

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-cv-81205-REINHART

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR
ENLARGEMENT OF TIME TO FILE JOINT DISCOVERY MEMORANDUM

Plaintiff Securities and Exchange Commission seeks an enlargement of time until noon today to submit the Joint Discovery Memorandum concerning Defendant Joseph LaForte's challenges regarding deposition objections. In support, the Commission states as follows:

1. A discovery hearing is scheduled for September 10, 2021 at 3:00pm.
2. The Standing Discovery Order requires the filing of a Joint Memorandum 48 hours in advance of the hearing, and thus by 3pm on September 8.
3. Undersigned received the draft Memorandum from defense counsel near the close of business on Tuesday, September 7, and was in a deposition the Defendants conducted in this case until about 7:30pm last night.
4. After learning of the 36 specific objections at issue, the Commission sent Mr. LaForte's counsel sworn answers by the witness to 32 of them to resolve these matters without the need for litigation and agreed that when the deposition continues (Defendants did not conclude the deposition at issue), then we will have no objection if they confirm or inquire about these answers

on the record (Exhibit A). Thus we believe the issues are significantly narrowed for tomorrow's hearing on the objection issues.

5. LaForte's counsel submitted an untimely unilateral "Joint Memorandum" at about 11pm last night that has a blank space for the Commission's position.

6. The Commission believes that submitting a Joint Memorandum that includes both parties' positions will aid the Court in addressing the matters during the September 10 hearing.

7. Accordingly, the Commission respectfully requests until noon today to submit a Joint Memorandum to Chambers.

CONFERRAL

Undersigned did not confer with LaForte's counsel because they have provided their position to Chambers, indicating they would not oppose filing a Joint Memorandum with both parties' positions today.¹

September 9, 2021

Respectfully submitted,

By: s/ Amie Riggle Berlin
Amie Riggle Berlin
Senior Trial Counsel
Florida Bar No. 630020
Direct Dial: (305) 982-6322
Email: berlina@sec.gov
Attorney for Plaintiff

**SECURITIES AND EXCHANGE
COMMISSION**

801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

¹ "Of course, the Defendant would not object to the SEC supplementally [sic] providing its argument portion sometime tomorrow. Further, once Ms. Berlin has had a chance to submit it, the parties will incorporate the SEC's portion into the Joint Memorandum and shall file the finalized version in accordance with the Rules of Federal Procedure." Sept. 9 email from counsel to Chambers.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 9th day of September 2021 via cm-ecf on all defense counsel in this case.

s/ Amie Riggle Berlin
Amie Riggle Berlin



MIAMI
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
801 BRICKELL AVENUE, SUITE 1950
MIAMI, FLORIDA 33131

DIVISION OF ENFORCEMENT

AMIE RIGGLE BERLIN
SENIOR TRIAL COUNSEL
DIRECT DIAL: (305) 982-6322
EMAIL: BERLINA@SEC.GOV

September 7, 2021

Joshua R. Levine, Esq.
Kopelowitz Ostrow Ferguson Weiselberg Gilbert
One West Las Olas Boulevard, Suite 500
Fort Lauderdale, FL 33301

Re: SEC v. Complete Business Solutions Group, et al., 20-81205 (SD Fla)

Dear Josh:

I am writing about the discovery dispute concerning certain objections made during the August 3, 2021 deposition of the Securities and Exchange Commission's Rule 30(b)(6) witness. You conferred with undersigned and SEC paralegal staff concerning your challenges to 32 objections (Exhibit B). Of these objections, 31 of them are to questions asking the witness whether she sees certain words on a deposition exhibit, or whether an exhibit shows certain information. These exhibits were all withheld from the Defendants' document productions and were not relevant to any topic noticed in the deposition. During the deposition, the SEC stipulated that the words written on any exhibits do in fact appear on exhibits, but objected to the questions concerning these specific matters because, among other reasons, they are beyond the scope of the deposition notice (August 3, 2021 Transcript at 183:17-184:19).

