IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, v. JOSEPH LAFORTE, COMPLETE BUSINESS SOLUTIONS GROUP, INC., d/b/a PAR FUNDING, JOSEPH COLE BARLETA, JAMES LAFORTE, and LISA McELHONE, Defendant.	CASE NO. 2:23-CR-00198-MAK

MEMORANDUM ON BEHALF OF DEFENDANTS LISA MCELHONE, JOSEPH COLE BARLETA AND JAMES LAFORTE IN RESPONSE TO THE COURT'S ORDER OF JUNE 13, 2023, REGARDING THE DISQUALIFICATION OF CURRENT COUNSEL FOR DEFENDANT CBSG

Defendants Lisa McElhone, Joseph Cole Barleta and James LaForte, by their respective attorneys, hereby respectfully submit this memorandum of law in support of an Order disqualifying Douglas Rosenblum, Esq., and the law firm of which he is a partner, Pietragallo Gordon Alfano Bosick & Raspanti LLP (the "Law Firm"), from their representation of codefendant Complete Business Solutions Group, Inc. d/b/a Par Funding ("CBSG"), in the above-captioned criminal case before this Court. Defendants also join in the submission of their codefendant Joseph LaForte.

I. INTRODUCTION

This Memorandum is respectfully submitted by the above-named defendants in response to the Order of this Court, issued *sua sponte* on June 13, 2023 (Doc. No. 53) ("Order"), seeking Defendants' position on whether the representation of CBSG by Mr. Rosenblum and the Law Firm poses a significant risk that counsel will be conflicted in its representation, requiring

disqualification under Pennsylvania Rules of Professional Conduct 1.7. For the reasons discussed herein, disqualification is warranted because the interests and obligations of trial counsel for CBSG (both Mr. Rosenblum and the Law Firm) are in conflict with, and indeed are antithetical to, the interests of the client, CBSG, on a number of grounds.

II. FACTUAL BACKGROUND

G.A. and the Law Firm currently represent Mr. Ryan Stumphauzer, the Receiver appointed in *Securities and Exchange Commission v. CBSG d/b/a Par Funding, et al*, 20 CV 81205 (RAR), pending in the Southern District of Florida, before the Honorable Rodolfo Ruiz ("the Florida Court") (case referred to herein as the "SEC Case"). Because of that current mandate, counsel's interests and obligations are diametrically opposed to zealously representing CBSG against the allegations in the current criminal prosecution.[1]

The Court identifies one area of conflict, the fact that Mr. Rosenblum's partner, G.A., is alleged to be the victim of an assault charged in the instant case against CBSG's codefendants, Joseph LaForte and James LaForte. As the Order indicates, G.A. is a partner in the Law Firm along with Douglas Rosenbaum, and he serves on the Law Firm's executive committee. The criminal charges thus present trial counsel with a potential conflict between trial counsel's fiduciary obligations to G.A. – a colleague at the same Law Firm --- and his obligations to CBSG. (Doc. 53) And G.A. cannot be both a witness for the prosecution and a member of the Law Firm representing one of the Defendants. Pennsylvania Rules of Prof. Conduct, Rule 3.7.

[1] Moreover, Ryan Stumphauzer, Esq., would also be disqualified from acting as counsel for CBSG were he to file a notice of appearance in this action. The Law Firm and G.A. conducted all of their legal work as agents for Mr. Stumphauzer, the Receiver in the SEC Action. The same rules of professional conduct would disqualify him from serving as counsel here.

Beyond that conflict lies a much deeper one – the unavoidable conflict posed by the work that G.A. and the Law Firm have performed in the SEC Case as counsel and agents for the court-appointed Receiver. In that role, for the past three years, G.A. and the Law Firm have been extremely and aggressively adversarial to CBSG. The securities violations alleged in the SEC Case overlap substantially with the allegations in the criminal case *sub judice*. These alleged securities violations have been the subject of extensive, vigorous litigation for the past three years in the SEC Case. That litigation is ongoing both in the Florida District Court and in the Eleventh Circuit.

CBSG is owned by Lisa McElhone through a Trust. (Amended Complaint in the SEC Case, DE 119, at ¶ 11)[2] Since in or about 2012, CBSG was engaged in the merchant cash advance (MCA) business and, by June 2020, had grown to over 70 employees and had millions of dollars in revenue. (Exhibit A to the Affirmation of Alan Tauber, dated June 29, 2023 ("Tauber Aff.") (citing DE 84, at 9-10) Joseph LaForte, Joseph Cole and Lisa McElhone were alleged to be principals of CBSG and are Defendants in the SEC Case. The SEC Case was brought in July 2020. At that time, the SEC requested, via a TRO and other relief, the appointment of a Receiver. Mr. Ryan Stumphauzer was appointed by the Florida Court as the Receiver over CBSG. Since his appointment, the Receiver has been represented throughout the litigation in the SEC Case by G.A. and the Law Firm.

