SUPREME COURT OF NEW YORK
NEW YORK COUNTY

PURSUIT CREDIT SPECIAL OPPORTUNITY FUND, L.P.,	:	
Plaintiff,	:	Index No. 651070/2022
- against -	:	
KRUNCHCASH, LLC, KC PCRD FUND, LLC, JEFFREY HACKMAN, and SEAN MCGHIE PLC	:	
Defendants.	:	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL BANK RECORDS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statute

Pursuit Credit Special Opportunity Fund, L.P. ("Pursuit") submits this Memorandum of Law in Support of Motion to Compel Bank Records.

PRELIMINARY STATEMENT

Pursuit asserts that Jeffrey Hackman, through specialty finance companies KrunchCash, LLC ("KrunchCash") and KC PCRD Fund, LLC ("KC PCRD"), is operating a multi-pronged investment fraud, and at the center of the scheme are two bank accounts held by KrunchCash and KC PCRD ***through which every dollar at issue flowed***. Defendants have refused to provide Pursuit with transparency regarding the transactions that flowed in and out of, in particular, the KrunchCash account, and are attempting to prevent Pursuit from obtaining bank records for those accounts. Pursuit seeks an order from this Court compelling KrunchCash and KC PCRD to produce unredacted bank records relevant to Pursuit's investigation and claims.

Pursuit asserts that the KrunchCash Parties[1] mishandled and misappropriated more than $10 million Pursuit invested through KrunchCash and KC PCRD. Pursuit provided funding, and KrunchCash was supposed to use those funds to make "Advances" into law firm advance, plaintiff funding, and medical factoring investments. For years, Hackman kept the music going—presenting what Pursuit now understands to be false accounting—until mid-2019, when two Advances became the subject of contentious litigation between KrunchCash, Hackman and the funded parties (the "Default Actions").

Through Pursuit's investigation of the Default Actions—and the seemingly overnight disappearance of Pursuit's $10 million—Pursuit discovered a web of fiduciary misconduct and outright fraud. Last year, Pursuit learned that Hackman concealed the collection

[1] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Verified Amended Complaint (Doc. 14), and unaccompanied references to "¶" refer to paragraph numbers therein.

of $2.5 million into the KrunchCash account, and has steadfastly refused to disburse or account for those proceeds. This revelation prompted deeper investigation, and as information flowed from the Default Actions, Pursuit learned that the KrunchCash Parties had been engaged in a pattern of concealment and self-dealing.

Pursuit's investigation revealed that KrunchCash and Hackman had prepared false and misleading accounting of the Advances, double-pledged collateral to multiple investors, and used Pursuit's capital, held in KrunchCash's account, to prop up other investors and investments. Evidence indicates several layers of illegality: a "false profits" scheme employed to induce Pursuit to invest millions in additional capital and to justify compensation Hackman drew from those false profits; a pattern of double-pledging and "churning" identical collateral across multiple investors; unaccounted-for investment capital used to repay prior investors; the interception and misuse of proceeds received in the KrunchCash account; and, a refusal to substantiate funds KrunchCash is withholding. The KrunchCash account was the core instrument of Hackman's malfeasance. ***Every single dollar*** invested, funded, collected, and diverted flowed through the KrunchCash account into which Hackman commingled multiple investors' funds.

Meanwhile, Hackman used the KC PCRD account to hide his conduct from Pursuit, manipulating the transactions in that account to mirror his false accounting of asset performance. In this action, Hackman asserts the KC PCRD entity as a dividing line, claiming that neither he nor KrunchCash owe fiduciary duties to investors who entrusted them with tens of millions of dollars on the basis that he cleverly concealed his conduct in the KrunchCash entity's accounts. This, of course, belies the parties' agreements, and every principle of fiduciary and securities law.

The KrunchCash and KC PCRD bank records are thus relevant—indeed critical—to trace Pursuit's investment and to analyze the extent of Defendants' malfeasance. Unsurprisingly, when Pursuit demanded bank records from First Citizens Bank and from the KrunchCash Parties, Defendants moved to quash the third-party subpoena in Florida, asserting spurious objections, and separately opposed disclosure of the records through party discovery. In doing so, Defendants have told the *Florida court* that Pursuit's subpoena should be quashed as premature because *this Court* has not yet determined relevance; and told *this Court* that Pursuit's request is "premature" *because of the Florida motion*. Apparently, Defendants would like both courts to abstain.

Pursuit comes now before this Court to seek an order, on an expedited basis, compelling KrunchCash and KC PCRD to produce unredacted bank records because the motion to quash in Florida is due to be heard on October 3 and this Court, as the presiding court (New York), will be given deference on the issue of relevance.

FACTUAL BACKGROUND

A. Defendants Conceal Underperforming Assets While Pursuit's Investment Sours

Pursuit invested more than $10 million through KrunchCash and KC PCRD, specialty finance entities controlled by Hackman. (¶1-3.) Under various agreements, Pursuit is entitled to participate in proceeds generated by "Advances," *i.e.,* law firm loans, plaintiff funding contracts, and factoring agreements made by KrunchCash to third-parties ("Recipients"). (¶1-2.) Between 2015 and 2019, Hackman represented that the Advances had generated millions in profits—and those reported profits were the basis for Hackman's collection of $3.7 million in profit-based performance fees. (¶36.) By *at latest* early-2019, undisclosed to Pursuit, the two largest investments Pursuit funded, the "Maryland" Advance ($4.08 million outstanding by Pursuit) and the "Pharma" Advance ($6.16 million outstanding), became impaired. (¶3.)

Hackman hid defaults from Pursuit and presented an appearance of timely repayment until, unable to conceal them any longer, Hackman finally revealed to Pursuit in July 2019 that the Advances were in default and that the KrunchCash Parties were embroiled in litigation with the Maryland Recipients. (¶42-44.) In addition to revealing the impairment, Hackman also divulged that the Maryland Advance represented a commingled, $17 million advance to the Maryland Recipients—divided among Pursuit ($4 million or 23% of the total), another investor (approximately 58%), and KrunchCash (investing for its own portfolio) ($3.3 million or 19%). (¶26.) Despite Pursuit's numerous requests, Defendants have never authenticated the relative monies each investor supposedly invested, and Pursuit challenges Hackman's representation that he personally invested $3.3 million cash into those Advances. (*See id.*) This layered investment, with multiple investors vying for the same collateral, presented a materially different collateralization ratio than what had been represented to Pursuit. (¶44-47.) Then, in January 2020, Pharma sued KrunchCash and Hackman. (¶45-47.) The Default Actions ensued among KrunchCash, Hackman, and the Pharma and Maryland Recipients—thrusting recovery of Pursuit's $10 million investment into jeopardy.

Shortly thereafter, Hackman began making extortionate demands that Pursuit fund the Default Actions by wiring monies directly to KrunchCash, which Pursuit did. (¶49-55.) Hackman threatened that if Pursuit did not rewrite the existing economic arrangement to pay Hackman extra-contractual compensation, he would scuttle Pursuit's assets. (*Id.*) Defendants strategically exploited information asymmetry in their favor by providing false information concerning the expenses Pursuit was being asked to fund (¶50), misrepresenting the status of, and amounts repaid and owed on, the Advances and Default Actions (¶45, 65-66), and

misrepresenting the capital contributions made among the three investors. (¶59-61.) Defendants then refused transparency altogether. (¶64-71.)

As Pursuit's questions mounted, Pursuit began to unravel the truth of the events that led to the seemingly sudden loss of more than $10 million. (¶7-8, 73-83.)

Growing desperate, KrunchCash and Hackman misappropriated several hundred thousand dollars in realizations from Pursuit's other investments, unrelated to the Pharma or Maryland Advance (¶73, 75), and concealed and misappropriated part of a $700,000 collection from the Pharma Advance. (¶76-78.) As Pursuit dug, it learned that the Default Actions were not just about Recipients' purported defaults—rather, Hackman had systematically mistreated Recipients, much like Hackman mistreated his investors, causing Recipients to question Hackman's accounting and business practices. (¶119-130.)

Pivotally, in Spring 2021, Pursuit learned that Defendants *had collected but failed to disclose or disburse $2.5 million from the Maryland Advance*. (¶82.) Hackman manipulated the accounting to obscure Defendants' unauthorized and improper use of proceeds owed to Pursuit to subsidize KrunchCash's operations (and other investors') obligations. (¶80-90.)

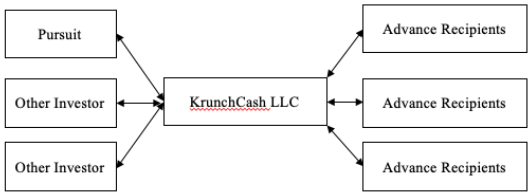
Pursuit sued. (¶96.) Since then, Pursuit has made stunning discoveries regarding the KrunchCash Parties' fraudulent conduct and gross fiduciary mismanagement, discussed *infra* Section C. (¶41-47, 231, 251.)

B. KrunchCash and KC PCRD Manage Pursuit's Investment Through Two Bank Accounts

Central to Hackman's malfeasance is Hackman's use of a KrunchCash bank account (the "KrunchCash Account") in coordination with a KC PCRD bank account (the "KC PCRD Account"). (¶ 27-29, 79, 116, 167, 202.) Both are held at First Citizens Bank & Trust Co. ("First Citizens") in Florida. Hackman used the KrunchCash Account, specifically, to commingle

multiple investors' funds and assets, even when the parties' agreements required Defendants to segregate funds, shuffling around monies and assets in a self-dealing fashion to satisfy Hackman's obligations. (*See id.*)

From 2015 onward, Pursuit's investments with KrunchCash were made under two agreements: the "Original IFA" dated April 2015 (Ex.[2] 1) and a separate September 2017 "Purchase Agreement" (as amended). (Ex. 2; ¶21.) Both governed Pursuit's funding of specific Advances and distributions pursuant to a waterfall. (¶24.) During those investment periods, Pursuit (and other investors) funded capital to the KrunchCash Account; KrunchCash then made Advances to Recipients; Recipients repaid KrunchCash; and KrunchCash allocated proceeds pursuant to a waterfall agreed upon among KrunchCash and Pursuit. (¶24.) These transactions flowed entirely through the KrunchCash Account. (*See id*.) Both agreements require KrunchCash to maintain the KrunchCash Account a certain way, and grant Pursuit a security interest accordingly. (Ex. 1-2 § 2, 4.)

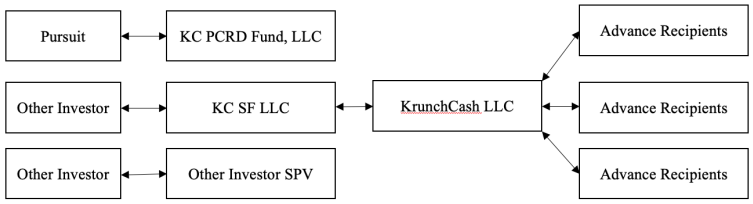


In April 2018, defendants asked Pursuit to enter into a new agreement, the "Amended IFA," inserting a dedicated entity, KC PCRD, designed to partition investor funds as a managed account for Pursuit's investments. (Ex. 3; ¶27-28.) The Amended IFA superseded the Original IFA, but does not disturb the Purchase Agreement. (*See* ¶28-31.) Substantively it did not disturb the economic waterfall for proceeds. (Ex. 3 at § 2, 6.)

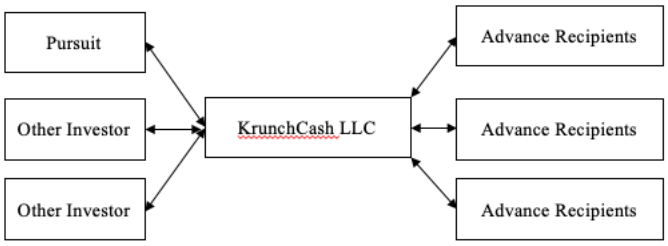
[2] "Ex." means exhibits to the Affirmation of Evan Fried ("Fried Aff.") dated September 13, 2022.

