UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.
_____/

ORDER DENYING MOTION TO INTERVENE

THIS CAUSE comes before the Court on Non-Party, Capital Source 2000, Inc.'s ("Capital Source") Motion to Intervene, [ECF No. 1734] ("Motion"), filed on October 24, 2023. The Court having carefully reviewed the Motion, the Response in Opposition filed by the Securities and Exchange Commission, [ECF No. 1741] ("Response"), Capital Source's Reply, [ECF No. 1745], and having ascertained the Receiver's position at the Status Conference held on November 29, 2023, [ECF No. 1765], it is hereby

ORDERED AND ADJUDGED that Capital Source's Motion is **DENIED**. As an initial matter, Capital Source has not established a right to intervene in these proceedings pursuant to Rule 24 of the Federal Rules of Civil Procedure. *See Qantam Commc'ns Corp. v. Star Broad., Inc.*, No. 05-21772, 2009 WL 3055371, at *2 (S.D. Fla. Sept. 14, 2009) (explaining that a prospective intervenor must establish "1) that the application to intervene is timely; 2) that the intervenor has an interest relating to the property or transaction that is the subject of the action; 3) that the intervenor is situated so disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and 4) that the intervenor's interest is not adequately

represented by the existing parties to the suit.") (citing *Purcell v. BankAtlantic Fin. Corp.*, 85 F.3d 1508, 1512 (11th Cir. 1996)). Here, the intervenor's interests are sufficiently represented by existing parties to the suit, as Capital Source is an entity owned by Joseph Cole Barela ("Cole")—who consented to this Court's Asset Freeze several years ago. *See* [ECF No. 202].

More importantly, Capital Source has not demonstrated good cause for modifying the Asset Freeze. It is undisputed that Cole has signatory authority over Capital Source's bank accounts. Resp. at 3. Although Capital Source was released from the Receivership once the Receiver determined that it was not an alter ego of Complete Business Solutions Group, Inc., *see* [ECF No. 357], the fact remains that Cole has not paid the Final Judgment against him. *See* Resp. at 5–7. The SEC is currently working to collect on this outstanding Final Judgment against Cole and is seeking discovery related to Capital Source. *Id.* Accordingly, the modification of the Asset Freeze would improperly impair this collection activity for the benefit of victimized investors given Cole's control over Capital Source—which he has used for personal purposes, such as paying his own lawyers. *See* [ECF No. 1572]; s*ee also Richards v. Mountain Cap. Mgmt., L.L.C.*, No. 10-CIV-2790-RMB-JCF, 2010 WL 2473588, at *2 (S.D.N.Y. June 17, 2010) ("The Court evaluates an application to unfreeze assets for payment of attorneys' fees also in light of the principle that '[n]either civil nor criminal defendants have the right to use frozen investor funds to pay their counsel.'") (quoting *Sec. & Exch. Comm'n v. Credit Bancorp Ltd.,* No. 99-Civ.-11395, 2010 WL 768944, at *4 (S.D.N.Y. Mar. 8, 2010)). In other words, modifying the Asset Freeze would frustrate the Court's ability to provide maximum compensation for all the victims in this case, as none of the $12 million Cole owes to investors under the Final Judgment has been paid. *See S.E.C. v. Spongetech Delivery Sys., Inc*., No. 10–CV–2031 DLI JMA, 2011 WL 887940, at *9 (E.D.N.Y. Mar. 14, 2011) (explaining the purpose of an asset freeze is to preserve all of the defendant's assets

for the victims of his fraud, and therefore, a "defendant can be ordered to disgorge funds that were not causally tied to the fraudulent activity") (citing *SEC v. Aragon Capital Mgmt., LLC,* 672 F. Supp. 2d 421, 443 (S.D.N.Y. 2009)); *see also S.E.C. v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000) ("As the SEC points out, the requirement of a causal relationship between a wrongful act and the property to be disgorged does not imply that a court may order a malefactor to disgorge only the actual property obtained by means of his wrongful act. Rather, the causal connection required is between the amount by which the defendant was unjustly enriched and the amount he can be required to disgorge."); *S.E.C. v. Callahan*, 12-cv-1065, 2015 WL 10853927 (E.D.N.Y. Dec. 24, 2015) (denying motion to partially lift asset freeze).

Further, Cole's self-serving deposition testimony contained in Capital Source's Motion regarding "what he would do if the funds would be unfrozen," Mot. at 8-9, is unaccompanied by a sworn accounting of Cole's assets or financial records as previously ordered by this Court—and therefore does not alter the analysis or present a change in circumstances. *See* Resp. at 8; *see also Sierra Club v. Meiburg*, 296 F.3d 1021, 1033 (11th Cir. 2002) (explaining that a district court may grant modification of an asset freeze if the movant shows that: (1) there has been "a significant change either in factual conditions or in law[;]" and (2) "the proposed modification is suitably tailored to the changed circumstances."); *S.E.C. v. Schiffer*, No. 97-CV-5853, 1998 WL 901684, at *1–3 (S.D.N.Y. June 25, 1998) (denying reconsideration of defendant's request to unfreeze assets because his failure to provide financial information on Fifth Amendment grounds "warranted a measure designed to preserve the status quo while the court could obtain an accurate picture of the whereabouts of the proceeds of the [alleged fraud].") (quoting *S.E.C. v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105–06 (2d Cir. 1972)).

In sum, Capital Source has not met its burden to establish that a modification of the Asset Freeze is warranted at this juncture and the Motion thus warrants denial.

DONE AND ORDERED in Miami, Florida, this 5th day of December, 2023.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE