

No. 24-

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IN THE  
**Supreme Court of the United States**

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STEVEN C. FUSTOLO,

*Petitioner,*

*v.*

THE PATRIOT GROUP, LLC,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH  
OF MASSACHUSETTS**

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**PETITION FOR A WRIT OF CERTIORARI**

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*i*

## **QUESTIONS PRESENTED**

Does an automatic stay in bankruptcy prevent a state from enforcing a pre-stay state court injunction against a bankruptcy petitioner during the period of the automatic stay?

When a state court has violated the automatic stay in bankruptcy, is such an act “void” or is it “voidable”?

## STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *In re Fustolo: 50 Thomas Patton Drive, LLC, et un. v. Stephen Fustolo*, Adv. P. No. 14-1193, U.S. Bankruptcy Court for the District of Massachusetts, Eastern Division (May 6, 2013 involuntary petition)
- *The Patriot Group, LLC v. Steven Fustolo, et al.*, docket no. 1081CV00529, Middlesex Superior Court, Woburn, Massachusetts (April 19, 2011 injunction requiring documentation of income; May 31, 2023 order finding Mr. Fustolo had violated the injunction)
- *The Patriot Group, LLC v. Steven Fustolo*, docket no. 23-P-293, Massachusetts Appeals Court (May 28, 2024 memorandum and order affirming the finding that Mr. Fustolo had violated the automatic stay and that the automatic stay in bankruptcy did not apply)
- *The Patriot Group, LLC v. Steven Fustolo*, docket no. FAR-29844, Massachusetts Supreme Judicial Court (October 17, 2024 order denying further appellate review)

There are no additional known proceedings in any court that are directly related to this case within the meaning of this Court's Rule 14(b)(iii).

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## INTRODUCTION

This case involves questions about the power and effect of the automatic stay in bankruptcy pursuant to 11 U.S.C. §362 over state court injunctions, thus implicating the Supremacy Clause of the United States Constitution. Steven Fustolo was enjoined by a Massachusetts state trial court to provide The Patriot Group, LLC (Patriot Group) with annual documentation regarding his income vis-a-vis other defendant business entities in the same case. After the state injunction was put into place, Patriot Group commenced involuntary bankruptcy proceedings against Mr. Fustolo, and the automatic stay under 11 U.S.C. §362 commenced.

During the pendency of the stay, Mr. Fustolo did not provide Patriot Group with the documentation pursuant to the state court injunction. After the bankruptcy stay was lifted, a state trial court found that Mr. Fustolo had violated the state court injunction during the time when the automatic stay was in effect because Mr. Fustolo did not provide the required documentation during the stay period. The state trial court further found that the automatic stay had not relieved Mr. Fustolo of this state injunction requirement during the stay. The Massachusetts Appeals Court affirmed the state trial court's holding, and the Massachusetts Supreme Judicial Court declined to review the lower court holdings.

The question of whether the automatic stay in bankruptcy protects individuals like Mr. Fustolo from the requirements of state court injunctions directly impacts both the rights of parties seeking the protections of bankruptcy and, more generally, the conflict between

state and federal law. To date, no Supreme Court decision has spoken on this topic, and while some Circuit Courts of Appeal have written decision regarding the extent and power of the automatic stay, none have addressed the issue of whether a state court injunction's documentation requirements regarding income are relieved by the automatic stay.

Furthermore, there is a circuit split on the related issue as to whether a state court's violation of an automatic stay is either void or voidable. As such, should this Court find that the state court's actions here against Mr. Fustolo violated the automatic stay, the issue arises as to whether the state court's violations are void from the start or must be voided by a court, and thus resolve the circuit split.

### **OPINIONS BELOW**

The Massachusetts Supreme Judicial Court denial of further appellate review is reproduced at App.1. The Massachusetts Appeals Court decision is unreported and reproduced at App.2-21. The state court trial order is reproduced at App.22-51. The state court injunction is reproduced at App. 51-56. The Involuntary bankruptcy petition is reproduced at App.56-79.

### **JURISDICTION**

Jurisdiction is proper under 11 U.S.C. §362 and the United States Constitution.

## STATUTORY PROVISIONS/RULES INVOLVED

- *11 U.S.C. §362 (a) (1) and (2):*

“(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; [and] (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title[.]”

- *Supremacy Clause of the U.S. Constitution (Article VI, Clause 2):* “

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

## STATEMENT OF THE CASE

This case arises directly from a 2024 Massachusetts Appeals Court decision affirming a 2022 Massachusetts state trial court contempt judgment, and indirectly from an automatic stay issued by the bankruptcy court for the District of Massachusetts.

In 2010, plaintiff/respondent The Patriot Group, LLC (Patriot Group) filed a state civil lawsuit against petitioner/defendant Steven Fustolo (Mr. Fustolo) and other parties, including various accounts and business entities related to Mr. Fustolo, the latter of which were sued via reach and apply (Reach and Apply Defendants) in Middlesex Superior Court in Woburn, Massachusetts (the state trial court). See A: May 31, 2022 contempt decision, p. 4.<sup>1</sup> The crux of the matter was monetary: Patriot Group argued that Mr. Fustolo and the Reach and Apply Defendants owed Patriot Group monies for loans provided, and ultimately received a judgment against the defendants for \$20.5 million. A: May 31, 2022 contempt decision, p. 4. On April 19, 2012, as part of that state case, the state trial court issued a permanent injunction (the state injunction). See A: April 19, 2012 state injunction, pp. 1-4. In the pertinent part, the state injunction provided that Mr. Fustolo limited in the amount he could receive annually from the Reach and Apply Defendants, and that Mr. Fustolo was, on an “annual basis”, to document to Patriot Group the amount of money he received from the Reach and Apply Defendants. A: April 19, 2012 state injunction, pp. 2-3. The state injunction also enjoined the

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1. References to orders in the appendix shall be denoted as “A: [date of order] + [name] + [page number in order].”

Reach and Apply Defendants from advancing funds to Mr. Fustolo beyond a certain given amount to cover his personal expenses. A: April 19, 2012 state injunction, pp. 3-4.

On May 6, 2013, after the above state injunction was put into place, Patriot Group brought involuntary bankruptcy proceedings in the District of Massachusetts (bankruptcy case). See A: May 6, 2013 involuntary bankruptcy petition. As a result of the bankruptcy case, the automatic stay under 11 U.S.C. §362 was put into effect twice: once from May 2013 to January 2017, and again during the appellate process of the bankruptcy matter from July 2018 to February 2019 (the automatic stay). See A: May 28, 2024 state appeals court decision, p. 5. In 2017, after stay had been lifted the first time, Patriot Group filed a contempt complaint in the state trial court against Mr. Fustolo and the Reach and Apply Defendants, arguing, in part, that defendants had violated the state injunction by not providing documentation during the period of the automatic stay in bankruptcy. See A: May 28, 2024 state appeals court decision, pp. 5-6. Mr. Fustolo argued, in part, that the automatic stay from the bankruptcy court stayed the enforcement of the state court injunction, including reporting requirements of income to Patriot Group. See A: May 28, 2024 state appeals court decision, pp. 5-6.

On May 31, 2022, the state trial court issued a decision on the contempt (the contempt decision). See A: May 31, 2022 contempt decision. In the contempt decision, the state trial court found that Mr. Fustolo had violated the 2011 state court injunction by “by failing to document his monthly expenses to [Patriot Group] on an annual basis.”

A: May 31, 2022 contempt decision, p. 16. Furthermore, the contempt decision found that Mr. Fustolo violated the state court injunction even during the periods where the bankruptcy court's automatic stay was in effect. The contempt decision found that the automatic stay did not "dissolve rights to enforce a judgment or vacate obligations under a judgment itself", including the obligations for Mr. Fustolo to report his monthly expenses on a monthly basis: "[i]ndeed, if the automatic stay eliminated the obligation to perform under an injunction during the pendency of a bankruptcy petition, then it would not be a mere 'stay.' The automatic stay would become final relief." A: May 31, 2022 contempt decision, p. 20.

Mr. Fustolo appealed to the Massachusetts Appeals Court, which is the mid-level state appellate court (state appeals court). On May 28, 2024, the state appeals court affirmed the trial court decision. See A: May 28, 2024 state appeals court order. In its affirmation, the state appeals court agreed with the trial court that the bankruptcy court's automatic stay did not release Mr. Fustolo from his reporting requirements under the state injunction. Citing Black's Law Dictionary 1709 (11<sup>th</sup> ed. 2019), the state appeals court stated that "[c]ontrary to [Mr.] Fustolo's argument, the stay does not have the effect of relieving a debtor of his obligations under an outstanding judgment. Instead, the automatic stay simply bars a creditor from pursuing any 'collection efforts against the debtor or the debtor's property.'" A: May 28, 2024 state appeals court order, p. 14.

Mr. Fustolo then sought further appellate review in the Massachusetts Supreme Judicial Court (state supreme court). On October 17, 2024, the state supreme court

declined to grant review on the matter. See A: October 17, 2024 state supreme court order. With his state court appellate abilities exhausted, Mr. Fustolo now seeks review in this Court.

## REASONS FOR GRANTING PETITION

### A. *Importance and ripeness of the case: Federalism and 11 U.S.C. §362*

This questions in this case are ripe to answer because they present an important and unresolved conflict between the limits of the automatic stay under 11 U.S.C. §362 and federalism. Mr. Fustolo’s matter presents a well-developed case on which this Supreme Court can rule on these issues.

Federal appellate courts and this Supreme Court have not directly spoken on whether the disclosure of financial information pursuant to a state court injunction can be required during the pendency of an automatic stay. However, courts have spoken about the broad, sweeping power of the automatic stay. For example, the First Circuit has stated that the automatic stay “is intended to give the debtor breathing room by stopping all collection efforts, all harassment, and all foreclosure actions[.]” *In re Soares*, 107 F.3d 969, 975 (1st Cir. 1997) (internal quotations and citations omitted). Indeed, “[c]ustomarily, so as to secure the [Bankruptcy] Code’s bedrock policies, the exceptions [to the automatic stay] are narrowly construed, the writ of § 362(a) broadly read.” *Shachmurove, Amir, Sherlock’s Admonition: Vindictory Contempts as Criminal Actions for Purposes of Bankruptcy Code § 362* De Paul, 13 DePaul Bus. & Com. L.J. 67, 68 (2014). Thus, the tension between the historical broad reading of the automatic stay

and the narrower reading imposed by the state courts here should be resolved.

Furthermore, circuit courts have also specifically spoken about state court actions during stays being limited to those of a “ministerial” character, versus those that are barred because they are “judicial” in character. Multiple circuits have found that “[m]inisterial acts, even if undertaken in a state judicial proceeding subsequent to a bankruptcy filing, do not fall within the proscription of the automatic stay.” *In re Soares*, 107 F.3d 969, 973-974 (1st Cir. 1997), citing *Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994) and *Savers Fed. Sav. & Loan Ass’n v. McCarthy Constr. Co. (In re Knightsbridge Dev. Co.)*, 884 F.2d 145, 148 (4th Cir. 1989). But it remains unanswered by this Supreme Court whether (1) the division between ministerial versus judicial acts applies in the context of the automatic stay; and (2) whether the state court injunction here requiring documentation of income was ministerial or judicial act during the automatic stay. Thus, these distinctions are also ripe for resolution at this time.

#### **B. *Circuit split: Void v. Voidable and the automatic stay***

There is another reason review should be granted: there is a federal circuit split on whether actions taken in derogation of the automatic stay are either “voidable” or are instead “void”. If this Supreme Court decided the actions of the state court violated the automatic stay, it would necessarily follow that it would have to decide whether the state court’s actions here were either “void” or “voidable”, and therefore resolve that split.

The apparent majority of circuits take the position that such actions are “void.” See *In re Soares*, 107 F.3d 969, 976 (1st Cir. 1997); *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992); *Job v. Calder* (*In re Calder*), 907 F.2d 953, 956 (10th Cir. 1990) (per curiam); *48th St. Steakhouse, Inc. v. Rockefeller Group, Inc.* (*In re 48th St. Steakhouse, Inc.*), 835 F.2d 427, 431 (2d Cir. 1987), cert. denied 485 U.S. 1035, 99 L. Ed. 2d 910, 108 S. Ct. 1596 (1989); *Albany Partners Ltd. v. Westbrook* (*In re Albany Partners, Ltd.*), 749 F.2d 670, 675 (11th Cir. 1984); *In re Siciliano*, 13 F.3d 748, 751 (3d Cir. 1994). However, an apparent minority of the federal circuits view the violation of the automatic stay as merely “voidable.” See *Jones v. Garcia* (*In re Jones*), 63 F.3d 411, 412 & n.3 (5th Cir. 1995), cert. denied, 134 L. Ed. 2d 666, 116 S. Ct. 1566 (1996); *Bronson v. United States*, 46 F.3d 1573, 1578-79 (Fed. Cir. 1995); *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir. 1993).

