UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-CV-81205-REINHART

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____/

JOINT DISCOVERY MEMORANDUM OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION AND DEFENDANT JOSEPH LAFORTE IN ADVANCE OF THE SEPTEMBER 10, 2021 DISCOVERY HEARING

The undersigned counsel for Plaintiff, the U.S. Securities and Exchange Commission, and counsel for the Defendant, Joseph LaForte, certify that they have conferred, but dispute the scope of conferral, as set forth by each party herein. The relevant source materials to this dispute-copies of both transcripts from the 30(b)(6) depositions have been submitted to Chambers.

I. STATEMENT OF THE ISSUE(S) BEFORE THE COURT

The issue before the Court concerns the 30(b)(6) depositions of the Plaintiff's designated corporate representative(s). Defendants seek relief from this Court, including but not limited to precluding the SEC from taking a position contrary to the corporate representatives' deposition testimony. The SEC contends that: (a) Mr. LaForte's counsel has conferred about 36 specific objections from one deposition and the SEC has addressed all but four of them, which are the only matters that should be heard; (b) the issues concerning Mr. Andjich's *July 2021* deposition are not properly before the Court and even if they were, the arguments are without merit as Mr. Andjich was adequately prepared to testify and had involuntary memory failure, provided sworn answers, and the SEC provided for further inquiry; (c) who the designated witness should be is not properly before the Court and even if it were, the SEC advised counsel on July 9 and 12 who the witness would be, the Defendant chose to proceed with the witness and deposed her on August 3, and only now comes to the Court to argue against the witness substitution and with no assertion that the witness was unprepared; and (4) even if relief were warranted, and it is not, then the appropriate relief would be to obtain answers either through a sworn statement or at the deposition (which has not concluded and to which the SEC has no objection if it occurs after the discovery period).

II. THE DEFENDANT'S ARGUMENT

The SEC produced two separate corporate representatives to testify as to all of the defendants' designated 30(b)(6) topics: (1) Raymond Andjich, a government contractor assigned to the SEC's Miami Regional office as a research and to assist with investigation interviews, who previously was an FBI Special Agent for 31 years (the "First Corporate Representative"); and (2) Elisha Frank, a 17 year SEC employee, previously Senior Counsel and now the Assistant Regional Director whose "primary responsibility is to supervise investigations" (the "Second Corporate Representative," respectfully).

The First Corporate Representative was unable to answer basic questions, repeatedly providing defendants with variations of "as I sit here today, I do not know" or "I do not recall" as responses to factual queries. After several hours the SEC announced on the record that it would like

to continue the deposition to another day with newly designated witnesses, and as part of this request, stipulated on the record that it would produce Linda Schmidt, who was involved in the SEC's investigation and had numerous communications with Heskin and DiPietro, as one of the designees on specific topics. Despite this stipulation made on the record, the SEC did not produce Linda Schmidt.

At the second deposition, the Second Corporate Representative was repeatedly instructed not to answer questions requiring factual answers due to various privileges, including: (i) investigative privilege; (ii) deliberative process privilege; (iii) law enforcement privilege; (iv) attorney work product (v) and attorney-client privilege. According to the explanation by SEC's Counsel, identification of what evidence the SEC has or had at the time of the complaint is all privileged. Above and beyond the many asserted privilege objections- the SEC's Counsel also instructed the Second Corporate Representative not to answer questions based on routine evidentiary objections, such as speculation, legal conclusion, argumentative, and asked and answered and the SEC's unilateral determination that a line of questioning was "outside the scope" of the designated topics. Counsel for the SEC also repeatedly interjected speaking objections and otherwise coached the Second Corporate Representative how to testify, or more to the point, avoid testifying. Finally, in addition to the multiple blanket privilege assertions and refusals to answer questions seeking the mere identification of evidence, the Second Corporate Representative also testified that the SEC does not have "personal knowledge" regarding much of the substance or statements in this case.

The SEC has made it clear that the only information it would permit the defendants to discover is what the SEC has unilaterally decided is pertinent and has already publicly filed in this case. The result of the SEC's conduct, after two day-long depositions, defendants received no substantive answers to their questions about the evidence or the facts about the underlying claims against them. The SEC's Counsel's repeated interruptions, lengthy speaking objections, over-assertion of blanket privileges, witness coaching, and improper instructions not to answer deposition questions completely thwarted the discovery process and resulted in the SEC not providing substantive answers to the questions asked at the corporate representative depositions.

As an extension of the violative discovery conduct, the SEC furthered its obstruction of the litigation by improperly exacerbating the meet and confer process. While the Defendant maintains that any represented litigant either does know or should know exactly what was objectionable about the SEC's behavior during the 30(b)(6) depositions, it is certainly clear from the transcripts that the

SEC and the SEC's counsel were put on notice of the subject discovery disputes in real time. Notwithstanding, counsel for the Defendant sent a detailed email outlining these issues on August 11th as well as a follow up email a couple of days later, the substance of which went ignored by the SEC.

The Defendant tried to coordinate a teleconference designated specifically for purposes of conferring on the issues arising from the depositions, but the SEC's Counsel did not attend and requested it be reset an hour after missing the scheduled start time without explanation. Upon rescheduling, the SEC's Counsel was again late to the second teleconference and then refused to meaningfully confer on the issues. Specifically, rather than acknowledge that the SEC did not provide a single sentence of substantive testimony or discuss the legitimacy of any of the identical bases used to thwart providing such testimony the SEC's Counsel insisted that defense counsel go line by line through the transcript and identify every single improper objection. The SEC's Counsel did not indicate whether the SEC intended to stand by its faulty positions taken at the depositions, inaccurately claiming that this was the first time it was being confronted with the Defendant's position, and demanded that the Defendant's Counsel provide all authority supporting their argument.

Not only is it not required for a litigant to give an opposing party an itemized, line-by-line recitation of improper objections in a transcript as well as all relevant authority supporting the litigant's position at a meet and confer conference, it is unfair to expect such given that any potential forthcoming motion has not yet been written. Here, it is all the more unreasonable given that the improper objections comprise the entirety of the plaintiff's testimony. Even still, the Defendant made every attempt to indulge the SEC on this unwarranted insistency; the Defendant's Counsel was willing to and tried to painstakingly expend the time exacted by such an endeavor by going through each and every improper objection on the phone with the SEC's Counsel. However, it was the SEC's Counsel who terminated the conferral conference- roughly an hour after the start time- claiming the parties would need to reconvene another day and hanging up.

When the Defendant's Counsel reached out to coordinate dates for a discovery hearing, on August 30th the SEC's Counsel originally tried to forestall providing dates of availability for a hearing premised on the it's unilateral position that the parties have not fully conferred, characterizing the Defendant's multiple attempts to meet and confer as merely providing a list of objections without waiting for the SEC's response. By this point- through no fault of the Defendant-

a full 19 days had elapsed since the original detailed email was sent outlining and attempting to confer on the issues, and the close of discovery deadline was fast approaching. Moreover, despite the repeatedly articulated position of a global impropriety of the SEC's deposition conduct (i.e., its reneging on the agreement to produce a witness with direct personal knowledge of relevant facts, blanket assertion of privileges, impermissible instructions not to answer, and the refusal or inability of the witness to respond to question), the SEC reduces the matter to tone-deaf, individual objections in an attempt to posture some of the issues identified by the Defendant as not ripe for hearing. The only reasonable conclusion is that the SEC's technical but purely ostentatious participation in conferral attempts served no purpose but to cause additional delay and constitute a refusal to cooperate in good faith in line with the very same obstructionist discovery tactics the Defendant is trying to resolve.

III. THE PLAINTIFF'S POSITION[1]

Objections During The August 3, 2021 Deposition. Pursuant to the Local Rules and the Standing Discovery Order, the issues before the Court should be those about which counsel conferred. Counsel for Mr. LaForte and the SEC held a two-hour conference call to confer, during which Mr. LaForte's counsel conferred about 36 specific objections made during the August 3 deposition of the SEC's designated Rule 30(b)(6) witness – and nothing more. [Exhibit 1 at Exh. A thereto, identifying objections]. Mr. LaForte did not conclude the August 3 deposition, and the parties agreed it will be continued on another date; we provided dates of availability on August 4.[2]

The SEC's Efforts To Resolve The Issues Raised During Conferral. After conferring, the SEC provided Mr. LaForte's counsel a sworn declaration by the designated witness, answering under oath 32 of the 36 questions at issue. [Exhibit 1 and Exh. B thereto].[3] We await a response.

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[1] The Commission is not responding here to the Defendants' assertions about who was late for conferral calls and other similar accusations about undersigned counsel as we believe these are not relevant to the discovery issues before the Court and because this memorandum is limited in length to five pages. In the event the Court wishes to hear about these issues, an SEC staff member, who is not assigned to this case but witnessed the conferral due to Defendants' history of making false allegations about counsel, will be present at the hearing on September 10 and can testify.

[2] The SEC has no objection if they continue this deposition after the discovery deadline.

[3] 31 of these 32 questions ask the witness whether words appear in an exhibit. The SEC objected to the lines of questions about these exhibits during the deposition because they are outside of the scope of the deposition topics, but we answered them after conferral in an effort to resolve issues to be litigated and without waiving our objections as to other questions within this line of questioning. As for the additional question answered in the Declaration, the SEC determined after

The Remaining Objections Still In Dispute. The Topics noticed for the deposition are attached as Exhibit 2,[4] and questions and objections about which we conferred and that remain at issue are attached as Exhibit 3. In *SEC v. Merkin,* Case No. 11–23585, 2012 WL 5449464 (S.D. Fla. Aug. 13, 2012), Magistrate Judge Goodman addressed the SEC's objections and instructions not to answer during a Rule 30(b)(6) deposition. In upholding all but eight of the objections instructing the witness not to answer, Judge Goodman found that many of the questions seemed to be more appropriate for closing argument, and that "[a]lmost all of the disputed questions are either beyond the scope of the deposition (i.e., not within the seven permissible topics), speculative, problematic because they would require the disclosure of privileged information and/or unduly argumentative." Exhibit 4 at *1. Similarly, and as set forth in detail below, the questions posed were beyond the scope of the deposition, speculative, would have required the disclosure of privileged information, and/or were argumentative. The questions did not concern the topics but were instead about matters raised, and the same exhibits, in Mr. LaForte's motion to dismiss for purported investigative misconduct that Mr. LaForte filed just days before the deposition. The SEC filed its Response on August 14, and Judge Ruiz held a full-day hearing on August 25 and denied the motion that same day. Having lost that motion, Mr. LaForte now seeks a second bite at the apple by arguing that the SEC should be prohibited from asserting the positions it took in its Response and about which Judge Ruiz has already ruled. Even if Mr. LaForte could succeed, the appropriate remedy would be to have the witness answer the questions when the deposition resumes or, as in *Merkin*, to answer them in a sworn written statement. The remaining issue about which the parties conferred is Mr. LaForte's contention that SEC counsel coached the witness, on all of pages 144 and 145 of the transcript. The SEC disputes this contention, and to resolve this issue without the need for litigation the SEC's witness provided a supplemental declaration under oath and answered these questions.

