

## **The August 4th Prophecy: How Par Funding Defense Counsel Predicted the SEC's Six-Year Trail of Chaos**

It has been nearly six years since the government seized Par Funding, and the billing by the court-appointed Receiver continues to this day. But if you want to know how a thriving, highly compliant business was dismantled, you do not have to look at the last six years. You only have to look at the Joint Memorandum filed by the defense on August 4, 2020. **(Only 7 days after the SEC's unwarranted raid)**

In that document, the defense laid out exactly what was happening: an unjustified heist of a perfectly sound company, executed without due process, without discovery, and without a single question asked of the experts who ran the business.

Here is the documented proof of how an overzealous agency destroyed a company to "save" it.

### **The Myth of the "Rogue" Operation**

The government paints a picture of a lawless enterprise, but the August 4, 2020, filing proves the exact opposite. Par Funding was a sophisticated operation guided by some of the most prestigious legal and financial minds in the United States.

According to the memorandum, the company *"has always strived for compliance and utilized excellent counsel"*. Consider the timeline of legal oversight detailed on Pages 3 through 5 of the filing:

- 2014: The law firm Offit Kurman produced the initial promissory notes and issued an opinion letter on the legality of the funding business under Pennsylvania law.
- 2016: DLA Piper, a global law firm, reviewed and edited the notes, adding explicit language clarifying they were debt instruments, not securities. Which puts in questions that the SEC even had jurisdiction over Par Funding.
- 2017 to 2020: The company retained Philip Rutledge, a nationally renowned securities regulation expert. Under his guidance, the company filed public disclosure documents with the SEC and state blue sky filings.
- 2020: The company engaged Fox Rothschild LLP to manage complex litigation and Haynes Boone—utilizing lawyers with substantial SEC experience—to oversee regulatory issues in Texas.
- Audits: Top-tier accounting firms, including Clifton Larson Allen and Friedman LLP, performed GAAP audits in 2017, 2018, 2019, and completed their latest audit just days before the SEC takeover in July 2020.

**(Exhibit: Deposition Transcript of Brett Berman, Esquire Fox Rothschild for Par Funding called by Plaintiff Amie Berlin for the SEC on June 8, 2021- Pgs.230-232)**

22 BY MR. FUTERFAS:

23 Q. Understood. Okay. Okay. And did you  
24 have a sense of how many employees you saw at these  
25 offices, whether it was 50, 70, a hundred, more than

230

**GRADILLAS COURT REPORTERS  
(424) 239-2800**

1 a hundred, just what your sense was?

2 MS. BERLIN: Objection. Relevance  
3 grounds. Outside of the scope of direct.

4 THE WITNESS: There were well in excess of  
5 a hundred employees, and they were all broken up by  
6 various departments. So you would look down at the  
7 floor for the underwriting team, and it was a series  
8 of open office space with 20, 30 people who would be  
9 processing deals, looking at, you know, files,  
10 looking at bank account statements, doing  
11 investigation on each of the merchants.

12 You then had the collection area with a  
13 similar type setup with a team of -- to me it looked  
14 like 20 people who were on their phone talking.  
15 Anthony Ronn Fazio and Tim were walking around  
16 dealing with each of them. They would intercede in

17 calls.

18           Then you had the Wendy Furman people who  
19 were doing deal documentation. It was a very broken  
20 up but organized, highly organized situation.

21           I actually remember the first time I went  
22 there, and it was shocking because it was so high  
23 tech and so fast moving and so many people  
24 collaborating on origination, collection, deal work,  
25 finance that I actually didn't -- I remember my

231

**GRADILLAS COURT REPORTERS**  
**(424) 239-2800**

1 initial reaction was I shocked this was in the City  
2 of Philadelphia given that I'm a Philly guy.

3 BY MR. FUTERFAS:

4           Q. So you observed a fully operational  
5 ongoing company employing over a hundred individuals  
6 as of 2020; is that correct?

7           MS. BERLIN: Objection. Relevance and  
8 outside of the scope of direct.

9           THE WITNESS: I 100 percent observed that,  
10 and it was actually a sight to be seen.

11           MR. FUTERFAS: I have no further  
12 questions.

This was not a fly-by-night operation. It was a heavily vetted, legally compliant financial institution. Yet the SEC ignored this entirely. Not only did they ignore it – they never asked prior to sending swarms of FBI agents to offices and homes. Instead, they chose a draconian raid as opposed to a subpoena seeking information which every bank and institution in America being investigated receives. Had they subpoenaed Par Funding their teams of professionals and attorneys would have been able to answer any inquiry requested.

To understand the sheer absurdity of the SEC's takeover, you must look at the company's balance sheet on July 28, 2020, the day before the Receiver took over.

As stated on Pages 9 and 10 of the filing, the company was incredibly healthy:

-Cash on hand was \$18 million.

-Fixed receivables from merchants totaled \$413 million.

-Retained earnings had grown from approximately \$85 million to \$104 million prior to the COVID-19 crisis.

*"Pre and Post-Covid 19, there is zero default on principal payments to an investor".*

Imagine the bank foreclosing on your home when you have never missed a payment and you are sitting on \$100 million in equity. That is exactly what the SEC did. Par Funding had over \$100 million in retained equity and zero investor defaults for eight years. When COVID-19 hit, they acted like smart businesspeople: they restructured notes to protect the company and its investors. They capitalized on a crisis to ensure survival and profitability, just like every other major corporation in the world.

### **The Swift and Calculated Destruction**

The SEC claimed this takeover was for the protection of the investors. The reality, as predicted by the defense, was immediate devastation.

The defense warned on Page 7 that the SEC's actions were *"ruining a business with excellent fundamentals and a strong financial base and essentially putting it into an ineffective liquidation causing huge financial losses"*.

They were right. In just the first seven days under the Receiver's control, the damage was catastrophic. The filing points out on Page 11 that by locking out the employees who understood the complex daily ACH draws, *"the total loss in ACH payments is approximately \$6,592,991.59"*. **Nearly \$6.6 million vaporized in a single week because the government handed the keys to a Receiver who had no idea how to run the business!**

The destruction did not stop there. The SEC ordered the Receiver to terminate Fox Rothschild, the very law firm actively collecting the funds needed to repay investors. They expelled employees, changed the locks, and shut down Full Spectrum Processing (FSP), which managed

technology and collections not just for Par Funding, but for completely unrelated businesses like solar companies and property management firms.

These were not just numbers on a spreadsheet; they were real people, thrown out of work in the middle of a pandemic. Prior to the SEC's takeover, management—including LaForte and McElhone—had refused to lay off a single person during the height of COVID-19 out of loyalty and love for their staff, to whom they were incredibly close. The SEC's callous actions broke their hearts and shattered those families' livelihoods.

### **A Tragic, Six-Year "I Told You So"**

The defense concluded their 2020 memorandum with a stark warning on Page 13:

*"The SEC - not the Defendants - are creating hundreds of millions of dollars in potential liability and losses to large and small investors."*

Today, six years later, that warning reads like a tragic premonition. The business is gone. The assets were pillaged. The professionals keep billing. And what was the result of the August 2020 motion itself? Unsurprisingly, Judge Rodolfo Ruiz denied it. Throughout the course of this ordeal, Judge Ruiz never once ruled in the defense's favor, thoroughly poisoned by the lies spun by the SEC and the Receiver. The defense counsel told the court exactly what would happen on August 4, 2020, but justice was blind in the worst conceivable way—and the record proves that the defendants and their counsel were right.