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.
_____/

SECURED CHEHEBAR INVESTORS' SUR-REPLY IN OPPOSITION TO RECEIVER'S MOTION TO (1) APPROVE PROPOSED PLAN OF DISTRIBUTION AND (2) AUTHORIZE FIRST INTERIM DISTRIBUTION

The Secured Chehebar Investors ("SCIs") hereby file their Sur-Reply to the Receiver's Reply to Chehebars' Response in Opposition to Receiver's Motion to (1) Approve Proposed Plan of Distribution and (2) Authorize First Interim Distribution [ECF No. 2049] (the "Reply").

SUMMARY OF THE ARGUMENT

The Receiver's Reply fails to demonstrate that the SCIs' 2017 and 2020 Liens are not valid and enforceable. As a preliminary matter, the Receiver's assertion that the SCIs "are taking inconsistent positions in their Response on the purported application of the 'freeze rule,'" *see* Reply at 6, misconstrues the SCIs' arguments. It is entirely consistent for the SCIs to argue that (1) the Court's *Amended* Receivership Order (the "ARO")—which specifically prohibited noticed persons from "creating or enforcing a lien upon any Receivership Property," ECF No. 141 ¶ 29.A—prevented the SCIs from filing continuations of their 2017 Liens, and (2) the Court's *Initial* Receivership Order (the "IRO")—which contained no such prohibition, *see generally* ECF No. 36—did not prevent the SCIs from filing their 2020 Liens. Indeed, it is the Receiver who is taking inconsistent positions by arguing that the IRO simultaneously permitted the SCIs to file continuations of their 2017 Liens and prohibited the SCIs from filing their 2020 Liens.

As to the validity and enforceability of the 2017 Liens, the Receiver provides no reason for this Court to deviate from the majority view in "the analogous context of bankruptcy law," *see Bendall v. Lancer Mgmt. Grp., LLC*, 523 F. App'x 554, 557 (11th Cir. 2013), that "the post-petition lapse of a properly filed UCC-1 does not render that security interest unperfected for purposes of its treatment as a secured claim," *see, e.g.*, *In re Short*, 651 B.R. 587, 610 (Bankr. D. Utah 2023). And if the Court determines that the SCIs' financing statements for their 2017 Liens lapsed, then the SCIs' 2017 Liens should give them priority over any *unsecured* Class 4 claimant.

As to the validity and enforceability of the 2020 Liens, the Receiver can only resort to his unsupported assertion that the "IRO clearly prohibited" the SCIs from filing their 2020 Liens despite the IRO containing no such prohibition. *Cf. United States v. Johnson*, 2022 WL 612507, at *1 (10th Cir. Mar. 2, 2022) (affirming district court order awarding attorney's fees to receiver after finding party in contempt for recording lien because the district court's receivership order "***specifically prohibited creating or enforcing liens on receivership property***" (emphasis added)). And even if the IRO prohibited the recording of existing liens, the Receiver concedes that he "does not have evidence" aside from "circumstances and timing" to rebut Josef Chehebar's, Ezra

Chehebar's, and Isaac Shehebar's sworn declarations that the SCIs did not have notice of the IRO at the time the SCIs filed the 2020 Liens. Reply at 8.

Without any evidence, the Receiver accuses the SCIs' counsel at Paul Weiss of "sitting on their hands for four months" and suggests that "it is no surprise" that Paul Weiss filed the 2020 Liens "promptly" after the IRO. *See* Reply at 9–10. The Receiver is wrong. As Secretary Jeh Johnson—the SCIs' lawyer at Paul Weiss—explains in his sworn declaration, "Contrary to the assertion made in the [Reply], neither [he], nor the other lawyers assisting with this matter at Paul Weiss, '[sat] on [their] hands' before filing the UCC-1 financing statements" because "these filings were made after Josef and the other members of his family spent time gathering and providing to us the information necessary to complete the UCC-1 financing statements." Ex. 1 ¶ 5. At no time before or at the time the UCC-1 financing statements were filed did Secretary Johnson or any other Paul Weiss lawyer have knowledge of the IRO. *Id.* ¶¶ 3–4. Nor is Paul Weiss charged with "constructive notice" of filings in a case in which their clients were not parties. *See Stevenson v. Orlando's Auto Specialists, Inc.*, 2008 WL 11435664, at *4 (M.D. Fla. Sept. 15, 2008) ("[A]ttorneys have a duty to be aware of entries on the docket of *their client's cases* and are on constructive notice of such entries." (emphasis added) (parenthetically quoting *Friedman v. State Univ. of N.Y.*, 2006 WL 2882980, at *8 (W.D.N.Y. Oct. 5, 2006))).

