)

12 THE COURT: Good morning, everyone. Please be seated.
13 Good to see you all. Happy Friday. Thank you, guys, for being
14 here on time, and as always, for being so diligent and giving
10:34 15 us your undivided attention as you've done this week.

16 So today is our last day of the week, obviously, with
17 testimony. We are going to go ahead and allow the SEC to
18 finish presenting their case, and then we're going to go from
19 there and take some next steps later today and we'll walk you
10:34 20 guys through where we're going to go next.

21 But I want to go ahead, so we don't waste any more
22 time, and allow the SEC to call their next witness. You-all
23 have your notepads, I can tell, and we're ready to go. Okay.

24 So with that being said, the SEC, you will please call
10:34 25 your next witness.

1 MS. BERLIN: Thank you, Your Honor. We call
2 Michael Furman.

3 THE COURT: All right. Mr. Furman, we will swear you
4 in.

10:35 5 Thereupon,

6 MICHAEL FURMAN,
7 having been duly sworn by the court reporter, testified as
8 follows:

9

10 DIRECT EXAMINATION

11 BY MS. BERLIN:

12 Q. Good morning, Mr. Furman.

13 A. Good morning.

14 Q. Do you hold any professional licenses?

10:35 15 A. I still hold my -- it's a 215, my insurance license.

16 Q. Have you ever heard any other licenses?

17 A. I've previously held Series 7 and 66 securities licenses,
18 many years ago.

19 Q. And what is a Series 7 license?

10:35 20 A. I believe it's just a general securities broker.

21 Q. You have to take an exam to get your Series 7 license;
22 isn't that correct?

23 A. Correct.

24 Q. And that exam tests your general knowledge with the
10:36 25 securities laws; would you agree with me?

1 A. **At that time.**

2 Q. And what year was that?

3 A. **I think 2004.**

4 Q. And so that exam covered the Securities Act of 1933?

10:36 5 A. **I'm going to presume so. It was very broad.**

6 Q. And it also covered the Securities and Exchanges Act of
7 1934?

8 A. **I couldn't say specifically. It was about over a
9 thousand-page book, but...**

10:36 10 Q. But you studied for those exams -- for that Series 7 exam?

11 A. **Yes.**

12 Q. And you passed the exam?

13 A. **Correct.**

14 Q. And so you had knowledge of those -- the Securities Acts,
15 correct?

16 A. **At that time.**

17 Q. Yes?

18 A. **At that time. Every year the test changed.**

19 Q. Right. But the Securities Act of 1933, you would agree
10:37 20 with me, was entered, would that be more than 80 years ago?

21 A. **All I can speak to is when I studied in 2004. And if it
22 changed since then, I wouldn't know actually. That's what I
23 mean.**

24 Q. It's been the same for 80 years.

10:37 25 And the Series 66 test, what is that?

1 A. I know it was a combined, I think 63 and 65, I think they
2 called it the "blue sky," which I believe it was a different
3 state, and invest -- IAR investment advisor, I think it was.

4 Q. And that's another license that requires you to take an
10:37 5 exam?

6 A. Correct.

7 Q. And you're taking a test about the securities laws?

8 A. Correct.

9 Q. And you passed it?

10:38 10 A. Yes, I did.

11 Q. And why do you no longer hold those licenses, your Series 7
12 and your Series 66 license?

13 A. That was back -- right out of college I got hired by
14 Prudential Financial, and one, it was required at that time to
10:38 15 be a financial advisory with them, as the insurance license
16 was. And my practice -- I left them fairly quickly, and my
17 practice evolved. I was not using securities. I was
18 concentrating on insurance.

19 Q. Okay. And so when did it -- when did your licenses expire?

10:38 20 A. I don't know the exact date. I want to say it was 2007 or
21 '8, something like that.

22 Q. And so you haven't been registered as a broker or
23 investment advisory --

24 A. Since then.

10:38 25 Q. -- since then, correct?

1 A. **Whenever that lapsed or -- yes. Correct.**

2 Q. More than ten years ago?

3 A. **Yes.**

4 Q. And you have a bachelor's degree in banking and financing?

10:39 5 A. **Correct.**

6 Q. And from what school?

7 A. **Northridge University.**

8 Q. And you're currently a resident of West Palm Beach,

9 Florida?

10:39 10 A. **Correct.**

11 Q. I'd like to show you what we have marked as P 553. It's in
12 front of you at the witness table already in hard copy form.

13 Do you see it?

14 (Thereupon, the exhibit was introduced into evidence.)

10:39 15 A. **Yes.**

16 Q. Are these your answers to the SEC's request for admissions?

17 A. **Honestly, at that point I was following the attorney that
18 the receiver referred me to --**

19 Q. I'm not asking that. I'm just asking, is this a copy of
10:39 20 your answer to the SEC's request for admissions?

21 A. **It's what my attorney at that time submitted.**

22 Q. Would you turn to page 16. It says page 16 of 16.

23 A. **Yes.**

24 Q. Is that your signature?

10:40 25 A. **Looks like a digital version of it, yes.**

1 Q. Do you see above it, it says: Sworn under penalty of
2 perjury this 9th day of August 2020 by Michael Furman?

3 A. **Correct.**

4 Q. And then we see a signature line for Michael Furman with
10:40 5 your signature, correct?

6 A. **Yes.**

7 Q. So is P 553 your response to the SEC's request for
8 admissions?

9 A. **That's what my attorney -- yes, that's -- I followed his**
10:40 10 **advice.**

11 **MS. BERLIN:** Your Honor, I'd like to introduce this.

12 **THE COURT:** Yes, that will be admitted at this time.

13 (Thereupon, the exhibit was admitted into evidence.)

14 **MS. BERLIN:** Can we publish 553, please.

10:41 15 **BY MS. BERLIN:**

16 Q. We're going to start on Pdf page 3.

17 **THE COURT:** Can you all see that, folks?

18 **THE JURY:** (Nodding).

19 **THE COURT:** Okay.

10:41 20 **MS. BERLIN:** Thank, you Kevin.

21 **BY MS. BERLIN:**

22 Q. We're going to start with number 3.

23 Do you see the SEC asked you here in item number 3:

24 Admit that you formed Fidelis in about April of 2018.

10:41 25 Do you see that?

1 A. **Yes. On the screen.**

2 Q. And do you see that your response says: See response to
3 request 1 supra, Fifth Amendment?

4 Do you see that?

10:42 5 A. **That's what it states it there.**

6 Q. And if we can just scroll up to the response to the Request
7 For Production -- I'm sorry -- the response to the request for
8 admissions, response number 1. It's on Pdf page 2 at the very
9 top. So we're just going to turn to what you cited as your
10:42 10 answer.

11 And do you see here -- we won't read all of this into
12 the record, but do you see where you're asserting on the advice
13 of counsel: I exercise my rights against self-incrimination
14 granted by the Fifth Amendment to the United States

10:42 15 Constitution and under Article 1, Section 9 of the Florida
16 Constitution, collectively Fifth Amendment rights?

17 Do you see that?

18 A. **Yes.**

19 Q. And so you asserted your Fifth Amendment rights to request
10:43 20 for admission number 3 about whether you formed Fidelis in
21 April of 2018 and did not give a substantive response to that
22 question.

23 Do you agree?

24 A. **No, I don't agree. But under the advice of counsel, that's**
10:43 25 **what he did at that time.**

1 Q. Mr. Furman, we'll go back to what you signed.

2 MS. BERLIN: Can we please pull up the response to
3 request for admission number 3.

4 THE WITNESS: That was a two-part question.

10:43 5 BY MS. BERLIN:

6 Q. Do you see here the SEC send the request to you: Admit
7 that you formed Fidelis in about April 2018.

8 And the response says: Response: See response to
9 request 1, supra, Fifth Amendment.

10:44 10 Do you see that?

11 A. Correct.

12 Q. And we already established that you signed this document
13 under penalty of perjury.

14 Do you recall that?

10:44 15 A. Yes.

16 Q. And so this was your answer to this request for admission.
17 You asserted the Fifth Amendment and did not respond; is that
18 correct?

19 A. At that time under counsel, yes. You said "since then,"
10:44 20 and I don't agree with that part.

21 Q. Mr. Furman, if you could just answer the questions that I'm
22 asking, please. I'm just asking if this was your answer in the
23 request for admission. Do you agree with me? We're looking at
24 it together.

10:44 25 A. Exactly. Correct.

1 Q. Let's turn now to request number 4. Do you see that the
2 SEC asked you to admit that Fidelis operated from an office in
3 West Palm Beach Florida and you asserted the Fifth Amendment in
4 response to that and did not give a substantive answer in your
10:45 5 sworn response to the request for admissions?

6 A. **I see that.**

7 Q. If we could please turn to request for admission number 5.

8 And so on August 9th, 2020, which you remember we
9 looked at your signature block for this document?

10:45 10 A. **Yes.**

11 Q. And the date was August 9th, 2020?

12 A. **I believe so, yeah. Yes.**

13 Q. Yes. Okay. So on August 9th, 2020, you responded to the
14 question: Admit that you were the president of Fidelis from at
10:46 15 least April 2018 until at least July 24th, 2020.

16 Do you see that?

17 A. **Correct. Correct.**

18 Q. And your sworn response on August 9th, 2020 was that you
19 were asserting the Fifth Amendment and not providing a
10:46 20 substantive answer, correct?

21 A. **By advice of counsel, yes.**

22 Q. So we read in what you were restating in your
23 Fifth Amendment in response to number 1. Let's move on to
24 number 6. The SEC asked you to admit that you were a signatory
10:46 25 on the Fidelis bank account at all times prior to July 27th,

1 2020.

2 Do you see that?

3 A. **Yes.**

4 Q. And do you see that your sworn response on August 9th, 2020
10:47 5 was that you asserted the Fifth Amendment and did not provide a
6 substantive response?

7 A. **On that date by counsel, yes.**

8 Q. If we could please turn to number 7. You see the SEC asked
9 you to admit that from about April 2018 until no later than
10:47 10 July 24th, 2020, you operated Fidelis, and you asserted your
11 Fifth Amendment rights and refused to provide a substantive
12 response, correct?

13 A. **By advice of my counsel at that time, yes.**

14 Q. The SEC asked you to admit that Fidelis is a pooled
10:47 15 investment fund in request number 8. And you asserted the
16 Fifth Amendment and refused to respond to that question as
17 well, correct?

18 A. **By advice of counsel on that date, yes.**

19 Q. The SEC asked you to admit in request number 9 at the top
10:48 20 of Pdf page 4 that Fidelis was created for the purpose of
21 raising money through the offer and sale of promissory notes.

22 Do you see that?

23 A. **I see that.**

24 Q. And in August of 2020, you responded by asserting your
10:48 25 Fifth Amendment rights and refusing to answer, correct?

1 A. Under advice of counsel on that date, yes.

2 Q. In request number 10, the SEC asked you to admit that from
3 April 24th, 2018 until July 24th, 2020, defendant ABFP
4 Management provided management services to Fidelis, correct?

10:49 5 A. That's what it states.

6 Q. And you responded by asserting your Fifth Amendment rights
7 against self-incrimination and refused to answer substantively,
8 correct?

9 A. At that time under advice of counsel.

10:49 10 Q. Next, in request number 11, the SEC asked you to admit that
11 a document attached to these requests as Exhibit A was a true
12 and correct copy of a management services agreement between
13 Fidelis and ABFP, correct?

14 A. That's what it states.

10:50 15 Q. And if we could please turn to Exhibit A. Why don't we
16 come back to Exhibit A and we'll move forward -- or just one
17 moment, Mr. Furman. I apologize. We're going to come back to
18 this so we don't waste anybody's time. I'm sorry about that.

19 MS. BERLIN: Actually, Your Honor, can I just use the
10:52 20 ELMO?

21 THE COURT: Sure.

22 (Thereupon, there was a brief discussion off the record.)

23 MS. BERLIN: Is it possible to see on this screen
24 what's on the ELMO?

10:53 25 THE COURTROOM DEPUTY: You moved that. So we were

1 having problems with it.

2 (Thereupon, there was a brief discussion off the record.)

3 **BY MS. BERLIN:**

4 Q. And do you see that here we have Exhibit A showing -- it's
10:54 5 the management services agreement, and it this should be
6 attached to the hard copy that I gave you. If you just want to
7 confirm what Exhibit A is?

8 A. **Correct.**

9 Q. Do you see that?

10:54 10 A. **Yes.**

11 Q. And Exhibit A states it's a management services agreement
12 between ABFP Management Company and Fidelis Financial Planning.

13 Do you see that?

14 A. **Correct.**

10:55 15 Q. Do you see it?

16 A. **Yes.**

17 Q. And do you see the signature block for Michael Furman on
18 your screen?

19 A. **Yes.**

10:55 20 Q. And in response to the request about whether or not that
21 was a true and correct copy of a management agreement that you
22 had with ABFP Management, you asserted your Fifth Amendment
23 rights against self-incrimination and refused to answer,
24 correct?

10:56 25 A. **By advice of counsel on that date.**

1 Q. And next, the SEC asked you to admit that since no later
2 than August 9th, 2018, Fidelis had raised more than 5.8 million
3 dollars from investors through the offer and sale of promissory
4 notes, correct?

10:56 5 A. **I see it written.**

6 Q. And you responded by asserting your Fifth Amendment right
7 against self-incrimination and refusing to testify through this
8 request for admissions, correct?

9 A. **That's what my attorney did on that date.**

10:56 10 Q. Sorry. We have established that you signed this under
11 penalty of perjury, Mr. Furman.

12 Do you remember that?

13 A. **Yes, under advice of counsel on that date.**

14 Q. Yes, but you do agree with us that you signed this under
10:57 15 penalty of perjury on page 16 of Exhibit 553?

16 Do you recall that?

17 A. **On that date, yes.**

18 Q. I wonder if we could look at number 13. The SEC asked you
19 to admit that Exhibit B was a true and correct copy of the
10:57 20 Fidelis Form D filing that you signed and filed with the
21 Securities and Exchange Commission in May of 2018.

22 Do you see that?

23 A. **I do.**

24 Q. And if it's easier, this is attached to your hard copy. It
10:57 25 might be easier to flip to -- if you want to see it in full.

1 But do you see that Exhibit B to your request for admission is
2 a filing with the United States Securities and Exchange
3 Commission?

4 Do you see that?

10:58 5 A. **Correct.**

6 Q. And do you see where it states it's for Fidelis Financial
7 Planning?

8 A. **Correct.**

9 Q. And that it's in West Palm Beach, Florida?

10:58 10 A. **That is correct.**

11 Q. And that you are listed as the related person for Fidelis?
12 Do you see that?

13 A. **I do.**

14 Q. And that you're listed as the executive officer?

10:58 15 A. **Yes, I do.**

16 Q. And do you see that this form asks for what type of
17 industry group Fidelis is and the box is checked for a pooled
18 investment fund? Do you see that?

19 A. **I see it.**

10:59 20 Q. And do you see where this form asks whether the issuer,
21 meaning Fidelis, intends the offering to last for more than one
22 year and the box is checked "no"? Do you see that?

23 A. **I see that.**

24 Q. And do you see where this same form with the SEC asks
10:59 25 whether the offering is made in connection with a business

1 combination transaction such as a merger or acquisition or
2 exchange offer, and the box is checked "no"?

3 A. **I see that.**

4 Q. Do you see where in this form filed with the Securities and
11:00 5 Exchange Commission, the box is checked, indicating that the
6 sales commissions for the offering will be zero?

7 A. **Where it says "estimate"? Yes, I see that.**

8 Q. We'll read it exactly.

9 It says: Provide separately the amount of sales
11:00 10 commissions and finders' fees expenses, if any. If the amount
11 of an expenditure is not known, provide an estimate and check
12 the box next to the amount.

13 Do you see that?

14 A. **I see that.**

11:00 15 Q. And do you see that on this form filed with the Securities
16 and Exchange Commission, it was represented that the sales
17 commissions were estimated to be zero?

18 A. **I see that.**

19 Q. Do you see an item number 16 on request for admission
11:01 20 Exhibit B that this form requires -- it states: Provide the
21 amount of gross proceeds of the offering that has been or is
22 proposed to be used for payments to any of the persons required
23 to be named as executive officers, directors or promoters in
24 response to item 3 above.

11:01 25 Do you see that?

1 A. I do.

2 Q. And do you see item 3 above, the related person listed on
3 this form is Michael Furman?

4 A. I do.

11:02 5 Q. And do you see -- if I flip it over, there's no one else
6 listed. Do you see that?

7 A. Yeah. I don't see anybody else listed. Yes.

8 Q. It's only Michael Furman, correct?

9 A. Yes.

11:02 10 Q. And so in this form -- this filing with the SEC, the SEC is
11 told that no proceeds, an estimated amount of zero will go to
12 the person named as an executive officer in item 3, in other
13 words, you.

14 Do you see that on Exhibit B to your request for
11:02 15 admissions?

16 A. I see number 16. Yes.

17 Q. I'm sorry, I couldn't hear you.

18 A. Yes. I see number 16.

19 Q. And we also see that the Exhibit B to your request for
11:03 20 admissions states that it is -- the issuer is Fidelis Financial
21 Planning, LLC. It includes a typed signature for Michael C.
22 Furman. The name of the signer is Michael C. Furman. It
23 states that Michael Furman's title is president. And it states
24 that the date of filing is May 3rd, 2018.

11:04 25 Do you see that?

1 A. **I see it.**

2 Q. And in response to the question of whether or not Exhibit B
3 was a true and correct copy of the Form D filing, you signed
4 and filed with the SEC, you asserted your Fifth Amendment right
11:04 5 against self-incrimination and refused to provide any further
6 answer, correct?

7 A. **Up and to that date under advice of counsel, yes.**

8 Q. Do you see that next the SEC asked you to provide a sworn
9 admission that Exhibit C to your request for admission was a
11:04 10 true and correct copy of the Fidelis amended form filing that
11 you signed and filed with the SEC in May 2019?

12 Do you see that?

13 A. **I see it. There is no C in the packet.**

14 Q. Thank you.

11:05 15 I've got three pages of it, if it's missing one.

16 Do you see that it states in the number 15: Admit
17 that Exhibit D is a true and correct copy of the Fidelis
18 amended form filing, you signed and filed with the SEC in May
19 of 2019?

11:05 20 A. **I see that.**

21 Q. And so that's the same as the one we just looked at but
22 reference C.

23 Do you agree?

24 A. **Other than the letter changing, yes.**

11:06 25 Q. Yes. And then in the packet in front of you you'll see --

1 you see Exhibit D, which is a filing with the United States
2 Securities and Exchange Commission where the issuer is Fidelis
3 Financial Planning.

4 The issuer is Fidelis Financial Planning in West Palm
11:06 5 Beach. And once again, the related person is Michael Furman.

6 Do you see that on Exhibit B?

7 A. **I do.**

8 Q. In this amended Form D filing with the Securities and
9 Exchange Commission, do you see that Fidelis is still
11:06 10 identified as a pooled investment fund?

11 A. **I do.**

12 Q. And this is an amendment. Do you see that on the page,
13 amendment with an X?

14 A. **I see it says amendment, yes.**

11:07 15 Q. And do you see that it also says that the date of first
16 sale is August 9th, 2018?

17 A. **That's what it states.**

18 Q. Here it states that in Exhibit B -- or I'm sorry --
19 Exhibit D in the amended version, do you see that it states
11:07 20 that the issuer in Fidelis intends this offering to last more
21 than one year?

22 A. **Yes.**

23 Q. And still it asks in item 10 whether the offering is being
24 made in connection with the business combination transaction
11:08 25 like a merger, acquisition or exchange offer. And the box is

1 checked no.

2 Do you see that?

3 A. **I see that.**

4 Q. And do you see where in this amended Form D filing with the
11:09 5 SEC it states that the securities have been sold by Fidelis to
6 two people as of the date of filing?

7 A. **That's what it says.**

8 Q. And that the sales commission is estimated to be zero?

9 A. **That's what it states.**

11:09 10 Q. And we see the same thing we did before, item 16, that the
11 executive officer, we looked at in item 3, which was you, would
12 receive an estimated zero dollars.

13 Do you see that?

14 A. **I see it.**

11:09 15 Q. And this form filed with the Securities and Exchange
16 Commission as Exhibit D lists Fidelis Financial Planning as the
17 issuer with a signature by you, Michael Furman, on the page in
18 front of you. And it also, this document states that Michael
19 Furman's title is president and that the date of filing is
11:10 20 May 10th, 2019.

21 Do you see that?

22 A. **Yes. That's when my attorney filed it.**

23 Q. And do you see that going back to the request for
24 admissions, which is P 553, the SEC asked you to admit that in
11:11 25 May of 2019, Fidelis had sold its promissory notes to more than

1 two individuals. And in response to that you asserted the
2 Fifth Amendment and your privileges against self-incrimination
3 and refused to answer substantively.

4 Do you see that in item 16?

11:11 5 A. Under advice of counsel up until that date, yes.

6 Q. What is the Bernardo Revokable Trust?

7 A. I believe it's a longer name than that, but I believe
8 you're referring to Steven and Leslie Bernardo's -- probably
9 their living trust.

11:12 10 Q. And how do you know them?

11 A. They are clients of mine.

12 Q. Did they invest in -- or did Fidelis issue promissory notes
13 to them?

14 A. Correct.

11:12 15 Q. What about the Tax Group, Inc. of Palm Beach?

16 A. That's not a -- Tax Group, Inc.?

17 Q. The Tax Group of Palm Beach. I believe it's Roland Manuel.

18 A. It's Palm Beach Tax Group. But, yes.

19 Q. Oh, thank you so much. Palm Beach Tax Group.

11:12 20 Roland Manuel, is he another person who was issued a
21 Fidelis promissory note?

22 A. Correct.

23 Q. What about Nicholas Sandoval?

24 A. At some point, correct.

11:13 25 Q. Excuse me?

1 A. From my recollection, at some point, yes.

2 Q. Did Nicholas Sandoval, was he issued a Fidelis promissory
3 note?

4 A. I believe it was in his name. Like I said, I don't have
11:13 5 anything in front of me. But yes.

6 Q. What about Celeste Zehren?

7 A. At some point in her name or IRA, correct.

8 Q. She invested -- she received a Fidelis promissory note by
9 using her IRA money; am I understanding?

11:13 10 A. I don't have anything in front of me to refresh my memory.

11 Q. Do you know if she -- if Fidelis issued her a promissory
12 note?

13 A. Correct. At some point. I don't know if it's IRA or not
14 qualified, off the top of my head.

11:13 15 Q. Understood. What about the Maloney revocable trust, Dale
16 and Sandra Maloney?

17 A. I'm not sure of the exact name of the trust, but yes.

18 Q. They were also issued Fidelis promissory note?

19 A. In some name, yes, trust or individual.

11:13 20 Q. What about Ronald Clayden?

21 A. I believe so.

22 Q. Okay. What about Betty Brabban?

23 A. Brabban, correct.

24 Q. Also someone you issued a promissory note?

11:14 25 A. Correct.

1 Q. What about Frank Nash?

2 A. **Correct.**

3 Q. He was issued a promissory note?

4 A. **Yes.**

11:14 5 Q. Steven Gibson, was he issued a Fidelis promissory note?

6 A. **Correct.**

7 Q. Fred Smith, was he issued a promissory note?

8 A. **I believe so.**

9 Q. Eugene Sheldon, was he issued a promissory note?

11:14 10 A. **At some point, yes.**

11 Q. Gary DeLucco, was he issued a promissory note?

12 A. **Yes.**

13 Q. Wadie or Wadie Khoury?

14 A. **Wadie, yes.**

11:14 15 Q. Thank you. Wadi.

16 He was issued a promissory note?

17 A. **Correct.**

18 Q. Nicholas Pancoast, also issued a Fidelis promissory note?

19 A. **At some point, yes.**

11:14 20 Q. William Altier Trust?

21 A. **Don't remember the exact name, but yes.**

22 Q. Okay.

23 A. **Am I supposed to be looking at a list here or no?**

24 Q. What about Anthony Marano?

11:15 25 A. **I know he's a client of mine. I can't remember everybody's**

1 investments off the top of my head, but yes.

2 Q. Mark Freedman?

3 A. Another client of mine at some point.

4 Q. Millen Livis Trust?

11:15 5 A. Millen, yes.

6 Q. Steven and Leslie Bernardo Revokable Trust?

7 A. We covered that, yes.

8 Q. Thank you.

9 Leslie Goldberg?

11:15 10 A. She's a client. I don't remember exact investments, but
11 yes.

12 Q. Pamela Summers?

13 A. Yes. Well, in some form.

14 Q. William Altier Trust?

11:15 15 A. We covered that. Yes.

16 Q. Donna Chlapperini?

17 A. Chlapperini. I believe -- again, I know she's a client.

18 Q. Okay. Steven Decker?

19 A. He's a client.

11:16 20 Q. Someone who was issued a promissory note?

21 A. Off the top of my head, I believe so. I know he's a
22 client. I don't remember every investment of every investor.

23 Q. Russell Meyer?

24 A. Yes.

11:16 25 Q. Mark Reikes?

1 A. **Correct.**

2 Q. Roland Manuel?

3 A. **Correct.**

4 Q. Rickey and Elizabeth McIntyre?

11:16 5 A. **They are clients.**

6 Q. Were they issued a promissory note?

7 A. **I believe so. But again, without a list I can't a hundred**
8 **percent. But yes. I believe so.**

9 Q. Fred Smith?

11:16 10 A. **I think we covered him. But yes.**

11 Q. Henry Barth?

12 A. **Yes.**

13 Q. Russell Meyer?

14 A. **Again, yes.**

11:16 15 Q. Jay Palazola?

16 A. **Yes. I believe so.**

17 Q. I'm sorry, that was a long list. Sorry about that. It was
18 a lot to go through.

19 Let's look back, again, at request for admission that
11:17 20 asked you whether Exhibit B was a true and correct copy of your
21 Form D filing. And you recall you asserted your Fifth
22 Amendment rights when asked about this document, correct?

23 A. **Under advice of counsel up until that date.**

24 Q. And that was filed with the commission in May 2018.

11:18 25 Do you remember me showing you your signature block?

1 A. One of the documents, yes. I did not file it, so I can't
2 recall.

3 MS. BERLIN: Your Honor, objection. The request for
4 admissions was asserted the Fifth Amendment on whether he filed
11:18 5 it.

6 THE COURT: Yes. That's going to be sustained. We'll
7 disregard that last response.

8 Go ahead.

9 BY MS. BERLIN:

11:19 10 Q. Just one moment.

11 And there it is. You can see it's May 10th, 2018, was
12 the date of that Form D filing that stated that no sale had
13 occurred.

14 Do you see that date there?

11:19 15 A. That's what it says.

16 Q. Right. And then we just looked at your amended version
17 stating that as of May 2019, one year later, there had only
18 been two investors in the offering.

19 Do you recall just seeing that?

11:20 20 MR. HYMAN: Objection, mischaracterized the document.

21 THE COURT: Overruled.

22 BY MS. BERLIN:

23 Q. Do you recall seeing that?

24 A. I recall seeing one of the documents saying that.

11:20 25 THE COURT: Speak into the microphone, please.

1 A. I recall seeing that.

2 BY MS. BERLIN:

3 Q. Let's just go back so we can take a close look at it. Do
4 you see that in this form filed with the SEC in May of 2019,
11:20 5 the form states: Regardless of whether securities in the
6 offering have been or may be sold to persons who do not qualify
7 as accredited investors, enter the total number of investors
8 who already have invested in the offering. And the number is
9 2.

11:21 10 Do you see that?

11 A. That's what the form states.

12 Q. And as a reminder, this is from May 3rd, 2019. Do you see
13 that filing date?

14 A. I see it on the screen.

11:21 15 Q. I'm showing you what was already introduced as P 205, which
16 is the chart of the promissory notes, the Fidelis -- the dates
17 of the notes that Fidelis issued and received from Par Funding.
18 We just went through all the names on here.

19 Mr. Furman, do you see that -- this is P 205 which was
11:22 20 introduced through Mr. Sharp on the first day of trial. Do you
21 see here, Mr. Furman?

22 A. I see.

23 Q. That Fidelis was -- had started, according to this
24 document, issuing notes to the Bernardo Revokable Trust, Steven
11:22 25 Leslie, as you corrected me, May 25th, 2018?

1 Do you see that?

2 A. **I see it on the document.**

3 Q. And do you see that the Palm Beach Tax Group, it was issued
4 a note by Fidelis in June 10th, 2018?

11:22 5 A. **That's what it states.**

6 Q. We'll count them. We're going to count them. So that's
7 number 2.

8 And then we see Nicholas Sandoval. Fidelis issued a
9 note to him on June 10th, to 2018 do you see that?

11:23 10 A. **That's what it shows.**

11 Q. And then Celeste Zehren, Fidelis issued a note to Celeste
12 Zehren on June 10th, 2018.

13 Do you see that?

14 A. **I do.**

11:23 15 Q. My bad handwriting is on full display. It's bad.

16 The Dale and Sandra Maloney Revokable Trust, a note
17 was issued to them on June 25th, 2018.

18 Do you see that?

19 A. **That's what it states.**

11:23 20 Q. That's number 5.

21 Then we have Ronald Clayden, July 25th, 2018 was
22 issued a Fidelis note.

23 Do you see that?

24 A. **I see it on the screen.**

11:23 25 Q. That's number 6.

1 Number 7, Betty Brabban, August 10th, 2018, and Frank
2 Nash, who we met yesterday, was August 10th, 2018.

3 Do you see them on the Plaintiff's Exhibit 205?

4 A. **I see it on the screen.**

11:24 5 Q. So we're up to 8.

6 We have Steven Gibson and Fred Smith, August 25th,
7 2018.

8 Do you see that?

9 A. **I see it.**

11:24 10 Q. Eugene Sheldon on August 10th, 2018.

11 Do you see that?

12 A. **I see it on the screen.**

13 Q. We have Gary DeLucco, Wadie Khoury, and Nicholas Pancoast,
14 October 25th, 2018.

11:24 15 Do you see that?

16 A. **I do.**

17 Q. So I think we're up to 14.

18 William Altier Trust is the next investor, November
19 10th, 2018.

11:25 20 Do you see that?

21 A. **I see it on the screen.**

22 Q. That's number 15.

23 Anthony Nicholas Marano, is that how you pronounce it?

24 A. **I believe so.**

11:25 25 Q. These are your clients, correct?

1 A. **That's how I've always pronounced it, yes.**

2 Q. 11-10-2018. Do you see that?

3 A. **I do.**

4 Q. I think we're up to 16.

11:25 5 Mark Freedman, that's number 17 on November 10th,
6 2018.

7 Do you see that?

8 A. **I do.**

9 Q. Millen Livis Trust, November 25th, 2018.

11:25 10 Do you see that?

11 A. **I do.**

12 Q. The Steven and Leslie Bernardo Revokable Trust, that's
13 February 25th, 2019.

14 Do you see that?

11:26 15 A. **I do.**

16 Q. Then we have Leslie Goldberg, Wadie Khoury again, and Frank
17 Nash also, oh and Pamela Summers all on the 25th.

18 Do you see that?

19 A. **I do.**

11:26 20 Q. We've already counted Khoury and Nash. We'll keep it
21 simple. So -- and the Bernardo Trust. So I think we're up to
22 19 -- up to 20.

23 And then we have the Willaim Altier Trust. Donna --
24 how do you pronounce that name?

11:26 25 A. **Chlapperini.**

1 Q. Chlapperini, Stephen Decker, Russell Meyer, and Marc
2 Reikes, who we met during trial. They're all on March 10,
3 2019.

4 Do you see that?

11:27 5 A. I do.

6 Q. So we already counted the Altier Trust. So I'm not going
7 to count that. So I think we're up to 24. We have Roland
8 Manuel in his individual capacity. You see that? That's
9 April 10th, 2019?

11:27 10 A. I do.

11 Q. And then we have Elizabeth and Rickey McIntyre.

12 Do you see them?

13 A. I do.

14 Q. Fred Smith, Henry Barth, we met hine during trial, and then
11:28 15 Russell Meyer again.

16 Do you see all those investors?

17 A. I do.

18 Q. They're all listed here as having received Fidelis
19 promissory notes April 10th, 2019.

11:28 20 Do you see that?

21 A. I do.

22 Q. And I don't think I had double counted anyone. I think
23 we're up to 28.

24 A. I'll take your word for it, but I think you're right.

11:28 25 Q. And then we have Jay Palazola on April 10th.

1 Do you see that?

2 A. I do.

3 Q. So that Form D filing you asserted the Fifth Amendment to
4 was dated May 3rd, 2019, stating there were only -- had ever
11:29 5 been two investors ever in Fidelis as of that date.

6 And you would agree with me that P 205, which
7 Mr. Sharp testified was the business record of the company's
8 Fidelis and ABFP that he's taken over, shows that we have 29
9 unique different investors by April 10th, 2019 who had been
11:29 10 issued a Fidelis note, correct?

11 A. That's what this states.

12 Q. Yeah. So the filing with the U.S. Security and Exchange
13 Commission of May 5th -- or May 3rd, 2019, that there were only
14 two investors wasn't true, right?

11:30 15 A. That's what my attorney filed.

16 Q. I'm just asking you, do you agree with me the form says two
17 investors and we just established that there were 29?

18 A. I agree that's what the form says.

19 Q. Now, we were also looking at that form. Do you remember
11:30 20 what it listed as your compensation in connection with the
21 Fidelis offering? Do you remember it said zero? You corrected
22 me. Because it did say if you don't know, give an estimate.

23 And do you remember that it said zero in both May
24 2018's filing and then again when it was updated in May 2019 in
11:31 25 Exhibits B and D to your request for admissions? Do you

1 remember it said estimated compensation --

2 A. **From earlier, yes.**

3 Q. -- from Michael Furman was zero?

4 A. **I remember seeing the form, yes.**

11:31 5 Q. I don't know if it's just me. I cannot hear you.

6 A. **I remember seeing the form, yes.**

7 Q. What we see here is according to P 205, the Fidelis
8 records, we see that the amount that was being paid when an
9 investor note was sent up to Par Funding and Par Funding would
11:32 10 issue its note in exchange -- so Fidelis investor note is here,
11 then Par Funding issues its note to Fidelis here, and over here
12 we see the amount that CBSG is paying.

13 Do you see that?

14 A. **I do.**

11:32 15 Q. And do you see that it shows the revenue to Fidelis after
16 the investor payment, after the investors have all been paid
17 out each month? Do you see that?

18 A. **I see it.**

19 Q. And that this chart shows the monthly amount. So in other
11:32 20 words, on Mr. Bernardo -- on the Bernardo Revocable Trust, the
21 amount retained as compensation for Fidelis is \$1,386.67 each
22 month on that note.

23 Do you see that?

24 A. **Incorrectly calculated, but yes.**

11:33 25 Q. And so you agree with me that's not zero, right?

1 A. **Those are not zeros.**

2 Q. And so the forms that we looked at that were filed with the
3 SEC as Exhibits B and D about the amount of money going as
4 being zero, that wasn't true either, right?

11:33 5 A. **You would have to ask my attorney.**

6 **THE COURT:** Lean in. I can't hear you.

7 A. **You would have to ask my attorney.**

8 **MR. HYMAN:** Your Honor, may we have two seconds?

9 **THE COURT:** No. We can continue.

11:33 10 **MS. BERLIN:** Thank you.

11 **BY MS. BERLIN:**

12 Q. I'm going to put the request for admissions back up. Let's
13 go on to the next one.

14 Do you see in item 17, you were asked to admit under
11:34 15 oath that Exhibit E was a true and correct copy of the Fidelis
16 private placement memorandum you distributed to potential
17 investors in connection with the offer and sale of Fidelis
18 notes?

19 Do you see that?

11:34 20 A. **I see it.**

21 Q. And then we have Exhibit E to the request for admissions.
22 And we gave you a courtesy copy of the hard copy with
23 everything attached in front of you, if you want to turn to it.
24 It's also on the screen.

11:35 25 A. **I see.**

1 Q. So Exhibit E states that it is the Fidelis Financial
2 Planning promissory notes.

3 Do you see that?

4 A. **Yes.**

11:35 5 Q. And in the -- this promissory note that's attached as
6 Exhibit E, it states that this offering is 100 percent -- the
7 interests in it had 100 percent held by United Fidelis Group.
8 Do you see that?

9 A. **I see it.**

11:36 10 Q. And United Fidelis was your company?

11 A. **Yes. That was my main company.**

12 Q. And in Exhibit E, do you also see that this -- it states at
13 the top it's an offering memorandum? It states that on each
14 page?

11:37 15 A. **At the top, yes.**

16 Q. And that's on every page of the document, correct?

17 A. **I believe so.**

18 Q. And do you see in the Exhibit E that there is also in this
19 offering memorandum a section that discusses the risks
11:37 20 associated with the investment?

21 A. **It's in there.**

22 Q. Why don't we talk about this first.

23 Do you see where in this offering memorandum it states
24 that Fidelis will act as a lender to merchant cash advance
11:38 25 businesses?

1 A. **I see that.**

2 Q. And did Fidelis loan money to any merchant cash advance
3 business other than Par Funding?

4 A. **Never executed, just looked at.**

11:38 5 Q. So only Par Funding, correct?

6 A. **That was issued, yes.**

7 Q. And in the offering memorandum, there are sections about
8 the duty of disclosure and the duty of loyalty.

9 Do you see that?

11:38 10 A. **I see it on the screen.**

11 Q. Do you see he it states the manager -- I think we just
12 looked back and saw was listed as you -- has an affirmative
13 duty to disclose material facts to the members?

14 Do you see that?

11:39 15 A. **I see it on the screen, yes.**

16 Q. And do you see that it then goes onto explain: Information
17 is considered material if there is a substantial likelihood
18 that a reasonable investor would consider it important in
19 making investment decisions. The manager must not make any
11:39 20 untrue statements to the members and must not omit disclosing
21 any material facts to the members.

22 Do you see that?

23 A. **I see that.**

24 Q. And that appears in this same offering memorandum,
11:39 25 Exhibit E to your request for admissions?

1 A. I see it.

2 Q. And do you also see that Exhibit E, the offering memorandum
3 states that the manager -- which we just established a moment
4 ago, the document states was you -- has a duty to avoid
11:40 5 undisclosed conflicts of interest?

6 A. I see that.

7 Q. Okay. And this document -- Exhibit E also is an operating
8 agreement that states that Fidelis is managed by the manager,
9 which we just identified was you.

11:40 10 Do you see that as well?

11 A. I see that.

12 Q. Okay. And do you see in this same document there's a
13 section called Use of Proceeds?

14 A. I see that.

11:41 15 Q. Okay. And you see in this section that the estimated fees
16 and offering expenses are expected not to exceed 15 thousand
17 for -- if the estimated amount raised is 19 million 985
18 thousand?

19 Do you see that in Exhibit E?

11:41 20 A. I see that's what it states.

21 Q. Okay. And I think we established you're not a broker and
22 you weren't a broker between 2018 and 2020. You were not
23 registered at all, correct?

24 A. I agree.

11:42 25 Q. Just one moment.

1 **THE COURT:** Anybody need a bathroom break, by any
2 chance? Everybody doing okay? It's okay if you do. Why don't
3 we do this: Let me take a five-minute break so I can get a
4 sense of how much more we got before we take a lunch break. Go
11:42 5 ahead and take a break. Leave your notepads on your chairs.
6 You're excused if you want to use the restroom. Yeah, go
7 ahead.

8 (Thereupon, the jury exited the courtroom.)

9 **THE COURT:** Please be seated, everyone. I just want
11:43 10 to use this opportunity -- I'm going to also let everyone have
11 a chance to use the restroom.

12 Since the parties weren't able to do their job and
13 I've been doing it for most of you, I've been reading the
14 deposition transcript. Okay. I'm not really sure, knowing
11:43 15 that the case law is pretty strict about not allowing the Fifth
16 Amendment to jeopardize an individual's indication of it,
17 especially when we look at this as a sword and shield, I have
18 all of these very specific RFAs that you've done here, and very
19 delineated, but I did just a review of the transcript. I have
11:44 20 from page 30, line 10 to page 43, line 10, all sorts of
21 questions about the knowledge of the Court's criminal record.
22 I mean, all over the place. As far as I'm concerned that area
23 of inquiry is open season.

24 **MS. BERLIN:** That's why we withdrew it.

11:44 25 **THE COURT:** Okay. I'm going to go through everything

1 I've seen so far and I'm not done.

2 MS. BERLIN: Oh, I'm sorry, we withdraw that one.

3 THE COURT: Okay. The next one is: All regulatory
4 actions in Pennsylvania, New Jersey and Texas were absolutely
11:44 5 explored. I'm looking at line 90, 15, through 108. Then
6 Pennsylvania starts at 100, line 9, through 101, line 19.
7 Texas comes up at 101, 20. But at least for 40 pages from 90,
8 line 15, to 134, line 6, it's open season on what he did or did
9 not know about New Jersey, Texas, Pennsylvania.

11:44 10 MS. BERLIN: We agree. Let me just be clear.

11 THE COURT: No, no, no, don't interrupt. I'm going to
12 tell you the areas of inquiry that are open season. This what
13 you've done here, what you've tried to delineate these things
14 is, first of all, impossible to manage. You had an opportunity
11:45 15 here to go all sorts of areas and get pretty deep into it. The
16 reason why I'm bringing this up is, I want to be clear, as
17 you're attempting to get through this direct, that you don't
18 sit and waste time because we're here to ask questions of
19 Mr. Furman about what he did or did not know as to the material
20 omissions.

21 I spot categories such as underwriting, regulatory
22 actions, default rate. There is from 186, line 6, to 192, line
23 2, and then it picks up again at 196, line 2, to 200, line 1,
24 then 188 has portions of the default rate. That was fair game
11:45 25 all over the place. He talked all about what he did or did not

1 know.

2 Underwriting is also found in here. So what I'm
3 trying to say is, pretty much every area that is relevant for
4 what you're trying to prove, you touched on in his depo. So
11:45 5 what am I restricting here? Because I'm very troubled, when
6 I've got in his depo, there's no way we can coffin this to one
7 or two questions. These are swaths of areas that you explored.
8 I don't see any holding back on anything regarding at least
9 default rate, criminal record, regulations, underwriting, the
11:46 10 relationship between Fidelis, their rate of return, when they
11 worked with Par Funding, communications with Abbonizio,
12 communications with Vagnozzi.

13 I guess to state it another way, I'm looking in the
14 reverse now. What area did you not ask about at all that would
11:46 15 actually allow me to keep the Fifth Amendment muzzle on Furman?
16 Because right now it looked like you got into almost every area
17 and you know where he's going, so there's no shortage of a
18 problem. You should be able to ask him, and he should be able
19 to answer. Can you just -- I don't need you to give me a
11:46 20 technical response.

21 What arena -- let's talk about arenas, because we
22 can't, under the Fifth Amendment case law, sit here and try to
23 delineate question by question, line by line in such a specific
24 fashion. If you waded into the pool of criminal record,
11:47 25 default rate, regulatory knowledge, underwriting, percentage of

1 return, you waded in. Once you waded in, it's open. He
2 answers, he's waived the Fifth, and it's fair game as far as
3 I'm concerned, because if not, you would unfairly prejudice him
4 for his invocation of the Fifth Amendment.

11:47 5 I'm just worried because I'm looking at these notes
6 about how representations were made on behalf of Fidelis.
7 Sure, you may not have asked that specific question, but it
8 would be really hard for me -- for example, you have 1.80, for
9 example. When you told potential investors in the Fidelis
11:47 10 promissory notes that New Jersey securities' regulators
11 retracted their funds, that Par Funding had violated the state
12 security's laws, you knew that statement was false.

13 As far as I can tell, from about page 90, line 15, to
14 100, line 8, you had all sorts of questions regarding his
11:48 15 knowledge of New Jersey securities regulators and what they
16 told them. You may not have asked that question, that
17 structured, but it would be, in my view, totally inappropriate
18 to take that off the table because you waded in to all the
19 regulations. So let me give that example. Why don't we just
11:48 20 take one.

21 How do you propose that an area like question RFA 80
22 is not fair game based upon what you talked about in the depo?

23 **MS. BERLIN:** Yes. So RFA 80, that when he told them
24 that, so on that date, when he had the conversation that he
11:48 25 didn't know that he knew it had been retracted, I didn't ask

1 him that. I asked him about other matters in there. I didn't
2 ask him that question. I didn't go to -- I didn't even show
3 him the recording that we knew was at issue when he made the
4 representation.

11:48 5 **THE COURT:** Well, I take it you didn't show him the
6 recording. But you understand my concern, Ms. Berlin, based
7 upon the Fifth Amendment and the way in which all circuits have
8 interpreted it, it's essentially a sliding scale based on
9 prejudice. So if I saw that you never asked him about the New
11:49 10 Jersey regulations, let's say you were worried, you don't want
11 to go there because you know that it could be problematic
12 reasons with the Fifth Amendment. But that's not what
13 happened. There is extensive discussion about his knowledge
14 and timing of New Jersey, Pennsylvania and Texas regulations.
11:49 15 So for me to sit here and say with a straight face that you're
16 prejudiced because you don't know what's coming, he was an open
17 book about those arenas for pages of this transport. I can't
18 sit here and say, well, because that particular question was
19 not asked, it rises to the level of prejudice to make him
11:49 20 unable to essentially expand beyond what his initial Fifth
21 Amendment privilege was. That would be improper.

22 I mean, it would be such a technical reading of his
23 Fifth Amendment privilege, and it's all about prejudice. You
24 know what he's going to say. I know what he's going to say.
11:49 25 You might impeach him if he deviates from his own depo, but I'm

1 looking at his explanation.

2 Whether or not the jurors believe his knowledge and
3 his scienter and mindset on some of these things that when he
4 claims said known or not known, I get it.

5 But, for example, if you're withdrawing your concerns
6 from the criminal record of LaForte, I would venture that it's
7 the same standard that should be applied to the regulatory
8 knowledge because it goes on for pages.

9 **MS. BERLIN:** So we gave you our double-sided list. We
10 have -- I don't know if we've given this yet. But we have --
11 so 34 -- on the list that the Court has. 34, 37, 41, 43, 48,
12 50, 54, 62, 72 -- yeah. These we're all taken out. So what
13 I'm doing with Mr. Furman is, the ones I know, like, we're not
14 going to assert, I'm asking follow-up questions -- you know,
15 I'm asking questions about them as I go along.

16 The ones that we think might still be in dispute that
17 I think the Court will need to address that we're not
18 withdrawing, I'm not going to ask him things that are exactly
19 like what he said in his RFA. So all of those are coming out.
20 So we have -- I wanted to do this before we started
21 questioning.

22 **THE COURT:** My concern is this, for your benefit, the
23 reason why I'm bringing this up now during your direct is to
24 assist clarity. Because you're going to walk away from areas
25 of inquiry that I'm going to tell you, you can ask. That's why

1 I'm doing it. And by the same token, I'm letting the defense
2 know, so we don't belabor it, that I think there are certain
3 areas are being covered.

4 But, for example, just looking at one of these.
5 Number 30 talks about when he distributed marketing materials.
6 I just saw -- and I wasn't searching because I'm having to go
7 by the index, but I just saw an entire section where you are
8 confronting him or showing him, or at least discussing
9 Par Funding marketing materials. I guess my point is that it's
10 all about prejudice.

11 If there's an area that you never waded into and you
12 didn't because you were worried about the Fifth Amendment, now
13 that would be sandbagging against your case in chief. But if
14 you touched on an area, yet did not go as far as to ask
15 specific questions that you thought arguably you couldn't ask,
16 but a lot of case views on those areas have been expanded on in
17 the depo, then to me, the prejudice is minimized because it's
18 not like we're getting a true surprise. And I would argue that
19 it's a lot easier, quite honestly, than trying to go through
20 RFAs so specifically to simply talk about it in terms of swaths
21 or areas of testimony. Right.

22 It just makes a lot more sense. Default rate, fair
23 game. Criminal record on LaForte, fair game. Underwriting,
24 fair game. Regulations that were taken, fair game. Percentage
25 of return, interactions with Par Funding and some of the

1 co-defendants, fair game.

2 I mean, all of these arenas were touched on in his
3 deposition, so I can't sit here in good conscience and start to
4 delineate these things based upon the way in which questions
5 were specifically worded. There is enough covered in his depo
6 that, at least as far as I can tell, pretty much all of the
7 seven counts which you're pursuing, you covered something
8 close, if not on point, for what you have to prove in the depo
9 on each count.

10 And so I guess what I'm saying is, we spent all this
11 time and I've looked at the depo and read about, you know, 60
12 percent of it here while this gentleman is testifying, and I'm
13 also ruling on current objections, and I see enough here that
14 I'm at a bit of a loss why this couldn't be agreed to before
15 today.

16 It seems fairly straightforward that we could have
17 said, Furman pretty much was asked 90 percent of these issues
18 that the Fifth was invoked on, and therefore, these are fair
19 game and we're not going to be prejudiced.

20 Now remember, am I saying that you were going to be
21 ambushed by an RFA amendment? No, I didn't allow that. That
22 would be improper. That was the right ruling.

23 Now we're beyond that. We're not arguing that
24 anymore. Now we're arguing whether or not Furman, in his
25 direct, in his cross, called in your case or in the defense

1 case, is going to be able to essentially contradict areas that
2 he withheld testimony on in the request for admissions by
3 invoking his Fifth Amendment right.

4 What's happening now is, there's a lot of testimony
5 here that touches so closely to these areas that he invoked the
6 Fifth on that he has essentially waived his Fifth Amendment
7 right on entire chunks of what the RFA is talking about.

8 So I'm fine with no RFA admissions. I think that's
9 fine. But at the same time, he can say, as he said repeatedly,
10 at one point I invoked the Fifth, now I've decided to answer,
11 and you can go after him with anything that's inconsistent in
12 the depo. But I guess I'm wondering what arena -- if you talk
13 about in terms of a broader picture. What arena of questioning
14 is really off limits? Not specifically, but just is there one
15 section that you didn't even touch on that is part of the
16 admissions? Is there something that's broader?

17 **MS. BERLIN:** Yes. So a few things. Remember, so
18 before 2018 Mr. Furman is soliciting investors in Par Funding.
19 So when we're -- if you look in the deposition, and perhaps
20 this just -- I was trying to --

21 **THE COURT:** Listen, I don't need this. Guys, listen.
22 Neither of you.

23 **MS. BERLIN:** Let me answer --

24 **THE COURT:** I just answered the Court's questions.
25 You guys make a habit of giving me your view of the evidence.

1 I don't care. What I want to do is, I have looked at the
2 evidence because the parties did not bring it to my attention
3 properly.

4 So now that I've gotten through it for everyone, tell
5 me an area of inquiry that you would say, Judge, I never
6 touched it, and therefore, the Fifth Amendment blankets it. Is
7 there any area -- not a specific question about who said what
8 when, because if you talked about general areas, it's fair
9 game. There's no more Fifth Amendment issue on that.

10 What area did you steer clear from generally that I
11 should say, you know what, we're not going to let Furman spot
12 off on something that you don't even talk about in any of the
13 depositions. There a specific area.

14 **MS. BERLIN:** Yes. May I ask one clarifying question
15 so I may answer correctly?

16 **THE COURT:** Yes.

17 **MS. BERLIN:** So assuming that the time periods don't
18 make a difference, if he testifies about the one time period or
19 one phase of the offering, it would be viewed as possibly
20 waived with respect to the other phases or notes that he was
21 offering. With that understanding -- which I didn't apply
22 before. I was applying it by offering, you know, because
23 remember, we had three. So if they're blended together, then
24 there are some sections that still would apply.

25 **THE COURT:** Like what? Give me one example.

1 **MS. BERLIN:** Sure. So -- let's see. That he was a
2 signatory on the Fidelis bank accounts, that Fidelis is a
3 pooled investment fund, that the Form D -- the Fidelis Form D
4 filings, the -- I didn't show him or even talk about the
5 promissory note, PPM.

6 **THE COURT:** Okay.

7 **MS. BERLIN:** We didn't talk at all about -- I'm now
8 looking at these as if it's not just like training on the
9 Par Funding promissory notes, but it could be viewed as if I
10 ask him about training for the Fidelis notes, if that would
11 then waive it for the other offerings, Your Honor. Just to be
12 clear, I'm trying to give it the broadest view.

13 So I agree what the Court just said, like 31, where we
14 ask about the marketing materials used for the Par Funding
15 offering in 2017. I asked him about that for other -- for
16 different offerings. So if testifying about it for that other
17 offering waives it for this one, then a lot of these would come
18 off.

19 **THE COURT:** Let me ask you -- tell me if I'm missing
20 areas of inquiry regarding the specific -- the key of the case,
21 not background, not timing, specific allegations of what's
22 relevant in this case for purposes of you carrying your burden
23 of proof.

24 The misstatements and omissions section for six of the
25 seven counts, am I correct that really knowledge of the

1 regulatory actions and other states and failure to disclose
2 them as one, misstatement about the default rates, another one,
3 LaForte's criminal record, the lack of underwriting. What am I
4 missing or is that all the key areas?

5 **MS. BERLIN:** Lack of underwriting, regulatory actions,
6 criminal record, the 1.2 percent default rate, the onsite
7 inspections. There's the omission of the regulatory actions
8 and then also the misrepresentation about the New Jersey
9 action.

10 **THE COURT:** Got it. Okay.

11 **MS. BERLIN:** There's the misrepresentation about
12 Dean Vagnozzi's -- the regulatory actions against Dean Vagnozzi
13 is the person managing his fund.

14 **THE COURT:** Okay.

15 **MS. BERLIN:** And the misrepresentations in connection
16 with the 2020 exchange note, that he invested himself, that the
17 2020 note, you know, had the lien, the Par Funding -- all of
18 those. I'm lumping them together for the 2020 note.

19 **THE COURT:** All right. Because --

20 **MS. BERLIN:** Your Honor --

21 **THE COURT:** I'm sorry.

22 **MS. BERLIN:** -- the insurance.

23 **THE COURT:** Right, insurance. That's right. I
24 dropped that one. That's a big category.

25 **MS. BERLIN:** And I know we asked about the insurance.

1 **THE COURT:** That's one area that I will say -- I will
2 tell you, page 179, line 20, like 19:

3 Did you make any representations to any investors or
4 potential investor of Fidelis about insurance in connection
5 with the Fidelis offering?

6 **ANSWER:** At some point they changed their brochure and
7 added an insurance program (inaud.).

8 **QUESTION:** So did you tell investors or potential
9 investors about the insurance? I'm asking, did you ever
10 communicate anything about insurance to the investors or
11 potential investors?

12 **ANSWER:** We communicated about insurance, that
13 Par Funding held insurance on their advances to companies, not
14 insurance on the investment.

15 **QUESTION:** So on the loans that they were making that
16 they have insurance; is that correct?

17 **ANSWER:** Correct. And that was at some point in the
18 middle, they changed it. It was an added value.

19 **QUESTION:** What did you tell investors of potential
20 investors about that?

21 **ANSWER:** We were told that they were starting to
22 insure advances over --

23 Over what?

24 I believe it was \$50,000.

25 It goes on.

1 So would you tell me today that you did not believe
2 you were able to address insurance?

3 MS. BERLIN: No. I thought you were asking for a list
4 of all the misreps and omissions at issue, not the ones --

5 THE COURT: You inferred to me just by way of that
6 example that insurance was explored in the depo, right?

7 MS. BERLIN: Yes. And we're not asking for -- we
8 weren't saying that there should be an adverse inference. When
9 you the judge just asked me -- I thought you wanted the overall
10 list of all the difference areas. It's not an our list.

11 THE COURT: You would agree with me that probably all
12 the material areas -- and you have to understand that this is a
13 balancing act under case law for the Fifth Amendment
14 invocation. You would agree with me that all of the critical
15 areas that form misstatements or omissions that you've alleged
16 in your six of seven counts were at some point -- at one point
17 or another addressed in this deposition?

18 MS. BERLIN: Yes, maybe not in connections with --
19 because there are three offerings.

20 THE COURT: I get that they're offerings. I
21 absolutely get what you're saying, and you can make the
22 argument to slice them and dice them by offering. But let's
23 take away the years.

24 You would agree with me that when it comes to all of
25 these areas, criminal record, default rate, regulations,

1 underwriting, onsite insurance, that you were able to ask about
2 these things in his deposition?

3 **MS. BERLIN:** Yes.

4 **THE COURT:** So if that was the case, then you would
5 agree with me that it would be improper, I would say, for the
6 Court to make any ruling that would prevent these areas of
7 inquiry from being asked either by you on direct, by Mr. Hyman
8 in direct, by anyone on cross-examination, because these areas,
9 although they were certainly areas where he invoked the Fifth
10 Amendment back then, and we know because I'm looking at some of
11 the questions clearly, there was issues with the -- just by way
12 of example with the regulatory actions, it was all sorts of
13 things were being invoked the Fifth. Since then, in his depo
14 he went ahead and answered a lot of those questions.

15 So the argument that there is truly prejudice to the
16 SEC because these areas were essentially hidden or protected by
17 the Fifth is, in my view, not the case when you look at the
18 deposition where he essentially opened up and started talking
19 about a lot of these areas.

20 And so what I'm trying to get down to at a very basic
21 level is that I see very, very, very limited or few areas where
22 we're going to get into a true -- not only a true adverse
23 inference, which we can talk about later, but that are off
24 limits. The whole purposes of this exercise is to avoid there
25 being an objection either -- and it wouldn't be coming from the

1 defense because they want all of this to come in -- but an
2 objection really by you if Mr. Hyman decides to talk about
3 these arenas because he's invoked the Fifth and has relied on
4 Fifth up until the day, to the detriment or causing prejudice
5 to the SEC.

6 And my view is that's not the case. You went into
7 these areas enough that you know what's coming, and even if you
8 suffered a little bit of prejudice, it weighs way more in favor
9 of Mr. Furman who would stand to lose a lot by invoking his
10 Fifth early in the case than sitting down for a depo later. So
11 that's why that analysis changes a little bit based on what I'm
12 looking at.

13 **MS. BERLIN:** I understand. The one issue is if you
14 look at a request for admissions -- because for these causes of
15 action what he knew and should have known and when is the
16 issue. So the ones we have presented are the ones that have to
17 do with -- and if you look at the RFA, it's in 2017 and then
18 there might be the same question in 2018.

19 I guess I parsed it too finely in his deposition
20 because I avoided -- like I would ask him in an RFA about 2017,
21 which is -- we all know is the Par Funding notes. Okay, that's
22 what's happening. That's the only thing happening in 2017.
23 And a different time period is different things.

24 So I understand that if he waives it now as to a
25 different offering, in a different year, that -- or he

1 testifies about it in a different year for a different
2 offering, it would waive it for the other offerings in the
3 other years. I did not understand that.

4 **THE COURT:** And I think the reason why is because the
5 argument that we have tried to draw this distinction in his
6 depo to not wade into certain areas, I think once we're talking
7 about insurance generally, once we're talking about default
8 rates generally, or representations about, you know,
9 underwriting or things of that nature, it becomes less
10 prejudicial for the SEC, meaning that it's a sliding scale.

11 We know that it's a case-specific issue and you can
12 withdraw your invocation of the Fifth in a civil case, and the
13 whole point of it is that withdraw requires us to carefully
14 look at what has been presented and what has been shielded by
15 the Fifth so as to prevent the SEC from being prejudiced in
16 their preparation of their case.

17 So that's what the analysis holds. I think my
18 colleague, Judge Bloom -- I would put it on the record -- in
19 AIM Recycling of Florida versus Metals, 2020 Westlaw 209860 is
20 probably the best summary of the analysis that has to go into a
21 court's decision that I've seen at the district level about
22 when we go ahead and allow the withdrawal of an invocation of
23 the Fifth at the late stage of the process.

24 Again, the analysis is are you gaining unfair
25 advantage and is there unnecessary prejudice. I would argue

1 that anyone that is going to walk in unrepresented into a
2 deposition against the SEC is probably not doing something from
3 their advantage. They just are up against the wall, and I
4 think that's what happened here.

5 And when you look at unnecessary prejudice, I can't
6 find that this is the sword that I would expect from someone
7 that's really game playing, meaning if you are able to ask
8 these questions and you're able to hover around general areas,
9 for me to now say that you're prejudiced because you held back
10 asking about this particular misrepresentation as to this
11 particular offering, that you were able to ask about it
12 generally, the analysis changes, I think, for the Court.

13 Because again, we're not allowing an RFA to be
14 amended. We can talk about adverse inferences later, but I
15 don't want to have a situation where we say entire swaths of
16 his depo are not fair game because of the RFA invocation of the
17 Fifth. I think you get what I'm saying, but I'm doing it now
18 because you are going to go through your direct and you're
19 going to leave issues on the table thinking that you can't ask
20 them.

21 **MS. BERLIN:** Yes. Thank you.

22 **THE COURT:** And I'm telling you can. And I'm telling
23 the defense, more importantly, that they can. They can ask
24 about it on cross, they can ask about it on direct.

25 So do I have any issue from the defense? You guys

1 understand where I'm coming from?

2 **MR. HYMAN:** We do. There's two quick things very
3 briefly to add, Your Honor. When we were first dealing with
4 this issue, counsel for the SEC had represented to you that
5 they were tiptoeing around the subject areas of inquiry because
6 they didn't believe that he had invoked the Fifth, but clearly,
7 as Your Honor aptly noted, the same criminal charges are all
8 about the investors, the fraud, and the omission. They went
9 through all of those issues in a deposition.

10 We sent them these lists and, Your Honor, it goes
11 beyond that. Because at a certain point Ms. Berlin
12 specifically said: I'm going to go get a list of all the
13 investors, I'm going to sit down and ask you what you said to
14 each and every one of them. Instead she chose not to because
15 she said it would take too much time. And that's at page 130,
16 10 through 18.

17 At the end of the deposition, Ms. Berlin and the
18 receiver and other defendants reserved the right to keep it
19 open with Ms. Berlin saying: I will issue you interrogatories
20 with any additional issues or questions we have.

21 There's no question that Mr. Furman had an absolute
22 intent to waive the Fifth there's no prejudice to the SEC could
23 have requested, sought, and obtained any additional information
24 as evidenced by the fact that after this deposition, the SEC
25 did issue interrogatories that Mr. Furman responded to in its

1 entirety.

2 At this point in time, we're concerned about the
3 prejudice because Mr. Furman just went through two hours of
4 questioning under the instruction and understanding that he
5 couldn't provide any explanation on these leading cross --
6 examination questions based on Your Honor's ruling.

7 **THE COURT:** Hold on a minute. First of all, you have
8 to understand a couple of things here. One, you know, I'm
9 giving you guys the ability to get into these areas that in my
10 view were sufficiently explored by the deposition so as not to
11 prejudice the SEC, and therefore, the Fifth Amendment analysis
12 withdrawal is slightly different now that I have had an
13 opportunity to carefully review the deposition transcript.

14 It's no harm, no foul to anyone because we just called
15 Mr. Furman as a witness for the first time. So we're getting
16 ahead of this in the middle of the direction examination. I
17 listened carefully. There's not a single point in the SEC's
18 questioning.

19 Number one, I don't believe any of them were leading
20 or problematic.

21 Number two, they were mostly background, most of the
22 stuff is getting a baseline of knowledge. We haven't moved
23 into misrepresentations and omissions at all yet, and that's
24 why I thought it wise that since I expected that you would feel
25 limited in that regard, you are no longer so limited.

1 **MS. BERLIN:** Thank you.

2 **THE COURT:** And that's why I'm doing it now. But none
3 of the questions that were asked -- let's be very clear. None
4 of the questions that were asked, okay, earlier today suffer
5 from this Fifth Amendment problem. What this is about is --
6 and again, there's no objections to that in that regard. There
7 haven't been about the areas that were asked about the SEC
8 because they're mostly background and none of them were really
9 a problem in the deposition.

10 What I want to be very clear on, though, is, the RFAs
11 and the invocation of the Fifth, you're stuck with that.
12 You're stuck with that. I want everyone to understand. You're
13 stuck with that. That's not amended. So it doesn't matter,
14 you're absolutely right to point out that at one point you
15 withheld that and then you decided not to.

16 In fact, Mr. Furman has all but said that and set it
17 up by saying at the time I invoked my Fifth upon the
18 instruction of counsel. So nothing has really been changed in
19 the way the case is being managed, except that for this
20 witness, if we're going to prevent unnecessary prejudice to
21 Furman, the Court is opening up areas of inquiry because I find
22 that the deposition gave the SEC enough knowledge to minimize
23 the prejudice by him changing or later on withdrawing -- even
24 though I would agree, he didn't do so unequivocally, unless he
25 was concerned about it. But I think they have enough

1 information from his depo that it would be really hard to say
2 that certain areas are off limits because he invoked the Fifth.
3 But it doesn't mean the RFA changes, it doesn't mean the RFA is
4 amended. The Fifth Amendment is still in play. He absolutely
5 invoked it, that would be game playing, that would be not
6 permitted. Problematic would be if I said that Furman couldn't
7 talk about all these areas simply because the SEC feels that
8 they didn't ask about a certain year because they were worried
9 about certain RFAs, I think that's cutting it and slicing too
10 thin and that is not, to me, the level of prejudice you need to
11 keep that Fifth Amendment block in place.

12 So now we're going to have the ability to let
13 Mr. Furman answer more freely. But to be fair, not a single
14 question that has been asked of Mr. Furman invokes any of these
15 arenas that I've just talked about. We haven't even gotten
16 there. In fact, what we're going to do now is because we have
17 a court ruling in place and we have a little more latitude,
18 we'll break for lunch now and we'll allow everyone to make some
19 adjustment to the rest of the direct and cross so that
20 everybody can be prepared. And then once we've done that, I
21 think it will be make things a lot easier when we resume this
22 afternoon, because we're going to know what you can ask about
23 without having a bunch of objections. And so I think this is
24 what had to be done, but the problem we're having is, one side
25 decided to do it in an RFA angle, the other side tried to do it

1 in a page and line angle. I couldn't get either side to give
2 me a composite so the Court could be guided. So the easiest
3 thing to do is the Court's has essentially read most, if not
4 all of the depo, I'll probably finish it here in a little bit,
5 and I can now tell you if I think someone is close enough that
6 it's fair game and he can answer it. But it doesn't mean,
7 again, that the RFA isn't a blanket Fifth Amendment. I mean,
8 that's still going to be an issue. I mean, that's the bottom
9 line.

10 MS. BERLIN: So I just want to make sure I understand.

11 THE COURT: Yes.

12 MS. BERLIN: As I go through, because the RFA has
13 always been an exhibit, of course.

14 THE COURT: It still is, yeah, of course.

15 MS. BERLIN: But now I can actually ask him --

16 THE COURT: Yes.

17 MS. BERLIN: -- questions about -- about it that I
18 have, and I can cross him on those things instead of only
19 putting in the Fifth -- (cross-talk).

20 THE COURT: A hundred percent.

21 MS. BERLIN: -- that we're stuck with.

22 THE COURT: And that's what defense is stuck with.
23 They couldn't do it either and then you were going to object
24 and now they have the bandwidth. So it is, in my view, because
25 the case law actually speaks -- it's a very equitable analysis

1 by courts. You have to find a hybrid solution that can make
2 everybody comfortable so that we don't necessarily penalize
3 someone invoking the Fifth in a civil context nor do we allow
4 one side to be unduly prejudiced. This is right in the middle
5 and enough is in his depo that I'm comfortable that it's fair.
6 So we're going to do that and that's what we'll pick up with
7 after lunch. Let me bring the jurors back in, let me know to
8 come back. I'll probably tell them 1:30, just so that we have
9 some time, and then we'll pick up where we left off. I think
10 that's the easiest thing to do.

11 **MS. BERLIN:** Thank you, Your Honor.

12 **THE COURT:** What do he have do we have?

13 Terry, can you grab my jurors for me, please.

14 (Thereupon, the jury entered the courtroom.)

15 **THE COURT:** Please be seated, everyone. Folks, I
16 don't want to belabor it too much because it's only the lunch
17 hour, I'm going go ahead and just take our lunch break at this
18 time because this is a natural break. Do not be concerned. We
19 were just taking care of some evidentiary issues so that the
20 remainder of the testimony for Mr. Furman doesn't have as many
21 interruptions. We're trying to streamline it a bit. Okay? So
22 we're still going to keep with our original plan and we're
23 still on pace. I just want to let everybody know what we're up
24 to. We're going to just have him retake the stand at 1:30, and
25 I'm going to let you guys take a break now. So take your lunch

1 now. Have everybody in the jury room, ready to go at 1:30, and
2 leave your notepads, and we'll pick up with Mr. Furman back on
3 the stand at that time. All right. You are all free to go.
4 Have a great lunch break.

5 (Thereupon, the jury exited the courtroom.)

6 **THE COURT:** Okay. Everyone, please be seated. I want
7 to give everybody an opportunity to maximize their time, so
8 that you can make adjustments, if you need to make adjustments.
9 And similarly for cross-examination as well.

10 Anything else pressing? I think we all know what's
11 being permitted now. This should -- this really should
12 minimize any sort of interruption from Mr. Furman. He should
13 make his testimony cleaner, we don't have to now be navigating
14 these potholes of the Fifth Amendment. We can pretty much move
15 forward, use the RFAs as admitted, but explain what his change
16 in answer was and get into the heart of the testimony from the
17 depo, which, of course, has been fair game in terms of
18 impeachment, and we can go from there and that works.

19 I mean, to me, the depo is probably the most -- the
20 best way to summarize really what the case is about because
21 it's all going to come on credibility issues and certain things
22 regarding what Mr. Furman knew or did not know, for some of the
23 counts. Some of them are, as we said yesterday, like running a
24 traffic light. There's not going to be as much in terms of
25 scienter. But I think this will let us streamline everything.

1 Anything else pressing before I take this out to our
2 lunch break here and we take a break? Anything else from the
3 SEC side?

4 **MS. BERLIN:** No, thank you. I think this also
5 accomplishes what we wanted, which is we were going to play the
6 deposition and then do it. Because -- and thank you, because I
7 was trying to navigate three things --

8 **THE COURT:** We could still do that, but I mean, I'm
9 thinking now -- listen, take the lunch break and let you guys
10 decide. If you really wanted to do that, I can -- we can do
11 that because now this is less of an issue. So if you guys
12 think it's a streamlined way, I'm absolutely fine with that,
13 too. But now that the Court has made clear what the parameters
14 are instead of waiting till Mr. Hyman started his cross and
15 then we're going to have a million -- as Mr. Hyman was
16 suggesting, rule contemporaneously while objections are coming.
17 It's not fair for anybody, it's going to make a horrible
18 record, and it's going to be really hard for Mr. Furman to
19 answer chopped up questions.

20 So now everyone should know what the Court's latitude
21 is for the Fifth Amendment, we should be able to get this done
22 faster and cleaner. So just take the lunch break and maybe you
23 guys can come to an agreement even more so on the video, but I
24 think we know what we're doing for the rest of his testimony
25 today.

1 MS. BERLIN: Thank you. No rules barred.

2 THE COURT: Pretty much.

3 MS. BERLIN: Thank you so much.

4 THE COURT: But it all balances it out.

5 MS. BERLIN: It does. I was looking at the
6 deposition, looking at this, I don't want to infringe on his
7 Fifth Amendment.

8 THE COURT: It wasn't by accident. I can tell and I
9 said, I better just start reading because this is going to be
10 very tricky for anybody to try to navigate this and deal with
11 jumping up and down objections. This is way better.

12 MS. BERLIN: And years and offerings and I was trying
13 to do it on the fly. So thank you, Your Honor.

14 THE COURT: This is way easier.

15 Does the defense team understand what your parameters
16 are, guys, for cross? Do you guys all understand that you're
17 now able to work with the depo? You guys all understand,
18 right?

19 MR. HYMAN: Yes, Your Honor.

20 THE COURT: Good. So this should make it easier for
21 you too.

22 MS. BERLIN: Thank you.

23 THE COURT: Recess until 1:30, everyone. Okay? You
24 can leave everything here. There are no proceedings taking
25 place here. Everything will be on Zoom today. My hearings are

1 at 1:00 and then a change of plea at 4:00. Those are the only
2 two breaks. Okay.

3 (Thereupon, a luncheon recess was taken.)

4 * * *

5

6

7

A F T E R N O O N S E S S I O N

8 THE COURT: Ms. Berlin, I think you wanted to touch
9 base with the Court before I brought the jurors back in. Did
10 you have something you needed to address or no?

11 MS. BERLIN: Yeah. I just wanted to make sure that
12 the way I was planning to go about something now that the gates
13 are opened --

14 THE COURT: Sure.

15 MS. BERLIN: -- is permissible, especially since we're
16 being broadcast by Zoom and it may be sensitive. I didn't know
17 if perhaps this was an area where the Court -- until you hear
18 what I'm about to say, you might want to turn off the
19 microphone.

20 THE COURTROOM DEPUTY: It's off.

21 THE COURT: We have the broadcast off.

22 MS. BERLIN: Thank you so much. I just wanted to --
23 before I go, some of our testimony, now that the gates are
24 opened, will involve asking Mr. Furman about certain admissions
25 that he made to the FBI.

1 **THE COURT:** Admissions, okay.

2 **MS. BERLIN:** Yes. And so because that will involve
3 asking him about the FBI's investigation, and the agents, I
4 wasn't sure -- I didn't want to just do that while we're being
5 broadcast. I thought I should raise it first.

6 **THE COURT:** Yes, when you're doing your exam and
7 you're going there, if you just let me know, Your Honor, at
8 this point we're going to move into a couple of sensitive
9 areas. And I will have my courtroom deputy turn off the audio
10 so we didn't have the same thing happen like yesterday, where
11 we had undercovers disclosed and all of that.

12 **MS. BERLIN:** Thank you so much. And I won't be using
13 any, like, 302 or any document as an exhibit obviously or to
14 impeach, but I will be asking based on -- you know, based on my
15 confidential information of his interviews with them, and once
16 I start talking about the FBI agent and investigation and what
17 he admitted, I didn't want that to be out in the public arena.

18 I just felt like -- and again, I think what we're
19 learning is a little too cautious, but I don't want to infringe
20 on his rights, even personally, not a right, just his
21 reputation. I wouldn't want anyone to know that even if I
22 didn't do anything wrong.

23 **THE COURT:** Look, I think there's some sensitive
24 information there, and I think we can take that part off the
25 public broadcast so that we don't run afoul of anything there

1 on what was happening in that investigation, and to the extent
2 it'll not only protect him, but protect any ongoing
3 investigation.

4 **MS. BERLIN:** That was the other thing I was going to
5 mention.

6 **THE COURT:** Just let me know and I'll go ahead and
7 turn it off.

8 **MS. BERLIN:** Thank you. That's all I wanted to ask.

9 **THE COURT:** Thank you.

10 Yes, guys, do you have an issue on that?

11 **MR. JOHN:** Yes, Your Honor. I would just point out,
12 Your Honor, that the SEC during its 30(b)(6) -- I know we
13 talked about this before. I'm not rehashing this issue, but I
14 would just point out that during the 30(b)(6) deposition, they
15 asserted the investigative privilege, and now they want to
16 bring in evidence regarding an investigation into this matter.
17 I think that's an issue. I think there's also, on some level,
18 some 403 issues. This is not a criminal case and bring --

19 **MS. BERLIN:** We weren't asking --

20 **MR. JOHN:** -- (cross-talk) disclosed, this
21 information.

22 **THE COURT:** Well, a couple of things. Investigative
23 privilege has been asserted because at some point, as we
24 discussed, it would be FBI in the beginning of the case. We
25 have held that going too far into what's still going on. So

1 some of this is, for example -- just by way of an example, it's
2 similar to what happened when a New Jersey regulatory
3 testified, right, and his counsel came on board and said, Look,
4 some of this is still ongoing.

5 So I think the privilege, up to a certain point, some
6 of this stuff has been brought up in the public domain, and
7 we're having an open hearing on it and what we are dealing with
8 here. Remember of course that there are concerns about
9 broadcasting individuals that -- I'm not saying they could be
10 the target of an investigation, but there could be individuals
11 watching on Zoom because it is so openly disseminated, the
12 link, that it can cause a problem as opposed to if I have
13 people in my courtroom that I could lay my eyes on and know who
14 they are, if they're investors or defendants or whoever they
15 may be. So I don't have as much control, although I'm still
16 doing it for the investors' benefit. That's one.

17 Number two, I don't really think that what they've
18 invoked into the 30(b)(6) is really going to impact the concern
19 you raise here, which is let's just not have it be publically
20 broadcast in the sense that matters. That's all we're talking
21 about here.

22 **MR. HYMAN:** Our concern is a little beyond this. This
23 is a document that wasn't on their exhibit list, wasn't
24 produced in discovery, that has never been provided. The first
25 time we're hearing about its existence is right after

1 Your Honor ruled on the Fifth Amendment issue.

2 **THE COURT:** Am I missing something? I thought that
3 what you just said, Ms. Berlin, is you are going to be asking
4 questions generally about what he said to the FBI.

5 **MS. BERLIN:** Right.

6 **THE COURT:** I didn't hear anything about new
7 documents.

8 **MS. BERLIN:** I am not introducing any document about
9 this. I will ask him about what he admitted to the FBI. He
10 will answer. And then if we need to impeach him, we'll call an
11 agent who will testify. There will not be a document.

12 **THE COURT:** What document are you talking about?

13 **MR. HYMAN:** I thought she was saying that she was
14 going to be asking specific questions based on whatever the
15 investigation was.

16 **THE COURT:** Is that the same thing as pulling out a
17 new exhibit? That's not what she said. You need to listen.
18 You've got to listen. That's not what she said. You guys
19 waste my time making objections on things that aren't even
20 there.

21 **MS. BERLIN:** I'll be cautious in raising it.

22 **THE COURT:** All we're doing is we're just being
23 cautious about it, and we're allowing them to ask him questions
24 about it. Listen, you guys have advocated for this, you've
25 gotten the relief you're seeking. Everything is coming in. So

1 rain or shine, it's going to come in.

2 It's a matter of trying to figure out what you want to
3 do with the public broadcast, and I agree that it's problematic
4 to be unfettered. So just exactly as we discussed, we're going
5 to give you a heads-up and I'll mute it, and that will be it.

6 **MS. BERLIN:** Thank you.

7 **THE COURT:** And if you want, maybe you can let me know
8 when you're done, like if you moved on in the arena. And then
9 you can say, Judge, I think for the remainder of my
10 examination, it's not a problem, and then I can unmute it so
11 that people understand.

12 **MR. JOHN:** I think we did misunderstand, Judge. So
13 our apologies.

14 **THE COURT:** No worries. I thought I hadn't heard
15 that. No worries.

16 Rita, let's go ahead and grab our jurors.

17 You can retake the stand, if you don't mind. Go
18 ahead, Mr. Furman. I'll let them know you're still under oath
19 and all that. But just make sure when you get up here, I know
20 it's weird because you can't move the chair. So it's awkward.
21 You almost have to sit on the edge of your chair because it's
22 so natural to lean, and then we can't get the mic. And so we
23 know. It's not so much Gigi. She has people on the line that
24 are helping us with the realtime stuff. So they can't hear.
25 Just try to lean in. That's all.

1 **THE WITNESS:** My apologies. It sounds echoey though
2 is the only reason. Too close.

3 **THE COURT:** I hear it well, but for some reason you
4 have to be right on top of it.

5 **THE WITNESS:** Yeah, okay.

6 **THE COURT:** Go ahead and unmute for me, please.

7 For those that are watching on our live stream at this
8 point, I just want to be clear because I see people were
9 wondering. We were on mute during the testimony of Mr. Furman.
10 If there are sensitive matters that are going to be addressed,
11 the Court may mute portions of it. Please be advised. It is
12 not a technical difficulty. It is simply because the Court may
13 have to omit certain portions for security purposes, but just
14 be aware of that. Everything should be heard from here on out.
15 You'll know when the Court pauses the audio. Thank you.

16 Come on in.

17 (Thereupon, the jury entered the courtroom.)

18 **THE COURT:** Please be seated, everyone. All right.

19 Ladies and gentlemen of the jury, thank you for your
20 patience. We're going to pick up where we left off with
21 Mr. Furman. Of course he's still under oath, and we're in the
22 middle of the SEC's direct examination of Mr. Furman.

23 So with that being said, we'll turn it back over to
24 Ms. Berlin.

25 Go ahead. You may proceed when you're ready.

1 Do we need to give access to any other technical
2 devices, the ELMO, whatever you're using?

3 MS. BERLIN: I'm going to use the ELMO because it's
4 faster for this, but we are going to be playing some audio
5 recordings. So at that time, Mr. Robinson will need access.

6 THE COURT: Go ahead. We're ready to go. Go ahead.

7

8 **DIRECT EXAMINATION** (continued)

9 BY MS. BERLIN:

10 Q. So I'm showing you what we have marked as P 56. Is this
11 your Form D filing with the Securities and Exchange Commission?

12 A. Where?

13 Q. I believe -- and hold on for Mr. Robinson to give me the
14 signal -- that it should be on your screen.

15 MS. BERLIN: Only the witness's screen.

16 BY MS. BERLIN:

17 Q. Not yet?

18 A. No.

19 Q. Just one moment. It will show up on your screen,
20 Mr. Furman. Go ahead. Let us know when you see it.

21 A. Something just came up.

22 THE COURT: You guys don't see it, right? Okay.

23 MS. BERLIN: Yes, I see it.

24 BY MS. BERLIN:

25 Q. So do you see on the screen it says P 56?

1 A. Yes.

2 Q. And can we turn to the first page. You see that's just an
3 SEC attestation. And turn -- let's just scroll through it.

4 Is this your Form D filing with the Securities and
5 Exchange Commission?

6 A. It looks to be a document of that type, yeah.

7 Q. It says that it's for Fidelis.

8 MS. BERLIN: And can we just scroll down to the end to
9 see the signature block all the way at the bottom. There you
10 go.

11 You see it says -- just scroll up -- back one more
12 page. Just a little bit further. There we go. Stop right
13 there. Thank you.

14 BY MS. BERLIN:

15 Q. Do you see where it says: Issuer, Fidelis, Furman. And
16 it's a picture of Michael Furman.

17 Remember we looked at this earlier today?

18 A. Fidelis Financial Planning, not Fidelis Furman.

19 Q. I'm sorry. I was talking about the signature and the
20 signer. It says Michael C. Furman.

21 Do you see that?

22 A. I do.

23 Q. So is P 56 the Form D filing that you had filed with the
24 Securities and Exchange Commission for Fidelis?

25 A. My attorney filed this. I did not.

1 Q. At your request?

2 A. **That's what I paid him to do, yes.**

3 **MS. BERLIN:** So, Your Honor, I'd like to introduce
4 P 56.

5 (Thereupon, the exhibit was introduced into evidence.)

6 **THE COURT:** All right. Any objection?

7 **MR. HYMAN:** Nope.

8 **THE COURT:** That will be admitted.

9 (Thereupon, the exhibit was admitted into evidence.)

10 **THE WITNESS:** Are we done this or keep this?

11 **BY MS. BERLIN:**

12 Q. You can set it aside. Thanks. We're going to turn back to
13 it.

14 So this is the document we looked at earlier today and
15 now you're admitting this is, in fact -- whereas, before you
16 asserted the Fifth, you're now going to admit this is your
17 filing with the SEC, correct? Is that yes?

18 A. **My attorney asserted the Fifth for me then, and since then,**
19 **I have not. Yes. This is a document my other attorney filed**
20 **for me.**

21 Q. Mr. Furman, we looked at it. We showed you your signature
22 underneath the statement that said you were making the
23 representations under penalty of perjury --

24 A. **Under advice of counsel. Under advice of counsel, yes,**
25 **which is on the document.**

1 Q. But you did, that's all I was establishing. Okay.

2 MS. BERLIN: Can we just scroll back just one more
3 page, Mr. Robinson? Thank you.

4 BY MS. BERLIN:

5 Q. So do you see this goes up through item 16?

6 A. I see number 16.

7 Q. Okay. And do you remember that before the break, we went
8 through this document and I showed you two things, two item
9 numbers that you agreed with me based on what was shown on the
10 document, they were not correct? Do you recall that, two of
11 the 16 items?

12 A. I remember seeing the numbers, yes.

13 Q. Okay. Let's go ahead and move on. We're just going to
14 show you another one of the -- another exhibit that we
15 identified as an exhibit number for a -- the same type of
16 thing. Just a moment.

17 All right. So we're going to show you the other two
18 Form Ds and ask you if these are true and correct copies. So
19 one was P 56 and the other ones -- let's see if Kevin finds it
20 faster than me.

21 MS. BERLIN: You did?

22 IT TECHNICIAN: No.

23 MS. BERLIN: Let's go back to 56, Kevin. Thank you.
24 We'll scroll through here. There we go. There's another one.

25 BY MS. BERLIN:

1 Q. So do you see in P 56 --

2 MS. BERLIN: Can we keep scrolling? Yes.

3 BY MS. BERLIN:

4 Q. And this -- is this a true and correct copy of the Form D
5 filing for your company Fidelis Financial Planning?

6 MS. BERLIN: And can we scroll down to the signature
7 page? It will show the date. Right there. Thank you.

8 BY MS. BERLIN:

9 Q. Do you see here it says: Fidelis Financial Planning,
10 Michael Furman, president, May 10th, 2019? Do you see that?

11 A. I see it.

12 Q. Okay. So this is -- this is already in evidence,
13 Mr. Furman. But this is another Form D that you had -- either
14 you directly or you directed your lawyer to file it with the
15 Securities and Exchange Commission, correct?

16 A. Yes. My attorney filled it out and filed it.

17 Q. Okay. At your request? You paid him to do it for you?

18 A. I paid him to do what was needed to be done, yes.

19 Q. Did you review it?

20 A. He asked me a series of questions. I don't know if I
21 actually saw the actual document beforehand. Saw it
22 afterwards.

23 Q. And after you reviewed it, did you tell him? This is the
24 same document that we looked at right before the break where we
25 identified together two falsehoods.

1 Did you tell your lawyer, at any time, the information
2 in these Form D filings that he filed with your signature were
3 false?

4 A. I can't speak to what was supposed to be on the document or
5 what he did, no.

6 Q. I'm asking you whether you told him it was false.

7 Mr. Furman, let's backup.

8 The two inconsistencies, the two lies to the
9 government in this document, one, the number of investors in
10 Fidelis. We walked through it. In your form you stated there
11 were two. And in reality you had at least 29.

12 Did you ever make any effort to correct this filing
13 with the SEC to reflect the truth about your offering?

14 A. I was unaware there are any errors. I was asked a series
15 of questions from my attorney, which I answered truthfully and
16 honestly, and he filed whatever necessary documents, which is
17 what I hired him to do so. If it was 29 or 27 it could have
18 been a typo and that's why there's two there. I can't speak to
19 that. You would have to ask him.

20 Q. Well, I'm asking you. Is this Erik Weingold?

21 A. Erik Weingold was my securities attorney, yes.

22 Q. So my question is very simple. Did you review these Form D
23 filings bearing your signature, your written signature that
24 were made with the U.S. government on your behalf? Did you
25 review them before they were filed?

1 A. I don't believe beforehand, no.

2 Q. Did you review them afterwards?

3 A. At some point I asked for copies. I don't know when they
4 sent them, if he ever sent them, to be honest with you.

5 MS. BERLIN: Can we show P 52 only to the witness.

6 (Thereupon, the exhibit was introduced into evidence.)

7 BY MS. BERLIN:

8 Q. I have hard copies here, Mr. Furman, if at any time you'd
9 rather hold the hard copy. I know that's always my preference
10 let me know. And I'll ask the Court if I can approach to give
11 it to you.

12 So we're looking at -- on your screen P 52. Do you
13 recognize this document?

14 A. Yes. Looks familiar.

15 Q. And if you turn to -- if we can scroll to Pdf page 3. Is
16 that your signature?

17 A. Yes. Looks like a certificate that I would sign, or my
18 assistant would have me sign.

19 Q. And this a Fidelis document?

20 A. Yes.

21 MS. BERLIN: Your Honor, I'd like to introduce P 52.

22 MR. HYMAN: Best evidence, Your Honor.

23 THE COURT: That will be overruled. It may be
24 admitted.

25 (Thereupon, the exhibit was admitted into evidence.)

1 **MS. BERLIN:** Is it available to everyone? Thank you.

2 All right. Can we scroll back to page 1.

3 **BY MS. BERLIN:**

4 Q. Now, Mr. Furman, while we're doing that, Par Funding paid

5 you 20 percent interest on the money that you sent up to

6 Par Funding, correct?

7 A. **Paid the fund.**

8 Q. 20 percent, correct?

9 A. **Total, correct.**

10 Q. To Fidelis, which was your company?

11 A. **The fund, yes.**

12 Q. And again, "the fund" is called Fidelis?

13 A. **United Fidelis Group, which is my company, and then Fidelis**
14 **Financial Planning, which I called it the fund, yes.**

15 Q. So when you refer to the fund, you're talking about --

16 A. **Fidelis Financial Planning, not United Fidelis Group.**

17 Q. And Fidelis Financial Planning, I might call it Fidelis
18 today just because it's a little shorter. If I do that, will
19 you understand that Fidelis means Fidelis Financial Planning?

20 A. **I will try.**

21 Q. Okay. And if you reference "the fund," should we
22 understand that you're referring to Fidelis?

23 A. **I will state Fidelis Financial Planning. I don't want to**
24 **confuse the two. They both have the word Fidelis in them.**

25 Q. Understood. Understood. So Par Funding would pay you 20

1 percent on the amount of money, the investor money that you
2 sent to Par Funding for the purchase of a promissory note; is
3 that right?

4 A. **Correct.**

5 Q. And then we're looking at P 52. This is a promissory note
6 from Fidelis to one of those investors whose money you sent to
7 Par Funding for the 20 percent note; is that right?

8 A. **Correct.**

9 Q. And it's -- this one went out to Gary DeLucco?

10 A. **Correct.**

11 Q. And you paid him 9 percent?

12 A. **That was the rate for that amount, correct.**

13 Q. So Par Funding would pay you 20 percent, and 9 percent of
14 that amount, once you got it, 9 percent would go to
15 Mr. DeLucco; is that right?

16 A. **Correct. In that instance.**

17 Q. So on Mr. DeLucco's investment, you would get 11 percent
18 and he would get 9?

19 A. **Incorrect.**

20 Q. Tell us.

21 A. **25 percent of that went into ABFP. They were the**
22 **management.**

23 Q. We're going to get there.

24 So 11 percent -- correct me if I'm wrong -- 20 percent
25 comes in. 11 percent goes to -- goes towards Fidelis, 9

1 percent goes to Mr. DeLucco, and out of your 11 percent you
2 send 25 percent of that figure to Dean Vagnozzi's company ABFP
3 Management for the work that they're doing; is that correct?

4 **A. Whether they took it out beforehand or not, I can't -- they**
5 **did all the management and accounting. I believe it was**
6 **actually in the fund, but I can't attest to that, whether they**
7 **took their fee out. I don't believe so.**

8 Q. We can do it again.

9 **MS. BERLIN:** Pull up P 205.

10 **BY MS. BERLIN:**

11 Q. I was just trying to establish, Mr. Furman, that -- my
12 question is Par Funding sends 20 percent to you, and that was
13 Fidelis, and 9 percent -- you then send 9 percent off to the
14 investor, correct?

15 **A. ABFP Management handled that for a majority of the time.**
16 **But yes.**

17 Q. So the investor gets 9 percent and the balance, the 11
18 percent that's there is, you give a cut to ABFP Management and
19 you get yours; is that right?

20 **A. Not every time. There's a class there, as you can see on**
21 **the document. But for this specific document, yes, he got 9**
22 **percent. Not everybody.**

23 **MS. BERLIN:** So we do not need to show him the chart
24 again. We can take that down. Let's go back to P 52.

25 **BY MS. BERLIN:**

1 Q. Now, Mr. DeLucco -- one of your -- the people who gave
2 money to you in connection with the Par Funding investment,
3 correct?

4 A. **Correct.**

5 Q. And did you have any investors who contributed towards the
6 Par Funding investment who were not senior citizens?

7 A. **Can you define senior citizen? Yes, I did. I know that.**

8 Q. You had one, your business partner, Roland Manuel, he's not
9 a senior citizen, correct?

10 A. **He is not a senior citizen.**

11 Q. And can you name any other? Let's say below the age of 60.

12 A. **Nicholas Pancoast.**

13 Q. And?

14 A. **Off the top of my head, I know that -- I don't know the
15 Meyer's age off the top -- I don't know my clients' ages --**

16 Q. They're more than 60, I'll proffer that.

17 A. **Close to 60, but they wouldn't qualify for Medicare. I'm
18 not sure how many clients qualify for Medicare at 65, what's a
19 senior citizen.**

20 Q. Okay. So you can identify your business partner and then
21 Nicholas Pancoast sitting here today?

22 A. **Pancoast.**

23 Q. Pancoast, sitting here today, correct?

24 A. **That's two of them.**

25 Q. And can you name any others?

1 A. **Off the top of my head, no, I cannot.**

2 Q. And you --

3 A. **(Cross-talk) -- retirees.**

4 Q. -- you solicited -- you advertised this investment as a way
5 to invest retirement money, correct?

6 A. **As an investment.**

7 Q. Did your advertisements discuss investing retirement money,
8 Mr. Furman?

9 A. **Some did, I'm sure. Yes.**

10 Q. Now, when you -- when the SEC sent you the request for
11 admissions that we looked at earlier today, you asserted the
12 Fifth Amendment at that time as to whether or not you were
13 distributing Par Funding marketing materials.

14 Do you recall that?

15 A. **That's what my attorney told me to do at that time.**

16 Q. I'm not asking about that. I'm just asking if you recall
17 that or if you want me to show you the document. We're trying
18 to move forward.

19 A. **I don't need to see it.**

20 Q. Well, if you can't answer, we'll have to go to the
21 document.

22 **MS. BERLIN:** So let's pull up P 553.

23 **BY MS. BERLIN:**

24 Q. And in P 553 -- and I'll find it for you. The only
25 question is whether or not you remember, you agree with me that

1 you asserted the Fifth Amendment concerning whether or not you
2 distributed Par Funding marketing materials. And that will be
3 at --

4 **MS. BERLIN:** Let's go to 31. It's on page 7.

5 **BY MS. BERLIN:**

6 Q. So looking at your request for admissions in evidence as P
7 553, Mr. Furman, you've been -- the SEC initially asked you
8 about the marketing materials.

9 Do you agree with me that you answered under penalty
10 of personal asserting your Fifth Amendment rights when asked to
11 admit that Exhibit F, which we'll show you in a moment, is a
12 true and correct copy of a Par Funding marketing material you
13 distributed to potential investors in at least 2017 when
14 soliciting them to invest in Par Funding promissory notes? Do
15 you see that?

16 A. I see it on the screen.

17 **MS. BERLIN:** And so now can you show Exhibit F,
18 please.

19 **BY MS. BERLIN:**

20 Q. And is -- Exhibit F is the Par Funding marketing material
21 being referred to.

22 Do you see that in the bottom right-hand corner?

23 A. I see Exhibit F.

24 Q. So I was just trying to establish, initially you asserted
25 your Fifth Amendment right in refusing to provide an answer as

1 to whether or not you distributed this marketing brochure to
2 investors when soliciting them to invest in Par Funding.

3 Correct?

4 A. **Back on August 2020, under advice of counsel, that's what I**
5 **answered, yes.**

6 Q. And so you did, in fact, distribute this Par Funding
7 brochure to people that you were soliciting for the Par Funding
8 investment; would you agree with me?

9 A. **This looks familiar, but it was a very old brochure. I**
10 **know that they sent a much newer brochure the majority of the**
11 **time. I think I saw that when I very first met them.**

12 Q. So was this a brochure that you distributed early on?

13 A. **I can't say if I distributed this one. I know I**
14 **distributed Par Funding brochures to some investors, but this**
15 **was a very old brochure. This looks like a pdf that they sent.**

16 Q. We have the original. But I'm just trying to establish
17 whether you distributed the Par Funding brochures.

18 A. **I'm sure in the beginning. If somebody asked, but that**
19 **wasn't the majority of the brochures that we used, no.**

20 Q. But you distributed maybe to Renee Meyer?

21 A. **I can't recall what I sent her, whatever information that I**
22 **could to help them understand.**

23 Q. Okay. We'll get to Renee Meyer's marketing materials,
24 Mr. Furman. So your assertion is you don't know -- your
25 testimony, now that you're testifying, is that you don't

1 remember -- I just want to make sure I understand.

2 A. **People and dates? No. It looks familiar, this document,**
3 **yes.**

4 Q. And you don't remember if you ever distributed it?

5 A. **I tried to provide as much information. So if I had that**
6 **in my possession, I wouldn't not show it to somebody, but I**
7 **can't tell you a date of when.**

8 Q. I'm not asking for a date, Mr. Furman. I was just asking
9 you a very general question.

10 A. **Lacks like something that I would have given out if I was**
11 **able to.**

12 Q. Okay. Thank you.

13 And in addition to --

14 **MS. BERLIN:** We can take this off the screen.

15 **BY MS. BERLIN:**

16 Q. In addition to what we're looking at now, you also
17 distributed -- did you also distribute this brochure, this
18 Par Funding brochure? And I'll hand it to you.

19 A. **No.**

20 Q. It has your business card inside?

21 A. **Yeah.**

22 Q. Some brochures inside?

23 A. **Yes.**

24 Q. And do you see it has the Par Funding corporate? This is
25 already in evidence.

1 A. Yes.

2 Q. And behind it, it has this document that we were just
3 looking at on the screen?

4 A. Okay. Yeah.

5 There you go.

6 MS. BERLIN: May I approach the witness?

7 THE COURT: You may.

8 MS. BERLIN: Thank you.

9 BY MS. BERLIN:

10 Q. And so this folder, if we can just open it to page 2. This
11 folder -- and we're looking on the screen -- it has your
12 business card in it, and then on the other side, it has the two
13 marketing brochures for Par Funding? This is yours?

14 A. At some point, yeah.

15 Q. And would you -- when would you give this type of folder or
16 this Par Funding folder to potential investors? Did it happen
17 at events that you would hold?

18 A. Most likely, yes. This is, again, very early on. It
19 changed since then, but yeah.

20 Q. Well, let's look at the chart that you're holding.

21 MS. BERLIN: May I approach the witness, Your Honor?

22 Can I have it back? I'll give it right back. There
23 you go.

24 BY MS. BERLIN:

25 Q. Do you see that in the left-hand pocket, that chart which

1 is a little blurry on our screens, but it actually says that
2 chart alone shows financial information through December 31st,
3 2018.

4 Do you see that?

5 A. **It's not what's on the screen, but yes.**

6 Q. I just -- yeah. So we're not being confusing, we'll turn
7 off your screen.

8 A. **Yes.**

9 Q. So in the folder that you distributed, that you said was
10 used early on, I'm asking you to agree -- whether you agree
11 with me that, in fact, that folder has marketing material in
12 the left-hand pocket that is -- it states at the top it's a
13 chart showing financial information through December 31st,
14 2018.

15 Do you see that in the upper left-hand corner?

16 A. **Correct.**

17 Q. So you would agree with me that this folder was -- and this
18 information is from at least after December 31st, 2018?

19 A. **At some point, yes.**

20 Q. And when you talk about early on, you're actually talking
21 about -- you first learned about Par Funding in 2017?

22 A. **Very late 2017, yes.**

23 Q. Through Dean Vagnozzi?

24 A. **Correct.**

25 Q. And you saw an advertisement in a magazine that led you to

1 an event in Philadelphia?

2 A. **Correct.**

3 Q. And while you were there in Philadelphia, you meet with
4 Dean Vagnozzi from A Better Financial Plan?

5 A. **Among many others, yes. He was the host.**

6 Q. And during that trip, did you also meet Perry Abbonizio?

7 A. **Later, yeah. Later in the -- part of that trip, yes.**

8 Q. And part of the trip, you all got together and you went
9 over to Par Funding's offices; is that correct?

10 A. **Yeah. We did a walkthrough.**

11 Q. And later you met Perry Abbonizio and Joseph LaForte and
12 other people; is that right?

13 A. **Briefly, yeah.**

14 Q. And then you came back. It was a two-day seminar?

15 A. **Off the top of my head, sounds about right. It wasn't very
16 long, yeah, a couple of days.**

17 Q. Yeah, in early November?

18 A. **November sometime, yeah. I don't remember the dates, but
19 yes, sounds about right.**

20 Q. And then when you came back from Philadelphia, did you --
21 were you living in West Palm Beach at the time? You came back
22 to the West Palm?

23 A. **Always, yes.**

24 Q. And when you got back from Philadelphia at some point in
25 November, would you agree with me that you almost immediately

1 started pitching the Par Funding investment to people?

2 A. **No. I would not agree with that statement.**

3 **MS. BERLIN:** Okay. I wonder if we could show the
4 witness P 18. It's not in evidence yet.

5 (Thereupon, the exhibit was introduced into evidence.)

6 **MR. HYMAN:** No objection to its introduction.

7 **THE COURT:** We'll admit that, P 18.

8 (Thereupon, the exhibit was admitted into evidence.)

9 **BY MS. BERLIN:**

10 Q. So we can show this now, P 18. Thank you.

11 So P 18, do you see that this is an e-mail? It's from
12 you to Russ Meyer and Renee Meyer?

13 A. **I see that.**

14 Q. And they eventually made an investment -- initially they
15 made an investment in an ABFP promissory note and then in
16 Fidelis notes.

17 Would you agree with me?

18 **MR. HYMAN:** Compound.

19 **THE COURT:** Overruled.

20 A. **I know they invested with me eventually, yes.**

21 **BY MS. BERLIN:**

22 Q. But they also invested with ABFP. Would you agree with me?

23 A. **I cannot speak to that. I wasn't a part of that at that
24 time.**

25 Q. Oh, you weren't?

1 A. I helped out, but this was not my fund.

2 Q. You didn't, like, provide any documents to -- you didn't
3 make that deal happen?

4 A. I provided them with information. They knew it very well.
5 I was going to Philadelphia to learn about a new investment
6 that I was excited about, they were excited about. I learned
7 about multiple investments. They wanted more information on
8 specifically merchant cash advance, and as a client of mine
9 with annuities, yes, I provided more information to help them
10 out while I was getting my fund together.

11 Q. And because your fund wasn't created yet, meaning Fidelis,
12 they initially -- after you told them about it, they invested
13 in Dean Vagnozzi's company, ABFP?

14 A. I wanted them to invest in my fund, and they were very
15 impatient, did not want to invest or did not want to wait the
16 couple of months I needed.

17 Q. So if I understand you correctly, you testified you were
18 not involved in their investment in ABFP?

19 A. Well, they learned about ABFP, about Par Funding and
20 merchant cash advance in general from me. I provided
21 information about my trip that I got from Dean.

22 Q. I'm not talking about that. A few minutes ago, when I
23 asked you about their investment in an ABFP promissory note,
24 remember, I said first they invested in the ABFP note, and then
25 they invested in a Fidelis note? And I understood your

1 testimony to be that you weren't involved in their investment
2 in the ABFP promissory note.

3 A. I didn't fill it out for them, no. I was trying to get
4 them to invest in my fund. They did not want to wait.

5 Q. So what was your involvement in their investment in the
6 ABFP fund, if anything?

7 A. I provided Dean Vagnozzi's phone number to them.

8 Q. Well, let's look at this e-mail. So this is your e-mail to
9 the Meyers.

10 A. Yes.

11 Q. And initially -- today you're acknowledging this is your
12 e-mail?

13 A. Correct.

14 Q. And initially, in your request for admissions, which we
15 looked at before, you asserted the Fifth Amendment when asked
16 about this specific document.

17 Do you recall that?

18 A. Can you repeat that question? Sorry.

19 Q. When the SEC asked you about this e-mail that we're seeing
20 on the screen, P 18, initially you swore under oath asserting
21 the Fifth Amendment to this document. And specifically, you
22 were asked: Admit that Exhibit G -- which is what we're
23 looking at now -- is a true and correct copy of your e-mail
24 message to a potential investor in November of 2017. And you
25 asserted the Fifth.

1 Do you remember that?

2 A. Way back on August 2020, under advice of counsel, I believe
3 that was like the first week this happened, yes.

4 Q. And now you're going to testify about it, correct?

5 A. Truthfully answer, yes.

6 Q. So in P 18, you would agree with me that you're telling the
7 Meyers -- if you look at the fourth line down, where it says --
8 you're telling them that you've spoken directly with your
9 partner. And at the top, you see it says: MCA investment
10 information, video and summary.

11 Do you see that?

12 A. Yes, I see that.

13 Q. And you referenced that you've spoken directly with your
14 partner. Who is your partner? What partner are you referring
15 to here?

16 A. I was considering the future working relationship with
17 Dean Vagnozzi.

18 Q. So the partner here is a reference to Dean Vagnozzi?

19 A. My company was partnering with ABFP Management, yes.

20 Q. And then if you look down further, you let them know that
21 Perry, who is a part owner and does over 50 million dollars of
22 his own money invested, who is someone I will make sure you
23 meet some day as he will be in town with me soon.

24 Do you see that?

25 A. Yes. Those are the few days in Philadelphia.

1 Q. So you told the Meyers that Perry Abbonizio -- and I'm
2 assuming that Perry means Perry Abbonizio who we heard testify?

3 A. **That's who I meant, yes. That was who I was referencing,**
4 **correct.**

5 Q. And that's the same person who was here testifying a couple
6 of days ago in court?

7 A. **Yes.**

8 Q. And you told the Meyers that he's a part owner of
9 Par Funding and that he invested 50 million dollars of his own
10 money?

11 A. **That's what he represented and said, so yes.**

12 Q. And you heard Mr. Abbonizio, who is not a party to this
13 case, testify that he didn't invest 50 million and he never
14 told you that, correct?

15 A. **He represented he did as retained earnings, yes.**

16 Q. My question is different. I'm just asking, did you hear
17 him testify to that in court?

18 A. **I heard him, yes.**

19 Q. And you sent -- and we're looking at P 18. You sent the
20 Meyers in November -- this is November 18th, 2017 -- videos and
21 information about the Par Funding investment, correct?

22 A. **Correct.**

23 Q. So this is shortly after you get back from your trip to
24 Philadelphia where you first learned about it. You said that
25 was in November. You couldn't remember exactly when. And here

1 we are, this is November 18th. So at the most, it's been 17
2 days.

3 Would you agree with me?

4 A. If it was the 1st, correct.

5 Q. Can we turn to page 2 of P 18.

6 MS. BERLIN: If we could blow up that paragraph, the
7 bottom.

8 BY MS. BERLIN:

9 Q. You told the Meyers that the bad debt for the company was
10 under 1 percent.

11 Do you see that?

12 A. I see that.

13 Q. And then you went on to tell them that touting the due
14 diligence that was done at Par Funding.

15 Do you see he that?

16 A. I see that.

17 Q. And you also referenced that there are background checks
18 done, criminal and background checks.

19 Do you see that?

20 A. That's what I was told.

21 Q. Did you ever tell the Meyers that the person who was
22 running Par Funding and taking investor money was himself a
23 criminal?

24 A. I cannot say that he ever was, but I did not remember
25 having that exact discussion.

1 Q. So you didn't tell the Meyers that?

2 A. **Not in that manner, no.**

3 Q. Well, in any manner did you tell the Meyers that Joseph
4 LaForte worked at -- in any manner at Par Funding and was a
5 convict?

6 A. **At some point.**

7 Q. When?

8 A. **I can't speak to exactly. I didn't know in the beginning,
9 no.**

10 Q. When did you tell Renee Meyer?

11 A. **I didn't speak to Renee as much or else I would have
12 discussed it with her.**

13 Q. When did you tell Russ?

14 A. **It would have been in my office.**

15 Q. When?

16 A. **Sometime in 2019 most likely, 2020. I can't remember the
17 date. I saw them many times. They have many investments with
18 myself.**

19 Q. Right. And they live near this courthouse, don't they?

20 A. **Russ Meyer?**

21 Q. Yes.

22 A. **I wouldn't say they live close by. They live the opposite
23 way of where I live. North of me.**

24 Q. And you're familiar, Mr. Furman, with a declaration from
25 Renee Meyer in this case that -- swearing under oath that you

1 never told them about Mr. Furman (sic) being a convict?

2 A. I can't speak to what Renee speaks to.

3 MR. HYMAN: Objection, Your Honor.

4 THE COURT: Overruled.

5 You may answer. Go ahead.

6 A. Can you repeat the question? Sorry.

7 BY MS. BERLIN:

8 Q. You aware of a sworn declaration from Renee Meyer in this
9 case that you never told them about Joseph LaForte being a
10 convict? You're aware of that declaration?

11 MR. HYMAN: Improper impeachment.

12 THE COURT: Overruled.

13 A. I'm aware of it.

14 BY MS. BERLIN:

15 Q. And, in fact, after you got that declaration, you sent an
16 e-mail to Russ Meyer taking issue with it because you were very
17 angry; is that right?

18 A. I didn't take issue with anything other than they wanted my
19 help, and I said, as they made a material misrepresentation to
20 the Court, I would suggest they go somewhere else for help.

21 Q. And so while the Meyers say that you never told them about
22 this, it's your testimony that you did and that you told them
23 in 2019. Am I understanding you correctly?

24 A. I did not say a date. I said probably sometime in 2019,
25 that was early on. I did not learn of it early on. And I

1 **never would say he was the owner.**

2 Q. Let's backup for a second. During your deposition you
3 testified that you told Frank Nash that Joseph LaForte was a
4 convict.

5 Do you recall that?

6 A. **Yeah.**

7 Q. And that's the same Frank Nash who testified here
8 yesterday, the pilot who testified that you never told him
9 that, correct? There's only one Frank Nash?

10 A. **Frank Nash had said that three Par Funding owners were in
11 my event.**

12 Q. Mr. Furman --

13 A. **(Cross-talk) -- being part of the Gambino crime family.**

14 Q. Mr. Furman, if you could just listen to me.

15 A. **Sure.**

16 Q. And answer the question.

17 Are we talking about the same Frank Nash? The
18 person -- the man who was here yesterday --

19 A. **Yes.**

20 Q. -- who testified that you never told him that?

21 A. **Yes.**

22 Q. And you're claiming he, too, is a liar?

23 A. **A hundred percent.**

24 Q. And you're also claiming that you did not know that Joseph
25 LaForte -- when -- did you ever find out that Joseph LaForte

1 was a convicted felon?

2 A. **At some point I did, yes.**

3 Q. When?

4 A. **I do not remember the date. Mark Nardelli told me, another
5 fund manager, and it was probably 2018 I think it was. But not
6 as the owner.**

7 Q. I'm sorry. In what year do you think it was?

8 A. **I believe 2018. Again, I can't remember exactly.**

9 Q. In 2018?

10 A. **I'm thinking. Yeah.**

11 Q. So shortly after --

12 A. **It was not -- it definitely was not 2017. 2019 or late
13 2018.**

14 Q. But what we understand is, in 2017 -- in 2017 you only
15 learned about this in the last month of 2017, correct?

16 A. **(Head nodding.)**

17 Q. And the Meyers, they invested with you several times over
18 the course of years, correct?

19 A. **Several investments, yes.**

20 Q. But in Par Funding?

21 A. **Well, they have two and it rolled over, yes.**

22 Q. Well, we can look at the chart if you can't remember. But
23 would you agree with me --

24 A. **A couple of times.**

25 Q. -- that they continued investing --

1 A. Yes.

2 Q. -- with you in 2019?

3 A. Correct.

4 Q. And you learned about the Joseph LaForte criminal record in
5 2019? 2018? What did you say?

6 A. Probably late '18 or '19. Again, I don't remember exactly
7 when. I testified to that before or deposed about that. I'm
8 not sure what the answer to that is.

9 Q. And you were aware within your first year of doing business
10 with Par Funding and Dean Vagnozzi that Mr. LaForte's family
11 had been previously wrapped up in a real estate fraud, correct?

12 A. Is that a question? Sorry.

13 Q. Yes.

14 A. Can you repeat the question?

15 Q. Sure. You're aware of -- I'm sorry.

16 MS. BERLIN: Your Honor, we should probably --
17 sensitive subject.

18 THE COURT: Sure. Let's go ahead and mute that. If
19 we can go ahead and take off the audio, please.

20 All right. Go ahead.

21 BY MS. BERLIN:

22 Q. You first became aware of Joseph LaForte's criminal history
23 within the first year of doing business with Par and Vagnozzi.
24 And you learned that he and his family had been wrapped up in a
25 real estate fraud; is that correct?

1 A. Can't say it was in the first year, but yes. When I
2 learned about it, that's what I was told.

3 Q. Well, Mr. Furman, do you recall being interviewed by the
4 FBI on July 28th, 2020?

5 A. I barely remember any of that. But yes, I remember that
6 day. I will never forget that day.

7 Q. And you spoke with two FBI agents?

8 A. Forcibly, yes.

9 Q. Forcibly? It was in your office --

10 A. (Cross-talk) -- it was not in my office. It was...

11 Q. Mr. LaForte -- I'm sorry, Mr. Furman --

12 A. -- (cross-talk)

13 MR. HYMAN: Your Honor, can you (cross-talk) the
14 question?

15 THE COURT: He said voluntarily. He withdrew that.

16 A. It's voluntarily.

17 THE COURT: Oh, it's not voluntarily? Okay. You can
18 deal with the repercussions of that in a separate lawsuit.

19 Let's go ahead and continue, please.

20 MS. BERLIN: Thank you.

21 BY MS. BERLIN:

22 Q. And during that interview, you told the agents, didn't you,
23 that you became aware of LaForte's criminal history within the
24 first year of doing business with Par Funding and Dean
25 Vagnozzi?

1 A. I can't remember anything I said that day. I remember what
2 I would have said, and I don't know the dates. I don't know
3 the date today.

4 Q. Were you aware of Joseph LaForte's use of aliases to
5 conceal his involvement at Par Funding?

6 A. I know he went by Joe Mack. And I wouldn't use the word
7 "alias" but besides...

8 Q. His real name was Joe LaForte and you -- but you would
9 agree with me that he would use other names, including
10 Joe Mack?

11 A. (Cross-talk) -- probably five minutes in my entire life,
12 but yes, I probably heard Joe Mack and I know Joseph LaForte
13 eventually, I heard, or I know of.

14 Q. So you met Joe LaForte for five minutes in your whole life?

15 A. Probably that first event, and I passed through that office
16 one other time, yes. I didn't stay for dinner at that event.

17 MS. BERLIN: Let's look at P 192. Only show the
18 witness, please.

19 (Thereupon, the exhibit was introduced into evidence.)

20 BY MS. BERLIN:

21 Q. Is this your handwriting?

22 A. Looks to be, yes.

23 Q. These are your notes?

24 A. At some point, it looks like, yes.

25 MS. BERLIN: Your Honor, I'd like to introduce this as

1 an exhibit.

2 **THE COURT:** That will be admitted.

3 (Thereupon, the exhibit was admitted into evidence.)

4 **BY MS. BERLIN:**

5 Q. And if you look at P 192 --

6 **MS. BERLIN:** I wonder if we can please turn to Pdf
7 page 2.

8 We can publish. Thank you.

9 **BY MS. BERLIN:**

10 Q. Do you see on page 2, Pdf page 2 --

11 **MS. BERLIN:** May I go speak with -- it looks like our
12 exhibits are different.

13 **THE COURT:** Yeah.

14 **BY MS. BERLIN:**

15 Q. I'm sorry, looking at page 3, do you see in your notes
16 where it says: All goes to Joe LaForte?

17 A. **Yes.**

18 Q. Okay. And you understood that these notes are about
19 Par Funding; would you agree with me or do you want to go
20 through them?

21 A. **No. I remember when this -- or what this was.**

22 Q. And then if we turn to the second to last page. And -- I'm
23 sorry, let's go -- we can go ahead and just go to the last
24 page.

25 This is a list of investors that you had for

1 Par Funding?

2 A. **That's a list of -- yeah.**

3 Q. This is your handwriting, correct?

4 A. **Now it is, yeah. It wasn't on that page.**

5 Q. You remember we went through this chart earlier today and I
6 read you some of the names, for like the first six months of
7 your investment offering.

8 Do you remember that?

9 A. **Yes.**

10 Q. And you agree with me that this is a list of the people who
11 invested in Fidelis for Par Funding?

12 A. **Looks to be, yes.**

13 Q. This isn't all of them, but this is a partial list,
14 correct?

15 A. **Correct.**

16 Q. And then did you also, Mr. Furman, Mr. LaForte had a home
17 in Jupiter, right?

18 A. **I was told that, yes.**

19 Q. Did you help him get that house?

20 A. **Not at all.**

21 Q. You didn't help him with it?

22 A. **Not even -- no. Not in the least bit.**

23 Q. Okay. And, in fact, you were concerned about the issue
24 with Joseph LaForte and you went and you spoke with Perry
25 Abbonizio about it, correct?

1 A. **At some point, yeah.**

2 Q. And you also went and talked to Dean Vagnozzi about it,
3 right?

4 A. **Tried to, yes.**

5 Q. And -- but you never -- like, you didn't -- you went and
6 spoke with him about your concerns but you did not disclose
7 this to the investors who were giving money to Par Funding,
8 correct?

9 A. **After I knew about it, and spoke to -- and tried to get the
10 correct story, I could only relay what I was told.**

11 Q. My question is: Did you tell the investors -- did you tell
12 all of these investors, all of the investors who gave money to
13 Par Funding -- you didn't -- you didn't tell them all about Joe
14 LaForte's criminal conviction, correct?

