UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Case No. 10-14967-D

CHURCH OF SCIENTOLOGY FLAG SERVICE ORGANIZATION, INC.,

Appellant,

v.

ESTATE OF KYLE THOMAS BRENNAN, et al.,

Appellees.

APPELLANT'S EMERGENCY MOTION TO STAY PERMANENT INJUNCTION AND FURTHER PROCEEDINGS BELOW, INCLUDING TRIAL SET ON NOVEMBER 2010 DOCKET

On Appeal From the United States District Court
For the Middle District of Florida

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ESTATE OF KYLE THOMAS BRENNAN,

Appellees.
_____/

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, I hereby certify that the following individuals or entities are interested in this case within the definition of these rules:

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Church of Scientology FSO, Inc., Appellant,

v.

Estate of Kyle Thomas Brennan, Appellee.

Case No. 10-14967-D

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Judge Robert E. Beach, Circuit Court Judge (Retired) Sixth Judicial Circuit, Pinellas County, Florida.

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Church of Scientology FSO, Inc., Appellant,

v.

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Church of Scientology FSO, Inc., Appellant,

v.

Estate of Kyle Thomas Brennan, Appellee.

Case No. 10-14967-D

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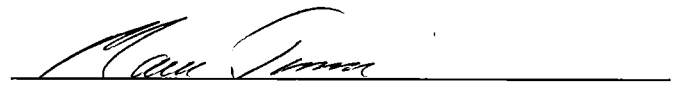

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UNITED STATES COURT OF APPEALS
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Appellant, Church of Scientology Flag Service Organization, Inc. ("the Church"), through counsel and pursuant to Federal Rule of Appellate Procedure 27 and 11th Cir. Rule 27-1(b), hereby moves this Honorable Court on an emergency basis for a stay of the permanent injunction enjoining the Church and others, including the judges of the Sixth Judicial Circuit of Florida, that is the subject of this appeal and of any further proceedings below, including the trial set on the November 2010 docket that commences on November 1. As set forth more fully below, a stay is necessary to prevent further irreparable harm to the Church and to the interests of the State of Florida resulting from the erroneous and unsupported injunction at issue. This motion is brought on an emergency basis due to a confluence of events described below and not due to any failure to act by the Church as movant.

Facts Necessary to a Determination of This Motion

The permanent injunction that is the subject of this appeal arose in a wrongful death action filed below by appellee, the Estate of Kyle Thomas Brennan ("the Estate") against the Church and others. The Estate was and has been represented throughout the proceedings below by Kennan Dandar ("Mr. Dandar"). The injunction arises not from anything related to the substance of the action below but instead from a state court action ("the McPherson case") in which Mr. Dandar settled money judgments entered against him and claims the Church held against him personally and against his law firm, as well as his client's claims in that state court matter, in a confidential settlement agreement that required Mr. Dandar to personally agree to cease all adverse activities against the Church, including but not limited to representing parties in lawsuits against the Church.[1]

The Church entered into the confidential settlement agreement with Mr. Dandar and with the McPherson plaintiff in the state court action on May 26, 2004. Mr. Dandar and his firm were parties to the agreement in their own capacities (not just as

[1] The absence of an evidentiary hearing and the fact that the state court McPherson filings are mostly sealed makes citation to the record challenging. Many of these facts are recited in the injunction on appeal. Most of the other facts stated herein can be found either in the Church's response to the Estate's Second Emergency Motion for Injunction, attached hereto as Exhibit A, or in the Church's verified timeline attached hereto as Exhibit B. Please note, however, that the district court struck the verified timeline. The Church has moved for reconsideration of that decision. Counsel has little alternative for citation given the shortness of time.

counsel to plaintiff) because the matters resolved by the agreement included judgments and claims the Church held against them in their own capacities. The settlement agreement precluded Mr. Dandar from any involvement, in any capacity, in any form of adversarial proceedings against the Church. In enforcement proceedings unrelated to this case, and in an effort to avoid sanctions for adverse public comments he made, Mr. Dandar's counsel told state circuit court Judge Beach that this provision did not prohibit negative public comment but only precluded Mr. Dandar from representing parties in lawsuits adverse to the Church.

Despite his express admission that such conduct was prohibited by the agreement, Mr. Dandar nevertheless filed the instant action below on behalf of the Estate. The Church moved in state court to enforce the settlement agreement and the state court issued an order dated June 10, 2009 finding Mr. Dandar in violation of the agreement and ordering him to "cease representation of all persons and entities ...in all matters, claims or cases...against" the Church. (A copy of that order is attached as Exhibit D). Mr. Dandar appealed that order, raising many of the same arguments he raised below and that the district court discusses in its injunction. The order was affirmed (a copy of the per curiam opinion is attached as Exhibit C) and Mr. Dandar sought no further review of it.

Instead, he filed a motion in state court seeking to set aside the mediation agreement. That motion was denied. (A copy of the order is attached as Exhibit E).

Mr. Dandar did not appeal its denial; instead he sought a writ of prohibition in the Florida Supreme Court. That Court, transferred the petition to the Second District, which denied the petition without prejudice. (A copy of the order is attached as Exhibit F). Meanwhile, the Church filed a motion in state court to enforce the court's June 10 order through civil contempt. The state court, after a full hearing, granted that motion, entering an order dated April 12, 2010 finding Mr. Dandar to be in willful contempt of court and requiring Mr. Dandar to "immediately file a motion for leave to withdraw" below. (A copy of that order is attached as Exhibit G). Mr. Dandar appealed that order, and that appeal is fully briefed and pending before the Second District Court of Appeal.[2]

Mr. Dandar then filed below an "involuntary" motion for leave to withdraw, which the district court denied. Mr. Dandar moved the district court to enjoin the enforcement of the civil contempt order and that motion was granted, giving rise to the permanent injunction at issue in this appeal. The district court entered the injunction without an evidentiary hearing, and based on an incomplete record, due in part to the fact that documents form the McPherson matter are mostly sealed, and in part to the court's decision to strike the Church's verified time line that was offered to provide pertinent facts.

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[2] The Second District's order denying a writ of prohibition expressly noted that Mr. Dandar could raise his jurisdictional argument in this appeal.

The district court expressed considerable doubt about the merits of the state court April 12 order that is pending on appeal in the state court system, but said that such concerns did not lead to the injunction. Instead, the court stated that the injunction was necessary to aid in its jurisdiction by preventing what the court apparently considered the unavoidable consequences that absent injunctive relief, the court would have to grant Mr. Dandar leave to withdraw and that inevitably would require dismissal of the case pending below. The court's conclusions are factually unsupported and wrong, and the injunction is legally unsupportable as set forth below.

Events Creating Need for Emergency Relief

The district court entered its permanent injunction on September 28, 2010. (A copy of the permanent injunction as originally entered is attached hereto as Exhibit H). At the time, the defendants in the wrongful death action had pending motions for summary judgment on the Estate's claims, and the case was set for trial on the November docket. The district court held a hearing on the motions for summary judgment on October 13, and a pretrial conference was scheduled for, and later held, on October 14, 2010. (Copies of the orders setting these matters are attached hereto as Exhibit I). As a result, the Church believed it likely that summary judgment would be entered in its favor, leaving the need to appeal the injunction but resolving any concerns about staying proceedings.

In the meantime, on October 7, Judge Beach, one of the judges of the Sixth Circuit expressly enjoined by the permanent injunction, filed a motion to dissolve the injunction. The district court held a hearing on that motion on October 12 and on the same day issued an order denying the requested relief but stating that the injunction would be clarified. (A copy of that order is attached as Exhibit J). Thus, on October 12, the district court issued its amended permanent injunction that also is the subject of this appeal (the original and amended injunctions are referred to herein simply as the permanent injunction because the clarification made no changes meaningful to the reasons why the injunction must be reversed). (A copy of the amended permanent injunction is attached hereto as Exhibit K).

When the district court had not issued a ruling on the pending motions by October 25, and after the disposition of Judge Beach's motion, the Church timely filed both its notice of appeal from the two versions of the injunction and its motion for stay relief in the district court. (A copy of the stay motion filed below is attached as Exhibit L; the Estate has not responded to the motion for stay relief). Thus, the Church acted in a reasonable and timely manner to protect its rights.

