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11 **Counsel for Compass Financial Partners
LLC and Compass USA SPE LLC**

12
13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 3685 SAN FERNANDO LENDERS, LLC,
et al.,
16
17 Plaintiffs,
18 v.
19 COMPASS USA SPE LLC, et al.,
20 Defendants

Case No. 2:07-CV-892-RCJ-GWF-BASE
Case No. 3:07-CV-241-RCJ-GWF
Bankruptcy Case No. BK-S-06-10725 LBR
[Chapter 11]

21
22 **NOTICE OF MOTION FOR APPOINTMENT OF RECEIVER**

23 TO PLAINTIFF LLCs AND THEIR ATTORNEYS OF RECORD:

24 NOTICE IS HEREBY GIVEN that on June 2, 2008, or at a time otherwise to be
25 set by the Court, located at 333 Las Vegas Boulevard South, Las Vegas, Nevada, 89101, in the
26 courtroom of the Honorable Robert C. Jones, Defendant Compass Financial Partners LLC and
27 Compass USA SPE LLC will and hereby does move the Court for the Appointment of a Receiver
28 to act on behalf of the Plaintiff LLCs. This Motion is based upon this Notice of Motion, the

1 Memorandum of Points and Authorities filed herewith, the declaration of Paul Torres filed
2 herewith, the pleading and papers on file herein, and upon such other matters as may be presented
3 to the Court at the time of the hearing.

4
5 Dated: May 19, 2008

6 /s/ Paul M. Torres
7 Linda Dakin-Grimm (admitted *pro hac vice*)
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF MOTION FOR APPOINTMENT OF RECEIVER**

3 For over a year now, Compass has been the subject of a relentless campaign of
4 misinformation at the hands of Donna Cangelosi and others acting at her direction. The Court has
5 now ordered that Ms. Cangelosi cause the LLCs and FDH Management Company, LLC (“FDH”),
6 her captive management company, to re-convey the over \$200 million in investments that she
7 solicited from Direct Lenders and cease all activities undertaken on behalf of the LLCs, FDH or
8 anyone other than herself in these proceedings. Understandably anxious to see that the LLC
9 Direct Lender members are represented in these proceedings, the Court has not yet ordered that
10 the LLCs themselves be dissolved. However, counsel selected for the LLCs by Ms. Cangelosi
11 has indicated that it is unwilling to represent the interests of the individual LLC members and
12 move forward as counsel in these proceedings without Ms. Cangelosi. Ms. Cangelosi has spent
13 over a year feeding the LLC members misinformation (and, at times, bald lies) and creating time-
14 consuming, unproductive litigation; the LLC members now face the prospect of cleaning up the
15 damage caused by her without competent representation and leadership. Compass, at the Court’s
16 direction, therefore moves for the appointment of an equity receiver to provide objective advice to
17 the LLC members and assist them in securing competent counsel going forward.

18 A receiver also will be needed to review and verify any accounting submitted by
19 Ms. Cangelosi and take whatever action is appropriate in connection with the matters disclosed by
20 a review of the LLCs’ finances. By way of example, the Declaration of Mark Weibel submitted
21 in connection with Fulbright and Jaworski’s Motion to Withdraw reflects that, as of May 6, 2008,
22 Ms. Cangelosi had failed to pay the \$51,334.11 paid by Compass to FDH in connection with the
23 Direct Lenders’ 1% pledge in support of the LLCs’ legal expenses. Ms. Cangelosi, through FDH
24 or otherwise, should not be permitted to keep those or any other funds she obtained as manager of
25 the LLCs.

26 This should not be a particularly contentious motion from the perspective of
27 anyone other than Ms. Cangelosi. From the outset of the proceedings before this Court, when it
28 became clear that the LLCs were formed in violation of law, counsel for the LLCs has urged the
Court not to disturb their organization so that they could continue to employ sophisticated counsel

1 to represent the interests of their members. This motion seeks to provide the LLC members with
2 a lawful avenue for doing just that. This is not an attempt by Compass to deny the Direct Lenders
3 the ability to represent their interests. Indeed, Compass has filed this Motion because it believes
4 that the appointment of an experienced receiver, without bias or self-interest, will be enormously
5 helpful in moving this matter forward to resolution.

