

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

**RECEIVER, RYAN K. STUMPHAUZER’S EXPEDITED MOTION TO QUASH
FRIDAY AFTERNOON SUBPOENA AND FOR PROTECTIVE ORDER**

Basis for expedited relief:

The Receiver respectfully seeks this relief on an expedited basis, on or before Monday, August 17, 2020. Yesterday afternoon, less than a day after the Court entered its Amended Receivership Order (ECF No. 141) over Defendants’ objections, Defendants served the Receiver with a subpoena for deposition on Monday, August 17, 2020. The Receiver believes that this eleventh-hour subpoena will interfere with his duties and responsibilities under the Court’s Orders, and has not been served for any proper purpose. Moreover, the Receiver believes that the such subpoena is improper under settled law insofar as it will have no purpose other than to compel testimony from the Receiver about his court-appointed functions.

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of Defendants Complete Business Solutions Group, Inc. d/b/a Par Funding; Full Spectrum Processing, Inc.; ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; and RE Income Fund 2 LLC (the “Receivership Entities”), by and through undersigned counsel, respectfully requests an Order quashing

Defendants' August 14, 2010 Subpoena Duces Tecum (attached as **Exhibit 1**) (the "Subpoena") and protecting him from discovery.

BACKGROUND

On the evening of August 13, 2020, the Court entered its Amended Receivership Order expanding the scope of the receivership. (ECF No. 141.) Defendants opposed this relief in several filings, including a "Memorandum of Law Regarding the Scope of the Receiver's Activities" (ECF No. 84), a "Brief on the Current Scope of Receivership and Asset Freeze Issues" (ECF No. 82) that was then joined by other Defendants (ECF No. 91), a "Cross Motion to Have This Court Direct the Receiver to Immediately Engage . . ." (ECF No. 106), and a "Response in Opposition to Plaintiff's Expedited Motion to Amend Receivership Order" (ECF No. 130.) In these filings Defendants' expressed their shared perspective that the Receiver had "narrow" authority under the Court's initial receivership Orders. (*See id.* at 2-3.) Outside of Court, Defendants made clear to the Receiver they opposed his requests for cooperation and information, denying his requests for interviews—instead demanding that he sit for an interview—and, in the case of Defendant Lisa McElhone, asserting privilege against the Receiver, not only on her own behalf, but on "behalf of CBSG, herself, its officers, directors and employees," over "each and every communication by, between or amongst any and all counsel for CBSG and Ms. McElhone and/or its other officers, directors and employees." (*See* ECF No. 133 at 5-8 (and accompanying exhibits).)

The Court disagreed with Defendants and entered an expanded Receivership Order. (*See* ECF No. 141.) The Court entered a separate Order granting Plaintiff's Motion to Amend Receivership Order, finding:

Given the difficulties the Receiver has encountered to obtain information he needs to adequately preserve the Receivership Entities' assets and protect investor funds, the Court finds it necessary to expand the scope of the receivership. The Court will separately enter an Order delineating the amended scope of the receivership.

(ECF No. 140.) The Court’s Amended Receivership Order details the scope of the Receivership with respect to many of the issues raised by the Defendants, including the privilege objections by various Defendants against the Receiver. In this respect, the Court held that the “Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all entity Receivership Entities.” (ECF No. 141 at ¶ 44.) This Order was entered on Thursday evening.

By Friday morning, counsel for Defendant LME 2017 Family Trust made clear that it was continuing to challenge the Receiver’s authority to review company records because, it claimed, “there are likely to be individual attorney-client privilege materials intertwined with corporate Receivership entities materials.” (See **Exhibit 2**.) Defendant did not identify any instances of individual privilege or assert any basis for that assertion. See *United States v. Maxwell*, Case No. 05-20571-CR-SEITZ/MCALILEY, 2006 WL 8439795, at *7 (S.D. Fla. Oct. 4, 2006) (Seitz, J.) (rejecting “conclusory” privilege assertions by company officers that do “not even begin to offer the necessary evidence to support an attorney-client privilege in this case, let alone to overcome the basic supposition of corporate privilege: that it belongs to the corporation, not the officer”). Hours later, Defendant LME 2017 Family Trust subpoenaed the Receiver for a Monday deposition. (See **Exhibit 1**.)

MEMORANDUM OF LAW

I. Legal Standard

“Court appointed receivers act as arms of the court and are entitled to share the appointing judge’s absolute immunity provided that the challenged actions are taken in good faith and within the scope of the authority granted to the receiver.” *Davis*, 70 F.3d 367, 373 (5th Cir. 1995). Such judicial immunity “extends to protection from discovery, not just from suit.” *FTC ex rel. Yost v.*

Educare Centre Servs., Inc., EP 19-CV-196-KC, 2020 WL 4334765, at *1 (W.D. Tex. May 26, 2020) (quashing subpoena served on receiver).

