

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF FLORIDA  
 CASE NO. 09-20526-CIV-GOLD/MCALILEY

KLAUS HOFMANN, an individual,

Plaintiff,

SEALED

v.

EMI RESORTS, INC., a foreign corporation,  
 EMI SUN VILLAGE, INC., a foreign corporation,  
 HSV HOTELES DE OPERADORA, S.A., f/k/a  
 EMI RESORTS MANAGEMENT, S.A., a foreign  
 corporation, EMI RESORTS MANAGEMENT  
 (S.V.G.), INC., a foreign corporation, EMI  
 COFRESI DEVELOPMENTS, INC., a foreign  
 corporation, KAHEBRAM, S.A., a foreign  
 corporation, EMI MANAGEMENT, INC., a  
 foreign corporation, INVERSIONES AVIATI,  
 S.A., a foreign corporation, SUN VILLAGE  
 JUAN DOLIO, INC., a foreign corporation,  
 PROMOTORA XARA, S.A., a foreign  
 corporation, ELLIOTT MICHELS HOLDINGS,  
 INC., a foreign corporation, INVERSIONES  
 YUBASO, S.A., a foreign corporation,  
 INMOBILIARIA LIRIOS DEL TROPICO,  
 S.A., a foreign corporation, INMOBILIARIA  
 CANADAIGUA, S.A., a foreign corporation,  
 HSV HOLDINGS, S.A., a foreign corporation,  
 DESARROLLOS MIRADOR COFRESI, S.A.,  
 a foreign corporation, TENEDORA HSV [BP],  
 S.A., a foreign corporation, VILLA SANTA  
 PONCA, S.A., a foreign corporation, DCS  
 DOMINICAN CONSTRUCTION SERVICES,  
 S.A., a foreign corporation, ELLIOTT REGENT  
 HOLDINGS, INC., a foreign corporation,  
 ELLIOTT TOSCANA HOLDINGS, INC., a  
 foreign corporation, LANDMARK LENDING  
 CORPORATION, a foreign corporation, 408  
 CUMBERLAND HOLDINGS, INC., a foreign  
 corporation, BERTUS MANAGEMENT, INC.,  
 a foreign corporation, ORANGEVILLE  
 RESERVATION SERVICES, LTD., a California  
 corporation, CCW DOMINICANA, S.A., a foreign  
 corporation, MPS LTD., S.A., a foreign corporation,  
 COFRESCO HOLDINGS, INC., a foreign

FILED by \_\_\_\_\_ D.C.  
 MAR - 3 2009  
 STEVEN M. LARIMORE  
 CLERK U. S. DIST. CT.  
 S. D. of FLA. - MIAMI

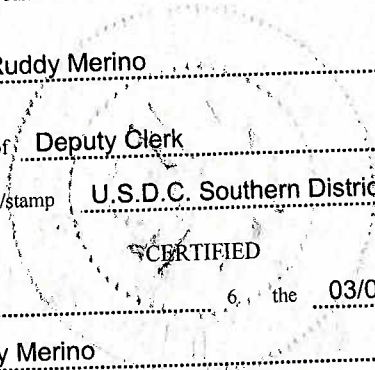
Certified to be true and  
 correct copy of the document on file  
 Steven M. Larimore, Clerk,  
 U.S. District Court  
 Southern District of Florida  
 By [Signature]  
 Date MAR 3 2009  
 Deputy Clerk

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APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: United States of America  
This public document
2. has been signed by Ruddy Merino
3. acting in the capacity of Deputy Clerk
4. bears the seal/stamp U.S.D.C. Southern District Florida
5. at Miami, the 03/03/2009
7. by Ruddy Merino
8. No. 09-A-9
9. Seal/Stamp
10. Signature: [Signature]



corporation, COFRESI DEVELOPMENTS, INC., a foreign corporation, IMMOBILIARIA MONCEY, S.A., a foreign corporation, CELLWAVE NETWORKS, LTD., a foreign corporation, WWIN INTERNATIONAL LTD., a foreign corporation, DE MARCHENA KALUCHE & ASOCIADOS, a foreign corporation, ENRIQUE DE MARCHENA, an individual, VICTOR CABRAL, an individual, NET WEALTH NAVIGATORS, LLC, a Nevada limited liability company, MICHAEL LAWTER, an individual, TIPPY TAN LAWTER, an individual, FREDERICK ELLIOTT, an individual, and DEREK ELLIOTT, an individual,

Defendants.

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**ORDER GRANTING EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, WITHOUT NOTICE; SETTING HEARING AND BRIEFING SCHEDULE**

THIS CAUSE is before the court upon Plaintiff's Verified Emergency Ex Parte Motion for(A) Temporary Restraining Order ("TRO"); (B) Order to Show Cause Why a Preliminary Injunction Should Not Issue; (C) Expedited Discovery; and (D) Order Temporarily Sealing the Court File, pursuant to Fed.R.Civ.P. 65(b)(1), signed on March 2, 2009 and filed on March 3, 2009 ("Motion"), and supporting exhibits. Plaintiff also filed a Verified Complaint and Jury Trial Demand on March 3, 2009 ("Complaint"). In the Motion, Plaintiff requests that I enter a temporary restraining order to enjoin the Defendants from diverting and/or dissipating assets related to Elliott brand real estate products, interests, and properties, pending a hearing on preliminary injunction. Having carefully reviewed the Complaint, the Motion, and supporting exhibits, I grant the Motion for a Temporary Restraining Order, without notice, and set this matter for preliminary injunction hearing on Monday, March 16, 2009 at 10:00 a.m. in front of Magistrate Judge Chris M. McAiley, after

full briefing has been completed. I conclude that, based on the face of the pleadings, Plaintiff has set forth sufficient grounds to meet the requirements for a Temporary Restraining Order.<sup>1</sup>

Pursuant to Fed.R.Civ.P. 65(b)(2), "Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record." Here, Plaintiff has sufficiently alleged irreparable harm, which is supported by the exhibits. Specifically, Plaintiff has alleged that, absent a Temporary Restraining Order, Plaintiff would be deprived of a real property interest and would be foreclosed upon, and Defendants would dissipate assets or records necessary to compensate Plaintiff. Because Plaintiff has set out sufficient grounds to suggest that Defendants would dissipate the assets at issue if given notice, the TRO is issued without notice. Accordingly, I enter a Temporary Restraining Order and set a briefing schedule as explained below. It is hereby

ORDERED AND ADJUDGED that:

1. Plaintiff's Verified Emergency Ex Parte Motion for(A) Temporary Restraining Order, signed March 2, 2009 and filed March 3, 2009, is GRANTED, and a

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In making this determination, I have considered on the face of the pleadings the ability of the plaintiff to demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs any potential harm to the defendant; and (4) granting the injunction would not be adverse to the public interest. *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005). These elements must be proven by a preponderance of the evidence at the preliminary injunction hearing.

Temporary Restraining Order is entered as follows:

Defendants, their officers, directors, employees, representatives, agents, subsidiaries, distributors, and all persons (including corporations, entities, and/or trusts) in active concert or participation with any of them are hereby temporarily restrained from:

1. Advertising, promoting, offering to sell, selling, distributing, or transferring any Elliott brand real estate products related to Defendants' real property interests located in the Dominican Republic;
  2. Communicating, directly or indirectly, with any entity, person, or persons (a) to whom Defendants sold or offered to sell Elliott real estate interests and related products; or (b) whom Defendants know or reasonably believe to possess, control, or have access to any of Defendants' real estate interests and/or related products;
  3. Secreting, distributing, concealing, relocating, destroying, selling off, transferring, or otherwise disposing of: (a) assets, including those acquired directly or indirectly through the sale of Elliott real estate interests and/or related products or through or as the result of the scheme to defraud as alleged in the Verified Complaint; (b) any evidence relating to the solicitation, presentation, marketing, sale, offer for sale, distribution, or transfer of any products relating to Elliott real estate interests; and
  4. Knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs 1-3 above.
2. This Temporary Restraining Order shall remain in effect until the Court orders otherwise, and the Court shall revisit this issue after full briefing and a preliminary injunction hearing in front of Magistrate Judge Chris M. McAliley, as set forth below.
  3. A preliminary injunction hearing is set before Magistrate Judge Chris M. McAliley at the C. Clyde Atkins Courthouse, 301 North Miami Avenue, Miami,

Florida, Sixth Floor on **Monday, March 16, 2009 at 10:00 a.m.**

4. Prior to the hearing, the parties shall present all direct testimony of witnesses by affidavit. Plaintiff's and Defendants' affidavits shall be filed with the Court on or before **Tuesday, March 10, 2009 at 5:00 p.m.** Counsel will be permitted to cross-examine witnesses at the hearing; therefore, affiants must be present at the hearing on **Monday, March 16, 2009.** Any necessary translation services shall be provided by the parties.
5. Defendants shall file a response to Plaintiff's Verified Motion no later than **Wednesday, March 11, 2009 at 12:00 p.m.** This response must include a comprehensive memorandum that addresses the requirements for a preliminary injunction and applies the facts contained in the supporting affidavits to the applicable legal standards.<sup>2</sup> The memoranda shall also set forth the legal and factual considerations regarding the appropriate amount of bond to be posted by Plaintiff in the event that the Court grants a preliminary injunction.
6. Plaintiff shall file a reply to Defendant's response no later than **Thursday, March 12, 2009 at 5:00 p.m.**
7. A courtesy copy of all submissions to the Court in preparation for the

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Specifically, the response should discuss the ability of the Plaintiff to demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs any potential harm to the defendant; and (4) granting the injunction would not be adverse to the public interest. *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Warren Publishing Inc. v. Microdos Data Corp.*, 115 F.3d 1509 (11th Cir. 1997); *Tepper v. Miller*, 82 F.3d 989, 992-93 n.3 (11th Cir. 1996); *Canal Auth. v. Calloway*, 489 F.2d 567, 572 (5<sup>th</sup> Cir. 1974).

preliminary injunction hearing, including affidavits, shall be submitted to the Chambers of Magistrate Judge McAliley via hand delivery by **Thursday, March 12, 2009 at 5:00 p.m.** These copies shall be bound and tabbed appropriately. **Additionally, the parties' shall submit all memoranda to the Court's E-box at mcaliley@flsd.uscourts.gov in Word or WordPerfect format.**

8. I conclude, at this time, that, under Fed. R. Civ. P. 65(c), Plaintiff shall post a bond in the amount of \$50,000 with the Clerk of the Court. The amount of this bond may be increased or decreased based upon the pleadings of the parties and the arguments presented at the preliminary injunction hearing.
9. Plaintiff shall immediately serve the Complaint, the Motion, and this Order on Defendants, by service of process as required by the Federal Rules of Civil Procedure. Plaintiff shall promptly file a Notice of Service indicating that such service has occurred.
10. A discovery hearing to discuss Plaintiff's Motion for Expedited Discovery is set before Magistrate Judge Chris M. McAliley at the C. Clyde Atkins Courthouse, 301 North Miami Avenue, Miami, Florida, Sixth Floor on **Friday, March 6, 2009 at 3:00 p.m.**
11. The Defendants may agree to an extension of time to dates set forth in this Order by motion pursuant to Fed.R.Civ.P. 65(b)(2), or at the discovery hearing on Friday, March 6, 2009.
12. This case shall be unsealed upon Plaintiff's service of the Complaint, the Motion, and this Order upon Defendants.

**DONE AND ORDERED** in Chambers at Miami, Florida at 1:30 p.m. this 3

day of March, 2009.

A handwritten signature in black ink, appearing to read 'Alan S. Gold', written over a horizontal line.

THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

cc:  
U.S. Magistrate Judge Chris M. McAliley  
All counsel of record

## **IMPORTANT NOTICES**

### **CM/ECF PROCEDURES**

**COURTESY COPIES: Notwithstanding the implementation of CM/ECF, all parties shall deliver a courtesy copy to the Intake Section of the Clerk's Office of all dispositive motions and/or motions with attachments EXCEEDING TWENTY-FIVE PAGES. This copy shall be bound and any Attachments and/or Appendices must be indexed with tabs.**

**PROPOSED ORDERS: Counsel shall send a proposed order for all non-dispositive motions in WORDPERFECT FORMAT directly to gold@flsd.uscourts.gov. Please note the docket entry number "[DE#]" on the proposed order. The Complete CM/ECF Administrative Procedures are available on the Court's Website at www.flsd.uscourts.gov**