

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

**DEFENDANTS' AND RELIEF DEFENDANTS' OPPOSITION TO SECURITIES AND
EXCHANGE COMMISSION'S
EXPEDITED MOTION FOR TEMPORARY INJUNCTIONS,
ASSET FREEZE, AND OTHER RELIEF**

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I. PRELIMINARY STATEMENT

Simply put, this is not a case that warrants emergency relief. There is no evidence of investor loss, missed payments, destruction of evidence, sudden transfers of funds, or moving funds outside of the jurisdiction of the U.S. courts. There is, however, plenty of evidence that the Defendants have built a viable multi-billion dollar real estate business with material assets and investments that generate significant revenues now and will generate even greater revenues in the coming years.¹ As explained more fully below, among other things, the SEC cannot establish a substantial likelihood of irreparable harm if a TRO, asset freeze, and receiver are not issued or appointed, and it cannot show that a receiver will do no more harm than good. As a result, the extraordinary relief the SEC seeks is not warranted, and the Court should deny its motion.

The pace of the SEC's investigation that preceded the TRO filing was not the typical short, fast-paced investigation that normally precedes a TRO. The SEC initiated this investigation nearly two and a half years ago in or about September 2022.² During the investigation, the SEC issued more than ninety (90) document subpoenas to third parties and Broadstreet-related entities and individuals, including Defendants' bank and financial institutions. Defendants produced hundreds of thousands of pages of materials in response.³ The SEC also took testimony from ten (10) Broadstreet-related witnesses over a span of seventeen (17) months. The SEC's investigation was essentially complete by August 22, 2024, when the Broadstreet Plaintiffs filed the action against

¹ For ease of reference, Defendants will adopt the SEC's naming conventions for purposes of its pleadings such as "BSI" for Broadstreet Inc., "BSG Fund" for the Broadstreet Global Fund LLC, and "BSG Management" for Broadstreet Global Management LLC. However, Defendants will refer to "Broadstreet" to include BSI and its affiliated entities including BSG Fund and BSG Management.

² Declaration of J. Lee Robinson ("Robinson Decl.") ¶ 4.

³ The SEC did not pursue any subpoena enforcement actions against the Defendants during its investigation.

the SEC in the Northern District of Texas (the “Texas Action”).⁴ Since that time, the SEC’s investigation has been on pause for five (5) months while the Texas action was being litigated, and the Broadstreet parties had not heard from the SEC’s Denver Regional Office which was conducting the investigation until the motion for TRO was filed in this Court.⁵

During the more than two-year period of the SEC’s investigation and while under the SEC’s scrutiny, the BSI business lines have grown into a more than billion-dollar enterprise that includes viable and valuable business lines in real estate infrastructure, crypto mining and data centers, hotel and lodging, merchant cash advance, and self storage facilities. For the past five months since the filing of the Texas Action, the SEC’s investigation has been inactive and essentially on hiatus. Significantly, in its papers, the SEC cites no new facts or evidence justifying its sudden TRO filing. No new evidence of investor losses. No fraudulent transfers of funds. In fact, the only ongoing conduct cited by the SEC is the fact that Broadstreet was continuing to raise funds from investors.⁶ The SEC has been sitting with the Defendants’ financial records in their possession for years as Broadstreet voluntarily turned over its financial records to the SEC early in the investigation. Yet, now, apparently without any new facts or evidence even suggesting that

⁴ *Broadstreet, Inc. et al. v. Securities and Exchange Commission*, Case No. 4:24-cv-00803-O (N.D. Tx.).

⁵ Indeed, the timing of the SEC’s filings in this matter strongly appear to be triggered by events in the Texas Action rather than a desire to halt ongoing misconduct. On January 8, 2025, the court in Texas Action denied the SEC’s motion to stay discovery after the SEC had stated its intention to file a motion to dismiss. It appears this order caused the SEC to seek expedited authority from the Commission to file the Motion for TRO. On January 28, 2025, the Texas court set a hearing on the Broadstreet plaintiffs’ motion to compel discovery for February 5, 2025. The very next day after the Texas court’s order, the SEC initiated the filing of the TRO action on January 29, 2025, and requested that a TRO be entered by February 5, 2025 – the same day as the hearing on the motion to compel in Texas. Thus, the timing of the SEC’s filings in this matter appeared to be drive by a desire to avoid the jurisdiction of the Texas court.

⁶ Robinson Decl. ¶ 235.

a TRO is necessary, the SEC filed this emergency action seeking extraordinary relief that would effectively shut down Broadstreet's business and cause irreparable harm to the fund's investors.

Contrary to the SEC's arguments, the BSG Fund's investors were provided numerous and detailed disclosures regarding BSG Management's discretion and control over fund assets, the management fees charged, the operations of the fund, and the status of the fund's investments. These numerous disclosures appear in several different documents provided to investors including the fund's operating agreement, the private placement memorandum ("PPM"), quarterly reports, a key compliance update provided to investors, and a data room of materials that fund investors were obligated to review. In short, investors see these disclosures dozens of times per year through data room materials.

Many of the SEC's key assertions in the papers are readily rebutted as follows:

- Defendants did not overstate returns with respect to its merchant cash advance ("MCA") portfolios. Rather, the SEC expert's analysis regarding BSI's portfolios is materially flawed. The expert relied on incorrect data inputs in computing BSI's returns on its portfolios, incorrect data on the collectability of the portfolios, and she applied the wrong accounting methodology.
- BSG Management did not divert \$880 million of fund assets. To the contrary, the fund manager was simply deploying fund assets to BSI's various business lines as was permitted by the fund's operating agreement, the PPM, and other disclosures. The SEC's own expert report acknowledges investment activity of at least \$721 million.
- BSG Management disclosed the amount of its management fees to fund investors. Disclosures contained in the fund data room, series supplements, and a key compliance update, clearly set forth that BSG Management was entitled to a six (6) percent fee

annually over five (5) years for a potential total of thirty (30) percent. The SEC does not allege BSG Management received fees in excess of this amount because they did not.

- Broadstreet’s qualified small business stock (“QSBS”) subseries is alive and well contrary to the SEC’s assertions. All of the corporate and tax paperwork has been filed with the proper authorities and a major U.S. law firm engaged by BSI recently completed a draft Form S-1 registration statement for the QSBS division.
- BSG Management accurately keeps records of each of its subseries through spreadsheets that are updated monthly and track subseries investments and distributions by client for each subseries. It’s simply not reasonable to conclude as the SEC does that BSG Management had to create a separate bank account for each of its multiple subseries.
- Disclosures to fund investors only provided that BSG Management would use “commercially reasonable efforts” to prepare financial statements for the fund – audited financials are not promised to investors. The SEC’s investigation – not a lack of effort by Defendants – has prevented BSG Management from being able to retain an outside accounting firm to audit the fund’s financial statements. Moreover, the consolidated financial statements that were prepared internally for BSI were not widely disseminated to fund investors and investors who received them received qualifying data room disclosures that the financials were not audited and not prepared in compliance with U.S. Generally Accepted Accounting Principles (“GAAP”).
- Contrary to the SEC’s arguments, fund materials contained numerous disclosures regarding the use of investor funds and how the subseries would operate in relation to

each other. Critically, it was disclosed that in the manager's discretion funds from one subseries or business line could be invested in another subseries or business line if necessary, and that funds associated with a particular subseries or business line could be used to satisfy obligations of another subseries or business line.

- It was disclosed to investors that Broadstreet's real estate projects would not immediately generate cash flows for several years and that real estate related funds could be invested in other subseries, such as MCA, while real estate projects were being developed and prior to generating returns.
- The SEC relies on stale evidence in making its arguments. For example, the SEC states that the infrastructure projects have made zero distributions to Broadstreet as of December 31, 2023, when in 2024 the infrastructure projects distributed over \$45 million dollars to Broadstreet and these projects are expected to distribute at least \$75 million to Broadstreet in 2025, with a projected \$5 billion in contracts with homebuilders for lot sales that will deliver \$500 million in distributions over the next 4-5 years for the benefit of the BSG Fund.

Based on the foregoing, and for reasons stated below, this is not a case that comes close to meeting the high requirements for emergency action like a TRO, and the relief sought by the SEC should be denied in its entirety. At best, the SEC's case against Defendants is a garden variety securities enforcement case that should proceed to discovery and litigation on the merits.

II. FACTUAL BACKGROUND

Broadstreet is a leading private equity firm rooted in the Carolinas with its main offices in South Carolina. [*See* Declaration of David Feingold ("Feingold Decl.") ¶ 5.] Broadstreet is the fourth largest private equity infrastructure developer in the USA. [*Id.*] Broadstreet has been

involved in over \$5 billion in transactions and currently is involved in over 17,000 acres of land, more than 54 communities/infrastructure projects, over 44,000 expected homesites, 863 hotel room units and over 130 total projects/businesses. [*Id.*] Broadstreet and its affiliated/related entities' office operations have over 100 front office personnel and an estimated 3,000 jobs created from its projects which have an estimated \$10 billion economic impact on the Carolinas. [*Id.*]

Broadstreet has fourteen (14) different business lines that include (1) infrastructure (2) home development (3) hotel/lodging (4) land banking (5) restaurants (6) specialty finance/merchant cash advance (7) crypto mining (8) self-storage facilities (9) automobile dealerships (10) data centers (11) broker/dealer (12) family office (13) insurance (14) mortgage conduit trading/securitization. [*Id.* at ¶ 6.] The BSG Fund provides equity capital for many of BSI's business lines and is entitled to receive certain distributions and profits from those business lines. [*Id.*] Each one of those business lines may contain numerous special purpose vehicles ("SPVs") to hold the assets, such as the lands and management companies applicable to the individual land deals. [*Id.*]

Broadstreet's infrastructure business, which is currently the largest business line, is primarily responsible for delivery of forty-four thousand (44,000) homesites to two primary clients, DR Horton, Inc. and Lennar Homes Corp. the first and second largest homebuilders in the U.S., respectively. [*Id.* at 7; *see also* Declaration of Josh Howard ("Howard Decl.") ¶¶ 2-8]. Both are multi-billion dollar publicly-traded companies that have entered into fixed contracts for the delivery of homesites for home building. [*Id.*] Broadstreet provides the infrastructure (roads, sewers, electric, gas, grading, basically all services besides the actual building of the homes). [Feingold Decl. ¶ 7.] Presently, the average lot price is almost \$110,000 per lot, accordingly, the infrastructure business will generate nearly \$5 billion in lot sales that are expected to generate

approximately \$500 million in distributions for the benefit of the BSG Fund. [Feingold Decl. ¶ 7; Howard Decl. ¶ 8.] Broadstreet currently controls approximately \$200 million in unencumbered real estate lands independent of its real estate business lines. [Feingold Decl. ¶ 9.; Howard Decl. ¶ 9.; *see also* Def. Ex. M.] *See also* Declaration of Steven Baldassarra (S. Baldassarra Decl.) ¶¶ 4-5, 24-27.

Broadstreet also operates a data center/crypto mining business line that is the largest DOGE coin miner in North America with sixteen thousand (16,000) miners in five (5) data center locations with an additional five (5) more data centers in process of development. [Feingold Decl. ¶ 8.] BSI has nearly 225 million worth in mining machines that consume 100 Megawatts or power or enough energy to power nearly 100,000 homes. [*Id.*; *see also* Def. Ex. N.; S. Baldassarra Decl. ¶ 28.]

Broadstreet's MCA business line currently holds approximately \$180 million in commercial papers. [*Id.* ¶ 10.] Broadstreet's MCA portfolios are syndicated through Samson Funding ("Samson") a company based primarily in New York.

Finally, Broadstreet's other remaining business lines such as hotel and lodging, self-storage facilities, land banking, restaurants, and auto dealerships hold assets of a combined value well in excess of \$150 million on a conservative basis. [*Id.* ¶ 11.]

III. ARGUMENT

A. Legal Standards

The legal standard for granting a temporary restraining order is similar to the standard for granting a preliminary injunction. *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1231 (11th Cir. 2005). Either is an "extraordinary and drastic remedy" that cannot be granted unless the SEC clearly establishes the burden of persuasion for each of the four factors. *Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1210 (11th Cir. 2003) (citation omitted) (emphasis added). Indeed, courts generally disfavor injunctions at the preliminary stage of a

proceeding except in “rare instances in which the facts and law are clearly in favor of the moving party.” *Miami Beach Federal Sav. & Loan Ass’n v. Callander*, 256 F.2d 410, 415 (5th Cir. 1958); *see also United States v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983) (granting a preliminary injunction “is the exception rather than the rule”). To obtain a temporary restraining order or preliminary injunction, the SEC must demonstrate that “(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *Schiavo*, 403 F.3d at 1231. Courts follow this same factor test in determining whether to grant an asset freeze requested by the SEC. *SEC v. Asset Recovery and Mgmt. Trust, S.A.*, 340 F. Supp. 2d 1305, 1309-11 (M.D. Ala. 2004); *see also SEC v. Chappell*, 107 F.4th 114, 126 (3d Circuit 2024).

B. The SEC Cannot Demonstrate Substantial Likelihood of Success on the Merits

The SEC must first establish a *substantial* likelihood of success on the merits. *Schiavo*, 403 F.3d at 1231. To do so, the SEC “must demonstrate a likelihood of success at trial as to both its *prima facie* case and the affirmative defenses asserted by the defendant.” *TracFone Wireless, Inc. v. Clear Choice Connections, Inc.*, 102 F. Supp. 3d 1321, 1325 (S.D. Fla. 2015). In assessing a substantial likelihood of success on the merits, courts “look to standards provided by the substantive law.” *Janvey v. Alguire*, 647 F.3d 585, 596 (5th Cir. 2011) (quotation marks and citation omitted). Accordingly, courts analyze the elements of each cause of action to assess the likelihood of success. *See Pliteq, Inc. v. Mostafa*, 2024 WL 4215635, at *1 (S.D. Fla. Aug. 30, 2024). And a failure to demonstrate a substantial likelihood of success on the merits is fatal to the SEC’s request. *See Pittman v. Cole*, 267 F.3d 1269, 1292 (11th Cir. 2001). If that occurs, the court need not consider the remaining three factors. *Id.*

The SEC's claims under the Securities Act and Exchange Act require the government to prove that Defendants made materially false statements or omissions to investors with respect to the BSG Fund's operations, or that the Defendants engaged in deceptive practices regarding the same (so-called scheme liability). For the most part, the SEC's Advisers Act claims rely on the same or similar allegations. The SEC allegations can essentially be grouped into four separate categories: (1) that Defendants overstated profits with regard to Broadstreet's merchant cash advance ("MCA") portfolios (2) that Defendants failed to strictly follow disclosures related to the Fund's status as a Delaware subseries LLC; (3) that Defendants made false statements regarding the qualified small business stock subseries; and (4) that Defendants engaged in deceptive practices regarding the fund's recordkeeping practices and financial statements (TRO Mtn, p. 2.).

Much of the SEC's purported arguments are based on Broadstreet's past history and PPM and less about Broadstreet's current practices. Since Mr. Feingold restructured the Broadstreet entities starting in June 2022 and when he became BSI's CEO, BSG Management has steadily improved its disclosures and compliance practices including updating its PPM in September 2023, and providing explicit disclosures to investors through a compliance update in July 2023 (which has since been provided to fund investors on an ongoing basis).

The SEC spills considerable ink regarding Broadstreet's MCA business line, arguing that the MCA portfolios were not profitable enough to cover distributions and redemptions to the BSG Fund's investors in earlier years. However, the SEC's analysis is based on a flawed expert report that significantly undervalues the MCA portfolios on a historical basis. Moreover, it was always contemplated that BSI would initially use the MCA portfolios to support the BSG Fund's obligations while BSI's real estate business lines began generating capital. Fund materials disclosed these facts to investors on a consistent basis through quarterly updates and in the data

room. BSI's key to building its real estate business is to not liquidate its real estate holdings every quarter or month to meet investor payments but to let the land values grow. As expected, BSI's real estate business line has grown rapidly to now dwarf the MCA portfolios. As a result, Broadstreet is much less reliant on the MCA portfolios as a source of revenue on a going forward basis.

Stripped down to its core, the SEC's claims essentially take aim at the sufficiency of BSG Management's disclosures and BSI's business practices. While Defendants believe such practices are legitimate, even in the best case scenario for the SEC, its claims are a garden variety SEC enforcement case; one that does not warrant emergency relief.

1. The SEC's Expert Materially Understates Broadstreet's MCA Returns

The Defendants' arguments regarding Broadstreet's MCA portfolios are based entirely on the analysis of their forensic accounting expert who attempted to calculate the returns associated with Broadstreet's MCA portfolios for the years at issue. Based on the expert's analysis, the SEC claims that actual returns from the MCA investments were below promised returns and deteriorated over time (TRO Mtn, pp. 9-14). However, the SEC expert's analysis is seriously flawed and understates the MCA's portfolios historical returns and current values.

First, the SEC's expert used incorrect and incomplete data for the calculations associated with Broadstreet's MCA advances.⁷ The expert used the wrong data inputs for her calculations and she did not take into account how the portfolios were managed. Second, the SEC's expert used incorrect and incomplete data regarding the performance and post-performance of Broadstreet's MCA portfolios. These are critically important data inputs that are ignored by the expert. As a result, the SEC's expert materially understated the returns on Broadstreet's MCA portfolios.

⁷ See Expert Report of Melissa Davis ("SEC Exp. Rpt.").

Third, the SEC expert mentioned in passing that Broadstreet at times relied on Samson's calculation of Broadstreet's monthly returns for its MCA portfolios of 2.866 percent per month, which was a five-year average. [SEC Exp. Rpt. ¶¶ 210, 211] The expert summarily rejected Samson's calculations without explaining why they were wrong, nor why it was unreasonable for Broadstreet to rely on Samson's analysis of its own data. Because the expert used an entirely different methodology to calculate Broadstreet's monthly returns on its MCA portfolios, it is hardly surprising that she arrived at different amounts than Samson. Further, the expert's criticisms of Broadstreet's reporting in its consolidated financial statements failed to take into account Broadstreet's status as an investor in MCA syndications through Samson and the fact that Broadstreet used the accrual method of accounting; her analysis appears to treat Broadstreet as a direct lender in MCA that reported on a cash basis. *See also* Feingold Decl. ¶¶ 37-39.

Finally, the SEC's expert report is significantly undercut by a recent securitization involving Samson's MCA lending. Basepoint Capital ("Basepoint"), a New York based specialty finance lender, is one of the syndicators who advances funds to merchants along with Broadstreet through Samson. [Feingold Decl. ¶ 40.] When Samson offers an advance to merchants, Broadstreet and Basepoint often act as co-syndicators on the advance each providing a certain percentage of the overall advance. In December 2023, Basepoint completed an offering memorandum for a \$100 million asset-backed securitization wherein the underlying assets consisted of MCA portfolios and with approval to upsize to \$500 million. [*Id.*; *see also* Def. Ex. O] The offering was underwritten by Guggenheim Securities, LLC, one of the largest investment banks in the U.S. [*Id.*] As part of the due diligence described in the offering memorandum, the underwriter analyzed a statistical pool of merchant cash advances that included approximately \$61 million of advances serviced by Samson (which comprised 69.85% of the advances analyzed). [*Id.*] The Samson advances analyzed

by the underwriter included much of the same advances that Broadstreet participated in as a co-syndicator with Basepoint. [*Id.*] The underwriter's analysis of Samson's portfolios showed materially different collection data than what was used by the SEC's expert in this matter. [*Id.*] Moreover, as a result of the underwriter's due diligence and Basepoint's offering materials, DBRS Morningstar rated the Class A and B notes for the securitization (which paid coupon rates of 8.704% and 11.286%, respectively) as investment grade. [*Id.*; see also Def. Ex. P.] If Samson's MCA advances returned less than 3 percent annually and had the collection issues that the SEC's expert contends, there is no chance the Basepoint securitization would have been rated investment grade under those circumstances.

Defendants will present evidence and testimony on these issues at the February 26, 2025 hearing to demonstrate the defects in the SEC's expert analysis. At best, the actual returns that Broadstreet earned on its MCA portfolios during the period at issue will come down to a battle of the experts during this litigation. At the early stages of this proceeding where Defendants have not yet had the opportunity to retain experts and prepare expert reports, it would be premature for the Court to rely on the SEC expert's questionable analysis as a basis to order the extraordinary relief requested by the SEC.

2. BSG Management Did Not Divert Investor Funds

Throughout its pleadings, the SEC suggests that BSG Management diverted approximately \$880 million in investor funds (*see e.g.*, SEC Motion for TRO ("TRO Mtn.") pp. 3, 20). This is simply incorrect. Investor funds were not diverted but rather deployed on behalf of the BSG Fund by its manager (as confirmed by the SEC's own expert cash analysis). Under the BSG Fund LLC operating agreement ("Operating Agreement"), BSG Management has broad discretion and control over investor funds. For example, Section 4.01 of the operating agreement outlines in

sixteen (16) subparts the broad powers and discretion provided to BSG management to manage, own and control fund assets. Section 4.01 states in pertinent part:

The management of the Company and each Series shall be vested exclusively in the Manager. The Manager shall have the authority, on behalf of and in the name of the Company or each Series, to take any action or make any decisions on behalf of the Company and each Series ...”.

[Def. Ex. B, Section 4.01, emphasis supplied.] The Operating Agreement goes on to further describe BSG Management’s discretion and control including to “acquire, hold, sell, transfer, exchange and dispose of Investments, and exercise all rights, power, privileges and other incidents of ownership and possession with respect to such Investments, including without limitation, the voting of Investments, the approval of restructuring of entities in connection with Investments ...”

[*Id.* at Section 4.01(c), emphasis supplied.] Moreover, Section 4.09 of the Operating Agreement states in relevant part, “[t]he Manager and its Affiliates may purchase an investment that would otherwise be appropriate for the Fund or a Series to own.” [*Id.* at Section 4.09, emphasis supplied.]⁸

The SEC’s own expert report acknowledges that Broadstreet’s investment activity resulted in the deployment of more than \$721 million in funds in BSI’s various business lines. [SEC Exp. Rpt., Table 4, pg. 16.]

The BSG Fund’s 2023 PPM also contains several disclosures regarding the manager’s discretion and control over fund assets. For example:

A Series may represent a particular industry or vertical but the Investor may not have any ownership interest in the underlying assets of a Series and may only have rights to specific returns or allocations of revenues, profits or such other structures set up in the sole discretion of the Manager.

[Def. Ex. A, pg. 9, emphasis supplied]

⁸ It should be noted that BSG Fund’s 2020 Operating Agreement contains the same disclosures. See Robinson Decl., Ex. 4, Sections 4.01 and 4.09.

While the Manager is accountable to the Fund generally, the Operating Agreement grants the Manager broad discretion as to many matters and limits the Manager's fiduciary duties. By entering into the Operating Agreement and signing the Subscription Agreement, each investor acknowledges and consents to the exercise of such discretion by the Manager, including where the Manager has a conflict of interest.

[*Id.* at pg. 26, emphasis supplied].

The Manager will have broad discretion to establish additional Series, and the investment strategy and other terms applicable to such Series without notice to or the consent of Members of any other Series. The Operating Agreement provides that the Manager will have complete control of the business of the Fund and that the Members will have no power to take part in the management of the Fund and each Series.

[*Id.* at pg. 43, emphasis supplied].

Accordingly, any suggestion that BSG Management diverted \$880 million in funds is patently false. BSG Management simply deployed fund capital pursuant to its authority under the Operating Agreement and PPM. All BSG Fund investors were provided copies of these documents as part of the subscription documents when they initially invested in the BSG Fund. Thus, BSG Management's control and discretion over fund assets was sufficiently disclosed.

3. BSG Management's Fees Were Disclosed to Fund Investors

The SEC also suggests that Defendants impermissibly took fees related to the BSG Fund's activities. This is another false premise. BSG Management provided fee disclosures to fund investors through several different means. The Operating Agreement provides in part that "each Series may pay to the Manager a fee for management and administrative services (the "Management Fee") for such periods and in such amounts as is set forth in the Series Schedule for such Series and if applicable, for each Class within such Series." [Def. Ex. B, Section 4.07.] The 2023 PPM provides that "Series Supplements" will be created and distributed for each of the fund's series that sets forth the investment objective, investment strategy and terms related to the applicable series. [Def. Ex. A, pg. 1]. There is a Standard Series Supplement that is applicable to

all fund series unless there is a side letter or customized Series Supplement for a particular series. The Standard Series Supplement clearly discloses the amount of BSG Management's management fee as follows:

Fees including management/administrative - Manager has the right to charge up to six percent per year on the funds received from the investor and with each investment expected to have a duration of five years, the Manager may, at its discretion, receive the prepayment of all fees at once or in any sequence it so desires. Thereby it can receive all of its fees upfront on the initial investment of the investor or in any manner so elected by the Manager and consequently at six percent per year over a five year assumed duration of each investment, the Manager is expected to earn a fee of thirty percent on the total funds received from the investor.

[Def. Ex. D, emphasis supplied]. Accordingly, the Standard Series Supplement clearly discloses to investors that BSG Management can take up to a 30 percent fee upfront if it so desired (although it never did). In addition, the Standard Series Supplement discloses to investors that BSG Management is entitled to any profits on the applicable series instead of taking a carry or performance fee. Thus, investors had no expectation of earning profits on the applicable series, just their fixed return. On this point the Standard Series Supplement states:

Performance Fee/Incentive Allocation – No performance fee, instead, the Manager is to receive all profits generated by the applicable sub-series venture after all distributions have been made. This fee is in addition to the fees expressed elsewhere in this supplement and/or the private placement materials.

[*Id.*] Additionally, in July 2023, BSG Management issued a Compliance Acknowledge Update (“Compliance Update”) to fund investors. The Compliance Update disclosed many items to investor regarding the BSG Fund operations including management fee disclosures. It states in relevant part:

I have been aware of and continue to consent to the fees and costs associated with my investment and how Broadstreet is paid, including but not limited to fees up to six percent per year for five years and all fees can be taken up front or by splitting profits with investors or other manners of fees and costs as disclosed in the series supplement, the private placement memorandum, the data room and the disclosures in pitch decks.

[Def. Ex. I] Following the Compliance Update disclosure in July 2023, it is now provided to all fund investors at the time of their investment. Currently, approximately 99 percent of fund investors have signed and returned the Compliance Update. [See Declaration of Ryan Feingold (“R. Feingold Decl.”) ¶ 8.d.]

Additionally, the fund PPM provides disclosures that BSG Management could pay some of its management fees to third parties or affiliates (such as Mr. Feingold) at its discretion in numerous places throughout the document. For example:

The Manager may cause a Series to pay a portion of its Management Fees to third parties and such is left to the absolute discretion of the Manager.

[Def. Ex. A at pg. 9, emphasis supplied.]

In addition, each Series indirectly bears its pro rata share of all such costs incurred by the investments in which it invests. Such costs may include costs relating to structuring and operating such investments and/or costs and expenses that the Manager and its affiliates incur in providing administrative, support and/or oversight services to investments (which services may vary over time). The effect of such expenses will be reflected in the value of the interests held by a Series in such investments.

The Manager and its affiliates may from time to time incur expenses on behalf of the Fund or a Series, other client accounts of the Manager or its affiliates, and one or more subsequent entities established by the Manager. Although the Manager and its affiliates will attempt to allocate such expenses on a basis that they consider fair and equitable over time, there can be no assurance that such expenses will in all cases be allocated appropriately or equitably.

[*Id.* at pg. 14, emphasis supplied.]

As a standard business practice, the Manager may cause a Series to pay a portion of its Management Fees to third parties (e.g., brokers, dealers, investment advisers, banks, etc.) that introduce investors to the Series, based on the ownership positions in the Series by such investors. The amount of the fees paid to such third parties will be debited against the capital accounts of the introduced investors and paid by the Series to such third parties.

[*Id.* at 15, emphasis supplied.] The SEC does not argue in its pleadings that Defendants took fees in excess of the amounts disclosed to investors – because they did not. The fees earned by BSG Management and allocated to Mr. Feingold for his efforts are well within the amounts authorized by the Operating Agreement, PPM, Series Supplements, and other data room disclosures.

4. BSG Fund Investors Are Provided Significant Additional Disclosures About the Fund's Investments and Operations

In addition to the above disclosures, the BSG Fund investors are provided significant disclosures that undercut that SEC's claims that investors are being defrauded. Importantly, these additional disclosures inform investors regarding how their funds can be used and other critical risk disclosures about the fund's investments. As stated above, the Compliance Update has been signed and acknowledged by 99 percent of the BSG Fund's investors and it is provided to all new investors at the time of investment. [R. Feingold Decl. ¶ 8d.] In addition to the fee disclosures mentioned above, the Compliance Update provides that by signing the document investors confirm they (in sum):

- read the private placement memorandum, series supplements, data room documents, monthly updates and disclosures of Broadstreet, and still consent to all matters contained in those documents;
- are responsible for reviewing the data room on a regular basis and also all updates posted as they may affect deal terms;
- acknowledge that real estate development projects are not designed to immediately generate cash flow and often take years to be developed, completed and generate cash flow;
- acknowledge that funds raised for projects may be deployed to generate additional returns not associated with the real estate project while capital is waiting to be deployed in real estate projects;
- acknowledge that until the infrastructure and other real estate investments generate significant cash flow, their investments may be used to generate profits elsewhere while awaiting deployment in real estate projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves;
- acknowledge that individual land is titled in SPV's owned, managed and/or controlled by BSG Fund or any of its affiliates (defined to include BSI and BSG Management); and

- make their own investment decisions, and neither Broadstreet nor any of its affiliates act as an investment advisors.

[Def. Ex. I] Critically, the Compliance Update discloses to investors in the real estate subseries that their funds can be deployed in other investments (such as MCA) while the funds are waiting to be deployed on real estate projects. And that investor funds may be used to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves. Also, the Compliance Update discloses that real estate assets may be titled in SPV's controlled the fund's affiliates BSI and BSG Management (as is permitted by the Operating Agreement as detailed above).

BSG Fund investors also receive additional disclosures regarding the status of BSI's subseries investments through quarterly reports that are provided to investors and posted to the data room. In addition to providing detailed information regarding the status of the underlying subseries investments, these quarterly reports also provided additional risk and information disclosures to the fund's investors including the fees charged and the manager's discretion in the use of investor funds. For example:

THE FUND OPERATES IN MANY LINES OF BUSINESS AND INDUSTRIES. IN THE EVENT THAT AN INTEREST PAYMENT, RETURN OF CAPITAL OR ANY OTHER FORM OF PAYMENT OR DISTRIBUTION IS BEING MADE TO AN INVESTOR, THE FUND MAY USE ITS REVENUES OR EARNINGS FROM OTHER BUSINESS LINES IN ORDER TO MAKE PAYMENTS TO INVESTORS. FOR EXAMPLE, IN REAL ESTATE DEALS, INVESTORS ARE GENERALLY PROVIDED AN EXPECTED RETURN, HOWEVER, DEPENDING ON THE REAL ESTATE PROJECT AND THE TIMING OF WHEN SUCH A PROJECT BEGINS TO GENERATE REVENUES FROM OPERATIONS, THE FUND MAY MAKE PAYMENTS TO INVESTORS FROM MONIES GENERATED FROM OTHER INVESTMENTS WHICH THE FUND HAS MADE SO THAT POSITIVE INVESTOR RETURNS CAN BE ACHIEVED. WITHOUT SUCH PAYMENTS BEING MADE FROM THE FUND BY ITS OTHER BUSINESS LINES, RETURNS MAY NOT HAVE BEEN ABLE TO HAVE BEEN MADE TO INVESTORS. HENCE, INVESTORS COULD RECEIVE PAYMENTS BY THE FUND FROM INDUSTRIES OTHER THAN THAT WHICH THE INVESTOR INITIALLY INTENDED TO INVEST.

FOR CERTAIN INVESTMENTS IN EITHER FIXED INCOME OR REAL ESTATE PROJECTS, THE INVESTOR MAY PAY MONIES TO PARTICIPATE IN A TRANSACTION AND THE FUND MAY USE SOME OR ALL OF THE INVESTOR FUNDS TO GENERATE RETURNS THROUGH

INVESTMENTS UNRELATED TO THE INVESTED INDUSTRY IDENTIFIED BY THE INVESTOR. FOR EXAMPLE, INVESTORS IN REAL ESTATE PROJECTS MAY HAVE SOME OR ALL OF THE FUNDS WHICH THEY HAVE PLACED WITH THE FUND ACTUALLY PLACED IN NON REAL ESTATE INVESTMENTS SUCH AS SECURITIES, DERIVATIVE CONTRACTS, DEBT PORTFOLIOS, MERCHANT CASH ADVANCE OR FIXED INCOME PRODUCTS IN ORDER TO GENERATE RETURNS TO PAY INVESTORS WHILE THE REAL ESTATE PROJECTS ARE BEING DEVELOPED AND NOT YET OPERATIONAL. THE FUND MANAGER IS SPECIFICALLY GIVEN THE AUTHORITY TO USE SUCH FUNDS IN SUCH MANNER AS IT DEEMS APPROPRIATE IN ORDER TO GENERATE RETURNS FOR THE BENEFIT OF INVESTORS.

[Def. Exs. F.1-7, emphasis supplied]. These same disclosures (plus additional disclosures not highlighted here) are shown to fund investors every time they access the data room. Accordingly, much of what the SEC complains about regarding the operation of the BSG Fund and its investments was and is directly being disclosed to fund investors.

5. The SEC's Claims regarding the Qualified Small Business Stock Subseries Are Wrong and Immaterial

The SEC claims that the BSG Fund's qualified small business stock ("QSBS") subseries never was implemented and that BSG Management made misrepresentations regarding the status of the subseries (TRO Mtn., pp. 22-23). First, and more importantly, it is simply incorrect that BSG Management has not taken any steps to implement this subseries. In fact, the QSBS subseries is alive and well. Broadstreet's QSBS entity, Broad Street Global Development Corp. was founded on June 17, 2021, it has been incorporated in Delaware, and registered with state and federal tax authorities. [Def. Ex. Y.] In October 2024, the QSBS entity was rebranded under the name TCVI Group, Inc., and a major national law firm recently completed a draft Form S-1 registration statement for the rebranded QSBS entity. [Def. Ex. W.] There has been some uncertainty in the last several years as politicians suggested potential changes to the tax code related to QSBS. [S. Baldassarra Decl. ¶ 37.] These political winds coupled with the SEC investigation have impacted the progress related to the QSBS subseries. However, the SEC's assertion that BSG Management has not moved the ball forward is completely inaccurate. Moreover, under the IRS statutes and

rules, QSBS stock has a 5-year holding period before tax benefits can be secured. *See* IRC Section 1202 and related guidance. Second, this subseries involves \$6 million in investor funds which is an immaterial amount to the BSG Fund’s overall subseries investments. The fact that the SEC included allegations regarding Broadstreet’s QSBS subseries which currently involves only \$6 million investor funds is telling – it signals the weakness in the SEC’s overall case. *See also* Feingold Decl. ¶ 43.

6. The SEC’s Delaware Multi-Series LLC Cross-Liability Arguments Are Misplaced and Not Material

The SEC makes arguments that BSG Management failed to operate the fund consistent with disclosures related to the fund’s status as a Delaware multi-series LLC and that the fund’s sub-series were subjected to cross liability issues as a result. (TRO Mtn., pp. 17-20). These arguments are exaggerated and misplaced. BSG Management maintained monthly spreadsheets that historically tracked each fund subseries by accounting for each client’s holdings for each subseries, the monthly client investments into each subseries, and the distributions paid or re-invested by each client in each subseries. [R. Feingold Decl. ¶ 7.; S. Baldassarra Decl. 15] These spreadsheets were updated each month and provide detailed tracking of the fund subseries contrary to the SEC’s assertions. Because this separate accounting was maintained on an ongoing basis, the fact that BSG Management did not set up multiple bank accounts for each fund subseries is immaterial and overblown by the SEC.

Additionally, as indicated above, disclosures in the Compliance Update, data room, and quarterly reports informed fund investors that funds associated with one subseries could be used to make required payments regarding another subseries. Moreover, the PPM disclosed that subseries’ cash may be commingled by stating “cash assets pertaining to various class of Interests (but not assets pertaining to multiple Series) may be commingled and not held separately.” [Def.

Ex. A, pg. 9.] Thus, it should be clear to Fund investors that subseries funds were not separately segregated. Finally, there is no evidence supporting whether a reasonable investor would consider the Fund's status as a Delaware multi-series LLC to be material. The test for determining whether an omission is material is whether there is a substantial likelihood that the disclosure of an omitted fact would have been viewed by a reasonable investor as having substantially altered the total mix of information made available. *SEC v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1245-46 (11th Cir. 2012). The SEC did not submit any evidence on this point as no investor affidavits were submitted with the TRO filing. In fact, it is equally likely that investors paid little to no attention to the legal structure of the Fund when making their investments.

The SEC cites to the Durham Homes bankruptcy proceeding when making its arguments about potential cross liability issues (TRO Mtn. pg. 19). Once again the SEC misses the mark. To date, BSG Management has met all required investor payments related to fund investments in Durham Homes, and it has even made these payments out of its own management fees. [S. Baldassarra Decl. ¶ 32.]

7. The SEC's Arguments Regarding BSI's Financial Records Are Exaggerated and Defendants Did Not Act Deceptively

The SEC complains that BSG Management did not generate financial statements for the fund that were prepared and audited pursuant to GAAP. From the outset, the SEC fails to acknowledge the difficulty a target of an SEC investigation has when trying to engage an independent auditing firm while under investigation. It is virtually impossible. As stated above, the BSG Fund has been under SEC investigation since September 2022, and thus, the funds' financial statements for 2022, 2023 and 2024 have been impacted by BSG Management's inability to retain an outside independent accounting firm that could conduct GAAP compliant audits. [Feingold Decl. ¶ 22; S. Baldassarra Decl. ¶ 62.; *see also* Declaration of Edward Fass ("Fass

Decl.”) ¶¶ 14-15.] Moreover, BSG Management only disclosed to investors that it would use “commercially reasonable efforts” to deliver financial statements to investors. These disclosures appeared in both the fund Operating Agreement and the PPM. [Def. Ex. B, Section 9.03; Def. Ex. A, pg. 45.; Fass Decl. ¶¶ 14-19; Feingold Decl. ¶ 46.] Again, in the face of an SEC investigation it was not reasonable to expect BSG Management to be able to obtain audited financial statements. The PPM also stated that the “[f]inancial information contained in all reports to the Members will be prepared on an accrual basis of accounting . . . The Fund may determine to provide financial information in such other format or method of presentation as it determines in its discretion employing such firms and professionals at its discretion.” [Def. Ex. A, pg. 45.] Given these many disclosures, the SEC arguments on this issue are unavailing.

BSI did prepare and maintain consolidated financial statements for the Broadstreet entities primarily for internal use. These consolidated financial statements were prepared with assistance by an outside CPA. The consolidated financials were not widely disseminated to investors and generally only accessible by institutional investors through a separate data room. [R. Feingold Decl., ¶ 8.a.] To date, the consolidated financials were only viewed by 284 persons. [*Id.*] Additionally, when an investor requests to see the financial statements, the data room includes a specific acknowledgment by the investor that the financials are not audited and not prepared in compliance with GAAP. [Fass Decl., ¶ 12.] Investors must also sign a Non-Disclosure Agreement to prevent dissemination. [*Id.*] Finally, it is not as if BSG Fund investors were kept in the dark about the fund investments. As indicated above, BSI provided detailed quarterly updates to investors regarding the status of the various BSI business lines where fund capital was deployed. [Def. Exs. F.1-7].

Finally, the SEC incorrectly asserts that BSG Management provided false account statements to fund investors focusing again on MCA returns (TRO Mtn. pg. 28). However, the PPM specifically states that the investments will all be held at cost. [Def. Ex. A, pg. 25.] The MCA portfolio was held at cost as provided on the account statements and required by the PPM. The PPM further advised that there was no guarantee that holding investments at cost would represent the fair market value of the investments. [*Id.*] The BSG Fund's investors are all sophisticated accredited investors who would understand these disclosures. In any event, the SEC's entire argument here appears to be based on the false premise that Broadstreet's MCA returns were overstated. For reasons stated above and as will be shown at the February 26, 2025 hearing, the SEC's arguments are based on a faulty expert report.

8. The SEC Scheme Liability Allegations Are Repetitive

The SEC argues for scheme liability against Defendants based on essentially the same acts and practices addressed in previous sections. For example, the SEC primarily argues, among other things, that Defendants engaged in a scheme by offering alleged inflated returns on BSI's MCA portfolios, by allegedly causing cross liability issues with respect to the fund's status as a Delaware multi-series LLC, by putting funds assets in the ownership of Broadstreet affiliates, and by allegedly disseminating financial statements that were not audited under GAAP. For reasons discussed throughout, these alleged acts were not deceptive, and the SEC cannot show a substantial likelihood of success on the merits for scheme liability under the Securities and Exchange Acts.

9. The SEC Cannot Show a Substantial Likelihood of Proving Scienter

The SEC is required to prove scienter with respect to its claims under Securities Act Section 17(a)(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and under Advisers Act Section 206(1). In order to prove scienter, the SEC must put on evidence that establishes a showing of "knowing misconduct or severe recklessness." *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th

Cir. 1982). To show recklessness, the SEC must demonstrate “that the defendant’s conduct was an extreme departure of the standard of ordinary care, which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.” *SEC v. Monterosso*, 756 F.3d 1326, 1335 (11th Cir. 2014) quoting *Carriba Air, Inc.*, 681 F.2d at 1324. For reasons argued above, the SEC cannot show a substantial likelihood of success on the merits in proving that the Defendants acted with scienter.

Additionally, much of the SEC’s allegations against Defendants involve the alleged overstated MCA returns. Because the SEC expert’s analysis and methodologies are flawed, they cannot be relied upon by this Court. Additionally, much if not all of the conduct complained about by the SEC is neutralized by disclosures made to investors in the fund Operating Agreement, the PPM, the Compliance Update, quarterly reports and data room information as described above. All fund materials were posted to the data room which was reviewed by Broadstreet’s outside counsel on a quarterly basis prior to the start of the SEC investigation. [S. Baldassarra Decl., ¶ 21.] Because of these factual defenses, at this stage, the SEC cannot show a reasonable likelihood of success in proving scienter against the Defendants. Absent a showing of scienter, a TRO, asset freeze and appointment of a receiver is not warranted.

C. The SEC Cannot Demonstrate a Likelihood of Irreparable Injury

Under the legal test to obtain a TRO, the SEC has the high burden to demonstrate irreparable harm in the absence of issuing the TRO. *Schiavo*, 403 F.3d at 1231. Irreparable harm is the “sine qua non of injunctive relief.” *Northeastern Fla. Chapter of Ass’n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)). Even if the SEC can show substantial likelihood of success on the merits, “the absence of a substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper.” *Menudo Int’l, LLC v. In Miami Prod., LLC*, No. 17-21559-CIV, 2017 WL 4919222, at *3 (S.D. Fla. Oct.

31, 2017); *see also City of Jacksonville*, 896 F.2d at 1285 (failure to show irreparable injury merited denial of a preliminary injunction).

The alleged irreparable injury must be “neither remote nor speculative, but actual and imminent.” *Id.* at 1285. (citation omitted). And any “irreparable” injury is one that cannot be undone through monetary remedies. *Id.* “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.” *Sampson v. Murray*, 415 U.S. 61, 88 (1974).

A delay in seeking a preliminary injunction “even only a few months . . . militates against a finding of irreparable harm.” *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016). “[T]he very idea of a *preliminary* injunction is premised on the need for speedy and urgent action to protect a plaintiff’s rights before a case can be resolved on its merits.” *Id.* “Courts (both in and outside the Eleventh Circuit) have held that unexplained delays of a few months negate any claim of irreparable harm on a preliminary injunction motion.” *Pals Group, Inc. v. Quiskeya Trading Corp.*, No. 16-23905, 2017 WL 532299, at *6 (S.D. Fla. Feb. 9, 2017); *see also, e.g., Comic Strip, Inc. v. Fox Television Stations, Inc.*, 710 F. Supp. 976, 981 (S.D.N.Y. 1989) (denying a preliminary injunction where plaintiff learned of alleged infringement approximately seven months before bringing suit); *Badillo v. Playboy Entertainment Group, Inc.*, 2004 WL 1013372, at *2 (M.D. Fla. Apr. 16, 2004) (finding plaintiffs’ nine month delay in seeking a preliminary injunction after discovery of the alleged cause of action was “fatal” to claims of irreparable harm); *Greenpoint Fin. Corp. v. Sperry & Hutchinson Co.*, 116 F. Supp. 2d 405, 408-09 (S.D.N.Y. 2000) (denying preliminary injunction because of a four-month delay).

The SEC cannot put forth sufficient evidence to establish the likelihood of irreparable harm. The SEC has not identified any evidence of investor losses. In fact, there were no investor

affidavits attached to its TRO motion. This is not surprising. BSG Management has not missed any investor payments related to any of its fund subseries. [S. Baldassarra Decl. ¶ 8.] Similarly, BSG Management has met all investor redemption requests for its subseries. [*Id.*] The SEC also has not provided evidence of recent fraudulent transfers or misuse of funds because there are none. Moreover, as indicated above, the fund's investors were provided with updated disclosures in July 2023 through the Compliance Update that addressed many of the SEC's concerns raised during the investigation, such as the management fees being charged and how investor funds were being deployed. As indicated above, nearly all (99 %) of the BSG Fund's investors executed the Compliance Update acknowledging that they were aware and consented to the disclosures at issue. Since then and throughout the BSG Fund's history, it has received no material investor complaints related to the issues purportedly implicated by the SEC's investigation and TRO filing. [R. Feingold Decl., ¶ 8.e.]

