UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-60907-CIV-MORENO

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.
_____/

RECEIVER JONATHAN E. PERLMAN'S MOTION TO ENFORCE SETTLEMENT AGREEMENT WITH RELIEF DEFENDANT JAMES MARCUS AND JENNIFER PEREZ

Jonathan E. Perlman, ("Perlman") "Permanent Receiver" for the Receivership Defendants[1] (the "Receiver") submits this Motion to Enforce Settlement Agreement relating to the real property located at 6665 Green Valley Circle #222, Culver City, CA 90230 (the "Property") currently titled in the name of Relief Defendant James Marcus, who is Defendant Jeremy Marcus' brother, and Jennifer Perez (James Marcus' wife). Relief Defendant James Marcus and his wife were gifted the Property by Receivership Defendant Halfpay International, LLC ("Halfpay") and Defendant Jeremy Lee Marcus, who used consumer funds for its purchase.

[1] Receivership Defendants are Financial Freedom National, Inc. f/k/a Institute for Financial Freedom, Inc. and Marine Career Institute Sea Frontiers, Inc. d/b/a 321 Loans, Instahelp America, Inc., Helping America Group, United Financial Support, Breeze Financial Solutions, 321Financial Education, Credit Health Plan, Credit Specialists of America, American Advocacy Alliance, and Associated Administrative Services, 321Loans, Inc., f/k/a 321 Loans, Inc. d/b/a 321Financial, Inc., Instahelp America, Inc. f/k/a Helping America Team, Inc. d/b/a Helping America Group, Breeze Financial Solutions, Inc. d/b/a Credit Health Plan and Credit Maximizing Program, US Legal Club, LLC, Active Debt Solutions, LLC f/k/a Active Debt Solutions, Inc. d/b/a Guardian Legal Center, Guardian LG, LLC d/b/a Guardian Legal Group, American Credit Security, LLC f/k/a America Credit Shield, LLC, Paralegal Support Group LLC f/k/a Paralegal Support LLC, Associated Administrative Services, LLC d/b/a Jobfax, Cockburn & Associate LLC, JLMJP Pompano, LLC, Halfpay International, LLC, Halfpay NV, LLC, HP Properties Group, Inc., HP Media, Inc., Omni Management Partners, LLC, Nantucket Cove of Illinois, LLC, Discount Marketing USA, S.A., Viking Management Services, LLC, White Light Media LLC, Blue42, LLC, and their divisions, subsidiaries, affiliates, predecessors, successors, and assigns.

I. INTRODUCTION

Relief Defendant James Marcus and his wife, Jennifer Perez, reached an oral agreement on all essential substantive issues with the Receiver in connection with the Property. As conceded by James Marcus' counsel "There is no problem with the concept, to which my client has already agreed, but there are some problems in the details." As the evidence clearly establishes, even the non-essential details referenced were soon resolved. This agreement was further evidenced by James Marcus' consent in the Stipulation of all Parties to Stay Proceedings and Toll Deadlines (the "Stipulation"). [ECF No. 224] In the Stipulation, James Marcus acknowledged his agreement with the Receiver and Plaintiffs' counsel. *Id.* Despite this agreement, when presented with an agreed motion to file with this Court, James Marcus and Jennifer Perez balked. The Receiver submits this motion to enforce the settlement reached.

II. THE AGREEMENT

With respect to the Property, the Receiver and his forensic accountants at KapilaMukamal, LLP ("KM") have traced and verified that the Property currently titled in the name of Relief Defendant James Marcus and his wife, Jennifer Perez, is in fact a Receivership Asset that was purchased with consumer funds provided by Receivership Defendant Halfpay and Defendant Jeremy Lee Marcus in September 2016. *See* Exhibit A. Relief Defendant James Marcus and his wife, Jennifer Perez did not provide any of the funds to acquire the Property and currently reside at the Property.

