UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LIFE WIN, INC., a Florida corporation; GET MOTIVATED SEMINARS INC, a Florida corporation; and WEALTH MAGAZINE INVESTOR EDUCATION LLC, a Florida limited liability company, Plaintiffs, v. BRIAN FORTE, an individual; TAKE ACTION MEDIA, INC. a Florida corporation; and TAMARA LOWE, an individual Defendants And WASHINGTON SPEAKERS BUREAU INC, Intervenor/Plaintiff v. LIFE WIN, INC., a Florida corporation; GET MOTIVATED SEMINARS INC, a Florida corporation; WEALTH MAGAZINE INVESTOR EDUCATION LLC, a Florida limited liability company; BRIAN FORTE, an individual; TAKE ACTION MEDIA, INC., a Florida corporation;TAMARA LOWE, an individual; BOOKER T. EQUITY, LLC, a Florida limited liability company; JOSEPH JOHNSON, an individual; and PETER LOWE, an individual, Intervenor/Defendants	Case No.: 8:12-cv-00119-JDW-MAP

WASHINGTON SPEAKERS BUREAU INC.'S MOTION TO INTERVENE AND SUPPORTING MEMORANDUM OF LAW

Pursuant to Rule 24 of the Federal Rules of Civil Procedure and Local Rule 3.01, Washington Speakers Bureau Inc. ("WSB") seeks to intervene in this action filed by Plaintiffs Life Win, Inc. ("Life Win"), Get Motivated Seminars, Inc. ("Get Motivated"), and Wealth Magazine Investor, Inc. ("Wealth Magazine") against Defendants Brian Forte ("Forte"), Take Action Media, Inc. ("TAM"), and Tamara Lowe (Ms. Lowe).[1] WSB includes herein a concise statement of the precise relief it requests, a statement of the basis for its request, and a memorandum of legal authority in support of its request. WSB's proposed Verified Complaint setting forth the factual basis on which, and the claims for which, intervention is sought is attached as hereto Exhibit 1 ("WSB Cmplt.").

I.

STATEMENT OF THE RELIEF REQUESTED

Pursuant to F.R.C.P. 24(a), WSB asserts that it has the right to intervene in this action. In the alternative, WSB seeks permission to intervene pursuant to F.R.C.P. 24(b).

II.

STATEMENT OF BASIS FOR REQUEST TO INTERVENE

Pursuant to F.R.C.P. 24, WSB's intervention motion should be granted because: (a) this motion is timely; (b) WSB has legally protectable interests relating to the transactions that are the subject of the action; (c) disposing of this action will, as a practical matter, greatly impair

[1] Plaintiffs Life Win, Get Motivated and Wealth Magazine are referred to collectively as the "Life Win Parties." Defendants Forte, TAM and Ms. Lowe are collectively referred to as the "TAM Parties." Plaintiffs and Defendants together are referred to as the "Existing Parties."

and/or impede WSB's ability to protect its interests; and (d) none of the Existing Parties is adequately protecting WSB's interests.

A. WSB'S GOOD-FAITH EFFORTS TO RESOLVE THESE ISSUES

Pursuant to Local Rule 3.01(g), WSB attempted to resolve the issues raised in this motion by asking the Existing Parties: (1) for consent to allow WSB to participate in the mediation ordered by Magistrate Judge Pizzo scheduled for April 10, 2012; (2) after the TAM Parties objected, that the mediation be adjourned until the issues WSB raises in this motion could be resolved; (3) for consent to allow WSB to join this action; or (4) that the approximately two million dollars owed to WSB be put in escrow, rather than, as more fully explained *infra*, be "credited" to the Life Win Parties as part of the transaction contemplated in the settlement agreement that the TAM parties are seeking to enforce. None of WSB's good faith "meet and confer" efforts were successful; thereby compelling WSB to file this motion. If the Existing Parties settle this dispute under the same or similar terms contemplated by the settlement agreement, -- which the TAM Parties filed a motion to enforce, but which the Life Win Parties argue Ms. Lowe has already breached (the Court referred the motion to the Magistrate Judge who, in turn, ordered the Existing Parties to mediation, now scheduled for April 10, 2012), -- WSB will have no recourse to recover the approximately 1.7 million dollars for which the Existing Parties should be held liable to pay WSB.

B. SUMMARY OF FACTS

The facts supporting WSB's intervention motion are set forth in WSB's proposed Intervenor Verified Complaint. (Exh. 1). WSB briefly summarizes them here.

1. WSB's association with the Get Motivated Seminars

Over the past 30 years, WSB has developed a reputation in its industry for representing the most preeminent speakers in a diverse array of fields, including American politics, business, and academia. For over a decade, WSB has executed dozens of contracts to provide speakers for "Get Motivated Seminars," an enterprise produced by Peter Lowe ("Mr. Lowe"), his wife, Ms. Lowe, and Ms. Lowe's brother, Mr. Forte. The Lowes and Forte produced the Get Motivated Seminars, which were very successful, under the name Life Win Inc.[2] Forte was responsible for operating the business of the Get Motivated Seminars. Ms. Lowe was a featured motivational speaker, perhaps best known for a "rap" she performs about Jesus. WSB provided very prominent speakers to headline these events, including Colin Powell, Rudolph Giuliani and former First Lady Laura Bush.

2. Ms. Lowe and Mr. Forte misrepresent that they are acting as agents of Life Win

In or around November 2011, the form contracts that WSB routinely sent to Forte concerning the Get Motivated Seminars, which he then signed, were returned with the name "Life Win" crossed out and "Take Action Media" ("TAM") written in. When questioned by WSB, TAM, and in particular, Forte, assured WSB that TAM was in fact Life Win, and Life Win was in fact TAM. TAM was disingenuously casual about the name change, essentially

[2] WSB was not aware that there was a "Get Motivated Inc." until Plaintiffs filed this action.

dismissing it as kind of a "legal thing." Thereafter, as far as WSB was aware, nothing changed about its relationship with the Get Motivated Seminars. In addition, in or around November 2011, WSB received an email from a Get Motivated email address stating that, as a result of "changes in the corporate structure" at Life Win, Life Win would now be called Take Action Media. (WSB Cmplt. Exh. 1.)

From November 2011 until the end of February 2012, WSB continued to send the same contract terms to Forte, using the same contact information (phone, street address and email address); and the employees with whom WSB interacted were the same. Over the course of the next several months, WSB continued to book speakers for the Get Motivated Seminars, even though TAM and/or Life Win was not making payments due under the WSB contracts. To date, WSB is owed approximately 1.7 million dollars -- not including attorneys fees and interest to which WSB is entitled under the contract terms, -- under contracts where the TAM name is written in, for speakers WSB provided for the Get Motivated Seminars (the "Contracts").

3. Mr. Lowe terminates Ms. Lowe's and Forte's employment with Life Win, and sells the Company, and neither Mr. Lowe nor the new owner informs WSB until more than a month after the sale

Unbeknownst to WSB at the time, Mr. and Mrs. Lowe had been separated for months, and were in the midst of a contentious divorce proceeding (the "Divorce Action"), during the November 2011- February 2012 time period in which WSB was continuing to provide speakers for the Get Motivated Seminars. Neither Mr. Lowe nor any of the Life Win Parties informed WSB that, as alleged in the Plaintiffs' First Amended Complaint, Ms. Lowe and her brother were unlawfully representing TAM to the public-at-large, including WSB, as "Get Motivated" and

"conducted business in the name of Get Motivated – *as if they were Get Motivated*." (Dkt. No. 17, ¶ 41 (emphasis in original)). Nor did Mr. Lowe, or any of the Life Win Parties, inform WSB that TAM "had signed documents and executed agreements on behalf of Life Win and GMS [Get Motivated Seminars] and have altered existing agreements between plaintiffs and outside parties, including, but not limited to, by replacing GMS [Get Motivated Seminars] with TAKE ACTION [Take Action Media] as a party to the agreements," as further alleged in the First Amended Complaint. (Dkt. No. 17, ¶ 45). The documents and executed agreement to which the Life Win Parties refer in the First Amended Complaint include the WSB Contracts that remain unpaid.

In December 2011, Mr. Lowe apparently terminated his wife's and Forte's employment with Life Win. Less than a month later, on January 9, 2012, he sold Life Win / Get Motivated for 20 million dollars in a stock deal to Booker Equity, an entity controlled by Johnson. WSB was not informed about the terminations, or the sale, and continued to enter into contracts for speakers to appear at Get Motivated Seminars.

4. The Existing Parties, acting together, enter into a sham for the wrongful purpose of avoiding creditors

In a February 16, 2012 Order entered in the Divorce Action, the proceeds of the sale of Life Win / Get Motivated were deemed a marital asset, and Mr. Lowe was to account for the receipt and disposition of the proceeds within 10 days of the Order. (The Order further provided that the proceeds could not be "*spent, pledged, converted, hidden or disposed of in any way, unless the parties complied with the Order*.")

Clearly, the Order entered in the Divorce Action essentially freezing 20 million dollars prompted the parties to "get motivated" about resolving their disputes. Six days after the Order was entered, Mr. Lowe, Ms. Lowe, Forte; Booker T. Equity, LLC ("Booker Equity"), the new owner of Life Win Inc., Joseph Johnson, the sole owner of Booker Equity; and Mitch Steitz ("Steitz"), who is apparently Ms. Lowe's boyfriend, entered into a "settlement agreement" (the "Settlement Agreement"). (Mr. Lowe, Booker Equity, Johnson, and Steitz are sometimes collectively referred to as the "Settlement Agreement Parties"). Concurrently with the Settlement Agreement, Ms. Lowe, Mr. Lowe, Forte and Steitz also negotiated a Distribution Agreement, which amended the January 9, 2012 Stock Purchase Agreement by and between Mr. Lowe and Johnson and/or entities he owned and controlled ("Stock Purchase Agreement").

On its face, the Settlement Agreement purported to resolve certain claims in various litigations filed among the parties, including this present action. However, the transfers made, and the obligations incurred under the Settlement Agreement and referenced Distribution Agreement (together, the "Transfers"), are fraudulent as to WSB because they were made with the actual intent to hinder, delay, or defraud WMS as a creditor of TAM. The actual intent to defraud is evidenced by, among other things, the fact that:

(a) insiders of TAM (Ms. Lowe and Forte), as well as Mr. Lowe, received the consideration for TAM's Transfers under the Settlement Agreement in the form of enhanced distributions under the Distribution Agreement leaving TAM without any assets or any ability to pay it creditors;

(b) the Transfers were made after TAM had been threatened with suit by WSB;

(c) the value of the consideration received by TAM for the Transfers was not reasonably equivalent to the value of the assets transferred or the amount of obligations incurred by TAM under the Settlement Agreement;

(d) TAM was insolvent or became insolvent after the Transfers; and

(e) the Transfers occurred shortly after substantial debts were incurred by TAM to WSB.

Suffice it to say that it appears that Mr. Lowe, Ms. Lowe and Forte would, if the Settlement Agreement were to be implemented, walk away from the deal $19,750,000 richer.[3] Under these Agreements, Ms. Lowe was also due to receive a lucrative ongoing personal services contract with one or more of the Life Win Parties. Moreover, Booker Equity and the Life Win Parties' assumptions of TAM's liabilities and debts are all illusory. The Settlement Agreement does not set forth which TAM assets and liabilities are assumed or retained. There are no schedules. Further, Booker Equity and the Life Win Parties are entitled, in their sole discretion, to elect whether or not to transfer TAM assets, including contracts, which the Settlement Agreement does not identify, entered into by TAM. Although the Settlement Agreement purports to amend the Stock Purchase Agreement to reduce the purchase price paid by Booker Equity and the Life Wine Parties by 7.5 million dollars, that $7.5 million is

[3] Apparently $1,750,000 was paid to the IRS for taxes, but the Distribution Agreement does not identify whether corporate or individual taxes were paid.

designated to cover not only TAM debts but also the debts of the TAM parties, the Life Win Parties and the individuals.

By way of example, the $7.5 million is supposed to cover: (i) debts incurred by TAM, Ms. Lowe, Forte, Steitz, or the Life Win Parties that remain unpaid as of the date of the Settlement Agreement, *including Ms. Lowe's credit card debt (allegedly incurred in connection with the operation of TAM or Life Win*); (ii) "improper payments", which are neither quantified nor set forth in a schedule, that were made to Ms. Lowe, Forte or Steitz, directly or through TAM; and (iii) all other debts of Booker Equity, Get Motivated, Life Win or Wealth Magazine – whether or not such debt related at all to the operation of TAM or Life Win. In sum, the Settlement Agreement provides Booker Equity and the Life Win Parties sole and unfettered discretion to decide what unidentified obligations they will satisfy and which they will choose not to satisfy.

In addition, the Settlement Agreement entitles Booker Equity and the Life Win Parties to half (50%) of the amount that they are able to negotiate down from the debts of TAM. In other words, if these parties were successful in persuading WSB to accept $1,000,000, rather than the more than 1.7 million dollars WSB is owed by some or all of these parties, the amount they would have to pay out $ under the Stock Purchase Agreement would be reduced by $500,000.

Life Win, did not disclose to WSB either the existence of the Settlement Agreement or the benefit it will receive if WSB accepts less than the amount it is owed. However, Life Win has represented to WSB that it is in control of what, if any, TAM debts get paid. Life Win has also informed WSB that WSB would be well-served to accept payment of a significantly reduced

sum, and on terms that Life Win dictates, because TAM is essentially judgment proof. Thus, the practical effect, if not intended goal, of the arrangement memorialized in the Settlement Agreement is to leave WSB at the mercy of Life Win because Life Win can deny that it assumed any TAM liability but also offer, again denying that it is obligated to do so, to pay the obligation at a discount on terms that Life Win dictates.

The Settlement Agreement has not yet been fully executed. The Magistrate Judge in this action ordered the parties to mediation, currently scheduled for Tuesday, April 10, 2012, seemingly in an effort to allow the parties to reach full and final settlement.

III.

WSB'S MEMORANDUM OF LEGAL AUTHORITY IN SUPPORT OF INTERVENTION MOTION

A. WSB IS ENTITLED TO INTERVENE AS OF RIGHT

WSB moves to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2).[4] In this Circuit, "[a] party seeking to intervene as of right under Rule 24(a)(2) must show that: (1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit." *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989). Once these prerequisites are met, "the trial court has no

[4] Rule 24(a)(2) provides: "On timely motion, the court must permit anyone to intervene who.…(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

discretion to deny the intervention." *Loyd v. Ala. Dep't of Corrections*, 176 F.3d 1336, 1340–41 (11th Cir. 1999), *cert. denied*, 528 U.S. 1061 (1999). Moreover, "[a]ny doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action." *Fed. Savings and Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993). As set forth below, WSB has met all the prerequisites for intervention as a matter of right.

1. WSB Timely Filed This Motion

In determining whether a motion to intervene is timely, this Court must consider:

> (1) the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that their motion was timely.

Georgia v. U.S. Army Corps of Eng'rs, 302 F.3d 1242, 1259 (11th Cir. 2002), *en banc reh'g denied*, 54 Fed. Appx. 935 (11th Cir. 2002). Timeliness is not limited to chronological considerations but "is to be determined from all the circumstances." *Stallworth v. Monsanto Co.*, 558 F.2d 257 (5th Cir. 1977).[5]

Here, the facts and circumstances show that WSB timely filed the instant motion. This litigation was commenced on January 20, 2012; however, the commencement of this litigation,

[5] *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), in which the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

in and of itself, did not give WSB any reason to believe it had an interest in the litigation. This is especially true because, before and well after commencement of the litigation, WSB continued to receive assurances from representatives of both Life Win and TAM that WSB would be paid.[6] WSB relied on these representations and did not seek to join in this action.

