

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., *et*
al.

Defendants.

**PARKER PLAINTIFFS' MOTION FOR RECONSIDERATION OF ORDER GRANTING
MOTION TO STAY AND REQUIRING MEDIATION**

Plaintiffs in the action styled *Dean Parker et al. v. John W. Pauciulo and Eckert Seamans*, pending in the Court of Common Pleas of Philadelphia County, Case No. 0892, December Term 2020 (the “Parker Plaintiffs”), respectfully submit this motion, pursuant to Fed. R. Civ. P. 60, for reconsideration of the Court’s August 1, 2024 Order [Dkt. No. 2006] (the “August 1 Order”) granting the Receiver’s Motion to Stay the Court’s Consideration of Motion to Approve Settlement with Eckert Seamans (“Eckert”) for Period of 90 Days and to Require Mediation [Dkt. No. 2004] (the “Motion to Mediate”), and in support thereof, state as follows:¹

¹ The Parker Plaintiffs include Joseph R. Cacchione, Francis Cassidy, Yajun Chu, Brian Drake, Joseph Gassman, David Gollner, Kurt Hemry, Sherri Marini, Andrew McKinley, Christopher McMorrow, Mark Nardelli, Paul Nick, Davis Parker, Dean Parker, Daniel Reisinger, Philip Sharpton, Michael Tierney, Legacy Advisory Group, Merchant Factoring Income, LLC, Victory Income Fund, LLC, Workwell Fund I, LLC, Cape Cod Income Fund, Wellen Fund 1, LLC, LWM Income Fund, 2, LLC, LWM Equity Fund, L.P., LWM Income Fund Parallel, LLC, Blue Stream Income Fund, LLC, Jade Funding, LLC, MK One Income Fund, LLC, GR8 Income Fund, LLC, STFG Income Fund, LLC, RAZR MCA Fund, LLC, Mariner MCA Income Fund, LLC, MCA Carolina Income Fund, LLC, and Merchant Services Income Fund, LLC.

1. On July 19, 2024, the Receiver filed a motion for extension of time [ECF No. 1997] to reply to the Objections filed by the Parker Plaintiffs, and others, to the Receiver's Motion for: (i) Approval of Settlement among Receiver, Putative Class Plaintiffs, and Eckert Seamans; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Setting a Deadline to Object to Approval of the Settlement and Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [ECF No. 1861].

2. On July 22, 2024, the Court entered an Order granting the Receiver's motion, and setting July 31, 2023 as the deadline for the Receiver to file his reply. [ECF No. 1998.]

3. On the evening of July 31, 2024, the Receiver filed the Motion to Mediate and a proposed Order seeking a ninety-day delay in order to mediate the dispute. The request to mediate was not the result of a joint agreement with the Parker Plaintiffs.

4. To the contrary, Lead Counsel to the Parker Plaintiffs advised the Receiver's counsel and counsel to the Putative Class Plaintiffs that the Parker Plaintiffs could not meaningfully and effectively mediate -- and fulfill his obligations to his clients -- without access to the information supposedly relied upon by the Receiver in seeking approval of the settlement with Eckert Seamans ("Eckert"). That information includes, among other things, the discovery allegedly relied upon by the Receiver (but not provided to the Parker Plaintiffs) and all information concerning the insurance proceeds potentially available to Eckert. Without such basic and essential information being shared among the parties prior to the mediation, the mediation is inherently unfair and unlikely to be productive.²

² As noted in their Objection, the Parker Plaintiffs have been requesting this information for more than a year, and since the beginning of this case, have been requesting an explanation from the Receiver as to his standing to interfere with the Parker Plaintiffs' lawsuit in Pennsylvania state court given his lack of viable claims against Eckert.

5. With respect to Eckert's insurance proceeds, it now appears that there is an additional insurance policy that could be available, which is one of the Receiver's stated reasons for the mediation. Of course, that additional policy -- and the possibility of recovering its proceeds -- was not identified by the Receiver in his motion to approve the settlement with Eckert.

6. On the morning of August 1, 2024, the Parker Plaintiffs' Lead Counsel informed the Receiver's counsel of the basis for their opposition to the Motion to Mediate. To that end, the Parker Plaintiffs' Lead Counsel sent the Receiver's counsel a proposed limited objection to a stay of the August 13, 2024 hearing in favor of mediation, along with a proposed Order setting forth a more expedited mediation schedule and a requirement that the Receiver provide the Parker Plaintiffs with the requested information prior to the mediation. The Parker Plaintiffs could not immediately inform the Court of their limited objection because, at the time, local counsel was on an international flight. Before the Parker Plaintiffs could make their filing, the Court entered the August 1 Order.

7. Accordingly, the Parker Plaintiffs respectfully request that the Court reconsider the August 1 Order, modify the time frame therein for resolution through mediation, and compel the Receiver to provide basic factual information in support of his claim and proposed settlement, which will enable the Parker Plaintiffs to participate in the mediation on a level playing field. A proposed Order is submitted herewith.³

WHEREFORE, the Parker Plaintiffs respectfully Request that the Court enter an Order granting this Motion for Reconsideration, vacating the August 1 Order, entering an Order in the

³ The Parker Plaintiffs initially sought to have the mediation conducted by Magistrate Judge Reinhart, to whom the Court originally referred the parties. However, the Parker Plaintiffs do not object to the arbitrator chosen by the Court.

substance and form submitted herewith, and granting such further relief as the Court deems just and proper.