You have now scheduled a hearing before Magistrate Judge Reinhart to compel the witness to answer these questions. To resolve this matter without the need for litigation and without waiving any arguments or agreeing to any positions beyond attempting in good faith to resolve an issue, the SEC witness has answered these 31 questions, indicating that the words do appear on the exhibit, and has also answered an additional question on your list of questions in dispute. This provides the same information as the stipulation discussed above that the SEC made during the deposition. These sworn answers are attached as Exhibit B. Please let me know whether this does not resolve the objection challenges. Of course, we would have no objection if you wish to question the witness when the deposition resumes, to confirm these answers with her on the record. As to these and any other questions about whether or not words appear on an



exhibit, we repeat the stipulation we made previously –namely, that words that appear on exhibits do in fact appear on exhibits.

Last month undersigned provided dates, as requested, for the continuation of this deposition. However, we have not received any response. Please advise whether or not you intend to continue and conclude this deposition.

Sincerely,

s/Amie Riggle Berlin
Amie Riggle Berlin
Senior Trial Counsel

From: [Alexis Fields](#)
To: [Berlin, Amie R.](#)
Cc: [Joshua R. Levine](#); [Landau, Lalaine](#); [Jacqmein, Victoria](#); [Karla Nunez](#)
Subject: RE: SEC v CBSG
Date: Saturday, August 28, 2021 10:31:39 AM
Attachments: [image870230.png](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ms. Berlin!

No worries, I was not in any way seeking your confirmation- tacit or otherwise- of what transpired, nor was I trying to lodge any personal attacks. My goal was simply to advise you of the position we will be taking with the Court. It is my preferred style of litigation to be transparent with my arguments and never ambush or “hide the ball” from opposing counsel. If you do not feel compelled to respond to the substance of my email that is your prerogative.

Notwithstanding, I believe our meet-and-confer obligations have been satisfied and I will not iterate the reasons as set forth in my earlier email. To that end, we are going to be requesting a hearing from the Magistrate-Judge pursuant to his local procedures. I have conferred with the other Defendants, and we are prepared to offer as available hearing dates:

Monday August 30 – anytime after one
Tuesday August 31 – all day
Wednesday September 1 – anytime after one
Thursday September 2 – all day
Friday September 3 – anytime before three

Please select two dates and times that work with your schedule so that we may move forward.

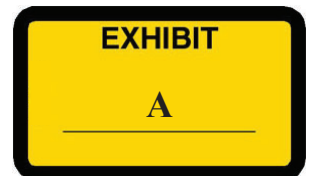
Stay well,
alexis

Alexis Fields

Direct: 954-862-8580



KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT



From: Berlin, Amie R. <BerlinA@sec.gov>

Sent: Friday, August 27, 2021 9:14 PM

To: Alexis Fields <fields@kolawyers.com>

Cc: Joshua R. Levine <levine@kolawyers.com>; Landau, Lalaine <LandauL@SEC.GOV>; Jacqmein, Victoria <JacqmeinV@SEC.GOV>

Subject: SEC v CBSG

Ms. Fields,

Thank you for your message. I disagree with your contentions of what has transpired; however, I do not respond to false statements, personal attacks, or self-serving comments. Please do not interpret or represent my refusal to respond to such statements in your message as any agreement with what you wrote. Rather, please understand that I will not engage in personal attacks or respond to matters outside of the legal and procedural matters at issue.

As to the legal and procedural matter at issue, it is my understanding that the only matter at issue is your challenge to various objections made during the Rule 30(b)(6) deposition. If that is incorrect, please let me know.

As for those objections, we previously asked that your colleagues provide us with the specific objections at issue so we can review them and confer. Mr. Levine insisted that this and any conferral are only permitted verbally under the discovery order; he provided the list of objections to us today by telephone.

As we advised you during that call today, we will promptly review the objections you take issue with and will provide a position or confer more fully so that we can resolve any issues without the need for litigation.

Based on our call this afternoon, we understand the issues are the objections at the following page and line numbers, based on your position that (1) the questions seek information within the scope of the deposition notice; and (2) even if they aren't within the scope, instructing a witness not to answer on behalf of the SEC is improper.

131:11

131:17-20

131:23-25

132:3-10

132:12

133:6-16

140:4-14

141:12

141:20

All of page 142

143:1

143:18

145:1

146:14-147:2

148:4

148:8

148:21

All of page 149

150:6-25
151:4
151:20
152:3
153:7
All of page 154
All of pages 156-157
158:4
159:23
All of page 160
161:3-23
162:3
163:10

Additionally, Mr. Levine advised he believes the following objections are improper witness coaching:

144:7
All of pages 144-145

Please advise if there are any other objections about which you would like to confer.

