UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-60907-CIV-MORENO/TURNOFF

FEDERAL TRADE COMMISSION, and
STATE OF FLORIDA,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.,*

Defendants and Relief Defendants.
_____/

JAMES MARCUS' RESPONSE TO RECEIVER'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

Relief Defendant, JAMES MARCUS, by and through his undersigned counsel, hereby files his Response To Receiver's Motion To Enforce Settlement, and states:

I
INTRODUCTION

On September 28, 2017, the Court permitted the filing of an Amended Complaint, which named James Marcus as a relief defendant in this action. There are no allegations contained in that Amended Complaint that James Marcus was in any way connected to the activities of the Defendants which were alleged to be unlawful. The allegations against Mr. Marcus were that he received certain funds from two of the Defendants without providing consideration therefor. In fact, Mr. Marcus received a loan from Defendants Halfpay International, LLC, and Defendant Jeremy Marcus. Although the Receiver inaccurately claimed in his motion that certain property was gifted to James Marcus and his wife, in fact James Marcus received a loan from these Defendants which is documented by and subject

to the provisions of a Promissory Note. See, Exhibit "A."

Mr. Marcus, through his counsel, participated in settlement discussions with the Plaintiffs, who delegated those discussions to the Receiver. Counsel for the Receiver made offers to counsel for Mr. Marcus, which were considered, discussed and refined. The parties never reached a meeting of the minds and never agreed on the essential terms of a settlement, notwithstanding the attempt to do so. The Receiver's motion is brought against James Marcus and his wife, Jennifer Perez. Ms. Perez is not named in this action, has not appeared or filed any pleading or paper, and has not retained counsel or participated in any settlement discussions regarding this matter. See, Exhibits "B, "C," and "D" to Receiver's motion.

During the discussions with the Receiver and counsel for James Marcus, the Plaintiffs proposed and Mr. Martin agreed to a Stipulation To Stay Proceedings and Toll Deadlines, as the negotiations continued. The Receiver erroneously suggests in his motion that the entry into that Stipulation evinced a settlement of the action against Mr. Marcus. In actuality, the Stipulation advised the Court that the "Plaintiffs' (sic) anticipate it will soon receive the second turnover agreement for its consideration." That anticipated second turnover agreement referenced the ongoing, but still incomplete settlement discussions with Mr. Marcus. The parties were ultimately unable to agree upon the terms and conditions of that turnover agreement. The Stipulation recognized and advised the Court of the possibility that there would be no settlement. In the last sentence thereof, the Stipulation recited, "[I]f any of the recommendations are rejected (referring to the need of the Plaintiffs to receive approval for any settlement) *or agreements break down,* one or more of the Plaintiffs' counsel will promptly notify the Court by filing a motion to lift the stay

and recalculate the tolled deadlines as to the affected parties." (emphasis supplied)

Contrary to the claim of the Receiver, by agreeing to the Stipulation, Mr. Marcus did not indicate that a settlement had then been reached. He agreed to the tolling of deadlines while negotiations continued and specifically advised the Court that negotiations were continuing and that there was a possibility that they would break down. In fact, those negotiations did break down without an agreement being reached. The exhibits to the Receiver's motion make clear that there were ongoing negotiations and that there were disagreements on essential conditions which would have to be resolved between the parties well after the Stipulation was submitted to the Court. See, Exhibits "D" and "E," to Receiver's motion, which reference the circulation of proposals, the proposed changes to the proposals for settlement and the continuing negotiations, well after the date of the Stipulation. Receiver's claim that the Stipulation of March 21, 2018, was evidence that Mr. Marcus acknowledged that at that time a settlement had been consummated is simply contrary to the facts and the proof that the Receiver provided to this Court.

II
THE TRANSACTION

James Marcus executed a Promissory Note dated September 20, 2016, which documented a loan that he received from two of the Defendants. See, Exhibit "A." Mr. Marcus is a 34 year old artist living in Los Angeles, California, with his wife and thirteen month old child. He utilized the proceeds from the loan transaction to purchase a 1,250 square feet condominium in Culver City, California, where he lives with his family. He was not a party to this suit until late September, 2017, when named as a Relief Defendant, for allegedly having not provided consideration for the loan. In James Marcus' Answer to the

Amended Complaint, he denied that he possessed any assets that once belonged to any of the Defendants, including the receivership Defendants, which he obtained without providing consideration therefor. (D.E. 206). Since the time that James Marcus became a party to this action, there have been no motions, orders or other proceedings that challenged that denial, or adjudicated the facts of the issue created by the allegation and the denial of Mr. Marcus.

III
THE FAILED SETTLEMENT DISCUSSIONS

Negotiations between the parties to resolve the issues concerning Mr. Marcus took place. The motion claims that there were terms agreed upon, but presents no evidence supporting that there was a settlement, beyond a letter indicating that there was a satisfactory concept for settlement, See, Exhibit "D" to Receiver's motion. An agreement in concept is not enforceable when essential terms are left open. Suggs v. Defranco's, Inc., 626 So.2d 1100, 1101 (Fla. 1st DCA1993). Review of the proof presented through the Exhibits to the motion and this Response makes it evident that there was no assent and agreement as to the essential terms. In fact, that same exhibit, along with Exhibit "E" of Receiver's motion, reveals that the essential terms of settlement remained open and had not been resolved.

As is set forth in Exhibit "D," the only evidence of the actual negotiations, Plaintiffs' initial position was that Mr. Marcus would have to immediately repay the total amount of the loan, although no proceedings thereon had been instituted. Marcus declined. Plaintiffs then suggested that Mr. Marcus could repay the loan by proffering an amount of money that he had in his bank accounts from a refinance of his home, and pay the balance

through a mortgage on his home. There was a dispute as to the origin of the funds in the accounts of Mr. Marcus, which included monies earned and saved by his wife and him, which were unrelated to either the loan or the subsequent refinance of his homestead. After some discussion, the parties agreed on the amount of the cash proceeds, and that there would be a mortgage for the balance. The "concept" of a payment of cash and the imposition of a second mortgage on his property was conditionally accepted by Mr. Marcus, subject to agreement on the mortgage terms.

The Plaintiff insisted on a mortgage term of one year. That term was rejected by Mr. Marcus. After some back and forth, Mr. Marcus indicated that he would accept a mortgage term of eighteen months, subject to agreement on the language of the settlement documents, including the mortgage itself. Receiver proffered a Promissory Note to be executed by Mr. Marcus' wife. Mr. Marcus rejected having his wife be in any way indebted, as she was not a party to the loan, not indebted in any way to the Plaintiffs, and had not been sued, appeared in the case or had any discussions or role in any negotiations. He recognized that with her name on the deed of the home that was to be mortgaged, the Receiver would expect that she would sign the Deed to be held in Trust as security.[1] Counsel for Mr. Marcus wrote to the Receiver on March 26, 2017, indicating an agreement to the concept of a cash payment and mortgage, making clear that Mr. Marcus did not agree that his wife would incur any debt. He demanded that as a condition of the execution of any settlement documents and any new note and mortgage, satisfaction and cancellation of the Note held by Jeremy Marcus, which documented the debt that James

[1]Mr. Marcus had no authority to bind his wife to take any action. See, Exhibits "B" and "C."

Marcus incurred upon his receipt of the $496,518.25. See, Exhibit "D."

In the letter of March 26, 2018, counsel for Mr. Marcus referred to that Note and informed the Receiver:

> Mr. Marcus executed that Note to memorialize the original loan that he received from his brother. So far as I know, Jeremy Marcus owns and holds the Note, notwithstanding whatever his signature thereon as a Maker might mean. The payment to the Receiver of the funds, and the execution of the new Note and Deed in Trust, satisfies the amount due under the attached Note to Jeremy Marcus and his affiliated company. *That Note will have to be satisfied in conjunction with the new Note being executed.* Id. (emphasis supplied)

See Exhibit "D," of Receiver's motion.

The Receiver proffered new settlement documents. The terms and conditions set forth in those documents were rejected. Within an hour of his receipt of the documents, counsel for Mr. Marcus informed the Receiver:

> There is still nothing in the motion about the substitution of the new Note and Deed in Trust for the previously executed Promissory Note, for which a Satisfaction will be provided. *That is a condition of Mr. Marcus doing the things that the agreement requires him to do.* (emphasis supplied)

See, Exhibit "E" to Receiver's motion.

Receiver responded in writing that he would revise the documents to indicate that *Receiver* would satisfy the Note. See, Exhibit "E" to Receiver's motion. He had previously advised counsel by telephone that he could not provide a Satisfaction from Jeremy Marcus. That is why, in his email response to counsel for Mr. Marcus sent the following day (after the telephone conversation), the Receiver wrote:

> As we discussed, your client will need to speak to his brother in getting his agreement to satisfy the note.

See, Exhibit "E" to Receiver's motion.

When the condition of the satisfaction of the note, owned and held by Jeremy Marcus was not satisfied, the settlement discussions failed; and, in the words of the Stipulation, broke down. No settlement documents were executed. Counsel for Plaintiffs and the Receiver were notified by telephone that James Marcus did not agree to settle on the terms then on the table, and offered by the Receiver. Counsel for the FTC indicated that she would so inform the Court, and would recalculate dates for mediation and the taking of the deposition of Mr. Marcus. Counsel for the Receiver indicated that he wanted to file the instant motion, and asked that the Court not be so informed. See, Exhibit "D."

IV
ARGUMENT

A. **Legal Standard**

Federal courts can examine and summarily enforce settlement agreements entered into by litigants in a pending case. Ford v. Citizens & Southern Nat'l Bank, 928 F.2d 1118, 1121 (11th Cir.1991). It is state law on the interpretation of contracts which governs the validity of settlement agreements. Schwartz v. Florida Bd. Of Regents,807 F.2d 901 (11th Cir.1987); Robbie v. City of Miami, 469 So.2d 1384, 1385 (Fla.1985). By seeking the enforcement of what he claims to be a settlement agreement, the Receiver is requesting the equitable remedy of specific performance of contract. Ford, supra.,928 F.2d at 1122.

An agreement is binding if the parties agree on the essential terms and seriously understand and intend the agreements to be binding upon them. Blackhawk Heating & Plumbing, Inc., v. Data Lease Fin. Corp., 302 So.2d 404, 405 (Fla.1974); Williams v. Ingram, 605 So.2d 890, 893 (Fla. 1st DCA 1992); Gaines v. Nortrust Realty Management

Corp.,422 So.2d 1037, 1039-1040 (Fla. 3d DCA 1982). In determining the parties' intent, an objective test is utilized. Reed By and Reed Through Reed v. U.S., 717 F.Supp. 1511 (S.D.Fla.1988) (citing Robbie,469 So.2d at 1385),aff'd, 891 F.2d 878 (11th Cir.1991).

B. The Alleged Settlement Agreement Should Not Be Enforced

1. Enforcement Of The Alleged Settlement Agreement Is Barred By the Statute Of Frauds

In some situations, an enforceable settlement agreement maybe reached between parties to a suit even if not reduced to writing. Reed, supra. The Receiver seeks to rely on that general proposition in his motion. However, under Florida law, the Statute of Frauds, Section 725.01, Florida Statutes (1981), applies to litigation settlement agreements. In Perimeter Investments, Inc.,et. al, v. Amerifirst Development Company of Central Florida, Inc., etc. et. al, 423 So. 2d 586 (Fla. 1st DCA 1982) it was held:

> The dispositive hornbook issue is whether the Statute of Frauds, Section 725.01, Florida Statutes (1981), applies to litigation settlement agreements. We hold that it does, finding no legislative enactment, court rule or decisional authority that specifically exempts settlement agreements from its purview. Id.

The Florida Statute of Frauds provides in relevant part that:

> No action shall be brought whereby to charge ... any person upon ... any contract for the sale of lands, tenements or hereditaments, ... or upon any agreement that is not to be performed *within the space of 1 year* from the making thereof ... unless the agreement or promise upon which such action shall be brought, or *some note or memorandum thereof shall be in writing and signed* by the party to be charged therewith or by some other person by him thereunto lawfully authorized. § 725.01, Fla.Stat. (2017) (emphasis added). Id.