15 A. **I can't tell you I told every single one of them. I can't
16 say that some of them invested before I even knew about Joseph
17 LaForte's criminal history.**

18 Q. Well, when I asked for your deposition, you'll agree with
19 me that you testified that you told Frank Nash --

20 A. **Correct.**

21 Q. -- that Joseph LaForte was a convict?

22 A. **Correct.**

23 Q. And do you recall that --

24 **MS. BERLIN:** This is another sensitive moment.

25 **THE COURT:** It's still muted.

1 **BY MS. BERLIN:**

2 Q. That when you were interviewed by the FBI, that you
3 acknowledged it to them, that you did not mention Par Funding's
4 past regulatory history and LaForte's past criminal history.

5 Do you recall that?

6 A. **Not offhand. I remember what I -- that day was, like I**
7 **said, not something that I can remember word for word.**

8 Q. Okay. So are you saying that all of the investors who have
9 sworn under oath and stated that you never told them about this
10 conviction, that they're all lying?

11 A. **I can only tell you the ones that I've read and**
12 **specifically remember those situations. I know Frank Nash lied**
13 **yesterday, yes.**

14 Q. Mr. Furman, you sent a lot of e-mails to your clients and
15 to potential investors, correct?

16 A. **Generally.**

17 Q. And we just looked at one with Renee Meyer, right?

18 A. **Russ and Renee, yes.**

19 Q. And you -- so you have a lot of e-mails through Fidelis and
20 text messages, correct?

21 A. **I wouldn't say a lot of text messages, no.**

22 Q. Well, we'll look at those later. But can you point to a
23 single e-mail or text message to any client -- because they're
24 all in this case -- any one ever written representation to any
25 client that Mr. LaForte is a convict?

1 A. I handled most of my conversations in person. Most of my
2 business was in person.

3 Q. But that's not my question. And your attorney will get to
4 ask you cross-examination. I'm just trying to get through
5 direct, and this is --

6 A. -- (cross-talk) I don't remember.

7 Q. These are clear direct questions. My question is: Can you
8 point me to -- out of thousands of e-mails and text messages --
9 a single -- with clients -- a single e-mail to anyone, to any
10 client or potential investor telling them and disclosing that
11 Joseph LaForte of Par Funding is a convict, yes or no?

12 A. There very well may be e-mails, but I can't point you to
13 one.

14 Q. Because you would be presenting it as an exhibit? I'm
15 sure, right?

16 A. I turned over my e-mails to you voluntarily. I'm not sure
17 why you're bringing it up.

18 Q. Mr. Furman, I don't want to argue. I'm just trying to ask
19 you direct questions.

20 A. I'm answering truthfully, answering your questions.

21 THE COURT: Move along. Let's go.

22 MS. BERLIN: Thank you.

23 BY MS. BERLIN:

24 Q. Mr. Furman --

25 MR. HYMAN: Your Honor, would you mind turning

1 the Zoom back on?

2 MS. BERLIN: I think we're going to be hitting it a
3 lot.

4 THE COURT: We'll leave it off for now.

5 MS. BERLIN: I think we're going to be going quite a
6 bit.

7 THE COURT: We'll leave it off. Let's go.

8 MS. BERLIN: I wonder if we could go to P 218, and
9 this is not yet in evidence. So just show it to the witness,
10 please.

11 (Thereupon, the exhibit was marked for identification.)

12 BY MS. BERLIN:

13 Q. And, Mr. Furman, while that's coming up, you testified a
14 few moments ago that you only met Mr. LaForte for five minutes?

15 A. I can't speak to the exact time period, but it was
16 extremely brief.

17 MR. HYMAN: No objection to 218 being shown to the
18 jury.

19 THE COURT: 218 will be admitted at this time.

20 (Thereupon, the exhibit was admitted into evidence.)

21 BY MS. BERLIN:

22 Q. And is this a -- this is one of your sales events.

23 MS. BERLIN: Can we publish it?

24 BY MS. BERLIN:

25 Q. This is one of your sales events?

1 MS. BERLIN: Maybe we can rotate it a bit.

2 A. Looks like it.

3 BY MS. BERLIN:

4 Q. And you would get -- so that's the group of potential
5 investors who heard about your investment --

6 MS. BERLIN: Can we rotate it?

7 BY MS. BERLIN:

8 Q. -- who heard about your investment on the radio or in a
9 newspaper advertisement? Those are the means that you used to
10 advertise?

11 A. They got there one of many ways.

12 Q. So we can talk about this briefly. Did you ever advertise
13 by radio?

14 A. Briefly.

15 Q. Did you advertise on television?

16 A. I think I did one or two times, yeah.

17 Q. Did you advertise in the Palm Beach Post?

18 A. That was predominantly, yes.

19 Q. And on the internet, there were websites, correct?

20 A. I had a website, yes.

21 Q. And so here, this is a picture of you speaking to a group
22 of potential investors in West Palm?

23 A. Looks to be, yes.

24 Q. And these people would have come to this event through one
25 of those means, right?

1 A. Most likely.

2 MS. BERLIN: Can we take that down and show P 215.
3 Only to the witness. It's not in evidence yet.

4 MR. HYMAN: No objection, Your Honor.

5 MS. BERLIN: Can we introduce --

6 THE COURT: That will be admitted. You can publish.

7 (Thereupon, the exhibit was introduced into evidence.)

8 (Thereupon, the exhibit was admitted into evidence.)

9 MS. BERLIN: 215, Your Honor, can I just hand the hard
10 copy to the witness?

11 THE COURT: You may.

12 MS. BERLIN: We can pass it around maybe.

13 THE COURT: Sure.

14 BY MS. BERLIN:

15 Q. So looking at 215, can you turn the page in this document
16 to the section -- you might see I gave you my handwritten
17 one right out of the bracket around it. It references --

18 MS. BERLIN: Your Honor, can I just approach the
19 witness? It will be easier.

20 THE COURT: Sure.

21 BY MS. BERLIN:

22 Q. Could you just read in that portion starting with "We will
23 show you"? This is from your website, right?

24 A. Yes. An old one, yes.

25 Q. Okay.

1 A. "We will show you how to not rely on the stock market."

2 Keep going?

3 Q. Yes.

4 A. "Due diligence up close allows our investors to sleep.

5 Over 100 million without any late payments. Market

6 alternatives do work. How many of your advisors go and meet

7 the owners of your stocks, mutual funds or insurance companies,

8 and how many investments have you made and can say that you

9 fully understand how they work inside and out. Then we will

10 earn your trust." I believe that's the end of your bracket.

11 Q. So you told these potential investors that one of the

12 things you touted was that you did due diligence yourself,

13 correct?

14 A. Correct.

15 Q. And that involved going and meeting the people who were

16 running these companies that you were investing in?

17 A. Yes, visited them in person, and we offered to do the same

18 for them.

19 Q. And you told them you would earn their trust, right? So

20 they could trust you to do this due diligence for them?

21 A. Earn their trust in a variety of ways, yes.

22 Q. I'm talking about the paragraph we just looked at, that you

23 read is about due diligence and the fact that you were going to

24 go and personally check out the people who are running the

25 companies that you're investing in so investors can sleep

1 better at night.

2 Is that about right?

3 A. That's up close, yes. I visited Par Funding in person,
4 correct.

5 Q. And -- but you did not disclose to the investors that
6 Joseph LaForte at Par Funding, who is -- according to you is
7 getting all the money, was a convicted felon even though you
8 knew, correct?

9 A. Incorrect. They never represented to me that Joseph
10 LaForte was an owner. I did not know any criminal history when
11 I first got involved, which is when this was published, and
12 those notes that you're talking about was during the pandemic,
13 after the exchange. That was my notes on Dean Vagnozzi's
14 attorneys' Zoom meeting. So we're talking a three-year
15 difference there.

16 Q. And again, I just want to make sure I understand you
17 correctly.

18 Is it your testimony that you did not tell -- admit to
19 the FBI, to two FBI agents on July 28th, 2020, that you became
20 aware of LaForte's criminal history within the first year of
21 doing business with Par Funding and Vagnozzi?

22 A. Well, there's a few incorrect statements there. Can I
23 address each of them fully without being interrupted?

24 Q. So did you tell them that or not? I'm not asking if that
25 statement --

1 A. It was not on July 28th, first of all. It was July 27th.
2 Also, I do know that I don't remember everywhere that I said
3 that. And I can't say the first year. I don't believe it was
4 in the first year.

5 Q. And do you recall that on July 28th, 2020, you admitted to
6 the FBI that you knew of the previous criminal history held by
7 Par Funding owner and operator?

8 MR. HYMAN: Objection, asked and answered.

9 THE COURT: Overruled.

10 You may answer.

11 BY MS. BERLIN:

12 Q. Owner/operator, Joseph LaForte?

13 A. I believe it was the 27th again. And I can't recall
14 exactly what I said that day.

15 Q. I'm not asking verbatim. I'm asking if you admitted to the
16 FBI agents that you knew that Joseph LaForte was an owner or
17 operator of Par Funding?

18 A. At that point in July -- was it July 2020? I found out
19 about his criminal history.

20 Q. So I'm not asking about the criminal history. My question
21 is -- I'll ask it again. Sorry.

22 A. Sure.

23 Q. My question was whether or not you told two FBI agents in
24 July 28th or July 27th, 2020, that you knew of the previous
25 criminal history that was held by Par Funding owner/operator,

1 Joseph LaForte. In other words, did you tell the agents that
2 you knew LaForte was an owner and operator of Par Funding? Did
3 you admit that?

4 **A. I don't believe verbatim. Again, I remember that at that**
5 **point, I was starting to put puzzle pieces together after the**
6 **pandemic.**

7 Q. So again, I'm not asking verbatim. I'm just asking
8 generally, did you acknowledge, did you admit to them that
9 yeah, you knew Joseph LaForte was an owner --

10 **A. We talked about Joseph LaForte.**

11 Q. Did you admit to them that you knew that Joseph LaForte was
12 an owner and operator of Par Funding?

13 **A. If they implied that he was an owner at that point, maybe I**
14 **agreed. Again, I don't remember that conversation verbatim.**

15 Q. Okay. And you -- just a bit ago, you remember you
16 mentioned something about Frank Nash referencing Joseph LaForte
17 and the Gambino crime family?

18 **A. I think he referenced myself.**

19 Q. I thought you testified to him about Gambino?

20 **A. I believe Frank Nash did, yes.**

21 Q. Okay. But you testified earlier today sort of indicating
22 to all of us that you thought that was sort of a wild concept?

23 **A. That I'm part of the Gambino crime family, yes, I think**
24 **that that's one of the wildest statements I've heard.**

25 Q. Not that you are. Mr. Furman, do you remember that in July

1 27th or 28th, 2020, when you were interviewed by two FBI
2 agents, that you actually discussed with them things that you
3 had read about LaForte's family ties to the Gambino crime
4 family? Do you remember you yourself discussing that with the
5 FBI?

6 **A. I remember them bringing up the mob indication, yes. Or**
7 **implication or insinuation as well as to myself, which is why I**
8 **remember it. I am 25 percent Italian, if that goes against me.**

9 Q. But you would agree with me that you did not bring up
10 Joseph LaForte or his criminal record every time to potential
11 investors who were considering investing in Par Funding?

12 **A. Not every meeting, no.**

13 Q. And so you did not bring it up to every person who invested
14 in the Par Funding through Fidelis.

15 Would you agree with me?

16 **A. I did not have a checklist, no.**

17 Q. And it's -- no where is that disclosed in any of the --
18 like, the Par Funding brochure that we looked at or in any
19 other marketing materials; is that correct?

20 **A. Not that I've seen.**

21 Q. And you hosted several seminars for Par Funding in the
22 past, correct?

23 **A. No.**

24 Q. You might call them sales events or --

25 **A. No. Events that were not Par Funding events by any means,**

1 **no.**

2 Q. So the photo that we looked just a few minutes ago with the
3 audience in the restaurant, would you ever have events like
4 that where you would speak to an audience about investing in
5 Fidelis and investing in Par Funding?

6 A. **Not just Par Funding, yes.**

7 Q. Okay. But Par Funding was one of the investments that you
8 would discuss during the events?

9 A. **At some of the events, yes.**

10 Q. And so when you had these seminars and these events, and
11 you discussed Par Funding with the audience, like in the
12 picture that we saw, would you disclose to the audience
13 Mr. LaForte's criminal record, or involvement in the company?

14 A. **I did not disclose, no. I was never told that was an owner
15 at that point, no.**

16 Q. Right. But you understood that he was in charge of the
17 sales and underwriting at a minimum, correct?

18 A. **He worked in sales or underwriting. I didn't know his
19 title.**

20 Q. Let's talk about it a little bit more. After you first met
21 Joseph LaForte in early November 2017, you went and tried to
22 get more information about him, correct?

23 A. **More information?**

24 Q. You tried to have a discussion with him and find out what
25 you could. You performed some sort of online search about him.

1 Is that true?

2 A. In November 2017, no.

3 Q. Are you saying that at some point you did or --

4 A. Once I found out, yes. It was not in November 2017. It
5 was not in 2017 at all.

6 Q. And what did your search results show?

7 A. Once Mark Nardelli told me about the family history, we
8 found a -- well, what we could read of a Bloomberg article.

9 Q. You read a Bloomberg article.

10 My question is: What did you learn about Mr. LaForte
11 when you went online and you searched his name?

12 A. Again, it's all I saw, was a part of a Bloomberg article.
13 We could not read all of it. And so that he's why I called
14 Perry and I tried to call Dean. I only talked to Mike Tierney.
15 I spoke to Mark Nardelli. But that's who I bounced most of
16 this off of.

17 Q. You learned that he served prison time, correct?

18 A. Yeah. I don't remember how much.

19 Q. And you learned that there were two different crimes,
20 correct?

21 A. Yeah. I'm not going to say I understood both of them, but
22 yes.

23 Q. But you generally understood there were two criminal
24 charges, two incidents and that he went to jail, correct?

25 A. At the time, honestly, I believed it was one with multiple

1 counts or something. I'm not sure how you would term that
2 honestly, though. But yes. And then we thought he went to
3 jail for two years, I believe it was, or a year or something
4 like that, and served his time.

5 I had learned about the real estate or was told about
6 the real estate and his family.

7 Q. Are you concerned that he's watching?

8 A. Not in the least bit.

9 Q. By Zoom? No?

10 A. Should I be?

11 Q. I just asked if you were concerned.

12 A. Are you insinuating I should be?

13 THE COURT: We don't ask questions back.

14 A. Okay. My apologies.

15 THE COURT: Let's move on.

16 MS. BERLIN: Thank you.

17 BY MS. BERLIN:

18 Q. And with respect to the events you held for -- about
19 Fidelis, you held about five of them?

20 A. United Fidelis or --

21 Q. You had about five events for potential investors in your
22 Fidelis offering, correct?

23 A. Estimated, yeah. Sounds about right.

24 Q. And you were told you actually knew that Mr. LaForte was
25 one of the founders of the company, correct?

1 A. We were told that a family -- I believe it was his family
2 money or something started it. \$500,000 is what we were told.
3 I believe Dean told that story.

4 Q. I'm not talking about his family or anyone other than him.
5 You were told, you knew, that Mr. LaForte was one of the
6 founders of the company? That he had helped start the company?

7 A. I was told part of his family money, yes.

8 MS. BERLIN: I wonder if we can just -- can we go to
9 his deposition by video to show him, at page 147, lines 21
10 through 25?

11 MR. HYMAN: Your Honor, it's improper impeachment.
12 She's got to first lay the predicate.

13 THE COURT: Let's go ahead and do that, please. It's
14 a little tough today.

15 MS. BERLIN: I just -- that's the exact same question
16 I'm about to show. I will in a moment.

17 THE COURT: Cue up -- for proximity, just cue up the
18 video and then let's ask him again.

19 MS. BERLIN: I will, yes. I'm always going to ask
20 Kevin to do it first because it takes a few minutes, and then
21 I'll turn back to the witness.

22 BY MS. BERLIN:

23 Q. So, Mr. Furman, do you recall having your deposition taken?

24 A. I do recall.

25 Q. And it was May 26th, 2021?

1 A. I'm going to take your word for it, yeah.

2 Q. Okay. So you don't remember the interview with the agents,
3 but you do -- that's what I'm asking. Do you remember you
4 being deposed by the SEC?

5 A. I remember it happened. I just don't remember what was
6 said then. Generally, I do.

7 MS. BERLIN: Oh, it's page 147, lines 21 through 25.

8 BY MS. BERLIN:

9 Q. And when you testified that day, did you testify
10 truthfully?

11 A. To the best of my knowledge. Tried to.

12 Q. And it's your testimony today that -- I'll just ask again,
13 while we're waiting. Didn't you understand that Mr. LaForte
14 was one of the founders of Par Funding?

15 A. I understood he and his family put up the money, yes.

16 Q. Were you told that Mr. LaForte -- I'm not asking about
17 anyone else -- were you told that Mr. LaForte helped start the
18 company?

19 A. In some capacity, yes.

20 Q. That's fine.

21 MS. BERLIN: We don't need to go there, Kevin. We can
22 move on. Thank you.

23 BY MS. BERLIN:

24 Q. And at a certain point -- sorry, one moment.

25 Eventually you learned that Joe LaForte was an owner,

1 correct?

2 A. **I do today.**

3 Q. But I mean we've already established, you went in and you
4 spoke with Perry Abbonizio and Dean Vagnozzi about your
5 concerns regarding Mr. LaForte.

6 And do you remember approximately when that was?

7 **MR. HYMAN:** Asked and answered.

8 **THE COURT:** Overruled. If he can remember.

9 **BY MS. BERLIN:**

10 Q. Do you remember when?

11 A. **I don't remember when.**

12 Q. And so for about late 2017 until July 2020, you coordinated
13 with Dean Vagnozzi to place investors and their investment
14 principal into Par Funding; would you agree with me?

15 A. **ABFP. It wasn't really personally Dean Vagnozzi.**

16 Q. I'm sorry. So are you saying -- can you explain -- are you
17 saying yes, but not Dean Vagnozzi, his company ABFP?

18 A. **Well, the recruiting event I went to, we were -- when we
19 started our funds, we worked -- Dean hired or somebody there,
20 it was Michael Tierney who was in charge of managing us. So I
21 spoke really -- we were to speak with Mr. Tierney.**

22 Q. So it would be more accurate to say that late 2017 until
23 about July 2020 you coordinated with Vagnozzi's company ABFP to
24 place investors and their investment principal into
25 Par Funding?

1 A. **Correct.**

2 Q. And you believed at that time that Dean Vagnozzi, who
3 you've identified earlier today as your partner, that he seemed
4 to raise funds for investments that, to you, Mr. Furman, seemed
5 like they were fraudulent?

6 A. **Can you repeat that question?**

7 Q. Sure. You believed that Mr. Vagnozzi seemed to raise funds
8 for investments that, to you, seemed like they were fraudulent.

9 Do you agree with me?

10 A. **Not entirely.**

11 Q. Mr. Furman, did you believe that Mr. Vagnozzi would lie to
12 investors?

13 A. **I have no idea what Dean Vagnozzi would tell his investors.**

14 Q. So that's not my question.

15 Mr. Furman, do you remember being interviewed by FBI
16 agents in July 27th or 28th, 2020, and telling them that for
17 the last three years you had coordinated with Dean Vagnozzi to
18 place investors and their investment principal into Par Funding
19 and that Mr. Vagnozzi seemed to raise funds for investments
20 that, to you, seemed like they were fraudulent.

21 Do you remember that?

22 A. **Not particularly. I had stopped working with Dean Vagnozzi**
23 **and A Better Financial Plan very early on in 2020. I started**
24 **in late 2019, over numerous agreements, and I felt he was**
25 **lackadaisical. So yes, I severed ties with his business.**

1 Q. My question was just whether you remember telling FBI
2 agents. Like, did you tell FBI agents that?

3 A. I can't recall exactly. I'm sure we went over Dean. I
4 know we did.

5 Q. But I'm not asking verbatim. I think you understand that.
6 Did you tell the FBI that?

7 A. Again, word for word, I can't remember what I told the FBI
8 that day. Did we discuss Dean? Yes.

9 Q. Mr. Furman, I'm going to say it one more time so that the
10 record is very clear.

11 A. Sure.

12 Q. And it's very clear that you understand what I'm asking.

13 I'm not asking -- when I ask you if you said something
14 to the FBI, or to FBI agents, I am not asking if it is
15 verbatim. And by that I mean, word for word. I am asking you
16 if you conveyed certain information to them. The wording might
17 be different, the message and facts and details, the same.

18 Do you understand?

19 A. Yes.

20 Q. Would you like to change your answer?

21 A. I know that we went over, and I probably conveyed that he
22 did a fraudulent offering or fraudulent investment that I found
23 out about at some point. Or was part of one.

24 Q. And you were paying from 2017 -- or late 2017 until 2020,
25 you were paying Mr. Vagnozzi and his company, ABFP, to do the

1 accounting for your business operations; is that correct?

2 A. **They earned part of the interest, yes.**

3 Q. And that's why they get their 25 percent cut?

4 A. **Correct.**

5 Q. On the investments you put into Par Funding, right?

6 A. **Strictly that.**

7 Q. And -- one moment. Let's go back to Renee Meyer and Russ
8 Meyer. And you had testified that you didn't have any
9 involvement, other than giving them Dean Vagnozzi's phone
10 number. I'd like to discuss that in more detail.

11 **MS. BERLIN:** I wonder if we could please show the
12 witness 104.

13 (Thereupon, the exhibit was introduced into evidence.)

14 **MS. BERLIN:** It hasn't been admitted.

15 **MR. HYMAN:** No objection.

16 **THE COURT:** You can admit that.

17 (Thereupon, the exhibit was admitted into evidence.)

18 **MS. BERLIN:** 104, please.

19 **BY MS. BERLIN:**

20 Q. So do you see that P 104 is your e-mail to
21 Perry@ParFunding. Is that Perry Abbonizio?

22 A. **Yeah.**

23 Q. Excuse me?

24 A. **Yes.**

25 Q. And to Dean Vagnozzi, correct?

1 A. **Correct.**

2 Q. And you're e-mailing them -- so initially we looked at
3 them. I could put that up. We looked at your e-mail to the
4 Meyers in November 2017, where you sent them the videos and all
5 the information about Par Funding offering.

6 Do you remember that?

7 A. **I do.**

8 Q. Now we're looking -- this is January 30th, 2018. And do
9 you see your e-mail to Perry Abbonizio and Dean Vagnozzi
10 stating that you: Want to check in and see if you know exactly
11 when we will be able to get Russell Meyer's MCA note started as
12 I know it was about 14 days out a couple of weeks ago. His
13 funds have been sitting there for over 30 days and really need
14 to get these invested and start his income.

15 Do you see that?

16 A. **I see that.**

17 Q. You go on to ask if there's anything that you can do to
18 help. Do you see that? It says: Can someone please let me
19 know when Dean's fund will be set up and if I can do anything
20 to help.

21 Do you see that?

22 A. **I do.**

23 Q. Let's turn to 103.

24 **MS. BERLIN:** Is there an objection to this?

25 (Thereupon, the exhibit was introduced into evidence.)

1 **MR. HYMAN:** It's the already in.

2 **THE COURT:** No objection. It will be admitted P 103
3 at this time.

4 (Thereupon, the exhibit was admitted into evidence.)

5 **BY MS. BERLIN:**

6 Q. So do you see here in the middle of the page your e-mail to
7 Alexis Abbonizio? And we heard her testimony yesterday. Do
8 you remember?

9 A. **Yes.**

10 Q. And here you're writing to Alexis at Par Funding, asking
11 for an update on Russ Meyer's final MCA paperwork.

12 Do you see that?

13 A. **I do.**

14 Q. And they're asking for details about it.

15 Do you see that?

16 A. **I do.**

17 Q. And if we look down, we see correspondence between you,
18 Alexis Abbonizio and Russ Meyer. Russ Meyer would be the
19 investor, correct?

20 A. **Correct.**

21 Q. And you're writing back and forth through early January
22 about the Par Funding, the note agreements.

23 Do you see that?

24 A. **Yes. I'm cc'd.**

25 Q. And if you look at the next page, do you see that

1 Alexis Abbonizio is sending Russ Meyer the Par Funding
2 promissory note, security agreement, and other information for
3 the investment?

4 A. I see that written, yes.

5 MS. BERLIN: Let's turn now to 424.

6 (Thereupon, the exhibit was introduced into evidence.)

7 MR. HYMAN: No objection.

8 MS. BERLIN: Can we introduce it?

9 THE COURT: You may.

10 MS. BERLIN: 424.

11 THE COURT: Admitted.

12 MS. BERLIN: Thank you, Your Honor.

13 (Thereupon, the exhibit was admitted into evidence.)

14 BY MS. BERLIN:

15 Q. Do you see this is your e-mail to Perry Abbonizio at
16 Par Funding from January 24th, 2018, and the subject says:
17 Urgent help for client for new note coming.

18 Do you see that?

19 A. I see that.

20 Q. And this is an e-mail about Russ Meyer and his investment,
21 correct?

22 A. Correct.

23 Q. And you write to Perry that your client wants to know
24 exactly when his money is going to be invested.

25 Do you see that?

1 A. **I see that.**

2 Q. And you're talking about the rate of interest on the note.
3 Do you see that as well?

4 A. **I do.**

5 Q. And you provide Mr. Meyers' contact information to Perry
6 Abbonizio.

7 Do you see that?

8 A. **I did earlier, yes. There it is.**

9 Q. And you're asking Mr. Abbonizio if he can e-mail and call
10 him to assure him this is being invested ASAP.

11 Do you see?

12 A. **Yeah. He called me upset, and I forwarded the information.**

13 Q. You can set P 424 aside.

14 Can we turn to 549. Do you recognize what we're
15 showing you on the screen premarked as P 549 as your e-mail
16 exchange with Dean Vagnozzi?

17 (Thereupon, the exhibit was introduced into evidence.)

18 **MR. HYMAN:** (Inaud.)

19 **MS. BERLIN:** It's P 549.

20 **BY MS. BERLIN:**

21 Q. P 549 is correct on the screen.

22 Do you see your e-mail exchange with Dean Vagnozzi?

23 A. **This is Dean's e-mail to me, yes.**

24 Q. And if we scroll down, it goes for several pages. Do you
25 see that it's your exchange there from you to him?

1 A. Yes.

2 Q. And if we scroll down, you see continuation of the string?

3 A. Correct.

4 Q. And this is -- these are your e-mails with Dean Vagnozzi?

5 A. Looks to be, yes.

6 MS. BERLIN: Your Honor, I'd like to introduce this
7 exhibit.

8 THE COURT: Any objection?

9 MR. HYMAN: Last one, Dean Vagnozzi, is hearsay but...

10 THE COURT: That will be moved in.

11 (Thereupon, the exhibit was admitted into evidence.)

12 MS. BERLIN: So let's publish it P 549.

13 BY MS. BERLIN:

14 Q. Now, Mr. Furman, here you write to Dean Vagnozzi. This is
15 still about the same note from the Meyers. Do you see that?

16 The subject line: Need update on new note for Meyer.

17 Do you see it?

18 A. Correct.

19 Q. And that's -- here you're writing to him in the middle of
20 the page -- maybe if we scroll down a little bit more. And do

21 you see where you write to Dean Vagnozzi about the Meyers'

22 note? "Thanks, Dean. I know I already did the EIN with the

23 IRA holding company for you, and please let me know if you need

24 any help with setting up his monthly bank account. I'll let

25 him know to expect it to be done any day now. Thanks let me

1 know." And it goes on to thank him.

2 Do you see that?

3 A. **I do.**

4 Q. So did you do the EIN with the IRA holding company for the
5 Meyers?

6 A. **Yes.**

7 Q. And for this investment?

8 A. **I assisted them, yes.**

9 Q. And that was CAMA, the CAMA Plan?

10 A. **I believe so, yes.**

11 Q. That we heard Alexis Abbonizio to testify about yesterday?

12 A. **Should be one in the same.**

13 Q. So it's a way for people to invest their retirement money?

14 A. **In varies places, yes.**

15 Q. Well, in this instance, in Mr. Vagnozzi's, company ABFP,
16 and to Par Funding. That's what we've been looking at. You
17 understand that, correct?

18 A. **Mr. Meyer invested in multiple places from that. So yes.**

19 **We utilized that account for multiple.**

20 Q. These e-mails we have all been looking at, they've all been
21 with Par Funding and Dean Vagnozzi about his investment in
22 ABFP --

23 A. **Correct.**

24 Q. -- that you e-mailed him about for the merchant cash
25 advance Par Funding investment, correct?

1 A. These e-mails, yes.

2 MS. BERLIN: I wonder if we can please turn to the
3 next one, which will be 550. It's only for the witness.

4 (Thereupon, the exhibit was introduced into evidence.)

5 MR. HYMAN: No objection.

6 MS. BERLIN: I'm sorry. This is included. We can set
7 this aside. Sorry. Thanks.

8 MR. HYMAN: No objection to this.

9 MS. BERLIN: Okay.

10 THE COURT: That will be admitted at this time.

11 (Thereupon, the exhibit was admitted into evidence.)

12 MS. BERLIN: And then we have P 551.

13 (Thereupon, the exhibit was introduced into evidence.)

14 MS. BERLIN: It's not admitted yet. We're just
15 showing it to the witness.

16 MR. HYMAN: No objection.

17 MS. BERLIN: P 551.

18 THE COURT: That will be admitted.

19 (Thereupon, the exhibit was admitted into evidence.)

20 BY MS. BERLIN:

21 Q. This is your e-mail exchange also concerning the Meyer
22 notes. Do you see that? At the top it's from you to Renee
23 Meyer and Russ Meyer, the investors. Forward MCA paperwork.

24 Do you see it?

25 A. From Russ.

1 Q. From them to you. Do you see it?

2 A. **Correct.**

3 Q. And they're asking you -- they're saying they haven't
4 received anything by e-mail, that the MCA agreement has been
5 executed and asking if it's coming through the mail.

6 Do you see it?

7 A. **I do.**

8 Q. And you're on this e-mail string which continues to be
9 about getting the paperwork executed, right?

10 A. **Generally, yeah.**

11 Q. Yes, correct?

12 A. **Correct.**

13 Q. And we don't even see Dean Vagnozzi on these e-mails about
14 sending the Par Funding promissory notes. It's you, Alexis
15 Abbonizio, and your clients, the Meyers, correct?

16 A. **Yes. I'm the cc to Alexis from Russ.**

17 **MS. BERLIN:** Let's turn to 556, please. It's only for
18 the witness.

19 (Thereupon, the exhibit was introduced into evidence.)

20 **BY MS. BERLIN:**

21 Q. Mr. Furman --

22 **MR. HYMAN:** No objection.

23 **MS. BERLIN:** Thank you. Can we introduce it?

24 **THE COURT:** You may. 556 is admitted.

25 (Thereupon, the exhibit was admitted into evidence.)

1 **BY MS. BERLIN:**

2 Q. Exhibit 556, here's another e-mail about the same note
3 purchase that the Meyers made in ABFP to put their money into
4 Par Funding. This one is from February 2018.

5 Do you see he it?

6 A. **I do.**

7 Q. And we start, it's a message from you, right? Do you see
8 it?

9 A. **Yes.**

10 Q. And you're reaching out to Mr. Vagnozzi about the Meyers'
11 MCA paperwork and that the wire's getting done that day.

12 Do you see that?

13 A. **I do.**

14 Q. And you're also advising him that you're going to get the
15 paperwork today as well.

16 Do you see that?

17 A. **I see that.**

18 Q. And if you could turn to the next page, please. Do you see
19 a writing to Dean Vagnozzi about the Meyers' note letting him
20 know -- why don't you read that, please. It starts with "I'm
21 waiting on Ryan."

22 A. **I see that.**

23 Q. Can you read it?

24 A. **"I'm waiting on Ryan at CAMA. He had to move the extra
25 funds in his Roth. So with the wire together, it will be about**

1 405k to get him the 14 percent. Is there any way to check from
2 your view if it's all there? I know they don't want to wait
3 and we did it right away Tuesday once they were there. So it's
4 all in CAMA's hands as we're just waiting on the wire. So you
5 can do it all at once like you said."

6 Q. Then it goes on to talk about something else. So you're
7 writing to them about the wiring of the money and what's going
8 on with CAMA Plan getting the investment money over so that the
9 investment can happen. Right?

10 A. Correct.

11 Q. Yes?

12 A. Correct.

13 MS. BERLIN: Next, let's look at 559. It hasn't been
14 admitted.

15 (Thereupon, the exhibit was introduced into evidence.)

16 MR. HYMAN: No objection.

17 THE COURT: All right.

18 (Thereupon, the exhibit was admitted into evidence.)

19 THE COURT: That will be admitted, 559.

20 BY MS. BERLIN:

21 Q. Mr. Furman, here we have your e-mail to Mr. Vagnozzi
22 continuing another e-mail about this investment with the
23 Meyers, talking about funding their CAMA Plan account with 201
24 thousand so you can make -- "So we can get the direct note for
25 the merchant set up and want to make sure you knew and could

1 help with the next steps."

2 Do you see that?

3 A. I do.

4 Q. You referenced that you're going to call CAMA Plan, make
5 sure the money is there for the investment.

6 Do you see that?

7 A. I do.

8 Q. And that you wanted this investment done right away. Do
9 you see that? You and your client want this done right away,
10 asking what the next steps should be.

11 A. He's eager to set it up, yes.

12 Q. So, Mr. Furman, you testified earlier -- I've just shown
13 you like seven or eight messages that -- showing your
14 involvement. You testified that you only gave the Meyers
15 Mr. Vagnozzi's phone number and that that was your involvement,
16 but in reality, you were actually quite involved in the process
17 for not only getting their funding set up, putting the money
18 into their retirement account, and orchestrating the funds
19 being sent to Vagnozzi so that they could invest in Par Funding
20 through ABFP; isn't that right?

21 A. Not completely correct, no. I helped my client, as I told
22 you. I was -- they were very aware -- fully aware of me going
23 to this event and were looking toward to what I could
24 potentially help them with their retirement accounts.

25 We moved over their -- some of their money to CAMA

1 Plan, which invested into multiple investments, not just
2 Par Funding over the time. And they would not wait for my fund
3 to be finished. And so at that point, the only thing that they
4 did was wanted to go around to talk to Dean and figure a way
5 out to invest.

6 And they -- as you can see, it started in December,
7 took a couple of month, they were frustrated and still called
8 me. I tried to assist my client in any way I could. I was
9 never maliciously trying to get involved in any way.

10 Q. Mr. Furman, my question is: Earlier today -- the reason I
11 just showed you all those e-mails is because you testified -- I
12 asked about your involvement in the Meyers investing in ABFP.
13 You testified that your involvement was: I gave them Dean's
14 phone number.

15 That you had limited involvement to that. And I've
16 now shown you a group of e-mails. And I'm asking you, isn't it
17 true, based on the e-mails I've shown you, that you were
18 involved in the process of getting them invested in this ABFP
19 note?

20 A. I assisted in certain ways that I could help out in their
21 retirement, yes.

22 Q. In fact -- so your testimony earlier that all you did was
23 give a phone number was false, right?

24 A. I never said that was all I did. That was what I initially
25 did. I sent them information after I got back for them to make

1 **their evaluation and discuss further.**

2 Q. Mr. Furman, in reality, you actually sent the Meyers -- you
3 were the one who delivered to the Meyers their ABFP promissory
4 note; isn't that true?

5 A. **Actually I can't remember how they got their executed note.**

6 Q. You sent it to them through interstate commerce, through
7 e-mails. Don't you recall that?

8 A. **Not off the top of my head, no.**

9 Q. Let's look at 563.

10 (Thereupon, the exhibit was introduced into evidence.)

11 **MS. BERLIN:** It has not been admitted yet. Is there
12 any objection to it, Mr. Hyman?

13 **MR. HYMAN:** No.

14 **THE COURT:** That will be admitted, 563.

15 (Thereupon, the exhibit was admitted into evidence.)

16 **BY MS. BERLIN:**

17 Q. 563 -- do you see -- this is an e-mail from you --

18 A. **Yes.**

19 Q. -- to KahunaFL. And that's Russ Meyer, correct?

20 A. **Yes.**

21 Q. In February 2018. Subject: MCA paperwork, exclamation
22 point.

23 Do you see it?

24 A. **I'm forwarding it, yes.**

25 Q. It's an e-mail from you to Mr. Meyer; isn't that right?

1 A. **Correct.**

2 Q. And attached to your e-mail is the ABFP income fund note as
3 well as the subscription agreement.

4 Do you see that?

5 A. **I do.**

6 Q. And you sent to him -- it says: Good evening.

7 And you write to him and you tell him, you're sending
8 him the private placement documents to look over. That you
9 need him to finish the paperwork for CAMA, which is the vehicle
10 for getting these investors' retirement money, and that you
11 already sent the full package of videos, the company
12 information, but you will send it again as well, but the due
13 diligence I have done, as well as this company does on every
14 piece of business, is the highest I've seen.

15 Do you see that?

16 A. **I do.**

17 Q. So you told them that you had done -- not only did you not
18 just give -- give them Dean Vagnozzi's phone number, you sent
19 them the promissory note, the subscription agreement, all the
20 marketing materials, the videos, the brochures, which you admit
21 here in your e-mail, and on top of that, you told them again
22 here that you did -- I have done the highest level of due
23 diligence that you've ever seen.

24 And, Mr. Furman, that's not true, is it?

25 A. **At that point, yes.**

1 Q. Did you tell -- you did not tell Renee Meyer and Russ Meyer
2 about Joseph LaForte, correct?

3 A. Not in February of 2018. I did not know. No, we did not
4 at that point.

5 Q. And so you're going to deny that last year you told two FBI
6 agents on July 28th, where you say it was July 27th, that you
7 knew about this in the first year; is that true?

8 A. I don't remember when I -- it was 2018 or '19, yes.

9 Q. And Mr. Furman, we've established --

10 A. (Cross-talk) -- my involvement.

11 Q. Mr. Furman --

12 A. I'm trying to answer my full question. You're cutting me
13 off.

14 Q. Please do.

15 THE COURT: One at a time. One at a time.

16 BY MS. BERLIN:

17 Q. Please continue.

18 A. You keep up bringing one year in some way. Again, I don't
19 remember verbatim, and that is a verbatim statement. I did not
20 know in the beginning, whether it was 2018, 2019, whether
21 you're talking from the day I learned about Par Funding, the
22 day I visited there, the day my fund opens. There's a lot of
23 dates that you're talking about that are spread out over time.

24 Q. Mr. Furman, you met Joseph LaForte the first week in
25 November in Philadelphia at Par Funding.

1 You agree with me on that, correct?

2 A. **Briefly, yes.**

3 Q. And you did online research, you testified in your
4 deposition, to see who these people were; isn't that true?

5 A. **Not in 2017, no. Not on Joseph LaForte in 2017.**

6 Q. And so you told the Meyers that you had done the utmost
7 level of due diligence, you've advertised on your website,
8 which we all saw, touting to investors that you had done the
9 due diligence on the people running this company so they could
10 sleep best at night. And that was false?

11 A. **It actually says: Due diligence I've done as well as this**
12 **company. Dean, Dean's attorney. I did as much due diligence**
13 **of it as I can on myself, on what I was given, what information**
14 **was given to me.**

15 Q. Mr. Furman, you were soliciting people, you've established
16 this, to invest in Par Funding. So when you post on your
17 website advertising Par Funding and saying you did all of the
18 research, either you lied on your website, and in this e-mail
19 to the Meyers, that you did the highest level of due diligence
20 and you actually did not and didn't even look up all the people
21 that you met with in Philadelphia for two days, or you did.
22 You did do the due diligence you promised them you were going
23 to do and then you lied and kept it a secret.

24 Would you agree with me that either way you lied?

25 A. **No, I would not agree.**

1 **MR. HYMAN:** Was that a question, Your Honor?

2 **THE COURT:** Overruled.

3 You may answer.

4 **A.** No, I do not agree. I did not lie.

5 **THE COURT:** We need to take a break at it this time.

6 Ladies and gentlemen of the jury, if you would indulge
7 me, I'm going to take a brief break. If you will leave your
8 notepads on your chairs, use the restroom if you need it.
9 We're going to try to make some coffee for those who could use
10 some and bring it into you all in just a moment. All right?
11 Thank you, guys.

12 (Thereupon, the jury exited the courtroom.)

13 **THE COURT:** Please be seated, everyone. I have a
14 brief change of plea that I need to take on Zoom. So I'm going
15 to take a brief recess to do that. And also to give the jurors
16 a chance to use the restroom and get a little coffee.

17 For the investors who are following along, this will
18 be a brief recess, but the video should not shut down. It
19 should stay on so people can continue to watch.

20 Again, for those that were participating and had no
21 audio, there was a need to keep the audio off due to sensitive
22 testimony during the direct examination.

23 Go ahead, Gracie, if you want to start logging off.
24 I'll leave mine on. I need to briefly just address scheduling
25 and timing.

1 How much more of this direct examination on the SEC am
2 I expecting to have? How much more? Can we get a sense of
3 where we're in the direct?

4 **MS. BERLIN:** Yeah, if it goes at this rate, and I -- I
5 mean, I just had to impeach him with eight exhibits. I wasn't
6 even planning on it. I didn't think it was -- this could go on
7 a while. I didn't -- some of these things I -- like I said, we
8 didn't ask. It could be longer. I mean, I have an outline and
9 we'll go through it, Your Honor. I'll move it faster.

10 **THE COURT:** You need to move. I understand, but I
11 know it takes you time, but the pace is not working for me, nor
12 are my jurors. So if you can try to streamline some of this, I
13 understand you were not getting direct answers to many of your
14 questions, but at the same time we've got to get exhibits on
15 faster.

16 As far as I can tell, I don't know how many more hours
17 of inquiry you have, but, for example, I think we just used two
18 hours for you to cover simply his knowledge of the criminal
19 record of LaForte. We haven't even talked about regulatory
20 issues, we haven't talked at all about the default rate, we
21 haven't talked to about underwriting. Am I to assume that
22 these are issues that on your outline? I bet they are. I
23 mean, I need to plan ahead.

24 **MS. BERLIN:** Yes.

25 **THE COURT:** So this is not for the convenience of the

1 parties. This is for my jurors.

2 **MS. BERLIN:** I understand.

3 **THE COURT:** I need to know what I'm dealing with here
4 and how much longer this is. Because if it's going to be
5 another hour or two hours, I need to prepare my jurors
6 accordingly. So I'm going to go ahead and do my change of
7 plea, and I would ask that when I return you advise the Court
8 as to where you are in your outline and how much you have left
9 to go. At the end of the day, I would urge the SEC to realize
10 that Mr. Furman, as a witness, is not going to give you the
11 answers that you may expect.

12 And a jury is going to have to make the determination
13 whether they believe a single bit of what he is saying. There
14 is plenty of exhibits that they will have to look at to
15 determine whether or not his state of mind was what it was.
16 There's FBI audio. There's a lot. So there's no Perry Mason
17 moment happening here with Mr. Furman.

18 **MS. BERLIN:** We're not trying to.

19 **THE COURT:** So don't waste your time or mine time
20 looking for one. You saw what you got. It's not getting any
21 better. So do your best of what you have, let these jurors
22 decide whether they believe him to be a credible witness
23 through the factors that we instruct them on when they are
24 deliberating. I don't want us to belabor the same questions
25 when we get back on track.

1 So let's take a brief recess, give everybody a chance
2 to take a break. I will be doing my change of plea, and I when
3 I come back I will ask the SEC to give me a ballpark of where
4 they're at. I cannot really in good faith keep this jury in
5 here on a Friday after all they've done past 5:30, let's say
6 worse case, 6 o'clock.

7 But if you think you're not going to finish his direct
8 examination by 5:30, we will do as much as we can by 5:30, and
9 you will finish on Monday.

10 Do I have a sense of whether or not the older investor
11 that was on standby from the hospital is going to be called?
12 Has the SEC made that decision yet?

13 **MS. BERLIN:** Yeah, I don't think we're going to call
14 him, Your Honor.

15 **THE COURT:** Okay.

16 **MS. BERLIN:** And that we will have -- either there are
17 other investors for rebuttal, you know, like Renee Meyer, other
18 people, that they're on our list -- they're on our list
19 already, Your Honor, but we're going to call them later, if at
20 all.

21 **THE COURT:** If at all. If we need it.

22 **MS. BERLIN:** If at all. And we will pick up the pace,
23 Your Honor.

24 **THE COURT:** Okay. So let me take my change of plea,
25 and then the only thing I will add is, obviously I understand

1 that we were planning on having Mr. Furman called in the
2 defense's case in chief. He's essentially a bit of an adverse
3 witness here, which is why we're giving some latitude. I don't
4 know if after the length of direct there will be a need, once I
5 give defense a chance to rehabilitation, to call him again in
6 your case in chief. I don't know if there's going to be a need
7 for that.

8 In fact, it probably wouldn't happen now until Monday
9 at best if you go ahead and do your cross/rehabilitation. So
10 I'd like to know also down the line if the defense team still
11 feels they have to recall Mr. Furman because the scope of what
12 we're covering here is so expansive that I can't see a reason
13 why we would allow everyone to sit through another round of
14 testimony from Mr. Furman once they get up and do their
15 rehabilitation questions. Do you guys have a sense?

16 **MR. HYMAN:** We don't anticipate there being very much.
17 I mean, if we have to recall him, it would be on a very limited
18 set of issues, maybe an hour or two tops. But right now we'll
19 have to see how their examination goes and --

20 **THE COURT:** Do your best on your cross to cover
21 whatever it is you want to cover in his direct, because I'm
22 going to give you latitude to do it. So do your best. I will
23 allow latitude for judicial economy. I don't think we need to
24 sit through another round with him.

25 So why don't we try, and I'll give you some room to

1 breathe, that if you want to get to some questions that may be
2 outside the scope of direct, I will give flexibility. If it
3 goes too far afield, I can't, but the judicial economy
4 indicates we allow it, especially since I've opened the door to
5 most of the stuff in the deposition. So plan ahead if you
6 could. It might make things a little easier.

7 All right. Let's take a recess so I can go ahead and
8 do my change of plea. We'll be back in about 20 minutes.

9 MR. HYMAN: Do we have to get our stuff out of here,
10 Your Honor?

11 THE COURT: No. It's on Zoom.

12 (Thereupon, a brief recess was taken.)

13 THE COURT: Okay. Let's call -- let's call the case
14 back to order. All right. So just about --

04:45 15 Yeah, go ahead and grab the stand. Thank you,
16 Mr. Furman.

17 It's just about 4:45. I think that the most I want to
18 take in terms of my jury's time is until 5:30, about 45 more
19 minutes. I plan on bringing them back in and letting them know
04:45 20 that that's the max, that's where we're going to break. I do
21 not expect the direct will be finished by 5:30, but hopefully
22 we can plan to find a natural breaking point right around that
23 time, in the next 45 minutes.

24 Does that make sense for the SEC?

04:45 25 MS. BERLIN: Yes, Your Honor. We have tried to cut --

1 you know, we made our modifications during lunch. I think when
2 we have more time, we'll be able to cut even more. But we have
3 cut some. We won't finish today.

4 **THE COURT:** Correct.

04:45 5 **MS. BERLIN:** But we can use the remaining time wisely.

6 **THE COURT:** All right. How much more do you think
7 just so I can plan ahead for Monday? We expect -- I can't
8 imagine that you won't be done with his direct at some point
9 Monday morning. Is that a safe assumption?

04:46 10 **MS. BERLIN:** Yes.

11 **THE COURT:** I think that's probably --

12 **MS. BERLIN:** Yes, for sure. And I think when we have
13 time to narrow it further, because obviously, you know, a lot
14 of it we had to add during lunch --

04:46 15 **THE COURT:** Sure.

16 **MS. BERLIN:** -- but yes, we'll be able to do it in a
17 more streamlined fashion. We think like an hour-and-a-half
18 Monday morning.

19 **THE COURT:** All right. Let's go ahead and we could go
04:46 20 ahead and grab our jurors, please.

21 (Thereupon, the jury entered the courtroom.)

22 **THE COURT:** Please be seated.

23 Ladies and gentlemen of the jury, I know it was a
24 little later than we normally give you the coffee, but we got
04:47 25 it to you. We got a little delayed earlier. So thank you,

1 guys, for your patience. Did those who needed coffee, get some
2 coffee? All right.

3 Let me first begin by letting you all know that we
4 will be done at 5:30 today, no matter what. So I don't want
5 anyone to think we're going until this witness is done because
6 he won't be done.

7 So we're going to go ahead and get to about 5:30, and
8 then I'll give you guys some instruction about what it's going
9 to look like on Monday. So let's just make the most of the
04:47 10 next 45 minutes so we can keep advancing the ball. So with
11 that being said, I'll turn it back over to the SEC to continue
12 the direct examination of Mr. Furman.

13 Go ahead please.

14 **BY MS. BERLIN:**

04:48 15 Q. Hi, Mr. Furman. You testified that one of the ways you
16 advertised was by radio, correct?

17 A. **Briefly, yes.**

18 Q. I would like to play for you a radio ad.

19 (Thereupon, the exhibit was introduced into evidence.)

04:48 20 **MR. HYMAN:** No objection.

21 **THE COURT:** All right. We're not admitting it. I
22 think it's just a demonstrative or...

23 **MS. BERLIN:** We're going to ask for it to be -- if
24 they have no objection, we can go ahead and admit it, yeah.

04:48 25 **THE COURT:** Sure. What's the number on this so we can

1 go ahead and admit it now?

2 MS. BERLIN: 326.

3 THE COURT: That's admitted without defense objection.

4 Go ahead.

04:48 5 (Thereupon, the exhibit was admitted into evidence.)

6 MR. HYMAN: And we have no objection to the transcript
7 being played to the jury. Whatever the subsequent related
8 exhibit is, no objection to it either, Your Honor.

9 THE COURT: If there is one, we'll admit that as well.

04:49 10 MR. HYMAN: Are we still going through sensitive
11 materials, Your Honor?

12 THE COURT: No. The audio has been on for quite some
13 time. I turned it back on a while ago. If there's sensitive
14 stuff again -- I waited until after most of that was done. But
04:49 15 I went ahead and my CR and I turned it back on. If something
16 else happens, let me know.

17 MS. BERLIN: Thank you, Your Honor.

18 THE COURT: It's been on for a little while now.

19 Go ahead.

04:49 20 MS. BERLIN: Thank you. And so we'll play Exhibit 326
21 as soon as we can.

22 (AUDIO PLAYING)

23 BY MS. BERLIN:

24 Q. And that was one of the radio advertisements that you
04:50 25 played in South Florida?

1 A. **Correct.**

2 Q. And it's advertising one of your events for the public to
3 come and attend?

4 A. **One of our dinner or lunch. I forget. Yes.**

04:50 5 Q. And at these events, one of the investment offerings you
6 would discuss was Par Funding, correct?

7 A. **One of, yes.**

8 Q. And I wonder if we can play the next one. I think it's
9 327.

04:51 10 (Thereupon, the exhibit was introduced into evidence.)

11 (Thereupon, the exhibit was admitted into evidence.)

12 (AUDIO PLAYING)

13 **BY MS. BERLIN:**

14 Q. And is that another advertisement that you would play in
04:52 15 South Florida to circulate interest or to gather interest from
16 potential investors?

17 A. **Very briefly, yes.**

18 Q. Now, turning back in time, and when you first -- after you
19 first met with Par Funding in November 2017, between that time
04:52 20 and March of 2018, was there a change in how investors could
21 invest in Par Funding, meaning directly versus through an
22 investment firm or investment fund?

23 A. **When I flew there was -- the recruiting event was to start
24 agent funds.**

04:52 25 Q. Oh, okay. So when you went there in November, it was for

1 an agent fund?

2 A. **Correct.**

3 Q. And just again, that was organized by Dean Vagnozzi,
4 correct?

04:53 5 A. **A Better Financial Plan, yes, correct. One in the same,
6 but just distinguishing a little bit.**

7 Q. Thank you. Thank you. I appreciate that.

8 And Mr. Vagnozzi, his company, their 25 percent cut
9 was -- he would do the -- he had someone from his staff on your
04:53 10 bank accounts to help move the money from your account to
11 Par Funding; is that correct?

12 A. **Their CPA. And it wasn't to help. They did it. I didn't
13 do it at all.**

14 Q. You added them as a signatory on your bank account?

04:53 15 A. **They created it. It was done simultaneously. Yes. The
16 shell price.**

17 Q. Thank you. So someone from his staff is on the bank
18 account for your fund, and they move the money to Par Funding;
19 is that correct?

04:53 20 A. **The CPI, yes. Correct.**

21 Q. And the other thing they would do is basically keep track
22 of the accounting and paperwork, like that colorful chart that
23 I've seen a few times today that shows all of the amounts and
24 notes and how much money everybody gave and received. There's
04:54 25 another document that they would keep track for their

1 25 percent cut?

2 A. **They created that, yes. Every month.**

3 Q. And they would send that to you every month?

4 A. **Yes.**

04:54 5 Q. And, Mr. Furman, Dean Vagnozzi also sort of -- did he
6 provide to you any guidance in how to solicit people for
7 Par Funding?

8 A. **He originally shared a lot of what he was doing, yes.**

9 Q. And he told you how you could go about creating your own
04:54 10 agent fund?

11 A. **That was the event I was at, yes. His attorney was one of
12 the main speakers.**

13 Q. And during these -- he also gave you marketing materials
14 that he had helped to create for Par Funding?

04:54 15 A. **Various forms, yeah.**

16 Q. So you would distribute Mr. Furman -- Mr. Vagnozzi's
17 videos, for example, of him talking about Par Funding or the
18 merchant cash advance investment?

19 A. **In the beginning, I didn't have anything to do with his
04:55 20 business mostly. So -- but in the beginning, to share more
21 about the merchant cash advance, as I said, I've worked with
22 these -- with many of these clients -- I don't want to give a
23 percentage, but over 90 percent invested in multiple
24 investments. So they knew what I was doing, both personally
04:55 25 and professionally at all times. And so they knew I was flying**

1 up there to learn about other investments that might help them
2 out. I shared what I had at the time on many different things,
3 to be honest.

04:55 4 Q. Would it be helpful if I show you an e-mail where you're
5 forwarding the videos or do you remember, sitting here today,
6 whether or not you sent investors videos of Mr. Vagnozzi
7 helping to pitch Par Funding?

8 A. He went over the merchant cash. You showed it earlier.

04:56 9 Q. Did Mr. Vagnozzi or ABFP, his company, provide to you
10 marketing videos -- marketing videos that you would then
11 distribute to potential investors as one of your marketing
12 materials?

13 A. Correct. ABFP, yes.

14 (Thereupon, the exhibit was introduced into evidence.)

04:56 15 MS. BERLIN: I wonder if we can please go ahead and
16 show P 144. Now, Your Honor, this has not been admitted. It
17 is a video of six minutes in length. I don't know if there's
18 an objection to its admission.

19 THE COURT: Any objection to P 144?

04:56 20 MR. HYMAN: No. I don't even know what it is. But,
21 no, at this point.

22 MS. BERLIN: It's -- 143 is the video, Your Honor, and
23 144 is the transcript.

04:56 24 THE COURT: Okay. We'll admit both of those without
25 objection.

1 MS. BERLIN: Thank you.

2 Can we play 143, please.

3 Yes, we can publish it.

4 THE COURT: Yeah, if you can publish it, they're

04:56 5 admitted.

6 (Thereupon, the exhibit was admitted into evidence.)

7 (AUDIO PLAYING)

8 BY MS. BERLIN:

9 Q. Mr. Furman, is that one of the videos that you would
05:02 10 distribute to potential investors?

11 A. Only for brief information in the beginnings with a lot of
12 extra context.

13 Q. Why don't we look at it. Let me show you what we have
14 already marked -- let's look at one of those. Let go back to
05:03 15 P 18. This is November 18th, 2017.

16 And do you see in this -- this is an e-mail that you
17 sent to potential investors. You've referenced for them right
18 above this OnDeck Capital point where we say this is a -- you
19 write to them: This is a six-minute video we created on the
05:03 20 MCA industry, merchant cash advance.

21 And then it shows it's a link to Vimeo, Dean Vagnozzi
22 review. And this is the -- we just watched a six-minute video
23 of Dean Vagnozzi. I'll -- do you agree with me that's what
24 this link is to or would you like us to show you?

05:04 25 A. It was in the very beginning, yes.

1 **MR. HYMAN:** Your Honor, this is getting overly
2 cumulative. Can we move on? It's Friday.

3 **MS. BERLIN:** It's not cumulative.

4 **THE COURT:** Let move it along. Let's go.

05:04 5 **BY MS. BERLIN:**

6 Q. So you sent it here. You said it was a lot of information.
7 I'd just like to look at what you sent with it. You sent that
8 video. You also -- if you look below, you let these potential
9 investors know: OnDeck Capital is the largest player in the

05:04 10 MCA space.

11 Do you see that?

12 A. **I see that.**

13 Q. And you identified that people from Shark Tank had invested
14 in this merchant cash advance business known as OnDeck Capital.

05:04 15 Did you see that?

16 A. **I do.**

17 Q. And you also mentioned another person from Shark Tank and
18 other people who were investing in MCAs, right?

19 A. **Yes.**

05:04 20 Q. And we heard some of that also in the six-minute video that
21 you were circulating.

22 Do you remember that?

23 A. **Like I said, one of many things that we discussed, yes.**

24 Q. Did you ever, like, take any time at all to look up OnDeck

05:05 25 Capital and to see if that was a merchant cash advance

1 business?

2 A. **It's one of the things they do.**

3 Q. Have you ever -- I'm asking you, have you ever gone to the
4 OnDeck Capital website, for example?

05:05 5 A. **Correct.**

6 Q. You have?

7 A. **At some point in my life, yes, not lately.**

8 Q. Is it still your representation today that -- is OnDeck
9 Capital a merchant cash advance?

05:05 10 A. **One of many things I'm sure they do.**

11 **MR. HYMAN:** Relevancy, Your Honor.

12 **THE COURT:** Overruled.

13 **BY MS. BERLIN:**

14 Q. We're going to move right on. We'll come back to that.

15 (Thereupon, the exhibit was introduced into evidence.)

16 **MS. BERLIN:** Let's look at P 389, please. It's not in
17 there. Any objection to it being introduced?

18 **MR. HYMAN:** I've got to see what it is.

19 No, no objection.

05:06 20 **THE COURT:** That will be admitted without objection.

21 P 389?

22 **MS. BERLIN:** Yes.

23 (Thereupon, the exhibit was admitted into evidence.)

24 **BY MS. BERLIN:**

05:06 25 Q. This is one of your -- P 398, it's another one of your

1 websites, correct?

2 A. **It was -- it turned in -- it was the same one and then they**
3 **changed it yes.**

4 Q. And it shows at the top, this United Fidelis Group?

05:06 5 A. **Correct.**

6 Q. One of your companies, correct?

7 A. **Correct.**

8 Q. And United Fidelis Group was also involved with the
9 Par Funding, raising money from investors for Par Funding?

05:06 10 A. **United Fidelis Group did not.**

11 Q. United Fidelis Group isn't mentioned in your PPM anywhere
12 as having a management role?

13 A. **Management role. It's not where the funds flow.**

14 Q. So United Fidelis, you would agree with me, they served in
05:07 15 a management role in connection with the offering to raise
16 money from investors for Par Funding?

17 A. **I believe the attorneys member managed or manager managed,**
18 **something along those lines.**

19 Q. Okay. So a manager member or a member manager is how you'd
05:07 20 prefer? Yes?

21 A. **One of those two, yes.**

22 **MS. BERLIN:** Let's turn to page 4 of 7, please.

23 **BY MS. BERLIN:**

24 Q. So on this website at that time do you see where it says:
05:07 25 Looking for short-term double digit returns?

1 A. **Correct.**

2 Q. And on your website we see language here about wanting to
3 introduce the viewer to what many of our clients call their
4 favorite investment, merchant cash advance or MCA.

05:07 5 Do you see that?

6 A. **I do.**

7 Q. And that's referring to Par Funding, correct?

8 A. **It's referring to my merchant cash advance fund, Fidelis
9 Financial Planning.**

05:08 10 Q. Which only ever invested in Par Funding, correct?

11 A. **I've looked at many different other merchant cash advance
12 companies.**

13 Q. We went through this earlier. It only ever invested in
14 Par Funding. Do you agree with me or not?

05:08 15 A. **I agree that's the only place I executed notes. But that
16 is not the only merchant cash advance company that we excused
17 and looked at.**

18 Q. I understand you looked at many. I'm not asking about
19 that.

05:08 20 A. **We did due diligence on many others and decided that
21 Par Funding was the best place at that time.**

22 Q. So you only invested in Par Funding; agreed?

23 A. **Through that fund, yes. Correct.**

24 Q. Okay. So here on your website you're talking -- your
05:08 25 introducing the MCA investment. And do you see where it says:

1 Let us show you how we selected the company with the strongest
2 financials and the most conservative underwriting team in the
3 industry to keep our funds secure?

4 Do you see that?

05:08 5 A. I do.

6 Q. And so you're talking about the Par Funding underwriting
7 team; is that right?

8 A. That would be how: Let me show you how I selected
9 Par Funding versus the other merchant cash advance companies
05:09 10 that I did evaluations on and Par Funding had the strongest
11 financials, that was told to me, and the strongest most
12 conservative underwriting team, from what they told me in the
13 industry. Correct.

14 Q. And you never called the head of underwriting or anyone in
05:09 15 the underwriting office at Par Funding, correct?

16 A. We were only to talk to Perry Abbonizio.

17 Q. So you never -- I'm asking something different.

18 Did you ever call anyone at Par Funding who was in the
19 underwriting department? The answer --

05:09 20 A. I signed an NDA. I was not allowed to. I was only to
21 speak with Perry Abbonizio.

22 Q. And when you went to Par Funding and you walked through the
23 underwriting office there, did you ever speak with any of them
24 about the underwriting work that was occurring?

05:09 25 A. Varies individuals, like I said, as I did a walk through,

1 yes.

2 Q. Did you ever inquire if the underwriting department --
3 anyone in underwriting at Par Funding during your trips there
4 or your phone calls, did you ever ask any of them about the
05:10 5 underwriting that they were actually doing?

6 A. Yes.

7 Q. Whether they were actually doing onsite inspections?

8 A. Yes.

9 Q. And who in underwriting did you speak to at Par Funding?

05:10 10 A. Whoever was sitting there as we walked through. They
11 showed me the various areas, internet search teams basically,
12 social media deep dives that they were doing. Physical copies
13 of their own site inspections, which I handed out to client.
14 Yes, I've seen those.

05:10 15 Q. Okay. So you spoke with -- a moment ago you said you
16 couldn't talk to anyone because you could only talk to Perry.
17 And now you spoke with someone in the underwriting
18 department --

19 A. I said while I was walking through. That was your
05:10 20 question. So if you want to delineate the two. I'm not
21 allowed to call Par Funding. I'm not going to avoid and go
22 around the business partners that they introduced me to on
23 their business contract.

24 Q. Sure.

05:10 25 A. I was supposed to speak with the head of the actual

1 investments, which is Perry Abbonizio, and that's who I spoke
2 with and worked through from day one. Before I signed any
3 contract and the first day I was introduced to the company,
4 before knowing whether I was going to work with them or not, we
05:11 5 did a tour, and during that tour is when I spoke to --
6 everybody in the tour spoke to them. So yes, if you want to be
7 truthful, that's what I'm saying.

8 Q. And you don't recall that person's name?

9 A. It wasn't one person. It was a group of us walking
05:11 10 through.

11 Q. And what year?

12 A. That would be -- you would know the date. 2017, I believe
13 it was. At the event.

14 Q. Okay. About how long did you talk to the person that you
05:11 15 walked past and the underwriting group at Par Funding?

16 A. Us as a group, we probably spoke for a couple of minutes.
17 Like I said, it wasn't to sit down and go through documents.
18 It was to say, this is the underwriting floor and this is --
19 these people do -- I distinctly remember social media team, and
05:11 20 I'm talking about online, and yes, the onsite inspection was
21 not that date, because I don't believe they did onsite
22 inspections the day I met them. I distinctly remember that
23 started after. The brochure actually changed for that.

24 Q. Okay. And so I just want to make sure I understand you
05:12 25 correctly. Sometime in late 2017 when you went up there as --

1 while you were passing through Par Funding, you and a group of
2 people talked to the underwriting group for about five minutes;
3 accurate?

05:12 4 A. I'm stating during the recruiting event, the actual one
5 that you've talked about this entire time, in November of 2017
6 is when they took all of us advisors. There was probably 50 of
7 us and we walked through. Yes. That was one of the
8 discussions. Whether it's five minutes, it was a couple of
9 minutes, as they passed they were showing us the
05:12 10 underwriting -- the floor, which they said was mostly
11 underwriting.

12 Q. I understand, Mr. Furman.

13 So in addition to that walk through, with the group of
14 the other agents, Par Funding agents, and speaking with them
05:12 15 briefly in passing, did you ever have any other discussion with
16 them? Did you have any meetings?

17 A. Other with Perry with, no.

18 Q. Okay. I was asking about the underwriting group. Sorry.

19 A. I don't know anybody in the underwriting group's name. Now
05:13 20 I do, but that's because of this case most likely.

21 Q. Now, we'd like to show you -- in this document we're
22 showing you, you're also making representations about their
23 financial status.

24 Do you see that?

05:13 25 A. I see that.

1 Q. Okay.

2 MS. BERLIN: I wonder if we can please pull up the
3 Par Funding 2017 audited financial statement.

4 BY MS. BERLIN:

05:13 5 Q. And as my team pulls that up on to the screen to show to
6 you -- and it's been admitted as an exhibit with Brad Sharp on
7 Tuesday.

8 As they're looking for that, Mr. Furman, did you see
9 the -- did you receive the Par Funding audited financials?

05:13 10 A. I know they exist. And Perry brought them down, but I was
11 not able to keep a copy. No.

12 Q. Okay. Were you able to look at them?

13 A. He brought them to my dinner event. So for lack of --
14 seeing the front cover.

05:14 15 Q. So you only looked at the front cover?

16 A. Flipping through them, yes. I did not have time to analyze
17 them.

18 Q. I'm just asking if you ever saw them?

19 A. Yes. I saw that it existed. A copy of it, yes.

05:14 20 Q. You made a copy?

21 A. No. A copy exists, yes.

22 Q. Oh, a copy exists. Okay.

23 So the audited financials, did you look at them? Did
24 you go and look at what their finances were? What their -- how
05:14 25 much they had in revenue or debt? Did you look at the bottom

1 line?

2 A. Maybe briefly, but I can't recall what I looked at that
3 day.

4 MS. BERLIN: And for this -- this has been -- I
05:14 5 believe it's been introduced into evidence, but let me confer
6 with my team. It has, Your Honor. So we can publish this,
7 correct?

8 THE COURT: If it's in.

9 MR. HYMAN: We renew our former objection to it, but
05:14 10 otherwise they can ask them about it.

11 MS. BERLIN: It's already in evidence.

12 THE COURT: It's already been admitted.

13 BY MS. BERLIN:

14 Q. I'm showing you Exhibit 270. So Par Funding -- they had --
05:15 15 we heard on Monday, or Tuesday, there was one year -- they had
16 their financial records only audited in one year. It was 2017.

17 So it is Exhibit P 270. Which is that financial
18 statement, audited financial statement for 2017. Is this what
19 you saw?

05:15 20 A. Most likely. Because of this case, I know that you -- the
21 SEC alleges there's two copies. I couldn't tell you which one
22 that they brought and Perry brought with them. But it looks
23 very similar to one of the two, yeah. If there is two, yeah.

24 Q. No. I'm not asking about what you've read in a complaint
05:15 25 or what you know outside. I'm asking, back when Perry

1 Abbonizio brought you the financial statement, I was asking if
2 perhaps this was it. And I think it might be easiest if I hand
3 you a hard copy. Is that okay?

4 A. Sure. It looks so --

05:16 5 MS. BERLIN: Your Honor, may I approach?

6 THE COURT: You may approach.

7 A. Thank you.

8 BY MS. BERLIN:

9 Q. And if you want to take just a couple of minutes, maybe
05:16 10 look at it and see if this is what you saw.

11 A. Looks to be.

12 Q. Okay. Great. And so is this -- is P 270, are the audited
13 financials, is that what served as the basis for you to tell
14 potential investors it was the company with the strongest
05:16 15 financials?

16 A. Not this document, no. But --

17 Q. What document?

18 A. It was the continued financial support of various documents
19 that they sent. The representations they made on from -- I
05:16 20 believe you guys call it KPI or summaries most likely. And the
21 fact that they had audited financials versus a lot of companies
22 did not have audited financials.

23 2018 was coming, that was on one of your other
24 documents that was on the screen. It was one of my notes. But
05:17 25 yes, the fact that they had various documents and were audited.

1 Q. Okay. So they had one year of audited financial
2 statements. We heard that from Mr. Sharp on Tuesday.

3 So based on -- I'm asking -- you made a
4 representation. We're looking at it in P 389. And I'm simply
05:17 5 asking you to tell me, so we can understand, what documents did
6 you rely on for your representation that Par Funding was the
7 company with the strongest financials? Was it --

8 A. Many of their financial documents that they sent to me.
9 This was 2000 -- ending year 2017. It wasn't available January
05:17 10 of 2018. I believe it actually took almost a year to get that,
11 but the fact that they sent out and showed us various documents
12 that Dean's attorney, who was at the event and helped host the
13 event, went over financials and said that he did his due
14 diligence into the company. And they sent this out every
05:18 15 month. They're averages. They're financial data to me and the
16 other investors.

17 Q. They sent you the data about loans that they had written --
18 what they were writing off and what they were not, correct?

19 A. They sent me their -- they called them advances and --

05:18 20 Q. Now, when we turn to -- I've shown you P 270. That's the
21 audited financial statement that you testified you saw. If you
22 could look at page 4, please.

23 A. Sure. Where in the document?

24 Q. And that's going to be -- I think it's Pdf 6, but it's the
05:18 25 number 4 in the document.

1 Do you see at the top it says: Consolidated statement
2 of operations?

3 A. Yes.

4 Q. And the year-ended December 31st, 2017.

05:19 5 Do you see that?

6 A. Correct.

7 Q. And do you see that the audited financials for Par Funding
8 in the one year that they were audited, it shows that they were
9 operating at a net loss of millions of dollars.

05:19 10 Do you see that?

11 A. I see that.

12 Q. Okay. You can set that aside, please.

13 A. Sure.

14 Q. And approximately when was it that Perry Abbonizio showed
05:19 15 this to you, roughly?

16 A. Again, I don't remember specifically. He brought it to an
17 event, and the first I -- from my recollection, it took
18 probably a year to get that. So probably late 2018. I mean, I
19 don't remember the exact dates, but something along that, maybe
05:20 20 early '19. And he brought that down. He said that any
21 investor that wanted it would have to sign an NDA. And I
22 believe he gave one to Roland.

23 Again, regardless of your accusations in this case and
24 looking up at a federal license, that's Michael Christopher
05:20 25 Furman. I'm not a certified public accountant. So I do not

1 know how to read this. But I was told by Perry that the
2 difference between an audited and their summaries were
3 between -- they used cash over cash. Again, I don't understand
4 that a hundred percent.

05:20 5 Q. The only question I asked was: Approximately when did he
6 give it to you? Do you remember the year? And if not --

7 THE COURT: Just answer the question.

8 A. 2018 or '19.

9 MS. BERLIN: Thank you. I wonder if we can show P 96,
05:20 10 and only show it to the witness. It has not been admitted.

11 (Thereupon, the exhibit was introduced into evidence.)

12 MS. BERLIN: May I approach the witness with a hard
13 copy?

14 THE COURT: You may.

05:21 15 BY MS. BERLIN:

16 Q. Have you seen P 96 before?

17 A. A long time ago, yeah.

18 Q. And this is something that you would have received from
19 Dean Vagnozzi?

05:21 20 A. I think it was from Dean, yeah. Somebody there.

21 MS. BERLIN: Do you have any objection?

22 MR. HYMAN: Hearsay.

23 MS. BERLIN: I'm not presenting it for the truth of
24 the matter asserted, Your Honor.

05:21 25 THE COURT: Overruled.

1 That's admitted. P 96 is admitted.

2 **MS. BERLIN:** Can we publish it, please?

3 (Thereupon, the exhibit was admitted into evidence.)

4 **MR. HYMAN:** Would you mind giving a quick instruction,
05:21 5 Your Honor.

6 **THE COURT:** Yes.

7 Ladies and gentlemen of the jury, when something is
8 admitted for state of mind or to develop a chain of events or
9 reasons other than what is contained in the actual item, then
05:21 10 you can consider it only for those limited purposes. So again,
11 this is not being admitted for you to take the contents of the
12 agent guide as true, but simply to establish things such as
13 state of mind, motive, et cetera.

14 Go ahead.

05:22 15 **MS. BERLIN:** Thank you.

16 **BY MS. BERLIN:**

17 Q. P 96 is entitled Agent Guide. This is a document you
18 received from Dean Vagnozzi?

19 A. Yes, or ABFP. Somebody sent it to me.

05:22 20 Q. Or from someone at his company, ABFP. Is that what you
21 said?

22 A. Correct.

23 Q. And basically, would you agree with me that P 96, it's
24 basically like a handbook for creating an agent firm? It tells
05:22 25 you how to get a PPM started, it gives you the name of a lawyer

1 you can call, it gives you -- it's like step by step, like,
2 kind of turnkey.

3 Do you agree?

4 A. It was his outline for his ABFP Management company, yeah.

05:22 5 Q. And he's speaking to you as a potential agent or as an
6 agent, correct?

7 A. Yeah. I think all of us -- 50 of us or so got this.

8 Q. So let's walk through it. Number one, he's telling you
9 contact this lawyer, here's his e-mail address. Then he goes
05:23 10 on to tell you sign an engagement letter, pay this lawyer
11 \$5,000?

12 MR. HYMAN: Your Honor, she's trying to bring this in
13 for the truth of the matter asserted.

14 MS. BERLIN: No, I'm not.

05:23 15 THE COURT: No. She's actually explaining it so we
16 can -- he can give us exactly what this means in the grand
17 scheme of everything that's going on with Fidelis versus
18 Par Funding versus ABFP. That's overruled.

19 Go ahead.

05:23 20 MS. BERLIN: Thank you.

21 BY MS. BERLIN:

22 Q. So you see at the top -- I'm not reading it verbatim. I'm
23 simply trying to summarize to move through it quickly.

24 A. Yes, that was the attorney --

05:23 25 Q. -- Mr. Vagnozzi tells you: Contact John (inaud.), here is

1 a lawyer to get your fund, your agent fund started, sign a
2 letter, pay \$5,000, sign a noncompete. The whole process will
3 take about three weeks. We'll get you a PPM. He goes on to
4 tell you you just need to get a name for your fund, get a bank
05:23 5 account, here is where to get it, and this goes on for a while.

6 It's giving you the steps on what exactly what to do,
7 who to call, what to do to get your agent fund created. Do you
8 agree with me? Do you see that?

9 A. **Information, yeah, it wasn't required, but yes.**

05:24 10 Q. I'm just asking about what's on the page so we don't have
11 to read the whole thing, yes?

12 A. **As I said, yes.**

13 Q. Okay. Great. Now, if we turn to page 2, you see it goes
14 through the whole process. And we see number -- do you see
05:24 15 number 9?

16 A. **Yes.**

17 Q. And above on -- let's go to paragraph 8. We don't have to
18 Zoom in.

19 Paragraph 8, do you see it says: Once you have
05:24 20 collected \$200,000 total of the available fund from investors
21 in your fund's account, you will sign a note and security
22 agreements. You send the money up to Par Funding to invest.
23 Do you see that? And again, I'm paraphrasing to move it along.

24 A. **I do.**

05:25 25 Q. And then we see paragraph 9 shows that once you do that,

1 the MCA investment company, which we agree the only one you
2 invested in is Par Funding, will pay your fund. Here, that
3 would be -- your fund would be Fidelis.

4 Do you agree with me that was your fund?

05:25 5 A. **Fidelis Financial Planning.**

6 Q. Fidelis Financial Planning.

7 20 percent on the amount that you send to them. Do
8 you see that in paragraph 9?

9 A. **I do.**

05:25 10 Q. And then ABFP is going to get their 25 percent cut is at
11 the end of the paragraph.

12 Do you see that?

13 A. **I do.**

14 Q. And then the remaining 75 percent will remain with you,
05:25 15 Mr. Furman.

16 Do you see that?

17 A. **I do.**

18 Q. Okay. And is this generally the way things operated
19 according to the agent guide?

05:26 20 A. **To this guide, yes.**

21 Q. And then we see too at the end that this little packet is
22 sort of created and also details, what to do with the
23 retirement accounts. That goes onto page 3.

24 Do you see that?

05:26 25 A. **I see it.**

1 Q. And so he explains to you how to get your investors'
2 retirement money into this CAMA Plan account so it can be sent
3 up to Par Funding.

4 Do you agree with me?

05:26 5 A. **I see it.**

6 Q. And it walks through and gives you instructions, right?

7 A. **That it does.**

8 Q. And so these agreements -- or I'm sorry. This agent guide
9 that's sent to you, one of the purposes that they write to you
05:26 10 in here in giving you these instructions and how to do it is if
11 you look at the bottom on page 1, the last sentence is sort of
12 adding ABFP to your bank account and following this method, it
13 will allow you to just focus on the selling. And those are
14 just the last words on page 1?

05:27 15 A. **That's what it states.**

16 Q. Right. So the agents and these agent funds, like your job
17 is to go out there and a sell it to people like Mr. Nash, to
18 people like Mr. Renner and other investors and to do it
19 according to this sort of agent manual.

05:27 20 Would you agree?

21 A. **No. These were recommendations. I didn't follow most of**
22 **it. So yes. Not everybody -- I can't speak to any other agent**
23 **funds.**

24 Q. All right. Now, let's go ahead and let's turn to --

05:28 25 **MS. BERLIN:** Your Honor, should we stop or you want us

1 to go a little further?

2 THE COURT: If this is a breaking point for you
3 naturally, let's stop.

4 MS. BERLIN: Yeah, I was just going to go to a website
05:28 5 externally. So this is good. Thank you, Your Honor.

6 THE COURT: Thank you. All right.

7 Okay. Ladies and gentlemen of the jury, you're
8 excused.

9 Mr. Furman, you can rejoin counsel's table.

05:28 10 Ladies and gentlemen of the jury, that's going to
11 conclude our testimony for this week. Just so that we can get
12 a little bit ahead of what we're going to be looking at over
13 the next couple of days here in trial, the plan right now is of
14 course to have you guys return on Monday.

05:28 15 At this point, we'll go ahead and once again start at
16 10:00. So you guys will give you a little extra time, and I
17 need everyone in by 10 o'clock so we can pick up where we left
18 off with Mr. Furman at that time.

19 I have spoken to the government. I believe that the
05:28 20 SEC will be able to conclude their direct examination in the
21 morning, and my hope is that we will finish with Mr. Furman
22 certainly by the end of Monday. If for whatever reason we are
23 somehow able to finish before the end of the day, then we hope
24 that the defense will be -- have enough time to present a
05:29 25 witness. What I do expect, though, that one way or another is

1 for the SEC's case in chief to conclude on Monday.

2 I have spoken to the attorneys in terms of scheduling.
3 This should not derail us just because we plan on finishing the
4 case today as opposed to Monday. I will still do everything I
05:29 5 can to keep us on a schedule that has us ending the trial
6 midweek and not taking the full week. So I will keep trying to
7 do my best to streamline things for you all so we can get all
8 of that done.

9 Now, obviously the SEC's case is almost over. There's
05:29 10 still a chunk to go in their direct examination of Mr. Furman
11 and of course their redirect that they're going to get a chance
12 to do on Monday. So it's important that you keep an open mind.
13 And of course you haven't even heard any defense witnesses yet.
14 So you must, again, reach no conclusions because they haven't
05:30 15 had an opportunity yet to put on any witnesses, and you will
16 hear instructions on the law which will help you guys
17 understand a lot of the legal concepts underlying some of these
18 allegations, and so until you get that and the attorneys'
19 summaries by way of their closing arguments, I want you guys,
05:30 20 again, to not reach any conclusions in this case.

21 We have presented a lot of information over the last
22 five days to all of you. I want to remind you that to the
23 extent evidence has come in and it's come in quickly and you
24 want to scrutinize it, all of it, including audio recordings,
05:30 25 video, all of it goes back to the jury room.

1 So if in your notes you've marked something that you
2 really want to take a look at it, don't worry. You're going to
3 get a chance to take that look. I don't want you guys to think
4 it's only going to be presented here and we won't be seeing
05:30 5 again.

6 When you go home this weekend, of course you may share
7 scheduling details with family and friends, but you have to
8 continue to tell them that you cannot talk about this case with
9 anyone. You also need to make sure that over the weekend, you
05:30 10 do not engage in any independent research regarding anything
11 you may have heard in this case. You have heard a lot about
12 events, people, places, financial instruments. Please remember
13 that you should only be guided by what is admitted in evidence
14 during this trial.

05:31 15 Similarly, of course stay off social media. Any
16 discussion of this case on social media is strictly forbidden,
17 and when you come in on Monday, should you bump into any
18 lawyers, remember that they must steer clear. Take no offence
19 from that.

05:31 20 So when you go to leave, leave all of your notepads in
21 the jury room. We're going to seal it up over the weekend. No
22 one is going to go in there. When you guys get back, we'll get
23 you your pass, get you back into your seats, and we'll pick up
24 where we left off. Again, we're still going to be on schedule
05:31 25 despite a little bit of a delay today. So I don't want anybody

1 to worry. Your service is still on pace. Okay? I just want
2 to make sure everyone understands that. Okay?

3 So thank you all so much for your attention. I know
4 it's been a long five days and you guys have been fantastic.
05:31 5 You've been diligent, you're locked in. I can't thank you
6 enough. I know the lawyers really appreciate it, especially
7 with the volume of evidence you've had to digest and are still
8 digesting. So thank you very much for that.

9 So with that being said, have a wonderful weekend.
05:32 10 We'll see you all at 10:00 a.m. on Monday. You are excused.

11 (Thereupon, the jury exited the courtroom.)

12 **THE COURT:** Please be seated, everyone. We'll just do
13 a how little housekeeping before we conclude. So as discussed,
14 we expect to conclude with Mr. Furman's testimony at some point
05:32 15 on Monday morning beginning at 10:00. And after that, we'll
16 see how close we are to the lunch hour before we break and
17 allow there to be a cross-examination, before our redirect.

18 I, of course, would urge the SEC over the weekend as
19 we go back and take a look at what is remaining, that we do our
05:33 20 very best to streamline what we can in terms of presentation of
21 exhibits, perhaps have all the exhibits that we think we're
22 going to be using for the remainder of Mr. Furman's direct
23 testimony queued up and ready to go so that we can streamline
24 that as much as possible, we cut down on any delays.

05:33 25 Similarly, let's try to see if we can make sure that

1 we don't retread any ground and cover any areas of inquiry that
2 have not been covered yet. I know there's a little bit left to
3 go, but I believe that we can probably finish this in the
4 morning. And so that would be the plan for Monday.

05:33 5 I expect, again, that the SEC will be resting in the
6 presence of the jury at that time. Unless there's some major
7 change with the one remaining investor that you believe you
8 need him. I urge the SEC to seriously consider not calling him
9 if only because he presents physical limitations that I think
05:34 10 will be difficult to take his testimony, and it's somewhat
11 cumulative as we've already discussed.

12 I do believe, my hope is that we can still have
13 Mr. Furman testify and have enough latitude given in the
14 cross-examination, which is essentially a rehabilitation and an
05:34 15 effort for the defense to put on some testimony through
16 Mr. Furman of the issues in the case and get some clarity that
17 we may not have to recall Mr. Furman. I understand that if he
18 needs to be recalled, it may be brief, but my sincere hope is
19 that we can make it without having to put him back on the stand
05:34 20 again after the SEC finishes.

21 Let me get a sense -- the defense has now had a little
22 more time after hearing from Mr. Furman to process their plan.
23 I was told somewhere between four to seven, that's obviously
24 almost double. That's a big range.

05:34 25 Does the defense have any sense right now that even if

1 I only get the names of a few witnesses, that you plan on
2 calling right out of the gate, so I can try to plan ahead,
3 what --

4 **MR. HYMAN:** Yes, Your Honor. We anticipate,
5 obviously, finishing Mr. Furman. I think his cross is going to
6 take maybe two hours tops. Three. After that, we anticipate
7 calling Joe Cole, who's flying in. So depending on how long
8 the SEC takes, we may have to pause Furman's cross redirect,
9 let me Mr. Cole go, then Mr. Furman. After Mr. Furman, then I
05:35 10 believe it's going to be likely -- well, either his mother,
11 Joel Glick is going to be a half hour total, probably, of
12 direct time, if that. And we'll try to fit in Joe Cole and
13 Joel Glick on Monday just to get them out of the way.

14 After that, probably Tuesday, we'd anticipate his --
05:35 15 yeah, Christine Furman, Mr. Furman's mother. Likely after
16 that, either Mr. Nardelli or Mr. Roland -- I forget his last
17 name right now. It's been -- Manual. And then from there a
18 few investors, Mr. Nardelli, maybe Mr. Berman if necessary.

19 **THE COURT:** So hold on. Let me make sure I have a
20 good sense of scheduling.

21 **MR. HYMAN:** We'd anticipate being able to rest by
22 close of business Wednesday at the latest, Your Honor.

23 **THE COURT:** You have a lot more faith in yourselves
24 than I do. All right.

05:36 25 So let's take a look here again what I'm looking at.

1 So Mr. Cole is flying in on Monday; is that right?

2 MR. HYMAN: Yep.

3 THE COURT: And when is he going to be here in court?

4 MR. HYMAN: His flight is out, I think early Tuesday
05:36 5 morning, so, so long as we can squeeze him in at sometime on
6 Monday, we can work with the schedule.

7 THE COURT: Right. But what I'm saying is, is he
8 available all day Monday or only part of Monday?

9 MR. HYMAN: He should be able all day Monday.

05:36 10 THE COURT: All right. So we have Joe Cole. And did
11 you say Joel Glick was also part of the lineup you had on
12 Monday, meaning that he's also -- I don't know if he's flying
13 in or what his schedule is. Is he also available all day
14 Monday?

05:37 15 MR. HYMAN: He should be available all day Monday. I
16 mean, depending on the timing, we may have him by Zoom if
17 that's acceptable to the SEC, and we can figure out the
18 technical issues.

19 THE COURT: All right. So that would be Mr. Glick.

05:37 20 MS. BERLIN: And, Your Honor, we might be able get rid
21 of -- I mean, if Glick -- Glick wasn't their expert. If he's
22 giving the same as what was in his expert report for the other
23 defendant, I don't think there's anything relevant to this
24 case. We would stipulate probably to whatever he wants to say
05:37 25 because -- I'll talk to defense counsel.

1 THE COURT: Meet and confer.

2 MS. BERLIN: Yes.

3 THE COURT: I think that's your job to figure out with
4 him what it is that -- the scope of what his testimony. But
05:37 5 I'm looking here at what looks to be at least a break in the
6 testimony of Mr. Furman. So there could be a scenario where we
7 finish Mr. Furman's direct in the morning and then actually put
8 a pause on that to allow the defense to call Mr. Cole in the
9 afternoon. And that's what we're going to have to do so that
05:38 10 we can get Cole in a little bit of out of sequence. If Cole
11 goes and maybe Glick goes, if there's no agreement, that would
12 be fine by me. That means then that you're probably going to
13 be hearing from Mr. Furman again through the cross. Again,
14 that would be still be part of the SEC's case. They have a
05:38 15 redirect on Tuesday morning because of the scheduling issue.
16 And then after that, once he's done, I mean, two to three
17 hours, if that's accurate, we're looking at losing at least
18 another half day, if not more, on just Mr. Furman. Because
19 then there's redirect. So that could be a chunk of Tuesday.

05:38 20 And then after that, if I can get Mr. Furman's
21 testimony in on Tuesday, and I will be very blunt, if it's
22 going to be two to three hours, I don't expect to have
23 Mr. Furman recalled. I mean, that's enough time to do
24 everything we need with Mr. Furman and each side has one crack
05:39 25 at Mr. Furman, period. I'm not going to sit here and have

1 Mr. Furman coming up again to retread it. There just can't
2 even be a universe of testimony left to touch, if he has sat on
3 for what I think has already been three to four hours on
4 direct, possibly another two, that's a five-hour direct in
05:39 5 addition to approximately a three-hour cross and then maybe
6 another hour of redirect, that's almost ten hours of Furman's
7 testimony. There's no way Furman is going to get recalled.

8 So I want everyone to understand, especially on the
9 defense side, you guys want to go ahead and ask him what you
05:39 10 want to ask him, do it all when you guys have him on the stand.
11 I will give you latitude to do so. So if we can get him done
12 then that's putting possibly one more witness on Tuesday, maybe
13 Christine Furman, and then you still have Nardelli and
14 Mr. Manuel, I believe, left, and that's not including
05:39 15 investors.

16 How many investors did you think you were going to
17 call?

18 **MR. HYMAN:** Maybe one or two, tops. It's just, you
19 know, the same basic thing, they put up the people saying what
05:40 20 he didn't disclose. We'll put up the ones that say that he
21 did.

22 **MS. BERLIN:** We can discuss relevance. It's not --
23 you can lie one time out of a million and it's still a
24 violation.

05:40 25 Your Honor, my issue is -- I wonder if we could just

1 get a completed witness list just so we know -- Joe Cole, for
2 example, was added the day before trial, and Brett Berman.
3 We're just kind of having a hard time understanding the
4 relevance to this case. And it doesn't have a description.

05:40 5 **THE COURT:** I definitely need more information.
6 That's why I'm asking. Because again, I'm going to point out
7 we're on the eve of the defense case, so -- for scheduling
8 purposes and to manage not only the Court's schedule, because I
9 have other matters that are set by the end of the week, in the
05:41 10 hopes that I can get to them, including a suppression hearing
11 in a criminal matter, I need to plan ahead.

12 So I want to make sure -- and this is not including
13 the fact that we still have to do a charge conference. So I
14 need to get a better sense of exactly what the lineup is. And
05:41 15 it will be good to get kind of a set lineup today so that we
16 know what next week is going to be all about because it's
17 really going to be driven by the defense case.

18 So I guess if I could proffer perhaps starting off
19 with Mr. Joe Cole, what's Joe Cole's purpose or what are we
05:41 20 going to talk about with Mr. Cole? Can you maybe proffer that
21 for me?

22 **MR. HYMAN:** He's going to testify as to -- first he's
23 going to authenticate the Fidelis notes that were issued
24 between Fidelis and Par Funding. He's also -- I mean, we can
05:41 25 obviously deal with stipulations of those. If they'll

1 stipulate to the admissibility of the Fidelis notes, then we
2 can deal with that separately. He'll also stipulate -- or we
3 also anticipate he'll testify as to issues concerning the
4 default rate, the preparation of the KPI reports and the
05:42 5 general operations of Par Funding to refute their assertions
6 concerning kind of the underwriting, and essentially the
7 allegations that the company has been mismanaged, all that
8 stuff.

9 After that, we anticipate, you know, Mr. Furman -- I
05:42 10 don't know what really limited stuff there is to cover that's
11 on redirect or cross. I don't think there's a whole lot more
12 after that.

13 We have both Christine Furman and Kristen, who are the
14 former office managers of Fidelis. They will testify about
05:42 15 Furman's interactions with investors, what happened at these
16 seminars and other similar issues. Obviously they were both
17 involved at different kind of times. Kristen came in after
18 Christine was working with Mr. Furman kind of a first and then
19 near the end. And then Kristen was working after.

05:42 20 Mr. Roland was involved in a lot of the conversations
21 and was also Mr. Nash's tack advisor and will testify as to
22 interactions with Mr. Nash, whose credibility is front and
23 center in this case.

24 Similarly, we anticipate also calling Mr. Weingold,
05:43 25 who would testify about the advice of counsel, advice he gave

1 in helping Mr. Furman preparing the PPMs and other similarly
2 related documents.

3 Mr. Nardelli would also talk about the discovery and
4 disclosure of the regulatory actions, Reliance and kind of
05:43 5 Par Funding and when Mr. Furman learned about it. And then
6 we'd have the two investors come in real quick if, you know,
7 say, look, this is what was or wasn't disclosed. I'd have to
8 the check their names on the list, whichever ones are disclosed
9 there.

05:43 10 **THE COURT:** Let me recap, because now I didn't have a
11 Weingold in the first lineup. So right now I have Joe Cole, I
12 have -- do I still have Joel Glick or no?

13 **MR. HYMAN:** We'll see if we can stipulate to him.
14 He's going to be nothing more than a half hour. It's going to
05:43 15 be I reviewed the KPI reports, they're accurate. Basically
16 consistent with what he already testified to, and that he also
17 conducted a review of the Par Funding books and records.

18 **THE COURT:** So Joe Cole, Joel Glick -- yeah, I don't
19 know. Is Joel Glick -- will he be coming in an as expert on
05:44 20 that? That might be --

21 **MS. BERLIN:** We have to.

22 **THE COURT:** I don't know how we would let him in.

23 **MS. BERLIN:** He can't.

24 **THE COURT:** The problem is I need to know this
25 because --

1 **MR. HYMAN:** He's an expert. He's been disclosed on
2 our witness list as such. He also --

3 **THE COURT:** That's filed, expert witness disclosures?

4 **MS. BERLIN:** No.

05:44 5 **MR. HYMAN:** I believe the other defendants did.

6 **THE COURT:** That doesn't cover you. That doesn't
7 cover you. This is why I needed to do this. Because I knew
8 this was going to happen. So we have to get your lineup clear.
9 You may not be calling some of these guys because you may have
05:44 10 run afoul of court orders, or I'm going to have a relevance
11 argument, which is different. You've got to make sure. Look,
12 if they're stipulating to it, this may not be an issue. But if
13 he's coming in as an expert to essentially testify to the
14 validity of the underlying financials, that's an expert. I
05:44 15 mean, that would have been the battle the experts in this case
16 would have had, had all the other defendants stayed in this
17 case. We're going to have a battle of the experts between
18 different accountants and different methods. We're going to
19 have, I believe it was Michelle -- and now I'm -- her name
05:44 20 blanking. Right?

21 **MS. BERLIN:** Michelle Davis.

22 **THE COURT:** Michelle Davis versus Glick. I don't know
23 that Glick is still in place. You're going to need to look
24 into that.

05:45 25 So let's, for a second, assume that whatever you need

1 through Glick you get in through stipulation, you don't need
2 it. That means you got Joe Cole, you got Weingold, the
3 attorney, for the advice of counsel issue. Did you say there
4 was a Christine Furman and another Kristin?

05:45 5 MR. HYMAN: Yes. They were just working internally.

6 THE COURT: But what's the other Kristin's last name?

7 THE WITNESS: Kristin Groleau.

8 THE COURT: So there's a Christine Groleau?

9 THE WITNESS: No, no. Christine is my mother,
05:45 10 Christine Furman, and then it's Kristin with a K, Groleau.

11 Another -- they were both my office managers.

12 THE COURT: So two office managers. Okay. And then
13 you have mentioned is Roland Manuel.

14 MR. HYMAN: We may be able to work with the SEC and
05:45 15 eliminate him. We'll see.

16 THE COURT: How about this Nardelli individual? Is
17 Nardelli definitely coming in?

18 MR. HYMAN: He would be via Zoom.

19 MS. BERLIN: He hasn't been subpoenaed.

05:46 20 MR. HYMAN: We'll coordinate with him.

21 THE COURT: And you say you have possibly two
22 investors?

23 MR. HYMAN: Yep.

24 THE COURT: All right. Just so that we're clear, you
05:46 25 have nine witnesses. So this is not like four to seven.

1 You're at nine right now. That's significant.

2 MS. BERLIN: I have 12.

3 THE COURT: There's not a universe where nine
4 witnesses, what we have left with Mr. Furman, are going to be
05:46 5 called by Wednesday. I mean, even if you were to streamline.
6 I can imagine that Mr. Weingold -- I mean, I don't think he's
7 going to be lengthy, but I can't imagine he's going to be that
8 quick as to the advice of counsel issue. Perhaps the office
9 managers are fairly brief.

05:46 10 And again, I don't know if this Nardelli individual is
11 going to be part and parcel of the testimony. If I take out
12 Joel Glick or stipulated to, I'm look at eight. But I think
13 the important thing is we really, really need to make a point
14 over the weekend to have a meet and confer on all of these
05:46 15 witnesses. We have to.

16 Because again, I can start off with one witness,
17 Mr. Furman's remainder of his direct on Monday, but I need to
18 know and make rulings just to save people costs, money, time to
19 see if people here are actually going to be called or not
05:47 20 called, or if you guys are not a hundred percent sure if you
21 need all of these people, that we can make a firm decision on
22 that.

23 We're no longer in a position -- we have to wait and
24 see. We need to know for the Court's scheduling and for the
05:47 25 jurors so I can manage things. So with this lineup, I think I

1 would ask the SEC and obviously Mr. Hyman to confer over this
2 lineup and maybe get a little more information.

3 I think that we still right now do not have a final
4 witness list, correct? The SEC was mentioning that we don't
05:47 5 have final witnesses with the expectation of what he's going to
6 testify to?

7 **MS. BERLIN:** For some witnesses we do, for their first
8 five. But we just counted 12 including Mr. Furman that they
9 named.

05:47 10 **THE COURT:** Let me go through. I got Joe Cole, Joel
11 Glick, Weingold, Christine -- the two office managers, Roland
12 Manuel, Nardelli, investor one and investor two. And that's
13 not including whatever Furman's got left in his redirect. I
14 think I got everybody.

05:48 15 **MS. BERLIN:** Oh, we had Furman on our list.

16 **THE COURT:** If you have Furman, I have him at 10. So
17 I'm just trying to make sure that I don't have anybody else.

18 **MS. BERLIN:** We must have double counted, Your Honor.
19 And Brett Berman is on their list.

05:48 20 **THE COURT:** Sorry. I don't have Berman on my list.
21 Is Berman being called?

22 **MR. HYMAN:** Probably not. We're going to reassess
23 over the weekend depending on how things go. I mean,
24 obviously, Your Honor, we are going to try to streamline it to
05:48 25 get things done by Wednesday.

1 **THE COURT:** Here's what we'll do: By 9:00 a.m. on
2 Monday -- we'll put this in the docket so that we can make it
3 very clear. It's by court order. By 9:00 a.m. on Monday, I
4 would ask that the defendant -- defense team provide me a
05:48 5 revised witness list listing the witnesses that he intends on
6 calling next week. And with a very brief summary of their
7 proposed testimony.

8 Get it in by 9:00 a.m. so we can make decisions, see
9 if you can connect with the SEC as to certain individuals and
05:49 10 whether we can stipulate to some of their testimony or bring it
11 in other ways that might be faster, and I would also ask that
12 when you put together that witness list, that you go ahead and
13 please make it -- indicate to me whether that's going to be
14 live or in Zoom so we know.

05:49 15 So it's either live or in Zoom, then the list of the
16 witnesses, the order in which you intend on calling them, and a
17 proposed very brief synopsis of their testimony. That way I
18 can try to plan ahead and see where I can slot them.

19 Then you guys, in putting that together, make an
05:49 20 educated decision of who you really need. And then we'll pick
21 up again with Furman on Monday at 10:00. The goal here is --
22 so the SEC understands, is Furman -- we need Furman's direct by
23 lunch.

24 **MS. BERLIN:** Hour and a half. It should be fast,
05:50 25 Your Honor. Yeah, yeah.

1 **THE COURT:** You've got to be done by lunch. I
2 understand that you guys did not prepare to have the scope
3 opened before his testimony and it showed, but now that we have
4 his testimony pretty ironed out in the beginning and you know
05:50 5 what you have left to cover, I think we can probably wrap them
6 up.

7 **MS. BERLIN:** We will.

8 **THE COURT:** That means after right after lunch, I will
9 probably have Joe Cole called and let -- because he's flying
05:50 10 out Tuesday, let him be called. And maybe he's fairly quick
11 and I can get Furman back on the stand in the afternoon for the
12 defense to put on their redirect -- excuse me -- their cross.

13 I will explain to the jurors that Furman is being
14 called essentially by both sides, and that I'm allowing, to
05:50 15 save judicial economy and their time -- I'm allowing both sides
16 additional latitude so they can ask him questions without
17 repeating some of the same issues. So I expect that we can do
18 that, and that's part and parcel all of the defense witness
19 list. So they're going to be able to go through that with
05:50 20 Furman. All right. So that will be the plan.

21 I'll enter a paperless order in this regard when we
22 get off the bench here so that everybody knows that's expected
23 by 9:00 a.m. so I can look over it in the morning. And that
24 should take care of a lineup. And again, let see what happens.
05:51 25 If we have got to go to Thursday, so be it. We should be, I

1 think, on the outskirts of our time if we do that. But I'm
2 optimistic that we streamline some of this, perhaps we can get
3 it done indeed by Wednesday, with some closings, maybe
4 Wednesday afternoon, if possible.

05:51 5 All right. So is there anything else, scheduling
6 issues, any other housekeeping things before we break before
7 the weekend on behalf of the SEC?

8 MS. BERLIN: I wonder, Your Honor, if it would be
9 helpful for us to get -- when you get the list Monday morning,
05:51 10 if we just want to talk -- before we commence with the jury,
11 maybe get together a little bit early because I think some of
12 these witnesses -- like three of them, according to the
13 descriptions on their current list, are coming in to testify
14 about whether certain investors are accredited.

05:52 15 I feel like we have been through that, and if
16 that's -- you know, maybe we can get rulings on what is
17 actually at issue in the case because there are three witnesses
18 that are -- about that. There are two witnesses who appear
19 to -- according to the descriptions are come in to testify
05:52 20 about hearsay, what they heard Mr. Furman say. So --

21 THE COURT: I was just going to say -- I was going to
22 say it's probably the office managers. Is that what the office
23 managers are going to --

24 MS. BERLIN: His mother and the office manager are
05:52 25 going to come in and talk about what they heard Mr. Furman say

1 according to this, and as well as three people on whether a few
2 investors are accredited, which we have said it is not
3 relevant. So I think that maybe it would be helpful to
4 streamline and also avoid a lot of objections because I don't
05:52 5 like interrupting testimony, Your Honor, is perhaps -- I'm just
6 suggesting if we want to start a little before the jury or not
7 to address these issues.

8 **THE COURT:** Well, let me ask as to the accreditation,
9 who are the witness that are coming in just to talk about
05:53 10 accredited investors?

11 **MR. HYMAN:** Your Honor, we're not planning on calling
12 any to talk about accreditation. Obviously when we first
13 started dealing with these issues, we described them as
14 discussing accreditation with Furman's dealings with investors.
05:53 15 To the extent that they're testifying about what Furman said,
16 it's not to prove the truth of the matter asserted. It's to
17 prove state of mind and the statements were said. So that's
18 why they would be coming in in terms of the disclosure issue.

19 **THE COURT:** Proffer to me, for example, what the
05:53 20 office manager is going to say that -- that's just so I can get
21 a sense, what would an office manager say that would go to
22 state of mind so I can understand?

23 **MR. HYMAN:** Well, for example, Ms. Furman had, as
24 Mr. Nash testified, numerous interactions with her countless
05:53 25 dealings with her, and also, as I understand, it was -- at

1 least had discussions with, I believe, Mr. Nash or otherwise
2 about some of the disclosures, we'd have to kind of run it down
3 a little bit more over the weekend as we start prepping our
4 witnesses.

05:54 5 **THE COURT:** So you're saying his mother went through
6 some of the disclosures regarding the investments?

7 **MR. HYMAN:** His mother was working in the office with
8 him and lived with Mr. Furman at the time. So she would have
9 overheard him or heard him or others discussing some of these
05:54 10 issues with investors. Also, similarly, what happened at these
11 events is at issue because, you know, as you can imagine --

12 **THE COURT:** Let me ask you this, though- let me try to
13 figure this out. So we're going to have his mom, who is the
14 office manager, say: My son did make all these disclosures.

05:54 15 **MR. HYMAN:** That would be part of it.

16 **THE COURT:** How is that because the absence or
17 omission of disclosure would be for the truth of that statement
18 asserted. How is that not going to be hearsay?

19 **MR. HYMAN:** Well, the fact that the disclosure was a
05:54 20 or was not made is not being asserted for the truth of the
21 matter asserted.

22 **THE COURT:** Isn't that exactly the defense? The whole
23 point is you're going to say that this guy's relying that
24 Mr. Furman informed his mother and she's savvy enough to know
05:55 25 about these investments along with him as his office manager

1 and therefore, he did say these things. And how are you going
2 to get that in? Because his mom said -- I guess the mom would
3 say she said to the investors the things that her son did not
4 disclose. So that would be her out-of-court statement to show
05:55 5 that he made a necessary disclosure. So it would be for the
6 truth of that actual disclosure, right?

7 **MR. HYMAN:** She was actually there for some of these
8 disclosures at the time --

9 **THE COURT:** So she's going to say that she overheard
05:55 10 her son in a meeting with someone make the disclosure. That
11 would mean that -- that, I think, is textbook hearsay. Right?
12 How is that -- if it's all about whether the disclosure was
13 actually made and you're saying I heard him make it, that's not
14 for the state of mind of Nash in his investment. That's to
05:55 15 prove what was actually said. That would be the content of the
16 statement, wouldn't it?

17 **MR. HYMAN:** Not necessarily, Your Honor.

18 **THE COURT:** How not? Maybe I don't understand. How
19 is it not?

05:56 20 **MR. HYMAN:** Because it's just whether or not the --
21 it's what was said. It's not the contents of it or the fact
22 that it's true or not. The key to hearsay -- and this is what
23 was going on with all of our hearsay objections --

24 **THE COURT:** I'm not done with this point. It's what
05:56 25 was said. There's a big difference between having

1 communications made between Fidelis, Par Funding and other
2 entities, most of which quite honestly, even if it was hearsay,
3 it'd be party admissions against his interests. So that would
4 be one thing.

05:56 5 But the majority of the e-mail traffic, let's take
6 Abbonizio, the daughter, which was again full of party
7 admissions yesterday, but most of that was to show the
8 relationship, not the e-mails, because no one is checking the
9 EIN number or the funding number, but to show that there was a
05:56 10 very strong relationship in existence between Fidelis and
11 Par Funding, which is relevant under 401 because we know that
12 one of the defenses has been that there's an arm's length
13 between Fidelis and Par Funding. There's not really a
14 relationship there. This money didn't get funneled.

05:57 15 And all of that was shown to at least advance the
16 SEC's theory that this is how the relationship worked. The
17 e-mails and the substance of those e-mails, I directed the
18 jurors to ignore that. It's to show that there is indeed a
19 relationship between all of these players. This is not like
05:57 20 Mr. Furman is so attenuate from the principals like Abbonizio
21 and Vagnozzi and others that he had no idea or would have no
22 communication with them to understand the nature of the
23 investment. That I understand. And that's why that's been let
24 in.

05:57 25 What I can't understand is you're actually trying to

1 get in the fact that something was said. So the content of the
2 communication which is I did -- my son did disclose these
3 things to investors is to me, I think, exactly what hearsay
4 would be. It would be an out-of-court statement, which is my
05:58 5 son disclosed it. It doesn't matter that it's the contents.
6 The contents are the very nature of the statement which is
7 there's disclosures being made. These disclosures were made to
8 Mr. Nash. That's out of court self-serving hearsay that would
9 be advanced through his mother to show that he did not leave
05:58 10 these issues off the table and there's no omissions.

11 So again, I don't think that that would be admissible
12 as non-hearsay. It really wouldn't be admissible, I think,
13 under hearsay exception that I can think of, and so I'm worried
14 because I don't want to have a situation where you guys go
05:58 15 through the trouble of getting her here and she's only going to
16 be able to talk about things she heard her son say that
17 wouldn't be able to come in.

18 **MR. HYMAN:** For example, his mother would also talk
19 about her interactions with Mr. Nash, what happened at these
05:58 20 events, who was there. A lot of different issues that go to
21 these investors' credibility because she was interacting with a
22 lot of the investors.

23 **THE COURT:** Proffer me something like that. So what
24 about what she's going to say that Mr. Nash was not at one of
05:58 25 the dinners or something like that?

1 **MR. HYMAN:** They say that he was at three of the
2 dinners actually. That kind of was out of it, confused easily,
3 different similar types of things like that, that would go to
4 his credibility.

05:59 5 And the other question I would have is, when there's
6 an omission case and somebody is contending, I made this
7 statement, how else can you defend it if you're saying hearsay
8 prevents them from otherwise saying, or people testifying that
9 they heard about these disclosures.

05:59 10 The key is not that he said truthfully there is a New
11 Jersey regulatory action. If the statement was being brought
12 in to prove there is a New Jersey regulatory action, that would
13 be a hearsay statement. But if you're saying to somebody, I
14 said there was a New Jersey regulatory action, that's no being
05:59 15 brought in to prove there was a New Jersey regulatory action.
16 It was being brought in to show just the statement was made at
17 a particular time with obviously the jury being one to
18 determine the credibility as to the witness's -- what the
19 witness heard in that circumstance.

06:00 20 **THE COURT:** Can the SEC -- I don't know if I can
21 explain it more. But maybe I'm not understanding. Can the SEC
22 maybe explain why there's not a way that we would be able to
23 parse out testimony from his mother saying my son gave all
24 necessary disclosures because I heard it? I mean, I don't --

06:00 25 **MS. BERLIN:** Hearsay.

1 **THE COURT:** I don't understand how that would be
2 anything other than hearsay.

3 **MS. BERLIN:** That is absolutely the definition of
4 hearsay. And also I think there's a fundamental just
06:00 5 disconnect. So this not a private -- if it was a private
6 lawsuit or a class action we would have to show that every one
7 of these people had a misrep.

8 For a securities case we need one misrep to one person
9 and that's it.

06:00 10 **THE COURT:** Right.

11 **MS. BERLIN:** So his mother would have to say -- even
12 if the hearsay didn't exist, which it does, he cannot -- he's
13 not a party opponent. He can't call his own mom to say --

14 **THE COURT:** Bolster credibility.

06:00 15 **MS. BERLIN:** Hearsay is bolstering credibility. It is
16 improper and it can't be done. And also as far as her
17 observations of a man at an event and what her perception of
18 him was, I guess that's more a relevance objection that we
19 would make at the time, right?

06:01 20 **THE COURT:** I can understand that. If his credibility
21 is at issue --

22 **MS. BERLIN:** They get to see him.

23 **THE COURT:** Right. That part at least I understand.
24 If she's going to get up and say that, you know, I don't know
06:01 25 what my son said, but I know that my son spent a lot of time

1 with Mr. Nash and I saw them have a lot of conversations and,
2 you know, I noticed that Mr. Nash often didn't seem to
3 understand or was disoriented, you know, to try to show that
4 maybe he was receiving necessary disclosures, I guess I could
06:01 5 allow something to that effect that would go to it. I mean,
6 it's strains a little bit of relevancy, but I could see that.
7 But I certainly can't have a situation where mom comes in and
8 says, you know, my son did all of these disclosures and I heard
9 him say it. I mean, because that does go to the truth of the
06:01 10 disclosure. The fact the disclosure was made cannot be
11 divorced from the content of the disclosure, I mean, if they're
12 one and the same. In fact, the statement has no relevance
13 unless it is directly related to a disclosure that has
14 allegedly been admitted here. So that's why -- I don't think
06:02 15 that works.

16 Now, you may call her again to talk generally about
17 the investors. I think it would be probably pretty brief, but
18 I can see given some latitude on that. But I want to be clear
19 that her and the other officer manager, if they're going to
06:02 20 come in and try to say that he's made these statements outside
21 of court and it's for the truth of those statements actually
22 being made, then that's going to be sustained. So I don't want
23 you guys to think that that's going to be admissible. And then
24 you might bring in for something else. But that -- at least
06:02 25 the value of the witness for that is not going to work.

1 **MR. HYMAN:** I understand, Your Honor. The other only
2 thing we'd ask is well before you kind of make the final
3 decision one way or another in terms of that is to give us an
4 opportunity to conduct some more legal research on this
06:02 5 ourselves.

6 **MS. BERLIN:** There's no research. We do this with
7 every issue. It's hearsay, Your Honor.

8 **THE COURT:** I don't -- I mean, he can -- if he wants
9 to bring me a case that says that's not hearsay, he's free to
06:03 10 do so.

11 **MS. BERLIN:** It should be interesting. I would be
12 interested if such a case exists. Actually I would be
13 intellectually interested in that.

14 **THE COURT:** I don't see how any of the non hearsay
06:03 15 definition was work there and so I -- but, you know, you're
16 more than welcome to attempt to show me that. And if there's
17 something there I missed, I'm happy to revisit the ruling. But
18 I just want us to know going in what we're talking about.

19 The SEC mentioned that there was -- they've said now
06:03 20 they're not going to worry a lot about accreditation, so that's
21 not really a big issue.

22 **MS. BERLIN:** Three of their witnesses are only
23 identified. I mean, that's what they're on their list for is
24 accreditation.

06:03 25 **THE COURT:** No, no, no. I know. So that's probably

1 why we need a revised witness list.

2 MS. BERLIN: Oh, I see.

3 THE COURT: Is there anything there -- because now
4 they're saying they're not for accreditation. So I've got to
5 know what they're for.

6 Is there anything else there, though, that perhaps I
7 can give a preview of how that's going to play before I go into
8 the weekend? Because, I will be honest, I'm not interested in
9 litigating a whole bunch of admissibility issues before we get
06:04 10 Furman on the stand and losing more time. So I don't know if
11 there's anybody else there. Sounds like if you can sit down
12 and talk about whatever Glick wants to get in, maybe that's
13 just admitted somehow.

14 MS. BERLIN: How are they calling Glick? He's not
06:04 15 their expert witness.

16 THE COURT: Yeah.

17 MS. BERLIN: And Glick's -- if you are limited to
18 Glick's expert report, assuming you can, like, adopt someone
19 else's expert, make them their your own --

06:04 20 THE COURT: No, I don't think that's going to work.

21 MS. BERLIN: -- I don't think it's possible.

22 THE COURT: No, it's not.

23 MS. BERLIN: It can't happen.

24 THE COURT: So why don't we try to take care of Glick.
06:04 25 Because right now -- what -- on Glick's front how do you expect

1 to get Glick in if he's not an expert? You guys haven't
2 produced an expert report. He's advanced by another defendant.
3 Or other defendants. And, you know, I guess I'm trying to
4 think really the value of Glick is to try to say that the
06:04 5 underlying financials were somehow valid or, you know, that
6 they were -- it was reasonable for him to rely on it. Again, I
7 don't know how I would divorce Glick's testimony from his
8 expertise, is my point. Because he's going to have to say, you
9 know, you heard Mr. Furman say today, cash over cash, that's
06:05 10 why I thought they were good. I talked to people about it. So
11 you already got him explaining why he hung his hat on that.
12 Why would I be able to get Glick in without it being an expert?
13 I mean, you have to come in and say, here's why that is a good
14 financial statement. Right? That's going to require
06:05 15 expertise, I think.

16 **MR. HYMAN:** I mean, at this point, Your Honor, our
17 view was we're going to piggyback on some of the other
18 defendants' expert disclosures, there wasn't prejudiced in
19 light of your kind of view of it all.

06:05 20 **THE COURT:** Listen, I want you to understand. It's
21 not in the light of my views. It's in the light of the views
22 of Civil Procedure and the rules that govern disclosures and
23 scheduling orders. We don't litigate by ambush. We cannot
24 piggyback off of a co-defendant's expert. Either you have
06:05 25 filed proper documentation and filings to adopt it as your own

1 and delineate it how it applies to your case or you can't use
2 it. I mean, this isn't like I'm -- I'm not making these things
3 up. This isn't Judge Ruiz' Rules of Civil Procedure. These
4 are the Southern District of Florida local rules and civil
06:06 5 rules of procedure. These are well established. There's no
6 surprise here by me that I wouldn't let you in or let you bring
7 in Glick, adopting someone else's expert report. I mean,
8 that's not going to fly and it was an ambush because no one
9 would ever assume that Furman was going to utilize Glick's
06:06 10 report. So I can't allow that to happen.

11 So can I then, just so we can streamline it, given
12 that the Court's not going to allow you to do that and bring
13 him now as now a late filed expert, is there anything Glick
14 would even offer outside of his expert testimony? Probably
06:06 15 not, right?

16 **MR. HYMAN:** No, Your Honor.

17 **THE COURT:** So Glick won't be called. So we took care
18 of Glick. We don't have any accreditation. We now know that
19 the office manager's testimony is maybe 15 minutes, 20, because
06:06 20 you're not going to talk about what he said outside of court
21 because it's hearsay.

22 We'll deal with Mr. Cole. I think Joe Cole has got
23 stuff that we can probably talk about. And I don't know about
24 Nardelli and Roland Manuel, what you're going to get from them.
06:07 25 I don't know -- can you tell me -- what does their disclosure

1 say? I don't know. Do we know what's Mark Nardelli going to
2 offer?

3 **MS. BERLIN:** Sure. Well, if they -- I mean, if I --
4 spoke to Cliff Haine's (ph.) lawyer, like, yesterday, and they
06:07 5 didn't know -- they hadn't talked to you guys, so they didn't
6 know about the list. They claim that Nardelli is going to be
7 testifying about accreditation. Nardelli is an agent fund
8 manager. He's just another -- he's the Michael Furman of his
9 region.

06:07 10 **THE COURT:** Got it. Okay.

11 **MS. BERLIN:** So, yeah. So --

12 **THE COURT:** I can see that.

13 **MS. BERLIN:** Mr. Nardelli --

14 **THE COURT:** I can see some relevance to that. I mean,
06:07 15 I don't know how it's going to play out. But I guess maybe he
16 can explain how these things work. I mean, that he's also --
17 had similar roles as Furman. Okay.

18 And what about -- his partner is Roland Manuel, right?
19 That's what I've been hearing; is that right?

06:07 20 **MR. HYMAN:** Yeah.

21 **THE COURT:** So is he just going to talk a little bit
22 about how Fidelis worked? Is that the idea?

23 **MR. HYMAN:** A little bit about how Fidelis worked and
24 his interaction with some of the investors, but the SEC brought
06:08 25 in to testify.

1 **THE COURT:** Okay. All right. So I can see some
2 limited testimony from Nardelli and Manuel that would be
3 relevant, and potentially admissible. So that's fine.

4 **MS. BERLIN:** And Roland Manuel is an investor, too.

06:08 5 **THE COURT:** Oh, that's right. He's a big investor,
6 too.

7 **MS. BERLIN:** (Cross-talking) -- relevant to us on a
8 cross-examination. Like he's going to go a while, I think,
9 because he's an investor, he's a partner in Fidelis, he had a
06:08 10 lot of interaction with investors. You know, just to give the
11 judge a sense of time. Like, that's one of our crosses.

12 **THE COURT:** Well, it looks to me, then, that the
13 biggest witnesses that are coming up will be Cole and
14 Roland Manuel. Glick is out now. The two office managers are
06:08 15 very brief. And Nardelli, I could see that being, you know --
16 that's not going to be too lengthy, but there's going to be
17 something there.

18 **MS. BERLIN:** He hasn't been subpoenaed. I don't if
19 he's showing voluntarily.

06:08 20 **THE COURT:** Yeah. I mean, that I don't know. I mean,
21 obviously they mentioned him coming in on Zoom. I don't know
22 if I've dealt with that yet as a motion or request for him to
23 come on Zoom, but I can deal with that.

24 Look, I mean, I think we all expected Weingold to come
06:09 25 in and I don't know -- I mean, he's definitely coming, right?

1 MR. JOHN: He's granted Zoom permission.

2 THE COURT: Yeah, yeah. So I expect him to come in,
3 so that's fine.

4 MS. BERLIN: Oh, yeah.

06:09 5 THE COURT: That's an issue in the case what Weingold
6 did or did not. I think that's really relevant.

7 MS. BERLIN: That's his affirmative defenses.

8 THE COURT: One of his affirmative defenses, advice of
9 counsel.

06:09 10 MS. BERLIN: It's only affirmative defense that he
11 said -- now, we are curious, if we are permitted to know, just
12 because there's no description for Joe Mack Cole, it was just
13 added, and we were kind of straining to understand -- like, if
14 we can get a sense of his relevance to Mr. Furman so we kind of
06:09 15 have a sense of how -- they don't know each other. Maybe they
16 met once.

17 THE COURT: The only thing I can think of is I assume
18 he's going to explain some of the underlying issues with
19 Par Funding, but I think the important thing is he's got to
06:09 20 connect his testimony what Furman knew or didn't know. So I
21 guess --

22 MS. BERLIN: It can't just be an effort to come in
23 here and try defend himself and his co-defendants in
24 Par Funding in light of other people watching this and other
06:10 25 people (cross-talk) it has to be related to --

1 MR. HYMAN: (Cross-talk) -- 10 witnesses.

2 THE COURT: One at a time. One at a time.

3 MS. BERLIN: We would just ask because I really do not
4 like to object when another attorneys are asking questions
06:10 5 unless it's an issue, is that it just needs to be connected to
6 this case and there's no description of what he's going to come
7 in and testify about. And so -- and it's a new -- he was just
8 recently added.

9 THE COURT: Well, look, I'll say this: I think
06:10 10 Joe Cole -- you know, I'm going to ask again, when I put out a
11 quick paperless order, that we get an update, but I expect
12 right now -- I mean, if you guys are writing it down, I should
13 not be getting -- I'm not going to get Joel Glick on that list
14 now, and we know the testimony of office managers are limited.
06:10 15 So right now I need to get an explanation of what Joel Cole is
16 going to say.

17 I have Weingold, I have the office managers, Roland
18 Manuel, Nardelli and possibly two investors, and obviously you
19 can list Mr. Furman. But we know already that's part and
06:11 20 parcel of the ongoing examination of him. But one of the
21 things I will note is when you put in there Joe Cole's -- what
22 he's going to talk about, it will be, I'm sure, too generalized
23 for the Court to be able to make any determination on what he's
24 going to say until he comes in. He's flying in.

06:11 25 But I want to be abundantly clear. Everybody else has

1 resolved the liability phase without admitting or denying
2 anything with the SEC and is preparing for disgorgement now.
3 What I don't want --

4 **MS. BERLIN:** He actually has a consent agreement.

06:11 5 **THE COURT:** He does. Cole has a separate -- he's a
6 little more detailed or a little different, right?

7 **MS. BERLIN:** There are provisions in there about, you
8 know, addressing, like, the allegations against him and other
9 things. So I mean --

06:11 10 **THE COURT:** Well, no. Let me take a moment. I'm sure
11 he's probably watching, but I know Mr. Ferguson has been his
12 lawyer. I think that everyone should use the time we have
13 between now and Mr. Cole's showing up on Monday to just double
14 check with his counsel so that we know. Because I doubt
06:12 15 Mr. Ferguson is going to allow Mr. Cole to get in here and
16 begin run afoul of his consent judgment. So we have to be
17 careful with that.

18 And I just think that the important thing is that we
19 don't have Joe Cole coming in and essentially doing a whole
06:12 20 explanation that has nothing to do with Furman on the defense
21 arguably of Par Funding's model factoring all of that. That's
22 my only concern. It's just going to get to the point where I
23 can see some relevance, but I can see sections of Joe Cole's
24 testimony that start to get too far afield.

06:12 25 **MS. BERLIN:** We can probably stipulate. Those things

1 were never issued in our case, we didn't charge, they're not a
2 feature of any charge.

3 **THE COURT:** My point is I want to let them put on
4 their case, but I just want them to know, bringing in Joe Cole,
06:12 5 that we have to give some parameters because we can't let him
6 just basically come in as if he's decided to go to trial on his
7 issues and talk about things that are too far apart from
8 Furman.

9 **MR. HYMAN:** We're not trying to do that, Your Honor,
06:13 10 and just for purposes very quickly of preserving records and
11 everything else, the SEC wasn't kept to this limitation when it
12 came to their witnesses. They managed to go five days.

13 **THE COURT:** Well, first of all, they had limitations
14 that are being placed on witnesses are only when the witnesses
06:13 15 have an issue as to relevancy or an issue as to the scope or
16 their testimony. I didn't have an issue with these witnesses
17 coming in and finding that they perhaps were outside the scope
18 of the case. That's the difference.

19 **MR. HYMAN:** Half the witnesses they presented didn't
06:13 20 even know who Mr. Furman was. But, Your Honor, at this point,
21 as we said we'll do, we can streamline things. And we'll let
22 everybody know our position as to the witnesses and their
23 testimony Monday.

24 **THE COURT:** I think the important thing is that you
06:13 25 need to be prepared for the Court to make rulings on Monday

1 regarding certain witnesses unless I can get a sense of their
2 scope, and I just don't want you to bring in Cole thinking that
3 Cole is going to be unfettered in his testimony.

4 **MR. HYMAN:** No. The only issues about Mr. Cole are
06:14 5 they sat her bringing, Mr. Sharp, Villarose, and all those
6 other people to try and show that Par Funding didn't do due
7 diligence, wasn't profitable. All those different things about
8 the issues within Par Funding and its financials.

9 **THE COURT:** Let me ask you something. You understand
06:14 10 that the issue here -- and this is partly why we have admitted
11 some of this stuff -- is it's more about the disclosure issues.
12 It's not about the truth of Par Funding's underlying
13 financials.

14 That was a case that you're not trying. That was a
06:14 15 case that your co-defendants are trying. So he's not -- don't
16 interrupt. He's not on the stand explaining Par Funding
17 financials. He's being asked about what did he know or not
18 know and did he disclose it. He's living off representations
19 from other individuals. That's been his testimony.

06:15 20 He only knew what he knew because he was told by
21 Abbonizio about this default rate or that these financials were
22 good. And so the jury is going to have to determine whether or
23 not they believe Mr. Furman in that regard, and whether or not
24 they believe Mr. Furman did or did not do any of his diligence
06:15 25 when he was transmitting or omitting some of this information

1 to investors. But what we can't allow is essentially having a
2 trial on Par Funding as an enterprise. Part of the motions in
3 limine have never focused on that. They focused on what did
4 Mr. Furman know or not know.

06:15 5 So, for example, if Joe Cole talked about how he
6 presented to his fund managers certain information or explained
7 to everybody like Mr. Furman at a dinner that these were the
8 numbers and that these numbers were X, Y and Z, I mean, some of
9 that I can understand. But what we can't do is get into a
06:15 10 situation where the whole trial is about the veracity of
11 Par Funding.

12 Let me give you by way of an example. Par Funding's
13 financials and all of the issues regarding merchant cash
14 advance had nothing to do with one of the individuals being a
06:16 15 convicted felon. At the end of the day, that had to be a
16 disclosure. That doesn't matter. So I'm just giving an
17 example of something that really is not tied to Par Funding,
18 and that's the kind of thing that I need to be clear on.

19 So you can bring in Cole, but where I'm going to
06:16 20 sustain the objections is if Cole is beginning to defend the
21 Par Funding business model because it's really not relevant
22 because it's all about what Mr. Furman said or didn't say,
23 right? So that's all I'm trying to tell you so that you
24 understand when you put on these witnesses that we don't want
06:16 25 to have a referendum on Par Funding because that part of the

1 case has been pretty much taken off the table with the consents
2 of the defendants who were at the forefront of Par Funding,
3 like LaForte, like McElhone. That's the concern there.

4 I mean, most of what we talked about throughout these
06:16 5 witnesses has not been so much about the underlying mechanics
6 but what kind of offerings to tie Mr. Furman to Par Funding
7 were being made and what kind of representations were or were
8 not made by Mr. Furman regarding things he knew or allegedly
9 knew from principals that shared it with him in Par Funding.

06:17 10 **MR. HYMAN:** (Cross-talk) (inaud.)

11 **THE COURT:** Hold on a second. Mr. Hyman, I just want
12 to make sure. So you understand where I'm coming from, I think
13 that it's a misstatement to say that the SEC's case has
14 essentially been an indictment of the Par Funding business
06:17 15 model which I sustained requests in limine from both sides not
16 to allow that to become the case. It is focused only on
17 primarily what Mr. Furman knew or what he says he did not know
18 and what he did or did not tell the FBI. So I just want to be
19 clear. In Cole's case, there may be some limits. That's what
06:17 20 I'm trying to say. I don't think it could be too much about
21 just Par Funding.

22 **MR. HYMAN:** Of course not, Your Honor. The biggest
23 issues are the default rate.

24 **THE COURT:** One of them.

06:17 25 **MR. HYMAN:** And that's one of the ones that they have

1 put at issue, unless Your Honor wants to just say, look,
2 there's no way Mr. Furman knew or should have known what the
3 default rate was based on their assertion that he should go
4 look up lawsuits or otherwise. Obviously we need him for that
06:18 5 no matter what.

6 **THE COURT:** Well, the default rate could be something
7 that could be at issue. You know, I don't know how much Cole
8 can shine on the regulatory concerns.

9 **MR. HYMAN:** The regulatory concerns wouldn't
06:18 10 necessarily be part and parcel of what we'd be trying to do.
11 It would be those kinds of issues, some of the relations with
12 him. And, Your Honor, we can deal with this as we go. I
13 just -- again, we're doing what we can to put on our case.
14 It's Friday. We're --

06:18 15 **THE COURT:** Listen, this is a problem. It doesn't
16 work like that in federal court. You don't just figure it out
17 as we go. You don't. This is a problem. This is why we have
18 witnesses and predictability. I have these jurors. They have
19 one more week with us, and we're entering the holidays. I have
06:18 20 to be extremely careful. This trial needs to end by next week
21 no matter what. So I need to be able to schedule things
22 accordingly so I can give these jurors predictability.

23 So I don't think it's a lot to ask that at this stage
24 of the would game you know, after hearing almost the entire
06:19 25 case -- you have heard the SEC's entire case. So at this

1 point, that you're making fine tunes to your game plan is
2 completely, completely understandable. It happens up until the
3 first witness is called.

4 But to have general categories or witnesses just
06:19 5 listed without necessarily having thought through how they fit
6 into the case, I can give you until Monday, but I can't have a
7 situation because that's why we have been delayed, because
8 we're trying to figure it out as we go which I detest. Some
9 things you can't avoid. I get it. But with these remaining
06:19 10 witnesses, I should be able to know at this stage of the game a
11 proffer of what they're going to say and how it fits into the
12 case.

13 So you understand going into the weekend that there
14 will be no one allowed to give hearsay. If it becomes a whole
06:19 15 sideshow about Par Funding, I'm going to limit it. But other
16 than that, I'm giving you the ability to bring in these
17 witnesses. Just be cognizant of what they're going to be
18 called to say and that it fits in with the case against your
19 client and doesn't become something the case is not.

06:20 20 Now, all you'll do is by Monday, you'll file the
21 revised list, but I think that before filing it, you should see
22 how much of this can either be stipulated to, maybe there's
23 things that can be moved in, there might be other exhibits you
24 want to get in under one of these witnesses. They may not even
06:20 25 had an issue with it. You may not need to bring the witness to

1 admit the exhibit. You may be able to bring it in because the
2 SEC has no concern. They stipulate to admissibility and
3 authenticity and it just gets moved in. But again, it's
4 obvious to me that this conversation has not happened. There
06:20 5 have been no conversations or communications between either
6 side of substance --

7 **MS. BERLIN:** We tried.

8 **THE COURT:** -- about what is going to be the defense's
9 case. That troubles me because then I can't get ahead of a
06:20 10 potential delay of a day or a half a day like when we lost
11 today about the Fifth Amendment.

12 **MS. BERLIN:** We have tried, Your Honor. I don't know
13 what else to say. We have tried --

14 **THE COURT:** It's okay. We have a fresh clean slate.

06:20 15 **MS. BERLIN:** -- to explain it. I don't think they
16 understand.

17 **MR. JOHN:** We'll get it by Monday.

18 **THE COURT:** We got a fresh clean slate.

19 **MR. JOHN:** We'll make it happen by Monday.

20 **THE COURT:** Just make it happen. You got to reach out
21 and call them.

22 **MS. BERLIN:** I know that they understand us. I will
23 say this: This issue with -- the Glick expert and stuff, but
24 the Joe Cole and the default rate and the analysis and all of
06:21 25 that, we'll turn and we will speak with defense counsel.

1 We will then have to put on our rebuttal that we would
2 have done with the witnesses, our expert report and Melissa
3 Davis. If default rate and whether a GAAP analysis versus a
4 cash analysis is the appropriate method, that is appalling.

06:21 5 Mr. Furman never made any -- we're not alleging he made a
6 representation that he used GAAP versus cash over cash. Our
7 point is he said it was 1.2 percent, he didn't do due
8 diligence, he didn't tell anyone about 2 thousand lawsuits, he
9 didn't tell anyone about the financial report that he did see.
06:21 10 And it links together. It's not that -- we're not alleging any
11 sort of accounting fraud with him.

12 **THE COURT:** Well, it's more than that. It's more than
13 that.

14 **MS. BERLIN:** It's what he knew.

06:22 15 **THE COURT:** The key is that it's -- again, it's an
16 omissions or misstatements claim against him. So the only
17 thing that here I think is relevant is, you know, what -- look,
18 for example, his state of mind could come into play if a
19 witness came in and said that this is how - this is what we
06:22 20 told Mr. Furman. That these defaults were nonexistent. Or
21 someone tried to explain to him a way in which he was under the
22 impression of something not being true or not being accurate
23 and so he didn't have an obligation to share to an investor.

24 I mean, there is a fine line where some of that could
06:22 25 be relevant. But the problem is, to get into the underlying

1 calculations of the default rate have no bearing on the issues
2 in the case because, at the end of the day what matter here is
3 what Mr. Furman claims to have known or not known and whether
4 he had to disclose it. I mean, that's really all it was. So
06:23 5 again, I get back to my other point. The veracity of the
6 numbers is not at issue. Right? It's not the number and the
7 calculation.

8 MS. BERLIN: Correct.

9 THE COURT: It's whether or not he shared it or didn't
06:23 10 share it. I mean, that's what I'm saying. So I don't know
11 that all of this would really be relevant to that point.
12 That's kind of the issue.

13 MR. HYMAN: I understand. I mean, we'll deal --

14 THE COURT: You know what I mean?

06:23 15 MR. HYMAN: -- with it, Your Honor, over the weekend,
16 and then address those and try to streamline things further and
17 go from there.

18 MS. BERLIN: And I think the issue, just so the
19 defense counsel can hear it, is the element, right, for the
06:23 20 mindset in our cases is not intent. It is not knowingly or
21 willfully. It is -- just a moment. I want to make sure you
22 understand. Scierter, which is severe recklessness, which is
23 defined in the law as knew or should have known. And so I just
24 want to be clear. These things I'm not debating basic IDEO
06:23 25 law. It's pattern jury instructions. It's a pattern --

1 **THE COURT:** Stop interrupting.

2 It's pattern -- the point is, these are pattern so you
3 understand when they're talking about should have known, that's
4 half of the theory here, for example, why did they bring on the
06:24 5 New Jersey guys to say, this stuff is plastered all over our
6 website? Because the whole point is, he had the wherewithal,
7 the education and the ability to look into the veracity of
8 these investments and so jury could very well find that this
9 publically available information by securities regulators in
06:24 10 Texas, Pennsylvania and New Jersey, he should have known.

11 **MS. BERLIN:** Exactly.

12 **THE COURT:** That's the kind of stuff that we're
13 dealing with here. I always think that to prepare a case
14 effectively, you start with the jury instructions and you work
06:24 15 your way backwards.

16 **MS. BERLIN:** Me too.

17 **THE COURT:** I would think that maybe that will help
18 us. And, in fact, maybe what the Court will do is -- and what
19 you guys may want to do is, when you're proffering to me on
06:24 20 Monday why someone is relevant, you may want to show me how
21 that ties into an element of the jury instruction. That may
22 help you understand why I wouldn't let someone in here that
23 wouldn't make it kind of a nonissue or have a relevancy
24 problem. So that's one of the things I want you to guys to
06:25 25 focus on.

1 But again, we've streamlined it a little bit now. You
2 guys can sit down now and work through your notes and meet and
3 confer and perhaps you can take even more stuff of the table so
4 we can truthfully have a shot at middle of the week closings.

06:25 5 But that's where we're at. So just -- I will put a paperless
6 order out now with an updated -- I'm just going to make it
7 simple -- as discussed on the record at the conclusion of
8 trial.

9 The defendants will file an updated witness list by
06:25 10 9:00 a.m. on Monday with descriptions or proffers as to those
11 witnesses' proposed testimony. And that way we know. But I
12 think you guys can talk about them. Maybe you can eliminate
13 some of those folks by meeting and conferring with the SEC
14 beforehand.

06:25 15 **MR. JOHN:** Your Honor, we got it. We will make it
16 happen.

17 **MS. BERLIN:** Good.

18 **THE COURT:** So with that being said, anything else on
19 the defense side before we conclude? I think we've covered
06:25 20 everything on the SEC.

21 **MR. JOHN:** We have nothing, Your Honor.

22 **THE COURT:** All right. There is no reason why you
23 wouldn't be able to leave, at least if you need to leave, some
24 boxes or anything in the courtroom. The courtroom will be
06:25 25 locked. The Court does not have any other proceedings until

1 the sentencing at 1:00 o'clock on Monday. So if you want to
2 leave things over the weekend, this is going to be closed up.
3 So it will be safe in here. You don't have to take stuff home,
4 if you want to leave boxes. I leave it up to you guys. Just
06:26 5 put in on the side.

6 MR. HYMAN: Thank you, Your Honor.

7 MS. BERLIN: Thank you, Your Honor.

8 THE COURT: We're in recess.

9

10 (Thereupon, the above portion of the trial was concluded.)

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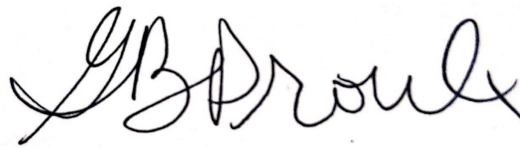
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C E R T I F I C A T E

This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of reporting remotely.

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



12/11/2021

DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. **20-CV-81205-RAR**

**SECURITIES AND EXCHANGE
COMMISSION,**
Plaintiff **December 13, 2021**
vs.
**COMPLETE BUSINESS SOLUTIONS
GROUP, INC, et al,**
Defendants.

TRIAL DAY 6
BEFORE THE HONORABLE **RODOLFO A. RUIZ, II,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **AMIE RIGGLE BERLIN, ESQ**
SECURITIES AND **ALISE M. JOHNSON, ESQ**
EXCHANGE COMMISSION U.S. Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANT: **ZACHARY P. HYMAN, ESQ**
MICHAEL C. FURMAN Millennial Law
501 E. Las Olas Blvd, Ste. 200/308
Ft. Lauderdale, FL 33301
(954) 271-2719
Zach@millenniallaw.com

ELROY M. JOHN, JR., ESQ
Florida Justice Law Firm, PLLC
101 NE 3rd Avenue, Ste. 1500
Fort Lauderdale, FL 33301
(954) 637-2767
Elroy@onlyforjustice.com

1 REPORTED BY: **GIZELLA BAAN-PROULX**, RPR, FCRR
2 United States Court Reporter
3 400 North Miami Avenue, Suite 8S32
4 Miami FL 33128
(305) 523-5294
gizella_baan-proulx@flsd.uscourts.gov

03:05 5 Also present: Victoria Jacqmein, Kevin Robinson
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10 I N D E X

11	Witness	Direct	Cross	Redirect	Recross
12	MICHAEL FURMAN	19			
13	JOSEPH COLE	116	143	154	
14	BARLETTA				
15	KRISTIN GROLEAU	157	170	186	
16	MICHAEL FURMAN		194		

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22 G O V E R N M E N T E X H I B I T S

23	Exhibit	Marked	Admitted
24	39	19	20
25	49	23	23

1	53	47	48
2	55	54	54
3	219	63	64
4	554	21	21
5	579	79	80
6	582	77	
7	585	39	39
8	586	85	88

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D E F E N S E E X H I B I T S

12	Exhibit	Marked	Admitted
13	6	123	125
14	29	137	137
15	1852	127	127
16	2165	236	236
17	2166	236	236
18	2207	221	233
19	2213	236	236
20	2214	236	236
21	2215	236	236
22	2216	236	236
23	2217	236	236

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P R O C E E D I N G S

(The following proceedings were held in open court.)

THE COURT: Please be seated, everyone.

MS. JOHNSON: Your Honor.

10:10 **THE COURT:** Yeah. We're going to address it in one
6 second. Let me get your co-counsel. Is she going to come in?

MS. JOHNSON: She's vomiting in the bedroom.

THE COURT: So we're currently off our audio at this
9 point. So we can go ahead and discuss some case management.
10:11 10 So it's my understanding that Ms. Berlin is not feeling well
11 battling some sort of a bug or something this morning.

MS. JOHNSON: Some type of stomach issue, yeah. She
13 had to pull over and get sick, and as I understand, she's
14 currently getting sick again. Her plan was to ask for an hour
10:11 15 continuance and see if it continued or if she felt better and
16 resume at 11:00.

THE COURT: Okay.

MS. JOHNSON: Oh, here she is.

THE COURT: Ms. Berlin, good morning. I understand
10:11 20 you're not feeling so well. I'm sorry to hear that.

MS. BERLIN: Thank you. I feel a little better now,
22 but I don't know how long it will last.

THE COURT: Okay. Are we comfortable -- I mean, I can
24 let -- the jurors won't really notice if you have to step out.
10:11 25 I'm wondering can we continue at all with the direct or can

1 co-counsel take the lead? How are we feeling in that regard?

2 **MS. BERLIN:** I can do it, you know, mentally and all
3 of that. It's just if I have to take a break, it will be an
4 urgent need.

10:12 5 **THE COURT:** That's okay. Maybe what I could do is let
6 the jurors know that to the extent that there may need to be a
7 sudden break, that, you know, we'll let them know and that way
8 they don't react in any sort of alarm or anything.

9 **MS. BERLIN:** Yeah, that was really our only concern is
10:12 10 that it could be a little not good for the SEC if I run out of
11 the courtroom at some point.

12 **THE COURT:** Sure. That's fine. I will let them know,
13 but I'm not going to obviously make any mention that you're not
14 feeling well. I'll just say there may need to be brief
10:12 15 interruptions by the SEC's counsel during the testimony or
16 remaining testimony of Mr. Furman and so they should take no
17 issue with that and we'll take a break. All right. So keep me
18 posted to the extent you can, and we will work with you on
19 that.

10:12 20 The Court -- while we're just doing a little bit of
21 housekeeping, the Court did receive the filings this morning.
22 Specifically, we had the amended witness list filed by the
23 defense, and so the Court has been reviewing that. And I
24 understand our four witnesses are going to be called and are
10:13 25 the ones we discussed on Friday. So Mr. Cole and a few others

1 are listed. So I'll take a look at that, but nothing there
2 raises any issues for me. It's just good to see what our
3 lineup is.

4 And obviously Mr. Furman is on that list, and we're
10:13 5 going to give the defense an opportunity really to do their
6 examination if and when they take their turn here on a really
7 rehabilitative cross-examination and a little bit of direct at
8 that point which I'll allow them to go through that.

9 The other thing I did receive was a revised joint
10:13 10 pretrial stipulation. I got that. So that kind of goes
11 through, I think, a summary of where we are at and hopefully
12 cleans up or clarifies any concern regarding each side's
13 position and so that's a good filing there as well that I can
14 review.

10:14 15 The last one obviously is a motion for leave to file a
16 memorandum in connection with the purportedly unpled claims of
17 immigration doctrine. Just so I can streamline it, I know it's
18 attached as an exhibit. I know it's objected to, but really to
19 make it easier, I'll grant the motion really paperlessly so
10:14 20 that it can be formally filed as a memorandum in the docket.
21 So Exhibit A will be deemed filed.

22 I'll review it. I haven't had a chance to read the
23 memorandum yet, and really we don't need to get caught up in
24 that right now. That's really more for later. I don't think
10:14 25 it's going to be an issue, but when we get to it, we'll talk a

1 little bit more about it. But I am going to grant the motion
2 so I can formally consider the memorandum.

3 So that's all the stuff we had to deal with this
4 morning. I think that we can put Mr. Furman back on the stand
10:15 5 in just a moment and continue on with Mr. Furman's direct. One
6 thing I needed to raise because it is significant is with
7 regards to our jury. We have another juror that is not going
8 to be with us any longer in the trial.

9 Juror number 1 was the young woman here in the front
10:15 10 where Rita, my courtroom security officer, is sitting. You may
11 recall that she was the one that was unfortunately repeatedly
12 late last week. I think she was running behind several times,
13 and if you recall also, during one of the lunch breaks she went
14 home and we couldn't get ahold of her and she ultimately came
10:15 15 back.

16 For whatever reason, maybe because she didn't want to
17 seem like she was coming up with an excuse, she has a baby,
18 almost a newborn, and never shared it during voir dire. And
19 then on top of that, she has another child that I think is not
10:16 20 in school. She's very young, toddler perhaps. She called us
21 and left us a message. This morning we finally reached out to
22 her before coming to court today to indicate that the
23 babysitter that has been the one relieving her so she could
24 serve has completely gone off the grid.

10:16 25 She's been trying to call her all morning, she can't

1 find her. She obviously cannot leave the children unattended.
2 There's no timeline for that. If this was a situation where
3 she said to me, look, I need an hour and then we'll work out to
4 give Ms. Berlin an hour, then I would do it because it would
10:16 5 make total sense. But she basically said, I don't know where
6 my babysitter is. And so the Court was in a unenviable
7 position of having to call her back and excuse her for the
8 remainder of trial.

9 But again, we have six jurors and the six actually, at
10:16 10 one point when she was running late, indicated they were all
11 ready to go without her. So they are a jury that has been very
12 much locked in, so I'm not too concerned. We still have the
13 requisite number under our rules, but I wanted to let everybody
14 know that she, like our juror on the first day, who had a flat
10:17 15 tire, will be excused or has been excused by the Court.

16 So we proceed with the six we have. They are all
17 here. They're all ready to go.

18 Is there anything else in terms of housekeeping that
19 the Court needs to be aware of before I can go ahead and have
10:17 20 Mr. Furman back on the stand and continue on with the direct?
21 Anything on the SEC's side that I need to cover?

22 **MS. BERLIN:** No, Your Honor. I wonder if, though,
23 before we call the jury, if I could just have five minutes
24 because I just came in, just to -- there's one exhibit I just
10:17 25 need to grab.

1 THE COURT: Sure. Go ahead, take the five.

2 And anything on the defense side that I need to cover
3 housekeeping-wise?

4 MR. HYMAN: Very briefly, Your Honor.

10:17 5 THE COURT: Yes, speak into the microphone.

6 MR. HYMAN: I apologize. On Friday, Your Honor
7 indicated that unless we found case law dealing with the
8 hearsay issue, you'd strike the investors. We didn't find any
9 case law supporting your position.

10:17 10 THE COURT: I'm sorry. Not to interrupt you. I don't
11 think it was the investors, right? Wasn't it the two office
12 managers?

13 MR. HYMAN: It was more of for the investors to the
14 disclosure issue. We had Mr. Stoller on the list. We kept him
10:18 15 on there just to preserve whatever rights with the knowledge
16 that Your Honor would likely be striking him in today light of
17 the failure to find the appropriate authority. I just wanted
18 to raise that so you could strike him appropriately.

19 THE COURT: So again, the -- I want to make sure that
10:18 20 I'm looking at your witness list Docket Entry 1090 so I know
21 who we're talking about. This is number 7, Kenneth Stoller,
22 right?

23 MR. HYMAN: Yes, Your Honor.

24 THE COURT: He was going to talk about Furman and
10:18 25 Fidelis's educational seminars and disclosures made by Furman;

1 is that right?

2 MR. HYMAN: Yes, Your Honor.

3 THE COURT: Okay. All right. Okay. So yeah, at this
4 point I don't know how his testimony would come in other than
10:18 5 hearsay. The issue is he would be testifying as to the
6 truthfulness of Mr. Furman's statements regarding disclosures.
7 And it would be a little difficult, I think, to do that and I
8 can't even think of an exception that would really apply for
9 that.

10:19 10 One could try to argue some sort of state of mind, but
11 the reality is Mr. Stoller would be materially addressing the
12 statements made by Mr. Furman. One would argue that's probably
13 self-serving hearsay, but I just don't know any way that
14 Mr. Stoller would come in, and I take it that defense has not
10:19 15 found any other way that that testimony would be admissible
16 given that it is, I think, straightforward hearsay. So he's on
17 your main call list. I recognize that. I think to save us the
18 time so he doesn't get brought in to simply have objections,
19 that works for the Court. We will not be calling him.

10:19 20 And I think everyone else, I mean, as far as I can
21 tell, will be fairly straightforward. We'll deal with any
22 issues with Christine Furman when she's called. There was an
23 argument made by the SEC there. But I'll let that play out and
24 see what happens when she testifies. I don't think I need to
10:19 25 make any sort of preliminary ruling in that regard.

1 Similar with Mr. Barletta, as we discussed on Friday,
2 as long as we don't make this a trial about Par Funding that's
3 not related to Mr. Furman, I think Mr. Barletta's testimony
4 will not have any major issues. Do we still think that we're
10:20 5 going to have Mr. Barletta come in this afternoon as you
6 planned?

7 **MR. HYMAN:** Yes, Your Honor. He's currently here
8 sitting outside. There's the one kind of -- we may ask him
9 some limited background questions, but we're not planning on
10:20 10 going into anything substantive. Also on our list we
11 referenced that he might be discussing Mr. LaForte. However,
12 upon reviewing the consent judgment, I think he is estopped
13 from testifying about any of Mr. LaForte's involvement. So we
14 don't plan on asking any questions on that subject.

10:20 15 **THE COURT:** Very good. And what I was planning on
16 doing is what you had requested on Friday, which was letting
17 the direct with Mr. Furman end and then calling him out of
18 turn. That's the plan still. And I'll let the jurors
19 understand that you guys are going to get to go up and ask
10:20 20 Mr. Furman questions, but we're now going to call your first
21 witness out of turn.

22 **MR. HYMAN:** Yep. And depending on timing, Ms. Groleau
23 had to take off work. So we may try to call her out of turn,
24 depending on just how much time there is, once the SEC finishes
10:21 25 its direct. If they're short and kind of sweet as we'd hope,

1 we might be able to get all three of them done today, but we'll
2 have to see what happens.

3 **THE COURT:** Let's hope. That would be ideal. I hope
4 so too. Let's see how it goes when we get Mr. Furman up here
10:21 5 and finish up his direct examination. And I take it, then, are
6 we ready to go exhibit-wise on the SEC's side too? I know that
7 we have been trying to show Mr. Furman a number of documents.
8 So hopefully we kind of have a game plan here of what needs to
9 be shown to him.

10:21 10 **MS. BERLIN:** Yes, Your Honor. In fact, I'm going to
11 use the ELMO so I can show everything quickly. And one other
12 thing, Your Honor, when you mentioned witness out of turn
13 reminded me, we have a witness who is an impeachment witness
14 that we're going to call after Furman.

10:22 15 **THE COURT:** Okay.

16 **MS. BERLIN:** But we want to ask if we can take him out
17 of turn because he's an agent. He can come tomorrow.

18 **THE COURT:** Okay. Yeah, that would make sense.

19 **MS. BERLIN:** If that's okay.

10:22 20 **THE COURT:** Yeah. I'm going to let the jurors know
21 we're calling some folks out of sequence due to availability,
22 but I think that makes sense since we kind of have a plan with
23 Cole and possibly Groleau today, let's have the defense
24 witnesses called, and then you can deal with your witness on
10:22 25 Tuesday, tomorrow.

1 MS. BERLIN: Thank you, Your Honor.

2 MR. HYMAN: Your Honor, we obviously object to this
3 witness being brought in for impeachment. There isn't any
4 prior inconsistent statement. Mr. Furman testified he doesn't
10:22 5 remember specifically as to what he had said to them and had
6 been questioned ad nauseam about those statements in front of
7 the jury. So we think it's overly cumulative and prejudicial
8 to have an FBI agent talking about what happened during that
9 interaction.

10:23 10 THE COURT: Understood. I mean, the challenge is
11 there's not a universe where you would be able to preclude an
12 entire witness in that fashion on impeachment grounds. I had
13 to let that witness come in, and then if it indeed becomes
14 problematic or I get something that's in appropriate, then
10:23 15 obviously if the proper foundation for impeachment isn't laid
16 or we have some issue as to argument as to being cumulative,
17 we'll deal with it at that time. But at this point, you know,
18 that witness is going to get called and we'll have to deal with
19 the situationally.

10:23 20 MS. BERLIN: If we didn't call him as impeachment, we
21 would be calling him as rebuttal. He probably would have been
22 on our initial list anyway if we didn't make the shift to open
23 the door. But -- so, Your Honor, we're very flexible on the
24 day. The only day he cannot come is Wednesday.

10:23 25 THE COURT: Okay. I think we can get him in tomorrow

1 out of turn. That's not a problem.

2 **MR. HYMAN:** The only thing we request, Your Honor, is
3 that the documents pertaining to this witness, the FBI report
4 and everything, be provided to us at some point.

10:24 5 **THE COURT:** I don't know what we're going to be using.
6 I don't think we have 302s or anything coming in with this
7 witness anyway, but if there's anything, we'll deal with it
8 when it comes in. I don't know -- again, I mean, this is all
9 impeachment. So, you know, the production of it as it's coming
10:24 10 in, we'll make sure we get copies from you guys. But I don't
11 even know if we're going to have much in the way of documents.

12 Ms. Berlin, do you know?

13 **MS. BERLIN:** There won't be any documents. And no 302
14 will be introduced. He won't be testifying from a 302.

10:24 15 **MR. HYMAN:** Your Honor, the only side point is, is
16 Mr. Furman's been questioned from the 302. At this point, I
17 think just fairness dictate that we be allowed at a minimum to
18 see it and ask him questions concerning the substance of it.

19 **THE COURT:** No. I mean, at this point, I mean, they
10:24 20 haven't questioned from the 302. They've asked questions to
21 the first agent. The agent -- the first agent actually came
22 in, really, as a records custodian almost for the tape. There
23 hasn't really been any questioning that I can recall from an
24 FBI report. It was simply to that witness. So I can't think
10:24 25 of it. It's not like it's been scripted and this would be

1 impeachment anyway, so we're not going to have a production of
2 these exhibits. Well, let's put it this way, there's no
3 exhibits. I mean, I'm being told that it's going to be an FBI
4 witness who has experience in directly rebutting some of what
10:25 5 Mr. Furman has stated. So I mean, it's pretty straightforward
6 impeachment. I'll deal with any objections when that witness
7 comes. But in terms of production up front, I see nothing that
8 the Court would even order or that's even going to be
9 introduced. So I think we're not going to have an issue.

10:25 10 **MR. HYMAN:** I wasn't talking about the FBI agent.
11 Ms. Berlin was questioning Mr. Furman based on statements that
12 she's reading off of the 302 yesterday.

13 **THE COURT:** Well, you mean on Friday. I don't recall
14 Ms. Berlin asking anything off the 302, and that would be the
10:25 15 same argument, turn over your notes, if you're using it for an
16 outline. I mean, I don't really -- that's not required and I'm
17 not going to be ordering that. If you wanted the 302, you
18 should have filed a motion to compel three months ago or four
19 months ago, we could have argued that and litigated in front of
10:25 20 my magistrate judge as a discovery issue. It's not going to be
21 turned over now. There's nothing to be dealing with a 302
22 production at this stage of the game. It's not an outline.
23 I've watched, with my own eyes, the testimony. It's the same
24 as anybody else that would have notes, but there was no
10:26 25 reference to any document that would require its production.

1 So that's not going to be permitted or required.

2 So with that being said, anything else? I think we're
3 ready to go. We can probably bring in our jurors and get
4 Mr. Furman back on the stand.

10:26 5 MS. BERLIN: Thank you.

6 THE COURT: Go ahead and get it started if you want.
7 If you want to get started.

8 And, Mr. Furman, you might as well make your way up to
9 the stand. Go ahead and grab a seat, make yourself comfortable
10:26 10 here. We'll go ahead and get our jurors.

11 MS. BERLIN: I feel like I should leave it on.

12 THE COURT: Yeah, that's fine. I'm not going to make
13 any mention. I'll let the jurors know, just in case.

14 Are you going to try to testify through the mask?

10:26 15 THE WITNESS: No.

16 THE COURT: I think you're far enough away.

17 THE WITNESS: If she cannot hand me anything --

18 THE COURT: Yeah. Everything should be shown through
19 the ELM0, so we can prevent any sort of issues with any bugs or
10:27 20 anything like that.

21 MS. BERLIN: Thank you, Your Honor. Let's see if I
22 can move this a little bit and move the microphones closer.

23 THE COURT: We can go ahead and turn on the audio as
24 well.

10:28 25 (Thereupon, the jury entered the courtroom.)

1 **THE COURT:** Good morning, everyone. Please be seated.
2 Good to see you all. Welcome back, ladies and gentlemen of the
3 jury. I hope you all had a nice and restful weekend. Again,
4 we do appreciate your services and your dedication coming in on
10:28 5 time again today, for what we expect to be the latter half and
6 the homestretch of this trial over the coming days.

7 You may recall from the testimony that we took on
8 Friday that we were in the midst of the SEC's direct
9 examination of Mr. Furman. The goal this morning before lunch
10:29 10 is to finish that direct examination. There may be some issues
11 with witnesses and other things that may necessitate or require
12 that SEC's counsel step out briefly. If at any point any
13 lawyers seem to put a quick pause and have to run out of court,
14 please take no inference from that. We've had some scheduling
10:29 15 issues and we're trying to get everything under way. So just
16 keep that in mind.

17 But again, if you recall, the plan here is to not only
18 have the SEC finish, but then this afternoon we are probably
19 going to call, just for availability sake, a witness out of
10:29 20 turn. What's going to end up happening is, this is expected to
21 be the SEC's last witness. They would rest after this witness.
22 Of course, you have to give defense an opportunity to
23 cross-examine this witness and the SEC a chance to do redirect
24 on the witness.

10:29 25 But since there may an defense witness that's

1 available for a short amount of time, once we're done with the
2 direct examination of Mr. Furman, we may put a pin on his
3 testimony and pause it so that we can call some witnesses out
4 of turn. Do you all understand? We're just doing this for
10:30 5 availability and trying to streamline things. It's just what
6 we're working on this morning.

7 Does everybody have their notepads? You guys all
8 found your stuff? Okay, great.

9 All right. So I don't want to hesitate any longer, so
10:30 10 we can get underway and pick up where we left off. So I'm
11 going to turn it back to the SEC to continue the direct of
12 Mr. Furman.

13 Mr. Furman, obviously you continue to be under oath.
14 We don't have to swear you in again.

10:30 15 He continues to be under oath since we took his oath
16 last Friday, or this past Friday.

17 Okay. With that being said, we'll turn it over to the
18 SEC.

19 MS. BERLIN: Thank you, Your Honor.

20

21 Thereupon,

22 MICHAEL FURMAN,

23 having been previously duly sworn:

24

25 DIRECT EXAMINATION (continued)

1 **BY MS. BERLIN:**

2 Q. Good morning, Mr. Furman.

3 A. Good morning.

4 **MS. BERLIN:** Your Honor, may I approach the witness?

5 **THE COURT:** Yes, you may.

6 **THE WITNESS:** No physical, please.

7 **THE COURT:** Can you just put it up on the overhead?

8 **MS. BERLIN:** It hasn't been admitted.

9 **THE COURT:** Okay. If you could -- you've got to show
10:31 10 it. Maybe you could show it to them in your own screens or you
11 don't have any other way of doing it? You have a screen there.
12 Yeah. That way you don't have to approach the witness and make
13 it easier.

14 **MS. BERLIN:** Okay, super.

15 (Thereupon, the exhibit was introduced into evidence.)

16 **THE COURT:** You should be able to see it.

17 You folks don't see anything, right?

18 **THE JURY:** (Shaking head).

19 **THE COURT:** Okay, very good. Let's do it that way.

10:31 20 That way you don't have to be going back and forth.

21 **MS. BERLIN:** Thank you, Your Honor.

22 **BY MS. BERLIN:**

23 Q. Do you recognize this document?

24 A. Yes.

10:31 25 **MR. HYMAN:** No objection to its introduction,

1 Your Honor.

2 **THE COURT:** Very good. We'll admit that at that time.

3 What's the label on that? P 39. So admit P 39 at
4 this time without objection.

10:31 5 (Thereupon, the exhibit was admitted into evidence.)

6 **BY MS. BERLIN:**

7 Q. Mr. Furman, can you see it on your screen now?

8 A. **Yes, I can.**

9 Q. Okay, great. This is your management services agreement
10:32 10 with Par Funding. I mean, I'm sorry, with ABFP, Mr. Dean
11 Vagnozzi's company?

12 A. **Correct. This was ABFP Management, not Par Funding.**

13 Q. Okay. And that's your signature on the back?

14 A. **That it is.**

10:32 15 Q. And it's dated April 24th, 2018?

16 A. **Yes.**

17 Q. And under this agreement, ABFP and Mr. Vagnozzi had access
18 to your investors' money?

19 A. **I know the accountant did, correct. The funds account.**

10:32 20 Q. An employee of ABFP was -- had access to the money of the
21 people that you raised money from, right?

22 A. **Correct.**

23 Q. Okay. And in addition to having access to your investors'
24 money, did ABFP also prepare the documents for your investors
10:33 25 that they had to file with their taxes?

1 A. That was an add-on at the end of the year. I know that I
2 had some problems with that, so I had to do some of that
3 myself. But yes, I believe it was like a dollars or something
4 more. We had to pay a fee of 10 dollars, a hundred dollars, I
10:33 5 don't remember. But yes.

6 Q. Okay. So ABFP also prepared tax documents for your
7 investors to file with the IRS?

8 A. I believe that's correct. ABFP Management.

9 Q. Okay. Dean Vagnozzi's company, correct?

10:33 10 A. His management company, yes.

11 (Thereupon, the exhibit was introduced into evidence.)

12 MS. BERLIN: And if we could show this only to the
13 witness, please.

14 BY MS. BERLIN:

10:34 15 Q. Do you recognize this document?

16 A. Looks like the same one.

17 Q. It's slightly different. I can put them next to each
18 other. That might make it easier for you.

19 MR. HYMAN: Ms. Berlin, what was the exhibit number?

10:34 20 A. 554.

21 MR. HYMAN: Thank you.

22 No objection to the introduction of this, Your Honor.

23 THE COURT: We'll admit this exhibit at this time.

24 (Thereupon, the exhibit was admitted into evidence.)

10:34 25 THE COURT: What's the number on this one?

1 MS. BERLIN: It's 554.

2 THE COURT: 554, that will be admitted.

3 BY MS. BERLIN:

4 Q. And again, your signature, correct?

10:35 5 A. Correct.

6 Q. And this is a management agreement with ABFP to perform the
7 same services we just talked about for your investors?

8 A. It looked to be, correct. It's not there now, but yeah.

9 Q. And those are the investors who were contributing to
10:35 10 your -- to Fidelis in order to invest in Par Funding?

11 A. Fidelis Financial Planning, the fund, yes.

12 Q. Okay. Do you see this agreement also included Section 16
13 where you were acknowledging that you'll only raise assets for
14 Par Funding? Do you see that?

10:35 15 A. Yes, I do.

16 Q. And also your -- this agreement states that both you and
17 Dean Vagnozzi's company agree that Russell Meyer and Renee
18 Meyer are your clients and are owned by your company.

19 Do you see that?

10:36 20 A. Correct. I see that.

21 Q. And you recall Russell Meyer and Renee Meyer are the
22 investors, we looked at their promissory note last week in
23 ABFP? Do you recall that?

24 A. I do.

10:36 25 Q. And did you tell your investors that Dean Vagnozzi and ABFP

1 were going to be handling or having access to their funds or
2 that they were the ones preparing the tax documents for them to
3 file with the IRS?

4 A. Yes. I went over ABFP Management Company to be handling
10:37 5 the accounting and back office.

6 Q. Okay. So you told the investors about ABFP and Dean
7 Vagnozzi's involvement?

8 A. The management. Mostly the CPA handled it, yes. Yeah.

9 Q. Okay.

10:37 10 MR. HYMAN: It's already in evidence.

11 MS. BERLIN: 49.

12 (Thereupon, the exhibit was introduced into evidence.)

13 Your Honor, can we show this only to the witness?

14 THE COURT: Sure.

10:37 15 BY MS. BERLIN:

16 Q. Mr. Furman, do you recognize what this document is?

17 A. I recognize what it pertains to, yes.

18 Q. Okay.

19 MS. BERLIN: Is there any objection to this admission
10:37 20 to this government document, Mr. Hyman?

21 MR. HYMAN: No, no objection.

22 THE COURT: That will be admitted at this time.

23 That's P 49?

24 MS. BERLIN: Yes.

10:38 25 (Thereupon, the exhibit was admitted into evidence.)

1 **BY MS. BERLIN:**

2 Q. And do you see here, this is a regulatory order, a consent
3 and agreement order that the Pennsylvania state regulators
4 issued against Dean Vagnozzi and doing business as A Better
10:38 5 Financial Plan, which is ABFP? Do you see that?

6 A. **I see that.**

7 Q. Okay. And you're familiar with this order against
8 Mr. Vagnozzi and his entity, correct?

9 A. **I'm a lot more now, correct.**

10:38 10 Q. And in this order, you were aware that the state regulators
11 found that Mr. Vagnozzi and his entity had violated the state
12 securities laws in connection with the Par Funding offering,
13 correct? You know about this order, correct?

14 A. **Now, correct.**

10:39 15 Q. Well, you knew about it before I'm showing it to you today
16 Mr. Furman, right?

17 A. **Yes.**

18 Q. In fact, you texted your assistant, Kristin Groleau, about
19 it and you discussed it prior to today, correct?

10:39 20 A. **Correct.**

21 Q. And do you see that this is executed by Mr. Vagnozzi on
22 April 30th and entered on May 1st, 2019?

23 A. **I see that.**

24 Q. And this order from the Pennsylvania state regulators
10:39 25 against ABFP and Mr. Vagnozzi imposed a \$499,000 sanction.

1 Do you recall that as well?

2 A. I recall, yes.

3 Q. And it was in connection with Mr. Vagnozzi raising money
4 from investors for Par Funding promissory notes, correct?

10:40 5 A. As far as I know, correct.

6 Q. And after learning about this consent agreement and order,
7 you continued to not tell your investors about the regulatory
8 actions against the Par Funding, which we looked at last week,
9 the Par Funding regulatory actions from 2018 or this regulatory
10:40 10 action from April 2019 against ABFP, correct?

11 A. Incorrect. I brought it up once I found out about it, and
12 again, it's not against my company or in the state that I
13 worked in. So I brought it up to clients once I found out
14 about it.

10:41 15 Q. Mr. Furman, you didn't discuss this at your sales events,
16 correct?

17 A. My educational events, no, we did not bring it up.
18 Generally at education events, I was not selling ABFP.

19 Q. And you did not tell every investor or potential investor
10:41 20 who was investing in Par Funding, correct?

21 A. Again, I did not make a list. So I cannot say when I found
22 out. I told everybody once I spoke to them that was pertinent
23 in a way that I thought was best informing them.

24 Q. Mr. Furman, I want to make sure I understand. Is it your
10:41 25 testimony that after you found out about this order -- and

1 let's accept that, you learned about this at the end of 2019,
2 correct?

3 A. I don't remember the date. Dean Vagnozzi and A Better
4 Financial Plan Management Company, which is different than
10:41 5 A Better Financial Plan, as I was one of, I don't know, 40 or
6 50 fund managers around the country, there is no press release,
7 there was no down to all the advisors or fund managers that he
8 managed or his company managed because he had his own company
9 and I dealt with solely the CPA. There was no communication
10:42 10 every week with Mr. Vagnozzi himself.

11 There was no communication, no e-mail letting every
12 fund manager know. I learned about it probably many months
13 after it happened from one of the fellow fund managers that I
14 bounced many of the ideas off of and our own pros and cons
10:42 15 about everything about all of our firms.

16 So once I found out about it and somebody -- like I
17 said, I don't let people know about it much through e-mail. So
18 most of my conversations were conversations in person, in my
19 office. These were -- as you call it, the majority of them
10:42 20 were retirees. And so I was not texting. I didn't think that
21 that is a very professional way to text, especially even
22 somebody regardless of their age. And so in person, I brought
23 up what I thought was pertinent as I learned about it in a way
24 that was constructive to give them as much education and
10:43 25 information as I thought I could.

1 Q. None of that is true, is it?

2 A. **No. That's true.**

3 Q. Okay.

4 A. **That's your own opinion.**

10:43 5 Q. Well, let's look at the evidence. I'd like to -- do you
6 remember the SEC taking your deposition testimony in May 26,
7 2021?

8 A. **I remember being deposed, correct, from my house.**

9 Q. And did you -- you took an oath to tell the truth that day,
10 right?

11 A. **Correct.**

12 Q. And you testified about this issue. Do you recall?

13 **MS. BERLIN:** And, Your Honor, may I put the transcript
14 on ELMO as I read it?

10:43 15 May we show everyone?

16 **THE COURT:** No. Let's go ahead and --

17 **MS. BERLIN:** Just read it.

18 **THE COURT:** Just the witness, please.

19 **MS. BERLIN:** Thank you.

10:43 20 **BY MS. BERLIN:**

21 Q. Do you recall being asked:

22 So did you tell any of the potential investors or
23 investors of Fidelis about any Pennsylvania securities
24 regulatory matter relating to Mr. Vagnozzi or his companies?

10:44 25 And you answered: Maybe it's come up over time, but I

1 did not work for Mr. Vagnozzi. So no, I did not discuss
2 Mr. Vagnozzi's companies with my clients typically.

3 And it just continues to go on. Do you see that,
4 Mr. Furman?

10:44 5 A. That I do.

6 Q. And so you testified not quite seven months ago that you
7 didn't tell your investors about Mr. Vagnozzi's involvement in
8 the company or the regulatory action, correct?

9 A. Incorrect. That's not what that states there. In a
10 snippet of two sentences out of eight hours is not going to
11 paint the picture of the truth. As I said, typically I did not
12 lead or talk about Mr. Vagnozzi's companies, especially in a
13 first meeting other than I'm under an umbrella or working with
14 a management company.

10:45 15 Also, Mr. Vagnozzi, as you were bringing up during my
16 deposition, had a much later similar, as far as I know, action
17 from the State of Texas which was, I believe, actually after
18 Corona. So there was no way for me to talk to my clients about
19 that after that time, as well as Pennsylvania, when I brought
10:45 20 it up, I do not work for ABFP or ABFP Management Company. So
21 no, I did not bring up Mr. Vagnozzi to my clients specifically
22 in the beginning.

23 Q. Right. So but we have just looked at the order. It's
24 against Mr. Vagnozzi doing business as his company. And you're
10:45 25 right, you did testify more about it because I wanted to make

1 sure I understood. So I'm going to show you the rest of this
2 portion.

3 **A. And it says A Better Financial Plan, not A Better Financial**
4 **Plan Management Company.**

10:46 5 Q. The question was asked -- after you provided that answer,
6 we stopped clarification and said -- after you said: So no, I
7 did not discuss Mr. Vagnozzi's -- I'll start at the beginning.

8 QUESTION: So did you tell any of the potential
9 investors or investors of Fidelis about any Pennsylvania
10 securities regulatory matter relating to Mr. Vagnozzi or his
11 companies?

12 ANSWER: Maybe it's come up over time, but did I not
13 work for Mr. Vagnozzi. So no, I did not discuss Mr. Vagnozzi's
14 companies with my clients typically.

10:46 15 QUESTION: I'm sorry. You did not discuss what? Can
16 you repeat your answer?

17 ANSWER: I did not discuss Mr. Vagnozzi typically with
18 my clients or with every client. He does not work for my
19 company and didn't represent my company ever.

10:46 20 QUESTION: I'm sorry. The question -- so is the
21 answer no, you did not tell investors or potential investors of
22 Fidelis about any Pennsylvania securities regulatory matters
23 concerning Dean Vagnozzi or any of his companies?

24 ANSWER: Again, as I stated a couple of minutes ago, I
10:47 25 know we had discussions and it came up with a few people, but I

1 did not represent Mr. Vagnozzi or his companies and did not
2 discuss, when I learned of it very late on, anything that
3 happened to him with my clients. It did not pertain to them.
4 They did not invest with him or through.

10:47 5 You can see it on your screen. But do you see,
6 Mr. Furman, your testimony seven months ago was that you did
7 not disclose this to your investors. Do you agree with me
8 about what I just read to you? That was your testimony --
9 A. I do not agree one hundred percent. You can read back
10:47 10 exactly what you read. And I did bring it up. I do not
11 discuss Dean Vagnozzi to my clients other than in a four-hour
12 conversation with a client, yes, I would try to bring it up
13 once I knew about this Pennsylvania regulation, as it stated in
14 there, if you'd like to put it back up there.

10:48 15 Q. Mr. Furman, the only question pending was: Was that your
16 testimony on May 26th, 2021?

17 A. What snippet you read was obviously part of my testimony,
18 yes.

19 **MS. BERLIN:** Your Honor, I'd like to admit this
10:48 20 portion of his testimony from May 26th, 2021.

21 **THE COURT:** That will be declined. It's in the
22 Court's discretion as to whether we admit deposition
23 transcripts. At this point the jurors will use their best
24 recollection of the evidence. Should they need to see it in
10:48 25 deliberations, I can always produce it to them.

1 MS. BERLIN: Thank you, Your Honor.

2 BY MS. BERLIN:

3 Q. And, Mr. Furman, in addition to that, at a certain point
4 you sought to break away from Mr. Vagnozzi and his companies,
5 correct?

6 A. Correct. Late 2019 early 2020.

7 Q. And you sent -- you prepared a letter to Mr. Vagnozzi where
8 you were explaining the reasons why you wanted to break away
9 from him. Is that true?

10:49 10 A. I believe my attorney that I hired prepared that letter,
11 but without recalling whether it was an e-mail, I know he
12 prepared a document that I had to send or serve him through the
13 mail where you have to sign for it. I forget the terminology
14 for that.

10:49 15 Q. Well, you -- do recall that you drafted your own personal
16 statement that you sent to your lawyer?

17 A. To my lawyer? I'm sure I had communications with my lawyer
18 about it. That's why I hired him.

19 Q. And do you recall that one of the reasons that you wanted
10:49 20 to break away with Mr. Vagnozzi is that you explained that the
21 start of the breach happened -- that you claim Mr. Vagnozzi
22 breached, that the start of it happened when you learned from a
23 potential client, so an investor, that they had decided not to
24 invest with you because they found out about the regulatory
10:49 25 actions against Dean Vagnozzi and ABFP.

1 Did that happen?

2 A. Very well sounds like it could have.

3 Q. And, in fact, when you were pitching Par Funding, some
4 people who went online and did research and found out who they
10:50 5 were and about Dean Vagnozzi's involvement in ABFP's
6 involvement and the regulatory cases, they told you that they
7 would know they weren't going to invest because of that; isn't
8 that true?

9 A. I can't remember many people stating that, but we covered
10:50 10 and addressed every fact, or what his involvement was or what
11 the investment of the management company, as again, it was not
12 Dean personally. And we addressed that he had a no admit/no
13 deny from the State of Pennsylvania, which I have zero clients
14 in the State of Pennsylvania and do not work there, as well as
10:50 15 that was for him working with Par Funding before I even knew
16 about Par Funding or met him.

17 That was their solicitors when they were going through
18 solicitors, before there were agent funds and fund managers.
19 That's when I went up to event, and that's how it was explained
10:51 20 to us exactly -- (inaud.) attorney, correct.

21 Q. Mr. Furman, do you remember that you personally wrote to
22 your attorney in describing the situation: The prospects were
23 not the only -- I assume you meant the prospects were not the
24 only that decided not to invest in Fidelis Financial Planning
10:51 25 after researching Par Funding and learning that Dean Vagnozzi

1 was forced to pay the Pennsylvania Banking and Securities
2 Commission a state record \$498,000 on May 30th, 2019 per his
3 consent and agreement order.

4 Do you remember that?

10:51 5 A. Sounds like something I could have written at some point.

6 Q. Okay. And was that true, that prospects weren't the only
7 ones who decided not to invest because they found out -- they
8 did some research about Par Funding and Dean Vagnozzi and they
9 learned about the regulatory cases?

10:51 10 A. Individuals. I'm not sure what that question means, to be
11 honest with you --

12 MR. JOHN: Objection.

13 THE COURT: Overruled.

14 A. -- whether they're prospects or clients of mine of other
10:52 15 investments. So it could have been a client or a prospect. I
16 don't know what other option there is there.

17 BY MS. BERLIN:

18 Q. I'm going to show you your draft.

19 MS. BERLIN: Your Honor, can we show this only to the
10:52 20 witness?

21 THE COURT: Yeah, sure.

22 A. Correct. Looks like it. From my attorney. Correct. This
23 is what my attorney drew up or at least a copy of it.

24 BY MS. BERLIN:

10:52 25 Q. It's actually from an attachment of your e-mail to him.

1 A. I stand corrected.

2 Q. If you could just read this?

3 MR. JOHN: Can we go sidebar briefly?

4 THE COURT: Come to sidebar.

10:52 5 (Thereupon, there was a side-bar conference outside
6 the presence and hearing of the jury.)

7 THE COURT: So tell me what's going on. What's your
8 objection?

9 MS. BERLIN: Thank you.

10:52 10 MR. JOHN: This document is being -- this document
11 that's being put up right now, we don't recognize having
12 received -- they claimed that they didn't receive anything from
13 us. I don't know where this is coming from as far as the SEC
14 is concerned. If they got nothing from it, we don't --

10:53 15 MR. HYMAN: We don't know where this came from or --

16 MS. BERLIN: I have a another version with the Bates
17 stamps. Do you need it?

18 THE COURT: Do you have an original of the Bates
19 stamp?

10:53 20 MS. BERLIN: Sure. Do you want it? Yeah, yeah, no
21 problem. Everything that we got was produced.

22 THE COURT: So this has been produced?

23 MS. BERLIN: Everything has been produced.

24 MR. HYMAN: We'd have to see the Bates stamp to
10:53 25 confirm it. Every document that was produced by the SEC --

1 THE COURT: We're not going to sit here and do it.

2 But go check the Bates stamp.

3 MR. HYMAN: We'll check it.

4 THE COURT: If you've got it, you got it. I mean, if

10:53 5 they turned it over, yeah. Go ahead.

6 (Thereupon, the side-bar conference was concluded.)

7 MS. BERLIN: Oh, Your Honor, it's actually here.

8 Sorry.

9 THE COURT: So if you guys want to take a look --

10:54 10 MS. BERLIN: There you go.

11 THE COURT: -- the number is there.

12 MS. BERLIN: Here, you can have a copy. You can have

13 that one.

14 THE COURT: Is it on your screen? That's why, so you

10:54 15 guys can just look at it off of your screen if you want to

16 check your files.

17 MR. HYMAN: It wasn't produced to Mr. Furman

18 specifically, Your Honor, but it was produced to apparently

19 OFR, whoever that is.

10:54 20 MS. BERLIN: Yeah, that is --

21 THE COURT: The office of financial regulations is

22 probably the code on that.

23 MS. BERLIN: That is the -- SEC-OFR?

24 THE COURT: Right.

10:54 25 MS. BERLIN: Means it was produced to the SEC from

1 OFR. And then our production unit in D.C., this is the stamp
2 they gave it. So this means it came from the SEC, which got it
3 from OFR, and it was produced together with hundreds of
4 thousands of documents.

10:55 5 **MR. HYMAN:** Your Honor, the documents produced by the
6 SEC all have the Bates stamp of SEC/DEF on it.

7 **MS. BERLIN:** That's not true.

8 **THE COURT:** I don't think so. I've seen other ones
9 with different labels. So you guys can go through it in your
10:55 10 documents, but we don't have any issue with this Exhibit B
11 shown to the witness. We haven't admitted it yet.

12 Let's go ahead.

13 **MS. BERLIN:** Thank you so much, Your Honor.

14 **THE COURT:** Go ahead.

10:55 15 **BY MS. BERLIN:**

16 Q. And so, Mr. Furman, after looking at that, do you -- isn't
17 it true that you lost clients, people would do their own
18 research and learn the things that had not been disclosed learn
19 about Par Funding, learn about the regulatory cases and tell
10:55 20 you that based on that, they were not going to invest?

21 A. I can't remember a specific person. But yes, this was me
22 breaking apart from ABFP.

23 Q. Okay. And is what you wrote in your letter here true?

24 A. Yes. Once I learned about it, yes. I would not -- there's
10:56 25 no reason for me to work with ABFP Management Company, and I

1 was planning on doing that management records. I was hiring a
2 CPA or an accounting firm to do that. Why would I subject any
3 of myself or my company? Again, I did is not work with ABFP,
4 other than their management company, for one fund, which was
10:56 5 part of my business. As I started to learn about this record
6 and any other thing that he was doing, I decided to break away
7 from him. This is what my attorney drafted, correct.

8 Q. But, Mr. Furman, you see, this is actually not -- the
9 attorney version is another exhibit.

10:56 10 Are you looking at this, that this is yours? This is
11 from you to your lawyer?

12 A. (Cross-talk) -- drafted it.

13 Q. Mr. Furman, do you see also that you also discussed here --
14 I mean, was it true that clients were already hesitant to
10:57 15 invest because of the long list of fraudulent schemes that have
16 occurred throughout the country and that you were concerned
17 that when they found out about Dean Vagnozzi and this
18 regulatory action that that just kind of made it impossible for
19 you to get their money, right?

10:57 20 A. No, I wouldn't agree it was impossible. And there's always
21 bad investments across the country even to this day. There's
22 no reason to add to that.

23 Q. Mr. Furman --

24 A. I would like to finish my statement.

10:57 25 THE COURT: Go ahead.

1 MS. BERLIN: Please do, yes.

2 A. When I stated that, yes, there's a long list of bad
3 investment, fraudulent investments, investments across the
4 country. There's no reason to add to any investor's worries
10:57 5 when I did not -- they did not need that extra scrutiny. So
6 that is the exact reason that I filed to cut Dean and have a
7 different accounting firm to handle the payment of -- to and
8 from investors. And that was, I believe, in 2020. The very
9 end of this before Corona happened. Unknowing that Corona was
10:58 10 about to happen, obviously.

11 BY MS. BERLIN:

12 Q. And it was such a big deal when people found out through
13 their own research that Dean Vagnozzi and Par Funding and all
14 the regulatory actions -- it was such a big deal they wouldn't
10:58 15 do business and you wanted to break away from Dean Vagnozzi
16 because it was causing investors to not want to invest once
17 they did their own research and found this, correct?

18 A. No. That's incorrect. It was not really for the fact of
19 them not wanting to invest. They were investing with me, my
10:58 20 company. So I always -- everybody explained how I got paid,
21 how they got paid, how the company worked.

22 Everything that I knew at the time, and this was to be
23 better in-house, I was managing it myself, there were
24 accounting mistakes that were very small but cumbersome
10:59 25 accounting mistakes, we had two different leads every month,

1 the tax statements, 1099s being -- missing. And so for me to
2 deal with that on top of it when I was already paying for it, I
3 mine as well do it in-house.

4 So there was a myriad and list of reasons. You're
10:59 5 pointing out one sentence on I don't know how many pages on
6 that document, that my attorney that I paid to simply breakaway
7 from him in 2020, which is what I did.

8 (Thereupon, the exhibit was introduced into evidence.)

9 MS. BERLIN: Your Honor, I wonder if we can introduce
10:59 10 this exhibit as P 585?

11 THE COURT: Yes. We're about going to go ahead and
12 move that in at this time.

13 (Thereupon, the exhibit was admitted into evidence.)

14 BY MS. BERLIN:

10:59 15 Q. I'm going to show you a highlighted version.

16 And give this back to Vicki.

17 Sorry. So this is the letter. And eventually your
18 lawyer sent out a letter on his letterhead that was, I'm sure
19 you'll agree, I think it's an exhibit, it was different from
11:00 20 this, to break off with Mr. Vagnozzi.

21 But do you see at the top where you start writing that
22 you: Hope this information will be used as a tool to improve
23 ABFP so these types of things don't occur in the future.

24 Do you see that?

11:00 25 A. No. What paragraph on there is it?

1 Q. Excuse me?

2 A. **I didn't see it.**

3 Q. Sorry, I'll try to highlight better.

4 A. **Can you go back up, please? Sorry.**

11:00 5 Q. Sure.

6 A. **Sure.**

7 Q. Okay. And then you continue to discuss -- and if you want
8 me to move it up or down, just let me know any time.

9 You discussed that the start of the breach by ABFP
11:00 10 started when you had to find out from a potential client they
11 were not investing due to your involvement with Dean Vagnozzi
12 and ABFP. Prospects were not the only that decided to not
13 invest in -- is FFP Fidelis Financial Planning?

14 A. **I believe that's what he used to shorten it, correct.**

11:01 15 Q. Okay. After researching Par Funding and learning that Dean
16 Vagnozzi was forced to pay the Pennsylvania Banking and
17 Securities Commissions a state record \$490,000 on May 30th,
18 2019.

19 Do you see that?

11:01 20 A. **I do.**

21 Q. Okay. And you write here that -- you tell your clients
22 that ABFP is the only other firm that has access to investor
23 funds and provides all accounting, book keeping and tax
24 preparation documentation for the investors?

11:01 25 A. **Correct.**

1 Q. That's what you wrote here.

2 A. **Correct.**

3 Q. Was that true or you testified earlier that you didn't
4 really tell them about Dean Vagnozzi?

11:01 5 A. **No, I told them about Dean Vagnozzi. And if you were to --**
6 **can you flip up -- or, sorry, slide up, I guess it would be.**

7 Q. Sure.

8 A. **The start -- a little bit more, sorry.**

9 Q. Mr. Furman, let me just get through my questions and then
11:02 10 we can go back through this with your attorney.

11 A. **I would just like to get one question at a time, so I don't**
12 **forget your first question.**

13 Q. Sure. And you wrote that: Due to the fact that FFP is an
14 alternative investment and the long list of fraudulent
11:02 15 investment schemes that have occurred throughout the country,
16 just about every client is hesitant to invest and does not need
17 any additional reason to question the legitimacy of the
18 investment being offered.

19 Do you see that?

11:02 20 A. **Yes, I do.**

21 Q. And you continue down that you used Dean Vagnozzi's name
22 and his marketing materials, et cetera.

23 Do you see all of that here?

24 A. **Yes. Right after the fact that ABFP did not disclose or**
11:02 25 **notify AFFP that there was pending litigation or any legal**

1 trouble that showed lack of communication or respect to the
2 relationship. Yes, I wrote that.

3 Q. Well, Mr. Furman, you're the one who has a partnership
4 agreement with them. You're giving them access. You add them
11:03 5 as a signatory to the accounts that hold your investors' money,
6 that holds Frank Nash's money, that holds all of the investors'
7 money who came here last week and testified.

8 These are your partners, correct?

9 MR. JOHN: Objection.

11:03 10 THE COURT: Overruled.

11 BY MS. BERLIN:

12 Q. ABFP is your partner? You testified to that last week.

13 A. Yes. And this is the letter to sever those for these very
14 reasons, correct. Doing the right thing for my clients.

11:03 15 Q. So -- Mr. Furman, then you talk about the next -- you say:
16 The next problem started in November.

17 Do you see that?

18 A. Yes.

19 Q. And so would this have been November 2019?

11:03 20 A. Yes.

21 Q. Okay. So the issue with the investors obviously happened
22 before that, because you're talking about the next problem
23 starts in November 2019.

24 Now, after --

11:03 25 A. Can you please leave that up on the screen if we're going

1 **to continue on this?**

2 Q. Mr. Furman, I'm just going to ask the questions. Okay?

3 And your lawyer will have a chance to go through this with you
4 in detail. And it's in evidence, so the jury will be able to

11:04 5 see all of it. Okay?

6 A. **Wonderful.**

7 Q. Mr. Furman, after you learned about this case against Dean
8 Vagnozzi, you still didn't disclose it, right?

9 A. **This case? I'm sorry.**

11:04 10 Q. The case that we've been talking about, the regulatory
11 actions against Dean Vagnozzi.

12 A. **Once I learned about it, I would discuss it with clients in
13 conversations.**

14 Q. Contrary to your deposition of seven months ago that we
11:04 15 looked at together.

16 A. **That's not what I said in the deposition.**

17 Q. Mr. Furman, after this, you actually made written
18 disclosures to your investors, correct?

19 A. **You'd have to be more specific.**

11:04 20 Q. Sure. In the end of 2019, and then again in April of 2020,
21 you sent written disclosures identifying the risks of the
22 investment to all of the investors that were investing in
23 Par Funding through Fidelis; isn't that true?

24 A. **Again, you'd have to be a bit more specific what you're
11:05 25 referring to. But I communicated with my investors on a**

1 periodic basis, a constant basis. So most was done via phone
2 calls or in-person meetings. I did not record those, as you
3 can.

4 Q. All right. We'll talk about that now then.

11:05 5 So in -- at a certain point in time did Par Funding
6 default -- I'm sorry, before we move on.

7 Did you eventually sever ties with ABFP?

8 A. Yes. I believe from that letter it was a 30-day,
9 according -- I followed what my attorney said, I had to send a
11:06 10 letter and wait 30 days, I believe it is, maybe 60 -- I don't
11 know, 45, it was a certain amount of days, and if they did not
12 reply or -- I believe you said addressed or fixed the different
13 mistakes, there was a numbered, I believe version, then we were
14 considered severed at that time.

11:06 15 Q. Right. The severing didn't occur until about May of 2020,
16 correct?

17 A. I don't know the date. It was once the attorney sent the
18 letter, yes.

19 Q. May of 2020.

11:06 20 A. Correct.

21 Q. So now, before May 2020, though, did Par Funding default on
22 its loans?

23 A. Yes, briefly, from the pandemic. When the pandemic
24 happened, yes, they halted all interest payments on March 25th,
11:06 25 I believe it was. Never forget that day. It was the 25th of

1 every month.

2 Q. They stopped paying?

3 A. They halted payments for those couple of months, yes,
4 before we they restarted in June.

11:06 5 Q. And when that happened, you went to your investors and you
6 told them that -- I'm sorry. When they halted the payments,
7 did you hire a lawyer to look into options for suing them?

8 A. Suing them? I had an attorney that was retained, but I
9 didn't hire him for specifically suing him, no.

11:07 10 Q. Which lawyer was retained by this for you?

11 A. I always had my securities attorney, Mr. Weingold.

12 Q. Mr. Weingold examined this?

13 A. Examined what?

14 Q. When Par Funding defaulted on the notes in the spring of
11:07 15 2020, did you retain a lawyer to assess whether or not you and
16 the investors should sue Par Funding?

17 A. Not specifically for those reasons, no, or solely for those
18 reasons. I was under the umbrella of the other managers. We
19 had some group Zoom calls as we were locked in our homes at
11:08 20 that point, and the attorney that I met on the very day I flew
21 up in June 2017, John Pauciulo, who represented Dean, and if
22 there were 50 fund managers, I was one of two that did not use
23 him. He had sole access to their financials and went over
24 periodically what his thoughts were. So we did not get to that
11:08 25 point.

1 Q. So you didn't hire a lawyer?

2 A. **Not solely to sue Par Funding, no.**

3 Q. Not to sue them Mr. Furman. I asked to examine whether or
4 not to sue them?

11:08 5 A. **Your words were to sue them. So...**

6 **THE COURT:** Why don't you restate the question.

7 **MS. BERLIN:** Sure.

8 **BY MS. BERLIN:**

9 Q. Mr. Furman, did you hire a lawyer to examine whether or not
11:08 10 you and the investors or Fidelis and the investors should sue
11 Par Funding?

12 A. **No, I did not hire an attorney to sue Par Funding.**

13 Q. And when Par Funding -- okay. That wasn't my question. I
14 think you understand me. I'm not asking whether you hired a
11:08 15 lawyer to sue Par Funding. I'm asking you whether or not you
16 hired a lawyer to examine whether or not you and the investors
17 should sue Par Funding? Do you understand the distinction?

18 A. **Probably not the way that you would or an attorney would.**
19 **But at that point, as I said, John Pauciulo, the attorney that**
11:09 20 **represented ABFP and ABFP Management and 48 of 50, if there are**
21 **that many, fund managers stated that --**

22 **MS. BERLIN:** I'm sorry. That's hearsay. Your Honor
23 --

24 A. **-- he's the sole --**

11:09 25 **THE COURT:** Let's disregard the last statement,

1 members of the jury.

2 And let's go ahead and get a direct answer to the
3 question, please.

4 **A. Again, I did not hire an attorney to sue Par Funding.**

11:09 5 **THE COURT:** Let move on. That's been answered. We
6 need to keep it moving.

7 **MS. BERLIN:** Yes, let's move.

8 **BY MS. BERLIN:**

9 Q. So at the time of the default by Par Funding in the spring
11:09 10 of 2020, did you have your own personal money invested with
11 Par Funding?

12 **A. Not at that point. It was pretty close, but no.**

13 Q. Okay.

14 **A. I severed ties with Dean Vagnozzi. Did not happen until**
11:10 15 **after then.**

16 Q. I'd like to show you --

17 **MS. BERLIN:** Only to the witness, Your Honor.

18 (Thereupon, the exhibit was introduced into evidence.)

19 **BY MS. BERLIN:**

11:10 20 Q. -- what we've marked as P 53. Mr. Furman, do you recognize
21 this e-mail from you?

22 **A. To me, I believe.**

23 **MR. HYMAN:** P 53?

24 **BY MS. BERLIN:**

11:10 25 Q. Does that help? Michael Furman to Kristin Groleau.

1 Do you see that?

2 A. Yes. Looks like I forwarded her the e-mail.

3 MR. HYMAN: My P 53 is not the same one.

4 THE COURT: What number is on the screen?

11:10 5 MS. BERLIN: It is P 53.

6 BY MS. BERLIN:

7 Q. And do you see at the end of this e-mail, it is your
8 signature block?

9 MR. HYMAN: No objection to the introduce of this,
11:10 10 Your Honor.

11 THE COURT: We'll admit P 53 at this time.

12 (Thereupon, the exhibit was admitted into evidence.)

13 MS. BERLIN: Thank you.

14 BY MS. BERLIN:

11:11 15 Q. Do you see this is from March 26th? MCA investment update,
16 do you see that at the top?

17 A. Yeah.

18 Q. And this is an e-mail that was sent out to your investors?

19 A. It was, as I stated, yes. It was sent to me and I
11:11 20 forwarded it, and I wanted everybody to read as much
21 information as I got as I got it.

22 Q. Well, Mr. Furman, it says it's from you to Kristen Groleau.
23 That's your assistant, correct?

24 A. At that time yes.

11:11 25 Q. And when you sent investor e-mails, typically it would look

1 like from you to her, and would you be bccing the investors or
2 how did that work exactly?

3 A. It depended completely. This was, as you can see -- read
4 below Par Funding's e-mail. I was forwarding that so they knew
11:11 5 it came from Par Funding. I was just adding on the top. Yes,
6 my signature would be on the bottom because that's how
7 computers work.

8 Q. We'll walk through it.

9 And do you see at the top it says Gary DeLuco?

11:12 10 A. Sure.

11 Q. And that's one of your investors?

12 A. It was, yes.

13 Q. And you see he's forwarding this. And I'll proffer that
14 Linda Schmidt is my colleague at the SEC.

11:12 15 A. I remember the name.

16 Q. And would you agree this was an e-mail that went out to
17 investors?

18 A. In some sort, yes.

19 Q. And in this letter, the top is from you and you're
11:12 20 explaining to them that you want them to read Par Funding's
21 e-mail and please read below her message from you?

22 A. Please read below from Par Funding's e-mail, not mine.

23 Mine is that one paragraph. I'm forwarding what they sent me

24 to let them know that I'm getting them as much information as I

11:12 25 get.

1 Q. Let's look at it together.

2 Mr. Furman, do you see that in this e-mail, it says
3 from Par Funding management?

4 A. **Yes.**

11:12 5 Q. And then this part is from Par Funding management.

6 A. **Correct.**

7 Q. Do you agree?

8 And then they say: We remain grateful for your
9 support and hope you are faring well during these challenging
11:13 10 times.

11 Do you see that?

12 A. **Yes. Correct.**

13 Q. And then it says: Here are my comments to the letter
14 above.

11:13 15 And this portion of the message is signed by you. Do
16 you see that?

17 A. **I see the entire message signed by me, correct.**

18 Q. Okay. And so then you write: First and foremost don't
19 panic.

11:13 20 Do you see it?

21 A. **Yes.**

22 Q. And you continue on to tell the investors that you have
23 your own personal funds. Your own personal funds are involved
24 here.

11:14 25 Do you see that?

1 A. Yes.

2 Q. And that wasn't true because you just testified you did not
3 have any personal funds invested at this time, correct?

4 A. That's where my interest and my income came from. So a lot
11:14 5 of it was involved there, correct. Never said I had a note
6 myself at that point, although I was trying to until I was --
7 had Vagnozzi out. I was not able to.

8 Q. You tell them you believe in Par Funding and the decision
9 that is -- which is the prudent name of preserving all of our
11:14 10 principal.

11 Do you see that?

12 A. Yes, I do.

13 Q. And again, you have no -- none of your personal principal
14 invested at that time. Now, you go on to say that you tout the
11:14 15 Par Funding employees down here. You see? You're telling them
16 these are employees are so hard working, and we're going to get
17 through this.

18 Do you see that?

19 A. It was our hope still, yes. It was a difficult time being
11:15 20 locked in our homes.

21 Q. Then you look here, that you have a substantial investment
22 in Par Funding.

23 Do you see that?

24 A. Yes. Time, money, effort, my business, my income, my
11:15 25 livelihood, my reputation.

1 Q. Okay, Mr. Furman. And you continue to tell them that you
2 hired -- it says -- you write that Par Funding has defaulted on
3 a note and they will continue to default in the next few months
4 by not paying interest payments and halting all principal
11:16 5 returns for those that come due to this moratorium. But in
6 short, both mine and other fund manager attorneys have said it
7 will take one to two years to win a judgment against
8 Par Funding. And along the way, they definitely will not be
9 paying us if we are in a legal fight with them. We will incur
11:16 10 legal fees and then collect and enforce any judgment.

11 Do you see that?

12 A. **Yes.**

13 Q. Okay. And after you send this letter to the investors, the
14 following month, in April, you wrote to the investors again
11:16 15 that Par Funding was insolvent and that you were suggesting --
16 or Par Funding was offering to -- that you would cancel their
17 notes, the investors' notes they had with you at that time.
18 And they would get a replacement note for less interest.
19 Correct?

11:17 20 A. **Incorrect.**

21 Q. Mr. Furman, how much interest did your investors get
22 initially? Was it between 9 and 15 percent?

23 A. **That is a correct statement.**

24 Q. Excuse me?

11:17 25 A. **That is a correct statement.**

1 Q. And then in April 20 -- on April 24th, 2020, you offered
2 them what was called an exchange offering where you would
3 exchanged their initial note for a note that had less interest.
4 Is that true?

11:17 5 A. No. That is untrue. I was not part of the agent funds
6 with -- again, I did not have John Pauciulo, which was if there
7 was 50 agent fund managers, I chose in the very beginning to
8 have a different attorney, so I would not have the same
9 attorney as an opposing business partner in case we had a
11:18 10 dispute, which three years later or two years later, I did not
11 anticipate that. Hopefully it was not coming, but it did and
12 thankfully I did.

13 My securities attorneys, who as you saw -- or I don't
14 know if you guys can see, but as you can read in that letter
11:18 15 and you will be able to see, I did speak with my counsel. But
16 the counsel for Dean and ABFP and all of the other fund
17 managers was the primary counsel at that point.

18 And my securities attorney that I hired explained to
19 me -- and you can read those e-mails; I'm sure she'll show
11:18 20 you -- is not an exchange note. My attorney switched at the
21 end and said it was an amended note was better for us to
22 present to --

23 Q. We'll call it --

24 A. It was changing the current document. It was not replacing
11:18 25 it.

1 Q. We'll call it an amended note for you.

2 Is that acceptable, Mr. Furman?

3 A. **By the legal terminology, correct.**

4 Q. Okay. So I'd like to show you --

5 (Thereupon, the exhibit was introduced into evidence.)

6 **MS. BERLIN:** Your Honor, this has not yet been
7 admitted.

8 **THE COURT:** Okay.

9 What do we mark this one as?

11:19 10 **MS. BERLIN:** P 55.

11 **BY MS. BERLIN:**

12 Q. Mr. Furman, do you see on the screen, this is another
13 e-mail from you to Kristin Groleau --

14 A. **Correct.**

11:19 15 Q. -- it's to investors?

16 **MR. HYMAN:** No objection.

17 **THE COURT:** All right. We'll admit P 55 at this time.
18 You may proceed.

19 (Thereupon, the exhibit was admitted into evidence.)

11:19 20 **BY MS. BERLIN:**

21 Q. So an April 20th, you wrote to your investors that you're
22 going to reach out. And everyone had to reply within 48 hours
23 on April 22nd. This is an e-mail from April 20th. They all
24 had to reply within 48 hours by April 22nd to what you were

11:19 25 about to offer.

1 Do you see that? It's highlighted in yellow.

2 A. **It would be three days later, but yes. So not 48 hours,**
3 **but correct. Soon.**

4 Q. And in connection with this exchange, or this offer that
11:20 5 you were about to make it says you have included a 30 to
6 40-minute video from the largest fund manager in the country
7 with this attorney.

8 Do you see that? I just highlighted it.

9 A. **I do.**

11:20 10 Q. And that video was of Dean Vagnozzi and his lawyer,
11 correct?

12 A. **Mr. Pauciulo and Mr. Vagnozzi, correct.**

13 Q. Okay. So when you're referring to the largest fund manager
14 in the country, and you attach a video about this new offering,
11:20 15 it's of Mr. Vagnozzi; agreed?

16 A. **Of his attorney, correct.**

17 Q. It's -- Mr. Furman, I'd like to avoid having to watch that
18 video.

19 Would you agree with me that your e-mail is accurate
11:20 20 and that it was a video, a 30 to 40-minute video from the
21 largest fund manager in the country with his attorney?

22 A. **From Dean with his attorney, correct.**

23 Q. The two of them talking?

24 A. **It could be more than those two, but, yes, those two are**
11:21 25 **definitely in the video. I don't know if it was strictly those**

1 two, again. I was providing as much information, forwarding it
2 onto my investors, explaining where I got it, as I found out as
3 we were locked in our homes. Correct.

4 Q. And then you go on to tell the investors that you feel that
11:21 5 the over one hundred million dollars that he -- that would be
6 Dean Vagnozzi, right?

7 A. His companies, correct.

8 Q. -- that he has done with Par Funding over the years, as
9 well as having one of the largest most specialized law firms
11:21 10 present in person looking at all of the financials and helping
11 to give us options from the firm that created the very first
12 fund is important to me and should help give you even better
13 insight.

14 Do you see that?

11:22 15 A. I do.

16 Q. Okay. And so you're telling the investors to listen to
17 Dean Vagnozzi and to -- that he will give them insight into
18 what's going on in this offer that you're making, correct?

19 A. I'm giving them as much information as I know. Yes.

11:22 20 Again, we were told the only person who has access to their
21 financials was Mr. Pauciulo, and that is what that video
22 pertains to.

23 Q. With no reference here to Mr. Vagnozzi who -- and the
24 regulatory actions against him.

11:22 25 You would agree with me, correct?

1 A. Not in this e-mail. So far.

2 Q. And here you tell all of your investors that Par Funding
3 is -- appears to be insolvent?

4 A. That's what it states and that's what we were told.

11:22 5 Q. And did you -- what financial records of Par Funding did
6 you look at in order to conclude that Par Funding appears to be
7 insolvent and to make that representation to your investors?

8 A. Again, first I said, "appears to be," and that is, as you
9 can read: The video link covers more about their recent
11:23 10 financials from the attorneys who are the only ones that were
11 allowed to sign a nondisclosure agreement.

12 They would not give us, as fund managers, any access,
13 or attorneys or anybody else, other than John Pauciulo, who
14 then stated on that video that they appear to be insolvent. So
11:23 15 yes, I am following, as I told my investors, their guidance.

16 Q. Okay. So just to be clear. My question was, what
17 documents did you review -- what you're in finance -- you're in
18 finance, you have a degree in banking and finance, you've had
19 your Series 7, your Series 66 you're a master financial
11:23 20 planner, is one of your designation. My question is --

21 MR. JOHN: Objection, asked and answered. Counsel is
22 testifying.

23 THE COURT: Overruled.

24 BY MS. BERLIN:

11:23 25 Q. My question is simply, what financial documents of

1 Par Funding did you look at in order to make this
2 representation to the investors?

3 A. As I've stated before, I left that to the attorneys. And
4 I'm not a certified public accountant. So I left that to the
11:24 5 attorneys that had access to that.

6 Q. Okay. So you didn't review anything, correct?

7 A. I was not able to, no. And I let them know that as well.
8 I never once stated that I personally reviewed documents. It
9 would not help anybody to have me look over a document.

11:24 10 Q. Okay. And you write here again, indicating that you're an
11 investor: They owe investors like you and me over 360 million
12 dollars.

13 A. Yes. My fund is the investor into Par Funding.

14 Q. Right. And that your fund has money that you raised from
11:24 15 other investors?

16 A. Correct. I am representing my investors. I am in this
17 with my investors.

18 Q. And then you go on to advise them that Par Funding needs
19 cash.

11:25 20 Do you see that? Do you see those words on the page?

21 A. I do see those words on the page.

22 Q. And you tell them that Par Funding needs to restructure all
23 of their promissory notes.

24 Do you see that?

11:25 25 A. Yes.

1 Q. And that they just need time for the small businesses to
2 get back.

3 Do you see that?

4 A. **It doesn't say "just," but Par needs time.**

11:26 5 Q. I'm sorry, I was not reading verbatim.

6 But do you see in step three: Par needs time. The
7 first thing that needs to happen is for small businesses to get
8 back to work? Do you see that?

9 A. **Correct. That is the pandemic for you.**

11:26 10 Q. And you, again, encouraged them to watch Dean Vagnozzi
11 telling them about the offering.

12 Do you see that?

13 A. **Not about the offering. It's Dean Vagnozzi's attorney.**

14 Q. It's Mr. -- are you going to -- is your testimony that it's
11:26 15 Mr. Vagnozzi's attorney and not Mr. Vagnozzi with his lawyer?

16 A. **You stated it was an offering. He's not offering an
17 investment. This is to give information about their current
18 investment.**

19 Q. Mr. Furman, we'd like to move this along without showing
11:26 20 the video. Do you agree with me -- I think we already covered
21 this -- the video is of Dean Vagnozzi and John Pauciulo
22 explaining a process by which people would no longer have
23 their -- the interest that they were initially offered and
24 would instead take 4 percent interest?

11:27 25 **MR. JOHN:** Objection, counsel is testifying and

1 argumentative.

2 **THE COURT:** Overruled. Counsel is attempting to save
3 us additional time that we do not need to waste for either
4 side. Okay. So she's not testifying. Your client wants to do
11:27 5 this and belabor our trial, that's his prerogative. But I need
6 him to see if he wants to streamline this or he's contesting
7 the contents of a video that we could just as easily play for
8 the jury.

9 So I'm going to have that question stated again, and I
11:27 10 would like to get a direct answer.

11 Could you state that again, please?

12 **MS. BERLIN:** Thank you, Your Honor.

13 **BY MS. BERLIN:**

14 Q. Would you agree with me that this video you attached to
11:27 15 your e-mail is of Dean Vagnozzi and his attorney discussing
16 investors getting a note for less interest than the one they
17 currently had?

18 A. **Correct.**

19 Q. And, in fact, in the next paragraph it explains that, that
11:28 20 the Par Funding would offer that investors would get 4 percent
21 interest over seven years.

22 Do you see that?

23 A. **In addition to the principal. It was an interesting**
24 **schedule. But yes, start off at interest only and then the**
11:28 25 **second year starts principal and interest.**

1 Q. Initially investors are getting 9 to 15 percent on their
2 investment and their principal, meaning what they initially
3 gave, that amount would come back to them after one year;
4 agreed?

11:28 5 A. **Originally, yes.**

6 Q. And understand what we're seeing here that is being offered
7 to investors in the spring of 2020 is, instead of 9 to 15
8 percent, you get 4 percent. And instead of getting your money
9 back after a year, you'll have all of it back after seven
10 years.

11 A. **Correct. Incrementally.**

12 Q. So yes, you agree with the way I just described it?

13 A. **Over the period of seven years, yes. Not in a lump sum at
14 the end.**

11:29 15 Q. And it goes on -- and I'm not going to go -- we're not
16 going through all the pages. But you agree with me that you
17 tell investors: You need to decide what you're doing. Are you
18 taking this deal where you take half or less of what you were
19 initially offered with your principal coming back later or not?

11:29 20 And you gave them until the 22nd to decide. Do you
21 agree?

22 A. **I agree that's when I had to get back to them, yes.**

23 Q. We're not going to go through this, but do you agree with
24 me that nowhere in this e-mail -- and I'm happy to hand it to

11:29 25 you -- do you disclose criminal conviction against LaForte, the

1 people -- the people of Par Funding who are offering this deal,
2 the regulatory actions against Par Funding, that is now in
3 default in offering this deal, or anything about Mr. Vagnozzi
4 and his regulatory history?

11:30 5 A. That would not be in this e-mail. No, that would not be in
6 this e-mail.

7 Q. And, in fact, you sent out new disclosures --

8 THE COURT: It's a little crackly. Go ahead.

9 BY MS. BERLIN:

11:30 10 Q. You sent out supplemental disclosures for -- in connection
11 with, I'll call it the amended offering, since you -- amended
12 offering. You sent out supplemental written disclosures with
13 that, correct?

14 A. Yes, the documents my attorney prepared for the amended
11:31 15 amendment.

16 Q. And that was in roughly April 2020?

17 A. Yeah. April or May, I don't remember when it was. It had
18 to be done before June.

19 Q. Laying out the offering and the risks and sort of the
11:31 20 details of the deal; agree?

21 A. What my attorney prepared, yes.

22 Q. Okay. And that document that -- the supplemental
23 disclosures did not disclose the criminal history of Joseph
24 LaForte or any of the regular -- at this point there will four
11:31 25 regulatory cases against Par Funding and -- among Par Funding

1 and Dean Vagnozzi. But none of that is in the disclosures that
2 you make in the spring of 2020, correct?

3 A. That's correct. My attorney had those documents and told
4 me he did not need --

11:31 5 MS. BERLIN: Your Honor, hearsay.

6 THE COURT: Yeah. Let's all disregard any statements
7 made by any witnesses about what someone else outside the court
8 may or may not have said. Okay? Disregard that last comment.

9 Go ahead.

11:32 10 MS. BERLIN: Thank you.

11 BY MS. BERLIN:

12 Q. Now, you testified Friday that when you gave presentations
13 to potential investors --

14 MR. HYMAN: Wouldn't it be circumstantial evidence of
11:32 15 state of mind, Your Honor?

16 THE COURT: No, it's not. So disregard that. Okay?

17 Go ahead.

18 BY MS. BERLIN:

19 Q. When you made presentations to investors, you testified on
11:32 20 Friday, I believe, that you also would talk about other
21 investments, too, right?

22 A. Correct.

23 Q. Okay.

24 (Thereupon, the exhibit was introduced into evidence.)

11:32 25 MS. BERLIN: And I'd like to show the witness only --

1 it's not admitted yet -- P 219. Is it okay to put it on the
2 screen?

3 **THE COURT:** Yes. It's only on our screens. P 219.

4 **BY MS. BERLIN:**

11:32 5 Q. And, Mr. Furman, this is one of your PowerPoint
6 presentations from one of your events, correct?

7 A. That's what it looks like, yes.

8 **MS. BERLIN:** I'd like to admit it, Your Honor. P 219.

9 **THE COURT:** Any objection on P 219?

11:32 10 **MR. HYMAN:** If we can just confirm that it is what I
11 think it is, no objection, Your Honor. No objection.

12 **THE COURT:** Okay. That will be moved in at this time.
13 219 is admitted.

14 **MS. BERLIN:** Okay.

11:33 15 (Thereupon, the exhibit was admitted into evidence.)

16 **BY MS. BERLIN:**

17 Q. And so, Mr. Furman, this is a PowerPoint presentation that
18 you would show on a screen to investors?

19 A. Correct.

11:33 20 Q. And it says here that you're master financial planner?

21 A. Correct.

22 Q. Okay. And you sort of tell all of your accolades to the
23 potential investors, Ethics.net?

24 A. It explains the different associations around the country,
11:33 25 and I use that as a way to honestly say that they don't really

1 need much.

2 Q. Okay. And then right at the beginning you -- this slide,
3 it's about trust and transparency.

4 Do you see that?

11:33 5 A. Yes, I do.

6 Q. And this is part of your presentation to potential
7 investors?

8 A. Correct.

9 Q. These are the dinners and things you would have at
11:34 10 Ruth's Chris or The Regional, those places?

11 A. Lunch or dinner, yes.

12 Q. Can you describe -- what is this circle supposed to show?
13 It says: Advisor going into the investments and the companies
14 involved. How would you describe this page to potential
11:34 15 investors, Mr. Furman?

16 A. I can't remember verbatim, but basically, I would speak
17 about how there's many different moving parts into any
18 investment or insurance when you're buying something. You have
19 to -- I have to develop a trust and transparency yourself, just
11:34 20 like I have to develop that trust and transparency to the
21 company that's involved, and I have to learn about the
22 investments.

23 So there's many different layers to the company that
24 may be the investment or the company that's providing the
11:34 25 investment, because if you do insurance, you have an insurance

1 company providing an investment. I have to believe the
2 insurance company and I have to believe what they're stating
3 about the investment.

4 In this plan, it was more myself. I have to be
11:35 5 disclosed and have trust into ABFP Management or who provides
6 that investment and then the companies involved. It's just
7 different layers of working with individuals and business.

8 Q. And it just shows the relationship about trust and
9 transparency between you -- you're the advisor, right? That
11:35 10 refers to you Michael Furman?

11 A. In a general sense, yes.

12 Q. You, the investments, and the companies involved, meaning
13 companies like Par Funding?

14 A. That would be one of the many things I was looking at
11:35 15 there, yeah.

16 Q. And as part of your PowerPoint, you also promise the
17 potential investors that that'll get piece of mind, complete
18 transparency, that'll be able to sleep at night.

19 Do you see that?

11:35 20 A. I do.

21 Q. And you were telling investors that you were complete
22 transparency, giving them all the facts and doing the due
23 diligence so they could rest assured and put their trust in
24 you. Fair?

11:36 25 A. What I know, yes. What they tell me is what I would be

1 transparent, even just as I'm sending them Dean's attorney's
2 video. Yes. What they send me, I will forward on to them.

3 Q. And these were the alternative investments you were
4 offering? A merchant cash advance, that's Par Funding?

11:36 5 A. That would be merchant cash advance, that would be at that
6 time, yes.

7 Q. And are these all the investments that you would discuss at
8 an event?

9 A. That one. I mean, it varied based on the event.

11:36 10 Q. Senior living, does that have another name?

11 A. It was for the senior living industry.

12 Q. What was the name of the company?

13 A. That one specifically would be my Fidelis Senior Living
14 Fund. I believe it was actually part of the name.

11:36 15 Q. And what about did you have any -- were any of these deals
16 offerings that you were doing, other things you were doing with
17 Perry Abbonizio?

18 A. Well, Perry was involved in real estate company that I
19 worked with.

11:36 20 Q. SFA?

21 A. Correct. He had introduced me to the owner of SFA.

22 Q. And would you talk to investors that you were doing due
23 diligence for them on the investments you were offering?

24 A. As much as I could, yes.

11:37 25 Q. And you had a page about it, telling them that, right?

1 A. We discussed due diligence, correct, the difference between
2 private markets and public markets, public company versus Tesla
3 versus, you know, a small company like my own. It's private or
4 it's public.

11:37 5 Q. And SFA, this is one of the other investments you had
6 offered. This was with Perry Abbonizio also that we heard from
7 last week?

8 A. He introduced me to that company, yes. He was not the
9 owner, no.

11:37 10 Q. He wasn't the owner, but you worked with him on that
11 investment as well as Par Funding, correct?

12 A. Primarily, but yes, he was one of the contacts.

13 Q. And, Mr. Furman, the merchant cash advance offering was the
14 big draw for these events, correct?

11:38 15 A. I can't speak to that. We covered a lot of things. It
16 depends on the person. Some people hated merchant cash
17 advance. They didn't like the idea of it, and they loved real
18 estate.

19 Q. So you see here, this was part of your presentation. What
11:38 20 brought you here, the 9 to 15 percent opportunity, fixed rate
21 for one year, introducing our MCA fund. And that's Fidelis and
22 the investment in Par Funding, correct?

23 A. For that event, correct.

24 Q. And you explained to them how this works. The more they
11:38 25 put in, the more interest they're supposed to make, correct?

1 A. **It was a tiered schedule, correct.**

2 Q. And attorneys's MCA, John Pauciulo, that's John Pauciulo
3 right there, correct?

4 A. **Yes.**

11:38 5 Q. He's with a major law firm Eckert Seamans?

6 A. **Correct.**

7 Q. You never hired Mr. Pauciulo, correct?

8 A. **I didn't retain him, correct?**

9 Q. He wasn't your lawyer, right?

11:39 10 A. **Personally, no.**

11 Q. At any time?

12 A. **Correct.**

13 Q. And yet you advertise him here in your brochure to
14 investors that Mr. Pauciulo is your attorney?

11:39 15 A. **No, that is not what that advertises, and that is not what**
16 **I advocated. I would state that that is one of the largest law**
17 **firms, as they said, in the country that represented the**
18 **individual in the management company that put this entire**
19 **investment together.**

11:39 20 Q. It says: Our attorneys MCA --

21 A. **Our attorneys is multiple people there. It does not ever**
22 **say that it is my attorney. So I'm just representing the truth**
23 **here.**

24 Q. You go on to give examples about Par Funding and the sample
11:39 25 advances they make, correct?

1 A. Yes.

2 Q. And you explain to them about how the risk is mitigated
3 because the loans are diversified?

4 A. That's what that slide says.

11:39 5 Q. And these slides are specifically about Par Funding, not
6 another company, not another MCA, but about Par Funding,
7 correct?

8 A. That was that current investment at that time, yes. Part
9 of the brochure.

11:40 10 Q. And you also tell investors here that Par Funding has
11 insurance?

12 A. That's part of their brochure as they started that program
13 in midterm, yeah.

14 Q. So at a certain point, you came to learn that they did not
11:40 15 actually have insurance coverage on their loans, correct?

16 A. After the pandemic happened and they -- when they were in
17 default and the attorneys -- they had that video you're
18 speaking about and conversations during that time. They stated
19 that the insurance they had and they paid millions of dollars
11:40 20 for had a clause in it that I guess -- they called it "act of
21 God." I'm not really sure. I'm not a PNC insurance.

22 I am in insurance, but it's something where --
23 whatever you want to call the pandemic, I don't think anybody
24 can foresee that, but there was a clause where that would not
11:40 25 pay out the insurances between Par Funding and some of their

1 advances. It wasn't towards the investment. It wasn't an
2 insured investment by any means.

3 Q. My question was: At a certain point you found out? And it
4 sounds like the answer is yes, right?

11:41 5 A. **Post Corona, correct.**

6 Q. And another page of your pitch deck was this chart of
7 Par Funding.

8 Do you see he it?

9 A. **I see it.**

11:41 10 Q. And this is the chart -- am I correct in understanding that
11 you would use this chart to tell investors that the exposure
12 percentage number reflected the loans that were in default?

13 A. **They would explain that this is one of the financial --**

14 **MS. BERLIN:** I'm not asking for hearsay, Your Honor.
11:41 15 I'm not asking hearsay.

16 **BY MS. BERLIN:**

17 Q. I'm asking what you said.

18 **THE COURT:** Ask the question.

19 A. **This is what I stated. I'm not saying what anybody else**
11:41 20 **stated.**

21 **BY MS. BERLIN:**

22 Q. My question is, Mr. Furman: Would you point to this
23 Exposure column during your presentations and tell investors
24 that this reflected the default rate on the merchant cash
11:41 25 advance loans?

1 A. Well, again, Perry usually covered this in his --

2 MS. BERLIN: I'm not asking -- Your Honor, hearsay.

3 THE COURT: Let's just -- again, direct answer to what
4 the question is, okay? Just remember the last answer.

11:42 5 Go ahead and restate it.

6 A. I explained what exposure percentage was to the -- at
7 various times. Again, I wasn't the presenter.

8 BY MS. BERLIN:

9 Q. Mr. Furman, did you tell investors that the Exposure
11:42 10 Percentage column reflected the default rate of merchant cash
11 advance loans? Just yes or no.

12 A. I told them that is defaulted on their loans, yes.

13 Q. That it was the merchants who defaulted on their loans,
14 correct?

11:42 15 A. In default.

16 Q. In default, okay.

17 Now, you were advertising that default rate to
18 investors as being about 1 percent?

19 A. It was an average. It changed every month, but an average
11:42 20 of 1 to 2.

21 Q. At a certain point you did your own analysis of the loans,
22 correct? And you determined that it was higher; isn't that
23 right?

24 A. I don't know what you mean by that.

11:42 25 Q. Mr. Furman, did you do your own analysis of the loans using

1 a GAAP, generally accepted accounting policy calculation and
2 determine that the default rate was actually about five times
3 higher than what Par Funding was advertising?

4 A. I did? No. I don't know GAAP accounting. That's why I'm
11:43 5 not an accountant again.

6 Q. Did you tell the FBI that you did and that you knew that
7 the rate was actually 5 percent based on a GAAP analysis?

8 A. I don't remember ever saying it in those words, no.

9 Q. I'm not talking verbatim. And we talked about this last
11:43 10 week.

11 Did you communicate not using the precise words?

12 A. I was told, just as I was today, that GAAP accounting,
13 which I don't understand what GAAP versus whatever the other
14 version is, I know that they present that as cash over cash.
11:43 15 And they explain that there is a difference there. So if you
16 do two different types of calculations, they will have two
17 different outcomes, both of which are correct and they're
18 different presentations. GAAP is what the -- I believe what
19 you have to file your taxes under. But again, I'm not a public
11:44 20 accountant or a CPA in any way.

21 Q. That doesn't answer my question. I only asked you: Did
22 you tell the FBI --

23 A. I don't recall exactly what I said to the FBI. I said
24 there were two different types of accounting that they could
11:44 25 use, cash over cash and GAAP. I don't know what GAAP is. So I

1 can't say. Never represented that I did.

2 THE COURT: All right. That's enough. We don't have
3 a question pending. All right? Let's go.

4 BY MS. BERLIN:

11:44 5 Q. Mr. Furman, did you also advertise to investors at your
6 events the due diligence that Par Funding was doing and show
7 them pictures of onsite inspections and onsite inspection
8 reports?

9 A. Yes. That was one of their slides, correct.

11:44 10 Q. And you impressed upon the investors that these inspections
11 were important to keeping the default rate low, correct?

12 A. These are two examples that I used to show what an onsite
13 inspection would provide.

14 Q. And you told investors that onsite inspections occurred,
15 correct?

16 A. Not on every loan, but yes, that was part of their
17 underwriting.

18 Q. And, Mr. Furman, you've also included that in the brochure
19 that we looked at last week, but I could show you again. You
11:45 20 also included that same representation?

21 A. Par Funding's brochure, correct. They put whatever they
22 wanted in Par Funding's brochure. I did not make Par Funding
23 brochures. Perry brought them down, so yes. Whatever is in
24 their brochure was in their brochure.

11:45 25 Q. And you distributed them, correct?

1 A. Me or Perry, correct.

2 Q. Now, in addition to Par Funding, did you also offer
3 something called Harbor City?

4 A. I never had a fund at that point. I was looking into it
11:45 5 and -- during Corona, and it stopped because of this action.

6 Q. You never put any of your investors -- any investor into
7 Harbor City?

8 MR. HYMAN: Your Honor, relevance.

9 THE COURT: Overruled. Overruled.

11:45 10 A. I had two investors in the very beginning that were
11 learning about it and went direct around me and did not want to
12 wait. As I had one during this lawsuit that went around me and
13 e-mailed me and said, I apologize, I can't wait for your case
14 to be over.

11:46 15 BY MS. BERLIN:

16 Q. So you did not put any investors into Harbor City?

17 A. As I just stated, I was looking into them and I had clients
18 that knew exactly that I was looking into them as well, and
19 they wanted to invest right away. I did not have a chance to
11:46 20 really do my own due diligence.

21 Q. Mr. Furman, did you receive commission payments from Harbor
22 City?

23 MR. HYMAN: Your Honor?

24 THE COURT: Yeah, at this point we're moving on from
11:46 25 this. Let's go.

1 A. I apologize, I touched the screen again.

2 BY MS. BERLIN:

3 Q. Was another one of the investments that you were offering
4 at this term Resolute Capital Partners?

11:46 5 A. It wasn't my offering. It was part of an insurance company
6 that we worked with that had solicitor agreement that you could
7 send a client to. I think I had one or two.

8 Q. Mr. Furman, very simple question.

9 A. No, I do not have a fund with Resolute Capital.

11:46 10 Q. Maybe you didn't have a fund. Was this an investment that
11 you were offering to investors that they could invest in
12 Resolute Capital Partners?

13 A. I could send them to Resolute Capital as a referral,
14 correct. But I did not have a fund.

11:47 15 Q. Okay. And Resolute Capital Partners and Harbor City paid
16 you commissions for the investors that you sent their way,
17 correct?

18 MR. HYMAN: Same objection.

19 THE COURT: Overruled.

11:47 20 Answer the question yes or no. Let's move.

21 A. I got a referral fee if somebody went there.

22 BY MS. BERLIN:

23 Q. Okay. And it was the same time that you were doing
24 Par Funding, correct?

11:47 25 A. I'm sure it was during my tenure, yeah, as an advisory.

1 Q. Okay. And it stopped because Resolute Capital Partners and
2 Harbor City were shut down by the government as offering for --
3 for other offerings frauds, correct?

4 A. I couldn't speak to that.

11:47 5 MR. HYMAN: Objection.

6 THE COURT: Overruled.

7 Just answer.

8 A. I have not done any business since this started about two
9 years ago, or whatever -- quite a bit.

11:47 10 BY MS. BERLIN:

11 Q. Mr. Furman, could you just answer the question?

12 A. I can't speak to those offerings.

13 Q. In your radio ads --

14 MS. BERLIN: And, Your Honor, we're almost finished.

11:48 15 Thank you. This is only for the investors' eyes at this point.

16 A. Investors' eyes?

17 MS. BERLIN: I'm sorry. Mr. Furman's eyes. I
18 apologize. P 582.

19 (Thereupon, the exhibit was introduced into evidence.)

11:48 20 BY MS. BERLIN:

21 Q. Do you recognize this, your radio script?

22 A. That's not what it is, but...

23 Q. Do you recognize this document, Mr. Furman?

24 A. It's not a radio script, but yes.

11:48 25 MR. HYMAN: Your Honor, this was never --

1 A. **Incorrect.**

2 MR. HYMAN: -- disclosed on their exhibit list.

3 THE COURT: There's a Bates list number here. Don't
4 you want to show it to him so he can take a look at it?

11:48 5 On the bottom, please. Scroll it up.

6 MS. BERLIN: There's no Bates number on this one. But
7 this --

8 THE COURT: P 582?

9 MR. HYMAN: It's not on their exhibit list,
10 Your Honor.

11 THE COURT: Has this been disclosed?

12 MR. HYMAN: As far as I know, it hasn't.

13 MS. BERLIN: I'm not sure if it has been. I'm taking
14 it away.

11:48 15 THE COURT: Why don't we move on.

16 MS. BERLIN: Let's move on.

17 **BY MS. BERLIN:**

18 Q. During your radio ads, Mr. Furman, did you tout in these
19 radio ads, if you like full transparency and zero sales
11:49 20 pressure, then they should contact you?

21 A. **Yes. I never would pressure anybody to do anything.**

22 Q. Okay. We were wanting to end things with Mr. Vagnozzi in
23 April, May 2020.

24 Did you go and speak with the owner of Par Funding to
11:49 25 see if he was okay with you cutting Dean out, Dean Vagnozzi out

1 of the deal?

2 A. I reached out to Perry, and I believe I only dealt with,
3 ever -- the only other person that had an e-mail was Joseph
4 Cole, who is someone that signed the notes between my company
11:50 5 and Par Funding. So I e-mailed -- I talked to Perry and I had
6 the e-mail of Joseph Cole Barletta to confirm that I would have
7 to sign those documents and do everything myself, my own
8 accounting firm.

9 Q. At a certain point, you read -- I'm going to --

10 (Thereupon, the exhibit was introduced into evidence.)

11 MS. BERLIN: I believe that this has been -- it's come
12 in with no objection, correct?

13 MR. HYMAN: No. There's a limited objection.

14 Your Honor, may we have a quick side-bar to discuss --

11:50 15 MS. BERLIN: There's no need, Your Honor, I don't
16 think. But this isn't coming in for the truth of the matter.

17 THE COURT: What is the objection?

18 MR. HYMAN: The objection is, it's unduly prejudicial
19 to certain -- it's a Par Funding --

11:50 20 THE COURT: I can look at what it is. You don't need
21 to give me a description. Under 403. That's going to be
22 overruled. The Court finds there's more probative value to it
23 than prejudicial, we can go ahead and admit, over that limited
24 objection, P 579 at this time.

11:51 25 MS. BERLIN: Thank you, Your Honor.

1 Would you like to publish it at this time?

2 THE COURT: You may.

3 MS. BERLIN: Thank you.

4 (Thereupon, the exhibit was admitted into evidence.)

11:51 5 BY MS. BERLIN:

6 Q. Mr. Furman, you've seen this article before?

7 A. Majority of it, yes.

8 Q. And this is an article -- it's hard to read.

9 MS. BERLIN: Can I pass it --

10 BY MS. BERLIN:

11 Q. Would you like a hard copy, Mr. Furman?

12 A. No. It's clear.

13 MS. BERLIN: Your Honor, would you like one?

14 THE COURT: I can see it.

11:51 15 BY MS. BERLIN:

16 Q. This is an article that Bloomberg ran in December of 2018.

17 Do you see that?

18 A. It's what it states, yeah.

19 Q. And it's an article about Par Funding; yes?

11:51 20 A. It mentioned them in there, yeah.

21 Q. The entire article is about Par Funding, correct?

22 A. It's about the industry and Par Funding, correct.

23 MS. BERLIN: Your Honor, can we just distribute a hard
24 copy of this? Because I would like to move through it quickly.

11:52 25 THE COURT: Come sidebar, please.

1 Take this off the screens.

2 (Thereupon, there was a side-bar conference outside
3 the presence and hearing of the jury.)

4 THE COURT: Proffer to me, Ms. Berlin, exactly what
11:52 5 you're getting out of this article.

6 MS. BERLIN: Yes, Your Honor. The article discusses
7 Joseph LaForte is the person running and owning it, and he's a
8 convicted felon who uses an alias to conceal his identity.
9 Mr. Furman testified in his deposition --

10 THE COURT: That he would have no knowledge of this.
11 Is it -- let's proffer it.

12 MS. BERLIN: He said he read it.

13 THE COURT: No, no, no. But the argument or the
14 relevance of this is, he has maintained at numerous times
11:52 15 during his testimony that he could not have known about these
16 things throughout. So it was impossible for him to disclose.
17 They were not publicly available, similar to what he said with
18 the disclosures from New Jersey.

19 Is that the argument here --

20 MS. BERLIN: Yes. Yes.

21 THE COURT: -- that he has made this an issue because
22 he says no one knew about these things, he couldn't have known
23 about them? And you're pointing out that he's been running a
24 Bloomberg piece that he's read?

11:53 25 MS. BERLIN: Correct.

1 THE COURT: Okay. Because I've just got to get a
2 proffer, so I can balance because obviously it's not going --

3 MS. BERLIN: It's that he read it, and he didn't
4 disclose after that. And even worse, he says he only read a
11:53 5 part of it his reason is at his deposition. So he didn't even
6 care about reading --

7 THE COURT: You can get that on redirect. You can get
8 that --

9 MR. JOHN: (Inaud.).

11:53 10 THE COURT: Yeah, but I'm just saying, I have to
11 balance over 403, but if he's put at issue with it -- because I
12 don't like it, I think it's got a prejudicial angle to it. But
13 the problem is, it shows his -- what he knew, what he did not
14 know at the time and he's denying knowing it. So it's a close
11:53 15 call, but I've got to let it in.

16 MR. HYMAN: First, I think she should ask -- first, I
17 think obviously she should go to the initial questions, when he
18 saw it, whether he knew --

19 THE COURT: Yeah, yeah I'm sure she's going to.

11:53 20 MR. HYMAN: And then from there, after he deals with
21 those questions, if she needs to refresh his recollection or go
22 into more detail, I think then it would be appropriate to do
23 so.

24 THE COURT: The problem is, he's unequivocally been
11:53 25 extremely difficult and denied everything that he's been asked.

1 He will not give a straight answer. You know it and I know it.
2 This is already at issue. I'm not going to waste time here
3 with him leading us on a 30-minute goose chase about what he
4 thought he saw. He has made this an issue throughout his
11:54 5 testimony for five hours. We've got to get to it. So that's
6 not going to happen. He can ask it and he can get
7 rehabilitated on it, but it's a close call. But he's put this
8 squarely at issue. I don't like letting it in, but he's put it
9 issue. It's on him. So that's going to come in.

11:54 10 Go ahead.

11 You can put that back up on the screen, Gigi, whenever
12 you're ready.

13 **MS. BERLIN:** Thank you, Your Honor.

14 Your Honor, can I take a break?

11:54 15 **THE COURT:** Yes, absolutely, we'll take a break.

16 Ladies and gentlemen, let's go ahead and take a quick
17 restroom break as well. We're almost done with his testimony.
18 So go ahead, everyone. If we could leave your notepads. This
19 is going to be brief. Take a little restroom break. We're
11:55 20 almost at noon, so we're going to be finished, probably, in the
21 next 30 minutes and then we're going to take our lunch break
22 anyway with the direct. All right. Thank you, everyone. Go
23 ahead and use the restroom and get a drink of water.

24 (Thereupon, a brief recess was taken.)

12:05 25 **MS. BERLIN:** Your Honor, I have a very brief amount.

