

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

www.flsb.uscourts.gov

In re:

1 GLOBAL CAPITAL LLC, *et al.*,¹

Debtors.

1 GLOBAL CAPITAL LLC and 1 WEST
CAPITAL LLC,

Plaintiffs,

v.

MOMENTUM AUTOMOTIVE
MANAGEMENT, LLC, *et al.*,

Defendants.

Chapter 11

Case No. 18-19121-RAM

(Jointly Administered)

Adv. Case No. 18-01495-RAM

NOTICE OF INTENT TO SERVE SUBPOENA

Pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rules 7001 and 9016 of the Federal Rules of Bankruptcy Procedure, notice is hereby given that counsel for Defendant Global Merchant Cash, Inc., d/b/a Wall Street Funding (“Wall Street”) has issued and intends to serve the attached subpoena commanding the testimony and production of documents and electronically stored information at a deposition upon Courtney Jared Bannan.

¹ The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor’s federal tax identification number, if applicable, are: 1 Global Capital LLC, d/b/a 1 GC Collections, 1250 E. Hallandale Beach Blvd., Suite 605, Hallandale Beach, FL 33009 (9517); and 1 West Capital LLC, d/b/a 1 West Collections, 1250 E. Hallandale Beach Blvd., Suite 605, Hallandale Beach, FL 33009 (1711). On February 19, 2019, the Debtors registered the fictitious names “1 GC Collections” and “1 West Collections” with the Florida Department of State.

Dated this 29th day of June, 2020.

THOMPSON HINE LLP

By: /s/ Mendy Piekarski
Mendy Piekarski, Esq. (*pro hac vice*)
335 Madison Avenue, 12th Floor
New York, New York 10017-4611
Telephone: (212) 908-3971
Facsimile: (212) 344-6101
E-mail: mendy.piekarski@thompsonhine.com

Counsel for Defendant Global Merchant Cash, Inc.

-and-

RICE PUGATCH ROBINSON STORFER & COHEN, PLLC

101 NE Third Avenue, Suite 1800
Fort Lauderdale, FL 33301
Telephone: (954) 462-8000
Facsimile: (954) 462-4300
E-mail: krobinson@rprsllaw.com

By: /s/ Kenneth B. Robinson

KENNETH B. ROBINSON
Florida Bar No. 559474

Local Counsel for Defendant Global Merchant Cash Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Mendy Piekarski

*One of the Attorneys for Defendant
Global Merchant Cash, Inc. d/b/a
Wall Street Funding*

UNITED STATES BANKRUPTCY COURT

Southern District of Florida

In re 1 Global Capital LLC, et al. Debtor

Case No. 18-19121-RAM

(Complete if issued in an adversary proceeding)

Chapter 11

1 Global Capital LLC and 1 West Capital LLC Plaintiffs

Adv. Proc. No. 18-01495-RAM

v.

Momentum Automotive Management, LLC, et al. Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Courtney Jared Bannan (Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Method of deposition (Remote via video conference...) and Date and Time (August 4, 2020 at 10:00 a.m. EST)

The deposition will be recorded by this method: stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See attached Exhibit A

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: June 24, 2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Mendy Piekarski Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Global Merchant Cash Inc., who issues or requests this subpoena, are:

Mendy Piekarski, Thompson Hine LLP, 335 Madison Avenue, 12th Floor, New York, NY 10017; mendy.piekarski@thompsonhine.com; (212) 908-3971

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

Defendant Global Merchant Cash, Inc. d/b/a Wall Street Funding hereby requests that, by the date provided on the attached subpoena, you produce for inspection and copying the documents described herein. In lieu of production at the location listed on the attached subpoena, paper copies or electronic copies of the records requested may be served by mail or email to:

Mendy Piekarski
Thompson Hine LLP
335 Madison Avenue, 12th Floor
New York, New York 10017-4611
(212) 908-3971
Mendy.Piekarski@ThompsonHine.com

DEFINITIONS AND INSTRUCTIONS

1. “Documents” means the original or copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless or whether approved, signed, sent, received, redrafted or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copied or produced in any other manner whatsoever, in any format (electronic or otherwise). Without limiting the generality of the foregoing, “documents” shall include correspondence, letters, emails, text messages, telegrams, telexes, mailgrams, memoranda, including inter-office and intra-office memoranda, memoranda for files, memoranda of telephone or other conversations, including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, notes or memorandum attached to or to be read with any document, booklets, books, drawings, graphs, charts, photographs, phone records, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained along with all ESI (as defined below) and other electronic data storage documents including but not limited to e-mails and any related attachments, electronic files or other data compilations which relate to the categories of documents as requested below, internet messages, or text messages, and shall include any private or public message or statement transmitted through any social network or media. Copies of documents which are not identical duplications of the originals or which contain additions to or deletions from the originals or copies of documents which are identical duplications of the originals if the originals are not available shall be considered to be separate documents.

Your search for these electronically stored documents shall include all of your computer hard drives, floppy discs, compact discs, backup and archival tapes, removable media such as zip drives, password protected and encrypted files, databases, electronic calendars, personal digital assistants, SMS or MMS text messages, any text based communications, Blackberry/Research in Motion “PIN” messages, any text based messages transmitted through a proprietary or public “chat” service, proprietary software and inactive or unused computer disc storage areas. All

electronically stored information produced shall be produced in its native format, and all requests expressly include requests for all metadata associated with the files to be produced. Copies of documents, which are not identical duplications or the originals or which contain additions to or deletions from the originals or copies of the originals if the originals are not available, shall be considered to be separate documents.

2. “Communication” shall mean any oral or written statement, correspondence, dialogue, colloquy, discussion or conversation and, also, means any transfer of thoughts or ideas between person (as defined below) by means of Documents (defined term above) and includes any transfer of data from one location to another by electronic or similar means, and shall include any private or public message or statement transmitted through any social network or media.

3. “Electronically Stored Information” or “ESI” means all materials within the full scope of Rule 34 of the Federal Rules of Civil Procedure and Rule 1001 of the Federal Rules of Evidence including, but not limited to, all electronic, digital, mechanical, magnetic, or optical records or representations of any kind (including, without limitation, computer files and programs, hard drives, thumb or flash drives, tapes, cassettes, discs, recordings), metadata, and information stored on a computer, laptop, hand-held computer device, disk, CD, DVD, and any electronic, digital, or mechanical recording or production or any oral material.

4. The term “referring”, “relating”, “support”, “evidence”, “evidencing”, “concerning”, “pertaining to”, “involving” and “regarding” to any given subject, when used to specify a Document or Electronically Stored Information, means any Documents or Electronically Stored Information that constitutes, contains, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

5. The conjunctions “and” and “or” shall be interpreted in each instance as meaning “and/or” so as to encompass the broader of the two possible constructions, and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any Request.

6. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of the Request.

7. “Possession, custody, or control” shall have the same meaning as in Rule 34(a) of the Federal Rules of Civil Procedure.

8. “Person” shall mean any natural person, individual, entity, proprietorship, partnership, corporation, association, organization, joint venture, business trust, or other business enterprise, governmental body or agency, legal or business entity, or group of natural persons, or other entity, whether sui juris or otherwise, and includes both the singular and plural.

9. The term ‘any and all documents’ means every Document or group of Documents or communications or “ESI” responsive as above defined known to you, and every such document or communication or “ESI” which can be located or discovered by reasonably diligent effort.

10. As used herein, the singular and masculine form of nouns and pronouns shall embrace, and be read and applied as, the plural or feminine or neuter, as circumstances may make appropriate.

11. If any Document or ESI is being withheld on grounds of privilege, provide a privilege log as required by the Federal Rules of Civil Procedure in sufficient detail in order to enable a Court to assess the applicability of the asserted privilege.

12. If you decline to respond to any of the requests on the basis of any privilege known in the law, you are requested to provide, at or prior to the designated time for response, the following written information pertaining to each such response:

- a. its date or, if not dated, the date it was prepared or received;
- b. the type of document and/or information or ESI (e.g., letter, memorandum, telegram, chart, photograph, reproduction, etc.);
- c. its author and the author's business and residence addresses;
- d. its present location;
- e. the identity and business and residence addresses of the person in custody;
- f. a general description of its contents;
- g. the number of pages thereof;
- h. the identity of each person who received or was shown the original or a copy, and the relationship of the person to any party to this litigation;
- i. whether the document or ESI contains or relates to facts or opinions, or both; and
- j. the exact nature of the privilege claimed.