Federal Rule of Civil Procedure 26 provides that the Court may, for good cause shown, enter an Order to protect a party or person from discovery that causes “annoyance, embarrassment, oppression, or undue burden.” Under Federal Rule of Civil Procedure 45(d)(3), a Court may to quash or modify a subpoena that imposes an undue burden on the subpoena recipient. A subpoena served on a receiver should be quashed because it subjects the receiver “to discovery risks impugning her integrity and good-faith decision-making because the subpoena implicates her quasi-judicial functions.” *Educare Centre Servs.*, 2020 WL 4334765, at *1 (W.D. Tex. May 26, 2020) (citing *Gary W. v. Louisiana Dep’t of Health & Human Resources*, 861 F.2d 1366, 1369 (5th Cir. 1988)); *see also Coleman v. Schwarzenegger*, Case No. CIV S-90-0520, 2007 WL 4276554, at *1 (N.D. Cal. Nov. 29, 2007) (granting protective order precluding deposition of receiver where “the Receiver and his staff ‘shall have the status of officers and agents of this Court’”) (quoting *Plata v. Schwarzenegger*, Case No. C01-1351 TEH, 2005 WL 2932253, at *1 (N.D. Cal. Oct. 3, 2005)).

II. The Subpoena Should be Quashed and a Protective Order Should be Entered

The Subpoena serves no proper purpose. The Amended Receivership Order expanding the Receiver’s authority and judicial functions was entered—over Defendants’ vigorous opposition—less than a day before the Subpoena was served, and the Receiver should not be required to sit for compelled testimony about the actions it is now taking under the Court’s amended instructions. And Defendants have no basis to inquire as to the actions the Receiver took prior to the Amended Receivership Order—they have maintained throughout that time period that the Receiver had a

narrowly proscribed role that they viewed as akin to a monitor, and broadly asserted privilege against the Receiver:

For the record, Vagnozzi does not consent to the imposition of a receivership, the current scope of the receivership, or any asset freeze. . . . (ECF No. 82.)

The Court specifically did not confer the overbroad and sweeping powers sought by the Commission. Instead, the Court provided the Receiver with measured powers to monitor the affairs of these legitimate businesses. . . (ECF No. 84 (emphasis in original).)

[T]he terms of this Receivership Order does not, under this binding legal authority, allow the Receiver to control the attorney-client privilege and terminate the Companies existing counsel. (ECF No. 100.)

To the extent your office [Receiver’s counsel] asserts that any communication by, between or amongst any lawyer, paralegal or anyone working on behalf of a lawyer or law firm and Ms. McElhone and/or CBSG or any other entity and/or any of its officers, directors and employees, is not subject to the attorney-client or work-product privileges, we request an opportunity to review the disputed communication before it is reviewed by anyone in your office, reviewed by any third party or reviewed by anyone outside your office, so that we may litigate the applicability of the privilege before a federal Magistrate or Judge or Special Master, if one is appointed. (ECF No. 133-7 (emphasis in original).)

The Court’s Amended Receivership Order on August 13, 2020 resolves these objections.

August 14, 2020 should have been an opportunity for the Receiver to diligently fulfill its duties and responsibilities unfettered, for the first time, by interference and objection. But by the afternoon of August 14, 2020, Defendant LME 2017 Family Trust had already (1) broadly asserted “individual attorney client privilege” over Receivership Entity materials—without identifying any communication or matter that might properly form the basis for this assertion (*see* Exhibit 2), and (2) served a subpoena on the Receivership for a Monday deposition without specifying any matter that might properly be the basis for such a deposition.

The Receiver is reluctant to again seek expedited relief from the Court but nonetheless believes there is good cause for this relief. At the time of this filing, the Receiver is actively investigating multiple instances where former employees or agents of the Receivership Entities—

including a declarant whose declaration was submitted to the Court by Defendants on August 14, 2020—have accessed Receivership Entity systems and taken records in violation of the Court’s Order. He intends to address those issues by separate motion. The Receiver is also continuing to pursue materials from third-party law firms who were told by Defendants not to produce materials to the Receiver. And the Receiver is working with its Court-appointed expert to assess the operations of the Receivership Entities without interference by former officers. The Subpoena is an improper and unnecessary distraction at a time that Defendants themselves have referred to as critical.

