

UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT
OF FLORIDA

Case No. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

MOTION TO DISMISS THE AMENDED COMPLAINT DUE TO MISCONDUCT BY
THE SECURITIES AND EXCHANGE COMMISSION AND RELATED
CONSTITUTIONAL VIOLATIONS

Rather than conduct its own investigation, the SEC delegated its investigative powers to a biased private attorney with a clear financial interest in the outcome of this case. After deputizing this attorney as a *de facto* SEC investigator, the Commission then took his false legal theories, false facts, defective “default rate” analysis, and hastily thrown together declarations obtained from his obviously biased merchant clients and submitted them to this Court without any critical scrutiny or corroboration. The SEC also added its own false allegations. The result – demonstrably inaccurate and false claims made to this Court and devastating fallout to Par and its noteholders and principals – could have been avoided had the SEC taken the time and effort to scrutinize the inaccurate information it was being provided and refrained from making its own false allegations. Because of the SEC’s delegation of duties, extraordinary lack of diligence, and false allegations, and the immense harm caused thereby, Joseph LaForte, Lisa McElhone, and Joseph Cole Barletta request that this Court grant the proper remedy of dismissal.

Legal Standard

Rule 41(b) of the Federal Rules of Civil Procedure states, in pertinent part:

...If the plaintiff fails...to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it....

(Emphasis added). “Rule 41(b) authorizes a district court to dismiss a complaint for failure to prosecute or failure to comply with a court order or the federal rules.” *Gratton v. Great Am. Communs.*, 178 F.3d 1373, 1374 (11th Cir. 1999). The Court’s power to involuntarily dismiss an action is an inherent aspect of its authority to enforce the rules of court and insure prompt disposition of lawsuits. *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985); *see also In Re: Am Trak ‘Sunset Ltd.’ Train Crash*, 136 F.Supp.2d 1251 (S.D. Ala. 2001) (holding that a district court has discretionary authority to dismiss a plaintiff’s case as a sanction, for the ***plaintiff’s abuse of the judicial process***, under its inherent power to protect the orderly administration of justice and to preserve the dignity of the tribunal.).

The Supreme Court has specifically rejected the notion that an attorney’s oversight and/or negligent failure to comply with the rules excuses the party’s non-compliance. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380 (1993). Attorneys must exercise diligence in monitoring the disposition of their cases, and “clients must be held accountable for the acts and omissions of their attorneys.” *Pioneer Invest. Servs. Co.*, 507 U.S. at 396-97 (“we [find] no merit to the contention that dismissal of petitioner’s claim because of his counsel’s unexcused conduct imposes an unjust penalty on the client.”) (citations omitted).

After Failing in His Private Crusade Against Par and Other MCAs, Shane Heskin and Kara DiPietro Shop This Case to Multiple Law Enforcement Agencies, All of Whom Reject It, But the S.E.C. Accepts It Without Doing Due Diligence

Shane Heskin, Esq. (“Heskin”), a partner at White & Williams in Philadelphia, has developed a practice of erroneously claiming that merchant cash advance (“MCA”) contracts are illegal and/or in violation of state or federal law.¹ (Declaration of Norman Valz, dated August 11, 2020, ¶¶ 14-16, 1) (“Valz. Decl.”) Attached as Exhibit 2. CBSG (also herein “Par”) has been Heskin’s primary target. Over the past four years, Heskin filed at least 25 merchant actions against Par.²

In such litigation, Heskin has alleged RICO claims and attempted class actions asserting that his clients should be allowed to avoid their contractual payment obligations to Par and other MCA businesses. (Valz. Decl. ¶¶ 16-19; Deposition of Brett Berman, Esq., June 8, 2021, Attached, as Exhibit 3 at T. 10:19-24, 12:18-25, and 239:7-16) None of these efforts were successful. (*Id.*) To Par’s knowledge, Heskin has never prevailed on the merits in any MCA case and certainly never prevailed against Par. (*Id.*) And, Heskin’s unsuccessful litigation has spawned abundant precedent in numerous jurisdictions that MCA contracts are valid and enforceable.³

In a particularly significant defeat, just four days before the SEC filed its Complaint on July 26, 2020, Heskin was effectively precluded from further efforts to attack MCA contracts in the U.S. District Court in the Eastern District of Pennsylvania when the court ruled that a confession of judgment filed in state court that has not been stricken or reopened remains a final state court judgment for the purposes of the *Rooker-Feldman* doctrine. *CBSG v. Sunrooms America, Inc., et al*, 474 F. Supp. 3d 693, 696 (ED Pa., July 22, 2020).

But more fundamentally, Heskin’s ill-conceived and failed lawsuits ignored state laws clearly favorable to Par’s business model, like Pennsylvania law, which is incorporated through choice of law

¹ See, e.g., written testimony of Shane R. Heskin, Partner, White and Williams LLP, before the United States House of Representatives Committee on Small Business “Crushed by Confessions of Judgment: The Small Business Story,” June 26, 2019. <https://docs.house.gov/meetings/SM/SM00/20190626/109720/HHRG-116-SM00-Wstate-HeskinsS-2019026.pdf>.

² Dockets from Heskin’s various unsuccessful cases are attached as Composite Exhibit 1

³ See, e.g., *CBSG v. Boreal Water Collection Inc.*, No. 17062692, 2017 WL 5652572, at *2 (Pa.Com.Pl. Nov. 02, 2017) (“Here, it is clear that the transaction between the parties was not a loan.”); and *CBSG vs. Pearce Timber et al.*, Phila. Common Pleas 180105060 (“The forum selection clause in the instant commercial contract it’s not so unfair as to deprive defendants of an opportunity to be heard; nor is it fraudulent or against public policy.”)

provisions in Par's MCA contracts.⁴ Courts across the country have recognized MCA contracts as valid and have denied claims that such contracts were unlawful or constituted usurious loans.⁵

Kara DiPietro ("DiPietro") is a Heskin client. Her company, HMC, is a substantial kitchen remodeling business. With Par's assistance, in 2018 Ms. DiPietro started her own MCA funding business, Kinetic Capital, through which she provides cash advances to merchants. *See* Emails, attached as Exhibit 5.

In early 2018, DiPietro approached Par for funding.⁶ Par conducted underwriting and provided \$868,942 to her company on February 15, 2018. *See* Feb. 15, 2018, HMC Factoring Agreement, Exhibit 7. All told, Par funded DiPietro's company approximately \$26 million. *See* Deposition of Josh Persing, dated March 12, 2020, attached as Exhibit 8 at T. 363-366. DiPietro used the cash Par advanced to expand her business and engage in a large number of interior design projects on which she made significant profits.

DiPietro was thrilled with the funding. In email correspondence with Par at the time, she repeatedly thanked the company. She even created and gave to Joseph LaForte a "Book of Gratitude" she made for him, expressing her appreciation for Par and its efforts on her behalf. In it, she stated:

For your birthday HMC wanted to give you the gift of gratitude. The pages that follow are a collection of projects HMC completed in 2018. You and everyone at CBSG have played an integral role to HMC's successes. Please consider this book as a show of gratitude from me and everyone at HMC. We look forward to building more success in 2019.

DiPietro's Book of Gratitude, Exhibit 9. As late as April 2, 2019, DiPietro sent an email to LaForte saying, "HMC is stronger than we have ever been. I know that it is 90% because of you & PAR Funding." *See* Exhibit 10.

⁴ *See Gur v. Nadav*, 178 A.3d 851, 857 (Pa. Super. Ct. 2018) (recognizing that business loans are exempted from Pennsylvania's Usury Law). And, even if the factoring agreements constituted loans (they have not been so held by any court), they would qualify as "business loans" that do not violate Pennsylvania's Usury Law. *See* 41 Pa. Stat. Ann. § 201(b)(3). Other states' laws are similar. *See, e.g.*, Md. Code Ann., Com. Law § 12-103(e)(1) ("A lender may charge interest at any rate if the loan is . . . [a] loan made to a corporation"); *see, e.g.*, Tex. Fin. Code § 306.103(b) ("For the purposes of this chapter, the parties' characterization of an account purchase transaction as a purchase is conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money.")

⁵ *See* various decisions on the legality of MCAs, attached as composite exhibit 4.

⁶ DiPietro suggests in her declaration that she knew Joe LaForte as "Joe Mack" or "Joe Macki." (DiPietro Decl. at ¶ 3). However, documents produced in discovery prove that Kara DiPietro knew full well that the individual she was speaking to was named Joe LaForte. Exhibit 6.

However, in the spring of 2019, DiPietro failed to make payments on an approximately \$11 million debt to Par, \$3 million of which was principal. *See* Deposition of Joseph Cole Barletta, attached as Exhibit 11 at T. 46-47, 68; *See* also Exhibit 8 at T. 363-366; *see also* Exhibit 12. This failure to make payments triggered charges Par was entitled to collect from DiPietro's bank accounts. Exhibit 13. When negotiation proved fruitless, Par directed its outside law firm, Fox Rothschild, to enforce the contract by filing DiPietro's Confession of Judgment ("COJ"), which it did on May 14, 2019.

Rather than pay Par under the MCA contract, DiPietro tried various means to avoid her obligations. First, she made a false claim to the local police that Joseph LaForte threatened her during a negotiation meeting. At the same time, on or about May 20-21, 2019, DiPietro filed complaints about Par with the Federal Trade Commission *See* Exhibit 14, and the U.S. Postal Service *See* Exhibit 15. The local police, the FTC, and the U.S. Postal Service did not take Ms. DiPietro's bait.

On May 22, 2019, still on her campaign to pocket Par's money, DiPietro sent a lengthy email to the Philadelphia Police Department (the "PPD") making false allegations against Joseph LaForte and Par. In her email to the PPD, she claimed to have also notified numerous other agencies. *See* Exhibit 16. Later that same day, a PPD Detective notified DiPietro that, "it was determined that this is not a criminal case and should be handled in civil court." *See* Exhibit 17.

As early as May 31, 2019, if not earlier, DiPietro retained Heskin. On July 26, 2019, HMC filed a lawsuit against Par (*HMC, Inc. v. CBSG*, No. 19-cv-03285-JS (E.D. PA)).⁷ Thereafter, (at least as early as September 2019),⁸ DiPietro, turned to the SEC by corresponding with a SEC Senior Counsel, Linda Schmidt. Apparently, the SEC never questioned her credibility, bias, or financial motives and did nothing to corroborate her allegations. For over a year, with no notice to Par whatsoever, DiPietro, along with Heskin, engaged in extensive correspondence with the SEC in which DiPietro falsely positioned herself as a victim of Par. In her correspondence with the SEC, DiPietro fabricated numerous allegations in an effort to spur the SEC into taking action against Par - and thereby relieving DiPietro of her contractual obligations. Their correspondence includes hundreds of

⁷ A year later, when the Receiver was appointed in late July 2020, this action was just concluding discovery.

⁸ On August 27, 2020, Ms. DiPietro forwarded her law enforcement emails to the SEC investigator. We have reason to believe that Ms. DiPietro began corresponding with the SEC investigator at least as early as September 18, 2019.

emails and an untold number of phone calls.⁹ Heskin is copied on and a participant in many of DiPietro's voluminous email communications with the SEC.

As just one outlandish example, DiPietro writes to the SEC that "CBSG is not in the MCA business. They are not in the factoring business. Their intentions are not to fund small businesses. They are just pretending to be a cash advance business. It's an act." (*See id.*) This coming from a merchant who received approximately \$26,000,000.00 in advances from Par! DiPietro then calls Fox Rothchild "an accomplice." She tells the SEC one real fact, however: ConvergeHub – That should tell you all you need" *See* Exhibit 18. Having been a customer of Par and an MCA funder herself, DiPietro knew that Par engaged in very substantial underwriting and that Par's underwriting data was stored on ConvergeHub. After the Receiver was appointed, DiPietro sought the SEC's assistance in having the Receiver make her multi-million-dollar debt to Par go away. *See* Exhibit 19.

The SEC never once contacted Par or its counsel and apparently did no due diligence into DiPietro's claims about Par and did not consider Heskin's possible financial motive and his prior failures in the civil cases against Par. Nor is there any suggestion that the SEC realized that the Declarants were biased because they had massive financial motives to bring down Par; or was aware that DiPietro owed Par and thereby its noteholders more than \$11,000,000 when it listened to her false claims.

Against a backdrop of legal losses, Heskin, along with his client and sidekick DiPietro, built this case for the Commission. Their obvious motivation and bias, which should have sounded multiple alarm bells at the SEC, apparently did not even cause the SEC to perform the slightest due diligence to verify their claims. Had the SEC done so, this case should never have been brought, or at the very least, emergency injunctive relief, a TRO and, thereafter, Preliminary Injunction should not have been sought by the SEC or entered by the Court.

