IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-cv-81205-RAR

SECURITIES & EXCHANGE COMMISSION Plaintiff, -against- COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING, et. al., Defendants.	: : : : : : : : : : :

UNOPPOSED MOTION TO REFER ALL PENDING CLAIMS TO COURT SPONSORED MEDIATION ON BEHALF OF NON-PARTY MOVANTS RADIANT IMAGES, INC., GIANNA WOLFE, TOURMAPPERS NORTH AMERICA, LLC, JULIE PAULA KATZ, FLEETWOOD SERVICES, LLC, ROBERT FLEETWOOD, PAMELA FLEETWOOD, GEX MANAGEMENT, INC., CARL DORVIL, MH MARKETING SOLUTIONS GROUP, INC., MICHAEL HELLER, SUNROOMS GROUP, INC., MICHAEL FOTI, PETROPANGEA, INC., JOHNNY HARRISON, VOLUNTEER PHARMACY, LLC, CHAD FROST, SEAN WHALEN AND YNGYIN IRIS CHEN

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Non-parties Radiant Images, Inc., Giane Wolfe, Tourmappers North America, LLC, Julie Paula Katz, Fleetwood Services, LLC, Robert Fleetwood, Pamela Fleetwood, Gex Management, Inc., Carl Dorvil, MH Marketing Solutions Group, Inc., Michael Heller, Sunrooms Group, Inc., Michael Foti, Petropangea, Inc., Johnny Harrison, Volunteer Pharmacy, LLC, Chad Frost, Sean Whalen and Yngyin Iris Chen (collectively, the "Movants"), through undersigned counsel, respectfully submit the within renewed motion (the "Motion") seeking an order referring resolution of the claims subject to this Motion to mediation before a magistrate judge.

Movants bring this motion to protect investors from all pending and future litigation and to ensure timely distribution of funds to investors and merchant victims. In each of the merchant victim cases listed in Schedule A, Movants have asserted claims against the John and Jane Doe Investors for their alleged knowledge of and furtherance of the RICO loansharking scheme used by the Receivership Entities. To establish a RICO conspiracy claim:

> It is not necessary to find that each defendant knew all the details or the full extent of the conspiracy, including the identity and role of every other conspirator. A RICO conspiracy does not demand that all defendants participate in all racketeering acts, know of the entire conspiratorial sweep, or be acquainted with all other defendants. All that is necessary to prove this element of the RICO conspiracy, against a particular defendant, is to prove that he or she agreed with one or more co-conspirators to participate in the conspiracy. Moreover, it is not necessary for the conspiratorial agreement to be express, so long as its existence can plausibly be inferred from words, actions, and the interdependence of activities and persons involved.

Enviromental Servs. v. Recycle Green Servs., 7 F. Supp. 3d 260, 266 (E.D.N.Y. 2014).

Here, Movants assert that the video taken by the private investigator in these very cases, and which was a centerpiece of the SEC's case in this proceeding, establishes conclusively that the John and Jane Doe Investors knew that their money was being used by the Receivership Entities to provide business loans at interest rates in excess of 100%. This interest rate violates the

maximum usury rate in various states including but not limited to, CBSG's alleged principal place of business Florida (25%), as well as the home states of many of the borrowers, such as California (10%), Tennessee (24%), New York (25%), Michigan (25%), Texas (28%), Colorado, (45%), and New Jersey (50%). The Receivership Entities even had an attorney from Eckert Seamans tout these high-interest loans to investors on a video, admitting that these loans provided an annual interest rate return in excess of 100%.[1]

The merchant victims allege that the investors have RICO liability through the collection of these unlawful debts in states with strong public policies against usury—like Texas. *See Fleetwood Servs., LLC v. Complete Bus. Sols. Grp.*, 374 F. Supp. 3d 361, 372 (E.D. Pa. 2019) ("The Court also finds applying Pennsylvania law would violate a fundamental public policy of Texas, namely its 'antipathy' to high interest rates, regardless of the nature of the debtor."); *Fleetwood Servs., LLC v. Richmond Capital Grp. LLC*, 2023 U.S. App. LEXIS 14241, *1 (2d Cir. June 8, 2023) (upholding RICO claims under nearly identical MCA agreement as CBSG); *Lateral Recovery, LLC v. Cap. Merch. Servs., LLC*, 632 F. Supp. 3d 402, 450 (S.D.N.Y. 2022) (finding nearly same form agreement used by CBSG is a loan as a matter of law due to its full recourse rights) ("The RICO statute of limitations is satisfied so long as an overt act that is part of the violation and injures the plaintiff occurs within the four years prior to the filing of a complaint asserting the RICO claim.") (citing *Klehr v. A.O. Smith Corp*., 521 U.S. 179, 188-89 (1997)).

The merchant victims also allege that a national class should be certified for violation of Florida's criminal usury laws. *See, e.g., 1st Global Capital, LLC v. Volt Elec. Sys., LLC*, 2017 U.S. Dist. LEXIS 175119, *3 (S.D. Fla. Oct. 20, 2017) ("A person who makes an extension of credit and knowingly charges interest thereon at a rate exceeding 25% commits criminal usury.

[1] A global merchant class settlement could also resolve any future claims against Eckert Seamans for its role.

Fla. Stat. §687.071. Such a loan is unenforceable and the remedy is cancellation of the debt and return of the amounts paid by the borrower. *Inetianbor v. Cashcall, Inc*., 2016 U.S. Dist. LEXIS 191643, 2016 WL 4250644, *6 (S.D. Fla., Apr. 5, 2016). Additionally, a borrower injured by such a loan is entitled to an award of reasonable attorneys' fees. *Id*. citing Fla.Stat. §687.147. Defendants also are entitled to an award of their fees with respect to their Florida Unfair and Deceptive Trade Practices Act (FUDTPA) claim. Fla.Stat. 501.2105.").

Approving a class settlement for merchant victims would not only be equitable but it would also shield investors from certain future litigation. Here, the Receiver has already lifted the litigation stay to reach class settlements with multiple class actions filed after every one of the merchant victim claims were filed and more than a year before the SEC even filed this action. Many of these merchant victims have likewise lost their life savings and had their only source of income ruined. And many stepped up and performed their civic duty by submitting affidavits in support of the SEC's claims in this action. Some have even endured physical threats by persons currently under federal indictment.

Despite these preexisting claims and assurances that these merchant victims would be afforded due process protections, the Receiver has universally rejected all merchant victim claims. In support, the Receiver has simply stated that the claims are denied as a "General No Liability Claim." These blanket denials include merchant victims who were physically threatened to have their house blown up by organized crime family members, and even in a case where the arbitrator had already ruled in the merchant's favor. The Receiver even denied a claim relating to a Texas victim where CBSG was paid off in publicly traded stock—not actual receivables. It has also denied claims of victims who are known victims included in the criminal indictments presently before the Eastern District of Pennsylvania. *See, e.g.,* ECF #1569.

The Receiver has done so in the face of multiple rulings sustaining Plaintiffs' RICO and class action claims, as well as a series of criminal indictments. These include RICO charges against the principals of the Receivership Entities, which only further demonstrates that the MCA agreements at issue are nothing more than sham agreements used to further a criminal RICO Enterprise engaged in money laundering, gambling, loansharking, bid rigging, and extortion. *See id;* ECF #1762.

Finally, by resolving all merchant victim claims on a global class basis, the Receiver will ensure prompt distribution to all victims rather than a prolonged claims objection process that will only ensure delay and further exhaustion of Receiver funds. The merchant victim claims are complex RICO liability claims that entitle these merchant victims to discovery and full constitutional due process via trial. These claims cannot be adjudicated by mere motion practice and their due process rights cannot be and should not be prejudiced merely because they stepped up to help the SEC protect the investors' rights and had their cases stayed while the SEC proceeded with its claims.

In sum, by requiring the Receiver to negotiate a class settlement of all merchant claims in good-faith and referring these claims to court supervised mediation, the Court would help protect investors from further litigation and liability, ensure constitutional due process for the merchant victims, potentially avoid costly litigation and appellate practice that would only drain Receivership assets, avoid prejudicing the criminal case pending in the Eastern District of Pennsylvania, and protect the merchant victims from further physical threats and abuse at the hands of a dangerous RICO Enterprise.

In support of the Motion, the Movants respectfully state as follows:

I. SUMMARY OF THE MERCHANT CLAIMS AT ISSUE.

The Movants are all merchants who fell victim to the predatory lending and abusive collection tactics of Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par Funding"). These tactics, which still continue, include:

a) On March 2, 2023, at around the same time as the threatening calls to the Abbonizios, government witness K.D. [Movant] received a threatening call in a male voice from the same spoofed number that had called the Abbonizios. The caller said, "We're coming after you. We're going to split your head open." Heskin Decl., Ex. 4.

b) Threatening physical harm to merchants if they failed to repay Par Funding, including advising one Movant that failing to pay Par Fund could affect "wives, households and children" and could make widows and telling multiple Movants that Par Funding would "blow up" their house;

c) Sending thousands of UCC lien notices to merchants' families, friends, neighbors vendors, customers and other business relations including, in one instance, the Movant's niece and to the school of the Movant's child;

d) Harassing the Movants, their spouses and employees with endless phone calls, email and text messages threatening to destroy their business and/or take everything they have;

e) Forging and doctoring confessions of judgments to obtain fraudulent judgments in jurisdictions with favorable judgment enforcement laws;

f) Obtaining hundreds of confessed judgments based upon the admittedly forged signature of an attorney and notary;

g) Confessing judgments against merchants for amounts that are grossly exaggerated and in instances where there was no breach of the underlying agreements and no basis for the entry of a confessed judgment; and

h) Claiming its merchant agreements are legitimate purchases of receivables but forcing merchants to sign mortgages that expressly acknowledge the agreements are actually absolutely repayable loans that charge interest at rates exceeding 700% per annum in violation of various state criminal usury laws;

These tactics have given rise to a variety of claims by the Movants sounding in breach of contract, fraud, usury and federal civil RICO charges stemming from wire fraud, mail fraud, the collection of an unlawful debt and extortion. Most of these claims were asserted by the Movants in actions pending *before* the appointment of Ryan Stumphauzer as the Receiver of Par Funding

(the "Receiver") on July 27, 2020 [ECF No. 36] and/or the imposition of the initial litigation stay on July 31, 2020 [ECF No. 56], and certain of these actions are asserted as class actions that seek to vindicate the rights not only of the respective Movant but also the rights of potentially thousands of other similarly situated victims. Notably, the class actions include claims against "The John and Jane Doe Investors," which until this SEC action, were previously unidentified. *See Lateral Recovery, LLC v. Cap. Merch. Servs., LLC*, 2022 U.S. Dist. LEXIS 181044, *97 (S.D.N.Y. Sept. 30, 2022) ("The RICO statute of limitations is satisfied so long as an overt act that is part of the violation and injures the plaintiff occurs within the four years prior to the filing of a complaint asserting the RICO claim.") (citing *Klehr v. A.O. Smith Corp*., 521 U.S. 179, 188-89, 117 S. Ct. 1984, 138 L. Ed. 2d 373 (1997)).

II. THE MERCHANT VICTIM CLAIMS PROCESS.

Over their objections, the merchant victims were ordered to submit their claims through the claims process. As part of that claims process, the Receiver represented that all claims, including merchant victim claims, would be adjudicated in good faith. Based on the Receiver's own status report filed on November 27, 2023, the Receiver has approved $240 million in investor claims, and only $10 million in non-investor claims. None of these non-investor claims includes merchant victim claims. Rather, they only include administrative vendor claims. In fact, the Receiver's own status report admits that it denied all claims if the claimant did not identify a Receiver Entity in which they "Invested." *See* ECF# 1759. Through the mediation and claims process, Movants seek to represent and resolve all claims possessed by similarly situated merchant victims in order to provide finality to all present and future litigation.

In short, the merchant victims who filed their actions long before this SEC action, as well as provided witness declarations in support of this SEC action, have all had their claims denied by

the Receiver. Now, these merchants are required to submit objections to these determinations by providing further information through the claims process website. The Receiver's blanket denial of all merchant victim claims requires this Court to now adjudicate each merchant claim, while ensuring full due process to each merchant. Indeed, full-scale litigation is the only way these complex legal claims can be adjudicated, and they will require further discovery into evidence possessed by the Receiver showing that the Receiver Entities treated their MCA agreements as absolutely repayable loans through the use of financial extortion and threats of physical violence.

Notably, pursuant to this Court's own order, the Receiver is required to negotiate in good-faith before filing an objection to a claim. *See* ECF # 1471. To ensure compliance with this obligation, the Court should direct resolution of these claims to mediation just like it did with the investor class action claims involving all other class action claims.

III. THE MERCHANT CLAIMS HAVE SUBSTANTIAL MERIT.

There can be no question that the Movants' claims have merit. First, the district court already denied CBSG's motion to dismiss the Fleetwood Class Action. *See Fleetwood Servs., LLC v. Complete Bus. Sols. Grp.*, 374 F.Supp. 3d 361 (2019); *see also Fleetwood Servs., LLC*, 2023 U.S. App. LEXIS 14241, *1 (2d Cir. June 8, 2023) (upholding RICO claims under similar MCA agreement). Second, CBSG's enforcer, Gino Renata Gioe, has been arrested and pled guilty to making extortionist threats to Radiant's owners and other Par Funding borrowers in violation of federal law. Third, an arbitrator has already determined that Tourmappers did not breach its contract with CBSG and that CBSG engaged in harassment and bad-faith conduct that has resulted in real and irreparable damages to Tourmappers' business and reputation. Fourth, a court has already vacated a confessed judgment because CBSG failed to allege facts demonstrating a breach of CBSG's form guaranty and Par Funding continued to file confession judgments against guarantors when there was no breach of the guaranteed obligations. *CBSG v. NG Consulting*

Services, LLC, 2017 Phil. Ct. Pl., LEXIS 14 at *5 (Pa. Ct. Comm. Pl. Feb. 16, 2017) (striking confessed judgment under identical guaranty where Par Funding failed to allege a breach of the representations and warranties).

Finally, the overwhelming documentary and other evidence demonstrates that CBSG's agreements in substance and every conceivable way were intended to and did in fact, operate as absolute repayable loans giving rise to the Movant's RICO claims for the collection of an unlawful debt. The essential characteristic of a loan is that it be absolutely repayable. *See* Tex. Fin. Code, § 306.001(1) (defining a "loan" under Texas law as "an advance of money that is made to or on behalf of an obligor, the principal amount of which the obligor has an obligation to pay the creditor"); *Rubenstein v. Small*, 273 A.D.2d 102, 104 (1st Dep't 1947) (Under New York law, "[f]or a true loan it is essential to provide for repayment absolutely and at all events of that the principal in some way be secured as distinguished from being put in hazard."); *Eisenhardt v. Schmidt*, 27 N.J. Super. 76, 82 (Ch. Div. 1953) (same under New Jersey law). "To determine whether a transaction is a loan or a sale, courts ascertain the intentions of the parties as disclosed by the contract, attending circumstances, or both." *Korrody v. Miller*, S.W.3d 224, 226 (Tex. App. 4th Dist. 2003); *see also Endico Potatoes, Inc. v. Git Grp./Factoring, Inc.*, 67 F.3d 1063, 1068 (2d Cir. 1995) (Whether an assignment of accounts receivable is a loan "depends on the substance of the relationship" between the parties "and not simply the label attached to the transaction."); *Major's Furniture Mart, Inc. v. Castle Credit Corp.,* 602 F.3d 538, 543 (3d Cir. 1979) ("Courts will not be controlled by the nomenclature the parties apply to their relationship when it comes to determining whether a transaction is a loan or a true sale.").

Both the terms of the agreements and CBSG's actions demonstrate that the transactions are loans. The following provisions demonstrate, on their face, CBSG's agreements are loans:

a) The agreements have set terms and fixed daily payment obligations. *See Funding Metrics v. NRO Boston, LLC*, 64204/2016, 2019 N.Y. Misc. LEXIS 4878, at *10 (Sup. Ct. N.Y. Cnty., Aug. 28, 2019) (holding a future receivable purchase agreement with a fixed term is evidence of a loan.)

b) Merchant is obligated to "ensure that funds adequate to cover the [Daily Specific Amount] to be debited by CBSG remains in the account." *See Hi Bar Capital LLC v. Parkway Dental Servs., LLC*, 533245/2021, 2022 N.Y. Misc. LEXIS 5814, *13-14 (Sup. Ct. Kings Cnty. Aug. 25, 2022) (finding agreement like a loan where merchant was required to maintain sufficient funds in the designated account for the fixed daily payments); *Lateral Recovery, LLC v. Capital Merchant Services LLC,* Case No. 21-cv-9336, 2022 WL 4815615, 2022 U.S. Dist. LEXIS 181044 (S.D.N.Y. Sept. 30, 2022) (denying motion to dismiss unlawful debt claims where receivable purchase agreement required the merchant to maintain specific amounts in designated accounts).

c) Violating any term of or covenant of the agreements, including the convent to ensure that sufficient funds are available to cover the Daily Specific Amount, is a breach of the agreements. *See Parkway*, 2022 N.Y. Mic. LEXIS 5814 at *14 (finding merchant had plead future receivable purchase agreements were loans where there were "virtually no circumstances" under the agreements where purchaser's risk of non-payment was placed at risk);

d) Bankruptcy is an event of default. *See Fleetwood*, 2023 U.S. App. LEXIS 14241, *1 (2d Cir. June 8, 2023); *Davis v. Richmond Capital Group, LLC,* 194 A.D.3d 516, 517 (1st Dep't 2021) (denying dismissal of merchant's RICO claims where future receivables agreement contained bankruptcy as an event of default).

e) Four insufficient fund notices constitutes an event of default. *See CMS*, 73-74 (ruling agreement to be like a loan where it provided for a default after a specific number of missed payments); *Lateral Recovery LLC v. Queen Funding, LLC*, 21-cv-9607-LGS, 2022 U.S. Dist. LEXIS 129032, *16 (S.D.N.Y. July 20, 2022) (same)

f) The agreements do not contain a reconciliation provision by which CBSG would credit the merchant for any amounts collected in excess of the specified percentage. *See K9 Bytes, Inc. v. Arch Capital Funding, LLC*, 57 N.Y.S.3d 625, 634 (N.Y. Sup. Crt. West. Cty. May 4, 2017) (finding that a receivable purchase agreement may be a loan where it has no reconciliation provision).

g) The merchants could request a reduction in the Daily Specific Amount, but Par Funding was not obligated to grant the request. *See Fleetwood Servs., LLC v. Ram Capital Funding, LLC*, Case No. 20-cv-5120, 2022 WL 1997207, 2022 U.S. Dist. LEXIS 100837 at *44-45 (S.D.N.Y. June 6, 2022) (finding a future receivables purchase agreement to be a loan as a matter of law where buyer had right to decline a request by a debtor to reduce the daily payments).

The conclusion that CBSG's agreements are absolutely repayable loans are further supported by CBSG's conduct with respect to the Movants:

a) Demanding that Tourmappers continue to make payments under its form agreements even though its business had been shut down by the government in response to the COVID-19 pandemic and it had no receivables.

b) To secure certain of its agreements, CBSG obtained mortgages from the merchant's owners which mortgages admitted that Par Funding was a "lender," the agreement was a "Note" and a failure to make any payments under the agreement constituted a default entitling Par Funding to foreclose on the mortgaged property.

c) When merchants were unable to pay because their business revenues had slowed down, CBSG sent Gino, a convicted felon who has admitted to using extortionists threats to collect upon CBSG's agreements in violation of federal law.

d) Filing confessions of judgment against guarantors even though the guaranteed obligations had not been triggered.

e) Harassing merchants and their guarantors to make payments under their agreements by repeatedly sending UCC lien notices to merchants' customers, potential customers, friends, family and business colleagues solely to tarnish the merchants' business reputations and extort a lumpsum payment from the merchant.

Plainly, Movant's RICO claims have merit and they should be resolved through mediation.

CONCLUSION

The fraudulent and unlawful scheme perpetrated by the Receivership Entities casts a wide net. On the one hand, numerous innocent investors have been defrauded by the Ponzi scheme orchestrated by a multitude of culpable persons, many of whom have already plead guilty to extortion, securities fraud, and/or have been recently arrested by law enforcement for federal crimes related to this proceeding. On the other hand, an even wider group of victims have been patiently waiting for their day in court while this proceeding nears a resolution. This latter group of victims have been terrorized by the Receivership Entities and have suffered many millions of dollars in damages to their businesses and their persons. These victims had their claims on file long before this action, and merely seek to have their claims adjudicated fairly.

CERTIFICATION REGARDING PRE-FILING CONFERENCE

Pursuant to Local Rule 7.1(a)(3), undersigned counsel, Shane R. Heskin, has conferred with counsel for the Receiver and counsel for the SEC regarding the relief sought by this Motion. Counsel certifies that the Receiver and SEC have both consented to the relief sought by this Motion.

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SCHEDULE A

a) *Complete Business Solutions Group, Inc., Broadway Advance, LLC and Fast Advance Funding, v. Radiant Images, Inc. d/b/a HD Camera Rentals and Giania Wolfe,* United States District Court for the Eastern District of Pennsylvania, Case No. 18-cv-04013 (KSM)

b) *Complete Business Solutions Group, Inc. d/b/a Par Funding v. Tourmappers North America, LLC d/b/a Tourmappers North America and Julie Paula Katz,* Pennsylvania Court of Common Pleas: Philadelphia County, Case No. 200401028.

c) *Tourmappers North America, LLC d/b/a Tourmappers North America LLC and Julie Katz v. Complete Business Solutions Group Inc. d/b/a Par Funding,* JAMS Arbitration Case No. 01-20-0005-3591.

d) *Fleetwood Services, LLC, Robert Fleetwood and Pamela Fleetwood Complete Business Solutions Group, Inc., d/b/a/ Par Funding; Prime Time Funding LLC and John and Jane Doe Investors*, United states District Court for the Eastern District of Pennsylvania, Case No. 18-cv-00268 (JS).

e) *Complete Business Solutions Group, Inc., by and through its Court-Appointed Receiver Ryan K. Stumphauzer v. Gex Management, Inc. and Carl Dorvil*, United States District Court for the Eastern District of Pennsylvania, Case No. 22-cv-4043.

f) *Complete Business Solutions Group Inc. v. MH Marketing Solutions Group, Inc. and Michael Heller*, Philadelphia Court of Common Pleas, Case No. 190606813.

g) *Complete Business Solutions Group, Inc. v Sunrooms*, *Inc. and Michael Foti*, Philadelphia Court of Common Pleas, Case No. 190606813.

h) *Petropangea, Inc., Johnny Harrison; Volunteer Pharmacy, Inc. and Toby C. Frost v. Complete Business Solutions Group, LLC; Fast Advance Funding LLC; MCA Capital Fund I, LLC; MCA National Fund, LLC, Recruiting and Marketing Resources, Inc. and Full Spectrum Processing, Inc.*, Court of Common Pleas: Philadelphia County, Case No. 200202013.

i) *Complete Business Solutions Group, Inc. d/b/a Par Funding v. Petropangea and Johnny Harrison*, Pennsylvania Court of Common Pleas: Philadelphia County, Case No. 1906067.

j) *Complete Business Solutions Group, Inc. v. Sean Whalen and Yingyin Iris Chen*, United States District Court, Eastern District of Pennsylvania, Case No. 19-cv-06181.