

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

CASE NO.: 20-CV-81205-RAR-REINHART

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.

**RECEIVER, RYAN K. STUMPHAUZER AND DEFENDANT MICHAEL
FURMAN'S JOINT DISCOVERY MEMORANDUM PURSUANT TO ECF NO. 1263**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ and Defendant Michael Furman (“Furman”), by and through their respective undersigned counsel, hereby file this Joint Discovery Memorandum pursuant to ECF No. 1263, and state:

¹ The “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”); Full Spectrum Processing, Inc.; ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; RE Income Fund 2 LLC; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel; ABFP Income Fund 3 Parallel; ABFP Income Fund 4 Parallel; and ABFP Income Fund 6 Parallel; ABFP Multi-Strategy Investment Fund LP; ABFP Multi-Strategy Fund 2 LP; MK Corporate Debt Investment Company LLC; Capital Source 2000, Inc.; Fast Advance Funding LLC; Beta Abigail, LLC; New Field Ventures, LLC; Heritage Business Consulting, Inc.; Eagle Six Consulting, Inc.; 20 N. 3rd St. Ltd.; 118 Olive PA LLC; 135-137 N. 3rd St. LLC; 205 B Arch St Management LLC; 242 S. 21st St. LLC; 300 Market St. LLC; 627-629 E. Girard LLC; 715 Sansom St. LLC; 803 S. 4th St. LLC; 861 N. 3rd St. LLC; 915-917 S. 11th LLC; 1250 N. 25th St. LLC; 1427 Melon St. LLC; 1530 Christian St. LLC; 1635 East Passyunk LLC; 1932 Spruce St. LLC; 4633 Walnut St. LLC; 1223 N. 25th St. LLC; 500 Fairmount Avenue, LLC; Liberty Eighth Avenue LLC; Blue Valley Holdings, LLC; LWP North LLC; The LME 2017 Family Trust; Recruiting and Marketing Resources, Inc.; Contract Financing Solutions, Inc.; Stone Harbor Processing LLC; LM Property Management LLC; and ALB Management, LLC; and the receivership also includes the properties

Furman has requested a discovery hearing on the issue of whether he should be entitled to take the depositions of the Receiver, Bradley Sharp, and Yale Bogen in connection with the Court's consideration of the SEC's Amended Omnibus Motion for Final Judgments [ECF No. 1252] (the "Amended Motion"). The Receiver disputes Furman's ability to conduct these depositions. Magistrate Judge Reinhart will be conducting a discovery hearing on this issue on Wednesday, June 15, 2022, at 1:00 p.m. Below are the parties' respective positions on this issue.

I. Position of Michael Furman

The SEC is seeking to recover millions of dollars from Michael Furman in addition to the entry of a permanent injunction against him in connection with the SEC's Amended Motion. In support of the Amended Motion, however, the SEC has relied solely on the affidavit of Ryan Stumphauzer, and the trial testimony of Bradley Sharp, with respect to the amount of disgorgement that Defendant Michael Furman would otherwise be required to pay. In connection with the preparation of his response to the SEC's Amended Motion, Furman requested an opportunity to depose Yale Bogen, who worked with Bradley Sharp and DSI and assisted Mr. Sharp in the preparation of his testimony and the analysis that supported Mr. Sharp's testimony. Essentially, Mr. Bogen completed analytical work for Mr. Sharp, and is the person who likely has the most knowledge concerning investments from investors associated with Furman. Mr. Bogen will also have an understanding of the documents and materials that the SEC used to create its disgorgement analysis, as Mr. Sharp did not have personal knowledge of where the document came from or how it was prepared, and what happened with the money that was invested into Fidelis. Similarly, and because the SEC has claimed that investors have lost money as a result of the conduct of Defendants, based on the Receiver's failure to provide a distribution or complete his investigation then Furman must be permitted to inquire about the status of the Receiver's recovery efforts as well.

In response to Furman's request, however, and even though during trial, the SEC and the Receiver represented that Mr. Sharp was available for to testify during discovery, the Receiver has taken the position that Mr. Sharp, and thus Mr. Bogen, cannot be called by Furman to testify as witnesses because their testimony is protected under a doctrine of judicial immunity. However, the

located at 568 Ferndale Lane, Haverford PA 19041; 105 Rebecca Court, Paupack, PA 18451; 107 Quayside Dr., Jupiter FL 33477; 2413 Roma Drive, Philadelphia, PA 19145; 159 26th Street, Avalon, NJ 08202; and 164 84th Street, Stone Harbor, NJ 08247.

Receiver allowed Brad Sharp and James Klenk to testify during trial about matters set forth in the SEC's Motion. And, most importantly, the Receiver has submitted a declaration to the Court, and has not objected to the submission and use of his own declaration concerning the alleged co-mingling of investor money in connection with the Amended Motion.

A party cannot use immunity or a privilege as both a sword and a shield, and here the Receiver is attempting to engage in just that. The Receiver's agent has voluntarily submitted himself to the Court to testify as a witness of the SEC, without objection from the Receiver to provide testimony as a witness of the SEC. By doing so, the Receiver, and his agent, in this case the Receiver have also waived any right to claim that their testimony and information within the scope of the testimony is immune from discovery or immunity. Likewise, and to the extent that the SEC intends to rely on testimony from the Receiver, then Furman requests an opportunity to depose the Receiver as well. It is also unduly prejudicial to prevent Mr. Furman from depose Mr. Sharp, Mr. Bogen and/or the Receiver on matters where they have already provided testimony to the Court, and, there is no question that the Receiver, by allowing the submission of his declaration, and/or his own agents to testify has waived the right to claim that the material and information is privileged. As a result, and to the extent that a privilege or immunity may have existed, that privilege or right has been unequivocally waived by the Receiver himself, who has allowed **two of his agents to testify during trial**, and his own declaration to be submitted to the Court without objection.

In the alternative, if the Court does not permit Furman to depose Mr. Bogen, the Receiver, and/or Mr. Sharp then Furman respectfully requests that the Court decline to consider any testimony or evidence that is submitted by the SEC in support of its Amended Motion by or through Mr. Sharp and/or the Receiver as it relates to Mr. Furman.

II. Position of the Receiver

There is no basis for Furman to take the deposition of: (a) the "Receiver; or (b) the Receiver's consultants at Development Specialists, Inc., Bradley Sharp ("Sharp") and Yale Bogen ("Bogen"). Furman suggests that he should be entitled to take these depositions because, in its Amended Motion, the SEC refers to (a) testimony Sharp provided during the trial of Furman and (b) a declaration from the Receiver (the "Receiver Declaration").² The requested depositions are

² The referenced trial testimony of Sharp and the Receiver Declaration are attached as Exhibits 1 and 2, respectively.

not appropriate because: (a) the Receiver and his professionals are immune from this discovery pursuant to the quasi-judicial immunity afforded to court-appointed receivers and their agents; (b) the discovery cutoff date in this case has long since passed; and (c) the depositions would serve no proper purpose related to the remaining issues pending before the Court.

A. The Receiver and his professionals are entitled to quasi-judicial immunity.

The SEC filed this action on July 24, 2020. Shortly thereafter, an attorney for the LME 2017 Family Trust issued a notice of taking the deposition of the Receiver. On August 15, 2020, the Receiver filed a motion to quash the subpoena and for protective order [ECF No. 156]. In that motion, the Receiver argued that he should not be subjected to discovery because, as an officer and agent of the Court, he is entitled to “absolute immunity,” including “protection from discovery” for all actions he has “taken in good faith and within the scope of the authority granted” to him as the Receiver in this case. (ECF No. 156, citing *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995) and *FTC ex rel. Yost v. Educare Centre Servs., Inc.*, EP 19-CV-196-KC, 2020 WL 4334765, at *1 (W.D. Tex. May 26, 2020).)