The Subpoena also endangers the Receiver’s ongoing investigation and actions. The Receiver will soon begin submitting regular reports, and those reports will “speak for themselves.” *Coleman*, 2007 WL 4276554, at *2 (*sua sponte* entering protective order to prevent deposition of receiver). But forced testimony “about the reports, as well as testimony about or the production of underlying documents considered by the Receiver in his preparation of the reports, would impermissibly intrude on the Receiver’s mental processes.” *Id.*; *see also Gary W.*, 861 F.2d at 1369 (“mental processes rule” prevents “the involuntary testimony of judicial and quasi-judicial officers” about their mental processes). Given that Defendants have consistently objected to and asserted privilege against the Receiver’s actions over the last few weeks, they should not be permitted to now interrogate the Receiver about his mental processes and judgments about his official functions as the Court’s agent. *See Educare Centre Servs.*, 2020 WL 4334765, at *2 (quashing subpoena served on receiver where receiver “is immune from Defendants’ request for materials arising out of [its] official judicial functions”).

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court enter an Order quashing the Subpoena and protecting the Receiver from discovery, and for such other and further relief to which he may be entitled.

Dated: August 15, 2020

Respectfully Submitted,

**STUMPHAUZER FOSLID SLOMAN
ROSS & KOLAYA, PLLC**
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By: /s/ Timothy A. Kolaya
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Co-Counsel for Receiver

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Co-Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2020, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya

TIMOTHY A. KOLAYA

EXHIBIT 1

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

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

Defendant

Civil Action No. 9:20-CV-81205-RAR

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Ryan Stumphauzer

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (Zoom Internet Platform) and Date and Time (08/17/2020 12:30 pm)

The deposition will be recorded by this method: stenographically

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: Produced electronically for delivery to andrew.sarangoulis@gray-robinson.com by August 15, 2020 - All documents, including written communication (emails with attachments, text messages, etc.), your office has exchanged with law enforcement or any State or Federal agency relating to the above-captioned matter; All subpoenas you have received in your capacity as Receiver for the subject companies in this case; All documents demonstrating payments made to investors of CBSG since your appointment as Receiver in this matter. *Please contact undersigned counsel to discuss the scope of this subpoena.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/14/2020

CLERK OF COURT

OR

/s/Joel Hirschhorn

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) The LME 2017 Family Trust, who issues or requests this subpoena, are:

Joel Hirschhorn, 333 SE 2nd Ave., Suite 3200, Miami, Florida 33131 (305-416-6880), jhirschhorn@gray-robinson.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 9:20-CV-81205-RAR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT 2

From: [JOEL HIRSCHHORN, Esq.](#)
To: [Gaetan J. Alfano](#)
Cc: [Alan Futerfas](#); [Timothy Kolaya](#); [Berlin, Amie R.](#); [James Froccaro](#); [Bettina Schein](#)
Subject: Re: Par Funding adv SEC: The LME 2017 Family Trust: Proposal - as per our telephone conference
Date: Friday, August 14, 2020 12:45:28 AM
Attachments: [image002.png](#)
[image279327.png](#)

Gaetan,

I write solely on behalf of my client, The LME 2017 Family Trust (hereafter, Family Trust), in response to your below email. I apologize for the delay in responding, but I actually tried to spend three hours this evening with my family. This response is intended to be informational, collegial and not confrontational.

1. I have carefully read the rather draconian Amended Order Appointing Receiver (hereafter Amended Order) (Doc 141) entered by the Court on August 13, 2020 at 6:46pm. I have not yet finished consulting with my client but we are contemplating filing an Interlocutory Appeal, assuming one is permissible and appropriate. Nonetheless, right or wrong, over broad or not, as we all learned in law school, Court Orders, even those with which we disagree -as this one- must be respected.

2. Paragraph 44 of the Amended Order makes clear that your client, The Receiver, holds "...all privileges, including the attorney-client privilege, held by the Receivership Entities." That resolves the corporate aspect of the privilege issue for now at least. However there are likely to be individual attorney-client privilege materials intertwined with corporate Receivership entities materials. To that extent I invite any reasonable suggestion you may have as to how these individual (including and in particular that of the Family Trust) privileges may be appropriately protected and preserved. To that extent, I respectfully suggest the individual(s) attorney-client privilege issue is not put to rest by paragraph 44 of the Amended Order.

