

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.

**RECEIVER'S RESPONSE TO THE EXPEDITED MOTION TO LIFT THE
LITIGATION STAY AND FOR OTHER RELIEF ON BEHALF OF NON-PARTY
MOVANTS RADIANT IMAGES, INC., GIANNA WOLFE, TOURMAPPERS NORTH
AMERICA, LLC., JULIE PAULA KATZ, FLEETWOOD SERVICES, LLC., ROBERT
FLEETWOOD, PAMELA FLEETWOOD, GEX MANAGEMENT, INC., CARL
DORVIL, HMC INCORPORATED, KARA DIPIETRO, MH MARKETING
SOLUTIONS GROUP, INC., MICHAEL HELLER, SUNROOMS AMERICA, INC.,
MICHAEL FOTI, PETROPANGEA, INC., JOHNNY HARRISON, SEAN WHALEN AND
YINGYIN IRIS CHEN**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (the "Receiver") of the Receivership Entities, by and through his undersigned counsel, hereby files his Response To The Expedited Motion To Lift The Litigation Stay And For Other Relief On Behalf Of Non-Party Movants Radiant Images, Inc., Gianna Wolfe, Tourmappers North America, LLC., Julie Paula Katz, Fleetwood Services, LLC., Robert Fleetwood, Pamela Fleetwood, GEX Management, Inc., Carl Dorvil, HMC Incorporated, Kara DiPietro, MH Marketing Solutions Group, Inc., Michael Heller, Sunrooms America, Inc., Michael Foti, Petropangea, Inc., Johnny Harrison, Sean Whalen and Yingyin Iris Chen (collectively, the "Motion") [ECF No. 1527] and states:

INTRODUCTION

The Motion is an attempt to circumvent the claims reconciliation process established by the Court. Rather than submitting claims through the established reconciliation process, Movants seek to add a duplicative layer of costs and expenses to litigate matters in multiple foreign jurisdictions. Allowing duplicative litigation will ultimately diminish and delay any distributions to investors. As this Court retains ultimate oversight to administer and authorize distribution to claimants, including litigation claimants such as the Movants, there is no basis to lift the Litigation Injunction. Rather, the Court should deny the Motion and direct Movants to submit claims in accordance with the Claims Administration Order.

I. RELEVANT PROCEDURAL HISTORY

On or about December 23, 2022, the Court entered the Order (1) Approving Proof of Claim Form; (2) Establishing Claims Bar Date and Notice Procedures; and (3) Approving Procedure to Administer and Determine Claims (the “Claims Administration Order”) [ECF No. 1471]. The Claims Administration Order establishes the detailed process for claims submission, adjudication, and reconciliation. [ECF No. 1471 ¶¶ 3-20].

The Claims Administration Order establishes the process for resolution of pre- Receivership litigation claims. [ECF No. 1471 ¶ 4]. As provided by the Claims Administration Order, those eligible and required to submit a claim are,

All Claimants and Administrative Claimants asserting or who believe they are entitled to assert a Claim or assert a right to distribution from the Receivership Estate regardless of whether the Claim is held with or through any individual or entity or based on a primary, secondary, direct, indirect, secured, unsecured, unliquidated or contingent liability **MUST** timely and properly submit a Proof of Claim.

Id. (emphasis in original). “Claimants” include Pre- Receivership Litigants. *Id.* at p. 1, fn. 1; Receiver’s Motion To Establish And Approve: (1) Proof Of Claim Form; (2) Claims Bar Date And

Notice Procedures; And (3) Procedure To Administer And Determine Claims (the “Claim Administration Motion”) at ¶ B(ii). [ECF No. 1467]. The Claims Administration Order defines Claimants as “all claimants holding a claim against any of the Receivership Entities arising out of the activities of the Receivership Entities.” *Id.* Pre- Receivership Litigants are defined as “any individual or entity that instituted a legal action against any of the Receivership Entities,” and are categorized are defined as a specific sub-set of “Direct Claimants.” Claim Administration Motion ¶ B(iv)(a).

The approved Proof of Claim Form, furthermore, expressly anticipates use by Pre- Receivership Litigants. Section 2(f) of the Proof of Claim Form requests information for any Claim stemming from litigation against a Receivership Entity.