The Amended IFA binds both KC PCRD and KrunchCash: KC PCRD was conceived as the 'managed account,' *i.e.,* a segregated bank account into which Pursuit's invested capital is deposited, and to which proceeds are to be remitted. (*Id*.) Pursuant the Amended IFA, KrunchCash is obligated to marshal "KrunchCash's right, title and interest in any and all future proceeds received from any Advances provided by KrunchCash with any [Pursuit] funding under the [Original IFA]." (*Id.* § 2.)

Importantly, notwithstanding the revisions in the Amended IFA, *KrunchCash*—not KC PCRD—assumed the role as the contractual party on all Advances with Recipients, such that (i) *KrunchCash* took control of investor monies from Pursuit and KC PCRD, (ii) *KrunchCash* invested those monies into Advances with Recipients, (ii) *KrunchCash* collected proceeds from Recipients, and (iv) *KrunchCash* was obligated to then pay over "KrunchCash's right, title and interest in any and all future proceeds," pursuant to the Amended IFA. (¶ 28-31, Ex. 3 § 2.) Thus, under Amended IFA, as under the Original IFA and Purchase Agreement, *every single dollar* flowed through the KrunchCash Account. (*See id.*)



Finally, when the Default Actions arose, KrunchCash demanded that Pursuit fund monies directly to *KrunchCash* to fund the litigation efforts—which Pursuit initially did. (¶ 30.) KrunchCash used those monies to fund litigations to which *KrunchCash* and Hackman—but *not* KC PCRD—were parties. (¶48-63.) Pursuit later learned that KrunchCash recovered over $3 million in proceeds into the KrunchCash Account as a result of those collection efforts. (¶72-90.)



KrunchCash has not paid over the proceeds collected from the Default Action to KC PCRD. KrunchCash has also withheld hundreds of thousands of dollars in the KrunchCash Account representing proceeds from Pursuit's other investments, e.g., the "Connecticut Advances." (¶ 142-144.) The KrunchCash account was used for all questioned transactions during this latter period, and the KC PCRD Account became dormant. (¶ 147.)

Pursuit brings contract, tort, quasi-contract, and statutory claims arising from or relating to the Purchase Agreement and Amended IFA. (¶ 170-258.) Every dollar underlying those claims also flowed through the KrunchCash Account, and a subset also flowed through the KC PCRD Account. (*See id*.) Hackman's improper use of the KrunchCash Account to commingle investors' monies is central Hackman's malfeasance.

C. Pursuit's Investigation Reveals Suspicious Transactions

Pursuit has discovered numerous areas of impropriety on the part of Hackman and KrunchCash, and engaged a consulting firm EisnerAmper Group, LLC ("EisnerAmper") to assist analyzing those improprieties. (Affidavit of Graham Rogers ("Rogers Aff.") dated September 12, 2022.) Based on its initial analysis, EisnerAmper (i) identified data irregularities, indicative that Hackman's presentations to investors were false, but (ii) concluded that in order to conduct a comprehensive analysis of Pursuit's investment and the Maryland and Pharma Advances, EisnerAmper requires the KrunchCash and KC PCRD bank records, unredacted, from January 1, 2017 to present. (*Id.* ¶ 5-7.) A summary of the inquiries and required data follows.

i. Pursuit Needs Bank Records to Authenticate the 'Layered' Maryland Investments Held by Investors

Upon learning of the Default Actions, Pursuit discovered that the Maryland Advances was, in fact, $17 million in aggregated "layered" investments, with different principal outstanding between Pursuit, KrunchCash, and another investor. (*See* Background § A.) Pursuit requested Defendants authenticate the $3.3 million cash that KrunchCash and Hackman claim they personally invested. (*See id.*) They have refused. (¶26.)

The Advances to Maryland date back to 2015. (Rogers Aff. ¶ 18-22.) Because the investment cycle is 2-3 years, and a substantial portion of the Advance funding at issue originated in 2017, EisnerAmper stated that it would require banking data at least to January 1, 2017 (two years prior to the defaults and Maryland Default Actions). (*Id.* ¶ 20-22.) These records are necessary to analyze the timing and amounts of Maryland Advance cash-flows, and sources of funds for each investment. (*Id*.)

ii. Pursuit Needs Bank Records to Trace KrunchCash's Improper Use of $2.5 Million to Prop Other Investors' Accounts and to Pay Antecedent Debts

In May 2021, with Hackman increasingly obfuscative and demanding *additional* capital for the Default Actions, Pursuit learned that KrunchCash had concealed and failed to disburse $2.5 million collected through the Maryland Default Action. (¶80-90.) This was a serious nondisclosure because, at the time Hackman was demanding *additional* funding to pursue recoveries, KrunchCash was already sitting on $2.5 million—an amount that likely represented the majority of recoverable assets in light of Hackman's personal crusade to shut the law firms down.(*See id.*) It was also a breach of KrunchCash's obligation to remit proceeds. And in further breach of KrunchCash's and Hackman's fiduciary obligations, they have since used that money to fund KrunchCash's operation costs, for which Pursuit (and other investors) are not

responsible. (¶ 80-90.) Hackman's own presentations to Pursuit indicate that Hackman cannot account for the funds and, worse, in light of that recovery, Pursuit should not have *contributed* funds to KrunchCash; to the contrary, KrunchCash *owed monies* to *Pursuit* based on Pursuit's overfunding. (*See id.*) What Hackman's version of accounting really shows is that Hackman demanded capital from Pursuit to prop KrunchCash's own obligations and investment positions, and to satisfy Hackman's other obligations. (*See id.*) Pursuit requires the KrunchCash Account records to understand how much money KrunchCash received, when, and where those monies actually went.

iii. KrunchCash and Hackman Engaged in a "Roll Forward" and "False Profits" Scheme Concerning Pharma

In March 2022, Pursuit learned that Hackman had falsely represented the success of the Pharma assets. (Rogers Aff. ¶ 35-37.) In attempting to recreate the timing and amounts of monies funded, repaid, and outstanding to/from Pharma, Pursuit learned that the "Ledgers" Hackman provided were fraudulent. (*See id*.; Ex. 5 at 5-6.)

Until the parties' relationship deteriorated, KrunchCash provided monthly "ledger" spreadsheets to Pursuit purporting to show detailed asset performance, including cash outflows and inflows (the "Ledgers"). (*E.g.,* Ex. 4-6.) These supposed "Ledgers" were manually prepared and maintained by Hackman, and showed a break down of each Pursuit-funded Advance by "tranche" to each Recipient, and within each tranche a further break-down on a claim-by-claim basis (e.g., within a particular tranche, there are many individual "claims" correlating to particular receivables). (Ex. 6.)

The so-called Ledgers were used to track the supposed performance of Pursuit's investment and document KrunchCash's entitlement to 50% profit-based performance fees. Hackman's Ledgers represented that Advances were performing excellently, *i.e.,* consistent

repayment on a tranche-by-tranche and claim-by-claim level. (*See, e.g.,* Ex. 6 (showing Pharma Advance tranches through 1/31/19 as "Collected").) On the basis of what appeared to be performing Pharma investments on the Ledgers, Pursuit invested approximately $4 million in *additional* capital to Pharma between October 2018 and February 2019. (*See* Doc. 33 (redacted bank statements showing $4.075 million wired from Pursuit to KrunchCash between 10/2/2018 and 2/12/2019); ¶42 (Pursuit learned that LB Pharma was behind on repayment of a tranche in March 2019).)

In discovery in the Pharma Default Action, however, Hackman stated under oath that Pharma *did not* timely or fully repay the initial "tranches" of investment. (Ex. 4 at 3-4, 5-6 (KrunchCash Resp. & Obj. to LB Pharma's First Interrogatories (Apr. 19, 2021) (highlighting added).) Rather, Hackman admitted, and Pursuit separately confirmed, that KrunchCash resolved prior tranches by "rolling forward" prior, unsuccessful tranches (as a result of Pharma's non-payment) to new tranches, representing those as new tranches in Ledgers prepared for Pursuit. (*Id.*) The Ledgers provided to Pursuit throughout 2018 and early 2019 presented an appearance that the investments were performing, with Hackman representing successful repayments. For example, an excerpt of accounting provided by KrunchCash purports to show claim by claim repayments "Collected" on October 12, 2018, and a newly funded tranche of $3,292,742.40 on the same date; KrunchCash *now* admits that these "Collected" amounts do not represent funds *actually* received at the time, but rather $1,165,500.00 in funds advanced in September that Hackman "rolled forward" into a tranche dated October 12, 2018. (*Compare* Ex. 5 (itemizing claim payments "Collected" and $3,292,742.40 "Funded" on October 12, 2018) *with* Ex. 4 at 5-6 (showing that only $2,127,252.40 in additional money was actually "Funded" on October 12, 2018, and the remainder represents a "Book Xfer" of amounts owed).) Thus, KrunchCash was

repaying Pharma's debts by refinancing the Pharma Advances *with Pursuit's own money*, and Hackman admits that he did not secure new collateral to support these "rolled forward" advances. (Ex. 4 at 5-6 (showing "Book Xfer" amounts rolled forward); Ex. 8 (Depo Tr. Hackman (Aug. 4, 2021) at 237:14-20 ("Again, the tranche was -- the old receivables that they put up were rolled into a new funding contract or a new purchase agreement…[t]hey were not replaced with new receivables.").) Contrary to Pursuit's belief at the time, the Pharma Advances were *never* performing at a level that would warrant reinvestment: Pharma had fallen behind on repayments since the *very first tranche*. (Ex. 4.)

Hackman used the appearance of "false profits," *i.e.,* the impression on the "Ledgers" that tranches were repaid profitably, to justify paying himself $1.29 million under KrunchCash's profit split between July 2018 and January 2019—a time period in which neither the Maryland nor the Pharma Advances generated profits. (Ex. 6.) Moreover, Hackman used the false reporting to induce Pursuit to invest approximately $4 million in *additional* capital in purportedly "new" Pharma receivables. (Doc. 33.) This "roll forward" scheme dramatically alters the likely value and collectability of what remains of the Pharma Advances.

EisnerAmper requires the KrunchCash Account statements to reconstruct an accounting of the Pharma Advance, and to determine how Pursuit's monies were misused. (Rogers Aff. ¶ 35-37.)

iv. KrunchCash "Churned" and Pledged the Same Maryland Collateral Across Multiple Investors

In EisnerAmper's initial analysis, EisnerAmper triangulated Hackman's Ledgers prepared for Pursuit with similar ledgers prepared for another investor and spreadsheets KrunchCash provided to courts in the Maryland Default Actions. (Rogers Aff. ¶ 18-19, 23-30.) That analysis reveals that Hackman had engaged in "churning" of assets: (i) Hackman sold or

pledged collateral related to certain "claims" to one investor, reflecting the transaction on one investor's ledger with one dataset of "principal" and "use fee" (i.e., KrunchCash's embedded profit); (ii) KrunchCash would then sell the same collateral to the next investor—inflating the "principal" and "fee" artificially, collecting a *second round* of profits from investors; and (iii) at sometime therein, Hackman would inflate the pricing to the Advance Recipient—without any apparent documentation or additional capital to the Advance Recipient. (*Id.* ¶ 23-30.) Thus, Hackman, in each step, inflated the value of the collateral and thus the amounts each party owes KrunchCash, and then sold that collateral to another party and collected an illusory fee he had created for himself. (*See id.*)

EisnerAmper's analysis reflects *thousands* of instances of Hackman's re-selling existing collateral between investors. (*Id.* ¶ 26-28.) The repeated re-selling of existing collateral constitutes illegal "churning," i.e., the excessive trading of assets for the purpose of generating commissions.

But worse, the same claim is reflected, *simultaneously*, on multiple investors' Ledgers, in thousands of instances. (*Id.* ¶ 28.) Thus, KrunchCash pledged the same collateral multiple times. This is problematic because (i) the "claims" at issue were on average less than $10,000, such that there is no feasible way to divide collateral so small without facing irreconcilable intercreditor issues, and (ii) the collateral—even when aggregated—was insufficient to support the $17 million of supposed investments across three different investors. (*See id.*) Undisclosed, double-pledging of collateral is also illegal and was the focus of a recent successful SEC and DOJ prosecution of another litigation funder.[3]

[3] SEC Litigation Release No. 25232 (September 28, 2021) *available at* https://www.sec.gov/litigation/litreleases/2021/lr25232.htm; Dept. of Justice, S.D.N.Y., Press Release, "Founder of New York Litigation Finance Firm Pleads Guilty to Multimillion-Dollar

To fully trace each investment and analyze Hackman's churning, EisnerAmper requires the unredacted KrunchCash Account records from January 2017 through present. (*Id.* ¶ 29-30.)

v. Millions in Investor Funds Cannot be Traced

EisnerAmper attempted to compare available documents to rule out the possibility that there was Investor capital which was used to pay off prior investors. (Rogers Aff. ¶ 31-34.) EisnerAmper concluded it could not account for several millions dollars of Investor funding, such that those monies are conspicuously untraceable to any investment. (*See id.*)

Put differently, in analyzing investors' invested capital against the monies supposedly funded to and repaid by Maryland, EisnerAmper identified several millions dollars in investor funding that does not pair with any particular Advance. (*Id*.) If investor monies are not traceable to a particular investment, and absent a legitimate explanation, it could indicate that Investor monies were used for improper, unauthorized purposes, such as to resolve KrunchCash's *other* obligations, and *not* for Advances—Ponzi-like behavior. (*See id.*)

To conduct this analysis, EisnerAmper requires unredacted bank statements for KrunchCash and KC PCRD from January 2017 through present. (*Id.* ¶ 34.)

vi. KrunchCash Intercepted Other Proceeds Owed to Pursuit

In addition to retaining proceeds owed from Pharma and Maryland recoveries, Hackman also intercepted funds deposited by other Advance Recipients into the KrunchCash Account, and refuses to pay those funds to Pursuit (or KC PCRD for distribution). (¶143-145.) This includes KrunchCash's refusal to pay $239,366 owed to Pursuit arising under the Purchase

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Securities Fraud Scheme" (Sept. 28, 2021) *available at* https://www.justice.gov/usao-sdny/pr/founder-new-york-litigation-finance-firm-pleads-guilty-multimillion-dollar-securities.

Agreement (¶73-74), interception of payments due to Pursuit under the Amended IFA (¶72-79), and, recently, interception *into the KrunchCash Account* of $270,000 from the "Connecticut Advances." (¶143-145.) Despite Pursuit's demands, Hackman refuses to disburse the funds, disclose when the funds were received, or provide objective confirmation of his representation that the funds are being held in the KrunchCash Account. (Ex. 9, Ex. 10.) Pursuit requires the KrunchCash Account statements to conduct these analyses, and determine whether Hackman has concealed or converted other recoveries.

vii. Unexplained Business Transactions between KrunchCash and Recipients

Finally, based on communications produced in the Default Actions, it is evident Hackman and the Advance Recipients (Maryland and Pharma) engaged in business outside of the Advances, with substantial sums of money being transferred between the parties and a significant risk of conflict of interest. (*See* Fried Aff. ¶ 13-21.) For instance, text messages discovered in the Pharma Default Action indicate Hackman and Pharma were engaged in discussions concerning complicated marijuana, gold, and natural resource transactions with no relationship to medical factoring. (*Id*., Ex. 11.) At one point, Pharma's principal appears to have wired $8.8 million to KrunchCash/Hackman, with no explanation regarding how those funds were supposed to be applied. (Fried Aff. ¶ 19-20.)

Hackman's other business dealings with the Recipients are relevant to assess conflicts in the management of Pursuit's capital, explain Hackman's motives for misrepresenting performance of the investments, whether Hackman collected undisclosed funds, and whether those transactions may explain Hackman's otherwise illogically excessive contention in the Default Actions.

D. The Unavailability of Other Records to Test the Ledgers

Despite touting themselves as specialty financiers managing millions in capital, Defendants did not provide industry-standard accounting or reporting. (¶24.) Defendants never issued IRS Form-1099 or K-1's to Pursuit, and to Pursuit's knowledge, Defendants have never reported or registered these investments to the SEC, FINRA, or other securities regulator. (¶24, 207, 214, 226.) Defendants do not maintain systematically generated accounting records, such as balance sheets or income statements, much less "audited" or "reviewed" financial statements typical of an asset manager of KrunchCash's or KC PCRD's size. (*Id.*)

Hackman has never permitted Pursuit to review the KrunchCash Account. (¶ 39.) In mid-2019, Pursuit engaged an accountant to conduct a "review" of KrunchCash's and KC PCRD's financial statements for Pursuit's own internal purposes. (*Id.*) Hackman refused to provide unredacted access to KrunchCash's bank records—thus preventing Pursuit's accountant from completing the financial analysis. (*Id*.)

Defendants' only reporting has been the manually created "Ledgers" and certain bank statements showing transactions to and from the KC PCRD Account (¶ 147, 153, 165, 202)—the very documents that Pursuit now questions as false, misleading, and unhelpful. (¶ 88, 165, 202.) And Defendants *circumvented* the intended purpose of the KC PCRD Account by using the KrunchCash entity and Account to contract with Recipients, fund Advances and collect proceeds—including proceeds owed to Pursuit that KrunchCash is withholding.

Pursuit requires the KrunchCash and KC PCRD bank statements, because there are no other documents against which to test the Ledgers and Hackman's assertions.

E. First Citizen Does Not Oppose the Production of the Bank Records

In May 2022, Pursuit served a third-party subpoena on First Citizens seeking the KrunchCash and KC PCRD Account statements, including documents sufficient to show transactions in those accounts (the "First Citizens Subpoena"). (Fried Aff. ¶ 22-33, Ex. 11 at 8-

14.) First Citizens notified defendants that it intended to comply with the subpoena. (*Id.* at 15, 19.)