3. With respect to your instructions that my client have no "...contact with any employees related to the business of the Receivership entities," as I read paragraph 5 of the Amended Order, all employees were dismissed. So, there are no employees. There are former employees and we hope there will be future employees, but right now there are no employees. We understand the mandate of the Amended Order to not interfere with the Receivership and will make every effort to abide by that. However as you are no doubt aware many - if not all of the- employees are, for lack of a better phrase at this late hour, anxiously concerned about their employment status, their past due earned wages and their future employment in these very difficult COVID -19 times. We trust the Receiver will address these issues in an expeditious manner.

4. We interpret your below instruction to not limit other than business contact, but as you can well imagine there are a lot of rumors, hearsay and gossip swirling about with respect to the Complete Business Solutions Group, Inc (hereafter CBSG) since the public disclosure of the SEC filing and more recently the Receivership. People- former employees and consultants - are entitled to answers about their own futures. We trust the Receiver will address this most expeditiously and thus help minimize even non business contact. I must say, however I read the Amended Order twice and failed to find any such specific authority as you now seek to

impose. Obviously paragraph 29 of the Amended Order makes clear that those who have notice of the Amended Order are “...enjoined from directly or indirectly taking or causing any action” which would hinder the Receivership, without the express written agreement of the Receiver. But, I do not believe that prohibits the Family Trust, as owner of all the issued and outstanding shares of CBSG, from exercising prudent speech with former and even future employees as long as same does not violate paragraph 29. Please advise if you read paragraph 29 differently.

5. Again, as we have previously expressed, the Family Trust, as owner of the CBSG shares, urges the Receiver to resume business operations as soon as possible so that jobs will be saved, investors and other creditors paid, and merchants continue to receive and repay their respective contracted advances.

Please call me if you have any questions regarding the above.

Kindly note that when I hit “reply all” the Receiver’s name and email popped up. I have deleted the Receiver as a recipient, because first he is your client and second when I initially called his office, shortly after being retired by the Family Trust, and left a message for him, one of the lawyers (I believe) in your firm called me back and correctly instructed me to not communicate with the Receiver, but rather his counsel.

Thank you.

Joel

Sent from my iPad

JOEL HIRSCHHORN, Esq. | Criminal and White Collar Defense
GRAY | ROBINSON

333 S.E. 2nd Avenue, Suite 3200 | Miami, Florida 33131
T: 305-416-6880 | **F:** 305-416-6887 | **D:** 305-913-0545
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On Aug 13, 2020, at 8:09 PM, Gaetan J. Alfano <GJA@pietragallo.com> wrote:

This message originated outside of GrayRobinson.

Counsel,

In response to your email below, the Receiver believes that the Court's Order entered this evening resolves any issues.

Please instruct your clients not to have contact with any employees related to the business of the Receivership entities.

Thank you.

Gaetan Alfano

Gaetan J. Alfano, Esquire

Pietragallo Gordon Alfano Bosick & Raspanti, LLP
1818 Market Street, Suite 3402
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From: Alan Futerfas <asfuterfas@futerfaslaw.com>

Sent: Thursday, August 13, 2020 5:37 PM

To: Gaetan J. Alfano <GJA@Pietragallo.com>; Timothy Kolaya <tkolaya@sflaw.com>; rstumphauzer@sflaw.com

Cc: Berlin, Amie R. <BerlinA@sec.gov>; Joel Hirschhorn <joel.hirschhorn@gray-robinson.com>; James Froccaro <jrfesq61@aol.com>; Bettina Schein <bschein@bettinascheinlaw.com>

Subject: Re: Proposal - as per our telephone conference

You are welcome.

As per our discussions and court filings, the company has proceeded in good faith to make employees available for interview so that the company can restart its operations, pay investors and assist merchants with funding. We are gratified to hear that our efforts to connect you to company employees has been successful.

Since, in public filings you assert representation of the company as counsel for all purposes, including all litigation matters (a position with which we take issue as per responsive public filings), we expect that any employees interviewed by you will be given *Upjohn* warnings as per Supreme Court precedent. Further, we

expect that you will act in the best interests of the company which includes promptly restarting company operations and rehiring employees.

Should there be any request for privileged communications, the Trust expects that you would assert the attorney/client privilege on behalf of the company. We discussed, on our call, the issues concerning a privilege waiver. Your email speaks of orders of the Court. To the extent you seek permission to waive the company's privilege, we request that you notify the Court of the Trust's objection to same and further provide notice of any intended waiver to counsel for the Trust so that it may be heard with respect to that matter.