The SEC's delay in bringing its TRO action strongly mitigates against the SEC being able to establish irreparable harm. *Wreal, LLC*, 840 F.3d at 1248. The SEC's investigation progressed over a two-and-a-half-year period. The SEC issued ninety (90) document subpoenas and took dozens of days of investigative testimony. They subpoenaed the Defendants' financial records from banks and Samson. They have been in possession of those records for numerous months (years in some instances) and presumably have been analyzing them for the same amount of time. The Defendants produced hundreds of thousands of pages of materials to the SEC. During the past five months, after the Defendants filed the Texas Action, the SEC investigation has been at a virtual standstill. No subpoena enforcement actions were instituted. The SEC can point to no recent events that necessitated the TRO filing. The 5-month delay in the SEC's investigation and the fact they

did not file their motion *ex parte* strongly signals a lack of irreparable harm. If there was real harm, *the SEC should have filed their TRO months ago.*

What's more, during the last several years, BSI has built a viable business enterprise with significant revenues currently and is expected to generate even more revenues in the coming years. BSI is currently the fifth largest private equity infrastructure developer in the U.S., currently responsible for the delivery of 44,000 homesites in the Southeastern U.S. to major homebuilders such as D.R. Horton, Inc. and Lennar Corporation. [Feingold Decl., ¶¶ 4-7; S. Baldassarra Decl., ¶¶ 24-27 ; *see also* Declaration of Josh Howard ("Howard Decl.") ¶¶ 7-8.] Generally speaking, the BSG Fund contributes equity capital for the land infrastructure projects and third-party lenders provide the balance of capital necessary to develop the land. BSI and its related entities own interests in unencumbered real estate lands worth approximately \$200 million. [Feingold Decl., ¶ 9; S. Baldassarra Decl., ¶ 26; Def. Ex. M.] Currently, there are 54 ongoing infrastructure projects and dozens of projects in the pipeline. BSI currently oversees infrastructure projects with existing contracts that are projected to generate approximately \$5 billion in lot sales over the next 5 years that will generate approximately \$500 million in distributions for the benefit of BSG Fund investors. [Feingold Decl., ¶ 7; Howard Decl. ¶ 8.]

BSI's crypto mining business line have grown exponentially in recent years. It operates five (5) data centers in the Carolinas with another five (5) data center in process of being established. [Feingold Decl., ¶ 8; S. Baldassarra Decl., ¶ 28.] BSI's crypto mining business presently operates more than 16,000 machines making it the largest DOGE coin mining operation in the USA. [*Id.*] BSI plans to add another 14,000 machines which would generate 100 megawatts of energy or enough energy to power over 100,000 homes. [*Id.*] BSI currently has more than \$225 million in crypto mining machines. [*Id.*]

The BSG Fund currently has approximately \$180 million invested in its merchant cash advance portfolios. [Feingold Decl. ¶ 10.; S. Baldassarra Decl. ¶ 29.] Finally, BSI's other remaining business lines such as hotel and lodging, self-storage facilities, land banking, restaurants, and auto dealerships hold assets of a combined value well in excess of \$150 million on a conservative basis. [Feingold Decl. ¶ 11.]

Based on the significant value of assets under BSI's control, the SEC cannot show irreparable harm absent a TRO and receiver. BSI's business lines hold significant assets and will earn sufficient revenues to continue the Fund's operations while this litigation is ongoing. Moreover, BSI's significant assets, such as the \$200 million in unencumbered real estate assets and cash on hand, could be used to meet investor redemption demands if necessary.

D. The Balance of Equities Favors Defendants

The third factor to obtain a TRO requires the SEC to show that the threatened harm to it outweighs the potential harm to Defendants. *Schiavo*, 403 F.3d at 1231. "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l Refugee Assist. Project*, 582 U.S. 571, 579 (2017). In considering the equities and overall public interest "a court need not grant the total relief sought by the applicant but may mold its decree to meet the exigencies of the particular case." *Id.* at 580 (quotation marks and citation omitted). In considering the balance of harms to parties, courts often consider such factors such as the threat to each party's rights; the potential economic harm to each party (*see Lakedreams v. Taylor*, 932 F.2d 1103, 1109-10 (5th Cir. 1991); the relative severity of harm on each party; the speculative nature of harm; the impact on the public; the harm to a business's employees; and voluntary remedial actions taken by defendants. *See, e.g., Harmonia Holdings Group, LLC v. United States*, 150 Fed. Cl. 670, 673 (2020) (balancing of harms did not weigh in favor of a TRO where, among other things, a TRO

would require employees to stop working); *Miller v. Ziegler*, 582 F. Supp. 3d 640, 647 (W.D. Mo. 2022) (“[C]ourts consider the threat to each of the parties’ rights that would result from granting or denying the injunction, the potential economic harm to the parties, and interested third parties, and whether the defendant has already taken remedial action.”).

The balance of the equities weighs strongly in favor of not granting the TRO, asset freeze and appointing a receiver in this case. The SEC’s motion for TRO is clearly just a mechanism to appoint the receiver and secure an asset freeze. Accordingly, the impact of the SEC’s motion for TRO needs to be considered in the context of the SEC’s desire to appoint the receiver over the Broadstreet entities. As the legal standards make clear, the appointment of a receiver is only appropriate if the receiver will do no more harm than good. *SEC v. Complete Business Solutions Group, Inc.*, No. 20-CV-81205-RAR, 2020 WL 9209279, at *2 (S.D. Fla. Dec. 16, 2020) (quoting *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012)); *see also Calliope Cap. Corp. v. Earthfirst Techs., Inc.*, No. 8:08-CV-00219, 2008 WL 1995077, at *7 (M.D. Fla. May 6, 2008).

Under the circumstances here, the receiver, if appointed, clearly will do more harm than good. For example, appointing a receiver will have a catastrophic impact on BSI’s infrastructure business line. Broadstreet affiliates own interests in special purpose vehicles (“SPV’s”) with Contender Development Inc., the real estate developer on BSI’s projects. [Feingold Decl. ¶ 6; Howard Decl. ¶ 3.] The BSG Fund provides the equity capital through the SPV’s that is utilized in conjunction with third-party mortgage financing to acquire the properties in question. The third-party lenders are mortgage lenders and have a first priority lien over the properties in question. The typical loan agreements have provisions that provide that appointment of a receiver would trigger an event of default. A typical provision is set forth below:

7.9 Appointment of Receiver, Trustee, Liquidator. Borrower, any Pledgor, any Guarantor or any of their Affiliates, applies for or consents in writing to the appointment of a receiver, trustee or liquidator, or all or substantially all of the other assets of Borrower, any Pledgor or any of their Affiliates, or an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Borrower, any Pledgor, or any of their Affiliates, or all or substantially all of the other assets of Borrower, any Pledgor, or any of their Affiliates.

[Howard Decl. ¶ 11.] Triggering an event of default by appointment of a receiver would be devastating because lenders could immediately foreclose on the loans and sell the land (sometimes partially developed) for pennies on the dollar. [Howard Decl. ¶ 12.] Under these circumstances, it is highly likely that the proceeds from the real estate sales will go toward satisfying the first priority liens and there will be no value that flows back to a receivership estate. [*Id.* at ¶ 13.] If the lenders are somehow prevented from doing so by a receivership order, they still will maintain their first priority lien positions.⁹

Moreover, the homebuilders on the infrastructure deals would have remedies to break their agreements if a receiver is appointed. The contracts with the homebuilders all contain default provisions, which would require the prompt return of deposits on the transactions which would result in the return of tens of millions of dollars (in addition to the lenders being repaid). [Howard Decl. ¶ 15]. Below is a typical default provision in the homebuilding contracts:

Section 15.02. Seller's Default. In the event of any default by Seller ("**Seller's Default**"), Buyer shall be entitled to (a) terminate this Agreement, receive a prompt refund of the Deposit and be reimbursed by Seller for the actual out-of-pocket costs and expenses incurred by Buyer in connection with this Agreement, including, but not limited to, costs and expenses incurred in connection with the Inspections and/or (b) seek specific performance of this Agreement. However, nothing in this Section shall limit Buyer's remedies at law or in equity after each Closing as to all representations and warranties, indemnities, and other obligations of Seller contained in this Agreement that by the terms of this Agreement survive such Closing or earlier termination of this Agreement. Notwithstanding anything contained herein to the contrary, in the event specific performance is not available as a remedy, then Buyer may exercise

⁹ It is not at all clear that a receiver, holding only equity interests in an SPV, could prevent a third-party lender holding a first priority lien from foreclosing on the properties in question.

[*Id.*] In the view of Josh Howard of CDI, the appointment of a receiver would cause irreparable harm to CDI and the BSG Fund investors, and cause default on the development of the 44,000 homesites creating job losses and economic chaos in many of the Carolina local communities where the BSI/CDI projects are ongoing. [*Id.* ¶ 10.] Because of these realities, appointing a receiver will directly result in the loss of hundreds of millions in value to the BSG Fund. The only way for fund investors to be made whole is for the infrastructure and home building projects to continue to their completion and a receiver will have no ability to fulfill those commitments. If the mortgage lenders pull their financing, it would take months to line up replacement financing. [Howard Decl. ¶ 14.] Given these facts, there is little doubt that appointing a receiver will do significantly more harm than good in the instant case.

E. The Relief Sought by the SEC Is Not In The Public Interest

The final factor to obtain a TRO requires the SEC to show that the relief sought is in the public interest. *Schiavo*, 403 F.3d at 1231. While it is in the public interest to protect against fraud (*Asset Recovery*, 340 F. Supp. 2d at 1311) there is no public interest in the perpetuation of an unlawful agency action. *See Texas v. U.S. Department of Homeland Security*, 700 F. Supp. 3d 539, (2023).

Shutting down Broadstreet through the appointment of receiver and ordering an asset freeze is not in the public interest. Broadstreet is one of the largest and fastest growing businesses in the Southeastern U.S. Taking into account all of the BSI's business lines, nearly 3000 people rely on the company for employment. [Feingold Decl., ¶ 5.] As stated above, issuing a TRO to appoint a receiver will have a disastrous impact on the value of BSI's assets and cause significant harm to the fund's investors. In the absence of a showing of irreparable harm, which the SEC cannot make as argued above, the SEC's request for TRO and appointment of a receiver is clearly not in the public interest.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the SEC's motion for TRO, asset freeze and appointment of a receiver be denied in all respects. This case should be allowed to proceed to discovery and litigation for a decision on the merits.

DATED: FEBRUARY 14, 2025

Miami, Florida

Respectfully submitted,

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Index of Defendants' Exhibits for TRO Hearing

Def. Ex. #	Description
A	Broad Street Global Fund PPM (September 2023)
A.1	Supplement to Broad Street Global Fund PPM (September 2023)
B	Broad Street Global Fund Amended and Restated Agreement (September 2023)
C	Broad Street Global Fund Subscription Agreement
D	Broad Street Global Fund General Series Supplement
E.1	BSG Fund Blackstream Development-D.R. Horton Infrastructure Subseries Slide Deck (September 2021)
E.2	Merchant Cash Advance Presentation Slide Deck (August 2022)
E.3	Public Access Lagoons Investment Summary Slide Deck (September 2024)
F.1	May 2021 Investor Update
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G	Data Room Disclosures
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I	Compliance Acknowledgement Sampling
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J.5	Gulf Atlantic Account Summary – BSG Series (December 2024)
J.6	Gulf Atlantic Account Statement – BSG Series #2 (December 2024)
J.7	Gulf Atlantic Account Statement – BSG Holdings (December 2024)
J.8	Gulf Atlantic Account Statement – BSG Management (December 2024)
J.9	Gulf Atlantic Account Statement – BSG Fund (December 2024)
J.10	CCNB Account Statement – BSG Fund (December 2024)
J.11	CCNB Account Statement – BSG Series (December 2024)
J.12	CCNB Account Statement – BSG Fund #2 (December 2024)
J.13	CCNB Account Statement – BSG Management (December 2024)
J.14	CCNB Account Statement – BSG Holdings (December 2024)
J.15	CCNB Account Statement – BS Inc. (December 2024)
J.16	CCNB Account Statement – BSG Series #2 (December 2024)
J.17	CCNB Account Statement – BSG Fund #3 (December 2024)
J.18	CCNB Account Statement – BSG Management #2 (December 2024)
J.19	CCNB Account Statement – CJS Tech Select Management (December 2024)
J.20	CCNB Account Statement – BSG Management #3 (December 2024)
J.21	CCNB Account Statement – BSG Fund #4 (December 2024)
J.22	CCNB Account Statement – BSG Holdings #2 (December 2024)

J.23	Gulf Atlantic Account Statement – BSG Series (January 2025)
K	2024 Broadstreet Income Received
L.1	Lennar Contract Example
L.2	DR Horton Contract Example
M	Land Appraisals
N	Estimated Market Price of Crypto Machines
O	BasePoint MCA Securitization LLC Offering Memorandum (December 20, 2023)
P	Morningstar Credit Rating Letter for BasePoint MCA Securitization LLC (December 22, 2023)
Q	MCA Recovery after Write Off
R	Marriott Agreement Sampling
S	Durham Homes Sales Summary
T	BSD & CDI Investor Summary through October 2024
U	Broadstreet Infrastructure Track Record
V	Project List by Builder as of January 1, 2025
W	QSBS - TCVI Group Inc. - Draft S-1 (January 24, 2025)
X	QSBS Disclosure
Y	BSG Development Corporate Documents
Z	Juniper Disclaimer
AA	MCA Points Per Month (Samson Created Doc) through Q3 2024
BB.1	AVG Duration
BB.2	AVG Factor Rate
BB.3	Dave's ROI
BB.4	David Feingold Mail – Monthly Reports 1.2
BB.5	David Feingold Mail – Monthly Reports 12.1
BB.6	David Feingold Mail – Weekly Reports 1.5
BB.7	Default Deal Losses 2023
BB.8	BSG Dave's ROI (January 5, 2024)
BB.9	BSG Realty Dave's ROI (January 5, 2024)
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CC.1	Monthly Subseries Spreadsheets for DR Horton 5 – Monthly Deposit
CC.2	Monthly Subseries Spreadsheets for DR Horton 5 – Holdings Breakdown

CC.3	Monthly Subseries Spreadsheets for DR Horton 5 – Dividends Reinvestment Breakdown
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CERTIFICATE OF SERVICE

I hereby certify that, on February 14, 2025, I electronically filed a copy of this document through the CM/ECF system, which will cause a copy of this document to be electronically served on all parties and counsel of record.

By: *Bryan A. Almeida*
Bryan A. Almeida, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF DAVID FEINGOLD

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the CEO and one of the owners of Broadstreet, Inc. (“BSI”). I am also an attorney in good standing and licensed to practice law in the State of Florida since 1991. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my role at BSI. I respectfully submit this declaration in opposition to Plaintiff’s (the “SEC”) Emergency TRO application for an asset freeze and receiver.

2. I categorically deny the SEC’s allegations of wrongdoing and fraud.

3. As part of the SEC's strategy in maligning me and the other Defendants, it consciously avoids recognition of the massive business lines supporting and protecting BSG Fund investors. During the SEC's years' long investigation, we literally offered to redeem all BSG Fund investors because we can with our assets and funds.

4. AS CEO of BSI, I oversee the business lines that generate returns for the Broadstreet Global Fund LLC ("BSG Fund"), which is managed by Broadstreet Global Management LLC ("BSG Management"). I refer to these entities and BSI collectively as Broadstreet. I work closely with the owners of BSG Management, Steven Baldassara ("Steve") and Joseph Baldassarra ("Joe"), both of whom I have known for decades.

5. BSI is a leading private equity firm rooted in the Carolinas with its main offices in South Carolina. Broadstreet is the fourth largest private equity Infrastructure developer in the USA. Broadstreet is involved in over \$5 billion in transactions and currently is involved in over 17,000 acres of land, more than 54 communities/Infrastructure projects, over 44,000 expected homesites, 863 hotel room units and over 130 total projects/businesses. Broadstreet and its affiliated/related entities' office operations have over 100 front office personnel and an estimated 3,000 job created from its projects which have an estimated \$10 billion economic impact on the Carolinas.

6. There are 14 different business lines that include (1) Infrastructure (2) home development (3) hotel/lodging (4) land banking (5) restaurants (6) specialty finance/merchant cash advance ("MCA") (7) crypto mining (8) self storage facilities (9) automobile dealerships (10) data centers (11) broker/dealer (12) family office (13) insurance (14) mortgage conduit trading/securitization. BSG Fund provides equity capital or funding to many of these business lines and is entitled to receive distributions and profits from those business lines as a result. Each one

of those business lines may contain numerous special purpose vehicles (“SPVs”) to hold the assets, such as the lands and management companies applicable to the individual land deals. By way of example, for each of the more than one hundred land deals, there is an individual SPV entity and management entity and hence upwards of two hundred entities involved. Business partners have communicated that a receiver or asset freeze will cause a cessation of continuation of business relationships.

7. I would also like to describe the substantial assets of these business lines because the SEC fails to do so. First, the Infrastructure business, which is our largest business is primarily responsible for delivery of 44,000 homesites to two primary clients, the largest homebuilder in the USA, DR Horton, Inc., and the second largest homebuilder in the USA, the Lennar Homes Corporation. Both are multi-billion dollar publicly traded companies that have entered into fixed contracts for the delivery of homesites for which they then build their homes. We provide the infrastructure (roads, sewers, electric, gas, grading, basically all services besides the actual building of the homes). Presently the average lot price is almost \$110,000 per lot and hence that business alone will generate nearly \$5 billion in lot sales which is also expected to generate approximately \$500 million in distributions for the benefit of BSG Fund investors.

8. In addition, we operate a data center/crypto mining operation that is the largest Dogecoin miner in North America with sixteen thousand miners in five data center locations with an additional five more data centers in process of closing/development. We have nearly \$225 million worth of machines that consumes 100 Megawatts of power or enough energy to power nearly 120,000 homes. It is a massive business.

9. We also independently own lands, and our first approximate thirty appraisals that we received on some of our lands show a value in excess of \$200 million in pure unencumbered equity, independent of our other business lines.

10. The MCA business holds approximately \$180 million in commercial papers and even assuming the SEC expert is correct, which she is not, if defaults were twenty five (25) percent and the portfolios make small profits, we could easily sell the portfolios and if there was a shortfall, we could sell our portion of lands that we own equity in and easily satisfy the return of all capital to all MCA investors.

11. BSI's other remaining business lines such as hotel and lodging, self-storage facilities, land banking, restaurants, and auto dealerships hold assets of a combined value well in excess of \$150 million on a conservate basis.

12. In addition we generally maintain \$75 million to \$125 million in cash just in bank checking accounts alone.

13. There is no emergency here. The SEC investigation has been going on for at least since September 2022, approximately 2 ½ years, and the only items relied upon by the SEC to suggest an emergency is the website <https://broadstreetprivateequity.com/> and certain bank statements for December 2024. Nothing in that website, that has been up since the last several years, nor do the bank statements provide any cause. Further, we have no material investor complaints, and no missed payments to any investor or counterparty. We chose to sue the SEC in federal court, write complaint letters about the SEC and meet with members of government to loudly announce our displeasure with the SEC and as a result I believe this aggressive action was taken in retaliation for our quite verbal opposition to the SEC. There are presently no risks of investor losses unless a receiver and asset freeze is approved as our counterparties have made it

quite clear that they will cease all funding, initiate actions to cause the liquidation of our assets which will cause the satisfaction of debts owed, however, liquidations also cause the least orderly sale of assets and hence all excess equity would likely be consumed and thereby leaving investors severely and unnecessarily harmed and damaged.

14. The drastic remedies sought by the SEC should be put in the context of the fact that (a) Broadstreet sued the SEC, (b) Broadstreet wrote complaint letters to senior persons in the US government about the SEC, and (c) the CEO of Broadstreet had meetings with senior people in the government about retribution. Hence, the harsh reaction after many years by the SEC is not unexpected based on the stance that Broadstreet took. Further, it will destroy investors and various businesses. In fact, the primary investigator who signed the affidavit in this case, Lee Robinson and the litigator who signed the pleadings in this case, both have been at the center of complaints by the CEO of Broadstreet to other members of government and those members of the SEC are aware of this fact.

15. It is unlikely that this Court has seen such remedies being sought under the circumstances presented of no insolvency, massive operating business lines, support of at least 99% of investors (discussed below), SEC reliance on stale information, no missed payments to investors, no secreting of assets and no sudden transfers of funds.

16. I dispute the SEC's assertions of emergency. If the SEC's TRO is granted, it will needlessly and catastrophically cause massive damage to investors and Broadstreet and their employees and affiliated businesses and those all working in the business lines and projects (numbered at nearly 3,000) will lose their jobs. This has been confirmed through discussions with business partners.

17. The core of the SEC's Complaint and motion papers can be boiled down to four items, which are refuted herein and extensively in other submissions. In brief, the SEC's claims of non-disclosures are simply wrong. The private placement memorandum, operating agreement, subscription agreement, Series Supplement, pitch deck, monthly/quarterly updates, data room disclosures and disclaimers and Compliance Update signed by approximately 99% of the investors demonstrate that the things the SEC claimed were not disclosed or concealed were actually disclosed over and over. Also, it cannot go unnoticed that the SEC does not even cite the appropriate private placement memorandum (PPM) to this Court, the SEC relies upon a PPM from over 4 years ago rather than disclosing to the Court the PPM from 2023 which has been made available to all investors via signature and/or the company's data room which all investors signed to read, acknowledge and be bound to each and every document therein. The Broadstreet investors are all accredited investors which has significance under the securities laws and which holds such investors to a higher standard of knowledge, sophistication and ability.

18. For example, the SEC claims that BSG Fund did not disclose the management fees when, in truth, it was repeatedly stated in disclosures to investors that BSG Management would receive a management fee of 6% a year for 5 years, up to 30%, which could be paid to others in the sole discretion of BSG Management and that management fee could be assessed in any time frame including all upfront or over time. Also, the management fees did not just go in personal pockets as BSG Management paid for employee compensation, partner distributions, payments to business lines among other things.

19. Another example is that the SEC claims that BSG Fund did not tell investors in the Infrastructure Series that their funds could be deployed in other investments while capital is waiting to be deployed in Infrastructure projects. In truth, investors were specifically told and

signed documents, as confirmed by 99% of the investors, that Infrastructure projects (i) were not designed to immediately generate cash flow and often take years to be developed, completed and generate cash flow, (ii) funds raised for projects may be deployed to generate additional returns not associated with the real estate project while capital is waiting to be deployed in real estate projects, and (iii) that until the infrastructure and other real estate investments generate significant cash flow, their investment may be used to generate profits elsewhere while awaiting deployment in real estate projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves. This was all in writing, signed by the investors and circulated to them additionally multiple times per year as well.

20. In addition, the monthly/quarterly reports' section on Infrastructure set forth that projects were in various stages of completion, but not yet cash flowing. Pictures were included showing the same as well as detailed reports giving the status of each and every project with said projects being encompassed in sometimes more than fifty detailed pages and circulated at first monthly and then quarterly as the business simply grew too large and took the convention of quarterly reports as consistent with large companies. The documents state it over and over in not just the signed documents, but also dozens of times through quarterly reports, monthly account statements and in the data room. The investors have been made well aware that their funds have been deployed in other investments, which also further refutes the SEC's allegations concerning investor knowledge, it was clearly stated that there would be risks that those other investors could ultimately incur losses within the Infrastructure Series.

21. Another example is that the SEC claims that BSG Fund told investors that BSG Management is an SEC Investment Advisor when, in truth, the offering materials say the exact opposite. In addition, not only do the offering materials specifically say that BSG Fund and its

Managers are not investment advisors but the investors also signed an acknowledgement stating specifically that Broadstreet is not their investment advisor and they specifically admit that they did not seek investment advice from Broadstreet.

22. Another example is that the SEC claims that BSG Fund told investors that it would use commercially reasonable efforts to provide GAAP audited financials when, in truth, this was removed from the September 2023 versions of the PPM and Operating Agreement because the cloud of the SEC investigation made it impossible to retain an audit firm. And, before that change, commercially reasonable efforts were made. The 2023 PPM very specifically states that only accrual based financials would be given, no audits, and each investor given the financials actually accepted an online acknowledgment and disclosure that specifically said the financials were not GAAP audits. Hence, the SEC takes a position directly contrary to what was stated to the investors and acknowledged by the investors.

23. Perhaps most misleading, is the SEC's claim that \$880 million somehow vanished in BSG Management's pocket. In truth, these funds were correctly sent to BSG Management as Manager with sole discretion to manage BSG Fund. Indeed, the SEC's own purported expert, Ms. Davis, attests that \$721 million of the funds were properly placed in the various business lines. BSG Management is simply the manager of BSG Fund, the operating agreement confers upon BSG Management to handle all monies for BSG Fund, which is exactly what BSG Management did and deployed all of the money, exactly in compliance with the PPM into all of the business lines and built an enormous real estate empire that the SEC now seeks to seize based on false allegations about MCA, which is but one of the 14 business lines that Broadstreet operates.

24. The SEC's assertions of diversion of investor funds is false and intentionally misleading. At page 10 of the SEC's Complaint there is a chart that supposedly explains these

purported diversions. Initially, the chart misleadingly suggests that all funds were disbursed at one time when this occurred over years. What the chart actually shows is that investor funds flowed to BSG Management which is completely proper as the Manager of BSG Fund. Further, the chart leaves out the most significant point which is the flow of funds out of BSG Management to the various business lines. The SEC makes it seem as if BSG Management simply kept the funds. BSG Management kept the management fees only, those management fees that every investor agreed to and signed off on. All the rest of the money went into the projects as the SEC's own expert report shows. Plain and simple, there is no diversion and investor funds were utilized to deploy into business lines at the Manager's discretion, which was done exactly as the documents to investors state. Defendants only received fees they were entitled to receive per disclosures.

25. As CEO of BSI, my role is primarily to oversee the 14 business lines. I have approximately 20 direct reports to me to keep me apprised of the 14 business lines and various administrative and finance issues. Steve Baldassarra's role is primarily in back office operations and he is the COO of BSI. Joe Baldassarra primarily deals with investors. I am in frequent communication with Steve and Joe and I provide input on business lines as well and review to the extent requested by Steve or Joe.

26. I am not a "control person" of BSG Management or BSG Fund. These are separate companies with separate observance of corporate formalities. The fact that Steve, Joe and I discuss the collective Broadstreet business together and there is a sharing of space and other items does not alter that result. The fact that I discuss with others the business line operations that I am involved in also does not alter that result. The fact that I want the collective Broadstreet business to succeed does not alter that result. In fact, the PPM of BSG Fund specifically authorizes Joe and Steve to have different divisions and hire different persons, such as me, to provide services to

oversee business lines. The website of Broadstreet makes clear that there are different business lines, different divisions and different personnel that work at different companies with different purposes.

27. When I first joined BSI in July 2022, I realized there was a growing business that required some improvements. Steve and Joe asked me for recommendations to improve the business and I provided some recommendations. One such improvement was to hire a full-time Chief Compliance Officer (Ed Fass). A compliance officer is not legally required. What is further interesting is that the SEC has never interviewed or contacted the chief compliance officer nor attempted to hear from him and his observation of compliance at the companies.

28. Other enhancements included having outside counsel reviewing the data room on an annual basis to ensure proper compliance, switching the vendor that prepares investor account statements (from Colonial to Juniper), having multiple sets of accounting professionals including one accountant who worked for a major firm and oversees the presentation of the financial statements. Not only did the SEC not contact or interview this accountant, the SEC did not even contact or interview Broadstreet's chief financial officer. Imagine trying to shut down a multi-billion business having never spoken to the accountant, nor the chief financial officer nor the chief compliance officer.

29. I also recognized that with all the different business lines and ownerships of assets, there was a need to secure all of these assets so that they would be pledged to paying investors as before my taking the CEO role, that was not addressed. In addition, in order to consolidate the financials, a document needed to be prepared that connected all of the various entities. Finally, when I reviewed the business, there appeared to be tax issues that needed to be addressed with a unifying document.

30. In simple terms, the Tri-Party Agreement was created to pledge all these assets and all personal assets to repay investors and to address all of the other referenced issues. That issue was discussed multiple times with corporate professionals, drafts of various versions of documents were created all prior to the execution date. The SEC claims the Tri-Party Agreement was somehow backdated based on alleged meta data of a document that was saved and sent to them. Just as the SEC has failed to disclose the proper PPM, has failed to disclose all of the disclosures and documents signed by investors and has failed to disclose that investors accepted that there would not be GAAP audits, the SEC assertions regarding dating of documents is not correct. The Tri-Party Agreement was created for legitimate business reasons and was not even circulated to investors, this was simply an internal document used for consolidation, tax planning and to protect assets. It is amazing that the SEC now criticizes a document necessary to achieve investor protection and consolidation of financials.

31. The SEC claims that “Defendants fraudulently offered and paid inflated returns to investors in at least two major Series, claiming that investments in Merchant Cash Advances – short term and fast funding transactions to small business – generated significant profits when in fact they did not.” First of all, the investors were paid a preferred fixed return, they were not paid based on profits. The preferred return means they got a fixed amount of money, unsecured, with no calculation of payment based on profits. Hence, the actual profits, which will be shown that the SEC math is woefully incorrect, is irrelevant for purposes of investor payments. The bottom line is that investors signed that they received a fixed return and acknowledged that their returns could come from any business source, from any business line and from any funds. This means even from borrowings, management fees, asset sales, the balance sheet of the business, land

refinancing, just to name a few examples. **No different than any other major enterprise using its balance sheet to satisfy obligations.**

32. The SEC also is claiming that investors in the Infrastructure Series were offered and paid inflated returns. As stated before, they were paid a preferred fixed return that gets paid after the mortgages on the properties. As money was raised, assets were acquired which increased dramatically the value of the affiliated special purpose vehicles of Broadstreet, to the effect of hundreds of millions of dollars. Rather than liquidate the lands on a regular basis, the company paid returns, the fixed returns, from cash available.

33. The key to real estate is to hold the assets and let them grow. Right now the business has a receivable of nearly \$500 million from the Infrastructure and \$200 million from appraised and unencumbered lands. Rather than sell those assets, the business continues to amass more land and control its cash flow from operations.

34. I have been involved in real estate for more than 34 years, literally done billions of dollars in deals, and this is the way that a real estate empire is built, not as the SEC would suggest, by constantly selling assets to meet payments and debts every quarter. Not a single publicly-traded developer in business such as ours does that. It simply is impossible as real estate is simply not that liquid and it defeats the purpose of building a business by selling your assets every quarter.

35. As previously shown, investors in the Infrastructure Series were told and signed documents that stated “that the real estate development projects are not designed to immediately generate cash flow and often take years to be developed, completed and generate cash flow. I am aware that funds raised for projects may be deployed to generate additional returns not associated with the real estate project while capital is waiting to be deployed in real estate projects” and “**that until the infrastructure and other real estate investments generate significant cash flow, my**

investment may be used to generate profits elsewhere while awaiting deployment in real estate projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves.” In addition, monthly/quarterly updates further reiterated that Infrastructure projects could take years to cash flow and generate returns.

36. The SEC correctly points out that Infrastructure did not generate income through year-end 2023. Of course it would not, if projects take five years to develop, you do not generate the money until you either refinance or sell lots. You leave the lands to grow in value. However, in 2024, Infrastructure started to generate monies, **about \$45 million**. As such, the offering and payments to Infrastructure investors were not inflated because their “investment may be used to generate profits elsewhere while awaiting deployment in real estate projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves.” In addition, we prudently chose to take money out of Infrastructure in a measured basis to meet our obligations but did not oversell lands or over re-finance. We took only what was needed to meet all obligations and let the real estate grow. We are literally the largest private equity Infrastructure development organization in North and South Carolina, we are not going to be forced to sell lands to satisfy the SEC when our documents do not require that.

37. The SEC next criticizes the MCA business. From the outset it should be noted that the MCA investors are not paid the profits of the business. They are simply given an unsecured return of fourteen percent annually. It is uncontroverted by the SEC’s own expert that the gross factor rate (comparable to an interest rate but is actually a discount rate) is 1.36 meaning 36% gross return on an average duration of ten months which means 3.6% is made monthly or 43.2% annual gross returns. This is uncontroverted by the SEC’s own expert. That 43.2% is actually the

discount of what the receivables of the various businesses are purchased at and hence is analogous to the gross expected return, again, which the SEC does not challenge.

38. Furthermore, these portfolios involving the company Samson Funding (the actual MCA firm) have been securitized and rated on Wall Street and are recognized as a legitimate business. What the SEC fails to advise this Court is that its expert, likely to no fault of her own, has not been given the proper input data to perform the proper return calculations that net out and show that MCA is in fact a profitable endeavor and is run in complete compliance with all documents signed by the investors.

39. Without having the correct input data, as will be shown at this Court's hearing, the SEC expert is not able to derive the correct results and thereby making her calculations unreliable.

40. The SEC's expert report is significantly undercut by a recent securitization involving Samson's MCA lending. BasePoint Capital ("BasePoint"), a New York based specialty finance lender, is one of the syndicators who advances funds to merchants along with Broadstreet through Samson. When Samson offers an advance to merchants, Broadstreet and BasePoint often act as co-syndicators on the advance each providing a certain percentage of the overall advance. In December 2023, BasePoint completed an offering memorandum for a \$100 million asset-backed securitization wherein the underlying assets consisted of MCA portfolios and with approval to upsize to \$500 million. The offering was underwritten by Guggenheim Securities, LLC, one of the largest investment banks in the U.S. As part of the due diligence described in the offering memorandum, the underwriter analyzed a statistical pool of merchant cash advances that included approximately \$61 million of advances serviced by Samson Funding (which comprised 69.85% of the advances analyzed). The Samson advances analyzed by the underwriter included much of the same advances that Broadstreet participated in as a co-syndicator with BasePoint. The

underwriter's analysis of Samson's portfolios showed materially different collection data than what was used by the SEC's expert in this matter. Also, as a result of the underwriter's due diligence and BasePoint's offering materials, DBRS Morningstar rated the Class A and B notes for the securitization (which paid coupon rates of 8.704% and 11.286%, respectively) as investment grade. If Samson's MCA advances returned less than 3 percent annually and had the collection issues that the SEC's expert contends, there is no chance the BasePoint securitization would have been rated investment grade under those circumstances. The BasePoint offering memorandum and Morningstar ratings are included within Defendants' Exhibits submitted herewith.

41. Moreover, the SEC has its expert spend another portion of her report on alleged improper commingling of monies, when in fact, the expert relies on an over four year old PPM to arrive at her conclusions. Again, if the 2023 PPM were utilized, this Court will see that commingling of cash was absolutely permitted as it would be unreasonable for Broadstreet to open more than two hundred separate bank accounts for its more than two hundred special purpose vehicles for which it is involved. There is absolutely no legal requirement, the SEC has cited no law, rule or regulation that requires a private business to have so many checking accounts, especially in light of the PPM which clearly states cash will be commingled involving the operations of Broadstreet.

42. Finally, the SEC complains about the format of the financial statements from its expert when discussing the financial statements provided to investors. Yet again, the SEC has its expert rely upon an over 4 year old PPM when the 2023 PPM clearly does not provide that there will be a GAAP audit and furthermore each investor given the financials acknowledged that the financials were not GAAP audits. In fact, the accountants that put the financials together also specifically noted as such in the financial statements.

43. The SEC's claims about the QSBS Series are entirely false, as well, as it indicates the money was taken and not utilized. However, the SEC fails to advise, first and foremost, that an extensive registration statement costing hundreds of thousands of dollars was prepared, that all legal work has been done to pursue and complete the QSBS transaction and that the SEC was advised that at one point the QSBS transaction was on hold awaiting Congress which at one point had indicated that the tax beneficial program was going to be cancelled. Once it was learned that there was no longer a proposal to cancel the program, all legal work was done and even more importantly, at a minimum there was a five-year hold period on that deal as communicated to investors and the legal work and transactions have been done within that 5-year period. Hence, the SEC's characterization of QSBS is a complete mischaracterization as reflected in the extensive work done and Defendants' Exhibited submitted herewith provide this documentation.

44. The SEC's claim about misleading statements about "recordkeeping and financial statements practices" is also incorrect. Each and every series had separate ledgers and the PPM stated and was accepted by investors wherein it specifically provided that records would be kept in a format in the discretion of the Manager.

45. In truth, BSG Management kept and maintained separate records for each Series and specifically complied with the language of the PPM which stated that the Fund may determine to provide financial information in such other format or method of presentation as it determines in its discretion. The SEC may not like the format but it is the format which the sophisticated accredited investors empowered the Manager to use.

46. The prior versions of PPMs and Operating Agreements from over 4 years ago state that BSG Fund would use "commercially reasonable efforts" to provide audited financials and GAAP compliant annual reports from independent public accountants. That provision of the PPM

was amended after the SEC issued a subpoena to the auditors who had a corporate policy of automatically withdrawing when receiving a regulatory subpoena. The auditors did not ever state the financials were improper, they simply withdrew due to the subpoena and hence it was commercially not reasonable to issue a GAAP audit without an auditor. Hence, the PPM was changed and the most recent PPM and Operating Agreement of September 2023 *has taken out* any requirement to provide audited financials and GAAP compliant annual reports from independent public accountants. This was done because we have been unable to secure an accounting firm under the cloud of the SEC investigation.

47. The new language is set forth below:

Financial information contained in all reports to the Members will be prepared on an accrual basis of accounting. The Fund will use commercially reasonable efforts to provide an annual report to Members that will be presented with the tax basis of accounting within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund will use commercially reasonable efforts to provide tax information to Members within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund may determine to provide financial information in such other format or method of presentation as it determines in its discretion employing such firms and professionals at its discretion.

PPM (Def. Ex. A) at 45.

Except as may be provided in a Series Schedule, the Company shall use commercially reasonable efforts to prepare and make available to each Member financial statements of the Company. The Company will also use commercially reasonable efforts to make available periodic performance information, no less frequently than quarterly, to the Members after the end of each calendar quarter (other than the last calendar quarter of each Fiscal Year).

Operating Agreement (Def. Ex. B) at Section 9.03.

48. Recognizing that its allegations supporting an emergency and other central claims are false, the SEC cobbles together what it calls “additional deceptive conduct” much of which relies on the same allegations in the other main allegations. These allegation fail, as well.

49. The SEC complains about the Tri-Party Agreement. This is odd since the Tri-Party Agreement was created to protect investors by pledges of business and personal assets in favor of investors. The SEC claims that the Tri-Party Agreement “does not” protect investors when it expressly does. It also contends that it “creates cross-liability” without explanation. The SEC concedes that this document was not disseminated to investors, and further concedes that it could be amended. No investors were parties to the agreement and the SEC fails to tell this Court that one of the risk factors discussed in the PPM to investors was a risk of cross liability. Hence, the SEC complains about a document not given to investors, but which protects investors and even though the PPM specifically warns investors about the risk of cross liability.

50. In addition, as I previously testified, my recollection was that the concept of the agreement was conceived during the July 2022 period when Steve and Joe asked me about improvements of which the Tri-Party Agreement was one. The fact that the SEC has a document with later dated meta-data is simply much ado about nothing, there is absolutely no doubt that there is a Tri-Party Agreement, that all of the professionals involved analyzed the business for consolidation, tax and asset protection issues in 2022 and that such agreement is consistent with such need of the company. The added bonus of the document that it gives investors a level of protection wherein the owners of Broadstreet pledged personal guarantees should be seen as a positive, yet with the SEC they have been able to argue that a positive protection for the investors is somehow negative.

51. Since the SEC’s unannounced emergency motion was filed, as CEO, I have been tasked with making sure communication take place with all of our business counterparties. To date, and for the most part, the counterparties have stood down from calling an event of default but have made it clear that in every single business, even Infrastructure, self storage, land banking

and data centers, to just name a few of the more valuable business, every single counterparty has confirmed that if a receiver is appointed or an emergency asset freeze is issued, they will all execute upon their right to pursue all of the assets and collateral of Broadstreet thus causing them to get paid, but with the liquidation process, the investors will likely receive substantially less than what they could. In addition, literally 3,000 persons will lose their jobs and projects for thousands upon thousands of homes will go idle.

52. For the reasons stated herein and in our submissions, I respectfully request that the Court deny the SEC's application in its entirety.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of February, 2025.



DAVID FEINGOLD

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF STEVEN BALDASSARRA

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am one of the Managers of the Broadstreet Global Fund LLC (“BSG Fund”), and one of the owners of Broadstreet Global Management LLC (“BSG Management”) and Broadstreet, Inc. (“BSI”) (collectively as “Broadstreet”). I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles in Broadstreet. I respectfully submit this declaration in opposition to Plaintiff’s (the “SEC”) Emergency TRO application for an asset freeze and receiver.

2. I have reviewed the Defendants' Index of Exhibits for the TRO Hearing and the documents referenced therein. I can attest that the documents referenced in the Index and filed with the Court with the TRO pleadings are true and correct copies.

3. I categorically deny the SEC's allegations of fraud and any wrongdoing.

4. BSG Fund is a private fund of accredited and sophisticated investors. BSG Management is the Manager of BSG Fund. My brother Joseph Baldassarra ("Joe") and I manage BSG Fund. BSI is a leading private equity firm rooted in the Carolinas. David Feingold ("Dave") is the CEO of Broadstreet, I am COO and Joe is mostly involved in dealing with investors. Dave is involved in overseeing the business lines. Broadstreet's main offices are located in South Carolina.

5. Broadstreet is estimated to be the fourth largest private equity infrastructure developer in the USA and is involved in over \$5 billion in transactions and currently is involved in over 17,000 acres of land, more than 54 communities/infrastructure projects, over 44,000 expected homesites, 863 hotel room units and over 130 total projects/businesses. Broadstreet and its affiliated/related entities' office operations have over 100 front office personnel and an estimated 3,000 jobs created from its projects which have an estimated \$10 billion economic impact on the Carolinas.

6. I dispute the SEC's assertions of emergency. If the SEC's TRO is granted, it will needlessly and catastrophically cause massive damage to investors, Broadstreet and their employees and those all working in the business lines and projects.

7. BSG Fund investor returns are tied to about 14 different business lines that include (1) infrastructure (2) home development (3) hotel/lodging (4) land banking (5) restaurants (6) specialty finance/merchant case advance ("MCA") (7) crypto mining (8) self storage facilities (9)

automobile dealerships (10) data centers (11) broker/dealer (12) family office (13) insurance (14) mortgage conduit trading/securitization. BSG Fund provides funding for use in these business lines and is entitled to receive distributions and profits from the business lines as a result of these investments.

The Broadstreet Entities

8. BSG Fund collects investor funds to place in various business lines overseen by BSI. The income from those business lines are used support investor returns. There have been no missed payments to investors and any investor redemption requests have been complied with.

9. BSG Management is the Manager of BSG Fund. BSG Management is not an investment advisor, nor is it required to be an investment advisor and the offering materials discussed below expressly state that BSG Management is not an investment advisor. The SEC alleges that \$880 million in funds were diverted in some nefarious way to BSG Management. This is not correct as the Manager deploys investor funds into business lines on behalf of the fund to support returns for investors. As discussed below, the fund PPM and operating agreement as well as other disclosure materials give BSG Management discretion and control over fund capital. My understanding is that the SEC's own expert acknowledges that at least approximately 70% of money raised was placed into the various business lines. Defendants Exhibits A and B are true and correct copies of the fund's 2023 PPM and operating agreement, respectively.

10. Investor documents specifically provide that 30% of all monies could be received by management to pay management fees, business operations and distributions. In fact, in multiple documents and disclosures the investors are advised that fees of 6% per year for 5 years or a total of 30% of funds raised may be used to pay management fees, distributions and any other financial reason as per the discretion of the manager. In addition, the \$170 million that the SEC claims were

undisclosed management fees were, in fact, fully disclosed to investors and spent as specifically authorized and disclosed to all investors. Importantly, BSG Management uses part of its management fees to cover BSI and fund related expenses.

11. BSG Management is owned by my brother Joe and me. We are the only individuals with authority to make decisions for BSG Fund. Both of us previously held securities licenses and were associated with registered SEC broker dealers and we formed private funds for investment in pre-IPO funds in or about 2016. When the pre-IPO market cooled down, Joe and I sought out other ventures and ultimately established the predecessor of the BSG Fund to focus primarily on real estate.

12. BSI was created in June 2022 during an organization restructuring. At that point, Broadstreet's operations and business had been growing at a fast pace and we wanted to bring in someone to assist us. Dave Feingold fit this role since he is an attorney with significant experience in infrastructure and real estate development. We have also known Dave for many years and he has provided us with legal guidance and consultation over the years. Based on Dave's skills and experience, he became the CEO of BSI and the primary person to oversee the various business lines.

13. BSI is owned by Joe, Dave and I and approximately 50 others who are considered partners in the business. BSI primarily oversees the 14 business lines described above with infrastructure being the largest with contracts involving the largest homebuilders in the USA and developing the infrastructure for 44,000 expected homesites. As CEO of BSI, Dave's role is primarily to oversee the 14 business lines. My role is primarily in back office operations for the fund and BSG Management and as mentioned above I am the COO of BSI. Joe primarily deals with investors. I am in frequent communication with Joe and Dave.

14. BSG Fund, BSG Management and BSI are separate companies with separate observance of corporate formalities. The fact that we discuss the collective Broadstreet business together and there is a sharing of space and other items does not alter that result. The fact that I want the collective Broadstreet business to succeed does not alter that result. In fact, the offering materials of BSG Fund specifically authorizes Joe and I to have different divisions and hire different persons, such as Dave, to provide services to oversee business lines.