The district court has yet to rule on any of the various pending motions, including the motion seeking a stay pending appeal. The Church has endeavored to give the district court as much time as possible to do so before seeking relief in this Court. The Church reasonably waited until now to file this motion in deference to the

district court and its various pending motions that could resolve the need for a stay and because the trial docket did not suggest a likelihood that this case would proceed early in November as it was listed as number 6, with several multiple day trials ahead of it. (A copy of the November trial docket is attached as Exhibit M). Trial counsel for the Church was advised yesterday, however, that all of the criminal cases are likely to either resolve or continue, leaving the instant case as first on the docket and therefore likely to go to trial early in November absent stay relief.

Federal Rule of Appellate Procedure 8 required the Church first to seek stay relief in the district court unless the Church could show that moving first in that court would be impracticable. There was no reason to believe the district court would not consider and determine a stay motion, hence the Church could not represent that such a motion was impracticable. Now, however, it is unlikely that the district court will act in time to stay the case below prior to the start of the November trial docket and it is likely that the case below will be first on that docket. Thus, relief must be sought in this Court, on an emergency basis.

Absent relief within seven calendar days (possibly less), the relief requested herein, at least in regard to staying further proceedings below, well may be moot. And the Church has moved for relief within 7 days of the action of the district court, or really from the inaction of the district court to rule on the pending stay motion. And as set forth more fully below, the Church is likely to succeed on the merits of this appeal

and will suffer irreparable harm in the absence of stay, as will the State of Florida, further showing that a stay serves the public interest. In contrast, the possibility of harm to the Estate if a stay is granted is slight. Thus, the Church satisfies the requirements of Rule 27-1(b) for seeking emergency relief.

Memorandum of Law in Support of Stay Relief

In deciding a motion to stay, this Court "must consider four factors: (1) the likelihood that the moving party will ultimately prevail on the merits of the appeal; (2) the extent to which the moving party would be irreparably harmed by denial of the stay; (3) the potential harm to opposing parties if the stay is issued; and (4) the public interest." Florida Businessmen for Free Enterprise v. City of Hollywood, 648 F.2d 956, 957 (5th Cir. 1981). Or as this Court has more currently rephrased the test, to obtain a stay a movant "must show: (1) a likelihood that [the movant] will prevail on the merits of the appeal; (2) irreparable injury to the [movant] unless the stay is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest." In re Federal Grand Jury Proceeding, 975 F.2d 1488, 1492 (11th Cir. 1992). Here, the Church readily satisfies all four parts of the test for obtaining stay relief from both the permanent injunction and from further proceedings below.

I. The Permanent Injunction is Likely to be Reversed Because It Violates the Anti-Injunction Act, Offends the Younger Abstention Doctrine and is Factually Unsupported.

The district court has permanently enjoined the Church and others, including the 6th Judicial Circuit state court, from taking certain actions "on account of" Mr. Dandar's continuing to serve as counsel for plaintiff in the district court, invoking the All Writs Act and based on the court's conclusion that such an injunction was necessary to defend the court's jurisdiction. By enjoining the state court proceedings, possibly even including in the pending state court appeal,[3] the district court violated the Anti-Injunction Act and the principles of Younger abstention, trampling on notions of states' rights and comity, all based on the erroneous premise that to do less threatened the district court's jurisdiction. The district court's conclusions are both factually unsupported and legally unsustainable.

A. The Permanent Injunction is Factually Unsupported.

The district court entered a permanent injunction without taking actual evidence and quite possibly without full knowledge and understanding of all that had transpired in the state court proceedings.[4] The district court may not have realized that Judge Beach did not start his efforts to enforce the settlement agreement with the order the district court seems to find so offensive, but instead had a long history of enforcement

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[3] The Church filed a motion for clarification below to determine whether the district court intended to enjoin the state appellate court when counsel received notice setting oral argument in that appeal. (A copy is attached as Exhibit N). The motion for clarification remains pending below.

[4] The district court struck a verified time line the Church submitted in an effort to give the court this information.

matters, including hearings at which counsel for Mr. Dandar expressly represented to Judge Beach Mr. Dandar's interpretation of the settlement agreement as precluding him from representing parties adverse to the Church in any litigation or other matters.

The federal court likely did not realize that Judge Beach's first enforcement order entered after Mr. Dandar filed the federal court case found that Mr. Dandar was to cease representation in all matters adverse to the Church, that Mr. Dandar appealed that order to the Second District Court of Appeal and that the order was affirmed.[5] The district court also may not have known that most of the arguments advanced by Mr. Dandar regarding whether he can or should be precluded from such matters (some of which are included in the district court's comments on possible infirmities in the order) were raised and lost in that appeal. The court likely knew, however, that an appeal remained pending in state court, and may have known that Mr. Dandar's motion to stay Judge Beach's civil contempt order was denied.

The district court justified its decision on the premise that when faced with Mr. Dandar's involuntary motion to withdraw, the court had no choice but to issue the injunction to allow the federal case to continue, that if he had granted the motion to withdraw the case would be dismissed. In fact, however, the district court had a myriad of other choices. The court could have denied the motion, requiring Mr.

[5] The injunction also violates the Full Faith and Credit Act, 28 U.S.C. § 1738. See JSK v. Hendry County School Board, 941 F.2d 1563 (11th Cir. 1991) (full faith and

Dandar to stay on as counsel so the federal case could continue as scheduled and leaving him to pursue avenues of relief from Judge Beach's order in state court, in the pending appeal or otherwise, or to simply bear the consequences of his willful breach. The district court also could have granted the motion, but stayed the federal case while plaintiff sought other counsel. The only "evidence" before the court regarding whether other counsel could be located was an untested affidavit by plaintiff in which she claimed to have made unsuccessful efforts. The court could have conditionally granted the motion, requiring Mr. Dandar and plaintiff to make certain efforts to secure counsel and report back to the Court. But the court could not do what it did – intervene in pending state court litigation, enjoining the enforcement of a lawful order of the circuit court that still was working its way through the appellate process, all without an evidentiary basis.

B. The Injunction Violates the Anti-Injunction Act.

As this Court has explained, "the All Writs Act and the Anti-Injunction Act...work in conjunction to enable a federal court to exercise its jurisdiction and enforce its judgments and, at the same time, limit the court's ability to interfere with state court proceedings." Burr & Forman v. Blair, 470 F.3d 1019, 1026 (11th Cir. 2006). The Anti-Injunction Act, 28 U.S.C. § 2283, limits the broad authority of the All Writs Act, prohibiting federal courts from enjoining state court proceedings unless

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credit must be given to Florida appellate court decisions).

"one of three narrow exceptions are met." Id. at 1027. Here, the district court has incorrectly invoked the exception permitting such an injunction when necessary to aid in the court's jurisdiction.

Judge Beach's order does not threaten the jurisdiction of the federal district court. The district court was not compelled to dismiss the federal action or enjoin the state court, as the injunction claims. As set forth above, the district court had several options to allow the case to proceed in that court, including the option of denying Mr. Dandar leave to withdraw and leaving him to his state court remedies.

This Court has made clear that the exceptions to the Anti-Injunction Act are to be very narrowly construed to avoid tension and preserve comity between federal and state courts. Id. at 1028. In Burr, the Court vacated a preliminary injunction enjoining prosecution of a state court action, rejecting reliance on the aid of jurisdiction exception. See also In re Bayshore Ford Truck Sales, Inc., 471 F.3d 1233 (11th Cir. 2006) (vacating injunction enjoining prosecution of state court action, rejecting reliance on same exception). Other courts of appeal agree. See, e.g., Retirement Systems of Alabama v. J.P. Morgan Chase & Co., 386 F.3d 419 (2d Cir. 2004) (the "necessary in aid of jurisdiction" exception did not permit district court managing complex, multidistrict litigation to enjoin state court action simply to preserve trial date); In re Life Investors Insurance Co. of America, 589 F.3d 319 (6th Cir. 2009).

Cases from the Ninth Circuit have eloquently described the critical importance the Anti-Injunction Act "to preclude unseemly interference with state court proceedings." Negrete v. Allianz Life Insurance Company of North America, 523 F.3d 1091, 1100 (9th Cir. 2008). The Court describes the Act as "a fortress which may only be penetrated through the portals that Congress has made available," noting that "the mere fact that the actions of a state court might have some effect on the federal proceedings does not justify interference." Id. at 1101. Moreover, and critically important here, "the mere fact that a state court may reach a conclusion that differs from what a federal court would prefer does not change the result." Id. at 1102.

