

**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

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION TO STRIKE
NOTICES OF APPEARANCE OF MELANIE DAMIAN AND ALLISON LEONARD**

Plaintiff Securities and Exchange Commission respectfully requests that the Court strike the Notices of Appearance of Attorneys Melanie Damian and Allison Leonard, both of the law firm Damian & Valori LLP [DE 523 & 524]. By their own admission, Damian and Leonard do not represent any party to this case. *Id.* Instead, they filed Notices of Appearance “on behalf of Non-Parties, Eckert Seamans Cherin & Mellot, LLC and John Pauciulo.” *Id.*

- There is no motion pending against Damian and Leonard’s clients;
- No hearing has been requested from Magistrate Judge Reinhart concerning Damian and Leonard’s clients; and
- Damian and Leonard’s clients have not filed a motion (to intervene or for any other relief) in this case.

Instead, Damian and Leonard simply represent clients who are among the numerous entities and individuals from whom the Commission has sought discovery in connection with this case or its investigation, and/or who are interested in this case.

There are hundreds of victim investors in this case. Many of them have asked or inquired about filing appearances in this case, either *pro se* or through counsel. However, they are not parties, and they obtain their information about this case from the Receiver's website where filings are published. Damian and Leonard's clients should not be treated any differently from the victims in this case.

Local Rule 11.1 dictates who may file a Notice of Appearance in this case. Nothing in Rule 11.1 applies to Damian or Leonard, or justifies their filing a Notice of Appearance. Undersigned counsel conferred with Damian prior to filing this Motion and asked that they withdraw their Notices of Appearance so that we do not have to spend Commission resources drafting and filing a Motion to Strike. Incredibly, Damian rejected our request.

Damian first claimed her Notice of Appearance is justified under Local Rule 11.1(d). (Exhibit A). It is not. Local Rule 11.1(d) states as follows:

(1) The filing of any pleading, written motion, or other paper shall constitute an appearance by the person who signs such paper unless the paper specifies otherwise.

(2) Unless they have noticed their appearance by filing a pleading, written motion, or other paper, any attorney appearing on behalf of a non-party witness at a hearing shall file and serve a notice of appearance prior to the attorney's appearance on behalf of the attorney's client at the hearing. When the appearance relates to a grand jury matter, the notice of appearance shall be filed with the Clerk of the Court in such manner as to maintain the secrecy requirements of grand jury proceedings, if applicable.

This Local Rule is inapplicable. No hearing is scheduled concerning Damian and Leonard's clients. No hearing has been requested from Magistrate Judge Reinhart in connection with their clients. And Damian and Leonard know that. Nor could a discovery hearing be set, as Magistrate Judge Reinhart's procedures for discovery hearings explicitly state they do not apply to non-parties. Damian and Leonard are aware of this, and they correctly pointed this out to undersigned counsel when we conferred about their clients' response to our subpoena and

undersigned requested hearing dates from them. Therefore, ***Rule 11.1(d) is inapplicable***, Damian and Leonard know that, and the Court should strike the Notices.

In a further effort to avoid having to litigate against them, undersigned counsel responded to Damian and Leonard in writing, to make crystal clear that no hearing had been requested (thus obliterating their purported Rule 11.1(d) basis). Undersigned counsel again asked that they withdraw their Notices of Appearance so we could conserve Commission resources by not having to file a Motion to Strike. Again, Damian refused. This time, she pivoted to new, equally meritless reasons.

Now Damian claims that the Notices of Appearance are proper because:

- (1) Undersigned counsel for the Commission will not communicate with Pauciulo and Eckert Seamans' Pennsylvania counsel unless they are admitted in this District; and
- (2) Damian "need[s] a mechanism to move for the pro hac admission" of the Pennsylvania lawyers, and wants to do so through this Court.

(Exhibit A).

This borders on the absurd. There is no requirement that Pauciulo and Eckert Seamans' Pennsylvania counsel be admitted in this District in order for undersigned counsel to communicate with them. In fact, undersigned has spoken with the Pennsylvania counsel, conferred with them about discovery issues, and has copied the Pennsylvania counsel on email messages *to confer about the instant Motion* as recently as *today*. (Exhibit A, copying Pennsylvania counsel Jay Dubow and Katie Recker). While Damian claims undersigned counsel will not communicate with Pennsylvania counsel absent their admission to this Court, Damian herself is on the same emails undersigned counsel sends to Damian and the Pennsylvania counsel (as recently today), and is therefore aware that undersigned includes them on communications. (Exhibit A). Undersigned

counsel had a conference call with Pauciulo and Eckert's local counsel and Pennsylvania counsel last week. (Exhibit B). And undersigned has communicated with the Pennsylvania counsel about specific discovery issues as recently as last week as well. (Exhibit C). Thus, the first argument is bogus.

The second reason Damian provides appears to be the real reason for the Notices of Appearance. According to Damian, the Pennsylvania lawyers want to file to appear *pro hac vice* through this Court – perhaps even in this case. They don't represent any party to this case. No motion is pending. The effort to file Notices of Appearance – when not representing any party or any non-party with litigation pending in this case – in order to have a “mechanism” for seeking *pro hac vice* admission of out-of-state lawyers representing non-parties who have no litigation pending before this Court is not a proper basis for filing a Notice of Appearance. Local Rule 11.1.

Instead, if Damian and Leonard's clients want to seek relief from this Court, they need to file a motion to intervene. They cannot simply use a Notice of Appearance to gain a foothold in this Commission enforcement action for purposes of filing *pro hac vice* motions or to seek other relief from this Court.

If Damian and Leonard are permitted to file Notices of Appearance – despite having no issue pending before this Court and not representing any party – then the hundreds of investors, merchant borrowers, and other interested parties will seek the same. We have repeatedly addressed these issues with investors and merchants, many of whom have contacted the Court and/or the Commission about wanting to appear or be heard in this case. The Rules are not different for attorneys. If a motion is filed against Damian and/or Leonard's client(s) in this case, or if they seek to intervene in this case, then a Notice of Appearance would be appropriate. Until then, it is not. The Commission anticipates that Damian and Leonard might argue that they should be

permitted to respond to this Motion, thereby “appearing” in this case and getting to appear in this case. The Court can strike the Notices without awaiting a response, as the Notices admit they are filed on behalf of non-parties and the docket reflects that there is no motion or hearing pending or set concerning these non-parties.

WHEREFORE, the Commission respectfully requests that the Court summarily strike Damian and Leonard’s Notices of Appearance because they do not represent any party or non-party litigant in this case.

Respectfully submitted,

April 7, 2021

By: Amie Riggle Berlin
Amie Riggle Berlin
Senior Trial Counsel
Florida Bar No. 630020
Telephone: (305) 982-6322
Facsimile: (305) 536-4154
Email: berlina@sec.gov

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305)982-6300
Facsimile: (305)536-4154

CERTIFICATE OF CONFERRAL

Undersigned counsel conferred with counsel for Damian and Leonard before filing, and was unable to resolve the issues raised in this Motion to Strike.

s/Amie Riggle Berlin
Amie Riggle Berlin

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2021, I electronically filed the foregoing response with the Clerk of Court using CM/ECF and copies were delivered via the CM/ECF system to counsel of record. By: s/Amie Riggle Berlin

Berlin, Amie R.

From: Berlin, Amie R.
Sent: Wednesday, April 7, 2021 8:22 PM
To: Melanie Damian
Cc: Allison Leonard; Jacqmein, Victoria; Alan Futerfas; Brian Miller; Alejandro Soto; Daniel Fridman; Bettina Schein; James R. Froccaro; Jeffrey Cox; Jeffrey Marcus; Schiff, Andrew; Jay A. Dubow (jay.dubow@troutman.com); Katie Recker
Subject: Re: Conferral

Melanie,

I've never refused to communicate with counsel because they aren't admitted in this jurisdiction. That's not accurate, and I've emailed with those lawyers already. I have advised them I prefer to communicate in writing, which is my position regardless of whether or not they are admitted pro hac vice or are admitted in this district.

You don't represent a party to this case. There is no motion or other matter pending against any client you represent. Therefore, your notice of appearance is improper. Since you won't withdraw it, we will ask the court for assistance.

Thanks,
Amie

> On Apr 7, 2021, at 3:19 PM, Melanie Damian <mdamian@dvllp.com> wrote:

>

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>

>

> Hi Amie,

>

> You sent us multiple e-mails on Thursday and Friday indicating you were asking for dates for a hearing. We provided dates. You only told us after we filed the appearances that you would wait until you received our Rule 45 logs to decide on/or request a hearing. I am also concerned because the Pennsylvania counsel plan to defend the deposition on Friday. We understand you are refusing to communicate with them absent an admission to the Court in this case. Based on this position, we need a mechanism to move for the pro hac admission. Under the circumstances, I think it makes sense to have the appearances made in anticipation of both disputes. We don't intend on taking positions on any other issues in the lawsuit. This seems the most straight forward path but I am happy to discuss alternatives.

>

> Melanie E. Damian

> Partner

>

>

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>

> 1000 Brickell Avenue, Suite 1020

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> 305-371-3960 (office)

> 305-371-3965 (fax)

>
> mdamian@dvlip.com |
> https://protect2.fireeye.com/v1/url?k=833bb709-dca08e1f-833b53bf-8681d
> 5b5fa8e-d81dff073aa86b68&q=1&e=5bc95d5b-31f3-44b0-9b88-9334d905c8fd&u=
> http%3A%2F%2Fwww.dvlip.com%2F

>
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>
> -----Original Message-----

> From: Berlin, Amie R. <BerlinA@sec.gov>
> Sent: Wednesday, April 7, 2021 1:33 PM
> To: Melanie Damian <mdamian@dvlip.com>; Allison Leonard
> <aleonard@dvlip.com>
> Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>; Alan Futerfas
> <asfuterfas@futerfaslaw.com>; Brian Miller <brian.miller@akerman.com>;
> Alejandro Soto <asoto@ffslawfirm.com>; Daniel Fridman
> <dfridman@ffslawfirm.com>; Bettina Schein
> <bschein@bettinascheinlaw.com>; James R. Froccaro <jrfesq61@aol.com>;
> Jeffrey Cox <jlc@sallahlaw.com>; Jeffrey Marcus
> <jmarcus@mnrlawfirm.com>; Schiff, Andrew <schiffa@SEC.GOV>; Jay A.
> Dubow (jay.dubow@troutman.com) <jay.dubow@troutman.com>; Katie Recker
> <cmrecker@welshrecker.com>
> Subject: RE: Conferral

>
> Hi Melanie,

>
> Per my prior email message, we are not seeking a hearing on the objections. If we file a motion to compel or an enforcement action against your clients, then you would have cause to file a notice of appearance. At this time, no such motion has been filed and no hearing on objections is being requested. We have moved to strike, or the Court has unilaterally stricken, numerous filings by investors' counsel, investors, merchants, and others in the case who have sought to file without moving to intervene. Your clients are not uniquely situated and nothing is pending against them. Therefore, we ask that you withdraw your notices or we will file today to strike them and for any additional relief we deem necessary for using Commission resources to litigate this issue.

>
> Thank you,

> Amie

>
> -----Original Message-----

> From: Melanie Damian <mdamian@dvlip.com>
> Sent: Wednesday, April 7, 2021 12:07 PM
> To: Berlin, Amie R. <BerlinA@sec.gov>; Allison Leonard
> <aleonard@dvlip.com>
> Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>; Alan Futerfas
> <asfuterfas@futerfaslaw.com>; Brian Miller <brian.miller@akerman.com>;
> Alejandro Soto <asoto@ffslawfirm.com>; Daniel Fridman
> <dfridman@ffslawfirm.com>; Bettina Schein

> <bschein@bettinascheinlaw.com>; James R. Froccaro <jrfesq61@aol.com>;

> Jeffrey Cox <jlc@sallahlaw.com>; Jeffrey Marcus

> <jmarcus@mnrlawfirm.com>; Schiff, Andrew <schiffa@SEC.GOV>; Jay A.

