IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COFACE NORTH AMERICA INSURANCE COMPANY, Plaintiff, v. JAMES WENDELL DAVIS, III, and JOHN DOES 1-50, Defendants.	)	CIVIL ACTION FILE NO. 1:19-cv-0242-AT

PLAINTIFF'S RENEWED EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT

Plaintiff Coface North America Insurance Company ("Plaintiff" or "Coface"), pursuant to Rule 65 of the Federal Rules of Civil Procedure, respectfully renews its request that this Court enter a Temporary Restraining Order or Preliminary Injunction against Defendant James Wendell Davis, III and J. Davis – Attorney at Law, LLC ("JDAL")[1] (the "Renewed Motion") for the following reasons.

[1] Filed contemporaneously with this motion is a Motion for Leave to Amend Complaint to Add as a Defendant J. Davis, Attorney at Law – LLC.

INTRODUCTION

Since the time that the Court denied Coface's initial Motion for Temporary Restraining Order or Preliminary Injunction ("Initial Motion") and during the pendency of the adjudication of Davis' Motion to Dismiss, extraordinary facts have come to light that warrant a renewed request for a temporary restraining order and preliminary injunction. Specifically, Coface has recently discovered a judgment entered against Davis for substantially the same fraudulent misconduct that is alleged in the Verified Complaint. Further, according to his law firm's website, Davis regularly practices and engages in areas of law that involve vulnerable populations and the management of their funds deposited in his firm's IOLTA, such as in probate administration. Time is of the essence to enjoin him and his law firm, J. Davis – Attorney at Law, LLC, from further misconduct and from divesting himself of assets and funds to avoid judgment.

In 2014, Davis was sued by a bank for submitting a fraudulent Account Clearing House ("ACH") transfer into an alleged sham company's account and then immediately transferring the fraudulently acquired funds to Calgary, Canada ("2014 Action").[2] According to the complaint in the 2014 Action (attached hereto as Exh. A), Davis, as here, initially appeared contrite and victimized with respect

[2] The facts and procedure of this case are more fully discussed below in Section II of the Procedural History.

to the transaction, but failed to follow through on any promises to return the funds or cooperate with the bank's investigation. The bank ultimately obtained a judgment against Davis on the same causes of action as in the instant case – including a violation of the Georgia RICO statute.

Based on similar misconduct by Davis, this is an action to recover at least $552,766.20 in funds that were fraudulently obtained from Coface by Davis, his law firm, and the Doe Defendants. Davis and his firm engaged in a complex conspiracy with the Doe Defendants to defraud Coface by intercepting e-mail communications between Coface and its insured regarding a legitimate insurance claim. In this case, Davis and his co-conspirators impersonated Coface in communications with its policyholder and impersonated the policyholder in communications with Coface. As a result, Davis, his firm, and the Doe Defendants managed to divert the insurance claim payment of $3,093,085.50 to Davis' IOLTA (the "IOLTA") account held at Wells Fargo, despite the lack of any relationship among Davis, his law firm, and Coface or its policyholder.

While $2,540,319.30 was returned to Coface from the IOLTA, $552,766.20 remains unreturned. Although Davis has portrayed himself as a victim of fraud as well, that position is dubious because he has engaged in fraudulent conduct

involving wire transfers in the past, as demonstrated by the 2014 Action.[3] Accordingly, while Coface pursues legal action against Davis, his firm, and their co-conspirators, extraordinary relief is warranted to ensure that Davis and his firm do not divest funds and assets that would result in Coface being unable to recover the remaining $552,766.20 taken from it. There is no doubt that further delay risks further divestment.

STATEMENT OF FACTS

As verified by the Complaint, Coface is the victim of a complex fraudulent scheme involving multiple unknown actors that includes Davis and his law firm. Coface, together with its affiliates, is a worldwide leader in commercial trade credit insurance, helping companies manage and protect their accounts receivable against the risk of non-payment. [D.E. 1 ¶ 8.][4] In or around December 2018, Coface agreed to pay to one of its policyholders $3,093,085.50 in connection with a claim made under a commercial trade credit insurance policy ("Real

[3] Coface requests that the Court take judicial notice of the court documents from the case *United Community Bank v. Autumn Sunset, LLC, et al.*, Case No. 14-cv-00746 in the Superior Court of Carroll County, Georgia. *See* Fed.R.Evid. 201 (b)(2) & (c)(2); *see also U.S. ex rel Osheroff v. Humana, Inc.*, 776 F.3d 805, 811-12 (11th Cir. 2015) (approving the district court's judicial notice of filings in state court); *United States v. Rey*, 811 F.2d 1453, 1457 (11th Cir. 1987) ("A court may take judicial notice of its own records and the records of inferior courts.").

[4] The Complaint has been verified by a corporate representative of Coface, and thus serves as evidence to support the facts asserted herein.

Policyholder"). [*Id.* ¶ 9.] On December 18, 2018, a representative of Coface (the "Coface Representative") requested payment instructions from the Real Policyholder's insurance brokers. Later that day, the Real Policyholder sent payment instructions to Coface's Representative via e-mail, including specific wire transfer information for an account in the Real Policyholder's name held at Citibank N.A. [*Id.* ¶ 10.]

The next day, on December 19, 2018, Defendants, acting in concert and in aid of each other, impersonated Coface's policyholder ("Imposter Policyholder") and sent Coface's Representative an e-mail that purported to be from the Real Policyholder and appeared to be in reply to the original December 18, 2018 message. [*Id.* ¶ 11.] In an effort to conceal Defendants' fraudulent scheme, the text of the original December 18, 2018 e-mail was included as part of the chain. The December 19, 2018 e-mail stated "Please disregard the below bank details i [*sic*] sent you and check attached Letter of authorization [*sic*] with our updated bank details for payment." [*Id.* ¶ 12.]

Attached to the December 19, 2018 e-mail was a "LETTER OF AUTHORIZATION AND DECLARATION, which purported to be sent by the Real Policyholder and stated that "our bank account details which was [*sic*] provided for payment yesterday is undergoing its yearly audit and we cannot

receive any payment with that account at the moment[.] Below is our ATTORNEY bank details for payment." The letter then set out new wiring instructions – this time to a specifically identified Wells Fargo account in the name "J. Davis – Attorney at Law IOLTA." [*Id.* ¶ 13.]

The LETTER OF AUTHORIZATION AND DECLARATION contained the logo used by the policyholder in connection with its business. The LETTER OF AUTHORIZATION AND DECLARATION also included what purported to be the signatures of the policyholder's President/CEO as well as those of two other individuals believed to be representatives of the policyholder. [*Id.* ¶ 14.]

In response to the December 19, 2018 e-mail, Coface's Representative requested that the "Real Policyholder" provide Coface with a W-9 for Defendant Davis, whose IOLTA account was specifically identified in the fraudulent transmission. The Imposter Policyholder provided a W-9 in the name of "James Wendell Davis III" to Coface on December 20, 2018, which contained Davis' business address and EIN. [*Id.* ¶ 15.]

On December 21, 2018, in reliance on the fraudulent transmission, Coface transferred $3,093,085.50 by wire to the IOLTA. [*Id.* ¶ 16] Thereafter, on December 21, 24, and 27, 2018, the Imposter Policyholder made inquiries with

Coface's Representative regarding the status of the wire transfer. Coface responded that the wire had been sent as directed. [*Id.* ¶ 17.]

On December 31, 2018, the Imposter Policyholder emailed Coface's Representative again, stating that their attorney (Davis) had informed them that the payment had been received. [*Id.* ¶ 18.] That same day, however, Coface was informed that the emails with the Real Policyholder had been compromised and that, sometime after December 18, emails were being received from and directed to an email address that was identical in all respects to the email address of the Real Policyholder, with the exception that ".com" had been replaced with ".cf." [*Id.* ¶ 19.]

On January 1, 2019, Coface was informed that its own representative had also been impersonated. Specifically, the Imposter Policyholder sent an email purporting to be from Coface's Representative to the Real Policyholder in response to its inquiries regarding the status of payment and in a clear effort to delay discovery of their fraudulent scheme. The message stated, "Please note that we have received information from our account department that due to the holiday the payment will have some delay and it's going to be received in your [*sic*] on the 4th of January." [*Id.* ¶ 20.]

On January 1 and 2, 2019, Coface reported the incident to its bank, Citibank, and the Federal Bureau of Investigation, respectively. Further, Coface, through counsel, sent a cease and desist letter to Davis on January 3, 2019, informing him that Coface had discovered the fraudulent scheme and demanded that he return to Coface immediately the approximately $3.1 million obtained by fraud. [*Id.* ¶ 22 & exh. A.]