Thus, this matter, in addition to deciding the questions of the automatic stay versus state court injunctions, would also resolve the circuit split. Therefore, for this reason, Mr. Fustolo’s petition should be granted as well.

**C. *Correction: the Massachusetts state courts decided the case incorrectly and unfairly punished Mr. Fustolo for obeying the automatic stay***

Although it is obvious from the filing of this petition, Mr. Fustolo believes that the state court decisions in this matter were incorrect. When the bankruptcy case was forced upon Mr. Fustolo – as it was brought involuntarily by Patriot Group against him -- then the automatic stay took effect on all previous cases, including the state trial court case that imposed the injunction. Notably, Patriot

Group never received a lift of the stay before 2017 and did not pursue contempt in state court until after the stay had been lifted. Had Mr. Fustolo attempted to comply with the state injunction documentation demands during the pendency of the stay, he would have himself have been found to have been violating the stay and perhaps faced penalties – and thus the situation placed Mr. Fustolo on the horns of a dilemma: either violate the automatic stay or violate the state court injunction. Notably also is the fact that Patriot Group never received a ruling from the bankruptcy court that Mr. Fustolo was required to continue the documentation during the stay, instead waiting to file contempt charges in state court after the stay had been lifted. These issues, along with the broad language of protection that the statute gives under 11 U.S.C. §362 all show that Mr. Fustolo was entitled to relief from the documentation requirements during the pendency of the stay and from penalties afterwards for his refusal to comply with the injunction during the stay.

However, perhaps the strongest argument in favor of reversal is the fact that the documentation itself was directly related to the collection of money owed to Patriot Group through bankruptcy. Mr. Fustolo was required to deliver documentation annually about how much money he received from the Reach and Apply Defendants, and was ordered that it not exceed a certain amount. This was because the state trial court had previously ruled Mr. Fustolo owed Patriot Group \$20.5 million; therefore, the documentation and income limitations were directly related to delivering Patriot Group its judgment. A: May 31, 2022 contempt decision, p. 4. When Patriot Group forced Mr. Fustolo into bankruptcy after the injunction, the action was also part of its collections process against him.

A: May 6, 2013 involuntary bankruptcy petition. Thus, the documentation requirements of the state injunction were, *ipso facto*, part of the collection process, the jurisdiction of which Patriot Group itself had decided to cede to the bankruptcy court. Thus, Patriot Group's later complaint of contempt thus reeks of unclean hands, of forcing Mr. Fustolo to cede power to the bankruptcy court for all collections matters but somehow allow the state court to retain jurisdiction over the documentation regarding that collection. Such an inherent contradiction in logic must surely be remedied by the broad application of 11 U.S.C. §362 to both the collection and the documentation of income for collection via the automatic stay, thus rendering Mr. Fustolo impervious to punishment for those failures to document during the pendency of the stay. Therefore, the state court rulings against Mr. Fustolo on this issue must be reversed.

## CONCLUSION

Mr. Fustolo asks that this petition for certiorari be granted.

Respectfully submitted,

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March 17, 2025

## APPENDIX

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**APPENDIX A — ORDER OF THE SUPREME  
JUDICIAL COURT FOR THE COMMONWEALTH  
OF MASSACHUSETTS, DATED OCTOBER 16, 2024**

**SUPREME JUDICIAL COURT FOR THE  
COMMONWEALTH OF MASSACHUSETTS**

Telephone

RE: DOCKET NO. FAR-29844

THE PATRIOT GROUP, LLC

vs.

STEVEN C. FUSTOLO

Middlesex Superior Court No. 1081CV00529  
A.C. No. 2023-P-0293

**NOTICE OF DENIAL OF APPLICATION FOR  
FURTHER APPELLATE REVIEW**

Please take note that on October 16, 2024, the application for further appellate review was denied.

Very truly yours,  
The Clerk's Office

Dated: October 16, 2024

To: Jack I. Siegal, Esquire  
Lane N. Goldberg, Esquire  
Keith McLean, Esquire  
Alexander G. Henlin, Esquire  
Marrielle Bilodeau Van Rossum, Esquire

**APPENDIX B — MEMORANDUM AND  
ORDER OF THE APPEALS COURT FOR THE  
COMMONWEALTH OF MASSACHUSETTS,  
FILED MAY 28, 2024**

COMMONWEALTH OF MASSACHUSETTS  
APPEALS COURT

23-P-293

THE PATRIOT GROUP, LLC

*vs.*

STEVEN C. FUSTOLO & OTHERS.<sup>1</sup>

Filed May 28, 2024

**MEMORANDUM AND ORDER  
PURSUANT TO RULE 23.0**

After a bench trial on a complaint for civil contempt, a judge of the Superior Court found that the defendant, Steven C. Fustolo, violated a 2012 permanent injunction

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1. Winchester Savings Bank was a trustee process defendant. The following defendants were joined solely on reach and apply claims: James J. Fox & Company LLP, National Tax Institute, Inc., CPE Meetings, Inc., Terrace Hall Partners LLC, Five High Street LLC, Huntington Properties, Inc., Property Trust Corporation, Huntington Properties Holding Company, L.L.C., 23-25 Highland Avenue, LLC, Fustolo Development LLC, and Atlas Garden Supply LLC. Fustolo CPE, LLC, was later added as a reach and apply defendant pursuant to the judgment on the contempt complaint.

*Appendix B*

that imposed certain spending limits on Fustolo's living expenses and required him to document his expenditures until he satisfied an outstanding \$20.4 million judgment in favor of the plaintiff, the Patriot Group, LLC (Patriot). A judgment entered that, among other things, ordered Fustolo to provide documentation of his and his wife's annual expenditures from 2012 forward, enjoined Fustolo and his wife from spending more than \$7,000 per month on ordinary living expenses, and added a newly-formed entity, Fustolo CPE, LLC (Fustolo CPE), as a reach and apply defendant.<sup>2</sup> By separate order, the judge also awarded Patriot \$15,000 in attorney's fees.

On appeal, Fustolo argues that the judge erred in finding Fustolo in violation of the injunction (but not in contempt) both because the requirement that Fustolo provide annual documentation of his expenditures was not clear and unequivocal, and because Fustolo was not obligated to comply with the injunction during two bankruptcy stays entered in this matter. Fustolo also argues that the judge exceeded his authority by clarifying the injunction to require Fustolo to provide annual accountings dating back to 2012, by adding to Fustolo's wife and Fustolo CPE to the injunction, and by awarding attorney's fees to Patriot. We affirm.

*Background.* We set forth those facts that are undisputed, as well as the facts found by the judge after trial. We reserve certain facts for our later discussion.

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2. Although Fustolo's notice of appeal also identifies a May 31, 2022 order for judgment, and an August 23, 2022 order on Patriot's motion to compel Fustolo's compliance with the order for judgment, we treat those two orders as subsumed in the judgment on the contempt complaint dated January 6, 2023.

*Appendix B*

1. *Underlying judgment and injunction.* Fustolo has been a certified public accountant (CPA) since the 1980s. He has wholly owned and operated businesses involving real estate development, publishing, and continuing professional education for CPAs, attorneys, and other tax professionals. In 2007, Fustolo created a company to hold and develop a property located in the city of Revere. That development company secured a \$13.6 million loan from Patriot, a private lender. The company subsequently defaulted on the loan and Fustolo became liable under a personal guaranty.

In February 2010, Patriot brought an action in the Superior Court against Fustolo under the guaranty and named several companies that are owned by Fustolo as reach and apply defendants (Superior Court action).<sup>3</sup> In May 2011, a separate and final judgment entered against Fustolo in the amount of \$20.4 million. Patriot then moved for entry of a reach and apply judgment and permanent injunction under G. L. c. 214, § 3 (6). In April 2012, final judgment and a permanent injunction entered against Fustolo and the reach and apply defendants. As relevant here, paragraphs two and four of the injunction read as follows:

“2. That Steven C. Fustolo and his respective managers, agents, members, partners, nominees, representatives, servants, employees, attorneys, and all people in

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3. For the names of the reach and apply defendants, see note 1, *supra*.

*Appendix B*

active concert or participation with them are *permanently restrained and enjoined* from directly or indirectly assigning, alienating, selling, transferring, pledging, encumbering, concealing or in any other manner, disposing of, diminishing, dissipating, re-directing or otherwise instructing the re-direction and/or misapplication of any and all intangible properties received by Steven C. Fustolo from the Reach and Apply Defendants, except to pay ordinary living expenses for mortgage, food and the like, *not to exceed \$84,000 per year or a cumulative average of \$7,000 per month*, to be documented to the Plaintiff on an annual basis, and to pay ordinary operating expenses for the operation of the Reach and Apply Defendants, including but not limited to real estate taxes, utilities, insurance premiums, payroll (excluding Steven C. Fustolo), payroll taxes, occupancy costs, and supplies, or as otherwise directed by this Court and from paying any monies directly or indirectly to any other person or entity created or controlled by Steven C. Fustolo;

...

“4. That the Reach and Apply Defendants . . . and all of their respective managers, directors, officers, agents, partners, members, subsidiaries, nominees, representatives, servants, employees and attorneys, and each

*Appendix B*

and every one of them, and all people in active concert or participation with them, *are permanently restrained and enjoined* from directly or indirectly paying money or any other form of compensation or dividend to or for the benefit of Steven C. Fustolo, or from altering, amending, modifying, hypothecating, assigning, alienating, selling, transferring, encumbering, concealing or in any other manner, disposing of, diminishing or dissipating the value of Steven C. Fustolo's beneficial, equitable, shareholder and/or ownership interests in the Reach and Apply Defendants. However, the above Reach and Apply Defendants may advance funds to Fustolo in an amount not to exceed *\$84,000 per year or a cumulative average of \$7,000 per month* to cover his personal living expenses as described above in paragraph 2, or to pay the Plaintiff."

2. *Bankruptcy matters.* Shortly after the injunction issued, in 2013, Patriot (and other creditors) brought a chapter 7 involuntary bankruptcy proceeding against Fustolo. In 2014, Patriot (and another creditor) commenced a related adversary proceeding against Fustolo, also in bankruptcy court, seeking to except certain debts from discharge or, in the alternative, deny Fustolo a discharge. After a six-day trial, the bankruptcy judge ultimately denied Fustolo's bankruptcy discharge.

While the bankruptcy matters were pending, two automatic stays were imposed in the Superior Court action

*Appendix B*

pursuant to 11 U.S.C. § 362. The stays were in effect from May 2013 to January 2017, while the matter initially was pending before the bankruptcy judge, and from July 2018 to February 2019, after a remand by the United States Court of Appeals for the First Circuit.

3. *Contempt action.* a. *Proceedings.* After the first bankruptcy stay was lifted in 2017, Patriot filed a Superior Court complaint for civil contempt against Fustolo and the reach and apply defendants.<sup>4</sup> Patriot alleged, among other things, that Fustolo violated paragraph two of the injunction by spending in excess of \$84,000 per year on ordinary living expenses and failing to provide documentation of same; Patriot also alleged that Fustolo violated paragraph four by transferring in excess of \$84,000 per year from the reach and apply defendants or their successors to Fustolo.

During the proceedings, Fustolo took the position that he complied with the injunction based on his understanding that paragraph two only required him to document and limit his living expenses if he received intangible property (which, according to Fustolo, did not include cash payments) from the reach and apply defendants. Fustolo further argued that he complied with paragraph four because “money” did not include the repayment of loans that Fustolo previously had made to the reach and apply defendants, and paragraph four did not impose any documentation requirement.

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4. As of May 2018, Fustolo had not made any payments toward the outstanding judgment to Patriot.

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A judge held three days of trial on the contempt complaint in May 2018. However, before the trial concluded, the second bankruptcy stay was imposed. After that stay was lifted, the trial on the contempt complaint resumed for two additional days before a different judge in April 2022 (hereinafter, the judge).<sup>5</sup>

b. *Findings.* Following the trial, the judge found as follows. Fustolo never provided Patriot with any report or disclosure of his expenditures traced to money that he received from the reach and apply defendants. Moreover, despite having the expertise to do so, Fustolo also did not set up any system to track his expenses (ordinary living or otherwise) or the funds that he received from the reach and apply defendants after the injunction issued. Instead, Fustolo, who had twenty-nine business bank accounts and nine personal accounts, comingled money from his companies with his personal accounts (including those held with his wife). Like the bankruptcy judge, the judge found that “Fustolo used his businesses to promote fraud. . . . Fustolo took money from [reach and apply defendant CPE Meetings, Inc.] and other companies when he saw fit, ignoring the [injunction] that . . . required Fustolo to document expenses to Patriot.” In short, the judge found that Fustolo’s failure to maintain records, books, or accounts precluded his creditors, like Patriot, from fully understanding his financial condition and business transactions.

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5. The first judge had retired by the time that the trial resumed.

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Based on this conduct, the judge found that Fustolo violated the injunction by failing to document his monthly expenses to Patriot on an annual basis; however, the judge also found that Fustolo was not in contempt because the documentation requirement concerning *cash payments* from the reach and apply defendants was not “clear and unequivocal.” The judge reasoned that paragraph four of the injunction—that limited the transfer of funds from the reach and apply defendants—did not explicitly include the documentation requirement and the requirement was only incorporated through cross-reference to paragraph two—that limited the transfer of intangible assets by the reach and apply defendants. Although the judge noted the obvious intent of the documentation requirement was to allow Patriot to verify that Fustolo had complied with the living expense limitations, he concluded that the proper course was to clarify the injunction to require Fustolo to document his living expenses for each year since the injunction issued.

Unlike the injunction’s documentation requirement, the judge found that paragraph four did include a clear and unequivocal command that Fustolo was prohibited from receiving funds from the reach and apply defendants exceeding \$84,000 per year or a cumulative average of \$7,000 per month to cover his personal expenses as described in paragraph two, i.e., “mortgage, food and the like.” The judge explained that he had “serious suspicions” that Fustolo had exceeded the spending limit and had “serious questions about the use of various entities to conceal assets or personal spending.” However, the judge found that Patriot was not able to prove a violation of the

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spending limit by clear and convincing evidence at that juncture through no fault of its own. The judge deferred acting on that portion of the complaint until Fustolo furnished Patriot with the requisite documentation.<sup>6</sup>

c. *Order for judgment.* On May 31, 2022, the judge issued an order for judgment (the substance of which entered as a judgment on January 6, 2023). The order required Fustolo to remedy his violation of the documentation requirement by providing Patriot on or before August 31, 2022, “with an accounting [demonstrating], on a yearly basis, beginning from April 19, 2012, the expenditures from all funds received by Fustolo, his wife, and anyone else acting in concert with him, and identify the specific source of the funds for each expenditure (e.g., from any Reach and Apply Defendant).”

The order also “clarified and modified” the injunction by setting forth the following conditions that applied prospectively: Fustolo and his wife were restrained from directly or indirectly spending more than \$7,000 per month on ordinary living expenses until the underlying judgment was satisfied; Fustolo was required to provide a detailed and itemized description of the prior year’s expenses with documentation on August 1st of each year; and Fustolo was prohibited from causing any entity he owned or controlled from paying him more than \$7,000 per month subject to certain conditions. The order also

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6. Although the judge indicated that he intended to dismiss the portion of the contempt complaint alleging a violation of the spending limit without prejudice, the judgment deferred action on that portion of the complaint.

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set certain fines for any future violations of the above conditions, added Fustolo CPE as a reach and apply defendant, and permitted Patriot to file a fee petition.<sup>7</sup>

d. *Attorney's fees.* As authorized by the order for judgment, Patriot filed a petition with a supporting affidavit, seeking \$104,080 in attorney's fees and \$24,441.35 in costs. The judge awarded \$15,000 in attorney's fees by order dated January 5, 2023. The judge reasoned that thus far, Patriot had only prevailed on the issues of the "failure to report and clarification of the court's earlier order."

*Discussion.* We review the judge's ultimate finding on the contempt complaint for abuse of discretion, but we review underlying conclusions of law de novo and underlying findings of fact for clear error. See *Commercial Wharf E. Condominium Ass'n v. Boston Boat Basin, LLC*, 93 Mass. App. Ct. 523, 532, 106 N.E.3d 1114 (2018).

1. *Violation of injunction.* a. *Documentation requirement.* Fustolo first argues that the judge's decision was "internally inconsistent" because Fustolo could not be found in violation of the documentation requirement when that requirement was not clear and unequivocal. Fustolo is correct that to support a finding of civil contempt, a plaintiff must prove by clear and convincing evidence that the defendant disobeyed "a clear and unequivocal command." *Birchall, petitioner*, 454 Mass. 837, 853, 913

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7. In August 2022, Patriot filed a motion to compel Fustolo's compliance with the order for judgment. The judge allowed the motion, concluding that Fustolo violated the requirement that he provide an accounting for the prior year on August 1, 2022.

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N.E.2d 799 (2009). “Where the order is ambiguous or the disobedience is doubtful, there cannot be a finding of contempt.” *Martinez v. Lynn Hous. Auth.*, 94 Mass. App. Ct. 702, 708, 119 N.E.3d 312 (2019), quoting *Birchall, petitioner, supra* at 852. It follows then that not every violation of an order constitutes contempt. See *Smith v. Smith*, 93 Mass. App. Ct. 361, 363-364, 100 N.E.3d 781 (2018).

Here, the judge properly applied these principles. He found that the injunction imposed a documentation requirement on Fustolo, but that the command as written “just barely” fell short of constituting a clear and unequivocal command at least as related to the cash payments from the reach and apply defendants. Given that the language of the injunction was imprecise, the judge was permitted to “comb relevant parts of the record to discern the authoring court’s intention,” and he did just that. *Negron-Almeda v. Santiago*, 528 F.3d 15, 23 (1st Cir. 2008). Consistent with the overall purpose of the injunction, the judge concluded that paragraphs two and four limited the monthly living expenses that Fustolo could receive from the reach and apply defendants. The documentation requirement, in turn, was intended to ensure Fustolo’s compliance with the spending limit and to provide verification of same to Patriot (beyond Fustolo’s self-reports of compliance). As the judge ultimately found, and we agree, “[t]here is no reason to think that an order, so drafted, intended to allow the serious loophole that Fustolo now seeks to exploit.”

For these reasons, the judge did not err in finding that Fustolo violated the injunction, but that the violation

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did not amount to contempt.<sup>8</sup> This is so even if, as Fustolo argues, his noncompliance was in good faith based on his own interpretation of the injunction. See *Wooters v. Wooters*, 74 Mass. App. Ct. 839, 844, 911 N.E.2d 234 (2009) (finding husband in violation but not in contempt of alimony order where order not clear and unequivocal, and husband had good faith belief of compliance).<sup>9</sup>

b. *Bankruptcy stays.* Fustolo next argues that he was not required to comply with the injunction during the pendency of the bankruptcy stays. This argument fails as a matter of law.

Title 11 U.S.C. § 362(a)(2), imposes a stay of the “enforcement” of any judgment against a debtor that was obtained before the commencement of a bankruptcy proceeding. See *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020) (“filing a petition for bankruptcy automatically ‘operates as a stay’ of creditors’ *debt-collection efforts*”

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8. To the extent Fustolo asserts that he voluntarily complied with the documentation requirement even though he was not required to do so, the judge found to the contrary based on Fustolo’s testimony, and we find no basis to set aside that finding. See *Demoulas v. Demoulas Super Mkts., Inc.*, 424 Mass. 501, 509-510, 677 N.E.2d 159 (1997) (trial judge in best position to judge weight and credibility of evidence).

9. Because Fustolo was not found in contempt, we need not pass on “the kind and degree of intent that must be shown to support a judgment of contempt” against an individual, as opposed to a corporate, defendant. *O’Connell v. Greenwood*, 59 Mass. App. Ct. 147, 150 n.3, 794 N.E.2d 1205 (2003).

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outside the umbrella of the bankruptcy case” [emphasis added; citation omitted]). “The purpose of the automatic stay is ‘to relieve a debtor of collection proceedings which would nullify the Bankruptcy Code’s objective of orderly liquidations or reorganizations which treat creditors equally’” (citation omitted). *Beverly v. Bass River Golf Mgt., Inc.*, 92 Mass. App. Ct. 595, 599, 93 N.E.3d 852 (2018). Thus, “[t]he automatic stay is designed to effect an immediate freeze of the status quo.” *Interstate Commerce Comm’n v. Holmes Transp., Inc.*, 931 F.2d 984, 987 (1st Cir. 1991).

Contrary to Fustolo’s argument, the stay does not have the effect of relieving a debtor of his obligations under an outstanding judgment. Instead, the automatic stay simply bars a creditor from pursuing any “collection efforts against the debtor or the debtor’s property.” Black’s Law Dictionary 1709 (11th ed. 2019) (defining “automatic stay”). If the discharge is denied or the trustee abandons the property at issue, and the stay is lifted as a result, “title reverts to the bankrupt, nunc pro tunc, so that he is treated as having owned it continuously” (citation omitted). *Barletta v. Tedeschi*, 121 B.R. 669, 673 (N.D.N.Y. 1990). See 11 U.S.C. § 362(c)(2). Cf. *In re Wilton Armetale, Inc.*, 968 F.3d 273, 284 (3d Cir. 2020) (if trustee abandons derivative claim, creditor’s right to pursue claim “spring[s] back to life” [citation omitted]). Accordingly, we discern no error in the judge’s conclusion that once the bankruptcy stays were lifted, Patriot was free to pursue a claim that Fustolo violated the injunction by failing to satisfy the documentation requirement and spending limit, even during the stays.

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*2. Clarification and enforcement of injunction.*

Fustolo next argues that the judge exceeded the scope of his authority by clarifying the injunction to require Fustolo to document his annual expenses from 2012 to 2022, and by modifying the injunction to expressly include Fustolo's wife, Fustolo CPE, and other nonparties. We address each argument in turn.

*a. Documentation of annual expenses.* “The purpose of civil contempt proceedings is remedial,’ and the formulation of the remedy is within the judge’s discretion.” *Eldim, Inc. v. Mullen*, 47 Mass. App. Ct. 125, 129, 710 N.E.2d 1054 (1999), quoting *Demoulas v. Demoulas Super Mkts., Inc.*, 424 Mass. 501, 571, 677 N.E.2d 159 (1997). “[W]hile judges will not read into an order additional terms, judges will not allow a party to do indirectly what an order makes clear he cannot do directly” (citation omitted). *Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep’t of Mental Retardation*, 424 Mass. 430, 449, 677 N.E.2d 127 (1997), abrogated on other grounds by *Birchall, petitioner*, 454 Mass. at 852-853. A judge may clarify a judgment on a contempt complaint. See *Colorio v. Marx*, 72 Mass. App. Ct. 382, 385, 892 N.E.2d 356 (2008).

Here, the judge ordered Fustolo to provide documentation of his expenditures from 2012 forward. Although Fustolo characterizes this remedy as “retrospective,” it is remedial and designed to determine whether Fustolo violated the injunction’s clear and unequivocal limit on the amount of funds that could be advanced to Fustolo to cover personal expenses. See

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*Labor Relations Comm'n v. Fall River Educators' Ass'n*, 382 Mass. 465, 476, 416 N.E.2d 1340 (1981) (“Remedial or compensatory actions are essentially backward looking, seeking to compensate the complainant through the payment of money for damages caused by past acts of disobedience” [citation omitted]). Indeed, the judge expressed concern that Fustolo was not in compliance with the spending limit and cited several compelling reasons in support. For example, the judge noted large, unexplained deposits and withdrawals of cash, and numerous expensive purchases made by Fustolo, including for gemstones and a country club golf membership. The judge also found that as of 2014, Fustolo’s monthly household living expenses were approximately \$20,000 (which, if substantiated, placed Fustolo well on track to exceed the annual \$84,000 limit). Notably, the judge also found that Fustolo—and not Patriot—was able to provide the documentation necessary to ascertain whether Fustolo violated the spending limit.

The judge was within his discretion to require that Fustolo provide that documentation where it was Fustolo’s obligation to ensure that he complied with the spending limit.<sup>10</sup> See *Eldim, Inc.*, 47 Mass. App. Ct. at 128 (“Where an injunction is in effect, the party bound by the order is responsible for ascertaining whether any proposed actions are among the proscribed activities. It is not the plaintiff’s obligation to police the decree but the defendant’s obligation to make certain he does not violate it” [citation omitted]). See also *New England Novelty*

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10. We also reject Fustolo’s argument that the judge exceeded his authority by clarifying the documentation and spending requirements prospectively. See *Colorio*, 72 Mass. App. Ct. at 385.