<p>2. CLAIM</p> <p>2a. Basis of Pre- Receivership Claim:</p> <p><input type="checkbox"/> Good sold or services performed</p> <p><input type="checkbox"/> Money loaned or invested or owner, partner, member, equity or other investment interest</p> <p><input type="checkbox"/> Taxes</p> <p><input type="checkbox"/> Wages, salaries, benefits or compensation (fill out below and attach a detailed explanation) or unpaid compensation and benefits for services performed from _____ to _____ (dates).</p> <p>Title: _____</p> <p><input type="checkbox"/> Uncashed check issued prior to July 18, 2020</p> <p><input type="checkbox"/> Other (attach a detailed explanation)</p> <p>2b. Pre- Receivership Claim Amount: \$ _____</p> <p>2c. Administrative (Post- Receivership) Claim:</p> <p><input type="checkbox"/> Check this box if your claim is an Administrative Claim. Briefly state the post Receivership basis of your Administrative Claim: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>2d: Administrative Claim Amount: \$ _____</p>	<p>2e. Identify any other party who you claim may be liable to you for repayment of your claim:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>2f. Legal action or claim against Receivership Entity (provide caption, date commenced, Court, Case No.):</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Amount recovered from other parties: \$ _____</p> <p>If court judgment, date obtained: _____</p> <p>2g: <input type="checkbox"/> Check this box if the claim includes interest or other Charges, such as attorney’s fees, lost profits or late fees in Addition to the principal amount of the claim. Attach an Itemized statement of all interest and other charges.</p>
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Proof of Claim ¶ 2(f). Moreover, the approved instructions demand that Claimants submit claims based upon “Pending Legal Action,”

2f. Pending legal action. If you have commenced a legal action against any party you believe may be liable to you on the claim, please provide the details of said legal action here, including the Court and Case number. Please attach supporting documentation. Also, please provide any information regarding court judgments and money recovered.

Information on Completing Proof of Claim ¶ 2(f)[ECF No. 1467]. Finally, the Court ordered notice upon all Pre-Receivership Litigants in connection with the Claims Administration Order. Claim Administration Order ¶ 6(c)(iv) [ECF No. 1471].

All Pre-Receivership Litigation claimants must submit their claims in accordance with the Claims Administration Order for reconciliation, adjudication, and potential distribution. The Court has not authorized the resolution of Pre-Receivership Litigation claims through different avenues.

II. RELEVANT HISTORY OF THE MOVANTS

Except for matters involving GEX Management Inc. and Carl Dorvil, as will be discussed below, each Movant is a Pre-Receivership Litigant eligible to submit a Proof of Claim and all cases involving Movants have been stayed in their entirety. Claims Administration Order ¶ 4 (‘Eligibility to Submit a Proof of Claim). Movants are required to submit a Claim in accordance with the Claim Administration Order. *Id.* at ¶ 11 (failure by a Claimant to submit a proof of claim will, “forever bar[], estop[], and enjoin[]” the prosecution of any Claim). Once Movants submit their Claim(s), the Receiver and Claimants will reconcile the claims to determine liability and Movants’ eligibility for distribution. *Id.* at ¶¶ 13-17. Reconciliation of Movants’ claims require a mandatory good-faith dispute resolution prior to any court adjudication. *Id.* at ¶¶ 14-17. Given the ongoing Claims Administration process and the fact that Movants have not yet submitted formal claims in this matter, litigation over the Movants claims are premature and wasteful.¹ On January 19, 2023, the Receiver provided Movants’ counsel notice of the claims administration process and the proof of claim.

¹ Movants spend considerable time alleging unscrupulous collections tactics by CBSG prior to Receiver’s appointment. While pre-Receivership conduct may give rise to claims against the Receivership Estate, it is not a basis to divest this Court of oversight for the claim administration process. Any claims regarding CBSG’s collections tactics may be addressed through the Claim Administration Order.

- i. *Complete Business Solutions Group, Inc. and Broadway Advance Funding v. Radiant Images, Inc. d/b/a HD Camera Rentals and Gianna Wolfe*, United States District Court for the Eastern District of Pennsylvania, Case No. 18-cv-04013

This matter involves pre-Receivership Litigation on an outstanding merchant cash advance. The Eastern District of Pennsylvania opened a pre-Receivership confessed judgment based upon a dispute of material fact regarding a signed settlement agreement. The Court opened the confessed judgment exactly a year prior to the appointment of the Receiver. *See* Motion Ex. 7 (Order dated July 31, 2019). Defendants took no action for a year to amend their pleadings to assert affirmative claims against CBSG. Subsequent case law calls into question the viability of Defendants' claims in the Eastern District of Pennsylvania. *Complete Bus. Sols. Grp., Inc. v. Knava's Bounce House Rentals LLC*, 2021 WL 5494184 (E.D. Pa. Feb. 26, 2021) (remanding a similar confessed judgment to state court based upon the *Rooker-Feldman* doctrine). Should Defendants in this case assert affirmative claim(s) against CBSG, they are pre-Receivership Claims subject to the Claims Administration Order.

- ii. *Complete Business Solutions Group, Inc. d/b/a Par Funding v. Tourmappers North America LLC. d/b/a Tourmappers North America and Julie Paula Katz*, Court of Common Pleas for Philadelphia County, Case No. 200401028

The matter involves a pre-Receivership Litigation on an outstanding merchant cash advance. Defendants sought emergency injunctive relief before the American Arbitration Association (AAA) restraining CBSG from collecting on a confessed judgment and retracting certain notices issued in connection with defendants' declared defaults. Should Defendants in this case assert affirmative claim(s) against CBSG, they are pre-Receivership Claims subject to the Claims Administration Order.

- iii. *Fleetwood Services LLC., Robert Fleetwood and Pamela Fleetwood v. Complete Business Solutions Group Inc. d/b/a Par Funding, Prime Time Funding LLC., and John and Jane Doe Investors, United States District Court for the Eastern District of Pennsylvania, Case No. 18-cv-00268*

This is pre-Receivership Litigation asserting a purported class action on behalf of Texas merchants against CBSG and other defendants. CBSG sought to dismiss the claim, relying upon Pennsylvania law. The Court, using the standards necessary for adjudication of a 12(b)(6) motion, applied Texas law in denying the motion to dismiss. Following the motion to dismiss, CBSG, now represented by outside counsel, filed a motion for judgment on the pleadings based upon application of Texas Finance Code § 306.103, which bars plaintiffs' claims in their entirety.² The Court did not rule on the motion for judgment on the pleadings prior to the Receiver's appointment. As pre-Receivership Litigation asserting claims against CBSG, the plaintiffs in this case are subject to the terms of the Claims Administration Order

- iv. *Complete Business Solutions Group, Inc. by and through-it's Court-Appointed Receiver Ryan K. Stumphauzer v. GEX Management, Inc. and Carl Dorvil, Court of Common Pleas for Philadelphia County Case No. 220800752*

This is a post-Receivership Litigation involving the collection of a defaulted MCA Agreement. The Court previously lifted the litigation injunction to allow the Receiver to pursue the claims. *See Order Granting Receiver's Motion to Lift Litigation Injunction as To Certain Counterparties in Default Under Agreements With Complete Business Solutions Group, Inc* [ECF

² the Texas Finance Code exempts "account purchase transaction[s]" from applicable usury laws. *See Texas Finance Code § 306.001*. Pursuant to 306.103(b), "the parties' characterization of an account purchase transaction as a purchase is conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money"—that is, it is not a transaction subject to "interest" as defined by § 301.002(a)(4). Courts strictly construe § 306.103(b) to apply to account purchase transactions. *Koch v. Boxicon, LLC*, 2016 WL 1254048, at *7 (Tex. App. Mar. 30, 2016).

1052] at ¶ 2(m). The Receiver commenced litigation and ultimately obtained default judgments in accordance with the Pennsylvania Rules of Civil Procedure.

In connection with the Receiver's default judgments, Defendants, for the first time, asserted the existence of a previously unknown settlement agreement. Notably, James LaForte purportedly signed the settlement agreement on behalf of CBSG. Moreover, as part of the alleged settlement, defendants purportedly transferred consideration to Valleybrook Consulting – an entity with suspected ties to James LaForte involving diverted funds. *See* Receiver's Motion for an Order to Show Cause Why Defendants Joseph LaForte and Lisa McElhone Should Not Be Held in Contempt and to Lift Litigation Injunction Against Specified Third Parties [ECF 1328] at p. 24, fn. 9.

Given the existence of a purported settlement, the Receiver voluntarily agreed to vacate the default judgments in exchange for an interview with defendants for additional information on the purported settlement. Motion Ex. 2. Should the defendants in this case assert affirmative claim(s) against CBSG arising from pre-Receivership conduct or settlement, they are pre-Receivership Claims subject to the Claims Administration Order.

- v. *HMC Incorporated and Kara DiPietro v. Complete Business Solutions Group Inc. d/b/a Par Funding, and Fast Advance Funding, LLC., United States District Court for the Eastern District of Pennsylvania, Case No. 19-cv-3285*

This matter involves a pre-Receivership Litigation asserting liability arising from pre-Receivership collection conduct. On July 23, 2020, CBSG and Fast Advanced Funding filed a motion for summary judgment on all claims. The court did not rule on the motion for summary judgment prior to the Receiver's appointment. As pre-Receivership Litigation, the claims are subject to the terms of the Claims Administration Order.

- vi. *Complete Business Solutions Group, Inc. v. MH Marketing Solutions Group, Inc. and Michael Heller, Court of Common Pleas for Philadelphia County, Case No. 190606813*

This matter involves a pre-Receivership Litigation for collection of an outstanding merchant cash advance. Courts have previously affirmed CBSG's use of confession of judgment provisions in its MCA Agreements and denied similar arguments. *Complete Business Solutions Group, Inc. v. La Rosa Greenhouse, LLP et al.*, 2016 WL 3857179 (Pa. Com. Pl. 2016) (denying petition to strike/open judgment against entity and individuals on the basis of usurious loans); *Complete Business Solutions Group, Inc. v. Boreal Water Collection Inc.*, 2017 WL 5652572, at *2 (Pa. Com. Pl. 2017) (same); *Complete Business Solutions Group, Inc. v. Thomas Alan Seuss*, 2019 WL 2637731 (E.D. Pa. 2019) (same); *Ryan K. Stumphauzer as Court-Appointed Receiver for Complete Business Solutions Group, Inc. v. D19 Liquor Inc.*, Case 210902829 (Pa. Com. Pl. Feb. 10 2022) (denying equitable arguments to strike and/or open Receiver's confessed judgment with respect to merchant); *Complete Business Solutions Group, Inc. by and through its Court-Appointed Receiver Ryan K. Stumphauzer v. The Ansell Group LLC and Charles Ansell*. Case 220301247 (Pa. Com. Pl. July 6, 2022) (same). Should the defendants in this case assert affirmative claims against CBSG, they are pre-Receivership Claims subject to the Claims Administration Order.

- vii. *Complete Business Solutions Group, Inc. v. Sunrooms America, Inc. and Michael Foti*, Court of Common Pleas for Philadelphia County, Case No. 200101883

This matter involves pre-Receivership Litigation for collection of an outstanding merchant cash advance. Defendants seek to open a confessed judgment. Courts have previously confirmed confessions of judgment may be proper. *Complete Business Solutions Group, Inc. v. La Rosa Greenhouse, LLP et al.* 2016 WL 3857179 (Pa. Com. Pl. 2016) (denying petition to strike/open judgment against entity and individuals on the basis of allegedly usurious loans). Should the

defendants in this case assert affirmative claim(s) against CBSG, they are pre-Receivership Claims subject to the Claims Administration Order.

- viii. *Petropangea, Inc. Johnny Harrison, Volunteer Pharmacy, Inc. and Toby C. Frost v. Complete Business Solutions Group, LLC, Fast Advance Funding LLC, MCA Capital Fund I, LLC, MCA National Fund, LLC, Recruiting and marketing Resources, Inc., and Full Spectrum Processing Inc.* Court of Common Pleas for Philadelphia County Case No. 200202013 and *Complete Business Solutions Group, Inc. d/b/a Par Funding v. Petropangea and Johnny Harrison*, Court of Common Pleas for Philadelphia County Case No. 190606067
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This matter involves a pre-Receivership Litigation asserting purported class action claims and seeking to open or strike a confessed judgment. All claims arise from pre-Receivership conduct. As pre-Receivership Litigation asserting a claim against CBSG, the claims in this case are subject to the terms of the Claims Administration Order

