UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____/

DEFENDANTS' JOINT RESPONSE TO RECEIVER'S STATUS REPORT OF SEPTEMBER 8, 2020 (DE 240)

Defendants Joseph W. LaForte, Lisa McElhone and Joseph Cole Barleta respectfully submit this Objection to the Receiver's Notice of Filing Report on Operations (DE 240) ("the Report") regarding certain financial assertions made in the Report and as referenced and amended by counsel for the Receiver during the September 8, 2020 Status Conference.

OMISSIONS MADE IN THE REPORT AND AS AMENDED DURING THE SEPTEMBER 8, 2020 STATUS CONFERENCE CREATED A MISLEADING IMPRESSION OF THE FINANCIAL STATE OF PAR FUNDING PRIOR TO THE TRO

1. **The Financial State of Par Funding Prior to the Order Appointing the Receiver**

The Report, as supplemented and amended by counsel for the Receiver during the conference, erroneously suggested that Par Funding was on unstable financial grounds prior to the TRO and that such grounds are purportedly being revealed through the investigative work of the Receiver. It was also suggested during the September 8, 2020 conference by these same

parties that there may be insufficient monies available to make investors whole. The true facts are otherwise.

Although the figures provided by the Receiver need to be verified by Par Funding documents, the day before the Court granted the SEC's application for a TRO, July 27, 2020, the Receiver reported that $365M was owed to investors. Defendants are confident that Par Funding records will reflect that these same investors have received at least $140M in interest payments over the past 3-4 years. That means that the net principle balance due investors is about $225M.

So that the defense position is clear, in prior filings we have urged the Receiver to reopen the MCA business. Doing so will allow the investors to not only be repaid principle, but also the agreed-upon interest reflected in the new Notes signed by the vast majority of the investors in April and May of 2020. In other words, stated very simply, had the SEC not taken its extreme action in July 2020, interest payments would have continued just as they had since 2012. As shown herein, there is nothing presented in the Receiver's Report, or the statements supplementing the Report made by Receiver's counsel, which changes that fact.

For example, we are quite confident that the books and records of Par Funding and the records of prior counsel for Par, Fox Rothschild, will show that on July 27, 2020, that law firm was collecting on $148M in unpaid merchant receivables. Why Fox Rothschild, which knows more about these cases than any firm on Earth – since they have litigated them – was not immediately pressed into service to continue their collection work is beyond comprehension. Having a new law firm replace Fox Rothschild will be very expensive and it will take that new firm months to understand the MCA business and the state of litigation and the relevant legal rulings around the country. This unnecessary expense and delay will come at a cost to investors,

as merchant collections have always been a significant source of revenue for Par Funding, even if such efforts may take time.

In addition to the unpaid merchant receivables previously being collected by Fox Rothschild, Par Funding holds a whopping $421M in current accounts receivable (AR). This AR includes other large merchants such as HMC (Kara Dipietro) that owes Par Funding $11M. That merchant is represented by Shane Heskins, Esq., at White & Williams, an individual who, despite losing in every court hearing his lawsuits, still erroneously claims that merchant funding agreements – agreements long recognized in the marketplace and by the Federal Reserve – are improper. *See* Declaration of Norman M. Valz, annexed to Defendants' Motion in Opposition to Amend Receivership Order as Exh. A (DE 130).

Moreover, long before and through July 27, 2020, Par Funding was collecting approximately $1.5M per day in merchant ACH and wire payments. After the Receiver was appointed, ACH processing was halted and the defense is unaware whether it has been reactivated. Had this not occurred, Par Funding would have received, from July 27, 2020 to date, another $45M in merchant payments.

If the law firm collection efforts are reactivated ($149M) and had the ACH processing continued to date (another $45M since July 27), the Receiver would be well on the way to collecting the money owed investors. And that is without the $421M in standard AR. In short, properly run, Par Funding has more than double the outstanding merchant debt to repay investor principle and could continue to pay its investors interest. Par Funding certainly was doing so up until July 27, 2020. To be clear, if Par Funding is properly operated, it can make good on the $365M in current liabilities, including interest owed pursuant to the modified Notes. Notably, at the time the Receiver was appointed, Par Funding was holding $25M in its accounts. Thus, when

the SEC sought the TRO, Par Funding had approximately $595M in cash and receivables broken down as follows: $421M in active AR; $149M in collection defaults, defined as 6 weeks without a payment and subject to collection by legal; and $25M in cash at Par Funding.

2. Receiver's Counsel's Supplement to the Report During the Conference Mischaracterized the Meaning and Context of the Largest 10 Merchants

While the Receiver's Report (DE 240) appropriately noted the 10 largest merchants which have received funding from Par Funding,[1] it did not criticize or suggest anything untoward about this circumstance. During the conference, however, counsel for the Receiver amended and supplemented that Report, erroneously suggesting that the purported financial instability of some of these merchants created serious collection concerns for Par Funding. These statements were inaccurate for several reasons. First, Receiver's counsel failed to advise this Court (and the investors and public), that many of these debts are significantly collateralized beyond Par Funding's standard factoring agreement protections. For example, to secure some of these debts, Par Funding has liens against properties and other collateral. Par Funding did not enter into these merchant funding agreements without securing additional protections. Second, these accounts reflect long-standing relationships where significant payments have already been collected and investor principle exposure is actually minimal. In other words, and as we explained during the Preliminary Injunction hearing, because of monies already collected from these same merchants, the debt that remains is largely factoring fees, i.e., profit—*not* investor principle. With a review of Par Funding accounting records (which access by the defense the Receiver and the SEC have opposed), the defense can quantify this figure to the penny. The failure of Receiver's counsel to

[1] The defense recollects that at the time of the TRO, these 10 merchants were in the $421M AR bucket of receivables.

advise this Court and the investors of these material facts may have led this Court and others to draw conclusions which are not supported by the true factual context and accounting.[2]

For example, counsel for the Receiver stated that a $400,000 payment did not clear from B and T Supply and that Joe LaForte responded in an email to the owner of B and T Supply, "I don't give a ****", about a purported loan that B and T said it would obtain. What Receiver's counsel failed to advise this Court, or the investors, or the public, is that Par Funding received replacement payments for that amount by wire shortly after Par received notice of the return payment.

Receiver's counsel also asserted during the conference words to the effect that "B and T Supply doesn't necessarily intend on returning any of that money." Did the Receiver or his counsel speak with B and T? Should we take this to mean that the Receiver has led B and T been led to believe that Par Funding will not aggressively litigate and collect on its agreements? If merchants believe, based on the Receiver or its counsel's actions and statements, that Par Funding agreements will not be enforced and collected, then which merchant in their right mind would pay? For these reasons as well, the discharge of Fox Rothschild makes no sense whatsoever.

Another merchant cited by the Receiver is National Brokers. National Brokers rarely missed a payment and the defense believes that National Brokers has repaid all principle and that the AR for this merchant is all factoring fees, i.e., profit. Again, a review of Par Funding records would show these numbers to the penny.

[2] Someone also provided misleading and inaccurate information to the Philadelphia Inquirer which, as a result, yesterday published a largely inaccurate account of these same matters.

The Receiver also identified Colorado Homes. Receiver's counsel failed to state that their factoring agreement is secured by significant property and assets. This merchant is a large and valuable land development outside Aspen, Colorado. It is secured by multiple deeds of trust with significant equity. The Receiver's counsel did not mention any of this.

Another merchant is Big Red. Par Funding has significant security and collateral on that funding agreement as well, including a farm in New Jersey worth millions of dollars; a valuable Florida property; and other collateral. This information was omitted by Receiver's counsel.

Another merchant funding agreement identified by the Report is Health Acquisition. Again, Par Funding controls collateral on this agreement and, in fact, successfully foreclosed on a piece of property in Florida and now holds the deed. The financials of this company are strong, and the agreement was well underwritten. Fox Rothschild was working on this matter and obtained a settlement offer in mid-July 2020.

The Receiver's Report also identified JRC Paint. Par Funding has been fully repaid the principle it extended and JRC is now paying funding fees, i.e., profit, totaling to date between $1.5 and $2M. JRC had paid on its factoring agreement every day until the Receiver took over and Par Funding helped and supported JRC through Covid-19 with modified payments.

Kingdom Logistics, another merchant identified in the Report, regularly paid Par Funding hundreds of thousands of dollars per week. The defense is not aware of a missed payment although, again, a review of Par Funding records would show these payments to the penny. And, again, Par Funding has property as collateral to backstop this funding agreement.

D19 Liquor, another merchant identified in the Report, paid every day on multiple accounts – at least until the Receiver was appointed. Without access to Par Funding records, the defense does not recall the cash over cash v. funding fees exposure. But a quick review of Par

Funding records would immediately reveal whether, and how much, D19's current payments are a return of investor principle, if any, or funding fees, i.e., profit.

Lastly, another merchant, Dual Diagnostics, settled with Par Funding just days before the TRO was filed. That settlement was favorable to Par Funding and, combined with other arrangements, is likely to recoup Par Funding's investor monies to that merchant.

For some unknown reason, the Receiver, and particularly its counsel, seem intent on suggesting that Par Funding's business, extant since 2012 and paying investors millions in principle and interest, was not real, not sustainable or something – anything to justify ending it. If that is their goal, then they will have harmed investors. Had the SEC not brought in a Receiver, investors *would still be receiving interest*, and merchants would be held accountable for their agreements by Fox Rothschild. For Receiver's counsel to supplement the Report and make public assertions without understanding the collateral backing these agreements, the merchants' payment history, and whether the amounts due now from merchants still encompass investor principle (cash over cash) and, if so, how much; or if these merchants are now paying only funding fees, suggests a significant lack of understanding of the finances and operations of Par Funding's business. This information is readily available from the books and records of Par Funding. Someone simply needed to look at these records before making these statements. Thus, the defense is concerned that materially incomplete information was provided to this Court and to the public and also made its way into national press. As has been requested since the filing of this action, the Receiver must take immediate action to engage in collection activity to protect the investors.

3. **The Receiver has Not "Recovered" $25 million – that Money was in Par Funding's Accounts Before the Order Appointing the Receiver Issued.**

During the September 8, 2020 Status Conference, the Receiver's counsel advised the Court that the Receiver had "recovered" approximately $25M. We are unsure what message Receiver's counsel was trying to convey. But to make clear what the facts are, the Court may recall that during a conference call in early August 2020, the SEC mistakenly asserted that Par Funding had only $2.5M in its accounts when the Receiver took over. We subsequently corrected that statement and advised the Court that the true figure was approximately $25M. (*See* Defense Joint Response and Cross Motion at page 5, dated August 7, 2020 (DE 106)) As we reported then, Par Funding's retained earnings and then-recent ACH activity in Par Funding accounts totaled about $25M as of late July 2020. Consequently, the defense questions whether, aside from the money that was already in Par Funding bank accounts on July 27, 2020, the Receiver or his counsel have collected *any* additional funds from merchants or collections. Such funds should be broken out separately from those funds already in Par Funding accounts at the time of the TRO.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 10, 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/Joel Hirschhorn
JOEL HIRSCHHORN