In June 2022, Pursuit served its First Request for Production of Documents to KrunchCash, KC PCRD, and Hackman (the "Document Demands"). (Ex. 12.) The Document Demands seek bank statements for the two accounts (Request 22), and documents concerning financial transactions located in those records. (*Id.*, Requests 4, 6, 8, 10-12, 19-21, 24-25, 31-32.)

As detailed in the Affirmation of Evan Fried submitted herewith, Pursuit has attempted to obtain Defendants' compliance in producing bank statements, but resulting in an impasse. (*See* Fried Aff. ¶ 22-33.) Defendants have lodged numerous frivolous objections, including purported confidentiality concerns and the need for redactions to the point of obscuring the very information Pursuit requires: transparency into what *actually* happened with Pursuit's investment. (*Id.* ¶ 27-32.)

Defendants filed a motion to quash the First Citizens Subpoena in Florida, which is due to be heard October 3. (*Id.* ¶ 28, Ex. 11.) In parallel to enforcing the First Citizen Subpoena, Pursuit exhausted all remedies to obtain Defendants' compliance through the Document Demands, but Defendants would not budge—leading this Court to grant Pursuit leave to file this motion. (*Id.* ¶ 27-32.)

Since Pursuit served the subpoenas, the parties entered into a Confidentiality Order. (Doc. 60.) Finally, also assuaging any purported confidentiality concerns, KrunchCash's other largest investor consents to Pursuit's access to the bank records. (Affirmation of Christopher O'Reilly ("O'Reilly Aff.") dated September 12, 2022.)

F. Defendants Reliance On Bank Records Concedes Relevance and Lack of Sensitivity

Even as Defendants dispute the relevance of the bank records, Defendants have confirmed their relevance. On June 23, Defendants affirmatively offered heavily-redacted versions of the KrunchCash Accounts in support of a motion to dismiss. (Doc. 33.)

LEGAL STANDARD

The CPLR requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" by a party to the action. CPLR 3101(a). "The words, 'material and necessary' . . . must 'be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.'" *Kapon v. Koch*, 23 N.Y.3d 32, 38 (2014) (quoting *Allen v. Crowell–Collier Publ. Co.*, 21 N.Y.2d 403, 406 (1968)).

"The purpose of disclosure procedures is to advance the function of a trial to ascertain truth and to accelerate the disposition of suits." *Siegel v. Snyder*, 202 A.D.3d 125, 130 (2d Dep't 2021) (quotation omitted). Thus, a party seeking disclosure need only show, "that the request is reasonably calculated to yield information that is 'material and necessary'—i.e., relevant—regardless of whether discovery is sought from another party…or a non-party. *Forman v. Henkin*, 30 N.Y.3d 656, 661 (2018) (citing CPLR 3101(a) and *Kapon,* 23 N.Y.3d 32). Moreover, "[p]retrial disclosure extends not only to admissible proof but also to testimony or documents which may lead to the disclosure of admissible proof," including material which might be used in cross-examination. *Polygram Holding, Inc. v. Cafaro*, 42 A.D.3d 339, 341 (1st Dep't 2007) (quoting *Fell v Presbyterian Hosp. in City of N.Y. at Columbia-Presbyt. Med. Ctr.*, 98 AD2d 624, 625 (1983)). "The test is one of usefulness and reason." *Forman*, 30 N.Y.3d at 661.

Plaintiff moves pursuant to CPLR 3124 to compel KrunchCash and KC PCRD to produce unredacted bank records, and seeks an order on an expedited basis in order to resolve KrunchCash's and KC PCRD's pretextual objection to non-party First Citizen's production.

ARGUMENT

I. KrunchCash and KC PCRD Should Produce Unredacted Bank Records

The Court should compel Defendants to produce unredacted bank records for KrunchCash and KC PCRD. Pursuit requested from Defendants, and from First Citizen, bank statements and other documents (checks, wires, withdrawals) showing all transactions, including the source or recipient, to and from the accounts from January 1, 2017 through present. (Ex. 11 at 11; Ex. 12 at RFP Nos. 8, 11, 12, 22.) The bank records are indisputably relevant, and Defendants have not presented any valid objection to the disclosure of complete, unredacted bank records to Pursuit. Moreover, the fact that there are no suitable alternative sources of such information further supports an order compelling disclosure of the bank records.

A. The Bank Records are Indisputably Material and Necessary

It cannot be reasonably disputed that the bank records are relevant under New York's broad standard for disclosure. CPLR 3101(a); *MSCI Inc. v. Jacob,* 120 A.D.3d 1072, 1075 (1st Dep't 2014) (New York "strongly encourages open and full disclosure as a matter of policy."). This action raises serious questions regarding Defendants' mismanagement of tens of millions of dollars in investor capital, and there can be no doubt that requests seeking the unabridged and untainted records of funds flowing through the very bank accounts used to invest Pursuit's money are, "reasonably calculated to yield information that is 'material and necessary'—i.e., relevant," and that production of those records will assist in Pursuit's preparation for trial and sharpening the issues in this case. *Forman*, 30 N.Y.3d at 661. Likewise, as it relates to the First Citizens Subpoena, the scope of non-party disclosure is "interpreted

liberally to require disclosure, upon request, of any facts bearing on the controversy…" and "imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source." *Kapon*, 23 N.Y.3d at 711. "[S]o long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty."[4] *Id.*

The causes of action plead by Pursuit plainly require examination of the bank records. Relevantly, Pursuit alleges that Defendants misused Pursuit's funds (¶196-203), failed to properly account for and allocate investment proceeds (¶170-183), concealed the underperformance of investments and prepared false accounting records (¶196-203), and concealed the receipt of, and refused to pay, proceeds owed to Pursuit (¶204-216).

Critically, ***every dollar and transaction*** flowed through the KrunchCash and KC PCRD Accounts. Courts routinely require disclosure of bank records where the party seeking production demonstrates that the information contained in the records is material and necessary to the action and not otherwise available from another source. *See, e.g., RP Bus. Mktg., Inc. v. Timlin Indus., Inc.*, 67 Misc.3d 1205(A) *11 (Sup. Ct. N.Y. Cty. Apr. 10, 2020) (denying motion for protective order where "financial statements sought by [plaintiff] are material and necessary to [plaintiff's] claims in this action because [] they will track payments that [defendant] may have received from [plaintiff's] competitors …"); *ICC Chemical Corp. v. Klein*, 243 A.D.2d 402 (1st Dep't 1997). Importantly, Courts routinely compel parties to produce bank records and financial statements where undisclosed compensation or misappropriation of revenue opportunities is at issue. *ICC Chemical Corp.,* 243 A.D.2d at 403.

[4] Notably, *Kapon* rejected the prior line of cases that required the requesting party to demonstrate special circumstances, in favor of disclosure of relevant information. *Kapon*, 23 N.Y.3d at 711.

In addition, Pursuit's preliminary investigation confirms that disclosure is necessary. With EisnerAmper's assistance, Pursuit has already learned that the KrunchCash Parties misrepresented the performance of the Advances, maintained multiple sets of irreconcilable "ledgers" across investors and Advance Recipients, and apparently used investor funds to mask underperformance or generate false profits. (Background § C.) To complete its investigation, and comprehensively analyze the scope of Defendants' misconduct, EisnerAmper opines that the bank statements are necessary to: (i) authenticate KrunchCash's "layering" of Advances across three investors and specifically ascertain KrunchCash's supposed $3.3 million invested from January 1, 2017 through present (Background § C(i)), (ii) determine how KrunchCash concealed the $2.5 million from the Maryland Default Actions and *actually* applied those funds when it refused to remit proceeds to Pursuit (*id.* § C(ii)), (iii) reconstruct the cash-flows of the Pharma Advance, to determine the extent of Hackman's "false profits" scheme (*id.* § C(iii)), (iv) determine the amount of illegal "churning" Hackman committed when he recycled collateral multiple times, taking multiple rounds of new profits (*id.* § C(iv)), (v) trace investor capital, which EisnerAmper cannot pair with any investment and may have been used in a Ponzi-like fashion to satisfy antecedent debts (*id.* § C(v)), (vi) determine how Hackman intercepted several hundred thousand dollars through KrunchCash Account via the Connecticut Advances (*id.* § C(vi)), and (vii) verify the details of Pharma's sending KrunchCash $8.8 million in a likely conflicted business transaction. (*Id.* § C(vii).)

Therefore, the Court should conclude the bank records are relevant, and compel production of the KrunchCash and KC PCRD Account records, so that Pursuit can demonstrate its claims that Defendants breached their fiduciary duties, breached contractual obligations, and engaged in fraud by, *inter alia,* misusing Pursuit's capital, misrepresenting KrunchCash's

investment, failing to disclose realizations, and presenting false accounting. *RP Bus. Mktg, Inc.*, 67 Misc.3d at 10 (finding bank accounts discoverable to determine whether defendants had received payments from competitors).

B. Defendants Offer No Valid Objection to Production

In a frivolous effort to interfere with the two subpoenas, the KrunchCash Parties assert several conclusory and baseless objections that this Court should reject. Specifically, Defendants assert that they will only produce bank records from the KrunchCash Account in redacted form based on disingenuous objections based on relevance and confidentiality. In doing so, the KrunchCash Parties ask this Court to bless their efforts to conceal the very information that is required to investigate Pursuit's claims. The Court should decline to do so.

"The party seeking to prevent disclosure has a heavy burden, especially where the materials sought are relevant." *Marten v. Eden Park Health Servs. Inc.*, 250 A.D.2d 44, 46 (3d Dep't 1998). None of Defendants' objections to disclosure come anywhere near meeting this "heavy burden" to prevent disclosure. The party asserting confidentiality has the burden of showing that documents should be redacted. *RP Bus. Mktg., Inc.*, 60 Misc.3d 1205 *11 (citations omitted). Moreover, a party's unilateral redactions based on its own assessment of relevance are improper. *Hansen Realty Development Corp. v. Sapphire Realty Group LLC*, 2020 WL 5745637, at *5 (Sup. Ct. N.Y., Sep. 25, 2020) (collecting cases and summarizing New York law). Here, Defendants cannot support either objection to disclosure, and in fact, all pertinent factors weigh *against* redaction.

First, Pursuit has already demonstrated the relevance of the bank records (Point I.A), and Pursuit's expert has explained that it requires access to the unredacted bank records of KrunchCash and KC PCRD in order to analyze the depth of fraud perpetrated by Defendants, and for its analysis to be considered comprehensive. (Rogers Aff. ¶ 1-39.) The heavily redacted

bank statements Defendants previously injected into this record, (Doc. 33), are not sufficient to conduct those analyses. (Rogers Aff. ¶ 38-39.) Defendants have also conceded relevance, using the selective and misleading disclosure of bank records to support a motion to dismiss. (Doc. 33 (bank records redacted to show *only* Pursuit's deposit of funds, while obscuring KrunchCash's use of those funds and collection of proceeds). Against this backdrop, redaction of bank records for accounts through which ***every single dollar Pursuit invested and is owed*** flowed is patently improper. *Hansen Realty*, 2020 WL 5745637 at *5. Moreover, it would defy logic to permit the KrunchCash Parties—who have already demonstrated dishonesty in presenting financial information to investors—to hand-select which transactions should be shielded from the eyes of the injured party and the Court. The Court should grant Pursuit what it has been seeking for years: transparency into where Pursuit's $10 million has seemingly disappeared overnight. *RP Bus. Mktg, Inc.*, 67 Misc.3d 1205(A) *11 (rejecting party's argument that "plaintiff is not entitled to the disclosure of bank records, as the records are privileged and confidential and contain financial information of unrelated transactions").

