

**UNITED STATES DISTRICT COURT  
FOR THE 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.

**RECEIVER, RYAN K. STUMPHAUZER'S RESPONSE IN OPPOSITION  
TO NON-PARTY GRAND HOPE INVESTMENTS, INC.'S MOTION  
TO INTERVENE AND MOTION FOR LEAVE TO SUE RECEIVER**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver ("Receiver") of the Receivership Entities,<sup>1</sup> by and through his undersigned counsel, hereby files his response in opposition to Non-

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<sup>1</sup> The "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; ABFP Income Fund 6 Parallel; ABFP Multi-Strategy Investment Fund LP; ABFP Multi-Strategy Investment 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 Consultants, 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 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; The LME 2017 Family Trust; Blue Valley Holdings, LLC; LWP North LLC; 500 Fairmount Avenue, LLC; Recruiting and Marketing Resources, Inc.; Contract Financing Solutions, Inc.; Stone Harbor Processing LLC; and LM Property Management LLC; and the Receivership also includes the properties located at 568

Party Grand Hope Investments, Inc.’s Motion to Intervene and Motion to Sue Receiver [ECF No. 1593] (the “Motion to Intervene”), and states:

### **INTRODUCTION**

In its Motion to Intervene, non-party Grand Hope Investments, Inc. (“Grand Hope”) asks this Court to permit Grand Hope to intervene in this action for the purpose of seeking relief from this Court’s litigation injunction so that Grand Hope can sue the Receiver to enforce a purported settlement agreement involving certain litigation related to property located at 1401 and 1501 Lake Ave. SE., Largo, Florida (the “Property”). As explained below, the purported settlement was never finalized or executed. Even if that were not the case, Grand Hope cannot establish that the Receiver engaged in malfeasance, bad faith, gross negligence, or in reckless disregard of his duties, which would be required for this Court to permit Grand Hope to pursue claims against the Receiver. Moreover, because Grand Hope has submitted a Proof of Claim in the claims process this Court has established, Grand Hope cannot simultaneously pursue an independent action against the Receiver or one of the Receivership Entities. Accordingly, and for the reasons more fully described below, Grand Hope’s request to intervene and for relief from the litigation injunction so that Grand Hope can pursue a lawsuit against the Receiver should be denied.

### **FACTUAL BACKGROUND**

1. Eagle Six Consultants, Inc. (“Eagle Six”), one of the Receivership Entities, through actions prior management took prior to the establishment of this receivership, entered into various transactions that resulted in the assignment to Eagle Six of a final judgment for money damages

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Ferndale Lane, Haverford PA 19041; 105 Rebecca Court, Paupack, PA 18451; 107 Quayside Dr., Jupiter FL 33477; and 2413 Roma Drive, Philadelphia, PA 19145.

in a foreclosure action in Pinellas County, Florida (the “Foreclosure Action”) based on a mortgage on the Property that was security for a loan from Sunshine Bank (the “Sunshine Mortgage”).

2. Grand Hope was the holder of a prior mortgage on the Property (the “Prior Mortgage”) and alleges that this Prior Mortgage has priority over the Sunshine Mortgage and was improperly extinguished through a fraudulent satisfaction of mortgage.

3. The Receiver engaged in settlement discussions with Grand Hope and a title insurance company, First American Title Insurance Company (“First American”), regarding a potential agreement under which: (a) Grand Hope and First American would deposit \$500,000 in escrow with the Receiver (the “Escrowed Funds”); (b) the Receiver, on behalf of Eagle Six, would attempt to obtain a final judgment of foreclosure on the Sunshine Mortgage in the Foreclosure Action (the “Foreclosure Judgment”); (c) the Receiver, on behalf of Eagle Six, would assign the Foreclosure Judgment to Grand Hope; and (d) upon the assignment of the Foreclosure Judgment to Grand Hope, the Escrowed Funds would be released from escrow and become part of the general Receivership Estate.