1 THE COURT: No issues. I think you've got to about 30
2 minutes left, right?

3 MS. BERLIN: No, I've got like 10 minutes left. I
4 could do it. I think I'm good.

12:05 5 THE COURT: No, we're good. We're good. Let's go
6 ahead and let the jury -- and we're going to break after this
7 anyway.

8 MS. BERLIN: Thank you. That's good.

9 THE COURT: We don't have anything until 2 o'clock.

12:05 10 MS. BERLIN: We think it will be go faster if we move
11 away from this exhibit for a moment, because we have one that
12 is only -- our printer hasn't showed up yet with a hard copy
13 for me to put here. We have one document to show with Kevin.

14 THE COURT: Needs Kevin's access?

12:06 15 MS. BERLIN: He has it on the screen. We're thinking
16 we start with him. As I'm asking him, we take it off and I
17 have ELMO ready to rock.

18 THE COURT: You want to try to connect that now?

19 Let's do it before the jury gets in.

12:06 20 MR. HYMAN: Can we see what the exhibit is?

21 THE COURT: Yeah, we'll put it up now because the jury
22 is out and I want to see what it is too. And we'll do that
23 first.

24 MS. BERLIN: It's the other Bloomberg article about
12:06 25 the New Jersey and Pennsylvania regulatory cases.

1 THE COURT: I'll take a look at what it is on my
2 screen here. I don't have it on my mine yet.

3 Now it's appeared.

4 MS. BERLIN: Can we zoom in a bit so he can see what
12:06 5 it is?

6 THE COURT: Yeah, I need to zoom in.

7 MS. BERLIN: And this is about the New Jersey order,
8 that it's in effect. It's, you know -- it's on Bloomberg and,
9 you know, Mr. Furman has Bloomberg a lot.

10 THE COURT: Okay. All right. So similar to what we
11 discussed.

12 MS. BERLIN: Same thing.

13 THE COURT: Similar to what we discussed at sidebar.

14 MS. BERLIN: Yeah.

15 THE COURT: Okay. And probably a little less -- in my
16 view a little less prejudicial than the other one which I have
17 other concerns.

18 (Thereupon, the exhibit was introduced into evidence.)

19 MS. BERLIN: So this one is about the New Jersey case.
12:07 20 The other one is about the criminal record. But as soon as we
21 finish this, if we can switch it to ELM0, then I'll do the last
22 two exhibits, which is the other Bloomberg and then one chart
23 and we're done. And it should be, I think, 10 minutes, but...

24 THE COURT: If we can start with this, so if you want
12:07 25 to turn to this exhibit first.

1 MS. BERLIN: It would be faster so we don't have tech
2 issues.

3 THE COURT: That's fine.

4 MS. BERLIN: So it's 586.

12:07 5 MR. HYMAN: I anticipate already having the hearsay
6 objection overruled, but we ask that you give the jury the
7 quick explanation to what it's being introduced for.

8 THE COURT: It's going to be admitted. So we can
9 already have it admitted for the record, what's the number for
12:07 10 this one?

11 MS. BERLIN: 586.

12 THE COURT: 586 will be admitted.

13 Again, at the end of the sidebar, the hearsay
14 objection is overruled. The instruction will be given to the
12:08 15 jurors that this is not for the contents of the article, but
16 again, because we have put the knowledge of Mr. Furman's
17 squarely at issue here as to whether or not these were
18 documents and really that the knowledge about these regulatory
19 concerns was out of the public domain so that his statement
12:08 20 that these were either hard to find or that he didn't know
21 about it or this was something that he wasn't aware of can be
22 rebutted through these exhibits, especially as I understand,
23 Ms. Berlin, the timing of these articles is very relevant as
24 well.

12:08 25 MS. BERLIN: Yes, these are all from December 2018 in

1 the midst of this offering.

2 THE COURT: Right. All right. So with that predicate
3 laid, I will go ahead and admit this one as well over defense
4 objection. I will give an instruction again to the jurors
12:08 5 before we come in before we go right into this document.

6 MS. BERLIN: Thank you.

7 THE COURT: Go ahead and grab our jurors, please,
8 Rita.

9 (Thereupon, the jury entered the courtroom.)

12:09 10 THE COURT: Please be seated, everyone. All right.
11 Ladies and gentlemen of the jury, we have about 15 or so
12 minutes, I'd say, before we break, and then the SEC will be
13 done with their direct examination of Mr. Furman, and then I'll
14 give you further instructions, let you guys have your lunch
12:09 15 break.

16 One of the next exhibits that is going to be put on
17 the screen has already been admitted into evidence. It's
18 another article, and if you recall, right when we broke, we
19 were dealing with another articles. These are articles from
12:10 20 Bloomberg. I want to give you all a cautionary instruction.

21 You may recall, and I've done this throughout the
22 trial, that sometimes when evidence is admitted, I will direct
23 you to only consider if for a limited purpose. These two
24 articles are not to be considered for the content of the
12:10 25 articles. They're to be considered because the SEC is, as they

1 must, carrying their burden, show knowledge, show knowledge
2 that these are things in the public domain, that Mr. Furman was
3 aware of certain regulatory actions and concerns. Do you
4 understand? So the articles are being admitted for that
12:10 5 limited purpose and they should only be considered for that
6 purpose. Okay?

7 So with that being said, we can proceed if we want to
8 put that now admitted exhibit on the screen.

9 **MS. BERLIN:** Thank you.

12:10 10 (Thereupon, the exhibit was admitted into evidence.)

11 **THE COURT:** You may proceed.

12 **BY MS. BERLIN:**

13 Q. So we're showing you what is Exhibit 586, and do you see
14 this is a Bloomberg article from December 28th, 2018?

12:10 15 A. **Yes, I see that.**

16 Q. And, Mr. Furman, your e-mails and your text messages
17 reflect that you do read Bloomberg news and the Bloomberg news
18 summaries about finance, correct? Do you agree with me?

19 A. **Well, no, I do not subscribe or pay for Bloomberg.**

12:11 20 Q. Didn't ask if you subscribed, Mr. Furman. I'm just asking
21 if we go through your text messages, which we're doing, will we
22 see that you forwarded and received Bloomberg.com news
23 articles? Do you access that? Do you go there sometimes --

24 A. **Not daily. In my life, yes. Not daily by any means.**

12:11 25 **Again, I don't pay for them. So I can't read everything.**

1 Q. Okay. But Bloomberg is a financial news outlet, correct?

2 A. **It's a news media outlet.**

3 Q. Would you agree with me it's a financial news outlet,

4 Mr. Furman? You're in the financial industry?

12:11 5 A. **Yeah, that's primarily what they cover.**

6 Q. Okay. And looking at Exhibit 586, do you see this is an

7 article available on Bloomberg news about Par Funding being

8 sanctioned by the New Jersey state regulators?

9 A. **That's what it states, correct.**

12:12 10 Q. That a cease and desist order was entered?

11 A. **Correct.**

12 Q. Do you see that?

13 And it discusses the cease and desist order and the

14 high interest rates for the businesses. Do you see that as

12:12 15 well?

16 A. **I believe that's their description of Par, correct.**

17 Q. Can we scroll down?

18 And you see a quote here from Gurbir Grewal who is now

19 with the SEC, that the Bureau -- the New Jersey Bureau's action

12:12 20 today puts cash advance companies on notice, and it goes on to

21 talk about the securities violations of Par Funding. And we

22 can scroll down a bit so you can take a better look. And it

23 discusses how much Par Funding is raising from investors around

24 the country without having proper registration.

12:13 25 Do you see that?

1 A. **I see that.**

2 Q. Okay. And it goes on. And we won't continue through the
3 rest.

4 But, Mr. Furman, in offering Par Funding and
12:13 5 advertising to investors that you were doing due diligence, did
6 you conduct any Google searches of Par Funding around this time
7 and come upon this article?

8 A. **This was much later. No, I did not find this under a**
9 **Google search. But in the beginning, I did look. But this**
12:13 10 **would not be there because it did not happen yet.**

11 Q. So this was December 2018, correct?

12 A. **Correct.**

13 Q. And in December 2018, Mr. Furman, you're sort of in the
14 middle of your offering.

12:13 15 You agree with me?

16 A. **Correct.**

17 Q. You were offering these notes from --

18 A. **Beginning. That would be mid/early 2018, but correct.**

19 Q. You continued until 2020, correct?

12:14 20 A. **Until this action or until my fund closed --**

21 Q. So you're offering this investment during this time to
22 investors and telling them about the investment and that you're
23 conducting due diligence.

24 Do you agree?

12:14 25 A. **Correct.**

1 MS. BERLIN: And now we'd like to show back on ELMO
2 P 579.

3 BY MS. BERLIN:

4 Q. And P 579 is another Bloomberg article about Par Funding.

12:14 5 Do you see that?

6 A. I see the article.

7 Q. And you saw this article sometime. You think your best
8 guess is 2019?

9 A. It was -- yeah, it was easily mid or late from --

12:14 10 Mark Nardelli brought it up. But again, as I stated before, if
11 you try to read this article, it blocks you until you pay for
12 it.

13 Q. That's not answering my question. My question is: You
14 admit you saw this article, correct?

12:14 15 A. At some point, yes.

16 Q. And your best guess was that it would be 2019.

17 Do you agree?

18 A. At some point, correct.

19 Q. In 2019?

12:15 20 A. At some point, yeah, in 2019.

21 Q. And in this article, if we could just Zoom in a bit, which
22 is now me. I forget that I've taken it from notes over here.

23 So this article is clearly about Par Funding.

24 Do you see that?

12:15 25 A. I see that they're mentioned in it, yes.

1 Q. Well, the whole article -- I don't want to read the whole
2 article, but would you agree with me this whole -- entire
3 article is about nothing but Par Funding?

4 A. **Predominantly Par Funding, yes, and merchant cash advance,**
12:15 5 **I'm sure in general, but yes, Par Funding is probably**
6 **99 percent.**

7 Q. And in this article, which talks about the collections
8 practices, but it also talks about the fact that -- talks about
9 the fact that the company is led by a convicted felon, correct?

12:16 10 A. **That's what it states.**

11 Q. And you see it says: The boss at Par goes by the name of
12 Joe Mack, though his real name is Joseph LaForte, and he's not
13 Gioe's cousin. That was a bill collector for Par Funding
14 discussed. LaForte founded Par with his wife in 2011, after
12:16 15 serving more than two years in prison for stealing \$14,000,000
16 in a real estate scam and running an illegal gambling
17 operation. LaForte says he uses the alias to conceal his
18 criminal record, which he says has dogged him even though the
19 charges are a decade old, and his loan company follows the
12:16 20 rules. And he talks about he uses an alias. If you Google,
21 his name, comes up "mugshots."

22 Do you see that?

23 A. **I see that.**

24 Q. And so you admitted in your deposition a few months ago you
12:17 25 did see this article in 2019. But you still never -- you were

1 offered Par Funding for another year. You never disclosed this
2 or put it into any of your written disclosures, correct?

3 **A. I thought I didn't have to as well because they never**
4 **represented --**

12:17 5 **MS. BERLIN:** Your Honor, hearsay.

6 **THE COURT:** Again, ladies and gentlemen of the jury,
7 you should disregard any out of court statement that has an
8 made and disregard that last answer from the witness.

9 Let's go ahead and ask that question again.

12:17 10 **MS. BERLIN:** Yes.

11 **BY MS. BERLIN:**

12 Q. You never disclosed this -- I'm sorry. You saw this
13 article in 2019, according to your testimony, and you continued
14 offering Par Funding for another year and never included this
12:17 15 in any of your disclosures to investors, correct?

16 **A. Not written in the document, no.**

17 Q. And, Mr. Furman, I think we have already gone over Friday
18 that you claim that you disclosed it to just Frank Nash, and I
19 think we heard from him.

12:18 20 Do you recall his testimony?

21 **A. I never said just Frank Nash, but I did discuss this with**
22 **Frank Nash.**

23 Q. And your partner Roland Manuel, correct?

24 **A. Among others, correct.**

12:18 25 Q. Mr. Furman, you admitted -- and I don't want to go back to

1 Friday, but you admitted that you did not tell all of the
2 investors.

3 Do you recall that?

4 A. I did not make a list and check off that we discussed it,
12:18 5 but --

6 THE COURT: Ladies and gentlemen of the jury, you will
7 use your best recollection of this witness's testimony, okay?
8 Let's move on.

9 MS. BERLIN: I wonder if could turn the ELM0 back on
10 briefly. I'm sorry if I turned it off.

11 BY MS. BERLIN:

12 Q. Just one last question, Mr. Furman. Looking at -- this is
13 already in evidence. It's P 205.

14 A. 205.

12:18 15 Q. Thank you.

16 And I just wanted to real quickly, all of the notes we
17 see in yellow, these are the notes that you got from
18 Par Funding by giving them the investor money that we see on
19 these lines, right?

12:19 20 A. Yellow.

21 Q. So all the yellow ones are Par Funding notes to you?

22 A. Well, to the fund, yes.

23 Q. To your fund.

24 And we see here that where the money comes from. It
12:19 25 comes from the investors every time, correct?

1 A. **Correct.**

2 Q. And these are all investors that you brought in, correct?

3 A. **They're mine, my clients.**

4 Q. Your clients.

12:19 5 And so but not for you raising the money from all of
6 these clients, these notes would never -- these notes from
7 Par Funding would never have been purchased, correct?

8 A. **Correct. If I'm not alive, this wouldn't have happened.**

9 Q. So if you hadn't raised this investor money and sent it to
12:19 10 Par Funding, Par Funding would not have been able to offer and
11 sell those particular promissory notes that we see on P 205.
12 Agreed?

13 A. **I'm sure they had a way to get there on their own.**

14 Q. I'm talking about the notes issued to Fidelis. If you
12:19 15 didn't raise money from investors, Mr. Furman, and send it to
16 Par Funding, you agree with me that Par Funding would not have
17 been able to offer and sell these notes that we see on 205
18 issued to Fidelis, correct?

19 A. **Yeah, if Fidelis didn't exist, they couldn't issue**
12:20 20 **anything.**

21 Q. And if you hadn't raised the investor money, then
22 Par Funding wouldn't have been able to offer and sell any of
23 these notes in yellow because they were purchased with your
24 investor money, correct?

12:20 25 A. **Not to Fidelis, no.**

1 Q. Mr. Furman, I'm going to ask one more time. You agree with
2 me -- and I think you understand, every one of these notes in
3 yellow is a note from Par Funding to Fidelis, which is your
4 company --

12:20 5 A. **That's correct.**

6 Q. -- that you purchased using money raised from investors,
7 correct?

8 A. **Correct.**

9 Q. And so if you had not raised the money from those
12:20 10 investors, send it to Par Funding, Par Funding would not have
11 been able to offer and sell these promissory notes to Fidelis
12 that we see on P 205. Fair?

13 A. **If Fidelis was not there, then no, they would not have been**
14 **able to.**

12:21 15 Q. Right. And if you haven't raised the investor money, these
16 sales wouldn't have happened, correct?

17 A. **Not through Fidelis, no.**

18 Q. All right. I think we both know we're talking about the
19 notes that were issued to Fidelis.

12:21 20 **MS. BERLIN:** I have no further questions, Your Honor.

21 **THE COURT:** Thank you. All right. Ladies and
22 gentlemen of the jury, we're going to go ahead and take our
23 break at this time. I'm going to ask that everybody please
24 come back at 2 o'clock. It will give you just a little over an
12:21 25 hour and a half. The Court has a hearing at 1:00, unrelated to

1 this matter, but it should not take me more than 30 minutes to
2 complete. So I don't want you waiting unnecessarily. We'll
3 bring you all some coffee into the jury room around 1:45. So
4 if you guys want to come back maybe by 10 before 2:00, this way
5 we can make sure everybody is ready to go.

6 Let me just refresh everyone's recollection about the
7 plan. I'm going to speak to the lawyers here in just a moment,
8 but I fully anticipate that what we're going to do this
9 afternoon is at 2 o'clock allow the defense to put an
12:22 10 out-of-turn witness, essentially their first witness, without
11 completing Mr. Furman's testimony yet. Once they're done with
12 that, we're going to swap Mr. Furman back in so that the
13 defense can go forward with their cross-examination. Really
14 more of a rehabilitative examination, because Mr. Furman is
12:22 15 also a witness that the defense would intend on calling
16 independently of these Securities and Exchange Commission.

17 So we're going to go ahead and get the exact timing
18 down over the break while you guys have lunch, and we'll let
19 you know what to expect when you come back. But don't be
12:22 20 surprised if we call somebody out of turn.

21 I want to, of course, remind you all, when you go on
22 lunch break, that if you should bump into anyone involved in
23 this case, any of the lawyers, they must steer clear of you,
24 take no offense from that, please.

12:22 25 I also want to make sure you all continue to obey all

1 of the instruction that I've given you since day one, including
2 of course, not to go on social media to discuss this case. Do
3 not discuss it with any family or friends at home or on the
4 message board or chat. Do not do any research in this case.

12:23 5 Obviously you've heard and seen articles and things of that
6 nature. Do not go out and do any independent research. The
7 things that are being admitted are being admitted for the
8 limited purpose that I've instructed you on already, and if you
9 go outside the four corners of this courtroom, we can't assure
12:23 10 ourselves that what you're looking at is proper and that it
11 follows the rules of evidence. So please remember that rule.
12 We don't want any independent research or anybody Googling
13 people, places or things in the case.

14 Make sure you leave the notepads in the jury room when
12:23 15 you go to leave. I hope everyone has a good lunch. We'll see
16 you in there just about 10 until 2 o'clock, please. You're in
17 recess.

18 (Thereupon, the jury exited the courtroom.)

19 **THE COURT:** All right. You may rejoin counsel's
12:24 20 table, Mr. Furman. Rejoin your counsel.

21 So obviously I want to double check, first, just so I
22 can get a sense of the SEC's case in chief. Does the SEC --
23 understanding you do have really a rebuttal witness, I think is
24 more of what you have than anything else. But we don't plan on
12:24 25 calling anyone else as a witness outside of finishing up with

1 Mr. Furman, or do we?

2 MS. BERLIN: No, just finishing Mr. Furman and then
3 the agent who will -- it be impeachment and party admissions.

4 THE COURT: Okay. And that would be it? For example,
12:24 5 we don't need to worry about that one investor, right?

6 MS. BERLIN: Right. No. We're not going to call him.
7 Thank you.

8 THE COURT: All right. So we have just the remaining
9 part of the SEC's case in chief would include redirect of
12:24 10 Mr. Furman, as well as bringing in an impeachment witness,
11 which is the agent. And that would be the end of their case.

12 All right. So on the defense side, do I then expect
13 to have, I guess it's Mr. Cole that will be testifying first,
14 Joe Cole Barletta?

12:25 15 MR. HYMAN: Yes, Your Honor. And then after that I
16 think we had asked to, this morning, to take Ms. Kristin
17 Groleau. I'm not handling her direct, so I can't pronounce the
18 name correctly.

19 THE COURT: And Ms. Groleau is live, right?

12:25 20 MR. HYMAN: Yes, sir.

21 THE COURT: Okay. Got it. Okay. Very good. So I
22 think we should, then, target to have Joe Cole and Ms. Groleau
23 go this afternoon. That should be our goal. If we get them
24 both done, we'll see how much time we have left. It does work
12:25 25 out, I think, because then what could happen tomorrow is, we

1 can have Mr. Furman go back on the stand tomorrow, allow the
2 defense to do their examination of Mr. Furman, and then we
3 could go back to the SEC, try to wrap up Furman, wrap up the
4 agent who's available tomorrow, and then pivot back to the
12:25 5 defense to conclude with calling any other witnesses, whether
6 that's Christine Furman or perhaps one of their main calls,
7 maybe Erik Weingold. I just want to be clear so that everyone
8 understands, in preparation for tomorrow, that I really don't
9 see a reason why -- because I'm giving everyone enough
12:26 10 bandwidth to ask questions, why the defense would feel the need
11 to recall Mr. Furman in their case in chief. I don't think
12 there's a need. I would rather give you guys the full
13 bandwidth on your rehabilitation and get in to some of where
14 your redirect would be. Any issue with that?

12:26 15 **MR. HYMAN:** No, Your Honor.

16 **THE COURT:** All right. So let's go ahead and do that.
17 It just makes sense to get them back on again.

18 **MS. BERLIN:** Yes.

19 **THE COURT:** Are you okay with that?

12:26 20 **MS. BERLIN:** Absolutely.

21 **THE COURT:** And then again, it doesn't really -- I
22 mean, the Court has discretion to go ahead and structure the
23 testimony that way. It just seems to be unnecessary and
24 duplicative, especially on giving the defense a chance to ask
12:26 25 the questions in whatever way they deem fit so they can cover

1 all their material. Quite honestly, I would imagine that the
2 majority of the defense's cross-examination or rehabilitation
3 will cover all the issues the SEC has handled and then whatever
4 extra they want to cover that they would have been on redirect,
12:27 5 they can do so. So that should make it easier. All right. So
6 that's the plan. And that way Mr. Furman should, tomorrow, be
7 done with his testimony for both sides, and then we'll check in
8 again and see if tomorrow afternoon we have anybody else, maybe
9 Christine Furman. I think maybe we have someone that could
12:27 10 appear, perhaps, even on Zoom or something, maybe we can make
11 it easy. But we'll deal with that tomorrow in the afternoon.
12 Just giving us a -- kind of a game plan for the rest of today
13 and tomorrow morning into tomorrow afternoon. All right.

14 **MS. BERLIN:** Your Honor.

12:27 15 **THE COURT:** We've got a good idea.

16 So yes, let's do a little housekeeping. We know
17 Barletta is coming up and then we have Ms. Groleau.

18 **MS. BERLIN:** It sounds like we could finish tomorrow.
19 And then we would be doing closings on Wednesday?

12:27 20 **THE COURT:** Let see. I mean, I don't know. I guess
21 it really depends. I mean, my original scheduling idea was to
22 try to do it on Wednesday. Looking ahead, it really just
23 depends on, for example, let's -- I think we're going to have
24 no problem being done with Joe Cole Barletta and being done
12:28 25 with Ms. Groleau today. If we do that and we finish Mr. Furman

1 tomorrow, and we still have to get through Mr. Furman and the
2 impeachment witness, that puts us in a position where the
3 defense is back on, and I don't know, again, how much -- I've
4 looked at the witness list. Based upon the direct length and
12:28 5 everything else, I just don't know how many of these remaining
6 folks the defense plans on calling.

7 Do you guys have a sense, going into end of tomorrow,
8 where you guys would go after you're done with Furman? Is
9 Christine Furman tomorrow someone that you would do?

12:28 10 **MR. HYMAN:** Likely, yes, Your Honor.

11 **THE COURT:** Okay. And then after Christine Furman --
12 because she's the only will call, do we have a sense of the
13 other witnesses at this point with -- we know that Stoller is
14 pretty much not coming in. So it really is only three other
12:29 15 witnesses that are being mentioned, Weingold, who is the
16 attorney, Roland Manuel and Dean Vagnozzi. Do we have a sense
17 at all as to whether these individuals may be called, just so I
18 can look to see when we'd be closing?

19 **MR. HYMAN:** I would anticipate we're probably not
12:29 20 going to Mr. Roland Manuel.

21 **THE COURT:** Okay.

22 **MR. HYMAN:** And then we'll see how -- I think Vagnozzi
23 is going to be a little bit more of a judgment call.

24 **THE COURT:** Judgment call? Okay. I can live with
12:29 25 that because just one witness is no big deal.

1 How about Weingold, do you think we're going to need
2 Weingold?

3 MR. HYMAN: We're going to discuss it internally. I
4 think a big issue, obviously, is the hearsay component that
12:29 5 Your Honor has been sustaining objections on. Obviously it's
6 our position that a lot of what Mr. Weingold said to Mr. Furman
7 and vice versa, should go to circumstantial evidence and state
8 of mind, as well as satisfying the elements of the reliance on
9 counsel. But on his cross he was prohibited from answering
12:29 10 those questions -- or his direct/cross so...

11 THE COURT: Well, look, I mean, again, I don't know
12 the full scope of Mr. Weingold's testimony. Does the SEC want
13 to weigh in on that? One of the proffers here is that he's
14 going to talk about not the hearsay component. There was a
12:30 15 proffer here that he would talk about efforts to comply with
16 SEC regulations. That's not going to be hearsay. He could
17 talk about --

18 MS. BERLIN: He's not going to testify about that.

19 THE COURT: Yeah. I'm talking about what was
12:30 20 proffered.

21 MS. BERLIN: Oh, what was proffered?

22 THE COURT: Yeah, the defense proffered that he would
23 testify about the efforts of Furman and Fidelis to comply with
24 SEC regulations and exemptions. Obviously that would be fair
12:30 25 game. If he decided that he was trying to file disclosure

1 documents or things of that nature, that's not hearsay. Those
2 are actions he took to try to bring Fidelis into regulatory
3 compliance with the SEC.

4 **MS. BERLIN:** Yeah, I mean, look, the issue --

12:30 5 **THE COURT:** But that's different from what I'm hearing
6 now, which is more direct advice of counsel issues.

7 Yeah, did you want to -- go ahead, Ms. Berlin.

8 **MS. BERLIN:** I'm sorry. If he -- I mean, it depends.
9 It's sort of a question-by-question kind of thing. The issue
12:31 10 came up with Mr. Furman on direct. I didn't ask him about his
11 lawyer. He just started talking about what people had said to
12 him, and that's why the issue came up.

13 **THE COURT:** And I sustained it.

14 **MS. BERLIN:** But I was explaining it to the defendants
12:31 15 because they seem to maybe need, you know, be curious about it.

16 But I think it would depend on what he's going to say.
17 If he's testifying about what he did --

18 **THE COURT:** Right, that's fine.

19 **MS. BERLIN:** -- then that's not hearsay. And in order
12:31 20 for them to -- I can't remember if they asserted -- did they
21 assert reliance on advice of counsel?

22 They did. So they have to prove those four elements.

23 **THE COURT:** Well, that's why I'm asking, because --
24 because they have asserted advice of counsel a lot, so I
12:31 25 presume that Weingold is going to be called.

1 MS. BERLIN: Exactly.

2 THE COURT: But I mean, really, without him, I don't
3 know how you would establish advice of counsel. The reason why
4 I'm saying that is because this could have an effect,
12:31 5 obviously, when we get to our charge conference. How much of
6 this even gets presented before the jury, we don't have any
7 evidence of it. I'm not going to give an instruction on it,
8 necessarily, if there's nothing to satisfied legally the
9 elements you would need for an advice of counsel defense.

12:32 10 I mean, you guys can obviously talk about it with each
11 other, but there is quite a bit of testimony that Mr. Weingold
12 truly was assisting in getting regulatory compliance
13 accomplished for Mr. Furman, he would be able to talk about
14 that without having to get into what he did or did not tell
12:32 15 Mr. Furman. I mean, there's plenty there.

16 MR. HYMAN: I think the majority of the testimony
17 would be more of the advice counsel not the regulatory
18 compliance, and in our view, the regulatory compliance part is
19 kind of --

12:32 20 THE COURT: Let me ask you this: Why wouldn't there
21 be an issue where you would be able to ask Mr. Weingold
22 something to the effect of why did you not file -- I'm going to
23 give you an example. I'm trying to go through it -- asking
24 Mr. Weingold any questions about what he did or did not do on
12:32 25 behalf of Fidelis, right?

1 And he would obviously say: Well, I didn't do it
2 because I didn't think it was necessary or was they didn't
3 qualify.

4 I mean, that to me -- I don't know why that would be a
12:32 5 problem. I'm just coming up with -- yes, why don't you tell me
6 what is the problem with that line of questioning.

7 **MS. BERLIN:** Yes, so on that particular issue that is
8 a problem -- and I'm just asking for the 11th pattern.
9 Section 5 is -- we have it right here -- which is the
12:33 10 compliance issue. Reliance on advice of counsel is not a
11 defense. It's in a pattern. It would be prejudicial and
12 confusing for a jury. It's like running a red light,
13 Your Honor. It's strict liability. If you don't register with
14 the SEC, it's like you didn't get a driver's license and you're
12:33 15 driving on the road.

16 **THE COURT:** So given that that's the pattern on that
17 particular count, what counts then would advice of counsel be a
18 valid defense for? So we all understand what they would be
19 seeking it for, which ones?

12:33 20 **MS. BERLIN:** So the remaining six, the fraud charges,
21 but it's not an affirmative defense in the traditional sense of
22 one. It's only if they can prove the affirmative defenses,
23 it's one factor that the jury can consider when assessing
24 scienter. So it's --

12:34 25 **THE COURT:** It's not dispositive.

1 MS. BERLIN: Test not dispositive.

2 THE COURT: It's something that they can go ahead
3 and --

4 MS. BERLIN: On those six issues. So they would have
12:34 5 to have the lawyer -- Mr. Weingold would have to come in and
6 say: Yeah, he told me the guy was a convict, he told me about
7 all the regulatory cases, he told me everything.

8 And I told him: You can -- you don't have to tell the
9 investors that when you solicit them.

10 THE COURT: So let me ask you, why would that line of
11 questioning not go to his state of mind?

12 MS. BERLIN: That part, I was reacting to the
13 compliance.

14 THE COURT: But would you agree with me then.

12:34 15 MS. BERLIN: Yes, of course.

16 THE COURT: The reason why we're having this
17 discussion is Mr. Hyman is concerned about there being an
18 objection to Mr. Weingold from a purely hearsay perspective.
19 And what we need to make clear is, you know, one thing is to
12:34 20 come in and say, well, so and so told me this straight up which
21 was sustained. But one of the things that he would be coming
22 in is it's not for the truth of the those statements. It is
23 simply to establish scienter or lack thereof. Right?

24 So it's state of mind of Mr. Furman as to why he would
12:35 25 not disclose, right, to a perspective investor certain pieces

1 of information, it would be -- his state of mind was it was
2 unnecessary by virtue of counsel's advice. Right?

3 MS. BERLIN: Right. So he would have to present
4 evidence, though, that he disclosed the information. They
12:35 5 can't meet the elements.

6 THE COURT: Look, look. Let's not get ahead of
7 ourselves. I'm not arguing.

8 MS. BERLIN: But no, it's not hearsay. It's not
9 hearsay.

10 THE COURT: Right. No, no. But remember, Mr. Hyman,
11 just a minute ago, he believed that it would be doing no
12 good -- let's remember what when he just said. Mr. Hyman just
13 said to the Court: I don't think I'm going to call him because
14 you sustained an objection giving hearsay.

15 And what I'm educating Mr. Hyman on now is the
16 question that I sustained on has nothing to do with state of
17 mind at that time. It was framed in a very different way. If
18 he brings Weingold in, as he wanted to and he has him as a may
19 call, and Weingold -- look, I don't know what he is going to
12:36 20 say. But if Weingold says, I was informed of all these things,
21 remember, I looked at summary judgment. I know what's out
22 there.

23 The reality is there's a bit of a dispute as to
24 whether Mr. Weingold was told certain things so that he could
12:36 25 develop a legal opinion. My recollection is he did or did not

1 know certain things. So if indeed Mr. Weingold came forward
2 and said, look, I went ahead and told him, because Mr. Furman
3 came to me and said I know this, that, or the other, and I
4 said, you don't have to worry about it, you don't have to
12:36 5 disclose it, that would go right to the heart of scienter for
6 state of mind for Mr. Furman.

7 Now, of course I expect that part of the issue is
8 whether Mr. Weingold was aware of certain things told to him in
9 the first place to render the proper legal opinion. That's my
12:36 10 recollection of the gaps in the record. I'm going off memory,
11 so that may be wrong. But part of it was Mr. Weingold, as I
12 recall, didn't necessarily say that he knew certain things.
13 And so his legal opinion was limited.

14 MS. BERLIN: Or that he gave advice. I'm not even
12:37 15 sure that we have established that he gave the advice.

16 THE COURT: That he actually gave the advice.

17 MS. BERLIN: He has a company called PPM Lawyers where
18 you would submit your info and you would get a PPM. So they
19 would have to show four elements with the reliance of advice on
12:37 20 counsel. I don't think I've ever had a trial without that
21 defense, either the accountant or the lawyer.

22 THE COURT: Of course not.

23 MS. BERLIN: So basically, usually the defendant will
24 testify about like what they told the --

12:37 25 THE COURT: Right. They disclosed to the lawyer,

1 right.

2 MS. BERLIN: Then the lawyer will testify about what
3 advice -- what they knew, you know, usually on cross and what
4 they said, what advice they gave. And then the defendant will
12:37 5 have to present testimony that they complied with the advice
6 and address questions about whether they disclosed everything.
7 But it involves both of them testifying. And that's the only
8 way to do it.

9 THE COURT: But, for example, nothing would stop
12:37 10 Mr. Hyman when Mr. Furman takes the stand tomorrow from asking
11 questions about what he did or did not tell his lawyer to
12 establish the state of mind, and then you would call Weingold,
13 and you would work through Weingold. You would attempt to show
14 that Weingold, based upon what Furman testified he told him, he
12:38 15 gave him advice. And then that's open for the redirect, slash,
16 almost like a secondarily cross.

17 So I guess to your point earlier, and I don't know you
18 guys obviously are the masters of your own defense, but there's
19 nothing stopping you from calling Weingold because of hearsay.
12:38 20 In fact, it's absolutely not a hearsay problem. I don't want
21 the record to reflect that you're not calling him because you
22 believe the Court is limiting you.

23 On the contrary, you could absolutely get Weingold up
24 there to show the state of mind or lack thereof for a scienter
12:38 25 defense for Mr. Furman, and you can ask Mr. Furman also in some

1 of the questioning what it was he shared with his counsel.

2 Remember, what happened when we had these questions,
3 number one, it was non-responsive is the bigger problem. The
4 answers he was giving were not only for hearsay concerns that I
12:38 5 was troubled with, but they were nonresponsive to the SEC's
6 questions.

7 Nothing that has happened from the direct stops the
8 defense from putting on their advice of counsel defense. In
9 fact, it's fair game tomorrow, and it's fair game if you call
12:39 10 him on Wednesday, whenever he would be called. So I guess you
11 guys still want to discuss it, but you do understand that you
12 could absolutely call Mr. Weingold and not run into a hearsay
13 problem.

14 **MR. HYMAN:** Yes, Your Honor. Thank you.

12:39 15 **THE COURT:** All right. Good. So the only thing I
16 would ask then is I'm venturing to guess just knowing the
17 current schedule. I know that some of this may not be really
18 flushed out until tomorrow, but we kind of have through
19 tomorrow planned out. We really know what to expect.

12:39 20 And I think that by tomorrow afternoon, once we
21 conclude with Mr. Furman and perhaps we go ahead and have
22 Christine Furman testify, then at that point we should -- and
23 especially if Roland Manuel is out and Stoller is out and we
24 may not call Mr. Vagnozzi, I think that other than calling
12:39 25 Mr. Weingold, I think we're almost done.

1 So what I surmise is probably the safest bet, looking
2 at schedule right now, is if we plan on finishing with
3 Mr. Weingold -- again, I expect to know this on Tuesday. But
4 by the end of Tuesday, I should know are we calling Weingold or
12:40 5 any other witnesses, right, for the defense.

6 If we're not calling any other witnesses and we're all
7 rested by Tuesday, then what I would almost certainly do is I
8 would have us come in in the morning and do the charge
9 conference and try to do -- get instructions polished, our
12:40 10 verdict form ready, and I would have all the jurors come at
11 1 o'clock. That's what I would do Wednesday, and you would
12 close in the afternoon.

13 The other option is we don't get everybody done, we
14 still have someone to call, then that means that last witness
12:40 15 is coming in Wednesday morning. Then we're charging in the
16 afternoon and we're closing Thursday. Those are the only two
17 scenarios that I think we're doing, either Wednesday afternoon
18 close or Thursday morning close. Does that make sense?

19 **MS. BERLIN:** Absolutely. And if we have any rebuttal
12:40 20 witnesses, those are typically very brief.

21 **THE COURT:** You can do that Wednesday too. That could
22 work Wednesday.

23 **MS. BERLIN:** This is not the client.

24 **THE COURT:** Look, I want to wait, right? I don't want
12:41 25 to pull the trigger until I see how tomorrow goes, but I really

1 do think that Wednesday could be an open day with a chunk of
2 time as something we need to be done, because we could always
3 use any remaining time for the charge conference. And if we're
4 closing Thursday morning, I think that's absolutely fine.

12:41 5 Looking at the Court's calendar, the only concern I had was a
6 criminal suppression hearing I had set for Friday, and I don't
7 see a universe where I won't be able to get to that as planned.

8 So right now we're looking at Wednesday afternoon or
9 Thursday morning, and by tomorrow I just need to know from the
12:41 10 defense who else we're going to call after Christine Furman,
11 after finishing with Mr. Furman, after calling Joe Cole
12 Barletta and Kristin Groleau. That should be it. So I think
13 we're in good shape.

14 **MS. BERLIN:** Yeah, that sounds pretty good.

12:41 15 **THE COURT:** All right. So with that being said,
16 2 o'clock, you've got a little over an hour and 15 minutes. I
17 have a sentencing in about 15 minutes. So if you guys want
18 to --

19 **MS. BERLIN:** We'll move our things.

12:41 20 **THE COURT:** Yeah, just give me a little space for the
21 criminal defense lawyer coming in and for my -- our prosecutor.
22 We're in a brief recess. I'll see you guys at 2 o'clock.

23 **MS. BERLIN:** Thank you, Your Honor.

24 **THE COURT:** You're welcome.

12:42 25 **MR. HYMAN:** And, Your Honor, for Mr. Cole, do you mind

1 if I take his questioning from here so I can use my computer
2 and the my exhibits here?

3 **THE COURT:** That's fine. That's absolutely fine. You
4 don't have to come to the podium. That's fine. Just as long
12:42 5 as you speak into the microphone, we're good.

6 (Thereupon, a luncheon recess was taken.)

7 * * *

8

9

02:08 10 A F T E R N O O N S E S S I O N

11 **THE COURT:** Please be seated, everyone. Okay.

12 Mr. Cole, I presume.

13 **THE WITNESS:** Hi, Judge.

14 **THE COURT:** Hi.

02:08 15 All right. So we're going to go ahead and get started
16 then. Any issues before I bring in my jury?

17 **MS. BERLIN:** No, Your Honor. If I step out, is it
18 okay if Ms. Johnson just makes any objections in my stead?

19 **THE COURT:** Yes, of course.

02:09 20 **MS. BERLIN:** Which would be unusual, but --

21 **THE COURT:** Yes, absolutely. Not an issue.

22 **MS. BERLIN:** Thank you. So we don't have to stop.

23 **THE COURT:** Yeah. Just to make sure at least,
24 obviously, one of you is here present if we have any
02:09 25 objections, that will be fine.

1 MS. BERLIN: Thank you.

2 THE COURT: You're welcome.

3 Okay. Anything else from the defense side? You guys
4 are ready?

02:09 5 MR. HYMAN: Yes, Your Honor.

6 THE COURT: All right. Make sure you guys draw it
7 close. I know you're working on the examination from there.
8 That's fine.

9 Let's go ahead and bring in the jury.

02:09 10 MR. HYMAN: I'll kind of refer to myself as "new
11 Kevin" when I try to put things on the screen.

12 THE COURT: Yeah, no. Just let me know whenever you
13 need access to the monitors, we'll we figure it out.

14 (Thereupon, the jury entered the courtroom.)

02:10 15 THE COURT: Please be seated, everyone. Ladies and
16 gentlemen of the jury, welcome back. I hope you had a nice
17 lunch break. As we discussed before we went on our break, we
18 are now going to be hearing from the defense. They're going to
19 be putting on their first witness, somewhat out of turn.

02:10 20 So we're going to go ahead, as you know, and go
21 through the same process by which the SEC put on their
22 witnesses, which means defense counsel will have direct
23 examination, the SEC will have cross-examination, and then the
24 defense counsel has redirect.

02:11 25 And, of course, we expect that if not done later

1 today, tomorrow we'll probably conclude with the remaining
2 testimony from Mr. Furman's. But for now we're going to take
3 these next few witnesses out of turn so we can keep things
4 moving.

02:11 5 With that being said, I turn it over to defense
6 counsel. Your next witness.

7 MR. HYMAN: Thank you, Your Honor.

8 THE COURT: What's the next witness?

9 MR. HYMAN: Joseph Cole Barletta.

10 THE COURT: All right. Let's get him to rise, please,
11 so that I can swear him in.

12 Thereupon,

13 JOSEPH COLE BARLETTA,

14 having been duly sworn by the court reporter, testified as
02:11 15 follows:

16 THE COURT: All right. Please proceed.

17 MR. HYMAN: Thank you.

18

19 DIRECT EXAMINATION

02:11 20 BY MR. HYMAN:

21 Q. Please state your name for the record.

22 A. Joseph Louis Cole Barletta.

23 THE COURT: And you're going to need to lean in a bit,
24 Mr. Cole. It's a little annoying, but just lean in.

02:11 25 THE WITNESS: Sure.

1 BY MR. HYMAN:

2 Q. Would you mind telling the jury a little bit about your
3 educational background.

4 A. Sure. I went to UC Irvine in California for computer
02:11 5 engineering. During college I worked for a publically traded
6 construction company in the accounting department for eight
7 years. And after that, I moved to Philadelphia because my wife
8 wanted to go to grad school there. Ended up meeting Lisa and
9 Joe and working in this business.

02:12 10 Q. And at that time -- do you have any other professional
11 licenses?

12 A. No, I do not.

13 Q. And what is your experience in terms of accounting or
14 similar types of financial work?

02:12 15 A. Sure. I cut my teeth, as I mentioned, in the publically
16 traded construction company. We worked primarily in the United
17 States in engineering and boiler manufacturers. I did a lot of
18 cost accounting. Four years into it, I specialized in sales
19 and use tax accounting. And as the company went public, we did
02:12 20 the whole Sarbanes-Oxley process and worked on compliance
21 internally.

22 Q. And where did your wife go to graduate school?

23 A. She went to Penn but she never finished.

24 Q. Okay. And so then you testified you met a Joe and Lisa.
02:13 25 That's Joe LaForte and Lisa McElhone, correct?

1 A. That's correct. Yes. I was looking for work out here
2 after moving.

3 Q. Okay. And did you apply for a job somewhere?

4 A. I had a couple of resumes out. I just wanted to find a
02:13 5 good fit for myself. Yeah.

6 Q. And where did you end up finding employment?

7 A. I ended up working with them.

8 Q. At what company?

9 A. At Complete Business Solutions Group. Although initially
02:13 10 it was working with a couple other entities that they had, but
11 that was the company I was employed under.

12 Q. Okay. And what year did you first obtain employment with
13 Par Funding or CBSG?

14 A. That was in 2012.

02:13 15 Q. 2012?

16 A. That's right.

17 Q. What was the position that you started with when you first
18 started working with CBSG?

19 A. It was director of finance that involved into a CFO
02:13 20 position.

21 Q. And did you go straight from -- what were your
22 responsibilities as director of finance?

23 A. I mean, it's sort of a start-up situation. Right. We're
24 putting together a lot of the models for the business. So I
02:14 25 had to develop really the model for this new factoring

1 business. They were developing sales and -- merely just
2 getting an idea of how the product behaved and really how it
3 could be profitable.

4 Q. And what type of modeling work did you do?

02:14 5 A. I mostly did projections and understanding the way the cash
6 flow of the product would work, getting repaid and being able
7 to leverage retainer and do subsequent fundings.

8 Q. And could you provide a little more explanation as to how
9 all of that would work?

02:14 10 A. The projection or the product?

11 Q. The product.

12 A. So in a nutshell, they would do short-term merchant cash
13 advances to small businesses in the United States. The product
14 works by providing quick turnaround cash within typically a
02:15 15 couple of days and then collecting on payments for those
16 factoring agreements the next business day after funding.

17 Typically these would be collected on a daily basis
18 through an ACH processor. That was one of the processes I
19 helped them building out, just to make sure that that was done
02:15 20 as efficiently and cost effectively as possible. And then that
21 would be then collected and provided to other clients in turn.

22 So it's sort of a compounding model where you're
23 taking daily cash flows and taking out into new deals. The
24 average rates that we were processing at were about 1.33 factor
02:15 25 rate, historically.

1 Q. What does "1.33 factor rate" mean?

2 A. That means when we purchase receivables, let's say for a
3 hundred thousand dollars from one of our merchants, we would
4 then receive \$133,000 in total return for the receivables.

02:15 5 We're financing their receivables as part of our agreement with
6 them.

7 Q. And could you explain what your understanding of a
8 receivable is?

9 A. A receivable is a collectible invoice for each of these
02:16 10 merchants that collect from their clients.

11 Q. And how did your role develop from being the financial
12 director to CFO?

13 A. It just happened organically. We grew. A head count was
14 less than ten people the first couple of years. By the end of
02:16 15 2016, we probably had about 40 people, excluding Joe's sales
16 teams.

17 Q. And Joe's sales teams was separate?

18 A. Yes. It's a separate legal entity.

19 Q. So in 2017 there were about 40 employees?

02:16 20 A. Yes.

21 Q. And did Par Funding continue to grow after that?

22 A. Well, this is where it gets a little bit more complicated
23 because we had to restructure the structure of the company for
24 a discussion with our tax accountants to see what would optimal
02:16 25 structure. We had other businesses that -- the company Full

1 Spectrum Processing, which was in 2017, was servicing.

2 So, for instance, Lisa also had some real estate, she
3 had a nail salon, she's a partner in a physical therapy center.

4 So in order to manager the books and processes for those

02:17 5 back-end businesses, we had to set up this entity.

6 Q. Okay. And between 2017 and 2020, approximately how many
7 employees did Par Funding have?

8 A. Par Funding never really had any employees, just Lisa was
9 on the payroll. It transitioned to Full Spectrum Processing in

02:17 10 2017. Full Spectrum had approximately 70 employees as of July
11 of 2020.

12 Q. And did Full Spectrum have its own accounting department?

13 A. Yes. That's my bread and butter.

14 Q. How many people were in your accounting department?

02:17 15 A. My office had about 15 people, about 12 accountants,
16 including an HR person, receptionist and some payroll people.

17 Q. And what were the responsibilities of your accounting
18 department at that time?

19 A. So Full Spectrum Processing manages not just Lisa's

02:18 20 businesses but also other companies. They provide services,
21 mostly back-end book keeping, IT work, HR and marketing for
22 those companies. My accountants would handle all of the books.

23 We had a Cloud server that stores all the QuickBooks files so
24 everyone was able to access, including our tax accountants.

02:18 25 And our role was keeping track of the books for all those

1 companies. Effectively providing services, paying payables,
2 collecting unreceivables somewhat, and just making sure that
3 we're able to communicate that financial information to the
4 owners of the businesses.

02:18 5 Q. And with respect to the MCA loans, what was the primary
6 source of funding for those loans?

7 A. The primary source of funding was from retained earnings.

8 Q. Retained earnings.

9 A. Which are the payments collected from our clients on those
02:18 10 factoring deals.

11 Q. And in order to fund the factoring deals, what was the
12 source of the money to fund that -- or were there other sources
13 of funding for those factoring deals?

14 A. Yes, yes. The company also sold promissory notes.

02:19 15 Q. And do you know approximately how much in promissory notes
16 were sold?

17 A. In total, I believe the volume was somewhere in the
18 neighborhood of 740 million dollars.

19 Q. And how much capital was deployed by Par Funding?

02:19 20 A. Deployed, you mean into those deals?

21 Q. Into the MCA deals, yes.

22 A. Approximately 1.25 billion dollars.

23 Q. And how is it able to deploy that much capital?

24 A. As I mentioned, we're collecting these deposits on a daily
02:19 25 basis where -- it's the most optimal scenario. Where you're

1 taking those daily receivables and putting it on to new deals
2 every day. So it's a constant churn of finding new clients
3 that provide this sort of short-term financing and getting them
4 booked.

02:20 5 Q. Are you familiar with the recordkeeping policies of
6 Par Funding and CBSG?

7 A. Yes.

8 Q. And are you familiar with how the records are maintained in
9 the ordinary course of business?

02:20 10 A. Yes.

11 MR. HYMAN: Your Honor, may I please have access to
12 the screen?

13 THE COURT: Sure.

14 MR. HYMAN: We're going to start with PX 56, which I
02:20 15 think has already been admitted into evidence.

16 THE COURT: Okay.

17 MR. HYMAN: But we'll show it -- oh, wait. Sorry, not
18 56. PX 6.

19 THE COURT: It's not in evidence, PX 6?

02:20 20 I guess not. Let's go ahead and show it to the
21 witness, please.

22 MR. HYMAN: I'm showing you what's been marked as
23 PX 6.

24 THE COURT: I don't see anything.

02:21 25 (Thereupon, the exhibit was introduced into evidence.)

1 **BY MR. HYMAN:**

2 Q. Do you recognize this document?

3 A. **Yes.**

4 Q. It's a --

02:21 5 **MR. HYMAN:** Keep scrolling down a little bit. Let's
6 see here.

7 **BY MR. HYMAN:**

8 Q. You see here it says: United States Securities Exchange
9 and Commission, Form DE?

02:21 10 A. **Yes.**

11 Q. Are you familiar with this document?

12 A. **Yes.**

13 Q. You'll see here it says: Name of issuer.

14 Who is that identified as the issuer?

02:21 15 A. **That is Complete Business Solutions Group.**

16 Q. Is this a document --

17 **MR. HYMAN:** And we'll keep scrolling down.

18 **BY MR. HYMAN:**

19 Q. You'll see clarification of response, last name Barletta,
20 Joseph L. Cole.

21 Is that you?

22 A. **That's right.**

23 Q. Okay.

24 **MR. HYMAN:** And then as we'll scroll down to the
02:21 25 bottom.

1 **BY MR. HYMAN:**

2 Q. You'll see the signature here, the issuer.

3 Do you recognize the name of the signature?

4 A. **Yes, that's my signature.**

02:21 5 Q. So seeing this document here, do you recognize it?

6 A. **Yes.**

7 Q. Is it a document that would be maintained by CBSG in the
8 order --

9 **MR. HYMAN:** You guys don't object?

02:22 10 **THE COURT:** No objection.

11 Well, let's go ahead and move that. PX 6 is now
12 admitted.

13 You may proceed.

14 (Thereupon, the exhibit was admitted into evidence.)

02:22 15 **BY MR. HYMAN:**

16 Q. Do you see this document here?

17 A. **Yes.**

18 Q. What is this document?

19 A. **This is a registration with an OMB approval from the SEC,
02:22 20 Form DE.**

21 Q. And we'll scroll down to here, subparagraph 6. You will
22 see federal exceptions.

23 Do you see that, sir?

24 A. **Yes.**

02:22 25 **THE COURT:** I don't think the jury is seeing it yet.

1 We can go ahead and let them see.

2 Do you folks see that document?

3 Very good. You may proceed.

4 **BY MR. HYMAN:**

02:22 5 Q. And you will see down for investors, number 14?

6 A. **Yes.**

7 Q. It says: Regardless of the securities and the offering
8 have or may be sold to persons who do not qualify and to the
9 total number of investors who have already invested in this
02:22 10 offering.

11 Do you see that?

12 A. **Yes.**

13 Q. And do you see the number there?

14 A. **Yes.**

02:23 15 Q. What is that?

16 A. **22.**

17 Q. And had CBSG been making this offer to accredited
18 investors?

19 A. **Yes.**

02:23 20 Q. Do you know whether or not it had been making any of these
21 offerings to non-accredited investors?

22 A. **No.**

23 Q. No, as in it had not made the offerings --

24 A. **No, it had not made those offerings to non-accredited**
02:23 25 **investors.**

1 Q. Same thing for DE 1852. Scroll up to the top. Always this
2 is another Form DE.

3 (Thereupon, the exhibit was introduced into evidence.)

4 MR. HYMAN: Give the SEC a minute and then we'll --

02:24 5 MS. BERLIN: We don't have an objection to it.

6 MR. HYMAN: Okay. Great. Would you guys mind
7 publishing it to the jury?

8 THE COURT: That will be admitted.

9 What is the other number?

02:24 10 MR. HYMAN: DE 1852 and P 6, Your Honor.

11 THE COURT: That will be admitted at this time. We
12 can publish this to the jury.

13 MR. HYMAN: Okay.

14 (Thereupon, the exhibit was admitted into evidence.)

02:24 15 BY MR. HYMAN:

16 Q. See here what's been marked as DE 1856 (sic). Do you
17 recognize this document?

18 A. Yes.

19 Q. And what is it?

02:24 20 A. This is another Form DE registration with the SEC.

21 Q. And we'll scroll down here to...

22 Were you involved in the preparation of this document,
23 sir?

24 A. Yes.

02:24 25 Q. Are its contents accurate?

1 A. **To the best of my knowledge, they are.**

2 Q. And did Par Funding take steps to assure that its investors
3 were accredited?

4 A. **Yes.**

02:25 5 Q. Do you have a recollection as to what those steps were?

6 A. **We worked with our securities counsel to prepare
7 questionnaires and verifications that every noteholder was
8 indeed accredited.**

9 Q. And you'll see there in subparagraph 14, it says investors.

02:25 10 Do you see that?

11 A. **Yes.**

12 Q. And it lists 488 accredited investors?

13 A. **That is correct.**

14 Q. Is that an accurate statement?

02:25 15 A. **I believe so.**

16 Q. As far as you know, at or around -- let me keep scrolling
17 down to the bottom. This was prepared 2019, 2-12.

18 Do you see that?

19 A. **Yes.**

02:25 20 Q. Is that accurate as of that date?

21 A. **Yes. Cindy signed that for the company.**

22 Q. And who is Cindy?

23 A. **Cindy is our general counsel for the company at the time.**

24 Q. And do you know whether or not CBSG prepared a similar

02:25 25 Form DE for 2018?

1 A. **No. This was the first time we had done it.**

2 Q. And had there been one prepared in 2019?

3 A. **This is in 2019.**

4 Q. I'm sorry. I apologize.

02:26 5 With respect to your responsibilities, were you
6 involved in the review of or signing of promissory notes to
7 various investors and entities?

8 A. **Yes. It was one of the corporate signatories.**

9 MR. HYMAN: And next we're going to put up on the
02:26 10 screen DE 0259.

11 THE COURT: Any objection to the next one, DE 295, was
12 it?

13 MR. HYMAN: 259, it's a defense exhibit. It's a
14 promissory note between CBSG and Fidelis. It was already
02:27 15 admitted? Well, we can publish it to the jury then.

16 **BY MR. HYMAN:**

17 Q. Do you see this document?

18 A. **Yes.**

19 Q. And do you recognize it?

02:27 20 A. **Yes, I do.**

21 Q. What is it?

22 A. **It is a note purchase agreement.**

23 Q. And whose it between?

24 A. **It is between CBSG and Fidelis Financial Planning.**

02:27 25 Q. Are you familiar with the company Fidelis Financial

1 Planning?

2 A. **Yes, I am.**

3 Q. What is your familiarity with Fidelis Financial Planning?

4 A. **It is a noteholder for one of CBSG's notes.**

02:27 5 Q. And are you familiar with who owns Fidelis Financial
6 Planning?

7 A. **Yes.**

8 Q. Who is that?

9 A. **Mark Furman.**

02:27 10 Q. Mark Furman?

11 A. **I'm sorry.**

12 Q. Why is it that you're confused with his name?

13 A. **I don't deal with Mr. Furman on a regular basis. And I
14 only recognize the name from the signatories on his agreements.**

02:27 15 Q. Have you ever had any dealings with Mr. Furman?

16 A. **Not directly, no, other than signing the same document.**

17 Q. Have you ever had any conversations with Mr. Furman?

18 A. **Not that I can recall.**

19 Q. Does Par Funding have the ability to exercise any control
02:28 20 over Fidelis funding?

21 A. **No. We're wholly independent entities.**

22 Q. And do you know whether or not -- that makes sense.

23 And are you familiar with the identify of the

24 investors or all the noteholders with respect to Par Funding?

02:28 25 A. **In what capacity?**

1 Q. So if you saw a list of names, could you tell us whether or
2 not a person held a note with Par Funding or not?

3 A. **Yes.**

4 Q. And I'm going show you what's been marked and introduced
02:28 5 into evidence as P 205.

6 Do see this document?

7 A. **Yes, I do.**

8 Q. Have you ever heard of Steve and Leslie Benardo?

9 A. **No.**

02:28 10 Q. Have you ever heard of the Palm Beach Tax Group Inc.?

11 A. **No.**

12 Q. Have you ever heard of Nicholas Sandoval?

13 A. **No.**

14 Q. Have you ever heard of Celeste Zehren?

02:29 15 A. **No.**

16 Q. And if you look through the rest of this list, we're not
17 going to belabor the point, do you recognize any of the names
18 of individuals that are listed in this --

19 A. **No, not at all.**

02:29 20 Q. If any of them were investors in Par Funding or CBSG, would
21 you recognize their names?

22 A. **Yes, I would.**

23 Q. And so it's safe to say that none of these people actually
24 invested in Par Funding?

02:29 25 A. **Correct.**

1 Q. And are you familiar with -- did CBSG have audited
2 financial statements?

3 A. **Yes, I did.**

02:29 4 Q. Were you responsible for overseeing and supervising these
5 audits?

6 A. **Yes, along with my comptroller, Jim Klenk.**

7 Q. And with respect to the audits and the audited financial
8 statements, how many audited financial statements were prepared
9 for CBSG?

02:29 10 A. **We had one finalized in 2018 for 2017. And then we had one
11 in the works for 2018, supposed to be finished in 2020.**

12 Q. And were there other financials that -- or financial
13 records that CBSG prepared in the ordinary course?

02:30 14 A. **Yes. We also had three not formal financial audits, and
15 those were separate projects. It's in the form of an agreed
16 upon procedures letter, a compilation, and onsite financial by
17 one of our noteholder's accountants.**

18 Q. And during the course of those audits, did any of the
19 accountants note anything wrong with CBSG's books and records?

02:30 20 A. **No, absolutely not.**

21 Q. I'm going to show you what's been marked -- so you
22 testified earlier about an audit year-end 2017, 2018?

23 A. **Yes.**

24 Q. I'm going to put up what's been marked as Plaintiff's 270.

02:30 25 Do you see this document?

1 A. Yes.

2 Q. Do you recognize it?

3 A. Yes, I do.

4 Q. What is it?

02:30 5 A. It is an audited financial statement for 2017.

6 Q. And were you involved in the preparation of this?

7 A. Not the preparation, just the work behind, for them to
8 prepare it.

9 Q. And as we go down, keep scrolling to --

02:31 10 MS. BERLIN: Is this in evidence?

11 MR. HYMAN: Yes, it is.

12 THE COURT: I believe it is. Yeah.

13 MR. HYMAN: It was introduced through both Mr. Klenk
14 and Mr. (Inaud.).

02:31 15 MS. BERLIN: Got it.

16 BY MR. HYMAN:

17 Q. So see here, we have the consolidated balance sheet?

18 A. Yes. Yes. That's the old balance sheet from '17.

19 Q. Could you explain to me how to -- what or how I should be
02:31 20 reading this balance sheet?

21 A. It depends on your objective, but the general idea here is
22 to see the total assets and liabilities of the business.

23 Q. So we'll see here -- what is the number for the total
24 assets?

02:31 25 A. Total assets, approximately \$135,000,000.

1 Q. And what were the total liabilities?

2 A. **Approximately 132 and a half.**

3 Q. And we'll see down, it says: Investor loans payable, net
4 of unamortized debt insurance cost of \$1,323,767.

02:32 5 Do you see that?

6 A. **Yes.**

7 Q. And then next to it, it's got the \$94,000,000 number?

8 A. **That's correct.**

9 Q. Can you explain to me what that represents?

02:32 10 A. **That reflects the total note balance of as of December 31,
11 2017 owed to note purchasers at CBSG.**

12 Q. And so how were noteholders paid profits from the company?

13 A. **Profits from the company?**

14 Q. Or how were noteholders paid?

02:32 15 A. **They're paid on a monthly basis. Typically on the same day
16 that they put their funds in. And they receive interest for 12
17 months with the principal being returned after 12 months.**

18 Q. And what is the source of the interest from CBSG that's
19 used to pay these noteholders?

02:32 20 A. **From the regular cash flow of the business.**

21 Q. Would that be profits from the business?

22 A. **It's -- includes profits, but it's a complicated question
23 you're stating -- or asking.**

24 Q. Okay. So we'll go down here. It lists stockholders'
02:33 25 equity and total liabilities and equity.

1 A. Yes.

2 Q. Down here we'll see there's a consolidated balance sheet,
3 page 4.

4 Could you explain to me how to read this, please.

02:33 5 A. Sure. So the top net revenues, it breaks down the income
6 of the business on a GAAP basis. That includes deferral of
7 revenues for subsequent periods, which means income recognized
8 in future periods that were started in 2017.

9 The next section breaks down general operating
02:33 10 expenses, consulting expenses, provisions for credit losses,
11 which is a combination of both actual losses and provisional
12 losses estimated from the value of the portfolio. And SG&A is
13 your typical day-to-day cost, including employees, rents,
14 things like that.

02:34 15 Q. And as we continue to go down, you'll see it lists interest
16 expenses?

17 A. Yes.

18 Q. What are those?

19 A. That is the cost of the notes for the business.

02:34 20 Q. And then after that it lists a net loss attributable of
21 6 million dollars.

22 Do you see that?

23 A. That's correct.

24 Q. Could you explain to me why there's a net loss listed
02:34 25 there?

1 A. Primarily it's a function of GAAP. But at the end of the
2 day, that's what the financial record reflects.

3 Q. Can you explain to me -- so you talk about GAAP. What is
4 GAAP?

02:34 5 A. GAAP is generally accepted accounting principles.

6 Q. And are there other ways to conduct an analysis of the
7 company's books and records?

8 A. There are many ways to conduct an analysis of the books and
9 records. But --

02:34 10 MS. BERLIN: Your Honor, we're just going to object
11 that this is going into expert testimony by Mr. Cole about a
12 financial record that's --

13 THE COURT: I'll allow him just to give an
14 explanation, but let's not go too far afield.

02:35 15 Go ahead, you may finish your answer.

16 A. Yeah, I'll keep it terse. So for this type of business, in
17 order to produce financial reporting that's going to be used
18 for what we intended to use it for, it would need to be
19 prepared under GAAP standards.

02:35 20 BY MR. HYMAN:

21 Q. But with respect to how internally you were calculating
22 your internal processes, what did you use?

23 A. It's GAAP. Yeah. It's always been -- since 2017 we moved
24 to GAAP.

02:35 25 Q. And with respect to documents that were provided to

1 investors, are you familiar with what's been called a CBSG
2 funding analysis?

3 A. Yes.

4 Q. What is the CBSG funding analysis?

02:35 5 A. That's a report I created in 2015. And since then, we
6 issued it on a monthly basis to reflect key performing
7 indicators of the business, funding bad debt and also
8 collections.

9 Q. And I'm going to show you on the screen what has been
02:36 10 marked for identification as Defendant's 29.

11 THE COURT REPORTER: Is it in evidence?

12 MR. HYMAN: It is not yet in evidence. I know it's
13 similar to the one that's been used throughout the course of
14 the --

02:36 15 (Thereupon, the exhibit was introduced into evidence.)

16 MS. BERLIN: No objection.

17 THE COURT: Okay. We can admit that at that time.
18 This time defense 29 is admitted. We'll publish that to the
19 jury at this time.

02:36 20 (Thereupon, the exhibit was admitted into evidence.)

21 BY MR. HYMAN:

22 Q. You see here, this is a funding analysis?

23 A. Yes.

24 Q. And were you involved in the preparation of this?

02:36 25 A. Yes. Like I said, I made this.

1 Q. Okay. And so this was what was provided to note-holding
2 investors?

3 A. Yes.

4 Q. And as we were discussing kind of the GAAP analysis, was
02:36 5 that provided routinely to note-holding investors?

6 A. No.

7 Q. So looking at this, it's called a KPI report; is that
8 correct?

9 A. That's a term you can use for it. It reflects key
02:37 10 performing indicators of the business.

11 Q. So how did you -- walk us through how you put this together
12 and how an ordinary person should read it.

13 A. So the simplest way to look at this is monthly activity in
14 the categories of both funding activity, defaults recognizing
02:37 15 in that month, and payments collected from clients in that
16 month. There's three different categories. So if you take any
17 random month, right, you're going to see how many deals were
18 funded, the total dollars amount, the average size of each
19 deal, the average factor rate for that month, the new
02:37 20 receivables generated for those deals, and the month ending AR
21 total, meaning how much money was owed.

22 Q. Okay. So as you continue through, you'll see there's
23 something that says: AR charge, bad debt.

24 A. Yes.

02:37 25 Q. What is the AR charge?

1 A. It's change. So it's the Delta from current month to prior
2 month. Meaning if we have -- you know, at the very beginning
3 you're going to see 1.7 in 2 million dollars. You're going to
4 see an increase of approximately \$280,000 from the prior month.
02:38 5 Right? Because we grew in the total amounts of monies owed to
6 CBSG for those receivables by \$300,000.

7 Q. And can you explain to me what the term "bad debt" means?

8 A. Bad debt reflects the number of deals or receivables value
9 written off for that period of time each month.

02:38 10 Q. Okay. And next there's something that says: Bad debt
11 exposure.

12 A. Right. With this industry it's important not just to look
13 at the total amount being written off, but the actual exposure
14 for each of those deals written off.

02:38 15 Q. And what do you mean by the term "exposure"?

16 A. Exposure is the net amount of monies provided versus
17 collected on these transactions.

18 Q. Is there another way to frame that in terms of net cash
19 that's there over cash?

02:39 20 A. Do you want me to give you an example?

21 Q. Well, sure.

22 A. Sure. In simple terms let's use that \$100,000 example we
23 were discussing. If we provide a client \$100,000 and they have
24 an obligation to repay us a historic factor rate average of
02:39 25 1.33, they would have to repay us \$133,000. To fully satisfy

1 that receivable, they would have to pay off that entire balance
2 for the company.

3 Let's say they went bad and said, you know what, we
4 paid off \$101,000. Right. That means they paid back all of
02:39 5 the \$100,000 and then we had \$1,000 more than what was provided
6 in funding. We would have an exposure of negative \$1,000. We
7 would have \$1,000 more than we collected.

8 But let's say it went the other way. Let's say they
9 only paid \$99,000. We would have an exposure of \$1,000 because
02:40 10 they have a net total amount of \$1,000 less than what was
11 provided as part of our funding agreement. So even if they're
12 not paying the entire \$133,000 balance, we have to look at the
13 exposure. Your bad debt, the \$99,000 payment example, would
14 reflect \$34,000 still owed. Right. Under the contractual
02:40 15 obligations, they need to pay \$34,000, but our exposure would
16 just be \$1,000 loss, which is why some months, you know, you
17 have negative exposure totals on this chart, because we've
18 actually collected more money than what was provided to those
19 deals, even though they're not paying off the remainder of
02:40 20 those agreements.

21 Q. Okay. Then next we see the column which says: Bad debt
22 ratio?

23 A. Yeah.

24 Q. What's that?

02:40 25 A. The ratio is a comparable of the total amount of exposure

1 for that given month compared to the amount of funding that we
2 produced.

3 Q. In normal English, what does that mean?

4 A. So if we say we've lost \$30,000 in a month in bad debt
02:41 5 exposure for the deals written off that month, but we provided
6 \$300,000. Well, \$30,000 is 10 percent of \$300,000, right, so
7 we would have a \$10 percent exposure ratio.

8 Q. And does that reflect the total losses in a particular
9 month that CBSG suffered?

02:41 10 A. I like that number just because it shows you a comparison
11 of funding versus losses. We want to make sure we're outpacing
12 that. If it's -- it's a whole different scenario if we're
13 losing a bunch of money but we're not funding anything. Even
14 if we lost money and we're outpacing with the amount of funding
02:41 15 we're doing, it's not proportionally a bad situation because
16 we're -- even if we're eating a couple of lost deals, I'll take
17 five lost deals but 5,000 good deals in the same month funded,
18 right.

19 Q. Okay. And you'll see here there's a note of a footnote
02:41 20 here. Do you see that?

21 A. Yes. Yeah. We had to prepare footnotes for all of these
22 reports.

23 Q. And what does that footnote represent? Do you have a
24 recollection or should I show you?

02:42 25 A. Well, it basically gives you the context in specific terms

1 of these calculations. A lawyer has reviewed this and they
2 wanted to make sure that we footnoted so people aren't taking
3 it out of context and trying to interpret --

4 MS. BERLIN: Your Honor, objection for hearsay.

02:42 5 THE COURT: Sustained. Let's just disregard that last
6 part, ladies and gentlemen of the jury.

7 You may proceed.

8 BY MR. HYMAN:

9 Q. It's just -- without what the lawyer told you, explain to
02:42 10 us kind of what the footnote means.

11 A. Okay. So the footnote then describes the mechanical
12 calculation behind each of those figures. Like what I
13 mentioned with the bad debt exposure, it's cash-over-cash
14 losses on these deals.

02:42 15 Q. And so scrolling down. This would reflect, essentially,
16 the money that Par Funding lost on its deals in a particular
17 month?

18 A. Yes. The exposure column would.

19 Q. Is that another way you could say defaults?

02:42 20 A. It is, but it's not the same thing in the terms of
21 application here -- in how you're applying that term. It
22 depends if you're talking about it from a financial reporting
23 perspective.

24 Q. And do you know whether Par Funding represented that as a
02:43 25 default to its investors and noteholders?

1 A. Yes. I believe they understood the nature of that number,
2 meaning the cash-over-cash losses.

3 Q. And we'll see here at the bottom it says 1.32.

4 A. Yes.

02:43 5 Q. Does that represent the total, quote, loss ratio or back --

6 A. Yeah, yeah. 2017 you're going to compare -- again, that's
7 the total funded amount versus the amount of bad debt exposed
8 for that period of time. So comparing those two columns, the
9 totals there, not accounting for current receivables not yet

02:43 10 collected, that's what it was. It's 4.9 million dollars over
11 374 million in funding. That is precisely a 1.32 percentage.

12 Q. Is there a reason why that is an effective way to assess
13 the financial condition of CBSG?

14 A. It's a metric to keep track of as far as the number of
02:44 15 money being lost. It's a way of keeping track of the
16 performance, yes.

17 MR. HYMAN: No further questions.

18 THE COURT: Cross-examination.

19 MS. BERLIN: Yeah.

20

21 CROSS EXAMINATION

22 BY MS. BERLIN:

23 Q. Hi. Good afternoon, Mr. Cole.

24 A. Hi, Amie.

02:44 25 Q. Have you ever met Mr. Furman before? Did I hear you say

1 no?

2 A. **No, I don't think I've met Mr. Furman.**

3 Q. But you guys have been co-defendants in a case together for
4 a year and a half?

02:44 5 A. **Yes.**

6 Q. So you definitely know of each other because your
7 co-defendants together and shared defenses, correct?

8 A. **That's correct.**

9 Q. Okay. Now, I had just a couple of quick questions for you.
02:44 10 I was looking at -- looks like it's DE 1852.

11 **MS. BERLIN:** And can I use -- is it easiest if I use
12 the ELM0? Is that okay?

13 **MR. HYMAN:** I can put it up on the screen for you,
14 Amie. Not a problem. DE 15?

02:45 15 **MS. BERLIN:** DE 1852.

16 **MR. HYMAN:** There you go.

17 **MS. BERLIN:** Okay, thanks.

18 **BY MS. BERLIN:**

19 Q. So this is a notice that Par Funding filed a couple of
02:45 20 years ago. And first to clarify, you don't work at Par Funding
21 anymore, correct?

22 A. **That's correct.**

23 Q. You were removed from the company about a year and a half
24 ago?

02:45 25 A. **Yes.**

1 Q. After fraud charges were alleged against you, correct?

2 A. **Yes.**

3 Q. And let's turn to the last page. I just want to make sure

4 I understood -- there was a 488 number.

02:45 5 **MS. BERLIN:** Thank you, guys. That's very nice.

6 **BY MS. BERLIN:**

7 Q. 488 investors.

8 A. **Yes.**

9 Q. Did I understand that you testified that you had first-hand
02:46 10 knowledge that all 488 of those people are accredited?

11 A. **Yes, to my understanding.**

12 Q. Okay. Well, let's hone in on that. So when did you start
13 working at Par Funding?

14 A. **I started working in 2012.**

02:46 15 Q. You started working in 2012?

16 A. **Yes, with them in 2012.**

17 Q. And you became CFO in what year?

18 A. **The same year. Effectively the title was CFO.**

19 Q. And you met every single investor in Par Funding?

02:46 20 A. **No, I did not meet every single one.**

21 Q. Okay. So did you personally review the financial
22 information for every investor for Par Funding? It looks like
23 this number is from 2012 through today. Have you been, like,
24 meeting with them and reviewing their financial records --

02:47 25 A. **No.**

1 Q. -- to assess if they're accredited?

2 A. **No.**

3 Q. So do you have any -- you're not testifying here as an
4 expert, and you're not testifying on behalf of Par Funding.

02:47 5 You're just testifying as Joe Cole?

6 A. **Right.**

7 Q. Do you have personal first-hand knowledge of these 488
8 people in their financial status?

9 A. **No, I do not.**

02:47 10 Q. And I just wanted to point out -- if we could turn to
11 page 3 where it says "federal exemptions and exclusions." And
12 there's a box checked for which exemptions Par Funding was
13 seeking which is 506(b). I don't suppose -- it's not a trick
14 question. You probably don't know what that number is, do you,
02:47 15 506(b)? It's a legal statute.

16 A. **No. I relied on the advice of counsel for that.**

17 Q. Absolutely. So do you see the box for 506(c) that's below
18 the box you checked and there's no X there?

19 A. **Right.**

02:48 20 Q. And do you know that 506(c) is what you check if you're
21 claiming that all of your investors are accredited?

22 A. **I don't know.**

23 Q. I'll proffer that it is. 506(c) is the everyone is an
24 accredited investor box. That's what that rule is.

02:48 25 And is that box checked here?

1 A. **It's not checked.**

2 Q. And just to turn briefly to the chart that you were talking
3 about, I'm not going to pull it up. We don't have to pull it
4 up again. The font is very small. But I think I understood,
02:48 5 when you were talking about the exposure percentage, you
6 started to say something about it might have a different -- the
7 word "default" might have a different meaning and different
8 context?

9 A. **Yeah. It has different, applications, depending on what**
02:49 10 **you're referring to.**

11 Q. So, like, if I understood you correctly, when you were
12 talking about the exposure percentage and the default rate,
13 you're talking about default from an accounting perspective
14 and, like, what the company decided to write-off the records;
02:49 15 is that right?

16 A. **The basis for the bad debt is from an accounting**
17 **recognition method, yes.**

18 Q. And that's different -- like that usage of the word
19 "default," that is totally different from, let's say,
02:49 20 defaulting on an MCA contract, right?

21 A. **If you're asking if the legal definition of "default" of**
22 **our agreement is different from an accounting, then yes.**

23 Q. Yeah.

24 A. Yeah.

02:49 25 Q. It has two different meanings. One is in the accounting

1 world, and one is in, like, the layperson's world or something,
2 that it would have to do with the merchant cash advance?

3 **A. Not necessarily even the layperson. This is under a legal**
4 **context of default. It would be different for taxes.**

02:50 5 Q. You're not a lawyer, correct?

6 **A. No.**

7 Q. And were you ever present when Mr. Furman solicited
8 investors using your chart?

9 **A. No. I've never been present.**

02:50 10 Q. So you don't know if he explained the footnote to them and
11 that -- the footnote and that the exposure percentage rate is
12 actually what you decided to write off, right?

13 **A. Right.**

14 Q. Versus this is -- which would be different than if he said
02:50 15 this is the number of MCA loans that merchants just didn't pay?

16 **A. I would not know.**

17 Q. I'm sorry?

18 **A. I would not know.**

19 Q. You don't know what he said?

02:50 20 **A. Right.**

21 Q. But you would agree with me that those two things are
22 different?

23 **A. Yes.**

24 Q. Because you can have -- let's say Par Funding has 2,000
02:51 25 lawsuits pending against it for merchants, that -- from what I

1 understand, your definition of default and exposure percentage
2 may not even include all of those merchants that have
3 confessions of judgment because your exposure percentage that
4 you testified about today is actually the number that you chose
02:51 5 to write-off the books?

6 **A. It's based on our accounting procedures, yes.**

7 Q. And actually what happens is you and Joe Cole -- I mean,
8 you and Joseph LaForte meet and decide what to write-off?

9 **A. I don't meet with Joe LaForte to decide what to write-off.**

02:51 10 Q. Well, you all meet and have -- or e-mails -- maybe it's not
11 an in-person meeting -- with Aida Lau and Joseph LaForte --

12 **MR. HYMAN:** Objection.

13 **THE COURT:** Overruled.

14 **BY MS. BERLIN:**

02:51 15 Q. -- to assess what is going to be written off?

16 **A. No. That's inaccurate.**

17 Q. Okay. Just one moment. Hold on, Mr. Cole.

18 **A. Sure.**

19 Q. We'll come back and we'll show you the e -- mails. Just to
02:52 20 make sure we're talking about the same thing, I'm talking about
21 the end of the month --- or you haven't worked there in a
22 while, but back when you did, Aida Lau and Joseph LaForte and
23 you would exchange e-mails about deciding what -- like which of
24 the merchant cash advances were going to be written off.

02:53 25 Do you remember that?

1 A. Are you talking about, like, earlier in the company, when
2 we had less employees?

3 Q. Well, I'm just -- I'm asking generally. We'll have to look
4 at your e-mail and you can look at the year?

02:53 5 A. Generally, it was staff discussing with staff. It wasn't
6 myself or Joe or anyone directly.

7 Q. Oh, that's right. It was later too because Brett Berman
8 was on some of these e-mails and others. So basically what
9 happens is -- correct me if I'm wrong -- that people at
02:53 10 Par Funding and some people that Par Funding hires will decide
11 what to write-off and, like, which MCA deals to write-off and
12 which ones not to write-off; is that correct?

13 A. Not exactly. We have to follow the accounting procedures
14 as part of our audit.

02:53 15 Q. Right. So you have, like, certain rules and in the
16 discretion of management, back when you were there --

17 A. Yes.

18 Q. -- you all would make a decision within your management
19 discretion of which deals to write-off and which ones not to;
20 is that fair?

21 A. Sure. Yes.

22 Q. And the ones that you decide to write-off in your
23 discretion -- we're not going into whether the discretion was
24 right or wrong; I'm just trying to get to the point that the
02:54 25 exposure percentage reflects the amount that management in its

1 discretion decides to write off. Agreed?

2 **A. It's not -- it's not just decides to write off. There's a**
3 **real formula and procedure.**

4 Q. That management following a procedure and following rules
02:54 5 that it has internally decides to write off.

6 How is that?

7 **A. Right.**

8 Q. So that's a write-off on your books and records versus
9 merchants who maybe have missed payments and are in default, as
02:54 10 that word is defined in the merchant cash agreement that they
11 signed. You agree with me these are two different things?

12 **A. Yes, they are.**

13 Q. They're apples and oranges?

14 **A. Yes.**

02:55 15 Q. So this chart reflects the amount that's written off, and
16 I'm not saying whether it's done incorrectly or correctly.
17 It's just something different. This is what that the company
18 writes off, and then the merchants who were in default under
19 their contracts, that's reflect -- that's something else?

02:55 20 **A. Yeah. Our counsel handles that.**

21 Q. Okay. Perfect. And then I just had a question. So
22 Michael Furman, you never heard him talk to an investor. You
23 have no idea what he said, I assume?

24 **A. No. Absolutely not.**

02:55 25 Q. And similarly, is it fair to say that you prepared this

1 chart for a financial professionals like Mr. Furman that you
2 e-mail it to?

3 A. **No, I don't really e-mail that to any of these guys.**

4 Q. Par Funding e-mails it out, though, Alexis Abbonizio and
02:55 5 others. Is the -- is this chart created for other people like
6 you who are finance people to understand?

7 A. **So let's talk about the chart a little bit. It wasn't --**

8 Q. No, no. I don't want to. The chart is not --

9 **MR. HYMAN:** Would you mind letting him answer the
02:56 10 question, please?

11 **THE COURT:** He's not listening. He has to answer the
12 question. It's not background.

13 (Crosstalk)

14 **BY MS. BERLIN:**

02:56 15 Q. No. Go ahead, please. Answer.

16 A. **I'm trying to answer.**

17 **THE COURT:** Let her restate it.

18 **MS. BERLIN:** Let me just restate it.

19 **BY MS. BERLIN:**

02:56 20 Q. You sent this to someone like Mr. Furman. You did not
21 e-mail this to all the people on that list that you said you've
22 never heard of that were his clients, correct?

23 A. **I never e-mailed.**

24 Q. Other people -- okay. You never e-mailed at all?

02:56 25 A. **I didn't e-mail to Mr. Furman.**

1 Q. Okay. Great.

2 A. **Yes.**

3 Q. Now, Mr. Furman, though, is something called -- is he like
4 a finder or an agent or finders or something that Par Funding
02:56 5 used before 2018, correct?

6 A. **Yes. We had finders agreements with him previously.**

7 Q. And then Par Funding stopped using finders like at the end
8 of 2017 or early 2018?

9 A. **That's right.**

02:57 10 Q. And Par Funding stopped using finders because Par Funding
11 got a subpoena from the Pennsylvania regulators, and they were
12 looking into whether Par Funding was paying finders fees to
13 people in violation of the securities laws? Is that why it
14 changed and you stopped using finders?

02:57 15 A. **It changed under the advice of our securities counsel.**

16 Q. Well, but isn't that the -- let me ask you: The reason
17 that Par Funding stopped using finders is because Par Funding
18 received a subpoena from the Pennsylvania Department of Banking
19 in regards to information about the finders fees that were
02:58 20 being paid; is that correct? And then at the recommendation of
21 counsel, you stopped the practice of paying finders fees; is
22 that correct?

23 A. **Correct.**

24 Q. And then after -- after that regulatory action happened
02:58 25 that was about the finders fees, Par Funding switched gears and

1 started working with or having people that you called agent
2 fund managers or PPM managers instead, correct?

3 A. Yes.

4 MS. BERLIN: That's all I have. No further questions.

02:58 5 I'm sorry about the confusion about the charts.

6 THE WITNESS: No worries.

7 THE COURT: Go ahead, Counsel. Redirect.

8

9

REDIRECT EXAMINATION

02:58 10 BY MR. HYMAN:

11 Q. So looking at the KPI report, does the KPI report include
12 all defaults with respect to Par Funding?

13 A. All defaults under what I just described as the accounting
14 basis for our default methodology.

02:58 15 Q. Are contractual defaults included within the KPI reports?

16 A. No.

17 Q. Is the number of lawsuits an accurate measure of how many
18 defaults Par Funding has?

19 MS. BERLIN: Your Honor, I object. This goes beyond
02:59 20 the scope of his testimony.

21 THE COURT: Overruled.

22 He can answer. That's fine.

23 THE WITNESS: Can you restate your question?

24 BY MR. HYMAN:

02:59 25 Q. Is the number of lawsuits filed an accurate way to

1 determine the amount of default for Par Funding?

2 A. **No. Absolutely not.**

3 Q. Why not?

4 A. **Because no accountant uses the number of litigations to**
02:59 5 **determine defaults. There's a financial methodology under**
6 **GAAP. It's very clearly defined.**

7 **MS. BERLIN:** Your Honor, we're getting testimony like
8 an expert. That's not what our case is about.

9 **THE COURT:** First of all, the relevancy is a bit
02:59 10 stretched, but again, we're going to go ahead and move on from
11 this arena. We're going to get an accurate testimony at this
12 point.

13 **MR. HYMAN:** Okay.

14 **BY MR. HYMAN:**

02:59 15 Q. You testified a second ago that Mr. Furman was a finder.
16 Are you sure that he was actually involved in finders fees or
17 was a finder for Par Funding prior to 2017?

18 A. **I am not sure.**

19 Q. Have you seen any documents with Mr. Furman's name on it
03:00 20 showing he was a finder for Par Funding?

21 A. **No, not to my recollection. I'm speaking generally the**
22 **relationships that we had with these fund managers.**

23 Q. And when did Par Funding stop using finders?

24 A. **At the beginning of 2018, January.**

03:00 25 Q. And going back to what was Exhibit 2005, you see this

1 document here?

2 A. Yes.

3 Q. Does this reflect Fidelis's involvement with Par Funding
4 and the money that went into and out of the company?

03:00 5 A. I'm not sure.

6 MR. HYMAN: Let me confer with co-counsel for one
7 second.

8 BY MR. HYMAN:

9 Q. So to be clear, CBSG stopped paying finders fees in 2018,
10 correct?

11 A. Yes. The last was in January of '18.

12 Q. And it's possible that CBSG got all of its money back with
13 respect to the purchase of the receivable but would still need
14 to file a lawsuit, correct?

03:01 15 MS. BERLIN: Objection, Your Honor.

16 THE COURT: That's sustained.

17 MR. HYMAN: No further questions.

18 THE COURT: Ladies and gentlemen of the jury, any
19 questions for the witness? Okay.

03:01 20 Thank you very much, Mr. Cole. You're excused.

21 THE WITNESS: All right. Thank you.

22 THE COURT: You're welcome.

23 Folks doing all right, right? So we can move on to
24 the next witness.

03:01 25 Defense's next witness, please.

1 Q. Ms. Groleau, I want to start with having you just give the
2 jury a little bit of your educational and work history
3 background, if you would, for us.

4 A. **Okay. I was paralegal for 20 years, and my boss**
03:04 5 **semi-retired and then I started working for Michael Furman with**
6 **his financial group.**

7 Q. You said you started working for Michael Furman and his
8 financial group. Speaking about Michael Furman, the defendant
9 in this case?

03:04 10 A. **Correct.**

11 Q. And when you say his financial group, what company are you
12 talking about?

13 A. **United Fidelis Group.**

14 Q. When did you begin working at United Fidelis Group?

03:04 15 A. **I started part-time in July of 2019, and then went**
16 **full-time as of January 1st, 2020. And I worked for him for**
17 **probably about a year and a half, it was often off and on due**
18 **to COVID.**

19 Q. And what was your position with United Fidelis Group when
03:05 20 you started?

21 A. **I was his executive assistant.**

22 Q. And what duties came with being executive assistant to --
23 when you say "him," I assume you mean Mr. Furman?

24 A. **Correct.**

03:05 25 Q. What duties came along with your role?

1 A. I answered phones, I scheduled client appointments. After
2 the clients would leave, then I would meet with Mr. Furman and
3 get my diaries on what I needed to follow up with, scheduling a
4 follow-up appointment.

03:05 5 Q. Let me ask you something. You mentioned clients. Did you
6 have contact with clients of United Fidelis Group?

7 A. Absolutely, yes. I answered the phone and greeted them
8 when they came in.

9 Q. What other contact, if any, with the clients did you have
03:06 10 besides just talking to them on the phone and greeting them
11 when they came in?

12 A. We had a couple of dinner events, and we had a couple of
13 clients attend that. Other than that, I guess that's it.

14 Q. Did you attend any of those dinner events?

03:06 15 A. Yes, I attended three.

16 Q. Can you describe them for me. What happened at those
17 dinner events?

18 A. We -- well, I didn't discuss, but it was just -- it was
19 about financial stuff, investing, there was a couple of
03:06 20 different types of investments that you could do. I mean, I
21 know Michael was a full-service investment firm, so, you know,
22 they just discussed, you know, everything that was available.
23 And, you know, mostly private equity funds, but, you know, a
24 little bit of everything else. It wasn't just geared towards,
03:07 25 like, one thing.

1 Q. Understood. And I forgot to ask you, where was the office
2 for United Fidelis Group located?

3 A. **Over off Palm Beach Lakes and -- 1615 Forum Place, Suite**
4 **500, West Palm Beach.**

03:07 5 Q. And with the dinner events that you referenced, would those
6 be held in that general area?

7 A. **We had two in West Palm and one in Boca.**

8 Q. Did you have any responsibilities at the dinner events?

9 A. **I checked people in, and that was pretty much it.**

03:07 10 Q. Talk to me about the check-in process at the dinner events.
11 What specifically did you do?

12 A. **We'll, they had to RSVP, so we knew how many people. And**
13 **when they came in I greeted them and gave them a pen, and I**
14 **think it was a handout sheet that we gave them. I'm not a**
03:07 15 **hundred percent. It's been a little while.**

16 Q. Sure.

17 A. **And that's it. I just checked them off, compared to my**
18 **list for everyone who RSVP'd.**

19 Q. So would you maintain a record of who would attend these
03:08 20 events?

21 A. **Correct.**

22 Q. And would that be maintained within the company's records
23 itself?

24 A. **Correct.**

03:08 25 Q. You mentioned that there were a number of products that

1 would be reviewed at these dinner events; is that correct?

2 A. **Correct.**

3 Q. Who would do the speaking at these events?

4 A. **We had a couple of different speakers. Michael Furman**
03:08 5 **would speak. And whatever representative from whatever company**
6 **would also speak.**

7 Q. And what would Mr. Furman cover all of the financial
8 products offered by United Fidelis Group?

9 A. **No. I don't think he covered every single thing because**
03:08 10 **there were so many, and I think we only had the dinner for,**
11 **like, an hour or maybe two hours, so...**

12 Q. At some point did you ever become familiar or aware of a
13 company called Fidelis Financial Planning?

14 A. **I don't -- I mean, I think it's another company that**
03:09 15 **Michael has, but I mean, I really didn't get involved in that.**

16 Q. Did you ever become aware of a company called Par Funding?

17 A. **Yes.**

18 Q. How did you become aware of a company called Par Funding?

19 A. **That was a private equity company that we had been**
03:09 20 **investing with.**

21 Q. And was -- is it possible that was through Fidelis
22 Financial Planning?

23 A. **It's possible.**

24 Q. Okay. Did you ever become aware of a company called A
03:09 25 **Better Financial Plan management company?**

1 A. I've heard the name, but I don't know if it's associated
2 with Mr. Furman.

3 Q. Okay. As far as clients, did you ever meet a client named
4 Marc Reikes?

03:09 5 A. Doesn't ring a bell, no.

6 Q. What about Frank Nash?

7 A. Yes.

8 Q. Tell me how you first met Mr. Nash?

9 A. Mr. Nash used to come into the office all the time. Very
03:10 10 friendly gentleman, always brought us honey from his farm. And
11 just very nice. Always called, always came in. You know,
12 stopped by sometimes just to say hi.

13 Q. When you say he always called, always came in, would you
14 say he was a regular at the office?

03:10 15 A. Oh, absolutely.

16 Q. What about calling, did he call often?

17 A. Oh, yeah.

18 Q. When Mr. Nash would call in, did you find Mr. Furman to be
19 pretty responsive?

03:10 20 A. Oh, absolutely. He always talked to all of his clients.

21 Q. When a client like Mr. Nash, or any other, would call into
22 the office, did you ever send them off to speak with someone at
23 Par Funding?

24 A. No, never.

03:10 25 Q. Did you ever send them off to speak with someone at A

1 Better Financial Plan management company?

2 A. No.

3 Q. Who would you direct those clients to when they would call?

4 A. Michael Furman. It was just me and Michael. If I couldn't
03:10 5 answer the call, it was Michael.

6 Q. When a client -- when a potential client would make contact
7 with the office, was there any other process to gather
8 information from them in the form of documents?

9 A. We would just -- we would ask them to bring in any
03:11 10 financials that they had. I always let them know that the
11 first visit is just a meet and greet to get to know Mr. Furman
12 and all the different products they had to offer. I know he's
13 a fiduciary, so, you know, the clients come first. And if
14 there's something that they, you know, had that was a good
03:11 15 plan, then Michael would say no, keep it.

16 Q. Do you remember what kind of documentation would be
17 requested from a potential client?

18 A. It depends on what they were interested in. I mean, if
19 they had life insurance policies and they were thinking about
03:11 20 changing, then we'd say, bring in your life insurance policy.

21 You know, any financials that they might have, just so
22 he could better fit them and, you know, whatever they were
23 available to invest in.

24 Q. Okay. And you mentioned the first meeting.

03:11 25 Would Mr. Furman regularly meet with clients and

1 potential clients in the office?

2 A. Yes.

3 Q. Tell me about that. How -- how long were those meetings
4 generally? Were they short? Were they long?

03:12 5 A. Oh, no. We only saw two to three clients a day. It was
6 two to three, sometimes even four hours for a client. So
7 that's why it's two to three max. He spent a lot of time with
8 them.

9 Q. You're saying the meetings would last about four hours?

03:12 10 A. Correct. The first initial meeting, yes.

11 Q. Okay. And at that time do you know if Mr. Furman would
12 review any paperwork from clients or potential clients?

13 A. I don't know because I wasn't in the office. I -- I would
14 assume so, if they brought them in.

03:12 15 Q. Okay, understood. Were you ever -- did you ever become
16 familiar with a client named Henry Barth?

17 A. Yes.

18 Q. Tell me about that. When did you first become familiar
19 with Mr. Barth?

03:12 20 A. Mr. Barth used to call in -- not as frequently as Mr. Nash,
21 but I'm trying to remember all the clients' names, and I know
22 he was one that called in a little more than others. I believe
23 Mr. Barth was a little forgetful, so he'd forget things and
24 call us back like a week or two later, and we'd have to explain
03:13 25 it to him again.

1 Q. Can you give me an example of things -- of times when Mr.
2 Barth would be forgetful?

3 A. Like I said, just he would call a lot. Not as much as
4 Mr. Nash, but he call because he was just very forgetful. And
03:13 5 so I'd always transfer him to Michael, and Michael would talk
6 to him about whatever it is that he needed or wanted.

7 Q. And did you find that Furman was pretty responsive when
8 Mr. Barth would call?

9 A. Oh, absolutely.

03:13 10 Q. Just going back to Mr. Nash for a second, would you say
11 he's one of the clients that called the most to your office?

12 A. Correct.

13 Q. Were you ever familiar with a client named Robert Renner?

14 A. I know the name, but I can't really say I remember anything
03:14 15 about him.

16 Q. Okay. I want to go back to those dinner events for a
17 moment.

18 Do you know whether or not Mr. Nash went to any of the
19 dinner events that was hosted by Fidelis?

03:14 20 A. Oh, yeah. He liked a free meal. So I think he attended
21 all three.

22 Q. How do you know he liked a free meal?

23 A. Because he told us that.

24 MS. BERLIN: Your Honor, I feel like this was covered
03:14 25 in our motion in limine.

1 **THE COURT:** Yeah. Let's go ahead and disregard that
2 last comment. Again, there's a relevancy issue here. Let's
3 move on.

4 **BY MR. JOHN:**

03:14 5 Q. And regarding Mr. Barth, do you know whether or not he went
6 to any of the dinner events?

7 A. I can't say a hundred percent without looking at my sheet.

8 Q. Are you aware of what an accredited investor is?

9 A. Accredited investor, I did. I think you have to have at
03:14 10 least a million dollars in assets in order to -- well, a
11 million dollars in assets to be an accredited investor.

12 Q. When you were working for United Fidelis Group, were you
13 involved in any of the marketing pieces, the newspaper ads or
14 anything that went out?

03:15 15 A. No. I didn't do any of those.

16 Q. Do you know whether or not United Fidelis marketed to
17 accredited investors?

18 A. Yes. It was in the end.

19 Q. So you've seen the ads for those?

03:15 20 A. Yes.

21 Q. Do you know why Fidelis marketed to accredited investors?

22 A. No.

23 **MS. BERLIN:** Your Honor, relevance.

24 **THE COURT:** Overruled. I'll allow her to answer.

03:15 25 **BY MR. JOHN:**

1 Q. Do you know why Fidelis marketed to accredited investors,
2 if you know?

3 A. No.

4 Q. I want to go back for a moment to Par Funding.

03:15 5 During your time with United Fidelis Group, was there
6 ever a time from anyone from Par Funding took any kind of
7 leadership role at United Fidelis Group?

8 A. I'm sorry. Repeat the question.

9 Q. During your time working for United Fidelis Group -- let me
03:16 10 ask it this way: Was there ever a time while you were working
11 at United Fidelis Group where you were required to be
12 supervised or take instructions from anyone from Par Funding?

13 A. No.

14 Q. Was Michael Furman always the person in charge at
03:16 15 United Fidelis Group while you were there?

16 A. Correct.

17 Q. What about from A Better Financial Plan, was there ever a
18 time when you were working at United Fidelis Group where you
19 were required to take instruction or you were supervised from
03:16 20 anyone from A Better Financial Plan Management Company?

21 A. No.

22 MR. JOHN: Moment to confer, Your Honor.

23 THE COURT: Yep.

24 MR. JOHN: Just briefly.

03:17 25 BY MR. JOHN:

1 Q. Ms. Groleau, did you ever become familiar with someone
2 named Perry Abbonizio?

3 A. **Yes.**

4 Q. Tell me about that. How did you become familiar with
03:17 5 Perry Abbonizio?

6 A. **Perry Abbonizio, I believe, was with Par Funding, if I'm
7 not correct.**

8 Q. Okay.

9 A. **Or he could have been with one of the real estate
03:17 10 companies. Sorry. I can't one hundred percent say how.**

11 Q. That's okay.

12 Do you know whether Mr. Abbonizio attended any of the
13 dinner events hosted by Fidelis?

14 A. **I believe he attended one of them.**

03:17 15 Q. Were you at that particular dinner event?

16 A. **Yes.**

17 Q. Do you know whether Mr. Abbonizio spoke at that event?

18 A. **Yes.**

19 Q. You know that he did or he did?

03:17 20 A. **Yes. Yes. If he was there, he spoke.**

21 Q. Okay.

22 **MR. JOHN:** Moment to confer, Your Honor.

23 **THE COURT:** Sure.

24 **BY MR. JOHN:**

03:18 25 Q. Ms. Groleau, did you ever receive -- are you familiar with

1 the KPI reports that would come to Fidelis?

2 A. The KPI?

3 Q. Yes.

4 A. What does that stand for?

03:18 5 THE COURT: Obviously she doesn't know.

6 A. I mean, I got reports in, but quarterly and monthly.

7 BY MR. JOHN:

8 Q. Tell me about that. What kind of reports would you get in
9 quarterly and monthly?

03:18 10 A. With the real estate companies, there was investments, how
11 they were doing, how they were, you know, profitable or
12 nonprofitable, the clients. I mean, they came in to Michael,
13 and Michael would have me e-mail to our clients.

14 Q. Did you ever get any reports that may be labeled "funding
03:19 15 analysis" or "analysis"?

16 A. I believe so, yes.

17 Q. Do you recall where those came from?

18 A. I can't remember which company.

19 Q. Okay. When you got those type of reports, what would you
03:19 20 do with them, those analysis reports?

21 A. I would wait for Michael's instructions. Like I said, they
22 would come to him and he would forward them to me and say:
23 Please distribute this to whatever clients are in this fund.

24 Q. So as you recall, whenever you got a funding analysis
03:19 25 report, Mr. Furman would give you directions about who to

1 distribute those to?

2 A. **Correct.**

3 Q. And would you do that? Would you distribute those reports
4 as instructed?

03:19 5 A. **Yes.**

6 **MR. JOHN:** Your Honor, no further questions for this
7 witness at this time.

8 **THE COURT:** All right. Cross-examination, please.

9

10 **CROSS EXAMINATION**

11 **BY MS. BERLIN:**

12 Q. Hi.

13 A. Hi.

14 Q. You and Mr. Furman, after you started working there, you
03:20 15 guys would text frequently, yes?

16 A. **Correct.**

17 Q. And Mr. Furman would text with you about Perry and Dean and
18 ABFP, correct?

19 A. **We texted about whatever was going on in the office, and**
03:20 20 **whatever personal texts, I can't recall exactly.**

21 Q. Sure. Yeah. And, but, I mean, you know who Dean -- he
22 would complain to you about Dean and ABFP and the management
23 work that they were doing?

24 A. **ADFP? What is that? What are you talking about?**

03:21 25 Q. Dean Vagnozzi's company?

1 A. I don't know that's Dean's company, but okay.

2 Q. Oh, okay. You're Kristin Groleau, correct?

3 A. Correct.

4 MS. BERLIN: I wonder if we can just -- Your Honor,
03:21 5 may I approach the witness -- the text messages are huge -- and
6 just provide it? We're just going to introduce it and --

7 MR. HYMAN: We have never seen them.

8 THE COURT: You want to show counsel?

9 MS. BERLIN: Sure.

03:21 10 MR. HYMAN: There's no Bates stamp on this,
11 Your Honor.

12 MS. BERLIN: The Bates stamp --

13 MR. HYMAN: There is nothing to show that this was
14 ever produced to this, Your Honor.

03:21 15 MS. BERLIN: Oh, Lord.

16 THE COURT: Come to sidebar.

17 (Thereupon, there was a side-bar conference outside
18 the presence and hearing of the jury.)

19 THE COURT: Yes. All right. So go ahead. Maybe give
03:22 20 a little explanation.

21 MS. BERLIN: Sure. We -- as you know, the SEC has
22 Mr. Furman's cell phone and all of his text messages, and we're
23 going to use this from rebuttal.

24 MR. HYMAN: I'm confused.

03:22 25 MS. BERLIN: We took the cell phone from Mr. Furman.

1 Before you came on, we downloaded the image and gave it back to
2 Furman. That is all -- these are all of his messages with
3 Kristin. We're not going to spend the time to go through it.
4 I'm going to argue things that I'm hearing in closing. I just
03:22 5 want to authenticate it or I can have an agent do it, but I
6 thought while she's here, it's easy. There's one message I'm
7 going to ask her about, and that's it. And no, these don't get
8 Bates-stamped. They were produced electronically.

9 **THE COURT:** Is this impeachment material, what you're
03:22 10 using this for?

11 **MS. BERLIN:** It's for both. One is impeachment and
12 the rest is because he's, like, messaging with her about the
13 regulatory actions and there's all kinds of stuff in here. So
14 I planned on getting in through her.

03:22 15 **THE COURT:** But I'm saying is that for -- just so -- I
16 don't know what the messages are. Is it showing that the
17 relationship between the parties, possible bias? What's the
18 issues there?

19 **MS. BERLIN:** Sure. So she was just saying she doesn't
03:23 20 know much about Dean. These messages are all about Dean and
21 ABFP and Perry and Par Funding, and we'll just use them in
22 evidence to argue later. I don't think we want to make a
23 feature of the case. So that's all I was going to do.

24 **THE COURT:** But were they ultimately produced too? I
03:23 25 missed the first part.

1 **MS. BERLIN:** Yes, of course. You came on the case in
2 August.

3 **THE COURT:** Yeah, listen. You guys don't know what
4 you have is the problem. I understand you guys came on and you
03:23 5 have constrained budgetary-wise and manpower-wise. But all
6 this stuff has been produced, and you guys don't know what you
7 have because you're sitting on a lot of documents.

8 **MR. HYMAN:** Part of the issue is that we got
9 admonished when we said that they have been given access to
03:23 10 Mr. Furman's cell phone and computer and everything else.

11 **We were** previously admonished when we said the SEC had
12 all of his text messages, his computer files, and all his
13 documents.

14 **THE COURT:** Probably because it wasn't relevant at the
03:23 15 time you said it, and you haven't linked it to anything.

16 **MR. HYMAN:** No. And then Ms. Berlin said we didn't
17 have any documents from Fidelis.

18 **THE COURT:** What are you talking about? Are you
19 talking about the first time with the laptop, where you
03:24 20 misrepresented to me that you had something you didn't have?
21 Which episode are you talking about?

22 **MR. HYMAN:** We're talking about --

23 **THE COURT:** The episode where you misrepresented to
24 the Court that you thought you had a password that you didn't
03:24 25 have, and then you had to have your counsel apologize, that

1 episode?

2 MR. HYMAN: That was not accurate.

3 THE COURT: You want to argue with me about something
4 where we already had the receiver come up and tell me that you
03:24 5 guys did not have the e-mail with the famous password and the
6 access? We already litigated that like a week ago.

7 MR. HYMAN: (Inaud.)

8 THE COURT: I mean, am I missing something you want to
9 talk about? I don't think you do want to go back over that.
03:24 10 Maybe you want to remind your co-counsel because we talked
11 about that. This is symptomatic of the whole issue. Some of
12 this has been turned over and you guys don't know. If this has
13 been turned over, we can use it. She's got to lay a predicate,
14 we got to authenticate it. And I don't think we need to spend
03:24 15 30 minutes with her talking about text messages.

16 MS. BERLIN: I was just going to put it in and be
17 done.

18 THE COURT: Let put it in and be done. It's going to
19 admissible. It's going to be admissible. She's going to be
03:25 20 able to lay a predicate to her messages. So she's going to be
21 able to lay a predicate on that. Just to be clear, are we
22 getting those in for the truth of the matter asserted, meaning
23 the text messages themselves, or are we getting those in --
24 some of those are going to be party admissions by Furman
03:25 25 himself anyway, so it might not matter. But I'm just curious

1 because there's a million pages here. I don't even know.

2 MS. BERLIN: And, Your Honor, I'm not going -- I think
3 I was just going to -- there's a place where she's telling her
4 about Dean and the one million in fines and he knows all about
03:25 5 it.

6 THE COURT: Maybe you show it to her and if she
7 remembers, you can ask her the question again. You don't have
8 to move it. Refresh her recollection.

9 MR. JOHN: They objected that they didn't have text
03:25 10 message related to Mr. Abbonizio. I just wanted to clarify,
11 they're definitely not in that pack, right? Because they came
12 from his phone?

13 THE COURT: I don't think this has anything to do with
14 Abbonizio.

03:25 15 MS. BERLIN: Every single document goes to the SEC
16 forensics lab. I get it the same day defense gets it. We all
17 have a written agreement --

18 MR. JOHN: (Inaud.)

19 MS. BERLIN: I get it when you guys get it.

03:25 20 THE COURT: I don't think anything in here is going to
21 do with Abbonizio. I mean, again, you guys -- it's just
22 between her and him. That's what they're telling me.

23 MS. BERLIN: This is Kristin (cross-talk) been like
24 two months.

03:26 25 THE COURT: Right. But it's not -- it's not from

1 Mr. Abbonizio is what Mr. John is asking. It's only between
2 Furman and her. Okay. Yeah. That's fine.

3 **MS. BERLIN:** These are messages.

4 **THE COURT:** That's fine. That's fine. Try to
03:26 5 streamline it, but that's fine.

6 **MS. BERLIN:** Thank you, Your Honor.

7 (Thereupon, the side-bar conference was concluded.)

8 **THE COURT:** All right. You may proceed when you're
9 ready.

03:26 10 **MS. BERLIN:** Your Honor, it's hard to show it on a
11 screen. May I approach?

12 **THE COURT:** Just approach. Just approach, please.
13 Direct the witness to a page or a line number.

14 **MS. BERLIN:** Here you go.

03:26 15 A. Thanks.

16 **BY MS. BERLIN:**

17 Q. And do you recognize -- is this your phone number? Do you
18 see where it says Kristin --

19 A. Yes.

03:26 20 Q. -- Groleau? Am I saying it right, Groleau?

21 A. Uh-huh. (Nodding.)

22 Q. And where it says "me," that's Michael Furman's? The 561
23 number?

24 A. Without looking at my phone, I don't know his phone number
03:27 25 by heart.

1 Q. And if you look to -- I'm sorry. It's all staticky. Sorry
2 about that.

3 If you turn to the sort of the green sticker.

4 A. Yes.

03:27 5 Q. If you would turn to that, and it's on the back side of the
6 text.

7 It might be at the top. It might help you remember
8 whose phone number it is that you were texting with.

9 A. Again, I don't memorialize phone numbers, so I'd have to
03:27 10 look at my phone.

11 Q. I am that same way. I get it.

12 So you're not sure if this is your phone number with
13 him? If this is his phone number, your boss?

14 A. No.

03:28 15 Q. Okay. Got it. All right. Go ahead and -- if you don't
16 know his phone number, set it aside.

17 A. Yeah. Not by heart. If you want me to get my cell phone
18 out and check, I can.

19 Q. No, no, no. It's okay. I'm the same way. I understand.

03:28 20 So while you were working with Mr. -- here, I'll take
21 it.

22 While you were working with Mr. Furman, did he ever
23 tell you about any of the fines or, like, regulatory fines
24 against Dean Vagnozzi?

03:28 25 A. He brought up some stuff about Dean, but I mean, I don't

1 recall our exact conversation.

2 Q. Sure.

3 A. He vented a lot. I just listened. I didn't process it,
4 but I just listened.

03:29 5 Q. Okay. Understood. But we have established that this is
6 your phone on the document that I showed you?

7 A. Correct.

8 Q. And when you were at of these events with Mr. Furman, did
9 you ever hear him tell investors at any of these events any
03:29 10 information about like the owner or any manager or owner at
11 Par Funding being a convicted felon? Like was that part of the
12 pitch?

13 A. No, not that I heard. But again, after I checked people
14 in, I didn't stay and listen to the entire --

03:29 15 Q. Sure, I understand. And did you -- so let me ask you about
16 what you heard. And understanding maybe you didn't hear
17 anything. But did you ever hear him -- well, actually, you
18 know what, I'm going to ask you about one other thing and then
19 we'll wrap it up.

03:30 20 A. Okay.

21 Q. Millen Livis, that's someone that you sent messages to
22 sometimes? She was an investor?

23 A. Correct.

24 Q. And did you try to explain the investment to her, the
03:30 25 Par Funding investment that she was in?

1 A. I wouldn't explain anything like that to clients. That
2 would be Michael's job. I mean, if she had a specific question
3 about something, you know, I may have answered it, but I mean,
4 unless you give me specifics, I can't tell you.

03:30 5 Q. Sure. Sure.

6 A. It was not my job to tell clients about investments.

7 Q. Well, would Mr. Furman sometimes send you messages to
8 forward onto investors?

9 A. Yes. He would instruct me to do -- you know, send an
03:31 10 e-mail or make a phone call to clients.

11 Q. And by the way, when he was -- when you were asked in
12 direct about that chart and whether you sent it out to people,
13 like a chart that you would forward on to investors; do you
14 remember that?

03:31 15 A. Yes.

16 Q. Were you sending that to people after they had already
17 invested?

18 A. Yes.

19 Q. Okay.

03:31 20 A. Yes.

21 Q. After they had already given their money to Mr. Furman?

22 A. Yes.

23 MS. BERLIN: Can I get access to the ELMO to show one
24 document? Thank you.

25 BY MS. BERLIN:

1 Q. All right. I'm going to show you --

2 MS. BERLIN: This is only for the witness. Sorry
3 about that noise.

4 BY MS. BERLIN:

03:32 5 Q. And do you recognize this is a document that you were on
6 with Mr. Furman and Ms. Livis?

7 A. Yes, I was copied on that.

8 Q. And sometimes Ms. Livis would also contact you with
9 questions about her account?

03:32 10 A. No. I didn't talk to any clients about their accounts. As
11 far as, you know, general questions I answer, but anything else
12 goes to Mr. Furman.

13 Q. Oh, okay. So when you were talking about investors earlier
14 and just like your personal impressions of them, were those
03:33 15 impressions gained during meetings that Mr. Furman had with the
16 individuals where he was talking about their investments?

17 A. I'm sorry, repeat -- I don't understand --

18 Q. Did you attend the meetings -- like, if Mr. Furman met with
19 one of his clients, would you sit in on those?

03:33 20 A. I never sat in on meetings.

21 Q. Okay. So you don't when they got information, they were --
22 what their demeanor was like that day?

23 A. I mean, I saw them when they came in and when they came
24 out. Everyone was always happy.

03:33 25 Q. Okay. But you would agree with me -- I mean, would

1 Mr. Furman take money from someone if he thought they had a
2 mental incapacity?

3 MR. JOHN: Objection, speculation.

4 THE COURT: Overruled.

03:33 5 You may answer, if you know.

6 A. Again, without me sitting in, I can't answer that question.

7 BY MS. BERLIN:

8 Q. Well, it's pretty clear. If you had a client who came in
9 and you all thought that the person was confused and didn't
03:34 10 know what was going on, would you and Mr. Furman have still
11 taken that person's money?

12 A. No.

13 Q. Okay. So fair to say if you took their money, you thought
14 they were competent mentally?

03:34 15 A. Yes. I didn't take anyone's money, for the record.

16 Q. Do you also go by the name Kristina?

17 A. That's my legal name, yes.

18 Q. And so you're not a registered securities professional,
19 correct?

03:34 20 A. I have my -- no.

21 Q. No, right?

22 A. No.

23 Q. You're not a registered broker?

24 A. No.

03:34 25 Q. Mr. Furman pays you commissions on the solicitation

1 efforts?

2 A. **No.**

3 Q. Really?

4 A. **Straight hourly salary.**

03:34 5 Q. Okay.

6 **MS. BERLIN:** Your Honor, can I show something just to
7 the witness.

8 **THE COURT:** Sure, you may approach. Show it to the
9 witness.

03:34 10 Make sure no screens are on.

11 **MS. BERLIN:** It's only for the witness.

12 **BY MS. BERLIN:**

13 Q. Is that your name?

14 A. **That is my name.**

03:35 15 Q. And that's Michael Furman at the top?

16 A. **That is correct.**

17 Q. And you see the commission column?

18 A. **Yes, I do. That is -- that's my personal investment that I**
19 **invested with Michael Furman. That is not a commission that I**

03:35 20 **got. That's my personal annuity.**

21 Q. And you see the carrier?

22 A. **Yes.**

23 Q. And who that person?

24 A. **I have no idea who that person is.**

03:35 25 Q. And so the document says "commissions," but it's wrong?

1 A. No. It's -- if you look at it, the date was March 20th,
2 2019. It's prior to me working for Mr. Furman. I didn't work
3 with him until July.

4 Q. I know.

03:36 5 A. So that's my personal investment. So I'd appreciate it not
6 being broadcast.

7 Q. No, it wasn't broadcast.

8 THE COURT: Don't worry, it wasn't in front of any
9 jurors.

03:36 10 BY MS. BERLIN:

11 Q. Only to you. And we won't -- we won't broadcast it to dig
12 into that further where it shows you had a commission.

13 MR. JOHN: Objection, mischaracterization of the
14 evidence.

03:36 15 THE COURT: Let's move on from this.

16 BY MS. BERLIN:

17 Q. Before you worked for Mr. Furman, you were his client?

18 A. Yes.

19 Q. And --

03:36 20 A. Well, one investment.

21 Q. Okay. Got it.

22 And while you were working for him, did you turn down
23 another job that was going to pay you the highest in the
24 industry plus stock options, because you really loved working
03:36 25 with Mr. Furman?

1 A. No.

2 MS. BERLIN: Can I show the witness a document,
3 please?

4 THE COURT: Show her a document.

03:37 5 A. Oh, okay. That is --

6 BY MS. BERLIN:

7 Q. Wait, wait.

8 A. Go ahead.

9 THE COURT: It's okay. No, no, just to refresh your
03:37 10 recollection.

11 BY MS. BERLIN:

12 Q. Do you want to look at it first?

13 MS. BERLIN: We don't have to introduce it.

14 THE COURT: No, we won't introduce it. Just to
03:37 15 refresh her recollection.

16 MS. BERLIN: Can I take it down now?

17 A. That's somebody who works Primerica who has been trying to
18 get me for 15 years. I don't know anything about higher stock
19 options.

03:37 20 BY MS. BERLIN:

21 Q. I get it.

22 So someone offered you a job to run and trade other
23 agents and run their offices and pay you the highest in the
24 industry and stock options, and you said, thanks, however, I
03:37 25 really love my boss, and you wanted to stay with Mr. Furman?

1 A. No. I'd like to see that text again, because I don't
2 believe it said all of that.

3 Q. Sure. Yeah, sure.

4 MS. BERLIN: Your Honor, should we just introduce it
03:38 5 at this point?

6 THE COURT: I would prefer not to. I don't think we
7 need to have her business out there.

8 MS. BERLIN: I agree.

9 BY MS. BERLIN:

03:38 10 Q. You can read it. I can bring you a copy, too, if you'd
11 rather.

12 A. Okay. No. You're right. It does say that. But like I
13 said, this guy has been trying to get me to work for him for 15
14 years. I have no interest in working for him. I responded
03:38 15 back, I like my boss.

16 Q. Okay. And you still work with Mr. Furman?

17 A. No.

18 Q. Oh, you don't work. Where do you work now?

19 A. I work for a surveying company. I'm head of HR.

03:38 20 MS. BERLIN: I don't think I have any further
21 questions. No. Thank you so much. And don't worry, the
22 document, only you and I could see it. Yeah, I didn't
23 broadcast it at all.

24 THE WITNESS: Thank you.

03:38 25 MS. BERLIN: Of course.

1 THE COURT: Redirect?

2 MR. JOHN: Yes, Your Honor.

3

4 REDIRECT EXAMINATION

03:38 5 BY MR. JOHN:

6 Q. Ms. Groleau, the government just showed you a document
7 related a personal investment. Do you recall that?

8 A. Yes.

9 Q. It was your personal investment, right?

03:39 10 A. Correct.

11 Q. Is it possible that the commission the government was
12 pointing to was the commission paid to Fidelis?

13 MS. BERLIN: Your Honor, that document is not in
14 evidence.

03:39 15 THE COURT: It's all right. I'm going to allow him to
16 ask questions. It's overruled.

17 BY MR. JOHN:

18 Q. Let me ask that question again.

19 Is it possible that the commission the government was
03:39 20 talking about was the commission paid to Fidelis based on your
21 personal investment?

22 A. Correct.

23 Q. That was not a commission paid to you, correct?

24 A. No.

03:39 25 Q. I want to ask you a question. You were asked about the

1 events -- the dinner events held by Fidelis. Do you recall
2 that during your cross-examination?

3 A. Yes.

4 Q. During the portion that you were able to hear, did
03:39 5 Mr. Furman explain multiple products available at Fidelis?

6 A. Yes.

7 Q. What was your understanding of the primary services
8 provided by United Fidelis Group?

9 A. Well, he was a full service financial firm. So any type of
03:40 10 investment or, you know, like I said, life insurance,
11 annuities, private equity funds, just everything he had to
12 offer depending on how the client and, you know, what they were
13 available to invest in or what they wanted, what they were
14 looking for.

03:40 15 Q. Did you find that Mr. Furman did a lot of business in
16 insurance through Fidelis, United Fidelis Group?

17 A. Yes.

18 Q. Taking an example of a -- going back to Mr. Nash, do you
19 recall the investor Mr. Nash?

03:40 20 A. Yes.

21 Q. Do you know whether or not Mr. Nash had more than one
22 product or investment with United Fidelis Group?

23 MS. BERLIN: This wasn't addressed on cross.

24 THE COURT: I'll allow it. Overruled.

03:40 25 BY MR. JOHN:

1 Q. Let me ask that question again.

2 Do you know whether Mr. Nash had more than one product
3 or investment through United Fidelis Group?

4 A. **Yes. He had a few.**

03:40 5 Q. What about Mr. Barth, do you recall the investor Mr. Barth
6 that we discussed on direct and cross-examination?

7 A. **Yes, I do. Same question?**

8 Q. Yeah. Do you know whether Mr. Barth had more than one
9 investment or product through United Fidelis Group?

03:41 10 A. **That I -- I'm sorry. I don't remember.**

11 Q. You were asked regarding the contact that you had with
12 clients and potential clients on cross-examination.

13 Do you remember that?

14 A. **Yes.**

03:41 15 Q. You didn't sit in on the meetings that those clients or
16 potential clients may have had with Mr. Furman, correct?

17 A. **Correct.**

18 Q. But did you still interact with them when they came into
19 the office?

03:41 20 A. **Oh, yes.**

21 Q. Were there some clients that you knew better than others?

22 A. **Yes.**

23 Q. And is it true you would have phone contact repeatedly with
24 certain clients?

03:41 25 A. **Yes.**

1 MR. JOHN: Brief moment, Your Honor.

2 THE COURT: Yes.

3 BY MR. JOHN:

4 Q. Ms. Groleau, are you familiar with a company called
03:41 5 JD Mellberg?

6 A. Yes.

7 Q. How are you familiar with that company?

8 A. That would be the company that we -- or Michael would go
9 get leads from for insurance purpose stuff, like life
03:42 10 insurance, annuities, stuff like that.

11 Q. When you were there, did JD Mellberg, in your opinion,
12 generate a lot of business for United Fidelis Group?

13 A. Yeah.

14 MS. BERLIN: Your Honor.

03:42 15 THE COURT: Overruled.

16 BY MR. JOHN:

17 Q. Let me ask that question one more time.

18 When you were there, in your opinion, did JD Mellberg
19 generate a lot of business for the United Fidelis Group?

03:42 20 A. I would say probably at least half of it.

21 Q. And was most of that business or a great amount of that
22 business insurance?

23 A. Yes.

24 MR. JOHN: Brief moment, Your Honor.

03:42 25 THE COURT: Yep.

1 **MR. JOHN:** Your Honor, we have no more questions about
2 this witness.

3 **THE COURT:** Any more questions for the witness before
4 I let her go? No.

03:42 5 Thank you, folks.

6 You are excused, ma'am. Thank you very much.

7 **THE WITNESS:** Thank you.

8 **THE COURT:** As she's exiting, ladies and gentlemen of
9 the jury, let me go ahead and give you guys a brief five-minute
03:43 10 break. If you'll leave your notepads on your chairs so I can
11 talk about scheduling with the lawyers. We will bring you in
12 momentarily. Please go ahead and take this break at this time.
13 We'll see you in a little bit. You're excused.

14 (Thereupon, the jury exited the courtroom.)

03:43 15 **THE COURT:** Please be seated, everyone. Just so I can
16 take a look here at what we have got to go, we moved for those
17 witnesses fairly quickly. So we have plenty of time left.
18 It's only about 3:45. I don't know if the move now would be to
19 probably recall Mr. Furman and allow the defense to put on
03:43 20 their cross/direct unless the defendant has someone in
21 particular you want to call in your case that's easier or on
22 standby. Where do you guys stand right now on that?

23 **MR. HYMAN:** We'd just like to take a little bit of a
24 longer break to make sure that we have the cross/direct
03:44 25 documents in order. Instead of it being a five-minute break,

1 extend it to out to maybe 15 to 20 minutes.

2 **THE COURT:** You got 10 minutes. So in about 10
3 minutes we're going to put him on and you're going to get
4 started. You sat here for five hours. If you don't have the
03:44 5 direct now, five more minutes isn't going to make a difference.

6 All right. So let's go ahead and give everybody a
7 ten-minute break. The plan then really is just try to see if
8 we can finish Furman today. I expect that Furman's examination
9 by his defense team may take the remainder of the day. So I'll
03:44 10 probably bank on this as being a redirect with Mr. Furman in
11 the morning and then Furman is done.

12 That's what I think is going to happen, because I'm
13 going to give them space to move through what you asked and
14 what they want to ask. So if we can finish Furman, we have got
03:44 15 an hour and 45, an hour and a half. Let's see how far we can
16 get in that.

17 Then if we do that, just so we can plan ahead, if
18 tomorrow morning we're finishing with the redirect of
19 Mr. Furman, then tomorrow afternoon or really maybe
03:45 20 mid-morning, but let's say it takes the morning, tomorrow
21 afternoon I want the defense team to be ready because we
22 should, in my view, be able to finish off whoever you have
23 left.

24 If that's Christine Furman and Erik Weingold, which
03:45 25 probably are the only two witnesses you have left, I don't see

1 a situation where we aren't having our charge conference
2 Wednesday morning and the jurors come to close Wednesday
3 afternoon. I think that's probably what it's looking like
4 right now. I'm not going to jam it all in, because I think
03:45 5 quite honestly, unless we have narrowed the issues down a lot
6 and we find ourselves tomorrow finishing early enough to be
7 able to do closings in the morning, then I'd have it in the
8 afternoon, I can't right now tell you how long it's going to go
9 and how long it will take us to debate our charging
03:46 10 instructions.

11 It may not take that much time at all, but it may make
12 the most sense if everybody comes in and does closings on
13 Wednesday afternoon just to space it out a little bit. So
14 that's where I'm at. So this will keep us right on schedule.
03:46 15 All right. So let me go ahead and give everybody a five or ten
16 more minutes here. We'll come back just before 4 o'clock and
17 turn it over to the defense for Mr. Furman. Okay? We're in
18 recess.

19 (Thereupon, a brief recess was taken.)

04:03 20 **THE COURT:** All our jurors are present and accounted
21 for.

22 If you would, Rita, please. Let's round them up.

23 (Thereupon, the jury entered the courtroom.)

24 **THE COURT:** Please be seated, everyone. Okay. Ladies
04:04 25 and gentlemen of the jury, here's the plan. Do you remember

1 that we took a little break and took things out of sequence?
2 So what I'm going to do now is, we're going to bring
3 Michael Furman back to the stand so that his counsel can do his
4 cross-examination/really direct examination.

04:04 5 As you guys know, Mr. Furman is a witness for both the
6 SEC and also for the defense. So in order to save time, so
7 that we don't have a situation where we're calling him twice,
8 I've given a lot of latitude to both sides to just be able to
9 question him and what they need to cover when they get their
04:05 10 chance. So you're going to see not only questions related to
11 cross-examination, but I'm going to give Mr. Hyman some
12 bandwidth to go into issues that maybe were not covered in
13 Ms. Berlin's general questioning.

14 Our plan is to try to see if this will be the end of
04:05 15 the day today, meaning let defense counsel finish his
16 examination of Mr. Furman. And then what will happen is,
17 tomorrow morning our plan is to finish with Mr. Furman when the
18 SEC gets up and it's redirect. Okay. That's the way we're
19 going to put together. Okay? Everybody understand?

04:05 20 And what that does also, so everyone knows, it puts us
21 right on pace. I've had to speak with the lawyers a couple of
22 times today. Our expectation, fingers crossed, is we will
23 complete hearing from witnesses tomorrow.

24 That means that once both sides have rested their
04:06 25 cases, that I could get us to closing arguments and

1 instructions on the law by Wednesday. So my hope is that by
2 the end of the day Wednesday you begin deliberating. That's
3 our current timeline. All right? So we'll see if we can get
4 to that.

04:06 5 So with that being said, Mr. Furman, if you want to go
6 ahead and take the stand.

7 And, ladies and gentlemen of the jury, he's still
8 under oath, as he was from last Friday. Okay?

9 And once he's situated, Defense Counsel, you're free
04:06 10 to begin your questioning.

11 **MR. HYMAN:** Your Honor, may I be given a little leeway
12 between the ELMO and the computer?

13 **THE COURT:** Yeah. You mean -- what do you mean,
14 behind the desk?

04:06 15 **MR. HYMAN:** Behind the desk and then I'll probably be
16 getting up and moving around.

17 **THE COURT:** That's fine. Absolutely. Not a problem.
18 Thereupon,

19 **MICHAEL FURMAN,**
20 having been previously duly sworn, testified as follows:

21

22 **CROSS EXAMINATION**

23 **BY MR. HYMAN:**

24 Q. Good afternoon, Mr. Furman.

04:06 25 A. Good afternoon.

1 Q. So I guess the first question I've been dying to ask you
2 is, who between Mr. Robinson and I is better dressed?

3 A. I have to give this one to Mr. Robinson, as much as I love
4 your attire.

04:07 5 Q. So you recall earlier, your direct examination started with
6 a series of questions about counsel and your request for
7 admissions.

8 Do you remember that?

9 A. Yes.

04:07 10 Q. How did you meet your attorney?

11 A. My -- in this case?

12 Q. The first attorney you had?

13 A. My original attorney, I was referred to from, what I was
14 told was the SEC, but I believe it was the receiver in my
04:07 15 office the day that this happened.

16 Q. And so speaking of what happened that day, you were asked a
17 lot of questions about what happened with the FBI, weren't you?

18 A. Today? Yes.

19 Q. Isn't it true they didn't read you your Miranda Rights or
04:07 20 anything before questioning you?

21 MS. BERLIN: Your Honor, objection.

22 THE COURT: That's sustained. That's sustained.

23 You will disregard any methodology regarding the
24 investigation. This is not a criminal matter, folks, so that's
04:07 25 not going to be an issue here.

1 Go ahead.

2 **BY MR. HYMAN:**

3 Q. Were they armed at the time?

4 A. Yes.

04:08 5 **MS. BERLIN:** Your Honor, same objection.

6 **MR. HYMAN:** Well, Your Honor --

7 **THE COURT:** That's going to be sustained.

8 **MR. HYMAN:** May we have a brief sidebar?

9 **THE COURT:** No. I know where you're going and it's
04:08 10 not an appropriate line of questioning. This is not an issue
11 where he's waived his rights involuntarily through the FBI's
12 pressuring. It's not an issue in the case. If you want to get
13 into the fact that he was unaware of exactly what was going on
14 with these submissions and his prior counsel gave him advice,
04:08 15 that's one thing. But allowing the FBI investigation at issue,
16 that has been addressed in motion in limine, we will not
17 discuss it. Move on.

18 **MR. HYMAN:** Okay.

19 **BY MR. HYMAN:**

04:08 20 Q. You were asked a lot of questions about statements you made
21 to them, correct?

22 A. Correct.

23 Q. And you don't really have a good recollection of what
24 happened, do you?

04:08 25 **MS. BERLIN:** Your Honor, objection, leading.

1 THE COURT: That's overruled. He's going to be given
2 a chance to lead because it's a hybrid examination. That's
3 overruled.

4 Go ahead.

04:08 5 A. The day when this all happened, no. They stormed into my
6 office. Yes, they were FBI. I did not know they were coming.
7 Nothing was happening. I was actually with a client. And as
8 you can assume, you're going to be very extremely nervous.

9 I didn't know what was going on. Never heard anything
04:09 10 remotely possible about this. There was no phone calls or --
11 scheduled ahead. And yes, they ushered me into what was --
12 again, I was in a shared space I rented from an attorney office
13 in that older building that I was at near the mall, and they
14 proceeded to badger me with questions -- ask me questions for
04:09 15 hours, until I basically -- I have a very bad panic attack
16 syndrome, they got tired of me not really being able to
17 breathe, and said that I had to go speak with the SEC, who was
18 still in my office. And they were -- Kristin was there helping
19 them with the files.

04:09 20 And that's where -- that was basically it. But it was
21 all day. I mean, yeah. I was so nervous I couldn't remember
22 exact verbatim. I remember some of the -- in my opinion,
23 outrageous claims or different questions that they might have
24 brought up that I'll never forget. But other than general
04:09 25 knowledge of what that day was about, which I'll never forget,

1 but no, the specifics, no. I didn't -- don't remember that.

2 BY MR. HYMAN:

3 Q. And you've heard testimony. Did you ever receive a
4 finder's fee with Par Funding?

04:10 5 A. No, I never had a finder's agreement with Par Funding at
6 all.

7 Q. Did you ever execute a finder's agreement with the ABFP
8 fund?

9 A. No.

04:10 10 Q. And with respect to -- did the ABFP fund ever pay you
11 commissions?

12 A. No, I didn't work with ABFP. Like I said, I was setting up
13 my fund.

14 Q. Did Par Funding ever pay you commissions?

04:10 15 A. No.

16 Q. Do you recall in 2017 you -- November 2017, you're invited
17 to an event by Mr. Vagnozzi. Do you recall that testimony?

18 A. Yeah. That was the original recruiting event.

19 Q. And was the event focused predominantly on Par Funding or
04:10 20 was it focused more so on other investments at that time?

21 A. No, it was primarily -- it was through the insurance -- I
22 think it was called Insurance News Net, I believe, Magazine,
23 which is for us insurance advisors and --

24 THE REPORTER: Can you slow down a little, please.

04:10 25 A. It was primarily for insurance, and I believe four other

1 investments. Alternative investments is what it was called.
2 It was to sell his life insurance. He wrote a book. Whether
3 he wrote actually every word, I can't speak. But it was a nice
4 bound book, which I did wind up using in my office because I
04:11 5 thought it explained the value of life insurance very good.
6 And it didn't really sell his company, which is one reason I
7 agreed to use it. And I paid for those books.

8 And a few other -- it was life Settlements, it was
9 Par Funding or merchant cash advance. We learned the name of
04:11 10 the company when we were there. And Litigation Funding, which
11 was, I guess, for attorneys that are car accidents and to get
12 them victims' money right away.

13 And then the Life Settlements, which was, I believe,
14 something he did for a long time, which was buying and selling
04:11 15 life insurance policies. You'll see it on commercials and
16 things, if you're older and don't need your life insurance
17 anymore, you can buy it and I guess invest it (inaud).

18 BY MR. HYMAN:

19 Q. And was there any sort of training with respect to how to
04:11 20 sell anything there?

21 A. I mean, it was an overall -- it was all a bunch of
22 advisors. I think we were in a big hotel auditorium, probably
23 bigger than this. They had different speakers, Mr. Pauciulo,
24 Dean's attorney was there. There was investors there.

04:12 25 I can't honestly remember if Perry was actually there

1 and we did a site visit to Par Funding, because it was in the
2 middle of Philadelphia, Center City Philadelphia, I guess you
3 call it, and somebody from the Litigation Funding, and he had
4 an individual that was a reseller of the Life Settlement funds,
04:12 5 or Life Settlement policies, I guess you could say.

6 So he had a representative from each fund, and he had
7 a Kansas City Life Insurance, I believe was the name of the
8 company and had a broker, an IMO or something from there.

9 Q. And Mr. Pauciulo -- do you recall your state of mind upon
04:12 10 hearing him talk about due diligence conducted?

11 MS. BERLIN: Your Honor, I'm going to object to the
12 question.

13 THE COURT: Yeah, that's going to be sustained.

14 BY MR. HYMAN:

04:13 15 Q. Did Mr. Pauciulo discuss any of the issues with respect to
16 Par Funding there?

17 MS. BERLIN: Objection, hearsay, not his lawyer.

18 THE COURT: Sustained.

19 MR. HYMAN: Well --

04:13 20 THE COURT: Sustained.

21 BY MR. HYMAN:

22 Q. Did you have a belief as to due diligence that had been
23 conducted as to Par Funding?

24 A. Yes. During the presentation, which was put on both with
04:13 25 the -- like a screen, you know, projector with a large TV, and

1 then talking -- they played a video. Mr. Pauciulo spoke for
2 quite a while about the due diligence that was paid for by --

3 MS. BERLIN: Objection, hearsay.

4 THE COURT: Again, we will disregard. That wasn't the
04:13 5 question. The question was generally, did you have an
6 understanding or knowledge? That was fine.

7 You will disregard, ladies and gentlemen of the jury,
8 any statements made outside of court by other individuals.

9 Go ahead.

04:13 10 BY MR. HYMAN:

11 Q. Okay. And so there's representations about due diligence
12 that had been --

13 A. Consistently, yes.

14 Q. And at a certain point, did you do a walk through
04:14 15 Par Funding?

16 A. Yes. We -- I don't believe we -- I don't think we drove.
17 We might have Ubered. However we got there, it wasn't very
18 far. And we walked into, I believe it's -- if you've never
19 been to Philadelphia or city, there were two buildings --
04:14 20 they're right next to each other, but you did have to walk in
21 and out to get to one or the other. It was a three- or
22 four-story building on the left, which was the main -- how we
23 call that the sales building. That was where -- like I said in
24 earlier testimony, they took us through there. Again, this was
04:14 25 a large group of 30 or 40, whatever many of us were there.

1 We were trying to be quiet, but they were trying to
2 show that there was a floor that I was told was underwriting.
3 They were showing the sales. It was a lot of people there
4 working, and -- and I distinctly remember the second building,
04:14 5 which was to the right, we had to enter and exit, that was
6 their executive building. That's where Mr. Cole or any of the
7 CFO, et cetera, attorneys were even in the building.

8 So it was quite distinguished that if you were on that
9 side, you were more executive, and sales and underwriting and
04:15 10 the phones -- I don't want to say it was cold calling or call
11 room, but there was -- you know, everybody was on headsets and
12 working constantly. So they were not dressed in suits and the
13 other side would have been of the suits and you had to be
14 quiet, so -- again, we didn't spend much time there. We walked
04:15 15 through, got to meet a couple of people. They asked if I met
16 certain individuals. Didn't really take names or get cards.

17 Again, we were working through there, other than
18 Perry. We had a dinner that was set up. I believe it was next
19 door to that, right on that street we all walked to. I did not
04:15 20 stay for that dinner. I know that I would have learned
21 probably a little bit more. It was just my flight -- I don't
22 remember whether it was that night or early the next morning,
23 but I did not stay for that dinner, so I didn't hang out with
24 everybody as much as the entire crowd did, to be honest with
04:15 25 you.

1 Q. And how would you describe Par Funding's office? Was it
2 nice or was it under construction?

3 A. It was very nice. I mean, it was a city building, it was
4 packed with people. There was -- and the second time I was
04:15 5 there was another recruiting event, or second one, and it was
6 even busier. There were more people there, but -- it was a
7 very well -- I mean, they were a growing company, so I'm sure
8 they were moving in more people and more desks. But there was
9 a lot of cubicles. A couple of stories, like I said.

04:16 10 Q. Esthetically it wasn't kind of just some run down --

11 A. Oh, no. This is a -- I would be very proud. That's why
12 when they said, if you have any investors that you would like,
13 you know, have come there to meet with Perry or to see it in
14 person, and that's where the transparency really came from. I
04:16 15 can tell you, being in that business for 18 years you're --

16 Their business wasn't selling to investors for me or
17 helping my investors, but you're not going to get an investment
18 into a senior living or any of my other investments where
19 they're going to welcome you over there because one, that's not
04:16 20 their job. They're going to be in the way over there.

21 But you couldn't show up there unannounced. I only
22 had to speak with Perry. That was the only person that I was
23 really dealing with at Par Funding. So no, it was not in my
24 area. I'm in Florida, I'm in West Palm Beach.

04:17 25 I didn't have any clients in Pennsylvania, New Jersey

1 area. So unfortunately, I don't think I had anybody that
2 visited because nor me nor anybody was going to pay for a
3 flight, but I made it available to everybody, yes. I made it
4 well known.

04:17 5 Q. Would you describe it as nicer than your office?

6 A. Yes. My office is old and run down in the sense that it's
7 an older building. And I rented it from an attorney. I
8 thought it was nice, mostly glass windows. But it was a real
9 estate attorney firm, and I had a corner office that they
04:17 10 didn't really use.

11 Because again, they had - it was a five-story building
12 and I had the top floor. They had the top floor. It was a
13 shared assistant when you got off the elevator. We were in the
14 very corner, and it was just one office. And that was my
04:17 15 office. And my assistant had a little cubicle on the outside.
16 That was really it.

17 Q. And did you have any displays stating that you were a CPA
18 there?

19 A. No. There was -- it's definitely not a penthouse office
04:17 20 and definitely no -- again, it's windows for over 50 percent of
21 the office. There are some old insurance policies from
22 Prudential, which is where I started from.

23 And my mother is very much into hereditary or ancestry
24 or home line, and so we have some old family Prudential
25 policies from the 1800s. And yes, we have my business license

1 that I have to by law, I think, for Palm Beach County, and my
2 insurance license and my degrees from university are on the
3 wall. But those would be behind them. But yes. And I had the
4 TV on the wall.

04:18 5 Q. And you went to Northwood University? That's in Palm Beach
6 County too?

7 A. Yes, correct. I went to the Palm Beach campus. There used
8 to be a Palm Beach campus, the Michigan -- the Palm Beach
9 campus is no longer. They sold that campus. So it's just
04:18 10 Michigan now.

11 Q. And do you recall the series of questions concerning the
12 educational seminars that you had?

13 A. Yeah, yeah.

14 Q. During those seminars, did you ever sign up any clients?

04:18 15 A. No. It was in the sales meeting. I didn't have any
16 paperwork when I was there. It was literally me talking from
17 my mic. I had the -- not Excel -- PowerPoint going and it was
18 pretty much I would have -- again, I didn't live and die by
19 those seminars, but it was something that I started, a few of
04:19 20 them lunch and dinner.

21 And they were predominantly to show that yes, I was
22 looking for annuity and insurance. They covered a variety of
23 other alternative investments that I was involved in. And I
24 tried to have one or two speakers, usually two. I think at
04:19 25 minimal it was two.

1 If it was Par Funding, it was Perry. And I usually
2 had my tax group that I referred business to, to go over taxes,
3 and myself. That was the most of anything. If not, I did some
4 events from my other funds where a real estate professional
04:19 5 from the real estate fund or the senior living because they put
6 on their own events, and I was really the advisor that was part
7 of their events as well.

8 Q. And with respect, do you remember the brochure that
9 Ms. Berlin handed you before?

04:19 10 A. Can you be specific which one? She tried to bring up a
11 few.

12 Q. The one that was in the folder with your card in it?

13 A. Yes, yes.

14 Q. Did you prepare that?

04:20 15 A. One of my assistants would have. That would have been very
16 early on because I had very nice brochures -- or folders that
17 were prepared with United Fidelis Group and paid for those.
18 And I'm more proud of that than the one she had, but that would
19 have been the very beginning when I came back from -- the one I
04:20 20 had or one of the very few that I had from them. But yes, they
21 sent a box -- Or Perry brought a box, should I say, for one
22 event.

23 Q. So you did didn't actually prepare those brochures. They
24 were sent to you by Perry Abbonizio?

04:20 25 A. Oh, no. I didn't have any input on your brochures. That's

1 what they provided to us as fund managers. He's going to speak
2 at the event. I'm going to try to give them as much
3 information as I can possibly give them.

04:20 4 Q. Did you have -- how many discussions or how often did you
5 discuss the substance of those brochures with Mr. Abbonizio?

6 A. Well, I mean, in the beginning, specifically we went
7 over -- that was his job, to teach fund managers about
8 Par Funding and to go over specifically the brochures broad. I
9 don't know anybody that takes a brochure and looks at that as a
04:21 10 contract or a contractual obligation, just like they had many
11 versions of that brochure.

12 Specifically the colorful one that was brought up a
13 few times here, I know that my files, even though I don't have
14 them, they are one hundred percent there was a version of it in
04:21 15 the beginning, did not have anything about the -- they didn't
16 have any insurance to their merchants in the beginning. So
17 that page wasn't there.

18 I know they changed how many millions of dollars they
19 did. It was alike 4 hundred million and went to 8 hundred
04:21 20 million or something, just like the examples that were in
21 there. There were -- a couple of the factor rates were changed
22 in there, but again, it wasn't a specific brochure, any
23 numbers. When it said general management, they never had a bio
24 for anybody in there.

04:21 25 But the insurance, when they added that, same with the

1 onsite inspections, that was something that they started to add
2 value to add to their business. They never took that as a --
3 they never said they did it on every single merchant, and even
4 in the brochure --

04:22 5 MS. BERLIN: Your Honor, objection, hearsay.

6 THE COURT: That's going to be sustained. Let's --
7 again, statements out of court. Let's get a question pending.
8 This is narrative.

9 BY MR. HYMAN:

04:22 10 Q. Did you discuss the substance of those materials with
11 Mr. Abbonizio without telling us what he said to you?

12 A. Correct.

13 Q. And did Mr. Abbonizio give you any reason to question the
14 veracity or accuracy of those statements?

04:22 15 A. Absolutely not. I mean, throughout the time that I was
16 involved before this case, although this has been engulfed in
17 my entire life for the last two years let's call it, I had
18 really no reason to doubt anybody at Par Funding in any way.
19 They never represented or misrepresented that I had learned
04:22 20 about and had no reason to.

21 They always held by their investors. My investors
22 made their money, they got paid on time, they showed up for the
23 meetings. Perry showed up for the meetings. He always was
24 there when I needed for the calls, and they did right by a lot
04:22 25 of my clients, specifically by me, my fund. They didn't meet

1 any of my specific clients.

2 Specifically, even Corona, we were locked in our
3 homes. I got a call and a specific call from Perry that he
4 asked about any of my clients, did I have any clients over the
04:23 5 age of 80. And they returned principal, part principal to my
6 clients over age 80. That was started by them.

7 BY MR. HYMAN:

8 Q. We'll keep going. And how often did you speak with
9 Mr. Abbonizio?

04:23 10 A. It varied. Like I said, in the beginning, I didn't know
11 him anymore than he was the head of investor relations. And
12 that was the only person we were allowed to talk to. But when
13 we started with this program, we signed up, I started my fund,
14 I found the attorney and started that process.

04:23 15 You know, when I flew up the recruiting event, it was
16 Dean Vagnozzi in that company, but once you got involved, it
17 was - they had a manager, Mike Tierney. He was in charge of
18 all of us. There was 20 or 30 or 40 -- I don't know how many
19 independent advisors around the country.

04:23 20 I wasn't involved in any of them I talked to Mark
21 Nardelli which was by chance. I wound up sitting next to him
22 at the event in November, and then I think we went back in
23 January or whatever the next event was, or next year.

24 But I had no reason to really doubt them, but it was
04:24 25 something that as we went on, I got to speak and have more

1 questions with Perry. And again, I tried to line up a couple
2 of investors in the beginning that were interested in that fit
3 their financial plan.

04:24 4 Q. Got it. And so let's touch base with a little bit on
5 Mr. Nardelli.

6 Who is Mr. Nardelli?

7 A. Mark Nardelli, he's an insurance agent advisor in North
8 Carolina. Again, I met him at the advisor event up in
9 Philadelphia.

04:24 10 Q. Do you know whether Mr. Nardelli conducted due diligence
11 with respect to Par Funding?

12 A. I know that me and him were the ying and the yang in the
13 sense that we always bounced ideas in as much as we could off
14 of each other. I know that he had retained Mr. Pauciulo as his
04:24 15 attorney.

16 MS. BERLIN: Your Honor, relevance.

17 THE COURT: All right. It's overruled.

18 A. We just shared ideas, and I know he tried to research as
19 much as they could.

04:25 20 THE COURT: Let's move on.

21 BY MR. HYMAN:

22 Q. And isn't it true that Mr. Nardelli was given the same set
23 of investor pamphlets or information as you?

24 A. Very similar, yeah. We were at the same event. I know
04:25 25 that he worked closer with him because he used the same

1 attorney. But so he has a little bit different access maybe
2 afterwards than I did, and that's one reason why me and him
3 struck an accord, because I had maybe a little outside than he
4 did. So I utilized that.

04:25 5 Q. Did Mr. Nardelli ever tell you issues with respect to
6 Par Funding?

7 MS. BERLIN: Objection, hearsay.

8 THE COURT: Sustained.

9 BY MR. HYMAN:

04:25 10 Q. Earlier you testified about seeing the Bloomberg article
11 that Ms. Berlin posted or showed you?

12 A. Briefly. Yes, that was again Mark Nardelli middle of -- I
13 don't remember when, I think it was that established in '18 or
14 '19 that he had heard or somebody had told him about that and
15 sent it to me.

16 Again, I did not pay for it. So you can only -- if
17 you ever looked on Instagram -- just like I don't have Wall
18 Street Journal. I don't pay for the actual publication. You
19 can see in the beginning or it asks you for your credit card
04:26 20 information. So we read and just like he did, we both called
21 Dean and Perry and got the explanation behind that.

22 Q. And what was the explanation you were given?

23 A. Well, again, they never represented that a Joseph LaForte
24 or Joe Mack was an owner of Par Funding. So first of all, he
04:26 25 was an employee there and had worked there. He was one of many

1 people we met that day. He was in the sales building or
2 underwriting building. I thought he was more underwriting
3 based on what I heard.

4 I didn't know it was a woman-owned business. They
04:26 5 would not give out, other than I heard a very large family that
6 invested a lot of money and did due diligence, additional due
7 diligence. That was not -- I was not a part of but only told
8 but through Perry, was there, but they said that this gentleman
9 was one of the hardest working individuals there in
04:26 10 underwriting and that he basically was involved in some family
11 real estate fraud year over, a decade ago which -- and they
12 said it did not --

13 MS. BERLIN: Hearsay objection.

14 THE COURT: Overruled.

04:27 15 A. Again, I can only go by what they told me, and if we go to
16 a -- I don't know what the disclosures you need if you're a
17 public company in something 20 years ago.

18 THE COURT: That's it. There's not a question
19 pending. We need to -- if you have an answer, let's go.

04:27 20 BY MR. HYMAN:

21 Q. Do you recall Ms. Berlin showing you audited financials?

22 A. Yeah.

23 Q. Was that the only set of financials or documents that you
24 saw of Par Funding?

04:27 25 A. Well, the monthly spreadsheet was their main -- I mean,

1 after this case, I saw quite a lot, but other than that, which
2 Perry brought and we offered to every investor if they wanted
3 to sign a nondisclosure agreement, which I did offer it to
4 every client that came in and said they have audited
04:27 5 financials, not that I can read them to you.

6 And I didn't have a copy to give them, but if you
7 wanted to, I could put you in touch of their head of investor
8 relations and you'd have to sign an NDA and you can look at
9 them. That was one of many things that we discussed in every
04:28 10 single meeting, yes. The fact that they had audited financials
11 was important to me.

12 Because you have a lot of companies that are private
13 and they don't have any audited financials. You are -- then
14 you are literally going by somebody's Excel spreadsheet on that
15 company.

16 This is a company that did obviously hundred of
17 millions of dollars of business over time. But have a complete
18 audit, and yes, they bragged about the stature of the
19 accounting firm, which again, I think somebody quoted me here
04:28 20 of why they were number 12 in the country, or number 9.

21 I don't know how you quote that. But that is what I
22 was told, it's one of the accounting firms in the country. And
23 they also showed the amount of money that they would spend on
24 something like that, which I've learned in this case, and it's
04:28 25 exorbitant. But the legitimacy was just there.

1 Q. I understand that.

2 Now, we're talking a lot about these investor reports.

3 A. KEPI.

4 Q. Yes, sir.

04:28 5 Do you have an understanding as to how to read those
6 investor reports?

7 A. Based on what Perry told us, yes. As he went over that
8 in -- many times. That was usually what he went over in the
9 presentation.

04:29 10 Q. And what was the -- I believe it was the exposure rate?

11 A. Exposure rate was what they told to us is -- it's basically
12 the amount of their debt that was exposed that was bad. That
13 was going bad, whether it was in collections, whether it was
14 they were working on it, that their potential losses could be.
04:29 15 So if they lend out a hundred thousand dollars and their
16 exposure to that, in a sense of how much could go wrong, was 2
17 percent, then \$2,000 might be already lost. They might be in
18 court over it. Again, that's not really for me to know. That
19 is really for them to be working on. And so whether that
04:29 20 was --

21 Q. (Cross-talk.) -- and then as it relates to the exposure
22 rate, did you have an understanding as to whether lawsuits were
23 an accurate determination as to the exposure that the company
24 had?

04:29 25 A. No, absolutely not. One, I would never know that -- I'm

1 involved in this case and I can barely find the paperwork for
2 this every day for the last two years. But I would not know to
3 search district or federal or state and what states, like I
4 said, to Google or to find those documents.

04:30 5 And also just because you lend out a hundred thousand
6 dollars and you were supposed to get \$135,000, they could have
7 gotten \$120,000 and still sue for the last \$15,000. So a
8 lawsuit doesn't necessarily mean that they didn't get paid back
9 everything or -- and again, that's not for me to interpret, but
04:30 10 there's no way for me to know that, no, for any prospective
11 person, to be honest with you.

12 Q. So do you recall being questioned by Ms. Berlin about the
13 ABFP Management agreement?

14 A. Yes.

04:30 15 Q. Let me try to pull this.

16 And do you recall Ms. Berlin asking you about
17 questions on page 16 of the document?

18 A. I do. I can't really remember what 16 was, but yes.

19 MR. HYMAN: Your Honor, would mind putting up what's
20 on the screen or giving me access to the screen, please?

21 THE COURT REPORTER: To the jury or just to the
22 witness?

23 THE COURT: Yes, jury or witness?

24 MR. HYMAN: It's already been introduced into
25 evidence.

1 THE COURT: Okay.

2 BY MR. HYMAN:

3 Q. So I'm showing you what's been marked previously as Exhibit
4 39.

04:31 5 Do you see this document?

6 A. Yes, I do now.

7 Q. And do you recall how Ms. Berlin had you read the first
8 part of subparagraph 2 of paragraph 16?

9 A. Yes.

04:31 10 Q. Could you please tell me what the second line of it right
11 where I'm highlighting also says?

12 A. Says: Company acknowledges that it will only raise assets
13 for Par Funding/CBSG through a management company using this
14 agreement.

04:31 15 Q. So does that mean that you're required to only raise funds
16 for Par Funding?

17 A. No, absolutely not. It actually meant because I had a
18 general merchant cash advance fund that if I were to raise
19 money for another company, that they would not be doing the
04:32 20 accounting for those, since I periodically did look at other
21 companies.

22 Q. And do you have an idea as to what other companies you
23 previously looked at in terms of merchant cash advance?

24 A. I know in preparation for this I looked -- I think I found
04:32 25 like 11 companies I, at one time or another looked at, from

1 (inaud.) Nick Raul (ph.), VeriFast (ph.), I looked at
2 everything from, you know, Kabbage and the larger companies,
3 but you can't really deal with that. But there was an AAI
4 company. There was -- that was one of the larger ones. That
04:32 5 was a national distribution. But it was really the back office
6 support, and the fact that they were audited and, you know, the
7 rates and terms for my clients. It was a one-year investment
8 versus a three-year, paid monthly versus annually or at the
9 back end, so it was really what fit for what I was looking for.

04:32 10 Q. And with respect to the promissory notes that Fidelis
11 executed with Par Funding, did the interest rate ever change?

12 A. In the sense that --

13 Q. If you invested more, Par Funding pay you more?

14 A. No. When you invest -- so if you invested a hundred
04:33 15 thousand dollars or even \$50,000, let's say, and you would get
16 9 percent on that. And if you invested six months later and
17 you got \$100,000, then you would get 10 percent on that
18 investment. So it didn't change based off of that.

19 Now, if you invested the total, then yes, you could
04:33 20 get into the next tier, but that was all structured ahead of
21 time. That was really not for me to choose, per se.

22 Q. And do you recall -- this is Exhibit 205?

23 A. Yeah, I remember this.

24 Q. You've been asked a lot of questions about this, haven't
04:33 25 you?

1 A. Yeah, there's quite a few of them in my file.

2 Q. Okay. Who prepared this document?

3 A. That would be -- well, it was first Michelle Price. It was
4 the CPAs over at ABFP Management. That's what their job was.

04:34 5 Now, I had a few different individuals. Mostly
6 Michelle, I know was the head of that, but there was another
7 woman that took over for me specifically. I know there was so
8 money fund managers that she couldn't handle all of them
9 herself. So there was different CPAs. But all of the
04:34 10 accountants, every month is who we dealt with for who's fund
11 and what the percentage was. We had to give them and provide
12 all of this information and then I had to go by and check it.
13 Because, honestly, that was one of the main reasons that I was
14 getting very, very frustrated with ABFP Management is because
04:34 15 there was little errors, and I was -- this is what I was paying
16 them for. So that's the reason why I actually -- one of the
17 many reasons that I eventually severed ties with them, to do
18 this myself. I had a different accounting firm do it.

19 Q. And with respect to the documents here, does this reflect
04:34 20 how much the investors were paid?

21 A. That one column, monthly. The investor interest payment
22 was what they got, correct.

23 Q. And does it reflect how much ABFP was paid?

24 A. The management was on the right, correct.

04:35 25 Q. And there is it says: Revenue after investor payment.

1 Do you see that?

2 A. Yes. You would have to actually subtract the ABFP
3 Management from that.

4 Q. Got it. So after you subtract that, would that reflect
04:35 5 much how much money you personally made?

6 A. Not personally, no. It was the gross revenue that was
7 there in the fund afterwards, as earned, again.

8 Q. And after you received the gross revenue, what did you do
9 with the money?

04:35 10 A. Well, most of that was used to pay staff support,
11 advertising, legal fees. Literally every expense that was
12 involved in this manner in helping these clients and to get
13 these clients and continue to keep these clients.

14 Q. Have you ever heard of the phrase "retained earnings"?

04:35 15 A. Yeah. Perry would use that quite often.

16 Q. Do you have an understanding as what that means?

17 A. From what I understood, it was money that they had invested
18 or they had earned through Par -- that they kept at Par. They
19 had the right to take it out at any time. And they said, Hey,
04:36 20 instead of me taking it out and getting paid a million dollars,
21 I'm going to leave the million dollars there and that will be
22 retained as his earnings in the company. And so that was
23 where, as he would explain to -- at our events, when he was
24 there, that he had millions and millions of dollars with other
04:36 25 owners.

1 **MS. BERLIN:** Your Honor, I'm going to object. It's
2 hearsay. It's not relevant to our claims.

3 **THE COURT:** It's less about relevance. That's my
4 concern.

04:36 5 Let's move on from that. We already know that he
6 established what he understands it means.

7 A. I understood that to be his money that he invested in the
8 Par.

9 **BY MR. HYMAN:**

04:36 10 Q. But did you also maintain your own retained earnings in
11 Fidelis?

12 A. I earned interest as earned. Like I said, until I -- every
13 month I got paid with the investor. There was no commission up
14 front, there was no commission at all. It was interest that I
04:36 15 was earning, as with the client. And I explained that to every
16 client. They understood the entire process of how we -- how I
17 made my money, how they made their money and every party
18 involved.

19 Q. And you see here how there's been the list of all these
04:37 20 investors and the note dates on the side for them? Do you see
21 that here?

22 A. Yeah.

23 **MR. HYMAN:** Your Honor, we're going to show him at
24 least 2207. It's an investor note.

04:37 25 A. 10-2207.

1 MR. HYMAN: I guess while we --

2 MS. BERLIN: Put it up.

3 THE COURT: Has this already been admitted?

4 MR. HYMAN: It has not.

04:37 5 (Thereupon, the exhibit was introduced into evidence.)

6 BY MR. HYMAN:

7 Q. So showing you a document.

8 MS. BERLIN: It's hearsay, Your Honor. They should
9 have tried to get this in.

04:37 10 THE COURT: Right now he's not moving to admit it.
11 They just want to refresh their recollection with it. I don't
12 know.

13 BY MR. HYMAN:

14 Q. Well, are you familiar with the business practices of
04:38 15 Fidelis Financial?

16 A. Yes. This is part of the subscription agreement, the PPO.

17 Q. And are you familiar with how Fidelis maintains its
18 records?

19 A. Yes. We used the OneDrive predominantly, or physical, and
04:38 20 we sign documents and kept them in the filing cabinet --

21 Q. With respect to the documents and the promissory notes that
22 are issued to Fidelis, is it your regular policy to maintain
23 them in the books and records of Fidelis at or around the time
24 they're maintained or created?

04:38 25 A. Correct. Yes. We always kept a copy of these. I know

1 this was brought up earlier. It was part of a larger document.

2 So this is just part of it.

3 Q. So I'm showing you right now this document. It's a PPM or
4 Fidelis Financial Planning, LLC document. Do you see this
5 document, sir?

6 A. Yes. Subscription -- again, it's part of the PPM, and I
7 know the PPM was actually admitted earlier. But yes.

8 Q. And as we scroll down here, you'll see that there's --

9 MS. BERLIN: Your Honor, this is -- I think we went
10 through this the other day, the laptop documents. I think
11 that's what this is.

12 THE COURT: My recollection is, this is -- part of
13 this was submitted, not --

14 A. Not this exact one, yes.

15 MS. BERLIN: Yes. Just the note on top was admitted.

16 THE COURT: Correct. The note on top was admitted.

17 Go ahead. I'm still listening.

18 BY MR. HYMAN:

19 Q. Let's see here. It's references Mr. Frank Nash?

20 A. Correct. See?

21 Q. And did Mr. Nash execute this document?

22 A. Yeah, looks to be his.

23 MS. BERLIN: Your Honor, come on.

24 THE COURT: That's not going to establish him. No,
25 that's not going to happen. We're not going to be able to get

1 it in under any circumstances, that last page. So you've to
2 move on from that.

3 MR. HYMAN: Okay. We'll keep going through it.

4 So, first of all, Your Honor, at this moment I'd like
5 to try to move DE 227 in as a business record. He's laid the
6 predicate of it being a promissory note made at or near the
7 time. It being the ordinary course of Fidelis Financial to
8 keep and retain these documents.

9 THE COURT: Ladies and gentlemen of the jury, do you
10 want to give me five minutes, if you would, please. Put your
11 notepads on your chairs. I don't want to get into too much of
12 an evidentiary issues with you presence, so I can try to figure
13 this out for you all. Okay. Just give us one moment.

14 (Thereupon, the jury exited the courtroom.)

15 THE COURT: Okay. All right. So let's address this.
16 We talked about this -- everyone can be seated. We talked
17 about this a little bit, maybe three or four days ago. So I --
18 I'm not exactly sure what we didn't make clear back then. I
19 just need to understand it because this is not something we can
20 do fully at sidebar.

21 My recollection was from last week also that this
22 was --

23 Let me the SEC, is this one of the documents -- we
24 talked about accreditation. We talked about whether or not
25 this attachment could even be admitted. First of all, he can't

1 testify, in my view, as to what Frank Nash's signature looks
2 like. That's not going to be a predicate authenticity. It's
3 going to be a problem.

4 But aside from that, didn't we have a discussion that
5 this accreditation form signed by Mr. Nash was a document that
6 has never been produced and that purportedly would have been in
7 the laptop that never got the password on? I'm trying to
8 remember exactly what the discussion was back then. Because
9 there may be multiple grounds for it not being able to come in,
10 but I want to make sure I understand.

11 **MS. BERLIN:** That was one of them. We asked last week
12 if they could tell us which documents came from the laptop. We
13 never heard back. So I don't -- it's hard for to us search --
14 we haven't seen this. It certainly wasn't produced by Fidelis
15 he's no longer Fidelis. This isn't a corporate record produced
16 by Fidelis. That would be the receiver now.

17 We don't know where it came from. They'll know if
18 it's from the laptop. I don't want to speculate. But it's
19 also -- the hearsay issue. We put in what we had, which was
20 the note, the remainder which is, you know, the application I
21 guess is hearsay. And it's not a corporate record.

22 **THE COURT:** Well, the bigger problem is he filled out
23 a form. So it wouldn't come in. It's definitely hearsay to
24 show that he is a purported accredited investor, which again,
25 continues to be, I think, part of the defense's theory of

1 obtaining the 506 exception. I think that's what they're still
2 arguing that point for.

3 **MS. BERLIN:** Okay.

4 **THE COURT:** I think. Because we know it doesn't go to
5 the other six fraud counts.

6 So the accredited investor issue, we know that it is
7 being introduced for that exact purpose, to show that he's an
8 accredited investor, so for the truth of the matter asserted.
9 But it looks like a form that is filled out. So that's why I'm
10 trying to figure out how would that be a record regularly
11 maintained in the course of Fidelis's business, meaning that
12 it's a filled out form by another individual and then filed or
13 at least it made its way to Fidelis's records.

14 I'm trying to figure out exactly where it came from
15 which is part of the problem. I don't know where the appendix
16 came from. Do we know where it came from? Do we know that it
17 came from his laptop? Where did we get that from?

18 **MR. HYMAN:** My understanding is it came from his
19 OneDrive which the receiver and the SEC have had access to.

20 **THE COURT:** Show me how I get it, even if it came from
21 the OneDrive. How is this going to be a business record? How
22 does something that someone else has filled out and provided to
23 him become a business record? And how can he authenticate this
24 signature and get this document in?

25 Because the problem was I couldn't let it come in

1 under Mr. Nash either. He was presented with it. And I
2 believe at that time, I sustained the objection also because it
3 was for the truth of the matter asserted. Mr. Nash can testify
4 about authenticity, but my recollection was Mr. Nash was still
5 not going to be overcome the regularly conducted activity of
6 Fidelis because he wasn't a custodian or had knowledge of that.

7 I believe that's why it didn't come in through
8 Mr. Nash, and I'm trying to figure out why we would be able to
9 have it come in through a business record here. All these
10 appendices are filled out by different investors. So I just
11 want to make sure I understand.

12 **MR. HYMAN:** To be clear, Your Honor, Fidelis was in
13 the business of offering these promissory notes for sale. The
14 Promissory notes comprised of three appendixes, Appendix A, B,
15 and C. It was ordinary course of business to have investors
16 sign these notes, filled them out and maintained them in the
17 books and records of the company. This is why it is a business
18 record and the exception would apply.

19 In addition, in terms of the overall signature,
20 otherwise it goes to kind of where these investors had invested
21 and that they did not invest actually in Par Funding, as
22 opposed to -- and that they had, in fact, invested in Fidelis.
23 So we're not trying to use this for the truth of the matter
24 asserted in terms of it being him showing that he's an
25 accredited investor. I think we have already shown he's an

1 accredited investor through other testimony.

2 But more, importantly, it goes to several different
3 issues. First, obviously I think it was a business record, and
4 we have laid the proper predicate for that.

5 Second, I think it also goes to the credibility of
6 Mr. Nash as well as the other investors who testified that they
7 weren't sure whether they were investing in Par Funding or
8 Fidelis, which is part of where that would otherwise be
9 relevant.

10 And as it relates to hearsay, it's a business record
11 plain and simple, and I don't know what other way to explain
12 that, Your Honor.

13 **MS. BERLIN:** There's no indicia of trustworthiness
14 here. We haven't seen this document. The investor that it
15 came up the other day, Your Honor, was Renner, not Nash. It
16 was Renner.

17 **THE COURT:** Well, this is Nash's form.

18 **MS. BERLIN:** This is Nash's form, but it was the same
19 thing --

20 **THE COURT:** I thought Nash was presented with this and
21 an objection was sustained, but I can't recall.

22 **MS. BERLIN:** And our notes -- and Vicki is really
23 good at keeping notes. She had written that they attempted it
24 with Renner. The same thing. The same exact document but
25 signed by Renner.

1 **THE COURT:** That was the one where Renner said he
2 didn't recall the document. And if then I think he said, if
3 memory serves me right, Renner said: I guess it looks like my
4 signature, but I don't recall signing it. I think that is what
5 he said.

6 **MS. BERLIN:** But issue is one --

7 **THE COURT:** Your bigger concern is going to be one of
8 authenticity. Because you're not going to satisfy. The Court
9 has to be satisfied that the record is sufficiently authentic
10 before it's admitted. And so that's one of the challenges we
11 have in large part because we don't have anybody that can
12 confirm that's his handwriting.

13 Even if it were arguably a business record, it all
14 hinges on indicia of authenticity. In fact, the Court many
15 times can determine we can't get into the business record
16 exception because we can't determine whether or not this
17 purports to be what they say it is, that it's actually a
18 sign-off of Nash as opposed to filled out by somebody else or
19 someone after the fact. I mean, that's the biggest challenge
20 we have.

21 So I think it would be an argument made that
22 truthfully, it probably would satisfy even on the outer bounds
23 if you were to argue this was a business record and it comes
24 through every time this way because they log them all.

25 But the problem is we don't have necessarily have

1 anybody that can confirm this signature or confirm this
2 actually has been done. The investors didn't really recall it.
3 So it's a little difficult for me to find that I can hang my
4 hat on it, that it's authentic. It's going to come in from
5 Mr. Furman, but he can't authorize or confirm that that's his
6 signature on it.

7 **MR. HYMAN:** I think he was present when it was
8 executed, Your Honor.

9 **THE COURT:** Is he going to testify that he was present
10 when it was signed in front of him?

11 **THE WITNESS:** As well as all ten other applications.

12 **MS. BERLIN:** Your Honor, why is it relevant?

13 **THE WITNESS:** I don't know if I'm allowed to talk.

14 **THE COURT:** No. I don't need to hear from you.

15 **MR. HYMAN:** Also, Your Honor, as you can see here,
16 this is Mr. Furman's signature.

17 **MS. BERLIN:** I don't know they have looked at the jury
18 instructions for the complaint.

19 **THE COURT:** Listen, we can argue relevancy.

20 **MS. BERLIN:** Not relevancy, but maybe we stipulate to
21 whatever they want.

22 **THE COURT:** It's easier at this point, before the
23 Court gets into a battle, given the relevant -- given the
24 limited relevancy of arguing accreditation of an investor to
25 one of seven counts and the fact that, you know, if I'm going

1 to be looking at it and allowing him to lay his predicate and
2 finding that he is testifying that he keeps them all in this
3 fashion, I think one could argue that it is business record,
4 with enough authenticity based upon his signature and him
5 saying he saw it signed, one could argue whether or not these
6 individuals understood what they were signing or the ability to
7 understand accreditation. We can get into that later.

8 But I don't see a reason right now where I don't have
9 enough here to let it get in. So I'm going to allow it to be
10 admitted as a business record given that the proffer we're
11 going to hear, that he saw, he met with Mr. Nash presumably.
12 Mr. Nash signed off on this. He saw him sign off on it.

13 That, to me, is going to satisfy authenticity business
14 record-wise, because it is for the truth of the matter
15 asserted. I know that's argued; it's not. But I believe
16 that's a big part of it because accreditation is one of the
17 reasons it's being offered, not just to show he invested in
18 Fidelis.

19 Because remember, even though it says Fidelis, we have
20 a ton of testimony that everybody here knows that those are
21 going to Par Funding. So it's not right -- (inaud.) just
22 because a document says Fidelis doesn't necessarily mean that
23 someone here didn't testify and explain that they understood
24 the money was going to go funnel from Fidelis to Par Funding.

25 So that's not as to me relevant in terms of the

1 exhibit's admissibility, as opposed to the idea that its
2 accreditation which is for one issue in the case.

3 **MS. BERLIN:** And we're not charging -- accreditation
4 is only relevant as an exemption. We have not charged Fidelis
5 with being an unregistered security.

6 **THE COURT:** But here is the problem: At this point to
7 go through this exercise, it has to have been the fourth time.

8 **MS. BERLIN:** Yes.

9 **THE COURT:** I would rather the defense put on whatever
10 they think is going to be relevant for them, and at closing,
11 provided it satisfies the rules of evidence, at closing let him
12 synthesize this for the jury. At this point the Court -- I've
13 spent, what, three hours going through all the counts last
14 week? If they believe in the heart of hearts this is relevant,
15 let them put on their case. I don't have a problem with it.
16 So you are going to get this admitted.

17 I will also say generally, as we continue on with
18 Mr. Furman's testimony, I'm going to be liberal in the idea of
19 state of mind. So as long as we don't get something into
20 something that I think is being offered for the truth of the
21 matter asserted, you know, the contents itself, if it's going
22 to the state of mind because we know scienter is an issue here,
23 we know what he thought was going on as an issue, general
24 statements, without getting into too much nitty-gritty and
25 trying to advance in truth and gospel, I think if they can be

1 connected to what he thought was a situation or what he thought
2 was a default rate or what he thought it was a lack of a
3 criminal record, I'm going to allow there to be some
4 questioning on that, but I want the SEC to know that I'm going
5 to give them a little wiggle room on that if I can see some
6 state of mind. At this point, I think it makes for a cleaner
7 record, and I think that the SEC will be able to explain these
8 issues themselves at closing and whether they're relevant or
9 not. I think it's the easiest way to do it. So go ahead and
10 bring it in, and we'll go from there.

11 Defense understands? You are going to have that
12 bandwidth to do it.

13 **MR. HYMAN:** Thank you, Your Honor.

14 **THE COURT:** Let go ahead and bring them back in,
15 please. The exhibit number for that is 2207.

16 (Thereupon, the jury entered the courtroom.)

17 **THE COURT:** Okay. Please be seated, everyone. We're
18 going to pick up where we left off. Can everyone go until
19 maybe 5:30 so I can get ahead of it? Is that all right? Let's
20 go for another 45 minutes or so and regardless where we are,
21 we're going to break by 5:30.

22 Go ahead, Counsel.

23 **MR. HYMAN:** So we're publishing what's been marked as
24 DE 2207.

25 **THE COURT:** That has already been admitted

1 understandably over SEC's objection. It will be admitted at
2 this time and that can be published, yes.

3 (Thereupon, the exhibit was admitted into evidence.)

4 **BY MR. HYMAN:**

5 Q. Do you see this document?

6 A. **Yes, I do. Yes.**

7 Q. Is it a promissory note that Mr. Nash executed?

8 A. **Yes. Correct.**

9 Q. And this promissory note was prepared by counsel, correct?

10 A. **Yes, the original document, correct.**

11 Q. And that counsel was Mr. Weingold?

12 A. **Correct. My securities attorney. Yes.**

13 Q. Did you ask Mr. Weingold -- or was Mr. Weingold -- or were
14 you under the impression that Mr. Weingold had done independent
15 research into Par Funding or other entities where you would be
16 invested?

17 A. **I didn't pay him specifically to do background check or
18 underwriting. But yes, we went over the entire investment, we
19 went over who it was. He worked with other fund managers, from
20 what I was told, and did what -- everything that I paid a
21 securities attorney to do in order to file the documents
22 correctly.**

23 Q. And under this document were you required to invest the
24 money with Par Funding?

25 A. **Oh, no, absolutely not. That was one of the general --**

1 major discussions in the beginning was that if I wanted to
2 invest in other companies or other merchant -- in that
3 industry, that specific guidance of where I could look at. But
4 yes, I did not have to invest in Par Funding specifically, no.

5 Q. And is there the reason why you only invested in
6 Par Funding?

7 A. Well, like I said, I looked at other companies -- again, in
8 the beginning this was something that came across and really
9 fit the -- not only did they have an entire program for not
10 just me, but any other fund managers across the country, so I
11 had back end support. It was a company I was very impressed
12 with. You were -- they gave you the open access to themselves
13 as much as -- more than other companies. But also it was
14 really fitting the timeline for the investment.

15 A lot of the annuities that I did were guaranteeing
16 but they were long term. They were ten years, 12 years, seven
17 years was the shortest. So this being a shorter term, we were
18 looking for income producing, so yes, some of the other
19 companies didn't pay monthly payments, didn't pay quarterly
20 payments. That didn't really fit what I was looking for.

21 So as I -- throughout the time period, I always was
22 pitched many investments and always liked the industry because
23 it was a short-term -- shorter term investment opportunity than
24 most of the companies, predominantly one to three years. And I
25 did -- it was very serious specifically in 2020, I got very

1 close and were in talks -- and again, the pandemic really did
2 do a number on a lot of different companies. And I was looking
3 at one completely, even after the pandemic, if I was able to,
4 which obviously did not come to fruition.

5 Q. So I'm showing you what's on the screen as Exhibit 2213.

6 A. Correct. Yes. Now I see.

7 Q. Do you recognize this document?

8 A. Looks like the same document. Probably somebody else, but
9 yes, it's part of the subscription agreement. This would be --
10 there's, like you said, there's A, B and C, and then DE was
11 really just the certificate that we would give.

12 MR. HYMAN: And then, Your Honor, would you mind
13 taking this out of the jury's view, unless the SEC is willing
14 to -- subject to their prior objections, (inaud.) agree to its
15 admission?

16 THE COURT: Sure. We can take this down for a second.
17 And I assume --

18 MS. BERLIN: The PPM is a business record?

19 THE COURT: It's already admitted, I think. This is
20 the exact same thing with the same appendix; is it not?

21 MS. BERLIN: No objection.

22 MR. HYMAN: Same documents executed by different
23 investors.

24 THE COURT: Correct.

25 MS. BERLIN: No objection, absolutely not.

1 **THE COURT:** So that will objection -- there is no
2 objection. And let me restate it then, because I think I
3 overruled an SEC objection the last exhibit, but it was the
4 same grounds. So given that there's no objection to the prior
5 exhibit or any of these exhibits, which were all the same, so
6 ladies and gentlemen of the jury, they're all going to be the
7 same, but you're going to have different signatories on the
8 appendices, but those will all be admitted without objection.
9 So we can move those in, and we can show the jury.

10 Just make sure we identified them by exhibit number,
11 please.

12 **MR. HYMAN:** Correct.

13 And so for purposes of brevity and to speed this
14 along, we're going to be moving 2165, 2166, 2207, 2213, 2214,
15 and 2215 through 2217 into evidence.

16 (Thereupon, the exhibits were introduced into evidence.)

17 **THE COURT:** Okay. And again, to be clear, those are
18 all the same thing, just different investors and the
19 appendices, right?

20 **MR. HYMAN:** Correct.

21 **THE COURT:** Those will be admitted at this time.

22 (Thereupon, the exhibits were admitted into evidence.)

23 **BY MR. HYMAN:**

24 Q. And isn't it true that the promissory notes I've shown you
25 are for basically Mr. Barth, Mr. Nash, Mr. Renner and

1 Mr. Reikes?

2 A. This is Mr. Reikes? Yes. This was his original -- he only
3 invested for one year and has not been invested since a year
4 from February.

5 Q. And Mr. Reikes, did he ever invest in Par Funding itself?

6 A. No, he invested into my Fidelis Financial Planning fund.

7 Q. And Mr. Nash, did he ever invest in Par Funding directly?

8 A. No, not at all.

9 Q. Did Mr. Barth ever invest in Par Funding directly?

10 A. Absolutely not.

11 Q. And Mr. Renner ever invest in Par Funding or CBSG directly?

12 A. Mr. Renner, no.

13 Q. Okay. So none of them actually, in fact, executed a
14 promissory note with respect to Par Funding?

15 A. Not that I've ever been aware of, no.

16 Q. And did you ever tell them that they would be investing
17 directly in Par Funding?

18 A. Not directly, no. They were invested -- as I said, I've
19 explained it to every single individual the process of why they
20 were investing in my fund. That they would -- there's no
21 access to Par Funding. They would not accept their funds.
22 They wouldn't accept their phone call. It was an opportunity
23 that was available for me, just like many other investments
24 that I offered that -- you could call that company and they
25 would not take your money. You could try to do that, but it

1 was through the relationship that I had, and it had to go
2 through my fund if you wanted to invest. It was through
3 Fidelis Financial Planning. They knew the name. Just like
4 many counsels here have confused Fidelis this, Fidelis that. I
5 had a lot of -- if the fund was called -- I understand Fidelis
6 is not an everyday word, but yes.

7 Q. And with respect to these investors, how often did you
8 speak with Mr. Nash?

9 A. Mr. Nash was a frequent flyer. He probably called, I mean,
10 called once a week. I mean, stopped in every once in a while.
11 Like I said, he was at least a couple of times a month. I've
12 been to his house. We've met for lunch and things like that.
13 Yeah.

14 Q. And how often did you meet with Mr. Reikes?

15 A. Mr. Reikes was not as similar. Like I said, he only
16 invested for a year. His principal was returned. He got all
17 of his interest. I met him at the event. I know he came to --
18 he was a tax client and he came and met for one of the dinner
19 or lunch events. I know he was at an event, him and his wife.
20 And I met him at Christmas parties around town. But that was
21 about it. He was not a frequent flyer.

22 Q. And Mr. Barth?

23 A. Mr. Barth was -- he had a lot of other annuities with me,
24 insurance policies, other investments. You know, like I said,
25 he was probably once a month, if not -- or a couple more. I

1 mean, while we're in the middle of doing insurance and other
2 annuities in his financial plan, there's a lot of work --
3 there's a lot of work to set up your financial plan when you
4 first come in. First of all, we're meeting -- like I said, I
5 do talk a lot, so it's going to be two to four hours for us to
6 generally get to know each other, learn how I work, how -- all
7 of the different relationships I have. Whether he would use
8 one of the attorneys that I could refer him to or accountants
9 that I could refer him to. If he needed any other service,
10 homeowners and automotive.

11 And then once we started doing applications or
12 actually investing his funds, Mr. Barth specifically had a few
13 different annuities with me, those take multiple meetings, a
14 couple of different weeks. There were transfers they involved.
15 So yeah, we had to meet -- he had to stop in. Some were much
16 shorter than others. And we would -- it would be many times
17 per month. We might meet five or ten times in one month if we
18 were getting something done. And then we might go a month or
19 two without seeing each other. But we would not really go more
20 than a month without talking. We would always have reviews for
21 various investments. They were staggered on purpose. We would
22 not put too much money in one spot typically.

23 Q. And with respect to these investors, you previously
24 testified that you disclosed the regulatory action?

25 A. Once I found out. We've had discussions, just like -- you

1 know, once I found out about New Jersey, again I was told by
2 Par that that was resolved and so we went over the fact that
3 also it was a state order. Once we found out about it --
4 again, we didn't -- I don't live in New Jersey, I didn't work
5 in New Jersey, none of my clients did. It was not in the State
6 of Florida. It was not -- they didn't shut them down. And
7 from what we were told, they explained it, it was not a good
8 thing, nobody wants to have a -- even if it's a no admit/no
9 deny, or even if there was or was not a fine, it was still --
10 the regulars were looking at them, and they did not come in and
11 freeze the entire company like they did today. Or when this
12 case started. That would be a completely different faction.

13 But they were -- when New Jersey was resolved, again,
14 that was a -- I was happy to see that. That they spoke to
15 regulators and it was for actions that were taken by Par or
16 actions -- how do I restate this?

17 That fine was for the same action, from what I was
18 told, from using solicitors' agreements before I even met
19 Par Funding. When I went up there, that was the reason that
20 they had the recruiting event was to open funds, private equity
21 funds. And so the fine that they got or did not get from each
22 one of those two states were for those actions before I had met
23 them. And so they were no longer doing that. They had told us
24 that they had spoken with regulators and the proper legal
25 matter was to use a fund. And to be a fund -- have a fund

1 manager.

2 Q. So going back to that, it was your original understanding
3 that New Jersey fined Par Funding, but then retracted the fine?

4 A. Well, I had learned from Nardelli, again, that Pennsylvania
5 had fined them. Or they were doing the no admit/no deny and it
6 was, you know, \$499,000, which to me is a large amount, but
7 under a couple billion dollars of money that Par Funding was
8 doing, in a grand scheme, I understand that they were able to
9 absorb that, which nobody wants to. And then I was told that
10 New Jersey was following in that foot steps, in the sense, for
11 the same or similar matter.

12 And as you can read, once I was able to look it up,
13 that they were fined for not having proper registration. From
14 what we were told, they were filing that proper registration.
15 And then whether he used the word "retracted" or "resolved," I
16 know I saw in writing resolved, but I apologize if I used the
17 word retracted instead of resolve, but I do not believe that
18 they actually paid the New Jersey fine. But whether they did
19 or they did not, I was told they didn't.

20 Q. And going back to when you visited the offices or when you
21 went to the first event, was your impression that due diligence
22 had been conducted with respect to Par Funding?

23 A. 100 percent. I mean, they used a dollars figure of how
24 much they paid Pauciulo to do due diligence, specifically on
25 Par Funding to look at financials. There was videos from the

1 attorney that you can watch that was portrayed to us and shown
2 to us. This was not from secondhand. I met with that
3 attorney, I -- the amount of attorney -- 300-plus attorneys in
4 a law firm is a very large law firm. He worked for the SEC
5 for, I believe it was --

6 MS. BERLIN: Your Honor, this is not an attorney that
7 he's hired.

8 THE COURT: Understood. Understood.

9 A. Part of the event.

10 THE COURT: Let's move on. Next question.

11 BY MR. HYMAN:

12 Q. And as time went on -- let's see.

13 So with respect to the termination of your
14 relationship with Dean Vagnozzi -- or sorry, ABFP Management,
15 let's take it back to ABFP Management.

16 A. Correct.

17 Q. You didn't deal with Mr. Vagnozzi that much in terms of the
18 flow of funds, did you?

19 A. Probably not ever. I don't think he would have known what
20 I was doing or what my fund was doing. And that was -- again,
21 it was his accountant team that I dealt with. And it was
22 Alexis Abbonizio would send over back and forth the actual
23 executed notes from Par. But I dealt 100 percent with -- they
24 wanted me to deal with Michael Tierney, who was their
25 management -- manager. He was a younger guy. I thought I had

1 a lot more experience than him, but he was in charge of us.
2 But I pretty much dealt with the accountants themselves when I
3 called. Or Anita, which was, I believe ABFP's Management or
4 office manager, who answered the phones really.

5 Q. And did you go back and verify all the numbers and
6 information from ABFP Management as it came in?

7 A. Yeah. Once I found one mistake, that was where I pretty
8 much had to -- they did the actual clicking the button of a
9 wire, but, you know, when they sent these forms, and it would
10 show -- because this was not a one time a month. It was a 10th
11 of the month, and the 25th of every month.

12 So if somebody invested -- and I used that word
13 loosely, invested -- if you came into my office on the 1st of
14 the month, again, it was not a one-meeting type of investment.
15 This was something that I generated over time, so we usually
16 meet a few times.

17 If you had a check in hand or a wire to my fund even,
18 which it really was never wires, or from an IRA, if it was
19 available into my fund on the 10th, it would not be invested
20 until the 25th. And in order to be invested on the 25th, it
21 had to be ready, you had to have notes executed by, I believe
22 it was the 20th. So everything was about timing. And so all
23 of the investors that were ready for the 25th were executed a
24 note on the 22nd. And then that was where I would have to
25 communicate constantly with ABFP Management company, and to try

1 to get individuals because they wanted their funds invested.
2 You didn't want to give me a check for \$100,000 and let it sit
3 there for a month without earning any interest. And yes, so
4 they wanted to get in on the next rollover or the next cycle,
5 which was the 10th or 25th. So there was constant every single
6 day regarding each one of them. I had communications with ABFP
7 Management. And that's really where -- the reason why I had to
8 double check the work. Because one, I don't -- I didn't
9 really -- a lot of little things to get those straight there.
10 And I did from time to time.

11 Q. And you also -- speaking of Perry Abbonizio and Mr. Nash,
12 do you know whether or not Mr. Abbonizio and Mr. Nash ever
13 spoke directly?

14 A. Yeah. Like I said, Mr. Nash came to quite a few events.
15 He wanted his -- and he was not lying. He was drenched and he
16 came in soaking wet on that one event, and Perry pointed him
17 out, maybe he was not in the right place. But it was a rainy
18 evening that time.

19 I know they spoke on multiple occasions. Perry was
20 the only representative that ever came down for any of the
21 events, but Mr. Nash came to a couple of dinners and a couple
22 of lunches. I believe it was four off the top of my head.

23 Q. And did you ever participate in any phone calls with
24 Mr. Nash and Mr. Abbonizio?

25 A. Yes. During -- when the pandemic hit or Corona. Again,

1 they halted payments as of -- I think it was March 25th. Then
2 when we were -- I was trying to obviously -- when we were
3 locked in our houses, speaking to each and every investor,
4 trying to assess what was going on and not just the world but
5 with this investment going forward.

6 Perry very graciously would do three-way calls with
7 every single one of my investors, because I wanted somebody
8 firsthand so it wasn't only taking my word for it, because we
9 only had that the phone at my point. And many of my clients
10 did not Zoom or FaceTime.

11 So there was -- computers wasn't a thing to some of
12 those. So phone calls was as much as we could do. So yes, as
13 I've tried to say, I've always given as much access to an
14 investor as I can, even if it was from the other attorney, I
15 would give them their view, whatever I heard from my attorney,
16 whatever I could give them during CORONA, as much information.
17 So Perry did three-way phone calls with every one of my
18 investors during the pandemic, in March/April, before the
19 amended note. He spoke to them as the head of investor
20 relations.

21 Q. Did you rely on Mr. Abbonizio to make the appropriate
22 disclosures?

23 A. One thousand percent. He was one of the heads of
24 Par Funding. Why would I not.

25 Q. And you knew that Mr. Abbonizio was also represented by

1 counsel at the time?

2 MS. BERLIN: Your Honor, objection. That's not
3 relevant.

4 THE COURT: That's not relevant. Move on. That's
5 sustained.

6 BY MR. HYMAN:

7 Q. And you don't read Bloomberg much, do you?

8 A. No. If anything, I would use one of the television
9 screens, our television station that has the tickers at the
10 bottom on the background on mute, but I never in my entire life
11 have paid for Bloomberg. If I get mass e-mails of the free
12 dailies, I get them from every single news outlet in the
13 country, and it's probably because you're on an auto e-mail.
14 But I have multiple e-mails.

15 So no, because I'm in insurance, I'm pretty much on
16 those lists regardless. But no, I did not subscribe or utilize
17 -- I don't believe much of what I read in the newspaper because
18 I can show you many examples of where it's completely false.

19 Q. Were you ever given access to Par Funding's insurance
20 policies?

21 A. Absolutely not. Before this suit, other than I knew that
22 they had some type of insurance. Again, not only investment in
23 any way, it was a hundred percent between Par Funding and some
24 of their merchants in some capacity to help their portfolio,
25 but I never was told it was on every single merchant, I never

1 was told how it covered them, other than it was on default.

2 If they defaulted, then it would ensure whether it was
3 100 percent, 20 percent. I was told this is a new part of our
4 product, our lineup we're offering it. It is built into that
5 factor rate. It is not cheap from what I was told.

6 And so -- but it came out of the merchant. It was not
7 an ad -- it was not going to lower the revenue for the company,
8 but they would make it available to those merchants over or
9 under a certain amount. I think it was over -- it said it in
10 the brochure. And that's where I had to do some explanation to
11 that and ask them questions.

12 But no, there was no me being in insurance, and it's a
13 completely different license for homeowners and auto, which is
14 what I called P&C, property and casualty if you ever worked in
15 insurance.

16 Q. Okay. And you were never given access to the bank
17 statements of Par Funding, were you?

18 A. Oh, absolutely not, no. And I did ask to have more
19 financials, whether it was for me or an actual accountant or
20 attorney to look at, but they said the only person that had
21 access to that and signed an NDA would be that John Pauciulo
22 individual, attorney.

23 Q. And you never had access to a report concerning the number
24 of lawsuits that were filed, did you?

25 A. No. And still, I mean, relevancy of that, like I said,

1 they did, I don't know, tens of thousands of advances over
2 time. Whether there was a thousand lawsuits for a penny or one
3 lawsuit for a million dollars, that still can be twisted and
4 portrayed differently. I mean, I can tell you different facts
5 right now.

6 Like I said, it could be just about some profit, it
7 could be about the entire amount. There's no way to know from
8 that, just like for me to have to go online to all 50 states
9 and try and look at up federal and state, I think it is for
10 lawsuits, the difference between the two or how to even search
11 for that. I couldn't tell you.

12 Q. And did you know where the borrowers of Par Funding were
13 located?

14 A. The actual merchants?

15 Q. Yeah.

16 A. I live in the one or two -- I think Ms. Berlin put one on
17 the screen here of the onsite inspections. They provided
18 basically two onsite inspection reports to us. I believe it
19 was in their brochure. One was of a trucking company. I think
20 it was South Carolina. It might not be. It was basically
21 desolate. The whole point of those two onsite inspection
22 reports was there was a pharmacy, Rx pharmacy, and it was to
23 show, hey, they went in, they did a picture of their business
24 licenses.

25 It was a family pharmacy. You could see it was

1 running. Whether it was profitable or not, that's not for me
2 to say. That was a good onsite inspection, that they were
3 there. That was the purpose behind an onsite inspection, which
4 hopefully makes sense.

5 Then there was the trucking company. It was ABC
6 Trucking. I don't know even know what the name of it was. But
7 this is the reason you do it, because they went out there, they
8 applied, they said they had great cash revenue on a note ten
9 thousand dollars a month or a hundred thousand dollars a month.

10 THE COURT: Slow down.

11 A. And there was -- when you went out there, you could see in
12 the photos, it was a parking lot. It was a desolate parking
13 lot. It was a building that was run down, and there was a
14 couple old trucks that probably wouldn't move.

15 So they might have some financial statements or forged
16 it, but when you went out there, that was a company you would
17 not want to lend to. And the other one was a pharmacy. That
18 was a real company and it was actually doing well.

19 So that was really the only onsite inspection access
20 that we had, was those two page printouts, and it was from a
21 third-party company. It was not Par Funding. They never
22 represented they were sending anybody out there, whether they
23 FaceTimed or did it in person, but it was called an in-person
24 onsite inspection.

25 BY MR. HYMAN:

1 Q. And do you have an understanding -- what was your
2 understanding that Par Funding issued loans to businesses
3 throughout the country, right?

4 A. Yeah. I mean, I don't think they were concentrated on any
5 one area. I would figure that the Northeast, since that's
6 where their headquarters was located. I know they had a Miami
7 sales call center but all over the country, yes.

8 Q. So you would have no idea as to where any concentration of
9 lawsuits would be, would you?

10 A. Absolutely not. There was Texas -- not Texas. There was
11 South Carolina and North Carolina, I think were the two onsite
12 inspections. But other than that, no, I would not have access
13 to any names of companies that they had. It was mom and pop
14 shops. It was different industries that they went over, but
15 industries, not locations, no.

16 Q. Earlier during your cross, you were questioned at length
17 about a Mr. Russ and Ms. Renee Meyer.

18 Do you recall that?

19 A. Yes.

20 Q. So going back through it, when did you first meet
21 Mr. Meyer?

22 A. Mr. Meyer, probably 2016 or early 2017. I think it was
23 early 2017. Because of this case, I looked at it. But he came
24 to me through JD Mellberg, which is an annuity wholesaler or
25 IMO.

1 **THE COURT:** We need to keep the questioning just a
2 little tighter in the narrative. My court reporter cannot. So
3 you need to try to break him up. As his lawyer, break him up
4 and get him to answer these questions. This is -- it's your
5 record. So I'm telling you. She's doing everything she can.

6 **BY MR. HYMAN:**

7 Q. Gotcha.

8 A. Year? Probably 2017.

9 Q. And he was a client of yours?

10 A. Primarily insurance, yes. Came to me for retirement plan,
11 financial plan.

12 Q. And around that time, how often or how frequently was he in
13 your office?

14 A. Russ would come in. He was still working. He worked at the
15 Florida Power and Light. I'm not sure if that's the name of
16 it, still but our next era energy. He would come in after work
17 a lot. And again, after the first couple of meetings, very
18 general, introduced about annuities, about how I worked. We
19 went over some alternative investments, and as we started to
20 implement the plan, it was applications and follow-ups.
21 Sometimes it was shorter, but as you can see, I talked quite a
22 lot with him. So yeah, he came in multiple times.

23 Q. So prior to see seeing Mr. Vagnozzi's advertisements, did
24 you inform Mr. Meyers about your interest in MCA funds?

25 A. He was interested in many alternative investments because

1 they were a unique -- he was a unique investor. Again, the
2 wife was not Mrs. Meyer -- or Ms. Meyer was not there every
3 time by any means. But it was more - they did not want to a
4 hundred a percent annuities and they were very -- they did not
5 like the stock market.

6 So they did not want to be invested in the stock
7 market for that constant up and down. They believed that the
8 market was very high at that point in 2017, and they were just
9 too scared to have that decline and work their whole life to
10 see that go down and have no income from that.

11 And so we were going to provide that for annuities and
12 alternative investments. They were very interested in that.
13 So I informed them of my trip, looking at many other
14 investments that we were evaluating, alternative investments,
15 and as I do, we talked about premier league soccer, me and
16 Mr. Meyer.

17 Q. So you told Mr. Meyer you're going on the trip, and then
18 after you got back from the trip, you sent him the e-mail that
19 was marked as P 561. After the trip, you sent him the e-mail
20 that's been marked as P 561?

21 A. Yes. I would -- as I told him before I went there, I would
22 provide him with as much information on -- I told him. We went
23 over everything. Again, most of my conversations with any of
24 my clients are going to be conversations.

25 MS. BERLIN: This is not admitted.

1 THE COURT: We're not showing this one.

2 MR. HYMAN: Are you sure about that?

3 THE COURT: Double check for me, please. We
4 haven't --

5 Folks, you don't have it on your screens, right?

6 THE JURY: No.

7 THE COURT: Let's double check.

8 (Thereupon, counsel confer.)

9 BY MR. HYMAN:

10 Q. So when you first started after returning from the seminar
11 with Mr. Vagnozzi, were you trying to start your own fund or
12 did you decide you were going to start your own fund?

13 A. Oh, yes, that was the purpose of going up there. I wanted
14 to definitely start a fund, and I informed them that I -- about
15 all the different investments we spoke about, how it went, what
16 I -- what my thoughts were. Again, most of my -- 99 percent of
17 my business was done in person.

18 Q. And did you invite them to invest in your fund?

19 A. Yes.

20 Q. And do you recall being asked questions about how they were
21 trying to transfer their money into a CAMA Plan?

22 A. Yes. That would be an independent IRA company. One of, I
23 think three or four --

24 Q. (Cross-talk.) And isn't it true that at that time you were
25 trying to get their money transferred over to the CAMA plans,

1 so that they could be funded with you?

2 A. I was setting up my fund, yes. That was the plan.

3 Q. And so when you were setting up the fund and getting the
4 money in there, you were trying to get them to invest in a fund
5 once you created it, right?

6 A. In future funds as well, yes.

7 Q. Also you were trying to help them get their money into
8 other alternative investments?

9 A. Correct.

10 Q. However, wasn't there a delay in getting your fund set up?

11 A. Yeah. It was a lot of delays. There again, it was one of
12 my first funds. I think I only had one other that started in
13 2018. And it was between the attorney, between trying to get
14 it set up properly. Again, I used the wrong name for one fund
15 that I used for my life settlement fund at that same time. My
16 life settlement fund is called MCA Income Management Funds, so
17 that was one discrepancy there. But by the time I had the
18 attorney, by the time we had all of the details set up, it took
19 a couple of months, and I told them that.

20 Q. And did you try to get them to wait for your fund?

21 A. Of course. I wanted them, just like I wanted to a few
22 other people to be, you know, lined up so I could start them
23 off and start off better. But yeah, they were very impatient,
24 didn't want to wait.

25 Q. And you used your best efforts to try to keep them from

1 Leaving your fund, didn't you?

2 A. Well, yes, I didn't want them to go direct or in any way.

3 And actually I wasn't -- like I said, I was not involved for

4 quite a while, but I got some frantic phone calls that they

5 were upset. They were my clients in every other manner, every

6 other investment they had, I'm going to help my clients. And

7 so whether it was before the documents that they already were

8 sent to them and they just couldn't find, or whether it was in

9 their spam, whatever it was, I was going to connect them with

10 Perry to make sure they had some questions answered.

11 Q. And they were trying to get themselves, independent of you,

12 set up with these funds, right?

13 A. That's what I believe so, yes.

14 Q. But they couldn't do it on their own, could they?

15 A. Yeah. They tried, and I guess they had some problems. And

16 again, that's where I interacted --

17 Q. It was just based on technological issues, right?

18 A. Probably terminology, yeah.

19 Q. And so did they -- were you the cause of their decision to

20 invest in ABFP?

21 MS. BERLIN: Your Honor, I'm sorry, calls for

22 speculation.

23 THE COURT: I'm going to allow him to answer. Again,

24 if he knows, I'll allow him to answer.

25 A. I shouldn't -- I don't believe so, no.

1 **BY MR. HYMAN:**

2 Q. And that's because you were trying to get them to invest in
3 Fidelis?

4 A. **I wanted them to. And they eventually did.**

5 Q. And when you were advertising Par Funding through Fidelis,
6 isn't it true you were doing so because Fidelis was investing
7 in Par Funding?

8 A. **At that time, yeah. I mean, it wasn't a SPAC company or a
9 blank check company, correct.**

10 Q. But your intent was to get them to invest in Fidelis, not
11 Par Funding?

12 A. **Oh, 100 percent. There was no -- yeah.**

13 Q. And you received no financial benefit if people invested in
14 Par Funding directly, did you?

15 A. **No, I would not have, and it didn't happen. So no, I would
16 not have either way. I didn't have a solicitor agreement with
17 them. And I don't know how anybody could have, but...**

18 Q. You were asked questions about statements you made to an
19 undercover agent. Do you recall that?

20 A. **Yes.**

21 Q. And you were asked questions about two series of recordings
22 with respect to the undercover agent, right?

23 A. **What you got -- what they played, yeah. It wasn't all of
24 my conversations, but yes.**

25 Q. So the first conversation was approximately when?

1 A. I was driving, as I'm sure you guys heard, across the state
2 to my brother's to meet my niece and nephew. I think it was
3 early '19, I think. I don't remember exactly when that
4 started. It was probably 2019 at some point.

5 Q. And did you hear from the undercover agent for a period of
6 time after that?

7 A. No. That was an introduction. The timeline of that
8 they -- or she represented the family office. I did a general
9 overview --

10 MS. BERLIN: Your Honor, if he's going to testify
11 about this, I would ask that we mute the Zoom, because
12 something could come out.

13 THE COURT: Yes. No. Thank you for that.

14 We'll go ahead and do that.

15 You may continue. We'll have my CRD go ahead. Go
16 ahead to keep answering the question.

17 Yeah, I'll instruct her to mute.

18 A. The -- can I just say "the woman"? I don't want to be
19 rude.

20 Q. Yeah, the woman. That's okay.

21 A. The woman that was introduced to me by Associate Scott,
22 that was potentially interested in investing, like I said, I
23 did that phone call when I was driving across the state.

24 And then, I think we had one follow-up quick phone
25 call that she had. Right after that she disappeared off the

1 radar. Was late 2019, I connected her with Perry because she
2 stated that she was from Chicago and Philadelphia -- I think it
3 was Philadelphia, but her office was in Chicago.

4 MS. BERLIN: Your Honor, objection, hearsay.

5 THE COURT: It's overruled. Most of this is
6 already -- to the extent some of this has already come into
7 evidence, the jury will use their best recollection of the
8 phone call.

9 But let's focus really on what's relevant in the call.
10 A lot of this is background we don't need.

11 A. She was from Philadelphia. I connected her with Perry
12 because she was going to be in Philadelphia and they visited
13 onsite.

14 BY MR. HYMAN:

15 Q. All right. So the next time you met her, why did she
16 approach you?

17 A. Well, she called back after the pandemic hit to see how I
18 was doing, how Par made out, and how I made out in general from
19 the pandemic. And she stated that as a distressed asset she
20 might be interested in buying Par Funding. And again, she had
21 already visited and met with Perry in person up there. I
22 wasn't involved in any of that, didn't know how it went. And I
23 said, look, you can call Perry again, and I connected them
24 again. That was way above my pay grade. I have no ownership
25 or any way to do that. My fund closed.

1 Q. Got it. So after that, do you recall being questioned
2 about the 2020 e-mails that you sent concerning Par Funding and
3 COVID?

4 A. Yeah, the -- yeah.

5 Q. So when Ms. Berlin asked you kind -- about whether or not
6 you had retained counsel, is that what you wrote in your
7 e-mail?

8 A. No. Not at all. I had spoken to my attorney. I didn't
9 know I had to re-retain my own counsel. And as I stated in
10 there, and I had conversations that relay, again, I don't do
11 business through e-mail. That is certainly a way that I can
12 communicate. But we did three-way phone calls between Perry
13 and myself with every investor. I did speak with my counsel of
14 whether it was smart or not. And he stated what I stated in
15 the e-mail.

16 Q. I understand you're a little nervous, Mr. Furman, but try
17 to just answer the questions as --

18 A. My apologies.

19 Q. And, in fact, it was your belief, based on those
20 discussions, that you had a right to sue Par Funding for
21 default on those notes, rights?

22 A. As I said in the e-mail, correct.

23 MS. BERLIN: I withdraw my objection.

24 A. For one to two years.

25 BY MR. HYMAN:

1 Q. And similarly, Ms. Berlin questioned you about statements
2 concerning the fact that you had invested time and energy into
3 the business.

4 Do you recall that?

5 A. **An enormous amount, yes.**

6 Q. And, in fact, you invested portions of your profits back in
7 to Fidelis, right?

8 A. **Yes.**

9 Q. So that statement was, in fact, true, that you had invested
10 a lot into the business, right?

11 A. **Correct. I made a major shift in my company as well to not**
12 **go after other insurance -- I gave up a lot of money in other**
13 **areas to build that one part of my business. Again, it was**
14 **one -- it was 20 percent or 30 percent of it.**

15 Q. And with respect to -- Ms. Berlin showed you the exchange
16 notes, the exchange documents.

17 A. **Yes. Amended.**

18 Q. Amended. Sorry. The amended notes.

19 A. **Mine was amended. Everybody else's was exchanged.**

20 Q. So with respect to the amended documents, she asked you
21 about the disclosures, right?

22 A. **It was part of a package that I received. Again, I had**
23 **severed ties with Dean Vagnozzi and A Better Financial Plan**
24 **Management, ABFP Management, and upon that e-mail from**
25 **management at Par Funding --**

1 Q. Got it. So you had discussed with your attorney the
2 situation -- or isn't it true you discussed with your attorney
3 the situation involving the regulatory actions?

4 A. Correct. And it was in the package I had e-mailed him
5 where he prepared the amended note, came from the 40 or 50-page
6 document that Par Funding Management sent me. So I sent that
7 to my attorney, which included that as part of our discussions
8 and he created my amended note from that.

9 Q. And did you, after that happened, ask him to provide
10 additional disclosures or information?

11 A. Yes. I was very upset, as I can -- as you can show with
12 the texts and e-mails, my attorney provided, I think it was
13 four pages in return. And as I said, I worked very closely
14 with Mark Nardelli, who had -- still was working under ABFP
15 Management. Because again, I was not at that point. And
16 their -- now, given theirs was an exchange note, but it was
17 probably 25 pages, and talked about Corona and the pandemic and
18 those disclosures, everything. And it was just not in my note.
19 So I not only reached out to Perry, who had another attorney,
20 another document with Mr. Weingold, my securities attorney, and
21 I reached out to Mr. Weingold and I wanted more disclosures
22 than that.

23 Q. Okay. However, you didn't need to make those additional
24 disclosures because you had already told all of your investors
25 but these situation, right?

1 A. Verbally, yeah.

2 MR. HYMAN: No further questions at this time.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, that brings us to a perfect point, just at 5:30, so that
5 we can break for the day. So tomorrow, we're going to start a
6 little later. I need everyone to be here by 10:30 instead of
7 10:00. I have a matter in the morning that I have to address.
8 This is not my only case. So sometimes lawyers forget, but
9 it's not my only case. So I've got to take care of a little
10 bit, in fact, the next two days, I believe we'll have to start
11 around 10:30. But it doesn't really change anything. We're
12 still going be right on schedule. My plan tomorrow morning is
13 to allow the testimony of Mr. Furman to completed. And the SEC
14 will get up. And then after that we should, I believe, have
15 maybe one more witness from the SEC. And then after that they
16 will be done with their case, and we'll turn it back to the
17 defense to finish with whatever witnesses they have.

18 I still believe -- it's hard to predict, but I still
19 believe that we may be done with all testimony by tomorrow.
20 Even if we're not, we'll still make it work. We have just the
21 instructions on the law at the end of that, and I am going to
22 meet with the lawyers to kind of work through the packet that
23 we're going to prepare for you guys. So I'm going to figure
24 out when that is. But I can tell you guys right now that my
25 plan is to try to schedule that and not have you guys waiting

1 around for us. So try to put that in the morning slot, maybe
2 even on Wednesday, so that you guys can stay home and won't
3 have to come in until later, so you guys are here when it's
4 ready for you. So we're trying to make all these -- it's like
5 a jigsaw puzzle. Trying to make it all work so that I don't
6 waste any of your time. All right.

7 So obviously we're getting to the end of the case. I
8 mean, we really are. We've probably got another couple of days
9 of testimony tops. I want to remind you guys to please
10 continue to keep yourselves focused on the evidence and keep an
11 open mind /there's still a ways to go. You haven't even heard
12 the law that applies in the case and you haven't heard the
13 closing arguments from the lawyers. All of that stuff is very
14 vital. So continue to keep an open mind until every witness is
15 heard from and we're done with all the arguments and
16 instructions on the law.

17 When you get home, again, I know I sound like a broken
18 record, but it's important I remind you not to do any
19 independent research, not to look up people, places or things
20 online, not to ask family or friends for help, not to tell
21 family or friends about the case. You are, of course, free to
22 let them know that we're on pace to finish Wednesday/Thursday
23 thereabouts. Okay. You can let them know already that's the
24 schedule and that your judge is pushing to see if we can get
25 done a little earlier.

1 But, of course, no postings on social media about your
2 service, no information should be put on the internet, any
3 website, chat room, things of that nature. And, of course, do
4 not discuss this with one another either. I know the
5 temptation is there. You all probably want to sit down and
6 start sorting out what you've heard. You guys will get a
7 chance to do that in a few days. Just hold off on that. Don't
8 start deliberating with each other until the end of the case.

9 And if you see the lawyers when they come in tomorrow,
10 please continue to avoid them as you've done, and they will
11 avoid you. You should take no offense from that.

12 So with that being said, let's make sure to leave our
13 notepads in the room. And we'll see you all promptly. If you
14 could get here by 10:15 so we can get started. You know that I
15 can't start without all of you here. So 10:30 start.

16 Have a great evening. Get home safe. You guys are
17 excused.

18 (Thereupon, the jury exited the courtroom.)

19 **THE COURT:** So let's do a little bit of housekeeping
20 so that we are all on pace for tomorrow. So the plan, I
21 believe, would be to have the SEC do their -- kind of like a
22 hybrid redirect in the morning of Mr. Furman, and then I think
23 your impeachment witness would will be after that. Is that
24 correct? That's the last witness from the SEC, the agent, if
25 you're going to call him?

1 MS. BERLIN: Yes.

2 THE COURT: And he's available in the morning?

3 MS. BERLIN: I have to check with him, but I think
4 he's available -- I think he's available any time tomorrow.

5 THE COURT: Okay. I think realistically, I mean, I
6 don't know, it depends on how far you go. But assuming that
7 your examination is about an hour, let's say like Mr. Furman, I
8 don't know how long you think it might take, there is a
9 potential to start at 10:30, which is my hope, that we could
10 have Mr. Furman done by, let's say, 11:30. And the only thing
11 I have tomorrow is I believe -- let me double check if I have
12 any sentencings as I did today during the lunch hour. I may
13 not. In case we could try to have your witness come on before
14 the lunch break. Let's see.

15 MR. HYMAN: Your Honor, and granted we have to see
16 what the SEC ended up asking, but we would at least for the
17 possibility of some limited re-redirect because this is --

18 THE COURT: Yeah, I hear you. I expected you to ask
19 for it. I'm still keeping that possibility open as well
20 because of the unique situation of the way I combined it. So
21 just let me know. It would be brief anyway. I'm willing to
22 let you do that and let you have the last word on that. If we
23 do that, it wouldn't be a big problem.

24 Even if we do that, I think realistically, we're
25 finishing with Furman tomorrow in the morning by lunch. And

1 then I have one change of plea at 1:30. So assuming we go --
2 let's say we start at 10:30. We finish with his redirect and a
3 possible limited re-redirect. Really almost a recross, I
4 guess, for rehabilitation purposes. Then we will have our
5 lunch break.

6 And then we will come back probably around 2:15 or
7 thereabouts to get our impeachment with this on. So I think
8 you can probably tell your agent realistically, it's probably
9 after lunch. I think I have the agent here by 1:30, 2 o'clock.

10 **MS. BERLIN:** Okay. Thank you.

11 **THE COURT:** Let's just focus on finishing Mr. Furman's
12 testimony in the morning. Now, once the agent is done, we
13 obviously time tomorrow afternoon. So I need to know from the
14 defense the plan for who is going to be called tomorrow
15 afternoon, because we have now covered Joe Cole. We'll have
16 been done with Mr. Furman. We have Kristin Groleau is done.
17 Do we have Christine Furman? Is that the one witness we'll
18 have tomorrow afternoon?

19 **MR. HYMAN:** Yes, Your Honor.

20 **THE COURT:** That works. I can't imagine she will be
21 very long. And then you guys will let me know, I trust, in the
22 morning. If we plan on calling any of the main calls, we know
23 that Manuel and Stoller are not being called, and you're up in
24 the air on Weingold and Vagnozzi.

25 Can you let me know tomorrow morning? Because that

1 way I can see if you're going to call either one, then
2 obviously I think we can squeeze them in. If you are not going
3 to call them, then I think we're going to be in very great
4 shape in terms of timing because that would mean Furman in the
5 morning, last SEC witness agent in the afternoon, Christine
6 Furman, and then everybody is done.

7 So -- and if I need to squeeze one more witness on the
8 defense side, I don't think the witnesses are going to be that
9 long. So I need the defense to let me know if anyone else
10 other than Furman plans on testifying and have that person
11 available mid to late afternoon tomorrow, please, because I
12 think we have a very strong opportunity to have everybody rest
13 in the juror's presence, and then we can get into charging
14 conference on Wednesday morning at 10:30.

15 And I think that's going to be very effective. And
16 Wednesday is bringing them back at 2 o'clock to do closings.
17 So that's the timeline as I see it. And I think we're right on
18 time to put this in the jurors's hands early Wednesday evening,
19 and then that way they can take whatever time they want on
20 Thursday to keep deliberating and if they need it, because
21 we'll have that whole day uninterrupted when they can come
22 back. So even if you put in their hands by 5:00 o'clock or
23 4:45 or something, they can pick a foreperson, get their ideas
24 sorted out, and then we can have ourselves deliberations going
25 into Thursday.

1 **MS. BERLIN:** That sounds good. And if we have an
2 issue with the agent availability, we won't let it hold it up
3 because we can just call him on rebuttal.

4 **THE COURT:** Yeah. That's true. We could.

5 **MS. BERLIN:** He could go either --

6 **THE COURT:** Yeah, he can go right after. That's fine
7 either way. In fact, to that point, I think we need to make
8 sure -- because I think that no matter which way we dice it,
9 Mr. Furman will be in the morning. So I think what we should
10 do is if you want to let Christine Furman know, she should be
11 able after lunch tomorrow. You have to have her ready, so you
12 have to have here no earlier than 2:00.

13 **MR. HYMAN:** It's going to be real hard to get
14 Mr. Furman's mom to court tomorrow.

15 **THE COURT:** So we'll make sure that's available.
16 Yes?

17 **MR. JOHN:** For closing will you allow the same thing
18 for opening, to walk with the mics.

19 **THE COURT:** Yes, same thing.

20 We'll talk more about the time, but we're going to let
21 you guys walk around. The one thing we're going to want to
22 make sure you do on closing is exchange demonstratives so that
23 I can make rulings or slide or things like that, so I can
24 handle any objections and we do don't have them breaking up
25 anyone's closings.

1 So any other housekeeping issues? I think that, you
2 know, to the extent that we have given favorable latitude, if
3 you will, I think, to allow the defense to put on their case, I
4 think given that we got these things in, most of the stuff
5 about the state of mind. And you might get a little extra
6 recross tomorrow. I think all the issues you want to get in
7 for his mental state are going to be obtained by the defense,
8 so let you put on a fulsome defense which is the Court's goal.
9 That's going to be fine. And you guys, again, just let me know
10 on the redirect, but I'm comfortable giving you a spot.

11 **MR. HYMAN:** For the record, you've got to give us
12 credit for moving quickly.

13 **THE COURT:** Look, part of the benefit, of course, this
14 is going to be Zoom and let you guys move right into stuff
15 without having to belabor it. And I mean, truthfully, we had
16 so much direct material from Mr. Furman that I think you guys
17 were able to narrow down the focus, which is good.

18 So you can leave -- leave all that there. The only
19 thing tomorrow is this 1:30 change of plea, but that's not even
20 going to impact the binders. One person is going to come in.
21 It's not going to mess with you guys. And no one is going to
22 come in until 10:30 anyway. So leave everything in here. You
23 don't have to do anything with it, with your binders.

24 Is there anything else on the SEC's side, like
25 housekeeping stuff that I need to address?

1 MS. BERLIN: No, Your Honor. Thank you.

2 THE COURT: I granted at the motion already as we're
3 sitting here, so you're up and running.

4 MS. BERLIN: Wait. We have to file a response to a
5 motion midtrial?

6 THE COURT: No, no, no. No, no, no. It was a
7 memoranda he filed regarding the issue of the integration. He
8 filed a memoranda for the Court as an exhibit. I just deemed
9 it filed. He had a motion for leave to file it, and I granted
10 it. We'll discuss that.

11 MS. BERLIN: I thought it was another motion, in trial
12 motion.

13 THE COURT: No, no, no. No, no, no. I just wanted to
14 make sure that that was properly docketed.

15 MS. BERLIN: Thank you. Thank you so much.

16 THE COURT: Okay. Anything on the defense side?
17 Guys, we're good?

18 MR. HYMAN: Yeah. To be clear, we're going to be
19 anticipate doing closings Thursday?

20 THE COURT: I mean, I think Wednesday.

21 MS. BERLIN: I think Wednesday.

22 THE COURT: Almost certainly Wednesday afternoon.
23 Wednesday afternoon is what it looks like.

24 MR. HYMAN: Okay.

25 THE COURT: So I think Wednesday afternoon. Starting

1 Wednesday morning will be charge conference at 10:30. Look, I
2 haven't gone back and looked at the recent iteration of jury
3 instructions. I don't know what kind of shape we're in. We
4 may not need that much time. So if we don't -- one thing is I
5 won't have you guys close until Wednesday afternoon. So if for
6 whatever reason we finish it in an hour, you guys are off. You
7 collect your thoughts, eat, do whatever you need to do before
8 closings. But I think Wednesday at 2 o'clock is our target for
9 closings.

10 **MS. BERLIN:** That sounds good, Your Honor. Thank you.

11 **THE COURT:** With that being said, we're in recess
12 until tomorrow at 10:30.

13 **MS. BERLIN:** Thank you. Good night.

14 **MR. HYMAN:** For me, it's I've got a specially set kind
15 of trial thing Thursday, and the Court said basically I have to
16 let him know where -- this is Wednesday night.

17 **THE COURT:** Let them know -- state court?

18 **MR. HYMAN:** Yeah. County court.

19 **THE COURT:** I wouldn't worry. Let the county --
20 Broward or Miami-Dade?

21 **MR. HYMAN:** Palm Beach. Actually, no. Broward, but
22 yeah.

23 **THE COURT:** Let the judge know that you need to be
24 here. Because look, let's assume for some reason that they're
25 deliberating. There could be juror questions and I want you to

1 be here. So just let him know that we plan on closing. The
2 judge says either Wednesday or Thursday closings, and so the
3 Court has asked that I be present if they can reset.

4 **MR. HYMAN:** Would you mind -- the judge already agreed
5 to reset. If you wouldn't mind entering a paperless order
6 saying Mr. Hyman shall be at the court Thursday --

7 **THE COURT:** No. He doesn't need that. If he has a
8 question, he can call my CRD. Do it like that. Just say:
9 Judge Ruiz said if there's any concerns about timing, to please
10 just call my chambers. Give him my phone number and I'll cover
11 for you. You will be fine.

12 **MR. HYMAN:** Thank you, Your Honor.

13 **THE COURT:** Yeah, that's fine. All right. We're in
14 recess.

15 **MS. BERLIN:** Thank you, Your Honor. Have a good
16 night.

17

18

19 (Thereupon, the above portion of the trial was concluded.)

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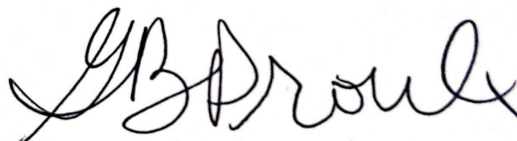
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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



12/14/2021

DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

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zach@millenniallaw.com
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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**
Plaintiff **December 14, 2021**
vs.
**COMPLETE BUSINESS SOLUTIONS
GROUP, INC, et al,**
Defendants.

TRIAL DAY 7
BEFORE THE HONORABLE **RODOLFO A. RUIZ, II,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **AMIE RIGGLE BERLIN, ESQ**
SECURITIES AND **ALISE M. JOHNSON, ESQ**
EXCHANGE COMMISSION U.S. Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANT: **ZACHARY P. HYMAN, ESQ**
MICHAEL C. FURMAN Millennial Law
501 E. Las Olas Blvd, Ste. 200/308
Ft. Lauderdale, FL 33301
(954) 271-2719
Zach@millenniallaw.com

ELROY M. JOHN, JR., ESQ
Florida Justice Law Firm, PLLC
101 NE 3rd Avenue, Ste. 1500
Fort Lauderdale, FL 33301
(954) 637-2767
Elroy@onlyforjustice.com

1 REPORTED BY: GIZELLA BAAN-PROULX, RPR, FCRR
2 United States Court Reporter
3 400 North Miami Avenue, Suite 8S32
4 Miami FL 33128
(305) 523-5294
gizella_baan-proulx@flsd.uscourts.gov

03:05 5 Also present: Victoria Jacqmein, Kevin Robinson
6
7

8 I N D E X

9 Witness	Direct	Cross	Redirect	Recross
10 MICHAEL C. FURMAN			6	9
11 CHRISTINE FURMAN	11	26	30	
12 ADAM WEISENSTINE	41	47	53	

13
14
15
16 G O V E R N M E N T E X H I B I T S

17 Exhibit	Marked	Admitted
18 573	27	28
19 587	7	7

20
21
22 D E F E N S E E X H I B I T S

23 (None)
24
25

P R O C E E D I N G S

(The following proceedings were held in open court.)

1
2
3 **THE COURT:** Okay, so back on the record, SEC versus
4 Mr. Furman. We are ready to go this morning. All our jurors
10:59 5 have now arrived. Our plan, based upon yesterday's discussion,
6 was to have Mr. Furman's examination continue through the SEC.
7 And then we'll see where we're at after that. I expect that
8 the SEC wanted to potentially call their witness, the agent.
9 Their additional witness. And I know that they talked about
10:59 10 maybe doing that as a rebuttal, but we'll see what the
11 witness's availability is in just a moment, and then my
12 understanding is, speaking with my CRD, the defense intends on
13 calling one additional witness in their case and that would be
14 the defendant's mother, Christine Furman, that there's been a
11:00 15 decision not to call Mr. Weingold or any of the other to folks
16 on the "may call list."

17 Is that right, Mr. Hyman?

18 **MR. HYMAN:** Yes, Your Honor.

19 **THE COURT:** All right, very good. All right. And do
11:00 20 I have a sense of availability for the SEC as to that one
21 additional witness?

22 **MS. BERLIN:** Yes, Your Honor. 1:00 o'clock, and
23 later. So I wasn't sure what time we were taking the break.
24 We'll be less than 10 minutes with Mr. Furman for our
11:00 25 cross/redirect and we have let him know that it's very brief.

1 THE COURT: So if that's going to be brief, do we have
2 Ms. Furman here? Is she around?

3 MR. JOHN: She's in the back.

4 THE COURT: Oh, great. Okay, good. So what we'll do
11:00 5 is we'll have Mr. Furman come on the stand, we'll finish him
6 and as I stated we'll have -- at this point I don't even know
7 if it's recross, but I'll give you some additional, if you need
8 it, just let me know and you'll get it and then we'll call
9 Ms. Furman up and then we will take our break. By that point,
11:01 10 I would imagine that would take us to the lunch hour, and then
11 we'll have the agent come on sometime after 1:00 o'clock, maybe
12 1:30, and I think that's going to be it.

13 So one of the things that we could do is spend
14 whatever remaining time we have today on charging conference.
11:01 15 It looks like we have time. Because I don't think it's going
16 to be very long for us to be get through the remaining
17 witnesses and that could put us in a position to do our closing
18 arguments in the morning tomorrow as opposed to the afternoon.
19 I prefer that. Only because I hate the idea of putting the
11:01 20 verdict form in the juror's hands closer to 5:00 o'clock.
21 That's not good for anybody. I'd like to have a full day and
22 we can even get them lunch tomorrow, they can start
23 deliberating over lunch. I have a sentencing at 1:30, but my
24 courtroom deputy and I are prepared to get that down the line
11:02 25 so we can get this done.

1 So I think we're in great shape in terms of
2 scheduling. All right. So I don't want to waste any time so
3 we can take advantage of wrapping up this morning.

4 Rita, let's bring in our jurors.

11:02 5 **THE DEFENDANT:** Do you want me to take the stand?

6 **THE COURT:** Yeah. Go ahead and get yourself
7 comfortable.

8 (Thereupon, the jury entered the courtroom.)

9 **THE COURT:** Please be seated, everyone. Good morning
11:03 10 ladies and gentlemen of the jury, good to see you all.

11 So just to give you a little preview of what the plan
12 is this morning before, I we end up breaking for lunch, you may
13 recall that we had the defense get through their examination of
14 Mr. Furman yesterday. We're going to complete Mr. Furman's
11:03 15 examination this morning. The SEC's going to get an
16 opportunity to do essentially a bit of redirect and then I will
17 prompt and see if the defense has any final questions they
18 would like to ask.

19 That is done, in large part, so that we streamline
11:04 20 Mr. Furman's testimony and give equal time to both sides. Once
21 we are done with that, we expect to have only a few witnesses
22 remaining between both the defense and the SEC. That means
23 that there's a very strong possibility that all testimony will
24 be done today, which sets us up for tomorrow being instructed
11:04 25 on the law and closing arguments, and that puts us with you

1 guys deliberating by tomorrow afternoon.

2 So that's our goal right now. So we're right on pace.

3 So with that being said, we're going to turn it back
4 over to the SEC to continue their questioning of Mr. Furman.

11:04 5 You guys all have your note pads I see.

6 All right, thank you, folks.

7 Go ahead, Ms. Berlin, the floor is yours.

8 **MS. BERLIN:** Thank you.

9 Thereupon,

10 **MICHAEL C. FURMAN**

11 having been previously duly sworn, testified as follows:

12

13 **REDIRECT EXAMINATION**

14 **BY MS. BERLIN:**

11:04 15 Q. Did you tell investors that companies like Par Funding do
16 not deal with individual investors, which is the purpose of why
17 they needed your company Fidelis?

18 A. A majority of them, I can't speak for every company in the
19 country or in the industry but, yes, the majority of companies.

11:05 20 Q. Did you tell investors that this investment with
21 Par Funding it worked similar to a pass-through?

22 A. Pass-through?

23 Q. Yes.

24 A. I don't know if I would use those words but I explained
11:05 25 what an LLC, a company would be in the sense that the money

1 goes to my fund and then I would invest that money into
2 Par Funding.

3 I'm not an attorney but those are the words that are
4 similar.

11:05 5 MS. BERLIN: Your Honor, can we show a document just
6 to the witness?

7 THE COURT: Sure.

8 (Thereupon, the exhibit was introduced into evidence.)

9 BY MS. BERLIN:

11:06 10 Q. Are you able to see that document on your screen,
11 Mr. Furman?

12 A. Yes, I am.

13 Q. And it's your e-mail to one of the investors Millin Livis?

14 A. Correct.

11:06 15 MS. BERLIN: Your Honor, I would like to introduce
16 this document as an exhibit.

17 MR. HYMAN: No objection, Your Honor.

18 THE COURT: That will be admitted without objection.

19 What is the number on that, again?

11:06 20 MS. BERLIN: I was just trying to get that.

21 THE COURT: I just want to make sure for the record.

22 MS. BERLIN: 587, Your Honor.

23 (Thereupon, the exhibit was admitted into evidence.)

24 MS. BERLIN: May we publish the exhibit?

11:06 25 THE COURT: You may.

1 MS. BERLIN: Thank you.

2 BY MS. BERLIN:

3 Q. And so this is your e-mail to Ms. Livis, one of the
4 Par Funding investors, correct?

11:07 5 A. Correct.

6 Q. And the subject matter makes clear that you're talking
7 about this MCA Par Funding related investment.

8 Do you see that?

9 A. I do.

11:07 10 Q. And can you just read the portion that I've highlighted on
11 the screen for you?

12 A. Yes. It says "The, quote, fund, which is Fidelis Financial
13 Planning, LLC fund, has the security agreement and is secured
14 by Par Funding not directly to each investor. No company deals
11:07 15 with the individual investors. This is the purpose for why we
16 need a private placement. Each investor has their own
17 individual unsecured note with the fund and it works similar to
18 a pass-through. There is a security agreement in the secured
19 filing for the fund, it's not for each individual investor."

11:07 20 MS. BERLIN: Thank you, Your Honor. No further
21 questions.

22 THE COURT: Any questions, Mr. Hyman.

23 MR. HYMAN: Sure. Would you mind putting that back on
24 the ELMO for me, please?

11:07 25 MS. BERLIN: Here you can use mine.

1 MR. HYMAN: Thank you so much.

2

3

RECROSS EXAMINATION

4 BY MR. HYMAN:

11:08 5 Q. So, see on the ELMO how Ms. Berlin asked you if you stated
6 that the investment works like a pass-through? Do you remember
7 her asking you that question?

8 A. Yes, that's not what that states, but yes.

9 Q. It says it's similar to a pass-through, right?

11:08 10 A. And it's when -- this was after Corona or after the
11 pandemic, during that whole call we were in an unsecured --
12 these are unsecured notes, I'm not sure if they have used that
13 word before but they were unsecured by Par.

14 Q. Just it was similar to a pass-through?

11:08 15 A. The security part of it, the UCC filing.

16 Q. So that was -- and isn't it true that Fidelis had an
17 interest with respect to all of the notes that it issued to
18 Par Funding?

19 A. Yes. That's what --

11:08 20 Q. I'm sorry, issued to investors?

21 A. That's what I was trying to explain was that she had a -- a
22 security between -- for the UCC would be between Par Funding,
23 they're going to file that we were then in a secured lien
24 position after the pandemic when they had to lower the interest
11:08 25 rates, that was one of the part of the deal. But that would

1 pass through to her, that's --

2 Q. And isn't it true that you never sold any notes for CBSG to
3 anybody?

4 A. Never. I had my fund and that was it, period.

11:09 5 Q. Prior to COVID did Par Funding or CBSG ever miss a payment
6 to Fidelis?

7 A. No. Never late, nothing. That was one of the wonderful
8 parts of this.

9 Q. And prior to COVID, did Par Funding make all of its
11:09 10 interest payments to Fidelis?

11 A. Yes, one hundred percent. The only time was during COVID
12 for two months and they restarted and paid on time.

13 MS. BERLIN: Your Honor, I'm going to object. This is
14 the motion in limine.

11:09 15 THE COURT: Understood. Let's finish the answer.
16 Let's move on. Go ahead.

17 BY MR. HYMAN:

18 Q. And you had no reason to suspect that the investment in
19 Par Funding wasn't safe and secure, did you?

11:09 20 A. No, I would never use that it was a safe, secure like an
21 annuity.

22 MR. HYMAN: No further questions.

23 THE COURT: Okay. All right.

24 Ladies and gentlemen of the jury, any questions for
11:09 25 Mr. Furman?

1 THE JURY: (Shaking head).

2 THE COURT: Mr. Furman, you're free to rejoin
3 counsel's table.

4 So at this time what we're going to go ahead and do,
11:10 5 folks, I know that we had called a couple of witnesses out of
6 turn. We're going to go ahead and have the defense call their
7 next witness. Okay. So who is defense's next witness?

8 MR. JOHN: Christine Furman, Your Honor. She's
9 outside.

11:10 10 THE COURT: We'll get her in and we'll get her sworn.
11 Thereupon,

12 CHRISTINE FURMAN,
13 having been duly sworn by the court reporter, testified as
14 follows:

11:11 15

16 DIRECT EXAMINATION

17 BY MR. JOHN:

18 Q. Good morning, Ms. Furman.

19 A. Good morning.

11:11 20 Q. Ms. Furman, would you please introduce yourself to the
21 Court and to the members of the jury and spell your last name
22 for the record?

23 A. Yes, my name is Christine Furman. I am 69 years old. I
24 live in West Palm Beach, Florida.

11:11 25 Q. Ms. Furman, I want you to start by just introducing some of

1 your background, educational and work history for us, if you
2 can.

3 A. Sure. I am a teach -- a special education teacher. I
4 teach mentally handicapped and emotionally handicapped high
11:11 5 school students. I taught for 31 years in Williamstown, New
6 Jersey.

7 Q. Are you from New Jersey originally?

8 A. I'm originally from New York, but I've lived most of my
9 life in New Jersey.

11:12 10 Q. And when did you make your way to Florida?

11 A. In 2014. I have two sons. They both live in Florida. My
12 husband, in 2009 was diagnosed with an inoperable brain tumor
13 and through a lot of help he recovered. Two years later he had
14 cancer. And so we figured that's two strikes, maybe we should
11:12 15 consider not waiting for the third to hit, and we put our house
16 up for sale and we moved to Florida in January of 2015.

17 I'm sorry, go ahead.

18 Q. So when you have two sons here in Florida, are one of those
19 sons the defendant in this case Mr. Michael Furman?

11:13 20 A. Yes, Michael is my youngest son. I have -- he has an older
21 brother by two years. My other son lives in Saint Petersburg
22 on the west coast. My son lives here in West Palm Beach.

23 Q. When you arrived here in 2015, did you pick up work as a
24 teacher again?

11:13 25 A. No, I didn't. When I decided to retire, I was just of the

1 age where I could collect social security. My husband already
2 collected social security. And being a teacher I had a small
3 pension. When we came here, because we had one son on the east
4 coast and one son on the gulf coast, we really weren't sure
11:13 5 where we were going to live, so Michael graciously invited us
6 to move into his house and gave us time to look around. My
7 other son has a very small place and had a child, was expecting
8 a child and is married, so we appreciated Michael's assistance
9 in giving us a place before we actually knew where we were
11:14 10 going to settle.

11 Q. At some point after you arrived and then moved in with
12 Mr. Furman, did you become aware of a company called
13 United Fidelis Group?

14 A. Yes. That was Michael's company. He was located in West
11:14 15 Palm Beach.

16 Q. And beyond just being familiar with United Fidelis Company,
17 did you ever visit Mr. Furman's office in West Palm Beach?

18 A. Yes, I did. When we first got there I met his executive
19 assistant. Very nice young lady. About two months after we
11:14 20 moved in with Michael she informed him that for medical reasons
21 she was going to have to take a leave of absence immediately
22 which left him with no one in the office other than himself. I
23 volunteered -- what can I tell you, I was a teacher. I
24 volunteered and I figured I could answer a phone and I didn't
11:15 25 have to do lesson plans and I was dealing with adults. And

1 about three weeks later when she was expected back, she
2 informed Michael that for health reasons she was not going to
3 be able to come back. So I stayed permanently.

4 Q. When you started with United Fidelis Group, what type of
11:15 5 work did you do for the company? What were your
6 responsibilities?

7 A. I answered the telephone, I scheduled people and
8 rescheduled people. I took care of the office bills, making
9 sure that the rent was paid and the utilities, general filing,
11:15 10 things -- it wasn't much in the beginning because, again, I was
11 a teacher, I wasn't trained as a secretary. Michael was
12 excellent at being able to assist me with how to use the
13 scheduling program.

14 Q. As you continued on with United Fidelis Group, did your
11:15 15 responsibilities change?

16 A. Yes, they increased. I -- he worked with a company from
17 Arizona, JD Mellberg. They provided leads. I would do a lot
18 more calling, a lot more scheduling, met some very nice people.
19 And that was it for a while.

11:16 20 Q. I want to talk to you about the calls you said you made.
21 These are presumably to clients or potential clients, those
22 calls?