6 **STATEMENT OF FACTS**

7 Over the past year and a half, this Court and the Bankruptcy Court have announced
8 a series of clear Orders designed to protect the interests of the Direct Lenders and Compass vis-à-
9 vis the Borrowers while the underlying disputes in the pending litigation between them could be
10 resolved. These Orders have been ignored, undermined, and willfully violated by certain parties
11 to these proceedings (chiefly Ms. Cangelosi and others acting under her leadership).

12 Beginning in December 2006, Donna Cangelosi and certain Direct Lenders acting
13 at her direction began a campaign designed to undermine Compass as servicer of the USACM
14 loans. Cangelosi and others affiliated with her called Compass “predators” and “rapists” and
15 likened it to a “buffalo hunter” that does “not care how many they slaughter as long as they get
16 their steak.” (*See, e.g. Memorandum of Law of Compass in Opposition to Motion to Dissolve*
17 *Bankruptcy Court Injunction*, Docket No. 54 at 1-2, 5-9.) These and subsequent
18 communications—many of which went beyond any notion of fair play and common decency—
19 had the cumulative effect of poisoning the well between Compass and many of the Direct
20 Lenders. On May 18, 2007, Cangelosi wrote to all of the Borrowers, declaring that she had
21 terminated Compass as loan servicer and that any further payments to Compass would be made at
22 the Borrowers’ “peril.” This communication, which precipitated the Bankruptcy Court’s entry of
23 the initial preliminary injunction order, threw the resolution of literally dozens of loans into
24 complete chaos—causing substantial damage to Compass and each of the Direct Lenders by
25 delaying resolution of these loans in a rapidly deteriorating real estate market. Since that time,
26 Ms. Cangelosi has gone out of her way to undermine Compass, which has further damaged all
27 involved by delaying and complicating loan resolutions. For example, Ms. Cangelosi and those
28 acting at her direction have impermissibly, and in disregard of this Court’s Preliminary Injunction

1 Order entered November 6, 2007, communicated with Borrowers (as demonstrated by the *Motion*
2 *for Order of Contempt* filed in regards to the Mountain House loan on April 11, 2008, Docket No.
3 473). And most recently, Ms. Cangelosi effectively sabotaged the mediated settlement of this
4 litigation by proposing to all Direct Lenders a continued litigation strategy with a pledge over \$10
5 million in Direct Lender assets and surrender of all control over the litigation to the Cross entity.

6 As this Court recognized on April 28, 2008, a receiver is necessary here to
7 implement the Orders of the Court and ensure that the LLC members receive truthful and
8 appropriate advice concerning the mediation and their prospects in litigation going forward. The
9 Direct Lenders (particularly the LLC members) are in need of professional representation of their
10 individual interests in this proceeding. The LLC members have not been accurately apprised of
11 the facts and the results of these proceedings to date. In many instances, the LLC members have
12 been actively misled by Ms. Cangelosi. Counsel for the LLCs, who was retained by and has
13 followed the direction of Ms. Cangelosi, has indicated that it cannot and will not communicate
14 with and provide representation and legal advice to the *individual* Direct Lenders.¹ With Ms.
15 Cangelosi now prohibited from managing the LLC or otherwise organizing Direct Lenders, that
16 counsel has sought to withdraw from these proceedings. As the Court has recognized, the LLC
17 members require sophisticated counsel free of the influence of Donna Cangelosi and those acting
18 at her direction.

19 ARGUMENT

20 The appointment of a receiver is an appropriate remedy here because Donna
21 Cangelosi, as manager of the LLCs, has endangered the economic interests of the LLC members
22 through her repeated violations of Bankruptcy and District Court Orders and her irresponsible
23 solicitation of the Cross offer during the litigation standstill. Ms. Cangelosi, and her alter ego

24 ¹ This position was taken not just by Fulbright, but also by Ms. Cangelosi and the several Direct
25 Lender representatives (sometimes denoted as “loan captains”), each of whom took the position at
26 the mediation that while they in fact had sought a formal mediation process and participated
27 actively in the mediation, they would not provide the Direct Lender LLC members (on whose
28 behalf they purportedly were negotiating) with a recommendation as to any settlement that would
result from the mediation process. There is not much utility in a mediation with representatives
without authority or even a willingness to make a recommendation in support of a settlement that
they have mediated. A receiver will have both the capacity and the ability to make
recommendations, as appropriate, to the Direct Lenders.