Coface was subsequently informed by its bank that Wells Fargo had credited $2,540,319.30 to Coface's account from the IOLTA, leaving a balance of $552,766.20 unaccounted for (the "Missing Funds"). [*Id.* ¶ 23.] Accordingly, on January 7, 2019, counsel for Coface attempted to contact Davis concerning the whereabouts of the Missing Funds and left a voicemail message to that effect. [*Id.* ¶ 24.]

That evening, Davis emailed counsel for Coface in response to the voicemail. [*Id.* exh. B.] In his January 7, 2019 email, Davis indicated that the $2,540,319.30 returned to Coface was done at his direction and that such funds constituted the "balance left in the [IOLTA]." He further disclosed that "about $3,500 of the money belonged to other clients."[5] [*Id.* ¶ 25.]

[5] Coface was never a client of Davis or his firm and, upon information and belief, neither was the Real Policyholder.

Davis did not offer any explanation as to what had happened to the Missing Funds or why the IOLTA would allegedly also be missing funds belonging to Davis' clients. Thus, it presently appears Defendants have also misused or misappropriated funds belonging to Davis' clients or other persons. [*Id.* ¶ 26.]

Accordingly, on January 8, 2019, counsel for Coface sent a letter to Davis demanding a "full accounting" of the Missing Funds. Specifically, Coface demanded Davis provide it with: (1) the date(s) on which any of the Missing Funds were transferred to other accounts; (2) the amount of the Missing Funds transferred; (3) the account(s) to which the money was transferred, including routing and account numbers; (4) the purpose of such transfers; and (5) to the extent any transfers were made to accounts owned or controlled by Davis, the current account balance(s). Coface provided a deadline of 3:00 PM the following day and indicated that legal action would result from a failure to comply. [*Id.* ¶ 27 & exh. C.]

To date, Davis has refused to respond to Coface's demand for a full accounting. Further, Davis has refused to return any of the Missing Funds to Coface despite its demand for the same. [*Id.* ¶ 28.] Coface has no knowledge as to whether any of the Missing Funds remain in the custody or control of one or more of the Defendants, [*Id.* ¶ 29,] although, in his portion of the Joint Preliminary

Report and Discovery Plan, Davis asserts that he kept the Missing Funds of $552,766.20 as a purported "fee" for his services as a paymaster, [D.E. 28 at 3-4.] Nonetheless, based on Davis' evasive responses and refusal to provide a full accounting or otherwise respond to Coface's demands, it is clear that Davis should be restrained from further divesting himself of funds and assets that would prevent Coface from recovering the funds that were fraudulently taken from it.

Further, Davis' refusal to provide a full accounting indicates that he may take efforts to destroy or cover up evidence of Defendants' wrongful acts. Accordingly, an order restraining Davis from destroying or altering any and all e-mails or other communications, client files, hard drives, servers, and financial and bank records is necessary to ensure Coface is not deprived access to further evidence proving Defendants' fraudulent scheme.

PROCEDURAL HISTORY

This section first summarizes the procedural posture of the instant case. Then, it will discuss the facts, procedural history, and outcome of the 2014 Action. In that case, the court adjudged Davis liable for committing fraud, and it awarded the plaintiff $299,850.00 in damages (including treble damages for violating the Georgia RICO statute) and $27,212.07 in attorneys' fees.

I. Procedural History of the Instant Case

Coface filed the initial Emergency Motion for Temporary Restraining Order and Preliminary Injunction on January 14, 2019 ("Initial Motion"), for the reasons explained above. [D.E. 2]. Davis opposed the Initial Motion by essentially arguing that Coface failed to do its due diligence and should have known it was being defrauded, yet he also failed to explain where the Missing Funds went or who directed him to disburse them. [*See generally* D.E. 7]. The Court scheduled a hearing on the Initial Motion for February 4, 2019 ("Hearing"), and Coface then filed a Motion for Expedited Discovery. [D.E. 11]. On the day of the Hearing, Davis filed a Motion to Dismiss the Verified Complaint. [D.E. 15].

At the conclusion of the Hearing, the Court denied Coface's Motion and Motion for Expedited Discovery so that it could first rule on Davis' Motion to Dismiss. [Feb. 4, 2019 H'rg Tr. at 17:1]. The Court explained that it would likely permit expedited discovery upon ruling on the Motion to Dismiss. [*Id.* at 32:22-25]. Coface responded to the Motion to Dismiss on February 14, 2019, [D.E. 21], and Davis replied on February 19, 2019, [D.E. 22]. The Parties have since exchanged initial disclosures and submitted a Joint Preliminary Report and Discovery Plan. [D.E. 28]. The Motion to Dismiss remains pending before the Court.

II. Procedural Outcome of United Community Bank's Lawsuit Against Davis and Co-Conspirators

Since exchanging initial disclosures, Coface has discovered that Davis has already been adjudicated as liable for committing fraud, Georgia RICO violations, conversion, and other misconduct comparable to the allegations Coface raises in this case. *United Community Bank v. Autumn Sunset, LLC, et al.*, Case No. SUCV2014000796, in the Superior Court of Carroll County, Georgia. [6] Both the allegations in United Community Bank's ("UCB") complaint and the undisputed material facts in the motion for summary judgment were adopted fully in the trial court's order granting summary judgment – including the fact that Davis engaged in a violation of the Georgia RICO statute.

The undisputed material facts admitted by Davis in In *United Community Bank v. Autumn Sunset, LLC, et al*. were as follows: Davis set up a sham LLC called Autumn Sunset, and then opened an account at UCB in Autumn Sunset's name ("Account").[7] Initially, the debit limit was $10,000, and Davis contacted UCB on June 3, 2014, to request that the limit be raised to $100,000. He explained that he needed a higher limit because he allegedly had three transactions that he

[6] Attached to this Motion, please find UCB's complaint (Exh. A), Davis' Answer (Exh. B), UCB's motion for summary judgment (Exh. C), and the Court's granting of summary judgment, (Exh. D).

[7] The facts as described here are the same as described in the complaint, motion for summary judgment, and final order granting summary judgment.

needed to fund, as his client was engaged to build senior centers in Atlanta. Per Davis' request, UCB raised the limit to $100,000. That same day, Davis requested that UCB initiate a Automated Clearing House ("ACH") debit in the amount of $100,000 from an account purportedly held by "CreditPay" at Wells Fargo into the Account at UCB. To do so, he submitted a document purporting to be an email correspondence from CreditPay to Davis and his client dated June 2, 2014, in which CreditPay authorized the debit pursuant to a "Standing Authorization" of an ACH authorization that CreditPay had executed. Based on these representations, UCB initiated the transaction on June 3, 2014.

On June 5, 2014—two days later—Davis initiated a wire transfer in the amount of $100,000 from the Account to an account held by Green Investment in Calgary, Canada. In accordance with the request, UCB initiated the international wire transfer on June 5, 2014, which left $50 in the Account.

On June 20, 2014, however, Wells Fargo notified UCB that the ACH debit was being returned because the customer holding the account *had not authorized it*. As a result, the ACH debit was charged back to UCB, overdrawing the Account by $99,950. Upon receiving evidence from Wells Fargo that the ACH transfer was not authorized, UCB requested that TD Canada Trust return the Wire Transfer. The request was declined.

UCB then requested that Davis return the money. Davis responded with similar platitudes as this case, including "this is all my responsibility" and that he "needed to make it right as quickly as possible." He never returned the funds and ceased communicating with UCB until UCB filed suit in the Superior Court of Carroll County.

In response to the UCB's complaint, Davis answered "NEITHER ADMIT NOR DENY" no less than 51 times without any qualification.[8] He also failed to respond to UCB's two sets of requests for admission. Accordingly, UCB moved for summary judgment, which the court granted based on the evidence before it. As pertinent to this case, the court specifically found:

- "The ACH Authorization was false and fraudulent." (Exh. D, ¶ 15).
- "Through the submission of the fraudulent ACH Authorization to UCB and subsequent Wire Transfer of those funds out of the Account, Davis engaged in a pattern of activity intended to deceive and defraud UCB (the "ACH Debit and Wire Fraud Scheme"). (*Id.* ¶ 16).
- "Davis presented the fraudulent ACH Authorization with the intent and purpose of deceiving and defrauding UCB." (*Id.* ¶ 19).

[8] *See* Exh. B ¶¶ 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 42, 44, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 76, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, & 99.

