

**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 UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION’S MOTION FOR AN ORDER TO SHOW CAUSE WHY  
DEFENDANT LISA MCELHONE SHOULD NOT BE HELD IN CIVIL  
CONTEMPT**

Plaintiff, Securities and Exchange Commission (the “Commission”) moves the Court for an order requiring Lisa McElhone (“McElhone”) to Show Cause, if any, why she should not be held in civil contempt for failure to pay the disgorgement, prejudgment, and post judgment interest required by this Court’s Amended Judgment.

This motion is supported by the Plaintiff’s Memorandum of Law in Support of its Motion for an Order to Show Cause why Defendant Lisa

McElhone should not be held in Civil Contempt, the Declaration of Michael J. Roessner, and the attached Exhibit.

**Local Rule 7.1(a)(3) Certificate of Conferral**

On October 17, 2023, undersigned counsel, SEC attorneys Amie Berlin, Alise Johnson and SEC Supervisory Assistant Chief Litigation Counsel Marsha Massey conferred with Lisa McElhone's counsel Noah Snyder and James Kaplan regarding this motion. The SEC specifically asked if Defendant Lisa McElhone would agree to stipulate to have the funds turned over to the Receiver to be applied to the Judgment and the request was denied. Defendants advised that they oppose the SEC's motion.

s/MICHAEL J. ROESSNER

Date: October 20, 2023

Respectfully submitted,

s/MICHAEL J. ROESSNER

Michael J. Roessner  
100 F Street, N.E., Mail Stop 5275  
Washington, D.C. 20549  
(202) 551-4347 (Phone)  
(202) 772-9223 (Fax)

*Attorney for Plaintiff*  
United States Securities and  
Exchange Commission

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

**CASE NO. 20-CV-81205-RAR**

**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

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

Defendants,

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**SECURITIES AND EXCHANGE COMMISSION’S MEMORANDUM  
OF LAW IN SUPPORT OF ITS MOTION FOR AN ORDER TO SHOW  
CAUSE WHY DEFENDANT LISA MCELHONE SHOULD NOT BE  
HELD IN CIVIL CONTEMPT**

Plaintiff, United States Securities and Exchange Commission, (“SEC” or the “Commission”), respectfully submits this memorandum of law in support of its Motion for an Order to Show Cause why defendant Lisa McElhone (“McElhone”) should not be held in civil contempt and states as follows.

Defendant Lisa McElhone has moved to release \$747,000 from accounts at an undisclosed financial institution from the Court's Asset Freeze to pay legal fees instead of directing these funds to pay the Court’s Amended Judgment against her,

thereby depriving her victims of compensation.<sup>1</sup> The Commission respectfully requests that the Court use its inherent equitable authority and order that McElhone be held in contempt until these frozen funds are identified and turned over to the Receiver to partially satisfy the Court's Judgment entered against her. Because as of October 19, 2023, McElhone owes almost \$157 million in disgorgement, prejudgment interest and post-judgment interest pursuant to the Amended Judgment entered by this Court, she should not be allowed to shelter these funds any longer.

### **BACKGROUND**

At the outset of this litigation, on July 28, 2020, the Court ordered the Defendants, Lisa McElhone and Joseph W. LaForte (“LaForte”) (collectively referred to as the “Defendants”) to provide an accounting of their assets.<sup>2</sup> McElhone has not provided an accounting or disclosed the location of the accounts at issue to the SEC.<sup>3</sup>

On November 22, 2022, this Court entered an Amended Final Judgment against the Defendants requiring them to disgorge \$153,224,738.24 (including prejudgment interest) and for each to pay civil penalties of \$21,850,000

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<sup>1</sup> Dkt. No. 1720.

<sup>2</sup> Dkt. No. 42.

<sup>3</sup> Declaration of Michael Roessner (Roessner Decl.) at ¶ 5.

(“Judgment”).<sup>4</sup> The Judgment provides that all funds collected by the SEC be turned over to the Receiver Ryan Stumphauzer (the “Receiver”).<sup>5</sup>

On January 17, 2023, the SEC provided McElhone a notice of delinquency and a demand to pay the Judgment.<sup>6</sup> To date, McElhone has not fully satisfied the Judgment.<sup>7</sup>

Rather than pay anything towards her Court-ordered obligation, on October 6, 2023, McElhone moved to release several previously undisclosed accounts to pay legal expenses.<sup>8</sup> The SEC repeatedly requested that McElhone provide the location of these accounts, but McElhone refused to provide their location and, in her motion, indicated that she would only provide that information if she was ordered to do so by the Court.<sup>9</sup>

## DISCUSSION

### A. Disgorgement is an Equitable Remedy

This Court has the inherent power to use a civil contempt proceeding to enforce its orders.<sup>10</sup> Moreover, the power to enforce judicial orders through

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<sup>4</sup> Dkt. No. 1451

<sup>5</sup> *Id.*

<sup>6</sup> Roessner Decl. at ¶ 3.