From the outset of the SEC Case in July of 2020, the Receiver and his counsel have worked closely with the SEC and aggressively against the interests of CBSG. The Receiver and his counsel have consistently advocated against CBSG, arguing that CBSG committed

[2] All citations prefaced herein by "DE" are to the document entry number on the docket sheet of the SEC Case, 20 CV 81205 (RAR), in the Southern District of Florida.

wrongdoing and should be liable for securities law violations, and seeking to hold CBSG financially responsible to pay disgorgement and penalties. At every turn, the Receiver, by and through his counsel, has relentlessly characterized CBSG and the Defendants as dishonest and having engaged in unlawful activity. And the Receiver, by and with his counsel, has billed more than $18 million to date in fees and expenses – money that they intend to keep.

At the very heart of the litigation in the SEC Case, and likely to be central in the related securities charges in the instant case, are competing assertions about the merchant cash advance (MCA) business that CBSG performed, including for instance: CBSG's profitability and continued viability; the business practices employed by CBSG; the diligence of its underwriting process; the value of the MCA portfolio; the accuracy of representations about its finances made to investors; and competing assertions about the roles performed by CBSG's principals and agents, including Defendants in this case. All of these competing assertions were hotly contested by the Receiver and his counsel through the course of three years of litigation in the SEC Case, including extensive filings and hours-long status conferences before the Honorable Rodolfo Ruiz. (A few of these public filings and a status conference from the SEC case are attached to the Tauber Affirmation and are refenced herein.)[3]

At every turn, the Receiver has advanced factual positions that are squarely antagonistic to CBSG, casting it as replete with wrongdoing. The Receiver has repeatedly asserted that the business conducted by CBSG was unprofitable, economically unsustainable, and that CBSG was poorly managed. It has also alleged, consistent with the SEC's case, that CBSG, through its agents, misrepresented numerous aspects of its business and its financial condition to the

[3] These few filings are but a proverbial drop in the bucket compared to the number of substantive and hotly contested legal and factual battles waged during the three-year SEC Case litigation. In fact, the number docket entries in the SEC Case currently stands at 1623.

investing public. By contrast, Defendants have consistently maintained in the SEC Case, and will argue here, that CBSG was highly profitable, economically sustainable, and professionally well-run. Indeed, contrary to the Receiver's assertions, the evidence presented in filings in the SEC Case showed that CBSG spent millions of dollars on in-house counsel, securities counsel, collections and debt litigation counsel, and accounting professionals. For example, prior to the Receivership, CBSG had approximately 15 in-house accountants, including a CPA with decades of experience. (Exhibit A (DE 84) at 7; see also Exhibits B (DE 106) and C (DE 115).

Defendants contended in the SEC Case, and will doubtless contend here, that the Receiver materially misrepresented numerous facts about CBGS's financial condition in order to poison the Court against the defense and effectively bless the Receiver's liquidation of a once highly profitable business. At the outset of the Receivership, in early August 2020, Defendants advised the Florida Court that CBSG's business was highly complex; that the Receiver had no ability to run CBSG; that the Receiver was firing good employees who knew how to run CBSG; and that the Receiver was hell-bent on liquidation. *See* Exhibits A (DE 84), B (DE 106), C (DE 115), D (DE 148) and E (DE 355). As the Receiver began to wind down the business, Defendants showed how the Receiver neither understood the business model, nor cared to, as it sought to justify a simplistic liquidation. *See* Exhibits E (DE 355), G (DE 401), J (DE 535), K (DE 535-1) and L (DE 602). These concerns ultimately led to Defendants' request for recusal of the Florida Court (Exhibit M)(DE 630) and to request discharge of the Receiver (Exhibit N)(DE 649).

For example, one focus of disagreement between the Receiver and the defense in the SEC Case, and likely to be at issue here, are the starkly opposing analyses submitted by the Receiver and Defendants of CBSG's finances. In one significant vignette, the Receiver commissioned an

analysis of the financial wherewithal of CBSG by Bradley Sharp, CEO of Development Specialists, Inc. (DSI). After months of expense and at great fanfare, the Receiver announced to the Florida Court (and the public) on December 15, 2020, that its financial analysis showed that CBSG was, at best, not profitable and, at worst, a Ponzi scheme.[4] (Exhibit H at T. 16-31, *see also id*. at T. 94: The Court: "as Mr. Stumphauzer put it eloquently, there are many definitions of a Ponzi scheme.") The Receiver's financial analysis was profoundly flawed in many ways, not least of which was that it did not understand basic accrual versus cash accounting and failed to analyze the approximately 4 million financial transactions processed and accounted for by CBSG.

A subsequent competing analysis commissioned by the defense, using the top forensic accounting firm in South Florida (who, unlike the Receiver's analysts, were skilled CPA's), found that CBSG was profitable year to year.[5] (Compare the Declaration of Bradley Sharp, Exhibit I (DE 426-1), submitted by the Receiver, and the two Declarations of CPA Joel Glick, Exhibit K (DE 535-1) and Exhibit O (SEC Case, DE 649-8), submitted by the defense. Months later, and after the defense filed its financial analysis, the Receiver sheepishly excused its financial analysis debacle by telling the Florida Court that Mr. Sharp's Declaration was never "intended to serve as an expert report" but was merely issued to provide "preliminary findings"

[4] Indeed, the Receiver, accompanied as always by his counsel, told the Florida Court that he staked his reputation on the analysis. (Exhibit H at T. 31: Mr. Stumphauzer: "… I feel that I have-- I certainly have a responsibility to the Court, but I also feel like I have a responsibility to the investors . . . everyone, and I'm including myself, including myself more than anyone, we should be held accountable for what we say to you. I'm holding myself accountable for what came out of my mouth today. I'm holding my accountants and consultants at DSI accountable for what they put in that declaration.")

[5] Notably, CBSG's CPA accountants, including those both inside the company and external, prepared and filed tax returns showing millions of dollars in revenue.

(Exhibit N (DE 649 at 15, quoting DE 577 at 9 (Receiver's Quarterly Report dated May 3, 2021)).

There is, simply, overwhelming evidence demonstrating that the Law Firm, G.A. and the Receiver – in their Court-appointed roles -- have, since July 2020, aggressively advocated against CBSG on the issues at the heart of the instant prosecution: the same alleged securities laws violations; CBSG's financial condition; the profitability of the MCA business; and the conduct of Defendants Joseph LaForte, Lisa McElhone and Joseph Cole. It is unavoidable that the factual and legal representations made in writing, and during numerous oral arguments and presentations to the Florida Court, all carried out by or through the Law Firm, will be central issues in this criminal case.

Not only has the Receiver and its counsel advanced positions directly oppositional to CBSG's interests, but the Receiver and its counsel have also participated in developing the factual record against the interests of CBSG. In their role as court-appointed Receiver (and Receiver's counsel), they have interviewed witnesses who were part of the SEC's case-in-chief. These include individuals who claimed to have been victims of Defendants' securities law violations and individuals who worked for CBSG before and after the Receivership. These same individuals are likely to be witnesses here, called by the prosecution, the defense or both. To be clear, the work of the Receiver and the Law Firm in interviewing and interacting with likely witnesses in this case also makes them potential witnesses themselves at trial, called by either the prosecution or defense, or both.

But the conflicts of interest go even further. The Receiver and its counsel also have a strong motive and bias -- or, at a minimum, the appearance of a motive and bias -- against CBSG's interest in defending itself in this prosecution. That bias is two-fold. First, we believe

that the evidence shows that the Receiver and its counsel assisted the government in bringing the instant prosecution against their supposed client, CBSG.[6] The evidence shows that the Receiver and the Law Firm worked closely with the FBI and with the prosecution here – the United States Attorneys' Office for the Eastern District of Pennsylvania ("USAO") -- in a successful effort to have the instant criminal charges brought against CBSG and the other charged defendants. This assertion is not mere speculation. The contact between the Receiver, his Law Firm and the FBI, and between the Receiver, his Law Firm and the USAO, is documented explicitly on the publicly filed invoices for legal fees and expenses that the Receiver regularly submitted to Judge Ruiz in the SEC Case.[7]

An analysis of the publicly filed billing records submitted by the Receiver to the Florida Court show that approximately 521 hours were spent by the Receiver and the Law Firm communicating with law enforcement, and providing information and evidence to law enforcement, in an effort to bring this prosecution against CBSG and the other defendants. This conduct is wholly corroborated by, and consistent with, the aggressively adversarial stance the Receiver and Law Firm have taken in public filings and court proceedings against CBSG and its principals in the SEC Case.

