

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.

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PLAINTIFF'S MOTION FOR PARTIAL RELIEF FROM ORDER  
REGARDING ATTENDANCE AT INFORMAL SETTLEMENT DISCUSSION

On August 27, 2021, the Court ordered the parties to conduct an informal settlement conference by September 21, 2021, and that “[a] representative with settlement authority must attend the informal settlement conference or be available telephonically.” [ECF No. 739]. The parties are scheduled to participate in the settlement conference on September 17. The Commission respectfully requests that the Court relieve it of the requirement to have a representative “with full settlement authority” present or available telephonically.

The laws governing the Commission as well as its own policies require the five-member Commission to review and approve nearly all forms of settlement in cases where the Commission has commenced litigation. The Commission consists of five Commissioners, appointed by the President with the advice and consent of the Senate. Section 4(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78d(a). Only the Commissioners may authorize commencement of a securities enforcement action such as this one. Exchange Act § 21(d)(1), 15 U.S.C. § 78u(d)(1).

Because only the Commissioners acting as a body must approve nearly all forms of settlement, it is impossible for the Commission to have a representative with binding authority to settle the case present or available telephonically at the informal settlement meeting. Both the Federal Rules of Civil Procedure and the federal courts have recognized the unique position that agencies of the federal government occupy when it comes to having a representative with binding

authority present at settlement conferences. For example, the Advisory Committee Notes to the 1993 Amendments to Rule 16 of the Federal Rules of Civil Procedure discuss the status of government agencies attending pretrial conferences at which settlement may be discussed: The amendment of paragraph (9) should be read in conjunction with the sentence added to the end of subdivision (c), authorizing the court to direct that, in appropriate cases, a responsible representative of the parties be present or available by telephone during a conference in order to discuss possible settlement of the case. The sentence refers to participation by a party or its representative. Whether this would be the individual party, an officer of a corporate party, a representative from an insurance carrier or someone else would depend on the circumstances. Particularly in litigation in which governmental agencies or large amounts of money are involved, there may be no one with on-the-spot settlement authority, and the most that should be expected is access to a person who would have a major role in submitting a recommendation to the body or board with ultimate decision-making responsibility. The selection of the appropriate representative should ordinarily be left to the party and its counsel. Advisory Committee Notes to 1993 Amendments to Rule 16 of the Federal Rules of Civil Procedure (emphasis added).

The Federal Rules contemplate the exact situation the Commission faces here—the inability to have a person with “on-the-spot” settlement authority present. Because only the Commissioners may approve any settlement of this case, the Commission is in a different posture than an individual party. It cannot have a person with full settlement authority present or available telephonically during the settlement meeting. That is not to say that the Commission cannot or will not attend the settlement meeting and attempt to negotiate in good faith.

Because of the unique statutes and rules that define the authority and obligations of the Commission and its staff, the Commission respectfully requests the Court to allow a senior representative from the Commission’s Miami Regional Office to attend the informal settlement meeting, who will have the authority to negotiate a settlement that the representative and undersigned can recommend to the Commission for possible approval. Undersigned trial counsel will also attend.

Undersigned conferred with defense counsel, who would agree with the requested relief sought herein only if a particular senior representative, the SEC Regional Director, attends the informal settlement discussion. If the Court grants this Motion, the Regional Trial Counsel and undersigned Senior Trial Counsel would attend the informal settlement meeting. The Regional

Director is aware of the settlement meeting, is not available for the duration of the meeting, but will be accessible to the Regional Trial Counsel and undersigned counsel by telephone.

CERTIFICATE OF CONFERRAL

Undersigned conferred with defense counsel, who would agree with the requested relief sought herein only if a particular senior representative, the SEC Regional Director, attends the informal settlement discussion.

Dated September 16, 2021

Respectfully submitted,

By: Amie Riggle Berlin  
Amie Riggle Berlin  
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COMMISSION  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 16th day of September 2021 via cm-ecf on all defense counsel in this case.

Amie Riggle Berlin  
Amie Riggle Berlin

UNITED STATES DISTRICT COURT  
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\_\_\_\_\_ /

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL RELIEF FROM ORDER  
REGARDING ATTENDANCE AT SETTLEMENT DISCUSSION

**THIS CAUSE** comes before the Court upon the Securities and Exchange Commission's Motion for Partial Relief From Order Regarding Attendance At Settlement Discussion.

Having reviewed the Motion and being otherwise duly advised, it is hereby

**ORDERED AND ADJUDGED** that the Motion is **GRANTED**. The Commission is relieved from the requirement to have a representative with full settlement authority attend the informal settlement discussion previously ordered by the Court. The Regional Trial Counsel and Senior Trial Counsel may attend the informal settlement discussion, with the Regional Director available to them by telephone.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE