

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.

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
EXPEDITED MOTION TO STRIKE DEFENDANTS' EXPERT REPORT**

This Motion is filed on an expedited basis because the Plaintiff's Reply to the Defendant's Expert Report is due Friday, July 15, 2022. The Defendants disclosed this new expert and his report for the first time on the night of Friday, July 11, 2022. If this new expert report will be considered by the Court, then the Plaintiff cannot file its Reply without seeking additional time in order to obtain expert witness disclosures, conduct expert witness discovery, and depose this expert.

I. INTRODUCTION

Plaintiff Securities and Exchange Commission respectfully moves the Court to strike the Expert Report of David Dunkelberger, filed by the Defendants on July 11, 2022 in support of their Response to the Commission's Motion for Final Judgments. The Court should strike what the Defendants identify in their filing [ECF No. 1298] as the "Dunkelberger Expert Report"[ECF No. 1298-17] for the following reasons:

- Not disclosed: The Defendants failed to disclose this expert witness at any time pursuant to Federal Rule of Civil Procedure 26 or prior to filing their July 11, 2022 filing;
- Untimely: The deadline for expert witness reports was August 11, 2021 pursuant to this Court's Scheduling Order, the Defendants have not sought an enlargement of this deadline, and therefore this witness is untimely and improper [ECF No. 521].¹

¹ The Consents and Judgments permit the parties to conduct additional discovery, but do not extend expert witness disclosure deadlines or extinguish the expert witness disclosure requirements or those under Rule 26 of the Federal Rules of Civil Procedure.

- Defendants have known about the legal and factual issues relating to disgorgement and penalties since July 2020 when the Commission filed a Complaint seeking this relief;
- Defendants retained an expert, Joel Glick, to opine on the facts relating to these issues – including whether Par Funding was a Ponzi scheme – and he produced an expert report and a rebuttal expert report in August 2021;
- The parties conducted expert witness discovery during the expert discovery period in 2021, including deposing Glick about his opinions;²
- The Commission did not file a new expert report with its Motion but instead cited to the prior expert work and the Receiver’s reports together with a declaration from the Receiver summarizing the amounts raised from investors and paid to investors and agent funds, which figures have been known to the Defendants since at least August 2021 because they appear in the Commission’s expert witness report produced at that time;
- Noncompliant: The Defendants failed to meet any of the expert witness disclosure obligations for their new expert witness pursuant to the Rules and have made no production whatsoever concerning this new expert witness;
- Improper: The new expert witness opines about the work of Glick, the Defendant’s first expert, and Melissa Davis, the Commission’s expert. The new expert’s opinion is merely an opinion to vouch for Glick’s report and rebuttal report. It is thus duplicative and opining about another expert’s work to vouch for it is not an appropriate subject matter of expert testimony.

If the Defendants are permitted to introduce a new expert witness report for the first time one year after the expert witness disclosure period, without seeking an extension of that deadline, and without regard for Rule 26 and expert witness disclosure requirements, then the Commission would need to seek an extension of time to file a Reply in order to conduct expert witness discovery, obtain Dunkelberger’s work papers, and depose him. This would result in a significant delay in the briefing schedule, caused solely by the Defendants’ conduct, and these relatively simple relief calculations should not be delayed further.³

³ The Dunkelberger report is not the only improper evidence or argument the Defendants present in their Response. However, it is the only issue the Commission cannot address in its Reply without seeking significant discovery, the need for which would be obviated by an Order from this Court striking the improper new expert report.

WHEREFORE, the SEC respectfully requests an expedited briefing scheduling and an expedited Order striking the July 2022 expert report.

July 12, 2022

Respectfully submitted,

s/Amie Riggle Berlin

Amie Riggle Berlin, Esq.

Senior Trial Counsel

Fla. Bar No. 630020

Telephone: (305) 982-6322

Facsimile: (305) 536-4154

E-mail: berlina@sec.gov

ATTORNEY FOR PLAINTIFF

SECURITIES AND EXCHANGE COMMISSION

801 Brickell Avenue, Suite 1950

Miami, Florida 33131

Telephone: (305) 982-6300

Undersigned contacted defense counsel via email on this same day to confer, but did not receive a response prior to filing. Given the expedited nature of the issue, the Commission is filing this Motion. Amie Riggle Berlin