The period for performance of the settlement that the Receiver claims should be enforced is eighteen months. Such an agreement is barred by the Statute of Frauds. Dwight v.

Tobin, 947 F.2d 455, 459 (11th Cir.1991) (stating that "[u]nder well-settled Florida law, the statute of frauds bars the enforcement of a contract when the parties intended and contemplated that performance of the agreement would take longer than one year ...). To be within, and thus barred by, the provision in the statute of frauds concerning agreements "not to be performed within the space of one year from the making thereof," it must be shown that neither party's performance was intended to be complete within one year." Lundstrom Realty Advisors, Inc. v. Schickedanz Bros.-Riviera Ltd., 856 So.2d 1117, 1122 (Fla. 4th DCA 2003) (quoting Fla. Pottery Stores of Panama City, Inc. v. Am. Nat'l Bank, 578 So.2d 801, 804 (Fla. 1st DCA 1991). The Receiver's own motion makes that time frame clear.

Additionally, Section 687.0304(2) Florida Statutes (2017), expressly provides that a

> "debtor may not maintain an action on a credit agreement unless the agreement is *in writing*, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." Id. (emphasis supplied).

For the purposes of that statute, a credit agreement is defined as "an agreement to lend or forbear repayment of money ..., to otherwise extend credit, or to make any other financial accommodation." § 687.0304(1)(a), Fla. Stat. (2017).

Clearly, the agreement which the Receiver seeks to enforce, which is not in writing, violates Florida law. Finally, the alleged settlement agreement requires the execution of a Deed In Trust, which would transfer title to land to the Receiver. Such an agreement must be in writing, pursuant to the Statute of Frauds. § 725.01, Fla.Stat. (2017)

2. There Was Neither Mutual Assent Nor a Meeting Of the Minds

Were this settlement not barred by the Statute of Frauds, the Court would have to determine whether a final settlement was actually reached by the parties. Settlement agreements in Florida are interpreted and governed by the law of contracts. Williams v. Ingram, 605 So.2d 890 (Fla. 1st DCA 1992). The party seeking to enforce a settlement agreement bears the burden of showing the opposing party assented to the terms of the agreement. Carroll v. Carroll, 532 So.2d 1109 (Fla. 4th DCA 1988), rev. denied, 542 So.2d 1332 (Fla.1989).

To compel enforcement of a settlement agreement, its terms must be sufficiently specific and mutually agreed upon as to every essential element. See, e.g., Don L. Tullis and Assoc., Inc. v. Benge, 473 So.2d 1384 (Fla. 1st DCA 1985). "[T]he making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs - not on the parties having meant the same thing, but on their having said the same thing." Blackhawk Heating & Plumbing Co., Inc. v. Data Lease Fin. Corp., 302 So.2d 404, 407 (Fla.1974) (quoting Gendzier v. Bielecki, 97 So.2d 604, 608 (Fla.1957)).

To be judicially enforceable, a settlement agreement "must be sufficiently specific and mutually agreeable as to every essential element." Williams v. Ingram, 605 So.2d 890, 893 (Fla. 1st DCA 1992); Gaines v. Nortrust Realty Management, Inc., 422 So.2d 1037, 1039-1040 (Fla. 3d DCA 1982). The party seeking a judgment on the basis of a settlement has the burden to establish a meeting of the minds or mutual reciprocal assent to a certain and definite proposition. Williams v. Ingram, 605 So.2d at 893. A trial court's finding of a meeting of the minds must be supported by competent substantial evidence. Healey v. Healey, 658 So.2d 1096, 1099 (Fla. 1st DCA 1995).

Here, there was no such meeting of the minds. Mr. Marcus insisted, and through counsel expressed that he would not agree to the settlement terms proposed by the Receiver unless the Promissory Note owned and held by Defendant Jeremy Marcus was satisfied. The exhibits to the Receiver's motion provided two explicit writings to that effect. See, Exhibits "D" and "E" to Receiver's motion. Receiver offered instead to provide a Satisfaction of the Note from the Receiver. See, Exhibit "E" to Receiver's motion. That offer did not satisfy the specific demand and condition of settlement expressed and demanded by Mr. Marcus. The Receiver indicated that he could not effect a Satisfaction of the Note, and that Mr. Marcus himself could seek such a Satisfaction from Jeremy Marcus. See, Exhibit "D," and Exhibits "D" and "E" of the Receiver's motion. Pursuant to Florida contract law, the acceptance of an offer which results in an enforceable agreement must be (1) absolute and unconditional; (2) identical with the terms of the offer; and (3) in the mode, at the place, and within the time expressly or impliedly stated within the offer. Cheverie v. Geisser, 783 So.2d 1115, 1119 (Fla. 4th DCA 2001). Thus, an acceptance must contain an assent-or meeting of the minds-to the essential terms contained in the offer. Id. Clearly, the " two sets of external signs" in this case reveal that parties neither meant the same thing nor said the same thing. As the moving party, it was incumbent upon the Receiver to demonstrate mutual assent and a meeting of the minds concerning the issue of satisfaction of the Promissory Note. The Receiver did not do so.

