

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'S RESPONSE TO DEFENDANTS' EXPEDITED MOTION TO STRIKE

Yesterday the Securities and Exchange Commission filed an Expedited Motion in which undersigned stated that we had conferred with defense counsel that same day via email but had not received responses, and we were proceeding with filing the Motion before hearing from counsel because of the expedited basis of the relief sought. The statement in the Motion read as follows:

“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”

This morning, undersigned called James Kaplan and Noah Snyder, counsel for Defendant Lisa McElhone and conferred about the relief sought in the Commission's Motion. The call lasted for 19 minutes, from 10:46 a.m. until 11:05 a.m. During that call Mr. Snyder advised that he would not withdraw the new expert report at issue in the Commission's Motion. Accordingly, the Commission's July 12 Motion is in dispute and will in fact be litigated. During this same call, and after counsel had conferred fully about the Commission's Motion, Kaplan stated he was moving to strike the Commission's Motion because undersigned conferred via email on July 12 with Kaplan's colleague/co-counsel Noah Snyder, but not him as well. Defendants then filed the instant Motion after the telephone conference/conferral on the Commission's Motion had concluded.

The Court should deny the Defendants' instant Motion. The Defendants are asking the Court to strike the Commission's Motion and then have the Commission re-file it today since conferral via telephone occurred this morning. There is no question that McElhone opposes the

relief sought in the July 12 Motion.¹ Contrary to Defendants' assertions in their Motion:

1. Undersigned conferred did not attempt to confer in bad faith or to avoid conferral on July 12. Rather, as undersigned stated in the July 12 Motion, the Commission filed its Motion without receiving responses from Defendants due to the expedited nature of the relief sought;

2. The Commission's July 12 Motion does not include a statement about conferral, explaining the date and manner of the conferral effort – that is via email the same day of the filing. While the Local Rules also require the specific time of the email, the failure to include the time of the message was inadvertent; and

3. Undersigned counsel sent an email message to counsel for all parties affected by the relief sought – namely, for McElhone (counsel Alan Futerfas and Noah Snyder), LaForte (Josh Levine), and Barleta (Bettina Schein). This is apparent in undersigned's conferral email Defendants filed with their expedited Motion today. The Local Rules require conferral with "all parties" affected by the relief sought, and undersigned emailed counsel for all parties affected. Defendants' argument that undersigned did not also include a third lawyer for McElhone (namely, Kaplan, who works at the same law firm as Snyder) and a second attorney for LaForte (namely, Ferguson, who is law partners with Levine), this was not done for any nefarious purpose as the Defendants claim. Undersigned simply conferred with the lawyers who are usually the point persons for conferral and those who typically confer on behalf of each of the parties.

The Defendants' request for legal fees from undersigned for filing their Motion should be denied. There was no bad faith, defendants filed their Motion after conferring, the Commission's Motion stated the conferral efforts (other than specific time), and the Defendants' Motion is not necessary because the parties dispute the relief sought in the July 12 Motion.

The Court should deny the Defendants' request to grant them an additional week to respond to the July 12 Motion. The July 12 Motion raises a simple issue. Further, the Defendants are essentially asking the Court to vacate its July 12 Order requiring the Defendants to file an expedited Response, and they do not address the burden for vacating an Order or even seek this relief. Finally, their purported basis – conferring with their clients – lacks merit. The Defendants conferred with their clients and filed a Motion today to strike the Commission's July 12 Motion; there is no reason they cannot confer with their clients about that same Motion in order to respond.

¹ While counsel for Defendants LaForte and Barleta have not responded to the Commission's July 12 email as of the time of this filing, McElhone has advised that she is opposing the Motion.

The July 12 Motion is simple, it raises a narrow issue, it is two pages in length, and the relief sought in this case has been delayed long enough. The Commission wishes to file its Reply Friday when it is due, the Court granted the expedited relief, and the Defendants raise no basis for disturbing that. This case should proceed without further delay so that distributions, if any, can occur to investors.

July 13, 2022

Respectfully submitted,

s/Amie Riggle Berlin
Amie Riggle Berlin, Esq.
Senior Trial Counsel
Fla. Bar No. 630020
pTelephone: (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