1 FDH, are now prohibited from managing the LLCs. Accordingly, a receiver should be appointed
2 to protect the interests of the LLCs and their members in this litigation.

3 **I. THE COURT HAS THE AUTHORITY TO APPOINT A RECEIVER**

4 Federal Rule of Civil Procedure 66 explicitly provides the Court with the authority
5 for the appointment of an equity receiver. Fed. R. Civ. P. 66. One of the primary reasons a court
6 will order the appointment of a receiver is to promote orderly and efficient management of
7 property involved in a dispute. *See SEC v. Hardy*, 803 F.2d 1034, 1038-1039 (9th Cir. 1986) (due
8 to complex nature of receivership, district court had discretion to establish reasonable procedures
9 to further efficient administration of estate); *see also SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th
10 Cir. 1986) (courts impose receiverships in securities fraud actions to protect defrauded investors
11 from further loss of assets). Thus, the appointment of a receiver, although denominated an
12 “extraordinary remedy,” generally is within a court’s discretion where some potential for loss of,
13 or harm to, the litigants’ property during the pendency of the proceeding is demonstrated. *See,*
14 *e.g., New York Life Ins. Co. v. Watt West Inv. Corp.*, 755 F.Supp. 287, 292-293 (E.D. Cal. 1991)
15 (creditor made sufficient showing of imminent loss and probability of success).

16 Although no precise formula governs the decision to grant the remedy of equity
17 receivership, courts have identified certain factors that generally are considered in determining
18 whether to appoint a receiver: (1) the existence of fraudulent conduct; (2) imminent danger that
19 the property at issue will be lost, concealed, squandered, or diminished in value; (3) inadequacy
20 of available legal remedies; (4) unavailability of a less drastic equitable remedy; (5) balance of
21 hardships favoring appointment of a receiver; (6) likelihood that appointing the receiver will do
22 more good than harm. *See New York Life Ins.*, 755 F.Supp. at 292; *see also Consol. Rail Corp. v.*
23 *Fore River Ry. Co.*, 861 F.2d 322, 326-27 (1st Cir. 1988); *Santibanez v. Wier McMahon & Co.*,
24 105 F.3d 234, 241-42 (5th Cir. 1997); *In re McGaughey*, 24 F.3d 904, 907 (7th Cir. 1994).

25 There is great variation in the circumstances under which receiverships have been
26 implemented. Historically, receiverships have been established to manage real estate or a
27 business until the court can fully and finally resolve underlying private rights of the individual
28 parties to a dispute. *See* 13 James WM. Moore, *Moore’s Federal Practice* § 66.03[3] (3d ed.

1 2008). But receiverships also have been applied in a variety of cases where the justification for
2 implementation of a receivership has been that the entity—whose assets become the subject of
3 court jurisdiction and oversight—has consistently failed to comply with prior court orders. *See,*
4 *e.g. Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 317 (8th Cir. 1993) (pattern
5 of willful non-disclosure and deceitful disclosure prompted district court to properly appoint a
6 receiver); *Lyman v. Spain*, 774 F.2d 495, 497-498 (D.C. Cir. 1985) (receiver properly appointed
7 where breaches of fiduciary duties to minority shareholder by dominant shareholder put closely
8 held corporation at imminent risk of loss); *Consolidated Rail Corp. v. Fore River Ry.*, 861 F.2d
9 322, 326-327 (1st Cir. 1988) (appointment of receiver appropriate where property in danger of
10 being “imminently squandered” as defendant failed to comply with two court orders and evidence
11 showed defendant intermingled funds). One court, dealing with the desegregation of schools,
12 described the appointment of a receiver best when it stated that where “[t]he more usual remedies
13 contempt proceedings and further injunctions [are] plainly not very promising as they [invite]
14 further confrontation and delay; and when the usual remedies are inadequate, a court of equity is
15 justified, particularly in aid of an outstanding injunction, in turning to less common ones, such as
16 a receivership, to get the job done.” *Morgan v. McDonough*, 540 F.2d 527, 533 (1st Cir. 1976).

17 In addition, the Court has the authority to order the appointment of a receiver *sua*
18 *sponte* in order “to secure compliance with the law and th[e] court’s judgment.” *U.S. v.*
19 *Government of Guam*, 2008 WL 732796, Civil No. 02-00022 at *4 (D.Guam, Mar. 17, 2008)
20 citing *United States v. City of Detroit*, 476 F.Supp. 512, 520 (E.D. Mich. 1979) (holding that the
21 court’s authority to appoint a receiver was “founded in the broad range of equitable powers
22 available to [a district] court to enforce and effectuate its orders and judgments”). The
23 appointment of a receiver brings the subject property within the custody, control, and exclusive
24 jurisdiction of the appointing court. *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).
25 Although “the care of the property in dispute” officially rests with the court itself, of which the
26 receiver is “but the creature,” (*Booth v. Clark*, 58 U.S. 322, 331 (1854)) the order of appointment
27 usually grants the receiver broad authority over management of the property. *See, e.g., SEC v.*
28 *Capital Consultants, LLC*, 397 F.3d 733, 747-48 (9th Cir. 2005); *U.S. Commodity Futures*

1 *Trading Comm'n v. Lake Dow Capital, LLC*, No. 05-CV-2709, 2005 WL 3741510 (N.D. Ga.
2 2005). Federal statutory law facilitates exercise of that authority by enabling federal receivers to
3 control property outside the territorial jurisdiction of the receivership court,² although they remain
4 accountable to the court that appointed them.

5 **II. THE CIRCUMSTANCES HERE SUPPORT THE APPOINTMENT OF A**
6 **RECEIVER**

7 This Court has stated repeatedly that the formation of the LLCs—and, in
8 particular, the “road shows” where Donna Cangelosi and others made misrepresentations about
9 the LLCs and Ms. Cangelosi’s own financial interests—likely violated state and federal securities
10 laws. At the same time that it held Ms. Cangelosi in contempt for violating court orders, this
11 Court ruled Donna Cangelosi must re-solicit Direct Lender consent to participate in the LLCs,
12 with full disclosure in compliance with securities laws, in order for the court to recognize the
13 LLCs’ authority to act on behalf of the Direct Lenders’ interests. (*See, e.g.*, Declaration of Paul
14 Torres filed herewith (“Torres Decl.”) Ex. A (Oct. 2 Tr., Vol. 2 at 118:2-7).)

15 Ms. Cangelosi has engaged in a pattern of simply ignoring court orders when she
16 disagrees with an Order of the Court or believes the Order would impair her ability to proceed
17 with whatever action she desires to take. When confronted with her actions, she attempts to
18 excuse her absolute defiance of the Court by contending that she never understood the plain
19 language of an Order or clear pronouncements from the Bench. Despite this Court’s
20 determination that Ms. Cangelosi, on behalf of the LLCs, would have to re-solicit the Direct
21 Lenders’ interests before the LLCs or Ms. Cangelosi could take further actions on their behalf,
22 Ms. Cangelosi continued to take actions and make commitments on behalf of the LLCs and their
23 Direct Lender members without re-soliciting powers of attorney and transfers of rights in the
24 underlying notes, deeds of trust, and loan servicing agreements. Her stated explanation (that she

25 ² Under 28 U.S.C. § 754, a duly appointed receiver in an action involving property located in
26 different districts is “vested with complete jurisdiction and control of all such property with the
27 right to take possession thereof” and retains such jurisdiction upon filing copies of the complaint
28 and order of appointment in the district court for each district where the subject property is
located. *See also* 28 U.S.C. § 1692 (providing that, where a receivership encompasses property in
different districts, “process may issue and be executed in any such district as if the property lay
wholly within one district, but orders affecting the property shall be entered of record in each of
such districts”).

1 believed re-solicitation would be “required” only with respect to re-solicitation of LLC member
2 powers of attorney and only in the event that the LLCs moved to terminate Compass (Torres
3 Decl. Ex. B (Apr. 28 Tr. at 12:10-13)) is simply not credible when one reviews the entire record
4 before the Court. (*See Response to the Objections and Motion for Reconsideration Relative to*
5 *April 28, 2008 Proceeding*, Docket No. 518, at 4-16.) And having already been found in
6 contempt for soliciting millions of dollars in investments from the Direct Lenders with inadequate
7 and misleading disclosure, Ms. Cangelosi committed largely the same transgression again in
8 soliciting support from the LLC members (based on misleading, incomplete and inaccurate
9 information) for the unlawful conveyance to Cross of over \$10 million in rights in the notes and
10 deeds of trust held by the LLCs. This conveyance would also have provided Cross (an entity with
11 no actual interest in this dispute) with absolute control over the litigation. And the proposed
12 arrangement was premised on having Cross, in the name of the LLCs, terminate Compass and
13 claim the servicing rights for itself.

14 Ms. Cangelosi has demonstrated that she is either unwilling or incapable of
15 complying with the Court’s Orders. As a result, the LLCs have been forced unnecessarily to
16 expend significant time and legal fees in defending Ms. Cangelosi’s contemptuous behavior.
17 Appointment of an equity receiver to take over the management of the LLCs is, therefore,
18 appropriate both to protect the Direct Lenders’ interests and as a sanction for Ms. Cangelosi’s
19 contempt.

20 An equity receiver will be in a better position to manage the LLCs’ affairs because
21 the receiver, unlike Ms. Cangelosi, will not be facing the prospect of personal liability in the
22 litigation. Nor will the receiver or its counsel fear personal liability from the Direct Lenders
23 when it provides litigation advice and guidance to the Direct Lenders. Receivers are not
24 ordinarily personally liable unless the receiver acted outside the scope of its authority. *See New*
25 *Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989) (court indicated that
26 receivers should enjoy absolute judicial immunity); *Capitol Indem. Corp. v. Curiale*, 871 F. Supp.
27 205, 209 (S.D.N.Y.) (suits against receiver are usually against receivership and only under limited
28 circumstances may the receiver be sued in personal or individual capacity). And a receiver may

1 not be sued in his or her individual capacity without the express permission of the appointing
2 court. *See, e.g., FDIC v. J.D.L. Assocs.*, 866 F.Supp. 76, 78 (D. Conn. 1994) (in order to get
3 permission by court to sue receiver, petitioner must clearly show right to relief against receiver).

4 * * *

5 One issue for the Court to consider is the manner in which the receiver will be
6 compensated. With that in mind, Compass offers the following thoughts as potential avenues of
7 funding. To date, \$234,703.78 has been collected for the benefit of FDH from the resolution of
8 loans. The Court ruled from the Bench that the amount withheld on the San Fernando loan “goes
9 to the members,” and stated “there will no longer be any withholding for the LLCs.” (Torres
10 Decl. Ex. B (Apr. 28 Tr. at 28:6-29:7).) Moreover, FDH has received \$51,334.11 from the La
11 Hacienda distribution to cover litigation expenses. As suggested above, it appears that Ms.
12 Cangelosi still holds that sum (the Declaration of Mark Weibel submitted in support of
13 Fulbright’s Motion to Withdraw does not list that sum as having been paid to Fulbright by the
14 LLCs). Compass believes it may be appropriate for the receiver to access those funds.
15 Furthermore, the Court could designate, as a “surcharge” to fund the expenses of the receivership,
16 (i) a very small percentage of the interests of Direct Lenders in the “disputed fees” currently held
17 in escrow and (ii) the same percentage from the interests of LLC members in disputed fees
18 subsequently deposited into escrow as loans resolve. In the alternative, the Court could authorize
19 the receiver to surcharge sums following settlement of or final judgment on the “waterfall” issue
20 in distributions otherwise to be made on account of principal and non-default interest. Currently,
21 \$6.1 million of “disputed fees” are held in escrow. The escrowed funds continue to accrue
22 interest for the respective proportional benefit of the Direct lenders and Compass. (*Preliminary*
23 *Injunction Order*, Docket No. 199 at 5-6.) If, for example, the Court were to designate 2% of the
24 presently escrowed Disputed Fees (\$122,000), plus 2% of the principal and non-default interest
25 collected and escrowed as disputed fees or otherwise to be distributed on a going forward basis to
26 Direct Lenders who were members of an LLC, that should be sufficient to fully compensate the
27 receiver for his services and the expenses the receiver would incur in its appointment, including
28 the expense of counsel.

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CERTIFICATE OF SERVICE

This certifies that, pursuant to Rule 5 of the FEDERAL RULES OF CIVIL PROCEDURE, on the May 19, 2008, a true and correct copy of the foregoing *MOTION FOR APPOINTMENT OF RECEIVER* and the Declaration of Paul M. Torres in support thereof were served on all counsel via the Court's CM/ECF System.

By: /s/ Paul M. Torres

Paul Torres