On Monday I will review the objections you identified today and set forth above and will be in a position to provide you with our position as to each objection challenge by Tuesday afternoon. If you wish to confer verbally again or to discuss this or any other legal or procedural issue in this case, please just let me know that and we will of course do that.

Thank you,
Amie Riggle Berlin

On Aug 27, 2021, at 3:27 PM, Alexis Fields <fields@kolawyers.com> wrote:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Berlin,

You hung up the phone before Mr. Levine finished explaining our position to you. We are going to be seeking relief including sanctions due to your conduct and the deponents' conduct during the two SEC representative 30(b)(6) depositions, including but not necessarily limited to: improper interruptions, improper speaking objections, objections that questions were outside the scope when it was well within the scope of the topic designation notice, witness coaching, improper instructions not to answer, and improper testimony.

Originally, you were scheduled for a meet and confer telephone conversation

yesterday with Mr. Levine, which you blew off, only emailing an hour after the scheduled call that you could do it the following day. Today, you were 10 minutes late for the scheduled half hour meet-and-confer teleconference, and further held up the discussion for an additional 10 minutes waiting for someone from your office to join as a witness, so it did not begin until approximately 1:20. You attempted to get the meet and confer started without your witness by seeking our consent to record the call so we could not misrepresent anything that occurred on the call. We agreed as long as you would provide us with a copy of the recording, but you refused, likening it to production of attorney notes, a false analogy. You then attempted to argue that you would not proceed with the meet and confer because I am an attorney at the same firm as Mr. Levine and Mr. Ferguson, and you did not believe I had filed a formal notice of appearance. You indicated my presence was somehow improper, making veiled accusations, stating that "it is between you and the Bar." But shortly, your witness, a paralegal from the SEC, got on the call, and the call proceeded.

It is objectively clear from the transcript that you and the SEC witnesses obstructed the 30(b)(6) depositions, with instructions and refusals to answer every single substantive question. When we attempted to carry out our meet-and-confer obligations, rather than discuss the legitimacy of the objections or the SEC's failure to provide meaningful testimony, you insisted that Mr. Levine go line by line through the deposition transcript of every single objection you lodged as you took notes. This was in light of the fact that you made many of the same objections throughout the deposition, such as instructing the witness not to answer on the basis that a question was outside the scope of the 30(b)(6) notice, and served no purpose but to delay and keep us from concluding the meet and confer today. You also demanded "all case law or authority" we had that supported our position regarding the impropriety of the instructions not to answer, witness coaching, assertion of blanket objections, and refusals or inability to answer questions at the deposition.

Mr. Levine attempted to comply with these unreasonable demands and was willing to spend the time with you going line by line, but at 2 o'clock- despite his willingness to go forward- you ended the call, refusing to advise your position as to the issues he had gotten to. Moreover, despite the deposition transcripts explicitly indicating that the issues we are trying to confer with you about now (before seeking relief from the Court) were raised at the deposition, you took the position that this "is the first time" you are being confronted with our argument. Again, this is not accurate, as Mr. Soto sent you an email on August 15, 2021, highlighting our multiple concerns.

The close of discovery deadline is approaching. We have no choice but to interpret your technical but purely ostentatious participation in the meet-and-confer obligations as a refusal to cooperate in good faith. We will be advising the Court of the same and shall proceed with our intended motions.

Have a great weekend,

alexis

P.S. I trust that you have seen the notice of appearance I have filed since our phone conversation, just in case I had not previously formally appeared on behalf of my client. I also made sure to reply from an email sent by you to Judge Ruiz on August 15, 2021, wherein I was CC-ed. I believe this helps demonstrate that despite my passive involvement up until this point, you and the SEC have understood me to have enough of a role in the case to warrant including me on correspondence.

— **Alexis Fields**

Board Certified in Appellate Practice and Civil Trial

KOPELOWITZ OSTROW

FERGUSON WEISELBERG GILBERT

One West Las Olas Blvd, Suite 500

Fort Lauderdale, Florida 33301

Main: 954-525-4100 • **Direct:** 954-862-8580

Fax: 954-525-4300 • **Web:** <http://www.kolawyers.com>

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In accordance with Internal Revenue Service Circular 230, we advise you that unless otherwise stated, any discussion of a federal tax issue in this communication or in any attachment is not intended to be used, and it cannot be used, for the purpose of avoiding federal tax penalties.

From: Berlin, Amie R. <BerlinA@sec.gov>

Sent: Sunday, August 15, 2021 12:32 AM

To: ruiz@flsd.uscourts.gov

Cc: dan.small@hklaw.com; aida.guerrero@hklaw.com;

Christopher.laquinto@hklaw.com; Allison.Kernisky@hklaw.com;

angel.barber@hklaw.com; Chad.vanderhoef@hklaw.com; brian.miller@akerman.com;

kelly.connolly@akerman.com; kim.stathopoulos@akerman.com;

alejandropaz@akerman.com; drashbaum@mnrlawfirm.com;

mordenes@mnrlawfirm.com; jmarcus@mnrlawfirm.com; kmeyers@mnrlawfirm.com;

jmay@mnrlawfirm.com; jhirschhorn@gray-robinson.com; andrew.sarangoulis@gray-robinson.com;

anita.abrams@gray-robinson.com; asfuterfas@futerfaslaw.com;

dfridman@ffslawfirm.com; vpantin@ffslawfirm.com; bschein@bettinascheinlaw.com;

arlaw@raikhelsonlaw.com; Seth D. Haimovitch <haimovitch@kolawyers.com>; Karla

Nunez <nunez@kolawyers.com>; Alexis Fields <fields@kolawyers.com>; Joshua R.

Levine <levine@kolawyers.com>; David L. Ferguson <ferguson@kolawyers.com>; Karla

Nunez <nunez@kolawyers.com>; gja@pietragallo.com; Douglas K. Rosenblum

<dkr@pietragallo.com>; Alejandro Soto <asoto@ffslawfirm.com>; Michael Bachner

<mb@bhllawfirm.com>; mikecfurman@gmail.com; 'Timothy Kolaya'

<tkolaya@sflaw.com>

Subject: RE: 20-cv-81205-RAR Proposed Order

Dear Judge Ruiz:

Attached for the Court's consideration is a Proposed Order on the Securities and Exchange Commission's Motion for Leave to File Under Seal the Exhibits to the filing at DE 692. A courtesy copy of the Motion [DE 693] is attached for the Court's convenience. Thank you for your attention to this matter.

Respectfully submitted,

Amie Riggle Berlin
Senior Trial Counsel
Securities and Exchange Commission

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

_____/

DECLARATION OF ELISHA FRANK

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Elisha Frank. I am over twenty-one years of age.
2. I hereby declare under penalty of perjury that the answers to the below questions are true and correct, and hereby answer these questions as the designated representative of the Securities and Exchange Commission as if still under oath in the August 3, 2021 Rule 30(b)(6) deposition.

Q. And, Ms. Frank, this merchant declaration provided by Mr. Frost was relied upon by the SEC in its Complaint, correct? 132:3-10

A. Yes, the testimony in this declaration is evidence the Commission references in its Complaint.

Questions Regarding Whether The Witness Sees Certain Words On Deposition Exhibit 102

Q. Okay. Let's go to Exhibit 102. All right. Do you see that this is a Credit Profile Report? 140:1-5

A. I cannot authenticate this exhibit, but I see the words "Credit Profile Report" on it.

Q. So do you see that it says "Credit Profile Report" at the top of Exhibit 102? 140:21-22.

A. Yes.

Q. So do you see that this Credit Profile Report identifies Mary Carleton in Houston, Texas, in the top left-hand corner? 141:9-11

A. I see those words on the exhibit where you are indicating.

Q. Do you see that in the top right-hand corner, it identifies CapJet in Houston, Texas? 141:18-19.

A. I see those words on the exhibit.

Q. Okay. So this being Exhibit 102, now that that's clear, Ms. Frank, do you see that this Credit Profile Report identifies Mary Carleton in Houston, Texas? 142:22-25.

