

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

**RECEIVER RYAN K. STUMPHAUZER’S RESPONSE IN OPPOSITION TO
DEFENDANT JOSEPH W. LAFORTE’S MOTION TO FILE MATERIALS
UNDER SEAL IN SUPPORT OF HIS RESPONSE TO THE RECEIVER’S MOTION
TO LIFT LITIGATION STAY TO ALLOW COMMENCEMENT OF PROCEEDINGS
AGAINST D19 LIQUOR, INC., FAWZI SIMON, AND RELATED ENTITIES**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver, (the “Receiver”) of the Receivership Entities,¹ by and through his undersigned counsel, hereby files this response in

¹ The “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”); Full Spectrum Processing, Inc.; ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; RE Income Fund 2 LLC; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel; ABFP Income Fund 3 Parallel; ABFP Income Fund 4 Parallel; ABFP Income Fund 6 Parallel; ABFP Multi-Strategy Investment Fund LP; ABFP Multi-Strategy Investment Fund 2 LP; MK Corporate Debt Investment Company LLC; Capital Source 2000, Inc.; Fast Advance Funding LLC; Beta Abigail, LLC; New Field Ventures, LLC; Heritage Business Consulting, Inc.; Eagle Six Consultants, Inc.; 20 N. 3rd St. Ltd.; 118 Olive PA LLC; 135-137 N. 3rd St. LLC; 205 B Arch St Management LLC; 242 S. 21st St. LLC; 300 Market St. LLC; 627-629 E. Girard LLC; 715 Sansom St. LLC; 803 S. 4th St. LLC; 861 N. 3rd St. LLC; 915-917 S. 11th LLC; 1250 N. 25th St. LLC; 1427 Melon St. LLC; 1530 Christian St. LLC; 1635 East Passyunk LLC; 1932 Spruce St. LLC; 4633 Walnut St. LLC; 1223 N. 25th St. LLC; Liberty Eighth Avenue LLC; The LME 2017 Family Trust; Blue Valley Holdings, LLC; LWP North LLC; and 500 Fairmount Avenue, LLC and the Receivership also includes the properties located at 568 Ferndale Lane, Haverford PA 19041; 105 Rebecca Court, Paupack, PA 18451; 107 Quayside Dr., Jupiter FL 33477; and 2413 Roma Drive, Philadelphia, PA 19145.

opposition to Defendant Joseph W. LaForte's ("LaForte") Motion to File Materials Under Seal [ECF No. 572] (the "Motion to Seal") in Support of His Response [ECF No. 573] (the "Response") to the Receiver's Motion to Lift the Litigation Stay to Allow Commencement of Proceedings Against D19 Liquor, Inc., Fawzi Simon, and Related Entities [ECF No. 556] (the "Motion to Lift"), stating as follows:

ARGUMENT

A. LaForte Fails to Demonstrate Good Cause for Filing Documents Under Seal

"Material filed in connection with any substantive pretrial motion, unrelated to discovery, is subject to the [public's] common law right of access" to judicial proceedings. *Romero v. Drummond Co., Inc.*, 480 F.3d 1234, 1245 (11th Cir. 2007). This right is premised on the notion that "[t]he operations of the courts . . . are matters of utmost public concern" and public access is "an essential component of our system of justice [and] is instrumental in securing the integrity of the process." *Id.* As a result of this policy, a party seeking to restrict access to documents filed in the Court's docket is required to demonstrate "good cause" before the Court will permit the filing of that document under seal. *Id.* at 1246; *see also* S.D. Fla. Local Rule 5.4.

In the Motion to Seal, LaForte asks the Court to allow him to file under seal certain business records from Par Funding's Converge Hub database (the "Business Records") that he referenced in his Response to the Motion to Lift. The Court already entered an Order granting the Motion to Lift on April 28, 2021 [ECF No. 558] (the "Order"). Additionally, LaForte acknowledges that he is not seeking to set aside or modify the ruling in the Order. (Response p. 1.). In other words, the Motion to Lift has already been decided and resolved.

Nevertheless, two (2) days after the Court entered the Order, LaForte filed the Response because he believes he needs to "rectify several factual inaccuracies and misleading statements"

that exist in the Motion to Lift. (Response, p. 1.) Because the Motion to Lift is no longer pending before the Court, however, the Court need not consider or take any action with respect to the Business Records LaForte is now asking to file under seal. Thus, LaForte has not satisfied the good cause requirement for filing the Business Records in the Court docket for any reason, much less filing those documents under seal.

B. LaForte Failed to Comply with the Court's Meet and Confer Requirements.

Under this Court's Local Rules, prior to filing any motion (with certain exceptions that are not applicable here) the moving party must first confer or make reasonable effort to confer with all parties "who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion." S.D. Fla. Local Rule 7.17.1(a)(3). The movant is also required to include a certification in the motion that details these meet-and-confer efforts. *Id.* Failure to comply with Local Rule 7.1, including a failure to engage in a meaningful conferral with those who may be affected by the relief sought in a motion, "may be cause for the Court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee." *Id.*

Courts regularly deny motions and award fees to the non-moving party in circumstances where the moving party fails to comply with Local Rule 7.1.² Counsel for LaForte never contacted

² See *Royal Bahamian Ass'n, Inc. v. QBE Ins. Corp.*, 744 F. Supp. 2d 1297, 1303 (S.D. Fla. 2010) (awarding attorneys' fees to non-moving party based on moving party's failure to comply with Local Rule 7.1(a)(3)); *Gomez v. 1131 Kent, LLC*, 18-24133-CIV, 2019 WL 498745, at *3 (S.D. Fla. Feb. 8, 2019) (denying motion based on failure to make reasonable efforts to confer in good faith before filing motion); *Katchmore Luhrs, LLC v. Allianz Glob. & Corp. Specialty*, 15-23420-CIV, 2016 WL 3580772, at *1 (S.D. Fla. June 28, 2016) (striking motion and entering an award of attorney's fees for failure to comply with Local Rule 7.1(a)(3)); *Rogers v. Universal Court Reporting, Inc.*, 13-61653-CIV, 2014 WL 12628472, at *1 (S.D. Fla. Jan. 7, 2014) (denying

the Receiver prior to filing the Motion to discuss the relief he is seeking with respect to filing these Business Records under seal. Nor did LaForte include in the Motion to Seal a certification detail what efforts, if any, he has taken in this regard. Accordingly, LaForte's failure to comply with Local Rule 7.1(a)(3) is a separate ground that independently supports denial of the Motion to Seal.

C. LaForte Should Not File Any Documents Containing Personal Data Identifiers.

LaForte suggests in the Motion to Seal that he would like to file certain Business Records in support of his Response, including documents containing "private financial information as well as personal information such as bank account numbers and social security numbers." (Motion to Seal, ¶ 3.) This Court's Administrative Procedures make clear that such personal data identifiers must be excluded or redacted from all documents filed with the Court:

Filers must exclude or redact personal information from documents filed with the Court as required by Federal Rule of Criminal Procedure 49.1 and Federal Rule of Civil Procedure 5.2. Unless specifically exempted by the rules or by court order, the personal data identifiers noted below must be redacted to show only the following: **Social Security number**: last four digits only; **taxpayer ID number**: last four digits only; **financial account numbers**: last four digits only; **date of birth**: year only; **minor's name**: initials only; **home address**: city and state only (for criminal cases only).

CM/ECF NextGen, Administrative Procedures, S.D. Fla., at § 6A (emphasis in original). Moreover, a party is instructed "to *exercise caution* when filing documents that contain" individual financial information, proprietary information, or other types of sensitive information. *Id.* at § 6B (emphasis in original). LaForte should comply with these procedures and not file any documents—under seal or on the publicly-available docket—that contain information that is required under this rule to be excluded or redacted.

motion based on violation of Local Rule 7.1(a)(3) and agreeing to consider non-moving party's request for an award of attorneys' fees for having to respond to the motion).

Moreover, although the ostensible purpose of LaForte’s Response was “to correct the latest false aspersions and factual inaccuracies peddled by the Receiver” (Response p. 2), it is clear that this filing serves no purpose other than to criticize the Receiver. *See* Response p. 6 (characterizing the Receiver’s efforts to date as “lackluster and toothless” and “ineffective[]”). In other words, there is no good reason for the Court to permit the filing of these Business Records—under seal or otherwise—particularly given that they contain financial and other types of sensitive information that do not belong on the Court’s docket and pertain to an issue that is no longer before the Court.

CONCLUSION

WHEREFORE, Ryan K. Stumphauzer, as Court-Appointed Receiver, by and through his undersigned counsel, respectfully requests this Honorable Court to deny the Motion to Seal and grant such other and further relief as the Court deems just and proper.

Dated: May 2, 2021

Respectfully Submitted,

**STUMPHAUZER FOSLID SLOMAN
ROSS & KOLAYA, PLLC**
Two South Biscayne Blvd., Suite 1600
Miami, FL 33131
Telephone: (305) 614-1400
Facsimile: (305) 614-1425

By: /s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA
Florida Bar No. 056140
tkolaya@sflaw.com

Co-Counsel for Receiver

**PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP**
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Telephone: (215) 320-6200
Facsimile: (215) 981-0082

By: /s/ Gaetan J. Alfano
GAETAN J. ALFANO
Pennsylvania Bar No. 32971
(Admitted Pro Hac Vice)
GJA@Pietragallo.com
DOUGLAS K. ROSENBLUM
Pennsylvania Bar No. 90989
(Admitted Pro Hac Vice)
DKR@Pietragallo.com

Co-Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 2, 2021, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA