

SUPREME COURT OF NEW YORK
NEW YORK COUNTY

PURSUIT CREDIT SPECIAL)	
OPPORTUNITY FUND, L.P.)	
Plaintiff,)	Index No. 651070/2022
)	
v.)	AFFIDAVIT OF GRAHAM D. ROGERS
KRUNCHCASH, LLC, KC PCRD FUND,)	
LLC, JEFFREY HACKMAN, and SEAN)	
MCGHIE PLC)	
)	
Defendants.)	

PERSONALLY appeared before me Graham D. Rogers, who, being sworn,
deposes and says that:

I. Background on this Affidavit

1. I am an adult over the age of eighteen (18) years residing in Mecklenburg County, North Carolina.
2. I have over twenty-five (25) years of experience providing litigation, valuation, forensic, and strategic consulting and have applied my skills as a damages expert in the context of many different types of cases, including those involving the types of financial issues included in this matter.
3. I am currently a Partner at Eisner Advisory Group LLC (“EA Group”). EA Group¹ is an international consulting firm with over 200 partners and 2,500 employees across the United States.

¹ EisnerAmper LLP (“EisnerAmper”) and Eisner Advisory Group LLC (“EA Group”) practice as an alternative practice structure in accordance with the AICPA Code of Professional Conduct and applicable law, regulations and professional standards. EisnerAmper provides attest services to its clients. EA Group is not a licensed CPA firm and does not provide audit or attest services.

4. Pursuit Credit Special Opportunity Fund, L.P. (“Pursuit”) engaged EA Group to analyze transactions related to its investments with KrunchCash LLC, a Florida-based specialty finance company, and its affiliates (“KrunchCash”). More specifically, we have been asked to analyze funding transactions (“Advances”) between KrunchCash and third-parties to whom it advanced monies (“Recipients”) concerning the monies such third-parties were funded, owed, and repaid, and to analyze documentation prepared by KrunchCash and provided to two of its investors, concerning the supposed financial performance of the aforementioned Advances. The purpose of our engagement is to analyze inconsistencies in the data which might suggest that KrunchCash and its principal presented data to one or more parties which is erroneous, inconsistent, or false, and or which reflect other impropriety or malfeasance on part of KrunchCash or its principal.

5. Based on the limited data available to me concerning the Resnick Advances (as defined below), I have identified significant patterns of inconsistencies in the recording of data. Accordingly, I can reasonably conclude that (1) KrunchCash has likely made misrepresentations to one or more parties by over-representing the monies advanced by KrunchCash in the Advances; (2) KrunchCash has sold or pledged the same very small collateral to multiple investors and multiple times; and (3) Investors have funded millions of dollars for investments which cannot be traced to any investment.

6. Additionally, I have been asked to analyze the Pharma Advances (as defined below) based on Pursuit’s recent discovery that what was reflected as the performance of the Pharma Advances on the Excel sheet reconciliations provided to Pursuit does not accurately reflect the actual performance of the Pharma Advances.

7. In order to conduct a full analysis, and conduct those analyses we were unable to conduct at all, we would require, *inter alia*, access to KrunchCash LLC's, KC PCRD Fund LLC's or all other entities funding these Advances monthly bank statements (including all bank balances, and wires, transfers, deposits, and withdrawals for the relevant time period) from at least January 1, 2017 or earlier.

II. Factual Predicate: Advances, Repayments, Investors, and Other Pertinent Facts

8. The following summarized my understanding of some of the facts surrounding this dispute.

9. I understand that KrunchCash LLC ("KrunchCash") is a specialty finance company which provides funding transactions to third-parties ("Recipients") secured by litigation, law firm, insurance, and medical receivables (each an "Advance"). I understand that KrunchCash is managed, owned and operated by Jeffrey Hackman ("Hackman"). I understand that the Resnick Advance was a series of litigation funding, law firm funding, and/or plaintiff funding advances pursuant to one or more agreements among KrunchCash, on the one hand, and The Law Offices of Jonathan S. Resnick, The Law Offices of Perry Resnick, American Wellness LLC, Jonathan Resnick, Perry Resnick, and Diane Resnick (collectively "Resnick"). I understand that the Pharma Advance is a series of medical factoring advances between KrunchCash and LB Pharma, LLC and its affiliates and principals ("LB Pharma").

10. I understand that each "Advance" is supposed to be secured by receivables from numerous individual "claims." For example, in the context of the Resnick Advance, sums provided as an Advance could represent hundreds of claims and receivables connected with contingency fees and/or expense reimbursements from personal injury litigations. In the context of the Pharma Advance, sums provided as an Advance could represent hundreds of claims and receivables

connected with prescription reimbursements between pharmacies and insurance companies. KrunchCash organized Advances into “tranches,” with each tranche collateralized by hundreds of claims, and each tranche representing hundreds of thousands or millions of dollars advanced to the Resnick and Pharma recipients.

11. Each “Advance” entitles KrunchCash to (1) the “Funded Amount,” *i.e.*, repayment of principal, and (2) what KrunchCash sometimes referred to as a Use Fee or Repurchase Price, *i.e.*, a repurchase premium or amount above the Funded Amount, as agreed-upon between KrunchCash and the Advance Recipient. I understand that the structure contemplates that profits would be returned to KrunchCash and its investors from the Use Fees, if any, over and above the Funded Amount.

12. I understand that KrunchCash obtains its investment capital in part from third-party investors. Investors, such as Pursuit and other investors (collectively, “Investors”), contribute capital to KrunchCash or KrunchCash’s affiliates, such as KC PCRD Fund LLC (“KC PCRD”). While KC PCRD is a segregated managed account for an individual investment, I understand that the Advances are not made from that account—rather KrunchCash (using monies from the managed account or otherwise provided by Investors) makes the Advance to the Recipient.

13. I understand that Investor monies are solicited based upon, and are supposed to be tied to, an Advance or series of Advances between KrunchCash and third-party Recipients. KrunchCash provided what it called “Ledgers”, but which are more accurately described as “reconciliation” spreadsheets, prepared by Hackman manually rather than system-based, to Investors purportedly tracking amounts invested, proceeds, profits, Investor balances and distributions (“Reconciliations”). Those Reconciliations appear to reflect a running tally of monies invested by the Investor to KrunchCash (or the managed account, e.g., KC PCRD), by KrunchCash

to the Advance Recipient, back from the Advance Recipient to KrunchCash, and, if the Advances return a profit, the split between KrunchCash and the Investor (based upon what I understand to be KrunchCash's 50% profit-split).

14. I understand that in 2019, KrunchCash and Hackman became adverse to Resnick and to Pharma in a series of litigations, with KrunchCash claiming the Resnick and Pharma were in default on repayment of Advances, and the Resnick and Pharma Recipients claiming that KrunchCash and Hackman were engaged in improper lending practices (the "Default Actions").

15. I understand that Pursuit learned in 2019, that the Resnick Advance was actually multiple "Advances" layered across multiple investors for an aggregate amount much greater than Pursuit anticipated. More specifically, I understand that KrunchCash represented that it invested an aggregate \$17 million into the Resnick Advances divided among (i) Pursuit (approximately \$4 million or 23%), (ii) KrunchCash's proprietary capital (approximately \$3.3 million or 19%), and (iii) a third investor, a Florida-based asset manager (the "Other Investor") (approximately \$10.1 million or 58%). I understand that Pursuit has not been able to authenticate the amounts purportedly invested by KrunchCash on behalf of each investor (and thus the supposed percentages).

16. Subsequently, I understand that a series of disputes arose between Pursuit and KrunchCash/Hackman. I understand that Pursuit alleges that KrunchCash and Hackman have engaged in a pattern of evasiveness, false reporting, and misappropriation across at least the Resnick and Pharma Advances, and withheld proceeds from Pursuit's other investments with KrunchCash/KC PCRD.

17. Pursuit engaged EA Group to perform a preliminary analysis based on limited available documents, to identify inconsistencies between the documentation, and to give my opinion as to the potential of questionable or fraudulent transactions.

III. Analysis to Date, Subsequent Analysis, and Documents Required

18. My analysis thus far is based upon the following documents related to alleged Advances between KrunchCash and the Resnick Firms:

- Table of transactions prepared by KrunchCash and filed with Baltimore County Circuit Court on November 26, 2019 in the Resnick Default Action (“Resnick Table”).² According to Hackman’s sworn affidavit on behalf of KrunchCash, the Resnick Table represents, “the amount of cash advanced by KrunchCash, LLC, from 2016 to today...,” and includes “use fees under the Funding Agreements...,” with Resnick. It is my understanding that the Resnick Table was presented to a court as the basis for KrunchCash’s substantiating KrunchCash had made certain Advances to the Resnick Recipients, and that the Resnick Recipients owed repayments thereon.
- Various Excel sheet tables of transactions prepared by Krunchcash and provided to Pursuit (“Pursuit Reconciliations”);³ It is my understanding that KrunchCash/Hackman provided the Pursuit Reconciliations to Pursuit to reflect the performance of the Advances into which Pursuit had invested and to substantiate KrunchCash/Hackman’s supposed entitlement to a 50% profit-share fee.
- Table of transactions prepared by Krunchcash and provided to another investor, 777 Partners, (“777 Reconciliations”).⁴ The 777 Reconciliations, like the Pursuit Reconciliations, reflected the supposed asset performance of Advances into which 777 Partners invested and Hackman’s right to proceed therefrom.
- Various documents presented to the Court in Maryland in the Pharma Default Actions concerning monies purportedly paid by the Pharma Recipients and amounts due to KrunchCash concerning the Pharma Advances (the “Pharma File”).

² Resnick Table.pdf.

³ PCSOF-JSR-00000001-004.

⁴ PCSOF-JSR-00000005.

19. Based on the limited information available to me thus far, I have been able to determine as follows:

A. We Cannot Authenticate Percentages and Invested Capital Without Bank Records

20. As noted, it is my understanding that the Resnick Advance was, in fact, multiple Advances, and that at least three different investors held economic interests in different Advances to Resnick. I understand that one of Pursuit's goals is to authenticate that other investors (KrunchCash, in particular) actually made the cash investment that it claims it did.

21. I am not able to do so without KrunchCash's (and other entities involved in the relevant Advances) monthly bank records. I understand that the Resnick Default Action arose in early-2019 at which point I understand that KrunchCash claims the aggregate outstanding principal was approximately \$14 million. Based on the Resnick Table, the Pursuit Reconciliations, and the Investor #2 Reconciliations, it is apparent that the claim collateral and principal advanced for those claims dated back to funds invested in early 2017. Accordingly, to properly conduct an accurate and complete analysis, I would need KrunchCash to provide any and all monthly bank records related to the relevant advances beginning as early as January 1, 2017.

22. Moreover, I understand that the Resnick Advances entailed hundreds of money transfers: on the Advance side, from KrunchCash to the Resnick Firms, and from the Resnick Firms to KrunchCash; and on the investor-side, between KrunchCash and the managed accounts and/or the investors directly. Accordingly, to properly conduct this analysis with confidence, I would need to review a complete, unredacted set of banking records, including information about the source and recipients of funds. Because I understand that KrunchCash does not maintain system-based accounting ledgers recording each and every transaction related to the relevant Advances, the full (and unredacted) monthly bank statements are necessary to conduct a complete and accurate analysis.

B. There is Evidence KrunchCash Pledged the Same Collateral Across Multiple Investors

23. I understand that another of Pursuit's concerns is that, because there are in fact three investors competing for related collateral, the collateral might be less than what Pursuit originally understood and/or the collateral is so small and inextricably intertwined that it cannot feasibly be divided. I therefore first conducted a preliminary analysis of the Resnick Table, including digesting and processing the data, and running various analyses on the data, in order to determine patterns, redundancies, and/or inconsistencies across the three investors' investments.

24. Based on that preliminary analysis, I was able to determine unexplained and inconsistent patterns in the Resnick Table, the Pursuit Reconciliations, and the 777 Reconciliations triangulating the "ID" numbers common to the Resnick Table and 777 Reconciliation, and then further using personal-injury plaintiff names within the Reconciliations. My preliminary data analysis determined that Hackman likely created a "coding" system which could not be viewed by observing each document individually. These patterns can only be observed by a party in possession of all three documents—which only KrunchCash could do (because only KrunchCash had access to those documents).

25. That triangulation revealed thousands of duplicate entries with a similar three-step pattern: (1) a claim is reflected as one amount on one Investor's Reconciliation with a certain "principal" and profit "fee" due; (2) the same claim ID is then reflected on the other Investor's Reconciliation, with an increased principal and fee due; and (3) at some point, the principal and fee is either inexplicably increased on the Resnick Table—reflecting that Resnick owes more for the same amount advanced, or both instances of the same claim advance—one at the original

principal amount, and another at the increased principal amount, are represented on the Resnick Table as due.⁵

26. In other words, one can observe the same collateral in multiple investors' portfolios—but each time it reappears, the value is inflated both to the Investor and to the Recipient. Thus, KrunchCash appears to be selling the same collateral from one investor to another, and embedding in the transaction a “profit,” *i.e.*, a difference between the principal and the fee, *and also* inflating the amount purportedly due by Resnick to KrunchCash.

27. From the Investors' perspective, we understand that the “profit” KrunchCash recorded in the Reconciliations served as the basis to collect substantial fees from investors. However, this does not appear to tie out to any actual profit resulting from repayment from the Recipient.

28. Elsewhere, I observe the same claim (thousands of different instances) appears multiple times in one or both Investors' Reconciliation. We understand that on average, the “claims” underlying the Advances were worth under \$10,000 (and often under \$6,000). My analysis suggests that KrunchCash advanced hundreds (or single-digit thousands) of dollars to each claim. We cannot determine any apparent or feasible mechanism for apportioning monies funded or received for a single “claim” within an “Advances” where the claim is so small—*i.e.*, in the thousands. Put differently, the same collateral appears to be split multiple ways, and sometimes across multiple investors, and without any apparent reconciliation or calculation mechanism to properly apportion that collateral or resulting repayments.

29. I draw several preliminary conclusions from the patterns observed:

⁵ These patterns cannot be seen by viewing each document individually. The patterns can only be observed by a party in possession of all three documents—which was not possible for any party except for KrunchCash (because only KrunchCash had access to those documents).

- KrunchCash maintained at least three sets of inconsistent and irreconcilable accounting records for the Resnick Advances, reflecting different principal advanced and different repayment dates and amounts;
- KrunchCash appears to be selling the same collateral from one investor to another, and embedding in the transaction a “profit,” i.e., a difference between the principal and the fee, and also inflating the amount purportedly due by Resnick to KrunchCash;
- for thousands of claims, the fee KrunchCash appears to charge to the Resnicks, and thus the amounts “due” to which KrunchCash credits payment, are inflated and higher than the fee described in the Resnick agreements I reviewed;
- the Resnick Table overstates the amounts owed to KrunchCash by the Resnicks by including both what appears to be the original loan amount (e.g., \$800) and a new loan amount (e.g., \$1,000), each reflected on a different Investor’s Reconciliation;
- KrunchCash appears to be dividing and recycling the same “claim” collateral—such that the same claim is apparently splitting very small collateral among multiple tranches and multiple investors.

30. Due to the inconsistent records maintained by KrunchCash regarding the principal advanced, fees charges, and payments recorded, I would need to analyze monthly bank records dated back far enough to show amounts funded as of at least 2017, when a significant portion of the claims were funded (according to the Reconciliations), for any accounts from which advances were funded, investor funds maintained, and repayment amounts received, in order to complete my analysis.

C. Unexplained Application of Investor Capital

31. We also attempted to compare Investors’ investment of capital, on the one hand, with what KrunchCash presented to the court via the Resnick Table, in order to determine whether all of Investors’ capital could be accounted for. I concluded the data does not readily explain the application of several millions of dollars of Investor funding.

32. More specifically, I compared the two Investors’ Reconciliations (specifically, the amounts they funded) with the monies supposedly funded to Resnick and repaid to KrunchCash

(and to those Investors). In performing this exercise, I observed that Investors invested several million dollars that I cannot account for because they do not pair with the Resnick Advances they supposedly funded. Simply, monies invested by Investors does not appear to be accounted for.

33. In order to determine whether and when Investor monies were advanced, and to conclusively trace Investor funds and proceeds (or determine that those funds are not traceable or accounted for) I would likewise need to review complete, unredacted monthly bank statements for KrunchCash dating back to at least January 1, 2017, the time period from which the majority of outstanding advances were originally funded according to the Reconciliations prepared by KrunchCash. Moreover, in light of indications that Investor funds were used to repay prior investors, only complete bank records, including information regarding the recipient or source of funds, would allow me to reconcile and account for actual repayments made by the Resnicks, as opposed to the application of investor capital as repayment, and to exclude the possibility that other sources of funds were applied as repayment of principal.

34. I understand, based on records appended to filings in this action, and the information I have reviewed from the Pharma Advance records, that KrunchCash and Hackman are able to provide this information—bank statements and wire confirmations—for KrunchCash and its affiliated entity accounts, i.e. the accounts through which I understand investor funds and Advances flowed.

D. Documents Needed to Reconcile the Pharma Advance

35. I am also informed that, with respect to Pharma, Pursuit now understands that what was presented to Pursuit in the “Reconciliations” does not match the actual timing or performance of the Pharma Advance. Pursuit has requested that I recreate a forensic accounting of the Pharma Advances to determine the actual dates and timing of Pharma Advance funding and repayments,

and determine whether Hackman used other monies or presented false accounting to give the appearance of the Pharma Advances performing.

36. I understand that the materials available present three different pictures: (i) KrunchCash presented Reconciliations to Pursuit that would suggest the Pharma Advances were performing—with each “claim” and “tranche” being resolved successfully (and thus, generating profit-based performance fees to KrunchCash); (ii) the Pharma File showing evidence KrunchCash and Pharma presented to the Court in the Pharma Default Action shows that Pharma, in fact, fell behind on repayments from the very first tranche and that the parties “rolled forward” underpayments from earlier tranches into future tranches; and, (iii) the KC PCRD bank statements reflect a subset of monies purportedly returned—but, because Pharma wired monies to KrunchCash, and not KC PCRD, do not provide sufficient information to determine the timing and amounts of monies wired between Pharma and KrunchCash, or otherwise reconcile the amounts KrunchCash represented as repayments in the Reconciliations that are not accounted for in the Pharma File. Likewise, I would need complete monthly bank records to reliably exclude other transactions and reconcile the accounting for the Pharma Advance (or determine that it cannot be reconciled with performance and repayments represented to Pursuit, if that is what the bank records show).

37. I cannot perform the exercise that Pursuit has requested without the monthly bank records for KrunchCash and KC PCRD from January 1, 2018 through present, without redactions.

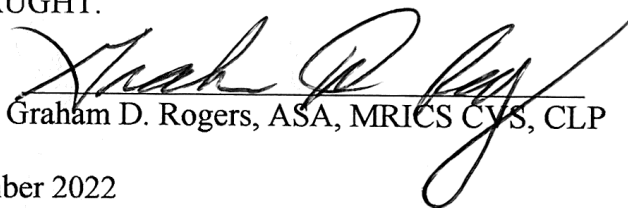
IV. Conclusion and Summary of Documents Needed

38. Based on my preliminary analysis, I have concluded that there are millions of unaccounted for investment funds, that the various records prepared by KrunchCash and Hackman purporting to account for the Advances and related repayments cannot be squared with each other,

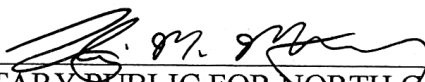
and that KrunchCash used the same collateral across multiple investors, without any apparent basis for allocating that collateral among investors.

39. I cannot complete the remainder of my analysis within a reasonable degree of professional certainty without access to the KrunchCash and KC PCRD monthly bank records from January 1, 2017 through present, without redactions. As discussed, the January 1, 2017 date is important because the Resnick Advances at issue in the Default Action and KrunchCash's supposed investments date back to then. It is important that the bank records be unredacted because it is important to verify all transactions in order to draw conclusions as to the reliability of the analysis.

FURTHER AFFIANT SAYETH NAUGHT.


Graham D. Rogers, ASA, MRICS CYS, CLP

SWORN to before me this 12 day of September 2022

 (L.S.)
NOTARY PUBLIC FOR NORTH CAROLINA
My Commission expires: 05/02/2023

O'Hagi M. McGriff
Notary Public
Mecklenburg County, NC
My Commission Exp 05/02/2023