UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

DEFENDANTS' MOTION TO AMEND THE COURT'S ORDER DATED JULY 27, 2020, TO CLARIFY THAT DEFENSE COUNSEL CAN RECEIVE A COPY OF THE DOCUMENTS THEY HAVE PROVIDED TO THE RECEIVER IN ORDER TO PREPARE THEIR DEFENSE

Defendants Lisa McElhone (L. McElhone"), Joseph Cole Barleta ("Cole"), and Joseph W. LaForte ("Laforte"), and Relief Defendant The LME 2017 Family Trust (the "Trust") (collectively, "Defendants"), respectfully submit this Motion to Modify the Order Appointing the Receiver (DE 36), dated July 27, 2020 ("the Order"), and the amended Receivership Order dated August 13, 2020 (DE 141)(the "Amended Order"), to clarify that Defendants are entitled to a copy of the Receivership entity documents they produced to the Receiver.

INTRODUCTION

This motion is necessitated by the Receiver's refusal to produce to the defense copies of Defendant Par Funding's company documents that Cole—as Par Funding's CFO—possessed prior to the TRO and subsequently provided to the Receiver. The Receiver maintains that the TRO and subsequent Orders appointing him and amending his authority prohibit Defendants from possessing a copy of these documents and, further, that he will determine at some future date what documents will be provided to Defendants and when. Consequently, Defendants now find

themselves at the mercy of the Receiver and his counsel, who have opposed their repeated requests to retain copies of these documents and, most disconcertingly, justified their refusal with unsubstantiated claims of data breaches against Defendants L. McElhone, Cole and various nonparties whose conduct cannot be attributed to Defendants.

Adding to the frustration, the Receiver and his counsel have refused to provide evidence of the alleged data breaches they now claim as a basis to deprive the defense of the Par Funding company documents. The defense cannot and should not be required to defend itself against the claims brought by the SEC and other claims of so-called data breaches while being kept in the dark.

Notwithstanding our significant efforts to confer and work with the Receiver to obtain a copy of the very documents Defendants provided to the Receiver, including our agreement to receive them pursuant to a protective order, it is now clear that the Receiver will not produce the documents absent Court intervention. We therefore respectfully request that the Court modify the Receivership Order to clarify that defense counsel are to be provided copies of these company documents without further delay.

STATEMENT OF FACTS

1. Counsel for Defendants Have Repeatedly Requested Access to Company Documents and Have Acceded to Every Condition Requested by the Receiver, To No Avail.

The defense has repeatedly asked the Receiver to agree that after he obtained Cole's Par Funding company data, he would return that data to counsel to be used in defense of the case. *See* Exhibits A-C, B. Schein and A. Futerfas e-mails dated August 19 and 27, 2020 (highlighted for ease of review). The Receiver has repeatedly acknowledged that the defense should have a copy of these materials but has deferred a decision after every such conversation.[1] At first, the Receiver

[1] During the preliminary injunction hearing, the Receiver also agreed to produce to the defense a copy of Par Funding's tax returns, including a 2018 tax return which showed that par Funding had

suggested Bates-stamping these documents so that their provenance would be clear, and defense counsel agreed. Later, the Receiver suggested production should occur pursuant to a standard protective order to prevent dissemination of documents to third parties. Exhibit B, A. Futerfas e-mail. Again, defense counsel agreed.

However, instead of producing the documents to defense counsel (or allowing counsel to retain a copy) under terms to which both sides have already agreed, defense counsel have instead been met with unsubstantiated accusations of data breaches. These accusations include allegations against nonparties Jamie McElhone, James Laforte, Jeremiah Ludenni and others—whom we do not represent—which the Receiver is using as a basis to withhold documents that Cole rightfully possessed before the TRO was issued and then turned over to the Receiver. With respect to the accusations against Cole and L. McElhone, counsel has: (1) advised the Receiver that they were not involved in this conduct; (2) provided the G-Suite password to the Receiver and recommended that he change them at once; (3) advised the Receiver to review the user access logs to the Par Funding G-Suite to identify those involved in these alleged data breaches; and (4) agreed to a protective order to prevent dissemination of the data Cole obtained prior to the TRO and disclosed to the Receiver. There is little else defense counsel can do.

