

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.

**DEFENDANTS LAFORTE, MCELHONE, AND COLE’S MOTION TO STRIKE
PONZI ALLEGATIONS FROM PLAINTIFF’S OMNIBUS MOTION FOR FINAL
JUDGMENTS, OR IN THE ALTERNATIVE, MOTION TO WITHDRAW/BE
RELIEVED FROM THEIR CONSENTS [D.E. 1002-2; 1004-1; 1016-1], VACATE
THE JUDGMENTS OF PERMANENT INJUNCTION AND OTHER RELIEF [D.E.
1007-10; 1016-1], AND TO RETURN THE CASE TO THE ACTIVE DOCKET**

Defendants, Joseph LaForte, Lisa McElhone, and Joseph Cole Barleta (the “Defendants”) move to strike from Plaintiff’s Omnibus Motion for Final Judgments [D.E. 1214] all references to a purported Ponzi scheme because the Amended Complaint contains no such allegations and the Defendants did not and would never have stipulated to bifurcation and signed the Consents if it did. Throughout this litigation, the SEC has repeatedly advanced its case with heavy-handed techniques that have unfairly prejudiced the Defense, starting with depriving Defendants of the documents they needed to defend themselves for months. The SEC also made outright misrepresentations that induced the Court to enter the Receivership Order, including the false allegation that Defendants stole money from Par Funding’s bank account, when in reality Par was sending money to its ACH processor in the ordinary course of business. *See* Rule 41 motion and hearing transcript (D.E. 663; 744 at p.16-17.). While it was perhaps too late to undo the harm done by the SEC by the time the defense was able to bring the truth to light, the SEC’s latest (and perhaps most insidious) unfair

tactics can and should be shut down immediately. The SEC has engaged in a bait-and-switch on the Parties' bifurcated settlement that should not be countenanced by a Court of equity or any Court for that matter.

After settling this case with a no-admit no-deny consent judgment, in which Defendants agreed not to contest the allegations of the Amended Complaint for the purposes of the final judgment motion only, the SEC has violated the letter, intent, and spirit of the agreement and has made salacious and scandalous allegations that the Defendants were operating a Ponzi scheme – a significant allegation that is not found *anywhere* in the original Complaint or the Amended Complaint.¹ These allegations, which were only made after the Defendants waived their right to a jury trial on liability, are interposed for the improper purpose of unduly influencing the Court, the investor community at large, and the court of public opinion. Had the SEC truly believed Par Funding was a Ponzi scheme, it should have pled such allegations and given the Defendants their due process rights to challenge such allegations at a trial.

Furthermore, the insertion of the Ponzi scheme allegations (which Defendants categorically deny) at this stage of the proceedings would un-do all the benefits of the bifurcated settlement and impose significant burdens upon the Defendants, the SEC, and the Court. The purpose of the settlement was to dispense with liability issues and proceed on the issues of disgorgement and the penalties sought by the SEC. The Defendants agreed to accept the allegations of the Amended Complaint (and only those allegations) for the purposes of the disgorgement and penalty proceedings. They *did not* agree, and never would have agreed, to accept the unpled and *unproven* allegations of a Ponzi scheme – which the SEC relies on as the basis for seeking disgorgement of all proceeds from

¹ A cursory review of the Complaint and Amended Complaint reveals that the SEC did not allege or intimate a Ponzi scheme. By contrast, the term Ponzi scheme is used *thirteen times* in the SEC's Omnibus Motion for Final Judgments!

PAR Funding's operations (without any offset for legitimate business expenses) and tier-three penalties totaling more than \$100 Million! Because these allegations were not included or contemplated in the Amended Complaint or the Defendants' Consents, they are not deemed admitted for the purposes of the disgorgement/penalty proceedings. Accordingly, if the Court intends to consider these allegations at all, the SEC would need to attempt to prove them at an evidentiary hearing, and the Defendants would have a due process right to present evidence and testimony to disprove them. Such liability proceedings could take days, if not weeks, to adjudicate. Further, the Defendants have the right and should be given the opportunity to submit such factual dispute to a jury if they are going to be required to defend themselves against Ponzi allegations. It would be fundamentally unfair and a violation of due process to allow the SEC to insert these new liability issues into this case after the Defendants entered their Consents and waived their right to a jury trial, and to force them to litigate these complicated liability issues on an expedited schedule with limited opportunity to conduct discovery.

To be clear, Defendants would never have agreed to this bifurcated settlement had they been required to accept allegations of operating a Ponzi scheme and instead would have elected to go to trial to prove to a jury that these horrible allegations are patently false. *See* Declarations of LaForte, McElhone, and Cole, attached as exhibits hereto. Par Funding was **not** a Ponzi scheme, and the SEC's Complaint, even after its amendment, never alleged it was. This Court should not permit the SEC to ambush the Defendants by inserting unpled and unproven liability allegations into the case after the Defendants agreed to bifurcated settlements and entered their Consents. Therefore, Defendants respectfully request that this Court strike all allegations of or references to Par Funding being a Ponzi Scheme from the Securities and Exchange Commission's Motion for Final Judgments [D.E. 1214] and preclude the SEC from presenting these allegations in any subsequent proceedings. In the alternative, if the Court is not inclined to strike these allegations, the Defendants respectfully request

that, pursuant to Federal Rule of Civil Procedure 60(b), the Court relieve the Defendants from the Judgment of Permanent Injunction and Other Relief entered against each of them [D.E. 1007 to 1010 and 1017 to 1018] and their respective Consents, and restore this case to the active trial docket. In support thereof, Defendants state as follows:

Background and Facts

1. On July 27, 2020, the SEC filed this action alleging a violation of Federal Securities laws. [D.E. 1]. The SEC did not make any allegations of a Ponzi scheme in the original Complaint.
2. On August 10, 2020, the SEC filed an Amended Complaint [D.E. 119]. While the Complaint and Amended Complaint made allegations about misrepresentations, there was never a single allegation pled in the Amended Complaint that Par Funding is or was a Ponzi Scheme.
3. On September 23, 2020, this Court issued a trial order, setting this case for trial on the two-week trial calendar starting August 23, 2021. [D.E. 279].
4. On March 23, 2021, this Court issued an Amended Trial Order rescheduling trial for December 6, 2021. [D.E. 521].
5. On November 23, 2021, Defendants LaForte and McElhone executed Consents in which they stipulated to liability without admitting or denying the allegations of the Amended Complaint. [D.E. 1002-2; 1004-1]. This was done as part of a bifurcated settlement which allowed the SEC to obtain a permanent injunction against LaForte and McElhone by consent and then proceed to seek disgorgement and civil penalties from this Court. [D.E. 1002-2; 1004-1].
6. On November 24, 2021, this Court granted the SEC's motions for permanent injunction (based on the Consents) and entered a Judgment of Permanent Injunction and Other Relief against Defendants LaForte and McElhone, with an order permitting the SEC to seek disgorgement and penalties from this Court [D.E. 1007 to 1010].

7. On November 28, 2021, Defendant Cole agreed to a bifurcated settlement in which he consented to a judgment of liability and to a permanent injunction that neither admitted nor denied the allegations of the Amended Complaint. [D.E. 1016-1].

8. On November 28, 2021, this Court granted the SEC's motions for permanent injunction and entered a Judgment of Permanent Injunction and Other Relief against Defendant Cole with an order permitting the SEC to seek disgorgement and penalties from this Court [D.E. 1017 to 1018].

9. The SEC's motions for permanent injunctions were based on the agreement between the Parties in which the Defendants neither admit nor deny the allegations in the Amended Complaint but are precluded from challenging them for the purpose of the final judgment hearing.

10. On April 15, 2022, Plaintiff Securities and Exchange Commission filed an Omnibus Motion for Final Judgments, which seeks a Final Judgment ordering the Defendants to pay disgorgement, prejudgment interest, and penalties [D.E. 1214]. In this Motion, the SEC alleges for the **first time** that the Defendants are Ponzi schemers and uses these unproven allegations – which the Defendants never consented to – as a basis to seek an outrageous disgorgement award and tier-three penalties in excess of \$100 Million!

11. This Court should not countenance, and the Defendants should not have to be prejudiced by or respond to, the SEC's uncharged Ponzi claim. If such allegations are allowed to stand, the Defendants would prefer and should be allowed to go to trial to prove to a jury there was no Ponzi scheme. Enough is enough, the SEC has to be roped in and made to play fair.

Argument

Despite having the opportunity to amend the Complaint and add Ponzi allegations if it believed it could prove them, the SEC waited until after the Defendants entered into a bifurcated settlement to make these scandalous and unsupported allegations. The Defendants were not on notice that the SEC

would seek disgorgement and civil penalties based on allegations of a Ponzi scheme because those allegations were not found in the pleadings and were never raised or pursued by the SEC. More egregious still, these unpled allegations of a Ponzi scheme form the platform for the SEC's request for third tier civil penalties and, with respect to disgorgement, the SEC's efforts to deprive the Defendants of offsets/deductions for legitimate business expenses which they are entitled to under the Supreme Court's directive in *Liu v. SEC*, 140 S. Ct. 1936, 1949 (2020). Because these Ponzi scheme allegations are unpled, unproven, and constitute a significant basis for the relief requested by the SEC, they should be stricken by the Court or, alternatively, Defendants should be released from their Consents and Judgments of Permanent Injunction and afforded the right to go to trial to defend against and disprove the SEC's Ponzi scheme allegations.

1. The Court Should Strike the SEC's Unpled Ponzi Scheme Allegations

In civil litigation, the pleadings frame the issues to be tried. The SEC's attempt to insert a Ponzi scheme theory into the instant motion following the entry of consent judgments on liability is completely improper. At best, the SEC's actions amount to an untimely amendment of the Complaint which would deprive the Defendants of their opportunity to take meaningful discovery and make an informed decision on whether to proceed to a trial on the merits. At worst, the SEC's actions amount to a deliberate ambush calculated to deprive the Defendants of their due process rights.

It is fundamental that "a judgment may not be based on issues not presented in the pleadings and not tried with the express or implied consent of the parties." *Kipu Sys., LLC v. ZenCharts, LLC*, No. 17-CV-24733, 2020 WL 9460639, at *9 (S.D. Fla. Nov. 24, 2020) (quoting *Cioffe v. Morris*, 676 F.2d 539, 541 (11th Cir. 1982)); (also citing *Doe #6 v. Miami-Dade Cty.*, 974 F.3d 1333, 1335 (11th Cir. 2020)). This is because "one must comply with the notice demands of procedural due process before an unpled issue can be added." *Doe #6*, 974 F.3d at 1335.

“[I]mply consent under Rule 15(b) will not be found if the defendant will be prejudiced; that is: (1) *if the defendant had no notice of the new issue*, (2) *if the defendant could have offered additional evidence in defense*, or (3) *if the defendant in some other way was denied a fair opportunity to defend*.” Cioffe, 676 F. at 542 (alternations made). “A party cannot be said to have implicitly consented to the trial of an issue not presented by the pleadings unless that party should have recognized that the issue had entered the case at trial.” *Wesco Mfg., Inc. v. Tropical Attractions of Palm Beach, Inc.*, 833 F.2d 1484, 1487 (11th Cir. 1987). “*Even where a party implicitly consents to the [] issue being tried, the prejudicial effect of a party may further prevent any amendment to the pleadings.*” *Schmidt v. Versacomp, Inc.*, 2011 WL 13172508, at *2 (S.D. Fla. Feb. 9, 2011).

Kipu Sys., LLC, 2020 WL 9460639, at *9 (emphasis added).

Even when a court is considering leave to amend when an issue is tried by consent, the court

“must ascertain that the evidence would not prejudice the objecting party’s action or defense on the merits. Fed.R.Civ.P. 15(b)(1). ‘There can be no question that *a defendant should be protected from surprise resulting from a change of theory.*’” *Robbins v. Jordan*, 181 F.2d 793, 795 (D.C.Cir.1950). “Prejudice under the rule means undue difficulty in prosecuting a lawsuit as a result of a change of tactics or theories on the part of the other party.” *Deakyne v. Comm'rs. of Lewes*, 416 F.2d 290, 300 (3d Cir.1969).

