

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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PURSUIT CREDIT SPECIAL OPPORTUNITY :
FUND, L.P. :

Plaintiff, :

- against - :

KRUNCHCASH, LLC, KC PCRD FUND, LLC, :
JEFFREY HACKMAN, and SEAN MCGHIE :
PLC. :

Defendants. :

----- X

Index No.: 651070/2022

NOTICE OF SUBPOENA

PLEASE TAKE NOTICE that pursuant to Article 31 of the CPLR, Plaintiff has served or intends to serve the enclosed subpoena at the earliest possible opportunity and to obtain document production accordingly.

December 19, 2022
New York, NY

SLARSKEY LLC

By: /s/Renee Bea
Renee Bea
767 Third Ave, 14th Floor
New York, NY 10017
(646) 893-1700
Counsel for Plaintiffs

Gabriel Berg
Robins Kaplan LLP
1325 Avenue of the Americas, Suite 2601
New York, NY 10019
Counsel for Defendants

SLARSKEY LLC / 767 Third Avenue / 14th Floor / New York, NY 10017

Renee Bea
(646) 893-1700
rbea@slarskey.com

Dropbox, Inc.
C/O Corporation Service Company
80 State Street
Albany, NY 12207

*Re: Pursuit Credit Special Opportunity Fund, LP v. KrunchCash
LLC et al., Index No. 650701/2022 (Sup. Ct. N.Y. Cty.)*

To Whom It May Concern:

We represent Plaintiff Pursuit Credit Special Opportunity Fund, LP (“Pursuit”) in connection with the above-captioned matter. The above-referenced action is an investment dispute between Pursuit, on the one hand, and two specialty finance entities in which Pursuit invested (defendants KrunchCash LLC and KC PCRD Fund, LLC) and their principal, Jeffrey Hackman (collectively “Defendants”). We write to provide context to the attached subpoena, which is being served on Dropbox, Inc. (“Dropbox”) herewith.

Pursuit maintains a corporate account with Dropbox, which is administered through Pursuit’s principals, Scott Turner (email: scott@pursuit-mgt.com) and Mitchell Cohen (email: mitch@pursuit-mgt.com). Pursuit uses the Dropbox to maintain business files, including confidential attorney-client privileged documentation, confidential business records, personally-identifying information concerning Pursuit and its investors, and confidential information concerning Pursuit’s investments unrelated to those with Defendants.

In November 2022, Pursuit learned that Defendants had accessed Pursuit’s Dropbox, without authorization, and downloaded Pursuit’s materials. Pursuit immediately disabled the compromised link and, on November 21, 2022, Justice Joel Cohen (who presides over the above-referenced dispute) executed an Order to Show Cause with Temporary Restraints (the “OTSC” with a “TRO”) enjoining Defendants and their counsel from further accessing or using documents from Pursuit’s Dropbox. (Ex. 1.) We have attached hereto a transcript of that hearing. (Ex. 2.) The hearing on the OTSC is set to be conducted on January 20, 2023.

After we became aware of Defendants’ unauthorized access, we downloaded an activity report identifying partial IP addresses of devices that accessed the Dropbox between November 4, 2022 and November 14, 2022. (Ex. 3.) The attached subpoena seeks information sufficient to determine the identities behind those IP addresses. The identities of those IP addresses are material to the Court’s inquiry into the devices that accessed the Dropbox account during the time it was compromised.

Pursuit is the owner/subscriber of the subject Dropbox account and consents to the disclosure of the materials sought in the attached subpoena. In light of the January 20, 2023 hearing date, we request that you provide the sought materials expeditiously. If you have any concerns or wish to discuss this matter further, please contact us at the information above.

Sincerely,

//s// Renee Bea
Renee Bea

Dated: New York, New York
December 15, 2022

SLARSKEY LLC

By: /s/Renee Bea _____
Renee Bea
767 Third Avenue, 14th Floor
New York, NY 10017
rbea@slarskey.com
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Counsel for Plaintiff

Cc: Gabriel Berg
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Suite 2601
New York, NY 10019
Counsel for Defendants

SCHEDULE A

DEFINITIONS

The following definitions apply to all Document Requests and Topics for Testimony:

1. **Dropbox Account.** The term “Dropbox Account” means the account(s) associated with or in the name of Pursuit Credit Special Opportunity Fund L.P., the Plaintiff in this action whom we represent, which is registered to the email addresses scott@pursuit-mgt.com and/or mitch@pursuit-mgt.com, and was last renewed under invoice ID “3RJFFT638PXR”.
2. **Communication.** The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
3. **Concerning.** The term “concerning” means relating to, referring to, describing, evidencing or constituting.
4. **Document.** The term “document” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents” in CPLR 3120, and includes electronically stored information (ESI), with metadata. A draft or non-identical copy is a separate document within the meaning of this term.
5. **ESI.** The term “ESI” shall mean electronically stored information stored in any medium from which information can be obtained, either directly or after translation by the responding party into a reasonably usable form, including information stored in electronic mail, messaging applications, or text messaging.
6. **Identify** (with respect to persons). When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
7. **Parties.** The terms “plaintiff” and “defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.
8. **Person.** The term “person” means any natural person or any legal entity, including, without limitation, any business or governmental entity or association.
9. **Request.** The term “request” refers to the requests stated herein.
10. **IP Address.** The term “IP address” means the entire Internet Protocol Address.

The following rules of construction apply to all discovery requests:

11. **All/Any/Each.** The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.
12. **And/Or.** The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
13. **Number.** The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

- A. Unless otherwise specified, each Request concerns the time period from November 3, 2022 through November 14, 2022.
- B. In answering these demands, you are under an obligation to make a diligent search of all files that you reasonably believe may contain responsive documents. You are required to produce all responsive and non-privileged documents in your possession, custody, or control, including but not limited to documents contained in records or files of your employees, agents, representatives, attorneys, or any other persons or entities acting on your behalf or at your direction, and any other files that you are authorized to inspect and copy.
- C. If you cannot comply in full with a request, you shall comply to the extent possible and explain (a) what information you cannot produce, and (b) why you cannot comply with the request.
- D. If you object to the production of any document on grounds of privilege, you must identify the document and the basis of the privilege, and provide sufficient information from which to assess the applicability of the stated basis. In particular, you must provide (a) the author of the document; (b) the name and title of each person who prepared, received, reviewed, or has or had custody, possession, or control of the document; (c) the date of the document; (d) the subject matter of the document; (e) the identity and length of any attachments to the document; (f) the basis for the claim of privilege or other grounds for withholding the document.
- E. If you believe that only a portion of a document is protected by an applicable privilege, the non-privileged portion shall be produced with the allegedly privileged portion redacted and indicated as such. You shall provide the information set forth in Instruction 6 for each such redaction. Any attachment to an allegedly privileged document shall be produced unless you also contend that the attachment is privileged, in which case the information required in Instruction 6 shall be provided for each such attachment.
- F. If you fail to produce a document or provide information requested on the grounds that such document or information is no longer in your possession, custody, or control, you shall state what disposition was made of that document or information, including, when applicable, the circumstances of any loss or destruction of such document or information.

