

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.

**ORDER DENYING DEFENDANTS' MOTION *IN LIMINE* TO
EXCLUDE EXPERT TESTIMONY AND REPORT OF MELISSA DAVIS**

THIS CAUSE comes before the Court upon Defendants' Motion *In Limine* to Exclude Expert Testimony and Report of Melissa Davis [ECF No. 803] ("Motion"). The Court has reviewed Defendants' Motion; Plaintiff's Response in Opposition to Defendants' Motion [ECF No. 843] ("Response"); Defendants' Reply in Support of its Motion [ECF No. 886]; and other relevant portions of the record. For the reasons set forth below, it is hereby

ORDERED AND ADJUDGED that Defendants' Motion [ECF No. 803] is **DENIED**.

LEGAL STANDARD

Federal Rule of Evidence 702 "controls the admission of expert testimony." *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc). Pursuant to that rule, an expert witness may testify if (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the

evidence or to determine a fact in issue. Fed. R. Evid. 702; *Frazier*, 387 F.3d at 1260; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589–592 (1993). The proponent of expert testimony bears the burden of establishing admissibility. *See Frazier*, 387 F.3d at 1244.

ANALYSIS

The Court concludes that the exclusion of Melissa Davis’s expert testimony is unwarranted. Defendants do not dispute Ms. Davis’s qualifications but rather that her “opinion is unreliable and would only mislead rather than assist the jury.” Mot. at 2. This puts prongs two and three of Fed. R. Evid. 702 at issue here. Upon careful review of the record, the Court is not persuaded that Davis’s testimony is either unreliable or would serve to mislead the jury. Defendants primarily argue that Davis’s opinion, insofar as she finds that Par Funding’s cash flow from Merchant Advances was insufficient to pay promised investor returns and operational expenses, is unreliable because she did not use Generally Accepted Accounting Principles (“GAAP”). Mot. at 2. In opposition, Plaintiff contends that Davis’s analysis was performed correctly, and her analysis did not necessitate GAAP to determine the adequacy of Par Funding’s cash flow to pay promised investor returns. Resp. at 1.

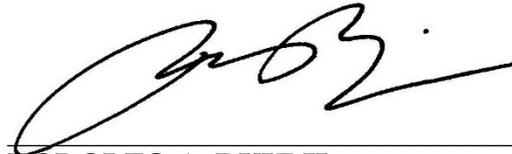
At bottom, this is a disagreement over the particular methodology employed by an expert witness. Such disagreements go to the weight, not the admissibility, of the expert testimony at issue. *Rosenfeld v. Oceania Cruises, Inc.*, 654 F.3d 1190, 1193 (11th Cir. 2011) (“[I]n most cases, objections to the inadequacies of [expert evidence] are more appropriately considered an objection going to the weight of the evidence rather than its admissibility.”) (citation and quotation marks omitted); *see also Bazemore v. Friday*, 478 U.S. 385, 400 (1986) (noting that, “[n]ormally, failure to include variables will affect the analysis’ probativeness, not its admissibility.”). Accordingly, Defendants may address these matters during cross-examination. *See Daubert*, 509 U.S. at 596

(“Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.”).

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that Defendants’ Motion [ECF No. 803] is **DENIED**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 15th day of November, 2021.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE