

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES THOMAS, on behalf of himself and all those similarly situated,

Plaintiff,

v.

ROBERT N. DEBENEDICTIS, individually and as Trustee of the Opportunity Trust, THE ROBERT N. DEBENEDICTIS FOUNDATION, ROGER SNYDER a/k/a ROGELIO SNYDER, individually and as Trustee of the Opportunity Trust, GINA HARRISON, as Trustee of the Opportunity Trust, SUSAN MARTINO, individually and as Trustee of the Opportunity Trust, MARYETTA SUNNI PREKUP, individually and as Trustee of the Opportunity Trust, JULIE MARTINO individually and as Trustee of the Opportunity Trust, PAUL GALLUCCIO individually and as Trustee of the Opportunity Trust, AVACOR PRODUCTS, LLC, ANTHONY IMBRIOLO, SEA HOLDINGS, LLC, EAST SIDE CLUB LLC, 230 E. 58th ASSOCIATES, LLC, SUNCHASER PROPERTIES, LLC, 9th AVENUE WILTON MANORS, LLC, B&B REALTY DEVELOPMENT, LLC, HANFORD AND HENDERSON MANAGEMENT, LLC, 234 TOWNHOUSE, LLC, WEST SIDE CLUB, LLC, RIVER STREET CLUB, LLC, CND PROPERTIES, LLC, THE BLUE LAGOON MOTEL, LLC, 3016 WINDAMAR, LLC, 227 E. 56th COMPANY, LLC, 835 RIVER BEND, LLC, 1215, LLC, 511-404, LLC, 511-405, LLC, 505 ORTON, LLC, 533 ORTON, LLC, 543 BREAKERS, LLC, 717 BREAKERS, LLC, 528 ANTIOCH, LLC, 2909 VISTAMAR, LLC, 710 N. BIRTH, LLC, 1164 ASSOCIATES, LLC, HOLLYWOOD ACQUISITIONS, LLC, LORELEI PROPERTY MANAGEMENT, LLC, and JOHN DOES 1-100,

Defendants.

Case No. C09-05664 MHP

**[PROPOSED]
SECOND MODIFIED TEMPORARY
RESTRAINING ORDER**

1 **SECOND MODIFIED TEMPORARY RESTRAINING ORDER**

2 This Second Modified Temporary Restraining Order shall supersede the
3 Modified Temporary Restraining Order issued on November 25, 2009, and extended
4 by Order of this Court on December 7, 2009, in the above-captioned matter.

5 Pending a further hearing on January 28, 2010, **ALL ASSETS**, including real and personal
6 property, bank and all other financial or monetary accounts, business receivables, other receivables
7 and business interests including stocks or limited liability interests, **of Robert N. DeBenedictis,**
8 **the Robert N. DeBenedictis Foundation, and The Opportunity Trust ARE HEREBY**
9 **FROZEN.** You, your employees and agents, and any other persons acting with you or in your
10 behalf are restrained and enjoined from withdrawing, removing, transferring, assigning, pledging,
11 encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any assets,
12 including but not limited to cash, real and personal property, bank and all other financial or
13 monetary accounts, business receivables, other receivables, and business interests including stocks,
14 or limited liability interests except that the payments referenced in Schedules A-D, annexed hereto,
15 may be made from the bank accounts identified in such Schedules.

16 Mr. DeBenedictis may also incur reasonable expenses and attorney's fees in the
17 prosecution, defense or compliance with court orders issued in the following actions pending:

18 In re James Thomas, et al., RG03-091195

19 In re James Thomas, et al. Case No. C09-05664 MHP

20 In re Global Vision Products, Inc., Case No. 07-12628 (RDD)

21 In re 635 9th Avenue Corp., Index No. 603981/07

22 In re Robert Malta and 654 Restaurant Corp., Index No. 604140/07

23 In re Robert Malta and Chelsea Tomato Inc., Index No. 604141/07

24 In re Robert Malta and 635 9th Avenue Corp., Index No. 604142/07

25 In re Robert Malta and 9th Avenue Tomato Inc., Index No. 604143/07

26 In re Global Vision Products, Inc., Adv. Proc. No. 08-01342 (RDD)

27 In re Gross Belsky Alonso LLP, Case No. 08-4666 SBA

1 In re Van De Poel, Levy & Allen, LLP, Case No.: 09-02138 SC (NDCA)

2 In re Global Vision Products, Inc., Adv. Proc. No. 09-01387 (RDD)

3 In re DeBenedictis v. Malta, et al., Index No.: 602537/08

4 In re Cabellero, et al., 09-5875 JSR (SDNY)

5 In re James Thomas, et al., RG0 9482587.

6 Where necessary, portions of the assets, including real and personal property, bank and all
7 other financial or monetary accounts, business receivables, other receivables and business interests
8 including stocks or limited liability interests, may be transferred into the accounts identified in
9 Schedules A-D as necessary to allow Robert N. DeBenedictis, the Robert N. DeBenedictis
10 Foundation or The Opportunity Trust to make the payments allowed by this Order.

11 Nothing herein shall prevent Mr. DeBenedictis from making application to this Court for
12 further modification of this Second Modified Temporary Restraining Order to address additional
13 personal expenses or expenses of the Robert N. DeBenedictis Foundation and/or The Opportunity
14 Trust not considered by Schedules A-D.

15 By no later than January 8, 2010, Mr. DeBenedictis shall provide a declaration stating the
16 percentage of his interest in each and every business entity in which he has any interest or
17 ownership. Mr. DeBenedictis' ownership interest in each of those entities shall be frozen. The
18 business operating accounts shall not be frozen so as to restrain any such business from paying its
19 ordinary business expenses, including without limitation, payroll and wages, trade vendors, utilities
20 and ongoing periodic payments of loans and mortgages to financial institutions. But such
21 businesses shall be restrained from making any transfers other than ordinary business expenses and
22 shall report no less frequently than monthly, starting on January 15, 2010, or as soon thereafter as
23 is feasible, by providing the bank account statements within 5 days from receipt.

24 By January 15, 2010, Mr. DeBenedictis shall submit declarations from either himself or
25 persons sufficiently knowledgeable regarding the ongoing business expenditures of the entities in
26 which he has an interest or ownership. Such information may be provided through bank statements
27 or other accountings which reflect the ordinary business expenses of the entities.

1 **IT IS FURTHER ORDERED THAT:**

2 The restraining order granted herein shall expire on January 28, 2010, unless extended by a
3 subsequent order.

4 Mr. DeBenedictis and/or the Robert N. DeBenedictis Foundation and/or The Opportunity
5 Trust shall provide to counsel for plaintiff the three most recent bank account statements for the
6 bank accounts referenced in Schedules A-D and shall provide copies of future statements for these
7 bank accounts when available during the period that this Second Modified Temporary Restraining
8 Order is in force.

9 Dated: December 18, 2009

10 
11 _____
12 Judge Marifyn Hall Patel
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Schedule A

THE OPPORTUNITY TRUST PROJECTED MONTHLY EXPENSES

To be paid from Signature Bank checking # 1500970894

RND FOUNDATION	700.00
9th Avenue Wilton Manors, LLC	
mortgage	612.00
utilities	40.00
re taxes due 11/30	3,268.00
B & B Realty Development	
mortgage	2,170.00
utilities	80.00
re taxes due 11/30	7,792.00
511 Bayshore Dr # 404	
maint	368.00
assess due 11/20	713.00
assess due 12/20	713.00
mortgage interest	858.00
re taxes due 11/30	4,815.00
511 Bayshore Dr # 405	
maint	368.00
assess due 11/20	713.00
assess due 12/20	713.00
mortgage interest	1,334.00
re taxes due 11/30	4,815.00
CND Properties, LLC	
monthly overhead	400.00
The Blue Lagoon Motel, LLC	
mortgage	4,792.00
3016 Windamar, LLC	
mortgage	7,650.00
835 Riverbend, LLC	
re taxes due 11/30	10,290.00
550 NE 20th St, LLC	
re taxes due 11/30	23,429.00
505 Orton Ave, LLC	
mortgage	4,388.00
533 Orton Avenue, LLC	

1	mortgage	6,030.00
2	543 Breakers, LLC	
3	mortgage	3,395.00
4	717 Breakers, LLC	
5	mortgage	11,560.00
6	528 Antioch, LLC	
7	re taxes due 11/30	7,486.00
8	1215, LLC	
9	mortgage	6,919.00
10	2909 Vistamar, LLC	
11	mortgage	13,132.00
12	710 No Birch, LLC	
13	mortgage	5,171.00
14	re taxes due 11/30	22,128.00
15	1164 Associates, LLC	6,410.00
16	Hollywood Acquisitions, LLC	5,387.00
17	Lorelei Property Mgmt Group, LLC	3,103.00
18		
19	TOTAL	<u>181,042.00</u>
20	LESS ONE TIME EXPENSES	(86,875.00)
21	(Real Estate Taxes & Assessments)	
22		
23	AVERAGE MONTHLY EXPENSES	<u>94,167.00</u>
24		
25		
26		
27		
28		

