IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(SOUTHERN DIVISION)

***In re* SANCTUARY BELIZE LITIGATION**	**Case No. 18-cv-3309-PJM**

NONPARTY DAVID WIECHERT'S MOTION TO INTERVENE AND OPPOSITION TO THE FTC'S TURNOVER MOTION

Nonparty David Wiechert, through counsel, C. Justin Brown, Brown Law, hereby moves, pursuant to Federal Rule of Civil Procedure 24, to intervene in this matter for the limited purpose of defending himself from the claims set forth in the Federal Trade Commission's ("FTC") Turnover Motion (Doc. 1023).

The FTC's contention that Mr. Wiechert be sanctioned – and ordered to pay money owed by his client – runs afoul of the law, the facts, and commonly held rules of legal ethics. The FTC's motion should be summarily dismissed.

I. INTRODUCTION

Mr. Wiechert, a California attorney, requests this Court to allow him to intervene for the sole purpose of opposing the FTC's fatuous assertion that he is personally liable for his client Rod Kazazi's financial commitment to pay $268,873.37 in the January 8, 2020, Stipulated Order for Permanent Injunction and Monetary Judgment Against Defendants Rod Kazazi and Foundation Partners (hereinafter the "Order").

Mr. Wiechert is not a party to the Order. He is not a "Settling Defendant" as that term is defined. Rather, he acted as advisory counsel to help Mr. Kazazi, then a

pro se defendant, achieve Mr. Kazazi's desired goals of cooperating with the government and reaching a settlement with the FTC that would not destroy his financial life.

The FTC drove a very hard bargain. The FTC demanded a $144,000,000 suspended judgment against Mr. Kazazi, who became involved in Sanctuary Belize in 2012, approximately seven years after property sales commenced. The FTC also demanded that Mr. Kazazi give up his assets, including his home in Irvine, California.

Rather than give up the home, which was purchased by his parents, Mr. Kazazi, through Mr. Wiechert, negotiated a settlement whereby Mr. Kazazi could keep the home, but instead pay a lump sum of $268,873.37. Critically, and as explained thoroughly below, the FTC knew Mr. Kazazi did not have this money in hand and he would have to borrow to make good on his promise.

Due to extenuating circumstances related to the COVID-19 pandemic, Mr. Kazazi was unable to obtain the full sum until just recently. Now, the FTC urges the Court to impose sanctions and lay claim to everything that Kazazi has paid to date, his house, and a $144 million judgment. In addition, the FTC seeks $268,873.37 from Mr. Wiechert – *who is Mr. Kazazi's lawyer*.

The FTC's turnover motion should be thrown out of court for several reasons. First, it is doubtful the Court has jurisdiction over Mr. Wiechert to hold him in contempt and/or impose a monetary judgment against him. Mr. Wiechert is not a party in this case, he is not a party to the Order, nor has he entered his appearance

in this case.

Second, even if there is jurisdiction, it is incontrovertible that Mr. Wiechert never had the $268,873.37 in his trust account – and the FTC knows this. Thus, it is impossible for Mr. Wiechert to turn this money over because he does not have this money – and he never had it.

Third, it would be unethical for Mr. Wiechert to personally pay his client's obligations. The fact that the FTC would even suggest this shows a lapse in judgment that should be roundly rejected by this Court.

Finally, the FTC is not telling the full story of how the critical language from the Order – which is the foundation of the FTC's motion – came into effect. The FTC rests its argument against Mr. Wiechert on a single sentence in Section III(C) of the Order that states the following: "Settling Defendants hereby stipulate that their counsel holds such funds [$268,873.37] in escrow for no purpose other than payments to the Commission."

But what the FTC fails to mention is that it slipped this language into a draft of the order; it misled Mr. Wiechert about how the draft had been modified; and that it is undisputed that Mr. Wiechert had neither knowledge nor understanding of the added language. Compounding the dubious origins of this language, the FTC knew then – and knows now – that Mr. Wiechert never held $268,873.37 in escrow. To now seek that Mr. Wiechert turn over such funds is disingenuous.

II. FACTUAL BACKGROUND

Mr. Wiechert is a California-licensed attorney and has been so for almost 40

years. Declaration of David W. Wiechert ("Wiechert Decl.") at ¶ 1-2.[1] He is a highly regarded, former Criminal Division Assistant United States Attorney and current federal indigent defense panel lawyer and has handled multiple matters involving the FTC. Wiechert Decl. at ¶ 2-3.

In late 2018, Mr. Kazazi retained Mr. Wiechert to assist him in the defense of the Sanctuary Belize case. Wiechert Decl. at ¶ 4. Pursuant to the obligations of the Temporary Restraining Order, Mr. Kazazi provided sworn financial disclosures to the FTC including references to monies held on his behalf by attorneys. Wiechert Decl. at ¶5. From the beginning, Mr. Kazazi wanted to cooperate with the government and Mr. Wiechert helped him do so by, among other things, providing information to the FTC and Receiver about the individuals and entities connected with Sanctuary Belize. Wiechert Decl. at ¶ 6-7.

In Fall 2019, Mr. Wiechert assisted Mr. Kazazi in negotiating a potential settlement with FTC's counsel Benjamin Theisman. Wiechert Decl. at ¶ 9-10. Mr. Kazazi's most valuable asset was his house. Wiechert Decl. at ¶ 10. The FTC insisted on certain conditions for settlement: 1) a suspended $144 million judgment; 2) relinquishment of assets; and 3) completion of an updated, verified financial statement. Wiechert Decl. at ¶ 9-10. Mr. Kazazi strongly desired to keep his house and, in lieu of surrendering it the FTC, agreed to a lump sum payment of

[1] The Declaration of David Wiechert, and all exhibits thereto, are being filed separately on the date of this filing and are referred to herein as "Weichert Decl."

$268,873.37 – an amount representing the equity of his house and some relatively small tax refunds. Wiechert Decl. at ¶ 10, 13. Mr. Kazazi advised the FTC that he needed to borrow the $268,873.37. Wiechert Decl. at ¶ 10.

The first draft of the agreement was transmitted by Mr. Theisman to Mr. Wiechert on October 21, 2019. Wiechert Decl. at ¶ 11. That draft set forth a lump sum payment of $250,000 and did not reference monies held by counsel in escrow. Wiechert Decl. at ¶ 11; Exhibit 4 to Wiechert Decl. at p. 28.

On November 2, 2019, Mr. Theisman transmitted a second draft of the agreement. In the email attaching the draft he stated: "The only changes are in the amount to be transferred (to account for the tax refund check), and the documents upon which the judgment will be suspended (which will include the credit card statements, trust document, and anticipated declaration regarding financial questions)." Wiechert Decl. at ¶ 13; Exhibit 6 to Wiechert Decl. This statement, however, was untrue, as the second draft included the escrow language which is now the foundation of the FTC's Turnover Motion against Mr. Wiechert. *Id*.

In mid-November of 2019, the FTC provided an execution copy of what became the Order. Wiechert Decl. at ¶ 15. Section III(C) of the final Order again contained the escrow reference and reads: "Settling Defendants shall pay to the [FTC], within fourteen (14) days of the entry of this Order, [$268,873.37]. Settling Defendants hereby stipulate that their counsel holds such funds in escrow for no purpose other than payments to the [FTC]." Order, Dkt. No. 775, at 5.; Exhibit 7 to Wiechert Decl. at p. 79. Mr. Wiechert is identified as Mr. Kazazi's counsel only in

the signature block, where he signs as "Counsel for Rod Kazazi and Foundation Partners;" his name does not appear elsewhere in the Order. *See id.* at 20.

Mr. Wiechert reviewed the execution draft of the Order and, as with the second draft, did not catch the sentence in Section III(C) relating to the funds already being held in escrow. Wiechert Decl. at ¶ 13, 15-16. It was never communicated to the FTC that such funds were being held by Mr. Wiechert, and a contributing factor to Mr. Wiechert not focusing on the language was that it was inserted by the FTC not only *sub silentio*, but transmitted with an email that, intentionally or not, had the effect of concealing the escrow language. Wiechert Decl. at ¶ 13, 15-16.

Regardless of the reasons for Mr. Wiechert's oversight, the FTC knew that Section III(C) was inaccurate, because in addition to Mr. Kazazi advising that he needed to borrow money to make the $268,873.37 payment during settlement negotiations, as part of the settlement Mr. Kazazi submitted verified financial statements that did not include the $268,873.37. Wiechert Decl. at ¶ 17; Exhibit 7 to Wiechert Decl. at pp. 73-74. The FTC has never contested the accuracy of these financial statements. Wiechert Decl. at ¶ 17. The FTC was also advised of Mr. Kazazi's difficulties in obtaining a loan via email on January 22, 2020, the date the $268,873.37 was due. Wiechert Decl. at ¶ 19. The FTC did not inquire about escrowed money after receiving the email. Wiechert Decl. at ¶ 19. The FTC was subsequently advised, via an April 9 email, of Mr. Kazazi's inability to obtain a loan during the global lockdown. Wiechert Decl. at ¶ 20.

On April 15, 2020, Mr. Wiechert received a letter from Mr. Theisman regarding Mr. Kazazi's outstanding obligations under the Order; the letter does not denote Mr. Wiechert as being a party to the Order, nor does it make a demand for immediate payment of the funds purportedly held in his trust account. Wiechert Decl. at ¶ 21. On April 22, Mr. Kazazi, Mr. Wiechert, and Mr. Theisman participated in a conference call wherein Mr. Kazazi explained that he signed a loan agreement for $250,000, but that the deal fell through due to the pandemic, and he was willing to give up his house to meet his obligations. Wiechert Decl. ¶ 22. On May 4, Mr. Kazazi forwarded Mr. Theisman a copy of the $250,000 loan agreement. Wiechert Decl. at ¶ 23.

There were several subsequent communications from the FTC that also evidence its knowledge that neither Mr. Kazazi nor Mr. Wiechert held the $268,873.37. On May 7, 2020, Mr. Theisman emailed a letter to Mr. Wiechert about Mr. Kazazi's compliance under the Order, but rather than making a demand for immediate payment pursuant to Section III(C), the letter focused on the FTC's loss due to Mr. Kazazi's delay in liquidating an investment account. Wiechert Decl. at ¶ 24. On June 3, 2020, Mr. Theisman emailed Mr. Wiechert and Mr. Kazazi regarding payment status, which again did not contain a demand for immediate payment pursuant to Section III(C). Wiechert Decl. at ¶ 25. Lastly, on August 12, 2020, Mr. Kazazi emailed Mr. Theisman to update him regarding his continued inability to obtain a loan for the $268,873.37 payment and offering to sell his house to acquire the necessary funds. Wiechert Decl. at ¶ 26. Mr. Theisman did not demand

immediate payment from escrow funds; instead he responded that selling the house would violate the asset freeze presently in place. Wiechert Decl. at ¶ 26.

On September 1, 2020, the FTC – without a meet and confer – filed its Turnover Motion, wherein it claimed that Mr. Wiechert and Mr. Kazazi should be held in contempt because Mr. Wiechert was holding the $268,873.37 in an account, as stated in the Order. Wiechert Decl. at ¶ 27. The FTC also claimed that Mr. Wiechert should be personally liable for this amount in the event Mr. Kazazi did not make the payment. On September 1, 2020, the FTC's demand was for $268,873.37, all of Mr. Kazazi's other assets (including his home), and a judgment in the amount of $144 million. Wiechert Decl. at ¶ 27-28. By letter dated September 10, 2020, the FTC evinced a willingness to accept general terms that if Mr. Wiechert or Mr. Kazazi pay the lump sum, and Mr. Kazazi gives up his home, then the FTC would agree to suspension of the $144 million judgment. Wiechert Decl. at ¶31. Thus, the FTC has invited Mr. Wiechert to pay $268,873.37 so his client can avoid a $144 million judgment. The mere proposition of this is troubling.