As for the issues that the SEC believes are not ripe for a discovery hearing, counsel should confer and the SEC would not object to any enlargement of time to resolve the issues. As for Ray Andjich, he first appeared as the Rule 30(b)(6) witness and was prepared to testify; he spent dozens of hours preparing. However, on the day of the deposition he appeared confused and

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conferring that we could answer the question in a manner that does not trigger privilege concerns and therefore did so. [Exhibit 1 and Exh. B thereto].

[4] The SEC conferred about our objections to the Topics and could not resolve the dispute.

testified about several incorrect matters, possibly relating to another case. Concerns that he could not competently/accurately testify that day relate to an involuntary issue he experienced. The SEC made another witness available, offered to and did pay the Court reporter costs for the second deposition, corrected and provided more answers from Mr. Andjch's testimony through his sworn declaration before the August deposition to ensure Defendants had answers to their questions and could inquire further of the substitute witness. As for Linda Schmidt vs Elisha Frank being the witness, Ms. Schmidt's name appears on the complaint and she is on the trial team; the Florida Bar Ethics hotline advised that acting as the Rule 30(b)(6) witness would violate the Rules. We *immediately* advised LaForte's counsel of this the day after the initial deposition and advised by July 12 that Elisha Frank would testify. The SEC then spent dozens of hours preparing Ms. Frank and she testified August 3. Defendants only now seek relief about the change of witness, despite knowing weeks in advance who the witness would be. Ms. Frank has testified and is prepared to continue testifying should Defendants continue the deposition as previously agreed.

Dated September 9, 2021

Respectfully submitted,

/s/Amie Riggle Berlin
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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MIAMI
REGIONAL OFFICE

DIVISION OF ENFORCEMENT

AMIE RIGGLE BERLIN
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September 7, 2021

Joshua R. Levine, Esq.
Kopelowitz Ostrow Ferguson Weiselberg Gilbert
One West Las Olas Boulevard, Suite 500
Fort Lauderdale, FL 33301

Re: SEC v. Complete Business Solutions Group, et al., 20-81205 (SD Fla)

Dear Josh:

I am writing about the discovery dispute concerning certain objections made during the August 3, 2021 deposition of the Securities and Exchange Commission's Rule 30(b)(6) witness. You conferred with undersigned and SEC paralegal staff concerning your challenges to 32 objections (Exhibit B). Of these objections, 31 of them are to questions asking the witness whether she sees certain words on a deposition exhibit, or whether an exhibit shows certain information. These exhibits were all withheld from the Defendants' document productions and were not relevant to any topic noticed in the deposition. During the deposition, the SEC stipulated that the words written on any exhibits do in fact appear on exhibits, but objected to the questions concerning these specific matters because, among other reasons, they are beyond the scope of the deposition notice (August 3, 2021 Transcript at 183:17-184:19).

You have now scheduled a hearing before Magistrate Judge Reinhart to compel the witness to answer these questions. To resolve this matter without the need for litigation and without waiving any arguments or agreeing to any positions beyond attempting in good faith to resolve an issue, the SEC witness has answered these 31 questions, indicating that the words do appear on the exhibit, and has also answered an additional question on your list of questions in dispute. This provides the same information as the stipulation discussed above that the SEC made during the deposition. These sworn answers are attached as Exhibit B. Please let me know whether this does not resolve the objection challenges. Of course, we would have no objection if you wish to question the witness when the deposition resumes, to confirm these answers with her on the record. As to these and any other questions about whether or not words appear on an

EXHIBIT
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exhibit, we repeat the stipulation we made previously –namely, that words that appear on exhibits do in fact appear on exhibits.

Last month undersigned provided dates, as requested, for the continuation of this deposition. However, we have not received any response. Please advise whether or not you intend to continue and conclude this deposition.

Sincerely,

s/Amie Riggle Berlin
Amie Riggle Berlin
Senior Trial Counsel

From: Alexis Fields
To: Berlin, Amie R.
Cc: Joshua R. Levine; Landau, Lalaine; Jacqmein, Victoria; Karla Nunez
Subject: RE: SEC v CBSG
Date: Saturday, August 28, 2021 10:31:39 AM
Attachments: image870230.png

Good morning Ms. Berlin!

No worries, I was not in any way seeking your confirmation- tacit or otherwise- of what transpired, nor was I trying to lodge any personal attacks. My goal was simply to advise you of the position we will be taking with the Court. It is my preferred style of litigation to be transparent with my arguments and never ambush or "hide the ball" from opposing counsel. If you do not feel compelled to respond to the substance of my email that is your prerogative.

Notwithstanding, I believe our meet-and-confer obligations have been satisfied and I will not iterate the reasons as set forth in my earlier email. To that end, we are going to be requesting a hearing from the Magistrate-Judge pursuant to his local procedures. I have conferred with the other Defendants, and we are prepared to offer as available hearing dates:

Monday August 30 – anytime after one
Tuesday August 31 – all day
Wednesday September 1 – anytime after one
Thursday September 2 – all day
Friday September 3 – anytime before three

Please select two dates and times that work with your schedule so that we may move forward.

Stay well,
alexis

Alexis Fields
Direct: 954-862-8580
KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT

EXHIBIT
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From: Berlin, Amie R. <BerlinA@sec.gov>
Sent: Friday, August 27, 2021 9:14 PM
To: Alexis Fields <fields@kolawyers.com>
Cc: Joshua R. Levine <levine@kolawyers.com>; Landau, Lalaine <LandauL@SEC.GOV>; Jacqmein, Victoria <JacqmeinV@SEC.GOV>
Subject: SEC v CBSG

Ms. Fields,

Thank you for your message. I disagree with your contentions of what has transpired; however, I do not respond to false statements, personal attacks, or self-serving comments. Please do not interpret or represent my refusal to respond to such statements in your message as any agreement with what you wrote. Rather, please understand that I will not engage in personal attacks or respond to matters outside of the legal and procedural matters at issue.

As to the legal and procedural matter at issue, it is my understanding that the only matter at issue is your challenge to various objections made during the Rule 30(b)(6) deposition. If that is incorrect, please let me know.

As for those objections, we previously asked that your colleagues provide us with the specific objections at issue so we can review them and confer. Mr. Levine insisted that this and any conferral are only permitted verbally under the discovery order; he provided the list of objections to us today by telephone.

As we advised you during that call today, we will promptly review the objections you take issue with and will provide a position or confer more fully so that we can resolve any issues without the need for litigation.

Based on our call this afternoon, we understand the issues are the objections at the following page and line numbers, based on your position that (1) the questions seek information within the scope of the deposition notice; and (2) even if they aren't within the scope, instructing a witness not to answer on behalf of the SEC is improper.

131:11
131:17-20
131:23-25
132:3-10
132:12
133:6-16
140:4-14
141:12
141:20
All of page 142
143:1
143:18
145:1
146:14-147:2
148:4
148:8
148:21
All of page 149

150:6-25
151:4
151:20
152:3
153:7
All of page 154
All of pages 156-157
158:4
159:23
All of page 160
161:3-23
162:3
163:10

Additionally, Mr. Levine advised he believes the following objections are improper witness coaching:
144:7
All of pages 144-145

Please advise if there are any other objections about which you would like to confer.

On Monday I will review the objections you identified today and set forth above and will be in a position to provide you with our position as to each objection challenge by Tuesday afternoon. If you wish to confer verbally again or to discuss this or any other legal or procedural issue in this case, please just let me know that and we will of course do that.

Thank you,
Amie Riggle Berlin

> On Aug 27, 2021, at 3:27 PM, Alexis Fields <fields@kolawyers.com> wrote:
>
>
>
> Ms. Berlin,
>
> You hung up the phone before Mr. Levine finished explaining our position to you. We are going to be seeking relief including sanctions due to your conduct and the deponents' conduct during the two SEC representative 30(b)(6) depositions, including but not necessarily limited to: improper interruptions, improper speaking objections, objections that questions were outside the scope when it was well within the scope of the topic designation notice, witness coaching, improper instructions not to answer, and improper testimony.
>
> Originally, you were scheduled for a meet and confer telephone conversation

yesterday with Mr. Levine, which you blew off, only emailing an hour after the scheduled call that you could do it the following day. Today, you were 10 minutes late for the scheduled half hour meet-and-confer teleconference, and further held up the discussion for an additional 10 minutes waiting for someone from your office to join as a witness, so it did not begin until approximately 1:20. You attempted to get the meet and confer started without your witness by seeking our consent to record the call so we could not misrepresent anything that occurred on the call. We agreed as long as you would provide us with a copy of the recording, but you refused, likening it to production of attorney notes, a false analogy. You then attempted to argue that you would not proceed with the meet and confer because I am an attorney at the same firm as Mr. Levine and Mr. Ferguson, and you did not believe I had filed a formal notice of appearance. You indicated my presence was somehow improper, making veiled accusations, stating that "it is between you and the Bar." But shortly, your witness, a paralegal from the SEC, got on the call, and the call proceeded.

It is objectively clear from the transcript that you and the SEC witnesses obstructed the 30(b)(6) depositions, with instructions and refusals to answer every single substantive question. When we attempted to carry out our meet-and-confer obligations, rather than discuss the legitimacy of the objections or the SEC's failure to provide meaningful testimony, you insisted that Mr. Levine go line by line through the deposition transcript of every single objection you lodged as you took notes. This was in light of the fact that you made many of the same objections throughout the deposition, such as instructing the witness not to answer on the basis that a question was outside the scope of the 30(b)(6) notice, and served no purpose but to delay and keep us from concluding the meet and confer today. You also demanded "all case law or authority" we had that supported our position regarding the impropriety of the instructions not to answer, witness coaching, assertion of blanket objections, and refusals or inability to answer questions at the deposition.

Mr. Levine attempted to comply with these unreasonable demands and was willing to spend the time with you going line by line, but at 2 o'clock- despite his willingness to go forward- you ended the call, refusing to advise your position as to the issues he had gotten to. Moreover, despite the deposition transcripts explicitly indicating that the issues we are trying to confer with you about now (before seeking relief from the Court) were raised at the deposition, you took the position that this "is the first time" you are being confronted with our argument. Again, this is not accurate, as Mr. Soto sent you an email on August 15, 2021, highlighting our multiple concerns.

The close of discovery deadline is approaching. We have no choice but to interpret your technical but purely ostentatious participation in the meet-and-confer obligations as a refusal to cooperate in good faith. We will be advising the Court of the same and shall proceed with our intended motions.

Have a great weekend,

alexis

P.S. I trust that you have seen the notice of appearance I have filed since our phone conversation, just in case I had not previously formally appeared on behalf of my client. I also made sure to reply from an email sent by you to Judge Ruiz on August 15, 2021, wherein I was CC-ed. I believe this helps demonstrate that despite my passive involvement up until this point, you and the SEC have understood me to have enough of a role in the case to warrant including me on correspondence.

Alexis Fields
Board Certified in Appellate Practice and Civil Trial
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From: Berlin, Amie R. <BerlinA@sec.gov>
Sent: Sunday, August 15, 2021 12:32 AM
To: ruiz@flsd.uscourts.gov
Cc: dan.small@hklaw.com; aida.guerrero@hklaw.com; Christopher.Iaquinto@hklaw.com; Allison.Kernisky@hklaw.com; angel.barber@hklaw.com; Chad.vanderhoef@hklaw.com; brian.miller@akerman.com; kelly.connolly@akerman.com; kim.stathopulos@akerman.com; alejandro.paz@akerman.com; drashbaum@mnrlawfirm.com; mordenes@mnrlawfirm.com; jmarcus@mnrlawfirm.com; kmeyers@mnrlawfirm.com; jmays@mnrlawfirm.com; jhirschhorn@gray-robinson.com; andrew.sarangoulis@gray-robinson.com; anita.abrams@gray-robinson.com; asfuterfas@futerfaslaw.com; dfridman@ffslawfirm.com; vpantin@ffslawfirm.com; bschein@bettinascheinlaw.com; arlaw@raikhelsonlaw.com; Seth D. Haimovitch <haimovitch@kolawyers.com>; Karla Nunez <nunez@kolawyers.com>; Alexis Fields <fields@kolawyers.com>; Joshua R. Levine <levine@kolawyers.com>; David L. Ferguson <ferguson@kolawyers.com>; Karla Nunez <nunez@kolawyers.com>; gja@pietragallo.com; Douglas K. Rosenblum <dkr@pietragallo.com>; Alejandro Soto <asoto@ffslawfirm.com>; Michael Bachner <mb@bhlawfirm.com>; mikecfurman@gmail.com; 'Timothy Kolaya' <tkolaya@sfslaw.com>
Subject: RE: 20-cv-81205-RAR Proposed Order

Dear Judge Ruiz:

Attached for the Court's consideration is a Proposed Order on the Securities and Exchange Commission's Motion for Leave to File Under Seal the Exhibits to the filing at DE 692. A courtesy copy of the Motion [DE 693] is attached for the Court's convenience. Thank you for your attention to this matter.

Respectfully submitted,

Amie Riggle Berlin
Senior Trial Counsel
Securities and Exchange Commission

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.
_____/

DECLARATION OF ELISHA FRANK

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Elisha Frank. I am over twenty-one years of age.
2. I hereby declare under penalty of perjury that the answers to the below questions are true and correct, and hereby answer these questions as the designated representative of the Securities and Exchange Commission as if still under oath in the August 3, 2021 Rule 30(b)(6) deposition.

Q. And, Ms. Frank, this merchant declaration provided by Mr. Frost was relied upon by the SEC in its Complaint, correct? 132:3-10
A. Yes, the testimony in this declaration is evidence the Commission references in its Complaint.

Questions Regarding Whether The Witness Sees Certain Words On Deposition Exhibit 102

Q. Okay. Let's go to Exhibit 102. All right. Do you see that this is a Credit Profile Report? 140:1-5
A. I cannot authenticate this exhibit, but I see the words "Credit Profile Report" on it.

Q. So do you see that it says "Credit Profile Report" at the top of Exhibit 102? 140:21-22.
A. Yes.

Q. So do you see that this Credit Profile Report identifies Mary Carleton in Houston, Texas, in the top left-hand corner? 141:9-11
A. I see those words on the exhibit where you are indicating.

Q. Do you see that in the top right-hand corner, it identifies CapJet in Houston, Texas? 141:18-19.
A. I see those words on the exhibit.

Q. Okay. So this being Exhibit 102, now that that's clear, Ms. Frank, do you see that this Credit Profile Report identifies Mary Carleton in Houston, Texas? 142:22-25.
A. Yes, I see those words on Exhibit 102.