Ramjeawan v. Bank of Am. Corp., No. 09-20963-CIV, 2010 WL 1882262, at *3 (S.D. Fla. May 11, 2010) (emphasis added).

Alternatively, the SEC’s injection of a new theory into this motion should be looked at as an attempt to constructively amend the Complaint, an act which courts frown upon absent a complete lack of prejudice. A common way in which parties attempt to constructively amend a pleading is by inserting new and unpled claims or defenses into a motion for summary judgment or a response. *Orbit Corp v. FedEx Ground Package Sys.*, No. 2:14cv607, 2016 U.S. Dist. LEXIS 155212, at *67-68 (E.D. Va. Nov. 8, 2016) (finding that a claim was not properly before the Court because it was “asserted for the first time in Plaintiffs’ brief in opposition to summary judgment, and because Plaintiffs have not moved to amend their second amended complaint to advance such a claim”) (citing *Harris v. Reston Hosp. Ctr., LLC*, 523 F. App’x 938, 946 (4th Cir. 2013) (holding that the district court “did not err in

refusing to consider” the plaintiff’s “new legal theory [raised] for the first time in opposing summary judgment,” noting that the “complaint guides the parties’ discovery, putting the defendant on notice of the evidence it needs to adduce” and that permitting “constructive amendment of the complaint at summary judgment undermines the complaint’s purpose and can thus unfairly prejudice the defendant”) (internal quotation marks and citations omitted) (citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292–93 (9th Cir.2000); *Deasy v. Hill*, 833 F.2d 38, 40–42 (4th Cir.1987); *Josey v. John R. Hollingsworth Corp.*, 996 F.2d 632, 642 (3d Cir.1993)); *See also United States ex rel. DRC, Inc. v. Custer Battles, LLC*, 472 F. Supp. 2d 787, 795-96 (E.D. Va. 2007) (declining to treat new theory, first asserted in opposition to summary judgment motion, as a constructive amendment of complaint; doing so “after the close of discovery . . . would seriously undermine the fairness of the litigation and unfairly prejudice the defendants”), *aff’d*, 562 F.3d 295 (4th Cir. 2009). “A party is not entitled to wait until the discovery cutoff date has passed and a motion for summary judgment has been filed on the basis of claims asserted in the original complaint before introducing entirely different legal theories in an amended complaint.” *Priddy v. Edelman*, 883 F.2d 438, 446 (6th Cir. 1989) (citing *Addington v. Farmers’ Elevator Mut. Ins. Co.*, 650 F.2d 663, 667 (5th Cir. Unit A July 1981), cert. denied, 454 U.S. 1098, 102 S.Ct. 672, 70 L.Ed.2d 640 (1981); *Acri v. Int’l Ass’n of Machinist & Aerospace Workers*, 781 F.2d 1393, 1398–99 (9th Cir. 1986), cert. denied, 479 U.S. 816, 107 S.Ct. 73, 93 L.Ed.2d 29 (1986); *Jones v. Hamelman*, 869 F.2d 1023, 1026–27 (7th Cir. 1989)).

Here, by ambushing the Defendants with Ponzi scheme allegations at this stage in the litigation, the SEC is attempting to constructively amend the complaint to add a theory of liability and basis for civil penalties that the Defendants did not apprehend or agree to when they entered into the consent judgments – well after the discovery cutoff, and after the Defendants made their decision to bifurcate and waive their right to a jury trial. Allowing the SEC to insert these allegations into the case at this stage of the proceedings would be extremely prejudicial to the Defendants for several