The Receiver's investigation further revealed that on or about May 13, 2017, days after the Plaintiffs filed this action, Relief Defendant James Marcus and his wife, Jennifer Perez, entered into a "cash out" mortgage with Watermark Capital, Inc. with the Property in the amount of $396,000.00 (the "Property proceeds"). The Receiver discovered that the Property proceeds

were deposited into and transferred into various bank accounts titled in the names of Relief Defendant James Marcus and Jennifer Perez at Bank of America. The Receiver put Relief Defendant James Marcus and Jennifer Perez on notice that the Property proceeds, as receivership property, were subject to this Court's asset freeze order. *See* Exhibit B.

The Receiver, Plaintiffs' counsel and Relief Defendant James Marcus (collectively, the "Parties") then sought to resolve the issues surrounding the Property and Property proceeds. Ultimately, the Parties agreed to the following:

1) James Marcus would immediately pay the Receiver $330,000 in cash from the Property proceeds;

2) James Marcus and Jennifer Perez would grant the Receiver a lien position on the Property for $167,279.51;

3) James Marcus would execute a promissory note which would be secured by a deed of trust (executed by Jennifer Perez, as well). The promissory note would accrue interest at 4% and become due and payable by James Marcus in 18 months (the "Balloon Payment")[2];

4) James Marcus and Jennifer Perez would execute a Deed in Lieu of Foreclosure, No Lien Affidavit and Bill of Sale to be held in escrow by the Receiver;

5) If James Marcus fails to make the Balloon Payment, then the Receiver could record the Deed in Lieu of Foreclosure; and

6) Upon completion of the foregoing, Plaintiffs' counsel would recommend dismissing Relief Defendant James Marcus from the case.

On March 21, 2018, the parties to the underlying action filed the Stipulation. [ECF No.

[2] On March 14, 2018, counsel for Relief Defendant James Marcus confirmed that his client "accepts the eighteen month proposal" on the terms of the promissory note. See Ex. C.

224] By agreement and with his consent, counsel for James Marcus' electronic signature was placed on the Stipulation. In the Stipulation, James Marcus, through his counsel, acknowledged his agreement with the Receiver and Plaintiffs' counsel:

> Similarly, the Relief Defendants, Jack Marcus and James Marcus, have entered into agreements with the Court-appointed Receiver to return funds that Plaintiffs' claim are the product of ill-gotten gains that they received for no return consideration. The Court has already approved one of those turnover agreements (Doc. 223), and the Plaintiffs' anticipate it will soon receive the second turnover agreement for its consideration. Plaintiffs' counsel therefore plan to recommend dismissing these Relief Defendants from the case.
> *Id. at pg. 2.*

Based upon the Stipulation, this Court entered an Order Closing the Case for Statistical Purposes and Placing Matter in Civil Suspension File (the "Stay Order"). [ECF. No. 227] as it relates to 30 Defendants and/or Relief Defendants, including James Marcus. In support of the Stay Order, this Court noted;

> Given the parties' settlement and the time necessary to obtain the necessary governmental approvals, the Court deems it advisable to place this case in a civil suspense file.
> *Id.*

Based upon the agreement reached, Receiver's counsel circulated a draft agreed motion for turnover to memorialize the settlement reached in writing for this Court's approval. On March 26, 2018, counsel for James Marcus provided Receiver's counsel with his comments to the proposed motion. *See* Exhibit D. In that letter, James Marcus' counsel wrote:

> I have reviewed the proposed motion for turnover that you forwarded to me. There is no problem with the concept, to which my client has already agreed, but there are some problems in the details.

Based upon the correspondence and a subsequent call with James Marcus' counsel, Receiver's counsel forwarded a revised motion. *See* Exhibit E. Again, counsel for James Marcus identified certain revisions to the proposed motion which the Receiver agreed to make

and ultimately provided a further revised motion which captured all of the comments made by counsel for James Marcus. *Id.*

Thereafter, counsel for James Marcus indicated that his client would not honor or perform the agreement reached. Prior to filing this Motion, counsel for the Receiver attempted to resolve the issues addressed herein with James Marcus without success.

