

**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.

**DEFENDANTS' MOTION TO ADJOURN THE TRIAL AND
FOR A STATUS CONFERENCE TO ADDRESS TRIAL LOGISTICS**

INTRODUCTION

Defendants Lisa McElhone, Joseph Cole Barleta, Joseph W. LaForte, Perry Abbonizio, Dean Vagnozzi, and Michael Furman (collectively "Defendants"), request that the Court adjourn the jury trial of this case, currently scheduled for December 6, 2021 for thirty days or as the Court's schedule permits. Defendants also respectfully request a status conference to discuss logistics for the jury trial.

REQUESTED RELIEF

A. Adjournment of trial

1. Defendants respectfully request an adjournment of the trial until January 2022.
2. On September 23, 2020, the Court set the trial for August 30, 2021 (DE 279.) On March 26, 2021, the Defendants filed a Joint Motion for Extension of Time to Conduct Discovery, Motion Deadlines and Trial Date (DE 519). On March 29, 2021, the Court set the current trial schedule of December 6, 2021 (DE 521).

3. At the time Court set the current trial schedule, the defense was just beginning to receive discovery. Since then, the defense has received 1.64 terabytes of data from the SEC – the equivalent of tens of millions of pages of discovery. Indeed, the defense continues to receive discovery well past the discovery deadline, including the receipt of discovery on October 15, 2021.

4. This case is thus factors of complexity greater than was known when the trial date was set on March 29, 2021. And it will necessitate the introduction of a significant number of exhibits and amount of data for the jury to understand what happened in this case; what Par Funding is about; and to establish the defenses to and rebut the allegations in the Amended Complaint and the elements of those allegations.

5. The defense has conferred and all of the defense attorneys – collectively about 150 years of trial experience amongst them – estimate the trial to last at least three weeks and most likely four. There are six defendants and thus six lawyers who will be cross-examining witnesses and presenting evidence. Further, each defendant will be putting on a defense case. The defense anticipates easily calling 15-20 witnesses. The defense will call as witnesses noteholders, Par employees, former Par attorneys and other professionals, an expert, defendants, and others. The defense case alone is expected to last last 10-14 days.

6. It is notable that the depositions conducted by the SEC in this case routinely lasted an entire day -- seven hours – with little time for cross-examination by counsel. At trial, defense counsel will engage in cross-examination to rebut the SEC's inferences, and develop the defense claims to the extent supported by each of the SEC's witnesses. The defense expects the SEC will conduct similarly comprehensive cross-examinations of its witnesses.

7. The SEC has stated that it anticipates that the presentation of its case-in-chief should be concluded within one week. Defendants believe this estimate is overly optimistic by half, given the breadth and complexity of the allegations in the Amended Complaint and the number of defendants. The estimate minimizes the time the lawyers for each defendant will conduct appropriate cross-examination. Defense counsel believe that the SEC will actually need at least two weeks to present its case – including defense cross-examination. And then there is the defense case – which will be extensive.

8. There is also the issue of the compressed schedule between now and the time of trial for dispositive motion practice and pre-trial matters. The parties have jointly moved to extend some of these dates to have adequate time to finish briefing these issues and meet the other deadlines preparatory to trial in this complex case, but the intersection of these deadlines shortly before trial has complicated matters further. A brief continuance would alleviate this compressed schedule.

9. Moreover, if the trial were to begin on December 6, 2021, the parties would only have two weeks of trial time until Christmas week (and the winter break for most school-aged children) begins. Under no analysis will the evidence be presented in that short time. And then there will be summations, the jury charge and deliberations. Accordingly, there is no question that the trial will run smack into the Christmas holidays – likely at or near the start of the defense case. That presents, in the defense view, a significant problem.

10. First, jury selection. The venire will have to be advised that they will very likely be sitting on the jury through the week before Christmas perhaps up to December 23 or 24, 2021. This will be a significant disincentive for any prospective juror with child care issues during the

winter break or those who fears holiday plans will be disrupted. School vacations, family trips, holiday shopping, social events and similar events are often committed to long before December 25th and encompass events well before that date.

11. Because of the high, almost definite, likelihood that the jury's service will not conclude by Christmas, jurors would then be faced with the disagreeable prospect of either continuing the case during the week between Christmas and New Year's or, more likely, continuing the case in January 2022. Such a week-long hiatus would compound the uncertainty and inconvenience to jurors during a traditionally busy time of year. Given the complexity of this case, jurors' memories may fade and their interest in this case may diminish. Alternatively, one or more jurors may fail to return altogether, resulting in a costly and unnecessary mistrial.

12. One thing that should not be done is a promise to the venire to end the trial on or before December 23, 2021. Such a promise will essentially be a precursor to a mistrial.

13. First, such a promise invites the Court to truncate the presentation of evidence and constrain cross-examination and the calling of witnesses – all in an effort to meet an artificial time constraint.

14. Secondly, there is the significant risk of prejudice, and a mistrial, if jurors are asked to serve through the holidays when they were assured beforehand that the trial will end by mid-December.

15. Third, should the trial and the presentation of evidence and cross-examination be truncated to meet a December 22 or 23 summation deadline, for instance, then the jury will be backed up against the Christmas holiday to render a verdict lest they be forced to return on

December 26th or after the New Year to deliberate. Putting the jury in such a bind in a complicated case is unfair to the parties.

16. Jurors in this situation may rush to verdict, or seek to avoid their jury service altogether, if their holiday plans are so threatened, especially if they have been assured that this will not occur.

17. To avoid the impractical and wholly unnecessary goal of concluding this complex and important trial before December 23, 2021, it is respectfully submitted that the trial be rescheduled for thirty days, or to a date in early 2022 convenient to the Court and parties.

B. Status Conference

18. In addition, counsel respectfully request an early status conference to discuss trial logistics, particularly in light of Covid precautions. Among the topics counsel wish to address is the question of the physical courtroom space that will be adequate for the number of attorneys and support personnel who will need seats and a tabletop throughout the trial. We understand that there are four (4) SEC attorneys scheduled to be involved in the trial, as well as paralegals and technical staff who will join SEC counsel in the courtroom. There are six (6) Defendants. Each defendant has at least one attorney and a paralegal who will be present every day. Collectively, the defense will also have one or more technical personnel to assist with evidence. At a bare minimum, there will be about 17 defendants, attorneys and support in the courtroom; more likely 20. The courtroom will need to accommodate this number, as well as provide room for the Court's staff and jurors. We should consider Covid precautions in such a space.

19. We welcome an opportunity to address this and other logistical questions at a status conference.

Dated: October 18, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)

I HEREBY CERTIFY that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues and their respective positions are addressed in this motion.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on the 18th day of October 2021, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Alan S. Futerfas
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