reasons. First, Defendants absolutely would not have agreed to a no-admit no-deny bifurcation if they were facing allegations of a Ponzi scheme; they would have exercised their constitutional rights to face those allegations head-on at trial. *See* Declarations of LaForte, McElhone, and Cole. In the context of a bifurcated settlement, Defendants agreed not to deny the allegations of the Amended Complaint for the purpose of the SEC's motion for final judgment and waived their Seventh Amendment right to a jury trial. Defendants did so understanding the scope of the actual allegations against them and recognizing the implication of not being able to deny them. *See* Consents at ¶5. However, had Defendants known they were going to be accused of an insidious financial crime in the SEC's subsequent motion, they would have elected to defend themselves before a jury. The fact that Defendants do not get the benefit of a jury trial shows just how prejudiced they are by the SEC's assertion of a brand-new theory at this stage of the litigation.

Second, if the SEC is allowed to proceed, the Defendants will have an extremely limited period in which to take discovery and develop their defenses to the SEC's unpled Ponzi scheme allegations. The SEC filed the subject motion on April 15, 2022 (approximately 4½ months after the Judgments against the Defendants were entered) and the Defendants have until July 1, 2022, to respond to the motion.² Accordingly, the Defendants will have only 2½ months to conduct discovery on this brand new issue (which was first raised in the SEC's April 15, 2022 motion) and to develop their defenses. This pales in comparison to the amount of time Defendants would have dedicated to discovery on this issue had the SEC actually and timely amended its Complaint to assert Ponzi allegations (in which case the Defendants would have had the entire period of time between the deadline to amend pleadings and the discovery cutoff to conduct discovery on this issue). The time allotted for Defendants' response to the motion would have been sufficient if the SEC's motion seeking disgorgement and

² The deadline was established by the Court's Order [D.E. 1221], which made clear that no further extension will be granted.

penalties was limited to the allegations of the Amended Complaint, but it is not nearly enough time for the Defendants to conduct discovery relating to the new and unpled Ponzi scheme allegations and prepare a meaningful response.

Finally, assuming *arguendo* that adequate discovery could be conducted in this limited time period, the Defendants would need, at a minimum, a multi-day evidentiary hearing to address the SEC's Ponzi allegations (which, again, Defendants did not consent to, and are not obligated to accept as true for purposes of the subject motion and response). To the extent the Court does not intend to take evidence on this issue or devote sufficient time to the adjudication of the unpled and unproven allegations of a Ponzi scheme – which are central to the SEC's request for disgorgement and penalties – the Defendants will be severely prejudiced by the introduction of the SEC's Ponzi allegations.

For all of these reasons, the SEC's new and unpled allegations of a Ponzi scheme should be struck in their entirety from the subject motion, the Defendants should not have to respond to such allegations, and the SEC should be prohibited from asserting such allegations at any subsequent hearing. Given the absence of factual support for the Ponzi allegations, the Defendants believe that the SEC chose not to plead a Ponzi scheme in Amended Complaint because they realized they could not prove it at trial. But regardless of the SEC's motivations, it should not be permitted to underhandedly declare Defendants Ponzi schemers now, after the Defendants agreed to a bifurcated settlement and entered Consents. The prejudice that would result is evident, as the Defendants had no notice that the SEC was alleging they were Ponzi schemers and, if they had been put on notice, they could and would have sought additional evidence in discovery and insisted on a jury trial. *See Kipu Sys., LLC*, 2020 WL 9460639, at *9; *Schmidt*, 2011 WL 13172508, at *2. The SEC's new theory is not merely a different characterization of the facts pled in the Amended Complaint, it is a brand-new allegation that the Defendants would have fought vigorously at trial had the SEC pled a Ponzi scheme. The SEC's conduct is tantamount to a plaintiff filing a lawsuit for breach of contract, and when the

defendant admits to breaching the contract and agrees to a trial on damages, the plaintiff seeks to interject at the damages trial allegations of fraud and request punitive damages. Notably, because Defendants LaForte and McElhone asserted their Fifth Amendment Rights against self-incrimination before trial, the SEC has expanded the scope of the litigation at this stage and is seeking an adverse inference against LaForte and McElhone on claims that were not before the Court and not part of their decision-making process when they determined whether or not to testify. The SEC continues to attempt to further deprive the Defendants of their due process rights when the playing field is already tilted in the SEC's favor. This Court should put a stop to these tactics and adjudicate the disgorgement and civil penalties motion based upon the allegations in the Amended Complaint pursuant to the Consents.

