

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

Securities & Exchange Commission,

Case No.: 9:20-cv-81205-RAR

Plaintiff,

v.

Complete Business  
Solutions Group, Inc.  
d/b/a/ PAR Funding, *et*  
*al.*

Defendants.

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**CORRECTED RESPONSE TO RECEIVER’S MOTION  
TO REIMPOSE A LITIGATION STAY AS TO CLAIMS  
AGAINST ECKERT SEMANS AND/OR JOHN PAUCIULO<sup>1</sup>**

Non-parties Mark Nardelli, Francis Cassidy, David Gollner and Christopher McMorrow (the “Objectors”) respectfully submit this Response to the Motion to Reimpose Litigation Stay as to Claims Against Eckert Seamans and/or John W. Pauciulo, filed by the Receiver on June 15, 2023 (the “Motion”) [Dkt. #1598], and in support thereof, state as follows:

**Argument**

The Motion -- filed by the Receiver in lieu of a report to the Court -- seeks a stay of the claims asserted by those parties who have brought legal malpractice cases against Eckert Seamans (“Eckert”). Based on the Motion, and the responses from the *Melchiore* and *Montgomery* parties, it would appear that the Receiver and the *Melchiore* and *Montgomery* plaintiffs have agreed to a settlement with Eckert and its insurers.

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<sup>1</sup> This Corrected Response is substantively identical to the Response filed at [DE1617]. That filing was inadvertently made without Local Counsel’s signature. Accordingly, this Corrected Response is filed solely for the purpose of including the signature of Local Counsel.

However, contrary to the Receiver's representation, the Objectors -- plaintiffs in the *Parker* cases -- have not agreed to settle their claims. (See Motion ¶5: "On June 7, 2023, after numerous discussions and substantial work, the Receiver and counsel representing the investors plaintiffs in the *Melchior*, *Montgomery* and ***Parker*** cases listed above reached an agreement in principal to resolve the Receivership Entities claims and the investors plaintiff claims against Eckert Seamans and John Pauciulo") (emphasis added). Not only have the *Parker* plaintiffs not agreed to any settlement, they have been systematically excluded from the discussions. They have not been informed about the nature of the discussions or the idea that such discussions could conceivably involve the *Parker* plaintiffs. The Receiver was asked to correct this representation to the Court over a week ago, but he has not done so.<sup>2</sup>

Repeated efforts over the past two weeks to obtain the relevant information from the Receiver's counsel or Eckert's counsel have failed. As counsel for the *Parker* plaintiffs, we have no idea what the basis for a settlement are or what the terms of the agreement might be. Obviously, the Receiver believes that Eckert has breached some duty to the PAR investors, which is the cause of their harm. But in the absence of an attorney/client relationship, any claim against Eckert by individual investors seems dubious at best. Moreover, over the past 2 1/2 years, the *Parker* plaintiffs have disputed the right of the Receiver to take any action with respect to the *Parker* case. Although the law permits the Receiver to intervene in the *Parker* lawsuit in Pennsylvania, the Receiver has refused to do so (and to the best of counsel's information and belief, the Receiver has not brought any lawsuit against Eckert).

The *Parker* plaintiffs object to the reimposition of a stay. They have opposed a stay on two previous occasions, and the arguments made in support of that opposition are fully

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<sup>2</sup> Counsel to the Objectors was informed earlier today that the Receiver made a "mistake" in the Motion by including the *Parker* Plaintiffs, and would be correcting the mistake today.

applicable -- and incorporated -- herein. Nothing has changed this time around. The *Parker* plaintiffs consistently have asserted that the proceeds of insurance available to them do not belong in the Receiver's estate. Moreover, those proceeds likely are not available to either the *Melchiorre* or the *Montgomery* plaintiffs (and if they are, the claim to such proceeds is far weaker than that of the *Parker* plaintiffs). The Receiver has not made any demonstration to the contrary. Nor has he proceeded against insurance proceeds arguably available to other investors. In this regard, the Receiver's systematic exclusion of the *Parker* plaintiffs from the process confirms the weakness of his position. Indeed, if the Receiver had a strong position, there would be no need to conceal it from the *Parker* plaintiffs.

To be clear, the *Parker* plaintiffs do not oppose hearing what the Receiver has to say, and considering the possibility of a settlement. But his actions to date with respect to the concerns of the *Parker* plaintiffs do not give them confidence. By proceeding in this manner, the Receiver is depriving the *Parker* plaintiffs of the opportunity to be fully informed concerning the supposed factual and legal basis for the purported settlement. Indeed, the Receiver has yet to prove that the Receivership Entities have a legal entitlement to the insurance proceeds (let alone an entitlement that is equal to the *Parker* plaintiffs' claims). The *Parker* plaintiffs doubt he can do so. Similarly, the settling plaintiffs have yet to prove their entitlement -- *i.e.*, that their decision to invest was affected by Eckert Seamans. In other words, it is not enough for the Receiver and the settling plaintiffs to simply assert they have meritorious claims and then secretly settle them, to the detriment of the *Parker* plaintiffs. Instead, these issues remain to be litigated, and the Court should not prevent them from being litigated simply because the Receiver, the settling plaintiffs and Eckert's insurer have entered into a secret settlement that excludes the *Parker* plaintiffs.

**Joinder in Vagnozzi Opposition**

The Objectors hereby join, and incorporate herein the arguments made, in the Response to the Motion filed by Dean Vagnozzi (the “Vagnozzi Opposition”) [Dkt. No. 1615].

**Conclusion**

For the foregoing reasons, for the reasons set forth in the Objectors’ previous oppositions to the Receiver’s motions for imposition of a stay, and for the reasons set forth in the Vagnozzi Opposition, the Objectors respectfully request that the Court enter an Order denying the Motion and granting such further relief as the Court deems just and proper.

Dated: June 26, 2023

Respectfully submitted,  
HAINES & ASSOCIATES

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-and-

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*Christopher McMorrow*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on June 26, 2023, via the Court's ECF Filing System, on all counsel of record.

/s/ Jonathan E. Minsker

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**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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**[PROPOSED] ORDER DENYING RECEIVER’S  
MOTION TO REIMPOSE LITIGATION STAY AS TO CLAIMS  
AGAINST ECKERT SEAMANS AND/OR JOHN W. PAUCIULO**

**THIS CAUSE** comes before the Court upon the Motion of Ryan K. Stumphauzer, Court-Appointed Receiver, to Reimpose Litigation Stay as to Claims against Eckert Seamans Cherin & Mellott, LLC and John W. Pauciulo [ECF No. 1598] (the “Motion”). The Court, having reviewed the Motion, the responses thereto, and being fully apprised in the record in this matter, hereby

**ORDERS AND ADJUDGS** that:

1. the Receiver’s Motion is denied as to the claims asserted in *Parker, et al. v. Pauciulo, et al.*, No. 201200892 (Phila. Ct. Com. Pl. 2020); and
2. the Receiver shall file a status report within 30 days from the date of this Order to update the Court on the progress of finalizing and seeking the Court’s approval of the settlement with Eckert Seamans and John W. Pauciulo.

**DONE AND ORDERED** in Miami, Florida, this \_\_\_\_ day of June, 2023.

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**RODOLFO A. RUIZ II**  
**UNITED STATES DISTRICT JUDGE**

Copies to: Counsel of record