13. If any Document or ESI to be produced has been destroyed or is otherwise incapable of production, state: (a) the date, place and means of the destruction; (b) the name and address of each person deciding upon, participating in and having knowledge of the destruction; (c) the reason for the destruction; and (d) if not destroyed, the reason why the document is incapable of production.

14. In the event such file(s) or document(s) or ESI has (have) been removed, either for the purpose of this action or for some other purpose, please state the name and address of the person who removed the file, the title of the file and sub-file, if any, maintained within the file, and the present location of the file.

15. This request for production of documents is continuing and you are requested to supplement your responses hereto. If after producing the Documents or ESI, you become aware of any further Documents or ESI responsive to this request, you are required to immediately produce such additional Documents or ESI without further request or Order of Court.

16. "1 Global" shall mean 1 Global Capital, LLC, or any officer, director, member, employee, agent, affiliate or attorney for 1 Global, and any other person acting for, or on behalf of such entities or under their authority or control.

17. "1 West" shall mean 1 West Capital, LLC, or any officer, director, member,

employee, agent, affiliate or attorney for 1 West, and any other person acting for, or on behalf of such entities or under their authority or control.

18. “Capital Stack” shall mean Capital Stack, LLC, or any officer, director, member, employee, agent, affiliate or attorney for Capital Stack, and any other person acting for, or on behalf of such entities or under their authority or control.

19. “Kings Cash” shall mean Kings Cash Group, LLC, or any officer, director, member, employee, agent, affiliate or attorney for Kings Cash, and any other person acting for, or on behalf of such entities or under their authority or control.

20. “Platinum” shall mean Platinum Rapid Funding Group, Ltd., or any officer, director, member, employee, agent, affiliate or attorney for Platinum, and any other person acting for, or on behalf of such entities or under their authority or control

21. “Radium2” shall mean Radium2 Capital, Inc., or any officer, director, member, employee, agent, affiliate or attorney for Radium2, and any other person acting for, or on behalf of such entities or under their authority or control

22. “Wall Street” shall mean Global Merchant Cash, Inc., d/b/a Wall Street Funding, or any officer, director, member, employee, agent, affiliate or attorney for Wall Street, and any other person acting for, or on behalf of such entities or under their authority or control.

23. “Momentum” shall mean Momentum Automotive Management, LLC and Momentum Auto Group, Inc. f/k/a Momentum Auto Group, LLC, either collectively or separately, or any officer, director, member, employee, agent, affiliate or attorney for Momentum and any other person acting for, or on behalf of Momentum or under Momentum’s authority or control.

24. “Framework Agreement” means and refers to that certain Framework Agreement By and Among 1 West Capital, LLC and Momentum Automotive Management, LLC, dated February 14, 2018.

25. “Capital Stack Subordination Agreement” means and refers to that certain Subordination and Standstill Agreement By and Among 1 West Capital, LLC and Capital Stack, dated February 16, 2018.

26. “Platinum Subordination Agreement” means and refers to that certain Subordination and Standstill Agreement By and Among 1 West Capital, LLC and Platinum, dated February 14, 2018.

27. “Radium2 Subordination Agreement” means and refers to that certain Subordination and Standstill Agreement By and Among 1 West Capital, LLC and Radium2, dated February 14, 2018.

28. “Wall Street Subordination Agreement” means and refers to that certain Subordination and Standstill Agreement By and Among 1 West Capital, LLC and Wall Street, dated February 15, 2018.

29. “Covered Time Period” means and refers to, unless otherwise indicated, the time period covered by this Request, which is January 1, 2017 through the present.

DOCUMENT REQUESTS

Please produce:

1. All Documents and communications pertaining to the Framework Agreement.
2. All Documents and communications evidencing, pertaining to, and/or reflecting the drafting, negotiation, and/or execution of the Wall Street Subordination Agreement.
3. All Documents and communications evidencing, pertaining to, and/or reflecting the drafting, negotiation, and/or execution of the Capital Stack Subordination Agreement.
4. All Documents and communications evidencing, pertaining to, and/or reflecting the drafting, negotiation, and/or execution of the Platinum Subordination Agreement.
5. All Documents and communications evidencing, pertaining to, and/or reflecting the drafting, negotiation, and/or execution of the Radium2 Subordination Agreement.