**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA**

**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 SECURITIES AND EXCHANGE COMMISSION'S RESPONSE IN OPPOSITION TO DEFENDANTS' SECOND AND THIRD MOTIONS FOR A CONTINUANCE OF THE TRIAL DATE**

## I. INTRODUCTION

This case has been pending for more than one year and has already been continued once, and at the Defendants' request. The Defendants now seek a second continuance [ECF Nos. 858 & 860]. They cannot meet their burden for obtaining one, and a further delay will prejudice the Securities and Exchange Commission and further delay any relief for the investors.

The Defendants cannot meet their burden for obtaining any continuance, for one month let alone the lengthier continuance that would have to occur if the trial does not proceed as currently scheduled. While the Defendants' Motion purports to seek a continuance until January 2022, in truth any continuance would be longer. The Defendants have been on notice since before they filed their Motion that SEC counsel is not available for trial in January. Thus, the Defendants are really seeking a continuance for a minimum of two months, and likely more.[1] The Court

[1] As for February, counsel for the SEC and at least one defense counsel are currently scheduled to commence a trial during the trial period commencing February 28, 2022 on another case if that

previously rejected the Defendants' request to continue the trial to March 2022, and nothing has occurred that could warrant that relief now.

Between them, the two motions for continuance filed by the Defendants raise myriad arguments, none of which has merit or supports the factors Courts consider in granting a continuance of trial.

## II. STANDARDS FOR DETERMINING A CONTINUANCE OF TRIAL

There are five factors considered in determining whether a trial continuance is warranted: (1) the diligence of the party requesting the continuance to ready the case prior to the date set for trial, *Hashwani v. Barbar*, 822 F.2d 1038, 1040 (11th Cir. 1987); (2) the likelihood that the need for a continuance could have been met if a continuance was granted, *id.*; (3) the extent to which granting the continuance would have been an inconvenience to the court and the opposing party, *id.*; (4) the extent to which the requesting party might have suffered harm as a result of the district court's denial of the continuance, *id.*; *see also Fowler v. Jones*, 899 F.2d 1088, 1094 (11th Cir. 1990); and (5) whether the district court has granted a prior continuance in the case. *See Quiet Tech. DC–8, Inc. v. Hurel–Dubois UK Ltd.*, 326 F.3d 1333, 1351 (11th Cir. 2003).

The Defendants fail to address any of these factors. The grounds they cite for a continuance meet none of them. The first factor does not support a continuance. The Defendants fail to demonstrate that their diligence to ready the case prior to the date set for trial. Nor can they. Instead, they merely claim that many documents were produced in discovery. That was the basis they provided for the first continuance of the trial date they obtained. They claim the SEC produced

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case does not settle or otherwise resolve. have conflicts due to a trial in another case that, if not resolved or settled, is set for the trial period commencing February 28. As for March, two members of the SEC trial and support team have availability issues. The Defendants filed the instant motion for continuance three days ago, and as of the time of this filing, the SEC has not been able to reach all witnesses to inquire about availability for trial in April, May, or June 2022.

documents as recently as October 15, but in truth the SEC produced a single letter that has attachments, which the SEC received from the Receiver in connection with his recent motion to lift a discovery stay. They cannot articulate a single reason why that single letter could conceivably warrant delaying this trial. The Defendants have numerous attorneys, and they have focused significantly during this case on litigating against the Receiver, filing "responses" to the Receiver's reports, and other extensive motion practice they chose to initiate rather than prepare for trial. They cannot now claim they need more time, and do not provide any explanation whatsoever of their efforts to prepare for the December 6, 2021 trial date the Court set 7 months ago. As for Mr. Furman's argument that his attorney works on a state court case in which the Judge reset trial *last week* so that it now overlaps with this trial, the state court docket reflects no effort by Mr. Furman's counsel to advise that court of this trial or to ask that court to reset that trial, which was scheduled after this trial.

Similarly, as to the second factor, the Defendants ask for a continuance until January because Christmas is in December, many documents were produced during discovery, they might not obtain rulings on pretrial motions until near the trial date, and they think this trial will last 4 weeks. However, there is no guarantee that granting this continuance would enable the parties to meet the need for a continuance. *Romero*, 552 F.3d at 1320–21 (noting that as to the second factor "[i]t is well-settled that a district court may deny a continuance when there is no guarantee that granting one will enable a party to [meet the need for the continuance]"). If fact, it is guaranteed that the need for a continuance would not be met because SEC counsel is not available for a January trial date. There is no guarantee – or even any requirement – that the Court would rule on the Defendants' preferred timeline. Nor is there any guarantee that voluntary productions will not continue to occur from third parties required to supplement their productions or the Receiver in the course of the litigation and other work being pursued in connection with the Receivership. Therefore, this factor

does not weigh in favor of a continuance.

The third and fourth factors weigh heavily against the continuance because the relatively last-minute request, if granted, would increase the inconvenience to the SEC, witnesses, and investors. The SEC has prepared and planned for a December trial date. Other matters have been reassigned pending resolution of this case. Witness availability has been assessed for this time period and strategy decisions made based on that information. Additional trial attorneys have been added by the SEC for this trial. And importantly, the Defendants cannot demonstrate prejudice from the denial of the continuance. The Defendants are not uniquely affected by Christmas occurring in December. They are not uniquely affected by the massive production the Receiver made in this case.[2] The massive production they reference was in fact received by the SEC counsel at the same time the Defendants received it. While the Defendants have more than a dozen attorneys between them, there was a single SEC attorney to review the production on behalf of the SEC. The Defendants are not prejudiced by anything they cite, and they do not even claim that they are. Therefore, they do not – and cannot – succeed as to the third and fourth factors.

The Defendants fare no better on the fifth factor, as they have already received a continuance of the trial date, based one of the same reasons they raise again now – the Receiver's production.

Therefore, the Court should deny the Defendants' motion because the Defendants cannot meet the factors Courts consider in determining whether a continuance is warranted. Nor did the Defendants even acknowledge them, let alone demonstrate them in their motions. *Rink v. Cheminova, Inc.,* 400 F.3d 1286, 1296 (11th Cir 2005) ("We have clearly stated that we will not reverse a district court's ruling on a motion for continuance unless the ruling is arbitrary, unreasonable, and severely prejudicial).

[2] As discussed in more detail in Section III, the production Defendants reference was made by the Receiver. The Defendants have raised this production throughout the case, and it was the basis for the first continuance.

## III. THE DEFENDANTS' ARGUMENTS ARE UNAVAILING

As set forth above, the Defendants cannot prevail in their request for a continuance under the factors Courts consider for granting that relief. In addition, the grounds the Defendants cite are themselves flawed. Therefore, the SEC addresses in this section each ground the Defendants raise to further demonstrate that the Court should deny the Defendants' motions for a second continuance in this case.

First, the Defendants claim there was a voluminous production by the SEC [ECF No. 838 at ¶ 3]. This assertion is not completely accurate and omits material facts. The SEC voluntarily produced all documents in its possession in July and August *2020 – more than one year ago.*[3] During discovery, the Defendants sought from the Receiver all the documents of every initial Receivership Entity. That production, which involved collecting and scanning hard copies and converting electronic materials, would have cost the Receivership a small fortune. The SEC assisted by scanning, bates-stamping, and using the SEC digital production system to produce them for the Receiver. It was not an SEC production, as the Defendants know, and is not bates-stamped as an SEC production. The Defendants received what they requested from the Receiver – everything. And then already used that voluminous production they demanded in order to seek a continuance from the Court seven months ago, claiming the production required a 6-month delay before trial. The Court rejected that notion and granted the Defendants' motion in part, continuing the trial for 3 months until December 2021. The Defendants now repackage this same argument, this time claiming it is an SEC production while ignoring the fact that the Court has already ruled

[3] As additional productions were received by the SEC during discovery, the SEC voluntarily distributed them to all defense counsel. The SEC does not believe these sporadic productions are what the Defendants are addressing in their Motion, because they do not meet the massive and voluminous descriptions Defendants ascribe to the production they received.

and granted them additional time to prepare for trial based on that production.

Second, the Defendants claim the SEC produced even more documents on October 15, 2021. *Id.* In truth, on October 15 the SEC voluntarily produced one thing – namely a letter report attaching exhibits dated October 5, 2021. The letter concerns matters the Receiver raised in a recent motion to lift litigation stay, and the SEC distributed it to all defense counsel after receiving it from the Receiver. The Defendants have not asked to conduct any discovery about the letter. Nor have the Defendants articulated any reason why receiving the letter could conceivably warrant delaying a trial on the charges the SEC alleges against them.

Third, the Defendants claim this case is far more complex than known when they sought the first continuance of the trial date [ECF No. at 838 ¶ 4]. However, the Defendants cite no fact and no reason how or why this case has grown in complexity. The case remains what it has always been – one where the SEC alleges two things: (1) the Defendants participated in securities offerings that were not registered with the SEC; and (2) the Defendants made material misrepresentations and omissions to potential investors and engaged in a fraudulent scheme in the course of those unregistered offerings. The elements of these claims – which are relatively simple – have not changed. The allegations have not changed. And the Defendants cite absolutely nothing that has changed – because they nothing has.

Fourth, the Defendants claim for the first time that the estimated length of trial they have given this Court and the SEC since September 2020 is wrong. [ECF No. 838 at ¶ 5]. The parties filed a Joint Scheduling Report in September 2020, representing to the Court that all parties believed the trial would last two to three weeks [ECF No. 261]. The Defendants have filed hundreds of documents in this case, including numerous "response briefs" that do not respond to any motion, but rather provide the Defendants' positions about a wide range of matters. The Court

has held status conferences in this case. At no time in the 16 months since this case was filed have the Defendants changed their trial length estimate – until now. The Court should not entertain this. The Defendants cite nothing more than the fact that there are 6 Defendants and they plan to call witnesses. This has been the case since day 1. It is nothing new, and it is not the basis for a continuance. Defendants cite "expert witnesses." In truth, there is only a single expert witness for all of the defense in this case. If a trial is conducted on the claims alleged and the defenses to those claims, and defense counsel do not repeat each other's same questions 6 times on each witness, a 4-week trial is frankly unfathomable.[4] [ECF No. 838 at ¶ 5].