2. The Receiver's Unsubstantiated Data Breach Claims.

Over the past several weeks, the Receiver has made allegations of data breaches of Par Funding's Google Cloud (the so-called "G-Suite") against defendants and other nonparties. These allegations have been made without the production of any supporting evidence by the Receiver which would have permitted: (1) the parties to confer before motions were filed, or (2) evaluation by a defense expert in the case of an impasse. We have repeatedly rebutted these allegations,

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paid taxes on $22 million in profits that year. Defense counsel still has not received those documents.

including allegations against Lisa McElhone (and her sister, Jamie) made on Thursday, August 27, 2020.

Counsel for the defense also advised the Receiver that Cole has not accessed Par Funding's G-Suite since this Court issued the Temporary Restraining Order ("TRO") on July 28, 2020. Counsel explained that Cole, as the Chief Financial Officer of Par Funding since 2012, had backups of Par documents prior to the TRO. The Receiver currently has Cole's work computer which contains these documents. Cole also provided his personal laptop to the Receiver's IT expert on August 19, 2020, which had a backup of these same pre-TRO Par documents. Cole also provided to the Receiver, without delay, the passwords needed to access both laptops, which also contained personal and other information unrelated to Par Funding. Additionally, on August 26, 2020, Cole's lawyer and the Receiver's IT expert spent two hours detailing the contents of his personal laptop, including the need to exclude any personal and privileged information. Cole's personal laptop is still in the Receiver's possession. Notably, these documents are copies of what already exists on the Par Funding G-Suite platform as well as on numerous Par Funding computers located in its headquarters.

Moreover, in further compliance with this Court's directives, Cole advised the Receiver on Friday, August 28, 2020, that he had another backup on a G-Suite platform on the cloud. His counsel provided the Receiver access to those documents on August 29, 2020. These are the same documents that he possessed prior to the TRO given his position in the company. The Receiver now has multiple copies of the exact same documents – the books and records of the company prior to the TRO. Cole did not enter the Par Funding G-Suite after the TRO.[2]

[2] Yesterday evening, the Receiver filed an Interim Status Report (DE 215), which included his concerns regarding "unauthorized access to the records of the Receivership Entities." Id., at 5-6. The Receiver's concerns largely involve individuals who are not parties to this action and whose conduct should not be attributed to Defendants. In other words, those allegations should have no bearing on the Defendants' request to receive the documents at issue in this Motion. That aside,

3. The Documents are Essential to the Defense of this Action.

The SEC has placed in issue a host of financial claims that go to its allegations of fraud and misrepresentations as well as the relief it has requested. Defendants have a right to investigate and rebut these allegations with the universe of documentary evidence that exists.

A. Fees Paid to Principals

A key issue in the SEC's case is the allegation that defendants McElhone, LaForte, and Cole were paid fees derived from investor funds. The Amended Complaint alleges that Defendants committed fraud and submitted false filings to the SEC by denying that they were paid fees derived from investor funds. (DE 119, Cpt. ¶¶ 235-243). The SEC has frozen assets of Defendants based upon its claim that these assets contain the proceeds of investor funds that were improperly paid out as consulting fees.

As the Court may recall, the allegations concerning these fees were a hotly contested issue at the preliminary injunction hearing, with the books and records of Par Funding taking center stage. In support of its claims about these fee payments, and other issues, the SEC offered the Declaration of Melissa Davis. (DE 14, 14, n. 110) (citing to Davis Declr, DE 21-1, ¶ 16). According to the financial records relied on by the SEC, between January 2018 and June 2020, Par Funding received $32,054,589 in investor funds and $357,104,247 in agent funds. (DE 21-1, ¶8(b),

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we reiterate our request that we be allowed to address these allegations at least as to Ms. Lau, whose declaration remains at issue. With respect to Mr. Cole, the allegations are inaccurate. First, he does not possess an "external hard drive" of pre-TRO company backup documents. Those documents were on his personal laptop computer, which he provided to the Receiver on August 19, 2020. Those documents were duplicated on a G-Suite cloud drive at the direction of Cole's prior counsel. Cole, through counsel, has already provided the link to this G-Suite to the Receiver (making its reference in the Receiver's Report rather unnecessary.) Most importantly, undersigned counsel has not accessed either the laptop files or this G-Suite cloud file, nor have counsel provided those materials to our forensic accountants. *That is the very reason for the instant motion* – to clarify that counsel can receive a copy of these materials in order to prepare our defense of the action and provide them to our forensic accountants who, to this point, have been unable to review any materials given the stalled negotiations with the Receiver regarding the production of these materials to defense counsel.