Mr. Kazazi currently is able to pay the FTC at least $276,000 if he can keep his residence and not have an $144 million-dollar judgment over his head.

III. RULE 24 INTERVENTION

A. Intervention as a Matter of Right

Rule 24 requires a court to permit a nonparty to intervene in a case if that nonparty "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of that action may as a

practical matter impair or impede the movant's ability to protect its interest..." Fed. R. Civ. P. 24(a)(2). In other words, intervention as a matter of right requires the nonparty movant show that they "stand to gain or lose by the direct legal operation" of the court. *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991).

Here, the FTC has asked the court to consider contempt sanctions against Mr. Wiechert, and to hold him personally liable for the $268,873.37 payment should Mr. Kazazi fail to make this payment. As such, Mr. Wiechert has an "interest relating to the property or transaction that is the subject of the action."

Moreover, courts have previously found that attorneys have a right to intervene to protect both their professional reputation and pecuniary interests in an underlying lawsuit. In *Penthouse Intern., Ltd. v. Playboy Enterprises, Inc.*, the Second Circuit found an attorney was entitled to intervention as a matter of right when the district court judge condemned his conduct at trial, exposing the attorney to professional malpractice liability towards his client. 663 F.2d 371, 373, 392 (2d Cir. 1981). In *Swann v. City of Dallas*, the court found that a plaintiff's former attorneys had the right to intervene to protect their interest in attorney's fees awarded plaintiff. 172 F.R.D. 211, 213-14 (N.D. Tex. 1997). Just like the attorneys in these cases, Mr. Wiechert stands to suffer reputational and pecuniary loss if he is not allowed to defend himself in this case.

As such, he is entitled to intervention as a matter of right.

B. Permissive Intervention

Alternatively, Mr. Wiechert should be allowed to intervene even if he is not

entitled to do so as a matter of right. Rule 24 permits a court to allow a party to intervene who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Mr. Wiechert's fate could be intertwined with Mr. Kazazi's. If Mr. Kazazi pays the $268,873.37 sought by the FTC, which is, as always was the case, dependent on his ability to borrow those funds, the FTC's papers concede that its claim against Mr. Wiechert will be extinguished.

Mr. Wiechert should be allowed to stand with Mr. Kazazi and rely on Mr. Kazazi's defenses.

IV. MR. WIECHERT SHOULD NOT BE HELD IN CONTEMPT NOR BE FOUND PERSONALLY LIABLE FOR THE $268,873.37 PAYMENT

The FTC's position here is astonishing: it claims that an attorney, who is neither a party in the case nor an attorney of record, should be personally liable for the missed payment of his client, and held in contempt if he does not make the payment. This position has no foundation in reason or law and should be rejected.

A. The Court Lacks Jurisdiction over Mr. Wiechert

As a preliminary matter, it is doubtful the Court has jurisdiction over Mr. Wiechert to impose a contempt finding and/or a money judgment against him. Mr. Wiechert has never appeared before the Court in any capacity – he is not a party in this case, not a party to the Order, nor is he an attorney of record. His primary role was helping Mr. Kazazi negotiate a settlement with the FTC that would not leave him destitute and allow him to keep his home.

The FTC argues that the Court can rely on its ancillary jurisdiction to hold Mr. Wiechert in contempt and liable for the missed payment, citing Federal Rule of Civil Procedure 65(d), *FTC v. Neiswonger*, 494 F. Supp. 2d 1067 (D. Mo. 2007), and Mr. Wiechert's signing of the Order as bases for jurisdiction. This, however, is a bridge too far.

Rule 65(d)(2)(B) provides that an injunction binds those persons who receive actual notice of it and includes a party's attorney as a person so bound. The key word though, is "injunction," because here, the FTC is requesting the Court find contempt based on, and impose, a *monetary judgment*, not a violation of an injunction.[2] Rule 65 does not govern money judgments or relief (indeed, it is titled "Injunctions and Restraining Orders") and thus is inapposite here. *Neiswonger* is accordingly inapplicable because that opinion singularly cites Rule 65(d) as the basis for holding a nonparty in contempt for violating an *injunction*, which is not at issue here. *See Neiswonger*, 494 F. Supp. 2d at 1078 (citing and discussing Fed. R. Civ. P. 65(d)).

