

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.

**DEFENDANTS LAFORTE, MCELHONE, AND COLE’S EXPEDITED MOTION
TO STRIKE THE S.E.C.’S EXPEDITED MOTION TO STRIKE DEFENDANTS’
EXPERT REPORT BASED ON THE S.E.C.’S FLAGRANT DISREGARD OF
LOCAL RULE 7.1(a)(3), OR FOR ALTERNATIVE RELIEF**

Defendants, Joseph LaForte, Lisa McElhone, and Joseph Cole Barleta (collectively the “Defendants”) file this Expedited Motion requesting that the Court strike the Securities and Exchange Commission’s Expedited Motion to Strike Defendants’ Expert Report [D.E. 1303] based on Plaintiff’s failure to comply with the meet-and-confer requirements of Local Rule 7.1(a)(3). This Motion is filed on an expedited basis because the Defendants’ Response to the S.E.C.’s Expedited Motion to Strike – which was filed in the afternoon on July 12, 2022 – is currently due on July 14, 2022. Accordingly, the Defendants request a ruling on this Motion by noon on July 14, 2022.

MEMORANDUM

1. On July 12, 2022 at **3:02 p.m. EDT**, the Plaintiff emailed *some* of the attorneys representing the Defendants’ asking to confer regarding the S.E.C.’s intent to file an expedited motion to strike an “expert witness report” from Defendants’ Response in Opposition to the S.E.C.’s Amended Omnibus Motion for Final Judgments. (A copy of the email is attached as Exhibit 1).

2. Less than two and a half hours later, at **5:24 p.m. EDT**, the S.E.C. filed its Expedited Motion to Strike [D.E. 1303] without actually seeking to meet and confer.

3. The S.E.C.'s Expedited Motion to Strike did not contain the certificate of good faith conferral required by Local Rule 7.1(a)(3). The obvious reason for this is that the S.E.C. did not confer with the Defendants in good faith, as discussed further below.

4. First, the close proximity between Plaintiff's email and the filing of the S.E.C.'s Expedited Motion to Strike belies any genuine attempt at conferral. The fact that the email did not request a response by a time-certain and was not marked as a "high importance" email also reflects that there was no real effort to confer before filing.

5. Second, the email omitted James M. Kaplan, Esq. (lead counsel for Lisa McElhone) and David L. Ferguson, Esq. (lead counsel for Joseph LaForte), as well as other counsel of record. Accordingly – at most – the S.E.C. attempted to confer with only *some* counsel.

6. Third, the S.E.C. did not make any effort to confer other than sending the email at issue to *some* counsel just prior to filing the Motion. The SEC did not attempt to call counsel to confer or send a follow-up email to counsel, nor did it make any other effort to confer.

7. Local Rule 7.1(a)(3) requires the movant "to confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion." *See* S.D. Fla L. R. 7.1(a)(3). Defendants respectfully submit that the S.E.C.'s email did not constitute a "good faith effort" to confer.

8. Local Rule 7.1(a)(3) also requires the movant to include a certificate of good faith conferral at the end of the motion which states either that counsel for the movant conferred with the other parties in good faith, or which states that the movant was unable to confer with the other parties and identifies the movant's specific efforts to confer:

At the end of the motion, and above the signature block, counsel for the moving party shall certify either: (A) that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so; or (B) **that counsel for the movant has made reasonable efforts to confer with all parties or non-parties who may be affected by the relief sought in the motion, which efforts shall be identified with specificity in the statement (including the date, time, and manner of each effort), but has been unable to do so.** *Id.* (Emphasis supplied).

9. The S.E.C.'s failure to make a good faith effort to meet and confer and failure to include the required meet-and-confer certification in its Expedited Motion to Strike both constitute violations of Local Rule 7.1(a)(3). Such violations "may be cause for the Court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee." *See id.*

10. Accordingly, as a consequence of the S.E.C.'s flagrant violations of Local Rule 7.1(a)(3), Defendants respectfully request that the Court either: 1) strike the S.E.C.'s Expedited Motion to Strike [D.E. 1303]; or (2) deny the S.E.C.'s Expedited Motion to Strike entirely. Defendants also request that the Court impose an appropriate sanction on the S.E.C.'s counsel as contemplated by Local Rule 7.1(a)(3), including, but not limited to, ordering payment of Defendants' reasonable attorneys' fees for bringing this Motion.

11. In the alternative, Defendants request that the Court grant them a one-week extension of time to respond to that motion. Pursuant to the Court's Order [D.E. 1304] issued at 7 p.m. EST last night, the Defendants currently have until July 14, 2022 to respond to the motion (*i.e.*, tomorrow), so the requested extension would run through July 21, 2022. Given the significance of the relief the S.E.C. seeks – and the press of other business which will consume all of the undersigned's time for the balance of the day – the current deadline will only permit counsel one single day to confer with

their clients and draft and file the response, which is an insufficient amount of time. The sole basis the S.E.C. has asserted for filing the subject motion on an expedited basis is that the S.E.C. requires a ruling in advance of the July 15, 2022 deadline for the S.E.C. to file its Reply brief. To rectify this issue, the S.E.C. may seek (and the Defendants would not oppose) a proportionate extension of time for the S.E.C. to file its Reply brief.

WHEREFORE, the Defendants Joseph Cole Barletta, Joseph LaForte and Lisa McElhone respectfully request that the Court either strike the S.E.C.'s Expedited Motion to Strike [D.E. 1303] or deny the S.E.C.'s Expedited Motion to Strike entirely. Defendants also request that the Court impose appropriate sanctions on the S.E.C.'s counsel in accordance with Local Rule 7.1(a)(3), including, but not limited to, ordering payment of Defendants' reasonable attorneys' fees for bringing this Motion. Alternatively, the Defendants' request that the Court extend the deadline for them to file a Response to the S.E.C.'s Expedited Motion to Strike to July 21, 2022.

S.D. Fla L. R. 7.1(a)(3) Certification of Counsel

Undersigned counsel hereby certify that they have conferred with counsel for Plaintiff by email and by telephone, in a good faith effort to resolve the issues raised in this motion, and have been unable to do so.

Dated: July 13, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of July 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 transmissions of Notices of Electronic Filing generated by CM/ECF.

By: /s/ James M. Kaplan
JAMES M. KAPLAN

EXHIBIT 1

From: [Berlin, Amie R.](#)
To: [Alan Futerfas](#); [Joshua R. Levine](#); [Noah Snyder](#); [Bettina Schein](#)
Subject: Motion to Strike
Date: Tuesday, July 12, 2022 3:02:34 PM

I'm writing to confer. We plan to file an expedited motion to strike your expert witness report filed with your response. This witness was never disclosed, the deadline for expert witnesses has long passed, it is duplicative of your first expert witness' reports, and the report does not comply with the expert witness disclosure obligations. We are filing this as an expedited motion today because if the court is considering the expert report we will need to then seek from the court extensive time to seek discovery from the witness and to depose him before filing a reply. Please let me know if you will agree to withdraw his report and arguments relating to it.

Thank you,
Amie

Sent from my iPhone