15. In addition, the SEC's assertion that BSG Fund does not keep separate records for each Series and each investor in each Series is not correct. As noted in Mr. Robinson's Declaration, the "BSG Fund produced to the SEC a series of monthly spreadsheets historically tracking: 1) client holdings for each Series; 2) monthly investments into each Series; and 3) dividends paid and reinvested for each Series (the "BSG Fund Monthly Schedules"). These BSG Fund Monthly Schedules were given Bates numbers in the range of SEC-BSG Fund-E-0000103 through SEC-BSG Fund-E-0000184, but because of the size of the files, I have not attached them to my Declaration." Indeed, Mr. Robinson relies on the BSG Fund Monthly Schedules to describe the various Series. These monthly schedules are too voluminous to attach, but electronic versions may be utilized during the TRO hearing as needed.

16. Moreover, contrary to the SEC's assertions, there is nothing improper about the account statements provided to investors. The account statements, prepared by a third-party vendor, correctly track the Series, additions, deductions, and dividends received or reinvested. Further, the offering materials specifically provide that BSG Fund may keep its records in the format so elected by the Manager and no specific format is required. BSG Fund does not reduce a fund investor's principal balance when management fees are received by BSG Management.

Investors are able to redeem the entire amount of their original investment if and when they redeem their investments. BSG Fund has operated this way since its inception.

17. In addition, it is important to note the frequency with which prospective investors receive the numerous important disclosures and disclaimers attendant to the investments. Initially, all investors acknowledge and agree that they must go to and review materials in the BSG Fund's data room. The materials in the data room include the private offering memorandum, operating agreement, subscription agreement, Series Supplement, pitch decks, and monthly/quarterly updates. Also, each time an investor goes to the data room they must acknowledge various important disclosures and disclaimers. There is also an institutional data room that likewise requires investor acknowledgement of various important disclosures and disclaimers. Further, in order to gain access to the institutional data room, the investor must sign a Non-Disclosure Agreement to insure that the investor does not disseminate to others who may not properly gain access to such data room. Consequently, prospective investors and investors are provided with important disclosures and disclaimers, many of which address the information the SEC claims has not been disclosed.

18. Significantly, in July 2023, BSG Fund disseminated to investors a Compliance Acknowledgement Update to further confirm investor knowledge and representations concerning many of the items that the SEC incorrectly claims were not properly disclosed. Approximately 99% have signed and returned such update. Such update has been included with the offering materials since that time and through the present and each new fund investor must execute and acknowledge the Compliance Update. Additionally, every time an existing investor decides to invest in a different Series they are required to execute the document again. A true and correct copy of the Compliance Update has been marked as Defendants Exhibit I.

The Business

19. The basic premise of BSG Fund is that accredited and sophisticated investors provide funds to BSG Fund and, in return, they expect to receive certain targeted returns or, in some instances, a profits interest. Regarding MCA, the one line out of the 14 business lines which the SEC seems most concerned about, investors are paid a fixed unsecured return. There is no guarantee of profits and the returns can be paid from any source per the data room disclosures. The investors own an LLC interest in BSG Fund and do not obtain ownership of the underlying business nor the underlying profits and they sign documents acknowledging the same.

20. An investor will select a Series to invest in pertaining to one or more business lines. As described in more detail below, investors must review and complete various offering materials in order to invest in BSG Fund. Those materials emphasize to investors the necessity of reviewing documents and disclosures placed in the BSG Fund's data room. The disclosures are comprehensive and agreed to literally dozens of times by each investor each time they access the data room.

21. All information pertaining to BSG Fund is included in its data room, including offering materials and information concerning investments such as monthly and quarterly updates. All investors have access to the data room and, as stated, acknowledge the necessity of reviewing data room materials and specifically that it is their obligation to go to the data room regularly as it is regularly updated. We engaged an outside law firm Sheppard Mullin LLP to review the PPM, the disclosures, and the data room materials during the period at issue before the SEC investigation began. Copies of Broadstreet's data room disclosures are marked as Defendants Exhibits G and H.

22. BSG Fund investors are provided with monthly and quarterly updates. The updates provide detailed information regarding the status of BSI's business lines and include financial data

where appropriate. The quarterly updates also provide detailed informational and risk disclosures discussed further below. True and correct copies of a sampling of the fund's monthly and quarterly updates for 2021-2024 have been marked as Defendants Exhibits F.1-F.4.

23. Each of BSI's business lines is described below:

Infrastructure Land Development

24. Infrastructure is BSI's largest business line and Series. Real-estate infrastructure development is the process of getting raw land ready for home developers. This generally includes (1) entitlements, (2) development site planning, (3) utility installation including gas, water, electric and sewer, (4) land contouring, (5) grading, (6) water retention plans, (7) clearing, (8) road paving, (9) curbing, (10) building pads, and (11) common areas.

25. Broadstreet works primarily with two real estate development companies (Contender and Blackstream) who develop the land for home builders such as D.R. Horton (largest in USA), Lennar (Second largest in the USA), Meritage, Pulte Homes and Ryan Homes. As indicated above, BSI's infrastructure Series currently has contracts in place to develop raw land to provide infrastructure for approximately 44,000 homesites. Representative examples of the contracts with homebuilders have been marked as Defendants Exhibits L.1 and L.2.

26. Data room disclosures were provided to investors indicating that Infrastructure projects take years to cash flow and that their funds could be deployed in other investments until such time. The BSG Fund data room also includes monthly/quarterly updates reflecting that the projects had not yet been developed to the point where they would generate investor returns. While the SEC states in its pleadings that no income came from the infrastructure projects through 2023, in 2024 the BSG Fund received \$45 million from infrastructure projects. It is expected that BSG Fund will receive an additional \$75 million from the infrastructure projects in 2025, and it is

expected that almost \$500 million will be distributed to the fund over the next several years. In addition, Broadstreet currently holds unencumbered real estate lands valued at approximately \$200 million. *See* Defendants Exhibit M including valuation.

27. Below are some photos of the various sites. Please note that since a substantial amount of the infrastructure work is below ground, involving installation of utilities, the actual progress is difficult to recognize until actual roads are put in, which is the last part of the infrastructure process.



Crypto Mining

28. Crypto Mining has become a large and successful business with 5 data centers located in the Carolinas and another 5 in process of being established by the end of the second quarter 2025. There are more than 16,000 machines operated by the business line making it the largest DOGE coin mining operation in the USA. The largest publicly traded company in this sector, Marathon Digital, has less DOGE coin miners than our division and trades at a market capitalization of \$6 billion. We have approximately the same number of workers in our crypto mining business as Marathon, more DOGE coin miners and more facilities in the Carolinas than them. We also have more than approximately \$225 million in machines presently and that number continues to grow monthly based on our manufacturing of more machines. *See Defendants Exhibit N for machines.*

Specialty Finance or Merchant Cash Advance

29. BSG Fund has MCA portfolios at Samson Funding, a company that specializes in and services MCA portfolios, currently valued by Samson at approximately \$180 million over 12 portfolios. The crux of the MCA business is that it involves transactions in which a small business can receive quick funding by selling its future receivables at a steep discount. The advance is repaid by debiting a percentage of the business's daily sales. Samson Funding is one of the top ten servicers in the USA. As detailed in other submissions, Defendants dispute the SEC's allegations regarding the MCA portfolios.

Hotel/Lodging

30. This business line or Series pertains to the purchase or construction and operation of specific hotel properties. Broadstreet has funded multiple hotel projects under the Marriott and Hilton brands. The current projects include Marriott Brands in Asheville and Raleigh, an Element

Hotel in North Charleston, the Residence Inn in North Myrtle Beach and Ormond Beach, FL, the first-ever AC Retreat Hotel by Marriott in Daytona Beach, FL, and a Hilton-branded hotel coming to Miami International Airport. *See* Defendants Exhibit R for example of Marriott agreement.

31. The TownePlace Suites in Asheville, NC has been open since April 2022. Performance is being reported regularly, and the hotel has been operating successfully since its opening. Raleigh NC Townplace Suites exceeded budget expectations last quarter, achieving strong performance across key metrics. The Element Hotel in North Charleston is progressing on schedule with key milestones achieved. The Ormond Beach, FL Residence Inn has hotel construction progressing smoothly, with several key benchmarks recently achieved. The Residence Inn in Myrtle Beach, SC is making significant strides as we progress toward 90% completion of the hotel redesign. The Marriott in Daytona Beach, FL is in the process of completing the initial stages of this project and once completed, our AC Hotel by Marriott will be the first resort of its kind in the United States.

Home Development

32. This business line or Series pertains to investment in the construction of residential housing communities. This Series pays investors a return based on a profit split with the home builder (Durham Homes USA LLC). Durham Homes filed for bankruptcy re-organization. However, no required investor payments have been missed for this (or any) Series. BSG Fund management has used a portion of its management fees to cover investor payments so that no investor losses were suffered while the business has been in reorganization. Durham Homes USA LLC has built and sold many homes connected to this Series (see <https://luxuryhomesbydurham.com/>). Below are some photos of homes currently under construction:



Crystal Lagoons

33. This business line or Series pertains to investments in the construction and operation of a resort project in Columbia, South Carolina. The Crystal Lagoons® concept and technology, patented worldwide, is one in which the ultimate goal is to create idyllic beaches with lagoons of crystalline water and excellent quality, in previously unimaginable places.

34. Broadstreet has secured the exclusive rights to Crystal Lagoons for the entire state of South Carolina. We have identified a site location in Columbia, SC for our first Lagoon project. The land is already pre-approved for commercial construction and zoning is already secured. D.R.

Horton is proposing to develop approximately 2,400 single-family homes and town homes within the Oak Hills community, which spans six acres adjacent to the Crystal Lagoons. This development will include a 1.5-acre beach and a three-acre lagoon. In addition to the residential lots, Oak Hills will feature a range of recreational amenities, including tennis courts, a kids' zone, a wedding peninsula, waterfront restaurants, a retail hub, water sport rentals, a park, and a luxury hotel. We are getting closer to breaking ground with an estimated start date by the end of 2025.

Self-Storage facilities

35. This business line or Series pertains to investments in a collection of self-storage facilities. The objective is to locate facilities near our infrastructure projects based on the belief that our infrastructure projects will create housing and population centers that will need a self-storage component. As of September 2024, we have 12 self-storage facilities projects underway.

Land Banking

36. This business line or Series pertains to investments in significant acreage near other development projects and predicted growth areas. We acquire strategic lands, entitle those lands with a goal to hold the lands to sell or self-develop with one of our venture partners depending on market conditions and opportunities. The business thesis is simple, once one of our master planned communities begins construction, it raises the value of the lands located around it. This has proven in part by the increase in acreage prices we have seen. For example, in Oak Hills, we purchased 1,000 acres at \$25,000 per acre, however, after the announcement of our massive project, surrounding lands began listing at \$300,000 per acre. A natural consequence of an expected development and demand.

Qualified Small Business Stock

37. The SEC incorrectly takes issue with this Series. The QSBS division, Broadstreet Global Development Corp., was created on June 17, 2021. It has been incorporated in Delaware, and registered with state and federal tax authorities. Under the QSBS regulations, interests must be held a minimum of 5 years to take advantage of the tax benefit. In the past several years, politicians such as Senator Warren has threatened to remove or diminish the tax benefit. During this period, Broadstreet waited to see if the Congress would change the law. This delay was disclosed to investors and in fact the project laid dormant. However, recently it has become clear that the QSBS benefit is not being withdrawn by Congress, and this project has had extensive work done including all property transfers done, legal working including a registration statement by a major law firm and the project is within the required time frames under IRS regulations. In October 2024, the QSBS entity was rebranded to TCVI Group, Inc. as reflected in the draft registration statement. The corporate formation and tax documents for the QSBS division are marked as Defendants Exhibit Y, and the draft S-1 registration statement is marked as Defendants Exhibit W.

Automobile Dealerships

38. This business line or Series pertains to investments in Brannen Ford, an automobile dealership that specializes in fleet sales of police cruisers including the Ford Police Interceptor utility vehicle, the best-selling police vehicle in America.

Pre-IPO securities

39. This is largely a legacy Series inherited from our predecessor firms. It focused on purchasing pre-IPO stock and generating returns upon an IPO or other liquidating event. As the pre-IPO market has been greatly reduced in activity over the years, this business line simply holds investments and awaits if there is a public offering/IPO of those companies.

Fixed Income securities

40. This is largely a legacy Series inherited from our predecessor firms. It has focused on generating returns from a wide variety of income generating investments. This is a business line that is not very active due to a focus many years ago away from fixed income and towards real estate.

Broker Dealer/Family Office/Insurance

41. In order to be more of a full service firm to clients and to be able to offer certain regulated products and services as so requested, Broadstreet also participates in the brokerage, family office and insurance industries by having business arrangements with licensed professionals in those business lines for services as requested by investors.

Recent Gross Receipts from Business Lines

42. During 2024, Broadstreet has received approximately \$145 million in gross receipts associated with the business lines. This amount includes approximately \$45 million from infrastructure, \$61 million from MCA, and approximately \$34 million from crypto mining/data centers. A spreadsheet listing the sources and amounts of gross revenues has been marked as Defendants Exhibit K.

The BSG Fund Investors

43. Mr. Robinson correctly points out that BSG Management provides prospective investors with offering materials that detail terms of a potential investment. These offering materials provide that only persons who are “accredited investors” who can withstand the loss of their entire investment should invest, that the investment is speculative and that the investment included a myriad of risk factors.

44. While the SEC focuses on older versions of the private placement memorandum, subscription agreement, and operating agreement, I will focus on the most recent versions of these documents which were amended in September 2023 since the SEC is claiming ongoing conduct to suggest emergency. These documents include a Supplement to the Confidential Private Placement Memorandum (prepared by Shearman & Sterling LLP “to make customary updates pertaining to regulatory, tax and other exogenous developments that have transpired during the period since the date of the Memorandum”), the PPM, the Subscription Agreement and the Operating Agreement. As indicted above, the 2023 PPM and Operating Agreement have been marked as Defendants Exhibits A and B, respectively. The 2023 Subscription Agreement has been marked as Defendants Exhibit C.

45. On the very first page of the 2023 PPM, it states:

A supplement to the Memorandum (each, a “Supplement”) in respect of each Series will be created and distributed to prospective investors in such Series. Each Supplement will set forth the investment objective, investment strategy and terms related to the applicable Series. To the extent there is any conflict between the terms of a Supplement in respect of a Series and the terms of this Memorandum, the Supplement shall control with respect to such Series. The term Supplement includes any materials which are contained in the data room of the Fund and hence each investor must read all materials contained in the aforementioned data room to understand all applicable terms and conditions and therefore each investor must regularly review the data room. 2023 PPM (Def. Ex. A), pg. i.

46. As such, investors are specifically told to refer to the Series Supplement and data room for specific terms of a Series. Indeed, the Series Supplement is repeatedly referenced throughout the PPM. In the Subscription Agreement, the investor acknowledges that the Series Supplement is part of the offering materials and is controlling and that “that the Subscriber is responsible for reading each Account Communication posted to any applicable data room and each Subscriber will be bound by the terms of all posted materials.” These statements are also included within the Operating Agreement as well.

47. As acknowledged by the SEC, there is a Standard Series Supplement applicable to all Series unless there is a side letter or customized Series Supplement. As acknowledge by the SEC, this Series Supplement “provides that BSG Management can charge a management fee of up to six percent per year on the funds received from the investor, and may receive five years of fees up front, such that BSG Management ‘is expected to earn a fee of thirty percent on the total funds received from the investor.’” The Standard Series Supplement states:

Fees including management/administrative Manager has the right to charge up to six percent per year on the funds received from the investor and with each investment expected to have a duration of five years, the Manager may, at its discretion, receive the prepayment of all fees at once or in any sequence it so desires. Thereby it can receive all of its fees upfront on the initial investment of the investor or in any other manner so elected by the Manager and consequently at six percent per year over a five year assumed duration of each investment, the Manager is expected to earn a fee of thirty percent on the total funds received from the investor.

48. It also states that,

Performance Fee / Incentive Allocation No performance fee, instead, the Manager is to receive all profits generated by the applicable sub-series venture after all distributions have been made. This fee is in addition to the fees expressed elsewhere in this supplement and/or the private placement materials.

49. Thus, in addition to the disclosures in the PPM and Operating Agreement about management fees, such management fees are specified the Series Supplement, as well. The Standard Series Supplement has been marked as Defendants Exhibit D.

Investor Compliance Acknowledgement

50. In order to further confirm that investors understood their investments, disclosures and associated risks, in July 2023, BSG Management disseminated to investors a Compliance Acknowledgement Update. Per our records, approximately 99% of investors signed and returned the document. As indicated above, a sampling of the Compliance Acknowledgement Update has been marked as Defendants Exhibit I.

51. The SEC gives little attention to the Compliance Acknowledgement Update because it undercuts its claims of lack of disclosure. By executing the Compliance Update, investors specifically confirmed, among other things, that they:

- Reviewed all offering materials,
- Still meet the definition of an accredited investor as presented in their original subscription documents,
- Read the private placement memorandum, series supplements, data room documents, monthly updates and disclosures of Broadstreet, and still consent to all matters contained in those documents,
- Are responsible for reviewing the data room on a regular basis and also all updates posted as they may affect deal terms,
- Consent to fees of up to 6% for 5 years,
- Acknowledge that real estate development projects are not designed to immediately generate cash flow and often take years to be developed, completed and generate cash flow,
- Acknowledge that funds raised for projects may be deployed to generate additional returns not associated with the real estate project while capital is waiting to be deployed in real estate projects,
- Acknowledge that until the infrastructure and other real estate investments generate significant cash flow, my investment may be used to generate profits elsewhere while awaiting deployment in real estate projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves,

- Acknowledge that individual land is titled in SPVs owned, managed and/or controlled by BSI, BSG Management and/or BSG Fund, BSI,
- Acknowledge that BSG Management and BSG Fund are not investment advisors, and
- Acknowledge that they make their own investment decisions, and neither Broadstreet nor any of its affiliates act as an investment advisors.

52. Thus, the Compliance Acknowledgement Update rebuts the SEC's contentions that BSG Fund or BSG Management represented it was an investment advisor, that it was not disclosed that up to 30% in management fees could be taken, and that it was not disclosed that investor funds pertaining to infrastructure and other real estate investments could be deployed elsewhere or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves.

Repeated Risk Disclosures Informing Investors

53. In their TRO papers, the SEC alleges that:

“[T]he Defendants managed the Fund in a way that was inconsistent with what they told investors and that materially increased investors' risk. The Baldassaras and BSG Management told investors that the Fund would follow certain structures and practices to protect their investments: that they would keep the assets and liabilities of each Series separate, that there would not be commingling of funds or assets between the Series, that there would be no cross-liability between Series, and that the Fund would own the investments made with investor funds. In fact, funds were commingled and cross-liabilities created, subjecting investors in one Series to risks in other Series. Moreover, nearly all investor funds were diverted to accounts and assets owned and controlled by BSG Management, the Baldassaras, or BSI. The BSG Fund Series has almost no assets held in its name.” SEC TRO Mtn. pg. 2.

54. The SEC focuses on a number of isolated snippets in offering materials as a centerpiece in this case. Yet, in reality, the things that the SEC claims were not disclosed were fairly disclosed. As shown, 99% of BSG Fund investors in July 2023 confirmed knowledge of the things that the SEC claims were concealed. Further, even if such disclosure had not been made and confirmed, they were not material to a reasonable investor placing funds in a speculative and

high risk venture replete with the numerous risks outlined in the PPM. Further, the Compliance Acknowledgement Update has been included in the offering materials since July 2023.

55. But more than that, the prior offering materials and data room disclosures provided numerous disclosures that rebut the concerns that the SEC has raised in this proceeding. The following paragraphs outline the numerous disclosures provided to fund investors through the PPM, Operating Agreement and Subscription Agreement that rebut the SEC's claims:

(i) **Disclosures Stating that BSG Management given wide discretion in managing BSG Fund's operations, assets, affairs**

The Manager has wide latitude in choosing investments for a Series. **Although the Manager intends to pursue the strategies described above, the Operating Agreement does not expressly require it to do so and, more particularly, except as noted above, imposes no limits on the types of securities or other instruments in which a Series may invest, the types of positions it may take, the concentration of its investments** (by country, sector, industry, company or asset class) or the amount of leverage it may employ, including short positions (*i.e.*, sales of securities that a Series does not own). Further, depending on conditions and trends in investment markets, the Manager may pursue other strategies or employ other techniques it considers appropriate and in a Series' best interests. **A Series' assets may at times be fully invested in investments and at other times be held primarily in cash or cash equivalents or may be placed in other income generating investments, solely at the discretion of the Manager.** PPM (Def. Ex. A) at 7, emphasis supplied.

Ownership in a Series does not confer to any investor ownership in the assets underlying a Series. The Supplement shall indicate the rights applicable to a Series. The Fund, the Manager or any affiliated individuals or entities of the same may be the ultimate owner of the underlying assets of a Series. PPM (Def. Ex. A) at 1.

The investment objective in respect of a Series will be set forth in the applicable Supplement for such Series. The Manager may invest capital intended for a particular Series into investments so designated by the Manager while awaiting deployment of capital for a particular series in order to enhance the returns being generated. PPM (Def. Ex. A) at 1, emphasis supplied.

A Series may represent a particular industry or vertical but **the Investor may not have any ownership interest in the underlying assets of a Series and may only have rights to specific returns or allocations of revenues, profits or such other structures set up in the sole discretion of the Manager.** PPM (Def. Ex. A) at 9, emphasis supplied.

While the Manager is accountable to the Fund generally, **the Operating Agreement grants the Manager broad discretion as to many matters** and limits the Manager's fiduciary duties. By entering into the Operating Agreement and signing the Subscription Agreement, each investor acknowledges and consents to the exercise of such discretion by the Manager, including where the Manager has a conflict of interest. PPM (Def. Ex. A) at 26, emphasis supplied.

The Manager will have broad discretion to establish additional Series, and the investment strategy and other terms applicable to such Series without notice to or the consent of Members of any other Series. **The Operating Agreement provides that the Manager will have complete control of the business of the Fund** and that the Members will have no power to take part in the management of the Fund and each Series. PPM (Def. Ex. A) at 43. **The management of the Company and each Series shall be vested exclusively in the Manager.** The Manager shall have the authority, on behalf of and in the name of the Company or each Series, to take any action or make any decisions on behalf of the Company and each Series hereunder, to carry out any and all of the purposes of the Company and each Series set forth in Section 2.05, and to perform all acts and enter into and perform all contracts and other undertakings that it may deem necessary or advisable or incidental thereto. Operating Agreement (Def. Ex. B) at Section 4.01, emphasis supplied.

the Company and any Series may engage in any activity or transaction that may, in the Manager's discretion, be necessary, suitable or proper to accomplish or further such objective, and do any and all other acts incidental to, arising from or connected with such purposes. Operating Agreement (Def. Ex. B) at Section 2.05.

The Company, in the Manager's sole discretion, may establish Classes within each Series, each of which having different terms, including, for example, different Management Fees, Incentive Allocation and withdrawal rights. New Classes may be established by the Manager without providing any notice to, or receiving consent from, existing Members. The terms of such Classes will be determined by the Manager in its sole discretion. Operating Agreement (Def. Ex. B) at Section 3.03.

(ii) **Disclosures Stating that Investors must look to Series Supplement and Data Room for specifics**

A supplement to the Memorandum (each, a "Supplement") in respect of each Series will be created and distributed to prospective investors in such Series. Each Supplement will set forth the investment objective, investment strategy and terms related to the applicable Series. To the extent there is any conflict between the terms of a Supplement in respect of a Series and the terms of this Memorandum, the Supplement shall control with respect to such Series. The term Supplement includes any materials which are contained in the data room of the Fund and hence each investor must read all materials contained in the aforementioned data room to understand all applicable terms and conditions and therefore each investor must regularly review the data room. PPM (Def. Ex. A) at i.

ALL INVESTORS ARE CAUTIONED TO ACCESS THE DATA ROOM MAINTAINED BY THE FUND IN ORDER TO UNDERSTAND ALL APPLICABLE TERMS AND CONDITIONS, WHICH ARE SUBJECT TO CHANGE AND UPDATE AND SUCH NEW AND/OR ADDITIONAL INFORMATION MAY ONLY BE MADE AVAILABLE IN THE DATA ROOM. IT IS THE INVESTOR'S RESPONSIBILITY TO REGULARLY REVIEW THE DATA ROOM TO BE MADE AWARE OF ANY NEW, ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS WHICH MAY BE APPLICABLE. PPM (Def. Ex. A) at ii.

Each Member consents to the electronic delivery of Account Communications. An email or other notice will be sent to each affected Member when a new Account Communication is posted on any website or electronic data room. Each Member is responsible for reading each Account Communication posted to such data room and each Member will be bound by the terms of all posted materials. PPM (Def. Ex. A) at 5.

The Subscriber acknowledges that the Subscriber is responsible for reading each Account Communication posted to any applicable data room and each Subscriber will be bound by the terms of all posted materials. Subscription Agreement (Def. Ex. C) at Section 5.19.

Each Series may pay the Manager a management fee (the "Management Fee") for managing the investment and reinvestment of such Series' assets, the terms and amount of which are set forth in the applicable Supplement in respect of such Series. The Manager may, in its sole discretion, waive, reduce or rebate the Management Fee as to particular Members. The Manager may also, in its sole discretion, vary the Management Fee applicable to a particular Series, Class or Member, as set forth in the applicable Supplement related to such Series. The Manager may pay its Management Fee to others or alter the terms, conditions and amount at any time in its absolute discretion. PPM (Def. Ex. A) at 4.

Distributions may be made at such time and in such amounts as the Manager may determine in its discretion and as set forth in any applicable Supplement. Any distributions (other than in connection with withdrawals) will be made in accordance with the Members' relative capital account balances. In the Manager's discretion, distributions may be made in assets held by the Fund. PPM (Def. Ex. A) at 5.

Prospective investors should consider carefully the information set out in this Memorandum and should in particular consider the following risk factors and conflicts of interest before making an investment in a Series. **The risks and uncertainties described below and elsewhere in this Memorandum are not the only risks facing a Series. Additional risks and uncertainties presently not known to the Fund or that the Fund currently deems immaterial or unlikely**

may also adversely affect the performance of the Fund or Series. Where relevant, additional risks not otherwise described herein which are applicable to a particular Series will be described in the Supplement relating to such Series. PPM (Def. Ex. A) at 15, emphasis supplied.

(iii) Disclosures that BSG Management is not an Investment Advisor

Broad Street Global Management LLC, a South Carolina limited liability company (the “Manager”), has sole authority to manage the Fund’s activities and to deploy the Fund’s assets in any manner the Manager determines to be necessary, suitable, or proper to accomplish the Fund’s purposes. The Manager is not currently registered as an investment adviser with the Securities and Exchange Commission (“SEC”) or any state and does not expect to become registered. The Manager may appoint affiliates to act in its capacity at any time for any reason. PPM (Def. Ex. A) at 1.

Absence of Regulation. The Fund is not registered under any comprehensive regulatory scheme. There may be liquidity risks associated with these investments. The Manager is not currently registered as an investment adviser. PPM (Def. Ex. A.) at 23.

Investment Advisers Act of 1940. The Manager is not currently registered with the SEC or any state as an investment adviser. If the Manager is required to register, such registration may limit or adversely affect certain aspects of the Fund’s operations. For instance, SEC rules regarding certain trading practices, such as principal transactions, may limit the ability of a Series to transact with affiliates without engaging in certain approval processes which may cause the Series to forgo investment opportunities. In addition, a Series may have to bear additional costs arising from the Manager’s regulatory compliance obligations. PPM (Def. Ex. A) at 24.

(iv) Disclosures regarding Delaware law on Series LLCs had not been tested and there could be commingling

Risk of Cross Liability. While Delaware law provides statutory protection against the risk that a Series may be liable for the liabilities and obligations of another Series, such protection has not been judicially tested in all contexts. Moreover, such protection can be lost if certain formalities are not observed, including not commingling assets and maintaining separate books and records for each Series. PPM (Def. Ex. A) at 17.

Accordingly, the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular class of a Series is intended to apply only against the assets of such class and not against the assets of the Series generally. However, **there can be no assurance that the use of separate classes of Interests will prevent creditors from proceeding against the assets of the entire Series or the Fund. In addition, cash assets pertaining to various classes**

of Interests (but not assets pertaining to multiple Series) may be commingled and not held separately. PPM (Def. Ex. A) at 9, emphasis supplied.

The property belonging to each particular Series shall be charged with the liabilities of the Company with respect to a Series and all losses, debts, obligations, liabilities, expenses, whether arising in contract, tort or otherwise existing, and reserves attributable to such Series. In the event that there is such property, losses, debts, obligations, liabilities, expenses, or any income, earnings, profits, and proceeds thereof, funds, or payments which are not readily identifiable as belonging to any particular Series, the Manager shall allocate them among any one or more of the Series established and designated, from time to time, in such manner and on such basis as the Manager, in its sole discretion, deems fair and equitable. Each such allocation by the Manager shall be conclusive and binding upon the Members for all purposes. Operating Agreement (Def. Ex. B) at Section 5.01(e)(ii).

(v) Disclosures Regarding Payments to Third Parties and Affiliates

In addition, each Series indirectly bears its pro rata share of all such costs incurred by the investments in which it invests. Such costs may include costs relating to structuring and operating such investments and/or costs and expenses that the Manager and its affiliates incur in providing administrative, support and/or oversight services to or in connection with the investments (which services may vary over time). PPM (Def. Ex. A) at 5.

The Manager may cause a Series to pay a portion of its Management Fees to third parties and such is left to the absolute discretion of the Manager. PPM (Def. Ex. A) at 9.

The particular fees to a series are more particularly described in the Supplement. PPM (Def. Ex. A) at 13.

Each Series may pay the Manager a Management Fee for managing the investment and reinvestment of such Series' assets and for providing such Series with the facilities and personnel to manage and administer such Series' business, the terms and amount of which are set forth in the applicable Supplement. The Manager may, in its sole discretion, waive, reduce or rebate the Management Fee as to particular Members.

The Management Fee applicable to a particular Series may vary from the foregoing description, and any such differences will be set forth in the applicable Supplement for such Series. PPM at (Def. Ex. A) 13.

In addition, each Series indirectly bears its pro rata share of all such costs incurred by the investments in which it invests. Such costs may include costs relating to structuring and operating such investments and/or costs and expenses that the Manager and its affiliates incur in providing administrative, support and/or oversight services to investments (which services may vary over time). The effect

of such expenses will be reflected in the value of the interests held by a Series in such investments. PPM (Def. Ex. A) at 14.

The Manager and its affiliates may from time to time incur expenses on behalf of the Fund or a Series, other client accounts of the Manager or its affiliates, and one or more subsequent entities established by the Manager. Although the Manager and its affiliates will attempt to allocate such expenses on a basis that they consider fair and equitable over time, there can be no assurance that such expenses will in all cases be allocated appropriately or equitably. PPM (Def. Ex. A) at 14.

As a standard business practice, the Manager may cause a Series to pay a portion of its Management Fees to third parties (e.g., brokers, dealers, investment advisers, banks, etc.) that introduce investors to the Series, based on the ownership positions in the Series by such investors. The amount of the fees paid to such third parties will be debited against the capital accounts of the introduced investors and paid by the Series to such third parties. PPM (Def. Ex. A) at 15.

(vi) Disclosures Regarding Conflicts of Interest

Conflicts of Interest. The Manager and its affiliates, managers, directors, officers and employees (together, the “Associated Parties”) may from time to time act for, own an interest in, or be otherwise involved with funds or accounts (other than the Fund) that may have a similar investment objective to that of a Series and may result in actual or potential conflicts of interest. Such conflicts may include, by way of example only: (i) the allocation of time by principals or employees of the Manager between Fund business and other activities, (ii) dealings between an Associated Party, as principal or agent, and the Fund, (iii) an investment by a Series in investments that could further benefit the Associated Parties or third-parties with whom they transact, (iv) an Associated Party directing a Series to invest in an investment which may result in a benefit to a different fund, (v) the Manager’s allocation of investment opportunities between a Series and other clients, (vi) the Manager’s payment of fees and expenses to financial intermediaries, if any, that introduce investors to a Series (which fees may be based on the amount invested and could cause the interests of the financial intermediary to conflict with those of the investor), and (vii) the Manager’s input in determining the fair value of certain securities from time to time, where such determinations may affect the compensation paid to the Manager. Similar and additional conflicts may also apply with respect to the financial intermediaries, the custodian, and other parties with whom a Series or the Associated Parties transact from time to time.

To mitigate any such conflicts, each Associated Party will at all times give due regard to its obligations to the Fund and each Series and will seek to ensure that such conflicts are resolved fairly, with due observance of applicable law. Transactions between the Fund and any Associated Party will be effected on normal commercial terms negotiated on an arm’s-length basis. The Manager and their related persons will act in a fair and reasonable manner in allocating suitable investment opportunities among the Fund and/or other client accounts.

Nevertheless, there can be no assurance that the foregoing conflicts of interest will not result in the payment of additional fees or expenses, that the treatment of the Fund and other client accounts will be equal in all respects, or that such conflicts of interest will not adversely impact an investor. (See “Potential Conflicts of Interest”.)

By acquiring Interests of the Fund, each investor will be deemed to have acknowledged the existence of actual and potential conflicts of interest set forth throughout this Memorandum and to have waived any potential claim with respect to the existence of such conflicts. PPM (Def. Ex. A) at 17, emphasis supplied.

(vii) Disclosures that Audited financials were not promised (“commercially reasonable” not guaranteed) and SEC investigation made this impossible

Financial information contained in all reports to the Members will be prepared on an accrual basis of accounting. The Fund will use commercially reasonable efforts to provide an annual report to Members that will be presented with the tax basis of accounting within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund will use commercially reasonable efforts to provide tax information to Members within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund may determine to provide financial information in such other format or method of presentation as it determines in its discretion employing such firms and professionals at its discretion. PPM (Def. Ex. A) at 45.

Except as may be provided in a Series Schedule, the Company shall use commercially reasonable efforts to prepare and make available to each Member financial statements of the Company. The Company will also use commercially reasonable efforts to make available periodic performance information, no less frequently than quarterly, to the Members after the end of each calendar quarter (other than the last calendar quarter of each Fiscal Year). Operating Agreement (Def. Ex. B) at Section 9.03.

(viii) Disclosures Regarding Investment Risks

The Interests are a speculative investment and this offering involves substantial risks of loss as described herein. The Interests are suitable only for sophisticated investors for whom an investment in the Fund does not constitute a complete investment program and who fully understand and are willing to accept and assume the risks involved with the investment program of the Fund. (See “Certain Risk Factors”). PPM (Def. Ex. A) at i.

An investment in the Fund is speculative and involves a high degree of risk. Certain of the Fund’s investment practices increase the risks to which the Fund is otherwise subject. In addition, there are a number of conflicts of interest in the structure and

operation of the Fund. Investors should carefully consider such risks prior to making an investment. See “Certain Risk Factors” PPM (Def. Ex. A) at 1.

An investment in a Series is speculative, involves a high degree of risk, and should only be made with the risk capital segment of an investor’s portfolio. The value of Interests of the Fund may depreciate as well as appreciate, and investors may lose all or a substantial portion of their investment. Accordingly, an investment in a Series should only be made by persons who are willing and able to bear the risk of loss of the entire amount invested. PPM (Def. Ex. A) at 15.

You have such knowledge and experience in financial and business matters that you are capable of evaluating the merits and risks of acquiring an Interest, and you have not relied in connection with this investment upon any representations, warranties or agreements other than those set forth in the Offering Documents. Your financial situation is such that you can afford to bear the economic risk of holding the Interest for an indefinite period of time, and you can afford to suffer the complete loss of your investment in the Interest. Subscription Agreement (Def. Ex. C) at Section 5.5.

You are an “accredited investor” as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act, and you so have indicated in the Investor Questionnaire attached hereto as Attachment 1 (together with all attachments thereto, collectively, the “Investor Questionnaire”) the manner in which you so qualify. Subscription Agreement (Def. Ex. C) at Section 5.8.

56. In addition, BSG Fund investors were provided slide decks that outlined a Series or business line. These slide decks were posted to the data room and contained key information and risk disclosures. The disclosures provide information about management fees and how investor funds can be used and invested. Specifically, these disclosures also provide that funds from one Series could be used to make payments with respect to another Series. Below are relevant excerpts from the infrastructure slide deck (SEC Ex. 87):

IN ADDITION, THE MANAGER, ITS AFFILIATES AND THIRD PARTIES CHARGE SIGNIFICANT FEES AND EXPENSES WHICH CAN DRAMATICALLY AFFECT THE PERFORMANCE OF AN INVESTMENT. YOU SHOULD MAKE SURE THAT YOU ARE ABLE TO READ ALL MATERIAL PROVIDED TO YOU AND IF YOU ARE NOT ABLE TO DETERMINE WHAT THE MANAGER, ITS AFFILIATES AND/OR ANY THIRD PARTIES ARE MAKING IN ANY TRANSACTION THEN IT IS YOUR RESPONSIBILITY TO REQUEST, IN WRITING, A COMPLETE SUMMARY. IF YOU DO NOT MAKE SUCH A REQUEST IN WRITING, THEN IT IS ASSUMED THAT YOU ARE

ABLE TO CALCULATE ALL SUCH FEES AND EXPENSES AND THAT YOU ACCEPT THE SAME. THE FEES AND EXPENSES CHARGED CAN BE A SIGNIFICANT AMOUNT, IN FACT, SUCH A LARGE AMOUNT THAT THE FEES AND EXPENSES CHARGED COULD CAUSE AN INVESTMENT TO NOT BE PROFITABLE TO YOU AND THEREFORE YOU ARE URGED TO READ EVERYTHING ABOUT ANY INVESTMENT YOU MAKE AND TO CONFIRM THAT YOU KNOW EXACTLY WHAT ALL OF THE FEES AND EXPENSES ARE. DEPENDING ON THE PRODUCT, THE MANAGER, ITS AFFILIATES, OR THIRD PARTIES MAY MAKE SUBSTANTIALLY MORE THAN YOU CAN MAKE IN THE INVESTMENT.

THE FUND OPERATES IN MANY LINES OF BUSINESS AND INDUSTRIES. IN THE EVENT THAT AN INTEREST PAYMENT, RETURN OF CAPITAL OR ANY OTHER FORM OF PAYMENT OR DISTRIBUTION IS BEING MADE TO AN INVESTOR, THE FUND MAY USE ITS REVENUES OR EARNINGS FROM OTHER BUSINESS LINES IN ORDER TO MAKE PAYMENTS TO INVESTORS. FOR EXAMPLE, IN REAL ESTATE DEALS, INVESTORS ARE GENERALLY PROVIDED AN EXPECTED RETURN, HOWEVER, DEPENDING ON THE REAL ESTATE PROJECT AND THE TIMING OF WHEN SUCH A PROJECT BEGINS TO GENERATE REVENUES FROM OPERATIONS, THE FUND MAY MAKE PAYMENTS TO INVESTORS FROM MONIES GENERATED FROM OTHER INVESTMENTS WHICH THE FUND HAS MADE SO THAT POSITIVE INVESTOR RETURNS CAN BE ACHIEVED. WITHOUT SUCH PAYMENTS BEING MADE FROM THE FUND BY ITS OTHER BUSINESS LINES, RETURNS MAY NOT HAVE BEEN ABLE TO HAVE BEEN MADE TO INVESTORS. HENCE, INVESTORS COULD RECEIVE PAYMENTS BY THE FUND FROM INDUSTRIES OTHER THAN THAT WHICH THE INVESTOR INITIALLY INTENDED TO INVEST.

FOR CERTAIN INVESTMENTS IN EITHER FIXED INCOME OR REAL ESTATE PROJECTS, THE INVESTOR MAY PAY MONIES TO PARTICIPATE IN A TRANSACTION AND THE FUND MAY USE SOME OR ALL OF THE INVESTOR FUNDS TO GENERATE RETURNS THROUGH INVESTMENTS UNRELATED TO THE INVESTED INDUSTRY IDENTIFIED BY THE INVESTOR. FOR EXAMPLE, INVESTORS IN REAL ESTATE PROJECTS MAY HAVE SOME OR ALL OF THE FUNDS WHICH THEY HAVE PLACED WITH THE FUND ACTUALLY PLACED IN NON REAL ESTATE INVESTMENTS SUCH AS SECURITIES, DERIVATIVE CONTRACTS, DEBT PORTFOLIOS, MERCHANT CASH ADVANCE OR FIXED INCOME PRODUCTS IN ORDER TO GENERATE RETURNS TO PAY INVESTORS WHILE THE REAL ESTATE PROJECTS ARE BEING DEVELOPED AND NOT YET OPERATIONAL. THE FUND MANAGER IS SPECIFICALLY GIVEN THE AUTHORITY TO USE SUCH FUNDS IN SUCH MANNER AS IT DEEMS APPROPRIATE IN ORDER TO GENERATE RETURNS FOR THE BENEFIT OF INVESTORS. SEC Ex. 87, emphasis supplied.

57. In addition, the BSG Fund's monthly and quarterly updates provided similar information and risk disclosures. These reports further demonstrate that investors in the Infrastructure Series were well aware that their preferred returns were not yet being paid from the Infrastructure projects. Thus, the update for July 2022 (SEC Ex. 47) on Infrastructure goes project by project showing none of the projects have been completed. In addition, this July 2022 update like all others include risk disclosures and disclaimers such as:

FURTHERMORE, PRODUCTS SUCH AS LOT TAKEDOWN/INFRASTRUCTURE DEALS AND/OR REAL ESTATE RELATED INVESTMENTS PROVIDE FOR ADDITIONAL MONIES TO BE PAID OUT OF FUNDS RECEIVED BY INVESTORS AND ARE IDENTIFIED IN THE FINANCIAL PROJECTIONS AS CAPITAL CONTRIBUTIONS FOR INVESTMENT PARTICIPATION. SUCH CONTRIBUTIONS WILL GENERALLY EQUATE TO SIX PERCENT PER YEAR FOR THE INITIAL FIVE YEARS OF THE INVESTMENT AND IN THE DISCRETION OF THE MANAGER, THIS ENTIRE CONTRIBUTION MAY BE COLLECTED DURING THE INITIAL FUND RAISE OF THE APPLICABLE INVESTMENT AND PAID TO THE MANAGER, AN AFFILIATE OF THE MANAGER, A SERVICE PROVIDER, DEAL SYNDICATOR, OR ANY PROFESSIONAL OR ENTITY WHICH ASSISTS THE FUND WITH SAID TRANSACTION AND THE AMOUNT PAID TO ANY OF THESE SHALL BE IN THE SOLE DISCRETION OF THE FUND AND ITS MANAGER.

THE FUND OPERATES IN MANY LINES OF BUSINESS AND INDUSTRIES. IN THE EVENT THAT AN INTEREST PAYMENT, RETURN OF CAPITAL OR ANY OTHER FORM OF PAYMENT OR DISTRIBUTION IS BEING MADE TO AN INVESTOR, THE FUND MAY USE ITS REVENUES OR EARNINGS FROM OTHER BUSINESS LINES IN ORDER TO MAKE PAYMENTS TO INVESTORS. FOR EXAMPLE, IN REAL ESTATE DEALS, INVESTORS ARE GENERALLY PROVIDED AN EXPECTED RETURN, HOWEVER, DEPENDING ON THE REAL ESTATE PROJECT AND THE TIMING OF WHEN SUCH A PROJECT BEGINS TO GENERATE REVENUES FROM OPERATIONS, THE FUND MAY MAKE PAYMENTS TO INVESTORS FROM MONIES GENERATED FROM OTHER INVESTMENTS WHICH THE FUND HAS MADE SO THAT POSITIVE INVESTOR RETURNS CAN BE ACHIEVED. WITHOUT SUCH PAYMENTS BEING MADE FROM THE FUND BY ITS OTHER BUSINESS LINES, RETURNS MAY NOT HAVE BEEN ABLE TO HAVE BEEN MADE TO INVESTORS. HENCE, INVESTORS COULD RECEIVE PAYMENTS BY THE FUND FROM INDUSTRIES OTHER THAN THAT WHICH THE INVESTOR INITIALLY INTENDED TO INVEST.

IDENTIFIED BY THE INVESTOR. FOR EXAMPLE, INVESTORS IN REAL ESTATE PROJECTS MAY HAVE SOME OR ALL OF THE FUNDS WHICH THEY HAVE PLACED WITH THE FUND ACTUALLY PLACED IN NON REAL ESTATE INVESTMENTS SUCH AS SECURITIES, DERIVATIVE CONTRACTS, DEBT PORTFOLIOS, MERCHANT CASH ADVANCE OR FIXED INCOME PRODUCTS IN ORDER TO GENERATE RETURNS TO PAY INVESTORS WHILE THE REAL ESTATE PROJECTS ARE BEING DEVELOPED AND NOT YET OPERATIONAL. THE FUND MANAGER IS SPECIFICALLY GIVEN THE AUTHORITY TO USE SUCH FUNDS IN SUCH MANNER AS IT DEEMS APPROPRIATE IN ORDER TO GENERATE RETURNS FOR THE BENEFIT OF INVESTORS.