<sup>7</sup> Roessner Decl. at ¶ 4. The only credit the defendants have received was pursuant to the Court’s Order directing turnover and credit of certain assets. *See* Dkt. No. 1525.

<sup>8</sup> Dkt. No. 1721.

<sup>9</sup> *Id.* at Fn. 1; *see also* Roessner Decl. at ¶¶ 5, 6.

<sup>10</sup> *Shillitani v. United States*, 384 U.S. 364, 370 (1966).

contempt proceedings has been incorporated into Rule 70 of the Federal Rules of Civil Procedure, which provides in pertinent part:

If a judgment directs a party ... to perform any ... specific act and the party fails to comply within the time specified, ... the court may also in proper cases adjudge the party in contempt ....<sup>11</sup>

Given McElhone's violation of the federal securities laws, this Court has the power to order the disgorgement of her ill-gotten gains.<sup>12</sup> Indeed, because of the equitable nature of disgorgement and its role in deterring illegal conduct, the disgorgement order against McElhone constitutes an injunction in the public interest, rather than a mere money judgment.<sup>13</sup> The order for McElhone to disgorge is designed to serve the important public interest of precluding her from benefitting from her illegal conduct and the Court may compel McElhone's compliance with it through a civil contempt proceeding.<sup>14</sup>

## **B. Contempt Legal Standard**

Based on the foregoing, it is well-settled that district courts have the inherent power to enforce compliance with their lawful orders through civil contempt.<sup>15</sup> "A party seeking civil contempt bears the initial burden of proving by clear and convincing evidence that the alleged contemnor has violated an outstanding court

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<sup>11</sup> Fed. R. Civ. P. 70.

<sup>12</sup> See, e.g., *SEC v. Blavin*, 760 F.2d 706, 713 (6th Cir. 1985).

<sup>13</sup> *SEC v. AMX, International, Inc.*, 7 F.3d 71, 74-75 (5th Cir. 1993).

<sup>14</sup> *Id.*; *SEC v. Solow*, 682 F. Supp. 2d 1312, 1324-25 (S.D. Fla. 2010)

<sup>15</sup> *Shillitani v. United States*, 384 U.S. 364, 370 (1966); see also Fed. R. Civ. P. 70 (in proper cases, court may adjudge a party in civil contempt for failure to perform specific acts required by a judgment).

order.”<sup>16</sup> So long as the SEC establishes McElhone’s violation of the disgorgement order, there is no further need to show that she acted with a wrongful intent or a lack of good faith.<sup>17</sup> The defendant’s intent is irrelevant as a contempt proceeding focuses only on compliance with the court’s order.<sup>18</sup>

Once non-compliance with her disgorgement obligation is shown, the burden then shifts to the defendant to prove her inability to comply with the Court’s order.<sup>19</sup> “To succeed on an inability defense, the alleged contemnor must go beyond a mere inability and establish that he or she has, in good faith, undertaken ‘all reasonable efforts’ to meet the terms of the order in question.”<sup>20</sup>

The Eleventh Circuit construes the “all reasonable efforts” requirement strictly:

Even if the efforts he did make were “substantial,” “diligent” or “in good faith,” ... the fact that he did not make “all reasonable efforts” establishes that [respondent] did not sufficiently rebut the ... prima facie showing of contempt.”<sup>21</sup>

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<sup>16</sup> *CFTC v. Wellington Precious Metals, Inc.*, 950 F.3d 1525, 1529 (11th Cir. 1992).

<sup>17</sup> *SEC v. Musella*, 818 F. Supp. 600 (S.D.N.Y. 1993) (internal citations omitted) (“The party seeking a finding of contempt need not show that violation of the order was willful, and good faith is not a defense. Nor may the alleged contemnor rely on his own inadvertence, misunderstanding or advice from counsel.”).

<sup>18</sup> *Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990).

<sup>19</sup> *United States v. Rylander*, 460 U.S. 752, 755 (1983).

<sup>20</sup> *Wellington*, 950 F.3d, at 1529. (Internal citations omitted).

<sup>21</sup> *Id.* (quoting *United States v. Hayes*, 722 F.2d 723 (11th Cir. 1984)).

## **C. McElhone's Failure to Pay Disgorgement Constitutes Contempt**

### **1. Prima Facie Case**

This Court should find McElhone in contempt of its Judgment, because she's only paid a small portion of the nearly \$157 million in disgorgement and prejudgment interest she owes.<sup>22</sup> Here, the SEC's burden as set forth in *CFTC v. Wellington Precious Metals, Inc.* is easily satisfied.<sup>23</sup> First, there can be no doubt that the Court's Judgment was clear and unambiguous in its order to pay. Second, McElhone owes over \$150 million on the disgorgement and prejudgment interest debt and has not made a significant payment since the Judgment was entered. Third, the lack of any meaningful payment made pursuant to the Judgment, despite her acknowledgment of her own ability to pay at least a portion due from undisclosed accounts is clear and convincing evidence that McElhone has not used all "reasonable efforts" to pay the Judgment.

### **2. McElhone Can Comply, in Part, with the Court's Judgment**

McElhone has accounts that she can use to make not "insignificant payments towards" the Court's Judgment.<sup>24</sup> In her current Motion, however, McElhone proposes to short-change the investors and use the funds for her personal legal expenses.<sup>25</sup> This admission establishes that McElhone knows of

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<sup>22</sup> Roessner Decl. at ¶ 4.

<sup>23</sup> *CFTC v. Wellington Precious Metals, Inc.*, 950 F.3d 1525, 1529 (11th Cir. 1992).

<sup>24</sup> Dkt. No. 1721.

<sup>25</sup> *Id.*



assets that can be used to pay part of the Judgment, but wants to keep those assets out of the hands of the SEC and the Receiver. Consequently, she is not using “all reasonable efforts” to comply with the Court’s Order and is clearly in civil contempt.

Once contempt has been established, a district court has “wide discretion in fashioning an equitable remedy in civil contempt...”<sup>26</sup> Such remedial sanctions may include any type of coercive order designed to produce compliance with the Court’s equitable orders.<sup>27</sup> Indeed, district courts in recent Commission enforcement actions have imposed incarceration to force defendants to comply with orders to pay disgorgement and surrender funds.<sup>28</sup> Considering McElhone’s contempt, and her financial resources, the Court should order that McElhone disclose the location of all assets in which she has an interest or be incarcerated until she provides the SEC with a meaningful payment towards her disgorgement obligation.<sup>29</sup> Without such an order, McElhone will simply continue to shield her

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<sup>26</sup> *FTC v. Leshin*, 618 F.3d 1221, 1237 (11th Cir. 2010); *see also EEOC v. Local 28*, 247 F.3d 333, 336 (2d Cir. 2001) (finding that district court has “broad discretion to fashion an appropriate coercive remedy ... based on the nature of the harm and the probable effect of alternative sanctions.”)

<sup>27</sup> *See United States v. United Mine Workers*, 330 U.S. 258, 304 (1947).

<sup>28</sup> *See, e.g., SEC v. Solow*, 682 F. Supp. 2d 1312, 1334 (S.D. Fl. 2020) (where defendant refused to pay disgorgement and prejudgment interest, district court ordered “that Mr. Solow shall surrender to the custody of the U.S. Marshall’s Office”); *SEC v. Durante*, 2013 WL 6800226 (S.D.N.Y. Dec. 19, 2013) (“Because Durante has failed to comply, despite being given every opportunity to do so, he should be ordered incarcerated until he makes meaningful payments towards the disgorgement amount and provides a current and accurate accounting of his income and assets.”); *SEC v. Kapur*, 2015 WL 4040558 (S.D.N.Y. July 1, 2015) (finding Kapur had not proven his inability to comply, the court found him in contempt, and ordered him incarcerated until he purged the contempt.).

assets via this Court's asset freeze without disclosing them to the SEC and with total disregard for the Judgment entered against her by this Court.

Indeed, failing to take any action in light of McElhone's contempt clearly threatens the SEC's recovery of sums the Court has ordered to be paid and deprives the victims of funds that will be returned to them. McElhone seems to have lost sight of the fact that this Court found that *she* broke the law, and the Court's Judgment requiring disgorgement is not to be "treated as a contribution to one's favorite charity that one makes if and when one feels able to do so."<sup>30</sup>

### CONCLUSION

For the reasons set forth above, the Commission respectfully urges this Court to grant its Motion for an order requiring Lisa McElhone to show cause, if any, why she should not be held in civil contempt for failure to pay the disgorgement, prejudgment, and post judgment interest required by this Court's November 22, 2022 Amended Final Judgment. The Commission further requests that the Court grant such other and further relief as this Court deems just and proper.

Dated: October 20, 2023  
Washington, D.C.

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<sup>30</sup> See *Musella*, 818 F. Supp. at 612.

