UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION, Plaintiff, v. MAIL TREE INC., *et al.*, Defendants.	Case No. 0:15-cv-61034 Judge James I. Cohn Magistrate Judge Barry S. Seltzer

NON-PARTY SERENA DYER PISONI'S OPPOSITION TO AND MOTION TO MODIFY *EX PARTE* TEMPORARY RESTRAINING ORDER WITH INCORPORATED MEMORANDUM OF LAW

Serena Dyer Pisoni ("Mrs. Pisoni") serves this opposition to and motion to modify the Temporary Restraining Order ("TRO") sought and obtained by the Federal Trade Commission ("FTC"), in advance of the Show Cause Hearing presently set for 9:30 a.m. on Friday, June 12, 2015.

I. PREFACE

This is a case where the FTC cast a wide net in seeking an *ex parte* TRO and asset freeze and snared an individual who had nothing to do with the alleged "deceptive acts and practices" identified in the Complaint for Permanent Injunction and Other Equitable Relief, filed by the FTC wanted to shut down. As a result of the FTC's wide cast net approach, an innocent non-party, is being harmed.

Mrs. Pisoni, individually, is harmed because her assets have been frozen. Indeed, Mrs. Pisoni is without access to funds and is unable to provide basic living necessities for herself, her newborn child or her family. The FTC is simply unable to demonstrate that Mrs. Pisoni is

currently violating, or is apt to violate, any provision of law enforced by the FTC. The FTC has neither attempted to nor made any effort to show any violation, or continuing violation, on the part of Mrs. Pisoni. For the reasons discussed below, the TRO including the asset freeze should be modified as to non-party Mrs. Pisoni.

II. PROCEDURAL BACKGROUND

On Tuesday, May 19, 2015 the FTC obtained an *ex parte* TRO and asset freeze against twelve corporations and four individuals. The FTC served the TRO on Matthew Pisoni, the husband of Mrs. Pisoni, on Thursday, May 22, 2015.

In the TRO, among other things, the Court originally scheduled a Show Cause Hearing for Tuesday, June 2, 2015 at 9:00 a.m., which was continued until Friday, June 12, 2015 at 9:30 a.m. The Court also directed all the Defendants to file answering affidavits, pleadings or legal memoranda no later than four business days before the preliminary injunction hearing.

III. THE TRO SHOULD BE MODIFIED AS NOT TO AFFECT THE NON-PARTY

The TRO should be modified in order to unfreeze certain assets of the non-party, Mrs. Pisoni. Specifically, one of the bank accounts affected by the TRO was a Bank of America account ending in 0841. While currently a joint account held by the non-party, Mrs. Pisoni and her husband, Matthew Pisoni, Mrs. Pisoni opened this bank account. She first added Matthew Pisoni to the account on or about October 2014 after they were married.

On or about January 20, 2015, Mrs. Pisoni deposited a check from her father in the amount of thirty-two thousand dollars ($32,000.00). This amount was broken down as a twenty-eight thousand dollar ($28,000.00) wedding gift and four thousand dollars ($4,000.00) in commission (Attached as Exhibit "A"). These monies were still in the account when it was frozen by the TRO on May 21, 2015. These monies were in no way connected with any of the

allegations made by the FTC in its Complaint or the initial findings contained in the TRO. Mrs. Pisoni needs these monies to continue to care for her family; including her newborn daughter.

The asset freeze of this particular bank account and more specifically, the monies that constitute a wedding gift from Mrs. Pisoni's parents causes greater harm to Mrs. Pisoni and her family than it protects the public interest as these funds are in no way related to the case at hand.

Mrs. Pisoni has executed a declaration confirming the above (Exhibit "B") and therefore, requests that this Honorable Court lift the freeze order as it relates to her Bank of America account ending in 0841, or in the alternative, releasing the aforementioned amount of thirty-two thousand dollars ($32,000.00).

"Ordinarily, '[t]he general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment.' *In re Fredeman Litig*., 843 F.2d 821, 824 (5th Cir.1988)(relying upon the Supreme Court's decision in *DeBeers Consol. Mines Ltd. V. United States*, 325 U.S. 212, 65 S.Ct. 1130, 89 L.Ed. 1566 (1945))."

IV. CONCLUSION

For the foregoing reasons, and as will be argued at the June 12, 2015 Show Cause Hearing, the May 19, 2015 TRO should be modified to permit Mrs. Pisoni to regain her Bank of America account referenced above or to at least release the funds described herein.

Respectfully submitted,

June 8, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2015, I electronically filed the foregoing with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the foregoing Service List via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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