

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-81205-RAR**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

**RECEIVER, RYAN K. STUMPHAUZER’S CORRECTED REPLY IN FURTHER
SUPPORT OF EXPEDITED MOTION TO APPROVE RETAINED PROFESSIONAL**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”), on behalf the Receivership Entities,¹ by and through undersigned counsel, hereby files this Reply in Further Support of the Receiver’s Expedited Motion to Approve Retained Professional (the “Motion”) [D.E. 101]. The Receiver takes no position, for purposes of this Motion only, regarding the ultimate scope of the Receivership. Under any scenario, Mr. Stumphauzer will need the assistance of a consulting professional that is deeply familiar with the merchant cash advance industry. To be sure, and as the defendants have stated repeatedly in Court and in their briefs, Mr. Stumphauzer is not an expert in the merchant cash advance (“MCA”) industry, has not owned or operated an

¹ The Receivership Entities include Defendants Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”); Full Spectrum Processing, Inc. (“Full Spectrum”); ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; and RE Income Fund 2 LLC (collectively, the “Receivership Entities”).

MCA business, and is therefore incapable of managing the day-to-day operations (or even monitoring the day-to-day operations) by himself. Thus, no matter the scope of his ultimate role, the Receiver will require an expert to advise him on countless issues including: (i) whether the MCAs are lawfully structured under the relevant statutory and regulatory regimes, which he understands vary from state to state;² (ii) whether the underwriting procedures are sufficient to ensure the creditworthiness of the applicants, especially in light of the concerns raised over default rates; (iii) whether the portfolio of MCAs—both performing and partially-performing—should be enforced according to their current terms or restructured to increase the feasibility of collection; and (iv) evaluating the non-performing loans to determine whether the loans should be passed to a collection agency, litigated in court, or “written off” because the chances of collection are slim.

Although the Court has not yet conducted the preliminary injunction hearing, the Receiver is mindful that this Court, after reviewing the Securities & Exchange Commission’s (SEC) Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief, along with dozens of declarations and exhibits, found that the SEC “made a sufficient and proper showing in support of the relief granted herein by: (i) presenting a prima facie case of securities laws violations by Defendants; and (ii) showing a reasonable likelihood the Defendants will harm the investing public by continuing to violate the federal securities laws unless they are immediately restrained.” (DE 42, p. 2). The Court also found “good cause to believe that unless immediately enjoined by Order of this Court, the Defendants will continue to dissipate, conceal or transfer from the jurisdiction of this Court assets which could be subject to an Order of Disgorgement.” (*Id.*) Based on this Court’s

² The Receiver has not taken a position regarding the legality of the MCAs, but certainly has reason to pause and consider the issue in light of the “interest rates” described in the Complaint.

findings, the Receiver does not think it would be appropriate to simply allow the Defendants' employees to return to work to conduct "business as usual" with no expert oversight or guidance.

Notwithstanding these findings, the Defendants associated with Par Funding and Spectrum Processing have nonchalantly requested the Court to direct the Receiver to allow approximately 70 employees—including accountants, bookkeepers, underwriters and ACH account processors—to return to work immediately. (D.E. 106). Defendant Dean Vagnozzi has similarly suggested that the Receiver should allow "the experienced employees who already work" at the Receivership Entities to continue to operate these businesses. (D.E. 109, ¶ 4).

But the Defendants' operational suggestions raise a myriad of practical concerns. For example: (i) how would the Receiver pay the existing employees when he has no control over the bank accounts and when the Defendants vehemently object to the Receiver having operational authority or discretion to process payroll?;³ (ii) how would the employees resume normal operations while documents are being collected and scanned, and while computers are being forensically imaged?; and (iii) how can the Receiver decide—in the span of a week—to rely on the current executives to manage ongoing operations when one of them is allegedly a convicted felon, others have faced (or are currently facing) regulatory enforcement scrutiny in one or more

³ The Court has indicated that these bank accounts will remain frozen pending the Court's determination of the SEC's request for a preliminary injunction, which is scheduled to be addressed at an evidentiary hearing on August 18, 2020. *Id.*; Order Resetting Preliminary Injunction Hearing [D.E. 97].

states,⁴ nearly all of them refuse to speak to the Receiver, and multiple of them are expected to invoke their 5th Amendment rights at the SEC's depositions.⁵

And these concerns have become more pronounced since the Court initially considered the issue. Indeed, the Receiver just learned that Joseph LaForte, the "*de facto*" Chief Executive Officer of Par Funding (D.E. 1, ¶ 17), was arrested yesterday on federal firearms charges after federal agents, while conducting a search warrant at his home in Haverford, Pennsylvania, found several firearms in his possession. *See* Exhibit 1 (Indictment). As it stands, Mr. LaForte remains in jail pending a pretrial detention hearing, so it is difficult to imagine how he could assist the Receiver.

To be clear, and despite suggestions to the contrary, the Receiver has not reached any conclusions about whether this receivership should result in a "liquidation" of the Receivership Entities. In the less than two (2) weeks since the Receiver has been appointed in this role, he and

⁴ On November 28, 2018, the Department of Banking and Securities for the Commonwealth of Pennsylvania entered into a Consent Agreement and Order with Par Funding, under which Par Funding agreed to pay an administrative fine of \$499,000.00 to resolve an investigation into Par Funding's practice of using unregistered agents in connection with the offer and sale of promissory notes. On December 27, 2018, the New Jersey Bureau of Securities issued a cease and desist order in connection with Par Funding's sale of unregistered securities by unregistered agents in the State of New Jersey. On May 30, 2019, Dean Vagnozzi, doing business as ABFP, entered into a settlement with the Pennsylvania Department of Banking and Securities in connection with the sale of promissory notes Par Funding offered and sold. In connection with that case, Mr. Vagnozzi agreed to pay a penalty of \$490,000 for violations of the Pennsylvania Securities Act. On February 25, 2020, the Texas State Securities Board issued an emergency cease and desist order against, among others, Par Funding, ABFP, and Perry Abbonizio, in connection with the sale of unregistered securities, engaging in fraud, and making materially misleading and deceptive statements to the public in connection with the sale of securities. The Texas administrative proceeding is scheduled for a hearing on September 28, 2020, to determine whether the cease and desist order should remain in effect and whether Par Funding and Abbonizio should be required to pay restitution to Texas investors.

⁵ To help underscore the practical issues, the Receiver requested an opportunity to interview Joseph LaForte, who indicated he wanted to know the list of questions in advance. The Receiver made clear he wanted to cover all relevant topics, but LaForte still has not agreed to an interview. He did, however, request an opportunity to interview the Receiver. Needless to say, that level of cooperation will not be sufficient to help the Receiver operate the Company without expert advice.

his counsel have engaged in many discussions with counsel for the individual Defendants and employees for the Receivership Entities who understand the records and mechanics of the operations of these businesses. These discussions have been focused on not only preserving evidence and maintaining the status quo, but also exploring opportunities to segregate aspects of those businesses that appear to be unrelated to the conduct at issue in this litigation and assessing the overall operations of these businesses. The Receiver is encouraged at the progress made thus far in these discussions, and hopes to rehire certain of these employees in the very near future, but wishes to do so in a thoughtful and prudent matter.

In light of the Court's findings, the Defendants' statements regarding the complexity of the business operations and the need to resume them as soon as possible, the Receiver believes that engagement of an operational consultant is not only warranted, but indispensable. DSI is on standby, pending the Court's ruling on this Motion, and is prepared to begin this proposed engagement immediately. With its expertise in assessing businesses in receiverships, coupled with its direct knowledge and recent experience in operating this exact type of merchant cash advance business, DSI is uniquely situated to assist the Receiver with interviewing these employees and assessing their functions with these businesses, evaluating the operations of the Receivership Entities, and developing recommendations for a course of action moving forward.

CONCLUSION

WHEREFORE, Ryan K. Stumphauzer, as Court-Appointed Receiver, by and through his undersigned counsel, respectfully requests the Court to grant the Motion and allow the Receiver to engage DSI as a financial advisor and operations consultant, as set forth in the Motion.

Dated: August 8, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 8, 2020, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA

Exhibit “1”

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 20CR231 PBT
v.	:	DATE FILED:
JOSEPH LAFORTE	:	VIOLATION:
	:	18 U.S.C. § 922(g)(1) (felon in possession of a firearm – 1 count)
	:	Notice of forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

On or about July 28, 2020, in Haverford, Pennsylvania, in the Eastern District of Pennsylvania, defendant

JOSEPH LAFORTE,

knowing that he had previously been convicted in courts of the State of New York and the United States District Court of crimes punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm, that is, at least one of the following: (1) a Beretta, Pietro S.P.A., Model ES100, .12 caliber shotgun, bearing serial number E07531-98; (2) a Beretta, Pietro S.P.A., Model AL391 Urika, .12 caliber shotgun, bearing serial number AA317345; (3) a Beretta, Pietro S.P.A., Model 84FS, .380 caliber handgun, bearing serial number H72038Y, loaded with 23 live rounds of .380 caliber ammunition; (4) a Smith & Wesson, Model M&P Bodyguard 380, .380 caliber handgun, bearing serial number KEM2420, loaded with 5 live rounds of .380 caliber ammunition; (5) a Smith & Wesson, Model M&P 380 Shield EZ, .380 caliber handgun, bearing serial number RDD0719, loaded with 8 live rounds of .380 caliber

ammunition; (6) a Smith & Wesson, Model M&P 15, .556 caliber rifle bearing serial number TK91955, loaded with 30 live rounds of .556 caliber ammunition; (7) and a Smith & Wesson, Model 19, .357 caliber handgun bearing serial number 52K2904, loaded with 6 live rounds of .357 caliber ammunition; and the firearms were in and affecting interstate and foreign commerce

In violation of Title 18, United States Code, Section 922(g)(1).

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

As a result of the violation of Title 18, United States Code, Section 922(g)(1), set forth in this indictment, defendant

JOSEPH LAFORTE,

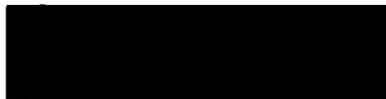
shall forfeit to the United States of America, the firearms and ammunition involved in the commission of this offense, including, but not limited to:

- (1) a Beretta, Pietro S.P.A., Model ES100, .12 caliber shotgun, bearing serial number E07531-98;
- (2) a Beretta, Pietro S.P.A., Model AL391 Urika, .12 caliber shotgun, bearing serial number AA317345;
- (3) a Beretta, Pietro S.P.A., Model 84FS, .380 caliber handgun, bearing serial number H72038Y;
- (4) 23 live rounds of .380 caliber ammunition;
- (5) a Smith & Wesson, Model M&P Bodyguard 380, .380 caliber handgun, bearing serial number KEM2420;
- (6) 5 live rounds of .380 caliber ammunition;
- (7) a Smith & Wesson, Model M&P 380 Shield EZ, .380 caliber handgun, bearing serial number RDD0719;
- (8) 8 live rounds of .380 caliber ammunition;
- (9) a Smith & Wesson, Model M&P 15, .556 caliber rifle bearing serial number TK91955;
- (10) 30 live rounds of .556 caliber ammunition;
- (11) a Smith & Wesson, Model 19, .357 caliber handgun bearing serial number 52K2904; and

(12) 6 live rounds of .357 caliber ammunition.

All pursuant to Title 28, United States Code, Section 2461(c), and Title 18,
United States Code, Section 924(d).

A TRUE BILL:



FOREPERSON

for 
WILLIAM M. McSWAIN
United States Attorney

No. _____

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

Criminal Division

THE UNITED STATES OF AMERICA

vs.

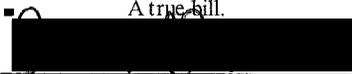
JOSEPH LAFORTE

INDICTMENT

Counts

18 U.S.C. § 922(g)(1) (felon in possession of a firearm – 1 count)
Notice of Forfeiture

A true bill.



Foreman

Filed in open court this _____ day,
Of _____ A.D. 20 _____

Clerk

Bail, \$ _____
