

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.

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**LAFORTE'S MOTION FOR SANCTIONS FOR DISCOVERY VIOLATIONS  
PURSUANT TO RULE 37 OF THE FEDERAL RULES OF CIVIL PROCEDURE**

**I. INTRODUCTION**

This motion for sanctions is brought pursuant to Fed. R. Civ. P. 37 due to the SEC’s discovery violations. Specifically, the SEC has intentionally obstructed the discovery process by prohibiting its own designated corporate representative from answering a single substantive question or otherwise producing a representative with requisite knowledge of identified issues of inquiry in the 30(b)(6) Notice. With no intention of allowing a witness to testify, the SEC designated 30(b)(6) representatives and then not only proceeded to object to every question, but also impermissibly instructed their own corporate representative not to provide testimony. On the rare occasion that the SEC allowed its witness to answer, the answers were non-answers. Therefore, this Court should sanction the SEC for discovery violations, up to and including dismissal, striking of the allegations against the Defendants, precluding the SEC from taking a position contrary to the corporate representatives’ deposition testimony, precluding the SEC from presenting evidence on topics it would not testify about, and awarding reasonable fees and costs

**II. THE SEC’S DISCOVERY VIOLATIONS**

1. On July 1, 2021, after mutual coordination, LaForte served a Notice of Deposition of SEC’s Corporate Representative Designee Pursuant to Federal Rule of Civil Procedure 30(b)(6) (the “First Depo Notice”), to occur on July 9, 2021.<sup>1</sup>

2. Attached to the First Depo Notice was a list of deposition topics. Specifically, LaForte noticed as intended topics:

The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, that support:

- i. the Commission’s allegations, causes of action and requests for relief in the Amended Complaint . . . .
- ii. the Commission’s disgorgement calculation as to each Defendant. . . .
- iii. the Commission’s claims that the Defendant’s actions presented a risk to investor funds when it filed its Complaint. . . .

The Commission and Commission staff’s communications with attorney Shane Heskin prior to the filing of the Commission’s enforcement action, including promises made to Heskin or his clients.

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<sup>1</sup> A copy of the First Depo Notice is attached hereto as **Exhibit A**.

The Commission's guidelines, policies, and procedures regarding joint action with, or direction or control by Commission staff of a private party involved in an investigation or private action.

The Commission's guidelines, policies, and procedures regarding the appointment of a Receiver.

*See* Exhibit A.

3. The SEC did not provide the Defendants with a privilege log identifying any purportedly privileged work product after asserting the privilege and instructing the representative witness not to answer numerous times.

4. The SEC originally produced Raymond Andjich,<sup>2</sup> a government contractor assigned to the SEC's Miami Regional office as a researcher and to assist with investigation interviews, who previously was an FBI Special Agent for 31 years<sup>3</sup>, as its corporate representative for every deposition topic listed in the First Depo Notice (the "First Corporate Representative").

5. At the deposition, the First Corporate Representative described his preparation as involving, for the most part:

[L]ooking at the motion for temporary restraining order, and then looking at the exhibits that were footnoted in that motion. And I know that there were at least 170 or more exhibits, and I'm happy to go through paragraph by paragraph and point out the exhibit that proves the allegation that the SEC is making . . . .

6. The First Corporate Representative was unable to answer basic questions, repeatedly providing Defendants with variations of "as I sit here today, I do not know" or "I do not recall" as responses to factual queries.<sup>4</sup> Admitting to not having the requisite knowledge to clarify the SEC's factual position regarding allegations in its complaint, he testified that other individuals would be better suited to answer the questions posed by the Defendants.<sup>5</sup>

7. At first wholly dismissive of the spirit and point of a 30(b)(6) deposition, the SEC's Lead-Counsel interjected that the SEC would later "supplement in writing" its position on any answer where the First Corporate Representative responded that he did not know an answer.<sup>6</sup> The SEC's

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<sup>2</sup> A copy of the Deposition Transcript of the First Corporate Representative is attached hereto as **Exhibit B**.

<sup>3</sup> *See* Exhibit B at 5:18-6:12

<sup>4</sup> *See* Exhibit B at 20:14-16; 27:11-14; 28:23-29:1; 31:24-25; 44:13-16; 45:23-46:3; 46:20-47:3; 47:11-17; 49:14-25; 50:11-18; 51:20-52:1; 53:20-54:1; and 58:16-22.

<sup>5</sup> *See* Exhibit B at 58:21-22.

<sup>6</sup> *See* Exhibit B at 57:9-11.

Lead-Counsel further unfairly characterized the questions being asked as requiring people to “memorize the evidence attached to the [TRO] motion.”<sup>7</sup> (Of course, this attempt was a smokescreen, as the SEC would later demonstrate that it had no interest in allowing a potentially-competent witness to testify about the evidence, regardless of whether they had “memorized” it).

8. Just as disturbing as not having information at all, the First Corporate Representative also testified several times in circular fashion that the facts supporting the allegations made in the complaint were based on the statements made in the complaint, itself.<sup>8</sup> This is a classic fallacy of begging the question where the argument’s premise assumes the truth of the conclusion without proof.<sup>9</sup> Essentially, according to the First Corporate Representative’s testimony, the SEC’s position is that the accusations made against the Defendants are true because the SEC said it was so.

9. After several hours, and after the First Corporate Representative had given testimony which the SEC’s Lead-Counsel unilaterally deemed “wrong,” the SEC announced on the record that it would like to continue the deposition to another day with newly designated witnesses. The SEC agreed the time spent deposing the First Corporate Representative would not be counted towards the time limits, and to pay the court reporter costs for the second deposition.<sup>10</sup> Furthermore, the SEC agreed to Defendant’s request that Linda Schmidt, Senior Counsel at the Miami regional office of the SEC, who was involved in the SEC’s investigation and had numerous communications with Heskin and DiPietro, would serve as one of the designees on specific topics, including “conversations that she had with investors, merchants, or counsel for either, and any email in which she was a participant, that is, someone who drafted received, or was copied on an email - in connection with this investigation...”<sup>11</sup> The parties’ stipulation was put on the record and contemplated the situation in which Ms. Schmidt might serve as trial counsel. As part of the agreement, the SEC agreed that it “would not object to [Mr. LaForte’s] use of her deposition testimony, even if she is available, because she might serve as trial counsel.” The stipulation expressly provided that if after being deposed Ms. Schmidt is to serve as trial counsel and her deposition testimony was used at trial, Ms. Schmidt would not be identified as the deponent but rather, her “deposition testimony would be ascribed to an SEC representative or designee.”<sup>12</sup>

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<sup>7</sup> See Exhibit B at 66:21-67:2

<sup>8</sup> See Exhibit B at 13:5-7; 30:11-25; 46:10-16; 47:20-48:11; 49:25-50:1; and 50:22-51:4.

<sup>9</sup> See *Hyman v. United States (In re Stanton)*, 503 B.R. 760, 764 & n. 23 (M.D. Fla. Bankr. Jan. 22, 2014).

<sup>10</sup> See Exhibit B at 59:3-20.

<sup>11</sup> See Exhibit B at 72:9-15.

<sup>12</sup> See Exhibit B at 72:17-25.

10. Again, this offer was not made when the First Corporate Representative could not answer substantive questions; it was only made when The SEC's Lead Counsel determined that she did not like the answers the First Corporate Representative was giving.

11. The reason provided by the SEC for continuing the deposition was, despite having spent "40 hours preparing," the First Corporate Representative felt that his memory was not good enough to allow him to "regurgitate" everything he had memorized or enable him to "be able to respond accurately."<sup>13</sup>

12. The Defendants stated on the record that any of the unobjected to statements provided should still be binding upon the SEC and any newly designated corporate representatives should not be able to contradict the First Corporate Representative's testimony. The SEC refused to agree, with the SEC's Lead-Counsel asserting that it would be "ridiculous" because the information sought during the deposition was available in the temporary restraining order with a footnote to the evidence and the First Corporate Representative "jumbled and got confused on and regurgitated incorrectly" so the parties all knew the testimony was inaccurate and needed to be corrected.<sup>14</sup>

13. Again, after mutual coordination, on July 27, 2021, the Defendants served a second Notice of Deposition of SEC's Corporate Representative Designee Pursuant to Federal Rule of Civil Procedure 30(b)(6) (the "Second Depo Notice") identifying the identical topics listed on the First Depo Notice, to occur on August 3, 2021.<sup>15</sup> Again, the never provided the Defendants with a privilege log identifying any purportedly privileged work product.

14. The SEC reneged on its stipulation to provide Ms. Schmidt as a witness citing the Florida Bar Rules. Counsel for the Defendant requested that the SEC provide the specific rule, but the SEC has not done so to date.<sup>16</sup> After breaching the stipulation on the record to produce Ms. Schmidt as the designee for certain topics, for the second deposition, the SEC produced Elisha Frank, a 17 year SEC employee, previously Senior Counsel and now the Assistant Regional Director whose "primary responsibility is to supervise investigations"<sup>17</sup> (the "Second Corporate Representative"), an assistant regional director for the SEC who is herself an attorney, as its newly designated corporate representative for every deposition topic listed in the Second Depo Notice.

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<sup>13</sup> See Exhibit B at 59:3-60:24.

<sup>14</sup> See Exhibit B at 61:12-63:5.

<sup>15</sup> A copy of the Second Depo Notice is attached hereto as **Exhibit C**.

<sup>16</sup> Notably, counsel for LaForte, Joshua Levine, called the Florida Bar Ethics Hotline and was advised that the Bar rules would not prevent Ms. Schmidt from testifying at deposition.

<sup>17</sup> See Exhibit C at 10:17-11:21.

15. Just as with the First Corporate Representative Deposition, the Second Corporate Representative made it clear at her deposition<sup>18</sup> that the SEC has baldly determined that the only information it will permit the Defendants to discover is what the SEC has decided is pertinent and has already publicly filed in this case.<sup>19</sup> Similarly, the Second Corporate Representative also limited her preparation for the deposition by reviewing the Amended Complaint, the TRO Motion and exhibits, the merchant declarations, the motion and certification to appoint a Receiver, and emails, as well as a review of the commission guidelines and manual.<sup>20</sup>

16. Throughout the deposition, the First and Second Corporate Representatives were repeatedly instructed not to answer questions requiring factual answers due to various privileges, including: (i) investigative privilege; (ii) deliberative process privilege; (iii) law enforcement privilege; (iv) attorney work product (v) and attorney-client privilege.<sup>21</sup>

17. Pursuant to the SEC's Lead-Counsel's instructions to the Second Corporate Representative not to answer, the SEC refused to respond to a single question asking for identification of what evidence the SEC had at the time the complaint was filed supporting any of the SEC's allegations.<sup>22</sup> Also Pursuant to the SEC's Lead-Counsel's instructions to the Second Corporate Representative not to answer, the SEC refused to respond to a single question asking for identification of what evidence the SEC currently has supporting any of the SEC's allegations in its complaint.<sup>23</sup>

18. According to the explanation by the SEC's Lead-Counsel, mere identification of what evidence the SEC has or had at the time of the complaint is all privileged:

The deliberative process privilege would apply to the deliberations of the SEC in determining which evidence supports which potential allegations and the decision to allege them. The attorney-work product is not limited to the post-filing determinations, but includes the entire scope of the case. [The Second Corporate Representative], once again, she can testify about the evidence that we have already filed annotating the allegations of the complaint in the TRO motion, but she cannot

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<sup>18</sup> A copy of the Deposition Transcript of the Second Corporate Representative is attached hereto as **Exhibit D**.

<sup>19</sup> See Exhibit D at 12:11-13; 44:1-7; 46:10-13; 51:23-52:3; 57:1-7; 96:13-18; and 108:5-8.

<sup>20</sup> See Exhibit D at 30:11-33:24.

<sup>21</sup> See fn 15-16, supra. See also e.g., Exhibit D at 11:25-12:6; 12:17-18; 14:7-11; 28:14-20; 47:20-53:11; 91:13-92:2; 171:15; and 193:15-19.

<sup>22</sup> See Exhibit D at 23:2-9; 25:6-26:1; 55:5-20; 57:11-59:18; 90:13-23; 92:3-12; 121:10-125:3; 132:3-16; 193:24-194:9; 195:13-21; 229:3-18; and 230:24-231:20.

<sup>23</sup> See Exhibit D at 23:2-9; 26:3-17; 40:9-41:8; 44:1-7; 45:18-46:4; 47:20-53:11; 55:15-20; 70:2-71:5; 88:8-19; 92:3-12; 93:3-11; 101:18-104:21; 109:3-22; 111:9-112:5; 113:9-20; 113:25-114:13; 115:14-25; 118:19-120:24; 170:15-23; 206:13-208:6; 216:18-25; 217:11-218:21; 226:8-227:19; 235:11-236:18; 251:1-10; and 258:11-259:16.

testify about our attorney work-product with respect to other documents that we have produced to you and how they fit into this case, because that is attorney work product and deliberative process privilege concerning the investigative file.<sup>24</sup>

19. As for any evidence acquired during the litigation, the SEC resolutely declared that it had not yet finished reviewing documents and therefore, “the SEC will not be testifying about the post-filing evidence,” noting it is also work product.<sup>25</sup>

20. Against the greater weight of authority, the SEC took the position that it was only required to testify about what was already provided publicly in connection with its preliminary injunction motion and exhibits.<sup>26</sup> But then refused to even do that. When the Defendants asked the Second Corporate Representative to direct them to the page or portion of an identified exhibit that supports an allegation in the complaint, she refused, essentially asserting that each exhibit “speaks for itself,”<sup>27</sup> and testified that merely explaining how or why an identified exhibit is supportive “would involve work product unless [the SEC] already identified it specifically with a pincite in the TRO.”<sup>28</sup>

21. No explanation was provided for how the mere existence of information could constitute work product, nor how it is suddenly rendered ‘not work product’ once it is identified within a filed motion. *See Johnson v. 27th Ave. Caraf, Inc.*, Nos. 19-14353, 19-14354, 2021 U.S. App. LEXIS 24521, at \*19 (11th Cir. Aug. 17, 2021) (“Selective disclosure for tactical purposes waives the privilege.”). The refusal to disclose how the SEC’s blanket pronouncement that the exhibits supported its allegations did not waiver even where it was apparent that it did not support the claim.

22. The SEC’s Lead Counsel contributed to, facilitated, and emboldened the Second Corporate Representative’s uncooperative responses, asserting work product privilege objections where Defendants asked: (i) whether specific allegations and statements in various declarations were false;<sup>29</sup> (ii) whether the SEC knew if the declarations contained false statements when they were filed;<sup>30</sup> and (iii) whether the SEC will be correcting the record with respect to declarations which contain false statements.<sup>31</sup>

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<sup>24</sup> See Exhibit D at 56:9-25.

<sup>25</sup> See Exhibit D at 44:1-7 and 57:1-7.

<sup>26</sup> See Exhibit D at 46:10-13; 48:22-49:1; 96:13-18; and 108:5-8.

<sup>27</sup> See Exhibit D 21:8-14; 22:8-24; 24:22-25:3; 45:9-47:19; 54:23-55:12; 63:4-9; 64:13-69:-7; 71:3-74:6; 84:11-22; 91:1-7; 106:2-7; 111:2-24; 113:9-23; and 139:19-25.

<sup>28</sup> See Exhibit D at 108:5-8.

<sup>29</sup> See Exhibit D at 247:21-8; 258:25-259:16; 262:12-263:21.

<sup>30</sup> See Exhibit D at 124:21-125:3.

<sup>31</sup> See Exhibit D at 192:15-25.

23. If the SEC's abusive assertion of objections and refusal to answer fact-based questions were not enough, the SEC's Lead-Counsel further aggravated the integrity of the deposition process by repeatedly interjecting speaking objections and otherwise "coaching" the Second Corporate Representative how to testify, or more to the point, avoid testifying.<sup>32</sup>

24. Moreover- above and beyond the many asserted privilege objections- the SEC's Lead-Counsel also impermissibly instructed the Second Corporate Representative not to answer questions based on routine evidentiary objections, such as speculation, legal conclusion, argumentative, and asked and answered.<sup>33</sup>

25. Unfortunately, the ineptitude of the First Corporate Representative, the SEC's choice to suspend the first deposition when it did not like the testimony it was hearing, and the SEC's actions in the beginning of the second deposition were merely a prelude to the SEC's misconduct that was still yet to occur during the latter half of the second deposition. The SEC's Lead-Counsel amped up her impermissible directions to the Second Corporate Representative not to answer questions predicated on the SEC's unilateral determination that a line of questioning was "outside the scope" of the designated topics. In fact, in a roughly six-hour deposition with a transcript spanning 266 pages, almost 60 pages are comprised entirely of questions the Second Corporate Representative declined to answer because they were purportedly outside of the scope of the notice.<sup>34</sup>

26. Finally, as a tandem legal strategy to asserting blanket privileges and refusing to answer questions seeking the mere identification of evidence, the Second Corporate Representative also testified that the SEC does not have "personal knowledge" regarding the substance or statements in this case.<sup>35</sup> The unremitting response that the SEC lacks personal knowledge included assertions that irreconcilably fly in the face of allegations raised in the SEC's complaint, such as not having knowledge about whether Defendants engaged in general solicitation despite needing this allegation to support the SEC's claim the Defendants filed an improper exemption. By bringing this lawsuit with outrageous accusations against the Defendants, pretending it does not need to even identify relevant

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<sup>32</sup> See Exhibit D at 16:3-4; 22:22-24; 24:18-25:3; 40:1-8; 45:20-46:4; 47:13-19; 53:1-10; 60:6-11; 60:18-24; 64:24-65:3; 68:12-17; 68:23-69:7; 114:17-19; and 140:6-150:25.

<sup>33</sup> See Exhibit D at 80:7-12; 82:16-19; and 131:17-20.

<sup>34</sup> See Exhibit D at 140:6-150:18; 151:4-158:18; 159:23-169:18; 171:1-174:5; 175:20-177:5; 178:4-192:1; 193:2-195:9; 199:6-201:15; 202:8-12; 206:10-208:6; 216:13-25; 217:11-218:21; 226:8-227:19; 232:20; 233:5; and 258:11-24.

<sup>35</sup> See Exhibit D at 21:8-14; 46:15-47:1; 63:21-64:17; 91:13-92:2; 113:9-23; 154:18-23; 214:4-14; 241:3-6; 250:21-251:10; and 257:11-14.

facts or evidence outside what it has already filed with its TRO motion, and refusing to acknowledge the irrefutable evidence establishing the falsity of the allegations, the SEC has taken the Sergeant Schultz<sup>36</sup> posture.

27. The SEC's Lead-Counsel's speaking objections, over-assertion of blanket privileges, and instructions not to answer deposition questions thwarted the discovery process and resulted in the Second Corporate Representative not providing a single substantive answer to any of the questions asked at corporate representative depositions.<sup>37</sup>

### III. MEMORANDUM OF LAW

#### a. Legal Standard

The Defendants are entitled to discovery and the deposition of a corporate representative of the SEC. Federal Rule of Civil Procedure 30(b)(6) provides, in pertinent part:

In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf . . . . The persons designated must testify about information known or reasonably available to the organization.

Fed. R. Civ. P. 30(b)(6).

“As a general proposition, government agencies embroiled in litigation are subject to the same discovery rules as private litigants, regardless of the level of government to which the agency belongs.” *SEC v. Merkin*, 283 F.R.D. 689, 696 (S.D. Fla. 2012). “Rule 30(b)(6) expressly applies to a government agency and provides neither an exemption from Rule 30(b)(6), nor special consideration concerning the scope of discovery, especially when the agency voluntarily initiates an action.” *SEC v. McCabe*, No. 2:13-cv-00161-TS-PMW, 2015 U.S. Dist. LEXIS 67253, at \*6 (D. Utah May 22, 2015) (internal quotations omitted) (citing to *S.E.C. v. Collins & Aikman Corp.*, 256 F.R.D. 403, 414 (S.D.N.Y. 2009).

“As an initial matter the rule does not limit what can be asked of a designated witness at a deposition.” *FDIC v. Brudnicki*, No. 5:12-cv-00398-RS -GRJ, 2013 U.S. Dist. LEXIS 154908, at \*4 (N.D. Fla. Oct. 29, 2013). Instead, the rule requires that the entity designating a witness must do so premised on the ability of the witness, who must testify “about information known or reasonably

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<sup>36</sup> So named after a character on an old television show, Sergeant Schultz on *Hogan's Heroes*, who was famous for always saying “I know nothing. NOTHING!”

<sup>37</sup> A chart of the deposition questions, asserted objections, and testimony grouped by subject is attached hereto as **Exhibit E**.

available to the organization.” *Sciarretta v. Lincoln Nat’l Life Ins. Co.*, 778 F.3d 1205, 1213 (11th Cir. 2015) (quoting Fed. R. Civ. P. 30(b)(6)). “The reason for adopting Rule 30(b)(6) was not to provide greater notice or protections to corporate deponents, but rather to have the right person present at deposition. The Rule is not one of limitation but rather of specification within the broad parameters of the discovery rules.” *Salvia v. Lowe’s Home Ctrs.*, No. 8:08-CV-1242-T-33MAP, 2011 U.S. Dist. LEXIS 161917, at \*4 (M.D. Fla. Apr. 28, 2011) (internal quotations omitted). “If it becomes apparent during the deposition that the designee is unable to adequately respond to relevant questions on listed subjects, then the responding corporation has a duty to timely designate additional, supplemental witnesses as substitute deponents.” *QBE Ins. Corp.*, 277 F.R.D. at 690.

Personal knowledge is not required and, in the absence of personal knowledge on behalf of the deponent, the entity bears the responsibility to “prepare the designee so that they may give knowledgeable and binding answers for the corporation.” *Rocket Real Estate, LLC v. Maestres*, No. 15-62488-CIV-COHN/SELTZER, 2016 U.S. Dist. LEXIS 37810, at \*3 (S.D. Fla. Mar. 23, 2016). *See also Colonial BancGroup Inc. v. PricewaterhouseCoopers LLP*, No. 2:11-cv-746-BJR, 2016 U.S. Dist. LEXIS 193186, at \*18 (M.D. Ala. June 17, 2016) (explaining, “[L]ack of involvement or firsthand knowledge of plaintiff does not relieve obligation to designate 30(b)(6) witness”).

Additionally, where the scope of such a deposition is known ahead of time, any objections as to that scope- or to privilege- should be made prior to the deposition. *See Kaplan v. Nautilus Ins. Co.*, No. 17-CV-24453-KING/LOUIS, 2018 U.S. Dist. LEXIS 222353, at \*3 (S.D. Fla. Sep. 17, 2018) (reasoning, “When a party objects to the scope of a 30(b)(6) deposition notice, courts have found that the proper means for raising the dispute is by timely serving those objections upon the opposing party in advance of the deposition . . .”). The corporate deponent should “object to the designation and give notice to the requesting party of those objections, so that the requesting party has the opportunity to reconsider its position, narrow the scope of the topic, or otherwise stand on its position and seek to compel additional answers, if necessary, following the deposition . . . The same holds true for privilege objections.” *Id.* *See also Beach Mart, Inc.*, 302 F.R.D. at 406 (providing that the entity explicitly cannot “make its objections and then provide a witness that will testify only within the scope of its objections”).

#### **b. Argument**

Rule 30(b)(6) “provides for a variety of sanctions for a party’s failure to comply with its Rule 30(b)(6) obligations, ranging from imposition of costs to preclusion of testimony and even entry of default.” *QBE Ins. Corp.*, 277 F.R.D. at 690. Requiring the responsive party to produce another

30(b)(6) deposition witness who is prepared and educated is a frequently-invoked sanction; however, where the discovery cutoff deadline has expired, such a sanction is no longer available. *See id.* at 690 n.6. Once a case's discovery cutoff deadline has expired, a more appropriate sanction is to preclude a corporation from admitting testimony at trial on the subjects which its designee was unable or unwilling to testify about at the 30(b)(6) deposition. *See id.* at 681.

**i. Dismissal Is an Appropriate Sanction**

This case should be dismissed as a sanction for the SEC's conduct regarding the deposition of its corporate representatives. The SEC has evinced a disrespectful refusal to provide discovery. The SEC's Lead Counsel's repeated direction that the witness not answer questions was violative of Rule 30(b)(6) and Rule 30(c)(2). The SEC's assertion of work product in the face of questions that were clearly aimed at the discovery factual information and were not aimed at mental impressions or opinions was inappropriate and improper. The unnuanced postulation that documents "speak for themselves" was not even a valid basis for objection, let alone for not providing answer in the event of an objection. And The SEC's Lead Counsel's speaking objections and other contextualization of the testimony was, itself, improper, to the limited extent that any testimony to have been contextualized was provided in the first place.

"If a corporate representative physically appears at a deposition but is completely unprepared to provide testimony on the noticed topics, courts have found a failure to appear under Rule 37(d)(1)(A)(i)." *Maronda Homes, Inc. v. Progressive Express Ins. Co.*, No. 6:14-cv-1287-Orl-31TBS, 2015 U.S. Dist. LEXIS 60603, at \*7 (M.D. Fla. May 8, 2015) (*citing Cont'l Cas. Co. v. First Fin. Empl. Leasing, Inc.*, No. 8:08-cv-2372-T-27GW, 716 F. Supp. 2d 1176, 1193 (M.D. Fla. 2010)).

Federal Rule of Civil Procedure 37 governs the available relief when a party fails to make disclosures or cooperate in discovery. Specifically, Federal Rule of Civil Procedure 37(c) provides:

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)–(vi).

These other specifically available orders delineated by the rule under the present circumstances include:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part; or
- (vi) rendering a default judgment against the disobedient party;

*See* Fed. R. Civ. P. 37(b)(2)(A).

Although dismissal with prejudice is the most severe Rule 37 sanction, “dismissal may be appropriate when a plaintiff’s recalcitrance is due to willfulness, bad faith, or fault.” *Phipps v. Blakeney*, 8 F.3d 788, 790 (11th Cir. 1993). “The Court in *National Hockey League* admonished the Courts of Appeals not to exhibit ‘lenity’ even in the face of ‘outright dismissal as a sanction for failure to comply with a discovery order’ because Rule 37 sanctions were designed ‘not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.’” *Carlucci v. Piper Aircraft Corp.*, 775 F.2d 1440, 1447 (11th Cir. 1985) (citing *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642-43, 96 S. Ct. 2778, 2780-81, 49 L. Ed. 2d 747 (1976)).

Where a party’s conduct evinces a disrespectful refusal to provide discovery, the entry of judgment is appropriate. *Maus v. Ennis*, 513 F. App’x 872, 878 (11th Cir. 2013). The severity of the sanction is, itself, sanctioned even where the party asserts privileges, and especially where that party fails to timely object based on a recognized privilege. *Id.* Here, the SEC has conducted itself in a manner demonstrative of a lack of respect for the discovery process in multiple regards, including: (i) self-declaring of what the Defendants can ask for despite the gravity of what is at stake for Defendant being exceptionally high; (ii) asserting improper, blanket privilege objections to shield against discovery; (iii) The SEC’s Lead-Counsel impermissibly instructing the witness not to answer questions posed at a deposition; and (iv) The SEC’s Lead-Counsel repeated assertion of speaking objections which tainted the testimony.

#### The Self-Declared Arbiter of Producing Discovery

The SEC’s outright refusal to answer any question outside of what it determined- in its own estimation- to be subject to disclosure is unacceptable conduct. The SEC has baldly determined that the only information discoverable by the Defendants is what the SEC is willing to provide and has

already publicly filed in this case. While this is a flagrant disregard of the spirit of the discovery process taken alone, it is especially troubling given the high stakes for the Defendants in this case and the SEC's status as a state actor.

Litigants may not unilaterally choose what discovery is appropriate to produce. To do so is a breach of discovery obligations and stymies not only a party's "access to discoverable documents, but also the efficient functioning of the adversarial process in this litigation." *Immuno Vital, Inc. v. Telemundo Grp., Inc.*, 203 F.R.D. 561, 571 (S.D. Fla. 2001). See also *Ramirez v. World Oil Corp.*, 2021 Cal. Super. LEXIS 1345, \*9 (Sup. Ct. Cal. 2021) ("Plaintiff cannot unilaterally determine what documents she deems relevant to Defendants' defenses"); *Energy Power (Shenzhen) Co. v. Wang*, Civil Action No. 13-11348-DJC, 2014 U.S. Dist. LEXIS 130997, at \*7 (D. Mass. Sep. 17, 2014); *Judicial Watch, Inc. v. United States DOC*, 34 F. Supp. 2d 47, 51 (D.D.C. 1998) ("it is not appropriate for a litigant to unilaterally determine what documents to produce"). This is of particular concern where privilege objections are asserted without a privilege log. *Williams v. Taser Int'l, Inc.*, No. 1:06-CV-0051-RWS, 2007 U.S. Dist. LEXIS 40280, at \*1 (N.D. Ga. June 4, 2007) ("non-specific objections operate to render the producing party the final arbiter of whether it has complied with its discovery . . . because the requesting party lacks sufficient information to understand either the scope of the objection, or to frame any argument as to why that objection is unfounded").

Here, the SEC declared it was categorically exempt from testifying about information other than what it wanted to disclose. Having deemed their own interpretation of the depo notices a fait accompli,<sup>38</sup> both the First Corporate Representative and Second Corporate Representative limited their review of the evidence in preparation for the deposition to just the exhibits filed with the TRO Motion. The SEC's Lead-Counsel repeatedly proclaimed, the SEC would only "testify about what we have already provided publicly in connection with our TRO and preliminary injunction exhibits,"<sup>39</sup> that the SEC would not discuss anything about the post-filing evidence, and directed the designee not to answer questions about the existence of claim supporting evidence did "unless she's referencing a filing or something public."<sup>40</sup> And despite the clear prohibition against the practice in Federal Rule of Civil Procedure 30(c), the SEC's Lead Counsel instructed the deponent not to answer questions for reasons not falling into the three exceptions (privilege, enforcing a court-ordered limitation, or to suspend the deposition in order to bring a motion to terminate or limit it).

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<sup>38</sup> See Exhibit D at 57:1-7 ("we read your topics to refer to the allegations in the Complaint").

<sup>39</sup> See Exhibit D at 96:13-18.

<sup>40</sup> See Exhibit D at 46:10-13.

The Eleventh Circuit has established that this type of conduct is demonstrative of bad faith. “Preparing a designated corporate witness with only the self-serving half of the story that is the subject of his testimony is not an act of good faith.” *Sciarretta v. Lincoln Nat’l Life Ins. Co.*, 778 F.3d 1205, 1213 (11th Cir. 2015). By providing representatives who were only prepared to merely translate footnote designations- directing Defendants to the cited exhibits but still refusing to give substantive testimony even as to these exhibits- the SEC deliberately engaged in selective disclosure and obfuscating tactics.

It was apparent that the SEC did not respect the Defendants’ right to depose a corporate representative. Throughout the depositions, the SEC and the SEC’s Lead Counsel unfairly reduced the information sought as just having a witness “memorize the evidence attached” to the TRO motion,<sup>41</sup> stated “obviously, the amended complaint is annotated in our temporary restraining order, so we all know what the evidence is that the SEC relied on”<sup>42</sup> in the face of having produced a representative who could not respond to questions, and dismissively suggesting any harm could be remedied later by the SEC’s “supplement in writing” to its position on any answer where the First Corporate Representative did not know an answer.<sup>43</sup>

Such a cavalier approach reveals a “blatant . . . failure to follow the rules.” *Sciarretta v. Lincoln Nat’l Life Ins. Co.*, 778 F.3d 1205, 1211 (11th Cir. 2015). It is also demonstrative of a motive of “strategic, offensive purpose” aimed to create “an unfair advantage in this litigation.” *Hayas v. Geico Gen. Ins. Co.*, No. 8:13-cv-1432-T-33AEP, 2014 U.S. Dist. LEXIS 149772, at \*10 (M.D. Fla. Oct. 21, 2014). Given the SEC’s role as a government entity and severity of the relief sought by the SEC, the abuse is all the more egregious.

This calculus is not new to state actors pursuing non-damages based remedies. “The claims in this case are substantial and raise serious claims of wrongdoing by former bank directors and officers. The Defendants should be allowed to explore fully the claims against them in this case and defend themselves. As discussed above, the scope of the Rule 30(b)(6) deposition will go beyond simply the calculation of damages.” *FDIC v. Brudnicki*, No. 5:12-cv-00398-RS -GRJ, 2013 U.S. Dist. LEXIS 154908, at \*15-16 (N.D. Fla. Oct. 29, 2013).

Within this proceeding, the SEC has requested injunctive relief, disgorgement, and a monetary penalty for alleged securities fraud and insider trading, and the gravity of what is at stake for Defendant is exceptionally high. *United States v. Sanchez*, 520 F. Supp. 1038, 1040 (S.D. Fla. 1981); *SEC v. Snyder*,

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<sup>41</sup> See Exhibit B at 66:21-67:2

<sup>42</sup> See Exhibit B at 62:19-22.

<sup>43</sup> See Exhibit B at 57:9-11.

No. H-03-04658, 2006 U.S. Dist. LEXIS 81830, 2006 WL 6508273, at \*1 (S.D. Tex. Aug. 22, 2006). “This practical reality is equally present in this case and necessitates careful consideration of the SEC’s attempts to avoid a Rule 30(b)(6) deposition in a case that it, not the Defendant, chose to file.” *See also SEC v. Kramer*, 778 F. Supp. 2d 1320, 1323 n.3 (M.D. Fla. 2011). *But see United States v. Mehlin*, 918 F.3d 1296, 1300 (11th Cir. 2017).

The brazen attitude of not being subjectable to the rules combined with the SEC’s governmental role and the exceptionally high stakes involved in the litigation frame the severity of the sanctions this Court should impose and highlight that sanctions should be levied.

#### Blanket Privilege Objections

The SEC was aware that it could not proceed on blanket privilege objections that frustrated the ability to meaningfully garner duly discoverable information. “According to Federal Rule of Evidence 501, ‘the privilege of a witness . . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.’” *Cox v. Adm’r United States Steel & Carnegie*, 17 F.3d 1386, 1414 (11th Cir. 1994). Despite its value in encouraging clients to confide in their counsel, the law recognizes that, as “an obstacle to the investigation of the truth,” the attorney-client privilege is not without exceptions. *Garner v. Wolfenbarger*, 430 F.2d 1093, 1101 (5th Cir.1970) (quoting 8 Wigmore, Evidence, § 2291, at 554), cert. denied, 401 U.S. 974, 91 S. Ct. 1191, 28 L. Ed. 2d 323 (1971). Moreover, it has been specifically held that work product cannot be asserted as a means to avoid testifying “regarding facts learned while reviewing documents selected by . . . counsel.” *United States v. Pepper’s Steel & Alloys, Inc.*, 132 F.R.D. 695, 698 (S.D. Fla. 1990) (internal quotations omitted). In the event that the SEC were allowed to conduct itself as it has attempted to, “every witness that counsel prepares for deposition pursuant to Rule 30(b)(6) could assert the work product doctrine on the basis that he learned the facts while reviewing documents selected by [counsel].” *See id.* (internal quotations omitted).

“The attorney-client and work product privileges may not be generally raised against testifying.” *Woznicki v. Raydon Corp.*, No. 6:18-cv-2090-Orl-78GJK, 2019 U.S. Dist. LEXIS 193514, at \*13-14 (M.D. Fla. Oct. 25, 2019). *See Johnson v. Gross*, 611 F. App’x 544, 547 (11th Cir. 2015) (blanket privilege assertions are generally unacceptable). “If such an objection is made without a *proper* privilege log attached, it shall be deemed a nullity.” *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399, 401 (S.D. Fla. 2008). This is because “without a privilege log, the agency’s assertions of privilege would be effectively unreviewable.” *State v. United States Immigration & Customs Enf’t*, 438 F. Supp. 3d 216, 219 (S.D.N.Y. 2020) (citing *Balintulo v. Daimler AG*, 727 F.3d 174, 186 (2d Cir. 2013)). *See also Ctr. for Biological*

*Diversity v. Bernhardt*, No. 2:19-CV-14243, 2020 U.S. Dist. LEXIS 92370, at \*20 (S.D. Fla. May 26, 2020) (holding in an administrative context, “Accordingly, the Court concludes that deliberative documents may be withheld from the record only upon invocation of the deliberative process privilege, as documented in a privilege log”).

“Permitting a litigant to use a 30(b)(6) deposition to learn facts would not cause disclosure of work product information merely because a lawyer prepared the witness. As the *Pepper’s Steel* court explained, “[t]he revelation of facts relevant to the litigation does not necessarily reveal the origin of those facts or how those facts were selected or ordered.” *SEC v. Merkin*, 283 F.R.D. 689, 697 (S.D. Fla. 2012).

Thus, the Defendants’ questions involving the existence of evidence supporting the SEC’s claims were entirely appropriate and the objections were baseless. *See id.* *See also Protective Nat’l Ins. Co. v. Commonwealth Ins. Co.*, 137 F.R.D. 267, 280 (D. Neb. 1989) (reasoning, “There is simply nothing wrong with asking for facts from a deponent even though those facts may have been communicated to the deponent by the deponent’s counsel. But, depending upon how questions are phrased to the witness, deposition questions may tend to elicit the impressions of counsel about the relative significance of the facts; opposing counsel is not entitled to his adversaries’ thought processes”). In this case, the SEC’s objections were not based on how the questions were phrased to the witness. The SEC simply did not want to provide testimony of any facts or information that may have ever been *thought about* by the SEC or the SEC’s attorneys.

Further, “The courts have consistently held that the work product concept furnishes no shield against discovery, by interrogatories or by deposition, of the facts that the adverse party’s lawyer has learned, or the person from whom he has learned such facts, or the existence or nonexistence of documents, even though the documents themselves may not be subject to discovery.” 8 C. Wright & A. Miller, *Federal Practice & Procedure* § 2023, at 194 (1970) (footnote omitted).

The work product doctrine “does not protect the facts a Rule 30(b)(6) deponent is aware of that support a particular allegation in the corporation’s answer.” *Palma v. Metro PCS Wireless, Inc.*, No. 8:13-cv-698-T-33MAP, 2014 U.S. Dist. LEXIS 68034, at \*4 (M.D. Fla. Apr. 30, 2014). *See Hickman v. Taylor*, 329 U.S. 495, 511, 67 S. Ct. 385, 91 L. Ed. 451 (1947) (finding that work product protection does not extend to facts the attorney has in his possession). Moreover, “Plaintiffs are permitted to ask Defendant’s corporate representative about the facts Defendant relied upon to support its affirmative defenses, without inquiring about legal theory.” *Palma v. Metro PCS Wireless, Inc.*, No. 8:13-cv-698-T-33MAP, 2014 U.S. Dist. LEXIS 68034, at \*5 (M.D. Fla. Apr. 30, 2014).

“It seems fundamental that a defendant should be able to inquire into the facts upon which a plaintiff relies in support of its complaint.” *A.R. v. Dudek*, No. 12-60460-CIV-ZLOCH/HUNT, 2015 U.S. Dist. LEXIS 6426, at \*10 (S.D. Fla. Jan. 15, 2015). “[T]he argument that a lawyer would be involved in the preparation process is simply a truism which, if sufficient to preclude 30(b)(6) depositions, would eliminate that discovery tool.” *Id.*

The fact that attorneys happen to assist with SEC investigations and that the SEC designated an attorney as its designee does not change the analysis. As specifically discussed by the Middle District regarding the very same privilege objections with an attorney deponent: “Plaintiff’s counsel improperly instructed [the witness] not to answer on the basis of work product in response to questions that were facially aimed at eliciting factual information rather than [his] mental impressions or opinions.” *FTC v. Vylab Tec LLC*, No. 2:17-cv-228-FtM-99MRM, 2018 U.S. Dist. LEXIS 223374, at \*13 (M.D. Fla. Nov. 26, 2018).

The SEC knew or should have known that it was violating multiple rules of discovery by employing these disruptive tactics. The violations were willful.

#### Instructions Not to Answer

In the context of a Rule 30(b)(6) deposition, the court in *FTC v. Vylab Tec LLC*, No. 2:17-cv-228-FtM-99MRM, 2018 U.S. Dist. LEXIS 223374, at \*11 (M.D. Fla. Nov. 26, 2018), explained that an “objection made at a deposition ‘must be noted on the record, but the examination still proceeds’ and that ‘[a] person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).’” *FTC v. Vylab Tec LLC*, No. 2:17-cv-228-FtM-99MRM, 2018 U.S. Dist. LEXIS 223374, at \*11 (M.D. Fla. Nov. 26, 2018).

“[I]t is well established in the Eleventh Circuit that the scope of a Rule 30(b)(6) deposition is not strictly confined to the topics set forth in the notice. Instead, courts have found that, while Rule 30(b)(6) was intended to give notice of the subject matter that the corporate representative must be prepared to discuss, any relevant question may still be asked of the deponent, who must answer if he or she knows the answer.” *Christie v. Royal Caribbean Cruises, LTD*, No. 20-22439, 2021 U.S. Dist. LEXIS 129957, at \*15 (S.D. Fla. July 13, 2021).

“If a 30(b)(6) deponent is asked a question thought to be outside the scope of a notice, Defendants should have briefly asserted their objection and allowed the deposition to proceed.” *Christie v. Royal Caribbean Cruises, LTD*, No. 20-22439, 2021 U.S. Dist. LEXIS 129957, at \*13 (S.D. Fla.

July 13, 2021) (citing *Siegmund v. Bian*, 2018 U.S. Dist. LEXIS 153313, 2018 WL 4293148, at \*1 (S.D. Fla. Sept. 6, 2018).

Defendants did so at various points but went much further by crossing the line into instructing the witness not to answer on relevance and form grounds. By doing so, they violated Rule 30 because there are only three circumstances where an attorney can instruct a witness not to answer a question and none of them apply to many of the questions at issue: (1) if the information contained in the answer is protected by a privilege, (2) to enforce a court order, or (3) to suspend a deposition for the purposes of filing a Rule 30(d)(3) motion related to improper harassing conduct.

*Id.*

“Counsel did the witness no favors by repeatedly instructing him not to answer those questions . . . .” *Buckley Towers Condo., Inc. v. QBE Ins. Corp.*, No. 07-22988-CIV-MORE, 2008 U.S. Dist. LEXIS 49305, at \*31-32 (S.D. Fla. June 26, 2008). The proffered objections by The SEC’s Lead-Counsel and the Second Corporate Representative’s refusal to answer that the “document speaks for itself” was improper. “This is neither a valid objection nor a basis upon which counsel may instruct a witness not to answer.” *See Collins v. Int’l Dairy Queen, Inc.*, No. CIV.A. 94-95-4MACWDO, 1998 U.S. Dist. LEXIS 8254, 1998 WL 293314, at \*2 (M.D. Ga. June 4, 1998) (“With respect to relevant documents, it is not a valid objection in the deposition of a witness who has or may have some relevant knowledge concerning the document or its subject matter, that the document ‘speaks for itself.’ The questioning attorney ordinarily is entitled to inquire of a witness concerning his or her relevant knowledge concerning the contents and subject matter of a document”).

Furthermore, the SEC did not immediately file a motion for protection following the deposition. “On this basis alone, any otherwise meritorious arguments to the questions posed during the deposition were thus waived.” *Buckley Towers Condo., Inc. v. QBE Ins. Corp.*, No. 07-22988-CIV-MORE, 2008 U.S. Dist. LEXIS 49305, at \*25-26 (S.D. Fla. June 26, 2008). “The record also shows that there was nothing about the questioning that could be deemed oppressive, harassing, or in bad faith. Rule 30(d)(4) could thus not have been used by counsel as a cover for improperly instructing the witness not to answer.” *Id.* *See also Branca v. Sec. Ben. Life Ins. Co.*, 773 F.2d 1158, 1165 (11th Cir. 1985) (reversing with instructions to make factual findings regarding discovery violations where one party’s counsel instructed a deponent not to answer questions).

The questions asked of both the First Corporate Representative and the Second Corporate Representative were germane to the facts of the case and what evidence could or would be used against the Defendants at trial. Therefore, the SEC’s refusal to answer these relevant inquiries should not be countenanced.

Improper Speaking Objections

Additionally, the SEC's Lead Counsel's pervasive speaking objections and other attempts to frame or editorialize the testimony have tainted the testimony. "The rule further clarifies that testimony taken during a deposition is to be completely that of the deponent, not a version of the testimony which has been edited or glossed by the deponent's lawyer." *Christie v. Royal Caribbean Cruises, LTD*, No. 20-22439, 2021 U.S. Dist. LEXIS 129957, at \*10 (S.D. Fla. July 13, 2021). "That is, a witness must be allowed to provide an answer to the best of his or her ability, free from any influence by the attorney. If a witness is confused about a question, or if a question seems awkward or vague to the witness, the witness may ask the deposing counsel to clarify the question." *Id.*

Ultimately, the Federal Rules of Civil Procedure "do not permit attorneys representing deponents to (1) coach the client by raising rhetoric-filled objections designed to feed the deponent information or advice; (2) answer the substantive questions themselves, before the deponent has provided an under-oath substantive response; and (3) instruct the deponent to not answer questions in the absence of a legitimate privilege objection or a Court-ordered limitation on the subject matter." *United States v. Tardon*, 493 F. Supp. 3d 1188, 1247 (S.D. Fla. 2020) (citing *United States v. Amodio*, 916 F.3d 967, 972 (11th Cir. 2019)). See also *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993).

Here, the SEC's Lead Counsel continually attempted to recalibrate the testimony of the deponent and used speaking objections and other asides to cause the deponent to give second versions of answers that were more in line with the SEC's Lead Counsel's theory than they were with the deponent's legitimate testimony. The SEC's conduct demonstrates a recalcitrance and disrespectful refusal to provide discovery. Therefore, dismissal of this case is an appropriate remedy. *Maus v. Ennis*, 513 F. App'x 872, 878 (11th Cir. 2013).

**ii. Alternatively, Either Prohibiting the SEC From Supporting Its Claims or Striking the SEC's Pleadings Is Also an Appropriate Sanction**

District courts "have broad discretion in imposing consequences for abusive discovery practices or for a failure to preserve the integrity of the discovery process." *Chappel v. Boss Rain Forest Pet Resort, INC.*, No. 16-62779-CIV-DIMITROULEAS/S, 2018 U.S. Dist. LEXIS 238512, at \*2-3 (S.D. Fla. Jan. 29, 2018) (citing *Aztec Steel Co. v. Florida Steel Corp.*, 691 F.2d 480, 482 (11th Cir., Nov. 4, 1982)).

As an initial matter, the SEC should not be permitted to brandish privileges as both a sword and a shield. See *McGabee v. Massey*, 667 F.2d 1357, 1362 (11th Cir. 1982) (finding that a "privilege cannot be invoked to oppose discovery and then tossed aside to support a party's

assertions”). When an abuse has occurred under this doctrine, it is appropriate to preclude the introduction of evidence previously withheld on privilege grounds. See *SEC v. Zimmerman*, 854 F. Supp. 896, 898-99 (N.D. Ga. 1993) (finding in favor of the SEC where it ironically expressed concern about withheld information by a defendant pursuant to an asserted privilege); see also *Sciarretta*, 778 F.3d at 1213 (noting that similar gotcha tactics can be likened to “the long-disallowed use of the Fifth Amendment as both a sword and a shield”). Therefore, the SEC should now be barred from presenting evidence in support of any matter where it asserted a privilege improperly.

Additionally, where the SEC was either unable or refused to answer a question, it should similarly be prohibited from changing their position and later supporting the claim. In *QBE Ins. Corp.*, the court found that the plaintiff should be sanctioned and precluded from offering any testimony at trial on the subjects which its designee was unable or unwilling to testify about at the 30(b)(6) deposition since the discovery deadline had expired, the plaintiff did not fulfill its obligation to properly prepare its own designee, the plaintiff waited until the corporate representative deposition began to give notice of its designee’s inadequacy, and because its designee could have (but did not) review substantially more material in order to be a more-responsive witness. *Id.* at 681.

Furthermore, “[w]hen a corporation’s designee legitimately lacks the ability to answer relevant questions on listed topics and the corporation cannot better prepare that witness or obtain an adequate substitute, then the “we-don’t-know” response can be binding on the corporation and prohibit it from offering evidence at trial on those points.” *Id.* at 690. “[T]he lack of knowledge answer is itself an answer which will bind the corporation at trial.” *Id.* (citations omitted). This conclusion is “a variation on the rule and philosophy against trial by ambush.” *Id.* “It would be patently unfair to permit [the responding party] to avoid providing a corporate deposition designee on certain topics...yet allow it to take a position at trial on those very same issues by producing testimony which [the requesting party] was unable to learn about during a pre-trial 30(b)(6) deposition.” *Id.* at 681. “[S]trict adherence to discovery rules is necessary to prohibit not only trial by ambush, but discovery gaming wherein a party holds back evidence” *Kearney Partners Fund, LLC v. United States*, 946 F. Supp. 2d 1302, 1317-1318 (M.D. Fla. 2013) (excluding non-disclosed evidence based on prejudice); see also *Goodman-Gable-Gould Co. v. Tiara Condo. Assoc., Inc.*, 595 F.3d 1203 (11th Cir. 2010) (affirming exclusion of evidence of an unpled misrepresentation theory because it had not been disclosed).Based on the SEC improperly invoking a variety of privileges to avoid producing discovery and failure to answer any substantive questions about the claims against the Defendants, if the case is not involuntarily dismissed, the SEC should be prohibited from supporting its claims or its pleadings should be stricken.

**IV. CONCLUSION**

Based upon the foregoing, this matter should be outright dismissed. Alternatively, based on its improper objections, assertions of privilege, testified lack of knowledge, or refusal to disclose or identify evidence, the SEC should be prohibited from supporting or opposing a factual position and should be barred from presenting evidence on topics that it improperly refused to testify about.

**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.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been served upon all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing on this 17th day of September, 2021.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**RE-NOTICE OF THE 30(b)(6) DEPOSITION OF UNITED STATES SECURITIES & EXCHANGE COMMISSION**

**PLEASE TAKE NOTICE** that, pursuant to Rule 30(b)(6) of the Federal Rules of Procedure, Defendant Joseph W. LaForte will take the deposition of the following deponent on the date, time and location/manner indicated below:

<b>NAME</b>	<b>DATE</b>	<b>TIME</b>	<b>LOCATION/MANNER</b>
Plaintiff Securities and Exchange Commission (the "Commission")	July 9, 2021	10:00 a.m. to 6:00 p.m.	Remotely (a link will be provided by Court Reporter)

The Commission shall designate one or more individuals who consent to testify on its behalf regarding the subjects listed in Exhibit A, attached hereto. The deposition will continue from day to day before a person duly authorized to administer oaths until concluded and shall be recorded by stenography, audio and/or videotape. You are invited to attend the deposition and exercise your rights under the Federal Rules of Civil Procedure.

Exhibit "A"

Plaintiff, the United States Securities and Exchange Commission ("the Commission"), shall designate one or more individuals who consent to testify on its behalf regarding the subjects set forth below:

1. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Complete Business Solutions Group, Inc. ("CBSG") made materially misleading statements and omissions to investors in connection with the purchase, offer, or sale of securities regarding:
  - a. CBSG's underwriting practices;
  - b. CBSG's loan default rate;
  - c. insurance offered by CBSG;
  - d. CBSG's regulatory history;
  - e. the true result of the New Jersey Division of Securities' investigation of CBSG;
  - f. Joseph LaForte's criminal history;
  - g. Lisa McElhone and Joe Cole's receipt of funds;
  - h. the LME 2017 Family Trust's receipt of funds;
  - i. Joseph LaForte's investment in CBSG;
  - j. Dean Vagnozzi and ABFP regulatory histories;
  - k. Perry Abbonizio's regulatory history;
2. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Joseph LaForte acted as the *de facto* CEO of CBSG and Full Spectrum Processing;
3. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Lisa McElhone was a control person of CBSG and Full Spectrum Processing;
4. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that no exemption from registration existed with respect to the securities allegedly issued by the Defendants.
5. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual

portions of the Staff's "Action Memo" to the Commission, that support the Commission's disgorgement calculation as to each Defendant.

6. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's claims that the Defendant's actions presented a risk to investor funds when it filed its Complaint.
7. The Commission and Commission staff's communications with attorney Shane Heskin prior to the filing of the Commission's enforcement action, including promises made to Heskin or his clients.
8. The Commission's guidelines, policies and procedures regarding joint action with, or direction or control by Commission staff of a private party involved in an investigation or private action.
9. The Commission's guidelines, policies and procedures regarding the appointment of a Receiver.

Dated: July 1, 2021

Respectfully submitted,

**FRIDMAN FELS & SOTO, PLLC**

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Daniel Fridman, Esq.

*Co-Counsel for Joseph W. LaForte*

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*/s/Alejandro Soto*

\_\_\_\_\_  
ALEJANDRO SOTO

Florida Bar No. 172847

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of July, 2021, I served the foregoing Plaintiff's Notice of Taking 30(b)(6) Deposition via email to all counsel of record.

/s/ Alejandro O. Soto  
ALEJANDRO O. SOTO

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

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

Defendants.

\_\_\_\_\_ /

Via Zoom Videoconference  
Broward County, Florida  
Friday, July 9, 2021  
10:21 a.m. to 1:53 p.m.

DEPOSITION OF RAYMOND ANDJICH

Taken before Marlene Gutierrez, Notary  
Public, State of Florida at Large, pursuant to Notice  
of Taking Deposition filed in the above cause.

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On behalf of Defendant Lisa McElhone.

ALSO PRESENT:  
Joshua Levine  
David Ferguson  
Michael Furman  
Brian Miller

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I N D E X

Witness

RAYMOND ANDJICH

Direct Examination By Mr. Soto 4

^ PLAINTIFF'S ^ DEFENDANT'S EXHIBITS

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(Exhibits retained by Mr. Soto.)

1 THE COURT REPORTER: Due to the current Florida  
2 Supreme Court administrative order, the parties will  
3 stipulate that the court reporter may swear in the  
4 witness via videoconference and that the witness has  
5 verified that he is, in fact, Raymond Andjich.

6 Would the attorneys please state your name and  
7 so stipulate, starting with the plaintiff.

8 MS. BERLIN: This is Amie Riggle Berlin on  
9 behalf of the U.S. Securities and Exchange  
10 Commission, and we so stipulate.

11 MR. SOTO: This is Alex Soto on behalf of  
12 Defendant Joseph LaForte, and we so stipulate.

13 MR. ROSENBLUM: This is Douglas Rosenblum on  
14 behalf of the court-appointed receiver, Ryan  
15 Stumphauzer; and we so stipulate.

16 MR. BACHNER: Michael Bachner, B-A-C-H-N-E-R,  
17 attending on behalf of Lisa McElhone, and we so  
18 stipulate.

19 MR. FUTERFAS: Alan Futerfas, A-L-A-N  
20 F-U-T-E-R-F-A-S, also on behalf of Lisa McElhone.

21 THE COURT REPORTER: Sir, would you raise your  
22 right hand, please.

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25 Thereupon --

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RAYMOND ANDJICH

was called as a witness by the Defendant and, having been first duly sworn, and responding, "I do," was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SOTO:

Q Good morning, sir.

A Good morning.

Q Would you please state your name for the record.

A My name is Raymond Andjich. That's spelled A-N-D-J-I-C-H.

Q Would it be okay if I called you Ray?

A Absolutely.

Q Great. Thank you.

Where do you currently work?

A I work for a third-party government contractor by the name of CLJ Consulting, but I am assigned to the Miami regional office of the United States Securities and Exchange Commission. And that's Brickell Avenue, Miami, Florida.

