UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____/

JOSEPH LAFORTE AND LISA MCELHONE'S MEMORANDUM OF LAW IN OPPOSITION TO RECEIVER'S MOTION (1) TO APPROVE PROPOSED TREATMENT OF CLAIMS AND (2) FOR DETERMINATION OF PONZI SCHEME

Joseph LaForte and Lisa McElhone ("Defendants"), submit this memorandum of law in opposition to the Receiver's Motion (1) to Approve Proposed Treatment of Claims and (2) for Determination of Ponzi Scheme (the "Claim Determination Motion," ECF No 1843), and state as follows:

INTRODUCTION

The Road to Hell is Paved with Good Intentions

The message of this well-known proverb reminds us that well intended acts can have disastrous results. The Receiver's motion constitutes a sincere but misguided attempt to administer rough justice in the face of a complex factual scenario. Nevertheless, on its best day, the Receiver's proposal will do far more harm than good without increasing the funds available for distribution by a single dollar. It will also cost hundreds of thousands of dollars more in legal fees, inflicting additional financial pain on the very investors the Receiver is charged with helping. For these reasons alone, the Receiver's attempt to have the court undo the outcome of years of litigation in order to determine that Par Funding constituted a Ponzi Scheme should be rejected by the court.

The Receiver's motion asks the court to revisit the findings of fact and conclusions of law contained in the Amended Final Judgment. While such a request would be extraordinary under

any circumstances, it is particularly astonishing here in light of the following facts and circumstances:

1. The Receiver fully participated in all aspects of the disgorgement proceedings that led to the entry of the court's Amended Final Judgment without ever advancing his newly adopted position that Par Funding operated as a Ponzi Scheme;
2. Although the Federal Rules of Civil Procedure provide various methods for seeking relief from a judgment (for example, in Rules 59 and 60), the Receiver makes no reference to any rule. Instead, in seeking what amounts to a "do-over", the Receiver has sought to carve out his own new path for reaching a result that is simply not permitted by the rules or the case law;
3. As if the foregoing is not enough, the Receiver has chosen to file this ill-considered attempt to rewrite history one month before the Eleventh Circuit Court of Appeals is scheduled to entertain oral argument on the Defendants' appeal of the Amended Final Judgment; and
4. The Receiver chooses to do all of the foregoing after standing silent with respect to the Amended Final Judgment for nearly a year and a half.

It would be difficult, under the most favorable of circumstances, to view the Receiver's position as remotely comporting with traditional principles of equitable jurisprudence. But these are not the most favorable of circumstances.

Instead, as the court has no doubt observed over the last day or two, the Receiver's effort to open Pandora's Box has been met with a firestorm of opposition from the Receiver's prime constituency – the disappointed investors. (*See, e.g.* ECF Nos 1862; 1863; 1864; 1865; 1866; etc.). As these investors make clear in their filings with the court, the Receiver's zeal to administer rough justice threatens to expose a number of investors to a series of harsh consequences – some of which may well have been unintended. First, however, the Receiver makes clear that in charting this new course, the instant motion is just the beginning – and not the end. Specifically, the Receiver plainly states his intention (should the court grant the relief he seeks) to bring clawback actions against numerous investors that the Receiver now contends are "net winners". While the foregoing moniker might have had justifiable application in a New York courtroom dealing with the wreckage of Bernard S. Madoff and Company, it surely has no place here. There are no "net winners." Second - and perhaps more concerning – the Receiver has evidently not considered the

sheer chaos that will result from the granting of his motion. To be clear, granting the instant motion will have numerous adverse tax consequences to the investors – which have been highlighted in the various filings received by the court over the last couple of days.

Finally, the Receiver's attempt to rewrite history would trample the due process rights of the Defendants. In order to achieve his objectives, the Receiver proposes to ignore the findings of fact and conclusions of law contained in the Amended Final Judgment. The Receiver offers no justification or precedent that would permit this outcome – other than a handful of vague aphorisms reciting general principles of equity jurisprudence. But this case is not venued in the Star Chamber, but rather in a Federal Court in the twenty first century, and if the Receiver wants relief from the Amended Final Judgment, then there are rules and procedures which must be observed (but which the Receiver has chosen to totally ignore). If the Receiver is to be permitted to obtain the relief he requests (for determination of Ponzi Scheme) that can only be done by abrogating the Amended Final Judgment – and not even the Receiver has the chutzpah to make that request *in haec verba*. The plain fact of the matter is that waiting a year and a half to seek the relief, and then doing so on the eve of oral argument of the appeal before the Eleventh Circuit, would constitute gross laches in any Court of Equity. Moreover, the disgorgement proceeding was based on a consent judgment that would never have been agreed to if a determination of a Ponzi Scheme had even been a remote possibility. The Defendants' liability has been litigated, adjudicated, and fixed. All of this cannot now be undone on the Receiver's whim because the Receiver has determined that his own sense of rough justice requires a recalculation of the investors' profit and loss.

At the end of the day, the Court should swiftly and firmly deny the Receiver's request to rewrite history and get about the complicated process of adjudicating the Receiver's claim determinations. The motion should be denied.

BACKGROUND AND FACTS

1. The SEC filed its Complaint against Par Funding ("Par"), the Defendants and other individuals and entities on July 27, 2020 (ECF No. 1) and filed an Amended Complaint on August 10, 2020 (ECF No. 119). Neither version of the Complaint contained allegations that Par was a "Ponzi" scheme.

2. On November 23, 2021, Defendants agreed to bifurcated consent judgments (the "Consents") in which they conceded liability without admitting or denying the allegations of the Amended Complaint – except that they agreed that those allegations would be deemed true and

would not be disputed for purposes of litigating the SEC's entitlement to disgorgement and penalties before the Court. ECF Nos. 1008 and 1010.

3. On April 15, 2022, the SEC filed an Omnibus Motion for Final Judgments (ECF No. 1214) accompanied by a two-page supporting Declaration of the Receiver which attested to the amounts Par purportedly raised from noteholders and the amounts that were repaid (ECF No. 1214-1). The SEC's filing contained unpled allegations that Par was a "Ponzi" scheme.

4. On May 4, 2022, Defendants moved to strike the SEC's Ponzi allegations or, alternatively, to withdraw from their Consents – which they never would have agreed to had they known such allegations would be asserted. (*See* ECF No. 1224 and supporting affidavits).

5. Following a hearing on the Defendants' motion to strike, the SEC agreed to remove all references to a "Ponzi scheme" from its submission, and thereafter filed the Amended Omnibus Motion for Final Judgments against Defendants. (ECF No. 1252, the "Disgorgement Motion").

6. Relying on the sworn calculations presented in the Receiver's supporting Declaration (ECF No. 1214-1), the Disgorgement Motion asserted that Defendants should be jointly and severally liable to pay "disgorgement of **$226,471,877,** representing the amount Par Funding raised from investors **($550,325,596)** minus the amounts Par Funding paid in principal or interest payments to investors and Agent Funds **($300,108,117)**… and the amounts Par Funding paid to Cole ($13,247,011) and Abbonizio ($10,498,581)." *See* ECF No. 1252 at 30 (footnotes omitted). In essence, the Disgorgement Motion asserted that Defendants are responsible for disgorging all sums Par raised from the issuance of promissory notes less principal and interest paid to noteholders (the "Net-Raise"), and argued that neither Par nor the Defendants were entitled to deductions for *any* business expenses.

7. On July 29, 2022, the Defendants filed their response to the SEC's Disgorgement Motion (ECF No. 1329, the "Opposition to Disgorgement Motion"), which disputed the SEC's calculation of the Net-Raise and demonstrated that Defendants were entitled to deductions for the legitimate business expenses of Par (which totaled tens-of-millions of dollars).

8. Defendants' Opposition to the Disgorgement Motion also included an analysis demonstrating that Par had been a successful and profitable business prior to the Receivership. This analysis was supported by expert reports and other evidence including, but not limited to, the Glick Expert Report dated 08/23/2021 (ECF No. 1330-16); Glick Deposition Transcript Excerpts (ECF No. 1330-17); Glick Declaration dated 04/15/2021 (ECF No. 1330-18); Glick Declaration

dated 07/13/2021 (ECF No. 1330-19); Glick Rebuttal Report dated 08/27/2021 (ECF No. 1330-20); and James Klenk Deposition Transcript Excerpts (ECF No. 1329-20).

9. On August 4, 2022, the SEC filed a reply in further support of its Disgorgement Motion in which it sought to characterize Par as a "Ponzi scheme" (without actually using that phrase) in an attempt to persuade the Court to deny Defendants deductions for the expenses attendant to Par's legitimate business activities. *See* ECF No. 1341 at 13 ("Defendants' use of investor funds to pay investors their purported investment returns is a further reason why legitimate business expenses are not deducted.").

10. On September 14, 2022, the Court held a lengthy evidentiary hearing on the SEC's Disgorgement Motion ("Disgorgement Hearing") in which it heard argument about the nature of Par's business and observed that "if the Court is ultimately adopting the defendants' view that this was at one point a business that was generating some income and making valid loans, then… [i]t would arguably open the door for the Court to consider deductions." *See* ECF No. 1419, Trans. at 70. Taking guidance from the Receiver, the Court determined that Par incurred significant business expenses for outlays such as banking fees, computer and internet expenses, insurance costs, janitorial services, legal fees, other professional fees, payroll and utilities costs. *Id.* at 69-72.

11. At the hearing, the Court also addressed the SEC's argument that Defendants should be subject to a $100 Million penalty, and directly rejected the SEC's comparison of this case to *Woodbridge* – which involved a $1.2 Billion Ponzi scheme. *Id.* at 122 ("This is not *Woodbridge*. This is not 100 million civil penalty. It just, it's not.").

12. Ultimately, the Court held Defendants had met their burden and established that Par incurred more than $66 Million in legitimate business expenses, $8.6 Million in arms-length consulting fees, and $11.8 Million in taxes – all of which was recognized in reducing the amount of disgorgement Defendants were ordered to pay. (*See* ECF No. 1450 at 19-26).

13. On November 23, 2022, the Court entered its Amended Final Judgment against the Defendants. (ECF No. 1451). That same day, the Court ordered this case administratively closed, stating: "Litigation on liability issues has concluded, Final Judgments have been entered against all Defendants, and Plaintiff and Receiver have notified the Court that the Receiver is consenting to Final Judgments against the corporate Defendants—all of which obviates the need for further litigation." (ECF No. 1453).

14. On December 21, 2022, the Receiver filed a Motion to Establish and Approve: (1) Proof of Claim Form; (2) Claims Bar Date and Notice Procedures; and (3) Procedure to Administer and Determine Claims (ECF No. 1467). The Court entered an Order granting the Receiver's Motion on December 23, 2022 (ECF No. 1471).

15. On March 4, 2024, the Court conducted a status conference during which the Receiver and SEC expressed opposing views of the appropriate claim reconciliation and distribution process (ECF No. 1819). Specifically, the Receiver proposed utilizing a calculation method that considers the investors' net investment in Par Funding (*i.e.*, total cash in, minus total cash out for all notes the investors held, including those that had been repaid in full), whereas the SEC maintains that this calculation method is improper absent a finding that Par operated as a Ponzi scheme. (ECF No. 1842 at 2).

16. Confronted with the SEC's opposition, the Receiver now asks the Court to "declare" that Par was a Ponzi scheme and seeks to introduce new evidence – the Declaration of Yale Scott Bogen (ECF No. 1843-27, the "Bogen Declaration") – to support this new liability theory. The Receiver asks the Court to determine that Par was a Ponzi scheme even though: 1) it is undisputed that Ponzi allegations were never pleaded in this case[1]; 2) the Court found that Par had over $64 Million in legitimate business expenses (which necessarily acknowledges that Par was a legitimate business, *not* a Ponzi scheme[2]); 3) the Court expressly rejected the SEC's comparison of this case to the *Woodbridge* Ponzi scheme; and 4) the Court already entered a Final Judgment which resolved all liability issues in this case, and that Final Judgment did not include (and is wholly inconsistent with) a determination that Par operated as a Ponzi scheme.

17. In short, rather than acting as a neutral charged with safeguarding the Receivership assets, the Receiver seeks to step into the shoes of the SEC and relitigate liability *after* a Final Judgment has already been entered, and *without* seeking reconsideration under Federal Rules of Civil Procedure 59 or 60.[3]

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[1] *See* Amended Disgorgement Order, ECF No. 1450 at 36 ("the Amended Complaint does not contain allegations of a Ponzi scheme").

[2] Indeed, the Receiver directly states in his Claim Determination Motion: "If the Court agrees with the Receiver and determines that CBSG, indeed, operated as a Ponzi scheme, any disgorgement judgment against the entity may not be reduced by any purported business expense as there was no legitimate underlying business." ECF No. 1843 at 47.

[3] Moreover, the Receiver seeks to relitigate these issues while the Court's Final Judgment is on appeal and is scheduled for oral argument before the Eleventh Circuit on June 10, 2024.

18. Granting the Receiver the relief he is seeking *would not* facilitate an expedient resolution of the issues before the Court, nor would it benefit the investors as a whole. Rather declaring Par a Ponzi scheme (which it is not) at this late stage in the proceedings would lob a grenade into the claims process, leading to numerous objections and potential appeals, and opening up a whole new front to this litigation – as the Receiver has announced his intent to pursue "claw back claims against older investors" and a separate disgorgement judgment against Par which does not include any deductions for legitimate business expenses (*see* ECF No. 1843 at 4, 47, 50-51), even though the proposed judgment against Par would directly conflict with the existing Final Judgment against Defendants, which ordered disgorgement based on the total amount Par raised from noteholders, less the amount repaid and legitimate business expenses.

19. For these reasons, and as discussed further herein, the Receiver's Claim Determination Motion is procedurally and substantively unsupportable, and the Court should deny the Receiver's request for a declaration that Par operated as a Ponzi scheme, and grant further relief requested in this response brief pertaining to the claims the Defendants submitted to the Receiver.

ARGUMENT

The Receiver's Claim Determination Motion ignores the Court's express findings regarding the nature of Par's business and the SEC's unpled Ponzi scheme allegations, as set forth in the Court's Disgorgement Order and Final Judgement (ECF Nos. 1450 and 1451). That hardly makes them go away. The Receiver is barred from relitigating these issues pursuant to the doctrines of Collateral Estoppel and/or *Res Judicata*. If the Receiver wished to obtain relief from the Court's Disgorgement Order and Final Judgment, he was required to do so by filing a timely motion under Rule 59 and/or 60 of the Federal Rules of Civil Procedure – which he has not done.

1. Legal Standard

"Collateral estoppel, i.e., issue preclusion, refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided." *See Quinn v. Monroe Cnty.*, 330 F.3d 1320, 1328 (11th Cir. 2003) (citations omitted). "The doctrine of collateral estoppel precludes a party from relitigating an issue that was fully litigated in a previous action." *Deweese v. Town of Palm Beach*, 688 F.2d 731, 733 (11th Cir. 1982). Collateral estoppel applies where: "(1) an identical issue, (2) has been fully litigated, (3) by the same parties or their privies, and (4) a final

decision has been rendered by a court of competent jurisdiction." *See Quinn*, 330 F. 3d at 1329 (citing *Community Bank of Homestead v. Torcise,* 162 F.3d 1084, 1086 (11th Cir.1998)).

"[T]he doctrine of res judicata "bars the filing of claims which were raised or could have been raised in an earlier proceeding." *Maldonado v. U.S. Atty. Gen.*, 664 F.3d 1369, 1375–76 (11th Cir. 2011) (citations omitted). Four elements must be present for Res Judicata to bar a subsequent claim or action: "(1) there is a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the parties, or those in privity with them, are identical in both suits; and (4) the same cause of action is involved in both cases." *Id.* "*Res judicata* acts as a bar 'not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same operative nucleus of fact.'" *Id.* (citing *Pleming v. Universal–Rundle Corp.*, 142 F.3d 1354, 1356 (11th Cir. 1998)).

To challenge the Court's Disgorgement Order and Final Judgment, the Receiver would have had to file a timely motion under Rule 59 and/or 60 of the Federal Rules of Civil Procedure. Rule 59(e) allows a district court to alter or amend a judgment in order to "rectify its own mistakes in the period immediately following its decision." *See Harris v. Wingo*, No. 2:18-CV-17-JES-MRM, 2022 WL 562263, at *1 (M.D. Fla. Feb. 24, 2022) (citing *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020)) (internal citations omitted). A district court may alter or amend a judgment "that is based on manifest errors of law or fact." *Jenkins v. Anton*, 922 F.3d 1257, 1263 (11th Cir. 2019); *see also Smalley v. Holder*, No. 09-21253-CIV, 2010 WL 11504501, at *1 (S.D. Fla. Dec. 13, 2010) ("To justify reconsideration, Plaintiff must establish: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice").

Rule 60(a) allows a district court to "correct a clerical mistake or a mistake arising from oversight or omission." *See* Fed. R. Civ. P. 60(a). "A district court may act under Rule 60(a) only to correct mistakes or oversights that cause the judgment to fail to reflect what was intended at the time." *Phuc Quang Le v. Humphrey*, 703 F. App'x 830, 835 (11th Cir. 2017) (citing *Vaughter v. E. Air Lines, Inc.*, 817 F.2d 685, 688–91 (11th Cir. 1987)) (internal quotation marks omitted).

Rule 60(b) allows relief from a final judgment by a court in order to "prevent an inequitable operation of a judgment" to a party who demonstrates:

> (1) mistake, inadvertence, surprise or excusable neglect, (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time, (3) fraud, misrepresentation, or misconduct by an opposing party, (4) the judgment

> is void, (5) the judgment has been satisfied, released, discharged, reversed or vacated, or (6) any other reason that justifies relief.

United States v. Fasttrain II Corp, 2019 WL 3426107 (S.D.N.Y. 2019)("*Fasttrain*"), *citing Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984) (citation omitted). "Rule 60(b) must be shaped to the specific grounds for modification or reversal enumerated in the Rule, and it may not be a mere general plea for relief." *Id., quoting Wendy's Int'l, Inc. v. Nu–Cape Constr., Inc.*, 169 F.R.D. 680, 686–87 (M.D. Fla. 1996). Rule 60 motions "must be made within a reasonable time." *Gill v. Wells*, 610 F. App'x 809, 812 (11th Cir. 2015)

2. The Receiver's Request for a Declaration that Par Operated as a Ponzi Scheme is Procedurally Improper and is Barred by the Doctrines of Collateral Estoppel and/or Res Judicata

The Receiver's request for a declaration that Par operated as a Ponzi scheme – which comes two years after the SEC voluntarily withdrew its unpled Ponzi allegations (*see* ECF No. 1251), and seventeen months after this Court entered a Disgorgement Order and Final Judgment *(see* ECF Nos. 1450 and 1451) acknowledging $64 Million in business expenses and deducting that amount from Defendants' disgorgement based on its recognition that Par engaged in some legitimate business activities and was not a wholly fraudulent scheme – is groundless, improper and barred by the doctrines of Collateral Estoppel and/or *Res Judicata*. The Receiver is seeking to relitigate issues this Court has already adjudicated and advance new theories of liability in an effort to support a separate claim for disgorgement from Par in an amount far greater than the $142 million Defendants were already ordered to disgorge (which was based on Par's Net-Raise less its legitimate business expenses). That number was fixed during the disgorgement proceedings – during which it was acknowledged that the Receiver had no "role to play in terms of presenting arguments" with respect to the amount of disgorgement and penalties. (Disg. H'ring T.18; *see* T. 7: the purpose of this hearing is to give the Receiver "numbers that you can put your hands around, in addition to everything you collected…so that you guys can actually figure out how to prioritize disbursement to investors" in the "claims process"). Whatever "claims process" the Receiver proposes, it cannot include relitigating disgorgement issues that were already decided as part of the Court's Final Judgment.[4]

[4] Nor is it clear why the Court would need to find a Ponzi scheme in order to use the net investment formula proposed by the Receiver. Noteably, the Court based its calculation of Defendants' disgorgement on the net funds Par received from noteholders less funds returned. It stands to

Tellingly, the Receiver' Claim Determination Motion contains a "Procedural Background" section which starts with the Receiver's appointment in August 2020 (ECF No. 141) and then proceeds to the initiation of the claims process in December 2022 (ECF No. 1467) – leapfrogging over, and omitting any discussion of, the Final Judgment and related findings of this Court. *See* ECF No. 1843 at 5-6. The Receiver would have us all pretend that the interested parties *did not* address the Ponzi-like fraud allegations; that these arguments and issues *were not* submitted in extensive briefing and in hearings; and that this Court *has not* adjudicated the Defendants' disgorgement obligation by taking Par's Net-Raise and deducting $64 Million in legitimate business expenses – which the Receiver concedes they would not be entitled had Par been a Ponzi scheme. *See* ECF No. 1843 at 47.[5]

The fact is, the Ponzi theory the Receiver now seeks to assert and prove was already thoroughly debunked by the Defendants in the underlying proceedings on disgorgement and penalties, and the Court's Disgorgement Order and Final Judgment reflect the Court's adjudication that a Ponzi scheme *was not* proved.[6] Among the specific issues that the defense thoroughly debunked through evidence submitted by their expert, Joel Glick, is the argument that older investors were repaid with funds collected from new investors – which is the crux of any Ponzi scheme. Defendants summarized Glick's findings, which showed:

> The bottom line is that the Defendants did not use noteholder funds to pay other noteholders, nor to pay themselves. *See* D.E. 727-2, Expert Report of Joel D. Glick at p. 4 ("As a result of investor funds having been used entirely to fund merchant advances, an analysis of the cash transactions reflects, on a FIFO basis, consulting fees were not paid with Investor Funds"); *see also* Transcript of Glick Deposition at 100: 14-18 (testifying, based on a FIFO analysis, that monies paid to investors were comprised exclusively of monies that merchant borrowers had paid to Par); *id.* at 71: 21-24 and 72: 22 to 73: 6 (Glick's conclusions and analysis were based on the flow of funds on an accrual basis); *id.* at 115: 3-12 (testifying that, during

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reason that the Court, upon a proper showing, could choose to permit the Receiver to distribute funds to individual noteholders based on the same formula (*i.e.,* the investor's net investment less total returns) without the need to declare a Ponzi scheme – although, as pointed out above, there are numerous other adverse consequences that strongly militate against choosing this method.

[5] Likewise, the SEC argued that Defendants were not entitled to deduct business expenses under *Liu* because Par's business purportedly resulted from wrongful activity, including the repayment of investors with funds from new investors and the commingling of funds. ECF No. 1252 at 32.

[6] *See* Disgorgement Order, ECF No. 1450 at 19 ("While the Court will not go so far as to say that Par Funding was always a profitable business – after all, forensic analysis of its QuickBooks records shows that it was often breaking even or in the red… – the Court does not find that Par Funding had absolutely no value apart from the fraudulent scheme.").

> each month of Par's operations prior to the Receivership, cash received from merchants exceeded principal and interest paid to noteholders, and cash advances to merchants exceeded funds raised from noteholders).

(*See* ECF No. 1329 at 31).

In the Disgorgement Order, the Court held that the SEC had provided a "reasonable approximation of the requested disgorgement," but the Court also disagreed with the SEC on certain points and made significant adjustments to the SEC's proposed disgorgement calculation to address the equities. *See* ECF No. 1450. In particular, the Court expressly rejected the SEC's contention that the entire profit of Par's business resulted from its wrongful activity: "[T]he SEC has not made a sufficient showing that the entire undertaking of Par Funding resulted from wrongdoing such that it would fit into the narrow exception articulated in *Liu* precluding any deductions for legitimate business expenses." ECF No. 1252 at 33 (*quoting Liu*, 140 S. Ct. at 1945). To be perfectly clear, that "narrow exception" – which this Court already rejected – is exactly what the Receiver now proposes to relitigate and prove. *See* Receiver's Claim Determination Motion, ECF No. 1843 at 47 ("If the Court agrees with the Receiver and determines that CBSG, indeed, operated as a Ponzi scheme, any disgorgement judgment against the entity may not be reduced by any purported business expenses as there was no legitimate underlying business.").

Based on the foregoing, it is irrefutable that this Court has already decided that Par was engaged in lawful business activity warranting legitimate business deductions under *Liu*, and that the Receiver's attempt to prove Par operated as a Ponzi scheme is barred by the doctrine of Collateral Estoppel and/or *Res Judicata*. If the Receiver had wished to challenge the Court's *existing* findings, he should have done so by seeking reconsideration of the Disgorgement Order and Final Judgment. Since the Receiver does not even mention those documents in his motion, *a fortiori,* the Receiver has also not invoked Rule 59 or 60 to justify finding that the Court's prior rulings are wrong. Further, had the instant motion been brought under Rule 60, it would still be barred as untimely, since the Disgorgement Order and Final Judgment were entered in November 2022 – and nothing prevented the Receiver from seeking relief at that time.

Indeed, Yale Bogen – whose new Declaration the Receiver relies on – has been with DSI from its retention and was involved in this case from the beginning. In fact, the Receiver's very first motion for payment of professionals (ECF No. 438), stated that Yale S. Bogen was a

Managing Director who billed 338.4 hours in August and September 2020, including 50 hours for travel. (ECF No. 438-5 at p. 2) After spending upwards of $20 million on the Receivership, it is beyond absurd that the Receiver would float this new Bogen theory two full years after the decision on "Ponzi" and seventeen months after the Court's Final Judgment was entered. The Receiver's new evidence is clearly untimely – and Defendants have been substantially prejudiced by the ongoing delay in the payment of their disgorgement obligation (out of assets that have already been seized from them and placed in the Receivership Estate). Instead of fulfilling its duty to safeguard the Receivership Assets and facilitate a distribution process, the Receiver is pursuing a path that will further dissipate these assets and delay the end of the Receivership.

3. The Receiver's Assertion that Par Operated as a Ponzi Scheme is Meritless

Even if the Receiver's late effort to prove a Ponzi scheme were procedurally proper (it is not), the record evidence refutes the Receiver's contention that Par was a Ponzi scheme – which was only raised as a justification for the Receiver's proposal to use a "net investment calculation" methodology to assess investor claims. *See* Claim Determination Motion, ECF No. 1843 at 4 ("This methodology accounts for all cash an investor paid into CBSG, minus all cash the investor received from CBSG (regardless of whether it was characterized as the payment of interest, the return of principal, or otherwise)").

The Receiver argues this methodology is appropriate because Par was allegedly a Ponzi scheme which used new investor funds to pay "interest" to existing noteholders. *Id.* As a consequence, the Receiver would deny, and seek to "clawback," a sizable portion of payments already made to investors. *Id.* The Receiver argues that "interest" payments to investors were really "false profits" because Par was a purely fraudulent scheme. The Receiver seeks to support these allegations with the new Bogen Declaration, which asserts that:

> LaForte operated CBSG as a Ponzi scheme by paying existing investors with new investor funds rather than revenue generated from business operations. LaForte had to pay investors from new investor proceeds because CBSG did not generate enough cash flow to sustain those payments. In fact, CBSG maintained a negative cash flow each year between 2012 and 2019.

See ECF No. 1843 at 42 (citing Bogen Declaration, ECF No. 1843-27 at ¶ 39).

The Bogen Declaration purports to "update[ ] the preliminary findings by Bradley D. Sharp in his December 13, 2020 Declaration (ECF No. 426-1) about [the Receiver's] analysis of CBSG's

sources and uses of cash through 2019, among other things (the 'Sharp Declaration')." *See* Bogen Declaration at ¶ 9. However, Bogen makes no mention of the Joel Glick Report, dated April 15, 2021 (ECF No. 535-1), which eviscerated both the Sharp Declaration, and the Receiver's prior spurious assertion that Par was a fraudulent Ponzi-like scheme. Once Joel Glick's forensic analysis was put before the Court, the Receiver sheepishly backtracked from his prior endorsement of the Sharp Declaration, calling it merely "preliminary findings." (*See* Defendants' Joint Response to the Receiver's Status Reports (ECF No. 535); and Defendants' Joint Motion to Discharge the Receiver (ECF No. 649 at 11)). This Court ultimately credited the Receiver's calculations of the amount of money raised from noteholders and the amount of principal and interest repaid to the noteholders – as set forth in the Receiver's Declaration – because those figures were derived from an analysis by the SEC's expert, Melissa Davis, whom, like Joel Glick, "relied on the same QuickBooks for their analyses of Par." (ECF No. 774-1 at 14-15, 27). The status report drafted by Bradley Sharp (ECF No. 1223-3), on the other hand, did not. (*Id*. T. 14-15)

Ultimately, Joel Glick's analysis thoroughly debunked any suggestion that Par operated as a "Ponzi" scheme. Mr. Glick proved, by an exacting analysis of every transaction which flowed through Par from 2012 to 2019 (3.8 million transactions in total!), that the Defendants did not use noteholder funds to pay other noteholders, nor to pay themselves. *See* ECF No. 535 (Glick Report dated April 15, 2021) and ECF No. 727-2 (Expert Report of Joel D. Glick dated August 13, 2021 at p. 4) ("As a result of investor funds having been used entirely to fund merchant advances, an analysis of the cash transactions reflects, on a FIFO basis, consulting fees were not paid with Investor Funds"). *See also* Glick Deposition at 100: 14-18 (testifying, based on a FIFO analysis, that monies paid to investors were comprised exclusively of monies that merchant borrowers had paid to Par); *id.* at 71: 21-24 and 72: 22 to 73: 6 (Glick's conclusions and analysis were based on the flow of funds on an accrual basis); *id.* at 115: 3-12 (testifying that, during each month of Par's operations prior to the Receivership, cash received from merchants exceeded principal and interest paid to noteholders, and cash advances to merchants exceeded funds raised from noteholders). Glick also proved that Par had an overall blended factor rate of return of MCA investments of 3.99 percent. (ECF No. 535 at ¶¶ 87-88)