- ix. *Complete Business Solutions Group, Inc. v. Sean Whalen and Yingyin Iris Chen*, United States District Court for the Eastern District of Pennsylvania, Case No. 19-cv-06181
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This matter involves a pre-Receivership Litigation asserting liability arising from pre-Receivership collection conduct. As pre-Receivership Litigation the claims are subject to the terms of the Claims Administration Order

III. ANALYSIS

The instant Movants, like other Claimants and investors, seek a distribution from the Receivership Estate based upon pre-Receivership claims. There is no basis to treat the Movants as unique Claimants permitted to litigate their claims outside of the scope of the Claims Administration Order. Instead, the Claims Administration Order, and applicable law, require Movants to submit their claims in this Court.

- a. This Court is the Proper Forum to Adjudicate Matters Involving Claims for Distributions from the Receivership Estate**

This Court, rather than multiple federal, state, or arbitration tribunals, is the proper body to adjudicate claims for distributions from the Receivership Estate. A “district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). This discretion derives from the inherent powers granted to an equity court to fashion relief. *Id.* (citing *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). To be sure, among these broad powers is the power to establish proof of claim procedures and set an effective claims bar date. *See SEC v. Tipco, Inc.*, 554 F.2d 710, 711 (5th Cir. 1977).

When administering the distribution of receivership assets, federal district courts may “make rules which are practicable as well as equitable,” including approving the use of summary procedures. *SEC v. Hardy*, 803 F.2d 1034, 1038, 1040 (9th Cir. 1986); *see also Elliott*, 953 F.2d at 1566 (citing *SEC v. Wencke*, 783 F.2d 829, 837 (9th Cir. 1986)); *United States v. Ariz. Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984)) (“A summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets.”). Specifically, “[r]eceivership courts have the general power to use summary procedure in allowing, disallowing, and subordinating the claims of creditors.” *Ariz. Fuels*, 739 F.2d at 458; *see also Wencke*, 783 F.2d at 836–38 (approving summary proceedings to adjudicate claims on receivership assets). Summary proceedings are appropriate in equity receiverships, and are within the jurisdictional authority of a district court. *See Wencke*, 783 F.2d at 836–38; *Ariz. Fuels*, 739 F.2d at 458. Such procedures “avoid formalities that would slow down the resolution of disputes. This promotes judicial efficiency and reduces litigation costs to the receivership.” *Wencke*, 783 F.2d at 837 n. 9.

District judges possess discretion to classify claims sensibly in receivership proceedings. *See SEC v. Wang*, 944 F.2d 80, 84–85 (2d Cir.1991); *Elliott*, 953 F.2d at 1566 (11th Cir.1992);

Forex Asset Management, 242 F.3d at 331; *SEC. v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 670-71 (6th Cir. 2001). In supervising an equitable receivership, the primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable. *See Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir.2006). It is reasonable to treat investor and non-investor claimants alike. *SEC v. Francisco*, 2019 WL 13026869, at *4 (C.D. Cal. Sept. 20, 2019).

The instant Motion attempts to circumvent the Claims Administration Order and Court's authority to adjudicate claims regarding distributions from the Receivership Estate. The Court has authorized—and established—a claims bar date and resolution procedure in accordance with its inherent authority. *See* Claims Administration Order [ECF No. 1471]; *Tipco, Inc.*, 554 F.2d at 711. The Claims Distribution Order seeks to classify claims, resolve, and ultimately, distribute assets from the Receivership Estate to Claimants. *Elliott*, 953 F.2d at 1566. This process inherently requires an adjudication regarding the validity of the Claims. *See* Claims Administration Order at ¶¶ 14-17 (requiring mandatory good-faith resolution attempts and setting process for adjudication). Applicable law contemplates summary proceedings to promote the efficient resolution of the Claims and the speedy distribution to claimants. *Wencke*, 783 F.2d at 837 n. 9

Put simply, this Court has the ultimate authority to authorize the distribution of the assets of the Receivership Estate under its control. The Motion seeks to diminish that authority by having foreign tribunals determine any potentially allowable Receivership Estate distributions to the Movants. This position is contrary to both the Court's Claims Distribution Order, as well as all applicable authority.

b. Denying the Motion to Lift the Litigation Injunction Promotes Judicial Efficiency and Reduces Administrative Costs.

