

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.

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**INVESTOR NON-PARTY PLAINTIFFS' NOTICE OF WITHDRAWAL OF MOTION  
FOR LIMITED RELIEF FROM THE AMENDED ORDER STAYING LITIGATION  
AGAINST THE RECEIVERSHIP ENTITIES (ECF NO. 252)**

Joseph Caputo and Joan Caputo (the "Delaware Plaintiffs") and additional investors in A Better Financial Plan ("ABFP"), Dennis Melchior, Linda Letier, Teresa Kirk-Junod, Robert Hawrylak, Joseph Brock, Raymond G. Heffner, John Madden, Thomas D. Green, Maureen A. Green, Dominick Bellizzie, Janet Kaminski, Cynthia Butler, William Butler, Edward Woods, Glen W. Cole, Jr., John Butler, Robert Betz, Michael D. Groff, Shawn P. Carlin, Marcy H. Kershner, and Donald Dempsey (the "E.D.P.A. Plaintiffs," and collectively, with the Delaware Plaintiffs, "Investor Non-Party Plaintiffs"), by and through their undersigned counsel, hereby withdraw their Motion for Limited Relief from the Amended Order Staying Litigation Against the Receivership Entities (**ECF No. 252**), without prejudice. The reasons for the withdrawal are as follows:

1. The Investor Non-Party Plaintiffs are currently operating under deadlines of September 25, 2020 to show cause regarding the standing of the Investor Non-Party Plaintiffs

and September 29, 2020 to file a reply in further support of the Motion for Limited Relief (the “Deadlines”).

2. The Investor Non-Party Plaintiffs have been in discussions with counsel for the Receiver and the SEC in an effort to explore whether there may be an opportunity to resolve the Motion for Limited Relief without requiring the Court to expend its time and resources on this issue. The Investor Non-Party Plaintiffs are hopeful that the discussions may resolve some, if not all, of the Motion for Limited Relief. However, it is unlikely that these discussions will be completed in advance of the Deadlines.

3. In order to promote judicial efficiency and allow the parties to complete their discussions, the Investor Non-Party Plaintiffs hereby withdraw the Motion for Limited Relief without prejudice to refile only if the discussions do not resolve the Motion.

4. Since the order to show cause resulted from arguments made by the SEC in its Response to the Motion for Limited Relief (the “SEC Response”) (ECF No. 265), Investor Non-Party Plaintiffs believe that the withdrawal of the Motion for Limited Relief moots the need to reply to the SEC Response and to respond to the Order to Show Cause Regarding Standing (ECF No. 272).

5. In the event this Court still desires and requires a response to the Order to Show Cause, the Investor Non-Party Plaintiffs briefly respond herein and, in the event the Investor Non-Party Plaintiffs renew the Motion for Limited Relief, the memorandum in support of the renewed Motion will address in detail the Court’s order to show cause regarding the standing of the Investor Non-Party Plaintiffs.

6. The Investor Non-Party Plaintiffs have standing to file the Motion for Limited Relief because the scope of the injunction provision in the Amended Order Appointing Receiver

(“Amended Order”) is unclear as to whether it enjoins claims *individual claims* that belong to the Investor Non-Party Plaintiffs, not the Receiver, which claims could not be brought by the Receiver, who steps into the shoes of the Receivership Entities. Specifically, the Amended Order is unclear as to: (1) whether the Investor Non-Party Plaintiffs can bring direct claims against third-parties (not the Receivership Entities), and (2) whether the statute of limitations is tolled for claims that accrued in favor of the Investor Non-Party Plaintiffs against the Receivership Entities and any third parties. “When an injunction fails to satisfy the specificity requirements of Rule 65(d), the proper remedy is clarification.” *United States v. Fifty Below Sales & Mktg.*, 2012 U.S. Dist. LEXIS 48894, at \*6 (D. Minn. Apr. 6, 2012). See *IGT v. High 5 Games, LLC*, 2018 U.S. Dist. LEXIS 177093, at \*7 (S.D.N.Y. Apr. 17, 2018) (“It is undoubtedly proper for a district court to issue an order clarifying the scope of an injunction in order to facilitate compliance with the order and to prevent ‘unwitting contempt.’”) (citation omitted). Moreover, when a receivership order relates to an interest held by a third party, the third party is entitled to appear in an SEC enforcement action “for the limited purpose of challenging or seeking modification of the [receivership order] without the need for leave to intervene.” *Leal v. Bimini Dev. of Vill. West Corp.*, 2018 U.S. Dist. LEXIS 220941, at \*8 (S.D. Fla. Aug. 28, 2018).

7. Here, the stay provisions in the Amended Order directly relate to an interest that is possessed by the Investor Non-Party Plaintiffs. The claims that the Investor Non-Party Plaintiffs seek to pursue at this time are direct individual claims accruing to the investors in the Receivership Entities. These claims are separate and distinct from the claims possessed by the Receiver. “A receiver stands in the shoes of the corporation and can assert only those claims which the corporation could have asserted.” *Leal v. Bimini Dev. of Vill. West Corp.*, 2018 U.S. Dist. LEXIS 220941, at \*7 (S.D. Fla. Aug. 28, 2018). A “[r]eceiver lacks standing to assert

claims on behalf of the defrauded investors and has standing to assert claims on behalf of the receivership entities, ..." *Obermaier v. Arnett*, 2002 U.S. Dist. LEXIS 22855, \*4 (M.D. Fla. Nov. 20, 2002).

8. Accordingly, regardless of the implications the Amended Order may have on claims by or against the Receivership Entities, Investor Non-Party Plaintiffs' clearly possess standing to seek clarification of the Amended Order regarding *their* ability to protect and pursue *their* direct, individual claims that they can bring *on behalf of themselves* to protect *their own rights* against any culpable party.

9. However, the Court need not determine the issue of standing at this time as the Investor Non-Party Plaintiffs hereby withdraw the Motion for Limited Relief without prejudice.

Dated: September 24, 2020.

Respectfully submitted,

**BARKER COOK, P.A.**

*/s/ Chris A. Barker*

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*ATTORNEYS FOR INVESTOR PLAINTIFFS*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was electronically filed and served by electronic notification to all counsel listed on the Court's CMECF system, on this 24<sup>th</sup> day of September, 2020.

By: /s/ Chris A. Barker

Chris A. Barker, Esquire