Q. So, Ms. Frank, you've been instructed not to testify in your capacity as the SEC designee. I disagree with the objection, I'm not going to debate it now, but I've asked you: This is a Credit Profile Report that identifies Ms. Carleton in Houston, Texas, correct? 143:18-23.
A. The SEC cannot authenticate this exhibit, but I agree that I see a title on the exhibit that reads "Credit Profile Report" and that I see the words "Mary Carleton" and "Houston, Texas" on the exhibit.

Q. So, this will be the fourth time I ask you to identify this document, a Credit Profile Report where Mary Carleton is in the top left-hand corner in Houston, Texas. Your answer? 145:1-5.
A. The SEC cannot authenticate this exhibit, but I agree that I see a title on the exhibit that reads "Credit Profile Report" and that I see the words "Mary Carleton" and "Houston, Texas" on the exhibit.

Q. So scroll down on Exhibit 102, please. So within this exhibit, do you see that there are various companies identified in the left-hand column, including "PHH Mortgage Services," under that Chase Card -- under that Chase Card again --Don't scroll down any further.-- and the columns above indicate "Monthly Payment Amounts," to the column to the right of that, "Past Due Amounts" and whether -- and to the right of that, whether the accounts are closed. Do you see that? 146:13-24.
A. I see the words "PHH Mortgage Services and "Chase Card." I see the words "Month Pay" and "Past Due" and "Closed."

Q. Okay. And so this Exhibit 102 is an exhibit that shows amounts that CapJet owes in connection with these identified entities, PHH Mortgage Services, Chase Card, and the others, and specifies the amounts owed and the status of their relationship, correct? 147:7-12.
A. I do not know that from looking at this exhibit. I do not know from looking at this exhibit whether it states information about or amounts owed by Mary Carleton or CapJet,

Q. And these would be expenses, would they not, with respect to CapJet? 147:18-19.
A. I do not know that from looking at this exhibit.

Q. Okay. A payment owed to a mortgage company would be an expense, would it not? 148:2-3.
A. No.

Q. An amount owed to a credit card company would be an expense, correct? 148:9-10
A. No.

Q. And you'll see that there are other entities here, including Amegy Bank of Texas, Chase Card, LensCrafters, AMEX, Chase Auto, and similarly amounts owed and the status of these accounts. Do you see that? 148:21-24.
A. I see those words on the exhibit.

Q. Those are expenses tied to this company, correct? 149:6-7.
A. I do not know that from looking at this exhibit.

Q. This is an Experian report. Do you see that at the very bottom? 149:17-18
A. I see the word "Experian." I do not know if this is a true and correct copy of an Experian report.

Q. And just to be clear, this is a Credit Profile Report which identifies CapJet in the right-hand column in Houston, Texas, correct? 150:7-9.
A. I do not know if this is an actual Credit Profile Report or whether it is for CapJet. I see the words "Credit Profile Report," "CapJet," and "Houston, Texas" on the exhibit.

Q. And this Credit Profile Report provides expenses with respect to CapJet identified as expenses under various credit cards and mortgage companies and those that we've reviewed, correct? 150: 12-15.
A. I do not know if this is a credit report and if so, whether it is for Mary Carleton or CapJet, and I do not agree that we can tell from looking at the exhibit that it lists expenses.

Questions Regarding Whether The Witness Sees Certain Words On Deposition Exhibit 103

Q. Well, before we do that, this is, at the very top, a document that says "Experian" on the top right-hand side, and the business name says, "Capital Jet, Inc.," correct? 151:4-7 (re: Ex. 103)
A. Yes.

Q. And Capital Jet, according to this document, is located in Houston, Texas, correct? 152:3
A. Yes.

Q. So you can see that in this document, Exhibit 103, at Bates stamp --Let's scroll down a little bit. - ConvergeHub ending in 112. It says that CapJet has a number of commercial accounts with net 1 through 30 days term and also provides information with respect to the number of commercial accounts with high utilization, those that might be delinquent, and those with recent active commercial accounts. Do you see that? 153:5-16.
A. I see that the exhibit has the words: "Factors lowering the score, NUMBER OF COMMERCIAL ACCOUNTS WITH NET 1-30 DAYS TERM, NUMBER OF COMMERCIAL ACCOUNTS WITH HIGH UTILIZATION, PERCENT OF DELINQUENT COMMERCIAL ACCOUNTS, NUMBER OF RECENTLY ACTIVE COMMERCIAL ACCOUNTS"

Q. Okay. And you'll see that there's a section that reads "Quarterly Payment Trends" that provides balances and whether the accounts are current for CapJet in connection with this Experian report, correct? 154:2-6.
A. I see the words "Quarterly Payment Trends," and a chart with columns that say "Balance," and "Cur."

Q. Okay. And there are also -- there's also data with respect to other accounts and credit limits, balances, and whether those accounts are current. Do you see that? 154:8-12.
A. I am not sure, but I see Exhibit 103 and the words that appear on the exhibit.

Questions Regarding Whether The Witness Sees Certain Words On Deposition Exhibit 31

Q. This is Exhibit 31. This is a document that, at the very top, reads "First Union Funding Application - Joseph Pucci," does it not, Ms. Frank? 160:9-11.
A. Yes

Q. Okay. The business name is American Heritage Billiards, correct? 160:15-16
A. I see those words on the exhibit.

Q. Okay. And that is the same company identified in Mr. Pucci's declaration, in Exhibit 30, correct? 160:18-20
A. Exhibit 30 references American Heritage Billiards.