Certification Regarding Pre-Filing Conference

On August 1, 2024, Lead Counsel to the Parker Plaintiffs sent the Receiver's counsel a copy of their proposed motion objecting to a stay of the August 13, 2024 hearing in favor of mediation, along with a proposed Order (which is substantially the same as the proposed Order submitted herewith). Lead Counsel to the Parker Plaintiffs also requested a conference to discuss finding common ground regarding the proposed mediation. The Receiver's counsel responded via email advising that it did not agree with the alternative proposed Order, and provided written comments to proposed order. The Receiver's counsel declined to participate in a conference concerning the matter.

Dated: August 2, 2024

Respectfully submitted,
HAINES & ASSOCIATES

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*Admitted Pro Hac Vice for
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-and-

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Local Counsel to Parker Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on August 2, 2024, via the Court's ECF Filing System, on all counsel in this matter.

/s/ Jonathan E. Minsker
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Counsel to Parker Plaintiffs

**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.

**[PROPOSED] ORDER ON PARKER PLAINTIFFS' MOTION FOR
REECONSIDERATION, AND ON RECONSIDERATION, GRANTING, IN PART,
RECEIVER, RYAN K. STUMPHAUZER'S MOTION TO STAY THE COURT'S
CONSIDERATION OF MOTION TO APPROVE SETTLEMENT WITH ECKERT
SEAMANS AND TO REQUIRE MEDIATION**

THIS CAUSE comes before the Court upon the Parker Plaintiffs' Motion for Reconsideration of Order Granting Motion to Stay and Requiring Mediation, filed on August 2, 2024 (the "Motion").

The Court, having considered the Motion, **ORDERS AND ADJUDGES** that:

1. The Motion is **GRANTED**.
2. The Court's August 1, 2024 Order [ECF No. 2006] is hereby vacated.
3. The Receiver's Motion to Stay the Court's Consideration of Motion to Approve Settlement with Eckert Seamans for Period of 90 Days and to Require Mediation, filed on July 31, 2024 [ECF No. 2004] is **GRANTED, IN PART**.
4. The Receiver's pending Motion for: (i) Approval of Settlement among Receiver, Putative Class Plaintiffs, and Eckert Seamans; (ii) Approval of Form, Content, and Manner of

Notice of Settlement and Bar Order; (iii) Setting a Deadline to Object to Approval of the Settlement and Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [ECF No. 1861] (“Eckert Seamans Motion”), including the Receiver’s deadline to file a reply in further support of the Eckert Seamans Motion, is hereby **STAYED** for a period of 45 days.

5. During this 45-day period, the Receiver, putative class counsel, Eckert Seamans, the Vagnozzi Group,¹ the Parker Plaintiffs,² and the Merchant Objectors³ (including all counsel, all clients, and all insurers) (each of these six groups is defined as a “Mediation Participant”) must participate in a mediation in an effort to resolve the pending objections to the Eckert Seamans Settlement.

6. Prior to the first mediation session and no later than August 19, 2024, the following information shall be provided by the Receiver and the Putative Class Action Plaintiffs to the Parker Plaintiffs: (i) a concise statement of the facts and law supporting a contention that assets of Eckert Seamans constitute a part of the Receiver’s estate; (ii) all documents and interrogatories, documents exchanged in discovery and all deposition testimony obtained in “litigation” with Eckert Seamans and/or relied on by the Receiver for its claims against Eckert Seamans; and (iii) a statement of the individuals or entities that constitute the “class” to be approved by the Court.

¹ The Vagnozzi Group is Defendant Dean Vagnozzi and non-parties Alec Vagnozzi, Albert Vagnozzi, and Terry Kohler.

² The Parker Plaintiffs are the Plaintiffs in the case of *Parker, et al. v. Pauciulo, et al.*, No. 20-00892 (Phila. Ct. Com. Pl. 2020).

³ The Merchant Objectors are B & T Supplies, Inc. d/b/a B and T Supply d/b/a Biggest Book.com; Tzvi Odzer; Ruben Azrak; RKDK Inc. d/b/a Haagen Dazs; Gelato on Hudson LLC d/b/a Haagen Dazs; Asia Star Broadcasting Inc.; Daniel Shah; Perfect Impression Inc.; Susan Abrahams; Kara Dipietro; Carl Dorvil; Pamela Fleetwood; Robert Fleetwood; Fleetwood Services LLC; Michael Joseph Foti; Chad Frost; Gex Management Inc; HMC, Inc; Johnny Harrison, Sr; Michael Heller; Julie Paula Katz; MH Marketing Solutions Group, Inc; Petropangea Inc; Radiant Images Inc; Sunrooms Group Inc; TourMappers NorthAmerica LLC; Volunteer Pharmacy, LLC; Sean Whalen; Giane Wolfe; and Iris Chen Yngyin.

7. The proposed mediation shall be completed no later than September 30, 2024.

DONE AND ORDERED in Miami, Florida, this _____ day of August, 2024.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of record