The SEC Delegated Its Investigation to Heskin and Relies on His Clients' Biased and False Merchant Affidavits, "Expert" Report, and Private Investigator, Without Any Apparent Scrutiny and Without Performing Its Own Investigation

Foundational to the SEC's civil action and its purported justification for emergency relief for a Receivership, TRO, and Asset Freeze, was the allegation that Par falsely claimed that it conducted robust underwriting. The claimed misrepresentations about Par's underwriting span fully 31 paragraphs of the original 58-page Complaint and purportedly provided key evidence of Defendants'

⁹ In addition to the emails attached as exhibits to this motion, there are hundreds more on the joint investigation between Heskin, DiPietro, the SEC, and FBI.

alleged securities law violations. (DE #1 ¶¶ 154-185, Section G(1), entitled: “False Claims about Par Funding’s Rigorous Underwriting Process.”) The SEC asserted that its claims about the quality of the underwriting were at the “core of the investment” allegations and a “key selling point.” (DE#244 at 49). These claims were essential to the Complaint and to the Court granting emergency *ex parte* relief and appointing the Receiver. Heskin’s merchant client declarations were the foundation of these claims. As the SEC made crystal clear, “you will see that in every investor (sic)¹⁰ declaration we have provided, this misrepresentation occurs either with respect to the onsite inspections or with respect to the underwriting... it was lackluster... this is undisputed evidence that appears in declarations we obtained from merchants who stated this.” (August 18, 2020, Preliminary Injunction Hearing Vol. I, DE# 244, 49-51). The Court later confirmed that the diligence of Par’s underwriting was “really the thrust of the SEC’s enforcement action.” (August 17, 2020, Status Conference, DE# 193 30-31).

Of the 14 merchants whose sworn declarations were proffered by the SEC, all of them were represented by Heskin in prior or then active litigation.¹¹ Based on the uniform template of the merchant declarations and other information and documents finally obtained in discovery, including emails between Heskin and the SEC, it is clear that Heskin drafted the declarations for all of the merchants. Thus, Heskin and his merchant clients supplied every one of the 14 declarations for the SEC’s complaint, *all of which were drafted over a one-week period between July 7 and July 14, 2020 – just days before the SEC filed its Complaint. See* Email chain between the SEC, Heskin, and Heskin clients attached as exhibit 23.

The declarations requested by the SEC and provided by Heskin from his financially motivated merchant clients are replete with demonstrable falsities. For example, the Heskin Merchant Declarations include the following falsities, among others: That Par did not perform an onsite inspection; that Par did not do a background check; and Par did not request accounts receivable information or account statements, as set forth in the chart and back-up exhibits attached hereto as Composite Exhibit “22.” The SEC should have considered the obvious bias, scrutinized the Heskin Merchant Declarations, and/or done its own investigation, using its broad subpoena powers, instead of relying on Heskin and his faulty legal contentions (loans/interest rates/usury) and false facts. No

¹⁰ Given that the SEC misspoke and accidentally called the declarations “investor declarations” rather than “merchant declarations,” it is unclear whether the Court was further persuaded that there were misrepresentations made to investors. The truth is none of these declarations came from investors, but rather from biased and self-interested merchants.

¹¹ The dockets of Heskin’s cases for the merchants he represented who signed declarations in this case are attached as composite exhibit 20.

doubt, many of the false representations to this Court led to the raid of Par's offices, LaForte and Lisa McElhone's home, and the *ex parte* installation of the Receiver. Furthermore, the SEC acknowledges that Par had received a number of subpoenas from different state regulatory bodies and Par always cooperated. Thus, there was no legitimate reason to believe the Defendants would not have cooperated with or would have absconded from the SEC.

Instead of examining the actual available financial data or using its broad subpoena powers, the SEC pursued its claims of insufficient underwriting by relying on the sworn declarations of fourteen (14) of the approximately 7,600 various merchants¹² who had received funding from Par. All fourteen declarants were preexisting Heskin clients, *see supra* at n. 10.¹³ Moreover, the surrounding circumstances described herein and the declarations themselves suggest that Heskin hand-picked and represented all fourteen of these declarants. The fourteen declarations bear the hallmarks of a single draftsman, tracking nearly identical language, all signed days before the Complaint was filed, with occasional blank fields suggesting both uniformity and haste. Just days before this case was filed, Heskin sent a mass email to a number of merchants asking them to quickly respond to a number of yes or no questions regarding Par's underwriting on their funding requests. *See* Exhibit 23. These questions formed the basis for the template for the 14 Merchant Declarations. The haste with which Heskin and the SEC demanded these declarations be turned around quickly is borne out in their sloppiness. These cookie cutter declarations use identical statements and, in some instances, are incomplete and include blank lines,¹⁴ but rather than reject these declarations, scrutinize them, or rely on its own efforts and work product, the SEC filed them with this Court.

In addition to containing falsities, the Heskin merchant declarations are neither a representative nor credible sampling of merchants. They constitute a mere .018% of Par's 7,600 merchant clients. Obviously, they are hardly random. Heskin and these merchants had a significant financial interest in the SEC's civil action and the appointment of a Receiver.¹⁵ Thirteen of the 14

¹² Par funded approximately 7,600 merchants, via 17,000 different deals, and there were approximately 3,000 deals in the portfolio at the time the SEC caused the Court to order the Receivership.

¹³ Of the fourteen merchants, three of them proffered declarations to support claims by the SEC other than the underwriting claims. These three clients are Kara DiPietro (HMC Decl.); Christine Rainwater (Quantico Decl.); and Michelle Rago (Woodside Decl.). (Also, prepared by Heskin)

¹⁴ *See* Exhibit 21 at p. 6 Decl. of Julie Caricato at ¶3; and at p. 18 Decl. of Bruce McNider at ¶3.