Q. And we can see that it says, "Gross Annual Sales: $48 million." Do you see that? 160:21-24.
A. I see those words on Exhibit 31.

Q. It says, at the very bottom of Page 1 "Outstanding Loans Balances," it says, "Yes." Do you see that? 161:4-6
A. I see those words on Exhibit 31.

Q. Let's scroll to the top of the next page. You were -- yeah, okay. It says -- the other loans referenced earlier, it says, Funding Company 1, Forward Finance, with a balance of $200,000. Do you see that? 161:9-15
A. Yes I see those words on Exhibit 31.

Q. "Funding Company 2, Green Capital, with a balance of $700,000, correct? 161:17-18.
A. I see those words on Exhibit 31.

Q. Okay. And just above Mr. Pucci's declaration, there is an authorization. Do you see that? -- And I meant to say, just above Mr. Pucci's signature -- I may have said something else -- reads, "Authorization. Do you see that? 161:20-162:2.
A. I see those words on Exhibit 31.

Q. And that authorization says, "The business and its owners or principals" --"The business and its owners or principals individually, an applicant, each represents, acknowledges, and agrees as follows: All information and documents provided to First Union Lending are true, accurate, and complete and that the applicant will immediately notify FUL" – that is First Union Lending -- "of any material change in such information or financial condition. Applicant authorizes FUL to disclose any information and documents that FUL may obtain, to other persons or entities (collectively assignees) that may be involved with any sort of business, and each assignee is authorized to use such information and to share such information with their assignees in connection with potential transactions." And it goes on to say, at Subsection 3, "FUL assignees, partners, and each of their representatives, successors, and designees(collectively recipients) are hereby given written instruction and authorization to request and receive any investigative reports, credit reports, bank statements, and financial documents, verification of information, or any other information that recipient deems necessary from creditors, reporting agencies, or financial institutions for the purpose of providing business funding options. Do you see that? 162:8-163:9
A. I see the authorization on Exhibit 31, but did not check word-for-word whether you read it correctly.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith. Executed on this 7th day of September 20201 in Broward County, Florida.

Frank, Elisha L. Digitally signed by Frank, Elisha L. Date: 2021.09.07 12:17:33 -04'00'

ELISHA FRANK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,
v.

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

Defendants.
_____/

NOTICE OF DEPOSITION OF SECURITIES & EXCHANGE COMMISSION'S 30(b)(6)

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Procedure, Defendant Joseph W. LaForte will take the deposition of the following deponent on the date, time and location/manner indicated below:

NAME	DATE/TIME	LOCATION/MANNER
Plaintiff Securities and Exchange Commission (the "Commission") – 30(b)(6)	Tuesday, August 3, 2021 10:00 AM	Remotely (a link will be provided by Court Reporter)

The Commission shall designate one or more individuals who consent to testify on its behalf regarding the subjects listed in Exhibit A, attached hereto. The deposition will continue from day to day before a person duly authorized to administeroaths until concluded and shall be recorded by stenography, audio and/or videotape. You are invited to attend the deposition and exercise your rights under the Federal Rules of Civil Procedure.

Exhibit "A"

Plaintiff, the United States Securities and Exchange Commission ("the Commission"), shall designate one or more individuals who consent to testify on its behalf regarding the subjects set forth below:

1. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Complete Business Solutions Group, Inc. ("CBSG") made materially misleading statements and omissions to investors in connection with the purchase, offer, or sale of securities regarding:
    a. CBSG's underwriting practices;
    b. CBSG's loan default rate;
    c. insurance offered by CBSG;
    d. CBSG's regulatory history;
    e. the true result of the New Jersey Division of Securities' investigation of CBSG;
    f. Joseph LaForte's criminal history;
    g. Lisa McElhone and Joe Cole's receipt of funds;
    h. the LME 2017 Family Trust's receipt of funds;
    i. Joseph LaForte's investment in CBSG;
    j. Dean Vagnozzi and ABFP regulatory histories;
    k. Perry Abbonizio's regulatory history;

2. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Joseph LaForte acted as the *de facto* CEO of CBSG and Full Spectrum Processing;
3. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that Lisa McElhone was a control person of CBSG and Full Spectrum Processing;
4. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's allegations, causes of action and requests for relief in the Amended Complaint, Docket Entry 119, specifically that no exemption from registration existed with respect to the securities allegedly issued by the Defendants.
5. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual

portions of the Staff's "Action Memo" to the Commission, that support the Commission's disgorgement calculation as to each Defendant.

6. The specific facts, information, documents, witness statements, investigative testimony, and other evidence relied upon by the Commission and Commission staff, including the factual portions of the Staff's "Action Memo" to the Commission, that support the Commission's claims that the Defendant's actions presented a risk to investor funds when it filed its Complaint.
7. The Commission and Commission staff's communications with attorney Shane Heskin prior to the filing of the Commission's enforcement action, including promises made to Heskin or his clients.
8. The Commission's guidelines, policies and procedures regarding joint action with, or direction or control by Commission staff of a private party involved in an investigation or private action.
9. The Commission's guidelines, policies and procedures regarding the appointment of a Receiver.