The FTC's argument that Mr. Wiechert's signature effectuates jurisdiction is equally misplaced. Mr. Wiechert is not a party to the Order; his name is nowhere to be found in the Order's recitation of the parties, and nowhere does the Order

[2] To be sure, there are injunction-related provisions in the Order, but the specific provision of which Mr. Wiechert is allegedly in breach is Section III(C), which pertains only to the payment of $268,873.37. Lest there be any doubt that this provision only relates to monetary relief, the title of Section III is "Monetary Judgment." Order, Dkt. No. 775, at 5.

indicate that its terms govern him. The identification of the parties in the signature lines for the Order is consistent with this. On page 19 of the Order after the language "SO STIPULATED AND AGREED," it states "FOR THE FEDERAL TRADE COMMISSION" above the signature line for the FTC representatives, and "FOR ROD KAZAZI AND FOUNDATION PARTNERS" above the signature line for Mr. Kazazi. There is nothing on top of the signature line for Mr. Wiechert on page 20 of the Order. Mr. Wiechert signed the Order, as countless lawyers do all day and every day, to indicate that he acted as counsel for a client in connection with the Order. The FTC cites no case where a lawyer, who had no connection with the facts leading to an enforcement action, was held responsible for a client's monetary obligations arising from the settlement of that action. The FTC's jurisdiction argument should be firmly rejected.[3]

B. Mr. Wiechert Should Not Be Liable for Contempt because He Did Not Violate a Court Order Causing Damage to the FTC and It is Impossible to Do What the FTC Asks—Pay a Client's Debt

Even if the Court has jurisdiction over Mr. Wiechert, it should nevertheless withhold a finding of contempt because the FTC cannot satisfy the elements of contempt and because Mr. Wiechert never possessed $268,873.37 of his client's

[3] If the FTC insists that his signature made Mr. Wiechert a party to the Order, then the Order is ambiguous as to who is party thereto. Such an ambiguity should be resolved against the party who drafted and presented the Order: the FTC. *See Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62 (1995) ("[A] court should construe ambiguous language against the interest of the party that drafted it." (citing the Restatement (Second) of Contracts § 206)).

money, making it factually and legally impossible for him to comply with the Order.

The elements of civil contempt are "(1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant's 'favor'; (3) that the alleged contemnor violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) that movant suffered harm as a result," and the movant must establish each element by clear and convincing evidence. *Schwartz v. Rent-A-Wreck of America*, 261 F. Supp. 3d 607, 612 (D. Md. 2017) (Messitte, J.). Impossibility to comply with an order is a complete defense to a contempt charge. *See United States v. Rylander*, 460 U.S. 752, 757 (1983) ("Where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action.").

The FTC is unable to demonstrate the four elements of contempt. First, the FTC cannot prove – and cannot honestly claim to have a belief – that Mr. Wiechert had actual knowledge that Mr. Kazazi was required to have placed money in his attorney's escrow at the time the Order was signed. Any claim of constructive knowledge, moreover, is undercut by the FTC's misleading email description of the second draft of the Order, which represented that only small changes had been made to the first draft, with no reference to the addition of an escrow requirement.

Further, while the Order is in favor of the FTC vis-a-vis Mr. Kazazi, it is not in favor of the FTC as to Mr. Wiechert, who was not a party to the Sanctuary Belize Action or the Order. The Order did require Mr. Kazazi to make payments within 14 days of the Court's adoption of it under Section III(C). On the fourteenth day, Mr.

Wiechert informed Mr. Theisman of Mr. Kazazi's inability to obtain the lump sum payment. There is no evidence that at that time Mr. Wiechert had any funds in escrow of Mr. Kazazi's, nor that he did anything to deprive the FTC of those funds. Rather, Mr. Wiechert kept the FTC timely advised of the payment status and Mr. Kazazi's efforts. There is no evidence that Mr. Wiechert contumaciously violated the terms of the Order.