- G. The original of each document requested shall be produced, or an identical copy of each document, imprinted with a Bates identification number.
- H. Identical copies of a document need not be produced. Any copy of a document that varies from the original, whether by reason of handwritten or other notation or any omission, or metadata associated with a file, shall constitute a separate document and must be produced, whether or not the original of such a document is within your possession, custody, or control.
- I. Each document requested shall be produced in its entirety without deletion or redactions, except as subject to applicable privileges, regardless of whether you consider the entire document to be responsive to these requests or relevant to the claims.
- J. You shall produce all documents as they are kept in the usual course of business.
- K. Documents not otherwise responsive to these requests shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by the requests, or if such documents are attached to documents called for by the requests and constitute routing slips, transmittal memoranda, letters, emails, comments, evaluations, or similar materials.
- L. These requests are continuing in nature. If, subsequent to your production of documents, you obtain, locate, create, or otherwise become aware of a document that would have been included in the production had it been in your possession at the time of the production, you shall promptly produce that document by supplemental production.

DOCUMENT REQUESTS

- REQUEST 1.** Documents sufficient to identify the IP addresses related to member or non team member users who accessed, viewed and/or downloaded any assets or ESI from the Dropbox Account between November 3, 2022 and November 14, 2022 including the entirety of the following partial IP addresses: 73.139.xxx.xxx; 206.169.xxx.xxx; 38.140.xxx.xxx; 47.16.xxx.xxx, 24.188.xxx.xxx, 23.228.xxx.xxx, 74.64.xxx.xxx, 69.114.xxx.xxx, 2600:387:5::xxx, and 54.80.xxx.xxx.
- REQUEST 2.** Documents sufficient to provide identifying information concerning the IP addresses responsive to “Request 1”, including associated names, titles, and accounts (including email addresses and Dropbox accounts).
- REQUEST 3.** Documents sufficient to identify user agent information related to all IP addresses responsive to “Request 1”, including browser information and phone model information.
- REQUEST 4.** The Dropbox Terms of Use in effect between November 3, 2022 and November 14, 2022.

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PURSUIT CREDIT SPECIAL OPPORTUNITY
 FUND, L.P.

Plaintiff,

- against -

KRUNCHCASH, LLC, KC PCRD FUND, LLC,
 JEFFREY HACKMAN, and SEAN MCGHIE
 PLC.

Defendants.

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Index No. 651070/2022

**CERTIFICATION OF BUSINESS
 RECORDS**

:

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The undersigned, being duly sworn, deposes and says:

1. I am the duly authorized custodian or other qualified witness of the business records of and have the authority to make the certification.
2. To the best of my knowledge, after reasonable inquiry, the records or copies thereof are accurate versions of the documents described in the subpoena duces tecum that are in the possession, custody, or control of the person receiving the subpoena;
3. To the best of my knowledge, after a reasonable inquiry, the records of copies produced represent all the documents described in the subpoena duces tecum, or if they do not represent a complete set of the documents subpoenaed, an explanation of which documents are missing and a reason for their absence is provided; and
4. The records or copies produced were made by the personnel or staff of the business, or persons acting under their control, in the regular course of business, at the time of the act, transaction, occurrence or event recorded therein, or within a reasonable time thereafter, and that it was the regular course of business to make such records.

- signature on next page -

By: _____

PRINTED NAME:

Sworn before me this ___ day of ___, 2022

Notary Public

Exhibit 1

At Part 3 of the Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York on the 21st day of November 2022

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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PURSUIT CREDIT SPECIAL OPPORTUNITY FUND, L.P., :

Plaintiff, :

- against - :

KRUNCHCASH, LLC, KC PCRD FUND, LLC, JEFFREY HACKMAN, and SEAN MCGHIE PLC, :

Defendants. :

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Upon the reading and filing the Affirmation of Renee Bea, Esq., with exhibits, dated November 20, 2022, the Affidavit of Scott Turner dated November 17, 2022, the supporting memorandum of law, dated November 20, 2022; and upon all prior papers and proceedings in this action and good cause having been alleged;

LET Defendants KRUNCHCASH, LLC, KC PCRD FUND, LLC, JEFFREY HACKMAN, and SEAN MCGHIE PLC, and their counsel Gabriel Berg of Robins Kaplan LLP, show cause before Justice Joel M. Cohen, Part 3, Room 208, of the courthouse of the Supreme Court of the State of New York, located at 60 Centre Street, on January 20, 2023 at 10:00 a.m. or as soon thereafter as counsel can be heard, why this Court should not enter an Order granting the following relief:

(1) a Protective Order pursuant to CPLR § 3103 directing Defendants

KRUNCHCASH, LLC, KC PCRD FUND, LLC, JEFFREY HACKMAN, and SEAN MCGHIE PLC, their attorney(s), and their agents and

representatives, and all persons acting or purporting to act on their behalf to certify within ten (10) days the immediate destruction and return of all documents and information obtained through the unauthorized access of Dropbox folders belonging to Plaintiff Pursuit Credit Special Opportunity Fund, LP or its investment manager, Pursuit Management, LLC, including copies and summaries thereof; and,

- (2) an Order granting Plaintiff's motion for sanctions, and awarding attorneys' fees and costs upon the submission of an affidavit submitted by Plaintiff's counsel in support thereof detailing costs associated with protecting the documents and in making this Order to Show Cause,

IT IS FURTHER ORDERED that, pursuant to CPLR § 6313 and § 3103, and with good cause having been **alleged** that immediate, irreparable injury, loss, or damage will result to Plaintiff unless a preliminary injunction and temporary restraint be imposed, that Defendants KRUNCHCASH, LLC, KC PCRD FUND, LLC, JEFFREY HACKMAN, and SEAN MCGHIE PLC, their attorney(s), and their agents and representatives, and all persons acting or purporting to act on their behalf with notice hereof, **are temporarily RESTRAINED and ENJOINED** from accessing or using any and all documents or information accessed and/or obtained through the access of Dropbox folders belonging to Plaintiff, Pursuit Credit Special Opportunity Fund, LP or its investment manager, Pursuit Management, LLC, pending the hearing of this motion, provided, however, that Defendants' counsel may use previously accessed non-privileged documents solely to the extent reasonably necessary to respond to this motion; and

J.S.C.
J.S.C.
J.S.C.

~~IT IS FURTHER ORDERED that such documents, including any copies thereof, be immediately sequestered and maintained with a secure third party custodian at Defendants' expense, which shall not be accessible to Defendants or their attorneys, pending the final determination of this proceeding; and,~~

~~IT IS FURTHER ORDERED that Defendants and their attorneys provide a sworn statement within three (3) business days of entry of this Order to Show Cause detailing the dates the Dropbox was accessed by Defendants, their attorneys, agents, representatives, and all persons acting or purporting to act on their behalf; the identity of persons who accessed the Dropbox; and the steps taken by Defendants' counsel to assess the scope and nature of the data contained in the Dropbox and notify Plaintiff's counsel of the Dropbox vulnerability and Defendants' access thereto.~~

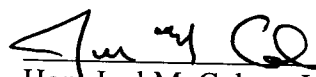
IT IS FURTHER ORDERED that the parties may complete limited discovery as discussed on the record on November 21, 2022;

IT IS FURTHER ORDERED that Defendants, and their attorneys shall serve any affidavits or other papers in opposition to this motion upon Plaintiff's attorneys by e-filing on NYSCEF on or before January 9, 2023;

IT IS FURTHER ORDERED that Plaintiffs shall serve any reply papers by filing on NYSCEF on or by January 16, 2023;

IT IS FURTHER ORDERED that Plaintiff shall serve Defendants by NYSCEF with a copy of this order and the papers upon which it is based, and that e-filing this order by Plaintiff in this action, and the papers upon which it is based, on or before November 28, 2023, shall be deemed good and sufficient service.

ENTER:



Hon. Joel M. Cohen, J.S.C.

Exhibit 2

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : CIVIL TERM PART 3
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3 PURSUIT CREDIT SPECIAL OPPORTUNITY FUND,
4 L.P.,
5 Plaintiff,

6 - against -

7 KRUNCHCASH, LLC, KC PCRD FUND, LLC,
8 JEFFREY HACKMAN, and SEAN MCGHIE PLC,
9 Defendants.

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10 INDEX NO. 651070/22 60 Centre Street
11 New York, New York
12 November 21 2022

13 BEFORE:

14 THE HON. JOEL M. COHEN, J.S.C.

15 APPEARANCES:

16 SLARSKY LLC
17 Attorney for Plaintiff
18 420 Lexington Avenue - Suite 2525
19 New York, New York 10170
20 BY: EVAN FRIED, ESQ.
21 RENEE BEA, ESQ. (Remote via MS Teams)

22 ROBINS KAPLAN LLP (Via MS Teams)
23 Attorneys for Defendants
24 1325 Avenue of the Americas - Suite 2601
25 New York, New York 10019
BY: ELLEN JALKUT, ESQ.
WALEED ABBASI, ESQ.
GABRIEL BERG, ESQ.

JACK L. MORELLI
Senior Court Reporter

PROCEEDINGS

1 THE COURT: Good afternoon, everyone. We're
2 here on an Order to Show Cause seeking a temporary
3 restraining order and preliminary injunctive relief. So,
4 let's start with the appearances, beginning with
5 plaintiff.

6 MR. FRIED: This is Evan Fried of Slarsky LLC,
7 for plaintiff, Pursuit Credit Opportunity Fund LP. My
8 colleague, Renee Bea, is joining remotely from California
9 via Microsoft Teams.

10 THE COURT: Okay. For the defendants.

11 MS. JALKUT: Ellen Jalkut, Waleed Abbasi and
12 Gabriel Berg.

13 THE COURT: Mr. Fried, can you do your argument
14 from the lecturn, please. I've read your papers so you
15 can put on the record the basis for your relief that you
16 sought. Obviously a large part of what I want to do is
17 hear the response, but go ahead.

18 MR. FRIED: Sure. The underlying motion that we
19 filed this morning seeks clawback of the protective order
20 of documents that defendants accessed and downloaded via a
21 Dropbox account that my clients didn't know existed and we
22 thought was stale.

23 On November 14th we learned that the defendants
24 had had access to a Dropbox link that was accessible by a
25 third-party production made by Kenneth Parzygnat,

- J L M -

PROCEEDINGS

1 P A R Z Y G N A T; you'll have to check my spelling. That
2 Dropbox link provided access, backdoor access to virtually
3 every single Pursuit document that exists. That those
4 documents include privilege folders, folders entitled
5 Legal, Slarsky LLC, Baker Donelson, containing privilege,
6 work product and common interest documents and
7 communications.

8 THE COURT: Can you explain to me a little bit
9 more about how this backdoor works without an updated
10 password? I'm not as familiar with this stuff as maybe I
11 could be. But I don't understand, I'm trying to look at
12 it from a perspective of counsel on the other side getting
13 this e-mail. So as best you can, not being an expert, how
14 does that work?

15 MR. FRIED: Sure. To the best of my
16 understanding, there was a link in the 2019 communication.
17 At the time the document or that link had been provided by
18 my clients, to Mr. Parzygnat, who is the third-party
19 administrator for Pursuit. It's under a NDA, two
20 different NDAs actually. And there is only three people,
21 to the best of my knowledge, only three people that have
22 access to that account. For whatever reason that was
23 still accessible. Mr. Parzygnat had provided over 1500
24 documents, which was over production in our mind, and we
25 already notified the defendants that we had preliminarily

- J L M -

PROCEEDINGS

1 designated everything as Attorney's Eyes Only.

2 At the time this dispute was not ripe. There
3 was no dispute brewing between our client and KrunchCash.
4 So these attorney-client privilege, work product and
5 common interest documents did not exist yet. They would
6 be later put into the Dropbox, but nevertheless then
7 accessible by defendants and their counsel.

8 THE COURT: Without a password?

9 MR. FRIED: I'm not exactly sure, Judge. Ms.
10 Bea might need to chime in on that. We worked with our
11 client to determine exactly how the access was
12 accomplished.

13 THE COURT: And I'll let her do that. But what
14 was Mr. Parzygnat's role again?

15 MR. FRIED: He's the third-party fund
16 administrator. So besides Mr. Cohen and Mr. Turner here
17 who are the principals of Pursuit, he's the only one that
18 has sole privilege to these Attorney's Eyes Only,
19 including K-1s, statements of distributions to LPs.

20 THE COURT: But I'm not sure I know what a
21 third-party fund administrator is. Why would somebody
22 like that be inside under the tent for privilege purposes?

23 MR. FRIED: It's essentially a bookkeeper for an
24 investment fund such as Pursuit. So he's part of the
25 team. He's bound by two different nondisclosures. He's

- J L M -

PROCEEDINGS

1 been assisting in this litigation. And he is in that, his
2 role as a third-party fund administrator, he's provided
3 access to the bank statements, he provided access to K-1s,
4 he works with the outside accountants to create those.
5 He's basically the third wheel beyond Mr. Cohen and Mr.
6 Turner. He's part of the day-to-day team.

7 So what happened was the defendants apparently
8 obtained access to this. They downloaded every single
9 document in this particular Dropbox. On the 14th, several
10 days ago, Mr. Berg sends an e-mail using those documents
11 against our client threatening us with fraud on the Court
12 and demanding that we withdraw the litigation immediately.
13 Apparently it wasn't as though he obtained access to them
14 on November 14th, he actually had access to them for at
15 least a week prior to that.

16 THE COURT: I'm sorry, just a couple of more
17 things on the Dropbox.

18 MR. FRIED: Sure.

19 THE COURT: Is that a static document or is that
20 when you hit that link are you sort of in a live
21 environment within the company?

22 MR. FRIED: Exactly, that's exactly the point.
23 So, this link was from 2019. This dispute was not yet
24 rumbling at the boil that it is right now. Those legal
25 documents, my firm was only engaged in 2021. So somebody

- J L M -

PROCEEDINGS

1 who had provided that link in 2019 would not know, would
2 not conceive that later Slarsky LLC could come in and be
3 putting in attorney-client privilege documents into that.

4 THE COURT: So if you access this Dropbox are
5 you then, do you then have read and write capabilities
6 with respect to all the documents within the
7 plaintiff's -- in other words, I'm not sure I know what a
8 Dropbox is. But does that mean that -- I'm familiar with
9 One Drive, Microsoft One Drive which is kind of a
10 work-share thing. And if you have access to One Drive you
11 can actually make changes to documents in real-time within
12 an organization. You typically would need a password
13 protection to do it. Is that what Dropbox is?

14 MR. FRIED: Yes, functionally it can be. My
15 understanding is that it can be read only or edit
16 accessibility. But, yes, that's basically --

17 THE COURT: Do you know whether this individual
18 had -- I'm trying to get a sense for, you know, this is
19 for the defendants' lawyers to think about. If I receive
20 this and I'm counsel in the litigation and I follow this
21 trail and I end up -- am I now, is it obvious to me that
22 I'm in some live environment within another organization
23 where I can start rummaging around and changing things?

24 MS. BEA: I probably did the work on this. I'll
25 speak to this because I did that.

- J L M -

PROCEEDINGS

1 So, this particular Dropbox link that defendants
2 put in their letter in November 15th was forwarded to,
3 sent to Mr. Parzygnat as part of an effort to ensure his
4 access. It's attached to the briefing, the contract by
5 which it services. It details the extent of services in
6 there. And in many different areas he actually says it.
7 So his role being not an employee of the company is
8 intentional in terms of his role to ensure that integrity.
9 And as part of that he was granted password protected
10 access to the Dropbox folders. Apparently what happened
11 with that link, notwithstanding password updates and
12 protocols, over time that link still provided a live
13 access to point to Pursuit's files. When one enters that
14 link, one comes to a set of folders. The top of your
15 screen would say Pursuit Credit Special Opportunity Fund
16 LP. And there are several clearly stated folders,
17 including folders entitled Financials, Tax, Legal, SSC.
18 We detail those in my affirmation, but the titles of the
19 different folders. And, yes, it's apparent that you are
20 now not in the files but that you are in Pursuit's files.

21 Moreover, both counsel for defendants and
22 defendant himself, are independently familiar with
23 Dropbox, both being active users of those environments to
24 maintain their own files for KrunchCash. That was the
25 repository by which Mr. Hackman frequently shared

- J L M -

PROCEEDINGS

1 materials from KrunchCash's own corporate set of folders.
2 And based on e-mail correspondence, we see also that at
3 least Mr. Berg and Kennedy Berg had some sort of Dropbox
4 environment as well, which was used to communicate or
5 share materials.

6 THE COURT: I would just actually like to turn
7 now to the defendants, because I have never seen anything
8 like that, honestly. And do you want to finish,
9 Mr. Fried?

10 MR. FRIED: There is one thing I do want to say
11 which we wrote to the Court several days, approximately a
12 week ago at this point, raising this issue with the Court.
13 And after that we went in and we conducted a subsequent
14 investigation which compared the IP addresses that
15 accessed it. And we learned it's not just defendant's
16 counsel that accessed these documents, it's the defendant,
17 Jeffrey Hackman himself, who accessed these documents.
18 The logs indicate a Boca Raton IP address that we had with
19 the previous communication with Mr. Hackman, that
20 demonstrates not just Mr. Berg and his team, it's Mr.
21 Hackman that's been accessing them.

22 I raise that for two specific reasons. Number
23 one, Mr. Hackman accessed those documents not just before
24 November 7th, but after November 7th. On November 7th
25 when we first had an indication that this production had

- J L M -

PROCEEDINGS

1 Attorney's Eyes Only documents generally, Ms. Bea wrote an
2 e-mail to Mr. Berg saying, we want everything to be
3 treated provisionally Attorney's Eyes Only. Mr. Berg
4 responded, I have instructed my team accordingly.

5 After that e-mail, after that representation,
6 Mr. Hackman continued, Mr. Hackman continued to access the
7 Dropbox account, downloading documents and viewing them
8 for an additional week. It's not just Mr. Hackman, we
9 have access points from around the nation, Virginia,
10 Florida, Minneapolis, which is presumably the Robins
11 Kaplan firm, and a bunch of other IP addresses that we
12 cannot identify.

13 So, that's why it's not just a matter of their
14 access, it's a matter of their access to this violating
15 the protective order, and also violating the rules
16 requiring turnover and notification of potentially
17 attorney-client privilege. Obviously attorney-client
18 privilege for nearly a week prior to us being notified by
19 that.

20 THE COURT: Thank you.

21 MR. FRIED: Thank you.

22 THE COURT: Ms. Jalkut, are you going to take
23 the incoming on this?

24 MS. JALKUT: I am, Your Honor. Plaintiffs here
25 are seeking extraordinary relief on a motion that amounts

- J L M -

PROCEEDINGS

1 to a lot of noise and, frankly, raises some troubling
2 allegations with very little evidentiary support. I'm
3 going to try to cut this down to the information that I
4 think that you need to know.

5 Mr. Parzygnat, I'm sorry, I don't know how to
6 actually pronounce his name, I'm doing the best I can.
7 Mr. Parzygnat is president of the fund services in Boca
8 Raton, Florida. He's not employed by Pursuit's attorneys,
9 nor was he retained to aid in communication between
10 Pursuit and its counsel.

11 KrunchCash issued a subpoena on Mr. Parzygnat on
12 September 9th, which was served on September 14th and
13 called for production of documents on September 23 in a
14 deposition on October 7th. Pursuit never moved to quash
15 the subpoena. It never moved for a protective order. And
16 as Exhibit 1 shows, counsel Pursuit was on every e-mail
17 communication between Mr. Berg and Mr. Parzygnat regarding
18 his response to the subpoena. He was late using the
19 documents, giving Pursuit yet more time to ask him if they
20 could review the documents first or if they could have
21 moved, they had more time to move to quash the subpoenas.

22 On November 2nd counsel for Pursuit weighed in
23 on the communications between Mr. Berg and Mr. Parzygnat
24 and suggested numerous ways that Mr. Parzygnat could
25 produce the documents. They were then finally produced on

- J L M -

PROCEEDINGS

1 November 4th. Mr. Berg noticed a link in the produced
2 e-mails and clicked on it. The link led to an active
3 Dropbox that was not password protected. And at no time
4 did Mr. Berg enter a password or do some backdoor magic to
5 obtain access to these files. He clicked a link in an
6 e-mail produced by a nonparty.

7 THE COURT: So the e-mails were produced in just
8 natural format, they were just what, forwarded as e-mails?

9 MS. JALKUT: I believe that they are PST files.
10 So like when you open them up it is like looking at it in
11 an e-mail.

12 THE COURT: So, it wasn't produced by a
13 discovery vendor, it was just some guy who knows how to
14 transmit electronic documents but transmitted them in live
15 native format?

16 MS. JALKUT: Correct.

17 THE COURT: Okay.

18 MS. JALKUT: Contrary to Pursuit's counsel's
19 affidavit, a subpoena was not just limited to documents
20 related to audit data between January 1, 2019 and
21 January 1, 2020, the subpoenas sought 12 categories of
22 documents with various time periods. For instance, it had
23 sought all documents and communications relating to audits
24 beginning after January 1, 2019 and it had sought
25 documents sufficient to evidence all moneys received by

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1 you from plaintiff between January 1, 2019 and present.
2 After Pursuit's counsel asked Mr. Berg to treat the
3 documents as Attorney's Eyes Only, he treated the
4 documents as Attorney's Eyes Only.

5 Now, I'm going to disclose one piece of
6 attorney-client communication. I'm not waiving any other
7 attorney-client communication or other privileges.

8 MR. FRIED: It is attorney-client communication
9 belonging to my client or belonging to your client?

10 THE COURT: The question is whether you're
11 talking about --

12 MR. FRIED: Whose privilege?

13 THE COURT: I assume that you meant a KrunchCash
14 attorney-client communication.

15 MS. JALKUT: KrunchCash attorney-client
16 communication. Mr. Berg conveyed to his client that he
17 could not look to his documents as they are Attorney's
18 Eyes Only. Pursuit has not produced any evidence to
19 substantiate its allegations that the Dropbox was password
20 protected or that Mr. Hackman accessed the documents after
21 he was informed that they were Attorney's Eyes Only.

22 Exhibit 8, Pursuit's counsel had self-serving --
23 had created in an attempt to show that the Dropbox was
24 accessed after Mr. Berg agreed to treat the documents as
25 Attorney's Eyes Only, shows that the Dropbox was accessed

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1 by someone in Stamford, El Paso, London and New York and
2 Boca Raton. Who was in Boca Raton? Mr. Parzygnat was in
3 Boca Raton. They have produced no evidence to establish
4 that it was our client who was accessing these documents.