Dated: July 27, 2021

Respectfully submitted,

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/s/Alejandro Soto
ALEJANDRO SOTO

CERTIFICATE OF SERVICE

I hereby certify that on the 27TH day of July, 2021, I served the foregoing Plaintiff's Notice of Taking 30(b)(6) Deposition via email to all counsel of record.

/s/ Alejandro O. Soto
ALEJANDRO O. SOTO

Page:Line	Question
131:11	"Exhibit 62 is inconsistent with the statement he makes under oath in Paragraph 8 of Exhibit 24, is it not?" - *Before the SEC objected the witness answered.*
132:12	"In other words, the SEC relied on a declaration that contained a falsehood, correct?"
133:6-16	"Ms. Frank, in your personal capacity as an Associate Regional Director for the SEC, would you allow a declaration that you know contains a false statement to be offered in support of a complaint filed in court?"
154:18-24	"So at Exhibit 61, in Paragraph 7, where Mary Carleton said that 'CBSG did not request information from me or the company about the company's expenses during the underwriting process or at any other time prior to approving the loans,' that statement was false, correct?" - *Before the SEC objected the witness answered.*

2012 WL 5449464
Only the Westlaw citation is currently available.
United States District Court, S.D. Florida,
Miami Division.

SECURITIES and EXCHANGE COMMISSION, Plaintiff,
v.
Stewart A. MERKIN, Defendant.

No. 11–23585–CIV.
|
Aug. 13, 2012.

Attorneys and Law Firms

H. Michael Semler, Christian D. H. Schultz, Stephan Jacob Schlegelmilch, U.S. Securities and Exchange Commission, Washington, DC, for Plaintiff.

Barton Stuart Sacher, Joseph Alan Sacher, Sacher, Zelman, Hartman, Paul, Beiley & Sacher, P.A., Miami, FL, for Defendant.

ORDER RE: DISCOVERY DISPUTE

JONATHAN GOODMAN, United States Magistrate Judge.

OVER DEPOSITION QUESTIONS TO SEC'S 30(b)(6) DESIGNEE

***1** This matter is before the Court because Defendant Merkin objects to the SEC's instructions that its Rule 30(b)(6) designee witness not answer certain deposition questions.

This discovery dispute flows from the Court's Order permitting Merkin to take a Rule 30(b)(6) deposition of the SEC. The Order [ECF No. 31] permitted Merkin to ask questions concerning only 7 of the topics listed in his Rule 30(b)(6) deposition notice. Moreover, it specifically gave the SEC the ability to instruct its 30(b)(6) witness (or witnesses) not to answer questions which are beyond the scope of the permissible topics or which would require the disclosure of privileged information, including information protected by the work product exception to discovery.

Merkin's 30(b)(6) deposition lasted almost an entire day. During the deposition, SEC counsel instructed its witness, Jennifer Leete, an attorney who has been with the SEC for more than 13 years and who is now assistant director in the enforcement division, not to answer certain questions. Merkin objects to these instructions.

The Court has reviewed all of the questions triggering do-not-answer instructions and the instructions. Almost all of the disputed questions are either beyond the scope of the deposition (i.e., not within the seven permissible topics), speculative, problematic because they would require the disclosure of privileged information and/or unduly argumentative. Some of the

questions seem to be more appropriate for closing argument,[1] rather than a 30(b)(6) deposition, such as asking why the SEC seemingly delayed the filing of this lawsuit, asking if the SEC was negligent, asking why the SEC did not use other similar Merkin-authored letters as the basis for this lawsuit and suggesting that the best way to protect the public would have been to simply contact Merkin or OTC/Pink Sheets and ask them to stop posting letters containing certain allegedly false information.

Nevertheless, there were some questions to which Merkin is entitled to receive answers. These questions are ones calling for simple yes/no answers and will not require the 30(b)(6) deposition to resume. Instead, the SEC shall within 10 days submit to Merkin an affidavit or declaration containing appropriate answers to the questions listed below:

"Do you request your staff when they interview potential witnesses or victims from the commission's point of view that they keep notes of their conversations?" (30(b)(6) Dep. Tr., 7/13/12, p. 57).

"Are there notes?" (*Id.* at 58).

"And I am going to ask the last question, are there notes in the commission's files of those or at least some of those interviews?" (*Id.* at 59).

"Has anybody at the commission taken all of his letters and compared them?" (*Id.* at 191).

"Who prepared the action memo to the commission in this case involving Mr. Merkin? Who prepared it?" (*Id.* at 250).

"What was the date of the action memo?" (*Id.* at 258).

***2** "Who authored it [i.e., a report in support of the staff's request for a formal order]?" (*Id.* at 278).

"How long was that report?" (*Id.* at 278).

Given that at least a few of the questions which caused the SEC to give do-not-answer instructions to its 30(b)(6) witness were permissible and should have been answered with a yes or no (or similarly succinct) response, the Undersigned views this dispute as basically "a wash" and will not award attorney's fees to either side.

DONE AND ORDERED.

All Citations

Not Reported in F.Supp.2d, 2012 WL 5449464

Footnotes

[1] The Court is not approving the use of these points in closing argument. It is not taking any position on whether these comments would, in fact, be permissible in closing argument. Instead, it is merely commenting on the nature of some of the 30(b)(6) questions.

End of Document