

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 4, 2018

SPAR Group, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

0-27408
(Commission
File No.)

33-0684451
(IRS Employer
Identification No.)

333 Westchester Avenue, South Building, Suite 204, White Plains, NY
(Address of Principal Executive Offices)

10604
(Zip Code)

Registrant's telephone number, including area code: (914) 332-4100

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 **Other Events.**

On September 4, 2018, SPAR Group, Inc. ("SGRP" or the "Registrant") filed a claim (the "Claim") with the Court of Chancery of the State of Delaware (C.A. No. 2018-0650) against Robert G. Brown, a substantial stockholder of SGRP and former Executive Chairman and director of SGRP, and William H. Bartels, a substantial stockholder of SGRP and current Vice Chairman and director and officer of SGRP (together with Robert G. Brown, the "Majority Stockholders").

The Claim was filed in response to the written consent from the Majority Stockholders received by SGRP on August 6, 2018 (the "Written Consent"), in which the Majority Stockholders attempted to change SGRP's By-Laws in order to (among other things) weaken the independence of the Board through new supermajority requirements and stockholder only approvals and eliminate the Board's independent majority requirement, in order to further benefit themselves.

SGRP has requested in the Claim that the Delaware Chancery Court provide SGRP with: (1) declaratory relief in the form of an order confirming that the bylaw amendments proposed by the Majority Stockholders (as set forth in the Written Consent and each of the Majority Stockholders' amendments to their respective Schedule 13Ds, each filed with the Securities and Exchange Commission on August 6, 2018) (the "Proposed Amendments") are invalid under Delaware law and (2) preliminary injunctive relief enjoining the Majority Stockholders from attempting during the pendency of the Claim to (a) enact the Proposed Amendments, (b) remove or attempt to remove any independent director of SGRP, (c) further weaken the independence of SGRP's Board of Directors (the "Board") or (d) circumvent or interfere with the duties of the Audit Committee of the Board.

SGRP is pursuing the Claim against the Majority Stockholders because the Board's Governance Committee believes that the Proposed Amendments will negatively impact all stockholders (particularly minority stockholders), among other things:

- weaken the independence of the Board through new supermajority requirements (because two of SGRP's non-independent directors can block the Board's actions and thus potentially reduce the representation of SGRP's minority stockholders);
- eliminate the Board's independent majority requirement (also potentially reducing the representation of SGRP's minority stockholders);
- eliminate the Board's ability to change the size of the Board and require that any proposed change in the Board's size be approved by the holders of a majority of the outstanding common stock of SGRP (the "Common Stock") (i.e., the Majority Stockholders), and thus also potentially reducing the representation of SGRP's minority stockholders;
- subject various functions of the Board respecting vacancies on the Board to the prior approval of the holders of a majority of the Common Stock (i.e., the Majority Stockholders), and thus also potentially reducing the representation of SGRP's minority stockholders; and
- permit submissions of stockholder proposals to be timely if received by SGRP no later than 60 days (changed from approximately six months) prior to SGRP's annual meeting of stockholders.

The foregoing description of the Claim and Proposed Amendments is qualified in its entirety by reference to the Verified Complaint Seeking Declaratory Judgment and Injunctive Relief (C.A. No. 2018-0650) filed by SGRP on September 4, 2018, a copy of which (without its exhibits) is filed herewith as Exhibit 99.1, and the Written Consent from the Majority Stockholders dated August 6, 2018, a copy of which (without its exhibits) is filed herewith as Exhibit 99.2, each of which is incorporated herein by reference.

Forward Looking Statements

This Current Report on Form 8-K and the attached Exhibit (this "Current Report"), contain "forward-looking statements" within the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, made by, or respecting, SGRP and its subsidiaries (together with SGRP, the "SPAR Group" or the "Company"), and this Current Report has been filed by SGRP with the Securities and Exchange Commission (the "SEC"). There also are "forward-looking statements" contained in SGRP's Annual Report on Form 10-K for its fiscal year ended December 31, 2017 (as filed, the "Annual Report"), as filed with the SEC on April 2, 2018, in SGRP's definitive Proxy Statement respecting its Annual Meeting of Stockholders held on May 2, 2018 (as filed, the "Proxy Statement"), which SGRP filed with the SEC on April 18, 2018, SGRP's preliminary Information Statement filed pursuant to Section 14(c) of the Securities Exchange Act of 1934 and Rule 14c-2 thereunder as filed with the SEC on July 30, 2018 (as filed, the "Preliminary Information Statement"), and SGRP's Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other reports and statements as and when filed with the SEC (including this Current Report, the Annual Report and the Proxy Statement, each a "SEC Report"). "Forward-looking statements" are defined in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and other applicable federal and state securities laws, rules and regulations, as amended (together with the Securities Act and Exchange Act, the "Securities Laws").

All statements (other than those that are purely historical) are forward-looking statements. Words such as "may," "will," "expect," "intend," "believe," "estimate," "anticipate," "continue," "plan," "project," or the negative of these terms or other similar expressions also identify forward-looking statements. Forward-looking statements made by the Company in this Current Report or the SEC Reports may include (without limitation) statements regarding: risks, uncertainties, cautions, circumstances and other factors ("Risks"); and plans, intentions, expectations, guidance or other information respecting the objective's of the Claim or the potential negative effects of the Proposed Amendments, the pursuit or achievement of the Company's five corporate objectives (growth, customer value, employee development, greater productivity & efficiency, and increased earnings per share), building upon the Company's strong foundation, leveraging compatible global opportunities, growing the Company's client base and contracts, continuing to strengthen its balance sheet, growing revenues and improving profitability through organic growth, new business development and strategic acquisitions, and continuing to control costs. The Company's forward-looking statements also include (without limitation) those made in the Annual Report in "Business", "Risk Factors", "Legal Proceedings", "Management's Discussion and Analysis of Financial Condition and Results of Operations", "Directors, Executive Officers and Corporate Governance", "Executive Compensation", "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters", and "Certain Relationships and Related Transactions, and Director Independence".

You should carefully review and consider the Company's forward-looking statements (including all risk factors and other cautions and uncertainties) and other information made, contained or noted in or incorporated by reference into this Current Report, the Annual Report, the Proxy Statement and the other applicable SEC Reports, but you should not place undue reliance on any of them. The results, actions, levels of activity, performance, achievements or condition of the Company (including its affiliates, assets, business, clients, capital, cash flow, credit, expenses, financial condition, income, liabilities, liquidity, locations, marketing, operations, performance, prospects, sales, strategies, taxation or other achievement, results, risks, trends or condition) and other events and circumstances planned, intended, anticipated, estimated or otherwise expected by the Company (collectively, "Expectations"), and our forward-looking statements (including all Risks) and other information reflect the Company's current views about future events and circumstances. Although the Company believes those Expectations and views are reasonable, the results, actions, levels of activity, performance, achievements or condition of the Company or other events and circumstances may differ materially from our Expectations and views, and they cannot be assured or guaranteed by the Company, since they are subject to Risks and other assumptions, changes in circumstances and unpredictable events (many of which are beyond the Company's control). In addition, new Risks arise from time to time, and it is impossible for the Company to predict these matters or how they may arise or affect the Company. Accordingly, the Company cannot assure you that its Expectations will be achieved in whole or in part, that it has identified all potential Risks, or that it can successfully avoid or mitigate such Risks in whole or in part, any of which could be significant and materially adverse to the Company and the value of your investment in the Company's Common Stock.

These forward-looking statements reflect the Company's Expectations, views, Risks and assumptions only as of the date of this Current Report, and the Company does not intend, assume any obligation, or promise to publicly update or revise any forward-looking statements (including any Risks or Expectations) or other information (in whole or in part), whether as a result of new information, new or worsening Risks or uncertainties, changed circumstances, future events, recognition, or otherwise.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

- 99.1 [Verified Complaint Seeking Declaratory Judgment and Injunctive Relief \(C.A. No. 2018-0650\), filed by SGRP with the Court of Chancery of the State of Delaware on September 4, 2018 \(exhibits omitted\).](#)
- 99.2 [Written Consent of Stockholders dated August 6, 2018, from Robert G. Brown and William H. Bartels, who together own over a majority of the outstanding shares of SGRP \(exhibits omitted\).](#)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SPAR GROUP, INC.,

Plaintiff,

V.

C.A. No. 2018-

ROBERT G. BROWN and
WILLIAM H. BARTELS,

Defendants.

**VERIFIED COMPLAINT SEEKING
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiffs, SPAR Group, Inc. ("SGRP"), brings this action in order to obtain declaratory and preliminary injunctive relief regarding certain proposed amendments to the corporate bylaws of SGRP that have been proposed and attempted (via written consent) by two stockholders, Robert G. Brown ("Brown") and William H. Bartels ("Bartels," and together with Brown, "Defendants"), who together hold a controlling interest in the common stock of **SGRP**. Specifically, in order to protect all stockholders, **SGRP** seeks (i) declaratory relief in the form of an order confirming that the bylaw amendments proposed by Defendants are invalid under Delaware law; and (ii) preliminary injunctive relief enjoining Defendants from attempting during the pendency of this action to enact the proposed bylaw amendments, to remove or attempt to remove any independent director, to further weaken the independence of SGRP's Board of Directors (the "Board"), or to circumvent or interfere with the duties of SGRP's Audit Committee (the "Audit Committee").

THE PARTIES

1. Plaintiff SGRP, a Delaware corporation that is publicly traded on the NASDAQ Stock Market ("NASDAQ") under the symbol "SGRP," is an international merchandising and marketing services company with its principal executive office at 333 Westchester Avenue, Suite 204, White Plains, New York 10604, and its principal operating office in Auburn Hills, MI.

2. Defendant Brown is a substantial stockholder in SGRP and, together with Bartels, forms a controlling group of stockholders in **SGRP**. Brown was Chairman of the Board and an officer of SGRP through May 3, 2018, when he retired and was succeeded as a director by his nephew, Peter W. Brown. Brown also was Executive Chairman of SGRP from 1999 through 2013, and from 1999 to 2007 he was CEO and President of SGRP.

3. Defendant Bartels is a substantial stockholder in SGRP and, together with Brown, forms a controlling group of stockholders in **SGRP**. Bartels is also Vice Chairman of the Board and an officer of SGRP and has held those positions since 1999.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 341, empowering it to hear "all matter and causes in equity." This Court also has jurisdiction over this action pursuant to 8 *Del. C.* § 11 l(a)(l), which establishes jurisdiction in the Court of Chancery to hear "[a]ny civil action to interpret, apply, enforce or determine the validity of the provisions of ... [t]he certificate of incorporation or the bylaws of a corporation," and pursuant to 8 *Del. C.* § 111(b) to hear "[a]ny civil action to interpret, apply or enforce any provision of [the Delaware General Corporation Law]...."

BACKGROUND

SGRP's Independent Management Structure

5. The Board and the Board's Governance Committee ("Governance Committee") determined that the Board should always have a majority of independent directors and have for years reported that position in SGRP's filings with the U.S. Securities and Exchange Commission (the "SEC"). To formalize that goal, the Board, based in part on the recommendations of its Governance Committee, amended SGRP's bylaws on July 5, 2018, to require that the Board have a majority of independent directors at all times.

Impact of Related-Party Activities on SGRP

6. **SGRP** executes the services it provides to its domestic clients primarily through field merchandising, auditing, assembly, and other field personnel (each a "Field Specialist"), and administers those services through local, regional, district, and other personnel (each a "Field Administrator"). Substantially all of the Field Specialists and Field Administrators were provided, through approximately July 31, 2018, by entities controlled entirely by Defendants (including "SAS" ¹ and "SBS"). ²

7. The cost recorded by SGRP for the expenses of SAS and SBS under their "Cost Plus Fee" arrangements was \$15.6 million for the six months ended June 30, 2018, and \$14.9 million for the six months ended June 30, 2017.

8. SGRP believed that, through a combination of the cost plus markups (both then 4%) and insurance reimbursements, SBS and SAS received over a million dollars per year of net economic benefits from providing their services to **SGRP** (whether or not reflected in their invoices or reported "profits"), and a reduction in those net economic benefits would have produced a significant savings to **SGRP**. **SGRP** therefore began negotiations in 2014 with SBS to update their service agreement and reduce those related-party expenses (with a goal of saving half). The negotiations dragged on over the course several years regarding (among other things) the net cost of using SBS (*i.e.*, achieving actual savings) and Brown's insistence that SGRP reimburse any and all expenses incurred by **SBS**, which Brown believed always to be in the best interest of SGRP if Brown made that determination, including (without limitation) legal expenses (and in later years) a salary to Brown.

¹ SPAR Administrative Services, Inc.

² SPAR Business Services, Inc.

9. Lorrence Kellar ("Kellar"), who then was Chairman of the Board's Audit Committee (the "Audit Committee"), was asked by the Board to mediate an acceptable solution between SBS and **SGRP**. Eventually, Brown agreed with Kellar to reduce SBS's apparent markup from 4% to 2.97% in return for other changes that together resulted in no economic savings for **SGRP**. However, no progress was ever made toward obtaining any actual savings for **SGRP** or toward limiting **SBS**'s reimbursable expenses to an approved budget, no new services agreement was ever reached, and Defendants continued to collect in excess of \$4 million over the past four years.

10. Shortly after the non-economic changes produced by the Kellar - **SBS** mediation went into effect, the Defendants began their efforts to remove Kellar from the Board. When that did not happen, the Defendants lobbied to remove Kellar as Chairman of the Audit Committee (despite his qualifications), and that eventually came to pass when Mr. Eric McCarthy joined the Board in 2015 and became Chairman of the Audit Committee in 2016. However, the Defendants continued to demand Kellar's removal from the Board.³

³ Tellingly, on or about August 31, 2018, Bartels contacted Art Drogue, Chairman of the Board, and informed him that Defendants were considering additional changes to the Board. See, *i* 12, *infra*

11. Mr. Kellar agreed to retire at the end of the Board meeting on May 3, 2018, in order to create a vacancy for the appointment of Mr. Carl Lee ("Lee") as his successor independent director. Brown also was retiring, and the meetings were extremely contentious, with Brown arguing for an award of "retirement" benefits to him which was greater than the compensation paid to SGRP's CEO and unprecedented in the view of the compensation consultants retained by the Board's Compensation Committee. Brown also demanded access to SGRP's SEC reports before their filing and arguing against the Kellar - SBS mediation described above. Lee observed that the Defendants would never stop trying to control SGRP and interfere with the Board and, for that reason, he withdrew as a candidate for the Board. Kellar then agreed to postpone his retirement and remain on the Board, which was approved by the Governance Committee and subsequently approved by the Board over the objection of Bartels. Defendants eventually attempted to remove and replace Kellar as a director by written consent. See,- 33, *infra*.

12. On or about August 31, 2018, Bartels contacted Art Drogue, Chairman of the Board, asking the Board to remove another Independent Director.

When asked if the Defendants would be filing another written consent, Bartels replied: "Not yet."

13. During the debate with regard to changing the Field Specialist provider to an entity other than SBS (because of, *inter alia*, its pending litigations), Defendants repeatedly urged SGRP to engage another related party owned (at least in part) by Brown's nephew, Peter W. Brown (now a SGRP director),⁴ on the same terms as SBS, but the independent directors and SGRP's management declined to enter into yet another related-party transaction with entities controlled by Defendants.

14. In May 2018, SGRP provided notice to SAS and SBS that their service arrangement (in the case of **SBS**) and agreement (in the case of **SAS**) would be terminated, and those agreements were terminated in July 2018.

15. SGRP has engaged independent third-party entities to provide the services previously provided by SAS and **SBS**, and SGRP expects to save substantial amount of money as a result. For example, **SGRP** believes that its net costs for Field Specialists for the six-month period ending June 30, 2018, could have been approximately \$450,000 less if SGRP had engaged those Field Specialists during that period through an independent third-party vendor rather than SBS (or approximately \$900,000 on an annualized basis).⁵

⁴ Peter Brown is not considered an independent director because he is an affiliate and related party in respect of SGRP and was proposed by Defendant Brown to represent the Brown family interests. Also, among other things, he works for and is a stockholder of SAS (see above) and certain of its affiliates.

⁵ These matters are discussed in considerably greater detail in SGRP's Q2 2018 10-Q (at pp. 11-18), filed with the Securities Exchange Commission ("SEC") on August 20, 2018, incorporated herein by reference and attached hereto as Exhibit "A."

16. In April 2017, the Board formed a special subcommittee of the Audit Committee (the "Special Subcommittee") to, *inter alia*, review the structure, documentation, fairness, conflicts, fidelity, appropriateness, and practices respecting SGRP's related-party transactions. See Ex. A., p. 12. The Special Subcommittee thereafter engaged the services of forensic accountants to review the related-party transactions. Their review identified a number of inefficient transactions with related parties that were of limited business value to SGRP. SGRP promptly moved to address these issues. *Id.*

17. The actual termination of SBS's services occurred on July 27, 2018. Even though SGRP has paid SBS for all services provided through that date, **SBS** notified SGRP that there may not be sufficient funds in their bank accounts to honor all payment checks they had sent to their Field Specialists. However, since SGRP had already deposited all Field Specialist payment reimbursements into the specific bank checking account designated by SBS for such payments, **SGRP** can only conclude that the Field Specialist payment reimbursements already made were used for other purposes. Ex. A, p. 13. Brown continues to demand that SGRP fund all Field Specialist payment checks even though they were already reimbursed in advance to SBS.

18. Brown also has notified SGRP that SBS is holding up other payments that SGRP has already reimbursed in advance to SBS and demanding that SGRP pay them again, including a pending litigation settlement in the amount of \$7,500.00.

Brown's Control of SBS Litigation Activity and its Effect on SGRP

19. The appropriateness of **SBS**'s treatment of its Field Specialists as independent contractors has been subject to legal challenge (both currently and historically) by various states and others, and SBS's expenses incurred in the course of defending those challenges and other proceedings (led by Brown) have historically been reimbursed by SGRP under SBS's Prior Agreement after determination (on a case-by-case basis) that those defense expenses were costs of providing services to SGRP. Ex. A, p. 14.

20. Defendants, SAS, and SBS are all related parties, and material transactions between them and SGRP require Audit Committee approval under applicable securities law, NASDAQ rules, and the Delaware General Corporation Law ("DGCL"). Accordingly, SGRP advised SBS that SGRP would continue to review and decide (through the Audit Committee) the propriety of each request by **SBS** for reimbursement of its legal defense expenses (including appeals) on a case-by-case basis in its discretion, including the relative costs and benefits to **SGRP**. Brown disagreed, stating that SBS and Brown should have exclusive authority to determine the expenses that were in the best interest of **SGRP**, and SGRP was bound to reimburse them without question, which the Audit Committee strongly disputed.

21. On June 30, 2014, Melissa Clothier filed suit against **SBS** and the Company in the Superior Court in Alameda County, California (the "Clothier Case"), in which Ms. Clothier asserted claims on behalf of herself and a putative class of similarly situated merchandisers in California who are or were classified as independent contractors at any time between July 16, 2008, and June 30, 2014. Ms. Clothier alleged that she and other class members were misclassified as independent contractors and that, as a result of this misclassification, the defendants improperly underpaid them in violation of various California minimum wage and overtime laws.

22. Facing huge potential damages in the Clothier Case, **SGRP** went into mediation with the Clothier plaintiffs and counsel. SBS and the Defendants refused to participate unless SGRP bore the full cost of any settlement and Brown was given a leading role in the mediation. SGRP disagreed, insisting on Defendants' and SBS 's economic participation. SGRP went into mediation by itself on June 7, 2018, and settled any potential obligation it might have in the Clothier Case for \$1.3 million. Ex. A, pp. 21-22. Since SGRP has no further involvement in that case, SGRP stopped paying (as of June 7, 2018) for SBS's legal expenses (defense and appeal) in the Clothier Case. Defendants continue to demand that those expenses be reimbursed by SGRP.

23. SGRP has refused to reimburse SBS for any judgment or similar amount (including any damages, settlement, or related tax, penalty, or interest) in any legal challenge or other proceeding against or involving **SBS**, and SGRP does not believe it has ever done so (other than in insignificant nuisance amounts). Indeed, SBS agreed to that in the signed amendment (dated as of November 2014) to its last written services agreement with **SGRP**, but Brown now disputes that amendment and argues for reimbursement or indemnification respecting *any* judgment against **SBS**.

24. SAS is a member of Affinity Insurance, Ltd. ("Affinity") and has purchased insurance coverage for workers' compensation, casualty, and property insurance risk for itself, for **SBS**, and for SGRP based on informal arrangements between the parties, with the premiums paid or reimbursed by **SGRP**. Affinity also required payment of cash collateral deposits ("Cash Collateral"), as determined and from time to time re-determined (upward or downward) by Affinity. From 2013 through August 1, 2018, SAS deposited Cash Collateral with Affinity using direct and indirect advances from SGRP that now total \$675,000. At the time, those Cash Collateral advances were not specifically disclosed to the Audit Committee or to the Board, as related-party transactions or otherwise, by Brown (then SGRP's Executive Chairman) or Bartels (SGRP's Vice Chairman then and now). The Cash Collateral advances were never approved by the Audit Committee or Board. At the time, Defendants were the sole owners and executives of SAS and **SBS**.

25. Affinity from time to time may (in the case of a downward adjustment in periodic premiums or the Cash Collateral) make refunds, rebates, or other returns of periodic premiums and Cash Collateral deposits to SAS for the benefit of itself and SBS (as returned, "Affinity Returns"), and SGRP believes that SAS and **SBS** are obligated to pay the Affinity Returns to SGRP in repayment of the corresponding advances. **SGRP** believes that SBS and SAS will have limited operations after August 1, 2018, that the litigation and the financial difficulties likely to face SBS as a result are significant, and that, without adequate security, those circumstances put such repayments to SGRP at a material risk.

26. Since November 2017, SGRP has been in negotiations with SBS and SAS, who have been represented by Brown and Bartels, respectively, for reimbursement and security agreements to document, confirm, and secure the aforementioned advances and repayment obligations totaling approximately \$675,000. Although SBS and SAS orally accepted those agreements in principle, the negotiations have recently broken down over (i) Defendants' refusal to allow fully perfected, first priority security interests in the Cash Collateral and SAS's policies with and equity interests in Affinity, and (ii) Defendants' demands for post-termination payments and offsets potentially larger than the Cash Collateral.

27. Given the unwillingness of SBS and SAS to document, confirm, and secure those advances and repayment obligations, and given the resulting material risk of non-payment by them to SGRP, SGRP has recorded a reserve for the full \$675,000 in such receivables in the second quarter of 2018. SGRP is exploring its legal options for recovering the Affinity Returns from SAS and SBS.

28. SGRP's services agreement with SAS provided for reimbursement of approved expenses incurred by SAS in providing services to SGRP. Those services ceased on July, 31, 2018. However, Bartels continues to demand that SGRP reimburse various ongoing expenses of SAS, including its personnel expenses and office rent for several years, which SGRP believes will be of no value or benefit to SGRP. While willing to consider reasonable reimbursements over a short period of time, SGRP has, with the support of the Audit Committee, refused to agree to reimburse most of those post-termination expenses. Bartels has used these demands as an excuse to avoid the Affinity reimbursement and security agreement he previously agreed to in principle.

29. In an email to Jack Partridge, Chairman of SGRP's Compensation Committee, on June 27, 2018, Brown renewed his request for post-retirement compensation, fees, expenses, and benefits in excess of \$300,000 per year (more than is paid to SGRP's CEO) to act as a special consultant to the Board for planning, acquisitions, and taxes. The Compensation Committee declined. Brown also has suggested a stockholder-approved (*i.e.*, Defendant-approved) pension plan for himself to achieve his desired results.

30. In 2016, SGRP acquired its Brazilian subsidiary with the assistance of Brown and his nephew, Peter W. Brown. Brown used his private company, **SPAR** Infotech, Inc. ("Infotech"), and undisclosed Irish companies to structure the acquisition to support claimed "tax breaks" for Infotech while jeopardizing SGRP's ability to control the consolidation of the Brazilian subsidiary.

31. Brown also ran his alleged expenses associated with the transaction through Infotech, including large salary allocations for unauthorized personnel and claims for his "lost" "tax breaks." He submitted his "expenses" to **SGRP**, and the Audit Committee allowed approximately \$50,000.00 of them (which were paid by SGRP) and disallowed approximately \$150,000.00 of them. Brown has repeatedly sought payment of the disallowed expenses, and on August 4, 2018, counsel for Infotech (also counsel for SBS and Brown) sent SGRP a draft complaint for a proposed action by Infotech against SGRP in Westchester County, NY, seeking to obtain the disallowed expenses.

The Defendants Move to Seize Managerial Control of SGRP from the Board

32. Unhappy that SGRP had found better deals by entering into services arrangements with unrelated third parties, faced with the prospect of no longer being able to funnel money from SGRP to other entities under their control, and in response to SGRP's investigation of Defendants' significant related-party self-dealing activities, Defendants took a series of actions to take managerial control of SGRP from the Board, which activities would benefit themselves at the expense of SGRP and the other stockholders.

33. On June 29, 2018, Defendants, who together hold at least 59% of SGRP's outstanding common stock, delivered a written consent in lieu of a meeting of stockholders to SGRP (the "First Consent").⁶ On July 5, 2018, SGRP received an additional counterpart written consent from Cede & Co. representing approximately one million (1,000,000) shares of SGRP's common stock (the "Second Consent"),⁷ which amount is included in Defendants' combined ownership noted above.

⁶ The First Consent is attached hereto as Exhibit "B."

⁷ The Second Consent is attached hereto as Exhibit "C."

34. The First Consent and Second Consent unilaterally endorsed resolutions approving (i) the appointment of Mr. Jeffrey Mayer as a director of SGRP and (ii) the removal of Kellar. Those consents would only become effective after all notices, filings, and other conditions under applicable law have been satisfied.