On August 15, 2020, the Court granted the Receiver’s motion. [ECF No. 157.] Thus, the Court has already confirmed that judicial immunity applies to the Receiver and his agents in this case. It cannot reasonably be argued that Sharp’s trial testimony or the Receiver Declaration constitute anything other than actions “taken in good faith and within the scope of the authority granted” to the Receiver in this case. *Id.* Thus, there is no waiver of or exception to the judicial immunity afforded to the Receiver and his professionals.

B. The discovery deadline passed on September 10, 2021.

The Court entered an Amended Order Setting Jury Trial Schedule [ECF No. 521], which established a deadline for completing all discovery of September 10, 2021. Prior to that deadline, Furman never requested any discovery from the Receiver and never asked to take the deposition of the Receiver’s professionals at DSI. As a result, assuming *arguendo* that Furman could overcome the quasi-judicial immunity afforded to the Receiver and his professionals, he missed any opportunity to request discovery from the Receiver more than nine (9) months ago.

C. The requested depositions would serve no proper purpose.

In the Amended Motion, the SEC refers to testimony Sharp provided during the trial of Furman. Specifically, Sharp confirmed—based on his review of the records of the Receivership Entities—the total amount of funds: (a) Furman raised from investors and delivered to Par Funding

for investment in Par Funding; (b) Par Funding returned to Furman's entity; and (c) the difference between (a) and (b). This is simple math based on Sharp's review of these records.³

In the Receiver Declaration the Receiver stated that, according to the records of the Receivership Entities, Par Funding: (a) raised from investors a total of \$550,325,596; and (b) repaid to investors a total of \$300,108,117. Neither Sharp's trial testimony nor the Receiver Declaration include any opinions, analysis, or other matters of discretion. Rather, they are simply confirmations of information existing in the records of the Receivership Entities and arithmetic.

Notably, Furman has access to the very same records and information that Sharp testified about in his trial testimony and the Receiver referenced in the Receiver Declaration. In addition, Judge Ruiz has already confirmed that he will not be conducting an evidentiary hearing on the Amended Motion. Furman has an opportunity to file a response to the Amended Motion, including attaching any evidence or other documentation in support of his position. But neither Sharp, Bogen, nor the Receiver will be testifying at a hearing on the Amended Motion and, therefore, there is no practical reason why Furman should be permitted to depose these individuals.

If Furman believes that the Sharp trial testimony or the Receiver Declaration do not accurately reflect information contained in the records of the Receivership Entities, or include incorrect mathematical calculations, Furman can make these arguments in his opposition to the Amended Motion. But given that there will be no evidentiary hearing on the Amended Motion, there is simply no reason for Furman to take these requested depositions. Finally, the Receiver disputes Furman's suggestion that the Receiver or his counsel ever represented to Furman or the Court that the Receiver would have made Sharp available to testify in a deposition during discovery in this case. Accordingly, the Court should reject Furman's request to take the depositions of Sharp, Bogen, and the Receiver.

³ As for Bogen, he did not testify at the trial of Furman, there is no reference to him in the Amended Motion, and no party has filed any document in this case that Bogen executed. Furman's sole justification for deposing Bogen is that he believes Bogen "did most of the work" that Sharp relied upon in his trial testimony and, therefore, "it would be more cost effective to simply question Mr. Bogen about these numbers." Aside from the fact that Furman's belief is not accurate, the same reasons why a deposition of Sharp would not be appropriate also apply to a proposed deposition of Bogen.

III. Conclusion

WHEREFORE, the Receiver and Furman submit their respective positions on whether Furman should be entitled to take the depositions of the Receiver, Sharp, and Bogen.

Dated: June 13, 2022

Respectfully Submitted,

**STUMPHAUZER FOSLID
SLOMAN ROSS & KOLAYA, PLLC**
Two South Biscayne Blvd., Suite 1600
Miami, FL 33131
Telephone: (305) 614-1400

MILLENNIAL LAW, INC.
501 E. Las Olas Blvd., Ste 200/308
Fort Lauderdale FL 33301
Telephone: 954-271-2719

By: /s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA
Florida Bar No. 056140
tkolaya@sflaw.com

By: s/ Zachary P. Hyman
Zachary P. Hyman
Florida Bar No. 98581
zach@millenniallaw.com
millenniallawforms@gmail.com
jessica@millenniallaw.com

Co-Counsel for Receiver

Attorneys for Michael C. Furman

**PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP**
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Telephone: (215) 320-6200

By: /s/ Gaetan J. Alfano
GAETAN J. ALFANO
Pennsylvania Bar No. 32971
(Admitted Pro Hac Vice)
GJA@Pietragallo.com
DOUGLAS K. ROSENBLUM
Pennsylvania Bar No. 90989
(Admitted Pro Hac Vice)
DKR@Pietragallo.com

Co-Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 13, 2022, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA

Exhibit “1”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH
CASE NO. **20-CV-81205-RAR**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff

December 7, 2021

vs.

**COMPLETE BUSINESS SOLUTIONS
GROUP, INC, et al,**
Defendants.

TRIAL DAY 2

BEFORE THE HONORABLE **RODOLFO A. RUIZ, II,**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:
SECURITIES AND
EXCHANGE COMMISSION

AMIE RIGGLE BERLIN, ESQ
ALISE M. JOHNSON, ESQ
U.S. Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(305) 982-6300
Berlina@sec.gov

FOR THE DEFENDANT:
MICHAEL C. FURMAN

ZACHARY P. HYMAN, ESQ
Millennial Law
501 E. Las Olas Blvd, Ste. 200/308
Ft. Lauderdale, FL 33301
(954) 271-2719
Zach@millenniallaw.com

ELROY M. JOHN, JR., ESQ
Florida Justice Law Firm, PLLC
101 NE 3rd Avenue, Ste. 1500
Fort Lauderdale, FL 33301
(954) 637-2767
Elroy@onlyforjustice.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JEREMY I. KNIGHT, ESQ
Knight Law, PA
4624 Hollywood Blvd, Ste. 203
Hollywood, FL 33021
(786) 480-0045
Yirmi@knightlawfl.com

REPORTED BY: GIZELLA BAAN-PROULX, RPR, FCRR
United States Court Reporter
400 North Miami Avenue, Suite 8S32
Miami FL 33128
(305) 523-5294
gizella_baan-proulx@flsd.uscourts.gov

Also present: Victoria Jacqmein, Kevin Robinson

I N D E X

Witness	Direct	Cross	Redirect	Recross
BRADLEY SHARP	55	120	129	
MARK REIKES	133	147	151	
PERRY ABBONIZIO	157	176	194	209

1 asking you to hold Mr. Furman accountable for that failure. He
2 played by the rules and now they are changing the game. They
3 tell you this is not about Par Funding, but what the evidence
4 will show is that they are trying to make Mr. Furman
11:18 5 indistinguishable from that entity. They will ask you to hold
6 him accountable for Par Funding's actions. And we are asking
7 you to reject that unreasonable request and instead find
8 Mr. Furman not liable on all counts. Thank you.

9 **THE COURT:** Thank you very much.

11:19 10 SEC's first witness.

11 **MS. BERLIN:** The SEC will call Mr. Bradley Sharp.

12 **THE COURT:** All right.

13 Thereupon,

14 **BRADLEY SHARP,**

15 having been duly sworn by the court reporter, testified as
16 follows:

17 **MR. HYMAN:** We'd just like to renew our prior
18 objection that -- on the motion in limine for purposes of
19 preserving the record, Your Honor.

11:19 20 **THE COURT:** Okay. Understood.

21 You may proceed.

22

23 **DIRECT EXAMINATION**

24 **BY MS. JOHNSON:**

11:19 25 Q. Good morning, Mr. Sharp.



1 A. They are another entity in the receivership. They are an
2 agent fund. They've raised money from investors.

3 Q. And do you have access to their records?

4 A. Yes.

11:28 5 Q. What records have you reviewed of theirs, if any?