23 A. Yes.

24 Q. Did you ever interact personally with any clients or
11:16 25 potential clients at the office?

1 A. Oh, yes. Yes. As I said, I met some very, very nice
2 people. It was always -- everybody always knew that I was
3 Michael's mother. They also knew that I was a teacher. We had
4 people travel from Vero Beach. I remember several of them. I
11:16 5 remember many of them. I wouldn't be able to give you all of
6 their names but, yes, I would greet them when they got off the
7 elevator and escort them back, provide them with coffee, tea,
8 whatever. Some people would bring financial material that they
9 wanted Michael to look at. And I would make copies of that
11:17 10 because either they were going to leave, possibly leave with
11 him the original or a copy. But, yes, I interacted with all of
12 them.

13 Q. When you say some of the folks visiting the office would
14 bring financial material, do you remember what kind of
11:17 15 materials they would bring?

16 A. I usually would ask them to bring -- if there was something
17 they were coming in specifically for, I would ask them to bring
18 whatever their latest statements were that would apply to them.

19 Q. Is it fair to say that United Fidelis Group sold or offered
11:17 20 a number of financial products?

21 A. Yes, Michael believed in diversification. He always told
22 his clients that you should never put all of your money in one
23 place.

24 MS. JOHNSON: I am going to object.

11:18 25 THE COURT: Overruled. I'll allow it. Go ahead.

1 A. You should never put all of your money in one investment.
2 He would -- he wouldn't tell them what to do, he would just
3 offer advice. And never really pushed anybody ever to make a
4 decision first meeting, second meeting, sometimes third. Some
11:18 5 of these people came in very often.

6 BY MR. JOHN:

7 Q. Well, let me talk to you about that. When potential
8 clients would call into the office, would you generally know
9 how they learned of United Fidelis? Was there a marketing
11:18 10 program for United Fidelis?

11 A. In the very beginning, Michael belonged to a BNI, business
12 networking which was for business, independent business owners
13 in Palm Beach, West Palm Beach. They would meet once a month.
14 They would share information about their company with the other
11:19 15 people that were there. So if anybody -- for instance, if one
16 of Michael's clients came in and was interested in real estate,
17 if he believed that he liked the person that was in these
18 monthly meetings as a real estate broker, then he would give
19 them their card with no obligation in any way. He also
11:19 20 advertised in a monthly newspaper the Coastal Star.

21 He is -- he did estate planning so he offered many
22 things. And from there he began to advertise even more.

23 Q. And when clients would call in based on what they were
24 looking for, would you direct them what documents they needed
11:19 25 to bring into the office?

1 A. No, I would -- no, I did not -- I did not. I would either
2 ask Michael or just in general say, "Please bring your latest
3 statement if you have something in mind."

4 Q. So, in some cases, Mr. Furman would advise you what
11:20 5 documents he would need them to bring?

6 A. Yes, sometimes I would just direct the call when they would
7 come in because some people didn't want to just make an
8 appointment, they wanted to speak directly with Michael before
9 they made the trip, because some people traveled a distance.

11:20 10 Q. Did you find that Mr. Furman would make himself available
11 for those type of calls?

12 A. Always, always. There were times where some people, they
13 asked him for -- asked me to have him call them back at a
14 specific time. Sometimes that would be 9:00 o'clock at night
11:20 15 and he would still call.

16 Q. You mentioned that Mr. Furman would meet in person with
17 clients and potential clients. Can you describe for me what
18 you recall about those meetings, length, what materials might
19 be involved in those meetings, if you recall?

11:20 20 A. Certainly. First, there were some people that did not want
21 to come out to the office and so Michael would drive to them.
22 The people who were interested, and I always encouraged people
23 to come into the office because Michael had set up a screen
24 larger than this screen on the left side of his -- left front
11:21 25 of his desk.

1 So anything that he was looking at as far as
2 documentation, they could see also. So as they -- he was
3 explaining to them, I'm just going to use the word an annuity
4 or an insurance policy, he would bring it up on the screen and
11:21 5 not only did they have to listen, then they could see it, too,
6 because some people are not auditory learners, they really need
7 to see what it is that you are talking about.

8 When they would come in, it was actually -- the length
9 of the meetings, I never allowed less than -- or scheduled less
11:21 10 than three hours for a first meeting.

11 Q. Why is that?

12 A. Because Michael took great pains to be very patient with
13 people. Understanding that some people, myself included, are
14 not financially gifted in being able to understand everything
11:22 15 that is explained the first time around. So three hours was
16 the least amount of time. Some of his meetings went on -- we
17 had some meetings that went on for six hours. I walked in and
18 I offered to order dinner or lunch because they had been there
19 so long. I always offered coffee and tea. We had a big basket
11:22 20 of snacks so people could snack while they were there. We had
21 a refrigerator so that they could have something to drink.

22 It was a very relaxed atmosphere so people felt
23 comfortable.

24 Q. At some point, did you become aware of a company called
11:22 25 Fidelis Financial Planning?

1 A. Yes, Fidelis. Uh-huh. (Nodding).

2 Q. How were you aware of that company?

3 A. Actually, I had been there a while. And that's one of
4 Michael's companies.

11:23 5 Q. Mrs. Furman, are you familiar with the term "accredited
6 investor"?

7 A. Yes, I am.

8 Q. Were there some products that Fidelis Financial Planning
9 offered that were specifically for accredited investors?

11:23 10 A. Yes.

11 Q. Are you aware of any marketing that Fidelis did that was
12 targeted specifically at accredited investors?

13 A. Yes. Michael held -- after he went through advertising in
14 the newspapers, he started doing seminars, lunch seminars and
11:23 15 dinner seminars. Being a senior citizen in South Florida, I
16 can attest to the fact that you get a ton -- pre-COVID times,
17 you would get a ton of mail inviting you, I probably could have
18 eaten out five days out of seven if I was willing to go to the
19 seminars that were being put on mainly investments, insurances,
11:24 20 things like that.

21 So Michael decided that maybe seminars were the way to
22 go. In order to qualify for the seminar, the specific seminar
23 that included a company called Par Funding, you had to be an
24 accredited investor. So once that advertisement came out when
11:24 25 people called, I would ask whether they were accredited

1 investors. I would go over what an accredited investor was.
2 If they were interested in attending, then I took their names,
3 and then the day before I would always call back to verify that
4 they were still coming. I would go over again that they were
11:24 5 accredited investors. And at the seminars, that would be one
6 of the first things that Michael would say and it was up on the
7 screen.

8 MS. JOHNSON: Objection, Your Honor.

9 THE COURT: Overruled.

11:24 10 BY MR. JOHN:

11 Q. May I ask you, sticking with the seminars, did you ever
12 become aware or acquainted with someone named Perry Abbonizio?

13 A. Yes. Yes. I got to know Perry Abbonizio quite well.

14 Perry Abbonizio would fly down for each of the seminars. We
11:25 15 tried to hold two in a row, meaning maybe a Tuesday and a
16 Wednesday. We limited the number of people so that it was a
17 little bit more personal. And Michael would -- would you like
18 me to tell you --

19 Q. Let me ask you this: At the seminars, would Mr. Abbonizio
11:25 20 ever speak?

21 A. Oh, yes. Yes. He would explain the whole merchant cash.
22 He did an excellent job, in my opinion, of explaining the
23 merchant cash program.

24 Q. And besides merchant cash, would Mr. Furman discuss other
11:25 25 products offered by the United Fidelis Group?

1 A. Yes, our seminars began. Michael would introduce himself.
2 He also would introduce Mr. Abbonizio. He also would introduce
3 Mr. Manual who was always there. And Michael would go through
4 the fact that -- and with the presentation on the screen that
11:26 5 he was a financial planner and the different things that he
6 did. And would go into explanations of those, and then he
7 would introduce Perry Abbonizio.

8 Perry Abbonizio then would go through a whole
9 PowerPoint presentation of what the merchant cash advance
11:26 10 program was.

11 Q. You mentioned that before the seminars, you would sign
12 folks up and record their names. Was there any kind of check-
13 in process at the seminar itself?

14 A. That was me. Yes.

11:26 15 Q. Could you describe that for the members of the jury?

16 A. Certainly. I took down -- when I -- when they called in, I
17 would take down their personal information, meaning telephone
18 number, I would remind them that in order to qualify to attend
19 that they had to be an accredited investor and I would explain
11:26 20 what that was. When I called back the day before, I also would
21 reiterate that just to make sure that they were still on board
22 for coming because we did occasionally have a waiting list of
23 people who wanted to attend a certain day but we only had so
24 much seating.

11:27 25 And then when they got there, I sat at the front or,

1 actually, I guess it would be at the back, when they would
2 enter, and I would check them in and by this point, I had
3 already spoken to them twice so they knew my voice, I knew
4 them. And they would show me -- they didn't necessarily have
11:27 5 to show me any identification, but I reiterated that they were,
6 again, accredited investors.

7 Q. I want to go back to something you mentioned. You
8 mentioned a company called Par Funding. How did you become
9 familiar with Par Funding?

11:27 10 A. I became familiar when, again, I lived with Michael. And
11 so he returned from a trip to Center City, Philadelphia, which
12 was only 20 minutes from where I used to live. When he had
13 gone there, he had gone for a program that they were putting on
14 about their different investments. One of them was
11:28 15 Par Funding, so it was mentioned at that time.

16 Q. At any point, was there ever a time when customers would
17 call in and you would send them to Par Funding for information?

18 A. No, I wouldn't even know how to do that, no.

19 Q. Did you ever become familiar with a company called A Better
11:28 20 Financial Plan Management Company?

21 A. A Better Financial Plan? I guess -- I couldn't even answer
22 that. I've heard of it, but I can't tell you how I --

23 Q. Were you ever familiar with someone named Dean Vagnozzi?

24 A. Yes. I've never spoken to him. I believe he is the
11:28 25 gentleman when Michael went up to Philadelphia that put on the

1 program that showed various investment opportunity.

2 Q. Was there ever a time when customers would call in and you
3 would send them to Dean Vagnozzi?

4 A. Never. I wouldn't know how to get ahold of him.

11:29 5 Q. Was there ever a time that you reported to anyone but
6 Mr. Furman at United Fidelis Group?

7 A. No, only him.

8 Q. Was there ever a time that you understood that anyone but
9 Mr. Furman was in charge of Fidelis Financial Planning?

11:29 10 A. No, nobody else was in charge.

11 Q. During your time with Fidelis Financial Group, I want to
12 talk to you about some of the specific investors you may have
13 met. Okay?

14 Are you familiar with someone named Frank Nash?

11:29 15 A. Oh yes. Yes. I've met with Frank Nash many, many times.
16 He has called many times. He is a lovable guy. He would come
17 in. He would bring honey because he knew that I liked honey in
18 my tea and he raised honey, raised honeybees. He would -- he
19 never came in alone. He was kind of mothered by the people,
11:30 20 the women that came in with --

21 Q. Let me stop you there for a second and ask you --

22 MS. JOHNSON: Objection, Your Honor.

23 THE COURT: Overruled.

24 BY MR. JOHN:

11:30 25 Q. Sticking with Mr. Nash and the dinner events you spoke

1 about earlier, do you know whether Mr. Nash ever attended any
2 of those dinner events?

3 A. Yes, Mr. Nash attended several of them. The first one that
4 he attended was at Chris Ruth's Steakhouse (sic). It was a
11:30 5 horrendous weather day. The poor man walked in soaking wet.
6 From that point on, he always asked to be -- for us to let him
7 know when they were scheduling another event. And so he came
8 for several of them.

9 Q. Okay. What about a Mr. Mark Reikes, are you familiar with
11:30 10 that person?

11 A. The name, but I'm afraid no mental picture comes.

12 Q. Did you ever meet a Mr. Henry Barth?

13 A. Oh, yes, I met Mr. Barth several times. I've spoken to him
14 on the telephone. He came to -- he also came to a seminar
11:31 15 maybe more than one, I'd have to look.

16 Q. And had Mr. Barth ever met with Mr. Furman in person at the
17 office?

18 A. Yes. Yes. Mr. Barth was another three-hour, at least,
19 meeting probably once every couple of months I'd say.

11:31 20 Q. What about Mr. Nash, did he ever meet with Mr. Furman at
21 the office in person?

22 A. Yes, Mr. Nash did. Mr. Nash, his meetings went very long.
23 He was a very talkative man, very talkative man. But yeah, he
24 met with Michael very often. He would call sometimes to ask
11:31 25 additional questions. He always came, he always brought me

1 something to eat, donuts or whatever.

2 Q. What about a Mr. Robert Renner, did you ever meet Mr.
3 Robert Renner?

4 A. The name is familiar but, again, I don't -- I believe he
11:32 5 came to -- I believe I checked him in at a seminar. I'm not
6 sure which seminar it was.

7 Q. Do you ever recall receiving any monthly reports regarding
8 funding analysis related to Fidelis Financial Planning?

9 A. That was not my position at the time. Any mail that came
11:32 10 in that was specifically financial, I would bring to Michael.

11 Q. Okay.

12 MR. JOHN: Your Honor, a moment to confer.

13 THE COURT: Yes.

14 BY MR. JOHN:

11:33 15 Q. And just a couple more questions, Ms. Furman.

16 Do you still reside in West Palm Beach?

17 A. I do. I'm still living with Michael. My husband and I had
18 rented a condo in Clearwater on the gulf coast so we could be
19 closer to our two grandchildren. When this all came down,
11:33 20 Michael's assets were frozen and we needed to give up our
21 rental and move back to West Palm so that we could pool our
22 resources so he could live.

23 MR. JOHN: Your Honor, no further questions for this
24 witness at this time.

11:33 25 THE COURT: Thank you. Cross-examination, please.

CROSS EXAMINATION

1

2 **BY MS. JOHNSON:**

3 Q. Good morning, Mrs. Furman.

4 A. **Good morning.**

11:33 5 Q. You're here to help your son today, aren't you?

6 A. **I'm here to provide information.**

7 Q. Did you help him make all the exhibits, make copies of the
8 exhibits for him in this case?

9 A. **I did because he was given very little time to be able to
11:34 10 do that.**

11 Q. And you made thousands of copies?

12 A. **Over 2,000, yes.**

13 Q. And when did you begin working with him?

14 A. **I began working with him April 2015.**

11:34 15 Q. And when did you begin living with him?

16 A. **January 29, 2015.**

17 Q. Do you cook dinner for him?

18 A. **Yes, I do. Unless we order out but we haven't been doing
19 much of that because it's expensive. My husband has to eat,
11:34 20 too.**

21 Q. And did a lot of seniors attend these seminars that you
22 spoke about earlier?

23 A. **Your definition of senior?**

24 Q. Sixty and over.

11:35 25 A. **Yeah, there were some people, I believe who were less than**

1 60, but, yes, I would say that probably three-quarters of them
2 were people who were either getting ready to retire or had
3 retired.

4 Q. So you will agree with me that they were geared towards
11:35 5 retirees?

6 A. I don't know they were necessarily geared towards retirees.
7 They were geared towards people who wanted to invest money to
8 get a return on an investment.

9 Q. And you talked about Mr. Furman, your son, meeting with
11:35 10 clients at the office. You aren't in the room during those
11 three-hour meetings were you?

12 A. No, I had a cubicle right outside. It -- he was -- he
13 rented one office on a floor that is a law firm and I would go
14 in and out being able to bring something if something was
11:36 15 needed. I do have to say that the office's office walls, all
16 of them were paper thin, so I could hear the bankruptcy lawyer
17 like next door.

18 But, no, to tell you that I could hear what they were
19 doing other than bringing coffee and tea in or making copies of
11:36 20 something, I was not present for their meetings.

21 Q. Let me show you --

22 (Thereupon, the exhibit was introduced into evidence.)

23 MS. JOHNSON: May I approach so I don't have to
24 publish this yet?

11:36 25 MR. HYMAN: There's no objection to its production.

1 THE COURT: Okay, we can move that in if it's not
2 already in. What's the number on that?

3 MS. JOHNSON: 573.

4 MR. HYMAN: No objection.

11:36 5 THE COURT: That will be admitted, and if you need to
6 publish, go ahead.

7 (Thereupon, the exhibit was admitted into evidence.)

8 BY MS. JOHNSON:

9 Q. Were you still working for your son in February 12th of
11:37 10 2020?

11 A. I would work on and off so what happened was when my
12 husband and I rented the condo in Clearwater, we wouldn't stay
13 there continuously. We would stay for a couple of weeks and
14 then we would come back and stay with Michael and I would work
11:37 15 remotely.

16 Q. Well, let me make this a little easier. Do you recognize
17 what you have in front of you Exhibit 573?

18 A. It is a signed -- well, it's the followup sign-in sheet for
19 an alternative investment seminar in Boca. I did attend one
11:38 20 that was in Boca, yes. And Kristin -- it has my name and
21 Kristin's name and we were the sign-in staff.

22 Q. And you'll see where it says, "Alternative investment
23 seminar, Seasons 52"?

24 A. Yes.

11:38 25 Q. You were the sign-in staff?

1 A. Yes. If that's what it says, then we were.

2 Q. And what -- are these the names of investors around the
3 left-hand side?

4 A. These are not necessarily investors.

11:38 5 Q. Attendees?

6 A. No, these are people, people on the left-hand side, I have
7 it here.

8 Yes. These were attendees. People who signed, who
9 requested to attend to get further information.

11:38 10 Q. And you were checking them in as they claim in?

11 A. We would check them in, yes. Sometimes they would sign up
12 for, for instance, the first one, possibly a husband and wife
13 and sometimes the wife wouldn't attend. So we kept track of
14 who attended.

11:39 15 Q. And then the numbers in the first column, does that
16 represent who attended to keep the person --

17 A. The number that attended, yes.

18 Q. So about 25 people?

19 A. I guess. I don't think I prepared this. I think Kristin
11:39 20 prepared this. I think I was just attending to help sign-in.
21 Because sometimes you would get 12, 15 people at one time. And
22 we didn't really want to have a line. So --

23 Q. And this "referred by" column, does that represent how the
24 person heard about the seminar?

11:39 25 A. Yes, through an advertisement in either the Sun Sentinel or

1 **the Palm Beach Post.**

2 Q. And the last column says, "Accredited, yes or no." That's
3 what you talked about so where it says a yes, those people you
4 confirmed were accredited?

11:39 5 A. **Kristin would have confirmed that they were accredited.**

6 Q. And where it doesn't have anything?

7 A. **Doesn't necessarily mean no, it just means that at that
8 point she didn't record it as yes.**

9 Q. Or no?

11:40 10 A. **Yes or no.**

11 Q. Did your son ever tell that you Joseph LaForte had a
12 criminal conviction?

13 A. **No. My son actually didn't mention Joseph LaForte.**

14 **MS. JOHNSON:** There's all, Your Honor. Thank you.

11:40 15 **THE COURT:** Okay. Any redirect?

16 **MR. JOHN:** Yes, Your Honor, briefly.

17

18 **REDIRECT EXAMINATION**

19 **BY MR. JOHN:**

11:40 20 Q. Hello again, Ms. Furman.

21 A. **Hi.**

22 Q. During your cross-examination you were asked about a sign-
23 in sheet used for United Fidelis Group. Do you recall that?

24 A. **Yes.**

11:40 25 Q. If you ever found that an unaccredited individual made it

1 to the dinners, what would be the process at that point?

2 A. Well, at that point, remember they would have already been
3 asked twice when they scheduled and when we made the
4 confirmation. And the assumption would be that they would have
11:41 5 said yes twice.

6 When they got there, if they then changed their
7 response to no, we would have had to step out and explain to
8 them that the presentation was only for accredited investors
9 and, unfortunately, they didn't qualify.

11:41 10 Q. Did they still get the free dinner?

11 A. No.

12 Q. If you found after the fact, after the event, that there
13 was an unaccredited investor present, what would be the process
14 at that point?

11:41 15 A. Well, the process after the seminars was that we would call
16 them the following day. And see -- now I would preface that by
17 saying that night after all the presentations were done, many
18 people just stood up. It was a very social time. Michael and
19 Roland and Perry would walk around, introduced themselves
11:42 20 individually to everybody. At that time, some people would ask
21 me to call them immediately. Some people didn't necessarily
22 say that. Not everybody who attended became an investor. Not
23 everybody who attended actually even came in for an
24 appointment. But we would get in touch with them to be able to
11:42 25 schedule whatever was best. At the seminars we handed out a

1 survey and on the survey, one of the questions, first question
2 after their name and address was whether, again, whether or not
3 they were an accredited investor. Down at the bottom it
4 explained what an accredited investor was and one of the
11:43 5 questions that was on there was what did you find most
6 interesting or helpful about the seminar. There also was an
7 area for them to fill in if they would -- what area they would
8 like more information about.

9 So that's where we went from there. I called, whether
11:43 10 they said that they weren't interested, some people were just
11 interested in Roland with his tax business. I called everybody
12 to thank them for attending whether they wanted an appointment
13 after that or not.

14 Q. During your cross-examination you were asked about some of
11:43 15 the type of clients, potential clients that United Fidelis
16 dealt with. Do you recall that?

17 A. Yes.

18 Q. Do you know whether or not Mr. Furman or the company
19 itself -- strike that.

11:43 20 Do you know whether or not Mr. Furman considered
21 someone's mental fitness, their competence, when evaluating a
22 customer?

23 A. Yes, always. I mean, that's part of having a person sit
24 with you and talk for you for hours is that you can evaluate
11:44 25 whether or not they're actually understanding what you're

1 saying, whether or not they are confused, whether they're
2 taking what you're saying seriously, not implying that somebody
3 necessarily could remember every single thing, but that's one
4 of the reasons that Michael made sure they went home with
11:44 5 paperwork that explained everything that he had gone over.

6 Q. So simply being elderly, as you understood it, wasn't a bar
7 to investing with United Fidelis Group?

8 A. No. Oh, no. No. In fact, I remember Michael walking out
9 after I had escorted a few people out and he would say, "How
11:44 10 old do you think that person is," and certainly some of those
11 people seemed younger than I am.

12 But no. No. Their age, their age -- mental capacity
13 was something that he always considered. He would never want
14 to take advantage of somebody who didn't know what they might
11:45 15 be doing.

16 Q. Finally, on cross-examination, you were asked about whether
17 or not you cooked dinner for Mr. Furman. Do you remember that?

18 A. Yes.

19 Q. What's your best dish?

11:45 20 A. Well, Michael has developed a number of allergies, so it
21 used to be a chicken. It used to be Italian food, and I don't
22 really make that anymore.

23 So whatever we can barbecue really. He works -- he
24 used to work long hours and when I worked at his office I was
11:45 25 there for long hours, too. So after all these years, cooking

1 isn't my favorite thing to do.

2 MR. JOHN: A moment to confer, Your Honor.

3 THE COURT: Sure.

4 MR. JOHN: Your Honor, no further questions for this
11:45 5 witness.

6 THE COURT: Thank you, ma'am. Anybody have any
7 questions for Mrs. Furman? No?

8 Thank you, you're excused.

9 A. Thank you.

10 THE COURT: You're welcome.
11:45 10

11 All right. Do we have any additional defense
12 witnesses?

13 MR. HYMAN: No, Your Honor. At this time the defense
14 rests.

15 THE COURT: Okay. Now, I believe that the government
11:46 15
16 has also intended to rest absent a rebuttal witness. Am I
17 correct on that?

18 MS. BERLIN: Yeah. I mean, we're going to call the
19 witness that we advised. I think technically he was in our
11:46 20 direct case but we can call him as rebuttal. We'll do that.
21 We'll call him as rebuttal after lunch.

22 THE COURT: So, ladies and gentlemen of the jury, we
23 only have one remaining witness that we're going to be calling.
24 It's a rebuttal witness from the government. I'm allowing them
11:46 25 to present it in their case in chief. There's also a situation

1 where even after they rest they do could have presented that
2 rebuttal witness, but we're going to go ahead and allow the
3 government witness to present that witness as part of their
4 direct case and then they will also, presumably, rest at that
11:47 5 time. So that's the current plan for today.

6 Now, the one thing I will say is I would ordinarily
7 want to bring you guys back even sooner, but I do have one
8 hearing during the lunch hour so you may get an extended lunch
9 break today. I'm going to have everybody come back at 2:00
11:47 10 o'clock. Okay. So about 1:50 or so you guys can start coming
11 back by that point. Again, my plan is to do the following:
12 The afternoon really only has this one remaining witness.
13 Okay. Once that witness testifies, you guys are done for the
14 day and I'm going to let you guys home. We expect to stay here
11:47 15 and do some work to get the legal part of the case ready for
16 you, the jury instructions, and the idea will be then that you
17 would be returning tomorrow morning and you would find in your
18 chairs a copy of those instructions for each of you. I would
19 review them with you and then we will go straight to closing
11:48 20 arguments.

21 That puts us in a situation where you are going to be
22 heading into the lunch hour. I will probably take care of
23 ordering lunch for you all and you can begin your deliberations
24 around lunch time and then you have the open afternoon to do
11:48 25 that.

1 So that's the schedule that I'm working with right
2 now, absent anything unforeseen, and that's how we're going to
3 wind things up.

4 So, of course, please remember that even though you
11:48 5 know that the end is near in terms of the closing arguments and
6 the law, I want you guys to continue to keep an open mind, we
7 still have one more witness we need to hear from, and once we
8 hear from that witness we will be done for the day, but during
9 the lunch break, of course, do not do any independent research,
11:48 10 do not discuss this case with family or friends or with each
11 other. Do not go on social media to discuss your jury service.
12 Make sure you leave your note pad in the jury room and should
13 you bump into lawyers over the lunch break, please take no
14 offense by their need to avoid you.

11:48 15 So with that being said, have a great lunch hour,
16 we'll see everybody just before 2:00 o'clock, we'll check in
17 around 1:45 to bring you guys coffee.

18 All right. You're all excused.

19 (Thereupon, the jury exited the courtroom.)

11:49 20 **THE COURT:** Okay. Everyone please be seated. One
21 thing I did want to ask, if it wasn't sent in I think
22 Ms. Johnson you had sent me some -- oh, they did get it here.
23 We do have a Word version of the proposed jury instructions. I
24 was looking for that in my inbox. Okay. Very good.

11:49 25 And this proposed version that was e-mailed to me

1 earlier this morning, is this one that you guys have already
2 discussed or at least done some meet and confer on?

3 **MR. HYMAN:** Yes, Your Honor, there's a few issues
4 provision that we were e-mailing back and forth this morning,
11:49 5 but we have met and conferred.

6 **THE COURT:** So I can work off of this draft when we
7 have our discussion this afternoon? You can work off of this
8 one?

9 **MR. HYMAN:** Yes, Your Honor.

11:50 10 **THE COURT:** Perfect. I'm just going to download it
11 and have it ready to go because I think we're going to have
12 more than enough time to sit down and finish all the jury
13 instructions and verdict this afternoon after we hear from the
14 agent.

11:50 15 So I would ordinarily have had that agent called, if I
16 could have, closer to 1:30. But I have a change of plea at
17 1:30. It is going to be in court. It's not on Zoom. So if
18 you guys would just do me a favor and clear a little bit of
19 space for either side, so I can go ahead and have that done
11:50 20 with my folks here at 1:30 and then, of course, come 2:00
21 o'clock, we'll have our agent come in as our final witness.
22 I'm assuming he's available without an issue at 2:00 o'clock.
23 Right, Ms. Berlin?

24 **MS. BERLIN:** I assume so. I know he'll be here soon,
11:50 25 and he's going to be here at 1:00. I'm not aware of any issue.

1 **THE COURT:** Perfect. Okay. Very good. All right.
2 So with that being said, we'll see all of you at 2:00 o'clock
3 for our final witness, and after that I'll let the jury go, and
4 then we will all get into finalizing our jury instructions.
11:51 5 All right. We're in recess until then.

6 **MS. BERLIN:** Thank you, Your Honor.

7 **MR. HYMAN:** Thank you, Your Honor.

8 **THE COURT:** Yep.

9 (Thereupon, a luncheon recess was taken.)

10 * * *

11

12

13 A F T E R N O O N S E S S I O N

14 **THE COURT:** Please be seated, everyone. Okay. We can
02:30 15 go ahead and unmute and all our jurors are present and
16 accounted for. All right. So let's -- any housekeeping before
17 we bring our jurors in? I know that we have one witness
18 remaining. Is that witness standing by?

19 **MS. BERLIN:** Yes, he's outside of the door ready.

02:30 20 **THE COURT:** All right. Yes, Mr. Hyman?

21 **MR. HYMAN:** Your Honor, we just wanted to note to the
22 Court that this witness was not disclosed in the SEC's Rule 26
23 disclosures and because the SEC was the party that brought up
24 the statements Mr. Furman made to the FBI agents in their
02:30 25 direct, that his testimony also wouldn't be the proper subject

1 of rebuttal either, and would ask that Your Honor limit the
2 testimony to simply issues of impeachment to the extent there's
3 inconsistent statements given the fact that he wasn't disclosed
4 and they were the ones who brought up the issue and, therefore,
02:30 5 it shouldn't be part of their case in chief nor was it not
6 anticipated.

7 **THE COURT:** Response from the SEC?

8 **MS. BERLIN:** Sure, as we explained to defense counsel,
9 rebuttal witnesses, impeachment witnesses do not have --
02:31 10 they're not disclosed, they're not on witness lists.

11 **THE COURT:** Correct.

12 **MS. BERLIN:** And so that is not relevant, and if
13 Mr. Furman had -- I mean, Mr. Furman answered the questions but
14 even if he hadn't, we might have called this witness anyway as
02:31 15 a rebuttal witness.

16 So, I mean, this is exactly how things work and it's
17 not a policy decision, it's these are just the rules.

18 **THE COURT:** Yeah. I mean, I think the important thing
19 is obviously I trust that the SEC will keep it within the range
02:31 20 of --

21 **MS. BERLIN:** Yes.

22 **THE COURT:** -- Key issues.

23 **MS. BERLIN:** Absolutely.

24 **THE COURT:** As long as I see that and it doesn't end
02:31 25 up being some sort of collateral attack on something and truly

1 focused on rebuttal issues and impeachment, then we won't have
2 any problems.

3 **MS. BERLIN:** Yes, we're not discussing any
4 investigation. It will only be focused on Mr. Furman and what
02:31 5 he said to the agents. So it's very narrow. And I don't know
6 if the Judge is considering it sensitive and wants to turn off
7 the Zoom or keep it on, but I wanted --

8 **THE COURT:** That's a good time to ask, because I do
9 have the audio on. Again, do we have any concerns about
02:32 10 ongoing investigations or undercovers through this testimony?

11 **MS. BERLIN:** It shouldn't come up, but I don't know,
12 you know, what will be asked on cross. I mean, I imagine that
13 we will object to any questions about any investigative work.

14 **THE COURT:** Yeah, I mean, we talked about that before.
02:32 15 And we have kept that off limits. I'll leave it on but if for
16 some reason it does seem to be heading into troublesome areas,
17 I know you'll let me know or I may feel uncomfortable that
18 we're getting too close and we might mute or at least give a
19 cautionary instruction.

02:32 20 **MS. BERLIN:** Okay.

21 **THE COURT:** Okay, let's go ahead and round them up and
22 we'll get started here with our last witness.

23 **MS. BERLIN:** Can the witness go ahead and come in,
24 Your Honor?

02:33 25 **THE COURT:** Yes. You can go ahead and take the stand,

1 sir, and if you've been vaccinated, you're free to take off the
2 mask as well.

3 A. Thank you, Your Honor.

4 (Thereupon, jury entered the courtroom.)

02:33 5 THE COURT: Please be seated, everyone.

6 Ladies and gentlemen of the jury, we have our
7 remaining witness here on the witness stand. We're going to
8 swear him in in just a moment and we'll get started with the
9 SEC's examination.

02:34 10 Gracie, you can go ahead and swear him in.

11 Thereupon,

12 **ADAM WEISENSTINE,**

13 having been duly sworn by the courtroom deputy, testified as
14 follows:

02:34 15 THE COURT: Thank you, sir. If you'll just have a
16 seat, speak into the microphone and it will require you to lean
17 in a little bit, and state your name for the record.

18 A. Adam Weisenstine.

19 THE COURT: Thank you, and we'll turn it over to the
02:34 20 SEC.

21 You may begin.

22 MS. BERLIN: Thank you, Your Honor.

23

24 **DIRECT EXAMINATION**

02:34 25 BY MS. BERLIN:

1 Q. Good afternoon, Mr. Weisenstine.

2 A. **Good afternoon.**

3 Q. Where do you work?

4 A. **I work for the Federal Bureau of Investigation.**

02:34 5 Q. And what's your title?

6 A. **I'm a special agent.**

7 Q. Have you ever met Michael Furman?

8 A. **I have.**

9 Q. How did that come about?

02:34 10 A. **On or about July 28th of 2020, we were executing a federal**
11 **search warrant at his business office and that's where I met**
12 **him.**

13 Q. And during the visit to Mr. Furman's office, did you have
14 an opportunity to speak with him?

02:35 15 A. **I did. We asked if he was willing to speak with myself and**
16 **another agent, and he agreed to.**

17 Q. And where was it that you all spoke?

18 A. **We went down the hallway from his office to a conference**
19 **room and we all sat at the conference room table.**

02:35 20 Q. In his office space?

21 A. **Yeah, I believe it was on the same floor as his office.**

22 Q. During your discussion with Mr. Furman, did he tell you
23 anything about Par Funding?

24 A. **Yes. He stated that himself and a Mr. Vagnozzi, through an**
02:35 25 **arrangement they had, he would put money into Par Funding with**

1 investor funds.

2 Q. And during this interview on or about July 28, 2020, did
3 Mr. Furman tell you whether or not he was still soliciting
4 investors for Par Funding?

02:35 5 A. Yes. On the day of the search warrant he was supposed to
6 be meeting a client who was going to bring about 10 million
7 dollars in that would go to Par Funding. I believe that
8 meeting was supposed to take place about 10:30, and he
9 additionally informed us that prior to the day of the search
02:36 10 warrant and us talking with him, that he was trying to contact
11 individuals at Par Funding to let them know about this money
12 that was potentially coming through.

13 However, Mr. Furman was unsuccessful in getting ahold
14 of anyone at Par Funding.

02:36 15 Q. During your meeting with Mr. Furman, did he tell you
16 anything about Par Funding's accounting books and records?

17 MR. HYMAN: Leading.

18 A. Yeah.

19 THE COURT: Overruled. Go ahead.

02:36 20 A. Yes. He stated that there were two sets of accounting
21 books. One was ascribed to the generally accounting
22 principles, or commonly known as GAAP, and there was another
23 set that did not conform or comply with GAAP.

24 BY MS. BERLIN:

02:36 25 Q. Did Mr. Furman talk with you at all about the default rate

1 on Par Funding's merchant cash advance deals?

2 A. Yes. They were two different figures for those depending
3 on which accounting books that were utilized for GAAP. That
4 figure was roughly five percent. And then for non-GAAP, it was
02:37 5 one percent, but he did say that could fluctuate.

6 Q. So am I correct in understanding, Mr. Furman told you that
7 he understood if -- that when the default rate was calculated
8 based on the generally accepted accounting principles, it was
9 about five times higher than the one percent figure?

02:37 10 MR. HYMAN: Leading. Compound.

11 THE COURT: Overruled. You may answer.

12 A. Correct.

13 BY MS. BERLIN:

14 Q. Did Mr. Furman discuss Par Funding's owner/operator with
02:37 15 you?

16 A. Yes, he mentioned a Joseph LaForte, also went by the name
17 Joe Mack.

18 Q. And did Mr. Furman tell you anything about Joseph LaForte's
19 background?

02:37 20 A. He stated within a year of him doing business with
21 Par Funding, he knew about Joseph LaForte's criminal history.
22 He knew him to be one of the leaders of Par Funding.

23 Q. During your discussion with Mr. LaForte, did you all
24 discuss an article in Bloomberg News about Par Funding?

02:38 25 MR. HYMAN: Leading.

1 THE COURT: Overruled.

2 A. Yes. We did discuss the article. Mr. Furman stated he
3 recognized it and knew that the article discussed Mr. LaForte's
4 criminal history as well as family ties to the Gambino crime
02:38 5 family.

6 BY MS. BERLIN:

7 Q. Okay. Did Mr. Furman discuss with you when it was that --
8 oh, just one moment.

9 MS. BERLIN: Your Honor, may I have access to ELM0?

02:39 10 THE COURT: Yes, you may.

11 BY MS. BERLIN:

12 Q. Agent Weisenstine, is this the article that you all showed
13 him on the phone, and I'll move it around on the screen so you
14 can see it?

02:39 15 A. Yes, ma'am, that is the article. I recognize the title.

16 MS. BERLIN: And, Your Honor, that was Exhibit 579.
17 It's already in evidence.

18 THE COURT: Okay, thank you.

19 BY MS. BERLIN:

02:39 20 Q. During your meeting with Mr. Furman, did he indicate when
21 it was that he learned about Joseph LaForte's criminal record?

22 A. Within the first year of doing business with Par Funding.

23 Q. And that's what he told you?

24 A. Yes, ma'am.

02:39 25 Q. Did Mr. Furman discuss with you what position he understood

1 Joseph LaForte held at Par Funding?

2 A. He stated that Mr. LaForte was one of the five leaders of
3 Par Funding.

4 Q. During your meeting with Mr. Furman, did he discuss with
02:40 5 you any Par Funding seminars?

6 A. Yes, he stated they would have seminars, the goal was to
7 either attract investors or raise capital, and at those they
8 would not discuss LaForte's criminal history or any regulatory
9 issues that Par Funding had experienced in the past.

02:40 10 Q. And Mr. Furman told you that?

11 A. Correct.

12 Q. Did Mr. Furman tell you how much he had raised for
13 Par Funding?

14 A. Yeah. There were two figures he collected. Approximately,
02:40 15 8 million he stated for Par Funding, and then he also stated in
16 total he had raised about 25 million.

17 Q. For Par Funding?

18 A. Yes, ma'am.

19 MS. BERLIN: Just one moment, please.

02:41 20 THE COURT: Sure.

21 MS. BERLIN: Agent Weisenstine, I have no further
22 questions. Thank you.

23 A. Thank you.

24 THE COURT: Cross?

02:41 25 MR. JOHN: Your Honor, may I proceed?

1 THE COURT: You may cross-examine.

2

3

CROSS EXAMINATION

4 BY MR. JOHN:

02:41 5 Q. Good afternoon, sir.

6 A. Good afternoon.

7 Q. Agent, the events you were just testifying to, they
8 occurred almost a year and a half ago, right?

9 A. Yes, sir.

02:41 10 Q. Anyone ever compliment you on your remarkably detailed
11 memory?

12 A. Sometimes.

13 Q. You get that, because you just managed to testify to
14 several issues that the SEC wasn't able to get in any other
02:42 15 way.

16 Were you aware of that?

17 MS. BERLIN: Your Honor, objection.

18 THE COURT: Overruled. That's all right. If you
19 know. You wouldn't know, sir, so let's move on. You wouldn't
02:42 20 here for the duration of trial, so let's go ahead.

21 BY MR. JOHN:

22 Q. But you were just sitting outside with the SEC, sir?

23 A. Yes, sir.

24 Q. Before you got in here?

02:42 25 A. Yes, sir.

1 Q. Did you see me sitting a couple of benches down from you?

2 A. **I believe so. I'm not sure.**

3 Q. Well, you definitely were talking about your testimony with
4 the SEC, right?

02:42 5 A. **Yes, sir.**

6 Q. You told Ms. Berlin what you were going to say today?

7 A. **Yes, sir. Reviewed it.**

8 Q. She told you what she was going to ask you today, right?

9 A. **Yes, sir, there are no surprises.**

02:42 10 Q. I'm sorry?

11 A. **There are no surprises.**

12 Q. I agree. No surprises. You reviewed exactly what you were
13 going to say in court?

14 A. **I reviewed a report I had associated with the interview of**
02:42 15 **Mr. Furman.**

16 Q. Right. You went through the entire report with the SEC,
17 right?

18 A. **Yes.**

19 Q. Right outside?

02:43 20 A. **Yes.**

21 Q. And this isn't the first time you spoke with the SEC about
22 your testimony today, right?

23 A. **Correct.**

24 Q. How many times have you spoken with someone from the SEC
02:43 25 about the testimony you're going to give today?

1 A. **Since last Friday, maybe ten times, maybe less.**

2 Q. What about before last Friday?

3 A. **Never.**

02:43 4 Q. In those ten times, did you again review exactly what you
5 were going to say here today?

6 A. **Not all ten times. A lot of it was just coordinating
7 possibly testifying in this trial.**

8 Q. So maybe half the time?

9 A. **That would be fair.**

02:43 10 Q. I want to focus on the actual events of last July 2020 when
11 you met with Mr. Furman. Before you showed up to his office,
12 you didn't notify him that you were coming, right?

13 A. **Correct.**

14 Q. And you weren't alone?

02:43 15 A. **Correct.**

16 Q. You had other law enforcement personnel with you?

17 A. **Yes, sir.**

18 Q. Were they all FBI?

02:44 19 A. **At the time that we did the initial approach for the search
20 warrant, yes.**

21 Q. How many other folks were with you?

22 A. **Probably at least five.**

23 Q. And you say that when you got to his office there was a
24 client there that he was meeting with?

02:44 25 A. **I can't recall. Earlier I had told her that he was**

1 supposed to meet with someone at 10:30 for the 10 million, but
2 I don't recall someone who had been in his office, but it's
3 possible.

4 Q. Okay. But you did say when you got to his office, you
02:44 5 separated him from everyone else in the office, right?

6 A. Yes. We asked if he was willing to speak with us.

7 Q. You and the other agents?

8 A. One other agent, yes, sir.

9 Q. When you had this -- is it fair to call it an
02:44 10 interrogation?

11 A. No.

12 Q. What would you call it?

13 A. Voluntary interview.

14 Q. When you had this interview with Mr. Furman, you didn't
02:44 15 take any formal written statement from him, right?

16 A. No.

17 Q. He didn't sign off on a statement for you?

18 A. No.

19 Q. You took some notes, I presume?

02:45 20 A. Yes, we did.

21 Q. But it was you, the agent, that did it, there t wasn't some
22 independent party like a court reporter or a stenographer
23 making those, right?

24 A. Correct.

02:45 25 Q. No transcript was produced?

1 A. **No.**

2 Q. You didn't do an audio or visual recording of the
3 interview?

4 A. **No, we don't have to, per policy.**

02:45 5 Q. So everything that you testified today is based on your
6 recollection and the conversations with the SEC, right?

7 A. **Yes.**

8 Q. When you showed up at Mr. Furman's office, you were armed?

9 A. **Yes, sir.**

02:45 10 Q. What kind of weapon were you carrying?

11 **MS. BERLIN:** Your Honor, we object. It's not
12 relevant.

13 **THE COURT:** Overruled. I mean, obviously, we know
14 that there's an argument being made to the jury that somehow
02:45 15 that this was a coerced or involuntary confession.

16 Go ahead.

17 **BY MR. JOHN:**

18 Q. What kind of weapon?

19 A. **GLOCK 17.**

02:45 20 Q. Were other agents around you also armed?

21 A. **Yes, sir.**

22 Q. Were they also carrying pistols?

23 A. **Yes, sir.**

24 Q. Did Mr. Furman experience any kind of medical issues while
02:45 25 you were with him?

1 A. In the beginning of the interview he stated that he was
2 prone to have panic attacks and that the smart watch that he
3 had on was stating that his heart rate was elevated.

4 Q. Okay. You testified during your direct examination that
02:46 5 Mr. Furman advised you that he learned about Mr. LaForte during
6 the first year of business, right?

7 A. First year of him doing business with Par Funding, yes,
8 sir.

9 Q. What year was that?

02:46 10 A. I'm not sure, sir.

11 Q. But you know it's the first year?

12 A. That's what he told us, right.

13 Q. It could be 2018?

14 A. I'm not sure, sir.

02:46 15 Q. It could be 2019?

16 A. I don't know.

17 MR. JOHN: Your Honor, a moment to confer?

18 THE COURT: Sure.

19 BY MR. JOHN:

02:46 20 Q. When Mr. Furman advised you about the medical condition,
21 did you or anyone else in the office provide any kind of aid to
22 him?

23 A. We asked him, given the nature of what he brought forth, if
24 he wanted to continue. Mr. Furman said he had done nothing
02:47 25 wrong and he wanted to continue because it might help us.

1 Q. And I just want to verify something. You can't remember
2 the year, when you say the first year of business, regarding
3 Mr. LaForte?

4 A. Yeah, I don't recall what year it was, but he said it was
02:47 5 within the first year of doing business with Par Funding.

6 MR. JOHN: No further questions for this witness at
7 this time.

8 THE COURT: Okay. Redirect?
9

10 **REDIRECT EXAMINATION**

11 BY MS. BERLIN:

12 Q. Agent Weisenstine, did anyone from the SEC tell you what to
13 say today?

14 A. No.

02:47 15 Q. And, in fact, after you interviewed Mr. Furman, did you
16 make a record of your notes like close to the time of speaking
17 with him?

18 A. Yeah. Whenever we take notes for an interview, we take
19 that into what we call FD-302, an interview report, for lack of
02:47 20 a better term, to kind of memorialize the events that happened
21 and the words that were stated by the interviewee.

22 Q. And did that occur on the date that you interviewed
23 Mr. Furman in July of 2020?

24 A. Yeah. We took those notes from that interview and then
02:48 25 they were later sterilized in our systems.

1 Q. And did they remain in your system untouched until now?

2 A. **Correct.**

3 Q. And so was your testimony today consistent with the record
4 that you made at the time of the interview in July 2020?

02:48 5 A. **Yes.**

6 Q. And you referenced the SEC talking to you starting last
7 Friday?

8 A. **Yes, ma'am.**

9 Q. And what was in connection with simply asking you to come
02:48 10 and testify about what was in the report that had been
11 sterilized a year ago?

12 A. **Correct. It was limited to that.**

13 Q. And we had not even spoken before then, correct?

14 A. **Correct, Friday, I believe it was actually another**
02:48 15 **individual and you were cc'd on an e-mail regarding it at**
16 **first.**

17 Q. And simply asking you if you would testify about what had
18 been recorded and sterilized at the time of the interview?

19 A. **Correct.**

02:49 20 Q. When you interviewed Mr. Furman, was there any indication
21 made to him as to whether or not he could leave the conference
22 room in his building where you were speaking to him?

23 A. **He had plenty of opportunity. We told him this is a**
24 **voluntary interview, which would imply that he would have that**
02:49 25 **knowledge.**

1 And, in fact, during the interview, another agent
2 actually took phone calls and left the room several times and
3 we, in fact, ended the interview at the end when we asked
4 Mr. Furman a question, he stated he was feeling light-headed
02:49 5 and we just decided to cut the interview there just due to the
6 health being so important.

7 Q. Was he handcuffed ever?

8 A. No.

9 Q. So he was free to leave at any time?

02:49 10 A. Correct.

11 Q. Was it like physically, you know, just as far as being
12 physically intimidating, it was July 2020?

13 A. Correct. It was rather still, the pandemic was fresh. So
14 we were in the conference room. He sat at the end of the table
02:50 15 and we sat at least midway down the table, six feet of distance
16 between all of us. So there was rather considerable space in
17 between us.

18 Q. So you were never physically intimidating. Am I correct in
19 understanding it was socially distanced?

02:50 20 MR. JOHN: Objection. Leading.

21 THE COURT: Overruled.

22 BY MS. BERLIN:

23 Q. It was socially distanced by six feet because of COVID?

24 A. Correct.

02:50 25 MR. HYMAN: Your Honor, may we have a very quick

1 sidebar.

2 You check to see if you have any other questions?

3 **MS. BERLIN:** I don't have anything else. Thank you.

4 **THE COURT:** Sure. Side-bar.

02:50 5 (Thereupon, there was a side-bar conference outside

6 the presence and hearing of the jury.)

7 **MR. HYMAN:** The testimony about the 302 form, we would
8 ask to look at it and have an opportunity, if possible, to.

9 **THE COURT:** Any response?

02:51 10 **MS. BERLIN:** Sure. I think they raised the idea that
11 maybe he had invented his testimony recently. So it was just
12 establishing the same as it's always been in the reports. I
13 don't think that providing that report is necessary for
14 anything that's been raised today.

02:51 15 **THE COURT:** Yeah, I tend to agree. There's no door
16 been opened there inconsistently. You asked about his
17 preparation and that was clarified in the redirect.

18 That's going to be denied.

19 (Thereupon, the side-bar conference was concluded.)

02:51 20 **THE COURT:** Any questions? Thank you very much,
21 Agent. You are excused. Have a great day.

22 Any additional witnesses on behalf of the SEC?

23 **MS. BERLIN:** No, thank you, Your Honor.

24 **THE COURT:** The SEC rests?

02:52 25 **MS. BERLIN:** Yes, Your Honor.

1 **THE COURT:** All right. Ladies and gentlemen of the
2 jury, that concludes all the testimony in this case. That
3 means that your service is done for today. We are going to let
4 you guys out of here early.

02:52 5 So here is the plan for tomorrow. What we're going to
6 be doing over the next few hours here is a little bit of
7 homework to get everything in position for you guys tomorrow
8 morning.

9 I would ask that everyone be here tomorrow morning by
02:52 10 9:30. My plan is to have the instructions on the law reviewed
11 with you first. So when you come in I'm going to read through
12 those instructions with you. You're each going to have your
13 own set.

14 After that, I'm going to turn it over to the lawyers
02:52 15 and I'll give you some instruction about their closing
16 arguments tomorrow. They will make their closing arguments to
17 all of you. Once the closing arguments are complete, then
18 there's a few final instructions that I will give you before
19 allowing you to begin deliberating.

02:53 20 I estimate that this will put us in a position where
21 by the lunch hour, you guys will be in the jury room. We'll
22 probably take some orders, bring you guys food, you can start
23 deliberations already while you wait for the food to arrive,
24 and the goal will be to give you until tomorrow afternoon to
02:53 25 continue on with your deliberations. But this will be in your

1 hands by tomorrow afternoon.

2 Now, of course, you have heard all the testimony in
3 the case, but you haven't heard the law that applies to it.
4 And I'm going to venture that it's going to help you a lot
02:53 5 tomorrow to figure out how all this evidence fits with the
6 charges that have been brought against Mr. Furman, and any
7 defenses that Mr. Furman may be trying to establish.

8 It's very hard to understand evidence in a vacuum
9 without understanding how it applies to the law that controls
02:53 10 the case.

11 So tomorrow, it will be very important to carefully go
12 through the instructions with all of you and, of course, the
13 lawyers are going to be summarizing everything you've heard
14 since last Tuesday. So there's been a quite a bit of evidence
02:53 15 that's been put on, and they're going to get an opportunity to
16 break all that down and show you how each side believes that
17 the evidence that they have been put on conforms and
18 establishes the elements of the law that they must each meet to
19 prove their claim or their defenses.

02:54 20 Do you all understand?

21 **THE JURY:** (Nodding).

22 **THE COURT:** I want you guys to remember again because
23 you still haven't heard the law in the case and you don't hear
24 or haven't heard anything about the closing arguments quite
02:54 25 yet, that you continue to keep an open mind until the very end

1 of the case tomorrow when you guys begin deliberations.

2 Of course, continue to abide by the law that I put in
3 place since the beginning, which is, don't discuss this case
4 with one another, that time will be coming very soon, it will
02:54 5 be by tomorrow afternoon that you will finally get a chance to
6 talk with your fellow jurors about what you think is going on
7 in this case, what you think has been shown.

8 When you go to leave today, of course, when family
9 asks you what's going on the case, you're free to tell them
02:54 10 we're in the home stretch, the Judge says tomorrow will be
11 closing argument and we should be deliberating and that's
12 absolutely fine.

13 One thing I will tell you in advance, because it might
14 help when you schedule things with your family, is when I go
02:54 15 into deliberations, I do not let jurors take their cell phones
16 back there with them. What we do is we have your cell phone
17 secured in my chambers and if someone were to call or the phone
18 is ringing off the hook, then I'll come get you if it's an
19 emergency, but if you want to tell family and friends already
02:55 20 that right around lunch, and, by the way, I'll let you guys
21 send the a text that we're going in so they don't have to call
22 you, you may do that, but you may want to let family and
23 friends know that you will be out of pocket and should
24 something happen, they can Google my name and in a few minutes
02:55 25 a member of my chambers will call me.

1 But I wanted to preview that so that you guys you're
2 going to a little bit out of pocket. We obviously -- not
3 because we don't believe that you guys would do it, but we
4 obviously want to avoid any possibility of anybody Googling or
02:55 5 looking anything up while they're deliberating.

6 Remember that all the evidence is going to go back
7 with you, all that is admitted, tomorrow. You are going to get
8 a chance to look at all that and review that again.

9 But continue not to engage in any sort of social media
02:55 10 discussion regarding this case.

11 Please, of course, do not conduct your own research.
12 Do not discuss with family and friends or one another until you
13 deliberate tomorrow, and the lawyers will, once again, have to
14 avoid you tomorrow when you come in. Take no offense from
02:56 15 that.

16 So all the same rules apply. You guys have done a
17 fantastic job. We are truly in the home stretch, I want you to
18 get some rest this evening because tomorrow will be our last
19 day.

02:56 20 So with that being said, you're all excused. See you
21 tomorrow at 9:30 a.m.

22 (Thereupon, the jury exited the courtroom.)

23 **THE COURT:** All right. Everyone please be seated. So
24 if you want to take a brief break, let's go ahead and do that
02:56 25 now and we're going to work through our jury instructions now

1 and our verdict forms in the hopes of getting all of that done
2 and that way, you guys are all set and tomorrow we will have
3 instructions on the law and closings.

4 I'm going to download now, I think I have a Word
02:57 5 format, both documents, so I'm going to go ahead and start
6 getting that ready.

7 Do you guys have laptops ready to go with those and we
8 can discuss them the jury instructions?

9 Yes, Mr. Hyman, do you have something you need to
02:57 10 address?

11 **MR. HYMAN:** Yes. This time we'd like to move for
12 judgment as a matter of law as it relates to the unregistered
13 securities claim as set forth in our memorandum which --

14 **THE COURT:** Why don't we do this: As you're arguing
02:57 15 this, this specifically is which count just so we make a very
16 clean record as you make your ore tenus motion. I think I
17 know, I think it's the last count.

18 **MR. HYMAN:** I believe it's Count 7, Your Honor.

19 **THE COURT:** Okay. So go ahead. You're seeking entry
02:57 20 of judgment on Count 7. Go ahead.

21 **MR. HYMAN:** There's been no evidence presented to the
22 jury that as a result of any of Mr. Furman's efforts whatsoever
23 that any promissory note of Par Funding was sold or otherwise
24 transferred, such that the necessary participant or a
02:58 25 substantial factor test would not be satisfied. At best,

1 Mr. Furman was purchasing promissory notes through Par Funding
2 and there's been no case which we have been able to locate
3 outside of the context of an integration count which has not
4 been pled, the SEC has specifically disavowed and is otherwise
02:58 5 not part of the record where a party, such as the SEC, has been
6 able to consolidate a series of transactions as the SEC is
7 trying to do, to determine essentially that Mr. Furman was
8 engaged in the offer or sale of unregistered securities in
9 Par Funding. This is only a limited judgment as a matter of
02:58 10 law.

11 Obviously, there's been testimony with respect to the
12 AFPB fund issue, however, as it relates to Par Funding, the
13 fact that Furman, through Fidelis, was soliciting investors
14 which then Fidelis would purchase notes is insufficient as a
02:58 15 matter of law for Mr. Furman to be liable for the sale of
16 unregistered securities.

17 **THE COURT:** Okay. Response, please, from the SEC on
18 this issue.

19 **MS. BERLIN:** Yeah, sure. It's actually a very clear
02:59 20 Section 5 violation. Section 5 is -- it's offer or sale of any
21 security that is not registered. The law provides for broad
22 interpretation to include anyone who is a necessary participant
23 or substantial factor.

24 Here, Mr. -- I mean, there was a lot of evidence but
02:59 25 the most basic was Mr. Furman yesterday at the end of his

1 testimony I showed him the chart of his purchases of
2 unregistered Par Funding note sales, and asked if he agreed
3 with me that but for him raising the investor funds, he would
4 not have been able to participate in this sort of prearranged
02:59 5 note transactions with Par Funding and their unregistered
6 offering, and he agreed.

7 It's really simple. He raised investor money. It was
8 like a pre-orchestrated thing through their agent funds. Two
9 days a month they send money up to buy the unregistered notes.
03:00 10 That's it. He did it. He bought them himself. That's how he
11 participated in it.

12 And so it's -- I'm mystified that it's even an issue.
13 It's a very clear violation and there was certainly sufficient
14 evidence to support this very basic claim.

03:00 15 **THE COURT:** And what would the SEC say as to the
16 statement made in both the memoranda and the argument here
17 today as to the perception from the defense that there cannot
18 be a Section 5 violation because Furman and Fidelis did not
19 offer or sell -- excuse me, did not sell or offer to sell
03:00 20 Par Funding notes? There seems to be a belief that that makes
21 it impossible to establish Section 5, because even though
22 there's ample testimony that the collection of investor funds
23 by Fidelis so that it could participate in the Par Funding
24 offering, which it had to do, Fidelis, it couldn't be
03:01 25 individuals, it had to be done through Fidelis, there is an

1 argument being made that because there wasn't direct sale,
2 really, I think that's the theory that the defense is
3 approaching, some sort of direct sale that it would be
4 difficult or if not legally impossible for there to be a
03:01 5 Section 5 violation.

6 What would be the SEC's response to that? I think
7 that's really been the -- I don't want to say it may be the
8 belief behind the integration has been I think all along
9 because of that, because there's a belief on the defense camp
03:01 10 that you cannot establish a Section 5 violation unless there is
11 some sort of a sale or offer to sell Par Funding notes directly
12 by Furman and Fidelis. I guess, offer to sell, one could argue
13 that everybody knew that the funds were going to be used for
14 purchase of Par Funding notes anyway, at least the evidence
03:02 15 with the inferences that need to be given at this stage of the
16 case would support that.

17 But maybe you want to just address that for the
18 record. That is one of the arguments that they have attempted
19 to advance for a little while now.

03:02 20 **MS. BERLIN:** Sure. So Section 5, and it's very clear,
21 even in the jury instructions, you know, the pattern jury
22 instructions, it is directly or indirectly sold or offered to
23 sell. So the participation in the offer or sale can be direct
24 or indirect.

03:02 25 And so under the case law, when you look at indirect

1 participation it's very broad. This is something that -- this
2 statute of the securities law like by its very face, it's
3 written directly or indirectly off -- participate in the offer
4 or sale, and like I was saying a moment ago, when it is
03:02 5 indirect and you are participating indirectly, then the words
6 that are used, like the examination, that's when you get into
7 the necessary and substantial factor tests, like that's where
8 that language comes from, Your Honor, that's not in the
9 statute.

03:03 10 So the statute is what it is and under the case law
11 you can indirectly violate. And when a court examines whether
12 someone indirectly violates, that's when you look at the
13 necessary and substantial language that we have been through
14 before.

03:03 15 So the SEC's case from the beginning and always has
16 been that by Mr. Furman raising money from investors for the
17 ultimate purpose of buying these notes and these sort of
18 pre-structured, orchestrated transactions, where he's an agent
19 of Par Funding and he's raising the investor money that makes
03:03 20 these transactions happen, that that is a violation of
21 Section 5. It's not an aiding and abetting charge. It is a
22 direct violation of Section 5. He is a necessary participant
23 in the offer or sale. But not for him raising investor money
24 and buying these notes, Your Honor, there wouldn't be any
03:04 25 sales. Like, Par Funding is selling to its agents and the

1 agents just raise money from investors to make it happen.

2 That's how the offering works.

3 And so one of the things about the securities laws is
4 every offering is different. You know, people can come up with
03:04 5 a million ways it try to sell a security or some sort of
6 orchestrated scheme to sort of conceal that they're doing an
7 unregistered offering. This is what they did and we have
8 alleged this from day 1 this whole way and the way they devised
9 it using agent funds was all in an attempt to avoid the
03:04 10 registration requirements thinking that if they just used these
11 agent funds to raise the money and buy the notes, that that
12 would somehow keep them below the radar, that we wouldn't find
13 out, all the state regulators wouldn't find out, and we did and
14 that's why we're here. But it's absolutely a violation and,
03:05 15 again, you know, the securities laws are something that are
16 interpreted broadly to include however creative people can be
17 in trying to break the rules by designing an offering, right?

18 But this is basic. But did he participate in an
19 unregistered offer or sale? How can we say he didn't? That's
03:05 20 all Fidelis was. That's all he did was for years raised money
21 from people so he could buy unregistered notes.

22 There is no scienter requirement, but even in his own
23 cross-examination yesterday, he admitted that that's -- he knew
24 about the Pennsylvania order against paying their referral fees
03:05 25 and that's why he created this fund. That's why it existed.

1 We don't need the scienter. You participate in a
2 security, an offer and sale of a security, you don't register
3 it. You ran the red light, you get a speeding ticket. That's
4 the equivalent. That's what this is.

03:06 5 **THE COURT:** I was going to say if you look at the
6 instruction for Count 7, Section 5, Securities Act, I think the
7 important distinction here is indirectly which begs the
8 argument to me that it was not directly sold, and by that I
9 mean that it wasn't directly done by Fidelis because Fidelis is
03:06 10 pooling with Fidelis notes which then are facilitating the
11 purchase of Par Funding notes, and part of that is, of course,
12 because the way it was structured was through these agent
13 funds. Then at least a culpable argument could be made that it
14 was an indirect sale. I mean, if you want to even make that
03:06 15 argument, there's a distinction. I think, at a minimum, you
16 would find there would be an indirect sale of Par Funding notes
17 of which Mr. Furman then would, at least in the jury's view,
18 have to decide whether he was a necessary a participant or a
19 substantial factor. That really goes to the question asked of
03:07 20 him this morning when we talked about whether this would be
21 facilitated without him, without Fidelis, and the answer to
22 that from a substantial factor or a necessary participant would
23 be no, without the funds drummed up through Fidelis, you could
24 not buy the Par notes.

03:07 25 So that kind of chain is pretty well established and,

1 sure, if the defense feels that that doesn't show a direct
2 relation, that's of no moment because the 5A/5C, is, as the
3 pattern instructions have shown us, allow for indirect
4 liability for that violation of Count 7.

03:07 5 So it's not enough, at least from a matter of law, to
6 be able to obtain a judgment in this regard for failure to
7 present evidence of a Section 5 violation, especially when the
8 inferences that need to be made in the SEC's case.

9 Anything you wanted to add on that because it's
03:07 10 pretty --

11 **MR. HYMAN:** Yes, Your Honor. I think the issue is,
12 and I'd like to start quoting the substantial case law that
13 deals with this very issue. We'll start with Donahue versus
14 Consolidated Operating and Products Corporation, 982 F.2d 1130,
15 Seventh Circuit, 1992.

16 The doctrine of integration prevents issuers of
17 securities from avoiding the requirements of Section 5 by
18 breaking offerings into small pieces. This doctrine was first
19 promulgated and discussed in Bowers versus Columbia Port
03:08 20 General Corp., 336 Fed. Supp 609, 624 through 625 from Delaware
21 1971 where they noted that the SEC has promulgated additional
22 rules to determine whether an offering would be private or
23 public, and in these circumstances there it looks to whether
24 you should consolidate a transaction based on a series of
03:08 25 factors that has been established. And there's a lot of case

1 law, Your Honor, that's been cited to it including APA
2 Excelsior III, LP versus Premiere Technologies, 2004 Westlaw
3 606442; Duran versus Petroleum Management, 545 F.2d 893;
4 Chapelry (ph.) Trust, all of these were cited in our
5 memorandum --

6 THE COURT REPORTER: Just a minute, 545 Petroleum --

7 THE COURT: He's filed it so we will give you that
8 later.

9 MR. HYMAN: Correct, and, most recently, in the SEC's
03:09 10 versus Map, which clearly states that integration theory is
11 what is utilized by the courts to determine whether to treat
12 two separate securities issuances as one. Here, the issue is,
13 and this is part of where kind of at least there was two
14 different concepts that the SEC's conflating. The indirect
03:09 15 sale or the participation and offering is intended for somebody
16 who is acting like a broker, who is not necessarily selling it
17 themselves, but who is facilitating someone to sell or purchase
18 or facilitating the sale of a particular security.

19 That would be kind of the definition of the indirect
03:10 20 participation in an offer. For example, if Mr. Furman was,
21 instead of selling people through Fidelis, if he was trying to
22 kind of sell through Par Funding, then he would be indirectly
23 participating in it, to the extent that he's facilitating the
24 sale to Par Funding. But the issue is in the area where there
03:10 25 is the confusion is that he was not soliciting to Par Funding,

1 he was soliciting for Fidelis. All of the investors invested
2 in Fidelis and not Par Funding. And at best, Mr. Furman
3 purchased the Par Funding shares and there is no Section 5
4 liability for a purchaser of sales.

03:10 5 So for the SEC to have consolidated these, or the only
6 time when sometimes obviously is if you purchase it, hold on
7 and then act as a pass-through to transfer those securities
8 yourself to somebody else. But the reason why the integration
9 doctrine was created, both by the SEC and has been recognized
03:11 10 by courts is for this exact circumstance, to basically prevent
11 a party from trying to circumvent the registration requirements
12 of Section 5 by breaking it up into smaller pieces.

13 And, Your Honor, I've tried to search for -- I have
14 spent an inordinate amount of time searching for case law where
03:11 15 the SEC has been permitted to do what they are trying to do
16 today: Disregard two transactions outside of the context of
17 integration, and I went beyond that. I called every single
18 former defense counsel that's been involved --

19 **MS. BERLIN:** Objection, Your Honor.

03:11 20 **THE COURT:** Just let him make a record. Go ahead and
21 finish.

22 **MR. HYMAN:** -- in this case, and there has been
23 absolutely no authority where the Court has been able to
24 essentially disregard the corporate veil, consolidate a series
03:11 25 of transactions into one, and then hold somebody liable for

1 Section 5 liability.

2 And consistent with the Supreme Court precedent that
3 dealt with this issue, because of the strict liability nature,
4 while the statute is remedial, there should be kind of limits
03:11 5 as to the extent or scope of that the liability, such as this,
6 where each offering should be treated distinctly and separately
7 with respect to those issues.

8 Thank you.

9 **THE COURT:** All right, thank you.

03:12 10 Is there anything the SEC wants to add to the issue of
11 integration? I think we have talked about it a number of
12 times. The Court has independently looked at the integration
13 issue. Perhaps there's just a difference of opinion how the
14 law applies with integration. This is not a situation where,
03:12 15 at least in the Court's view and, quite honestly, even if you
16 apply the standard that you have to apply now, that's going to
17 be fatal anyway, because this is not, as a matter of law, in
18 which you possibly make an argument under a Rule 50 at this
19 stage that they, the defense, should be entitled to judgment as
03:12 20 a matter of law under Rule 50 given the facts in this case
21 simply because they believe there's been enough evidence shown
22 to establish some sort of integration. I mean, that would fly
23 in the face of the standard for a judgment as a matter of law
24 anyway.

03:13 25 And so I'm not too keen on even addressing or entering

1 any sort of integration analysis because at the end of the day
2 there's been ample evidence shown to this jury so for them to
3 decide truly one or separate transactions or essentially one
4 entity is funneling money to another with all investors being
03:13 5 well aware that they are going to purchase Par Funding notes
6 that they must do so through an agent fund like Fidelis, it's
7 not a situation where the Court, drawing all reasonable
8 inferences in favor of the nonmoving party, which would be the
9 SEC, unable to make credibility determinations or weigh the
03:13 10 evidence, would be in a position to grant judgment as a matter
11 of law in this case and on the integration issue as to Count 7,
12 most certainly.

13 So I'm going to deny it, it simply doesn't rise to the
14 standard to enter it.

03:13 15 You know, the issue as it pertains to integration
16 though, again, I understand that the defense believes that that
17 this is an integration problem but one thing I wanted to try to
18 review with the SEC briefly on this and, again, I don't know if
19 I'm going to do be able to clarify to the defense's comfort
03:14 20 level but integration usually, I mean, as far as I understand
21 it in the case law, and the factors that you apply for
22 integration really is the idea of integrating two different
23 offerings to avoid registration requirements. I mean, that's
24 really what it's been.

03:14 25 So the argument would be that the SEC would charge or

1 allege someone having consolidated two offerings to avail
2 thefts of a registration exemption that would otherwise be
3 themselves of a registration exemption they wouldn't otherwise
4 be entitled to.

03:14 5 The SEC has not alleged or structured this case in
6 that fashion. They have never raised integration. So in an
7 odd way, you know, if we're arguing it in the reverse, I guess
8 the defense, what they would have the Court do is find enough
9 indicia of integration so that Fidelis could somehow be
03:15 10 absolved of registration requirements. I think that's really
11 part of what the argument would be as a matter of law.

12 Obviously, that's so rife with all the different
13 intricacies of this agent for an offer that it would be
14 something I could never do under a Rule 50 anyway.

03:15 15 But just taking a step back, and I want to talk about
16 the jury instructions, you know, I don't believe that there is
17 -- let's put it this way. I think the defense believes that
18 the SEC is unable to maintain a theory such as this one where
19 an agent fund essentially is a pass-through conduit to buy
03:15 20 other notes without alleging integration. I mean, that is what
21 I believe the defense's theory is. I don't know that that's
22 accurate, but I don't know if the SEC wants to just mention or
23 address that because that seems to be -- you haven't charged it
24 this way, because you're not attempting to, for example,
03:15 25 eliminate the use of an exemption because you're charging them

1 to use integration to avoid registration requirements. That's
2 never been the SEC's theory. The SEC's theory has always been
3 that Fidelis was simply -- I don't know if you want to call it
4 an agent, a pass-through, a conduit, but they bought
03:16 5 Par Funding notes, they indirectly, at a minimum, facilitated
6 their purchase because they could not be bought by the direct
7 investor, they had to be bought by an agent fund.

8 So that, to me, would be the very definition a jury
9 should decide as to whether they indirectly facilitated the
03:16 10 sale of Par Funding notes, an unregistered offering, in
11 violation of Section 5 under Count 7. I mean, that's -- I
12 think I've stated what your case is. They believe that that's
13 not allowed without alleging integration because it's
14 integration by another name or you're avoiding it, but to my
03:16 15 other point you are not cabined, and this is what I researched
16 the other day, there's nothing that says the SEC cannot
17 maintain this theory without alleging integration.

18 **MS. BERLIN:** I have never seen it.

19 **THE COURT:** I've never seen it. Especially because
03:16 20 the jury instruction even says "indirectly." So they don't
21 have to go through -- I was preparing for today and talking
22 about all the different integration factors, right? Is the
23 different offerings part of the simple plan of financing? Are
24 the offerings involving issues of the same class of security?

03:17 25 Honestly, there is a reason why you wouldn't charge

1 integration because you probably wouldn't satisfy these
2 elements because it's not an integrated offering, it's a
3 separate note they facilitated indirectly by a separate fund,
4 it would be impossible to lump them together, no one would ever
03:17 5 find this is integration. I mean, legally, I don't know how
6 you would even make the argument. It would be very hard with
7 integrations tests that I've seen.

8 MS. BERLIN: Yeah. So, I mean, yeah. What the Court
9 just said is correct in the sense, you know, what the
03:17 10 commissioners at the SEC decided to charge this as. So I
11 cannot discuss the discussion that was made because, of course,
12 the Court knows it's not made by the litigator at the SEC, it's
13 made by our say divisions and the commissioners who examine
14 these things and then determine, based on the rules, what the
03:18 15 charges should be and how they should be done.

16 And this is, I will say, not only is this the way it
17 was charged but this is the correct way. There's nothing that
18 requires the SEC to assert that something is integrated.
19 Instead, Section 5, is if you were participating in the
03:18 20 unregistered offer or sale of securities, you have to register.
21 Think about it, Your Honor, otherwise we would have people all
22 over the country who would say, hey, you asserted to me like
23 they did hear. You sell it to me twice a month, okay, and I'll
24 go get your investors. Whether there is the Fidelis company
03:18 25 around Mr. Furman or not, that doesn't really make a

1 difference.

2 The point is they are pre-structured, it's like twice
3 a month I'll go get all the investor money through me to give
4 to you for the purchase of the notes. That way, no one is
03:18 5 going to trace it to all of the 50 investors behind me, it will
6 just look like it's only me, and that way, you know, we're
7 doing our own unregistered offering and keeping it secret
8 because we are friends.

9 And if that happened, there would be no enforcement of
03:19 10 the securities laws anywhere in the country. I mean, it simply
11 can't work that way. The rules are really broad. If you're
12 selling a security, you must registered it, period. It's not a
13 big deal. You have to -- you file a paper. You register it.
14 That's all you had to do. And --

03:19 15 **THE COURT:** I don't want to -- I hate to interrupt, I
16 just wanted to point out just really more for academics --
17 academically. The theory of trying to pursue integration in a
18 case like this would be to extend what the defense believes are
19 exemption protections for, again, I'm going off what I think
03:19 20 the defense's theory is, but I believe that the theory they're
21 trying to advance is that if they can establish this is an
22 integrated offering, then any protections available to Fidelis
23 by way of accredited investors would extend to the Par Funding
24 purchase because they're all one in the same.

03:20 25 I think, I think -- can I just get a yes or no? Isn't

1 that really --

2 MR. HYMAN: It's the converse. It's that Fidelis was
3 never trying to solicit Par Funding investors, they're
4 soliciting Fidelis to invest.

03:20 5 THE COURT: Okay, okay, so I was overcomplicating it,
6 I got it.

7 So based upon that, I mean, I think it's a pretty
8 straightforward issue then. There is testimony in the record
9 from the investors themselves, right, that the investors
03:20 10 themselves are all aware that these purchases or the monies
11 that they were giving to Fidelis were going to Par Funding
12 purchases.

13 So if you're looking at Section 5, then it's pretty
14 straightforward. That would be the definition of issues for
03:20 15 the jury to determine as to whether or not this was an indirect
16 purchase of Par Funding notes because all of the investors, at
17 least there's been enough testimony, I think, to get to the
18 jury that everyone believed that this was just a method by
19 which they could purchase Par Funding notes is through Fidelis.

03:21 20 So even though it's a Fidelis note being issued, the
21 Fidelis note being issued and the monies being given that are
22 being funneled to the Par Funding offering would be an
23 indirect, with all the inferences that need to be given to the
24 SEC at this phase it would be an indirect purchase of an
03:21 25 unregistered security in violation of Section 5. That would be

1 the problem, I think, just by way of Rule 50, that that's
2 evidence in the record and that would, at a minimum, support an
3 indirect offering. I mean, indirect sale, really, or indirect
4 offer, right?

03:21 5 MS. BERLIN: Yes, that's exactly right and, again, you
6 know, when we look at this in looking at this instruction,
7 that's why the pattern instruction has in it already.

8 THE COURT: Direct or indirect.

9 MS. BERLIN: Yes, and when it's indirect, that's when
03:21 10 you have the -- it's the necessary and substantial test.

11 So here our argument is Mr. Furman is, and always has
12 been, a necessary and substantial factor in these Par Funding
13 sales because he is raising money for the sole purpose of
14 putting them into the promissory note, like he's not -- he
03:22 15 doesn't buy a promissory note with anyone's money other than
16 these investors. I mean, that's all he does. He just bundles
17 it. He bundles their money so instead of buying -- let's say
18 he raises money from ten investors -- instead of buying ten
19 different notes from Par Funding issued to ten people, he
03:22 20 bundles their money together and he gets one with just theirs.

21 So it's -- he's indirectly participating in that way
22 and it's not a big complicated thing involving integration. I
23 mean, I haven't looked at the cases that the defendant cited,
24 and I think they filed it last night.

03:22 25 THE COURT: I just don't know that it's applicable to

1 the SEC's theory of the case. And the more important thing is
2 there's been an argument that somehow the SEC cannot allege a
3 Section 5 violation without advancing a theory of integration,
4 and that I don't think is supported by the law. That's been
03:23 5 one of the arguments I just -- I didn't find anything
6 independently, I don't think it's out there. It's not a
7 theory. They believe, and I think the jury instructions, the
8 pattern instructions would support that they've advanced
9 enough, certainly, to get to the jury on the issue of whether
03:23 10 this is an indirect offer and sales of registered securities
11 with Fidelis with Par Funding.

12 So, to me, that's a jury question at this point.

13 All right. Okay. So was there anything else? I'm
14 going to deny the motion.

03:23 15 Anything you wanted to add for the record?

16 **MR. HYMAN:** Thank you very much for entertaining our
17 argument. We appreciate your patience.

18 **THE COURT:** All right. So with that being said, I'm
19 going to download now, I think we have -- you guys have done a
03:23 20 very thorough job of advancing where there's differences of
21 opinion, if you guys want to pull up, I'm looking at the jury
22 instructions, we have a lot of general preliminary instructions
23 which, of course, have no issues. I may just do some
24 formatting changes and one thing I will do before we leave
03:24 25 today is print out fresh copies.

1 **MR. JOHN:** I apologize. Could we take a two-minute
2 break for the bathroom?

3 **THE COURT:** When you come back, let's talk about your
4 jury instructions. I see proposed language for both sides. So
03:24 5 we're going to want to do that.

6 So let's take a two-minute break and come back and do
7 the charge conference.

8 **MS. BERLIN:** Thank you, Your Honor.

9 Just because you seem intellectually curious about
03:24 10 that, something to keep in mind if you look at it again in
11 another case, the private cases that I was listening to,
12 there's not a private action under Section 5. So that's when
13 we look at SEC enforcement charge. So in the private, when you
14 have private litigants arguing about registration, it's brought
03:24 15 under a different section. So a section, the Section 5
16 analysis will only be found in the SEC cases. And then if it's
17 private, it's under Section 12 and it has a slightly different
18 test. So it's like Section 12 has a different test and some
19 slightly different elements, so I just wanted to mention that
03:25 20 because you seem to be interested intellectually.

21 **THE COURT:** So I wanted to make sure I have it.

22 **MS. BERLIN:** No, I just wanted to mention.

23 (Thereupon, a brief recess was taken.)

24 **THE COURT:** Please be seated, everyone.

03:41 25 All right, just for those that are watching our case,

1 just by way of background, the Court is going to proceed into
2 dealing with jury instructions at this point, so I'm going to
3 be shutting down the feed, there is no need to be having this
4 portion of the trial broadcast. I will be resuming it tomorrow
03:42 5 morning so those individuals that want to watch the closing
6 arguments they will be essentially broadcast starting at 9:30
7 in the morning.

8 We're going to begin with the instructions that we're
9 working on this afternoon so you'll all be privy to the
03:42 10 instructions that apply in this case and after that, there will
11 be closing arguments and then ultimately deliberations. But
12 just letting everybody know that may be following along that
13 the Court is not going to be broadcasting live our charge
14 conference. There's no need for that. So we're going to go
03:42 15 ahead at this point and close the feed down and you are all
16 welcome again to join when we resume tomorrow morning at 9:30.

17 I shut it down on my end.

18 **MR. HYMAN:** So I think, Your Honor, at least to start
19 off on page 3 where there had been the language that we
03:43 20 objected to while reserving our prior objection as stated in
21 the Rule 51 motion, we're going to obviously understand how
22 Your Honor is going to address that to streamline the process.

23 **THE COURT:** Okay. So let me make sure I have
24 plaintiff's proposed language in the bottom of 3 and a
03:43 25 defendant objection to that. And let's see here, there's an

1 objection here that plaintiff's proposed language, it would
2 read -- I'm going it read it from the top here.

3 Plaintiff, Securities Exchange Commission, which is
4 also known as the SEC, claims that defendant, Michael Furman,
03:43 5 violated the Federal Securities laws by, one) acting as a
6 necessary participant or substantial factor in the unregistered
7 Par Funding offering of promissory notes in that Mr. Furman
8 drew respective investors to invest in Fidelis Planning for the
9 ultimate purpose of raising money for Par Funding's
03:44 10 unregistered offer and sale of promissory notes," and was the
11 theory of the case. It's just a theory. This is not --

12 **MS. BERLIN:** It is the description of the case section
13 that we would like to tell the jury what the description of the
14 case is.

03:44 15 **THE COURT:** This is not an element, this is just a
16 description of the SEC's case so, again, I would allow them to
17 do that. I'm going to overrule any objection it that. To me,
18 that's fairly straight forward. Again, it's not what happened
19 in the case, it's their theory of the case. So I want to give
03:44 20 them a chance to describe it the way they believe they've
21 presented it. So all right.

22 Then continuing on, in the bottom of 4, plaintiff
23 says, "The SEC further alleges that Mr. Furman made material
24 misrepresentations, misleading statements and/or omissions
03:44 25 verbally or through marketing materials or private placement

1 memorandum he distributed to investors about the one percent
2 default rate of Par Funding's merchant cash advance loans and
3 the 2,000 lawsuits Par Funding filed against merchant borrowers
4 in default on the merchant cash advance loans. Par Funding
03:45 5 always conducting onsite inspections," et cetera, et cetera.

6 And I don't see it. He says here, the objection is
7 Furman's knowledge of the number was not part of the SEC's case
8 and there's no allegation that Mr. Furman stated that
9 Par Funding always conducts onsite inspections.

03:45 10 I mean --

11 **MS. BERLIN:** Mr. Sharp testified -- this is our
12 description of the case. Sharp testified about the number of
13 cases that had been filed and we heard the investors'
14 testimony. This is what we're telling the jurors our case is
03:45 15 about. I didn't know it was up to the defendants to edit.

16 **THE COURT:** More than that, you guys can point out the
17 fact. The objections which they are making here are the
18 objections you can make when you are in front of the jury. You
19 can argue that he never represented he always, he never talked
03:46 20 about this many lawsuits being an issue. This is what SEC
21 believes their theory of the case is.

22 Putting it in here in the jury instructions is really
23 no prejudice to the defense. They can actually, if anything,
24 if they believe it hasn't been satisfied, they can point out
03:46 25 that this has not been shown to them. That's fine. Again,

1 this is a description of the case.

2 MR. HYMAN: The only issue we have in addition to that
3 is the proposed language concerning regulators had sanctioned
4 ABFP. We suggest or we object to that language because it's
03:46 5 misleading.

6 THE COURT: What page are you on on that?

7 MR. HYMAN: Page 5, the beginning of page 5.

8 MS. BERLIN: It's our description of our case.

9 MR. HYMAN: But, Your Honor, it's misleading to say
03:46 10 that they had sanctioned ABFP which was managing Mr. Furman's
11 investment firm when ABFP managed but was never sanctioned by
12 the Texas Securities Board.

13 THE COURT: Any response to that?

14 MS. BERLIN: I am sorry, this is what we're going to
03:46 15 in our closing and he can argue his side of the case.

16 THE COURT: Correct. Again, if they had misstated
17 something that you believe that the evidence shows otherwise,
18 never said anything, only benefits the defense to point out
19 flaws in the SEC's case. That's overruled and we can proceed.

03:47 20 So I'm going through now and looking for the next
21 issue here. We're onto page 8 here, post-trial introduction.
22 I would assume, I hope, that I have quite a bit to go before I
23 see any edits. This is all pattern.

24 MR. HYMAN: Correct. I think the next issue --

03:47 25 THE COURT: Is that on the stipulations on page 16?

1 Is that the next time I see something?

2 MS. BERLIN: Yes.

3 THE COURT: Plaintiff's proposed --

4 MS. BERLIN: 15.

03:47 5 THE COURT: 15. I guess it might be my 16, to be
6 honest, it might jump over. Plaintiff's proposed language of
7 stipulation number 12, no registration.

8 MR. HYMAN: We withdraw that objection.

9 THE COURT: All right. Let me just --

03:47 10 MS. BERLIN: I just want to make clear. I'm now
11 seeing other edits that were made. We think it's important
12 that these stipulations reflect what the defendants agreed to
13 before they revised these jury instructions this morning. I
14 didn't even see the changes to the stipulations here.

03:48 15 THE COURT: They're not objecting to it now.

16 MS. BERLIN: It's not just that. There were some
17 other -- there's at least one other change I see which is in
18 paragraph 2.

19 THE COURT: Let me look because I didn't see more than
03:48 20 that. But I want to --

21 MS. BERLIN: They didn't underline it or italicize it.
22 I can just tell.

23 THE COURT: Which one is it?

24 MS. BERLIN: Number 2.

03:48 25 THE COURT: Par Funding was started by Lisa McElhone,

1 that one?

2 MS. BERLIN: Yes.

3 THE COURT: Where is the edit?

4 MS. BERLIN: So in our pre-trial stipulation that they
03:48 5 signed and filed with us, that says it was started by Lisa
6 McElhone and Joseph LaForte in about 2011.

7 THE COURT: So Joseph LaForte is missing?

8 MS. BERLIN: Joseph LaForte is missing which is,
9 obviously, important.

03:48 10 MR. HYMAN: There's no -- I'm not sure, at least I
11 think -- well, we'll reincorporate that one.

12 THE COURT: So Par Funding was started by Lisa
13 McElhone and Joseph LaForte.

14 MS. BERLIN: Yes.

03:48 15 THE COURT: I'm putting that back in. And in or
16 about, I think is what you meant to say. In or about, right,
17 2011?

18 MS. BERLIN: Yes.

19 THE COURT: Got it. All right. Moving on. All of
03:49 20 this other stuff looks pretty pattern. Again, I'm going to
21 print it out for you guys so you clean it up.

22 I'm now down to assertion of the Fifth. So let's see
23 here. This is, again, the pagination is probably off because
24 I'm cleaning up formatting as we go.

03:49 25 MR. HYMAN: There is one issue before we get there

1 which Your Honor had included the instruction on use of
2 depositions. I don't really care one way or another. Sorry
3 not, Your Honor, the use of deposition instructions had been
4 included.

03:49 5 THE COURT: Correct.

6 MR. HYMAN: We don't necessarily object. I just
7 question whether it's necessary because deposition --

8 MS. BERLIN: It should come out. There were no
9 depositions used.

03:49 10 THE COURT: No one used -- I was going to say no one
11 used any depos. That's out. I took it out. I took it out.

12 MS. BERLIN: I think the assertion of the Fifth
13 Amendment and the adverse inference should come out because we
14 didn't use it.

03:49 15 THE COURT: We didn't use it.

16 MS. BERLIN: The Judge allowed us to inquire so we're
17 not seeking it.

18 THE COURT: I kind of --

19 MS. BERLIN: So we're not seeking it.

03:50 20 THE COURT: By the way --

21 MR. HYMAN: No objection, Your Honor.

22 MS. BERLIN: That should come out. That was just an
23 oversight.

24 THE COURT: No, no, it worked out, I think, to
03:50 25 everyone's benefit. It's a cleaner case now anyway.

1 MS. BERLIN: Thank you, Your Honor.

2 THE COURT: So I deleted that one.

3 Now I'm on the, let's see, commissions claims looks
4 good. This is all Count 1.

03:50 5 First next thing I have an edit on is Count 1, Section
6 10(b) and Rule 10(b)(5) of the Exchange Act. Plaintiff's
7 proposed language, I don't know if it's objected to, but it
8 says for the first element that an instrumentality of
9 interstate commerce was used in connection with the purchase or
03:50 10 sale of a security. You must use these definitions.

11 It has instrumentality of interstate commerce.

12 Is there an objection to that?

13 MR. HYMAN: No. I think the -- hold on.

14 THE COURT: I think the only thing I see you guys
03:50 15 saying is you have a fraudulent --

16 MR. HYMAN: There's one other issue which is a typo on
17 the bottom on 25, it says, for the second element, Mr. Furman
18 must prove that Mr. Furman used a device. It should say the
19 SEC must prove.

03:51 20 MS. BERLIN: I don't think we're there yet.

21 THE COURT: I don't think we're there. I'm under
22 Count 1. The only thing I see on Count 1 is there is two
23 things. One) there is a definition for the first element, that
24 an instrumentality of interstate commerce, it has a definition.

03:51 25 Are you guys objecting to that definition?

1 MR. HYMAN: We're not objecting to that definition.

2 THE COURT: Okay, so I can leave that in. Then you
3 guys have a proposal that you're talking about where we get
4 into fraudulent device and you guys have a proposal that says,
03:51 5 a fraudulent device or scheme is a knowing or use of a
6 deceitful practice or willful device with the intent to obtain
7 an unjust advantage or cause loss to another. This comes from
8 SEC versus Gobel or Gobel.

9 Do we have a defense objection to that proposal?

03:51 10 MS. BERLIN: It's a defense proposal. You mean --

11 THE COURT: Yeah, it's a SEC objection to the defense
12 proposal. They want to add a little more information where it
13 says an untrue statement of material fact or the omission that
14 looks pretty accurate from the case law. It's fine.

03:52 15 MS. BERLIN: Yeah, it's not from the pattern
16 instruction.

17 THE COURT: No, no, no. It's from the Eleventh
18 Circuit case law SEC versus Gobel.

19 MS. BERLIN: I guess if we believe the cite here.
03:52 20 It's not what it quite says and we're not in a Gobel situation.
21 So --

22 THE COURT: Let me look and I'll pull up the case.

23 MR. HYMAN: I think, Your Honor, before we get there,
24 though, there's one typo at the bottom of page 25 which is for
03:52 25 the second element.

1 MS. BERLIN: We're not there.

2 THE COURT: I'm not on 25, we're not there yet.

3 I'm on Count 1. I am under Count 1, Section 10(b),
4 Rule 10(b)(5), we are on the elements, okay, first, second and
03:52 5 third of 10(b) and 10(b)(5). We already dealt with
6 instrumentality meant of interstate commerce. You guys have a
7 proposal for a fraudulent device or scheme. And that's the one
8 that I'm asking the SEC their position on.

9 MR. HYMAN: Before we get there, there's a typo, I'm
03:53 10 trying to point out, the bottom of 21, right after it says the
11 instrumentality, it says for the second element, Mr. Furman
12 must prove. It should read the SEC must prove.

13 THE COURT: I'm looking for it.

14 MS. BERLIN: That's correct.

03:53 15 THE COURT: I think I found it.

16 So let me ask you why do I need the proposal from the
17 defense if two paragraphs prior I have a scheme defined, a
18 device to find trick or fraud would refer to any improper plan
19 or course of action?

03:53 20 MR. HYMAN: You can --

21 THE COURT: It looks like I have what you want and it
22 even talks about materiality, too. Why is it not duplicative?

23 MR. HYMAN: You can take out our proposed language
24 there.

03:54 25 THE COURT: I don't think it adds anything. I think,

1 in fact, you guys got what you want. It adds, it looks like
2 there is a paragraph duplicative in general.

3 I'm taking out that extra paragraph.

4 **MS. BERLIN:** And that's the pattern, Your Honor.

03:54 5 **MR. HYMAN:** There is an issue with the next one in
6 terms of definition of material.

7 **THE COURT:** I'm sorry, what was the issue of material?

8 **MR. HYMAN:** I don't think there was one.

9 **THE COURT:** No. It says if the statement of omission
03:54 10 or fact is material or there is a substantial likelihood that a
11 reasonable investor would attach importance to it, put another
12 way, that the investor would view the misstated or omitted
13 facts of disclosure as significantly altering the mix of
14 available information, and a minor or trivial detail is not a
03:54 15 material fact.

16 That's a pattern, that looks good. You guys want
17 that?

18 **MR. HYMAN:** Yes, I do.

19 **THE COURT:** Leave that in there. So then you have
03:54 20 another one, though, at the end of this that says, defendant's
21 proposed all of these elements must be proved by the SEC by a
22 preponderance of the evidence for a finding of liability as to
23 any defendant -- as to the defendant if failure by the SEC to
24 prove any element must result in the finding of no liability.

03:55 25 Okay. How does the SEC feel about that? I mean,

1 again, it's just I don't know that the jury -- it's not
2 misstating anything, they have to find all three.

3 It says you must prove each of the following by a
4 preponderance of the evidence, so it does state it up there.

03:55 5 **MS. BERLIN:** It's not the pattern.

6 **THE COURT:** No, it's not the pattern.

7 **MS. BERLIN:** It's just adding, it's almost like saying
8 not only does the SEC have the burden, but they want to say it
9 like why, it's at the beginning. If the Eleventh Circuit
03:55 10 wanted to be reiterated multiple times in multiple confusing
11 ways, it would have been done in the instruction. But to add
12 this here not only is it duplicative, but I find it confusing.

13 **THE COURT:** Well, I'll say this, I'm not going to
14 accept it only because I do think that we lead off by clearly
03:56 15 stating that the SEC has to prove each of these facts by a
16 preponderance of the evidence. So we don't even get into the
17 elements without making that qualifier so it's a little
18 repetitive.

19 **MR. HYMAN:** Similarly, the language, if you find the
03:56 20 SEC has proved one or more of the elements, I, alone, will
21 determine the remedy, that's duplicative. They have the Court
22 determine their own instruction below.

23 **MS. BERLIN:** It's in the pattern, Your Honor.

24 **THE COURT:** It's in the pattern, Mr. Hyman. Listen,
03:56 25 the key is the following: When you have a pattern, having done

1 this for a little bit of time, you don't mess with the pattern
2 unless it's truly inapplicable, what you want to be careful is
3 adding non-pattern instructions unless they're really, really
4 necessary. I don't want to cut pattern. I'm willing to add to
03:56 5 pattern or eliminate, for example, like we do with a deposition
6 something that is wholly irrelevant, but once you find an
7 instruction that is appropriate, very careful about cutting a
8 piece of pattern that my appellate court has found to be
9 necessary. If anything, you want a line in there, again, that
03:57 10 would indicate that they don't need to worry about what the
11 remedies are whatsoever. That's always a good thing to remind
12 the jury and I think the Eleventh thought as well, so we're
13 going to leave that in.

14 **MR. HYMAN:** I saw it as a red line, so I didn't
03:57 15 believe it was part of the pattern.

16 **THE COURT:** No, no, no. I see it in here because I
17 have the pattern open, too. There's another thing here that
18 says defendant is objecting to plaintiff's addition of a
19 sentence.

03:57 20 **MR. HYMAN:** We don't need that.

21 **THE COURT:** We don't need that. We can get rid of
22 that.

23 **MR. HYMAN:** That was something before Your Honor's
24 summary judgment issues.

03:57 25 **THE COURT:** So let me go to -- I'm on Count 2 now

1 because I know the pagination is off. Right now, unless I'm
2 misreading something, I don't see anything until the very end
3 of Count 2. I'm on my page 24, I'm sure that's not what you
4 guys have but there's an argument here at the end that says,
03:57 5 again, it's the same thing, it's a request by the defendant to
6 once again emphasize that if the SEC doesn't prove all of these
7 things, you can't establish your case.

8 I've already said it's, again, the same thing we say
9 up front very clearly that the SEC has to prove a preponderance
03:58 10 of the evidence in Count 2 as well, so I don't need that.

11 Now, what I don't need to know -- what I need to know
12 is plaintiff is asking for an addition there. Do you still
13 want this addition? There's something here about to find for
14 the SEC on the second element, you need to only find that the
03:58 15 defendant was made or was responsible for one misrepresentation
16 or omission.

17 **MS. BERLIN:** That's correct. So basically, the SEC
18 alleges the series of misrepresentations and omissions. The
19 jury only needs to find one of them and any one of them.

03:58 20 So, for example, in other jury instructions, you know,
21 City of Miami, as an example, with Judge Altonaga, you know, we
22 include that language where we have multiple misreps and
23 omissions, they only have to find this element as to one of
24 them, they don't have to find the default and the insurance and
03:58 25 the conviction. We give them a menu in closing -- they just

1 need to find one. So that is just something that we have
2 included jury instructions in this district where we have
3 multiple misreps and omissions, otherwise the jury may have to
4 go through the whole list, which they don't.

03:59 5 **THE COURT:** And any response to that? By the way,
6 where it would go, I think, would be under the part for the
7 second element, and then under there's a line about
8 misrepresentations, not a statement that's not true, an
9 omissions defined and then I would think there you would
03:59 10 probably put it right.

11 **MS. BERLIN:** That's where we did it.

12 **THE COURT:** Put the SEC on the second element, you
13 need to only find one, because that's right after definitions
14 of misrepresentations and omissions.

03:59 15 **MS. BERLIN:** That's where we did it in the past, I'm
16 looking at the City of Miami instructions.

17 **THE COURT:** At the bottom, but I would move it into
18 that part if you are going to have it because it makes sense
19 there.

03:59 20 **MS. BERLIN:** Right under definition is where we have
21 used it before, so I think that was just an error, we should
22 move it up like the Court suggested, that's how we have done it
23 before, right after definitions, then to find for the SEC.

24 **THE COURT:** Defense's response on that line being
04:00 25 added?

1 **MR. HYMAN:** Obviously, the pattern instructions is
2 going to be our position, however, there is two other issues
3 with respect to these instructions that we want to address with
4 the Court which is misleading, which is the fact that ABFP was
04:00 5 managing Mr. Furman's investment fund. Because ABFP Management
6 is separate from the entity that was sanctioned by the Texas
7 Security Board as is the entity that was sanctioned by the
8 Pennsylvania Department of Banking and Securities, and those
9 entities were not managing Fidelis.

04:00 10 **MS. BERLIN:** I don't think we are there yet.

11 **THE COURT:** I don't know if we're there yet.

12 **MR. HYMAN:** It was before we got to that part of it.
13 It's subparagraph F and H with respect to the --

14 **THE COURT:** So it's the part that says, Texas Security
04:00 15 Board had entered an emergency cease and desist order against
16 Par Funding, that paragraph.

17 **MR. HYMAN:** Yep, Par Funding, executive Perry
18 Abbonizio and ABFP which was managing Mr. Furman's investment
19 fund and that's not accurate, Your Honor.

04:00 20 **THE COURT:** Okay.

21 **MR. HYMAN:** ABFP was not the entity -- Management Co.
22 was not the entity that was sanctioned.

23 **MS. BERLIN:** So, Your Honor, we can just -- why don't
24 we just take out the comma, which was managing Mr. Furman's
04:01 25 investment fund?

1 **MR. HYMAN:** I think you need to specify the specific
2 fund, Your Honor.

3 **MS. BERLIN:** I'm sorry, Your Honor, we'll just leave
4 it, and as ABFP.

04:01 5 **THE COURT:** For violating the securities laws.

6 **MS. BERLIN:** For violating securities laws, and we
7 will take out the phrase, "Which was managing Mr. Furman's
8 investment fund." I think that should come out.

9 **THE COURT:** Yeah. It would just read, "The Texas
04:01 10 Securities Board has entered an emergency cease and desist
11 order against Par Funding. Par Funding's executive Perry
12 Abbonizio and ABFP, for violating the securities laws and
13 engaging in fraud in connection with the offer and sale of
14 Par Funding promissory notes."

04:01 15 **MR. HYMAN:** I think, Your Honor, it still is
16 misleading and could lead to jury confusion in terms of the
17 different entity names and the specific entities that were
18 sanctioned should be listed.

19 **THE COURT:** I disagree with that. I think it's more
04:01 20 confusing. At the end of the day, this strips that out, it
21 only talks about those entities in big picture that ultimately
22 were a part of the cease and desist orders. I don't think we
23 need to get granular. Our jury is sophisticated enough that
24 they can figure it.

04:02 25 But I will take the one part that was misleading

1 against Mr. Furman because I do agree, as the SEC does as well,
2 that that would be improper. And I'm going to, obviously, I'll
3 be doing a little bit of grammar cleanup here so don't worry
4 about pointing out other things like that.

04:02 5 I'm going to print out one fresh copy for everybody
6 and have you guys all read it together while I'm in chambers to
7 make sure that we catch every typo because we don't want to
8 have anything get through here. So I've taken care of that
9 change.

04:02 10 And now I'm on to Count 3. I feel that we may have
11 the same small edits here to make. Same thing, again, it looks
12 like must -- well, let's see here. This looks new. There's a
13 cite -- oh, no, it's the Gobel cite. The defendant has
14 proposed at the end of Count 3, the SEC must prove that act,
04:02 15 practice or course of deceitful or fraudulent business that the
16 defendant engaged in involved the purchase or sale of
17 securities. Okay.

18 You guys still want that? I'm trying to figure out
19 why we need that. I'm just looking above it.

04:03 20 **MR. HYMAN:** Yeah, that's fine, Your Honor.

21 **THE COURT:** I think we can take that out, because I
22 think we got it explained.

23 **MR. HYMAN:** Same thing with the fraudulent device.
24 Your Honor has already addressed that issue.

04:03 25 **THE COURT:** Yeah. The fraud device part.

1 MS. BERLIN: Why do we have this part here?

2 THE COURT: Does the plaintiff need that? The
3 plaintiff also had a section here about fraud or deceit.

4 MS. JOHNSON: That's part of the pattern, Your Honor.

04:03 5 THE COURT: The part that's underlined.

6 MS. BERLIN: Are you sure for C?

7 MS. JOHNSON: Yes.

8 MR. HYMAN: The thing is that we had incorporated it
9 to show that there was a difference between the two languages.

04:03 10 MS. BERLIN: We want to just go with the pattern,
11 Your Honor, obviously.

12 THE COURT: Let me pull up the pattern here.

13 MS. BERLIN: Let's just check.

14 THE COURT: I just need to check that one because it
04:03 15 looks like it's not supposed to be here.

16 Give me one second, I can look it up.

17 So that's why I made it I thought for a second.

18 MS. JOHNSON: It's underlined because they objected to
19 it.

04:04 20 THE COURT: Oh, I got you but let me just double-check
21 to make sure in an abundance of caution. It's loading, give me
22 one second here.

23 MS. JOHNSON: I'm 99 percent it's from the pattern but
24 at 2:00 in the morning --

04:04 25 THE COURT: I have it here give me a second here. Let

1 me just -- I'm pulling it up.

2 Securities Act instructions, it would be let see.

3 Hold on, I'm looking for the exact pattern, Exchange Act 10(b).

4 Let me do it this way. Fraud or deceit. I'm looking for --

04:05 5 there we go. Here it is. Got it.

6 5.13 looks like the instruction that I'm working with

7 here. And this would -- let me make sure it's the same place.

8 6.4.

9 **MS. BERLIN:** Yeah.

04:05 10 **THE COURT:** So 6.4 pattern has this section of 5.13

11 and it does have this language in here. Fraud or deceit means

12 a lie or trick. It comes after, I want to see where do they

13 put it in for the second element. So I guess so it is in that

14 spot. Okay.

04:05 15 So that is pattern. So it just describes a fraud or

16 deceit and it's not necessary. Okay. That looks fine.

17 Defendant, some person -- that is pattern so I can

18 take that underline off and that's fine. And then, let's see,

19 this last line that you put this in, the term, yeah, that's in

04:06 20 there.

21 Did you change that? What did you do there? The term

22 would in the phrase would operate for means to act, practice or

23 submit and have the capacity to defraud a purchaser or seller.

24 Looks like you -- oh, that's why. There was another line there

04:06 25 but it just got cut. So that means I need to address one line

1 here.

2 The defendant has proposed some language that says,
3 "This means the allegedly improper practice or course of
4 dealing must have been sufficiently material to have the
04:06 5 capacity to fraud a purchaser or seller. I have defined
6 materiality above." Okay.

7 Does the defense still need that? Again, that's just
8 an addition outside a pattern. You guys want that in the
9 instructions still? Is that still an issue?

04:06 10 **MR. HYMAN:** We would like it but, obviously, I don't
11 think it's worth belaboring the point or --

12 **THE COURT:** Yeah, again, if it added something under a
13 case I can understand, but it's an added thing to the pattern
14 so I'm going to take that out. So that's eliminated.

04:07 15 The third element looks like it's still verbatim from
16 the pattern. Knowingly -- let's see. Knowingly means -- okay.
17 You decided to refer back to Count 1 so it wouldn't be
18 repetitive.

19 If you prove more than one of these claims, okay. And
04:07 20 then I would -- obviously, it's the same liability instruction
21 so I can take that out. All right.

22 Count 4, are we eliminating -- I think we withdrew
23 this promissory note issue, right? This is an old one. The
24 defendant had an objection under Count 4, if you find a
04:07 25 promissory note --

1 MR. HYMAN: That's out.

2 THE COURT: That's out. We have already dealt with
3 that. So let me go through this and see. Same thing. We have
4 an objection or a wish to add no finding of liability, failure
04:07 5 to prove, I'm going to delete that, we don't need to go through
6 that, I made that clear, we make it clear in the pattern that
7 if they don't prove it all the elements, that they're out.

8 Okay. So now I'm on Count 5.

9 MS. JOHNSON: We have the same on F to take out --

04:08 10 THE COURT: Which was managing the fund, so it is just
11 going to read ABFP for, right? Okay, I had that change.

12 MR. HYMAN: H as well.

13 THE COURT: Let's see. Ah, is that the first time
14 that we saw see that or was there a prior H? We should get
04:08 15 that out again.

16 MR. HYMAN: It's in both, the prior H --

17 THE COURT: I didn't catch that the first time. We
18 have got to go back which is managing Mr. Furman's investment
19 fund, SEC needs to have H?

04:08 20 MS. BERLIN: We see that. That should come out, which
21 was managing Mr. Furman's investment.

22 THE COURT: I took that out there, but I didn't take
23 it out in the prior H. Let me go back.

24 MS. BERLIN: It should come out.

04:08 25 THE COURT: Which was managing it. I should be able

1 to find it.

2 You know, I control F'd it. It shouldn't be anywhere
3 after this. So there was three more spots. I may be catching
4 it down the line. One more. Okay, I got it. All right.

04:09 5 Okay. All right. So let me scroll back down. That
6 was Count 5. Then we have to take out the same thing again,
7 the elements language from the defense proposed, that's already
8 covered. That's deleted.

9 Count 6 now, we can take out the securities again.
04:09 10 I've already made these rulings, they're just repetitive, and I
11 can take those out.

12 And now, I am on Count 7.

13 **MR. HYMAN:** Yep.

14 **THE COURT:** And let's see, what do we have here?

04:09 15 **MR. HYMAN:** We have already stricken the language
16 about the burden of proof.

17 **THE COURT:** Right. What's this fourth? There's a
18 fourth prong here right. You guys have entered a fourth prong
19 applicable because that's burden shifting.

04:09 20 I think in my order on summary judgment I made clear
21 that at trial it's got to be the defendant that proves the
22 exception, right?

23 **MR. HYMAN:** We have stricken that language.

24 **THE COURT:** Okay, I'll take that out. All right.

04:10 25 **MR. HYMAN:** And then, similarly, too, we had proposed

1 some additional language at the end of the -- well, hold on.

2 **THE COURT:** Let's see here. I see I got a couple of
3 additions here. Defendant's proposed language, "The Commission
4 is required to show, however, that the transaction would not
04:10 5 have taken place without the defendant's participation."

6 **MS. BERLIN:** It's not in the pattern. I am not sure
7 why we would be adding that.

8 **THE COURT:** Listen, unless we have a case that
9 supports it and adds it, I'm not going to be differing from the
04:10 10 pattern and it's not on a case that is on point. I'm going to
11 delete that.

12 What about the SEC's good faith belief issue under
13 Section 5? Do you need that?

14 **MS. BERLIN:** That comes from -- I mean, it's something
04:10 15 they've continued to argue, right, throughout the trial so I
16 think it's relevant. It's in the -- if you look at the page of
17 law that comes after this -- wait, wait. This is the pattern,
18 isn't it?

19 **THE COURT:** It might be.

04:11 20 **MS. BERLIN:** I think it is.

21 **THE COURT:** Let me check because, remember some of
22 them are underlined and the actual pattern -- hold on, I can
23 look it up.

24 **MS. BERLIN:** I know it's in there.

04:11 25 **THE COURT:** Hold on. It's here. I got it. It's

1 right here. A defendant's good faith -- in the pattern, a
2 person who sells unregistered securities violates Securities
3 Act Section 5 regardless, whether the violation is committed
4 knowingly, intentionally, recklessly or negligently. The
04:11 5 defendant's good faith belief that the sale was legal and his
6 or her reliance on advice of counsel aren't defenses to a
7 violation of Section 5. So that is pattern.

8 **MR. HYMAN:** And then we can strike the proposed
9 language that we put in at the bottom of that given
04:11 10 Your Honor's ruling on the directed verdict issue.

11 **THE COURT:** Okay, so we got that done. Now we're on
12 -- I think we're down to --

13 **MS. JOHNSON:** One more. Do you want to take it out?

14 **MS. BERLIN:** Oh, yeah. So we think at the top of our
04:11 15 page 39 where it says, "Mr. Furman may be a necessary
16 participant or substantial factor in the sale of securities if,
17 for example," do you see that?

18 **THE COURT:** Yes, I found it now.

19 **MS. BERLIN:** So the "for example" isn't an example
04:12 20 that's relevant to this case at all, so we think it's
21 confusing. We think the "for example" part should come out.

22 **THE COURT:** So it should read, "Mr. Furman may be a
23 necessary participant or a substantial factor in the sale of
24 securities if by" --

04:12 25 **MS. BERLIN:** We think that sentence should come out

1 because in the sentence before it discusses the necessary
2 participant or substantial factor. It's the sentence before
3 and then there's an example sentence. And so that sentence
4 should come out.

04:12 5 **THE COURT:** So do you think it has to be -- hold on a
6 minute. So you want to take out that whole section?

7 **MS. BERLIN:** Just the sentence so that it would
8 read --

9 **THE COURT:** To satisfy the element?

04:12 10 **MS. BERLIN:** -- to directly or indirectly sell
11 securities," and then the next sentence would say, "To satisfy
12 this element."

13 **THE COURT:** Oh, gotcha.

14 **MS. BERLIN:** So we would just take the out the
04:13 15 sentence that has an example that is not relevant to this case.

16 **MR. HYMAN:** I think that's part of the pattern --

17 **MS. BERLIN:** It is.

18 **MR. HYMAN:** -- and it's necessary to provide the
19 context as to the definition of it.

04:13 20 **THE COURT:** Well, but remember, let's think about why.
21 Remember, we cut pattern if it's not totally inapplicable, but
22 I don't know that you want that in there for your own sake
23 because what that does is -- I mean look, what it says. They
24 want to cut out something that talks about if you employed or
04:13 25 directed anyone to sell or to offer to sell securities on his

1 behalf, expand the scope of his potential exposure by linking
2 him up to anyone else.

3 I don't remember ever having Mr. Furman say that
4 anybody else did this on his behalf. He was the guy. I mean,
04:13 5 he was the main guy. Doesn't distinguish anything, it points
6 out that it's not an issue in the case.

7 What they want to cut is just one line that says,
8 "Mr. Furman may be necessary if he, for example, employs or
9 directs others to sell or offers to sell securities or plans to
04:13 10 process by which they are offered or sold." They want to cut
11 that.

12 MS. BERLIN: Our concern if that's there, then their
13 defense will point to it and say, here is what that means and
14 he didn't do these two things. I mean, that's just my
04:14 15 experience from --

16 THE COURT: The whole point is it's structured as, for
17 example, so if it's not a possible example of what he did and
18 the evidence supports it, I don't know why we would want to
19 give it.

04:14 20 MS. BERLIN: I think that could be confusing.

21 MR. HYMAN: That was our whole argument, is that that
22 is what is the definition of the necessary factor, that's why
23 we're trying to say that they haven't proven these elements
24 because that's what's required of them to prove. And,
04:14 25 candidly, I think it should be in there because it's part of

1 the pattern jury instructions and it explains the context of
2 what those definitions are.

3 **THE COURT:** I don't know if you're thinking through
4 these objections, but if you want to keep it in, there you can
04:14 5 keep it in there.

6 **MS. BERLIN:** I think if you keep it in there we should
7 just say, among other examples, because if we're going to get
8 this argument in closing and I think the jury, what he just
9 said, and then the jurors are going to be confused and then I
04:14 10 start to get confused.

11 It clearly says this is just an example. This isn't
12 the way, the only way. And so if it's in there as an example
13 and they argue what they just argued here to the Court,
14 which --

04:15 15 **THE COURT:** Meaning that they're trying -- meaning
16 that that is the only way by which you can satisfy indirect,
17 which it's not. Again, look, I think if that happened I would
18 have to jump in and explain that it's not the only way. It
19 says it very clearly. If, for example, it's one of the ways
04:15 20 you can be a necessary participant or a substantial factor.

21 I'll leave it in there. If you want it in there, I'll
22 leave it in there. If the defense wants it in there, I'll do
23 it.

24 I mean, the only thing I would say if -- I'm trying to
04:15 25 think how you would want to word it, and (inaud.).

1 MS. BERLIN: Can we indicate there are other examples
2 because, Your Honor, we know what's going to be argued.

3 THE COURT: If, for example --

4 MS. BERLIN: Or by way of just one example.

04:15 5 THE COURT: Right, let me see here. And it's may be.
6 So it would be, "Mr. Furman may be a necessary participant or
7 substantial factor in the sale of securities if, by way of one
8 example, he employs or directs others to sell or offer to sell
9 securities or plans, the process by which unregistered
04:16 10 securities are offered or sold."

11 MS. BERLIN: Sure.

12 THE COURT: I think that's fine. It gives you guys
13 what you want, it's in there, you guys can honor it, you guys
14 can still make arguments. That's fine.

04:16 15 MS. BERLIN: Would it be permissible if we say to the
16 jury, like, this is one example --

17 THE COURT: So even if the defense comes up and says
18 he didn't do part of that, it's not the exclusive way to prove,
19 I mean, that's what the instructions say.

20 MS. BERLIN: Perfect.

21 THE COURT: It gives the defense a chance to argue
22 that theory and it lets the defense get that language, I'm
23 giving the benefit of the defense, I think we can work with
24 that. I think it's a clear statement of the law.

04:16 25 MR. HYMAN: And for the next one with the proposed

1 language, we can just argue the definition of necessary
2 participant without that going into the jury instructions.

3 **THE COURT:** Where is this? This is now -- because the
4 next thing I have defense's exemption. Did I miss something?

04:17 5 **MR. HYMAN:** Defendant's proposed language, the
6 Commission is required to show, however, that the sale
7 transaction would not have taken place without the defendant's
8 participation, that's the but-for cause definition defined in
9 various cases.

04:17 10 **MS. BERLIN:** We have talked about this.

11 **THE COURT:** This is the one I just took out.

12 **MR. HYMAN:** Oh, you took that out already.

13 **THE COURT:** Yeah, I already ruled. We are not going
14 to have that in there. You can keep the part you want in the
04:17 15 pattern, but I don't think you need that in there. That's
16 surplus.

17 **MS. BERLIN:** And, Your Honor, we just want to be very
18 clear. I don't want to try this case twice. We want to make
19 sure that the jury is clear and that the defense is not going
04:17 20 to, or if the Court will give some corrective if their closing
21 tomorrow is, here is the example, and if they don't meet this
22 example, then there's no Section 5.

23 **MR. HYMAN:** That's double hearsay.

24 **MS. BERLIN:** I'm just making a prediction.

04:17 25 **THE COURT:** I hear you and I have no problem

1 explaining it. So I can give a curative or I can just answer a
2 jury question. And I can guarantee we are not trying this
3 case. We're not trying this case. That much I can guarantee.
4 One way or the other, this case is over after the jury comes
04:18 5 back.

6 **MS. BERLIN:** Thank you so much, Your Honor.

7 **THE COURT:** And then, let's see. This one next is
8 defense proposed instruction.

9 **MR. HYMAN:** That can be stricken, Your Honor. That
04:18 10 was based on the issues raised.

11 **THE COURT:** Okay. Let me, so I don't lose my -- how
12 about the next one, fraud of a good faith defense? Are we
13 still there?

14 **MS. BERLIN:** Yeah, that's not a pattern, that's
04:18 15 something the defense would like to create and include. We
16 would oppose it.

17 **THE COURT:** So, you guys, let me just make sure, I
18 know the defense is not asking for the one before, the
19 defensive exemption, that's not being asked for, that's fine,
04:18 20 but -- and I deleted that. Are you guys still arguing the good
21 faith one?

22 **MR. HYMAN:** Actually, Your Honor, we are arguing
23 exemption as well. There was evidence to show that
24 Par Funding --

04:19 25 **THE COURT:** You just told me to delete it.

1 **MR. HYMAN:** No, no, no, I was talking about the
2 language above, I put defendant's proposed, not the defensive
3 exemption.

4 **THE COURT:** Listen. You have got to follow me here
04:19 5 because I'm moving.

6 **MR. HYMAN:** The language when we wrote the fact that
7 Mr. Furman was selling promissory notes to Fidelis was not part
8 of the transaction at issue.

9 **MS. BERLIN:** Where are we? I'm sorry?

04:19 10 **THE COURT:** I don't know, but I deleted that anyway.
11 Stay with me. You are defensive exemption.

12 **MR. HYMAN:** Yes, we want that in, sir.

13 **THE COURT:** Any argument on the defendant's defensive
14 exemption? That's where we are now? Do you know where we are,
04:19 15 SEC?

16 **MS. BERLIN:** Yes, you would like to hear from us on
17 this?

18 **THE COURT:** Yes. Let me hear from you guys on that.

19 **MS. BERLIN:** We oppose this instruction. It's not
04:19 20 from the pattern, it is incorrect law. It is an incorrect
21 recitation of the exemptions. It's -- we're not sure where it
22 came from. It's just completely wrong, and I don't know what
23 more I can say about it. I feel like we have been over this.
24 It talks about things that were never even tried in this case
04:20 25 or even raised as affirmative defenses, 506(b), 508, and the

1 law is wrong.

2 I can't say enough about it, it's just I'm mystified.
3 We don't know what else to say.

4 **THE COURT:** Let me see. So the objection also written
04:20 5 here is whether the Fidelis notes have an exception under
6 506(c) was only funded by a credit investment is not an issue
7 at the trial. The only issue regarding exemption would be
8 whether Par Funding notes, which has been the argument that we
9 heard last week, and the ABFP notes were subject to the
04:20 10 exemption from registration, which they have not been.

11 So can I hear from the -- I mean, we have kind of
12 argued this issue already. And so my concern here is obviously
13 misleading the jury. It doesn't really, by the way I'm looking
14 at it, it doesn't actually even identify which note, in fact,
04:20 15 interestingly enough, the entire proposed instruction doesn't
16 mention which note we're talking about, it doesn't say it's
17 Fidelis, it doesn't say it's Par, it's doesn't say it's ABFP.
18 It just goes into general 506(c), and then says that there's a
19 good faith issue here.

04:21 20 You guys have cited the Eleventh for this proposition
21 and some CFRs.

22 **MS. BERLIN:** That's Levin.

23 **THE COURT:** I'm sorry, Levin -- and I'm just pulling
24 up Levin.

04:21 25 **MS. BERLIN:** Levin has to do with -- Levin was one of

1 my cases. It was -- that was an issue on summary judgment, the
2 defendants had raised a certain affirmative defense exemption
3 under good faith that wasn't raised in this case. The
4 defendants raised 506(c) in their pleadings. And that's what
04:21 5 we had a trial on. And so now we got these instructions this
6 morning where have added like 508 and 506(b) for other
7 offerings where the issuers never even argued this.

8 If it did come in, we would have to obviously address
9 it, but I think we have an issue like, first and foremost, with
04:22 10 additional affirmative defenses being added at the end of
11 trial. That would be one problem.

12 **THE COURT:** So can I understand why if this is -- if
13 the SEC is -- and I spent time earlier in the trial trying to
14 address this because I wanted to avoid this today, and that was
04:22 15 why I wanted to discuss that this was not an applicable defense
16 as to the SEC's theory because they were only focusing on notes
17 that were not the Fidelis notes.

18 So can I get an understanding from the defense,
19 unfortunately, I don't know that there's a compromise on this
04:22 20 as a proposed instruction, either it's applicable or it's not
21 legally, and if the SEC is not arguing about the Fidelis notes,
22 and I will note that you would have to, I think, put in this
23 instruction to make it clear that you're talking about
24 applicability as to the Fidelis notes, because that's the
04:23 25 argument, but the problem is you don't mention which note in

1 the proposal, and if you mention Fidelis, that's not what the
2 SEC has been pursuing, and if the Court has rejected the
3 integration theory where you think Fidelis is the same as
4 Par Funding and/or ABFP, then this wouldn't apply.

04:23 5 So can you maybe tell me where --

6 **MR. HYMAN:** There's two different issues that are kind
7 of within the context of it. First of all, Your Honor,
8 obviously, there's been the defense throughout the course of
9 the case that Fidelis is subject to exemption and to the extent
04:23 10 that Fidelis was not a pass-through or a mere conduit to
11 Par Funding, then that exemption would obviously protect
12 Mr. Furman from liability.

13 Second, Your Honor, is --

14 **THE COURT:** Hold on let, you know, unfortunately we
04:23 15 have talked about this a lot. We're either just going to have
16 to just go forward with the explanation that I've tried to give
17 and there's not much more I can do.

18 What you just stated there is not what's happening in
19 the case. There is no protection for Fidelis being exempt
04:24 20 under 506(c) because they're not arguing that the Fidelis notes
21 are the unregistered problematic offering, and, again, I don't
22 want to get into it, but am I correct again --

23 **MS. BERLIN:** Yes.

24 **THE COURT:** -- that the argument has been Par Funding
04:24 25 and ABFP are unregistered so whether or not you show that

1 Fidelis is protected is of no moment.

2 MS. BERLIN: Correct, the SEC has not -- once again,
3 the SEC has not charged Mr. -- has not charged anything about
4 the Fidelis claim being unregistered, that has not been
04:24 5 charged, therefore, that is not being alleged by the SEC and we
6 will object to the jury deciding something we haven't charged.

7 THE COURT: But, more important than that, one cannot
8 have the jury thinking that because he's established that he --
9 that under the Fidelis notes he is somehow exempt and that this
04:24 10 is a defense to unregistered offerings and other notes. That
11 is problematic. That would really misstate the law and it
12 would confuse the jurors incredibly. They are going to think
13 that because accredited investors bought the Fidelis notes,
14 assuming they believe that that's true, then somehow that means
04:25 15 that the unregistered nature of Par Funding notes and ABFP
16 notes doesn't create liability under Section 5, right?

17 MS. BERLIN: That is correct. We have to talk about
18 the offering.

19 THE COURT: So that's a problem, guys, and I don't --
04:25 20 I mean, look, at this point, you guys believe that there's a
21 theory of the case that would permit that, you have preserved
22 the record and the Eleventh Circuit can be the ultimate arbiter
23 of that. I don't know what else I can do but given that
24 instruction, it's just not a valid defense.

04:25 25 MR. HYMAN: A separate issue as well which is that we

1 also did put sufficient evidence to show that the Par Funding
2 notes and offering would otherwise be exempt from registration.
3 We put into evidence the 506(b) forms, and as a result, the
4 innocent mistake exemption.

04:26 5 **THE COURT:** Wait a minute. Hold on a minute. Hold on
6 a minute. We discussed this last week and there was a very
7 clear explanation, as I recall, that from no moment has
8 Par Funding or ABFP ever put themselves out in the world of
9 exemptions. Their own filings, I believe, indicated very
04:26 10 clearly that they knew they were unregistered in nature.

11 I don't want to say that's a stipulation, but I don't
12 think any point that's even been an argument advanced by Mr.
13 Furman, meaning Mr. Furman is going to come in now through his
14 case and try to show that those ABFP and Par Funding notes did
04:26 15 not need to be registered?

16 I think that the registration has never been changed
17 as to those notes.

18 **MS. BERLIN:** We're double-checking it. So we're
19 checking, you remember there was a litigation over, they were
04:26 20 arguing initially it wasn't a security and it was something
21 under Reeves.

22 **THE COURT:** Right.

23 **MS. BERLIN:** We're just checking that November
24 pretrial stip to make sure, and on the ones we filed because we
04:26 25 filed with them the other day.

1 THE COURT: Yeah, I saw the revised one.

2 MS. BERLIN: So let me just -- I just want to check to
3 make sure.

4 MR. HYMAN: We didn't take the position that they
04:27 5 hadn't filed a registration, it was that the party is taking
6 the position that they're exempt from registration, which I'm
7 sure the other defendants had not previously stipulated to.

8 We also introduced into evidence the 506(b) forms of
9 Par Funding throughout the course of this case. And also,
04:27 10 information as to the number of accredited investors as well as
11 Par Funding's reasonable efforts to show that these investors
12 were, in fact, accredited through Mr. Cole and, as a result, we
13 had, in fact, put in sufficient evidence for the jury to
14 address the issue of whether the Par Funding notes were also
04:27 15 exempt.

16 THE COURT: Let me know when the SEC has double-
17 checked the issue.

18 MS. BERLIN: We're double-checking. Hold on.

19 THE COURT: I'm just trying to remember if that issue
04:27 20 has ever been stipulated to. I can't remember.

21 MS. BERLIN: We're looking. We just had a glitch with
22 the internet, with the system.

23 THE COURT: If you want to give me the ECF number, I
24 can look it up where you think a stipulation has been reached
04:28 25 or earlier. Might even have been in the preliminary injunction

1 case.

2 MS. BERLIN: No, no, no, we want the one filed with
3 the other defendants when they were in the case, although they
4 don't represent those companies.

04:28 5 THE COURT: But there was already representations on
6 that. I don't remember.

7 MS. BERLIN: I don't remember. We're looking. It was
8 filed November something. I don't remember the exact date.

9 THE COURT: I'll tell you now, hold on.

04:28 10 MS. JOHNSON: November 22nd.

11 MS. BERLIN: Can we pull it up so we can just
12 double-check the -- thanks.

13 THE COURT: I have November 23rd, but I don't know, I
14 don't have November 22nd.

04:29 15 MS. BERLIN: I think that was from her memory.

16 MR. HYMAN: Your Honor, at least in the Word version
17 that I'm looking, it states, "The statement of reasonable
18 detailed issues of fact which remain to be detailed at trial,
19 A) whether Par Funding, McElhone, LaForte, Barletta, Vagnozzi,
04:29 20 Abbonizio and Furman, offered to and sold securities in the
21 form of promissory notes and transactions that were not
22 registered and not exempt from registration.

23 That's in the reasonable details facts which remain to
24 be litigated at trial in the Word version that I have.

04:29 25 MS. BERLIN: Let's look at the CM/ECF version and

1 let's look at the stipulations. We're just trying to pull
2 those up on our end.

3 MS. JACQMEIN: I think it was the 23rd.

4 MS. BERLIN: You think it was the 23rd?

04:29 5 MS. JACQMEIN: It was around that time. I know it was
6 before Thanksgiving.

7 MS. BERLIN: Once we pull it up, we'll look.

8 I mean, the -- so, let's assume, let's -- while Alise
9 is looking that up, let's assume, because we can't pull it up,
04:30 10 that there is a legal issue for trial over whether Par Funding
11 was exempt from registration.

12 THE COURT: Right.

13 MS. BERLIN: Which I don't recall, but we're going to
14 look. And it should be on the file. So Par Funding, as part
04:30 15 of this trial, the exemption that they claimed in their filings
16 with the SEC and the defendant put that in themselves into
17 evidence, is 506(b) as in boy. That's those are the boxes that
18 were checked. And B, as in boy, is they would have to prove
19 that Par Funding did not engage in any general solicitation --
04:30 20 I mean, offer it to the public. That's what a 506(b) exemption
21 is.

22 That's the only exemption, and that's the evidence in
23 the case and those were the filings with the SEC the defendants
24 put them into evidence.

04:31 25 So if they wanted to add -- I don't know that I would

1 be opposed, I don't know that it's going to help.

2 THE COURT: I was going to say this --

3 MS. BERLIN: The 506(b) exemption, they would have to
4 prove that nobody was ever solicited in the public domain.

04:31 5 THE COURT: So let's -- so the issue is, it's Docket
6 Entry 966, November 16, 2021 was the last time that the parties
7 stipulated. We have already ruled as a matter of law they are
8 securities.

9 So there is an argument, again, it's not too specific,
04:31 10 but I think we're specifically talking about ABFP and
11 Par Funding notes where they are maintaining that they're
12 exempt from registration pursuant to 506(b) and (c) of the
13 Securities Act.

14 So if we're going to allow there to be this
04:31 15 instruction, it has to be modified. Number 1) the proposal
16 doesn't even specify what note, so it's extremely confusing,
17 but you would have to say something in here.

18 So as I previously explained if you find that the SEC
19 has proven by a preponderance of the evidence that the
04:32 20 defendant sold securities for which no registration was in
21 effect, you must decide whether the defendant has met his or
22 her burden to prove by a preponderance of the evidence that the
23 offer to sell the securities was exempt from the Securities Act
24 registration requirements.

04:32 25 I think you would say there specifically the issue is

1 whether the Par Funding or ABFP notes were subject to exemption
2 under 506(b) and (c).

3 **MS. BERLIN:** No, no, no. Okay. So 506(c) was
4 never -- it's in evidence already in this case. Par Funding
04:32 5 and -- Vicki, can you just pull the Form Ds? I really wish
6 they had sent this before this morning and before we had
7 closed, we would have just called Mr. Sharp.

8 So they did not, Par Funding did not file with the SEC
9 for exemption under 506(c).

04:32 10 **THE COURT:** So it should be 506(b).

11 **MS. BERLIN:** (B) as in boy, and I pointed that to out
12 to Mr. (inaud.), and it's a traumatic difference.

13 **THE COURT:** That's fine.

14 **MS. BERLIN:** Let us just -- I just want to check that
04:33 15 before, because we did not know this was a feature of the trial
16 until this moment. So I haven't even looked at it.

17 **MR. HYMAN:** It's been --

18 **MS. BERLIN:** I'm not even sure that you have the right
19 to claim that another company should have gotten exemption from
04:33 20 the registration laws, quite frankly, but let's assume for a
21 second that you even have -- an individual defendant has the
22 right to prove that Par Funding was exempt in its nationwide
23 offering. Let me just make sure I know that exemptions were
24 filed with the SEC.

04:33 25 **THE COURT:** Okay, go ahead and take a look while I'm

1 editing this instruction.

2 MS. BERLIN: So P6 is one of them. And that is 506(b)
3 as in boy.

4 THE COURT: So let's --

04:34 5 MS. BERLIN: And Your Honor --

6 THE COURT: Hold on. Listen, I'm not going to --

7 we're trying to streamline this. The first paragraph here
8 doesn't work because the first paragraph is defensive exemption
9 says 4(a)(2) of the Securities Act exempts from the

04:34 10 registration requirements transactions by an issuer not
11 involving any public offering, and then it talks about the safe
12 harbor and mentions (b) and (c).

13 We can all agree there's not a universe where we can

14 maintain a defense of exemption that this was not a public
04:34 15 offering, these things were on the radio waves, they were all
16 over the steakhouses. I mean, the defense, I am assuming, that
17 that's not relevant in this case. There's no way you could
18 even maintain these on public offerings. They're absolutely
19 made to the public. These aren't private placements in that
04:35 20 sense, they're not limited private placements where you get a
21 safe harbor.

22 I mean, at this point everybody has mentioned that
23 these things were wildly offered and once you put something on
24 the radio and on TV, I don't know how could you argue that

04:35 25 Par Funding and ABFP were private.

1 **MR. HYMAN:** That's part of the difficulty, right, is
2 that he was only advertising for Fidelis, he wasn't advertising
3 for Par Funding. In not a single one of the advertisement is
4 Par Funding specifically mentioned.

04:35 5 **MS. BERLIN:** Can't.

6 **THE COURT:** Listen, because I'm not going to be -- I
7 only have so much reservoir with everybody here. I can only do
8 so much. I'm writing this for everybody.

9 You got to -- this isn't just throw the dart and see
04:35 10 what sticks. It's jury instructions and we need to get this
11 right. We have a jury that has a lot of information and you
12 can't play fast and loose with securities regulations, you will
13 make a mistake and it will confuse my jury.

14 So I need to make everyone understand that you're not
04:35 15 going to get a jury instruction that doesn't match attest a
16 theory of the case. We're not going to shift things on the
17 fly.

18 You just understood my earlier statement that Fidelis
19 is not a part of the SEC's case, meaning the Fidelis notes
04:36 20 themselves are not at issue. The Par Funding and ABFP notes
21 are at issue. Then you stated to me, well, we have put enough
22 evidence to show that the Par Funding and ABFP notes are
23 permissible to be unregistered because they fall into
24 exemption, it's going to be exemption 506(b), not 506(c).

04:36 25 But now you're shifting me back to Fidelis. So I need

1 you to stay with one theory of the case. This isn't throw up
2 (b), (c) and three sets of notes and hope that the jury gets
3 confused and finds that the SEC has not proven its burden. We
4 need to make sure that the evidence makes sense.

04:36 5 So my understanding is you are arguing now, and let me
6 be clear so the SEC is following along with what's happening
7 here. I mean, we're looking up stuff, but follow with me.

8 **MS. BERLIN:** I am, Your Honor.

9 **THE COURT:** Here is the issue: You can't make an
04:36 10 argument to this jury that the Fidelis notes are exempt because
11 it's not part of the SEC's case and this is not sandbagging
12 because the Court spent two hours in the middle of trial
13 clearing this you issue up to literally avoid this litigation
14 at charge conference. I already spent the time and energy to
04:37 15 clean up this issue.

16 So now we're down to just Par Funding notes and ABFP
17 notes. I don't have a problem with the theory of the defense
18 that those two notes are exempt from registration requirements
19 and, therefore, under Count 7, we can't find Mr. Furman to have
04:37 20 violated the Securities Act because these notes, as
21 unregistered notes, mean that he's not going to be held
22 liability for that count because he didn't sell unregistered
23 notes, these note were exempted from registration.

24 So we know that the theory is Par Funding and it's
04:37 25 only ABFP, that our instructions should only focus on whether

1 the jurors felt there was enough evidence to find that
2 Par Funding and the ABFP notes were exempt from the Securities
3 Act which, my understanding would be an exemption only under
4 506(b), not (c).

04:38 5 That means issues like public offering concerns under
6 4(a)(2) and the safe harbor for private placements, that's
7 really not the issue. In fact, what I see here is the issue is
8 506(b) requires that A) excluding accredited investors, the
9 issuer reasonably believes there are no more than 35 purchasers
04:38 10 of this security in any 90-day calendar period, and B) each
11 purchaser who is not an accredited investor, either alone with
12 or with his purchaser representative, has such knowledge and
13 experience in financial and business matter and he's capable of
14 evaluating the merits and risks of the prospective investment
04:38 15 or the issuer reasonably believes immediately prior to making
16 any sale, that such purchaser comes within this description.

17 And then it goes on to say, in order to comply with
18 506(b) exemption, an issuer may not solicit security by any
19 form of general solicitation or general advertising.

04:39 20 That's going to be a problem, I think, but we can
21 leave that in there.

22 An offering under 506(c), however, again, is a
23 different section.

24 So I can understand if we leave ourselves to (b), but
04:39 25 I think (c) is a bit of a problem. I'm hearing now that (c) is

1 not what Par Funding has ever sought to get exemption under,
2 right?

3 **MS. BERLIN:** Yes, Your Honor. And I just pulled the
4 exhibits. P19 is the ABFP Form DE filing with the SEC.

04:39 5 **THE COURT:** Got it.

6 **MS. BERLIN:** I'm sorry, so P19 is the note showing it
7 was -- because you know how they have many different ABFP
8 funds?

9 **THE COURT:** Yes.

04:39 10 **MS. BERLIN:** So it's ABFP Income Fund. ABFP's Form DE
11 is P45, and it's 506(b) as in boy.

12 **THE COURT:** Got it.

13 **MS. BERLIN:** Then we have -- I know, but I want to be
14 able to tell the Judge the exhibit numbers. P6 --

04:39 15 **THE COURT:** Exemption only under B.

16 **MS. BERLIN:** B as in boy.

17 So then we have P6, which is CVSG, 506(b) and then
18 P64, 506(b) as in boy, that's the other exhibit.

19 So the only evidence in the case, and these are the
04:40 20 exemptions they claimed they were entitled to, which they would
21 then have to prove, it's 506(b).

22 So our concern is, coming in now after trial and
23 saying, well, we want to make it, we want to argue that the
24 issuers got it wrong and that they should have asked for a
04:40 25 506(c) and that every investor in ABFP --

1 THE COURT: No, no, no. Let me save you the time.
2 We're not going to argue 506(c). It's not even in the papers
3 for the registration claim.

4 MS. BERLIN: Thank you. That's all --

04:40 5 THE COURT: We can't change. If you didn't ask for it
6 in the first place, that's not a theory of the case. You only
7 got it by what the exemption is you requested.

8 MS. BERLIN: Yes.

9 THE COURT: How could you go to trial and say, oh, but
04:40 10 I meant to say 506(c), find me cover under that. That doesn't
11 make any sense. That would be completely upsidedown.

12 It has to be only what they asserted, and I agree with
13 the SEC that it's a little novel to have the nonissuer come and
14 defend the exemption from the parties that have all settled.

04:41 15 MS. BERLIN: Sure.

16 THE COURT: That's already a stretch, but let's say,
17 for the sake of argument, that I allow this theory to go
18 forward and I allow it to be only under what has been claimed,
19 506(b), that then this instruction has to be modified to only
04:41 20 talk about 506(b). It's got extra stuff in here about 506(d).

21 So does the defense follow that if you guys are going
22 to rely on an exemption under 506, it can only be (b) because
23 the notes that you are seeking to get cover from only listed
24 that as their exemption in their Form Ds?

04:41 25 Do you guys have to follow me logically on that.

1 **MR. HYMAN:** We follow your logically, Your Honor. I'm
2 not going to argue any points, I am just going to say for
3 purposes of the record there's the good faith distinction but
4 I'm not going to push anything beyond saying we'll accept the
04:41 5 instructions as they are, and I think that's the simple
6 solution as it relates to this issue.

7 **THE COURT:** Well, no, you can't accept the
8 instructions as they are because you floated out a custom
9 instruction that's not tethered to case law and it talks about
04:42 10 using 506(b) and (c). So I have to now craft this so that you
11 can avail yourself of this exemption that you're trying to
12 argue for.

13 **MR. HYMAN:** Yes. And I think, Your Honor, while kind
14 of obviously preserving whatever rights, if we take out from --
04:42 15 essentially, if you take it where it starts Rule 506(b) goes on
16 to the second, in order to comply with it, and from there,
17 strike the rest of it, I think that pretty much simplifies the
18 issue and takes care of the rest of.

19 **MS. BERLIN:** It doesn't. This recitation of the law
04:42 20 is incorrect and I don't know where it came from. There's no
21 case cite, it doesn't even cite to the statute. I mean,
22 it's -- I see now --

23 **THE COURT:** The CFR.

24 **MS. BERLIN:** -- they cite the Levin case. I'm looking
04:42 25 at the Levin case, so if they want to seek an exemption under

1 506(b), first, I would suggest that they go and search for jury
2 instructions where 506(b) has been tried before, but if they
3 want to come up with one on their own and invent it so to make
4 -- I'm reading to you from the case they cited. It's the Levin
04:43 5 case, which was one of the cases I did.

6 To meet the conditions of Rule 506, an offer or sale
7 must satisfy the terms of Rules 501 and 502. This is way more
8 complicated than what they are writing here.

9 So, and, in addition to meeting the requirements of
04:43 10 501 and 502, the issuer must reasonably believe there were more
11 than 35 purchasers of securities. They have that part. The
12 accredited investors were not counted towards the 35. So there
13 can't be more than 35 people who invested in Par Funding that
14 were not accredited. They would have to prove that. They
04:44 15 would have to show that Par Funding met the requirements of
16 Rules 501 and 502. I put that in our summary judgment motion.
17 It's certainly like disclosure requirements, information that
18 has to be distributed.

19 I suggest, Your Honor, that they draft a 506(b) jury
04:44 20 instruction that tracks the statute and also includes the
21 requirements of 501 and 502, and if they want some guidance
22 they could look at the Levin case which they cited. On page 3
23 there's a discussion.

24 **THE COURT:** Yeah, I'm looking at the Levin case. I'm
04:44 25 saying I can't even really begin to try to rewrite this for

1 them. This has to be -- this has to be scrapped because it
2 doesn't have -- it's got too much in there about 506(c)
3 embedded for me to be able to strip it out to make it make
4 sense.

04:44 5 So if the defense wants to use this, they need to go
6 back and give me some sort of -- now that I'm telling you it's
7 only going to be under 506(b) and that you have to draft it in
8 a way that makes clear that it is only as applicable to
9 Par Funding and ABFP promissory notes, then at that point we
04:45 10 can take a look at it but, you know, that would be crucial
11 because right now I can't -- I'm looking at this and I can't --
12 I can't edit this to the point where it's applicable.

13 It's just right now there's too many issues with it.
14 So, I haven't looked at this other case that has been cited
04:45 15 here.

16 But can the defense attempt to at least try to come up
17 with an instruction that would match what 506(b) calls for?

18 **MR. HYMAN:** Yes, Your Honor.

19 **THE COURT:** Because they told me 506(b).

04:45 20 **MR. HYMAN:** After we get out of here, we will.

21 **THE COURT:** Yeah.

22 **MR. HYMAN:** And have full access to the internet, we
23 will go ahead --

24 **THE COURT:** Yeah, I need it tonight so I can look at
04:45 25 it so I don't lose time if I have to hear argument.

1 **MR. HYMAN:** We will plan on something submitted by
2 9:00 o'clock at the latest, Your Honor, 8:00 or 9:00.

3 **THE COURT:** I'm just looking here. I mean, this is
4 not something I can edit. Okay. Let's move on to the rest
04:46 5 of -- I'm literally at the very end here. I'm only dealing
6 with only the defense's issues on these three customs because
7 everything else is done.

8 The defendant's proposed instruction on fraud, good
9 faith defense.

04:46 10 **MS. BERLIN:** It looks like it's a criminal
11 instruction, maybe.

12 **THE COURT:** Yeah, what is this: This is citing to a
13 federal practice and this is not a correct statement of
14 applicable law in a civil matter such as this one.

04:46 15 **MS. BERLIN:** The cite they have is to criminal.

16 **THE COURT:** Yeah, it's a federal practice guide that
17 I'm not even sure is civil. Why do I need this if the
18 instructions prior to this talk about the state of mind? I
19 mean, this is -- we talked about earlier what is the standard,
04:47 20 negligence standard. Can you guys tell me where this comes
21 from or why I would be giving this instruction? There's no
22 case law in support of this.

23 **MR. HYMAN:** My understanding is that the good faith
24 defense is affirmative defenses which goes to issues beyond
04:47 25 just the scienter. However, obviously, I think at this point

1 there's no need to belabor argument on this issue given the
2 fact that the good faith language appears to be above.

3 Let me just double-check the prior jury instructions.

4 **THE COURT:** I'm going to Control F it, but I just want
04:47 5 to make sure.

6 **MS. BERLIN:** Is this an affirmative defense they pled?

7 **THE COURT:** Well, that's an issue.

8 **MS. BERLIN:** I don't think so. Is it, Mr. Hyman?

9 **MR. HYMAN:** I believe good faith was pled.

04:47 10 **MS. BERLIN:** By your client?

11 **THE COURT:** We may want to double-check. For example,
12 in the statement of claim, they do have Michael Furman denies
13 these claims and claims that he acted in good faith and
14 committed no security laws violations.

04:48 15 **MR. HYMAN:** I'm don't have the affirmative defense in
16 front of us, but I'm almost positive it was raised in Mr.
17 Furman's affirmative defense as was reliance on advice of
18 counsel. Both of them were, as I understand it, pled
19 specifically.

04:48 20 **MS. BERLIN:** I really don't recall. Again, like the
21 good faith is really just a defense to, you know, scienter. We
22 didn't act recklessly, I don't know that good faith is an
23 affirmative defense in our case anyway.

24 **THE COURT:** Right. What I think is -- just to clarify
04:48 25 what the SEC's saying, I think that, and I think that Mr. Hyman

1 understands that it's not so much an affirmative defenses as it
2 is that there has not been sufficient scienter pled by the SEC
3 to begin with. That is not an affirmative defense.

4 They may just point out they don't believe you guys
04:48 5 have shown enough scienter on some of these. Some of them
6 don't have a scienter element.

7 **MS. BERLIN:** Sure but scienter is just severe
8 recklessness so I am just unfamiliar with saying, well, I acted
9 in good faith, you know, this is -- it's severe recklessness.

04:49 10 Is there something that's going to show us that there
11 can be a jury instruction in an SEC case for scienter mindset
12 that I didn't act recklessly, because I acted in good faith?
13 Oftentimes the two happen hand-in-hand.

14 **THE COURT:** I don't know.

15 **MS. BERLIN:** I don't either.

16 **THE COURT:** I don't know if the defense wants to tell
17 me where they believe that they would be --

18 **MR. HYMAN:** At this juncture, Your Honor, I think it's
19 covered in the other areas of the jury instructions.

04:49 20 **THE COURT:** So you're going to withdraw that, right?

21 **MR. HYMAN:** We'll withdraw that. The only other thing
22 we request with respect to the jury instructions is that there
23 is some statement that's clear that Fidelis's or the sale of
24 Fidelis notes themselves aren't at issue or something along
04:49 25 those lines.

1 MS. BERLIN: No, no, no. So the Fidelis notes are
2 still relevant to the fraud charges. So they engaged in fraud
3 in a -- through a series of transactions. The only one where
4 we can say we're looking at Par Funding maybe is Section 5, and
04:50 5 Section 5 has sort of two roads to success for the SEC. It
6 could be the unregistered Par Funding offering or the 2017
7 unregistered ABFP offering.

8 The fraud charges are very clearly about his
9 involvement in Fidelis. So you can't parse it. Like this is a
04:50 10 scheme. We charged this as a scheme. He tells lies through
11 Fidelis at Fidelis seminars, through his Fidelis brochure that
12 he puts up, through his Fidelis web page about transparency
13 where he doesn't disclose these things. So you can't limit it
14 in the fraud realm and say to the jury that it has nothing to
04:50 15 do with Fidelis because that's not accurate.

16 His violating Section 5 has to do with he's doing that
17 through Par Funding and ABFP. The fraud charges are through
18 the various offerings. And there's not the need to actually
19 say, you know, which one because it doesn't matter if it's an
04:51 20 unregistered offering or not. The only element there is in
21 connection with the offer or sale of any security.

22 And so the jury could find it was in connection with
23 the offer or sale of the Fidelis, the fidelity security. The
24 Court has already found it's a security, or they could find
04:51 25 it's in connection with the offer or sale of the ABFP security

1 when he lied to the Meyers.

2 He could say it's in connection with the promissory
3 note of Par Funding when it's with the undercover. So they're
4 all three at issue in the fraud realm.

04:51 5 **THE COURT:** And, by the way, going back to the good
6 faith briefly, it's -- I mean, there is some case law on this,
7 but it's a little bit -- most of the good faith defenses come
8 in under the advice of counsel theory.

9 **MS. BERLIN:** Yes.

04:52 10 **THE COURT:** They don't come in as an independent good
11 faith theory. You know, stand alone without advice of counsel.
12 There's one case, SEC versus Todd from the Ninth Circuit that
13 I'm looking at, that is, and, again, out of circuit, it's the
14 only thing I can find, but it talks a little bit about trying
04:52 15 to find a good faith defense, but it seems that that was --
16 obviously, there was a summary judgment phase, which is a
17 little bit different, but it talks about that you have to act
18 in good faith based on the absence of scienter, and there it's,
19 again, I'm not exactly clear how you would create a standalone,
04:52 20 it came up in a different context. And it's under 15 USC
21 Section 78(t), so I don't even know if that's really in the
22 same universe as what we're dealing with here, but it's the
23 only one I found right now where it would seem that you could
24 have some sort of a good faith defense.

04:53 25 I'm just bringing it up because there is some case law

1 that the defendant is entitled to a good faith defense if he
2 can show no scienter and effective lack of participation.

3 Again, I'm not very clear how that would play here.
4 So, to me, there's a lot in the other instructions that talks
04:53 5 about what is the mindset, what is the recklessness that is
6 required, and as far as I can tell, the entire defense theory
7 is almost, in my view, on the six counts that deal with
8 securities regulation violations, not the seventh, not the one
9 that we have been arguing all this time about, but they all
04:53 10 seem to deal with one over-arching theme, and that is that
11 Mr. Furman did not know about these issues. He was unaware of
12 the arrests or the Par Funding criminal record of one of the
13 principals of Par Funding. He was unaware of the default rate
14 concerns. He was led to believe there was sufficient
04:54 15 underwriting.

16 I mean, all of these things go to his mind state as to
17 whether or not they believe that there's been certain
18 recklessness and scienter satisfied. So none of that really
19 gets into good faith as a need for an instruction. That's more
04:54 20 about trying to show, from the defense perspective, that by a
21 preponderance of the evidence the SEC has not shown that mental
22 state required for them to establish these violations.

23 That's really what the defense has made most of their
24 case about. I'm just going back on this good faith issue and
04:54 25 it's very difficult to have a good faith defense proposed with

1 no supporting case law.

2 MR. HYMAN: At this point, Your Honor, it's withdrawn
3 anyway.

4 MS. BERLIN: I was going to look --

04:54 5 THE COURT: No, no, it's okay. I just wanted to make
6 a record because I'm trying to my best to even find if there
7 would be a way to do it, but it's being withdrawn so at this
8 point there is no issue to litigate. Defense has been
9 withdrawing their good faith.

04:54 10 Now they have the next one, which is the reliance on
11 attorneys. Now that one is kind of a good faith hybrid.

12 MR. HYMAN: That was one has already been stricken.
13 We, unfortunately, didn't met the elements.

14 THE COURT: We never dealt with calling that. So if
04:55 15 that's out, then what we have here, really, is we're down to
16 only one because the next few instructions are the Court's duty
17 to decide remedies. I don't think anyone objects to that, if
18 you determine that the SEC has proved any defendant liable in
19 any of the counts that I alone will determine the remedy or
04:55 20 remedies to impose at a later date. Duty to deliberate with
21 damages are not at issue. That's a standard.

22 Doesn't look like any issues. And then the foreperson
23 one. All right. So I think that if I'm correct -- and defense
24 can correct me if I'm wrong -- the only issue that we don't
04:55 25 have a ruling on is the defense of exemption. I think that

1 everything else is covered. The defense has withdrawn one
2 defense and has not -- really, withdrawn two, advice of counsel
3 is not an issue, insufficient evidence was not even shown to
4 put that forward, that's gone.

04:56 5 They have withdrawn any sort of abstract good faith
6 defense, so that's not an issue that has been preserved, both
7 of those are withdrawn.

8 So the exemption is the final issue and the Court has
9 noted that the exemption has to be redrafted and tailored to
04:56 10 only the 506(b) and, therefore, 506(b) as it pertains solely to
11 the Par Funding and ABFP notes. So we need some sort of
12 redraft there that would chart or track the language of the
13 statute. I think if we get that redrafted, we should be able
14 to present that as one of the affirmative, or the affirmative
04:56 15 defenses of the defense, and I want to be clear that that
16 affirmative defense really is only as to Count 7. And that's
17 why I draw that after that count.

18 I think that the defense theory beyond that really is
19 focused a hundred percent on the SEC's purported failure to
04:57 20 show the sufficient mental state of Mr. Furman and the
21 knowledge that he had and lack thereof, because he was unaware
22 of the sanctions that took place in other states, that was
23 either done later after the offerings, without his knowledge,
24 same thing with default rate, how the insurance was done, the
04:57 25 underwriting.

1 It's really about him to attempting to establish in
2 the jurors' eyes that the SEC has been unable to satisfy their
3 burden of proof as to his knowledge to establish violations on
4 all of these.

04:57 5 I know not all of them with are contingent on
6 knowledge, but that's one of the main defenses.

7 So the only thing I can think of now is that we have
8 got to give them a chance to try to work on this. But anything
9 else should be good to go.

04:57 10 Does the SEC have anything else that you need -- you
11 want me to address because we're down to only 506(b) defense
12 that they're going to have to redraft. Everything has been
13 withdrawn by the defense. So there should be nothing left.

14 **MS. BERLIN:** Okay.

04:58 15 **THE COURT:** Do you guys want to add anything?

16 **MS. BERLIN:** No, I would just help them as they are
17 researching tonight. If they look at 506(1) and (2) as well.

18 **THE COURT:** Yeah, you are going to have to -- look,
19 exchange drafts so that tomorrow we don't lose a ton of time so
04:58 20 we can go right into reading these things, because I don't want
21 to have a situation where we lose time, and honestly, it's only
22 5:00 o'clock and I would wish we could do a little bit of this
23 work now, if anybody can get connected to the internet, we
24 could try to draft this, that's what we're supposed to do now
04:58 25 so we don't waste any time.

1 Why don't I do this? I'm going to go into chambers
2 and do a final read through of this and do a little cleanup,
3 and in the interim, I think the parties should attempt to try
4 to start looking into whether or not we can at least get a
04:58 5 draft or something, some language. Maybe I can workshop with
6 everybody right now on the 506(b). I mean, we should at least
7 take a look at it.

8 **MS. BERLIN:** I mean, we can --

9 **THE COURT:** Maybe we find out what cases on
04:59 10 (inaud.) --

11 **MS. BERLIN:** We tried. We already tried that before.
12 I don't think anybody has ever argued this that we have been
13 able to find. It's hard to prove what they're trying to do, so
14 we weren't able to find it. That doesn't mean it doesn't
04:59 15 exist, but it would be in one of our cases.

16 **THE COURT:** While we're doing that, while we're doing
17 that let's talk about the verdict form and I'm going to print
18 everything out, everyone is going to look at this before we
19 finish today, so we're all going to walk away with, other than
04:59 20 making an edit to this if we can't figure out the 506 issue,
21 we're all going to be done with this exercise. Tomorrow we
22 need to have this printed and read so you guys focus on
23 closings.

24 I don't see any objections right now. I'm looking at
04:59 25 the jury verdict. It looks to me like it's pretty

1 straightforward. Count 1, Count 2, Count 3, Count 4, Count 5,
2 Count 6, yes or no for each one of the counts. 17A1, 17A2,
3 17A3, et cetera.

4 Now there is a proposal here, defendant's proposed
05:00 5 language only if your answer to any of the proceeding questions
6 was yes, did Michael Furman make a material misrepresentation
7 or omission regarding the following subject matter.

8 So essentially what the defense is proposing are
9 special interrogatories wanting to know specifically what the
05:00 10 reason was to find each of the underlying or, excuse me, these
11 are the underlying bases for any one of Counts 1 through 6, I
12 would think, right?

13 So why would we do that? I mean, do we really need
14 that? Any one of these hits he could have misrepresented the
05:00 15 background, right, and --

16 **MS. BERLIN:** Judge, I'm probably going to take some of
17 the -- I was just looking at the instructions, we might even
18 chop a few out and only do our closing on a few of the misreps
19 and omissions.

05:00 20 One) it would be putting a burden on them to do
21 something they are not required to do.

22 Number two) it could be more than one, but it only has
23 to be one.

24 Number three) four of these six claims, and I feel
05:01 25 like I've said this a few times to the defendants, you don't

1 need a misrep and omission. They are scheme. They are the
2 deceptive course of conduct.

3 So we don't -- if they want to list every conceivable
4 deceptive course of conduct and all that, but just asking for
05:01 5 the misreps and omissions, that would only be relevant to the
6 17A2 and 10B5B charges, those two. And I don't see any reason
7 to do it.

8 **THE COURT:** Well, the other thing is, I mean, the
9 possibility of an inconsistent verdict is pretty high. They
05:01 10 could do yeses and nos and then find no.

11 **MS. BERLIN:** That's what they want.

12 **THE COURT:** Right, that's a problem. I mean, when we
13 do that, then we end up with an inconsistent verdict and then I
14 have to send them back and they have to understand that any one
05:01 15 of these violations forms a basis for finding yes on these
16 counts.

17 So I don't -- again, I don't see any advantage, quite
18 honestly, to that. In fact, I don't know why it needs to be
19 that granular. The jury instructions explain it. Why would we
05:02 20 have to go through each individual one to determine liability
21 when any one of them or a combination of them would be
22 sufficient.

23 Can the defense give me any argument why I would need
24 that?

05:02 25 **MR. HYMAN:** I think in lieu of belaboring any points

1 with any additional argument, we'll just withdraw it and
2 reserve rights.

3 **THE COURT:** Okay, I don't really know what that means
4 but if you're withdrawing it that means that the appellate
05:02 5 court is not going to entertain any of these argument, I just
6 want to be clear.

7 **MR. HYMAN:** Fine.

8 **THE COURT:** These are just not -- this isn't in the
9 Court's discretion anyway, it begs for inconsistent verdicts
05:02 10 and we don't want that, it doesn't help. Quite honestly,
11 having additional bullets in the holster where the SEC can show
12 that checking any one of these is a violation does not inure to
13 the benefit of your client, so it's much easier. So that's
14 been withdrawn for the record, the Court will not do that.

05:02 15 Now, I've numbered them, so that they correspond, it's
16 Questions 1 through 7, but we need to them put this last issue,
17 only if your answer to question 7, which was this exemption, on
18 question 7 above was yes, if your answer to question 7 above
19 was yes, then the securities qualify to an exemption of
05:03 20 registration and that's what we have been debating up until
21 this point.

22 So we have got to figure that out. That's the last
23 bit but I can leave that in there, that's fine, I'm leaving it
24 in there. The question is, we just need to get the instruction
05:03 25 cleaned up a little bit. But that looks to me like the last

1 one and then we can just sign and date the verdict form.

2 **MS. BERLIN:** So I think the, "Answer only if your
3 answer to the preceding question was yes," so it's a little --
4 this is confusing because --

05:03 5 **THE COURT:** I said the if your answer to question 7
6 above, because I've numbered them now.

7 **MS. BERLIN:** Okay. So the issue that we would have
8 with that is that to have a violation of Section 5A and C that
9 means no exemption is present. It's already been decided.

05:04 10 **THE COURT:** Okay. So I see what you're saying.
11 You're saying that to get a violation of 5A or 5C, it's an
12 element, is that it's a nonexempt. Is that the issue?

13 **MS. BERLIN:** Yeah. So let me just -- I'm --

14 **THE COURT:** I understand what you're saying, you're
05:04 15 thinking it could be inconsistent. The problem is that that's
16 a little tough for the jury to understand exactly how that's
17 going to work because you're saying they have to find that
18 there is no exemption within the count, but I don't know that I
19 can break that up that way.

05:04 20 I know what you're saying. What you're saying is
21 there is no reason for the question. You're going to answer no
22 if you find there could be an exemption, right, instead of
23 answering yes and then saying it's an exemption.

24 That doesn't make sense, that's a problem.

05:04 25 **MS. BERLIN:** Yeah, and, to me, it's -- it puts the

1 exemption before them. It has them go through it twice.

2 Maybe there's another way.

3 **THE COURT:** The only thing I can think of, because I
4 tend to explain the verdict form to the jurors, is I could make
05:05 5 an explanation or mention to them that, you know, when you're
6 debating Count 7, you want to look at the affirmative defenses
7 to determine whether or not he violated, because if you find
8 there's to be exemption, then he would not have violated
9 Sections 5A and 5C, you know.

05:05 10 I don't know how else to do it, that would be the only
11 way, if it's truly an element, because even the jury
12 instructions have designed to seem that it could be an
13 exemption even after, right?

14 **MS. BERLIN:** Mmh.

05:05 15 **THE COURT:** Let me do this. While you're talking that
16 through, let me just go and do -- finish cleaning up the
17 verdict, excuse me, the jury instructions formatting-wise, so
18 that it can be done, and then I'll pop back out and see if you
19 guys have advanced the ball at all on the 506(c), and if you
05:06 20 have, you can let me know what your proposal is while I edit
21 this and maybe work through it.

22 I think the best thing to do is give the parties an
23 opportunity to at least try to talk through how you would
24 structure this.

05:06 25 **MS. BERLIN:** I think that makes sense, and I think

1 what the Court just said about the solution for that makes
2 sense. There's not going to be a perfect way to do it, it's
3 not that it's an element, it's just kind of confusing because
4 it would actually kind of go -- one of them it was registered
05:06 5 but that without exemption.

6 I think we should do it exactly as it's written and if
7 there is any confusing the Court, you know, can explain it.

8 **THE COURT:** Meaning leave the exemption question at
9 the end.

05:06 10 **MS. BERLIN:** I think so. I don't know another way.

11 **THE COURT:** I think I can explain it. And just to
12 make sure we don't do something inconsistent where they say,
13 yes, it's a violation of 5A and 5C, and yes, we had an
14 exemption. They're mutually exclusive.

05:06 15 So I think that, you know, arguably I'm trying to
16 think there could be a situation where -- well, it says if you
17 answered yes, so if there are other elements that for some
18 reason they wouldn't answer question 7 anyway, so the key is
19 that they understand that you should not be having a yes/no
05:07 20 conflict on those two questions, you need to make sure that
21 it's one, you find it to be at violation, but you're exempt
22 from it anyway.

23 **MS. BERLIN:** I have an idea. What if we did it, have
24 the element of this Section 5 claim been met, right, and then
05:07 25 the three elements, because the way it's written for Section 5,

1 it's a little confusing. It's like the SEC proves these three
2 things, that a prima facie case, then the burden shifts.

3 So I always kind of view it as being one, you know, we
4 have to meet our burden and then they can meet theirs or not.

05:07 5 But --

6 **THE COURT:** The burden shifts to show an exemption.

7 **MS. BERLIN:** So maybe we keep it. I think you have to
8 keep both questions on the verdict form. And I think it's just
9 inherent, and the record would be clear right now that we all
05:08 10 understand that, you know, when it says, did you find the
11 violation of Section 5, we're saying that to make it simple so
12 the jury understands it, like that's common sense.

13 **THE COURT:** I think that makes sense. I think if you
14 do it like that, it makes sense and everybody can understand
05:08 15 what we're talking about, that we're saying they carried that
16 burden, the jury instructions track a verdict form that would
17 have to as a secondary question, too, so I think that's
18 probably easiest just to leave it as a question like that.

19 **MS. BERLIN:** Me, too.

20 **THE COURT:** And then we're fine. So I think we can do
21 that so that that way the defense understands what they have to
22 do.

23 All right. So then everything should be done. The
24 only thing that we need to do is get you all to start figuring
05:08 25 out what you're going to do for that 508 (sic) instruction. We

1 have got to get that fixed so that I can get something that is
2 in compliance with the law.

3 All right. So let me step out for a minute and can
4 start editing this so that is in a presentable form for the
05:08 5 jurors and then I will return to check in to see if we have any
6 kind of guidance on 506, and we'll go from are there.

7 **MS. BERLIN:** And, Your Honor, we might have to -- I
8 think that for the 506(b), it probably -- this is one that will
9 we just want to make sure that we check with -- once they give
05:09 10 us something, if they want to seek 506(b), we'll probably just
11 want to run it up through our policy offices at the SEC to
12 double-check that it's an accurate statement.

13 This is going to be tricky, I think, if that's okay.
14 I mean, we're still going to do it today, I was basically
05:09 15 asking if we can make a few phone calls while we sit here.

16 **THE COURT:** I think you should. It might help us if
17 the SEC is familiar with this being done before and how it
18 works, we would read it because I'm not going to find -- I'm
19 not going to find any a case law on this that's on point
05:09 20 because this theory is not orthodox and it doesn't really
21 necessarily track what happened here a hundred percent. It's a
22 little off.

23 So it's got to be simply 506(b) on Par Funding and
24 ABFP. That's all it is. What would they have to show those
05:10 25 elements about 35, the accreditation. I mean, they're a little

1 dense so we have to find a way to show they can -- something
2 that will guide them so we don't misstate it. That's the most
3 important.

4 **MS. BERLIN:** Yeah. And the parts of Reg DE a little
05:10 5 confusing because they have, you know, like preliminary things
6 that have to be met, so we're looking.

7 We did search before today because we have like a jury
8 instruction database, frankly, for all of our SEC cases. I
9 couldn't find a 506(b), so, yeah, and Alise is checking some
05:10 10 other cases, so we might be in bit of uncharted territory but
11 we'll figure it out.

12 And also, Your Honor, I think this is the one
13 remaining issue, is it acceptable, I'm just -- is it okay if I
14 leave this in the capable hands of Alise, I am available to her
05:11 15 by phone, because I just have a child care issue.

16 **THE COURT:** I'm almost done. In fact, it's not going
17 to be a problem because I will -- what I'll do is I'll e-mail a
18 draft to everyone at the last e-mail I had of both revised
19 versions and what I was -- I mean, look, if you guys want to
05:11 20 print it and take a look at it this evening and then let me
21 know, I would prefer that the parties, to streamline it, if
22 they could e-mail the Court back and let me know if there's
23 either a redline or any edits that are caught so that I
24 don't -- my key is here, I want everyone to understand why
05:11 25 we're doing this. I'm not interested in losing another hour

1 tomorrow. I mean, the whole goal is these jurors are coming in
2 at 9:30 and I want to hand them instructions. I don't want to
3 get into more charge conference. We have now spent a couple of
4 hours on this and we shouldn't be writing this from scratch in
05:11 5 the morning.

6 If this is going to be argued, it needs to be
7 streamlined so that tomorrow morning I can deal with just
8 making a ruling and move on and take whatever draft is there.

9 We understand how this draft should look, we know it's
05:12 10 got to be ABFP and it's got to be Par Funding and it's to only
11 be 506(b).

12 So I think if we just focus on that, we should be able
13 to get a draft of that. The jury instructions are all but
14 done. The verdict form is all but done. I will just do this:
05:12 15 Everyone can just plan on getting these drafts to their e-mail
16 in the hour. I'm going to go into chambers just to polish.
17 But everyone is responsible for checking these this evening and
18 e-mailing me back so that I can check what this looks like
19 tonight, 9:00, 10:00 o'clock I want to know so I can see do we
20 have a lot of little nit-picky things that I can just do quick
21 and options, maybe you guys can submit it to me jointly and you
22 can let me know everything here is pretty much typos and then
23 maybe get me a proposed draft of that instruction, or each side
24 proposes something and let me know in Word and I can make a
05:12 25 change. That's fine.

1 MS. BERLIN: Thank you, Your Honor, we'll do that.

2 Thank you so much. I think that makes sense and hopefully we
3 can reach an agreement on that affirmative defense.

4 THE COURT: I guess we know what we want to say. It's
05:13 5 because no one has ever done it before.

6 MS. BERLIN: We'll figure it out.

7 MR. HYMAN: It may make sense to take what the SEC
8 wrote on its website under the application of 506(b).

9 MS. BERLIN: I've explained that to you. That's for
05:13 10 investors, that's basic common language.

11 You have to look at the statute, Zac, that's what we
12 use like investors to educate them.

13 THE COURT: Anything else before we recess? I think
14 that we are -- oh, just so I can plan ahead.

05:13 15 So tomorrow, it's instructions and go right to
16 closings. I'm afraid to even ask because I'm going to tell you
17 how much time you have, but just for my own entertainment, how
18 long does each side think they need for closings? What does
19 the SEC want?

05:13 20 MS. BERLIN: We were going to ask for 30 to 40
21 minutes.

22 THE COURT: Excellent. I thought you were going to
23 ask for more than that.

24 What about on the defense side.

05:13 25 MR. HYMAN: Same.

1 **THE COURT:** Okay, I'll give you guys each 45, and
2 that's drop dead, 45 is the outside limit. I think you guys
3 can do it inside less, but I think 45 is more than enough. I
4 won't handicapped you at 30, that's a little tight, but I think
05:14 5 45 is more than enough and you can split the 45 and do you
6 first and second close, so really 30 and 15 is what I expect
7 you guys to do.

8 **MS. BERLIN:** It sounds like what we would like to do.

9 **THE COURT:** So the defense is fine with 45, 45 a side
05:14 10 is the plan. I will let you know at five and at two minutes
11 and one and I will let the SEC know when they're done with
12 their first close how much time they have left on the rebuttal.

13 Okay, I'll keep track of time.

14 **MS. BERLIN:** Thank you.

05:14 15 **THE COURT:** You got it. So I think we can get through
16 these jury instructions, they're long, but I think we can read
17 through them in about 45 minutes. That puts you guys in a
18 position to start closing somewhere around, let's say, 10:15.
19 If we go an hour a side, that's 12:15, works just right. I got
05:14 20 jurors going in the jury room right around 12:30 or so, while
21 I'm figuring out what they want to eat and they can start
22 settling in.

23 That works out 45 minutes a side. Feel free not to
24 use the whole 45, but if you guys need it, that's what it's
05:15 25 there for.

1 Okay. We got a good game plan. Look out for this
2 e-mail, it's going to be coming up in the next hour.

3 **MS. BERLIN:** Thank you, Your Honor.

4 **MR. HYMAN:** Thank you.

05:15 5 **THE COURT:** We're in recess.

6 **MR. HYMAN:** It's a good thing we get to go back to our
7 offices, otherwise I'd be asking Your Honor to make us your
8 famous cafecitos.

9 **THE COURT:** I'll make some for you guys tomorrow.

05:15 10 **MR. HYMAN:** After closings, that way we don't get too
11 hyper.

12 **THE COURT:** More so for my poor court reporter. Let's
13 not do them until after we're done.

14 Okay.

05:15 15 **MR. HYMAN:** Thank you so much, Gigi.

16

17 (Thereupon, the above portion of the trial was concluded.)

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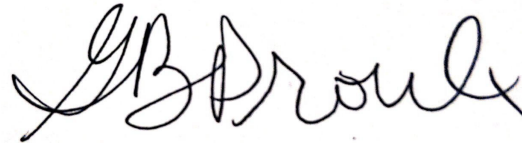
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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.



12/15/2021
DATE COMPLETED

GIZELLA BAAN-PROULX, RPR, FCRR

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**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 MICHAEL FURMAN'S ANSWERS TO PLAINTIFF UNITED STATES
SECURITIES AND EXCHANGE COMMISSION'S FIRST SET OF INTERROGATORIES
TO DEFENDANT MICHAEL FURMAN**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Securities and Exchange Commission requests that Defendant Michael Furman responds to the following written interrogatories under oath within the time prescribed by law. The following interrogatories are to be considered continuing in nature and must be supplemented or amended to the extent required by Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

EXHIBIT

11

1. "Action" means the lawsuit captioned *SEC v. Complete Business Solutions Group, Inc. d/b/a Par Funding, et al.*, Case No. 20-CIV-81205, filed July 24, 2020, currently pending in the United States District Court for the Southern District of Florida.

2. "Communication" means any transmission, conveyance, or exchange of information whether by written, oral, electronic, or other means, including electronically stored information.

3. "Concerning" means constituting, referring to, relating to, pertaining to, involving, discussing, mentioning, or otherwise bearing any logical relation to the specified subject matter.

4. "Document" means, without limitation, any written, printed, typed, photographed, recorded, or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes drafts and originals and copies or duplicates contemporaneously or subsequently created which have any non-conforming notes or other markings and the backsides of any communication or representation which contains any of the above. This definition also includes any attachments or enclosures, and includes any document stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

5. "Par Funding" includes Complete Business Solutions Group, Inc. ("CBSG"), Full Spectrum Processing ("FSP"), and all subsidiary and Affiliated Entities.

6. "You" or "Your" means Michael Furman.

7. "Agent Funds" means the investment funds that offered and sold promissory notes to Investors and then obtained promissory notes from Par Funding.

8. "Investor" means any individual or entity who purchased a promissory note from Par Funding or from an Agent Fund.

9. "Affirmative Defense" refers to an Affirmative Defense You plead in Your Answer and Affirmative Defenses filed in this case.

INSTRUCTIONS

1. These interrogatories are to be answered separately and fully, in writing, within thirty (30) days of the date of service and in accordance with the Federal Rules of Civil Procedure and the Southern District of Florida's Local Rules.

2. You are to answer each interrogatory by providing all responsive information. If you object to any interrogatory, specify the part to which you object, state your objections, state all factual and legal justifications that you believe support your objections, and respond to the remainder to which you do not object.

3. If you cannot respond fully and completely to any interrogatory or part thereof, then answer to the fullest extent possible and state the reason for your inability to provide a full and complete answer.

4. You may, pursuant to Fed. R. Civ. P. 33(d) produce business records in lieu of a written response, if the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(a) specifying the specific records, by Bates number or other clear identification method, that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(b) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

If you elect this option to produce business records, you must produce the records and materials for inspection and copying within fourteen (14) days after service of the answers to these interrogatories pursuant to Southern District of Florida Local Rule 26.1(e)(3)(C).

5. To the extent that any information called for by any interrogatory is unknown to you, so state and set forth such information as is known to you. If any estimate can reasonably be made in place of unknown information, set forth your best estimate, clearly designated as such, and describe the basis upon which the estimate is made.

6. Each interrogatory shall be construed to include information and documents within your knowledge, possession or control as of the date you answer to these interrogatories, and any supplemental information, knowledge, data, documents or communications responsive to these interrogatories that is generated, obtained or discovered after the date of your answers.

7. If you contend that any documents required to be identified herein are protected by attorney-client privilege, the attorney work product doctrine or any other privilege, provide a list of each document and, as to each, state (a) the type of document (*e.g.*, letter, memo, e-mail), (b) name and title or position of the author(s), (c) name and title or position of the recipient(s), including all cc: and bcc: recipient(s), (d) the date of the document, (e) the title or subject matter, (f) the privilege or privileges claimed, and (g) the interrogatory to which the document relates.

8. You are required to promptly supplement your responses to these interrogatories throughout the duration of this action pursuant to Federal Rule of Civil Procedure 26(e).

9. All definitions and instruction set forth herein are expressly incorporated by reference into the following interrogatories as if fully set forth therein.

10. Unless otherwise stated in a specific request below, the operative time frame for your responses is from January 1, 2012 to the present.

PRELIMINARY STATEMENT

The Defendant has not completed his investigation of the facts relating to this case, has not completed discovery, and has not completed his preparation for trial. Therefore, these responses and objections are made without prejudice to, and are not a waiver of, defendant's right to rely on other facts or documents at trial, and are based only on the information and documents presently available to and specifically known and/or available to the Defendant at this time. By making the accompanying responses and objections to the Plaintiff's requests for documents and interrogatory, defendant does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, Defendant makes the responses and objections herein without in any way implying that it considers the requests and interrogatory, and responses to the requests and interrogatory, to be relevant or material to the subject matter of this action. Defendant expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s). Defendant must now file motions for the return of his only original laptop and phone that he has been denied access to that would be used for discovery and to prepare his defense that was seized and provided to the SEC & Receiver in this case over 1 year ago. The receiver and the SEC have blamed each other for its untimely and unnecessary extensive delays while promising to remedy the situation through promises that have continually not been upheld. The receiver has since stopped answering emails on this subject and has not provided any update, nor has followed through with the return of said devices

to the pro se defendant on this subject for over 4 months. Further discovery, independent investigation, legal research, and analysis may lead to the discovery of additional non-privileged responsive information which may lead to additions to, changes in, and variations from the information, responses and/or objections set forth below. These responses are given without prejudice to the Defendant's right to produce evidence of any subsequently discovered facts, including the right to supplement these responses if he obtains further evidence. The Defendant reserves the right to produce at trial and make reference to any evidence, facts, documents or information not discovered at this time, omitted through good faith error, mistake or oversight, or the relevance of which has not presently been identified by the Defendant and to further modify these responses as a result of subsequently discovered information. The Defendant further reserves the right to withhold any information protected by the attorney-client and work product privileges. Notwithstanding any of the responses and objections set forth herein, the Defendant agrees to meet and confer in writing, pursuant to Federal Rule of Civil Procedure 37(a)(1), to the extent that the SEC takes issue with these Limited Objections or any specific response and objection below sent.

GENERAL OBJECTIONS

Defendant objects to each instruction, definition, document request, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court. Defendant objects to each document request and interrogatory that is overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS

1. In connection with Your reliance on advice of counsel Affirmative Defense, state: (a) the name, (b) contact information, and (c) date You retained any and all attorneys whose advice You claim You relied upon.

RESPONSE: Erik Weingold 877-354-2465, John Pauciulo 215-851-8480, David Steinfeld 561-316-7905, Dave Alperstein 609-220-9255, Fox Rothchild (previous attorney for CBSG), CBSG In-House Attorneys, CBSG External Auditing Firm, Larry Pino (407-425-7831) ; Defendant does not know what dates or any additional information about retainer agreements and objects as that information was previously provided through both discovery, during the Defendants deposition, and additional information & communications between the Defendant, Defendants previous counsel, and the plaintiff. Defendant also objects for additional production of this as this information is in evidence that was seized, not in his possession, and is currently in the possession of the SEC and or the Receiver at this time, and would be overly burdensome to attempt to find these dates and additional information. Defendant objects to each instruction, definition, document request, and interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Defendant occur, it is inadvertent and shall not constitute a waiver of any privilege. Defendant objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the

possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, or has been provided during my deposition.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC.

2. For each attorney identified in Your answer to Interrogatory Number 1, state, making clear which attorney You are referencing:

- (a) what advice, if any, You sought from the attorney,
- (b) when You sought the advice,
- (c) what facts You shared with the attorney when You sought the advice,
- (d) what advice the attorney gave You,
- (e) when the attorney gave You the advice,
- (f) whether the attorney's advice to You was in writing, and
- (g) whether the attorney's advice to You was verbal and, if so, the identity of any other person present when the attorney gave You the advice.

RESPONSE: Defendant makes reiterates his objections as a ProSe Defendant that does not understand the full allowance of what is attorney client privilege or not, and has been pressured into answering this question again without any reliance on counsel or legal aid due to the time constraints

and not wanting to bother a judge for such a matter. So in light of that, the following is all of the information that the Defendant is able to recall with full knowledge to the extent it calls for materials not within his possession, custody or control.

Defendant relied on several attorneys for vital information in regards to this case as the defendant is not an attorney and without any legal experience. Defendant retained Mr Erik Weingold (herein Weingold) after multiple conversations and or meetings with another attorney relied upon, Mr. John Pauciulo (Herein Pauciulo). The Defendant relied upon Pauciulo after his presentation at the advisor conference/seminar that presented not only the investment fund program, but the reliance that he represented himself as a former SEC attorney, over 15 years experience in solely securities work, the head of the securities department at one of the largest law firms in the northeast and country. Pauciulo, whom together with Defendant Vagnozzi, in person and in conversations stated that they did a full due diligence on the company we would be raising funds for and is the main defendant in this case CBSG or Parfunding. Pauciulo represented that he had not only focused his business on how to raise capital in a completely compliant and legal manner, but that this program involving Defendant Vagnozzi and the agent fund program was both legal and in full compliance. Pauciulo further represented that he had been Vagnozzi's counsel for over 10 years and never represented at any time, and in any way, that either were previously involved in any investigations, had been sanctioned, actions of any kinds, and that any additional disclosures were necessary to anyone, that he was not an accounting expert or that his assertions made to us as fund managers would not be able to be relied upon when he determined and provided information about the status of "insolvency" of Parfunding". Defendant relied upon Pauciulo that by relying upon his advice that any fund manager would not have to force legally any additional attorney firm to fight Parfunding after telling us fund managers that Parfunding would only disclose any financial and or accounting information to Pauciulo, and that we

would not need to hire an independent CPA to research Parfunding's financial status and not on his legal advice given. Defendant relied upon the statements made by Pauciulo that all general advertising was legal and in compliance, that utilizing a brochure for a company that would be invested in was allowed, legal, and compliant. Defendant relied upon Pauciulo's statements that we should accept the restructuring agreement, that we would be secured by a UCC filing after such agreement, that accepting such agreement was in the best interest for both fund managers and investors, that such agreement was legal, compliant, and did not offer any other option legally that could be avoided. Defendant further relied upon Pauliulo during the pandemic, while locked in his own home, via various calls, that a restructured note agreement for every agent was both in the best interest of us as fund managers, and to our investors. Defendant further relied upon Pauciulo for his advice used in his PPM's and related documents for fund managers, as that information was always shared with my retained counsel Erik Weingold whom represented myself and other fund managers in preparation and use for this Defendants PPM that is in dispute in this case. Defendant relied upon Pauliulo for his legal advice in media representations he made both on video and other media forms, that stated that not only was this "legal", but he had done due diligence on the necessary individuals at CBSG, and that it was in full compliance for the structuring of putting together an agent fund management corporation, system, and agent fund program at which he was the lead speaker at its recruiting event, he filed and started all corporations involved, and advised fund managers on such structures. Further Defendant relied upon Pauliulo on his advice that all fund managers accept and sign the revised restructuring agreement with Parfunding, that the option of holding out and litigation against CBSG/Parfunding was not in the best interest of a fund manager or the investors, that there was no further disclosures needed other than what he provided in his own prepared documents being the sole attorney allowed by Parfunding to access its financials & documents, and by relying on Pauliulo that

no additional disclosures were necessary to investors about compensation or in the manner in which a fund manager was compensated as he was vital and instrumental in the development in the agent fund program in which he participated in. Defendant relied upon Pauciulo on his assertions that he had met with personally, visited in person, and communicated directly with CBSG owners and executives to gather all required and necessary information in order to legally provide all opinions and representations that were made at any and all times to both agent fund managers and through his work that includes both legal materials and media documents.

Defendant relied upon the advice of Mr. Erik Weingold, (herein Weingold) who was retained after attending the agent fund conference, and conferring with him that Weingold was a PPM specialist, and that he and his firm focused exclusively on private placements, general solicitation and compliance in regards to this type of business. Defendant relied upon Weingold that his firm could represent the defendant in a full and legal compliant manner with a better independent stance over Pauciulo who was also representing Defendant Vagnozzi who was going to also be in a legal management agreement with the Defendant and its fund, therefore, to prevent an conflicts. Defendant relied upon Weingold for the full compliance of his fund that raised capital for Parfunding. Defendant relied upon Weingold for his interpretation of how to legally advertise and stay compliant under the general solicitation guidelines that were appropriate for the type of fund the Defendant had, and through the examples that were shared with Weingold about compliant general solicitation for which Weingold held out as one of his areas of expertise. Defendant relied upon Weingold during conversations and other media that the structuring and or proper sec filing format for which his funds restructuring was done under was not only best for the fund, but for the investors in the fund compared to the other legal formats and options that Weingold discussed as being two different options he could recommend from. Weingold specifically changed his mind before selecting the final format, which

was slightly different from the other option, and different from the restructuring documents that many other agent fund managers were using through Pauciulo as all information was always provided to Weingold in regards to what the other majority agent fund managers were utilizing in an attempt to stay both compliant and universal to the guidelines of Defendant Vagnozzi's Management company. Defendant relied upon Weingold to utilize all information provided to him by defendant and other agent fund managers about Pauciulo and CBSG in his representations and advice given to defendant including any and all potential disclosures needed such as Vagnozzi's regulatory history. Defendant sent the information package and examples to Weingold, as well as other formats that Weingold had brought up to the Defendant who did not know or understand the differences to and solely relied upon Weingold in his decision for all document creation. Through further discussions with Weingold, mostly over the phone, the Defendant relied upon Weingold on what disclosures were needed within both the PPM created by Weingold, but what verbal disclosures had to be made available to the investors as new information was learned by the defendant. Defendant relied upon the discussions with Weingold that he was aware and familiar on a more personal manner with Parfunding as he was not only was representing Defendant Abbonizio, who held himself out to be an "owner" of Parfunding and the head of investor relations for Parfunding, but also for other Fund managers such as another attorney whom had communications with Parfunding and Abbonizio and was fully up to date with knowledge about the background of Parfunding, its business, and completely familiar with the fund system being used and how to stay compliant with the SEC. Defendant relied upon his knowledge of the business, its model, background, compliance checks, disclosures, among others that Weingold would reasonably know through his representations to the Defendant through his other communications with CBSG, whom he held out to have regular communications and knowledge about the company & funds, and that had voluntarily paid a portion of the retainer fee as we were all creating

similar documents. Defendant relied upon Weingold that Parfunding did not need to be specifically disclosed within the ppm as the defendant was able to invest in other companies within the selected industry as we had discussed other possibilities. Defendant relied upon Weingold for his knowledge of the business of Parfunding, and for the Defendants ability to use general solicitation for the defendants funds, even providing examples of both print, audio, and other examples of what defendant was going to utilize, as well as discussions about defendant Vagnozzi and his "general" solicitations and the differences as to what he was doing to our knowledge, the differences to how our funds were set up and the variables allowed therein, and his positions on general advertising which included his recommended & trusted lead generation ad consulting company that would introduce possible investors to Defendant for a set fee to advertise the Defendants fund and opportunity to invest with the Defendant through his fund. This was based on Weingold's knowledge of that advertising/consulting company and its positive outcomes with companies within the industry that the Ppm was covering. Defendant relied upon Weingold for his representations of how he would make all necessary filings with any federal and state regulatory agencies such as the SEC, file and complete all on going filings, from which phone calls and various series of questions were asked to the defendant on a regular basis in order to stay compliant with all necessary filings. Defendant relied upon Weingold on his advice on how to "select" exemptions which he advertised and held knowledge of the topic on how to stay compliant on the area in order to specifically prevent any and all sec litigation possibilities, which he also advertises. Defendant relied upon counsel for any and all disclosures that were needed to stay compliant, for any and all filings, documents, and for any and all procedures and or processes that the defendant needed to uphold as a fund manager raising capital. Defendant can not remember any additional relevant topics discussed, the dates, when or what medium was used, or any additional information at this time without speculating, but reserves the

right to add to or make changes to this information at a later date.

Defendant relied upon the advice of David Steinfeld, herein known as Steinfeld, whom was retained for information regarding how to properly sever his relationship and eventual separation from Vagnozzi and the management agreement with Vagnozzi and or his companies. Defendant relied upon Steinfeld for all proper legal documents, and processes necessary to properly and legally separate from the management agreement with Defendant Vagnozzi and or his companies.

Defendant relied upon the team of attorneys that CBSG represented as both in house and external counsel that the defendant relied upon being truthful and correct in their legal representations. Defendant was introduced during a site visit to in house counsel who briefly stated they were involved in any of the "bad debt" collections and would be done in a completely proper, legal, and compliant manner. Defendant relied upon the executives and owners at CBSG that the legal counsel, which was named at certain times and understood at other times to be Fox Rothchilds, that they had been in communications on a voluntary basis with regulatory agencies in regards to the agent fund model being a proper legal and compliant model for which agents could and should establish their own ppm in order to stay compliant. Defendant relied upon defendant CBSG's counsel that the marketing materials created were both compliant, legal, and truthful. Defendant later relied upon the CBSG counsel that they provided full, complete, legal, and truthful information at all times to the Defendant, to all fund managers, and to Pauciulo for which he used such information to agree with CBSG and its counsel that the company was insolvent, not making payments to investors, that they would follow through on their threat of filing bankruptcy if agent fund managers did not accept the restructuring deal, and other details expressed to counsel Pauciulo who represented all fund managers during the restructuring time period. Defendant relied upon this counsel that it structured its business in a proper and legal manner, filed all appropriate documents on its behalf, that its multi-million dollar fee

history was done in a proper manner, that it did all necessary and warranted background checks, that it represented CBSG in which state it was filed and did business under, to what disclosures to investors and fund managers must be made by its staff, and that any and all exemptions relied upon that were private to CBSG and said discussed by its employees were correct, true, compliant, relative and legal. Defendant relied upon the counsel for CBSG that its accounting procedures that were in place and being advertised and disseminated by CBSG were true, accurate, reliable, and compliant to the representations made by CBSG. Defendant can not remember any other specific topics or statements made to him at this time that are relevant and in his possession, any additional dates, when or what medium was used, or any additional information at this time without speculating, but reserves the right to add to or make changes to this information at a later date as remembered.

Defendant relied upon the advice from attorney Dave Alperstein, herein known as Alperstein, that he was a fellow fund manager that had detailed history and knowledge of properly, compliantly, and legally raising capital as an attorney working with CBSG, in dealing with PPM Lawyers/Erik Weingold, with Perry Abbonizio. and CBSG in a more local area and in a constant communication. Defendant relied upon Alperstein on his advice about the agent restructuring, its structure, the contents provided to agent fund managers, the situation at hand and all information disclosed to agent fund managers and "attorneys" since various information was for "attorneys only", the pros vs cons of accepting or denying and litigating with CBSG, with the best potential outcome for the investors and us as fund manager, in regards to what the legal process was, that he had looked at the deal from the eyes of an attorney, that his dealings with Weingold were in a true, compliant, and legal manner, and that all of his dealings with CBSG and or Defendant Abbonizio were of a true, complete, compliant, and legal manner. Defendant relied upon Alperstein that by signing the restructuring agreement he was also signing a legal document that was compliant and in that attorneys best legal determination

vs any other option available to a fund manager. Defendant relied upon the advice of Alperstein that the fund managers compensation was legal in manner that was being paid, that Weingold and the fund managers he represented were making all appropriate and necessary disclosures, and that all statements made were in a truthful, compliant, complete, and legal manner. This is all that the defendant can recall at this time without speculating and that is under his possession, but defendant retains the right to make additional statements and productions as they come to light and are relevant.

Defendant also relied upon the attorneys used by CBSG for their independent auditing that was performed and shared at any point by Defendant CBSG or its affiliates. The Defendant although not involved at all in the process, selection of this firm, access to any financial documents in comparison, that by both performing and finalizing a complete independent audit on CBSG they found it to be a legal company with sound accounting procedures that were being disclosed. Nowhere in the sole version shown to the defendant did the accounting law firm disclose that any investor funds were used to repay investors, or to show that default rates could differ from those portrayed in the shown audit. Defendant relied on these attorneys if CBSG was as vastly unprofitable as the SEC alleges, utilizing investor funds to repay investor funds at the extensive level the SEC alleges, and had the varying level of defaults that the SEC is alleging, that the attorneys involved in the independent audit would have been able to confirm this and should have disclosed such in the audit results.

Defendant also relied upon advice and information gathered from attorney Larry Pino (herein referred as Pino). Defendant relied upon the background described by Pino that he was a business and securities attorney that through the working partnership and relationship between the defendant and Pino, that many similar situations existed similarly to that of the agent fund management used to raise capital with CBSG. Defendant relied upon Pino that the defendant could operate, own, manage, and oversee a ppm with the defendants then current licensure status, or lack thereof in the state of

Florida. Defendant relied upon Pino that he could use both general advertisements, and dinner and or lunch seminars which were both shared to, approved by, and paid for in part by Pino and the management company of the Defendants other and completely separate ppm fund named the "Fidelis Senior Living Fund." Defendant had discussions directly and through Pino's representatives about general solicitations and disclosures necessary for ppms. Defendant relied upon the fact that Pino did not require the defendant to obtain any additional licenses at any time that all fund management and capital raising, that the defendant did not need any additional licenses as discussed for the ppm funds being utilized in the manner they were at that time.

Defendant also objects to each instruction, definition, document request, and interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Defendant occur, it is inadvertent and shall not constitute a waiver of any privilege. Defendant objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, or has been provided during my deposition.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC.

3. In connection with Your reliance on professionals and experts Affirmative Defense, state the name and contact information of each professional and expert whose advice You claim You relied upon.

RESPONSE: Defendant objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant objects to the overly general terms "professionals" and "experts" and asks for further clarification of the SEC's definition of these terms and asks to provide examples of "professionals" as every employed individual can ascertain that they are a "professional" in some manner. Defendant also objects to this question as there would be no end to the amount of information that was disseminated during the 2-5 year time period that is in question from an unlimited number of "professionals" and or "experts" that could be relevant. Defendant also objects to Request for information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my deposition and are available in deposition transcripts or previously supplied documents.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC.

4. For each professional and/or expert identified in Your answer to Interrogatory Number 3, state, making clear which professional or expert You are referring to:

- (h) what advice, if any, You sought from the attorney,
- (i) when You sought the advice,
- (j) what facts You shared with the attorney when You sought the advice,
- (k) what advice the attorney gave You,
- (l) when the attorney gave You the advice,
- (m) whether the attorney's advice to You was in writing, and
- (n) whether the attorney's advice to You was verbal and, if so, the identity of any other person present when the attorney gave You the advice.

RESPONSE: Defendant objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant objects to the overly general terms "professionals" and "experts" and asks for further clarification of the SEC's definition of these terms and asks to provide examples of

“professionals” as every employed individual can ascertain that they are a “professional” in some manner. Defendant also objects to this question as there would be no end to the amount of information that was disseminated during the 2-5 year time period that is in question from an unlimited number of “professionals” and or “experts”. Defendant also objects to this question as it is a duplication of other interrogatory questions above. Defendant also objects to Request for information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my deposition and are available in deposition transcripts or previously supplied documents. Defendant objects to each instruction, definition, document request, and interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Defendant occur, it is inadvertent and shall not constitute a waiver of any privilege.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC.

5. State the facts and evidence supporting Your “Estoppel” affirmative defense, including:

- (a) The identity or identities of any and all Securities and Exchange Commission staff who made the representations at issue in Your Estoppel defense; and
- (b) For each SEC staff member identified in response to answer 5(a), state (i) what representation(s) that SEC staff member made, (ii) to whom, (iii) when, (iv) by what communication method the representation was made, (v) whether and to what extent You relied on the representation; (vi) whether and, if so why, the SEC staff representation was material; and (vii) whether and if so, how, You changed Your position to Your detriment based on the SEC staff member representation.

RESPONSE. Defendant objects to Request for information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my deposition and are available in deposition transcripts or previously supplied documents. Defendant also objects to each instruction, definition, document request, and interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Defendant occur, it is inadvertent and shall not constitute a waiver of any privilege.

Defendant is unaware or does not have access to any names of anyone at the Sec when he relied upon at any point before July 27, 2020 that by not stopping the business of CBSG prior to this action, by not taking any additional measures to halt the business of or the fundraising efforts of CBSG, by the lack of contact by the SEC and both the defendant and its companies, and the engagements that occurred between the SEC and CBSG that were disclosed to the Defendant at that time were that it of a compliant, legal, and correct manner after entering into any agreements or legal contracts with the Defendant CBSG.

Defendant relied upon the actions, and inaction or silence, by the SEC in regards to the SEC that they had entered into a legal agreement with CSBG which must be a legal and compliant company in order for any agreement to properly be utilized over other potential actions or remedies. Defendant relied in good faith upon the material actions, inaction, and silence by Defendants Vagnozzi, CSBG, Abbonizio, and their counsels for any lack of disclosures needed to investors, for the lack of reporting any and all regulatory events, actions, or investigations, and for the appropriate changes in any material facts about the information that they stated was discussed with the SEC at some point and those material facts that changed during the relevant time period at question.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC. Defendant also objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff.

6. State the facts and evidence supporting Your "Good Faith" Affirmative Defense.

RESPONSE: Defendant relied on all individuals provided in my rule 26 disclosures. Without access to my work laptop computer I must go from memory and I do not want to speculate, but these would include but are not limited to: Erik Weingold, John Pauciulo, David Steinfeld, Perry Abbonizio, Dean Vagnozzi, Michael Tierney, Michelle Price, Roland Manual, Joseph Cole, Mark Nardelli, Anita Badalamenti, Fox Rothchild, Alexis Abbonizio, Fox Rothchild, CSBG's in house counsels, Joseph Laforte, Lisa McElhone, among others. Defendant

relied upon all individuals and or corporate representatives that all statements at any time they made were of a complete, truthful, accurate, and legal manner. Defendant objects to Request for information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my deposition and are available in deposition transcripts and or previously supplied documents.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC. Defendant also objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff.

7. State the facts and evidence supporting your “Justifiable Reliance” Affirmative Defense.

RESPONSE: Defendant relied upon the following but not limited to Dean Vagnozzi, John Pauliulo, Perry Abonizio, Joseph Cole, Joseph LaForte, Michelle Price, Anita Badalamenti, Shannon Westhead, and others that organized and or participated in a nationally advertised advisor conference where I was introduced to Complete Business Solutions Group/Par Funding (herein “CBSG”), A Better Financial Plan & A Better Financial Plan’s “Management Company”, and the sales agent fund program described in this suit. Defendant relied upon the vast legal opinions, statements, documents, conversations, videos, and other mediums that were presented to the defendant by the above mentioned individuals and companies, as well as the CBSG in house and external counsels in various manners that represented that not only was CBSG a legitimate, profitable, legal merchant cash advance company, that they had proper counsel representations that had prepared all media given to the defendant that was accurate, complete, and truthful, and had individuals with the appropriate licenses, accreditations, and or experience to prepare such documents and or media given to the Defendant for use that represented true and accurate statements, and that CBSG through its counsels had communicated with the proper regulatory agencies and or departments that their proposed agent fund program was legal, appropriate, and proper under that current environment. Defendant relied upon Perry Abbonizio, Joseph Cole, CBSG, and CBSG’s attorneys representations through their revised brochure and other media, many verbal statements, among other ways that they had at some point began to insure themselves against default on certain merchant cash advances and had properly held that insurance between CBSG and certain merchants after that point. Similarly, Defendant relied

upon Perry Abbonizio, Joseph Cole, CBSG, CBSG's attorneys, CBSG's accountants, Michelle Price, Dean Vagnozzi, CBSG's Auditing Firm, John Pauciulo, among others who had provided the defendant with financial and accounting figures and documents that were used in describing the financial status and health of CBSG. Defendant relied upon John Pauciulo, Eckert Seamans, Joseph Cole, Dean Vagnozzi, among others that provided and determined themselves and provided to the Defendant, agent fund managers, and investors that CBSG/Parfunding was "insolvent". Defendant relied upon Erik Weingold and other attorneys and staff at PPM Lawyers that all documents and filings for Defendant and used by the Defendant were correctly drafted, updated, filed with all appropriate regulatory agencies and states, and met all necessary requirements as advertised to assure compliance with the SEC. Defendant relied upon CBSG, CBSG's independent auditing firm and others included in the Defendants rule 26 disclosures that CBSG was a verified legitimate business at that time after performing such extensive accounting audit and was a full, complete, and true statement. Defendant relied upon Dean Vagnozzi, Michael Tierney, Michelle Price, Anita Badalamenti, Perry Abbonizio, Alexis Abbonizio, Joseph Cole, CBSG, Mark Nardelli, John Pauciulo, Eckert Seamans, PPM Lawyers, Erik Weingold, and others to be truthful and correct when asked about regulatory and compliance histories and by admitting and disclosing such if and when they or any entity they were a part of, worked with, worked for, raised money for, invested in, and if there was any investigations and or disciplinary and or compliance matters or actions raised in any manner at any time by any regulatory agency or governing body that had to do with both themselves as individuals, their companies, and or CBSG. Defendant objects to Request for additional information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the

Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my deposition and are available in deposition transcripts and or previously supplied documents.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC. Defendant also objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff.

8. State each of Your current source(s) of income.

RESPONSE: Defendant has already answered this question during his deposition and would refer the SEC to those transcripts. Defendant objects to Request for additional information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my deposition and are available in deposition transcripts or previously supplied documents.

Defendant is not aware of any information or documents responsive to this request that

are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC. Defendant also objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff.

9. State how much money You received, both directly and indirectly, from the offer and sale of promissory notes offered and sold in connection with Par Funding, United Fidelis Group, and/or Fidelis Financial Planning LLC.

RESPONSE: I do not want to speculate or be general, but I do not have access to this information which has been provided previously. Defendant objects to Request for information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my deposition and are available in deposition transcripts or previously supplied documents.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC. Defendant also objects to request for additional information & production to the extent it calls

for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff.

10. State all facts and identify all evidence supporting Your Affirmative Defense that the promissory notes You offered and sold are exempt as securities and did not need to be registered.

RESPONSE: Defendant objects to Request for additional information & production in this statement as unnecessarily duplicative, overly broad, and unduly burdensome because it improperly seeks documents & information that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver, or have also been previously provided to the plaintiff and or the receiver, and or has been provided during my 7 hour deposition made under oath and are available in deposition transcripts or previously supplied documents. This information was also given at previous times and in other documents or transmissions.

Defendant is not aware of any information or documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such Document or information, Defendant will produce it to the SEC. Defendant also objects to request for additional information & production to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff.

August 9th 2021

Respectfully submitted,

By: Michael C. Furman, Pro Se

Will
Notarize

again &
return by 8-13-21

and sign again →

→



A handwritten signature in black ink, appearing to read 'Michael C. Furman', written over a horizontal line.



A single horizontal line drawn in black ink.

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SALLAH ASTARITA  **COX**
LLC

3010 North Military Trail, Suite 210 | Boca Raton, Florida 33431
Phone: (561) 989-9080 | Fax: (561) 989-9020 | www.sallahlaw.com

ATTORNEYS AT LAW Florida | New York | New Jersey

August 9, 2020

VIA EMAIL ONLY

Amie Riggle Berlin, Esq.
Senior Trial Counsel
United States Securities and Exchange Commission
801 Brickell Avenue, Suite 1950
Miami, Florida 33131
Email: BerlinA@sec.gov

Re: *Securities and Exchange Commission v. Michael C. Furman, et al.*,
Case No. 20-CIV-81205-RAR (S.D. Fla. July 28, 2020)

Dear Ms. Berlin:

On behalf of our client, Michael C. Furman (“Furman”), this serves to respond to the Section IV (“Sworn Accountings”) of the Court’s Order Granting Emergency Ex Parte Motion for Temporary Restraining Order and Other Relief. [ECF No. 42 at p.17] (the “Order”). In response to the Order and in abundance of caution, please be advised that Furman exercises his right against self-incrimination granted by the Fifth Amendment to the United States Constitution and under Article 1, Section 9 of the Florida Constitution (collectively, “Fifth Amendment rights”).

Furman submits that no negative inference should be drawn from his exercise of his Fifth Amendment rights. The Fifth Amendment protects a person from being “compelled in any criminal case to be a witness against himself” and applies in any proceeding to “any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.” *In re DG Acquisition Corp.*, 151 F.3d 75,79 (2d Cir. 1998), quoting *Kastigar v. United States*, 406 U.S. 441, 444-45, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972).

The Supreme Court has long condemned “the practice of imputing a sinister meaning to the exercise of a person’s constitutional right under the Fifth Amendment,” finding that “[t]he right of an accused person to refuse to testify, which had been in England merely a rule of evidence, was so important to our forefathers that they raised it to the dignity of a constitutional enactment, and it has been recognized as ‘one of the most valuable prerogatives of the citizen’.” *Slochower v. Board of Higher Education*, 350 U.S. 551, 557-558, 76 S.Ct. 637, 640-641, 100 L.Ed. 692, 699 (1956) (citations omitted). “The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. . . . [A] witness may have a reasonable fear of

EXHIBIT

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Amie Riggle Berlin, Esq.
August 9, 2020
Page 2 of 2

prosecution and yet be innocent of any wrongdoing.” *Id.* (citations omitted). Indeed, the Supreme Court has repeatedly stated that “we have emphasized that one of the Fifth Amendment’s ‘basic functions ... is to protect *innocent* men ... who otherwise might be ensnared by ambiguous circumstances.’” *Ohio v. Reiner*, 532 U.S. 17, 21, 121 S. Ct. 1252, 1254, 149 L. Ed. 2d 158 (2001) (quoting *Grunewald v. United States*, 353 U.S. 391, 77 S. Ct. 963, 1 L. Ed. 2d 931 (1957) (citation and internal quotation marks omitted) (emphasis in original)).

Furman reserves the right to withdraw his assertion of his Fifth Amendment rights should he believe it appropriate to do so, including in the event that he obtains immunity from the U.S. Department of Justice under 18 U.S.C. §§ 6002 and 6004, or otherwise receives appropriate safeguards to protect him against criminal prosecution. If Mr. Furman withdraws his assertion of his Fifth Amendment rights, he will seek to amend this response. He reserves the right to do at any time.

Please contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cox', with a stylized flourish at the end.

Jeffrey L. Cox

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 LAFORTE’S OBJECTIONS AND RESPONSES TO
THE SECURITIES AND EXCHANGE COMMISSION’S
FIRST SET OF INTERROGATORIES TO DEFENDANT JOSEPH
LAFORTE**

Defendant Joseph LaForte pursuant to Fed. R. Civ. P. 33, submits the following objections and responses to the Securities and Exchange Commission’s (“SEC”) First Set of Interrogatories to Defendant Joseph LaForte.

PRELIMINARY STATEMENT

LIMITED OBJECTIONS: The Defendant has not completed his investigation of the facts relating to this case, has not completed discovery, and has not completed his preparation for trial. Therefore, these responses are based only on the information and documents presently available to and specifically known to the Defendant. Further discovery, independent investigation, legal research, and analysis may lead to the discovery of additional non-privileged responsive information which may lead to additions to, changes in, and variations from the information, responses and/or objections set forth below.

These responses are given without prejudice to the Defendant's right to produce evidence of any subsequently discovered facts, including the right to supplement these responses if he obtains further evidence. The Defendant reserves the right to produce at trial and make reference to any evidence, facts, documents or information not discovered at this time, omitted through good faith error, mistake or oversight, or the relevance of which has not presently been identified by the Defendant and to further modify these responses as a result of subsequently discovered information.

In an abundance of caution and so as not to waive his rights, Mr. LaForte provides notice of his intention to invoke his Fifth Amendment Privilege Against Self-Incrimination.

Notwithstanding any of the responses and objections set forth herein, the Defendant agrees to meet and confer in writing, pursuant to Federal Rule of Civil Procedure 37(a)(1), to the extent that the SEC takes issue with these Limited Objections or any specific response and objection below.

RESPONSES TO INTERROGATORIES

1. In connection with Your reliance on advice of counsel Affirmative Defense, state: the name, contact information, and date You retained any and all attorney whose advice You claim You relied upon.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

2. For each attorney identified in Your answer to Interrogatory Number 1, state, making clear which attorney You are referencing:

(a) what advice, if any, You sought from the attorney,

- (b) when You sought the advice,
- (c) what facts You shared with the attorney when You sought the advice,
- (d) what advice the attorney gave You,
- (e) when the attorney gave You the advice,
- (f) whether the attorney's advice to You was in writing, and
- (g) whether the attorney's advice to You was verbal and, if so, the identity of any other person present when the attorney gave You the advice.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

3. In connection with Your reliance on professionals and experts Affirmative Defense, state the name and contact information of each professional and expert whose advice You claim You relied upon.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

4. For each professional and/or expert identified in Your answer to Interrogatory Number 3, state, making clear which professional or expert You are referring to:

- (h) what advice, if any, You sought from the attorney,
- (i) when You sought the advice,
- (j) what facts You shared with the attorney when You sought the advice,
- (k) what advice the attorney gave You,
- (l) when the attorney gave You the advice,

(m) whether the attorney's advice to You was in writing, and

(n) whether the attorney's advice to You was verbal and, if so, the identity of any other person present when the attorney gave You the advice.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

5. State the facts and evidence supporting Your "Estoppel" Affirmative Defense, including:

(a) The identity or identities of any and all Securities and Exchange Commission staff who made the representations at issue in Your Estoppel defense; and

(b) For each SEC staff member identified in response to answer 5(a), state (i) what representation(s) that SEC staff member made, (ii) to whom, (iii) when, (iv) by what communication method the representation was made, (v) whether and to what extent You relied on the representation; (vi) whether and, if so why, the SEC staff representation was material; and (vii) whether and if so, how, You changed Your position to Your detriment based on the SEC staff member representation.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

6. State the facts and evidence supporting Your "Good Faith" Affirmative Defense.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

7. State (a) each of Your current source(s) of income; and (b) the source(s) of income You are using to pay Your attorneys in this case.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

8. State how much money You received – both directly and indirectly and including through companies and entities You own, control, and/or benefit from - from the offer and sale of promissory notes offered and sold in connection with Par Funding and the Agent Funds.

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

9. State all facts and identify all evidence supporting Your Affirmative Defense that “the notes are also exempt as securities under the express language of the Exchange Act (15 U.S.C. § 78c(a)(10)) and from the registration requirement under the Securities Act (15 U.S.C. § 77b(a)(1).”

RESPONSE: The interrogatory would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such response under the Fifth Amendment of the Constitution of the United States.

Dated: August 5, 2021

Respectfully Submitted,

Alejandro Soto, Esq.
Attorney for Joseph LaForte
Fridman Fels & Soto, PLLC
2525 Ponce de Leon Blvd., Suite 750
Coral Gables, FL 33134
(305) 569-7701
asoto@ffslawfirm.com

/s/ Alejandro O. Soto
ALEJANDRO O. SOTO
Florida Bar No. 172847

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on all counsel of record via electronic mail this 5th day of August, 2021.

/s/ Alejandro O. Soto
ALEJANDRO O. SOTO
Florida Bar No. 172847

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 LAFORTE’S OBJECTIONS AND RESPONSES TO
THE SECURITIES AND EXCHANGE COMMISSION’S
REQUEST FOR PRODUCTION TO DEFENDANT JOSEPH LAFORTE**

Defendant Joseph LaForte pursuant to Fed. R. Civ. P. 34, submits the following objections and responses to the Securities and Exchange Commission’s (“SEC”) Request for Production to Defendant Joseph LaForte.

PRELIMINARY STATEMENT

LIMITED OBJECTIONS to each and every Request: The Defendant has not completed his investigation of the facts relating to this case, has not completed discovery, and has not completed his preparation for trial. Therefore, these responses are based only on the information and documents presently available to and specifically known to the Defendant. Further discovery, independent investigation, legal research, and analysis may lead to the discovery of additional non-privileged responsive information which may lead to additions to, changes in, and variations from the information, responses and/or objections set forth below.

These responses are given without prejudice to the Defendant's right to produce evidence of any subsequently discovered facts, including the right to supplement these responses if he obtains further evidence. The Defendant reserves the right to produce at trial and make reference to any evidence, facts, documents or information not discovered at this time, omitted through good faith error, mistake or oversight, or the relevance of which has not presently been identified by the Defendant and to further modify these responses as a result of subsequently discovered information. The Defendant further reserves the right to withhold any information protected by the attorney-client and work product privileges.

GENERAL OBJECTION to each and every Request: Defendant objects to the Requests as they are unduly burdensome, call for the production of materials seized by and in the possession of the Court Appointed Receiver, call for the production of materials otherwise obtained by and in the possession of the Court Appointed Receiver, call for the production of materials that are not in the possession, custody or control of Defendant, call for the production of materials not remotely relevant to any issue in the case, call for the production of materials seized by the SEC, call for the production of materials in the possession of the SEC, and call for the production of materials already provided by the Defense to the SEC.

In an abundance of caution and so as not to waive his rights, and in addition to the LIMITED OBJECTIONS and GENERAL OBJECTION above (collectively "the OBJECTIONS"), Mr. LaForte provides notice of his intention to invoke his Fifth Amendment Privilege Against Self-Incrimination.

Notwithstanding the OBJECTIONS or any specific response set forth herein, the Defendant agrees to meet and confer in writing, pursuant to Federal Rule of Civil Procedure 37(a)(1).

RESPONSES TO REQUESTS FOR PRODUCTION¹

1. Produce all documents, whether electronic or otherwise, supporting Your First Affirmative Defense (“Advice of Counsel”) [D.E. 607] including any and all documents indicating or demonstrating: (1) that You asked for legal advice; (2) the legal advice, if any, You sought and from whom; (3) the facts and evidence You disclosed to Your attorney(s) in connection with seeking or obtaining the legal advice; (4) the legal advice Your attorney(s) gave You; (5) the identity of the lawyer(s) You relied on; and (6) that You relied on Your attorney’s legal advice in good faith.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

2. Produce all documents, whether electronic or otherwise, supporting Your Second Affirmative Defense (“Reliance on Other Professionals and Experts”) [D.E. 607] including any and all documents indicating or demonstrating that: (1) You retained professionals and/or experts; (2) the identities of all professionals and experts You relied on; (2) the work and/or advice you asked the professionals and/or experts to do; (3) the facts you disclosed to the professionals and experts in connection with seeking or obtaining the professionals and experts’ work and conclusions; (4) the work and conclusions of the professionals and experts; and (5) that You relied on the professionals and experts’ work and conclusions in good faith.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

3. Produce all documents, whether electronic or otherwise, supporting Your Third Affirmative Defense (“Good Faith”) [D.E. 607], including any and all documents indicating or demonstrating that “[You] Defendant acted at all times in good faith and/or did not know, and in the exercise of reasonable case could have known, or had any reasonable grounds to believe, that any misstatements or omissions of material fact existed in any statements, reports, and/or filings allegedly issued or uttered by [You].”

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

¹ Each and every Response herein incorporates in their entirety the OBJECTIONS.

4. Produce all documents, whether electronic or otherwise, supporting Your Third Affirmative Defense (“Good Faith”) [D.E. 607], including any and all documents indicating or demonstrating that You “relied upon competent personnel to assist her in making reasonable and informed decisions.”

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

5. Produce all documents supporting Your Fourth Affirmative Defense (“Laches”) [DE 607], including any and all documents indicating or demonstrating that “Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches.”

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

6. Produce all documents supporting Your Fifth Affirmative Defense (“Estoppel”) [DE 607], including any and all documents indicating or demonstrating that “Plaintiff’s claims are barred by the doctrine of estoppel.”

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

7. Produce all documents supporting Your Sixth Affirmative Defense (“Waiver”) [DE 609], including any and all documents indicating or demonstrating that “Plaintiff’s claims are barred by the doctrine of waiver.”

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

8. Produce all documents supporting the first portion of Your Seventh Affirmative Defense – namely, that “the notes at issue... fall squarely within the list of non-securities enumerated in *Reves v. Ernst & Young*, 494 U.S. 56, 63 (1990)” – including any and all documents indicating or demonstrating that “the notes at issue... fall squarely within the list of non-securities enumerated in *Reves v. Ernst & Young*, 494 U.S. 56, 63 (1990),”

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

9. Produce all documents supporting the second portion of Your Seventh Affirmative Defense – namely, that “the notes are also exempt as securities under the express language of the Exchange Act (15 U.S.C. § 78c(a)(10)) and from the registration requirement under the Securities Act (15 U.S.C. § 77b(a)(1))” – including any and all documents indicating or demonstrating that “the notes are also exempt as securities under the express language of the Exchange Act (15 U.S.C. § 78c(a)(10)) and from the registration requirement under the Securities Act (15 U.S.C. § 77b(a)(1)).”

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

10. Produce any and all notes of witness interviews that were conducted in connection with this case.

Defendant objects to Request for Production 10 because these communications reflect 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 defense to assemble, process, and then individually log each document, note and/or communication. If needed, Defendant reserves the right to supplement, revise, or amend this log as appropriate.

11. Produce Your personal telephone and cellphone records for the period of July 27, 2015 through July 27, 2020.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

12. Produce all bank records, including but not limited to statements, for all bank and other financial accounts on which You were a signatory, for the period July 27, 2015 through present.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

13. Produce all bank records, including but not limited to statements, for all bank and other financial accounts that You controlled, directly or indirectly, for the period July 27, 2015 through present.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

14. Produce all correspondence between You and Aida Lau from July 2015 through present, unless such correspondence was sent from your parfunding.com email address.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

15. Produce all correspondence between Your attorney(s) and Aida Lau from July 23, 2020 through present.

There are no documents responsive to this request.

16. Produce all correspondence between Your attorney(s) and any individual or entity (either directly or through that individual or entities' counsel) identified in Your Rule 26 Disclosures in this case, from July 23, 2020 through present.

Defendant objects to Request for Production 16 as unnecessarily duplicative and unduly burdensome because it calls for the production of materials already seized by and in the possession of the SEC and the Court Appointed Receiver. Defendant further objects that this request calls for the production of materials already provided by the Defense to the SEC.

Defendant further objects because these communications reflect 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 defense to assemble, process, and then individually log each document, note and/or communication. If needed, Defendant reserves the right to supplement, revise, or amend this log as appropriate.

17. Produce documents reflecting all of Your source(s) of income, compensation, and financial support from July 27, 2020 through present.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

18. Produce all correspondence regarding Complete Business Solutions Group, a/k/a Par Funding between you and any individual and/or entity that was a purchaser or potential purchaser of a promissory note. This Request seeks documents for the period of July 27, 2015 through present.

The request would require the Defendant to provide information which may incriminate him, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

19. Copies of all subpoenas You and/or Your attorney have issued in connection with this case.

Defendant objects to Request for Production 19 as unnecessarily duplicative and unduly burdensome because it calls for the production of materials already provided by the Defense to the SEC.

20. Copies of all documents and other materials You and/or Your attorney have received in connection with this case, (a) in response to any subpoena, (b) in response to any informal request, or (c) produced or provided on a voluntary basis by any individual or entity. This Request does not include documents produced by the Securities and Exchange Commission in this case.

Defendant objects to Request for Production 20 as unnecessarily duplicative and unduly burdensome because it calls for the production of materials already provided by the Defense to the SEC.

21. Copies of all documents and other materials You and/or Your attorney have received from or through ConvergeHub, whether received from ConvergeHub, the Receiver, or anyone else, including but not limited to documents and materials You obtained because they were downloaded from ConvergeHub.

Defendant objects to Request for Production 21 because these documents and materials reflect 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 defense to assemble, process, and then individually log each document, note and/or communication. If needed, Defendant reserves the right to supplement, revise, or amend this log as appropriate.

Dated: July 30, 2021

Respectfully Submitted,

Alejandro Soto, Esq.
Attorney for Joseph LaForte
Fridman Fels & Soto, PLLC
2525 Ponce de Leon Blvd., Suite 750
Coral Gables, FL 33134
(305) 569-7701
asoto@ffslawfirm.com

/s/ Alejandro O. Soto
ALEJANDRO O. SOTO
Florida Bar No. 172847

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on all counsel of record via electronic mail this 30th day of July, 2021.

/s/ Alejandro O. Soto
ALEJANDRO O. SOTO
Florida Bar No. 172847

**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 LISA MCELHONE'S OBJECTIONS AND RESPONSES TO THE
SECURITIES AND EXCHANGE COMMISSION'S
FIRST SET OF INTERROGATORIES TO
DEFENDANT LISA MCELHONE**

Defendant Lisa McElhone, pursuant to Fed. R. Civ. P. 33, submits the following objections and responses to the Securities and Exchange Commission's ("SEC") First Set of Interrogatories to Defendant Lisa McElhone.

PRELIMINARY STATEMENT

LIMITED OBJECTIONS: The Defendant has not completed her investigation of the facts relating to this case, has not completed discovery, and has not completed her preparation for trial. Therefore, these responses are based only on the information and documents presently available to and specifically known to the Defendant. Further discovery, independent investigation, legal research, and analysis may lead to the discovery of additional non-privileged responsive

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information which may lead to additions to, changes in, and variations from the information, responses and/or objections set forth below.

These responses are given without prejudice to the Defendant's right to produce evidence of any subsequently discovered facts, including the right to supplement these responses if she obtains further evidence. The Defendant reserves the right to produce at trial and make reference to any evidence, facts, documents or information not discovered at this time, omitted through good faith error, mistake or oversight, or the relevance of which has not presently been identified by the Defendant and to further modify these responses as a result of subsequently discovered information.

In an abundance of caution and so as not to waive his rights, Ms. McElhone provides notice of her intention to invoke her rights under the Fifth Amendment to the United States Constitution.

Notwithstanding any of the responses and objections set forth herein, the Defendant agrees to meet and confer in writing, pursuant to Federal Rule of Civil Procedure 37(a)(1), to the extent that the SEC takes issue with these Limited Objections or any specific response and objection below.

RESPONSES TO INTERROGATORIES

1. In connection with Your reliance on advice of counsel Affirmative Defense, state: the name, contact information, and date You retained any and all attorneys whose advice You claim You relied upon.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

2. For each attorney identified in Your answer to Interrogatory Number 1, state, making clear which attorney You are referencing:

- (a) what advice, if any, You sought from the attorney,
- (b) when You sought the advice,
- (c) what facts You shared with the attorney when You sought the advice,
- (d) what advice the attorney gave You,
- (e) when the attorney gave You the advice,
- (f) whether the attorney's advice to You was in writing, and
- (g) whether the attorney's advice to You was verbal and, if so, the identity of any other person present when the attorney gave You the advice.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

3. In connection with Your reliance on professionals and experts Affirmative Defense, state the name and contact information of each professional and expert whose advice You claim You relied upon.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

4. For each professional and/or expert identified in Your answer to Interrogatory Number 3, state, making clear which professional or expert You are referring to:

- (h) what advice, if any, You sought from the attorney,
- (i) when You sought the advice,
- (j) what facts You shared with the attorney when You sought the advice,

- (k) what advice the attorney gave You,
- (l) when the attorney gave You the advice,
- (m) whether the attorney's advice to You was in writing, and
- (n) whether the attorney's advice to You was verbal and, if so, the identity of any other person present when the attorney gave You the advice.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

1. State the facts and evidence supporting Your "Estoppel" Affirmative Defense, including:

- (a) The identity or identities of any and all Securities and Exchange Commission staff who made the representations at issue in Your Estoppel defense; and

5. For each SEC staff member identified in response to answer 5(a), state (i) what representation(s) that SEC staff member made, (ii) to whom, (iii) when, (iv) by what communication method the representation was made, (v) whether and to what extent You relied on the representation; (vi) whether and, if so why, the SEC staff representation was material; and (vii) whether and if so, how, You changed Your position to Your detriment based on the SEC staff member representation.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

6. State the facts and evidence supporting Your "Good Faith" Affirmative Defense.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

7. State (a) each of Your current source(s) of income; and (b) the source(s) of income You are using to pay Your attorneys in this case.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

8. State how much money You received – both directly and indirectly and including through companies and entities You own, control, and/or benefit from - from the offer and sale of promissory notes offered and sold in connection with Par Funding and the Agent Funds.

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

9. State all facts and identify all evidence supporting Your Affirmative Defense that “the notes are also exempt as securities under the express language of the Exchange Act (15 U.S.C. § 78c(a)(10)) and from the registration requirement under the Securities Act (15 U.S.C. § 77b(a)(1).”

RESPONSE: The interrogatory requests information that the Defendant has a right not to produce under the Fifth Amendment of the Constitution of the United States.

September 1, 2021

Respectfully Submitted,

Law Offices of Alan S. Futerfas
Attorneys for Lisa McElhone
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400
asfuterfas@futerfaslaw.com

By: /s/ Alan S. Futerfas
ALAN S. FUTERFAS
Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on all counsel of record via electronic mail this 1st day of September, 2021.

/s/ Alan S. Futerfas
ALAN S. FUTERFAS
Admitted *Pro Hac Vice*

**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 LISA MCELHONE'S OBJECTIONS AND RESPONSES
TO THE SECURITIES AND EXCHANGE COMMISSION'S
THIRD REQUEST FOR PRODUCTION TO
DEFENDANT LISA MCELHONE**

Defendant Lisa McElhone pursuant to Fed. R. Civ. P. 34, submits the following objections and responses to the Securities and Exchange Commission's ("SEC") Third Request for Production to Defendant Lisa McElhone.

PRELIMINARY STATEMENT

LIMITED OBJECTIONS to each and every Request: The Defendant has not completed her investigation of the facts relating to this case, has not completed discovery, and has not completed her preparation for trial. Therefore, these responses are based only on the information and documents presently available to and specifically known to the Defendant. Further discovery, independent investigation, legal research, and analysis may lead to the discovery of additional non-privileged responsive information which may lead to additions to, changes in, and variations from the information, responses and/or objections set forth below.

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These responses are given without prejudice to the Defendant's right to produce evidence of any subsequently discovered facts, including the right to supplement these responses if she obtains further evidence. The Defendant reserves the right to produce at trial and make reference to any evidence, facts, documents or information not discovered at this time, omitted through good faith error, mistake or oversight, or the relevance of which has not presently been identified by the Defendant and to further modify these responses as a result of subsequently discovered information. The Defendant further reserves the right to withhold any information protected by the attorney-client and work product privileges.

GENERAL OBJECTION to each and every Request: Defendant objects to the Requests as they are unduly burdensome, call for the production of materials seized by and in the possession of the Court Appointed Receiver, call for the production of materials otherwise obtained by and in the possession of the Court Appointed Receiver, call for the production of materials that are not in the possession, custody or control of Defendant, call for the production of materials not remotely relevant to any issue in the case, call for the production of materials seized by the SEC, call for the production of materials in the possession of the SEC, and call for the production of materials already provided by the Defense to the SEC.

In an abundance of caution and so as not to waive her rights, and in addition to the LIMITED OBJECTIONS and GENERAL OBJECTION above (together "the OBJECTIONS"), Ms. McElhone provides notice of her intention to invoke her Fifth Amendment Privilege Against Self-Incrimination.

Notwithstanding the OBJECTIONS or any specific response set forth herein, the Defendant agrees to meet and confer in writing, pursuant to Federal Rule of Civil Procedure 37(a)(1).

RESPONSES TO REQUESTS FOR PRODUCTION¹

- 1. Produce all bank records, including but not limited to statements, for all bank and other financial accounts on which You were a signatory, for the period July 27, 2015 through present. This Request seeks all records for all bank accounts identified in the Request, regardless of whether the account was your personal account, was held with another individual, or was a business or corporate account.**

The request would require the Defendant to provide information which may incriminate her, and the Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

- 2. Produce all bank records, including but not limited to statements, for all bank and other financial accounts that You controlled, directly or indirectly, for the period July 27, 2015 through present. This Request seeks all records for all bank accounts identified in the Request, regardless of whether the account was your personal account, was held with another individual, or was a business or corporate account.**

The request would require the Defendant to provide information which may incriminate him, and Defendant has a right not to produce such information under the Fifth Amendment of the Constitution of the United States.

- 3. Copies of all subpoenas You and/or Your attorney have issued in connection with this case.**

Defendant objects to Request for Production 3 as unnecessarily duplicative and unduly burdensome because it calls for the production of materials already provided by the Defense to the SEC.

- 4. Copies of all documents and other materials You and/or Your attorney have received in connection with this case, (a) in response to any subpoena, (b) in response to any informal request, or (c) produced or provided on a voluntary basis by any individual or entity. This Request does not include documents produced by the Securities and Exchange Commission in this case.**

¹ Each and every Response herein incorporates in their entirety the OBJECTIONS.

Defendant objects to Request for Production 4 as unnecessarily duplicative and unduly burdensome because it calls for the production of materials already provided by the Defense to the SEC.

5. Copies of all documents and other materials You and/or Your attorney have received from or through ConvergeHub, whether received from ConvergeHub, the Receiver, or anyone else, including but not limited to documents and materials You obtained because they were downloaded from ConvergeHub.

Defendant objects to Request for Production 5 because these documents and materials reflect 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 defense to assemble, process, and then individually log each document, note and/or communication. If needed, Defendant reserves the right to supplement, revise, or amend this log as appropriate.

Dated: July 30, 2021

Respectfully Submitted,

Law Offices of Alan S. Futerfas
Attorneys for Lisa McElhone
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400
asfuterfas@futerfaslaw.com

By: /s/ Alan S. Futerfas

ALAN S. FUTERFAS

Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on all counsel of record via electronic mail this 30th day of July, 2021.

/s/ Alan S. Futerfas

ALAN S. FUTERFAS

Admitted *Pro Hac Vice*

**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 JOESPH COLE BARLETA'S OBJECTIONS AND
RESPONSES TO THE SECURITIES AND EXCHANGE COMMISSION'S
REQUEST FOR PRODUCTION TO DEFENDANT
JOSEPH COLE BARLETA**

Defendant Joseph Cole Barleta pursuant to Fed. R. Civ. P. 34, submits the following objections and responses to Securities and Exchange Commission's Request for Production to Defendant Joseph Cole Barleta.

PRELIMINARY STATEMENT

The Defendant has not completed his investigation of the facts relating to this case, has not completed discovery, and has not completed his preparation for trial. Therefore, these responses are based only on the information and documents presently available to and specifically known to the Defendant. Further discovery, independent investigation, legal research, and analysis may lead to the discovery of additional non-privileged responsive information which may lead to additions to, changes in, and variations from the information, responses and/or objections set forth below.

These responses are given without prejudice to the Defendant's right to produce evidence of any subsequently discovered facts, including the right to supplement these responses if he

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obtains further evidence. The Defendant reserves the right to produce at trial and make reference to any evidence, facts, documents or information not discovered at this time, omitted through good faith error, mistake or oversight, or the relevance of which has not presently been identified by the Defendant and to further modify these responses as a result of subsequently discovered information. The Defendant further reserves the right to withhold any information protected by the attorney-client and work product privileges.

Notwithstanding any of the responses and objections set forth herein, the Defendant agrees to meet and confer in writing, pursuant to Federal Rule of Civil Procedure 37(a)(1), to the extent that the SEC takes issue with these Limited Objections or any specific response and objection below.

RESPONSES TO REQUESTS FOR PRODUCTION

1. Produce all documents, whether electronic or otherwise, supporting Your First Affirmative Defense (“Advice of Counsel”) [D.E. 608] including any and all documents indicating or demonstrating: (1) that You asked for legal advice; (2) the legal advice, if any, You sought and from whom; (3) the facts and evidence You disclosed to Your attorney(s) in connection with seeking or obtaining the legal advice; (4) the legal advice Your attorney(s) gave You; (5) the identity of the lawyer(s) You relied on; and (6) that You relied on Your attorney’s legal advice in good faith.

Defendant objects to Request for Production 1 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 1 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized by and are in the possession of either or both the Plaintiff and or the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

2. Produce all documents, whether electronic or otherwise, supporting Your Second Affirmative Defense (“Reliance on Other Professionals and Experts”) [D.E. 608] including any and all documents indicating or demonstrating that: (1) You retained professionals and/or experts; (2) the identities of all professionals and experts You relied on; (2) the work and/or advice you asked the professionals and/or experts to do; (3) the facts you disclosed to the professionals and experts in connection with seeking or obtaining the professionals and experts’ work and conclusions; (4) the work and conclusions of the professionals and experts; and (5) that You relied on the professionals and experts’ work and conclusions in good faith.

Defendant objects to Request for Production 2 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 2 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

3. Produce all documents, whether electronic or otherwise, supporting Your Third Affirmative Defense (“Good Faith”) [D.E. 608], including any and all documents indicating or demonstrating that “[You] Defendant acted at all times in good faith and/or did not know, and in the exercise of reasonable belief could have known, or had any reasonable grounds to believe, that any misstatements or omissions of material fact existed in any statements, reports, and/or filings allegedly issued or uttered by [You].”

Defendant objects to Request for Production 3 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 3 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the SEC or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

4. Produce all documents, whether electronic or otherwise, supporting Your Third Affirmative Defense (“Good Faith”) [D.E. 608], including any and all documents indicating or demonstrating that You “relied upon competent personnel to assist her in making reasonable and informed decisions.”

Defendant objects to Request for Production 4 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Receiver. Defendant also objects to Request for Production 4 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

5. Produce all documents supporting Your Fourth Affirmative Defense (“Laches”) [DE 608], including any and all documents indicating or demonstrating that “Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches.”

Defendant objects to Request for Production 5 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Receiver. Defendant also objects to Request for Production 5 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

6. Produce all documents supporting Your Fifth Affirmative Defense (“Estoppel”) [DE 608], including any and all documents indicating or demonstrating that “Plaintiff’s claims are barred by the doctrine of estoppel.”

Defendant objects to Request for Production 6 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 6 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the government or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

7. Produce all documents supporting Your Sixth Affirmative Defense (“Waiver”) [DE 608], including any and all documents indicating or demonstrating that “Plaintiff’s claims are barred by the doctrine of waiver.”

Defendant objects to Request for Production 7 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 7 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

8. Produce all documents supporting the first portion of Your Seventh Affirmative Defense – namely, that “the notes at issue... fall squarely within the list of non-securities enumerated in *Reves v. Ernst & Young*, 494 U.S. 56, 63 (1990)” – including any and all documents indicating or demonstrating that “the notes at issue... fall squarely within the list of non-securities enumerated in *Reves v. Ernst & Young*, 494 U.S. 56, 63 (1990).”

Defendant objects to Request for Production 8 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for

Production 8 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

9. Produce all documents supporting the second portion of Your Seventh Affirmative Defense – namely, that “the notes are also exempt as securities under the express language of the Exchange Act (15 U.S.C. § 78c(a)(10)) and from the registration requirement under the Securities Act (15 U.S.C. § 77b(a)(1))” – including any and all documents indicating or demonstrating that “the notes are also exempt as securities under the express language of the Exchange Act (15 U.S.C. § 78c(a)(10)) and from the registration requirement under the Securities Act (15 U.S.C. § 77b(a)(1)).”

Defendant objects to Request for Production 9 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 9 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the government or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

10. Produce any and all notes of witness interviews that were conducted in connection with this case.

Defendant objects to Request for Production 10 because these communications reflect 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 defense to assemble, process, and then individually log each document, note

and/or communication. If needed, Defendant reserves the right to supplement, revise, or amend this log as appropriate.

Defendant further objects to Request for Production 10 as unduly burdensome, overbroad, and not proportional to the needs of the case because it seeks “any and all” notes from witness interviews regardless of whether relevant to any claim or defense, and because it seeks identification of “all” witnesses interviewed.

11. Produce Your personal telephone and cellphone records for the period of July 27, 2015 through July 27, 2020.

Defendant objects to Request for Production 11 as unduly burdensome, overbroad, and not proportional to the needs of the case because it seeks the defendant’s “personal telephone and cellphone records from July 27, 2015 through July 27, 2020”, regardless of whether relevant to any claim or defense.

Defendant further objects to Request for Production 11 as unduly burdensome, overbroad, and not proportional to the needs of the case because it improperly seeks documents that have already been seized either by the Plaintiff or by the Receiver.

12. Produce all bank records, including but not limited to statements, for all bank and other financial accounts on which You were a signatory, for the period July 27, 2015 through present.

Defendant objects to Request for Production 12 as premature because it seeks information regarding Defendant’s assets which could only be relevant, if at all, to judgment enforcement efforts; however, no judgment has been obtained against Defendant and, therefore, Request for Production 12 is objectionable as premature.

Defendant further objects to Request for Production 12 as unduly burdensome, overbroad, and not proportional to the needs of the case because it seeks information that is not relevant to any claim or defense, and because it seeks identification of “all” bank and other financial accounts.

Defendant further objects to Request for Production 12 as unduly burdensome, overbroad, and not proportional to the needs of the case because it improperly seeks documents that have already been seized either by the Plaintiff or by the Receiver.

13. Produce all bank records, including but not limited to statements, for all bank and other financial accounts that You controlled, directly or indirectly, for the period July 27, 2015 through present.

Defendant objects to Request for Production 13 as premature because it seeks information regarding Defendant's assets which could only be relevant, if at all, to judgment enforcement efforts; however, no judgment has been obtained against Defendant and, therefore, Request for Production 12 is objectionable as premature.

Defendant further objects to Request for Production 13 as unduly burdensome, overbroad, and not proportional to the needs of the case because it seeks information that is not relevant to any claim or defense, and because it seeks identification of "all" bank records.

Defendant further objects to Request for Production 13 as unduly burdensome, overbroad, and not proportional to the needs of the case because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

14. Produce all correspondence between You and Aida Lau from July 2015 through present, unless such correspondence was sent from your parfunding.com email address.

Defendant objects to Request for Production 14 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 14 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

15. Produce all correspondence between Your attorney(s) and Aida Lau from July 23, 2020 through present.

Defendant objects to Request for Production 15 because these communications reflect 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 defense to assemble, process, and then individually log each document, note and/or communication. If needed, Defendant reserves the right to supplement, revise, or amend this response as appropriate.

16. Produce all correspondence between Your attorney(s) and any individual or entity (either directly or through that individual or entities' counsel) identified in Your Rule 26 Disclosures in this case, from July 23, 2020 through present. This Request does not seek or include attorney-client privileged correspondence between You and Your attorney, Bettina Schein.

Defendant objects to Request for Production 16 because it is unduly burdensome and expensive for the defense to assemble, process, and then individually log each document, note and/or communication. If needed, Defendant reserves the right to supplement, revise, or amend this response as appropriate.

17. Produce documents reflecting all of Your source(s) of income, compensation, and financial support from July 27, 2020 through present.

Defendant objects to Request for Production 17 to the extent that it is duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the Plaintiff or by the Receiver.

Defendant further objects to Request for Production 17 as premature because it seeks information regarding Defendant's assets which could only be relevant, if at all, to judgment enforcement efforts; however, no judgment has been obtained against Defendant and, therefore, Request for Production 17 is objectionable as premature.

18. Produce all correspondence regarding Complete Business Solutions Group, a/k/a Par Funding between You and any individual and/or entity that was a purchaser or potential purchaser of a promissory note. This Request seeks documents for the period of July 27, 2015 through present.

Defendant objects to Request for Production 18 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 18 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the SEC or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

19. Produce all correspondence between You and Joseph LaForte, a/k/a Joe Mack, /a/k/a Joe Macki ("LaForte") during the time period of July 2015 through present. This Request does not seek or include correspondence where both You and LaForte are communicating via email using email addresses with the domain "@parfunding.com."

Defendant objects to Request for Production 19 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 19 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the SEC or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

20. Produce all correspondence between You and Lisa McElhone (“McElhone”) during the time period of July 2015 through present. This Request does not seek or include correspondence where both You and McElhone are communicating via email using email addresses with the domain “@parfunding.com.”

Defendant objects to Request for Production 20 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 20 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the government or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

21. Produce all correspondence between You and Perry Abbonizio (“Abbonizio”) during the time period of July 2015 through present. This Request does not seek or include correspondence where both You and Abbonizio are communicating via email using email addresses with the domain “@parfunding.com.”

Defendant objects to Request for Production 21 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 21 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the SEC or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

22. Produce all correspondence between You and Dean Vagnozzi (“Vagnozzi”) during the time period of July 2015 through present. This Request does not seek or include correspondence where You are communicating via email using Your email addresses with the domain “@parfunding.com.”

Defendant objects to Request for Production 22 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 22 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the SEC or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

23. Produce all correspondence between You and Michael Furman (“Furman”) during the time period of July 2015 through present. This Request does not seek or include correspondence where You are communicating via email using Your email addresses with the domain “@parfunding.com.”

Defendant objects to Request for Production 23 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 23 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the government or by the Receiver.

Defendant is not aware of any documents responsive to this request or that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

24. Produce all correspondence between You and any employee, contractor, or agent of Berkowitz, Pollack Brant Advisors & CPAs, including but not limited to Joel Glick, for the time period July 2020 through present.

Defendant objects to Request for Production 24 to the extent it calls for materials not within his possession, custody or control, including materials within the control of other parties or third parties and therefore equally accessible to the Plaintiff. Defendant also objects to Request for Production 24 as unnecessarily duplicative and unduly burdensome because it improperly seeks documents that have been seized either by the SEC or by the Receiver.

Defendant is not aware of any documents responsive to this request that are not already in the possession of the SEC or the Receiver. However, should Defendant become aware of any such document, Defendant will produce it to the SEC.

25. Copies of all subpoenas You and/or Your attorney have issued in connection with this case.

Defendant believes any subpoenas and notices of subpoena were properly served upon all counsel.

26. Copies of all documents and other materials You and/or Your attorney have received in connection with this case, (a) in response to any subpoena, (b) in response to any informal request, or (c) produced or provided on a voluntary basis by any individual or entity. This Request does not include documents produced by the Securities and Exchange Commission in this case.

Defendant believes any productions counsel received were properly served upon counsel. However, should Defendant become aware of any such documents not already served upon the SEC, the Defendant will produce a copy to the SEC.

27. Copies of all documents and other materials You and/or Your attorney have received from or through ConvergeHub, whether received from ConvergeHub, the Receiver, or anyone else, including but not limited to documents and materials You obtained because they were downloaded from ConvergeHub.

Pursuant to the agreement between the Receiver and the Defense, documents downloaded by the defense may be provided to the SEC. To the extent not already provided, counsel will assist the SEC in arranging access to Converge Hub through its IT administrator.

Dated: July 30, 2021

Respectfully Submitted,

Law Offices of Bettina Schein
Attorney for Joseph Cole Barleta
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 880-9417
bschein@bettinascheinlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2021, the foregoing document is being served this day on the SEC via email.

By: /s/ Bettina Schein
BETTINA SCHEIN
Admitted Pro Hac Vice

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3
4 SECURITIES AND EXCHANGE)
5 COMMISSION,)
6 Plaintiff,)
7 v.) Case No.
8) 20-CV-81205-RAR
9 COMPLETE BUSINESS SOLUTIONS)
10 GROUP, INC. d/b/a PAR)
11 FUNDING, et al.,)
12 Defendants, and)
13)
14 L.M.E. 2017 FAMILY TRUST,)
15)
16 Relief Defendant.)
17 _____)
18
19 REMOTE VIDEOTAPED DEPOSITION OF LISA MCELHONE,
20 called by the Plaintiffs for examination, taken by
21 and before Ann Medis, Registered Professional
22 Reporter and Notary Public in and for the
23 Commonwealth of Pennsylvania, via Webex
24 videoconference, on Thursday, May 27, 2021,
25 commencing at 10:47 a.m.

JOB No. 210527AME

1

1 A P P E A R A N C E S
2 (Participants appeared via Webex videoconference)
3 On behalf of Plaintiff
4 UNITED STATES SECURITIES AND EXCHANGE
5 COMMISSION
6 BY: AMIE RIGGLE BERLIN, ESQUIRE
7 801 Brickell Avenue, Suite 1800
8 Miami, Florida 33131
9 305.982.6300
10 berlina@sec.gov
11
12 On behalf of Defendant Joseph W. LaForte
13
14 FRIDMAN FELS & SOTO
15 BY: ALEJANDRO O. SOTO, ESQUIRE
16 2525 Ponce de Leon Boulevard, Suite 750
17 Coral Gables, Florida 33134
18 305.569.7701
19 asoto@ffslawfirm.com
20
21 On behalf of Defendant Lisa McElhone
22
23 THE LAW OFFICES OF ALAN S. FUTERFAS
24 BY: ALAN S. FUTERFAS, ESQUIRE
25 565 Fifth Avenue, 7th Floor
New York, New York 10017
212.684.8400
asfuterfas@futerfaslaw.com
BACHNER and WEINER, P.C.
BY: MICHAEL BACHNER, ESQUIRE
39 Broadway, Suite 1610
New York, New York 10006
917.639.5370
On behalf of Defendant Joseph Cole Barleta
LAW OFFICES OF BETTINA SCHEIN
BY: BETTINA SCHEIN, ESQUIRE
565 Fifth Avenue, 7th Floor
New York, New York 10017
212.880.9417
bschein@bettinascheinlaw.com

2

1 A P P E A R A N C E S (Continued)
2 On behalf of the Receiver Ryan K. Stumphauzer
3 STUMPHAUZER FOSLID SLOMAN ROSS &
4 KOLAYA, PLLC
5 BY: TIMOTHY ANDREW KOLAYA, ESQUIRE
6 2 South Biscayne Boulevard, Suite 2550
7 Miami, Florida 33131
8 305.371.9686
9 tkolaya@sfsflaw.com
10 PIETRAGALLO GORDON ALFANO BOSICK &
11 RASPANTI, LLP
12 BY: GAETAN J. ALFANO, ESQUIRE
13 1818 Market Street, Suite 3402
14 Philadelphia, Pennsylvania 19103
15 215.320.6200
16 gja@pietragallos.com
17
18 Also present
19
20 Michael C. Furman
21 Dean Vagnozzi
22 Richard Brueckner
23
24 Nancy Holmstock, videographer
25

3

1 * I N D E X *
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9 to Pennsylvania Department of
10 Banking and Securities, Re: CBSG
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4



1 PROCEEDINGS
 2 - - - -
 3 THE VIDEOGRAPHER: We're on the record.
 4 This is the video deposition of Lisa McElhone in the
 5 matter of Securities and Exchange Commission versus
 6 Complete Business Solutions Group, et al., pending
 7 in the United States District Court, Southern
 8 District of Florida, Case No. 20-CV-81205-RAR.
 9 Today's date is May 27, 2021. The time on the video
 10 monitor is 10:47 a.m.
 11 My name is Nancy Holmstock, videographer
 12 and the court reporter today is Ann Medis. Both are
 13 with Gradillas Court Reporters, located at 520 North
 14 Central Avenue, Glendale, California.
 15 Will counsel please identify yourselves
 16 for the record starting with the taking attorney.
 17 MS. BERLIN: Amie Riggle Berlin on behalf
 18 of the Securities and Exchange Commission.
 19 MR. FUTERFAS: Alan Futerfas for the
 20 witness and joined by...
 21 MR. BACHNER: Michael Bachner on behalf of
 22 Lisa McElhone.
 23 MR. SOTO: Alex Soto on behalf of
 24 defendant Joseph LaForte.
 25 MR. KOLAYA: Good morning. Timothy Kolaya

5

1 on behalf of the receiver Ryan K. Stumphauzer.
 2 MR. ALFANO: Gaetan Alfano on behalf of
 3 the receiver.
 4 MR. FURMAN: Michael Furman on behalf of
 5 myself.
 6 LISA MCELHONE,
 7 having been first duly sworn, was examined
 8 and testified as follows:
 9 EXAMINATION
 10 BY MS. BERLIN:
 11 Q. Hi, Ms. McElhone. My name is Amie Riggle
 12 Berlin, and I work with the U.S. Securities and
 13 Exchange Commission. If you need me to repeat a
 14 question or restate it in better way, just let me
 15 know that. And any time you want to take a break,
 16 you can just let me know, and we'll accommodate that
 17 and take a break right away. Okay?
 18 A. Thank you. Sure.
 19 Q. By the way, can you tell me how to
 20 pronounce your last name?
 21 A. It's McElhone.
 22 Q. And then we heard a different one this
 23 morning.
 24 A. Thank you.
 25 THE VIDEOGRAPHER: I apologize for

6

1 mispronouncing your last name.
 2 THE WITNESS: That's okay.
 3 BY MS. BERLIN:
 4 Q. Ms. McElhone, could you begin by just
 5 telling us your educational background?
 6 A. Sure. I have a bachelor's degree in
 7 management information systems, and I graduated from
 8 Saint Joseph's University.
 9 Q. And where do you currently work?
 10 MR. FUTERFAS: Hold on one second, please.
 11 MS. BERLIN: Sure.
 12 MR. FUTERFAS: I'll put you on that mute.
 13 Hold on. Thank you.
 14 (Counsel and witness conferred 10:50 a.m. to 10:50 a.m.)
 15 THE WITNESS: Upon the advice counsel, I
 16 am asserting the rights and privileges guaranteed
 17 under the Fifth Amendment to the United States
 18 Constitution.
 19 BY MS. BERLIN:
 20 Q. Are you using any proceeds from Complete
 21 Business Solutions Group to pay your legal fees in
 22 connection with this case?
 23 MR. FUTERFAS: Hold on.
 24 (Counsel and witness conferred 10:50 a.m. to 10:51 a.m.)
 25 MR. FUTERFAS: Thank you. The witness

7

1 will answer.
 2 THE WITNESS: Upon the advice counsel, I
 3 am asserting the rights and privileges guaranteed
 4 under the Fifth Amendment to the United States
 5 Constitution.
 6 BY MS. BERLIN:
 7 Q. Are you founder of a company called
 8 Complete Business Solutions Group?
 9 A. Upon the advice counsel, I am asserting
 10 the rights and privileges guaranteed under the Fifth
 11 Amendment to the United States Constitution.
 12 Q. Did you control the business decisions for
 13 Complete Business Solutions Group?
 14 A. Upon the advice counsel, I am asserting
 15 the rights and privileges guaranteed under the Fifth
 16 Amendment to the United States Constitution.
 17 Q. Did Complete Business Solutions Group
 18 provide short-term loans to small businesses from no
 19 later than August 27, 2013 through at least February
 20 of 2020?
 21 MR. FUTERFAS: Hold on please while we
 22 consult. Thank you. Hold on.
 23 (Counsel and witness conferred 10:53 a.m. to 10:54 a.m.)
 24 MR. FUTERFAS: Ms. Berlin, do you mind
 25 repeating the question or at least having the court

8

1 reporter read it back.
 2 MS. BERLIN: Yes. Can the court reporter
 3 read it back.
 4 (The following record was read back:
 5 "Q Did Complete Business Solutions
 6 Group provide short-term loans to small
 7 businesses from no later than August 27, 2013
 8 through at least February of 2020?")
 9 MR. FUTERFAS: Just give us one second to
 10 consult. Thank you. Hold on one second.
 11 (Counsel and witness conferred 10:54 a.m. to 10:57 a.m.)
 12 MR. FUTERFAS: Thank you very much. We're
 13 ready. The witness will answer.
 14 THE WITNESS: I decline to answer the
 15 question on the basis of the spousal testimonial
 16 privilege.
 17 MR. SOTO: Amie, this is Alex Soto. To
 18 the extent that the answer requires further reliant
 19 communications she had with Mr. LaForte, we're also
 20 asserting the marital communications privilege.
 21 BY MS. BERLIN:
 22 Q. From 2011 through June of 2020, did you
 23 have ultimate decision-making authority for Complete
 24 Business Solutions Group?
 25 MR. FUTERFAS: Hold on one second, Amie.

9

1 Thank you.
 2 (Counsel and witness conferred 10:58 a.m. to 10:58 a.m.)
 3 MR. FUTERFAS: Thank you. The witness
 4 will answer.
 5 THE WITNESS: I decline to answer the
 6 question on the basis of the marital communications
 7 privilege. I decline to answer the question on the
 8 basis of the spousal testimonial privilege.
 9 BY MS. BERLIN:
 10 Q. And what is the name of the spouse that
 11 you're claiming the privilege for? Is that Joseph
 12 LaForte?
 13 MR. FUTERFAS: Hold on one second.
 14 (Counsel and witness conferred 10:58 a.m. to 10:59 a.m.)
 15 MR. FUTERFAS: You can answer.
 16 THE WITNESS: Yes.
 17 BY MS. BERLIN:
 18 Q. Are you an owner of Complete Business
 19 Solutions Group?
 20 MR. FUTERFAS: Hold on, please.
 21 (Counsel and witness conferred 10:59 a.m. to 11:00 a.m.)
 22 MR. FUTERFAS: Thank you, Amie. The
 23 witness will answer.
 24 THE WITNESS: Upon the advice of counsel,
 25 I'm asserting the rights and privileges guaranteed

10

1 under the Fifth Amendment to the United States
 2 Constitution.
 3 BY MS. BERLIN:
 4 Q. Are you the grantor of the L.M.E. 2017
 5 Family Trust?
 6 MR. FUTERFAS: Hold on, please. Thank
 7 you. One moment.
 8 (Counsel and witness conferred 11:01 a.m. to 11:02 a.m.)
 9 MR. FUTERFAS: Amie, thank you. The
 10 witness will answer.
 11 THE WITNESS: Upon the advice of counsel,
 12 I'm asserting the rights and privileges guaranteed
 13 under the Fifth Amendment to the United States
 14 Constitution.
 15 BY MS. BERLIN:
 16 Q. No later than 2013 through present, have
 17 you and Joseph LaForte been the beneficiaries of the
 18 L.M.E. 2017 Family Trust?
 19 MR. FUTERFAS: Hold on, please, Amie.
 20 Thank you.
 21 (Counsel and witness conferred 11:03 a.m. to 11:04 a.m.)
 22 MR. FUTERFAS: Thank you, Amie. The
 23 witness will answer.
 24 THE WITNESS: I decline to answer the
 25 question on the basis of the marital communications

11

1 privilege. I decline to answer the question on the
 2 basis of the spousal testimonial privilege.
 3 MR. SOTO: Amie, this is Alex Soto. I'm
 4 just going to have her lodge a standing objection
 5 whenever the witness declines to answer on the basis
 6 of the marital communications privilege.
 7 Mr. LaForte will be joining to speed things up a
 8 little bit more.
 9 MS. BERLIN: I just realized I was saying
 10 Alex, thank you. Understood. And I then asked Alex
 11 and Alan do we also just want to sort of have like a
 12 standing any time the spousal testimony privilege or
 13 marital communications privilege are asserted, that
 14 the spouse at issue is Joseph LaForte?
 15 MR. FUTERFAS: We agree the spouse at
 16 issue is Joseph LaForte.
 17 MR. SOTO: Yes. On behalf of Mr. Soto,
 18 that's true, yes.
 19 MS. BERLIN: That way I don't have to keep
 20 asking. I want to make sure. I assumed, but I want
 21 to make sure. Okay. Great.
 22 BY MS. BERLIN:
 23 Q. In 2017, did you become aware of an
 24 investigation by the Commonwealth of Pennsylvania
 25 acting through the Department of Banking and

12

1 Securities concerning Complete Business Solutions
2 Group?
3 MR. FUTERFAS: Hold on, please, Amie.
4 Thank you.
5 (Counsel and witness conferred 11:07 a.m. to 11:07 a.m.)
6 MR. FUTERFAS: Amie, thank you. The
7 witness will answer.
8 THE WITNESS: I decline to answer the
9 question on the basis of the marital communications
10 privilege. I decline to answer the question on the
11 basis of the spousal testimonial privilege.
12 BY MS. BERLIN:
13 Q. From 2016 until at least June of 2020,
14 were you the sole owner of Full Spectrum Processing
15 Inc.?
16 MR. FUTERFAS: Thank you, Amie. Hold on,
17 please.
18 (Counsel and witness conferred 11:08 a.m. to 11:08 a.m.)
19 MR. FUTERFAS: Thank you, Amie. The
20 witness will answer.
21 THE WITNESS: Upon the advice of counsel I
22 am asserting the rights and privilege guaranteed
23 under the Fifth Amendment to the United States
24 Constitution.
25

13

1 BY MS. BERLIN:
2 Q. From no later than 2017 through at least
3 June of 2020, did you use Spectrum Processing, Inc.
4 to operate Complete Business Solutions Group?
5 MR. FUTERFAS: Hold on, please. Thank
6 you, Amie.
7 (Counsel and witness conferred 11:09 a.m. to 11:10 a.m.)
8 MR. FUTERFAS: Thank you, Amie. Before
9 the witness answers, we're going to object to the
10 form of the question. But after that objection,
11 without waiving any objections, the witness will
12 answer as follows.
13 THE WITNESS: I decline to answer the
14 question on the basis of the marital communications
15 privilege. I decline to answer the question on the
16 basis of the spousal testimonial privilege.
17 BY MS. BERLIN:
18 Q. From no later than January 2015 until
19 June 2020, were you the chief executive officer of
20 Complete Business Solutions Group?
21 MR. FUTERFAS: Hold on, please, Amie.
22 Thank you.
23 (Counsel and witness conferred 11:11 a.m. to 11:12 a.m.)
24 MR. FUTERFAS: Amie, thank you. We have
25 an objection to the form. But after that objection,

14

1 the witness will answer as follows.
2 THE WITNESS: Upon the advice of counsel I
3 am asserting the rights and privileges guaranteed
4 under the Fifth Amendment to the United States
5 Constitution.
6 MS. BERLIN: Alan, can you give me a
7 clarification of your objection so that I can
8 understand and maybe try to resolve it?
9 MR. FUTERFAS: I think you assumed a fact
10 in evidence. That is, whether -- I don't think you
11 laid a proper foundation for the designation CEO.
12 MS. BERLIN: Okay. Thank you.
13 MR. FUTERFAS: You're welcome.
14 BY MS. BERLIN:
15 Q. From no later than -- I'm sorry. Let's do
16 it again. From 2016 through June 2020, were you the
17 sole owner of Full Spectrum Processing, Inc.?
18 MR. FUTERFAS: Thank you, Amie. Hold on,
19 please.
20 (Counsel and witness conferred 11:14 a.m. to 11:15 a.m.)
21 MR. FUTERFAS: Amie, thank you. The
22 witness will answer the question.
23 THE WITNESS: Upon the advice of counsel,
24 I'm asserting the rights and privileges guaranteed
25 under the Fifth Amendment to the United States

15

1 Constitution.
2 BY MS. BERLIN:
3 Q. At all times that Complete Business
4 Solutions Group had a bank account, were you a
5 signatory on the bank account prior -- let me start
6 again. I'm sorry, Ms. McElhone.
7 A. Sure.
8 Q. Prior to the court's appointment of the
9 receiver in this case, were you a signatory on all
10 of the bank accounts for Complete Business Solutions
11 Group?
12 MR. FUTERFAS: Hold on, Amie. Thank you.
13 (Counsel and witness conferred 11:15 a.m. to 11:16 a.m.)
14 MR. FUTERFAS: Thank you, Amie. The
15 witness will answer.
16 THE WITNESS: Upon the advice of counsel,
17 I'm asserting the rights and privileges guaranteed
18 under the Fifth Amendment to the United States
19 Constitution.
20 MS. BERLIN: Just one moment, please.
21 Sorry.
22 MR. FUTERFAS: No problem.
23 BY MS. BERLIN:
24 Q. From no later than 2015 through at least
25 June 2020, did your husband, Joseph LaForte, use the

16

1 alias Joe Mack?
2 MR. FUTERFAS: Hold on, please.
3 (Counsel and witness conferred 11:18 a.m. to 11:18 a.m.)
4 MR. FUTERFAS: Thank you, Amie. The
5 witness will answer.
6 THE WITNESS: I decline to answer the
7 question on the basis of the marital communications
8 privilege. I decline to answer the question on the
9 basis of the spousal testimonial privilege.
10 BY MS. BERLIN:
11 Q. From no later than 2015 until at least
12 June 2020, did you refer to your husband as Joe
13 Mack?
14 MR. FUTERFAS: Hold on, please.
15 (Counsel and witness conferred 11:18 a.m. to 11:20 a.m.)
16 MR. FUTERFAS: Amie, thank you very much.
17 The witness will answer.
18 THE WITNESS: I decline to answer the
19 question on the basis of the marital communications
20 privilege. I decline to answer the question on the
21 basis of the spousal testimonial privilege.
22 MR. FUTERFAS: Amie, you might be on mute.
23 MS. BERLIN: Thank you.
24 MR. FUTERFAS: You're welcome. We saw you
25 talking, but we didn't hear you. Go ahead.

17

1 MS. BERLIN: I can hear Ms. McElhone
2 whispering. So tell her to mute.
3 MR. FUTERFAS: Thank you very much.
4 MS. BERLIN: I apologize. I'll tell you
5 you'll see me looking around because I have like so
6 many people. Everybody is home today in my
7 household doing virtual school and everything else
8 nearby. So when you're speaking, I try to mute it
9 so that you don't hear any of the background noise
10 here between like my kids and my dog. Thank you for
11 letting me know.
12 BY MS. BERLIN:
13 Q. I asked the question during the period
14 2015 through June 2020, were there occasions where
15 you heard your husband, Joseph LaForte, pretend to
16 be a person named Joe Mack while in the company of
17 third parties?
18 MR. FUTERFAS: Okay. Amie, I'm going to
19 object to the form of the question. Beyond that,
20 give us a second, and we will have an answer. Thank
21 you.
22 MS. BERLIN: Okay.
23 (Counsel and witness conferred 11:22 a.m. to 11:23 a.m.)
24 MR. FUTERFAS: Thank you, Amie. The
25 witness will answer.

18

1 THE WITNESS: I decline to answer the
2 question on the basis of the spousal testimonial
3 privilege.
4 BY MS. BERLIN:
5 Q. In at least 2019 and early 2020, was the
6 primary business location of Complete Business
7 Solutions Group in Florida?
8 MR. FUTERFAS: I'm sorry. Can you just
9 repeat the question.
10 MS. BERLIN: Yes. Just one moment.
11 MR. FUTERFAS: Okay.
12 MS. BERLIN: Alan, I'm not going to re-ask
13 the question. I'm just going to move on.
14 MR. FUTERFAS: Okay. Okay.
15 BY MS. BERLIN:
16 Q. From no later than 2015 through June 2020,
17 did your husband, Joseph LaForte, act as the
18 de facto chief executive officer at Complete
19 Business Solutions Group?
20 MR. FUTERFAS: Okay. Hold on, please.
21 (Counsel and witness conferred 11:25 a.m. to 11:25 a.m.)
22 MR. FUTERFAS: Thank you, Amie. The
23 witness will answer.
24 THE WITNESS: I decline to answer the
25 question on the basis of the marital communications

19

1 privilege. I decline to answer the question on the
2 basis of the spousal testimonial privilege.
3 BY MS. BERLIN:
4 Q. Did Joseph LaForte use aliases in order to
5 conceal from potential investors the fact that he
6 had a criminal record?
7 MR. FUTERFAS: Hold on, please.
8 (Counsel and witness conferred 11:25 a.m. to 11:30 a.m.)
9 MR. FUTERFAS: Thank you, Amie. We have
10 an objection to the form of the question. And
11 beyond that, the witness will answer as follows.
12 THE WITNESS: I decline to answer the
13 question on the basis of the marital communications
14 privilege. I decline to answer the question on the
15 basis of the spousal testimonial privilege.
16 BY MS. BERLIN:
17 Q. Did you conceal from Complete Business
18 Solutions Group's investors that Joseph LaForte had
19 a criminal record?
20 MR. FUTERFAS: I lost the first three or
21 four words of your question. Can you repeat it,
22 please?
23 MS. BERLIN: Sure.
24 BY MS. BERLIN:
25 Q. Did you conceal from Complete Business

20

1 Solutions Group's investors the fact that Joseph
2 LaForte a criminal record?
3 MR. FUTERFAS: Thank you. Hold on,
4 please.
5 (Counsel and witness conferred 11:30 a.m. to 11:33 a.m.)
6 MR. FUTERFAS: Thank you, Amie. We're
7 going to object to the form of the question. And
8 the witness can answer as follows.
9 THE WITNESS: I decline to answer the
10 question on the basis of the spousal testimonial
11 privilege.
12 THE VIDEOGRAPHER: Ms. McElhone, can you
13 center yourself to the screen?
14 THE WITNESS: Sure.
15 THE VIDEOGRAPHER: Thank you.
16 BY MS. BERLIN:
17 Q. From no later than 2015 through June 2020,
18 were you the president of Complete Business
19 Solutions Group?
20 MR. FUTERFAS: Hold on, please, Amie.
21 Thank you.
22 (Counsel and witness conferred 11:34 a.m. to 11:35 a.m.)
23 MR. FUTERFAS: Thank you, Amie. The
24 witness will answer as follows.
25 THE WITNESS: Upon the advice of counsel,

21

1 I'm asserting the rights and privileges guaranteed
2 under the Fifth Amendment to the United States
3 Constitution.
4 BY MS. BERLIN:
5 Q. From 2015 through June 2020, did you and
6 your husband, Joseph LaForte, operate Complete
7 Business Solutions Group together?
8 MR. FUTERFAS: Hold on, please. Thank
9 you.
10 (Counsel and witness conferred 11:36 a.m. to 11:36 a.m.)
11 MR. FUTERFAS: Thank you, Amie. The
12 witness will answer.
13 THE WITNESS: I decline to answer the
14 question on the basis of the marital communications
15 privilege. I decline to answer the question on the
16 basis of the spousal testimonial privilege.
17 BY MS. BERLIN:
18 Q. From 2015 -- I'm sorry. Let me start
19 again.
20 From no later than 2015 through June 2020,
21 did Joseph LaForte have hiring and firing authority
22 at Complete Business Solutions Group?
23 MR. FUTERFAS: Hold on, please. Thank
24 you.
25 (Counsel and witness conferred 11:37 a.m. to 11:41 a.m.)

22

1 MR. FUTERFAS: Thank you, Amie. The
2 witness will answer as follows.
3 THE WITNESS: I decline to answer the
4 question on the basis of the spousal testimonial
5 privilege.
6 BY MS. BERLIN:
7 Q. During 2015 through June 2020, did you
8 observe Joseph LaForte running the day-to-day
9 operations of Complete Business Solutions Group?
10 MR. FUTERFAS: Hold on. Thank you.
11 (Counsel and witness conferred 11:41 a.m. to 11:42 a.m.)
12 MR. FUTERFAS: Thank you, Amie. We object
13 to the form of the question. And the witness will
14 answer as follows.
15 THE WITNESS: I decline to answer the
16 question on the basis of the spousal testimonial
17 privilege.
18 MR. FUTERFAS: Amie, are you talking? You
19 might be on mute again.
20 MS. BERLIN: Thank you.
21 MR. FUTERFAS: Okay. No problem.
22 BY MS. BERLIN:
23 Q. Did you and Joseph LaForte jointly decide
24 which loans Complete Business Solutions Group would
25 make to borrowers?

23

1 MR. FUTERFAS: Hold on, please.
2 (Counsel and witness conferred 11:43 a.m. to 11:45 a.m.)
3 MR. FUTERFAS: Thank you. Amie, we object
4 to the form of the question. And the witness will
5 answer as follows.
6 THE WITNESS: I decline to answer the
7 question on the basis of the spousal testimonial
8 privilege.
9 BY MS. BERLIN:
10 Q. Prior to August of 2012, did you and
11 Joseph LaForte make a joint decision that Complete
12 Business Solutions Group would begin offering and
13 selling promissory notes?
14 MR. FUTERFAS: Sorry, Amie. What was the
15 beginning of the question, what period of time?
16 MS. BERLIN: Prior to August 2012.
17 MR. FUTERFAS: Okay. Hold on, please.
18 (Counsel and witness conferred 11:46 a.m. to 11:48 a.m.)
19 MR. FUTERFAS: Thank you, Amie. We object
20 to the form of the question. And the witness will
21 answer as follows.
22 THE WITNESS: I decline to answer the
23 question on the basis of the marital communications
24 privilege. I decline to answer the question on the
25 basis of the spousal testimonial privilege.

24

1 BY MS. BERLIN:
2 Q. During the time period of August 2012
3 through June 2020, did you sign promissory notes on
4 behalf of Complete Business Solutions Group?
5 MR. FUTERFAS: Thank you. Hold on,
6 please.
7 (Counsel and witness conferred 11:49 a.m. to 11:49 a.m.)
8 MR. FUTERFAS: Thank you. The witness
9 will answer.
10 THE WITNESS: Upon the advice of counsel,
11 I am asserting the rights and privileges guaranteed
12 under the Fifth Amendment to the United States
13 Constitution.
14 BY MS. BERLIN:
15 Q. From no later than January 2015 until no
16 later than 2018, did Complete Business Solutions
17 Group utilize finders to locate potential investors?
18 MR. FUTERFAS: Hold on. Thank you.
19 (Counsel and witness conferred 11:50 a.m. to 11:51 a.m.)
20 MR. FUTERFAS: Thank you, Amie. The
21 witness will answer.
22 THE WITNESS: I decline to answer the
23 question on the basis of the spousal testimonial
24 privilege.
25

25

1 BY MS. BERLIN:
2 Q. Did you make the decision on behalf of
3 Complete Business Solutions Group that it would use
4 finders to solicit investors?
5 MR. FUTERFAS: Thank you.
6 (Counsel and witness conferred 11:52 a.m. to 11:52 a.m.)
7 MR. FUTERFAS: Thank you, Amie. The
8 witness will answer.
9 THE WITNESS: I decline to answer the
10 question on the basis of the spousal testimonial
11 privilege.
12 BY MS. BERLIN:
13 Q. In early January 2018, did you become
14 aware of a subpoena that Pennsylvania securities
15 regulators issued to Complete Business Solutions
16 Group?
17 MR. FUTERFAS: Thank you.
18 (Counsel and witness conferred 11:54 a.m. to 11:55 a.m.)
19 MR. FUTERFAS: Thank you, Amie. The
20 witness will answer.
21 THE WITNESS: I decline to answer the
22 question on the basis of the spousal testimonial
23 privilege.
24 BY MS. BERLIN:
25 Q. By early January of 2018, were you aware

26

1 of the fact that Pennsylvania securities regulators
2 were investigating Complete Business Solutions
3 Group's use of unregistered sales agents?
4 MR. FUTERFAS: Hold on, please. Thank
5 you.
6 (Counsel and witness conferred 11:56 a.m. to 11:56 a.m.)
7 MR. FUTERFAS: Thank you, Amie. The
8 witness will answer.
9 THE WITNESS: I decline to answer the
10 question on the basis of the marital communications
11 privilege. I decline to answer the question on the
12 basis of the spousal testimonial privilege.
13 BY MS. BERLIN:
14 Q. Did you make the decision on behalf of
15 Complete Business Solutions Group that it would
16 convert its sales agents into agent fund managers?
17 MR. FUTERFAS: Hold on. Thank you.
18 (Counsel and witness conferred 11:57 a.m.)
19 THE VIDEOGRAPHER: Ms. Berlin, would you
20 like to go off the record while they confer?
21 MS. BERLIN: Yes. Thank you.
22 THE VIDEOGRAPHER: The time is 11:58 a.m.
23 Going off the record.
24 (Off the record 11:58 a.m. to 12:02 p.m.)
25 MR. FUTERFAS: Thank you. We're back on

27

1 the record. Thank you for the conferral.
2 THE VIDEOGRAPHER: We're not on the record
3 yet, sir.
4 MR. FUTERFAS: Okay. Go ahead.
5 MS. BERLIN: We can go back on the record.
6 THE VIDEOGRAPHER: We're back on the
7 record. The time is now 12:02 p.m.
8 MR. FUTERFAS: Thank you for the
9 conferral. The witness will now answer the answer.
10 THE WITNESS: I decline to answer the
11 question on the basis of the spousal testimonial
12 privilege.
13 BY MS. BERLIN:
14 Q. Did you make the decision on behalf of
15 Complete Business Solutions Group to convert its
16 sales agents into investment fund managers for
17 purposes of trying to circumvent the Pennsylvania
18 securities laws?
19 MR. FUTERFAS: Hold on, please. Thank
20 you.
21 (Counsel and witness conferred 12:03 p.m. to 12:04 p.m.)
22 MR. FUTERFAS: Thank you. We have an
23 objection to the form. And the witness will answer
24 the question.
25 THE WITNESS: I decline to answer the

28

1 question on the basis of the spousal testimonial
2 privilege.
3 BY MS. BERLIN:
4 Q. Did you review the correspondence sent on
5 behalf of Complete Business Solutions Group to the
6 Pennsylvania state regulators in connection with
7 their investigation of Complete Business Solutions
8 Group?
9 MR. FUTERFAS: Amie, can I get a
10 clarification. Are you talking about the
11 correspondence from the law firms? Which
12 correspondence are we talking about?
13 MS. BERLIN: Any of the correspondence
14 sent on behalf of Complete Business Solutions Group
15 to the Pennsylvania state regulators. So it could
16 have been sent by an attorney, by an officer of the
17 company, but if she reviewed any of the
18 communications that were sent to the Pennsylvania
19 regulators on behalf of Complete Business Solutions
20 Group.
21 MR. FUTERFAS: Thank you for the
22 clarification. Be right there. Hold on. Thank
23 you.
24 (Counsel and witness conferred 12:05 p.m. to 12:07 p.m.)
25 MR. FUTERFAS: Thank you, Amie. The

29

1 witness will answer the question.
2 THE WITNESS: I decline to answer the
3 question on the basis of the spousal testimonial
4 privilege.
5 MS. BERLIN: Wait. Were we back on the
6 record?
7 MR. FUTERFAS: Yes. Yes.
8 THE VIDEOGRAPHER: We never went off the
9 record.
10 MS. BERLIN: Okay. Thank you.
11 THE VIDEOGRAPHER: We're still on the
12 record.
13 MS. BERLIN: Thank you.
14 BY MS. BERLIN:
15 Q. From January 2018 until June 2020, did
16 Complete Business Solutions Group raise money
17 primarily through the offer and sale of promissory
18 notes?
19 MR. FUTERFAS: Hold on, please. Thank
20 you.
21 (Counsel and witness conferred 12:08 p.m. to 12:09 p.m.)
22 MR. FUTERFAS: Thank you, Amie. The
23 witness will answer.
24 THE WITNESS: I decline to answer the
25 question on the basis of the spousal testimonial

30

1 privilege.
2 BY MS. BERLIN:
3 Q. Prior to July of 2020, did you sign checks
4 for Complete Business Solutions Group's bank
5 accounts?
6 MR. FUTERFAS: Thank you. Hold on.
7 (Counsel and witness conferred 12:10 p.m. to 12:10 p.m.)
8 MR. FUTERFAS: Thank you, Amie. The
9 witness will answer.
10 THE WITNESS: Upon the advice of counsel,
11 I'm asserting the rights and privileges guaranteed
12 under the Fifth Amendment to the United States
13 Constitution.
14 BY MS. BERLIN:
15 Q. Did you give anyone permission to sign
16 your name for you on checks for Complete Business
17 Solutions Group's bank accounts?
18 MR. FUTERFAS: Okay. Hold on. Thank you.
19 MS. BERLIN: We can go off the record
20 while they confer.
21 THE VIDEOGRAPHER: The time is now
22 12:10 p.m. Going off the record.
23 (Counsel and witness conferred 12:10 p.m. to 12:11 p.m.)
24 THE VIDEOGRAPHER: Back on the record
25 12:11 p.m.

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1 MR. FUTERFAS: The witness will answer.
2 Thank you.
3 THE WITNESS: Upon the advice of counsel,
4 I'm asserting the rights and privileges guaranteed
5 under the Fifth Amendment to the United States
6 Constitution.
7 BY MS. BERLIN:
8 Q. Did you give your sister, Jamie McElhone,
9 permission to sign your name on checks or other
10 documents related to Complete Business Solutions
11 Group?
12 MR. FUTERFAS: Thank you. Hold on.
13 MS. BERLIN: We can go off the record.
14 THE VIDEOGRAPHER: The time is now
15 12:12 p.m. Going off the record.
16 (Counsel and witness conferred 12:12 p.m. to 12:13 p.m.)
17 THE VIDEOGRAPHER: We're back on the
18 record. The time is now 12:13 p.m.
19 MR. FUTERFAS: The witness will answer.
20 Thank you.
21 THE WITNESS: Upon the advice of counsel,
22 I'm asserting the rights and privileges guaranteed
23 under the Fifth Amendment to the United States
24 Constitution.
25

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1 BY MS. BERLIN:
2 Q. Did you give Joseph LaForte permission to
3 sign your name on checks or other documents related
4 to Complete Business Solutions Group?
5 MR. FUTERFAS: Thank you.
6 MS. BERLIN: We can go off the record.
7 THE VIDEOGRAPHER: The time is now
8 12:13 p.m. Going off the record.
9 (Counsel and witness conferred 12:13 p.m. to 12:14 p.m.)
10 THE VIDEOGRAPHER: Back on the record.
11 The time now is 12:14 p.m.
12 MR. FUTERFAS: The witness will answer.
13 Thank you.
14 THE WITNESS: I decline to answer the
15 question on the basis of the spousal testimonial
16 privilege.
17 BY MS. BERLIN:
18 Q. Did you approve bank transfers on behalf
19 of Complete Business Solutions Group during the time
20 period 2012 through June of 2020?
21 MR. FUTERFAS: Amie, I'm going to object
22 to the form. Can you just clarify what transfers
23 you're talking about? We're dealing with millions
24 of transactions here.
25 MS. BERLIN: Sure.

33

1 BY MS. BERLIN:
2 Q. During the time period 2012 through
3 June 2020, did you ever make any electronic bank
4 transfers, whether through wire transfer or an
5 inter-fund electronic transfer on behalf of Complete
6 Business Solutions Group's bank accounts?
7 MR. FUTERFAS: Okay. Thank you. Hold on.
8 Thank you.
9 MS. BERLIN: Let's go off the record while
10 they confer.
11 THE VIDEOGRAPHER: The time is now
12 12:16 p.m. Off the record.
13 (Counsel and witness conferred 12:16 p.m. to 12:22 p.m.)
14 THE VIDEOGRAPHER: We're back on the
15 record. The time is now 12:22.
16 MR. FUTERFAS: Thank you for the
17 conferral. The witness will answer the question.
18 THE WITNESS: Upon the advice of counsel,
19 I'm asserting the rights and privileges guaranteed
20 under the Fifth Amendment to the United States
21 Constitution.
22 MR. FUTERFAS: Now, Amie, do you want to
23 take a break at this point?
24 MS. BERLIN: Yeah. We can go off the
25 record for a lunch break, and that way we can wrap

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1 up the personal break and lunch break into one and
2 kind of move things along.
3 THE VIDEOGRAPHER: Do you want to go off
4 the record first?
5 MS. BERLIN: Oh, I'm sorry. I thought we
6 were off the record already.
7 THE VIDEOGRAPHER: The time is now
8 12:23 p.m. Going off the record.
9 (Recess from 12:23 p.m. to 1:09 p.m.)
10 THE VIDEOGRAPHER: We're on the record.
11 The time is now 1:09 p.m.
12 BY MS. BERLIN:
13 Q. I'd like to show you what we've marked as
14 Exhibit 46, Ms. McElhone.
15 A. Okay.
16 MR. FUTERFAS: Amie, where is it going to
17 appear on the screen?
18 MS. BERLIN: I'm not sure. Is the
19 videographer going to show it, or is the court
20 reporter going to show it?
21 THE VIDEOGRAPHER: I was not given any
22 kind of instructions for sharing the screen today.
23 MS. BERLIN: Okay. Well, I can share it
24 then. Hold on. See if I have it in the marked
25 version that Vicky sent.

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1 THE VIDEOGRAPHER: Did you want to go off
2 the record so that you can figure that out?
3 MS. BERLIN: We'll go off the record. And
4 I'll call Vicky and ask her to send the marked
5 version that she sent to you, I'll ask her to send
6 it to me, and then I'll show it.
7 MR. FUTERFAS: No problem. We're standing
8 by.
9 THE VIDEOGRAPHER: The time is now
10 1:10 p.m. Going off the record.
11 (Off the record 1:10 p.m. to 1:12 p.m.)
12 THE VIDEOGRAPHER: We're on the record.
13 The time is 1:12 p.m.
14 BY MS. BERLIN:
15 Q. Ms. McElhone, did you review the marketing
16 brochures Complete Business Solutions Group utilized
17 to solicit investors for its promissory notes?
18 MR. FUTERFAS: Thank you. Hold on,
19 please.
20 MS. BERLIN: We'll go off the record while
21 they confer.
22 THE VIDEOGRAPHER: The time is 1:13. Off
23 the record.
24 (Counsel and witness conferred 1:13 p.m. to 1:16 p.m.)
25 THE VIDEOGRAPHER: Back on the record

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1 1:16 p.m.
 2 MR. FUTERFAS: Thank you. The witness
 3 will answer the question.
 4 THE WITNESS: Upon the advice of counsel,
 5 I'm asserting the rights and privileges guaranteed
 6 under the Fifth Amendment to the United States
 7 Constitution.
 8 BY MS. BERLIN:
 9 Q. Did you conceal from Complete Business
 10 Solutions Group's investors the fact that Joseph
 11 LaForte had a criminal record?
 12 MR. FUTERFAS: Hold on. Thank you.
 13 MS. BERLIN: We can go off the record.
 14 THE VIDEOGRAPHER: The time is 1:17 p.m.
 15 Off the record.
 16 (Counsel and witness conferred 1:17 p.m. to 1:18 p.m.)
 17 THE VIDEOGRAPHER: We're back on the
 18 record 1:18 p.m.
 19 MR. FUTERFAS: Thank you. We have an
 20 objection to form. We believe the question has been
 21 asked and answered.
 22 But in any event, the witness will answer
 23 as follows.
 24 THE WITNESS: I decline to answer the
 25 question on the basis of the spousal testimonial

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1 privilege.
 2 BY MS. BERLIN:
 3 Q. Ms. McElhone, do you understand that the
 4 SEC's case against you is a civil action?
 5 MR. FUTERFAS: Hold on, please.
 6 (Counsel and witness conferred 1:19 p.m.)
 7 MS. BERLIN: Let's go off the record.
 8 THE VIDEOGRAPHER: The time is now 1:19.
 9 Off the record.
 10 (Off the record 1:19 p.m. to 1:20 p.m.)
 11 THE VIDEOGRAPHER: We're back on the
 12 record 1:20 p.m.
 13 MR. FUTERFAS: Thank you. Amie, we're
 14 going to object to the form of the question and
 15 we're going to assert attorney/client privilege over
 16 the answer for that question.
 17 BY MS. BERLIN:
 18 Q. Ms. McElhone, did you determine the
 19 interest rates that Complete Business Solutions
 20 Group offered in its promissory notes?
 21 MR. FUTERFAS: Thank you. We'll be right
 22 with you. Thank you.
 23 MS. BERLIN: Go off the record.
 24 THE VIDEOGRAPHER: The time is 1:20 p.m.
 25 Going off the record.

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1 (Counsel and witness conferred 1:20 p.m. to 1:22 p.m.)
 2 THE VIDEOGRAPHER: Back on the record
 3 1:22 p.m.
 4 MR. FUTERFAS: Thank you. The witness
 5 will answer.
 6 THE WITNESS: Upon the advice of counsel,
 7 I'm asserting the rights and privileges guaranteed
 8 under the Fifth Amendment to the United States
 9 Constitution.
 10 BY MS. BERLIN:
 11 Q. Did you supervise the underwriting process
 12 at Complete Business Solutions Group?
 13 MR. FUTERFAS: Hold on, please.
 14 (Counsel and witness conferred 1:23 p.m.)
 15 MS. BERLIN: They left the screen to
 16 confer, so we'll go off the record.
 17 THE VIDEOGRAPHER: The time is 1:23 p.m.
 18 Off the record.
 19 (Off the record 1:23 p.m. to 1:24 p.m.)
 20 THE VIDEOGRAPHER: Back on the record
 21 1:24 p.m.
 22 MR. FUTERFAS: Thank you. The witness
 23 will answer the question.
 24 THE WITNESS: Upon the advice of counsel,
 25 I'm asserting the rights and privileges guaranteed

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1 under the Fifth Amendment to the United States
 2 Constitution.
 3 BY MS. BERLIN:
 4 Q. Did you ever solicit any investors to
 5 purchase a Par Funding or Complete Business
 6 Solutions Group promissory note?
 7 MR. FUTERFAS: Give us a second to confer.
 8 Thank you.
 9 MS. BERLIN: We can go off.
 10 THE VIDEOGRAPHER: The time is 1:26 p.m.
 11 Off the record.
 12 (Counsel and witness conferred 1:26 p.m. to 1:28 p.m.)
 13 THE VIDEOGRAPHER: Back on the record.
 14 The time is 1:28.
 15 MR. FUTERFAS: Thank you. The witness
 16 will answer the question.
 17 THE WITNESS: Upon the advice of counsel,
 18 I'm asserting the rights and privileges guaranteed
 19 under the Fifth Amendment to the United States
 20 Constitution.
 21 BY MS. BERLIN:
 22 Q. During the time period 2015 until July of
 23 2020, did you have knowledge of the underwriting
 24 process that was conducted for Complete Business
 25 Solutions Group?

40

1 MR. FUTERFAS: Hold on, please. Thank
2 you.
3 MS. BERLIN: Go off the record.
4 THE VIDEOGRAPHER: The time is 1:28 p.m.
5 Off the record.
6 (Counsel and witness conferred 1:28 p.m. to 1:30 p.m.)
7 THE VIDEOGRAPHER: Back on the record.
8 The time is 1:30.
9 MR. FUTERFAS: Thank you. The witness
10 will answer the question.
11 THE WITNESS: Upon the advice of counsel,
12 I'm asserting the rights and privileges guaranteed
13 under the Fifth Amendment to the United States
14 Constitution.
15 BY MS. BERLIN:
16 Q. Was the underwriting process at Complete
17 Business Solutions Group stringent?
18 MR. FUTERFAS: Give us a moment. Thank
19 you.
20 MS. BERLIN: Go off.
21 THE VIDEOGRAPHER: The time is 1:30 p.m.
22 Going off the record.
23 (Counsel and witness conferred 1:30 p.m. to 1:37 p.m.)
24 THE VIDEOGRAPHER: Back on the record
25 1:37.

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1 MR. FUTERFAS: Thank you. We have an
2 objection to the form. I did want to say we
3 appreciate the conferrals. Obviously, there are
4 different privileges involved, and some of the
5 questions are complicated.
6 But in any event, with that the witness
7 will answer the question.
8 THE WITNESS: I decline to answer the
9 question on the basis of the spousal testimonial
10 privilege.
11 BY MS. BERLIN:
12 Q. During the time period from 2015 through
13 June of 2020, was it your understanding that Par
14 Funding was conducting an on-site inspection prior
15 to approving all loans?
16 MR. FUTERFAS: We're going to confer, but
17 I certainly object to the form of the question. But
18 we do have to confer. Hold on one minute. Thank
19 you.
20 THE VIDEOGRAPHER: The time is 1:38 p.m.
21 Going off the record.
22 (Counsel and witness conferred 1:38 p.m. to 1:39 p.m.)
23 THE VIDEOGRAPHER: On the record 1:39.
24 MR. FUTERFAS: Thank you. With the form
25 objection in place, the witness will answer the

42

1 question.
2 THE WITNESS: I decline to answer the
3 question on the basis of the spousal testimonial
4 privilege.
5 BY MS. BERLIN:
6 Q. During the time period 2015 through
7 June 2020, did you know that Par Funding was not
8 conducting on-site inspections before approving
9 loans?
10 MR. FUTERFAS: Hold on, please. We object
11 to the form of the question. Amie, so the record
12 will be clear, these are not loans. But we object
13 to the form, use of the word loans in the context of
14 the MCA business, but we will confer and get back to
15 you immediately. Hold on one second.
16 THE VIDEOGRAPHER: The time is now
17 1:40 p.m. Going off the record.
18 (Counsel and witness conferred 1:40 p.m. to 1:41 p.m.)
19 THE VIDEOGRAPHER: Back on the record
20 1:41.
21 MR. FUTERFAS: I think I all already
22 objected the form. The witness will answer the
23 question.
24 THE WITNESS: I decline to answer the
25 question on the basis of the spousal testimonial

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1 privilege.
2 BY MS. BERLIN:
3 Q. During the time period 2015 through June
4 of 2020, was it your understanding that Complete
5 Business Solutions Group approved merchant cash
6 advance funding for borrowers without obtaining
7 financial information for the borrowers?
8 MR. FUTERFAS: Hold on, please.
9 THE VIDEOGRAPHER: The time is 1:42. Off
10 the record.
11 (Counsel and witness conferred 1:42 p.m. to 1:43 p.m.)
12 THE VIDEOGRAPHER: On the record 1:43 p.m.
13 MR. FUTERFAS: Thank you. The witness
14 will answer.
15 THE WITNESS: I decline to answer the
16 question on the basis of the spousal testimonial
17 privilege.
18 BY MS. BERLIN:
19 Q. Ms. McElhone, I wonder if you could
20 provide the basis for asserting the spousal
21 testimony privilege. I guess my question to you is:
22 Is it the case that the only way you have access to
23 information that you'd be answering is with respect
24 to your spouse, or is it another reason? Can you
25 provide some basis to explain why you're asserting

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1 the privilege?
 2 MR. FUTERFAS: Amie, that is the answer
 3 that calls for attorney/client privilege with
 4 respect to conversations between her and her
 5 counsel.
 6 MS. BERLIN: Obviously, we'll move on, and
 7 we'll raise issues with the privilege assertions
 8 with the court rather than discuss them here.
 9 BY MS. BERLIN:
 10 Q. Ms. McElhone, did you review Complete
 11 Business Solutions Group's filings with the
 12 Securities and Exchange Commission before Complete
 13 Business Solutions Group filed them?
 14 MR. FUTERFAS: Give us one second. Thank
 15 you.
 16 MS. BERLIN: Go off the record.
 17 THE VIDEOGRAPHER: The time is 1:44. Off
 18 the record.
 19 (Counsel and witness conferred 1:44 p.m. to 1:45 p.m.)
 20 THE VIDEOGRAPHER: The time is now
 21 1:45 p.m. On the record.
 22 MR. FUTERFAS: Thank you. The witness
 23 will answer.
 24 THE WITNESS: Upon the advice of counsel,
 25 I am asserting the rights and privileges guaranteed

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1 under the Fifth Amendment to the United States
 2 constitution.
 3 BY MS. BERLIN:
 4 Q. Did you approve Complete Business
 5 Solutions Group's filings before Complete Business
 6 Solutions Group filed them with the SEC?
 7 MR. FUTERFAS: Hold on one second while we
 8 confer. Thank you.
 9 MS. BERLIN: Go off the record.
 10 THE VIDEOGRAPHER: The time is 1:46. Off
 11 the record.
 12 (Counsel and witness conferred 1:46 p.m. to 1:47 p.m.)
 13 THE VIDEOGRAPHER: On the record 1:47 p.m.
 14 MR. FUTERFAS: The witness will answer.
 15 Thank you.
 16 THE WITNESS: Upon the advice of counsel,
 17 I'm asserting the rights and privileges guaranteed
 18 under the Fifth Amendment to the United States
 19 Constitution.
 20 BY MS. BERLIN:
 21 Q. Did you make the decision on behalf of
 22 Complete Business Solutions Group to omit Joseph
 23 LaForte's name from Complete Business Solutions
 24 Group's SEC filings?
 25 MR. FUTERFAS: Hold on, please. Thank

46

1 you.
 2 THE VIDEOGRAPHER: 1:47 p.m. off the
 3 record.
 4 (Counsel and witness conferred 1:47 p.m. to 1:51 p.m.)
 5 THE VIDEOGRAPHER: Back on the record
 6 1:51 p.m.
 7 MR. FUTERFAS: We're going to have an
 8 objection to form. And beyond that objection, the
 9 witness will answer.
 10 THE WITNESS: Upon the advice of counsel,
 11 I'm asserting the rights and privileges guaranteed
 12 under the Fifth Amendment to the United States
 13 Constitution.
 14 BY MS. BERLIN:
 15 Q. Did you fail to disclose Joseph LaForte in
 16 the Complete Business Solutions Group's SEC filings
 17 because you wanted to conceal Mr. LaForte's
 18 management role at Complete Business Solutions
 19 Group?
 20 MR. FUTERFAS: Hold on for the conferral.
 21 Hold on.
 22 THE VIDEOGRAPHER: The time is now
 23 1:52 p.m. Going off the record.
 24 (Counsel and witness conferred 1:52 p.m. to 1:56 p.m.)
 25 THE VIDEOGRAPHER: We're on the record.

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1 The time is now 1:56 p.m.
 2 MR. FUTERFAS: Thank you. We have an
 3 objection to form. And the witness will answer.
 4 THE WITNESS: I decline to answer the
 5 question on the basis of the spousal testimonial
 6 privilege.
 7 BY MS. BERLIN:
 8 Q. During the time period 2015 through
 9 June 2020, did you approve on behalf of Complete
 10 Business Solutions Group its funding of merchant
 11 cash advances without an on-site inspection?
 12 MR. FUTERFAS: Okay. Give us a second.
 13 Thank you.
 14 THE VIDEOGRAPHER: The time is 1:57 p.m.
 15 Off the record.
 16 (Counsel and witness conferred 1:57 p.m. to 1:59 p.m.)
 17 THE VIDEOGRAPHER: Back on the record
 18 1:59 p.m.
 19 MR. FUTERFAS: We object to the form of
 20 the question. And then the witness will answer.
 21 THE WITNESS: I decline to answer the
 22 question on the basis of the spousal testimonial
 23 privilege.
 24 BY MS. BERLIN:
 25 Q. During the period 2015 through June 2020,

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1 did you tell any investor or potential investor in
 2 Complete Business Solutions Group that Complete
 3 Business Solutions Group had a 1 percent default
 4 rate on its merchant cash advances?
 5 MR. FUTERFAS: Give us one second. Thank
 6 you.
 7 THE VIDEOGRAPHER: The time is now
 8 2:00 p.m. Off the record.
 9 (Counsel and witness conferred 2:00 p.m. to 2:01 p.m.)
 10 THE VIDEOGRAPHER: We're on the record.
 11 2:01 p.m.
 12 MR. FUTERFAS: Thank you. We have an
 13 objection to form. In addition to that, the witness
 14 will answer.
 15 THE WITNESS: Upon the advice of counsel,
 16 I'm asserting the rights and privileges guaranteed
 17 under the Fifth Amendment to the United States
 18 Constitution.
 19 BY MS. BERLIN:
 20 Q. During the time period 2015 through
 21 June 2020, were you aware of the fact that Complete
 22 Business Solutions Group had a default rate on its
 23 merchant cash advances that far exceeded 1 percent?
 24 MR. FUTERFAS: We object to the form of
 25 the question because it assumes a fact, obviously it

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1 assumes a fact that certainly we dispute. But I
 2 will get back to you in one second on that. Thank
 3 you.
 4 THE VIDEOGRAPHER: The time is now
 5 2:02 p.m. Going off the record.
 6 (Counsel and witness conferred 2:02 p.m. to 2:08 p.m.)
 7 THE VIDEOGRAPHER: We're back on the
 8 record. The time is now 2:08 p.m.
 9 MR. FUTERFAS: Thank you very much. We
 10 object to the form of the question. And the witness
 11 will answer.
 12 THE WITNESS: I decline to answer the
 13 question on the basis of the spousal testimonial
 14 privilege.
 15 BY MS. BERLIN:
 16 Q. Do you have any understanding between 2015
 17 and June 2020, other than through learned from your
 18 spouse, that the default rate on Complete Business
 19 Solutions Group's merchant cash advances exceeded
 20 10 percent?
 21 MR. FUTERFAS: Can you restate -- just say
 22 it again so we understand exactly what default rate
 23 you're referring to, Amie? Thank you.
 24 MS. BERLIN: Sure.
 25

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1 BY MS. BERLIN:
 2 Q. Did you have the understanding between
 3 2015 and June 2020, other than as or through learned
 4 from your spouse default rate on Complete Business
 5 Solutions Group's merchant cash advances exceeded
 6 10 percent?
 7 MR. FUTERFAS: And what default rate are
 8 you referring to?
 9 MS. BERLIN: Well, I think the -- I mean,
 10 I'm asking the question about the default rate, and
 11 the witness can explain that in her answer.
 12 MR. SOTO: Amie, this is Mr. Soto. I
 13 think we're asking for, if you can provide one, a
 14 definition of default rate so that we can make a
 15 decision whether a particular privilege is
 16 applicable or whether she should answer.
 17 MS. BERLIN: Well, I think the issue is if
 18 the witness is confused and requires me to provide
 19 more detail.
 20 MR. FUTERFAS: The witness is confused.
 21 MS. BERLIN: How do you know?
 22 THE WITNESS: Amie, do you mind repeating
 23 the question just so I can understand better.
 24 BY MS. BERLIN:
 25 Q. Sure.

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1 A. Thank you.
 2 Q. Of course. Did you have the understanding
 3 between 2015 and June 2020, other than as learned
 4 from your spouse, that the default rate on Complete
 5 Business Solutions Group's merchant cash advances
 6 exceeded 10 percent?
 7 MR. FUTERFAS: Amie, we have an objection
 8 because of the definition of default rate. We don't
 9 know what default rate you're referring to, what
 10 mathematics you're actually referring to.
 11 MS. BERLIN: Well, the witness can answer
 12 and explain that in her answer, but I don't think
 13 I'm required to provide a definition. If we have
 14 to, we can have the court review the question. But
 15 I'm going to ask for an answer on the question as
 16 posed.
 17 MR. FUTERFAS: We object to the form of
 18 the question because the definition of default rate
 19 is clearly not -- is certainly not clear. And we
 20 will confer quickly. Thank you. Thank you.
 21 THE VIDEOGRAPHER: The time is now
 22 2:12 p.m. Off the record.
 23 (Counsel and witness conferred 2:12 p.m. to 2:13 p.m.)
 24 THE VIDEOGRAPHER: On the record 2:13 p.m.
 25 MR. FUTERFAS: Thank you. With those

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1 objections repeated, the witness will answer the
 2 question.
 3 THE WITNESS: I decline to answer the
 4 question on the basis of the spousal testimonial
 5 privilege.
 6 BY MS. BERLIN:
 7 Q. By 2019 were you aware of the fact that
 8 Complete Business Solutions Group was in collections
 9 litigation with about 1,000 merchant cash advance
 10 borrowers for failure to pay on the merchant cash
 11 advances?
 12 MR. FUTERFAS: Object. We object to the
 13 form of the question. We're not really sure what
 14 you mean by failure to pay merchant cash borrowers.
 15 But we preserve that objection.
 16 MS. BERLIN: I can re-ask it then.
 17 BY MS. BERLIN:
 18 Q. By 2019 were you aware of the fact that
 19 Complete Business Solutions Group had about a
 20 thousand lawsuits pending against merchant cash
 21 advance borrowers who had not made their payments to
 22 Complete Business Solutions Group?
 23 MR. FUTERFAS: I still -- it's better,
 24 Amie. We still have an objection to the form
 25 because the question of not made payments, I'm not

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1 really sure which payments we're talking about
 2 because it's payments -- it's total RTR. Are we
 3 talking about total RTR, right to return under the
 4 contract? It could be any. So there's ambiguity
 5 there. So we object to the form. But let me
 6 quickly confer.
 7 MS. BERLIN: Payments isn't specified. It
 8 can be anything. The question is whether she knew
 9 about these lawsuits or not.
 10 MR. FUTERFAS: Got it. Okay. We'll
 11 confer.
 12 MS. BERLIN: I didn't specify what kind of
 13 payment hadn't been made in the question.
 14 MR. FUTERFAS: Okay. Fair enough. We'll
 15 confer quickly and get back to you. Hold on one
 16 second.
 17 MS. BERLIN: Okay. Thanks.
 18 THE VIDEOGRAPHER: The time is now
 19 2:16 p.m. Going off the record.
 20 (Counsel and witness conferred 2:16 p.m. to 2:18 p.m.)
 21 THE VIDEOGRAPHER: On the record 2:18 p.m.
 22 MR. FUTERFAS: Thank you. Obviously, we
 23 have an objection to form. And the witness will
 24 answer the question.
 25 THE WITNESS: I decline to answer the

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1 question on the basis of the spousal testimonial
 2 privilege.
 3 BY MS. BERLIN:
 4 Q. During the time period 2015 through
 5 June 2020, were you aware of Complete Business
 6 Solutions Group understating the default rate on its
 7 merchant cash advances when it was trying to solicit
 8 investors to invest in Complete Business Solutions
 9 Group's promissory notes?
 10 MR. FUTERFAS: I'm going to object to the
 11 form. And I believe it's been asked and answered.
 12 Didn't you just ask this question a few minutes ago?
 13 MS. BERLIN: No.
 14 MR. FUTERFAS: Okay. Then do you mind
 15 repeating it? I'm sorry.
 16 BY MS. BERLIN:
 17 Q. Did you have an understanding during the
 18 time period of 2015 through June 2020 that Complete
 19 Business Solutions Group was understating the
 20 default rate on its merchant cash advances when it
 21 was soliciting investors.
 22 MR. FUTERFAS: All right. Thank you. We
 23 got to confer. Thank you.
 24 MS. BERLIN: Go off.
 25 THE VIDEOGRAPHER: 2:20 off the record.

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1 (Counsel and witness conferred 2:20 p.m. to 2:21 p.m.)
 2 THE VIDEOGRAPHER: Back on the record
 3 2:21.
 4 MR. FUTERFAS: Thank you. We have an
 5 objection to the form and renew the objections on
 6 the indefiniteness and the vagueness of the words
 7 default rate.
 8 But with those objections, the witness
 9 will answer.
 10 THE WITNESS: I decline to answer the
 11 question on the basis of the spousal testimonial
 12 privilege.
 13 BY MS. BERLIN:
 14 Q. During the time period of 2016 through
 15 June 2020, did Complete Business Solutions Group
 16 have insurance coverage that provided coverage for
 17 the merchant cash advance loans that Complete
 18 Business Solutions Group was offering?
 19 MR. FUTERFAS: I'll object to the form of
 20 the question. Can you clarify, if you wish or can
 21 or choose to, what the nature of that coverage that
 22 you're referring to, the insurance coverage?
 23 MS. BERLIN: Well, I'm asking the question
 24 about whether there is insurance coverage. Then if
 25 she answers, I would ask her. If she says yes, I'll

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1 ask her what kind of coverage was there.
 2 So right now it's just the general
 3 question of coverage.
 4 MR. FUTERFAS: What kind of coverage?
 5 MS. BERLIN: Any kind of coverage
 6 whatsoever. This is very general. Depending on her
 7 answer, I would get narrower.
 8 MR. FUTERFAS: Okay. All right. No
 9 problem. Thank you. We'll confer. Thank you.
 10 MS. BERLIN: Thank you.
 11 THE VIDEOGRAPHER: The time is now
 12 2:23 p.m. Off the record.
 13 (Counsel and witness conferred 2:23 p.m. to 2:27 p.m.)
 14 THE VIDEOGRAPHER: On the record. The
 15 time is 2:27.
 16 MR. FUTERFAS: Thank you. We object to
 17 the form. And with that objection, the witness will
 18 answer.
 19 THE WITNESS: Upon the advice of counsel,
 20 I am asserting the rights and privileges guaranteed
 21 under the Fifth Amendment to the United States
 22 Constitution.
 23 BY MS. BERLIN:
 24 Q. During the time period of 2015 through
 25 2020, were you present Joseph LaForte made

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1 representations to potential investors of Complete
 2 Business Solutions Group about his business acumen?
 3 MR. FUTERFAS: Thank you. We'll confer.
 4 Thank you.
 5 THE VIDEOGRAPHER: It's 2:28. Off the
 6 record.
 7 (Counsel and witness conferred 2:28 p.m. to 2:30 p.m.)
 8 THE VIDEOGRAPHER: Back on the record
 9 2:30 p.m.
 10 MR. FUTERFAS: The witness will answer.
 11 THE WITNESS: I decline to answer the
 12 question on the basis of the spousal testimonial
 13 privilege.
 14 BY MS. BERLIN:
 15 Q. Were you present at any time between 2015
 16 and June 2020 when Joseph Cole Barleta was telling
 17 any potential investor of Complete Business
 18 Solutions Group that Complete Business Solutions
 19 Group's management team was highly successful?
 20 MR. FUTERFAS: We'll confer. Thank you.
 21 THE VIDEOGRAPHER: It's 2:31 p.m. Off the
 22 record.
 23 (Counsel and witness conferred 2:31 p.m. to 2:33 p.m.)
 24 THE VIDEOGRAPHER: Back on the record
 25 2:33.

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1 MR. FUTERFAS: Thank you. The witness
 2 will answer the question.
 3 THE WITNESS: I decline to answer the
 4 question on the basis of the spousal testimonial
 5 privilege.
 6 BY MS. BERLIN:
 7 Q. During the time period 2015 through
 8 June 2020, did you ever witness a single occasion
 9 where anyone disclosed to a potential Complete
 10 Business Solutions Group investor that Joseph
 11 LaForte had a criminal record?
 12 MR. FUTERFAS: We will confer. Thank you.
 13 THE VIDEOGRAPHER: The time is 2:34 p.m.
 14 Off the record.
 15 (Counsel and witness conferred 2:34 p.m. to 2:41 p.m.)
 16 THE VIDEOGRAPHER: Back on the record.
 17 The time is now 2:41.
 18 MR. FUTERFAS: Thank you. Thank you. We
 19 have an objection to form. And with that objection,
 20 the witness will answer the question.
 21 THE WITNESS: Upon the advice of counsel,
 22 I am asserting the rights and privileges guaranteed
 23 under the Fifth Amendment to the United States
 24 Constitution.
 25

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1 MS. BERLIN: Before we came back on the
 2 record, did I hear you all say something about
 3 wanting to take a personal break?
 4 MR. FUTERFAS: Yes. Love to.
 5 MS. BERLIN: That's all we heard. It was
 6 like right as you came on. We didn't hear anything
 7 other than that.
 8 MR. FUTERFAS: You didn't hear this
 9 unbelievable telemuted discussion of the evolution
 10 of the law of privileges?
 11 MS. BERLIN: No.
 12 MR. FUTERFAS: Then I'm sorry you missed
 13 that.
 14 MR. SOTO: The knock-knock jokes.
 15 MR. FUTERFAS: I would love to take a
 16 two-minute break or a three-minute break if we can.
 17 MS. BERLIN: Sure. Why don't we make it
 18 five minutes. And I'll see you guys back at 2:48.
 19 MR. SOTO: Amie, I know we're going a
 20 little slower than you probably anticipated. What's
 21 your target time now?
 22 THE VIDEOGRAPHER: Would you like to have
 23 this on the record or would you like to go off the
 24 record?
 25 MR. FUTERFAS: We can go off the record.

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1 MR. SOTO: Off.
 2 MS. BERLIN: We can go off the record.
 3 THE VIDEOGRAPHER: The time is 2:42 p.m.
 4 We're going off the record.
 5 (Recess from 2:42 p.m. to 3:07 p.m.)
 6 THE VIDEOGRAPHER: We're back on the
 7 record. The time is now 3:07 p.m.
 8 BY MS. BERLIN:
 9 Q. Have you ever disclosed to any investor in
 10 Complete Business Solutions Group excluding your
 11 spouse that Complete Business Solutions Group was
 12 sanctioned by state securities regulators?
 13 MR. FUTERFAS: We got to confer. Thank
 14 you. Thank you, everyone. Hold on one second.
 15 THE VIDEOGRAPHER: The time is 3:08. Off
 16 the record.
 17 (Counsel and witness conferred 3:08 p.m. to 3:13 p.m.)
 18 THE VIDEOGRAPHER: The time is 3:13 p.m.
 19 On the record.
 20 MR. FUTERFAS: Amie, we object to form.
 21 But beyond that objection, the witness will answer.
 22 Thank you.
 23 THE WITNESS: I decline to answer the
 24 question on the basis of the spousal testimonial
 25 privilege.

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1 BY MS. BERLIN:
 2 Q. When I refer to investors in Complete
 3 Business Solutions Group or Complete Business
 4 Solutions Group investors in the questions that
 5 follow today, I am excluding Joseph LaForte. Do you
 6 understand that? Do you understand, Ms. McElhone?
 7 MR. FUTERFAS: We do understand that, and
 8 that's why the privilege being asserted is the
 9 spousal testimonial privilege as opposed to the
 10 marital communications privilege.
 11 MS. BERLIN: I understand. I was just
 12 going to make that statement now so that when I ask
 13 the next group of questions, I don't have to just
 14 keep saying "excluding Joseph LaForte."
 15 MR. FUTERFAS: Understood. Understood.
 16 Sorry. I misunderstood you. Got it. Got it. Got
 17 it.
 18 MS. BERLIN: Just so my questions can be
 19 shorter.
 20 MR. FUTERFAS: Okay.
 21 BY MS. BERLIN:
 22 Q. Do you understand, Ms. McElhone, that I'm
 23 excluding Joseph LaForte?
 24 A. Yes.
 25 Q. Okay. Great. Prior to the SEC filing its

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1 case against you, did you ever hear anyone disclose
 2 to a Complete Business Solutions Group investor that
 3 Complete Business Solutions Group had been
 4 sanctioned for violating state securities laws?
 5 MR. FUTERFAS: One second. I'm pausing
 6 for a minute because it sounds like the question you
 7 just asked.
 8 MS. BERLIN: No. The question prior was
 9 whether Ms. McElhone had ever disclosed to any CBSG
 10 investor. And the question I just asked is whether
 11 she ever witnessed anyone telling a CBSG investor.
 12 So they're two separate questions.
 13 MR. FUTERFAS: Just a question of
 14 clarification of form. Does "anyone" include
 15 lawyer's letters or forms filed or schedules
 16 submitted to investors in documents prepared by
 17 lawyers?
 18 MS. BERLIN: It could be anyone.
 19 MR. FUTERFAS: I'm sorry?
 20 MS. BERLIN: It could be anyone. So I'm
 21 asking about whether Ms. McElhone ever witnessed
 22 anyone making that disclosure to a CBSG investor.
 23 So it could include attorneys because those would be
 24 third parties, right.
 25 MR. FUTERFAS: We've seen disclosures in

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1 some of the documents. So I just want to make sure
 2 that the question -- would the question include
 3 disclosures made by lawyers in documents submitted
 4 and sent to various investors?
 5 MS. BERLIN: It could include anyone. It
 6 could include anyone. Then if she answers, then I
 7 would ask her specifically who, when and where and
 8 what was said.
 9 Now the question pending is whether prior
 10 to the SEC filing its case Ms. McElhone ever
 11 witnessed anyone disclose to a Complete Business
 12 Solutions Group investor that Complete Business
 13 Solutions Group had been fined or sanctioned for
 14 violating the state securities laws.
 15 MR. FUTERFAS: Okay. I understand your
 16 question. Give us a second to confer. Thank you so
 17 much.
 18 MS. BERLIN: We'll go off the record.
 19 THE VIDEOGRAPHER: The time is 3:17 p.m.
 20 Off the record.
 21 (Counsel and witness conferred 3:17 p.m. to 3:20 p.m.)
 22 THE VIDEOGRAPHER: Back on the record
 23 3:20.
 24 MR. FUTERFAS: Thank you. The witness
 25 will answer is as follows.

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1 THE WITNESS: Upon the advice of counsel,
 2 I am asserting the rights and privileges guaranteed
 3 under the Fifth Amendment to the United States
 4 Constitution.
 5 BY MS. BERLIN:
 6 Q. Have you ever disclosed to any investor in
 7 Complete Business Solutions Group that Pennsylvania
 8 securities regulators filed a consent agreement and
 9 order against Complete Business Solutions Group?
 10 MR. FUTERFAS: Amie, can I ask, does the
 11 word "you" in that sentence, "have you," does that
 12 include attorney's filings?
 13 MS. BERLIN: "You" is Ms. McElhone.
 14 MR. FUTERFAS: Individually?
 15 MS. BERLIN: Yes. This is not a 30(b)(6)
 16 deposition of the company. It's a deposition of
 17 Ms. McElhone in her personal capacity.
 18 MR. FUTERFAS: Okay. Thank you for that
 19 clarification.
 20 MS. BERLIN: If her answer is that she has
 21 made those disclosures through an attorney, then
 22 obviously would be responsive and included, that
 23 would have to be included in her answer, that she
 24 has. Then I would ask who, when, where, how, why
 25 and she would then be testifying that it was done

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1 through an attorney.
 2 But, yes, it could be her directly or if
 3 she had her attorney do it on her behalf, that would
 4 also -- I think it could be included. It just
 5 depends on the circumstances which only she knows.
 6 MR. FUTERFAS: Okay. With that
 7 clarification, we will confer. Thank you.
 8 MS. BERLIN: Okay. Great.
 9 THE VIDEOGRAPHER: The time is 3:21. Off
 10 the record.
 11 (Counsel and witness conferred 3:21 p.m. to 3:27 p.m.)
 12 THE VIDEOGRAPHER: We're back on the
 13 record. The time is now 3:27.
 14 MR. FUTERFAS: Thank you. We have an
 15 objection to form. But beyond that, the witness
 16 will answer as follows. Thank you.
 17 THE WITNESS: I decline to answer the
 18 question on the basis of the spousal testimonial
 19 privilege.
 20 BY MS. BERLIN:
 21 Q. Have you ever disclosed to any investor of
 22 Complete Business Solutions Group that Complete
 23 Business Solutions Group paid a -- I'm sorry. Let
 24 me start again.
 25 Have you ever disclosed to any investor of

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1 Complete Business Solutions Group that the New
 2 Jersey Bureau of Securities issued a
 3 Cease-and-Desist Order against Complete Business
 4 Solutions Group concerning securities law
 5 violations?
 6 THE WITNESS: I decline to answer the
 7 question on the basis of the spousal testimonial
 8 privilege.
 9 BY MS. BERLIN:
 10 Q. Prior to February 2020, did you ever
 11 witness anyone disclose to any Complete Business
 12 Solutions Group investor that the New Jersey Bureau
 13 of Securities issued a Cease-and-Desist Order
 14 against Complete Business Solutions Group for
 15 securities law violations?
 16 MR. FUTERFAS: Amie, I'm going to object
 17 to the form. I think that's what you just asked.
 18 MS. BERLIN: No. I asked Ms. McElhone if
 19 she had ever disclosed it. Then I asked her whether
 20 she ever witnessed anyone else disclose it prior to
 21 February 2020.
 22 THE WITNESS: I decline to answer the
 23 question on the basis of the spousal testimonial
 24 privilege.
 25

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1 BY MS. BERLIN:
 2 Q. Have you ever disclosed to any investor in
 3 Complete Business Solutions Group that Texas
 4 securities regulators had issued a Cease-and-Desist
 5 Order against Complete Business Solutions Group for
 6 violations of state securities laws?
 7 A. I decline to answer the question on the
 8 basis of the spousal testimonial privilege.
 9 Q. Prior to February 2020, have you ever
 10 witnessed anyone disclose to any Complete Business
 11 Solutions Group investor that the Texas state
 12 securities regulators had issued a Cease-and-Desist
 13 Order against Complete Business Solutions Group?
 14 A. I decline to answer the question on the
 15 basis of the spousal testimonial privilege.
 16 Q. Just one moment.
 17 MR. FUTERFAS: Take your time, Amie.
 18 Sorry. I thought maybe you are muted or something.
 19 MS. BERLIN: No, no. I have to share the
 20 exhibits myself. I'm going to share the screen now,
 21 show you what we've marked as Exhibit 45.
 22 BY MS. BERLIN:
 23 Q. Ms. McElhone, I'm showing you what I have
 24 marked as Exhibit 45 for this deposition and it is a
 25 letter to Lori Boyogueno at the Pennsylvania Bureau

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1 of Securities Compliance and Examinations. Do you
 2 see that on your screen?
 3 **A.** Yes.
 4 **Q.** Did you review Exhibit 45, the document
 5 that you see as Exhibit 45, before it was sent to
 6 the Pennsylvania Bureau of Securities Compliance and
 7 Examinations?
 8 **MR. FUTERFAS:** We have to confer. Let me
 9 have a moment, please. Hold on. Thank you.
 10 **THE VIDEOGRAPHER:** The time is now 3:31.
 11 Off the record.
 12 (Counsel and witness conferred 3:31 p.m. to 3:34 p.m.)
 13 **THE VIDEOGRAPHER:** Back on the record
 14 3:34.
 15 **MR. FUTERFAS:** Thank you. The witness
 16 will answer.
 17 **THE WITNESS:** Upon the advice of counsel,
 18 I'm asserting the rights and privileges guaranteed
 19 under the Fifth Amendment to the United States
 20 Constitution.
 21 **BY MS. BERLIN:**
 22 **Q.** Did you on behalf -- did you on behalf of
 23 Complete Business Solutions Group approve the
 24 representations that Complete Business Solutions
 25 Group made to the Pennsylvania Bureau of Securities

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1 Solutions Group sent the letter appearing as
 2 Exhibit 45 to the Pennsylvania securities
 3 regulators, were you aware of the fact that
 4 representations about -- in Exhibit 45 concerning
 5 agreements with individuals for compensation in
 6 connection with the sale of promissory notes were
 7 misleading.
 8 Let me ask that question again. I'm
 9 sorry.
 10 **MR. FUTERFAS:** Okay.
 11 **BY MS. BERLIN:**
 12 **Q.** At the time Exhibit 45 was sent to the
 13 Pennsylvania securities regulators in
 14 September 2018, were you aware that Exhibit 45
 15 contained misleading representations to the
 16 Pennsylvania securities regulators with respect to
 17 whether or not Complete Business Solutions Group
 18 continued to have agreements with people providing
 19 compensation for the sale of promissory notes?
 20 **MR. FUTERFAS:** Hold on a second. We have
 21 to confer for a minute. Thank you.
 22 **THE VIDEOGRAPHER:** 3:41 off the record.
 23 (Counsel and witness conferred 3:41 p.m. to 3:44 p.m.)
 24 **THE VIDEOGRAPHER:** Back on the record
 25 3:44.

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1 Compliance and Examinations that appear in
 2 Exhibit 45?
 3 **MR. FUTERFAS:** Okay. We'll confer very
 4 briefly. Hold on, please. Thank you.
 5 **THE VIDEOGRAPHER:** 3:35 off the record.
 6 (Counsel and witness conferred 3:35 p.m. to 3:38 p.m.)
 7 **THE VIDEOGRAPHER:** The time is 3:38. On
 8 the record.
 9 **MR. FUTERFAS:** Thank you. The witness
 10 will answer. Thank you.
 11 **THE WITNESS:** Upon the advice of counsel,
 12 I'm asserting the rights and privileges guaranteed
 13 under the Fifth Amendment to the United States
 14 Constitution.
 15 **BY MS. BERLIN:**
 16 **Q.** At the time Exhibit 45 was sent -- just
 17 one moment. Let me share it again. I just realized
 18 it's not sharing any longer.
 19 Can you all see it on your screen?
 20 **A.** Yes.
 21 **MR. FUTERFAS:** It's pretty tiny. That's
 22 better. That's better. Okay. I'm sorry. Go ahead
 23 with your questioning. Sorry.
 24 **BY MS. BERLIN:**
 25 **Q.** At the time that CBSG or Complete Business

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1 **MR. FUTERFAS:** Thank you. We have a form
 2 objection. The objection assumes certain facts. So
 3 any answer -- our objection is any answer would not
 4 adopt any facts alleged in the question. And with
 5 that form objection, the witness' answer is as
 6 follows.
 7 **THE WITNESS:** Upon the advice of counsel,
 8 I'm asserting the rights and privileges guaranteed
 9 under the Fifth Amendment to the United States
 10 Constitution.
 11 **BY MS. BERLIN:**
 12 **Q.** In September 2018, was it your
 13 understanding Complete Business Solutions Group was
 14 compensating individuals for the offer and sale of
 15 promissory notes relating to Complete Business
 16 Solutions Group?
 17 **MR. FUTERFAS:** Okay. Please stand by.
 18 Thank you.
 19 **THE VIDEOGRAPHER:** The time is 3:45. Off
 20 the record.
 21 (Counsel and witness conferred 3:45 p.m. to 3:47 p.m.)
 22 **THE VIDEOGRAPHER:** 3:47 on the record.
 23 **MR. FUTERFAS:** Thank you. We have the
 24 same objection as to the previous question. The
 25 question alleges facts in the body of the question

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1 which aren't in evidence. So the witness' answer in
 2 no adopts the allegation that was made in the
 3 question. And with that the witness' answer is as
 4 follows.
 5 THE WITNESS: Upon the advice of counsel,
 6 I'm asserting the rights and privileges guaranteed
 7 under the Fifth Amendment to the United States
 8 Constitution.
 9 BY MS. BERLIN:
 10 Q. Let me show you what we've marked as
 11 Exhibit 46. I'll share my screen. Ms. McElhone,
 12 can you see on your screen something that says
 13 Declaration of Lisa McElhone and it as a yellow
 14 sticker that says Deposition Exhibit 46?
 15 A. Yes.
 16 Q. Okay. Is Exhibit 46 a declaration --
 17 first of all, do you recognize Exhibit 46?
 18 A. I can't recall.
 19 MR. FUTERFAS: Can you make it a little
 20 bit larger?
 21 MS. BERLIN: Yeah. Do you want me to
 22 scroll back to the top and then scroll down? Let me
 23 know if I scroll too fast.
 24 MR. FUTERFAS: We're not in a position to
 25 review the document. Let's say for purposes of the

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1 record so we can move on that I do not object to the
 2 document representing what it appears to be.
 3 MS. BERLIN: Okay. What I'll also do, I
 4 can email it to you. Would that be easier?
 5 MR. SOTO: Probably.
 6 MR. FUTERFAS: I could probably print it
 7 out.
 8 MS. BERLIN: Just so you have it there,
 9 too. Let's go off the record for a moment.
 10 THE VIDEOGRAPHER: The time is now
 11 3:50 p.m. Going off the record.
 12 (Recess from 3:50 p.m. to 4:03 p.m.)
 13 THE VIDEOGRAPHER: On the record. Time is
 14 4:02.
 15 BY MS. BERLIN:
 16 Q. Ms. McElhone, do you recognize Exhibit 46.
 17 A. Upon the advice of counsel, I'm asserting
 18 the rights and privileges guaranteed under the Fifth
 19 Amendment to the United States Constitution.
 20 Q. Turning to page 3 of Exhibit 46, is this a
 21 true and correct copy of your signature on the
 22 signature line here?
 23 A. Upon the advice of counsel, I'm asserting
 24 the rights and privileges guaranteed under the Fifth
 25 Amendment to the United States Constitution.

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1 Q. Did you sign the declaration appears as
 2 Exhibit 46?
 3 A. Upon the advice of counsel, I'm asserting
 4 the rights and privileges guaranteed under the Fifth
 5 Amendment to the United States Constitution.
 6 Q. Do you see right above the signature line
 7 where it states, "I declare under penalty of perjury
 8 that the foregoing is true and correct, executed on
 9 August 12, 2019."
 10 A. Upon the advice of counsel, I'm asserting
 11 the rights and privileges guaranteed under the Fifth
 12 Amendment to the United States Constitution.
 13 Q. When you executed Exhibit 46, did you
 14 understand that you were making representations that
 15 in Exhibit 46 under penalty of perjury?
 16 A. Upon the advice of counsel, I'm asserting
 17 the rights and privileges guaranteed under the Fifth
 18 Amendment to the United States Constitution.
 19 Q. Do you see on page 1 paragraph 5, where it
 20 states, "We founded Complete Business Solutions
 21 Group d/b/a Par Funding ('CBSG') in or around 2012.
 22 Mr. LaForte ran the factoring side of the business
 23 and I handled the accounting for less than a year."
 24 Do you see that paragraph?
 25 A. Upon the advice of counsel, I'm asserting

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1 the rights and privileges guaranteed under the Fifth
 2 Amendment to the United States Constitution.
 3 Q. I just want to be. Do you understand what
 4 I'm just asking, if you see the paragraph in a
 5 document that's on your screen?
 6 MR. FUTERFAS: We will all stipulate that
 7 we see a document that's on your screen.
 8 MS. BERLIN: And that it's Exhibit 46?
 9 MR. FUTERFAS: Yes. We can see that it's
 10 Exhibit 46.
 11 BY MS. BERLIN:
 12 Q. So is the representation in paragraph 5 of
 13 Exhibit 46, which I just read into the record -- are
 14 the representations in paragraph 5 true?
 15 A. Upon the advice of counsel, I'm asserting
 16 the rights and privileges guaranteed under the Fifth
 17 Amendment to the United States Constitution.
 18 Q. I would like to turn your attention to
 19 paragraph 6 of Exhibit 46 where it states, "I hired
 20 Joe Cole, the current CFO of CBSG, to replace me in
 21 2012. At that time I started a nail salon called
 22 The Lacquer Lounge, see www.lacquerlounge.com."
 23 Do you see paragraph 6 in Exhibit 46 which
 24 I just read into the record?
 25 A. Upon the advice of counsel, I'm asserting

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1 the rights and privileges guaranteed under the Fifth
 2 Amendment to the United States Constitution.
 3 **Q.** Are the representations you made in
 4 paragraph 6 of Exhibit 46 true and correct?
 5 **A.** Upon the advice of counsel, I'm asserting
 6 the rights and privileges guaranteed under the Fifth
 7 Amendment to the United States Constitution.
 8 **Q.** Turning to paragraph 7 of Exhibit 46,
 9 which states "I have worked full time at the Lacquer
 10 Lounge since its inception and have had no
 11 subsequent involvement in CBSG despite the fact that
 12 I was never formally removed as its president."
 13 Did I read that correctly?
 14 **A.** Upon the advice of counsel, I'm asserting
 15 the rights and privileges guaranteed under the Fifth
 16 Amendment to the United States Constitution.
 17 **Q.** At the time that you executed Exhibit 46,
 18 were the representations in paragraph 7 true?
 19 **A.** Upon the advice of counsel, I'm asserting
 20 the rights and privileges guaranteed under the Fifth
 21 Amendment to the United States Constitution.
 22 **Q.** Turning to paragraph 9 of Exhibit 46,
 23 which states, "It is my understanding that
 24 Mr. LaForte is responsible for evaluating and
 25 closing merchant cash advance actions at CBSG, and I

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1 believe he closes approximately 20 to 25
 2 transactions per day."
 3 Did I read that correctly?
 4 **A.** Upon the advice of counsel, I'm asserting
 5 the rights and privileges guaranteed under the Fifth
 6 Amendment to the United States Constitution.
 7 **Q.** Was paragraph 9, which I just read into
 8 the record, were the representations made in
 9 paragraph 9 true as of August 12, 2019?
 10 **MR. FUTERFAS:** We just need to confer for
 11 a moment, if you don't mind. Hold on one minute.
 12 **THE VIDEOGRAPHER:** The time is 4:08. Off
 13 the record.
 14 (Counsel and witness conferred 4:08 p.m. to 4:10 p.m.)
 15 **THE VIDEOGRAPHER:** On the record 4:10.
 16 **MR. FUTERFAS:** Amie, you completed your
 17 question?
 18 **MS. BERLIN:** Yes, I did.
 19 **MR. FUTERFAS:** Okay. Fair enough.
 20 **THE WITNESS:** Upon the advice of counsel,
 21 I'm asserting the rights and privileges guaranteed
 22 under the Fifth Amendment to the United States
 23 Constitution.
 24 **BY MS. BERLIN:**
 25 **Q.** Was your representations in Exhibit 46

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1 that you had no involvement in CBSG from 2012 until
 2 August 12, 2019, was that representation true at the
 3 time that you signed Exhibit 46?
 4 **A.** Upon the advice of counsel, I'm asserting
 5 the rights and privileges guaranteed under the Fifth
 6 Amendment to the United States Constitution.
 7 **MS. BERLIN:** Just to confirm, is my screen
 8 still sharing or no?
 9 **MR. FUTERFAS:** It's not.
 10 **MS. BERLIN:** Okay. Good. Thank you.
 11 **BY MS. BERLIN:**
 12 **Q.** I'm going to turn now to show you
 13 Exhibit 47.
 14 **MS. BERLIN:** Let's go off the record for a
 15 moment.
 16 **MR. FUTERFAS:** No problem.
 17 **THE VIDEOGRAPHER:** The time is 4:12 p.m.
 18 Going off the record.
 19 (Recess from 4:12 p.m. to 4:13 p.m.)
 20 **THE VIDEOGRAPHER:** Back on the record.
 21 The time is now 4:13.
 22 **BY MS. BERLIN:**
 23 **Q.** Ms. McElhone, I am showing you what we
 24 have marked as Exhibit 47. Do you see a document on
 25 your screen that has the yellow sticker that says

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1 Deposition Exhibit 47?
 2 **MR. FUTERFAS:** We'll acknowledge we can
 3 see that on the screen. And I'll also put on the
 4 record that I received the same document via email,
 5 and we have printed it out so we have a hard copy
 6 here.
 7 **MS. BERLIN:** Okay. Great.
 8 **BY MS. BERLIN:**
 9 **Q.** So I'm showing you Exhibit 47, which has
 10 also been filed in this case as document entry 41-3.
 11 Ms. McElhone, do you recognize the
 12 document that appears as Exhibit 47?
 13 **A.** Upon the advice of counsel, I'm asserting
 14 the rights and privileges guaranteed under the Fifth
 15 Amendment to the United States Constitution.
 16 **Q.** Prior to Complete Business Solutions Group
 17 filing Exhibit 47 with the SEC, did you review it?
 18 **A.** Upon the advice of counsel, I'm asserting
 19 the rights and privileges guaranteed under the Fifth
 20 Amendment to the United States Constitution.
 21 **Q.** Prior to Complete Business Solutions Group
 22 filing the Form D that appears as Exhibit 47, did
 23 you approve the filing?
 24 **MR. FUTERFAS:** We got to take a minute to
 25 consult. Thank you. Thank you.

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1 THE VIDEOGRAPHER: The time is 4:15. Off
 2 the record.
 3 (Counsel and witness conferred 4:15 p.m. to 4:19 p.m.)
 4 THE VIDEOGRAPHER: The time is 4:19. On
 5 the record.
 6 MR. FUTERFAS: Ms. Berlin, can you
 7 rephrase or just repeat the question if you don't
 8 mind?
 9 MS. BERLIN: Sure.
 10 BY MS. BERLIN:
 11 Q. Ms. McElhone, did you approve the Form D
 12 filing that appears as Exhibit 47 before it was
 13 filed with the SEC?
 14 A. Upon the advice of counsel, I'm asserting
 15 the rights and privileges guaranteed under the Fifth
 16 Amendment to the United States Constitution.
 17 Q. I'm going to share my screen again. I'm
 18 showing Exhibit 47 on the screen. Turning to PDF
 19 page 2 of Exhibit 47, which is the Form D filing for
 20 Complete Business Solutions Group, I'd like to turn
 21 your attention to Section No. 4, Related Person on
 22 page 205. Do you see where Section 3 of Exhibit 47
 23 discloses to the SEC that you are an executive
 24 officer of Complete Business Solutions Group?
 25 A. Upon the advice of counsel, I'm asserting

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1 the rights and privileges guaranteed under the Fifth
 2 Amendment to the United States Constitution.
 3 Q. Was the representation made to the SEC in
 4 Section 3 of Exhibit 47 true as of April 2019?
 5 A. Upon the advice of counsel, I'm asserting
 6 the rights and privileges guaranteed under the Fifth
 7 Amendment to the United States Constitution.
 8 Q. Was the representation to the SEC that was
 9 made in Exhibit 47 true with respect you to being an
 10 executive officer of CBSG as of April 2020?
 11 A. Upon the advice of counsel, I'm asserting
 12 the rights and privileges guaranteed under the Fifth
 13 Amendment to the United States Constitution.
 14 Q. Turn your attention now to Section 16 of
 15 Exhibit 47, which is on PDF page 4 of 5. It's
 16 entitled Use of Proceeds, and it states -- it asks
 17 that CBSG provide the amount of the gross proceeds
 18 of the offering that has been or is proposed to be
 19 used for payments to any person required to be named
 20 as executive officers, directors or promoters in
 21 response to item 3 above.
 22 Do you see that on Exhibit 47? I'm
 23 highlighting it on the screen.
 24 A. Upon the advice of counsel, I'm asserting
 25 the rights and privileges guaranteed under the Fifth

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1 Amendment to the United States Constitution.
 2 Q. Was the representation CBSG made to the
 3 SEC in Exhibit 47, item No. 16, that zero was paid
 4 to you from the securities proceeds, was that
 5 representation true as of April 2020?
 6 A. Upon the advice of counsel, I'm asserting
 7 the rights and privileges guaranteed under the Fifth
 8 Amendment to the United States Constitution.
 9 Q. Turning back to item No. 3, on page 2 of
 10 Exhibit 47, it also identifies Joseph Cole Barleta
 11 as an executive officer and Jamie McElhone as an
 12 executive officer. I'm just going to highlight that
 13 section so that it's there on the screen what I'm
 14 referring to.
 15 Do you see that on your screen?
 16 A. Upon the advice of counsel, I'm asserting
 17 the rights and privileges guaranteed under the Fifth
 18 Amendment to the United States Constitution.
 19 Q. Was Jamie McElhone an executive officer of
 20 Complete Business Solutions Group as of April 2020?
 21 A. Upon the advice of counsel, I'm asserting
 22 the rights and privileges guaranteed under the Fifth
 23 Amendment to the United States Constitution.
 24 Q. Had Jamie McElhone received any of the
 25 proceeds from the Complete Business Solutions Group

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1 securities offering as of April 2020?
 2 A. Upon the advice of counsel, I am asserting
 3 the rights and privileges guaranteed under the Fifth
 4 Amendment to the United States Constitution.
 5 Q. As of April 2020, had Joseph Cole Barleta
 6 received any of the securities offering proceeds
 7 from Complete Business Solutions Group?
 8 A. Upon the advice of counsel, I'm asserting
 9 the rights and privileges guaranteed under the Fifth
 10 Amendment to the United States Constitution.
 11 Q. Is the representation made to the SEC on
 12 page 4, item No. 16 regarding use of proceeds, is
 13 the representation made there that zero dollars had
 14 been received by Jamie McElhone as of April 2020,
 15 was that representation to the SEC true at the time
 16 it was made?
 17 MR. FUTERFAS: Hold on. Let me just find
 18 this, please. What page are you on, Amie?
 19 MS. BERLIN: It's page 4 of 5, item
 20 No. 16, Use of Proceeds.
 21 MR. FUTERFAS: Okay. It's a single
 22 paragraph. Okay. I understand your question. Okay.
 23 Thank you.
 24 THE WITNESS: Upon the advice of counsel,
 25 I'm asserting the rights and privileges guaranteed

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1 under the Fifth Amendment to the United States
2 Constitution.
3 BY MS. BERLIN:
4 Q. Were the representations made in
5 Section 16 of Exhibit 47 true at the time they were
6 made with respect to Joseph Cole Barleta?
7 A. Upon the advice of counsel, I'm asserting
8 the rights and privileges guaranteed under the Fifth
9 Amendment to the United States Constitution.
10 Q. In addition to you, Joseph Cole Barleta
11 and Jamie McElhone being executive officers of
12 Complete Business Solutions Group as of April 2020,
13 was Joseph LaForte also an executive officer of
14 Complete Business Solutions Group as of April 2020?
15 MR. FUTERFAS: We have to confer. Give us
16 a moment. Thank you.
17 THE VIDEOGRAPHER: The time is 4:26. Off
18 the record.
19 (Counsel and witness conferred 4:26 p.m. to 4:28 p.m.)
20 THE VIDEOGRAPHER: Back on the record
21 4:28.
22 MR. FUTERFAS: Thank you. Amie, have you
23 completed your question?
24 MS. BERLIN: Yes.
25 MR. FUTERFAS: Okay. Good. Thank you.

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1 THE WITNESS: Upon the advice of counsel,
2 I'm asserting the rights and privileges guaranteed
3 under the Fifth Amendment to the United States
4 Constitution.
5 BY MS. BERLIN:
6 Q. Did you omit disclosure of Joseph LaForte
7 as an executive officer or director of Complete
8 Business Solutions Group from the Form D filing that
9 appears as Exhibit 47 in order to conceal the fact
10 that a convicted felon was managing Complete
11 Business Solutions Group?
12 MR. FUTERFAS: We object to the form. I
13 think it's a compound question and assumes facts not
14 in evidence. And so presuming that objection, the
15 witness' answer is as follows.
16 MS. BERLIN: I'll break it down.
17 MR. FUTERFAS: Okay.
18 BY MS. BERLIN:
19 Q. Ms. McElhone, did you make the decision to
20 omit Joseph LaForte from the Form D filing with the
21 SEC that appears as Exhibit 47?
22 MR. FUTERFAS: We have to confer for just
23 a second. Hold on.
24 THE VIDEOGRAPHER: The time is 4:30 p.m.
25 Going off the record.

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1 (Counsel and witness conferred 4:30 p.m. to 4:33 p.m.)
2 THE VIDEOGRAPHER: Back on the record
3 4:33.
4 MR. FUTERFAS: Thank you. Amie, did you
5 finish your question?
6 MS. BERLIN: Yes.
7 MR. FUTERFAS: We object to the form of
8 the question to the word "omit." The word omit --
9 our objection is the word omit presumes that there
10 was an understanding or a belief or something that
11 something should have happened. And so omit
12 suggests purposefulness. So we're objecting to the
13 form on that basis.
14 With that objection, the witness will
15 answer.
16 MS. BERLIN: I'll just change the
17 question.
18 MR. FUTERFAS: I'm sorry?
19 MS. BERLIN: We'll just change it.
20 MR. FUTERFAS: Okay. Okay. Okay.
21 MS. BERLIN: No problem.
22 BY MS. BERLIN:
23 Q. Ms. McElhone, did you make the decision
24 not to list Joseph LaForte on the Form D filing with
25 the SEC that appears as Exhibit 47?

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1 MR. FUTERFAS: Hold on one second. Sorry.
2 I appreciate you changed the question. Hold on one
3 second.
4 THE VIDEOGRAPHER: 4:34 off the record.
5 (Counsel and witness conferred 4:34 p.m. to 4:35 p.m.)
6 THE VIDEOGRAPHER: On the record 4:35.
7 MR. BACHNER: Hi, Amie. It's Michael
8 Bachner. Alan's voice is tired from talking. So
9 I'm going to chime in here. The question -- we
10 object to the form. The question assumes facts not
11 in evidence and that is that Joe should have, in
12 fact, been listed on the Form D. So we object as to
13 form. And otherwise, the question -- the response
14 as follows.
15 THE WITNESS: Upon the advice of counsel,
16 I'm asserting the rights and privileges guaranteed
17 under the Fifth Amendment to the United States
18 Constitution.
19 MS. BERLIN: And just for the record, I
20 don't have any objection to you switching lawyers
21 like from Alan Futerfas to Michael Bachner at this
22 point. Just so the record is clear, usually the
23 rule is that one lawyer has to do the representation
24 through the whole deposition. I'm not going to
25 raise any issue with that.

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1 MR. BACHNER: Thank you.
 2 MR. FUTERFAS: He's been here the whole
 3 time telling me what to do.
 4 MR. BACHNER: I wish that was true, but
 5 it's not.
 6 We're assuming your dog is not giving you
 7 any advice either here.
 8 MS. BERLIN: Oh, yeah. He's my secret.
 9 I'm kidding.
 10 BY MS. BERLIN:
 11 Q. Ms. McElhone, did you make the decision
 12 not to list Mr. LaForte in the Form D filing that
 13 appears as Exhibit 47 because you did not want to
 14 disclose to the SEC that Complete Business Solutions
 15 Group was being operated by a convicted felon?
 16 MR. FUTERFAS: Amie, I object. This was
 17 the same question you asked, and you said you were
 18 going to bifurcate. So it's a compound question,
 19 and it also assumes -- the word "decision" assumes
 20 purposefulness. Like A decision assumes that
 21 there's some evidence or requirement that a person
 22 should have been on the form in the first place. So
 23 it's almost like me saying did you make a decision,
 24 you know, not to speak to -- I don't have to go into
 25 detail. I object to the form of the question. If

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1 you want to try it again.
 2 MS. BERLIN: No. I already broke down the
 3 part. So I think it's okay. I think if it's no, I
 4 didn't it for that reason, I did it because he
 5 wasn't an executive officer, that would be the
 6 answer. I'll ask the question. Let me see if I can
 7 fine tune it a little bit more.
 8 MR. FUTERFAS: Okay.
 9 MS. BERLIN: Yeah.
 10 BY MS. BERLIN:
 11 Q. Did you determine that Joseph LaForte
 12 should not be identified in Section 3 of the Form D
 13 filing that appears as Exhibit 47 because you wanted
 14 to conceal from the SEC that a convicted felon was
 15 involved in the securities offering of CBSG?
 16 MR. FUTERFAS: Okay. We're objecting on
 17 the grounds --
 18 MS. BERLIN: It's more complex. All
 19 right.
 20 BY MS. BERLIN:
 21 Q. Let me try it one more time, Ms. McElhone.
 22 I'm trying to make it simpler, but I think I'm
 23 making it worse. So let me try again.
 24 Is the reason that you did not list
 25 Mr. LaForte in Exhibit 47 that you wanted to conceal

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1 the involvement of a convicted felon with Complete
 2 Business Solutions Group?
 3 MR. BACHNER: Amie, it's Michael. We
 4 object to the form assuming Lisa had the
 5 decision-making authority over that.
 6 MS. BERLIN: She can answer that in her
 7 answer. I'm just asking the question. I get it.
 8 You can make your objection, and the judge can
 9 review it, I guess.
 10 THE WITNESS: Upon the advice of counsel,
 11 I'm asserting the rights and privileges guaranteed
 12 under the Fifth Amendment to the United States
 13 Constitution.
 14 BY MS. BERLIN:
 15 Q. Did you decide to file Exhibit 47 with the
 16 SEC for purposes of obstructing the SEC's
 17 enforcement obligations?
 18 MR. FUTERFAS: We object to the form of
 19 the question. Object to the form of the question.
 20 Anyway, with that objection, the witness will
 21 answer.
 22 THE WITNESS: Upon the advice of counsel,
 23 I'm asserting the rights and privileges guaranteed
 24 under the Fifth Amendment to the United States
 25 Constitution.

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1 BY MS. BERLIN:
 2 Q. I'm going to -- give me a moment. We're
 3 going to switch to Exhibit 48 on the screen. I just
 4 want to make sure it's fine if counsel advises me
 5 whether or not on your screens you all are seeing
 6 what I'm going to mark as Exhibit 48, which has a --
 7 it was filed this document as document entry 28 in
 8 this case. Do you see that on your screen?
 9 MR. FUTERFAS: Yes. This one does not --
 10 this one does not have the yellow deposition
 11 sticker; right? We agree on that?
 12 MS. BERLIN: No, it does not. We'll mark
 13 that so that we have it for future.
 14 MR. FUTERFAS: I'm just going to mark it
 15 on the hard copy. Yes. For the record, we have
 16 printed out a hard copy of Deposition Exhibit 48
 17 which we see on the screen.
 18 MS. BERLIN: Okay.
 19 BY MS. BERLIN:
 20 Q. Ms. McElhone, do you recognize Exhibit 48?
 21 A. Upon the advice of counsel, I'm asserting
 22 the rights and privileges guaranteed under the Fifth
 23 Amendment to the United States Constitution.
 24 Q. Did you review the document appears as
 25 Exhibit 48 before Complete Business Solutions Group

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1 filed it with the SEC?
2 **A.** Upon the advice of counsel, I'm asserting
3 the rights and privileges guaranteed under the Fifth
4 Amendment to the United States Constitution.
5 **Q.** Did you approve the document appearing as
6 Exhibit 48 before Complete Business Solutions Group
7 filed it with the SEC?
8 **A.** Upon the advice of counsel, I'm asserting
9 the rights and privileges guaranteed under the Fifth
10 Amendment to the United States Constitution.
11 **Q.** And do you see under the section that
12 states Related Persons on PDF page 2 of Exhibit 48,
13 which lists you, Joseph Cole Barleta and Jamie
14 McElhone as executive officers of CBSG?
15 **A.** Upon the advice of counsel, I'm asserting
16 the rights and privileges guaranteed under the Fifth
17 Amendment to the United States Constitution.
18 **Q.** Was the representation to the SEC in item
19 No. 3 of Exhibit 48 that you were an executive
20 officer as of the date of the filing, February 2019?
21 Let me start again. I'm sorry, Ms. McElhone.
22 In February of 2019, it was the
23 representation in Exhibit 48 true with respect to
24 the statement that you were an executive officer of
25 Complete Business Solutions Group at that time?

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1 **A.** Upon the advice of counsel, I'm asserting
2 the rights and privileges guaranteed under the Fifth
3 Amendment to the United States Constitution.
4 **Q.** Was the representation in the filing with
5 the SEC that appears in Exhibit 48, item 3, stating
6 that Jamie McElhone was an executive officer of
7 Complete Business Solutions Group as of
8 February 2019, was that representation true when
9 made?
10 **MR. FUTERFAS:** I'm just going to take a
11 second and consult, please. Thank you.
12 **THE VIDEOGRAPHER:** The time is 4:45. Off
13 the record.
14 (Counsel and witness conferred 4:45 p.m. to 4:47 p.m.)
15 **THE VIDEOGRAPHER:** The time is now 4:54.
16 On the record.
17 **MR. FUTERFAS:** Thank you for the
18 conferral. Amie, do you want to ask the question
19 again or -- we recall it.
20 **MS. BERLIN:** I think it's okay.
21 **BY MS. BERLIN:**
22 **Q.** Go ahead.
23 **A.** I decline to answer the question on the
24 basis of the spousal testimonial privilege.
25

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1 **Q.** Did you ever -- prior to February 2019,
2 did you discuss with Jamie McElhone what her role
3 was at Complete Business Solutions Group?
4 **MR. BACHNER:** Hold on. Sorry. Can we
5 just get that question repeated?
6 **BY MR. BACHNER:**
7 **Q.** As of February of 2019, did you ever
8 discuss with your sister, Jamie McElhone, what her
9 role at Complete Business Solutions Group was?
10 **A.** Upon the advice of counsel, I'm asserting
11 the rights and privileges guaranteed under the Fifth
12 Amendment to the United States Constitution.
13 **Q.** Did you make a decision not to identify
14 Joseph LaForte in item number 3 of Exhibit 48?
15 **A.** I decline to answer the question on the
16 basis of the spousal testimonial privilege.
17 **Q.** And did you decide not to include Joseph
18 LaForte in the CBSG disclosure to the SEC,
19 Exhibit 48, because you were trying to conceal the
20 involvement of a convicted felon?
21 **MR. FUTERFAS:** Objection to the form. But
22 with that objection, the witness will answer.
23 **THE WITNESS:** I decline to answer the
24 question on the basis of the spousal testimonial
25 privilege.

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1 **BY MS. BERLIN:**
2 **Q.** Turning to PDF page 405, item 16,
3 Proceeds?
4 **MR. FUTERFAS:** Hold on. Let's get there.
5 We're not there yet. Okay. I'm there. Thank you.
6 **BY MS. BERLIN:**
7 **Q.** And we're looking at item 16, Proceeds,
8 which states, "Provide the amount of the gross
9 proceeds at the offering that has been or is
10 proposed to be used for payments to any of the
11 persons required to be named as executive officers,
12 directors or promoters in response to item 3 above."
13 Do you see that provision of Exhibit 48?
14 **MR. FUTERFAS:** We recognize that that is
15 on the page.
16 **MS. BERLIN:** On the page. Do you all
17 recognize or, AI, do just you want to stipulate
18 there's no number other than zero which I'll
19 highlight here?
20 **MR. FUTERFAS:** We'll stipulate to that,
21 yes.
22 **BY MS. BERLIN:**
23 **Q.** Was the representation made to the SEC in
24 paragraph 16 true as of February 2019 with respect
25 to your receipt of funds?

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1 A. I decline to answer the question on the
2 basis of the spousal testimonial privilege.
3 Q. By February 12, 2019, had you received any
4 of the gross proceeds from the promissory note
5 offering conducted by Complete Business Solutions
6 Group?
7 MR. FUTERFAS: Hold on. Let's just confer
8 one second on that. Thank you.
9 THE VIDEOGRAPHER: The time is 4:58. Off
10 the record.
11 (Counsel and witness conferred 4:59 p.m. to 4:59 p.m.)
12 THE VIDEOGRAPHER: The time is 4:59 p.m.
13 on the record.
14 THE WITNESS: You completed your question,
15 right, Amie?
16 MS. BERLIN: Yes, I did.
17 MR. FUTERFAS: The witness will answer.
18 THE WITNESS: Upon the advice of counsel,
19 I'm asserting the rights and privileges guaranteed
20 under the Fifth Amendment to the United States
21 Constitution.
22 BY MS. BERLIN:
23 Q. Did you direct Complete Business Solutions
24 Group to transfer investor funds to other entities
25 that you owned or controlled?

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1 MR. FUTERFAS: We have to confer on that.
2 Sorry. Hold on.
3 THE VIDEOGRAPHER: 4:59 p.m. off the
4 record.
5 (Counsel and witness conferred 4:59 p.m. to 5:01 p.m.)
6 THE VIDEOGRAPHER: On the record 5:01.
7 MR. FUTERFAS: Amie, have you completed
8 your question. We're back on the record.
9 MS. BERLIN: Yes, I did.
10 MR. FUTERFAS: Okay. Good. The witness
11 will answer.
12 THE WITNESS: Upon the advice of counsel,
13 I'm asserting the rights and privileges guaranteed
14 under the Fifth Amendment to the United States
15 Constitution.
16 MR. BACHNER: I understood in your
17 conversations with Alan that you were going to be
18 breaking at 5:00. I kind of planned to have another
19 phone call at a few minutes after 5:00. Are we okay
20 breaking now?
21 MS. BERLIN: Yeah, with the final clock
22 cutoff, actually we're going to get super close
23 because I just have two more questions.
24 MR. FUTERFAS: Okay.
25 MS. BERLIN: That could take one minute.

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1 BY MS. BERLIN:
2 Q. Ms. McElhone, did you direct Complete
3 Business Solutions Group to transfer investor funds
4 for your personal benefit?
5 A. Upon the advice of counsel, I'm asserting
6 the rights and privileges guaranteed under the Fifth
7 Amendment to the United States Constitution.
8 Q. Did you direct Complete Business Solutions
9 Group to transfer investor funds to acquire real
10 estate for your benefit?
11 A. Upon the advice of counsel, I'm asserting
12 the rights and privileges guaranteed under the Fifth
13 Amendment to the United States Constitution.
14 MS. BERLIN: So as we discussed earlier,
15 as Alan and I discussed, we're going to stop at
16 5:00, and we will resume. While get in touch with
17 Alan, Mr. Futerfas if we need to resume after we
18 address some of the privilege issues. We're ready
19 to break for the day. Unless anyone else has
20 anything they wanted to add on the record, thank you
21 so much, Ms. McElhone, for your time today. And as
22 always, Alan it's a pleasure to see you.
23 MR. FUTERFAS: Same here, Amie. Thank
24 you, although I'm not seeing you right now. You
25 went off screen.

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1 MR. KOLAYA: I'm sorry. If we could make
2 one statement on the record before we go.
3 MS. BERLIN: Sure.
4 MR. KOLAYA: I think we went off the
5 record. If we could go back on, please.
6 THE VIDEOGRAPHER: We're not off the
7 record. We're still on the record.
8 MR. KOLAYA: Oh, perfect. This is Tim
9 Kolaya on behalf of the receiver. I know that this
10 deposition may or may not continue. I know Amie and
11 Alan need to discuss that.
12 I just want to make clear on the record
13 that the receiver does have the right to conduct his
14 own independent discovery and investigation. And we
15 reserve the right to schedule a separate deposition
16 of Ms. McElhone potentially in the future.
17 MS. BERLIN: Okay. Does anyone else want
18 to say anything on the record today?
19 MR. FUTERFAS: No.
20 THE VIDEOGRAPHER: It is May 27, 2021.
21 The time is 5:04 p.m. completing today's deposition.
22 (Whereupon, at 5:04 p.m., the taking of
23 the instant deposition ceased.)
24
25

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1 COMMONWEALTH OF PENNSYLVANIA)
 2 COUNTY OF ALLEGHENY) SS:
 3 C E R T I F I C A T E
 4 I, Ann Medis, Registered Professional
 5 Reporter, Certified Livenote Reporter and Notary
 6 Public within and for the Commonwealth of
 7 Pennsylvania, do hereby certify:
 8 That LISA MCELHONE, the witness whose
 9 deposition is hereinbefore set forth, was duly sworn
 10 by me and that such deposition is a true record of
 11 the testimony given by such witness.
 12 I further certify the inspection, reading
 13 and signing of said deposition were not waived by
 14 counsel for the respective parties and by the
 15 witness.
 16 I further certify that I am not related to
 17 any of the parties to this action by blood or
 18 marriage and that I am in no way interested in the
 19 outcome of this matter.
 20 IN WITNESS WHEREOF, I have hereunto set my
 21 hand this 8th day of June, 2021.
 22
 23
 24 _____
 25 Notary Public

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1 CERTIFICATE OF WITNESS
 2
 3
 4 I, LISA MCELHONE, do hereby declare under
 5 penalty of perjury that I have read the entire
 6 foregoing transcript of my deposition testimony,
 7 or the same has been read to me, and certify that
 8 it is a true, correct and complete transcript of
 9 my testimony given on May 27, 2021, save and
 10 except for changes and/or corrections, if any, as
 11 indicated by me on the attached Errata Sheet, with
 12 the understanding that I offer these changes and/or
 13 corrections as if still under oath.
 14 _____ I have made corrections to my deposition.
 15 _____ I have NOT made any changes to my deposition.
 16
 17 Signed: _____
 18 LISA MCELHONE
 19 Dated this _____ day of _____ of 20 ____.
 20
 21
 22
 23
 24
 25

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1 ERRATA SHEET
 2 Deposition of: LISA MCELHONE
 3 Date taken: MAY 27, 2021
 4 Case: SEC v. COMPLETE BUSINESS SOLUTIONS GROUP, et al.
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 7 REASON: _____
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 24 Signed _____
 25 Dated _____

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1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF ALLEGHENY) SS:

3 C E R T I F I C A T E


4 I, Ann Medis, Registered Professional
5 Reporter, Certified Livenote Reporter and Notary
6 Public within and for the Commonwealth of
7 Pennsylvania, do hereby certify:

8 That LISA MCELHONE, the witness whose
9 deposition is hereinbefore set forth, was duly sworn
10 by me and that such deposition is a true record of
11 the testimony given by such witness.

12 I further certify the inspection, reading
13 and signing of said deposition were not waived by
14 counsel for the respective parties and by the
15 witness.

16 I further certify that I am not related to
17 any of the parties to this action by blood or
18 marriage and that I am in no way interested in the
19 outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 8th day of June, 2021.

22
23
24 
Notary Public

25
Commonwealth of Pennsylvania - Notary Seal
Ann Medis, Notary Public
Allegheny County
My commission expires January 7, 2025
Commission number 1109616
Member, Pennsylvania Association of Notaries