Schedule B

ROBERT DEBENEDICTIS PROJECTED MONTHLY BUSINESS EXPENSES

To be paid from Signature Bank checking # 1500875336

9th Avenue Wilton Manors, LLC

mortgage	153.00
utilities	10.00
re taxes due 11/30	817.00

B & B Realty Development

mortgage	271.00
utilities	20.00
re taxes due 11/30	1,948.00

511 Bayshore Dr # 404

maint	92.00
assess due 11/20	178.00
assess due 12/20	178.00
mortgage interest	215.00
re taxes due 11/30	1,204.00

511 Bayshore Dr # 405

maint	92.00
assess due 11/20	178.00
assess due 12/20	178.00
mortgage interest	333.00
re taxes due 11/30	1,204.00

CND Properties, LLC

monthly overhead	100.00
------------------	--------

The Blue Lagoon Motel, LLC

mortgage	1,198.00
----------	----------

3016 Windamar, LLC

mortgage	1,912.00
----------	----------

835 Riverbend, LLC

re taxes due 11/30	2,572.00
--------------------	----------

550 NE 20th St, LLC

re taxes due 11/30	5,857.00
--------------------	----------

505 Orton Ave, LLC

mortgage	1,097.00
----------	----------

533 Orton Avenue, LLC

mortgage	1,508.00
----------	----------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

543 Breakers, LLC mortgage	849.00
717 Breakers, LLC mortgage	2,890.00
528 Antioch, LLC re taxes due 11/30	1,872.00
1215, LLC mortgage	1,730.00
2909 Vistamar, LLC mortgage	3,283.00
710 No Birch, LLC mortgage	1,293.00
re taxes due 11/30	5,532.00
1164 Associates, LLC	1,602.00
Hollywood Acquisitions, LLC	1,347.00
Lorelei Property Mgmt Group, LLC	776.00
TOTAL	<u>42,489.00</u>
LESS ONE TIME EXPENSES (Real Estate Taxes & Assessments)	(21,718.00)
AVERAGE MONTHLY EXPENSES	<u><u>20,771.00</u></u>

Schedule C

ROBERT DEBENEDICTIS PERSONAL MONTHLY EXPENSES

To be paid from Citibank checking # 64520267 or Signature Bank checking # 1500875336

39 Gramercy Park
maint 1,385.00
cable 61.00
phone/internet 167.00
electric 60.00
equity line interest only 1,225.00

99 Red Creek Road
cable 50.00
phone 50.00
electric 50.00
repairs 75.00
re taxes due 1/1/10 (est) 6,000.00

625 Orton
maint 586.00
cable 75.00
phone 75.00
electric 80.00
re taxes due 11/30 3,490.00

20 Orchard Hill Drive
mortgage 7,244.00

279 So Tradewinds Ave
mortgage 2,403.00

221 East 50th St
maint 684.00
electric 50.00

321 West 13th St
maint 376.00

321 E 43rd St
maint 2,149.00

45 Tudor City Place
maint 1,084.00

Auto Insurance 676.00

Credit Cards 4,275.84

1	Other Monthly Expenses		
2	Airfare to FL (roundtrip)	300.00	
3	Groceries/Household Items	200.00	
4	Gas & Auto Exp	100.00	
5	Medical Expense	100.00	
6	Miscellaneous Spending	<u>250.00</u>	
7			950.00
8	TOTAL		<u>33,320.84</u>
9			
10	TOTAL EXPENSES CARRIED FORWARD		33,320.84
11			
12	LESS ONE TIME EXPENSES		(13,765.84)
13	(Real Estate Taxes & Credit Cards)		
14	SUB TOTAL		<u>19,555.00</u>
15			
16	LESS MONTHLY RENTAL INCOME:		
17	321 E 43rd St	1,492.00	
18	45 Tudor City Place	<u>923.00</u>	
19			(2,415.00)
20			
21	AVERAGE MONTHLY EXPENSES		<u><u>17,140.00</u></u>
22			
23			
24			
25			
26			
27			
28			

Schedule D

ROBERT N DEBENEDICTIS FOUNDATION PROJECTED MONTHLY EXPENSES

To be paid from Signature Bank checking # 1500876677

Total Income from The Opportunity Trust

Expenses

Rent 450.00

Phone 250.00

Pet Project For Pets, Inc. (food -
400 animals) 3,000.00

TOTAL EXPENSES 3,700.00