

[REDACTED]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION DIV.

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

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[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

**DEFENDANT [REDACTED]  
RESPONSE IN OPPOSITION TO PLAINTIFF**

**[REDACTED] MOTION FOR PROCEEDINGS SUPPLEMENTARY**

Defendant, [REDACTED] (“Management”), opposes Plaintiff [REDACTED]

[REDACTED] (“Vencejo[’s]”) Motion for Proceedings Supplementary. Vencejo attempts to

implead third parties without actually identifying them or meeting the “reasonable particularity” standard outlined in Florida Statutes, section 56.29(2). Furthermore, regardless of whether Vencejo manages to comply with Florida Statutes, section 56.29, the law is well settled (in Florida and Delaware) that a charging lien is the only recourse available to Vencejo to enforce its judgment against Management’s subsidiary—the only third party actually identified in Vencejo’s motion.

### **INTRODUCTION**

Vencejo has a judgment against Management. Management is a Delaware limited liability company. On November 16, 2022, as part of post-judgment proceedings, Vencejo took a deposition of Management’s manager. Ultimately, Vencejo’s counsel ended its own deposition after repeated attempts to probe into the confidential financial records and dealings of non-parties—rather than to obtain information about Management. A hearing on Vencejo’s motion to compel is set for June 7, 2023.<sup>1</sup> (Dkt. Entry # 230).

In the instant motion, Vencejo is asking this Court to approve supplementary proceedings to “implead several third parties . . . .” Mot. at ¶ 3. Even though Vencejo has demonstrated that it has an unpaid and valid judgment—two of the prerequisites to authorize supplementary proceedings—it fails to adequately identify the purported third parties it wishes to implead with one exception. According to the affidavit of Julio [REDACTED], Vencejo aims to implead an ambiguously identified group of “managers, owners, investors, directors, and others in control of the Partnership,” with “Partnership” being a reference to Management’s partly-owned subsidiary CFLB Partnership, LLC. Aff. of Julio [REDACTED] ¶ 9. Other than

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<sup>1</sup> Vencejo alleges that its motion remains unheard due to dilatory tactics by Management’s counsel, but this claim is unfounded. The initial hearing date, April 4, 2023, was postponed due to Judge [REDACTED] retirement. The rescheduled hearing date, May 16, 2023, was cancelled not by Management’s counsel but by the Court itself.

Partnership, then, Vencejo fails to adequately plead the third parties it wishes this Court to drag into this action.

As to Partnership as well as the other unspecified non-parties, Vencejo's motion fails for an additional reason. Vencejo has not identified at all—much less with the “reasonable particularity” required by law—the property, debt, or obligation that can be used to satisfy the judgment from any non-party. *See generally* Aff. of Julio [REDACTED]. The motion thus fails to comply with Florida Statutes for that additional reason.

Finally, as to Partnership, Florida and Delaware law limit Vencejo's remedy to a charging order—impleading Partnership is a nullity.

### **ARGUMENT**

Motions for proceedings supplementary are governed by Florida Statutes, section 56.29. To initiate a proceeding supplementary, section 56.29(1) “requires that the judgment creditor have an unsatisfied judgment and file an affidavit averring that the judgment is valid and outstanding.” *Fundamental Long Term Care Holdings, LLC v. Estate of Jackson ex rel. Jackson–Platts*, 110 So. 3d 6, 8 (Fla. 2d DCA 2012).

If the judgment creditor seeks to implead third parties, it must also satisfy the requirements in section 56.29(2):

The judgment creditor shall, in the motion described in subsection (1) or in a supplemental affidavit, ***describe any property of the judgment debtor*** not exempt from execution in the hands of any person ***or any property, debt, or other obligation due to the judgment debtor*** which may be applied toward the satisfaction of the judgment.

§ 56.29(2). Fla. Stat. (emphasis added). “Upon filing of the motion and affidavits that property of the judgment debtor, or any debt, or other obligation due to the judgment debtor in the custody or control of any other person may be applied to satisfy the judgment, then the court shall issue a

Notice to Appear.” *Id.* (emphasis added). “The Notice to Appear must describe with ***reasonable particularity*** the property, debt, or other obligation that may be available to satisfy the judgment . . . .” *Id.* (emphasis added).

### **I. Vencejo Inadequately Specifies the Third Parties it Seeks to Implead**

Vencejo’s request to implead various third parties in the proceedings lacks the necessary specificity, failing to meet established legal criteria for implementing proceedings supplementary. Vencejo has requested that the Court allow it to “implead numerous third parties that appear to have been intimately involved . . . .” Mot. at ¶ 3. “In the proceedings supplementary Plaintiff seeks to implead, along with CFLB Partnership, its various managers, members, and others who have been involved in the development and operation of Conrad Ft. Lauderdale Beach.” *Id.* ¶ 4.

When impleading third parties, the affidavit should “list the parties to be impleaded.” *Pucci v. May-Wong Chou*, 319 So. 3d 722 (Fla. 3d DCA 2021) (citing *Mejia v. Ruiz*, 985 So. 2d 1109, 1112 (Fla. 3d DCA 2008)). Here, Vencejo has failed to list the parties (other than Partnership) it would like the court to implead with reasonable particularity. *See* Aff. of Julio [REDACTED] ¶ 9. Besides Partnership, the affidavit lacks names or identities that would help distinguish these individuals or entities. This generalization would stymie the Court’s ability to issue a notice to appear with any degree of “reasonable particularity.” § 56.29(2), Fla. Stat. Accordingly, the Court should refuse to implead any unnamed third parties.

### **II. Vencejo’s Request to Implead Partnership Fails the “Reasonable Particularity” Requirement**

Even as to Partnership (or anyone else), Vencejo’s motion is insufficient. Venecejo does not specify with reasonable particularity any property, debt, or other obligation Partnership (or others) may have as required by Florida law:

The entire statutory scheme of section 56.29(2) contemplates that the judgment creditor describe “any property of the judgment debtor” or “any property, debt, or

other obligation due to the judgment debtor” that may be applied to satisfy the judgment, so as to enable the trial court to issue Notices to Appear that describe the property, debt, or other obligation “with reasonable particularity.”

*Longo v. Associated Limousine Servs., Inc.*, 236 So. 3d 1115 (Fla. 4th DCA 2018) (holding that the trial court correctly refused to issue Notices to Appear to the impleader defendants because the judgment creditor’s motion and affidavit did not meet the requirements of section 56.29(2) to describe non-exempt property, debt, or obligations that could be used to satisfy the judgment).

Here, Vencejo has not described any property of the judgment debtor (Management) in the hands of Partnership (or others) nor any property, debt, or other obligation due to Management which may be applied toward the satisfaction of the judgment. Vencejo has not alleged that Partnership is in possession of any units in the Conrad Hotel that belong to Management, for instance. *See generally* Mot. Nor has Vencejo pointed to any debt or obligation that Partnership owes to Management. At most, Vencejo may only pursue a charging order, as discussed below.

### **III. A Charging Lien is Vencejo’s Sole Recourse Against Partnership**

Vencejo’s only avenue against Partnership is a charging order, and proceedings supplementary are unnecessary to obtain a charging order. Specifically, section 605.0503(3) states that a charging lien is the exclusive remedy available to a judgment creditor, such as Vencejo, when seeking to satisfy a judgment from a member’s interest in a multi-member limited liability company.<sup>2</sup> § 605.0503(3), Fla. Stat.

The Third District Court of Appeal confirms that fact. *See Ramos v. Miss. Real Estate Dispositions, LLC*, 314 So. 3d 643 (Fla. 3d DCA 2021). In *Ramos*, the Third District held that the

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<sup>2</sup> As discussed earlier, Management is a Delaware limited liability company. Importantly, the law in Delaware mirrors that of Florida: a judgment creditor’s exclusive remedy is a charging order. Del. Code Ann. Tit. 6, § 18-703. This commonality further reinforces the point that a charging order remains the sole recourse for a judgment creditor.

trial court's order, which required the judgment debtor to surrender his membership in a limited liability company to satisfy a lien, exceeded the remedy allowed under the statute, i.e., a charging order. *See generally id.*

Partnership is a multi-member limited liability company, and, as such, Vencejo's remedies under both Florida and Delaware law are limited to a charging order. Last year, in discovery, Management produced to Vencejo an ownership chart reflecting that Partnership is a multi-member limited liability company partly owned by Management. *See* Exhibit A (Bates [REDACTED]). Under Florida Statutes, section 605.0503(3) and *Ramos*, accordingly, Vencejo's only remedy is a charging order. A charging order permits a judgment creditor, like Vencejo, to acquire any distributions from Partnership to its member, Management. Florida and Delaware law do not authorize Vencejo to foreclose on that membership interest nor to acquire any property of Partnership. Proceedings supplementary are thus superfluous to the actual remedies Florida and Delaware law authorize. Vencejo's attempt to implead this non-party is thus another attempt to peer into the finances of or otherwise harass non-parties.

### **CONCLUSION**

For the foregoing reasons, Defendant [REDACTED] respectfully requests that the Court deny Plaintiff [REDACTED] request to institute proceedings supplementary.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

# EXHIBIT A