III. LEGAL ARGUMENT

A. Legal Standard.

It is a "well-established principle that a district court possesses the inherent power to 'summarily enforce a settlement agreement entered into by litigants while litigation is pending before it.'" *Reed v United States*, 717 F. Supp. 1511, 1514-15 (S.D. Fla. 1988) (citation omitted). In addition, "[t]he Southern District of Florida has made it clear that public policy strongly favors the enforcement of settlement agreements in all types of litigation." *Baratta v. Homeland Housewares, LLC,* No. 05-60187-CIV-Marra, 2007 WL 2668585, at *3 (S.D. Fla. June 14, 2007) (citing *Sea-Land Serv., Inc. v. SeIlan,* 64 F. Supp. 1255, 1259 (S.D. Fla. 1999)).

"[A]ny considerations of a settlement agreement must commence with an understanding that compromise of disputed claims is favored by the Court and will be enforced if at all possible." *Baratta,* 2007 WL 2668585, at *3 (citing *Reed*, 717 F. Supp. 2d at 1514-15, and *Cia Anon Venzolana de Navagacion v. Harris*, 374 F.2d 33, 35 (5th Cir. 1967)). "The threshold issue is whether a final settlement agreement was reached by the parties. Florida contract law governs this analysis. An objective test is used to determine the parties' intent." *Reed*, 717 F. Supp. at 1515 (citation omitted).

Under Florida law, an enforceable settlement agreement may be reached orally or may be reduced to writing but never signed. *Reed*, 717 F. Supp. at 1516-17 (citation omitted); *Specialty*

Disease Mgmt. Servs., Inc. v. AIDS Healthcare Fund, No. 3:01-cv-13534-32TEM, 2003 WL 25608009, at *3 (M.D. Fla. Oct. 21, 2003) (citation omitted). "All that is required is that the terms be clear, definite and capable of proof." *Reed*, 717 F. Supp. at 1517 (citation omitted); *Specialty Disease*, 2003 WL 25608009, at *5 (concluding that parties "reached a binding oral settlement agreement that contained all essential terms," and noting that, "[w]hile it certainly was permissible (and perhaps even beneficial) for the parties to try to agree on a more detailed written agreement, having failed to do so, the oral settlement agreement [wa]s due to be enforced."); *Carpaneda v. Quayside Place Partners, LLP,* No, 09-20740-CIV-PAS, 2010 WL 2696958, at *2 (S.D. Fla. July 7, 2010) (concluding that parties entered into enforceable and binding written settlement agreement containing essential terms notwithstanding parties' disagreement regarding terms addressing how agreement would be implemented).

"[U]ncertainty as to nonessential terms or small items will not preclude the enforcement of a settlement agreement." *Specialty Disease*, 2003 WL 25608009, at *3 (quoting *Spiegel v. H. Allen Homes, Inc.,* 834 So. 2d 295, 297 (Fla. Dist. Ct. App. 2002)). For example, disagreement over non-disparagement or confidentiality provisions will not prevent enforcement of an otherwise complete settlement agreement. *Carpaneda* 2010 WL 2696958, at *2 (citation omitted). Rather, "[t]he agreement to agree is enforceable if it is sufficiently specific to be capable of implementation and all the essential elements are set forth." *Specialty Disease*, 2003 WL 25608009, at #4 (quoting *In re Sav-A-Stop Inc.,* 124 B.R. 356, 359 (Bankr. M.D, Fla. 1991)).

B. The Parties' Settlement Agreement Should Be Enforced.

The Parties in this case have agreed to a settlement that is unambiguous and covers all essential terms. James Marcus has acknowledged this settlement to the Receiver and stipulated

to this Court that a settlement was reached. It was only after the settlement was reached and the Receiver was capturing the settlement, in writing, through an agreed motion, that Relief Defendant backed out of the settlement.

