

SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

vs.

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

Defendants

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No: 9:20-CV-81205**

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**JOSEPH COLE BARLETA'S MOTION TO STAY PENDING APPEAL AND  
MOTION FOR ORDER TO APPROVE SUPERSEDEAS BOND**

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COMES NOW, JOSEPH COLE BARLETA, by and through his undersigned counsel, and pursuant to this Court's inherent authority, as well as Rule 62(d) of the Federal Rules of Civil Procedure. Barleta states the following in support:

### **INTRODUCTION**

In November of 2021, Cole entered into a Consent Judgment [D.E. 1016-1], pursuant to which the Court was to determine whether an order of disgorgement and civil penalties should be entered against them, and if so, in what amount. The Consent Judgment specifically did not admit or deny any allegation in the SEC's Amended Complaint. After considering the Parties' briefings and conducting an evidentiary hearing on these issues, the Court entered its Order and Final Judgment on October 25, 2022, which held Barleta liable for disgorgement of \$10,055,625.00, prejudgment interest in the amount of \$754,525.32, and \$1,330,000.00 in civil penalties.

Cole attempts to move this Court to issue a stay based, primarily, on his likely success on the merits regarding the specific amount of disgorgement, as well the culpability attributed to Cole in this Court's Civil Penalties analysis.

### **STANDARD OF REVIEW**

#### *A. Standard of Review Pertaining to Staying the Case*

"[A]s part of the traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal." *Nken v. Holder*, 556 U.S. 418, 426, 129 S. Ct. 1749, 1756 (2009). "A stay does not make time stand still, but does hold a ruling in abeyance to allow an appellate court the time

necessary to review it. *SEC v. Mut. Benefits Corp.*, No. 04-60573-CIV-MORE, 2021 U.S. Dist. LEXIS 216725, at \*7 (S.D. Fla. Nov. 8, 2021).

The standard four-part courts evaluate whether to stay an order on appeal is: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Id.*

However, these four parts are more akin to factors than elements that must be met. See generally *Garcia-Mir v. Meese*, 781 F.2d 1450 (11th Cir. 1986)(clarifying the four part test in equating the four parts as factors, where a "movant may also have his motion granted upon a lesser showing of a 'substantial case on the merits' when 'the balance of the equities [identified in factors 2, 3, and 4] weighs heavily in favor of granting the stay'"); See also *LabMD, Inc. v. FTC*, 678 F. App'x 816, 819 (11th Cir. 2016)(holding that granting a stay that simply maintains the status quo pending appeal 'is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the [stay] would inflict irreparable injury on the movant.'").

As such, it appears the trend in the Eleventh Circuit is to recede from holding that stays are extraordinary remedies, as they did in the past. See generally *In re Lickman*, 301 B.R. 739, 742 (Bankr. M.D. Fla. 2003)(holding that a stay is an extraordinary remedy).

#### *B. Standard of Review regarding Bond*

Federal Rule of Civil Procedure 62, titled, "Stay of Proceedings to Enforce a Judgment," provides in pertinent part:

Stay by Bond or Other Security. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

The 2018 amendment to Rule 62 "makes explicit the opportunity to post security in the form other than a bond." Fed. R. Civ. P. 62(b) (2018 committee note); *Deutsche Bank Nat'l Tr. Co. as Tr. for GSAA Home Equity Tr., 2006-18 v. Cornish*, 759 F. App'x 503, 510 (7th Cir. 2019) (noting amendment provides greater flexibility in granting stays pending appeal).

### **UNDERSTANDING JOE COLE'S ROLE THROUGH ACTUAL TESTIMONY**

#### *A. Cole's Role in CBSG*

The SEC based a lot of its argument on conjecture from its counsel. If one were to get to the actual evidence, it can be gleaned that Cole's involvement was minimal – at best. As a threshold matter, Cole did not report to LaForte, and would communicate with McElhone on a daily basis to provide her with regular financial reporting (See Dep. Tran. Cole pg. 10; ln 10-11)<sup>1</sup>. Moreover, although Cole was considered the Chief Financial Officer<sup>2</sup>, the testimony is un rebutted that Cole's primary duties (initially) were not procuring investors, but with accounting, payroll, and human resources.

Q. What were your duties as the chief financial officer with respect to Complete Business Solutions Group?

A. My duties for Complete Business Solutions Group included management of their accounting departments, payroll, human resources for the service staff providing services to Complete Business Solutions Group, and also discussions of company financials and taxation information with third parties (Dep. Tran. Cole pg. 8; ln 12-18).

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<sup>1</sup> Although LaForte was, in certain times, copied on e-mails, Cole did not immediately report to LaForte. Instead, Cole reported to McElhone. LaForte being copied on the e-mails in no way should be construed as Cole Reporting to LaForte.

<sup>2</sup> The title of CFO or CEO mean little in a legal landscape. Some companies do not even have a CEO, but a founder, or chairperson. Tesla, Inc.'s CEO calls himself a "technoking." The notion had Cole is somehow an evil perpetrator of fraud because his title is a CFO is nonsensical – and bears no relation to fact.

As time went on Cole entered into different businesses in connection with CBSG. First, in 2017, Cole entered into a consulting agreement through a company called Beta Abigail, which was structured in the way it was based on the advice of tax consultants (See Dep. Tran. Cole pg. 26; ln 8-15). Beta Abigail ultimately became a non-functioning entity, and was taken over by an entity called ALB Management, Inc. (See Dep. Tran. Cole pg. 81; ln 9-10). Likewise, New Field Ventures, LLC. was created by Perry Abbonizio, where Cole had no ownership interest. Next, as time went on, Cole's role changed to more of a focus on "managing the mangers" of the business, and doing less of the work hands on himself (Dep. Tran. Cole pg 28; ln 5-8)<sup>3</sup>.

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

A. To put it succinctly, there was a lot more of it. We were managing more of Lisa's entities and a lot of -- the procedures, again, we had managers handling. So it was more meetings and interactions with our tax accountants and less about handling the day-to-day, you know, operations like printing out vendor checks, for example (Dep. Tran. Cole pg. 29; ln 10-16).

In fact, the role that the SEC labeled Cole as having was in fact a role Mr. Abbonizio had, who was focused on the sale of promissory notes. In fact, and this goes more to civil penalties than anything, if the SEC's argument stands and holds any merit, than one would have to conclude that DLA Piper in Philadelphia, Fox Rothschild, and many other "white shoe" firms are somehow involved in a massive conspiracy to scam millions, if not billions, of dollars from investors. The reason Cole says this is because, at all material times, Cole, McElhone, and LaForte were in constant communication with

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<sup>3</sup> It is also clearly supported by the evidence that at around 2016, Cole transitioned from doing less hands-on work to more management work as the company grew. The work flows and company procedures were first developed by Cole, and other company management, and those procedures were taught to staff.

outside counsel from some of the most prestigious law firms in the United States (See generally Dep. Tran. Cole pg. 33; ln 14-18).

Most likely, the reason why the SEC is even interested in Cole is because of his administrative role in the later years of CBSG pertaining to the sale of promissory notes, as well as he signing various public filings that were approved by accountants, in-house counsel, and outside counsel before Cole ever put his pen to the paper (Dep. Tran. Cole pg 37; ln 1-19)<sup>4</sup>.

In fact, the only contact Mr. Cole had with investors was presenting company financial information, the number of deals, payment schedules, and other things related to accounting, approved by DLA Piper, outside accountants, and other lawyers hired by the Defendants in this action.

Pertaining to the Credit Committee between 2015 -2020, the members of the Credit Committee over time included Nate Trunfio, Victoria Villarose, Alek Shlepin, Frank Scarpati, LaForte, and McElhone (from 2015 -2016). Cole was never part of the credit committee, nor was he ever involved with the credit committee aside from providing financial information and some operational information of the business through Full Spectrum Processing. As Cole testified multiple times, his role morphed into operating the global aspects of the business, and “managing managers.”

We had several managers of the business. Lisa and I have always been the sort of figureheads of the business, but we had several departments run by

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<sup>4</sup> Evaluating the deposition transcript of Cole is a tedious affair as the SEC keeps asking Cole similar questions of “what did you do and who did you report too” in an attempt to make Cole somehow liable for allegations of fraud. Cole keeps answering the same way, not because he is good at remembering his past answers, but because the truth can be boiled down into two sentences:

1. Cole took an administrative role in the company.
2. Initially, his role was wide, and then as time went on and more staff were hired, he focused on the global operation of CBSG, and managing the people who were responsible for specific tasks.
3. His sole contact with investors were limited to sharing financial information approved for distribution by DLA Piper and other attorneys and law firms, see *infra*

numerous managers. For example, I mentioned before Tori was in charge of the underwriting. I believe I discussed that. We also had Jim Klenk and Aida Lau who worked as supervisors and managers of the accounting department. We had Kevin Young who was in charge of IT. Anthony Fazio was in charge of collections. Wendy Furman was in charge of processing. There were a couple of different lawyers in the business acting as general counsel in charge of the legal department. We also had personnel that worked in the HR department. I had a couple of different HR managers handling that. So those were the folks that were in charge of the day-to-day operations (indecipherable) (Dep. Tran. Cole pg. 59; ln. 7-25)

\* \* \*

We had Anthony Fazio in charge of collections, Wendy Furman in charge of the processing department. We also had Davin Kane who was in charge of the HR department at the end of in 2020. There were other HR guys in there before. And obviously we have Perry Abbonizio who's in charge of talking to these noteholders and third [parties lending money to CBSG](Dep. Tran. Cole pg. 60; ln 11-25).

\* \* \*

I typically talked about accounting and finance, not background. So that's not the focus of my discussion with any potential purchasers of these promissory notes from CBSG (Dep. Tran. Cole pg. 69; ln 19-25).

*B. Cole Fails to Tell Investors About the Criminal Record of LaForte*

Cole was not responsible with telling investors about LaForte's criminal record, or any other information other than simply the "numbers." Regardless, LaForte's criminal record was not a secret, and it was told to numerous investors. In fact, the lawyers who were tasked of preparing the various disclosures to investors knew of LaForte's criminal record (See generally Dep. Tran. Berman pg. 207-209)<sup>5</sup>.

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<sup>5</sup> Relevant examples are as followed:

THE WITNESS: And with that objection, I will answer it again, but I did answer it before. I was involved in phone calls with Joe LaForte, Joe Cole and maybe others and Phil Rutledge where that discussion was had with me present on the phone 12 where Phil Rutledge gave them advice as to what needed to be disclosed. (Dep. Tran. Berman, pg. 58; ln. 7-13).

Q. Okay. And how do you know that everyone at CBSG knew about Joseph LaForte's criminal conviction?  
A. Because there was no hiding it. I mean, remember, we were involved in constant litigation. And in every

Q. Okay. And I think you testified that you recall phone calls with either Joe LaForte or Joe Cole and Mr. Rutledge regarding what should be disclosed, period, regarding what should be disclosed. Do you recall those questions and answers?

A. I do. Q. Did Mr. Rutledge know of Joe LaForte's prior criminal history?

A. 100 percent, yes.

Q. And were there discussions about whether that criminal history needed to be disclosed in connection with the exchange notes that Mr. Rutledge was advising on?

A. The answer is yes. Mr. Rutledge was part 8 of those discussions and gave his opinion about the disclosability of that, of Mr. LaForte's criminal conviction.

Q. And were those conversations during the very same conversations that Ms. Berlin asked you about in which also disclosure of regulatory actions, the Texas action, the New Jersey action, the Texas action, whether those should be disclosed as well?

THE WITNESS: The answer is yes. These were all part of the same discussion related to all disclosable events where Mr. Cole and Mr. LaForte were asking Mr. Rutledge for his advice with respect 22 to what should or should not be disclosed.

(Dep. Tran. Berman pg. 207; ln 14-25; pg. 208; ln. 22-22).

However, Cole's failure to tell investors of Cole's criminal record should not be used against Cole – as Cole's role was not in marketing or sales, but mostly in the accounting department. Frankly, if this case was not talking about such a large amount of money, it would almost be humorous. Would the SEC have Cole, as the individual in charge of accounting, meet with investors and say, "Here is the financial life of the company, and by the way, LaForte has a criminal record?" Surely, the fact that LaForte has a criminal record might require disclosure under certain circumstances, but that disclosure should not come from Cole as it is outside of his parameters in CBSG, or any accompanying

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single case that was of significance, not just in the Eastern District of Pennsylvania, but in the South Coast case in California to various cases that were filed in Florida and Texas and wherever else these things were occurring, every opposing counsel, it was the first thing they said. A guy associated with Complete Business Solutions has criminal convictions. It was involved in every communication. There were so many communications that everybody knew it because it was just raised by counsel in all these cases all over the country (Dep. Tran. Berman, pg. 80; ln. 10-25).

entity linked to CBSG. The role of disclosure was relegated to other members of CBSG, advised by a team of lawyers, particularly Attorney Mr. Rutledge.

As such, the extent of Cole's interaction with the "investors" was limited, not to marketing, but explanation of the financial health of the company and explaining the key performance indicator reports.

Q. Okay. And what types of questions were they asking about it?

A. Can you explain the metrics on the report? Can you explain your historic trends and projected trends going forward? What are the 6 used to determine the various columns, the calculations, and explaining the footnotes on how these numbers were derived. There's a lot of information on there, and there were a lot of different questions.

Q. Okay. Would you sometimes explain to the potential investors what the exposure percentage meant?

A. Yes, absolutely.

Q. Okay. And how would you explain that?

A. The exposure percentage is a dynamic number that's calculated each month. It reflects the cash-over-cash exposure for deals that were written off for that respective period of time in proportion to the amount of funding for that respective period of time. (Dep. Tran Cole. Pg 152; ln. 1-25).

As such, to the extent that Cole had any contact with investors or potential investors, that was limited to his area of expertise, which is the financial viability of the company. Holding Cole accountable for something unsaid is akin to arguing that DLA Piper, Bybel Rutledge LLP, and Fox Rothschild, who put together various Private Placement Memorandum/Prospectus for CBSG should likewise be jointly and severally liable.

In that same vein, Cole did not have anything to do with creating the brochure materials for CBSG, or distributing those materials. See Dep. Tran. Cole pg. 74; ln 7-10<sup>6</sup>.

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<sup>6</sup> Although some of the reports may be used by other areas of CBSG, these reporters were used for the purpose of disclosing the financial health of the company, not for sales and marketing purposes.

*C. Cole's Extensive Use of Internal and External Sources of Advice*

Internally in CBSG, again, Cole oversaw accounting and was directly responsible for maintaining the meticulously managed ledger pertaining to accounts receivables and cash flow. During the later years of CBSG's management, there were a dozen employees who would put together and manager the ledger, including outside accounting firms who would also conducts audits and act as an entity to "check the work," which ultimately would reach Cole for final review. Ultimately, during the life of CBSG, prior to the Receivership, approximately 1.3 billion dollars were funded by the merchant cash advance business<sup>7</sup>. [Put in Actual Slides from PP Presentation]

In 2020, CBSG modified its promissory notes because of the downturn created by monetary policy pertaining to COVID-19 to offer less interest and for the return of principal at a later period. This decision was made internally by Cole, and with the help of counsel, once again, from Fox Rothschild, particularly Brett Berman<sup>8</sup>, and Phil Rutledge of Bybel Rutledge<sup>9</sup>. Mr. Rutledge is also the individual who crafted several of the PPM's for CBSG and their respective affiliated entities.

Moreover, just to make sure everything was on the "up and up," Cole and the other Defendants consulted with the following professionals:

1. Brett Berman of Fox Rothschild
2. Phil Rutledge of Bybel Rutledge
3. Lauren Taylor Wolfe of Fox Rothschild
4. Stephen M. Cohen of Fox Rothschild
5. Norman Valz as in-house counsel, replaced by Cynthia Clark in 2018

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<sup>7</sup> The SEC uses this number to show that CBSG was not profitable, and at best, broke even. However, that 1.3 billion does not take in the factoring rate and other fees collected by CBSG. For example, if someone buys a house for \$100,000.00, and pays back \$100,000.00, that does not mean the bank did not make money on various fees, factoring, and interest. Moreover, neither the SEC, nor the Court's Final Judgment, takes into consideration the amounts outstanding that had not yet been collected. During this time, there were approximately 1.9 billion dollars of incoming cash flows when it was in business.

<sup>8</sup> <https://www.foxrothschild.com/brett-a-berman>

<sup>9</sup> <https://www.bybelrutledge.com/professionals/attorney/philip-rutledge>

6. Rod Ermel Associates out of Colorado Springs (prepared taxes for CBSG and reviewed the KPI Reports that Cole sent out)
7. Lisa Jacobs of DLA Piper
8. Friedman LLP (Accounting firm conducted audit in 2018)
9. Clifton Larson Allen (Accounting firm conducted audit in 2019, also provided guidance on bank purchase transaction)

As such, for the SEC to say that there was something not right with the business dealings of CBSG, or particularly Cole, is to simply ignore the fact that at all material times, Cole and the other Defendants acted under the advice of some of the most competent securities lawyers and consultants in the United States that money can buy. As such there are two paths for the SEC, two of which seem ridiculous: 1) The six outside professionals and their large law firms advising CBSG were incompetent, or 2) The six outside professionals and their large law firms advising CBSG were in on it and also defrauded investors. As such, the easier approach for the SEC is to simply pretend that fact does not exist and inform the Court that Cole wanted to defraud investors out of hundreds of millions of dollars.

However, that was not even remotely true. In fact, it's the opposite, Cole wanted to make CBSG more profitable, not less. The plan to make CBSG more profitable resulted in taking a haircut on corporate income, but maintain the principal of the loans.

Joe Cole explains it best:

On one hand, you could continue with the notes as they were and potentially face running out of cash, although we had cash enough for at least three to four months. But depending on how merchant deposits went, you know, there was concerns that the slowdown can affect these payments. So we wanted to make sure that that wasn't a concern. So the result was that renegotiation of the rate still providing 5 percent annual rate of return to the noteholders was the best plan of attack to prudently protect their capital. We absolutely can take a haircut on income, but absolutely don't want to touch a penny with any of the principal from these loans that these folks lent us. And the objective there was to really protect that capital. We absolutely can take a haircut on income, but absolutely don't want to touch a penny with any of the principal from

these loans that these folks lent us. And the objective there was to really protect that capital. We don't want to, per the advice of counsel, put anyone at risk by aggressively repaying those notes. People were losing their shirt on Wall Street, all sorts of other deals. We wanted to make the best, most prudent strategy that we could use from the lawyers that we had on hand (Dep. Tran. Cole pg. 106; ln 22-25; Dep. Tran Cole pg. 107; ln 1-.18).

*D. How Was Cole's Communication With Investors Checked?*

Cole's sole communication with investors or potential investors was in disclosing the financial viability of CBSG. Cole financial records were reviewed by Chuck (Robert) Frei, who looked out for the Chehebar family's finances, who were also note holders. Not to stop there, Rod Ermel was provided the funding analysis of CBSG, and would perform an audit on each specific report. See Dep. Tran. Cole pg. 150; ln 1-7). Two CPAs from Rod Ermel contacted the merchants to verify that the information provided on the KPI report was indeed factual as stated (See Dep. Tran. Cole pg. 150; ln 1-7). Rod Ermel verified the KPI reports each and every month.

Pertaining to the "finders," Cole specifically sent out financial reports in the form of a Key Performance Indicator report (KPI). Cole sent out KPI reports every month, and would prepare this typically the first two weeks of the month, e-mail it to some of the noteholders, including Mr. Abbonizio who would distribute that report to other noteholders. It should be noted that the same accountants who reviewed the KPI's ultimately decided to become note holders as well.

Regardless, individuals who were sold notes individually had the option of taking their money out and getting the loan repaid (See Dep. Cole. Pg. 129; ln 4-18).

So let's say a noteholder had half a 22 million dollars come due. We would typically wire that back. And then they would subsequently wire the note per the terms of the new note issued for the subsequent period.

Clearly, there is no indication that this was a Ponzi Scheme, or anything close to a Ponzi scheme. In fact, the payment scheme indicated above was all cleared through Phil Rutledge.

Q. So prior to the time that that order was entered where CBSG would pay the fee, did you tell Phil Rutledge that you CBSG was paying agent fund managers?

A. We told Phil Rutledge that prior to the order, that we paid finder's fees through 2017 and possibly the first month of '18 and we were no longer paying any finder's fees for any fund managers or noteholders or finders.

*E. Company Write-Offs Were Also Checked*

As it pertained to defaults, McElhone rarely, if ever, made the decision on allowing a write-off. Pertaining to write-off's of defaults, there would be a review based on generally accepted accounting principles, as well as several team members, including, but not limited too, In-house CPAs Zoe Lou, Jim Klenk, and a series of internal accountants and auditors under the control of Cole. Internal policy was that before a debt is deemed uncollectible, subject to a write-off, it would likely be reviewed and authorized by Brett Berman and the other members of the collection group. See Dep Tran Cole, pg. 164; ln 1-9). Mr. Berman worked with a team in the collections group, who made recommendations to Cole as to whether the debt was an uncollectible one. Before Berman, Peter Mulcahy was the general counsel for Full Spectrum, and before that, it was Cindy Clark. Before Cindy Clark, Norma Valz was the general counsel involved with collection efforts. The general counsel would work with Tim Meyers, Anthony Fazio, Ken Calcagnini, and other senior colleagues. As such, it was not Cole sitting in a high chair making decisions. It was a team, headed by both in-house and outside counsels.

As such, the business was operational and had a full staff of lawyers and accountants who would review each and every detail about collections, and make the recommendation to Cole, who would make the ultimate decision. As far as describing the default rate with potential investors, Joe Cole, again, explains it best.

Q. So which investors did you discuss it with?

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

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

A. So typically we'd go over the cash-over-cash analysis on the exposure on their KPI report. I would say that's the most common analysis we're discussing. But we're also very careful to provide the context of what that number represents and not to characterize it as a default rate. In any explanation I provided, the term cash over cash is really driven home because we don't want that to be misconstrued as potentially a rate of default, which for what I just explained can come in many different interpretations and calculations depending on what jurisdiction . . .

*F. Overall Conclusion of Cole's Testimony*

Ultimately, Cole's testimony is un rebutted. There is not a single piece of evidence produced by the SEC that show that shows Cole knowingly, voluntarily, or negligently mislead investors or provided false information. Likewise, there is no evidence that the SEC has provided that is contrary to the fact that Cole acted outside the advice of his various lawyers.

The Court should also consider that the SEC never actually conducted its own investigation, and relied on Shane Heskin, whose investigation was dubious at best, and a straight-up fraud on the Court at worse [See D.E. 663].

**DISCUSSION AND ANALYSIS OF STAY FACTORS**

A. Disgorgement

*i. Success on the Merits – Appeal*

The Court calculated disgorgement as

“ALB Management and Beta Abigail received approximately \$8,063,304 in total distributions from Par Funding. SEC Expert Report ¶ 128. Further, Cole acknowledges that he received approximately \$751,000 in salary and bonus payments from Par Funding. Resp. at 29. Thus, based upon a review of the distributions and salary, the Court is satisfied that a reasonable approximation of Cole’s liability is \$8,814,304 worth of disgorgement.”

Disgorgement is an equitable remedy which must be limited to the “the gain made upon any investment, when both the receipts and payment are taken into account. The Court’s power to order disgorgement extends only to the amount with interest by which the defendants profited from his wrongdoing. Any further sum would constitute a penalty assessment”).

However, “[b]ecause disgorgement is meant to be remedial and not punitive, it is limited to property causally related to the wrongdoing at issue.” *Allstate Ins. Co. v. Receivable Fin. Co.*, 501 F.3d 398, 413 (5th Cir. 2007). “Accordingly, the party seeking disgorgement must distinguish between that which has been legally and illegally obtained.” *Id.* “In actions brought by the SEC involving a securities violation, ‘disgorgement need only be a reasonable approximation of profits causally connected to the violation.’” *Id.* (quoting *Sec. & Exch. Comm’n v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989)).

Pertaining to salary, in order to disgorge a defendant's salary, the plaintiff must establish that the defendant's misconduct somehow unfairly increased his compensation, such as could occur if an investment manager falsely recorded gains on his positions and pumped up his resulting performance-based bonus. *Avande, Inc. v. Evans, C.A.* No. 2018-0203-AGB (Del. Ch. Aug. 13, 2019).

Although it is true that salaries can be considered ill-gotten and subject to disgorgement under *SEC v. Merch. Capital, LLC*, 486 Fed. Appx. 93, 96 (11th Cir.

2012), such disgorgement must be tied to the ill-gotten gains. For example, in *Merch. Capital, LLC.*, the ill-gotten salary was derived from fees associated with violations of anti-fraud provisions. The Court cannot require a defendant to disgorge compensation that is NOT tied to unlawful activity. *SEC v. Faulkner*, Civil Action No. 3:16-CV-1735-D, 2021 U.S. Dist. LEXIS 4258, at \*20 (N.D. Tex. Jan. 8, 2021); *SEC v. E-Smart Techs., Inc.*, 139 F.Supp.3d 170, 189 (D.D.C. 2015) (SEC not entitled to disgorgement of defendant's entire salary when "most of the salary appears to have been earned before the violation at issue."); *SEC v. Levin*, 2015 WL 11199843, at \*3 (S.D. Fla. July 15, 2015) (disgorgement of entire salary received in 2008 and 2009 not subject to disgorgement when securities violations did not begin until halfway through 2008); *Liu v. SEC*, 140 S. Ct. 1936, 1956 (2020)(citing *Elizabeth v. Pavement Co.*, 97 U. S. 126, 24 L. Ed. 1000 (1878)(rejecting liability for an individual officer who merely acted as an agent of the defendant and received a salary for his work); *Seymour v. McCormick*, 57 U.S. 480, 16 How. 480, 490, 14 L. Ed. 1024 (1854) (rejecting a blanket rule that infringing one component of a machine warranted a remedy measured by the full amounts of the profits earned from the machine); *Mowry v. Whitney*, 81 U.S. 620, 14 Wall. 620, 649, 20 L. Ed. 860 (1872) (vacating an accounting that exceeded the profits from infringement alone);

As such, the Court must first make a determination what exactly was the “wrongful conduct” that Cole engaged in as CFO of CBSG, and then make a finding what money was derived from that wrongful conduct.

As indicated in the vast majority of cases cited above, if Cole was merely an officer and simply receiving a salary, that salary should not be disgorged. Looking at Cole’s salary, he received compensation in the form of a salary for his role of CFO, which entailed, at first, management of CBSG’s accounting departments, payroll, and

human resources. As CBSG grew, Cole's duty was to "manage the managers," and procure help from outside sources. Cole evaluated and aided in negotiation of defaults, evaluated write-offs, as well as aided in policy decisions pertaining to notes. Cole was also involved in preparing KPI reports. Regardless, all of the work that Cole performed was very much a team effort, employing not only specific teams (such as the collections team) for certain tasks, but employing outside counsel.

Again, every KPI report was issued with the consent and review of CPAs at Rod Ermel & Associates. Every decision regarding the treatment of notes was first cleared through the various in-house counsel that Cole employed, as well as some of the best and brightest legal scholars pertaining to securities regulations, i.e. Brett Berman of Fox Rothschild, Phil Rutledge of Bybel Rutledge, Steven A. Cohen at Fox, and Lisa Jacobs at DLA Piper and staff.

Cole was not involved with procuring investors, managing investor capital, or marketing. In fact, the only contact Cole ever had with investors is based solely on presenting the financial stability of CBSG, as well as answering certain questions in the KPI report. Likewise, any data that Cole provided investors was reviewed by in-house counsel, and outside counsel, primarily Brett Berman of Fox Rothschild and Phil Rutledge of Bybel Rutledge. Likewise, as stated on multiple occasions in this brief, the actual numbers/financial data being presented were reviewed by CPAs from Rod Ermel & Associates.

Clearly, the SEC is not suing Bybel Rutledge or Fox Rothschild as an accessory to securities fraud. Ultimately, the SEC, who has the burden of proof in this case, cannot establish that Cole's salary was derived from unlawful conduct. This is even more true

when looking at the fact that Cole’s salary at CBSG was not based on “sales” or “receivables.”

Because the SEC must meet its burden of proof by preponderance of the evidence, *SEC v. Schvacho*, 991 F. Supp. 2d 1284, 1297 (N.D. Ga. 2014), it is not enough to have a blanket decision that since certain actions of CBSG were found to be in violation of securities law, than Cole is therefore a violator and his salary must be disgorged. Because the SEC has not shown any evidence that Cole acted with scienter, or individually mislead investors, nor has the SEC shown how Cole’s salary pertained to any securities law violation, this Court cannot disgorge Cole’s salary simply because the SEC asked the Court to do so.

The same is true for New Field Ventures. The Court held, “It is Cole’s contention that he did not receive distributions from New Field. Resp. His evidentiary support for this contention consists of his own deposition testimony and a purported agreement between Par Funding and New Field.”

Although The Court goes on to say that the agreement is not signed, and provides no probative value to the court, the Court further says, “While the Court cannot say with certainty that Cole received zero distributions from New Field, the Court is persuaded that Cole did not receive 100 percent of the distributions from New Field because it was “Abbonizio’s company with Cole.”

That is the problem, and that is where the Court made a mistake as it pertains to New Field. It is not Cole’s burden of persuasion to convince this Court that he never received monies from the New Field entity. Instead, the SEC bears the burden of proof and persuasion. As such, when the Court stated, “Given the allegations in the Amended Complaint, however, some percentage of the New Field distributions must be allocated to

Cole,” Cole is genuinely perplexed. Cole asks this Court, “Why?” Why does some percentage of New Field distribution need to be attributable to Cole simply because the SEC said it in their Amended Complaint. Moreover, why is it fair that Cole gets hit with a disgorgement in the amount of \$1,241,321.00 when there is no evidence from the SEC, aside from allegations made in their Complaint, that Cole received some amount of money from New Field, when that amount was not even specified. *Terry v. United States*, 99 Fed. Cl. 384, 392 (2011); *First Fed. Lincoln Bank v. United States*, 518 F.3d 1308, 1319 (Fed. Cir. 2008) (“A claim for an attenuated loss resulting from a breach . . . must not be speculative and must be supported by evidence providing a reasonable basis for the amount of damages.”); *Trinity Outdoor, LLC v. Oconee Cty.*, No. 3:02-CV-67 (CAR), 2004 U.S. Dist. LEXIS 30223, at \*14 (M.D. Ga. May 20, 2004)(“compensatory damages must not be based on speculation or guesswork.”)

As such, is it likely that Cole will be successful on the merits pertaining to his salary at CBSG, and an even greater likelihood of success on the merits regarding money received from New Field.

His disgorgement amount should be reduced by \$1,992,321. Moreover, this Court should also deduct the amounts that Cole paid in taxes. Although the Court relies on *SEC v. Merch. Cap., LLC*, 486 F. App'x 93 (11th Cir. 2012). However, *Merchant Capital, LLC*. based its ruling on *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008), which is a Ponzi scheme case. The *Donell* Court said, “there are no winners in a Ponzi Scheme.” This case is not a Ponzi Scheme and, more importantly, the court in *Liu* held that a disgorgement award should not exceed a wrongdoer's net profits. Net profits is usually gross profit, minus various expenses, taxes being one of them. Cole has a proven record of paying

taxes consistently up until the point the Receiver took control of the business – to the detriment of the business and its investors/note holders.

In fact, the only times that taxes were not credited is in a Ponzi Scheme, when the profits were fictitious *In re Bernard L. Madoff Inv. Sec. Llc*, No. 1:21-cv-02334-CM, 2022 U.S. Dist. LEXIS 29201, at \*24 (S.D.N.Y. Feb. 17, 2022), when there is evidence of a fraudulent transfer, *Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC*, 610 B.R. 197, 237 (Bankr. S.D.N.Y. 2019).

The funds that Cole Received were not part of a Ponzi Scheme and were not part of a fraudulent transfer. The SEC alleged no Civil RICO claims, no mail fraud, and no wire fraud. Not allowing Cole to set-off his tax burden would put the disgorgement in punitive damages territory because it would not constitute a “net profit.” See generally *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1233, 281 U.S. App. D.C. 410 (D.C. Cir. 1989), and *SEC v. Grossman*, No. 87 Civ. 1031 (SWK), 1997 U.S. Dist. LEXIS 6225, 1997 WL 231167, at \*9 (S.D.N.Y. May 6, 1997))

*ii. Other factors*

Preamble: Going back to the standard of review, the Court must look at the “elements” as “factors” in determining whether a Stay is appropriate. The absence of one factor is not determinative.

In all candor to the tribunal, although there is little irreparable injury absent a stay besides putting Cole in a position to pay on a disgorgement that has a large probability of being substantially reduced, it is clear that the disgorgement from Cole is a drop in the bucket compared to the other Defendants. There is no indication that a stay will injure the SEC, the investors, or anyone else. Moreover, as the Court indicated, there is still a long

road between actually collecting on the amount, and the initial steps, which involve processing claim forms.

Moreover, and equally as important, is the fact that the Receivership Estate has more than enough assets to cover any disgorgement amount issued by the Court. As such, it is not as if the money is nowhere to be found. The money is, in the most literal sense, sitting in the Receiver's pocket.

Finally, some of the issues, such as the boundaries of *Liu*, the boundaries of "net proceeds" and how substantively disgorgement must be calculated are all issues of great importance to the public. Likewise, these issues are likely ones of first impression for the appellate Court, because no Court in the Country has yet to evaluate the contours of *Liu*, as well as tax consequences outside of a Ponzi scheme or fraudulent transfer. As such, since the SEC is a government entity that, presumably, serves in the interest of the public, it makes sense to fix the contours of the law as it stands today.

## B. Civil Penalties

### *i. Likely Success on the Merits*

Regarding Civil Penalties, there are three tiers.

Tier One:

For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

Tier Two:

The amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

Tier Three:

The amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if— (I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

The SEC sought Tier 3 Civil Penalties from Cole, that amounts to \$5,000,000.

This Court awarded the SEC with Tier 3 Civil Penalties, and ordered Cole to pay \$1,330,000.

The Court found that Tier 3 was appropriate because there was a “substantial risk of losses,” even though there were no actual losses. However, this involves an extremely granular and factual analysis that the Court did not perform. Frankly, any security has a risk of loss. There is no such thing as a security with no potential risk. Even investing in the safest, most stable, blue-chip stock has a risk of reduction in value. The question is were investors appraised of the potential risk.

The various different products issued by CBGS, mostly in the form of notes, came with either a PPM, or a KPI report, which were created by a team of accountants and lawyers, and reviewed by outside accountants and lawyers for their correctness.

Next, the Court contradicted itself. First, the Court found that

While the Court will not go so far as to say that Par Funding was always a profitable business— . . .the Court does not find that Par Funding had absolutely no value apart from the fraudulent scheme

Then, the Court said, “Further, in deposition testimony, Cole admitted that Par Funding had collected roughly what it had lent out—meaning Par Funding was barely breaking even.”

However, the second part is untrue. Cole never said that. Cole said,

Q. So approximately during the lifetime of 9 Par Funding -- I'm sorry -- Complete Business Solutions Group, approximately how much money did it fund in the merchant cash advance agreements?

A. You're talking about gross cash provided to third-party merchants as part of these MCA deals?

Q. Yes.

A. The approximate amount is \$1.3 billion 16 from the beginning of 2013 through July of 2020.

So, only pertaining to the Merchant Cash Advance arm of the business, CBSG provided funding in the amount of 1.3 billion dollars.

\* \* \*

Q. Sorry. Of the \$1.3 billion funded to merchants, how much did merchants pay back to Complete Business Solutions Group?

