

**UNITED STATES DISTRICT COURT  
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.

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**ORDER REQUIRING SUPPLEMENTAL DECLARATION  
IN SUPPORT OF NON-PARTY BROADWAY ADVANCE, LLC’S  
MOTION FOR CLARIFICATION OF ORDER AND REQUEST FOR A HEARING**

**THIS CAUSE** comes before the Court on Non-Party Broadway Advance, LLC’s (“Broadway”) Motion for a Clarification of Order and Request for a Hearing [ECF No. 251] (“Motion”). In the Motion, Broadway seeks an evidentiary hearing to clarify the scope of the Court’s Order Granting Preliminary Injunction by Consent as to Defendant Joseph Cole Barleta (“Cole”) [ECF No. 202] (“Preliminary Injunction Order”), which directed financial institutions to freeze funds owned or controlled by Cole. *See* Mot. ¶¶ 1, 8-9; Preliminary Injunction Order, Section II, at 4-5.

According to the Motion, Broadway is a Merchant Advance Lender that used Cole as its “outside accountant” from July 2014 through January 2016. *See* Mot. ¶¶ 3-4. Broadway indicates that Actum Processing (“Actum”)—a company that processes financial transactions—is refusing to release funds it is holding on behalf of Broadway because of concerns that Cole controls Broadway. *See id.* ¶ 2, 7. Broadway denies that it is controlled by Cole and requests an evidentiary

hearing for the Court to determine if the Broadway funds held by Actum should be frozen pursuant to the Preliminary Injunction Order. *See id.* ¶¶ 8-9.

Receiver Ryan K. Stumphauzer and Plaintiff Securities and Exchange Commission (“SEC”) filed responses to the Motion. *See* [ECF No. 263] (“Receiver’s Response”) and [ECF No. 266] (“SEC’s Response”). The SEC argues that Broadway lacks standing to file motions in this case absent intervention. *See* SEC’s Resp. at 1. The Receiver agrees with Broadway that there are questions of fact regarding whether Cole controls the Broadway funds held by Actum. *See* Receiver’s Resp. ¶ 15. However, Receiver proposes that—in lieu of an evidentiary hearing—Broadway submit a declaration and evidence establishing whether Cole has control over the Broadway funds Actum is holding, and whether the funds in this account are otherwise “Recoverable Assets” as defined in the Court’s Amended Order Appointing Receiver [ECF No. 141] (“Amended Receivership Order”).

The Court subsequently required Broadway to show cause why the Court should not strike the Motion due to lack of standing. *See* Order to Show Cause Regarding Standing [ECF No. 272]. Broadway filed a response to the Order to Show Cause Regarding Standing, *see* [ECF No. 284], as well as a declaration from Broadway’s Chief Executive Officer. *See* Declaration of Nicholas Defonte [ECF No. 281-1] (“Declaration”). Although the Declaration addresses the question of whether Cole controls Broadway, it does not establish that the Broadway funds Actum is holding are not Recoverable Assets—*i.e.*, assets that (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; and/or (c) may otherwise be includable as assets of the estates of the Defendants. *See* Amended Receivership Order at 1.

Having reviewed the Motion, the SEC and Receiver's responses, Broadway's response to the Order to Show Cause Regarding Standing, and the Declaration, it is hereby

**ORDERED AND ADJUDGED** as follows:

1. Broadway has asserted a sufficient basis for standing to file this Motion as a non-party. Broadway is seeking clarification regarding who is bound by the Court's Preliminary Injunction Order, which is one of the limited circumstances in which the Court will consider a motion from a non-party. *See NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 243 (2d Cir. 2013) (noting that under Fed. R. Civ. P. 65(d), every injunction issued by a district court forbids those in "active concert or participation" with an enjoined party from assisting in a violation of the injunction and that "the Supreme Court has expressed its expectation that, when questions arise as to who is bound by an injunction ... district courts will not 'withhold a clarification in the light of a concrete situation.'" (quoting *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945))).

2. Broadway's request for an evidentiary hearing is **DENIED**. Instead, as the Receiver proposed, the Court will resolve this issue based on written submissions.

3. On or before **October 6, 2020**, Broadway shall file a supplemental declaration and evidence establishing that the Broadway funds Actum is holding are not Recoverable Assets.

4. Although the Court will not hold an evidentiary hearing as requested in the Motion, it will briefly address this Motion at the status conference set for **October 7, 2020 at 2:00 P.M.**

**DONE AND ORDERED** in Fort Lauderdale, Florida, this 30th day of September, 2020.



**RODOLFO A. RUIZ II**  
**UNITED STATES DISTRICT JUDGE**

Copies to: Counsel of record