5 THE COURT: All right. Putting aside the
6 client, the question in my mind is, it is certainly
7 unusual to receive in a discovery, in response to a
8 discovery, a live link to anything. And so what happens
9 after you get the live link, you start looking at these
10 documents which are obviously different from the documents
11 that were actually produced by Mr. Parzygnat. At that
12 point in time, especially when there is a folder called
13 Legal, doesn't -- don't certain alarm bells go off in
14 one's head that this has not been produced intentionally?

15 MS. JALKUT: Well, two things, Your Honor.
16 First of all, there is some concern that the questions and
17 relief that is being sought infringes on attorney work
18 product. So what happened when we received this does go
19 into what the attorneys did internally.

20 THE COURT: You know, I'm sure that there are
21 obligations when one receives privileged documents in a
22 situation, when it is reasonable to believe that it wasn't
23 intentionally produced. So, I do, I mean, I'm being very
24 transparent here. I just have serious concerns with the
25 way that this was handled. This seems to be, to me

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1 anyway, if I were the recipient it would be pretty clear
2 that this was a mistake. And I think that you have to get
3 me over my shock at an attorney seeing, for whatever
4 reason, a Dropbox link that, you know, gets you behind the
5 curtain and whether this password protection thing, I
6 guess we can get to the bottom of it if we need to. But
7 at some point in time we're talking looking at
8 communications between, at least it seems like, between
9 the plaintiff and its counsel.

10 MS. JALKUT: As far as I know, Your Honor, that
11 folder was briefly looked at and then just to see it had
12 the term Legal and it was shut down. It was not an
13 extensive review at all of anything in that folder. And I
14 didn't do the review. Mr. Berg, would make your mic
15 louder.

16 MR. BERG: Do you mind if I walked, Your Honor,
17 into Ellen's office?

18 THE COURT: You're louder right now.

19 MR. BERG: Let me tell you what happened and why
20 I don't think that the Court should have any concerns.
21 Number one, it wasn't password protected. Number two, I
22 downloaded the information. I opened the Legal file
23 enough to learn that I shouldn't look at it. I stopped
24 looking at them. But, Your Honor, the issue here is what
25 did I do afterwards. I preserved the information and I

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1 let them know. Yes, it took a week because I'm very busy,
2 but I let them know that. And my review of those folders
3 suggest two things, number one, that all the documents
4 were responsive to the subpoena except for maybe the Legal
5 folder, which there was a waiver of the privilege. And
6 they cite cases in their brief where a party makes an
7 inadvertent disclosure. This is about a third party
8 making a disclosure that gives us access that he has
9 currently to this folder.

10 That's a textbook 101 waiver. So I preserved
11 the documents. I let the other side know. I did take a
12 week because I was busy. I wasn't looking at this every
13 day, all day. That's just far from the truth. But here
14 we are and it's preserved because I preserved it. There
15 is no harm as of yet, unless the Court decides that we
16 can't use them because they undermine their case. And
17 they are responsive to document requests that are pending.

18 THE COURT: When you say "they," are you
19 referring to the privileged documents or just the
20 documents more broadly?

21 MR. BERG: No, the folders with the exception of
22 this one called Legal I did open it, I did look at I think
23 one document and shut it down and I didn't look at it any
24 more. But as to the rest of it, it is things like letters
25 to Pursuit's investor which are discoverable. All those

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1 files and the information about the investors, most of
2 them was given to us. The names of the investors was
3 given to us by Mr. Parzygnat in his production. This is a
4 lot to do about nothing. And when I saw where I was,
5 without waiving my work product privilege, believe me, I
6 was incredibly careful about what I was doing.

7 THE COURT: The fact remains that, I mean, it's
8 the privileged stuff is what got my attention most
9 immediately. So, I'm glad to hear that, you know, what
10 your representation is. That as soon as you saw that it
11 was privileged you put it aside. I didn't have that
12 information until right now. So I wanted to give a chance
13 to explain that. You still have this -- it's a peculiar
14 situation, okay? You made a third-party document request
15 to this guy and you end up with his documents and then a
16 portal to everything else.

17 Now, I have to say, I've never seen this before
18 and I'm struggling to know exactly what to do with it.
19 But it seems pretty clear to me that when you get
20 something like that and you are now in, essentially inside
21 the other company in real-time, you're no longer looking
22 at flat files produced by somebody in discovery, you are
23 in the live environment of your opponent. That is clearly
24 not -- well, it's, I don't know if it's ever happened to
25 you before, but this goes well beyond what would normally

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1 happen in discovery, and I'm sure that you recognize.

2 Now, maybe it's, you know, just an enormous
3 error in your favor and you're allowed to do something
4 with it. But I'm going to say that I'm troubled by it.
5 I'm no longer troubled by what I was most troubled by,
6 which was the privileged part, because this is not the way
7 that discovery works. You don't get a live file which
8 allows you to look into a non-discovery environment, your
9 opponent's records. That is just not anything that I've
10 ever seen before, and not the way that anybody makes files
11 available, especially when the other side doesn't know you
12 are doing it. And, you know, maybe a week goes by because
13 you're busy.

14 All I can say is, this is way off the map here.
15 And I have to figure out what to do with this. Because
16 there is no way on earth that this was intended, and it is
17 just happenstance that there was a link in this guy's
18 e-mail. And so now what happens? You didn't force him to
19 produce it. You looked at it. I mean, in other words, it
20 came into your hands, not illegitimately, it was provided
21 by this guy. The question I have to figure out now is,
22 are you allowed to look at and use a link that was clearly
23 unintentional in terms of discovery. Because if you had
24 asked for it, for example, if you had made a request, if
25 the guy said in a deposition, yes, I have some e-mails

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1 with links to a Dropbox and you had asked me, we would
2 like them to produce that so I can then look through that
3 Dropbox link into their files, I and virtually everybody I
4 know, would say no way.

5 MR. FRIED: Judge, can I --

6 MS. JALKUT: I have a couple of reponses to Your
7 Honor. One, when you serve a subpoena on a party they are
8 supposed to produce all the documents responsive to that
9 subpoena. These were documents that Mr. Parzygnat had
10 access to that were responsive to the subpoena. He had
11 access to that Dropbox. It was the means by which they
12 shared information with Mr. Parzygnat. And that is what
13 the purpose of Dropbox is.

14 THE COURT: I just don't think that discovery is
15 intended to be live linking into the other side's Dropbox.
16 It's intended to be the production of documents, not an
17 access point into the other side's office building.

18 MS. JALKUT: So, two things, Your Honor. Like
19 the fact that it was a live link has to do with the
20 unsophistication of both Mr. Parzygnat and Pursuit. They
21 should have shut this down in 2019; they didn't. But that
22 said, this was how they shared documents with them,
23 documents that were responsive to the subpoena. And they
24 were maintained within those files. So those files were
25 responsive to the subpoena.

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1 THE COURT: I don't think -- well, look, this
2 is -- I don't know if there is any case law on this and
3 this has ever happened before; maybe there is. I haven't
4 seen any response from you all yet because obviously this
5 is moving quickly. But I find it hard to believe -- but
6 are there cases that you're aware of where somebody gets a
7 production which includes a link and then there was a
8 dispute about whether you also are entitled to pursue that
9 link to wherever it leads?

10 MR. FRIED: Your Honor --

11 THE COURT: I'm still with them for now.

12 MS. JALKUT: I mean, I received this motion this
13 morning, Your Honor. I have not had time to find such a
14 case.

15 MR. BERG: If I might, Your Honor, let me say it
16 this way. The cases look at how they protected the
17 information, what did you do to make sure it was secure?
18 What did you do to make sure it was confidential? It does
19 not -- and there are plenty of cases out there that result
20 in the following, whatever the third party has access to,
21 you have access to. He's a third party. He had access as
22 a third party. We asked the other side the minute we
23 subpoenaed this guy, do you control him? Do you represent
24 him? No and no. And as Ms. Jalkut said, they had plenty
25 of opportunities to move to quash, to ask to review them

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1 first. But the cases themselves, and you will see them in
2 our brief and this is a distinction between what is in
3 front of Your Honor right now, what they cite in the brief
4 in support of this motion are inadvertent disclosures by
5 parties. What we have are a series of cases that result
6 in too bad, you stand in the shoes of the third party. If
7 there is a waiver, and I didn't look at that legal file
8 out of an abundance of caution because the cases say that
9 is law school 101 waiver, a third party access to all your
10 confidential and privilege information you waive. That's
11 what the cases say. The cases that the other side has
12 cited are all about a party disclosure.

13 THE COURT: I would be curious to see that you
14 have a case that is this convoluted where the document was
15 sent to this person at a time when it did not give access
16 to, for example, this privileged information. But because
17 the link never was severed it has now migrated to include
18 privileged information. That seems awfully inadvertent to
19 me.

20 MR. BERG: Inadvertent is not the test, that
21 isn't it when you come to a third party. It's what he had
22 access to and what he was given access to and how the
23 other side protected or didn't protect their information.
24 That is what the cases say and we'll get them in front of
25 Your Honor. And as Mr. Abbasi has found, there is lots of

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1 them. I don't know if there is one directly on point.
2 I've been in two depositions today and just saw the cases
3 today. But I do know it is routine in cases and in
4 matters like this, the other side simply looks at the
5 ability to clawback anything.

6 THE COURT: So, in other words, if they
7 inadvertently provided access to a link that a few years
8 later then led this guy, unknowingly probably, to have
9 access to their legal files, you have cases with that kind
10 of fact pattern saying that that constitutes a waiver?

11 MR. BERG: Your Honor, I'm not going to say with
12 that kind of fact pattern, I don't know. I know there is
13 research that's been done that all come out our way. In
14 fact, there is a case involving a hospital that is close
15 to this that I've read. It's not exact, it's close to it.
16 And the Court said too bad, you didn't protect your
17 information, and it was in Dropbox of all places.

18 So, that is what we have found so far. And if
19 Your Honor reads the other side's cases, they will all be
20 party disclosure. It makes a world of difference that it
21 was a nonparty.

22 THE COURT: Well, it's one step removed because
23 then the inadvertence would be that the disclosures of the
24 third party was inadvertent and then the third party
25 inadvertently disclosed it through a link to somebody

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1 else. It's quite a few leaps there.

2 I'm familiar, in general, with the idea that
3 you're talking about, which is that you do have a
4 fundamental obligation to take steps to protect the crown
5 jewels, as some cases call them. You have to show that
6 you've done reasonable steps to ensure. And so
7 translating that, I think, into these facts it would be,
8 did Pursuit take reasonable steps to avoid disclosure of
9 attorney-client information, along with anything else, by
10 sending just a Dropbox link at all. Because then later or
11 maybe the problem is putting privileged information in a
12 folder that could be accessed that way, I don't know.
13 It's a tough one.

14 But, again, my concerns here go beyond the
15 privilege just because I at this point, it's just a
16 feeling because I haven't seen the cases and I'm actually
17 very curious to see if it's ever happened before, but I
18 think that we've sort of turned a corner from discovery
19 into something else. That I know that you received the
20 documents, the files, the e-mails in the traditional way.
21 The question is, what happens when an e-mail then morphs
22 into a window into the other side's files free ranging,
23 without having been reviewed by anyone, without really
24 even any suggestion that the witness who produced it had
25 any idea it was there. I will tell you that I have a very

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1 queasy feeling that is not appropriate discovery. It's
2 not that you did anything wrong getting the e-mail or even
3 necessarily opening, I suppose, and doing it carefully.
4 The question whether you can retain it in these
5 circumstances, when it's pretty clear to me that it would
6 never have been granted if sought, I'm mulling very, very,
7 seriously.

8 Let me ask the plaintiffs to respond. Mr. Fried
9 is very patient.

10 MR. FRIED: Thank you, Your Honor. I'm itching
11 to get a couple of notes out. The first thing, the first
12 thing I want to talk about is what the standard is for --
13 with this inadvertent disclosure. It talks about
14 privilege and whether there is a reasonable expectation of
15 privacy. My client did everything right here. There were
16 two NDAs. We clawed it back immediately upon learning
17 about this. And this was in addition to the e-mails
18 saying that we needed everything provisionally titled as
19 Attorney's Eyes Only.

20 THE COURT: How did you explain this stuff being
21 in a Dropbox that didn't require a password to be entered?

22 MR. FRIED: First of all, there was a password
23 at one point in time; I don't know exactly.

24 THE COURT: So when you say they did everything
25 to protect it, not quite.

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1 MR. FRIED: But the standard is reasonable under
2 the circumstances. My colleague, Ms. Bea, can chime in
3 in-depth. But what's going on, we're talking about --
4 we're not talking about Carlisle here, we're talking about
5 a moderate sized investment fund. One entered into two
6 nondisclosure agreements with its third-party
7 administrator taking all the proper services it does,
8 several passwords, and they are complicated, created to
9 have numbers and exclamation points and yada, yada, yada,
10 to reasonably protect it against it. And that's outlined
11 in the turnout. That's one of the two principles.

12 Number two, it's privileged here. We've already
13 explained in the affirmation of Ms. Bea that we were
14 already in possession of these Dropbox documents. We are
15 looking for these documents and we are going to produce
16 the relevant nonprivileged documents that these guys need.
17 If Mr. Berg and his colleagues aren't going to use these
18 documents, they should put them on the sideline. I would
19 like to get into the TRO relief that we seek. They should
20 put them on the sideline for right now. We will go back
21 and we will produce all the documents that are responsive
22 and nonprivileged. There is no prejudice here. Which
23 begs the question --

24 THE COURT: Why weren't they produced before?

25 MR. FRIED: We're in the process of producing

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1 them right now. We made a production this week.

2 THE COURT: So, part of the discovery is still
3 ongoing?

4 MR. FRIED: Exactly. In fact, they haven't
5 produced a single document and we are in the process of
6 producing documents here. Which makes me point out the
7 duplicity in what's being talked about here. I believe
8 that Mr. Berg has only opened those documents for a
9 second, let's take that at its face value. But his letter
10 to us says, I'm going to use these documents, they are no
11 longer privileged. I'm going to be using these documents
12 in the deposition of Mr. Mitch Cohen. We write back, Ms.
13 Bea says, no, you are not. And Mr. Berg said, oh, yeah, I
14 am. And then we write to the Court and then Mr. Berg
15 says, oh, no, no, no, I'm not going to use these
16 documents. But even today you heard it, I don't think
17 that these things are privileged, they waived the
18 privilege. I don't really know. Let's put this --

19 THE COURT: That's their position. They are
20 entitled to take the position that there has been a
21 waiver. But I agree, that the proper course is where you
22 are now which is that, let's see what happens on the
23 privilege discussion before you look at them again.

24 MR. FRIED: Exactly. Let's put them on the
25 sideline and --

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1 THE COURT: That's the privileged documents.

2 MR. FRIED: There are two more points I want to
3 make. First of all, after this interaction with the Court
4 Mr. Berg had, during this interaction, Mr. Berg said, we
5 invited a phone call. I sent an e-mail to him late last
6 week saying I want to hear all the people that received
7 it, who, what, where, when, and why. Who received it so
8 we can diagnose it and try to figure out what the proper
9 remedy is. He has not responded to that. Okay, so that's
10 the second part of the TRO relief.