2. In the Alternative, the Defendants Should Be Relieved from the Judgments, and the Case Should Be Restored to the Active Docket

For all of these reasons, the SEC's new and unpled allegations of a Ponzi scheme should be struck from the subject motion, and the SEC should be prohibited from asserting such allegations at any subsequent hearing. However, if the Court is not inclined to strike these allegations, the Defendants respectfully request that they be relieved from their Consents and the Judgments pursuant to Federal Rule of Civil Procedure 60(b), which states:

(b) GROUND FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Defendants' request for relief from the Consents and Judgments pursuant to Rule 60(b) is warranted for several reasons. First, Defendants consented to the Judgments based on an understanding that the SEC would seek disgorgement and/or penalties based on the allegations of the Amended Complaint – rather than unpled Ponzi scheme allegations that were raised for the first time *after* the Judgements were entered. For the reasons discussed *supra*, the SEC's bait-and-switch tactics are improper and constitute misrepresentations or misconduct which warrant relief from the Consents and Judgment pursuant to Rule 60(b)(3). Second, because the SEC's untimely assertion of the Ponzi-scheme allegations would deprive the Defendants of due process and would be extremely prejudicial (for all of the reasons enumerated above), it would be inequitable to apply the Judgements prospectively, and relief from the Judgments is justified under the totality of the circumstances. Accordingly, the Defendants should be afforded relief from the Consents and Judgments pursuant to Rule 60(b)(5) and/or Rule 60(b)(6). Finally, even if it were not improper or prejudicial (it is both) for the SEC to raise unpled and unproven Ponzi scheme allegations for the first time after the Judgements were entered, it is clear that the Defendants never anticipated, and had no reason to anticipate, that the SEC would accuse them of being Ponzi-schemers, or that the SEC would use such allegations as the cornerstone of its request for an enormous disgorgement award and an extraordinarily large penalties in the post-Judgement proceedings. Thus, at a minimum, relief from the Judgment is warranted based on mistake, inadvertence, surprise or excusable neglect, pursuant to Rule 60(b)(1).

Conclusion

For the reasons stated above, the Court should strike the SEC's unpled and unproven Ponzi scheme allegations, which were raised for the first time in the SEC's Motion for Final Judgments. The SEC should not be allowed to bait the Defendants into a bifurcated settlement and then add in allegations significantly worse than anything that was alleged in the Amended Complaint after the

close of discovery, and after the Defendants have waived their right to a jury trial. Therefore, Defendants, Lisa McElhone, Joseph W. LaForte and Joseph Cole Barleta respectfully request that this Court enter an order striking all allegations or mentions of Par Funding being a Ponzi Scheme in Plaintiff Securities and Exchange Commission’s Omnibus Motion For Final Judgments Against Defendants Michael Furman, Joseph Cole Barleta, Joseph Laforte, And Lisa Mcelhone [D.E. 1214]. Alternatively, if the Court is not inclined to strike the SEC’s Ponzi scheme allegations, Defendants requests that they be relieved from their Consents and the Judgements entered based on those Consents pursuant to Federal Rule of Civil Procedure 60(b), and that the case be restored to the active docket so that Defendants can have their day in court.

Dated: May 4, 2022.

S.D. Fla L. R. 7.1(a)(3) Certification of Counsel

Counsel for the Defendants hereby certify that we have conferred with Amie Berlin, counsel for the SEC, and were informed that the SEC opposes the relief sought in this Motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2022, I electronically filed the forgoing 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 transmissions of Notices of Electronic Filing generated by CM/ECF.

By: /s/ David L. Ferguson
DAVID L. FERGUSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

DECLARATION OF JOSEPH W. LAFORTE

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Joseph W. LaForte. I am over twenty-one (21) years of age and have personal knowledge of the matters set forth herein.
2. After careful consideration, I agreed to a bifurcated settlement of the claims against me in this case, and agreed to execute a Consent [DE 1004-1].
3. I understood that, by signing the Consent, I was giving up my right to a jury trial.
4. As part of the Consent, I agreed not to dispute the allegations of the Amended Complaint.
5. Based on my review of the Amended Complaint, I was aware that the Amended Complaint did not contain any allegations that Par Funding was a Ponzi scheme, or that I was otherwise involved with or responsible for any Ponzi scheme.
6. I understand that the SEC has accused me of being involved in a Ponzi scheme in its Omnibus Motion for Final Judgment and Other Relief [DE 1214], and I take those allegations very seriously. If those allegations had been contained in the Amended Complaint, I would not

have signed the Consent [DE 1004-1], would not have agreed to a bifurcated settlement, and would not have agreed to waive my right to a jury trial.

7. If the Court denies my motion to strike all of the Ponzi scheme allegations from the SEC's Omnibus Motion for Final Judgment and Other Relief [DE 1214], I ask to be relieved of the terms of the Consent and have my right to a jury trial on all issues restored.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 4, 2022


Joseph LaForte (May 4, 2022 18:28 EDT)

Joseph W. LaForte

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

DECLARATION OF LISA MCELHONE

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Lisa McElhone. I am over twenty-one (21) years of age and have personal knowledge of the matters set forth herein.
2. After careful consideration, I agreed to a bifurcated settlement of the claims against me in this case, and agreed to execute a Consent [DE 1002-2].
3. I understood that, by signing the Consent, I was giving up my right to a jury trial.
4. As part of the Consent, I agreed not to dispute the allegations of the Amended Complaint.
5. Based on my review of the Amended Complaint, I was aware that the Amended Complaint did not contain any allegations that Par Funding was a Ponzi scheme, or that I was otherwise involved with or responsible for any Ponzi scheme.
6. I understand that the SEC has accused me of being involved in a Ponzi scheme in its Omnibus Motion for Final Judgment and Other Relief [DE 1214], and I take those allegations very seriously. If those allegations had been contained in the Amended Complaint, I would not

have signed the Consent [DE 1002-2], would not have agreed to a bifurcated settlement, and would not have agreed to waive my right to a jury trial.

7. If the Court denies my motion to strike all of the Ponzi scheme allegations from the SEC's Omnibus Motion for Final Judgment and Other Relief [DE 1214], I ask to be relieved of the terms of the Consent and have my right to a jury trial on all issues restored.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 4, 2022

Lisa McElhone
Lisa McElhone (May 4, 2022 18:30 EDT)

Lisa McElhone

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

DECLARATION OF JOSEPH COLE BARLETA

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Joseph Cole Barleta. I am over twenty-one (21) years of age and have personal knowledge of the matters set forth herein.
2. After careful consideration, I agreed to a bifurcated settlement of the claims against me in this case, and agreed to execute a Consent [DE 1016-1].
3. I understood that, by signing the Consent, I was giving up my right to a jury trial.
4. As part of the Consent, I agreed not to dispute the allegations of the Amended Complaint.
5. Based on my review of the Amended Complaint, I was aware that the Amended Complaint did not contain any allegations that Par Funding was a Ponzi scheme, or that I was otherwise involved with or responsible for any Ponzi scheme.
6. I understand that the SEC has accused me of being involved in a Ponzi scheme in its Omnibus Motion for Final Judgment and Other Relief [DE 1214], and I take those allegations very seriously. If those allegations had been contained in the Amended Complaint, I would not

have signed the Consent [DE 1016-1], would not have agreed to a bifurcated settlement, and would not have agreed to waive my right to a jury trial.

7. If the Court denies my motion to strike all of the Ponzi scheme allegations from the SEC's Omnibus Motion for Final Judgment and Other Relief [DE 1214], I ask to be relieved of the terms of the Consent and have my right to a jury trial on all issues restored.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 4, 2022


Joe Cole (May 4, 2022 19:57 EDT)

Joseph Cole Barleta