A. For the same time period, merchants paid back approximately close to \$1.3 billion, not including the funds still outstanding from the receivables.

The SEC makes it seem like the business broke even. They funded 1.3 billion, and only received back 1.3 billion. But what Cole actually said, is that this is the amount, minus the factor fees or other profits that CBSG receives.

Q. And how much like on average was the interest rate on the MCA agreements?

A. There was no interest rate on MCAs. It's based on a factor fee.

That means that CBSG got back roughly every cent it of funding provided, plus received additional factor fees, which is calculated in its profits. SEC did not ask how much these factor fees were. In fact, the SEC never pushed Cole into giving a revenue amount, and were content that they "got him" when he said that CBSG only made back what it funded. However, looking at the SEC's own expert, CBSG was highly profitable. According the SEC's expert witness, Melissa Davis, CBSG received 550 million from investors and experienced over 3.8 billion in cash flows from its business operations.

Category	Receipts	Disbursements	Net Funds
<b>Investor Activity</b>			
Receipts from Investors	\$ 547,230,160	\$ -	\$ 547,230,160
Principal Repayments	-	178,682,344	(178,682,344)
Interest Paid to Investors (Note 1)	3,095,426	121,425,773	(118,330,348)
<b>Investor Activity Total</b>	<b>550,325,586</b>	<b>300,108,117</b>	<b>250,217,469</b>
<b>MCA Activity</b>			
MCA Disbursements to Joint Funders	-	139,012,050	(139,012,050)
MCA Disbursements to MCA Clients	-	1,183,362,123	(1,183,362,123)
MCA Receipts from Joint Funders	155,563,318	-	155,563,318
MCA Receipts from MCA Clients	1,206,708,236	-	1,206,708,236
<b>MCA Activity Total</b>	<b>1,362,271,554</b>	<b>1,322,374,173</b>	<b>39,897,382</b>
<b>Business Expenses</b>			
Consulting/Commission Fees to Other Entities	1,663,433	45,663,370	(43,999,937)
Consulting/Commission Fees to Related Entities	757,581	94,143,096	(93,385,514)
Other Operating Expenses	9,748,606	59,461,871	(49,713,266)
<b>Business Expenses Total</b>	<b>12,169,620</b>	<b>199,268,337</b>	<b>(187,098,717)</b>
<b>Other Receipts / Disbursements</b>			
Other Note Receivable/Payable	213,667	645	213,022
Other Related Party Payments	1,213,500	8,622,403	(7,408,903)
Related Party Receivable/Payable	4,873,279	27,668,771	(22,795,493)
Equity Distribution	-	49,971,790	(49,971,790)
<b>Other Receipts / Disbursements Total</b>	<b>6,300,446</b>	<b>86,263,610</b>	<b>(79,963,164)</b>
<b>Account Activity Total</b>	<b>\$1,931,067,205</b>	<b>\$1,908,014,237</b>	<b>\$ 23,052,969</b>
<b>Note 1)</b> Receipts in the Interest Paid to Investor category represent returned payments, as such the net interest paid to investors is \$118,330,348.			

According to Melissa Davis, this activity generated \$478,332,407 in revenue in addition to the 1.3 billion dollars funded to CBSG's clients. This also does not consider that after funding and receiving 1.3 billion dollars CBSG still had an additional 24 million dollars in cash and was owed 399 million in accounts receivables when the company was seized by the SEC. Davis Expert Report p34 Table 2 / <sup>2</sup>Davis Expert Report p35 Table 3/ DE 358-1.

When analyzing the financial health of CBSG, one must consider how raising 550 million from investors resulted in over 1.9 billion in total outgoing cash to pay for merchant funding, repayments to investors, consulting expenses and other operational costs the business made during its operations. This indicates that CBSG did not just "break even" but was exceptionally profitable. It earned 34% in revenue for every dollar

provided in funding resulting in the millions of dollars in profits the company earned. DE  
535-1 Glick Report p9

Incoming Cash Total \$550 million

-Investor Capital = 550 million

Outgoing Cash Total \$1.9 Billion

-MCA Funding = 1.32 billion

-Principal Repaid = 178.7 million

-Interest Paid = 118.3 million

-Consulting Expense = 139.8 million

-Other Business Expenses = 59.5 million

-Other Distributions = 86.2 million

**Delta = 1.35 billion**

Moreover, pertaining to Cole, the Court made a finding that Cole made false and misleading statements and omissions. However, there was no statement or omission that was made without first consulting with a team of attorneys and accountants, described in multiple places in this instant paper. Pertaining to Form D, this Court held that Form D had multiple false statements in it. However, as Cole testified.

Q. Did you make a decision not to include Perry Abbonizio on the Complete Business Solutions 6 Group Form D filing?

A. No, I did not.

Q. Why wasn't he included?

A. Filings were prepared and filed per advice of counsel. This was through Phil Rutledge at Bybel Rutledge and our in-house counsel, Cynthia Clark.

Q. Who provided the information to counsel that they utilized to prepare the Form D filings?

A. Information was provided by the legal department at Full Spectrum Processing, and I provided some of the information pertinent to the amounts as requested as part of the form.

Q. Did you tell the legal department or anyone who prepared those Form D filings that you had received funds from Complete Business Solutions Group prior to the filing?

A. Yes. In-house counsel and our third-party counsel at Bybel Rutledge were cognizant of the facts that consulting payments were being paid and all the relevant materials as part of that form in the filing

\* \* \*

A. Yes. The bulk of the work done to prepare those filings was done by Phil Rutledge and Cynthia Clark. They provided copious advice in discussions regarding that filing and carefully considered all the facts being provided before making the filing

As such, how could Cole have been acting with scienter and with the intent to defraud investors by providing false and misleading information when the information was checked triple checked. It was checked by in-house counsel, it was checked by third party counsel at Bybel Rutledge, and it was checked by Cole (not necessarily in that order).

Likewise, clear in Cole testimony is that he did not actively conceal with criminal record of LaForte. Most, if not all the note holders knew of LaForte's past (See Dep Tran. Col pg. 66; ln 10-24). It was never Cole's job to conceal, nor did anyone conceal LaForte's past. All the lawyers knew of LaForte's criminal past, and Cole, with his team, listened to their guidance. Likewise in the November 2019 Dinner and the meeting in Florida, LaForte used his real name<sup>10</sup>. There was never an attempt to conceal. In fact, the SEC's representation that they were concealing LaForte's identity at this investor dinner when he was specifically introduced by name is a shocking misrepresentation. Regardless, Cole was not in the role of procuring investors, and his only communication with investors, including the dinner with three hundred investors and potential investors, is discussing the financial aspects of the company<sup>11</sup>. Before making any comments about

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<sup>10</sup> "I want to introduce Joe LaForte. Come on up, Joe." (DE 41-7 at 57, lines 17-18) (emphasis added).

<sup>11</sup> The SEC was extremely liberal with the truth regarding this dinner. First of all, LaForte used his real name, not any sort of alias. Next, it is well established the SEC was dishonest when they alleged that Cole targeted investors with a "pump up our MCA business" scheme. The transcript of the dinner does not reflect that Cole ever made such a statement.

the financial life of the company, those numbers were, again, triple, sometimes quadruple checked, and were the same numbers touted by the KPI reporters, that were also checked by accountants and lawyers.

To say that Joe Cole somehow acted in a way to intentionally defraud investors is to ignore the rigorous checks that Cole employed while working for CBSG. As such, there is no evidence presented other than what is found in the amended complaint that “Cole acted with knowing misconduct or, at minimum, extreme recklessness when he engaged in this egregious conduct.”

Ultimately, what the Court did was, assume true, the allegations contained in the SEC’s Complaint. Noteworthy is that nothing in the Consent Decree of Joseph Cole Barleta even closely functions as an admission [See D.E. 1016-1]. Specifically, Cole does not admit or deny any of the allegations in the complaint except for jurisdictional allegations.

*ii. Other Factors*

Like with disgorgement, the other factors present weigh less heavily because of the enormous weight of the likely success on the merits. As such, Cole incorporates by reference the arguments made in previous sections regarding the other factors.

**IMPOSITION OF A BOND**

If this Court is inclined to grant a stay of any kind, the next question is a “bond” amount. The 2018 amendment to Rule 62 "makes explicit the opportunity to post security in the form other than a bond." Fed. R. Civ. P. 62(b) (2018 committee note); Deutsche Bank Nat'l Tr. Co. as Tr. for GSAA Home Equity Tr., 2006-18 v. Cornish, 759 F. App'x

503, 510 (7th Cir. 2019) (noting amendment provides greater flexibility in granting stays pending appeal).

Currently, the Receiver is in possession of a Cole asset called Capital Source 2000, Inc. Although it is true that the Receiver has stated that its total liabilities are \$33,575,096.52, this is because all of those accounts have yet to be collected. There is no indication of what the Receiver has done to try to collect on these accounts, and the process of why roughly 33 million dollars were written off.

With that being said, the Receiver has stated that it as \$2,366,043.75 in total Cash, and \$19,272,036.06 in Accounts Receivables. As such, there are more than enough assets in the Receivership attributable to Cole that can be used as a bond.

Date: December 7, 2022

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on December 7, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Andre G. Raikhelson  
Andre G. Raikhelson Esq.

**NOTICE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)**

I hereby certify that I have complied with Local Rules 7.1(a)(3), otherwise known as the “meet and confer” rule by speaking with counsel for the SEC, Amie R. Berlin, Esq. by phone on December 7, 2022. Mr. Berlin has indicated that she would oppose this instant motion.

- Andre G. Raikhelson, Esq.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

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

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A P P E A R A N C E S

(Participants appeared via Webex videoconference)

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

On behalf of Defendant Lisa McElhone

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

On behalf of Defendant Joseph Cole Barleta

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On behalf of the Receiver Ryan K. Stumphauzer

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Also present

Joseph LaForte  
Dean Vagnozzi  
Tim Hunter, videographer

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WITNESS:	EXAMINATION	PAGE
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	BY MS. BERLIN	7

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NO.	DESCRIPTION	PAGE
	(No deposition exhibits were marked.)	

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P R O C E E D I N G S

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THE VIDEOGRAPHER: Here begins the videotaped deposition of Joseph Cole Barleta in the matter of SEC versus Complete Business Solutions Group, Inc. This case is being heard in the United States District Court, Southern District of Florida, Case No. 20-CV-812205-RAR.

This deposition is being held via Webex. Today's date is June 2, 2021. The time on the record is 9:28 a.m. -- I'm sorry -- 10:28 a.m. My name is Tim Hunter. I'm your legal videographer. Our court reporter today is Ann Medis.

Counsel, would please state introduce yourselves and state whom you represent for the record starting with noticing counsel. And the witness will be sworn.

MS. BERLIN: This is Amie Riggle Berlin on behalf of the U.S. Securities and Exchange Commission.

MS. SCHEIN: Bettina Schein, counsel for Joseph Cole Barleta.

MR. SOTO: This is Alex Soto, counsel for Joseph LaForte.

MR. KOLAYA: Good morning. Timothy Kolaya

1 on behalf of the Receiver, Ryan K. Stumphauzer.

2 MR. MILLER: Brian Miller from Akerman on  
3 behalf of the defendant Dean Vagnozzi.

4 MR. MARCUS: Jeff Marcus on behalf of  
5 Perry Abbonizio along with Jason Mays and Brandon  
6 Floch.

7 MR. BACHNER: Michael Bachner on behalf of  
8 Lisa McElhone. Sorry to interrupt.

9 MR. LEVINE: Josh Levine and David  
10 Ferguson, also co-counsel for Joseph LaForte.

11 JOSEPH COLE BARLETA,  
12 having been first duly sworn, was examined  
13 and testified as follows:

14 EXAMINATION

15 BY MS. BERLIN:

16 Q. Do you sometimes go by the name Joe Cole?

17 A. Yes. I often go by the name Joe Cole.

18 Q. Okay. Do you have a preference today  
19 whether I should call you Mr. Cole or Mr. Barleta?

20 A. I prefer Joe Cole. Yeah, Mr. Cole would  
21 be great.

22 Q. Okay.

23 A. Thank you.

24 Q. Okay. Thank you. Are you currently  
25 employed?

1 A. No, I am not.

2 Q. Were you employed by a company called  
3 Complete Business Solutions Group previously?

4 A. Yes, I was.

5 Q. During what time period were you employed  
6 by Complete Business Solutions Group?

7 A. I was employed from October of 2012 until  
8 December 31st of 2016.

9 Q. Okay. And then in December of 2016, why  
10 did you stop working for Complete Business Solutions  
11 Group?

12 A. I started working the following day or  
13 month in Full Spectrum Processing in Philadelphia.

14 Q. And why was your employment changed from  
15 Complete Business Solutions Group to Full Spectrum  
16 Processing?

17 A. There was a restructure in the company per  
18 guidance of our tax accountants and starting in  
19 2017, Philadelphia operations would operate out of  
20 an entity Full Spectrum Processing. So I was then  
21 employed into that entity.