IV. CONCLUSION

By way of this Motion, the Receiver seeks an order from this Court enforcing the settlement agreement. In the alternative, the Receiver would request that this Court grant the Receiver's motion for turnover of the receivership assets and proceeds being filed concurrently.

The Receiver has conferred with counsel for Plaintiffs who concur in the relief sought. Defendants Jeremy Marcus, Smith, and Segrea have no position on the relief sought.

WHEREFORE, the Receiver respectfully requests this Court to enter an Order to Enforce Settlement Agreement with Relief Defendant James Marcus and Jennifer Perez, together with such other and further relief as this Court deems just and proper.

Respectfully submitted this 30th day of April 2018.

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Jonathan E. Perlman, Court-Appointed Permanent Receiver
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300;
Facsimile: (305) 349-2310

By: /s/ Gregory M. Garno
Gregory M. Garno, Esq., FBN 87505
ggarno@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification and/or U.S. Mail to all parties on the attached service list on this 30th day of April 2018.

By: /s/ Gregory M. Garno, Esq.
Gregory M. Garno, Esq.

SERVICE LIST

Federal Trade Commission v. Jeremy Lee Marcus, et al.
USDC, SD Fla., Case No. 17-cv-60907-MORENO

Ryann Flack, Esq.
Ryann.Flack@myfloridalegal.com
Ronnie Adili, Esq.
Ronnie.Adili@myfloridalegal.com
Office of the Attorney General
Consumer Protection Division
SunTrust International Center
1 S.E. 3rd Ave, Suite 900
Miami, FL 33131
Telephone: (786) 792-6249
Attorneys for State of Florida, Office of Attorney General

Valerie M. Verduce, Esq.
vverduce@ftc.gov
Angeleque P. Linville, Esq.
alinville@ftc.gov
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303
Telephone: (404) 656-1355
Facsimile: (404) 656-1379
Attorneys for Federal Trade Commission

Jonathan E. Perlman, Esq.
jperlman@gjb-law.com
Gregory M. Garno, Esq.
ggarno@gjb-law.com
Allison Day, Esq.
aday@gjb-law.com
Theresa M.B. Van Vliet, Esq.
tvanvliet@gjb-law.com
Genovese Joblove & Battista, P.A.
Miami Tower, 44th Floor
100 Southeast 2nd Street
Miami, FL 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310
Receiver and his Counsel

Rachel Hirsch, Esq.
rhirsch@ifrahlaw.com
A. Jeff Ifrah, Esq.
jeff@ifrahlaw.com
Ifrah Law
1717 Pennsylvania Avenue, NW, Suite 650
Washington, DC 20006

Maurice B. VerStandig, Esq.
mac@mbvesq.com
The VerStandig Law Firm, LLC
12505 Park Potomac Avenue, Sixth Floor
Potomac, Maryland 20854
Counsel for Defendant Jeremy Lee Marcus and
Relief Defendants Halfpay International, LLC; Halfpay NV LLC;
JLMJP Pompano, LLC; and Nantucket Cove of Illinois, LLC

Edward Shohat, Esq.
eshohat@joneswalker.com
Barry S. Turner, Esq.
bturner@joneswalker.com
Jones Walker, LLP
201 South Biscayne Blvd., 26th Floor
Miami, FL 33131
Counsel for Defendants Craig Davis Smith and
Yisbet Segrea

Mark Wilensky, Esq.
dubiner_wilensky@bellsouth.net
Dubiner & Wilensky, L.L.C.
1200 Corporate Center Way, Suite 200
Wellington, FL 33414
Counsel for Relief Defendant James Marcus

Relief Defendants

Jack Marcus
jackmarcus@bellsouth.net
6436 Grand Cypress Cir.
Lake Worth, FL 33463
Relief Defendant Via Electronic Mail

Teresa Duda
110 Glouchester Street
Boca Raton, FL 33487
Pro Se via U.S. Mail