

**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 AND MCELHONE'S REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF THEIR MOTION FOR ORDER TO SHOW CAUSE**

Defendants, Joseph LaForte and Lisa McElhone (the "Defendants"), file this Reply in further support of their Motion for an Order to Show Cause Why the United States District Attorney for the Eastern District of Pennsylvania Should Not Be Held in Contempt (the "Motion" ECF 1468) and as support therefore, state as follows:

1) Introduction

The Defendants' Motion seeks to bring a Plane and Stock Account which are being held by the U.S. Attorney into the Receivership so that those assets (valued at \$18 Million) will be available to address the enormous judgment entered against the Defendants in this action and, ultimately, to make distributions to investors.¹ Ordinarily, one might expect the SEC to support the Motion – as the Receiver has² – since the SEC is the judgement creditor in this case, and is a government agency

¹ These assets *are not* needed to satisfy the judgment, as the Receiver's Quarterly Reports reflect that the value of the assets that are already in his possession greatly exceed the amount of the current judgment. However, it is Defendants' position that the Plane and Stock Account constitute Receivership Assets which should be marshalled by the Receiver – with the understanding that once the judgment is satisfied out of some combination of the Receivership Assets, all remaining Receivership Assets which are attributable to the Defendants must be returned to them.

² See Motion, p. 8, Certification of Counsel, stating that the Receiver does not oppose the inclusion of these assets in the Receivership Estate if those asserts constitute Receivership Property.

charged with protecting public investors. But instead of joining in the Motion (or at least remaining neutral), the SEC chose to file a scathing opposition filled with baseless accusations and personal attacks against the Defendants. The SEC also curiously labeled its opposition as a “Notice of Filing Position” in a transparent attempt to prevent the Defendants from responding to the SEC’s outrageous allegations. It is important to note, however, that despite the SEC’s fierce opposition and bully tactics, the SEC’s “Notice of Position” does not dispute *any* of the essential grounds upon which Defendants seek an Order to Show Cause – *i.e.*, that the Plane and Stock Account constitute Receivership Assets which are under this Court’s exclusive jurisdiction pursuant to the Receivership Orders, that the U.S. Attorney is on notice of the Receivership Orders, and that the U.S. Attorney has refused to transfer the Plane and Stock Account to the Receiver as required by the Receivership Orders.

In short, the SEC’s opposition to the Motion conveniently ignores the fact that the U.S. Attorney is wrongfully holding over \$18 Million in Receivership Assets, and instead focuses on vilifying and punishing the Defendants – even though doing so is detrimental to the investors the SEC is charged with protecting, and affords actual or tacit approval of the U.S. Attorney’s violations of the Receivership Orders. None of the arguments raised by the SEC have any merit, nor do these arguments even address – let alone rebut – Defendants’ evidence that the U.S. Attorney has violated the Receivership Orders. Accordingly, the Court should enter an Order requiring the U.S. Attorney to show cause why he should not be held in contempt for the reasons set forth in the Defendants’ Motion.

2) The Defendants Have Standing To File The Motion For Order To Show Cause

The SEC’s primary argument in opposition to the Motion is that the Defendants’ lack standing because only the Receiver is imbued with the authority to seek contempt for violations of the Receivership Orders. As support, the SEC states that when it filed its own motion for order to show cause against Defendants and Fox Rothschild back in September of 2021, Fox Rothschild moved to

strike on the basis that the SEC lacked standing (amongst other grounds), and the Defendants filed a Notice of Joinder adopting Fox Rothschild's arguments. However, the SEC was in a very different position from the Defendants when it filed its motion for order to show cause because it had no ownership interest in the property it claimed had been transferred in violation of the Receivership Orders, nor did it have a judgment which would give it a potential interest in such property. Here, by contrast, the Defendants contend that the U.S. Attorney has violated the Receivership Orders by wrongfully retaining Receivership Assets *which are solely owned by Defendant Lisa McElhone*.³ Because the Defendants have a direct pecuniary interest in the Receivership Assets at issue, they have standing to seek enforcement of the Receivership Orders with respect to those assets.

Furthermore, the moving Defendants are merely asking the Court to enforce its own Receivership Orders by issuing an order to show cause – and the Court unquestionably has the inherent authority to enforce its own orders. *See, e.g., S.E.C. v. Bilzerian*, 613 F. Supp. 2d 66, 72 (D.D.C. 2009) (noting that Courts can initiate orders to show cause under their own inherent authority); *see also Barash v. Kates*, 585 F. Supp. 2d 1347, 1352 (S.D. Fla. 2006); *Garciga v. Dolphin Towing & Recovery Inc.*, No. 14-24797-CIV, 2015 WL 12778639, at *1 (S.D. Fla. Apr. 8, 2015). Defendants are not seeking to enforce the Receivership Orders, nor are they asserting an independent claim against the U.S. Attorney based on her violations of the Receivership Orders. Accordingly, the issue of Defendants' standing is not an impediment to this Court issuing the requested order to show cause of its own volition. *See Bilzerian*, 613 F. Supp. 2d at 72 (declining to vacate an order to show cause based on the movant/intervenor's alleged lack of standing, holding that the order to show cause issued from the Court, not the intervenor, so the contemnor could not "escape the order to show cause" based on the alleged standing issue).

³ As stated in the Defendants' Motion, the Plane and Stock Account are 100% owned and controlled by Ms. McElhone, through her interests in the LME Trust and EUQO. (*See* ECF 1468, p. 3 at FN 4). The SEC does not dispute these facts in its Notice of Opposition.

3) The Defendants Satisfied Its Obligation To Meet And Confer

The SEC also contends that the Motion should be denied because the Defendants allegedly failed to satisfy their duty to meet and confer with the U.S. Attorney. Assuming the SEC has grounds to oppose the Motion based on the Defendants' alleged failure to meet and confer *with someone else* (which is questionable), this argument would still fail because Defendants *did* confer with the U.S. Attorney. Specifically, the Defendants contacted Assistant United States Attorney Matthew Newcomer to request that the Plane and Stock Account be transferred to the Receiver, and Mr. Newcomer advised the Defendants of the U.S. Attorney's opposition when he stated – in writing – that they would not agree to transfer the assets. (*See* Motion, p. 3 and Exhibit 2). These conferral communications were expressly detailed in the Defendants' Motion, which addresses and satisfies the Court's conferral requirements, as set forth in Local Rule 7.1. Thus, the SEC's contention that the Motion should be denied due to Defendants' alleged failure to confer with the U.S. Attorney lacks merit.

4) The Defendants Have Not Interfered With The Receivership Or The U.S. Attorney's Criminal Investigation

Finally, the SEC's contention that the Defendants have "interfered" with the Receivership and/or violated the Receivership Orders by filing the Motion lacks any factual or legal basis and should be disregarded by the Court. The Defendants' Motion *does not* interfere with the Receiver's duties – if anything, it assists the Receiver by seeking to deliver additional Receivership Assets into his possession. Importantly, the Defendants conferred with the Receiver before filing this Motion, and the Receiver advised that he "does not oppose the inclusion of assets in the Receivership Estate if those asserts constitute Receivership Property." (*See* Motion, p. 8, Certification of Counsel).⁴ Accordingly, it appears that the Receiver himself does not view the Motion as an interference.

⁴ The Receiver does not take a position on whether the U.S. Attorney should be held in contempt.

Furthermore, the SEC's allegation that the Defendants are interfering with the Receivership is irrelevant to the inquiry presented in the Motion – *i.e.*, whether the U.S. Attorney should be held in contempt for violating the Receivership Orders – and constitutes nothing more than an *ad hominem* attack on the Defendants. Thus, irrespective of the dubious nature of the SEC's argument, there is nothing to prevent the Court from entering an order to show cause directed to the U.S. Attorney regarding her failure to deliver the Plane and Stock Account to the Receiver, as required by the Receivership Orders.

Similarly, the SEC's assertion that the Defendants filed the Motion in an effort to interfere with the U.S. Attorney's criminal investigation is completely spurious and utterly without merit, and appears to have been raised solely in an effort to poison the well. The SEC offers absolutely no support for its contention that the Defendants filed the Motion for any improper purpose, nor has it explained why the Defendants' purported motives would have any impact on the Court's determination of whether there is sufficient evidence that the U.S. Attorney violated the Receivership Orders by refusing to transfer the Plane and Stock Account to the Receiver.⁵ For these reasons, the SEC's arguments that the Defendants' are interfering with the Receivership and/or a criminal investigation are red-herrings that should not be credited by the Court.

5) Conclusion

For all of the foregoing reasons, as well as the reasons stated in the Defendants' Motion, the Defendants respectfully request that the Court enter an Order requiring the United States Attorney for the Eastern District of Pennsylvania, Jacqueline C. Romero, to show cause why she should not be

⁵ The SEC also asserts that the Defendants failed to advise the Court that the Plane and Stock Account were seized pursuant to two warrants issued by the Eastern District of Pennsylvania that remain under seal. It appears that the SEC knows more about the seizure than the Defendants – who have never seen the subject warrants and have not been advised regarding the U.S. Attorney's purported authority to conduct a *pre-indictment* seizure of Defendants' property. Furthermore, the SEC does not contend that the sealed warrants would excuse the U.S. Attorney from complying with the Receivership Order – so this argument has no bearing on Defendants' Motion.

held in contempt for refusing to transfer the Plane and Stock Account to the Receiver. Alternatively, Defendants request that the Court enter an Order requiring Ms. Romero to immediately deliver possession of the Plane and Stock Account to the Receiver. The Defendants also seek their costs and attorneys' fees for bringing the Motion, and any other or different relief that this Court deems just, proper and equitable.

January 6, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6, 2023, I electronically filed the forgoing 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