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Court-Appointed Receiver

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAMIAN KUTZNER, et al.,

Defendants.

Case No. 8:16-cv-00999 DOC (AFMx)

RECEIVER'S NOTICE OF *EX PARTE* APPLICATION AND *EX PARTE* APPLICATION FOR AN ORDER TO SHOW CAUSE WHY JEREMY FOTI SHOULD NOT BE HELD IN CIVIL CONTEMPT

JUDGE: Hon. David O. Carter
CTRM: 9D

Pursuant to L.R. 7-19, the Court-appointed Receiver Thomas W. McNamara (the "Receiver") hereby applies *ex parte* for an Order to Show Cause Why Jeremy Foti Should Not Be Held in Civil Contempt for failing to comply with the Court's Order prohibiting Receivership Entities from filing bankruptcy petitions. (ECF No. 153 at 34:4-8.) In violation of the Preliminary Injunction, yesterday, February 22, 2018, Jeremy Foti filed a Chapter 7 bankruptcy petition for Time Out Management LLC. *See In re Time Out Management LLC*, Case No. 8:18-bk-10592-CB, ECF No. 1 (Bankr. C.D. Cal. Feb. 22, 2018) (the "Time Out Bankruptcy").

The Receiver requests that the Court order Foti to immediately dismiss the Time Out Bankruptcy. Foti should be charged a fine in the amount of $500 per day until the contempt is purged. He should also be held liable to the Receivership Estate for compensation for any actual damages suffered, including, but not limited to, the Receiver's attorneys' fees and expenses in bringing the *ex parte* application.

Relief is sought *ex parte* to shorten the time in which this matter is heard. Such expedited relief is sought because there is ongoing contempt that threatens to cause continued violations of the Court's Order.

Notice of this application has been provided to counsel for Jeremy Foti who stated that he will oppose the *ex parte* application.[1] Notice of this application has also been provided to counsel for the FTC who supports the application.

Because civil contempt requires that the alleged contemor receive an opportunity to respond and to be heard at an in-person hearing prior to any finding of contempt, a briefing and hearing schedule should be set to allow Foti a full and fair opportunity to be heard.

[1] Pursuant to L.R. 7-19, the contact information for counsel for the opposing party is Michael A. Thurman, Thurman Legal, 1055 East Colorado Boulevard, Fifth Floor, Pasadena, California 91106; Phone: 626-399-6205; Fax: 626-380-4880; Email: michael@thurman-legal.com. *See also* Declaration of Edward Chang at ¶ 3.

This *ex parte* application is supported by this Notice and Application, the accompany Memorandum of Points and Authorities, the Declaration of Edward Chang, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing. A proposed order is attached hereto.

Dated: February 23, 2018

MCNAMARA SMITH LLP

By: /s/ Andrew W. Robertson
Andrew W. Robertson
Attorneys for Thomas W. McNamara, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2018, 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 the case who are registered CM/ECF users.

/s/ Andrew W. Robertson
Andrew W. Robertson