Glick's analysis is fully supported by the attached declaration of David Dunkelberger, CPA. (*See* Declaration of David Dunkelberger dated May 7,2024 attached hereto as Exhibit 1). Mr. Dunkelberger analyzed Glick's expert reports and confirmed that his methodology was sound

and his work meticulous. Mr. Dunkelberger also identifies several fatal flaws in Bogen's belated analysis. First, only Joel Glick analyzed each of Par's 3.8 million transactions; neither Davis, Sharp nor Bogen attempted anything near that level of analysis. *See id*. Second, Davis, Sharp and Bogen all used a methodology which is not GAAP compliant. As Glick stated in his first Report:

> While an analysis of cash flows has its use, it is neither a good proxy nor a measure of profitability. The accrual basis of accounting provides a more accurate measure of a company's profitability and economic performance during an accounting period, and a more accurate picture of a company's financial position at the end of an accounting period. It is the proper methodology to use to determine profitability as is the most widely used and accepted financial reporting framework in the United States….
>
> The two main methods of maintaining an entity's accounting books and records are the cash basis and accrual basis methods of accounting. The cash basis method of accounting, as the name suggests, recognizes revenue when cash is received and an expense when cash is paid. Conversely, the accrual basis method of accounting recognizes revenue when earned and expenses when incurred. The accrual basis results in a more accurate financial picture over the long term. Under GAAP, accrual basis accounting is required as it supports the matching principle which pairs revenues and the corresponding expenses incurred to generate such revenues to the period or periods in which they occurred.

See ECF No. 535 at ¶¶50-51; *see also* ECF No. 803-2.

Under GAAP, the liquidation analysis employed by Bogen and Davis would never be used to determine profitability of an ongoing business. At her deposition, Melissa Davis acknowledged that she analyzed the "profitability" of Par using a pure liquidation analysis – and Bogen has now adopted that improper analysis in his belated Declaration. In short, Davis: 1) accelerated all of the debt on 7-year term notes to July 28, 2020 (in July 2020 about 95% of Par's notes were, in 7-year notes); and 2) assumed that all business functions and operations would cease immediately and that there would be no further revenues, save for collections and assets sales. (*See* M. Davis Depo. dated Sept. 8, 2021, at T. 274-287). As Mr. Dunkelberger states in his Declaration :

> Effectively, Ms. Davis analyzed CBSG as if all its debt was due and payable immediately and CBSG ceased all operations and had no future income from operations. As she acknowledged during her deposition, the analysis she used for CBSG was as if she determined the profitability of Ford Motor Company by demanding that all of its debt be repaid immediately and that Ford cease all operations and have no further income, except possible collections from prior operations. (*Id.*) This liquidation scenario was wholly inappropriate for CBSG as it was an ongoing, continuing business.

Id. at 3-4.

Even if the Court is not persuaded that Mr. Dunkelberger's analysis is correct, and the analyses of Bogen and Davis are wrong, these competing views demonstrate that – at a minimum – disputed issues of fact exist that preclude the Court from granting the Receiver's request for a "declaration" that Par was a Ponzi scheme.

4. The Court Should Reject the Receiver's Unreasoned Denial of Each of the Defendants' Claims Against the Receivership Estate

Ms. McElhone submitted twelve (12) claims based on her ownership (individually or through the LME Trust) of real property and assets made a part of the Receivership Estate, as well as her entitlement to receivables, tax refunds and rental income owed to Receivership Entities she owns or controls. Mr. LaForte submitted a single claim for commissions he is owed in connection with Par's MCA business. The Receiver rejected each of these claims, asserting – as the sole basis for each denial – that the Receiver "has no liability due to Claimant's fraudulent conduct in the underlying case, which was not contested." Ms. McElhone and Mr. LaForte then filed timely objections to each claim denial. (A schedule which summarizes each claim at issue, the Receiver's stated reason for rejecting each claim, and the Defendants' objections to each claim denial, is attached hereto as Exhibit 2).

The Receiver's Motion urges the Court to adopt the Receiver's denial of McElhone and LaForte's claims, and again identifies their purported "involvement and fraudulent conduct in the underlying case" as the sole basis for doing so. *See* DE 1843 at 22. However, the Receiver provides no support for his contention that McElhone and LaForte's claims – even those which have nothing to do with the conduct alleged in this action – may be summarily denied simply because they are Defendants who consented to a final judgment on liability in this action. In essence, the Receiver asserts that McElhone and LaForte have forfeited their rights to all property that was taken from them and placed in the Receivership Estate (even though the value of such property exceeds their disgorgement and penalty amounts) and their right to make *any* claim upon the Receivership Estate (even if the claim has nothing to do with the liability issues in this case) because – in the Receiver's mind – McElhone and LaForte have been adjudicated 'bad people.' This *is not* how an equity receivership is intended to work.

As the Receiver notes in his Motion, this Court "has the care of the property in dispute" and is charged with the ultimate decision to allow or deny claims. *See* ECF No. 1843 at 8 (citing *SEC v. Safety Finance Service, Inc.*, 674 F. 2d 368, 377 (5th Cir. 1982); Ralph E. Clark, Clark on Receivers § 646, at 1132 (3rd ed. 1992)). Likewise, the Receiver correctly observed that the Court's goal is to ensure that the claim and distribution process "is done equitably and fairly" and that "equity should not permit one group a preference over another, because 'equity is equity.'" *Id* at 10 (citing *SEC v. Homeland Communications Corp*., 07-80802 CIV, 2010 WL 2035326, at * 2 (S.D. Fla. May 24, 2010)).

Here, the Receiver urges the Court to deny McElhone and LaForte's claims without any analysis of the bases for those claims, without determining whether those claims should be applied as an offset to the disgorgement and penalties they have been ordered to pay,[7] and without regard for whether the value of their claims exceeds the amount of their disgorgement and penalties. Such summary denial would not be equitable and, in fact, would constitute a forfeiture and/or unlawful taking. Accordingly, McElhone and LaForte respectfully request that the Court overrule the Receiver's summary denial of their claims, and award them relief on those claims as the Court deems just and appropriate.

5. Request for Oral Argument and an Evidentiary Hearing

If the Court is at all inclined to grant the Receiver's request for a declaration that Par operated as a Ponzi scheme, the Defendants respectfully request that the Court convene an evidentiary hearing and allow oral argument on the Receiver's Claim Determination Motion so that the Defendants may address the legal and factual issues raised by the Receiver and present evidence to rebut the Receiver's untimely and prejudicial assertion that Par operated as a Ponzi scheme, which is based on the late-filed Bogen Declaration. The Defendants believe that oral argument and additional evidence would assist the Court in addressing these important issues.

[7] The Receiver states that he "take no position on whether any particular assets should be credited against Ms. McElhone's judgment," but asserts that this issue is not currently before the Court and should be raised in a separate motion. *See* ECF No. 1843, at 37. Ms. McElhone and Mr. LaForte intend to accept this invitation and will file such motion in the near future. Without waiving their right to do so, or otherwise limiting the scope of such motion, McElhone and LaForte contend that it is appropriate for the Court to consider that their assets under the Receivership *have not* been credited to their judgment when considering whether their claims should be denied simply because they are defendants.

