

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 9:20-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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**RESPONSE IN OPPOSITION TO MOTION FOR CONTEMPT**

Defendant **JOSEPH COLE BARLETA** (“Cole”), by and through their undersigned counsel, hereby files this Response in Opposition to the Reciever’s Motion for Contempt. Cole states the following in support:

**FACTUAL BACKGROUND**

1. As a threshold matter, it should be clear that the Reciever’s Motion for Contempt cites to almost zero authority, and does not even mention the statute or the Order granting the Reciever authority. Moreover, the Reciever has not even articulated the elements of what is needed for a finding of contempt, nor has the Reciever articulated its position of why it waited for “more than a year” to seek relief. All of these factors come into play and show that the Reciever is acting purely on bad faith and “gotchya” tactics.
2. On April 29, 2022, this Court ordered Defendant, Joseph Cole Barleta (“Cole”) to produce, within seven (7) days, copies of all documents within Cole’s possession,

- custody, or control containing information relating to various categories of assets in which Cole may have a personal or business interest [D.E. 1222].
3. On May 18, 2022, Cole appealed this Court's Order on Motion to Compel to the United States Court of Appeals for the Eleventh Circuit [D.E. 1247].
  4. There was no stay that was issued either by this Court or the Eleventh Circuit, and Cole did not produce any of the documents, nor did the Reciever seek Cole's compliance.
  5. On August 26, 2022, the Eleventh Circuit dismissed Cole's appeal for lack of jurisdiction.
  6. On October 24, 2022, this Court entered a Final Judgment against Cole in the total amount of \$12,140,150.32 [D.E. 1434].
  7. Up to this instant day, Cole has not produced the documents, nor has the Reciever sought these documents.
  8. Alarminglly, the Reciever cites to absolution no case law justifying any of his positions that Cole should be held in contempt of court.
  9. However, the case law that Cole cites to show that not only should Cole not be held in contempt, but that the Reciever has absolutely no power post judgment.

#### **STATUS CONFERENCE**

10. On April 17, 2023, during the status conference, Cole's counsel made clear that he was not prepared to argue any position before the Court, as Cole's counsel was prepared for a status conference, and nothing more. Cole's counsel was not prepared to argue the merits of the Reciever's forthcoming, now instant, Motion for Order to Show Cause.

11. The Court understood this and stated that, although it would likely reject Cole's argument, it would not make a decision until it reads the Reciever's motion and Cole's response.

12. Now, it seems that the Court sees fit to find that the Reciever has met his initial burden, justifying, at the very least, a Show Cause Order from the Court.

13. However, the law is clear, cited below, that Cole has acted in full reliance on federal law pertaining to the extent of the Reciever's powers.

14. This Court has not, at any point, including since the April 17, 2023 issued an Order extending the Reciever's power beyond the final judgment.

### **MEMORANDUM OF LAW**

#### **A. Reciever Has No Authority Post-Judgment**

Federal law governs the appointment of a receiver in a federal action, regardless of whether the Court is exercising diversity or federal question jurisdiction." *Ferm v. Crown Equity Holdings, Inc.*, No. 2:10-cv-02075-GMN, 2011 U.S. Dist. LEXIS 84433, 2011 WL 3300210, at \*3 (D. Nev. Aug. 1, 2011) (citation omitted); accord *Magma Holding, Inc. v. Au-Yeung*, No. 2:20-cv-00406-RFB-BNW, 2020 U.S. Dist. LEXIS 72982, 2020 WL 2025365, at \*5 (D. Nev. Apr. 26, 2020).

The power granted to a Reciever is codified in 28 U.S. Code § 3103. 28 U.S. Code § 3103(c) holds, very clearly:

A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under section 3203(e) or unless the court otherwise directs its continuation.

In this case, neither the original order appointing the Receiver, nor the Final Order of Disgorgement, nor any other document extends the powers of the Reciever past the Final Order

of Disgorgement. Likewise, the Reciever himself has not filed any motion that would allow its powers to be extended past the final judgment.

As such, the Reciever's entire argument holds no merit because the Reciever has no power to seek any relief from this Court unless/until the Court extends that power.

**B. Assuming This Court Extends Reciever's Power, Reciever Is Time Barred From Seeking Relief**

Moreover, the case law is clear that any discovery motion is only timely if filed within the discovery phase of the litigation. Regardless of the above-mentioned statement, as Reciever mentions in his Motion for Contempt, it has been "more than a year" and the Reciever has not sought to enforce the compliance of a discovery Order. In fact, Reciever has acted in bad faith and has now waited until after its power has extinguished to bring its instant motion.

Ultimately, the Reciever is precluded from seeking relief because of how long he has taken in seeking relief. *Coleman*, 2015 U.S. Dist. LEXIS 67059, 2015 WL 2449585, at \*8 (finding as untimely motion to compel filed on "eve of the discovery deadline" when impasse reached two months earlier); *Goers v. L.A. Entm't Grp., Inc.*, No. 2:15-CV-412-FTM-99CM, 2017 U.S. Dist. LEXIS 91093, 2017 WL 2578649, at \*3 (M.D. Fla. June 14, 2017) (finding motion to compel untimely after five month delay with no explanation, and "[a]ny attempts at conferral . . . occur[red] . . . after the expiration of the discovery deadline"); *United States v. Stinson*, No. 6:14-cv-1534-Orl-22TBS, 2016 U.S. Dist. LEXIS 185771, 2016 WL 8488241, at \*4 (M.D. Fla. Nov. 22, 2016) (finding motion in limine untimely where party neither "filed a motion to compel during the discovery phase, or . . . brought the dispute to the attention of the [c]ourt."); *Galle v. Nationstar Mortgage, LLC*, No. 2:16-cv-407-FTM-38CM, 2017 U.S. Dist. LEXIS 90493, 2017 WL 2559634, at \*3 (M.D. Fla. June 13, 2017) (waiting five months after receiving defendant's

objections, until discovery deadline, to raise discovery concerns and attempt to confer with opposing counsel); *Tillman v. Ally Fin. Inc.*, No. 2:16-cv-313-FTM-99CM, 2017 U.S. Dist. LEXIS 185900, 2017 WL 5187748, at \*4 (M.D. Fla. Nov. 9, 2017) (denying motion to compel filed on discovery deadline where defendant waited eight months to confer with plaintiff and gave no reason for delay); *Southeastern Mech. Servs. v. Brody*, No. 808-CV-1151-T-30EAJ, 2009 U.S. Dist. LEXIS 36183, 2009 WL 997268, at \*2 (M.D. Fla. Apr. 14, 2009) (untimely motion to compel filed "almost three months after . . . discovery deadline" when issues unraised in earlier conferences with opposing counsel); *Pushko v. Klebener*, No. 3:05-CV-211-J-25HTS, 2007 U.S. Dist. LEXIS 66223, 2007 WL 2671263, at \*2 (M.D. Fla. Sept. 7, 2007) (noting two extensions of discovery deadlines, and questioning timeliness of three-month late motion to compel seeking to reopen discovery).

As the Court can see, there is, literally, over a page of string cited case law showing that there is timeline for the procurement of documents and other material throughout the process of discovery. At some point, the onus is on the party seeking production to take some affirmative steps to procure production. At this point, after over a year, the Reciever has done absolutely nothing, and waited for such a long time, there is a legitimate concern that it has absolutely no power in this case.

### **C. Contempt is Not Proper**

A "party moving for contempt bears the burden of establishing by 'clear and convincing' evidence [that]: (1) the allegedly violated order was valid and lawful; (2) the order was clear, definite, and unambiguous; and (3) the alleged contemn[o]r had the ability to comply with the order." *United States v. Bosset*, No. 8:07-cv-947-T-17MSS, 2008 U.S. Dist. LEXIS 48568, at \*5

(M.D. Fla. May 15, 2008) (citing *Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990); *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000)).

In this case, the Reciever has not shown, or even alleged any of the elements. Ultimately, the Receiver has not established his burden of proof, nor has the Reciever shown how it still maintains any power originally mandated to him by this tribunal. At this point, the Order compelling discovery is no longer valid because the authority that the Reciever had when that Order was issued is no longer available to the Reciever. Likewise, the Reciever is time barred because of its own delay.

As such, there cannot be a finding of contempt because Cole relied on federal law in his action to not produce the documents.

**WEREEFORE**, Cole respectfully requests that this Court Deny Reciever's Motion for Contempt.

Dated: April 26, 2026

Law Offices of Andre G. Raikhelson, LLC.  
7000 W Palmetto Park Road, Suite 210  
Boca Raton, Florida 33433  
Telephone: (954) 895-5566  
Primary: [arlaw@raikhelsonlaw.com](mailto:arlaw@raikhelsonlaw.com)

/s/ Andre G. Raikhelson

Andre G. Raikhelson, Esq.  
Bar Number: 123657

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of April 2023, a true and correct copy of the foregoing was served via the Court's CM/ECF System upon all counsel of record.

= Andre G. Raikhelson, Esq  
= FBN: 123657