Second, Defendants' purported concerns regarding confidentiality are even less persuasive. Any legitimate concern is addressed by the Confidentiality Order, which Defendants only agreed to *after* Pursuit demanded a preliminary conference in this matter. (Fried Aff. ¶ 31-33, Doc. 60 ([Proposed] Confidentiality Order).) The Confidentiality Order is in place so that, if appropriate, the parties may protect against *public* disclosure of information. Defendants may designate the bank records pursuant to the Confidentiality Order, if appropriate,[5] and Pursuit will act accordingly. But a party's interest in preventing *public* disclosure, assuming proper

[5] Pursuit takes no position as to whether entries merit redaction before this Court, which the parties will evaluate upon disclosure.

confidentiality designations, does not permit Defendants to prevent *Pursuit's* inspection of the same.

Indeed, KrunchCash's purported concerns regarding confidentiality of the records are contradicted by their own broad, self-serving publication of such information in numerous public proceedings, including this one. (*See, e.g.,* Doc. 33 (numerous unredacted pages and account numbers); Ex. 21 (excerpts of wire confirmations published in the Pharma Default Action); Ex. 11 at 23 (KrunchCash and KC PCRD published account numbers in Florida).) And Defendant's other largest investor, whose investment transactions were likewise marshaled through the KrunchCash Account, has already consented to disclosure of the bank records in question. (O'Reilly Aff. ¶ 6.)

Finally, the Court should also reject Defendants' improper attempt to limit the time frame for the records. EisnerAmper has stated that they require the entire bank records dating back to January 1, 2017, specifically because that is when the Maryland investments were originally funded—and thus the period that will be tested to ascertain representations regarding performance of the Maryland Advance, KrunchCash's own assertion that it invested $3.3 million, cash flows to and from the Maryland Recipient, and other relevant inquiries. (Rogers Aff. ¶ 7, 21-22, 30, 39.) And while Defendants have repeatedly attempted to limit disclosure to the period after the Amended IFA was signed, whatever affirmative defenses the KrunchCash Parties might argue, they cannot limit disclosure on this basis. Pursuit is entitled to broad disclosure, and that right "extends not only to admissible proof but also to testimony or documents which may lead to the disclosure of admissible proof, including material which might be used in cross-examination." *Polygram Holding, Inc.*, 42 A.D.3d at 341.

Thus, Defendants' attempts to limit the scope of disclosure of the bank records should be rejected. *Healey v. Ean Holdings, LLC,* 180 A.D.3d 1015, 1016-1017 (2d Dep't 2020) ("the Supreme Court improvidently exercised its discretion in declining to compel [defendant] to provide the portion of the bank statements or other financial records that would reflect all debit or credit card payments …").)

The entirety of Pursuit's financial investments flowed through the KrunchCash and KC PCRD bank accounts. Those accounts should be provided, unredacted from January 1, 2017 through present. *ICC Chemical Corp.*, 243 A.D.2d at 403.

C. There are No Suitable Alternatives to Discover the Information Pursuit Requires to Prove its Case

Disclosure of the bank records is also favored because Pursuit has no other means to obtain the data necessary to investigate its claims. *Healey*, 180 A.D.3d at 1016-1017 ("contrary to the court's conclusion, document discovery provided by the [] defendants, as well as [defendant's] deposition, were insufficient sources of the information sought by the plaintiffs."); *see also ICC Chemical Corp.*, 243 A.D.2d at 403. The KrunchCash Parties have never issued systematically generated (much less *audited*) financial statements, K-1's or 1099's to investors, or made any filings or disclosures to securities regulators. (Background § D.) The records the KrunchCash Parties did maintain are demonstrably unreliable. It is now evident that Hackman maintained multiple, inconsistent, irreconcilable—and *false*—investment records. (Rogers Aff. ¶ 30.) Defendants' faulty record keeping mechanisms *necessitates* the production of verifiable bank records.

In the absence of verifiable financial data—and because KrunchCash's records are demonstrably inconsistent—the bank statements are the *only* means to track what *actually*

occurred with Pursuit's investment. *Healey*, 180 A.D.3d at, 1016-1017; *ICC Chemical Corp.*, 243 A.D.2d at 403.

II. Pursuit's Motion Requires Expedited Resolution Due to the Pending Florida Proceeding

The Florida court is due to decide Defendants' motion to quash the First Citizens Subpoena on October 3. In the context of a third-party subpoena being challenged out-of-state in the jurisdiction where the subpoena was served pursuant to the Uniform Interstate Depositions and Discovery Act (and *not* in the jurisdiction where the case is presiding), the *presiding* court's determination as to discoverability will be given deference. *In re Aerco, Inc.*, 40 Misc.3d 571, 575-577 (Sup. Ct. Westchester Cty. May 16, 2013) (agreeing that "to avoid the possibility of inconsistent rules" the presiding court should prevail).

Additionally, both New York and Florida recognize that the presiding court has broad discretion to fashion orders relating to the scope of discovery. CPLR 3103(a); *MSCI Inc. ,* 120 A.D.3d at 1075 ("A trial court is vested with broad discretion in its supervision of disclosure."); *SCI Funeral Servs. of Fla., Inc. v. Light*, 811 So. 2d 796, 798 (Fla. Dist. Ct. App. 2002) ("scope and limitation of discovery is within the broad discretion of the trial court"). Accordingly, a ruling from *this* Court will aid the disclosure process by compelling production of any bank records in Defendants' custody and control, and mooting defendants' patently pretextual bases to oppose the Subpoena directed to the bank itself.

Pursuit respectfully requests that this Court act expeditiously in granting Pursuit's motion, so that it can inform the Florida court as to this Court's determination of discoverability. Though Pursuit is confident the Florida court will agree the records are relevant, without this Court's prior determination, there exists a risk of inconsistent decisions. *See id.*

CONCLUSION

For the foregoing reasons, the motion to compel should be granted.

New York, New York
Dated: September 14, 2022

SLARSKEY LLC

By: _____

Evan Fried
Renee Bea
420 Lexington Avenue, Suite 2525
New York, NY 10022
(212) 658-0661
Counsel for Pursuit Credit Special Opportunity Fund, L.P.

CERTIFICATION

I hereby certify pursuant to Rule 17 of the Commercial Division that the word count for the foregoing memorandum of law is 7,125 words, exclusive of caption, table of contents, table of authorities, and signature block, as prepared by Google Documents.

Evan Fried