Q And how long have you been an independent contractor for the SEC?

A Since May of 2015.

1 Q Okay. And what do you do for the SEC as an  
2 independent contractor?

3 A I conduct research as needed, I sit in on  
4 interviews when requested, and I would say that's --  
5 that's generally what I do.

6 Q Okay. What did you do before your stint with  
7 the SEC as an independent contractor?

8 A I was a special agent with the Federal Bureau  
9 of Investigation.

10 Q How long did you hold that position?

11 A 31 years, from February of 1984 through April  
12 of 2015.

13 Q I imagine you interviewed probably hundreds of  
14 witnesses during your 30-plus years as an FBI agent?

15 A Many more than that.

16 Q More than that.

17 Did you ever train other agents with respect to  
18 how to build an investigation, interview witnesses,  
19 things of that nature?

20 MS. BERLIN: I object on grounds of relevance.

21 This is the deposition of the SEC. Mr. Andjich's  
22 work at the FBI is irrelevant, and the FBI is not  
23 here to object to Mr. Andjich testifying about his  
24 duties there and whether they might be confidential  
25 or otherwise protected by the investigatory or law

1 enforcement privileges. And Mr. Andjich is also --  
2 there might also be attorney work product. They're  
3 not here to object, so I object to the questioning  
4 for the reasons stated.

5 MR. SOTO: Thank you. Unless you're  
6 instructing him not to answer --

7 Mr. Andjich -- Ray, you can answer.

8 BY MR. SOTO:

9 Q And I don't hear Amie instructing you not to  
10 answer, so did you train -- in your capacity as an FBI  
11 agent over the course of 30 years, did you train others  
12 with respect to how to build cases and interview  
13 witnesses?

14 A I was designated as a training agent when new  
15 agents would come to a squad.

16 Q Okay. And as Amie just indicated, you're here  
17 as the SEC's 30(b)(6) designee, correct?

18 A Yes.

19 Q Okay. So for purpose of this deposition, when  
20 I ask you a question, when I refer to you, I am going to  
21 be referring to you in your capacity as an SEC 30(b)(6)  
22 designee for this deposition. Okay?

23 A Yes.

24 Q All right. If I want to have you answer as  
25 Ray Andjich, in your personal capacity, I will make that

1 clear, but if I don't, you understand that you'll be  
2 answering in the capacity as the SEC's 30(b)(6)  
3 designee. Is that fair?

4 A Yes.

5 Q Okay. So first question, Ray, is, did you play  
6 a role in the investigation of this particular case?

7 A Yes. I provided assistance to the staff  
8 attorneys that worked this matter.

9 Q Okay. What sort of assistance did you provide?

10 MS. BERLIN: I object on grounds of  
11 investigatory privilege, attorney-work-product  
12 privilege, and direct the witness not to testify  
13 about specific work he did in connection with the  
14 SEC's nonpublic investigation.

15 MR. SOTO: Amie, some of the work he did is  
16 public, in the sense that he prepared declarations  
17 that are on the public docket. Are you instructing  
18 him not to answer questions with respect to those  
19 items, or his role in those items?

20 MS. BERLIN: I'll just object on a  
21 question-by-question basis. So it depends on the  
22 question that you ask him.

23 BY MR. SOTO:

24 Q I'll repeat the question. Did you play a role  
25 in the investigation of this case, and if so, in what

1 capacity?

2 MS. BERLIN: That's been asked and answered.

3 That's not the question I objected to.

4 MR. SOTO: You objected to in what capacity?

5 MS. BERLIN: I object to the witness testifying  
6 about any work that he did concerning the SEC's  
7 nonpublic investigation, on grounds of investigatory  
8 privilege, attorney work product, as well as  
9 deliberative process privilege. So I am directing  
10 the witness not to answer that general, broad  
11 question.

12 MR. SOTO: Okay. Let's go to Exhibit 1.

13 (Defendant's Exhibit 1 was marked for  
14 identification.)

15 BY MR. SOTO:

16 Q This is a copy of the SEC's amended complaint.  
17 It's docket entry 119.

18 Have you seen this complaint?

19 A Yes.

20 Q Did you review it before today's deposition?

21 A I reviewed the motion for temporary restraining  
22 order, with the annotated footnotes. I did read this  
23 document.

24 Q Okay. What I'd like to do is I'd like to go  
25 over some terminology that I'll be using during the

1 course of this deposition, and I'd like to use the  
2 complaint to help us go through that terminology. That  
3 way, when I use a particular word or phrase, you and I  
4 will understand what I mean by it. Is that fair?

5 A Yes, it is.

6 Q Okay. So in the amended complaint, the SEC  
7 breaks down the timing of the offer and sale of the  
8 notes at issue in this case into three phases.

9 MR. SOTO: Let's go to paragraph 2.

10 BY MR. SOTO:

11 Q And I'll give you a moment to read that.

12 Do you see paragraph 2?

13 A Yes.

14 Q So paragraph 2 refers to a time period between  
15 August 2012 to December 2017, where the SEC alleges  
16 Par Funding offered and sold notes to the public  
17 directly and for a period of time through sales agents.

18 Do you see that?

19 A Yes.

20 Q Okay. This is phase one, according to the  
21 SEC's complaint.

22 Would you agree with that?

23 MS. BERLIN: I object on the grounds -- I  
24 haven't seen anything on the document referring to  
25 phase one. On the screen, we're only seeing

1 paragraphs 2, 3, and 4, and I don't see any  
2 reference to phase one.

3 MR. SOTO: Amie, I'm going to, at this point,  
4 ask you not to engage in speaking objections. The  
5 proper objection is an objection to the form. If  
6 you have an issue with the question, that is the  
7 appropriate objection. At this point, you're  
8 coaching the witness, and we're just getting  
9 started, so I want to make that point now. So if  
10 you're not directing him not to answer --

11 BY MR. SOTO:

12 Q Mr. Andjich, the question is, would you agree  
13 that this is phase one of the time period, as alleged by  
14 the SEC's complaint?

15 MS. BERLIN: And I, once again, object. Again,  
16 so the record is clear and the Court understands  
17 what we're seeing on our screen -- by the way,  
18 Mr. Soto, is this being video-recorded?

19 MR. SOTO: It is not.

20 MS. BERLIN: Okay. So the record is clear, on  
21 the screen we're not seeing anything that says  
22 phase one. So I object, and I want the record to be  
23 clear what Mr. Andjich is being shown at this time.

24 MR. SOTO: You're confused about whether this  
25 is phase one? Is that what your objection is, that

1 that's confusing to you?

2 MS. BERLIN: My objection is, you're showing  
3 Mr. Andjich a paragraph and asking him if this  
4 paragraph refers to phase one.

5 MR. SOTO: No, that was not my question. My  
6 question was not whether phase one appears in this  
7 paragraph. My question was whether this time  
8 period -- if he agrees that this time period refers  
9 to phase one, as alleged by the SEC. But I can  
10 refer you to paragraph 49, if that helps.

11 BY MR. SOTO:

12 Q Okay. Mr. Andjich, do you see that  
13 paragraph 49 reads that from no later than August 2012  
14 until December 2017, Par Funding sold promissory notes  
15 directly to investors?

16 A Yes.

17 Q Okay. Do you see the subheading above that  
18 that refers to this time period as phase one of the  
19 offering?

20 A I do.

21 Q Okay.

22 MR. SOTO: Let's go back to paragraph 2.

23 BY MR. SOTO:

24 Q Okay. So in paragraph 2, the second sentence  
25 says "from August 2012 until approximately

1 December 2017." Same time period, correct?

2 A Yes.

3 Q Okay. So we agree this is phase one?

4 A Yes.

5 Q Okay. And during this time period, Par Funding  
6 offered and sold notes directly to the public, correct?

7 A That's what's stated.

8 Q Okay. And can we agree that, just for purposes  
9 of terminology, the individuals who purchased these  
10 notes -- we'll call them phase one investors. Is that  
11 fair?

12 A Okay.

13 Q All right. So when I refer to phase one  
14 investors, you'll understand the time period that I'm  
15 talking about, correct?

16 A Yes.

17 Q All right.

18 MR. SOTO: Let's go to paragraphs 3 and 4.

19 BY MR. SOTO:

20 Q I'll give you a minute to review that. Let me  
21 know when you're done.

22 A All right.

23 Q All right. Let's go to paragraph 70, so  
24 there's no confusion.

25 Okay. So just above paragraph 70, do you see

1 that it says phase two of the offering?

2 A I do.

3 Q Okay. Paragraph 70, you would agree, says that  
4 phase two began from January 2018 through the present,  
5 that being the date of the amended complaint, July 27,  
6 2020, correct?

7 A Correct.

8 Q Okay. So, again, the terminology that I'll be  
9 using for phase two is going to refer to this period,  
10 where, according to the SEC's complaint, Par Funding  
11 began selling notes to agent funds, correct?

12 A Yes.

13 Q Okay. And you understand that during  
14 phase two, agent funds offered and sold their own notes  
15 to investors. Is that fair?

16 A Yes.

17 MR. SOTO: So let's go to paragraph 7 of the  
18 amended complaint.

19 BY MR. SOTO:

20 Q Okay. And paragraph 7 refers to some of the  
21 individuals who operated the agent funds, correct?

22 A Yes.

23 Q Okay. Those individuals include Vagnozzi,  
24 Michael Furman, and John Gissas as operating agent  
25 funds?

1 A That's what it states, yes.

2 Q Okay. It also says that the purchasers of  
3 notes or -- the securities that the agent funds were  
4 selling are referred to as limited partners. Do you see  
5 that? They sell promissory notes and limited  
6 partnership interests to investors.

7 A Yes.

8 Q Okay. So phase two investors, just so we are  
9 all in agreement, I'll be referring to them as LPs.  
10 Okay?

11 A Okay.

12 Q So when I refer to LPs, I'll be referring to  
13 investors who purchased investments from the agent  
14 funds. Is that fair?

15 A Yes.

16 Q Okay.

17 MS. BERLIN: Mr. Soto, please clarify so that I  
18 understand. When you refer to LPs, are you  
19 referring to the promissory notes as well as limited  
20 partnership interests?

21 MR. SOTO: I'm referring to any investors who  
22 purchased notes or interests from the agent funds in  
23 particular.

24 MS. BERLIN: Got it. Thank you.

25 MR. SOTO: We want to capture that just as one

1 unit so that there's no confusion.

2 MS. BERLIN: Thank you.

3 MR. SOTO: Let's go to paragraph 92.

4 BY MR. SOTO:

5 Q Okay. You would agree that the LPs in  
6 Mr. Vagnozzi's agent funds opened accounts at an IRA  
7 administrator company he directed them to, correct?

8 A That's my understanding, yes.

9 Q Okay. And at paragraph 96, you would agree  
10 that the agent funds offered more than just investment  
11 interests in MCAs; they also offered investment  
12 interests in investments having nothing to do with MCAs,  
13 correct?

14 MS. BERLIN: I object. Are we referring to  
15 paragraph 96, Mr. Soto?

16 MR. SOTO: We are.

17 MS. BERLIN: Are you asking the witness to tell  
18 you what paragraph 96 says, or are you asking him  
19 for information beyond what is stated in  
20 paragraph 96?

21 MR. SOTO: I asked the witness whether he would  
22 agree, having read paragraph 96, that the agent  
23 funds offer more than just investment interests in  
24 MCAs; they offer investment interests in other  
25 investment opportunities.

1 MS. BERLIN: So I object. This is not based on  
2 what we're seeing on the screen. We're seeing on  
3 the screen paragraph 96, which is only referencing  
4 one of the agent funds.

5 BY MR. SOTO:

6 Q Okay. Mr. Andjich, would you agree that this  
7 particular agent fund offered more than just investment  
8 opportunities in MCAs; this particular agent fund also  
9 offered three other investment opportunities, correct?

10 A Well, I would have to see the actual document  
11 that the investor had signed to answer whether or not  
12 there were other investment opportunities. I mean,  
13 that's what the complaint says. I have no reason to  
14 doubt that fact.

15 Q Okay. That was my next question.

16 You have no reason to doubt what's alleged in  
17 the complaint, do you?

18 A No.

19 Q Okay. Can you read the first line of  
20 paragraph 96.

21 A "Attendees were given a one-page flyer  
22 describing four investment opportunities, one of which  
23 was MCAs."

24 Q Okay. Do you know what an MCA is?

25 A Merchant cash advance.

1 Q Okay. So you see that in paragraph 95, above  
2 paragraph 96, it references a dinner hosted by Dean  
3 Vagnozzi, correct?

4 A Yes.

5 Q Okay. And in paragraph 96, you understand that  
6 the word "attendees" refers to individuals who attended  
7 that dinner, correct?

8 A Yes.

9 Q Okay. So individuals who attended that dinner  
10 were given a one-page flyer describing four investment  
11 opportunities. You would agree that that would be  
12 investment opportunities in ABFP, according to  
13 paragraph 95, correct?

14 A Yes.

15 Q Okay. And it says "four investment  
16 opportunities, one of which was MCAs," correct?

17 A That's what it states.

18 Q Okay. So would it be fair to say that the  
19 three other investment opportunities offered by ABFP on  
20 that evening to those attendees did not have anything to  
21 do with MCAs?

22 MS. BERLIN: Objection. Calls for speculation.

23 And it's also beyond the scope of the notice of  
24 deposition.

25 BY MR. SOTO:

1 Q Mr. Andjich, you can answer.

2 MS. BERLIN: If the witness knows what you're  
3 referring to, he can answer; however, it would be in  
4 his individual capacity and not on behalf of the  
5 SEC. This was not a noticed topic.

6 MR. SOTO: Amie, you are, again, coaching the  
7 witness. I'd ask that you refrain from doing so,  
8 and that you limit your objections to objections to  
9 the form, which is what is appropriate in this  
10 setting.

11 BY MR. SOTO:

12 Q So, Mr. Andjich, I'll ask you again --  
13 (Overlapping speakers.)

14 MS. BERLIN: Please give me the legal cite, or  
15 what you're relying on, that the only proper  
16 objection is objection to form in a deposition. I  
17 certainly don't want to break a rule that I don't  
18 know about.

19 MR. SOTO: Okay. I'm not going to give you the  
20 legal cite. You're supposed to understand the rules  
21 before you get involved in a deposition, so I'm not  
22 going to educate you with respect to the rules. But  
23 I'm going to ask that you not coach the witness.  
24 This is the second time I've asked you to do that.

25 BY MR. SOTO:

1 Q So, Mr. Andjich, again, would you agree that  
2 attendees at Mr. Vagnozzi's November 21st, 2019, dinner  
3 were given an opportunity, by virtue of this flyer, to  
4 invest in four investment opportunities, only one of  
5 which had anything to do with MCAs?

6 MS. BERLIN: And I object that it calls for  
7 speculation, and it's outside of the scope of the  
8 30(b)(6) deposition notice. Therefore, if  
9 Mr. Andjich can answer the question, his answer is  
10 in his personal capacity and not on behalf of the  
11 SEC.

12 BY MR. SOTO:

13 Q Mr. Andjich, you can answer.

14 A I recall the flyer, seeing the flyer. As I sit  
15 here today, I don't have a specific recollection of the  
16 other investment opportunities that were being offered.

17 What does, perhaps, come to mind is real estate  
18 and then a -- and I forgot the terminology -- life  
19 settlement. But, you know, I'd like to see the flyer,  
20 then I could, you know, speak more accurately.

21 Q Okay.

22 MR. SOTO: Let's go to paragraph 67.

23 BY MR. SOTO:

24 Q Okay. Paragraph 67 reads: The agent fund PPMs  
25 distributed to potential investors state that the agent

1 fund is raising money to invest in an MCA company.

2 Do you see that?

3 A Yes.

4 Q Okay. Fair to say that the agent funds  
5 prepared and issued their own PPMs?

6 MS. BERLIN: Objection. Outside of the scope  
7 of the deposition notice, and, therefore,  
8 Mr. Andjich would not be testifying on behalf of the  
9 SEC. I also object that this is not a memory test.  
10 And if you're asking about a specific document,  
11 there are more than 44 agent funds. So I object  
12 that this is really broad and he's not being shown  
13 any specific document. He's now being expected to  
14 testify based on his memory. But the witness can  
15 answer in his individual capacity.

16 THE WITNESS: Could you repeat the question?

17 BY MR. SOTO:

18 Q Yes.

19 Would you agree that the agent funds prepared  
20 and issued their own PPMs?

21 A My recollection is that a lawyer by the name of  
22 John Pauciulo -- I don't know if I'm pronouncing that  
23 correctly -- actually prepared the offering materials  
24 relative to each of these funds, that the funds did not  
25 actually prepare the documents themselves.

1 Q Okay. He prepared them for the agent funds?

2 A At the request of Mr. Vagnozzi.

3 Q Correct.

4 Do you have any evidence that Par Funding  
5 played any role in asking Mr. Pauciulo to prepare the  
6 PPMs for those agent funds?

7 MS. BERLIN: Objection. Just a moment.

8 Objection. This, again, is not within the scope of  
9 the deposition notice. And you're asking  
10 Mr. Andjich to -- I'm sorry, Mr. Soto. Repeat your  
11 question so that I can make sure my objection is  
12 proper.

13 MR. SOTO: Madam Court Reporter, can you read  
14 it back.

15 (The requested portion of the record was read  
16 back by the reporter as above recorded.)

17 MS. BERLIN: So, again, I object. It's outside  
18 of the scope of the deposition notice, and this  
19 witness has not been prepared on this subject  
20 matter. And so if he chooses to answer, it's in his  
21 individual capacity and not on behalf of the SEC.

22 MR. SOTO: Okay. I disagree with you, Amie,  
23 but if you're not instructing him to not --

24 (Overlapping speakers.)

25 MS. BERLIN: Please tell me which topic. Which

1 topic would this fall under, Mr. Soto? Maybe I'm  
2 wrong.

3 MR. SOTO: If you look at Exhibit A, we asked  
4 for a designee prepared to answer questions that  
5 support the Commission's allegations, causes of  
6 actions, or requests for relief in the amended  
7 complaint, at docket entry 119, with respect to  
8 materially misleading statements and omissions to  
9 investors in connection with the purchase offer or  
10 sale of securities in this matter. And the agent  
11 funds and their sale of investments are part of this  
12 complaint. And I am asking about the agent fund  
13 PPMs which are part of this complaint. Obviously,  
14 they're alleged in the complaint, and I am making  
15 specific reference to a paragraph within the  
16 complaint. So, again, there's no need for us to  
17 debate --

18 MS. BERLIN: Well, we can litigate that. Yeah,  
19 I'm not going to respond to any of your comments  
20 today, but I will repeat my objection. I do not  
21 believe this falls -- whether or not any of the 44  
22 agent funds were directed -- or had CBSG directing  
23 Mr. Pauciulo is not within the scope of the  
24 deposition notice, and it is also not something that  
25 is alleged in the complaint.

1           So to the extent Mr. Andjich has reviewed the  
2           entire file in this case and is prepared to testify,  
3           he does so in his individual capacity, not on behalf  
4           of the SEC.

5           MR. LEVINE: Amie, I'm going to ask that you  
6           not give a speech --

7           THE COURT REPORTER: Who's speaking? I don't  
8           know who's speaking.

9           MR. LEVINE: Sorry. This is Josh Levine.

10          Amie, it's sufficient to say "outside the  
11          scope" and move along. And if we need to litigate  
12          it later, we can litigate it later, but --

13          MS. BERLIN: I'm not going to respond,  
14          Mr. Levine --

15          MR. LEVINE: What's that?

16          MS. BERLIN: I'm not going to respond to you or  
17          Mr. Soto, with your criticisms, or whatever. I'm  
18          going to state my objections --

19          MR. LEVINE: Outside the scope --

20          (Overlapping speakers.)

21          MR. LEVINE: Speaking objections are improper.  
22          We're done.

23          MS. BERLIN: Mr. Levine, you're not even  
24          representing the witness today; Mr. Soto is. So  
25          this is Mr. Soto's deposition, not -- I believe you

1 both represent the same party.

2 But it is important to explain what I've  
3 stated. So I restate my objection, and the witness  
4 can testify in his individual capacity, if he knows  
5 the answer to that question.

6 MR. FUTERFAS: I'm going to lodge an objection.

7 THE COURT REPORTER: Who's speaking? I don't  
8 know who's speaking.

9 MR. FUTERFAS: Alan Futerfas. I announced  
10 myself. It's Alan Futerfas. I'm a lawyer for Lisa  
11 McElhone.

12 I'm going to lodge an objection for the day,  
13 and that is that the defense is entitled to a  
14 certain amount of time to conduct a deposition.

15 And, Ms. Berlin, if you are going to end up  
16 taking 50 percent of the time by lengthy objections  
17 to every single question, then I'm going to object  
18 that our time is not being -- we are not being  
19 permitted appropriate time during the deposition and  
20 will have to continue day to day to day until we  
21 actually get our seven hours of deposition time.

22 So if you want to lodge just a continuing  
23 objection, Ms. Berlin, to every single question on  
24 every possible ground, you can do that now, and that  
25 will save us a lot of time litigating later. Thank

1           you.

2           MR. SOTO: Amie, I'm going to join in that  
3           objection. I was about to say the same thing. If  
4           you continue to engage in speaking objections and  
5           take up the bulk of the time here, we're going to  
6           ask the judge for additional time, to compensate for  
7           the time you took up in your unnecessary speaking  
8           objections.

9           MS. BERLIN: And, Mr. Soto, I will remind you  
10          that you and Mr. Cutercross took breaks with your  
11          witness, of 10 to 15 minutes at times during your  
12          client's deposition, and I extended you the courtesy  
13          of not criticizing you on the record, and was very  
14          professional and courteous. I will state the  
15          objections that need to be stated so that the judge  
16          can review the transcript and understand the basis  
17          for the objections. So I stated my objection to  
18          this question quite some time ago, and I don't need  
19          to repeat it.

20         BY MR. SOTO:

21           Q     Mr. Andjich, you testified that the agent funds  
22           had their PPMs prepared by an attorney, John Pauciulo,  
23           correct?

24           A     Yes.

25           Q     Okay. And my question was, do you have any

1 knowledge, any evidence, that Par Funding directed John  
2 Pauciulo to play any role in preparing the PPMs for the  
3 agent funds?

4 MS. BERLIN: Objection. It's outside the scope  
5 of the deposition notice. And Mr. Andjich, if he  
6 knows the answer to this, would not be testifying on  
7 behalf of the SEC, but in his personal capacity as  
8 an individual.

9 BY MR. SOTO:

10 Q Mr. Andjich, you can answer the question.

11 A As I sit here today, I don't have a specific  
12 recollection. If there is a document or something you'd  
13 like to show me which might refresh my recollection, I'd  
14 be happy to take a look at it.

15 Q Mr. Andjich, there wouldn't be a document,  
16 because, to my knowledge, there is no such evidence.  
17 I'm asking you whether you're aware of any evidence of  
18 the agent funds taking direction from -- or rather, John  
19 Pauciulo taking direction from Par Funding with respect  
20 to the preparation of the PPMs for the agent funds?

21 MS. BERLIN: Objection. It's outside of the  
22 scope of the deposition notice. And I believe this  
23 question has been asked and answered. If  
24 Mr. Andjich can testify about this, he would be  
25 doing so in his individual capacity and not binding

1 the Securities and Exchange Commission.

2 BY MR. SOTO:

3 Q Is that correct, Mr. Andjich, that you have no  
4 knowledge and you have seen no evidence that Par Funding  
5 directed John Pauciulo to prepare PPMs for the agent  
6 funds? Is that correct?

7 MS. BERLIN: Again, I object.

8 MR. SOTO: Amie, your objection is noted.

9 MS. BERLIN: I object. It misstates  
10 Mr. Andjich's testimony. This is outside of the  
11 deposition notice, and he would be testifying in his  
12 individual capacity regarding his testimony about  
13 Mr. Pauciulo and the agent funds, and CBSG and  
14 Mr. Pauciulo.

15 MR. FERGUSON: This is David Ferguson.

16 Alex, this isn't going to work. You can give  
17 the court a call. I've never seen anything like  
18 this. This isn't going to work.

19 MR. SOTO: Thank you, David. I'm going to keep  
20 trying, but I hear you.

21 BY MR. SOTO:

22 Q Mr. Andjich, you can answer.

23 A I think I gave you my answer. I don't have a  
24 specific recollection, but if there is a document that  
25 might suggest that that's the case, I'd gladly take a

1 look at it.

2 Q Okay.

3 MR. SOTO: Let's turn to paragraph 87 of the  
4 amended complaint.

5 BY MR. SOTO:

6 Q Okay. Mr. Andjich, fair to say that one of the  
7 agent funds, referred to as ABFP, prepared their own  
8 Form Ds with the Commission, giving notice of their  
9 individual offerings?

10 MS. BERLIN: Objection. It's outside of the  
11 scope of the deposition notice. Therefore,  
12 Mr. Andjich does not bind the SEC. And if you can  
13 identify the topic, Mr. Soto, then it would save me  
14 from having to object to some of your questions.

15 MR. SOTO: I've stated the topic, Amie.

16 BY MR. SOTO:

17 Q Mr. Andjich, you can answer the question.

18 A That's what the complaint states, yes.

19 Q Okay. Are you aware of any evidence to the  
20 contrary?

21 MS. BERLIN: Hold on a minute. Again, it's  
22 outside of the scope of the deposition notice.  
23 Mr. Andjich has not been prepared about this matter,  
24 and if he testifies about it, it is in his personal  
25 capacity; it's not binding the Securities and

1 Exchange Commission.

2 BY MR. SOTO:

3 Q Mr. Andjich, do you remember the question?

4 A Could you repeat it?

5 Q Based on the evidence that you reviewed in your  
6 capacity as the 30(b)(6) designee for the SEC, would you  
7 agree that the agent funds, the ABFP agent fund,  
8 prepared its own Form Ds with the Commission, giving  
9 notice of its own individual offerings?

10 MS. BERLIN: And I repeat my objection.

11 THE WITNESS: Well, that's what the complaint  
12 states, and I have no reason to doubt it. I think I  
13 have seen those, one or more of those documents,  
14 yes.

15 BY MR. SOTO:

16 Q Okay. Having reviewed those documents, would  
17 you agree with that statement, that ABFP prepared their  
18 own Form Ds in connection with their own offerings?

19 MS. BERLIN: Objection. Mr. Andjich has no  
20 personal knowledge about who prepared the documents,  
21 it's not alleged, and it's outside of the scope of  
22 the deposition notice.

23 BY MR. SOTO:

24 Q Mr. Andjich, you can answer.

25 A I'll stand by what the complaint states.

1 Q Mr. Andjich, you just referenced having seen a  
2 couple of Form Ds, and I'm asking you based on -- not  
3 just on the complaint, but on your review of the  
4 evidence to include what you just said you saw.

5 A Well, if you could point me to a specific piece  
6 of evidence on the Form D, I'll gladly take a look at  
7 it.

8 Q We're going to be going through a lot of  
9 exhibits today. I'm asking you, based on your  
10 recollection of the Form Ds that you just testified you  
11 reviewed, whether you would agree that the ABFP agent  
12 funds filed their own Form Ds in connection with their  
13 own offerings.

14 A I don't know how to answer that, because if by  
15 "ABFP funds," you're referring to Vagnozzi funds --

16 Q I am.

17 A -- I would say yes. But there were many, many  
18 other agent funds, and I don't know if Form Ds were  
19 filed in those instances.

20 Q I asked only with respect to ABFP, the Dean  
21 Vagnozzi funds.

22 A I have seen Form Ds.

23 Q Okay. Do you have any evidence --

24 A How many were filed, as I sit here today, I  
25 don't recall.

1 Q Okay. I didn't ask you how many. That's fine.

2 Do you have any evidence, or are you aware of  
3 any evidence, that Par Funding played any role in  
4 preparing those Form Ds on behalf of the agent funds?

5 MS. BERLIN: I object on grounds that this is  
6 outside of the scope of the deposition notice; and,  
7 therefore, if Mr. Andjich testifies about this, it  
8 would be in his individual capacity and not  
9 representing the SEC.

10 BY MR. SOTO:

11 Q You can answer, Mr. Andjich.

12 A I think you would have to look at each specific  
13 Form D, because the last line item, there is a  
14 signature -- I mean, it states who actually prepared the  
15 Form D.

16 Q Okay. You mentioned earlier that you --

17 MS. BERLIN: Alex, I need to take a quick  
18 personal break. Can we take five minutes, please?

19 MR. SOTO: Yes.

20 MS. BERLIN: Thank you.

21 MR. SOTO: Off the record.

22 (A break was taken from 11:00 a.m. to  
23 11:14 a.m.)

24 MR. SOTO: So, Amie, I'm going to offer this as  
25 a potential way of resolving the dispute we had

1 before we broke, which is, if your objection to a  
2 question is that it refers to matters outside the  
3 scope of the notice of deposition, that you simply  
4 say it's outside the scope. And we will agree with  
5 respect to the consequences that you stated earlier,  
6 which is that you believe Mr. Andjich would be  
7 speaking only in his individual capacity as opposed  
8 to speaking as the 30(b)(6) designee.

9 MS. BERLIN: Well, I will address it on a  
10 question-by-question basis as I hear it.

11 Are we on the record right now?

12 MR. SOTO: We are.

13 MS. BERLIN: Oh, we are? Okay.

14 So I'll make my objections on a  
15 question-by-question basis.

16 MR. SOTO: Okay. I'm also going to state for  
17 the record, in response to your question, that under  
18 Rule 30(d), the commentary at Subdivision (d) states  
19 as follows: The first sentence of new paragraph  
20 (1) provides that any objections during a deposition  
21 must be made concisely and in a nonargumentative and  
22 nonsuggestive manner. Depositions frequently have  
23 been unduly prolonged, if not unfairly frustrated,  
24 by lengthy objections and colloquy, often suggesting  
25 how the deponent should respond. While objections

1 may, under the revised rule, be made during a  
2 deposition, they ordinarily should be limited to  
3 those that under Rule 32(d)(3) might be waived if  
4 not made at that time, i.e., objections on grounds  
5 that might be immediately obviated, removed, or  
6 cured, such as to the form of a question or the  
7 responsiveness of an answer.

8 So that is what I was referring to. Your  
9 obligation, when objecting, is to be as concise and  
10 nonargumentative as possible, and object to the form  
11 whenever necessary, and not object in a manner that  
12 suggests the answer to the witness or unnecessarily  
13 prolongs the deposition, which I think three lawyers  
14 have suggested you were doing. So that is in  
15 response to your request for the rule I was thinking  
16 about. That is the rule.

17 BY MR. SOTO:

18 Q Mr. Andjich, are you ready to proceed?

19 A Yes.

20 Q All right.

21 MR. SOTO: Let's go to Exhibit 3.

22 (Defendant's Exhibit 3 was marked for  
23 identification.)

24 BY MR. SOTO:

25 Q Okay. This is the re-notice of your 30(b)(6)

1 deposition. Have you seen this?

2 A Yes.

3 Q Okay. What did you do to prepare for each of  
4 the -- let's go to Exhibit A. I'm sorry.

5 You reviewed Exhibit A?

6 A Yes.

7 Q The topics that you were supposed to be  
8 prepared for today?

9 A Yes.

10 Q Okay. What did you do to prepare for each of  
11 these topics?

12 A I reviewed the complaint. I reviewed the  
13 motion for temporary restraining order. I reviewed the  
14 evidence that was cited in the motion for temporary  
15 restraining order, the footnotes and the corresponding  
16 exhibits. I looked at the enforcement manual, SEC's  
17 website, some documents from the investigative file, and  
18 also production of communications with a lawyer by the  
19 name of Shane Heskin.

20 Q Okay. You mentioned that there were others  
21 involved in the investigation, a staff attorney?

22 A Yes.

23 Q Did you speak to the staff attorney who was  
24 involved in the investigation in connection with your  
25 preparation?

1 A Yes.

2 Q Okay. Who was that staff attorney?

3 A Linda Schmidt, senior counsel at the Miami  
4 regional office of the SEC; and Elisha Frank, who's  
5 assistant regional director with the Miami office of the  
6 SEC; and, of course, Amie Berlin, who is senior trial  
7 counsel.

8 Q Okay.

9 MR. SOTO: Let's go to Exhibit 4.

10 (Defendant's Exhibit 4 was marked for  
11 identification.)

12 BY MR. SOTO:

13 Q Okay. One of the topics you were asked to  
14 prepare for was whether the notes are exempt from  
15 registration. Do you recall that? We can go back to  
16 the exhibit if you don't remember.

17 A Yes.

18 Q You do remember?

19 A Repeat the question.

20 Q One of the topics you were asked to prepare for  
21 for today's deposition is any evidence with respect to  
22 the exemption from registration with respect to the  
23 securities at issue in this case, the notes at issue in  
24 this case.

25 A Okay.

1 Q It's paragraph 4 in Exhibit A.

2 Do you recall that?

3 A Yes.

4 Q Okay. So let's look at Exhibit 4, which is a  
5 Form D, Notice of Exempt Offering.

6 Have you seen this document before?

7 MR. SOTO: Can you go to the very top, so the  
8 witness can see the very top of it.

9 THE WITNESS: Yes, I see it. It's Form D, for  
10 Complete Business Solutions Group, Inc. It's kind  
11 of hard to read; it's small, but I see it.

12 MR. SOTO: Can you scroll down to page 6 -- I'm  
13 sorry -- page 3, section 6.

14 BY MR. SOTO:

15 Q Do you see that the item 506(b) is marked  
16 there, under Federal Exemptions?

17 A Yes.

18 Q Okay.

19 MR. SOTO: Can we scroll all the way to the  
20 bottom.

21 BY MR. SOTO:

22 Q Okay. And you see that this document is filed  
23 on behalf of the issuer, Complete Business Solutions  
24 Group?

25 A Yes.

1 Q And it's signed by Complete Business Solutions  
2 Group's general counsel, Cynthia Clark, correct?

3 A Yes.

4 Q And it is dated February of 2019, February 12,  
5 2019, correct?

6 A Yes.

7 Q Okay. And you'll also see that there's a  
8 description in the second bullet point, stating that if  
9 the issuer is claiming a Regulation D exemption for the  
10 offering, the issuer is not disqualified from relying on  
11 Rule 504 or Rule 506.

12 Do you see that? It's the second bullet point.

13 A Okay.

14 Q You do see that, sir?

15 A Can you point to it again, the second bullet  
16 point.

17 Q I'm sorry. It's the third bullet point. It's  
18 the last bullet point.

19 A It begins with "certifying that"?

20 Q Yes. You can read that to yourself.

21 A Okay.

22 Q All right. So would you agree that this is a  
23 Form D notice filed by CBSG which claims an exemption  
24 from registration under Rule 506(b) based on the  
25 provisions you've seen so far?

1 A Yes.

2 Q Okay. And would you agree that this document  
3 was signed by CBSG's lawyer, Cynthia Clark?

4 A That's what it says, yes.

5 Q Okay.

6 MR. SOTO: Let's go to Exhibit 5. Let's go to  
7 the top.

8 (Defendant's Exhibit 5 was marked for  
9 identification.)

10 BY MR. SOTO:

11 Q The issuer here, again, is Complete Business  
12 Solutions Group. Do you see that?

13 A Yes.

14 Q Okay.

15 MR. SOTO: Let's go to page 3 -- section 6,  
16 rather. Okay. Right there. Yeah.

17 BY MR. SOTO:

18 Q Do you see that a claim under Rule 506(b),  
19 under a federal exemption, is claimed here as well?

20 A Yes.

21 Q Okay. So just as before, Complete Business  
22 Solutions Group has filed, in connection with this  
23 Form D, an exemption from registration, correct?

24 A That's what it states.

25 Q Okay.

1 MR. SOTO: Let's go to the very bottom.

2 BY MR. SOTO:

3 Q And this one -- again, the issuer is the same.  
4 It's dated April 24th of 2020, correct?

5 A Yes.

6 Q And signed by Joe Cole?

7 A Yes.

8 Q Okay. So based on your review of the evidence,  
9 as you described, in your preparation for today, are you  
10 aware of any evidence that the claimed exemptions in  
11 either of those Form Ds are inaccurate or false?

12 A Yes.

13 Q What is your evidence?

14 A Number one, there were general solicitations in  
15 the form of dinners, seminars, television and radio  
16 advertisements. There were sales to investors in  
17 multiple states, and there were no reasonable steps  
18 taken to assure that the people who invested were  
19 accredited investors.

20 Q Okay. So let's take those one at a time.

21 The general solicitation efforts that you  
22 referred to, what evidence do you have that Par Funding  
23 engaged -- or any of its representatives engaged in  
24 general solicitations? And first -- let me retract  
25 that.

1           What do you mean by -- let's understand what  
2           you mean by "general solicitations."

3           A     That's a solicitation that can be done by a  
4           radio ad, a televisions ad, a newspaper advertisement,  
5           and these promotional dinners or presentations.

6           Q     Okay. What evidence do you have that  
7           Par Funding engaged in or caused a radio ad or a  
8           television ad, or a general solicitation, as you just  
9           described it?

10          A     Well, the one item is our Exhibit 136, which is  
11          basically a recording of a November 2019 dinner attended  
12          by several hundred people, and the presenters were  
13          Mr. Vagnozzi, and then later Abbonizio, and then  
14          LaForte, and I believe even Mr. Cole spoke.

15          Q     Okay. And based on your understanding of the  
16          evidence, who organized that event?

17          A     It may have been Vagnozzi.

18          Q     And what was the purpose of that event?

19                 MS. BERLIN: I object. Mr. Andjich has no  
20          personal knowledge about what was -- the purpose.

21          BY MR. SOTO:

22          Q     Based on your review of the evidence, what is  
23          your understanding of the purpose of that event?

24          A     Well, it was to offer investment opportunities.

25          Q     Right. To offer investment opportunities to

1 individuals interested in buying investments from ABFP,  
2 correct, Dean Vagnozzi's business -- or agent fund,  
3 rather?

4 A Yes.

5 Q Okay. Do you have any evidence or any  
6 knowledge of evidence that exists that investors, or  
7 prospective investors, at that dinner were offered an  
8 opportunity to buy any sort of security from Par Funding  
9 directly?

10 A Well, certainly a large part of that  
11 presentation involved Mr. LaForte, Mr. Abbonizio, and  
12 Mr. Cole touting their business, Complete Business  
13 Solutions Group, and the investment opportunities that  
14 were afforded -- or could be afforded to people by  
15 investing through Mr. Vagnozzi.

16 Q Right. My question, Mr. Andjich, was, what  
17 evidence are you aware of that any of the individuals at  
18 the dinner you just referenced were offered an  
19 opportunity to buy any sort of security directly from  
20 Par Funding? Are you aware of any evidence?

21 A Clearly, the investment in Complete Business  
22 Solutions Group was being touted. Whether it could be  
23 purchased directly through CBSG or Mr. Vagnozzi, I'm  
24 thinking it was probably through Vagnozzi.

25 Q It was a dinner put together by Mr. Vagnozzi in

1 order to give individual attendees an opportunity to buy  
2 investments in ABFP securities, correct?

3 A In ABFP, but specifically merchant cash  
4 advances.

5 Q Yes. I'm sorry. I didn't mean to cut you off.

6 But earlier we discussed, did we not, that  
7 Mr. Vagnozzi's company, ABFP, offered investments in  
8 four different categories? Do you recall that?

9 A Yes. I recall you telling me there were four.

10 Q Right. But it's not just what I told you; it's  
11 what the SEC alleged, correct?

12 MS. BERLIN: I object. This has been asked and  
13 answered, and the complaint is what it is. If you  
14 want to show him that paragraph again.

15 BY MR. SOTO:

16 Q Mr. Andjich, you can answer the question.

17 Do you recall that conversation we had earlier,  
18 where you agreed --

19 A Yes.

20 Q -- you agreed that there were four investment  
21 opportunities offered by ABFP, only one of which was  
22 MCAs?

23 A I can't seem to recall the fourth, but  
24 definitely MCAs. I think there was a real estate  
25 investment, and the other was a life settlement. I

1 don't recall the fourth.

2 Q Okay. So the reason we're talking about this  
3 is because I asked you whether you were aware of any  
4 information or any evidence that Par Funding was  
5 involved in general solicitations, and you mentioned  
6 this dinner; and we just discussed it. What other  
7 general solicitations are you aware of, based on your  
8 review of the evidence, that Par Funding is responsible  
9 for?

10 MS. BERLIN: Objection. I think it's vague.

11 BY MR. SOTO:

12 Q You can answer, sir.

13 A I know that there were investor declarations  
14 and people who indicated that they did hear radio and  
15 television advertisements. Whether they were directly  
16 put on by Par Funding or Mr. Vagnozzi, I don't recall.

17 Q So you don't recall any evidence that  
18 Par Funding engaged in any of those radio advertisements  
19 or television advertisements you just referenced, right?

20 MS. BERLIN: Alex, I have to object, or just  
21 ask for clarification. Are you talking about the  
22 ABFP offerings, or are you talking about promissory  
23 notes of only CBSG --

24 MR. SOTO: Well, the question was --

25 MS. BERLIN: -- their involvement with the

1 general solicitation, regardless of whose promissory  
2 notes are being sold?

3 MR. SOTO: I'm happy to answer your question,  
4 to clarify this, if necessary.

5 So the question, first, was, Are you aware of  
6 any evidence that the claimed exemptions under  
7 Rule 506(b) and the Form D notices that we discussed  
8 earlier are inaccurate or false?

9 And Mr. Andjich's answer was that he was aware  
10 of general solicitations and that some of the  
11 individuals who purchased were not accredited. So  
12 we're covering the general solicitation component of  
13 that now.

14 The first answer he gave with respect to  
15 examples of general solicitations that he believes  
16 Par Funding might have been involved in was the  
17 dinner that we just discussed. The second was what  
18 he referred to as radio ads and television ads.

19 BY MR. SOTO:

20 Q Is that a fair summary of what your testimony  
21 was, Mr. Andjich, what I just said?

22 A Yes.

23 Q So my question was, what evidence are you aware  
24 of that Par Funding -- specifically Par Funding, not  
25 ABFP -- paid for or in any way caused the general

1 solicitations you just described: radio ads, television  
2 ads, anything of the sort?

3 A I don't know.

4 Q Okay. What information -- when you mentioned  
5 that sufficient efforts were not made to ensure that  
6 investors were accredited, are you referring to phase  
7 one investors, or are you referring to phase two LPs, as  
8 we discussed earlier; or are you referring to both?

9 A I would say probably I would refer to both.

10 Q Okay. So with respect to phase one investors,  
11 that is, those who purchased notes directly from  
12 Par Funding between 2012 and 2017, what evidence are you  
13 aware of that those phase one investors were not  
14 accredited?

15 A Well, you would have to look to some of the  
16 investor declarations.

17 Q Name one investor declaration for me where an  
18 investor or a witness identifies or testifies that some  
19 of the phase one investors were not accredited.

20 A I guess you'd have to show me the declarations,  
21 and we'd have to go through them. I don't remember as I  
22 sit here today.

23 Q Okay. You cannot remember a single witness who  
24 testified in those declarations that phase one investors  
25 were not accredited, correct? You don't remember as you

1 sit here today?

2 A Yeah. I'd have to review those investor  
3 declarations. I know there were a number of them.

4 Q I'm sorry. I didn't mean to cut off.

5 You would agree, Mr. Andjich, that it was your  
6 obligation to prepare for today's deposition by  
7 reviewing those declarations, correct, or any other  
8 information you felt was necessary in order to prepare  
9 for topic 4 of Exhibit A, correct?

10 A Yes.

11 Q Okay. And just so I'm clear, are you aware of  
12 any evidence that any witness testified in a declaration  
13 or otherwise that Par Funding did not take specific  
14 steps, or sufficient steps, to ensure that phase one  
15 investors were accredited?

16 A I don't know the -- I don't have the answer to  
17 that.

18 Q I don't understand what you mean you don't have  
19 the answer. Are you saying that you don't -- go ahead.

20 A I would have to review the investor  
21 declarations again. I know there were a number of them.  
22 I did look at them. I just don't have a specific  
23 recollection as to the points you're asking about.

24 Q Okay. So you don't have any evidence -- you're  
25 not aware of any evidence, as you sit here today, of a

1 witness who was part of this investigation, leading to  
2 this complaint, who said that Par Funding did not take  
3 sufficient steps to ensure that its phase one investors  
4 were accredited?

5 MS. BERLIN: Objection. Asked and answered.

6 BY MR. SOTO:

7 Q You can answer, Mr. Andjich.

8 A Well, there were a number of declarations that  
9 I took a look at. I mean, Kara DiPietro comes to mind.  
10 I know there were others. I just don't have their names  
11 off the top of my head.

12 Q Okay. So you believe Kara DiPietro, in her  
13 declaration, testified that Par Funding did not take  
14 sufficient steps to ensure that its phase one investors  
15 were accredited?

16 MS. BERLIN: I object. This isn't a memory  
17 test. If you want to show him the document that  
18 he's referring to -- Mr. Andjich only reviewed  
19 documents that we filed in this case. So if you  
20 want to show him the DiPietro declaration -- but I  
21 will state on the record, anything Mr. Andjich  
22 cannot recall, sitting here, since it's not a memory  
23 test, despite our extensive preparation, the SEC, if  
24 we don't object to the question, will just  
25 supplement it after his deposition, so that you have

1 your answers under oath.

2 MR. SOTO: So, Amie, I'm going to just state  
3 for the record that that is probably the third or  
4 fourth or fifth time that you've said that this  
5 isn't a memory test and that he can't be expected to  
6 remember everything. I understand that. There's no  
7 need to repeat that. I'm asking for his  
8 recollection based on the preparation that he did,  
9 pursuant to the notice of deposition and the rules  
10 under 30(b)(6), to tell us what evidence the SEC has  
11 that Par Funding did not take sufficient steps to  
12 ensure that its phase one investors were accredited.

13 BY MR. SOTO:

14 Q Mr. Andjich, if your answer is that you are not  
15 aware of any, as you sit here today, I will take that  
16 answer and we can move on.

17 MS. BERLIN: I believe he answered -- that  
18 Mr. Andjich testified that he --

19 MR. SOTO: Amie, do not -- there is a question  
20 pending. Do not instruct him how to answer, please.

21 BY MR. SOTO:

22 Q Mr. Andjich, is that a fair summary?

23 A I don't recall which specific investor or  
24 investors told the SEC in a declaration that there was  
25 no accreditation required or asked, but I know there are

1 a number of SEC declarations from investors.

2 Q Okay. And are those investors who purchased  
3 directly from Par, or are those investors who were LPs,  
4 who purchased from agent funds?

5 A It could be both.

6 Q Okay. And you can't remember a single one  
7 as you sit here today?

8 MS. BERLIN: Objection. Asked and answered.

9 BY MR. SOTO:

10 Q You can answer, sir.

11 A Well, the one that comes to mind is Kara  
12 DiPietro. I don't recall exactly when she invested.  
13 But I know there were a number of other declarations by  
14 investors.

15 Q Okay. Do you know whether -- do you remember  
16 whether Ms. DiPietro purchased a note or -- purchased a  
17 note directly from Par Funding or from an agent fund?

18 A I don't know which.

19 Q Okay. Are there any others you can think of  
20 as you sit here today?

21 MS. BERLIN: Objection.

22 THE WITNESS: Well, there are a number of other  
23 investors, as there are declarations. I remember  
24 one by the name of Beebe. That's B-E-E-B-E. Let me  
25 see. Let's see. There's another one, Eric Husebo,

1 H-U-S-E-B-O. There's a Ronald Lipowski,  
2 L-I-P-O-W-S-K-I. I think declarations were prepared  
3 for them. There are others. I just don't recall  
4 the names.

5 BY MR. SOTO:

6 Q Okay. So let's go back to Exhibit 1 and  
7 paragraph 40 -- I'm sorry -- 240.

8 Okay. So in paragraph 240 -- I'll give you an  
9 opportunity to review it -- the SEC alleges that the  
10 Form D filings that we just discussed falsely  
11 represented that Mr. Cole and Ms. McElhone would not  
12 receive gross proceeds of the securities offering; is  
13 that right?

14 A Yes.

15 Q Okay. So I want to understand the SEC's  
16 position here, and it's important that we understand the  
17 terminology. "Gross proceeds" mean investor funds,  
18 correct?

19 A Yes.

20 Q Okay. So the SEC is alleging that Mr. Cole and  
21 Ms. McElhone were paid directly from investor funds? Is  
22 that the allegation?

23 A I know there was an accounting performed by  
24 Melissa Davis from an outside accounting firm, and that  
25 will tell you exactly from which accounts the money

1 came.

2 Q Okay. So cash that is paid back to CBSG to  
3 Par Funding by merchants is not gross proceeds, correct?

4 A Could you repeat the question?

5 Q Yes.

6 Cash that comes into Par Funding from investors  
7 and is then sent out to merchants, advanced to  
8 merchants, and then comes back, as cash coming back from  
9 those merchants, are not gross proceeds, correct?

10 MS. BERLIN: Objection. Calls for an expert  
11 opinion or conclusion that this witness hasn't been  
12 prepared for.

13 (Reporter clarification.)

14 MS. BERLIN: Just one moment, please.  
15 Alex, I need to confer with Mr. Andjich.

16 MR. SOTO: Okay. There's a question pending,  
17 and he needs to answer before you confer.

18 MS. BERLIN: Okay. So I would like point out,  
19 during my deposition of Ms. McElhone, I had a  
20 question pending, and you and Mr. Futerfas and  
21 Ms. McElhone took a break before coming back to  
22 answer. Mr. Andjich can answer this question, if he  
23 knows the answer, and then I would just state that I  
24 need to take a break to speak with him.

25 MR. SOTO: That's fine. I don't represent

1 Ms. McElhone. I don't recall what it is that you're  
2 saying. I would not have asked for a break on her  
3 behalf. But I will insist that he answer the  
4 question before we break, and then you can break and  
5 confer with him.

6 MS. BERLIN: Thank you.

7 BY MR. SOTO:

8 Q So my question, Mr. Andjich, is simply, cash  
9 that comes back to the company, to Par Funding, from  
10 merchants does not represent investor proceeds,  
11 correct -- not gross proceeds, as referenced here?

12 MS. BERLIN: And I have the same objection that  
13 I stated previously. I won't repeat it.

14 BY MR. SOTO:

15 Q Mr. Andjich, you can answer.

16 MS. BERLIN: Wait, wait. Just a moment.

17 I don't believe this is within the topic. And  
18 if Mr. Andjich knows this definition, he can  
19 testify.

20 THE WITNESS: I don't know. All I can do is  
21 tell you that there was an extensive review done of  
22 the bank records and the accounts, and that those  
23 numbers that are cited in the affidavit -- or the  
24 complaint come from the analysis that was done by  
25 Melissa Davis and her team, the outside accounting

1 firm.

2 BY MR. SOTO:

3 Q I'm sorry. I didn't mean to cut you off.

4 You were asked to testify today with respect to  
5 several topics, one of which was Lisa McElhone and Joe  
6 Cole's receipt of funds, correct?

7 A Yes.

8 Q Okay. And this is one of those topics. This  
9 refers to a representation and allegation made by the  
10 SEC that Mr. Cole and Ms. McElhone received gross  
11 proceeds from an offering, correct?

12 A Yes.

13 Q That implicates their receipt of funds,  
14 correct?

15 A Yes.

16 Q So it is within the scope of the topics in the  
17 notice, right?

18 A And, again, I'm going to repeat my answer. I  
19 think you have to look to the declaration of Melissa  
20 Davis, who's analyzed the bank accounts in this case.

21 Q Right. Melissa Davis is not the witness today;  
22 you are. And you can prepare however it is you see fit,  
23 which includes reviewing Melissa Davis's declaration and  
24 any other evidence in order to prepare yourself to  
25 answer the questions.

1           And so my question simply is this: The SEC has  
2           alleged that Mr. Cole and Ms. McElhone received gross  
3           proceeds of a securities offering, correct?

4           MS. BERLIN: I'm objecting. Asked and  
5           answered, and argumentative. The witness has  
6           answered, and he's directed you to the evidence  
7           supporting this allegation.

8           BY MR. SOTO:

9           Q     Mr. Andjich, the SEC has alleged that Mr. Cole  
10           and Ms. McElhone have received gross proceeds of a  
11           securities offering, correct? You agreed with that a  
12           few minutes ago.

13           A     I believe you pointed me to that section,  
14           right?

15           Q     Okay. And you agree that "gross proceeds" mean  
16           investor funds, right?

17           MS. BERLIN: I'm sorry to interrupt you. Is  
18           this paragraph 240? Because that's what I see on my  
19           screen. Or was it a different paragraph?

20           MR. SOTO: It's paragraph 240.

21           BY MR. SOTO:

22           Q     Mr. Andjich, you agreed earlier that "gross  
23           proceeds" mean investor funds, correct?

24           MS. BERLIN: Hold on. I object. We're looking  
25           at paragraph 240, and I don't see "gross proceeds"

1           referenced in this allegation.

2       BY MR. SOTO:

3           Q     Mr. Andjich, you can answer the question.

4                     You agreed earlier that "gross proceeds" mean  
5 investor funds, correct; or do you want to change your  
6 answer?

7           A     I -- I don't know. You know, I'm looking at  
8 the analysis that was done. The monies that flowed to  
9 Cole and McElhone, the source of those funds, obviously,  
10 can be traced to bank accounts. You know, whether there  
11 was any commingling of investor funds, I don't know the  
12 answer. You'd have to look to her declaration.

13          Q     Okay. So your position, then, is -- the SEC's  
14 position, by virtue of your designation here, is that  
15 you can't tell us what "gross proceeds" mean?

16           MS. BERLIN: I'm going to object. This has  
17 been asked and answered. And I don't see the phrase  
18 "gross proceeds" in the paragraph that you're  
19 showing him on the screen, which is paragraph 240.

20       BY MR. SOTO:

21          Q     Mr. Andjich, you can answer.

22                     Your position is that the SEC does not  
23 understand what "gross proceeds" means?

24           MS. BERLIN: Mr. Soto, it's outside of the  
25 scope. You've asked him and he's answered multiple

1 times --

2 MR. SOTO: He hasn't answered, because you keep  
3 interrupting him. And every time you interrupt him  
4 with an objection, I have to re-ask it. So we can  
5 just keep doing this, and then we can go to the  
6 judge, and we'll just be here tomorrow, or the next  
7 day and the next day, until we get the question  
8 answered.

9 MS. BERLIN: If he says he doesn't know, Alex,  
10 we've already told you that we will supplement in  
11 writing the answer. Mr. Andjich has testified.

12 MR. SOTO: You are testifying, Amie. You are  
13 testifying. And I'd ask you, again, that you stop.  
14 Your objections should be narrow, should be concise.  
15 You asked me for the rule. I cited the rule. It  
16 specifically says that you are to be concise and  
17 narrow in your objections. You are doing more  
18 talking than the witness is.

19 MS. BERLIN: I would say --

20 MR. SOTO: And your objection is noted. Amie,  
21 your objection is absolutely noted. You've said it  
22 five times.

23 MS. BERLIN: Mr. Soto, you are speaking a lot  
24 as well. I am simply stating that I think the  
25 transcript will reflect you've asked the same thing

1 over and over. I wanted to point it out, because  
2 the Court doesn't have the benefit of seeing what's  
3 on the screen. You're asking him about paragraph --  
4 you're showing him paragraph 240 and asking him  
5 about gross proceeds. And that's all I was trying  
6 to reflect. And I was also stating that I believe  
7 the witness has answered your question and directed  
8 you to the evidence supporting paragraph 240. I  
9 believe at this point it's just badgering him. If  
10 you would like to ask it again, please do, and then  
11 I'd like to speak with Mr. Andjich and take a break.