6 A. Again, not a lot, mostly tax records and records of
7 investors.

8 Q. And who controlled United Fidelis and Fidelis Financial
9 Planning before you were involved?

11:29 10 A. Michael Furman.

11 Q. Where were those two companies located?

12 A. West Palm, in South Florida.

13 Q. What services did Fidelis provide to Par Funding?

14 A. As I said, they were an agent fund. They raised money from
11:29 15 investors and then loaned that money to Par Funding.

16 MR. HYMAN: Objection, Your Honor.

17 THE COURT: Overruled.

18 BY MS. JOHNSON:

19 Q. Based on your review of Par Funding's records, can you tell
11:29 20 us how much money was -- Fidelis raised for Par Funding?

21 A. Yes, about 12.1 million dollars.

22 Q. And what was the purpose of the money that was sent from
23 Fidelis to Par Funding?

24 A. To be used in Par Funding's business to make MCAs.

11:30 25 Q. MCAs being the cash advances to other businesses?

1 A. **Correct.**

2 Q. **Based on your review of Par Funding records, do you know**
3 **how much money Par Funding sent back to the Fidelis companies?**

4 A. **About 6.4 million dollars.**

11:30 5 Q. **Does Par Funding still owe the Fidelis companies any**
6 **outstanding monies?**

7 A. **Yes.**

8 Q. **What were those for?**

9 A. **That's the remaining that has not been paid, depending upon**
11:30 10 **how the 6.4 million is characterized as principal or interest,**
11 **there's remaining cash due of 5.6 million dollars.**

12 Q. **That's what's owed back to the Fidelis companies or their**
13 **investors? What is that number?**

14 A. **That's the 5.6 million that Par Funding owes to Fidelis.**

11:31 15 Q. I want to show you what's been previously marked as
16 Plaintiff's Exhibit 205. Let me know if you want a paper
17 version.

18 May I approach?

19 **THE COURT:** You may.

11:31 20 (Thereupon, the exhibit was marked for identification.)

21 **BY MS. JOHNSON:**

22 Q. Do you recognize this exhibit?

23 A. **Yes.**

24 Q. And what, is it?

11:31 25 A. **This is a schedule of the individual investors into the**

Exhibit “2”

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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 RYAN K. STUMPHAUZER, ESQ.

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

1. My name is Ryan K. Stumphauzer. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

2. I am an attorney at the law firm of Stumphauzer Foslid Sloman Ross & Kolaya, PLLC. My business address is 2 South Biscayne Boulevard, Suite 1600, Miami, Florida 33131.

3. Pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver dated July 27, 2020 [ECF No. 36] (the "Receivership Order") and other subsequent orders entered in this action, I was appointed as the receiver (the "Receiver") over, among other entities, Complete Business Solutions Group, Inc. d/b/a Par Funding ("CBSG") and Full Spectrum Processing, Inc. ("FSP") (together, the "Receivership Entities").

4. In the course of my work as the Receiver, I have, among other things, reviewed the books, records, documents, accounts, and all other instruments and papers of the Receivership

Entities, including the QuickBooks files and other financial information (the “Receivership Records”).

5. Accordingly, I am familiar with the records and documents of the Receivership Entities, including the record-keeping system of the Receivership Entities.

6. The Receivership Records of Par Funding reflect that the company raised from investors a total of \$550,325,596.

7. The Receivership Records of Par Funding reflect that the company repaid to investors, including the “Agent Funds” a total of \$300,108,117. These amounts include interest payments and the return of principal.

8. The Receivership Records of Par Funding were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of the matters described in those records.

9. The Receivership Records of Par Funding were kept in the course of regularly-conducted business activities of the Receivership Entities.

10. It was a regular practice of the Receivership Entities to make and maintain records such as the Receivership Records of Par Funding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15th day of April, 2022 in Miami, Florida.


RYAN K. STUMPHAUZER