

1 Thomas W. McNamara
info@regulatoryresolutions.com
2 Regulatory Resolutions
501 West Broadway, Suite 2020
3 San Diego, California 92101
Telephone: 619-269-0400
4 Facsimile: 619-269-0401

5 *Court-Appointed Receiver*

6 Daniel M. Benjamin (SBN 209240)
dbenjamin@mcnamarallp.com
7 Andrew W. Robertson (SBN 62541)
arobertson@mcnamarallp.com
8 McNamara Benjamin LLP
501 West Broadway, Suite 2020
9 San Diego, California 92101
Telephone: 619-269-0400
10 Facsimile: 619-269-0401

11 *Attorneys for Receiver*

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 DAMIAN KUTZNER, et al.,

19 Defendants.
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Case No. LACV16-00999 BRO (AFMx)

**REPORT OF TEMPORARY
RECEIVER RE: RECEIVERSHIP
ESTATE OF DEFENDANT
JEREMY FOTI**

JUDGE: Hon. Beverly Reid O'Connell
CTRM: 14
DATE: October 28, 2016
TIME: 11:00 a.m.

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1 By the Temporary Restraining Order with Appointment of Temporary
2 Receiver as to Defendant Jeremy Foti entered October 19, 2016 ([ECF No. 130](#),
3 “TRO”), the Court appointed me the Temporary Receiver over the Receivership
4 Estate, defined as “[a]ll Assets valued at \$1,000 or more ... owned or controlled,
5 directly or indirectly, by Defendant Foti or a Receivership Entity.”¹

6 The TRO (Section IX) directs me to report to the Court at least one day prior
7 to the date set for the Preliminary Injunction hearing on the five designated
8 subjects below.

9 **I. Steps taken to implement the TRO**

10 As directed and authorized by Section IV (A) of the TRO, I took immediate
11 steps to take “custody, control, and possession of the Receivership Estate.” The
12 first necessary step was to secure “immediate access” to the Foti residence in
13 Newport Beach as provided for in Section V of the TRO.

14 **A. Immediate Access**

15 At the outset, one of my paramount concerns was to minimize the disruption
16 to the Fotis’ four minor children (ages 2-15). I arranged for light surveillance of the
17 residence on the morning of October 20 in order to identify what time the children
18 left for school. Based on that surveillance, we concluded that 9:30 - 10:00 a.m. was
19 a window of time by which Mrs. Foti would be back at the house after dropping off
20 the older children at school. We had no advance information as to the whereabouts
21 or routines of Mr. Foti, only that a black Maserati registered to him was parked in
22 the driveway. (Mr. Foti’s yellow Lamborghini was not in the driveway at the time
23 of surveillance.) Nor did we have advance information on the presence of any
24 household employees.

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27 ¹ The TRO defines Receivership Entities to include “Time Out Management
28 Ltd. LLC, DND Consulting, Inc., GAMC Services, Inc., and all other entities
wholly owned or controlled by Defendant Foti.” (TRO, Definitions, Section K.)

1 As we planned for implementation of the immediate access, there were
2 many unknowns, including whether Mr. Foti would be present, whether Mr. or
3 Mrs. Foti would cooperate and provide access or resist, whether Mr. Foti had a
4 home office with multiple computers and files, and whether we would locate
5 valuable art, furniture or other personal belongings (identified by Mr. Foti in his
6 mortgage application and insurance policies) that would require transport to a
7 secure facility. In preparation, we retained Whelan & Associates, a local private
8 investigative firm, to provide logistical support through four retired and off-duty
9 law enforcement officers, coordinated with the Newport Beach Police Department,
10 retained a forensic computer firm, tentatively reserved a secure storage site for any
11 art assets identified, and arranged for a moving van to be on standby nearby.

12 We arrived at the home at 9:45 a.m. on Friday, October 21. We were
13 accompanied by two uniformed officers from the Newport Beach Police
14 Department, as allowed by the TRO, to keep the peace during the immediate
15 access. We received no response to the doorbell or the door knock. The Maserati
16 was still in the driveway, but neither the Lamborghini nor the Cadillac Escalade
17 used by Mrs. Foti were present.

18 After waiting nearly 30 minutes, I telephone Mr. Foti's attorney, Michael
19 Thurman and advised him of the basic terms of the TRO and the situation at the
20 house, and requested that he attempt to arrange for one of the Fotis to provide us
21 access. I explained to him that the TRO authorized me to achieve access through a
22 locksmith, but that I much preferred to enter with the Fotis' cooperation. I
23 arranged for my office to email him a copy of the TRO. In subsequent calls over
24 the next 40-50 minutes, he reported that he had been unable to reach Mr. Foti.

25 At 10:30 a.m., we advised the police officers that their presence was not
26 necessary, given that no one was home. They departed.

27 At approximately 11:00 a.m., Mrs. Foti arrived in the Escalade. I provided
28 her a copy of the TRO and explained my duties as receiver. She was polite, but

1 took the firm position that we should take this up with her husband, she had no
2 relevant knowledge, and she needed to speak with her husband. I suggested that
3 she speak with Michael Thurman, her husband's attorney, but she asserted that she
4 had never heard of Thurman and saw no utility in speaking with him, that this was
5 all her husband's problem. After many minutes of conversation, Mrs. Foti
6 ultimately agreed to provide access after she took her young child (who was a
7 passenger in the Escalade) and the family dog to her mother's home nearby. While
8 she was away, I had another conversation with Mr. Thurman who reported that he
9 had spoken with Mrs. Foti and confirmed that she would return.

10 Mrs. Foti returned after approximately 20-30 minutes and provided us access
11 to the house. Until our departure at a little after 3:00 p.m., she remained generally
12 cooperative, but was not always credible or forthright as noted below at Section
13 I(D) below.²

14 Upon entry, the four-man team from Whelan & Associates videotaped and
15 diagrammed the home. Once that was done, a room-by-room review was
16 conducted. We did not identify any art of significant value – Mrs. Foti stated that
17 they never had any valuable art and she had no explanation as to why Mr. Foti
18 would have listed \$950,000 of art in the mortgage application.³ While the house
19 was fully furnished, we did not identify any furniture items that appeared to have
20
21

22 ² I spoke from time-to-time with Mr. Thurman during the course of the day
23 to give him periodic status updates. He was at all times cooperative. After we left
24 the house, I telephoned him to give him a brief report. I let him know that Mrs.
25 Foti remained generally cooperative throughout the day. I did make clear to him,
however, that I had concerns about her candor as it related to the safes, cash and
diamond earrings. I let him know that these concerns would be included in my
report.

26 ³ There were a few sports and music collectible items on the walls and
27 several full-size novelty games (e.g., air hockey, pool table, and shuffleboard) and
28 video arcade games which may exceed the \$1,000 asset threshold. We
documented the items through video and photos and left them in place where they
can be collected as needed in the future.

1 significant value that would justify the cost of removal and storage – this furniture
2 was, however, documented through video and photos.

3 **B. Jeremy Foti Residence**

4 We could not confirm with certainty whether and to what extent Mr. Foti
5 currently resides in the Newport Beach house. During telephone calls with her
6 husband, Mrs. Foti repeated several times in a loud voice such that those around
7 her could hear that she and Mr. Foti were separated. When asked where Mr. Foti
8 lived, she indicated that he was staying with his mother, but also stayed
9 periodically at the family residence. Notably, Mr. Foti’s side of the master closet
10 and associated drawers were full of male clothing. There were no gaps on Mr.
11 Foti’s side of the closet which would suggest that clothes had not been removed.⁴

12 **C. Assets**

13 The assets of value that we identified and removed for safekeeping are
14 described in Exhibit A attached. In summary, there was \$78,000 in cash (all \$100
15 bills) and \$31,062 in cashier’s checks, two Chanel watches, three Rolex watches, a
16 Boucheron Diamond Necklace, one firearm, and other jewelry.⁵ The house itself,
17 which is titled in the name of Receivership Entity Time Out Management Ltd.,
18 LCC, is the largest potential asset, although it is encumbered by nearly \$5 million
19 in debt. We recorded a Notice of Pendency of Action on the property on October
20 21, 2016.

21
22 ⁴ When asked about Mr. Foti’s whereabouts, Mrs. Foti stated that he was in
23 Hawaii on business, but she had no additional details. She also indicated that she
24 believed Mr. Foti had an office in the Newport Beach area, but stated she did not
25 know where or what type of business Mr. Foti was conducting.

26 ⁵ We were unable to locate the 4.13 carat diamond earrings identified in the
27 TRO. Mrs. Foti initially claimed that a pair of diamond earrings located in the
28 small safe were the 4.13 carat earrings. However, it was apparent that they were
not large enough to be the earrings we were looking for. Mrs. Foti then claimed
that she lost the 4.13 carat earrings several years ago and that an insurance claim
had been made. She could not, however, explain why the earrings would still be
listed in the current insurance policy. We have not been able to follow-up with the
insurance company yet.

1 After quickly determining that there was no valuable art or clearly
2 marketable furniture, we released the moving van that had remained on standby.
3 As to the Meridian 490 boat, we videotaped the interior and took possession of the
4 keys and registration, but took no steps to remove it since the debt may exceed its
5 market value. Likewise, we took no action as to the parked Maserati as it appears
6 to be leased, as is the yellow Lamborghini. Mrs. Foti claimed that the
7 Lamborghini lease had been taken over by a third party.

8 **D. Safes**

9 A significant portion of our time on site was devoted to locating, opening,
10 and inventorying the contents of three different safes we discovered at the house.
11 In this process, Mrs. Foti was less than candid.

12 Shortly after the house had been videotaped and diagramed, Mrs. Foti was
13 asked whether there was a safe in the house. When that did not seem to ring a bell,
14 we noted for her that the insurance policy indicated there was a safe. Mrs. Foti
15 then identified one small portable safe in the master bedroom closet. After Mr.
16 Foti provided the combination to Mrs. Foti via telephone, we opened and
17 inventoried the contents of that safe in Mrs. Foti's presence. It contained \$18,500
18 cash, \$31,062 in cashier's checks payable to three of the Foti children, one white
19 Chanel sports watch, one Rolex platinum watch, a Boucheron diamond necklace, a
20 pair of small ladies diamond earrings, and costume jewelry. Mrs. Foti told us that
21 the cash was part of "her inheritance" and that the cashier's checks were for the
22 kids' college.

23 When our investigator Dan Whelan later found a second safe in the master
24 bedroom closet, Mrs. Foti said she had forgotten about that safe and was not sure
25 what was in it. Although Mr. Foti, via telephone, attempted to assist with the
26 combination, we were unable to open that safe – we transported it to our office in
27 San Diego and achieved access through a locksmith on Tuesday, October 25. It
28 contained one Rolex Day-Date watch, assorted men's and women's jewelry, three

1 loose gemstones, and a firearm. It also contained miscellaneous personal
2 paperwork (e.g., Mr. Foti's birth certificate, will, social security card), some
3 business documents (e.g., unsigned shareholder agreements for Kirkland Green
4 and Backend Servicing, Inc.), and three empty Rolex watch boxes.

5 Although we were onsite for approximately two hours after locating the
6 second safe, Mrs. Foti at no time mentioned the existence of a third safe. In
7 examining the ground level closets for floor safes, investigator Dan Whelan found
8 a third safe in the floor of the entryway closet. It was well concealed in the rear of
9 the dark closet behind and under family jackets and clothes and underneath
10 carpeting.

11 When told about the discovery, Mrs. Foti stated she did not know there was
12 a safe in the closet. When later asked how we could obtain the combination, she
13 stated that Mr. Foti must have it. We requested that she get the combination from
14 him.⁶ She contacted Mr. Foti at least a couple of times on this issue. We waited
15 for a significant amount of time for the combination, but no combination was
16 provided. Ultimately, we informed Mrs. Foti that we were not going to depart
17 without opening the in-floor safe and would have to wait for a safe company to
18 arrive. Shortly afterwards, Mr. Foti was able to direct Mrs. Foti to a slip of paper
19 with the combination located in her address book.

20 We then experienced some difficulty opening the safe. It was necessary to
21 get Mr. Foti on the phone to assist. During this time, Mrs. Foti made no claim as
22 to what we would find in the safe – which was not surprising, as she had indicated
23 she was unaware the safe existed. We were ultimately able to get the safe open
24 and inside we found \$59,500, consisting of 595 \$100 bills. Mrs. Foti initially
25 made no comment about the source of the funds. Indeed, in a videotaped segment

26 _____
27 ⁶ To their credit, Mrs. Foti called Mr. Foti a number of times throughout the
28 day to get information from him and he was generally responsive. For example,
Mr. Foti explained where the boat keys were located and he attempted to walk the
team through the process of opening the second safe.

1 of approximately 20 minutes during which the bills were counted in her presence,
2 she is heard confirming the bill counts, but offers no claim about the source of the
3 cash. Sometime later, she did claim that the funds were her inheritance from her
4 grandparents. We did not confront her with the obvious inconsistency of claiming
5 not to know of the existence of the safe and yet later claiming the contents of the
6 safe were her inheritance.

7 We note that Defendant Foti's opposition includes declarations from Mrs.
8 Foti and her mother, Livvia Wilson, in which they claim that the cash taken from
9 the in-floor safe is actually Ms. Wilson's. This was not something Mrs. Foti ever
10 asserted when she was with us. There does appear to be a close financial
11 connection between the Fotis and Ms. Wilson, however. We located a checkbook
12 for a Chase account in Ms. Wilson's name in the Fotis' kitchen which included
13 five checks Ms. Wilson had pre-signed. *See* Exhibit B.

14 We also asked Mrs. Foti if she knew the location of a "hiding place"
15 identified by Mr. Foti in insurance documents as the location of his platinum
16 Rolex. She said she had no knowledge.

17 **E. Computers**

18 We identified and reviewed a number of computers in the home. Only two
19 of the devices appeared to have data related to the identified Receivership Entities.
20 They were removed by our forensic computer expert, imaged over the weekend
21 and returned to Mrs. Foti on Monday, October 24.

22 **F. Asset Freeze**

23 Beginning October 20, 2016, we served the TRO/Asset Freeze on banks and
24 other financial institutions where Defendant Foti was known to have accounts. We
25 have not yet received any confirmation as to account balances.

26 **II. Value of All Liquidated and Unliquidated Assets of the Receivership**
27 **Estate**

28 *See* Section I(C) above.

1 **III. Sum of All Liabilities of the Receivership Estate**

2 We do not yet have detailed information as to liabilities, except to note that
3 the house is encumbered by approximately \$5 million in debt and that the debt on
4 the Meridian 490 boat may exceed market value.

5 **IV. Steps to Prevent Diminution of Assets, Pursue Assets from Third
6 Parties, and Adjust Liabilities of the Receivership Estate**

7 Imposition of the immediate access at the residence and removal of the items
8 identified in Exhibit A constitute the primary steps to preserve assets. We have not
9 yet identified any other off-site office location for Mr. Foti. Whether or not there
10 are claims against third parties is an open issue at this time.

11 **V. Any Other Matters Which the Receiver Believes Should be Brought
12 to the Court's Attention**

13 The TRO (Section X) directs that a fee application be filed at the same time
14 as any required report – given the time compression of the TRO and its
15 implementation, my staff was not able to prepare a fee application simultaneous
16 with this report, but we will file an interim fee application as expeditiously as
17 possible.

18 While Mr. Foti claims in his declaration that he had difficulty preparing the
19 financial statement because he did not have access to his documents at the
20 receivership site, he was granted access on two occasions. On the first occasion,
21 Mr. Foti stated that he needed access to certain banking information at the
22 receivership site to complete the financial statements. A member of my team met
23 him on Saturday, July 16, 2016, to allow Mr. Foti to obtain the necessary banking
24 information. Mr. Foti spent approximately one hour in the office collecting the
25 bank account information that he needed and his personal items. On July 21, 2016,
26 Mr. Foti and his counsel were again provided access to the receivership site to
27 retrieve personal items.

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1 Finally, I will not be able to attend the hearing this Friday, October 28, 2016,
2 as I will be travelling internationally on a long-planned trip. My counsel will be
3 present to address the Court's questions or concerns.

4 Dated: October 26, 2016

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6 By: S/ Thomas W. McNamara
7 Thomas W. McNamara
8 Receiver
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1 **CERTIFICATE OF SERVICE**

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3 I hereby certify that on October 26, 2016, I caused the foregoing to be
4 electronically filed with the Clerk of the Court using the CM/ECF system, which
5 will send notification of the filing to all participants in the case who are registered
6 CM/ECF users.

7 I further certify that I have caused the foregoing to be mailed by First Class
8 Mail, postage paid, to the following non-CM/ECF participants:

9 Damian Kutzner
10 511 Cliff Drive
Newport Beach, CA 92663

11 R. Geoffrey Broderick
12 20 Paseo Canos
San Clemente, CA 92673

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14 S/ Andrew W. Robertson
15 Andrew W. Robertson
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