Moreover, there is no evidence that any post-Order conduct by Mr. Wiechert caused the FTC any injury. Indeed, if the FTC has its druthers, the failure by Mr. Kazazi to pay the lump sum will result in a total windfall for the FTC. If the payment had been timely made, the $144 million judgment would have remained suspended and Mr. Kazazi could have kept his house. Now the FTC is asserting that it is entitled to the house *and* the judgment, with a $268,873.37 kicker to boot. As Mr. Kazazi currently has access to this amount, the FTC's actual losses due to the delay in payment translate to a few thousand dollars – reflecting loss of use of the funds which Mr. Kazazi can currently repay through borrowing as well.

Finally, contempt is precluded by the impossibility doctrine both as a factual matter and a legal matter. Factually, it was impossible for Mr. Wiechert to transfer the $268,873.37 payment to the FTC because Mr. Kazazi never gave said funds to him; Mr. Wiechert could not give what he did not have. As detailed above, Mr. Kazazi had difficulty obtaining a loan to cover the lump sum payment, and the FTC received numerous updates, passed on from Mr. Kazazi through Mr. Wiechert, on the status of Mr. Kazazi's efforts to secure the funds. Because Mr. Kazazi never had

the funds, Mr. Wiechert never had the funds.[4]

The FTC cites to Section III(C) which states "Settling Defendants [i.e. Mr. Kazazi] hereby stipulate that their counsel holds such funds in escrow for no purpose other than payments to the [FTC]," as some "gotcha" talisman. It is indisputable that Mr. Wiechert never possessed $268,873.37. This incontrovertible fact is the best evidence that Mr. Wiechert was never aware of this provision in the Order at the time of its negotiation, or the date it took effect.

For a lawyer that has practiced federal criminal law for almost four decades there is absolutely no reason for Mr. Wiechert to have risked his career, and potential violation of a whole host of federal criminal provisions, by making a false representation to the FTC or the Court. Not even the FTC with a straight face could take a contrary position. While Mr. Wiechert missed the inclusion of the escrow language in the second and final drafts of the Order, the FTC never notified him of this clause's insertion. Indeed, Mr. Theisman's email including the second draft denies the existence of such a change, noting that the "only change" between the first and second drafts were "the amount to be transferred."

[4] This fact alone defeats the FTC's Turnover Motion as to Mr. Wiechert in that it is stylized as a "turnover motion." A turnover motion or proceeding implies a court is being asked to "order a third party to turn over assets to the creditor if those assets do, in fact, belong to the judgment debtor." *In re Emerald Casino, Inc.*, 584 B.R. 727, 735 (Bankr. N.D. Ill. 2018). In other words, a turnover motion or proceeding is premised on the third party actually being in possession of the debtor's funds sought by the turnover motion. If that third party is not in possession of such funds, the turnover motion is nonviable. Here, because Mr. Wiechert does not, and never did, possess the $268,873.37, there is nothing for him to "turnover" to the FTC.

Further, given the FTC's inaction concerning the provision, it is also clear that the FTC did not believe the lump sum settlement was in an escrow account controlled by Mr. Wiechert.[5] Simply put, Mr. Wiechert cannot turn over funds he never had and this was a state of facts known to the FTC when it brought its meritless turnover motion against him.

Moreover, legal impossibility also precludes a contempt order to extract a payment from Mr. Wiechert that will benefit Mr. Kazazi. The FTC asks the Court to require Mr. Wiechert to pay the $268,873.37 should Mr. Kazazi be unable to do so. Essentially, the FTC is claiming that Mr. Wiechert is a guarantor for Mr. Kazazi's obligations under the Order.

