

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-60907-CIV-MORENO

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

**RECEIVER JONATHAN E. PERLMAN'S SECOND VERIFIED MOTION TO EXPAND
RECEIVERSHIP AND AUTHORITY TO SELL CERTAIN INVENTORY AND
EQUIPMENT AND FOR ORDER OF REAPPOINTMENT**

Jonathan E. Perlman, “Permanent Receiver” over the Receivership Defendants¹ (the “Receiver”), pursuant to S.D. Fla. L.R. 7.1(E), submits this Second Verified Motion to Expand Receivership and Authority to Sell Certain Inventory and Equipment and for Order of Reappointment (the “Motion”) to confirm or expand the Receivership to include an additional affiliated entity to the Defendants who were apart of the single debt-relief enterprise that is the

¹ The current “Receivership Defendants” are: Financial Freedom National, Inc. f/k/a Institute for Financial Freedom, Inc. and Marine Career Institute Sea Frontiers, Inc. d/b/a 321 Loans, Instahelp America, Inc., Helping America Group, United Financial Support, Breeze Financial Solutions, 321Financial Education, Credit Health Plan, Credit Specialists of America, American Advocacy Alliance, and Associated Administrative Services; 321Loans, Inc., f/k/a 321 Loans, Inc. d/b/a 321Financial, Inc.; Instahelp America, Inc. f/k/a Helping America Team, Inc. d/b/a Helping America Group; Breeze Financial Solutions, Inc. d/b/a Credit Health Plan and Credit Maximizing Program; US Legal Club, LLC; Active Debt Solutions, LLC f/k/a Active Debt Solutions, Inc. d/b/a Guardian Legal Center; Guardian LG, LLC d/b/a Guardian Legal Group; American Credit Security, LLC f/k/a America Credit Shield, LLC; Paralegal Support Group LLC f/k/a Paralegal Support LLC; Associated Administrative Services, LLC d/b/a Jobfax; JLMJP Pompano, LLC; Viking Management Services, LLC; Cockburn & Associate LLC; Omni Management Partners LLC; Discount Marketing USA, S.A.; JLMJP Pompano, LLC; Nantucket Cove of Illinois, LLC; Halfpay International, LLC; Halfpay NV, LLC; HP Properties Group, Inc.; HP Media, Inc.; White Light Media LLC; Blue42, LLC, **and their divisions, subsidiaries, affiliates, predecessors, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them.** [See ECF No. 21 at 5]. (emphasis added).

CASE NO. 17-60907-CIV-MORENO

subject of the Federal Trade Commission and Office of the Attorney General, State of Florida, Department of Legal Affairs' ("State of Florida") Complaint, all of whom are owned and controlled by Defendant Jeremy Marcus. The additional entity this Motion seeks to formally add as a Receivership Entity is National Arms, LLC ("Additional Receivership Entity" or "National Arms"). In addition, the Receiver seeks authority to sell certain equipment and inventory owned by National Arms, retain Moecker Auctions, Inc. to assist him in selling this Property, and for order of reappointment as Receiver.

Individual Defendants Yisbet Segrea and Craig Smith have authorized the Receiver to state that they have no objection to this Motion.

Plaintiffs FTC and State of Florida have authorized the Receiver to represent that they have no position on this Motion.

Despite repeated attempts, the Receiver has been unable to get a position from Marcus on the relief sought herein.

I. INTRODUCTION

The FTC's and State of Florida's Complaint alleges that Defendants engaged in a scheme defrauding consumers of millions of dollars by offering phony debt relief services and fake loans in violation of Section 5(a) of the FTC Act, 15 U.S.C. §45(a); the FTC's "Telemarketing Sales Rule," 16 C.F.R. Part 310; and Section 501.204 of the FDUTPA. [ECF No.1]. The Court, in its May 17 Preliminary Injunction, found that Plaintiffs were likely to prevail on the merits and that immediate and irreparable harm would likely result unless Defendants were restrained and a receiver appointed. [ECF No.21]. The Court appointed Mr. Perlman as "Permanent Receiver" over the then eleven named "Receivership Defendants," plus "any of their affiliates, subsidiaries,

CASE NO. 17-60907-CIV-MORENO

divisions, or sales or customer service operations, wherever located...with the full power of an equity receiver. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order.” [*Id.* at p.17]. The Receiver shall conserve, hold and manage all receivership assets, and perform all acts necessary or advisable to preserve the value of those assets, in order to prevent irreparable loss, damage or injury to consumers or creditors of the Receivership Defendants. [*Id.* at p. 18]. The Receiver subsequently moved to confirm/expand the Receivership to include twelve additional entities, which motion the Court granted on July 31, 2018. [ECF No. 102].

By this Motion, Receiver Perlman seeks the entry of an Order formally confirming as Receivership Entity and/or expanding the Receivership, to include National Arms, which entity also is owned and controlled by Defendant Marcus, was funded by Marcus’ debt relief enterprise, and is currently subject to this Court’s Asset Freeze. The Receiver is already acting as *de facto* Receiver over National Arms, with Defendant Marcus’ consent, in order to safeguard its assets as required by the Preliminary Injunction Order.

Given that the Court’s Preliminary Injunction Order already appoints Mr. Perlman receiver over National Arms as an “affiliate, subsidiary, division, or sales or customer service operation” of the Defendants; that Mr. Perlman is already the de-facto receiver over National Arms; and that Defendant Marcus, the owner and control person for National Arms, has consented, the Motion clearly should be granted.

In addition, the Receiver seeks authority to market and sell certain equipment and inventory of National Arms (the “Property”) and retain Moecker Auctions, Inc. (“Moecker”) to assist him.

CASE NO. 17-60907-CIV-MORENO

Finally, the Receiver seeks an order of reappointment in connection with 28 U.S.C. §754 based upon newly discovered assets since the Receiver's original appointment in May 2017.

II. FACTUAL BACKGROUND

On May 10, 2017, the Receiver and his professionals, accompanied by representatives of the Plaintiffs, pursuant to the Court's Temporary Restraining Order ("TRO") [ECF No. 13], entered and took possession of the Defendants' Headquarters, a 50,000 sq. ft. building located at 1410 SW 3rd Street, Pompano Beach, Florida (the "Pompano Headquarters").

During his subsequent investigation, the Receiver discovered that the Receivership Defendants were operating as a common enterprise, because they were operating as an interrelated network of companies with common owners, operators, employees, locations, and shared funds. The Receiver also determined that National Arms was operating at the Pompano Headquarters where it maintained its books and records.

The Receiver also learned from his investigation that Defendant Marcus utilized at least \$1,200,000 taken primarily from Receivership Defendant 321Loans' bank account at Banco Popular to purchase and fund National Arms, a startup gun ammunition manufacturer. Jeremy Marcus is the 100% owner of National Arms. Marc Cohen, a former employee of the Receivership Defendants, operated the company on a day-to-day basis and is listed as a Member and Registered Agent. Defendant Craig Smith was also involved.

In addition, Defendant Marcus, confirmed in his interview with the Receiver's professionals that Receivership monies from consumers were used to acquire the assets of National Arms.

Stonegate Bank has frozen \$33,819.65 in an account belonging to National Arms. In

CASE NO. 17-60907-CIV-MORENO

order to preserve the value of the climate-sensitive ammunition making equipment, the Receiver paid the electric bill for July through September 2017 of approximately \$500 per month. Prior to the expiration of its lease, the Receiver removed National Arms' inventory and equipment which he is currently maintaining and securing.

III. NATIONAL ARMS WAS ACQUIRED AND FUNDED WITH CONSUMER MONIES

Marcus is the 100% owner and managing member of National Arms. National Arms is a start-up gun ammunition manufacturer that was formed by Marcus, Defendant Craig Smith, and Marc Cohen, a former employee of the Receivership Defendants.

Receivership Defendant 321 Loans transferred, at the direction of Marcus, at least \$1,200,000 to fund National Arms.

National Arms utilized the Pompano Headquarters as its principal place of business according to its articles of incorporation, and its mail, including bank account statements, were sent there. National Arms' corporate books and records were located by the Receiver at the Pompano Headquarters.

Based upon the foregoing, the Court should expand the Receivership to include National Arms as an Additional Receivership Entity.

