

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): November 28, 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", the "Corporation" or the "Registrant") filed in the Court of Chancery of the State of Delaware (the "Court") a claim, C.A. No. 2018-0650 (the "By-Laws Case"), in a Verified Complaint Seeking Declaratory Judgment and Injunctive Relief (the "Original Complaint") 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" or "Defendants"). On September 21, 2018, SGRP supplemented and amended its Claim in a Verified Amended Complaint filed with the Court (the "Amended Complaint"). Please see Part II, Item IA - *Risk Factors - Dependence Upon and Cost of Services Provided by Affiliates and Use of Independent Contractors, Risk Factors - Risks Related to the Company's Significant Stockholders: Potential Voting Control and Conflicts*, and Note 9 to the Company's Condensed Consolidated Financial Statements – *Commitments and Contingencies -- Legal Matters*, in the Corporation's Quarterly Report on Form 10-Q as filed with the SEC on November 19, 2018, and the Corporation's Current Report on Form 8-K as filed with the SEC on September 28, 2018.

In an email to Arthur Drogue, SGRP's Chairman, on October 3, 2018, and in subsequent calls with him, William H. Bartels, a substantial stockholder of SGRP and current Vice Chairman and director and officer of SGRP (and one of the Majority Stockholders), requested indemnification for his legal fees and expenses incurred in his defense of the By-Laws Case brought by SGRP against him and Mr. Brown.

On November 2, 2018, in a letter from his counsel, Mr. Bartels demanded advancement of his proportionate share of the legal fees and expenses incurred in his defense of the By-Laws Case against him, setting an arbitrary deadline of November 7, 2018, for SGRP to respond.

SGRP's Audit Committee determined on November 5, 2018, that Mr. Bartels was not entitled to indemnification by SGRP for his fees and expenses incurred in his defense of the By-Laws Case because (among other things) the By-Laws Case alleges numerous instances of improper conduct by Mr. Bartels. However, the Audit Committee made no determination regarding the issue of advancement.

On November 28, 2018, Mr. Bartels filed with the Court a Verified Complaint For Advancement against SGRP (the "Advancement Complaint") seeking advancement of his proportionate share of the legal fees and expenses incurred in the By-Laws Case against him.

SGRP is evaluating the Advancement Complaint. If advancement is made by SGRP, and Mr. Bartels is ultimately determined not to be entitled to indemnification, he will be obligated to return all amounts advanced to him by SGRP.

The foregoing description of the Advancement Complaint is qualified in its entirety by reference to the Advancement Complaint, a copy of which is filed herewith as Exhibit 99.1 and 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 By-Laws Case or the potential negative effects of the Advancement Complaint or the advancement sought by Mr. Bartels, 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 For Advancement by William H. Bartels against SGRP filed with the Court of Chancery of the State of Delaware on November 28, 2018.](#)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: December 4, 2018

SPAR Group, Inc.

By: _____ /s/ James R. Segreto
James R. Segreto, Chief Financial Officer

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

| | | |
|---------------------|---|----------------|
| WILLIAM H. BARTELS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. _____ |
| |) | |
| SPAR GROUP, INC., |) | |
| |) | |
| Defendant. |) | |

VERIFIED COMPLAINT FOR ADVANCEMENT

Plaintiff William H. Bartels (“Plaintiff” or “Mr. Bartels”), by and through his undersigned counsel, alleges for his Verified Complaint against SPAR Group, Inc. (“SGRP” or the “Company”), a Delaware corporation, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to 8 *Del. C.* § 145(k) to remedy SGRP’s wrongful refusal to advance to Mr. Bartels the legal fees and expenses that he has incurred and continues to incur in connection with pending litigation. Mr. Bartels is named as a defendant in litigation pending before this Court, captioned *SPAR Group, Inc. v. Robert G. Brown and William H. Bartels*, C.A. No. 2018-0650-MTZ (the “Delaware Litigation”). In the Delaware Litigation, SGRP asserts claims against Mr. Bartels both in his capacity as an officer and director of the Company, as well as a controlling stockholder.