12 BY MR. SOTO:

13 Q Mr. Andjich, you testified earlier that "gross  
14 proceeds" means investor funds. Are you changing that  
15 answer now?

16 A I mean, that would be my understanding, but,  
17 again, we'd have to look to the declaration of Melissa  
18 Davis as to the source of the monies that wound up in  
19 the hands of McElhone and Cole. I don't have that  
20 specific knowledge. I know she looked at a number of  
21 bank accounts. They're listed in her declaration. She  
22 could tell you what the source of those monies were.

23 MR. SOTO: Okay. You want to take that break  
24 now?

25 MS. BERLIN: Yes. Thank you.

1 (A break was taken from 11:55 a.m. to  
2 12:39 p.m.)

3 MS. BERLIN: During this break, I spoke with  
4 Mr. Soto, and I'll state on the record what he and I  
5 just discussed. And I spoke with Mr. Andjich.

6 Mr. Andjich spent about 40 hours preparing for  
7 this deposition today, and he has been asked to  
8 regurgitate a lot of things that he memorized, and  
9 his memory is not such that he can just regurgitate  
10 everything that he prepped; and he feels that he  
11 cannot do it accurately.

12 And so we have offered that we will designate  
13 other witnesses, people who worked on the  
14 investigation. And that, obviously, will not  
15 include any of this time towards the seven hours or  
16 limit it that way in any way. And the SEC would,  
17 you know, of course, pay for the court reporter. We  
18 can make those arrangements, that the defendants are  
19 not paying for the court reporter again, so that we  
20 don't spend more time today.

21 What we're asking to do is to pause and then  
22 continue this on another day in the near future with  
23 different witnesses. Because despite the extensive  
24 preparation that Mr. Andjich did with me, and by  
25 himself, it's just not possible for him to

1 regurgitate everything from memory here today and be  
2 able to respond accurately. And so he feels that  
3 way. And knowing that, that we have a witness who  
4 won't be able to give and regurgitate the accurate  
5 evidence from memory, we are asking that we  
6 continue -- we will not count, obviously, the time  
7 used today towards the time for the deposition. We  
8 will pay for the continued-deposition court reporter  
9 costs. And we apologize. We did not anticipate  
10 this, and I assure you that we did an extensive  
11 amount of preparation.

12 So we've offered -- we've asked to go ahead and  
13 continue the deposition so that we can make sure  
14 that your deposition is worthwhile and you have a  
15 witness who's able to regurgitate all of this  
16 evidence that the witness will have to memorize.  
17 And that's it. And we would obviously do it in the  
18 very near future so that we're not delaying the  
19 defense. So we will also make this a priority item,  
20 so that we're not causing any sort of further delay  
21 from the defense in getting the 30(b)(6) testimony  
22 that they're seeking.

23 So that's it. We're asking to just continue on  
24 another day.

25 MR. SOTO: Okay. Our position is that the SEC

1 should have designated more than one individual if  
2 the volume of information here is too much for one.  
3 They had that opportunity, and they chose not to do  
4 that. We are not inclined to continue the  
5 deposition. We stated our conditions.

6 Our first condition would be that the  
7 individual designated in Mr. Andjich's place would  
8 be Linda Schmidt, who is a staff attorney and was an  
9 investigator on this case. And I believe  
10 Mr. Andjich testified she was involved as an  
11 investigator on this case as a staff attorney.

12 The second condition would be that any of the  
13 statements Mr. Andjich has made to this point on the  
14 record would be and remain binding against the SEC,  
15 with the exception, of course, of any objections  
16 that Ms. Berlin has made with respect to the scope.

17 So any questions that she believes are outside  
18 the scope, we could either confer, agree, disagree,  
19 litigate those, but beyond that, any statements he  
20 makes would be binding on the SEC. In other words,  
21 somebody wouldn't be able to come in and say, Well,  
22 I'm going to provide testimony that essentially  
23 erases or replaces or supplants that testimony. We  
24 would not agree to that.

25 To this point, I think Ms. Berlin has suggested

1 that Ms. Schmidt cannot be the sole designee, for  
2 reasons we don't need to mention on the record, but  
3 can be a designee, one of two or, you know, more  
4 designees, if we have an agreement. I need to  
5 confer with my client about that. But I do need an  
6 assurance that any of the statements, as I said,  
7 that Mr. Andjich has made to this point would be  
8 binding in the event that we brought someone else  
9 in, or others in.

10 MS. BERLIN: So, I mean, as we stated, part of  
11 the reason that we need to continue it is,  
12 Mr. Andjich's memory isn't such that -- he's not --  
13 there have been many statement where he's  
14 obviously -- and I'm sure it's clear to all of us --  
15 Mr. Andjich has testified about the wrong company,  
16 or about -- you know, things that he's confused  
17 about, who the person is.

18 So, no, we would need someone to clarify it,  
19 and Mr. Andjich's statements that -- I mean,  
20 obviously, the amended complaint is annotated in our  
21 temporary restraining order, so we all know what the  
22 evidence is that the SEC relied on. Mr. Andjich has  
23 to do it from his memory, and he's citing different  
24 evidence because he's confused about -- he's getting  
25 the companies confused and the offerings confused.

1 And so that's why we're asking for the continuance.  
2 It's because he can't keep it all straight. And  
3 he's already testified to things that he knows, and  
4 has acknowledged to me, he jumbled and got confused  
5 on and regurgitated incorrectly.

6 So, I mean, we can't do that. Like, that would  
7 be ridiculous. I mean, we all know -- like,  
8 everything you asked in that sentence is in a  
9 temporary restraining order, with a footnote to the  
10 evidence. Mr. Andjich hasn't read any document in  
11 this case that we received after the preliminary  
12 injunction, because the deposition notice was about  
13 the evidence that supported the allegations in the  
14 complaint, and we haven't finished reviewing all of  
15 the discovery in this case. So that's how he was  
16 prepared, and that's how our subsequent -- I haven't  
17 decided what other evidence supports things.

18 But Mr. Andjich's testimony so far -- there are  
19 several things that need to be corrected. And  
20 Mr. Andjich would tell you that, that he's been  
21 confused about some things and that he realizes he  
22 doesn't -- he's not able to regurgitate it all  
23 correctly. And he realizes that, because he's  
24 incapable of doing that, we have to switch witnesses  
25 and give you someone, as soon as possible, who can

1 do it. But we can't be bound by something that, I  
2 mean, we all know is wrong. He's given you  
3 testimony about ABFP and CBSG, and talking to you  
4 about -- I think that we all know what's going on,  
5 and so this sort of feels like a trap. The reason  
6 that we need to continue with a different witness is  
7 because it's become apparent that Mr. Andjich cannot  
8 regurgitate the evidence to you correctly by memory,  
9 without looking at something, which he hasn't been  
10 permitted to do.

11 And, Mr. Andjich, do you agree with what I've  
12 just stated, that you are unsure -- or feel that  
13 maybe some of the answers that you gave, you  
14 confused the evidence or the facts, because you just  
15 can't memorize everything in this case that was  
16 noted?

17 MR. SOTO: Well, Amie, I'm going to object to  
18 that question.

19 MS. BERLIN: It's not a question. We're on the  
20 record, and we're just making statements, and I'd  
21 like Mr. Andjich to answer that, so it's clear that  
22 I am not just making this decision. Mr. Andjich  
23 feels that he cannot regurgitate all of this from  
24 memory and that he knows he's already had some  
25 issues with his testimony.

1 Mr. Andjich, do you agree?

2 MR. SOTO: That's fine. And I'm just going to  
3 object. To the extent that Mr. Andjich feels that  
4 he's unable to continue, I certainly don't have a  
5 problem with him stating that, but I am not going to  
6 allow you to ask a question that undermines all of  
7 the testimony he just gave, by saying, you know,  
8 broadly, Is it true that everything you said, you're  
9 confused about? That's not appropriate. We're  
10 not --

11 MS. BERLIN: Alex --

12 MR. SOTO: Hold on, Amie. Let me just make my  
13 record.

14 MS. BERLIN: Go ahead.

15 MR. SOTO: We're not at the place where it is  
16 even appropriate for you to be asking questions of  
17 Mr. Andjich, because I'm still conducting my direct  
18 examination. If you want to ask cross-examination  
19 questions, you know the rules; you know when that  
20 happens, and you know how to ask them. And that's  
21 not an appropriate way to ask. So I would object to  
22 that. If he wants to tell us that he's unable to  
23 continue, I'm happy to hear.

24 MS. BERLIN: Mr. Soto, I think I can ask  
25 anything I want or want. Like, maybe resumed the

1 deposition. We were all talking before the  
2 questioning to be resumed. So I think he can just  
3 state it right now. Or do I need to get it from him  
4 in a sworn declaration that I email to you? What's  
5 the difference? It's better to just do it now.

6 Mr. Andjich, do you agree with the statement  
7 that I made?

8 MR. SOTO: Same objection.

9 THE WITNESS: Yes.

10 MS. BERLIN: So there it is. And we don't want  
11 to waste the day having you get information that's  
12 wrong, Alex. And that's why I'm offering. And I  
13 reviewed it. He's prepared as much as humanly  
14 possible, and we need to -- we are offering to  
15 provide you other witnesses very quickly, to not  
16 count this towards your time, and to give you a  
17 different court reporter, because Mr. Andjich, for  
18 all the reasons I've stated, that he agrees with --  
19 and that's based on my conversation with him --  
20 everything I just said.

21 Like, I'm sorry, we're going to have to correct  
22 some of those things, because his memory doesn't  
23 allow him to just spit it out. And maybe we have  
24 to, like, designate ten people, because of how broad  
25 the 30(b)(6) is, so people can memorize the evidence

1 attached to the motion. But Mr. Andjich can't do  
2 it.

3 MR. SOTO: Okay. Well --

4 MS. BERLIN: I have to ask to continue, and I  
5 think that's -- I'm just trying to do the right  
6 thing here, because once I realized and once I  
7 talked to Mr. Andjich, and he expresses that to me,  
8 which is what occurred during the break, I have an  
9 obligation then to make sure that I give you people  
10 who can answer these questions, and to do it as  
11 quickly as possible, so that you can get the  
12 discovery that you want, so that it's meaningful.

13 MR. SOTO: Okay. Well, you've made your  
14 record; I've made mine. We object to your,  
15 essentially, cancelling and postponing this  
16 deposition. We are going to have to bring this up,  
17 obviously, with the Court. We'll try to confer with  
18 you before then and consider the proposal that you  
19 made. But as I said, we don't agree with it.

20 So if your position is that Mr. Andjich can't  
21 continue, and you are -- you are unilaterally making  
22 the decision to cut this off, you're doing that over  
23 our objection. That's it.

24 MS. BERLIN: Well, I don't want to do that. I  
25 mean, we can continue, but the witness might just

1 say he doesn't know to every question. I mean,  
2 Alex, it's up to you, but he's identified for you  
3 that he feels that he cannot accurately regurgitate  
4 the evidence to you. So if you want to continue for  
5 the next seven hours and use this time as your  
6 30(b)(6), with a witness who's told you that he's  
7 not -- he can't accurately regurgitate all of the  
8 evidence to you, I don't want -- I was doing this  
9 because I thought it was the right thing to do. I  
10 want to give you the witnesses who can do it.

11 If you want to use Mr. Andjich, even though his  
12 answers might be that he doesn't know, and even put  
13 on the record about his memory, that's your  
14 decision. I'm certainly not -- we're not going to  
15 walk out of this, but I just -- I didn't want you to  
16 waste your day, and I thought I had a duty to notify  
17 you as soon as I was advised. So if you want to use  
18 this as your 30(b)(6) deposition, you can do that,  
19 but Mr. Andjich's answers are probably -- I mean,  
20 he's told you that he really can't proceed.

21 MR. SOTO: Right. So here's the issue -- and  
22 I'll let Mr. Andjich --

23 MS. BERLIN: We're not walking out. So if you  
24 want us -- I mean, I'm not going to walk out. Alex,  
25 that's why I called you. I was trying to find a way

1 that I could do the right thing here, and I feel  
2 like I have a professional responsibility to notify  
3 you right away and to try to correct this to the  
4 best of my ability. And there's no further amount  
5 of preparation that's going to help with  
6 Mr. Andjich.

7 MR. SOTO: Mr. Andjich, did you want to say  
8 something?

9 THE WITNESS: Look, my preparation, in large  
10 part, involved looking at the motion for temporary  
11 restraining order, and then looking at the exhibits  
12 that were footnoted in that motion. And I know  
13 there were at least 170 or more exhibits, and I'm  
14 happy to go through paragraph by paragraph and point  
15 out the exhibit that proves the allegation that the  
16 SEC is making; but I certainly don't want to bind  
17 the SEC for something that I've mistakenly stated.

18 MR. SOTO: Okay. Well, it's the SEC's  
19 obligation to ensure that they present us with a  
20 witness who is prepared. I understand the  
21 challenges that you've suggested, that you  
22 encountered in preparing. The SEC could've  
23 designated you and one, two, three, or ten other  
24 people, as Amie just said. They chose not to do  
25 that. We disagree that the information you're

1 providing isn't accurate. It's obviously a matter  
2 of perspective. We're in litigation. We disagree  
3 with respect to the facts and the evidence. So what  
4 we will do --

5 MS. BERLIN: Alex, it's not that. Mr. Andjich  
6 identified during a break -- like, he was talking to  
7 you about, you know, like, radio ads and TV with  
8 respect to CBSG, and he realized that he was  
9 referring to ABFP. Like, he's --

10 MR. SOTO: I understand.

11 MS. BERLIN: -- there are memory issues here.  
12 So, I mean, you get one shot at a 30(b)(6), and I'm  
13 saying to you that we have recognized this is a  
14 problem and let me fix it. We could not have  
15 predicted that this would have occurred.  
16 Mr. Andjich and I have spent weeks and time, close  
17 to 40 hours, just going scrupulously through all of  
18 the evidence supporting every claim, which is what  
19 your topics -- and looking at all of your topics and  
20 preparing topic by topic, item by item, everything  
21 that you asked.

22 So Mr. Andjich has advised, and you heard him  
23 agree with me, that he feels that he doesn't have  
24 the -- he cannot regurgitate these things accurately  
25 to you from memory. So I'm offering to give you --

1 I've made my offering, and I feel like that's the  
2 right thing to do, and it's the obligation to do,  
3 once we identified that the witness can't do it.

4 MR. SOTO: Okay. You also said during our  
5 conferral that you weren't going to -- my concern is  
6 that we've been talking and conferring and taking  
7 more breaks than we've been actually deposing  
8 anyone. So I also want to state on the record that  
9 you assured me that this seven-hour time period  
10 isn't going to be an issue. So we can --

11 MS. BERLIN: We certainly would not count,  
12 like, today towards your seven hours at all, either.  
13 So, I mean, no, of course. Like, I'm trying to  
14 rectify this, the issue that has arisen. So we  
15 would -- you know, you're absolutely right. Like, I  
16 agree with what you stated, is the bottom line. We  
17 wouldn't count --

18 MR. SOTO: Let me do this: Why don't we take a  
19 break. Let me confer, and we'll either come back  
20 on, or I'll call you. I don't even know what time  
21 it is. It is now 1 o'clock. Why don't we take a  
22 30-minute break.

23 MS. BERLIN: Okay.

24 MR. SOTO: Let me consider this and what we're  
25 going to do, and under what conditions we would do

1 it, and we'll get back on at 1:30.

2 MS. BERLIN: Okay. Sounds great.

3 (A break was taken from 12:57 p.m. to  
4 1:49 p.m.)

5 MR. SOTO: We want to put our agreement on the  
6 record. The parties have agreed to postpone the  
7 deposition. The SEC is going to identify another  
8 designee or designees for purpose of the 30(b)(6).  
9 They have agreed to have Linda Schmidt serve as one  
10 of the designees on specific topics. We identified  
11 those topics as conversations that she had with  
12 investors, merchants, or counsel for either, and any  
13 emails in which she was a participant, that is,  
14 someone who drafted, received, or was copied on an  
15 email -- in connection with this investigation,  
16 obviously.

17 To the extent this case is tried, we have  
18 agreed that we would use -- the SEC would not object  
19 to our use of her deposition testimony, even if she  
20 is available, because she might serve as trial  
21 counsel. And if that is the case, we would use her  
22 deposition testimony, and she would not be  
23 identified in that deposition testimony as the  
24 speaker. That deposition testimony would be  
25 ascribed to an SEC representative or designee.

1           The other component of this is that we have  
2           agreed to schedule the next phase of this deposition  
3           for July 21st, assuming the designees are available.  
4           And Ms. Berlin has indicated to me that she's going  
5           to work in good faith to make sure that that  
6           happens. If that isn't possible, then we've agreed  
7           to August 2nd, to reconvene the remainder of this.

8           We've also agreed that we will get seven hours  
9           anew, for the remainder, that the SEC will pay for  
10          the court reporter's fees to this point, and that  
11          we --

12          MS. BERLIN: Alex, I was actually offering that  
13          we would pay for your seven hours, or however long  
14          you take for the continuation, which will be a  
15          longer period of time.

16          MR. SOTO: Okay. Thank you for that, Amie.

17          MS. BERLIN: I was just offering that we could  
18          just make the arrangements, and we could just  
19          schedule it with the court reporter and do it by  
20          Webex.

21          MR. SOTO: Yeah. That's fine.

22          Okay. So the only other -- two other things.  
23          We agreed that we are not -- as counsel for  
24          Mr. LaForte, not in any way agreeing that the  
25          testimony that Mr. Andjich has provided to this

1 point has been erased or will be supplanted by other  
2 testimony. The SEC is free, through interrogatories  
3 or whatever else is within the rules of evidence, to  
4 clarify any issues they wish, but his testimony  
5 today remains. And finally, we are advising that we  
6 are not waiving our right to request fees. That's  
7 it.

8 MS. BERLIN: Sounds good.

9 MR. SOTO: Okay. Thank you all.

10 (The taking of the deposition was concluded.)

11 (Reading and signing waived.)

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CERTIFICATE OF OATH

STATE OF FLORIDA:

: SS

COUNTY OF DADE:

I, Marlene Gutierrez, Shorthand Reporter and Notary Public, State of Florida, certify that RAYMOND ANDJICH appeared before me via videoconference on the 9th of July, 2021, and was duly sworn.

WITNESS my hand and official seal this 14th day of July, 2021.



Marlene Gutierrez  
Notary Public-State of Florida  
My Commission #GG 126375  
Expires: July 20, 2025

Personally known\_\_\_\_\_

Or Produced Identification\_\_\_\_x

Type of Identification Produced\_\_\_government ID

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REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA:

: SS

COUNTY OF DADE:

I, Marlene Gutierrez, Notary Public, certify that I was authorized to and did stenographically report the deposition of RAYMOND ANDJICH; that a review of the transcript was not requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, parties' attorney, or counsel connected with the action, nor financially interested in the action.

Dated this 14th day of July, 2021.



MARLENE GUTIERREZ

[& - advised]

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FLORIDA RULES OF CIVIL PROCEDURE

Rule 1.310

(e) Witness Review. If the testimony is transcribed, the transcript shall be furnished to the witness for examination and shall be read to or by the witness unless the examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness wants to make shall be listed in writing by the officer with a statement of the reasons given by the witness for making the changes. The changes shall be attached to the transcript. It shall then be signed by the witness unless the parties waived the signing or the witness is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within a reasonable time after it is furnished to the witness, the officer shall sign the transcript and state on the transcript the waiver, illness, absence of the witness, or refusal to sign with any reasons given therefor. The deposition may then be used as fully as though signed unless the court holds that the reasons given for the refusal to sign require rejection of

the deposition wholly or partly, on motion under rule 1.330(d)(4).

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,  
v.

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

Defendants.

\_\_\_\_\_ /

**NOTICE OF DEPOSITION OF  
SECURITIES & EXCHANGE COMMISSION'S 30(b)(6)**

**PLEASE TAKE NOTICE** that, pursuant to Rule 30(b)(6) of the Federal Rules of Procedure, Defendant Joseph W. LaForte will take the deposition of the following deponent on the date, time and location/manner indicated below:

<b>NAME</b>	<b>DATE/TIME</b>	<b>LOCATION/MANNER</b>
Plaintiff Securities and Exchange Commission (the "Commission") – 30(b)(6)	Tuesday, August 3, 2021 10:00 AM	Remotely (a link will be provided by Court Reporter)

The Commission shall designate one or more individuals who consent to testify on its behalf regarding the subjects listed in Exhibit A, attached hereto. The deposition will continue from day to day before a person duly authorized to administer oaths until concluded and shall be recorded by stenography, audio and/or videotape. You are invited to attend the deposition and exercise your rights under the Federal Rules of Civil Procedure.

**Exhibit “A”**

Plaintiff, the United States Securities and Exchange Commission (“the Commission”), shall designate one or more individuals who consent to testify on its behalf regarding the subjects set forth below:

1. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff’s “Action Memo” to the Commission, that support the Commission’s allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Complete Business Solutions Group, Inc. (“CBSG”) made materially misleading statements and omissions to investors in connection with the purchase, offer, or sale of securities regarding:
  - a. CBSG’s underwriting practices;
  - b. CBSG’s loan default rate;
  - c. insurance offered by CBSG;
  - d. CBSG’s regulatory history;
  - e. the true result of the New Jersey Division of Securities’ investigation of CBSG;
  - f. Joseph LaForte’s criminal history;
  - g. Lisa McElhone and Joe Cole’s receipt of funds;
  - h. the LME 2017 Family Trust’s receipt of funds;
  - i. Joseph LaForte’s investment in CBSG;
  - j. Dean Vagnozzi and ABFP regulatory histories;
  - k. Perry Abbonizio’s regulatory history;
2. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff’s “Action Memo” to the Commission, that support the Commission’s allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Joseph LaForte acted as the *de facto* CEO of CBSG and Full Spectrum Processing;
3. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff’s “Action Memo” to the Commission, that support the Commission’s allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Lisa McElhone was a control person of CBSG and Full Spectrum Processing;
4. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff’s “Action Memo” to the Commission, that support the Commission’s allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that no exemption from registration existed with respect to the securities allegedly issued by the Defendants.
5. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual

portions of the Staff's "Action Memo" to the Commission, that support the Commission's disgorgement calculation as to each Defendant.

6. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's claims that the Defendant's actions presented a risk to investor funds when it filed its Complaint.
7. The Commission and Commission staff's communications with attorney Shane Heskin prior to the filing of the Commission's enforcement action, including promises made to Heskin or his clients.
8. The Commission's guidelines, policies and procedures regarding joint action with, or direction or control by Commission staff of a private party involved in an investigation or private action.
9. The Commission's guidelines, policies and procedures regarding the appointment of a Receiver.

Dated: July 27, 2021

Respectfully submitted,

**FRIDMAN FELS & SOTO, PLLC**

Alejandro Soto, Esq.

Florida Bar No.: 172847

Daniel Fridman, Esq.

Florida Bar No.: 176478

*Co-Counsel for Joseph W. LaForte*

Fridman Fels & Soto, PLLC

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[dfridman@ffslawfirm.com](mailto:dfridman@ffslawfirm.com)

/s/Alejandro Soto

ALEJANDRO SOTO

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>TH</sup> day of July, 2021, I served the foregoing Plaintiff's Notice of Taking 30(b)(6) Deposition via email to all counsel of record.

/s/ Alejandro O. Soto  
ALEJANDRO O. SOTO

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UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.
	)	9:20-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.	)	
	)	

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REMOTE 30(B)(6) DEPOSITION OF  
SECURITIES AND EXCHANGE COMMISSION  
THROUGH ITS DESIGNATED REPRESENTATIVE  
ELISHA FRANK, ESQUIRE  
Tuesday, August 3, 2021

Reported by:  
Denise Sankary,  
RPR, RMR, CRR  
Job No. 210803DSA

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UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.
	)	9:20-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 30(B)(6) deposition of SECURITIES AND EXCHANGE COMMISSION, through its designated representative, ELISHA FRANK, ESQUIRE, taken on behalf of Defendants, all parties appearing remotely, commencing at 10:49 a.m. and ending at 6:07 p.m., on Tuesday, August 3, 2021, before Denise Sankary, RPR, RMR, CRR, and Notary Public of the State of Florida, pursuant to notice.

1 APPEARANCES (All appearing remotely):

2

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11 Receiver:

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28 On behalf of Joseph LaForte:

29

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1 APPEARANCES (All appearing remotely):

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3 On behalf of Joseph LaForte:

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9

ALSO PRESENT:

10

Perry Abbonizio

11

Dean Vagnozzi

12

Perry Abbonizio

13

Michael Furman

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M. Victoria Pantin, Paralegal

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Cherly Lucien, Esquire

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Joseph Cole

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George Bochetto, Esquire

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WITNESS: EXAMINATION

ELISHA FRANK, ESQUIRE

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Tuesday, August 3, 2021

10:49 a.m. - 6:07 p.m.

MR. SOTO: Madam Court Reporter, before we begin, can we get appearances. We'll start with my own.

This is Alex Soto, on behalf of Defendant Joseph LaForte. I'll be taking the deposition this morning.

MR. LEVINE: Also here, Josh Levine on behalf of Defendant Joseph LaForte.

MS. LUCIEN: Cherly Lucien, on behalf of Joseph LaForte.

MR. ALFANO: Gaetan Alfano on behalf of the Receiver, Ryan Stumphauzer. Good morning.

THE COURT REPORTER: On behalf of who?

MR. ALFANO: The Receiver, Ryan Stumphauzer.

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

THE COURT REPORTER: David Ferguson?

MR. FERGUSON: David Ferguson, also on behalf of Joseph LaForte.

THE COURT REPORTER: Thank you.

1 I see we have Dean Vagnozzi present.

2 MR. VAGNOZZI: I'm -- I'm sorry, yes.

3 Dean Vagnozzi here. I had my microphone muted.

4 THE COURT REPORTER: Okay. I'm just going  
5 to go down the list. I think it will be  
6 easier.

7 Jeffrey Marcus.

8 MR. MARCUS: Yes.

9 THE COURT REPORTER: Joe Cole.

10 MR. COLE: Yes, that's me.

11 THE COURT REPORTER: We have a JL. Is  
12 that also Joshua Levine just calling in?

13 MR. COLE: No. I believe that's Joseph  
14 LaForte.

15 THE COURT REPORTER: Joseph LaForte.  
16 Okay, thank you.

17 Michael Furman, I know is present.

18 Perry Abbonizio.

19 Mr. Abbonizio, you there?

20 MR. ABBONIZIO: Yes, I'm here as well.  
21 Thank you. It's not working.

22 THE COURT REPORTER: Thank you,  
23 Mr. Abbonizio.

24 Okay. I -- I think I have everyone,  
25 Mr. Soto.

1 MR. SOTO: Okay. Let's begin.

2 (Brief recess due to technical  
3 difficulties.)

4 THE COURT REPORTER: Ms. Elisha Frank,  
5 would you raise your right hand, please?

6 Do you swear the testimony you're about to  
7 give today will be the truth, the whole truth,  
8 and nothing but the truth?

9 THE WITNESS: I do.

10 THE COURT REPORTER: Thank you.

11 Thereupon:

12 ELISHA FRANK, ESQUIRE

13 having been first duly affirmed, was examined and  
14 testified as follows:

15 EXAMINATION

16 BY MR. SOTO:

17 Q. Would you please state your name for the  
18 record, please.

19 A. Elisha Frank.

20 Q. Okay. And where do you currently work?

21 A. I work for the Securities and Exchange  
22 Commission in the Miami regional office.

23 Q. How long have you worked there?

24 A. Seventeen years, a little over 17 years.

25 Q. And what is your current title?

1 A. Assistant Regional Director.

2 Q. And what does an Assistant Regional  
3 Director do at the SEC?

4 A. My primary responsibility is to supervise  
5 investigations.

6 Q. Okay. Prior to that, what was your  
7 position?

8 A. I was a Senior Counsel.

9 Q. And what was your position prior to that?

10 A. I believe it was just the title of  
11 counsel.

12 Q. Okay. And does "counsel" mean that you  
13 were an attorney who investigated cases?

14 A. That's correct.

15 Q. Okay. So now you are in a position of  
16 supervising other counsel or staff attorneys who  
17 investigate cases?

18 A. That's correct.

19 Q. Okay. And did you supervise anybody in  
20 connection with this case?

21 A. Yes, I did.

22 Q. Who was the staff attorney or counsel on  
23 this case?

24 A. Linda Schmidt.

25 Q. Did any other staff attorney or counsel

1 serve to investigate or assist Ms. Schmidt with  
2 respect to this case?

3 MS. BERLIN: This is Amie Riggle Berlin on  
4 behalf of the SEC. We object. It's inquiring  
5 about investigative privilege, and we direct  
6 the witness not to answer.

7 MR. SOTO: You're directing Ms. Frank,  
8 just so I'm clear, not to answer who else other  
9 than Ms. Schmidt was involved as a staff  
10 attorney on this case?

11 MS. BERLIN: Yes. We'll be objecting to  
12 any questions about the investigation  
13 specifically because it's privileged.

14 MR. SOTO: Okay. Well, I'm not asking  
15 about the investigation, I'm asking about who  
16 staffed the investigation.

17 MS. BERLIN: Same objection that I've  
18 already stated.

19 MR. SOTO: Okay.

20 BY MR. SOTO:

21 Q. So, Ms. Frank, did you have an accountant  
22 assigned to this case?

23 MS. BERLIN: Same objection.

24 MR. SOTO: You're not going to allow her  
25 to even answer whether there was an accountant

1 assigned?

2 MS. BERLIN: Right. So, no questions  
3 about the investigation, which is nonpublic.

4 MR. SOTO: Okay.

5 MS. BERLIN: I have other reasons, but  
6 that's -- for the deposition purposes, anything  
7 concerning the investigation itself is  
8 nonpublic, and, therefore, we're instructing  
9 the witness not to answer.

10 MR. SOTO: Okay. I'm just going to ask --  
11 keep asking these questions, and you can object  
12 as you see fit.

13 BY MR. SOTO:

14 Q. Is Ms. Schmidt still employed at the SEC,  
15 Ms. Frank?

16 A. Yes.

17 Q. Okay. Is the staff -- is the accountant  
18 who was assigned to this case still employed at the  
19 SEC?

20 MS. BERLIN: And same -- same objection  
21 other than to the extent it's already something  
22 that's in the public record or one of our  
23 filings, obviously.

24 MR. SOTO: Okay.

25 All right. So let's go to Exhibit 1.

1 (Thereupon, marked as Exhibit 1.)

2 BY MR. SOTO:

3 Q. This is the Amended Complaint in  
4 connection with this case.

5 Do you recognize it?

6 A. Yes, I do.

7 Q. Okay. When was the first time you saw the  
8 Complaint in this case?

9 MS. BERLIN: Objection to the extent it's  
10 seeking any attorney work product or  
11 investigative privilege information.

12 BY MR. SOTO:

13 Q. Okay. When was the first time you saw the  
14 Complaint in this case?

15 MS. BERLIN: Objection to the extent it's  
16 seeking anything prefiling concerning the  
17 investigation or the SEC's attorney work  
18 product.

19 MR. SOTO: Okay. You're going to have to  
20 make clear if you're directing her not to  
21 answer; otherwise, I don't know whether you're  
22 just stating or objecting.

23 Are you directing her not to answer?

24 MS. BERLIN: So to the extent that  
25 Ms. Frank would be testifying about work done

1 during the investigation or in her capacity as  
2 counsel for the SEC, then she is directed not  
3 to answer the question.

4 MR. SOTO: Well, she -- the note -- the  
5 notice --

6 THE WITNESS: I think my phone just went  
7 out. I know you can hear me, but let me dial  
8 back in, and then I can give my answer.

9 MS. BERLIN: While she's doing that,  
10 Mr. Soto, it's helpful if you clarify your  
11 question. You were just asking her questions  
12 about her personally. So if you're -- if  
13 you're now asking about the 30(b)(6) questions  
14 and asking her as the SEC, or if we've moved  
15 into that sort of phase of -- of matters, then  
16 the objection might be different. I wanted to  
17 mention that in case that helps us move  
18 forward.

19 MR. SOTO: My questions are directed to  
20 her as the designee for this deposition, which  
21 is her capacity as an SEC representative.

22 Let's wait for her to get back on because  
23 she can't hear us.

24 THE WITNESS: I think I'm back. Can you  
25 hear me?

1 MR. SOTO: Yes, we can hear you.

2 THE WITNESS: Okay.

3 A. I can't answer because it would be work  
4 product.

5 BY MR. SOTO:

6 Q. Your -- so your testimony is that when you  
7 first saw the draft Complaint in this case would be  
8 work product?

9 MS. BERLIN: Objection. Asked and  
10 answered.

11 And we assume that when you ask Ms. Frank  
12 questions as you today, that you're speaking to  
13 her as the -- as if you as the SEC. And so  
14 with that understanding, we already directed  
15 the witness not to answer when the SEC saw the  
16 Complaint as attorney-client privilege,  
17 attorney work product, and the deliberative  
18 process privilege, and so she's directed not to  
19 answer.

20 BY MR. SOTO:

21 Q. Okay. Ms. Frank, just so you know, my  
22 questions are being directed to you in connection  
23 with your designation as the SEC's corporate  
24 representative, not in your individual capacity.

25 Do you understand that?

1 A. Yes.

2 Q. All right. So let's look at Exhibit  
3 Number 1. This is the Amended Complaint.

4 You have seen it before, correct?

5 A. Yes.

6 Q. All right. What I would like to do is I  
7 would like to go over some terminology using the  
8 allegations as defined by you, the SEC, in your  
9 Complaint. Okay?

10 A. Okay.

11 Q. What I would like to do is make sure that  
12 when I use a particular word or phrase going  
13 forward, you and I both understand what it means.  
14 And we're going to draw from the definitions and the  
15 language in the -- in the Amended Complaint.

16 So, what I want to do is begin with the  
17 three phases defined in the Amended Complaint.

18 If we go to Paragraph 49. Paragraph 49,  
19 you can see under Subheading B, reads: "Phase 1 of  
20 the offering: Par Funding issues promissory notes  
21 directly to investors."

22 Do you see that?

23 A. Yes.

24 Q. Okay. And the time period is defined as  
25 from no later than August 2012 until 2000 -- 2017.

1 Do you see that?

2 A. Yes, until December of 2017.

3 Q. Correct, December 2017.

4 And during that time period, which is  
5 Phase 1, Par Funding is alleged to have sold  
6 promissory notes directly to investors, correct?

7 A. Yes.

8 Q. Okay. So, going forward, we'll refer to  
9 those individuals as Phase 1 investors.

10 Is that fair?

11 A. Okay.

12 Q. And that will reflect -- reflect that time  
13 period, okay?

14 A. Okay.

15 Q. All right. Let's go back to Paragraphs 3  
16 and 4.

17 It says, in Paragraph 3, "This changed in  
18 early January 2018."

19 Do you see that?

20 A. Yes.

21 Q. Okay. And so let's quickly go to  
22 Paragraph 70.

23 Okay. Thank you.

24 And do you see, under Subsection D, that  
25 it says, "Phase 2 of the offering: Par Funding uses

1 agent investment funds to raise investor money and  
2 issues its notes to the agent" investor funds --  
3 "investment funds."

4 Do you see that?

5 A. Yes.

6 Q. Okay. So when it says, in Paragraph 3,  
7 that things changed in 2018, you will agree with me  
8 that Phase 2 is from January 2018 through the date  
9 of the filing of the Complaint, correct?

10 A. Based on what is in Paragraph 70 from  
11 January 2018 through present, yes.

12 Q. Okay. And that's all we're doing, is  
13 we're just tracking the language of the Complaint.

14 Okay. So you would agree with me that  
15 Phase 2, as defined by the Amended Complaint, begins  
16 in January 2018 and presumably ends when the  
17 Complaint was filed, July of 2020?

18 A. Yes.

19 Q. Okay. And this period for Phase 2, you  
20 would agree that the SEC alleged that Par Funding,  
21 during Phase 2, raised investor money -- is alleged  
22 to have raised investor money through agent funds,  
23 correct?

24 A. Primarily through agent funds as  
25 Paragraph 70 states, yes.

1 Q. Okay. So let's go to Paragraph 86.

2 And one of those agent fund managers,  
3 according to Paragraph 86, is someone whose name is  
4 Vagnozzi, Dean Vagnozzi, correct?

5 A. Correct.

6 Q. And Mr. Vagnozzi offered and sold  
7 promissory notes through agent funds that are  
8 identified here as ABFP Income Fund, ABFP Income  
9 Fund 2.

10 Do you see that, collectively referred to  
11 as ABFP funds?

12 MS. BERLIN: Objection to form.

13 BY MR. SOTO:

14 Q. Is that a fair characterization of the  
15 allegations in Paragraph 86, Ms. Frank?

16 A. Well, it states that Vagnozzi offers and  
17 sells promissory notes through his own agent funds,  
18 ABFP Income Fund and ABFP Income Fund 2.

19 So, yes, I agree with that statement in --

20 Q. Okay.

21 A. -- Paragraph 86.

22 Q. I'm sorry to cut you off.

23 So we're in agreement that during Phase 2,  
24 Mr. Vagnozzi was selling promissory notes through  
25 ABFP, which are agent funds?

1 MS. BERLIN: Objection to form.

2 BY MR. SOTO:

3 Q. Correct?

4 MS. BERLIN: Objection to form.

5 BY MR. SOTO:

6 Q. Ms. Frank, you can answer, if you can hear  
7 me.

8 A. So I can agree that that is what the  
9 Complaint says in Paragraph 86. I don't have any  
10 personal knowledge, and the SEC doesn't have any  
11 personal knowledge, as to what Mr. Vagnozzi was  
12 doing. I can tell you the evidence that supports  
13 the allegations in Paragraph 86. To point to the  
14 evidence, I can do that.

15 Q. We're going to discuss that. For now, I'm  
16 just trying to define some time periods.

17 And so you've answered my question.

18 MR. SOTO: Let's go to Paragraph 4.

19 BY MR. SOTO:

20 Q. Okay. So you just testified, Ms. Frank,  
21 that you were going to provide us some information  
22 about the evidence that the SEC has, and I'll ask  
23 you about that now.

24 So if you look at Paragraph 4, go ahead  
25 and read it to yourself.

1 A. Okay.

2 Q. Okay. The second sentence alleges that,  
3 "Par Funding compensated the agent funds by issuing  
4 Par Funding promissory notes to the agent funds  
5 offering higher rates of return than what the agent  
6 funds are obligated to pay investors under the agent  
7 fund notes."

8 Is that a fair characterization of that  
9 allegation?

10 A. I mean, Paragraph 4 states what it states.  
11 I'm not sure that I can confirm any characterization  
12 of it.

13 Q. I'm simply asking whether that's what  
14 Paragraph 4, Sentence Number 2, states.

15 MS. BERLIN: Objection. Asked and  
16 answered.

17 A. I think I've answered it in just saying  
18 that the sentence states what the sentence states.

19 BY MR. SOTO:

20 Q. Does the sentence state what I stated on  
21 the record? I read it verbatim.

22 MS. BERLIN: Objection. Asked and  
23 answered.

24 A. I think I've answered the question.

25

1 BY MR. SOTO:

2 Q. All right. So tell me, Ms. Frank, what  
3 evidence the SEC has that Par Funding had any  
4 control over what the agent funds were obligated to  
5 pay investors.

6 MS. BERLIN: Objection. Calls for  
7 attorney work product. Deliberative process  
8 privilege. We instruct the witness not to  
9 answer that question as phrased.

10 MR. SOTO: All right. Well, Amie, the  
11 purpose of today's deposition is to ask the SEC  
12 for evidence supporting the allegations of the  
13 Complaint as set forth in the Notice of  
14 Deposition.

15 Are you going to object every time I ask  
16 for evidence supporting an allegation in the  
17 Complaint? I just want to know because that  
18 will shorten this deposition.

19 MS. BERLIN: We'll object on a  
20 question-by-question basis. If you ask the SEC  
21 what -- you know, point to a specific  
22 allegation and ask what evidence supported that  
23 allegation in the Complaint, at that time, then  
24 I would not be objecting. It was just to the  
25 way that you had phrased it, Mr. Soto.

1 I hope that's helpful, so maybe you can  
2 rephrase and get your answer.

3 MR. SOTO: I just want to be clear. So is  
4 your objection that I'm asking for evidence  
5 that the SEC currently has as opposed to  
6 evidence it had when it filed the Complaint?

7 MS. BERLIN: You would have to re-ask your  
8 question, and then I can object to the specific  
9 question that you're asking, but the question,  
10 as phrased, I've already stated the objection.

11 MR. SOTO: Okay.

12 BY MR. SOTO:

13 Q. Ms. Frank, what evidence did the SEC have  
14 when it filed the Complaint that Par Funding had any  
15 control over what the agent funds were obligated to  
16 pay investors under the agent funds' notes as  
17 alleged in Paragraph 4?

18 MS. BERLIN: Objection. Mischaracterizes  
19 Paragraph 4 of the Complaint.

20 BY MR. SOTO:

21 Q. You can answer.

22 A. The SEC could tell you what evidence we  
23 have that supports the sentence that says, "Par  
24 Funding compensates the agent funds by issuing Par  
25 Funding promissory notes to the agent funds offering

1 higher rates of return than what the agent funds are  
2 obligated to pay investors under the agent fund  
3 notes."

4 Q. I appreciate that, Ms. Frank, and we may  
5 get to that.

6 But my question is: What evidence did the  
7 SEC have when it filed the Complaint that Par  
8 Funding had any control over what the agent funds  
9 paid on their notes?

10 MS. BERLIN: Objection. Investigative  
11 privilege. Attorney work product.

12 MR. SOTO: Okay.

13 MS. BERLIN: I'll direct the witness not  
14 to answer that question. That does not concern  
15 one of the Complaint allegations.

16 MR. SOTO: Okay.

17 BY MR. SOTO:

18 Q. What evidence did the SEC have when it  
19 filed its Complaint that Par Funding played any role  
20 in what the agent funds offered their investors  
21 insofar as interest on notes that the agent funds  
22 were offering or selling to investors?

23 MS. BERLIN: Objection. Attorney work  
24 product. Investigative privilege. I think  
25 it's the same question. We direct the witness

1 not to answer that question.

2 BY MR. SOTO:

3 Q. What evidence does the SEC have that Par  
4 Funding had any conversations with agent funds with  
5 respect to what the agent fund managers were going  
6 to be offering their investors during Phase 2?

7 MS. BERLIN: Objection. Calls for  
8 attorney work product, and to the extent during  
9 the investigation, the investigative privilege  
10 and deliberative process privilege. We would  
11 direct the witness not to answer that question  
12 as phrased.

13 BY MR. SOTO:

14 Q. What evidence does the SEC have that Par  
15 Funding or any of its representatives played any  
16 role in the interest that was paid on notes sold by  
17 the agent funds during Phase 2?

18 MS. BERLIN: Objection. Asked and  
19 answered. And we've already stated our  
20 objection to that question and directed the  
21 witness not to answer it for the grounds  
22 stated.

23 BY MR. SOTO:

24 Q. All right. Let's look at Exhibit 3, which  
25 is the Notice of Deposition.

1 (Thereupon, marked as Exhibit 3.)

2 BY MR. SOTO:

3 Q. All right. So do you recognize this as  
4 the Notice of Deposition that was served on you,  
5 Ms. Frank?

6 A. Yes, I do.

7 Q. Okay. Let's go down to the attachment,  
8 Exhibit A.

9 Okay. Do you recognize that as well?

10 A. Yes.

11 Q. Okay.

12 MR. SOTO: Let's -- don't scroll down.

13 Scroll back up to Exhibit A.

14 BY MR. SOTO:

15 Q. So Paragraph 1 asks the SEC to designate  
16 one or more individuals who can testify on the SEC's  
17 behalf regarding the specific facts, information,  
18 documents, witness statements, investigative  
19 testimony, and other evidence relied upon by the  
20 Commission and Commission staff, including the  
21 factual portions of the staff's Action Memo to the  
22 Commission that support the Commission's  
23 allegations, causes of actions, and requests for  
24 relief in the Amended Complaint, which is identified  
25 as Docket Entry 119.

1 Correct?

2 A. I see -- I see that that's what Memo 1  
3 states, yes.

4 Q. Okay. And specifically, it asks for  
5 information -- any of that information relating to  
6 several categories that are immediately underneath  
7 that, correct?

8 A. Correct.

9 Q. Okay. So I would like to ask you, can you  
10 define what an Action Memo is?

11 MS. BERLIN: Objection. We will -- to the  
12 extent the witness can testify about public  
13 information, we're not directing her not to  
14 answer that, but to the extent, Mr. Soto,  
15 you're asking about the Action Memo in this  
16 particular case, then we direct the witness not  
17 to answer as that is nonpublic information  
18 protected by the investigative and deliberative  
19 process privilege, attorney work product, and  
20 attorney-client privileges.

21 MR. SOTO: Okay. I believe I was clear,  
22 in that I asked what an Action Memo is. I  
23 didn't ask what this Action Memo said, I asked  
24 what is an Action Memo. It's identified in  
25 Paragraph 1.

1 MS. BERLIN: Again, same objection.

2 Ms. Frank can testify about public information,  
3 but to the extent the question is seeking to  
4 elicit any information about nonpublic internal  
5 processes at the Commission, then Ms. Frank is  
6 directed not to answer.

7 A. So what I can tell you is that we have --  
8 the SEC has an enforcement manual that is on our  
9 website that has information in it about the Action  
10 Memo process, and I would refer you to that for the  
11 answer to this question.

12 BY MR. SOTO:

13 Q. Okay. And have you reviewed that  
14 guideline?

15 A. I did not review the guidelines with  
16 respect to action memos in preparation for this  
17 testimony, because the Action Memo itself was not  
18 one of the items in A through K that was listed  
19 here.

20 Q. Did you -- have you ever reviewed that  
21 guideline?

22 A. Yes.

23 Q. Okay. So can you tell us what an Action  
24 Memo is?

25 MS. BERLIN: Objection. Asked and

1 answered. Objection. Asked and answered. And  
2 we repeat the same objections that we've  
3 already stated.

4 BY MR. SOTO:

5 Q. You can answer, Ms. Frank.

6 A. Without looking at the enforcement manual  
7 to refresh my memory, I don't have a specific  
8 recollection of what's publicly available regarding  
9 the Action Memo and the Action Memo process, so I  
10 can't answer that at this point.

11 Q. So what steps did you take in order to  
12 prepare yourself as directed by Exhibit A,  
13 Paragraph 1, with respect to each of these  
14 subsections?

15 A. I reviewed the Amended Complaint. I  
16 reviewed our -- the SEC's TRO motion that was filed  
17 with the Court. I reviewed the exhibits that were  
18 cited in the TRO motion. I reviewed investor  
19 declarations.

20 Are you asking only with respect to Item  
21 Number 1?

22 Q. Only with respect to Item Number 1.

23 A. I think that's all I reviewed with respect  
24 to Item Number 1.

25 Q. Did you speak with any SEC employees to

1 prepare for this investigation in order to prepare  
2 for Item Number 1?

3 A. I'm sorry, you broke up a little bit. Can  
4 you say that again?

5 Q. Did you speak with any SEC employees who  
6 worked on this investigation in connection with Item  
7 Number 1?

8 A. Only with Amie Berlin, my counsel.

9 Q. So you did not speak with Linda Schmidt?

10 A. I did not.

11 Q. Okay. So let's look at Exhibit Number 4.

12 I'm sorry, let's go back to Exhibit 3.

13 Let's go to Number 2.

14 So you recognize the remaining paragraphs  
15 here, Ms. Frank?

16 A. Yes, I do.

17 Q. Okay. And did you do anything differently  
18 to prepare with respect to Numbers 2, 3, 4 --

19 MR. SOTO: Can we scroll down to 5?

20 BY MR. SOTO:

21 Q. 2, 3, or 4?

22 THE WITNESS: Can you scroll a little bit,  
23 so I can see the bottom, 5, again?

24 BY MR. SOTO:

25 Q. I referred -- Ms. Frank, I referred just

1 to 2, 3, and 4. I'm sorry.

2 A. Oh, I'm sorry.

3 Okay. No, I did not. I reviewed all of  
4 those same documents.

5 Q. All right. Let's look at Number 5.

6 Did you review anything else in order to  
7 prepare yourself for the item listed in Number 5,  
8 which is any information that supports the  
9 Commission's disgorgement calculation as to each  
10 Defendant?

11 A. No. The same information. We covered  
12 that as well.

13 Q. Okay. And would your answer be the same  
14 with respect to Number 6?

15 A. With respect to Number 6, I would also add  
16 our motion for the appointment of a receiver, our  
17 certification under Rule 65, and our motion in  
18 support of an assets freeze.

19 Q. Okay. And with respect to Number 7, did  
20 you do anything different?

21 A. Yes. With respect to Number 7, I also  
22 reviewed e-mails between Shane Heskin and the SEC  
23 and e-mails between Kara DiPietro and the SEC.

24 Q. Okay.

25 A. This is one where I did speak with Linda.

1 Q. You spoke with Linda with respect to the  
2 item identified in Paragraph 7?

3 A. Yes.

4 Q. Okay. And with respect to Paragraph 8,  
5 what did you do to prepare, if you did something  
6 differently than you've previously testified?

7 A. On this, I reviewed Commission guidelines  
8 in the enforcement manual.

9 Q. Which Commission guideline corresponds to  
10 Paragraph 8?

11 MS. BERLIN: Objection to the extent that  
12 you're -- if it would elicit information about  
13 nonpublic guidelines, the witness cannot  
14 answer; if it's concerning public guidelines,  
15 then she may.

16 A. There's a guideline in Section 3 that may  
17 be applicable.

18 BY MR. SOTO:

19 Q. And what does that guideline say? Did you  
20 review it?

21 A. She did, and I don't specifically recall  
22 it to be able to accurately recite it back to you,  
23 so I would refer you to the enforcement manual in  
24 that section.

25 Q. Okay.

1 MR. SOTO: Okay. And, Amie, for the  
2 record, you indicated to me, when I set this  
3 deposition weeks ago, that you were going to  
4 provide the guideline before the deposition, no  
5 later than the date of the deposition.

6 MS. BERLIN: Yes. So, as Ms. Frank has  
7 testified, she can testify -- we can't testify  
8 about anything other than providing the  
9 enforcement manual.

10 MR. SOTO: Okay. Well, you --

11 MS. BERLIN: It is quickly available on  
12 the SEC's website. And I apologize if we were  
13 supposed to e-mail it to you, but we can do  
14 that right now, but the enforcement manual,  
15 that's all that Ms. Frank can testify about,  
16 and she cannot provide her opinion or the SEC's  
17 opinion about that document.

18 MR. SOTO: Okay. Well, with respect to  
19 Paragraphs 8 and 9, Amie, you indicated that  
20 you were going to provide the guidelines that  
21 were applicable no later than the date of the  
22 deposition. We've already started. I haven't  
23 gotten it from you. So I would appreciate it  
24 if you would comply and provide that to us.

25 MS. BERLIN: Sure. I'll e-mail you the

1 SEC's website right now, but, again, Ms. Frank  
2 cannot opine about -- or the SEC, because  
3 that's who Ms. Frank is today, cannot opine  
4 about whether any portion of that manual  
5 applies to anything or how, but I've just  
6 e-mailed it to you, Mr. Soto.

7 MR. SOTO: Amie, in order for us to get  
8 through today -- we started late for various  
9 reasons -- I'm going to ask that you make your  
10 objections more succinct than you're making  
11 them. It's -- you're taking up quite a bit of  
12 time explaining over and over and over again  
13 that certain things are nonpublic. If you  
14 could just advise that you're objecting because  
15 something is confidential or attorney-client  
16 privilege or work product, I think that would  
17 suffice and would allow us to move more  
18 quickly.

19 BY MR. SOTO:

20 Q. All right. So let's look at --

21 MR. SOTO: And, Amie, also, I didn't ask  
22 for the SEC's website. I asked for the  
23 guidelines that are applicable to Paragraphs 8  
24 and 9. So I would appreciate if you sent that.  
25 You sent the website. I imagine you meant the

1 entire manual.

2 MS. BERLIN: So the manual is, as you  
3 know, Mr. Soto, on our website, and so I sent  
4 you the link to the manual, and we're not  
5 claiming that it's applicable to 8 and 9, but  
6 it is the public -- those are the public  
7 guidelines, though the SEC is not -- we're not  
8 stating that they're applicable at all to your  
9 topics.

10 MR. SOTO: Okay.

11 MS. BERLIN: I've sent them to you  
12 nonetheless.

13 MR. SOTO: Okay. Well, the Notice of  
14 Deposition specifically asks for those  
15 guidelines, and you agreed to provide the  
16 guidelines applicable to 8 and 9. You've  
17 provided what you're providing, and we could  
18 deal with it later.

19 All right. Let's go to Exhibit 4.

20 (Thereupon, marked as Exhibit 4.)

21 BY MR. SOTO:

22 Q. All right. Do you recognize Exhibit 4?

23 And we can scroll down if you need us to  
24 show you more of it.

25 MR. SOTO: I think that's a little too

1 fast.

2 A. I recognize it.

3 BY MR. SOTO:

4 Q. Okay. This is a Form D, Notice of Exempt  
5 Offering, filed by Complete Business Solutions,  
6 correct?

7 A. It is a Form D filing.

8 MS. BERLIN: I'm sorry. Objection.

9 Excuse me.

10 Ms. Frank, just give a pause right before  
11 you answer just to give me a chance to object,  
12 so I'm not speaking over you.

13 I object as to form as the question was  
14 stated.

15 BY MR. SOTO:

16 Q. You can answer, Ms. Frank.

17 A. But I have no knowledge of who filed this.

18 Q. Okay. My question simply was: This is a  
19 Form D -- this is a Form D filing filed on behalf of  
20 Complete Business Solutions, correct?

21 A. Well, I think the document speaks for  
22 itself in that it says "Form D" on the top, and it  
23 has a name of an issuer, and it lists "Complete  
24 Business Solutions Group."

25 Q. Okay.

1 MR. SOTO: Let's scroll down to the  
2 bottom.

3 BY MR. SOTO:

4 Q. And this was filed on February 12, 2019,  
5 correct?

6 MS. BERLIN: Objection. Form.

7 A. I don't have any personal knowledge as to  
8 when it was filed.

9 BY MR. SOTO:

10 Q. The form itself indicates that it was  
11 filed February 12, 2019, correct?

12 MS. BERLIN: Objection. Asked and  
13 answered. Form.

14 BY MR. SOTO:

15 Q. You can answer, Ms. Frank.

16 A. So the SEC doesn't have any personal  
17 knowledge as to when it's filed. I can look at the  
18 document, and I can see that there is a date on this  
19 page at the bottom.

20 Q. And the form indicates that it was filed  
21 by a Cynthia Clark, who is General Counsel for CBSG,  
22 correct?

23 MS. BERLIN: Objection. Form.

24 A. The SEC doesn't have any personal  
25 knowledge of who filed this document.

1 BY MR. SOTO:

2 Q. The question was: The document itself  
3 indicates that it was filed by -- signed by Cynthia  
4 Clark as General Counsel for CBSG, correct?

5 MS. BERLIN: Objection. Asked and  
6 answered. Form.

7 A. So while we have no personal knowledge,  
8 again, I can see here that this page of the document  
9 has a place that says "Signature," and it says  
10 "Cynthia A. Clark" and the title, and it says,  
11 "General Counsel."

