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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
BRETT BERMAN, ESQUIRE,
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 Tuesday, June 8, 2021,
commencing at 10:08 a.m.

JOB No. 210608AME

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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)

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A P P E A R A N C E S

On behalf of the Deponent

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Also present

- Joseph LaForte
- Joseph Cole
- Dean Vaggio
- George Bochetto
- Richard Brueckner
- Tim Hunter, videographer

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* I N D E X *

WITNESS:

BRETT BERMAN, ESQUIRE	PAGE
EXAMINATION BY MS. BERLIN	7, 242
EXAMINATION BY MR. FUTERFAS	203
EXAMINATION BY MR. MILLER	232
EXAMINATION BY MR. SOTO	235

* INDEX OF EXHIBITS *

NO.	DESCRIPTION	PAGE
Exhibit 49	CBSG Funding Analysis 01/01/13 - 12/31/18	116

- - - -

1
2
3
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P R O C E E D I N G S

- - - -

THE VIDEOGRAPHER: Here begins the videotape deposition of Brett Berman in the matter of the SEC versus Complete Business Solutions Group. This deposition is being held via Webex.

Today's date is June 8, 2021. The time on the record is 10:08 a.m. My name is Tim Hunter. I'm a legal videographer. Our court reporter today is Ann Medis.

Counsel, would you please 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.

MR. LEVITT: Good morning. Peter Levitt, Shutts & Bowen, on behalf of the witness, Brett Berman.

MR. KOLAYA: Good morning. This is Tim Kolaya on behalf of the court appointed receiver, Brian K. Stumphauzer.

MR. SOTO: Good morning. This is Alex Soto on behalf of defendant, Joseph LaForte.

1 MR. MILLER: Brian Miller from Akerman on
2 behalf of defendant, Dean Vagnozzi.

3 MR. MARCUS: Jeff Marcus on behalf of
4 Perry Abbonizio.

5 MS. SCHEIN: Bettina Schein on behalf of
6 Joe Cole.

7 BRET BERTMAN, ESQUIRE,
8 having been first duly sworn, was examined
9 and testified as follows:

10 EXAMINATION

11 BY MS. BERLIN:

12 Q. Good morning, Mr. Berman. My name is Amie
13 Riggle Berlin. I'm senior trial counsel with the
14 U.S. Securities and Exchange Commission. If you
15 need to take a break at any time today, just let me
16 know. And if you don't understand a question that
17 you're asked, just let me know that, and I'll try to
18 ask it in a better way. Do you understand?

19 A. I do.

20 Q. Are you familiar with a company called
21 Complete Business Solutions Group?

22 A. I am.

23 Q. And how did you first become aware of
24 Complete Business Solutions Group?

25 A. Fox Rothschild was engaged to represent

1 Complete Business Solutions Group.

2 Q. And who was the primary attorney at Fox
3 Rothschild who worked for Complete Business
4 Solutions Group?

5 A. I'm not sure what you mean by primary
6 attorney, but I was the relationship attorney.

7 Q. How did it come about that you became an
8 attorney representing Complete Business Solutions
9 Group?

10 A. I was introduced to someone in 2018 -- I
11 couldn't tell you who it was; it's a while ago --
12 who hired us to undertake a limited engagement on
13 behalf of Complete Business Solutions Group.

14 Q. I'm sorry. I don't understand. Someone
15 retained you and you don't remember who it was?

16 A. I can't tell you the person I spoke to in
17 2018 about the engagement. It was a limited
18 engagement involving looking at some of their
19 corporate documents related to the MCA deals, and it
20 was very minor. No, I don't remember exactly who it
21 was who we spoke to in 2018.

22 Q. Well, how did it come about Complete
23 Business Solutions Group initially became a client
24 of Fox Rothschild?

25 A. Sure. A gentleman by the name of Anthony

1 Zingarelli made the introduction to someone at
2 Complete Business Solutions Group back in 2018. And
3 I have known Mr. Zingarelli for a decade.

4 Q. And so was a retainer agreement signed
5 with Complete Business Solutions Group back in 2018?

6 A. Yes, it was.

7 Q. And who signed that on behalf of Complete
8 Business Solutions Group?

9 A. I don't remember, but it could have well
10 been -- I don't remember, to be honest with you. I
11 know it was turned over to the receiver in this
12 case, Mr. Kolaya and Mr. Alfano.

13 Q. And so during what -- would this be the
14 first of several representations that Fox Rothschild
15 undertook for Complete Business Solutions Group?

16 A. Yes, that is correct.

17 Q. So can you tell me a little bit more about
18 the work that was done in connection with this first
19 cycle of the firm being retained by Complete
20 Business Solutions Group? What was the firm doing?

21 A. By recollection, they were -- "they" being
22 Complete Business Solutions Group -- were
23 considering alternative type lending-related
24 products, and they wanted us to look at and opine on
25 certain issues on those documents. I didn't do any

1 of the work myself on that, so I can't be any more
2 specific. But it was a very limited engagement,
3 i.e., I think by memory a few thousand dollars of
4 legal work.

5 Q. Okay. And then did there come a time when
6 Fox Rothschild was retained again by Complete
7 Business Solutions Group?

8 A. Yes. I would say sometime in late --
9 well, the answer is yes to your question. Yes.

10 Q. Okay. And when did the second occurrence
11 happen?

12 A. Sure. By memory, and there was an
13 engagement letter for this as well that was turned
14 over to Mr. Cole and Mr. Alfano, I was engaged or
15 Fox Rothschild was engaged to assist with the
16 Fleetwood litigation. The Fleetwood litigation was
17 the next time or the real only -- the legal work
18 really substantively began in late 2019.

19 Q. And what exactly is the Fleetwood
20 litigation?

21 A. Fleetwood was a litigation pending in the
22 Eastern District of Pennsylvania that was being
23 handled by in-house counsel prior to our engagement.
24 It was a proposed class action that never got there.

25 Q. So Complete Business Solutions Group

1 retained Fox Rothschild to represent it in defending
2 against the case?

3 A. Correct.

4 Q. Okay. And who was the primary contact at
5 Complete Business Solutions Group for Fox Rothschild
6 attorneys?

7 A. Sure. At that time you're asking,
8 Ms. Berlin?

9 Q. Yes, for the 2019 representation in
10 connection with the Fleetwood case.

11 A. Sure. It was primarily focused on
12 in-house counsel at the time, Pete Mulcahy and John
13 Hartley. Those were the primary points of contact.

14 Q. And was there a point of contact with
15 anyone other than two of them?

16 A. At the very beginning, very little. It
17 was primarily done through in-house counsel. That's
18 who engaged me, I believe who signed the engagement
19 letter that I gave to Mr. Kolaya, by memory. I
20 think that's correct. And I would say maybe
21 Mr. Cole at that point in time, but not right at the
22 beginning. It was in-house counsel.

23 Q. How long did the representation continue
24 in connection with the Fleetwood case?

25 A. Until the day this case was filed.

1 Q. So did your primary contact at Complete
2 Business Solutions Group ever change from the
3 initial in-house counsel and Joseph Cole?

4 A. Yes. At some point by memory, it was
5 early February 2020. Mr. Hartley and Mr. Mulcahy
6 were no longer associated with Complete Business
7 Solutions Group. So on that case, I would say I
8 dealt primarily with -- although we were pretty far
9 into the case. I can't say how much I had to deal
10 with people at that point.

11 But I would say it was then Mr. Cole or
12 Mr. Anthony Ronn Fazio who I would get most of my
13 information for for things related to that case.

14 Q. And so who would you reach out to at
15 Complete Business Solutions Group when you had to
16 confer with your client? Was it Mr. Cole or someone
17 else?

18 A. Yeah, again, depending on the issue. By
19 that I mean Mr. Cole was involved. I believe his
20 official title was chief financial officer. So if
21 it dealt with issues surrounding financial aspects
22 of the case, you know, pulling up payment histories
23 or other related information or in the Fleetwood
24 case, given that it was a proposed class, although
25 it was not a class certified case, I needed to

1 obtain information about proposed class members and
2 things like that I got from either Mr. Cole -- there
3 was a woman at the company, Tori Villarose, that I
4 would obtain information from or, as I said, Anthony
5 Ronn Fazio. I know him as Fazio.

6 Q. Anyone other than those four people?

7 A. Primary points of contact were those
8 people. I'm sure I spoke at some point in time to
9 Lisa McElhone, Joe LaForte, other people in
10 accounting or collections. There was a guy who I'm
11 blanking on his name who came in about that time who
12 was leading the collections department with Anthony
13 Fazio. I think his Tim was by memory, although it
14 was a while ago now.

15 So really depending on the type of issue I
16 needed, it was primarily the people I told you
17 about, but there could be many others since there
18 were a lot of people there.

19 Q. When you say primarily the people you told
20 me about, you mean Mr. Cole, Villarose, Aida Lau or
21 the Fazio individual; is that accurate?

22 A. That's correct.

23 Q. Okay. And so was there any other matter
24 that Fox Rothschild was retained for by Complete
25 Business Solutions Group?

1 A. Yes. After being engaged for the
2 Fleetwood case, I believe the next engagement,
3 although that was also pursuant to a fee letter, I
4 believe was the HMC case.

5 Q. That's another lawsuit against Complete
6 Business Solutions Group?

7 A. I don't think either were really -- don't
8 hold me to the specific procedural aspects. It's
9 been a while. But the way that those cases were
10 both initiated, the Fleetwood and HMC were the
11 filing of a confession of judgment by Complete
12 Business Solutions in the Court of Common Pleas, and
13 they were either removed or a petition to open
14 and/or separate claims brought through counterclaims
15 or affirmative claims.

16 So it's not really that they were
17 independent lawsuits, per se. They were responses
18 to judgments that were entered by Complete Business
19 Solutions Group.

20 Q. And who contacted you to retain Complete
21 Business Solutions Group in that matter?

22 A. Pete Mulcahy.

23 Q. And who was the primary contact at
24 Complete Business Solutions Group?

25 A. I would say that the answer is the same as

1 I gave previously for Fleetwood, although there was
2 some more history to that given that this was an
3 extended relationship, not a single MCA deal.

4 So it was again all of the people I spoke
5 about before, both from the primary point of contact
6 and the secondary points of contact, that I
7 referenced for the Fleetwood case.

8 Q. In addition to the Fleetwood and HMC
9 matters, was there anything else that Fox Rothschild
10 was retained to do for Complete Business Solutions
11 Group?

12 A. Sure. Sometime after or about at the same
13 time as the engagement involving Fleetwood and HMC,
14 we were asked to -- we weren't alone. There were
15 other people who were involved -- to look into and
16 potentially enter our appearance in -- I'm blanking
17 on the name, but it was Sharma/Dual Diagnosis, which
18 was a case pending in New York Supreme Court before
19 Justice Borrok and a corresponding action involving
20 the same parties down in Lee County, Florida.

21 Q. And who were primary client contacts at
22 Complete Business Solutions Group for that?

23 A. Pete Mulcahy.

24 Q. Anyone else?

25 A. I mean, just depending on the aspects of

1 what I needed to determine up and through that case,
2 which eventually settled I believe right before this
3 case was filed, it varied because I needed payment
4 information and things like that.

5 So there were definitely Joe Cole and Aida
6 Lau and people in their group. And Anthony Fazio
7 provided information on things that occurred long
8 before my time representing the company.

9 Q. Is there any other matter that Fox
10 Rothschild was retained on in connection with
11 Complete Business Solutions Group?

12 A. Yes. After that engagement, I would say
13 that the engagement expanded to additional
14 litigation. And I may be placing one before the
15 other from the Dual Diagnostics case, but it was
16 about the same time.

17 There were a series of cases that were
18 filed in the Eastern District of Pennsylvania by
19 merchants who were -- again, as I said, I don't
20 believe they were independent cases. Well, they
21 were in fact. Let me take back.

22 These were cases that were filed in the
23 Court of Common Pleas as a confession of judgment.
24 They were then removed to federal court, improperly
25 I would add because they were eventually all

1 remanded or most of them were remanded by different
2 federal judges. But it was a series of cases filed
3 by an individual by the name of Shane Heskin on
4 behalf of his clients.

5 Q. Okay. And who was primary contact at
6 Complete Business Solutions Group for those cases?

7 A. Initially Pete Mulcahy and John Hartley
8 until -- as I said, they left in February. And I
9 don't know exactly the time period, but probably
10 about then -- no, no. It was probably before that.
11 But it was those two.

12 And, as I said before, similar to what I
13 said about HMC and Fleetwood, it involved a lot of
14 different people at the company trying to obtain
15 different information. Anthony Fazio, Tim were
16 involved obviously in gaining information on any
17 merchant files.

18 We at some point had to get discovery in
19 all of these cases. So I dealt with the IT person
20 to pull custodian logs of emails for production or
21 review for production. I dealt with Joe Cole on
22 financial issues. I'm sure I spoke to Joe LaForte
23 or Lisa McElhone at some point about those cases and
24 issues, if they had personal knowledge. That
25 summarizes it I think.

1 Q. But who was the primary client contact?
2 If your client needed to make a decision, meaning
3 CBSG, who would you reach out to?

4 A. On a day to day, Joe Cole would be my
5 primary point of contact.

6 Q. Okay. And approximately how many of those
7 cases are there that you're identifying?

8 A. I would say 10 to 15, purely by memory.
9 And I could name a few if you want, Annies Pooch
10 Pots, Knava's Bounce House. There was a travel
11 company. I forget the name. Some sunroom
12 installer, Sun something.

13 I don't remember all the names, but, as I
14 said, what they were were cases that were filed as
15 confessions and then removed to federal court. And
16 we challenged them as improper removal. So none of
17 them progressed that far other than HMC and
18 Fleetwood because they were stuck in waiting for
19 motion practice and then decisions were made
20 remanding them. At that point, we were in the
21 middle of the pandemic.

22 Q. Okay. And did you have any other
23 representation in connection with Complete Business
24 Solutions Group?

25 A. Yes. In about February of 2020, as I

1 relayed before, the in-house counsel were
2 terminated, and Fox Rothschild was hired under a
3 separate fee agreement, again that was provided to
4 Mr. Alfano and Mr. Kolaya, where we took over the
5 function of filing confessions of judgment in the
6 City of Philadelphia for defaulted merchants.

7 So that ran from some point early
8 February 2020 through the time this case was filed.

9 Q. Anything else in connection with any
10 representation provided to Complete Business
11 Solutions Group?

12 A. As part of that engagement, which was all
13 defined in a fee agreement what it would be, we
14 would deal with defaulted merchants or making
15 modification agreements for merchants, potentially
16 settlement agreements with merchants. But the
17 primary representation dealt with that.

18 And then the other engagement that
19 occurred for Complete Business Solutions Group was
20 in March or April of 2020, in the heart of the
21 pandemic, we were asked to provide corporate
22 documents with respect to investors.

23 Q. What were you asked to provide?

24 A. We were asked to review the existing
25 promissory notes with investors. And we were hired

1 solely to do the corporate function of what was
2 later described by the securities counsel as an
3 exchange note process.

4 Q. So you drafted the offering documents for
5 the exchange note process?

6 A. I'm not sure exactly what offering
7 documents are, but I know that there was a
8 promissory note and a security agreement. When you
9 say "you," it wasn't me. I'm not a corporate
10 lawyer. But there were people at Fox Rothschild
11 that prepared the corporate pieces of it.

12 And then when you talked about offering,
13 that sounds more like something that prior to this
14 case I wasn't familiar with. But, as I said, there
15 was -- there was a securities lawyer that was
16 representing Complete Business Solutions that dealt
17 with, I think, what you're talking about, which is
18 the offering component or something like that.

19 Q. Who is that?

20 A. Phil Rutledge.

21 Q. He's not with Fox Rothschild; right?

22 A. No. Phil Rutledge is on his own firm. I
23 think the name of the firm -- don't hold me to it,
24 but I think it's Harrisburg, Pennsylvania. They
25 were the securities lawyer prior to Fox Rothschild's

1 engagement. I believe so, although I never spoke to
2 Phil prior to that limited window of time.

3 And as part of this, Phil was hired and
4 retained pursuant to a fee agreement to provide all
5 securities advice relating to what became known as
6 the exchange offer.

7 Q. But when you testified a few minutes ago
8 about in March or April of 2020 being retained to
9 prepare corporate documents for investors including
10 promissory notes, were you testifying about work
11 that Fox Rothschild did, or were you testifying
12 about work that Phil Rutledge did?

13 A. Well, what we were hired to do initially
14 was to review the existing agreements with
15 investors. And all of those documents were provided
16 us for the first time by Joe Cole. We
17 immediately -- we're dealing with Phil Rutledge.

18 So it was Fox Rothschild was working on
19 the corporate piece of it, and Phil Rutledge was
20 working on the securities piece. So we drafted, as
21 I just said, the corporate piece of those documents,
22 and Phil Rutledge then created and gave the
23 recommendation that this should be part of what
24 later would be called the exchange offer. So he
25 drafted that part of it. And these documents, I

1 believe, were attachments to that pile of documents.

2 Q. Okay. So setting aside Phil Rutledge who
3 is not with your firm, can you just explain to me
4 what Fox Rothschild did, not Phil Rutledge and not
5 an attorney at another firm, but what Fox Rothschild
6 did, what work you provided generally in connection
7 with the exchange offering so there's clarity on the
8 record?

9 A. I think I just answered. We provided and
10 drafted the corporate documents that were then used
11 by Phil Rutledge to create the exchange offer. And
12 by corporate documents, because I think I said this
13 before, it was, by my memory, a promissory note and
14 a security agreement. And obviously we were working
15 with Phil Rutledge.

16 I can't subtract from it. I mean, I'm
17 sure we dealt with Phil, you know, on however this
18 entire package would then come together. But you
19 can't look at one without the other because he was
20 doing the piece that I think was the securities
21 piece of it.

22 Q. Any other work Fox Rothschild has done in
23 connection with Complete Business Solutions Group?

24 A. I think that probably adequately describes
25 to my memory what we did.

1 Q. Okay. And so who is the -- I guess at a
2 law firm you said there's the relationship partner,
3 which is you. And whose client -- at Fox Rothschild
4 whose client is Complete Business Solutions Group?
5 Is it your client, or is there another partner?

6 A. Yeah. That's what I meant by the
7 relationship partner. And I would say they were
8 mine, yes.

9 Q. Okay. And you don't remember how it was
10 specifically that you came about being retained by
11 them or who the individual was at Complete Business
12 Solutions Group that initially retained you; is that
13 accurate?

14 A. Well, I don't think that was what I said.
15 What I said was I was introduced to the company by
16 Anthony Zingarelli. And the fee arrangement would
17 memorialize who signed that. And that was provided
18 over to Mr. Alfano and Mr. Kolaya. So I'm sure if
19 they have it or you have it, you can see who signed
20 it. But the introduction to the company generally
21 was Anthony Zingarelli.

22 Q. Right. You don't remember who at Complete
23 Business Solutions Group Mr. Zingarelli introduced
24 you to?

25 A. I'm not sure I was introduced to anybody.

1 We spoke with I'm sure someone from the collections
2 department at that time, although I don't remember
3 specifically. As I said, it wasn't me who did that
4 work. But I know generally what the work was, and I
5 would be on that phone call.

6 But it wasn't really an introduction to
7 anybody. It was we have these documents. Can you
8 take a look at these documents. We want to roll out
9 this new type of product that was part of their
10 portfolio of work they were doing.

11 Q. Before we sort of talk in more detail
12 about the various matters that Fox Rothschild worked
13 on for Complete Business Solutions Group, I wonder
14 if you could just briefly give an overview of your
15 educational and work history.

16 A. Sure. I went to George Washington
17 University and got a bachelor's in business
18 administration. And then I went to Rutgers
19 University for law school and a master's in business
20 administration. And I have worked at Fox Rothschild
21 my entire career, from a summer associate in 2005 to
22 the present.

23 Q. And you're a partner at Fox Rothschild;
24 correct?

25 A. I am a partner at Fox Rothschild.

1 Q. Okay. And do you have any other titles
2 within the firm?

3 A. Yes. I'm the co-chairman of the firm's
4 litigation department, and I'm a member of the
5 executive committee of the firm.

6 Q. So where is Complete Business Solutions
7 Group headquartered?

8 A. That's a legal question I don't know the
9 answer to. The office that I would go to if I had
10 to go in person was on Third Street in Philadelphia.

11 Q. Well, did you sign affidavits on behalf of
12 Complete Business Solutions Group as to where
13 Complete Business Solutions Group was located?

14 A. As I knew, they were located in
15 Philadelphia.

16 Q. Did you ever do any checking of any of the
17 corporate records to see where, in fact, Complete
18 Business Solutions Group identified its principal
19 place of business was?

20 A. Did I do checking? No, because I told you
21 where I went and what I knew. I do know at some
22 point in the litigations that I previously
23 described, which was probably pretty close to when
24 this case was filed, there was an issue raised at a
25 deposition about the principal place of business

1 versus where the company was.

2 And, as I said, that's a legal
3 determination that I have litigated not for Complete
4 Business Solutions Group, but for many clients.
5 When you're asking me where the headquarters or
6 nerve center, this is the United States Supreme
7 Court issue that's been addressed for 200 years. So
8 I can't answer the legal determination.

9 And I'm not aware of any legal
10 determination of, you know, what the headquarters is
11 or what the nerve center is or any other types of
12 things that your question implied.

13 Q. My question wasn't to imply anything. So
14 we're taking your deposition, Mr. Berman, in your
15 person capacity and we're not asking you for any
16 legal opinions or conclusions today. We're asking
17 you questions --

18 A. But I'm a lawyer. But I'm a lawyer. So
19 you ask me questions calling for legal conclusions.
20 Obviously I practice law every day of my life.

21 Q. I want the record to be clear, Mr. Berman,
22 so that you understand that you're being asked
23 questions in your individual capacity and you're not
24 being asked for any legal opinion about anything.

25 Do you understand that for the questions

1 going forward?

2 A. I do, but I'm a lawyer for the past 16 or
3 15 years. So when you ask me questions that have
4 legal conclusions, of course it's going to -- I will
5 answer you always that I cannot give you a legal
6 conclusion.

7 Q. And did there ever come a time where you
8 learned that Complete Business Solutions Group had
9 an office or a location in Florida?

10 A. I can't say for an office. I'm aware that
11 they have some office down -- I believe it was in
12 Palm Beach, but I've never been there. So I don't
13 know more than that. And as I said, this came up
14 right near the end of our representation at a
15 deposition, by memory.

16 Q. But you're not referring to a deposition
17 involving the SEC; correct? Was this --

18 A. No, no. Yes. I'm sorry. I didn't mean
19 to interrupt. Yes. I'm talking about pre-filing of
20 this case.

21 Q. So I'm not asking you about another
22 deposition in another case. I'm just asking you for
23 your knowledge about matters and not what occurred
24 in other litigation or in other depositions, but
25 about your personal knowledge based on what you,

1 Brett Berman, know. Do you understand?

2 A. And I -- and I answered that. I only know
3 things because I was a lawyer. So I would find out
4 at a deposition, and that's the first I heard of
5 this distinction between Philadelphia versus
6 Florida.

7 Q. So am I understanding correctly that you
8 didn't know there was any sort of connection between
9 CBSG and Florida until it came up in a deposition in
10 another case?

11 A. That's correct. I mean, again, as I said,
12 I would -- I visited the office at Third Street in
13 Philadelphia. I do know at a deposition the issue
14 came up about whether it's a Florida corporation or
15 a Philadelphia, Pennsylvania corporation. But, as I
16 said, that's what I know. I learned questions at a
17 deposition about this topic.

18 Q. Okay. So when did that occur? When is
19 this deposition that you're referring to and in what
20 case?

21 A. It was one of either the HMC or Fleetwood
22 depositions. There were two depositions of Joe Cole
23 and two depositions of Joe LaForte. And at one of
24 those depositions, I remember questions being asked
25 of, I believe, Mr. Cole on this topic.

1 Q. Okay. And that was the first that you
2 knew there might be an office or principal location
3 of Complete Business Solutions Group in Florida?

4 A. That's the best of my memory. That's when
5 I recall. It could have been that I learned that
6 before, but I don't remember.

7 Q. Did Fox Rothschild provide any tax advice
8 to Complete Business Solutions Group?

9 A. To my knowledge, we provided no tax
10 advice.

11 Q. And did you ever become aware of any sort
12 of connection between Complete Business Solutions
13 Group and the State of Florida for tax purposes?

14 A. We didn't provide tax advice. So my
15 testimony previously about when I became aware of
16 this distinction between Philadelphia and Florida is
17 what I testified to previously.

18 Q. Understood. But did you ever become aware
19 of -- have you ever become aware of any issue
20 involving Complete Business Solutions Group
21 identifying Florida as a business location for tax
22 purposes?

23 A. I don't know what you mean by issue, but,
24 no, I'm not aware that that's an issue to this day.

25 Q. How many offices did Complete Business

1 Solutions Group have in Pennsylvania?

2 A. I can't answer that. But the two I knew
3 about, one was on Third Street. I believe it was 20
4 and 22 North Third. And I knew that building long
5 before Complete Business Solutions Group from prior
6 representation of the former owners. And an office
7 I think it was Arch Street, Second and Arch which I
8 only went to one time.

9 Q. And during the course of your
10 representation of Complete Business Solutions Group,
11 who did you understand to be the person who was
12 operating Complete Business Solutions Group on a
13 day-to-day basis?

14 A. Joe Cole was my primary point of contact
15 on the day to day, everything going on from a
16 financial perspective, getting information from him
17 or his team. Anthony Fazio was who I dealt with on
18 all of collection-type work.

19 I knew that -- you know, Joe LaForte I
20 dealt with with respect to specific issues on
21 specific merchants. Lisa McElhone, if there were a
22 question more about some corporate aspect, which is
23 fairly limited. And then really every single person
24 at the company at a higher level.

25 You know, as I said before, Tori I would

1 have to deal with on certain issues. There were a
2 team of collection people, Cory and Sam and another
3 woman. Those who we dealt with day to day every day
4 on issues relating to merchants.

5 Q. So is it your testimony that all the
6 people you just named were the individuals that you
7 understood to be running the day-to-day operations
8 at Complete Business Solutions Group?

9 A. I can't answer running day-to-day
10 operations as I didn't work there. I was handling
11 legal matters. So the question for me was who do I
12 need to obtain information from.

13 And the people I just identified in my
14 previous answer were the people I would obtain
15 information from. I don't really understand the
16 question beyond that.

17 Q. During the representation of Complete
18 Business Solutions Group, who did you understand was
19 the owner of the company?

20 A. Lisa McElhone is what I was told.

21 Q. And who told you that?

22 A. I believe I learned that either prepping
23 for one of the four depositions I told you about or
24 at the depositions. But there did become a time
25 later I saw documents to that effect.

1 Q. And did you have an understanding of
2 anyone else as the owner of the company?

3 A. No, I don't think so.

4 Q. What document did you see that reflected
5 that Lisa McElhone was the owner?

6 A. Well, that, I think, deals with a separate
7 engagement of individuals that are not -- they're
8 part of this case, but I think that starts to
9 implicate privilege.

10 Q. Oh. I'm sorry. I didn't realize that you
11 represented individuals as well. Tell me about what
12 individuals have you represented in connection with
13 Complete Business Solutions Group.

14 A. We were hired by Joe LaForte and Lisa
15 McElhone. I believe it was the summer of 2020
16 personally.

17 Q. After the SEC filed its case?

18 A. No, before the SEC filed the case.

19 Q. Tell me when was the firm retained.

20 A. I would say general ranges between April
21 and June of 2020.

22 Q. And the firm was retained by Lisa McElhone
23 and Joseph LaForte in their individual capacities?

24 A. Yes.

25 Q. And was that in connection with a

1 particular legal -- was it in connection with a case
2 or what kind of work was done?

3 MR. FUTERFAS: This is Alan Futerfas. I'm
4 going to object on the grounds of privilege.

5 MR. LEVITT: I'm mostly going to object on
6 the grounds privilege for the witness. The matter
7 did not involve work for Par Funding. It involved
8 something else, and he represented the individuals.
9 Objecting on the grounds of privilege.

10 MR. SOTO: This is Mr. Soto also objecting
11 on behalf of Mr. LaForte on the grounds of
12 privilege.

13 BY MS. BERLIN:

14 Q. Mr. Berman?

15 A. My attorney objected on the grounds of
16 privileged which means it's privileged.

17 Q. Does that mean you're going to refuse to
18 answer on privilege grounds what the general nature
19 of the representation was?

20 A. The general --

21 MR. LEVITT: I'll instruct you not to
22 answer on privilege grounds.

23 MS. BERLIN: We do need an answer from the
24 witness as to whether or not he's going to answer
25 the question so that we can provide this to the

1 court.

2 THE WITNESS: The answer is I will defer
3 to what my lawyer just instructed me.

4 BY MS. BERLIN:

5 Q. Are you still representing Lisa McElhone
6 and Joseph LaForte?

7 A. I would say the answer is no.

8 Q. And when did the representation conclude?

9 A. I would say that the representation
10 concluded when the receivership was expanded.

11 Q. But the receivership was not expanded over
12 Lisa McElhone and Joseph LaForte in their individual
13 capacities; correct?

14 A. Well, I'm not -- I can't say the effect of
15 an order, but what I would say to that is the
16 receivership was expanded, to my knowledge, to
17 affect everything that Ms. McElhone or Mr. LaForte
18 owned. So there was nothing to be representing them
19 about since everything is under the control of the
20 receiver.

21 BY MS. BERLIN:

22 Q. So have you represented anyone else in
23 connection with -- in their individual capacities in
24 connection with Complete Business Solutions Group?

25 A. No, I don't think so.

1 Q. And is the matter that you just testified
2 about in connection with Lisa McElhone and Joseph
3 LaForte the only time that you've represented them
4 in their individual capacities?

5 A. No. I don't think that's correct. In
6 some of the litigation, for instance, Dual
7 Diagnostics litigation, by memory, they were
8 individually named along with other actions I
9 believe that were pending in Philadelphia they were
10 individually named.

11 And so, no, again, that was a different
12 scope of representation. But I would say that I was
13 representing them as part of the Par
14 Funding/Complete Business Solutions Group umbrella
15 during a previous time.

16 Q. When? What time period?

17 A. At some point after the filing, after me
18 getting involved in the Fleetwood case until the
19 time you filed this case.

20 Q. So when is the -- what do you mean by --
21 what time period is the Fleetwood case? Can you
22 give us a range of when you're claiming you were
23 actually providing legal work for Lisa McElhone and
24 Joseph LaForte in their individual capacities?

25 A. Well, you kind of twisted my answer a bit,

1 so I can't really go by your sandbox of what you
2 just asked me. I'll say what I just said before.

3 They were sued personally in certain
4 cases. As part of the representation of the
5 company, they were subject to the representation I
6 was giving to the company. And so I don't know.
7 And as to Fleetwood, I think I answered that
8 previously, but it was at some point in mid 2019.

9 Q. Okay. So did Joseph LaForte and Lisa
10 McElhone, did they retain Fox Rothschild in their
11 individual capacities back in 2019?

12 A. I don't remember what the fee letter said,
13 but there was not a specific fee letter -- what may
14 have occurred is that it was -- a fee letter would
15 define who the defendants were in a case, but the
16 bills would be sent to CBSG because these were not
17 independent representations outside of the scope of
18 company.

19 Q. But my question you to was whether or not
20 Fox Rothschild represented Lisa McElhone and Joseph
21 LaForte in their individual capacities. And I'm
22 understanding your testimony to be, yes, in
23 connection with the Fleetwood -- in connection with
24 cases where they were named as defendants in CBSG
25 matters; is that correct?

1 A. I think that's what I just said.

2 Q. Okay. Just making sure. But am I also
3 understanding correctly that Lisa McElhone and
4 Joseph LaForte did not pay Fox Rothschild for that
5 representation, but instead Complete Business
6 Solutions Group paid for it?

7 A. That is correct.

8 Q. And you're not sure if Lisa McElhone and
9 Joseph LaForte signed any sort of retainer in their
10 individual capacities to retain Fox Rothschild; is
11 that correct?

12 A. I don't believe that occurred, other than
13 the fee agreements that were provided to Mr. Kolaya
14 and Mr. Alfano. I can't speak to anything more
15 specific. But, no, I don't believe so.

16 Q. Have you represented anyone else in their
17 individual capacity other than -- anyone else
18 connected with CBSG in their individual capacity
19 other than Ms. McElhone and Mr. LaForte?

20 A. I'm not sure exactly what that means. I
21 don't think so though.

22 Q. What about Wendy Furman, did you represent
23 her in her individual capacity?

24 A. She was a witness at a deposition. So she
25 was there as part of the company, but, no, I didn't

1 independently represent her.

2 Q. But you were her attorney during her
3 deposition; correct? You appeared as her attorney
4 when she was deposed?

5 A. I appeared as the company's attorney, and
6 she was an employee of the company. So I'm not sure
7 of the distinction. But I was there on behalf of
8 the company defending a deposition of an employee of
9 the company.

10 Q. But just so I understand, you represented
11 Wendy Furman not in her individual capacity, but as
12 an employee of the company as counsel for CBSG. But
13 when it came to Lisa McElhone and Joseph LaForte, in
14 2019, you were representing them in their individual
15 capacity. So it was not the same type of
16 representation you were providing for Wendy Furman;
17 is that accurate?

18 A. I'm not sure I could parse the way you
19 just did, but I gave my answer, and the answer
20 was -- I'll say it again just so we're not lacking
21 any clarity -- Joe LaForte and Lisa McElhone were
22 either sued personally in cases. And if they were,
23 we would then defend them as part of claims against
24 the company.

25 But I'm not aware, by my memory, of Wendy

1 Furman being personally sued. I dealt with Wendy
2 Furman as a -- she was noticed as a deposition in
3 either the HMC or Fleetwood case.

4 Q. Did you defend the depositions of any
5 other employees of Complete Business Solutions Group
6 at any time?

7 A. Joe LaForte, Joe Cole, Aida Lau and Wendy
8 Furman, that's who comes to memory.

9 Q. Anyone else?

10 A. I don't remember sitting here right now,
11 but I don't think so.

12 Q. Did you prepare Aida Lau for her
13 deposition?

14 A. I had a joint meeting with Aida Lau and
15 Wendy Furman and Joe Cole to prepare the three of
16 them for their depositions.