Recognizing that he cannot meet his burden to show by clear and convincing evidence that the SCIs violated the IRO by filing the 2020 Liens, the Receiver seeks to avoid the required contempt proceedings by mis-citing cases. *See* Reply at 10–11 (citing *Johnson*, 2022 WL 612507, at *2 (affirming district court order ***awarding attorney's fees after finding individual in contempt of receivership order***); *United States v. Barnette*, 902 F. Supp. 1522, 1542–43 (M.D. Fla. 1995) (deeming transfer of assets by individual null and void ***after finding individual in contempt of criminal forfeiture judgment and a restraining order***); *In re Albany Partners, Ltd.*, 749 F.2d 670, 675 (11th Cir. 1984) (in bankruptcy case, explaining that section 362(d) grants bankruptcy courts the power to annul the automatic stay retroactively in order to validate the foreclosure sale of estate property where the individuals conducting the foreclosure sale were unaware of the debtor's bankruptcy filing at the time of the foreclosure sale)).

The Receiver explains that, despite his recognition that the Vagnozzi Liens were filed by a CBSG insider and that the agent funds who hold the Vagnozzi Liens are owned and/or controlled by CBSG insiders, he has determined to treat the Vagnozzi Liens as valid and enforceable because

there is no "suggestion[] that the victim-investors were insiders or otherwise engaged in improper conduct." Reply at 12–13. But as explained herein, the agent funds already disgorged to the receiver the same money he now seeks to distribute to them. The disgorgement was ordered in a Final Judgment because the agent funds engaged in securities fraud with CBSG. The Receiver seeks to enforce liens that are not valid because they were granted in a transaction that violated the SEC Act, against funds that have already been disgorged from the agent funds by a Final Judgment. This is not equitable, and it is not legally supportable.

Finally, the Receiver—whose mission is to achieve the "fair and equitable" distribution of Receivership assets, *see* ECF No. 2014 at 6—is acting in a manner inconsistent with his mission by not applying the same logic to SCIs for whom there is not even a "suggestion" of being insiders or otherwise engaging in improper conduct. If the Receiver has elected not to invalidate the Vagnozzi Liens, then the Receiver should similarly elect not to invalidate the liens held by *all thirteen* of the SCIs. Liens the Receiver seeks to invalidate include those held by SCIs who were children at the time the liens were filed; the Receiver's theory is that those liens should be invalidated based on imputation of some SCIs' alleged (but not established) insider status. The Court should reject the Receiver's invitation to avoid discovery and an evidentiary hearing, *see* Reply at 14, by glossing over the SCIs' rights to contest the Receiver's unsupported decision to broadly paint the entire Chehebar family as "insiders" while giving the Exchange Offering Investors every benefit of the doubt and ignoring that the exchange fund liens were created by a transaction directly between the parties to overarching fraud – CBSG on the one hand and the agent funds on the other.

ARGUMENT

A. The 2017 Liens Remain Valid

The Receiver criticizes the SCIs because they "rely heavily on bankruptcy principles to argue . . . that they were not required to file a continuation statement to preserve any priority status their 2017 liens might have maintained." Reply at 2. But as the Receiver recognizes, it is an "uncontroversial proposition that courts may 'apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context." Reply at 3 (parenthetically quoting *Brendall*, 523 F. App'x at 557). And in the analogous context of bankruptcy law and in the context of interpleader actions, courts have concluded that a secured party is not required to file continuation statements to maintain perfection of its security interest

because "such a filing is not needed to protect potential creditors when the funds have been placed openly in the possession and control of the court." *See Avant Petroleum, Inc. v. Banque Paribas*, 853 F.2d 140, 144–45 (2d Cir. 1988).

