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' AMENDED EMERGENCY MOTION FOR IMMEDIATE STAY OF ORDER, MOTION FOR RELIEF FROM ORDER, AND FOR APPROPRIATE TIME TO FILE RESPONSE
(solely amends conferral certification)

Relief Defendant, JAMES MARCUS, by and through his undersigned counsel, hereby files his Amended Emergency Motion For Immediate Stay of Order, Motion For Relief From Order pursuant to Rule 60 FRCP, and for Appropriate Time To File Response, and states:

1. On April 30, 2018, the Receiver filed (DE 234) a Motion For Turnover of Real Property by Relief Defendant James Marcus("the motion").

2. On May 10, 2018, well before the time for response to the motion by James Marcus pursuant to the Rules; and, without affording James Marcus the opportunity to respond, the Court entered an Order granting the Receiver's motion (hereinafter "the order").

3. *Basis For Emergency Consideration*: That order, entered without giving James Marcus the opportunity to be heard and to file a response to the motion as guaranteed by S.D. Fla. L.R. 7.1 (c), subjects the property of James Marcus to immediate

turnover without further proceedings. Absent this matter being considered immediately and on an emergency basis by the Court, irreparable damage will be done to James Marcus and his property. There will otherwise be no adequate remedy for James Marcus to be protected from such harm. Those circumstances, in light of the matters set forth below, constitute good cause to be considered on an emergency basis.

4. This application is timely made and filed on the first business day following the service of the order and its posting.

5. This application is made pursuant to Rule 60 (a), (b)(3), and (b)(6) FRCP.

6. The Court's order resulted from a mistake arising from oversight or omission; and, relief from it should be afforded pursuant to Rule 60 (a) FRCP.

7. While it is clear on the face of the order that it was entered without Mr. Marcus being afforded the opportunity to respond as provided to a party opposing a motion by Local Rule 7, it is unclear as to why the Court took that action.

8. The motion itself certifies that Receiver consulted with three Defendants and the Plaintiffs. Contrary to Local Rule 7, the motion does *not* recite, as *required* by the Rule, that the Receiver conferred or attempted to confer with Relief Defendant James Marcus. James Marcus is a party with whom the Receiver was required to confer, or make reasonable effort to confer in good faith, as he was and is the party *most* affected by the relief sought in the motion.

9. As a result, the Court, in reviewing the motion, would have been left to believe in error that there was no affected party who either did not agree to or support the relief sought. Accordingly, relief from the order should be given pursuant to Rule 60 (b)(3) FRCP.

10. As the right to respond to the motion is guaranteed by the Rules and mandated by concepts of due process, relief should be granted pursuant to Rule 60 (b)(6) FRCP.

11. Because James Marcus was prevented from filing his response to the motion prior to it being considered and ruled upon by the Court, the order erroneously entered should be stayed until the Receiver's motion is fully resolved. Failure to stay the order will result in irreparable damage to James Marcus, his wife and young child, as all of the funds that they have as well as their homestead stands to be taken without due process.

12. The order adjudicating the motion without affording James Marcus the opportunity to be heard and to respond prevents Mr. Marcus from filing his response when it would otherwise be due. It is requested that the Court allow Mr. Marcus a reasonable time after the granting of this motion to file that response.

MEMORANDUM IN SUPPORT OF MOTION

I
INTRODUCTION

Relief Defendant James Marcus became a party to this matter some six months after it was filed, when this Court granted Plaintiffs' motion to amend the Complaint (D.E. 122), on September 28, 2017. (D.E.125). The Amended Complaint added James Marcus as a relief defendant in this action. No wrongdoing was asserted on the part of Mr. Marcus. The only allegation made against him was that he had been gifted certain property for which no consideration passed. In James Marcus' Answer to the Amended Complaint, he denied that he possessed any assets that once belonged to any of the defendants 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 in any way challenged that denial, or adjudicated the facts of the issue created by the allegation and the denial.

It cannot be disputed that James Marcus received a loan from Halfpay International, LLC, a company owned by his brother. It also cannot be disputed that the loan is secured by a promissory note, an executed copy of which is attached hereto and incorporated herein as Exhibit "1."

Although the Receiver's motion asserts that the documented loan proceeds were "gifted" to James Marcus, that allegation is refuted by the existence of a promissory note documenting the loan of the funds. Receiver's claim of a gift would have been strongly contested by James Marcus in his response to the motion, had the Court not ruled before the response to the motion was due and could be filed.

Although the Preliminary Injunction entered in this case does not mention James Marcus, his property or in any way take action to cancel, foreclose or otherwise address the promissory note that documented the consideration given by James Marcus for the loan of the funds at issue, the Receiver acted to freeze all of the bank accounts of James Marcus. That freeze is presently being contested in a pending motion filed by James Marcus, for which the Receiver's response is not yet due. Accordingly, no order has yet been entered on it. The Receiver filed two motions, one to enforce an alleged settlement agreement; and, the other, the motion for turnover, which was erroneously ruled upon by the Court without James Marcus being afforded an opportunity to respond. In fact, the Receiver asserted that the motion for turnover was filed in the alternative, should the Court not enforce what he alleged to be a settlement agreement. The response to the motion to enforce settlement agreement is not yet due and has not yet been filed. Accordingly,

no order has been entered on it. It is being strongly contested on the facts and the law; and, has been referred by this Court to Magistrate Judge Seltzer for further proceedings. However, without resolution of that motion, this Court entered the order which is the subject of this motion, granting relief that the Receiver claimed was sought only in the event that what he claimed to be a settlement agreement was not enforced.

II
LEGAL ARGUMENT

Local Rule 7.1 of the Southern District of Florida sets forth the briefing schedule for motions filed in this Court. Ashe v. M/Y After Hours, etc., 2014 WL 12570245 (S.D. Fla. April 15, 2014); S.D. Fla. L.R. 7.1(c). In pertinent part, Local Rule 7.1(c) states:

> **(c) Memorandum of Law**. For all motions, except motions served with the summons and complaint, each party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. Failure to do so may be deemed sufficient cause for granting the motion by default. The movant may, within seven (7) days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court. All materials in support of any motion, response, or reply, including affidavits and declarations, shall be served with the filing. For a motion served with the summons and complaint, the opposing memorandum of law shall be due on the day the response to the complaint is due.
>
> (1) *Time*. Time shall be computed under this Local Rule as follows:
> (A) If the motion or memorandum was filed via CM/ECF or served by hand-delivery, count fourteen (14) days (seven (7) days for a reply) beginning the day after the motion, response, or memorandum was filed via CM/ECF or certified as having been served by hand-delivery. The last day is the due date. If the last day falls on a Saturday, Sunday, or legal holiday, the period continues to run until the next business day, which is the due date for the opposing memorandum or reply.
>
> (B) If the motion or memorandum was served only by mail, count fourteen (14) days (seven (7) days for a reply) beginning the day after the motion, response, or memorandum was certified as having been mailed. Court three

> (3) more days. The third day is the due date for the opposing memorandum or reply. If the third day falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

As set forth in the order of May 10, 2018, the Receiver's motion was filed on April 30, 2018. The clear dictates of the Rule provide that the "party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion." To determine the date his response was to be filed, James Marcus would "count fourteen (14) days (seven (7) days for a reply) beginning the day after the motion, response, or memorandum was filed via CM/ECF or certified as having been served by hand-delivery. The last day is the due date." The due date is thus May 14, 2018. The order of the Court was signed on May 10, 2018.

The Federal Rules of Civil Procedure are designed to further the due process of law that the Constitution guarantees. cf. Fed. Rule Civ. Proc. 1 (Rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.") Nelson v. Adams, 529 U.S. 460 (2000). In Nelson, supra, the Supreme Court considered a case where judgment was entered by the Court after an amended pleading was filed, without permitting the added party to first respond within the time set forth by rule (there, Rule 15, FRCP). The Supreme Court held:

> Rule 15 and the due process for which it provides, however, demand a more reliable and orderly course...Nelson was never afforded a proper opportunity to respond to the claim against him. Instead, he was adjudged liable the very first moment his personal liability was legally at issue. Procedure of this style has been questioned even in systems, real and imaginary, less concerned than ours with the right to due process. Id.

The situation at bar is directly analogous. James Marcus was never afforded a proper opportunity to respond to the claim against him, as presented by the Receiver's motion. "The essential requirements of due process ... are notice and an opportunity to respond.

The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement..." Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). Nicholson v. Grant, 816 F.2d 591(11th Cir. 1987).

The initial question in a due process claim is the determination of what process is due. Here, that process is determined and defined by the clear dictates of the Local Rule. That Rule states that the party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. In Nelson, supra, it was determined that the time for response set forth in Rule 15 determined the process that was due. The same should be true with regard to the time set forth in S.D. Fla. L.R. 7.1 (c). The fundamental requisite of due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385 (1914).