9). The SEC offered in its rebuttal the Declaration of James Klenk, dated August 18, 2020, and the 2017 draft financial audit attached thereto (The "Klenk Declaration"). The SEC argued that any payment of fees to principals of Par Funding necessarily derived from investor funds, because investor funds were in a commingled account. Moreover, the Klenk Declaration suggested that Par operated at a loss according to a 2017 draft audit, suggesting that operational funds were insufficient to cover fees paid to the principals.

The defense has a legitimate basis to rebut the SEC's accounting analysis. Namely, while the Davis Declaration only advised the Court of investor fund inflows, it overlooked—or conveniently ignored—$1.257 billion of non-investor funds in Par Funding's operational accounts. Par Funding's books and records show that, on a quarter by quarter basis, the amount of merchant payments deposited into the business—the $1.257 billion dollars deposited over the life of the company—far exceeded the amount of consulting fees paid to owners and executives. (Declaration of Aida Lau, dated August 7, 2020, DE 106-1, Exhibit A [Column 14 entitled "Total Deposits"]). In her Declaration, dated August 24, 2020 (DE 148-19), Lau stated that she had "reviewed Par Funding's financial records between 2017 and 2019," and "for each such quarter, the total amount of Consulting Fees made was less than the operational income generated by the company for the quarter." (Id., ¶ 5). Notably, rather than contesting Lau's accounting analysis or the exhibits attached to her declaration, the SEC asked this Court to assign less weight to her declaration based on an allegation that she was involved in a data breach. We reiterate our request that the Court permit the defense to review evidence of this and other alleged breaches, and allow defense counsel an opportunity to respond, before reaching any conclusion. The defense should not be put in a position where the evidence it adduces in support of a motion is ignored and the documents it requests in discovery are withheld based on allegations it is not given a fair opportunity to rebut.

But unproven allegations of data breaches do not change the books and records of the company – of which the Receiver now has multiple copies from numerous sources. Par Funding's books and records show that its other funds were more than sufficient to serve as the source of the fees transferred to principals because they greatly exceeded the amount of funds received from investors. These facts certainly rebut the SEC's allegations of fraud and misrepresentation with respect to the purported transferring of investor funds to the principals. They would also defeat the basis for the SEC's seizure of assets premised on the claim that Defendants' purchase of these assets is traceable to investor funds.

Separately, Defendants have a right to use Par Funding's financial records to show that the 2017 draft audit attached to the Klenk Declaration does not provide an accurate picture of Par Funding's financial condition in 2017, or at any other time. The suggestion that Par Funding was operating at a loss can be rebutted with documents in the Receiver's possession. These documents show that the 2017 draft audit was fundamentally flawed because the accountants who prepared the 2017 audit overstated losses, thereby creating an inaccurate picture of the company's true financial condition. The accountant's misguided work was the reason that Par Funding selected another accounting firm to complete the 2017 audit—and the reason defense counsel needs to be able to review those records now.

B. Default Rate

The Amended Complaint alleges that Defendants committed fraud and made false representations to investors regarding the default rate of its merchant cash advances. (DE 119, Cpt. ¶¶ 185-203.) The SEC claims that the default rate must be high because of the amount of defaulted repayments that Par Funding has pursued through litigation. (*See* DE 14 at 36) ("These representations are false and misleading. In reality, Par Funding has filed more than 2,000 collections lawsuits against small business borrowers for defaulting on Loans since 2013 alone…

seeking more than $300 million in missed Loan payments.") The SEC makes no attempt to address the successful recovery rate of Par Funding's litigation or, more fundamentally, how this litigation correlates to a cash over cash default rate.

As the SEC has placed the default rate squarely in issue in its allegations of fraud and misrepresentation, Defendants have a right to show that Par Funding did not misrepresent the default rate to investors. Nowhere, in fact, does Par Funding use the term "default rate" in its books and records. Rather, as the Court may recall, Defendants argued in opposition to the preliminary injunction that Par Funding routinely calculates the "funding exposure" instead. This "funding exposure" is 1.2% according to the financial spreadsheet attached to the Affidavit of Aida Lau (*See* "CBSG's Funding Analysis," and n. 5 thereto, attached as Exhibit A to the Affidavit of Aida Lau, dated August 7, 2020, DE 106-1, and repeated in Exhibit K to DE 148 (DE 148-11)). Par Funding's books and records are therefore critical to demonstrating that Defendants have not misrepresented a "default rate" and, moreover, that the SEC's failure to consider the success of the company's litigation over defaulted repayments of cash advances does not correlate with a cash over cash default rate in any meaningful sense.

C. <u>Disgorgement</u>

The Amended Complaint requests equitable relief in the form of disgorgement. (DE 119 at 56). The SEC seeks disgorgement in the amount of $492 million against Par Funding, L. McElhone, and LaForte. (DE 14 at 105). It claims that "[t]his is the number raised from investors from July 2015 through the most recent bank statements available to us." (*Id.* at 104, n. 4). Further, it seeks disgorgement against Cole in the amount of $5.5 million (joint and several with Par Funding, L. McElhone and Laforte.) (*Id.* at 105).

Defendants have every right to challenge the calculations concerning disgorgement. Par Funding's records demonstrate that investors were repaid approximately $180 million of principal

and $100 million of interest for a total of $280 million. The SEC's disgorgement figure does not make any reduction to reflect the amount of funds that were returned to investors. If proven, the repayment of capital and interest to investors nets out to a potential disgorgement of $212 million, not $492 million. Even further, Defendants are also entitled to calculate and deduct operating expenses from the disgorgement amount pursuant to the recent Supreme Court decision in *Liu v. Securities and Exchange Commission*, 140 S.Ct. 1936 (June 22, 2020). For this additional reason—to rebut the SEC's claim for disgorgement—Defendants need the requested documents.

ARGUMENT

1. Counsel Should be Permitted to Have Access to Documents Necessary to the Defense.

Defendants' right to discovery is broad. "Courts in this Circuit have often noted the basic rule that the scope of discovery is broad and that the discovery rules generally favor complete discovery." *S.E.C. v. Wall Street Capital Funding, LLC*, 2011 WL 2295561, at *4 (S.D.FL 2011). The Federal Rule of Civil Procedure "sets forth the permissible parameters of discovery." *S.E.C. v. Huff*, No. 08-60315-CIV, 2010 WL 228000, at *3 (S.D. Fla. Jan. 13, 2010). Indeed:

> Under this Rule, Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party ... [that] appears reasonably calculated to lead to the discovery of admissible evidence ..., [as long as the Court does not find that] (i) the discovery sought is unreasonably cumulative or duplicative, or ... obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues...."

S.E.C. v. Huff, 2010 WL 228000, at *3.[3] The Advisory Committee Notes to Rule 26 indicate the ruled should be read broadly. "[T]he purpose of discovery is to allow a broad search for facts, the

[3] *See also* Fed. R. Civ. P. 26(b) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering

names of witnesses, or any other matters which may aid a party in the preparation or presentation of his case. Indeed, the Advisory Committee Notes approvingly cite language from a case stating that the Rules ... permit fishing for evidence as they should." *S.E.C. v. Huff*, 2010 WL 228000, at *4 *quoting* Adv. Com. Notes, 1946 Amendment, R. 26, Fed.R.Civ.P. (quotations and citations omitted, emphasis in original).

> The courts have long recognized the wide scope of discovery allowed under the Federal Rules of Civil Procedure. As the Eleventh Circuit's predecessor court noted, "The discovery provisions of the Federal Rules of Civil Procedure allow the parties to develop fully and crystalize concise factual issues for trial. Properly used, they prevent prejudicial surprises and conserve precious judicial energies. The United States Supreme Court has said that they are to be broadly and liberally construed."

S.E.C. v. Huff, 2010 WL 228000, at *4 (S.D. Fla. Jan. 13, 2010)(quotation omitted)

Under broad discovery rules, Defendants are absolutely entitled to receive a copy of all the financial records that they have provided to the Receiver in order to rebut a host of allegations pertaining to the finances of Par Funding. This need is urgent. Defendants have engaged forensic accountants to undertake the significant task of assessing the books and records of Par Funding with regard to all of the issues addressed above, among other issues. In a case of this nature, forensic accounting is critical to prepare the defense. This important work cannot even begin until Defendants can provide the necessary material to the accountants. To do that, Defendants must first have clear direction from this Court that they are permitted to receive these documents, to provide copies to their accountants and to use them in preparing a defense.

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the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.")

2. The Receiver Has Failed to Produce Documents to Which Defendants Are Entitled Pursuant to the Court's Expedited Discovery Order.

The TRO issued by this Court on July 28, 2020 was clear. It stated that, "Immediately upon entry of this Order, and while the Plaintiff's request for a Preliminary Injunction is pending, the parties shall be entitled to serve interrogatories, requests for the production of documents and requests for admissions." (DE 42, at 18.) The TRO also directed the parties to "respond to such discovery requests within two days of service," and that service of same "shall be sufficient if made upon the parties by email, facsimile, or overnight courier, and depositions may be taken by telephone or other remote electronic means." (Id.) The Court's orders apply to the Receiver. *See Wiand v. Wells Fargo Bank, N.A.*, 8:12-CV-557-T-27EAJ, 2013 WL 6170610, at *1 (M.D. Fla. Nov. 22, 2013) (granting in part the defendant's motion to compel discovery from the receiver).

Here, defense counsel requested documents from the Receiver while the preliminary injunction was pending.[4] No later than August 19, 2020, defense counsel asked the Receiver to make a copy of the documents Cole produced to the Receiver on his personal laptop (which Cole saved prior to the entry of the TRO). (Exhibit A, B. Schein email). Over the course of the next two weeks, defense counsel had several conversations with the Receiver regarding the parameters for the Receiver's production of these documents. (Exhibits, B-C). During the course of those discussions, the Receiver agreed that defense counsel should have a copy of these documents but asked that they be Bates stamped and produced subject to a standard protective order. (Exhibit B, A. Futerfas e-mail). Defense counsel agreed to both conditions. (Id.)

To date, those documents have not been produced. The Receiver has not provided defense counsel with a good faith basis for its failure to produce the documents as requested. It has not even objected to their production; indeed, it agreed that defense counsel should have the documents

[4] The asset freeze as to the Trust remains pending.

subject to a protective order and bates stamping. In keeping with this Court's direction in the TRO that the parties respond to expedited discovery requests, defense counsel respectfully requests that the Court direct the Receiver to produce a Bates-stamped copy of the documents Cole possessed on his laptop prior to the entry of the TRO.

CONCLUSION

For the forgoing reasons, Defendants' Motion to Amend this Court's Order to clarify that defense counsel should be provided forthwith a copy of the records that Defendants have already provided to the Receiver should be granted.

CERTIFICIATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has conferred with the parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues, but has been unable to resolve the issues.

Respectfully submitted,

Daniel Fridman, Esq.
Attorney for The LME 2017 Family Trust
Fridman Fels & Soto, PLLC
2525 Ponce de Leon Blvd., Suite 750
Coral Gables, FL 33134
Telephone: 305 569 7701
dfridman@ffslawfirm.com

By: */s/ Daniel Fridman*
DANIEL FRIDMAN
Florida Bar No. 176478

Bettina Schein, Esq.
Attorney for Joseph Cole Barleta
565 Fifth Avenue, 7th Floor
New York, New York 10017
Telepone: (212) 880-9417
bschein@bettinascheinlaw.com

By: */s/ Bettina Schein*
BETTINA SCHEIN
Admission Pro Hac Vice Pending

Law Offices of Alan S. Futerfas
Attorneys for Lisa McElhone
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400
asfuterfas@futerfaslaw.com

By: */s/ Alan S. Futerfas*
ALAN S. FUTERFAS
Admitted Pro Hac Vice

James R. Froccaro Jr., Esq.
Attorney for Joseph W. Laforte
20 Vanderventer Ave., Suite 103W
Port Washington, New York 11050
Telephone: 516-944-5062
Facsimile: 516-944-5066
Mobile: 516-965-9180
jrfesq61@aol.com-(email)

By: */s/ James R. Froccaro Jr.*
JAMES R. FROCCARO JR.
Admitted Pro Hac Vice

GRAYROBINSON, P.A.
Attorneys for The LME 2017 Family Trust
333 S.E. 2d Avenue, Suite 3200
Miami, Florida 33131
Telephone: (305) 416-6880
Facsimile: (305) 416-6887
joel.hirschhorn@gray-robinson.com

By: */s/ Joel Hirschhorn*
JOEL HIRSCHHORN
Florida Bar No.: 104573

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 1, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Daniel Fridman
DANIEL FRIDMAN

From: Bettina Schein <bschein@bettinascheinlaw.com>
Date: Wednesday, August 19, 2020 at 1:33 PM
To: "Douglas K. Rosenblum" <DKR@Pietragallo.com>, Ryan Stumphauzer <rstumphauzer@sfslaw.com>, Tim Kolaya <tkolaya@sfslaw.com>
Cc: Daniel Fridman <dfridman@ffslawfirm.com>
Subject: Re: Laptop

Doug,

Pursuant to our telephone conversation today, our agreement is as follows:

The independent computer expert will take an image of the data on Mr. Cole's personal computer. He will copy and retain only business files. The expert will not look at or retain Mr. Cole's personal files, nor will the expert look at or retain emails. In addition, of course, the expert will not look at or retain attorney client communications, including with me at Bschein@bettinascheinlaw.com or any co-counsel which includes emails ending in "@futerfaslaw.com," "@grey-robinson.com," "@ffslawfirm.com," and "jrfesq61@aol.com" and Fox Rothschild lawyers until they were discharged from individual representation.

Please provide me with a copy of the data that the independent computer expert has retained from my client's personal computer.

Regards,
Bettina Schein

Law Offices of Bettina Schein
565 Fifth Avenue
New York, New York 10017
(212) 880
(917) 375
Bschein@bettinascheinlaw.com

From: Daniel Fridman Fridman <dfridman@ffslawfirm.com>
Date: Wednesday, August 19, 2020 at 10:01 AM
To: "Gaetan J. Alfano" <GJA@pietragallo.com>
Cc: Tim Kolaya <tkolaya@sfslaw.com>, Ryan Stumphauzer <rstumphauzer@sfslaw.com>, Bettina Schein <bschein@bettinascheinlaw.com>
Subject: RE: Laptop and Chase Account

Gaetan –

I will be speaking with defense counsel in a few minutes and will address the requests you sent this morning. I'll be back in touch soon.

Best,

Dan

Daniel Fridman | Partner
T +1 305 569 7720 **M** +1 786 514 2541 **E** dfridman@ffslawfirm.com
Fridman Fels & Soto PLLC
2525 Ponce de Leon Boulevard, Suite 750 | Coral Gables, FL 33134

From: Timothy Kolaya <tkolaya@sfslaw.com>
Date: Thursday, August 27, 2020 at 10:42 AM
To: Alan Futerfas <asfuterfas@futerfaslaw.com>
Cc: Daniel Fridman <dfridman@ffslawfirm.com>, James Froccaro <jrfesq61@aol.com>, Bettina Schein <bschein@bettinascheinlaw.com>, Ellen Resnick <ebresnick@futerfaslaw.com>, "Gaetan J. Alfano" <GJA@Pietragallo.com>, "Douglas K. Rosenblum (DKR@pietragallo.com)" <dkr@pietragallo.com>
Subject: RE: Follow up to our call of last night.

Alan:

Here are responses to the points you raised below:

First, as to paragraph one (1), Lisa McElhone knows nothing about these events. As per our call, I have no objection to a standard protective order (PO) precluding the defense from distributing documents beyond the defense team.

RECEIVER'S RESPONSE: Thank you. We will prepare a stipulation and protective order regarding the protection of confidential documents.

Second, as to paragraph two (2), we are aware that a document Lisa M received from Joe Cole was a redlined copy of the SEC's Complaint. This is a Privileged document and was marked up with redline notes pursuant to our joint-defense privilege. Your IT people should not be looking at Joint-Defense privileged materials, including emails that are clearly to counsel. We have identified the counsel domain names to Mr. Rosenblum and the computer expert. The Receiver should not be looking at these documents. This information shows that we have all not yet figured out how these various data bases interact and how to protect against incursions into attorney/client information.

RECEIVER'S RESPONSE: I have not seen or reviewed a redlined copy of the SEC's complaint with notes or comments to or from counsel. The document I was referring to was the Excel document titled "CBSG Creditor Contacts." James LaForte sent this Excel document to Bruno Scotti at Creative Capital Solutions. Where is this other document you are referring to, what email addresses was it sent to and from, and why do you believe the Receiver or his IT people have the document?

Third, as to paragraph three (3), the G-Suite holds the email domains of businesses that are unrelated to the Receivership entities. For instance, the G-Suite holds the domain of "@laquerlounge.com," the email domain for Lisa M's nail salon. We will have to have a protocol to separate these non-Receivership entities from the G-suite.

RECEIVER'S RESPONSE: Agreed. The Receiver is only reviewing and accessing emails from the @parfunding.com and @fullspectrumprocessing.com accounts. We are happy to have a discussion about separating the data from those other domains from that of the Receivership Entities.

Also, as to paragraph three (3) of your email, you note that "On August 12, 2020….a New IP address" was used. Please note that, to our knowledge, there is no "New IP address." Until the last week or so, Jamie McElhone, and all other Par employees, still had "@ParFunding" email domains on their cell phones that emanated from the G-Suite. Jamie's, for instance, was "Jamie@ParFunding.com."

RECEIVER'S RESPONSE: We are not referring to a domain. Rather, we are referring to an IP address. An IP address identifies the location from which a user is accessing information on the internet. In this particular case, after the Receivership Order was entered, three Par employees accessed the G Suite database for Full Spectrum/Par Funding from the very same IP address. Based on the data log in the G Suite, it is clear that these were intentional logins to the database, and not the result of a cell phone pinging the server because of a connected email account. Those three different accounts were used to access the Full Spectrum / Par Funding database from the same location (*i.e.*, the same WiFi network located at the same home/business/etc.). The G-Suite had never been accessed from that particular IP address prior to July 28, 2020. We really need to understand why Jamie McElhome, Aida Lau, and Jeremiah Luddeni were accessing the Receivership Entities' G Suite database from the same location after the entry of the Receivership Order.

In the wake of the TRO, merchants were emailing Jamie seeking information regarding re-load requests, questions about their account status and all manner of related questions. She made screen shots to preserve this correspondence and we are happy to provide these screen shots as part of our proposed agreement that we share with you what we have.

RECEIVER'S RESPONSE: If these communications involve merchants of Par Funding, the Receivership Order requires Jamie McElhome to immediately provide that information to the Receiver.

Regards,

Tim

TIMOTHY A. KOLAYA
PARTNER

DIRECT	305. 614. 1405
MAIN	305. 614. 1400
MOBILE	305. 321. 3055
E-MAIL	TKOLAYA@SFSLAW.COM
WEB	WWW.SFSLAW.COM

ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD
SUITE 1600
MIAMI, FL 33131

From: Alan Futerfas <asfuterfas@futerfaslaw.com>
Sent: Thursday, August 27, 2020 10:04 AM
To: Timothy Kolaya <tkolaya@sfslaw.com>
Cc: Daniel Fridman <dfridman@ffslawfirm.com>; James Froccaro <jrfesq61@aol.com>; Bettina Schein <bschein@bettinascheinlaw.com>; Ellen Resnick <ebresnick@futerfaslaw.com>; Alan Futerfas

<asfuterfas@futerfaslaw.com>
Subject: Follow up to our call of last night.

Dear Tim:

In an effort to bring document issues to a close, please see this response to your email of last night at 11:06 pm.

First, as to paragraph one (1), Lisa McElhone knows nothing about these events. As per our call, I have no objection to a standard protective order (PO) precluding the defense from distributing documents beyond the defense team.

Second, as to paragraph two (2), we are aware that a document Lisa M received from Joe Cole was a redlined copy of the SEC's Complaint. This is a Privileged document and was marked up with redline notes pursuant to our joint-defense privilege. Your IT people should not be looking at Joint-Defense privileged materials, including emails that are clearly to counsel. We have identified the counsel domain names to Mr. Rosenblum and the computer expert. The Receiver should not be looking at these documents. This information shows that we have all not yet figured out how these various data bases interact and how to protect against incursions into attorney/client information.

Third, as to paragraph three (3), the G-Suite holds the email domains of businesses that are unrelated to the Receivership entities. For instance, the G-Suite holds the domain of "@laquerlounge.com," the email domain for Lisa M's nail salon. We will have to have a protocol to separate these non-Receivership entities from the G-suite.

Also, as to paragraph three (3) of your email, you note that "On August 12, 2020….a New IP address" was used. Please note that, to our knowledge, there is no "New IP address." Until the last week or so, Jamie McElhone, and all other Par employees, still had "@ParFunding" email domains on their cell phones that emanated from the G-Suite. Jamie's, for instance, was "Jamie@ParFunding.com."

In the wake of the TRO, merchants were emailing Jamie seeking information regarding re-load requests, questions about their account status and all manner of related questions. She made screen shots to preserve this correspondence and we are happy to provide these screen shots as part of our proposed agreement that we share with you what we have.

In a separate email, Bettina Schein and Mr. Cole, who spent two hours with your IT expert and Mr. Rosenblum yesterday, provides a list of the files that were removed and copied from Mr. Cole's computer. We need a copy of these files immediately so that we can defend the case.

Thank you,

Alan

Law Offices of Alan S. Futerfas
565 Fifth Avenue, 7th Floor
New York, New York 10017
Work: 212-684-8400
Fax: 212-856-9494
E-mail: asfuterfas@futerfaslaw.com
Website: www.futerfaslaw.com

From: Bettina Schein <bschein@bettinascheinlaw.com>
Date: Thursday, August 27, 2020 at 10:03 AM
To: Timothy Kolaya <tkolaya@sfslaw.com>, Ryan Stumphauzer <rstumphauzer@sfslaw.com>, "Douglas K. Rosenblum" <DKR@Pietragallo.com>
Cc: Alan Futerfas <asfuterfas@futerfaslaw.com>, Daniel Fridman <dfridman@ffslawfirm.com>, James Froccaro <jrfesq61@aol.com>, Ellen Resnick <ebresnick@futerfaslaw.com>
Subject: Zoom meeting today and files to provide to the defense

Dear Tim,

Please provide the defense with a copy of all of the following files. Yesterday, as you know, Mr. Cole, the Receiver's computer expert, Doug Rosenblum, and I, during a 2 hour telephone call, identified all of the files below as related to the Receivership entities. The computer expert took the below-identified files and copied them to provide to the Receiver. These files were backed up on Mr. Cole's computer prior to the TRO. In addition, the Receiver already has all of these files because they are also found in the Google Suite. The file list below were taken from Mr. Cole's computer. Please provide the defense with a copy of these files, listed as they were identified on Mr. Cole's computer, as soon as possible.

{FILE LIST REDACTED}

In addition, please provide from the G Suite, all Receivership entity files from 2012 to the present, including copies of QuickBooks (these files are found on the Right Network), all financials records, tax returns, investor files, sales force files, underwriting files and customer/merchant files, as well as all Notes and any other contacts or agreements with merchants, investors and vendors.

In advance of the 2:00 pm Zoom meeting today regarding operations of the company, I attach here a list of topics provided by Mr. Cole which will be helpful for DSI and Mr. Cole to discuss during the Zoom meeting.

Regards,
Bettina

Law Offices of Bettina Schein
565 Fifth Avenue
New York, New York 10017
(212) 880
(917) 375
Bschein@bettinascheinlaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO AMEND THE COURT'S ORDER DATED JULY 27, 2020

THIS CAUSE having come before the Court on Defendants' Motion to Amend The Court's Order Dated July 27, 2020, To Clarify That Defense Counsel Can Receive a Copy of The Documents They Have Provided To The Receiver In Order To Prepare Their Defense (DE __), the Court having reviewed the Motion, and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Motion is hereby granted.

DONE AND ORDERED in Chambers in the United States District Court, Southern District of Florida, this _____ day of September, 2020.

_____
RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record via ECF.