

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO.: 20-cv-81205-RAR

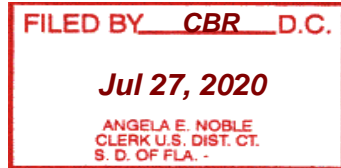
SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.



**DEFENDANTS' EMERGENCY/EXPEDITED PRELIMINARY RESPONSE TO
PLAINTIFF'S REQUEST FOR *EX PARTE* RELIEF**

Pursuant to Local Rule 7.1 (d), Fed.R.Civ.P. 65(b)(1) and in accordance with *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 432-439 (1974), Defendants Complete Business Solutions Group, Inc., d/b/a Par Funding, Full Spectrum Processing, Inc., Lisa McElhone, Joseph Cole Barleta and Joseph W. LaForte, and relief defendant L.M.E. 2017 Family Trust, submit this emergency/expedited, preliminary response to Plaintiff's request for *ex parte* relief and state as follows:

On July 24, 2020, Plaintiff filed a Complaint for Injunctive and Other Relief with this Court. That pleading was initially published by the Courthouse News Service. Undersigned counsel learned of the filing of the Complaint and was able to obtain a copy before the file in this matter was sealed.

The Complaint reveals that, among other requested relief, Plaintiff is seeking the imposition of a temporary restraining order, an asset freeze of all of Defendants' assets, and the

imposition of a receiver over Defendants' entire business activities. ECF 1, at pp. 56-57. This relief is the most extraordinary relief that any litigant can seek to impose on an adversary and thus implicates the most fundamental aspects of Due Process.

Defendants do not dispute that Plaintiff is a Government agency, whose duty is to take action to protect interests that it believes are being harmed by the conduct of Defendants. Plaintiff will claim that is not a "typical litigant." But even a Government agency, whose duty it is to protect the public interest, is subject to the same rules and fundamental principles of Due Process that every other litigant must follow. Due Process requires that both sides of an adversary proceeding be heard before relief can be granted. And, when extraordinary relief is requested, those Due Process requirements are more heightened.

Recent cases from Florida District Courts have recognized the importance of conducting a hearing before extraordinary temporary relief can be granted. In *Cummings v. DeSantis*, Case No. 2:20-cv-351, 2020 WL 2512805 (M.D.Fl. May 15, 2020)(Denying Motion for *Ex Parte* Temporary Restraining Order), the Court explained:

[Rule 65(b)(1) acknowledges] "that informal notice and a hastily arranged hearing are to be preferred to no notice or hearing at all." *Granny Goose Foods, Inc. v. Bhd. Of Teamsters and Auto Truck Drivers Local No. 70 of Alameda Cty*, 415 U.S. 423, 432 n.7 (1974). The Supreme Court has further recognized "a place in our jurisprudence for ex parte issuance, without notice, of temporary restraining orders of short duration" but not "where no showing is made that it is impossible to serve or to notify the opposing parties and to give them an opportunity to participate." *Carroll v. President and Com'rs of Princess Ann*, 393 U.S. 175, 180 (1968). And ex parte TROs "should be restricted to serving the underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. Of Teamsters and Auto Truck Drivers Local No. 70 of Alameda Cty*, 415 U.S. 423, 439 (1974).

See also Dragados USA, Inc. v. Oldcastle Infrastructure, Inc., Case No. 20-cv-20601, 2020 WL 733037 (S.D.Fl. Feb. 13, 2020)(Denying Plaintiff's request for *ex parte* temporary restraining order, relying on *Granny Goose Foods, Inc.*).

The extraordinary relief requested by Plaintiff would be far from preserving the status quo and would not be limited in its scope. Instead, Plaintiff seeks to impose a receiver to take control of a legitimate, operating business and to freeze all of the assets of the Defendants before they can even be heard in response to this request. Undersigned counsel is well aware of cases in this District, involving illegitimate businesses, or Ponzi schemes, where this Court has found it necessary to impose drastic and extraordinary relief in an *ex parte* manner. This is not such a case. Plaintiff is well aware that the Defendants have successfully defended their legitimate business in various courts throughout the United States and before the very state regulators that Plaintiff refers to in an effort to paint the Defendants as miscreants, in order to justify the imposition of extraordinary and destructive “temporary” relief.

It is fortuitous that the Complaint was initially published before it was sealed. Otherwise, Plaintiff would have likely accomplished its stealth imposition of so-called “temporary” relief, that would have led to the unnecessary destruction of a legitimate business. But, the fact is that the Complaint was published and the Defendants are working to respond to the allegations in the Complaint. Undersigned counsel is prepared to appear before this Court to respond to Plaintiff’s request for temporary relief as soon as the Court requires our appearance.

Moreover, upon learning of this action, undersigned counsel contacted Plaintiff’s counsel, offering to discuss the requested relief so that the interests Plaintiff seeks to protect can be accommodated without unnecessarily destroying a legitimate business. A copy of undersigned counsel’s letter to Plaintiff’s counsel is attached as Exhibit “A” to this response.¹

¹ Undersigned counsel has requested that Plaintiff provide us with a copy of all filings that they made in support of their request for temporary relief so that we can prepare a written response to that request and so that we can be more fully prepared for any hearing that this Court would

Pursuant to Local Rule 7.1(d), Defendants have titled this response as an emergency/expedited response. Although Plaintiff's motion for temporary relief has been sealed, undersigned counsel's experience is that Plaintiff has moved for temporary relief on an emergency *ex parte* basis. Defendants, by titling this response as an emergency/expedited response, seek to have this Court treat this preliminary response with as much urgency as the Court is treating Plaintiff's request for *ex parte* temporary relief.

WHEREFORE, Defendants respectfully request that their Due Process rights to be heard be enforced, that any request by Plaintiff for *ex parte* relief pursuant to Rule 65(b)(1) be denied and that the Court schedule a hearing where Defendants can be heard in response to Plaintiff's request.

Respectfully submitted,

FOX ROTHSCHILD LLP

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schedule. If Plaintiff refuses to provide those documents, we will file a motion requesting that the Court order Plaintiff to immediately provide us with those supporting documents.

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2020, I electronically filed the foregoing with the Clerk of the Court using CM/ECF.

s/Joseph A. DeMaria

Joseph A. DeMaria

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