As the Court possesses authority to resolve Movant's claims, the Court should deny the Motion to promote judicial efficiency and reduce administrative costs. It is well settled that "[t]here is a strong federal interest in having this court, which created the receivership, maintain litigation related to the receivership." *Wing v. Storms*, 2004 WL 724448, at *3 (D. Utah Feb. 5, 2004). Moreover, there is a strong presumption in managing Receivership claims in a single forum for judicial efficiency. *Quilling v. Stark*, 2006 WL 1683442, at *3 (N.D. Tex. 2006) ("Together, these statutes give a receivership court both *in rem* and *in personam* jurisdiction in all districts where property of the receivership estate may be located. This promotes judicial efficiency by permitting courts to manage claims regarding receivership property in a single forum.")

In resolving claims brought against receiverships, a court may use "abbreviated procedures" to "advance the government's interest in judicial efficiency by reducing the time needed to resolve disputes, decreasing the costs of litigation, and preventing the dissipation of the receiver's assets." *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d 657 (6th Cir. 2001). Ultimately,

[t]o the extent that a party has a colorable claim against a receiver or the entities in receivership, due process demands that the claimant be heard, but the district court exercises significant control over the time and manner of such proceedings.... In addressing claims on the receivership estate brought before it, the district court may consider both the merits of the individual claim and the equities attendant to the situation

Liberte Cap. Grp., LLC v. Capwill, 462 F.3d 543, 552 (6th Cir. 2006)

Judicial efficiency dictates that the Court deny the Motion. Movants request to litigate their claims in multiple federal and state tribunals. Additionally, at least one Movant seeks to litigate claims before an arbitrator. This litigation would occur simultaneously with the claims resolution process before this Court. *See* Claims Administration Order [ECF No. 1471]. With multiple forums adjudicating overlapping issues addressing the Movants right to a Receivership Estate distribution,

there is also a substantial risk of inconsistent rulings. Moreover, the Receiver will incur substantial administrative costs litigating these duplicative issues in multiple forums. *FTC v. Med. Resorts Int'l, Inc.*, 199 F.R.D. 601, 609 (N.D.Ill.2001) (recognizing that lifting a stay for certain claimants would open the door to others and “the assets of the receivership estate would quickly be diminished”). The Court should not allow Movants to circumvent the process detailed in the Claims Administration Order providing for efficient claims resolution in a single forum. *See* Claims Administration Order; *Quilling* 2006 WL 1683442, at *3 (permitting court to manage claims regarding receivership property in a single forum promotes efficiency); *United States v. Acorn Tech. Fund, L.P.*, 429 F.3d 438, 443 (3d Cir.2005) (instructing district courts to consider “the very real danger of litigation expenses diminishing the receivership estate”)

c. Movants Fail to Satisfy the *Wencke* Elements Necessary to Lift the Litigation Injunction.

While the Court may deny the Motion based solely upon its authority to oversee the claims reconciliation process, review of the *Wencke* elements further supports denial. In determining whether to lift a litigation stay a court may consider,

(1) [W]hether refusing to lift the stay genuinely preserves the *status quo* or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim.

Wencke II, 742 F.2d at 1231. Each of the above elements supports maintaining the litigation stay.

Maintaining the Litigation Stay will preserve the *status quo* and will not impose substantial injury on the Movants. To the extent that Movants possess claims against Receivership Entities, the Claims Administration Order requires them to assert their claims. Once filed, the Receiver will reconcile the claims in accordance with Claims Administration Order. *See* Claims Administration Order at ¶¶ 14-17. Put otherwise, the Court does not need to modify the Litigation Injunction for

the Movants to assert, or otherwise advance, their claims. Movants already possess that ability. Lifting the Litigation Injunction now would only open the door for expensive and potentially inconsistent claims adjudication across multiple tribunals.

Movants' citations to *SEC. v. One Equity Corp.*, 2010 WL 4878993 (S.D. Ohio Nov. 23, 2010) is far from dispositive. The creditor in *One Equity* failed to file a formal proof of claim with the Receivership. As a result, the creditor sought to have pre-receivership litigation treated as an informal claim to partake in a plan distribution. Furthermore, *One Equity* involved a single creditor asserting an existing counterclaim in one forum. The instant Movants, on the other hand, constitute approximately nine proposed actions across multiple different forums. Moreover, a number of the Movants have not yet even asserted a claim against a Receivership Entity. Instead, they simply propose to do so in the event the stay is lifted. *See* Radiant Action (intending to assert counterclaims); GEX Action (intending to assert counterclaims); MH Marketing Action (intending to assert counterclaims); Sunrooms Action (intending to assert counterclaims). There is no reason why Movants cannot file the proposed counterclaims through the Claims Administration Order in the first instance. In *SEC. v. Kaleta*, the district court barred creditors from pursuing claims against third parties strongly associated with the fraud causing the receivership. 530 F. App'x 360-362 (5th Cir. 2013). Instead, creditors were able to assert their claims in the receivership process. *Id.* As such, the district court correctly barred the creditors from pursuing claims in foreign forums. *Id.*

With respect to the second element, the timing weighs against lifting the Litigation Injunction. There is no "clear cut-off date after which a stay should be presumptively lifted," and the inquiry is "inherently case-specific" *Acorn Tech*, 429 F.3d at 443. The *Wencke II* court lifted a stay after seven years, given that no new facts had been discovered in six years, and that the receiver was ready to distribute the assets. *Wencke II*, 742 F.2d at 1232; *but see Acorn Tech* 429

F.3d at 443 (refusing to lift stay 30-36 months into receivership); *United States v. ESIC Cap., Inc.*, 685 F. Supp. 483, 485 (D. Md. 1988), 685 F.Supp. at 485 (“[T]his motion comes at a fairly youthful age of the receivership—two years since its inception.”).

Notably, the Receivership has not yet proposed a plan of distribution, which is a factor Courts frequently reference in determining whether to lift a litigation stay. *SEC. v. Provident Royalties, LLC*, 2011 WL 2678840 (N.D. Tex. July 7, 2011) (timing factor weighed in favor of lifting stay where receiver had marshaled almost all receivership assets and had proposed a plan of distribution); *United States v. JHW Greentree Cap., L.P.*, 2014 WL 2608516, at *8 (D. Conn. June 11, 2014) (timing factor weighed in favor of lifting stay when receiver proposed distributions to parties). Moreover, courts may consider maintaining the litigation injunction to allow a receiver time to effect the steps necessary to wind down operations. *Huntington Nat'l Bank v. Saint Catharine Coll., Inc.*, 2017 WL 6347971, at *7 (W.D. Ky. Dec. 12, 2017) (“Nevertheless, maintaining the status quo would allow LS Associates to focus its attention on finalizing the sale of Saint Catharine's remaining assets.”).

Finally, the last element weighs in favor of maintaining the Litigation Injunction. “A district court need only determine whether the party has colorable claims to assert which justify lifting the receivership stay.” *Acorn Tech.*, 429 F.3d at 449. The more meritorious a movant’s underlying claim, the more heavily this factor will weigh in the movant’s favor. *See, e.g., Wencke I*, 622 F.2d at 1373 (“Where the claim is unlikely to succeed (and the receiver therefore likely to prevail), there may be less reason to require the receiver to defend the action now rather than defer its resolution”).

Movants assert a variety of claims generally sounding in RICO, alleging improper pre-Receivership collections and usurious debts. Movants’ claims, however, rely substantially on