Although the district court here claims not to be reviewing the merits of Judge Beach's order, the court identifies no fewer than 9 reasons why the order still on appeal in state court might be infirm. Many of these arguments were raised by Mr. Dandar and rejected by the Second District in the first appeal, some are raised in the second, pending state court appeal, but none are properly before a federal district court. Whether the state court order is sound is left to state court appellate processes.

As another Ninth Circuit opinion so well explains, because the Anti-Injunction Act "rests on the fundamental constitutional independence of the States and their courts...'any doubts as to the propriety of a federal injunction against state court proceedings [will] be resolved in favor of permitting the state courts to proceed,' " and an injunction will be upheld "only on 'a strong and unequivocal showing' that such

relief is necessary." Sandpiper Village Condominium Association, Inc. v. Louisiana-Pacific Corp., 428 F.3d 831 (9th Cir. 2005) (internal citations omitted). The Ninth Circuit expressly noted that the federal district court could not properly determine whether the state court's decisions were correct; the proper recourse for the complaining party was, of course, through the state court system and, if necessary, to seek review in the United States Supreme Court. Id. at 850.

C. The Permanent Injunction Offends the Younger Abstention Doctrine.

The Younger Abstention doctrine requires federal courts to abstain from exercising jurisdiction where there is an on-going state judicial proceeding that implicates important state interests and provides an adequate opportunity for a party to raise constitutional challenges. 31 Foster Children v. Bush, 329 F.3d 1255, 1274 (11th Cir. 2003) (affirming district court's abstention). Federal courts are to "assume that the state procedures will afford an adequate remedy," id. at 1279, and nothing in the record before the district court in the instant matters suggested otherwise.

The United States Supreme Court has explained that the Younger doctrine of nonintervention rests on notions of comity, a respect for state court processes and proceedings. Juidice v. Vail, 430 U.S. 327 (1977). In Juidice, the Court found that the federal courts should have abstained when debtors held in contempt by state court judges for disobeying subpoenas to appear in supplemental proceedings brought by

judgment creditors sought relief in federal district courts. Focusing on the nature of contempt proceedings, the Court noted that

> A State's interest in the contempt process, through which it vindicates the regular operation of its judicial system, so long as that system itself affords the opportunity to pursue federal claims within it, is surely an important interest... . The contempt power lies at the core of the administration of a State's judicial system...federal-court interference with the State's contempt process is 'an offense to the State's interest...likely to be every bit as great as it would be were this a criminal proceeding.' Such interference with the contempt process...'unduly interfere(s) with the legitimate activities of the Stat(e),'... .

Id. at 335-36. The Court further noted that although contempt proceedings certainly vindicate the rights of private parties, the power and exercise of contempt also "stands in aid of the authority of the judicial system, so that its orders and judgments are not rendered nugatory... ." Id. at 336, fn. 12.

In Old Republic Union Insurance Company v. Tillis Trucking Co., Inc., 124 F.3d 1258 (11th Cir. 1997), the Court affirmed the district court's invocation of Younger abstention where a decision by the district court could have had the effect of enjoining a state court's enforcement of its judgment. This Court started with the premise that under Younger, "federal district courts must refrain from enjoining pending state court proceedings except under special circumstances." Id. at 1261. Relying on Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987), the Court held that states' interests in administering their judicial systems are sufficient to support the invocation

of Younger abstention even in "civil proceedings involving purely private parties." Id. at 1263. This is particularly true where the federal injunction would interfere with the execution of state court judgments on "grounds that challenge the very process by which those judgments were obtained." Id.

Here, the state has an important interest in the contempt process to prevent orders like Judge Beach's from becoming "nugatory" and an important interest in preserving the state court appellate review of circuit court orders. Nothing in the district court record supported any finding, nor did the court make any finding, that Mr. Dandar was unable to advance his arguments in state court, or that he did not have adequate means of review available to him. Yet the court interjected itself into the heart of enforcement issues, regarding an order that is the subject of a pending state court appeal.

II. The Church, and the State of Florida, Will Continue to Suffer Irreparable Harm Absent Stay Relief.

The permanent injunction prevents the Church from enforcing the settlement agreement and the lawful orders of the circuit court, causing the Church to lose contract rights for which the Church gave consideration and that have been affirmed by the state appellate court in Mr. Dandar's first appeal. These rights are not readily subject to quantification; in fact, the settlement agreement does not have a liquidated damages clause for this type of violation as it does for others just for this reason. The

Church gave up judgments and claims against Mr. Dandar personally, in exchange for Mr. Dandar's agreement that he willfully disregarded when he filed the case below, an agreement that the circuit court tried to enforce. Thus, the permanent injunction causes irreparable harm to the Church.

As is facially apparent, the permanent injunction also causes irreparable harm to the Sixth Judicial Circuit and to the State of Florida by infringing on and impeding the ability of Florida courts to enforce their orders. As the case law above makes clear, such concerns are central to the need for the Anti-Injunction Act and the Younger abstention doctrine, and strike at the heart of comity and respect between the federal and state court systems. A stay of the injunction should issue to prevent further harm to Florida's courts.

Further proceedings below also must be stayed pending the outcome of this appeal to avoid further irreparable harm to any of the parties below. The district court denied Mr. Dandar's involuntary motion to withdraw but then issued the permanent injunction, apparently to protect Mr. Dandar from the consequences of his remaining in the case. If further proceedings are not stayed pending review, and this Court ultimately reverses the injunction, the case below will have been tried without the Church having been permitted to seek enforcement of the state court orders in state court, without any penalty to Mr. Dandar for his contemptuous conduct., and also without having afforded the district court the opportunity to consider other options

available for resolving the quagmire Mr. Dandar created by his willful, improper conduct. Although not technically moot in the absence of a stay, the relief that might be available to the Church on reversal is incomplete and inadequate.

III. A Stay Will Cause No Substantial Harm to the Estate.

The Estate will suffer no substantial harm from a stay pending appeal. Any delay in the trial of the wrongful death action below will be slight, and that is the only possible harm to the Estate from the stay of further proceedings below. Although prompt resolution of disputes is preferred, such considerations must give way to bedrock principals such as the preservation of comity.

The Estate may claim that it will suffer substantial harm if the injunction is stayed because then the circuit court's civil contempt order may be enforced against Mr. Dandar, but that is exactly the misplaced logic that caused entry of the infirm injunction in the first instance. Whether the state court enforces its contempt order, which is on appeal to the Second District Court of Appeal in Florida's court system, and whether any relief from enforcement is available to Mr. Dandar are matters that must be left to the state courts and that do not determine at all whether the federal case can continue and under what conditions.

IV. A Stay Furthers the Public Interest.

A stay of the injunction furthers the public interest by protecting the power and authority of state courts, and easing tension between the federal district court and the

state courts. Public interest likely is not implicated in the stay of proceedings below, except as incident to a recognition of the proper role of the federal court in these facts.

CONCLUSION

For the reasons set forth herein, the Church respectfully requests that this Court stay the permanent injunction as well as any further proceedings below.

Respectfully submitted,

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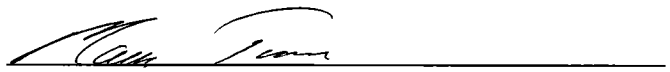
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28th, 2010, I electronically filed the Appellant's Emergency Motion to Stay Permanent Injunction and Further Proceedings Below, Including Trial Set on November 2010 Docket via email to the Clerk of the U. S. Court of Appeals, Eleventh Circuit as instructed to: Nancy_Holbrook@ca11.uscourts.gov; Sheila_Welton@ca11.uscourts.gov; and Wardell_Lovelace@ca11.uscourts.gov; and to to Kennan G. Dandar, Esquire, kgd@dandarlaw.net, attorney for plaintiff; Lee Fugate, Esquire, lfugate@zukerman.com, attorney for defendants Denise Gentile and Gerald Gentile; and Richard C. Alvarez, Esquire, ralvarez@alvarezgarcia.com, attorney for defendant Thomas Brennan, and copies of the Exhibits are being provided to all parties via Federal Express.



Attorney