12 MR. SOTO: Okay. So let's go to -- back  
13 to the top. And scroll down. Let's go to  
14 Page 3.

15 BY MR. SOTO:

16 Q. The document itself, this Form D filing,  
17 indicates that the issuer is claiming an exemption  
18 under Rule 506(b), correct?

19 A. I can't give you an opinion on that. I  
20 don't know, and the SEC does not know, what someone  
21 was meaning when they filled this document out.

22 Q. You're saying the SEC does not know what  
23 the person who filled this out meant when they  
24 marked "X" next to Rule 506(b) under Section 6 for  
25 "Federal Exemptions and Exclusions Claimed"?

1 MS. BERLIN: Objection. Asked and  
2 answered. Object to the form.

3 BY MR. SOTO:

4 Q. You can answer.

5 A. I think I answered it before, but we have  
6 no personal knowledge about this. Again, I can see  
7 that under Section 6, someone has checked a box, it  
8 says, Rule 5 -- "Rule 506(b)."

9 Q. Okay. What evidence does the SEC have  
10 that this claimed exemption under 506(b) is false?

11 MS. BERLIN: Objection. Calls for  
12 attorney product to the extent you're asking  
13 about the investigative phase, deliberative  
14 process privilege. And so on those grounds, we  
15 would direct the witness not to answer. If  
16 you're asking about information that we've  
17 already made public, then the witness may  
18 answer to that extent.

19 BY MR. SOTO:

20 Q. Ms. Frank, you can answer.

21 A. I'm trying to recall the exact question.  
22 I'm sorry, can you say it one more time?

23 Q. Yes, certainly.

24 What evidence does the SEC have that the  
25 exemption claimed under Section 6 here for 506(b) is

1 false?

2 MS. BERLIN: Objection. Calls for  
3 attorney work product. Deliberative process  
4 privilege. So the witness cannot answer to  
5 those things. However, to the extent the  
6 question is inquiring about evidence or  
7 arguments already made public, the witness may  
8 testify to that.

9 BY MR. SOTO:

10 Q. Ms. Frank, you can answer.

11 A. So the public documents, some of them, we  
12 would have, would be investor declarations,  
13 marketing brochures, transcripts of dinner seminars  
14 solicitations.

15 And I think that's all I can remember at  
16 the moment. If you would allow me to look at some  
17 notes that I made to the Amended Complaint, I might  
18 be able to add some other items to that.

19 Q. Ms. Frank, you can review your notes. Any  
20 notes you review in order to answer questions would  
21 be discoverable, and I would ask that you share them  
22 with us if that's what you -- if that's what your  
23 preference is. If not, then I'll just go through  
24 the items you just identified.

25 MS. BERLIN: Mr. Soto, this is Ms. Berlin.

1 So if you'll permit Ms. Frank to utilize her  
2 notes to answer these questions, then we, of  
3 course, would produce those notes to you so  
4 that you would have them.

5 BY MR. SOTO:

6 Q. Ms. Frank, are you looking through your  
7 notes right now? I can't tell.

8 A. Yes, yes, I'm just looking at my notes.

9 So, there's also the Form D that states  
10 that sales agents were used, and if I didn't say it  
11 previously, finder's agreements.

12 There's an undercover transcript that was  
13 provided where Perry Abbonizio talks about CBSG  
14 using about 45 sales agents nationwide to offer the  
15 investments.

16 There's a transcript of the November 2019  
17 dinner seminar.

18 Q. Uh-huh.

19 A. The promissory notes themselves.

20 Q. Does that complete your answer?

21 A. Yes, that completes my answer with respect  
22 to items that were available at the time that we  
23 filed our Amended Complaint.

24 As you know, since then, we've gotten many  
25 more documents through discovery, and we have not

1 finished going through all of those documents yet,  
2 so it would not include all of those documents.

3 Q. So, Ms. Frank, just to be clear, my  
4 questions seek to elicit any evidence that the SEC  
5 has from the date of filing and thereafter to the  
6 present.

7 MS. BERLIN: And, Mr. Soto, we've already  
8 objected --

9 MR. SOTO: Ms. Berlin, I was not finished.

10 MS. BERLIN: Oh, sorry.

11 MR. SOTO: So in order to work through  
12 this deposition more efficiently, Ms. Berlin,  
13 if it's your position that you're going to  
14 object to any questions that I ask about  
15 evidence that the SEC currently has as opposed  
16 to evidence that it had when it filed the  
17 Complaint, just make that clear to me now, and  
18 you can have a standing objection on that, as  
19 long as we have an agreement that with respect  
20 to every one of these questions, I would be  
21 asking you for evidence that the SEC has during  
22 or through the current date.

23 MS. BERLIN: Thank you.

24 So under the rules, we have to object  
25 question by question. As we advised you before

1 this deposition occurred, the SEC has not even  
2 completed reviewing the hundreds of thousands  
3 of documents during litigation, nor has this  
4 witness reviewed all of those. So she will not  
5 be -- the SEC will not be testifying about the  
6 post-filing evidence. It's attorney work  
7 product, among other things.

8 And also, you know, we object to questions  
9 to the extent you're just soliciting --  
10 basically, Ms. Frank can testify about what is  
11 supported in our TRO motion, where the evidence  
12 is, and that's all, and the preliminary  
13 injunction here today, as we advised you in  
14 advance of this deposition in writing.

15 MR. SOTO: Well, obviously, I disagree  
16 with that, but there's no need to debate that  
17 now. I just want to make sure it's clear on  
18 the record that I'm asking for that evidence  
19 through the present date, and it's clear that  
20 you're objecting. So that's what I wanted to  
21 cover.

22 BY MR. SOTO:

23 Q. So, Ms. Frank, you identified a number --

24 MS. BERLIN: I'm sorry, Mr. Soto. I just  
25 need to take a five-minute break. I have

1 someone at my door, a repairman. I just need  
2 to let him in.

3 Could we just take five minutes?

4 MR. SOTO: Sure. We'll get back on at  
5 11:56.

6 MS. BERLIN: Thanks.

7 (Recess taken.)

8 BY MR. SOTO:

9 Q. All right. So, Ms. Frank, in response to  
10 my question, which was, what evidence does the SEC  
11 have that any of the claimed exemptions in the  
12 Form D filing are false. You listed a number of  
13 things, and I want to cover some of those things.

14 One thing you mentioned was a transcript  
15 of a November dinner.

16 Do you recall that?

17 A. Yes.

18 Q. Okay. So why did you reference that  
19 dinner?

20 MS. BERLIN: Objection. Calls for  
21 attorney work product and investigative  
22 privilege. I'll advise the witness not to  
23 respond unless she's referencing something that  
24 we have already made public.

25

1 BY MR. SOTO:

2 Q. Ms. Frank?

3 A. I can't answer that any more fully than I  
4 already have.

5 Q. So the only thing that you can tell me is  
6 that this November dinner has something to do with  
7 the exemption I referenced for Exhibit 4?

8 MS. BERLIN: Objection. Asked and  
9 answered. The SEC has already -- I'm sorry.  
10 Objection. Asked and answered. And I'll  
11 direct the witness not to respond just as I did  
12 unless she's referencing a filing or something  
13 public.

14 BY MR. SOTO:

15 Q. Okay. And, Ms. Frank, who put on this  
16 November dinner that you're referring to?

17 MS. BERLIN: Objection as to form.

18 BY MR. SOTO:

19 Q. You can answer, Ms. Frank.

20 A. The SEC doesn't have any personal  
21 knowledge who put that dinner on. We just have  
22 provided the transcript of that dinner --

23 Q. I want to make clear, Ms. Frank -- I'm  
24 sorry, I cut you off. Please finish your answer.

25 A. We just have provided that transcript of

1 the dinner as a piece of evidence.

2 Q. Okay. So I want to make clear that I'm  
3 not asking for the SEC's personal knowledge -- I'm  
4 not sure I even understand what an entity's personal  
5 knowledge would be -- and I'm not asking for your  
6 personal knowledge. I'm asking for the evidence  
7 that the SEC has to support the allegations of the  
8 Complaint.

9 My last question was: What evidence do  
10 you have of who was responsible for putting on this  
11 November dinner that you referenced in your last  
12 answer?

13 MS. BERLIN: Objection. Asked and  
14 answered. The witness has referred you to the  
15 evidence.

16 BY MR. SOTO:

17 Q. So, Ms. Frank, do you have -- do you have  
18 an answer for my question?

19 A. The evidence is the transcript itself.

20 Q. Okay. What evidence do you have that  
21 anybody who was an employee, an executive, or  
22 officer of Par Funding paid for the dinner that  
23 you're referencing?

24 MS. BERLIN: Objection. Calls for  
25 attorney work product and deliberative process

1 privilege, as well as the investigative  
2 privilege. We'll direct the witness not to  
3 answer this question.

4 BY MR. SOTO:

5 Q. What evidence do you have that Joseph  
6 LaForte, Joseph Cole Barleta, Lisa McElhone, or  
7 Perry Abbonizio contributed financially in order to  
8 put on this dinner that you're referencing?

9 MS. BERLIN: Objection. Investigative  
10 privilege, attorney work product privilege,  
11 deliberative process privilege.

12 BY MR. SOTO:

13 Q. What evidence does the SEC have that any  
14 Par representative -- and when I say "Par  
15 representative," I'm going to include the Defendants  
16 I just referenced in my previous question -- took  
17 any steps to identify the location of this dinner?

18 MS. BERLIN: Objection. Same objections;  
19 investigative privilege, law enforcement  
20 privilege, attorney work product privilege. I  
21 direct the witness not to answer.

22 Mr. Soto, if it helps you to get your  
23 answers, we have no objection to you inquiring  
24 of the witness about the specific allegations  
25 in the Complaint and the evidence supporting

1           them, which I just wanted to mention if that is  
2           helpful for you to know, you know, those -- we  
3           do not object to those types of questions.

4           MR. SOTO: Thank you for that  
5           clarification, Amie. I'm going to go ahead and  
6           ask the questions I want to ask. You can  
7           object. I ask you again, you don't need to go  
8           through your long description of your  
9           objection. If you have an objection on  
10          privilege or work product privilege, work  
11          product, instructing not to answer, would  
12          suffice. I'm going to ask you again to do that  
13          because this deposition started late. Your  
14          objections are still going on for far too long,  
15          but that's all I'm going to ask you to do. You  
16          can continue as you see fit.

17         BY MR. SOTO:

18           Q.     What evidence does the SEC have that  
19           anyone at Par Funding conferred with Mr. Vagnozzi  
20           with respect to whether to put this dinner on in  
21           November?

22           MS. BERLIN: Objection. Deliberative  
23           process privilege, investigative privilege,  
24           attorney work product. Direct the witness not  
25           to answer.

1 BY MR. SOTO:

2 Q. What evidence does the SEC have that  
3 anyone at Par Funding, any representative of Par  
4 Funding, played a role in identifying the invitees  
5 for this November dinner?

6 MS. BERLIN: Objection. Deliberative  
7 process, law enforcement, attorney work product  
8 privilege. Direct the witness not to answer.

9 BY MR. SOTO:

10 Q. What evidence does the SEC have that  
11 anybody at Par Funding played a role in identifying  
12 what would be said to any of the invitees at this  
13 November dinner?

14 MS. BERLIN: Objection. Deliberative  
15 process. Investigative and attorney work  
16 product privileges. Direct the witness not to  
17 answer.

18 BY MR. SOTO:

19 Q. What evidence does the SEC have that  
20 anybody at Par Funding attempted -- strike that.

21 What evidence does the SEC have that  
22 anybody at Par Funding, any representatives as I've  
23 defined, sold a note to any of the invitees at this  
24 November dinner that you've identified?

25 MS. BERLIN: Objection. Attorney work

1 product. Investigative privilege. Law  
2 enforcement privilege. Direct the witness not  
3 to answer.

4 BY MR. SOTO:

5 Q. What evidence does the SEC have that  
6 anybody at Par Funding, any representative of Par  
7 Funding, played any role in creating, editing, or  
8 authorizing any offering materials that were shown  
9 at this dinner?

10 MS. BERLIN: Attorney work product.  
11 Investigative privilege. Law enforcement  
12 privilege. Direct the witness not to answer.

13 BY MR. SOTO:

14 Q. What evidence does the SEC have that any  
15 Par representative who might have attended this  
16 November dinner did anything other than answer  
17 questions with respect to the operation of the  
18 company?

19 MS. BERLIN: Objection. Deliberative  
20 process. Investigative and attorney work  
21 product privilege. And I'll direct the witness  
22 not to answer.

23 Mr. Soto, I just want to make sure that  
24 perhaps I'm understanding correctly, we've  
25 produced all of our evidence. So our objection

1 is based on that you're asking this witness to  
2 opine or give the SEC's legal opinion about  
3 what the evidence shows. And again, if you  
4 would like to ask the witness about the  
5 allegations in the Complaint and the evidence  
6 supporting them, then to that, we will not have  
7 an objection for the nonpublic evidence.

8 So you could ask whatever questions. I  
9 was just trying to assist you and let you know  
10 that we won't be objecting to those questions  
11 in case that is helpful for you to know.

12 MR. SOTO: Okay. Thank you, Amie, and  
13 your efforts to assist are not necessary. Let  
14 me just ask my questions, and you can object as  
15 you see fit.

16 BY MR. SOTO:

17 Q. Ms. Frank, you identified promissory notes  
18 as another item of evidence in response to evidence  
19 that the SEC has that the claimed exemptions were  
20 false.

21 Did I hear you correctly?

22 A. Yes.

23 Q. Okay. Why did you identify the promissory  
24 notes as evidence that the exemptions claimed in  
25 Exhibit 4 were false?

1 MS. BERLIN: I object to the extent you're  
2 seeking attorney work product. I would direct  
3 the witness not to give the SEC's legal opinion  
4 on that, but, otherwise, she can answer.

5 A. My answer would involve a legal answer, so  
6 I can't answer that.

7 BY MR. SOTO:

8 Q. Okay. What about the promissory notes  
9 provide evidence that the claimed exemptions are  
10 false?

11 MS. BERLIN: Same objection.

12 BY MR. SOTO:

13 Q. In your response to my original question  
14 regarding the exemptions, you mentioned transcripts  
15 of dinners. You then identified a November dinner.  
16 What other dinners are you referring to,  
17 if you were referring to other dinners?

18 A. I'm not sure if I said transcripts of  
19 dinners, plural. There are undercover transcripts  
20 that were produced. There are exhibit lists full of  
21 documents that would be part of the evidence  
22 supporting or related to this question.

23 Q. And what specifically within these  
24 transcripts -- let me ask you a different question.

25 What meetings are you referring to that

1 were transcribed that answered my question? All of  
2 them, some of them?

3 A. Some of them, and I can't tell you with  
4 specificity from memory, as we sit here today, which  
5 ones.

6 Q. Okay. You could take whatever time you  
7 need to review your notes to answer the question.

8 Which of these meetings that were  
9 transcribed are you referring to?

10 A. The notes that I have will not assist me  
11 in identifying which of the sealed documents are  
12 most responsive here.

13 Q. Okay. You also mentioned marketing  
14 brochures.

15 Which marketing brochures were you  
16 referring to?

17 A. There's a CBSG Par Funding marketing  
18 brochure that's attached to some of the investor  
19 declarations.

20 Q. Okay. Did that complete your answer?

21 A. There may be more than one version of that  
22 brochure.

23 Q. Okay. Which investor declaration are you  
24 referring to, or declarations?

25 A. I can't tell you specifically which

1 investor declarations from my memory right now.

2 Q. Okay. And your notes won't assist you  
3 either?

4 A. Not on that level of specificity.

5 Q. Okay. So what evidence did the SEC have  
6 when it filed its Complaint that Par Funding played  
7 any role in drafting the marketing brochures you are  
8 referring to?

9 MS. BERLIN: Objection. Asked and  
10 answered. And we direct the witness not to  
11 answer. Seeking deliberative process privilege  
12 information, investigative privilege, and the  
13 attorney work product of the SEC.

14 BY MR. SOTO:

15 Q. What evidence, if any, does the SEC have  
16 to date that anyone at Par Funding drafted the  
17 marketing brochures that you just testified about?

18 MS. BERLIN: Same objection on the three  
19 privilege grounds just stated. I direct the  
20 witness not to answer.

21 MR. SOTO: And so, Amie, I just want to  
22 make clear that if I ask for evidence  
23 supporting the testimony that these marketing  
24 brochures demonstrated that these exemptions  
25 are false, if I ask about this evidence that

1 was collected prior to the filing and which  
2 supported the filing of the Complaint, your  
3 objection would be that it violates the  
4 deliberative process, and if I ask about any  
5 such evidence that you came into possession of  
6 after the filing of the Complaint, your  
7 objection is a combination of work product and  
8 attorney-client privilege?

9 MS. BERLIN: No. The deliberative process  
10 privilege would apply to the deliberations of  
11 the SEC in determining which evidence supports  
12 which potential allegations and the decision to  
13 allege them. The attorney work product is not  
14 limited to the post-filing determinations, but  
15 includes the entire scope of the case.

16 Ms. Frank, once again, she can testify  
17 about the evidence that we have already filed  
18 annotating the allegations of the Complaint in  
19 the TRO motion, but she cannot testify about  
20 our attorney work product with respect to the  
21 other documents that we have produced to you  
22 and how they fit into this case, because that  
23 is attorney work product and deliberative  
24 process privilege concerning the investigative  
25 file.

1           And with respect to the hundreds of  
2           thousands of documents produced during  
3           litigation, as she explained, she's not -- she  
4           has not reviewed those, and we read your topics  
5           to refer to the allegations in the Complaint,  
6           which would be the documents in our file.

7           I don't know if that answers your  
8           question, Alex.

9           MR. SOTO: It does. It does.

10          BY MR. SOTO:

11          Q. All right. So what evidence does the  
12          SEC -- did the SEC have when it filed its Complaint  
13          that anybody at Par Funding, including any of the  
14          Defendants identified in this case, authorized any  
15          of the content of the marketing brochures to which  
16          you referred to early?

17          MS. BERLIN: Attorney -- Mr. Soto, is it  
18          sufficient, because I know you're angry that  
19          I'm making a long objection, if I just say the  
20          same privileges that I've just stated? Is that  
21          adequate? I want to make sure you understand  
22          what I'm referring to.

23          But deliberative process, attorney work  
24          product, and investigative privilege concerning  
25          our investigative file. As you ask questions,

1 if I just say the same privileges that I've  
2 just stated, can we all agree we understand  
3 that that's what I'm referring to, so I don't  
4 take up as much of your time?

5 MR. SOTO: Absolutely. And I'm not angry,  
6 I just want to have this deposition move  
7 smoothly. That would be appreciated, that  
8 would be fine, and your objection, from my  
9 perspective, would be noted.

10 MS. BERLIN: Thank you.

11 MR. SOTO: Okay.

12 BY MR. SOTO:

13 Q. What evidence does the SEC have or did the  
14 SEC have when it filed this Complaint that anybody  
15 at Par Funding, any of the representatives that I've  
16 identified, even knew that these marketing brochures  
17 were going to be created, the ones that you've  
18 identified?

19 MS. BERLIN: Same objections on privilege  
20 grounds concerning the investigative file,  
21 documents that we produced.

22 MR. SOTO: Okay.

23 MS. BERLIN: I'm directing the witness not  
24 to answer.

25 MR. SOTO: All right. Let's go to --

1 let's go to Exhibit 5.

2 (Thereupon, marked as Exhibit 5.)

3 BY MR. SOTO:

4 Q. Before we do, I just want to ask just a  
5 couple of other questions with respect to those  
6 marketing brochures.

7 What evidence, if any, did the SEC have  
8 when it filed the Complaint that anyone at Par  
9 Funding -- again, anyone at the entity -- or as I've  
10 stated, Joseph Cole, Lisa McElhone, as alleged by  
11 the SEC, Joseph LaForte, and/or Perry Abbonizio  
12 distributed any of the marketing brochures that  
13 you've identified in your previous answer?

14 MS. BERLIN: Objection. Asserting the  
15 same three privileges. Directing the witness  
16 not to provide the SEC's legal opinion about  
17 the investigative file we have produced in this  
18 case.

19 BY MR. SOTO:

20 Q. Okay. Let's look at Exhibit 5.

21 So Exhibit 5, would you agree with me,  
22 Ms. Frank, is a Form D filing, another Form D  
23 filing?

24 A. This document states "Form D" on it.

25 MR. SOTO: Okay. Let's go to the bottom.

1 BY MR. SOTO:

2 Q. Would you agree with me that this one  
3 indicates that it was filed April 24, 2020, by  
4 Joseph Cole, as Chief Financial Officer on behalf of  
5 Complete Business Solutions?

6 A. We don't have any knowledge of that, but I  
7 see at the bottom of the page that you're showing  
8 right here, that it does have a date on it, and it  
9 does have a signature block with Joe Cole's name on  
10 it, and the title block says, "Chief Financial  
11 Officer."

12 Q. So, Ms. Frank, I just want to make clear,  
13 because you've continued to say we don't have any  
14 knowledge with respect to that. My question was:  
15 Would you agree with me that this document  
16 indicates, the document itself indicates, that it  
17 was filed as I've described?

18 MS. BERLIN: Objection. Asked and  
19 answered. The document speaks for itself. She  
20 stated that.

21 BY MR. SOTO:

22 Q. You can answer, Ms. Frank.

23 A. I think I already answered in my previous  
24 answer.

25 MR. SOTO: Let's go up to Section 6.

1 BY MR. SOTO:

2 Q. You'll see -- would you agree with me that  
3 this Form D filing also claims an exemption under  
4 Rule 506(b)?

5 A. I think the document speaks for itself,  
6 but I can see, under Section 6, that there's a  
7 checkmark or X marked under Rule 506(b).

8 MR. SOTO: Let's scroll down a little bit.

9 Keep going. Keep going. Keep going.

10 Okay, stop there. Go up to 16.

11 BY MR. SOTO:

12 Q. Do you see under Section 16, "Use of  
13 Proceeds," that there is some language that's been  
14 included in this document, Form D filing?

15 A. Yes.

16 Q. Section 16 asks that the filer provide the  
17 amount of the gross proceeds of the offering that  
18 has been or is proposed to be used for payments to  
19 any of the persons required to be named as executive  
20 officers, directors, or promoters in response to  
21 Item 3 above.

22 Correct?

23 A. Yes.

24 Q. Okay. And the amount indicated here is  
25 zero, correct?

1 A. Yes.

2 MR. SOTO: Okay. So let's look at  
3 Exhibit 1 quickly and go to Paragraph 240.

4 BY MR. SOTO:

5 Q. So in Paragraph 240, the SEC alleges that  
6 Ms. McElhone received at least \$11.3 million from  
7 the offering between July 2015 and October 2019,  
8 correct?

9 A. Yes.

10 Q. It also alleges that as for Cole, Par  
11 Funding transferred funds, which included investor  
12 funds, to companies in which Cole had an ownership  
13 interest or otherwise received financial benefits.  
14 Cole: 1.8 million-dollar to ALB Management between  
15 July 2019 and October 2019, and about \$4.9 million  
16 to Beta Abigail between July 2016 and April 2019,  
17 and about \$9.5 million to New Field Ventures, LLC,  
18 between February 2017 and November 2019, correct?

19 A. Yes.

20 Q. Paragraph 239, forgive me, it says that,  
21 "The representations in both filings are that Cole  
22 and McElhone would not receive any of the gross  
23 proceeds of the securities offerings are false."

24 Do you see that?

25 A. Yes.

1 Q. So I want to understand the SEC's position  
2 here. "Gross proceeds" mean investor funds,  
3 correct?

4 MS. BERLIN: Objection as to form.

5 A. I can't give you an opinion on the  
6 definition of "gross proceeds." We hired an  
7 accounting expert in this case, and she submitted  
8 declarations that we provided that are publicly  
9 available.

10 So I would refer you to Melissa Davis'  
11 declarations with respect to any questions related  
12 to accounting.

13 BY MR. SOTO:

14 Q. Okay. Ms. Frank, I'm not asking you for  
15 your opinion. I'm asking you, as the SEC's  
16 corporate designee, to define a term in your own  
17 Complaint.

18 MS. BERLIN: Objection. Asked and  
19 answered.

20 BY MR. SOTO:

21 Q. And so as the SEC's corporate designee,  
22 I'm asking you to define what the SEC meant or tell  
23 us what the SEC meant by the term "gross proceeds"  
24 of the securities offering.

25 A. The evidence that supports the claim in

1 Paragraph 239 is Melissa Davis' declaration, so I  
2 would refer you to that evidence.

3 Q. "Gross proceeds" means investor proceeds,  
4 correct?

5 MS. BERLIN: Objection. Asked and  
6 answered.

7 BY MR. SOTO:

8 Q. You can answer.

9 A. I can't answer that question. I would  
10 refer you to Melissa Davis' declaration.

11 Q. Okay. And cash that is paid back to CBSG  
12 by merchants would not be gross proceeds, correct?

13 MS. BERLIN: Objection as to form.  
14 Seeking an expert opinion from the SEC on an  
15 accounting issue.

16 A. We would refer you to Melissa Davis'  
17 declarations.

18 MR. SOTO: Let's go back to Exhibit 5, and  
19 back at 16.

20 BY MR. SOTO:

21 Q. Okay. So that paragraph in 16 does not  
22 say that Par will not commingle no proceeds with  
23 other sources of income, does it?

24 MS. BERLIN: Objection. The document  
25 speaks for itself.

1 BY MR. SOTO:

2 Q. Ms. Frank?

3 A. The document says what the document says.

4 MR. SOTO: Ms. Berlin, if you have an  
5 objection to form, I would ask that you do  
6 that. If you continue to say "The document  
7 speaks for itself," and the witness then  
8 repeats what you're saying, it sure sounds like  
9 you're coaching the witness, and I would  
10 appreciate that you not do that.

11 So I ask you, again, that you limit your  
12 objections to the form, where appropriate, as  
13 directed by Judge Reinhart in his order, in his  
14 guidelines, that we're all supposed to follow.

15 BY MR. SOTO:

16 Q. Ms. Frank, that Form D, under Section 16,  
17 does not say that Par will not pay consulting fees  
18 from accounts into which gross proceeds were  
19 deposited, does it?

20 MS. BERLIN: Objection as to form.

21 A. Section 16 says just what's on the paper  
22 there.

23 BY MR. SOTO:

24 Q. It doesn't say that Par represented that  
25 it will not pay consulting fees from accounts into

1 which gross proceeds were deposited?

2 MS. BERLIN: Objection as to form.

3 A. I believe I've answered the question.

4 BY MR. SOTO:

5 Q. You haven't. You told me that the -- you  
6 told me what that Section 16 says. I'm asking you  
7 whether you agree that it doesn't say that Par  
8 Funding will not pay consulting fees from accounts  
9 into which gross proceeds were deposited?

10 MS. BERLIN: Objection. Asked and  
11 answered and harassing the witness.

12 BY MR. SOTO:

13 Q. It doesn't say that, does it?

14 A. I think the document speaks for itself.

15 Q. Section 16 of that form does not say that  
16 Par will not pay consulting fees from accounts into  
17 which gross proceeds were commingled with other  
18 sources of income, does it?

19 MS. BERLIN: Objection as to form.

20 A. The document speaks for itself.

21 BY MR. SOTO:

22 Q. The SEC has alleged that Ms. McElhone and  
23 Mr. Cole made false statements because they received  
24 gross proceeds of the offering after having made  
25 this statement in Section 16 of this exhibit,

1 correct?

2 Did you understand my question, Ms. Frank?

3 A. I do.

4 Can you refer me to a specific place in  
5 the Complaint where you're saying that we said what  
6 you just said?

7 Q. Yeah. We'll go right back to  
8 Paragraph 239.

9 I'm sorry. Okay. "The representations in  
10 both filings that Cole and McElhone would not  
11 receive any of the gross proceeds of the securities  
12 offerings are false."

13 Do you see that?

14 A. Yes, I do.

15 Q. Okay. And that allegation refers to  
16 Section 16 --

17 MR. SOTO: Let's go back to Exhibit 5.

18 BY MR. SOTO:

19 Q. -- does it not? At least with respect to  
20 this Form D?

21 A. Well, I can tell you that the evidence  
22 supporting the allegation that we just looked at  
23 includes Melissa Davis' declaration, and it would  
24 also include this Form D.

25 Q. Right.

1           And this Form D is what the SEC is relying  
2 on when it alleges that Par Funding and the  
3 defendants made a misrepresentation in this form  
4 when they said that gross proceeds of the offering  
5 would not be used to pay any of the individuals in  
6 Section 3?

7           MS. BERLIN: Objection. Asked and  
8 answered.

9 BY MR. SOTO:

10          Q. In other words, Paragraph 239 is  
11 referencing this -- this statement --

12          MS. BERLIN: Objection. Asked and  
13 answered.

14 BY MR. SOTO:

15          Q. -- correct?

16          A. I think I've already answered that  
17 question.

18          Q. What evidence, Ms. Frank, does the SEC  
19 have that consulting fees, when paid to the  
20 executive officers in this case of Par Funding, were  
21 paid from investor -- gross proceeds or investor  
22 proceeds?

23          MS. BERLIN: Objection as to form. Asked  
24 and answered.

25

1 BY MR. SOTO:

2 Q. You can answer, Ms. Frank.

3 A. I think that I've answered it already with  
4 respect to the declarations of -- Melissa Davis'  
5 declarations. And I would add the bank records  
6 would also be evidence that support those  
7 allegations.

8 Q. You would agree, would you not, that  
9 evidence of falsity in this case would require proof  
10 that the consulting fees, when paid, exceeded the  
11 amount of nongross proceeds in the account from  
12 which they were paid?

13 MS. BERLIN: Objection. Attorney work  
14 product. Seeks a legal and accounting opinion  
15 and not -- this witness is not an accounting  
16 expert or presented as one today.

17 BY MR. SOTO:

18 Q. You can answer.

19 MS. BERLIN: She cannot answer because of  
20 the objections I just stated.

21 MR. SOTO: I'm sorry?

22 MS. BERLIN: I apologize, Alex. I  
23 apologize, I should have said that. I was  
24 trying to be brief. I apologize.

25 MR. SOTO: No problem.

1 BY MR. SOTO:

2 Q. The SEC does not have any evidence, does  
3 it, that the consulting fees, when paid in this case  
4 to Ms. McElhone, to Mr. Cole, when they were paid,  
5 were paid from gross proceeds of the offering, does  
6 it?

7 MS. BERLIN: Objection. Asked and  
8 answered. I would just add at this point, I  
9 think you're harassing the witness.

10 MR. SOTO: Okay.

11 BY MR. SOTO:

12 Q. The only evidence that the SEC has, and  
13 the only evidence that the SEC had when it filed  
14 this Complaint, is that consulting fees were paid  
15 from accounts in which investor proceeds and other  
16 sources of income were commingled; isn't that right?

17 MS. BERLIN: Objection to the extent  
18 you're asking for information beyond the public  
19 filings, and you're seeking attorney work  
20 product, investigative privileged information,  
21 or deliberative process information.

22 BY MR. SOTO:

23 Q. The evidence that the SEC has, which  
24 includes Melissa Davis' declarations, does not  
25 include any evidence that there were insufficient

1 nongross proceeds in the accounts when these  
2 consulting fees were paid; isn't that right?

3 MS. BERLIN: Objection. Asks for a legal  
4 and accounting opinion. I believe that it's  
5 been asked and answered.

6 BY MR. SOTO:

7 Q. Can you direct me, Ms. Frank, to any  
8 statement in Melissa Davis' declaration that  
9 indicates that fees paid to executives, as  
10 identified in Paragraph 16 of this form, were paid  
11 from gross proceeds as opposed to accounts in which  
12 gross proceeds and other sources of income were  
13 commingled?

14 MS. BERLIN: Objection as to form.

15 BY MR. SOTO:

16 Q. Can you point me to any statement in her  
17 declaration that says that?

18 A. I would just refer you to the declarations  
19 of Melissa Davis.

20 Q. It is true, isn't it, that nowhere in  
21 Melissa Davis' declaration does it say that there  
22 were insufficient nongross proceed funds in the  
23 accounts when these consulting fees were paid?

24 MS. BERLIN: Objection. Argumentative.

25

1 BY MR. SOTO:

2 Q. You can answer, Ms. Frank.

3 A. As a nonaccountant, I can't opine on the  
4 meaning of what's in Melissa Davis' declarations.

5 MR. SOTO: Okay. Let's look at  
6 Paragraph 241.

7 BY MR. SOTO:

8 Q. In Paragraph 241, the SEC alleges, "In a  
9 recent recorded conversation with an FBI  
10 confidential source, Cole admitted that Par Funding  
11 pays him through his consulting firms and that the  
12 amounts are reflected in the consulting line on the  
13 Par Funding financial statements."

14 Correct?

15 A. Correct.

16 Q. All right. But Mr. Cole did not admit in  
17 any recording that he was paid consulting fees from  
18 gross proceeds, correct?

19 MS. BERLIN: Objection. Argumentative.

20 A. The transcript of the recording speaks for  
21 itself.

22 BY MR. SOTO:

23 Q. There is nothing in that recording that  
24 indicates that Mr. Cole admitted that he was paid  
25 from gross proceeds, correct?

1 MS. BERLIN: Objection as to form.

2 A. The transcript speaks for itself.

3 BY MR. SOTO:

4 Q. Can you point me -- I'm sorry to interrupt  
5 you. Go ahead.

6 A. I can't opine on the language, the  
7 wording, the meaning of the wording, but that  
8 transcript speaks for itself, and that is our  
9 support for that allegation.

10 Q. Okay. I'm not asking you to opine on  
11 anything. I'm asking you to point to the evidence  
12 in that transcript which you identified for any  
13 indication that Mr. Cole admitted that he was paid  
14 using -- from gross proceeds.

15 Can you do that?

16 MS. BERLIN: Objection as to form.

17 BY MR. SOTO:

18 Q. Can you do that, Ms. Frank?

19 A. The document speaks for itself and  
20 supports the allegation in Paragraph 241.

21 Q. And the same is true with respect to any  
22 payments he received through his entities, correct?  
23 In other words, he didn't admit that his entities,  
24 any entities that he controlled or owned, received  
25 consulting fees from gross proceeds, correct?

1 MS. BERLIN: Objection as to form.

2 BY MR. SOTO:

3 Q. Is that correct?

4 A. Again, I can just refer you to the piece  
5 of evidence, the undercover video meeting, which  
6 supports the allegations in Paragraph 241.

7 Q. Okay.

8 MR. SOTO: Let's look at exhibit -- I'm  
9 sorry, one second.

10 All right. Let's look at the Amended  
11 Complaint, Exhibit 1, at Paragraph 243.

12 BY MR. SOTO:

13 Q. That allegation alleges that the  
14 representation in Par Funding's 2020 Form D filing  
15 that Par Funding did not pay commissions is false.  
16 Par Funding had paid so-called finder's fees of at  
17 least \$3.6 million, plus an additional \$1 million in  
18 payments labeled as commissions, from July 2015 to  
19 February 2020.

20 Do you see that?

21 A. Yes.

22 MR. SOTO: Okay. Can we go to Exhibit 6,  
23 please.

24 (Thereupon, marked as Exhibit 6.)

25

1 MR. SOTO: Go to Page 3 of that exhibit.

2 MS. BERLIN: I wonder if you could -- it  
3 was just scrolled through really quickly.  
4 Could you go back to the top, so I could see  
5 what it is?

6 MR. SOTO: Sure.

7 MS. BERLIN: Thank you so much.

8 Mr. Soto, it looks like it starts at the  
9 last page of the exhibit. Could we go to the  
10 last page and then just scroll up, so we could  
11 just review what this document is?

12 MR. SOTO: Sure.

13 MS. BERLIN: Thank you so much.

14 I think we're still trying to get to the  
15 bottom. Would it be easier, Mr. Soto, to  
16 e-mail it to Ms. Frank and I, so we could look  
17 at it more quickly, or do you prefer to scroll  
18 it on the screen from the bottom up? Whatever  
19 your preference is. I'm just trying to make it  
20 easier.

21 MR. SOTO: I'm not controlling this.

22 So that is the very bottom. I'm looking  
23 at it now.

24 The very bottom of it -- could we go all  
25 the way to the bottom -- has a Bates number

1 beginning FR ending in 469. That's the very  
2 bottom of the exhibit.

3 MS. BERLIN: Okay. Thank you.

4 Is it permissible if Ms. Frank just speaks  
5 to the person who is scrolling the exhibit to  
6 sort of let them know, okay, you can scroll up  
7 a bit more?

8 MR. SOTO: Sure.

9 MS. BERLIN: Thank you.

10 So, Ms. Frank, you can just let them know  
11 when you're ready to scroll up, and they'll do  
12 that for you.

13 THE WITNESS: Okay. We can scroll up a  
14 little bit, please.

15 Okay. If you could slow down for a  
16 minute.

17 Okay. You could scroll up, please.

18 Okay. You could scroll up.

19 Okay. You could scroll up.

20 Okay. You could scroll up.

21 Okay. Thank you.

22 Oh, okay. Sorry, I didn't realize there  
23 was a bit more. If you could scroll up to the  
24 top of this.

25 Okay. Thank you.

1 BY MR. SOTO:

2 Q. Okay. Let's go to Page 2, which begins  
3 with, "On April 5, 2020, at 11:01 a.m., Philip  
4 Rutledge wrote."

5 Do you see that, Ms. Frank?

6 A. Yes.

7 Q. Okay. Good.

8 So earlier, when I asked you about the  
9 exemptions claims in the Form D filings identified  
10 as Exhibits 4 and 5, you cited the fact that  
11 finder's fees were paid as evidence that the  
12 exemptions were not applicable.

13 Do you recall that?

14 A. I believe I cited to finder's agreements  
15 as evidence.

16 Q. Okay. So I would like to direct your  
17 attention to the last paragraph of this April 5,  
18 2020 e-mail, where it says, "Whether or not a Form D  
19 filing may be required for the exchange offer, I  
20 suggest that CBSG file an amendment to its existing  
21 Form D, which should have been done in  
22 February 2020, to delete the finder fee information  
23 which appeared on the February 12, 2019 Form D  
24 filing and which is the only filing that is publicly  
25 available."

1 Do you see that?

2 A. Yes.

3 Q. And that was written by Phil Rutledge,  
4 correct?

5 MS. BERLIN: Objection to form.

6 A. Yeah, I don't know who wrote it.

7 BY MR. SOTO:

8 Q. His name --

9 A. I see on the document that his name is  
10 there on the bottom of what you just said.

11 Q. Okay.

12 MR. SOTO: And let's go back to 239. I'm  
13 sorry, I meant to say 243.

14 BY MR. SOTO:

15 Q. All right. So you see in Paragraph 243,  
16 the SEC alleges that, "The representation in Par  
17 Funding's 2020 Form D filing that Par Funding did  
18 not pay commissions is false. Par Funding had paid  
19 so-called finder's fees of at least \$3.6 million,  
20 plus an additional million dollars in payments  
21 labeled as commissions, from July 2015 to  
22 February 2020."

23 Do you see that?

24 A. Yes.

25 Q. And would you agree with me that the

1 reason that they deleted that from the 2020 Form D  
2 filing was at the -- based on the advice provided by  
3 Mr. Rutledge in the final paragraph of that e-mail,  
4 which is Exhibit 6?

5 MS. BERLIN: Objection as to form.

6 A. I would be guessing, and I don't want to  
7 guess or speculate.

8 BY MR. SOTO:

9 Q. You would agree, would you not, that  
10 Mr. Rutledge was providing advice with respect to  
11 removing the finder's fees from the 2020 Form D  
12 filing, correct?

13 MS. BERLIN: Objection as to form.

14 A. I would be guessing. All I can tell you  
15 is these documents speak for themselves.

16 BY MR. SOTO:

17 Q. Well, I'm not asking you to guess. I'm  
18 asking you whether Mr. Rutledge is providing that  
19 advice in his e-mail at Exhibit 6 at the very bottom  
20 where he says, "I suggest that CBSG file an  
21 amendment to its existing Form D to delete the  
22 finder fee information which appeared on the  
23 February 12, 2019 filing"?

24 MS. BERLIN: Objection. This has been  
25 asked and answered, so I believe it's harassing

1 the witness at this point.

2 BY MR. SOTO:

3 Q. Ms. Frank, you would agree with me that he  
4 was providing advice that that particular provision  
5 of the February 2019 Form D filing be deleted from  
6 the subsequent 2020 filing?

7 MS. BERLIN: Objection. Calls for  
8 speculation. It's been asked and answered.  
9 Argumentative. And at this point, it's  
10 harassing. We'll direct the client -- or we'll  
11 direct the witness for the SEC not to answer  
12 this question. She's already answered it.

13 BY MR. SOTO:

14 Q. In other words, Mr. Rutledge, who was  
15 counsel for CBSG, was providing advice to CBSG with  
16 respect to that 506(b) exemption in that 2020  
17 filing, was he not?

18 MS. BERLIN: Objection as to form. Asked  
19 and answered.

20 MR. SOTO: Amie, that's the first time  
21 I've asked that question.

22 MS. BERLIN: I apologize. My objection as  
23 to form if you're asking the client to opine  
24 about evidence, because she's already stated  
25 she can't do that.

1 MR. SOTO: Okay. I don't want a long  
2 objection. I'm just saying it's the first time  
3 I've asked that question.

4 MS. BERLIN: So I object as to form.

5 BY MR. SOTO:

6 Q. Ms. Frank, do you remember the question at  
7 this point?

8 A. I do.

9 I can't agree with you because I can't  
10 guess. I can see on this paper on the exhibit that  
11 you've shown me that it reads, "I suggest that CBSG  
12 file an amendment to its existing Form D." I see  
13 that word.

14 MR. SOTO: Okay. Let's go to Exhibit 7.

15 (Thereupon, marked as Exhibit 7.)

16 MR. SOTO: And we will take a break in ten  
17 minutes.

18 BY MR. SOTO:

19 Q. Okay. Do you see at the very top, this is  
20 an e-mail dated April 14, 2020, from Philip Rutledge  
21 to Joe Cole and others at Fox Rothschild?

22 A. Yes, I see that up at the top.

23 Q. Okay. And you see the subject line is  
24 "Form D Filing - Items for Exchange Offer"?

25 Do you see that?

1 A. Yes.

2 Q. And the attachment indicates an April 14,  
3 2020 memo to CBSG on Form D filing, correct?

4 A. Yes.

5 Q. So Mr. Rutledge, counsel for Par, has sent  
6 an e-mail on April 14, 2020, providing a memo with  
7 respect to the Form D filing for April 2020,  
8 correct?

9 MS. BERLIN: Object to form.

10 A. So we have no personal knowledge of  
11 whether Mr. Rutledge sent this or not, so I can't --  
12 I can't answer that question.

13 BY MR. SOTO:

14 Q. Do you have any reason to doubt that this  
15 was sent?

16 MS. BERLIN: Objection to form. We're  
17 going to direct the witness not to speculate  
18 about evidence that you're showing her on the  
19 screen.

20 MR. SOTO: Ms. Berlin, that is a speaking  
21 objection, and you're coaching the witness.

22 MS. BERLIN: I apologize, but I believe  
23 the question is improper. I object as to form.

24 MR. SOTO: You can.  
25

1 BY MR. SOTO:

2 Q. Ms. Frank?

3 A. I don't have any comment on whether I  
4 would doubt or not doubt something. I mean, I  
5 can't -- I can't tell you anything about this  
6 document other than what I see.

7 Q. In other words -- my question is: In  
8 other words, you have no evidence that would cause  
9 you to doubt that this e-mail was sent by Philip  
10 Rutledge to the individuals identified here on this  
11 date?

12 MS. BERLIN: Objection as to form.

13 A. I have no personal knowledge as to whether  
14 he sent it.

15 BY MR. SOTO:

16 Q. Okay. And in the e-mail, Mr. Rutledge is  
17 telling Joe -- and, first, in the "To" section, you  
18 do see that Mr. Rutledge, at least as the e-mail  
19 indicates, that it was sent to Complete Business  
20 Solutions, Inc. (joecole@parfunding.com).

21 Do you see that?

22 A. Yes, I see that.

23 Q. Do you see any other Joe indicated in the  
24 "To" or the carbon copy section of this e-mail?

25 A. No, I don't.

1 Q. So in this e-mail, Philip writes, "Joe,  
2 attached is a memo indicating the process for filing  
3 Form D with the SEC and the several states with  
4 respect to the exchange offer."

5 Do you see that?

6 A. Yes.

7 Q. And he says, "In that regard, please  
8 review the draft Form D attached to the memo,"  
9 correct?

10 A. I see that.

11 Q. Okay. And that would be consistent with  
12 the attachment that says, "April 14, 2020 memo to  
13 CBSG on Form D filing," correct?

14 A. I have no idea.

15 Q. Okay. He's saying that he's attaching a  
16 draft Form D filing, and there is a reference in the  
17 e-mail to an attachment that says "Form D filing."

18 You don't see a connection between those  
19 two things?

20 MS. BERLIN: Objection. Asked and  
21 answered.

22 A. I have no way of knowing for sure.

23 BY MR. SOTO:

24 Q. Okay. Mr. Rutledge is providing advice  
25 with respect to the process for filing this Form D

1 to Joe Cole, is he not?

2 MS. BERLIN: Objection as to form.

3 A. I have no personal knowledge.

4 MR. SOTO: Let's go to Exhibit 8.

5 (Thereupon, marked as Exhibit 8.)

6 BY MR. SOTO:

7 Q. Do we see it?

8 A. Not yet.

9 Q. I don't see it.

10 Okay. All right. Exhibit 8 is an  
11 April 15, 2020 e-mail from Philip Rutledge to Joseph  
12 Cole, copying others, correct?

13 A. That is what is written on the document,  
14 yes.

15 Q. All right. And in this e-mail,  
16 Mr. Rutledge is instructing Joseph Cole at one, two,  
17 three, four -- the fourth line, "Please correct the  
18 contact person and telephone number and sign the  
19 form. If you can notarize it, fine. If not, EDGAR  
20 support said to indicate no notarization due to  
21 COVID-19."

22 So in this e-mail, Mr. Rutledge is giving  
23 Mr. Cole directions how to fill out the form, the  
24 Form D filing, correct?

25 MS. BERLIN: Objection as to form.

1           A.    I can see the words that you've read, and  
2 I see them on the document, but I have no personal  
3 knowledge as to any characterization of what's going  
4 on here.

5           BY MR. SOTO:

6           Q.    Sorry to interrupt you.

7                    He then directs Mr. Cole to scan what he's  
8 filled out and return it to Mr. Rutledge, correct?

9           A.    I see where the words appear "scan and  
10 return to me," yes.

11          Q.    Okay. So here, again, in Exhibit 8, like  
12 in Exhibit 7, Philip Rutledge, counsel for CBSG, is  
13 providing advice with respect to how to fill out  
14 this April 2020 Form D filing to Joe Cole, correct?

15          A.    I have no personal knowledge, no way to  
16 answer that question. The document says what it  
17 says.

18          Q.    And also copied on this e-mail, Exhibit 8,  
19 are three other lawyers, Brett Berman, Stephen  
20 Cohen, and Lauren Taylor, of Fox Rothschild,  
21 correct?

22          A.    I see those names on the CC. I don't have  
23 any personal knowledge as to whether they're all  
24 lawyers.

25          Q.    Okay. You do recognize the firm Fox

1 Rothschild as a law firm, correct?

2 A. I do.

3 Q. And you're aware, from your involvement in  
4 preparing for today's deposition, that Fox  
5 Rothschild was one of the law firms that provided  
6 advice to Par Funding?

7 MS. BERLIN: Objection as to form.

8 BY MR. SOTO:

9 Q. Correct?

10 MS. BERLIN: Objection as to form.

11 A. I don't have any personal knowledge of  
12 that.

13 BY MR. SOTO:

14 Q. Well, again, I'm not asking for your  
15 personal knowledge. I'm asking for you to tell us,  
16 based on your review of the documents and whatever  
17 you did to prepare for today's deposition, that Fox  
18 Rothschild was among the law firms that provided  
19 advice to Par Funding in connection with the matters  
20 raised in the Amended Complaint.

21 MS. BERLIN: Objection. Asked and  
22 answered.

23 A. I don't have personal knowledge of that,  
24 so I can't answer that question.

25

1 BY MR. SOTO:

2 Q. All right. I just want to make clear.  
3 When you say "personal knowledge," I'm not asking  
4 for your personal knowledge. I'm asking for any  
5 evidence that the SEC has based on your review of  
6 what you described based on any conversations you  
7 had with others who may have personal knowledge.

8 So it's not just your personal knowledge  
9 that I'm after. I'm after any evidence that the SEC  
10 has based on the work you've done to prepare as  
11 directed by that Notice of Deposition.

12 MS. BERLIN: Objection to the extent  
13 you're seeking a legal opinion, it would be  
14 protected by attorney work product to the  
15 extent you're asking if the SEC views certain  
16 communications as providing legal advice.  
17 Otherwise, the witness can answer.

18 A. I don't have anything further to give as  
19 an answer.

20 BY MR. SOTO:

21 Q. Okay. In this e-mail, Mr. Rutledge --  
22 rather -- strike that.

23 In this e-mail, Joe Cole is receiving an  
24 e-mail from Philip Rutledge providing advice with  
25 respect to how to fill out Form D that was filed in

1 April 2020 and another law firm is copied in this  
2 e-mail.

3 So he's receiving advice from two law  
4 firms with respect to this one filing, correct?

5 MS. BERLIN: Objection as to form.

6 A. I do not want to speculate on whether or  
7 not this is advice, so I can't answer that question.

8 MR. SOTO: Okay. All right. It's 1:00.

9 I think we should probably take a lunch break.  
10 We started late, we started at 11:00, for the  
11 record, and had a ten-minute break occasioned  
12 by something that Amie Berlin needed to take  
13 care of, so we haven't been going for very  
14 long. I suggest we limit lunch to 30 minutes.  
15 So I would like us to begin, let's call it,  
16 1:35?

17 MS. BERLIN: Sounds good. Thank you,  
18 Alex.

19 MR. SOTO: Okay. Let's do that.

20 We're off the record. Thank you.

21 (At this time, a luncheon recess was taken  
22 from 1:00 p.m. to 1:40 p.m.)

23 BY MR. SOTO:

24 Q. Let's go back to Exhibit 1, to the Amended  
25 Complaint.

1 I would like to focus on another  
2 allegation in the Amended Complaint and ask you  
3 about the evidence that you have in support of it.  
4 It's Paragraph 20.

5 In that allegation, you allege that --  
6 let's see, in the second sentence of that paragraph,  
7 that, "Perry Abbonizio recruits and trains Par  
8 Funding's agent fund managers, provides information  
9 to potential investors about Par Funding, and  
10 oversees the agent funds, and solicits investors."

11 Do you see that?

12 A. Yes.

13 Q. Okay. So I would like to ask you to  
14 provide me with any evidence that you -- that the  
15 SEC had when it filed its Complaint that  
16 Mr. Abbonizio would oversee the agent funds.

17 MS. BERLIN: Objection. Investigative  
18 privilege, attorney work product,  
19 attorney-client privilege, and deliberative  
20 process privilege. We direct the witness not  
21 to answer unless she is testifying about  
22 evidence and arguments supporting this  
23 allegation that we have already made public.

24 BY MR. SOTO:

25 Q. And, Ms. Frank, I would also like to ask

1 you, what did the -- what does the SEC mean by the  
2 word "oversee" when it says -- when it alleges that  
3 Mr. Abbonizio "oversees the agent funds"?

4 MS. BERLIN: Objection as to form.

5 A. So I can't give you an opinion on the  
6 question that you just asked, but I can give you  
7 evidence that supports our allegation --

8 BY MR. SOTO:

9 Q. So my question --

10 A. -- regarding Mr. Abbonizio.

11 Q. My question isn't what you have in  
12 support, I will get to that.

13 My question is: I would like to  
14 understand what the SEC means by the word "oversee"  
15 in that allegation.

16 MS. BERLIN: Objection as to form and to  
17 the extent you're seeking attorney work product  
18 or attorney-client privilege regarding the  
19 attorney's thoughts who drafted this Complaint  
20 allegation.

21 A. So I can't answer that question.

22 BY MR. SOTO:

23 Q. Ms. Frank, you represent the SEC. What  
24 did the SEC mean in that allegation? It's your  
25 Complaint.

1           A.    I can't answer that.  I can't answer that  
2 question.

3           Q.    Okay.  Is there any -- what evidence do  
4 you have, or did the SEC have, that Mr. Abbonizio  
5 had any authority over the agent funds when it filed  
6 its Complaint -- when you filed the Complaint?

7           MS. BERLIN:  Objection.  Investigative  
8 privilege, attorney work product privilege,  
9 attorney-client privilege, law enforcement  
10 privilege.  The witness is directed not to  
11 answer other than as to evidence that we have  
12 already filed with our annotated Complaint.

13           MR. SOTO:  And, Amie, as we did before,  
14 you can just say -- previously, you know,  
15 stated privilege objections will suffice.  I'll  
16 note them as all of the ones that you just  
17 mentioned.

18           MS. BERLIN:  Well, they might not all  
19 apply each time.  It depends on the question  
20 that you're asking.  So I do think that to  
21 represent my client, which is the SEC,  
22 properly, and I apologize, I think I need to  
23 actually object on a question-by-question  
24 basis, but I'll continue to do so in as brief a  
25 format as possible just by stating what

1           privileges are at issue.

2           BY MR. SOTO:

3           Q.     Did any witnesses ever interviewed by the  
4 SEC say that Mr. Abbonizio had authority over the  
5 agent funds?

6                     MS. BERLIN:  Objection.  Calls for  
7 attorney work product and invades the  
8 investigative privilege and law enforcement  
9 privileges.  The witness is directed not to  
10 answer unless she's testifying about the  
11 publicly annotated Complaint evidence.

12           BY MR. SOTO:

13           Q.     Did any witnesses ever tell the SEC orally  
14 or in writing in a declaration that Mr. Abbonizio  
15 oversaw the agent funds, as alleged in the  
16 Complaint?

17                     MS. BERLIN:  Objection.  The same  
18 objections that I just stated.  And to the  
19 extent you're asking the SEC to interpret the  
20 declarations that we have filed, we would  
21 object to that as well.

22           BY MR. SOTO:

23           Q.     Okay.  Are there any documents, any  
24 documents or any evidence, suggesting that  
25 Mr. Abbonizio had authority to oversee the agent

1 funds, as alleged in Paragraph 20 of the Amended  
2 Complaint?

3 MS. BERLIN: Same objections I've just  
4 stated. And the witness is directed not to  
5 answer other than as to the annotations to the  
6 Complaint citing evidence that we publicly  
7 filed.

8 BY MR. SOTO:

9 Q. Did any of the agent fund managers ever  
10 say that he had such authority over their funds?

11 MS. BERLIN: Same objections.  
12 Investigative privilege, law enforcement  
13 privilege, attorney work product. The witness  
14 can answer if it concerns a public  
15 representation we've made about the evidence.

16 BY MR. SOTO:

17 Q. Ms. Frank?

18 A. So there are some exhibits that we filed  
19 that support the allegations in Paragraph 20, and,  
20 in specific, the allegation about overseeing the  
21 agent funds and solicits investors.

22 I can provide that for you, if you would  
23 like.

24 Q. I'm specifically interested in any  
25 evidence that the SEC has suggesting or

1 demonstrating that Mr. Abbonizio oversaw the agent  
2 funds. Whether he solicited or not is a different  
3 question, and I'm happy to discuss that after we  
4 answer -- after you answer this question.

