

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO.: 20-CV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

vs.

COMPLETE BUSINESS SOLUTION
GROUP, INC. d/b/a PAR FUNDING, et al.

Defendants.

**DANIEL SCARAMELLINO RESPONSE AND MEMORANDUM OF LAW IN
OPPOSITION TO RECEIVER’S EXPEDITED MOTION TO EXPAND THE
RECEIVERSHIP TO INCLUDE 19 COUNTRY DRIVE, MORRISTOWN, NJ 07960**

COMES NOW non-party, Daniel Scaramellino (“Scaramellino”), by and through counsel, submits his Response and Memorandum of Law in Opposition to *Receiver, Ryan K. Stumphauzer’s Expedited Motion to Expand the Receivership to Include 19 Country Drive, Morristown, NJ 07960 [ECF No. 1180]* (“Receiver’s Motion”), and further states:

BACKGROUND FACTS

1. Receiver, Ryan Stumphauzer (“Receiver”) has been appointed receiver of certain Receivership Entities, including but not limited to, Eagle Six Consultants, Inc., a Florida corporation (“Eagle Six”)¹, a lender of Scaramellino.

2. In connection with his Receivership duties over Eagle Six, on September 29, 2021, Receiver instituted a lawsuit in the Middle District of Florida, case styled *Ryan Stumphauzer, in his Capacity as Court-Appointed Receiver for Eagle Six Consultants, Inc., a*

¹ A complete list of the Receivership Entities is identified in Receiver’s Motion, at FN 1.

Florida corporation v. Daniel Scaramellino, Case No. 8:21-CV-2307-SD-AAS (the “Eagle Six Lawsuit”), seeking a judgment against Scaramellino, solely for Scaramellino’s alleged breach of contract of the loan transaction with Eagle Six. A true and correct copy of the Complaint filed by Receiver in the Eagle Six Lawsuit, the case docket as of 6-29-2022, and all relevant pleadings filed in the pending Eagle Six Lawsuit is attached as **Composite Exhibit “A.”**

3. The Receiver has not been appointed as receiver over Scaramellino, individually in either the Eagle Six Lawsuit or the pending above-referenced case, individually. The pleadings in the Eagle Six Lawsuit makes it clear that the Receiver, on behalf of Eagle Six, is seeking to effectively seeking to collect from Scaramellino based upon a simple breach of contract. The Receiver has taken the position in the Eagle Six Lawsuit that Scaramellino executed loan documents, and in consideration of receiving Eagle Six’s the loan proceeds, Scaramellino gave consideration to Eagle Six in the form of a promissory note and other security agreements and promised to repay the Loan (See Exhibit A).

4. In the Receiver’s Motion, Receiver now requests that the receivership be expanded to include certain real property located at 19 Country Drive, Morristown, NJ 07960 (“the NJ Property”). Receiver alleges that 19 Country Drive is currently owned by “One Nine Country Drive, LLC,” a New Jersey limited liability company in which Michelle Scaramellino (Scaramellino’s wife) is identified as President and Michael Scaramellino (Scaramellino’s brother) is identified as manager. Accordingly, Receiver, without providing any basis, refers to One Nine Country Drive, LLC as an “affiliated entity” to Scaramellino and requests, in addition to the expansion of the receivership to include 19 Country Drive, that Scaramellino and One Country Drive, LLC be retrained and enjoined from directly or indirectly selling, assigning, or transferring any interest in the proceeds from the sale of the NJ Property in any manner.

5. In the Eagle Six Lawsuit, The Receiver has not alleged any fraud, any alter ego claim, has not sought any pre-judgment writs of garnishment, has not posted a bond. Yet, the Receiver's Motion seeks to effectively take control over funds that may link partially to loan proceeds from Eagle Six, which partial funds were comingled with Scaramellino's funds, all under the power of his receivership.

6. As set forth below, Receiver's argument is without merit and must be denied.

7. Scaramellino expressly incorporates herein all arguments and facts set forth in One Nine Country Drive, LLC and Michelle Scaramellino's Response in Opposition to the Receiver's Motion, as if fully set forth herein.

ARGUMENT and MEMORANDUM OF LAW

There is no justification for the extraordinary relief sought by Receiver in this instance, which, in essence, would treat Scaramellino and others as mere alter egos of the wrongdoing Defendants in this instant action, to which no reasonable due process has been given and no evidentiary finding of fact, and purely no cause for such a drastic overreaching has been shown. However, wholly absent from Receiver's Motion is any evidence or proof of wrongdoing by Scaramellino. Indeed, in his Receiver's Motion to Expand, the Receiver fails to even provide one clear allegation that Scaramellino participated in, or even knew of, any wrongful conduct by any Defendant or Receivership Entity in this receivership. Absent such, this Court is not authorized to freeze the assets of non-parties such as Scaramellino or others against whom no wrongdoing is alleged. *See SEC v. Kirkland*, 2006 WL 3388463 at *3 (M.D. Fla. 2006) (denying receiver's request to expand a receivership estate to include a non-party's interest in real property on varying grounds including that no finding had been made that the non-party acted in active concert or participation with the receivership Defendant and receiver had not demonstrated that

the non-party acquired her interest the property via a fraudulent conveyance or that the non-party was the “alter ego” of the receivership defendant); *SEC v. Black*, 163 F.3d 188, 197 (3d Cir. 1988) (finding a “district court not authorized to freeze the assets of a non-party against whom no wrongdoing is alleged[.]”). To hold otherwise would essentially eliminate the due process rights of such non-parties.

Receiver’s Motion alleges that “[o]n May 28, 2019, Scaramellino entered into a series of agreements with Eagle Six – including a Loan Agreement and a Secured Convertible Line of Credit – under which Scaramellino borrowed Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) from Eagle Six.” Receiver’s Motion and the Eagle Six Lawsuit acknowledges that Scaramellino made payments to Eagle Six pursuant to the Loan Agreement but claims payments ceased after appointment of Receiver in this case. Receiver has offered no showing of, or even alleged, the reasons for any alleged non-payment by Scaramellino. Receiver has alleged, at most, a commercial, arm’s length lending transaction between Eagle Six and Scaramellino, which Receiver now alleges is in default. Indeed, Receiver has filed a lawsuit against Scaramellino in the Middle District of Florida, Case No. 8:21-cv-2307, alleged a single count of breach of contract (*i.e.*, breach of the Loan Agreement).

Notably, Receiver did not allege and has not alleged any action or wrongdoing against Scaramellino including, but not limited, alter ego claims, securities violations, fraud, or fraudulent transfer(s) to name a few. Of important note is the undisputed fact that the NJ Property has never been titled to Scaramellino since the original purchase by Michelle Scaramellino and/or 19 Country Drive, LLC. Of important note is the undisputed fact that Scaramellino has never had any equity interest in 19 Country Drive, LLC. Receiver, in error, simply seeks to assume, without an evidentiary hearing establishing required findings of fact, or

even aligning the facts with applicable law. Instead, Receiver's Motion seeks this Court's adoption of assumptions that Scaramellino should, without reason, be lumped with the principals of Complete Business Solutions Group or any defendant in this instant case.

In addition to the foregoing, Receivers' Motion concerns a July 3, 2019 payment by Scaramellino of \$2,072,173.86 from his Chase Checking Account to Signature Closing Services, LLC for the purported purchase of the NJ Property. Receiver alleges that prior to the payment to Signature Closing Services, on July 3, 2019, Scaramellino had transferred \$2,072,173.86 from his Chase Savings Account to his Chase Checking Account, presumably to fund the payment to Signature Closing Services. However, as Receiver expressly acknowledges, Scaramellino had in his Chase Savings Account \$1,500,779.62, which were wholly separate and apart from any of the funds Scaramellino ever received in connection with the Loan Agreement with Eagle Six. Receiver fails to account for these separate funds of Scaramellino in his argument. Instead, Receiver makes the blanket assertion that "19 Country Drive was purchased with and represents the proceeds of commingled investor funds." In fact, V&S Holding/Scaramellino's bank account already possessed 75% of the purchase price of the NJ Property from separately non-related funds.

Not only is this assertion belied by Receiver's allegations elsewhere, as stated above, Receiver has not offered any proof or even alleged any wrongdoing by Scaramellino in connection with the loan agreement or in participation with the any of the alleged wrongdoers in this action. Instead, as stated above, at most, Receiver has alleged that Scaramellino entered but remains in default of an otherwise arm's length commercial Loan Agreement, similar to any traditional borrower and lender.

Receiver has alleged no other factual or legal basis for this Court to award the relief he now seeks against Scaramellino, a non-party, and other non-parties. Certainly, Receiver has not provided the support necessary invoke such an extraordinary remedy in this instance or reasons or basis to use the power of a court appointed receiver, to skip procedural due process required, including but not limited to, first seeking a declaration that Scaramellino is the alter ego of 19 Country Drive LLC.

To allow for such an intentional unilateral skip of the procedural due process steps and pre-judgment writs in arm's length transaction, would effectively grant the Receiver power to essentially repossess a borrower's child's vehicle when such vehicle was purchased with loan proceeds from a re-financing of a borrower's home. When an arms-length loan transaction does not establish a security/collateral in an asset, the asset can not just be seized simply because the borrower failed to pay a non-related loan back. In the instant case, although the amount may be in the millions, Eagle Six's transaction with Scaramellino was simple: it an arms-length loan where consideration was given, collateral was given, and Eagle Six's rights and duties are set forth in the Eagle Six Lawsuit. To extend the Receiver's powers to reach funds from the sale of a real property that never belonged to Scaramellino is comparative to the home re-financing lender, without even a collateral agreement or a judgment, repossessing the funds from the borrower's son selling a vehicle. Such is not allowed by law.

In *FTC v. Digital Altitude, LLC*, 2019 U.S. Dist. LEXIS 240556, 2019 WL 12536176 (C.D. Cal., July 5, 2019), the District Court explained the extreme due diligence and careful standard of care that the Receiver must first prove up prior to expanding its powers over non-defendants. In ruling that the receiver had not made a showing that a constructive trust over disputed funds is warranted, the Court in *Digital Altitude* made the following analysis:

The dispute here can be distinguished from the prototypical case in which summary proceedings have been found appropriate. Thus, no party contends PMV is acting as a "mere custodian" of the funds at issue. Rather, PMV contends that it owns the disputed funds as payment, pursuant to a contractual agreement it entered with Digital Altitude in connection with goods and services it provided. Although the Receiver disputes this contention, resolution of these competing positions through the limited process of the Motion would be neither appropriate nor fair. It has not been shown, as the Receiver contends, that "[t]he facts in this matter are very straightforward."

Nor has the Receiver made a clear showing that a constructive trust over the disputed funds would be appropriate. The Receiver argues that "this Court has the authority to order a constructive trust over the Overpaid Funds *even if* PMV did nothing wrongful in connection with the funds," and that the funds paid to PMV "are clearly ill-gotten gains of the [Digital Altitude] enterprise." *Id.* at 6. However, this showing is not sufficient, on its own, to warrant imposition of a constructive trust. The Receiver does not address the "innocent transferee" exception,⁵ pursuant to which, under certain circumstances, the rights of the transferee in the disputed assets have priority over those of the victims of the original fraud. See *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1142 (9th Cir. 2010). It has not been shown that PMV had actual or constructive notice of the wrongdoing of Digital Altitude when it contracted with and received payments from Digital Altitude. Therefore, it has not been shown that it is without "innocent transferee" status. Based on the present briefing and corresponding limited evidence, there is not a sufficient basis to find that the imposition of a constructive trust over the disputed funds is appropriate.

Accordingly, the Receiver has not demonstrated that the Court should exercise its equitable powers and grant the Motion, *i.e.*, that doing so would be both prudent and just under the circumstances. Instead, a more comprehensive evidentiary process is warranted. Consequently, the denial of the Motion is without prejudice to the Receiver pursuing a process that applies those standards, and that could result in granting the same relief sought in the Motion through a showing that the disputed funds are the property of the receivership estate.

(See Digital, 2019 U.S. Dist. LEXIS 240556 at 18-19).

Further, the law is clear that federal courts may order equitable relief against a person who is not accused of wrongdoing in a securities enforcement action. However, that person must first have 1) received ill-gotten funds, and 2) does not have a legitimate claim to those funds. See *SEC v. Cherif*, 933 F. 3d 403 (7th Cir. 1991). In *SEC v. Cavanagh*, 155 F. 3d 129 (2d. Cir. 1998), the Second Circuit Court of Appeals held that where consideration is given for the proceeds,

such consideration constitutes a legitimate claim to the proceeds, thus negating any claim to preliminary injunctions over such funds. In the Eagle Six Lawsuit, the Receiver has alleged and conceded that Scaramellino gave consideration for the loan proceeds by virtue of the loan agreements. Without consideration, Receiver's sole breach of contract claim would fail as a matter of law since consideration, by law, must exist for the parties to have a contract. Accordingly, Receiver's clear overreach should be rejected, and the Receiver's Motion denied. To be clear, a granting of Receiver's Motion would violate the due process rights of Scaramellino and other non-parties.

CONCLUSION

WHEREFORE, for the reasons stated above and incorporated arguments set forth in 19 Country Drive LLC and Michelle Scaramellino's Response in Opposition to the Receiver's Motion, Scaramellino respectfully requests that this Court a) deny Receiver's Motion as a matter of law, b) order that the Receiver promptly release the proceeds from the sale of the NJ Property to 19 Country Drive LLC, or alternatively, c) to the extent the Court believes certain issues of fact exists that would warrant the appointment of a Receiver over the NJ Property, allow for discovery and conduct an evidentiary hearing, and d) awarding such other relief as the Court deems just.

Dated: June 30, 2022

Respectfully submitted,

/s/ Katie Brinson Hinton
KATIE BRINSON HINTON, ESQ.
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Attorney for Daniel Scaramellino

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 30, 2022, a true and correct copy of the foregoing was filed with the Clerk of the Court using CM/ECF.

/s/Katie Brinson Hinton
Katie Brinson Hinton

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:21-cv-02307-SDM-AAS**

Stumphauzer v. Scaramellino
Assigned to: Judge Steven D. Merryday
Referred to: Magistrate Judge Amanda Arnold Sansone
Demand: \$9,999,000
Cause: 28:1332 Diversity-Negotiable Instrument

Date Filed: 09/29/2021
Jury Demand: None
Nature of Suit: 140 Negotiable Instrument
Jurisdiction: Diversity

Plaintiff

Ryan K. Stumphauzer
*in his capacity as Court-Appointed Receiver
for Eagle Six Consultants, Inc., a Florida
Corporation*

represented by **Jessica P Albert**
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V.

Defendant

Daniel Scaramellino

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Defendant**Katie Brinson Hinton**

Date Filed	#	Docket Text
09/29/2021	<u>1</u>	COMPLAINT against Daniel Scaramellino (Filing fee \$ 402 receipt number AFLMDC-18763110) filed by Ryan K. Stumphauzer, as Court-Appointed Receiver for Eagle Six Consultants, Inc.. (Attachments: # <u>1</u> Exhibit 1 - Receivership Orders, # <u>2</u> Exhibit 2 - Order Lifting Stay of Litigation, # <u>3</u> Exhibit 3 - Loan Agreement, # <u>4</u> Exhibit 4 - Secured Convertible Line of Credit Note, # <u>5</u> Exhibit 5 - Email from D. Scaramellino to J. LaForte, # <u>6</u> Exhibit 6 - Ledger of Scaramellino Account, # <u>7</u> Civil Cover Sheet, # <u>8</u> Proposed Summons)(Kolaya, Timothy) (Entered: 09/29/2021)
09/29/2021	<u>2</u>	CERTIFICATE of interested persons and corporate disclosure statement by Ryan K. Stumphauzer, as Court-Appointed Receiver for Eagle Six Consultants, Inc. identifying Other Affiliate Eagle Six Consultants, Inc. for Ryan K. Stumphauzer, as Court-Appointed Receiver for Eagle Six Consultants, Inc.. (Kolaya, Timothy) (Entered: 09/29/2021)
09/30/2021	3	NEW CASE ASSIGNED to Judge Steven D. Merryday and Magistrate Judge Amanda Arnold Sansone. New case number: 8:21-cv-2307-SDM-AAS. (SJB) (Entered: 09/30/2021)
09/30/2021	<u>4</u>	SUMMONS issued as to Daniel Scaramellino. (CTR) (Entered: 09/30/2021)
10/01/2021	5	NOTICE of Local Rule 1.07(c) and Local Rule 3.02(a)(2), - Local Rule 1.07(c) requires lead counsel to <i>promptly</i> file a Notice of a Related Action that identifies and describes any related action pending in the Middle District. - Local Rule 3.02(a)(2) requires the parties in every civil proceeding, except those described in subsection (d), to file a case management report (CMR) using the uniform form at www.flmd.uscourts.gov. The CMR must be filed (1) within forty days after any defendant appears in an action originating in this court, (2) within forty days after the docketing of an action removed or transferred to this court, or (3) within seventy days after service on the United States attorney in an action against the United States, its agencies or employees. Judges may have a special CMR form for certain types of cases. These forms can be found at www.flmd.uscourts.gov under the Forms tab for each judge. -. (Signed by Deputy Clerk). (DAY) (Entered: 10/01/2021)
10/01/2021	<u>6</u>	NOTICE of a related action per Local Rule 1.07(c) by Ryan K. Stumphauzer. Related case(s): Yes (Kolaya, Timothy) (Entered: 10/01/2021)
10/13/2021	<u>7</u>	NOTICE of Appearance by Katie Brinson Hinton on behalf of Daniel Scaramellino (Hinton, Katie) (Entered: 10/13/2021)
11/01/2021	<u>8</u>	MOTION to Dismiss for Lack of Jurisdiction <i>and Supporting Memorandum Law</i> by Daniel Scaramellino. (Attachments: # <u>1</u> Exhibit Exhibit A- Affidavit of Daniel Scaramellino)(Hinton, Katie) (Entered: 11/01/2021)
11/15/2021	<u>9</u>	RESPONSE in Opposition re <u>8</u> MOTION to Dismiss for Lack of Jurisdiction <i>and Supporting Memorandum Law</i> filed by Ryan K. Stumphauzer. (Attachments: # <u>1</u> Exhibit 1 - Declaration of Jessica Albert)(Kolaya, Timothy) (Entered: 11/15/2021)

11/15/2021	<u>10</u>	MOTION for Discovery <i>Seeking Leave to Conduct Jurisdictional Discovery</i> by Ryan K. Stumphauzer. (Kolaya, Timothy) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 11/15/2021)
12/28/2021	<u>11</u>	CASE MANAGEMENT REPORT. (Albert, Jessica) (Entered: 12/28/2021)
12/29/2021	<u>12</u>	CASE MANAGEMENT AND SCHEDULING ORDER: Pretrial conference scheduled for 12/1/2022 at 10:00 AM in Tampa Courtroom 10B before Magistrate Judge Amanda Arnold Sansone; jury trial set for the January 2023 trial calendar in Tampa Courtroom 15A before Judge Steven D. Merryday. Signed by Judge Steven D. Merryday on 12/29/2021. (GG) (Entered: 12/29/2021)
12/30/2021	<u>13</u>	NOTICE of Appearance by Richard Jehangir McIntyre on behalf of Daniel Scaramellino (McIntyre, Richard) (Entered: 12/30/2021)
03/11/2022	<u>14</u>	NOTICE by Katie Brinson Hinton of <i>Unavailability from March 10, 2022 through March 16, 2022</i> (Hinton, Katie) (Entered: 03/11/2022)
04/18/2022	<u>15</u>	ENDORSED ORDER directing response to <u>10</u> MOTION for Discovery Seeking Leave to Conduct Jurisdictional Discovery. Response due by 4/29/2022. Signed by Magistrate Judge Amanda Arnold Sansone on 4/18/2022. (BEE) (Entered: 04/18/2022)
04/29/2022	<u>16</u>	RESPONSE to Motion re <u>10</u> MOTION for Discovery <i>Seeking Leave to Conduct Jurisdictional Discovery</i> filed by Daniel Scaramellino. (Hinton, Katie) (Entered: 04/29/2022)
05/05/2022	<u>17</u>	ORDER granting <u>10</u> motion for leave to conduct jurisdictional discovery. Signed by Magistrate Judge Amanda Arnold Sansone on 5/5/2022. (BEE) (Entered: 05/05/2022)
05/13/2022	<u>18</u>	ORDER denying as moot <u>8</u>--motion to dismiss; directing the parties to complete jurisdictional discovery not later than 6/10/2022; permitting the defendant to respond to the complaint not later than 7/1/2022. Signed by Judge Steven D. Merryday on 5/13/2022. (GG) (Entered: 05/13/2022)

PACER Service Center			
Transaction Receipt			
06/29/2022 10:13:13			
PACER Login:	katiehinton	Client Code:	scaramollino
Description:	Docket Report	Search Criteria:	8:21-cv-02307-SDM-AAS
Billable Pages:	3	Cost:	0.30

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RYAN K. STUMPHAUZER, IN
HIS CAPACITY AS COURT-
APPOINTED RECEIVER FOR
EAGLE SIX CONSULTANTS,
INC., a Florida corporation,

Plaintiff,

vs.

DANIEL SCARAMELLINO, an
individual,

Defendant.

CASE NO.: 8:21-cv-2307

COMPLAINT

Plaintiff, Ryan K. Stumphauzer, in his capacity as Court-Appointed Receiver (the “Receiver”) for Eagle Six Consultants, Inc. (“Eagle Six”), by and through his undersigned counsel, brings this Complaint against Defendant, Daniel Scaramellino (“Scaramellino”), and in support thereof states as follow:

PRELIMINARY ALLEGATIONS

1. On May 28, 2019, Scaramellino entered into a series of agreements with Eagle Six—including a Loan Agreement and a Secured Convertible Line of Credit—under which Scaramellino borrowed Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) from Eagle Six.

2. Under these agreements, Scaramellino was required to pay all accrued and unpaid interest to Eagle Six on a monthly basis, with the principal amount and all remaining interest payable to Eagle Six on the three-year anniversary of the agreements (*i.e.*, May 28, 2022).

3. For approximately 13 months, through June 30, 2020, Scaramellino made the required interest payments to Eagle Six.

4. On July 27, 2020, shortly before Scaramellino's next interest payment was due, the United States District Court for the Southern District of Florida (the "Receivership Court") appointed Ryan K. Stumphauzer as the Receiver for several companies in an enforcement action that the Securities and Exchange Commission filed against Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par Funding") in Case No. 20-cv-81205, captioned *Securities and Exchange Commission v. Complete Business Solutions Group, Inc. d/b/a Par Funding, et al.* (the "Enforcement Action").

5. Although Eagle Six was not initially included as one of the receivership entities in the Enforcement Action, it is owned by the principals of Par Funding and was subsequently added as a receivership entity in an Order Granting Motion to Expand Receivership Estate.

6. Following the filing of the Enforcement Action and the appointment of the Receiver, Scaramellino has failed to make a single interest payment to Eagle Six.

7. In accordance with the terms of these agreements, Scaramellino's failure to make these required payments to Eagle Six constitutes an event of default, entitling Eagle Six to accelerate the debt and file suit to recover the full amount due.

8. The Receiver has attempted to resolve this dispute with Scaramellino. Despite numerous conversations with Scaramellino's counsel, however, the Receiver and Scaramellino have been unable to resolve this matter. As a result, the Receiver has obtained an Order from the Receivership Court permitting the Receiver to file an action against Scaramellino for the recovery of these amounts.

THE RECEIVER'S AUTHORITY OVER EAGLE SIX

9. The Receiver is a court-appointed receiver for various entities, including Eagle Six, pursuant to various orders entered in the Enforcement Action. Specifically, on July 27, 2020, the Receivership Court entered an Order Appointing Receiver, under which it appointed the Receiver as a receiver over Par Funding and various other entities (the "Receivership Entities"). On August 13, 2020, the Receivership Court entered an Amended Order Appointing Receiver, which expanded the Receiver's role and authority over the Receivership Entities. On December 16, 2020, the Receivership Court entered an Order Granting Motion to Expand Receivership Estate, which, among other things, added Eagle Six as an additional Receivership Entity. On

February 2, 2021, the Receivership Court entered an Order that, among other things, corrected a scrivener’s error in the December 16th Order to correct the name of Eagle Six. Copies of these various Orders (the “Receivership Orders”) are attached as **Composite Exhibit 1**.

10. The amounts Scaramellino owes to Eagle Six—\$7,500,000 in principal, plus interest, fees, and other amounts—are “property interests of the Receivership Entities,” including “monies, funds, securities, credits, . . . claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own” and, therefore, constitute Receivership Property. *See* Amended Order Appointing Receiver Dated August 13, 2020, ECF No. 141, at ¶ 7(A).

11. As part of his duties under the Receivership Orders, the Receiver is authorized “to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto.” *Id.* at ¶ 7(B).

12. When the Receivership Court appointed the Receiver, it also entered a stay of all litigation involving the Receivership Entities. *Id.* at ¶ 32.

13. On September 7, 2021, the Receivership Court entered an Order lifting the stay of litigation for claims against Daniel Scaramellino, thereby authorizing the Receiver to pursue claims on behalf of Eagle Six against Scaramellino. A copy of this Order is attached as **Exhibit 2**.

PARTIES, JURISDICTION, AND VENUE

14. The Receiver is a citizen of Florida, domiciled in Miami-Dade County, Florida, with a principal place of business of 2 South Biscayne Boulevard, Suite 1600, Miami, Florida, 33131.

15. Eagle Six is a Florida corporation. Following the entry of the Receivership Orders, Eagle Six's principal place of business is now 2 South Biscayne Boulevard, Suite 1600, Miami, Florida, 33131.

16. Scaramellino, an individual over the age of 18, is domiciled in Morristown, New Jersey and, thus, a citizen of New Jersey. Additionally, Scaramellino is the registered agent for V&S Holdings Group, LLC, a corporation domiciled in Florida.

17. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because: (a) the amount in controversy exceeds \$75,000.00, exclusive of interest and costs; and (b) there is diversity of citizenship between the parties. Specifically, the Receiver—as the court-appointed receiver for Eagle Six¹—is a

¹ “It is the citizenship of the receiver, not the citizenship of the entities in receivership, that controls in determining diversity of citizenship.” *Wiand v. Buhl*, 8:10-CV-75-T-17MAP, 2011 WL 6048829, at *3 (M.D. Fla. Nov. 3, 2011), report and recommendation adopted, 8:10-CIV-75-T-17-MAP, 2011 WL 6048741 (M.D. Fla. Dec. 6, 2011). In any event, Eagle Six, the receivership entity on whose behalf the Receiver brings this action, is incorporated in Florida and maintains its principal place of business in Miami, Florida and, thus, is also a citizen of Florida.

citizen of Miami-Dade, County, Florida; and Scaramellino, an individual, is a citizen of New Jersey.

18. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(3) and (c)(3) because Scaramellino consented in the Loan Agreement “to the exclusive jurisdiction of any state or federal court in the county Hillsborough, state of Florida” and is otherwise subject to the court’s personal jurisdiction with respect to the civil action in question.

19. This Court has personal jurisdiction over Scaramellino pursuant to the express agreement of the parties, as evidenced by the terms of the Loan Agreement, a true and correct copy of which is attached hereto as **Exhibit 3**, and the Secured Convertible Line of Credit Note, a true and correct copy of which is attached hereto as **Exhibit 4**. Specifically, in each of these agreements, Scaramellino agreed that: (a) he “irrevocably consents to the exclusive jurisdiction of any state or federal court in the county of Hillsborough, state of Florida;” (b) “the venue provided above is the most convenient forum for both [Eagle Six] and [Scaramellino];” and (c) he “waives any objection to venue and any objection based on a more convenient forum.” Exhibit 3 at ¶ 11; Exhibit 4 at ¶ 20.

20. Additionally, this Court has jurisdiction over Scaramellino under Florida’s long-arm statute. Specifically, the Court has jurisdiction over Scaramellino pursuant to: (a) Fla. Stat. § 48.193(1)(a)(9) and Fla. Stat. §

685.102, because the Receiver’s claim arises out of or relates to a contract containing a choice of the law of Florida and which contains a provision by which Scaramellino agreed to submit to the jurisdiction of the courts of this state; (b) Fla. Stat. § 48.193(1)(a)(7), because Scaramellino breached a contract in this state by failing to perform acts required by the contract to be performed in this state; and (c) Fla. Stat. § 48.193(2), because Scaramellino is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, and therefore subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

COUNT I
(Breach of Contract against Scaramellino)

21. The Receiver repeats and re-alleges each and every allegation contained in paragraphs 1 through 21 above as if fully set forth herein.

22. Eagle Six entered into the Loan Agreement and the Secured Convertible Line of Credit Note with Scaramellino on May 29, 2019, whereby Eagle Six agreed to loan Scaramellino Seven Million Five Hundred Thousand Dollars (\$7,500,000.00). *See* Exhibits 3 and 4.

23. Under the terms of the Loan Agreement, Eagle Six provided Scaramellino with “a revolving . . . multi-advance loan in the maximum

principal amount of \$7,500,000,” and agreed to “disburse the proceeds of the Loan as set forth in the Secured Convertible Line of Credit.” Exhibit 3 at ¶ 1.

24. Specifically, the Secured Convertible Line of Credit Note provided for an initial advance of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to Scaramellino upon the execution of the note. Exhibit 4, ¶ 1. Thereafter, subject to certain restrictions, Scaramellino was entitled to borrow additional amounts, so long as the aggregate unpaid principal amount did not exceed the face amount of the Secured Convertible Line of Credit Note (*i.e.*, Seven Million Five Hundred Thousand Dollars (\$7,500,000)). *Id.*

25. On May 28, 2019, Eagle Six sent a check to Scaramellino for Two Million Five Hundred Thousand Dollars (\$2,500,000.00), which Scaramellino accepted and deposited, reflecting the initial advance under the Loan Agreement and the Secured Convertible Line of Credit Note.

26. In November 2019, Scaramellino e-mailed one of the principals of Eagle Six, Joseph LaForte (who also goes by the alias of Joe Mack) (“LaForte”), and requested that Eagle Six wire Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to David Chessler, on Scaramellino’s behalf, as the second draw down on the Loan Agreement and Secured Convertible Line of Credit Note from Eagle Six. A copy of the e-mail from Scaramellino to LaForte is attached as **Exhibit 5**.

27. Four days later, Par Funding wired the requested Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to David Chessler's entity, Chessler Holdings. With this additional advance, the total principal amount Scaramellino had borrowed from Eagle Six as of that time was Five Million Dollars (\$5,000,000.00).

28. On February 28, 2020, at Scaramellino's request, Eagle Six wired Scaramellino an additional One Million Dollars (\$1,000,000.00), as an additional advance under the Loan Agreement and Secured Convertible Line of Credit Note. With this additional advance, the total principal amount Scaramellino had borrowed from Eagle Six as of that time was Six Million Dollars (\$6,000,000.00).

29. A few days later, on March 3, 2020, at Scaramellino's request, Eagle Six wired Scaramellino an additional Five Hundred Thousand Dollars (\$500,000.00) as an additional advance under the Loan Agreement and Secured Convertible Line of Credit Note. With this additional advance, the total principal amount Scaramellino had borrowed from Eagle Six as of that time was Six Million Five Hundred Thousand Dollars (\$6,500,000.00).

30. Finally, on March 5, 2020, at Scaramellino's request, Eagle Six wired Scaramellino an additional One Million Dollars (\$1,000,000.00) as an additional advance under the Loan Agreement and Secured Convertible Line of Credit Note. With this additional advance, the total principal amount

Scaramellino borrowed from Eagle Six as of that time was Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), which equaled the maximum principal amount allowable under the Loan Agreement and Secured Convertible Line of Credit Note

31. Pursuant to the terms of the Secured Convertible Line of Credit Note, Scaramellino, as the Borrower, was required to pay interest on the first of every month, beginning on June 1, 2019, at a rate of nine percent (9%) simple interest based on a 360-day year. Exhibit 4 at ¶ 4.

32. A default, as defined by the Loan Agreement, occurs when “the Borrower shall fail to comply with any covenant contained in this Agreement or any of the other Loan Documents which, among other things, calls for the payment of money when such payment is due.” Exhibit 3 at ¶ 7.

33. Beginning on June 1, 2019, and continuing through June 30, 2020, Scaramellino began making interest payments in accordance with the terms of the Loan Agreement and the Secured Convertible Line of Credit Note. A ledger reflecting the total amounts advanced to Scaramellino and the total amounts of interest paid back to Eagle Six under these agreements is attached as **Exhibit 6**.

34. After the District Court appointed the Receiver in the Enforcement Action, however, Scaramellino has failed to make a single interest payment to Eagle Six.

35. Accordingly, pursuant to the express terms of the Loan Agreement and Secured Convertible Line of Credit Note, Scaramellino is now in default.

36. Scaramellino's failure to continue to pay these interest payments in accordance with the terms of the Loan Agreement and the Secured Convertible Line of Credit Note constitutes an Event of Default and material breach of these agreements.

37. Under the terms of the Secured Convertible Line of Credit Note, upon an Event of Default: (a) "the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder shall be immediately due and payable without demand or notice of any kind;" (b) at Eagle Six's option, "this Note will bear interest at the Default Rate from the date of the occurrence of the Event of Default;" and (c) Eagle Six "may exercise from time to time any of the rights and remedies available under the Loan Documents or under applicable law." Exhibit 4 at ¶ 9.

38. Eagle Six seeks interest on the outstanding balance due and owing under the Secured Convertible Line of Credit Note at the Default Rate, which is defined as three percentage points (3%) in excess of the interest rate in effect under this Note, or a total of 12 percent (12%) simple interest based on a 360-day year. Exhibit 4 at ¶ 6. The outstanding balance due and owing has been bearing interest at this Default Rate since August 1, 2020.

39. As a result of Scaramellino's breach, the Receiver has suffered damages in the sum of \$7,500,000, which equals the total principal amount loaned by Eagle Six to Scaramellino, plus accrued interest, interest at the Default Rate, and late charges due under the terms of the Loan Agreement and Secured Convertible Line of Credit Note, attorneys' fees, and any other charges or amounts recoverable under those agreements.

WHEREFORE, Plaintiff, Ryan K. Stumphauzer, in his capacity as the Court-Appointed Receiver for Eagle Six Consultants, Inc., demands judgment against Defendant, Daniel Scaramellino, for damages in the amount of \$7,500,000, which equals the total principal amount loaned by Eagle Six to Scaramellino, plus accrued interest, interest at the Default Rate, and late charges due under the terms of the Loan Agreement and Secured Convertible Line of Credit Note, attorneys' fees, costs, and such other relief as this Court deems just and proper.

Dated: September 29, 2021

Respectfully Submitted,

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*Counsel for Ryan K. Stumphauzer,
in his capacity as Court-Appointed
Receiver for Eagle Six Consultants,
Inc.*

EXHIBIT 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS GROUP,
INC. d/b/a/ PAR FUNDING,
FULL SPECTRUM PROCESSING, INC.,
ABETTERFINANCIALPLAN.COM LLC
d/b/a/ A BETTER FINANCIAL PLAN,
ABFP MANAGEMENT COMPANY, LLC
f/k/a/ PILLAR LIFE SETTLEMENT
MANAGEMENT COMPANY, LLC,
ABFP INCOME FUND, LLC,
ABFP INCOME FUND 2, L.P.,
UNITED FIDELIS GROUP CORP.,
FIDELIS FINANCIAL PLANNING LLC,
RETIREMENT EVOLUTION GROUP, LLC,
RETIREMENT EVOLUTION INCOME
FUND, LLC f/k/a RE INCOME FUND, LLC,
RE INCOME FUND 2, LLC,
LISA MCELHONE,
JOSEPH COLE BARLETA a/k/a/ JOE COLE,
JOSEPH W. LAFORTE a/k/a JOE MACK
a/k/a/ JOE MACKI a/k/a JOE MCELHONE,
PERRY S. ABBONIZIO,
DEAN J. VAGNOZZI,
MICHAEL C. FURMAN,
and JOHN GISSAS,**

Defendants, and

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

_____/

**ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MOTION FOR APPOINTMENT OF RECEIVER**

THIS CAUSE comes before the Court upon Plaintiff Securities and Exchange Commission’s *Ex Parte* Motion for the Appointment of a Receiver [ECF No. 4] (“Motion”), filed on July 24, 2020. In the Motion, Plaintiff seeks the appointment of a Receiver over the corporate Defendants in this case: Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”), Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan (“ABFP”), ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC (“ABFP Management”), ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE Income Fund 2 LLC (collectively, the “Receivership Entities”).

Plaintiff seeks a Receiver with full and exclusive power, duty, and authority to: administer and manage the Receivership Entities’ business affairs, funds, assets, causes of action, and any other property; marshal and safeguard all of the assets of the Receivership Entities; and take whatever actions are necessary for the protection of the investors. *See* Motion at 2. Plaintiff has made a sufficient and proper showing in support of the relief requested, submitted the credentials of a candidate to be appointed as Receiver, and advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court. Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff Securities and Exchange Commission’s *Ex Parte* Motion for the Appointment of a Receiver [ECF No. 4] is **GRANTED**. Ryan K. Stumphauzer is appointed Receiver over the Receivership Entities, their subsidiaries, successors, and assigns. If the Court grants Plaintiff’s Emergency *Ex Parte* Motion for Temporary Restraining

Order and Other Relief [ECF No. 14], Mr. Stumphauzer is authorized, empowered, and directed as follows until further Order of the Court:

1. To take custody, control, and possession of all Receivership Entity records, documents, and materials, and to safeguard these items until further Order of the Court;

2. To secure and safeguard the Receivership Entity's information technology, data, documents, storage systems, and documents, including by making contact with any third party vendors, such as movers and information technology personnel, to assist in this process;

3. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, lawyers, and paralegals ("Retained Personnel");

4. To take any other action as necessary and appropriate for the preservation of the Receivership Entities' property interests or to prevent the dissipation or concealment of such property interests; and

5. To take such other action as may be approved by this Court.

6. Additionally, the Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of each Receivership Entity, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

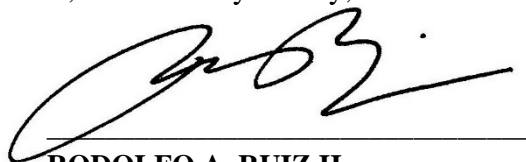
7. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and the Receiver's appointment.

8. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates. The Receiver shall seek the Court's

approval by filing a Motion for the reimbursement of expenses and compensation for time spent on the matters set forth herein.

9. The Receivership Entities and all persons receiving notice of this Order shall not hinder or interfere with the Receiver’s efforts to take control or possession of the Receivership Entities’ property interests identified above, or hinder his efforts to preserve them.

DONE AND ORDERED in Fort Lauderdale, Florida, this 27th day of July, 2020.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Amie Riggle Berlin, Esq.
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Securities and Exchange Commission
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

_____ /

AMENDED ORDER APPOINTING RECEIVER

THIS CAUSE comes before the Court upon Plaintiff Securities and Exchange Commission’s (“SEC” or “Commission”) Expedited Motion to Amend Receivership Order [ECF No. 105] (“Motion”), filed on August 7, 2020, and the Court’s Order granting the Motion [ECF No. 140], entered on August 13, 2020.

WHEREAS as set forth in the Court’s July 27, 2020 Order appointing the Receiver [ECF No. 36], the Court found that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendants (“Receivership Assets”) and those assets of the Relief Defendant that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; and/or (c) may otherwise be includable as assets of the estates of the Defendants (collectively, “Recoverable Assets”); and,

WHEREAS this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendants, and venue properly lies in this district, it is hereby

ORDERED AND ADJUDGED as follows:

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the following Defendants: Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”), Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan (“ABFP”), ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC (“ABFP Management”), ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE Income Fund 2 LLC; and the following related entities: ABFP Income Fund 3, LLC, ABFP Income Fund 4, LLC, ABFP Income Fund 6, LLC, ABFP Income Fund Parallel LLC, ABFP Income Fund 2 Parallel, ABFP Income Fund 3 Parallel, ABFP Income Fund 4 Parallel, and ABFP Income Fund 6 Parallel (collectively, “Receivership Entities”).

2. Until further Order of this Court, Ryan Stumphauzer, Esq. is appointed to serve without bond as receiver (“Receiver”) for the estates of the Receivership Entities.

I. Asset Freeze

3. Except as otherwise specified herein, all Receivership Assets and Recoverable Assets are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets and/or any Recoverable Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Assets and/or Recoverable Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

II. General Powers and Duties of Receiver

4. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed. R. Civ. P. 66.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Entities are hereby dismissed and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Entities' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of their claims.

6. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly ("Receivership Property" or, collectively, "Receivership Estates");

- B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- C. To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;
- D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Entities;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
- H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- K. To take such other action as may be approved by this Court.

III. Access to Information

8. The individual Receivership Entities and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and

employees of the entity Receivership Entities, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

9. Within ten days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the Commission a sworn statement, listing: (a) the identity, location and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the Receivership Entities; and, (c) the names, addresses and amounts of claims of all known creditors of the Receivership Entities.

10. Within thirty (30) days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the Commission a sworn statement and accounting, with complete documentation, covering the period from January 1, 2015 to the present:

- A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Entities, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. Identifying every account at every bank, brokerage or other financial institution: (a) over which Receivership Entities have signatory authority;

and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Entities;

- C. Identifying all credit, bank, charge, debit or other deferred payment card issued to or used by each Receivership Entity, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;
- D. Of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Entities, and each of them, in any way related, directly or indirectly, to the conduct alleged in the Commission's Complaint. The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;
- G. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and
- H. Of all transfers of assets made by any of them.

11. Within thirty (30) days of the entry of this Order, the Receivership Entities shall provide to the Receiver and the Commission copies of the Receivership Entities' federal income tax returns for 2015 through present with all relevant and necessary underlying documentation.

12. The individual Receivership Entities and the Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. In the event that the Receiver deems it

necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

13. The Receiver is authorized to issue subpoenas to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Fed. R. Civ. P. 26(d)(1), concerning any subject matter within the powers and duties granted by this Order.

14. The Receivership Entities are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

IV. Access to Books, Records, and Accounts

15. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

16. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, his agents and/or employees.

17. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

- A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Commission a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

V. Access to Real and Personal Property

18. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

19 The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

20. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

21. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

22. Upon the request of the Receiver, the United States Marshal Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody and control of, or identify the location of, any assets, records or other materials belonging to the Receivership Estates.

VI. Notice to Third Parties

23. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

24. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entity shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Entity had received such payment.

25. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

26. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entities ("Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individual Receivership Entities, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mailbox, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

27. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain

such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

VII. Injunction Against Interference with Receiver

29. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;
- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entity, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or which otherwise affects any Receivership Property; or,
- D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

30. The Receivership Entities shall cooperate with and assist the Receiver in the performance of his duties.

31. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

VIII. Stay of Litigation

32. As set forth in detail below, and excluding the instant proceeding, all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, and the proceedings specified in the Court's Order Granting the Receiver's Emergency Motion to Lift Litigation Injunction as to Certain Garnishment Proceedings [ECF No. 112], the following proceedings are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

33. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

34. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

IX. Managing Assets

35. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property ("Receivership Funds").

36. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of [Receivership Entity]" together with the name of the action.

37. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

38. Subject to Paragraph 39, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

39. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

40. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

41. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable, whether proposed,

temporary or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a “Qualified Settlement Fund.” The Receivership Entities shall cooperate with the Receiver in fulfilling the Settlement Funds’ obligations under Treas. Reg. § 1.468B-2.

X. Investigate and Prosecute Claims

42. Subject to the requirement, in Section VIII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

43. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts,

disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions.

44. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all entity Receivership Entities.

45. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

XI. Bankruptcy Filing

46. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (“Bankruptcy Code”) for the Receivership Entities. If a Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 4 above, the Receiver is vested with management authority for all entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

47. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings.

XII. Liability of Receiver

48. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

49. The Receiver and his agents, acting within scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel, nor shall the Receiver or Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties.

50. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

51. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission’s counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

XIII. Recommendations and Reports

52. If the Receiver deems it necessary, the Receiver is authorized to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (“Liquidation Plan”) for review by the Court. The Receiver shall file the Liquidation Plan in the above-captioned action, with service copies to counsel of record.

53. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (“Quarterly Status Report”), reflecting (to the best of the Receiver’s knowledge as of the period covered by the report) the

existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

54. The Quarterly Status Report shall contain the following:
- A. A summary of the operations of the Receiver;
 - B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
 - C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
 - D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
 - E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
 - F. A list of all known creditors with their addresses and the amounts of their claims;
 - G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
 - H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

55. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

XIV. Fees, Expenses and Accountings

56. Subject to Paragraphs 57 – 63 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

57. Subject to Paragraph 58 immediately below, the Receiver is authorized to solicit persons and entities (“Retained Personnel”) to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

58. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (“Billing Instructions”) agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

59. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (“Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

60. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver

will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

61. Quarterly Fee Applications may be subject to a holdback of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

62. Each Quarterly Fee Application shall:

- A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,
- B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

63. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

DONE AND ORDERED in Fort Lauderdale, Florida, this 13th day of August, 2020.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, et al.,**

Defendants.

_____ /

ORDER GRANTING MOTION TO EXPAND RECEIVERSHIP ESTATE

THIS CAUSE comes before the Court upon the Receiver’s Motion to Expand Receivership Estate [ECF No. 357] (“Motion”), filed on October 30, 2020. In the Motion, the Receiver seeks to modify the Court’s Amended Order Appointing Receiver dated August 13, 2020 [ECF No. 141] (“Receivership Order”), which has already been amended by this Court’s order dated September 4, 2020 [ECF No. 238].¹ The Court has carefully reviewed the Motion, Defendant Perry Abbonizio’s Response in Opposition [ECF No. 376], Non-Party Capital Source 2000, Inc.’s Response [ECF No. 399], Defendants’ Joint Response in Opposition [ECF No. 401], and Receiver’s Reply in Support of the Motion [ECF No. 414].

¹ The current “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding; Full Spectrum Processing, Inc.; ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; RE Income Fund 2 LLC; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel; ABFP Income Fund 3 Parallel; ABFP Income Fund 4 Parallel; and ABFP Income Fund 6 Parallel; ABFP Multi-Strategy Investment Fund LP; ABFP Multi-Strategy Fund 2 LP; and MK Corporate Debt Investment Company LLC.

The Court finds that the Receiver has made a sufficient and proper showing in support of the relief requested. *See SEC v. Quiros*, 966 F.3d 1195, 1199 (11th Cir. 2020) (“A district court has ‘broad powers and wide discretion to determine relief in an equity receivership.’”) (quoting *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)). As noted during the Status Conference held on December 15, 2020 [ECF No. 433], the Court believes that expansion of the Receivership is necessary to effectively safeguard assets for the benefit of investors in this matter and to guard against potential dissipation.²

To be clear, the Court does not take this decision lightly and recognizes that the instant request to expand the receivership estate “should be employed with the utmost caution and is justified only where there is a clear necessity to protect a party’s interest in property, legal and less drastic equitable remedies are inadequate, and the benefits of receivership outweigh the burdens on the affected parties.” *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012) (internal quotations and citations omitted); *see also United States v. Bradley*, 644 F.3d 1213, 1310 (11th Cir. 2011) (noting that “[a] district courts’ appointment of a receiver . . . is an extraordinary equitable remedy.”). Here, having reviewed the Receiver’s findings—as well as Defendants’ overall conduct to date—the Court finds a clear necessity for expansion given that tainted funds, which could be the subject of disgorgement, may be found in the entities and properties identified herein. *See SEC v. Laurer*, No. 03-80612, 2009 WL 812719, at *3 (S.D. Fla. Mar. 26, 2009)

² In determining whether expansion of the Receivership is appropriate in this case, the Court has also considered the following factors: “(1) whether [the party] seeking the appointment has a valid claim; (2) whether there is fraudulent conduct or the probability of fraudulent conduct, by the defendant; (3) whether the property is in imminent danger of being lost, concealed, injured, diminished in value, or squandered; (4) whether legal remedies are inadequate; (5) whether the harm to plaintiff by denial of the appointment would outweigh injury to the party opposing appointment; (6) the plaintiff’s probable success in the action and the possibility of irreparable injury to plaintiff’s interest in the property; and, (7) whether [the] plaintiff’s interests sought to be protected will in fact be well-served by receivership.” *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 844 (9th Cir. 2009) (internal quotations and citations omitted).

(noting that “when tainted funds are used to pay costs associated with maintaining ownership of the property, the property itself and its proceeds are tainted by the fraud.”); *SEC v. Faulkner*, No. 3:16-CV-1735-D, 2018 WL 4362729, at *4 (N.D. Tex., Sept. 12, 2008) (explaining that it is “often appropriate to appoint a receiver over an entity that has violated securities law and regulations[.]” and a court “may also exercise its equitable powers over an entity that has *not* engaged in wrongdoing, but nonetheless (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds.”) (internal quotations and citations omitted, emphasis in original).

Further, the Court does not find that the existing asset freeze will sufficiently safeguard the property at issue in this Motion, thereby necessitating the requested expansion. *See Netsphere*, 703 F.3d at 306 (“[I]n cases of non-compliance with SEC regulations, a receiver may be appointed to prevent the corporation from dissipating corporate assets and to pay defrauded investors.”); *see also SEC v. Posner*, 16 F.3d 520, 521 (2d Cir. 1994) (holding that once the “equity jurisdiction of the district court has been properly invoked by a showing of a securities law violation,” the court has “broad discretion” to fashion an appropriate remedy) (quoting *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972)). Accordingly, it is hereby

ORDERED AND ADJUDGED that the Receiver’s Motion to Expand Receivership Estate [ECF No. 357] is **GRANTED** as follows:

1. The scope of the receivership created in this case is expanded to include the following entities:

- a. Capital Source 2000, Inc.
- b. Fast Advance Funding LLC
- c. Beta Abigail, LLC
- d. New Field Ventures, LLC

- e. Heritage Business Consulting, Inc.
- f. Eagle Six Consulting, Inc.
- g. 20 N. 3rd St. Ltd
- h. 118 Olive PA LLC
- i. 135-137 N. 3rd St. LLC
- j. 205 B Arch St Management LLC
- k. 242 S. 21st St. LLC
- l. 300 Market St. LLC
- m. 627-629 E. Girard LLC
- n. 715 Sansom St. LLC
- o. 803 S. 4th St. LLC
- p. 861 N. 3rd St. LLC
- q. 915-917 S. 11th LLC
- r. 1250 N. 25th St. LLC
- s. 1427 Melon St. LLC
- t. 1530 Christian St. LLC
- u. 1635 East Passyunk LLC
- v. 1932 Spruce St. LLC
- w. 4633 Walnut St. LLC
- x. 1223 N. 25th St. LLC
- y. Liberty Eighth Avenue LLC


2. The scope of the receivership created in this case is expanded to include the following properties:

- a. 568 Ferndale Lane, Haverford PA 19041
- b. 105 Rebecca Court, Paupack, PA 18451
- c. 107 Quayside Dr., Jupiter FL 33477

3. The scope of the receivership created in this case is expanded to include Relief Defendant L.M.E. 2017 Family Trust.

4. The Court finds that based upon the Securities and Exchange Commission’s previous filings and the information the Receiver has supplied in the Motion, the same findings and conclusions that led the Court to include the other Receivership Entities apply equally to those listed in paragraphs 1 through 3 above. Ryan K. Stumphauzer is appointed Receiver of all entities, properties, and Relief Defendant listed in paragraphs 1 through 3 above and all the “Receivership Assets” of those entities, properties, and Relief Defendant, as defined in the Receivership Order [ECF No. 141]. The Receivership Order shall apply with equal force and effect to the entities, properties, and Relief Defendant listed in paragraphs 1 through 3 above as it applies to the other Receivership Entities. The terms and provisions of the operative Receivership Order are incorporated by reference herein.

DONE AND ORDERED in Fort Lauderdale, Florida, this 16th day of December, 2020.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

_____ /

**ORDER GRANTING RECEIVER’S THIRD MOTION TO EXPAND RECEIVERSHIP
ESTATE AND MOTION TO CORRECT SCRIVENER’S ERRORS IN PRIOR ORDERS
EXPANDING RECEIVERSHIP ESTATE**

THIS CAUSE comes before the Court upon the Receiver’s Third Motion to Expand Receivership Estate and Motion to Correct Scrivener’s Errors in Prior Orders Expanding Receivership Estate [ECF No. 468], filed on January 14, 2021. In the Motion, the Receiver seeks to expand the scope of the Court’s Amended Order Appointing Receiver dated August 13, 2020 [ECF No. 141] (“Receivership Order”), which has been previously amended by this Court’s Order dated September 4, 2020 [ECF No. 238] and the Order Granting Motion to Expand Receivership Estate dated December 16, 2020 [ECF No. 436] (“Order on Motion to Expand”).¹

¹ The current “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”); Full Spectrum Processing, Inc.; ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; RE Income Fund 2 LLC; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel; ABFP Income Fund 3 Parallel; ABFP Income Fund 4 Parallel; and ABFP Income Fund 6 Parallel; ABFP Multi-Strategy Investment Fund LP; ABFP Multi-Strategy Fund 2 LP; MK Corporate Debt Investment Company LLC; Capital Source 2000, Inc.; Fast Advance Funding LLC; Beta Abigail, LLC; New Field Ventures, LLC; Heritage Business Consulting, Inc.; Eagle Six Consulting, Inc.; 20 N. 3rd St. Ltd.; 118 Olive PA LLC; 135-137 N. 3rd St. LLC; 205 B Arch St Management LLC; 242 S. 21st St. LLC; 300 Market St. LLC; 627-629 E. Girard LLC; 715 Sansom St. LLC; 803 S. 4th St. LLC; 861

The Court finds that the Receiver has made a sufficient and proper showing in support of the relief requested. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Receiver’s Third Motion to Expand Receivership Estate and Motion to Correct Scrivener’s Errors in Prior Orders Expanding Receivership Estate [ECF No. 468] is **GRANTED** as follows:

1. For the same reasons articulated in the Order on Motion to Expand [ECF No. 436], the scope of the receivership created in this case is expanded to include the following entities:

- a. Blue Valley Holdings, LLC;
- b. LWP North LLC; and
- c. 500 Fairmount Avenue, LLC.

2. The name of ABFP Multi-Strategy Fund 2 LP, one of the Receivership Entities, is corrected to ABFP Multi-Strategy Investment Fund 2 LP.

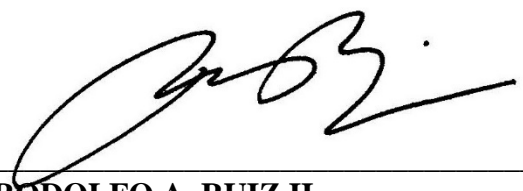
3. The name of Eagle Six Consulting Inc, one of the Receivership Entities, is corrected to Eagle Six Consultants, Inc.

4. The Court finds that based upon the Securities and Exchange Commission’s previous filings and the information the Receiver has supplied in the Motion, the same findings and conclusions that led the Court to include the other Receivership Entities apply equally to those listed in paragraphs 1 through 3 above. Ryan K. Stumphauzer is appointed Receiver of all entities listed in paragraphs 1 through 3 above and all the “Receivership Assets” of those entities, as defined in the Receivership Order [ECF No. 141]. The Receivership Order shall apply with equal

N. 3rd St. LLC; 915-917 S. 11th LLC; 1250 N. 25th St. LLC; 1427 Melon St. LLC; 1530 Christian St. LLC; 1635 East Passyunk LLC; 1932 Spruce St. LLC; 4633 Walnut St. LLC; 1223 N. 25th St. LLC; Liberty Eighth Avenue LLC; and The LME 2017 Family Trust; and the receivership also includes the properties located at 568 Ferndale Lane, Haverford PA 19041; 105 Rebecca Court, Paupack, PA 18451; and 107 Quayside Dr., Jupiter FL 33477.

force and effect to the entities listed in paragraphs 1 through 3 above as it applies to the other Receivership Entities. The terms and provisions of the operative Receivership Order are incorporated by reference herein.

DONE AND ORDERED in Fort Lauderdale, Florida, this 1st day of February, 2021.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

EXHIBIT 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, et al.,**

Defendants.

_____ /

**ORDER GRANTING THE RECEIVER’S MOTION TO
LIFT THE LITIGATION STAY TO ALLOW COMMENCEMENT
OF PROCEEDINGS AGAINST: (1) JRC PAINTING, LLC d/b/a C&C
PAINTING AND JOSEPH R. CANTY; AND (2) DANIEL SCARAMELLINO**

THIS CAUSE comes before the Court upon the Receiver’s Motion to Lift the Litigation Stay to Allow Commencement of Proceedings Against JRC Painting, LLC d/b/a C&C Painting (“JRC”), Joseph R. Canty, and Daniel Scaramellino [ECF No. 745] (“Motion”), filed on September 3, 2021.

In the Motion, the Receiver seeks to modify the Court’s Amended Order Appointing Receiver dated August 13, 2020 [ECF No. 141], so as to lift the litigation injunction provided for in that Order to pursue causes of action against JRC, Joseph R. Canty, and Daniel Scaramellino for the benefit of the Receivership Estate.

The Receiver has made a sufficient and proper showing in support of the relief requested. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Receiver’s Motion is **GRANTED**. The litigation injunction set forth in the Court’s Amended Order Appointing Receiver dated August 13, 2020

[ECF No. 141] is hereby lifted solely for the purpose of allowing the Receivership Entities to pursue claims against the following persons and entities:

- 1. JRC Painting, LLC d/b/a C&C Painting;
- 2. Joseph R. Canty; and
- 3. Daniel Scaramellino.

DONE AND ORDERED in Fort Lauderdale, Florida, this 7th day of September, 2021.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of record

EXHIBIT 3

Loan Agreement

THIS LOAN AGREEMENT (this “**Agreement**”) is made as of May 28, 2019 (the “**Effective Date**”), by and between DANIEL SCARAMELLINO, 4000 Hollywood Boulevard, Suite 495, Hollywood, FL 33021 (the “**Borrower**”), and Eagle Six Consultants, Inc., a Florida business corporation with an office at 20900 NE 30th Avenue, Aventura, FL 33160 (the “**Lender**”).

RECITALS:

A. The Borrower has requested that the Lender provide to the Borrower a loan in the form of a line of credit in the maximum principal amount of \$7,500,000.00, upon the terms and conditions set forth in this Agreement.

B. The Loan (as defined below) extended pursuant to this Agreement, the Secured Convertible Line of Credit Note (as defined below), the Membership Interest Pledge Agreement (as defined below), the Escrow Agreement (as defined in the Membership Interest Pledge Agreement), and all other agreements, documents, instruments, certificates and agreements now or hereafter executed in connection with the Loan, as the same may be amended, replaced, or supplemented from time to time (collectively, the “**Loan Documents**”).

C. The Lender is willing to provide the Loan upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, covenant and agree as follows:

AGREEMENT:

1. **Loan; Disbursement.** Subject to the terms and conditions hereinafter set forth, the Lender agrees to make the following loan to the Borrower: a revolving (as set forth in the Secured Convertible Line of Credit Note), multi-advance loan in the maximum principal amount of \$7,500,000.00 (the “**Loan**”). The Loan will bear interest and be repaid as provided in the Secured Convertible Line of Credit Note dated as of even date with this Agreement in a form set forth on Exhibit “A,” made by Borrower, as maker, in favor of the Lender, as such note may hereafter be amended, renewed, replaced, modified, restated or otherwise supplemented from time to time (the “**Secured Convertible Line of Credit Note**”). The Loan shall be paid and become due and payable as set forth in the Secured Convertible Line of Credit Note; *provided, that*, the Lender shall be eligible to convert \$2,500,000.00 of the principal of the Loan into equity of the MGFVS Holdings, LLC or otherwise pay the difference up to \$2,500,000.00 in the event that the principle balance of the Loan is less than \$2,500,000.00 at the time of conversion as set forth in the Secured Convertible Line of Credit Note. The Lender and the Borrower acknowledge and agree that the Lender will disburse the proceeds of the Loan as set forth in the Secured Convertible Line of Credit Note, with all such disbursements to be made in accordance with the terms and subject to the conditions set forth in this Agreement.

2. **Representations and Warranties.** The Borrower hereby represents and warrants to the Lender as follows, which representations and warranties shall be automatically recertified to the Lender with each disbursement request:

2.1. **Binding Obligations.** The Borrower has full power and authority to enter into the transactions provided for in this Agreement and the other Loan Documents to which he is a party, and has been duly authorized to do so by appropriate action of its governing body (if an entity) as may be required by law, charter, other organizational documents or agreements; and the Loan Documents, when executed and delivered by the Borrower, will constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms.

2.2. **No Defaults or Violations.** There does not exist any Event of Default under this Agreement or any of the Loan Documents or any default or violation by the Borrower or (a) any indenture, mortgage, deed of trust, franchise, permit, contract, agreement, or other instrument to which he is a party or by which he is bound; or (b) any law, ordinance, regulation, ruling, order, injunction, decree, condition or other requirement applicable to or imposed upon him by any law, the action of any court or any governmental authority or agency; and the consummation of this Agreement and the transactions set forth herein will not result in any such default or violation or Event of Default.

2.3. **Disclosure.** None of the Loan Documents contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary in order to make the statements contained in this Agreement or the Loan Documents not misleading. There is no fact known to the Borrower which materially adversely affects or, so far as the Borrower can now foresee, might materially adversely affect the business, assets, operations, condition (financial or otherwise) or results of operation of the Borrower and which has not otherwise been fully set forth in this Agreement or in the Loan Documents.

3. **Affirmative Covenants.** The Borrower covenants and agrees that until the Loan is paid in full, the Borrower shall:

3.1. **Books and Records.** Give representatives of the Lender access thereto at all reasonable times, including permission to examine, copy and make abstracts from any of such books and records and such other information as the Lender may from time to time reasonably request.

3.2. **Compliance with Covenants, Agreements and Laws.** Comply with all applicable laws, covenants and restrictions now of record affecting all or any part of the assets or business of the Borrower. Perform and observe all the terms and provisions of each material agreement or contract to be performed or observed by it, maintain each material agreement or contract in full force and effect, enforce each such material agreement or contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Lender and, upon request of the Lender, make to each other party to each material agreement or contract such demands and requests for information and reports or for action as Borrower is entitled to make under such material agreement or contract.

3.3. **Payment of Taxes and Other Charges.** Pay and discharge when due all indebtedness and all taxes, assessments, charges, levies and other liabilities imposed upon the Borrower, its income, profits, property or business, except those which currently are being contested in good faith by appropriate proceedings and for which the Borrower shall have set aside adequate reserves or made other adequate provision with respect thereto acceptable to the Lender in its sole discretion.

3.4. **Additional Reports.** Provide prompt written notice to the Lender of the occurrence of any of the following (together with a description of the action which the Borrower proposes to take with respect thereto): (i) any Event of Default or any event, act or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default (a "Default"), or (ii) any litigation filed by or against the Borrower.

4. **Negative Covenants.** The Borrower covenants and agrees that until the Loan is paid in full, the Borrower shall not, unless waived in advance in writing by Lender:

4.1. **Indebtedness.** Create, incur, assume or suffer to exist any indebtedness for borrowed money other than the Loan, any other indebtedness to the Lender or consumer credit card debt.