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*Co. v. Sandberg*, 315 Mass. 739, 746, 54 N.E.2d 915, cert. denied, 323 U.S. 740, 65 S. Ct. 63, 89 L. Ed. 593 (1944) (judge has power to compel obedience to his decrees and punish those who obstruct or degrade administration of justice). Cf. *Judge Rotenberg Educ. Ctr., Inc.*, 424 Mass. at 449 (“contempt finding is appropriate where ‘steps are taken to subvert the decree’” [citation omitted]).<sup>11</sup>

b. *Inclusion of Fustolo’s wife, Fustolo CPE, and other nonparties.* “An injunction is binding on the parties ‘and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.’” *Mohamad v. Kavlakian*, 69 Mass. App. Ct. 261, 265, 867 N.E.2d 778 (2007), quoting Mass. R. Civ. P. 65 (d), 365 Mass. 832 (1974). Indeed, even a nonparty may be held in contempt if that person “counsels or aids a party in disobeying a decree” (citation omitted). *Bird v. Capital Site Mgmt. Co.*, 423 Mass. 172, 178, 667 N.E.2d 826 (1996).

The judge enjoined, among others, Fustolo’s wife from “directly or indirectly spending more than \$7,000 per

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11. Fustolo’s argument that it is impossible for him to comply with the documentation requirement for past years is premature. As the judge noted in a September 2022 order, impossibility might be a defense to a contempt finding, but litigation of that issue has yet to occur. See, e.g., *Commonwealth v. One 1987 Ford Econoline Van*, 413 Mass. 407, 412, 597 N.E.2d 430 (1992).

Similarly, to the extent that Fustolo contests the potential fines for future noncompliance included in the judgment on the contempt complaint, none of the orders before us impose such a fine on Fustolo.

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month . . . on ordinary living expenses for food, mortgage and the like until the judgment in this case is paid,” starting in May 2022. On the issue of notice, the evidence was that Fustolo’s wife was shown a copy of the original injunction during a deposition in 2012, and she testified at the contempt proceedings in May 2018.

Evidence also was presented that Fustolo’s wife was an active participant in Fustolo’s financial affairs. Fustolo and his wife lived together and shared expenses. Fustolo’s wife primarily paid the household bills using checks from her own accounts or joint accounts shared with Fustolo. The wife received funds in her accounts from unknown sources, including, for instance, \$119,000 that Fustolo deposited into his wife’s accounts during a one-year period between 2012 and 2013. Fustolo also comingled money from the reach and apply defendants with personal accounts that he shared with his wife; the judge found that such use of the businesses “promote[d] fraud.” Moreover, Fustolo’s wife helped Fustolo with his seminar business for over a decade, and Fustolo, on behalf of Fustolo CPE, entered into an agreement with Fustolo’s wife to compensate her for marketing and communications work that she did for the company. In light of this evidence, the judge did not err in including Fustolo’s wife in the judgment, particularly where the injunction imposed a limit on spending for ordinary living expenses. See *Bird*, 423 Mass. at 178-179 (wife who received and spent proceeds in violation of attachment order may be held in contempt if aware of order).

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With respect to Fustolo CPE, Fustolo argues that Massachusetts did not have jurisdiction over the Delaware company. To the contrary, there are sufficient contacts between Fustolo CPE and Massachusetts to satisfy both the long-arm statute, G. L. c. 223A, § 3 (a), and due process. See, e.g., *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 712-713 (1st Cir. 1996), cert. denied, 20 U.S. 1155 (1997).

The judge found that Fustolo formed Fustolo CPE around December 2013, to carry on the same seminar business of two previously named reach and apply defendants, CPE Meetings, Inc., and National Tax Institute, Inc. As noted by the judge, the bankruptcy judge found based on “several badges of fraud,” [that] Fustolo ‘transferred the business model to the new entity in an attempt to defraud creditors.’”

Fustolo CPE provided income to Fustolo at some points in time. For instance, the judge found that approximately \$1.9 million flowed through Fustolo CPE between December 2013 and December 2015, and Fustolo paid himself \$100,000 from Fustolo CPE in 2015 alone without accounting for payments to pay down his wife’s credit card debt.

The company’s sole owner is Fustolo, a Massachusetts resident, and the company holds a bank account in Massachusetts. See *Walden v. Fiore*, 571 U.S. 277, 285, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014) (physical entry into State by agent relevant contact between defendant and forum). Fustolo, on behalf of the company, also entered into a contract with Fustolo’s wife, another

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Massachusetts resident, for marketing services. Moreover, the company entered an appearance in a parallel action in the Superior Court, not for the limited purpose of challenging jurisdiction. Given this evidence, Fustolo CPE was properly added as a reach and apply defendant under G. L. c. 214, § 3 (8), for the purposes of satisfying the outstanding judgment against Fustolo.<sup>12</sup>

*3. Attorney's fees.* Finally, Fustolo argues that Patriot was not entitled to attorney's fees in the absence of a contempt finding. As a general rule, a "successful" or "prevailing" litigant in a contempt action is entitled to attorney's fees. *Ventresca v. Town Manager of Billerica*, 68 Mass. App. Ct. 62, 66, 859 N.E.2d 897 (2007). Here, the judge found that Patriot prevailed only in demonstrating that Fustolo violated the documentation requirement and in obtaining clarification of the injunction. Because most of the trial and preparation related to Patriot's other claims, the judge awarded Patriot just under fifteen percent of Patriot's requested fees.

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12. General Laws c. 214, § 3 (8), grants the Superior Court original and concurrent jurisdiction over the following:

"Actions to reach and apply in payment of a debt any property, right, title or interest, real or personal, of a debtor, liable to be attached or taken on execution in a civil action against him and fraudulently conveyed by him with intent to defeat, delay or defraud his creditors, or purchased, or directly or indirectly paid for, by him, the record or other title to which is retained in the vendor or is conveyed to a third person with intent to defeat, delay or defraud the creditors of the debtor."

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The partial award of attorney's fees was appropriate because Patriot succeeded in obtaining an order directing Fustolo to provide accountings of his annual expenditures so that Patriot can assess whether Fustolo adhered to the spending limit in the injunction. The judge was within his discretion to award fees for that request. See *Police Comm'r of Boston v. Gows*, 429 Mass. 14, 18-19, 705 N.E.2d 1126 (1999), and cases cited (fees may be awarded to party even when no finding of contempt).

*Conclusion.* The judgment on the complaint for contempt dated January 6, 2023, is affirmed. The order on the petition for attorney's fees and costs dated January 5, 2023, is affirmed.

*So ordered.*  
By the Court  
(Meade, Blake & Desmond, JJ.<sup>13</sup>)

Entered: May 28, 2024.

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13. The panelists are listed in order of seniority.

**APPENDIX C — ORDER FOR JUDGMENT OF  
THE SUFFOLK SUPERIOR COURT FOR THE  
COMMONWEALTH OF MASSACHUSETTS,  
DATED MAY 31, 2022**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss.  
SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. 2010-00529

THE PATRIOT GROUP, LLC,

*Plaintiff,*

v.

STEVEN C. FUSTOLO, *et al.*,

*Defendants.<sup>1</sup>*

**ORDER FOR JUDGMENT**

For the reasons set forth in the accompanying Findings of Fact, Conclusions of Law and Order for Judgment, the Court ORDERS THAT JUDGMENT ON THE COMPLAINT FOR CONTEMPT SHALL ENTER AS FOLLOWS:

1. Declaring that Fustolo has violated the “to be documented” requirement of the Permanent

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1. The names of Trustee Process and Reach and Apply Defendants have been omitted from the case caption.

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Injunction beginning on April 19, 2012, through the present, but is not in contempt of that Injunction, because the applicable provisions are not clear and unequivocal.

2. Deferring action upon the remainder of the Complaint for Contempt until Fustolo complies with the “to be documented” requirement, or until the August 31, 2022 deadline set forth in paragraph 3, below or any extension thereof, whichever first occurs.
3. To remedy his violations and come into compliance with the Permanent Injunction, Fustolo shall:
  - a. Provide Patriot, on or before August 31, 2022, with an accounting which shall demonstrate, on a yearly basis, beginning from April 19, 2012, the expenditures from all funds received by Fustolo, his wife, and anyone else acting in concert with him, and identify the specific source of funds for each expenditure (*e.g.*, from any Reach and Apply Defendant).
4. The Permanent Injunction is clarified and modified to make clear that, from and after the date of this Order:
  - a. Fustolo (and his respective agents, partners, nominees, spouse and all people in active concert or participation with them) is permanently restrained and enjoined from directly or indirectly spending more than \$7,000 per month (\$84,000 per annum) on

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ordinary living expenses for food, mortgage and the like until the judgment in this case is paid. In the absence of Patriot's written agreement, the burden is on Fustolo, after compliance with Superior Court Rule 9A, to seek Court approval or clarification regarding whether any expense is not an ordinary living expense;

b. On August 1st of each calendar year (or other date selected by the Court), Fustolo must provide Patriot with (i) a detailed and itemized description of his prior year's paid expenses, and (ii) copies of bank statements, receipts and any other reasonably necessary back-up materials reflecting those expenditures upon request by Patriot;

c. Fustolo is prohibited from causing any entity he owns and controls from paying him more than \$7,000 per month (\$84,000 per annum), unless (i) Fustolo is making payments in excess of \$50,000 per annum on August 1st to Patriot against Patriot's Judgment, (ii) Fustolo has made at least two years of such payments and (iii) Fustolo obtains prior Court approval.

4. In the event of violation of any obligation set forth in paragraph 3 or 4 above (or both):

a. Fustolo shall pay a civil fine of \$500 per week for the first four weeks and \$1,000 per week thereafter; and

b. In the event that Fustolo fails to pay such fine within 6 months of the time when the violation

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first arose, the court shall reduce the allowance of \$7,000 per month (\$84,000 per annum) in ordinary living expenses as set forth in the Permanent Injunction and above. The reduction shall be in the amount of \$100 in monthly living expense allowance for each full calendar month of non-compliance (starting with the first full calendar month of non-compliance), in addition to the civil fine itself; and

5. Fustolo CPE, LLC is added as a Reach and Apply Defendant. Further, any other entity Fustolo owns and controls as of the present shall also be added as a Reach and Apply Defendant upon motion. Fustolo shall provide the Court and Patriot with a certified and complete list of entities on or before July 15, 2022, all of which will be subject to the Permanent Injunction.

6. Patriot is entitled to reasonable costs and attorney's fees. As such, Patriot shall file and serve a final verified, detailed and documented fee petition within thirty (30) days of receipt of the Court's Order, addressing fees and costs as have been incurred in connection with the Complaint for Contempt. Fustolo shall have fourteen (14) days thereafter to oppose the petition, after which a hearing shall be held on the petition, if necessary and at the Court's sole discretion.

/s/  
Douglas Wilkins,  
Associate Justice of the Superior Court

Dated: May 31, 2022

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COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX, ss.  
SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO. 1081-00529

THE PATRIOT GROUP, LLC,

*Plaintiff,*

v.

STEVEN C. FUSTOLO, *et al.*,

*Defendants.<sup>1</sup>*

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER FOR JUDGMENT**

The court tried this case without a jury on three days of trial on May 16, 17 and 18, 2018 (Billings, J.) with two additional trial days, after Judge Billings' retirement, on April 4 and 5, 2022 (Wilkins, J.). The parties also stipulated to a number of facts in the parties' Amended Joint Pre-Trial Memorandum ("PTM") (Docket Entry 86).

After trial, the court finds that the defendant Steven C. Fustolo ("Fustolo") violated the permanent injunction in this case, that the injunction's requirements were not

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1. The names of Trustee Process and Reach and Apply Defendants have been omitted from the case caption.

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sufficiently clear and unequivocal, and that the Permanent Injunction requires modification and clarification to remove any doubt about Fustolo's obligations and to fix definite consequences in the event of failure to comply with the permanent injunction, as modified.