However, by late February 2012, which WSB now knows was shortly after the Settlement Agreement was reached, Life Win became more evasive about paying amounts due under the WSB Contracts. Thus, on or around March 26, 2012, WSB referred the matter to its outside litigation counsel. As a result, WSB learned, on or around March 30, 2012, of the purported Settlement Agreement and the scheduled mediation. Before reviewing the purported Settlement Agreement, WSB did not know that the Existing Parties were meting out the distribution of TAM's assets amongst themselves and WSB's interests were not being represented.

Immediately upon learning that WSB's interests were not being represented, WSB, through its counsel, contacted the attorneys for the Existing Parties to request permission to participate in the mediation. Counsel for TAM and Ms Lowe would not consent.

Thus, the time elapsed between WSB knowing that its interests were not being protected, and the filing of this motion, is only *a matter of days*. Courts have found substantially longer periods to time satisfy the timeliness requirement. *See e.g., Georgia*, 302 F. 3d at 1259 (holding that a delay of six months did not in and of itself indicate untimeliness); *Chiles*, 865 F.2d at 1213 (finding motion to intervene timely where it was filed seven months after the complaint).

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6 All factual assertions in the memorandum are fully supported by WSB's proposed Verified Complaint, which is attached as Exhibit "1."

Further, this action was filed only approximately three months ago. Thus, the Existing Parties will not be prejudiced if WSB joins this action. On the other hand, WSB will be significantly prejudiced if its motion is denied.

2. WSB Has Significant Interests In The Subject Matter Of This Litigation

"[A] party is entitled to intervention as a matter of right if the party's interest in the subject matter of the litigation is direct, substantial, and legally protectable." *Georgia*, 302 F.3d at 1249. The interest need not "be of a legal nature identical to that of the claims asserted in the main action." *Chiles*, 865 F.2d at 1214 (citation omitted). The inquiry "is 'a flexible one, which focuses on the particular facts and circumstances surrounding each [motion for intervention].'" *Id.* (citation omitted).[7] The circumstances surrounding this motion for intervention establish that WSB has several compelling interests in the subject matter of this litigation.

First, WSB has an interest in the central question presented to this Court for resolution by the Life Win Parties in the First Amended Complaint; namely which of the Existing Parties had and continues to have the right to hold themselves out as Get Motivated Seminars to the public and to Get Motivated Seminars' third-party business partners? Stated even more simply, the Life Win Parties have asked the court to answer, who *is* Get Motivated Seminars?

These questions concerning the ownership of Get Motivated Seminars, and the rights to benefit from and be bound by its contracts, simply cannot be resolved without WSB being at the table, at least not in a manner that would not be irreparably prejudicial to WSB's interests. It is

[7] *See also U.S. v. American Institute of Real Estate Appraisers of the Nat. Ass'n of Realtors*, 442 F. Supp. 1072, 1080 (D.C. Ill. 1977) ("The 'interest' requirement of Rule 24(a)(2) has been recognized as ' primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'…The requirement is satisfied by something less than a specific legal or equitable interest in the chose.").

WSB's understanding that it WSB, by far, TAM's single largest creditor. Thus, resolving the questions presented by the Existing Parties in this litigation goes hand-in-hand with this Court resolving the question of who bears legal responsibility for the mounting debts created during the period from, at least, October 2011, through December, 2011, when the Contracts were executed with WSB in connection with the Get Motivated Seminars.

Second, the Settlement Agreement's provision for the sale of TAM's assets, some of which indisputably belong to WSB, establishes a legally cognizable interest in the property that is the subject of the litigation and its resolution. *See, e.g., Cox Enterprises, Inc. v. News-Journal Corp.*, No. 6:04–cv–698–Orl–28KRS, 2009 WL 2602642 (M.D. Fla. Aug. 24, 2009) (finding that intervenors had protectable interest relating to the property at issue, namely the distribution of dissolution assets to fund a pension plan). *See also Mountain Top Condominium Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361 (3d Cir. 1995) (condominium-unit owners' interest in the remainder of insurance proceeds that were being held in trust by the condominium association for hurricane reconstruction was sufficient to satisfy the protectable interest requirement).