This argument fails. For one, there is no language in the Order signifying that Mr. Wiechert is guaranteeing Mr. Kazazi's obligations. Nor does the Order

[5] The FTC's inaction and corresponding eight-month delay in asserting its supposed right to immediate payment under Section III(C) precipitates application of the doctrine of laches, an equitable defense which arises when (1) the claimant has lagged in asserting its rights, and (2) the defendant has been prejudiced by such lack of diligence. *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990). Laches is a defense to a charge of civil contempt. *See Derek & Constance Lee Corp. v. Kim Seng Co.*, No. CV 05-3635 ABC, 2010 WL 11508468 at *4-5 (C.D. Cal. Apr. 5, 2010), *aff'd.* 467 Fed. Appx. 696 (9th Cir. 2012) (holding that a claim of civil contempt was barred by the laches doctrine). Here, by its own assertions the FTC admits that it could have brought its Turnover Motion as early as January 23, 2020, but it did not do so until September 1, 2020. The FTC does not aver any compelling reason why it did not seek immediate payment when, according to its belief, it had a right to do so. The accompanying prejudice to Mr. Wiechert takes the form of the diminution of value of Mr. Kazazi's home, caused by the COVID-19 pandemic's shock to the economy, to the extent that the equity of Mr. Kazazi's house, should it be used to cover the $268,873.37 payment, is found inadequate to cover this amount, with Mr. Wiechert being (somehow) liable for the remaining balance.

contain any language that Mr. Wiechert becomes personally liable for the $268,873.37 amount should Mr. Kazazi fail to make the payment. The FTC cites no authority holding that an attorney who signs an agreement as a non-party becomes a guarantor of his client's obligations. Indeed, the authority on this point runs counter to the FTC's claims. The Texas Supreme Court recently observed that it "would strain the very existence of settlement agreements if a party could hold an opposing attorney liable" for his client's breach of a settlement agreement, fearing that "such a practice could impute a guarantee of the client's performance onto the attorney merely because he played a role in negotiating his client's agreement." *Youngkin v. Hines*, 546 S.W.3d 675, 682 (Tex. 2018). The *Youngkin* court presaged the FTC's position here, and it should be similarly rejected under similar rationale.

Finally, and critically, it would violate a cornerstone of the California ethical rules for Mr. Wiechert to guarantee Mr. Kazazi's obligations under the Order. California's code of ethics explicitly prohibits an attorney from being a guarantor of his client. *See* Cal. R. Prof. Conduct 1.8.5(a) ("A lawyer shall not directly or indirectly pay or agree to pay, *guarantee*, or represent that the lawyer or lawyer's law firm will pay the personal or business expenses of a prospective or existing client.") (emphasis added). *See also* ABA Model Rule of Professional Responsibility 1.8 (e) (prohibiting lawyer except in very limited inapposite circumstances from providing financial assistance to a client in a pending or contemplated litigation). The California proscription is unambiguous. It is legally impermissible for Mr. Wiechert to make the $268,873.37 payment that will be credited to Mr. Kazazi's

obligation to the FTC, whatever the amount of that obligation turns out to be. The Court should summarily reject this contention.[6]

V. CONCLUSION

Based on the foregoing, Mr. Wiechert respectfully requests the Court permit him to intervene in this case for the sole purpose of defending himself against the charge of contempt and claim of personal liability the FTC has made against him. Moreover, the Court should deny both the FTC's request for a finding of contempt and a finding that Mr. Wiechert is personally liable for Mr. Kazazi's $268,873.37 payment obligation under the Order. If the court takes a contrary view, Mr. Wiechert requests that the Court deny the FTC's request for a $500-a-day penalty for non-payment, which has no connection to the actual economic cost to the FTC of non-payment, and stay any order against him pending an appeal, as compliance will jeopardize Mr. Wiechert's law license and vocation of close to 40 years.

[6] The FTC also fails to make any showing that it conferred on Mr. Wiechert any consideration in exchange for his guaranteeing Mr. Kazazi's obligations. Thus, in addition to the many other failings discussed above, the FTC's claim that Mr. Wiechert is liable for Mr. Kazazi's obligations fails for lack of consideration. *See In re Wincopia Farms, LP*, BK No. 07-15899-JS, 2011 WL 1237651, at *5 n.17 (Bankr. D. Md. March 31, 2011) ("[T]he contract of guaranty is often founded upon a separate consideration from that supporting the contract of the principal, and consequently, the consideration for the guarantor's promise moves wholly or in part to him.") (quoting *GMAC v. Daniels*, 492 A.2d 1306, 1309-10 (Md. Ct. App. 1985)).