3. Satisfaction Of The Promissory Note Was An Essential Term Not Agreed Upon.

When proposed settlement documentation was provided to Mr. Marcus, he made clear that he would not agree to settle unless he received a Satisfaction of the Promissory

Note that he had signed at the time that he received the original loan of $496,518.25. See, Exhibit "B' and D," and Exhibits "D" and "E" to Receiver's motion. The executed Promissory Note documents that debt. See, Exhibit "A." The Receiver alleges that those funds were used to purchase the home of Mr. Marcus, some two years ago. See, Exhibit "A" to Receiver's motion. The Receiver further alleges that Mr. Marcus took a mortgage on the property of $396,000.00. See, Exhibit "A" to Receiver's motion. The Receiver nonetheless alleges a settlement whereby Mr. Marcus would provide an eighteen month term mortgage of an additional $167,279.51, on that same property. The total debt on a property purchased for less than $500,000 would thereby total in excess of $1,000,000. Moreover, without the satisfaction of the original Promissory Note, Mr. Marcus would be paying the alleged debt of $496,518.25, twice. He would be liable on the original note, and pay an identical amount in cash and through the mortgage to be executed. Certainly, in this case, it was an essential term of the settlement that the original note be satisfied and cancelled upon the provision of new and different security for the debt. The payment to the Receiver of the funds, and the execution of the new Note and Deed in Trust, was to satisfy the amount due under the note to Jeremy Marcus and his affiliated company; and, was material and essential to the agreement of James Marcus to any settlement. See, Exhibit "B."

An essential term is determined on a case by case basis and the court must look to the "nature and complexity of each transaction." King v. Bray, (Fla. 5th DCA 2004). Of course, what is an "essential term" of a contract differs according to circumstances. But, surely, it must include the terms specified in an offer to make a contract. This is because an acceptance is effective to create a contract only if it is absolute and unconditional, and

identical with the terms of the offer. Ribich v. Evergreen Sales & Serv., Inc., 784 So.2d 1201(Fla. 2d DCA 2001). In other words, an acceptance must contain an assent to the same matters contained in the offer. Lickert v. Pike, 736 So.2d 724 (Fla. 2d DCA 1999). Any reasonable view of the matter of the demand of Mr. Marcus that the Promissory Note be satisfied as a condition of settlement, reveals its essential nature.

4. The Settlement Urged By the Receiver Requires The Assent of Jennifer Perez, Who Neither Took, Agreed To, Nor Authorized Settlement On Her Behalf

The Receiver claims a settlement was reached which should be enforced against Mr. Marcus. That alleged settlement agreement contained terms requiring action by Jennifer Perez, the wife of James Marcus. Jennifer Perez is not a party to the litigation, and neither participated in nor authorized any person who discussed settlement in this matter to make an agreement to settle on her behalf, or to bind her to act in any way. See, Exhibits "B," "C," and "D". Receiver does not suggest how this Court can impose a settlement upon and require action by a non-party, who neither agreed to the settlement nor authorized anyone to agree on her behalf. Generally, a contract does not bind one who is not a party to the contract, or who has not in some manner agreed to accept its terms. Whetstone Candy Company, Inc.v. Kraft Foods, Inc.,351 F.3d 1067 (11th Cir. 2003), and Florida case law authority cited therein.

The alleged settlement that Receiver advances in this matter requires Jennifer Perez to perform certain acts. She cannot be compelled to do so, and there is no proof proffered that she agreed to do so. As essential terms of the settlement agreement that the Receiver claims should be enforced require action by Jennifer Perez, the alleged

settlement agreement is unenforceable according to Florida law. A party may be liable on a contract if the evidence supports that the party acted as if the provisions of the contract were in force. See, James Register Constr. Co. v. Bobby Hancock Acoustics, Inc., 535 So.2d 339, 340 (Fla. 1st DCA 1988); see, also, Gateway Cable T.V., Inc. v. Vikoa Constr. Corp., 253 So.2d 461, 463 (Fla. 1st DCA 1971). However, such is not the case in this matter. Jennifer Perez is not alleged to have done anything at all to indicate assent to the terms of the alleged settlement agreement.

Florida law demands that before a settlement agreement may be recognized as valid, the party seeking to compel enforcement must show that the subject attorney (typically an attorney is alleged to have acted as a representative) had clear and unequivocal authority to settle on the client's behalf. Sharick v. Southeastern University of Health Services, Inc., 891 So.2d 562, 565 (Fla. 3d DCA 2004) ("A party seeking to compel enforcement of a settlement bears the burden of proving that an attorney has the clear and unequivocal authority to settle on the client's behalf."); Jorgensen v. Grand Union Co., 490 So.2d 214, 215 (Fla. 4th DCA 1986) ("[t]he law is clear that a client's express authority given to his attorney to settle his cause of action must be clear and unequivocal."). The "clear and unequivocal authority" standard is a stringent one, not easily satisfied by the moving party. Weitzman v. Bergman,555 So.2d 448, 449-50 (Fla. 4th DCA 1990) (noting that "[c]aselaw indicates that court's have been very stringent in what they find to be a 'clear and unequivocal' grant of authority") (citations omitted).

Here, no such authority has been proven or even asserted by the Receiver. Moreover, the existence of such authority is specifically denied by Ms. Perez and by Mr. Marcus and his counsel. While an attorney discussed settlement on behalf of Mr. Marcus,

ms. Perez had no attorney and no participant in the discussions. See, Exhibit "C." There is no basis to enforce a settlement requiring action by a third person who is not a party to negotiations, either directly or through an authorized representative.

V
CONCLUSION

The Receiver's Motion To Enforce Settlement Agreement with Relief Defendant James Marcus and Jennifer Perez must be denied.

I HEREBY CERTIFY that on this 14th day of May, 2018, I electronically filed the foregoing document with the Clerk of this Court by using the CM/ECF system. I also certify that the foregoing document is being served this date on all counsel of record either via transmission of Electronic Filing or another authorized manner for those counsel or parties authorized to receive electronically Notices of electronically Notice of Electronic Filing generated by the CM/ECF system.

/s/ Mark Wilensky
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UNSECURED PROMISSORY NOTE

Loan Amount: **$497,279.51**

Place: 6665 Green Valley Circle unit 222

Culver City, CA 90230.