4. Counsel for the Receiver, Grand Hope, and First American prepared a draft agreement reflecting proposed terms for this settlement (the “Draft Agreement”). Ultimately, however, the parties could not reach a final agreement on all material terms regarding the Escrowed Funds.

5. Specifically, under the Draft Agreement, Grand Hope was to deposit \$275,000.00, and First American was to deposit \$225,000.00 with the Receiver, comprising the full \$500,000.00 of Escrowed Funds. The Draft Agreement did not include a specific timeframe indicating how long the Escrowed Funds might potentially remain in escrow pending the Receiver’s efforts to

obtain and assign to Grand Hope the Foreclosure Judgment (*i.e.*, the conditions precedent to release of the Escrowed Funds (the “Conditions Precedent”)).

6. To that end, First American insisted on including additional language in the Draft Agreement providing that the portion of the Escrowed Funds First American was to deposit with the Receiver must be returned if the Receiver did not satisfy the Conditions Precedent within a specific period of time. For example, First American suggested that its portion of the Escrowed Funds should be returned to First American if the Conditions Precedent were not satisfied within six months. The Receiver rejected this proposal, making clear that the Receiver would not agree to any outside time limitation, given the inherent unpredictability of litigation and potential delays in scheduling matters in state court, which would make it difficult to determine how long it might ultimately take to accomplish these tasks and satisfy the Conditions Precedent.

7. On August 30, 2022, counsel for First American sent an email to counsel for the Receiver, advising that First American “would like to talk to you about the terms of the escrow into which the settlement funds will be deposited.” [Email dated August 30, 2022, a copy of which is attached as Exhibit 1]. Thus, as of August 30, 2022, there was clearly no agreement between the Receiver and First American regarding the “terms” under which First American would deposit its portion of the Escrowed Funds with the Receiver.

8. On September 22, 2022, counsel for First American sent an email to counsel for the Receiver and counsel for Grand Hope, asking to schedule a call to discuss, among other things, an update on “First American’s concern about the settlement funds being held indefinitely under the settlement agreement.” [Email dated September 22, 2022, a copy of which is attached as Exhibit 1]. Clearly, as of September 22, 2022, First American was still not in agreement with depositing the Escrowed Funds with the Receiver for an indefinite period of time.

9. A few weeks later, on October 10, 2022, counsel for First American inquired about the status of the parties' efforts to reach agreement on this material term:

During our last group conference call I was tasked with contacting John Kaufman of First American to see if he would agree to the money could being held in escrow as long as the Receiver was diligently pursuing the matter and returned if he was not doing so or if he was unsuccessful (or something along those lines). When I finally reached John on Thursday, he told me that, in the interim, the two of you had been in contact, he offered some sort of compromise and the ball was now in your court.

[Email dated October 10, 2022, a copy of which is attached as Exhibit 2]. Thus, as of October 10, 2022, the Receiver and First American were exchanging proposals regarding a potential "compromise" on the terms under which First American would deposit its portion of the Escrowed Funds with the Receiver, but had not reached any sort of definitive agreement on what was clearly a material term to the Receiver and First American.

10. In fact, despite the parties' discussions, no agreement was ever reached between First American and the Receiver on this issue. As a result, neither the Receiver nor First American ever executed the Draft Agreement.

11. Further confirming that no final agreement was reached by these three parties, neither Grand Hope nor First American delivered to the Receiver their respective contributions to the Escrowed Funds, which would have been required to occur under the terms of the Draft Agreement prior to the Receiver attempting to satisfy the Conditions Precedent.

12. Several months after the parties circulated, but never fully executed, the Draft Agreement, another party involved in the Foreclosure Action approached the Receiver about a potential settlement. Upon receiving this settlement proposal—and because Grand Hope, First American, and the Receiver never reached agreement on all material terms of, or fully executed, the Draft Agreement—the Receiver responded to the settlement proposal from this other party and

advised Grand Hope that the Receiver was no longer interested in attempting to finalize a settlement offer with Grand Hope and First American along the lines of the Draft Agreement.

13. Based on the foregoing, Grand Hope now asks this Court to lift the Litigation Injunction to allow Grand Hope to sue the Receiver and First American for their purported breach and to compel specific performance of the Draft Agreement.

### **LEGAL ARGUMENT**

#### **A. Grand Hope has not established that its intervention would be proper.**

The purpose of appointing a receiver in an SEC enforcement action is to effect an “orderly and efficient administration of the estate.” *FTC v. 3R Bancorp*, 2005 WL 497784, at \*3 (N.D. Ill. Feb. 23, 2005) (citing *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986)). Grand Hope’s intervention and requested relief would interfere with that process. As this Court is aware, there are more than 1,000 counterparties that owe outstanding balances on their agreements with the Receivership Entities. The Receiver is negotiating on a daily basis with these counterparties to resolve issues relating to their accounts. For example, as a result of Orders from this Court granting the Receiver’s prior motions to lift the Litigation Injunction, the Receiver has marked confessed judgments as satisfied or dissolved writs of attachment with respect to collections proceedings involving hundreds of counterparties. Recognizing the challenges that would accompany allowing numerous non-parties to intervene for the purpose of seeking to lift the Litigation Injunction, and to avoid the expenditure of legal fees and expenses from the Receivership Estate in litigating these numerous disputes, the Receiver requests the Court to deny the Motion to Intervene.<sup>2</sup>

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<sup>2</sup> To that end, the Receiver incorporates the SEC’s prior arguments opposing requests by non-parties to intervene in this SEC enforcement action. *See, e.g.*, SEC’s Response in Opposition to Lead Funding’s first Motion to Intervene [ECF No. 409].

**B. Grand Hope's request to sue the Receiver is not warranted.**

Grand Hope asks this Court to lift the stay of litigation (the “Litigation Injunction”) this Court established in its Amended Order Appointing Receiver [ECF No. 141, at ¶ 32] to allow Grand Hope to sue the Receiver in a proposed state court lawsuit in Hillsborough County, Florida. Grand Hope indicates that it intends to pursue claims for breach of contract and specific performance against the Receiver and First American, based on their purported failure to perform their respective obligations under the Draft Agreement (the “Threatened Claims”). As explained below, these Threatened Claims are wholly without merit and, therefore, Grand Hope should not be granted relief from the Litigation Injunction.

1. The Draft Agreement is not enforceable against First American and the Receiver.

Under Florida law, “the party seeking to enforce a settlement bears the burden of establishing that the opposing party assented to all material terms of the contract. Mutual reciprocal assent to every essential term is a prerequisite to the formation of a contract.” *Kuppinger v. JM.JZ Enterprises, Inc.*, 21-CV-80492-BER, 2022 WL 2341240, at \*4 (S.D. Fla. May 9, 2022) (internal citations omitted). Conversely, “[n]o enforceable contract exists where essential terms of the agreement remain open and are subject to further negotiation. *Id.*

Here, although counsel for the Receiver and First American at one time believed that their respective clients would potentially agree to and execute the Draft Agreement, an obstacle arose regarding the issue of how long the Escrowed Funds would remain with the Receiver absent satisfaction of the Conditions Precedent. First American was unwilling to transfer its portion of the Escrowed Funds to the Receiver without a specific agreement in place regarding how long the Receiver would have to satisfy the Conditions Precedent, absent which it would insist that those Escrowed Funds be returned to First American. The Receiver, on the other hand, was unwilling

to expend time and resources attempting to satisfy the Conditions Precedent if there was a possibility that First American would later demand that the Escrowed Funds be returned due to any potential delay in accomplishing these tasks.