Fifth, the Defendants request a continuance based on how long the defense lawyers think the SEC should take to present its case [ECF No. 838 at ¶ 7]. The SEC estimates as it always has that its case in chief will require 7 days.[5] The Defendants have not received our witness list or exhibit list, and have no reasonable basis for their estimate. And obviously, they do not represent the SEC or determine how long the SEC takes to present this relatively simple case.

Sixth, the Defendants claim that the extensions of time they sought for pretrial motions creates a "compressed schedule" and therefore a further delay of trial would be more convenient. [ECF No. 838 at ¶ 8]. The Defendants requested the extensions, and Motions in Limine and Summary Judgment Motions, if granted, only serve to narrow the evidence presented at trial. Courts can rule on these motions on the first day of trial; the Defendants are represented by more than a dozen lawyers with extensive experience who can identify any evidence that no longer needs

[4] We give the Defendants' argument about the length of a deposition somehow correlating to the length of that same witness' trial testimony the attention it is due [ECF No. 838 at ¶ 6]. There is no correlation. A depositions is for one purpose (discovery); trial testimony is for another.

[5] This is based on the SEC trial team's experience litigating these exact claims for more than 40 years at the SEC alone. The estimate is reasonable, and is based on cross examinations being reasonable, not duplicative, and within the scope of the direct examination so that the Defendants do not unreasonably multiply the length of trial (which we are not suggesting they would do).

to be introduced should the need arise.

Seventh, the Defendants argue that Christmas falls in December [ECF No. 838 at ¶¶ 9-10]. This has been the case since the beginning of time (literally, according to many cultures and religions), and was certainly the case when the Court entered the Amended Scheduling Order seven months ago setting the trial to commence December 6. Citing no legitimate basis for doing so, the Defendants have waited until mid-October to raise this issue, essentially insuring that any Christmas-based delay would cause only further delay of the trial date since it is now too late to set the trial in November. Their argument that families might have children who might have breaks from school, etc. is unavailing. Jurors appear for trial during Spring Break and Summer Break. As the Court knows from conducting pilot jury trials, jurors even appear during a pandemic. While many people believe Christmas is a magical time of year, it does not magically erase a month of trials in the U.S. judicial system.

In a related vein, the Defendants claim that the week of Christmas would be silent in the Courthouse, and therefore a break in trial would occur [ECF No. ¶ 11]. The Court has made no such pronouncement. The Friday of Christmas Eve and New Year's Eve are federal holidays, and therefore the Defendants are really talking about two long weekends – assuming this trial goes to New Year's. If trial has somehow not concluded by New Year's, it could commence Monday, January 3, 2022 after that long weekend. A long weekend during a trial is not unusual, and occurs in trials nearly every month of the year when a federal holiday occurs.[6]

Eighth, Defendant Michael Furman separately raises additional arguments for a continuance or to be severed from this case, based on (a) the fact that a state court trial was reset

[6] We give the credit it is due to the Defendants' arguments about what could happen if the Court should decide to create a December 3, 2021 finish date. The Court has made no such pronouncement, and therefore this is an invented issue that requires no response at this time.

– last week – to commence in December 2020 (it is now set to commence November 30) [ECF No, 840 ¶¶ 2-4]; and (b) the SEC has not advised Mr. Furman of its disgorgement calculation in the event the SEC succeeds at trial, *id.* at ¶ 5]. This trial was scheduled first and Mr. Furman's counsel should raise his conflict with the state court rather than ask this Court to delay this trial or to sever Mr. Furman and require the SEC to conduct two trials in this case.[7] Disgorgement is not an issue for trial; a jury does not determine it. If the SEC is successful at trial, then the SEC will request time to obtain authorization from the Commissioners of the SEC to seek monetary relief and file a motion setting disgorgement and civil penalty amounts.

## IV. CONCLUSION

For the reasons set forth above, the Court should deny the Defendants' Motions for a second continuance of the trial date, to sever Mr. Furman from this trial, and to pay Mr. Furman's *pro bono* attorney $75,000 from Receivership funds.

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Respectfully submitted,

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[7] Mr. Furman's counsel – who agreed to represent Mr. Furman *pro bono* – now asks the Court to release investor funds so he can be paid $75,000. No legal argument or justification is provided. If Mr. Furman's counsel no longer desires to represent Mr. Furman pro bono, he can file a motion to withdraw and allow the case to return to the Give Something Back pro bono program to which this Court referred Mr. Furman's case. This is a civil case, not a criminal case where Mr. Furman is entitled to representation. The other defendants, who are subject to asset freezes prohibiting them from paying their counsel, have apparently addressed this to the tune of finding numerous lawyers to represent them.