**PRIOR PROCEEDINGS**

In February 2010, Patriot sued Fustolo in Middlesex County Superior Court on the guarantee and named "Reach and Apply" defendants. On May 27, 2011, the court entered judgment for \$20.5 million in Patriot's favor. On April 19, 2012, the Court (Curran, J.) issued a Permanent Injunction ("Permanent Injunction"), which provides, in relevant part:

That Steven C. Fustolo and his respective managers, agents . . . are **permanently restrained and enjoined** from directly or indirectly assigning, alienating, selling, transferring, pledging, encumbering, concealing or in any other manner, disposing of, diminishing, dissipating, re-directing or otherwise instructing the re-direction and/or misapplication of any and all intangible properties received by Steven C. Fustolo from the Reach and Apply Defendants, except to pay ordinary living expenses for mortgage, food and the like, **not to exceed \$84,000 per year or a cumulative average of \$7,000 per month**, to be documented to the Plaintiff on an annual basis, and to pay ordinary operating expenses for the operation of the Reach and Apply Defendants, including but not limited to real estate taxes, utilities, insurance

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premiums, payroll (excluding Steven C. Fustolo), payroll taxes, occupancy costs, and supplies, or as otherwise directed by this Court and from paying any monies directly or indirectly to any other person or entity created or controlled by Steven C. Fustolo;

That Steven C. Fustolo and his respective managers, agents . . . **are permanently restrained and enjoined** from directly or indirectly altering; amending, modifying, hypothecating, assigning, alienating, selling, transferring . . . or in any other manner disposing of, diminishing or dissipating the value of Steven Fustolo's beneficial, equitable, shareholder and/or ownership interests in the Reach and Apply Defendants: James J. Fox & Company LLP, National Tax Institute, Inc., CPE Meetings, Inc. . . . , or any other of their tangible and intangible assets except to pay ordinary business operation or living expenses, as described above in paragraph 2, or to pay the Plaintiff; and

That the Reach and Apply Defendants, James J. Fox & Company LLP, National Tax Institute, Inc., CPE Meetings, Inc., Terrace Hall Partners, LLC, Five High Street, LLC, Huntington Properties, Inc., Property Trust Corporation, Huntington Properties Holding Company, L.L.C., 23-25 Highland Avenue, LLC, Fustolo Development, LLC, and Atlas Garden Supply LLC, and all of their respective managers, directors, officers, agents . . . **are permanently restrained and enjoined** from directly or indirectly paying money or any other form of compensation or

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dividend to or for the benefit of Steven C. Fustolo, or from . . . transferring, encumbering, concealing or in any other manner, disposing of the value of Steven C. Fustolo's beneficial, equitable, shareholder and/or ownership interests in the Reach and Apply Defendants. However, the above Reach and Apply Defendants may advance funds to Fustolo in an amount not to **exceed \$84,000 per year or a cumulative average of \$7,000 per month** to cover his personal expenses as described in paragraph 2, or to pay the Plaintiff.

(Emphasis in the original). Fustolo received notice of the Permanent Injunction. He later was involved with bankruptcy proceedings, described below.

On September 15, 2017, Patriot filed its Complaint for Contempt against Fustolo. (Docket Entry 46). On November 8, 2017, Fustolo filed his Answer to Patriot's Complaint for Contempt. (Docket Entry 51). Trial before the Honorable Thomas Billings in this matter began on May 16, 2018, and continued on May 17 and 18, 2018, but was not completed before Judge Billings resigned from the Superior Court. Trial resumed before the undersigned, by agreement of the parties, on April 4 and 5, 2022, during which the court received live testimony from Fustolo and counsel for Patriot on the merits and on the issue of the reasonable value of legal services. At the close of testimony on April 5, 2022, the Court allowed the parties thirty (30) days to provided post-trial proposed findings.

*Appendix C***Bankruptcy Proceedings**

Meanwhile, the United States Bankruptcy Court for the District of Massachusetts resolved a number of material issues after a six-day trial involving the same parties in the bankruptcy adversary proceeding entitled *The Patriot Group, LLC v. Steven C. Fustolo*, Adv. P. 14-1193 (Feeney, J) (the “Patriot Adversary Proceeding”) (related to the main Chapter 7 bankruptcy proceeding *In re Steven C. Fustolo, Debtor*, No. 13-12692-JNF (Bankr. D. Mass.)). After trial in the Patriot Adversary Proceeding, the Court issued an Order and February 4, 2019 Memorandum denying Fustolo’s bankruptcy discharge (the “Bankruptcy Order”).

Among other things, the Bankruptcy Order adjudicated (a) the relationship of Reach and Apply Defendants CPE Meetings, Inc. and National Tax Institute, Inc. to Fustolo CPE, LLC, (b) Fustolo’s spending and his transfer of assets from Reach and Apply Defendants to other Fustolo-owned entities, (c) Fustolo’s failure to maintain adequate records and (d) Fustolo’s receipt and expenditures of funds. Patriot is entitled to the benefit of offensive collateral estoppel on those issues. *See Bellerman v. Fitchburg Gas and Electric Light Company*, 470 Mass. 43, 60 (2014) (“the offensive use of collateral estoppel occurs when a plaintiff seeks to prevent a defendant from litigating issues which the defendant has previously litigated unsuccessfully.”); *Bar Counsel v. Bd of Bar Overseers*, 420 Mass. 6 (1995) (estopping the re-litigation of issues); *Coastal Oil New Eng., Inc. v. Citizens Fuels Corp.*, 55 Mass. App. Ct. 69 (2002) (same). The Bankruptcy Order’s findings

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and rulings also and provide context for the evidence presented to the Court. To avoid dispute over application of collateral estoppel, and in light of the fact that some of those issues were litigated in this court notwithstanding the Bankruptcy Order, this court affirmatively finds the facts in those instances where it has independently come to the same conclusion as the Bankruptcy Court.

**FINDINGS OF FACT**

1. Fustolo is a Certified Public Accountant (“CPA”) who earned a bachelor’s of science in accounting from Bentley College and an MBA from Babson College.
2. Fustolo has been a CPA and professional tax advisor since the early 1980’s. Fustolo is a partner in the accounting firm James J. Fox & Co.
3. Fustolo has wholly owned and operated businesses involving real estate development, publishing, and continuing professional education (“CPE”) for CPA’s, attorneys and other tax professionals.
4. Fustolo resides in Winchester, Massachusetts and is married to Elisa Fustolo, who testified on May 17, 2018.
5. In 2007, Fustolo created Revere Beach Holdings, LLC to hold property located in Revere, Massachusetts. Fustolo intended to develop the land and caused Revere Beach Holdings, LLC to borrow money from Patriot, a private lender. Patriot loaned Revere Beach Holdings, LLC a total of \$13.6 million; Fustolo signed a personal

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guarantee. Revere Beach Holdings, LLC subsequently defaulted on the Patriot loan.

6. The court credits Fustolo's testimony on the following facts regarding his response to the Permanent Injunction, although it does not agree with his reasoning:

“And when the injunction entered, you didn’t set up any kind of account specifically to receive funds from the reach and apply defendants, correct?”

Fustolo: “No. There was no requirement to do so.”  
May 16, 2018 Trial Transcript at 146.

\* \* \*

“When the injunction was issued, did you implement any financial or accounting procedure to track your expenses?”

Fustolo: “No, I didn’t. I had the bank statements. *id.* at 148.

11. Fustolo had the expertise and actual ability to track his expenses (ordinary living or otherwise) from his bank statements, as well as transfers from the Reach and Apply Defendants and expenditures of specific funds received from the Reach and Apply Defendants. He did not do so. Mrs. Fustolo confirmed that she too did not track the couple’s expenses for any purpose.

12. Fustolo believes that the Permanent Injunction does not require him to document anything to Patriot.

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13. He also believes that the Permanent Injunction is meant to be understood according to, and incorporates, accounting and tax industry terms of art.

14. Fustolo did not make reports or disclosures of any kind to Patriot to comply with the Permanent Injunction. He testified, and the court finds, as follows: “Have you ever provided to the Patriot Group an itemized list of expenditures directly traced to monies you received from the reach and apply defendants?” Fustolo: “No.” May 16, 2018 Trial Transcript at 148.

15. Fustolo did not maintain records, books or accounts that would allow a creditor, such as Patriot, to understand his financial condition, including concerning his twenty-nine (29) business bank accounts and the nine (9) personal accounts. This court adopts and independently agrees with the Bankruptcy Court’s finding “that the Debtor failed to keep and preserve adequate books and records . . . Ascertaining [Fustolo’s] financial condition and business transactions posed an intractable problem owing to the complexity of the ownership structure of his various business entities and the movement of money among them and between business and personal accounts.” Bankruptcy Order at 99.

16. There is no way, based upon the evidence in this case, to determine the magnitude and nature of the transfers and cash flow between Fustolo, his spouse and Reach and Apply Defendants CPE Meetings, Inc. and National Tax Institute, Inc., including which cash inflows represent compensation, reimbursement for legitimate

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business expenses, distributions, dividends, or other payments.

17. Fustolo took money from his companies (including Reach and Apply Defendant CPE Meetings, Inc.) and commingled it with his and his wife's personal bank accounts. The court agrees with the Bankruptcy court's finding that "Fustolo used his businesses to promote fraud . . . Fustolo took money from that and other companies when he saw fit, ignoring the April 2012 Superior Court permanent injunction that . . . required Fustolo to document expenses to Patriot." Bankruptcy Order 85, 90.

18. "Kimberley Train, Fustolo's accounting expert in the Bankruptcy Case, calculated Mr. Fustolo's expenditures for May 2012 through December 2014. During this period, the Fustolos expended \$729,048.31. During this period, Fustolo did not track which expenses were paid from funds received from the Reach and Apply Defendants. As he admits, he could have done so. He still could do so.

19. Fustolo also withdrew and deposited significant sums of cash without explanation, records or receipts to corroborate the source of the cash, the reason for the deposit or withdrawal, or the cash's use on an itemized basis. For example, from May 7, 2012 to May 6, 2013, Fustolo deposited \$119,000 in cash into his wife's account from unknown sources.

20. On Fustolo's sworn bankruptcy schedules, Fustolo listed his monthly income as \$17,332.00 and his monthly

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expenses as \$20,322.00. By at least 2018, the couple's monthly expenditures were roughly the same as listed on Schedule I, or higher.<sup>2</sup>

21. During the period covered by Ms. Train's report, Fustolo purchased numerous expensive items, none of which constitute ordinary living expenses. He bought gemstones, continued to pay for a country club golf membership and expended funds on other non-ordinary household items. A Fustolo-created spreadsheet lists "disbursements not household expenditures" including \$42,000 for "stones" and \$23,000 to his wife. The court agrees with the Bankruptcy court that "There was ample indicia of fraudulent intent associated with [Fustolo's] suspicious acquisition of the gemstones from funds in his personal bank account." Bankruptcy Order at 73-74. This court also agrees with the bankruptcy court that Fustolo "is a sophisticated businessman and CPA, yet he was unable to adequately explain the sources of cash deposited into his wife's accounts." *Id.* at 103.

22. For decades, Fustolo was in the business of providing professional tax education seminars at luxury resorts around the world.

23. Fustolo's seminar business was comprised of two Reach and Apply Defendants for which he was the sole shareholder and owner: (a) CPE Meetings, Inc.; and (b)

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2. The Bankruptcy Court calculated Fustolo's actual income at \$37,870 per month, \$20,000 more than Fustolo provided in his sworn bankruptcy schedules. (*Compare* Ex. 3, Schedule I with Bankruptcy Order at 103).

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National Tax Institute, Inc. (collectively, “Old NTI”). The defining attribute of the seminar business was what Old NTI described as “perfecting the art of resort CPE.” Fustolo was the sole owner of Old NTL

24. CPE Meetings handled customer travel reservations, and National Tax Institute operated the actual conferences. Later, a new company, “NTI, LLC” was created to hold escrowed funds for Old NTI to ensure certain Old NTI creditors were paid.

25. When operating Old NTI, Fustolo was one of many presenters. Old NTI also paid numerous other professionals to give lectures and sold continuing education self-study guides written by other authors and other off-the-shelf products. Old NTI marketed itself on the Internet and through brochures.

26. Old NTI’s 2013 brochure promoted “Timely Topics” and “Impressive Speakers,” including Fustolo. It also included sign-up and registration information along with contact and phone numbers. Old NTI was also associated with a specific IRS and NASBA<sup>3</sup> registration that allowed it to offer continuing accounting and tax education courses.

27. The 2013 brochure features a quote from a certain “James Douglas, CPA Michigan” describing his attendance at Old NTI seminars “14 years in a row and

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3. NASBA stands for “National Association of State Boards of Accountancy” (May 16, 2018 Trial Transcript at 62).

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still going strong.” This exact quote appears in the 2016 brochure for a different company, Fustolo CPE, LLC d/b/a NTI (“New NTI”).

28. In or about December 2013, Fustolo formed New NTI to carry on the very same business as Old NTI with a bank account ending in 0834 at Belmont Savings Bank. Fustolo is the sole owner of New NTI, which continues to conduct seminars.

29. New NTI continues Old NTI’s “niche concept [perfecting the art of resort CPE], the content of the website and brochures, including format and descriptions regarding topics, speakers, registration, and phone numbers, as well as goodwill both pre- and post-petition [i.e., before and after May 6, 2013]” This court agrees with the Bankruptcy court that “The overwhelming weight of the evidence compels the conclusion that the new ‘NTI’ was the same as the old ‘NTI’”). Bankruptcy Order at 91, 92.

30. A comparison of the marketing brochures of Old NTI and New NTI confirms that the companies were identical and that Fustolo merely transferred Old NTI to New NTI

31. After a trial, the Bankruptcy Court determined that, based upon “several badges of fraud,” Fustolo “transferred the business model to a new entity in an attempt to defraud creditors.” This court agrees.

32. Patriot also contends that Old NTI conveyed a valuable customer list to New NTI as evidenced by

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James Douglas's testimonial '14 years in a row and still going strong.'" Fustolo, however, testified that the names of potential customers are readily available from public listings of certified accountants. The court finds that explanation plausible. It finds against Patriot on the assertion that Old NTI had a customer list that amounted to an asset that it transferred to New NTI.

33. More generally, Patriot has not proven that the transfer of Old NTI to new NTI included a transfer of valuable assets, as opposed to Fustolo's own goodwill, use of a business model that was generally known to the public and solicitation of customers whose names were set forth in public licensure records. Patriot has submitted no evidence or expert opinion to support its assertion that Old NTI transferred commercially valuable assets to New NTI.

34. Moreover, in Fustolo's settlement with the Trustee, the Trustee *abandoned* certain assets, including any claims or rights pertaining to CPE Meetings, Inc., National Tax Institute, Inc. and Fustolo CPE, LLC. *See* Stipulation of Settlement, Doc. 304-1, 9 (abandonment of property), Exhibit A (listing abandoned property which includes CPE Meetings, Inc., National Tax Institute, Inc., Fustolo CPE, LLC and NTI, LLC). The court infers that, like this court, the Trustee was unable to find that these entities retained any valuable and marketable assets.

35. Approximately \$1.9 million flowed into New NTI from its inception through December 2015, the last date for which Patriot has records.

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36. Fustolo paid himself \$100,000 from New NTI in 2015 alone, without accounting for payments to pay down Mrs. Fustolo's American Express credit card.

37. As of 2014, the Fustolos' monthly household living expenses was approximately \$20,322, which exceeds \$84,000 per year. Fustolo testified that, "barring attorneys fees and with respect to the lifestyle, not a whole lot has changed moving forward." Tr. I-101 (April 4, 2022). He contended he was, nevertheless, in compliance with the Permanent Injunction, based upon his reading that his only obligation regarding living expenses was under paragraph 2 which required that, if he received a distribution of intangible assets, he would have to spend it on personal living expenses or expenses of the business.

**ATTORNEYS FEES**

38. Patriot has incurred attorney's fees and expenses in prosecuting the Contempt Complaint in this case against Fustolo in an amount of \$140,401.98, which amount excludes fees and costs for the month of March 2022, trial and preparation of post-trial filings. Given the disposition reached below,<sup>4</sup> the court does not, at this time, determine

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4. Patriot has yet to prevail on its complaint for contempt. Attorney's fees and costs are an appropriate element of a successful civil contempt proceeding. They are the court's means of compensating the contempt plaintiff for costs incurred as a consequence of the defendant's violation of the court order. Such awards are proper whether or not the underlying violation is found to have been willful, and are within the court's remedial discretion. *Judge Rotenberg Educational Center, Inc. v. Department of*

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whether those amounts are reasonable for fee shifting purposes.

**DISCUSSION**

To prevail on its complaint for contempt, Patriot must prove that: (a) Fustolo had actual notice of the Order; (b) the Order was a clear and unequivocal command; and (c) the defendant's actions constituted a clear and undoubted disobedience of that clear and unequivocal command. *Demoulas v. Demoulas Supermarkets, Inc.*, 424 Mass. 501, 565 (1997); 424 Mass. at 565-70. *Demoulas*, 424 Mass. at 569. The defendant has the burden of proof on question of ability to comply. *Cf. Diver v. Diver*, 402 Mass. 599, 603 (1988) (addressing "ability" in the context of probate support orders).<sup>5</sup>

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*Mental Retardation (No.1)*, 424 Mass. 430,448 (1997); *Demoulas v. Demoulas Super Mkts. Inc.*, 424 Mass. 501, 571(1997); *Ventresca v. Town Manager of Billerica*, 68 Mass. App. Ct. 62, 65 (2007); *Eldim, Inc. v. Mullen*, 47 Mass. App. Ct. 125, 130-131 (1999).

5. Remedies for contempt include a prospective; coercive fine, payable to the Commonwealth (*Labor Relations Comm'n. v. Fall River Educators' Assn.*, 382 Mass. 465, 475-476 (1981)); a retrospective, compensatory fine, payable to the plaintiff for harm caused by past violations (*Fall River Educators*, 382 Mass. at 474-478); coercive incarceration, including a sentence for a fixed term, if suspended for a period to allow the defendant to purge the contempt (*Barreda v. Barreda*, 16 Mass. App. Ct. 918, 920-921 (1983)), and attorneys' fees (*Demoulas v. Demoulas Super Mkts., Inc.*, 424 Mass. 501, 571(1997)). The "formulation of the remedy is within the judge's discretion." *Eldim, Inc. v. Mullen*, 47 Mass. App. Ct. 125, 129 (1999), quoting *Demoulas*, 424 Mass. at 571.

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Patriot the burden of proving contempt by clear and convincing evidence, rather than a mere preponderance of evidence. *In Re Birchall*, 454 Mass. at 852-853. Fustolo does not contest that he had notice of the Preliminary Injunction. Nor does he contest his ability to comply with the Permanent Injunction's documentation requirements. He does contest whether the order imposed a clear and unequivocal command to document living expenses for purposes of assessing the limits upon cash payments to him and whether he clearly and undoubtedly disobeyed that command.<sup>f</sup>

**I.**

In a contempt proceeding, the court focuses first upon the language of the order. *Peggy Lawton Kitchens, Inc. v. Hogan*, 403 Mass. 732, 734-35 (1989). The court will not read additional terms into an order; it will not hold the defendant in contempt if doing so would expand the scope of the underlying order beyond its plain meaning. *Demoulas*, 424 Mass. at 566; see *Judge Rotenberg Educational Center, Inc. v. Department of Mental Retardation (No.1)*, 424 Mass. 430,449 (1997)ss; *Peggy Lawton Kitchens*, 403 Mass. at 734-35.

Two passages in the Permanent Injunction are key. Paragraph 2 prohibits transfer or dissipation of assets of intangible properties received by Steven C. Fustolo from the Reach and Apply Defendants "except to pay ordinary living expenses for mortgage, food and the like, not to exceed \$84,000 per year or a cumulative average of \$7,000 per month, to be documented to the Plaintiff on an

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annual basis, . . . ” Paragraph 4 prohibits the Reach and Apply Defendants from paying Fustolo or disposing of his interests in those defendants, but allows them to “advance funds to Fustolo in an amount not to exceed \$84,000 per year or a cumulative average of \$7,000 per month to cover his personal expenses as described in paragraph 2, or to pay the Plaintiff.”

Fustolo points out that paragraph 4 does not include the phrase in paragraph 2: “to be documented to the Plaintiff on an annual basis.” He also observes that paragraph 2 applies to “intangible properties,” which is an accounting term of art that does not include cash payments. See IRS Intangible Property Valuation Guidelines, 4.48.5.1.2 (“For purposes of this document, intangible property includes but is not limited to any commercially transferable interest in any items included in the following six categories,” none of which is cash payments); See also 350 Intangibles—Goodwill and Other 20 Goodwill 20 Glossary at p. 2 (““The term intangible assets is used to intangible assets other than goodwill.”). Arguing that paragraph 4 is the only paragraph addressing cash payments, Fustolo concludes that the cash payments he has received from the Reach and Apply Defendants are not subject to the documentation requirements. Since he has not provided documentation, this argument is the crux of his argument that he has not violated the Permanent Injunction.

The court rejects Fustolo’s overly literal parsing of words obviously intended to hold him to account. It is true that paragraph 4 does not explicitly require the living expenses “to be documented to the Plaintiff on an annual

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basis.” But Paragraph 4 does refer to “personal expenses as described in paragraph 2.” It has the same goal of allowing Fustolo to maintain a level of monthly living expenses, but no more. There is no apparent reason why the Permanent Injunction would require documentation regarding intangible assets but not regarding cash payments. Paragraph 2 has mandatory language, “to be documented to the Plaintiff on an annual basis.” While this language appears in a paragraph addressing intangible asset transfers, it is not, in terms, limited to situations where Fustolo has in fact transferred assets. Given paragraph 4’s reference to “paragraph 2,” the better interpretation is that the obligation to document living expenses exists whether or not Fustolo transfers intangible properties.

Indeed, the history and purpose of this language refutes any suggestion that the Permanent Injunction intentionally left open the argument that Fustolo now makes. The documentation requirement’s obvious intention was to avoid reliance upon Fustolo’s unproven assertions that he has complied with the monthly living expense limitation. The Permanent Injunction is a court order, based upon a proposed order submitted by Patriot. There is no reason to think that an order, so drafted, intended to allow the serious loophole that Fustolo now seeks to exploit.

It follows that Fustolo has violated the Permanent Injunction by failing to document his monthly expenses to Patriot on an annual basis.

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Violation of the Permanent Injunction is not enough. Patriot must show that Mr. Fustolo's actions were a "clear and undoubted disobedience of a clear and unequivocal command." *Id.*, 454 Mass. at 851, quoting *Manchester v. Department of Envtl. Quality Eng'g*, 381 Mass. 208,212 (1980) (additional citations omitted). Fustolo contests Patriot's assertion that the Permanent Injunction is clear and unequivocal.

A clear and unequivocal command is one which provides "all who are subject to [the] order's command [with] fair notice of the conduct the order prohibits." *Sax v. Sax*, 53 Mass. App. Ct. 765, 772 (2002). See *Judge Rotenberg*, 424 Mass. at 448. Fustolo's arguments show—just barely—that there is sufficient ambiguity in the Permanent Injunction to defeat an argument that the requirement to document monthly living expenses in the absence of a transfer or intangible property is clear and unequivocal.

The drafting leaves open a number of questions. It was certainly possible to express a general obligation to document living expenses in a stand-alone sentence or paragraph. If the intent was to impose an unconditional documentation requirement, why did the injunction include it only as a subordinate clause in paragraph 2, which addressed intangible asset transfers? The cross reference in paragraph 4 is to "personal expenses as described in paragraph 2" but not to the annual documentation requirement. If the intent was to require documentation in

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the event of cash payments, why did paragraph 4 not cross-reference the documentation requirement? In fact, where the contempt complaint targets violations of paragraph 4, it is highly significant that, read by itself, nothing in that paragraph expressly imposes the documentation requirement that Patriot contends was violated.

The court cannot, therefore, conclude that the documentation requirement was “clear and unequivocal” enough to support a finding of contempt. The court therefore finds against Patriot on the question of contempt of that particular requirement and, instead, enters clear and specific orders that clarify and implement the Permanent Injunction and requires compliance with the applicable requirements in short order, including documenting living expenses for past years, when Fustolo was under an obligation to do so, even though his obligation was not stated with sufficient clarity.

On the other hand, there is no ambiguity in the substantive requirement that the amount of funds advanced to Fustolo is “not to exceed \$84,000 per year or a cumulative average of \$7,000 per month to cover his personal expenses as described in paragraph 2, or to pay the Plaintiff.” This limit is clear and unequivocal. The findings of this court, and the Bankruptcy court, raise serious suspicions that Fustolo has exceeded the limit by spending on expensive jewelry, club memberships and the like. They also raise serious questions about

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the use of various entities to conceal assets or personal spending. However, the evidence of these alleged violations is not clear and convincing enough to support a finding of contempt under *Birchall*. That is not Patriot's fault. Fustolo has failed to provide precisely the documentation that the court ordered him to provide, to reduce the uncertainty and potential for argument about compliance with the spending limits. Once the documentation is produced, Patriot may well be able to meet its high burden. In the absence of the required documentation, which will now be forthcoming, the court cannot presently find that Fustolo is in contempt for having cash advances for his personal expenses that exceeded the \$84,000 (\$7,000) limit. However, given Fustolo's violation of the documentation requirement, it would be unfair to dismiss Patriot's complaint for contempt on the merits of the excessive expenditure claim. In dismissing that portion of the complaint without prejudice, the court contemplates that Patriot may make a motion under Mass. R. Civ. P. 60(b) to vacate the judgment, reopen the record, add any documentation that Fustolo may provide, and obtain a new ruling on the merits of this claim based upon the complete record to which Patriot and the court are entitled under the Permanent Injunction.

Because the documentation requirement is not clear and unambiguous, and the court defers action on any claim that Fustolo has exceeded the dollar limit for personal expenses, it is not necessary to decide whether his state

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of mind satisfied the necessary element for a contempt finding.<sup>6</sup>

**IV**

Fustolo also claims that his bankruptcy proceeding bars enforcement of the Permanent Injunction. Under 11 U.S.C. § 362, the filing of a bankruptcy petition “operates as a stay, applicable to . . . (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title.” This automatic stay “is designed to effect an immediate freeze of the status quo at the outset” of bankruptcy proceedings. *I.C.C. v. Holmes Transp., Inc.*, 931 F.2d 984, 987 (1st Cir. 1991); *In re A&J Auto Sales, Inc.*, 223 B.R. 839 (D.N.H. 1998). It serves the dual

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6. It is apparently an “unsettled question” whether an individual defendant may defend a contempt complaint on the ground of good faith, lack of willful disobedience or lack of intent to violate a decree. See *O'Connell v. Greenwood*, 59 Mass. App. Ct. 147, 150 n.3 (2003). For organizational defendants, the absence of willfulness will not purge civil contempt; it is enough to establish that the individual defendant was responsible for acts constituting a violation. *United Factory Outlet, Inc. v. Jay's Stores, Inc.*, 361 Mass. 35, 37-38 (1972), and 40-41 (Tauro, J. concurring); *O'Connell v. Greenwood*, 59 Mass. App. Ct. 147, 150 n.3 (2003). Moreover, for institutional defendants, the alleged contemnor's good faith and/or reliance on advice of legal counsel is irrelevant; all that must be proved is that the alleged contemnor violated the order. *Judge Rotenberg Educational Center, Inc. v. Commissioner of the Department of Mental Retardation*, 424 Mass. 430, 453 (1997); *United Factory Outlet*, 361 Mass. at 38.

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purposes of (a) relieving the debtor from added financial pressure during the pendency of bankruptcy proceedings, and (b) protecting creditors by preventing premature disbursement of the debtor's estate. *In re Taylor*, 430 B.R. 305 (Bankr. N.D. Ga. 2010).

The stay does not, however, dissolve rights to enforce a judgment or vacate obligations under a judgment itself. Those are decisions to be made later in the bankruptcy proceeding. Once a debtor is denied discharge in bankruptcy and the bankruptcy is terminated, the rights of creditors and the obligations of the debtor revert to their pre-bankruptcy status. 11 U.S.C. § 362(c)(2)(C); *Barletta v. Tedeschi*, 121 B.R. 669, 671 (N.D.N.Y. 1990); *In re Wilton Aremtale, Inc.*, 968 F.3d 273, 285 (3rd Cir. 2020). Likewise, assets and claims abandoned by a Trustee revert back to the debtor as if he owned them continuously and the bankruptcy never happened. *See Putizer v. Ace Hardware Corp.*, 2016 U.S. DIST. LEXIS 43516, at \*32 (N.D. Ill. Mar. 30, 2016) (quoting and citing *Mathews v. Potter*, 316 F. App'x 518, 521-522 (7th Cir. 2009)); *Moran v. Universal Guar. Life Ins. Co.*, 298 F.3d 609, 617 (7th Cir. 2002) ("[F]or when property of the bankrupt is abandoned, the title reverts to the bankrupt, *nunc pro tunc*, so he is treated as having owned it continuously"). Regardless of the bankruptcy stay, therefore, because assets, claims and other property relating to CPE Meetings, Inc., National Tax Institute, Inc. and Fustolo CPE, LLC were abandoned, they reverted to Fustolo "nunc pro tunc" as if

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he “owned [them] continuously and the bankruptcy never happened,” thus eliminating any argument concerning the impact of the bankruptcy stay regarding those Reach and Apply Defendants. *See Putizer*, 2016 U.S. DIST. LEXIS 43516, at \*32; *Mathews*, 316 F. App’x at 521-22; *Morlan*, 298 F.3d at 617.

Indeed, if the automatic stay eliminated the obligation to perform under an injunction during the pendency of a bankruptcy petition, then it would not be a mere “stay.” The automatic stay would become final relief. That is not what the statute says. Indeed, on May 17, 2018 (Tr. at 12-14) Judge Billings ruled that 11 U.S.C. § 362 only stayed Patriot’s collection efforts but did not relieve Fustolo of his Permanent Injunction obligations in the event his discharge was denied. The court now incorporates this ruling into its final determination.

Fustolo also testified that he believes that his settlement with the Bankruptcy Trustee (Harold Murphy) released Patriot’s claims. He is incorrect. His belief conflicts with the settlement agreement and the Bankruptcy Court’s approval thereof as stated at that court’s November 2, 2016 hearing, incorporated by subsequent Order. The Bankruptcy Court ruled: “The stipulation of settlement, Patriot agrees, and I agree with the trustee’s interpretation and now Patriot’s interpretation that the claims against the debtor **release only the claims of the trustee and cannot affect the**

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**pending litigation between Patriot and the debtor, and any order that I enter will make that clear.”** Bankruptcy Court Order of November 2, 2016 (“Hearing held. For the reasons stated on the record, the motion is granted.”).

Finally, the automatic stay has not been in effect since February 2019. Fustolo has taken no effort since the stay was lifted to comply with the Permanent Injunction. While he was under an obligation to comply with the Permanent Injunction at all times, there is no question that enforcement of that injunction is now unencumbered by the Bankruptcy Proceedings and that, since February 2019, there is no conceivable bankruptcy-stay-based argument against compliance.

**ORDER**

For the above reasons, the Court ORDERS that Judgment shall enter:

1. Declaring that Steven Fustolo has violated the Permanent Injunction by failing to provide documentation of his living expenses.
2. Dismissing the complaint for contempt for failure to (a) show that the Permanent Injunction has a clear and unequivocal command to document living expenses and (b) prove violation of the limit on living expenses by clear and convincing evidence, PROVIDED THAT, as to item (b), dismissal is without prejudice

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to a motion to vacate the judgment and reopen the evidence if Fustolo's documentation proves a violation of the living expense limit.

3. Clarifying and Modifying the Permanent Injunction as set forth in the accompanying ORDER and JUDGMENT.

/s/  
Douglas Wilkins,  
Justice of the Superior Court

Dated: May 31, 2022

**APPENDIX D — FINAL JUDGMENT AND  
PERMANENT INJUNCTION OF THE  
MIDDLESEX SUPERIOR COURT FOR THE  
COMMONWEALTH OF MASSACHUSETTS,  
DATED APRIL 18, 2012**

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX, SS.  
SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

CIVIL ACTION NO. 2010-00529-F

THE PATRIOT GROUP, LLC,

*Plaintiff,*

v.

STEVEN C. FUSTOLO,

*Defendant*

v.

WINCHESTER SAVINGS BANK,

*Trustee Process Defendant*

v.

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JAMES J. FOX & COMPANY LLP; NATIONAL TAX INSTITUTE, INC.; CPE MEETINGS, INC.; TERRACE HALL PARTNERS, LLC; FIVE HIGH STREET, LLC; HUNTINGTON PROPERTIES, INC.; PROPERTY TRUST CORPORATION; HUNTINGTON PROPERTIES HOLDING COMPANY, L.L.C.; 23-25 HIGHLAND AVENUE, LLC; FUSTOLO DEVELOPMENT LLC; AND ATLAS GARDEN SUPPLY LLC,

*Reach and Apply Defendants*

**FINAL JUDGMENT AND  
PERMANENT INJUNCTION**

This matter having come before the Court on Plaintiff's Motion for Entry of Reach and Apply Judgment and Permanent Injunctive Relief under G.L. c. 214 § 3(6) and for entry of Final Judgment as to All Defendants, it is hereby ORDERED AND ADJUDGED:

1. That Final Judgment shall enter against Reach and Apply Defendants, James J. Fox & Company LLP<sup>1</sup>, National Tax Institute, Inc., CPE Meetings, Inc., Terrace Hall Partners, LLC<sup>2</sup>, Five High Street, LLC, Huntington Properties, Inc., Property Trust Corporation, Huntington

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1. Subject to restrictions on transfer of Fustolo's membership in James J., Fox & Company LLP partnership imposed by Mass. G.L. c. 112; §87B1/2..

2. Subject to Terrace Hall Partners LLC Membership Pledge Agreement dated September 8, 2008.

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Properties Holding Company, L.L.C., 23-25 Highland Avenue, LLC, Fustolo Development, LLC, and Atlas Garden Supply LLC (the “Reach and Apply Defendants”) on Counts II through VI of the Verified Complaint and Prayers for Injunctive Relief.

2. That Steven C. Fustolo and his respective managers, agents, members, partners, nominees, representatives, servants, employees, attorneys, and all people in active concert or participation with them are **permanently restrained and enjoined** from directly or indirectly assigning, alienating, selling, transferring, pledging, encumbering, concealing or in any other manner, disposing of, diminishing, dissipating, re-directing or otherwise instructing the re-direction and/or misapplication of any and all intangible properties received by Steven C. Fustolo from the Reach and Apply Defendants, except to pay ordinary living expenses for mortgage, food and the like, **not to exceed \$84,000 per year or a cumulative average of \$7,000 per month**, to be documented to the Plaintiff on an annual basis, and to pay ordinary operating expenses for the operation of the Reach and Apply Defendants, including but not limited to real estate taxes, utilities, insurance premiums, payroll (excluding Steven C. Fustolo), payroll taxes, occupancy costs, and supplies, or as otherwise directed by this Court and from paying any monies directly or indirectly to any other person or entity created or controlled by Steven C. Fustolo;

3. That Steven C. Fustolo and his respective managers, agents, members, partners, nominees, representatives,

*Appendix D*

servants, employees, attorneys, and each and every one of them, and all people in active concert or participation with them, **are permanently restrained and enjoined** from directly or indirectly altering, amending, modifying, hypothecating, assigning, alienating, selling, transferring, pledging, encumbering, concealing or in any other manner disposing of, diminishing or dissipating the value of Steven Fustolo's beneficial, equitable, shareholder and/or ownership interests in the Reach and Apply Defendants: James J. Fox & Company LLP, National Tax Institute, Inc., CPE Meetings, Inc., Terrace Hall Partners, LLC, Five High Street, LLC, Huntington Properties, Inc., Property Trust Corporation, Huntington Properties Holding Company, L.L.C., 23-25 Highland Avenue, LLC, Fustolo Development, LLC, and Atlas Garden Supply LLC, or any other of their tangible and intangible assets except to pay ordinary business operation or living expenses, as described above in paragraph 2, or to pay the Plaintiff; and

4. That the Reach and Apply Defendants, James J. Fox & Company LLP, National Tax Institute, Inc., CPE Meetings, Inc., Terrace Hall Partners, LLC, Five High Street, LLC, Huntington Properties, Inc., Property Trust Corporation, Huntington Properties Holding Company, L.L.C., 23-25 Highland Avenue, LLC, Fustolo Development, LLC, and Atlas Garden Supply LLC, and all of their respective managers, directors, officers, agents, partners, members, subsidiaries, nominees, representatives, servants, employees and attorneys, and each and every one of them, and all people in active concert or participation with them, **are permanently restrained**

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**and enjoined** from directly or indirectly paying money or any other form of compensation or dividend to or for the benefit of Steven C. Fustolo, or from altering, amending, modifying, hypothecating, assigning, alienating, selling, transferring, encumbering, concealing or in any other manner, disposing of, diminishing or dissipating the value of Steven C. Fustolo's beneficial, equitable, shareholder and/or ownership interests in the Reach and Apply Defendants. However, the above Reach and Apply Defendants may advance funds to Fustolo in an amount not to exceed **\$84,000 per year or a cumulative average of \$7,000 per month** to cover his personal living expenses as described above in paragraph 2, or to pay the Plaintiff.