5 MS. BERLIN: Objection to the extent this  
6 seeks attorney-client privileged, investigative  
7 privileged information, deliberative process  
8 privilege, and attorney-client privilege  
9 information.

10 MR. SOTO: So, Amie, here's an example of  
11 where that objection isn't necessary. You've  
12 already stated, and Ms. Frank has indicated,  
13 that she is about to point us to some evidence  
14 that is apparently publicly available. So I  
15 understand your objections with respect to  
16 deliberative process, law enforcement  
17 privilege, attorney-client privilege, work  
18 product privilege, and to the extent that she  
19 is aware of any information that is publicly  
20 available, she can answer the question.

21 You've made that objection a number of  
22 times. She was about to tell us what that is,  
23 and you keep repeating that objection. You're  
24 really prolonging this much more than is  
25 necessary. I've already told you that I have

1 no objection to your just saying prior  
2 objection and any of those that apply. We will  
3 not object to your raising that later.

4 MS. BERLIN: I'm so sorry, Mr. Soto, but I  
5 believe I'm required to assert privileges on a  
6 question-by-question basis, which is why the  
7 Court would not let us present our overall  
8 objections in advance of the deposition and  
9 directed us to raise them question by question.

10 And the same objections don't apply to  
11 every question, so I have to listen carefully  
12 to your question and then make the objection.

13 And, yes, so I made the objection, and as  
14 with the others, Ms. Frank, the SEC will  
15 testify about what we have already provided  
16 publicly in connection with our TRO and  
17 preliminary injunction exhibits, and she may  
18 testify about that.

19 MR. SOTO: Okay. Well, I'm asking you,  
20 Amie, again for I don't know how many times,  
21 not to state -- restate that long objection,  
22 that I have no problem with your stating that  
23 objection to each question and just saying the  
24 previously referenced objections apply even if  
25 they don't all apply. You can just state that

1 objection, so we can move on. If you don't  
2 want to do that, I don't want to argue the  
3 point.

4 BY MR. SOTO:

5 Q. Ms. Frank, what evidence --

6 MR. SOTO: You and I are just talking, and  
7 we're not hearing from the witness, and that's  
8 what we're here to do.

9 Let me just finish.

10 That's what Judge Reinhart's rules and  
11 guidance provide, that you are to be as  
12 succinct as possible, and I've asked numerous  
13 times that you do so. I'm trying to suggest  
14 ways for you to do that. I'm telling you I'm  
15 not going to stand in your way later if you  
16 want to stand on an objection that you've  
17 raised with respect to questions, and you can  
18 make your summary succinct objection after each  
19 question, not in a blanket form, after each  
20 question, but just make it succinct. If you  
21 don't want to do that, Amie, that's fine.  
22 We'll deal with that later.

23 MS. BERLIN: Again, you're the one who is  
24 speaking with me on the record, Mr. Soto, and I  
25 was just responding to you continuing to tell

1 me not to raise specific objections and,  
2 instead, to refer to any and all objections,  
3 and I don't believe that -- that I would be  
4 doing my job as an attorney or that that's  
5 proper if I just cite to all objections,  
6 whatever they may be.

7 So I will continue to be succinct, and if  
8 we could just proceed without criticizing the  
9 objections, I think that would also help this  
10 go a little bit faster. I think because of the  
11 objection, you might need to repeat your  
12 question for the witness since so much time has  
13 passed.

14 MR. SOTO: That's not what I said, Amie.  
15 My job, like your job, is to move this along.  
16 I'm not being critical. I'm trying to be  
17 constructive. You don't have to take my  
18 suggestion. As I've said numerous times, we're  
19 going to move on.

20 MS. BERLIN: I'm not going to debate with  
21 you on the record, and I ask that you stop  
22 making comments about the objections and  
23 proceed. Thank you.

24 MR. SOTO: Amie, I'm not going to stop  
25 making comments. As appropriate, I'll make

1           them. And I think we should stop bickering and  
2           just allow the witness to answer the question.  
3           If you would allow me to restate it, I'll do  
4           that.

5                   MS. BERLIN: And I don't believe I'm  
6           bickering. And I would also take issue with  
7           that as you telling a woman that she's  
8           bickering when I'm simply an attorney who is  
9           responding to your comments. And that, I do  
10          take issue with. I don't believe that that is  
11          appropriate at all, to characterize me  
12          responding to your comments about my objections  
13          as, quote, "bickering."

14                   And with that, Mr. Soto, unless you would  
15          like to continue and reply to that, we stand  
16          ready to continue, and Ms. Frank is prepared to  
17          testify, if you would like to re-ask your  
18          question or ask her if she remembers what you  
19          asked.

20                   MR. SOTO: Okay. At this point, Amie, I'm  
21          just letting you know that the next time you go  
22          on as you just did, we're going to file a  
23          motion for sanctions. It's enough. This is  
24          nothing to do with whether you're a woman or a  
25          man. I said this bickering needs to stop, and

1 I didn't reference your gender. You're  
2 introducing things that are not only  
3 disconnected from our conversation, but you are  
4 prolonging this, and I'm asking you to stop  
5 now.

6 I've suggested to you how you can be more  
7 succinct. If you don't want to do that, that's  
8 fine. But I'm just letting you know if this  
9 continues, we will file a motion for sanctions.  
10 We're going to terminate this deposition --

11 MS. BERLIN: Thank you. This is now, I  
12 think, the second time you threatened  
13 sanctions.

14 Mr. Soto, we would like to take a quick  
15 break. I don't think --

16 MR. SOTO: I'm advising you that that's  
17 what we're going to have to do if you continue  
18 to interrupt and obstruct this deposition. I'm  
19 not threatening you, I'm putting you on notice  
20 so that we don't have to go that route. I  
21 would like to continue.

22 MS. BERLIN: Mr. Soto, we would like to  
23 take a few minutes break and go off the record  
24 at this time. Thank you.

25 MR. SOTO: Well, I don't want to take a

1 break. This is my deposition, and I want to  
2 continue. If you need a break, you need to  
3 tell me why you need a break other than just  
4 saying you want to take a break. You can't  
5 stop the deposition whenever you want to.

6 MS. BERLIN: Mr. Soto, I would ask that  
7 you extend the same courtesy to me that I've  
8 extended to you and the Defendants in  
9 depositions where you've asked for a break.  
10 You just threatened the SEC with sanctions, and  
11 I've advised you that before we proceed, I need  
12 to take a break to consult with my client.

13 MR. SOTO: Take your break.

14 (Recess taken.)

15 MR. SOTO: Can you read, Madam Court  
16 Reporter, the last question.

17 (Record read.)

18 MS. BERLIN: Same objections, and,  
19 therefore, I direct my client -- direct the  
20 witness not to answer to the extent it's  
21 seeking the privileged information that I've  
22 already stated in relation to this question.

23 MR. SOTO: Thank you.

24 BY MR. SOTO:

25 Q. Any evidence that any agent fund manager

1 has ever publicly said or said to the SEC that  
2 Mr. Abbonizio has this authority to oversee their  
3 funds?

4 MS. BERLIN: The same four objections that  
5 I made to the prior question with the same  
6 instruction to the witness. She may testify  
7 about public information and evidence.

8 BY MR. SOTO:

9 Q. The fact is that no agent fund manager has  
10 ever said that, correct, Ms. Frank?

11 MS. BERLIN: I make the same four  
12 objections with the same obstruction -- or the  
13 same instruction to the witness, and I also  
14 object as to form.

15 BY MR. SOTO:

16 Q. And the truth is that Perry Abbonizio has  
17 never said that publicly or to the SEC, correct?

18 MS. BERLIN: I make the same objections  
19 with the same obstruction -- or the same  
20 instruction, and I also object as to form.

21 BY MR. SOTO:

22 Q. And the fact is that Perry is not employed  
23 by the agent funds, is he?

24 MS. BERLIN: I make the same objections  
25 with the same instruction. I also object as to

1 form.

2 And I note for the transcript that you're  
3 not giving the witness an opportunity to answer  
4 after any of these questions, you're just  
5 moving to the next one.

6 MR. SOTO: I'm sorry. I thought your  
7 objection was to directing her not to answer.

8 MS. BERLIN: I believe my instruction is  
9 clear on the record.

10 MR. SOTO: Okay. So let's back up.

11 MS. BERLIN: Now that you've criticized me  
12 for speaking so much, the instruction I made is  
13 that the witness cannot testify about matters  
14 that are protected by those privileges, but she  
15 can testify about the evidence that we have  
16 argued publicly support any of the facts that  
17 you're asking about.

18 BY MR. SOTO:

19 Q. So, Ms. Frank, there is no evidence that  
20 any agent fund manager has ever said that Perry  
21 Abbonizio oversees their funds, correct?

22 MS. BERLIN: Same objection and  
23 instruction. Also object as to form.

24 BY MR. SOTO:

25 Q. There is no evidence, and the SEC has no

1 evidence, that Perry has ever stated publicly that  
2 he oversees or has the authority to oversee an agent  
3 fund?

4 MS. BERLIN: Same objections, instruction,  
5 and object as to the form.

6 BY MR. SOTO:

7 Q. Perry is not an executive or officer or  
8 director or manager of any of the agent funds,  
9 correct?

10 MS. BERLIN: Same objection and  
11 instruction and object to form.

12 BY MR. SOTO:

13 Q. Perry isn't a partner at any of the agent  
14 funds, correct?

15 MS. BERLIN: Same objection, instruction,  
16 and object to form.

17 BY MR. SOTO:

18 Q. Perry receives no profit shares or salary  
19 from any of the agent funds, correct?

20 MS. BERLIN: I make the same objection,  
21 instruction, and object to form.

22 I once again point out that no opportunity  
23 is given to the witness to respond to any of  
24 these questions before she's being asked the  
25 next question after my objection is made, as

1 that will not be clear from the transcript and  
2 only from a video.

3 BY MR. SOTO:

4 Q. Ms. Frank, do you have a response to any  
5 of the previous questions I've asked with respect to  
6 Mr. Perry Abbonizio's alleged authority to oversee  
7 the agent funds?

8 MS. BERLIN: Object as to form.

9 A. The way that you're asking it, I don't  
10 have an answer, but I can give you exhibits that we  
11 believe support the allegation in the Complaint, in  
12 Paragraph 20, with respect to the words "oversees  
13 the agent funds."

14 And for that, some of the documents that  
15 we would refer to include the declaration of Kara  
16 DiPietro, the transcript of the November 2019 sales  
17 dinner, the deposition of Renee Meyer, and the  
18 sealed document, which is Exhibit 136, which is an  
19 undercover recording, and those are among the  
20 documents that we would say support that allegation.

21 And then, in addition, I refer you to our  
22 evidence in the TRO and the annotations to that, as  
23 well as evidence that was presented at the  
24 preliminary injunction, as well as evidence in our  
25 investigative file that we produced.

1 BY MR. SOTO:

2 Q. Okay. Where in the transcript of the  
3 sales dinner that you just referenced is there any  
4 evidence demonstrating or supporting that  
5 allegation?

6 A. I don't have specific page cites in the  
7 transcript for you.

8 Q. Okay. Give me your best recollection, as  
9 you sit here today, of any evidence within that  
10 transcript of that sales dinner supporting the  
11 allegation.

12 MS. BERLIN: Object as to form.

13 A. The SEC isn't going to have an opinion  
14 that I can share with you as to where exactly in  
15 that evidence, so I can't share that with you.

16 BY MR. SOTO:

17 Q. Okay. Is your answer the same with  
18 respect to Exhibit 136, that you can't point me  
19 specifically to anything in that exhibit that  
20 supports the allegation we've just been discussing?

21 MS. BERLIN: Object as to form and because  
22 it's seeking attorney work product.

23 BY MR. SOTO:

24 Q. And to be clear, Ms. Frank, I'm not asking  
25 for anything based on conversations you might have

1 had with Ms. Berlin. I'm asking for you to point me  
2 to the exhibit that you referenced in your answer as  
3 evidence that Mr. Abbonizio had some sort of  
4 oversight authority over the agent funds. So,  
5 whatever reason it was that stirred you to say  
6 "Exhibit 136," I would like to know what that reason  
7 is.

8 A. If we gave any particular pincites in our  
9 TRO motion, then that would be the best source for  
10 that information, but, otherwise, I can't give you  
11 that information at this time.

12 Q. Well, Ms. Frank, I could have read, and I  
13 did read, the motion for TRO, didn't need to take  
14 your deposition to have you tell me to reread it.  
15 We called you here today to speak as the SEC's  
16 corporate representative and help us understand the  
17 evidence that the SEC has in support of the  
18 allegations of the Complaint.

19 You identified Exhibit 136 as a piece of  
20 evidence in support of the allegation we've been  
21 discussing, and so I would like you to tell me why  
22 it is that you identified Exhibit 136 in support of  
23 that allegation.

24 A. That --

25 MS. BERLIN: Object as to form -- I'm

1           sorry. Ms. Frank, just a moment, please.

2                   I object as to form. I believe it's --  
3           and also to the extent it's seeking attorney  
4           work product.

5           A. And I was just going to say that that  
6           would involve work product unless we've already  
7           identified it specifically with a pincite in the  
8           TRO.

9           BY MR. SOTO:

10           Q. Okay. Can you identify for me where in  
11           the deposition of Kara DiPietro or declaration of  
12           Kara DiPietro there is evidence that Mr. Abbonizio  
13           had oversight authority over the agent funds?

14                   MS. BERLIN: Object to form.

15           A. I don't have the pinpoint cite for that.

16                   MR. SOTO: Okay. Can we call up SEC  
17           Exhibit 18. It's the declaration of Kara  
18           DiPietro.

19                   (Thereupon, marked as Exhibit 18A.)

20                   MR. SOTO: Is it up yet? Not yet.

21           BY MR. SOTO:

22           Q. Okay. Ms. Frank, I asked you to identify  
23           within the declaration of Kara DiPietro, which you  
24           testified was evidence of what you believed to be  
25           Mr. Abbonizio's oversight -- alleged oversight over

1 the agent funds. So it's up in front of you. You  
2 said you couldn't provide a pinpoint cite.

3 Can you point to me to any paragraph, any  
4 sentence, in this declaration that supports your  
5 testimony?

6 MS. BERLIN: Objection to form. Objection  
7 that you're seeking attorney work product and  
8 attorney-client privileged information. And we  
9 object to any question asking the SEC to argue,  
10 debate, or weigh evidence with the defense.

11 MR. SOTO: Okay. And can we pull up the  
12 declaration of Renee Meyer, which is SEC  
13 Exhibit 25.

14 (Thereupon, marked as Exhibit 25.)

15 BY MR. SOTO:

16 Q. And I'll ask you the same question, which  
17 is: Identify within that declaration any statement,  
18 phrase, sentence that supports the SEC's allegation  
19 that Mr. Abbonizio had oversight authority over the  
20 agent funds.

21 MS. BERLIN: Same objections I've just  
22 stated.

23 BY MR. SOTO:

24 Q. Okay. Let's move on.

25 All right. Let's look at Exhibit 1, which

1 is the Amended Complaint, at Paragraph 93.

2 And that allegation in the Complaint  
3 states, "Vagnozzi and ABFP advertised the investment  
4 through radio, television commercials, the Internet,  
5 and ABFP's Facebook page," correct?

6 Do you see that, Ms. Frank?

7 A. Yes, I do.

8 Q. All right. You don't allege in the  
9 Complaint that Par Funding engaged in any radio,  
10 television commercials, or Internet advertising,  
11 correct?

12 MS. BERLIN: Object to form.

13 BY MR. SOTO:

14 Q. Is that correct?

15 MS. BERLIN: Same objection.

16 A. I mean, I haven't looked through all of  
17 this in order to see whether that specific  
18 allegation is here or not.

19 BY MR. SOTO:

20 Q. Okay. Do you have any recollection of  
21 that allegation being made --

22 MS. BERLIN: Objection as to form. Asked  
23 and answered.

24 MR. SOTO: I wasn't finished with my  
25 question.

1 BY MR. SOTO:

2 Q. Do you have any recollection of that  
3 allegation being made, specifically that Par Funding  
4 advertised through radio, television commercials, or  
5 the Internet?

6 MS. BERLIN: Object to form.

7 A. I think the document speaks for itself.

8 BY MR. SOTO:

9 Q. And can you point me to any evidence that  
10 the SEC has that Par Funding engaged in general  
11 solicitations through the use of radio, television  
12 commercials, the Internet, or Facebook?

13 MS. BERLIN: Attorney-client privilege.  
14 Attorney work product privilege. Investigative  
15 and law enforcement privileges. To the  
16 extent -- Ms. Frank is instructed not to  
17 testify about any matters that are covered by  
18 those privileges, but she may testify about the  
19 evidence and arguments that we have made public  
20 in this case.

21 BY MR. SOTO:

22 Q. Ms. Frank, you can answer, if you can.

23 A. I would just refer you to the  
24 investigative file and the TRO that is annotated.

25 Q. You have no evidence that Par

1 representatives engaged in general solicitations as  
2 I've described, radio, television commercials, the  
3 Internet, Facebook, anything like that, do you?

4 MS. BERLIN: Object -- sorry.

5 Same objections and object as to form.

6 MR. SOTO: Are you instructing her not to  
7 answer?

8 MS. BERLIN: You told me just to say --  
9 that you would seek sanctions if I repeat the  
10 full objection and that I have to only say that  
11 I'm repeating them. So that's what I was  
12 doing.

13 Would you now like me to be -- to state  
14 them again, more explicitly, to repeat them  
15 again, Mr. Soto?

16 MR. SOTO: Amie, I'm clearly not asking  
17 you to do that. I'm only asking you, once you  
18 say same objection, or however you want to say  
19 it succinctly, just let us know whether you're  
20 directing the witness not to answer. That's  
21 all, directing witness not to answer.

22 MS. BERLIN: I will then state I'm going  
23 to state the objections.

24 MR. SOTO: You don't need to do that.

25 MS. BERLIN: Mr. Soto, I know you're

1 threatening that if I do, you'll seek  
2 sanctions, but we are going to comply with the  
3 rules about specifically asserting privileges,  
4 so the Court can review them. I wonder if you  
5 could -- and I apologize -- if you could repeat  
6 the question so that I could be as succinct as  
7 possible in my objection.

8 BY MR. SOTO:

9 Q. You have no evidence that Par  
10 representatives engaged in any general solicitation  
11 through radio, television commercials, or the  
12 Internet, do you?

13 MS. BERLIN: Objection. Seeks attorney  
14 work product, attorney-client privilege,  
15 deliberative process, and investigative  
16 privileges. I instruct the witness not to  
17 answer as to matters covered by those  
18 privileges. She can testify about the evidence  
19 that we have annotated publicly.

20 Thank you.

21 A. So with respect to that question, though,  
22 the SEC has no personal knowledge, and so I can't  
23 opine on that.

24 BY MR. SOTO:

25 Q. You have no evidence that Par or any of

1 its representatives played any role in the general  
2 solicitations that you allege Vagnozzi engaged in,  
3 do you?

4 MS. BERLIN: Objection. This is seeking  
5 attorney work product, attorney-client  
6 privileged information. And to the extent  
7 you're seeking the SEC's legal opinion about  
8 the evidence, I'm instructing the witness not  
9 to answer.

10 BY MR. SOTO:

11 Q. Go ahead, Ms. Frank.

12 A. I don't believe I can answer that without  
13 giving a legal opinion.

14 Q. And those alleged solicitations alleged  
15 with respect to Mr. Vagnozzi involve the sale of  
16 notes by ABFP and not Par Funding, correct?

17 MS. BERLIN: Object to form.

18 A. I'm not sure I understand the question.  
19 Which notes are you referring to?

20 BY MR. SOTO:

21 Q. I can restate it.

22 So Paragraph 93 alleges that ABFP engaged  
23 in advertisements as I've described them.

24 So my question is: Those alleged  
25 advertisements involved or were directed at the sale

1 of notes by ABFP, not by any other entity, correct?

2 MS. BERLIN: Object as to form.

3 A. I don't agree with that statement, and I  
4 would refer you to Phase 1 of the -- of the Amended  
5 Complaint.

6 BY MR. SOTO:

7 Q. When you say "Phase 1," you mean all of  
8 the paragraphs within Phase 1 of the Amended  
9 Complaint, Ms. Frank?

10 A. I believe that we have evidence that -- I  
11 guess I can't say -- I mean, I have to say the SEC  
12 doesn't have personal knowledge, and so I can't  
13 answer.

14 Q. Okay. With respect to the Phase 2 notes,  
15 the SEC has no -- also has no knowledge, no  
16 evidence, that Par Funding engaged in radio,  
17 television commercials, or the Internet,  
18 solicitations through those means, correct?

19 MS. BERLIN: I object as to form and on  
20 attorney work product, attorney-client  
21 privilege, deliberative process, and  
22 investigative privilege grounds and instruct  
23 the witness not to answer to give the SEC's  
24 opinion about the evidence produced in this  
25 case.

1 BY MR. SOTO:

2 Q. Do you have an answer with respect to  
3 nonpublic sources, Ms. Frank?

4 MS. BERLIN: Objection as to form.

5 BY MR. SOTO:

6 Q. Public sources, I meant to say.

7 MS. BERLIN: Objection as to form. To the  
8 extent, Mr. Soto, to help you, if you're asking  
9 Ms. Frank to testify --

10 MR. SOTO: I was not asking for your help.

11 MS. BERLIN: I will not help.

12 MR. SOTO: Thank you.

13 BY MR. SOTO:

14 Q. Ms. Frank, do you have --

15 A. The SEC -- I'm sorry. The SEC doesn't  
16 have personal knowledge.

17 Q. Okay.

18 A. And so I can't opine.

19 Q. Okay. Let's turn our attention to a  
20 different -- before we do that, I have another  
21 couple of questions. Strike that.

22 Let's turn our attention to CBSG's  
23 underwriting practices.

24 MR. SOTO: All right. So at -- let's go  
25 to Exhibit 1, Paragraph 166, I believe.

1 All right. So let's actually go to 154.

2 BY MR. SOTO:

3 Q. Ms. Frank, you'll see in Subsection G  
4 there is a subheading in the Amended Complaint that  
5 reads: "Material misrepresentations and omissions  
6 in connection with the Par Funding, ABFP, United  
7 Fidelis, and Retirement Evolution offerings."

8 Do you see that?

9 A. Yes.

10 Q. And then there's a subsection under that  
11 that reads, "False claims about Par Funding's  
12 rigorous underwriting process," right?

13 A. Yes.

14 Q. Are you familiar with this section of the  
15 Amended Complaint?

16 A. Yes.

17 Q. Okay. At Paragraph 166, the SEC alleges  
18 that, in truth, the underwriting was not stringent.

19 Do you see that?

20 A. Yes.

21 Q. Okay. And one of the other allegations  
22 with respect to this, in support of this, is that  
23 Par Funding didn't always conduct on-site  
24 inspections, didn't always approve loans in less  
25 than 48 hours, and did not request information about

1 certain financial information. And that's at  
2 Paragraph 168 -- I'm sorry, 167, 168, 169 through  
3 183.

4 So I'll just let you review those  
5 paragraphs. Again, it's 167 through 183.

6 THE WITNESS: So if you could scroll down  
7 a little bit, please.

8 Okay. And if you could keep scrolling  
9 down a little bit more.

10 Okay. You can keep scrolling down.

11 Okay. If you could keep scrolling.

12 Okay.

13 Okay. Thank you.

14 BY MR. SOTO:

15 Q. Okay. Have you had a chance to read those  
16 paragraphs through 183?

17 A. Yes.

18 Q. Okay, good.

19 So first, I would like to ask you, what  
20 evidence does the SEC have that CBSG represented to  
21 anyone that underwriting of merchant cash advance  
22 required it to obtain debt schedules?

23 MS. BERLIN: Same objection with respect  
24 to the four privileges I raised previously and  
25 the same instruction to the witness.

1 I'm just reminding Mr. Soto that she may  
2 testify about public evidence and legal  
3 arguments we have made, but is instructed not  
4 to provide a legal opinion as to how the  
5 evidence we have produced would support these  
6 allegations this time.

7 BY MR. SOTO:

8 Q. You can answer, Ms. Frank.

9 A. I believe that I can't answer because of  
10 work product and the other privileges.

11 And I am not sure, are you citing to a  
12 specific place in the Complaint where that wording  
13 was used?

14 Q. I'm merely asking you whether the SEC has  
15 any evidence that Par Funding or any of its  
16 representatives represented to investors that  
17 underwriting in MCA required it to obtain debt  
18 schedules.

19 Are you aware of any such evidence?

20 MS. BERLIN: Same instruction. Same  
21 objections on the four privileges we raised  
22 previously. And the witness may answer subject  
23 to the instruction and privileges.

24 A. If you can point me to any place in the  
25 Complaint where we say debt schedules, I might be

1 able to be of assistance with a particular document  
2 based on my notes, but, otherwise, I can't answer  
3 because of work product and other privileges.

4 BY MR. SOTO:

5 Q. Okay. I'll point you to a document as we  
6 move forward. I just want to know whether you have  
7 an answer to that, and your answer is you don't have  
8 an answer right now.

9 MS. BERLIN: Objection. Mischaracterizes  
10 what she stated.

11 BY MR. SOTO:

12 Q. What's your answer, Ms. Frank?

13 A. I can't give an answer because it would be  
14 subject to revealing work product or attorney-client  
15 privilege.

16 Q. Okay. What evidence does the SEC have  
17 that CBSG represented to investors that underwriting  
18 in MCA required it to obtain profit margins?

19 MS. BERLIN: Same four privileged  
20 objections. Same instruction to the witness,  
21 who may testify subject to those privileged  
22 assertions and instruction.

23 A. My answer is the same as before.

24 BY MR. SOTO:

25 Q. Okay. So let's go back to 168.

1 So you've reviewed 168 to 183, correct?

2 A. Yes.

3 Q. And within those paragraphs, there are  
4 allegations regarding various merchants that are  
5 identified through various means, locations, where  
6 they operate, a description of some of the work that  
7 they do.

8 Did you see that?

9 A. Yes.

10 Q. And the evidence that you collected in  
11 connection with this Complaint in support of  
12 allegations were declarations from merchants,  
13 correct?

14 MS. BERLIN: Objection. Investigative  
15 privilege, attorney work product, and  
16 attorney-client privilege. The witness is  
17 instructed not to answer to the extent it  
18 covers one of those privileges, but may testify  
19 about anything that we have already publicly  
20 disclosed.

21 A. So there are various merchant declarations  
22 that support some of these paragraphs from 168 to  
23 183, and other than that, I can't provide an answer  
24 because it would be subject to the privileges.

25

1 BY MR. SOTO:

2 Q. Okay. Now, you reviewed the facts in  
3 evidence in support of this Complaint before the  
4 Complaint was filed, correct?

5 MS. BERLIN: Objection. Investigative  
6 privilege, deliberative process privilege,  
7 attorney-client privilege, attorney work  
8 product privilege. Instructing the witness not  
9 to testify.

10 BY MR. SOTO:

11 Q. Was the SEC aware before it filed the  
12 Complaint that the overwhelming majority of the  
13 merchants whose declarations it relied on had either  
14 sued or been sued by CBSG in connection with  
15 merchant cash advances?

16 MS. BERLIN: Objection. Same privileges  
17 are being asserted again and same instruction  
18 to the witness not to answer as to what the SEC  
19 and its attorneys knew or did not know.

20 BY MR. SOTO:

21 Q. Were you aware when this SEC Complaint  
22 was -- was the SEC aware when the Complaint was  
23 filed that every single one of these merchant --  
24 merchants whose declarations were submitted to the  
25 SEC were represented by -- the declarants therein

1 were represented by an Attorney Shane Heskin?

2 MS. BERLIN: Same objection. Same  
3 instruction to the witness not to testify.

4 BY MR. SOTO:

5 Q. Was the SEC aware that the overwhelming  
6 majority of merchants whose declarations were  
7 provided to the SEC in support of its Complaint owed  
8 Par Funding money in connection with MCA advances?

9 MS. BERLIN: Same objections and  
10 privileges asserted. Same instruction and  
11 object as to form.

12 BY MR. SOTO:

13 Q. Was the SEC aware before filing its  
14 Complaint that the merchant declarations it relied  
15 on or declarants whose -- let me restate that.

16 Was the SEC aware before filing its  
17 Complaint that these merchant declarations were  
18 provided by individuals and entities who had been  
19 sued by Par Funding for failing to pay the amounts  
20 owed to Par Funding in connection with these MCAs?

21 MS. BERLIN: Object to form. We assert  
22 the same four privileges and the same  
23 instruction to the witness not to answer.

24 BY MR. SOTO:

25 Q. Wouldn't you agree that a declarant who

1 owes money in connection with a statement made  
2 against a particular defendant or target has a  
3 conflict with respect to statements made by that  
4 individual in a declaration?

5 MS. BERLIN: Object to form. Same four  
6 privileges asserted. Object to the extent it's  
7 seeking a legal opinion and also instruct the  
8 witness not to answer.

9 BY MR. SOTO:

10 Q. What steps did the SEC take to confirm or  
11 corroborate the statements made by these merchant  
12 declarants?

13 MS. BERLIN: Same objections. And just  
14 it's been a while, so I'm going to restate  
15 them, Mr. Soto. Investigative privilege,  
16 deliberative process privilege, and law  
17 enforcement privilege, the attorney work  
18 product and attorney-client privileges. And we  
19 instruct the witness not to answer.

20 BY MR. SOTO:

21 Q. Were you aware when these declarations  
22 were filed by these merchant declarants that they  
23 contained false statements?

24 MS. BERLIN: Object to form. Object to --  
25 I'm sorry. Object to form. We raise the same

1 privileges asserted to the immediately prior  
2 question and give the witness the same  
3 instruction not to answer.

4 BY MR. SOTO:

5 Q. Okay. Let's discuss the allegations  
6 regarding underwriting, and let's look at one of  
7 those merchant declarations.

8 MR. SOTO: Let's look at Exhibit 24,  
9 please.

10 (Thereupon, marked as Exhibit 24.)

11 MR. SOTO: And let's look at the bottom of  
12 that page. It's at Paragraph 8. I'm sorry,  
13 let's go back up.

14 BY MR. SOTO:

15 Q. First, I would like you to tell me whether  
16 you recognize this document as a declaration of Chad  
17 Frost?

18 A. Yes, I do.

19 Q. Okay. And Chad Frost was a treasurer and  
20 consultant for a company called Volunteer Pharmacy,  
21 correct?

22 A. So that is what he states in Paragraph 2  
23 of this declaration.

24 Q. Right.

25 And he also says that in June 2016,

1 Complete Business Solutions advanced money to the  
2 company, that being Volunteer Pharmacy, correct?

3 A. I see that Volunteer Pharmacy is defined  
4 in Paragraph 2 as the, quote, "company," closed  
5 quote, so I believe that that's correct in  
6 Paragraph 3 when he states that CBSG made a loan to  
7 the company.

8 Q. Okay.

9 A. The company has already been defined as  
10 Volunteer Pharmacy, yes.

11 MR. SOTO: Okay. And if we can scroll  
12 down.

13 BY MR. SOTO:

14 Q. In Paragraph 8, Mr. Frost testifies in his  
15 declaration that CBSG did not perform a background  
16 check on him during the underwriting process or at  
17 any time prior to approving the loan.

18 Do you see that?

19 A. Yes.

20 Q. Okay.

21 MR. SOTO: Can we go to Exhibit 62.

22 (Thereupon, marked as Exhibit 62.)

23 BY MR. SOTO:

24 Q. Do you see Exhibit 62, Ms. Frank?

25 A. Yes.

1 Q. And do you see, at the very top, it says  
2 "Business Information"?

3 A. Yes.

4 Q. Okay. And under "Legal Corporate Name,"  
5 it says, "Volunteer Pharmacy, Inc."?

6 A. Yes.

7 Q. The same company identified in Mr. Frost's  
8 declaration, correct, as "the company"?

9 A. I don't know if that's the case or not.

10 MR. SOTO: Okay. We can go back to  
11 Exhibit 24.

12 A. I mean, they have the same name. You're  
13 asking if they're the same company. I don't know.

14 BY MR. SOTO:

15 Q. Okay. But they do have the same name,  
16 Volunteer Pharmacy?

17 A. Actually, I take that back. Now I'm  
18 looking at the declaration. The name in the  
19 declaration is Volunteer Pharmacy without the Inc.

20 Q. Right. And they're both located in  
21 Knoxville, Tennessee?

22 Well, let me ask you a different question.

23 His declaration indicates that Volunteer  
24 Pharmacy is located in Knoxville, Tennessee,  
25 correct?

1 A. Yes, it states that in Paragraph 2.

2 MR. SOTO: Okay. Let's go to Exhibit 62.

3 BY MR. SOTO:

4 Q. In what city is Volunteer Pharmacy  
5 indicated in this form to be located?

6 A. It states Knoxville, Tennessee.

7 MR. SOTO: Okay. Let's go to the bottom  
8 of that page. Let's blow that up a little bit.

9 BY MR. SOTO:

10 Q. You see the printed name there is Chad  
11 Frost.

12 Do you see that?

13 A. Yes, I see that.

14 Q. Okay.

15 MR. SOTO: And let's make that a little  
16 bit smaller so we can read the print right  
17 above his name. It needs to be a little bit  
18 bigger.

19 Okay. Move it over.

20 Okay. And we've got to blow it up again.

21 BY MR. SOTO:

22 Q. It says, "The merchant and owner/officers  
23 identified above individually, an applicant, each  
24 represents, acknowledges, and agrees that all  
25 information and documents provided to Imperial

1 Advance, including credit card processor statements,  
2 are true, accurate, and complete;

3 "Number 2. Applicant will immediately  
4 notify Imperial of any change in such information or  
5 financial condition;

6 "3. Applicant authorizes Imperial to  
7 disclose all information and documents that Imperial  
8 may obtain, including credit reports to other  
9 persons or entities (collectively assignees) that  
10 may be involved with or acquire commercial loans  
11 having daily repayment features or purchases of  
12 future receivables, including merchant cash advance  
13 transactions," and it goes on.

14 Do you see that?

15 A. Yes.

16 Q. So Mr. Frost has attested that he is  
17 providing as an applicant authority to have his  
18 financial information reviewed in connection with  
19 this application, including credit card statements  
20 and financial information.

21 Do you see that?

22 A. We have no personal knowledge of that. I  
23 see the wording that you read to me is on this  
24 document.

25 Q. Okay.

1 MR. SOTO: Let's go back to paragraph --  
2 I'm sorry, Exhibit 24, Paragraph 8.

3 BY MR. SOTO:

4 Q. "To my knowledge, CBSG did not perform a  
5 background check on me during the underwriting  
6 process or at any time."

7 Do you see that?

8 A. Yes.

9 Q. The wording as you described it in  
10 Exhibit 62, which is an application by Mr. Frost,  
11 includes his agreement that a background check be  
12 completed, correct?

13 MS. BERLIN: Object to form.

14 A. I can't give you --

15 THE WITNESS: I'm sorry. Go ahead, Amie.

16 MS. BERLIN: No, I was finished. I just  
17 said object to form.

18 THE WITNESS: Okay.

19 A. I can't give you an opinion on that. The  
20 SEC does not have personal knowledge as to the  
21 meaning of those records on the document and signing  
22 of the document, so I can't give you an opinion as  
23 to the significance or the meaning of it.

24 BY MR. SOTO:

25 Q. Exhibit 62 is inconsistent with the

1 statement he makes under oath in Paragraph 8 of  
2 Exhibit 24, is it not?

3 A. I can't give you an opinion on that.

4 MS. BERLIN: Objection.

5 Hold on, hold on, guys. I was objecting.

6 I think she answered, but I object as to  
7 form, that it's seeking an opinion or asking  
8 the SEC to weigh any evidence. Instruct the  
9 witness not to answer to weigh evidence or  
10 provide any privilege. And I also believe that  
11 this is outside of the scope of the noticed  
12 deposition.

13 BY MR. SOTO:

14 Q. Exhibit 62 is evidence that Mr. Frost was  
15 lying in his declaration at Paragraph 8; isn't that  
16 right?

17 MS. BERLIN: Objection as to form.

18 Seeking an opinion from the SEC, a legal  
19 opinion, and we will instruct the witness not  
20 to answer.

21 MR. SOTO: Okay. Let's go to Exhibit 61.

22 (Thereupon, marked as Exhibit 61.)

23 MS. BERLIN: I also note that this line of  
24 questions, and to the extent there are more, we  
25 object that it's outside of the scope of the

1 noticed deposition.

2 BY MR. SOTO:

3 Q. And, Ms. Frank, this merchant declaration  
4 provided by Mr. Frost was relied upon by the SEC in  
5 its Complaint, correct?

6 MS. BERLIN: Objection. Attorney work  
7 product. Attorney-client privilege.  
8 Deliberative process privilege. Investigative  
9 privilege. I instruct the witness not to  
10 answer that question.

11 BY MR. SOTO:

12 Q. In other words, the SEC relied on a  
13 declaration that contained a falsehood, correct?

14 MS. BERLIN: Same objections and same  
15 instruction to the witness, and I also object  
16 as to the form.

17 BY MR. SOTO:

18 Q. Ms. Frank, I'm going to ask you this in  
19 your personal capacity as an Associate Regional  
20 Director.

21 MS. BERLIN: We will object to any  
22 questions to this witness in her personal  
23 capacity. She is only here as a 30(b)(6)  
24 witness speaking as the Commission. I will  
25 direct her not to answer any questions you ask

1 her in her personal capacity, which is not  
2 noticed.

3 MR. SOTO: I'm going to ask it anyway.  
4 You can object.

5 BY MR. SOTO:

6 Q. Ms. Frank, in your personal capacity as an  
7 Associate Regional Director for the SEC, would you  
8 allow a declaration that you know contains a false  
9 statement to be offered in support of a complaint  
10 filed in court?

11 MS. BERLIN: Objection. Outside of the  
12 scope of the -- objection. Outside of the  
13 scope of the deposition noticed. Ms. Frank is  
14 not here in her personal capacity, and I'll  
15 instruct her not to answer any questions  
16 directed to her personally.

17 BY MR. SOTO:

18 Q. And I'll ask you, in your capacity as an  
19 SEC designee, is the SEC in the practice of  
20 submitting declarations that contain a false  
21 statement in support of a complaint filed in federal  
22 court?

23 MS. BERLIN: Object to form. The witness  
24 may answer.

25 A. No.

1 BY MR. SOTO:

2 Q. I imagine not.

3 All right. Let's go through a few others.

4 Let's look at Exhibit 61. This is a  
5 declaration of Mary Carleton, correct?

6 A. Yes.

7 Q. And in this declaration, Ms. Carleton said  
8 she owns a company called CapJet?

9 A. Yes.

10 Q. Which is located in Houston, Texas?

11 A. Yes, that's what the documents says.

12 Q. She said in August 2019, CBSG advanced  
13 money to CapJet in the amount of roughly \$112,000,  
14 correct?

15 A. It says, "made a loan to my company,"  
16 which is defined as CapJet, yes.

17 Q. And she said she applied to Fast Advance  
18 Funding, a broker for the loan, right, on behalf of  
19 the company?

20 That's at Paragraph 4.

21 A. Yes.

22 MR. SOTO: Okay. Let's go to Paragraph 8.

23 BY MR. SOTO:

24 Q. It says, "CBSG did not request information  
25 from me or the company about the company's profit

1 margins during the underwriting process or at any  
2 other time."

3 Do you see that?

4 A. Yes.

5 Q. It says, in Paragraph 7, "CBSG did not  
6 request information from me or the company about the  
7 company's expenses during the underwriting process  
8 or at any other time."

9 Do you see that?

10 A. Yes.

11 MR. SOTO: Okay. Let's go to Exhibit 100.

12 (Thereupon, marked as Exhibit 100.)

13 BY MR. SOTO:

14 Q. Do you see this exhibit, Ms. Frank?

15 A. Yes, I do.

16 Q. It says "Merchant Prequalification Form"  
17 at the top?

18 A. Yes.

19 Q. Okay. And the business legal name is  
20 Capital Jet, or CapJet?

21 A. Capital Jet, Inc.

22 Q. And the business d/b/a next to that is?

23 A. CapJet, yes.

24 Q. That's the same company -- I'm sorry,  
25 we're talking over each other.

1           That is the same name identified in  
2 Ms. Carleton's declaration, right, CapJet?

3           A.    It appears to be the same name.

4           Q.    Right.

5                   And she, in her declaration, attested that  
6 the company was in Houston, Texas, if I'm not  
7 mistaken, and this exhibit says the company is at  
8 least incorporated in the State of Texas, right?

9           MS. BERLIN: Object to form.

10           MR. SOTO: Actually, let me restate -- I'm  
11 sorry to interrupt you. Let me restate that.

12          BY MR. SOTO:

13           Q.    It actually says their physical address is  
14 in the City of Houston, Texas.

15                   Do you see that?

16           A.    Yes, on this document, I see physical  
17 address and actual address is in City of Houston,  
18 State of Texas.

19          BY MR. SOTO:

20           Q.    The same city and state as the CapJet in  
21 Ms. Carleton's declaration, Exhibit 61, right?

22           MS. BERLIN: Object as to form.

23           A.    Can you go back to Exhibit 61?

24          BY MR. SOTO:

25           Q.    Sure.

1 Paragraph 2.

2 A. Yes, I see Houston, Texas, in Paragraph 2.

3 Q. Okay. The same company name, the same  
4 location in Exhibit 61 and Exhibit 100, correct?

5 A. Correct.

6 Q. Okay.

7 MR. SOTO: Let's go back to Exhibit 100.

8 And scroll down.

9 BY MR. SOTO:

10 Q. And you can see that the owner/officer's  
11 name is Mary Carleton, correct?

12 A. I see that the document reflects those  
13 words, "Owner/Officer's Name," "Print," and then  
14 colon, and then "Mary Carleton."

15 Q. And then above that, it says, "Job Title:  
16 President," and Mary Carleton is identified, at  
17 least in this document, as the president of CapJet,  
18 right?

19 A. Correct.

20 MR. SOTO: Let's go to Exhibit 101.

21 (Thereupon, marked as Exhibit 101.)

22 MR. SOTO: And let's go to the last page.

23 BY MR. SOTO:

24 Q. Okay. You see the category that says,  
25 "Outstanding Advances"?

1 A. Yes.

2 Q. Okay. And it says, next to that,  
3 "Strategic Weekly: \$223," another one says,  
4 "Strategic Weekly: \$720."

5 Do you see that?

6 A. Yes.

7 Q. Okay.

8 MR. SOTO: And let's just go back up, so  
9 we can all agree on what Exhibit 101 is.

10 BY MR. SOTO:

11 Q. So Exhibit 101, at the very top, says,  
12 "Capital Jet, Inc. d/b/a CapJet" on the right-hand  
13 top column, correct?

14 A. Yes, I see that.

15 Q. Okay. And the owner name, it says "Mary  
16 Carleson," it's misspelled. You see it has an S  
17 instead of a T?

18 A. I see it says "Mary Carlson."

19 MR. SOTO: Ms. Berlin, did you want to  
20 object?

21 MS. BERLIN: Yeah, I just stated object as  
22 to form.

23 MR. SOTO: Okay.

24 BY MR. SOTO:

25 Q. Ms. Frank?

1 A. I see it says "Mary Carlson" with an S.

2 Q. And do you see that the location is  
3 Houston, Texas?

4 A. Yes.

5 Q. Okay. And at the very bottom --

6 MR. SOTO: Let's go back.

7 BY MR. SOTO:

8 Q. -- you'll see that there are -- there is  
9 an area where outstanding advances made to this  
10 company are identified, and there are amounts that  
11 are identified with respect to each of those  
12 advances disclosed on this form.

13 Do you see that?

14 A. I see a column that says "Outstanding  
15 Advances," and then I see next to it another column  
16 that says "Strategic," I guess it's an abbreviation  
17 for weekly, W-K-L-Y, a number, "Strategic Wkly," and  
18 a different number, and then "Foundation: Biweekly."

19 Q. Okay. And so you see advances made to  
20 this company in those amounts, correct, on a weekly  
21 basis?

22 MS. BERLIN: Objection as to form.

23 A. The SEC has no personal knowledge of that,  
24 and I couldn't give you an opinion of what that  
25 means.

1 MR. SOTO: Okay. Let's go to Exhibit 102.

2 (Thereupon, marked as Exhibit 102.)

3 BY MR. SOTO:

4 Q. All right. Do you see that this is a  
5 Credit Profile Report?

6 MS. BERLIN: And I'm going to just object  
7 to the extent I believe I gave a little leeway,  
8 Mr. Soto, to see if this was going to come back  
9 to one of the topics that was noticed for  
10 today. It doesn't. And so Ms. Frank can  
11 testify about matters not in the notice in her  
12 personal capacity, but not on behalf of the  
13 SEC.

14 MR. SOTO: Okay. If you're going to  
15 object on that basis, again, I would appreciate  
16 it if you objected and just said objection,  
17 scope or scope, and I'll understand that you  
18 mean this to be outside the scope of the  
19 noticed deposition.

20 BY MR. SOTO:

21 Q. So do you see that it says "Credit Profile  
22 Report" at the top of Exhibit 102?

23 MS. BERLIN: Objection. Scope with the  
24 same representation and instruction for the  
25 witness.

1 MR. SOTO: And I'll also -- by the way --  
2 I'm sorry if you weren't done -- you can make a  
3 standing objection with respect to this  
4 particular exhibit if you would like to because  
5 I'm going to ask several questions with respect  
6 to this, and you already stated you think it's  
7 outside the scope.

8 BY MR. SOTO:

9 Q. So do you see that this Credit Profile  
10 Report identifies Mary Carleton in Houston, Texas,  
11 in the top left-hand corner?

12 MS. BERLIN: Same objection as to the  
13 scope.

14 A. So I'm not going to testify regarding this  
15 document in my personal capacity since it's outside  
16 of the scope of the 30(b)(6).

17 BY MR. SOTO:

18 Q. Do you see that in the top right-hand  
19 corner, it identifies CapJet in Houston, Texas?

20 MS. BERLIN: Mr. Soto, I'll take you up on  
21 the offer for the standing objection, so I  
22 don't have to keep repeating it. Thank you for  
23 suggesting that. So I'll just have a standing  
24 objection to questions about this document.

25 MR. SOTO: Okay. And you're instructing

1 her to answer -- or your objection is that she  
2 will be answering in her personal capacity  
3 because it's outside the scope in your opinion?

4 MS. BERLIN: The -- I believe that this  
5 line of questioning is outside of the scope of  
6 the deposition notice. So the SEC will not be  
7 testifying about certain matters that are  
8 outside of the scope. Right now, we're on one  
9 of them.

10 And therefore, if the witness,  
11 nonetheless, wants to testify in her personal  
12 capacity, she may do so, but the SEC, which is  
13 who I represent, we object on grounds it's  
14 outside of the scope.

15 And rather than repeating that each time,  
16 I'll just thank you for just letting me state  
17 it as a standing objection, so I don't have to  
18 continue to repeat and take up any of your  
19 time.

20 MR. SOTO: Got it.

21 BY MR. SOTO:

22 Q. Okay. So this being Exhibit 102, now that  
23 that's clear, Ms. Frank, do you see that this Credit  
24 Profile Report identifies Mary Carleton in Houston,  
25 Texas?

1           A.    I'm not going to testify about this  
2 document because I do not want to be testifying in  
3 my personal capacity.

4           Q.    The reason I reasked the question,  
5 Ms. Frank, is I thought I heard you say that, and  
6 you actually don't have the option not to answer  
7 unless you're directed not to answer based on  
8 privilege or some other basis that Ms. Berlin  
9 suggests. You can't just choose not to answer  
10 because you don't want to answer in your personal  
11 capacity. So I will ask it again.

12           MS. BERLIN: I'm instructing the witness  
13 not to testify as the SEC designee about this  
14 matter because -- this issue because it's  
15 outside of the scope of the notice.

16           MR. SOTO: Okay.

17           BY MR. SOTO:

18           Q.    So, Ms. Frank, you've been instructed not  
19 to testify in your capacity as the SEC designee. I  
20 disagree with the objection, I'm not going to debate  
21 it now, but I've asked you: This is a Credit  
22 Profile Report that identifies Ms. Carleton in  
23 Houston, Texas, correct?

24           MS. BERLIN: And same objection.

25           Ms. Frank has not been noticed in her personal

1 capacity today to testify, and the SEC's  
2 objection is that it's outside of the scope,  
3 and, therefore, we're directing the witness not  
4 to testify about this document.

5 MR. SOTO: In her personal capacity or in  
6 her capacity as an SEC designee?

7 MS. BERLIN: Ms. Frank wasn't noticed  
8 today for a deposition in her personal  
9 capacity. I don't represent Ms. Frank in her  
10 personal capacity, so I cannot give her  
11 personally any legal advice, Mr. Soto, but  
12 today's notice is of the SEC proper, not  
13 Ms. Frank in her individual capacity, and we've  
14 made our objection clear. We've given the  
15 instruction to the witness, and I believe that  
16 that's all.

17 I believe I've said it a few times, but if  
18 you have more questions, I'm happy to go off  
19 the record and discuss it with you, but I would  
20 rather not continue the back and forth.

21 BY MR. SOTO:

22 Q. Ms. Frank, so Ms. Berlin has indicated she  
23 does not represent you in your personal capacity,  
24 has not indicated that you should -- not directed  
25 you not to answer in your personal capacity.

1           So, this will be the fourth time I ask you  
2 to identify this document, a Credit Profile Report  
3 where Mary Carleton is in the top left-hand corner  
4 in Houston, Texas.

5           Your answer?

6           MS. BERLIN: And again, I instruct the  
7 witness --

8           MR. SOTO: Ms. Berlin, you don't need to  
9 restate your -- we've heard your objection  
10 numerous times.

11           MS. BERLIN: Okay. I believe I was  
12 objecting question by question, and so I was  
13 just trying to comply with my professional  
14 obligations. So I will restate the same  
15 objection and instruction.

16           A. I'm not going to answer in my personal  
17 capacity because I was not noticed in my personal  
18 capacity. I thought that I was here in my 30(b)(6)  
19 capacity for the Commission. I don't have my own  
20 counsel. I don't want to be my own counsel,  
21 although in this situation, I'm stuck with that for  
22 the moment, and so I'm advising myself not to answer  
23 in my personal capacity, so I'm sorry that I can't  
24 do that.

25

1 BY MR. SOTO:

2 Q. Okay. That's fine. I just wanted to make  
3 clear that for a 30(b)(6) deposition, you don't have  
4 that right. You have to answer the questions. If  
5 you choose not to, that's fine. We can move on.

6 I'll just answer -- I'll ask you the  
7 questions, and you can decide on a  
8 question-by-question basis whether to ask -- answer,  
9 rather.

10 MR. SOTO: So scroll down on Exhibit 102,  
11 please.

12 BY MR. SOTO:

13 Q. So within this exhibit, do you see that  
14 there are various companies identified in the  
15 left-hand column, including "PHH Mortgage Services,"  
16 under that Chase Card -- under that Chase Card  
17 again --

18 MR. SOTO: Don't scroll down any further.

19 BY MR. SOTO:

20 Q. -- and the columns above indicate "Monthly  
21 Payment Amounts," to the column to the right of  
22 that, "Past Due Amounts" and whether -- and to the  
23 right of that, whether the accounts are closed.

24 Do you see that?

25 MS. BERLIN: Same objection and

1 instruction.

2 A. I'm not going to answer.

3 BY MR. SOTO:

4 Q. Okay.

5 A. I decline to answer in my personal  
6 capacity.

7 Q. Okay. And so this Exhibit 102 is an  
8 exhibit that shows amounts that CapJet owes in  
9 connection with these identified entities, PHH  
10 Mortgage Services, Chase Card, and the others, and  
11 specifies the amounts owed and the status of their  
12 relationship, correct?

13 MS. BERLIN: Same objection and  
14 instruction.

15 A. I decline to answer in my personal  
16 capacity.

17 BY MR. SOTO:

18 Q. And these would be expenses, would they  
19 not, with respect to CapJet?

20 MS. BERLIN: Objection as to form and same  
21 objection. Outside of the scope and same  
22 instruction to the witness.

23 BY MR. SOTO:

24 Q. Ms. Frank?

25 A. I decline to answer in my personal

1 capacity.

2 Q. Okay. A payment owed to a mortgage  
3 company would be an expense, would it not?

4 MS. BERLIN: Object to form and same  
5 objection and instruction.

6 A. I decline to answer in my personal  
7 capacity.

8 BY MR. SOTO:

9 Q. An amount owed to a credit card company  
10 would be an expense, correct?

11 MS. BERLIN: Same objection, same  
12 instruction. And, you know, we would also  
13 object to the extent this is seeking an opinion  
14 from the SEC about this document. So object to  
15 form.

16 BY MR. SOTO:

17 Q. Ms. Frank, same answer?

18 A. Same answer.

19 MR. SOTO: Okay. Could we scroll down?

20 BY MR. SOTO:

21 Q. And you'll see that there are other  
22 entities here, including Amegy Bank of Texas, Chase  
23 Card, LensCrafters, AMEX, Chase Auto, and similarly  
24 amounts owed and the status of these accounts.

25 Do you see that?

1 MS. BERLIN: Same objection and  
2 instruction.

3 BY MR. SOTO:

4 Q. Ms. Frank?

5 A. Same answer.

6 Q. Those are expenses tied to this company,  
7 correct?

8 MS. BERLIN: Object to form and same  
9 objection as stated previously and same  
10 instruction.

11 BY MR. SOTO:

12 Q. Ms. Frank, same answer?

13 A. Same answer.

14 MR. SOTO: Okay. And scroll down.  
15 Okay, you can stop.

16 BY MR. SOTO:

17 Q. This is an Experian report.

18 Do you see that at the very bottom?

19 MS. BERLIN: Same objection and answer --  
20 Mr. Soto, can I just -- I'll have a standing  
21 objection to any questions about this document,  
22 is that acceptable? Then I don't have to keep  
23 saying it.

24 MR. SOTO: Yep. That's fine.

25 MS. BERLIN: You're welcome to ask if

1 Ms. Frank wants to do the same if you want to  
2 move forward, but I just want to make sure I  
3 don't have to keep interrupting.

4 MR. SOTO: Okay. Can we scroll to the  
5 top?

6 BY MR. SOTO:

7 Q. And just to be clear, this is a Credit  
8 Profile Report which identifies CapJet in the  
9 right-hand column in Houston, Texas, correct?

10 A. Same answer, I decline to answer in my  
11 personal capacity.

12 Q. And this Credit Profile Report provides  
13 expenses with respect to CapJet identified as  
14 expenses under various credit cards and mortgage  
15 companies and those that we've reviewed, correct?

16 MS. BERLIN: Same objection, but I also  
17 object as to form as to that question.

18 MR. SOTO: Okay. Can we go to  
19 Exhibit 103.

20 (Thereupon, marked as Exhibit 103.)

21 BY MR. SOTO:

22 Q. And, Ms. Frank, did you want to answer  
23 that question the same way as before, that you're  
24 not going to answer in your personal capacity?

25 A. Yes, please.

1 MR. SOTO: Okay. Exhibit 103.

2 All right. Let's go to -- let's scroll.

3 BY MR. SOTO:

4 Q. Well, before we do that, this is, at the  
5 very top, a document that says "Experian" on the top  
6 right-hand side, and the business name says,  
7 "Capital Jet, Inc.," correct?

