

**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.

**ORDER DENYING MOTION FOR CONTEMPT
AND REQUIRING BRIEFING ON RELATED ISSUES**

THIS CAUSE is before the Court on Plaintiff's Motion for Contempt ("Motion"), [ECF No. 1729], filed on October 20, 2023. The Court has reviewed Defendant Lisa McElhone's Response in Opposition, [ECF No. 1752], Plaintiff's Reply, [ECF No. 1758], and heard oral argument on the Motion on November 27, 2023 ("Hearing"), [ECF No. 1760]. For the reasons stated on the record during the Hearing, and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED that Defendant's Motion, [ECF No. 1729], is **DENIED** as follows:

1. "The party seeking civil contempt has the burden of proving by clear and convincing evidence that the alleged contemnor has violated an outstanding order." *CFTC v. Wellington Precious Metals, Inc.*, 950 F.3d 1525, 1529 (11th Cir. 1992). Once non-compliance with a valid court order is shown, the burden then shifts to the defendant to prove her inability to comply with the Court's order. *See United States v. Rylander*, 460 U.S. 752, 755 (1983). "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.” *Wellington*, 950 F.3d at 1529.

2. Here, the SEC filed its Motion after Defendant McElhone moved to release several previously undisclosed accounts to pay legal expenses, [ECF No. 1721], arguing that Defendant’s failure to direct these funds towards satisfying the Final Amended Judgment against her, [ECF No. 1451], constituted contempt. However, as explained at the Hearing, given that the funds in question are frozen and therefore beyond Defendant’s reach, the Court cannot hold her in contempt for failing to utilize these funds to satisfy the Final Amended Judgment.

3. Although Defendant will not be held in contempt, the Motion and related briefing have emphasized the need for an accounting of Defendant McElhone’s assets.¹ However, Defendant has indicated that she will assert her Fifth Amendment privilege in response to any Court-ordered accounting. *See* [ECF No. 1767].

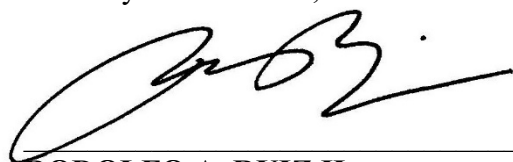
4. Accordingly, the Court finds that full briefing of this issue is warranted and hereby sets the following briefing schedule as requested by the parties:

SEC’s Motion: December 15, 2023

Defendant’s Response: January 5, 2024

SEC’s Reply: January 12, 2024

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



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

¹ For clarity of the record, the Court ordered Defendant McElhone to provide a sworn accounting as part of the Temporary Restraining Order issued by this Court on July 28, 2020, [ECF No. 42]. And the SEC has asked that Defendant McElhone identify and turn over the six bank accounts identified in her Motion to release such funds from the Court’s Asset Freeze Order, [ECF No. 1721]. *See* Reply at 2.