35. Mr. Mayer was not nominated, appointed, or endorsed by the Board or Governance Committee. He had no support in the Governance Committee, and he was never reported out of it to the Board for consideration. Although Defendants asked the Governance Committee to consider Mr. Mayer as a potential Board candidate in order to add unspecified legal expertise to the Board, the Governance Committee determined after extensive deliberations that Mr. Mayer's limited legal experience was in unrelated areas and was far from recent. The Governance Committee further determined that Mr. Mayer does not satisfy any of the SGRP nomination standards for a director and cannot be considered an independent director because he was unilaterally appointed by Defendants.

36. On August 6, 2018, Defendants each filed an amended Schedule 13D with the SEC. See Defendants' amended Schedule 13D filings (the "SEC Filings") attached hereto as Exhibit "D."

37. In the SEC Filings, Defendants acknowledge that they "may be deemed to comprise a 'group' within the meaning of [the Securities Exchange Act of 1934]" and "may act in concert ... with respect to certain matters," including the proposed bylaw amendments at issue in this case. Ex. D.

38. In the SEC Filings, Defendants describe a number of amendments and additions to SGRP's bylaws which they subsequently endorsed, as a controlling stockholder group, by written consent (in the Third Consent, defined below). *Id.* The proposed changes to SGRP's bylaws (the "Proposed Amendments") are described as follows:

- (i) Add new Section 3.12 to the by-laws providing that the Board shall not take any of the following actions (or delegate its authority, or enter into any agreement, to take such actions) without the approval of at least 75% of the directors then in office ("Supermajority Approval") at a meeting for which 20 business days prior notice was given to all directors stating the purpose thereof: (i) issue, transfer or sell more than 500,000 shares of Common Stock (or securities convertible into or exercisable or exchangeable for 500,000 shares of Common Stock) in one or a series of related transactions; (ii) authorize, issue, transfer or sell shares of preferred stock or any security convertible into or exercisable or exchangeable for preferred stock; (iii) declare any dividend on the shares of capital stock of the Company (other than solely cash dividends); (iv) amend, restate, repeal or replace the by-laws, as amended by the By- law Amendments, or adopt, amend or restate new by-laws, in whole or in part; or (v) form or authorize any Board committee, expand the authority of any Board committee, appoint or remove a director from any Board committee or authorize any Board committee to create a sub-committee provided that the foregoing shall not modify or eliminate any currently existing Board committees or authority thereof. Under new Section 3.12, no committee of the Board may exercise the power or authority of the Board with respect to any actions that require Supermajority Approval.

- (ii) Amend Section 3.01 to fix the size of the Board at a total of seven directors and provide that future changes to the Board's size shall be fixed from time to time exclusively by the stockholders of the Company (except as provided in amended Section 3.11).
- (iii) Amend Section 3.04 of the by-laws to provide that any vacancy or newly created directorship occurring for any reason, with the exception of death and directors appointed in accordance with amended Section 3.11, will be filled exclusively by a vote of the Company's stockholders.
- (iv) Amend Section 3.11 of the by-laws to **delete** the requirement that a majority of the Board be independent directors whether or not required by applicable law and to **add** new language providing that the Board may increase the size of the Board from time to time and fill the resulting newly created directorships but only to appoint to the Board a nominee (including without limitation a nominee who is "independent" for purposes of applicable law) who is approved in **advance** by the holders of a majority of the outstanding Common Stock (emphasis added).
- (v) Amend the advance notice provision in Section 2.1 l(b) of the by-laws to provide that, for any business, director nominee or proposal to be properly brought before an annual meeting by a stockholder, notice of such business, nominee or proposal must be delivered to the Company not later than the 60th day prior to the first anniversary of the preceding year's annual meeting, assuming the date of the annual meeting is not more than 30 days before or after such anniversary date. Under the current by-laws any such notice would need to be delivered no less than 120 calendar days prior to the first anniversary of the date the proxy statement for the prior year's annual meeting was released to stockholders.
- (vi) Provide in Section 3.05(c) of the by-laws that any notice of a special meeting of the Board must state the date, time and a description of the business to be transacted at such meeting.

- (vii) Add a forum selection provision in new Section 10.09 of the by-laws establishing the Court of Chancery of the State of Delaware (the "Chancery Court") (or if such court does not have jurisdiction, the Superior Court of the State of Delaware, or if such other court does not have jurisdiction, the U.S. District Court for the District of Delaware) for all claims, including claims in the right of the Company, (i) that are based upon a violation of a duty of a current or former director or officer or stockholder in such capacity or (ii) as to which the Delaware General Corporation Law ("DGCL") confers jurisdiction upon the Chancery Court, unless the Company (exclusively by Supermajority Approval) consents in writing to the selection of an alternative forum.
- (viii) Amend Sections 3.06(c) and 4.06(c) of the by-laws regarding the required vote for actions taken at Board and Board committee meetings and Section 8.01 of the by-laws regarding record dates. These amendments make these sections consistent with the relevant provisions of the DGCL.

Id.

39. On August 8, 2018, SGRP received an additional written consent from the Defendants (the "Third Consent,"⁸ and together with the First Consent and Second Consent, the "Written Consents"), pursuant to which the Defendants unilaterally resolved to enact the Proposed Amendments. The Proposed Amendments would only become effective after all notices, filings, and other conditions under applicable law have been satisfied.

40. The Proposed Amendments were prepared by the Defendants and their own counsel and were not submitted to, discussed with, or considered or approved, and have not been supported or endorsed, by the Board or its Governance Committee.

⁸ The Third Consent is attached hereto as Exhibit "E."

41. The Governance Committee also believes that the Proposed Amendments (among other things):

(i) weaken the independence of the Board through new supermajority requirements (because two of the non-independent directors can block Board actions and thus potentially reduce the representation of the minority stockholders);

(ii) eliminate the Board's independent majority requirement;

(iii) eliminate the Board's ability to change Board size and make such size changes subject to the prior approval of the holders of a majority of the outstanding common stock (*i.e.*, the Defendants);

(iv) subject various normal Board functions respecting vacancies to the prior approval of the holders of a majority of the outstanding common stock (*i.e.*, the Defendants); and

(v) permit comparatively last-minute submissions of stockholder proposals (60 days, instead of approximately 6 months, before the annual meeting) intended to be raised at an annual meeting of stockholders (and thus potentially delaying and increasing the costs of **SGRP**'s proxy statement and annual stockholders' meeting).

42. The changes sought to be made by the Defendants in their Proposed Amendments effectively block the declared determination and intention of the Board to increase the Board size to nine and add two new independent directors to maintain majority independence for the Board. As a result of the Defendants' proposed actions, the Board would continue to lack a majority of independent directors and may face compliance issues with NASDAQ and under applicable securities law.

43. The Proposed Amendments are invalid under Delaware law, as they either conflict directly with the provisions of the DGCL or improperly infringe on the powers and responsibilities belonging to the Board and its Committees, enumerated or not, pursuant to the DGCL, applicable securities law, NASDAQ rules, and SGRP's Certificate of Incorporation. SGRP's Certificate of Incorporation, with amendments, is attached hereto as Exhibit "F."

44. Through Defendants actions in Clothier (see **11** 21-22, *infra*) and respecting the Affinity Cash Collateral (see **11** 24-25, *infra*), SGRP incurred an additional loss of approximately \$2 million for the quarter and six month period ending June 30, 2018. With control of the Board, Defendants will be in a position to try to indemnify themselves against future judgments in Clothier and other cases, which SGRP likely could not afford.

45. The Proposed Amendments and other Board changes would effectively gut the critical role of an independent Board and Audit Committee to review, investigate, and approve reasonable, proper expenditures sought in related-party transactions. The Brazilian "expense" reimbursement (see **iii** 29-30, *infra*) and additional Clothier defense expenses (see **iii** 21-22, *infra*) could alone cost SGRP another \$500,000 this year if Defendants gain control of the Board. With that control, the Defendants could also require the approval of the Brown compensation (see **ii** 28, *infra*) and SAS post-termination expenses currently requested (see **ii** 27, *infra*), which could cost **SGRP** over \$400,000 per year.

Finally, with that control, the Defendants could also require that SGRP again use related parties like SAS and SBS to provide its domestic Field Administrators and Field Specialists (see **iii** 6-8, 15-16, *infra*), which if on the same terms as before could cost SGRP an additional \$900,000 per year. All of those unnecessary expenses would seriously and negatively impact SGRP's profitability and financial condition, as well as its relationships with its banks, other vendors, and customers.

COUNT I
DECLARATORY JUDGMENT UNDER
10 DEL. C. § 6501, et. seq., AND 8 DEL. C. § 111

46. The allegations set forth in Paragraph 1 - 45 are incorporated by references as though set forth in full herein.

47. The Court of Chancery is empowered to grant the relief requested herein pursuant to 10 *Del. C.* § 6501, *et. seq.*, and 8 *Del. C.* § 111, and this matter is ripe for adjudication.

48. The Proposed Amendments are invalid under Delaware law, as they either conflict directly with the provisions of the DGCL or represent impermissible stockholder infringement on the powers and responsibilities of the Board. Further, the Proposed Amendments are no more than a transparent effort by Defendants to wrest control of SGRP's business and affairs from the Board, to further weaken the independence of SGRP's Board, to circumvent and interfere with the duties of SGRP's Audit Committee regarding related-party matters, and to consolidate that power in themselves for the purpose of enriching themselves to the detriment of SGRP and the other stockholders.

49. SGRP is therefore entitled to a declaration that the Proposed Amendments are invalid, against public policy, and would be void *ab initio* if enacted.

50. Any further action by the Defendants to remove or attempt to remove any independent director, to further weaken the independence of SGRP's Board, or to circumvent or interfere with the duties of SGRP's Audit Committee regarding related-party matters would be invalid and against public policy, and bylaw amendments enacted for those purposes would be void *ab initio*.

51. SGRP has no adequate remedy at law.

COUNT II
INJUNCTIVE RELIEF

52. The allegations set forth in Paragraphs 1 - 51 are incorporated by reference as though set forth in full herein.

53. **SGRP** and its minority stockholders will suffer immediate, irreparable injury in the event that the Proposed Amendments are allowed to stand, as the Proposed Amendments will have the effect, among other things, of improperly restricting the Board's ability to manage the business and affairs of SGRP independent from the control of the Defendants for their own benefit.

54. Any inconvenience or injury to Defendants resulting from the issuance of injunctive relief, and SGRP submits that there is none, is outweighed by the injury to SGRP in the event that Defendants are permitted to enact the Proposed Amendments.

55. The balance of equities weighs in SGRP's favor.

56. SGRP is likely to succeed on the merits because the Proposed Amendments are invalid under Delaware law.

57. The issuance of injunctive relief will not adversely affect the public interest. To the contrary, it will protect the interests of SGRP's other stockholders and the interests of other members of the public who may wish to become stockholders in SGRP.

58. **SGRP** has no adequate remedy at law.

59. **SGRP** is entitled to a temporary restraining order enjoining the Defendants from enacting or attempting to enact the Proposed Amendments during the pendency of this action.

PRAYER FOR RELIEF

WHEREFORE, SGRP respectfully requests that this Court enter an order:

(a) Declaring that the Proposed Amendments are invalid under Delaware law and would be void *ab initio* if enacted;

(b) Issuing a temporary restraining order enjoining Defendants from enacting or attempting during the pendency of this action to enact the Proposed Amendments, to remove any independent director(s), to further weaken the independence of SGRP's Board, or to circumvent or interfere with the duties of SGRP's Audit Committee regarding related-party matters;

(c) Awarding SGRP its attorneys' fees and costs incurred in this action; and

(d) Awarding SGRP such other and further relief as the Court deems equitable.

COLE SCHOTZ P.C.

/s/

Michael F. Bonkowski (No. 2219)
Bradley P. Lehman (No. 5921)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
(302) 651-2002 (Phone)
(302) 574-2102 (Fax)
mbonkowski@coleschotz.com
blehman@coleschotz.com

*Counsel for Plaintiff,
SPAR Group, Inc.*

Dated: September 4, 2018

B DAY PITNEYLLP

BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK WASHINGTON, DC

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297-2423 F: (973) 206-6589
eknarr@daypitney.com

August 6, 2018

BY HAND DELIVERY AND EMAIL

SPAR Group, Inc.
333 Westchester Avenue, Suite 204 White Plains, NY 10604

Attention: James R. Segreto, Secretary
jsegreto@sparinc.com

BY HAND DELIVERY

SPAR Group, Inc.
Care of its Registered Agent: The Corporation Trust Company 1209 Orange Street
Wilmington, DE 19801

Dear Mr. Segreto,

Enclosed are written consents of record stockholders of SPAR Group, Inc. ("SPAR") consenting to the amendment of SPAR's by-laws ("By-law Amendments"). The individual stockholders who signed the consents (the "Stockholders") are the beneficial owners of additional shares of common stock and are taking action to have the nominee record holders sign and deliver consents with respect to those additional shares. Those consents will be delivered in the immediate future. Until delivery of the remaining written consents, the Stockholders intend to engage with the Board of Directors of SPAR (the "Board") regarding adoption of the By-law Amendments or the adoption of a modified version mutually agreeable to both the Board and the Stockholders.

Please be advised that the shares represented by the enclosed consents and the additional shares beneficially owned by the individual stockholders total 10,681,450.89 shares of SPAR common stock. Based on SPAR's public filings, these shares represent a majority of the common stock outstanding.

II DAY PITNEY LLP

August 6, 2018

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This transmission constitutes delivery of written consents in accordance with Section 228 of the Delaware General Corporation Law, and in accordance therewith the record date for determining the stockholders entitled to consent to the By-law Amendments is August 6, 2018.

If you have any questions, please contact me at (212) 297-2423.



Ellen S. Knarr

Enclosures

**WRITTEN CONSENT OF STOCKHOLDERS OF
SPAR GROUP, INC.**

The undersigned record stockholders (or proxyholders of record stockholders) of SPAR Group, Inc., a Delaware corporation (the "Company"), hereby take the following actions pursuant to Section 228 of the Delaware General Corporation Law. This consent will apply to all shares of capital stock of the Company held by the undersigned and all shares of capital stock of the Company with respect to which the undersigned may act by consent pursuant to a proxy or power of attorney. If two or more of the undersigned hold shares of capital stock of the Company jointly, this consent will apply to all shares jointly owned by such holders and all shares individually owned by each holder.

Resolved, that the By-laws of the Company are amended in the manner attached hereto and incorporated herein by reference (with deletions shown in strike-through text and additions shown in underlined text).

Resolved, that this consent of stockholders may be executed in counterparts.

[Signature pages follow]

In witness whereof, the undersigned have executed this consent of stockholders.

This consent should be signed and dated. Please sign exactly as your name appears on the Company's stock ledger or on your stock certificate. Where stock is issued in two or more names, both must sign. In case of joint owners, each joint owner must sign. When signing as an attorney, executor, administrator, trustee, guardian or corporate officer, please include your title.

A complete copy of this consent must be delivered to the Company.


William H. Bartels

Dated: August 6, 2018

WHD SERVICES, INC. INCENTIVE SAVINGS PLAN & TRUST

By: 
tels

Name : William H. Bartels
Title: Trustee

Dated: August 6, 2018

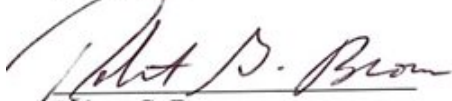
[Signature Page of Consent of Stockholders of SPAR Group, Inc.]

In witness whereof, the undersigned have executed this consent of stockholders.

This consent should be signed and dated. Please sign exactly as your name appears on the Company's stock ledger or on your stock certificate. Where stock is issued in two or more names, both must sign. In case of joint owners, each joint owner must sign. When signing as an attorney, executor, administrator, trustee, guardian or corporate officer, please include your title.

A complete

, *e* copy of this consent must be delivered to the Company.


Robert G. Brown

Dated: August 6, 2018

[Signature Page of Consent of Stockholders of SPAR Group, Inc.]