¹⁵ In addition to escaping their debts under the MCA contracts, Heskin and his declarants may have also sought a financial reward as whistleblowers under 15 U.S.C. § 78u-6 (a) (6). The Defense has served document demands to confirm this fact. Documents pursuant to those demands, if they exist,

merchants, all except Fleetwood Services that had an ill-conceived class action case pending, owed large outstanding balances to Par when they signed their sworn declarations.¹⁶ They stood to gain massive financial benefit from the Receiver's liquidation of Par and his discretion to forgive some or all of their outstanding debts, at the expense of and huge detriment to Par and the investors. It appears their gambit may pay off because the Receiver's billing filed in this case show that he and his agent DSI have spent significant time negotiating a "Global Settlement" for Heskin's merchant clients. *See* Exhibit 25 Receiver billing entries related to global settlement. Since he was losing miserably in court over and over, the only hope Heskin had of getting his merchant clients out of their obligations to repay Par was to get a governmental agency to take the bait. After being rejected by local law enforcement, the FTC, the U.S. Postal Service, Heskin and DiPietro found a buyer in the SEC.

But the SEC did not just rely on merchant affidavits from Heskin clients, it actively relied upon Heskin and his clients to perform the SEC's investigation, contrary to the SEC's own guidelines. Pursuant to Section 3.1.4 of the SEC Enforcement Manual, government employees are apprised:

When staff is aware that a private entity is investigating conduct that is the same or related to the conduct involved in the staff's investigation, staff should keep the following guidelines in mind:

- In fact and appearance, the SEC and the private entity's investigations should be parallel and should not be conducted jointly. Staff should make investigative decisions independent of any parallel investigation that is being conducted by a private entity.
- Do not take any investigative step principally for the benefit of the private entity's investigation or suggest investigative steps to the private entity.
- In SEC investigations in which a witness has asserted or indicated an intention to assert the Fifth Amendment in testimony, do not suggest any line of questioning to the private entity conducting a parallel investigation, and do not provide to the private entity any document or other evidence for use in questioning a witness other than pursuant to an approved access request.

have not yet been produced. And it appears that the SEC has withheld emails documenting its initial contacts with Heskin and Kara DiPietro.

¹⁶ *See* Exhibit 24, a chart reflecting the outstanding balances owed by each of Heskin's seventeen clients who submitted declarations in support of the Complaint.

SEC Enforcement Manual¹⁷ at 34. “Agencies must respect their own procedural rules and regulations.” *Gonzalez v. Reno*, 212 F.3d 1338, 1349 (11th Cir. 2000) (citing *Morton v. Ruiz*, 415 U.S. 199, 234, 94 S. Ct. 1055, 1074 (1974) (*Hall v. Schweiker*, 660 F.2d 116, 119 (5th Cir.1981))).

Remarkably, Heskin and DiPietro were in regular contact with the SEC and FBI simultaneously both before and after this action was filed. They went beyond merely providing information within their personal knowledge and purported to investigate all different aspects of Par’s business for the agencies and repeatedly sent their research to the SEC and FBI. *See* Exhibit 26. Perhaps most egregiously, on June 30, 2020, Heskin took the deposition of Defendant Joe Cole in a merchant civil action. In that deposition, Heskin asks numerous questions that were unrelated to any possible merchant concerns and beyond the proper scope of the deposition as ordered by the Court. Specifically, Heskin asked questions related to representations made to investors about topics outside the scope of the court order on permissible areas of inquiry for this deposition including topics such as: Par’s default rate, other companies owned by defendants, LME Trust assets and ownership, investors, office addresses, LaForte’s role in Par, the CLA Audit, CBS liabilities and assets, where McElhone lives and the address of her business Lacquer Lounge, COJ’s, use of reloads, ABF owned by Vagnozzi, usury laws, investor disclosures, Laforte’s statements about equity in the company, Joe Cole’s partner Bill Broomly. These questions and topics were irrelevant to Heskin’s lawsuit on behalf of his merchant client, but they were key to the SEC’s case filed approximately three weeks after the deposition took place, which Heskin obviously knew about when he took the deposition. Three days after the deposition, Heskin forwarded the transcript to the SEC and the FBI in the same email. *See* Exhibit 11.

This conduct implicates the Defendants’ constitutional rights because Heskin and DiPietro became arms of the government. “A nexus of state action exists between a private entity and the state when the state exercises coercive power, is entwined in the management or control of the private actor, or provides the private actor with *significant encouragement*, either overt or covert, or when the private actor operates as a *willful participant in joint activity* with the State or its agents, is controlled by an agency of the State, has been delegated a public function by the state, or is *entwined with governmental policies*.” *United States v. Stein*, 541 F.3d 130, 147 (2d Cir. 2008) (emphasis in original). “The appropriate remedy for a constitutional violation is one that as much as possible restores the defendant to the circumstances that would have existed had there been no constitutional error.” *United States v. Stein*,

¹⁷ Available at <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>.

541 F.3d 130, 135 (2d Cir. 2008). In the event that the SEC has impinged upon the defendants' constitutional rights in filing the complaint and amending the complaint, the defendants would be restored to the circumstances that would have existed in the absence of a constitutional error via dismissal of the case. *See Stein*, 541 F.3d at 135.

The evidence shows that the SEC not only used and accepted the help of Heskin, DiPietro and his merchant clients - all with obvious bias and financial motive - to form and build its case, it deputized Heskin and DiPietro as *de facto* co-counsel and paralegal. As one example, the Defendants filed the declaration of Norm Valz, (DE 132-1), in which Mr. Valz soundly debunked Heskin's contention that Par's advances are "loans" that charge usurious rates of "interest," a false claim parroted by the SEC in its Complaint and TRO Motion. Incredibly, the SEC sent the Valz Declaration to Heskin soliciting his response. Heskin then drafted a page-long comfort email to the SEC attempting (unsuccessfully) to rebut the Valz Declaration. *See* Comfort Email, attached as exhibit 27. Heskin even offered to draft a counter-declaration. *Id.*

This vignette is disturbing because it shows that the SEC did no independent legal research or analysis of whether MCA contracts are lawful and enforceable throughout the United States, notwithstanding the dozens of published decisions making that absolutely clear, and the existence of an entire MCA industry. Rather, the SEC delegated its legal analysis to Heskin – an attorney who lost every MCA case he brought against Par. As a result, the SEC's Complaint included specious mischaracterizations of the MCA agreements as "loans" and criticized their terms. These are precisely the failed claims that Heskin made in his lawsuits. The SEC's delegation here is astounding and profoundly irregular.