17 Q. And Joseph LaForte was there as well;
18 correct?

19 A. He may have popped his head in, but I
20 don't think he was really there. He could have been
21 there for a few minutes, but I don't think, by my
22 memory, he was there. I mean, I brought three
23 binders, and the three binders were for Joe Cole,
24 Aida Lau and Wendy Furman.

25 Q. Who else attended the prep session from

1 your law firm?

2 A. There were probably two different prep
3 sessions that we went for. There was the first
4 deposition of Joe Cole and Joe LaForte. And I
5 believe my former colleague, John Christman, may
6 have attended with me.

7 And at the second prep session -- second
8 or third because it was canceled at one point. So I
9 don't remember if there were two or three. There
10 was -- either John Christman was there or not there.
11 It may have been, as I'm saying, the second or
12 third. But that's who it would have been.

13 Q. Okay. And was there any associate other
14 than -- it was just -- John was there. But was
15 there any other associate who was present for the
16 prep sessions?

17 A. No, no, not to my memory. I don't think
18 so. I don't think so.

19 Q. Can you spell John's last name for the
20 court reporter, please?

21 A. Christ man.

22 Q. So I'm going to guess it's
23 C-H-R-I-S-T-M-A-N with one N; is that correct?

24 A. I think so. He's not here anymore though.

25 Q. Where is he now?

1 A. He's a pastor or in pastoral school. He
2 decided to join the seminary.

3 Q. So you prepared Aida Lau, Wendy Furman and
4 Joseph Cole for their depositions together in a prep
5 session where the three of them all attended; is
6 that accurate?

7 A. That sounds right, yes.

8 Q. Okay. And about when was this?

9 A. Right before the depositions. I couldn't
10 tell you the exact dates, but I think this was for
11 the HMC case, and that would lead me to believe it
12 was in late 2019, early 2020.

13 Q. So was the first prep session attended by
14 Ms. Lau, Mr. Cole and Ms. Furman? You said multiple
15 sessions.

16 A. Yeah. Okay. I'm sorry. The first prep
17 session, what I referred to before, was I believe
18 the Fleetwood case, which was first. And that was a
19 prep session of Joe Cole and Joe LaForte. That was
20 meeting one.

21 And then there were either one or two
22 meetings because, as I said, the deposition was
23 canceled. So it may have been a few months went by,
24 and I went and did a reprep or I went to prep. I
25 just don't remember specifically if it were two or

1 three. And the two or three are what you're
2 referring to, which was Joe Cole, Aida Lau, Wendy
3 Furman, and perhaps Joe LaForte popped his head in.

4 Q. And these prep sessions occurred at the
5 Complete Business Solutions Group office in
6 Pennsylvania?

7 A. Correct.

8 Q. And what did you understand Joseph
9 LaForte's role at Complete Business Solutions Group
10 to be beginning from when you first began doing work
11 for Complete Business Solutions Group?

12 A. And by first I think you're referring to
13 the limited 2018. I didn't know Joe LaForte, never
14 spoke to him, or Joe Cole for that matter, back
15 then. So it would be the only time I would start to
16 gain an understanding would have been in the 2019
17 into '20 representation.

18 And my understanding was that he was
19 involved for a company, Resources and Benefits,
20 which to me meant he was the originator of merchant
21 deals, certain merchant deals at CBSG. And he was
22 essentially a broker type role. So broker would be
23 someone who deals with the merchants on origination
24 of the MCA deal.

25 Q. Did you understand that he had any sort of

1 management position in connection with Complete
2 Business Solutions Group?

3 A. I don't think he had formal management
4 positions in that way. You know, the company was
5 pretty tiered out. And that's what I said before.
6 You had the collection arm, which was Anthony Fazio
7 and Tim. You had the accounting arm, which was Joe
8 Cole, Aida and others. You had the underwriting
9 team, which included -- or underwriting such
10 documentation, which was Wendy Furman and that
11 group.

12 And Joe LaForte was, you know, there
13 because, obviously, merchants were the life blood of
14 CBSG. So he had that function of knowing what
15 happened to form a merchant relationship and some of
16 the dealings with merchants as they either went good
17 or bad or new deals. So he was one of probably
18 multiple pieces of people I would talk to.

19 But I wouldn't say he dealt with the Joe
20 Cole side of finance and he didn't deal with
21 necessarily the Anthony Ronn Fazio side of the
22 collection arm.

23 Q. You testified that Mr. LaForte had no
24 formal management position. I'm not just speaking
25 about a formal management position. I'm talking

1 about as a practical matter or more informal. Did
2 he have any sort of role at the company where he was
3 managing any aspect of Complete Business Solutions
4 Group's operations?

5 A. I think my last answer is the same. I
6 mean, I definitely dealt with Joe LaForte at the
7 company. But everybody had their own silos of what
8 they did, and his was -- he could give me the
9 background on merchants. He could tell me what
10 happened at origination. He could tell me what
11 happened at a reload or the on-the-ground facts of
12 how the deal came to be and what the deal looked
13 like.

14 But he wouldn't deal with Joe Cole. I
15 won't say he didn't deal with Joe Cole. I'm sure he
16 did. But if I needed financial information, I
17 called Joe Cole or Aida Lau. If I needed collection
18 information, I called Anthony Fazio or one of this
19 people. I think that answers your question.

20 Q. It actually doesn't. I was just asking --
21 I wasn't asking about any -- I just asked a very
22 simple question, which was whether or not during
23 your time representing Complete Business Solutions
24 Group at any time you understood that Joseph LaForte
25 had any sort of management role, whether formal or

1 informal, in connection with Complete Business
2 Solutions Group.

3 And let me clarify. I mean in any aspect,
4 not necessarily finance. You're talking about all
5 these other people. I'm just asking about Joseph
6 LaForte.

7 Did you ever understand him -- during the
8 entire time you represented Complete Business
9 Solutions Group, did you understand him to have any
10 management role in connection with the company,
11 whether it was a formal management role or informal
12 management role? That's the only question I was
13 asking.

14 A. Well, you asked a lot of questions right
15 there.

16 MR. LEVITT: Object to the last question.
17 BY MS. BERLIN:

18 Q. Well, that's the third time I've asked it.
19 So I'm trying to provide to you --

20 A. But I've given you the answer. I mean,
21 you're asking me -- are you asking what I felt or
22 what I observed? And what I observed was -- I mean,
23 sure, I told you I dealt with Joe LaForte, but I
24 dealt with a lot of people there. And he was one of
25 the many people I dealt with and probably not the

1 most because I would deal with Anthony Fazio all day
2 every day. I would deal with Joe Cole.

3 But Joe LaForte was -- yeah, I mean, he
4 was involved in the mix. No doubt about it. But he
5 was the merchant guy. So I would deal with him on
6 questions like, as we said, about HMC, like what
7 happened with Kara DiPietro. How did this
8 relationship come to be? How did it go bad? I
9 would deal with Joe LaForte on that type of topic
10 because he helped originate it. He had a
11 relationship. And he was able to describe to me
12 what happened in the entire process.

13 BY MS. BERLIN:

14 Q. So during the time you represented
15 Complete Business Solutions Group, did Joseph
16 LaForte have a management role, whether formal or
17 informal, in connection with the merchant
18 agreements?

19 A. Not the agreements. I don't think he was
20 an agreement guy like that. He had other people
21 from his own team who would do the agreements, like
22 Wendy Furman, for instance. She was the one who, to
23 my knowledge, would document a lot of these deals,
24 especially for HMC. And I know that from her
25 deposition.

1 But he was someone who dealt with
2 originating a merchant. So, yeah, I mean, clearly
3 that has a big piece of CBSG since their money was
4 made or lost by merchants. But I don't think I can
5 answer --

6 Q. I'm sorry. You broke up. Mr. Berman,
7 your answer was cut off, at least on my end. I
8 don't know if the court reporter heard the end of
9 what he was saying.

10 MR. LEVITT: We lost you, Brett. We lost
11 your audio feed.

12 THE WITNESS: Can you hear me now?

13 MS. BERLIN: Yes.

14 MR. LEVITT: Yes, we can.

15 THE WITNESS: I'm sorry. For some reason,
16 my line went dead. Let me just hang up on my other
17 line because it just went dead on me. Hold on. I'm
18 back.

19 BY MS. BERLIN:

20 Q. So did Mr. LaForte have any -- did you
21 understand during your representation of Complete
22 Business Solutions Group that Mr. LaForte had any
23 sort of management role in connection with Complete
24 Business Solutions Group in any aspect of the
25 company?

1 MR. FUTERFAS: This is Alan Futerfas. I'm
2 going to object. I think this is about the eighth
3 time that the exact same question has been asked and
4 answered. So I'm going to lodge an objection.
5 Thank you.

6 THE WITNESS: I stand by my last answer.
7 I've answered this. If you want to ask a different
8 question, I could answer, but I've answered this
9 question.

10 BY MS. BERLIN:

11 Q. So are you refusing to answer --

12 A. No.

13 Q. -- the question of --

14 A. No.

15 Q. -- whether or not he had management
16 exper -- whether or not he had a management role?

17 You testified about what Joseph Cole did,
18 what other people did, and about what -- that Joseph
19 LaForte had some involvement in the merchant
20 origination. But you haven't answered the question
21 I'm going to ask. This is the fifth time. But the
22 transcript will reflect it. It's pretty simple.

23 During your entire representation, did you
24 understand that Joseph LaForte had a management
25 role, whether formal or informal, in connection with

1 any aspect of Complete Business Solutions Group?

2 MR. FUTERFAS: I maintain -- Alan
3 Futerfas. I maintain the same objection. That same
4 question has been asked a number of times. It has
5 been answered very thoroughly by the witness. Thank
6 you.

7 THE WITNESS: So just to be clear, because
8 I'm absolutely not refusing to answer, so let's not
9 put words in my mouth. I'll tell you when I'm not
10 going to answer.

11 And the answer is, again, Joe LaForte's
12 role as I knew it was dealing with merchants. So
13 when it came to dealing with merchants, Joe LaForte
14 was someone I absolutely dealt with regularly on
15 specific merchant questions or issues about --
16 dealing with -- you know, if there was an interplay
17 with the collection piece with Anthony Fazio.

18 But you're asking me was he a manager. I
19 mean, he was clearly doing that. And he did a lot,
20 I mean, but I don't -- I don't -- I can't answer
21 your question any better than I've answered it five
22 times now.

23 BY MS. BERLIN:

24 Q. Okay. So in connection with whether or
25 not you understood him to be a manager of the

1 company, formally or informally, your answer is just
2 that if you had a matter concerning a merchant
3 issue, that you would contact him. That doesn't
4 answer the question about management.

5 And so if you refuse to provide an
6 answer -- and it could be that you don't know. But
7 whether you understood that he was providing a
8 management role, not what happened to the company he
9 was in, not who you would call sometimes. It's a
10 very specific question.

11 MR. LEVITT: Excuse me, Mr. Berman.

12 BY MS. BERLIN:

13 Q. We just want to make sure the transcript
14 is clear so that if we ask the court for assistance
15 in getting an answer, that we don't later learn that
16 you were willing to continue to actually answer the
17 question posed.

18 MR. FUTERFAS: Amie, I object. This is
19 Alan Futerfas. I object to everything you said. I
20 represent a litigant here. You are asking -- this
21 witness has given you detailed factual information,
22 which a deposition is for. He's answered your
23 question 12 times.

24 You're mischaracterizing his testimony in
25 every way, shape and form. I have nothing further

1 to say except that I think your comments are
2 misplaced. Thank you.

3 MR. LEVITT: May I speak for the witness
4 for a moment. Peter Levitt.

5 MS. BERLIN: You can make an objection if
6 you like.

7 MR. LEVITT: I'll tell you what.

8 MS. BERLIN: If he's going to answer,
9 that's great. And if he's not going to answer the
10 question posed, then we'll move on.

11 THE WITNESS: We're going to let my lawyer
12 speak for a second. How about that.

13 MR. LEVITT: Would you allow me to speak,
14 Ms. Berlin?

15 MS. BERLIN: I am not going to preclude
16 you from speaking on this transcript.

17 MR. LEVITT: I know what's appropriate.
18 Ms. Berlin, I know what's appropriate in a
19 deposition and what isn't appropriate. You don't
20 have to teach me that.

21 MS. BERLIN: I wasn't trying to do that.
22 I'm sorry. I was just trying to point out to you
23 that you don't have to (indecipherable), that you'll
24 have an opportunity through any sort of litigation
25 process to address this. But by all means, you can

1 speak as much as you like. I'll give you an
2 opportunity to just talk.

3 MR. LEVITT: I think I'd like to take a
4 sidebar with Mr. Berman to see if we can -- if I can
5 help clarify this issue.

6 MS. BERLIN: Sounds good.

7 MR. LEVITT: And get you what you need. I
8 think he has answered the question. Let's go off
9 record. I'd like to confer with my client for just
10 a minute since this seems to be an important
11 question for you.

12 MS. BERLIN: Sure. And why don't we --
13 actually, I was going to ask if we could take a
14 personal break soon. So why don't we do that now.
15 Why don't we take -- let's take 15 minutes. And you
16 can confer. And everyone can take a break. We'll
17 become back on at like 11:25. All right. Sounds
18 good. Thank you.

19 THE VIDEOGRAPHER: And we're going off the
20 record at 11:09 a.m.

21 (Recess from 11:09 a.m. to 11:28 a.m.)

22 THE VIDEOGRAPHER: And we're back on the
23 record at 11:28 a.m.

24 BY MS. BERLIN:

25 Q. Mr. Berman, is there anything that you

1 wanted to add in connection with your answer to the
2 question of whether or not during your time
3 representing CBSG, whether Mr. Joseph LaForte had
4 any management role in connection with Complete
5 Business Solutions Group?

6 A. Yeah. So what I would just further add is
7 similar to what I said before. The company, as I
8 knew it, was broken up into various subparts,
9 collections, finance, underwriting. Joe LaForte I
10 dealt with, you know, primarily on the merchant
11 relations and the deal.

12 And as to your specific questions about
13 whether that means he was the manager of the
14 company, I don't know the answer to that question.

15 Q. Did you understand that he was managing
16 that merchant relations aspect of the business?

17 MR. FUTERFAS: Objection to form.

18 THE WITNESS: As I understood it is how I
19 heard him to testify to it in the HMC and Fleetwood
20 cases, which was that he worked for a company,
21 Resources and Benefits, and they were essentially a
22 third-party broker that worked out of the
23 neighboring connected office space that originated
24 the deals.

25 So that's what I knew his role was. But

1 that had a fairly large role for dealing with
2 merchants because that was the function of the
3 company, merchants. So that's how I understood his
4 role at the company, in that way.

5 BY MS. BERLIN:

6 Q. At any time did you meet with any
7 investors of Complete Business Solutions Group?

8 A. Never.

9 Q. What about any potential investors?

10 A. Never.

11 Q. What about any of the individuals who had
12 set up investment firms that were raising money in
13 connection with Complete Business Solutions Group?

14 A. To my knowledge, never.

15 Q. Did you ever review any marketing
16 materials that were in connection with Complete
17 Business Solutions Group?

18 A. Never.

19 Q. Did you ever provide any legal advice
20 about whether or not disclosures to potential
21 investors were adequate with respect to Complete
22 Business Solutions Group?

23 A. The answer is no, never. But what I would
24 say is that as part of what came to be called the
25 exchange offer, there was discussions with Phil

1 Rutledge where he gave the opinions as to what
2 disclosures would be required. That would be the
3 only discussion or discussions I'm aware of on top
4 of when the Texas Securities Board filed the claim,
5 the Cease and Desist Order, if that's what it's
6 called. Haynes & Boone was representing them on
7 that securities piece.

8 And I was involved in discussion with
9 Haynes & Boone where the general topic came up in
10 light of the allegation in that suit or in that
11 administrative proceeding.

12 Q. Okay. So my question was just whether you
13 provided any legal advice concerning the
14 disclosures.

15 A. I did not provide legal advice concerning
16 the disclosures.

17 Q. Okay. Did anyone at Complete Business
18 Solutions Group ever seek your legal advice in
19 connection with the disclosures being made to
20 investors or potential investors?

21 A. The answer is no, not -- the only time
22 that ever came up with me or Fox Rothschild would
23 have been as part of what became known as the
24 exchange offer where there were discussions about
25 what would be in that disclosure document. But

1 prior to that, zero.

2 Q. Okay. So with respect to the exchange
3 note offering, and I assume you're talking about the
4 April 2020 offering where investors were asked to
5 exchange their promissory notes for notes that
6 offered a lower interest rate paid with a later
7 maturity date.

8 Is that what you're referring to when you
9 talk about the exchange offering?

10 A. I can't describe it the way you just
11 described it because it sounded like things -- I
12 can't -- I do know that there was a promissory note
13 that modified terms of other promissory notes. But
14 the rest of it, I'm not sure I can answer your
15 question.

16 Q. Well, why don't you tell us -- why don't
17 you explain what the exchange offering is that you
18 referred to in your testimony.

19 A. I think I did before twice, but I'll do it
20 again. We, Fox Rothschild, was engaged to review
21 the existing promissory notes that were in effect at
22 the time, in March or April of 2020 when we were --

23 Q. I don't think you understood my question
24 correctly. I just want to make sure the transcript
25 is clear.

1 When you refer to the phrase -- so I'm not
2 asking what work you did. But when you used
3 exchange note or exchange offering, can you just
4 clarify for the record what that means, not the work
5 you did, but the phrase that you're using, what that
6 means, exchange note or exchange offering?

7 A. Got it. Understood. My apologies. So as
8 I said before, Phil Rutledge called it an exchange
9 offer, and it was the document that would, I guess,
10 go to investors that enclosed a lot of disclosures
11 and certain things and the corporate documents that
12 Fox Rothschild prepares.

13 Q. So is the exchange offering, is that an
14 offering that occurred in about April of 2020?

15 A. If exchange offering is the correct way to
16 describe it, yes, that's what I was referring to.
17 And that was my testimony when I talked about the
18 exchange -- what Phil Rutledge called the exchange
19 offer, yes, in April or May 2020. But prior to
20 that, nothing.

21 Q. And so during the exchange offering, just
22 to be clear -- I was a little confused. My question
23 was just whether anyone at CBSG asked you for legal
24 advice, not what discussions you had with other
25 lawyers. But just did anyone at CBSG ask you for

1 legal advice concerning the disclosures that needed
2 to be made?

3 MR. FUTERFAS: I'm going to object as
4 asked and answered. I believe that question was --
5 Alan Futerfas. I believe that question was asked
6 before and answered completely before. Thank you.

7 THE WITNESS: And with that objection, I
8 will answer it again, but I did answer it before. I
9 was involved in phone calls with Joe LaForte, Joe
10 Cole and maybe others and Phil Rutledge where that
11 discussion was had with me present on the phone
12 where Phil Rutledge gave them advice as to what
13 needed to be disclosed.

14 But I'm not a securities lawyer ever,
15 don't know it. And I'm surely not someone who would
16 be giving legal advice about what needs or need not
17 be disclosed nor would they ask me.

18 BY MS. BERLIN:

19 Q. So if I understand correctly, no one at
20 CBSG asked you for legal advice about disclosures
21 that should be made, but you were present when they
22 received legal advice from a lawyer outside your law
23 firm; is that correct?

24 A. Right. The answer to your question is
25 yes, but, you know, Phil was hired to do the

1 securities work. So there could have been a
2 question that I was on that was -- by email, too, by
3 the way. And that was all turned over in response
4 to Mr. Soto's subpoena.

5 And I remember seeing communications about
6 that topic. But I can't say they were asking me.
7 They knew that I wouldn't be the one who would say
8 disclose or don't disclose. They were looking to
9 Phil Rutledge and were asking questions about what
10 needed to be disclosed.

11 Q. So I just need to clarify, and I'm sorry
12 to do this, but I'm not asking about Phil Rutledge
13 right now. I'm just going to try one more time to
14 see if we can get a direct answer.

15 Did anyone -- and if you could just listen
16 to the question asked. I'm not asking about Phil
17 Rutledge and what advice he provided and I'm not
18 even asking what you provided. I'm just asking the
19 simple question of whether anyone at CBSG asked you
20 for legal advice about the disclosures being made to
21 investors regarding the CBSG investments.

22 MR. FUTERFAS: I'm going to object as
23 asked and answered. So I object to form. Thank
24 you.

25 THE WITNESS: The answer is I was on at

1 least one telephone where CBSG asked the general
2 question, Joe LaForte and Joe Cole. They didn't
3 say, Phil, can you answer or, Brett, can you answer.
4 But Phil answered. So I can't say no. They did ask
5 the question. But I can't say it was me because
6 they knew I wouldn't be the guy who has any idea
7 about securities advice.

8 BY MS. BERLIN:

9 Q. I now understand. So this was a
10 conference call, and because they didn't direct the
11 question you to or Phil, but it was just generally
12 posed, Phil Rutledge was the one who answered; is
13 that correct?

14 A. That is correct.

15 Q. Okay. And other than that conference call
16 where the question was posed generally without
17 identifying whether it was being asked of you or
18 Mr. Rutledge, was there any other time when you were
19 even possibly asked for legal advice about the
20 disclosures?

21 A. The answer is yes. When the Texas
22 securities issue arose, I was on telephone calls,
23 multiple, with both Haynes & Boone, Phil Rutledge
24 and myself where Joe Cole asked the question about
25 whether or not there needed to be more disclosures

1 or whether the disclosures were adequate.

2 And again, just like I said before, he
3 didn't pose it to me, but he didn't say kit at
4 Haynes & Boone or Phil at Bybel Rutledge, here's the
5 question. He just posed the question.

6 And one further. One further. There was
7 another telephone call where Joe LaForte
8 participated and posed a similar question generally
9 to Haynes & Boone, generally to Phil Rutledge, and
10 Haynes & Boone -- by memory, it could have just been
11 Phil, but I think they were on that call and just
12 talked generally about what disclosures were
13 required. But that was in light of the Texas
14 Securities Board allegation that there were not
15 enough disclosures.

16 Q. So why was Joseph LaForte on a call with
17 counsel if he was working for this separate entity
18 that handled the merchant accounts? Was the
19 separate entity where Mr. LaForte was employed, was
20 that also your client?

21 A. No. It was not my client, Resources and
22 Benefits. But the allegations of disclosure, some
23 of the allegation of disclosure related to the
24 nondisclosure of litigation, and that was a primary
25 focus of the inquiry regarding -- I think it was the

1 Fleetwood case involving the Texas Securities Board.

2 And, therefore, as I said before, Joe
3 LaForte would have specific knowledge about merchant
4 cases and what the allegations were. So that's why
5 Joe LaForte would be involved, because that was a
6 big component of what they claimed was not
7 disclosed, Fleetwood.

8 Q. I'm sorry. Are you saying the Texas case
9 involved the failure to disclose the Fleetwood
10 litigation? Am I understanding that correctly?

11 A. By memory, I'm pretty sure that was one of
12 the allegations, that there was a nondisclosure of
13 either a lot of litigation or specifically the
14 Fleetwood litigation because that was a Texas-based
15 case. And I'm pretty sure, although now you just
16 made me doubt myself a little bit, that that was
17 absolutely at issue.

18 Q. Did Mr. LaForte ever direct your legal
19 work for CBSG?

20 A. It's the same I said before. I dealt with
21 Joe LaForte on matters involving merchants, and I
22 had constant communication with him about merchants.
23 But that overlapped with all the litigation I was
24 handling because all of the -- not all, but 98
25 percent of the litigation involved merchants. So I

1 absolutely dealt with Joe LaForte about those cases
2 because of the merchants.

3 Q. Okay. So I'm not asking if you dealt with
4 him. I'm asking if he ever directed your legal work
5 that you did for CBSG.

6 MR. FUTERFAS: Objection. Asked and
7 answered.

8 THE WITNESS: Joe LaForte, because of the
9 role he had involving merchants, was involved in
10 settlements. So if you're including settlements or
11 potential settlements, Joe LaForte would be involved
12 because he had direct knowledge of exposure and
13 topics related to that involving specific merchants.

14 So I didn't look at it as directed, but he
15 was absolutely a client person that I spoke to about
16 to get information.

17 BY MS. BERLIN:

18 Q. Okay. So if you needed to get from, like,
19 your clients feedback on whether or not to enter
20 into a settlement in connection with any of these
21 cases where you were representing CBSG, which
22 individual in connection with CBSG would have the
23 authority or tell you, yes, we'll settle or, no, we
24 won't? Who was that person at CBSG?

25 A. So at the outset of my representation, it

1 was general counsel. Pete Mulcahy was the primary
2 point of contact. I would say post general counsel
3 being terminated or leaving, I would then deal
4 primarily -- I mean, there were a lot of people
5 involved in that, but Anthony Fazio was the direct
6 point of contact on a day-to-day basis who would
7 help me get information as to whether or not it was
8 settleable and amount.

9 But Joe Cole was intimately involved.
10 Aida Lau would provide that and help me guide as
11 to -- it all came down to numbers, by the way,
12 right, so it's numbers. And Joe LaForte was in the
13 discussion as well.

14 Q. And so Aida Lau is one of the people at
15 the company who had authority to tell you whether or
16 not, like, the terms of a settlement were
17 acceptable. Am I understanding that correctly?

18 A. Well, Aida Lau was someone who got me
19 numbers every single day. And the company was based
20 on numbers, right. So the way it would be looked at
21 would be -- remember, my role expanded to deal with
22 all the confessions in February of 2020.

23 So Aida Lau was someone I dealt with every
24 day. And the numbers are what mattered. So is a
25 settlement offer in excess of the exposure plus rate

1 of return. And, therefore, Aida was intimately
2 involved in that process of helping guide us towards
3 whether or not it was a settleable matter, yes.

4 Q. But ultimately did you have to get a
5 client approval on a settlement in connection with
6 CBSG?

7 A. Yeah, but most of the litigation, the real
8 heavy litigation in the Eastern District of
9 Pennsylvania did not settle. And the settlements
10 occurred every day, all day with merchants all over
11 the country. And that was run through many people,
12 but primarily it was Anthony Fazio, Anthony Ronn
13 Fazio who was the head. And he would delegate who
14 could answer is it a deal that the company would
15 take.

16 But Joe LaForte was involved. Joe Cole
17 was involved. Aida was involved and lots of other
18 people in collections.

19 Q. Was your contact with CBSG primarily
20 through email or some other method?

21 A. Email, telephone calls and meetings,
22 although, remember, most of my heaviest role, which
23 is when the role was expanded in February of 2020,
24 occurred corresponding to the pandemic.

25 So I would say it became in that window of

1 time, February of 2020 to the takeover, I mean the
2 closedown based in July, end of July, it was
3 primarily telephone calls and emails, maybe one
4 meeting in that entire period.

5 Q. How many times have you been to the CBSG
6 offices in Pennsylvania?

7 A. I would say maybe -- definitely under ten,
8 but probably about five.

9 Q. And so in connection with the exchange
10 note offering in April of 2020, what was the advice
11 that Phil Rutledge gave concerning the disclosures
12 that needed to be made for that offering?

13 A. Everything that was disclosed was what
14 Phil Rutledge recommended. That was the scope of
15 disclosures recommended.

16 Q. Did Phil Rutledge express that they needed
17 to disclose the Texas regulatory matter?

18 A. I think if that was in there, it was Phil
19 Rutledge's recommendation to disclose it. And by
20 memory, there was an Exhibit A or an exhibit
21 something that was prepared primarily by Phil
22 Rutledge which disclosed the issues that had
23 occurred, both obviously Texas being the pending
24 matter and New Jersey and Pennsylvania. So that was
25 at the advice of Phil Rutledge, yes.

1 And I just want to clarify. I can't give
2 the ultimate conclusion about whether Phil Rutledge
3 said that it needed to be disclosed, but he
4 recommended, you know, that if disclosures are going
5 to be made in light of what happened in Texas,
6 disclose everything. And that was his
7 recommendation. Everything that was in there was at
8 Phil Rutledge's recommendation.

9 Q. Did Aida Lau work with -- like did she
10 work with Joe Cole at Complete Business Solutions
11 Group?

12 A. That was my understanding, yes.

13 Q. Okay. And what about with Mr. LaForte?

14 A. Not -- I mean, did they know each other
15 and say hi and maybe get information relating to
16 merchants? Yes. But my understanding was Aida Lau
17 worked for Joe Cole.

18 Q. Okay. But did you understand that she
19 also worked with Joseph LaForte on matters?

20 A. No. I mean, she was in accounting, and
21 that was Joe Cole's complete domain.

22 Q. Did she know who Joseph LaForte was at the
23 office?

24 A. Of course. Everybody knows who Joe
25 LaForte was. He originated merchant deals, and the

1 entire company was based on merchants.

2 Q. And what about Wendy Furman, did she work
3 with Joseph LaForte?

4 A. I don't know. She was, to my knowledge --
5 and I didn't know Wendy well except for the HMC
6 case. I had nothing to do with underwriting.
7 That's not something I dealt with. So I learned in
8 the HMC case that she dealt with or was the head of
9 underwriting the files, but that's the extent of my
10 dealing with Wendy Furman.

11 Q. When you prepared Wendy Furman and Aida
12 Lau for their deposition testimonies in the private
13 litigation against Complete Business Solutions
14 Group, did you advise them to avoid answering
15 questions about Joseph LaForte's involvement in the
16 company?

17 A. No. Joseph LaForte's role in the company
18 dealing with the merchants was public knowledge.
19 He's on all the emails that we were showing them
20 because Wendy and Aida had very specific roles in
21 HMC because they dealt with Kara DiPietro
22 personally. And Joseph LaForte was in all those
23 emails.

24 What we did was we showed them a book of
25 emails, and Joe LaForte was on them. So I don't

1 think that could even be possible.

2 Q. So did you direct Wendy Furman to answer
3 that she didn't know in response to questions about
4 Joseph LaForte during her sworn testimony?

5 A. I don't ever direct a witness how to
6 testify. So if what you're asking is when I showed
7 emails to her that she was on and Joe LaForte was
8 on -- I don't know what you mean by direct because I
9 helped prepare witnesses for testimony. I don't
10 direct anything.

11 Q. Well, in preparing Wendy Furman for her
12 testimony, did you advise her or indicate in any way
13 to her that she should answer that she didn't know
14 when asked about Joseph LaForte?

15 MR. FUTERFAS: Object to the form of the
16 question. I have no idea, Ms. Berlin, what
17 testimony you're referring to, what question, what
18 specific answer you're referring to. So I object to
19 the form. Thank you.

20 BY MS. BERLIN:

21 Q. Mr. Berman, just to make sure, to help
22 Mr. Futerfas, you testified previously that you were
23 the counsel for CBSG in defending a deposition where
24 Wendy Furman was the witness and that you prepared
25 her for her testimony; correct?

1 A. Correct. That's the HMC case involving
2 Kara DiPietro. And the answer is no, because that
3 would be impossible. She was on emails with Joe
4 LaForte. We went through the emails that she
5 exchanged with Kara DiPietro, many of which involved
6 Joseph LaForte and Aida Lau and Joe Cole.

7 So I don't even know how that could be
8 possible when we were showing her emails involving
9 Joseph LaForte.

10 Q. So to be clear, is it your testimony
11 that -- I want to be clear because I think I asked
12 you a question, and then I clarified for
13 Mr. Futerfas. I'm going to ask the question so we
14 can make sure that it's clear on the transcript what
15 question you're answering.

16 So just going back to the deposition of
17 Wendy Furman in the HMC case, when preparing
18 Ms. Furman for that testimony, did you in any way
19 indicate to her that she should answer that she did
20 not know in response to questions concerning Joseph
21 LaForte and his involvement with CBSG?

22 MR. FUTERFAS: I object to the form.
23 Excuse me. I object to the form. I interpose my
24 objection. I object to the form because your
25 question, Ms. Berlin, assumes a certain question and

1 answer. You're not quoting from the record. So I
2 for one am lost as to what the question actually is
3 because I don't know what Ms. Furman said with
4 respect to one question or another.

5 Anyway, my objection is there. I object
6 to the form. Thank you. Sorry for the delay.

7 THE WITNESS: So the answer is I don't
8 remember every word of our discussion, of course.
9 It was from a year ago. But I absolutely could not
10 have told her "Say you don't know who Joe LaForte
11 is" because he's on emails with her with Kara
12 DiPietro. That's nonsensical.

13 If what you're referring to is that "I
14 don't know" is a perfectly acceptable answer at a
15 deposition if you truly do not know, that could have
16 been because that's a standard thing I tell
17 witnesses. "You shouldn't guess at questions. If
18 you don't know or if you don't understand, you
19 should tell the questioner you don't know or you
20 don't understand."

21 But your implication of not knowing Joe
22 LaForte when Joe LaForte is on the emails that were
23 being shown to her, exchanged with Kara DiPietro at
24 HMC and their CFO is impossible.

25

1 BY MS. BERLIN:

2 Q. Similarly, did you ever indicate in any
3 way during these prep sessions with Ms. Wendy Furman
4 that she should testify that she did not know about
5 Mr. LaForte's involvement with work done in
6 connection with Complete Business Solutions Group?

7 MR. FUTERFAS: Object to the form. I
8 object to the form. Same objection I lodged before.
9 Thank you.

10 THE WITNESS: Yeah. Same answer. That's
11 impossible because we brought a book of emails for
12 her that Joe LaForte was on. So I don't even
13 understand the scope of the question.

14 BY MS. BERLIN:

15 Q. The scope of the question is I'm asking if
16 during that prep sessions or at any time before
17 Ms. Furman testified in the HMC case, did you
18 indicate to her in any way that she should testify
19 under oath that she did not know when she was asked
20 questions about Joseph LaForte?

21 MR. FUTERFAS: Same objection. I have to
22 lodge my objection. I'm sorry, Mr. Berman. It's
23 Alan Futerfas. I'm objecting to the form. I'm
24 objecting that it's been asked and answered about
25 five times. Thank you.

1 BY MS. BERLIN:

2 Q. You said you were confused, Mr. Berman, so
3 I'm trying to explain what I was asking about.

4 A. You're asking me the same question for the
5 fifth time, and my answer stands.

6 Q. Okay. So your answer was that it would be
7 impossible. So does that mean no, you did not
8 indicate to Ms. Furman that she should answer that
9 she did not know in response to questions about
10 Joseph LaForte?

11 MR. FUTERFAS: Objection.

12 THE WITNESS: That's impossible.

13 MR. FUTERFAS: Objection to the form of
14 the question. And I reiterate in full my prior
15 objections to this line. Thank you.

16 THE WITNESS: The answer is the prep of
17 Ms. Furman was reviewing a booklet of documents that
18 we received in discovery, and Joe LaForte was on so
19 many of those communications that the premise of
20 your question that we could ignore that Joe LaForte
21 is on the communication is just impossible.

22 BY MS. BERLIN:

23 Q. I'm not asking about what documents there
24 were. I'm asking if you ever, you, Brett Berman,
25 ever indicated to her -- I'm not asking about the

1 documents you showed her or book or anything else.

2 I'm just asking something else.

3 I'm asking: Did you indicate to
4 Ms. Furman that she should answer "I don't know"
5 when asked about Joseph LaForte? I'm not asking
6 about all the other things you've been testifying
7 about.

8 MR. FUTERFAS: Ms. Berlin, I object to the
9 form. You've asked the same question. The witness
10 is a seasoned lawyer, understands the question, has
11 answered the question repeatedly. So I object to
12 the form and reiterate my prior objections. Thank
13 you.

14 THE WITNESS: Yeah. I've now answered
15 this five times.

16 BY MS. BERLIN:

17 Q. Mr. Berman, just to be clear, no one is
18 asking about the documents you showed or anything
19 else. I'm asking a very simple, I think very direct
20 question.

21 Did you or did you not indicate to
22 Ms. Furman how she should testify and indicate to
23 her that she should claim that she didn't know
24 anything about Joseph LaForte's involvement at CBSG?
25 Did you --

1 MR. FUTERFAS: Same objection. Thank you.

2 BY MS. BERLIN:

3 Q. Did you indicate that or not? And then we
4 can move on.

5 MR. FUTERFAS: Same objection. Same
6 objection. Asked and answered. I've lodged my
7 objections. Thank you.

8 THE WITNESS: The answer is I have no
9 recollection of giving any advice like you're
10 talking about, and I stand by my previous answers.

11 BY MS. BERLIN:

12 Q. So you don't recall whether or not you
13 indicated that to Ms. Furman?

14 A. No.

15 MR. FUTERFAS: Objection to the form of
16 the question.

17 THE WITNESS: You heard my -- I can't
18 clarify the answer any more than I have. The answer
19 is not I don't recall. It's impossible of what
20 you're asking because the deposition prep was solely
21 about going through the documents to refresh her
22 recollection on the entire transaction
23 (indecipherable) all of those communications and
24 that was our meeting.

25 So I don't have any recollection of

1 telling Ms. Furman to say you don't know who Joe
2 LaForte is when he's on all of the emails or a
3 significant amount of the emails we're talking
4 about.

5 BY MS. BERLIN:

6 Q. And you understand that my question wasn't
7 just about whether she knew who Joseph LaForte was,
8 but I also asked you if you indicated to her she
9 should answer "I don't know" when asked about Joseph
10 LaForte's role at Complete Business Solutions Group.
11 You understand that?

12 MR. FUTERFAS: Same objection. Asked and
13 answered probably the tenth time. All of us
14 understand your question, Ms. Berlin. You've asked
15 it multiple times. It's been answered multiple
16 times. That's my objection. Thank you.

17 THE WITNESS: No. I have no recollection
18 of instructing Ms. Furman in any such way.

19 BY MS. BERLIN:

20 Q. What about Ms. Lau, did you indicate to
21 her that she should answer questions with "I don't
22 know" if she was asked anything about Joseph LaForte
23 and his role and involvement at Complete Business
24 Solutions Group?

25 A. Ms. Lau's prep was with Mr. Furman and

1 Mr. Cole. Anything I've said about Ms. Furman is
2 also applied to Ms. Lau.

3 Q. So the same answer, that you don't recall?

4 A. That's not my answer. My answer was all
5 of what I said, and I have no recollection of ever
6 giving such advice.

7 Q. So you have no recollection. You don't
8 recall if you gave that advice. And you didn't
9 answer whether or not you did, but you, in fact,
10 testified that it just would have been impossible.
11 So I just want to make sure that I'm understanding
12 correctly. If I am not, then this is your
13 opportunity to clarify.

14 MR. FUTERFAS: Object to the form of the
15 question. The question is argumentative. So I
16 object. Thank you.

17 BY MS. BERLIN:

18 Q. Is there anything you want to clarify,
19 Mr. Berman?

20 A. I've given you my answer now maybe eight
21 times. I stand by my answer.

22 Q. Okay. Is there anything that you wanted
23 to clarify so that the complete picture is provided?

24 A. The complete picture has been provided.

25 Q. Did there come a time when you became

1 aware that Joseph LaForte had a criminal record?

2 A. Yes.

3 Q. When did you become aware of that?

4 A. The day the representation expanded in
5 2019.

6 Q. So the 2019 expansion, was that in
7 connection with the Fleetwood litigation?

8 A. Yes.

9 Q. And so what did you learn in 2019
10 concerning Mr. LaForte's criminal record?

11 A. That he had a criminal conviction.

12 Q. Did you learn what it was for?

13 A. Not day one, but definitely early on
14 because it was something that was raised in the
15 various cases.

16 Q. When you say the various cases, do you
17 mean the litigation against Complete Business
18 Solutions where you were the counsel for CBSG?

19 A. I wouldn't describe it that way because,
20 as I said before, these were confessions of judgment
21 where merchants had judgments against them for
22 millions of dollars and were raising defenses and/or
23 counterclaims to try to get out of the judgments.
24 So as to that part, I can't agree with you.

25 But as to the actual question, yes, in

1 those cases where there was litigation involving
2 CBSG involving certain merchants, it was public
3 knowledge that Joe LaForte had a criminal
4 conviction.

5 Q. Okay. When you say those cases, you're
6 talking about -- are you talking -- tell me which
7 cases are you referring to where you learned details
8 about the criminal conviction. Can you identify
9 them?

10 A. Fleetwood. When it was raised in the
11 Fleetwood case in 2019, either I was provided
12 documents by the lawyer on the other side or we ran
13 an independent search and I knew exactly what the
14 convictions were for.

15 Q. Okay. So in the Fleetwood case at some
16 point in 2019, it was raised by your opposing party
17 in the Fleetwood case that Mr. LaForte had a
18 criminal conviction. Am I understanding correctly?

19 A. Probably in my first phone call with him.

20 Q. Okay.

21 A. This was public knowledge. Everybody knew
22 he had a criminal conviction.

23 Q. What is the basis for you saying everybody
24 knew that Joseph LaForte had a criminal conviction?

25 A. He didn't hide it from anybody. Every

1 single person at CBSG knew it. You just ran a
2 search on Joe LaForte on Google, and I think it was
3 the second thing that popped up, a mugshot of him.

4 When I learned -- when I met Joe LaForte,
5 which I didn't until this 2019 period, I probably
6 searched Par Funding on Google and I searched Joe
7 LaForte and Joe Cole, which is part of what I do. I
8 saw the criminal conviction from the first
9 significant engagement.

10 Q. Okay. And how do you know that everyone
11 at CBSG knew about Joseph LaForte's criminal
12 conviction?

13 A. Because there was no hiding it. I mean,
14 remember, we were involved in constant litigation.
15 And in every single case that was of significance,
16 not just in the Eastern District of Pennsylvania,
17 but in the South Coast case in California to various
18 cases that were filed in Florida and Texas and
19 wherever else these things were occurring, every
20 opposing counsel, it was the first thing they said.
21 A guy associated with Complete Business Solutions
22 has criminal convictions.

23 It was involved in every communication.
24 There were so many communications that everybody
25 knew it because it was just raised by counsel in all

1 these cases all over the country.

2 Q. Okay. And so it was raised in the
3 litigation, and so that's the reason why you think
4 that everyone at Complete Business Solutions Group
5 knew?

6 A. Sure. I'll tell you. It was not only
7 raised in litigation, but, remember, we were
8 involved and saw lots of communications from
9 merchants and from lots of counsel around the
10 country that would send emails to all the collection
11 people. So that was a huge portion of this
12 business.

13 And frequently their defense would be you
14 have a criminal associated with you named Joe
15 LaForte or Joe Mack and, therefore, we're not
16 paying, usury, RICO.

17 I mean, it was part of a defense for
18 nonpayment. So those communications would involve
19 the entire finance department, Aida Lau, the entire
20 collections department, all of the people,
21 underwriters. I mean, it was -- it was -- that's
22 how people, merchants defended against not paying.
23 So everybody I ever spoke to knew Joe LaForte had a
24 criminal conviction.

25 Q. Understood. So it wasn't just from the

1 pleadings. But also there were communications
2 happening from like the merchants to the individuals
3 who were working in connection with CBSG where they
4 were raising this; is that right?

5 A. Correct. Correct.

6 Q. Because I was going to ask you were they
7 circulating the pleadings in the litigation matters.
8 But it sounds like there's more correspondence --

9 A. I'll tell you why. I'll tell you why.
10 There were two cases, South Coast in California,
11 which is before my time and we just handled the
12 appeal portion of it, and Fleetwood where these
13 issues were raised.

14 And it wasn't very hard to just do a
15 Google search or search them out, and you'd see
16 these opinions that talked about the criminal
17 conviction. And, therefore, every single person who
18 touched the merchant cash advance world and dealt
19 with Complete Business Solutions thought they had
20 this smoking gun that Joseph LaForte had a criminal
21 conviction.

22 Everybody knew. He didn't hide it. He
23 was very open about his criminal conviction. It was
24 the furthest thing from a secret for anyone having
25 anything to do with Complete Business Solutions.

1 Q. Okay. So all of the employees and anyone
2 who is working at Full Spectrum or Complete Business
3 Solutions Group, they all -- this was -- you believe
4 it was common knowledge amongst all of them that
5 Joseph LaForte had a criminal record?

6 A. Absolutely, yes.

7 Q. Now, Joseph LaForte, would he communicate
8 with you using one of his aliases, either Joe Mack
9 or Joe Macki?

10 A. Or Joe LaForte. I mean, I knew him as Joe
11 LaForte. You know, again, from very early on, one
12 of my first things with him was dealing with
13 Fleetwood where this issue was raised. And I didn't
14 communicate with anybody but Joe LaForte because
15 that was his name. I knew that from the day I met
16 him in 2019. He was Joe LaForte. He went by Joe
17 LaForte.

18 Q. So he wasn't communicating with you as Joe
19 Mack or Joe Macki?

20 A. Well, he had emails that had Joe Mack on
21 it, but he also had Joe LaForte. So to me I knew
22 his name was Joe LaForte from the second I got
23 involved in 2019.

24 I heard allegations in all of those cases
25 about aliases and things. But I knew Joe LaForte,

1 and I said probably the first day I met him in 2019,
2 I ran a Google search on him and the second article
3 that came up was his criminal conviction and
4 mugshot. So I always knew he was Joe LaForte.

5 Q. And you got his mugshot by Googling the
6 name Joe LaForte; right?

7 A. I think it was the second thing that came
8 up. Or Joe Mack. I don't -- again, I only knew him
9 as Joe LaForte. So I would be surprised if I
10 Googled Joe Mack.

11 Q. Well, Mr. LaForte, he would email you
12 using his Joe Mack email address with his Joe Mack
13 signature block on his email. Do you remember that?

14 A. I do. But I told you from day one I knew
15 who Joe LaForte was.

16 Q. I understand. I was just asking if you
17 recall that he would communicate --

18 A. Yes.

19 Q. -- using an email address that identified
20 him -- where he identified himself as Joe Mack and
21 had a signature block that said Joe Mack or Joe
22 Macki.

23 A. I'm sorry. You're right. I don't
24 remember the signature block, so I can't answer
25 that. But, yes, one of his emails was Joe Mack.

1 Q. Did you ever ask him why he used the name
2 or the email address Joe Mack to identify himself?

3 A. I can't say I asked him, but he was
4 deposed very early on in the Fleetwood case when I
5 got really involved and met him. It was very short
6 into the representation, and he was asked that
7 question at a deposition, and he answered it.

8 And his answer was essentially he goes by
9 Joe. And if he's dealing with certain merchants,
10 it's just easier to use a short name so they're
11 not -- I don't remember exactly what the testimony
12 said, but he gave that explanation like very early
13 on in the representation.

14 So it was nothing that I really had a
15 discussion with him about because I heard him
16 testify to it.

17 Q. So you heard him testify, and you never
18 asked about it yourself?

19 A. He testified to it, and he gave the answer
20 under oath. So I didn't have any reason to ask him
21 why he goes by names. Because I'll tell you a lot
22 of clients I know use their middle name or use some
23 abbreviation where they have long names. A lot of
24 immigrants use the shorter names.

25 So it wasn't something that like jumped

1 off the page at me because I always knew of him as
2 Joe LaForte.

3 Q. In the cases where you were representing
4 Complete Business Solutions, there were allegations
5 that Mr. LaForte was utilizing an alias in order to
6 conceal his criminal record; correct?

7 A. I don't know if that was the exact
8 allegation. So I can't say correct to what you
9 said. But there was discussion that Joe LaForte had
10 a criminal record. So I think that answers your
11 question.

12 Q. Okay. So I just want to make sure your
13 testimony is clear that you never asked Mr. LaForte
14 about his use of the alias and why. Your only
15 knowledge is based on hearing him testify in
16 connection with a question posed by your opposing
17 counsel during a deposition?

18 A. No. I'm sorry. Thank you for refreshing
19 my memory by asking further. I prepped him for the
20 Fleetwood deposition, and this was an allegation in
21 the case. So I had the direct discussion with him
22 in preparing him for his deposition as to why he
23 went by Joe Mack.

24 But he didn't only go by Joe Mack. So I
25 asked him why his email said Joe Mack, and he said

1 it was just easier for merchants to understand and
2 easier for merchants to just have a simple name.

3 Q. Were you aware that he used names other
4 than Joe Mack and Joe LaForte?

5 A. Not that I remember.

6 Q. What about Joe Macki?

7 A. I don't remember any distinction between
8 Joe Mack and Joe Macki.

9 Q. Did you ever ask Mr. LaForte whether he
10 used the alias to conceal his true identity so
11 people didn't Google him and didn't find out about
12 his criminal record?

13 A. Well, I asked him why he used the alias.
14 I just told you. But further, in the Fleetwood case
15 and others, South Coast and others, there were these
16 allegations of criminal-type conspiracies. And I
17 think part of it was -- his answer to me at the time
18 and at his deposition was, by my memory, was they
19 associate -- they always try to throw, like, LaForte
20 is a Mafia felon.

21 And, therefore, Mack was just a lot more
22 neutral, and, therefore, he would use a name that
23 people didn't start associating with how you search
24 CBSG. Because there was a lot of sites in the
25 merchant cash advance business. And that was the

1 answer that I got.

2 Q. Okay. But my question was whether you
3 ever directly asked him whether he used an alias or
4 used a different name in order to conceal his real
5 name so people wouldn't find out about his criminal
6 record.

7 Did you ever ask him? I understand the
8 other things you talked about. But I'm just asking,
9 like yes or no, did you ever ask him whether or
10 not --

11 A. Yes.

12 Q. -- he used the alias to conceal the
13 criminal record?

14 MR. FUTERFAS: I object to the form. That
15 exact same question was asked and answered. Thank
16 you.

17 THE WITNESS: But to answer again, I
18 prepped him very early on for the Fleetwood case
19 where I asked him why he uses the name Joe Mack, and
20 I told you why. And I remember him being asked at
21 the deposition do you do it to conceal you have this
22 criminal record. And his answer was no.

23 So I didn't -- that's my answer. I don't
24 know how to answer any better.

25

1 BY MS. BERLIN:

2 Q. I understand. You just talked about what
3 opposing counsel asked. I'm asking you: Did you,
4 Brett Berman, ask him whether or not he uses an
5 alias so that people don't -- in order to help
6 conceal his criminal record. I'm not asking about
7 what (indecipherable).

8 A. Sure, sure.

9 Q. I'm not asking about a first prep session.
10 I'm just asking a very direct question.

11 Did you or did you not ask him directly
12 yourself whether or not he used an alias to conceal
13 his criminal record? And I don't mean verbatim
14 using those words. But did you ever inquire about
15 that subject?

16 A. The answer is I asked him why he used Joe
17 Mack on his emails, because it was something raised
18 in the case. And he gave me the answer, which I
19 think is the exact same thing you're asking. I
20 didn't ask: Are you trying to hide a criminal
21 background? I said, "Why do you use Joe Mack?"

22 MR. FUTERFAS: Objection to the form of
23 the question. Object to the form of the question.

24 THE WITNESS: I knew about the criminal
25 record. We discussed the criminal record at that

1 same dep prep session because I was preparing him
2 for his deposition.

3 BY MS. BERLIN:

4 Q. My question is: You didn't poke further
5 to ask him whether he used the alias to conceal his
6 criminal record; correct?

7 MR. FUTERFAS: Objection to the form of
8 the question.

9 THE WITNESS: I didn't use the exact words
10 you're saying, but I've adequately described me
11 asking him both about his criminal record and about
12 the use of the name Joe Mack.

13 MS. BERLIN: I think this is a good time
14 to take a break. Let's take a lunch break. And
15 we'll go off the record.

16 THE VIDEOGRAPHER: And we're going off the
17 record at 12:14.

18 (Recess from 12:14 p.m. to 1:15 p.m.)

19 THE VIDEOGRAPHER: And we're back on the
20 record at 1:25 p.m.

21 BY MS. BERLIN:

22 Q. Mr. Berman, did you participate in any
23 collections efforts on behalf of Complete Business
24 Solutions Group?

25 A. Yes.

1 Q. And what collection efforts did you engage
2 in?

3 A. Starting in February of 2020 -- well, it
4 could have been some minor issues on specific cases
5 before, but we were involved in the filing of
6 confessions of judgment, and we worked out deals and
7 related efforts on collection in that February to
8 July 2020 period.

9 Q. How many confessions of judgment did you
10 file approximately?

11 A. I don't know the exact number, but my
12 educated guess would be a hundred or so.

13 Q. And approximately how much were those
14 confessions of judgment seeking in total?

15 A. I don't know the exact number because I
16 never added it up. There were some larger ones. So
17 I just can't give the exact number. I'm sorry.

18 Q. And how much were you able to collect?

19 A. Significant amounts of money because
20 not -- I don't know the exact number. I'm sorry.
21 But there were a lot of deals made based on
22 confessions that were filed to do modification
23 agreements, and that led to collection of money.

24 Q. Okay. Can you give an approximation? Was
25 it in the range of a million, tens of millions,

1 hundreds of million?

2 A. Definitely more than a million, but not
3 hundreds of millions. I'm sorry. I don't know the
4 exact number. I never added it up.

5 Q. Okay. And like approximately what
6 percentage -- of the confessions of judgment that
7 you filed, approximately what percentage of those
8 did you win in court?

9 A. Confessions are not a win or loss. You
10 file a confession, and that's a statutory notice
11 that goes out under -- excuse me -- a
12 Philadelphia -- excuse me -- a Pennsylvania Rule of
13 Civil Procedure notice that goes out giving 30 days
14 to petition and/or open, or it's a final judgment.

15 I would say the hundred'ish or more,
16 whatever the number exactly is, 98 percent of them
17 are not challenged.

18 Q. And so were you able to collect on about
19 98 percent of those confessions of judgment, whether
20 it was the amount in the confession of judgment or a
21 modified amount?

22 A. We made deals, I would say, which we
23 called modification agreements or Par Funding called
24 modification agreements on significant percentages
25 of the ones that were filed by us.

1 And just one point of clarification
2 because it goes greater than what we filed. In
3 February of 2020, we were entered in older
4 confessions of judgment that were filed by in-house
5 counsel or others, and we entered into many
6 modification agreements on those older deals but not
7 ones we filed in, if that makes sense.

8 Q. And so who made the decisions about the
9 modification agreements and how much to accept from
10 a merchant as a modification from the amount
11 initially owed?

12 A. If it were less than 100 cents on the
13 dollar, face of the MCA deal, my primary point of
14 contact was Anthony Ronn Fazio, but there were
15 obviously discussions with Joe Cole -- discussions
16 and decisions made by Joe Cole, Aida Lau, Joe
17 LaForte to weigh in with respect to the merchants he
18 was involved with.

19 So it was not one person making a
20 decision. It was multiple people giving input to
21 try to get the highest value.

22 Q. And so, ultimately, who was the decision
23 made by? Was it made by, like, collectively between
24 Anthony Fazio, Joe Cole, Aida Lau and Joseph
25 LaForte?

1 A. And others, because there were instances
2 where we were dealing with -- as I said I think
3 before, Anthony Ronn had a counterpart that started
4 sometime in the pandemic. I think his name was Tim.
5 So he was a decision-maker in that process.

6 And then depending on the specifics of the
7 default, there were also, you know, collection
8 people who would make a decision because not all of
9 these were very large. So all of the people you
10 named and then other people in the collection
11 department and/or the -- Tori Villarose would weigh
12 in on things. So it was really depending on the
13 type of deal and what was at issue.

14 Q. How would you go about it if there was
15 going to be a modification agreement? Would you
16 email all of those people, or did you have regular
17 meetings with a group of people at Complete Business
18 Solutions Group? How did this work?

19 A. Yes. There were no regular meetings like
20 that, but it was a constant phone
21 call/email/discussion chain. And on larger matters,
22 I would send, you know, an update every day or every
23 few days about, you know, status.

24 Q. And who would you send the status updates
25 to?

1 A. I'm sorry. What did you say, Ms. Berlin?

2 Q. I apologize. I didn't realize you weren't
3 finished. Go ahead.

4 A. No, no. I was. I cut you off. I
5 apologize.

6 Q. Who would you send the status updates to?

7 A. Typically depending on the type of issue,
8 it would be Joe Cole, Anthony Ronn, Aida Lau, Joe
9 LaForte, Tim when he got involved, general counsel
10 when they were involved. So it really varied on
11 what it was and what the topic was. Various. I
12 mean, it was emails all day every day.

13 Q. And what about Lisa McElhone, was she
14 someone that you'd consult about the modification
15 agreement?

16 A. No, not on a standard modification. I
17 would not consult with Ms. McElhone.

18 Q. And did someone from Complete Business
19 Solutions execute modification agreements on behalf
20 of Complete Business Solutions Group?

21 A. Yes, and I think that was primarily
22 Mr. Ronn.

23 Q. Did Joseph Cole ever execute them?

24 A. Yes. I'm sorry. Yes. You're absolutely
25 right. Joe Cole would also execute modification

1 agreements and other documents.

2 Q. Would anyone else execute the modification
3 agreements other than Mr. Ronn and Mr. Cole?

4 A. There's a chance Ms. McElhone did or her
5 sister, Jamie McElhone.

6 Q. Okay. Anyone else?

7 A. Not to the best of my knowledge.

8 Q. Were there specific guidelines in place
9 for determining what the company would accept as a
10 modification?

11 A. It depended on each and every merchant
12 relationship and the history of it, but on the
13 whole, they were never under -- none that I can
14 remember. I don't want to say never because that's
15 too broad. There was so many. Never that were
16 below the advanced amount plus a return on
17 investment.

18 So just to give you an example of that,
19 let's say there was a \$150,000 agreement, MCA deal
20 that was on the face of the paper. It would never
21 be -- let me just clarify -- 150,000 on the face of
22 paper, but 120,000 was advanced. It would never be
23 under any circumstances, to my recollection, less
24 than the principal amount, i.e., the amount that was
25 advanced by Complete Business Solutions plus, by

1 memory, on the whole it was around a 30 percent
2 minimum return.

3 Q. So at 30 percent of the amount that was
4 provided with the merchant cash advance?

5 A. The amount that was advanced by CBSG to
6 the merchant. So that amount, which is not
7 principal, but the principal amount just for this
8 discussion plus a return on investment of about
9 30 percent of that number at a minimum.

10 And most of the modification deals,
11 however, were not writing off or anything like the
12 question implies. It was getting under a new deal
13 with new payment terms. So there could be some
14 upfront advance plus an amount of money paid out
15 over time.

16 Q. And were the modification agreements
17 collected upon?

18 A. Yes, I mean, in the sense that -- so I
19 would get involved if there was a default. I
20 wouldn't know about nondefault with rare exception.
21 And we would do a modification agreement. And most,
22 if not all, were then paying out through the time
23 because it wasn't that long of a time.

24 So I can't tell you were there
25 modifications that then defaulted. Very rare to my

1 recollection. But most modification deals kept the
2 confession of judgment in place pending a payout on
3 the modification deal. So it wasn't that you had to
4 refile a confession most of the time. It would be
5 that they perform under the terms of the
6 modification deal.

7 Q. But do you know -- do you have any
8 knowledge of the success rate that CBSG had
9 collecting under the modification agreements?

10 A. To my knowledge, it was pretty close to a
11 hundred percent.

12 Q. And what is that knowledge based on?

13 A. Based on the fact that if they were not
14 performing under the modification agreement, it
15 would be back to me in a default status. And I
16 can't remember any that came back to me
17 post-modification.

18 Q. So is it an assumption that they were at a
19 100 percent level of collection, or do you actually
20 know that it was about 100 percent collection?

21 MR. FUTERFAS: Objection to the form of
22 the question. Asked and answered.

23 THE WITNESS: It's an educated reason I
24 gave the answer, but I can't tell you that I
25 reviewed the books and records. And I would need to

1 review the books and records today obviously to
2 answer your question.

3 But during the time I was involved up
4 until the case was filed, I cannot remember any
5 instances where those modification deals were not
6 lived up to by the merchant.

7 BY MS. BERLIN:

8 Q. And that understanding is based on the
9 fact that you were not asked to take any
10 additional -- make any additional collection efforts
11 in connection with the modification agreements. Am
12 I understanding you correctly?

13 A. Yes. It was based on that fact and it was
14 based on the fact that -- for instance, there were
15 some larger ones, like, by memory, a merchant called
16 OXY Media based in California who owed -- don't hold
17 me to the exact number -- but let's say a million
18 dollars by rough numbers under the modification
19 deal, and it was a three-payment deal.

20 And prior to the receivership -- well, no.
21 Prior the receivership, there was one payment made
22 on that for a large chunk of money. Then during the
23 receivership I had communications with Mr. Kolaya
24 and/or Mr. Alfano where I told them that second
25 payment was coming. And it's my understanding that

1 it came in.

2 So I can't tell you about the third
3 payment. But I think I answered your question. But
4 if I didn't, sorry, I got lost in my own answer.

5 Q. It's okay. I was trying to understand for
6 all of the modifications. The only question I had
7 was whether or not -- I was just clarifying your
8 testimony about the 100 percent collection rate on
9 the modification agreements is not based on a review
10 of the financial records, but is based on the fact
11 that you weren't asked to make any further
12 collections efforts?

13 A. Right. And I would get regularly from
14 Mr. Cole or someone under his staff a default list
15 of people, merchants that were in default. And it
16 was a very long list because lots of merchants
17 obviously. And I don't remember seeing any of those
18 on the default list post-modification.

19 And one further point of clarification
20 just on this and why I have an educated opinion is
21 that, remember, my role in this collection domain
22 was February of 2020 until July of 2020, and that
23 was in the heart of the pandemic.

24 And, therefore, the company made lots of
25 deals with merchants, and they weren't the full

1 payment stream that were on the face of the
2 document. They were modifications that were met --
3 that were reached by working very closely with each
4 of the merchants to find a method that would avoid a
5 default scenario moving forward, and they were done
6 with the basis of finding a deal and giving the
7 merchant some room to breathe in the pandemic.

8 Q. When did that process begin?

9 A. Which process?

10 Q. The process that you were discussing about
11 during the pandemic trying to reach agreements with
12 merchants to modify so that there would not be a
13 default. Approximately.

14 A. I'm sorry. That happened from the first
15 day I got involved in February. But obviously, the
16 pandemic had an impact on this and every other
17 company in the world. And my educated watch of the
18 outside was that they were really trying with
19 merchants to make deals for the people who couldn't
20 pay because they didn't want default scenarios
21 either.

22 It was to try to work with the merchants
23 because a lot of these merchants are longtime
24 multiyear customers. And the goal always was of Par
25 Funding to not have litigation, but to actually find

1 a way to bring in the money.

2 Q. So you testified about the modification
3 agreement. I understand when you use the word
4 principal, you're just talking about the amount that
5 is provided to a merchant by CBSG as the merchant
6 cash advance.

7 A. Correct.

8 Q. So if I use the same word just for
9 simplification purposes, I'm not using it in any way
10 other than like referring to the amount that was
11 provided by CBSG to a merchant at the advanced
12 figure. Do you understand?

13 A. Okay. I do.

14 Q. So I understand your testimony that
15 modifications were never agreed to that were the
16 principal, as we're using that term, plus 30
17 percent.

18 What would the -- how much of a discount
19 was that typically from the amount that the
20 merchants owed under the merchant cash advances?

21 A. So those are really kind of two separate
22 concepts. The modification deals that we did
23 without any exception that I can recall sitting here
24 today were a hundred percent deals in that they were
25 face amount of the merchant cash advance agreement,

1 just the modified payment stream.

2 On the ones I was talking about, and I may
3 have confused the answer, it was on -- there were
4 cases or merchants that a deal was made to
5 essentially walk away from the relationship, and
6 that's what I was referring to, where it was, you
7 know, a hundred percent of the advanced amount plus
8 some rate of return.

9 So they're kind of two separate concepts
10 that could overlap, but modifications were nearly
11 hundred percent deals.

12 Q. Understood. And just to make sure that
13 I'm clear, the modifications typically were not
14 agreed to unless it was the amount initially funded
15 plus a 30 percent return on the amount funded. Did
16 I understand correctly?

17 A. Again, just two different concepts,
18 Ms. Berlin. That's why I'm struggling with the
19 answer. Because modification deals were pretty
20 universally face value of the paper amount with
21 limited exception.

22 A settlement agreement let's call it, a
23 walk away from the relationship may involve some
24 reduction on the face amount of the MCA paper, but
25 that was more the exception, very minor exception,

1 versus the rule of modifications with daily or
2 weekly payments.

3 Q. Okay. So if I understand
4 correctly because I'm just -- you testified about
5 the 30 percent figure. So I'm just trying to
6 understand.

7 Was it the case that it was typically the
8 amount that was funded to the merchant plus a 30
9 percent return, but there were some exceptions when
10 it would have been less than that?

11 A. It's actually reversed. The typical was a
12 hundred cents on the dollar of the MCA paper. The
13 exception would be there would be no resolution but
14 for some abnormality ever below the amount advanced
15 plus some rate of return.

16 Q. Okay. And so on the merchant cash advance
17 papers, what was like the average amount, like
18 percentage of return that merchants were supposed to
19 pay?

20 I understand in a settlement context, it
21 could be -- the exception could be 30 percent
22 return. But what was it typically or on average
23 what was the percentage that the merchants would
24 have owed on the paper?

25 A. I don't know if I can give an average

1 because I didn't do a statistical analysis. But
2 what I would say to answer your question is that the
3 face of the paper typically had a multiple I
4 think -- I haven't looked at the document in a year,
5 but I think it was like 1.4 or 1.25 or 1.3, and I
6 think that tied to your question because that, I
7 think, is, you know, 25 to 40 percent returns or
8 something like that.

9 I can't tell you I remember. I don't
10 remember exactly, so I don't want to guess, but it
11 was -- that's my answer. I don't think I could
12 answer better than that.

13 Q. Were you ever asked for any legal opinion
14 about whether or not the merchant cash advances were
15 usurious?

16 A. We weren't asked for a legal opinion in
17 the sense that you're asking, like a client asking
18 can you give us a formal legal opinion. We didn't
19 do that. I wasn't asked to. But we filed a lot of
20 briefs in court addressing the legality of the
21 merchant cash advance business and the fact that
22 they were not usurious or loans or anything of the
23 sort.

24 Q. Understood. I'm not asking about what was
25 filed in court. I'm just asking you about legal

1 advice that was provided to Complete Business
2 Solutions Group about the way they were operating
3 and whether you were asked for that legal advice.

4 A. I was not.

5 Q. Okay. At any point did you advise anyone
6 at Complete Business Solutions about whether or not
7 it was legal for them to charge merchants the amount
8 that was being charged under the merchant cash
9 advances?

10 A. Did you say was I asked? I'm sorry.

11 Q. No. Did you provide legal advice about
12 that?

13 A. No. The answer is no, other than
14 defending against the lawsuits that were -- or the
15 lawsuits or counterclaims or whatever they may be
16 challenging that fact, because when we got involved
17 in this part of it in February of 2020, obviously
18 this company had been around for six years and the
19 merchant cash advance business had been around for a
20 very long time. So we were not asked, nor did I
21 provide that.

22 Q. Okay. Now, you used -- earlier in your
23 testimony you referred to default.

24 What do you mean by that? You testified
25 about that you would have been advised if a merchant

1 cash advance was in default or if a modification was
2 in default. What do you mean by default?

3 A. I didn't have a definition. What I meant
4 by that, I didn't have a definition of default
5 because that wasn't my decision or anything.

6 What would happen would be we would get an
7 email from Cory in that department or Sam, or I
8 forget the other person's name. And they would say
9 the following merchants are in default. Please run
10 a conflict check. If the conflict check comes back
11 clear, we need to move forward with a confession of
12 judgment. So I would know it from that sense.

13 Q. I believe you testified that you would
14 receive a default list from -- was it from Joseph
15 Cole?

16 A. I can't promise you it was from him
17 personally, but it was something that was maintained
18 by his department, and it was either sent by him or
19 sent by someone else under him.

20 Q. And so when was a company deemed to be in
21 default for purposes of having you file a case?

22 A. I cannot answer the question because I
23 only got the end result. I didn't weigh in on what
24 was a default or not a default. So I don't know.

25 Q. Well, your pleadings in the CJ cases, you

1 plead that, did you not, that a certain merchant is
2 in default based on certain facts, and you attached
3 an affidavit from Complete Business Solutions laying
4 out why an entity is in default? Isn't that right?

5 A. I would, but we would -- I don't remember
6 sitting here now if the confession would say there
7 were multiple balances or some more reason. I don't
8 think that's what it is.

9 I think what you plead is that there is a
10 default on the paper and they have not cured it, and
11 that's what's pled. I don't remember there being
12 more, but I could be wrong.

13 Q. Did you have a role in deciding which of
14 the merchants was in default?

15 A. No.

16 Q. So if Joseph Cole testified in this case
17 that you made those decisions or participated in
18 making those decisions, how would you respond to
19 that assertion?

20 A. I didn't --

21 MR. FUTERFAS: Object to the form. Object
22 to the form.

23 THE WITNESS: I was not involved in the
24 decision-making process of which merchants were in
25 default. So I don't -- I would be surprised if he

1 said that, but maybe -- who knows. That's not how
2 it worked.

3 BY MS. BERLIN:

4 Q. So would it be -- if there was testimony
5 in this case from Joe Cole that you would decide
6 what was in default based on your relationship with
7 opposing counsel and the status of negotiations
8 regarding loans and that you would sort of advise
9 about what merchant cash advances should be deemed
10 in default, I mean, is that accurate?

11 A. I was not involved. I was not involved in
12 the process of calling merchants into default or
13 making the decision about who was in default. I
14 wasn't even privy to that information.

15 MR. FUTERFAS: I object to the form of the
16 question. There are different definitions of
17 default used by the company and by lawyers. And
18 Ms. Berlin knows that. So in my view, we are using
19 two different definitions of default operating at
20 the same time. So I object to the form of the
21 question.

22 BY MS. BERLIN:

23 Q. Did anyone at Complete Business Solutions
24 Group ever ask you to identify any merchant cash
25 advances that you believed should be held in default

1 in any definition of that word?

2 A. Did they ask me if I -- I don't believe
3 so, Ms. Berlin.

4 Q. Did anyone at Complete Business Solutions
5 Group consult you about various merchant cash
6 advances to obtain your opinion on whether specific
7 merchant cash advances could be collected upon?

8 A. I mean, that was kind of my role, right,
9 to collect, to file and collect. So, yes, I would
10 say they consulted with me about, you know, the
11 ability to collect on certain files, yes, of course.

12 Q. Did you ever understand that your
13 responses to any inquiries about which merchant cash
14 advances, that your responses were utilized as the
15 basis for Complete Business Solutions Group
16 identifying merchant cash advances or some in their
17 accounting?

18 MR. LEVITT: Object to the form.

19 THE WITNESS: No, no, because I didn't
20 have anything to do with accounting like that. And
21 the system that I walked into in February 2020
22 didn't get changed. So I just took on a role, but I
23 didn't modify the way they did business for the six
24 years prior.

25

1 BY MS. BERLIN:

2 Q. Did you ever have any understanding that
3 any sort of status updates about the merchant cash
4 advances that you were working on collections on,
5 that those status reports were utilized in any way
6 for Complete Business Solutions Group's accounting?

7 A. I didn't have that understanding with one
8 exception. At one point I was asked by Mr. Cole to
9 advise as to the potential exposure on the Fleetwood
10 case pretty early on in the representation, and I
11 sent a detailed email. I can't tell you the exact
12 words, but I remember it being a detailed email
13 laying out potential exposure because that was the
14 first potential class action I had handled for them.

15 Other than that, no, I didn't weigh in on
16 anything to do with the accounting, to the best of
17 my memory.

18 Q. And were you ever asked by anyone at
19 Complete Business Solutions Group about the exposure
20 rate of any merchant cash advance other than
21 Fleetwood?

22 A. I think I would say that there were
23 probably general discussions, not specific, about
24 all of those litigations I was talking about in the
25 Eastern District of Pennsylvania, but I don't

1 think -- it was not as detailed as what I told you
2 about Fleetwood.

3 That was a specific email that I was asked
4 to give it. I think it was for the accounting
5 reason, but I don't know. It was to Mr. Cole. So I
6 think the answer is no, not that I recall.

7 Q. And did Complete Business Solutions Group
8 ask you to opine about what you thought the chances
9 of recovery were on all of the CJAs that you had
10 either filed or that you had stepped into for
11 representation purposes?

12 A. They didn't ask me, but I have done this
13 type of work for 14 years, not for merchant cash
14 advance, but for hard money lenders and banks and
15 credit unions and, therefore, I have a pretty good
16 understanding of the ability to collect on files,
17 and I have been very successful in my career doing
18 so. And I think that's why they were using me.

19 Q. So did you ever tell anyone at Complete
20 Business Solutions Group that the default rate of
21 the merchant cash advances that Complete Business
22 Solutions Group had offered was 1 percent?

23 MR. FUTERFAS: Object to the form. Object
24 to the form. The question is unintelligible.

25

1 BY MS. BERLIN:

2 Q. Mr. Berman, if you don't understand any
3 question, just let me know.

4 A. Of course. To the best I understand your
5 question, no, I didn't personally weigh in on that.
6 But there were discussions in front of me with
7 Mr. Cole and others about this concept of 1 percent.

8 I can't tell you when exactly, Ms. Berlin,
9 but it's not -- it's not a default in the way you're
10 thinking of it. Because technically, let's play
11 this out, even of the hundred or so I filed, by my
12 memory, let's say 50 percent were actually default
13 prereturn of money. Simply filing a confession
14 doesn't mean there's a default. Many of those they
15 had actually made money on and made their return
16 back.

17 So I didn't talk to them or give advice in
18 the way you just asked me about 1 percent or any
19 default rate because I didn't have access to those
20 type of files. But I think from what I saw, most of
21 the deals that I was involved with were people who
22 had paid back the money and we were talking about,
23 you know, the profit on the deal, for lack of a
24 better word.

25 Q. Okay. But in your filings, you pled on

1 behalf of Complete Business Solutions Group that the
2 merchants were in default.

3 A. Default under the MCA agreement, yes.

4 Q. Okay. So just going back to my question,
5 which is a very narrow question, did you advise
6 Complete Business Solutions Group that there was a
7 1 percent default rate on the merchant cash
8 advances?

9 MR. FUTERFAS: Object to the form, the
10 same reasons I said before, that the default rates
11 that are being discussed are completely different
12 definitions of the term. Ms. Berlin knows that.
13 We've gone over that in prior depositions. I object
14 to the form of the question.

15 THE WITNESS: The answer to your question
16 is no, never.

17 BY MS. BERLIN:

18 Q. Okay. Did you ever advise Complete
19 Business Solutions Group about what the exposure
20 percentage was on all of the merchant cash advances
21 that Complete Business Solutions Group had made?

22 A. I'm not sure what the exposure percentage
23 is, so I think I have to say no, but maybe if you
24 give me a little bit better of a definition.

25 Q. Did you receive from Complete Business

1 Solutions Group any of their monthly status reports?

2 A. If you're talking about the document that
3 I think you're talking about, it's a document that
4 had thousands of merchants on it. Some were in
5 default. Some weren't. There were default lists.

6 I'm not sure a monthly status report I'm
7 aware of, but merchant lists with some in red, some
8 in blue, some in green, lots of different colors.

9 Q. Okay. My question is: Did you ever give
10 any opinion or any advice or make any representation
11 to anyone at Complete Business Solutions Group about
12 what the exposure rate or exposure percentage was on
13 the merchant cash advances?

14 MR. LEVITT: Object to the form.

15 THE WITNESS: No, because I don't know
16 what exposure rate is. But no, the way you're
17 asking it, no.

18 MS. BERLIN: Let's go off the record for a
19 moment.

20 THE VIDEOGRAPHER: And we're going off the
21 record at 1:56 p.m.

22 (Recess from 1:56 p.m. to 1:57 p.m.)

23 THE VIDEOGRAPHER: And we're back on the
24 record at 1:57 p.m.

25

1 BY MS. BERLIN:

2 Q. Mr. Berman, I'd like to show you and I'm
3 going to ask the video record to show on the screen
4 an exhibit.

5 Mr. Berman, I'm showing what has been
6 marked as Deposition Exhibit 49. And we can zoom in
7 on it. And there's some handwriting on this
8 particular version of the document. So I'm not
9 asking if you've seen this particular version with
10 someone's handwriting on it.

11 But generally --

12 MS. BERLIN: And if we could zoom in on it
13 into in the upper left-hand corner where it
14 indicates the title of the document as -- let's see
15 if we can just zoom in.

16 THE WITNESS: I see it. I see the
17 document.

18 BY MS. BERLIN:

19 Q. Okay. Have you ever seen anything like
20 Deposition Exhibit 49 before? And, again, I'm not
21 asking you about the handwriting. That just happens
22 to be the particular copy that I'm showing you of
23 this status report.

24 A. It does not look familiar to me, but I
25 can't say I haven't seen something like this. I'm

1 looking at the date. You maybe asked me about later
2 versions. Obviously, I wasn't involved in any of
3 this time period. But I don't remember seeing this
4 before.

5 Q. Again, I'm not asking about this
6 particular one. Have you ever seen any sort of
7 document from CBSG that has this type of information
8 where it's providing information about -- and you
9 can see that I've circled the column about the
10 exposure, which is the third or fourth column from
11 the right.

12 A. It is possible, but this does not look
13 familiar to me.

14 Q. Okay. And do you see where this document
15 indicates --

16 MS. BERLIN: And I don't know if you can
17 zoom into the heading on the column that has
18 handwriting around it that's sort of circled at the
19 top of the document. Thank you.

20 BY MS. BERLIN:

21 Q. So do you see where it says Exposure
22 Percentage?

23 A. I do.

24 Q. Okay. Have you ever heard that phrase
25 before with Complete Business Solutions Group or

1 opined about an exposure percentage before? And I'm
2 asking you about this particular phrase.

3 A. I don't recall it. I don't remember ever
4 having this type of discussion. The answer is I
5 don't ever remember having this discussion. It
6 could be possible, but I don't remember seeing
7 something like this.

8 Q. Okay.

9 MS. BERLIN: And can we scroll down to the
10 bottom of the page where it shows --

11 BY MS. BERLIN:

12 Q. Do you see where it says Exposure
13 Percentage. There was a Footnote 4.

14 MS. BERLIN: Can we just zoom in on
15 Footnote 4 in the bottom right-hand corner of the
16 document. Right under the handwriting in the bottom
17 right-hand corner, if could just enlarge that
18 section so that Mr. Berman can read it.

19 BY MS. BERLIN:

20 Q. Do you see Footnote 4 states, "Factoring
21 losses realized in respective months equal to total
22 AR balance for transactions written off against
23 factoring loss reserve."

24 Do you see that line?

25 A. I do see the line.

1 Q. Okay. And here I will posit to you AR
2 means accounts receivable. Did you ever provide any
3 advice or opinion or facts to anyone at Complete
4 Business Solutions Group providing the figure for
5 the exposure percentage as defined by the sentence I
6 just read to you in Footnote 4?

7 A. Absolutely not.

8 MS. BERLIN: Okay. We can take down this
9 exhibit.

10 BY MS. BERLIN:

11 Q. Did some of the -- in the matters that you
12 were involved in with collections, had some of the
13 merchants pledged collateral in connection with the
14 merchant cash advances they received?

15 A. Yes.

16 Q. And did you participate in collections
17 efforts with respect to the collateral?

18 A. Yes.

19 Q. And on approximately how many occasions?

20 A. Not a lot because there were some that
21 occurred long before we got involved. That we may
22 have entered our appearance in, I can only think of
23 a handful on one hand that come to mind now.

24 Q. Okay. And what are those?

25 A. There was the Welkowitz estate, Steve

1 Gerba which is -- I forget how it's known here --
2 Eagle Express or something. I don't know the exact
3 name. That was one where a foreclosure action was
4 filed in the State of New Jersey against Steve
5 Gerba. Let me think what else there would have
6 been.

7 Q. So the collateral was a foreclosure on
8 what property?

9 A. It was described to me as the farm in New
10 Jersey. So that's one. I can't tell you more. I
11 think it was a farm obviously. I never visited the
12 property, so I don't have a lot of detail.

13 There was a -- as part of also that estate
14 of Welkowitz, Gerba, Eagle -- if Eagle is the name.
15 I'm just blanking out right now -- the Big Red
16 Trucking, that merchant, there was a property in
17 Florida that we didn't file, but there was a title
18 dispute going on based on an assignment of rights in
19 the interest there that we were working with a
20 lawyer assigned by the title company.

21 There were other actions that CBSG had
22 with what we called local counsel that were hired
23 pre-Fox Rothschild ever being involved that we then
24 tried to clean up once we got involved just to make
25 sure it was managed and organized. And we created

1 lists of status on foreclosures, but most of those
2 were filed prior to our involvement.

3 And I'll say the reason for that is
4 because, remember, my role was primarily involved in
5 the pandemic in this area, and there were no -- you
6 couldn't really file that type of action in the
7 pandemic because there were freezes across the
8 country on court shutdowns and ability to file those
9 types of actions. So it was fairly minimal new
10 filings during my time.

11 Q. At a certain point, did you become aware
12 of a Pennsylvania securities regulatory action
13 against Complete Business Solutions Group?

14 A. Yes.

15 Q. And approximately when did you become
16 aware of it?

17 A. After the Texas cease and desist was filed
18 because it was mentioned there. I didn't know about
19 it before.

20 Q. Okay. And did you provide -- I think it's
21 already been included in your prior testimony, which
22 was a little broader, but just to confirm, did you
23 provide any legal advice to Complete Business
24 Solutions Group about the disclosure of any
25 securities regulatory action against the company?

1 A. No.

2 Q. Okay. And do you know who John Pauciulo
3 is?

4 A. He was a lawyer for Dean Vagnozzi.

5 Q. Did you ever advise John Pauciulo that
6 Complete Business Solutions Group was insolvent?

7 A. No.

8 Q. Did you provide Mr. Pauciulo with
9 financial spreadsheets showing that Complete
10 Business Solutions Group was insolvent?

11 A. I can't say what they showed. I was
12 provided by Mr. Cole a few documents that were given
13 to Mr. Pauciulo, but I can't say it said they were
14 insolvent. I don't think that's correct. But they
15 had financial information.

16 Q. What exactly did you -- am I correct in
17 understanding this is in the March, April 2020
18 timeframe?

19 A. Correct. Mr. Pauciulo asked for financial
20 documents, and I forwarded the request to Mr. Cole,
21 and Mr. Cole provided the financial documents.

22 Q. So you did not provide the financial
23 documents to Mr. Pauciulo?

24 A. Sorry. I'm sorry. It was confusing. I
25 was like the intermediary on that. So, yes, I

1 forwarded the financial documents that Mr. Cole gave
2 me, yes.

3 Q. And what financial documents did
4 Mr. Pauciulo request?

5 A. I don't specifically remember, but my
6 general recollection was he requested documents
7 showing the status of the company in the pandemic.

8 Q. Was that the financial status?

9 A. I don't want to say financial status of
10 the company, because I don't think that's what he
11 was asking. I think it was, you know, what's going
12 on with the merchant portfolio is what I remember.

13 Q. So what documents did you provide to John
14 Pauciulo?

15 A. The answer is I can't even tell you
16 exactly what they were because I don't think I
17 reviewed them so closely, to my memory. But they
18 were documents that I think showed collections from
19 the merchants during that limited window of time,
20 from the start of the pandemic or the real start of
21 the pandemic mid March until whatever date they were
22 provided is my memory of what was given.

23 Q. Did you provide this by email or through
24 some sort of portal or like online workroom?

25 A. I don't know how to do online workrooms.

1 So I think it must have been -- it was fairly
2 discrete documents. By memory, it was email,
3 although I haven't seen that email in, you know, a
4 year.

5 Q. Did Mr. Pauciulo after you provided the
6 documents to him -- by the way, I'd like to just get
7 a sense of this. Approximately how many documents
8 did you provide?

9 A. I think it was three documents by memory.
10 It could be five. It could be three. But I think
11 it was three.

12 Q. And were these documents massive or was it
13 a relatively lean collection of material?

14 A. I don't think it was massive because I
15 wouldn't have been able to forward it. I don't
16 think I had anyone else upload them. I just am not
17 good at that. I think they were fairly small by my
18 memory.

19 Q. And after you sent those documents to
20 Mr. Pauciulo, did he request additional materials
21 from you?

22 A. Not to my recollection.

23 Q. And did Mr. Pauciulo ever speak with you
24 at all about whether or not Complete Business
25 Solutions Group was insolvent?

1 A. I don't remember a discussion on
2 insolvency because I wouldn't have known the answer
3 to that question, although nothing I saw ever led me
4 to believe there was an insolvency. So I don't
5 think I would have had that discussion with him.

6 Q. Did you discuss with Mr. Pauciulo the
7 possibility that Complete Business Solutions Group
8 would have to file for bankruptcy?

9 A. I think the concept of what would happen
10 if -- I don't think we ever talked about bankruptcy.
11 So, no, I don't think that conversation ever
12 happened. But the concept if you couldn't pay
13 certain amounts of money and everybody starts suing,
14 I think we had that general discussion. But I don't
15 remember having a bankruptcy discussion because I'm
16 not a bankruptcy expert, and I didn't know enough to
17 even begin to opine whether bankruptcy was an option
18 or not.

19 Q. Did anyone at Complete Business Solutions
20 Group ever advise you that the company was
21 insolvent?

22 A. No.

23 Q. And I don't mean that they used that
24 specific word. They might have just communicated
25 the concept that Complete Business Solutions was

1 insolvent by using different words, not verbatim the
2 actual word "insolvent".

3 A. It's actually the opposite. I was never
4 told anything related to insolvency. It was, you
5 know, obviously the pandemic had an effect on
6 everybody, every business, including Par Funding.

7 But it was always positive, positive being
8 like there was no -- obviously there was a crunch
9 there where there was worry for everybody, but not
10 anything about insolvency or bankruptcy or anything
11 like that.

12 Q. Thank you. Sorry. I didn't mean to
13 interrupt you, but that was perfect. I was going to
14 ask you about bankruptcy.

15 So how did you first learn about the
16 possibility that there might be an exchange offering
17 as we sort of defined that phrase earlier in your
18 testimony?

19 A. I think I spoke to Joe Cole. And when you
20 say exchange offer, I didn't -- that concept was
21 foreign to me. Even maybe today it's a little
22 foreign to me. But what we knew early, I would say
23 probably late March, was that they wanted to look
24 at -- they wanted us to look at the existing notes,
25 which I had never seen before, and talk about a way

1 to restructure the notes.

2 And then Phil got on that first or second
3 phone call and started coming up with this
4 concept of -- it may not have been the first day or
5 second day, but he's the one who, I believe,
6 introduced the concept of an exchange offer.

7 Q. I'm sorry. Who introduced? Phil Rutledge
8 you said?

9 A. Phil Rutledge.

10 Q. And did you have an understanding from
11 Complete Business Solutions as to why they wanted to
12 modify the existing promissory notes?

13 A. I think if there was -- again, just like
14 this and every other client I had at the time, the
15 world was in complete panic about shutdowns and
16 pandemic.

17 And they were always very clear, Mr. Cole
18 before, Anthony Ronn, whoever else I spoke to, that
19 they saw that there would be an opportunity to grow
20 and thrive, and they wanted to put the company in a
21 position to make sure that every investor -- and I
22 didn't know investors before that period -- would be
23 paid back.

24 So they didn't want to default on any
25 obligations to anybody. They said they always pay

1 their bills and they want to make sure the company
2 is viable and everybody who's owed money will be
3 paid.

4 Q. But am I understanding correctly at that
5 time, they were thinking about what possibly could
6 happen and the risk that they might not be able to
7 pay, or was it that they were already seeing a
8 situation where they were not going to be able to
9 pay based on a change in merchant payments?

10 A. I don't -- I don't -- I can't say I know
11 exactly because I wasn't -- I don't know the exact
12 financial -- exact financials at time period.

13 But I think it was just like everyone else
14 in the world. I mean, all of a sudden, we got
15 thrown into a pandemic with shutdown orders and no
16 office space. I just think everybody including Par
17 was not knowing what would happen in the future for
18 them, their business, their families. I don't think
19 there was something specific like that.

20 Q. So it was sort of preparing for the
21 unknown and like the worst case scenario that could
22 happen with the pandemic?

23 A. I think that's fair. And, again, it was
24 because they were very clear in every discussion
25 that I had that if they owe people money, they want

1 to pay back the money. So however they can do it to
2 make sure everybody is made whole, that's what their
3 goal was.

4 Q. Did you ever understand prior to the SEC
5 filing its case that representations were being made
6 to investors in order to get them to sign and agree
7 to the exchange notes that Complete Business
8 Solutions Group was insolvent and so this was their
9 only hope of getting any of their money back?

10 MR. FUTERFAS: Object to the form.

11 MR. MILLER: Mr. Miller. Join in the
12 objection.

13 THE WITNESS: Ms. Berlin, I'm sorry. For
14 some reason again, my audio went out. Let me put
15 that on ahold and end it. I'm sorry. I didn't hear
16 your question. So one second.

17 BY MS. BERLIN:

18 Q. Oh, sure. Prior to the SEC filing its
19 case against --

20 A. I didn't hear you. And I'm so sorry. If
21 you could ask one more time.

22 Q. Sure. No problem. Prior to the SEC
23 filing its case against Complete Business Solutions
24 Group, did you know that representations were being
25 made to investors that Complete Business Solutions

1 Group was insolvent and that agreeing to the
2 exchange offering was their best chance of getting
3 any of their money back?

4 A. I honestly don't recall.

5 MR. MILLER: Mr. Miller. Same objection.

6 MR. FUTERFAS: Same objection. Thank you.

7 MR. FERGUSON: Ferguson joins in that.

8 THE WITNESS: I don't remember any
9 discussion like that, insolvency, so no.

10 BY MS. BERLIN:

11 Q. I imagine, but I just need to ask, no one
12 asked you for any legal advice about whether they
13 could make representation to investors; is that
14 right?

15 A. Fox Rothschild never was asked and never
16 gave any legal advice on anything to do with
17 investors or raising money at all other than the
18 corporate documents we did in April or May. But
19 prior to that, nothing ever under any circumstance.

20 Q. And was Fox Rothschild asked for an
21 opinion? Obviously, I'm only asking you. This
22 isn't the law firm's deposition.

23 So just based on your personal knowledge,
24 are you aware of any advice that was asked of you or
25 your colleagues about whether or not you all

1 believed that Complete Business Solutions Group
2 would need to file for bankruptcy?

3 MR. FUTERFAS: Object to the form of the
4 question.

5 THE WITNESS: Two things I would say. No
6 one at Fox Rothschild will have more information
7 than me because I was involved in nearly everything.
8 So I can answer your question individually, of
9 course, but I would be the same person answering for
10 Fox Rothschild.

11 But the answer is we did not -- we were
12 not asked, to the best of my recollection, nor did
13 we give them any advice on anything related to
14 bankruptcy because I don't even think that
15 discussion ever occurred or any topic of bankruptcy
16 or insolvency or anything like that was really on
17 the table.

18 BY MS. BERLIN:

19 Q. Did anyone at Complete Business Solutions
20 Group ask you for any advice or ask you to review
21 any of the emails that they were sending out to
22 noteholders regarding the status of the company in
23 March or April of 2020?

24 MR. FUTERFAS: Object to the form. I
25 don't know who "they" is.

1 THE WITNESS: You said prior to or during
2 April and May? I'm sorry.

3 BY MS. BERLIN:

4 Q. Sure. At any time. At any time did
5 anyone from Complete Business Solutions Group ask
6 you to review and give legal advice concerning
7 correspondence that anyone at Complete Business
8 Solutions Group was sending to noteholders?

9 A. Definitely never anything prior to the
10 pandemic because I didn't even know about
11 noteholders prior to that. So definitely not.

12 And to the best of my recollection, no,
13 although I thought I saw, or it could have been
14 after the fact, an email that was sent out to
15 somebody. I don't know who the somebody is. I
16 think it was after. But I just don't specifically
17 remember. But I don't think so.

18 Q. Are you aware of a UCC lien that Albert
19 Vagnozzi filed in connection with Complete Business
20 Solutions Group?

21 A. I'm aware that there was discussion about
22 all of the liens that would be filed as a result of
23 this process in April and May. I don't remember if
24 I saw an actual lien, but I do remember Albert
25 Vagnozzi in some capacity with some document would

1 be essentially filing a lien on behalf of all the
2 funds or something like that. But that was the more
3 Phil creature of things and how you do this. So I
4 don't -- I remember general, but I don't remember
5 that ever happening or not happening.

6 Q. Okay. Were you aware of whether prior to
7 the pandemic -- I'm talking like February,
8 March 2020 -- whether there were already any UCC
9 liens against Complete Business Solutions Group?

10 A. I definitely didn't know prior to that
11 time period, although I remember once this role of
12 dealing with the corporate documents, that we
13 learned somehow that there were various liens
14 outstanding, filed I guess pursuant to their rights
15 under the security agreement. But I didn't know
16 prior to the pandemic, no.

17 Q. And about when did you learn about those
18 other liens, those prior liens?

19 A. It would be once we were working on the
20 corporate piece and Phil advised what would be done.
21 Somehow we learned that certain people filed liens
22 as they had a right to do, to my understanding, in
23 that time period.

24 Q. Did you ever represent to John Pauciulo
25 that there were no liens against Complete Business

1 Solutions Group?

2 A. No, because there were liens. And I think
3 his clients had liens, to my knowledge. So, no, we
4 didn't have that discussion.

5 Q. So prior to Albert Vagnozzi filing the UCC
6 lien, just to clarify, prior to his clients filing
7 UCC liens, did you ever advise John Pauciulo that
8 there were no UCC liens against Complete Business
9 Solutions Group?

10 A. No, absolutely not. And I actually -- by
11 the best of my memory, John told me he knew what
12 liens were there. So it's the reverse.

13 Q. And when approximately did John Pauciulo
14 indicate that to you?

15 A. John and I probably, to the best of my
16 memory, had two calls, very brief phone calls
17 because I wasn't someone who had information. I was
18 purely providing the financials that we talked about
19 before to him. I didn't -- I didn't have anything
20 to add, right.

21 So I know that he and/or his clients were
22 having discussions with people over at CBSG, but
23 this wasn't a lawyer-to-lawyer process because I
24 just didn't have the knowledge to even relay other
25 than here are the documents. That's why I said I

1 was kind of the middleman in that process. I just
2 didn't have information.

3 Q. Understood. If I understand correctly, in
4 connection with the exchange offering, all you were
5 doing with John Pauciulo was passing on to
6 Mr. Pauciulo what Mr. Cole was giving you to pass
7 on; is that accurate?

8 A. Yeah. I mean, we had a very brief, by my
9 memory, phone call or two or three. I don't want to
10 hold exactly to it. But they were very brief
11 because I didn't -- he knew I didn't know. It was
12 just not -- how would I know about levels of
13 financial aspects. It just wasn't my area.

14 And he knew that his client, clients -- he
15 always referred to them as Dean and Albert -- were
16 the ones who were having direct discussions with
17 CBSG people, right.

18 I think I answered your question. No, we
19 didn't have that level of discussion because I had
20 nothing to add.

21 Q. Understood. But your testimony about that
22 it was the reverse, that it wasn't you telling John
23 Pauciulo anything about the UCC liens, that he
24 mentioned to you that there were outstanding UCC
25 liens, do you recall approximately like the month

1 and year that that discussion happened?

2 A. What was the date of the exchange offers
3 being signed? Because that would help me.

4 Q. It was in April. I think it was
5 April 2020.

6 A. Then if it was, I think probably the end
7 of April, to the best of my memory, and it would
8 have been within the two-week period leading up to
9 the signatures.

10 Q. Okay. So if the exchange offerings
11 occurred -- let me ask you this: Did he mention
12 that to you, that there were other outstanding UCC
13 liens before or after his client, Albert Vagnozzi,
14 filed the UCC lien?

15 A. It would have had to have been before
16 because I didn't speak to them after the documents
17 were provided to them by CBSG.

18 Q. And to be clear, the discussion where John
19 Pauciulo acknowledged to you the prior outstanding
20 lien against CBSG, that conversation would have
21 occurred before the exchange offering materials,
22 like the agreements were presented to the
23 noteholders; is that right?

24 A. Pretty sure. I mean, I'm pretty sure. I
25 can't be a hundred percent, but I don't remember

1 speaking to him. I don't know. I don't think I
2 spoke to him after those because, remember, I wasn't
3 providing those documents.

4 I can't tell you exactly when they were
5 provided or how, because we weren't involved in
6 that. I think Joe Cole did that. But I don't think
7 I spoke to him after.

8 Q. Okay. So the discussion with Pauciulo
9 about the UCC liens would have occurred before you
10 provided him with the financial documents that you
11 passed on to Mr. Pauciulo from Mr. Cole; is that
12 correct?

13 A. Yeah, but I don't want to put too much
14 emphasis. He just said to me in passing there are
15 liens already filed on the company and I'm looking
16 at, you know, all this stuff. We didn't have like a
17 what's the impact of a lien or how many liens. It
18 wasn't -- I don't want to give you that implication.
19 He said it in passing, and that's all I remember of
20 the discussion.

21 Q. I understand. But the only thing that
22 I've asked about and that you've testified about
23 this far is that Mr. Pauciulo told you that he knew
24 that there were already liens outstanding. So I
25 think that's all that has been discussed in your

1 testimony.

2 A. Okay. All right. All right.

3 Q. I understand. But the timing of that is
4 important. So that's why I'm just trying to
5 pinpoint whether or not that discussion with him
6 would have occurred before you sent him the
7 materials that he requested.

8 A. I think it was before, yes.

9 Q. Okay.

10 MS. BERLIN: I wonder if we can just go
11 off -- let's go off the record, please.

12 THE VIDEOGRAPHER: And we're going off the
13 record 2:28 p.m.

14 (Recess from 2:28 p.m. to 2:46 p.m.)

15 THE VIDEOGRAPHER: And we're back on the
16 record on the 2:46 p.m.

17 MS. BERLIN: I can't hear any audio.

18 THE WITNESS: You don't hear me?

19 MS. BERLIN: Can someone speak just so I
20 can test the audio because I'm not hearing anyone.

21 THE WITNESS: Can you hear me?

22 MR. LEVITT: I just heard -- I heard
23 Mr. Berman speaking.

24 MS. BERLIN: Can someone say something so
25 I can see if the audio is working now?

1 MR. FUTERFAS: Ms. Berlin, we all hear
2 each other testing. Yeah, we're all talking.

3 MS. BERLIN: All right. Hold on a second.
4 Can someone say something? Can someone say
5 something? It's definitely me. All right. I can
6 see on my screen that Peter Levitt is speaking, but
7 I can't hear.

8 THE VIDEOGRAPHER: And we're back on the
9 record at 2:49 p.m.

10 BY MS. BERLIN:

11 Q. Mr. Berman, were you ever present in any
12 meeting where a noteholder or potential noteholder
13 was also present?

14 A. Not that I know of.

15 Q. Did you ever meet with Dean Vagnozzi?

16 A. Never have met Dean Vagnozzi.

17 Q. Have you ever spoken with him?

18 A. Maybe one phone call about something to do
19 with his life insurance product that he was talking
20 to Par Funding about at some point, but other than
21 that, no.

22 Q. Did you -- who was present when you
23 prepared Joseph Cole for his depositions in the
24 private litigation?

25 A. For the first deposition in HMC, I think

1 John Christman because I remember being in the
2 office there. In the second dep, second prep, Aida
3 Lau and Wendy Furman and Joe Cole and maybe John
4 Christmas, but I don't think so. But maybe he came
5 the second time and not when I went back the third
6 time.

7 Q. Was anyone else present when you prepped
8 Joseph LaForte for any of his testimony?

9 A. Joe Cole.

10 Q. Anyone else?

11 A. John Christman would have been there, at
12 least in the Fleetwood case because that happened on
13 the same day. And it's possible that John was with
14 me for the second deposition prep as well.

15 Q. What about Aida Lau or Wendy Furman?

16 A. I don't think so, no.

17 Q. Okay. How do you know Anthony Zingarelli?

18 A. I met him 12 years ago when he was a union
19 contractor in Philadelphia.

20 Q. Sorry. I just realized my video is off.
21 So let me start it. Sorry about that.

22 A. No problem.

23 Q. And what was his role in Complete Business
24 Solutions Group when you were initially retained?

25 A. I don't know, to be honest with you. I'm

1 not sure he had an official role there ever.

2 Q. Would it surprise you to learn that
3 Anthony Zingarelli signed a retainer agreement on
4 behalf of Complete Business Solutions Group?

5 A. No, not surprise because I told you that
6 would actually make sense because that's the only
7 person or probably the only person other than maybe
8 general counsel that I spoke to back in 2018 about
9 it. I didn't even know who Joe LaForte and Joe Cole
10 were or Lisa or Anthony Ronn. It was well before I
11 met anyone at the company.

12 Q. But you had an understanding that Anthony
13 Zingarelli could execute a contract on behalf of
14 Complete Business Solutions Group?

15 A. He asked if we could help on that limited
16 task. I said who -- by memory, I said who do I send
17 an engagement letter to? And he said him. I didn't
18 ask does he have the authority or not. I sent it to
19 him. I got it back signed.

20 Q. Okay. And you didn't ask and you never
21 knew what his position was or now what his role was
22 at Complete Business Solutions Group?

23 A. I never asked the question. I mean, I --
24 I spoke to him about Par Funding stuff over time.
25 He had information on certain merchants that he

1 would deal with in some capacity. But I never asked
2 officially what his formal role or title was.

3 Q. Did you have an understanding what type of
4 work he did in connection with Complete Business
5 Solutions Group?

6 A. No, not exactly, but what I will say is
7 what I dealt with him on involving Complete Business
8 Solutions was certain merchant defaults in a similar
9 way I would talk to Joe LaForte about certain
10 default. He knew some background on certain of the
11 merchants and he would request something to be done
12 on a certain merchant file. And that was my primary
13 dealing with Anthony Zingarelli with his role at Par
14 Funding.

15 Q. Did you understand that Mr. Zingarelli
16 worked closely with Joseph LaForte?

17 A. I mean, I knew that they were friendly and
18 that, you know -- I don't know. Closely is hard for
19 me to say. Anthony is a guy who's always on the
20 move, always doing things, always traveling. So I
21 knew -- I mean, he's the one who introduced me to
22 Par Funding. So I figured he was tied in with
23 everyone, but I can't say closely. I don't know
24 that.

25 Q. My question was just whether your

1 understanding was that he worked -- how about this.
2 Did you have an understanding that he worked with
3 Joseph LaForte at Complete Business Solutions Group?

4 A. I know that him and Joe dealt with each
5 other, yes.

6 Q. In connection with the merchant cash
7 advances?

8 A. Yeah, exactly.

9 Q. Did you ever represent Anthony Zingarelli
10 personally?

11 A. Yes.

12 Q. In connection with what matter?

13 A. Many matters over a decade. As I said, he
14 was a union contractor to start, which is how I met
15 him. He was referred by another friend. And then
16 various companies and dealings over time in the
17 contracting business. I was the president of a
18 condo board in the mid 2000s, in 2010. His company
19 did the storefront on the commercial space. I
20 represented him in matters for a decade.

21 Q. Did you ever represent him in connection
22 with any matter that related in any way to Complete
23 Business Solutions Group?

24 A. No, I don't think so.

25 Q. Okay. Did you ever represent any other

1 company with which Anthony Zingarelli was
2 associated?

3 A. Yes.

4 Q. What was that company?

5 A. Colorado Sky, CMP Operating, and then, as
6 I said, various contracting-type entities over a
7 decade. He had a bunch, United American Builders,
8 some other -- I can't tell you all the names, but it
9 was various matters over a decade.

10 Q. Okay. What is Colorado Sky?

11 A. It was an entity that -- I don't know what
12 it is. It's an entity that he was affiliated with.
13 I don't know where or what it is exactly.

14 Q. What kind of legal work did you provide in
15 connection with Colorado Sky generally?

16 A. I would call it privileged.

17 MR. LEVITT: Amie, I'm going to object on
18 privilege. If it's something that was done for
19 Mr. Zingarelli's companies, it's not related to Par
20 Funding. I would object to disclosing the substance
21 of the work that was done or the communications that
22 occurred as privileged.

23 MS. BERLIN: We're just inquiring about
24 the bases that I'm allowed to inquire about under
25 the federal rules for when someone raises the

1 privilege.

2 BY MS. BERLIN:

3 Q. So I'm not asking about any specific legal
4 advice you gave, but the general type of work you
5 did. Was it corporate or litigation?

6 A. For which entity you said? I'm sorry.
7 Colorado Sky?

8 Q. Yeah.

9 A. It was litigation.

10 Q. Okay. And was it a lawsuit that was
11 pending?

12 A. It was a lawsuit.

13 Q. Okay. And what's the name of the lawsuit?

14 A. I don't -- I don't remember the exact
15 name. I'm sorry.

16 Q. Where was it pending?

17 A. Colorado.

18 Q. Other than Anthony Zingarelli, was anyone
19 else who is affiliated with Complete Business
20 Solutions Group also affiliated with Colorado Sky?

21 A. He was the only person I ever dealt with
22 for Colorado Sky.

23 Q. Did you ever have any understanding of who
24 owned Colorado Sky?

25 A. My understanding was him.

1 Q. And did you have any knowledge of Lisa
2 McElhone's involvement or interest in Colorado Sky?

3 A. Not to the best of my recollection.

4 Q. And what about Mr. LaForte?

5 A. Not to the best of my recollection. I
6 only dealt with him, Anthony Zingarelli.

7 Q. Did you understand that -- was Colorado
8 Sky ever -- did they ever receive a merchant cash
9 advance from Complete Business Solutions Group?

10 A. No idea in the world. No idea.

11 Q. When was the last time you spoke with
12 Anthony Zingarelli?

13 A. Probably three or four weeks ago.

14 Q. And do you socialize often with him?

15 A. I never socialized with him.

16 Q. What about Michael Alperstein, do you know
17 him?

18 A. I think you mean David Alperstein.

19 Q. I'm sorry. David Alperstein. Do you know
20 David Alperstein?

21 A. I do know David Alperstein, yes.

22 Q. And have you ever represented him?

23 A. No, I don't think so.

24 Q. Do you know David Alperstein in connection
25 with anything having to do with Complete Business

1 Solutions Group?

2 A. The answer is no. I've known Dave
3 Alperstein for a decade. He's from the same town as
4 me. We have mutual friends, et cetera. But I knew
5 him from the taxi medallion world. And I learned
6 after the fact, probably after this case was filed
7 by my best guess, that he had a role with Par
8 Funding at some point and then had something to do
9 with the fund. But we never discussed Par Funding
10 prior to the filing of this case ever.

11 Q. Okay. Did you ever review any SEC filings
12 that were made on behalf of Complete Business
13 Solutions Group?

14 A. No, but I think I would probably be on
15 some emails if Phil was sending it to Joe Cole for
16 review, and I didn't review because I wouldn't even
17 know what to look at quite frankly.

18 Q. Okay. So were you ever asked for any
19 legal advice in connection -- you, not Phil Rutledge
20 or anyone else -- but were you ever asked for any
21 legal advice in connection with the Complete
22 Business Solutions Group's SEC filings?

23 A. I hate to go in a circular answer, but I
24 was on phone calls where there was discussions of
25 it. It was not posed to me directly because that

1 was fully Phil's domain as the securities lawyer for
2 CBSG. Fox Rothschild did not provide nor were we
3 asked to provide any securities advice at all.

4 Q. Okay. And so am I correct in
5 understanding then that you did not provide any
6 legal advice to anyone at Complete Business
7 Solutions Group about the Form D filings or any
8 other SEC filing?

9 A. We provided absolutely no advice on Form
10 D, securities or anything related to securities.
11 That was 100 percent Phil Rutledge's role for the
12 company.

13 Q. Okay. Did you ever meet Lisa McElhone in
14 person?

15 A. That's a great question. I don't know. I
16 feel like I have in passing, but I don't have a
17 specific recollection of when that would be. I
18 think maybe when I was in the office one day, she
19 walked through or I saw her in front of the Lacquer
20 Lounge where she was, too, because there was parking
21 right behind there. But I don't -- I talked to her,
22 of course, but I've never, I don't think, had a -- I
23 don't have a clear recollection of meeting her.

24 Q. And approximately how many times did you
25 speak with Lisa McElhone in connection with being

1 the attorney for Complete Business Solutions Group?

2 A. I spoke to her a bunch of times. I mean,
3 there were various things that Lisa handled or
4 banking or I needed a signature on something, you
5 know. It was not infrequent, but it also wasn't
6 frequent, if that makes sense.

7 Q. Was it, you know, a hundred times, 50
8 times?

9 A. No.

10 Q. Once? I mean, can you give an
11 approximation of how many times you spoke with her?

12 A. Definitely not a hundred. And I don't
13 think it was 50. So it's somewhere in that
14 ballpark. But it was not an everyday occurrence
15 like I would speak to Joe Cole or Anthony Fazio, you
16 know, or other collectors there. It was nothing
17 like that.

18 Q. Okay. So did you speak with Joseph Cole
19 and Joseph LaForte more frequently than you spoke
20 with Lisa McElhone?

21 A. I spoke with definitely both of them more
22 frequently, but I can't lump them together because
23 Joe Cole was a day to day, every day, all day, back
24 and forth. And Joe LaForte was more when I had
25 specific questions on specific topics on cases I was

1 handling.

2 Q. Okay. So you would -- I get it. You
3 spoke with Joe Cole on a day-to-day basis. You
4 spoke to with Joe LaForte when you had something
5 specific to ask him, but you spoke with each of Joe
6 Cole and Joseph LaForte more frequently than you
7 spoke with Lisa McElhone; is that right?

8 A. I think that would be fair, yes.

9 Q. Okay. What about Perry Abbonizio, did you
10 speak with him?

11 A. I have no recollection of speaking to
12 Perry Abbonizio ever other than meeting him as a hi,
13 bye in the office one day prior to the filing of
14 this case.

15 Q. Okay. What about Jamie McElhone, did you
16 speak with her?

17 A. I did email and speak with her, yes.

18 Q. And Jamie McElhone provided affidavits of
19 default for many of the actions that you filed
20 against merchants; is that right?

21 A. That is correct.

22 Q. And what would you speak with Jamie
23 McElhone about or email with her about, what
24 subjects?

25 A. I can't say I emailed too much. There was

1 intermediaries there. Again, there were collectors
2 and Cory and Sam there. I don't know what exactly
3 you call them, but they were the ones who primarily
4 dealt with Jamie McElhone. So I can't say I emailed
5 frequently.

6 I'm pretty sure I emailed with her because
7 she notarized and signed documents, but it was not
8 for frequent and it was not greatly substantive.

9 Q. But did you ever speak with her on the
10 phone?

11 A. I think so.

12 Q. Did you ever meet her in person?

13 A. I don't remember. I don't think so, but
14 possible. Definitely, I mean, hi, this is Jamie,
15 but not substantive.

16 Q. Is Jamie McElhone -- is she able to
17 communicate?

18 A. I'm not exactly sure what that means.

19 Q. Is she someone who is able to communicate
20 or is she an individual who cannot communicate,
21 meaning like she's not verbal or she can't type?
22 Did you ever have any indication that she lacked any
23 sort of like mental capacity to communicate?

24 A. I can't -- truthfully sitting here, I
25 can't even remember talking to her on the phone. So

1 I can't answer from a phone perspective. And her
2 emails were usually just -- if I exchanged a lot,
3 which I honestly don't remember to be honest with
4 you if I got them from her or if emails were
5 forwarded to me from her, you know, with the
6 signatures. I don't remember any communication
7 issues, but I don't have really one way or the other
8 to say on that.

9 Q. Why did you prepare the affidavits of
10 default for Jamie McElhone's signature as opposed to
11 other staff at Complete Business Solutions Group?

12 A. It was my understanding from the outset
13 that she was the authorized signatory for those type
14 of documents.

15 Q. Did anyone ever tell you that Jamie
16 McElhone lacked any sort of mental capacity to be
17 able to notarize documents?

18 A. I've never heard that before, no.

19 Q. Did anyone ever tell you that Jamie
20 McElhone was disabled and might not be able to
21 comprehend or communicate adequately?

22 A. That would be surprising, so no.

23 Q. If you had known that, would that have
24 affected who you asked to execute affidavits on
25 behalf of Complete Business Solutions Group for

1 filing with the court?

2 A. I didn't ask for her to do that, so I
3 can't answer that part of the question. That was
4 something I was told. She's the authorized
5 signatory. She's on the credit committee. She
6 reviews each of the files.

7 This is news to me if she's disabled or
8 unable to comprehend things. I never heard anything
9 like that.

10 Q. If you had told that she lacks the ability
11 to communicate or that she has any sort of
12 disability mentally with respect to communication or
13 processing, would that have impacted your decision
14 to file and rely upon her sworn statements in court?

15 MR. FUTERFAS: Object to the form. Object
16 to the form.

17 THE WITNESS: Hypothetically, but I'm not
18 aware of anything like that. And Jamie was
19 providing documentation -- review of documentation
20 and looking at the business records of the company
21 that showed default.

22 I mean, hypothetically, I mean, as extreme
23 as you're talking about, maybe, but I never heard
24 this before today.

25

1 BY MS. BERLIN:

2 Q. Was her deposition ever taken in
3 connection with any case?

4 A. Not -- nothing to do with me, no.

5 Q. Were you ever asked for any legal advice
6 by anyone at Complete Business Solutions Group about
7 insurance that Complete Business Solutions Group had
8 in connection with merchant cash advances?

9 A. No. I never heard about anything
10 involving insurance before this case.

11 Q. Okay. Do you mean the SEC filed its case?

12 A. Before the SEC filed its case; correct.

13 Q. Okay. And when did you learn of the SEC's
14 case approximately?

15 A. The day it was filed, there was a -- I had
16 a -- I and a few other colleagues at my firm had
17 trackers for Complete Business Solutions and Joe
18 LaForte, anybody really -- anyone that I touched in
19 this company, Anthony Ronn. And we got a notice
20 from the court filing system that this was filed.

21 Q. And did you notify Complete Business
22 Solutions Group the same day?

23 A. Yes.

24 Q. Who did you notify?

25 A. Joe Cole is who I spoke to.

1 Q. Okay. And did you direct Joe Cole to --
2 so, by the way, when you learned about the SEC's
3 filing that day, did you also understand that the
4 SEC was seeking the appointment of a receiver?

5 A. I can't say we knew anything that day
6 because I think we just got a docket entry on a
7 sealed docket. So I don't think we found that out
8 until a few days later when maybe you emailed it to
9 us or something of the sort. But we didn't know
10 that day exactly it was filed, no, not to my memory.
11 I don't think we knew.

12 Q. Not whether you've seen the document, but
13 whether you knew that the SEC was seeking a
14 receiver.

15 A. I don't think we knew it at that point,
16 no, because my memory is it was a sealed docket. We
17 just knew a case was filed. But I could be wrong.
18 I don't think so.

19 Q. But if you have emails with the SEC or
20 with the court about a receiver, that would indicate
21 when you became aware of it; correct?

22 A. Yeah. And we would have shared it with
23 Joe Cole at that time. So whatever that was, we
24 would have shared it, yes.

25 Q. I understand. I was just trying to

1 pinpoint. I'm not asking you to, like, recall from
2 your memory the specific day. But I think it's fair
3 to say if someone from your firm was emailing the
4 SEC or the court on a certain date about the
5 receivership, it would indicate that you were aware
6 of it by at least that time; fair?

7 A. Fair to assume, but I just can't remember
8 exactly.

9 Q. Okay. Did you direct Joe Cole to remove
10 documents from Complete Business Solutions Group
11 after you learned about the SEC's filing?

12 A. No.

13 Q. If Joe Cole testified that you told him to
14 download or take materials from Complete Business
15 Solutions Group after you learned about the case,
16 would you say that that was false, that Mr. Cole's
17 testimony was false?

18 MR. FUTERFAS: Object to the form of the
19 question.

20 THE WITNESS: It was actually the way you
21 said, to take. What we told Joe Cole was that --
22 and I had never been involved in this type of case
23 before and I have no idea what was possible. But
24 what my colleague, Joe DeMaria, told me was that we
25 should advise Mr. Cole that he should take a copy

1 of, definitely not delete and we actually said do
2 not delete, do not alter, do not modify, but take a
3 copy of any key documents you're going to need to
4 defend yourself in this case, and that's what we
5 told him.

6 BY MS. BERLIN:

7 Q. Did you tell that to anyone else at
8 Complete Business Solutions Group?

9 A. I think I had that discussion with Joe
10 Cole and Lisa McElhone and potentially I mentioned
11 it to Joe LaForte and then -- those three would be
12 the only three I would have that discussion with.

13 Q. Did you at any time advise anyone from
14 Complete Business Solutions Group about whether or
15 not they should turn over any materials that they
16 had taken or downloaded from Complete Business
17 Solutions Group, that they should turn those back
18 over to the receiver?

19 A. I think that was well after we were
20 terminated by the court where that was really a
21 topic of discussion.

22 Q. Okay. So --

23 A. So no. Ms. Berlin, no, I don't recall
24 such a discussion because I think we were
25 terminated. We didn't do any work after that on

1 this case or anything. So, no, I don't remember
2 being involved in that.

3 Q. Okay. After you learned about the
4 appointment of the receiver in this case, did you
5 continue to appear in court cases on behalf of
6 Complete Business Solutions Group?

7 A. Not without the consent of the receiver.
8 I do remember an instance right when this case was
9 filed we had -- we were ordered to appear in an
10 emergency status conference before Judge Sanchez in
11 the Eastern District. And that's the only thing I
12 recall.

13 We discussed it with Mr. Alfano after
14 fact. But other than that, no, I'm not aware of
15 anything like that, no.

16 Q. So the matter that you're talking about,
17 is that the matter where there was an emergency
18 hearing concerning the SEC's subpoena for documents
19 issued to your opposing parties in that case?

20 A. It could be. I just don't remember
21 exactly the circumstances. It was a pretty brief
22 phone call, and I don't remember exactly what was
23 talked about. I do remember -- I more remember the
24 discussion with Mr. Alfano after the fact where he
25 said you can't -- you can't do anything. We said if

1 there's a receiver order, we will do nothing other
2 than run it by you and Mr. Kolaya.

3 Q. When you went into court on that matter in
4 July after the receiver was appointed, it was
5 actually that you were challenging the request to
6 the court to lift the confidentiality designation on
7 documents in the case so that they could be produced
8 in responses to an SEC subpoena; correct?

9 A. No. I think your facts are a little
10 wrong, and I clarified all of this for Mr. Alfano in
11 writing. We actually did not have notice of the
12 receiver. It all came after. And I produced all
13 the documents to Mr. Alfano and Mr. Kolaya about
14 when we learned and when we filed what you're
15 talking about.

16 So, no, it was not after we had knowledge
17 of the receiver in the way you're talking about it,
18 no.

19 Q. So your testimony is that on the day you
20 went to court in that case in the hearing
21 concerning -- I think you were opposing -- it was in
22 the Pennsylvania federal court; is that right?

23 A. We didn't go to court. It was a
24 telephonic conference.

25 Q. I know it were a telephone conference.

1 But the court where the case was pending was the
2 federal district court in Pennsylvania; correct?

3 A. That's correct.

4 Q. And it was scheduled to occur by telephone
5 that same day?

6 A. Correct, correct.

7 Q. And what was the name of that case?

8 A. I don't remember if it was Fleetwood or
9 HMC.

10 Q. And so it's your testimony that when you
11 appeared in that case in July for the telephonic
12 hearing, that you did not yet know that a receiver
13 had been appointed over Complete Business Solutions
14 Group?

15 A. No. I think what I said was that I
16 believe, and you're testing my memory a bit, but I
17 think there was a letter that went out with the
18 position. When we got on the call with the judge,
19 we were then aware of the receiver. And I informed
20 him that this is all going to be subject to what's
21 going on in court.

22 I'm sure there's a transcript of it. I
23 just don't remember exact words or details. But I'm
24 pretty sure when we appeared, we then knew that
25 there was a receiver.

1 But, remember, that was also before the
2 receiver was actually expanded. I'm not talking
3 about the later expansion. This was -- there was
4 still a dispute as to what the role of the receiver
5 was. To my memory, that's what we told Judge
6 Sanchez, that this is all going to have to be
7 addressed in Florida.

8 Q. So is it your testimony that you disclosed
9 to Judge Sanchez during this hearing that a receiver
10 had been appointed over Complete Business Solutions
11 Group?

12 A. I think -- I don't remember the exact
13 words to Judge Sanchez. I'm sure there's a
14 transcript because it was before a federal judge.
15 But my memory of it was that we told him the case
16 was filed. I'm not sure -- I don't remember the
17 exact timeline of what time in the day we learned of
18 the receiver motion versus appearing.

19 I sent all of that to Mr. Alfano about ten
20 months ago. And I'm pretty sure what I sent him
21 showed that we didn't have the knowledge that you're
22 now implying I would have had at the time.

23 But Judge Sanchez absolutely knew about
24 this case, and the case was discussed. So yeah, I
25 don't remember if we told him, the receiver, the

1 extent of the order. I don't remember that.

2 Q. Let's back up for a moment. Judge Sanchez
3 was aware of the SEC investigation because the SEC's
4 subpoena was utilized as a case filing in your case
5 and was the subject of the hearing that you're
6 testifying about; correct?

7 A. I have no memory of that, to be honest
8 with you.

9 Q. Okay. But I just want to make sure that
10 it's clear. Why do you believe that Judge Sanchez
11 knew that the SEC had filed a case as opposed to
12 investigating the matter, that we had actually filed
13 a case against Complete Business Solutions Group
14 when you appeared at that hearing before him?

15 A. I actually think you're confusing two
16 different events in time.

17 Q. Okay.

18 A. Again, I don't exactly remember. I'm
19 going to be honest with you. And John Christman was
20 handling the day to day on that case with other
21 people. But I think the SEC's subpoena that you're
22 talking about was whether or not opposing counsel
23 had turned over documents improperly because there
24 was a lot of fight in that case about who and what
25 disclosures would be made about documents provided

1 to the government.

2 I think you're talking about something
3 different by my memory, but I don't exactly
4 remember.

5 Q. But this is a hearing where it wasn't
6 Mr. Christman. It was you who appeared at the
7 hearing in July 2020 after the SEC filed its case.
8 That's the hearing I'm talking about, the hearing
9 before Judge Sanchez that you appeared at after the
10 receiver was appointed.

11 A. Again, it was not a hearing. It was a
12 status conference. And I don't remember every
13 detail, but I do know that the judge was aware of
14 this case.

15 Q. Okay. So why is it your testimony that
16 Judge Sanchez was aware of the SEC's case when that
17 hearing or status conference occurred in July 2020?

18 A. Because my memory is it was discussed with
19 Judge Sanchez.

20 Q. By whom?

21 A. Me.

22 Q. Did you have an exparte communication with
23 Judge Sanchez?

24 A. No. But again, I'm a little -- what date
25 was the hearing you're talking about? I just

1 haven't looked at those emails in a year. So I
2 don't remember every detail, but I'm pretty sure it
3 was after. It had to have been after we knew about
4 this case because I sent all of these to Mr. Alfano.
5 And he said, don't do it unless the receiver knows.
6 And I showed him how we didn't know before that
7 time.

8 And I think actually you sent the email
9 not to me, but to a colleague who forwarded it a few
10 hours later. All was sent to Mr. Alfano and
11 Mr. Kolaya.

12 Q. But that's not my question. My question
13 is: When did you have the communication with Judge
14 Sanchez about the SEC having filed a case?

15 A. I don't think -- on a status conference
16 that was set by the court.

17 Q. And during that status conference, you
18 successfully on behalf of Complete Business
19 Solutions Group prevented the SEC from obtaining
20 documents that had been filed in that case; correct?

21 A. I have no specific recollection of that,
22 but I'm pretty sure -- I don't remember what
23 happened exactly, to be honest with you, but I'm
24 pretty sure -- when you say successfully, I think
25 they were then turned over like that day. So I

1 don't know what that means, successfully.

2 Q. You won the status conference. You showed
3 up at the status conference and you argued against
4 the documents being produced by the subpoenaed party
5 on grounds that CBSG opposed the production and
6 opposed the lifting of the confidentiality
7 designation as to those documents and you did so on
8 behalf of Complete Business Solutions Group; isn't
9 that correct?

10 MR. FUTERFAS: I object to the form of the
11 question, and I'm going to object on the grounds of
12 relevancy. I really don't know what this has to do
13 with the SEC's case against various defendants. My
14 objection is noted.

15 THE WITNESS: I have no specific memory of
16 what occurred of it. My bigger memory is talking to
17 Mr. Alfano after the fact and showing him that
18 whatever notice he said I had or didn't have, I
19 didn't, and I sent him all the emails to show the
20 exact time period. I don't remember the specifics
21 of what occurred at that status conference and the
22 win or lose. It was a status conference. I don't
23 know exactly -- it wasn't a hearing with motions.
24 That would be a win or loss. I just don't remember
25 what you're talking about.

1 BY MS. BERLIN:

2 Q. I'm talking about during the status
3 conference you argued that the SEC shouldn't get
4 these documents under the subpoena issued in
5 connection with the investigation in this case that
6 you're testifying in today. And the judge agreed
7 with you. And the SEC was not able to obtain the
8 documents during that status conference; isn't that
9 correct?

10 A. I have no idea.

11 MR. FUTERFAS: Same objections. Object to
12 the form. Object to the form. Thank you.

13 THE WITNESS: I have no idea what you're
14 talking about. And I'm pretty sure what you're
15 talking about is not what went down. But maybe -- I
16 don't remember. I'm sorry.

17 BY MS. BERLIN:

18 Q. And, in fact, after that status
19 conference, you did not voluntarily disclose what
20 had occurred to the receiver's counsel or Gaetan
21 Alfano. In fact, the receiver's counsel and
22 Mr. Alfano learned about it and then contacted you
23 to inquire. Isn't that correct?

24 MR. FUTERFAS: Object to the form of the
25 question. How would he know when someone else

1 learned something. Object to the form of the
2 question.

3 THE WITNESS: I honestly have no idea what
4 you're talking about. And this is almost silly the
5 questions you're asking because I think you have
6 your facts wrong. But when you say -- there was not
7 even -- I don't even know who was appointed when or
8 when that occurred. So, no, I have no idea what
9 you're talking about.

10 BY MS. BERLIN:

11 Q. Meaning after the status conference
12 occurred in July after the receiver had been
13 appointed, you did not voluntarily reach out to the
14 receiver or his counsel to tell him about it.
15 Instead you only disclosed information about it
16 after the receiver and his counsel asked you about
17 it, after they learned about it and inquired of you;
18 isn't that correct?

19 MR. FUTERFAS: I'm going to object to the
20 form. It's a compound question. I object to the
21 form. It assumes all kinds of facts not in
22 evidence. I object to the form.

23 MR. LEVITT: I'm going to object. These
24 questions are harassing to the witness. This is not
25 relevant to the SEC's complaint in this action.

1 You're cross-examining him on matters that are not
2 relevant, and it's harassment. Please move on.

3 THE WITNESS: Yeah. And I have no idea
4 what you're talking about your. Questions are just
5 lacking foundation in so many different ways
6 because, in fact, you should read the emails I sent
7 to Mr. Alfano after the fact showing him exactly
8 when I learned what I learned. I don't remember the
9 timing. But I can assure you you're wrong in your
10 entire line of questioning.

11 BY MS. BERLIN:

12 Q. Okay. Is the answer to my last question
13 no or yes?

14 A. I have no idea what you're even asking me,
15 to be honest with you.

16 Q. I'm asking you after the status
17 conference -- that you testified that you discussed
18 status conference with Gaetan Alfano who is one of
19 the receiver's counsel. So I'll ask you directly.

20 The conversation that you're referring to,
21 did Mr. Alfano contact you to ask to discuss that
22 status conference with you, or did you voluntarily
23 disclose what had occurred to the receiver before
24 they asked you?

25 MR. FUTERFAS: Objection to the form of

1 the question.

2 MR. LEVITT: Objection to the form.
3 Harassing the witness. Lack of relevance. Lack of
4 foundation.

5 THE WITNESS: I have no idea.

6 BY MS. BERLIN:

7 Q. Okay. When was the last time that you
8 spoke with any of the defense counsel involved in
9 this case?

10 A. I can't exactly remember, to be honest
11 with you. I remember I spoke to Mr. Futerfas
12 probably a month ago where he said, you're going to
13 be deposed. I said, yeah, and that was our
14 discussion.

15 And Mr. Soto sent me an email probably a
16 month ago or three weeks ago asking me can I sign a
17 records custodian form for the subpoena that was
18 served on my firm for records involving the exchange
19 offer or SEC or regulatory filings, whatever the
20 subpoena said. So I've had no discussion.

21 Q. And so your office received a subpoena
22 from -- was it Joseph LaForte or Lisa McElhone?

23 A. I don't know who. And the documents were
24 provided. Yes, we received a subpoena. We did the
25 production in conjunction with Mr. Kolaya who

1 reviewed everything before it went out.

2 Q. And who made the production? Fox
3 Rothschild or was it the receiver?

4 A. Fox Rothschild at the request of the
5 receiver.

6 Q. And you sent that to Alex Soto?

7 A. I sent it -- I think so. I think so. I
8 think I sent it to Gaetan and Tim, too, both before,
9 after and during. I asked Mr. Kolaya specifically a
10 lot of questions to make sure the receiver didn't
11 think we shouldn't produce. So we gave them
12 everything, and they reviewed it.

13 Q. So other than just simply acknowledging
14 the fact that you were being deposed in this case
15 with Mr. Futerfas, did you discuss anything else
16 with Mr. Futerfas about this case or about Complete
17 Business Solutions Group?

18 A. In the call I just said, no. And I
19 haven't had substantive discussions with any counsel
20 for the defense at any time that I can vividly
21 remember. Many, many months ago. I have really not
22 been involved.

23 Q. And have you spoken with any of the
24 individual defendants in this case recently, like
25 within last six months?

1 A. Probably the last time I spoke to anyone
2 was Joe LaForte, and it was, I'd say, three, four
3 months ago.

4 Q. And what did you discuss?

5 A. Just generally, you know, how upset he was
6 about the case and how -- I mean, it was very -- not
7 substantive and it was like, you know, distraught
8 that this could happen.

9 Q. Any other discussions with any of the
10 other individual defendants?

11 A. Nothing in the last many months, and
12 nothing that jumps out at me, to be honest with you.

13 Q. Okay. Did you become aware at any time of
14 any transfers of money that occurred by anyone
15 connected with Complete Business Solutions Group of
16 Complete Business Solutions -- let me ask that a
17 better way. I just realized how convoluted that was
18 going. I'm sorry.

19 At any time did you learn about the
20 transfer of any funds related to Complete Business
21 Solutions Group after the SEC had filed its case?

22 A. Did I learn? Yes. Money was sent to Fox
23 Rothschild.

24 Q. And that money has been returned to the
25 receiver?

1 A. The money that was not earned was returned
2 to the receiver.

3 Q. And so how much did Fox Rothschild retain?

4 A. The money that was earned. I don't know
5 the exact number. It's probably around \$700,000.

6 Q. And that was for work done during what
7 time period?

8 A. The work prior to the filing of this
9 action, all of the money was earned for legal fees
10 that were incurred.

11 Q. What about any other money transfers, were
12 you ever asked for any legal advice by any of the
13 defendants about their transfer of any Complete
14 Business Solutions Group related funds after the SEC
15 filed its case?

16 A. No.

17 Q. What about any of their personal funds or
18 assets after the SEC filed its case?

19 A. I think there was an asset freeze in this
20 case. So, no, I'm not aware of personal assets
21 being talked about.

22 Q. So you weren't asked for any legal advice
23 about that?

24 A. Not that I recall, no.

25 Q. And did you give any legal advice to any

1 of the defendants in this case about the transfer of
2 funds after the SEC filed its case?

3 MR. LEVITT: I'm going to have a -- go off
4 the record and talk to my client. I want to make
5 sure that we don't inadvertently reveal any
6 privileged information. So let's take a five-minute
7 break so I can do that.

8 MS. BERLIN: Understood. Before we go off
9 the record, please be aware that Mr. LaForte,
10 Mr. McElhone and Mr. Cole have all asserted reliance
11 on advice of counsel defenses in this case.

12 MR. LEVITT: Thanks for advising.

13 MS. BERLIN: Sure.

14 MR. LEVITT: So give us about five
15 minutes, and we'll get back on.

16 MS. BERLIN: Sounds good. I'm going to
17 turn my camera off and go on mute, but I'm here. So
18 just let me know whenever --

19 MR. FUTERFAS: Those advice of counsel
20 defenses as to the allegation of the SEC's
21 complaint. That's what the advice of counsel
22 defenses are for, just so we're clear.

23 MS. BERLIN: That has to be something
24 litigated if you're claiming --

25 MR. FUTERFAS: I just want to make sure.

1 I just want to make sure that we understand what
2 we're all talking about.

3 MS. BERLIN: I would suggest that you look
4 at the -- if you look at the answer and affirmative
5 defense, you could see the scope of the waiver of
6 the attorney/client privilege. There are three
7 affirmative defenses on reliance.

8 MR. FUTERFAS: I'm not sure there's --

9 MS. BERLIN: I'm speaking to Mr. Levitt.
10 Just to let you know, Mr. Levitt, you might want to
11 take a look at the docket, you know, before you come
12 back on so you can see like exactly what was pled by
13 the defense. They filed it just last week. So it's
14 one of the most recent ones. And if it's easier for
15 us to email it to you, I can email it to you in a
16 matter of minutes if that's a simpler thing.

17 MR. LEVITT: No. That's fine. I'll take
18 your word for it. And we'll get back on soon.

19 MS. BERLIN: Okay.

20 THE VIDEOGRAPHER: And we're going off the
21 record at 3:30 p.m.

22 (Recess from 3:30 p.m. to 3:37 p.m.)

23 THE VIDEOGRAPHER: And we're back on the
24 record at 3:37 p.m.

25

1 BY MS. BERLIN:

2 Q. Mr. Berman, we just came back from the
3 break so you could confer with your counsel. Would
4 you like to respond to the question?

5 MR. LEVITT: We're going to object to the
6 question based on attorney/client privilege because
7 it asks for communications with his clients after
8 the SEC action was filed regarding legal advice.

9 MS. BERLIN: And which client is that?

10 MR. LEVITT: Mr. Berman was representing
11 the individual defendants in the SEC action at that
12 time.

13 MS. BERLIN: Which ones?

14 MR. LEVITT: Well, whoever the -- I think
15 it was Mr. LaForte and Ms. McElhone -- Mr. Berman,
16 you can correct me if I'm wrong -- you were
17 representing at that time. So we're going to assert
18 a privilege based upon that attorney/client
19 relationship with regard to your last question.

20 MS. BERLIN: He's asserting a privilege in
21 connection with Lisa McElhone and Joseph LaForte?

22 MR. LEVITT: That is correct.

23 BY MS. BERLIN:

24 Q. Mr. Berman, when were you representing
25 Ms. McElhone and Mr. LaForte until their individual

1 capacities other than what you testified about
2 earlier that was before the SEC filed its case.

3 After the SEC filed its case, when were
4 representing Ms. Lisa McElhone and Mr. Joseph
5 LaForte?

6 A. Until the time we got out of -- until the
7 time the court issued the order having us withdraw.

8 Q. And so when did you begin representing
9 Lisa McElhone and Joseph LaForte?

10 A. When the case was filed.

11 Q. So in July 2020?

12 A. Yes. July 28 by memory.

13 Q. Okay. And who -- were you only
14 representing Lisa McElhone and Joseph LaForte, or
15 were you also representing others during that same
16 time period?

17 A. Joe Cole for a very limited window and the
18 company for a very limited window until the court
19 issued an order. Then there was further briefing on
20 the issue.

21 Q. And is the attorney/client privileged
22 communication, the privilege that you're claiming
23 regarding communication, was it written
24 communication or was it verbal?

25 MR. LEVITT: I want to assert the

1 attorney/client privilege as to any details about
2 the communications.

3 MS. BERLIN: So I would direct you to the
4 local rule which permits inquiry into the insertion
5 of attorney/client privilege without going into any
6 detail about what the substance of the communication
7 was. I would direct you to that.

8 I'm going to ask the questions again just
9 so that I'm providing you an opportunity to review
10 that.

11 BY MS. BERLIN:

12 Q. My question is: Was the communication
13 you're claiming privilege over with respect to
14 Ms. McElhone and Mr. LaForte about the transfer of
15 funds, was that communication written or verbal or
16 both?

17 MR. LEVITT: I'm going to object. The
18 witness has not identified the exact nature of the
19 communication, and he has not -- you're assuming
20 facts that are not in evidence. The subject is
21 something that we're objecting to. I'm not going to
22 let you inquire as to any communications involving
23 legal advice to those individuals after this SEC was
24 filed for the period of time that Mr. Berman was
25 representing them. It's an improper question. I'm

1 going to stand on that objection.

2 MS. BERLIN: So you're making a blanket
3 objection on privilege grounds to any questions
4 concerning whether or not he gave advice to the
5 individual defendants after we filed the case; is
6 that accurate?

7 MR. LEVITT: That's correct. I'm going to
8 object to any questions about legal advice sought or
9 received between Mr. Berman and those individuals
10 during the time that he was representing them after
11 this action was filed. It's privileged.

12 MS. BERLIN: So, again, just because we
13 need to make the record, I'm going to ask the
14 questions under local rule for when someone is
15 asserting a privilege in a deposition.

16 BY MS. BERLIN:

17 Q. I've already asked you if you provided any
18 legal advice about the transfer of funds, and you
19 asserted privilege. I'm going to have to ask again.
20 You can assert privilege or however you want to
21 answer and those things will be addressed, but the
22 court can only address things that are on the
23 transcript.

24 Were your communications -- were any of
25 the communications at issue that you're claiming

1 attorney/client privilege over with Ms. McElhone and
2 Mr. LaForte about the transfer of funds after the
3 SEC filed its case?

4 MR. SOTO: This is Mr. Soto. I'm
5 objecting on the basis of privilege.

6 MR. LEVITT: I'm objecting to the basis of
7 privilege. Instructing the witness not to answer.

8 MR. FUTERFAS: Alan Futerfas. I join the
9 objections on privilege.

10 BY MS. BERLIN:

11 Q. And the privilege that's being asserted,
12 with it with respect to written or verbal
13 communication?

14 MR. LEVITT: Same objection.

15 BY MS. BERLIN:

16 Q. And was anyone else present other than
17 Ms. McElhone and Mr. LaForte when any legal advice
18 was provided concerning the transfer of funds after
19 the SEC filed its case?

20 MR. LEVITT: He's not testified that legal
21 advice was given on that subject as you described
22 it. Object to the form of the question. Object on
23 grounds on privilege. If you rephrase the question,
24 we may be able to answers that, but not the way it's
25 phrased.

1 BY MS. BERLIN:

2 Q. You asserted privilege in response to a
3 question about whether he provided any legal advice
4 about the transfer of funds. So under the standing
5 discovery order in this case, that would indicate
6 that there is a responsive answer.

7 So I'm now following the local rules
8 guidance, and I'm asking if any third parties were
9 present during any communications with Ms. McElhone
10 or Mr. LaForte regarding the transfer of -- in any
11 communications regarding the transfer of funds after
12 the SEC filed its case?

13 MR. LEVITT: I'm going to object to the
14 form of the question because you are -- the way you
15 phrased your question, that requires a disclosure of
16 privileged information. You have to rephrase the
17 question.

18 MS. BERLIN: I think the transcript is
19 clear that we're not asking for the substance or
20 what advice was given. So are you instructing your
21 client not to answer the question?

22 MR. LEVITT: As phrased, yes. You have to
23 ask a more general question as to whether anyone was
24 present other than his clients during legal advice
25 that was given in connection with this case during

1 that time period. I'll let him answer that, but not
2 when you load the question up with information about
3 was that advice may or may not have been because
4 that invades the privilege.

5 MS. BERLIN: I think the transcript is
6 clear that we didn't ask about what the advice was
7 but the general subject matter, which is
8 permissible. But we're not going to litigate that
9 here. I just wanted to make sure that everyone was
10 on notice of the local rule.

11 BY MS. BERLIN:

12 Q. Mr. Berman, are you refusing to answer the
13 question about whether you had any discussions with
14 Lisa McElhone or Joseph LaForte concerning the
15 transfer of funds in the presence of third parties?

16 MR. LEVITT: Objection. Privileged.
17 Instruct you not to answer.

18 You'll have to take that to the court.

19 MS. BERLIN: I'm sorry. Are you claiming
20 that it's attorney/client privileged whether or not
21 he communicated with Lisa McElhone and Joseph
22 LaForte about the transfer of funds while in the
23 presence of third parties?

24 MR. LEVITT: I'm objecting to your
25 question as phrased based on attorney/client

1 privilege. I'm instructing him not to answer.

2 BY MS. BERLIN:

3 Q. And, Mr. Berman, do you understand that
4 I'm asking you about whether or not you had
5 communications with third parties who are not your
6 clients together with -- so let me be clear. I want
7 to make sure that you understand, Mr. Berman, that
8 my question is whether or not you had communications
9 in the presence of third parties who were not your
10 clients with Lisa McElhone and Joseph LaForte about
11 the transfer of funds after the SEC filed its case?

12 MR. LEVITT: I'm going to object to that
13 question as phrased on the grounds privilege and
14 instruct him not to answer.

15 MS. BERLIN: And which privilege again?
16 Are you claiming attorney/client privilege over
17 that?

18 MR. LEVITT: I've said that a few times.

19 MS. BERLIN: I just have to clarify for
20 the record you're not talking about a different work
21 product privilege or something else. So is that the
22 attorney/client privilege that you're asserting?

23 MR. LEVITT: That's correct.

24 MS. BERLIN: Okay. And the clients at
25 issue are Ms. McElhone, Mr. LaForte and no one else;

1 is that accurate?

2 MR. LEVITT: Mr. Cole as well.

3 MS. BERLIN: And Mr. Cole as well?

4 MR. LEVITT: Yeah.

5 BY MS. BERLIN:

6 Q. Did you have any discussions with Lisa
7 McElhone after the SEC filed its case where someone
8 was present who was not also your client?

9 MR. FUTERFAS: I'm going to object to the
10 form of the question.

11 MR. LEVITT: I object to the form. But,
12 Mr. Berman, since that question doesn't contain
13 contents about was those discussions may have been
14 or the subject matter, if you understand the
15 question, I'll allow you to answer that.

16 THE WITNESS: No, not to my knowledge.

17 BY MS. BERLIN:

18 Q. And what about Mr. LaForte, did you have
19 any communications with him after the SEC filed its
20 case when a third party was present who was not also
21 your client?

22 A. No, not to my knowledge.

23 Q. Okay. At any time during -- at any time
24 were you asked for any legal advice about
25 transferring funds from any of CBSG's accounts for

1 the purposes of acquiring property and real estate?

2 MR. LEVITT: I'm going to object on the
3 grounds of attorney/client privilege. Probing into
4 any advice that may or may not have been sought by
5 the client or given is privileged. And it's not
6 relevant to your complaint as well.

7 BY MS. BERLIN:

8 Q. So, Mr. Berman, are you refusing to answer
9 whether you were representing Complete Business
10 Solutions Group when you were asked for any legal
11 advice about the transfer of Complete Business
12 Solutions Group funds for the purposes of acquiring
13 real estate?

14 MR. LEVITT: What time period are we
15 speaking about?

16 MS. BERLIN: We're talking about while he
17 represented Complete Business Solutions Group and
18 the receiver's (indecipherable) that privilege.

19 MR. FUTERFAS: I object to the form of the
20 question. Funds belonging to CBSG or funds
21 belonging to individual persons? I don't understand
22 your question. I'd ask you to rephrase it.

23 MS. BERLIN: I think the question was
24 clear.

25

1 BY MS. BERLIN:

2 Q. Mr. Berman, would you please respond.

3 MR. LEVITT: Can I hear the question read
4 back by the reporter because I'm not clear about it
5 myself.

6 MS. BERLIN: I'll just ask it again. You
7 don't have to do that, court reporter.

8 BY MS. BERLIN:

9 Q. Mr. Berman, during the time that you
10 were -- any time you were representing Complete
11 Business Solutions Group, were you asked for any
12 legal advice about the use of funds from Complete
13 Business Solutions Group's accounts to be
14 transferred for purposes of acquiring property and
15 real estate?

16 MR. FUTERFAS: Object to the form of the
17 question. If you're asking -- I don't know whether
18 you're asking Mr. Berman whether he was advising
19 people to take money from CBSG or you're asking
20 whether he's advising people what to do with money
21 they've earned from CBSG. I really don't understand
22 your question at all, Amie. I'd ask you to rephrase
23 it, please.

24 MS. BERLIN: I'm not going to unless
25 Mr. Berman claims he's confused, but I think the

1 transcript will be very clear. I think it's a clear
2 question.

3 BY MS. BERLIN:

4 Q. Mr. Berman, do you understand the question
5 about whether you were asked for legal advice about
6 the transfer of funds from Complete Business
7 Solutions Group towards the purchase of real estate?

8 MR. FUTERFAS: Object to the form for the
9 reasons I've stated.

10 MR. LEVITT: I'll object to the form, too.
11 But, Mr. Berman, if you understand the question, you
12 can answer it. And if it concerns matters that
13 occurred before this action was filed, you can
14 answer the question.

15 THE WITNESS: Sure. I think I understand
16 the question. And the answer is I was not aware of
17 any funds being transferred for any purpose, so no.

18 BY MS. BERLIN:

19 Q. Okay. And then, Mr. Berman, during the
20 time that you were representing Complete Business
21 Solutions Group, so before the SEC filed -- I'll
22 narrow the time.

23 Before the SEC filed its case, did you
24 know that Complete Business Solutions Group had
25 funded about \$1.2 billion in merchant cash advances

1 and had collected about \$1.2 billion from the
2 merchants?

3 A. I was not aware of the specific numbers,
4 no.

5 Q. Were you aware of the fact that Complete
6 Business Solutions Group received from merchants
7 about the same amount that it actually had sent out
8 to merchants?

9 A. I was not aware of that number.

10 Q. I'm not asking if you knew the specific
11 number. I'm asking if you knew that they -- that
12 CBSG funded an amount that was about equal to what
13 Complete Business Solutions Group ultimately
14 collected from the merchants.

15 MR. FUTERFAS: I object to the form and I
16 object to the relevance. And it's assuming facts
17 that are completely erroneous as proven by reports
18 filed in this case.

19 THE WITNESS: So the answer to your
20 question is no, I wasn't aware of specifics, but
21 what I would say to you in response to your question
22 is that that ignores the fact that there was an
23 excess of \$500 million of receivables that were
24 subject to collection and active agreements or
25 agreements that were just subject to collection. So

1 I don't even understand how you're making that link.

2 BY MS. BERLIN:

3 Q. Mr. Berman, what is your understanding of
4 receivables? Are you talking about account
5 receivables?

6 A. I'm talking about the fact that there was,
7 by my knowledge, over \$400 million in active money
8 on the street, either owed in MCA deals or money
9 advanced, plus there was \$100 to \$150 million of
10 deals that were subject to collection.

11 So when you say the numbers equal, I have
12 no idea if the numbers equal or don't equal. But
13 you've completely ignored the fact that there are
14 hundreds of millions of dollars on the street that
15 were able to be collected.

16 Q. Let's back up. I'm not asking you
17 about -- what is your definition -- what do you mean
18 when you say receivables? Are you referring to
19 accounts receivables?

20 A. This is the MCA business. So merchant
21 cash advance lends on future receivables.

22 Q. Okay. But accounts receivables is not the
23 cash that's coming back into Complete Business
24 Solutions Group. You would agree with me that it's
25 the amount that -- the accounts receivables is the

1 money that has not yet been -- it's the cash that
2 has not yet been received in the accounts of
3 Complete Business Solutions Group; correct?

4 A. I have no idea what you're talking about.

5 Q. Mr. Berman, is your understanding of
6 accounts receivable that that's actual dollars that
7 have been returned to Complete Business Solutions
8 Group? For example, if I looked in their bank
9 account, I would see that money?

10 MR. LEVITT: Object to the form.

11 THE WITNESS: I think you have a
12 fundamental misperception of this business based on
13 your question.

14 BY MS. BERLIN:

15 Q. Mr. Berman, I'm just asking if and I can
16 agree that accounts receivables is not cash that has
17 come into Complete Business Solutions Group yet.

18 A. I have no idea what you're talking about.
19 It's not even a sensical question. It's not a
20 sensical question. So a bank -- when a bank lends
21 money, they are not are owed receivables on their
22 balance sheet? That's GAAP accounting. I just
23 think you have a fundamental misperception of
24 accounting.

25

1 BY MS. BERLIN:

2 Q. Oh, okay. So are you refusing to answer
3 other than personally attacking me for what you
4 perceive is my lack of my accounting knowledge,
5 Mr. Berman?

6 A. I told you multiple times I don't even
7 understand your question. It doesn't make sense.
8 So if you want to rephrase it, I'm always happy to
9 answer any question you want.

10 Q. Mr. Berman, I'm not asking for your
11 opinion about me personally. And fortunately, your
12 counsel is not intervening to assist here. But I
13 will just sort of let it be known that I object to
14 that sort of personal attack in our litigation.

15 A. There have been no personal attacks.

16 Q. That's specifically not how we conduct
17 ourselves.

18 A. There have been no personal attacks.

19 (Multiple speakers talking at the same time.)

20 MS. BERLIN: I think the transcript will
21 reflect exactly you said, Mr. Berman, the video as
22 recorded will reflect your tone.

23 MR. LEVITT: Ms. Berlin, let me just
24 intervene, if I may, for one second.

25 MS. BERLIN: I'm going to ask the

1 question.

2 MR. LEVITT: I would like to just object
3 to that characterization. I think he was critical
4 of your question. He's very critical of the
5 question you asked. But he wasn't critical of you
6 personally.

7 MS. BERLIN: I think the transcript will
8 reflect it.

9 MR. LEVITT: If you can rephrase the
10 question. Let's spend the time so that you get the
11 information that you want to get because -- I'm sure
12 you can rephrase the question. And you and
13 Mr. Berman can come to the terms on the subject
14 matter and he can give you the information you want.
15 But he's just not understanding your question.

16 BY MS. BERLIN:

17 Q. Well, Mr. Berman, it's a simple question,
18 and I think you might have your own personal opinion
19 about it, but I wonder if you could just listen to
20 the question I'm asking and answer me.

21 I never asked you a question at the
22 beginning about account receivable. My initial
23 question -- I'd like to go back to that. I'm just
24 going to focus on that.

25 The question I have for you is not about

1 accounts receivable. I asked you a question about
2 the amount that had been collected, the actual cash
3 that came into Complete Business Solutions Group.

4 Do you understand what I mean by the cash?
5 I mean the dollars that came into Complete Business
6 Solutions Group as opposed to the accounts
7 receivable figure that might be reflected in
8 merchant cash advance agreements. Do you understand
9 the distinction between those two things?

10 MR. FUTERFAS: I object to the form of the
11 question.

12 BY MS. BERLIN:

13 Q. Mr. Berman, do you understand the
14 distinction that I am drawing between those two
15 things?

16 A. You're talking about numbers and issues
17 that I have no idea about. So, yes, I understand
18 the concept of cash in the door versus money owed.
19 Yes, I do understand that.

20 Q. That's I was trying to get to before with
21 my question about accounts receivable.

22 So my initial question you to was not
23 about money code. My question to you is about the
24 money collected. And by money collected,
25 Mr. Berman, I mean the cash that has been received.

1 Do you understand what I mean by money
2 collected?

3 A. I understand your words, yes.

4 Q. Okay. So my question is simply: Did you
5 know before the SEC filed its case or did you have
6 an understanding before the SEC file its case while
7 you were representing Complete Business Solutions
8 Group that the amount of cash that Complete Business
9 Solutions Group sent out to the merchants through
10 funded merchant cash advances was about equal to the
11 amount of cash that came in from the merchants? Did
12 you have that understanding?

13 MR. FUTERFAS: Objection. Asked and
14 answered. Let me state my objection before you
15 answer, Mr. Berman.

16 Objection. Asked and answered. And as I
17 recall, Mr. Berman, in the course of his answer also
18 said that that financial question does not include,
19 I think, about \$600 million of other value. So that
20 was my recollection of his prior answer.

21 MS. BERLIN: I'm objecting to the speaking
22 objection.

23 BY MS. BERLIN:

24 Q. And, Mr. Berman, again, I'm not asking
25 about the 600 million in accounts receivable.

1 MS. BERLIN: So I would ask that counsel
2 refrain from making speaking objections.

3 BY MS. BERLIN:

4 Q. This is a very simple question. I'm going
5 to ask you again, Mr. Berman.

6 Mr. Berman, did you or did you not have an
7 understanding while you represented Complete
8 Business Solutions Group before the SEC filed its
9 case that Complete Business Solutions Group, the
10 money that went out, meaning the cash that went out,
11 to the merchants through the merchant cash advances
12 was about equal to the amount of cash that came back
13 in from the merchants? Did you have an
14 understanding or not?

15 MR. SOTO: Objection to form.

16 THE WITNESS: No.

17 BY MS. BERLIN:

18 Q. Okay. And did anyone at Complete Business
19 Solutions Group give you a sense of how much more or
20 less was coming in from the merchants, than cash,
21 than was going out to merchants while you were
22 representing CBSG before the SEC filed its case?

23 A. I saw both default lists and active files
24 and saw \$500 to \$600 million in collectible
25 receivables. So that's --

1 Q. Mr. Berman, I'm not asking you about
2 accounts receivable. And I'd really like to finish
3 your deposition.

4 MR. FUTERFAS: Please let the witness
5 finish his answer. I object to you interrupting the
6 witness because you don't like what the witness is
7 saying. You asked the question. He's answering
8 your question. I object to the interruption of the
9 witness.

10 MS. BERLIN: Mr. Futerfas, there's no
11 issue with liking or not liking what he's saying.
12 I'm just trying to get an answer to the question.

13 BY MS. BERLIN:

14 Q. But, Mr. Berman, by all the means speak
15 for as long as you want about accounts receivable.
16 And then I'll ask my question again. So go ahead.

17 A. No. You could ask your question. I'd
18 like to be done.

19 Q. No, please. Mr. Futerfas has objected
20 that I cut you off. Please speak as long as you
21 would like about accounts receivable or whatever it
22 is that you were discussing that was not the subject
23 of your question.

24 A. It was as I understood your question to
25 be. You're talking about dollars in versus dollars

1 out. And I don't think that's how -- I don't
2 understand, but I told you before I don't know if
3 the dollars match. So if you want another question,
4 here I am.

5 Q. Thank you. Did anyone at Complete
6 Business Solutions Group ever indicate to you like
7 anything about the dollars out versus dollars in for
8 merchants? And I am not asking about the amount
9 owed. I'm talking about cash out and cash in.

10 MR. SOTO: Objection to the form.

11 THE WITNESS: It was my understanding that
12 the company was always cash flow positive.

13 BY MS. BERLIN:

14 Q. But did you understand by how much?

15 MR. SOTO: Objection to the form.

16 THE WITNESS: No, no. I did not know by
17 how much, no.

18 BY MS. BERLIN:

19 Q. And by how much, I don't mean a specific
20 dollar figure, but they were extremely positive or
21 barely breaking even. Did you ever have an
22 understanding of that from your clients at CBSG
23 while you were representing them before the SEC file
24 its case?

25 MR. SOTO: Objection to the form,

1 specifically to the phrase breaking even. Objection
2 to the form.

3 THE WITNESS: The answer is I said as part
4 of those spreadsheets that I would see whatever time
5 period, they would analysis on there about money in
6 versus money out, and it was significantly greater
7 of what was owed or outstanding than what was
8 advanced, which to me meant there was always more
9 money coming in than your questions implicates.

10 Q. Okay.

11 MR. SOTO: Amie, this is Mr. Soto. I just
12 want to make clear I understand the questions where
13 you're trying to distinguish cash from GAAP
14 accounting. But when you use a phrase like breaking
15 even, now you're conflating two different things
16 unless you make your question much more clear.

17 MS. BERLIN: I don't think so, but you
18 guys can ask that on cross.

19 MR. SOTO: That's just my objection.

20 MS. BERLIN: There have been so many
21 speaking objections and just like revisions to the
22 questions I've asked.

23 MR. SOTO: Amie, I objected merely to the
24 form, and I wanted make sure you understood my
25 objection. I haven't given you any speaking

1 objections during this whole long depo. I just
2 wanted to make sure you understood the reason for my
3 objection on that very last question.

4 MS. BERLIN: Understood.

5 BY MS. BERLIN:

6 Q. And, Mr. Berman, what spreadsheets are you
7 referring to that you were provided that showed
8 money in and money out?

9 A. If I said money in and money out, I didn't
10 mean that. It was the documents I referenced
11 earlier that had lots of different color coding on
12 it. And those documents listed all, to my
13 knowledge -- I don't want to say all because I can't
14 verify it was every single deal that ever occurred
15 in the history of CBSG, but they showed different
16 line items for the money advanced versus the amount,
17 the face amount of the MCA deal, and it showed
18 hugely positive numbers.

19 Q. And you're not sure if that was cash
20 in/cash out or if that was including accounts
21 receivable?

22 A. I remember seeing in Mr. Cole's office or
23 in the office in a boardroom presentations that
24 showed an analysis of the numbers, and it was hugely
25 profitable.

1 Q. It was hugely profitable. And what kind
2 of document was that?

3 A. It was both the document I told you, which
4 they were able to break down and show deals since
5 inception and it had line items that totaled
6 everything at the end. And it was -- again, I
7 didn't do an audit of it. That's not my role. But
8 I saw numbers that were hugely in the positive.

9 Q. And this spreadsheet with the color
10 coding, who would email that to you?

11 A. You asked that a few times before, and it
12 was either Mr. Cole directly or someone that he had
13 send it out. I don't remember.

14 Q. Okay. And have you ever litigated a case
15 involving GAAP or an accounting fraud case?

16 A. Yes. I have an MBA. I'm very familiar
17 with GAAP accounting.

18 Q. My question is: Have you litigated cases
19 regarding accounting fraud or GAAP accounting
20 principles?

21 A. I can't talk -- I mean, the answer is I've
22 litigated so many different cases. And, yes, I have
23 litigated issues on alleged improprieties on
24 financial statements through accounting. I've
25 represented accounting firms. So, yes, I'm very

1 familiar with the topic.

2 Q. Okay. So you're fully knowledgeable about
3 these matters. And when you reviewed the -- and you
4 reviewed Complete Business Solutions Group's
5 finances from what I understand from your testimony
6 today; is that accurate?

7 MR. SOTO: Objection to form.

8 THE WITNESS: No. I don't think that's
9 what I said. I told you I saw spreadsheets that
10 showed the gross amount that was given out in MCA
11 deals versus the amount that was both outstanding
12 and collected. And everything I saw was positive.

13 Did I do a forensic review of their
14 financials? Absolutely not. Did I have access to
15 that? No. But the documents that I was shown in
16 the time period I was representing them only showed
17 positives.

18 BY MS. BERLIN:

19 Q. Did you ever review their finances to see
20 if they were in compliance with GAAP?

21 A. What finances?

22 Q. Any financial records for Complete
23 Business Solutions Group to determine if they were
24 in compliance with GAAP. You brought up GAAP today
25 in your testimony. So I'm allowed to probe that,

1 why you raised that issue.

2 Did you do any sort of review or
3 assessment of Complete Business Solutions Group's
4 records to determine if they were in compliance with
5 GAAP?

6 MR. SOTO: Objection to form.

7 THE WITNESS: The answer is no.

8 BY MS. BERLIN:

9 Q. And are you CPA?

10 A. I'm not.

11 Q. And have you ever done securities
12 litigation?

13 A. Never.

14 Q. And so why was it earlier today that you
15 began testifying about GAAP?

16 A. Because it's a revenue recognition
17 vehicle. So when you ask me about whether or not
18 dollars in and dollars out equal zero, you're
19 ignoring the fact that there's revenue recognition
20 of accounts receivable.

21 Q. But you understand that that's an
22 accounting principle. And I was simply asking you
23 about the dollars collected by the company, and that
24 that's a vastly different issue. Do you understand
25 that?

1 MR. SOTO: Objection to form.

2 MR. FUTERFAS: Objection to form.

3 THE WITNESS: I understand your question.
4 Your question asked me 1.2 billion in, 1.2 billion
5 out equals zero. And I don't understand how you
6 just ignore the fact that there are receivables of
7 hundreds of millions of dollars in making a zero
8 analysis.

9 BY MS. BERLIN:

10 Q. I don't think anyone was ignoring
11 anything. I simply asked you a question. I just
12 want to make sure that you understood the questions
13 you've been asked today and that you understand --

14 A. I have answered all the questions. I've
15 answered all the questions. If you want to ask them
16 again, I'm here. But I understood all the questions
17 you asked today. I don't know 1.2 in, 1.2 out, I
18 have no idea. I told you that.

19 Q. Okay. And is there anything from your
20 testimony earlier today that you feel the need that
21 you need to clarify because I'd like to give you an
22 opportunity to clarify anything that you might be
23 concerned you weren't clear enough on.

24 A. No.

25 MS. BERLIN: Okay. I have no other

1 questions today.

2 MR. FUTERFAS: This is Alan Futerfas. We
3 have a few questions on cross. Can we take maybe a
4 five-minute break and then resume at 4:14 or
5 whatever it is.

6 MR. LEVITT: Mr. Futerfas, can I ask you
7 if you have any estimate of how long you're
8 expecting to go?

9 MR. FUTERFAS: Maybe half an hour.

10 MR. LEVITT: Thank you.

11 MS. BERLIN: Can we go off the record now?

12 MR. FUTERFAS: Fine with me.

13 THE VIDEOGRAPHER: Going off the record at
14 4:09 p.m.

15 (Recess from 4:09 p.m. to 4:16 p.m.)

16 THE VIDEOGRAPHER: We're back on the
17 record at 4:16 p.m.

18 THE WITNESS: Alan, I'm not sure if Peter
19 is back. I haven't seen him.

20 EXAMINATION

21 BY MR. FUTERFAS:

22 Q. Thank you, Mr. Berman. I know it's a
23 little late in the day. I will try to be clear and
24 efficient. If I'm not clear with any question,
25 please feel free to let me know that, and I'll

1 rephrase the question for you.

2 I want to start off where Ms. Berlin just
3 left off. Do you recall that she was asking you
4 questions about whether you were a CPA and whether
5 you reviewed the records for compliance with GAAP?

6 Do you recall those questions just a few
7 minutes ago?

8 A. I do recall the questions.

9 Q. And do you recall an answer to one of her
10 questions that you have an MBA and you are familiar
11 with GAAP accounting and you've represented
12 accounting firms? Do you recall that answer to one
13 of her questions just a few minutes ago?

14 A. I do.

15 Q. What is GAAP accounting?

16 A. GAAP accounting is a revenue recognition
17 principle.

18 Q. And for a company and organization to file
19 tax returns, do they need to recognize revenue in
20 accordance with GAAP accounting?

21 MS. BERLIN: I object on grounds that
22 Mr. Berman is not an expert in this area and you're
23 asking him for his professional opinion as a lay
24 witness.

25 MR. FUTERFAS: Your objection is duly

1 noted.

2 BY MR. FUTERFAS:

3 Q. Can you answer the question, Mr. Berman?

4 A. So the answer is I'm not a GAAP expert.

5 My only point I was trying to make is in response to
6 Ms. Berlin's questions about 1.2 billion in, 1.2
7 billion out equals zero. I was saying that ignores
8 GAAP principles of revenue recognition from accounts
9 receivable that are on their books at the time of
10 the question she asked me, as of July 28, 2020.

11 BY MR. FUTERFAS:

12 Q. Fair enough. You do recall her question
13 to you of whether you are a CPA; correct?

14 A. Yes. I'm not a CPA.

15 Q. If you were analyzing the books and
16 records of a company for profitability, would you
17 want a CPA to determine profitability under GAAP?

18 A. With all due respect, Mr. Futerfas, I
19 wouldn't be asking a lawyer that question. I think
20 that's much better suited to an accountant.

21 Q. Fair enough. Have you seen the report of
22 the Joel Glick filed in this case on April 15, 2021?

23 MS. BERLIN: Objection. Outside of the
24 scope of direct examination.

25 MR. FUTERFAS: Your objection is noted.

1 BY MR. FUTERFAS:

2 Q. Have you seen that report, Mr. Berman?

3 A. I saw a Glick document that was filed on
4 the public docket, yes.

5 Q. Okay. And did you note in that report
6 that Mr. Glick, a CPA, determined that the
7 profitability of CBSG was, if memory serves,
8 1.339 -- have an average rate of return of 1.339?
9 Did you see that?

10 MS. BERLIN: Objection. Hearsay.

11 THE WITNESS: I can't remember if I
12 specifically saw that, but I did think I saw that
13 there was an analysis with respect to the
14 profitability.

15 BY MR. FUTERFAS:

16 Q. Okay. Did the analysis that you saw --
17 was that consistent with your recollection of,
18 quote, hugely positive numbers, closed quote, that
19 you recall seeing from spreadsheets prepared by
20 Mr. Cole?

21 A. You are adequately quoting my testimony.
22 I obviously did not review all books and records of
23 the company. Based on what I saw, which was an
24 analysis of MCA deals that were funded, I only saw
25 positives. Because there were red ink or parens if

1 there was something negative. And I only saw
2 positive numbers.

3 Q. I want to turn your attention to a subject
4 matter that Ms. Berlin asked you about with respect
5 to the exchange offers in April, March, April of
6 2020.

7 Specifically she asked you and you
8 recalled conversations with you and other lawyers,
9 including Phil Rutledge, and then certain defendants
10 in this case, including Joe LaForte.

11 Do you recall generally those questions
12 and answers earlier today?

13 A. I do.

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

20 A. I do.

21 Q. Did Mr. Rutledge know of Joe LaForte's
22 prior criminal history?

23 A. 100 percent, yes.

24 Q. And were there discussions about whether
25 that criminal history needed to be disclosed in

1 connection with the exchange notes that Mr. Rutledge
2 was advising on?

3 MS. BERLIN: Objection. Calls for
4 hearsay.

5 BY MR. FUTERFAS:

6 Q. You may answer.

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

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

17 MS. BERLIN: Objection. Hearsay.

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

23 BY MR. FUTERFAS:

24 Q. At any point to your recollection, did
25 Lisa McElhone or Joseph LaForte or quite frankly

1 anyone else who was affiliated with CBSG in any way
2 suggest to you that Mr. LaForte's criminal
3 background should be hidden or concealed from
4 anyone?

5 A. I didn't speak to Lisa McElhone about
6 that, so I can't answer as to her. But it's quite
7 to the contrary. I mean, as I said before, it was
8 public knowledge for merchants, opposing counsel,
9 employees of CBSG and Phil Rutledge and Haynes &
10 Boone that Mr. LaForte had a criminal conviction.
11 So no, it was actually the opposite of trying to
12 hide it.

13 Q. You just mentioned Haynes & Boone, and I
14 neglected to ask you that question. Were the
15 lawyers at Haynes & Boone aware of Mr. LaForte's
16 prior criminal history?

17 MS. BERLIN: Objection. Hearsay and calls
18 for speculation.

19 THE WITNESS: To the best of my
20 recollection, yes.

21 BY MR. FUTERFAS:

22 Q. Now, to your knowledge, is either
23 Mr. LaForte, Lisa McElhone or Joe Cole an attorney?

24 A. To my knowledge, they are not attorneys.

25 Q. Did they draft the PPM agreements, to your

1 knowledge?

2 A. If you're talking about the underlying
3 documents, I didn't have knowledge of those prior to
4 April or May of 2020. So I have no idea.

5 Q. Okay. To your experience from the time
6 you were affiliated with CBSG, to your knowledge,
7 did either of those -- did those individuals,
8 Mr. LaForte, Ms. McElhone or Mr. Cole, draft legal
9 documents, whether it was subscription agreements,
10 PPM agreements, exchange notes or any other legal
11 documents?

12 MS. BERLIN: Objection.

13 THE WITNESS: Not that I remember.

14 MR. FUTERFAS: Please give me a moment to
15 object. Objection. Outside the scope of the direct
16 examination and calls for speculation.

17 BY MR. FUTERFAS:

18 Q. You may answer.

19 A. I have no recollection of any of the three
20 people you named drafting legal documents.

21 Q. Okay. Is your recollection, in fact, to
22 the contrary, that they hired lawyers to draft
23 documents, different kinds of legal documents
24 including those that I just described?

25 A. Either hired or had in-house counsel who

1 did that type of work for them, yes.

2 Q. Fair enough. Thank you.

3 And when it came to the disclosure issues
4 that we just talked about and that you recall
5 conversations about, again, did these individuals,
6 who are not attorneys, rely on and utilize the
7 expertise of attorneys with respect to what needed
8 to be disclosed, if anything?

9 MS. BERLIN: Objection. Calls for
10 speculation.

11 THE WITNESS: The answer was they were
12 very proud of the fact that they had someone like
13 Phil Rutledge on their team because he is, to my
14 knowledge, a renowned securities expert. And they
15 relied on -- I can't say what they did, but they
16 asked him questions, and they followed his advice.

17 BY MR. FUTERFAS:

18 Q. And those questions included disclosure of
19 regulatory actions and criminal history and matters
20 of that nature?

21 A. As far as regulatory actions --

22 MS. BERLIN: If you don't mind, please --

23 MR. LEVITT: I can't see. You're not on
24 the screen, so it's hard --

25 MS. BERLIN: Please, Mr. Berman, if you

1 could give me the same courtesy you gave defense
2 counsel of pausing to allow for an objection.

3 I object on the grounds that this is
4 seeking hearsay testimony.

5 BY MR. FUTERFAS:

6 Q. You may answer if you recall the question,
7 Mr. Berman.

8 THE WITNESS: I just disagree with the
9 characterization that I waited or didn't wait for
10 any pause. I don't see anyone on the screen and
11 your phone is on mute. So it's just all of a sudden
12 you come when I'm answering. But I will try to
13 pause out of respect to you, Ms. Berlin.

14 I think you asked about regulatory and
15 legal disclosures. As far as the regulatory
16 disclosures, again, I was not representing the
17 company on anything to do with Pennsylvania, New
18 Jersey. Phil Rutledge was. So Phil Rutledge told
19 Mr. Cole and Mr. LaForte exactly what needed to be
20 disclosed for the three regulatory events that I'm
21 aware of or became aware of in April or May of 2020.

22 And as far as legal issues, that's kind of
23 broad, so I'm not sure I understand your question.
24 But my best guess at what you're asking me is that,
25 you know, there was a disclosure made about the fact

1 that there was a large amount of litigation, and
2 that was at the recommendation of Phil Rutledge
3 because he understood, as addressed in the
4 Fleetwood -- in the Texas action, that there was a
5 claim of nondisclosure of litigation.

6 So he said you should just disclose that
7 there's a lot of litigation all over the place in a
8 very large format.

9 BY MR. FUTERFAS:

10 Q. Thank you.

11 MS. BERLIN: Mr. Futerfas, does that
12 conclude your cross-examination?

13 MR. FUTERFAS: No. I'm going through my
14 questions to weed out those that I do not need to
15 ask. I am trying to save time actually, Ms. Berlin.

16 BY MR. FUTERFAS:

17 Q. Turning to a different topic, do you
18 recall being asked questions by Ms. Berlin of
19 confessions of judgment and whether a merchant deal
20 could be profitable even with the filing of a
21 confession of judgment? Do you recall those
22 questions?

23 A. Again, with all due respect, I'm not sure
24 Ms. Berlin asked me about that. I brought up the
25 fact that there were confessions of judgment. Maybe

1 if you ask me a different way, but I don't know if I
2 understand what you're asking.

3 Q. We'll do it this way. Would an MC --
4 excuse me. Withdrawn.

5 Would a confession of judgment be filed
6 where the deal, the underlying deal was profitable,
7 but the deal had not reached its RTR, the total
8 right to return? Do you understand my question?

9 MR. LEVITT: I'm going to object to the
10 form. But if you understand it, you can answer it.

11 THE WITNESS: I think it's rate of return.
12 But I think the answer is, as best I understand your
13 question, that many of the deals for which
14 confessions of judgment were filed, the company was
15 a cash flow positive. Simply because a confession
16 was filed doesn't mean that the merchant hadn't
17 returned the underlying amount that was provided
18 along with some rate of return.

19 It was purely that there was a default
20 based on the face of the MCA papers. So, yes, there
21 could be lots of deals that are and there were, in
22 fact, many, many deals I was involved in that were,
23 in your world, cash flow positive.

24 BY MR. FUTERFAS:

25 Q. And you used the word default. And when

1 you used the word default in that answer, you were
2 referring to a default under the merchant agreement;
3 correct?

4 A. Yes. I'm pausing just to make sure
5 Ms. Berlin doesn't have any objection now I can see
6 her.

7 But the answer is I was talking about
8 technical defaults under the agreements because
9 there were things like, you know, by memory, for
10 insufficient funds or overdrafts. It was spelled
11 out in the MCA agreement.

12 So when I said default, I was talking
13 about when one of those events of default occurred
14 under the MCA paper.

15 Q. Okay. And have you heard the same term
16 default used in connection with a determination of
17 bad debt for the purposes of reporting on tax
18 returns or to the IRS?

19 A. You're on mute, Ms. Berlin. We can't hear
20 you.

21 MR. FUTERFAS: Amie, we can't hear you if
22 you have an objection.

23 MS. BERLIN: Objection. Outside of the
24 scope of direct examination. Relevance.

25

1 BY MR. FUTERFAS:

2 Q. You may answer, Mr. Berman, if you
3 understand the question.

4 A. I think I understand the question, but I'm
5 not sure I could analyze it from a tax perspective
6 like that. It's just a little above my scope or
7 knowledge of accounting fundamentals.

8 Q. Fair enough. I want to ask you a few
9 questions about -- withdrawn.

10 Do you recall questions at the beginning
11 of your testimony about where CBSG was located?

12 A. I do remember Ms. Berlin asking me those
13 questions, yes.

14 Q. Okay. And do you recall at some point,
15 and it may have been prior to your representation of
16 the company, that CBSG was domiciled in Florida?

17 A. I mean, I'm generally aware, and
18 Ms. Berlin explored this with me. That's before my
19 time. But, yes, I've heard in cases, in
20 specifically one or two cases prior to this case
21 being filed, this whole discussion about Florida
22 versus Pennsylvania.

23 Q. Okay. Have you heard of a company called
24 Full Spectrum Processing?

25 A. Yes. I have heard of Full Spectrum

1 Processing.

2 Q. Okay. And did you understand that the
3 offices in Philadelphia or that you were visiting
4 were the offices of Full Spectrum Processing?

5 A. I mean, I heard testimony from Mr. Cole
6 about this, but I can't say I did a deep dive into a
7 loan processing servicing company versus the
8 underlying -- I didn't ever have a reason to analyze
9 that. This was raised in a litigation right before
10 this case was filed.

11 Q. Fair enough. Have you heard of an
12 accounting firm called Rod Ermel Associates?

13 A. Yes.

14 Q. And do you understand that they provided
15 accounting advice and tax advice to CBSG?

16 A. I'm aware, but I never had a discussion
17 with Rod Ermel Associates. So I never spoke with
18 them or communicated with him.

19 Q. Okay. I'm going to ask you a different
20 question then. Are you aware of, do you have
21 knowledge whether they provided advice to domicile
22 CBSG to Florida and open the company Full Spectrum
23 Processing in Philadelphia?

24 MS. BERLIN: Objection on relevance and
25 hearsay grounds.

1 THE WITNESS: The answer is I was not
2 privy to any such advice, although I believe
3 Mr. Cole testified in one of the cases I mentioned
4 earlier that this was based on the advice of
5 accountants and tax professionals. But it was not
6 Fox Rothschild, and we didn't look at that, opine on
7 that, and it's before my time.

8 BY MR. FUTERFAS:

9 Q. Fair enough. Going back to a few
10 questions that Ms. Berlin asked you kind of late in
11 the day, when she was asking you about monies out,
12 monies in, and you were having that discussion about
13 revenue recognition.

14 In that connection, did CBSG or FSP, Full
15 Spectrum Processing, employ accountants?

16 MS. BERLIN: Objection. Outside the scope
17 of direct examination and relevance.

18 THE WITNESS: The answer is yes. There
19 were a team of internal accountants that were led by
20 Joe Cole, Aida Lau and others who every day were
21 crunching numbers. You couldn't -- I wasn't -- Joe
22 Cole's instruction was essentially unless it's very
23 important, don't write me before 11:00 in the
24 morning because that was the time that the
25 accountants did their reconciliation.

1 BY MR. FUTERFAS:

2 Q. And do you recall if any of those
3 accountants were CPAs?

4 A. I was told that, but I have no independent
5 knowledge.

6 Q. Did you know someone by the name of James
7 Klenk, K-L-E-N-K, at FSP?

8 MS. BERLIN: Objection. Outside of the
9 scope of direct examination.

10 THE WITNESS: I was aware that James Klenk
11 worked there, yes.

12 BY MR. FUTERFAS:

13 Q. Were you aware that he was a CPA?

14 A. I was told he was a CPA.

15 Q. Did you ever see the tax returns filed by
16 CBSG?

17 A. I don't think so, no.

18 Q. Okay. You were asked questions by
19 Ms. Berlin about prep sessions with, I think,
20 Ms. Lau and Joe Cole in connection with some of
21 these private litigations.

22 Do you remember those questions?

23 A. I do. I do.

24 Q. Do you recall in those meetings or -- in
25 those meetings whether the instruction, whether it

1 came from you or indeed from Joe LaForte, for
2 everyone to simply to tell the truth about what
3 happened?

4 A. I was just seeing if Ms. Berlin objected
5 to be respectful to her.

6 The answer is if you talk about me, my
7 recollection of it was, you know, essentially you
8 have to give some context to the type of litigation
9 that was occurring. We were dealing with an
10 onslaught of litigation from one firm who was using
11 those litigations to ask a lot of different
12 questions about things that were completely
13 irrelevant to the cases.

14 So, you know, what my instruction to any
15 witness I've ever prepped for a deposition in my
16 career, which are hundreds or thousands, is tell the
17 truth. It is absolutely your job to tell the truth.
18 But you should not be guessing at any questions
19 under any circumstance.

20 So if you're asked questions that you
21 think you know, but you really don't and you're just
22 making conjecture, the answer is "I don't know" or
23 "rephrase the question." You're not there to guess
24 or give conjecture. So it was the same deposition
25 instructions I give to all witnesses who are being

1 deposed.

2 Q. Do you recall any of the participants in
3 those meetings, including Joe LaForte, saying to the
4 group, look, just tell the truth; all you got to do
5 is go in there and tell the truth?

6 A. The answer to that was, I mean,
7 truthfully, that was Joe LaForte's mantra always.
8 It was -- you know, there wasn't lying. It was try
9 to do the right thing, try to be respectful to
10 merchants. So, yes. I mean, I can't say I recall
11 specifically, you know, every word that was said at
12 that meeting, the same way I couldn't recall
13 specifically when Ms. Berlin asked me the questions.
14 But that sounds like something Mr. LaForte would
15 say, yes.

16 Q. You just referenced this onslaught of
17 legal action. I want to ask you just a few
18 questions about that. Do you recall that a lawyer
19 named Shane Heskin filed some actions against CBSG?

20 A. Yes. I'm very well aware.

21 Q. And in those actions, did he challenge the
22 legality of the MCA deals and contracts?

23 A. He did that there and he did it all up and
24 down various states against various companies, yes.

25 Q. And did courts uphold the validity and

1 enforceability of the MCA contracts?

2 MS. BERLIN: Objection. Relevance and
3 outside of the scope of direct examination.

4 THE WITNESS: The answer is I'm not aware
5 of any reported decisions that did not uphold the
6 MCA agreements for Complete Business Solutions.
7 And, in fact, it's quite the contrary. Courts have
8 routinely upheld the legality of these. And there's
9 actually state statute that allow for this type of
10 business.

11 So, no, I'm not aware of any victories
12 like that by Mr. Heskin.

13 BY MR. FUTERFAS:

14 Q. And you referenced a few moments ago
15 depositions that were taken in these private actions
16 and that questions were asked that appeared not to
17 be relevant to those actions. Do you remember
18 saying that just a few moments ago?

19 A. I do remember saying that, yes.

20 Q. Okay. So I just want to ask you a little
21 bit more about that.

22 Do you recall disputes during some of
23 those depositions occurring arising from certain
24 questions being asked by Mr. Heskin?

25 MS. BERLIN: Objection. Objection on

1 relevance grounds and also on the grounds this is
2 outside of the scope of direct examination, and it's
3 calling for hearsay.

4 BY MR. FUTERFAS:

5 Q. You may answer.

6 A. The answer is I think by saying disputes
7 puts it mildly. These were some of the most
8 litigious cases involving issues that had nothing to
9 do with the facts of any of the cases. And they
10 dealt with really what this case is about.

11 BY MR. FUTERFAS:

12 Q. I'm going to try to parse your answer a
13 little bit. Are you suggesting that Mr. Heskin was
14 asking questions during these private litigations
15 that had nothing to do with those litigations, but,
16 in fact, were relating to issues raised by the SEC
17 in its action here?

18 MS. BERLIN: Objection. Relevance and
19 hearsay and outside the scope of direct.

20 THE WITNESS: The answer is the
21 depositions that occurred and the discovery that was
22 served had 98 percent nothing to do with the actual
23 merchants and issues in any of those cases. And all
24 of the questions or 98 percent of the questions
25 dealt with issues that now are part of this action,

1 which I didn't understand at the time, but now I've
2 seen them in this action.

3 BY MR. FUTERFAS:

4 Q. By the way, do you recall when those
5 depositions occurred?

6 A. The first deposition was shortly after I
7 was really engaged, as I would say it, by the
8 company in the Fleetwood case. Both Joe LaForte and
9 Joe Cole were deposed, I believe, in 2019.

10 Q. Okay. And do you recall a deposition in
11 the summer of 2020?

12 A. Both Mr. LaForte and Mr. Cole were deposed
13 twice, once in HMC and once in Fleetwood. One would
14 be in 2019. One would be in -- well, two in '19,
15 two in '20.

16 Q. And the ones in 2020 -- excuse me. The
17 two depositions that occurred in the summer of 2020,
18 were those basically weeks before the SEC filed its
19 action in this case?

20 MS. BERLIN: Objection. Relevance and
21 outside of the scope of direct examination.

22 THE WITNESS: The answer is it was right
23 before this case. And I didn't understand the
24 questions at the time they were being asked. But
25 when you look or think back to what was asked, it's

1 identical to the facts in this case.

2 BY MR. FUTERFAS:

3 Q. I'm going to turn to a different topic
4 now, Mr. Berman. You were asked a few questions by
5 Ms. Berlin about the use of collateral or collateral
6 being used as security on some of the MCA deals. Do
7 you recall a few questions about that?

8 A. I do remember Ms. Berlin asking me those
9 questions, yes.

10 Q. Okay. And I was unclear about one thing.
11 Did you institute some of that collateral or had
12 prior counsel, whether they were external counsel or
13 in-house counsel, put in place that collateral?
14 Could you just clarify that a little bit for us?

15 A. Both. There were a significant number of
16 actions that were pending to go after collateral.
17 We took over or organized and worked with local
18 counsel to make sure they were proceeding
19 efficiently.

20 And after we were retained to do more of
21 that collection work in February of 2020, we also
22 brought certain actions. There would have been
23 others as part of the same deals that were occurring
24 in default, but because, as I explained to
25 Ms. Berlin, the court systems essentially shut down

1 in late March, that became much harder to institute
2 those type of actions for that window of court
3 emergencies across the country.

4 Q. Let me ask you this question. When you,
5 let's say, got more involved in February of 2020, as
6 part of some of these MCA or as part of your work,
7 did you create collateral instruments?

8 In other words, did you file confessions?
9 Did you take mortgages? In other words, did you do
10 some of that work anew starting when you got
11 involved, or was the collateral that was on these
12 deals preexisting, put in place by prior counsel?

13 MS. BERLIN: Objection. Relevance.

14 THE WITNESS: The answer is I'm not sure I
15 fully understand your question, but what I did
16 understand from it, I was not involved in any way in
17 underwriting or origination of deals. Zero
18 involvement in that. So I wouldn't have been doing
19 what you're talking about. I just don't remember
20 anything where we would have been involved in that.

21 BY MR. FUTERFAS:

22 Q. Okay. So if there was collateral to be
23 executed upon, whether it's a mortgage or a deed
24 that was held by CBSG or notes or other kinds of
25 collateral, that would have been put in place by

1 counsel before your time? Let's put it that way.

2 A. I want to give one proviso to my answer
3 because now you just -- you reminded me of deeds of
4 trust. There were certain deeds of trust that were
5 done with us, but I think those were modification
6 deals.

7 But there was a very large double filing
8 cabinet, like huge, that was filled with collateral
9 deals from many years that were in place on many MCA
10 agreements originated by CBSG.

11 Q. Okay. And what is the purpose of having
12 collateral where it's sought underlying some of
13 theses approximately MCA deals?

14 MR. LEVITT: I'm going to object to the
15 form. He's not here as an expert witness,
16 Mr. Futerfas.

17 MS. BERLIN: Same objection. And it's
18 outside of the scope of direct.

19 THE WITNESS: I mean, again, I said I
20 represented a lot of alternative lenders, banks,
21 et cetera. Like any deal where you're providing
22 money to a third-party business, collateral is done,
23 you know, not as an expert opinion, but just common
24 sense to bring additional collateral to the deal,
25 i.e., bring down the risk on the amount that's owed.

1 You have additional source beyond the underlying
2 business, the guarantor.

3 And then you can go after collateral as
4 well. So it's done to provide an extra layer of
5 security to whoever is lending or giving a third
6 party money.

7 BY MR. FUTERFAS:

8 Q. Okay. You were also asked questions by
9 Ms. Berlin about some of your collection activities.

10 Was the work you did and your firm did in
11 these collections, was that a source of revenue for
12 CBSG?

13 A. 1000 percent. Collection and work with
14 lawyers was a huge portion of their business because
15 that's how they made money in the event someone
16 wasn't paying them or got people to enter into new
17 deals to make them pay. So it was an essential
18 function of their business.

19 Q. Okay. Do you know if your collection work
20 brought in 10 percent of the revenue, 15 percent of
21 the revenue, 20 percent? Do you have any idea
22 whatsoever of the percentage of the revenue that
23 your collection work brought in?

24 A. The answer is, just like I said to
25 Ms. Berlin, I can't tell you exact numbers we

1 brought in. I think we were pretty profitable for
2 the company because that was our job, right. That's
3 what we were paid to do, which is address default
4 situations and either make modification deals or
5 collect. I can't tell you exact numbers just like I
6 couldn't tell Ms. Berlin.

7 Q. Have you been to the offices -- you said
8 you've been at the offices in Pennsylvania; is that
9 right?

10 A. Yes.

11 Q. How many times have you been to those
12 offices?

13 A. I think, as I said to Ms. Berlin -- maybe
14 she didn't ask me that. I went to Joe Cole's office
15 over on Arch Street once or twice. And I went to
16 the main CBSG office ten or so times.

17 But, as I said to Ms. Berlin, I
18 represented the former owners of that building in a
19 multiyear litigation. So I've been in that building
20 many, many, many, many times before CBSG was even a
21 thought in my mind.

22 Q. Okay. Okay. So you recall then where Joe
23 Cole was located and the accounting -- all the
24 accountants that worked for FSP, they were located
25 which address, if you recall?

1 MS. BERLIN: Objection. Relevance.
2 Outside of the scope of direct examination.

3 THE WITNESS: They were -- to the best of
4 my knowledge, they were all located at Second and
5 Arch Street, 205 and 208 Arch.

6 BY MR. FUTERFAS:

7 Q. Okay. And then there was another location
8 with about six floors of offices; is that right?

9 A. There were two separate --

10 MS. BERLIN: Same objection. Just a
11 moment.

12 THE WITNESS: Sorry.

13 MS. BERLIN: That's okay. Objection on
14 relevance grounds. And we're going so far outside
15 of direct examination. So I object on that ground
16 as well.

17 THE WITNESS: I apologize for speaking too
18 quickly. It was -- on North Third Street there were
19 two different addresses that had a series of broken
20 up offices in them for different functions of CBSG
21 or Full Spectrum. That's what it was.

22 BY MR. FUTERFAS:

23 Q. Understood. Okay. Okay. And did you
24 have a sense of how many employees you saw at these
25 offices, whether it was 50, 70, a hundred, more than

1 a hundred, just what your sense was?

2 MS. BERLIN: Objection. Relevance
3 grounds. Outside of the scope of direct.

4 THE WITNESS: There were well in excess of
5 a hundred employees, and they were all broken up by
6 various departments. So you would look down at the
7 floor for the underwriting team, and it was a series
8 of open office space with 20, 30 people who would be
9 processing deals, looking at, you know, files,
10 looking at bank account statements, doing
11 investigation on each of the merchants.

12 You then had the collection area with a
13 similar type setup with a team of -- to me it looked
14 like 20 people who were on their phone talking.
15 Anthony Ronn Fazio and Tim were walking around
16 dealing with each of them. They would intercede in
17 calls.

18 Then you had the Wendy Furman people who
19 were doing deal documentation. It was a very broken
20 up but organized, highly organized situation.

21 I actually remember the first time I went
22 there, and it was shocking because it was so high
23 tech and so fast moving and so many people
24 collaborating on origination, collection, deal work,
25 finance that I actually didn't -- I remember my

1 initial reaction was I shocked this was in the City
2 of Philadelphia given that I'm a Philly guy.

3 BY MR. FUTERFAS:

4 Q. So you observed a fully operational
5 ongoing company employing over a hundred individuals
6 as of 2020; is that correct?

7 MS. BERLIN: Objection. Relevance and
8 outside of the scope of direct.

9 THE WITNESS: I 100 percent observed that,
10 and it was actually a sight to be seen.

11 MR. FUTERFAS: I have no further
12 questions.

13 MR. MILLER: This is Brian Miller. I have
14 a couple questions.

15 MR. SOTO: This is Alex. I have some
16 questions. Go ahead, Brian.

17 EXAMINATION

18 BY MR. MILLER:

19 Q. Can you see me, Mr. Berman?

20 A. I can.

21 Q. I just want to ask you a couple of
22 follow-up questions regarding the testimony you gave
23 earlier today about passing on some financial
24 records to John Pauciulo during the spring of 2020.
25 Do you remember that testimony?

1 A. I do.

2 Q. Now, I believe you testified that you had
3 no discussions with Mr. Pauciulo regarding whether
4 CBSG was solvent or insolvent; is that correct?

5 A. I don't recall the discussion of solvency.
6 I do recall Mr. Pauciulo asking for financial
7 documents, for me to get from CBSG financial
8 documents so that he can do an analysis.

9 But more importantly, as I think I said
10 before, that there was very limited discussion of
11 anything with Mr. Pauciulo because it was my
12 understanding that his client, clients as I came to
13 learn, were dealing directly with CBSG principals.

14 Q. So did Mr. Pauciulo ever tell you what
15 analysis he was going to do with the financial
16 records you obtained from Mr. Cole and passed along
17 to Mr. Pauciulo?

18 MS. BERLIN: Objection. Calls for
19 hearsay.

20 THE WITNESS: I can't say I got into the
21 mind of John Pauciulo. I didn't know him very well.
22 So I'm not -- we weren't -- like we weren't
23 co-counsel or anything, and I never worked with
24 Mr. Pauciulo before.

25 So the answer is I don't know what he was

1 going to do. He made requests. I relayed them to
2 CBSG. He was satisfied with what was given to him
3 by CBSG, and I didn't engage in an extended analysis
4 with him because we didn't talk like that.

5 BY MR. MILLER:

6 Q. Sure. And my question really was just a
7 simple factual question. Did Mr. Pauciulo tell you
8 what analysis he was going to do with these
9 documents?

10 MS. BERLIN: Objection. Relevance and
11 also calls for hearsay.

12 THE WITNESS: No, I don't think he did.
13 He told me he wanted them so he could review them
14 for his clients.

15 BY MR. MILLER:

16 Q. Thank you. And then a follow-up question
17 on that, Mr. Berman. Would it also be fair to say
18 that Mr. Pauciulo -- actually, let me rephrase that
19 question.

20 Did Mr. Pauciulo tell you what the results
21 were of any analysis that he performed on these
22 financial records you got from Mr. Cole and passed
23 along to Mr. Pauciulo?

24 A. The answer is I don't think I -- I don't
25 know if Ms. Berlin was saying something.

1 MR. MILLER: I was just going to object on
2 hearsay grounds. Thank you.

3 THE WITNESS: My apologies.

4 The answer is I don't recall having a
5 discussion with Mr. Pauciulo after he got the
6 documents, but what I would say is he was clearly
7 satisfied with what he was given because the next
8 thing I knew, his clients signed the exchange offer.

9 BY MR. MILLER:

10 Q. Thank you very much, Mr. Berman. I have
11 no further questions.

12 MR. SOTO: Mr. Berman, this is Mr. Soto.
13 I have just a couple of quick questions.

14 EXAMINATION

15 BY MR. SOTO:

16 Q. The first question relates to a series of
17 questions and answers you gave earlier regarding
18 whether you provided a legal opinion to CBSG
19 regarding whether their advances were usurious.

20 Do you recall that line of questioning?

21 A. I do remember Ms. Berlin asking me those
22 questions.

23 Q. Right. And do you recall saying that you
24 don't recall providing CBSG specifically advice
25 regarding whether the advances were usurious. Did I

1 hear you correctly?

2 A. I did not provide them with that advice,
3 but they were given -- like Mr. Cole was given
4 copies of our briefing along with the general
5 counsel where we made substantial and significant
6 arguments with respect to the legality of the entire
7 portfolio of what they were doing as we understood
8 it.

9 Q. Okay. And that's exactly what I wanted to
10 clarify. You testified earlier that you had filed
11 briefings with respect to whether the advances were
12 usurious. Those are the briefings that you are now
13 testifying you provided to Mr. Cole?

14 A. Of course, yeah.

15 Q. And I imagine in those briefings you
16 argued that the advances were not usurious; correct?

17 A. 1,000 percent.

18 Q. So would it be fair to say that you
19 provided an opinion at minimum through those
20 briefings to Mr. Cole that the advances were not
21 usurious?

22 A. You know, what I would say, Mr. Soto, and
23 I said this to Mr. Kolaya and Mr. Alfano when they
24 were asking these questions at the beginning of this
25 case about opinions, I've been practicing for almost

1 15 years. I've never given a legal opinion on
2 things. There's a very technical meaning to legal
3 opinions that at Fox Rothschild involve audit
4 committees and approvals. So I've never done what
5 you're asking.

6 Did we file legal briefs in court? Yes.
7 Did we take the position these are not usurious or
8 illegal loans? Yes. Do I believe that sitting here
9 today? Yes. And the reason I believe that are the
10 court opinions around the country that have upheld
11 the legality of this type of business.

12 But I'm not in the business, unless
13 there's a specific request, which I never had in 15
14 years, to give legal opinions in the way you just
15 framed it.

16 Q. Okay. And I didn't mean to ascribe any
17 particular meaning to the phrase legal opinion.

18 My question is simply: Did Mr. Cole have
19 an understanding with respect to your position on
20 whether these advances were usurious based on the
21 pleadings you provided to him?

22 MR. LEVITT: I'm going to object to form.

23 BY MS. BERLIN:

24 Q. Is it your understanding that he had an
25 opinion with respect to whether these advances were

1 usurious based on the pleadings that you provided to
2 him?

3 A. I think that Mr. Cole had an understanding
4 that this was not illegal.

5 MS. BERLIN: Mr. Berman, I'm objecting on
6 grounds that this calls for speculation about what
7 you think Mr. Cole was thinking based on pleadings
8 you filed.

9 THE WITNESS: What I was going to say was
10 not only did I think Mr. Cole believed 100 percent
11 that these were not illegal. I think he had been
12 working with lawyers for many, many years before me.
13 They were very well aware of cases all around the
14 country involving MCA, the MCA business.

15 This was a hotly litigated topic in New
16 York for a number of years and in Pennsylvania and
17 in Texas and in California.

18 The answer was they were not -- to my
19 knowledge other than, you know -- that this was
20 legal. I mean, yeah, that was their -- of course,
21 that was their opinion.

22 BY MS. BERLIN:

23 Q. Fair to say after he discussed the
24 pleadings with you, that opinion hadn't changed?

25 MS. BERLIN: Objection. Again, calls for

1 speculation.

2 BY MR. SOTO:

3 Q. You can answer, Mr. Berman.

4 A. I don't think Mr. Cole's opinion changed
5 after reading my briefing that supported the
6 legality of the business.

7 Q. Did you have a conversation with Mr. Cole
8 regarding the pleadings that were filed and the
9 legality of the advances?

10 A. Again, I didn't give a legal opinion to
11 him. But, I mean, remember, the prime thrust of my
12 role in 2019 into '20 was defending the cases
13 brought by who you said before, Mr. Heskin on behalf
14 of his clients, where he was bringing criminal RICO
15 allegations involving the alleged impropriety of
16 this entire business.

17 And so, yeah, that was a topic of
18 discussion because they were defending and spending
19 a lot of money on legal fees defending that type of
20 allegation, none of which were getting any traction
21 from any courts, by the way.

22 Q. Okay. I want to turn to a different
23 topic. You were asked during Ms. Berlin's
24 questioning regarding whether you played any role
25 you, Brett Berman, played any role in decisions made

1 at CBSG regarding whether an MCA deal was going to
2 be put into a category of default.

3 Do you recall that general line of
4 questioning?

5 A. I remember her asking me about Mr. Cole's
6 testimony where he supposedly said that, yes.

7 Q. Okay. Let me ask you: Did you engage in
8 pre-suit negotiations with merchants on behalf of
9 CBSG in connection with deals where the merchants
10 either weren't paying or weren't paying on time?

11 A. Absolutely.

12 Q. Before filing suit?

13 A. In certain instances, yes.

14 Q. Okay.

15 A. That was the exception, not the rule,
16 because the only time it would get to me is in a
17 multi default scenario. So you had a team of people
18 who did that every single day, is negotiated deals
19 with merchants pre-default, post-default and
20 everywhere in between.

21 Q. Right. But my question was whether you
22 engaged, whether rarely or often, in pre-suit
23 negotiations with merchants who had been identified
24 to you as either not paying or not paying on time.

25 A. If asked, yes. And I was asked, yes.

1 Q. Okay. And did you communicate the results
2 of your negotiations to anybody at CBSG?

3 A. Of course.

4 Q. Of course, you did. And do you know
5 whether CBSG made use of the information you
6 provided to them with respect to the results of your
7 negotiations?

8 A. I can't answer what they made use of, but
9 that was a revenue. They would receive the revenue
10 or they would sign an agreement or they would begin
11 a process by which they were beginning or restarting
12 the collection. So I think they knew what results
13 were coming.

14 Q. Okay. And they knew results based on
15 conversations with you in this specific instance
16 that I just asked about?

17 A. I think that's fair to say.

18 MR. SOTO: Okay. I have no further
19 questions.

20 MS. BERLIN: Is there anyone else who
21 wants to cross-examine the witness?

22 MR. KOLAYA: This is Tim Kolaya on behalf
23 of the receiver. We do not intend to ask any
24 question today. The only thing I would say on the
25 record is the receiver does have his own

1 investigative powers under the receivership orders.
2 We haven't made any determination as to whether we
3 may want to seek a deposition of Mr. Berman, but I
4 just wanted to say we do not intend to ask any
5 questions today.

6 MS. BERLIN: Okay. Understood.

7 So we have a brief redirect.

8 RE-EXAMINATION

9 BY MS. BERLIN:

10 Q. Mr. Berman, you referred in your
11 cross-examination to court orders all around the
12 country that you relied on that supported the idea
13 that these merchant cash advances of Complete
14 Business Solutions were legal. I wonder if you can
15 identify what cases you're referring to.

16 A. I am not. I can't identify cases, but I
17 have stream sites that go on for a day about
18 challenges to the merchant cash advance business and
19 upholding the veracity of it.

20 And in the Pennsylvania, which is where
21 we're talking about specifically, there are various
22 decisions issued by various Court of Common Pleas
23 judges and Eastern District judges. And I'm not
24 aware of any decisions that have -- especially in
25 Pennsylvania that have questioned the validity of

1 these agreements.

2 Q. Okay. So can you identify for me?
3 Because, you know, the defense has sort of now
4 turned you into sort of an expert witness on this
5 issue, and you testified in your legal opinion that
6 you gave on cross that these are legal merchant cash
7 advances, but it's based on decisions from all
8 around the country. And I'm asking you if you can
9 identify any one of them.

10 MR. SOTO: Object to the form.

11 BY MS. BERLIN:

12 Q. Can you identify?

13 A. Yeah. There was a decision entered by
14 Judge Tucker in the Eastern District. There was a
15 decision entered by Judge McInerney in the Court Of
16 Common Pleas.

17 Q. Mr. Berman, if you could slow down so the
18 court reporter can take down what you're saying and,
19 two, when you identify the court, if you could just
20 say the state.

21 A. I said the Eastern District. That's
22 Pennsylvania. The Eastern District of Pennsylvania,
23 Judge Tucker, I believe; the Court of Common Pleas,
24 various decisions by the commerce court judges,
25 commercial division judges, Judge Glazer, Judge

1 Djerassi, Judge Nina Wright Padilla, Judge
2 McInerney.

3 And there were so many countless
4 challenges to confessions of judgment that were
5 denied which shows the courts, despite hearing
6 challenges in Pennsylvania, frequently were
7 upholding them.

8 Further in New York, there was a series of
9 cases that eventually went up to the court of
10 appeals about the ability to challenge these
11 judgments. Again, I didn't file these judgments in
12 New York, but this is something we look to, that
13 upheld them. So I'm not giving a legal opinion,
14 legal or not in legal. I believe that the case law
15 supports legality.

16 Q. Okay. So these New York cases, did those
17 involve Complete Business Solutions Group?

18 A. No, but you asked me about the MCA
19 business.

20 Q. Okay. And so can you identify -- I guess
21 what we'll do is rather than spending time today,
22 we'll just issue a subpoena to you for those cases
23 that you were referencing.

24 And, by the way, when you are referencing
25 the string of judges and courts, were those all like

1 Pennsylvania Court of Common Pleas cases?

2 A. I think I just to answered the Eastern
3 District of Pennsylvania, which is federal court.

4 Q. When you gave the list of judges, those
5 are federal district court judges in the Eastern
6 District of Pennsylvania?

7 A. No. They're Court of Common Pleas, which
8 is state court, and federal court. And I gave you
9 the most important example of the legality of the
10 business, Judge Ruiz --

11 Q. If you could stop because I really would
12 like to finish. The only question pending --

13 MR. FUTERFAS: I object to you
14 interrupting the witness. He was just giving you
15 the name of another court decision, Ms. Berlin, and
16 you've interrupted the witness when he was trying to
17 answer your question.

18 BY MS. BERLIN:

19 Q. Mr. Berman --

20 A. I'm going to finish.

21 Q. Okay. Stop. Since Mr. Berman is being
22 utilized as an expert by the defense, we'll issue a
23 subpoena for those cases and your opinions.

24 MR. FUTERFAS: Ms. Berlin, I object you to
25 suggesting that we're utilizing him as an expert,

1 and I'm happy to send you -- I'm happy to send you
2 tomorrow pages and pages of string cites that you
3 can look up yourself. They're all available. We're
4 all lawyers. We can all look up the same opinions,
5 Mr. Berlin. I disagree and object.

6 MS. BERLIN: Could you please stop the
7 speaking objection.

8 BY MS. BERLIN:

9 Q. The only question, Mr. Berman, that I
10 asked you was just to clarify when you gave the list
11 of judges, were those all judges in the federal
12 district court in Pennsylvania and/or the
13 Pennsylvania Court of Common Pleas? Or were those
14 judges that you referenced, are they in other
15 courts? That's the only question that was pending.

16 A. Sure. And I was going to answer before
17 you interrupted me. So my answer was they're all
18 around the country including in the Eastern District
19 of Pennsylvania, Court of Common Pleas, but most
20 importantly where you cut me off before, in this
21 very case, the Honorable Judge Ruiz, approved the
22 fact that these are able to be collected on.
23 Because the receiver has filed motions saying that
24 they're going to proceed in collections on MCA
25 contracts for CBSG. Don't trust me. Trust Judge

1 Ruiz who issued an order.

2 Q. Okay. Well, just a moment. Are you
3 testifying that Judge Ruiz issued an order finding
4 that the merchant cash advance agreements are legal?
5 And if so --

6 A. Sure. What Judge Ruiz did, if you'll
7 recall -- because I followed the docket. I'm
8 curious -- is the receiver has filed motions asking
9 for relief from the litigation stay to proceed in
10 collections on merchant cash advance agreements held
11 by CBSG.

12 So the opinions allowed the receiver to
13 file those lawsuits on the same agreements that were
14 being collected on prefiling of this case.

15 Q. And so are you testifying under oath that
16 Judge Ruiz has made a finding that the merchant cash
17 advances are legal?

18 A. I think I just gave the answer to that
19 question.

20 Q. I wonder if you can just state it clearly
21 for the record and for the transcript for the court.

22 MR. FUTERFAS: I object to the form.
23 Asked and answered.

24 BY MS. BERLIN:

25 Q. I'm sorry. You just brought up Judge Ruiz

1 who is the judge presiding this case who is
2 reviewing this transcript. So I'd like to get
3 clarification on exactly what it is you're
4 testifying Judge Ruiz has found in this case.

5 A. I think Judge Ruiz' orders speak for
6 himself. I don't speak for judges. But what I will
7 say again is the receiver filed motions to lift
8 litigation stay to proceed in collection on certain
9 of the MCA agreements, and Judge Ruiz granted that
10 relief.

11 Q. Okay. And so based on the fact that the
12 order imposing a litigation stay was lifted by a
13 receiver, it's then your understanding that Judge
14 Ruiz has somehow blessed the legality of the
15 merchant cash advances themselves; is that accurate?

16 A. No. I don't think -- I don't think those
17 were my words. My words were what my testimony was.
18 I'm not in the mind of Judge Ruiz. I'm telling you
19 that Judge Ruiz, like judges all around the country,
20 have allowed the collection on MCA deals.

21 I mean, you can subpoena me, but I think
22 this is a -- these are in briefs. So I don't have
23 any cases in my possession. I don't keep hard copy
24 briefs. So I have zero to give you on that, except
25 for they're publicly filed documents arguing about

1 the legality of the merchant cash advance business
2 and specifically the merchant cash advance
3 agreements that were utilized by Complete Business
4 Solutions.

5 Q. Are you relying on in any other case or
6 with any other client Judge Ruiz's rulings in this
7 case to argue to any other court that the merchant
8 cash advances of CBSG are legal?

9 A. No, because I don't represent any merchant
10 cash advance companies.

11 Q. And do you understand that receivers can
12 be appointed over any sort of investment, even if
13 it's one like this in an SEC case where there's an
14 allegation that the investment violates the law, and
15 the receiver is, nonetheless, permitted to collect
16 under that investment regardless of whether it's
17 legal, that their job is to simply try to get the
18 investor funds without passing on the legality of
19 the underlying investment?

20 MR. FUTERFAS: Objection. Form. This
21 question was about eight minutes long. But I object
22 to the form of this multiple compound question.

23 MS. BERLIN: That's fine. Mr. Berman had
24 testified about these things. And so I'm asking.

25

1 BY MS. BERLIN:

2 Q. Mr. Berman, are you knowledgeable about
3 the law as it applies to receiverships in SEC cases
4 and whether the underlying investment has to be
5 legal in order for the receiver to collect upon it?

6 A. I'm aware of no law nor have I ever looked
7 at it.

8 Q. Right. So, in fact, even if a case is a
9 Ponzi scheme and is inherently illegal, a receiver
10 can go and re-collect the funds from the investment
11 agreements. Would you agree with me on that?

12 A. I think you're taking out of context the
13 fact that I have not seen any negative law around
14 the country. And Mr. Alfano and Mr. Kolaya, as part
15 of their -- actually, I won't talk about that.
16 That's privileged, I'm assuming, Mr. Kolaya.

17 But I assume when I provided all the
18 documents to them, which you're asking me for now
19 about the cases that I'm talking about, that they
20 analyzed that on behalf of the receivership.

21 Q. Well, to the extent the defense is
22 utilizing you as a witness on the law concerning the
23 legality of this, which I believe has already been
24 addressed in our case, we will just seek that
25 discovery from you and your firm at a different time

1 rather than using more of today.

2 Going back --

3 MR. LEVITT: We reserve the right to
4 object to that discovery, of course.

5 MS. BERLIN: Right. Well, we're issuing a
6 subpoena to the firm, to Fox Rothschild.

7 MR. FUTERFAS: And I reiterate -- I have
8 an objection to make. My objection is I object to
9 how you characterize our use or questioning of
10 Mr. Berman. And I reiterate my offer to the SEC to
11 provide literally pages of case law supporting
12 precisely what Mr. Berman said.

13 These are public decisions all around the
14 country that are accessible to the SEC and
15 every lawyer on this deposition. And we're happy to
16 provide that. And, in fact, I will provide it to
17 you --

18 MS. BERLIN: Mr. Futerfas, stop.

19 MR. FUTERFAS: -- and to Mr. Berman's
20 counsel tomorrow.

21 MR. FERGUSON: This is Ferguson. I'm
22 sorry. Can we stop hearing about what you're going
23 to do and just ask the witness some questions.

24 MS. BERLIN: Mr. Ferguson --
25 Mr. Ferguson --

1 MR. FERGUSON: Let me just make my record.
2 I haven't spoken much here. I want to make my
3 record.

4 MS. BERLIN: Mr. Ferguson --
5 Mr. Ferguson --

6 MR. FERGUSON: I'm getting a lot -- we're
7 getting a lot --

8 MS. BERLIN: We're going off the record.
9 I'm calling a break.

10 MR. FERGUSON: I want to make my record.

11 MS. BERLIN: Mr. Ferguson, you cannot --

12 MR. FERGUSON: No. I want to make my
13 record.

14 MS. BERLIN: There's only one attorney per
15 party. Mr. Ferguson, stop shouting.

16 MR. FERGUSON: Just ask the witness. Ask
17 the witness questions.

18 MS. BERLIN: You need to stop
19 interrupting. Mr. Ferguson --

20 MR. FERGUSON: Ask the witness --

21 MS. BERLIN: Mr. Ferguson --

22 MR. FERGUSON: No, I'm not going to stop.
23 I want to say this on the record to what you said.

24 MS. BERLIN: Mr. Ferguson --

25 MR. FERGUSON: Ask the witness questions.

1 MS. BERLIN: Mr. Ferguson, please stop.
2 You're not representing anyone today. There's one
3 attorney per witness.

4 MR. FERGUSON: I am representing Joe
5 LaForte.

6 COURT REPORTER: This is not on the
7 record.

8 MS. BERLIN: Mr. Ferguson, please stop
9 shouting. Stop interrupting.

10 MR. FERGUSON: I'm not shouting.

11 MS. BERLIN: This is not an objection to a
12 question.

13 MR. FERGUSON: I said it's not.

14 MS. BERLIN: Mr. Ferguson, I'm going to ask
15 that you please stop speaking. There's no question
16 pending. And Mr. Soto is representing Mr. LaForte
17 today and has conducted a cross-examination. You
18 are not --

19 MR. FERGUSON: I'm counsel of record in
20 this case. And I am asking you to stop talking
21 about what you're going to do and ask the witness
22 some questions. Proceed with your questioning.

23 MS. BERLIN: Oh, my word. We're going to
24 take a 15-minute break because Mr. Ferguson is
25 shouting.

1 (Multiple speakers talking at the same time.)

2 MS. BERLIN: We'll provide this to the
3 court. I've been yelled at. I'm actually shaking.
4 We are taking a break. We are taking a ten-minute
5 break, and we will resume at 5:28.

6 THE VIDEOGRAPHER: And we're going off the
7 record at 5:18 p.m.

8 (Recess from 5:18 p.m. to 5:31 p.m.)

9 THE VIDEOGRAPHER: And we're back on the
10 record at 5:31 p.m.

11 MR. FUTERFAS: And so before the break, I
12 was simply trying to indicate that I'm not asking
13 any additional questions about the legality of the
14 merchant cash advances because it's not at issue in
15 our case.

16 So sorry. My dog is barking in the
17 background.

18 It's not an issue in our case. And to the
19 extent if in the future when experts are disclosed
20 the defendants identify Mr. Berman or his law firm
21 as an expert, then we'll address it at that time.
22 But I'm not going to address any of that even though
23 it was addressed on cross because it's not at issue.
24 It's not relevant in our case. So I'm going to move
25 on.

1 BY MS. BERLIN:

2 Q. Mr. Berman, you testified about -- on
3 cross you had testified more about the legal advice
4 from Phil Rutledge. And I wonder if you could just
5 clarify the advice that you testified about on
6 cross.

7 When did you witness Phil Rutledge giving
8 that advice?

9 A. Sure. The answer was, I mean, I guess I
10 have to give you two points of reference. The first
11 point of reference is when the Texas Securities
12 Board filed the initial Cease and Desist Order, Phil
13 Rutledge was engaged that day to provide the
14 securities advice or to continue his securities
15 advice for the company.

16 And then we got Haynes & Boone involved.
17 So there were multiple phone calls with Haynes &
18 Boone where he provided his analysis. And I think
19 there was actually a detailed memo that was produced
20 as part of the subpoena served to my firm where he
21 analyzed disclosure issues and should it be -- does
22 it need to be registered in a certain way, et
23 cetera. So that was the start. And there were
24 multiple calls with Haynes & Boone to the clients
25 and Phil Rutledge where that was discussed.

1 And then to your question, there were
2 phone calls, multiple phone calls with clients and
3 Phil Rutledge where this was analyzed at length
4 about what would need to be disclosed, what would
5 not need to be disclosed. And everything that he
6 recommended for disclosure was identified in that
7 document.

8 Q. Okay. So my question was a little
9 different. It was when. So my question is asking
10 about the time period. So you split it into the two
11 parts. And the first was the day that the Texas
12 Securities Board entered its order against CBSG. So
13 I understand the timing on that.

14 And then as far as the second time, my
15 question is when. You've the already testified
16 about those on cross. But when did you witness the
17 evidence -- I'm sorry -- witness Phil Rutledge
18 giving the testimony, meaning like month and year?

19 A. It was in April or May of 2020 on multiple
20 occasions.

21 Q. Okay. So in April and May of 2020. And
22 then when the Texas Securities Board case was filed
23 in February of 2020?

24 A. Yes. But, again, that was also for a
25 six-week period or longer. I guess it really went

1 until this case was filed that there were many phone
2 calls with clients, Phil Rutledge and Haynes & Boone
3 and Rutledge and clients and me. That was more
4 extended than just the April into May period of the
5 exchange offer.

6 Q. Okay. So fair to say like between
7 February 2020 and July 2020 when the SEC filed its
8 case?

9 A. Correct.

10 Q. Okay. Now, Haynes & Boone was the law
11 firm retained in connection with the Texas matter;
12 correct?

13 A. Yes. We got a recommendation, being me,
14 to have Haynes & Boone retained for that matter.

15 Q. Okay. And they represented Complete
16 Business Solutions Group before the Texas Securities
17 regulators; is that accurate?

18 A. That's my understanding.

19 Q. Okay. And so when you testified about the
20 legal advice that Haynes & Boone was providing, was
21 it in connection with that Texas securities
22 litigation matter?

23 A. And Haynes & Boone, I believe, reviewed
24 and was in discussions, limited discussions with
25 respect to the issues on the exchange offer.

1 Q. Okay. So, again, the time period for
2 legal advice you testified about on cross was
3 between February 2020 and when the SEC filed its
4 case in July of 2020. Do I have that right?

5 A. That is correct.

6 Q. Okay. You testified on cross that
7 everyone knew that Joseph LaForte was a criminal,
8 and you went through the people who knew about it.

9 What about the investors in promissory
10 notes related to Complete Business Solutions Group,
11 do you have any knowledge of whether or not the
12 investors knew that Joseph LaForte was a criminal?

13 MR. FUTERFAS: Can I object to the word
14 criminal. Someone who has a conviction going back
15 10 or 15 years or 20 years, I don't think it's
16 appropriate to refer to them in that way. People
17 are allowed to move onto their lives in our society
18 and form businesses and participate in society if
19 they have a prior conviction.

20 BY MS. BERLIN:

21 Q. I'm going to rephrase the question. Do
22 you have any personal knowledge, Mr. Berman, of
23 whether all of the investors in promissory notes
24 related to Complete Business Solutions Group knew
25 that Joseph LaForte had a criminal record?

1 A. The answer is prior to the exchange offer,
2 I didn't even know what the investors were that
3 you're referring to. So no. But I have read
4 obviously things in this case from Mr. Vagnozzi
5 where he acknowledges he learned about it in 2018 I
6 believe, by what I've seen.

7 Q. Okay. So your testimony is that Dean
8 Vagnozzi knew in 2018, and your knowledge of that is
9 based on something that -- a document that you read
10 in this case. Do I have that right?

11 A. Correct. You have that right.

12 Q. Do you have any personal knowledge of
13 Mr. Dean -- of Dean Vagnozzi's knowledge? Have you
14 ever spoken with him yourself? You're testifying
15 under oath about your personal knowledge.

16 Do you have any personal knowledge of what
17 Dean Vagnozzi knew and when?

18 A. I read the Complaint Mr. Vagnozzi filed in
19 the Court of Common Pleas where he described it,
20 verified petition. So it's not lack of knowledge.
21 I actually saw his words sworn under oath.

22 But the answer is I just told you -- I
23 told you before, at best, I had one limited
24 discussion with Dean Vagnozzi about some life
25 insurance issue he was talking to someone, Joe Cole

1 or Joseph LaForte, about. So no, I've never had
2 that discussion with Mr. Vagnozzi.

3 Q. So you have no personal knowledge about
4 whether Mr. Vagnozzi -- the only knowledge -- the
5 only basis for your sworn testimony about what
6 Mr. Vagnozzi knew and when is what you read in a
7 complaint Mr. Vagnozzi filed in a Court of Common
8 Pleas? I'm not sure of the name of the court, but
9 in Pennsylvania state court. Is that true?

10 A. I said it was also in this case. And you
11 harp unsworn, but those were sworn statements. I
12 read them and I have knowledge from reading them.

13 Q. Okay. So what sworn statements are you
14 referring to exactly?

15 A. A sworn verified complaint and there was
16 something filed in this action about the same thing,
17 I believe in opposition to the injunction that I
18 read many months ago.

19 Q. So something the defense filed in this
20 case and then a complaint Mr. Vagnozzi filed in
21 another case and then you're testifying under oath
22 that Mr. Vagnozzi knew in 2018 based on you reading
23 two documents. Is that -- do I have summarized
24 inaccurately?

25 A. You keep on talking about testifying under

1 oath. I told you how I gained that knowledge. So
2 it's no do I know or don't know. I told you I
3 didn't speak to Dean Vagnozzi. So I know what I
4 just told you.

5 Q. I think it's clear, Mr. Berman, I'm asking
6 about what you knew in your personal knowledge and
7 not what you've read somewhere. Do you understand?

8 A. I do, and I answered what I knew and when
9 I knew it.

10 Q. Okay. You testified questions were asked
11 in private lawsuits that had 98 percent nothing to
12 do with the lawsuit you were involved in and had to
13 do with the SEC's action.

14 Do you recall that testimony on
15 cross-examination?

16 A. Yeah, but you didn't adequately summarize
17 what I said. You added some quotes of your own at
18 the end of the sentence.

19 Q. Okay. Well, did I -- okay. Did I
20 accurately summarize what you conveyed in your
21 testimony?

22 A. What I -- yeah. I mean, no, you didn't
23 accurately summarize. I said that. But what I did
24 say in my testimony was that I was hearing those
25 questions where we had phone calls with the judge,

1 et cetera, about the scope of the questions that
2 were being asked at every deposition, looking back
3 at it today, the questions that were asked in both
4 cases, but primarily the HMC case, were word for
5 word what you now have in your Complaint.

6 Q. Okay. And so what case is it that you're
7 referring to?

8 A. I just told you. HMC.

9 Q. Okay. And that's pending in the
10 Pennsylvania federal district court?

11 A. When you say pending, I haven't been
12 involved in that case for 10 months. So I have no
13 idea where it stands.

14 Q. Okay. Let me correct it. Was that
15 pending in Pennsylvania federal district court or
16 was it a different -- was it another court?

17 A. It was pending in the federal district
18 court, the last I checked.

19 Q. Okay. And I understood from your
20 cross-examination that you were testifying about
21 four depositions. It happened in two depositions of
22 Joe Cole and two depositions of Joseph LaForte; is
23 that accurate?

24 A. That's what I said, yeah.

25 Q. Okay. I'm just making sure. And so the

1 first time was in 2019. Did I also get that
2 correct?

3 A. Well, I also added -- the answer to your
4 question is yes, but I also added that this was
5 significantly addressed and briefed in various
6 proceedings before Judge Sanchez in the Eastern
7 District.

8 Q. Okay. That's fine. That's not my
9 question. My question was just was it 2019 the
10 first time that these questions came up that you
11 testified were word for word what was in the SEC's
12 case. Was the first time that this occurred in a
13 deposition in 2019 in the HMC case?

14 A. No. The HMC case depositions were in
15 2020.

16 Q. Okay. So I thought I heard you testify on
17 cross that this also happened in 2019. Did I
18 misunderstand you?

19 A. You misunderstood. What I said was
20 questions at the deposition in 2019 had no bearing
21 on the facts or circumstances of the case at issue.
22 In 2020 when I think back to what was said at that
23 deposition, those are directly parallel to what you
24 filed weeks later.

25 Q. Okay. And so it didn't happen before the

1 2020 deposition; is that correct?

2 A. I didn't say that either. I just remember
3 the 2020 deposition better.

4 Q. Okay. So let's go back. The question
5 that I asked you was -- because we're going to go
6 through all four depositions.

7 The only question I asked, was the first
8 time this happened that you were asked -- that your
9 clients were asked questions that you testified
10 under oath were unrelated to your case and were
11 later reflected in the SEC's case, the first time
12 that happened, was that 2019?

13 A. Yes.

14 Q. Okay. So we're going to go one by one.
15 If you listen to the questions I'm asking, it will
16 go a lot faster.

17 So in 2019 --

18 A. I've been listening the whole time.

19 Q. Okay. Great. The first time this
20 occurred, whose deposition was being taken?

21 A. I told you two depositions of Joe Cole and
22 two depositions Joe LaForte. I don't know who was
23 first or second. I don't know who was first or
24 second.

25 Q. Okay. So in 2019, was it Joe Cole twice

1 or was it one Cole and one LaForte?

2 A. I told you before Fleetwood cases were in
3 2019 into '20, and HMC was in 2020.

4 Q. Okay. So identify for me -- let's try it
5 a different way. Tell me the first deposition that
6 this occurred in, the name of the case and the name
7 of the deponent.

8 A. I just told you, 2019, Fleetwood, Joe Cole
9 or Joe LaForte or both along with briefing on these
10 issues prior to the deposition, stoppages during the
11 deposition and rulings by Judge Sanchez on these
12 issues, yes.

13 Q. Okay. And so what were the questions that
14 were asked during that deposition that you were --
15 that you testified under oath were unrelated to your
16 case and later reflected word for word in the SEC's
17 case.

18 A. You'd have to recite or you'd have to show
19 me the 2019 depositions if you're going to ask by
20 parsing through them. I will tell you that the 2020
21 depositions all dealt with disclosures to investors
22 relating to how money was raised, what was made with
23 respect to default rates, what was done with respect
24 to Joe LaForte's criminal conviction, what was done
25 with respect to regulatory actions, nearly identical

1 to the complaint that was filed by the SEC.

2 Q. Okay. And so we're talking about 2019.
3 We're going to talk about 2020?

4 A. I parsed between two.

5 Q. Well, you testified under oath that it
6 happen in 2019. So what were you referring when you
7 swore under oath that it happened in 2019?

8 A. You keep saying swear under oath, like
9 that's going to change my answer. But my answer is
10 the same as I said before. The 2019 depositions
11 dealt 98 percent with things that were not anything
12 to do with Fleetwood. They were dealing solely with
13 extraneous issues about everything in the world but
14 Fleetwood.

15 But what I remember more specifically are
16 the 2020 depositions. I can't differentiate between
17 the two sitting here today.

18 Q. Okay. So you've identified so far three,
19 disclosures to investors about what? Like, what was
20 it that was asked in that case you said was weeks
21 later like in the SEC's case?

22 A. You'll have to show me the deposition
23 transcript.

24 Q. But it's your testimony. So I'm asking
25 you.

1 A. I don't have more specific for you. I
2 told you the scope, the scope of my recollection.

3 Q. Okay. So we'll take a break and we'll get
4 the transcripts and you can point out each thing in
5 there that you're referring to.

6 A. We have 14 minutes left of this
7 deposition.

8 Q. You testified -- Mr. Berman, you testified
9 under oath that in 2019 and 2020 depositions were
10 taken where questions were asked that were almost
11 verbatim word for word what was in the SEC's case.

12 Now I'm asking you to identify what those
13 questions were. And you can't identify without
14 looking at the transcript.

15 Can you identify generally what areas
16 you're talking about so that we can review these
17 transcripts and examine it? You said disclosures to
18 investors. About what? Like, were there inquiries
19 in the depositions about disclosures to investors
20 about insurance rates?

21 MS. SCHEIN: Ms. Berlin, I'm going to
22 object as asked and answered. Surely the deposition
23 transcripts will speak for themselves. Asked and
24 answered.

25 MS. BERLIN: Okay.

1 MR. LEVITT: I'm going to object also. It
2 has been asked and answered. He gave you a general
3 description of his recollection of the overlap of
4 the 2020 HMC deposition with the allegations in the
5 SEC's complaint. He gave you the best of his
6 recollection some general responses to that. He
7 can't give you more detailed responses.

8 And frankly, I know that he was asked this
9 question. I know he gave testimony about the
10 overlap. Frankly, it's not relevant, and going into
11 more detail, excessive detail about that is a
12 complete waste of time.

13 MS. BERLIN: Well, I'm going to continue
14 to ask because it was asked on cross, and you didn't
15 object then as to relevance or to anything else,
16 Mr. Levitt. You permitted it. And you didn't
17 object. So I need to now ask them on redistrict.

18 MR. LEVITT: He told you he can't remember
19 more detail.

20 MS. BERLIN: That's a matter to take up
21 with the court if you wanted to litigate it, but
22 right now I'd just like to proceed with asking your
23 client to identify.

24 BY MS. BERLIN:

25 Q. So far you have disclosures to investors.

1 I'll just ask, can you recall anything specific, yes
2 or no? Do you recall anything specific about the
3 disclosures to investors questions that were asked
4 in the depositions that you believe paralleled the
5 SEC's complaint?

6 A. I have given you all of my recollection of
7 the transcripts from 2019 and '20. I have no
8 further recollection.

9 Q. Okay. So it's just those three areas, the
10 disclosures to investors, the default rate and
11 Mr. LaForte's criminal record, is that --

12 A. You will have to cite to the deposition
13 testimony. That's the best part of depositions.
14 There's a transcript. And I've given you my full
15 recollection.

16 Q. Okay. And so, Mr. Berman, do you believe,
17 have you conveyed to the defendants before that
18 there's some overlap? It seems like an unusual
19 thing for them to ask you out of blue about.

20 Did you have a discussion with defense
21 counsel about this overlap and why --

22 A. Sure.

23 Q. Can you answer that?

24 A. Yes, sure. No, I have not had discussions
25 with defense counsel, but what I will tell you is

1 that when you look at the affidavits that you filed
2 in support of the preliminary injunction, which I
3 did read at the time they were filed, but have not
4 since, nearly, by my memory, 95 percent of the
5 merchants that are listed in those affidavits were
6 the merchants that were represented by Shane Heskin
7 litigating in the cases in the Eastern District.

8 So that led me to look back at the
9 deposition transcripts where I saw and refreshed my
10 memory that the overlap was striking.

11 Q. Okay. And is there some reason why that's
12 relevant?

13 A. You're asking me questions. I'm not here
14 or weigh in on relevancy.

15 Q. You keep saying it struck you after the
16 fact. So I'm just curious as to -- why did it
17 strike you? Why was this an issue in your mind as
18 you conveyed it today?

19 A. I will tell you, because I walked out of
20 each and every dealing in one of those cases pending
21 in the Eastern District, every deposition, every
22 argument, every review of written discovery,
23 scratching my head why we were possibly talking
24 about issues that had nothing to do with the claims
25 and defenses of the action. And the filing of this

1 action showed me why we were talking about those
2 issues.

3 Q. So do you believe that the questions were
4 being asked in that case because the SEC -- I don't
5 understand what you mean. What is the connection
6 between the two?

7 A. Sure. So you're asking me to disclose
8 communications that were clawed back by Judge
9 Sanchez in the Eastern District. So let me be clear
10 on that.

11 Mr. Heskin on behalf of Kara DiPietro
12 produced a series of communications in the action
13 pending in the Eastern District Court of
14 Pennsylvania that had correspondence with various
15 state and federal agencies, including the Securities
16 and Exchange Commission. Those were clawed back. I
17 don't have them in my possession. But looking back
18 at it now, if you want to start asking me those
19 questions, that's why.

20 Q. Okay. I'm not sure I still understand.
21 So why was it -- was this an issue that was raised
22 or came up in the Eastern District of Pennsylvania
23 case before Judge Sanchez?

24 A. Yes.

25 MR. LEVITT: Mr. Berman, before you go any

1 further, I just want to caution you if there are
2 any protective orders, confidentiality orders or
3 other orders entered by the U.S. District Court for
4 the Eastern District of Pennsylvania regarding what
5 you called the clawed back documents, obviously --

6 THE WITNESS: I'm not testifying as to the
7 clawed back documents because of that reason. So I
8 won't give any substance without a court order.

9 MR. LEVITT: Thank you.

10 THE WITNESS: But to answer your question,
11 this was an issue that was regularly addressed with
12 Judge Sanchez, the scope of the irrelevant and
13 harassing discovery on topics that had nothing to do
14 with the case, cases. And Judge Sanchez frequently
15 ruled and stopped this type of questioning. That is
16 also cited within the transcripts that I referenced
17 previously.

18 BY MS. BERLIN:

19 Q. Okay. And so what is the relevance of
20 that to this case? Like how does that connect to
21 this case?

22 MR. SOTO: Objection to form.

23 THE WITNESS: I don't know how to weigh in
24 the relevance. My point was I was asked a question
25 before about those cases. And I can't tell you

1 relevance or not relevance. That's not really what
2 I'm here for. I'm here at a fact deposition.

3 But I found it striking looking back how
4 closely those questions and discovery mirrored the
5 complaint that was filed in this action.

6 BY MS. BERLIN:

7 Q. Okay. And that's it?

8 A. I don't know what --

9 Q. You testified there was some overlay and
10 on the things. Your testimony on the transcript
11 will reflect a little bit of more detail about that.
12 And I'm just trying to understand what is the
13 significance of questions that were asked by Kara
14 DiPietro's lawyer in a Pennsylvania lawsuit.

15 How are those things relevant -- in 2019
16 and 2020, how are they -- what connection are you
17 perceiving to this action?

18 A. I make no parallel link. I answered a
19 question. So I have no special significance to
20 anything.

21 Q. Okay. I was just trying to understand why
22 this was addressed, and the fact that your attorney
23 did not object on relevance grounds at that time led
24 me to believe it must be relevant somehow. So I
25 apologize for asking you why it's relevant.

1 MR. LEVITT: I should have objected to it
2 on relevance grounds. I apologize for that.

3 MS. BERLIN: And I'm sorry for taking up
4 so much time, but the fact that you didn't object,
5 made me think, okay, is this somehow connected to
6 this case.

7 BY MS. BERLIN:

8 Q. And then were the issues about Joseph
9 LaForte being -- like his criminal record, were
10 those things that merchants had raised trying to get
11 out of the collections efforts in court? Had
12 merchants been raising that for years prior?

13 A. I can't say years because I told you I was
14 only involved in that portion of it from February of
15 2020. But, yes, that was raised and, yes, that was
16 raised in all of the cases that were brought by
17 Mr. Heskin on behalf of his clients.

18 Q. Okay. And when did you start litigating
19 against Mr. Heskin's clients?

20 A. I think I testified that Fleetwood was the
21 first starting in mid 2019.

22 Q. Okay. And you mentioned Kara DiPietro.
23 She's an investor in Complete Business Solutions
24 Group?

25 A. I don't think she was an investor in

1 Complete Business Solutions Group. But I don't know
2 exactly, to be honest.

3 Q. So you're not aware of whether or not
4 she's an investor in a promissory note issued by
5 Complete Business Solutions Group?

6 A. I'm aware from her deposition and
7 documents produced in that case, which, again, I'll
8 do some caution because there was confidentiality
9 agreements in that case.

10 THE WITNESS: So should I be testifying as
11 to potential documents that were marked confidential
12 or should I not?

13 MR. LEVITT: You should not. You should
14 comply with the court confidentiality orders.

15 BY MS. BERLIN:

16 Q. So you are --

17 A. I am aware, but the last thing I'm looking
18 to do is violate a standing order from the Eastern
19 District of Pennsylvania on confidentiality.

20 Q. Understood. Am I right in saying you were
21 at the Par Funding offices about five times?

22 A. I think I said between five and ten during
23 the tenure. But five probably sounds right.

24 Q. Okay. And that was starting in what year?

25 A. '20 probably, 2020 or right -- it would be

1 if we know the date of the Fleetwood deposition.
2 Actually, I don't know if I was -- no, yeah, the
3 date of the Fleetwood deposition may have been the
4 first time I ever went there, right before that to
5 prepare Joe LaForte and Joe Cole.

6 Q. Okay. And so do you remember what time of
7 year that was?

8 A. I think it was winter, winter going
9 into -- going into spring.

10 Q. Of 2019?

11 A. '19 into '20.

12 Q. Okay. So you were there five times
13 between the end of 2019 or early 2020. And then
14 when was the last time you were at the office?

15 A. Right before -- no, no, no, no. So there
16 was a gap of the four-month COVID, right. So this
17 representation expanded to the collection side of
18 things in February of 2020. I probably went once or
19 twice. And then the last time -- and then obviously
20 I didn't go for the shutdown, so four months. And
21 then whatever the date of the HMC depositions where
22 we talked about the prep I believe was the last time
23 I was at their office to prepare Wendy, Aida and Joe
24 Cole.

25 Q. Okay. And do you recall about when that

1 was?

2 A. April. Between February and April --
3 that's the best I can tell you -- 2020.

4 Q. Okay. So you were at Par Funding's
5 offices during the timeframe of -- your visits there
6 all occurred starting either at the end of 2019 or
7 early 2020, but during winter. And the last time
8 you were there was sometime between April and July
9 of 2020?

10 A. That's correct, to the best of my
11 knowledge.

12 Q. Okay. So you were there like five times
13 over the course of like six or seven months?

14 A. That sounds about right.

15 Q. Okay. That's all I have.

16 MR. LEVITT: Thank you.

17 MR. FUTERFAS: I'm sorry. I have a very
18 brief re-cross. Do we have two minutes?

19 MS. BERLIN: Then you're probably going to
20 get another re-redirect. I don't think there is
21 such a thing as a re-cross.

22 MR. FUTERFAS: Well, I'll take a shot.

23 MS. BERLIN: If you're willing to do it,
24 go ahead.

25 MR. FUTERFAS: It will be very fast. I'll

1 try to be very fast.

2 RE-EXAMINATION

3 BY MR. FUTERFAS:

4 Q. Mr. Berman, you were asked a whole bunch
5 of questions about why you found it striking that
6 you were getting questions by Mr. Heskin that had
7 nothing to do with the lawsuits under consideration.

8 Do you recall those questions two minutes
9 ago?

10 A. I do.

11 Q. Did you -- and I'll get right to it. Did
12 you find it striking -- did you come to a belief or
13 an understanding that Mr. Heskin was feeding and
14 creating the SEC's eventual case?

15 MR. LEVITT: I'm going to object. I
16 should have objected before on relevance, but to
17 raise this issue again on re-cross, I really do need
18 to object.

19 MR. FUTERFAS: Fine. The witness can
20 answer.

21 MS. BERLIN: I object as well on
22 relevance.

23 MR. FUTERFAS: Fine.

24 THE WITNESS: If Ms. Berlin is done, the
25 answer is I can't draw that -- I mean, that's a

1 little deeper than I can go to say what was in the
2 SEC's head. Hopefully, this is my first and last
3 experience with the SEC. No offense Ms. Berlin.

4 MS. BERLIN: None taken.

5 BY MR. FUTERFAS:

6 Q. I'll ask you one more question. Did you
7 have an understanding that Heskin, not the SEC, but
8 at least Mr. Heskin was in some way trying to use
9 the SEC to bring a case that he was continuing to
10 lose in the courts that you were dealing with?

11 MS. BERLIN: Objection. Relevance.
12 Nothing to do with this case and speculation.

13 Mr. Levitt, do you have anything that you
14 want to add to that?

15 MR. LEVITT: I'm going to renew my prior
16 objection.

17 BY MR. FUTERFAS:

18 Q. You may answer.

19 A. What I would say is that I can't draw the
20 link of Heskin, DiPietro, Amie Berlin, SEC. That's
21 a little too deep for me. But I would say that I
22 didn't understand at the time why this was happening
23 in the cases. It was a cause to bring down the
24 business as I saw it. I scratched my head at every
25 turn in those cases not understanding what was going

1 on. And here we are.

2 Q. That's all I have. Thank you.

3 MS. BERLIN: Okay. Thank you.

4 MR. LEVITT: Thank you all.

5 MR. FUTERFAS: Thank you all. Thank you.

6 MS. BERLIN: We're off the record.

7 THE VIDEOGRAPHER: This concludes
8 today's videotape deposition. We're going off the
9 video record at 6:01 p.m.

10 (Whereupon, at 6:01 p.m., the taking of
11 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 BRETT BERMAN, ESQUIRE, the witness
9 whose deposition is hereinbefore set forth, was
10 duly sworn by me and that such deposition is a
11 true record of the testimony given by such
12 witness.

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

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

21 IN WITNESS WHEREOF, I have hereunto set
22 my hand this 14th day of June, 2021.

23

24

25



Notary Public

CERTIFICATE OF WITNESS

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I, BRETT BERMAN, 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 8, 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: _____
BRETT BERMAN

Dated this _____ day of _____ of 20____.