58. Likewise, in the 2023 Q3 report (SEC Ex. 48), none of the Infrastructure projects are noted as being completed and includes the same disclosures and disclaimers in the July 2022 update including:

THE FUND OPERATES IN MANY LINES OF BUSINESS AND INDUSTRIES. IN THE EVENT THAT AN INTEREST PAYMENT, RETURN OF CAPITAL OR ANY OTHER FORM OF PAYMENT OR DISTRIBUTION IS BEING MADE TO AN INVESTOR, THE FUND MAY USE ITS REVENUES OR EARNINGS FROM OTHER BUSINESS LINES IN ORDER TO MAKE PAYMENTS TO INVESTORS. FOR EXAMPLE, IN REAL ESTATE DEALS, INVESTORS ARE GENERALLY PROVIDED AN EXPECTED RETURN, HOWEVER, DEPENDING ON THE REAL ESTATE PROJECT AND THE TIMING OF WHEN SUCH A PROJECT BEGINS TO GENERATE REVENUES FROM OPERATIONS, THE FUND MAY MAKE PAYMENTS TO INVESTORS FROM MONIES GENERATED FROM OTHER INVESTMENTS WHICH THE FUND HAS MADE SO THAT POSITIVE INVESTOR RETURNS CAN BE ACHIEVED. WITHOUT SUCH PAYMENTS BEING MADE FROM THE FUND BY ITS OTHER BUSINESS LINES, RETURNS MAY NOT HAVE BEEN ABLE TO HAVE BEEN MADE TO INVESTORS. HENCE, INVESTORS COULD RECEIVE PAYMENTS BY THE FUND FROM INDUSTRIES OTHER THAN THAT WHICH THE INVESTOR INITIALLY INTENDED TO INVEST.

Financial Statements

59. The SEC references unaudited consolidated financial statements as of December 31, 2022 and December 31, 2023. These financial statements were only disseminated to a small percentage of investors.

60. The SEC also fails to disclose that the PPM and Operating Agreement of September 2023 removed the requirement to take commercially reasonable efforts to disseminate audited or GAAP financials because we recognized that these would be extremely difficult under the cloud of an SEC investigation. Our efforts to nonetheless become GAAP compliant was done in order to enhance our financial reporting. The SEC seemingly suggests that we did make serious efforts to obtain an auditing firm, but this is untrue. The SEC investigation has made it impossible to retain an outside audit firm to conduct GAAP compliant audits.

61. The prior versions of PPMs and Operating Agreements state that BSG Fund would use “commercially reasonable efforts” to provide audited financials and GAAP compliant annual reports from independent public accountants. The most recent September 2023 PPM and Operating Agreement of September 2023 *has taken out* any requirement to provide audited financials and GAAP compliant annual reports from independent public accountants. The new language is set forth below:

Financial information contained in all reports to the Members will be prepared on an accrual basis of accounting. The Fund will use commercially reasonable efforts to provide an annual report to Members that will be presented with the tax basis of accounting within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund will use commercially reasonable efforts to provide tax information to Members within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund may determine to provide financial information in such other format or method of presentation as it determines in its discretion employing such firms and professionals at its discretion.

PPM (Def. Ex. A) at 45.

Except as may be provided in a Series Schedule, the Company shall use commercially reasonable efforts to prepare and make available to each Member financial statements of the Company. The Company will also use commercially reasonable efforts to make available periodic performance information, no less frequently than quarterly, to the Members after the end of each calendar quarter (other than the last calendar quarter of each Fiscal Year).

Operating Agreement (Def. Ex. B) at Section 9.03.

62. The SEC's reliance on an email where BSG Management sought to part ways with an accounting firm is not meaningful. That firm was not well suited for the job. BSG Management attempted to hire other firms, such as Cohen Reznik, but this was made impossible by the SEC's investigation. In that regard, the SEC's investigation resulted in termination of other relationships and potential relationships including its banking relationship.

No Diversion of Investor Funds

63. The SEC's assertions of diversion of investor funds is false and intentionally misleading. At page 10 of the SEC's Complaint there is a chart that supposedly explains these purported diversions. Initially, the chart misleadingly suggests that all funds were disbursed at one time when this occurred over years. What the chart actually shows is that investor funds flowed to BSG Management which is completely proper as the manager of BSG Fund. Further, the chart leaves out the most significant thing which is the flow of funds out of BSG Management to the

various business lines. The SEC makes it seem as if BSG Management simply kept the funds. Plain and simple, there is no diversion and investor funds were utilized to deploy into business lines at Manager's discretion, which was done. Defendants only received fees they were entitled to receive per disclosures.

SEC MCA Claims are Without Merit

64. The SEC claims that "Defendants fraudulently offered and paid inflated returns to investors in at least two major Series, claiming that investments in Merchant Cash Advances – short term and fast funding transactions to small business – generated significant profits when in fact they did not." As described in the accompanying submissions, these assertions are untrue.

65. Also, as shown, investors in the Infrastructure Series were told "that the real estate development projects are not designed to immediately generate cash flow and often take years to be developed, completed and generate cash flow. I am aware that funds raised for projects may be deployed to generate additional returns not associated with the real estate project while capital is waiting to be deployed in real estate projects" and "**that until the infrastructure and other real estate investments generate significant cash flow, my investment may be used to generate profits elsewhere while awaiting deployment in real estate projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves.**" In addition, monthly/quarterly updates further reiterated that Infrastructure projects could take years to cash flow and generate returns.

66. The SEC correctly points out that Infrastructure did not generate income through year-end 2023. However, in 2024, Infrastructure started to generate income, **about \$45 million.** As such, offering and payments to Infrastructure investors were not inflated because their "investment may be used to generate profits elsewhere while awaiting deployment in real estate

projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves.”

SEC Claims about Records and Practices Untrue

67. The SEC’s claim about misleading statements about “recordkeeping and financial statements practices” is also incorrect. The SEC contends that there were “false and misleading statements that separate records would be maintained for each Series, that BSG Management would use commercially reasonable efforts to prepare and distribute to investors financial statements in compliance with Generally Accepted Accounting Principles (“GAAP”), and that those financial statements would be audited.” In truth, BSG Management kept and maintained separate records for each Series as discussed above.

CONCLUSION

For the reasons stated in all of Defendants’ submissions herewith, I respectfully request that the Court deny the SEC’s applications in the entirety.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14 day of February, 2025.



STEVEN BALDASSARRA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF JOSEPH BALDASSARRA

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am one of the Managers of the Broadstreet Global Fund LLC (“BSG Fund”), and one of the owners of Broadstreet Global Management LLC (“BSG Management”) and Broadstreet, Inc. (“BSI”) (collectively as “Broadstreet”). I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles with Broadstreet. I respectfully submit this declaration in opposition to Plaintiff’s (the “SEC”) Emergency TRO application for an asset freeze and receiver.

2. I categorically deny the SEC's allegations that I engaged in fraud or any wrongdoing.

3. My primary responsibility is speaking to and meeting with investors. I make sure that investors are given access to the data room and that I am surrounded by competent people and professionals to handle all tasks of the business. My job as manager of BSG Fund and an executive of BSI, besides handling all of the investors, is to delegate tasks to those persons who I believe are the most skilled to accomplish the same.

4. Our back office numbers nearly two dozen, we have nearly ten law firms, 3 specialists in tax and accounting, a compliance department, financial analysts that build models, persons that specialize in zoning, entitling, land coordination, property management, business operations and human resources. It is an enormous business that is comprised of 14 separate business lines with each business line having its own head who then reports on operations.

5. I believe with the size of business that we have created we have set up an efficient organization with those best qualified to handle particular tasks, being assigned to those tasks. I understand that we previously offered to give the SEC a tour of our facilities as well as a voluntary presentation regarding the size and scope of our business and they denied the opportunity to participate and receive such information. There is and was no way for them to truly understand the size of our business or how rapidly that we have grown and yet they have consciously refused such presentations as well as meeting with some of our key executives.

6. In the BSG Fund's offering materials, we make clear that an investment in Broadstreet is speculative and that only accredited and sophisticated investors who can withstand the loss of their entire investment should invest. In my many years of experience in dealing with investors, over 20 years, these types of investors do not invest in speculative investments because

of any type of fund structure, Delaware LLC law, or audited financials. They invest their risk capital because they like the “big idea” or concept fully aware that a multiplicity of risk factors could ultimately derail the endeavor. This has been my experience with fund investors. With that said, and contrary to the SEC’s assertions, I believe we have followed our obligations in the offering materials as discussed in the other submissions in opposition.

7. We have created massive business lines with substantial assets.

8. We have never missed a payment to investors.

9. We have consistently taken measures to enhance and improve our operations.

10. The relief being sought by the SEC, if granted, is wholly unwarranted and will destroy the business lines and investor returns. There is no basis to do this and the Court should deny the SEC’s application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13 day of February, 2025.


Joseph Baldassarra

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF JOSHUA HOWARD

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the President and Chief legal officer of Contender Development, Inc. (“CDI).

I am also an attorney with 20 years of prior experience counseling southeast regional businesses and developers. I graduated Clemson University in 1998, and the University of South Carolina School of Law, *Magna Cum Laude*, in 2001.

2. Upon graduation from law school, I was a law clerk to the Honorable Henry M. Herlong Jr. of the United States District Court for the District of South Carolina from 2001-2002. Thereafter, I was a partner with the law firm Haynsworth Sinkler Boyd PA from 2002-2015 and a

law partner at Womble Bond Dickinson, LLP from 2015-2018, after which I entered the real estate development sector which ultimately resulted in the formation of CDI.

3. CDI is a large regional real estate development firm with its primary offices located in Greenville, South Carolina. Currently, CDI, through its various special purpose entities (“SPV”) is currently developing over 100 projects and has contracts with major homebuilders such as DR Horton, Inc. (“DR Horton”) and Lennar Homes Corporation (“Lennar”).

4. CDI is comprised of three primary owners, myself, Ford Elliott and David Feingold (the “CDI Owners”). Mr. Feingold, who is also the Chief Executive Officer (“CEO”) of Broadstreet, Inc. (“BSI”) is also the co-chairman of CDI. Mr. Feingold has more than 34 years in business in both legal, finance and development background and we rely upon him and Broadstreet for our continued operation and success. We rely heavily on BSI and no one could fund us as quickly and efficiently with our substantial monthly needs.

5. CDI requires unanimity from the CDI Owners for any major business decision that we make. This voting mechanism was set in place because Feingold, as CEO of Broadstreet, desired to make sure that Broadstreet was (and is now) the sole private equity provider for CDI and without Feingold’s approval CDI cannot receive either debt or equity funding thus securing for the benefit of Broadstreet a constant flow of deals and business (hereafter the “BSI/CDI Relationship”).

6. The BSI/CDI relationship has been quite successful. The BSI/CDI Relationship is responsible for creating one of the largest infrastructure development operation in North and South Carolina with additional territories of Tennessee, Alabama, Georgia and Florida.

7. The infrastructure business involves creating entire master planned communities for the largest homebuilders in the United States which are DR Horton and Lennar.

8. A total of forty-four thousand homesites are expected to be developed with a gross revenue generated of greater than five billion dollars. BSI's share of this business is expected to be nearly one half of one billion dollars.

9. In addition the BSI/CDI Relationship controls hundreds of millions of dollars of land, nine separate hotel properties under major names such as Marriott, self-storage facilities under the brand name Public Storage, Chevrolet and Ford automobile franchises, a man made lagoon property expected to be the largest in South Carolina once completed under the name Crystal Lagoons and this list is only by way of example. The BSI/CDI Relationship has created a multi-billion-dollar organization.

10. If the court was to appoint a receiver over Broadstreet Inc, Broadstreet Global Management LLC, Mr. Feingold or the Baldassarra brothers, whom are all affiliates of CDI by virtue of the BSI/CDI relationship, it would cause irreparable harm to CDI, the BSI/CDI Relationship, and even more importantly to the investors of Broadstreet Global Fund LLC (“BSGF”). Additionally, it would cause defaulting on the development of 44,000 homesites, potentially causing job losses through our business and all of the trades and construction that rely upon us and causing economic chaos in many of the Carolina local economies based on our prevalence and importance with more than 100 projects in our pipeline.

11. The loan agreements with the lenders for CDI's development projects include a provision (or similar provisions) such as below which would trigger an event of default.

7.9 Appointment of Receiver, Trustee, Liquidator, Borrower, any Pledgor, any Guarantor or any of their Affiliates, applies for or consents in writing to the appointment of a receiver, trustee or liquidator, or all or substantially all of the other assets of Borrower, any Pledgor or any of their Affiliates, or an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Borrower, any Pledgor, or any of their Affiliates, or all or substantially all of the other assets of Borrower, any Pledgor, or any of their Affiliates.

12. Triggering an event of default would be devastating, lenders could immediately foreclose the loans and sell of the land (sometimes partially developed) for pennies on the dollar. Likely in some instances, for less than was paid for the land initially.
13. This could result, since lenders are paid first, in Broadstreet receiving nothing from the sale of these properties in an event of default.
14. Finding additional funding would take months and months of diligence by others and I fail to understand how the SEC can seek to collaterally kill one of the largest real estate companies in the Carolinas
15. Moreover, the contracts with the homebuilders all include a default provision, similar to the below, which will require a prompt return of the Deposit which would result in 10's of millions of dollars (in addition to the lenders being repaid) needing to be repaid prior to Broadstreet receiving any funds.

Section 15.02. Seller's Default. In the event of any default by Seller ("Seller's Default"), Buyer shall be entitled to (a) terminate this Agreement, receive a prompt refund of the Deposit and be reimbursed by Seller for the actual out-of-pocket costs and expenses incurred by Buyer in connection with this Agreement, including, but not limited to, costs and expenses incurred in connection with the inspections and/or (b) seek specific performance of this Agreement. However, nothing in this Section shall limit Buyer's remedies at law or in equity after each Closing as to all representations and warranties, indemnities, and other obligations of Seller contained in this Agreement that by the terms of this Agreement survive such Closing or earlier termination of this Agreement. Notwithstanding anything contained herein to the contrary, in the event specific performance is not available as a remedy, then Buyer may exercise

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16. During the investigation into BSGF I was subpoenaed to testify. My impression from the SEC and its line of questioning was that the SEC did not believe that BSI/CDI

Relationship had created such a large real estate business. In fact, it seemed they were questioning whether any of these development projects even existed.

17. The SEC also subpoenaed our major home building partners, such as DR Horton and Lennar, and it seems ultimately the SEC learned that as I testified the BSI/CDI Relationship has in fact created a massive real estate development enterprise and we have the contracts from the major home builders to prove it.

18. After the filing of the instant motion for a TRO and the appointment of a receiver by the SEC, I had discussions with many of the lenders and I have been assured that they will stand by us if Broadstreet defeats the TRO and no receiver is appointed.

19. I hereby attach documentation showing our projects and monies generated as referenced above as Defendants' Exhibit T, Exhibit U and Exhibit V. All of said information was previously provided to the SEC in the attached format or through documentation that reflects the same

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of February, 2025.


Joshua Howard (Feb 13, 2025 12:50 MST)
JOSH HOWARD

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF EDWARD FAAS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Chief Compliance Officer of an organization known as Broadstreet which encompasses a number of entities including, but not limited to, Broadstreet, Inc., the Broadstreet Global Fund LLC and Broadstreet Global Management LLC. Each such entity is a separate and distinct enterprise but is consolidated for purposes of financial reporting and compliance purposes. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles with Broadstreet. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. I am a 20+ year veteran of the financial services and compliance industry. After beginning my career in accounting, I transitioned to compliance in the financial services industry and have since held various compliance positions with Luttner Financial Group, MetLife and Brighthouse Financial. Most recently I served as Director of Compliance for MassMutual Carolinas. In my capacity as a compliance officer I have been employed by multi-billion dollar enterprises and been responsible for oversight of compliance for some of the largest compliance operations in finance.

3. I have had the role of Chief Compliance Officer at Broadstreet for approximately 2.5 years. I can confidently say that Broadstreet is a compliance conscious organization.

4. Broadstreet is a private enterprise/private fund that is not even required to have a compliance officer and yet it chose to hire me and to create a complete and exhaustive compliance program, including but not limited to, setting up an email review system, AML/KYC program, a new reporting system, transition to a new self-directed IRA platform, acknowledgement forms, and internal controls, to name a few.

5. BSGF only accepts accredited and sophisticated investors who confirm that they understand that the investment is speculative, acknowledge all risk factors and confirm they can withstand losing their entire investment.

6. All BSGF investors confirm that they must go to the data room and review data room materials. Each time an investor logs into the data room, whether the general data room or the data room for institutional investors, they must click to acknowledge important disclaimers and disclosures.

7. The offering and other materials, including the private placement memorandum, operating agreement, subscription agreement, Series Supplement, pitch decks, and monthly/quarterly reports, repeatedly include important disclosures and disclaimers.

8. In addition, beginning in July 2023 and thereafter, BSGF obtained further confirmation of investor knowledge of important disclosures and disclaimers by way of a Compliance Acknowledgment Update, signed and returned by approximately 99% of BSGF investors.

9. In addition, in order to log into account statements, the investors must again click to acknowledge important disclosures in order to enter.

10. As such, investors are repeatedly presented with the disclosures and disclaimers that the SEC's incorrectly claims were concealed. Thus, the average investor complying with the requirement of reviewing data room materials, and who reviews account statements monthly, will be exposed to the important disclosures and disclaimers on a monthly basis.

11. I do not believe that I have ever seen such a comprehensive effort to confirm investor understanding and confirmation of important disclosures and disclaimers.

12. In addition, when an investor requests to see financial reports of Broadstreet, they are only permitted such access through what is known as an institutional data room, and that data room includes a specific acknowledgment by the investor that the financials are not audited and not prepared in compliance with US GAAP. They must also sign a Non-Disclosure Agreement to prevent dissemination.

13. As a private firm, that is not public, there is no legal requirement for a private firm to prepare its financial statements in U.S. GAAP or have an audit, only public companies are

required to do so. The September 2023 private placement memorandum of Broadstreet specifically states the financials will not be audited.

14. An older version of the private placement memorandum of BSGF that dates back over 4 years ago did provide language that an audit in compliance with GAAP would be obtained if it was commercially reasonable, as shown below:

Reports /	The Fund will use commercially reasonable efforts to provide each Member with annual audited financial statements, unaudited interim reports on a quarterly or more frequent basis, and copies of the Member's Schedule K-1 to each relevant Series' tax return. It is possible and should be expected that each Series will provide annual Schedules K-1 to Members after April 15. Members should, therefore, be prepared to file extensions with relevant U.S. federal, state and local tax authorities.
Data Room	

15. However, the SEC fails to advise this Court that it was not “commercially reasonable” to provide an audit because Broadstreet hired one of the twenty largest audit firms in the USA (CohnReznick LLP, obviously showing an intent to comply) but CohnReznick LLP quit and refused to produce an audit after receiving an SEC subpoena. Further, prior to CohnReznick LLP's withdrawal, Broadstreet had the services of an audit from a top 10 accounting firm in the world (Grant Thornton LLP). However, Grant Thornton LLP was to be replaced with CohnReznick LLP due to cost overruns in billing and then CohnReznick LLP received an SEC subpoena and withdrew audit services and thus it was not commercially reasonable to obtain a financial statement audit. CohnReznick LLP did not withdraw due to any financial misstatements.

16. Broadstreet then amended its PPM to state unequivocally the following:

Reports

Financial information contained in all reports to the Members will be prepared on an accrual basis of accounting. The Fund will use commercially reasonable efforts to provide an annual report to Members that will be presented with the tax basis of accounting within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund will use commercially reasonable efforts to provide tax information to Members within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund may determine to provide financial information in such other format or method of presentation as it determines in its discretion employing such firms and professionals at its discretion.

17. Consequently, Broadstreet made it clear that there was no longer a U.S. GAAP financial statement audit but simply financials prepared on accrual basis. Further, Broadstreet made it clear that it could use any other format or method of presentation as it determines in its discretion.

18. Then in a further abundance of caution, to make certain there would be an understanding about the financials and the format chosen, when and if a Broadstreet investor requested to see the financial statements, they were sent to a separate data room known as the institutional data room, wherein they were denied any access to financial information until they reviewed and scrolled down a comprehensive disclosure which with regards to the financial statements provided the following warning:

thereof. The Company has in good faith been involved in the preparation of any and all materials that are being reviewed by the Recipient, however, the accuracy and the reliability of the information is not guaranteed. The Recipient of the Information is responsible for conducting their own due diligence on the Information when contemplating an investment. The Recipient shall only rely on their own due diligence for any and all investment decisions. None of the financial statements included have been audited under GAAP and the investor understands that GAAP Accounting may reflect different results.

19. If the client was unwilling to accept that disclosure and rejected it for any reason, then they were not given access to the financials. In my recollection, there was only one client who rejected, asked for his money back and was fully redeemed.

20. As such, Broadstreet went out of its way to caution investors of the non-existence of U.S. GAAP financial statements. Yet, even with all of these warnings, I was shocked to hear that the SEC criticized Broadstreet for not having U.S. GAAP audited financial statements when such documents clearly warned that no such financial statements would be used and the SEC cites a stale PPM from October 2020 and does not advise the Court of all of the aforementioned.

21. Only approximately 7.5% of investors actually asked for institutional data room access for the financial statements. All of Broadstreet's investors are required to be accredited investors. Each investor must attest that they are an accredited investor prior to funding an account. Under Federal Securities laws, there is no legal requirement to give accredited investors financial statements. Broadstreet only takes accredited investors. Accredited investors are deemed smart enough to know what documents they want and how to read financial statements. We have never received an investor complaint for lack of payment or for lies in the financial statements or inability to understand matters.

22. Thereafter, besides all of the above steps taken to warn clients, Broadstreet then secured yet another document called a Compliance Acknowledgment Update, completely separate and apart from all of the aforementioned, wherein all of the clients, not just the ones seeking the financials, electronically signed to the following separate statements:

Compliance Acknowledgement Update – July 2023

I, the undersigned do hereby swear and affirm to the following to be used and relied upon by Broadstreet Global Fund, LLC and any of its affiliated entities including but not limited to Broadstreet, Inc. and Broadstreet Global Management (collectively "Broadstreet"):

- 1) I still meet the definition of an accredited investor as presented in my original subscription documents.
- 2) My mailing address and contact information has not changed and is accurate and up to date as reflected in my original subscription documents, and in the event it has changed I will promptly notify Broadstreet.
- 3) I have read the private placement memorandum, series supplements, data room documents, monthly updates and disclosures of Broadstreet, and still consent to all matters contained in those documents.
- 4) I acknowledge that I am responsible for reviewing the data room on a regular basis and also all updates posted as they may affect deal terms. Updates may not be provided to me by email and thereby I must enter the data room to make sure I have reviewed all information. That is my responsibility. These investments involve risk.
- 5) I am aware that if I do not log into the data room on a regular basis that I do so at my own risk as many significant and material terms and conditions are contained therein that may affect my investment. Broadstreet does not email me every material document and I should review the data room as a result.
- 6) I have been aware of and continue to consent to the fees and costs associated with my investment and how Broadstreet is paid, including but not limited to fees of up to six percent per year for five years and all fees can be taken up front or by splitting profits with investors or other manners of fees and costs as disclosed in the series supplement, the private placement memorandum, the data room and the disclosures in pitch decks.
- 7) I understand that the real estate development projects are not designed to immediately generate cash flow and often take years to be developed, completed and generate cash flow. I am aware that funds raised for projects may be deployed to generate additional returns not associated with the real estate project while capital is waiting to be deployed in real estate projects.
- 8) I am aware that until the infrastructure and other real estate investments generate significant cash flow, my investment may be used to generate profits elsewhere while awaiting deployment in real estate projects or to make or pay distributions, interest, returns, or towards any payments, fees and/or reserves.
- 9) I am aware that my investment in Broadstreet provides ownership in the applicable Broadstreet subseries. Individual land is titled in special purpose vehicles owned, managed and/or controlled by Broadstreet. Also, I only have ownership in the subseries for which I have invested and no others.
- 10) I acknowledge that I have no complaints involving the operation of Broadstreet or any matters involving Broadstreet and the company makes itself readily available to answer my questions.
- 11) I have always been given the opportunity to ask questions regarding Broadstreet products and operational information. I am a sophisticated investor and it is my obligation to ask questions if I feel I need more information.
- 12) I make my own investment decisions, neither Broadstreet nor any of its affiliates act as an investment advisor.
- 13) I have had the opportunity to seek my own legal and accounting advice when making decisions in relation to Broadstreet.
- 14) I recognize that at anytime I have questions or concerns, I can contact the Compliance Department at compliance@bsgfund.com
- 15) I understand if there are any material changes in my investment objectives or investment qualifications, I must notify Broadstreet immediately.