11 The second part which is what these guys have
12 tried to sidestep is, it just isn't Mr. Berg, I trust
13 Robins Kaplan to do the right thing; they can sequester
14 this. And notwithstanding Mr. Berg's threats that he's
15 going to use them against Mr. Cohen, I will take it at his
16 face value he's not going to use them. But that's not the
17 problem here. The problem here is that Mr. Hackman has
18 access to these documents, he has downloaded them. They
19 do not address that at all. Mr. Berg is very, very,
20 careful, he says we've instructed our side to do that.
21 But he can't control his client and we can't.

22 Okay, and the fear here is that, number one, and
23 we put this in a document, it's a message from Mr. Hackman
24 to Mr. Turner and Mr. Cohen saying, I'm not bound by the
25 ethical rules. I'm not bound by the same rules that Mr.

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1 Berg and that Mr. Fried is bound by. I can use these
2 documents. And in that context he was talking about the
3 no contact rule, I can contact if I want. But he knows or
4 he's banking on the fact that has, in fact, threatened my
5 clients with the fact that he's not bound by anything.
6 That's number one.

7 Number two, Judge, if we think about to where we
8 were a month ago, we came in front of this Court, we
9 presented this Court the affidavit of Mr. Rogers, Graham
10 Rogers of EisnerAmper. And the cornerstone of that
11 affidavit is everything that Mr. Hackman has put in these
12 cables and in affidavits to courts around this country
13 concerning how much money was invested, repaid, yada,
14 yada, yada, is false. Mr. Hackman is dangerous when
15 presented with these types of information.

16 So, I trust that Robins Kaplan is going to do
17 the right thing. But the reason we need an order today is
18 to make it abundantly clear that Mr. Hackman, who has been
19 apprised that this information is not just privileged but
20 Attorney's Eyes Only as of November 7, and who continued
21 to access them for a week later, cannot touch these
22 documents. I trust Robins Kaplan, but I don't trust --

23 THE COURT: Just on this last point, the
24 continued access. That's based on the Boca Raton address?

25 MR. FRIED: Not just the Boca Raton and it's not

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1 Parzygnat, contrary to Mr. Berg's colleague. We actually
2 triangulated this and compared the IP address to previous
3 access points that Mr. Hackman had used.

4 THE COURT: Interesting.

5 MR. FRIED: Ms. Bea can chime in on that
6 further. But to a high degree of certainty it's Mr.
7 Hackman.

8 MS. BEA: The attorney affidavit is key on both
9 dealing with who accessed those documents and to the
10 password issue that's come up. So, first as to was it or
11 was it not Mr. Hackman. That IP address and those reports
12 generated directly from Dropbox. I didn't create them
13 myself. They are generated from the program. What they
14 show are unknown access points. Only people who are
15 unknown are the people who don't have the password and
16 share access. So they are not Mr. Parzygnat. And
17 included as an exhibit to this return affidavit is a
18 report that he generated from June 2021 when Mr. Hackman
19 was sharing files with Mr. Turner from KrunchCash's
20 Dropbox. And that those -- Jeff Hackman,
21 jeff@krunchcash.com is associated with that particular IP
22 address in Boca Raton. And that was how it was determined
23 and triangulated. That that same IP address showing up
24 anonymously indicates, because it is not a person who was
25 or an IP address that was supposed to have authorized

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1 access to that box is going to show up always unknown.
2 However, the IP address in the Boca Raton location do show
3 up.

4 Then as to password protection. Mr. Turner
5 spells out in his affidavit these are encrypted password
6 protected. Mr. Parzygnat has to have a password to
7 access. Mr. Turner has to have a password to access it.
8 And Mr. Cohen has to have a password to access it. And
9 these are the only three people as far as Pursuit knew,
10 until we received that letter that could possibly access
11 this.

12 THE COURT: Have your experts figured out how
13 the presumably, not super hacker Mr. Berg, was able to do
14 it without a password?

15 MS. BEA: The link itself apparently. So when
16 the link was sent to Mr. Parzygnat back in 2019, he was
17 already under a NDA and he already had the password access
18 to the account. So, his experience should have reasonably
19 been to click the link and go directly in, you know,
20 because he already had that access. So nothing about that
21 link at the time --

22 THE COURT: So it's some sort of, I'm probably
23 using the wrong term by saying cookie, but there are
24 sometimes because you've on your computer accessed a
25 certain thing, it will populate the password. You're

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1 saying that this went -- it didn't even get to that screen
2 where it asks you for a password and has it filled in, it
3 just goes right through? That's odd.

4 MS. BEA: Correct, it is odd. And for that
5 reason and because Mr. Parzygnat only was supposed to be
6 able to access by a password, Pursuit was unaware that the
7 link provided a bypass from the password system. And
8 immediately upon realizing it, was able to go back to the
9 date the link was generated and do some work on there and
10 to shut that down. But the first time they would have
11 been alerted to the way that the link operated, again,
12 because these aren't IT people, but these are people doing
13 what a reasonable person, a diligent person would have
14 been doing at the time, which was to make sure that only,
15 only certain people under certain circumstances had
16 password access to any of their files.

17 THE COURT: We're running short of time and I
18 want to give the defendants a chance to respond to this.
19 Hang on one second.

20 (Pause)

21 THE COURT: Ms. Jalkut or Mr. Berg, can you -- I
22 mean, that triangulation of Mr. Hackman's address thing.

23 MS. JALKUT: I'm getting shades of serial
24 podcast here. Do we need an expert to talk about how
25 triangulation doesn't actually work?

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1 THE COURT: I don't know.

2 MS. JALKUT: I don't know either.

3 THE COURT: But IP addresses are specific to
4 locations, are they not?

5 MS. JALKUT: I don't know. Do we need an expert
6 to talk about that?

7 THE COURT: Well, we may. Because my
8 understanding is that each computer has its own unique IP
9 address, but maybe I'm wrong about that.

10 MR. BERG: Your Honor, if I might just jump in.
11 None of what Ms. Bea said was supported by an expert
12 affidavit, which it needs to be if she's going to make
13 these accusations and Mr. Fried is going to tarnish my
14 client on the record. Who, by the way, has accounted for
15 every penny separately that it got from Pursuit. And they
16 can't possibly confirm otherwise because they don't have
17 the backup material. But put that to one side.

18 Mr. Hackman will be instructed, yet again, not
19 to access this. If they want to destroy it, he will
20 destroy it; I don't care. This is not about what Mr.
21 Hackman did, this is about how they protected their
22 information and didn't protect their information. And as
23 to super hacker, I'm 51 and I can barely operate a cell
24 phone. I clicked on a link.

25 THE COURT: Look, I'm somewhere in the zone

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1 between perplexed and extremely concerned. This is very
2 unusual. I've never seen it in my practice or here. And
3 it does seem to be a series of sort of odd events strung
4 together. But I'm concerned enough about it that I am
5 going to order a temporary restraint until we can untangle
6 this and determine what, if any, portion of the
7 information that was secondarily linked from Mr.
8 Parzygnat's files is legitimate discovery first of all.
9 And if within the material that plaintiff would have ended
10 up having or defendants would have ended up having access
11 to at a bare minimum, never would have been reviewed for
12 responsiveness because that's not how they were accessed.
13 They would not have been reviewed for privilege. That
14 leads you into the privilege issues they question of
15 whether Mr. Hackman was continuing to access it, which I
16 express no view on other than to say that at this point I
17 would hazard to say that nobody on this call could tell me
18 definitively one way or the other, yes.