8 Same answer?

9 MS. BERLIN: Same objection. It's a new  
10 exhibit, so I'm going to make the same  
11 objection, that this is outside of the scope of  
12 the topics noticed for today. The SEC, we're  
13 instructing the witness not to testify about  
14 any questions concerning this document, and  
15 that's it. We're instructing the witness not  
16 to testify.

17 MR. SOTO: Okay. You can have a standing  
18 on that as before.

19 BY MR. SOTO:

20 Q. Ms. Frank, is it your position that you're  
21 not going to answer this question in your individual  
22 capacity?

23 A. Yes.

24 Q. Okay.

25 MR. SOTO: You can have a standing

1 objection if you want to use it.

2 BY MR. SOTO:

3 Q. And Capital Jet, according to this  
4 document, is located in Houston, Texas, correct?

5 Same objection as before, Ms. Frank?

6 A. Same answer, yes.

7 MS. BERLIN: Excuse me. Mr. Soto,  
8 Ms. Frank isn't represented by counsel, and  
9 you're now converting this into a deposition of  
10 her in her personal capacity. So, Ms. Frank  
11 will not be answering any questions today in  
12 her personal capacity, she's not represented by  
13 counsel, and the SEC will not be permitting her  
14 to answer any questions that weren't noticed.

15 So we will not be responding in any way to  
16 those types of questions, and to the extent  
17 you're now seeking to convert this into a  
18 deposition of Ms. Frank personally, Ms. Frank  
19 will not be answering. My understanding from  
20 Ms. Frank is she will not be answering any  
21 questions today in her personal capacity. It's  
22 not a noticed deposition.

23 MR. SOTO: Thank you. You stated that  
24 objection. I've offered you a standing  
25 objection. I will ask my questions.

1 Let's scroll down.

2 Go back up, I'm sorry.

3 Stop right there.

4 BY MR. SOTO:

5 Q. So you can see that in this document,  
6 Exhibit 103, at Bates stamp --

7 MR. SOTO: Let's scroll down a little bit.

8 BY MR. SOTO:

9 Q. -- ConvergeHub ending in 112. It says  
10 that CapJet has a number of commercial accounts with  
11 net 1 through 30 days term and also provides  
12 information with respect to the number of commercial  
13 accounts with high utilization, those that might be  
14 delinquent, and those with recent active commercial  
15 accounts.

16 Do you see that?

17 MR. SOTO: Let's scroll down.

18 A. I'm not going to answer in my personal  
19 capacity, and from here on, I'll just say "same  
20 answer."

21 Q. Okay.

22 MR. SOTO: Let's scroll down a little bit  
23 more.

24 Okay, just stop right there.

25

1 BY MR. SOTO:

2 Q. Okay. And you'll see that there's a  
3 section that reads "Quarterly Payment Trends" that  
4 provides balances and whether the accounts are  
5 current for CapJet in connection with this Experian  
6 report, correct?

7 A. Same answer.

8 Q. Okay. And there are also -- there's also  
9 data with respect to other accounts and credit  
10 limits, balances, and whether those accounts are  
11 current.

12 Do you see that?

13 A. Same answer.

14 Q. Okay.

15 MR. SOTO: Let's scroll back -- I'm sorry,  
16 let's go back to Exhibit 61.

17 BY MR. SOTO:

18 Q. So at Exhibit 61, in Paragraph 7, where  
19 Mary Carleton said that "CBSG did not request  
20 information from me or the company about the  
21 company's expenses during the underwriting process  
22 or at any other time prior to approving the loans,"  
23 that statement was false, correct?

24 A. The SEC does not have personal knowledge.

25 MS. BERLIN: Hold on a moment. Just a

1 moment.

2 I'm sorry, I have to object. We have a  
3 standing objection, so that I don't have to  
4 keep repeating it, that the SEC believes this  
5 is outside -- this line of questioning is  
6 outside the scope, and we would object to it  
7 and instruct her not to answer. If she wishes  
8 to do so in her personal capacity, she may.

9 And perhaps I misunderstood the question,  
10 Mr. Soto, and you were asking about something  
11 in the topic, and I'm welcome to hear that or  
12 to discuss off the record, but I believe that's  
13 outside of the scope. If you would like to  
14 reframe the question, then that would be okay.

15 BY MR. SOTO:

16 Q. Ms. Frank, you can answer.

17 A. I'm not going to answer in my personal  
18 capacity.

19 Q. Okay.

20 MR. SOTO: I will note for the record that  
21 at Exhibit 3, Paragraph 1, we asked for the  
22 specific facts, information, documents, and  
23 other evidence, to summarize, that the SEC has  
24 to support its Complaint with respect to -- the  
25 very first subsection is CBSG's underwriting

1 practices. I've heard your position that these  
2 are outside the scope. These relate to  
3 underwriting. You can continue to object as  
4 you see fit.

5 So let's go back to Exhibit 61.

6 BY MR. SOTO:

7 Q. Exhibit 61 is a declaration where Mary  
8 Carleton, a merchant cash advance client of Par,  
9 indicates in Paragraph 7 that CBSG never requested  
10 information about her or the company's expenses  
11 despite the fact that Exhibits 100, 101, 102, and  
12 103 indicate that Par requested and pulled the  
13 information that she denies they pulled in  
14 Paragraph 7, correct?

15 A. I'm not going to answer.

16 MS. BERLIN: Same objection -- I'm sorry,  
17 hold on just one moment.

18 Mr. Soto, I'm sorry. Could you repeat  
19 your question? I just want to make sure,  
20 because that one, I might not object to. I  
21 might have misheard you. Would you mind  
22 terribly just repeating it?

23 MR. SOTO: I would mind because we're  
24 taking way too long with these objections, and  
25 I'm going to have Ms. Frank answer the

1 question, and you've stated your objection. We  
2 started this deposition an hour late. We've  
3 taken multiple breaks, including one break that  
4 I viewed as unnecessary, and at this point,  
5 we've wasted so much time, that it's 3:00, and  
6 I've barely gotten through my outline, and  
7 we're going to have to come back. So --

8 MS. BERLIN: I believe you could have just  
9 restated the question.

10 MR. SOTO: I'm not done.

11 MS. BERLIN: I simply asked you to repeat  
12 it so that I can object appropriately. I  
13 understand you refuse to repeat the question.  
14 So just proceed instead of taking up more --  
15 there's no need for a back and forth.

16 MR. SOTO: Ms. Berlin, you've been  
17 obstructing this deposition, and I think that  
18 asking me to restate the question is an effort  
19 to obstruct this deposition to prolong it.  
20 You've indicated through various means and  
21 statements that this is what you're trying to  
22 do. I think you've spoken more than the  
23 witness has. And so I'm going to re-ask the  
24 question to give you an opportunity to hear it  
25 again.

1 MS. BERLIN: Thank you. Thank you so  
2 much.

3 BY MR. SOTO:

4 Q. Ms. Frank, so Paragraph 61 is a  
5 declaration of Mary Carleton, correct?

6 A. Exhibit 61, that's up on the screen now,  
7 yes.

8 Q. Exhibit 61.

9 And the representation she makes in  
10 Paragraph 7, that CBSG did not request information  
11 from her or the company about the company's  
12 expenses, is false -- clearly false in light of  
13 Exhibits 100, 101, 102, and 103, which show that the  
14 company pulled and reviewed CapJet's expenses,  
15 correct?

16 MS. BERLIN: Same objection. And same  
17 instruction to the witness.

18 A. Same answer.

19 MR. SOTO: Okay. Let's go to Exhibit 30.

20 (Thereupon, marked as Exhibit 30.)

21 BY MR. SOTO:

22 Q. This is the declaration of Joseph Pucci.  
23 Do you see that?

24 A. Yes.

25 Q. Mr. Pucci states, in Paragraph 2, that he

1 previously owned a company called American Heritage  
2 Billiards?

3 A. Yes.

4 Q. He states in Paragraph 3 that in October  
5 of 2019, CBSG loaned that company \$792,000 through a  
6 merchant cash advance?

7 A. Yes, through what CBSG calls its merchant  
8 capital advance, MCA, business.

9 Q. Okay. So let's look at Paragraph 7.

10 And in that declaration, Mr. Pucci states  
11 that CBSG did not request information about his  
12 company's expenses during the underwriting process  
13 or at any other time prior to approving the loan.

14 Do you see that?

15 A. Yes.

16 Q. Okay.

17 MR. SOTO: Let's go to Exhibit 31.

18 (Thereupon, marked as Exhibit 31.)

19 BY MR. SOTO:

20 Q. This is a First Union Funding application  
21 that says "Joseph Pucci" to the right of that.

22 Do you see that?

23 MS. BERLIN: Since this is a new exhibit,  
24 I'm going to state my standing objection to it,  
25 that this is outside of the scope of the topics

1 that were noticed, and so we object to this  
2 line of questioning and instruct the witness  
3 not to answer on behalf of the Securities and  
4 Exchange Commission.

5 MR. SOTO: Okay. And you can have a  
6 standing objection with respect to that.

7 MS. BERLIN: Thank you.

8 BY MR. SOTO:

9 Q. This is Exhibit 31. This is a document  
10 that, at the very top, reads "First Union Funding  
11 Application - Joseph Pucci," does it not, Ms. Frank?

12 A. I'm going to decline to answer in my  
13 personal capacity and just say "same answer" going  
14 forward.

15 Q. Okay. The business name is American  
16 Heritage Billiards, correct?

17 A. Same answer.

18 Q. Okay. And that is the same company  
19 identified in Mr. Pucci's declaration, in  
20 Exhibit 30, correct?

21 A. Same answer.

22 Q. And we can see that it says, "Gross Annual  
23 Sales: \$48 million."

24 Do you see that?

25 A. Same answer.

1 MR. SOTO: Okay, let's scroll down.

2 Oh, sorry. Okay.

3 BY MR. SOTO:

4 Q. It says, at the very bottom of Page 1,  
5 "Outstanding Loans Balances," it says, "Yes."

6 Do you see that?

7 A. Same answer.

8 Q. Okay.

9 MR. SOTO: Let's scroll to the top of the  
10 next page. You were -- yeah, okay.

11 BY MR. SOTO:

12 Q. It says -- the other loans referenced  
13 earlier, it says, Funding Company 1, Forward  
14 Finance, with a balance of \$200,000.

15 Do you see that?

16 A. Same answer.

17 Q. Funding Company 2, Green Capital, with a  
18 balance of \$700,000, correct?

19 A. Same answer.

20 Q. Okay. And just above Mr. Pucci's  
21 declaration, there is an authorization.

22 Do you see that?

23 A. Same answer.

24 Q. And I meant to say, just above Mr. Pucci's  
25 signature -- I may have said something else --

1 reads, "Authorization."

2 Do you see that?

3 A. Same answer.

4 Q. And that authorization says, "The business  
5 and its owners or principals" --

6 MR. SOTO: You don't have to blow it up.

7 BY MR. SOTO:

8 Q. "The business and its owners or principals  
9 individually, an applicant, each represents,  
10 acknowledges, and agrees as follows: All  
11 information and documents provided to First Union  
12 Lending are true, accurate, and complete and that  
13 the applicant will immediately notify FUL" -- that  
14 is First Union Lending -- "of any material change in  
15 such information or financial condition. Applicant  
16 authorizes FUL to disclose any information and  
17 documents that FUL may obtain, to other persons or  
18 entities (collectively assignees) that may be  
19 involved with any sort of business, and each  
20 assignee is authorized to use such information and  
21 to share such information with their assignees in  
22 connection with potential transactions."

23 And it goes on to say, at Subsection 3,  
24 "FUL assignees, partners, and each of their  
25 representatives, successors, and designees

1 (collectively recipients) are hereby given written  
2 instruction and authorization to request and receive  
3 any investigative reports, credit reports, bank  
4 statements, and financial documents, verification of  
5 information, or any other information that recipient  
6 deems necessary from creditors, reporting agencies,  
7 or financial institutions for the purpose of  
8 providing business funding options."

9 Do you see that?

10 A. Same answer.

11 Q. Okay. In connection with that  
12 authorization, there is information in this document  
13 with respect to --

14 MR. SOTO: Can we scroll up to the top  
15 of -- the bottom of the next page.

16 Scroll up.

17 Yeah, stop there.

18 BY MR. SOTO:

19 Q. With respect to that authorization, there  
20 is information here with respect to outstanding  
21 loans or balances owed by this particular company,  
22 right?

23 A. Same answer.

24 Q. Okay.

25 MR. SOTO: Let's go to Exhibit 104.

1           And to the extent Ms. Berlin and you  
2           object on the same grounds, Ms. Berlin, you  
3           could have a standing objection as to this new  
4           exhibit. And, Ms. Frank, you can just say  
5           "same answer," and I'll accept it as the same  
6           objection as before.

7           (Thereupon, marked as Exhibit 104.)

8           BY MR. SOTO:

9           Q.    All right. So Exhibit 104 is "First Union  
10          Debt Consolidation Form."

11          Do you see that?

12          MS. BERLIN: So we have the same objection  
13          that it's outside of the scope of today's  
14          deposition, and we would instruct the witness  
15          not to testify on behalf of the SEC as to the  
16          Defendants' evidence or to weigh or opine on  
17          any evidence on behalf of the SEC.

18          And I'll have a standing objection, I'll  
19          remain silent, and thank you for letting us  
20          just make that standing objection to any  
21          questions about this document that's being  
22          shown. Thank you.

23          BY MR. SOTO:

24          Q.    Ms. Frank, same answer?

25          A.    Same answer.

1 Q. Okay. And this First Union Debt  
2 Consolidation Form, it references American Heritage  
3 Billiards, correct?

4 A. Same answer.

5 Q. And Joseph Pucci, correct?

6 A. Same answer.

7 Q. Okay.

8 MR. SOTO: And let's scroll down just a  
9 little bit.

10 BY MR. SOTO:

11 Q. You can see it says, "Lender Name:  
12 Forward Finance and Green Capital."

13 Those were the two same -- those are the  
14 were lenders identified in Exhibit 31.

15 Do you recall that?

16 A. Same answer.

17 Q. Okay. And the balances referenced in  
18 Exhibit 31 are the same ones referenced here;  
19 current balance, 200,000 with respect to Forward  
20 Finance and 700,000 with respect to Green Capital.

21 Do you see that?

22 A. Same answer.

23 Q. And that's evidence of debt, correct?

24 A. Same answer.

25 Q. Okay.

1 MR. SOTO: Let's go to Exhibit 105.

2 (Thereupon, marked as Exhibit 105.)

3 BY MR. SOTO:

4 Q. Okay. Exhibit 105, at the very top, reads  
5 "Canter & Associates."

6 Do you see that?

7 A. Same answer.

8 Q. Okay.

9 MR. SOTO: And let's scroll down.

10 MS. BERLIN: One moment, Mr. Soto. I  
11 realize this is a new exhibit, so we have the  
12 same objections and the same instruction about  
13 outside of the scope of the notice and  
14 instructing the witness not to opine or weigh  
15 defendants' evidence on behalf of the SEC.

16 Also objecting to lines of questioning.  
17 Doing that is attorney work product.

18 And we'll just carry that standing  
19 objection for this exhibit, and we'll remain  
20 silent so you can proceed. Thank you.

21 MR. SOTO: Okay. Let's scroll down to --  
22 scroll down. We're going to go to Page 4.

23 BY MR. SOTO:

24 Q. Okay. Do you see at Page 4, that this, on  
25 the left-hand side, reads "Schedule K-1 for American

1 Heritage Billiards"?

2 Do you see that?

3 A. Same answer.

4 Q. Okay. And this is for 2018.

5 Do you see that?

6 MS. BERLIN: Same objection and  
7 instruction. Same objection and instruction  
8 for anything concerning the exhibit on the  
9 screen now and this page.

10 MR. SOTO: Okay. Let's scroll up.

11 Stop here.

12 BY MR. SOTO:

13 Q. And this page, which, for reference, is  
14 Page 3 of Exhibit 105, indicates ordinary business  
15 income, total income of \$135,583.

16 Do you see that?

17 A. Same answer.

18 Q. Okay. And it has deductions, and then it  
19 has income after those deductions.

20 Do you see that?

21 A. Same answer.

22 Q. Okay.

23 MR. SOTO: Let's scroll down.

24 BY MR. SOTO:

25 Q. Income --

1 MR. SOTO: Scroll up just a little bit  
2 more.

3 Okay. Stop right there.

4 BY MR. SOTO:

5 Q. You'll see that it has a line at the very  
6 bottom, "Income Loss Reconciliation, Schedule K,  
7 Line 18, \$1,531,157."

8 Do you see that?

9 A. Same answer.

10 MR. SOTO: Okay. So let's go to  
11 Exhibit 106.

12 (Thereupon, marked as Exhibit 106.)

13 BY MR. SOTO:

14 Q. Exhibit 106 is a bank statement for  
15 American Heritage Billiards.

16 Do you see that?

17 MS. BERLIN: I'll just have the same  
18 standing objection and instruction to the  
19 witness with respect to this new exhibit as  
20 outside of the scope, and to the extent we're  
21 asking the SEC to weigh Defendants' documents  
22 or opine on them, also attorney work product.

23 And I'll remain silent for the remainder  
24 of the questions about this exhibit with that  
25 standing objection.

1 Thank you, Mr. Soto.

2 BY MR. SOTO:

3 Q. Ms. Frank, same answer?

4 A. Same answer.

5 Q. Okay.

6 MR. SOTO: Let's scroll down just so that  
7 we can see what this document is.

8 BY MR. SOTO:

9 Q. So you can see it's a bank statement for  
10 American Heritage Billiards with an ending balance.

11 One second. You'll see that -- same  
12 answer with respect to that question, Ms. Frank?

13 A. Same answer.

14 Q. Okay. And you'll see that it has amounts  
15 and expenses or amounts that were paid to merchant  
16 bank card, American Express bank card 1292.

17 Do you see that?

18 A. Same answer.

19 Q. Okay.

20 MR. SOTO: Let's keep scrolling.

21 Another example of payments made, as  
22 reflected in this bank statement.

23 All right. So let's go back to  
24 Exhibit 30.

25

1 BY MR. SOTO:

2 Q. Let's look at Paragraph 7, where Mr. Pucci  
3 testifies in the declaration that, "CBSG did not  
4 request information about my company's expenses  
5 during the underwriting process or at any other time  
6 prior to approving the loan."

7 Do you see that?

8 MS. BERLIN: We have no objection to --  
9 the standing objection I had is not standing  
10 for this question. Thank you.

11 MR. SOTO: Right. Okay.

12 BY MR. SOTO:

13 Q. Do you see that, Ms. Frank?

14 A. Yes, I see that in Paragraph 7.

15 Q. Okay. And that statement is inconsistent  
16 with the exhibits that you just saw, Exhibits 31,  
17 104, 105, and 106, which clearly provide information  
18 about this company's expenses during an underwriting  
19 process, correct?

20 MS. BERLIN: We object as to form. It's  
21 argumentative. It seeks attorney work product,  
22 and it's outside of the scope of the  
23 deposition. It's also deliberative process.

24 BY MR. SOTO:

25 Q. Ms. Frank?

1 MS. BERLIN: I'm sorry, I instruct the  
2 witness not to answer on behalf of the SEC  
3 since that's outside of the scope. Thank you.

4 BY MR. SOTO:

5 Q. Ms. Frank, same answer?

6 A. I'm not going to answer in my personal  
7 capacity, so I have no answer.

8 Q. Okay. In paragraph -- at Paragraph 8,  
9 Mr. Pucci states that CBSG did not request  
10 information about his company's profit margins.

11 Do you see that?

12 A. Yes, I do.

13 Q. Okay. And Exhibit 105 showed the  
14 company's profit margins, did it not?

15 MS. BERLIN: Objection as to form. Any  
16 questions about -- just so I'll have a standing  
17 objection, Mr. Soto, since I know that's what  
18 you prefer, any questions asked of the witness  
19 concerning the documents presented today that  
20 weren't within the topic noticed, we would  
21 direct the witness not to answer on behalf of  
22 the SEC and a separate objection to the extent  
23 you're asking the witness to weigh or opine on  
24 evidence or give a legal opinion, that that  
25 would be attorney work product.

1 Thank you.

2 BY MR. SOTO:

3 Q. Ms. Frank, same answer?

4 A. Same answer.

5 Q. Do you recall Exhibit 105, which provided  
6 information about this company's income after  
7 expenses, after expenses were deducted?

8 MS. BERLIN: Same objection as to scope.

9 BY MR. SOTO:

10 Q. Do you recall that, Ms. Frank?

11 A. Same answer.

12 Q. Okay. Income -- deducting income from  
13 expenses gives you profit, correct?

14 MS. BERLIN: Same objection, same  
15 instruction.

16 I'm sorry, just a standing objection, and  
17 I won't speak up again until you show the next  
18 exhibit. Thank you, Mr. Soto.

19 BY MR. SOTO:

20 Q. Ms. Frank, same answer?

21 A. Same answer.

22 Q. So CBSG did request information about his  
23 company's profit margins, correct?

24 MS. BERLIN: Objection. Also as to form  
25 as to that question.

1 A. Same answer.

2 BY MR. SOTO:

3 Q. Okay. And CBSG did request, as part of  
4 the underwriting process, his bank statements, you  
5 saw that clearly in Exhibit 106, correct?

6 MS. BERLIN: Objection as to form and for  
7 the reasons previously stated in my standing  
8 objection.

9 BY MR. SOTO:

10 Q. Same answer, Ms. Frank?

11 A. Yes.

12 Q. And those bank statements indicated  
13 expenses with respect to this company, correct?

14 A. Same answer.

15 Q. Okay. So this declaration contains  
16 several falsehoods, correct?

17 MS. BERLIN: Objection. Argumentative.  
18 And we object on that ground since this  
19 declaration is part of the evidence and, I  
20 think, noticed, but to the extent you're asking  
21 the SEC to opine or weigh evidence, we object  
22 that it's argumentative and you're seeking  
23 attorney work product from the SEC and an  
24 opinion weighing the evidence. Therefore, I --  
25 I'm sorry. We, therefore, instruct the witness

1 not to answer.

2 BY MR. SOTO:

3 Q. Ms. Frank, same answer?

4 A. I'm not going to answer in my personal  
5 capacity, no.

6 Q. Okay. That's what I mean by "same  
7 answer." Okay.

8 A. Okay.

9 MR. SOTO: Let's go to Exhibit 21.

10 (Thereupon, marked as Exhibit 21.)

11 BY MR. SOTO:

12 Q. This is a declaration of Sean Whalen,  
13 correct?

14 A. Yes.

15 Q. And Mr. Whalen states in his declaration  
16 that he owns a company called Flexogenix Group.

17 Do you see that?

18 A. Yes, in Paragraph 2.

19 Q. Okay. At Paragraph 7, He says, "To my  
20 knowledge, CBSG did not perform a background check  
21 on me during the underwriting process or at any  
22 other time prior to approving the loan."

23 Do you see that?

24 A. Yes.

25 Q. Okay. And in Paragraph 8, it says, "CBSG

1 did not request information showing the company's  
2 profit margins or expenses during the underwriting  
3 process or at any other time prior to approving the  
4 loan."

5 Do you see that?

6 A. Yes.

7 Q. Okay. And I also want to ask you,  
8 Paragraph 3 says that Complete Business Solutions  
9 made the loan to his company, Flexogenix, in October  
10 of 2018, correct?

11 A. Yes.

12 Q. Okay.

13 MR. SOTO: So let's go to Exhibit 22.

14 (Thereupon, marked as Exhibit 22.)

15 BY MR. SOTO:

16 Q. Okay. This is a merchant application at  
17 the very top left-hand corner.

18 Do you see that?

19 MS. BERLIN: We will object.

20 I'm so sorry. I object. This is outside  
21 of the scope of the topics noticed, and we'll  
22 have a standing objection that the witness  
23 cannot testify on behalf of the SEC as to this.

24 And, also, we will object as to any  
25 questions asking the witness to weigh evidence

1 for the Defendants or provide a legal opinion  
2 on attorney work product grounds, and we will  
3 instruct the witness not to answer.

4 And we'll have that standing objection to  
5 this exhibit, if that's permissible, Mr. Soto,  
6 that we have a standing objection rather than  
7 repeat.

8 MR. SOTO: It is. A standing objection  
9 would be appreciated.

10 BY MR. SOTO:

11 Q. Okay. So, Ms. Frank, you've indicated  
12 with respect to several other exhibits prior to this  
13 that you don't want to answer in your personal  
14 capacity, and you said you would just respond by  
15 saying "Same answer."

16 So I just ask you whether this document,  
17 Exhibit 22, on the top left-hand corner, states  
18 "Merchant Application"?

19 Same answer?

20 A. Same answer.

21 Q. Okay. Right under that, under "Business  
22 Legal Name," it says, "Flexogenix Group."

23 Do you see that?

24 A. Same answer.

25 Q. Okay. And Mr. Whalen's declaration, in

1 Exhibit 21, indicated that he obtained a loan from  
2 CBSG on behalf of Flexogenix Group, correct?

3 Do you recall that?

4 Same answer?

5 A. Same answer.

6 Q. Okay.

7 MS. BERLIN: I'm sorry. The SEC has no  
8 objection if you're asking about the  
9 declaration. I just wanted to make sure that  
10 my standing objection was clear.

11 I'm sorry, Mr. Soto. I didn't mean to  
12 interrupt.

13 MR. SOTO: That's fine.

14 BY MR. SOTO:

15 Q. So, Ms. Frank, you can answer on behalf of  
16 the SEC that -- answer my question, which was, the  
17 business legal name here in this application is  
18 Flexogenix Group, which is the same business name  
19 identified in Exhibit 21, correct?

20 A. Both names are the same, correct.

21 Q. Okay. And let's -- one second.

22 You see the e-mail there is  
23 sean@flexogenix.com?

24 A. Yes, I see that the e-mail is as it is on  
25 the document, yes.

1 Q. Okay. And if we go down a little bit  
2 further, under "Owner/Principal Information," you'll  
3 see that the name is "Sean Whalen," correct?

4 MS. BERLIN: And just to be clear, the SEC  
5 has a standing objection to any and all  
6 questions about this exhibit, which are outside  
7 of the topic -- the topics noticed.

8 MR. SOTO: You do.

9 MS. BERLIN: Of course, we do not have an  
10 objection to the questions about the  
11 declaration. We do have objections to the  
12 Defendants -- the document the Defendants are  
13 trying to get the witness to opine on on behalf  
14 of the SEC, and to that, we instruct the  
15 witness not to testify on behalf of the SEC.

16 MR. SOTO: Your objection is noted.

17 A. For this current answer, my answer would  
18 be same answer.

19 And I misunderstood. For the previous  
20 question, my answer should have been same answer.

21 BY MR. SOTO:

22 Q. That's fine.

23 Okay. So scrolling down a little bit  
24 further, this application is signed and dated,  
25 correct?

1 A. Same answer.

2 Q. Okay. And it's dated October 17, 2017,  
3 correct?

4 A. Same answer.

5 Q. Okay. In fact, there are two dates, both  
6 of them reflect the same date, October 17, 2017,  
7 right?

8 A. Same answer.

9 Q. And the applicant, by signing below, just  
10 above his signature indicates, "Each of the  
11 above-listed business and business owner/officer  
12 (individually and collectively you) authorize  
13 Empower Group and each of its representatives,  
14 successors, assigns, and designees that may be  
15 involved with or acquire commercial loans, having  
16 daily repayment features or purchases of future  
17 receivables, including merchant cash advance  
18 transactions," it goes on to say, "to obtain  
19 consumer or personal business and investigative  
20 reports and other information about you, including  
21 credit card processor statements and bank statements  
22 from one or more consumer reporting agencies."

23 Do you see that?

24 A. Same answer.

25 Q. So Mr. Whalen, through his signature on

1 October 17, 2017, is permitting a review of his  
2 credit history through the use of credit reports and  
3 the review of bank statements, correct?

4 A. Same answer.

5 Q. Okay.

6 MR. SOTO: And scroll up.

7 BY MR. SOTO:

8 Q. This is on behalf of business legal name  
9 Flexogenix Group, right?

10 A. Same answer.

11 Q. And this is a funding application with  
12 Flexogenix Group identified as the business, right?

13 A. Same answer.

14 Q. Okay.

15 MR. SOTO: Let's go to Exhibit 107.

16 (Thereupon, marked as Exhibit 107.)

17 BY MR. SOTO:

18 Q. Exhibit 107 reads "Bank of America" at the  
19 very top.

20 Do you see that?

21 MR. SOTO: You can have a standing  
22 objection with respect to this new document,  
23 this new exhibit.

24 MS. BERLIN: I need to state it for the  
25 record.

1           The SEC objects to questions -- you're  
2           showing the witness a series of documents the  
3           defense has provided in a motion recently filed  
4           that has nothing to do with any of the topics  
5           and is improperly attempting to get the SEC to  
6           engage in some sort of evidence weighing with  
7           the defense in support of that motion the  
8           defense filed.

9           It's outside of the topic, and for all of  
10          these questions, we will make the same  
11          objection. It's outside of the scope, and  
12          you've been made aware that the witness will  
13          neither testify in her individual capacity or  
14          her capacity as the SEC representative to any  
15          of these questions based on our instruction not  
16          to testify on behalf of the SEC, and the  
17          witness has also -- and because it's attorney  
18          work product when you're asking her to weigh in  
19          or opine, and the witness has also advised you  
20          under oath that she's not going to testify in  
21          her individual capacity.

22          And so we have a standing objection that  
23          would apply to this document. And for the next  
24          one, I might just refer to back to this  
25          objection and say that I'm restating it so that

1 we'll understand and I don't have to repeat  
2 this.

3 Thank you, Mr. Soto.

4 BY MR. SOTO:

5 Q. So this is exhibit -- and, Ms. Frank, I  
6 imagine that you will say "Same answer" with respect  
7 to my questions to the extent that they're asking  
8 you for an answer in your individual capacity?

9 A. Correct.

10 Q. Okay.

11 A. Thank you.

12 Q. That's fine.

13 Exhibit 107 reads, top left-hand corner,  
14 "Bank of America," and under that, "Flexogenix North  
15 Carolina."

16 Do you see that?

17 A. Same answer.

18 Q. Okay.

19 MR. SOTO: Let's scroll down.

20 Stop right there.

21 BY MR. SOTO:

22 Q. And you can see there that this is a bank  
23 statement indicating statements from October 1  
24 through October 31, 2018.

25 Do you see that?

1 A. Same answer.

2 Q. Okay.

3 MR. SOTO: Let's continue scrolling down.  
4 Stop.

5 Let's keep going. Okay.

6 BY MR. SOTO:

7 Q. And so this is another page of a  
8 Flexogenix bank statement, again for the period  
9 October 1, 2018, through October 31, 2018.

10 Do you see that?

11 A. Same answer.

12 Q. Okay.

13 MR. SOTO: Let's go to Exhibit 108, where  
14 I will accept the SEC's standing objection as  
15 previously noted.

16 (Thereupon, marked as Exhibit 108.)

17 MS. BERLIN: And, Mr. Soto, I can also add  
18 that for any questions you're asking the  
19 witness, if words appear on the screen, we  
20 stipulate that -- the SEC will stipulate with  
21 you that the words on the screen are what the  
22 words on the screen state.

23 So if you ask the witness or the SEC, do  
24 these words appear on the document we're  
25 showing you on the screen, we stipulate that

1 the exhibits are what they are and say what  
2 they are. Our objection is to the -- any  
3 substantive questions where you're weighing or  
4 asking the witness or the SEC to weigh  
5 evidence.

6 But you have our stipulation on the record  
7 that the exhibits state what they state. We're  
8 not stipulating to authenticity or the  
9 interpretation you have, but I wanted to  
10 provide that stipulation to hopefully provide  
11 more clarification and assist.

12 Thank you, Mr. Soto.

13 And, of course, with this new exhibit, we  
14 have the same objection and instruction to the  
15 witness, and we stipulate that the document  
16 shown on the screen has the words that are  
17 shown -- you know, that the words appear. We  
18 don't dispute that the words appear on the  
19 screen. Thank you.

20 BY MR. SOTO:

21 Q. Ms. Frank, will you be answering the same  
22 way, same answer as before?

23 A. Yes.

24 Q. Okay. So this Exhibit 108, at the very  
25 top left-hand corner, reads "Par Funding," under

1 that, "Client: Flexogenix."

2 Do you see that?

3 A. Same answer.

4 Q. And it has an Underwriting Control Sheet  
5 with a date of November 21, 2017, correct?

6 A. Same answer.

7 Q. Okay.

8 MR. SOTO: And let's just scroll down.

9 You're going too fast for me. Go back up.

10 Okay.

11 BY MR. SOTO:

12 Q. So this report, at Page 1, indicates that  
13 an Experian personal search has been done for  
14 credit, bankruptcy, and tax liens.

15 Do you see that?

16 A. Same answer.

17 Q. Okay. And it indicates that a CLEAR  
18 report has been run, both personal and business.

19 Do you see that?

20 A. Same answer.

21 Q. Do you know what a CLEAR report is,  
22 Ms. Frank?

23 A. Same answer.

24 Q. Okay. CLEAR report is a background check,  
25 is it not?

1 A. Same answer.

2 Q. Okay. And Justia Law, DataMerch, Ripoff  
3 Report, these are all background checks, correct?

4 A. Same answer.

5 MR. SOTO: Let's scroll down a little bit  
6 more.

7 BY MR. SOTO:

8 Q. You'll see "Business Lease Agreement."  
9 You've got Packard Commercial and a phone number.  
10 It says, "Good through September 2021."

11 Do you see that?

12 A. Same answer.

13 Q. Okay.

14 MR. SOTO: Let's scroll down.

15 MS. BERLIN: Mr. Soto, while you're  
16 scrolling down, I wonder if we could take a  
17 personal break soon, whenever it is a  
18 convenient time.

19 MR. SOTO: That's fine. We'll take a  
20 break.

21 MS. BERLIN: Thank you. Thanks so much.

22 MR. SOTO: Okay.

23 Okay. Let's stop right there.

24 BY MR. SOTO:

25 Q. It says, "Other merchant advances." Do

1 you see that it's circled "Yes"?

2 A. Same answer.

3 Q. Okay.

4 MR. SOTO: Okay. Let's just scroll down a  
5 little bit more.

6 Okay. And let's go back to Exhibit 21.

7 BY MR. SOTO:

8 Q. So in Exhibit 21, in Paragraph 7, it says,  
9 "To my knowledge, CBSG did not perform a background  
10 check on me during the underwriting process or at  
11 any time prior to approving the loan."

12 You saw in Exhibit 108, which was dated  
13 October of 2017, that an underwriting application  
14 and report was prepared by Par Funding, correct?

15 MS. BERLIN: Our standing objection. The  
16 witness can testify what the declaration  
17 states, but our standing objection applies to  
18 this line of question in asking the witness to  
19 weigh evidence. We would instruct the witness  
20 as we have before.

21 Thank you.

22 MR. SOTO: Can we go back to Exhibit 108  
23 at the very top.

24 BY MR. SOTO:

25 Q. Exhibit 108 is an Underwriting Control

1 Sheet prepared by Par Funding for Flexogenix dated  
2 November 21, 2017, correct?

3 A. Same answer.

4 MS. BERLIN: Our standing objection and  
5 instruction applies. I just want to restate it  
6 since we switched exhibits.

7 BY MR. SOTO:

8 Q. Same answer, Ms. Frank?

9 A. Yes, same answer.

10 MR. SOTO: Okay. Let's go to Exhibit 22.

11 BY MR. SOTO:

12 Q. Down at the bottom, you see, Ms. Frank,  
13 that it says "October 17, 2017." I just want to  
14 refresh your recollection.

15 Same answer?

16 A. Same answer.

17 MR. SOTO: Okay. Let's go to Exhibit 21.

18 BY MR. SOTO:

19 Q. At Paragraph 7, Mr. Whalen testifies in  
20 this declaration that CBSG did not perform a  
21 background check on him during the underwriting  
22 process or at any other time prior to approving the  
23 loan.

24 You can see in Paragraph 3 that CBSG made  
25 the loan in October of 2018, correct?

1 MS. BERLIN: We have no objection to the  
2 witness answering a question about what the  
3 declaration states.

4 BY MR. SOTO:

5 Q. You can answer that, Ms. Frank.

6 A. Yes, I see Paragraph 3 reflects that in  
7 October 2018, CBSG made a loan --

8 Q. Okay.

9 A. -- to the company.

10 Q. Okay. And the application prepared by  
11 Flexogenix and the underwriting report both occurred  
12 before that loan was made?

13 MS. BERLIN: And we would object to the  
14 form and outside of the noticed topics, so the  
15 same objection and instruction to the witness  
16 that I've stated previously.

17 BY MR. SOTO:

18 Q. Same answer, Ms. Frank?

19 A. Same answer, yes.

20 Q. And Mr. Whalen signed a document in the  
21 Flexogenix application, which is Exhibit 22,  
22 authorizing a background check on his company,  
23 correct?

24 A. Same answer.

25 MS. BERLIN: Same objection or standing

1 objection. Same instruction to the witness.

2 And again, the SEC stipulates that any  
3 documents that you show today are -- like if  
4 you ask if the words -- does it have these  
5 words on the document, we stipulate that that's  
6 what you're showing on the screen. So far,  
7 they have all tracked the screen with what  
8 you've been stating, so I just wanted to make  
9 sure that that stipulation, that you understand  
10 it still applies. Thank you.

11 BY MR. SOTO:

12 Q. And so at Paragraph 7, where Mr. Whalen  
13 testifies in his declaration that CBSG did not  
14 perform a background check, that statement is  
15 inconsistent with Exhibits 22 and 108, correct?

16 MS. BERLIN: Same standing objection and  
17 instruction. And also we object to the extent  
18 it's asking this witness to weigh evidence and  
19 attorney work product.

20 BY MR. SOTO:

21 Q. Ms. Frank?

22 A. Same answer.

23 Q. Okay. And at Paragraph 8, where  
24 Mr. Whalen says that CBSG did not request  
25 information showing the company's profit margins or

1 expenses during the underwriting process or at any  
2 other time prior to approving the loan, that  
3 statement is inconsistent with Exhibit 107, which  
4 provides bank statements in October of 2018 which  
5 include expenses for the company, correct?

6 MS. BERLIN: The same objection just  
7 stated, and I believe that this is also  
8 argumentative with the witness.

9 BY MR. SOTO:

10 Q. Ms. Frank?

11 A. Same answer.

12 Q. Okay. So we've gone through four examples  
13 of declarants who lied in their declarations with  
14 respect to the underwriting process, correct?

15 MS. BERLIN: Same objections just stated  
16 and same instruction to the witness.

17 A. Same answer.

18 BY MR. SOTO:

19 Q. Same answer.

20 And all of these declarants own companies  
21 who either owed Par Funding money or had been sued  
22 by Par Funding when they made these declarations,  
23 correct?

24 MS. BERLIN: Same objection previously  
25 stated. Same instruction.

1 A. Same answer.

2 BY MR. SOTO:

3 Q. Okay. And you previously testified,  
4 Ms. Frank, that the SEC would not present  
5 declarations containing false statements in support  
6 of a complaint, correct?

7 MS. BERLIN: Objection. Argumentative.

8 Asked and answered.

9 BY MR. SOTO:

10 Q. Ms. Frank?

11 A. I would have to have the court reporter  
12 read back the exact question that I answered. My  
13 answer was my answer at the time to whatever that  
14 question was.

15 Q. Okay. So given that the SEC would not  
16 knowingly support a complaint with declarations that  
17 contained false statements, will the SEC be  
18 correcting the record with respect to these  
19 declarations which contain false statements with the  
20 Court?

21 MS. BERLIN: Objection. Argumentative and  
22 seeking attorney-client privileged and attorney  
23 work product and the same objections that we've  
24 stated with respect to the scope.

25

1 BY MR. SOTO:

2 Q. Ms. Frank, have you ever heard of  
3 ConvergeHub?

4 MS. BERLIN: Objection. Outside of the  
5 scope of any noticed topic today. We instruct  
6 the witness not to testify on behalf of the  
7 Securities and Exchange Commission about  
8 ConvergeHub.

9 BY MR. SOTO:

10 Q. Ms. Frank?

11 A. Same answer.

12 Q. In connection with the work that you did  
13 to prepare for today's deposition, did you come  
14 across ConvergeHub?

15 MS. BERLIN: Objection. Attorney work  
16 product and attorney-client privileged  
17 information. Also, the witness has testified  
18 what she reviewed to prepare for today's  
19 testimony.

20 BY MR. SOTO:

21 Q. Ms. Frank?

22 A. I can't answer that without violating  
23 privilege.

24 Q. Was the SEC aware of ConvergeHub before it  
25 filed its Complaint?

1 MS. BERLIN: Objection. Attorney-client  
2 privilege, because the Commission operates  
3 through the five commissioners that the SEC  
4 advised by counsel, deliberative process,  
5 investigative privileges, attorney work  
6 product, and outside of the scope of today's  
7 deposition. Therefore, we instruct the witness  
8 not to answer on behalf of the Securities and  
9 Exchange Commission.

10 BY MR. SOTO:

11 Q. Ms. Frank?

12 A. I decline to answer in my personal  
13 capacity.

14 Q. Was the staff at the Miami regional office  
15 aware of ConvergeHub before this Complaint was  
16 filed?

17 MS. BERLIN: The same objection, but with  
18 respect to the staff as attorneys rather than  
19 the five commissioners at the SEC. Same  
20 objection and same instruction.

21 BY MR. SOTO:

22 Q. Ms. Frank?

23 A. I decline to answer in my personal  
24 capacity.

25 Q. Was the SEC -- was the staff at the Miami

1 regional office aware that ConvergeHub held all of  
2 the underwriting documents that we just discussed  
3 before filing its Complaint?

4 MS. BERLIN: Same objection. Same  
5 objection on the privileges we have stated and  
6 same instruction to the witness.

7 BY MR. SOTO:

8 Q. Ms. Frank?

9 A. Same answer.

10 Q. Same answer.

11 Did the SEC request documents from  
12 ConvergeHub -- let me restate that.

13 Did the staff at the Miami regional office  
14 request documents from ConvergeHub before filing the  
15 Complaint in this case?

16 MS. BERLIN: Objection concerning the  
17 investigative privilege, attorney work product,  
18 deliberative process privilege. We would  
19 instruct the witness not to testify about those  
20 privileged and nonpublic matters concerning the  
21 SEC's investigation.

22 MR. SOTO: Okay. I'm going to turn to a  
23 different topic, so I think this is probably a  
24 good time to take a short break. So why don't  
25 we take a five-minute break. It's 3:57 now.

1 We can come back at 4:05. Okay?

2 MS. BERLIN: That sounds great.

3 Mr. Soto, to the extent that -- obviously  
4 I wanted to make clear, our breaks, of course,  
5 we will not be, like, calculated in the seven  
6 hours.

7 And, also, I wanted to offer, to the  
8 extent you believe that our objections are too  
9 wordy and, therefore, cutting into your time,  
10 we would have no issue if you need additional  
11 time beyond the seven hours because of that.  
12 So I just wanted to let you know that as a  
13 courtesy, now and on the record, that we  
14 certainly don't want to -- you know, when I'm  
15 making objections, it's because I feel I have  
16 an obligation to, and I'm doing so to represent  
17 the SEC.

18 So to the extent that you're not able to  
19 finish in your seven hours, whether or not it's  
20 because of those objections, I just want you to  
21 know that we will be flexible in agreeing to  
22 additional time so that you're not hampered in  
23 any way with the discovery you're trying to  
24 seek.

25 MR. SOTO: Okay. Thank you, Ms. Berlin.

1 So we'll break until 4:05.

2 MS. BERLIN: Thank you so much.

3 (Recess taken.)

4 MR. SOTO: So let's turn our attention to  
5 the SEC's allegation again with respect to  
6 underwriting concerning on sites.

7 So let's go to Exhibit 44.

8 (Thereupon, marked as Exhibit 44.)

9 BY MR. SOTO:

10 Q. Okay. So, Ms. Furman -- did I say that?

11 Ms. Frank, did you -- do you see the  
12 exhibit on the screen, Exhibit 44?

13 A. Yes, I do.

14 Q. Okay.

15 That is a declaration of Jim Frost,  
16 correct? Or James Frost, rather?

17 A. Correct.

18 Q. Okay. And in this declaration, Mr. Frost  
19 indicates that he owns a company called National Rx  
20 Inc., correct?

21 A. Yes, in Paragraph 2. I see that in  
22 Paragraph 2.

23 Q. Okay. Which is located in Tennessee?

24 A. That is what Paragraph 2 says, yes.

25 Q. Okay.

1 MR. SOTO: All right. And let's go to  
2 Paragraph 6.

3 BY MR. SOTO:

4 Q. It says --

5 MR. SOTO: I'm sorry, let's go to  
6 Paragraph 3. We need to establish.

7 BY MR. SOTO:

8 Q. In April 2016, Complete Business Solutions  
9 Group made a loan to the company, which he  
10 previously identified as National Rx Inc., through  
11 what CBSG calls its merchant capital advance  
12 business.

13 Do you see that?

14 A. Yes.

15 Q. And he says, in Paragraph 6, "CBSG did not  
16 perform an on-site inspection of the company prior  
17 to approving the loan."

18 Do you see that?

19 A. Yes.

20 Q. Okay.

21 MR. SOTO: Okay. So let's go to  
22 Exhibit 108.

23 BY MR. SOTO:

24 Q. Okay. Exhibit 108 is a document that  
25 says, "Merchant Site Inspection Report," correct?

1 Ms. Frank, do you see it at the very top?

2 A. I see the document. I'm just not certain  
3 that this would fall into the same category as the  
4 other documents where there was a standing  
5 objection.

6 MS. BERLIN: Yes, this does fall into the  
7 standing objection, it's not part of what was  
8 noticed for today, but is instead just further  
9 effort to obtain discovery concerning the  
10 motion filed last week. The SEC will instruct  
11 the witness not to testify on behalf of the SEC  
12 regarding this same line of questioning it  
13 appears we're on.

14 And to the extent the witness is asked to  
15 weigh any evidence, we object on a work product  
16 grounds.

17 And for all questions asking the witness  
18 if the screen says certain words, we stipulate  
19 that the documents say what they say, that the  
20 words on the document appear on the document,  
21 and that's just evidenced by the evidence  
22 itself.

23 And so we will now -- based on the  
24 privileges we've previously asserted, I'll have  
25 that standing objection and instruction.

1           And thank you, Mr. Soto.

2           BY MR. SOTO:

3           Q.    Okay.  And, Ms. Frank, as before, are you  
4 going to be responding with the phrase "Same answer"  
5 to indicate that you're choosing not to testify in  
6 your individual capacity?

7           A.    Yes.  Thank you.

8           Q.    I'm sorry, were you going to say something  
9 else?

10          A.    No.

11          Q.    Okay.  And I want to make clear that I'm  
12 not agreeing that either of these questions are  
13 outside the scope, nor am I agreeing that you would  
14 be left to testify in your individual capacity, but  
15 I am just accepting your noted refusal to answer the  
16 question on that basis through the phrase "Same  
17 answer."

18                    So Exhibit 108 is a Merchant Site  
19 Inspection Report from Par Funding, is it not?

20           MS. BERLIN:  The same standing objection  
21 and instruction applies to all questions  
22 regarding this document unless -- and I will  
23 say, Mr. Soto, if as before, the question is  
24 asked that is within the topic, then I will  
25 note that and direct the witness that she can

1 answer after you ask the question, but  
2 otherwise the standing objection and  
3 instruction and stipulation applies.

4 Thank you.

5 BY MR. SOTO:

6 Q. Okay. And so the order date for this  
7 inspection report is April 7, 2016.

8 Do you see that?

9 A. Same answer.

10 Q. Okay. The contact person is James Frost,  
11 correct?

12 A. Same answer.

13 Q. James Frost was the declarant in  
14 Exhibit 44, right?

15 A. Same answer.

16 MS. BERLIN: The SEC has no objection to  
17 the witness answering a question about whose  
18 name appears on the declaration that we filed  
19 with our TRO motion.

20 BY MR. SOTO:

21 Q. James Frost --

22 A. The name is the same. The SEC does not  
23 know whether it's the same person.

24 Q. Okay. And the declarant in Exhibit 44  
25 identified as James Frost indicated that he owned a

1 company called National Rx in Paragraph 2, right?

2 A. Yes, I see that in Paragraph 2 of his  
3 declaration.

4 Q. Okay.

5 MR. SOTO: And let's go back to  
6 Exhibit 108.

7 BY MR. SOTO:

8 Q. The individual identified in Exhibit 108,  
9 James Frost, is the contact person for National Rx.  
10 Do you see that?

11 A. Same answer regarding not testifying in my  
12 personal capacity.

13 Q. Okay. And the company has an address, a  
14 physical address, in Tennessee, which is the same  
15 physical address as the National Rx identified in  
16 the declaration in Exhibit 44, which I believe you  
17 can answer?

18 A. The addresses or Tennessee?

19 Q. Not the addresses.

20 A. It's the same.

21 Q. Is that correct, they both appear to be in  
22 Tennessee?

23 MS. BERLIN: We would just object as to  
24 form, but, again, the witness can testify about  
25 what the documents state. My instruction

1 doesn't apply to that.

2 A. Yes, they both state Knoxville, Tennessee.

3 BY MR. SOTO:

4 Q. Okay. Under "Inspection Results," you do  
5 see the date of inspection as April 8, 2016,  
6 correct?

7 A. Same answer.

8 Q. Indicating that an inspection was actually  
9 done by Par Funding on April 8, 2016.

10 Do you see that?

11 A. I see that there's a date of April 8,  
12 2016.

13 Q. Under the words "Date of Inspection"?

14 A. Yes, that's where it's under.

15 Q. Within the category "Inspection Results"?

16 A. Yes.

17 Q. Within a report called "Merchant Site  
18 Inspection Report"?

19 A. Yes.

20 Q. Okay.

21 MR. SOTO: And let's scroll down.

22 BY MR. SOTO:

23 Q. And it says, "Name of Owner: James  
24 Frost," correct?

25 A. Yes, under "Staffing," it says, "Name of

1 Owner/Principal: James Frost."

2 Q. Okay.

3 MR. SOTO: Let's keep scrolling down.

4 Okay. Let's go to Exhibit 68.

5 (Thereupon, marked as Exhibit 68.)

6 BY MR. SOTO:

7 Q. Exhibit 68, at --

8 MR. SOTO: Let's go to April --

9 BY MR. SOTO:

10 Q. I'm sorry, let's just identify this, and I  
11 imagine your answer is going to be "Same answer."

12 This is a TD Bank bank statement,  
13 Statement of Account, for Complete Business  
14 Solutions Group.

15 Do you see that?

16 MS. BERLIN: Just because we're showing an  
17 exhibit, I'll state again, the SEC has no  
18 objection to -- we stipulate if the witness is  
19 asked what something says on the screen, the  
20 witness can testify it states what it shows on  
21 the screen, and we stipulate to that as well.  
22 So our objection as to scope and privilege  
23 concerns regards the questions about weighing  
24 the evidence.

25 So the witness can answer your question if

1 you want to ask, despite our stipulation, that  
2 words appear on the screen. She can answer  
3 that. I just wanted to clarify that.

4 I think the witness understood, because  
5 she was answering the questions on the other  
6 document about what shows on the screen. And I  
7 apologize for speaking so long, but I wanted to  
8 make sure that the witness knows she can  
9 testify about what is shown on the screen.

10 MR. SOTO: Okay. So let's scroll down to  
11 the April 8 entry.

12 BY MR. SOTO:

13 Q. Do you see at Page 1, April 8 on the left,  
14 midway down, wire transfer outgoing to National Rx  
15 Inc. in the amount of \$38,832?

16 Do you see that?

17 A. Yes, I see those words on the document.

18 Q. Okay. And you see that the date is  
19 April 8?

20 A. Yes.

21 Q. Okay.

22 MR. SOTO: And let's go back to  
23 Exhibit 44.

24 BY MR. SOTO:

25 Q. And you'll see that in Paragraph 3,

1 Mr. Frost testifies that in April of 2016, CBSG made  
2 a loan to the company in the amount of \$40,000,  
3 right?

4 A. Yes.

5 Q. Okay. Indicates in Paragraph 6 that no  
6 on-site inspection of the company was done prior to  
7 approving the loan.

8 Do you see that?

9 A. Yes.

10 Q. Okay. But Exhibit 108 indicates that an  
11 inspection was done on April -- was ordered on  
12 April 7 and completed on April 8, right?

13 MS. BERLIN: The SEC objects to the extent  
14 you're asking anything more than what's on the  
15 screen. I just want to make sure my objection  
16 is clear. If you're asking the witness to  
17 interpret or opine on that, the SEC would  
18 object that's outside of the topics noticed and  
19 as to form and attorney work product.

20 BY MR. SOTO:

21 Q. Ms. Frank, your answer?

22 A. So I have the same answer regarding not  
23 testifying in my personal capacity and also not  
24 wanting to divulge work product.

25 Q. Okay. And Exhibit 68 made clear that CBSG

1 funded this loan on April 8, right?

2 MS. BERLIN: Same objection and  
3 instructing the witness not to answer to the  
4 extent you're asking her to divulge work  
5 product or the SEC's interpretation of  
6 evidence, but the witness can testify about the  
7 words that appeared on the screen that you  
8 showed her what those words were, but we  
9 instruct her not to interpret or otherwise  
10 testify with respect to attorney work product  
11 or privileged matters or to weigh evidence on  
12 behalf of the SEC.

13 BY MR. SOTO:

14 Q. Ms. Frank, your answer?

15 MS. BERLIN: I'm sorry. Outside of the  
16 scope, but we're trying to give some leeway so  
17 that you can get more evidence. Thank you.

18 BY MR. SOTO:

19 Q. Ms. Frank, your answer?

20 A. Same answer.

21 Q. Okay. Despite averting in his declaration  
22 that CBSG did not perform an on-site inspection of  
23 the company, in fact, these exhibits demonstrate  
24 that CBSG performed an on-site inspection before  
25 funding this loan, correct?

1 MS. BERLIN: Objection. Scope, privileges  
2 stated previously, and instructing the witness  
3 as I just have.

4 BY MR. SOTO:

5 Q. Ms. Frank?

6 A. Same answer including work product.

7 Q. And the SEC, in its Complaint, alleged  
8 that on-site inspections were not done despite  
9 making representations of the same to investors in  
10 connection with stringent underwriting standards,  
11 correct?

12 A. Same answer.

13 MR. SOTO: I'm not sure that the objection  
14 applies to that question.

15 MS. BERLIN: And I apologize, Mr. Soto, I  
16 tried to just do a standing objection, since  
17 that's what you told me I had to do or you were  
18 seeking sanctions, but I think it is confusing  
19 for the witness. So I'm going to just make  
20 clear that a question -- I'm going to just go  
21 back to objecting question by question.

22 The SEC has no objection to you asking the  
23 witness that question about what the Complaint  
24 shows, if she can remember it verbatim or you  
25 want to show it to her, but we have no

1 objection to the witness testifying to what's  
2 alleged in the Complaint.

3 BY MR. SOTO:

4 Q. I'll just restate the question, so now you  
5 understand that the objections previously noted  
6 regarding the exhibits don't apply to this question.

7 So the SEC has alleged that Par Funding  
8 and its representatives have made misrepresentations  
9 regarding underwriting, correct?

10 A. Yes.

11 Q. And as part of those misrepresentations  
12 regarding underwriting, the SEC has alleged in the  
13 Complaint that on-sites were not performed as  
14 indicated, correct?

15 A. In certain instances, yes, I believe  
16 that's correct, in the Complaint.

17 Q. Okay. So the question of on-sites is  
18 actually a subcategory or part of the SEC's  
19 allegation with respect to underwriting, right?

20 A. I'm just trying to look back at the  
21 Complaint, if you give me a minute just to look?

22 Q. Yep.

23 MS. BERLIN: And we would just instruct  
24 the witness not to look at a document unless  
25 the witness is letting defense counsel know

1 what document is being reviewed, so Mr. Soto is  
2 aware and can request any copy of any document  
3 that's reviewed.

4 So, Mr. Soto, is it permissible for her to  
5 look at the Complaint?

6 MR. SOTO: I was about to direct her to  
7 Paragraphs 168 through 183.

8 MS. BERLIN: Okay. Thank you.

9 A. Thank you.

10 So, yes, I believe it's in Paragraph  
11 167 --

12 THE WITNESS: If you could scroll up just  
13 a little bit.

14 A. -- that Par Funding did not always conduct  
15 on-site inspections of small businesses prior to  
16 funding loans, and that is under the underwriting  
17 section.

18 BY MR. SOTO:

19 Q. Okay. And I'm asking about on-sites now,  
20 correct, with respect to the James Frost and  
21 National Rx?

22 A. Yes.

23 Q. Okay.

24 MR. SOTO: Let's go to Exhibit 18.

25 (Thereupon, marked as Exhibit 18.)

1 BY MR. SOTO:

2 Q. That is the declaration of Pamela  
3 Fleetwood?

4 A. Yes, it is.

5 Q. Okay. And she indicates that she,  
6 together with her husband, own a company called  
7 Fleetwood Services, LLC, in Dallas, Texas?

8 A. Yes.

9 Q. Okay. And she indicates, at  
10 Paragraph 7 --

11 MR. SOTO: Can we scroll down a little  
12 bit.

13 BY MR. SOTO:

14 Q. Paragraph 7, "CBSG did not perform an  
15 on-site inspection of the company prior to approving  
16 the loan."

17 Do you see that?

18 A. Yes.

19 Q. Okay.

20 MR. SOTO: So let's go to Exhibit 19.

21 (Thereupon, marked as Exhibit 19.)

22 BY MR. SOTO:

23 Q. Exhibit 19 is a Merchant Inspection Report  
24 with the Par Funding name to the right of that  
25 title, correct?

1 MS. BERLIN: Objection as to form.

2 MR. SOTO: Hold on. What were you saying,  
3 Ms. Berlin?

4 MS. BERLIN: Object to form, but we have  
5 no objection if you're asking what you're  
6 showing on the screen right now.

7 MR. SOTO: Right.

8 BY MR. SOTO:

9 Q. So this document, exhibit -- so this  
10 document, Exhibit 19 is a Merchant Site Inspection  
11 Report, and to the right of that title is "Par  
12 Funding."

13 Do you see that?

14 MS. BERLIN: Object as to form. The  
15 beginning of the question asked if that's what  
16 this document is, and at the end, you were  
17 asking if she sees it.

18 To the extent you're asking if she sees  
19 it, no objection. As to the first part of your  
20 objection, if this is what the document is, we  
21 object as to form.

22 BY MR. SOTO:

23 Q. This is a Merchant Site Inspection Report,  
24 correct?

25 MS. BERLIN: Objection as to form.

1           A.     The answer would be the SEC has no  
2 personal knowledge as to this document, but I can  
3 see from the document that at the top, it says,  
4 "Merchant Site Inspection Report."

5           BY MR. SOTO:

6           Q.     Right.

7           A.     And then it says, "Par Funding."

8           Q.     Okay. Thanks.

9                     And the contact person for this form is  
10 indicated as Pam Fleetwood, correct?

11           A.     Yes, it says, "Contact Person: Pam  
12 Fleetwood."

13           Q.     And the legal name of the business is  
14 "Fleetwood Services, LLC," in Dallas, Texas, right?

15           A.     That is what appears on the face of the  
16 document.

17           Q.     Right.

18                     And Pam Fleetwood is the declarant in  
19 Exhibit 18, and she indicates in Exhibit 18 that she  
20 owns, with her husband, Fleetwood Services in  
21 Dallas, Texas, right?

22           A.     The names are the same. The Dallas,  
23 Texas, is the same on both documents, yes.

24           Q.     Okay. And this Merchant Site Inspection  
25 Report has a category, a section, entitled

1 "Inspection Results."

2 Do you see that?

3 A. Yes.

4 Q. And it indicates that the date of an  
5 inspection -- date of inspection is January 5, 2017,  
6 right?

7 A. I see those words --

8 MS. BERLIN: Objection to form.

9 BY MR. SOTO:

10 Q. Ms. Frank?

11 A. I see those words on the document. The  
12 SEC has no personal knowledge of whether there was  
13 an inspection the date of the inspection. I see the  
14 words on the document.

15 Q. Okay.

16 MR. SOTO: Let's go to Exhibit 20.

17 (Thereupon, marked as Exhibit 20.)

18 BY MR. SOTO:

19 Q. Okay. Exhibit 20 is a document that  
20 indicates that Complete Business Solutions wired out  
21 money to Fleetwood Services on January 9.

22 Do you see that?

23 MS. BERLIN: Objection -- excuse me.

24 Objection as to form and also beyond the scope  
25 of the deposition notice.

1 To the extent -- giving some leeway, to  
2 the extent that you're asking the witness if  
3 certain words appear on her screen, we will not  
4 instruct her not to answer. In fact, we've  
5 already told you we stipulate that they do.

6 To the extent that any additional  
7 information is sought, then we'll be objecting  
8 on the grounds of topic and perhaps other  
9 privileges, depending on a question, and I'll  
10 state them at that time, but for now as to any  
11 questions about what the document says, what  
12 words on the screen, the witness can testify.

13 BY MR. SOTO:

14 Q. Ms. Frank?

15 A. So I see there are various words regarding  
16 wires out, and I see "Complete Business Solutions  
17 Group Inc." doing business as Par or "d/b/a Par  
18 Funding Capital" is in the header of this document.

19 Q. At the very top, you see the date  
20 January 31, 2017?

21 A. Yes.

22 Q. Okay. And you see an account number with  
23 the last four visible, correct?

24 A. Right, yes.

25 Q. Okay. And just above the "wire out" words

1 that you referenced, it says, "Cash management -  
2 small business checking."

3 Do you see that?

4 A. Yes, with management and checking looks  
5 like they're abbreviated.

6 Q. Right.

7 And under that, you see "Activity Dates,"  
8 there's a column for "Activity Dates," right?

9 A. Yes.

10 Q. Okay. And a column for "Description" and  
11 a column for "Credits and Debits," right?

12 A. Yes.

13 Q. And it appears on this document, that a  
14 wire went out to Fleetwood Services on January 9 in  
15 the amount of a hundred thousand dollars?

16 MS. BERLIN: We object as to form and  
17 outside of the scope of today's deposition.

18 Again, if you want to ask her what the  
19 words state on the screen, no issue, but when  
20 you're asking for her to testify about what  
21 this document indicates, it's outside of the  
22 scope, attorney work product privilege, and the  
23 deliberative process privileges would apply,  
24 and we would instruct the witness not to answer  
25 on scope and privilege grounds.

1 MR. SOTO: Okay. Let's go back to  
2 exhibit -- I'm sorry, Exhibit 18.

3 BY MR. SOTO:

4 Q. Okay. So Exhibit 18, at Paragraph 7,  
5 indicates -- in that exhibit, Ms. Fleetwood  
6 indicates that CBSG did not perform an on-site  
7 inspection of the company prior to approving the  
8 loan.

9 Do you see that?

10 A. Yes.

11 Q. Okay. But Exhibits 19 and 20 indicate  
12 that CBSG ordered an inspection of Fleetwood  
13 Services, the company, on January 5, 2017, and  
14 funded the loan on January 9, 2017, correct?

15 MS. BERLIN: Same objections regarding  
16 scope and privilege issues that I've previously  
17 stated and had been asked not to repeat, and on  
18 those grounds, we instruct the witness not to  
19 testify on behalf of the SEC to give any  
20 opinion about evidence, or what Ms. Frank's  
21 personal opinion is, or Ms. Frank's or the  
22 SEC's opinion in weighing any evidence or  
23 opining on it.

24 BY MR. SOTO:

25 Q. And so Ms. Fleetwood's declaration is

1 inconsistent with Exhibits 19 and 20, correct?

2 MS. BERLIN: Same objection and  
3 instruction.

4 BY MR. SOTO:

5 Q. Ms. Frank, you can answer.

6 A. Same answer.

7 And, also, I don't want to answer because  
8 I don't want to give away work product.

9 Q. Okay. And so it appears that  
10 Ms. Fleetwood testified in this declaration that no  
11 on-site was performed before the loan was approved  
12 when, in fact, an on-site was performed -- was  
13 ordered, performed, and completed before this loan  
14 was funded by CBSG, correct?

15 MS. BERLIN: Same objection. Same  
16 instruction to the witness.

17 BY MR. SOTO:

18 Q. Ms. Frank?

19 A. Same answer. Same answer, and I can't  
20 answer because I don't want to give away work  
21 product.

22 MR. SOTO: Okay. Let's go to Exhibit 21.

23 BY MR. SOTO:

24 Q. You've seen this one before. It's the  
25 declaration of -- I'll let it come up on the screen.

1 MS. BERLIN: Mr. Soto, I want to note for  
2 the record, so it's clear, Ms. Frank, as you  
3 know, is an attorney. When she's testifying in  
4 her personal capacity and raising privilege  
5 issues where you're asking for legal opinions,  
6 I believe that she is asserting her own  
7 privilege as attorney -- her own attorney  
8 opinion product and attorney work product on  
9 the questions you're asking, and I just wanted  
10 to make sure that you were aware of that.  
11 Because you keep asking those types of  
12 questions, and the way she's asserting, I just  
13 wanted to make sure you're aware of what she's  
14 asserting as just a courtesy to let you know in  
15 case you wanted to address that.

16 MR. SOTO: Ms. Berlin, thank you for that.  
17 I disagree with your assessment. We asked you  
18 to designate a representative for the SEC. You  
19 chose to designate Ms. Frank, who is an  
20 attorney, and you are now indicating that  
21 because she's an attorney, she's going to be  
22 asserting attorney-client privilege. That's  
23 your choice.

24 MS. BERLIN: No, no, Mr. Soto, I think you  
25 misunderstood me. I was just pointing out to

1 you that where you asked Ms. Frank to testify  
2 in her individual capacity, that -- and I was  
3 just trying to help you -- where she's  
4 testifying in her individual capacity and  
5 asserts her attorney-client privileges, that I  
6 wanted to clarify for you, I think those are  
7 her personal privileges she's raising separate  
8 from the objections that I'm making, and that's  
9 all I was saying, and I will not speak again on  
10 that. I was just trying to make sure because I  
11 did not think it was clear.

12 MR. SOTO: Okay. Thank you. Great.

13 So let's go to Exhibit 21.

14 BY MR. SOTO:

15 Q. Ms. Frank, you've seen this before. This  
16 is the declaration of Sean Whalen, who owned a  
17 company called Flexogenix Group.

18 Do you see that?

19 A. Yes.

20 Q. Located in California, right?

21 A. That's what the declaration says in  
22 Paragraph 2.

23 Q. Okay. And in Paragraph 6, it says CBSG  
24 did not perform an on-site inspection of the company  
25 prior to approving the loan, right?

1 A. Yes.

2 Q. Okay. And you previously testified that  
3 you agreed in this declaration, in Paragraph 3, that  
4 CBSG had funded a loan to this company in the amount  
5 of \$800,000?

6 MS. BERLIN: Objection. Mischaracterizes  
7 the evidence.

8 BY MR. SOTO:

9 Q. Ms. Frank, is that consistent with what  
10 you said earlier?

11 A. No, I didn't testify that CBSG funded a  
12 loan. I testified that Paragraph 3 states that in  
13 October 2018, CBSG made a loan to the company.

14 MR. SOTO: Okay. And let's turn to  
15 Exhibit 109.

16 (Thereupon, marked as Exhibit 109.)

17 BY MR. SOTO:

18 Q. Okay. Exhibit 109 is a document that  
19 reads "Merchant Site Inspection Report," correct?

20 MS. BERLIN: And again, the same objection  
21 about this is outside of the scope of the  
22 topics noticed for today. This is -- instead,  
23 this is a deposition about the Defendants'  
24 recent motion and exhibits to that motion not  
25 noticed for today, and so questions about this

1 document, the same objections I've stated  
2 before apply, outside of scope and privilege,  
3 and the instruction to the witness.

4 However, we do, as I stated before, have  
5 no issue with the witness telling you what  
6 words appear on the screen, and we stipulate  
7 that, in fact, the words appear -- the words in  
8 the documents, you know, appear on the screen.

9 Thank you.

10 That will be my -- I'll just make that  
11 standing objection, Mr. Soto, so I don't  
12 disrupt you, and if you ask a question that I  
13 don't think that applies to, I'll then speak up  
14 again. Thank you.

15 A. So the document states at the top,  
16 "Merchant Site Inspection Report."

17 BY MR. SOTO:

18 Q. And to the right of that, it says "Par  
19 Funding," correct?

20 A. Yes.

21 Q. So this is a Merchant Site Inspection  
22 Report for Par Funding, right?

23 MS. BERLIN: Objection as to form.

24 A. The SEC has no personal knowledge as to  
25 what this document is, but it does state at the top

1 "Merchant Site Inspection Report."

2 BY MR. SOTO:

3 Q. Okay. And this is a Merchant Site  
4 Inspection Report for Flexogenix.

5 Do you see that under "Business  
6 Information"?

7 MS. BERLIN: Object to form.

8 A. Again, the SEC has no personal knowledge  
9 of what this document is, so I can't opine on that,  
10 but I do see on the document that under "Business  
11 Information," under "Legal Name of Business," it  
12 states "Flexogenix."

13 BY MR. SOTO:

14 Q. Flexogenix in Los Angeles, California,  
15 right?

16 A. Correct.

17 Q. So the contact person here, Sean Whalen,  
18 is the declarant in Exhibit 109, and the Flexogenix  
19 company in Los Angeles, California, is the company  
20 he says he owns in this declaration, right?

21 MS. BERLIN: Objection as to form.

22 A. The SEC has no personal knowledge of  
23 whether that statement you just made is correct.  
24 The names are the same on both documents.

25

1 BY MR. SOTO:

2 Q. Okay. And in this exhibit, there is a  
3 section that reads "Inspection Results."

4 Do you see that?

5 A. Yes.

6 Q. Okay. And it says, "Date of Inspection:  
7 November 6, 2017," right?

8 A. Yes, I see that.

9 MR. SOTO: Okay. Let's go to Exhibit 23.  
10 (Thereupon, marked as Exhibit 23.)

11 BY MR. SOTO:

12 Q. Do you see that Exhibit 23 is a TD Bank  
13 Statement of Account?

14 MS. BERLIN: Objection as to form.

15 BY MR. SOTO:

16 Q. Ms. Frank?

17 A. I see that it states on the top of the  
18 document "TD Bank," and it also states "Statement of  
19 Account."

20 Q. And this is a Statement of Account for  
21 Complete Business Solutions Group d/b/a Par Funding,  
22 right?

23 MS. BERLIN: Object as to form.

24 A. The SEC has no personal knowledge of what  
25 this document is, but I do see that in addition to

1 "TD Bank" and "Statement of Account," at the top, it  
2 also says, "Complete Business Solutions Group, Inc.  
3 d/b/a Par Funding."

4 BY MR. SOTO:

5 Q. Okay. Let's look at the section under  
6 "Daily Account Activity."

7 Do you see "Daily Account Activity"?

8 A. Yes.

9 Q. Okay. Third row from the top, do you see  
10 that November 22nd posting date for wire transfer  
11 outgoing out to Flexogenix Group, Inc.?

12 A. I see the words "11/22" and then "Wire  
13 transfer outgoing, Flexogenix Group, Inc." and a  
14 dollar amount of 580,575.50.

15 Q. So this is a bank statement for a bank  
16 account controlled by CBSG funding d/b/a Par Funding  
17 which indicates that a wire transfer went out to  
18 Flexogenix on November 22 in the amount of \$580,575?

19 MS. BERLIN: Objection. I apologize,  
20 Mr. Soto. I thought you were finished.

21 Objection as to form, and otherwise the  
22 witness can testify.

23 A. The SEC has no personal knowledge what  
24 this document is or what exactly these statements on  
25 it mean. So all I can tell you is what I see on the

1 document --

2 BY MR. SOTO:

3 Q. Okay. So exhibits --

4 A. -- which I've already --

5 Q. I'm sorry, please complete your answer.

6 A. -- which I had just told you in the last  
7 few answers that I gave.

8 Q. Okay. So Exhibits 109 and 23 indicate  
9 that Complete Business Solutions completed an  
10 on-site inspection of Flexogenix on November 6 and  
11 funded Flexogenix on November 22, 2017, correct?

12 MS. BERLIN: Objection as to form. This  
13 is beyond the scope of the deposition notice,  
14 so -- and it's also seeking attorney work  
15 product and privileged information, and so we  
16 would instruct the witness not to testify about  
17 her legal -- the SEC's legal opinion about the  
18 evidence. I believe she can, and I believe she  
19 has, testified about the words on the screen  
20 that you're showing her and she can continue to  
21 do that.

22 MR. SOTO: Let's go back to Exhibit 21.

23 BY MR. SOTO:

24 Q. So having seen Exhibits 109 and 23, which  
25 indicate that an inspection was completed on the 6th

1 and funded on the 21st of November, 2017, you would  
2 agree with me, would you not, that the statement  
3 CBSG did not perform an on-site inspection of the  
4 company prior to approving the loan is false?

5 MS. BERLIN: Objection as to form and  
6 scope. And for the reasons stated previously  
7 with respect to privilege and scope, we  
8 instruct the witness not to answer on behalf of  
9 the SEC.

10 BY MR. SOTO:

11 Q. Ms. Frank?

12 MS. BERLIN: I'm sorry, I would also like  
13 to add we object on grounds that this is  
14 argumentative and, therefore, as to form.

15 BY MR. SOTO:

16 Q. Ms. Frank?

17 A. I decline to answer in my personal  
18 capacity and also decline based on potential waiver  
19 of work product.

20 Q. Okay. So let's turn our attention to  
21 another subcategory of the SEC's allegation  
22 regarding Par Funding's underwriting practices, and  
23 that is whether loans were approved in less than 48  
24 hours.

25 MR. SOTO: So let's take a look at

1 Exhibit 1, Paragraph 167. Okay, let's just  
2 scroll up just to remind the witness we are  
3 in -- oh, you went too fast, too far.

4 BY MR. SOTO:

5 Q. Okay. Subsection G, Paragraph 1, you can  
6 see that this section of the Complaint references  
7 false claims about Par Funding's rigorous  
8 underwriting process.

9 Do you see that?

10 A. Yes, I do.

11 Q. Okay. And so if we go --

12 MR. SOTO: Scroll down slowly to  
13 Paragraph 167.

14 BY MR. SOTO:

15 Q. You'll see that among the allegations made  
16 with respect to Par Funding's underwriting  
17 practices, 167 is an allegation that, "Contrary to  
18 the defendants' representations, Par Funding did not  
19 always conduct on-site inspections of small  
20 businesses prior to funding loans, and it would  
21 approve loans in less than 48 hours."

22 Do you see that?

23 A. Yes.

24 Q. So part of the SEC's allegation with  
25 respect to underwriting was that Par would approve

1 loans in less than 48 hours, right?

2 A. Yes.

3 Q. And it relied, based on the paragraphs  
4 here, which you've reviewed a number of times,  
5 Paragraphs 163 through 183, on information provided  
6 by merchants?

7 MS. BERLIN: Object as to form. Object as  
8 to investigative privilege, deliberative  
9 process privilege, attorney work product, and  
10 attorney-client privilege, and we instruct the  
11 witness not to testify about what the SEC  
12 relied upon.

13 BY MR. SOTO:

14 Q. Ms. Frank, you can answer.

15 A. What I can tell you is that some of the  
16 evidence that supports the allegation in  
17 Paragraph 167 are merchant declarations and also the  
18 declaration of Lionese Jones.

19 MR. SOTO: Okay. So let's look at  
20 Paragraph 171.

21 BY MR. SOTO:

22 Q. So Paragraph 171 alleges that between  
23 October 2018 and December 2018, Par Funding funded  
24 four loans to a small business in California, the  
25 California small business, totaling \$3.5 million.

1 "For each of these four loans, Par Funding failed to  
2 perform an on-site inspection of the California  
3 small business, and in each instance, the loan was  
4 underwritten by Par Funding in less than 48 hours  
5 from the time California small business owner  
6 applied for the loan."

7 Do you see that?

8 A. Yes.

9 MR. SOTO: Okay. So let's look at  
10 Exhibit 21 again.

11 BY MR. SOTO:

12 Q. Exhibit 21 --

13 MR. SOTO: Scroll up.

14 BY MR. SOTO:

15 Q. -- is the declaration of Sean Whalen, who  
16 says that he owns a company called Flexogenix, which  
17 is located in California, right?

18 A. Yes.

19 Q. Okay. In Paragraph 4, he says, "The loan  
20 was underwritten by CBSG in less than 48 hours from  
21 the time I applied."

22 Do you see that?

23 A. Yes.

24 Q. What steps did the SEC take to verify this  
25 statement in this declaration?

1 MS. BERLIN: Objection. Investigative  
2 privilege, deliberative process privilege,  
3 attorney work product, and attorney-client  
4 privilege, and Ms. Frank is instructed not to  
5 testify in response to that question.

6 BY MR. SOTO:

7 Q. Ms. Frank, did the SEC attempt to obtain  
8 documents to corroborate the statement of  
9 Mr. Whalen?

10 MS. BERLIN: Same objection and  
11 instruction.

12 BY MR. SOTO:

13 Q. Ms. Frank, did the SEC, knowing that  
14 Mr. Whalen was a merchant who owed Par Funding money  
15 and was engaged in a lawsuit with Par Funding, did  
16 the SEC attempt to in any way corroborate this  
17 information?

18 MS. BERLIN: Objection as to form and for  
19 the privileged -- the reasons of privilege I  
20 stated. We instruct the witness not to answer.

21 MR. SOTO: Okay. So let's take a look at  
22 Exhibit 22. Let's go to the bottom of Page 1.  
23 Bottom of Page 1.

24 Let's go to the top, just so that we know  
25 what we're talking about.

1 BY MR. SOTO:

2 Q. We discussed this one before. This is --  
3 Exhibit 22 is a Merchant Application indicating  
4 Flexogenix Group as the merchant applicant.

5 Do you see that?

6 A. I see at the top "Merchant Application,"  
7 and I see on the business label name "Merchant:  
8 Flexogenix Group, Inc."

9 Q. Right.

10 And "Owner/Principal Name," you see -- on  
11 the right-hand side, do you see Sean Whalen?

12 A. Yes.

13 Q. Sean Whalen is the declarant in  
14 Exhibit 21, right?

15 MS. BERLIN: Objection as to form and  
16 scope, but the witness can testify as to what's  
17 on -- what words appear on the documents.

18 A. The documents have the same name.

19 BY MR. SOTO:

20 Q. Okay. And Mr. Whalen is the same  
21 Mr. Whalen who testified in his declaration that he  
22 owned Flexogenix, had obtained a loan from Par  
23 Funding, and that the loan was underwritten by CBSG  
24 in less than 48 hours, right?

25 MS. BERLIN: Object as to form and object

1 as to scope, that this is beyond the scope of  
2 the notice.

3 BY MR. SOTO:

4 Q. Ms. Frank?

5 A. So same answer.

6 Q. Okay.

7 MR. SOTO: Let's go down to the bottom of  
8 Exhibit 22.

9 BY MR. SOTO:

10 Q. And you see that the date of the  
11 application, the date it was signed, was October 17,  
12 2017, correct?

13 A. I see there's a date at the bottom, which  
14 is October 17, '17.

15 Q. Right.

16 And so this is a date of the application,  
17 October 17, 2017, correct?

18 MS. BERLIN: The SEC objects as to form.

19 BY MR. SOTO:

20 Q. Ms. Frank?

21 MS. BERLIN: I'm sorry. I apologize, I  
22 didn't mean to interrupt. The witness can  
23 answer that.

24 A. The SEC has no personal knowledge of the  
25 date of this application, but I can see at the

1 bottom, there is a date on the application, and it  
2 says, "10/17/17."

3 MR. SOTO: Okay. Let's go to Exhibit 23.

4 BY MR. SOTO:

5 Q. Exhibit 23 --

6 MR. SOTO: Let's scroll up to the top.

7 BY MR. SOTO:

8 Q. -- is a TD Bank statement for Complete  
9 Business Solutions, right?

10 MS. BERLIN: The same objection -- I  
11 apologize. Objection as to form.

12 BY MR. SOTO:

13 Q. We've seen this exhibit before, right?

14 Do you recall it?

15 A. I can tell you what's on it. I don't have  
16 any knowledge or the SEC doesn't have any knowledge  
17 as to what the document is, where it came from, how  
18 it was obtained.

19 So what I can tell you is that on the top,  
20 it says, "TD Bank." It has "Complete Business  
21 Solutions Group Inc. d/b/a Par Funding." It says  
22 it's a statement of account, and it has an account  
23 number on it.

24 Q. Okay. And this TD Bank Statement of  
25 Account indicates that Complete Business Solutions

1 wired funds in the amount of \$580,575 to Flexogenix  
2 on November 27, doesn't it?

3 MS. BERLIN: Objection as to form and  
4 scope as previously stated.

5 BY MR. SOTO:

6 Q. Ms. Frank?

7 A. The SEC has no personal knowledge, so we  
8 can't tell you what it indicates. I can tell you  
9 that I see on the document wire transfer outgoing,  
10 Flexogenix Group, Inc., and a dollar amount.

11 Q. Okay. So Flexogenix applied for funding,  
12 according to Exhibit 22, on October 17, 2017, and  
13 was funded, according to Exhibit 23, on November 21,  
14 2017.

15 Isn't that what these documents indicate?

16 MS. BERLIN: Objection as to form. And  
17 for the reasons previously stated, as to scope  
18 and the privilege reasons I gave previously,  
19 including attorney work product, deliberative  
20 process privileges, we would instruct the  
21 witness not to answer on behalf of the SEC.

22 BY MR. SOTO:

23 Q. Ms. Frank?

24 A. Same answer. And, also, I decline to  
25 answer so as not to waive work product.

1 Q. Okay. And so Mr. Whalen's statement in  
2 his declaration that his loan was underwritten in  
3 less than 48 hours from the time he applied was  
4 false, correct?

5 MS. BERLIN: Same objection and same  
6 instruction to the witness.

7 BY MR. SOTO:

8 Q. Ms. Frank?

9 A. Same answer, including work product.

10 Q. Okay. These documents, Exhibits 22 and  
11 23, indicate that the loan was underwritten,  
12 completed, weeks after he applied on October 17,  
13 2017, correct?

14 MS. BERLIN: Same objections as just  
15 previously stated and same instruction.

16 BY MR. SOTO:

17 Q. Okay. Ms. Frank, your answer?

18 A. Same answer, including work product.

19 Q. Okay.

20 MS. BERLIN: Mr. Soto?

21 MR. SOTO: Yeah.

22 MS. BERLIN: Can we just go off the record  
23 for one moment?

24 MR. SOTO: Sure.

25 (Recess taken.)

1 MR. SOTO: So let's look at -- I'm sorry.

2 Let's look at Exhibit 1, Paragraph 173.

3 Let's go up to 172, actually.

4 BY MR. SOTO:

5 Q. All right. So let's -- Paragraph 172, the  
6 second line of that paragraph alleges that in  
7 April 2016, Par Funding issued a loan of \$40,000 to  
8 a pharmacy in Tennessee with the initial NR, the  
9 Tennessee small business.

10 Do you see that?

11 A. Yes.

12 Q. Okay. And at Paragraph 173, the SEC  
13 alleges that Par Funding did not conduct an on-site  
14 inspection prior to approving the loan to this  
15 Tennessee small business, and then it says Par  
16 Funding completed the underwriting process within 48  
17 hours of the Tennessee small business applying for  
18 the loan.

19 Do you see that?

20 A. Yes.

21 Q. Okay.

22 MR. SOTO: So let's go back to Exhibit 44.

23 We've seen it before.

24 BY MR. SOTO:

25 Q. This is a declaration of Jim Frost.

1 Do you see that?

2 A. Yes.

3 Q. And he indicates he owns a company called  
4 National Rx Inc., which is located in Tennessee,  
5 right?

6 A. Yes.

7 Q. Okay. The allegation in Paragraph 172,  
8 which indicates a small business in Tennessee with  
9 initials NR, is this company, right, National Rx in  
10 Tennessee?

11 A. That is the evidence that supports that  
12 claim in that Complaint, yes.

13 Q. Okay.

14 A. The declaration of James or Jim Frost.

15 Q. And the allegation in the Complaint that  
16 the loan was underwritten by CBSG in less than 48  
17 hours is supported by Paragraph 4 of Mr. Frost's  
18 declaration, right?

19 A. That's correct.

20 MR. SOTO: Okay. Let's go to Exhibit 67.

21 (Thereupon, marked as Exhibit 67.)

22 BY MR. SOTO:

23 Q. Do you see that Exhibit 67, at the very  
24 top left-hand corner, says, "Business Legal Name:  
25 National Rx Inc."?

1 A. Yes, I see that.

2 Q. Which is located in Tennessee?

3 A. I see that. It also states, "City:  
4 Knoxville," and "State: Tennessee."

5 Q. Right.

6 Same company name, same location in  
7 Tennessee, right?

8 A. Correct, the names are the same. The city  
9 and state are the same.

10 Q. Okay.

11 MR. SOTO: So let's scroll down. Just a  
12 little more.

13 BY MR. SOTO:

14 Q. It says, "Owner/Principal Information," it  
15 says, "James Frost," which is the same name as the  
16 declarant in Exhibit 44, right?

17 A. Yes, the names are the same.

18 Q. Okay.

19 MR. SOTO: And let's scroll up for one  
20 second. Nope -- yep. A little bit further  
21 down. Okay.

22 BY MR. SOTO:

23 Q. And do you see that this application, the  
24 amount requested is \$60,000?

25 A. I see that the document reflects "Amount

1 Requested: 60,000."

2 Q. Okay.

3 MR. SOTO: Let's go to Exhibit 68.

4 BY MR. SOTO:

5 Q. Okay. And do you see that -- do you agree  
6 that this is a TD Bank Statement of Account for  
7 Complete Business Solutions?

8 MS. BERLIN: Objection as to form.

9 A. No, I can't agree to that because the SEC  
10 has no personal knowledge regarding this document,  
11 but I see that the document says "TD Bank" at the  
12 top. It says, "Statement of Account." It has  
13 Complete Business Solutions Group's name on it, and  
14 it has primary account number and an account number.

15 Q. Okay.

16 MR. SOTO: And can we scroll down to the  
17 daily account activity for April 8.

18 BY MR. SOTO:

19 Q. And do you see the third entry on April 8,  
20 a wire transfer outgoing to National Rx Inc. for  
21 \$38,832?

22 A. I see those words on the document, yes.

23 Q. Okay. And so this account was funded on  
24 April 8, 2016, correct?

25 MS. BERLIN: Objection as to form.

1 BY MR. SOTO:

2 Q. Ms. Frank?

3 A. The SEC has no personal knowledge of when  
4 the funding occurred, but I can just tell you again  
5 that I see those words, "Wire Transfer Outgoing,  
6 National Rx Inc.," and an amount on this document.

7 Q. Okay.

8 MR. SOTO: Let's turn to Exhibit -- I'm  
9 sorry. Turn back to the Amended Complaint,  
10 which is Exhibit 1, Paragraph 175.

11 BY MR. SOTO:

12 Q. 175 says, for example, in June 2016, Par  
13 Funding loaned \$100,000 to a merchant pharmacy in  
14 Knoxville, Tennessee.

15 The next line reads, "Par Funding  
16 completed the underwriting process in less than 48  
17 hours, failed to offer the merchant insurance of any  
18 kind, and did not seek the merchant's debt  
19 schedule," and it goes on after that.

20 Do you see that?

21 A. Yes.

22 Q. Okay. So this allegation in this  
23 paragraph, the SEC alleges that Par Funding  
24 completed the underwriting process for this  
25 Knoxville, Tennessee merchant in less than 48 hours,

1 right?

2 MS. BERLIN: Objection as to form.

3 A. I see in Paragraph 175 the statement, "Par  
4 Funding completed the underwriting process in less  
5 than 48 hours."

6 MR. SOTO: Okay. Let's go to Exhibit 62.

7 I'm sorry, pardon me, Exhibit 24.

8 BY MR. SOTO:

9 Q. Exhibit 24 is a declaration of Chad Frost,  
10 right?

11 A. I can't see where the exhibit number is, I  
12 guess because there are so many exhibits up there,  
13 but this document that you have on the screen is the  
14 declaration of Chad Frost.

15 Q. Okay. And Chad Frost, in Paragraph 2 --  
16 we've seen this exhibit before -- indicates he's a  
17 treasurer and consultant for a company called  
18 Volunteer Pharmacy in Knoxville, Tennessee, right?

19 A. Yes, according to Paragraph 2.

20 Q. And in Paragraphs 3 and 4, he indicates  
21 that he applied to CBSG for a loan which CBSG funded  
22 in the amount of hundred thousand dollars, right?

23 A. So Paragraph 3 states that in June 2016,  
24 Complete Business Solutions Group made a loan to the  
25 company in the amount of \$100,000.

1 Q. And in Paragraph 4, he says he's the one  
2 who applied for it?

3 A. Okay. Yes, in Paragraph 4, he states that  
4 he applied for the loan, yes.

5 Q. Right.

6 So the Amended Complaint, at  
7 Paragraph 175, which indicates that a loan was  
8 processed in less than 48 hours for a loan of  
9 \$100,000 for a company out of Knoxville, Tennessee,  
10 is supported by Mr. Frost's declaration, correct?

11 A. Yes.

12 MR. SOTO: Let's look at Exhibit 62.

13 BY MR. SOTO:

14 Q. Okay. Exhibit 62 reads, at the very top,  
15 "Business Information."

16 Do you see that?

17 A. Yes.

18 Q. Okay. Right under that, under "Legal  
19 Corporate Name," "Volunteer Pharmacy, Inc."?

20 A. Yes, I see that.

21 Q. Okay. In Knoxville, Tennessee?

22 A. Yes, I see that.

23 Q. Okay. The same company as the one  
24 identified in Exhibit 24 and which supports the  
25 allegation in Paragraph 175 of the Amended

1 Complaint, right?

2 A. The names are the same on both documents.

3 Q. Names and locations of the businesses --  
4 of the business, correct?

5 A. And the location is the same.

6 Q. Right.

7 MR. SOTO: Let's scroll down.

8 BY MR. SOTO:

9 Q. And do you see at the very bottom, it  
10 says, on the right-hand side above the words "Print  
11 Name," it says, "Chad Frost," right?

12 A. Yes, that appears to be what it says  
13 there.

14 Q. Okay. And the "Print Name" date is what  
15 date?

16 A. March 18, 2012. So it looks like -- I  
17 can't tell if that's 2012.

18 Q. You can't tell whether it's 2012.

19 Does it look like 12 or 13 to you?

20 MR. SOTO: Can you blow it up a little  
21 bit?

22 A. Okay. Now it looks like 2013.

23 MR. SOTO: Okay. So let's go to  
24 exhibit --

25

1 BY MR. SOTO:

2 Q. I'm sorry, before we go to the next  
3 exhibit, you'll see that above Mr. Frost's  
4 signature -- name and signature, that there is a  
5 statement that indicates that he is an applicant.

6 Do you see that? "The merchant and owner  
7 identified above individually, an applicant"?

8 A. I see the words that you just said on the  
9 document. The SEC has no personal knowledge as to  
10 what those words indicate.

11 Q. Okay. And above "Chad Frost," where it  
12 says "Signature," it says, "Applicant's Signature,"  
13 right?

14 A. Yes.

15 Q. So this is an application signed by Chad  
16 Frost on behalf of Volunteer Pharmacy, correct?

17 MS. BERLIN: Objection as to form.

18 A. The SEC has no personal knowledge as to  
19 what this document is or who signed it.

20 MR. SOTO: Okay. Let's go to Exhibit 63.

21 (Thereupon, marked as Exhibit 63.)

22 BY MR. SOTO:

23 Q. Exhibit 63 is a bank statement from  
24 Beneficial Bank for the account of Complete Business  
25 Solutions.

1 Do you see that?

2 A. I see that this document says "Beneficial  
3 Bank" at the top and that it says "Complete Business  
4 Solutions Group Capital Investment Account."

5 Q. Okay.

6 MR. SOTO: Well, let's go to November 5.  
7 Scroll down.

8 I'm sorry, it's actually November -- it  
9 looks like November 4.

10 BY MR. SOTO:

11 Q. Volunteer -- "November 4, Wire Out  
12 Reference 51, Volunteer Pharmacy."

13 Do you see that?

14 A. Yes, I see that.

15 Q. Okay. In the amount of \$44,206?

16 A. Yes, I see that under "Debits," \$44,206.

17 Q. Okay. So Exhibit 63 indicates that  
18 Complete Business Solutions wired out of its  
19 Beneficial Bank account, on November 4, \$44,206 to  
20 Volunteer Pharmacy, right?

21 MS. BERLIN: Objection as to form. And to  
22 the extent it's asking for any opinion on the  
23 evidence, but objection as to form.

24 The witness can answer.

25 A. The SEC has no personal knowledge, so I

1 can't say what this indicates. I can just say what  
2 the words are that are on it, which we've already  
3 gone over.

4 BY MR. SOTO:

5 Q. Okay. So Exhibit 62 indicates that Chad  
6 Frost, on behalf of Volunteer Pharmacy, applied for  
7 a loan on March 18, 2013, and Exhibit 63 indicates  
8 that that loan was funded months later, on  
9 November 4, 2013 correct?

10 MS. BERLIN: Objection as to form.

11 BY MR. SOTO:

12 Q. Ms. Frank?

13 A. No, the SEC can't -- can't testify as to  
14 what either of the documents intended. I don't have  
15 personal knowledge of that, so I can just testify to  
16 what the documents state on their face, which I've  
17 already done.

18 MR. SOTO: Okay. So back -- let's go back  
19 to Exhibit 24.

20 BY MR. SOTO:

21 Q. Exhibit 24, Paragraph 5, "The loan was  
22 underwritten by CBSG in less than 48 hours from the  
23 time I applied," that statement is false, correct?

24 MS. BERLIN: Objection as to -- objection  
25 on several grounds. Objection as to privilege

1 and work product. Objection as to outside of  
2 the scope of the topics noticed. And to the  
3 extent you're asking the SEC to give an opinion  
4 on the weight of any evidence or legal opinion  
5 about the falsity of any evidence, also  
6 privileges and improper, and outside the scope  
7 on those grounds, so we would instruct the  
8 witness not to testify for the SEC.

9 BY MR. SOTO:

10 Q. Ms. Frank?

11 A. So I decline to answer in a personal  
12 capacity and also based on not wanting to waive work  
13 product.

14 MR. SOTO: Let's turn to Exhibit 27.

15 (Thereupon, marked as Exhibit 27.)

16 BY MR. SOTO:

17 Q. Exhibit 27 is a Merchant Prequalification  
18 Form for Sunrooms America, right?

19 MS. BERLIN: Objection as to form, outside  
20 of the scope, but the witness can testify about  
21 what the document states on its face.

22 A. The SEC has no personal knowledge of what  
23 this document is, but I do see at the top, it  
24 states, "First Class Advance, Merchant  
25 Prequalification Form," and it does state, "Business

1 Legal Name: Sunrooms America, Inc."

2 BY MR. SOTO:

3 Q. Okay.

4 MR. SOTO: And if we scroll down.

5 BY MR. SOTO:

6 Q. You see the owner/officer name is now near  
7 the top of the screen, "Owner/Officer Name: Michael  
8 Foti."

9 Do you see that just above  
10 "Authorizations"?

11 A. Yes, I see first name, Michael, last name,  
12 Foti.

13 Q. Okay. And under "Authorizations," do you  
14 see "Owner/Officer's Signature," and it appears that  
15 there's an "MF" to the right of an "X"?

16 A. Yes, I see that.

17 Q. And the date of this application is  
18 August 26, 2019, correct?

19 MS. BERLIN: Objection as to form.

20 A. The date of this -- there's a date on this  
21 document that is August 26, 2019.

22 MR. SOTO: Okay. So let's go to  
23 Exhibit 28.

24 (Thereupon, marked as Exhibit 28.)

25

1 BY MR. SOTO:

2 Q. Exhibit 28 is a TD Bank Statement of  
3 Account for Complete Business Solutions Group,  
4 correct?

5 MS. BERLIN: Objection as to form.

6 A. The SEC has no personal knowledge as to  
7 what this document is, but I can tell you that at  
8 the top, it says, "TD Bank." It also says,  
9 "Complete Business Solutions Group, Inc." and  
10 "Statement of Account" and has a primary account  
11 number on it.

12 BY MR. SOTO:

13 Q. Okay. And under "Daily Account Activity"  
14 at December 17, there is an entry for a wire  
15 transfer outgoing to Sunrooms America in the amount  
16 of \$68,005.

17 Do you see that?

18 A. I see the words on -- I see the words and  
19 numbers "12/17, Wire Transfer Outgoing, Sunrooms  
20 America, Inc."

21 Q. Okay. So you have, in Exhibit 27, an  
22 application prepared by Mr. Foti on behalf of  
23 Sunrooms on August 26, 2019, and in Exhibit 28, you  
24 have an amount funded to Sunrooms nearly or more  
25 than three months later?

1 MS. BERLIN: Objection as to form. And as  
2 previously stated, the SEC objects to any  
3 topics or questions asking the SEC to opine or  
4 weigh evidence. It's attorney work product  
5 privilege, deliberative process privilege, and  
6 we instruct the witness not to weigh evidence  
7 on behalf of the SEC.

8 A. So the SEC has no personal knowledge and  
9 also can't answer this because we might potentially  
10 be waiving privileges.

11 MR. SOTO: Okay. Let's look to  
12 Exhibit 19.

13 BY MR. SOTO:

14 Q. Do you see Exhibit 19 in front of you?

15 A. Yes.

16 Q. Okay. Exhibit 19 is a Metro Inspections'  
17 Merchant Site Inspection Report.

18 Do you see that?

19 MS. BERLIN: Objection as to form.

20 BY MR. SOTO:

21 Q. Ms. Frank?

22 MS. BERLIN: And as to the scope of  
23 today's deposition, we've stipulated the  
24 documents state what they are, so Ms. Frank is  
25 permitted to testify on behalf of the SEC when

1 you ask her if certain words appear on  
2 documents, but beyond that, as I stated  
3 throughout today, that's privileged and outside  
4 of the scope of the notice topics when you're  
5 inquiring not about the notice topics, but  
6 about the Defendants' motion of last week,  
7 which are not included.

8 And I'll just make that standing objection  
9 and instruction to the witness, so I don't  
10 interrupt you, Mr. Soto, on this document.

11 Thank you.

12 BY MR. SOTO:

13 Q. Okay. Exhibit 19, as I indicated, is a  
14 Merchant Site Inspection Report with an order date  
15 for an inspection of January 4, 2017.

16 Do you see that?

17 A. So I can't agree with your  
18 characterization of this, but I can testify that at  
19 the top of this document, it states, "Metro  
20 Inspections," and it also states, "Merchant Site  
21 Inspection Report."

22 Q. Okay.

23 A. And --

24 Q. I'm sorry, go ahead.

25 A. And there is a date.

1           And I'm sorry, I was just going to say,  
2 and there is a date on it as well.

3           Q.    And an inspection was completed on  
4 January 5, 2017, according to this Merchant Site  
5 Inspection Report.

6                   Do you see that?

7           A.    No, but I see a date of inspection listing  
8 January 5, 2017.

9           Q.    Okay.  And you see a date of inspection  
10 for January 5, 2017, for Fleetwood Services, right?

11          A.    Well, I see that the document has -- under  
12 "Business Information," it has the legal name of a  
13 business, and that is Fleetwood Services, LLC, and  
14 then below that, I see a section under "Inspection  
15 Results" that says, "Date of Inspection:  January 5,  
16 2017."

17                   MR. SOTO:  Okay.  So let's go to  
18 Exhibit 29.

19                   (Thereupon, marked as Exhibit 29.)

20          BY MR. SOTO:

21          Q.    Okay.  Do you see, at the very top of this  
22 document, it reads, "Fast Advance Funding"?

23          A.    Yes.

24          Q.    Okay.  And the date is December 29, 2016?

25          A.    Yes, that's the date on the top of the

1 document, yes.

2 Q. And the company name indicated on this  
3 form is Fleetwood Services, right?

4 A. Yes.

5 Q. Okay.

6 MR. SOTO: And can we scroll down a little  
7 bit more.

8 BY MR. SOTO:

9 Q. And under "Owner Name," you see -- there  
10 are two owners indicated, Pam Fleetwood and Robert  
11 Fleetwood, right?

12 A. Yes.

13 MR. SOTO: Let's scroll down a little bit  
14 more.

15 BY MR. SOTO:

16 Q. And you have signatures there, Signature 1  
17 and Signature 2.

18 Do you see those?

19 A. I do.

20 Q. And they appear to say Pam Fleetwood and  
21 Robert Fleetwood.

22 Do you see that?

23 A. The SEC has no personal knowledge of that,  
24 so I can't testify about that.

25 Q. Okay.

1 MR. SOTO: Let's scroll down a little bit  
2 more.

3 All right. Let's go back to the top.

4 BY MR. SOTO:

5 Q. So the date of this form is December 29,  
6 2016. It's filled out on behalf of Fleetwood  
7 Services, and the owners are indicated as Robert and  
8 Pam Fleetwood, right?

9 A. The SEC has no personal knowledge about  
10 the part that you just said as far as it being  
11 filled out, I believe you said, on behalf of  
12 Fleetwood Services.

13 Q. Up at the top, under "Date," it says  
14 "Intended Use of Funds."  
15 Do you see that?

16 A. Yes.

17 Q. And it says, "Working Capital"?

18 A. Yes.

19 Q. And under "Required for Recommended Cash  
20 Amount," there's a column one, two, three -- four  
21 from the right that says "Cash Amount Requested:  
22 350K."

23 Do you see that?

24 A. Yes.

25 Q. Right.

1           So this is an application for a loan of  
2 \$350,000 for working capital to be used by Fleetwood  
3 Services, right?

4           MS. BERLIN: Objection as to form.

5           BY MR. SOTO:

6           Q. Let me restate that.

7           A. The SEC has no --

8           Q. Go ahead and answer the question.

9           A. I was just going to say the SEC has no  
10 personal knowledge as to your characterization of  
11 the document and what the document is. I can just  
12 testify about what's written on the actual document.

13           MR. SOTO: Okay. Let's go to Exhibit 20.

14           BY MR. SOTO:

15           Q. Okay. Exhibit 20, we've seen before,  
16 Ms. Frank.

17           You see this is a bank statement for  
18 Complete Business Solutions Group with account  
19 number ending 4169, right?

20           MS. BERLIN: Objection as to form.

21           BY MR. SOTO:

22           Q. Ms. Frank?

23           A. The SEC has no personal knowledge of this  
24 document and what it is. I can tell you that I see,  
25 on the top of the document, the last four digits of

1 what next to it says "Account Number," and I see the  
2 name of Complete Business Solutions, Inc., and I  
3 see -- down below that, I see cash -- what looks  
4 like an abbreviation for management small business  
5 and what looks like an abbreviation for checking.

6 Q. And the date of this account statement is  
7 January 31, 2017, at the top.

8 Do you see that?

9 A. I see the date at the top of the document,  
10 yes, January 31, 2017.

11 Q. Okay. So Complete Business Solutions,  
12 according to this document, wired out a hundred  
13 thousand dollars to Fleetwood Services, LLC, on  
14 January 9, 2017, right?

15 MS. BERLIN: Objection as to form.

16 A. The SEC has no personal knowledge of that.  
17 I can just speak to the words on the document.

18 I do see, under "Description," it says,  
19 "Wire - out" underneath that, it says, "Fleetwood  
20 Services, LLC," and under "Debits," it says  
21 "100,000."

22 MR. SOTO: Okay. Let's go to Exhibit 18.

23 Okay. Exhibit 18, let's scroll down to  
24 Paragraph 5.

25

1 BY MR. SOTO:

2 Q. Do you see in Paragraph 5 that it says,  
3 "The loan was underwritten by CBSG in less than 48  
4 hours from the time we applied"?

5 A. Yes, I see that.

6 Q. Okay. But in Exhibit 29, we saw that  
7 Fleetwood applied for the loan on December 29, 2016,  
8 and in Exhibit 20, we saw that the loan was funded  
9 nearly ten or eleven days later, on January 9, 2017,  
10 right?

11 MS. BERLIN: Objection as to form. And  
12 asking the SEC to weigh the documents that  
13 you've presented and opine on them is beyond  
14 the scope of the notice of this deposition, and  
15 it's also seeking our attorney work product,  
16 attorney-client privileged information, and in  
17 this instance, deliberative process privilege  
18 as well, and therefore, we instruct the witness  
19 not to answer on behalf of the SEC.

20 BY MR. SOTO:

21 Q. Ms. Frank?

22 A. I decline to answer in my personal  
23 capacity, and, also, I decline based on potential  
24 waiver of work product.

25 Q. Okay. So the statement that Ms. Fleetwood

1 makes in Paragraph 5 that "the loan was underwritten  
2 by CBSG in less than 48 hours from the time we  
3 applied" is false based on Exhibits 29 and 20,  
4 correct?

5 MS. BERLIN: Same objection.

6 I apologize, Mr. Soto, I believe I spoke  
7 before you finished.

8 We object on the same grounds of scope and  
9 privilege and form, and we direct the witness  
10 not to answer on behalf of the SEC. The SEC's  
11 legal positions about all of these issues will  
12 be reflected in our response to the Defendants'  
13 motion that you're asking about.

14 And at this time, we instruct -- we  
15 continue to instruct the witness not to testify  
16 for the reasons I've just stated.

17 BY MR. SOTO:

18 Q. Ms. Frank?

19 A. Same answer, including work product.

20 MR. SOTO: Okay. I just want to state for  
21 the record that I'm not asking, and have not  
22 mentioned, the motion you're referring to. I'm  
23 asking about documents and evidence supporting  
24 the allegation in the Complaint regarding  
25 underwriting, which was noticed, and the fact

1 that there's a motion pending having to do with  
2 a fact at issue in the Complaint is both  
3 irrelevant to my questions and not surprising  
4 because litigation often involves the matters  
5 raised in a Complaint.

6 So I don't want you to be confused that  
7 I'm asking these questions for any purpose  
8 other than the topics noticed in the deposition  
9 notice, but I heard your objections, and  
10 they're obviously noted for the record.

11 So let's go to Exhibit 30.

12 THE WITNESS: Excuse me, could I ask a  
13 question about the potential timing, how long  
14 we're intending to go today? I don't know if  
15 you want to do that off the record.

16 MR. SOTO: Let's just get through this  
17 last exhibit or series of exhibits here. We'll  
18 get through it in a few minutes, and then we  
19 could have that discussion. I think it's  
20 probably a good idea to talk about.

21 THE WITNESS: Thank you. That would be  
22 great. I appreciate it.

23 MR. SOTO: So let's get to Exhibit 30.

24 BY MR. SOTO:

25 Q. This is a declaration of Joseph Pucci,

1 correct?

2 A. Yes.

3 Q. Right?

4 We've seen this before. He claims in this  
5 declaration to be an owner of a company called  
6 American Heritage Billiards, which is located in  
7 Ohio, correct?

8 A. He claims that in Paragraph 2, yes.

9 Q. And in Paragraph 3, he claims that in  
10 October 2019, that CBSG loaned his company, American  
11 Heritage Billiards, \$792,000, right?

12 A. Yes, I see where he states that in  
13 Paragraph 3.

14 Q. Okay.

15 MR. SOTO: Scroll down just a little bit  
16 more.

17 Scroll up. Okay.

18 All right. You know what, let's just  
19 break here. Let's just go off the record and  
20 talk about that.

21 (Recess taken.)

22 MR. SOTO: So the -- what I would like to  
23 do is just ask another question, and then we'll  
24 just break, and I would like to get everybody's  
25 assurance that we're going to work to quickly

1 get ourselves back to completing this  
2 deposition, both because we don't have a lot of  
3 time in the discovery period and I just don't  
4 want a long break in between this and the next  
5 period.

6 So I'm sure we'll all work in good faith  
7 to sort of work toward that goal. We don't  
8 need to necessarily do it on the record, but I  
9 do want to make that statement.

10 The only other question I have is:

11 BY MR. SOTO:

12 Q. So, Ms. Frank, we've discussed a number of  
13 declarations that were offered into the record in  
14 support of the Complaint. The question I have for  
15 you is: Does the SEC have any knowledge that there  
16 are any other false statements in the declarations  
17 that we've discussed today?

18 MS. BERLIN: This is Amie.

19 We object to the form of the question, and  
20 we would instruct the -- we disagree with the  
21 premise of the question and object to the form.  
22 We would instruct the witness not to answer for  
23 all of the prior privilege and scope -- not  
24 scope, but all of the prior privilege reasons,  
25 including attorney work product and

1 deliberative process privilege, which is raised  
2 here, and as to form as well.

3 MR. SOTO: Okay.

4 BY MR. SOTO:

5 Q. Ms. Frank?

6 A. So I would give the same answer as not to  
7 testify in my personal capacity, and then also on  
8 the basis of work product. And by saying "work  
9 product," I'm referring to my personal attorney work  
10 product and opinion product as well.

11 MS. BERLIN: As the SEC stated previously,  
12 you know, we object to any topics where the SEC  
13 is being asked for, you know, anything that's  
14 privileged, that we relied on to weigh  
15 evidence, to give our legal opinions, or to  
16 debate evidence with you in a position.

17 As I stated, everything shown today is the  
18 subject of your motion filed last week, and the  
19 SEC will file a response with the SEC's  
20 position on that next week when the due date  
21 occurs.

22 MR. SOTO: Okay. Fine.

23 So, Amie, let's confer tomorrow with  
24 respect to dates of availability for the next  
25 go-around. Are you available?

1 MS. BERLIN: I don't know. I'm supposed  
2 to be traveling starting tomorrow, but why  
3 don't we -- when we go off the record, let's  
4 schedule a time for tomorrow, and I will make  
5 myself available around my travels so that we  
6 can speak, but we'll set a time so that I can  
7 make sure I'm available to have that call with  
8 you.

9 MR. SOTO: Okay. Let's go off the record,  
10 then, Madam Court Reporter.

11 (Time noted: 6:07 p.m.)  
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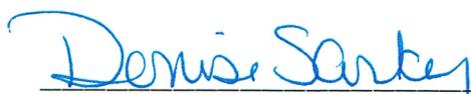
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CERTIFICATE OF OATH

STATE OF FLORIDA

I, the undersigned authority, certify that ELISHA FRANK, ESQUIRE appeared remotely before me and was duly sworn on the 3rd day of August, 2021.

Signed this 6th day of August, 2021.

  
DENISE SANKARY, RPR, RMR, CRR  
Notary Public, State of Florida  
My Commission No. GG 944837  
Expires: 1/27/24

CERTIFICATE OF REPORTER

STATE OF FLORIDA

I, DENISE SANKARY, Registered Merit Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing remote videotaped deposition of ELISHA FRANK, ESQUIRE; pages 1 through 264; that a review of the transcript was not requested; and that the transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 6th day of August, 2021.

  
DENISE SANKARY, RPR, RMR, CRR

Refusal to Identify Supporting Evidence

Question	Objection	Testimony	Transcript
Tell me what evidence the SEC has that Par Funding had any control over what the agent funds were obligated to pay investors.	Calls for attorney work product. Deliberative process privilege. We instruct the witness not to answer that question as phrased.	[none provided]	Frank Depo 23:2-9
What evidence did the SEC have when it filed the Complaint that Par Funding had any control over what the agent funds paid on their notes?	Investigative privilege. Attorney work product ... I'll direct the witness not to answer that question. That does not concern one of the Complaint allegations	[none provided]	Frank Depo 25:6-15
What evidence does the SEC have that Par Funding had any conversations with agent funds with respect to what the agent fund managers were going to be offering their investors during Phase 2?	Calls for attorney work product, and to the extent during the investigation, the investigative privilege and deliberative process privilege. We would direct the witness not to answer that question as phrased.	[none provided]	Frank Depo 26:3-12
What evidence does the SEC have that Par Funding or any of its representatives played any role in the interest that was paid on notes sold by the agent funds during Phase 2?	Asked and answered. [Repeated asserted objections: investigative and deliberative process privileges].  And we've already stated our objection to that question and directed the witness not to answer it for the grounds stated.	[none provided]	Frank Depo 26:14-22
So what evidence did the SEC have when it filed its Complaint that Par Funding played any role in drafting the marketing brochures you are referring to?	Asked and answered. And we direct the witness not to answer. Seeking deliberative process privilege information, investigative privilege, and the attorney work product of the SEC.	[none provided]	Frank Depo 55:5-13
What evidence, if any, does the SEC have to date that anyone at Par Funding drafted the marketing brochures that you just testified about?	[Repeated asserted objections: deliberative process, investigative, and attorney work product privileges].  I direct the witness not to answer.	[none provided]	Frank Depo 55:15-20
What evidence does the SEC have or did the SEC have when it filed this Complaint that anybody at Par Funding, any of the representatives that I've	[Repeated asserted objections: deliberative process, investigative, and attorney work product privileges] concerning the investigative file, documents that we	[none provided]	Frank Depo 55:13-24

<p>identified, even knew that these marketing brochures were going to be created, the ones that you've identified?</p>	<p>produced. ... I'm directing the witness not to answer.</p>		
<p>So what evidence does the SEC -- did the SEC have when it filed its Complaint that anybody at Par Funding, including any of the Defendants identified in this case, authorized any of the content of the marketing brochures to which you referred to early?</p>	<p>But deliberative process, attorney work product, and investigative privilege concerning our investigative file.</p>	<p>[none provided]</p>	<p>Frank Depo 57:11-58:4</p>
<p>What evidence, if any, did the SEC have when it filed the Complaint that anyone at Par Funding -- again, anyone at the entity -- or as I've stated, Joseph Cole, Lisa McElhone, as alleged by the SEC, Joseph LaForte, and/or Perry Abbonizio distributed any of the marketing brochures that you've identified in your previous answer?</p>	<p>[Repeated asserted objections: deliberative process, investigative, and attorney work product privileges].  Directing the witness not to provide the SEC's legal opinion about the investigative file we have produced in this case.</p>	<p>[none provided]</p>	<p>Frank Depo 59:7-18</p>
<p>You would agree, would you not, that evidence of falsity in this case would require proof that the consulting fees, when paid, exceeded the amount of nongross proceeds in the account from which they were paid?</p>	<p>Attorney work product. Seeks a legal and accounting opinion and not -- this witness is not an accounting expert or presented as one today. ... She cannot answer because of the objections I just stated.</p>	<p>[none provided]</p>	<p>Frank Depo 69:8-20</p>
<p>The SEC does not have any evidence, does it, that the consulting fees, when paid in this case to Ms. McElhone, to Mr. Cole, when they were paid, were paid from gross proceeds of the offering, does it?</p>	<p>Objection. Asked and answered. I would just add at this point, I think you're harassing the witness.</p>	<p>[none provided]</p>	<p>Frank Depo 70:2-9</p>
<p>The only evidence that the SEC has, and the only evidence that the SEC had when it filed this Complaint, is that consulting fees were paid from accounts in which investor proceeds and other sources of income were commingled; isn't that right?</p>	<p>Objection to the extent you're asking for information beyond the public filings, and you're seeking attorney work product, investigative privileged information, or deliberative process information.</p>	<p>[none provided]</p>	<p>Frank Depo 70:12-21</p>
<p>The evidence that the SEC has, which includes Melissa Davis' declarations, does not include any evidence that there were</p>	<p>Asks for a legal and accounting opinion. I believe that it's been asked and answered.</p>	<p>[none provided]</p>	<p>Frank Depo 70:23-71:5</p>

insufficient nongross proceeds in the accounts when these consulting fees were paid; isn't that right?			
<p>[Reading from paragraph 20 of the Amended Complaint]</p> <p>So I would like to ask you to provide me with any evidence that you – that the SEC had when it filed its Complaint that Mr. Abbonizio would oversee the agent funds.</p>	<p>Investigative privilege, attorney work product, attorney-client privilege, and deliberative process privilege. We direct the witness not to answer unless she is testifying about evidence and arguments supporting this allegation that we have already made public.</p>	[none provided]	Frank Depo 90:1-23
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Is there any – what evidence do you have, or did the SEC have, that Mr. Abbonizio had any authority over the agent funds when it filed its Complaint – when you filed the Complaint?</p>	<p>Objection. Investigative privilege, attorney work product privilege, attorney-client privilege, law enforcement privilege. The witness is directed not to answer other than as to evidence that we have already filed with our annotated Complaint.</p>	[none provided]	Frank Depo 92:3-12
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Did any witnesses ever interviewed by the SEC say that Mr. Abbonizio had authority over the agent funds?</p>	<p>Calls for attorney work product and invades the investigative privilege and law enforcement privileges. The witness is directed not to answer unless she's testifying about the publicly annotated Complaint evidence.</p>	[none provided]	Frank Depo 93:3-11
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Did any witnesses ever tell the SEC orally or in writing in a declaration that Mr. Abbonizio oversaw the agent funds, as alleged in the Complaint?</p>	<p>[Repeated asserted objections: attorney work product, investigative, and law enforcement privileges].</p> <p>And to the extent you're asking the SEC to interpret the declarations that we have filed, we would object to that as well.</p>	[none provided]	Frank Depo 93:13-21
<p>Are there any documents, any documents or evidence, suggesting that Mr. Abbonizio had authority to over the agent funds, as alleged in Paragraph 20 of the Amended Complaint?</p>	<p>[Repeated asserted objections: attorney work product, investigative, and law enforcement privileges].</p> <p>And the witness is directed not to answer other than as to the annotations to the Complaint citing evidence that we publicly filed.</p>	[none provided]	Frank Depo 93:23-94:7
[Referring to Paragraph 20 of the	Objection to the extent this seeks attorney-	[none provided]	Frank Depo

<p>Amended Complaint]</p> <p>I'm specifically interested in any evidence that the SEC has suggesting or demonstrating that Mr. Abbonizio oversaw the agent funds. Whether he solicited or not is a different question, and I'm happy to discuss that after we answer – after you answer this question.</p>	<p>client privileged, investigative privileged information, deliberative process privilege, and attorney-client privilege information.</p> <p>...</p> <p>And, yes, so I made the objection, and as with the others, the SEC will testify about what we have already provided publicly in connection with our TRO and preliminary injunction exhibits, and she may testify about that.</p>		94:24-101-22
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>Any evidence that any agent fund manager has ever publicly said or said to the SEC that Mr. Abbonizio has this authority to oversee their funds?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]</p>	[none provided]	Frank Depo 101:25-102:7
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>The fact is that no agent fund manager has ever said that, correct?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]</p> <p>Objection to the form.</p>	[none provided]	Frank Depo 102:9-20
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>And the truth is that Perry Abbonizio has never said that publicly or to the SEC, correct?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]</p> <p>Objection to the form.</p>	[none provided]	Frank Depo 102:16-20
<p>[Referring to Paragraph 20 of the Amended Complaint]</p> <p>And the fact is that Perry is not employed by the agent funds, is he?</p>	<p>[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]</p> <p>[Repeated previous instruction to the witness not to answer unless it concerns a</p>	[none provided]	Frank Depo 102:24-103:1

	public representation the SEC has already made]  Objection to the form.		
[Referring to Paragraph 20 of the Amended Complaint]  There is no evidence that any agent fund manager has or ever said that Perry Abbonizio oversees their funds, correct?	[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]  [Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]  Objection to the form.	[none provided]	Frank Depo 103:19-23
[Referring to Paragraph 20 of the Amended Complaint]  There is no evidence, and the SEC has no evidence, that Perry has ever stated publicly that he oversees or has the authority to oversee an agent fund?	[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]  [Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]  Objection to the form.	[none provided]	Frank Depo 103:25-104:5
[Referring to Paragraph 20 of the Amended Complaint]  Perry is not an executive or officer or director or manager of any of the agent funds, correct?	[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]  [Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]  Objection to the form.	[none provided]	Frank Depo 104:7-11
[Referring to Paragraph 20 of the Amended Complaint]  Perry isn't a partner at any of the agent funds, correct?	[Repeated asserted objections: attorney work product, investigative, deliberative process, and attorney-client privileges]  [Repeated previous instruction to the witness not to answer unless it concerns a public representation the SEC has already made]  Objection to the form.	[none provided]	Frank Depo 104:13-16

<p>You have no evidence that Par or any of its representatives played any role in the general solicitations that you allege Vagnozzi engaged in, do you?</p>	<p>This is seeking attorney work product, attorney-client privileged information. And to the extent you're seeking the SEC's legal opinion about the evidence, I'm instructing the witness not to answer.</p>	<p>I don't believe I can answer without giving a legal opinion.</p>	<p>Frank Depo 113:25- 114:13</p>
<p>What evidence does the SEC have that CBSG represented to anyone that underwriting of merchant cash advance required it to obtain debt schedules?</p>	<p>[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p> <p>I'm just reminding Mr. Soto that she may testify about public evidence and legal arguments we have made, but is instructed not to provide a legal opinion as to how the evidence we have produced would support these allegations this time.</p>	<p>I believe that I can't answer because of work product and the other privileges.</p>	<p>Frank Depo 118:19- 119:10</p>
<p>[Are you aware of any such evidence that Par Funding or any of its representatives represented to investors that underwriting in MCA required it to obtain debt schedules?]</p>	<p>[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p>	<p>I can't give an answer because it would be subject to revealing work product or attorney-client privilege.</p>	<p>Frank Depo 119:14- 120:15</p>
<p>What evidence does the SEC have that CBSG represented to investors that underwriting in MCA required it to obtain profit margins?</p>	<p>[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p>	<p>[I can't give an answer because it would be subject to revealing work product or attorney-client privilege.]</p>	<p>Frank Depo 120:16-23</p>
<p>[referring to paragraphs 168-183 of the Amended Complaint]</p> <p>The evidence that you collected in connection with this Complaint in support of allegations were declarations from merchants, correct?</p>	<p>Investigative privilege, attorney work product, and attorney-client privilege. The witness is instructed not to answer to the extent it covers one of those privileges, but may testify about anything that we have already publicly disclosed.</p>	<p>So there are various merchant declarations that support some of these paragraphs</p>	<p>Frank Depo 121:1-24</p>

		from 168 to 183, and other than that, I can't provide an answer because it would be subject to the privileges.	
Was the SEC aware before it filed the Complaint that the overwhelming majority of the merchants whose declarations it relied on had either sued or been sued by CBSG in connection with merchant cash advances?	[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]  [Repeated] instruction to the witness not to answer as to what the SEC and its attorneys knew or did not know.	[none provided]	Frank Depo 122:11-19
Were you aware when this SEC Complaint – was the SEC aware when the Complaint was filed that every single one of these merchant – merchants whose declarations were submitted to the SEC were represented by – the declarants therein were represented by an attorney Shane Heskin?	[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]  [Repeated] instruction to the witness not to testify.	[none provided]	Frank Depo 122:21-123:3
Was the SEC aware that the overwhelming majority of merchants whose declarations were provided to the SEC in support of its Complaint owed Par Funding money in connection with MSA advances?	[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]  [Instruction to the witness not to testify.]  Object as to form.	[none provided]	Frank Depo 123:5-11
Was the SEC aware before filing its Complaint that these merchant declarations were provided by individuals and entities who had been sued by Par Funding for failing to pay the amounts owed to Par Funding in connection with these MCAs?	Object as to form.  [Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]  [Instruction to the witness not to testify]	[none provided]	Frank Depo 123:16-23
Wouldn't you agree that a declarant who	Object to form.	[none provided]	Frank Depo

owes money in connection with a statement made against a particular defendant or target has a conflict with respect to statements made by that individual in a declaration?	[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]  Object to the extent it's seeking a legal opinion and also instruct the witness not to answer.		123:25-124:8
What steps did the SEC take to confirm or corroborate the statements made by these merchant declarants?	Investigative privilege, deliberative process privilege, and law enforcement privilege, the attorney work product and attorney-client privileges.  And we instruct the witness not to answer.	[none provided]	Frank Depo 124:10-19
Were you aware when these declarations were filed by these merchant declarants that they contained false statements?	Object to the form. [Investigative privilege, deliberative process privilege, and law enforcement privilege, the attorney work product and attorney-client privileges] and give the witness the same instruction not to answer.	[none provided]	Frank Depo 124:21-125:3
This merchant declaration provided by Mr. Frost was relied upon by the SEC in its Complaint, correct?	Attorney work product. Attorney-client privilege. Deliberative process privilege. Investigative privilege. I instruct the witness not to answer that question.	[none provided]	Frank Depo 132:3-10
In other words, the SEC relied on a declaration that contained a falsehood, correct?	[Repeated asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]  [instruction to the witness not to answer]  And I also object as to the form.	[none provided]	Frank Depo 132:12-16
In connection with the work that you did to prepare for today's deposition, did you come across ConvergeHub?	Attorney work product and attorney-client privileged information. Also, the witness has testified what she reviewed to prepare for today's testimony.	I can't answer that without violating privilege.	Frank Depo 193:12-23

Refusal to Discuss Allegations in the Complaint

Question	Objection	Testimony	Transcript
<p>Can you define what an Action Memo is?</p>	<p>We will -- to the extent the witness can testify about public information, we're not directing her not to answer that, but to the extent you're asking about the Action Memo in this particular case, then we direct the witness not to answer as that is nonpublic information protected by the investigative and deliberative process privilege, attorney work product, and attorney-client privileges.</p> <p>...</p> <p>Again, same objection. Ms. Frank can testify about public information, but to the extent the question is seeking to elicit any information about nonpublic internal processes at the Commission, then Ms. Frank is directed not to answer.</p>	<p>So what I can tell you is that we have -- the SEC has an enforcement manual that is on our website that has information in it about the Action Memo process, and I would refer you to that for the answer to this question.</p>	<p>Frank Depo 28:9-29:11</p>
<p>[Reading from Paragraph 239 of the Amended Complaint]</p> <p>“The representations in both filings are that Cole and McElhone would not receive any of the gross proceeds of the securities offerings are false.”</p> <p>...</p> <p>So I want to understand the SEC's position here. “Gross proceeds” mean investor funds, correct?</p>	<p>Objection as to the form.</p>	<p>I can't give you an opinion on the definition of “gross proceeds.” We hired an accounting expert in this case, and she submitted declarations that we provided that are publicly available. So I would refer you to Melissa Davis' declarations with respect to any questions related to accounting.</p>	<p>Frank Depo 62:20-63:12</p>
<p>I'm asking you, as the SEC's corporate designee, to define a term in your own Complaint.</p> <p>...</p> <p>And so as the SEC's corporate designee, I'm asking you to define what the SEC meant or tell us what the SEC meant by the term “gross proceeds” of the securities offering [in Paragraph 239 of the</p>	<p>Asked and answered.</p>	<p>The evidence that supports the claim in Paragraph 239 is Melissa Davis' declaration, so I would refer you to that evidence.</p>	<p>Frank Depo 63:14-64:2</p>

Amended Complaint]			
[Reading from Paragraph 239 of the Amended Complaint]  “Gross proceeds” means investor proceeds, correct?	Asked and answered	I can’t answer that question. I would refer you to Melissa Davis’ declaration.	Frank Depo 64:3-10
[Reading from Paragraph 239 of the Amended Complaint]  Cash that is paid back to CBSG by merchants would not be gross proceeds, correct?	Objection as to the form. Seeking an expert opinion from the SEC on an accounting issue.	We would refer you to Melissa Davis’ declarations.	Frank Depo 64:11-17
[Reading from Paragraph 239 of the Amended Complaint]  “The representations in both filings are that Cole and McElhone would not receive any of the gross proceeds of the securities offerings are false.”  ... This allegation refers to Section 16 – does it not? At least with respect to this Form D?	[none]	Well, I can tell you that the evidence supporting the allegation that we just looked at includes Melissa Davis’ declaration, and it would also include this Form D.	Frank Depo 67:7-24
And this Form D is what the SEC is relying on when it alleges that Par Funding and the defendants made a misrepresentation in this form when they said that gross proceeds of the offering would not be used to pay any of the individuals in Section 3?  ... In other words, Paragraph 239 is referencing this – this statement –	Asked and answered.	I think I’ve already answered that question.	Frank Depo 68:1-
[Reading from Paragraph 241 of the Amended Complaint]  The SEC alleges, “In a recent recorded conversation with an FBI confidential source, Cole admitted that Par Funding pays him through	Argumentative.	The transcript of the recording speaks for itself.	Frank Depo 72:8-21

<p>his consulting firms and that the amounts are reflected in the consulting line on the Par Funding financial statements.”</p> <p>...</p> <p>But Mr. Cole did not admit in any recording that he was paid consulting fees from gross proceeds, correct?</p>			
<p>[Reading from Paragraph 243 of the Amended Complaint]</p> <p>The SEC alleges that, “The representation in Par Funding’s 2020 Form D filing that Par Funding did not pay commissions is false. Par Funding had paid so-called finder’s fees of at least \$3.6 million, plus an additional million dollars in payments labeled as commissions, from July 2015 to February 2020.</p> <p>...</p> <p>And would you agree with me that the reason that they deleted that from the 2020 Form D filing was at the – based on the advice provided by Mr. Rutledge in the final paragraph of that e-mail, which is exhibit 6?</p>	<p>Objection as to form.</p>	<p>I would be guessing, and I don’t want to guess or speculate.</p>	<p>Frank Depo 78:12-7</p>
<p>[Reading from paragraph 20 of the Amended Complaint]</p> <p>What did the -- what does the SEC mean by the word “oversee” when it says – when it alleges that Mr. Abbonizio “oversees the agent funds?”</p>	<p>Objection as to form.</p>	<p>So I can’t give you an opinion on the question that you just asked, but I can give you evidence that supports our allegation --</p>	<p>Frank Depo 90:1-91:7</p>
<p>My question is: I would like to understand what the SEC means by the word “oversee” in that allegation.</p>	<p>Objection as to form and to the extent you’re seeking attorney work product or attorney-client privilege regarding the attorney’s thoughts who drafted this Complaint allegation.</p>	<p>So I can’t answer that question.</p>	<p>Frank Depo 91:11-21</p>
<p>What did the SEC mean in that allegation. It’s your Complaint.</p>	<p>[none]</p>	<p>I can’t answer that. I can’t answer that</p>	<p>Frank Depo 91:23-92:2</p>

		question.	
<p>[Referring to Paragraph 93 of the Amended Complaint]</p> <p>Those alleged advertisements involved or were directed at the sale of notes by ABFP, not by any other entity, correct?</p>	Object as to form.	I don't agree with that statement, and I would refer you to Phase 1 of the – of the Amended Complaint.	Frank Depo 114:22-115:5
<p>With respect to Phase 2 notes, the SEC has no – also has no knowledge, no evidence, that Par Funding engaged in radio, television commercials, or the Internet solicitations through those means, correct?</p> <p>[Do you have an answer with respect to public sources?]</p>	<p>Object as to form and on attorney work product, attorney-client privilege, deliberative process, and investigative privilege grounds and instruct the witness not to answer to give the SEC's opinion about the evidence produced in this case.</p> <p>Object as to form.</p>	The SEC – I'm sorry. The SEC doesn't have personal knowledge. . . And so I can't opine.	Frank Depo 115:14-116:16
<p>You have no evidence that Par representative engaged in general solicitation through radio, television commercials, or the Internet, do you?</p>	<p>Seeks attorney work product, attorney-client privilege, deliberative process, and investigative privileges. I instruct the witness not to answer as to matters covered by those privileges. She can testify about the evidence that we have annotated publicly.</p>	<p>So with respect to that question, though, the SEC has no personal knowledge, and so I can't opine on that.</p>	Frank Depo 113:9-23
<p>[clarifying response referring to "Phase 1 of the Amended Complaint"]</p> <p>When you say Phase 1, you mean all of the paragraphs within Phase 1 of the Amended Complaint?</p>	[none]	<p>I believe that we have evidence that – I guess I can't say – I mean, I have to say the SEC doesn't have personal knowledge, and so I can't answer.</p>	Frank Depo 115:7-13
<p>Referring to Paragraph 167 of the Amended Complaint]</p> <p>[The SEC] relied, based on the paragraphs here, which you've reviewed a number of times, Paragraphs 163 through 183, on information provided by merchants?</p>	<p>Object as to form. Object as to investigative privilege, deliberative process privilege, attorney work product, and attorney-client privilege, and we instruct the witness not to testify about what the SEC relied upon.</p>	<p>What I can tell you is that some of the evidence that supports the allegation in Paragraph 167 are merchant declarations and also the declaration of Lionese Jones.</p>	Frank Depo 229:3-18

**Refusal to Discuss Substance of Its Own Exhibits**

Question	Objection	Testimony	Transcript
<p>Can you direct me to any statement in Melissa Davis' declaration that indicates that fees paid to executives, as identified in Paragraph 16 of this form, were paid from gross proceeds as opposed to accounts in which gross proceeds and other sources of income were commingled?</p> <p>...</p> <p>Can you point me to any statement in her declaration that says that?</p>	<p>Objection as to the form.</p>	<p>I would just refer you to the declarations of Melissa Davis.</p>	<p>Frank Depo 71:7-19</p>
<p>Is it true, isn't it, that nowhere in Melissa Davis' declaration does it say that there were insufficient nongross proceed funds in the accounts when these consulting fees were paid?</p>	<p>Argumentative.</p>	<p>As a nonaccountant, I cannot opine on the meaning of what's in Melissa Davis' declaration.</p>	<p>Frank depo 71:20-72:4</p>
<p>There is nothing in that recording that indicates that Mr. Cole admitted that he was paid from gross proceeds, correct?</p>	<p>Objection as to the form.</p>	<p>The transcript speaks for itself. . . I can't opine on the language, the wording, the meaning of the wording, but that transcript speaks for itself, and that is our support for that allegation.</p>	<p>Frank Depo 73:23-74:9</p>
<p>I'm asking you to point to the evidence in that transcript which you identified for any indication that Mr. Cole admitted that he was paid using – from gross proceeds. Can you do that?</p>	<p>Objection as to the form.</p>	<p>The document speaks for itself and supports the allegation in Paragraph 241.</p>	<p>Frank Depo 73:10-20</p>
<p>And the same is true with respect to any payments he received through his entities, correct? In other words, he didn't admit that his entities, any entities that he controlled or owned, received consulting fees from gross</p>	<p>Objection as to form.</p>	<p>Again, I can just refer you to the piece of evidence, the undercover video meeting, which supports the allegations in</p>	<p>Frank Depo 73:21-74:6</p>

<p>proceeds, correct?</p>		<p>Paragraph 241</p>	
<p>Where in the transcript of the sales dinner that you just referenced is there any evidence demonstrating or supporting [the allegation in Paragraph 20 of the Complaint]?</p>	<p>[none]</p>	<p>I don't have specific page cites in the transcript for you.</p>	<p>Frank Depo 106:2-7</p>
<p>Give me your best recollection, as you sit here today, of any evidence within that transcript of that sales dinner supporting the allegation [in Paragraph 20 of the Complaint]?</p>	<p>Object as to form.</p>	<p>The SEC isn't going to have an opinion that I can share with you as to where exactly int that evidence, so I can't share that with you.</p>	<p>Frank Depo 106:8-15</p>
<p>Is your answer the same with respect to Exhibit 136, that you can't point me specifically to anything in that exhibit that supports the allegation [in Paragraph 20 of the Complaint]?</p> <p>...</p> <p>I'm asking for you to point me to the exhibit that you referenced in your answer as evidence that Mr. Abbonizio had some sort of oversight authority over the agent funds. So, whatever reason it was that stirred you to say "Exhibit 136," I would like to know what that reason is.</p>	<p>Object as to form and because it's seeking attorney work product.</p>	<p>If we gave any particular pincites in our TRO motion, then that would be the best source for that information, but otherwise, I can't give you that information at this time.</p>	<p>Frank Depo 106:17-107:11</p>
<p>Well, Ms. Frank, I could have read, and I did read, the motion for TRO, didn't need to take you deposition to have you tell me to reread it. We called you here today to speak as the SEC's corporate representative and help us understand the evidence that the SEC has in support of the allegations of the Complaint.</p> <p>You identified Exhibit 136 as a piece of evidence in support of the allegation we've been discussing, and so I would like you to tell me why it is that you identified Exhibit</p>	<p>Object as to the form. I believe it's – and also to the extent it's seeking attorney work product.</p>	<p>And I was just going to say that that would involve work product unless we've already identified it specifically with a pincite in the TRO.</p>	<p>Frank Depo 107:12-108:8</p>

<p>136 in support of that allegation.</p>			
<p>I asked you to identify within the declaration of Kara DiPietro, which you testified was evidence of what you believed to be Mr. Abbonizio's oversight – alleged oversight over the agent funds. So it's up in front of you. You said you couldn't provide a pinpoint cite.</p> <p>Can you point to me to any paragraph, any sentence, in this declaration that supports your testimony?</p>	<p>Objection to form. Objection that you're seeking attorney work product and attorney-client privileged information. And we object to any question asking the SEC to argue, debate, or weigh evidence with the defense.</p>	<p>[none provided]</p>	<p>Frank Depo 108:22-109:10</p>
<p>[referring to Meyer Declaration]</p> <p>I'll ask you the same question, which is: Identify within that declaration any statement, phrase, sentence that supports the SEC's allegation that Mr. Abbonizio had oversight authority over agent funds.</p>	<p>Objection to form. Objection that you're seeking attorney work product and attorney-client privileged information. And we object to any question asking the SEC to argue, debate, or weigh evidence with the defense.</p>	<p>[none provided]</p>	<p>Frank Depo 109:16-22</p>
<p>Can you point me to any evidence that the SEC has that Par Funding engaged in general solicitations through the use of radio, television commercials, the Internet, or Facebook?</p>	<p>Attorney-client privilege. Attorney work product privilege. Investigative and law enforcement privileges. To the extent -- Ms. Frank is instructed not to testify about any matters that are covered by those privileges, but she may testify about the evidence and arguments that we have made public in this case.</p>	<p>I would just refer you to the investigative file and the TRO that is annotated.</p>	<p>Frank Depo 111:9-24</p>
<p>I'm merely asking you whether the SEC has any evidence that Par Funding or any of its representatives represented to investors that underwriting in MCA required it to obtain debt schedules.</p>	<p>[Repeated previously asserted objections: attorney-client privilege, attorney work product, deliberative process privilege, and investigative privilege]</p> <p>[Repeated previous instruction to the witness not to give the SEC's opinion about the evidence produced in this case]</p>	<p>If you can point me to any place in the Complaint where we say debt schedules, I might be able to be of assistance with a particular document based on my notes, but, otherwise, I can't answer because of work product and other privileges.</p>	<p>Frank Depo 119:14-120:3</p>

<p>[comparing the Frost merchant declaration with Frost underwriting documents]</p> <p>The same company identified in Mr. Frost's declaration, correct, as "the company"?</p>	<p>[none]</p>	<p>I don't know if that's the case or not.</p> <p>...</p> <p>I mean they have the same name. You're asking if they're the same company. I don't know.</p> <p>...</p> <p>Actually, I take that back. Now I'm looking at the declaration. The name in the declaration is Volunteer Pharmacy without the Inc.</p>	<p>Frank Depo 125:15-127:19</p>
<p>[referring to Carleton merchant declaration]</p> <p>Where Mary Carleton said that "CBSG did not request information from me or the company about the company's expenses during the underwriting process or at any other time prior to approving the loans," that statement was false, correct?</p>	<p>I'm sorry, I have to object. We have a standing objection, so that I don't have to keep repeating it, that the SEC believes this is outside -- this line of questioning is outside the scope, and we would object to it and instruct her not to answer. If she wishes to do so in her personal capacity, she may.</p>	<p>The SEC does not have personal knowledge.</p>	<p>Frank Depo 154:15-155:8</p>
<p>[comparing Frost merchant declaration with Frost underwriting documents]</p> <p>James Frost was the declarant in Exhibit 44, right?</p>	<p>[none]</p>	<p>The name is the same. The SEC does not know whether it's the same person.</p>	<p>Frank Depo 201:13-23</p>
<p>[referring to ¶ 4 of Whalen merchant declaration]</p> <p>What steps did the SEC take to verify this statement in the declaration?</p>	<p>Objection. Investigative privilege, deliberative process privilege, attorney work product, and attorney-client privilege, and Ms. Frank is instructed not to testify in response to that question</p>	<p>[none provided]</p>	<p>Frank Depo 230:19-231:5</p>
<p>[referring to ¶ 4 of Whalen merchant declaration]</p>	<p>[Repeated previously asserted objections: investigative privilege, attorney work, and attorney-client privilege]</p>	<p>[none provided]</p>	<p>Frank Depo 231:7-12</p>

<p>Did the SEC attempt to obtain documents to corroborate the statement of Mr. Whalen?</p>	<p>[Repeated previous instruction to the witness not to answer]</p>		
<p>[referring to ¶ 4 of Whalen merchant declaration]</p> <p>Did the SEC, knowing that Mr. Whalen was a merchant who owed Par Funding money and was engaged in a lawsuit with Par Funding, did the SEC attempt to in any way corroborate this information?</p>	<p>[Repeated previously asserted objections: investigative privilege, attorney work, and attorney-client privilege]</p> <p>[Repeated previous instruction to the witness not to answer]</p>	<p>[none provided]</p>	<p>Frank Depo 231:13-20</p>
<p>Does the SEC have any knowledge that there are any other false statements in the declarations that we've discussed today?</p>	<p>We object to the form of the question, and we would instruct the -- we disagree with the premise of the question and object to the form. We would instruct the witness not to answer for all of the prior privilege and scope – not scope, but all of the prior privilege reasons, including attorney work product and deliberative process privilege, which is raised here, and as to form as well</p>	<p>So I would give the same answer as not to testify in my personal capacity, and then also on the basis of work product. And by saying “work product,” I’m referring to my personal attorney work product and opinion product as well.</p>	<p>Frank Depo 262:12-263:10</p>

**Refusal To Acknowledge Any Documents Not Filed By The SEC**

Question	Objection	Testimony	Transcript
<p>Would you agree with me that this [Form D Filing] indicates that it was filed April 24, 2020, by Joseph Cole, as Chief Financial Officer on behalf of Complete Business Solutions?</p>	<p>[none]</p>	<p>We don't have any knowledge of that, but I see at the bottom of the page that you're showing right here, that it does have a date on it, and it does have a signature block with Joe Cole's name on it, and the title block says, "Chief Financial Officer."</p>	<p>Frank Depo 59:21-60:11</p>
<p>You would agree, would you not, that Mr. Rutledge was providing advice with respect to removing the finder's fees from the 2020 Form D filing, correct?</p>	<p>Objection as to form.</p>	<p>I would be guessing. All I can tell you is these documents speak for themselves.</p>	<p>Frank Depo 78:25-79:15</p>
<p>Well, I'm not asking you to guess. I'm asking you whether Mr. Rutledge is providing that advice in his email at Exhibit 6 at the very bottom where he says, "I suggest that CBSG file an amendment to its existing Form D to delete the finder fee information which appeared on the February 12, 2019 filing"</p>	<p>Objection. This has been asked and answered, so I believe it's harassing the witness at this point.</p>	<p>[none provided]</p>	<p>Frank Depo 79:17-80:1</p>
<p>You would agree with me that he was providing advice that that particular provision of the February 2019 Form D filing be deleted from the subsequent 2020 filing?</p>	<p>Objection. Calls for speculation. It's been asked and answered. Argumentative. We'll direct the client – or we'll direct the witness for the SEC not to answer this question. She's already answered it.</p>	<p>[none provided]</p>	<p>Frank Depo 80:3-12</p>
<p>In other words, Mr. Rutledge, who was counsel for CBSG, was providing advice to CBSG with respect to that 506(b) exemption in that 2020 filing, was he not?</p>	<p>Objection as to form.</p>	<p>I can't agree with you because I can't guess. I can see on this paper on the exhibit that you've shown me that it reads, "I suggest that CBSG file an amendment to its existing Form D" I see that word.</p>	<p>Frank Depo 80:14-81:13</p>
<p>[reading from exhibit 7]</p>	<p>Object to form.</p>	<p>So we have no personal knowledge of</p>	<p>Frank Depo</p>

<p>...</p> <p>So Mr. Rutledge, counsel for Par, has sent an email on April 14, 2020, providing a memo with respect to the Form D filing for April 2020, correct?</p>		<p>whether Mr. Rutledge sent this or not, so I can't – I can't answer that question.</p>	<p>81:19-12</p>
<p>Do you have any reason to doubt that this was sent?</p>	<p>Objection to form. We're going to direct the witness not to speculate about evidence that you're showing her on the screen.</p>	<p>I don't have any comment on whether I would doubt or not doubt something. I mean, I can't – I can't tell you anything about this document other than what I see.</p>	<p>Frank Depo 82:14-83:6</p>
<p>In other words, you have no evidence that would cause you to doubt that this email was sent by Phillip Rutledge to the individuals identified here on this date?</p>	<p>Objection as to form.</p>	<p>I have no personal knowledge as to whether he sent it.</p>	<p>Frank Depo 83:7-14</p>
<p>And that would be consistent with attachment that says, "April 14, 2020, memo to CBSG on Form D filing," correct?</p>	<p>[none]</p>	<p>I have no idea.</p>	<p>Frank Depo 84:11-14</p>
<p>He's saying that he's attaching a draft Form D filing, and there is a reference in the email to an attachment that says "Form D filing." You don't see a connection between those two things?</p>	<p>Asked and answered.</p>	<p>I have no way of knowing for sure.</p>	<p>Frank Depo 84:15-22</p>
<p>Mr. Rutledge is providing advice with respect to the process for filing this Form D to Joe Cole, is he not?</p>	<p>Objection as to form.</p>	<p>I have no personal knowledge.</p>	<p>Frank Depo 84:24-85:3</p>
<p>[reading from exhibit 8]</p> <p>So in this email, Mr. Rutledge is giving Mr. Cole directions how to fill out the form, the Form D filing, correct?</p>	<p>Objection as to form.</p>	<p>I can see the words that you've read, and I see them on the document, but I have no personal knowledge as to any characterization of what's going on here.</p>	<p>Frank Depo 85:22-86:4</p>
<p>So here, again, in exhibit 8, like in Exhibit 7, Phillip Rutledge, counsel for CBSG, is providing advice with respect to how to</p>	<p>[none]</p>	<p>I have no personal knowledge, no way to answer that question. The document says what it says.</p>	<p>Frank Depo 86:11-17</p>

<p>fill out this April 2020 Form D filing to Joe Cole, correct?</p>			
<p>And you're aware, from your involvement in preparing for today's deposition, that Fox Rothschild was one of the law firms that provided advice to Par Funding?</p>	<p>Objection as to form.</p>	<p>I don't have any personal knowledge of that.</p>	<p>Frank Depo 87:3-12</p>
<p>Well, again, I'm not asking for you to tell us, based on your review of the documents and whatever you did to prepare for today's deposition, that Fox Rothschild was among the law firms that provided advice to Par Funding in connection with the matters raised in the Amended Complaint.</p>	<p>Asked and answered.</p>	<p>I don't have personal knowledge of that, so I can't answer that question.</p>	<p>Frank Depo 87:14-24</p>
<p>All right. I just want to make clear. When you say "personal knowledge," I'm not asking for your personal knowledge. I'm asking for any evidence that the SEC has based on your review of what you described based on any conversations you had with others who may have personal knowledge.</p> <p>So it's not just your personal knowledge that I'm after. I'm after any evidence that the SEC has based on the work you've done to prepare as directed by that Notice of Deposition.</p>	<p>Objection to the extent you're seeking a legal opinion, it would be protected by attorney work product to the extent you're asking if the SEC views certain communications as providing legal advice.</p> <p>Otherwise, the witness can answer.</p>	<p>I don't have anything further to give as an answer.</p>	<p>Frank Depo 88:2-19</p>
<p>In this email, Joe Cole is receiving advice with respect to how to fill out Form D that was filed in April 2020 and another law firm is copied on this email.</p> <p>So he's receiving advice from two law firms with respect to this one filing, correct?</p>	<p>Objection as to form.</p>	<p>I do not want to speculate on whether or not this is advice, so I can't answer that question.</p>	<p>Frank Depo 88:23-89:4</p>
<p>[Referring to Frost underwriting</p>	<p>[none]</p>	<p>We have no personal knowledge of that.</p>	<p>Frank Depo</p>

<p>documents]</p> <p>So Mr. Frost has attested that he is providing as an applicant authority to have his financial information reviewed in connection with this application, including credit card statements and financial information.</p> <p>Do you see that?</p>		<p>I see the wording that you read to me is on this document.</p>	<p>129:16</p>
<p>[Referring to Frost underwriting documents]</p> <p>The wording as you described it in Exhibit 62, which is an application by Mr. Frost, includes his agreement that a background check be completed, correct?</p>	<p>Object to form.</p>	<p>I can't give you an opinion on that. The SEC does not have personal knowledge as to the meaning of those records on the document and signing of the document, so I can't give you an opinion as to the significance or the meaning of it.</p>	<p>Frank Depo 130:9-23</p>
<p>[Comparing Frost underwriting documents to Frost merchant declaration]</p> <p>Exhibit 62 is inconsistent with the statement he makes under oath in Paragraph 8 of Exhibit 24, is it not?</p>	<p>Object as to form, that it's seeking an opinion or asking the SEC to weigh any evidence. Instruct the witness not to answer to weigh evidence or provide any privilege. And I also believe that this is outside of the scope of the noticed deposition.</p>	<p>I can't give you an opinion on that.</p>	<p>Frank Depo 130:25-131:12</p>
<p>[Comparing Frost underwriting documents to Frost merchant declaration]</p> <p>Exhibit 62 is evidence that Mr. Frost was lying in his declaration at Paragraph 8; isn't that right?</p>	<p>Objection as to form. Seeking an opinion from the SEC, a legal opinion, and we will instruct the witness not to answer.</p>	<p>[none provided]</p>	<p>Frank Depo 131:14-19</p>
<p>[Comparing Carleton underwriting</p>	<p>Objection as to</p>	<p>The SEC has no personal knowledge of</p>	<p>Frank Depo</p>

<p>documents to Carleton merchant declaration]</p> <p>And so you see advances made to this company in those amounts, correct, on a weekly basis?</p>	<p>form.</p>	<p>that, and I couldn't give you an opinion of what that means.</p>	<p>139:19-25</p>
<p>[referring to Fleetwood Merchant Site Inspection Report]</p> <p>This is a Merchant Site Inspection Report, correct?</p>	<p>Objection as to form</p>	<p>The answer would be the SEC has no personal knowledge as to this document, but I can see from the document that at the top, it says "Merchant Site Inspection Report"</p>	<p>Frank Depo 212:23-213:4</p>
<p>[referring to Fleetwood Merchant Site Inspection Report]</p> <p>It indicates that the date of an inspection – date of inspection is January 5, 2017, right?</p>	<p>[none]</p>	<p>I see the words on the document. The SEC has no personal knowledge of whether there was an inspection the date of the inspection. I see the words on the document.</p>	<p>Frank Depo 214:4-14</p>
<p>[referring to Whalen Merchant Site Inspection Report]</p> <p>So this is a Merchant Site Inspection Report for Par Funding, right?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge as to what this document is, but it does state at the top "Merchant Site Inspection Report."</p>	<p>Frank Depo 222:21-223:1</p>
<p>[comparing Whalen Merchant Site Inspection Report to Whalen merchant declaration]</p> <p>So the contact person here, Sean Whalen, is the declarant in Exhibit 109, and the Flexogenix company in Los Angeles, California, is the company he says he owns in this declaration, right?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge of whether that statement you just made is correct. The names are the same on both documents.</p>	<p>Frank Depo 223:17-24</p>
<p>[referring to CBSG's bank statement showing wire transfer to Flexogenix Group, Inc.]</p> <p>So this is a bank statement for a bank account controlled by CBSG funding d/b/a Par Funding which indicates that a wire transfer went out to Flexogenix on November 22 in the amount of \$580,575?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge what this document is or what exactly these statements on it mean. So all I can tell you is what I see on the document . . .</p> <p>, but I do see that in addition to "TD Bank" and "Statement of Account," at the top, it also says, "Complete Business Solutions Group, Inc. d/b/a Par Funding."</p>	<p>Frank Depo 224:12-</p>

<p>[referring to Whalen underwriting documents]</p> <p>And so this is a date of the application, October 17, 2017, correct?</p>	<p>Objects as to form.</p>	<p>The SEC has no personal knowledge of the date of this application, but I can see at the botton, there is a date on the application, and it says, "10/17/17."</p>	<p>Frank Depo 233:16-2</p>
<p>[referring to CBSG's bank statement]</p> <p>This TD Bank Statement of Account indicates that Complete Business Solutions wired funds in the amount of \$580,575 to Flexogenix on November 27, doesn't it?</p>	<p>Objection as to form and scope as previously stated.</p>	<p>The SEC has no personal knowledge, so we can't tell you what it indicates. I can tell you that I see on the document wire transfer outgoing, Flexogenix Group, Inc., and a dollar amount.</p>	<p>Frank Depo 234:24-235:10</p>
<p>[referring to CBSG's bank statement showing date and amount of wire transfer to National Rx, Inc.]</p> <p>And so this account was funded on April 8, 2016, correct?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge of when the funding occurred, but I can just tell you again that I see those words, "Wire Transfer Outgoing, National Rx Inc.," and an amount on this document.</p>	<p>Frank Depo 240:23-241:6</p>
<p>[referring to Frost underwriting documents]</p> <p>I'm sorry, before we go to the next exhibit, you'll see that above Mr. Frost's signature -- name and signature, that there is a statement that indicates that he is an applicant. Do you see that?</p> <p>"The merchant and owner identified above individually, an applicant"?</p>	<p>[none]</p>	<p>I see the words that you just said on the document. The SEC has no personal knowledge as to what those words indicate.</p>	<p>Frank Depo 245:2-10</p>
<p>[referring to Frost underwriting documents]</p> <p>So this is an application signed by Chad Frost on behalf of Volunteer Pharmacy, correct?</p>	<p>Objection as to form.</p>	<p>The SEC has no personal knowledge as to what this document is or who signed it.</p>	<p>Frank Depo 245:15-19</p>
<p>[referring to CBSG's bank statement showing date and amount of wire transfer to Volunteer Pharmacy]</p> <p>So Exhibit 63 indicates that Complete Business Solutions wired out of its</p>	<p>Objection as to form. And to the extent it's asking for any opinion on the evidence, but objection as to</p>	<p>The SEC has no personal knowledge, so I can't say what this indicates. I can just say what the words are that are on it, which we've already gone over.</p>	<p>Frank Depo 246:17-247:3</p>

<p>Beneficial Bank account, on November 4, \$44,206 to Volunteer Pharmacy, right?</p>	<p>form.</p>		
<p>[comparing Frost underwriting documents and CBSG’s bank statements]</p> <p>So Exhibit 62 indicates that Chad Frost, on behalf of Volunteer Pharmacy, applied for a loan on March 18, 2013, and Exhibit 63 indicates that that loan was funded months later, on November 4, 2013 correct?</p>	<p>Objection as to form.</p>	<p>No, the SEC can’t – can’t testify as to what either of the documents intended. I don’t have personal knowledge of that, so I can just testify to what the documents state on their face, which I’ve already done.</p>	<p>Frank Depo 247:5-17</p>
<p>[comparing Foti underwriting documents and CBSG’s bank statement]</p> <p>Okay. So you have, in Exhibit 27, an application prepared by Mr. Foti on behalf of Sunrooms on August 26, 2019, and in Exhibit 28, you have an amount funded to Sunrooms nearly or more than three months later?</p>	<p>Objection as to form. And as previously stated, the SEC objects to any topics or questions asking the SEC to opine or weigh evidence. It’s attorney work product privilege, deliberative process privilege, and we instruct the witness not to weigh evidence on behalf of the SEC.</p>	<p>So the SEC has no personal knowledge and also can’t answer this because we might potentially be waiving privileges.</p>	<p>Frank Depo 250:21-251:10</p>
<p>[referring to CBSG’s bank statement showing date and amount of wire transfer to Fleetwood Services, LLC]</p> <p>So Complete Business Solutions, according to this document, wired out a hundred thousand dollars to Fleetwood Services, LLC, on January 9, 2017, right?</p>	<p>Objection as to form</p>	<p>The SEC has no personal knowledge of that. I can just speak to the words on the document. I do see, under “Description,” it says, “Wire – out” underneath that, it says, “Fleetwood Services, LLC,” and under “Debits,” it says “100,000.”</p>	<p>Frank Depo 257:11-21</p>

**Refusal To Answer in “Personal Capacity” Based on Unilateral Determination Question Was Outside the Scope of 30(b)(6) Depo Notice**

<p>[When asked any questions regarding the underwriting documents for merchant declarant, Mary Carleton]</p> <p>You’re instructing her to answer -- or your objection is that she will be answering in her personal capacity because its outside the scope in your opinion?</p> <p>...</p> <p>I just wanted to make clear that for a 30(b)(6) deposition, you don't have that right. You have to answer the questions. If you choose not to, that’s fine. We can move on.</p> <p>...</p> <p>I will note for the record that [in the Depo Notice], we asked for the specific facts, information, documents, and other evidence, to summarize, that the SEC has to support its Complaint with respect to – the very first subsection is CBSG’s underwriting practices.</p> <p>I’ve heard your position that these are outside the scope. These relate to underwriting. You can continue to object as you see fit.</p>	<p>And I’m going to just object to the extent I believe I gave a little leeway, to see if this was going to come back to one of the topics that was noticed for today. It doesn’t.</p> <p>And so Ms. Frank can testify about matters not in the notice in her personal capacity, but not on behalf of the SEC.</p> <p>...</p> <p>I believe that this line of questioning is outside of the scope of the deposition notice. So the SEC will not be testifying about certain matters that are outside of the scope. Right now, we’re on one of them.</p> <p>And therefore, if the witness, nonetheless, wants to testify in her personal capacity, she may do so, but the SEC, which is who I represent, we object on grounds it’s outside of the scope.</p> <p>...</p> <p>I am instructing the witness not to testify as the SEC designee about this matter because -- this issue because it’s outside the scope of the notice.</p> <p>Ms. Frank has not been noticed in her personal capacity today to testify, and the SEC’s objection is that it’s outside of the scope, and, therefore, we’re directing the witness not o testify about this document.</p> <p>...</p> <p>Ms. Frank wasn’t noticed today for a deposition in her personal capacity. I don’t represent Ms. Frank in her personal capacity, so I cannot give her personally any legal advice. . . but today’s notice is of the SEC proper, not Ms. Frank in her individual capacity, and we’ve made our objection clear. We’ve given the</p>	<p>So I am not going to testify regarding this document in my personal capacity since it’s outside of the scope of the 30(b)(6)</p> <p>...</p> <p>I’m not going to testify about this document because I do not want to be testifying in my personal capacity.</p> <p>...</p> <p>I’m not going to answer in my personal capacity because I was not noticed in my personal capacity. I thought that I was here in my 30(b)(6) capacity for the Commission. I don’t have my own counsel. I don’t want to be my own counsel, although in this situation, I’m stuck with that for the moment, and so I’m advising myself not to answer in my personal capacity, so I’m sorry that I can’t do that.</p> <p>...</p> <p>I’m not going to answer.</p> <p>...</p> <p>I decline to answer in my personal capacity.</p> <p>...</p> <p>I’m not going to answer in my personal capacity, and from here on, I'll just say “same answer.”</p> <p>["same answer” or refusal to testify in a “personal capacity” as to the Carleton merchant underwriting documents asserted 6 additional times]</p>	<p>Frank Depo 141:18-158:18</p>
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	<p>instruction to the witness, and I believe that that's all.</p> <p>It's a new exhibit, so I'm going to make the same objection, that this is outside of the scope of the topics noticed for today. The SEC, we're instructing the witness not to testify about any questions concerning this document, and that's it. We're instructing the witness not to testify.</p> <p>...</p> <p>Ms. Frank isn't represented by counsel, and you're now converting this into a deposition of her in her personal capacity. So, Ms. Frank will not be answering any questions today in her personal capacity, she's not represented by counsel, and the SEC will not be permitting her to answer any questions that weren't noticed.</p> <p>...</p> <p>So we will not be responding in any way to those types of questions, and to the extent you're now seeking to convert this into a deposition of Ms. Frank personally, Ms. Frank will not be answering. My understanding from Ms. Frank is she will not be answering any questions today in her personal capacity. It's not a noticed deposition.</p> <p>...</p> <p>I'm sorry, I have to object. We have a standing objection, so that I don't have to keep repeating it, that the SEC believes this is outside -- this line of questioning is outside the scope, and we would object to it and instruct her not to answer. If she wishes to do so in her personal capacity, she may.</p>		
<p>[When asked any questions regarding the underwriting documents for merchant declarant Joseph Pucci]</p>	<p>Since this is a new exhibit, I'm going to state my standing objection to it, that this is outside of the scope of the topics that were noticed, and so we object to this line of questioning and instruct the witness not to</p>	<p>I'm going to decline to answer in my personal capacity and just say "same answer" going forward.</p> <p>["same answer" or refusal to testify in a personal capacity as to the</p>	<p>Frank Depo 158:19-174:8</p>

	<p>answer on behalf of the Securities and Exchange Commission.</p> <p>...</p> <p>So we have the same objection that it's outside of the scope of today's deposition, and we would instruct the witness not to testify on behalf of the SEC as to the Defendants' evidence or to weigh or opine on any evidence on behalf of the SEC.</p> <p>Any questions asked of the witness concerning the documents presented today that weren't within the topic noticed, we would direct the witness not to answer on behalf of the SEC and a separate objection to the extent you're asking the witness to weigh or opine on evidence or give a legal opinion, that that would be attorney work product.</p>	<p>Pucci merchant underwriting documents asserted 32 additional times]</p>	
<p>[When asked any questions regarding the underwriting documents for merchant declarant, Sean Whalen]</p>	<p>I'm so sorry. I object. This is outside of the scope of the topics noticed, and we'll have a standing objection that the witness cannot testify on behalf of the SEC as to this. And, also, we will object as to any questions asking the witness to weigh evidence for the Defendants or provide a legal opinion on attorney work product grounds, and we will instruct the witness not to answer.</p> <p>...</p> <p>The SEC objects to questions – you're showing the witness a series of documents the defense has provided in a motion recently filed that has nothing to do with any of the topics and is improperly attempting to get the SEC to engage in some sort of evidence weighing with the defense in support of that motion the defense filed.</p> <p>It's outside of the topic, and for all of these questions, we will make the same objection. It's outside of the</p>	<p>[refusal to testify in a personal capacity as to the Whalen merchant underwriting documents asserted 34 times]</p>	<p>Frank Depo - 187:25- 191:11;  226:8-19;  232:13-233:5;  and  234:24- 236:19.</p>

	<p>scope, and you've been made aware that the witness will neither testify in her individual capacity or her capacity as the SEC representative to any of these questions based on our instruction not to testify on behalf of the SEC, and the witness has also -- and because it's attorney work product when you're asking her to weigh in or opine, and the witness has also advised you under oath that she's not going to testify in her individual capacity.</p>		
<p>[When asked about the underwriting documents and merchant declarations generally]</p> <p>And all of these declarants own companies who either owed Par Funding money or had been sued by Par Funding when they made these declarations, correct?</p>		<p>[refusal to testify in a personal capacity as to the merchant declarations or knowledge of the SEC before filing the Complaint was filed asserted 4 times]</p>	<p>Frank Depo 191:12-195:10</p>
<p>[When asked any questions regarding the declarant Frost merchant underwriting documents]</p> <p>And I want to make clear that I'm not agreeing that either of these questions are outside the scope, nor am I agreeing that you would be left to testify in your individual capacity, but I am just accepting your noted refusal to answer the question on that basis through the phrase "Same answer."</p>	<p>This does fall into the standing objection, it's not part of what was noticed for today, but is instead just further effort to obtain discovery concerning the motion filed last week. The SEC will instruct the witness not to testify on behalf of the SEC regarding this same line of questioning it appears we're on.</p> <p>And to the extent the witness is asked to weigh any evidence, we object on a work product grounds. And for all questions asking the witness if the screen says certain words, we stipulate that the documents say what they say, that the words on the document appear on the document, and that's just evidenced by the evidence itself.</p>	<p>[refusal to testify in a personal capacity as to the Frost merchant underwriting documents asserted 10 times]</p>	<p>Frank Depo 197:15-208:6;  and  247:21-248:13</p>

<p>[When asked any questions regarding the declarant Fleetwood merchant underwriting documents]</p> <p>I disagree with your assessment. We asked you to designate a representative for the SEC. You chose to designate Ms. Frank, who is an attorney, and you are now indicating that because she's an attorney, she's going to be asserting attorney-client privilege. That's your choice.</p> <p>...</p> <p>I just want to state for the record that I'm not asking, and have not mentioned, the motion you're referring to. I'm asking about documents and evidence supporting the allegation in the Complaint regarding underwriting, which was noticed, and the fact that there's a motion pending having to do with a fact at issue in the Complaint is both irrelevant to my questions and not surprising because litigation often involves the matters raised in a Complaint.</p> <p>So I don't want you to be confused that I'm asking these questions for any purpose other than the topics noticed in the deposition notice, but I heard your objections, and they're obviously noted for the record.</p>	<p>Mr. Soto, I want to note for the record, so it's clear, Ms. Frank, as you know, is an attorney. When she's testifying in her personal capacity and raising privilege issues where you're asking for legal opinions, I believe that she is asserting her own privilege as attorney -- her own attorney opinion product and attorney work product on the questions you're asking, and I just wanted to make sure that you were aware of that. Because you keep asking those types of questions, and the way she's asserting, I just wanted to make sure you're aware of what she's asserting as just a courtesy to let you know in case you wanted to address that.</p> <p>...</p> <p>We object on the same grounds of scope and privilege and form, and we direct the witness not to answer on behalf of the SEC. The SEC's legal positions about all of these issues will be reflected in our response to the Defendants' motion that you're asking about. And at this time, we instruct -- we continue to instruct the witness not to testify for the reasons I've just stated.</p>	<p>[refusal to testify in a personal capacity as to the Fleetwood merchant underwriting documents asserted 4 times]</p>	<p>Frank Depo 211:5-218:21;</p> <p>and</p> <p>258:6-24-260:10</p>
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