

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.

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**DEFENDANTS' JOINT MOTION TO EXTEND DISCOVERY  
AND MOTION DEADLINES AND RESET TRIAL DATE**

Defendants Lisa McElhone, Joseph Cole Barleta, Joseph W. LaForte, Perry Abbonizio, Dean Vagnozzi, and Michael Furman (collectively, "Defendants") pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, move unopposed<sup>1</sup> to extend the discovery and accompanying deadlines and reset the trial date, and in furtherance thereof, state:

**BACKGROUND**

1. On September 15, 2020, the Parties filed their Joint Scheduling Conference Report. (ECF No. 261). On September 23, 2020, this Court entered an Order Setting Jury Trial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge ("Scheduling Order") (ECF No. 279).

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<sup>1</sup> As explained below, the SEC does not oppose an amendment of the Scheduling Order but believes a three-month extension of the deadlines would be appropriate rather than the six-month extension of the deadlines Defendants believe is necessary. Counsel for the SEC also indicated that it is difficult at this time to anticipate how much time might be required to complete discovery because the Defendants' Motion to Dismiss remains pending and therefore the SEC has not seen the Defendants' Answers to the Complaint or any affirmative defenses, and the SEC will likely need to conduct discovery concerning any affirmative defenses the Defendants might raise.

2. The Scheduling Order set trial in this matter for the Court's two-week calendar period commencing on August 30, 2021 and set the following deadlines:

- a. April 5, 2021 – The parties shall exchange expert witness summaries or reports.
- b. April 19, 2021 – The parties shall exchange rebuttal expert witness summaries or experts.
- c. May 3, 2021 – All discovery, including expert discovery, shall be completed.
- d. May 10, 2021 – The parties must have completed mediation and filed a mediation report.
- e. May 17, 2021 – The parties shall file all pre-trial motions, including motions for summary judgment, and *Daubert* motions.

3. While the Parties have been diligent in proceeding with discovery in this case, Defendants have only recently begun receiving documents. In addition to the discovery produced and still being produced by the SEC, Defendant McElhone (on behalf of the other Defendants) has served six Requests for Production of Documents on the Receiver. As described in greater detail below, the Receiver's production of a voluminous number of documents began in early January and document production from both the SEC and the Receiver is not expected to be complete for at least another four weeks. Document production from both the SEC and the Receiver was delayed for almost six months as a consequence of various disputes between the Receiver and Defendants, as well as the Receiver not waiving privilege until mid-January 2021.

4. As a result of the delayed production of documents and the massive volume of document production still underway, Defendants have canceled numerous depositions and have conferred with counsel for the SEC to postpone depositions the SEC has scheduled until document discovery is complete and the parties have had an opportunity to review them.

5. In light of these delays, defense counsel have discussed their concerns with the SEC regarding the current discovery cutoff date of May 3, 2021. The SEC has proposed an extension of three months, although clearly reserving the opportunity to seek a much longer extension should the Motion to Dismiss be denied in whole or part and the Defense raise affirmative defenses in their Answer. However, three months is insufficient to review the massive volume of document discovery (which is not yet complete) and thoroughly prepare for depositions, much less make the voluminous discovery available to experts for their review and drafting of expert reports.

6. Because Defendants are likely several weeks away from even completing document discovery—much less reviewing it—Defendants have not had a meaningful opportunity to consult with experts in order to meet the current deadlines for expert disclosures and the submission of expert reports. Moreover, because the parties will not be able to complete discovery by the cutoff date, they will not be adequately prepared to file pre-trial motions, including motions for summary judgment and *Daubert* motions, by the current deadlines.

7. Accordingly, the Defendants jointly request that the deadlines below be modified as follows:

- a. October 6, 2021 – The parties shall exchange expert witness summaries or reports.
- b. October 20, 2021 – The parties shall exchange rebuttal expert witness summaries or experts.
- c. November 3, 2021 – All discovery, including expert discovery, shall be completed.
- d. November 17, 2021 – The parties shall file all pre-trial motions, including motions for summary judgment, and *Daubert* motions.
- e. Trial on or after the two-week calendar beginning February 28, 2022 in accordance with the Court's availability.

8. The Defendants submit that the requested extension of these deadlines is necessary to complete discovery in this matter and adequately prepare for trial. This motion is brought in good faith and not for purposes of delay.

### MEMORANDUM OF LAW

The Court has authority to modify the Scheduling Order. Pursuant to Federal Rule of Civil Procedure 16(b)(4), “a schedule may be modified for good cause and with judge’s consent.” Fed. R. Civ. P. 16(b)(4). *See Keim v. ADF Midatlantic, LLC*, No. 12-80577-CIV, 2019 WL 8262650, at \*2 (S.D. Fla. Mar. 18, 2019) (“a party seeking leave to amend a deadline designated in a scheduling order, such as a deadline for the completion of discovery, must demonstrate ‘good cause’ under rule 16(b) of the Federal Rules of Civil Procedure.”). Courts in this District have explained that “this good cause standard precludes modification unless the schedule cannot ‘be met despite the diligence of the party seeking the extension.’” *See White v. De La Osa*, No. 07-23381-CIV, 2012 WL 254803, at \*2 (S.D. Fla. Jan. 27, 2012) (citing to *Sosa v. Airprint, Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998)).

