

1

QA 3.10.009

1 NOTICE IS HEREBY GIVEN THAT:

2 Jon Eardley, as a party and interested party, and Britney J. Spears, both to the  
3 extent allowed by law and the operation of law; and consistent with the lawful orders  
4 of this court and this court's appellate and original jurisdiction, hereby appeal in their  
5 entirety the orders of Permanent Conservatorship over the person and the estate,  
6 dated January 5, 2009; and the Letters of Conservatorship over the person and the  
7 estate, dated January 9, 2009. Attached and incorporated herein as Exhibit 1 are true  
8 and correct copies of the orders of Permanent Conservatorship, dated January 5,  
9 2009 over the person and the estate. Attached and incorporated herein as Exhibit 2  
10 are true and correct copies of the Letters of Conservatorship, dated January 9, 2009  
11 over the person and the estate. Further, the Temporary Restraining Order issued  
12 against Jon Eardley, dated January 30, 2009 is also appealed in its entirety. Attached  
13 and incorporated herein as Exhibit 3 is a true and correct copy of the Temporary  
14 Restraining Order, dated January 30, 2009.  
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22 Date: March 6, 2009

By: 

23 Jon Eardley, Esq.  
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## INTRODUCTION

The courts of this state have recognized that it is fundamental law to seek the assistance of the court of appeal, particularly in complex cases and where prophylactic intervention is necessary. The right to seek assistance of an appellate court whether by appeal or by writ is dependent upon the person being aggrieved, injuriously affected or prejudiced by the challenged judgment order or decree. In this case, there is no question that Mr. Eardley, Ms. Spears, and the state of California are injuriously effected by the orders of the lower court upon the presentation, without any notice whatsoever, of the conservatorship's application for a Temporary Restraining Order; and the Permanent Orders of Conservatorship over the person and estate of Britney J. Spears. ( Estate of Colton (1912) 164 Cal. 1, 5 [127 P. 643]; Guardianship of Pankey (1974) 38 Cal.App.3d 919, 925 [113 Cal.Rptr. 858]; Mize v. Crail (1973) 29 Cal.App.3d 797, 805 [106 Cal.Rptr. 34]; Edwards v. City of Santa Paula (1956) 138 Cal.App.2d 375 [292 P.2d 31].)

The application for a Temporary Restraining Order presented "facts" entirely predicated upon speculation, hearsay, and innuendo. Essentially, the conservatorship obtained an order barring constitutionally protected speech and mischaracterized the interviewing of witnesses as unlawful associations, even though such conduct as alleged is consistent with the California Probate Code. Taken to its logical extreme, every lawyer in the United States Department of Justice would be "tainted" for merely obtaining information from witnesses, informants, defendants, co-defendants

1 and the like; and for maintaining a political and legal viewpoint that is inconsistent  
2 with the power of entrenched and self-serving economic interests.

3  
4 Such a contention is untenable in an ordered system of liberty, much less one  
5 where its principal constituent is the Bill of Rights. To succumb to this level of  
6 materialistic perfidiousness is inherently inconsistent with the belief that the United  
7 States is worth fighting for in the preservation of liberties guaranteed to all by the  
8 Constitution, irrespective of wealth, public perception, celebrity, or status. These  
9 rights are not held exclusively by banks, international financiers, and Wall Street  
10 corporate interests, but are by constitutional and divine design the possession of  
11 every American man and woman.  
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14  
15 1. THE LOWER COURT IS DIVESTED OF SUBJECT MATTER  
16 JURISDICTION AS A RESULT OF THE FAILURE TO PROVIDE THE  
17 CONSERVATEE WITH THE MANDATORY 5 DAY NOTICE REQUIRED  
18 BY PRINCIPLES OF DUE PROCESS AND CALIFORNIA LAW.  
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22 A. Without The Required 5 Day Notice To The Conservatee, The  
23 Conservatorship Is A Jurisdictional Nullity That Cannot Support The  
24 Issuance Of A TRO Against Mr. Eardley.  
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26  
27 Attached hereto As Exhibit 4 is the declaration of U.C.L.A. Law Professor  
28 NOTICE OF APPEAL; ELECTION TO PROCEED PURSUANT TO  
CALIF. RULE OF COURT RULE 8.124

1 William McGovern, filed in the above captioned case. The declaration and its  
2 accompanying material demonstrate why the conservatorship is a nullity as a matter  
3 of law. The declaration of Professor McGovern is incorporated herein by reference  
4 for the establishment of the lack of the conservatorship's standing to initiate a  
5 restraining order proceeding against Mr. Eardley.  
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9 B. The Points And Authorities Contained Therein Amply Demonstrate The  
10 Requirement Of The 5 Day Notice And That The Supporting Declaration Of  
11 Lynn Spears Is Not Adequate For The Dispensing With Of The Required 5  
12 Day Notice.  
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15 The supporting declaration of Lynn Spears does not meet the legal sufficiency  
16 requirement for the disposing with of the required 5 day notice mandated by  
17 California Law. The McGovern declaration establishes that the 5 day notice  
18 requirement has never been met in this case and thus the conservatorship case is  
19 without jurisdiction and therefore lacks standing to prosecute a TRO against Mr.  
20 Eardley. Said Declaration is incorporated herein by reference for the establishment  
21 of the lack of standing to initiate a restraining order proceeding against Mr. Eardley.  
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24 Consistent with the McGovern declaration is attached herein as Exhibit 5 the  
25 letter from the California Department of Justice, Office of the Attorney General. The  
26 letter, among other things, indicates that Ms. Spears was entitled to trial prior to  
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1 being declared a permanent conservatee. She has never even received a hearing  
2 consistent with due process or the California Probate Code.  
3  
4

5 2. BY THE CONSERVATORSHIP'S OWN ADMISSION, THE FEDERAL  
6 REMOVAL HAD THE EFFECT OF DIVESTING THE STATE COURT OF  
7 JURISDICTION AND ALL SUBSEQUENT ORDERS FROM THAT DATE  
8 FORWARD ARE INVALID FOR LACK OF SUBJECT MATTER  
9 JURISDICTION.  
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13 There are many other reasons why the conservatorship is invalid. However, one  
14 of the most important and salient reasons relates to the jurisdiction of the state  
15 conservatorship court on February 14, 2008, *after* the case was removed to federal  
16 court at exactly 2:03 P.M. PST. The conservatorship is well aware of this fatal error  
17 on its part and has disseminated a campaign of misinformation in its pleadings filed  
18 with the state court and has utilized a campaign of misinformation to profit from its  
19 knowing violations of federal law.  
20  
21

22 In the recent papers to obtain a TRO against Mr. Eardley, the conservatorship  
23 recites the time line of the proceedings in state court on February 14, 2008 with  
24 respect to the federal removal notice filed at exactly 2:03 P.M. PST in the United  
25 States District Court, Central District of California. The conservatorship lawyers  
26 proceeded at 2:04 P.M. PST to conclude the hearing to extend the temporary  
27

1 conservatorship over Ms. Spears. According to the papers recently filed to obtain the  
2 TRO against Mr. Eardley, the conservators recite the timeline of that day:  
3  
4

5 “The Court completed the February 14, 2008 hearing at about 2:04 p.m.

6 Immediately after that hearing, the Court signed the Orders extending the Letters  
7 and issued new Letters of Temporary Conservatorship of the Person and the  
8 Estate.”  
9

10  
11 This knowing admission of the timeline, accompanied by the  
12 conservatorship’s other statements, also contained in the restraining order papers,  
13 reveals its knowledge that the conservatorship was, is, and always will be a nullity,  
14 as a matter of law. The statement, contained in footnote number 2 of the recent  
15 restraining order papers, states as follows:  
16  
17

18  
19 “The timing of the Notice of Removal supports an inference that it was filed  
20 for the purpose of derailing the conservatorship proceedings and, in particular,  
21 in an attempt to divest the Court of jurisdiction to extend the conservatorship  
22 past February 14, 2008, with the intended result of the expiration of the  
23 conservatorship on that day. If Mr. Eardley had filed the Notice of Removal  
24 with the court a half hour earlier on February 14, 2008, the Court would have  
25  
26 been unable to extend the conservatorship, and Mr. Spears would not have had  
27

1 enough time to seek relief from the district court to extend the conservatorship  
2 before it expired later that day.”  
3  
4

5 Federal case law is clear on this point of jurisdiction. In the interim time  
6 period that occurs between the filing of the federal removal papers in federal court  
7 and the time of the filing of the copy of the removal notice in state court, all  
8 jurisdiction resides in the federal court, and thus the order by the Commissioner  
9 extending the conservatorship was invalid as a matter of law. As a matter of law, the  
10 conservatorship was extended in direct contravention of federal law, thus, according  
11 to the conservatorship’s own admissions, the conservatorship is invalid, as all  
12 subsequent orders extending the temporary conservatorship were and are invalid.  
13

14 In Barrett v. Southern Railway Company, 68 F.R.D. 413 (E.D.S.C. 1975), the  
15 court stated as follows:  
16

17 “This court adopts the reasoning set forth in 1A Moore’s Federal Practice P.  
18 0.168 (3.-8 p. 509-510):  
19

20 When a copy of the removal petition is filed in the state court this operates to  
21 ‘effect the removal’ as of the date of filing the original removal petition in the federal  
22 court; and in the event of conflicting proceedings during the interim period the  
23 federal jurisdiction predominates.” Id., at 419-420.  
24  
25  
26  
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1 The United States District Court for the District of North Dakota, in Hornung  
2 v. Master Tank & Welding Co., 151 F. Supp. 169 (D.N.D.1957), discussed the effect  
3 of federal and state jurisdiction during this time interval as follows:  
4

5 "The state court acquired jurisdiction of the present action when the Summons  
6 and Complaint were duly served upon the defendants in accordance with the  
7 Nonresident Motorist Statute. That jurisdiction was active until the removal was  
8 finally effected by the filing of a copy of the Petition for Removal with the state  
9 court clerk. 28 U.S.C.A. § 1446(e). It then became passive or dormant, pending  
10 disposition of the case in federal court. Doerr v. Warner, 1956, 247 Minn. 98, 76  
11 N.W.2d 505. Federal jurisdiction vested for all purposes when the Petition was filed  
12 in this court, the later notice thereof and the filing of a copy thereof in state court  
13 operating retroactively to 'effect the removal' as of the date of filing the Petition in  
14 federal court. Shenandoah Chamber of Progress v. Frank Associates, D.C.Pa.1950,  
15 95 F. Supp. 719.  
16  
17  
18

19 "This all indicates that Federal jurisdiction exists even before completion of  
20 the removal proceedings in State court. The delay between the petition in Federal  
21 court and filing in State court is within the purview of 'promptly' as set forth in §  
22 1446. Master Equipment, Inc. v. Home Ins. Co., 342 F. Supp. 549, 552  
23 (E.D.Pa.1972)." Hornung at 172.  
24  
25

26 For this reason and many others, the conservators are well aware of the  
27 invalidity of the conservatorship as a matter of law. When this is coupled with the

1 additional fact that she never received a jury trial, or even a hearing in court before  
2 her constitutional rights were permanently stripped away from her by the Orders of  
3 Permanent Conservatorship, it is no wonder why the conservatorship would resort to  
4 anything to keep the truth silenced.  
5

6  
7 3. THE CONSERVATORSHIP OVER THE PERSON AND THE ESTATE OF  
8 BRITNEY J. SPEARS IS IN DIRECT CONFLICT WITH VARIOUS  
9 PROVISIONS OF § 18 OF THE UNITED STATES CODE AND  
10 THEREFORE CANNOT SUPPORT A TRO OVER MR. EARDLEY.  
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14 The conservatorship over Ms. Spears is in direct contravention of federal law and  
15 therefore cannot support a TRO as to Mr. Eardley; a conservatorship over the person  
16 and the estate, when the conservatee is engaged in labor of any kind, as a matter of  
17 federal law, violates 18 U.S.C. § 1589, et seq. The applicable statutes state as  
18 follows:  
19

20 **18 U.S.C. § 1589**  
21  
22

23 Whoever knowingly provides or obtains the labor or services of a person—  
24

25 (1) by threats of serious harm to, or physical restraint against, that person or  
26 another person;  
27

28 NOTICE OF APPEAL; ELECTION TO PROCEED PURSUANT TO  
CALIF. RULE OF COURT RULE 8.124

1  
2 (2) by means of any scheme, plan, or pattern intended to cause the person to  
3 believe that, if the person did not perform such labor or services, that person or  
4 another person would suffer serious harm or physical restraint; or  
5

6  
7 (3) by means of the abuse or threatened abuse of law or the legal process,  
8  
9  
10 shall be fined under this title or imprisoned not more than 20 years, or both. If death  
11 results from the violation of this section, or if the violation includes kidnapping or an  
12 attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated  
13 sexual abuse, or an attempt to kill, the defendant shall be fined under this title or  
14 imprisoned for any term of years or life, or both.  
15  
16

17  
18 **18 U.S.C. § 1591**  
19

20 Whoever knowingly—  
21  
22

23 (1) in or affecting interstate or foreign commerce, or within the special maritime and  
24 territorial jurisdiction of the United States, recruits, entices, harbors, transports,  
25 provides, or obtains by any means a person; or  
26  
27

1 (2) benefits, financially or by receiving anything of value, from participation in a  
2 venture which has engaged in an act described in violation of paragraph (1), knowing  
3 that force, fraud, or coercion described in subsection (c)(2) will be used to cause the  
4 person to engage in a commercial sex act, or that the person has not attained the age  
5 of 18 years and will be caused to engage in a commercial sex act, shall be punished  
6 as provided in subsection (b).  
7  
8

9  
10 **18 U.S.C. § 1592**  
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12  
13 (a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any  
14 actual or purported passport or other immigration document, or any other actual or  
15 purported government identification document, of another person—  
16

17  
18 (1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591,  
19 or 1594(a);  
20

21  
22 (2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or  
23

24 (3) to prevent or restrict or to attempt to prevent or restrict, without lawful  
25 authority, the person's liberty to move or travel, in order to maintain the labor or  
26 services of that person, when the person is or has been a victim of a severe form of  
27

1 trafficking in persons, as defined in section 103 of the Trafficking Victims Protection  
2 Act of 2000, shall be fined under this title or imprisoned for not more than 5 years, or  
3 both.  
4

5 (b) Subsection (a) does not apply to the conduct of a person who is or has been a  
6 victim of a severe form of trafficking in persons, as defined in section 103 of the  
7 Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident  
8 to, that trafficking.  
9

10 Additional provisions of the TVPA provide for mandatory restitution (18  
11 U.S.C. § 1593) and forfeiture (18 U.S.C. § 1594(b)), criminalize attempt (18 U.S.C.  
12 § 1594(a)), and give victims an avenue for civil lawsuits (18 U.S.C. § 1595).  
13

14 Counsel is informed and believes that an enhancing factor is that the  
15 conservatorship has obtained a large “key man” policy on Ms. Spears that ostensibly  
16 required her to be a “conservatee” for its issuance; or in the alternative that she was  
17 informed of such an unlawful justification for her continued status as a conservatee.  
18 Further the conservatorship, by and through the testimony of James Spears, co-  
19 conservator, is intent on removing her from the United States for commercial  
20 purposes.  
21  
22