The Receiver also argues that this Court should not apply the bankruptcy "freeze rule" because the SCIs filed their 2020 Liens after the Court entered the IRO. *See* Reply at 3. This misconstrues the SCIs' argument. To be clear, the SCIs' position is that "[t]his Court's August 13, 2020 ARO"—*not* the IRO—"like Section 362's automatic stay provision, prevented the SCIs from filing continuations of their 2017 Liens." Resp. at 7. Because the ARO expressly prohibited new liens, the same rationale for eliminating the requirement for filing continuation statements during insolvency proceedings is applicable to this Receivership. *See In re Essex Constr., LLC*, 591 B.R. 630, 635 (Bankr. D. Md. 2018) (explaining that no new "liens acquire validity after the filing of the petition" as a justification for applying the freeze rule in a bankruptcy case). Thus, this Court should "analyze the question before [it] through the lens of . . . bankruptcy decisions." *See Sec. & Exch. Comm'n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1344 (11th Cir. 2017).

Finally, the Receiver asserts that this Court should not look to analogous bankruptcy law because "state law has spoken and controls this issue." Reply at 3–4. But the usual state law requirement that a secured party file a continuation statement to prevent its filed financing statement from lapsing is "of no effect to the extent that federal bankruptcy law dictates a contrary result (e.g., to the extent that the Bankruptcy Code determines rights as of the date of the filing of the bankruptcy petition)."[1] *See In re Short*, 651 B.R. at 610 (quoting U.C.A. § 70A-9a-515 cmt. 4); *accord* Del. Code. Ann. Tit. 6, § 9-515, cmt. 4. The "freeze rule" applies whether assets are marshaled by a receiver who takes them pursuant to an order like the ARO, a bankruptcy trustee, or a court because they were deposited directly into its registry. As the interpleader cases demonstrate, the rule is not a statutory creation of bankruptcy law that only applies in that context. It results from a logical application of the UCC's lien provisions in the context of federal law when assets are held for the benefit of others. The same reasoning applies here and controls this case.

B. The 2017 Liens Maintain Priority Over Any Unsecured Class 4 Claims

[1] The Eleventh Circuit's decision in *Wells Fargo* is not to the contrary. That "[i]t is axiomatic that security interests in property are determined by state law and that a receiver appointed by a federal court takes property subject to all liens, priorities, or privileges existing or accruing under the laws of the state," *see* 848 F.3d at 1344 (quotation marks omitted), says nothing about whether the "freeze rule" applies in the receivership context.

The Receiver defined Class 4 claims as "Allowed Claims of a Claimant that invested money with one or more of the Receivership Entities, but did not obtain a security agreement that is supported by a properly-filed and valid UCC-1 financing statement." ECF No. 2014 at 13. This definition is ambiguous as to whether it includes claimants without a security agreement. Accordingly, to the extent Class 4 includes unsecured claimants, the SCIs' 2017 Liens give them priority over the unsecured claims even if the SCIs' filed financing statements lapsed.

The Receiver now clarifies that Class 4 consists of claimants who "obtained security agreements from CBSG in connection with the issuance of a promissory note." Reply at 5. But it is important to note that these claimants would not include investors in agent funds. Those investors did not receive security in CBSG.[2] And as explained, agent funds are entitled to no security interest because the contracts they gained them by are void.

C. The SCIs Did Not Violate The IRO By Filing The 2020 Liens

1. The IRO did not prohibit the SCIs from filing the 2020 Liens

The Receiver again mischaracterizes the SCIs' arguments regarding the effect of the IRO and the ARO by accusing the SCIs of "taking inconsistent positions . . . on the purported application of the 'freeze rule.'" Reply at 6. To reiterate, the SCIs' position that the *IRO* did not prohibit them from filing the 2020 Liens is entirely consistent with their position that the *ARO* prohibited them from filing continuation statements for the 2017 Liens. As the Receiver explains, "[t]he scope of . . . any . . . limitation on the ability of others to take action with respect to the property under the Receiver's control[] is governed by the terms of the Court's order," Reply at 6, and unlike the ARO's express prohibition on the creation or enforcement of a lien upon any Receivership property, ECF No. 141 ¶ 29.A, the terms of the IRO contained no such prohibition, *see generally* ECF No. 36.

