

**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.**

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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
MOTION TO STRIKE MCELHONE AND LAFORTE'S  
MOTION OF MARCH 17, 2023 [ECF NO. 1531]**

**I. INTRODUCTION**

Defendants Lisa McElhone and Joseph LaForte have filed a Motion through which they “are endeavoring to satisfy the Judgment” entered against them by seeking an Order directing the use of Receivership Property to pay that Judgment. *See* Motion at ¶¶ 2 & 4. The Court should strike the Motion because McElhone and LaForte lack standing to seek this relief. In addition, Defendant’s Motion is filed in violation of the Injunction Against Interference with the Receivership.

**II. BACKGROUND**

Defendants are seeking an order directing cash held in the Receivership be “credited” towards the debt Defendants owe under the Amended Final Judgment entered against them [ECF No. 1531]. Defendants seek this relief on grounds McElhone “owns or controls” the Receivership Entities that hold this cash – specifically, the Relief Defendant The LME 2017 Family Trust (“LME Trust”), Defendant Complete Business Solutions Group, Inc. d/b/a/ Par Funding (CBSG”),

Defendant Full Spectrum Processing, Inc. (“FSP”), Fast Advance Funding LLC (“FAF”), Heritage Business Consulting, Inc. (“HBC”), Eagle Six Consultants, Inc. (“ESC”), and Recruiting and Marketing Resources, Inc. (“RMR”) (collectively, the “Receivership Entities”). *See* Motion at ¶ 4 and fn 2 [ECF No. 1531].

These entities are all Receivership entities currently under the control of the Receiver pursuant to this Court’s prior Orders.

- **Defendants CBSG and FSP.** On July 27, 2020, the Court granted the S.E.C.’s Motion seeking the appointment of a Receiver over all corporate Defendants in this case [ECF No. 36]. *See* Order Appointing Receiver, placing all corporate Defendants including CBSG and FSP in the Receivership [ECF No. 36]. On August 7, 2020, the S.E.C. filed an S.E.C. Expedited Motion Amend the Receivership Order, seeking entry of an expanded Receivership Order due to numerous issues that had arisen under the Receivership and Defendants’ conduct in this case [ECF No. 105]. On August 13, 2020, the Court granted the S.E.C.’s Expedited Motion and entered an Amended Order Appointing Receiver [ECF Nos. 140, 141].

- The Amended Order Appointing Receiver includes an Injunction Against Interference with the Receivership that explicitly restrains and enjoins Defendants and all third parties with notice from interfering with the Receivership [ECF No. 141, Section VII]. The Injunction restrains and enjoins Defendants from interfering with the Receivership Property, from **fill.**

- **Relief Defendant LME Trust and FAF, HBC, and ESC.** On October 30, 2020, the Receiver sought to expand the Receivership to include, among others, Relief Defendant LME Trust, FAF, HBC, and ESC under the Amended Order provision “empower[ing] the Receiver to use reasonable efforts to identify ‘Receivership Property,’ which includes all ‘monies, funds,

securities, credits, . . . lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest or other income that is attributable to the Receivership Entities.’ ” [ECF No. 357 at p.2 (quoting Amended Order, ECF. No. 141)].

- On December 16, 202, the Court granted the Receiver’s Motion to Expand the Receivership Estate to place Relief Defendant LME Trust as well as FAF, HBC, and ESC (among other entities) in the Receivership [ECF No. 436]. The Court found that these entities had received tainted funds from CBSG, placed LME Trust, FAF, HBC, and ESC in the Receivership, and ordered that the Amended Receivership Order applied with equal force and effect to LME Trust, FAF, HBC, and ESC as Receivership Entities [ECF No. 436].

- **RMR.** Similarly, on May 5, 2021, the Court granted the Receiver’s Motion to Expand the Receivership Estate to place RMR (among other entities) in the Receivership [ECF No. 579]. The Court further ordered that the Amended Receivership Order applied with equal force and effect to RMR as a Receivership Entity [ECF No. 579]

The S.E.C.’s complaint seeks disgorgement, prejudgment interest, and civil money penalties against all corporate defendants, including CBSG and FSP, and disgorgement with prejudgment interest against the LME Trust [ECF No. 1]. As the S.E.C. and Receiver previously notified the Court, this monetary relief will be resolved upon entry of the Receiver’s Consent Judgment to specific monetary amounts. As set forth in the Order administratively closing this case, the S.E.C. will seek to reopen the case to file the Receiver’s Consent to the Final Judgment [ECF No. 1453].

### **III. MEMORANDUM OF LAW**

This Court has the inherent power to impose reasonable and appropriate sanctions for violations of procedural rules or court orders. *See Dahdouh v. Road Runner Moving and Storage,*

*Inc.*, Case. No. 20-cv-61936-RAR, 2021 WL 1617693 (granting motion to strike for filing in violation of Court order). *See also Chambers v. NASCO*, 501 U.S. 32, 43–44 (1991); *In re Walker*, 532 F.3d 1304, 1310 (11th Cir. 2008).

As the Court previously ruled in denying Defendants’ Motion for Order to Show Cause concerning the turnover of assets into the Receivership, Defendants lack standing to seek relief with respect to Receivership Property over which the Receiver has sole authority. *See Order Denying Motion for Order to Show Cause* [ECF No. 1490]. As the Court explained:

Defendants lack standing to bring this Motion. The Court has vested the Receiver with the sole authority “to take custody, control and possession of all Receivership Property and records relevant thereto from Receivership Entities. . . and to take into possession from third parties all Receivership Property[.]” Am. Receivership Order ¶ 7(b) [ECF No. 141]. The statute which endowed this Court with the power to appoint the Receiver, 28 U.S.C. § 754, provides that receivers be “vested with complete jurisdiction and control of all such property with the right to take possession thereof.” Defendants have advanced both points in their briefing in this case. *See Notice* at 2–4. They have no power to urge this Court to second guess the Receiver’s reasonable and diligent efforts to manage the affairs under its purview.

[ECF No. 1490].

The Amended Order Appointing Receiver includes an Asset Freeze that restrains and enjoins anyone other than Receiver from, among other things, assigning any Receivership Assets:

Except as otherwise specified herein, all Receivership Assets and Recoverable Assets are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets and/or any Recoverable Assets, other than the Receiver, are hereby ***restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets.*** This freeze shall include, but not be limited to, Receivership Assets and/or Recoverable Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds all persons and entities with direct or indirect control over any Receivership Assets and/or any Recoverable Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets.

[ECF No. 141 at ¶ 3].

The Amended Order Appointing Receiver also (i) *dismisses* all trustees, directors, officers, managers, and other agents of the Receivership Entities; (ii) provides that all such persons and entities “shall have no authority with respect to the Receivership Entities’... assets;” and (iii) vests the Receiver with all powers, authorities, rights, and privileges concerning the Receivership Entities [ECF No. 141 at ¶¶ 4-6].

In addition, the Amended Order Appointing Receiver imposes an “Injunction Against Interference with Receiver” providing that anyone with notice of the Amended Order is

Hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, ***without the express written agreement of the Receiver***, which would:

- A. Interfere with the Receiver’s efforts to take control, possession, or ***management of any Receivership Property***; such prohibited actions include but are not limited to, ***using self-help or executing or issuing or causing the execution or issuance of any court attachment***, subpoena, replevin, ***execution***, or other process for the purpose of impounding or taking possession of or ***interfering with*** or creating or enforcing a lien upon ***any Receivership Property***;
- B. ***Hinder, obstruct or otherwise interfere*** with the Receiver in the performance of his duties....; [or]
- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, ***assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entity***....

[ECF No. 141 at ¶ 29].

Further, the Amended Order Appointing Receiver gives the Receiver sole authority to “manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.” [ECF No. 141 at ¶ 40].

Defendants have advanced these points in their Motion. *See* Motion [ECF No. 1531 at ¶¶ 1-2, 4, 7]. Defendants seek an Order that assigns or credits the Receivership Property toward payment of Defendants’ personal judgments in order to satisfy the Defendants’ personal Judgment [ECF No. 1531 at ¶ 2]. The Receiver has sole authority to manage the Receivership assets, and the Injunction explicitly prohibits Defendants from interfering without written permission from the Receiver – which they do not have. Indeed, Defendants did not even confer with the Receiver before filing their Motion. *See* Motion, Certificate of Conferral (no conferral with defense counsel).