By my signature, I certify that all information above is accurate.

23. In addition to all of the above, many Broadstreet investors have visited the offices, met in person the fund managers and been given yet another opportunity to ask questions.

24. Over the last 3 years nearly every single investor involved with BSGF has met either manager Joseph Baldassarra or partner David Berger and again been given another opportunity to ask questions. Mr. Berger provides one-on-one and group investor meetings for the

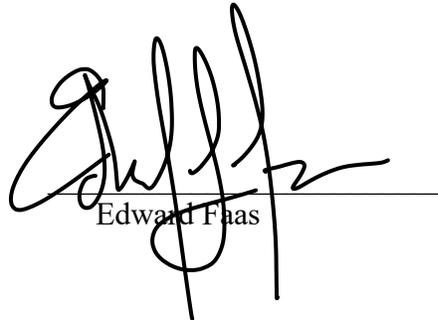
last three years and Broadstreet has a shuttle that picks investors up at the airport so that they can meet with either the fund manager, Joe Baldassarra or David Berger. They have literally conducted more than 700 individual and group investor meetings.

25. In addition to all of the already mentioned measures, Broadstreet retains some of the largest and most high profile law firms in the world with some of the most high profile former members of the SEC to give it guidance. Again, seeking advice from every reasonable avenue for the conduct of its business.

26. To say Broadstreet has been compliance oriented is an understatement. I am disappointed at the turn of events with the SEC but am aware that we sued the SEC in Texas court and in addition we have complained to government officials about the SEC but we have been operating this way for years, with the SEC's full knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13 day of February, 2025.



Edward Faas

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF RYAN FEINGOLD

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am an analyst of an organization known as Broadstreet which encompasses a number of entities including, but not limited to, Broadstreet, Inc., the Broadstreet Global Fund LLC and Broadstreet Global Management LLC. Each such entity is separate and distinct enterprise but is consolidated for purposes of financial reporting and compliance. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles with Broadstreet. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. I have worked for Broadstreet for approximately 8 years and am previously a graduate of the University of Florida where I participated in the innovation academy (a joint program of entrepreneurship, business and liberal arts) and graduated with a bachelor's degree. My father David Feingold is the CEO of Broadstreet, Inc.

3. As part of my duties as an analyst at Broadstreet, I collect information, do analysis and report to various managers based upon the assignments that I receive. I was previously deposed by the SEC for the investigation involving Broadstreet and asked questions pertaining to my role.

4. I work in a department of approximately 12 people which are responsible for interacting with all of the various software programs, reporting functions and analysis that may be needed on a day-to-day basis including, but not limited to, client reports, client communications, data room maintenance and preparation of slide decks or such other information as requested.

5. During my time at Broadstreet the firm has expanded into multiple industries at incredible pace. I provide assistance in virtually every line of business including general Broadstreet systems and the various business lines including real estate, infrastructure, specialty finance, brokerage service and insurance services.

6. Due to our rapid growth, we have frequently upgraded and incorporated new software packages and service providers to keep pace with the firm's expansion. That includes utilizing transfer agents, QuickBooks, Juniper, Backstop, Ideals, excel, custom software,. Marx systems, various tax software packages just to name a few. Incorporating the interoperation of all of our systems has been an enormous task and thus we collect certain data points to monitor our operations as expansion continues. I discuss some of those important data points below as it relates to this case.

7. BSG Management maintains spreadsheets updated monthly that historically tracked each fund subseries by accounting for each client's holdings for each subseries, the monthly client investments into each subseries, and the distributions paid or re-invested by each client in each subseries.

8. I was asked to research the following of which I report hereinbelow:

- a. The financial statements of Broadstreet are only accessible through the institutional data room with a signed Non-Disclosure Agreement. To enter such data room certain acknowledgements including the signed NDA need to be accepted and affirmed or access is denied. The financial statements when viewed are then watermarked and dated to show when viewed and by whom they were viewed. As of February 4, 2025, there have only been 284 persons that have been given access to the institutional data room.
- b. Broadstreet keeps track of how many investors that it has by the number of K1's to be generated and client contact software. As of December 31, 2024, there are 3,701 K1's that are to be generated this year which represent 3808 investors (some K1's are entities and may have multiple shareholders/partners and some investors hold multiple investments and get more than one K1).
- c. Based on the numbers above, 92.5% of all investors represented by the above have elected to NOT review Broadstreet's financial statements. Only about 7.5% of investors (284 out of 3808 investors) elected to see the financial statements and were only granted access after extensive disclosures as discussed in the Declaration of Edward Faas, Chief Compliance Officer. Only these 284 requests were granted out of the investors who were asked.
- d. Likewise, I was also responsible for sending out a document called the Compliance Acknowledgment Update (up until September 2023) wherein investors again acknowledge their confirmation to disclosures, this document is referenced in the declaration of Chief Compliance Officer Edward Faas. Also, there are numerous repetitive disclosures of risks that are provided to each investor on an annual basis as well. Based on electronic signatures on file, it appears that nearly 99% of all investors physically signed the Acknowledgment, 100% of all investors have signed off on the private placement, 100% of investors have signed the subscription agreement, 100% of investors have received the monthly, annual and quarterly reports with risk disclosures (no bounced back email or returned mail). As of

September 2023, this form was added to the new subscription package so I am not the one sending it out anymore.

- e. Similarly, with the assistance of the Chief Compliance Officer, we have searched company email and compliance files and can report that there are (a) No complaints of clients that they were not given financial statements if requested, (b) No comment by a client about commingling cash, not even an inquiry regarding the same, (c) No comment ever by a client about a tri-party agreement, (d) No comment by a client about wanting all of the series and subseries to have separate financial statements, (e) No comments that they wanted to understand what the MCA portfolios performance was on a cash basis versus an accrual basis, (f) No comment by any client that they did not understand the PPMs.
- f. I also participated in contacts with all of the managing directors of Broadstreet to confirm if any of the representations listed in subparagraphs a through f had been verbally expressed by any clients and the answer was “No.”
- g. Consequently, from my review of the issues raised by the SEC, the only material issue to investors is that they desire to be paid and in the Acknowledgment referenced herein, they even agreed that their source of payment was not even necessarily needed to be paid from their subseries, they simply want to be paid the returns which in fact have always been paid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of February, 2025.



RYAN FEINGOLD

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF JACLYN TEXEIRA

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Chief Financial Officer for an enterprise known as Broadstreet which encompasses a number of entities, including but not limited to Broadstreet, Inc., the Broadstreet Global Fund LLC and Broadstreet Global Management LLC. Each such entity is a separate and distinct enterprise but is consolidated for purposes of financial reporting and compliance purposes. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles with Broadstreet. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. Prior to joining Broadstreet, I spent nearly 17 years as a controller at a substantial multi-million-dollar healthcare company that distributed medical technology and operated a large chain of imaging centers in the United States, Canada and United Kingdom. In that role, I provided professional services across a broad range of finance and administrative areas including business process, bookkeeping, human resources, payroll, sales tax, US and UK audits and financial reporting. In addition to managing that company's finances, I also provided administrative and accounting support to the CEO for his privately held companies.

3. I have had the role of CFO/comptroller at Broadstreet for nearly 5 years and oversee a team of nearly ten professionals. Broadstreet is an enormous business that encompasses one of the largest land infrastructure firms in the USA, in addition to data centers, land banking, hotels, raw land development, structured finance, home building, insurance operations just to name a few.

4. I have learned of the SEC's action against Broadstreet and have never been contacted by the SEC or deposed. I felt it important to describe my job and then in particular address some statements made about Broadstreet to the extent those criticisms fall under my job responsibilities.

5. In particular my job focuses on the following:

- a. Overseeing nearly ten full time people whose job it is to enter data into the accounting software and keep separate books/ledgers of each series and subseries in our excel based software. I generally make sure individual bookkeeping staff are meeting deadlines to take raw data and enter the same.
- b. Communicating with outside financial professionals to understand deadlines and goals in regards to the presentation of financial information.
- c. For staff to keep separate books/ledgers of each series and subseries and then provide that raw data to Steven Baldassarra, who is also my brother but importantly for the business, he is the Chief Operating Officer, so that he can review and confirm accuracy and proper presentation of the same.
- d. Assist in assembling data for K1 tax reports.
- e. Assist in assembling data as requested by financial professionals on an as needed basis.
- f. Reviewing bank accounts.

- g. Issuing payments and monitoring receipts.
- h. All of my services are then communicated to Steven Baldassarra as Chief Operating Officer.

6. I have consulted with corporate counsel and confirmed that there is no legal requirement to have a separate bank account for every single business line that you have. Due to the massive number of businesses and projects that we have, nearly 130 projects going right now and more than one dozen business lines, Broadstreet uses a single primary account for ease of operations and bill payment, nothing more. Most importantly, all funds have been clearly accounted for and designated in the books.

7. All of the series/subseries are separately accounted for by having a separate ledger for each series/subseries maintained in our excel based software and not through QuickBooks but such manner of keeping our records is permitted under the PPM which states:

reasonable efforts to provide tax information to members within one hundred twenty (120) days following the close of each calendar year or as soon thereafter as practicable. The Fund may determine to provide financial information in such other format or method of presentation as it determines in its discretion employing such firms and professionals at its discretion.

8. The true shame is that this organization is one of the fastest growing real estate firms in the United States as well as the biggest private equity infrastructure developer in the Carolinas and more than 3,000 people could lose their jobs, more than 130 projects could be stopped and operations completely fail simply from criticisms that are quite clearly not well founded.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14 day of February, 2025.



Jaclyn Teixeira

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF GABRIEL ALVAREZ

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a Managing Director of an organization known as Broadstreet, which is comprised of a number of entities including, but not limited to, Broadstreet, Inc., Broadstreet Global Fund LLC, and Broadstreet Global Management LLC. Each such entity is a separate and distinct enterprise, but all such entities have been consolidated at the election of management for purposes of financial reporting and compliance. I have personal knowledge of the facts set forth herein from my own experiences, business records, and/or from my various roles with the

Broadstreet organization. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. I have spent nearly 20 years as an accountant and financial consultant. Prior to my current role at ASC Advisors, LLC ("ASC"), a company I founded, I was a manager at Daszkal Bolton, LLP, which is one of the largest privately held audit and accounting firms in the State of Florida. My practice at ASC is primarily focused on accounting and tax preparation services; however, I have not become a certified public accountant as it is not required for the services that I perform. Nevertheless, there are other partners/owners of ASC who are certified public accountants.

3. My initial introduction to the Broadstreet organization contemplated ASC as a secondary provider of tax accounting services. I had no intention of being a primary accounting firm and service provider for the Broadstreet organization. At the time of my initial introduction, there were other firms who were the primary providers of those services. Notably, the original private placement memorandum does not even mention ASC.

4. After my introduction, Broadstreet received notice of an SEC informal inquiry that preceded the formal investigation. As a result of such notice, Broadstreet's primary accounting and audit services providers terminated their engagements with Broadstreet, thereby, leaving Broadstreet in the unenviable position of being under investigation and without some of Broadstreet's key service providers. Broadstreet's Chief Financial Officer, Jackie Teixeira, requested that ASC fill the void left by the departing firms – Broadstreet needed immediate assistance, as it was rapidly growing and struggling to find accounting services providers as a result of the SEC inquiry, which had matured into an actual investigation. Broadstreet was very concerned about preserving the continuity of its business operations and protecting and preserving

investor value. Because of my prior knowledge of Broadstreet and the various personnel, I had grown comfortable with their honesty, integrity, and values. I did not perceive any potential conflict of interest as a result of my financial interest or involvement in Broadstreet as a Managing Director. Further, I do not believe that any conflict of interest ever existed or currently exists. As a result, and as a favor to Mrs. Teixeira, who I had known from a prior working engagement, I agreed to allow ASC to take a larger role with the Broadstreet organization, until new primary accounting services providers could be engaged.

5. It was always anticipated that ASC's role as the primary accounting services provider would be temporary. However, I did not anticipate that the Broadstreet organization would grow so rapidly. It is my understanding that in a few short years, the Broadstreet organization has matured into one of the largest private equity infrastructure developers in the USA and the largest private equity infrastructure developer in the Carolinas.

6. I was able to successfully assist Broadstreet in recruiting a new primary accounting firm, Coggins CPA, LLC ("Coggins CPA"). Coggins CPA's principal, Sean Coggins, is an active CPA and held the positions of CPA and auditor at a large international firm, RSM US LLP, for over eight years. Coggins CPA was engaged in late 2022, as the primary accounting services provider, thereby allowing ASC to take a more passive and consultative role in the provision of accounting services.

7. Coggins CPA consults on financial reporting matters and assists in the proper accrual and United States generally accepted accounting principles treatment for various transactions of the entities within the Broadstreet organization, to ensure that Broadstreet is providing accurate and valid financial presentations, consistent with the private placement memorandum of Broadstreet (the "PPM"). In my role as a Managing Director and in ASC's role

as a secondary accounting services provider and consultant, we assisted Coggins CPA with updating the financials and taking over the engagement. I assisted in the review of the various disclosures in the PPM regarding how financial statements were being presented to investors. It was imperative and confirmed that such disclosures clearly state (which they do, in multiple locations) that the financial statements were not audited and were not in traditional U.S. GAAP format. It is important to note that the Broadstreet organization consolidated all of its businesses in 2022, subsequent to the initial SEC investigation.

8. Due to the sheer size and rapid growth of the Broadstreet organization, the preparation and compilation of the financial statements was an extensive and arduous process. To wit, the Broadstreet organization now has financial and equity interests in over 200 special purpose vehicles, which require separate auditing.

9. I have taken precautionary measures with my various roles in the Broadstreet organization and my role with ASC, because both Broadstreet and I wanted to avoid any potential perception of a conflict. The Broadstreet organization has made painstaking efforts to ensure that any remuneration that I or ASC received was valid, consistent, at arms' length, and compliant.

10. Most important for this Court, even with my financial interest in the Broadstreet organization (as a Managing Director and investor), I have never made any decision nor taken any action that would falsely present the financial information of the Broadstreet organization.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14 day of February, 2025.



Gabriel Alvarez

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF DAVID BERGER

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a partner for an enterprise known as Broadstreet which encompasses a number of entities including, but not limited to, Broadstreet, Inc., the Broadstreet Global Fund LLC and Broadstreet Global Management LLC. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles with Broadstreet. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. I am a veteran of the hospitality and economic development industry. Prior to Broadstreet, I served as Chief Operating Officer for Hospitality America, which operates more than 20 hotels throughout the United States. Earlier in my career I served as General Manager for several national hotel chains, including Starwood Hotels & Resorts, Marriott, and others. Since arriving in Greenville, SC in 2013, I have been an active member of the community, serving on the Executive Board of Directors for Visit Greenville SC and Artisphere. I have also served for six consecutive years on the Accommodations Tax Advisory committee (ATAX) for the City of Greenville, SC.

3. Broadstreet is the largest and fastest growing business with which I have ever been involved. Over the last 3 years, many investors involved with BSGF have met either manager Joseph Baldassarra or me and again been given another opportunity to ask questions. I provide one-on-one and group investor meetings for the last three years and Broadstreet has a shuttle that picks investors up at the airport so that they can meet with either the fund manager, Joe Baldassarra or myself. I have literally conducted more than 700 individual and group investor meetings and tours including our infrastructure land development projects.

4. As part of my duties as a Managing Director at Broadstreet, I am involved in client contact, presentations, question and answer sessions and follow up involving a group of up to approximately fifty partners. I am frequently involved in their discussions with their clients and literally have observed hundreds of verbal communications and presentations with clients over the last three years. I can confirm the following from what I have observed:

- a. There are (a) No complaints of clients that they were not given financial statements if requested, (b) No comment by a client about commingling cash, not even an inquiry regarding the same, (c) No comment ever by a client about a tri-party agreement, (d) No comment by a client about wanting all of the series and subseries to have separate financial statements, (e) No comments that they wanted to

understand what the MCA portfolios performance was on a cash basis versus an accrual basis, (f) No comment by any client that they did not understand the PPMs.

- b. I also participated in contact with all of the other managing directors of Broadstreet to confirm if any of the representations listed in the above subparagraphs a through f had been verbally expressed by any clients and the answer was "No."
- c. All of the investors are accredited investors under the securities laws and sophisticated enough to ask for any information that they would consider material or complain if they did not receive any material that they thought was material.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of February, 2025.



DAVID BERGER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF CARL SMITH

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a Managing Director of an organization known as Broadstreet which encompasses a number of entities, including but not limited to Broadstreet, Inc., the Broadstreet Global Fund LLC and Broadstreet Global Management LLC. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles in Broadstreet. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. I have more than 25 years of experience in financial services. For most of my career I was an independent registered representative with LaSalle Securities, where I focused on servicing high-net-worth individuals, businesses, and institutional clients. I have held many different securities licenses, as well as a Florida insurance and real estate license.

3. Broadstreet is the largest and fastest growing business with which I have ever been involved.

4. One part of the SEC's investigation was to contact clients of Broadstreet and, in particular, my client known as KC (initials for privacy purposes) who had invested \$25 million with Broadstreet. KC was contacted by the SEC and an investigator named Lee Robinson. This is the same Lee Robinson who has filed an affidavit with the court in this case.

5. My client advised me that he was quite clear to the SEC that as they asked their questions, he kept conveying how pleased that he was with Broadstreet. They then began to ask him about satisfaction with documents and products, and he made it very clear to them that all that he cared about was that he was getting paid the rate reflected in the documents and that any technicalities that they had raised to him were immaterial to him.

6. To this day and even after being contacted by the SEC, KC continues to be a great client. The experience that I conveyed regarding KC is the same experience that I have had with all of my high net worth clients involving Broadstreet. That is, they appear not interested in the technicalities of matters and more interested in receiving a return. KC, like all of my other clients, visited Broadstreet as well.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13 day of February, 2025.



CARL SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF MICHAEL DAZZO

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a Managing Director of an organization known as Broadstreet which encompasses a number of entities, including but not limited to Broadstreet, Inc., the Broadstreet Global Fund LLC and Broadstreet Global Management LLC. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles with Broadstreet. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. I have more than 30 years of experience in financial services. I began my career on Wall Street in 1994 and became the youngest senior vice president of my firm just two years later. After transitioning to focus on the housing market in Florida, I then ventured into the debt services business which led me to build a multi-million-dollar business that employed over 100 individuals. In 2012, I entered the private equity industry and have been involved ever since. Broadstreet is the largest and fastest growing business with which I have ever been involved.

3. As part of my duties as a managing director at Broadstreet, I am involved in client contact, presentations, question and answer sessions and follow up involving a group of up to approximately fifty partners. I am frequently involved in their discussions with their clients and literally have observed hundreds of verbal communications and presentations with clients over the last three years. I can confirm the following from what I have observed:

- a. There are (a) No complaints of clients that they were not given financial statements if requested, (b) No comment by a client about commingling cash, not even an inquiry regarding the same, (c) No comment ever by a client about a tri-party agreement, (d) No comment by a client about wanting all of the series and subseries to have separate financial statements, (e) No comments that they wanted to understand what the MCA portfolios performance was on a cash basis versus an accrual basis, (f) No comment by any client that they did not understand the PPMs.
- b. I also participated in contact with all of the other managing directors of Broadstreet to confirm if any of the representations listed in the above subparagraphs a through f had been verbally expressed by any clients and the answer was "No."
- c. All of the investors are accredited investors under the securities laws and sophisticated enough to ask for any information that they would consider material or complain if they did not receive any material that they thought was material. Most all of the investors did not request financial information and that is not uncommon in a fixed return product wherein the investors appear most concerned about simply getting their payment more than anything else.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13 day of February, 2025.

A handwritten signature in cursive script that reads "Michael Dazzo". The signature is written in black ink and is positioned above a horizontal line.

MICHAEL DAZZO

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-CV-20436

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID J. FEINGOLD, JOSEPH B.
BALDASSARRA, STEVEN S.
BALDASSARRA, BROAD STREET
GLOBAL MANAGEMENT, LLC, AND
BROAD STREET INC.,

Defendants, and

JOSEPHBENJAMIN, INC.,
JUST A NICE DAY, INC.,

Relief Defendants.

DECLARATION OF AKHIL MORADA

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a Managing Director of an organization known as Broadstreet which encompasses a number of entities including, but not limited to, Broadstreet, Inc., the Broadstreet Global Fund LLC and Broadstreet Global Management LLC. I have personal knowledge of the facts set forth herein from my own personal observations, business records and/or from my roles with Broadstreet. I respectfully submit this declaration in opposition to Plaintiff's (the "SEC") Emergency TRO application for an asset freeze and receiver.

2. I have personally put more than \$20 million of my own personal money into Broadstreet investments.

3. I have more than 18 years of experience in the financial industry. After working in a variety of financial firms, I entered private equity in 2016. Broadstreet is the largest and fastest growing business with which I have ever been involved.

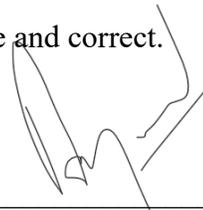
4. The SEC decided to take my sworn testimony by a number of people including an investigator named Lee Robinson. This is the same Lee Robinson who has filed an affidavit with the Court in this case.

5. During my deposition with the SEC, they brought out documents such as a tri-party agreement and asked my knowledge of the same. My response was that I was aware of the document and it made me even more comfortable knowing that other executives at the firm had pledged their assets.

6. I respectfully request that the Court deny the SEC's motions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of February, 2025.



AKHIL MORADA