19 So, at this point I'm looking at the OSC, Order
20 to Show Cause, which we marked. I'm going to grant the
21 first -- first of all, we'll set a time to have a full
22 hearing or briefing on this issue for longer term
23 questions. But I will just read it in so it's clear and
24 you'll have it before the written version. It will be
25 further ordered that pursuant to CPLR 6313 and 3103, and

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1 with good cause having been alleged, that immediate
2 irreparable injuries, loss or damage will result to
3 plaintiff unless a preliminary injunction and a temporary
4 restraint be imposed, that the defendants, KrunchCash LLC,
5 KC PCR Fund LLC, Jeffrey Hackman and Sean McGhie,
6 M c G H I E PLC, their attorneys and their agents and
7 representatives and all persons acting or purporting to
8 act on their behalf with notice thereof, are temporarily
9 restrained and enjoined from accessing or using any and
10 all documents or information accessed and/or obtained
11 through the access of Dropbox folder also belonging to
12 plaintiff Pursuit Credit Special Opportunity Fund LP or
13 its environment manager, Pursuit Management LLC, pending
14 the hearing of this motion.

15 I'm not including the other items with respect
16 to sequestering and the like, and the order for sworn
17 statements and the like, I trust that the injunction is
18 enough. But I will schedule this for a hearing on the
19 broader question of ongoing discoverability of this stuff.
20 It should include, I guess, whether this stuff is
21 privileged.

22 I take this very seriously. I don't think that
23 I've ever, as I said, I think that this is potentially an
24 extremely broad expansion of discovery in a what seems to
25 be an inadvertent manner. Now, maybe the defendants are

- J L M -

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1 right that, you know, you give this kind of information to
2 a third party and you take your chances and then come what
3 may or maybe not.

4 MS. JALKUT: Your Honor, may I ask a question?

5 THE COURT: Yes.

6 MS. JALKUT: If we're not allowed to use any of
7 the documents, how do we defend against the motion or
8 prove that they are discoverable?

9 THE COURT: Well, I think that that's the point,
10 right? I mean, you have the circumstances under which
11 they were provided to you. So I think that the e-mail
12 containing the link is all you need, right? Everything
13 from there forward is just the result of access from that
14 link. So you don't need to use that. And, look, to the
15 extent that you need to reference anything solely for
16 purposes of responding to this motion, I don't really
17 understand why. Because the whole question here is
18 whether you were legitimately able to, are able to keep
19 whatever was provided by virtue of that link. So I don't
20 think so. I don't see why you would need to refer to the
21 output to be able to address the question of why you
22 shouldn't have that output. If you legitimately think
23 that you have to reference something, not a privileged
24 something but something that solely to respond to this
25 motion, I guess that maybe we'll add a proviso saying

- J L M -

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1 that, unless required solely for purposes of responding to
2 this motion, I guess that we will add that.

3 MS. JALKUT: Thank you, Your Honor.

4 THE COURT: But that does not include the
5 privileged, the privileged documents that Mr. Berg has
6 already said that he did not look at. From now forward,
7 anything that has been looked at shouldn't be used. This
8 should apply to all derivative works. So, if you've
9 written memos about this same thing, everything is
10 embargoed. I don't take this step lightly. I don't like
11 to get involved in the middle of this. But maybe it's not
12 easy to see from the perspective of the combatants. But
13 this is a very, very, different kind of information
14 exchange than discovery is intended to be. And I just
15 want to lock it down until we can figure out what to do
16 with it, all right?

17 We will fiddle with the language and send this
18 document out. But the restriction that I read into the
19 record is effective as of now. Please communicate that to
20 your client and anyone else who is covered by the order I
21 just read.

22 So, let's talk about the schedule, schedule for
23 hearing this. I'm going to give plaintiffs the ability to
24 take some discovery on this issue, who has seen it.
25 Basically the things that they asked for in their OSC,

- J L M -

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1 which is information about the dates the Dropbox was
2 accessed. All persons who accessed it and the like. This
3 hearing on this motion, it doesn't have to be evidentiary.
4 You guys can decide how you want to do it. But I'm
5 interested enough to know how this went down that I will
6 allow the parties some ability to take discovery. I don't
7 know what discovery the defendants need but, you know. I
8 can -- rather than doing this on the record, we'll look
9 around for a time that we can hear you and presumably in
10 December. How much time do you think that you need to
11 respond to the motion?

12 MR. BERG: With everything that's going on, I
13 think I need some time. I know it's urgent so I'm trying
14 to estimate carefully. But I would think I would need at
15 least three weeks. And if there is going to be discovery
16 I'm going, I may need more.

17 MR. FRIED: I actually think that sounds
18 reasonable.

19 MR. BERG: I said if there is going to be
20 discovery.

21 THE COURT: No, Mr. Fried was saying something
22 but you can't hear him.

23 MR. BERG: I'm sorry.

24 MR. FRIED: I think that's fine. We recognize
25 Thanksgiving and the holidays coming up. I think that the

- J L M -

PROCEEDINGS

1 best way to do this, would the Court permit us to take an
2 hour deposition of Mr. Hackman on this point exactly,
3 after a little bit of document demands or interrogatory or
4 two?

5 THE COURT: Yes.

6 MS. JALKUT: Likewise, I think that we would
7 need a deposition too.

8 THE COURT: Of Mr. Parzygnat?

9 MS. JALKUT: And of Pursuit's principals to find
10 out how they protected this information.

11 THE COURT: We're going get to the bottom of
12 this. I don't want this to turn into an entirely separate
13 branch of the litigation. But given what I have to assume
14 what is the breadth of disclosure, expansion, I don't know
15 if you have a gigabyte explanation of how much data was
16 made available through this Dropbox. Does anybody know?

17 MR. BERG: I couldn't estimate. I don't know
18 what a gigabyte looks like unfortunately.

19 MR. FRIED: I believe the number of folders that
20 was downloaded by the defendants and their counsels is
21 outlined in Ms. Bea's affidavit.

22 THE COURT: I'll give you time to do what you
23 need to do. Now that the TRO is in place, at least no
24 further expansion of the issues should take place.

25 So, I ask Mr. Blaustein to circle back to you

- J L M -

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1 with dates and times and we'll come up with some specific
 2 dates for the Order to Show Cause. I will permit a reply
 3 in these circumstances. It probably makes sense for the
 4 defendant's brief not to come in until after this
 5 discovery has taken place so that they can give their
 6 pitch based on the discovery record, and then the
 7 plaintiffs will have a chance to respond. So that might
 8 actually speak for going into January with this thing.
 9 Because I think that it's important for that. All right,
 10 thanks all. I will see you the next time.

11 * * *

12 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.

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 JACK L. MORELLI, CM, CSR

- J L M -

Exhibit 3

List of Partial IP Addresses for Unknown Non-Team Member Access**Access Dates:** November 4, 2022 through November 14, 2022**Dropbox Account Holder:** scott@pursuit-mgt.com

<u>IP Address</u>	<u>Country</u>	<u>City</u>
73.139.xxx.xxx	United States	Boca Raton
23.228.xxx.xxx	United States	El Paso
74.64.xxx.xxx	United States	New York
2600:387:5::xxxx	United States	New York
38.140.xxx.xxx	United States	New York
69.114.xxx.xxx	United States	Hewlett
47.16.xxx.xxx	United States	Babylon
206.169.xxx.xxx	United States	Minneapolis
54.80.xxx.xxx	United States	Ashburn