

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
RESPONSE TO DEFENDANTS' MOTION TO CONTINUE AUGUST 25 HEARING**

Defendant Lisa McElhone filed a motion to continue the August 25, 2021 hearing on her Motion to Discharge the Receiver and Motion to Dismiss based on the purported misconduct of the Securities and Exchange Commission staff, stating only that the SEC does not oppose the continuance. The SEC responds to clarify its position on the Motion. As undersigned stated to the Ms, McElhone's counsel during the conferral:

The first basis for the continuance Defendants seek – that rebuttal expert reports are not due before the August 25 hearing date – is not a basis for seeking a continuance. Undersigned explained that to defense counsel during conferral on the Defendants' motion for continuance. The SEC did not file its expert report in response to either Motion being heard on August 25. Instead, and as set forth in our response to the Defendants' Motion to Discharge the Receiver, the Defendants are improperly asking the Court to make a ruling now that CBSG accurately stated its financial position and was a successful company, the SEC and Receiver are wrong, and the Defendants' expert witness is right. These are issues for the jury to consider if not decided by the Court on summary judgment, based on authenticated evidence.

The SEC has alleged that the Defendants made misrepresentations and omissions about the success of CBSG's merchant cash advance loan business by falsely touting the default rate of the loans¹ CBSG was in the business of making. The Defendants seek a ruling by the Court on that issue now, by presenting their own expert witness' declarations and report, and unauthenticated evidence they chose not to raise at the two-day preliminary injunction hearing in this case, and ask the Court to decide the issues now – one year after they were provided with a two-day hearing and expedited discovery to do so, less than one month before summary judgment motions are due, and less than three months before the jury hears the relevant facts of this case.

The SEC *did not* file our expert's report because, again, this is a feature of the claims against the Defendants and thus the SEC will present this evidence on summary judgment and, if unsuccessful, to the jury, on the claims we charged against the Defendants as it is relevant to the claims, including materiality, whether misrepresentations and omissions were made, and whether the Defendants acted with scienter.² The SEC's expert report is not before the Court, and a rebuttal to that unfiled report is clearly not relevant to any issue being heard August 25. The Defendants' apparent failure to wait for the SEC's expert report before filing their frivolous motion claiming their expert is correct – and so much so that the Receiver must be discharged – is no one's fault but their own, as are their efforts to have these issues pre-determined by the Court through the presentation of myriad false and baseless assertions to this Court about the Receiver, the SEC staff and non-party witnesses. The Defendants made significant false assertions about ethical violations, perjury, and incompetence that potentially impact the lives of at least every non-party witness to

¹ This word has no legal significance as used in this motion or any other filing, other than to refer to the deals CBSG offered – the legal characterization of which is not a feature of this case.

² The SEC's expert report addresses, among other things, the default rate, financial success of CBSG, and CBSG's need for new investor funds in order to make payments to prior investors.

this case who has been attacked, and now is the time for the Defendants to prove those egregious allegations. They can't, and the Court should not delay in hearing and ruling on these issues on grounds the Defendants apparently read the SEC expert report after they filed their motions, and thus realize (if they did not already) that there is, at a minimum, an issue of fact for trial. That the Defendants presented a false narrative of a wild conspiracy about the SEC to this Court based on unauthenticated and in some instances manipulated evidence, untrue facts, and improperly characterized evidence and arguments is no fault but the Defendants'. Had they interviewed or deposed any of the non-party witnesses they attack or the private attorney they attempt to slander, or engaged in any conferral whatsoever before filing, they would have learned the truth. They did not want to know the truth and instead to publicly file their false aspersions. Not surprisingly, they now want time before having to argue their motions to the Court. No. They made wild allegations with no evidentiary basis, no investigation, no attempt to confer, and this should not drag out.

As for the second basis for a continuance – that counsel for Ms. McElhone is unavailable – we advised counsel during the conferral process that of course, if no attorney can appear in some fashion to represent her on August 25 then the SEC would not oppose a brief continuance so she is represented. The motion for continuance addresses one attorney's availability; there are numerous other attorneys representing Ms. McElhone in this case and the motion makes no mention of their availability, let alone any ability to appear via Zoom, as the Court's order indicates they can upon obtaining leave of Court to do so.

Finally, and as the motion for continuance makes clear in not referencing any conferral effort with the Receiver' counsel, counsel for Ms. McElhone did not confer with the Receiver's counsel before filing a motion to continue the hearing to terminate the Receiver.

Accordingly, the SEC's position is that the rebuttal expert witness schedule is not a basis for a continuance and if no lawyer can represent Ms. McElhone on August 25, then the SEC would not oppose a brief continuance. Otherwise, the motions should be heard without delay. Summary judgment motions are due in just weeks, as are dispositive motions. Undersigned has spent more than 125 hours on the Defendants' motions since they filed them because they cite evidence Defendants failed to produce in response to discovery requests and failed to produce in response to our request for all Rule 26 documents (they finally filed some documents August 16, but we do not have access to them), as well as the fact that there is no logic to what the Defendants claim, the evidence is unauthenticated with no indication of how it fits into the factual structure of this case, some of the evidence, it turned out, had been manipulated, and most of the arguments have no logical basis. Attempting to unravel the frankly bizarre conspiracy theories presented in the motions required the SEC counsel to work on the responses to the exclusion of all other work on this and other matters. If we must continue this, we will not be able to complete our summary judgment motion, complete discovery by the September 10 deadline (at least four depositions are being taken by the parties in the next three weeks), and prepare dispositive motions. Absent some compelling reason such as Ms. McElhone being unrepresented by an attorney on August 25 absent her counsel having to cancel other travel or matters, the Court should address the motions without delay. Regardless, the Court should not rule on the Motion for Continuance until the Receiver responds or otherwise presents his position.

August 17, 2021

Respectfully submitted,

By: Amie Riggle Berlin
Senior Trial Counsel
Florida Bar No. 630020
Direct Dial: (305) 982-6322
Email: berlina@sec.gov
Attorney for Plaintiff

**SECURITIES AND EXCHANGE
COMMISSION**

801 Brickell Avenue, Suite 1950
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this seventeenth day of August 2021 via CM-ECF on all defense counsel and via email on the *Pro Se* Defendant in this case.

Amie Riggle Berlin
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