22 Q. And beginning in 2017, Full Spectrum was  
23 operating Complete Business Solutions Group; is that  
24 right?

25 A. That's right. They were providing

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

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?

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.

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

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.

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.

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

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.

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

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 deskpace 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.

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

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

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?

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?

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?

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

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

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

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

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?

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

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

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

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

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.

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

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

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

4 A. Yes.

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

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

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

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

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

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

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

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

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

6 A. Yes.

7 Q. And what did you do?

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

13 Q. When did you start signing the notes?

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

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

22 A. Yes.

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

25 A. I would email them to the related parties

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

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

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

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

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

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

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

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

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

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

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

15 A. Yes, she did.

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

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

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

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

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

6 A. Yes.

7 Q. Did they occur anywhere else?

8 A. Not that I can recall.

9 Q. Would they also occur by telephone?

10 A. Not that I can recall.

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

16 A. Yes.

17 Q. Who would attend those?

18 A. Perry Abbonizio and other employees of --

19 Q. Anyone else?

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

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

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

1 sales entity Armar.

2 Q. Would Joseph LaForte attend those  
3 meetings?

4 A. Yes.

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

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

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

19 A. Yes.

20 MR. SOTO: Objection to form.

21 BY MS. BERLIN:

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

24 MR. SOTO: Objection to form.

25 THE WITNESS: I don't recall how many

1 meetings. They were very infrequent though.

2 BY MS. BERLIN:

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

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

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

18 MR. SOTO: Objection to form.

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

22 BY MS. BERLIN:

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

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

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

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

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

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

16 A. Mr. Abbonizio --

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

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

1 people running it.

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

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

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

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

16 Q. And who else?

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

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

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

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

1 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

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.

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

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

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 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 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 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

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

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

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.

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.

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

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).

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

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

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.

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

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.

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

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

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

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.

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 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 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. 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

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?

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

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,

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 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 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 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.

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

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?

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

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

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

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

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

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

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

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

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

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

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

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

9           Q.     What bank account was that?

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

12          Q.     Yes, for 2015.

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

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

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

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

1 years, 2015 through 2020?

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

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

15 Q. Who maintains this meticulously maintained  
16 ledger?

17 A. It would be the accounting department.

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

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

22 Q. Okay. Did Aida Lau?

23 A. No, not to my recollection.

24 Q. What about Wendy Furman?

25 A. Wendy Furman is not in the accounting

1 department.

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

5 A. It depends on the period of time.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Q. 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.

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

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.

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.

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.

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

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

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

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

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.

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

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

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.

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

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.

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.

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

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

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.

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 Pauciulo,  
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.

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.

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

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

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

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.

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

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

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

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?

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.

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

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.

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.

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

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

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

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

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?

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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 A. It depends on what information.

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

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

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

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

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

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

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?

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

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

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

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

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

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.

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.

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

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?

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.

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

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.

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

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

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.

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

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

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?

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 CBSG determine which merchant cash advances

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

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

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.

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.

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

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

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

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,

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

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

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

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

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?

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

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

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

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

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

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

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

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

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 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 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 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

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

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

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

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?

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?

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.

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

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 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 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 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.

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?

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

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.

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.

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

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.

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

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

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

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.

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?

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?

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

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.

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

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

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.

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

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.

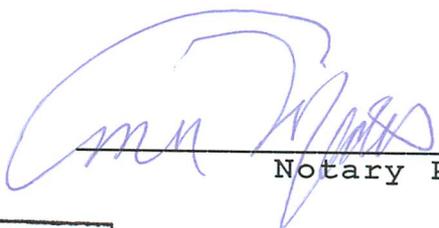
16 I further certify that I am not related to  
17 any of the parties to this action by blood or  
18 marriage and that I am in no way interested in the  
19 outcome of this matter.

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

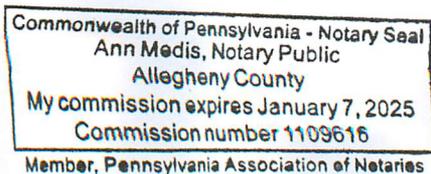
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Notary Public

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CERTIFICATE OF WITNESS

I, JOSEPH COLE BARLETA, do hereby declare under penalty of perjury that I have read the entire foregoing transcript of my deposition testimony, or the same has been read to me, and certify that it is a true, correct and complete transcript of my testimony given on June 2, 2021, save and except for changes and/or corrections, if any, as indicated by me on the attached Errata Sheet, with the understanding that I offer these changes and/or corrections as if still under oath.

\_\_\_\_\_ I have made corrections to my deposition.

\_\_\_\_\_ I have NOT made any changes to my deposition.

Signed: \_\_\_\_\_  
JOSEPH COLE BARLETA

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of 20\_\_\_\_.



7:45 AM

10/28/22

Accrual Basis

## Capital Source 2000 Inc

## Balance Sheet

As of December 31, 2020

	Dec 31, 20
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
Actum ACH	1,071.69
Actum ACH Prefund	100,000.00
BOA Capital - 7887	100.00
BOA Operating - 7845	-494,571.59
First Bank ACH Reserve - 7151	300,000.00
First Bank NJ Operating - 9967	392,000.90
Meridian Capital - 6314	1,883,780.43
Meridian Operating - 6306	28,392.40
PPS ACH	8,141.80
PPS ACH Prefund	96,929.75
<b>Total Checking/Savings</b>	<b>2,315,845.38</b>
Accounts Receivable	
Accounts Receivable	19,418,508.24
<b>Total Accounts Receivable</b>	<b>19,418,508.24</b>
Other Current Assets	
Deferred Tax	570,540.00
Factoring Loss Reserve	5,952,194.99
Funding Receivable	11,587.25
Note Receivables	
CBSG Note Receivables	3,350.00
CN Note Receivables	66,557.99
<b>Total Note Receivables</b>	<b>69,907.99</b>
Prepaid Processing Expense	1,883,691.00
TX Transaction	448,936.37
Undeposited Funds	93,603.81
<b>Total Other Current Assets</b>	<b>9,030,461.41</b>
<b>Total Current Assets</b>	<b>30,764,815.03</b>
<b>TOTAL ASSETS</b>	<b>30,764,815.03</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Accrued Interest Expense	-101,167.02
Client Funding Payables	
Joint CBSG Funding	21,974.48
Joint Fundrite Funding	5,805.51
<b>Total Client Funding Payab...</b>	<b>27,779.99</b>
Deferred Revenue	4,390,994.00
Loans Payable	
Investor Liabilities	
Investor Payables AA	150,000.00
Investor Payables AC	500,000.00
Investor Payables ACF	400,000.00
Investor Payables AIGP	500,000.00
Investor Payables BR	200,000.00
Investor Payables CA	200,000.00
Investor Payables CB	50,000.00
Investor Payables CFL	100,000.00
Investor Payables CGR	500,000.00
Investor Payables CS2	5,417,400.00
Investor Payables DV	25,000.00
Investor Payables DVA	75,000.00
Investor Payables FC	6,354,000.00
Investor Payables GFL	100,000.00

7:45 AM

10/28/22

Accrual Basis

**Capital Source 2000 Inc****Balance Sheet**

As of December 31, 2020

	<u>Dec 31, 20</u>
Investor Payables HBC	400,000.00
Investor Payables HDU	500,000.00
Investor Payables HMA	2,960,000.00
Investor Payables HTU	100,000.00
Investor Payables JCL	100,000.00
Investor Payables JG	300,000.00
Investor Payables JME	300,000.00
Investor Payables KM	150,000.00
Investor Payables LDA	100,000.00
Investor Payables LG	203,000.00
Investor Payables MA	250,000.00
Investor Payables MAL	100,000.00
Investor Payables MB	150,000.00
Investor Payables MM	150,000.00
Investor Payables MR	100,000.00
Investor Payables PS	800,000.00
Investor Payables RBG	3,488,150.00
Investor Payables RGI	2,691,800.00
Investor Payables SW	300,000.00
Investor Payables TF	200,000.00
Investor Payables TIF	1,950,000.00
Investor Payables TM	250,000.00
Investor Payables WH	100,000.00
Investor Payables WIF	375,000.00
<b>Total Investor Liabilities</b>	<u>30,589,350.00</u>
<b>Total Loans Payable</b>	30,589,350.00
<b>Total Other Current Liabilities</b>	<u>34,906,956.97</u>
<b>Total Current Liabilities</b>	34,906,956.97
<b>Long Term Liabilities</b>	
<b>Accrued Tax</b>	
Federal	-946,525.45
Pennsylvania	-387,889.00
Philadelphia-BIRT	2,554.00
<b>Total Accrued Tax</b>	<u>-1,331,860.45</u>
<b>Total Long Term Liabilities</b>	-1,331,860.45
<b>Total Liabilities</b>	33,575,096.52
<b>Equity</b>	
Retained Earnings	-4,384,970.23
Net Income	1,574,688.74
<b>Total Equity</b>	<u>-2,810,281.49</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>30,764,815.03</u></u>

## NOTE PURCHASE AGREEMENT

### NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT, (the "Agreement") dated as of August 25, 2019 the "Effective Date"), is between COMPLETE BUSINESS SOLUTIONS GROUP, INC. ("Seller"), a Delaware corporation, and GR8 Income Fund, LLC (the "Purchaser").

#### RECITALS

WHEREAS, Purchaser desires to purchase non-negotiable term promissory notes to be issued by the Seller (the "Notes") and as to which the Seller, pursuant to a separate security agreement of even date with each Note issued hereunder (each, and collectively, the "Security Agreement"), has granted to Purchaser a security interest in substantially all of its assets, including without limitation, its inventory, accounts receivable and general intangibles; and

WHEREAS, Seller desires, from time to time, to offer the Notes for sale to the Purchaser in accordance with the terms and conditions of this Agreement and the terms and conditions of the Note and the Security Agreement whose terms and conditions are incorporated by reference herein and Purchaser agrees to purchase the Notes on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the amount and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

#### ARTICLE I DEFINITIONS

"Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.

"Knowledge of Seller" means the actual knowledge of the Seller or any of its Affiliates.

"Knowledge of Purchaser" means the actual knowledge of the Purchaser or any of its Affiliates.

"Person" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, governmental or regulatory authority or other entity of whatever nature.

#### ARTICLE II PURCHASE OF NOTE

2.01. Purchase and Sale. Subject to and upon the terms and conditions set forth in this Agreement, the Note and the Security Agreement and in reliance on the representations and warranties set forth herein, the Seller, from time to time, may offer to sell to Purchaser, and Purchaser agrees to purchase from the Seller, at the Closing referred to in Section 2.04 below, the Notes offered by the Seller.

2.02. Principal Amount, Interest Rate and Maturity. The Notes to be offered and sold to Purchaser shall contain such terms and conditions relating, without limitation, to principal amount, interest rate and maturity, as the Seller, in its sole discretion, may determine.

2.03. No Right to Purchase Note. Nothing in this Agreement creates a right on the part of Purchaser to require Seller to offer and sell Notes to the Purchaser and Seller reserves the right not to offer to sell any Notes to the Purchaser in its sole discretion.

2.04. Closing. The sale and purchase of Notes under this Agreement may be made pursuant to one or more closings (each, a "Closing") on such dates, times and places as the Seller may determine in its sole discretion (each, a "Closing Date").

2.05. Accredited Investor Status. Purchaser and Seller agree and acknowledge that a bargained for provision of this Agreement is that Seller shall offer to sell Notes to Purchaser only if Purchaser is an accredited investor ("Accredited Investor") as that term is defined in Rule 501 of Regulation D adopted by the U.S. Securities & Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 Act"). In this regard, Purchaser agrees to provide such information as Seller may require including, without limitation, an opinion of counsel satisfactory to Seller, for Seller to form a reasonable belief that Purchaser is an Accredited Investor. Failure of Purchaser to provide Seller with requested information and any conclusion by Seller that it does not have a basis to form a reasonable belief that Purchaser is an Accredited Investor shall release Seller from any obligations under this Agreement as to which Purchaser agrees to hold Seller harmless.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Seller hereby makes the following representations and warranties to the Purchaser.

3.01. Incorporation, Good Standing and Qualification of Seller. The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Seller has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted or as proposed to be conducted.

3.02. Corporate Power and Authority; Authorization; Enforceability. All corporate action on the part of the Seller necessary for the authorization of this Agreement and such Notes and Security Agreements to be issued pursuant to this Agreement and the performance of all obligations of the Seller hereunder and thereunder at the Closing has been taken or will be taken prior to the Closing. This Agreement has been duly executed and delivered by the Seller by a Person duly authorized under the Seller's organizational documents and constitutes a valid and binding obligation of the Seller enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights.

3.03. No Conflict. Neither the execution and delivery by the Seller of this Agreement and each other instrument to be executed and delivered by the Seller pursuant to, or as contemplated by, this Agreement nor the performance by the Seller of the Seller's obligations thereunder, (i) violates any laws of the United States or laws of any state or other jurisdiction applicable to the Seller or requires the Seller to obtain any approval, consent or waiver of, or make any filing with, any Person or entity (governmental or otherwise).

that has not been obtained or made; (ii) results in a breach of, or constitutes a default under (or with due notice or lapse of time or both would result in a default under) any material agreement, indenture or instrument to which the Seller is a party or by which the Seller or any of its respective properties or assets is bound; (iii) results in the creation or imposition of any lien, pledge, security interest, claim, charge or encumbrance on the Notes; (iv) results in any judgment, order or decree of any governmental authority or law or regulation applicable to the Seller or its respective properties or assets; or (v) violates the Seller's certificate of incorporation or bylaws, as amended, or statute, law, rule, regulation, judgment, decree, writ, injunction, order or award of any arbitrator, court or governmental authority.

**3.04. No Proceedings.** There are no outstanding judgments, proceedings, or claims pending against Seller or its Affiliates or, to the Knowledge of Seller, threatened against the Seller or its Affiliates and no governmental investigation is pending against Seller or its Affiliates or, to the Knowledge of the Seller, is threatened against the Seller or its Affiliates that, in any case, individually or in the aggregate, reasonably would be expected to prevent the Seller from consummating the transactions contemplated by this Agreement.

**3.05. No Bad Actor Disqualification.** Neither the Seller nor any of its Affiliates is subject to a "bad actor" disqualification under Rule 506(d) of SEC Regulation D which would make the provisions of Rule 506(b) of SEC Regulation D unavailable for the sale of Notes pursuant to this Agreement.

**3.06. Finders or Brokers.** Seller agrees that it has not paid any fee or commission to any agent, broker, finder or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

Purchaser hereby makes the following representations and warranties to Seller.

**4.01. Organization, Good Standing and Qualification of Purchaser.** The Purchaser is a GR8 Income Fund, LLC duly formed, validly existing and in good standing under the laws of the State of Delaware. The Purchaser has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted or as proposed to be conducted.

**4.02. Corporate Power and Authority; Authorization; Enforceability.** All corporate action on the part of the Purchaser necessary to enter into this Agreement, the Notes and the Security Agreements and the performance of all obligations of the Purchaser hereunder and thereunder at the Closing has been taken or will be taken prior to the Closing. This Agreement has been duly executed and delivered by the Purchaser and constitutes a valid and binding obligation of the Purchaser enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights.

**4.03. No Conflict.** Neither the execution and delivery by the Purchaser of this Agreement and each other instrument to be executed and delivered by the Purchaser pursuant to, or as contemplated by, this Agreement nor the performance by the Purchaser of the Purchaser's obligations thereunder, (i) violates any laws of the United States or laws of any state or other jurisdiction applicable to the Purchaser or requires the

Purchaser to obtain any approval, consent or waiver of, or make any filing with, any Person or entity (governmental or otherwise) that has not been obtained or made; (ii) results in a breach of, or constitutes a default under (or with due notice or lapse of time or both would result in a default under) any material agreement, indenture or instrument to which the Purchaser is a party or by which the Purchaser or any of its respective properties or assets is bound; (iii) results in the creation or imposition of any lien, pledge, security interest, claim, charge or encumbrance on the Notes; (iv) results in any judgment, order or decree of any governmental authority or law or regulation applicable to the Purchaser or its respective properties or assets or (v) would violate the Purchaser's certificate of incorporation or bylaws, as amended or statute, law, rule, regulation, judgment, decree, writ, injunction, order or award of any arbitrator, court or governmental authority.

4.04. No Proceedings. There are no outstanding judgments, proceedings, or claims pending against the Purchaser or its Affiliates or, to the Knowledge of Purchaser, threatened against the Purchaser or its Affiliates and no governmental investigation is pending against the Purchaser or its Affiliates or, to the Knowledge of Purchaser, threatened against the Purchaser or its Affiliates that, in any case, individually or in the aggregate, reasonably would be expected to prevent the Purchaser from consummating the transactions contemplated by this Agreement.

4.05. Accredited Investor Status: No Disqualification. Purchaser is an Accredited Investor as that term is defined in Rule 501(a)(8) of SEC Regulation D.

4.06. Not a Broker-Dealer. Purchaser is not acting as a broker or dealer as those terms are defined in the Securities Exchange Act of 1934, as amended (the "1934 Act") and is not acting as a broker-dealer under the Pennsylvania Securities Act of 1972, as amended (the "1972 Act") or the securities laws of any other state and is not required to register as a broker or dealer with the SEC or as a broker-dealer with the Pennsylvania Department of Banking and Securities (the "PADOBS") or the securities regulatory agency of any other state.

4.07. Not an Investment Adviser. Purchaser is not acting as an investment adviser as that term is defined in the Investment Advisers Act of 1940, as amended ("Advisers Act") or the 1972 Act and is not required to register as an investment adviser with the SEC, the PADOBS or the securities regulatory agency of any other state.

4.08. Not an Investment Company. Purchaser is not acting as an investment company as that term is defined in the Investment Company Act of 1940, as amended ("1940 Act") and is not required to register with the SEC as an investment company thereunder.

4.09. Compliance with Securities Laws. Purchaser's business as now being conducted is in compliance with all applicable federal and state securities laws and the rules and regulations adopted thereunder.

4.10. Compliance with Tax Laws. Purchaser's business as now being conducted is in compliance with all applicable federal, state and local tax laws and the rules and regulations adopted thereunder.

4.11. Finders or Brokers. Purchaser has not paid any fee or commission to any agent, broker, finder or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby.

**ARTICLE V**  
**ADDITIONAL COVENANTS**

5.01. Notice Required for Governmental Actions. Purchaser shall immediately notify Seller if Purchaser or any of its Affiliates is the subject of any demand, inquiry, investigation, subpoena, civil complaint, criminal complaint or indictment, injunctive action or administrative proceeding by any governmental agency or if, to the Knowledge of Purchaser, any such action is threatened by any governmental agency.

5.02. Notice Required for Civil Suit. Purchaser shall immediately notify Seller if Purchaser or any of its Affiliates is the subject of any demand, inquiry, subpoena, complaint, arbitration, or injunctive action relating to an alleged civil cause of action against Purchaser or any of its Affiliates or if, to the Knowledge of Purchaser, any such action is threatened.

**ARTICLE VI**  
**INDEMNIFICATION**

6.01. Indemnification of Seller. Subject to the other terms and conditions of this Article VI, Purchaser shall indemnify and defend Seller and its managers, officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, the "Seller Indemnitees") against, and shall pay and reimburse each of them for, any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorneys' fees (collectively "Losses"), that are Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Purchaser contained in this Agreement whether or not such inaccuracy or breach arose before, at or after a Closing;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Purchaser pursuant to this Agreement;
- (c) any claim by a third party based upon any transaction contemplated by this Agreement on or after the Effective Date, including without limitation, any claim based upon an alleged violation of the 1933 Act, 1934 Act, 1940 Act, Advisers Act, the 1972 Act or the securities laws of any other jurisdiction (a "Third Party Claim"); or
- (d) any act or omission of the Purchaser or its Affiliates constituting dishonest, fraudulent, or criminal conduct or gross negligence.

6.02. Indemnification of Purchaser. Subject to the other terms and conditions of this Article VI, Seller shall indemnify and defend Purchaser and its managers, officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, the "Purchaser Indemnitees") against and shall pay and reimburse each of them for any and all Losses that are incurred or sustained by, or imposed upon, the Purchaser Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in

this Agreement whether or not such inaccuracy or breach arose before, at or after a Closing;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement;

(c) any Third Party Claim; or

(d) any act or omission of the Seller or its Affiliates constituting dishonest, fraudulent or criminal conduct or gross negligence.

6.03. Certain Limitations. The party making a claim under this Article VI is referred to as the "Indemnified Party," and the party against whom such claims are asserted under this Article VI is referred to as the "Indemnifying Party." The indemnification provided for in this Article shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification until the aggregate amount of all Losses in respect of indemnification exceeds \$25,000 (the "Deductible"), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Deductible.

(b) Payments by the Indemnifying Party shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(c) In no event shall the Indemnifying Party be liable to the Indemnified Party for any punitive, incidental, consequential, multiple, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple (other than indemnification for amounts paid or payable to third parties in respect of any Third Party Claim for which indemnification hereunder is otherwise required).

(d) The Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

6.04. Indemnification Procedures. Whenever any claim shall arise for indemnification hereunder, the Indemnified Party shall promptly provide written notice of such claim to the Indemnifying Party. In connection with any Third Party Claim giving rise to indemnity hereunder, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such action, with its counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense of any such action, the Indemnified Party may, but shall not be obligated to, defend against such action in such manner as it may deem appropriate, including, but not limited to, settling such action, after giving prior written notice to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken

by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided. The Indemnifying Party shall not settle any action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

## **ARTICLE VII CONDITIONS TO CLOSE**

7.01. Conditions to Purchaser's Obligations at the Closing. Purchaser's obligations under Article II of this Agreement are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties True. The representations and warranties made by the Seller in Article III hereof shall be true and correct in all material respects as each Closing Date; and

(b) Delivery of the Notes and Security Agreements. The Seller shall have delivered the Notes in the appropriate principal amount and the associated Security Agreements to Purchaser.

7.02. Conditions to Obligations of the Seller. The Seller's obligations under Article II of this Agreement are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties True. The representations and warranties made by Purchaser in Article IV shall be true and correct as each Closing Date; and

(b) Purchase Price Delivery. The Seller shall have received from Purchaser a wire transfer in immediately available funds in the principal amount of the Notes being purchased by the Purchaser hereunder in an account designated by the Seller to the Purchaser.

## **ARTICLE VIII MISCELLANEOUS**

8.01. Amendments and Waivers. This Agreement may be amended, and any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only upon the written consent of the Seller and the Purchaser. Unless otherwise specified, no amendment or waiver of this Agreement pursuant to this Section 8.01 shall constitute a waiver or an amendment to any term or condition of any Note or Security Agreement issued by Seller to Purchaser pursuant to this Agreement.

8.02. Successors and Assigns. This Agreement may not be assigned, conveyed or transferred without the prior written consent of the Seller. The rights and obligations of the Seller and Purchaser under this Agreement shall be binding upon and benefit their respective successors, permitted assigns, heirs, administrators and transferees.

8.03. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or, in the case of electronic mail, when received, or, in the case

of a nationally recognized courier service, one business day after delivery to such courier service, addressed as follows or to such other address as may be hereafter notified by the respective parties hereto:

Seller:  
Complete Business Solutions Group  
20900 NE 30<sup>th</sup> Avenue STE 307  
Miami, FL 33180

Attn: Joe Cole

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Purchaser:  
GR8 Income Fund, LLC  
2840 Plaza Place, Ste 210  
Raleigh, NC 27612  
Attn: Mark S Nardelli

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.04. Waiver: Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of either party of any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law or in equity.

8.05. Payment of Fees, Expenses. Each of the parties hereto shall bear its own costs and expenses in connection with the transactions contemplated hereunder including, without limitation, any litigation arising under this Agreement.

8.06. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.07. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.08. Governing Law. This Agreement shall be construed and enforced in accordance with, and governed by, laws of the Commonwealth of Pennsylvania, without giving effect to the conflicts of law principles thereof.

8.09. Jurisdiction and Service of Process. Any legal action or proceeding with respect to this Agreement or arising out of the Purchaser's purchase of the Notes and the Seller's sale of the Notes shall be brought in the courts of the Commonwealth of Pennsylvania or of the United States of America for the Eastern District of Pennsylvania. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts, irrevocably waives objection to the laying of venue of such claim or cause of action brought in such court, irrevocably waives any claim that any such claim or cause of action brought in such court has been brought in an inconvenient forum, irrevocably waives the right to object, with respect to such claim or cause of action brought in such court that the court does not have jurisdiction over such party, irrevocably agrees that service of process sufficient to confer personal jurisdiction in any such action may be made by any party on the other by courier service, with a copy by regular mail, with service to be made to the addresses set forth in Section 8.03, and irrevocably waives any objection which such party may have to such service of process in any such action.

8.10. No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing in this Agreement expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such permitted assigns, any legal or equitable rights under this Agreement.

8.11. Entire Agreement; Drafting. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings of the parties, oral and written, with respect to the subject matter hereof. No party shall be liable or bound to any other party in any manner by any representation, warranty or covenant relating to such subject matter except as specifically set forth in this Agreement. No rule of construction shall be applied against the party drafting this Agreement.

8.12. Termination. This Agreement may be terminated upon either party giving written notice to the other party as provided in Section 8.03 hereof. Articles III, IV and VI of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive the expiration or termination of this Agreement, shall survive such expiration or termination.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

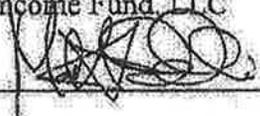
(Signatures on Following Page)

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

By:  \_\_\_\_\_

Name: Joseph Cole  
Title: Chief Financial Officer

GR8 Income Fund, LLC

By:  \_\_\_\_\_

Name: Mark S Nardelli  
Title: Sole Member

**Neither this Agreement nor any Note issued by Seller pursuant to this Agreement has been registered under the 1933 Act, the 1972 Act or any other state securities law. Neither this Agreement nor any Note issued by Seller pursuant to this Agreement may be offered, sold, transferred, pledged, hypothecated or otherwise disposed of in the absence of an effective registration statement under such laws, or if such registration is not required, to effect such sale or offer.**

Documents Word Marking

Current View [Settings] [Print]

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15 Navigable [Up] [Down] [Search] [Dropdown]

From: Philip Rutledge <Rutledge@bybelrutledge.com> Sent: Fri, 28 Sep 2018 19:46:50 +0000  
To: Joe Cole <joecole@parfunding.com>  
Subject: Draft Note Purchase Agreement Template  
Attachments: Note Purchase Agreement for Complete Business Solutions (Draft of 9.28.18).Docx

>> Rec # Email View

476993 Philip Rutledge  
Draft Note...  
To: Joe Co...

476994 CBSG-Recei

Joe:

Per your request, attached for your review and comment is a draft Note Purchase Agreement which could be used as a template for future issuance of notes by CBSG, Inc.

Regards,

Phil



G. Philip Rutledge  
BYBEL RUTLEDGE LLP  
1017 Mumma Road, Suite 302  
Lemoyne, PA 17043  
Tel. 717.731.1700  
Fax 717.731.8205  
Mobile 717.503.1928  
rutledge@bybelrutledge.com  
www.bybelrutledge.com

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<< < Set 1 of 1 >>

**From:** "Berman, Brett" <BBerman@foxrothschild.com>  
**To:** Cohen, Stephen M. <SMCohen@foxrothschild.com>, Joe Cole <joecole@parfunding.com>  
**Cc:** Joe Mack <joe@parfunding.com>, "Taylor, Lauren W." <LWTaylor@foxrothschild.com>  
**Subject:** RE: [EXT] Re: Draft For Investor Email  
**Sent:** Tue, 24 Mar 2020 19:41:35 +0000

I am good with this version.

Joe Cole – I would just change the first paragraph where it says “our physical office”. We cant be sure which eyes see this so I would just slightly modify to not get caught on the words.

**Brett A. Berman, Esq.**  
**Partner**



[Firm Website](#) | [COVID-19 Resource Center](#)

**PA:** 2000 Market Street | 20<sup>th</sup> Floor | Philadelphia, PA 19103  
**NY:** 101 Park Avenue | Suite 1700 | New York, NY 10178

(215) 299-2842 (Philadelphia office)  
(212) 878-7945 (New York office)  
(215) 299-2150 (facsimile)

[bberman@foxrothschild.com](mailto:bberman@foxrothschild.com)

[California](#) | [Colorado](#) | [Connecticut](#) | [Delaware](#) | [DC](#) | [Florida](#) | [Georgia](#) | [Illinois](#) | [Minnesota](#) | [Nevada](#) | [New Jersey](#) | [New York](#) | [North Carolina](#) | [Pennsylvania](#) | [South Carolina](#) | [Texas](#) | [Washington](#)

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**From:** Cohen, Stephen M. <SMCohen@foxrothschild.com>  
**Sent:** Tuesday, March 24, 2020 3:32 PM  
**To:** Joe Cole <joecole@parfunding.com>; Berman, Brett <BBerman@foxrothschild.com>  
**Cc:** Joe Mack <joe@parfunding.com>; Taylor, Lauren W. <LWTaylor@foxrothschild.com>  
**Subject:** RE: [EXT] Re: Draft For Investor Email

Clean and marked next draft to reflect our conversation.

**Stephen Cohen**

Partner

**Fox Rothschild LLP**

2000 Market Street

20th Floor

Philadelphia, PA 19103-3222

(215) 299-2744 -direct

(215) 266-9601-cell

(215) 299-2150- fax

[SMCohen@foxrothschild.com](mailto:SMCohen@foxrothschild.com)

[www.foxrothschild.com](http://www.foxrothschild.com)

**From:** Joe Cole <joecole@parfunding.com>

**Sent:** Tuesday, March 24, 2020 3:29 PM

**To:** Berman, Brett <BBerman@foxrothschild.com>

CBSG-ReceiverNative-000255232

**Subject:** Re: [EXT] Re: Draft For Investor Email

We just spoke with Stephen on a call and agree with excluding specific numbers on the letter.

He is drafting a revision and will be sending it to everyone shortly.

Joe Cole

On Tue, Mar 24, 2020 at 3:25 PM Berman, Brett <[BBerman@foxrothschild.com](mailto:BBerman@foxrothschild.com)> wrote:

I am good with changes with limited exception.

I do not necessarily think we need to list the specific numbers of the portfolio or the diminished cash flow numbers with specificity.

Otherwise, I am good with this.

Joe/Joe – any thoughts? Happy for us to get on a call.

Thanks.

**Brett A. Berman, Esq.**  
**Partner**



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**PA:** 2000 Market Street | 20<sup>th</sup> Floor | Philadelphia, PA 19103

**NY:** 101 Park Avenue | Suite 1700 | New York, NY 10178

**(215) 299-2842** (Philadelphia office)

**(212) 878-7945** (New York office)

**(215) 299-2150** (facsimile)

[bberman@foxrothschild.com](mailto:bberman@foxrothschild.com)

California | Colorado | Connecticut | Delaware | DC | Florida | Georgia | Illinois | Minnesota | Nevada | New Jersey | New York | North Carolina | Pennsylvania | South Carolina | Texas | Washington

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**From:** Cohen, Stephen M. <[SMCohen@foxrothschild.com](mailto:SMCohen@foxrothschild.com)>

**Sent:** Tuesday, March 24, 2020 2:50 PM

**To:** Joe Cole <[joecole@parfunding.com](mailto:joecole@parfunding.com)>; Joe Mack <[joe@parfunding.com](mailto:joe@parfunding.com)>

**Cc:** Berman, Brett <[BBerman@foxrothschild.com](mailto:BBerman@foxrothschild.com)>; Taylor, Lauren W. <[LWTaylor@foxrothschild.com](mailto:LWTaylor@foxrothschild.com)>

**Subject:** RE: [EXT] Re: Draft For Investor Email

Guys, here is my redraft. This has not yet been blessed by Brett/Fox team, but for the purpose of expediting progress, here it is. I am prepared to review by phone if anyone wants to.

**Stephen Cohen**

Partner

CBSG-ReceiverNative-000255232

**From:** Joe Cole <[joecole@parfunding.com](mailto:joecole@parfunding.com)>

**Sent:** Tuesday, March 24, 2020 11:33 AM

**To:** Joe Mack <[joe@parfunding.com](mailto:joe@parfunding.com)>

**Cc:** Cohen, Stephen M. <[SMCohen@foxrothschild.com](mailto:SMCohen@foxrothschild.com)>; Berman, Brett <[BBerman@foxrothschild.com](mailto:BBerman@foxrothschild.com)>; Taylor, Lauren W. <[LWTaylor@foxrothschild.com](mailto:LWTaylor@foxrothschild.com)>

**Subject:** [EXT] Re: Draft For Investor Email

I toned down being overly hyperbolic but we can certainly adjust the language to make it seem more worrying.

The important thing to note is that it addresses the points as discussed during our conversations yesterday:

- world has changed
- preserve the investment in near zero revenue environment
- reality is we could go into liquidation
- not taking new debt to increase costs
- 3 month hold on interest
- foreshadow strategy, may need period without interest before resuming interest payments
- study economic effects and will respond with additional details

I also wanted to make sure it's sound legally, and I'm not saying anything that will screw up our follow up proposal.  
Thanks.

On Tue, Mar 24, 2020 at 11:28 AM Joe Mack <[joe@parfunding.com](mailto:joe@parfunding.com)> wrote:

What do you think guys??? I like it a lot, but I want to give them more of a dire response and let them know we can potentially be out of business

**From:** Joe Cole <[joecole@parfunding.com](mailto:joecole@parfunding.com)>

**Sent:** Tuesday, March 24, 2020 11:21 AM

**To:** Joe Mack <[Joe@parfunding.com](mailto:Joe@parfunding.com)>; Cohen, Stephen M. <[SMCohen@foxrothschild.com](mailto:SMCohen@foxrothschild.com)>; Berman, Brett <[BBerman@foxrothschild.com](mailto:BBerman@foxrothschild.com)>; Taylor, Lauren W. <[LWTaylor@foxrothschild.com](mailto:LWTaylor@foxrothschild.com)>

**Subject:** Draft For Investor Email

I have the following draft message to send out for investors prior to subsequently sending over our note restructure plan:

"Over the past two weeks, Par Funding, like many other companies in the world, has experienced a drastic change in its normal course of business. We have closed our offices and have been remotely working to manage our MCA portfolio in a near zero revenue environment.

Given this unprecedented global economic crisis, we are asking all of our investors for a hold on interest payments and note redemptions for the next three months while the company solidifies its business continuity strategy.

Our priority is to maintain healthy cash reserves to protect the company and your capital with us. During this time, we are focusing on collecting client payments and reducing exposure for the deals on our MCA portfolio. We believe that this strategy and strictly controlling outgoing cash flow will be critical in protecting both your capital and our retained earnings in the business.

We have also stopped taking any additional creditor capital and feel that any additional funds could not be responsibly deployed into new deals in the current economic environment.

How we manage this crisis in the coming months will be pivotal to ensuring the future success of our company and avoiding any sort of default or liquidation scenario.

We remain grateful for your support and hope you are faring well during these challenging times. We plan to update you again soon."

Please provide feedback and we can send to our entire investor pool accordingly.

This will be emailed from [management@parfunding.com](mailto:management@parfunding.com) which will forward correspondence to Joe and myself.

I'm still holding off on sending this out or any other investor communications until further discussion with you guys.

Thank you.

**Joe Cole**  
CFO



20 N 3rd St  
Philadelphia, PA 19106

☎ Office: (215) 613-4126

☎ Cell: (949) 232-2463

✉ [joecole@parfunding.com](mailto:joecole@parfunding.com)

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## **INDEPENDENT BUSINESS SERVICES AGREEMENT**

THIS AGREEMENT made and entered into on the date last written below, by and between Complete Business Solutions Group, Inc. (herein the "Business"), a Delaware business corporation with an office at 20900 NE 30th Avenue, Aventura, FL 33180 and ALB Management Inc. a Delaware business corporation with an office at 3704 Kennet Pike, Suite 150, Wilmington, DE 19807 (herein the "Business Services Provider" or "BSP");

WHEREAS, the Business desires to retain the services of BSP, and BSP desires to render services to the Business, upon the terms and conditions herein stated:

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby promise and agree as follows:

### **SECTION 1- SCOPE OF AGREEMENT**

**1.1 Superseding Obligation.** The terms of this Agreement shall prevail and supersedes all terms of prior consulting, service, management or operation agreements between the parties to this Agreement. Any obligations, debts or credits which may currently exist under the terms of any prior notes or finance agreements between the parties are hereby ratified.

**1.2 General.** BSP further agrees that BSP shall comply with the policies, standards, and regulations of the Business from time to time established, and shall perform the duties assigned herein faithfully, intelligently, to the best of its ability, and in the best interest of the Business in the performance of the Services, as herein defined.

**1.3 Term of Agreement.** This Agreement shall remain in effect for five (5) years from the date of this Agreement, and from year to year thereafter if both parties mutually consent to the extension of this Agreement. Otherwise, the Agreement is terminated at the end of the five (5) year period, or at the end of each year extension. BSP's responsibilities to provide Services as set out in this Agreement with regard to future accounts receivable (herein "Receivables") funded prior to the termination of this Agreement, and the Business' obligation to pay the Compensation set out in this Agreement, will survive any termination of this Agreement, with the exception of instances where the Business specifically instructs BSP in writing to stop management efforts. The Business will be responsible to pay any costs, expenses and for the labor expended by BSP incurred in facilitating the transfer of the remaining Receivables to the Business or its designee. Otherwise, BSP shall be obligated to continue to service all the Receivables managed by BSP under this Agreement until paid in full regardless of whether Agreement termination has occurred. This Agreement may be terminated by either party upon thirty (30) days written notice for any or no reason.

### **SECTION 2 – CONFIDENTIALITY**

#### **2.1 Confidentiality.**

- (i) BSP acknowledges and agrees that all financial and accounting records, lists of

property owned by Business and its related business enterprises and/or subsidiaries, including, but not limited to, Complete Business Solutions Group, Inc., and Par Funding, including amounts paid therefore, client and customer lists, and other Business data and information related to its business (herein collectively the "Confidential Information") are valuable assets of the Business.

(ii) Except for disclosures required to be made to advance the business of the Business and information which is a matter of public record, BSP shall not, during the term of this Agreement or after the termination of this Agreement, disclose any Confidential Information to any person or entity or use any Confidential Information for the benefit of BSP or any other person or entity, except with the prior written consent of the Business.

(iii) The Business understands that certain Confidential Information may be required to be disclosed to certain individuals, such as directors, officers, employees, agents, contractors or advisors of BSP (collectively, the "BSP Representatives"). BSP shall maintain records of the persons to whom Confidential Information is distributed, will inform all such persons of the confidential nature of the information, will direct them to treat such information in accordance with this Agreement, will direct them to exercise such precautions or measures as may be reasonable in the circumstances to prevent improper use of Confidential Information by them, and will be responsible for any breaches by BSP or the BSP Representatives of the provisions of this Agreement.

(iv) The term "Confidential Information" does not include information that is or becomes publicly available (other than through breach of this Agreement) or information that is or becomes available to BSP on a non-confidential basis, provided that the source of such information was not known by BSP to be bound by a confidentiality agreement or other legal or contractual obligation of confidentiality with respect to such information after such inquiry as would be reasonable in the circumstances.

(v) In the event that BSP or any of BSP's Representatives, assigns, or agents are requested or required by law or legal process to disclose any of the Confidential Information, the party required to disclose such information shall provide the Business with prompt oral and written notice before making any disclosure. In addition, Confidential Information may be disclosed to the extent required in the course of inspections or inquiries by federal or state regulatory agencies to whose jurisdiction BSP is subject and that have the legal right to inspect the files that contain the Confidential Information, and BSP will advise Business promptly upon such disclosure.

**2.2 Return of Documents.** BSP acknowledges and agrees that all originals and copies of records, reports, documents, lists, plans, memoranda, notes and other documentation related to the business of the Business or containing any Confidential Information shall be the sole and exclusive property of the Business, and shall be returned to the Business upon the termination of this Agreement or upon the written request of the Business.

**2.3 No Release.** BSP agrees that the termination of this Agreement shall not release BSP from any obligations under Section 2.1 or 2.2.

### **SECTION 3 – SERVICES**

**3.1 Services to be Provided Under this Agreement.** The services to be provided to the Business by BSP shall include, but not be limited to, the administration and management of agreements for the purchase of Receivables and the collection of the proceeds from such Receivables, portfolio management, portfolio balancing and general day-to-day management of the Business' business operations as it relates to the Receivables (herein the "Services"). The Business may engage in any business, which may or may not be managed by BSP under this Agreement, including the purchase and management of Receivables not managed by BSP under this Agreement. The Business may request that BPS manage Receivables under this Agreement that are initially purchased and managed by the Business or by other entities (herein "Other Receivables"). BPS is obliged to manage such Other Receivables under this Agreement. The Other Receivables will not be included in the calculation of Gross Funding, as defined herein, for the purpose of calculating BPS' compensation under this Agreement. All Receivables and Other Receivables managed by BPS will remain the property of the Business or the other entities. Receivables and Other Receivables shall be collectively referred to as "Receivables" herein, except for the purpose of calculating BSP's compensation. BSP may use its discretion with respect to providing the Services and with respect to exercising or not exercising any rights or taking or refraining from taking any action or actions which BSP may be entitled to exercise or take under or in connection with the Services and may, with the consent of Business, modify or waive, or consent to the modification or waiver of, any of the terms or conditions of said agreements or Receivables.

### **SECTION 4 – COMPENSATION**

**4.1 Definitions.** For purposes of this Section, capitalized terms shall have the following meanings:

- (i) "**Funding Percentage**" means a percentage of Gross Funding, initially set at ten percent (10%) of Gross Funding. The Funding Percentage is subject to adjustment from time to time by the Business, and may be reduced to zero percent (0%).
- (ii) "**Gross Funding**" means, with respect to a relevant period, the aggregate amount of funds deployed by the Business to its customers for the purchase of Receivables managed by BPS under this Agreement, regardless of whether such funds were provided by the Business or another source.
- (iii) "**Profit Percentage**" means a percentage of the Funding Percentage, initially set at ten percent (10%), to be paid to BSP (and certain other persons and entities as designated by the Business) as part of the Profit Participation. The Profit Percentage is subject to adjustment from time to time by the Business, and may be reduced to zero percent (0%).

**4.2 Profit Participation.** BSP (and certain other persons and entities as designated by the Business) shall receive a "**Profit Participation**" at the end of each quarter calculated as the product of (i) the Funding Percentage and (ii) the Profit Percentage.

**4.3** BSP's rights to Profit Participation do not and shall not constitute or be deemed to

constitute an ownership interest in the Business, any right to manage the Business, or any right to vote in any matter as to which holder of equity interests in the Business may vote.

**4.4 No other benefits.** BSP shall not be entitled to compensation or benefits of any kind for performance of the Services other than its Profit Participation expressly set forth in this Section, and the reimbursement of expenses incurred in the performance of this Agreement. Expenses shall not include expenses of ordinary overhead (i.e. rent, utilities, etc.) or ordinary payments made to personnel or executives of BSP.

#### **SECTION 5 - INDEPENDENT CONTRACTOR STATUS**

**5.1 Independent Contractor.** BSP acknowledges that it and the BSP Representatives are independent contractors and not agents, partners, joint venturers nor employees of the Business. Neither BSP nor the BSP Representatives shall have any authority to bind or otherwise obligate the Business in any manner, nor shall BSP or the BSP Representatives represent to anyone that any of them has a right to do so. BSP further agrees that in the event that the Business suffers any loss or damage as a result of a violation of this provision, BSP shall indemnify and hold harmless the Business from any such loss or damage.

#### **SECTION 6 - REPRESENTATIONS OF WARRANTIES OF BSP**

**6.1 Warranties.** BSP represents and warrants to the Business that there are no employment contracts or other contractual obligations to which BSP is subject that prevent BSP from entering into this Agreement or from performing fully the Services under this Agreement.

#### **SECTION 7 - INDEMNIFICATION**

7.1 BSP shall indemnify, hold harmless, and defend the Business and its managers, officers directors, employees, agents, affiliates, successors, and assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorneys' fees, that are incurred or to be incurred by Indemnified Party or awarded or claimed against Indemnified Party in any court, administrative, or any alternative dispute resolution proceeding (collectively an "Indemnified Claim"), arising out of any third-party or government agency claim alleging:

- (i) breach or non-fulfillment of any obligation, representation, warranty, or covenant of this Agreement by BSP or BSP's Representatives;
- (ii) any negligent or more culpable act or omission of BSP or BSP's Representatives (including any reckless or willful misconduct) in connection with the performance of the obligations under this Agreement; or
- (iii) any failure by BSP or BSP's Representatives to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of the obligations under this Agreement.

7.2 **Settlement of Indemnified Claims by BSP.** BSP shall give prompt written notice to Indemnified Party of any proposed settlement of an Indemnified Claim. BSP may not, without Indemnified Party's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder unless such settlement, compromise, or consent:

(i) includes an unconditional release of Indemnified Party from all liability arising out of such claim;

(ii) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of Indemnified Party; and

(iii) does not contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains, or interferes with the business of Indemnified Party or any of Indemnified Party's affiliates.

## **SECTION 8 - MISCELLANEOUS PROVISIONS**

8.1 **Survival.** The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. Any provision hereof which imposes upon BSP or the Business an obligation after termination or expiration of this Agreement shall survive termination or expiration hereof and be binding upon BSP or the Business.

8.2 **Waiver.** No waiver of any provision of this Agreement shall be deemed, or shall be constituted, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8.2.1 **Assignment.** BSP shall not assign any of its rights under this Agreement, or delegate the performance of any of its duties hereunder, without the prior written consent of the Business.

8.3 **Choice of Law.** This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any applicable principles of conflict of laws.

8.4 **Venue/Jurisdiction.** The Federal and State Courts located in Philadelphia, Pennsylvania shall have exclusive jurisdiction and be the sole location for any legal dispute related to the terms of this Agreement.

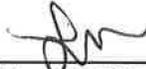
8.5 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties.

7.7 **Severability.** If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable. If a court finds that any

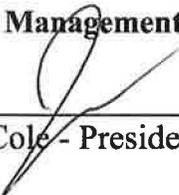
provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

IN WITNESS THEREOF WE SET OUR SIGNATURES, this the 1<sup>st</sup> day of July, 2019.

**Complete Business Solutions Group, Inc.**

  
\_\_\_\_\_  
Lisa McElhone - President

**ALB Management Inc.**

  
\_\_\_\_\_  
Joe Cole - President