4.2. **Liens and Encumbrances.** Create, assume, incur or permit to exist any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any of his property, now owned or hereafter acquired, or acquire or agree to acquire any kind of property subject to any conditional sales or other title

retention agreement, except as may be solely in favor of the Lender or permitted in a prior writing by the Lender in its sole discretion.

4.3. Guarantees. Guarantee, endorse or become contingently liable for the obligations of any person, firm, corporation or other entity, except in connection with the endorsement and deposit of checks in the ordinary course of business for collection.

4.4. Borrower will take no act that diminishes or compromises Company's interest with PMC Consolidated Holding LLC ("PMC") and will keep Lender apprised of all events and developments with regard to PMC.

5. Conditions for Disbursements. The Lender shall not be obligated to make the first disbursement of the Loan, or any future disbursement of the Loan, until the Borrower at its expense shall have fulfilled, to the Lender's satisfaction, all provisions of this Agreement applicable thereto and shall have delivered all items reasonably requested by the Lender, and the following conditions have been met, or in the event of future disbursements, continue to be met:

5.1 Transaction Documents. The Loan Documents shall have been duly executed and, where applicable, delivered to the Lender, and the Escrow Property shall have been provided to the Escrow Agent under the Escrow Agreement.

5.2 No Default. No Event of Default shall have occurred and be continuing hereunder or under any of the other Loan Documents.

5.3 Membership Interest Pledge Agreement. The Lender shall have received from the Borrower a pledge of the membership interest of the Borrower in the form set forth on Exhibit "B" (the "Membership Interest Pledge Agreement").

5.4 Representations and Warranties. Each of the representations and warranties made by the Borrower in or pursuant to the Loan Documents shall be true and correct on and as of such date.

6. Other Conditions and Procedure for Disbursements. The Lender's obligation to make any disbursement hereunder is conditioned upon a request of the Borrower, delivery by the Borrower and approval by the Lender of the items required pursuant to Section 5 herein, delivery of the items specified below and the performance by the Borrower of all of its covenants, agreements and obligations under this Agreement and the other Loan Documents.

6.1 Requisition. At least three (3) business days prior to the date on which the Borrower desires a disbursement, the Borrower shall submit to the Lender a request for disbursement in a form reasonably agreeable to the Lender, signed by the Borrower.

6.2 Other Disbursement Contingencies. The Lender shall not be obligated to make any disbursement hereunder or to take any action hereunder or under the Loan Documents if, on the date of a proposed disbursement or the date of a proposed action, (i) the Borrower is in default of its obligations hereunder or under any of the Loan Documents, or an event has occurred which with the passage of time or the giving of notice or both would constitute an Event of Default hereunder or thereunder or (ii) any representation or warranty made by the Borrower herein or in any of the other Loan Documents proves to be untrue in any material respect.

7. Events of Default; Remedies. The occurrence of one or more of the following events shall constitute an "Event of Default" hereunder: (i) the Borrower shall fail to comply with any covenant contained in this Agreement or any of the other Loan Documents which, among other things, calls for the payment of money when such payment is due; (ii) if the Borrower fails to keep, observe or perform any of the other undertakings, conditions, stipulations, agreements, covenants or obligations of the Borrower as set forth in this Agreement or any

of the other Loan Documents, or otherwise to the Lender, which do not have a specified grace or cure period, and does not cure such failure within fifteen (15) days of written notice from the Lender of such failure; (iii) if any of the representations or warranties made by the Borrower under this Agreement or under any of the other Loan Documents shall be untrue in any material respect; (iv) the filing by or against the Borrower of any proceeding in bankruptcy, receivership, insolvency, reorganization, liquidation, conservatorship or similar proceeding (and, in the case of any such proceeding instituted against the Borrower, such proceeding is not dismissed or stayed within thirty (30) days of the commencement thereof, provided that the Lender shall not be obligated to advance additional funds hereunder during such period); (v) any assignment by the Borrower for the benefit of creditors, or any levy, garnishment, attachment or similar proceeding is instituted against any property of the Borrower held by or deposited with the Lender; (vi) a default or failure to pay when due with respect to any other indebtedness of the Borrower for borrowed money; (vii) the commencement of any foreclosure or forfeiture proceeding, execution or attachment against any collateral securing the obligations of the Borrower to the Lender; or (viii) the entry of a final judgment against the Borrower and the failure of the Borrower to discharge the judgment within ten (10) days of the entry thereof. Upon the occurrence of any one or more of the Events of Default, at the Lender's option, all obligations on the Lender's part to make the Loan, or to make any further disbursements hereunder shall cease and terminate, and the Loan and all sums then or thereafter due under any and all of the Loan Documents shall thereupon become immediately due and payable. Upon the occurrence of an Event of Default, the Lender may enforce any or all of its rights hereunder or under any other Loan Documents, or at law or in equity.

8. **Security.** For the purpose of securing the payment and performance of the obligations of the Borrower to the Lender pursuant to the Loan Documents, the Borrower and the Lender are simultaneously entering into the Membership Interest Pledge Agreement.

9. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder (the "Notices") must be in writing and will be effective upon receipt. Notices may be given in any manner to which the parties may separately agree, including electronic mail. Without limiting the foregoing, first-class mail, and commercial courier service are hereby agreed to as acceptable methods for giving the Notices. Regardless of the manner in which provided, the Notices may be sent to a party's address set forth below or to such other address as any party may give to the other for such purpose in accordance with this Section:

To the Lender:

Eagle Six Consultants, Inc.
205 Arch Street
2nd Floor
Philadelphia, PA 19106
Attn: Joe Cole

To the Borrower:

Daniel Scaramellino
4000 Hollywood Boulevard
Suite 495
Hollywood, FL 22021
E-mail: [REDACTED]@gmail.com

10. **Preservation of Rights.** No delay or omission on the Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Lender's action or inaction impair any such right or power. The Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Lender may have under other agreements, at law or in equity.

11. **Illegality.** If any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Agreement.

12. **Changes in Writing.** No modification, amendment or waiver of, or consent to any departure by the Borrower from, any provision of this Agreement will be effective unless made in a writing signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower will entitle the Borrower to any other or further notice or demand in the same, similar or other circumstance.

13. **Entire Agreement.** This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

14. **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

15. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Borrower and the Lender and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Borrower may not assign this Agreement in whole or in part without the Lender's prior written consent and the Lender at any time may assign this Agreement in whole or in part.

16. **Interpretation.** In this Agreement, unless the Lender and the Borrower otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Agreement unless otherwise indicated; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. Unless otherwise specified in this Agreement, all accounting terms shall be interpreted and all accounting determinations shall be made in accordance with GAAP. If this Agreement is executed by more than one party as Borrower, the obligations of such persons or entities will be joint and several.

17. **Certain Waivers.** The Borrower hereby relieves and discharges the Lender from any and all liability and responsibility whatsoever arising out of the disbursement of Loan proceeds hereunder and agrees and acknowledges that the Lender does not assume any responsibility whatsoever for the method of disbursement, the application or use of Loan proceeds disbursed hereunder or as to any liens or claims whatsoever which might attach to or be filed against any collateral.

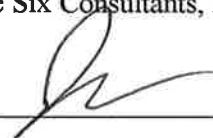
The Borrower acknowledges that he has read and understood all the provisions of this Agreement, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

IN WITNESS WHEREOF, the due execution hereof as a document, as of the date first written above, with the intent to be legally bound hereby.



DANIEL SCARPELLINO

Eagle Six Consultants, Inc.

By: 

Print Name: Joe Cole

Title: Chief Financial Officer

EXHIBIT 4

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE BORROWER THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

Secured Convertible Line of Credit Note

\$7,500,000.00

May 28, 2019

FOR VALUE RECEIVED, DANIEL SCARAMELLINO (the “**Borrower**”), with an address at 4000 Hollywood Boulevard, Suite 495, Hollywood, FL 33021, promises to pay to the order of Eagle Six Consultants, Inc., a Florida business corporation with an office at 20900 NE 30th Avenue, Aventura, FL 33160 (the “**Lender**”), in lawful money of the United States of America in immediately available funds at its offices located at 205 Arch Street, 2nd Floor, Philadelphia, PA 19106, or at such other location as the Lender may designate from time to time, the principal sum of **SEVEN MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$7,500,000.00)**, or such lesser amount as may be advanced to or for the benefit of the Borrower hereunder, together with interest accruing on the outstanding principal balance from the date hereof, prior to the Maturity Date (as defined below), all as provided below. This Convertible Line of Credit Note (this “**Note**”) is the Promissory Note described in that certain Loan Agreement dated the same date hereof between Borrower and Lender, as such agreement may be amended, restated, renewed, replaced, supplemented, or otherwise modified from time to time (the “**Loan Agreement**”). MGFVS Holding LLC (the “**Company**”) is signing this Note for the transfer of Membership Interest set out in this Note

1. **Advance Procedures.** A total of two million five hundred thousand dollars (\$2,500,000.00) shall be advanced to the borrower upon the execution of this Note. Thereafter, up to an additional one million dollars (\$1,000,000.00) may be borrowed every 30 days thereafter up to the maximum principal amount of this Note (\$1,000,000.00 on or after June 30, 2019 for a maximum outstanding principal balance of \$3,500,000.00 on such date, an additional \$1,000,000.00 on or after July 30, 2019 for a maximum outstanding principal balance of \$4,500,000 on such date, an additional \$1,000,000.00 on or after August 30, 2019 for a maximum outstanding principal balance of \$5,500,000.00 on such date, an additional \$1,000,000.00 on or after September 30, 2019 for a maximum outstanding principal balance of \$6,500,000.00 on such date and an additional \$1,000,000.00 on or after October 30, 2019 for a maximum outstanding principal balance of \$7,500,000.00 on or after such date). During the period from the date of this Note to and including the Maturity Date (as hereinafter defined), the Borrower may borrow hereunder (and may re-borrow after repayment if permitted under the Loan Agreement), subject to the terms and conditions of this Note, the Loan Agreement and the other Loan Documents (as hereinafter defined). In no event shall the aggregate unpaid principal amount of advances under this Note exceed the face amount of this Note. If permitted by the Lender, a request for advance may be made by telephone or electronic mail, with such confirmation or verification (if any) as the Lender may require in its discretion from time to time. A request for advance by Borrower shall be binding upon Borrower. The Borrower authorizes the Lender to accept telephonic and electronic requests for advances, and the Lender shall be entitled to rely upon the authority of solely the Borrower, or his designee (upon evidence of such written designation), providing such instructions. The Borrower hereby indemnifies and holds the Lender harmless from and against any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees and expenses) which may arise or be created by the acceptance of such telephonic and electronic requests or by the making of such advances. The Lender will enter on its books and records, which entry when made will be presumed correct, the date and amount of each advance of principal, as well as the date and amount of each payment of principal and interest made by the Borrower. The records of the Lender regarding the advances and payments made shall constitute prima facie evidence of the information contained therein.

2. **Maturity Date.** Unless converted pursuant to Section 3, this Note will mature and be immediately due and payable, plus any accrued but unpaid interest, by the Borrower upon the three (3) year anniversary of the date of this Note (the “**Maturity Date**”). In the event that a replacement note is issued, such note will mature and be immediately due and payable, plus any accrued but unpaid interest, by the Borrower upon this Note’s Maturity Date.

3. **Conversion.** Without limiting any other rights that it may have, the Lender shall be entitled to elect to convert two million five hundred thousand dollars (\$2,500,000.00) of this Note, or pay to Borrower up to the amount of two million five hundred thousand dollars (\$2,500,000.00) in the event that the outstanding principal balance of the Note is less than two million five hundred thousand dollars (\$2,500,000.00) (the “**Conversion Principal**”) The Lender may elect to convert or pay the Conversion Principal by delivering written notice of such election to the Borrower (the “**Conversion Notice**”) at any time during the term of this Note until the Maturity Date (the “**Conversion Election**”). For clarity, in the event that the Lender provides the Conversion Notice of the Conversion Election at the time that the outstanding principal balance of the Note is \$5,000,000.00, the Lender may elect to convert \$2,500,000.00 of the Note into the Conversion Principal, or, if the outstanding principal balance of the Note is \$1,500,000.00 at that time, the Lender may choose to convert the \$1,500,000.00 of the Note and pay to the Borrower directly \$1,000,000.00 for the balance of the Conversion Principal.

In the event that the Lender delivers a Conversion Notice as described above, then the Conversion Principal shall be converted into 50% of the Membership Interest units (100 Units) (the “**Conversion Shares**”) of the Company, at which time Lender, its designee or assignee will become an Additional Member of the Company, with 50%, un-dilutable, Membership Interest in the Company, with full Membership rights, including voting rights. Upon such conversion or payment of the Conversion Principal, the Lender shall surrender this Note, duly endorsed, at the principal offices of the Borrower and shall deliver executed documents relating to the units of the Company. Thereupon, there shall be issued and delivered to the Lender the Conversion Shares, and a replacement note or payment for an amount equal to the outstanding principal balance of the Note, plus any accrued but unpaid interest, remaining after conversion. In the event that a replacement note is issued, such note will not exceed a face value of \$5,000,000.00, be on terms similar to this Note, and will mature and be immediately due and payable, plus and accrued but unpaid interest, upon this Note’s Maturity Date. The Borrower shall cause any Conversion Shares, if and when issued, to be duly authorized, validly issued, fully paid and non-assessable. The Borrower shall as promptly as practicable, and in any event within fifteen (15) days thereafter, cause the Company to execute and deliver to the Lender a certificate or certificates for the total number of Conversion Shares into which the Conversion Principal is converted.

4. **Rate of Interest.** Except as otherwise provided herein, the outstanding principal amount of all advances made hereunder shall bear interest at the Applicable Rate from the date such advance was made until this Note is paid in full. Interest hereunder will be calculated based on the actual number of days that principal is outstanding over a year of 360 days. The “**Applicable Rate**” shall mean nine percent (9%) simple interest.

5. **Payment Terms.** Prior to the Maturity Date, payments of interest shall be due and payable monthly, commencing on June 1, 2019, and continuing on the 1st day of each month thereafter until the Maturity Date. Each such monthly payment shall be in an amount equal to accrued but unpaid interest, as such amounts are reflected in the records of and calculated by the Lender. All outstanding principal and accrued interest shall be due and payable in full on the Maturity Date. If any payment under this Note shall become due on a day other than a business day (i.e., any day other than a Saturday or Sunday or a federal legal holiday), such payment shall be made on the next succeeding business day and such extension of time shall be included in computing interest in connection with such payment. Payments received will be applied to charges, fees and expenses (including attorneys’ fees), accrued interest and principal in any order the Lender may choose, in its sole discretion.

6. **Late Payments; Default Rate.** If the Borrower fails to make any payment of principal, interest or other amount coming due pursuant to the provisions of this Note within five (5) calendar days of the date due and payable, the Borrower also shall pay to the Lender a late charge equal to the greater of five percent (5%) of the amount of such payment or \$100.00 (the “**Late Charge**”). Such five (5) day period shall not be construed in any way to extend

the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at the Lender's option upon the occurrence of any Event of Default (as hereinafter defined) and during the continuance thereof, amounts outstanding under this Note shall bear interest at a rate per annum (based on the actual number of days that principal is outstanding over a year of 360 days) which shall be three percentage points (3%) in excess of the interest rate in effect under this Note (the "**Default Rate**"). The Default Rate shall continue to apply whether or not judgment shall be entered on this Note. Both the Late Charge and the Default Rate are imposed as liquidated damages for the purpose of defraying the Lender's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Lender's exercise of any rights and remedies hereunder, under the other Loan Documents or under applicable law, and any fees and expenses of any agents or attorneys which the Lender may employ. In addition, the Default Rate reflects the increased credit risk to the Lender of carrying a loan that is in default. The Borrower agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the Lender, and that the actual harm incurred by the Lender cannot be estimated with certainty and without difficulty.

7. **Prepayment.** The Borrower may prepay any amounts under this Note in whole or in part at any time or from time to time without penalty or premium by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment.

8. **Other Loan Documents.** This Note is issued in connection with the Loan Agreement, the Membership Interest Pledge Agreement, the Escrow Agreement and the other agreements and documents executed and/or delivered in connection therewith or referred to therein, the terms of which are incorporated herein by reference (as amended, modified or renewed from time to time, collectively the "**Loan Documents**"), and is secured by the property described in the Loan Documents and by any and all mortgages, security agreements, assignments, loan agreements, pledge agreements and other documents or instruments evidencing a security interest or other lien in favor of the Lender and delivered by the Borrower or by any third party with reference to indebtedness of the Borrower, whether such documents were previously or are hereafter executed, and whether given expressly as security for payment of this Note or generally as security for any and all indebtedness of the Borrower to the Lender. Such documents may be executed contemporaneously with the execution of this Note, or they may be executed and delivered at another time. Collateral securing other obligations of Borrower to the Lender may also secure this Note.

9. **Events of Default.** The occurrence of any of the events defined in the Loan Documents as an Event of Default will be deemed to be an "**Event of Default**" under this Note. Upon the occurrence of an Event of Default: (a) the Lender shall be under no further obligation to make advances hereunder; (b) the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder shall be immediately due and payable without demand or notice of any kind; (c) at the Lender's option, this Note will bear interest at the Default Rate from the date of the occurrence of the Event of Default; and (d) the Lender may exercise from time to time any of the rights and remedies available under the Loan Documents or under applicable law. Upon an Event of Default Lender may, among its other remedies, exercise its security interest under the Membership Interest Pledge Agreement and demand the transfer of the Escrow Property under the Escrow Agreement. If Lender exercises its security interest under the Membership Interest Pledge Agreement, unless the parties can agree to a value of the Escrow Property, it will be valued by a nationally recognized person or entity who is in the business of valuing entities similar to the Company. In the event that the value provided by such person or entity for the Escrow Property is higher than the then outstanding principal value of this Note or any replacement note, the Borrower will be entitled to sufficient membership units of the Company held by the Escrow Agent to accommodate the value higher than the outstanding principal balance. In the event that the value provided by such person or entity for the Escrow Property is lower than the then outstanding principal value of this Note or any replacement note, the Borrower shall pay to Lender the difference between the value set and the outstanding principal balance within 10 days of such valuation. In the event the Lender does not exercise its security interest under the Membership Interest Pledge Agreement, Borrower remains personally liable for the outstanding principal balance of this Note or any replacement note.

10. **Indemnity.** The Borrower agrees to indemnify each of the Lender, and each of the Lender's affiliates and their respective managers, members, directors, officers, employees, agents and representatives (the "**Indemnified**

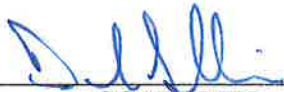
individually, against any security or against any property of the Borrower within any other county, state or other foreign or domestic jurisdiction. The Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Lender and the Borrower. The Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Note.

13. **Electronic Signatures and Records.** Notwithstanding any other provision herein, the Borrower agrees that this Note, the Loan Documents, any amendments thereto, and any other information, notice, agreement or authorization related thereto (each, a “Communication”) may, at the Lender’s option, be in the form of an electronic record. Any Communication may, at the Lender’s option, be signed or executed using electronic signatures. For the avoidance of doubt, the authorization under this Section 13 may include, without limitation, use or acceptance by the Lender of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format) for transmission, delivery and/or retention.

14. **WAIVER OF JURY TRIAL. THE BORROWER AND THE COMPANY IRREVOCABLY WAIVES ANY AND ALL RIGHTS THE BORROWER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS NOTE, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS NOTE OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE BORROWER ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

The Borrower the Company acknowledges that he and it has read and understood all the provisions of this Note, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

IN WITNESS WHEREOF, the due execution hereof as a document, as of the date first written above, with the intent to be legally bound hereby.



DANIEL SCARAMELLINO

MGFVS Holding, LLC



By: _____

Daniel Scaramellino

Its: Managing Member

Eagle Six Consulting, Inc.



By: _____

Joe Cole

Its: Chief Financial Officer

EXHIBIT 5

From: Dan Scaramellino [REDACTED]
Subject: PAR/REDBOX
Date: November 4, 2019 at 11:17 PM
To: Joe Mack joe@parfunding.com, David Chessler [REDACTED]



Joe,

I appreciate your time today, It was great catching up with you. Looking forward to reconnecting in nyc the week of the 11th-15th. I think it's the right time and a good idea for all of us to talk through the details of a LOI, so we can start the process on the PAR deal. I know your planning on being in FL on the 11th, but when you know your schedule let's coordinate a date that works- even if you end up staying in FL, maybe we can meet down there?

In the meantime, as discussed please wire \$2.5 mill to DC on my behalf as a draw down against the \$5 mill LOC on the PMC stock agreement.

DC- Please send Joe your wire instructions, as Joe has agreed to send the Redbox funds directly to you.

Also, I mentioned to Joe our discussions about you spearheading and controlling all of the ancillary offerings that can be rolled out to the 30+million Redbox users. Our team from the RX Pharmacy discount card is ready to go! Let's make that shit happen! I asked Joe to join us at our next meeting when we are ready to take the next step with them.

Thanks again to both of you...I'll be heading to Disney with the family in the am and should be available after 1pm ish tomorrow if either of you need to speak.

Danny

Sent from my iPad

EXHIBIT 6

112
General Ledger
All Transactions

Daniel Scaramellino Account totals
8/19/21

Total Funded	\$ 7,500,000.00
Total Interest Received	\$ 468,750.00
Last Int Payment Received	6/30/20

Account	Type	Date	Num	Adj	Name	Memo
VS Holidng Loan Receivable	Check	05/28/2019	2017		Daniel Scaramellino	v and s holding
VS Holidng Loan Receivable	Check	02/28/2020			Daniel Scaramellino	v and s holding
VS Holidng Loan Receivable	Check	03/03/2020			Daniel Scaramellino	v and s holding
VS Holidng Loan Receivable	Check	03/05/2020			Daniel Scaramellino	v and s holding
Interest Income	Deposit	07/01/2019			Daniel Scaramellino	v and s holding group wire
Interest Income	Deposit	07/26/2019			Daniel Scaramellino	v and s holding
Interest Income	Deposit	09/04/2019			Daniel Scaramellino	v and s holding wire
Interest Income	Deposit	10/01/2019			Daniel Scaramellino	v and s holding
Interest Income	Deposit	10/29/2019			Daniel Scaramellino	v and s holding wire
Interest Income	Deposit	11/29/2019			Daniel Scaramellino	Deposit
Interest Income	Deposit	12/31/2019			Daniel Scaramellino	Deposit
Interest Income	Deposit	01/31/2020			Daniel Scaramellino	Deposit
Interest Income	Deposit	03/02/2020			Daniel Scaramellino	Deposit
Interest Income	Deposit	03/31/2020			Daniel Scaramellino	Deposit
Interest Income	Deposit	04/30/2020			Daniel Scaramellino	Deposit
Interest Income	Deposit	05/29/2020			Daniel Scaramellino	Deposit
Interest Income	Deposit	06/30/2020			Daniel Scaramellino	Deposit
DSC Loan Receivable	General Journal	11/07/2019	AL191107-01		Daniel Scaramellino	DSC Chessler holding funding wire sent form cbsg bo

General Ledger
 All Transactions

Daniel Scaramellino Account totals
 8/19/21

Total Funded		
Total Interest Received		
Last Int Payment Received		
Total	\$ 7,500,000.00	\$ 468,750.00

Account	Split	Debit	Credit	Notes
VS Holidng Loan Receivable	ENT Operating 5104 10	2,500,000.00		
VS Holidng Loan Receivable	BOSJ Operating 2187	1,000,000.00		
VS Holidng Loan Receivable	BOSJ Operating 2187	500,000.00		
VS Holidng Loan Receivable	BOSJ Operating 2187	1,000,000.00		
Interest Income	ENT Operating 5104 10		18,750.00	Interest Income
Interest Income	ENT Operating 5104 10		18,750.00	Interest Income
Interest Income	BOSJ Operating 2187		18,750.00	Interest Income
Interest Income	BOSJ Operating 2187		18,750.00	Interest Income
Interest Income	BOSJ Operating 2187		18,750.00	Interest Income
Interest Income	BOSJ Operating 2187		37,500.00	Interest Income
Interest Income	BOSJ Operating 2187		37,500.00	Interest Income
Interest Income	BOSJ Operating 2187		37,500.00	Interest Income
Interest Income	BOSJ Operating 2187		37,500.00	Interest Income
Interest Income	BOSJ Operating 2187		56,250.00	Interest Income
Interest Income	BOSJ Operating 2187		56,250.00	Interest Income
Interest Income	BOSJ Operating 2187		56,250.00	Interest Income
Interest Income	BOSJ Operating 2187		56,250.00	Interest Income
DSC Loan Receivable	Note Payable LME	2,500,000.00		Paid from CBSG

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Ryan Stumphauzer, in his capacity as Court-Appointed Receiver for Eagle Six Consultants, Inc.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Miami-Dade County, FL</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)</p> <p>Timothy A. Kolaya, Esq. and Jessica P. Albert, Esq., Stumphauzer Foslid Sloman Ross & Kolaya, PLLC, Two</p>	<p>DEFENDANTS</p> <p>Daniel Scaramellino</p> <p>County of Residence of First Listed Defendant <u>Morris County, NJ</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> <p>Richard J. McIntyre, Esq., McIntyre Thanasides, 500 E. Kennedy Boulevard, Suite 200, Tampa, FL 33602,</p>
--	--

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input checked="" type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1332 and 28 U.S.C. §§ 2201 and 2202

Brief description of cause:
 Breach of Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** In excess of \$7,500,00 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: September 29, 2021 SIGNATURE OF ATTORNEY OF RECORD: /s/ Timothy A. Kolaya

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Ryan K. Stumphauzer, in his capacity as)
Court-Appointed Receiver for Eagle Six Consultants,)
Inc.)

Plaintiff(s)

v.)

Daniel Scaramellino)

Civil Action No. 8:21-cv-2307

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Daniel Scaramellino
19 Country Drive
Morristown, NJ
07960

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Timothy A. Kolaya, Esq.
Jessica P. Albert, Esq.
Stumphauzer Foslid Sloman Ross & Kolaya, PLLC
Two South Biscayne Boulevard, Suite 1600
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 8:21-cv-2307

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

RYAN K. STUMPHAUZER, IN
HIS CAPACITY AS COURT-
APPOINTED RECEIVER FOR
EAGLE SIX CONSULTANTS, INC.,
A Florida corporation,

Plaintiff,

Case No.: 8:21-cv-2307-SDM-AAS

vs.

DANIEL SCARAMELLINO, an individual,

Defendant(s).

**DEFENDANT, DANIEL SCARAMELLINO'S
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND
SUPPORTING MEMORANDUM OF LAW**

Defendant, Daniel Scaramellino (“Defendant” or “Scaramellino”), by and through its undersigned counsel, hereby pursuant to Fed.R.Civ.P. 12(b)(1), hereby files his Motion to Dismiss for Lack of Subject Matter Jurisdiction on the ground that there is a lack of complete diversity of citizenship between the parties because Receiver is a Florida resident, the underlying entity upon which Plaintiff is a Florida corporation, and Defendant is a Florida resident, and Plaintiff does not allege any other basis to invoke federal court jurisdiction. In support, Defendant states as follows:

I. COMPLAINT'S ALLEGATIONS

1. Plaintiff’s Complaint (Doc. 1) is a one (1)-count complaint for Breach of contract against Defendant Scaramellino.

2. Plaintiff invokes this Court's subject-matter jurisdiction pursuant to 28 U.S.C. § 1332 alleging that “a) the amount in controversy exceeds \$75,000.00 exclusive of interest and costs; and (b) there is diversity of citizenship between the parties.” See Complaint (D.E 1), ¶ 17.

3. In paragraph 17 of the Complaint, Plaintiff alleges that “the Receiver, as the court appointed receiver for Eagle Six- is a citizen of Miami-Dade County, Florida; and Scaramellino, an individual, is a citizen of New Jersey.” *Id.* at ¶ 17.

4. In footnote 1 of paragraph 17 of the Complaint, Plaintiff also alleges that Eagle Six Consultants, Inc. (“Eagle Six”), to which Plaintiff is the current receiver for, is a Florida corporation and maintains its principal place of business in Miami, Florida. *Id.* At pg. 5, Footnote 1.

DEFENDANT’S DOMICILE IS IN FLORIDA

5. Although Plaintiff’s Complaint facially alleges diversity of citizenship, a factual analysis demonstrates that there is a clear lack of complete diversity of citizenship between the parties because Plaintiff and Defendant are not citizens of different states.

6. Both parties are citizens of the state of Florida, and thus no diversity of citizenship exists which would afford this Court subject-matter jurisdiction.

7. Specifically, Defendant Scaramellino has never been a resident of, or domiciled in the state of New Jersey. Instead, as testified by Defendant in the Affidavit attached hereto as **Exhibit “A,”** Scaramellino has been, and continue to be, domiciled in, and a citizen of the state of Florida.

8. Further, even the Loan Agreement and Note, attached to the Complaint as Exhibits 3 and 4 respectively, upon which Plaintiff seeks relief, denotes Scaramellino’s address in Hollywood, Florida.

9. Moreover, Plaintiff does not allege any other basis for invoking this Court's jurisdiction. Accordingly, Plaintiff's complaint should be dismissed for lack of subject matter jurisdiction.

II. LEGAL DISCUSSION- MEMORANDUM OF LAW

Pursuant to 28. U.S.C. § 1332, this Court has “original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000...and is between... citizens of different States...” “[A] corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business...” 28 U.S.C. § 1332(c) (1).

“It is . . . axiomatic that the inferior federal courts are courts of limited jurisdiction. They are ‘empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,’ and which have been entrusted to them by a jurisdictional grant authorized by Congress.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999) (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)). Accordingly, the party who seeks to invoke a federal district court's jurisdiction must (1) allege facts establishing jurisdiction; and (2) when suit is based on diversity, those allegations must include the citizenship of each party so the court is satisfied that no plaintiff is a citizen of the same state as any defendant. *Travaglio v. Amer. Express Co.*, 735 F.3d 1266, 1268 (11th Cir. 2013) . “It is presumed that a federal court lacks jurisdiction in a particular case until the plaintiff demonstrates that the court has jurisdiction over the subject matter.” See *JPMCC 2005-CIBC13 Collins Lodging, LLC v. Philips South Beach, LLC*, 2010 WL 11452084 at 2(S.D. Fla. 2010) (citing *Kokkonen v. Guardian Life Ins. Co. of Am*, 511 U.S. 375, 377 (1994)).

A defendant can move to dismiss a complaint under Rule 12(b)(1) by attacking subject-matter jurisdiction either facially or factually. *Stalley ex rel. U.S. v. Orlando Regional Healthcare System, Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008). A facial attack affords a plaintiff safeguards similar to those provided in opposing a Rule 12(b)(6) motion - the court must consider the allegations of the complaint to be true. *Lawrence v. Dunbar*, 919 F.2d 1525, 128-29 (11th Cir. 1990). By contrast, a factual attack challenges subject-matter jurisdiction, in fact, irrespective of the pleadings. “In resolving a factual attack, the district court may consider extrinsic evidence such as testimony and affidavits.” *Id.* at 1529.

In order to invoke this Court's jurisdiction based on diversity, Plaintiff must show on the face of his complaint complete diversity of citizenship or face dismissal of their complaint for lack of subject matter jurisdiction. *See Selensky v. Mobile Infirmary*, 2007 WL 715997 (11th Cir. 2007) (where plaintiff did not plead sufficient facts to demonstrate complete diversity of citizenship among the parties or to state a claim involving a substantial question of federal law, the district court properly dismissed the action for lack of subject matter jurisdiction).