23 When a conservatorship over the estate and the person, as in this case, exists in  
24 tandem, each and every prong of 18 U.S.C. § 1589 is satisfied. The fact that the  
25 conservatorship is authorized by state law is of no moment under the federal statute  
26 because pursuant to 18 U.S.C. § 1589 (3) the abuse of state law is inherent in the  
27

1 plain meaning of the statute, but when coupled with the jurisdictional violations  
2 stated above and the justification of the need for the status of a conservatee to  
3 comply with unlawful provisions of an insurance policy that is inherently against  
4 public policy, federal law is even more significantly violated. Further, the  
5 transportation of the person in interstate commerce, while the conservatorship over  
6 the estate is in place provides financial gain to all involved, and therefore 18 U.S.C.  
7 §§ 1591 and 1592 are violated.  
8

9  
10 Irrespective of the disbelief that may, at first impression, strike the  
11 conservators, the federal statutes are clear and unequivocal in their mandate. Ms.  
12 Spears is not incompetent; she is not gravely disabled by the direct testimony on  
13 February 23, 2009 of co-conservator James Spears; and she should no longer be  
14 subject to a conservatorship over the person and estate, thereby requiring, among the  
15 myriad of other reasons heretofore raised, the dismissal of the TRO over Mr.  
16 Eardley.  
17

18  
19 From the testimony of the co-conservator James Spears and other related facts,  
20 the underlying premise of the conservatorship of Ms. Spears rests upon two pillars  
21 that are invidious to California and federal law:  
22

- 23 1) As a matter of law, forced labor by a conservatee, who is by  
24 definition gravely disabled and/or incompetent; and  
25 2) Surveillance;  
26  
27

1 As in the instant case, the "nanny" eavesdropped on telephone calls and other  
2 communications prohibited by the co-conservator James Spears and reported said  
3 communications to the co-conservator, and Ms. Spears cell phone was even further  
4 restricted and taken away from her altogether, thus preventing her from contacting a  
5 legal representative of her own choosing. To this extent, the paradigm of the  
6 conservatorship is reminiscent of the principal mechanism of restricted and  
7 controlled labor, as elucidated in Solzhenitsyn's masterpiece *The Gulag Archipelago*.  
8 Parallel to this historical and legal narrative, Solzhenitsyn follows the typical course  
9 of a *zek* (person who engages in freedom of expression) through the Gulag system,  
10 starting with arrest, show trial and initial internment; and transport to the  
11 "archipelago". In the instant case, it is worth noting that there has not even been a  
12 "show trial" for Ms. Spears.

13  
14 This court should not be dissuaded from recognizing the applicability of the  
15 Gulag paradigm because the living circumstances and material accommodations of  
16 every *zek* differed consistent with their stature in society. For instance, it was within  
17 the Gulag system where Andrei Sakharov and his team of prisoner-scientists  
18 developed the hydrogen bomb, among other Soviet scientific breakthroughs. As  
19 well, many artists, writers, musicians, philosophers, lawyers and other free thinkers  
20 were controlled in the same manner.

1 Nevertheless, just as in the instant case, communication with a legal  
2 representative of the person's own choosing was strictly prohibited.<sup>1</sup> By effect, a  
3 TRO without notice has been issued against Mr. Eardley for no legitimate reason  
4 whatsoever upon the conservatorship's application, which is entirely and erroneously  
5 based upon speculation and innuendo.  
6

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9 4. BECAUSE THE CONSERVATORSHIP HAS NOTED ITS "FIRST  
10 ANNIVERSARY" THE PROVISIONS OF 18 U.S.C. § 1961 ARE  
11 APPLICABLE.  
12

13  
14 18 U.S.C. § 1961 states as follows:

15 As used in this chapter—

16 (1) "racketeering activity" means (A) any act or threat involving murder,  
17 kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene  
18 matter, or dealing in a controlled substance or listed chemical (as defined in  
19 section 102 of the Controlled Substances Act), which is chargeable under State  
20 law and punishable by imprisonment for more than one year; (B) any act which is  
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22

23  
24 \_\_\_\_\_  
25 <sup>1</sup> Finished in 1968, The Gulag Archipelago was microfilmed and smuggled out to  
26 Solzhenitsyn's main legal representative, Dr Kurt Heeb of Zürich, to await publication (a later  
27



1 indictable under any of the following provisions of title 18, United States Code:  
2 Section 201 (relating to bribery), section 224 (relating to sports bribery), sections  
3 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from  
4 interstate shipment) if the act indictable under section 659 is felonious, section  
5 664 (relating to embezzlement from pension and welfare funds), sections 891–  
6 894 (relating to extortionate credit transactions), section 1028 (relating to fraud  
7 and related activity in connection with identification documents), section 1029  
8 (relating to fraud and related activity in connection with access devices), section  
9 1084 (relating to the transmission of gambling information), section 1341  
10 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344  
11 (relating to financial institution fraud), section 1425 (relating to the procurement  
12 of citizenship or nationalization unlawfully), section 1426 (relating to the  
13 reproduction of naturalization or citizenship papers), section 1427 (relating to the  
14 sale of naturalization or citizenship papers), sections 1461–1465 (relating to  
15 obscene matter), section 1503 (relating to obstruction of justice), section 1510  
16 (relating to obstruction of criminal investigations), section 1511 (relating to the  
17 obstruction of State or local law enforcement), section 1512 (relating to  
18 tampering with a witness, victim, or an informant), section 1513 (relating to  
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26 paper copy, also smuggled out, was signed by Heinrich Böll at the foot of each page to prove  
27 against possible accusations of a falsified work).

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1 retaliating against a witness, victim, or an informant), section 1542 (relating to  
2 false statement in application and use of passport), section 1543 (relating to  
3 forgery or false use of passport), section 1544 (relating to misuse of passport),  
4 section 1546 (relating to fraud and misuse of visas, permits, and other  
5 documents), **sections 1581–1592 (relating to peonage, slavery, and trafficking**  
6 **in persons).**,[1] section 1951 (relating to interference with commerce, robbery, or  
7 extortion), section 1952 (relating to racketeering), section 1953 (relating to  
8 interstate transportation of wagering paraphernalia), section 1954 (relating to  
9 unlawful welfare fund payments), section 1955 (relating to the prohibition of  
10 illegal gambling businesses), section 1956 (relating to the laundering of monetary  
11 instruments), section 1957 (relating to engaging in monetary transactions in  
12 property derived from specified unlawful activity), section 1958 (relating to use  
13 of interstate commerce facilities in the commission of murder-for-hire), section  
14 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and  
15 2260 (relating to sexual exploitation of children), sections 2312 and 2313  
16 (relating to interstate transportation of stolen motor vehicles), sections 2314 and  
17 2315 (relating to interstate transportation of stolen property), section 2318  
18 (relating to trafficking in counterfeit labels for phonorecords, computer programs  
19 or computer program documentation or packaging and copies of motion pictures  
20 or other audiovisual works), section 2319 (relating to criminal infringement of a  
21 copyright), section 2319A (relating to unauthorized fixation of and trafficking in  
22

1 sound recordings and music videos of live musical performances), section 2320  
2 (relating to trafficking in goods or services bearing counterfeit marks), section  
3 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),  
4 sections 2341–2346 (relating to trafficking in contraband cigarettes), sections  
5 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological  
6 weapons), sections 229–229F (relating to chemical weapons), section 831  
7 (relating to nuclear materials), (C) any act which is indictable under title 29,  
8 United States Code, section 186 (dealing with restrictions on payments and loans  
9 to labor organizations) or section 501 (c) (relating to embezzlement from union  
10 funds), (D) any offense involving fraud connected with a case under title 11  
11 (except a case under section 157 of this title), fraud in the sale of securities, or the  
12 felonious manufacture, importation, receiving, concealment, buying, selling, or  
13 otherwise dealing in a controlled substance or listed chemical (as defined in  
14 section 102 of the Controlled Substances Act), punishable under any law of the  
15 United States, (E) any act which is indictable under the Currency and Foreign  
16 Transactions Reporting Act, (F) any act which is indictable under the  
17 Immigration and Nationality Act, section 274 (relating to bringing in and  
18 harboring certain aliens), section 277 (relating to aiding or assisting certain aliens  
19 to enter the United States), or section 278 (relating to importation of alien for  
20 immoral purpose) if the act indictable under such section of such Act was  
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1 committed for the purpose of financial gain, or (G) any act that is indictable under  
2 any provision listed in section 2332b (g)(5)(B);

3  
4 (2) "State" means any State of the United States, the District of Columbia, the  
5 Commonwealth of Puerto Rico, any territory or possession of the United States,  
6 any political subdivision, or any department, agency, or instrumentality thereof;

7  
8 (3) "person" includes any individual or entity capable of holding a legal or  
9 beneficial interest in property;

10 (4) "enterprise" includes any individual, partnership, corporation, association, or  
11 other legal entity, and any union or group of individuals associated in fact  
12 although not a legal entity;

13  
14 (5) "pattern of racketeering activity" requires at least two acts of racketeering  
15 activity, one of which occurred after the effective date of this chapter and the last  
16 of which occurred within ten years (excluding any period of imprisonment) after  
17 the commission of a prior act of racketeering activity;

18  
19 (6) "unlawful debt" means a debt

20 (A) incurred or contracted in gambling activity which was in violation of the law  
21 of the United States, a State or political subdivision thereof, or which is  
22 unenforceable under State or Federal law in whole or in part as to principal or  
23 interest because of the laws relating to usury, and

24  
25 (B) which was incurred in connection with the business of gambling in violation  
26 of the law of the United States, a State or political subdivision thereof, or the  
27

business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

1  
2 18 U.S.C. §§ 1581-1592 are predicate acts under § 1961. There are additional  
3 predicate acts, which are unnecessary to note at this time. The conservatorship is a  
4 legal entity and therefore an “enterprise” as defined by § 1961 (4) and a pattern of  
5 two acts has occurred pursuant to § 1961 (5). There has unquestionably been a  
6 violation of the statute upon numerous counts.  
7  
8

9  
10 5. THE LAW OF FEDERAL CONFLICT PREEMPTION INTERDICTS THE  
11 ENTERPRISE OF THE CONSERVATORSHIP AND THUS THE TRO  
12 AGAINST MR. EARDLEY MUST BE DISMISSED.  
13

14  
15 **Conflict Preemption**  
16

17  
18 Under the Supremacy Clause, any state law that conflicts with a federal law is  
19 preempted. Gibbons v. Ogden, 22 U.S. 1 (1824). A conflict exists if a party cannot  
20 comply with both state law and federal law (for example, if state law forbids  
21 something that federal law requires). Florida Lime & Avocado Growers, Inc. v. Paul,  
22 373 U.S. 132, 142-43 (1963). In addition, even in the absence of a direct conflict  
23 between state and federal law, a conflict exists if the state law is an obstacle to the  
24 accomplishment and execution of the full purposes and objectives of Congress.  
25  
26  
27 Crosby v. Nat’l Foreign Trade Council, 530 U.S. 363, 372-73 (2000).  
28

1 Because the conservatorship as it is presently constituted is in direct conflict  
2 with the statutes of the United States, the court must dismiss the TRO against Mr.  
3 Eardley, as the conservatorship is an unlawful enterprise from which no process may  
4 lawfully issue.  
5

6  
7  
8 6. ADDITIONAL ISSUES WILL BE RAISED IN THE APPEAL.  
9

10 Many additional issues will be raised in the appeal and the above stated issues are  
11 by no means exclusive.  
12

13  
14 Date: March 6, 2009

By: 

Jon Eardley, Esq.