While Grand Hope is correct that a signed agreement is not always necessary to establish the existence of an enforceable contract, a meeting of the minds on all material terms is the cornerstone of any settlement. Here, First American would not agree to contribute its portion of the Escrowed Funds without a deadline for satisfying the Conditions Precedent, and the Receiver was unwilling to enter into a settlement with uncertainty around whether the agreement would likely result in the payment of additional funds into the Receivership Estate. Ultimately, First American and the Receiver never reached a meeting of the minds on how much time the Receiver would have under the proposed terms of the Draft Agreement to satisfy the Conditions Precedent. As a result, their attorneys' respective beliefs that a settlement could be finalized on the terms set forth in the Draft Agreement is insufficient to establish the existence of an enforceable settlement. *See Ramos v. S. Florida Express Bankserv, Inc.*, 08-23382-CIV, 2009 WL 10667774, at \*3 (S.D. Fla. Dec. 9, 2009) ("Thus, even if there is a meeting of the minds between the attorneys, there can be no enforceable settlement if the terms of the agreement are not ratified or authorized by the clients themselves, either *ex ante* or *ex post*.").

2. Even if the parties had agreed to the material terms of the Draft Agreement, Grand Hope cannot establish that the Receiver is liable for the Threatened Claims.

Assuming, *arguendo*, the Draft Agreement was a valid and enforceable contract (which, as explained above, it clearly is not), Grand Hope would have no chance of prevailing on its Threatened Claims against the Receiver. Under the terms of the Amended Order Appointing Receiver, the Receiver and his Retained Personnel shall not "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.” [ECF No. 141, at ¶ 49 (emphasis added)].

Nowhere in the Motion to Intervene or its draft Complaint attached thereto does Grand Hope suggest, much less allege, that the Receiver engaged in “malfeasance, bad faith, gross negligence, or in reckless disregard of [his] duties.” [*Id.*] At best, Grand Hope suggests that the Receiver breached his purported contractual obligations under the Draft Agreement. [*See, e.g.*, Motion to Intervene, ECF No. 1593, at 17-18 (“After partially performing, the Receiver has now refused to comply with the terms of the Settlement Agreement.”); Draft Complaint, ECF No. 1593-5 at ¶ 25 (alleging that the Receiver “materially breached the Settlement Agreement by failing to comply with its terms”)]. Under these circumstances—where two of the three parties to the Draft Agreement had materially different positions on a critical term in, and never executed, that proposed settlement—the Receiver’s failure to perform under an agreement he rightfully believed he did not enter into cannot establish potential liability for the Receiver under this standard.

As Grand Hope explains in the Motion to Intervene, several months after First American and the Receiver failed to execute the Draft Agreement, the Receiver was presented with a different settlement proposal from another party involved in the Foreclosure Action. Given that Grand Hope, First American, and the Receiver were seemingly unable to finalize the Draft Agreement, the Receiver decided to explore the possibility of entering into this other settlement involving the Foreclosure Action. Notably, this other settlement would result in a larger recovery for the Receivership Estate than the proposed recovery under the Draft Agreement, and is not contingent on any potential litigation success, such as in the Draft Agreement.

Therefore, in exercising his professional judgment and with the goal of recovering Receivership Property (*i.e.*, additional funds) and maximizing the assets within the Receivership

Estate, the Receiver determined it would be in the best interests of the Receivership Estate to explore a settlement with this other party. This Court should not find that the Receiver's actions in this situation constitute malfeasance, bad faith, gross negligence, or reckless disregard of his court-appointed duties. Accordingly, Grand Hope should not be permitted to pursue the Threatened Claims in a separate lawsuit against the Receiver.

3. Having submitted a Proof of Claim in this receivership, Grand Hope cannot pursue a separate lawsuit against one of the Receivership Entities.

As this Court is aware, the Receiver filed a motion to establish, and the Court entered an order approving, a process through which “all claimants holding a claim against any of the Receivership Entities arising out of the activities of the Receivership Entities . . . *must* assert their claims.” [ECF No. 1467 at 6 (emphasis added)]. In entering its order approving this claims process, the Court made clear that “[t]he submission of a Proof of Claim shall constitute consent to be bound by the decisions of the Court as to the treatment of the Claim in a Court-approved distribution plan.” [ECF No. 1471 at 11].

Grand Hope acknowledges that it submitted a Proof of Claim in this receivership. [Motion to Intervene at 11 (noting that on March 22, 2023, “Grand Hope filed its notice of claim against Eagle Six in the Receivership relating to the Real Property”)]. Through this claim, Grand Hope seeks to recover approximately \$4,000,000, which it claims to be the damage it suffered as a result of the satisfaction of its Prior Mortgage on the Property. In other words, Grand Hope is seeking to recover through the claims process in the receivership and is simultaneously requesting leave to sue the Receiver to recover those same damages in a separate lawsuit. Having submitted a Proof of Claim, Grand Hope is bound by the claims and distribution process in this receivership, and cannot pursue an independent action against the Receiver. *See Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 552 (6th Cir. 2006) (“The district court may require all such claims to be

brought before the receivership court for disposition pursuant to summary process consistent with the equity purpose of the court.”).

**CONCLUSION**

WHEREFORE, Ryan K. Stumphauzer, as Court-Appointed Receiver, by and through his undersigned counsel, respectfully requests this Honorable Court to deny the Motion to Intervene.

Dated: June 26, 2023

Respectfully Submitted,

**STUMPHAUZER KOLAYA  
NADLER & SLOMAN, PLLC**  
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Miami, FL 33131  
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*Co-Counsel for Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 26, 2023, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya  
TIMOTHY A. KOLAYA

# Exhibit “1”

**From:** [Michael Cohn](#)  
**To:** [Timothy Kolaya](#)  
**Cc:** [John Kaufman](#)  
**Subject:** RE: Grand Hope / Eagle Six / First American Settlement  
**Date:** Tuesday, August 30, 2022 10:45:14 AM  
**Attachments:** [image001.png](#)

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Tim,

The claims attorney handling this matter on behalf of First American is John Kaufman, who is copied on this email. John would like to talk to you about the terms of the escrow into which the settlement funds will be deposited.

John,

Tim's contact information is below. Please contact him directly.

Michael Cohn

**AWERBACH | COHN**

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# Exhibit “2”

**From:** [Michael Cohn](#)  
**To:** [Brad Barrios](#); [Timothy Kolaya](#)  
**Cc:** [Anthony Severino](#); [Gayla Arnold](#)  
**Subject:** RE: Signed agreement  
**Date:** Thursday, September 22, 2022 11:39:41 AM  
**Attachments:** [image001.png](#)

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Brad, Anthony & Tim,

I'd like to schedule a conference call to discuss where things are at with Lake Ave's objection to the motion to substitute in the CenterState action and First American's concern about the settlement funds being held indefinitely under the settlement agreement. Is everyone available Monday or Tuesday morning to discuss?

Michael Cohn

**AWERBACH | COHN**

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# Exhibit “3”

**From:** [Michael Cohn](#)  
**To:** [Timothy Kolaya](#)  
**Subject:** RE: Grand Hope / Eagle Six / First American Settlement  
**Date:** Monday, October 10, 2022 11:33:02 AM  
**Attachments:** [image001.png](#)

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Tim,

During our last group conference call I was tasked with contacting John Kaufman of First American to see if he would agree to the money could being held in escrow as long as the Receiver was diligently pursuing the matter and returned if he was not doing so or if he was unsuccessful (or something along those lines). When I finally reached John on Thursday, he told me that, in the interim, the two of you had been in contact, he offered some sort of compromise and the ball was now in your court. I just want to make sure that wires aren't crossed here and that the ball really is in your court. Let me know if there's anything you'd like me to do.

Michael Cohn

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