> Dubow (jay.dubow@troutman.com) <jay.dubow@troutman.com>; Katie Recker

> <cmrecker@welshrecker.com>

> Subject: RE: Conferral

>

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>

>

> Hi Amie (and all cc'd, I hope everyone is well),

>

> We don't believe the rules you cite are applicable because we are not seeking to intervene in this action. We filed the notice of appearance, pursuant to Local Rule 11.1(d), on behalf of the non-parties you have subpoenaed because you informed us that you would be seeking a hearing before the Magistrate Judge concerning non-parties' objections to your subpoenas. We believe the rules required us to appear under the circumstances. Further, we will be moving for admission of Jay Dubow, Katie Recker and Amy Carver pro hac vice on behalf of the non parties so that they may have authority to appear to argue the applicable objections.

>

> We plan to send you the information required by Rule 45(e)(2)(E) today. We have previously provided our availability for hearing as you requested. Let me know if you think we need to discuss further.

>

> Thank you,

>

>

> Melanie E. Damian

> Partner

>

>

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>

> mdamian@dvllp.com |

> <https://protect2.fireeye.com/v1/url?k=0a4f506d-55d4694b-0a4fb4db-86766>

> [6c9b37a-ece0ab34156e234b&q=1&e=5a6e863c-51a3-4ff9-9f30-ad7d4127da23&u=](https://protect2.fireeye.com/v1/url?k=0a4f506d-55d4694b-0a4fb4db-86766)

> [http%3A%2F%2Fwww.dvllp.com%2F](http://www.dvllp.com)

>

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>

> -----Original Message-----

> From: Berlin, Amie R. <BerlinA@sec.gov>
> Sent: Wednesday, April 7, 2021 11:06 AM
> To: Melanie Damian <mdamian@dvllp.com>; Allison Leonard
> <aleonard@dvllp.com>
> Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>; Alan Futerfas
> <asfuterfas@futerfaslaw.com>; Brian Miller <brian.miller@akerman.com>;
> Alejandro Soto <asoto@ffslawfirm.com>; Daniel Fridman
> <dfridman@ffslawfirm.com>; Bettina Schein
> <bschein@bettinascheinlaw.com>; James R. Froccaro <jrfesq61@aol.com>;
> Jeffrey Cox <jlc@sallahlaw.com>; Jeffrey Marcus
> <jmarcus@mnrlawfirm.com>; Schiff, Andrew <schiffa@SEC.GOV>
> Subject: RE: Conferral

>

> Melanie and Allison,

>

> I have not received a response from you. I would appreciate it if you could please respond today so that we can make the appropriate filing today if necessary.

>

> Thank you,

> Amie

>

> -----Original Message-----

> From: Berlin, Amie R. <BerlinA@sec.gov>
> Sent: Tuesday, April 6, 2021 5:57 PM
> To: Melanie Damian <mdamian@dvllp.com>; Allison Leonard
> <aleonard@dvllp.com>
> Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>; Alan Futerfas
> <asfuterfas@futerfaslaw.com>; Brian Miller <brian.miller@akerman.com>;
> Alejandro Soto <asoto@ffslawfirm.com>; Daniel Fridman
> <dfridman@ffslawfirm.com>; Bettina Schein
> <bschein@bettinascheinlaw.com>; James R. Froccaro <jrfesq61@aol.com>;
> Jeffrey Cox <jlc@sallahlaw.com>; Jeffrey Marcus
> <jmarcus@mnrlawfirm.com>
> Subject: Conferral

>

> Hi Melanie and Allison,

>

> I hope you're both doing well. I'm writing about your notice of appearance in the SEC v. CBSG case. Counsel not representing parties cannot simply appear in a case. Instead, you would need to move to intervene. Section 21(g) of the Exchange Act and FRCP 24. Please advise whether you will withdraw your notices and if not, why not so we can confer about our motion to strike.