Respectfully submitted,

/s/

C. Justin Brown
BROWN LAW
1 N. Charles, Suite 1301
Baltimore, MD 21201
Tel: (410) 244-5444
Fax: (410) 934-3208
brown@cjbrownlaw.com

CERTIFICATE OF SERVICE

I CERTIFY THAT on September 29, 2020, I served the foregoing filing, and all related documents through ECF and by email to the following people and entities identified below:

All Federal Trade Commission counsel;

Peter Baker and entities he owns or controls, including Global Property Alliance, Inc., Sittee River Wildlife Reserve, Eco-Futures Belize Limited, Eco-Futures Development, Buy Belize LLC, Buy International LLC, and Foundation Development Management Inc. at peterbakerx@gmail.com;

Gary Caris, James E. Van Horn, and Kevin Driscoll, Counsel for the Receiver, which controls all of the Defaulting Defendants but the Estate of John Pukke and John Usher, by ECF or at gcaris@btlaw.com; jvanhorn@btlaw.com; and kevin.driscoll@btlaw.com;

Luke Chadwick and entities he owns or controls, including Prodigy Management Group LLC, Belize Real Estate Affiliates LLC, Exotic Investor LLC, and Southern Belize Realty LLC, at luketchadwick@gmail.com;

Andirs Pukke and entities he owns or controls, including the Estate of John Pukke, at ekkup@msn.com; and

Bruce Searby, as standby counsel for Luke Chadwick and entities he owns or controls, at bsearby@searby.law.

I further certify that on September 29, 2020, I caused the foregoing filing, and all related documents, to be served by email and methods otherwise specified, to the following people and entities identified below:

John Usher, and the entities he owns or controls including Sittee River Wildlife Reserve, Eco-Futures Belize Limited, and the Sanctuary Belize Property Owners' Association by email at johnusher758@gmail.com, johnusher758@yahoo.com, and cotinga63@gmail.com;

Joseph Rillotta, by email at joseph.rillotta@faegredrinker.com;

David Heiman, by email at David@regencyhomesllc.com;

Global Property Alliance Inc., by email on Counsel for the Receiver and Peter Baker, as well as by email on Brandi Greenfield through her counsel, Cori Ferrentino and Michael King, at cori@ferrentinolaw.com and mking@wintersking.com;

Sittee River Wildlikfe Reserve, by email on Counsel for the Receiver, Peter Baker, and John User;

Buy Belize LLC, by email on Counsel for the Receiver and Peter Baker;

Buy International Inc., by email on Counsel for the Receiver and Peter Baker, as well as by email on Frank Costanzo at ecologicalfox@gmail.com;

Foundation Development Management Inc., by email on Counsel for the Receiver and Peter Baker, as well as by email on Frank Costanzo at ecologicalfox@gmail.com

Eco Futures Development, by email on Counsel for the Receiver and Peter Baker, as well as by email on Frank Costanzo at ecologicalfox@gmail.com;

Eco-Futures Belize Limited, by email on Counsel for the Receiver, Peter Baker, and John Usher;

Newport Land Group LLC, by email on Counsel for the Receiver and to Frank Costanzo;

Power Haus Marketing, by email on Counsel for the Receiver and by email on Angela Chittenden though her counsel Wayne Gross, at the following email address: wgross@ggtriallaw.com;

Prodigy Management Group LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Belize Real Estate Affiliates LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Exotic Investor LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Southern Belize Realty LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Sanctuary Belize Property Owners' Association, by email on Counsel for the Receiver, and John Usher;

The Estate of John Pukke, by email to Andris Pukke, Executor for the Estate of John Pukke, at ekkup@msn.com;

David Wiechert at dwiechert@aol.com

Frank Costanzo at exologicalfox@gmail.com; and

Brandi Greenfield through her counsel, Cori Ferrention and Michael King, at cori@ferrentinolaw.com; and mking@wintersking.com

/s/
C. Justin Brown