CONCLUSION

For all of the foregoing reasons, the Defendants respectfully request that the Court deny the Receiver's request for a declaration that Par operated as a Ponzi scheme, overrule the Receiver's summary denial of their claims, and award them relief on those claims as the Court deems just and appropriate.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2024, I electronically filed the forgoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmissions of Notices of Electronic Filing generated by CM/ECF.

By: */s/ James M. Kaplan*
JAMES M. KAPLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____/

DECLARATION OF DAVID A. DUNKELBERGER, CPA

David A. Dunkelberger, pursuant to 28 USC 746, declares under penalty of perjury:

1. I am over the age of 21 and have personal knowledge of the contents of this declaration. If called upon to testify, I could and would testify as follows:

2. I am a Certified Public Accountant actively licensed in the Commonwealth of Pennsylvania and the State of Delaware. I was first licensed in Pennsylvania in 1998. During my career I've held senior positions in public accounting and private industry and previously managed forensic investigations for RSM McGladrey in its FDIC Receivership practice. My credentials are set forth in greater detail on page 12 of my July 1, 2022 Independent Accountant's Review Report, which is attached as Exhibit C to the Response in Opposition to Receiver's Motion for Determination of a Ponzi Scheme filed by Joseph Cole Barleta (ECF 1855).

3. I make this declaration in response to the Declaration of Yale Scott Bogen, submitted by the Receiver in support of his Motion for Determination of a Ponzi Scheme. (ECF 1843, Exhibit 27)

4. In reviewing Mr. Bogen's declaration, several flaws were apparent, the principle ones of which I will now detail for the court.

5. GAAP Methodology - Yale Scott Bogen, the Senior Managing Director of Development Specialists, Inc. ("Bogen/DSI") used a cash basis approach in his analysis, which is not in accordance with generally accepted accounting principles ("GAAP") and is not relevant for assessing an ongoing business. CBSG was an ongoing business during the scope period of the Bogen/DSI analysis, and the U.S. District Court in 2021 specifically stated that the SEC's action was not going to be a liquidation. Instead, under GAAP rules, CBSG should have been analyzed via the accrual basis of accounting.

6. Liquidation Scenarios - In the Receiver's Motion, arbitrary dates were selected to form liquidation scenarios, even though the investor notes had 12-month maturities. If CBSG needed to liquidate and pay back investors in a 12-month period, it could have accomplished that task as follows (data from the Glick Expert and Expert Rebuttal reports):

2017- CBSG collected $3.26 million per week and owed about $91 million, resulting in net cash of $60 million.

2018- CBSG collected $6.43 million per week and owed about $220 million, resulting in net cash of $90 million.

2019- CBSG collected $7.4 million per week and owed about $340 million, resulting in net cash of $90 million.

An important fact: during the height of the COVID-19 shutdown, March through July 2020, CBSG raised no investor funds. However, the company paid $20 million back to investors and paid out approximately $180 million in advances. No Ponzi scheme would have survived without raising new money, which is the hallmark of a Ponzi.

Additionally, on page 11 of the Glick Expert Report, an analysis of the cash transactions in all relevant CBSG accounts reflects, on a FIFO basis, that consulting fees were not paid with Investor Funds. Rather, the fees were paid through the collection of merchant receivables.

7. Merchant Payments - The Glick reports include an extensive analysis of merchant payments in which forensic software was used to analyze approximately 4.7 million transactions. This amount represents every payment received by CBSG between 2012 and 2019, thereby providing a reliable source of receivable collectability.

Additionally, Glick reviewed every one of the 17,600 loans that CBSG issued and presented a full analysis of the true payment history of every merchant.

In contrast, neither the Bogen/DSI declaration, nor the Melissa Davis Report utilize an extensive, transaction by transaction analysis. Instead, both Bogen and Davis use an improper cost recovery method, and both merely summarize particular merchants who experienced payment challenges with potential write-offs.

8. Payment Default - The Bogen/DSI declaration states that returned payments are a proxy for the default rate. It is not unusual for most, if not all, merchants, to have an occasional returned payment.

Glick performed a return payment analysis and found that it was sufficiently low to actually prove the opposite – a positive referendum on quality underwriting. He further found that CBSG only underwrote 17% of the MCA deals presented to the company.

9. Late Submission of Bogen/DSI Declaration - Bogen states that he has been part of the DSI engagement team since the outset of the Receivership. Per the Receiver's Motion, "The Court later entered an Amended Order Appointing Receiver on August 13, 2020, which authorized the Receiver to "develop a plan for the fair, reasonable, and efficient recovery and liquidation of

all remaining, recovered and recoverable Receivership Property." [ECF No. 141 ¶ 52]. It would seem that the Bogen/DSI team would have been able to begin its analysis in late 2020 or at least 2021, especially considering that the Glick expert reports were completed by August 2021.

10. Deposition of Melissa Davis - In response to questions about paragraph 124 in the Report of Expert prepared by Melissa Davis, CPA, CIRA, CFE, Davis stated in her deposition that the analysis she conducted was a comparison of the accounts receivable and the amounts due to the investors and the joint funders *as of July 27, 2020*. Basically, Davis considered that all of the $366 million owed to investors and $22.6 million owed to joint funders would be due immediately (on July 28, 2020), even though most of the notes payable were due over the next 7 years under varying maturities due to the issuance and acceptance of 7 year notes in April and May 2020 due to COVID. (See M. Davis Depo. dated Sept. 8, 2021 at T. 274-287) Her analysis also assumed no future income to the company, except possible collections from prior operations. (*Id.*)

Effectively, Ms. Davis analyzed CBSG as if all its debt was due and payable immediately and CBSG ceased all operations and had no future income from operations. As she acknowledged during her deposition, the analysis she used for CBSG was as if she determined the profitability of Ford Motor Company by demanding that all of its debt be repaid immediately and that Ford cease all operations and have no further income, except possible collections from prior operations. (*Id.*) This liquidation scenario was wholly inappropriate for CBSG as it was an ongoing, continuing business.

In a follow-up question to determine whether a projection of the revenue was performed for CBSG over the next seven years from 2021 to 2026 or 2027, during the period of time those notes were actually due, Davis stated that no such revenue projection was conducted. (*Id.*)

Yale S. Bogen adopted Davis' flawed cash basis/cost recovery methodology and analysis.

In effect, CBSG was treated as a business that was going to be liquidated on July 28, 2020, rather than as it should have been under GAAP rules – an ongoing business in operation.

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

Executed on this 7th day of May, 2024.

David A. Dunkelberger

DAVID A. DUNKELBERGER, CPA

LISA MCELHONE'S CLAIMS

Claim No. 20690	Amount: $3,478,137	Entity: CFS

Claim Description

Lisa McElhone is the sole owner of Contract Financing Solutions ("CFS") and is therefore entitled to the cash assets which belong to CFS. Based on the Receiver's most recent report, the cash balance being held in a bank account belonging to CFS (City National Bank Account No. x4540) is $3,478,137. (*See* ECF 1504-1 at p. 14).