As set forth above, the Injunction prohibits Defendants from interfering, from seeking to assign Receivership Property, from seeking to enforce any Judgment (which would obviously include enforcing the Judgment entered against them through the use of Receivership Property to satisfy it), and from precisely what Defendants are seeking to do through their Motion. The Receiver has sole authority with respect to the Receivership Property and as this Court previously found, “Defendants have no power to urge this Court to second guess the Receiver’s reasonable and diligent efforts to manage the affairs under its purview.” [ECF No. 1490]. In fact, not only do Defendants not have power to interfere with the Receivership Property, they are explicitly restrained and enjoined from doing so under the Injunction [ECF No. 141, Section VII].

Defendants attempt to justify their Motion by arguing the Receivership was established to pay their own personal Judgment obligations. *See* Motion at ¶ 9. This is wrong. The Receivership is only over the corporate defendants, and not the individual defendants [*See* ECF Nos. 36, 141]. As set forth in the Receiver’s Motions and Orders granting same, The Receivership was expanded beyond the corporate defendants on the Receiver’s motions that tainted CBSG funds that included investor proceeds from the alleged fraud were transferred from CBSG to the Receivership

Entities. *See supra* Section II above. Each Order expanding the Receiver specifically incorporates the Amended Receivership Order and the Injunction therein. *See* Receivership Orders [ECF Nos. 141, 436, 579].

Defendants also justify their Motion by arguing that the S.E.C. is no longer seeking disgorgement, prejudgment interest, or civil monetary penalties against the Receivership Entities, and that “the time to do so has now passed (since the case has been administratively closed, and counsel for the SEC has repeatedly stated that the liability and damages portion of this case has concluded and we are now in the collections phase).” *See* Motion at ¶ 8. Thus, according to Defendants’ reasoning, the Receivership Property should be turned over to pay the Amended Final Judgments against Defendants. This is incorrect.

The Complaint pleads disgorgement, prejudgment interest, and civil money penalties against each corporate defendant/Receivership Entity [ECF No. 1]. These claims have not been dismissed. Instead, the Receiver entered bifurcated Consents on behalf of the corporate defendants/Receivership Entities (without admitting or denying liability) that agreed to disgorgement, prejudgment interest, and civil money penalties in amounts to be set at a later time. *See* Motion at ¶ 8. The Order Administratively Closing this case explicitly provides that the S.E.C. may seek to reopen this case to file the Final Judgments imposing the monetary relief against the corporate defendants/Receivership Entities [ECF No. 1453]. And the S.E.C. will do that at the appropriate time by filing the Receiver’s Consents to Final Judgments that impose specific monetary relief. *See* S.E.C. Notice [ECF No. 1452].

Defendants also attempt to justify their Motion by arguing that McElhone owns and controls the Receivership Entities. *See* Motion at ¶¶ 3, 5-7. This is also wrong. As set forth above, the Amended Order Appointing Receiver explicitly (i) *dismisses* all trustees, directors,

officers, managers, and other agents of the Receivership Entities; (ii) provides that all such persons and entities “shall have no authority with respect to the Receivership Entities’ ... assets;” and (iii) as this Court recently reminded Defendants [ECF No. 1490], the Amended Order vests solely with the Receiver with all powers, authorities, rights, and privileges concerning the Receivership Entities. Amended Receivership Order [ECF No. 141 at ¶¶ 4-6].<sup>1</sup>


Defendants point to shorthand in the Receiver’s Status Report and Exhibit thereto, where a reference is made to certain Receivership Entities being “owned by McElhone” as evidence that these are personal assets owned and controlled by McElhone that can be turned over to satisfy the Final Judgment against McElhone [ECF No. 1531 at ¶¶ 4-5]. This is wrong and ignores the Receivership Orders that explicitly enjoin Defendants from seeking to invade the Receivership Property. In addition, the Receiver’s reference is shorthand to refer to the Receivership Entities McElhone formed, and not a legal or factual finding that these Entities are personal assets not properly included in the Receivership pursuant to the Orders Expanding the Receivership. Upon learning that Defendants intended to misconstrue and rely on the shorthand reference in the Status Report to advance an argument that Defendants are therefore entitled to utilize these Receivership

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<sup>1</sup> The Amended Final Judgment against Defendants ordered them to pay their disgorgement, prejudgment interest, and civil money penalty by December 21, 2022 [ECF No. 1451]. They paid no portion of the Final Judgment. The Amended Final Judgment authorizes the S.E.C. to collect on the Amended Final Judgment “by using all collection procedures authorized by law.” [ECF No. 1451]. As part of its collection efforts, the S.E.C. collections unit identified two assets in the Receivership that were not held by any Receivership Entity and that had been seized by the F.B.I. in a criminal matter and transferred into the Receivership – namely, cash seized from Defendants’ home and McElhone’s retirement account. The S.E.C. collections unit determined that these assets could be collected under applicable law and thus sought and obtained a Stipulation from Defendants and filed it with the S.E.C.’s Motion for Turnover of these assets for credit toward the balance of the Amended Final Judgment [ECF No. 1524]. The S.E.C. has identified no other assets of the Defendants in the Receivership that can be collected for payment of the Amended Final Judgment. Thus, the S.E.C. has not filed any subsequent Motion to collect on any other asset in the Receivership.



Assets to satisfy the Amended Final Judgment, the Receiver's counsel sent Defendants' counsel an email – *before Defendants filed the instant motion*. Receiver's counsel advised Defendants' counsel that the Receiver would be amending the Status Report and Exhibit, and that Defendants should not cite this to ask the Court for relief:

 **Gaetan J. Alfano**  
GJA@Pietragallo.com ...

To: **Noah Snyder** noah.snyder@kaplanzeena.com  
**You** BerlinA@sec.gov  
**Roessner, Michael** RoessnerM@SEC.GOV  
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Cc: **James Kaplan** james.kaplan@kaplanzeena.com  
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**asfuterfas@futerfaslaw.com**  
**Timothy Kolaya** tkolaya@sknlaw.com  
**Maria Escobales** maria.escobales@kaplanzeena.com

Friday, March 17, 10:26 AM

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please note that the Receiver intends to amend Exhibit E to his quarterly reports. Accordingly, please do not cite Exhibit E for this purpose until the Receiver has submitted his amendment.

**Gaetan J. Alfano, Esquire**  
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A few hours after receiving this message from the Receiver, Defendants filed the instant Motion citing the Status Report and Exhibit E thereto as grounds for the relief sought in the Motion. *See* Motion at ¶¶ 4-7 [ECF No. 1461]. As the Defendants are aware, the shorthand in the

Status Report should not be relied on and is being corrected through an amended Status Report, which the Receiver is expending resources to do so that we can avoid further attempts by Defendants to construe the shorthand by the Receiver in order to interfere with the Receivership.

Defendants are improperly seeking to relitigate the same arguments Defendants raised in their briefs opposing the formation, scope, and expansion of the Receivership. These matters were extensively litigated and ruled upon by the Court. *See, e.g.*, ECF Nos. 4, 36, 43, 48, 84, 105, 130, 132, 133, 140, 357, 367, 376, 378, 401, 414, 436, 498, 513, 517, 560, 579, 634, 640, 648, 667, 1180. Defendants lack standing to allocate the Receivership Property or to enforce the Amended Final Judgment against the Receivership Property. And the Injunction Against Interference with the Receivership expressly prohibits it [ECF No. 141].

#### **IV. CONCLUSION**

The Receivership Entities and Properties are subject to the Amended Order Appointing Receivership and the Injunction Against Interference with Receivership therein – which remain in full force and effect and which restrain and enjoin Defendants from interfering with the Receivership Assets [ECF No. 141]. The instant Motion marks the second time in the last three months that Defendants have attempted to interfere with the Receivership and have sought relief they lack standing to seek in connection with the Receivership. *See* ECF Nos. 1468, 1531. The Court should strike the Motion because Defendants lack standing to seek this relief and the Motion is filed in violation of the Injunction. The Receiver needs to operate and wind down the Receivership without further interference from Defendants' efforts to invade the Receivership Property.

March 28, 2023

Respectfully submitted,

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**CERTIFICATE OF CONFERRAL**

Undersigned conferred with defense counsel for defendants LaForte and McElhone via email and a telephone conference call and could not resolve the issue; they oppose the relief requested..

Amie Riggle Berlin  
Amie Riggle Berlin

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 28th day of March 2023 via CM-ECF on all defense counsel in this case.

Amie Riggle Berlin  
Amie Riggle Berlin