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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
Tuesday, August 3, 2021

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

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GROUP, INC. D/B/A PAR)	
FUNDING ET AL.,)	
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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.

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14 ALSO PRESENT:

15

16 Perry Abbonizio

17

18 Dean Vagnozzi

19

20 Perry Abbonizio

21

22 Michael Furman

23

24 M. Victoria Pantin, Paralegal

25

26 Cherly Lucien, Esquire

27

28 Joseph Cole

29

30 George Bochetto, 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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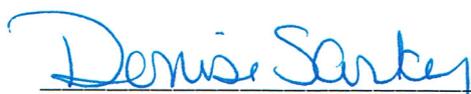
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CERTIFICATE OF OATH

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