>

> Thank you,

> Amie

>

Berlin, Amie R.

From: Berlin, Amie R.
Sent: Monday, March 29, 2021 10:42 PM
To: 'Allison Leonard'
Cc: Jacqmein, Victoria; Dubow, Jay A.; damian@dwaldmanlaw.com; Catherine Recker; Melanie Damian; Jennifer Flores
Subject: RE: SEC v CBSG subpoena objections

2pm on Thursday sounds great. We will send a call-in number.

Thank you,
Amie

From: Allison Leonard <aleonard@dvllp.com>
Sent: Monday, March 29, 2021 6:03 PM
To: Berlin, Amie R. <BerlinA@sec.gov>
Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>; Dubow, Jay A. <Jay.Dubow@Troutman.com>; damian@dwaldmanlaw.com; Catherine Recker <cmrecker@welshrecker.com>; Melanie Damian <mdamian@dvllp.com>; Jennifer Flores <jflores@dvllp.com>
Subject: Re: SEC v CBSG subpoena objections

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Hi Amie,

How about Thursday at 2:00 p.m.? Will you send around a call-in number?

Thank you,

Allison

Allison J. Leonard
Partner

DAMIAN & VALORI LLP
ATTORNEYS AT LAW

Culmo
TRIAL ATTORNEYS

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On Mar 29, 2021, at 3:33 PM, Berlin, Amie R. <BerlinA@sec.gov> wrote:

Hi Allison,

Yes, that works for me. Please let me know what specific time you would like to have the call.

Thanks,

Amie

From: Allison Leonard <aleonard@dvllp.com>

Sent: Monday, March 29, 2021 3:22 PM

To: Berlin, Amie R. <BerlinA@sec.gov>

Cc: Jacqmein, Victoria <JacqmeinV@SEC.GOV>; Dubow, Jay A.

<Jay.Dubow@Troutman.com>; damian@dwaldmanlaw.com; Catherine Recker <cmrecker@welshrecker.com>; Melanie Damian <mdamian@dvllp.com>

Subject: Re: SEC v CBSG subpoena objections

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

We are available to speak with you on Thursday afternoon after 1:00 p.m. Does that work for you?

Thanks,

Allison

Allison J. Leonard
Partner

<image001.png>

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a waiver of any attorney/client, work product, or other applicable privilege. Thank you.

On Mar 29, 2021, at 11:55 AM, Berlin, Amie R. <BerlinA@sec.gov> wrote:

Good afternoon Ms. Leonard,

I wonder if you have time today or tomorrow to confer about the objections to the subpoenas issued to John Pauciolo and Eckert Seamans.

Thank you,
Amie

Berlin, Amie R.

From: Berlin, Amie R.
Sent: Friday, April 2, 2021 1:45 PM
To: Dubow, Jay A.; 'Allison Leonard'
Cc: Jacqmein, Victoria
Subject: UCC Lien Search
Attachments: pauciulo lien reports ordered april 10 2020.pdf

Good afternoon,

I wonder if there are any responsive documents that were not produced in connection with the UCC Lien Search Mr. Pauciulo ordered in April 20, 2020 and, if so, whether you will produce them. A copy of some of the correspondence relating to that is attached for your convenience and to provide some context for why I am inquiring.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-CV-81205-RAR-REINHART**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.

**ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MOTION TO STRIKE NOTICES OF APPEARANCE OF
MELANIE DAMIAN AND ALLISON LEONARD**

THIS CAUSE comes before the Court upon Plaintiff Securities and Exchange Commission's Motion to Strike the Notices of Appearance of Melanie Damian and Allison Leonard in this case [DE 523 & 524].

The Court, having reviewed the Motion and the record in this matter, noting that the Notices of Appearance are filed on behalf of two non-parties who have no litigation pending in this case, and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED that the Joint Motion is **GRANTED** and the Notices of Appearance [DE 523 & 524] shall be **STRICKEN**.

DONE AND ORDERED in West Palm Beach, Florida, this ____ day of April, 2021.

**BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE**

Copies to: Counsel of Record