Rule 16(b)(4) empowers this Court to exercise its discretion to enlarge deadlines established by a court order. This Court has routinely done so in the past. *See Keim*, 2019 WL 8262650, at \*2 (finding that good cause existed to extend the pretrial deadlines by seventy-five days as well as the trial date under 16(b)(4)); *Jacobson v. City of W. Palm Beach*, No. 16-CV-81638, 2017 WL 11549935, at \*2 (S.D. Fla. Feb. 3, 2017) (granting defendant’s motion to extend the discovery deadline under Fed. R. Civ. P. 16(b)(4)); *Boney v. Carnival Corp.*, No. 08-22299-CIV, 2009 WL 10712206, at \*2 (S.D. Fla. June 4, 2009) (granting motion to extend the final discovery deadline); *Incardone v. Royal Caribbean Cruises, Ltd.*, No. 16-CV-20924, 2018 WL 3696708, at \*1 (S.D. Fla. May 14, 2018) (extending the time for completion of expert discovery to an additional six months).

In the instant case, good cause exists to permit this Court to enlarge the discovery deadlines and reset the trial date. Defendants' efforts to obtain documents through discovery are well-documented. Despite their best efforts, Defendants only began receiving documents from the Receiver in January 2021. The Receiver's first production of documents on January 11, 2021 comprised 103,887 pages of documents totaling 27.9 gigabytes of data.<sup>2</sup> Between its second production on January 24, 2021 and 4<sup>th</sup> production on February 23, 2021, the number of documents increased to 122,740, totaling approximately 32.96 gigabytes of data. Defendants are now awaiting the production of somewhere between three and five million emails comprising roughly two additional *terabytes* of data following Magistrate Judge Bruce Reinhart's March 15, 2021 Order adopting a stipulation by the parties involving the manner of their production (ECF No. 510). Those emails are expected to be produced by the end of this month. In addition, Defendants are conferring with the Receiver regarding the production of Par Funding's underwriting files, which will likely comprise another half-terabyte of data. The timeline for production of these underwriting files is still uncertain but will likely take weeks to process and produce once the Receiver and defense counsel negotiate terms regarding said production, assuming a resolution is possible,<sup>3</sup> and this does not include the time it will take for Defendants to process the data for review once it is received.<sup>4</sup>

The above description does not include the SEC's recent production of electronically stored files comprising the equivalent of 300 boxes of Par Funding files the SEC obtained from the

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<sup>2</sup> One such "document" was Par Funding's historical QuickBooks data, which alone comprised over 4.2 million transactions. A gigabyte is generally equivalent to roughly 10,000 pages of documents.

<sup>3</sup> The Receiver and defense counsel have been diligently conferring regarding the production of these files for weeks.

<sup>4</sup> Because of the volume of data involved, the files are typically transferred in zipped format. The unzipping and processing for review upon receipt takes days to permit initial review and additional time is needed, typically a week, in order to make all the files searchable.

Receiver. The SEC began producing these files electronically in tranches to Defendants on February 23, 2021 after the Receiver formally notified the SEC that it was waiving privilege. Defendants received the most recent tranche of data from the SEC on March 18, 2021 and expect at least one more tranche will be necessary which could take another month to produce.

Suffice it to say that massive amounts of data have recently been received by Defendants—and more are on the way—and Defendants and their consultants need time to review these documents to prepare for fact witness and expert disclosures and depositions. As a result of the delay in production and the sheer volume involved, several depositions have already been removed from the calendar and others are in the process of being rescheduled. The parties have agreed that a case of this complexity will require more than the ten depositions permitted per side for fact witnesses pursuant to Fed. R. Civ. P. 30, and Defendants expect to move for leave of Court to exceed ten depositions at the appropriate time. Defendants expect that expert witnesses will play an important role in this case as well. As things currently stand, the parties must exchange expert witness summaries or reports in two weeks, on April 5, 2021, when the exchange of document discovery is not expected to even be complete.

Accordingly, Defendants respectfully request that the Court grant the relief sought in this Joint Motion to Extend the Discovery and Motion Deadlines and Reset Trial Date and order the following new deadlines to be put in place:

- a. October 6, 2021 – The parties shall exchange expert witness summaries or reports.
- b. October 20, 2021 – The parties shall exchange rebuttal expert witness summaries or experts.
- c. November 3, 2021 – All discovery, including expert discovery, shall be completed.
- d. November 17, 2021 – The parties shall file all pre-trial motions, including motions for summary judgment, and *Daubert* motions.

- e. Trial on or after the two-week calendar beginning February 28, 2022 in accordance with the Court's availability.

Dated: March 26, 2021

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)**

I HEREBY CERTIFY that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues and their respective positions are addressed in this motion.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on the 26th day of March 2021, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Alejandro O. Soto  
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UNITED STATES DISTRICT COURT  
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**[PROPOSED] ORDER GRANTING DEFENDANTS' JOINT MOTION TO EXTEND  
DISCOVERY AND MOTION DEADLINES AND RESET TRIAL DATE**

THIS CAUSE came before the Court on the Defendants' Joint Motion to Extend Discovery and Motion Deadlines and Reset Trial Date (the "Motion") (ECF No. \_\_\_\_). This Court, having reviewed the Motion and being otherwise advised, finds that good cause exists to modify certain pretrial deadlines in this Court's Order Setting Jury Trial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge (ECF No. 279).

The Motion is therefore **GRANTED**. The following deadlines shall now apply in this action:

- a. October 6, 2021 – The parties shall exchange expert witness summaries or reports.
- b. October 20, 2021 – The parties shall exchange rebuttal expert witness summaries or experts.
- c. November 3, 2021 – All discovery, including expert discovery, shall be completed.
- d. November 17, 2021 – The parties shall file all pre-trial motions, including motions for summary judgment, and *Daubert* motions.

- e. Trial on or after the two-week calendar beginning February 28, 2022 in accordance with the Court's availability.

**DONE AND ORDERED** in Chambers, at Miami, Florida, this \_\_\_\_ day of March 2021.

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RODOLFO A. RUIZ II  
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record via ECF