To survive a motion to dismiss for failure to state a cause of action under Fed.R.Civ.P. 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “While courts must liberally construe and accept as true allegations of fact in the complaint and inferences reasonably deductive therefrom, they need not accept factual claims that are internally inconsistent; facts which run counter to facts of which the court can take judicial notice; conclusory allegations, unwarranted deductions; or mere legal conclusions asserted by a party.” *Anthony Sterling, M.D. v. Provident Life & Acc. Ins. Co.*, 519 F.Supp.2d 1195, 1208 (M.D. Fla. 2007).

“Plausibility is the key, as the ‘well-pled allegations must nudge the claim ‘across the line from conceivable to plausible.’ ” *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1333 (11th Cir. 2010) (internal quotations omitted). In short, the complaint must not merely allege a misconduct, but must demonstrate that the pleader is entitled to relief. *Iqbal*, 556 U.S. at 678). Thus, if a defendant shows a lack of diversity by meeting its burden of production for a factual attack, then the plaintiff must respond with proof definitively evincing diversity exists. See *OSI, Inc. v. United States*, 285 F.3d 947, 951 (11th Cir. 2002). Factual attacks also differ from facial attacks because “no presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” See *Mortensen v. First Fed. Sav & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977).

Based on the foregoing, although Plaintiff has, without any established basis, alleged diversity of citizenship with one mere allegation that Defendant is a citizen of New Jersey, such allegation is factually inconsistent with the evidence presented in the exhibits attached to the Complaint, along with Scaramellino’s sworn affidavit attached hereto. Because Plaintiff has failed to sufficiently allege either diversity jurisdiction, this action should be dismissed for lack of subject matter jurisdiction.

WHEREFORE, Defendant, Daniel Scaramellino, respectfully requests that this Court grant his Motion to Dismiss for lack of subject-matter jurisdiction, award Defendant his reasonable attorney’s fees and costs incurred in filing this Motion and providing such other relief as the Court deems just.

Respectfully submitted,

/s/Katie Brinson Hinton, Esq.

Richard J. McIntyre, Esquire

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Katie Brinson Hinton, Esquire

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Tampa, FL 33602

Tel: 813-223-0000

Fax: (813)899-6069

Attorney for Defendant, Daniel Scaramellino

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the CM/ECF and/or email service to all counsel of record on this 1st day of November 2021.

/s/Katie Brinson Hinton

Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RYAN K. STUMPHAUZER, IN
HIS CAPACITY AS COURT-
APPOINTED RECEIVER FOR
EAGLE SIX CONSULTANTS, INC.,
A Florida corporation,

Plaintiff,
AAS
vs.

Case No.: 8:21-cv-2307-SDM-

DANIEL SCARAMELLINO, an individual,
Defendant(s).

AFFIDAVIT OF DANIEL SCARAMELLINO

Personally appeared before the undersigned officer duly authorized to administer oaths, DANIEL SCARAMELLINO, who upon being duly sworn, deposes and states as follows:

1. My name is DANIEL SCARAMELLINO. I am over 21 years of age, under no legal disabilities, and competent to give this Affidavit. I make this Affidavit based upon my personal knowledge of the matters contained herein.
2. I have never been a citizen of, resident of, or domiciled in the state of New Jersey.
3. At all times relevant to Plaintiff's complaint filed in this case, I have been a citizen of, resident of, and domiciled in the state of Florida, specifically residing in South Florida.
4. At all times relevant to the allegations of the complaint filed in this case, my voter registration has been within the state of Florida.
5. Currently, I am a resident of and domiciled in the city of Palm Beach Gardens, Florida.
6. In the past 365 days, up until 10/15/2021 when I re-located to Palm Beach Gardens, Florida, my primary residence was in Jupiter, Florida.

[left blank intentionally]

STATE OF FLORIDA DISTRICT COURT
NINTH JUDICIAL DISTRICT OF FLORIDA
TAMPA DIVISION

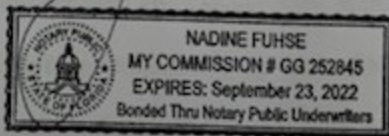
STATE OF FLORIDA DISTRICT COURT
NINTH JUDICIAL DISTRICT OF FLORIDA
TAMPA DIVISION

FURTHER AFFIANT SAYETH NOT.

DANIEL SCARAMELLINO

SWORN TO AND SUBSCRIBED before me on this 1st day of ~~October~~ ^{November} 2021, by DANIEL SCARAMELLINO, who is _____ personally known to me or X has produced Drivers License as identification.

NOTARY PUBLIC



**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO.: 8:21-CV-2307-SD-AAS

RYAN STUMPHAUZER, IN HIS
CAPACITY AS COURT-
APPOINTED RECEIVER FOR
EAGLE SIX CONSULTANTS,
INC., a Florida corporation,

Plaintiff,

vs.

DANIEL SCARAMELLINO, an
individual,

Defendant.

PLAINTIFF’S RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Plaintiff, Ryan Stumphauzer, in his capacity as Court-Appointed Receiver (the “Receiver”) for Eagle Six Consultants, Inc. (“Eagle Six”), by and through his undersigned counsel, responds to Defendant Daniel Scaramellino’s Motion to Dismiss [Doc. 8] (the “Motion”) as follows:

INTRODUCTION

Scaramellino’s Motion lacks merit and must be denied. Scaramellino seeks dismissal of the Receiver’s Complaint based solely on an alleged lack of subject matter jurisdiction. In his Motion, Scaramellino contends that he is a Florida citizen. Because the Receiver is a Florida citizen and the underlying

entity in receivership is also a Florida corporation, Scaramellino contends that there is no diversity of citizenship and, therefore, no basis for federal court jurisdiction. Contrary to the conclusory affidavit Scaramellino submitted in support of the Motion, Scaramellino's financial documentation and attorney representations confirm that Scaramellino is domiciled in New Jersey. To the extent the Court disagrees, concurrently herewith, the Receiver moves for leave to conduct jurisdictional discovery.

ARUGMENT

A. This Court Can Properly Exercise Subject Matter Jurisdiction.

1. Legal Standard.

Diversity jurisdiction exists where there is "complete diversity of the parties' citizenship and an amount in controversy exceeding \$75,000." *Davis v. Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792, 794 (11th Cir. 1999); *see also* 28 U.S.C. § 1332(a). "It is well established that there must be complete diversity of citizenship between opposing litigants." *Siegworth v. Sun City Stables*, No. 8:09-CV-973-T-33TBM, 2010 WL 11627536, at *1 (M.D. Fla. Feb. 2, 2010). For the purposes of diversity jurisdiction, citizenship is equivalent to domicile. *McCormick. V. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002). "A person's domicile is the place of his true fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom." *Simpson v. Fender*, 445 Fed. Appx. 268, 270 (11th Cir. 2011)

(internal citations omitted). The determination of citizenship for diversity jurisdiction purposes must be made at the time the suit is filed. *Id.*

“[T]he party invoking the court’s jurisdiction bears the burden of proving, by a preponderance of the evidence, facts supporting the existence of federal jurisdiction.” *Aderholt*, 293 F.3d at 1257. If diversity of citizenship is challenged, “by submitting affidavit evidence in support of its position, ‘the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction.’” *RT-destin Assocs. LLC v. Nexpoint Real Est. Advisors LP*, No. 3:20CV5616-MCR/EMT, 2020 WL 6505014, at *1 (N.D. Fla. Nov. 5, 2020) (citing *Diamond Crystal Brands, Inc. v. Food Movers Int’l, Inc.*, 593 F.3d 1249, 1257 (11th Cir. 2010) (quoting *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)).

2. The Receiver has Established Diversity Jurisdiction by a Preponderance of the Evidence.

In support of his Motion to Dismiss, Scaramellino submitted a barebones Affidavit of Daniel Scaramellino [Doc. 8-1] (the “Scaramellino Affidavit”), rife with conclusory statements claiming he is a citizen of and domiciled in the State of Florida. These statements are in direct contradiction to documents produced and statements made to Receiver’s counsel by Scaramellino’s former counsel, Todd Stone. In support of the Receiver’s contention that diversity jurisdiction exists, Jessica Albert has submitted a declaration, a copy of which

is attached as **Exhibit 1**. Ms. Albert is an Associate for the law firm serving as counsel for the Receiver. Exhibit 1 at ¶ 2. During her discussions with Mr. Stone, Ms. Albert reviewed certain of Scaramellino's bank statements that Mr. Stone provided to her. Ex. 1 at ¶¶ 5-6. These bank statements supported that Mr. Scaramellino is domiciled in New Jersey. His expenses in New Jersey and the surrounding area evidenced a person residing there; his expenses in Florida, on the other hand, evidenced a person visiting temporarily. *Id.* at ¶ 7. Of utmost importance, these bank statements showed a cash payment of over Two Million Dollars for a residence located in Morristown, New Jersey. *Id.* at ¶ 8. Furthermore, Scaramellino's counsel made a series of representations to Ms. Albert concerning Scaramellino's frequent business travel to Boca Raton and his children's Covid-19 diagnosis, which prevented Mr. Scaramellino from leaving the family home in New Jersey for a period of time, that support a finding that Scaramellino is domiciled in New Jersey. *Id.* at ¶ 10.

Unlike the barebones and conclusory affidavit submitted by Scaramellino, Ms. Albert's declaration relies on documentation and statements by Scaramellino's representative. It is not conclusory in nature; rather, Ms. Albert's declaration is supported by objective bank documents and statements of an objective party. As such, the Receiver has carried his burden and established, by a preponderance of the evidence, that diversity jurisdiction exists between the Receiver and Scaramellino.

Jurisdiction over Scaramellino is proper and it is clear that the Receiver has carried his burden in establishing diversity jurisdiction. However, to the extent the Court disagrees, concurrently herewith, the Receiver moves for leave to conduct jurisdictional discovery.

CONCLUSION

The Receiver has carried his burden and established this Court has subject matter jurisdiction based on diversity jurisdiction. Therefore, the Court should deny Scaramellino's Motion to Dismiss.

LOCAL RULE 3.01(G) CERTIFICATION

The undersigned counsel has conferred with counsel for Scaramellino regarding the relief sought through this Motion by telephone on November 12, 2021. Counsel for Scaramellino advised the undersigned that Scaramellino opposes the relief requested in this Motion.

Dated: November 15, 2021

Respectfully Submitted,

**STUMPHAUZER FOSLID SLOMAN
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Suite 1600
Miami, FL 33131
Telephone: (305) 614-1400
Facsimile: (305) 614-1425

By: /s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA
Florida Bar No. 056140
tkolaya@sflaw.com
JESSICA ALBERT
Florida Bar No. 115389
jalbert@sflaw.com

*Counsel for Ryan Stumphauzer, in
his capacity as Court-Appointed
Receiver for Eagle Six Consultants,
Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of November, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA

SERVICE LIST

***Ryan Stumphauzer, in his capacity as Court-Appointed Receiver for
Eagle Six Consultants, Inc. v. Daniel Scaramellino
Case No. 8:21-CV-2307-SD-AAS
United States District Court, Middle District of Florida***

**MCINTYRE THANASIDES BRINGGOLD
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katie@mcintyrefirm.com
tmoore@mcintyrefirm.com

Counsel for Defendant

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.: 8:21-CV-2307-SD-AAS

RYAN STUMPHAUZER, IN HIS
CAPACITY AS COURT-
APPOINTED RECEIVER FOR
EAGLE SIX CONSULTANTS,
INC., a Florida corporation,

Plaintiff,

vs.

DANIEL SCARAMELLINO, an
individual,

Defendant.

DECLARATION OF JESSICA ALBERT

Pursuant to 28 U.S.C. § 1746, I, Jessica Albert, under penalty of perjury, declare as follows:

1. My name is Jessica Albert. I am over the age of eighteen and am competent to make this declaration. The facts set forth herein are based upon my personal knowledge.

2. I am an Associate at the law firm Stumphauzer Foslid Sloman Ross & Kolaya, PLLC. In that capacity, I have knowledge regarding Mr. Stumphauzer's appointment as Receiver for Eagle Six Consultants, Inc.

(hereinafter “Eagle Six”), as well as Mr. Daniel Scaramellino’s obligations to Eagle Six.

3. On March 23, 2021, Mr. Todd Stone contacted me to inform me that he had been retained to represent Mr. Scaramellino in connection with his obligations to Eagle Six.

4. From March 23, 2021 until September 15, 2021, Mr. Stone and I engaged in a variety of settlement discussions in an effort to resolve Mr. Scaramellino’s obligations to Eagle Six.

5. As part of those settlement discussions, I requested Mr. Stone provide me with Mr. Scaramellino’s bank statements to support his contention that Mr. Scaramellino was in financial ruin and could not afford to repay his Seven Million, Five Hundred Thousand Dollar (\$7,500,000) obligation to Eagle Six.

6. On August 12, August 20, and August 26, 2021, I received a series of e-mails from Mr. Stone containing Mr. Scaramellino’s bank statements from approximately May 2019 through July 2021.

7. These bank statements showed a pattern: per his spending records, Mr. Scaramellino spends the majority of his time in New Jersey and New York. He then purchases a flight on Jet Blue Airways. The purchases following that flight are consistent with a visitor in Florida (i.e., hotel rooms, Uber rides, restaurants).

8. Importantly, these bank statements showed that on July 3, 2019, Mr. Scaramellino paid a sum of \$2,072,173.86 to Signature Closing Services, L.L.C. in reference to a residence located at 19 Country Drive, Morristown, NJ 07960.

9. That property is deeded to Mr. Scaramellino's wife, Michelle Scaramellino.

10. On or about August 19, 2021, Mr. Stone and I discussed the possibility of interviewing Mr. Scaramellino as to his assets and ability to satisfy his obligation to Eagle Six. As we were attempting to schedule this interview, Mr. Stone made the following representations to me:

- a. Mr. Scaramellino lives in Morristown, New Jersey, with his wife and two children.
- b. Mr. Scaramellino travels to Boca Raton, Florida frequently. We discussed coordinating the interview around his next trip to Boca Raton.
- c. In the month of August, Mr. Scaramellino's children contracted Covid-19. As a result, Mr. Stone represented to me that Mr. Scaramellino could not travel down to Boca Raton from New Jersey because his children were in quarantine.

11. It was never represented to me that Mr. Scaramellino was a resident of Florida. Instead, it was always represented to me that Mr.

Scaramellino was a resident of New Jersey, who made periodic trips to Florida for business purposes.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 12, 2021



Jessica Albert

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO.: 8:21-CV-2307-SD-AAS

RYAN STUMPHAUZER, IN HIS
CAPACITY AS COURT-
APPOINTED RECEIVER FOR
EAGLE SIX CONSULTANTS,
INC., a Florida corporation,

Plaintiff,

vs.

DANIEL SCARAMELLINO, an
individual,

Defendant.

**PLAINTIFF’S MOTION FOR LEAVE TO
CONDUCT JURISDICTIONAL DISCOVERY**

Plaintiff, Ryan Stumphauzer, in his capacity as Court-Appointed Receiver for Eagle Six Consultants, Inc. (the “Receiver”), hereby seeks leave to conduct jurisdictional discovery on Defendant Daniel Scaramellino (“Scaramellino”). In support thereof, the Receiver states:

INTRODUCTION AND BACKGROUND

This is a simple case. On May 28, 2019, Scaramellino entered into a series of agreements with Eagle Six Consultants, Inc. (“Eagle Six”) under which he borrowed Seven Million Five Hundred Thousand Dollars (\$7,500,000) from Eagle Six. Under the terms of these agreements, Scaramellino was

required to pay all accrued and unpaid interest to Eagle Six on a monthly basis. He did so for approximately 13 months; however, Scaramellino stopped his monthly payments, thereby defaulting on the loan, in July 2020. Scaramellino has not made a payment since. Shortly before Scaramellino defaulted on the agreement, the United States District Court for the Southern District of Florida (the “Receivership Court”) appointed Ryan K. Stumphauzer as the Receiver for several companies in an enforcement action that the Securities and Exchange Commission filed in the U.S. District Court for the Southern District of Florida against Complete Business Solutions Group, Inc., d/b/a Par Funding (“Par Funding”). Eagle Six is owned by the principals of Par Funding and was added as an additional receivership entity by the Receivership Court.

In an effort to reclaim investor money, the Receiver filed the Complaint in this action on September 21, 2021. In the Complaint, the Receiver alleges that diversity jurisdiction exists, given that the Receiver and Eagle Six are both residents of Florida, and Scaramellino is a citizen of New Jersey. [Doc. 1 at ¶¶ 14-17]. Scaramellino filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction [Doc. 8] on November 1, 2021. As his sole basis for dismissal, Scaramellino argues a lack of subject matter jurisdiction, as he claims to be a citizen of Florida.

The Receiver seeks to propound limited discovery—through interrogatories, requests for admission, requests for production, and depositions—on topics including, but not limited to, the following:

- Scaramellino’s property located in Morristown, New Jersey, which Scaramellino purchased in cash in July 2019 and deeded to his wife, Michelle Scaramellino;
- Scaramellino’s expenses, including, but not limited to, utilities, car payments, rental properties, travel reservations, and medical expenses;
- The banks in which Mr. Scaramellino maintains any accounts;
- The schools in which Scaramellino’s children are enrolled; and
- Any other topic to establish Scaramellino’s citizenship in New Jersey, Florida, or elsewhere.

The Receiver should be provided an opportunity to conduct the aforementioned discovery, rather than being constrained by the self-serving statements in the Affidavit of Daniel Scaramellino (“Scaramellino Affidavit”) [Doc. 8-1] that Scaramellino filed in support of his Motion to Dismiss. The proposed discovery is very likely to yield additional facts that would establish this Court has subject matter jurisdiction over this matter.

LEGAL STANDARD

In general, jurisdictional discovery should be freely granted when a Rule 12(b)(1) motion is pending. “Federal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits.” *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 729 (11th

Cir. 1982) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978)). “[W]here issues arise as to jurisdiction or venue, discovery is available to ascertain the facts bearing on such issues.” *Oppenheimer Fund*, 437 U.S. at 351 n.13. “If the jurisdictional question is genuinely in dispute and the court cannot resolve the issue in the early stages of the litigation then discovery will certainly be useful and may be essential to the revelation of facts necessary to decide the issue.” *Eaton*, 692 F.2d at 729, n.7.

A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction may be based on either a facial or factual attack on the Court’s jurisdiction. *SE Prop. Holdings, LLC v. Phillips*, No. 3:15CV554/MCR/EMT, 2016 WL 11529612, at *2 (N.D. Fla. May 3, 2016) (quoting *Stalley v. Orlando Reg’l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008)). Under a facial attack, the Court need only look to the complaint to ascertain if it sufficiently alleges a basis for subject matter jurisdiction. *See Stalley*, 524 F.3d at 1232. However, a factual attack challenges “the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered.” *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990). When presented with a factual attack, jurisdictional discovery is appropriate. *See Id.* at 1529-30.

ARGUMENT

A. To the Extent the Court Does Not Deny Scaramellino’s Motion to Dismiss on the Briefing Papers, the Receiver Should Be Given Leave to Conduct Jurisdictional Discovery

As discussed above and in the Receiver’s Response in Opposition to Scaramellino’s Motion to Dismiss [Doc. 9], Scaramellino filed a self-serving, conclusory affidavit in an effort to meet his burden of raising a meritorious challenge to subject matter jurisdiction. In light of the evidence the Receiver has presented in opposition to Scaramellino’s Motion to Dismiss, including the Declaration of Jessica Albert [Doc. 9-1] (“Albert Declaration”), the Scaramellino Affidavit falls far short of adequately challenging the Receiver’s assertions of subject matter jurisdiction based on diversity of citizenship.

The Scaramellino Affidavit does not, and cannot, establish Scaramellino’s citizenship. The Scaramellino Affidavit merely makes statements, in conclusory fashion, without any evidence or support, regarding his voter registration and his domicile. For example, Scaramellino states: “I have been a citizen of, resident of, and domiciled in the state of Florida, specifically residing in South Florida.” Scaramellino Affidavit ¶ 3. These statements are in direct contradiction with information that Scaramellino’s former counsel, Mr. Todd Stone, provided to Ms. Jessica Albert, by way of bank statements and representations. Albert Declaration ¶¶ 7-10. Should this Court determine that it does not have sufficient information to deny

Scaramellino’s Motion to Dismiss, based on the parties’ briefing alone, jurisdictional discovery is appropriate.

The Receiver’s request is both timely and consistent with applicable law. Scaramellino filed his Motion to Dismiss on November 1, 2021. At this time, Scaramellino has not sought leave to file a reply in support of his Motion to Dismiss. Further, the Court has not yet ruled on Scaramellino’s Motion to Dismiss. District courts in this Circuit follow the rule that a plaintiff “must be given an opportunity to develop facts sufficient to support a determination on the issue of jurisdiction.” *Eaton*, 692 F.2d at 731. This is true when there are conflicting jurisdictional facts. *See Bernardele v. Bonorino*, 608 F. Supp. 2d 1313, 1324 (S.D. Fla. 2009) (“The conflicts in jurisdictional facts as to the activities of LSFL and certain directors residing in Florida warrant limited jurisdictional discovery to ascertain the nature and degree of such activity.”).

Indeed, Courts regularly allow jurisdictional discovery when defendants file self-serving affidavits and generally try to avoid disclosing the true nature of facts that are relevant to the determination of the defendant’s citizenship. *See, e.g., Exhibit Icons, LLC v. XP Cos., LLC*, No. 07-80824, 2008 U.S. Dist. LEXIS 15971, at *6-7, 2008 WL 616104 (S.D. Fla. Mar. 3, 2008) (Marra, J.) (granting plaintiff leave to take jurisdictional discovery, stating “[o]nly through jurisdictional discovery can Plaintiffs learn about the various entities that comprise Defendants’ businesses and those entities’ contact with Florida

State University and the Jacksonville Jaguars” and noting that “there is no way for Plaintiffs to have personal knowledge of the inner workings of Defendants’ various business organizations. However, by deposing and serving interrogatories and document requests on Defendants, Plaintiffs may be able to produce relevant evidence for the Court to consider.”); *Amerifactors Fin. Grp., LLC v. Enbridge, Inc.*, No: 6:13-cv-1446-Orl-22TBS, 2013 U.S. Dist. LEXIS 159629, at *17-18, 2013 WL 5954777 (M.D. Fla. Nov. 7, 2013) (stating that “[d]iscovery is appropriate because the allegations in Amerifactors’ complaint suggest the possible existence of requisite contacts between Enbridge and Florida with reasonable particularity” and explaining that holding otherwise would allow “a defendant to defeat jurisdiction on the strength of a self-serving affidavit while withholding information on its contacts to the forum”) (internal quotations omitted). These principles support granting the Receiver’s Motion here, particularly given the conflicting statements in the Scaramellino Affidavit and the Albert Declaration.

Scaramellino’s Motion to Dismiss should be denied, for the reasons set forth in the Receiver’s response to that motion. But, to the extent the Court is not prepared to deny the Motion to Dismiss based on the current briefing alone, the Receiver should be provided with an opportunity to take limited, targeted discovery on Scaramellino’s citizenship. This discovery is necessary to fill in information gaps and resolve evidentiary conflicts created by the incomplete

and conclusory Scaramellino Affidavit. Thus, the Receiver requests this Court to allow the Receiver to conduct limited discovery—through targeted interrogatories, document requests, requests for admission, and depositions—to explore the topics set forth above.

CONCLUSION

For the foregoing reasons, if Scaramellino’s Motion to Dismiss is not denied based on the current briefing, the Receiver respectfully requests that this Court grant his Motion for Leave to Conduct Jurisdictional Discovery on Daniel Scaramellino.

LOCAL RULE 3.01(G) CERTIFICATION

The undersigned counsel has conferred with counsel for Scaramellino regarding the relief sought through this Motion by telephone on November 12, 2021. Counsel for Scaramellino advised the undersigned that Scaramellino takes no position as to the relief requested in this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of November, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA

SERVICE LIST

***Ryan Stumphauzer, in his capacity as Court-Appointed Receiver for
Eagle Six Consultants, Inc. v. Daniel Scaramellino***
Case No. 8:21-CV-2307-SD-AAS
United States District Court, Middle District of Florida

**MCINTYRE THANASIDES BRINGGOLD
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Counsel for Defendant

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RYAN K. STUMPHAUZER,

Plaintiff,

v.

CASE NO. 8:21-cv-2307-SDM-AAS

DANIEL SCARAMELLINO,

Defendant.

_____ /

ORDER

1. The parties must conform to the deadlines proposed in the case management report.
2. The parties must adhere to both the pre-trial meeting and pre-trial statement requirements of the Local Rules and to the pre-trial disclosure requirements in the Federal Rules of Civil Procedure.
3. Either a motion to amend a pleading or a motion to continue a hearing, the pre-trial conference, or the trial is distinctly disfavored after issuance of this order.
4. The parties must serve no more than twenty-five interrogatories, including sub-parts.
5. The pre-trial conference will occur before Magistrate Judge **Amanda Arnold Sansone** in Courtroom 10B, United States Courthouse, 801 North Florida Avenue, Tampa, on **DECEMBER 1, 2022, at 10:00 A.M.**

ANY DISPUTE ABOUT DISCOVERY, THE WITNESS LIST, OR THE EXHIBIT LIST REQUIRES JUDICIAL RESOLUTION AT OR BEFORE THE PRE-TRIAL CONFERENCE—NOT AT TRIAL. OTHERWISE, ABSENT A STIPULATION BY THE PARTIES, ONLY A WITNESS ON THE WITNESS LIST CAN TESTIFY AT TRIAL AND ONLY AN EXHIBIT ON THE EXHIBIT LIST IS ADMISSIBLE AT TRIAL. THE PARTIES MAY AGREE ON ANY DISCOVERY MATTER, BUT—UNLESS ADDRESSED AT THE PRE-TRIAL CONFERENCE—EACH PARTY ASSUMES THE RISK OF NON-COMPLIANCE BY THE OTHER PARTY.

6. The lead trial counsel must attend the pre-trial conference.
7. A jury trial will occur in Courtroom 15A, United States Courthouse, 801 North Florida Avenue, Tampa, during the **JANUARY 2023** trial term.
8. At least five days before the monthly trial term, the parties must file:
 - (a) a trial brief with citations of authority and with argument of the disputed issues likely to arise at trial;
 - (b) a concise (preferably one paragraph) joint statement of the action for presentation to the venire;
 - (c) proposed jury instructions;
 - (d) proposed verdict forms; and
 - (e) proposed voir dire.

ORDERED in Tampa, Florida, on December 29, 2021.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO.: 8:21-CV-2307-SD-AAS

RYAN STUMPHAUZER, In His
Capacity as Court-Appointed Receiver
For EAGLE SIX CONSULTANTS, INC.,
a Florida corporation,

Plaintiff,

vs.

DANIEL SCARAMELLINO, an individual,

Defendant.

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR LEAVE TO
CONDUCT JURISDICTIONAL DISCOVERY**

Defendant, Daniel Scaramellino (“Scaramellino” or “Defendant”), through his undersigned counsel, pursuant to the Court’s directive (doc. 15), hereby responds to the Motion for Leave to Conduct Jurisdictional Discovery (doc. 10) (the “Motion”), filed by Plaintiff, Ryan Stumphauzer, in his capacity as Court-Appointed Receiver for Eagle Six Consultants, Inc. (the “Receiver” or “Plaintiff”), and states:

1. On or about November 15, 2021, the Plaintiff filed the Motion, seeking to conduct jurisdictional discovery on Defendant’s Motion to Dismiss based on lack of jurisdiction since Defendant is a resident of the state of Florida.

2. Although the parties are in hopes of resolving all disputed issues amicably in settlement, and Defendant has provided some supporting documents related to the Motion, since Defendant has raised the factual issue of whether he resides in the state of Florida, jurisdictional discovery is appropriate.

3. Thus, the Defendant does not object to the relief sought in the Motion, provided Defendant can also conduct discovery related to the issue of jurisdiction, in the event that the parties are not able to resolve such issues in settlement.

WHEREFORE, Defendant, Scaramellino respectfully requests that this Court grants the Motion, allowing for jurisdictional discovery to be conducted for both parties, and for such other relief as the Court deems just.

Dated: April 29, 2022

Respectfully Submitted,

/s/ Katie Brinson Hinton _____
KATIE BRINSON HINTON, ESQ.
Florida Bar No.: 0022367
Jennis Morse Etlinger
606 East Madison Street
Tampa, Florida 33602
Telephone: (813) 229-2800
khinton@jennislaw.com
ecf@jennislaw.com
Counsel for Daniel Scaramellino

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the CM/ECF and/or email service to all counsel of record on this 29th day of April 2022.

/s/Katie Brinson Hinton
Attorney

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**RYAN STUMPHAUZER, in his
Capacity as Court-Appointed Receiver
for EAGLE SIX CONSULTANTS, INC.,
a Florida corporation,**

Plaintiff,

v.

Case No.: 8:21-cv-02307-SDM-AAS

**DANIEL SCARAMELLINO, an
individual,**

Defendant.

_____ /

ORDER

Plaintiff Ryan Stumphauzer, in his capacity as Court-Appointed Receiver for Eagle Six Consultants, Inc., moves for leave to conduct jurisdictional discovery related to Defendant Daniel Scaramellino’s citizenship. (Doc. 10). Mr. Scaramellino does not oppose Mr. Stumphauzer’s motion, provided Mr. Scaramellino “can also conduct discovery related to the issue of jurisdiction.” (Doc. 16).

“While some circuits allow jurisdictional discovery more freely than others, Eleventh Circuit precedent indicates that jurisdictional discovery is highly favored . . .” *Steinberg v. Barclay’s Nominees (Branches) Ltd.*, No. 04-60897-CIV, 2007 WL 4287662, at *2 (S.D. Fla. Dec. 5, 2007) (citing *Eaton v.*

Dorchester Dev., Inc., 692 F.2d 727, 731 (11th Cir. 1982); *Majd-Pour v. Georgiana Cmty. Hosp., Inc.*, 724 F.2d 901, 903 (11th Cir. 1984) (“Although the plaintiff bears the burden of proving the court’s jurisdiction, the plaintiff should be given the opportunity to discover facts that would support his allegations of jurisdiction.”). “[If] the jurisdictional question is genuinely in dispute and the court cannot resolve the issue in the early stages of the litigation ... [then] discovery will certainly be useful and may be essential to the revelation of facts necessary to decide the issue.” *Eaton*, 692 F.2d at 729 n.7.

Because the Eleventh Circuit highly favors jurisdictional discovery at this stage in the litigation when there is a genuine question of jurisdiction and because Mr. Scaramellino does not oppose Mr. Stumphauzer’s motion, Mr. Stumphauzer’s motion for leave to conduct jurisdictional discovery (Doc. 14) is **GRANTED**. The parties may conduct discovery narrowly tailored to Mr. Scaramellino’s citizenship for diversity jurisdiction purposes through targeted interrogatories, document requests, requests for admission, and depositions.

ORDERED in Tampa, Florida on May 5, 2022.


AMANDA ARNOLD SANSONE
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RYAN K. STUMPHAUZER,

Plaintiff,

v.

CASE NO. 8:21-cv-2307-SDM-AAS

DANIEL SCARAMELLINO,

Defendant.

_____ /

ORDER

Because a May 5, 2022 order (Doc. 17) grants the plaintiff's motion for leave to conduct jurisdictional discovery, the defendant's motion (Doc. 8) to dismiss the complaint for lack of jurisdiction is **DENIED AS MOOT**. Not later than **JUNE 10, 2022**, the parties must complete jurisdictional discovery. Not later than **JULY 1, 2022**, the defendant must respond to the complaint.

ORDERED in Tampa, Florida, on May 13, 2022.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE