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4 *Court-Appointed Receiver*

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9 *Attorneys for Receiver*

10  
11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13  
14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 DAMIAN KUTZNER, et al.,

18 Defendants.

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

**RECEIVER'S STATUS REPORT  
FOLLOWING THE COURT'S  
ORDER AUTHORIZING SALE OF  
NEWPORT BEACH REAL  
PROPERTY AND FOUR PIECES  
OF JEWELRY [391]**

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

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1 **I. INTRODUCTION**

2 On December 18, 2017, this Court issued its Order Denying Motion for  
3 Relief from Judgment [368]; Denying Motion to Stay Pending Appeal [372]; and  
4 Granting Motion for Order to Authorize Sale of Newport Beach Real Property and  
5 Four Pieces of Jewelry [370] (the “December 18, 2017 Order”). (ECF No. 391.)  
6 Among other things, the Court ordered Jeremy Foti and any other current residents  
7 to vacate 300 Morning Star Lane, Newport Beach, California 92660 (the “Time  
8 Out Property” or “Newport Beach Real Property”) owned by Time Out  
9 Management Ltd. LLC (“Time Out”) by February 16, 2018. (ECF No. 391 at 20.)  
10 This Report provides an overview of Foti’s various delay tactics and the current  
11 status of the Time Out Property.

12 **II. FOTI’S ACTIONS BEFORE HE WAS REQUIRED TO VACATE**

13 Foti sought emergency relief from the December 18, 2017 Order. First, he  
14 filed an emergency stay motion with the United States Court of Appeals for the  
15 Ninth Circuit. Foti’s motion was denied. *See Fed. Trade Comm’n v. Foti*, Case  
16 No. 17-56455, Order, ECF No. 17 (9th Cir. Jan. 24, 2018). Then, he filed an  
17 emergency stay motion with the Supreme Court of the United States. The  
18 Supreme Court denied that request. *Foti v. Fed. Trade Comm’n*, Case  
19 No. 17A845, (Feb. 8, 2018) (application denied).

20 On the morning of February 15, 2018, my counsel called Foti’s counsel and  
21 left a message asking for a return call to discuss whether Foti vacated the Time Out  
22 Property and the logistics of turning over the Time Out Property to the Receiver.  
23 *See* Declaration of Edward Chang (“Chang Decl.”) at ¶ 3. Foti’s counsel did not  
24 respond until the evening of February 16, 2018 – the day Foti was required to  
25 vacate the property – but then only providing a copy of Foti’s individual personal  
26 Chapter 7 bankruptcy petition, which Foti filed two days earlier, and no further  
27 explanation. *See In re Jeremy Foti*, Case No. 8:18-bk-10492, ECF No. 1 (Bankr.  
28 C.D. Cal. Feb. 14, 2018); Chang Decl. at Ex. A. Foti’s counsel did not reveal that

1 Foti had vacated the property; it was only five days later in a meet and confer call  
2 on the Receiver's intended *ex parte* application to seek an Order to Show Cause  
3 that Foti's counsel revealed he had vacated the property.

4 In Foti's bankruptcy filing, Foti states that he lives at the Newport Beach  
5 Real Property, but does not claim an ownership interest in the property and  
6 affirmatively states he does not rent the property. *See In re Jeremy Foti*, ECF  
7 No. 1 at 2-3. These statements are consistent with the fact that Time Out is the  
8 owner of the Newport Beach Real Property and at least since January of 2016 Foti  
9 has lived in the property as a squatter – not a renter. He has not paid the mortgage,  
10 taxes, insurance, or rent for the property for more than twenty months. Foti's  
11 individual bankruptcy appeared to be a desperate effort to extend his squatting  
12 habitation of the Newport Beach Real Property. I directed my counsel to prepare  
13 an *ex parte* application for an Order to Show Cause why the Court should not hold  
14 Foti in contempt for failing to vacate the Time Out Property. On February 21,  
15 2018, during the call to advise Foti's counsel of the *ex parte* application, Foti's  
16 counsel stated for the first time that Foti vacated the Time Out Property. *See*  
17 *Chang Decl.* at ¶ 5.

18 Foti's counsel contended that the automatic stay associated with Foti's  
19 personal bankruptcy prevented the Receiver from taking possession of the Time  
20 Out Property. We disagreed, noting that Foti did not have a legal ownership or  
21 equitable interest in the Time Out Property and did not claim otherwise in the  
22 bankruptcy petition.

### 23 **III. SECURING THE TIME OUT PROPERTY**

24 After being informed that Foti vacated the Time Out Property, my counsel  
25 requested the keys and alarm code to the property to secure the property. *See id.* at  
26 ¶ 6. Despite multiple requests, Foti refused to cooperate. Also, on February 21,  
27 2018, we reminded Foti of his obligations to cooperate with the Receiver pursuant  
28 to the Preliminary Injunction (ECF No. 153) and the Receiver's duty to, among

1 other things, “[t]ake exclusive custody, control, and possession of the Receivership  
2 Estate,” and “[c]onserve, hold, and manage all receivership Assets, and perform all  
3 acts necessary or advisable to preserve the value of those Assets.” (ECF No. 153  
4 at 26:7-8, 27:9-10.) We also informed Foti’s counsel that we would hire a  
5 locksmith to change the locks to the Time Out Property on February 22, 2018. *See*  
6 *Chang Decl.* at ¶ 7 and Ex. B.

7 Yesterday morning, February 22, 2018, my counsel again asked Foti’s  
8 counsel for the keys and the alarm code. Foti refused to provide the keys to the  
9 Time Out Property and refused to provide the alarm code. Instead, we were told  
10 by Foti’s counsel that the alarm was active, in an attempt to prevent us from  
11 entering the property. We contacted the alarm company to provide notice that we  
12 were entering the property. *See id.* at ¶¶ 8-12.

13 At approximately 12:00 p.m. yesterday, the locksmith arrived at the Newport  
14 Beach Real Property. *See id.* at ¶ 11. Livvia Wilson, Foti’s mother-in-law, and  
15 another individual arrived at approximately the same time. Ms. Wilson explained  
16 that she was there to retrieve some personal items. Since Ms. Wilson had a key to  
17 the property, she opened the front door, which did not trigger the alarm. *See id.* at  
18 ¶ 13. Contrary to Foti’s assertion, the alarm was not active. The locksmith  
19 changed the keys to the Time Out Property and as of 2:00 p.m. yesterday, we have  
20 the only keys to the property. *See id.* at ¶ 15.

21 Incredibly, at the same time we were dealing with Foti’s counsel to gain  
22 access to the Time Out Property, Foti took an even more desperate act to extend  
23 his squatting on the property. At roughly 10:30 a.m. yesterday morning, Foti filed  
24 a Chapter 7 bankruptcy petition for Time Out. *See id.* at Ex. C. Foti’s action  
25 violates the Preliminary Injunction, which plainly prohibits Receivership Entities –  
26 like Time Out – from filing bankruptcy petitions absent permission from this  
27 Court.

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1 **XII. BANKRUPTCY**

2 **IT IS FURTHER ORDERED** that in light of the  
3 appointment of the Receiver, the Receivership Entities are  
4 prohibited from filing petitions for relief under the United  
5 States Bankruptcy Code, 11 U.S.C. § 101 et seq., or any  
6 other similar insolvency proceeding, without prior  
7 permission from this Court.

8 (ECF No. 153 at 34:4-8.)

9 We immediately reminded counsel representing Foti in this case, and his  
10 bankruptcy counsel, of the prohibition against filing bankruptcy for Time Out and  
11 asked that the petition be withdrawn. Foti’s counsel has raised a number of  
12 arguments and has refused to withdraw the petition, forcing the Receiver to file  
13 this report and associated *ex parte* application for an Order to Show Cause.

14 **IV. MARKETING AND SALE OF THE TIME OUT PROPERTY**

15 The Time Out Property has been secured. Pursuant to the December 18,  
16 2017 Order, I contacted four real estate brokers. After receiving proposals from  
17 the brokers, we selected Dean Lueck of First Team Estates, Christie’s International  
18 Real Estate to be the real estate broker for the Time Out Property. Mr. Lueck  
19 presented an impressive marketing plan and approach to sell the property. Mr.  
20 Lueck has been ranked one of the top five individual agents in Orange County for  
21 2015 and 2016 by the Wall Street Journal and he has over \$600 million in  
22 successfully closed transactions. Mr. Lueck has agreed to steeply discount his  
23 commission to 4.125% (2.5% to buyer’s agent and 1.625% to seller’s agent).  
24 Unless directed otherwise, I will proceed in accordance with the December 18,  
25 2017 Order and begin marketing the Time Out Property for sale.

26 **V. CONCLUSION**

27 As the Court can see, Foti has made the process of taking control of the  
28 Time Out Property extremely difficult. While we have accomplished physical  
control of the property, the unlawful Time Out bankruptcy petition remains on file.  
Our efforts to persuade Foti’s counsel to withdraw the petition have gone on for

1 more than a day at this point without any meaningful progress. We were forced to  
2 notify counsel of our intent to seek an *ex parte* application for an Order to Show  
3 Cause. In that call, counsel raised a number of arguments and we indicated that we  
4 intended to move forward. Very recently, counsel contacted us to indicate Foti  
5 was considering withdrawing the petition. However, after all of the nonsense Foti  
6 resorted to in the last week, we cannot take any comfort in Foti's supposed  
7 reconsideration. We must push forward and bring the *ex parte* application for an  
8 Order to Show Cause.

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Dated: February 23, 2018

MCNAMARA SMITH LLP

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

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**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