2. As set forth below, the Company's Amended and Restated Bylaws (the "Bylaws") have at all relevant times included a broad mandatory advancement provision requiring the Company to advance expenses (including attorneys' fees) to current and former officers and directors to the fullest extent permitted by Delaware law. Despite its clear obligation to Mr. Bartels as an officer and director in the Bylaws, the Company now refuses to advance any fees or expenses to Mr. Bartels in connection with the Delaware Litigation, claiming that Plaintiff was only sued in his capacity as a controlling stockholder. However, SGRP's purported basis for avoiding its advancement obligations is directly contradicted by the allegations of its very own Complaint, in which SGRP not only sought to have this Court exercise jurisdiction over Mr. Bartels for his actions as an officer and director, but also expressly asserted claims against Plaintiff for allegedly breaching his fiduciary duties owed "as an officer and director."

3. Accordingly, Plaintiff is entitled to the entry of an Order specifically enforcing SGRP's mandatory advancement obligation and awarding Plaintiff the fees and costs that he has incurred in the Delaware Litigation as well as those incurred in enforcing the advancement right in this litigation.

THE PARTIES

4. Plaintiff William H. Bartels is the Vice Chairman of the board of directors and an officer of SGRP. Mr. Bartels has served in these capacities since 1999.

5. Defendant SPAR Group, Inc. is a Delaware corporation with its principal executive offices in White Plains, New York. SGRP is an international merchandising and marketing services company.

FACTUAL BACKGROUND

A. Mr. Bartels' Rights to Advancement

6. The Company's Bylaws contain a broad, mandatory advancement provision that requires SGRP to advance expenses (including attorneys' fees) to current and former officers and directors to the fullest extent permitted by Delaware law. Specifically, Section 6.06 provides:

Right to Advancement of Expenses. The Indemnification Rights of each Indemnitee shall include the right to have the Corporation advance the Expenses actually and reasonably incurred in defending any Proceeding in advance of its final disposition ("Expense Advances"); provided, however, that the Indemnitee shall execute and deliver a Reimbursement Agreement to and with the Corporation if and to the extent the DGCL requires such a Reimbursement Agreement under the circumstances. The Corporation shall not require collateral or other security or the support of any spouse or other surety (whether by co-signature, endorsement or otherwise) for any of the Indemnitee's obligations under any such Reimbursement Agreement.

The advancement rights are granted to any “Indemnitee who was or is made a party or who is threatened to be made a party to or who is otherwise involved in any Proceeding by reason of the Indemnitee’s position with the Corporation . . . in each case irrespective of whether the basis of such proceeding is alleged action in any such official capacity, in any other capacity while serving in any such official capacity or otherwise.”

7. In addition, Section 6.12 provides that an indemnitee is entitled to reimbursement of the fees and expenses incurred in enforcing advancement rights.

B. The Delaware Litigation

8. On September 4, 2018, the Company filed the Delaware Litigation against Mr. Bartels and Robert G. Brown. The Company subsequently filed the Amended Complaint on September 21, 2018. The Amended Complaint brought claims against Mr. Bartels for breach of fiduciary duty and conspiracy in his capacity as a director and officer. The Delaware Litigation remains pending, and Mr. Bartels continues to incur legal fees in connection with his defense of that action. Mr. Bartels’ expenses in the Delaware Litigation fall squarely within the advancement provision of the Company’s Bylaws.

9. The Amended Complaint specifically identifies the fiduciary duties owed by Mr. Bartels as an officer and director of the Company and purports to establish personal jurisdiction over Mr. Bartels based upon those duties. For example, it alleges:

This Court has personal jurisdiction over Bartels pursuant to 8 *Del. C.* § 3114(a) because (i) he is – and has been since 1999 – ***an officer and director of SGRP*** who owes a fiduciary duty of loyalty to the Company, (ii) he engaged in the conduct alleged ***herein while as an officer and director of SGRP***, and (iii) the conduct alleged herein constitutes a breach of Bartels’ duty of loyalty owed to the Company ***as an officer and director***.

Am. Compl. ¶ 12 (emphasis added).

10. Further, SGRP expressly alleges in the Amended Complaint that Mr. Bartels breached his fiduciary duties, including his duties as an officer and director, to the Company and its minority stockholders. *See id.* at ¶ 93 & 92 (“***As an officer and director of the Company***, Bartels owes a fiduciary duty of loyalty to the Company and its minority stockholders.”)(emphasis added).

C. Mr. Bartels’ Demand for Advancement

11. On November 2, 2018, Mr. Bartels’ counsel wrote to the Company on behalf of Mr. Bartels and demanded advancement for Mr. Bartels’ expenses in connection with the Delaware Litigation. This demand letter included an undertaking signed by Mr. Bartels whereby he agreed to repay such amounts if it is ultimately determined that he is not entitled to be indemnified by the Company. Ex. A.

12. On November 12, 2018, Mr. Bartels received a response from Eric McCarthy, the chairman of the Audit Committee, denying Mr. Bartels request for advancement. Ex. B. According to Mr. McCarthy, Mr. Bartels is not entitled to advancement because he was sued as a majority stockholder and not as a director or officer. *Id.*

13. However, as explained above, SGRP purported basis for denying advancement is refuted by SGRP's Amended Complaint. Not only did SGRP purport to rely upon allegations that Mr. Bartels violated his fiduciary duty as an officer and director as a basis for exercising personal jurisdiction, but SGRP also expressly included in the Amended Complaint a claim that Mr. Bartels allegedly breached the fiduciary duties he owed as a director and officer. The fact that Amended Complaint also includes a claim against Mr. Bartels in his capacity as a controlling stockholder in no way affects his entitlement to advancement as an officer and director.

14. The Company has breached its obligations to Mr. Bartels under the Bylaws by rejecting his demand for advancement.

COUNT I
(Specific Enforcement of Advancement Obligation Under Bylaws)

15. Plaintiff repeats and realleges the foregoing allegations set forth herein.

16. Mr. Bartels is an officer and director of the Company entitled to advancement of all expenses and costs, including legal fees, incurred in connection with the Delaware Litigation because he was sued in his capacity as an officer and director.

17. Mr. Bartels has complied with his obligations in connection with obtaining advancement by sending a written demand and executing the required undertaking.

18. Mr. Bartels has incurred, and will continue to incur, expenses and costs (including attorneys' fees) that are subject to advancement under the Bylaws.

19. Mr. Bartels is therefore entitled to the entry of an Order declaring that he is entitled to advancement under the Bylaws for all fees and expenses he has incurred and will continue to incur in connection with the Delaware Litigation and compelling the Company to promptly pay all unpaid fees to date, plus interest.

20. Plaintiff has no adequate remedy at law

COUNT II

(Specific Enforcement Of Fees on Fees Obligation)

21. Plaintiff repeats and realleges the foregoing allegations as if set forth herein.

22. Mr. Bartels has incurred attorneys' fees and expenses in enforcing and protecting his rights to advancement, including by commencing this action.
23. Both Delaware law and Section 6.12 of the Bylaws entitle Mr. Bartels to fees and expenses incurred in enforcing his rights to advancement.
24. Mr. Bartels, therefore, is entitled to an Order awarding him "fees on fees" in enforcing his rights to advancement in this action, plus interest.
25. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order:

- a) Declaring that Mr. Bartels is entitled to advancement of his legal fees and expenses incurred in connection with defending the Delaware Litigation;
- b) Specifically enforcing the obligation of the Company under the Bylaws to advance Mr. Bartels fees and expenses in connection with the Delaware Litigation;
- c) Compelling the Company to pay those fees and expenses on Mr. Bartels' behalf in accordance with the terms of the Bylaws, including pre-judgment and post-judgment interest on such fees and expenses, and declaring that payment must be made within thirty (30) days of receiving a redacted invoice and certification by Mr. Bartels' counsel;

- d) Awarding Mr. Bartels his legal fees and expenses incurred in prosecuting this action and ordering the Company to pay those fees and expenses to Mr. Bartels, including pre-judgment and post-judgment interest on such fees and expense; and
- e) Granting such other and further relief as the Court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Elizabeth A. Mullin

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November 28, 2018