A. Yes, I see those words on Exhibit 102.

EXHIBIT

B

Q. So, Ms. Frank, you've been instructed not to testify in your capacity as the SEC designee. I disagree with the objection, I'm not going to debate it now, but I've asked you: This is a Credit Profile Report that identifies Ms. Carleton in Houston, Texas, correct? 143:18-23.

A. The SEC cannot authenticate this exhibit, but I agree that I see a title on the exhibit that reads "Credit Profile Report" and that I see the words "Mary Carleton" and "Houston, Texas" on the exhibit.

Q. So, this will be the fourth time I ask you to identify this document, a Credit Profile Report where Mary Carleton is in the top left-hand corner in Houston, Texas. Your answer? 145:1-5.

A. The SEC cannot authenticate this exhibit, but I agree that I see a title on the exhibit that reads "Credit Profile Report" and that I see the words "Mary Carleton" and "Houston, Texas" on the exhibit.

Q. So scroll down on Exhibit 102, please. So within this exhibit, do you see that there are various companies identified in the left-hand column, including "PHH Mortgage Services," under that Chase Card -- under that Chase Card again --Don't scroll down any further.-- and the columns above indicate "Monthly Payment Amounts," to the column to the right of that, "Past Due Amounts" and whether -- and to the right of that, whether the accounts are closed. Do you see that? 146:13-24.

A. I see the words "PHH Mortgage Services and "Chase Card." I see the words "Month Pay" and "Past Due" and "Closed."

Q. Okay. And so this Exhibit 102 is an exhibit that shows amounts that CapJet owes in connection with these identified entities, PHH Mortgage Services, Chase Card, and the others, and specifies the amounts owed and the status of their relationship, correct? 147:7-12.

A. I do not know that from looking at this exhibit. I do not know from looking at this exhibit whether it states information about or amounts owed by Mary Carleton or CapJet,

Q. And these would be expenses, would they not, with respect to CapJet? 147:18-19.

A. I do not know that from looking at this exhibit.

Q. Okay. A payment owed to a mortgage company would be an expense, would it not? 148:2-3.

A. No.

Q. An amount owed to a credit card company would be an expense, correct? 148:9-10

A. No.

Q. And you'll see that there are other entities here, including Amegy Bank of Texas, Chase Card, LensCrafters, AMEX, Chase Auto, and similarly amounts owed and the status of these accounts. Do you see that? 148:21-24.

A. I see those words on the exhibit.

Q. Those are expenses tied to this company, correct? 149:6-7.

A. I do not know that from looking at this exhibit.

Q. This is an Experian report. Do you see that at the very bottom? 149:17-18

A. I see the word "Experian." I do not know if this is a true and correct copy of an Experian report.

Q. And just to be clear, this is a Credit Profile Report which identifies CapJet in the right-hand column in Houston, Texas, correct? 150:7-9.

A. I do not know if this is an actual Credit Profile Report or whether it is for CapJet. I see the words "Credit Profile Report," "CapJet," and "Houston, Texas" on the exhibit.

Q. And this Credit Profile Report provides expenses with respect to CapJet identified as expenses under various credit cards and mortgage companies and those that we've reviewed, correct? 150:12-15.

A. I do not know if this is a credit report and if so, whether it is for Mary Carleton or CapJet, and I do not agree that we can tell from looking at the exhibit that it lists expenses.

Questions Regarding Whether The Witness Sees Certain Words On Deposition Exhibit 103

Q. Well, before we do that, this is, at the very top, a document that says "Experian" on the top right-hand side, and the business name says, "Capital Jet, Inc.," correct? 151:4-7 (re: Ex. 103)

A. Yes.

Q. And Capital Jet, according to this document, is located in Houston, Texas, correct? 152:3

A. Yes.

Q. So you can see that in this document, Exhibit 103, at Bates stamp --Let's scroll down a little bit. - ConvergeHub ending in 112. It says that CapJet has a number of commercial accounts with net 1 through 30 days term and also provides information with respect to the number of commercial accounts with high utilization, those that might be delinquent, and those with recent active commercial accounts. Do you see that? 153:5-16.

A. I see that the exhibit has the words: "Factors lowering the score, NUMBER OF COMMERCIAL ACCOUNTS WITH NET 1-30 DAYS TERM, NUMBER OF COMMERCIAL ACCOUNTS WITH HIGH UTILIZATION, PERCENT OF DELINQUENT COMMERCIAL ACCOUNTS, NUMBER OF RECENTLY ACTIVE COMMERCIAL ACCOUNTS"

Q. Okay. And you'll see that there's a section that reads "Quarterly Payment Trends" that provides balances and whether the accounts are current for CapJet in connection with this Experian report, correct? 154:2-6.

A. I see the words "Quarterly Payment Trends," and a chart with columns that say "Balance," and "Cur."

Q. Okay. And there are also -- there's also data with respect to other accounts and credit limits, balances, and whether those accounts are current. Do you see that? 154:8-12.

A. I am not sure, but I see Exhibit 103 and the words that appear on the exhibit.

Questions Regarding Whether The Witness Sees Certain Words On Deposition Exhibit 31

Q. This is Exhibit 31. This is a document that, at the very top, reads "First Union Funding Application - Joseph Pucci," does it not, Ms. Frank? 160:9-11.

A. Yes

Q. Okay. The business name is American Heritage Billiards, correct? 160:15-16

A. I see those words on the exhibit.

Q. Okay. And that is the same company identified in Mr. Pucci's declaration, in Exhibit 30, correct? 160:18-20

A. Exhibit 30 references American Heritage Billiards.

Q. And we can see that it says, "Gross Annual Sales: \$48 million." Do you see that? 160:21-24.

A. I see those words on Exhibit 31.

Q. It says, at the very bottom of Page 1 "Outstanding Loans Balances," it says, "Yes." Do you see that? 161:4-6

A. I see those words on Exhibit 31.

Q. Let's scroll to the top of the next page. You were -- yeah, okay. It says -- the other loans referenced earlier, it says, Funding Company 1, Forward Finance, with a balance of \$200,000. Do you see that? 161:9-15

A. Yes I see those words on Exhibit 31.

Q. "Funding Company 2, Green Capital, with a balance of \$700,000, correct? 161:17-18.

A. I see those words on Exhibit 31.

Q. Okay. And just above Mr. Pucci's declaration, there is an authorization. Do you see that? -- And I meant to say, just above Mr. Pucci's signature -- I may have said something else -- reads, "Authorization. Do you see that? 161:20-162:2.

A. I see those words on Exhibit 31.

Q. And that authorization says, "The business and its owners or principals" --"The business and its owners or principals individually, an applicant, each represents, acknowledges, and agrees as follows: All information and documents provided to First Union Lending are true, accurate, and complete and that the applicant will immediately notify FUL" -- that is First Union Lending -- "of any material change in such information or financial condition. Applicant authorizes FUL to disclose any information and documents that FUL may obtain, to other persons or entities (collectively assignees) that may be involved with any sort of business, and each assignee is authorized to use such information and to share such information with their assignees in connection with potential transactions." And it goes on to say, at Subsection 3, "FUL assignees, partners, and each of their representatives, successors, and designees (collectively recipients) are hereby given written instruction and authorization to request and receive any investigative reports, credit reports, bank statements, and financial documents, verification of information, or any other information that recipient deems necessary from creditors, reporting agencies, or financial institutions for the purpose of providing business funding options. Do you see that? 162:8-163:9

A. I see the authorization on Exhibit 31, but did not check word-for-word whether you read it correctly.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith.
Executed on this 7th day of September 2021 in Broward County, Florida.

Frank, Elisha L. Digitally signed by Frank, Elisha L.
Date: 2021.09.07 12:17:33 -04'00'

ELISHA FRANK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 20-CV-81205-REINHART

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

/

**ORDER GRANTING MOTION FOR ENLARGEMENT OF TIME TO FILE JOINT
DISCOVERY MEMORANDUM**

THIS MATTER came before the Court upon Motion for Enlargement of Time to File Joint Discovery Memorandum. The Court having reviewed the motion and the record and finding good cause for the Plaintiff's request.

IT IS HEREBY ORDERED that the Motion **IS GRANTED**. The Joint Discovery Memorandum shall be filed by noon today September 9, 2021.

DONE and ORDERED in West Palm Beach, Florida, this ____ day of September, 2021.

BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE

Copies to: All Counsel of Record