Indeed, the Tenth Circuit case the Receiver cites in support of his assertion that the IRO "[o]f course" prohibited the filing of the 2020 Liens, *see* Reply at 7, supports the SCIs' position that the IRO did no such thing. In *Johnson*, the Tenth Circuit affirmed the district court's order awarding attorney's fees to a receiver after the district court held the individual in contempt of its receivership order for filing a lien even though the receivership order "***specifically prohibited***

[2] This is true even in the case of the exchange offering. Those notes and agreements make clear that the security agreement is between CBSG and the agent fund, and that there are no third-party beneficiaries. ECF No. 2014-26 at p.27, Section 8.12, p.48, ¶10.

creating or enforcing liens on receivership property." 2022 WL 612507, at *1 (emphasis added). Thus, contrary to the Receiver's parenthetical description of *Johnson* indicating that the receivership order in that case, like the IRO here, merely prohibited actions that "interfere[d] with [the Receiver's] work," *see* Reply at 7, the receivership order in *Johnson*, ***unlike the IRO and like the ARO***, "specifically prohibited creating or enforcing liens on receivership property," *see id.* The difference between the IRO and ARO—like the difference between how the Receiver described the receivership order in *Johnson* and what that order actually said—matter.

2. There is no evidence that the SCIs had actual notice of the IRO

The Receiver concedes that he has no direct evidence that the SCIs had actual notice of the IRO *See* Reply at 7. He instead attacks Josef Chehebar's, Ezra Chehebar's, and Isaac Shehebar's sworn declarations that they did not have notice of the IRO as "self-serving" and insists that "[t]he circumstances and timing . . . strongly suggest it was anything but a coincidence that the Chehebars filed their 2020 liens on August 7, 2020." *Id.* "Self-serving" or not, the sworn declarations are certainly sufficient to defeat the Receiver's unsupported assertions. *See Perez v. Fla. Beauty Flora, Inc.*, 2021 WL 1581925, at *12 (S.D. Fla. Mar. 24, 2021) ("Perez's declaration, of course, can be classified as 'self-serving,' but that alone is insufficient to ignore it. First, most, if not all, affidavits are self-serving. . . . Second, a court cannot simply discredit or disbelieve an otherwise adequate affidavit merely because it is self-serving."); *cf. Fordham v. Maximus Human Servs., Inc.*, 2023 WL 11932479, at *11 (N.D. Ga. Jan. 25, 2023) ("[T]he Eleventh Circuit has consistently held that a plaintiff's allegedly 'self-serving' affidavit or declaration may alone be sufficient to defeat a motion for summary judgment if it establishes a genuine issue of material fact."). And the Receiver's unsupported arguments about "circumstances and timing" totally ignores Josef Chehebar's sworn explanation that the decision to file the 2020 Liens was made in May 2020, months before the Court entered the IRO, ECF No. 2041-1 ¶ 6, and Ezra Chehebar's and Isaac Shehebar's sworn statements that they did not discuss the IRO with Mr. Berman, *see* ECF No. 2041-2 ¶ 3; ECF No. 2041-3 ¶ 3. To be sure, the SCIs' sworn declarations are corroborated by Secretary Johnson's sworn declaration that the SCIs sought Paul Weiss' assistance with filing the 2020 Liens "[i]n May 2020." Ex. 1 ¶ 2.

3. There is no basis to find that the SCIs were on inquiry notice of the IRO

The Receiver argues that the Court should find the SCIs qualify as "persons receiving notice" of the IRO because they were on inquiry notice of the IRO. Reply at 9–10. As a

preliminary matter, the Receiver's argument stretches the IRO's terms too far. If the Court intended for inquiry notice of the IRO to suffice to bind third-parties to the IRO's prohibitions, the phrase "persons receiving notice" was an odd choice. How can an individual "receive" inquiry notice? Indeed, at least one court has expressed "doubt[] that imputed knowledge alone suffices" to hold a non-party in contempt for violating an injunction. *See White-Lett v. Shellpoint Mortgage Servicing*, 2024 WL 3636285, at *9 (N.D. Ga. July 3, 2024) (expressing "doubt[] that imputed knowledge alone suffices to hold a creditor in contempt for violating a discharge injunction").

Moreover, the Receiver incorrectly states that "there is overwhelming evidence that the Chehebars were aware of the pending action ***and the appointment of the receiver***," Reply at 9 (emphasis added), even though the ***only*** evidence is that the SCIs were aware of the SEC's enforcement proceeding but were not aware of the Receiver's appointment. *See* ECF No. 2014-2 ¶ 7; ECF No. 2014-3 ¶ 16; ECF No. 2041-1 ¶ 9; ECF No. 2041-2 ¶ 4; ECF No. 2041-3 ¶ 4. Thus, the cases the Receiver cites where individuals with "actual notice" of a receiver's appointment were held to be on inquiry notice of the receiver's claims process are distinguishable. *See Fla Cmty. Bank v. BRI, LLC*, 2011 WL 13214327, at *2 (S.D. Fla. Apr. 26, 2011) ("[I]t is undisputed that Gajeski and/or his attorney were informed in April of 2010 that Florida Community Bank had been taken over by the FDIC."); *Intercontinental Travel Mktg., Inc. v. F.D.I.C.*, 45 F.3d 1278, 1286 (9th Cir. 1994) (party conceded that "the FDIC put it on actual notice of its receivership appointment and thereby on inquiry notice of the claims bar date"); *Peach Blossom Dev. Co., Inc. v. F.D.I.C.*, 2014 WL 7215194, at *7 (M.D. Ga. Dec. 17, 2014) (finding party was on inquiry notice of receivership based on "overwhelming evidence" and the party's "own admissions" that it "discovered at some point prior to the filing of this lawsuit that the failed bank entered receivership"). And one case the Receiver cites, *Elmco Properties, Inc. v. Second Nat'l Fed. Sav. Ass'n*, supports the SCIs because the Fourth Circuit explained that "[b]ecause nothing in the record suggests that Elmco had actual knowledge that FSA had entered receivership, nor that it had actual knowledge of the administrative claims process or bar date, Elmco ***was never placed on inquiry notice of the claims process***." 94 F.3d 914, 922 (4th Cir. 1996) (emphasis added).

The Receiver also insinuates that the SCIs' counsel at Paul Weiss "must have been" on notice of the IRO and that Paul Weiss' notice is imputed to the SCIs. *See* Reply at 9–10. But the Receiver again ignores that the *only* evidence is that the decision to file the 2020 Liens was made in May 2020 and that none of the SCIs discussed the IRO with Paul Weiss because the SCIs did

not know about the IRO. ECF No. 2041-1 ¶¶ 5–10. And Secretary Johnson's sworn declaration puts to rest any doubt that Paul Weiss may have had actual notice of the IRO when Paul Weiss filed the 2020 Liens. Ex. 1 ¶¶ 3–4. Further, there is simply no basis to charge Paul Weiss with constructive notice of filings in a case to which its clients were not parties. *See Stevenson*, 2008 WL 11435664, at *4 ("[A]ttorneys have a duty to be aware of entries on the docket of *their client's cases* and are on constructive notice of such entries." (emphasis added)).

4. Contempt proceedings are required for the Court to determine that the SCIs violated the IRO by filing the 2020 Liens

The Receiver seeks to have his cake and eat it too by having the Court rule that the SCIs violated the IRO by filing the 2020 Liens but avoiding the evidentiary standard necessary for the Court to find that the SCIs violated the IRO by filing the 2020 Liens. *See* Reply at 10–11. Tellingly, the Receiver cites no authority that supports his position that contempt proceedings are unnecessary for him to achieve his desired result. In *Johnson*, the Tenth Circuit affirmed the district court's order awarding attorney's fees to the receiver and not, as the Receiver represents, an "order invalidating lien that was filed in violation of court order," Reply at 10. *See* 2022 WL 612507, at *2 (explaining that the appellant appealed "only the attorney fees order, and not the underlying contempt order" and that the court did not have jurisdiction to review the underlying contempt order because the notice of appeal "is untimely to permit review of that order"). In *Barnette*, the district court "f[ound] that [a] transfer [was] null and void" *after* it determined that the transferor was "in contempt of the criminal forfeiture judgment and the trial court's October 18, 1983 restraining order as it relates to this judgment." *See* 902 F. Supp. at 1543. And the portion of Eleventh Circuit's decision in *In re Albany Partners, Ltd.* the Receiver quotes has nothing to do with the necessity of contempt proceedings and instead simply explains that the Bankruptcy Code grants bankruptcy courts the power to annul the automatic stay retroactively in order to validate the foreclosure sale of estate property where the individuals conducting the foreclosure sale were unaware of the debtor's bankruptcy filing at the time of the foreclosure sale. 749 F.2d at 675.

D. The Receiver's Enforcement of the Vagnozzi Liens is Inequitable and not Supported by Law

The Receiver does not dispute that the Vagnozzi Liens were created in a transaction between CBSG and a CBSG insider (indeed, an active participant in the fraud). *See* Reply at 12. Yet the Receiver indicates that he has declined to seek equitable subordination or invalidation of

the Vagnozzi Liens "[w]ithout a finding, or even a suggestion, that the victim-investors were insiders or otherwise engaged in improper conduct." Reply at 13. According to the Receiver, he has decided to instead prioritize and enforce the Vagnozzi Liens "[b]ecause these liens were for the benefit of the victim-investors in the agent funds, and not the agent fund managers who could potentially be labeled as insiders." Reply at 13.

As a threshold matter, the Vagnozzi Liens were not created "for the benefit of the victim investors in the agent funds." The Receiver cites no law or evidence to support this assertion. To the contrary, the only evidence is that the Vagnozzi Liens were created for the benefit of the agent funds themselves to protect the CBSG insiders and fraud participant who owned them in the event the CBSG Ponzi scheme collapsed. The only parties to the exchange offering agreements were CBSG and CBSG insiders/fraud perpetrators, and the Amended and Restated Note Purchase Agreement expressly provides that there are "**No Third Party Beneficiaries**" to the agreements. ECF No. 2014-26 § 8.12. There is therefore no basis to treat the Vagnozzi Liens as anything other than liens held by CBSG insiders and participants in the fraud.

Further, the Receiver's legal gymnastics bely the soundness of his approach and demonstrate it is not legally supportable. On November 6, 2023, Judge Bloom entered a Final Judgment that disgorged over $110 million dollars from the agent funds. *SEC v. ABFP Income Funds Parallel, LLC, et al.*, SD Fla. Case No. 23-23721 (Final Judgment) (ECF No. 11). The Final Judgment provided that "disgorgement and prejudgment interest thereon are deemed satisfied by the amounts collected by the Receiver in…" the matter before this Court. The Receiver's quarterly reports reflect that on October 31, 2023, the cash balance was $135,290,131, and as of January 31, 2024 it was $140,884,766. ECF Nos. 1739, 1792. That those disgorged funds were free of any possible liens being asserted by the Vagnozzi's or agent funds is really beyond question. In his September 13, 2024, filing, the Receiver noted that "[t]he amount of cash on in the Receivership bank accounts as of June 30, 2024, which is the end of the Application Period, was $160,279,955. **All of the cash is unencumbered**." ECF 2038 at p.6 (emphasis added).[3] The Receiver offers no explanation as to how the agent funds can now enforce liens based

[3] This representation is not new, and predates the Receiver's Motion that is now before the Court. See e.g. ECF No. 1959 at p.6 (same). With regard to the agent funds, the assertion is completely consistent with the Final Judgment that was entered by Judge Bloom and the reality of the transactions, and procedural history of the cases relating to CBSG and the agent funds.

upon fraudulent contracts, especially when those same agent funds agreed to the disgorgement of the very proceeds they now seek to reclaim through unenforceable liens.[4] The position is simply untenable. Regardless of whether the liens were ever enforceable (they were not), the agent funds lost any right to assert a lien over them when they agreed to their disgorgement to the Receivership.

And even if the Exchange Offering Investors were third party beneficiaries of the agent funds' fraudulent agreements with CBSG, the Receiver's treatment of third-party beneficiaries of fraudulent contracts between CBSG and CBSG insiders is incompatible with his treatment of the SCIs for whom he has also never even suggested were insiders or otherwise engaged in improper conduct. While the Receiver seeks to enforce as valid the Vagnozzi Liens even though they were filed by a CBSG insider and held by CBSG insiders, the Receiver seeks to invalidate the liens held by *all* of the SCIs based on the alleged insider status of only a few members of the Chehebar family.[5] *See* ECF No. 2014 at 24–33. The Receiver's disparate treatment of those he deems "victim-investors" and those SCIs who he similarly does not even suggest engaged in improper conduct is incompatible with the principle that "equality is equity." *See* ECF No. 2014 at 3 ("In general, 'any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike,' and 'equity should not permit one group a preference over another, because equality is equity.'").

CONCLUSION

For these reasons and the reasons stated in their Response, the SCIs respectfully request that the Court deny the Receiver's Motion to the extent the Motion seeks invalidation of the SCIs' liens and subordination of the SCIs' claims to the claims held by investors in the 2020 Exchange Offering and any unsecured claims.

[4] Note that in his Motion, the Receiver argued disgorged funds no longer belong to the wrongdoer. ECF No. 2014 at p.8. This position is correct and there is no legal mechanism that would allow the agent funds to reassert an unenforceable lien upon funds that they consented to being disgorged, and were pursuant to a Final Judgment.

[5] The SCIs of course dispute the Receiver's assertion that any member of the Chehebar family was an insider.

Dated: October 4, 2024

Respectfully submitted,

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EXHIBIT 1

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.

DECLARATION OF JEH CHARLES JOHNSON

I, Jeh Charles Johnson, state as follows:

1. I am a partner in the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP. I am a member in good standing of the Bars of the State of New York and the District of Columbia. I have from time to time represented Josef Chehebar and his extended family on various discrete matters.

2. In May 2020, Josef, on behalf of himself and various members of his family, sought the assistance of Paul Weiss with the filing of UCC-1 financing statements with respect to certain promissory notes between members of the family and Complete Business Solutions Group, Inc. On August 7, 2020, Paul Weiss filed UCC-1 financing statements on behalf of members of the Chehebar family after they had gathered and provided to Paul Weiss the necessary information to complete those filings.

3. On or before August 7, 2020 – the date the UCC-1 financing statements were filed – neither I, nor, to the best of my knowledge, any other lawyer at Paul Weiss, had knowledge of the July 27, 2020 order appointing the receiver in this matter or its terms.

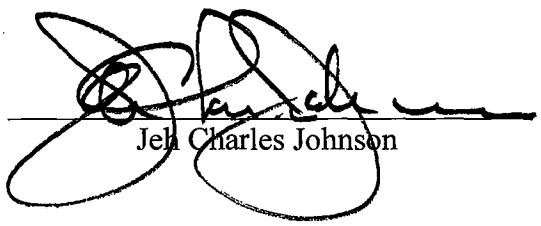
4. At the time the UCC-1 financing statements were filed, neither I, nor, to the best of my knowledge, any other lawyer at Paul Weiss, had knowledge of the motion to amend the order appointing the receiver that was filed that same day.

5. Contrary to the assertion made in the *Receiver's Reply to Chehebar's Response in Opposition to Receiver's Motion to (1) Approve Proposed Plan of Distribution and (2) Authorize First Interim Distribution*, neither I, nor the other lawyers assisting with this matter at Paul Weiss, "[sat] on [our] hands" before filing the UCC-1 financing statements. As stated above, these filings were made after Josef and the other members of his family spent time gathering and providing to us the information necessary to complete the UCC-1 financing statements.

6. By this declaration, I do not intend to waive, and am expressly not waiving, the attorney-client privilege, nor have I been authorized to do so by Josef Chehebar or the Chehebar family.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed the 3rd day of October, 2024.



Jeh Charles Johnson