- "Davis initiated the Wire Transfer with the intent and purpose of deceiving or defrauding UCB." (*Id.* ¶ 20).
- "Davis knew these statements were false and misleading and made them with the intent to deceive and defraud UCB as part of the ACH Debit and Wire Fraud Scheme." (*Id.* ¶ 25).
- "The pattern of racketeering activity consisted of various acts of theft and fraud and Davis knowingly (and with specific intent) conducted the ACH Debit and Wire Fraud Scheme to defraud UCB by engaging in a pattern of racketeering activity." (*Id.* ¶ 26).[9]

In its grant of summary judgment, the court awarded UCB $299,850.00 in damages, which included treble damages for the Georgia RICO violation, plus attorneys' fees and costs. (*Id.* at 6). It appears that Davis still has not paid the damages awarded by the court, as there is now an ongoing garnishment action against him by UCB. *See generally United Community Bank v. Davis and J. Davis – Attorney at Law, LLC*, case no. STCV2016000147.[10]

[9] The state court's conclusion of facts that Davis has engaged in egregious misconduct challenges the Court's reasoning for proceeding with caution in issuing a temporary restraining order. [*See* Feb. 4, 2019 Hr'g Tr. at 32:5-8 ("So it is better to not be a sting -- if it is -- if Mr. Davis is correct and it has nothing to do with any misdeed on his part, I would think he would want that corrected right away.").]

[10] The docket is attached hereto as Exh. E.

The 2014 Action bears striking similarities to the instant case. Here, Davis continues to refuse to disclose the whereabouts of the Missing Funds or agree to return them to Coface. He acknowledged only that he kept the Missing Funds for himself as a "Fee" that amounted to one-sixth of the amount Davis contends he received into the IOLTA in connection with his role as a "paymaster."

MEMORANDUM OF LAW AND CITATION OF AUTHORITIES

Given the similarities in fraud between established facts in the 2014 Action and the underlying case here, the extraordinary relief of a temporary restraining order ("TRO") is warranted to prevent Davis from concealing funds or divesting himself of assets, including those wrongfully obtained from Coface, such that it would prevent Coface from achieving a full recovery. As noted above, there is an ongoing garnishment case derived from the 2014 case, indicating Davis' penchant for immediately divesting himself of funds and rendering himself judgment proof. This is a horn book example of extraordinary circumstances warranting extraordinary relief.

"To be entitled to a TRO, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the TRO is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the TRO would inflict on the non-movant; and (4) the TRO would serve the public interest." *Ingram v. Ault*, 50

F.3d 898, 900 (11th Cir. 1995). Additionally, "[i]t is state law that determines whether injunctive relief is available for the given state cause of action or remedy." *Cochran v. Marshall*, case no. 8:17-CV-1700-T-36TGW, 2018 WL 2688784, at *3 (M.D. Fla. Apr. 19, 2018); *see also Noventa Ocho, LLC v. PBD Properties LLC*, 284 Fed. App'x 726, 728 & n.4 (11th Cir. 2008) (applying state law to determine whether injunctive relief is warranted).

This case bears striking resemblance to *Hennessy Cadillac, Inc. v. Performance Automotive Management, Inc.*, wherein this Court granted an emergency motion for a temporary restraining order to freeze accounts controlled by an attorney. Case no. 1:15-CV-2693-AT, 2015 WL 13389781 (Totenberg, J.). In *Hennessey Cadillac*, the plaintiffs filed a verified complaint that, as here, established that "certain accounts (collectively, the 'Escrow Accounts') were established into which funds were deposited to be held" for the benefit of car dealerships and their customers. *Id.* at * 1. The plaintiffs "offered evidence that the funds in the Escrow Accounts" were "being radically dissipated for purposes other than those agreed to." *Id.* Based on this, the plaintiffs "face[d] a real threat of irreparable injury." *Id.* at *2. Unlike the instant case, the attorney managing those Escrow Accounts was committed involuntarily for psychiatric treatment. *Id.*

Nonetheless, the Court found "that the likely harm from the status quo order [plaintiffs sought was] outweighed by the threatened injury." *Id.* Finally, the Court determined that "freezing the accounts at issue and ordering the other relief requested will not adversely affect the public interest." *Id.*

This instant case is comparable, as discussed at length below. Coface is very likely to succeed on the merits, which is substantiated by Davis' own statements in filings with this Court. [*See generally* D.E. 28.] Further, like the plaintiffs in *Hennessy Cadillac*, Coface will face irreparable injury if Davis is not prevented from divesting himself of funds and assets, such that his wealth is allowed to dissipate prior to judgment. The harm to Coface substantially outweighs any potential harm to Davis because Coface only seeks the Missing Funds, to which Davis is not entitled. Finally, the public interest is best served by granting equitable relief because Davis' conduct undermines the public trust in the legal profession.

1. Substantial Likelihood on the Merits

The first inquiry is a determination as to whether Coface is likely to succeed on the merits. As discussed and verified in the Complaint, Davis has already been forced to return $2,540,319.30 of the funds to Coface. Further, Davis has acknowledged to receiving the funds and disbursing them. [D.E. 28 at 3-4.]

Accordingly, Davis' and Doe Defendants' culpability has already been established. [*Id.* exh. B.] Further, Davis has been found liable previously for substantially similar conduct in the 2014 Action, which makes it all the more likely that Coface will prevail in this case. The only difference here is that he attempts to hide his wrongdoing behind the auspices of his law practice.

Thus, it cannot be disputed that Coface is legally entitled to the remaining $552,766.20 of the funds fraudulently obtained and that these Missing Funds must be returned to it. To the extent that Davis disputes this fact, his arguments are belied by both his prior statements and his return of a portion of the funds that Defendants fraudulently obtained from Coface in the first instance.

2. Necessary to Prevent Irreparable Harm

Coface recognizes that, generally, injunctive relief will not be granted if money damages are sufficient to make the plaintiff whole. However, under Georgia law, injunctive relief is nevertheless warranted here – even where the plaintiff seeks money – if the "property [, i.e., the Missing Funds,] is obtained by fraudulent representations." *See Mitchell v. Hayden, Stone, Inc.*, 225 Ga. 711, 714 (1969); *Kennedy v. W.M. Sheppard Lumber Co., Inc.*, 261 Ga. 145, 146 n.2 (1991) (reviewing *Mitchell* and explaining that, in that case, the defendant would have been "'unable to respond to a judgment in the sum of one million dollars.' Thus, an

interlocutory injunction preventing Mitchell from disposing of his assets, which allegedly included the proceeds of the sale of stolen IBM stock, was in order.").

This is not a case simply seeking money damages as a result of an alleged negligent act, breach of contract, or breach of fiduciary duty. Rather, Coface's funds were obtained through fraud. The amount due to be returned to Coface, exclusive of interest, attorney's fees, and the other relief sought in Coface's Verified Complaint, is readily ascertainable; it is the delta between what was taken by fraud and what was returned upon Coface's discovery of the fraudulent scheme. Additionally, it is evident that Davis' misuse and misappropriation of funds deposited into the IOLTA is not an isolated incident. Indeed, Davis has admitted in this case that some $3,500 of client funds had been misappropriated out of the now-closed Davis IOLTA account that also contained Coface's funds. [D.E. 1, exh. B.] The fact that the IOLTA account was short no less than approximately $560,000 is proof positive of the fact that Davis has misappropriated and will continue to misappropriate the funds taken from Coface in the absence of the full force and effect of a court order.

Further, in the 2014 Action, Davis was adjudged liable for committing fraud and violating the Georgia RICO statute, for which he now faces a garnishment action. Extraordinary steps are necessary to prevent the same peril from befalling

Coface. The fact that Davis has successfully concealed fraudulently obtained funds in previous cases and that he could do the same in this case calls to mind the holding in *Hennessy Cadillac*, in which this Court granted a temporary restraining order and found potential irreparable harm by an attorneys' mismanagement of funds. Thus, a temporary restraining order and preliminary injunction are warranted to prevent Davis from further concealing funds or divesting himself of funds and assets that would deprive Coface from the ability to recover the remaining funds that Davis has already acknowledged is owed to Coface.

3. Threatened Injury Outweighs Harm to Davis

Davis is not entitled to the remaining $552,766.20 of Coface's funds that he appears to control. Instead, his own wealth has been aggrandized by his misconduct. He would not be harmed by an order that prevents him from divesting himself of $552,766.20 in funds or assets because he is not entitled to such money in the first instance. Accordingly, Davis is not threatened by any injury, as he is culpable for taking the exact amount that Coface seeks to enjoin him from expending.

Finally, it is clear that Coface faces risk of permanent harm. Davis has a currently active garnishment case against him that was derived out of the 2014 Action and his failure to pay thereon. The threatened injury to Coface far

outweighs the risk to Davis, as any injury Davis sustains in this action is self-inflicted.

4. TRO Will Serve the Public Interest

In the legal profession, there is no greater public interest than the public's faith that legal professionals will ethically and diligently execute their responsibilities to the community. *See Hull v. Celanese Corp.*, 513 F.2d 568, 572 (2d Cir. 1975) ("The preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount."); *Emle Industries, Inc. v. Patenex, Inc.*, 478 F.2d 562, 570 (2d Cir. 1973) ("The dynamics of litigation are far too subtle, the attorney's role in that process is far too critical, and the public's interest in the outcome is far too great to leave room for even the slightest doubt concerning the ethical propriety of a lawyer's representation in a given case."). This is particularly so in the areas of law that Davis purports to practice: probate administration, trusts and estates, custody issues, juvenile representation, family and adoption law, and others. (*See* Exh. F.)

The Georgia Supreme Court recognizes an important interest in ensuring that attorneys conduct themselves properly in the context of managing a client's funds. In *Matter of Kendall*, 269 Ga 28 (1994), the Georgia Supreme Court suspended an attorney for three years for "failing to maintain properly funds held

in trust, and failing, after several demands, to render accounts of those funds." *Id.* at 29. Indeed, as the Court described, "We agree with the special master that the aggravating factors in this case consist of the fact that the client appears to have been of advanced age and near incompetence at the time she retained Kendall, and thus was vulnerable to a lawyer's misconduct; and the fact that Kendall's failure to properly account for and manage his client's funds extended over more than three years." As noted above, Davis practices probate administration, which necessarily involves the vulnerable elderly and legally enforcing *in trust* their wishes once they pass.

Davis' misconduct – both here and in the 2014 case – undermines that trust. He admitted to misappropriating his client's funds amounting to $3,500, noting that it had been included in the now-closed IOLTA account that once contained the Missing Funds. He further has been found liable for a fraudulent ACH authorization and wire transfer scheme, such that his actions violated the Georgia RICO statute. (*See generally* Exh. D). Given that Davis' misconduct undermines the public trust in the legal process and profession, the public interest is best served by restraining him from utilizing funds that he acquired through fraud, or from divesting himself of his assets and funds to prevent Coface from recovery.

CONCLUSION

Based on the foregoing and the prior adjudication against Davis for fraud and RICO violations, it is clear that a temporary restraining order and preliminary injunction are warranted to prevent Davis from divesting himself of funds and assets in favor of his co-conspirators, such that he would prevent Coface from obtaining a full recovery of the assets fraudulently taken from it. Coface requests a temporary restraining order and preliminary injunction that prevents Davis from divesting himself of or transferring money from any accounts over which he has dominion of funds which would be used to satisfy the inevitable judgment against him of $552,766.20. Additionally, an order restraining Davis from destroying or altering any and all e-mails or other communications, client files, hard drives, servers, and financial and bank records is necessary to ensure Coface is not deprived access to further evidence proving Defendants' fraudulent scheme.

Respectfully submitted this 28th day of March, 2019.

CARLTON FIELDS, P.A.

/s/ Christopher B. Freeman

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RULE 65(B) CERTIFICATION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, I hereby certify that, contemporaneously with the filing hereof, efforts are being made to serve Defendant J. Davis – Attorney at Law, LLC and its counsel, with a copy of Plaintiff's Renewed Emergency Motion for a Temporary Restraining Order or Preliminary Injunction via hand-delivery. Defendant is also being served via U.S. Mail and e-mail. Additional notice to Defendant of Plaintiff's TRO Motion should not be required because providing J. Davis – Attorney at Law, LLC with further notice would defeat the very purpose of a TRO in this instance by providing it with a substantial opportunity to transfer or hide the funds that were obtained from Plaintiff Coface by fraud.

/s/ Christopher B. Freeman
Christopher B. Freeman
Georgia Bar No. 140867

LOCAL RULE 7.1(D) CERTIFICATION

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared with Times New Roman, 14 point.

/s/ Christopher B. Freeman
Christopher B. Freeman
Georgia Bar No. 140867

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the within and foregoing document, along with any attachment(s), with the Clerk of Court using the CM/ECF system, which will automatically send electronic notice upon all counsel of record.

This 28th day of March, 2019.

/s/ *Christopher B. Freeman*
Christopher B. Freeman
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