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[6] Of course, this begs the question – how can an attorney be both the Court-appointed Receiver over an entity, and fulfil that very unique responsibility which is to recover and maintain assets in advance of a potential judgment, and yet here, at the same time, enter an appearance under with the ethical rules require the same Law Firm to zealously represent an entity over which it is Receiver? The two roles are wholly incongruous and incompatible. (*See* Exhibit H at T. 99: The Court: "The receiver is an arm of the Court so, at the end of the day, the Receiver's only obligation is to follow the Court's direction and try to protect investors and recover funds.")

[7] The Receiver's detailed fee applications are all filed publicly and are available on the docket of the SEC Case. (*See* DE 438, 491, 589, 699, 948, 1153, 1246, 1358, 1440, 1509, 1567)

These facts lead inexorably to another conflict. The Receiver and its counsel have a huge personal financial interest that creates a significant incentive against the interests of CBSG. The Receiver and its counsel have collectively billed in excess of $18 million for work directly related to the Receivership as well as the extensive litigation in the SEC Case. This litigation includes motion practice over the disgorgement amount to be paid to CBSG noteholders from the Receivership.[8] It also includes Defendants' many challenges to the Receiver's dissipation of assets of a once profitable business (*see, e.g.,* Exhibits E (DE 355), G (DE 401), J (DE 535), K (DE 535), L (DE 602) and N (DE 649), and failure to preserve assets far in excess of what is needed to pay disgorgement and other penalties. (*See* Exhibits P (DE 1556) and Q (DE 1610).

For the Receiver and the Law Firm, a successful criminal prosecution here proves them correct. It suggests that the Receiver's intentional destruction of CBSG's business was justified, and that all the money they received in fees - over $18 million and counting – was justified as well. The Receiver and his Law Firm have 18,000,000 reasons to work with the USAO to bring a criminal prosecution and see that it is successful. In a similar regard, several aspects of the SEC Case, including the disgorgement and penalties judgments, are being appealed. (*See* Eleventh Circuit docket, *SEC v. CBSG*, 21-10195; 23-10228 and 23-10234). Consequently, the Receiver and his counsel have a strong personal financial interest in defeating any challenge on appeal of the SEC Case that involves the work they performed, and the fees they received. The best outcome here for their purposes is criminal liability for CBSG and a substantial financial penalty.

[8] The Florida Court directed very substantial disgorgement and penalties against the individual defendants based on their operation of CBSG. These decisions are all being appealed to the 11th Circuit. Not content just to advocate against CBSG for three years, the Receiver and the Law Firm recently advised the Florida Court that, in addition to the disgorgement and penalty amounts assessed against the individual defendants, the Receiver plans on coming up with an additional amount of disgorgement to levy against CBSG. *See* Exhibit P (DE 1565) at 3, 18-19.

III. LEGAL ARGUMENT

Federal courts have "an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that the legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 158 (1988); *United States v. Voigt*, 89 F.3d 1050, 1074 (3d Cir. 1996). When a lawyer's actual or potential conflict risks inadequate representation of a defendant or jeopardizes the federal court's institutional interest in rendering a just verdict, a court has discretion to disqualify counsel or decline a proffer of waiver. *Voigt*, 89 F.3d at 1077 (*quoting Wheat*, *supra* at 162-64). *See* ABA Model Rule 1.7; Pa. RPC 1.7(a). "A defendant [cannot] insist on the counsel of an attorney who has a previous or ongoing relationship with an opposing party, even when the opposing party is the Government." *Wheat*, 486 U.S. at 159. Further, the potential that counsel may be called as a witness is a relevant consideration to be weighed in determining whether disqualification is appropriate. Pa. RPC 3.7(a); *United States v. Merlino*, 349 F.3d 144, 152 (3d Cir. 2003).

Both the ABA Model Rules of Professional Conduct and the Pennsylvania Rules of Professional Conduct limit an attorney's ability to represent a client when a concurrent conflict exists that is directly "adverse to another client" or that significantly risks "materially limit[ing] the lawyer's responsibilities to another client…or by a personal interest of the lawyer." ABA Model Rule 1.7; Pa. RPC 1.7(a). Concurrently, Rule 1.10 of both the ABA Model Rules and Pa RPC imputes one attorney's conflicts to all other attorneys in his firm.

Here, the Law Firm has numerous serious conflicts of interests as described above. For these reasons, it is inappropriate for the Law Firm to represent CBSG.

CONCLUSION

For the forgoing reasons, the Law Firm should be disqualified as counsel for CBSG.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 29, 2023, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents will be served on all parties either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically filed Notices of Electronic Filing.

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Alan Tauber