merchant cash advance agreements (“MCA Agreements”) and case law from inapplicable jurisdictions. The MCA Agreements at issue apply Pennsylvania law pursuant to applicable choice of law provisions. Pursuant to Pennsylvania law, there are no interest rate limits for commercial transactions. *See* 41 P.S. § 201(b)(3) (“business loans of any principal amount” are exempt from maximum interest rate requirements). Pennsylvania law additionally prevents corporations, or individuals guaranteeing a corporate loan, from asserting usury as a defense to an action. 15 Pa. C.S. § 1510(a). Moreover, Pennsylvania courts have previously denied similar usury and RICO claims to those advanced by the Movants. *See Gur v. Nadav*, 178 A.3d 851, 857 (Pa Super Ct. 2018) (business loan and confession of judgment with 50% interest rate not impermissible and not violation of Pennsylvania's “civil RICO statute under facts presented.”). This includes cases involving Receivership Entities. *Complete Business Solutions Group, Inc. v. La Rosa Greenhouse, LLP et al.*, 2016 WL 3857179 (Pa. Com. Pl. 2016) (denying petition to strike/open judgment against entity and individuals on the basis of usurious loans); *Complete Business Solutions Group, Inc. v. Boreal Water Collection Inc.*, 2017 WL 5652572, at *2 (Pa. Com. Pl. 2017) (same). Even the Fleetwood Action, in which the court applied Texas law based upon 12(b)(6) standards, is subject to a pre- Receivership Motion for Judgment on the Pleadings in favor of CBSG, based upon application of Texas Finance Code § 306.103, which bars claims and acts as a defense in factoring agreement claims. Furthermore, another federal court in the Eastern District of Pennsylvania has distinguished Fleetwood. *Complete Business Solutions Group v. Suess* 2019 WL 2637731 (E.D. Pa. 2019) (denying in part a motion for reconsideration of the denial of a petition to open a confessed judgment filed by Movants’ counsel). Taken together, Movants claims lack the substantial merit necessary to warrant lifting the Litigation Stay.

IV. CONCLUSION

This Court has authorized and established the claims submission and reconciliation process through the Claims Administration Order. The claims process will address all claims in a single forum subject to judicial oversight. Movants seek to upend this at the 11th hour by pursuing claims outside of the established process before multiple different tribunals. Allowing Movants to do so will substantially increase the costs of administration, delay claims reconciliation, and disrupt the claims administration. Movants must submit claims in accordance with the Claims Administration Order and resolve those claims through the established process. As such the court should deny the Motion.

Dated: March 15, 2023

Respectfully Submitted,

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Exhibit 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
ASE NO.: 20-CV-81205-RAR**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

[PROPOSED] ORDER DENYING THE EXPEDITED MOTION TO LIFT THE LITIGATION STAY AND FOR OTHER RELIEF ON BEHALF OF NON-PARTY MOVANTS RADIANT IMAGES, INC., GIANNA WOLFE, TOURMAPPERS NORTH AMERICA, LLC., JULIE PAULA KATZ, FLEETWOOD SERVICES, LLC, ROBERT FLEETWOOD, PAMELA FLEETWOOD, GEX MANAGEMENT, INC., CARL DORVIL, HMC INCORPORATED KARA DIPIETRO, MH MARKETING SOLUTIONS GROUP, INC., MICHAEL HELLER, SUNROOMS AMERICA, INC., MICHAEL FOTI, PETROPANGEA, INC. JOHNNY HARRISON, SEAN WHALEN AND YINGYIN IRIS CHEN

THIS CAUSE comes before the Court upon the Movants Radiant Images, Inc., Gianna Wolfe, Tourmappers North America, LLC., Julie Paula Katz, Fleetwood Services, LLC, Robert Fleetwood, Pamela Fleetwood, GEX Management, Inc., Carl Dorvil, HMC Incorporated, Kara DiPietro, MH Marketing Solutions Group, Inc., Michael Heller, Sunrooms America, Inc., Michael Foti, Petropangea, Inc. Johnny Harrison, Sean Whalen And Yingyin Iris Chen (collectively the “Movants”) Expedited Motion to Lift Litigation Stay (“CBSG”) [ECF No. 1527 (the “Motion”)], filed on March 10, 2022.

UPON CONSIDERATION of the Motion and the Receiver’s Response thereto [ECF No. ___], it is hereby

ORDERED AND ADJUDGED that Movant’s Motion is **DENIED**. Movants shall submit claims in accordance with the Order (1) Approving Proof of Claim Form; (2) Establishing Claims Bar Date and Notice Procedures; and (3) Approving Procedure to Administer and Determine Claims (the “Claims Administration Order”) [ECF 1471].

DONE AND ORDERED in Fort Lauderdale, Florida, this ____ day of _____, 2023.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record