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to cash belonging to Contract Financing Solutions ("CFS") which is in the Receiver's possession. Ms. McElhone is the sole owner of CFS. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the sums at issue in this claim were not credited towards her disgorgement obligation. Second, there has been no finding that the sums at issue are actually traceable to any purported fraud, the Court merely found that assets held by CFS could potentially be traced to commingled funds and should be preserved for satisfaction of a potential disgorgement award (again, these sums have not been applied to Ms. McElhone's disgorgement obligation). Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of CFS. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20689	Amount: $4,744	Entity: FSP

Claim Description

Lisa McElhone is the sole owner of Full Spectrum Processing, Inc. ("FSP") and is therefore entitled to the cash assets which belong to FSP. Based on the Receiver's most recent report, the cash balance being held in a bank account belonging to FSP (City National Bank Account No. x5700) is $4,744. (*See* ECF 1504-1 at p. 13).

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to cash belonging to Full Spectrum Processing, Inc. ("FSP") which is in the Receiver's possession. Ms. McElhone is the sole owner of FSP. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the sums at issue in this claim were not credited towards her disgorgement obligation. Second, there has been no finding that the sums at issue are actually traceable to any purported fraud, the Court merely found that assets held by FSP could potentially be traced to commingled funds and should be preserved for satisfaction of a potential disgorgement award (again, these sums have not been applied to Ms. McElhone's disgorgement obligation). Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of FSP. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20688	Amount: $1,537,545	Entity: FAF

Claim Description

Lisa McElhone is the sole owner of Fast Advance Funding LLC ("FAF") and is therefore entitled to the cash assets which belong to FAF. Based on the Receiver's most recent report, the cash balance being held in two bank accounts belonging to FAF (an Actum Account and City National Bank Account No. x2069) totals $1,537,545. (*See* ECF 1504-1 at p. 13).

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to cash belonging to Fast Advance Funding LLC ("FAF") which is in the Receiver's possession. Ms. McElhone is the sole owner of FAF. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the sums at issue in this claim were not credited towards her disgorgement obligation. Second, there has been no finding that the sums at issue are actually traceable to any purported fraud, the Court merely found that assets held by FAF could potentially be traced to commingled funds and should be preserved for satisfaction of a potential disgorgement award (again, these sums have not been applied to Ms. McElhone's disgorgement obligation). Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of FAF. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20691	Amount: $2,314	Entity: RMR

Claim Description

Lisa McElhone is the sole owner of Recruiting and Marketing Resources ("RMR") and is therefore entitled to the cash assets which belong to RMR. Based on the Receiver's most recent report, the cash balance being held in a bank account belonging to RMR (City National Bank Account No. x4279) is $2,314. (*See* ECF 1504-1 at p. 14).

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to cash belonging to Recruiting Marketing Resources ("RMR") which is in the Receiver's possession. Ms. McElhone is the sole owner of RMR. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the sums at issue in this claim were not credited towards her disgorgement obligation. Second, there has been no finding that the sums at issue are actually traceable to any purported fraud, the Court merely found that assets held by RMR could potentially be traced to commingled funds and should be preserved for satisfaction of a potential disgorgement award (again, these sums have not been applied to Ms. McElhone's disgorgement obligation). Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of RMR. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

JOSEPH LAFORTE'S CLAIMS

Claim No. 20714	Amount: $512,204.40	Entity: RMR

Claim Description

Joseph LaForte performed ISO services for Recruiting and Marketing Resources ("RMR") and is entitled to receive commissions which RMR received from CBSG (pursuant to RMR's ISO agreement with CBSG, which is attached) for work performed by Mr. LaForte. The balance of commission owed to Mr. LaForte for ISO services performed for CBSG through RMR in 2020 is $512,204.40. (*See* CBSG Balance Sheet at p. 5, attached). Accordingly, Mr. LaForte brings this claim for commissions owed.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim seeks payment of commissions owed to Mr. LaForte as an ISO for services he performed for Recruiting and Marketing Resources ("RMR"). Mr. LaForte's work resulted in locating clients which obtained Merchant Cash Advances and is unrelated to the offer and sale of securities alleged in the underlying lawsuit. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Mr. LaForte consented to liability for purposes of disgorgement only. Second, there were no allegations presented against RMR, let alone any findings of wrongful conduct by RMR. Finally, neither the fraud alleged against Mr. LaForte in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Mr. LaForte's rights to receive commissions for the valid and lawful work he performed for RMR. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

LME TRUST'S CLAIMS

Claim No. 20705	Amount: $34,600,000	Entity: ESC

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control and distribute the assets which belong to the Trust or to entities owned by the Trust, including, without limitation, Heritage Business Consulting ("HBC") and Eagle Six Consulting ("ESC"). Based on the Receiver's most recent report, the balance of accounts receivable owed to HBC and ESC totals $34,600,000. (*See* ECF 1504-1 at p. 6). Because these accounts receivable have not been liquidated at this time, Ms. McElhone, as Trustee of the Trust, now presents this claim for the total value of the unliquidated accounts receivable or, alternatively, the relinquishment of the right to collect the accounts receivable. Because Ms. McElhone does not have information sufficient to allow her to determine what portion of the accounts receivable is attributable to HBC and what portion is attributable to ESC, she submits two separate claims, each for the full value of the accounts receivable (or relinquishment of same), one as to HBC and the other as to ESC, with the understanding that the amount of the claims may need to be adjusted to reflect an appropriate allocation.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to the value of accounts receivable held by Eagle Six Consulting ("ESC") which is owned by the LME Trust. Ms. McElhone was formerly the Trustee of the LME Trust (prior to the expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the value of the AR (both collected and uncollected) has not been credited towards her disgorgement obligation. Second, there has been no finding of liability or wrongful conduct as to ESC. Finally,

neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to ESC's assets. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20703	Amount: $34,600,000	Entity: HBC

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control and distribute the assets which belong to the Trust or to entities owned by the Trust, including, without limitation, Heritage Business Consulting ("HBC") and Eagle Six Consulting ("ESC"). Based on the Receiver's most recent report, the balance of accounts receivable owed to HBC and ESC totals $34,600,000. (*See* ECF 1504-1 at p. 6). Because these accounts receivable have not been liquidated at this time, Ms. McElhone, as Trustee of the Trust, now presents this claim for the total value of the unliquidated accounts receivable or, alternatively, the relinquishment of the right to collect the accounts receivable. Because Ms. McElhone does not have information sufficient to allow her to determine what portion of the accounts receivable is attributable to HBC and what portion is attributable to ESC, she submits two separate claims, each for the full value of the accounts receivable (or relinquishment of same), one as to HBC and the other as to ESC, with the understanding that the amount of the claims may need to be adjusted to reflect an appropriate allocation.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to the value of accounts receivable held by Heritage Business Consulting ("HBC") which is owned by the LME Trust. Ms. McElhone was formerly the Trustee of the LME Trust (prior to the expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the value of the AR (both collected and uncollected) has not been credited towards her

disgorgement obligation. Second, there has been no finding of liability or wrongful conduct as to HBC. Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to ESC's assets. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20726	Amount: $5,057,200	Entity: CBSG

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control and distribute the assets which belong to the Trust or to entities owned by the Trust. In 2020, the Trust made tax payments totaling $5,057,200 on behalf of CBSG (an entity owned by the Trust) to address CBSG's actual or potential tax liability. (*See* CBSG Balance Sheet at p. 2, addressing tax liability). Due to subsequent events, including but not limited to the cessation of CBSG's main business under the Receiver, it now appears that CBSG will not be subject to tax liability and will receive a substantial tax refund. (*See* the Receiver's Quarterly Report, ECF 1504 at p. 4). Accordingly, Ms. McElhone, as Trustee of the Trust, makes a claim for the tax payments made on behalf of CBSG which are expected to be reimbursed.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to an anticipated tax refund owned to CBSG. CBSG is owned by the LME Trust, and Ms. McElhone was formerly the Trustee of the LME Trust (prior to the expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false, as Ms. McElhone consented to liability for purposes of disgorgement only. Second, the tax refund has no connection to the allegations of misconduct in the underlying lawsuit. Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications establish a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to CBSG and the anticipated tax refund.

Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20698	Amount: $312,100,000	Entity: LME

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control and distribute the assets which belong to the Trust or to entities owned by the Trust, including, without limitation, CBSG and the other MCA entities in the Receivership which have accounts receivable. Based on the Receiver's most recent report, the balance of accounts receivable owed to CBSG and other MCA entities under the Receivership totals $312,100,000. (*See* ECF 1504-1 at p. 4). Because these accounts receivable have not been liquidated at this time, Ms. McElhone, as Trustee of the Trust, now presents this claim for the total value of the unliquidated accounts receivable or, alternatively, the relinquishment of the right to collect the accounts receivable.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to the value of accounts receivable for MCA contracts held by CBSG and other MCA entities owned by the LME Trust. Ms. McElhone was formerly the Trustee of the LME Trust (prior to the expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver remains in control of the subject MCA contracts and had been seeking to enforce them and collect the AR. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the value of the AR (both collected and uncollected) has not been credited towards her disgorgement obligation. Second, there has been no finding that either the MCA contracts themselves nor the AR owed on those contracts are fraudulent (indeed, the Receiver's decision to enforce the contracts serves as an admission that they are valid and lawful). Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest

and/or rights with respect to the MCA contracts and AR. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20686	Amount: $51,784,000	Entity: LME

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control and distribute real property belonging to the Trust or to entities owned by the Trust. Based on the Receiver's most recent report, the value of the multi-unit residential and commercial properties owned by the Trust total $44,284,000. (*See* ECF 1504-1 p. 17). The report uses purchase-price to value two residential properties owned by the Trust (the Haverford House and Paupack House), but the actual value of those homes has gone up and is believed to be at least $7,500,000. Accordingly, Ms. McElhone presents a claim for $51,784,000, which is a good faith estimate of the value of the properties belonging to the Trust based on the Receiver's report and other information available to her.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to the value of commercial and residential real estate belonging to the LME Trust or entities owned by the Trust. Ms. McElhone was formerly the Trustee of the LME Trust (prior to the expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver remains in control of much of the real estate at issue, and has realized millions of dollars from the sale of certain properties. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the value of the real estate at issue in this claim was not credited towards her disgorgement obligation. Second, there has been no finding that the real estate at issue is actually traceable to any purported fraud, the Court merely found that these assets could potentially be traced to commingled funds and should be preserved for satisfaction of a potential disgorgement award (again, these sums have not been

applied to Ms. McElhone's disgorgement obligation). Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of the LME Trust. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20685	Amount: $221,650	Entity: RMR

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control real property belonging to the Trust (or to entities owned by the Trust) and the rental income derived from those properties. Prior to the appointment of the Receiver, the Trust leased to Recruiting and Marketing Resources ("RMR") Units 102 and 201 at 20-22 N 3rd St. Philadelphia, PA for $3,550 a month and $3,600 a month, respectively. (*See* Rent Roll, attached to this claim form). The Trust has not received any of these rental payments since the Receivership began, and it is believed that the Receiver has been using these properties to conduct its business and operations without paying rent. Accordingly, the Trust is entitled to the unpaid rent under RMR's lease and/or the unpaid rent incurred by the Receiver as a holdover tenant over the 31-month period the Receiver has been in control or possession of the subject properties. These rent payments total $221,650.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to the Receiver's occupancy and use of commercial real estate owned by the LME Trust during the course of the Receivership without payment of rent or other consideration. Prior to the Receiver's occupancy, the space was leased to Recruiting and Marketing Resources. Ms. McElhone was the Trustee of the LME Trust (prior to the expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only. Second, Ms. McElhone's purported fraudulent conduct prior to the

Receivership does not bear on the Receiver's use of the LME Trust's commercial real estate after the Receivership was established. The property at issue could have been leased for value, but the Receiver instead chose to occupy and use the space for its own purposes without providing any consideration. Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of the LME Trust, including but not limited to the real estate at issue. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20682	Amount: $759,500	Entity: FSP

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control real property belonging to the Trust (or to entities owned by the Trust) and the rental income derived from those properties. Prior to the appointment of the Receiver, the Trust leased to Full Spectrum Processing ("FSP") Units 101 and 202 at 20-22 N 3rd St. Philadelphia, PA for $7,000 a month and $12,000 a month, respectively, and also leased Unit 2 at 205 Arch St., Philadelphia, PA for $5,500 a month. (*See* Rent Roll, attached to this claim form). The Trust has not received any of these rental payments since the Receivership began, and it is believed that the Receiver has been using these properties to conduct its business and operations without paying rent. Accordingly, the Trust is entitled to the unpaid rent under FSP's lease and/or the unpaid rent incurred by the Receiver as a holdover tenant over the 31-month period the Receiver has been in control or possession of the subject properties. These rent payments total $759,500.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to the Receiver's occupancy and use of commercial real estate owned by the LME Trust during the course of the Receivership without payment of rent or other consideration. Prior to the Receiver's occupancy, the space was leased to Full Spectrum Processing. Ms. McElhone was the Trustee of the LME Trust (prior to the

expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only. Second, Ms. McElhone's purported fraudulent conduct prior to the Receivership does not bear on the Receiver's use of Receiver's use of the LME Trust's commercial real estate after the Receivership was established. The property at issue could have been leased for value, but the Receiver instead chose to occupy and use the space for its own purposes without providing any consideration. Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of the LME Trust, including but not limited to the real estate at issue. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.

Claim No. 20681	Amount: $103,402,834	Entity: LME

Claim Description

Lisa McElhone is the Settlor and Trustee of the LME 2017 Family Trust ('the Trust") and is therefore authorized to control and distribute the cash assets which belong to the Trust or to entities owned by the Trust. Based on the Receiver's most recent report, the cash balances being held in bank accounts belonging to the Trust or to entities owned by the Trust total $103,402,834. (*See* ECF 1504-1 at p. 14 and 15). Additionally, the LME Trust is the holder of a Bank Deposit Program bank account with Premier Bank that had a value of approximately $155,845 at the time the Receivership began.

Receiver's Response

Receiver has no liability due to Claimant's fraudulent conduct in underlying case, which was not contested.

Claimant's Objection

This claim pertains to cash belonging to the LME Trust which is in the Receiver's possession. Ms. McElhone was the Trustee of the LME Trust (prior to the expansion of the Receivership) and remains a beneficiary of the Trust. The Receiver contends that it has no liability for this claim because of the Claimant's alleged fraudulent conduct

in the underlying case. First, the Receiver's assertion that the purported fraudulent conduct was not contested is false. Ms. McElhone consented to liability for purposes of disgorgement only, and the sums at issue in this claim were not credited towards her disgorgement obligation. Second, there has been no finding that the sums at issue are actually traceable to any purported fraud, the Court merely found that assets held by the LME Trust could potentially be traced to commingled funds and should be preserved for satisfaction of a potential disgorgement award (again, these sums have not been applied to Ms. McElhone's disgorgement obligation). Finally, neither the fraud alleged against Ms. McElhone in the underlying lawsuit nor the Court's adjudications provide for a forfeiture of Ms. McElhone's ownership interest and/or rights with respect to the assets of the LME Trust. Since the Receiver has offered no other basis for denying the claim, he has tacitly acknowledged the validity of the claim.