Maturity Date: 12/01/2046

Date: 09/20/2016

FOR VALUE RECEIVED, **James R. Marcus** whose address is, **6665 Green Valley Circle Unit 222, Culver City, CA 90230, ("Maker" or "Borrower")** promises to pay to the order of **Jeremy L. Marcus and/or Halfpay International, LLC**, or any subsequent holder of this Unsecured Promissory Note ("Lender" and/or "Holder"), whose address is of **1410 SW 3rd Street, Pompano Beach, FL 33069**, the principal sum of **Four Hundred Ninety Seven, Two Hundered Seventy Nine Dollars and Fifty One Cents ($497,279.51)** ("Principal Amount" and/or "Loan"), with interest on the principal balance, at the rate of interest as set forth herein and payable as follows:

a. **Interest.** The Principal Amount shall bear interest at a fixed rate per annum equal to **Three (3.500%)** ("Interest Rate"). Interest shall be computed on the basis of a daily amount of interest accruing on the daily outstanding principal balance during a 366-day year multiplied by the actual number of days the principal is outstanding during such applicable interest period.

b. **Payment of Principal and Interest.** This is a bullet, interest only, **240-month** term (the "Term"), Promissory Note (hereinafter, the "Promissory Note"), with pre-payment penalties as set forth herein, with all accrued and unpaid interest and the entire principal balance then outstanding due at the Maturity Date. Makers promises to pay interest on the unpaid Principal Amount at the Interest Rate, compounded monthly, if applicable, from the Date of this Note until payment in full, as hereinafter provided. Monthly payments, representing interest only, payable in arrears, but calculated on the daily outstanding unpaid principal balance of this Promissory Note shall be due and payable commencing **December 1st 2016** and on the same day of each and every month thereafter until the Maturity Date, as set forth herein, at which time the entire unpaid principal balance and any unpaid and accrued interest shall become due and payable in full without demand. The monthly interest only payment is **$1,350.00**. Payments of principal and interest shall be made in lawful currency of the United States of America which shall be legal tender in payment of all debts, public and private, at the time of payment. Each payment hereunder shall be credited first to Lender's collection expenses, next to late charges, next to unpaid interest, and the balance, if any, to the reduction of the Principal Amount. The interest on this Note shall be calculated on the basis of a 366-day year and on the actual number of days in each month.

c. **Maturity Date.** The then outstanding principal balance, plus all accrued but unpaid interest, shall be due and payable in full on **12/01/2036.**

d. **Recast Provision.** This Unsecured Note has the option to the Maker to lower the monthly payment through a one-time recast (or re-amortization) of the interest-bearing portion of the loan. With a recast (or re-amortization), the scheduled interest rate(s) will not change, but the

EXHIBIT "A"

all earned incentives are applied) that will be paid over the remaining term of the loan. If the Maker chooses to recast the loan and make the recast payment, the Maker will not pay off the loan early. In addition, the Maker will pay more interest over the life of the loan than if he did not accept the recast and continued making your regularly scheduled payment.

e. **Pre-payment Penalty.** Provided this Promissory Note, as defined below, secured by this Note, or any other document executed in connection with the Note, the principal balance due hereunder may be prepaid, in whole or in part, at any time **without penalty** during the Term.

Each Makers, endorser and Guarantor, jointly and severally, waives demand, protest and notice of maturity, non-payment or protest and all requirements necessary to hold each of them liable as makers and endorsers and consents without notice to any and all extensions of time or changes in terms of payment by the holder of this Note.

Each Makers, Endorser and Guarantor, jointly and severally, agrees to pay all costs of collection, including reasonable attorney's fees, in the event it becomes necessary to protect the security hereof, whether suit be brought or not.

From and after the occurrence of an Event of Default, as such term is hereinafter defined, under this Promissory Note or the maturity thereof, whether normal maturity or accelerated maturity, the unpaid principal hereof shall bear interest at the greatest of 18% per annum or the highest legal rate permitted by Florida law. Notwithstanding anything herein to the contrary or consistent hereof, an event of default shall exist wherein a payment required herein is not made within ten (10) days of the due date.

This Unsecured Promissory Note is unsecured and is to be construed and enforced in accordance with the laws of the State of Florida. Upon default in the payment of any of the terms and conditions of the Note, and after the expiration of all applicable cure and grace periods, then, at the option of the Holder, the entire Principal Amount remaining unpaid, together with accrued interest, shall become immediately due and payable, without further notice.

It is agreed that the granting to the Makers of this Unsecured Promissory Note or any other party of an extension or extensions of time for the payment of any sum or sums due hereunder shall not in any way release or affect the liability of the Makers or any endorser or Guarantor for any sums due under this Promissory Note.

This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Borrowers, and any endorsers, sureties, guarantors and all others who are, or who may become liable for the payment hereof, severally, irrevocably, and unconditionally (a) agree that any suit, action, or other legal proceeding arising out of or relating to this Note may be brought, at the option of the Lender, in a court of record of the **State of Florida in Broward County, United**

States District Court for the Southern District of Florida, or in any other court of competent jurisdiction; (b) consent to the jurisdiction of each such court in any such suit, action or proceeding and (c) waive any objection which it or they may have to the venue of any such suit, action, or proceeding in any such court.

Upon the happening of any of the following events ("Event of Default"), each of which shall constitute a default hereunder, all sums due hereunder shall thereupon or thereafter, at Lender's option, without notice or demand, become immediately due and payable: (a) failure of any Obligor (which term shall mean and include each Makers, Endorser, Surety, Guarantor or other party liable for payment of or pledging collateral or security under this Note) to pay on or before expiration of any applicable grace period, any sum due hereunder or due by any Obligor to Lender under any other Promissory Note; (b) occurrence of default under any of the Loan Documents in effect which by its terms covers this Promissory Note or the indebtedness evidenced hereby; (c) filing of any petition under the Bankruptcy Code or any similar federal or state statute by or against any Obligor or the insolvency of any Obligor and not discharged and dismissed within 30 days from the filing thereof; (d) making of a general assignment by any Obligor for the benefit of creditors, appointment of or taking possession by a receiver, trustee or custodian or similar official for any Obligor or for any assets of any such Obligor or institution by or against any Obligor of any kind of insolvency proceedings or any proceeding for dissolution or liquidation of any Obligor which is not dismissed within thirty (30) days of the filing thereof;(e) entry of a final judgment against any Obligor which is not satisfied or transferred to bond within thirty(30) days of the date of entry or an appeal of such judgment timely filed and, in such event, not satisfied within thirty (30) days after such appeal is dismissed or the date of the appellate court entering a judgment upholding the trial court judgment in whole or in part; (f) material falsity in any certificate, statement, representation, warranty or audit at any time furnished to Lender by or on behalf of any Obligor pursuant to or in connection with this Promissory Note, the Loan Documents which by its terms covers this Promissory Note for the indebtedness evidenced hereby or otherwise including any omission to disclose any substantial contingent or liquidated liabilities or any material adverse change in any facts disclosed by any certificate, statement, representation, warranty or audit furnished to Lender; (g) cancellation of any guaranty with respect hereto without the prior written consent of Lender hereof; (h) the death of a guarantor, (i) if any interest in any Obligor is sold or transferred without Lender's prior written consent; or, (j) at Lender's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Obligor or Borrowers.

Without limiting the generality of the foregoing, upon the occurrence of an Event of Default hereunder, Lender may, at its option, and without notice or demand after the expiration of all applicable cure and grace periods (i) declare the entire unpaid principal and accrued interest accelerated and due and payable at once, together with any and all other liabilities of Makers or any such liabilities selected by Lender; notice is, at the option of Lender, hand delivered, sent via expedited courier, or mailed, postage prepaid to Makers, at the address given to Lender by Makers.

Notwithstanding anything herein to the contrary or already stated, all parties to this Promissory Note, whether Makers, principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, notice, protest, notice of protest and notice of dishonor and, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Makers under this Promissory Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Promissory Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Makers stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Makers and the Holder of this Promissory Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Makers.

The term "Makers" as used herein in every instance shall include the successors, legal representatives and assigns of the Makers, and shall denote the singular and/or plural, the masculine and/or feminine, and natural and/or artificial persons whenever and wherever the context so requires or admits. In addition to anything herein already stated, if the calculation of interest or the imposition of a change in the rate of interest after acceleration upon default or the payment of any fees or other charges which are construed to be interest under applicable law, rule, or regulation in effect from time to time, result in an effective rate of interest higher than that permitted to be paid under applicable law, rule, or regulation in effect from time to time, then such charges shall be reduced by a sum sufficient to result in an effective rate of interest no greater than the maximum effective rate of interest permitted to be paid under applicable law, rule or regulation in effect from time to time. The Lender may, in determining the maximum rate permitted under applicable law, rule or regulation in effect from time to time, take advantage of: (i) the rate of interest permitted by Florida Statutes Chapter 665 (Florida Savings Association Act), by reason of both Section 687.12 Florida Statutes ("interest rates: parity among licensed lenders or creditors") and 12 United States Code, Sections 85 and 86, and (ii) any other law, rule or regulation in effect from time to time, available to Lender which exempts Lender from any limit upon the rate of interest it may charge or grants to Lender the right to charge a higher rate of interest than that permitted by Florida Statutes, Chapter 687. Upon maturity of this Promissory Note, whether by acceleration or in due course, interest shall be recalculated over the actual life of the loan based upon the amounts outstanding, and if the total amount of interest theretofore paid exceeds the amount permitted to be paid under applicable law, rule, or regulation in effect from time to time, the excess shall be credited to Principal Amount, or if such excess exceeds the Principal Amount due hereunder, refunded to the Borrowers.

Notwithstanding anything consistent or contrary herein, this unsecured Note shall not be cross defaulted or cross collateralized with all other loans which Borrowers shall have from or shall have guaranteed to Lender (or any assignee, successor, subsidiary or affiliated entity of Lender) during the Term, whether existing as of the closing date or subsequently made. A default under any of the above-described other loans shall not constitute a default under this Note. A default under this Note shall not constitute a default under the above-described other loans.

Borrowers represent and warrant that this Promissory Note evidences a loan for a consumer-type transaction.

This Promissory Note shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted. Notwithstanding anything contained herein to the contrary, if there is more than one Maker or borrower, each Maker or borrower shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Promissory Note.

MAKERS, HOLDERS AND/OR GUARANTORS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION (INCLUDING BUT NOT LIMITED TO) ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREIN. MAKERS HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE MAKER, HOLDER AND/OR GUARANTOR, NOR THEIR RESPECTIVE COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE MAKERS, HOLDERS AND/OR GUARANTORS WOULD NOT, IN THE EVENT OF SUCH LITIGATION; SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. MAKERS AND GUARANTORS ACKNOWLEDGE THAT THE HOLDER HAS NOT BEEN INDUCED TO ENTER INTO THIS LOAN, INCLUDING THIS PROMISSORY NOTE, BY, INTER ALIA, THE PROVISIONS OF THIS PARAGRAPH.

Maker:

JAMES R. MARCUS

STATE OF California)

) ss.

Los Angeles **COUNTY)**

The foregoing instrument was acknowledged this ___ day of **September, 2016,** by **James R. Marcus** Individually, who is personally known to me or who has produced his _____ State issued Driver's Licenses as identification on behalf of himself

_____

Notary Public

See Acknowledgment Attachment

(Printed Name of Notary)

Commission Expires: _____

Commission Number: _____

Maker:

JEREMY L. MARCUS

STATE OF FLORIDA)

) ss.

BROWARD COUNTY)

The foregoing instrument was acknowledged this **20th day of September 2016,** by **Jeremy L. Marcus** Individually who is personally known to me or who has produced his Florida State issued Driver's Licenses as identification on behalf of himself.

PAUL A. HERMAN
Notary Public - State of Florida
My Comm. Expires Oct 27, 2017
Commission # FF 035303
Bonded Through National Notary Assn.

_____

Notary Public

PAUL A. HERMAN

(Printed Name of Notary)

Commission Expires: 10/27/17

Commission Number: FF 035303

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On October 31, 2016 before me, Michael Parra, Notary
(insert name and title of the officer)

personally appeared James R. Marcus,
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies),~~ and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

MICHAEL PARRA
COMM.# 2070066
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires June 1, 2018

This certificate is attached to a 7 page document dealing ~~with~~/entitled
unsecured promissory note and dated 9/20/2016.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-60907-CIV-MORENO/TURNOFF

FEDERAL TRADE COMMISSION, and
STATE OF FLORIDA,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants and Relief Defendants.
_____/

AFFIDAVIT

STATE OF CALIFORNIA)
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared JAMES MARCUS, who, being by me first duly sworn, deposes and says:

1. I have been sued in this matter as a relief defendant. I am 34 years old, an artist, and live in California with my wife and thirteen month old son.