Respectfully submitted,

s/MICHAEL J. ROESSNER

MICHAEL J. ROESSNER

Assistant Chief Litigation Counsel

Division of Enforcement

United States Securities and Exchange

Commission

100 F Street, NE

Mail Stop 5631

Washington, DC 20549-0022

RoessnerM@SEC.gov

Telephone: 202.551.4347

Facsimile: 703.813.9366

Attorney for Plaintiff/Judgment Creditor

United States Securities and Exchange

Commission

**UNITED STATES DISTRICT COURT  
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Defendants,

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**DECLARATION OF MICHAEL J. ROESSNER IN SUPPORT OF MOTION  
FOR ORDER TO SHOW CAUSE WHY DEFENDANT LISA McELHONE  
SHOULD NOT BE HELD IN CIVIL CONTEMPT**

I, MICHAEL J. ROESSNER, declare as follows:

1. I am an Assistant Chief Litigation Counsel with the United States Securities and Exchange Commission (“Commission”), Division of Enforcement, Office of Collections, in Washington, D.C., and I am personally familiar with the facts stated herein. I am also the attorney assigned to collection efforts on the judgment obtained against Defendant Lisa McElhone.

2. On November 22, 2022, this Court entered an Amended Final Judgment against Defendants, Lisa McElhone (“McElhone”) and Joseph W. LaForte

(“LaForte”) (collectively referred to as the “Defendants”) requiring them to disgorge \$153,224,738.24 (including prejudgment interest) and for each to pay civil penalties of \$21,850,000 (“Judgment”). A true and correct copy of the amended final judgment is attached as Exhibit 1.

3. On January 13, 2023, the SEC sent McElhone a copy of the Judgment and a demand for payment.

4. As of the date of this declaration, McElhone has not satisfied the amounts due on the Judgment entered against her in this action and owes \$22,761,001.33 on the civil penalty and \$156,967.087.16 in disgorgement.

5. McElhone has not provided an accounting or disclosed the location of the accounts at issue to the SEC.

6. SEC counsel specifically requested the location of the accounts at issue and the request was declined.

I declare under penalty of perjury pursuant to the provisions of 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed October 20, 2023, at Washington, District of Columbia.

s/MICHAEL J. ROESSNER  
MICHAEL J. ROESSNER  
Assistant Chief Litigation Counsel  
U.S. Securities and Exchange Commission

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE  
COMMISSION,

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Defendants.

\_\_\_\_\_ /



**AMENDED FINAL JUDGMENT AS TO DEFENDANTS  
LISA MCELHONE AND JOSEPH LAFORTE**

**THIS CAUSE** comes before the Court upon the Amended Order Granting in Part Plaintiff’s Amended Omnibus Motion for Final Judgment [ECF No. 1449] (“Amended Order”).<sup>1</sup> For the reasons set forth in the Order, it is hereby **ORDERED AND ADJUDGED** as follows:

**INCORPORATION OF JUDGMENT**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court’s Judgments of Permanent Injunction as to Defendants entered on November 24, 2021 [ECF Nos. 1008 and 1010] are hereby adopted and incorporated by reference with the same force and effect as if fully set forth herein, and that Defendants shall comply with all the undertakings and agreements set forth therein.

<sup>1</sup> Pursuant to Federal Rules of Civil Procedure 59(e) and 60(a), the Amended Order solely corrected a clerical mistake in the disgorgement calculations for Lisa McElhone and Joseph W. LaForte and provided updated prejudgment interest amounts based on those corrected calculations. Defendants moved the Court to make these corrections, [ECF No. 1444], the SEC stated *ore tenus* it did not oppose Defendants’ motion related to the clerical mistakes, [ECF No. 1446], and the Court granted in part Defendants’ motion, [ECF No. 1449].

**DISGORGEMENT, PREJUDGMENT INTEREST, AND CIVIL PENALTY**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants are jointly and severally liable for disgorgement of \$142,529,980, representing the amount of their ill-gotten gains as a result of the conduct alleged in the Amended Complaint [ECF No. 119], together with prejudgment interest thereon in the amount of \$10,694,758.24. Defendants are also liable for civil penalties in the amount of \$21,850,000 each for a total of \$43,700,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Defendants shall pay the total of **\$196,924,738.24** to the Court-appointed Receiver within **thirty (30)** days of entry of this Final Judgment.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after thirty (30) days following entry of this Final Judgment. The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in this action. Defendants shall pay post-judgment interest on any amounts due after thirty (30) days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

The Commission or the Receiver may propose a plan to distribute the funds subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fair Fund and the Fund may only be disbursed pursuant to an order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendants' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Final Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

#### **RETENTION OF JURISDICTION**

This Court shall retain jurisdiction over this matter and Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any



suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

**RULE 54(b) CERTIFICATION**

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

**DONE AND ORDERED** in Fort Lauderdale, Florida, this 22nd day of November, 2022.



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

cc: Counsel of Record