As an additional ground upon which relief should be granted, the Receiver neither conferred with James Marcus, nor certified an attempt to do so, as required by Local Rule 7. The pre-filing certificate required by Local Rule 7.1(a)(3), mandates that the movant first confer (or make a reasonable effort to confer) before filing the motion. That local rule also requires the movant to include a certification about the conferral. Latele Televsion, C.A. v. Telemundo Communications Group, LLC, 2015 WL 11201191 (S.D. Fla., Feb. 05, 2015). The Rule requires, except in a few enumerated circumstances, that, prior to filing any motion, movant's counsel must "make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues raised in the motion." S.D. Fla. L.R. 7.1 (a)(3).

The Local Rule exempts certain types of motions from the pre-filing conference requirement, but a motion for turnover is not one of the excepted matters. In fact, the motion contains a certification, but is incomplete and totally misleading. The certification states that conferral took place in this case; but, the certificate significantly omits any indication that there was conferral with *this* Relief Defendant, the owner of the property at issue, and the party most directly affected by the relief requested in he motion. That is the party to whom the duty to confer is most specifically directed.

Here no such conferral is certified. Had the Court been advised, in the required certification, that there was in fact a party (in this case the party who was most) affected by the relief sought in the motion who in fact objected, the Court likely would not have treated the motion as though it was not opposed. However, the consequences of such a hypothetical conferral are unknown because the mandatory pre-filing conference never occurred. In addition to vacating and providing James Marcus relief from the order improvidently entered, the motion itself should be denied on this ground alone. See, U.S. v. Twenty-Nine Pre-ColumbianEyeglasses, 2014 WL 4655737 (S.D. Fla., Sep. 17, 2014).

In Royal Bahamian Ass'n, Inc. v. QBE Ins. Corp., 744 F. Supp. 2d 1297, 1298 (S.D. Fla. 2010), Judge Goodman explained in detail the requirements of Local Rule 7.1(a)(3):

> The rule requires the movant to certify that one of two possible scenarios occurred: (1) that movant's counsel did, in fact, confer but was unable to resolve the issues, or (2) that movant's counsel made 'reasonable efforts' to confer but has been unable to do so. If movant uses the latter type of certification, then movant's counsel must 'identi[fy] with specificity' the efforts taken in the unsuccessful attempt to confer. The rule also provides that if the movant fails to comply with the rule, the court may grant or deny the motion and impose an appropriate sanction. Id. Here, there was no conferral, no explanation for the failure to so confer, and thus no expression that the motion was in fact, opposed." Id.

The effect of the improvidently entered order places the property of James Marcus

and his wife and son in immediate jeopardy of being immediately taken from them. Accordingly, a stay of the order is requested while this motion is before the Court. Additionally, James Marcus is precluded from filing his response to the Receiver's motion, as the motion has in fact already been decided. When the improvidently entered order is vacated, a reasonable time for response should be afforded to him.

III
CONCLUSION

It is clear that the Court decided the Receiver's motion without affording relief Defendant James Marcus the opportunity to respond to it, to which he was entitled pursuant to S.D. Fla. L.R. 7.1 (c). Movant had a right to an opportunity to be heard in opposition to the motion before it was decided by the Court. The order entered should be vacated, and determined to be of no force and effect. In order to protect the interest of James Marcus and his family, an immediate stay of the order should be entered. A district court has a general discretionary power to stay proceedings before it in the control of its docket and in the interests of justice. Hines v. D'Artois, 531 F.2d 726 (5th Cir.1976). Also, as Mr. Marcus is precluded by the entry of the improvident order from timely filing his response to the motion in the allotted 14-day period, James Marcus should be allowed a reasonable period of time to respond to the Receiver's motion for turnover.

The undersigned made reasonable efforts to confer with all parties who may be affected by the relief sought in the motion in a good faith effort to resolve these issues without the need for proceedings or the emergency certification, but was unable to do so. On May 13, 2018, emails were sent to counsel for all such parties, seeking both a resolution of the issues in the motion, and an agreement to delay execution of the order until the ruling of the Court, so as to eliminate the emergent nature of the relief sought.

Neither the Plaintiffs, the Receiver nor Defendants Jeremy Marcus, Smith and Segrea, have responded in any way.

I HEREBY CERTIFY that on this 16th 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
MARK WILENSKY
DUBINER & WILENSKY, L.L.C.
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Telephone (561) 655-0150
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Fla. Bar No. 290221
E-Service: dubiner_wilensky@bellsouth.net

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 "1"

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.