Third, WSB has an interest in protecting its rights as a party to the Contracts and as a third party beneficiary of any future settlement agreement between these parties. It is well-established that contract rights are legally protectable interests. *See, e.g., South Florida Equitable Fund LLC v. City of Miami, Florida*, No. 10-21032-CIV, 2010 WL 2925958, at *3 (S.D. Fla. July 26, 2010) (holding that intervenors had legally protectable interests in their settlement agreements and the permits granted thereunder, which were related to the underlying

lawsuit); *Danner Constr. Co. v. Hillsborough County*, No. 809-CV-650-T-17TBM, 2009 WL 2525486, at *4 (M.D. Fla. Aug. 17, 2009) (holding that party to a contract that plaintiff sought to invalidate in an antitrust suit had a sufficient interest to intervene).

WSB also has an interest in protecting its valuable business relationships with its speakers, who are well-known public figures. These relationships are at the core of WSB's business and are related to the subject of this litigation and the Settlement Agreement. Again, this litigation raises the question: Can the real Get Motivated Seminars please stand up? If WSB does not know which of the Existing Parties is the true Get Motivated Seminars, then certainly the speakers WSB books for Get Motivated Seminars will likely not know on whose behalf they are appearing, and, by extension, whom they are appearing to endorse to the public. Such confusion is damaging to WSB's goodwill and personal relationships, both of which are integral to WSB's ability to continue representing preeminent speakers and, ultimately, to WSB's continued success.

3. If the Court Denies Intervention, WSB's Ability To Protect Its Interests will be Substantially Impaired

WSB expects that the Existing Parties will likely resolve any outstanding disputes in the forthcoming mediation and proceed with the Settlement Agreement or an agreement with similar terms. If WSB is not permitted to be a part of the mediation and settlement negotiations (or if those negotiations are unsuccessful, the course of this litigation), WSB will be unable to defend its legal and economic interests as a party to the Contracts, a creditor of the parties, and a business seeking to maintain its valuable relationships. As fully set forth in WSB's proposed

Intervenor Complaint, the Settlement Agreement is, among other things, an unlawful fraudulent transfer of assets.

4. WSB's Interests Cannot Be Adequately Represented By The Existing Parties

"The proposed intervenor has the burden of showing that the existing parties cannot adequately represent its interest, but this burden is 'treated as minimal.'" *Georgia*, 302 F.3d at 1255 (citation omitted). "[T]he inadequate representation requirement 'is satisfied if the [proposed intervenor] shows that representation of his interest 'may be' inadequate' ...." *Chiles*, 865 F.2d at 1214 (quoting *Trbovich v. United Mine Workers of Amer.*, 404 U.S. 528, 538 n.10 (1972)).

WSB easily satisfies this minimal burden. The Existing Parties have repeatedly represented that they either cannot or will not adequately represent WSB's interests. Indeed, they have no incentive to do so; the protection of WSB's creditor and contractual rights in any settlement negotiations would mean less assets available to be shared among the Existing Parties. As previously noted, the only reasonable conclusion that can be drawn from the terms of the Settlement Agreement, and the Existing Parties' actions and representations in connection therewith, is that its main goal is to ensure that each of the Existing Parties (and the Settlement Parties) could leave this litigation with as much of the assets at issue as possible, while leaving creditors like WSB with no recourse to recoup what they are owed. This goal will surely be accomplished if WSB is not permitted to join and represent its own interests, including participating in this mediation.

B. IN THE ALTERNATIVE, THIS COURT SHOULD PERMIT WSB TO INTERVENE

Rule 24(b) provides:

> On timely motion, the court may permit anyone to intervene who.…(B) has a claim or defense that shares with the main action a common question of law or fact.…In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b).[8] WSB concedes that it is well-established that, under F.R.C.P. 24(b), even if the prerequisites of timeliness and commonality are met, this Court retains discretion as to whether to order intervention. *See Chiles*, 865 F.2d at 1213. Should it determine that intervention as of right is not appropriate, the Court, in its discretion, should nevertheless permit WSB to intervene here.

1. WSB's Claims Share Common Questions Of Law And Fact With The Transactions At Issue In This Action.

For the reasons discussed above, WSB's motion is timely. Moreover, WSB's claims, which are set forth in WSB's proposed Intervenor Complaint, present questions of law and fact that are common with the allegations in Plaintiffs' First Amended Complaint. The First Amended Complaint centers on TAM, Ms. Lowe and Forte allegedly representing themselves to third parties as Get Motivated Seminars and utilizing Life Win / Get Motivated Seminars' property as their own. TAM, Ms. Lowe and Forte also allegedly signed documents and executed agreements on behalf of Life Win and Get Motivated Seminars by replacing TAM as the party to the agreements. In the WSB's proposed Intervenor Complaint, WSB alleges that the TAM

[8] In this Circuit, a party seeking to intervene under Rule 24(b)(2) must show that: (1) its application to intervene is timely; and (2) its claim or defense and the main action have a question of law or fact in common. *Chiles*, 865 F.2d at 1213.

Parties engaged in this same misconduct to the detriment of WSB. The common nucleus of facts and legal issues between WSB's claims and the claims asserted in this action, and, relatedly, the Settlement Agreement, warrant permissive intervention.

2. WSB's Intervention Will Not Unduly Delay Or Prejudice The Adjudication Of The Rights Of The Original Parties

WSB's intervention will neither unduly delay nor prejudice the adjudication of the Existing Parties' rights. WSB seeks only to become a part of this litigation for purposes of ensuring that its creditor and contract rights are adequately protected, whether it is in mediation, settlement discussions, or, if those are unsuccessful, in prosecuting its claims. As discussed earlier, this litigation remains in its early stages and WSB's intervention now will not unduly affect the Existing Parties' limited progress thus far. In fact, allowing WSB to join will save the Existing Parties the time and expense of having to defend themselves in a second action filed in this distinct, which is what WSB will be compelled to do if this motion to intervene is denied.

IV.

CONCLUSION

For the foregoing reasons, WSB respectfully requests that this Court grant WSB's motion to intervene as of right, pursuant to F.R.C.P. 24(a), or in the alternative, permit WSB to intervene, pursuant to F.R.C.P. 24(b).

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 3.01(g)

Pursuant to Local Rule 3.01(g), Maureen McLoughlin, of Davis & Gilbert LLP, counsel for WSB, conferred with counsel for the parties in this litigation in a good-faith attempt to resolve the issues raised in this motion. Specifically, Ms. McLoughlin sought to resolve the

issues presented by asking: (1) for consent to allow WSB to participate the mediation ordered by Magistrate Judge Pizzo scheduled for April 10, 2012; (2) after the TAM Parties objected, that the mediation be adjourned until the issues WSB raises in this motion could be resolved; (3) for consent to allow WSB to join the action; or (4) that the approximately two million dollars owed to WSB be placed in escrow, rather than, as more fully explained in this motion *(infra)*, be "credited" to the Life Win Parties as part of the transaction contemplated in the settlement agreement that the TAM parties are seeking to enforce. One of Brian Forte's attorneys, Michael Addison, had no objection to WSB's motion to intervene or WSB's request to participate in the mediation. Otherwise, none of WSB's good-faith "meet and confer" efforts were successful; thereby compelling WSB to file this motion, as well as a motion to stay Proceedings and set aside funds, filed concurrently herewith.

Dated: Tampa, FL
April 6, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court on April 6, 2012, by using the CM/ECF filing system, which will send notice to counsel of record.

/s/ Timothy A. Andreu
Attorney