IV. LEGAL ARGUMENT

The Court has broad powers to determine what relief is appropriate in an equity receivership. *See SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Creative Capital Consortium*, 2009 WL 10664430, (SD Fla. Sept 21, 2009). The government's interest in preventing violations of the statutes pursuant to which this action was brought mandates application of a "flexible approach in determining whether the corporate entity should be

CASE NO. 17-60907-CIV-MORENO

disregarded.” *Id.* Moreover, the overarching goal behind a proposed receivership expansion should be “to ensure that all available assets are brought within the receivership and may properly be distributed to creditors.” *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 234 (D. Nev. 1985), *aff’d*, 805 F.2d 1039 (9th Cir. 1986).

Receiverships are consequently regularly expanded to include entities related to defendants, or where Receivership funds have been commingled with assets used by other entities. *See, e.g., Creative Capital*, 2009 WL 10669430 at *1 (expanding receivership over entities controlled by individual defendant who conceived the scheme); *S.E.C. v. Nadel*, No. 8:09-cv-87-T-26TBM, 2013 WL 2291871, at *2 (M.D. Fla. May 24, 2013) (third party entity’s use of scheme proceeds to purchase oil and gas leases subjected it to inclusion in receivership despite that it was not an alter ego of defendant); *SEC v. Lauer*, No. 03-80612-Civ. 2009 WL 812719, at *4-5 (S.D. Fla. Mar. 26, 2009) (proceeds from sale of condominium that was maintained with tainted funds are also tainted by the fraud); *In re Fin. Federated Title & Tr., Inc.*, 347 F.3d 880 (11th Cir. 2003) (establishing constructive trust on property purchased with over 90% funds from Ponzi scheme); *CFTC v. Hudgins*, 620 F. Supp. 2d 790, 795 (E.D. Tex. 2009) (directing sale of condominium because defrauder’s innocent girlfriend paid the mortgage with Ponzi scheme funds).

V. IT IS IN THE BEST INTERESTS OF THE RECEIVERSHIP TO MARKET AND SELL THE PROPERTY

Moecker has familiarized itself with the Property and provided the Receiver with a summary appraisal of the Property and has advised the Receiver that the current market is strong. Moecker is currently holding and storing the Property at a secured location for the Receiver.

After considering the various options available, the Receiver finds it to be in the best

CASE NO. 17-60907-CIV-MORENO

interests of the Receivership Estate to market the Property at this time, and sell it at the highest and best price. The Property does not generate any revenue for the estate but requires the payment of associated expenses which act as a financial drain on the estate. Accordingly, the Receiver requests that the Court enter an order authorizing it to do so.

In addition to authority to market and sell the Property, the Receiver by this Motion seeks authority to retain Moecker as his broker for the marketing and sale of this Property. The PI authorizes the Receiver to choose, engage and employ attorneys, accountants, appraisers and any other independent contractors and technical specialists, as the Receiver deems advisable or necessary, in the performance of duties and responsibilities under the authority granted by this order. [ECF. No. 21 at p. 19.]. Nonetheless, the Receiver seeks court approval of Moecker in an abundance of caution.

Moecker has extensive experience and has worked with numerous fiduciaries all over the State of Florida.

The Receiver and members of his team have worked with Moecker in the past and found the firm to provide excellent service and results.

Moecker has agreed to compensation in the form of a “Buyer Premium” in connection with the sale of the Property. Moecker will charge a Buyer Premium of 15% of gross sales price for in-person purchases and a Buyer Premium of 18% of gross sales price for online purchases. Moecker also proposes a marketing budget and auction costs of \$12,135.00 and moving and storage costs of \$2,729 to be subtracted from the auction proceeds.

The Receiver, by way of this Motion, seeks the Court’s authority to sell the Property at the highest and best price and to retain Moecker to act as the Receiver’s Broker.

CASE NO. 17-60907-CIV-MORENO

Based upon the foregoing, the Receiver submits that this Motion should be granted and the Receivership should be expanded to include National Arms, and grant the authority for the Receiver to market and sell the Property and retain Moecker in doing so.

VI. REQUEST FOR ORDER OF REAPPOINTMENT

Since his appointment, the Receiver is continuously discovering new assets in other jurisdictions. In addition, since his original appointment, new entities have been added to the Receivership estate [ECF No. 102]. By way of this Motion, the Receiver seeks an order of reappointment over all the entities in the receivership estate.²

Under 28 U.S.C. §754, if the Receiver files a copy of the order appointing receiver along with the underlying Complaint in each federal district where such assets are located within 10 days, then this Court acquires *in rem* jurisdiction over all property located in these other judicial districts, personal jurisdiction over any person in possession or control of such assets, and subject matter jurisdiction over any claim or case related to such assets.

Here, after the initial ten days of the receivership, the Receiver discovered assets in jurisdictions in which the Receiver did not file the PI and Complaint. To establish jurisdiction over the newly discovered assets, a receiver may request issuance of an “Order of Reappointment” and then file the Reappointment Order and Complaint in the districts where the newly discovered assets are located. In essence, this Court may reset 28 U.S.C. §754’s ten-day clock by reappointing a receiver. *SEC v. Vision Comm’n. Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996); *Terry v. Walker*, 369 F.Supp.2d 818, 820-21 (W.D. Va. 2005); *SEC v. Equity Serv., Corp.*, 632 F.2d 1092, 1095 (3d Cir. 1980)(Holding “a receiver who has failed to file within the

² The order of reappointment is identical to the original PI, except for the issuance date.

CASE NO. 17-60907-CIV-MORENO

ten-day period [can] reassume jurisdiction by a later filing, as long as the rights of others have not been prejudiced during the intervening period”): *Warfield*, 2007 WL 549467 at *12. Here the requested order of reappointment will not prejudice the rights of others.

WHEREFORE, Receiver Perlman respectfully requests this Court to enter an order expanding the Receivership Order to formally include National Arms, authorize the Receiver to sell the Property at the best and highest offer, and retain Moecker to sell the Property and enter an order of re-appointment over all the Receivership Entities, together with such other and further relief as this Court deems just and proper.

Respectfully submitted this 27th day of February 2018.

GENOVESE JOBLOVE & BATTISTA, P.A.

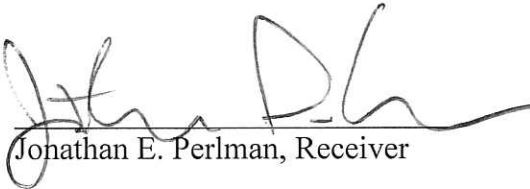
Attorneys for Jonathan E. Perlman
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310

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

CASE NO. 17-60907-CIV-MORENO

VERIFICATION

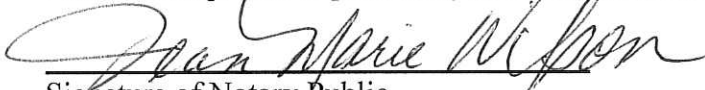
After being duly sworn, I hereby verify under penalty of perjury that I have read the foregoing document and that based on my personal knowledge, the factual allegations contained therein are true, accurate, and correct.


Jonathan E. Perlman, Receiver

STATE OF FLORIDA)
)ss:
MIAMI-DADE COUNTY)

Sworn to and subscribed before me this 27 day of FEBRUARY 2018, by Jonathan E.

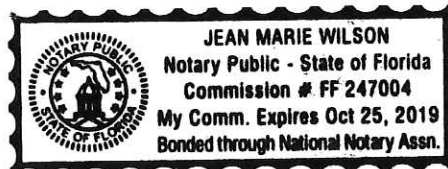
Perlman, Esq., who is personally known to me, and took the oath.


Signature of Notary Public

JEAN MARIE WILSON
Printed Name of Notary Public

Commission No.
Commission Expires

(SEAL)



CASE NO. 17-60907-CIV-MORENO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was served via CM/ECF Notification and/or U.S. Mail to all parties on the attached service list on this 27th day of February 2018.

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

CASE NO. 17-60907-CIV-MORENO

SERVICE LIST

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

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

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

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

CASE NO. 17-60907-CIV-MORENO

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

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

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

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

Relief Defendants

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

CASE NO. 17-60907-CIV-MORENO

Teresa Duda
110 Gloucester Street
Boca Raton, FL 33487
Pro Se
Via U.S. Mail

[10675-006 / 2815884 /3]