2. I have never authorized any settlement in this case, and withdrew from settlement discussions when there was no agreement by the Receiver to secure a satisfaction of the prior Promissory Note from Jeremy Marcus.

3. I was aware that my lawyer, the Plaintiffs and the Receiver were discussing settlement, and was also aware of various proposals that were being exchanged. My lawyer was not given authority to make or accept any settlement without the Receiver providing a satisfaction of the Promissory Note from Jeremy Marcus.

EXHIBIT "B"

4. I gave my lawyer the authority to negotiate, but never gave him the authority to settle this matter. I always specifically retained the authority to approve any terms and conditions advanced by the Plaintiffs and Receiver, and to consider and decide whether to accept them.

5. I originally understood that the Receiver wanted my wife to sign on a note regarding the mortgage that he had requested. I never sought nor gained her agreement to do so. That term was rejected out of hand, without my consulting her, as I was unwilling to agree to any such term.

6. I did not authorize my lawyer to negotiate on behalf of Jennifer Perez, and did not have authority myself to negotiate on behalf of Jennifer Perez.

7. I did not waive conflict as to Jennifer Perez, and did not authorize my lawyer to represent her. To my knowledge they have never spoken.

8. I agreed to the concept of a mortgage and a cash payment to settle the matter, and was willing to accept a cash payment of $330,000, with the rest in a mortgage; but, at all times reserved approval of any actual settlement depending on the language of any note, mortgage, and settlement agreement.

9. I never authorized settlement, because the terms proffered by the Receiver did not include a satisfaction by Jeremy Marcus of the previous Promissory Note, and I never received documentation of terms that I agreed to.

10. I always insisted that if we agreed upon a mortgage, the Promissory Note that I had previously signed would have to be cancelled and deemed satisfied. That full satisfaction was essential. Without it, the total debt related to the original loan, the first mortgage on the home and the Receiver's proposed lien would have created a debt that

I could never repay. That was not acceptable to me. My understanding was that the Receiver would offer only a satisfaction from him, but not from Jeremy. I absolutely refused to accept anything that did not include a satisfaction fro Jeremy Marcus, who owned and held the original Promissory Note.

11. The original note was unsecured by property; but, was nonetheless a debt related to my home. I used the money from the loan that was documented by the Promissory Note to buy my home. I have a first mortgage on the home of almost $400,000. The unsecured note is in the amount of just under $500,000, and the Receiver proposed that he would tack on a mortgage in the amount of $167,000, if we were to settle. I did not agree to do that, and could not have ever afforded to do that. I insisted upon the total cancellation and satisfaction of the unsecured note from Jeremy Marcus; and, there was never an agreement to accept anything less. That term was material, essential and, without it there was no deal to be had.

12. It was suggested that I speak with my brother, and I spoke with him about it. However, I never was advised that in a settlement, the Plaintiffs would provide a satisfaction and cancellation from him. Without that term, I made clear that there was no settlement.

13. I was trying my best to work out a settlement of this matter, and fully intended to do so, if I could reach acceptable terms with the Plaintiffs. I still would like to do so. However, no such terms have been reached, and I have not authorized a settlement.

14. I understood that because we had reached the stage of trying to work out the details of a settlement, the Court was abating the case; so that no unnecessary time, effort and money were expended. I certainly agreed with that; and, understood that we had time

to try to work out an actual settlement. I was aware that if we did not, the abatement would end.

15. I have read the motion filed by the Receiver. I NEVER gave my lawyer authority to settle the case upon the terms set forth on page three in numbered paragraphs 1 - 6. This is not a situation where I agreed to something and changed my mind. I never agreed to the terms the Receiver claims constituted a settlement.

FURTHER AFFIANT SAYETH NOT.

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME THIS 13 DAY OF May, 2018, BY James Marcus, WHO IS PERSONALLY KNOWN TO ME OR WHO PRODUCED California Driver Lic. AS IDENTIFICATION.

A. Sheikh
NOTARY PUBLIC

My commission expires: 01-27-2021

A. SHEIKH
Notary Public – California
Los Angeles County
Commission # 2177954
My Comm. Expires Jan 27, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-60907-CIV-MORENO/TURNOFF

FEDERAL TRADE COMMISSION, and
STATE OF FLORIDA,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants and Relief Defendants.
_____/

AFFIDAVIT

STATE OF CALIFORNIA)
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared JENNIFER PEREZ, who, being by me first duly sworn, deposes and says:

1. I live in California with my husband and am a stay at home mom to our thirteen month old son. I was not sued in any capacity in this case.

2. I have never been involved in any settlement discussions or negotiations in this case.

3. I know of no agreement to settle the case.

4. I do not have a lawyer.

5. I have never authorized anyone to bind me to do anything relating to this case.

6. I have never met or spoken to Mark Wilensky, whom I am advised is my

EXHIBIT "C"

husband's lawyer.

7. Mr. Wilensky was never retained by me, or authorized to act in any way on my behalf.

8. I did not waive conflict as to my husband, and nobody has ever told me what that even means.

9. No person has or has ever had authority to speak for me or represent me in any matter which in any way relates to this case.

FURTHER AFFIANT SAYETH NOT.

Jennifer Perez
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME THIS 13 DAY OF May, 2018, BY Jennifer Perez, WHO IS PERSONALLY KNOWN TO ME OR WHO PRODUCED California Driver Lic. AS IDENTIFICATION.

A. Sheikh
NOTARY PUBLIC

My commission expires: 01-27-2021

A. SHEIKH
Notary Public – California
Los Angeles County
Commission # 2177954
My Comm. Expires Jan 27, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-60907-CIV-MORENO/TURNOFF

FEDERAL TRADE COMMISSION, and
STATE OF FLORIDA,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.,*

Defendants and Relief Defendants.
_____/

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared MARK WILENSKY, who, being by me first duly sworn, deposes and says:

1. I represent relief defendant James Marcus in this case.

2. I was involved in settlement negotiations in this case. My client never authorized any settlement in this case, and on his behalf, I withdrew from settlement discussions when there was no agreement by the Receiver to secure a satisfaction of the prior Promissory Note from Jeremy Marcus.

3. Negotiations began with the Plaintiffs demanding complete repayment of the prior note (loan) in full, up front. At a later point, the Receiver took over making offers to settle on behalf of the Plaintiff. Various offers were made. I was not given authority to make or accept any settlement without the Receiver providing a satisfaction of the

EXHIBIT "D"

Promissory Note from Jeremy Marcus.

4. I was given authority to negotiate, but not to settle this matter without the specific approval of Mr. Marcus. He never gave me authority to settle this matter. He always specifically retained the authority to approve any terms and conditions advanced by the Plaintiffs and Receiver, and to consider and decide whether to accept them.

5. When the Receiver offered to accept an up front payment and a mortgage on Mr. Marcus' home, on behalf of Mr. Marcus, I rejected the offer, because the up front money was well in excess of the amount that remained from the refinancing of the property. However, I advised the Receiver that the concept of a payment of cash in an acceptable amount and a mortgage to cover the balance was an acceptable concept.

6. After the Receiver offered a $330,000 payment and a mortgage, I asked him to write up the terms that he proposed.

7. It was around that point that the Plaintiffs' lawyer suggested that she would draft a Stipulation, advising the Court that all other parties had settled, and that it looked like we were settling, and seeking an abatement of the case, as the scheduling of depositions and mediation were upon us.

8. The Stipulation indicated that negotiations (in addition to an explanation of the Plaintiffs' decision making hierarchy) were continuing; and, that if they broke off, the Court would be advised. That was acceptable to my client and to me, and I agreed.

9. The terms sent to me in writing were not acceptable because they caused Jennifer Perez to assume a debt. I indicated that she would not do so, but that I understood that if we reached a settlement involving a mortgage and a Deed in Trust, her signature on those documents would be necessary for any settlement.

10. I never discussed any of that with Jennifer Perez, and in fact to the time of this writing have not communicated with her in any way about anything. I have never even heard her voice.

11. I never sought or gained authority to bind Jennifer Perez. I never expressed to any person that I represented Jennifer Perez. I do not represent Jennifer Perez. I could not represent Jennifer Perez, as to do so would be a conflict with my representation of James Marcus.

12. Terms that did not involve Ms. Perez assuming any debt were verbally discussed, and I asked for new documents, reflecting the new offer, for my client to consider.

13. Those documents were not accepted because they did not contain a satisfaction and cancellation of the original note and mortgage from Jeremy Marcus.

14. I explained to the Receiver that the concept of a note and mortgage type of settlement was agreeable, but that a satisfaction and cancellation of the original Promissory Note had to be included. I explained that the debt related to the loan would be due twice without that satisfaction, and that my client would not agree to any settlement that did not include cancellation of the original note.

15. There was never a settlement, because the terms proffered by the Receiver did not include a satisfaction by Jeremy Marcus of the previous Promissory Note, and I never received documentation of terms to which there were agreement.

16. I always advised that if there was to be a note with the new mortgage, the Promissory Note that Mr. Marcus had previously signed, and was owned and held by Jeremy Marcus, would have to be cancelled and deemed satisfied. That full satisfaction

was essential. Without it, the total debt related to the original loan, the first mortgage on the home and the Receiver's proposed lien would have created a debt that Mr. Marcus could never repay. That was not acceptable to Mr. Marcus, and I expressed that to the Receiver.

17. Both on the telephone and in an email, the Receiver told me that while he would execute a satisfaction, he could not gain a satisfaction from Jeremy Marcus. He suggested that Mr. Marcus speak to Jeremy Marcus about a satisfaction.

18. I explained both on the phone and in an email that the satisfaction from Jeremy Marcus was an essential element of any settlement. I recall that I said it was a condition to Mr. Marcus agreeing to the other parts of the settlement that he proposed. I also told the Receiver that I would pass on the suggestion that James Marcus speak to his brother.

19. Shortly thereafter, before the settlement documents were further revised, and while the settlement offer did not include the essential agreement to satisfy the original note, I advised the Receiver that Mr. Marcus rejected his offer. The Receiver asked why the offer was being rejected, and I told him that without a satisfaction of the original note from Jeremy Marcus, there was no settlement.

20. Some time later, I received a telephone call from the Plaintiffs' lawyer. The Receiver was on the line. She advised that she had been told that settlement talks had ended unsuccessfully and I confirmed that fact. I do not believe that the reason was asked for or given. She indicated that she would tell the Judge that the case should be reactivated, and I agreed. There were a few threats about depositions and mediation, which I took to be warnings that now that there was no settlement, Mr. Marcus' costs of

defense would rise. At the end of the conversation, the Receiver's counsel asked the Plaintiffs' lawyer to hold off on advising the Judge and reinstating the litigation, because he had some ideas about compelling a settlement. They decided to speak without me on the telephone, and that call ended.

21. I have read the motion filed by the Receiver. There was no agreement given or expressed to settle the case upon the terms set forth on page three in numbered paragraphs 1 - 6.

22. This is not a situation where Mr. Marcus agreed to something and changed his mind. There was never an agreement to the terms the Receiver claims constituted a settlement.

FURTHER AFFIANT SAYETH NOT.

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME THIS 14 DAY OF MAY, 2018, BY MARK WILENSKY WHO IS PERSONALLY KNOWN TO ME OR WHO PRODUCED _____ AS IDENTIFICATION.

NOTARY PUBLIC

My commission expires:

RICHARD PATTERSON
MY COMMISSION # GG 074708
EXPIRES: March 14, 2021
Bonded Thru Notary Public Underwriters