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Attorney for Defendant Jeremy Foti

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

DAMIAN KUTZNER, et al.,

Defendants.

Case No. 8:16-00999 BRO (AFMx)

DEFENDANT JEREMY FOTI'S OPPOSITION TO TRUSTEE ANNENBERG'S MOTION TO DISSOLVE OR OTHERWISE MODIFY PRELIMINARY INJUNCTION; DECLARATION OF JEREMY FOTI

Date: June 19, 2017
Time: 1:30 pm
Location: Courtroom 7C

United States Courthouse
350 West 1st Street
Los Angeles, CA 90012

Defendant Jeremy Foti hereby opposes the Motion of Interested Parties Neil R. Anenberg and Carol A. Anenberg to dissolve or otherwise modify the Preliminary Injunction (ECF No. 240) so that they may proceed with a nonjudicial foreclosure of their third trust deed loan on the Newport Beach residence owned by Time Out Management Ltd., LLC.

The Receiver's prior motion for authorization to sell this same property (motion filed February 13, 2017, ECF No. 187) was denied by the Court (Order entered March 10, 2017, ECF No. 202). Mr. Foti asserts that the present motion should be denied for the same reasons the Court previously denied the Receiver's motion. In addition, Mr. Foti incorporates his objections to the Receiver's motion (opposition filed February 21, 2017, ECF No. 198) in this response and offers his accompanying declaration in further objection to the Interested Parties' motion.

For all of the above reasons, Mr. Foti submits that Interested Parties' motion should be denied.

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Dated: May 26, 2017

By: */s/ Michael A. Thurman.*
Michael A. Thurman, Esq.
Attorney for Defendant Jeremy Foti

Declaration of Jeremy Foti

I, Jeremy Foti, declare as follows:

1. I am a defendant in this action. I have personal knowledge of the following facts and if called upon to testify, I could and would testify competently thereto.

2. I was current on every bill I had for the last 20 or more years until the FTC obtained an asset freeze of all of my possessions beginning on about August 24, 2016. As a result of the asset freeze, which has remained in place since that time, I have been unable to make my payments and fell into default on my bills, including the mortgages on my home. As a result of the restrictions placed on me by the Temporary Restraining Orders ("TROs") and the Preliminary Injunctions ("PIs") entered against me in this action, the effect of the publicity of this action and the nearly continuous harassment the FTC has engaged in, I have been unable to obtain gainful employment since this action was filed and have been unable to survive financially. The FTC has caused me and my family significant embarrassment and humiliation, and also damaged to my reputation, by calling as many of my friends and acquaintances as they have been able to identify, including, but not limited to my sons' baseball coaches, our friends, community members and family members. This conduct has also prevented me from being able to make a living to be able to pay my bills. In addition, as a result of the publication of press releases and the continued harassing telephone calls made by the FTC to various people who know me, including the parents of children who know my sons, my sons have had to endure bullying by other children at school.

3. The TROs and PIs have prevented me from being able to sell my home, which I was in the processing of doing before this action was filed. I have

also been burdened with the fact that the FTC did not provide accurate or complete information to the Court in order to obtain the asset freeze. We have now shown that information that was relied upon by the Court relied in entering both sets of TRO's and PI's was inaccurate and incomplete. It is important to remember that I was not included as a defendant in this action when it was originally filed, and the only reason I was added is because the Receiver and the FTC located paperwork in my office reflecting that I was in the process of selling my home with an asking price of $8.99 million. If I was as significant a participant in Brookstone Law as the Receiver and FTC have subsequently claimed, clearly the FTC should have known this during its nearly year-long investigation before this action was filed. However, I am now left to defend myself without any assets with which to do so.

4. The trustee is now the next one in line behind the FTC seeking to capitalize on the opportunity presented by this action to strip my assets before I have an opportunity to present my defense. Allowing the Trustee to foreclose on my home would not only leave our family with nowhere to live and also significantly damage the value of the property. The harm done to me and my family will be irreparable, since there would be no way for us to replace the unique property we have lived in as our home for the last 15 years.

5. Consistent with the appraisal obtained by the Receiver, the trustee has asserted that the property is worth $6 million, despite the fact that the property was previously appraised in December 2015 at $9 million. Assuming the property is now worth $6 million, as the trustee claims, then the damage to the noteholder may have been caused by the lender's or the appraiser's misrepresentation of the true market value of the property to the beneficiary. Among other things, we have demonstrated that the original loan application that was submitted for the loan did not include the assets that were apparently added to the final loan application,

including purported jewelry and artwork that I did not own and have never owned. In addition, the hand written explanation of what the loan proceeds were to be used for is not my handwriting. The discrepancies in the appraisal valuation and the loan applications appear to demonstrate that the lender went to great lengths to fund and sell the loan, and the beneficiary and I have paid the price of those discrepancies.

6. At the conclusion of this matter the trustee will be paid in full along with interest and penalties. The lien position is protected by the deed of trust and the asset freeze place on the property.

7. Since I have been subject to the terms of the TROs and the PIs, I have been unable to take any steps to try and remedy this situation. The Court has also prohibited the Receiver from selling the house in order to pay its fees and costs before I have had an opportunity to present my defense. For the same reasons, the trustee should not be able to foreclose on our residence. In addition, the current first and second mortgage holders have also been subject to the terms of the PIs; therefore, also been forced to sit on the sidelines as per the court order requires so the trustee should not be allowed to leap frog past all of the other parties before this case is resolved.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of May, 2017, at Newport Beach, California.

Jeremy Foti

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in this case who are registered CM/ECF users.

/s/ Michael Thurman