UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

FEDERAL TRADE COMMISSION, and
STATE OF FLORIDA,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants and Relief Defendants.
_____/

JAMES MARCUS' MEMORANDUM IN OPPOSITION TO RECEIVER'S MOTION FOR TURNOVER

Relief Defendant, JAMES MARCUS, by and through his undersigned counsel, hereby files his Memorandum In Opposition To The Receiver's Motion For Turnover 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 alleges in his motion that certain property was "gifted" to James Marcus and his wife, the

actual facts are that James Marcus received a loan from certain of the Defendants, and signed and obligated himself to repay that loan upon specified terms and conditions which are documented in the provisions of a Promissory Note. See, Exhibit "A." The Promissory Note is in the full amount of the loan proceeds, and constitutes not only reasonably equivalent value for the property transferred, but constitutes full and complete equal value.

The actual proof (rather than the bare and unsupported allegations of the Receiver's motion), is that there are no allegations of fraudulent conduct on the part of James Marcus. Neither is there proof nor allegation that James Marcus stands to be unjustly enriched by a fully documented loan transaction. Mr. Marcus is nothing other than a third party transferee for value. The Receiver's assertion that the material facts of the motion are undisputed is simply contrary to the facts. This motion and the relief sought therein is not about Defendant Jeremy Marcus. Whether or not Jeremy Marcus asserted his privilege against self incrimination to discovery requests and at deposition has no relevance to any of the issues in this motion. The Receiver neither cites authority nor presents persuasive argument as to how another person's exercise of his constitutional rights has any bearing, or provides any inferences whatsoever, for another person. The presentation of pages of "facts," allegations and law regarding the actions of Jeremy Marcus and the scheme to which he has admitted is a transparent attempt to substitute innuendo for reasoning. Whatever Jeremy Marcus did or did not do has no relevance to the issues of this motion. Those issues center on whether the loan for value made to this relief defendant was an improper and unlawful transfer.

The "investigation" of the Receiver regarding the origin of the funds loaned to James Marcus, and his subsequent use of the funds he acquired completely avoids the seminal

issue in this matter. James Marcus neither disputes nor endorses the allegations concerning the other Defendants. There is no allegation, and absolutely no proof that he had any role in whatever illegal acts are alleged. The Affidavit of the Receiver's accountant does not identify, contradict or provide any factual support for any of the issues surrounding the documented loan of money, for equivalent value, received by James Marcus. To the extent that the Receiver claims that all that he must prove to justify the summary turnover of property in the possession of a bona fide third party transferee for value, he ignores the well settled law of the bona fide purchaser doctrine. Neither the law, nor the language of the preliminary injunction in this case authorizes such a result.

II
Legal Argument

The Receiver makes the bare assertion that James Marcus would be unjustly enriched if permitted to retain the property which was the subject of the loan. He offers no proof in support of that proposition. Rather than provide that proof, he suggests that James Marcus took the property "for no consideration." As is clear from Exhibit "A," that simply is untrue. Moreover, the Receiver does not supply any proof or basis for that assertion. Instead, the Receiver simply states his position as though it is a conclusion. Likewise, the Receiver asserts that a constructive trust lies "in respect to property acquired by fraud, though originally acquired without fraud." It is correct that the property at issue was acquired without fraud, and Receiver does not provide proof to the contrary. A constructive trust can then attach if it is against equity that it should be retained by him who hold it. There is neither proof nor reasoning provided as to why it is against equity for a third party transferee to retain possession of property acquired for equal value. The

Receiver wants this Court to assume his position correct because he asserted it in italics. Such a presentation, devoid of fact and /or legal support, cannot stand.

The Receiver presents legal authority, in the nature of long string citations to authority not relevant to the question herein presented, that an equitable lien can be established in Florida against property secured through fraudulent conduct. However, none of the cases cited concern or address a situation where that lien was sought against a third party purchaser for value, without notice. The Receiver notes that he provided James Marcus with evidence of this lawsuit and the preliminary injunction entered by the Court (which does not mention him or the property, and was entered many months before he was made a relief defendant). Review of Exhibit "B" makes clear that although the Receiver does not mention it in his motion, that notice was provided more than fifteen months after the loan to James Marcus was made. It cannot be disputed that:

> Under Florida law, when a person acquires title to property by giving value without notice of another's constructive trust or equitable lien, then that person is bona fide purchaser who acquires title without being subject to constructive trust or equitable lien. Restatement of Restitution §§ 172, 173, Williams v. Alosi, 271 B.R. 676 (Bankr.M.D. Fla. 2002).

The Receiver also does not address the bona fide purchaser doctrine in his recitation of the law regarding Chapter 726 Florida Statutes (2017). That doctrine of bona fide purchaser is equally applicable to the provisions of Chapter 726 (Florida Statutes). See, In re Shannis, 229 BR 234 (Bankr. M.D. Fla. 1999). While James Marcus does not quarrel with the general principles set forth in that statute, any more than he quarreled with the general principles of the law regarding either the imposition of a constructive trust or an equitable lien, recitation of those principles are not germane to the matter before this

Court. Here, unlike any of the cases cited by the Receiver, Mr. Marcus was a bona fide purchaser without notice. He gave equivalent value for the loan he secured. He neither committed, nor is accused of being in any way involved in, any fraud or similar misdeed.

Additionally, Chapter 726 contains exceptions and defenses clearly relevant to the matter before the Court. In his argument presented in pages two and three of the motion, the Receiver alleges that the property for which he seeks turnover is titled in the names of James Marcus, and his wife, Jennifer Perez. Under Florida law, property that is absolutely exempt cannot be reached by creditors, even if disposed of with a purpose to hinder, delay, or to defraud, because the creditors never had the right to look at such property in the first place. Sneed v. Davis, 135 Fla. 271, 276–77, 184 So. 865 (Fla. 1938). Thus, that property is not subject to Chapter 726 analysis. In re McCuan, 569 B.R. 511 (M.D. Fla. 2017). Under both the fraudulent transfer provisions of the Bankruptcy Code *and the* Florida Uniform Fraudulent Transfer Act ("FUFTA")[1], a transfer of property that is exempt from creditors may not be the subject of an action to avoid a fraudulent transfer. See, Sneed v. Davis, supra; see, also, In re Goldberg, 229 B.R. 877, 882–83 (Bankr. S.D. Fla. 1998). The absence of reasonably equivalent value is a required element of Fla. Stat. §§ 726.105 (1)(b) and 726.106(1). In re Berkman, 517 B.R. 288 (Bankr. M.D. Fla. 2014). Here, as shown above, completely equal value was given. The Receiver's allegations regarding intent are equally lacking in proof. Receiver references the "badges of fraud," as indicating the intent to hinder, delay or defraud. However, the Receiver provides no proof of any of those "badges." Contrary to the continued bald assertion of the Receiver to the contrary,

[1] Chapter 726 Florida Statutes

there was adequate consideration given for the loan to James Marcus, in the promissory note of equal value to the loan itself. See, Exhibit "A" and Exhibit "C" of Receiver's motion. The mere fact that James Marcus is the brother of Jeremy Marcus, without more, establishes nothing. Nothing more is proven. Certainly no authority exists which prevents a relative from making a loan for value, merely because of the familial relationship. The lender retained no part of the benefits or use of the property. There is no allegation that the transaction caused the financial insolvency of the lender, nor is there anything about the timing of the transaction, many months before any suit or threat of suit by the Plaintiffs. It is clear that for all of these reasons, the Receiver cannot prevail upon the proof presented in this motion, under Chapter 726.

The Receiver attempts to utilize his own failure of proof to somehow prove that which did not prove. Receiver claims that while the accountant's analysis shows the origin of the loan funds, he then claims that there is no evidence that the Receivership defendants received anything as consideration for the transfer of the property to James Marcus. The Court can only speculate as to why the accountant did not address the Promissory Note in the Affidavit submitted. It is attached to the motion as Exhibit "C." The Receiver dismisses the clearly presented consideration with a number of unsupported assertions. First he claims that James Marcus never made a payment on the Note. Absolutely no factual or evidentiary support is presented which supports that assertion, with which James Marcus absolutely denies. The burden of proof of such an assertion is on the proponent of the argument, and that burden is not carried. The Receiver further asserts that the terms of the Note "do not appear to be arms length." No support is presented for that bare assertion. Finally, the Receiver asserts that his "investigation" has

not revealed any evidence to support a finding that here was any expectation that the unsecured promissory note would be paid. Again, there is no support for this assertion. The only "investigation" evidence presented is the affidavit of the accountant. That "investigation" makes no mention of the promissory note. The Receiver's attempt to use his failure to provide proof of his assertion to prove that assertion is unavailing. Equally lacking in proof is the allegation that James Marcus did not have the financial capability to pay the promissory note. Indeed, the Receiver's own claim of James Marcus having subsequently taken a "cash out" mortgage within months of this transaction supports a conclusion that yet another third party lender found James Marcus to be a credit worthy borrower. The Receiver simply asserting, without any factual support whatsoever, that "it does not appear" that James Marcus had the financial capability to pay the promissory note does not present this Court with a basis to make such a conclusion.

The cited case of Estate of Flandreau, 994 F. 2d 91 (2nd Cir. 1993), exemplifies the use of case law well off the point of the relevant issues before this Court on this motion in an attempt to obfuscate the true issues presented in the motion. There, a taxpayer made gifts to family members followed by loans back to the taxpayer, in an effort to avoid the federal taxes that would otherwise be imposed. Id. That case has nothing in common with this matter. There is no suggestion here that James Marcus was involved in any scheme to somehow benefit Jeremy Marcus. There is no proof (and no allegation in the Amended Complaint) that James Marcus and Jeremy Marcus were passing funds back and forth to each other.

As there is neither a legal nor a factual basis presented for turnover, the motion seeks to misdirect and mislead the Court with pages and pages of allegations concerning

the fraudulent scheme of another, and apparently attempts to paint James Marcus with what is intended to be a broad brush. However, a clear reading of the allegations of fraud reveals that they do not apply to James Marcus. Similarly, a reading of the cases presented in support of the Receiver's motion reveal them to be boilerplate law, not at all connected to or in any way instructive in light of the facts of this case. None of the cases address an issue even remotely connected to the issue before the Court - the issue of a loan made to a third party unrelated to the fraud alleged, and made for completely equivalent value. No authority is presented in the motion, the included case law, or the factual basis (as opposed to the unsupported bare allegations presented without factual basis) which would permit the summary turnover of the property[2] in this matter.

III
CONCLUSION

There is neither a legal nor a factual basis for this Court to order the summary turnover of the property sought in this motion. James Marcus has asserted and the evidence supports his claim that he is a bona fide purchaser, and that he gave equivalent value for the loan that he received. No authority has been presented upon which this Court should grant the relief sought in the Receiver's motion.

I HEREBY CERTIFY that on this 22nd day of May, 2018, I electronically filed the

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[2] The motion asserts that this Court has "previously held, under similar facts, that the Property is a receivership asset and subject to turnover.' Nothing could be further from the actual facts. The cited orders of this Court do not represent a holding. Actual review of the docket entries cited evidence Agreed Motions reduced to order. There is neither mention of nor the existence of loans for equivalent value, and none of the issues set forth in this motion or memorandum exist. At best, those orders stand for the proposition that where a party agrees to turn over property to the receivership, an order memorializing that agreement may be entered.

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
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Fla. Bar No. 290221
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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 "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.

_____

Notary Public

PAUL A. HERMAN

(Printed Name of Notary)

Commission Expires: 10/27/17

Commission Number: FF 035303

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

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.