On another note, it has come to our attention this morning that the FBI or other law enforcement intend to interview employees of the company. This information leads to our concern that the Receiver may act as an investigative arm of the government, rather than as an independent court ordered operator of the business, and may facilitate such meetings or, indeed, have law enforcement present at informal meetings arranged in good faith for the purpose of restarting company operations. The Trust is concerned that employees will be inadvertently misled to attend meetings which they believe is about company business, i.e., rehiring employees and operating the company, only to be confronted by an investigative agenda or even law enforcement investigators.

On behalf of the Trust which owns all of the shares of the company, we understand that the Receiver is obliged to conduct himself in the best interests of the company, which, by any measure, includes resuming company operations, paying investors and funding merchant businesses.

Thank you,

Alan and Joel

Law Offices of Alan S. Futerfas
565 Fifth Avenue, 7th Floor
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From: "Gaetan J. Alfano" <GJA@Pietragallo.com>

Date: Thursday, August 13, 2020 at 3:05 PM

To: Alan Futerfas <asfuterfas@futerfaslaw.com>, Timothy Kolaya <tkolaya@sflaw.com>, "rstumphauzer@sflaw.com" <rstumphauzer@sflaw.com>

Cc: "Berlin, Amie R." <BerlinA@sec.gov>, Joel Hirschhorn <joel.hirschhorn@gray-robinson.com>, James Froccaro <jrfesq61@aol.com>, Bettina Schein <bschein@bettinascheinlaw.com>

Subject: RE: Proposal - as per our telephone conference

Thank you for this proposal.

With respect to your first point, the Court's Order provides that the Receiver is authorized to take custody, control, and possession of all Receivership Entity records, documents, and materials and to safeguard these items until further Order of the Court. The Receiver will not agree to any limitation on his authority over these items unless ordered by the Court.

I believe that we have resolved the second issue as the Receiver is interviewing employees of the Receivership Entities.

Thank you again.

Gaetan Alfano

Gaetan J. Alfano, Esquire

Pietragallo Gordon Alfano Bosick & Raspanti, LLP
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From: Alan Futerfas <asfuterfas@futerfaslaw.com>

Sent: Wednesday, August 12, 2020 3:21 PM

To: Gaetan J. Alfano <GJA@Pietragallo.com>; Timothy Kolaya <tkolaya@sflaw.com>; rstumphauzer@sflaw.com

Cc: Berlin, Amie R. <BerlinA@sec.gov>; Joel Hirschhorn <joel.hirschhorn@gray-robinson.com>; James Froccaro <jrfesq61@aol.com>; Bettina Schein <bschein@bettinascheinlaw.com>

Subject: Proposal - as per our telephone conference

On behalf of the Trust, we would agree with the Receiver as follows:

Privileged Communications

To provide the Receiver with CBSG/Par corporate attorney client privileged communications relating to the operations and structure of the merchant funding business and the receipt of investment funds as well as its litigation with various parties, provided that the Receiver agrees to keep all such communications confidential and not provide such communications to any third party, including any litigant, the SEC or any governmental agency, as such may be determined to constitute a waiver of the company's privilege.

This agreement is without prejudice to our position that Receiver does not stand in the shoes of company counsel for all purposes; indeed, we still maintain that the law firm which has represented the company in numerous litigations and has the greatest knowledge of these proceedings should continue to prosecute and defend those litigations.

Interview of Employees

We agree and encourage that the Receiver have access to interview employees with knowledge of the day to day operations for the purpose of restarting the operations of the company as soon as possible. We believe this process should begin immediately and agree that it can be conducted without our presence.

As you are aware, the employees should be given *Upjohn* warnings. Please note that to the extent any employee reaches out to any member of the defense team, we will advise that, obviously, we are not their counsel, but our position on the matter is that we encourage communications with the Receiver. Please be further advised that we maintain the position set forth in our cross motion that these employees should be paid. In that motion, we provided specific details as the

employee amounts owed.

Alan

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**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

**[PROPOSED] ORDER ON RECEIVER, RYAN K. STUMPHAUZER'S
EXPEDITED MOTION TO QUASH FRIDAY AFTERNOON SUBPOENA
AND FOR PROTECTIVE ORDER**

This matter having come before the Court on Receiver, Ryan K. Stumphauzer's Expedited Motion to Quash Friday Afternoon Subpoena and for Protective Order (the "Motion"), the Court having reviewed the relevant filings and being otherwise advised on the premises, it is **ORDERED AND ADJUDGED** that:

The Motion is **GRANTED**. The Subpoena served on the Receiver on August 14, 2020 is QUASHED. The Receiver's Motion for Protective Order is GRANTED.

DONE AND ORDERED in Fort Lauderdale, Florida, this ____ day of August, 2020.

**RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE**

Copies to: Counsel of record