The SEC, itself an investigative body and agency of the United States federal government that comes to the courts clothed in the authority of having conducted its own investigation prior to filing suit, alleged as fact knowingly or provably false allegations that benefited Heskin. First, Heskin hired his own private investigator to attend and video record an investor presentation put on by Dean Vagnozzi. *See* Letter from Ed Horder of Reehl Investigations, attached as exhibit 28. After the investigator attended the presentation, he sent a letter to Heskin stating: "The device used for recording the event was a 'Anysun AS820 Night Vision Camera' designed to look like the latest key fob. The device was given to "White & Williams" for sound and video and returned to the investigator." *Id.* The SEC relied upon Heskin's recording of this presentation 14 times in the TRO Motion for Temporary Restraining Order. (DE# 14).

Furthermore, as explained below, the SEC adopted Heskin's defective "default rate" analysis without its own scrutiny, even drafting declaration regarding this theory while Heskin was still explaining the theory to the SEC. Essentially, the SEC deputized Heskin as an investigator in violation of the state actor doctrine.

A private entity's conduct may be constrained where it is "fairly attributable" to the government, which has been held to mean that there is a "sufficiently close nexus between the State and the challenged action of the regulated entity." *D.L. Cromwell Inns., Inc. v. NASD Regulation, Inc.*, 279 F.3d 155, 161 (2d Cir. 2002).

The test for such a nexus was established in *Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982):

That nexus exists either (1) where the state "has exercised coercive power [over a private decision] or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State"; or (2) where "the private entity has exercised powers that are 'traditionally the exclusive prerogative of the State.'"

Under this standard- with the false affidavits and use of depositions to illicit improper discovery, the egregious actions certainly fall into prohibited conduct. *See generally Stein*, 541 F.3d at *passim*; *United States v. Connolly*, No, 16-CR-0370, 2019 WL 2120523, at *11 (S.D.N.Y. May 02, 2019); *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1279 (11th Cir. 2003).

Because the SEC built this case on improper discovery by deputizing Heskin and DiPietro as SEC investigators, this case should be dismissed for the constitutional violations. As bad as the SEC's delegation to Heskin is, the evidence shows that the claims placed before the Court to obtain emergency relief were false.

The SEC Obtained the TRO, Asset Freeze, and Receivership by Providing False Material Allegations to the Court That Were Not and Are Not Supported by Existing Fact or Law

The SEC misled the Court in its Complaint (DE 1)¹⁸ and its Emergency *Ex Parte* Motion for Temporary Restraining Order (DE 14) (the "TRO Motion"). Specifically, as discussed in detail below, the SEC misled the Court by: a) falsely alleging that Par's merchant cash advances are loans and usurious interest was charged on such loans, sometimes as high as 400% and half the time in excess 95% interest, which was and is not supported by existing fact or law and is contrary to existing law

¹⁸ Although the SEC filed an Amended Complaint, Defendants refer to the original complaint here because those were the representations made to the Court at the time of the *ex-parte* proceedings and when the Receiver was installed. The misrepresentations in the original complaint were not corrected in the Amended Complaint.

because merchant cash advances are *not* loans and are not subject to an interest analysis; b) falsely alleging that Par funded the merchant cash advance to Fleetwood Services *before* conducting the on-site inspection of the business, which was and is not supported by existing fact and was entirely made up by the SEC; c) falsely alleging in the TRO Motion that a transcript of recorded dinner conversation establishes that Joe Cole referred to Par's MCAs as loans and said that the reason the Defendants were about to buy a bank was to avoid usury laws; d) the SEC misled the Court about Joseph LaForte's identity being concealed from investors at a large event put on by Defendant Vagnozzi; (e) the SEC misled the Court regarding the default rate representations made to investors; and, last but not least, f) falsely alleging in the TRO Motion that the Defendants stole investor money by cleaning out Par's bank account and sending the money to another company in Georgia, which was and is not supported by existing fact because it never happened. Regardless of whether these false allegations came from Heskin or were made up by the SEC itself, the SEC is responsible for all of the false allegations of law and fact it made to this Court. As discussed below, there can be no doubt that the SEC misled the Court and in doing so has set into motion the near, if not already absolute, destruction of Par irrespective of the outcome of this case.

- a) The SEC misled the Court with the false allegation that Par's merchant cash advances are "Loans" and that Merchants paid interest as high as 400% at times and 95% over half the time.

In its Complaint (DE 1) and its TRO Motion (DE 14) the SEC relies heavily on the false allegation that Par's merchant cash advances are "Loans." The very first paragraph of its Complaint and the TRO Motion states: "The McElhone-LaForte duo is in the business of making opportunistic loans – some of which charge more than 400% interest – to small businesses across America." *See* Complaint (DE 1) at ¶ 1; TRO Motion (DE 14) at p. 1. The SEC falsely referred to Pars' merchant cash advances as "Loans" 91 times in the Complaint and 101 times in the TRO Motion. The SEC obviously knew this loan contention was material because it harped on it incessantly throughout the Complaint and TRO Motion. The obvious reason the SEC falsely characterized Par's advances as "loans" right out of the gate and continued to do so repeatedly thereafter was to create a platform for the usurious interest rate false allegation, discussed below, to misled the Court into believing that the Defendants were running a mob-like, illegal, loan shark operation and thereby induce the Court to shut down Par. Obviously, if the Court believed that Par was making illegal loans it would have no choice but to enter a TRO and appoint a Receiver to protect the investors. The problem is the allegations are false.

The SEC could not, in good faith, claim that Par's cash advances were loans. Courts across the nation have held that merchant cash advances based upon the purchase of merchant accounts receivable are not loans. *See* Exhibits 2; 4. As shown above, Heskin had tried numerous times to convince courts that Par's cash advances were loans and failed. In fact, Heskin hired an expert CPA, Charles Lunden ("Lunden"), to provide a Report to present a damages model in an ill-conceived, attempted class action lawsuit¹⁹ against Par. *See* Charles Lunden report, dated February 28, 2020 (the "Lunden Report"), attached hereto as Exhibit 29. The SEC received the Lunden Report from Heskin. Apparently, rather than doing any work to verify the accuracy of the Lunden Report's claim that Par's advances were usurious loans, the SEC blindly adopted it and attached it as Exhibit 76 to its TRO Motion and cited to it several times.

Had the SEC conducted its own legal research and due diligence, it would have learned that the loan contention was not supported by existing fact or law. And, had the SEC carefully examined the Lunden Report, it would have realized that Lunden was not endorsing the loan/interest proposition. Rather, he was making a damages assessment *assuming* that Heskin could convince the court that Par's MCA agreements were loans. The Lunden Report makes this clear with an apt disclaimer:

While not rendering any opinion on the merits of the plaintiffs' claims, class or otherwise, *I necessarily assumed liability on the part of the defendants as alleged in the second amended complaint*, in order to determine whether any damages were suffered. That is, in order to compute damages, *I have assumed that counsel will prove at trial that the merchant cash advances are actually loans, subject to Texas laws about usury interest rates...* I have assumed liability on the part of the defendants for purposes of my damages analysis. *See* [Exhibit 29]. (Emphasis added)

Lunden's disclaimer should have unequivocally made it clear to the SEC that it was *not* Lunden's opinion that Par's merchant cash advances were loans, it was Heskin's! Without any apparent scrutiny, investigation, or legal research of its own, the SEC ran with this false loan concept and misled this Court over and over again in the Complaint and TRO Motion. In fact, later when the SEC received the Valz Dec. that soundly debunks Heskin's and the SEC's false "loan" theory, the SEC turned to

¹⁹ *See* Fleetwood Services LLC, Robert L. Fleetwood and Pamela A. Fleetwood, individually, and on behalf of all others similarly situated v. Complete Business Solutions Group, Inc. d/b/a Par Funding; the John and Jane Does, Case No. 18-0268, E.D.P.A.

Heskin for reassurance that the Valz was wrong, and the advances are loans. *See* Exhibit 27. However, Heskin's reassurances were necessarily lackluster and entirely unconvincing because Heskin was flat wrong and Valz was correct. Subsequently, at the Preliminary Injunction hearing in August, the SEC changed its tune and said it did not care and it does not matter if the Defendants were selling loans or not (DE #193 at 29), but the damage was done and the SEC still referenced generally all the evidence it cited in the TRO Motion, referred to Par's advances as "loans", and referred to the Lunden Report. To this day the SEC has not conceded to the Court that it was wrong and there can be no doubt this false loan allegation was a factor in the Court granting the TRO and ordering a receivership. The SEC must be held to a higher standard than this and must be taught this type of conduct is not acceptable.

Heskin was the basis for the equally false, but damning contention in the Complaint and TRO motion that Par was charging merchants usurious interest rates as high as 400% and 95% over half the time. This false charge is made repeatedly throughout the Complaint and even more so in the TRO motion. *See* TRO Motion (DE 14) at p. 15; *see also* Complaint (DE 1) at ¶¶ 45 and 46. For example, the SEC states in its TRO Motion at page 15 that "[a]ccording to a recent expert witness analysis of the Loans issued to Texas small businesses, more than half the Loans charged in excess of 95% interest." The "recent expert witness analysis" the SEC is referring to for this information is Heskin's witness, Lunden, and his Report. *See id.* at p. 15, footnotes 119 and 120.

Nothing in the TRO Motion alerts the Court to the fact that the SEC relied on Heskin's paid expert, Lunden, who based his conclusions on Heskin's assumption that Par's cash advances were loans. The SEC failed to conduct its own independent investigation and legal analysis and, instead, relied upon and offered Heskin's false legal theories to urge this Court to take down Par. It is a blatant and frightening dereliction of responsibility by a government agency. So, when reading the TRO Motion the Court likely would have been led to believe the SEC retained an expert to back up this damning usury allegation, but the SEC did not. Instead, the SEC relied on Heskin's paid expert, Lunden, who got the base conclusion that Par's advances are loans and, as such, subject to an interest rate analysis from Heskin. Therefore, the SEC's "expert" for these sham loan/usury allegations is none other than Heskin. This conduct and disregard for the truth by the SEC is outrageous. The SEC should have conducted a legitimate, independent investigation, done its own legal research, and cultivated its own expert if it needed one, and should not have relied upon and offered Heskin's false legal theories to induce this Court to take down Par. Frankly, it is hard to think of a more blatant and more frightening dereliction of responsibility by a government agency than relying on the legal opinion

of a private litigant that his adversary is acting illegally and then filing a case and inducing the Court to installing a receiver without any independent legal analysis or factual inquiry.

There are thousands of MCA businesses across this United States and cash advances to merchants secured by the purchase of the right to collect on merchants' accounts receivable is a legal business throughout the land, and interest rates and usury laws do not apply to merchant payments in the MCA context. One need look no further than to the fact that the Receiver is presently pulling Par merchant payments to conclusively demonstrate that Par's merchant cash advances are not loans and usury is inapplicable to merchant payments. If they were loans, the Receiver would be enforcing usurious loan contracts. Rather, recognizing their validity, the Receiver is collecting Merchant payments, albeit at a significantly lower rate than Par management did prior to the Receivership. Yet the SEC stands silent and allows its toxic false loan/usury allegations to fester and continues to refer to the MCA advances as loans, thereby continuing to cause irreparable injury to Par and extreme financial injury to the Defendants and the investors. It is shocking that the SEC made these false allegations in the first place and more shocking that it has not come forward to correct the record.

- b) The SEC misled the Court with the false allegation that Par funded the advance to Fleetwood Services *before* doing the on-site inspection.

The SEC's misrepresentations to this Court continue with the false allegation that Par advanced cash to merchant Fleetwood Services *before* conducting an on-site inspection of the business. This allegation was obviously made to impugn Par's underwriting efforts. The problem for the SEC is that this allegation is demonstrably false and never should have been made. The funding to Fleetwood Services before the on-site inspection sham allegation was not even in a Merchant Declaration, but rather was concocted by the SEC. Specifically, the SEC states in its TRO Motion:

The [Defendants'] representations about Par Funding's underwriting process are false.... For example, Par Funding executed a Loan agreement [and] 9{sic} funded a Loan to a Texas small business on January 4, 2017, and that same day ordered the inspection to occur on January 5, 2017. FN 264

See TRO Motion at p. 34. In footnote 264, the SEC cites to TRO Motion Exhibit 111, which is the Fleetwood Services on-site inspection report by Metro Inspections. That report clearly shows that the on-site inspection was, in fact, ordered on January 4, 2017, and a detailed and thorough inspection was conducted the next day, on January 5, 2017. *See id.* A true and correct copy of the Inspection Report of Fleetwood Services is attached hereto as Exhibit 22 at 149-53. However, the SEC's allegation that the Fleetwood Services advance was funded on January 4th *before* the on-site inspection on January 5th is untrue.

The SEC's own exhibits to its TRO Motion prove that the allegation that Par funded the Fleetwood Services advance *before* conducting an on-site inspection is untruthful and was made up by the SEC itself. First, the SEC filed as exhibits for the Motion for TRO the Declarations of Pamela Fleetwood (DE 29-2) (the "Pamela Fleetwood Declaration") and Robert Fleetwood (DE 29-3) (the "Robert Fleetwood Declaration"), both not surprisingly Heskin clients, in which they declare under penalty of perjury at paragraphs 7 that "CBSG [Par] did not perform an on-site inspection of the Company prior to approving the Loan." *See* Pamela Fleetwood Declaration (DE 29-2) at p. 1, ¶ 7 and Robert Fleetwood Declaration (DE 29-3) at p. 1, ¶ 7, true and correct copies of which are attached hereto as Exhibit 21 at 9-10. Importantly, Pamela and Robert Fleetwood make no mention whatsoever in their Declarations about when Par *funded* the Fleetwood Services advance. Next, another familiar SEC exhibit for the TRO Motion, the Lunden Report, makes clear the falsity of the SEC's allegation that the Fleetwood Services advance was funded before the on-site inspection. The Lunden Report, discussed above, shows on three different pages that Par funded the Fleetwood Services Advance on January 9, 2017, four days after the January 5th on-site inspection, not January 4th. *See* TRO Motion Exhibit 76 the Lunden Report, at Exhibit "A", pp. 1 (showing the "Payment Stream" and confirming the first advance to Fleetwood Services in the amount of \$133,335.00 on 1/9/17) and 13 (confirming the "Start Date" and "Payment Stream" with the initial advance on 1/9/17); *see also* Par's Bank Statement showing the outbound advances to Fleetwood Services was made on January 9, 2017, a true and correct copy of which is attached hereto as Exhibit 29.

Thus, the SEC's allegation that the Fleetwood Services advance was funded on January 4th *before* the on-site inspection on January 5th is untrue and was concocted by the SEC. The SEC's untruths go on, as discussed below.

- c) The SEC misled the Court with the false allegation that a transcript of a recorded dinner conversation establishes that Joe Cole referred to Par's MCAs as loans and stated that the reason acquiring a bank was being contemplated was to avoid usury laws.

The next false assertion made by the SEC in its TRO Motion is that a transcript of a recorded dinner establishes that Joe Cole ("Cole") referred to Par's MCAs as loans and stated that Par's advances are "loans" and that acquiring a bank was being considered to avoid usury laws. While Cole was considering acquiring a bank,²⁰ the allegation that he said the acquisition was being considered to

²⁰ In reality, the contemplated bank acquisition involved Cole and other accredited individuals/entities other than Par to provide bank products and services other than MCA funding. However, even if Par's alleged involvement offered by the SEC is accepted as true for the purposes of this Motion only,

avoid usury laws is false, was made up by the SEC, and makes no sense. Specifically, in Section V(B) of the TRO Motion, titled “An *Ex Parte* Freeze of Assets Is Necessary,” the SEC makes the following allegation:

As Cole recently explained to two individuals posing as investors, they are buying a bank to “pump up our MCA business” and *there are no usury laws in effect if they run Loans through the bank*. FN 439

See TRO Motion at p. 73 (emphasis added). There is a transcript of a recording. The transcript does not establish that Cole said any such thing. In footnote 439 of the TRO Motion, the SEC cites to portions of a transcript of a recorded conversation at a dinner (the “Dinner Conversation Transcript”), attached to the TRO Motion as Exhibit 129, part 2, at 401:3-408:14, and 420:24-421:18. The transcript does not reflect that Cole ever made such a statement. In fact, the alleged statements attributed to Cole make no sense. As shown above, Par’s cash advances are not loans and usury laws do not apply. On the other hand, usury laws do apply to regulated banks that make loans.

d) The SEC Misled the Court About Joseph LaForte Hiding His Identity from Investors

In the TRO motion, the SEC includes an entire section on how LaForte purportedly hid his identity from Investors to conceal his criminal identity. The SEC specifically references the November 2019 investor dinner as an example of this alleged malfeasance, stating:

Additionally, Cole has solicited at least one investor by touting the experience of Par Funding’s management team while failing to disclose LaForte’s criminal history, despite knowing “from the first day” that LaForte has been convicted of crimes involving dishonesty. Abbonizio also touts the Par Funding management and conceals LaForte’s identity and criminal history from investors. For example, at the November 2019 solicitation dinner, he introduced LaForte to the 300 potential investors and investors in attendance by telling them, “You’re going to hear from the president of our company in a few moments, the gentleman that does the best job in multi-faceted businesses of exuding operational excellence.”

(DE 14 at 43-44). The SEC leads this Court to believe that Mr. Abbonizio referred to LaForte as “the president” rather than by his name to conceal his identity from the investors at that dinner. However, the SEC completely ignores the fact that only 2 pages later in the transcript, Mr. Vagnozzi introduces LaForte by name, stating: “I want to introduce **Joe LaForte**. Come on up, Joe.” (DE 41-7 at 57, lines 17-18) (emphasis added). The SEC’s representation that they were concealing LaForte’s identity at this investor dinner when he was specifically introduced by name is a shocking misrepresentation. There

the SEC’s allegations are obviously false and nonsensical because Cole said no such thing and usury laws do not apply to Par’s merchant cash advances. The law could not be any clearer.

is no reasonable interpretation of the transcript that LaForte's true identity was concealed at the November 2019 investor dinner. Unfortunately, the SEC's misrepresentations do not end here.

e) The SEC mislead the Court regarding the default rate representations to investors

The SEC advances an inaccurate theory concocted by Heskin that Par misrepresents its default rates to investors, making it seem as if the rate of merchant defaults is significantly lower than it really is. However, the evidence shows that the SEC did not even fully understand this theory even after it filed the case but were rather relying on Heskin. The contention that filed judgments equal a default that would need to be disclosed to investors has already been debunked in the Glick KPI analysis. (DE# 694-8). On July 16, 2020, Heskin e-mails the SEC a 120-page long list of all the Judgments filed by Par's collection arm, New York Unity Factor. *See* Exhibit 30. The SEC adopts the documents and Heskin's concept and sends them to Crystal Ivory, Senior Accountant for the Miami Office of the SEC and Ray Anjlich who has the title of Senior Auditor. Six days later the two "seniors" create a declaration where they cut and paste the e-mail attachments Heskin sent to the SEC on July 16, 2020, just 8 days before the TRO Motion, adopting both Heskin's fallacious default rate calculation and his proposed strategy for the prosecution in this case. *See* declaration of Crystal Ivory and Ray Anjlich dated July 22, 2020, attached as Exhibit 31 and exhibits at pp. 155 to 275. It would appear from the Ivory and Anjlich declarations that they did months of investigation. Indeed, Anjlich stated in his declaration that he summarized the findings because to attach all the documents he reviewed would require printing over 5,000 pages. However, these declarations were in fact hastily thrown together, in the same fashion as the merchant declarations, without the SEC or its vendors performing its own critical analysis.

However, the speed with which Ivory and Anjlich allegedly reviewed thousands of case dockets is just the first problem. At the time the declarations were being prepared and executed, the SEC did not even know that New York Unity Factor was related to Par. On July 22, 2020, the day after the Anjlich declaration was executed and the same day the Ivory declaration was executed, the SEC e-mails Heskin asking, "how do we know the NY Unity Factor cases are CBSG/Par funding cases? I want to understand the link" *See* Exhibit 32. Heskin gives his explanation to the SEC, who accepts it. The fact that the SEC is taking instruction from Heskin on such a critical point two days before the case was filed and after one of the declarations were executed just goes to show that the Heskin tail was wagging the SEC dog, and the SEC did not understand the full nature of its case at the time it was filed. The next misrepresentation by the SEC is arguably the worst because it was likely one of the main reasons this Court decided to enter the TRO and appoint the Receiver.

- f) The SEC misled the Court with the false allegation that the Defendants stole noteholder money by cleaning out Par's bank account and sending the money to another company in Georgia.

The most material and toxic misrepresentation the SEC made to trigger the Court to enter the TRO, Asset Freeze, and Receivership was the false allegation that some of the individual Defendants diverted investor funds by stealing all the money from Par's bank account and sending it to a company in Georgia. The Defendants did no such thing. However, the SEC falsely alleged in the TRO Motion that:

Many of the individual Defendants are currently in the process of arranging financing and other details in their bid to acquire a bank in Dallas, Texas. Further, Par Funding recently transferred most of the proceeds in its bank account to the bank account held by another entity in Georgia.

See TRO Motion at p. 3. The SEC then elaborated on this false allegation, representing to the Court that:

As set forth in the Declaration of Melissa Davis filed with this Motion, in June 2020, Par Funding transferred millions from the (sic) Par Funding, leaving only thousands in its bank account.

Specifically, Ms. Davis, stated: "As of June 30, 2020, the balance in the Par Funding JP Morgan Chase accounts total \$82,319 after transfers labeled 'Par Fund Pref' totaling \$20,865,953 were made out of the JP Morgan accounts during the month of June 2020." (Doc. 21-1 at 4).

So here the SEC was baiting the Court into believing an emergency asset freeze was needed because individual Defendants stole all of Par's money. Of course, this would alarm and grievously concern the Court. The problem is that caper never happened. The money transfer to "another entity in Georgia" was actually multiple transfers in the ordinary course of Par's business to Priority Processing, the company that Par routinely used to process cash advances to merchants, which was Par's core business function. Since January 2020, Par had sent many transfers totaling in excess of \$360,000,000.00 to Priority Processing for the purpose of advancing cash to merchants. *See* Exhibit 33. The SEC could have easily figured this out. Indeed, the claim that certain Defendants stole or diverted money from Par's bank account "leaving only thousands" behind, is belied by the Receiver's Interim Status Reports that make clear there was approximately \$22,000,000.00 in Par's bank account when he took over on July 28, 2020. (*See* DE#358-1). Most disturbingly, the SEC could have easily determined that the daily transfers to Par's ACH processor account were transactions made in the ordinary course of business.

The damage done by this false and misleading allegation is incalculable. The SEC made this claim in its filing seeking extraordinary emergency relief. And the false claim was incendiary – suggesting that Defendants were cleaning out millions of dollars from Par and leaving little. It was unquestionably material to the Court’s decisions on the requested emergency relief. Yet, the SEC stands silent and leaves this Court, the public, and the investors to erroneously believe some individual Defendants cleaned out Par’s bank account in June 2020, without correcting the record. This outrageous false allegation should never have been made. Contrary to the SEC’s statement to this Court, there was not a single large transaction to some shell company in Georgia, but rather to a payment processor in an account owned by Par that Par used to fund merchant deals and save on transaction costs, passing those savings on to noteholders. Had the SEC bothered to do a proper investigation it would have discovered this and one of the foundational allegations upon which this Court granted the restraining order and installed the Receiver would not have been made.

There can be no doubt this false contention was a major factor in the Court’s decision to enter the TRO, Asset Freeze, and Receivership. The SEC’s conduct is indefensible and cannot be allowed.

Proposal to Rescue Par Funding

Despite all that has occurred, the Defendants are hopeful that Par can be saved. Defendants McElhone and Cole include in Exhibit 34, attached hereto, the planned structure and efforts to be made should the Court grant this motion in part or in whole. This should allay any concerns the Court has for Par and the noteholders and they would be open to modifying or adding to these terms if the Court deems necessary. Of course, given the injury already caused to Par by the SEC, it is impossible for the Defense to guarantee success, but the willingness and commitment to try hard to turn this situation around and right the ship endures.

Conclusion

The SEC improperly delegated its investigative authority to a private attorney who was a civil adversary of Par, who along with his merchant clients had a financial motive to induce the SEC to prosecute Par. In addition, the SEC induced this Court into entering the TRO, Asset Freeze, and Receivership Order with materially false allegations. The SEC’s conduct is unacceptable and should not be condoned or rewarded. An agency of the United States federal government must not behave in such a way and must be held to a higher standard. The appropriate result is that this case should be dismissed, the Receivership should be terminated, and the Defendants should be allowed to get back to work and making money for the investors.

REQUEST FOR HEARING

Movants respectfully request a hearing on this motion. This motion presents a complex web of factual and legal issues and Movants believe oral argument would help the court wade through these issues and evidence. Movants estimate 2-3 hours for oral argument would be sufficient.

Dated: July 28, 2021

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2021, I electronically filed the forgoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmissions of Notices of Electronic Filing generated by CM/ECF.

By: /s/ David L. Ferguson
DAVID L. FERGUSON