Entered as an Order of this Court this 18th of April, 2012.

/s/  
(Justice of the Superior Court)

**APPENDIX E — PETITION OF THE UNITED  
STATES BANKRUPTCY COURT FOR THE  
DISTRICT OF MASSACHUSETTS,  
DATED MAY 6, 2013**

<b>UNITED STATES BANKRUPTCY COURT District of Massachusetts</b>	<b>INVOLUNTARY PETITION</b>
IN RE (Name of Debtor – If Individual: Last, First, Middle) Steven C. Fulstolo	ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)
Last four digits of Social-Security or other Individual's Tax-ID. No./ Complete EIN (If more than one, state all.): 4889	
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) 100 Church Street Winchester, MA 01890	MAILING ADDRESS OF DEBTOR (If different from street address)
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS Middlesex	
ZIP CODE 01890	ZIP CODE
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)	

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<b>CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED</b> <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11	
<b>INFORMATION REGARDING DEBTOR</b> (Check applicable boxes)	
<b>Nature of Debts</b> (Check one box.)  Petitioners believe:  <input type="checkbox"/> Debts are primarily consumer debts <input checked="" type="checkbox"/> Debts are primarily business debts	<b>Type of Debtor</b> (Form of Organization) <input checked="" type="checkbox"/> Individual (Includes Joint Debtor) <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) <hr/> <b>Nature of Business</b> (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other

## Appendix E

<p style="text-align: center;"><b>VENUE</b></p> <p><input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.</p> <p><input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.</p>	<p style="text-align: center;"><b>FILING FEE</b> (Check one box)</p> <p><input checked="" type="checkbox"/> Full Filing Fee attached</p> <p><input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached.</p> <p><i>[If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.]</i></p>
<p><b>PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR</b> (Report information for any additional cases on attached sheets.)</p>	
Name of Debtor	Case Number
Relationship	District
Date	Judge

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ALLEGATIONS (Check applicable boxes)	COURT USE ONLY
<p>1. <input checked="" type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303 (b).</p> <p>2. <input checked="" type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code.</p> <p>3.a. <input checked="" type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount; or</p> <p>b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.</p>	

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<b>TRANSFER OF CLAIM</b>	
<input type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).	
<b>REQUEST FOR RELIEF</b>	
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.	
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.	
x /s/ _____ Signature of Petitioner or Representative (State title) <u>50 Thomas Palton Drive, LLC</u>	x /s/ _____ Signature of Attorney Bruce F. Smith, Esq. <u>(BBO No. 467900)</u>
Name of Petitioner      Date Signed	Name of Attorney Firm (If any) <u>Jager Smith P.C.</u>
Name & Mailing Address of Individual Signing in Representative Capacity C/o Cliff Schorer 10 Turnpike Road Southborough, MA <u>01772</u>	Address <u>One Financial Ctr, 4th Flr,</u> <u>Boston, MA 02111</u> Telephone No. (617) 951-0500

## Appendix E

*Appendix E*

Name and Address of Petitioner  The Patriot Group, LLC	Nature of Claim  Judgment (Exhibit B Annexed Hereto)	Amount of Claim  \$20,423,216.44 plus accrued unpaid interest
Name and Address of Petitioner  Richard Mayer	Nature of Claim  Judgment (Exhibit C Annexed Hereto)	Amount of Claim  \$150,000.00 plus accrued unpaid interest
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims

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<b>TRANSFER OF CLAIM</b>	
<input type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).	
<b>REQUEST FOR RELIEF</b>	
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.	
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.	
x /s/ _____ Signature of Petitioner or Representative (State title) <u>50 Thomas Palton Drive, LLC</u>	x /s/ _____ Signature of Attorney Bruce F. Smith, Esq. <u>(BBO No. 467900)</u>
Name of Petitioner      Date Signed C/o Cliff Schorer 10 Turnpike Road Southborough, MA <u>01772</u>	Name of Attorney Firm (If any) <u>Jager Smith P.C.</u> Address <u>One Financial Ctr, 4th Flr,</u> <u>Boston, MA 02111</u>
Name & Mailing Address of Individual Signing in Representative Capacity	Telephone No. (617) 951-0500

## Appendix E

<p><u>x</u></p> <p>Signature of Petitioner or Representative (State title)  <u>The Patriot Group, LLC</u></p> <p>Name of Petitioner      Date                                      Signed</p> <p>Name &amp; Mailing Address of Individual Signing in Representative Capacity</p> <p>C/o John Howe  <u>1120 Post Rd, 2nd Flr</u>  Darien, CT 06820</p>	<p><u>x</u></p> <p>Signature of Attorney      Date  Bruce F. Smith, Esq.  <u>(BBO No. 467900)</u></p> <p>Name of Attorney Firm (If any)  <u>Jager Smith P.C.</u></p> <p><u>One Financial Ctr, 4th Flr,</u>  <u>Boston, MA 02111</u></p> <p>Telephone No.  (617) 951-0500</p>	
<p><u>x</u></p> <p>Signature of Petitioner or Representative (State title)  <u>Richard Mayer</u></p> <p>Name of Petitioner      Date                                      Signed</p> <p>Name &amp; Mailing Address of Individual Signing in Representative Capacity</p> <p>_____</p> <p>_____</p>	<p><u>x</u></p> <p>Signature of Attorney      Date  Bruce F. Smith, Esq.  <u>(BBO No. 467900)</u></p> <p>Name of Attorney Firm (If any)  <u>Jager Smith P.C.</u></p> <p>Address  <u>One Financial Ctr, 4th Flr,</u>  <u>Boston, MA</u></p> <p>Telephone No.      02111  (617) 951-0500</p>	
<p><b>PETITIONING CREDITORS</b></p>		
<p>Name and Address of Petitioner  50 Thomas Patton Drive, LLC</p>	<p>Nature of Claim  Judgment (Exhibit A Annexed Hereto)</p>	<p>Amount of Claim  \$6,759,948.50 plus accrued unpaid interest</p>

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Name and Address of Petitioner  The Patriot Group, LLC	Nature of Claim  Judgment (Exhibit B Annexed Hereto)	Amount of Claim  \$20,423,216.44 plus accrued unpaid interest
Name and Address of Petitioner  Richard Mayer	Nature of Claim  Judgment (Exhibit C Annexed Hereto)	Amount of Claim  \$150,000.00 plus accrued unpaid interest
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims

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<b>TRANSFER OF CLAIM</b>	
<input type="checkbox"/> Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).	
<b>REQUEST FOR RELIEF</b>	
Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.	
Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.	
x /s/ _____ Signature of Petitioner or Representative (State title) <u>50 Thomas Palton Drive, LLC</u>	x /s/ _____ Signature of Attorney Bruce F. Smith, Esq. <u>(BBO No. 467900)</u>
Name of Petitioner      Date Signed	Name of Attorney Firm (If any) <u>Jager Smith P.C.</u>
Name & Mailing Address of Individual Signing in Representative Capacity C/o Cliff Schorer 10 Turnpike Road Southborough, MA <u>01772</u>	Address <u>One Financial Ctr, 4th Flr,</u> <u>Boston, MA 02111</u> Telephone No. (617) 951-0500

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<p><u>x</u>  Signature of Petitioner or Representative (State title)  <u>The Patriot Group, LLC</u>  Name of Petitioner      Date                                      Signed  Name &amp; Mailing Address of Individual Signing in Representative Capacity                                      C/o John Howe                                      <u>1120 Post Rd, 2nd Flr</u>                                      <u>Darien, CT 06820</u></p>	<p><u>x</u>  Signature of Attorney      Date  Bruce F. Smith, Esq.  (BBO No. 467900)  Name of Attorney Firm (If any)  <u>Jager Smith P.C.</u>  <u>One Financial Ctr, 4th Flr,</u>  <u>Boston, MA 02111</u>  Telephone No.  (617) 951-0500</p>	
<p><u>x</u>  Signature of Petitioner or Representative (State title)  <u>Richard Mayer</u>      <u>5-1-13</u>  Name of Petitioner      Date                                      Signed  Name &amp; Mailing Address of Individual Signing in Representative Capacity                                      <u>3520 Manor Road</u>                                      <u>Bethlehem, PA 18020</u></p>	<p><u>x</u>  Signature of Attorney      Date  Bruce F. Smith, Esq.  (BBO No. 467900)  Name of Attorney Firm (If any)  <u>Jager Smith P.C.</u>  Address  <u>One Financial Ctr, 4th Flr,</u>  <u>Boston, MA</u>  Telephone No.      02111  (617) 951-0500</p>	
<b>PETITIONING CREDITORS</b>		
Name and Address of Petitioner 50 Thomas Patton Drive, LLC	Nature of Claim Judgment (Exhibit A Annexed Hereto)	Amount of Claim \$6,759,948.50 plus accrued unpaid interest

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Name and Address of Petitioner  The Patriot Group, LLC	Nature of Claim  Judgment (Exhibit B Annexed Hereto)	Amount of Claim  \$20,423,216.44 plus accrued unpaid interest
Name and Address of Petitioner  Richard Mayer	Nature of Claim  Judgment (Exhibit C Annexed Hereto)	Amount of Claim  \$150,000.00 plus accrued unpaid interest
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims

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**EXHIBIT A**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, SS.  
SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

CIVIL ACTION NO. 09-3567-BLS2

50 THOMAS PATTON DRIVE LLC,

*Plaintiff*

v.

STEVEN C. FUSTOLO, 50 TPD REALTY, LLC,  
HUNTINGTON PROPERTIES, INC.,  
5 HIGH STREET, LLC AND  
REVERE BEACH HOLDINGS, LLC,

*Defendants*

**FINAL JUDGMENT**

Pursuant to Mass. R. Civ. P. 58, it is Ordered and  
Adjusted as follows:

As to Count 2 of the Plaintiff's Verified Complaint  
alleging breach of contract, Judgment shall enter in favor  
of 50 Thomas Patton Drive, LLC and against Defendant  
50 TPD Realty, LLC in the amount of \$810,587.11. Post-  
judgment interest shall accrue on this award as set forth  
by the terms of the Promissory Note.

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As to Count 3 of the Plaintiff's Verified Complaint alleging breach of contract, Judgment shall enter in favor of 50 Thomas Patton Drive, LLC and against Defendant 50 TPD Realty, LLC in the amount of \$1,903,551.87. Post-judgment interest shall accrue on this award as set forth by the terms of the guaranteed promissory notes.

As to Count 4 of the Plaintiff's Verified Complaint alleging breach of contract, Judgment shall enter in favor of 50 Thomas Patton Drive, LLC and against Steven C. Fustolo in the amount of \$6,759,948.50. Post-judgment interest shall accrue on this award as set forth by the terms of the guaranteed promissory notes.

As to Count 5 of the Plaintiff's Verified Complaint alleging breach of contract, Judgment shall enter in favor of 50 Thomas Patton Drive, LLC and against 5 High Street, LLC and Huntington Properties, Inc. in the amount of \$2,714,138.90. Post-judgment interest shall accrue on this award as set forth by the terms of the guaranteed promissory notes.

As to Count 6 of the Plaintiff's Verified Complaint alleging breach of contract, Judgment shall enter in favor of 50 Thomas Patton Drive, LLC and against Revere Beach Holdings in the amount of \$2,726,910.17. Post-judgment interest shall accrue on this award as set forth by the terms of the guaranteed promissory notes.

As to Count 7 of the Plaintiff's Verified Complaint alleging breach of contract, Judgment shall enter in favor of 50 Thomas Patton Drive, LLC and against Revere

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Beach Holdings in the amount of \$1,318,899.35. Post-judgment interest shall accrue on this award as set forth by the terms of the Promissory Note.

As to Count 8 of the Plaintiff's Verified Complaint alleging violations of M.G.L. c. 93A, Sections 2 and 11, Judgment shall enter in favor of 50 Thomas Patton Drive, LLC and against Steven C. Fustolo.

For Counts 3 through 8, the Court awards attorneys' fees in the amount of \$ 106,430 plus costs in the amount of \$ 4105.35. Each of the Defendants shall be jointly and severally liable-for this amount. Interest shall accrue on the attorneys' fees and costs award at the statutory rate of interest.

Judgment on Counts One and Nine of the Verified Complaint shall enter against the Plaintiff and in favor of the Defendants.

Counts Ten and Eleven of the Verified Complaint shall be dismissed as moot.

DATED: October 21, 2011

/s/  
Justice Christine M. Roach

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EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 2010-00529 F

THE PATRIOT GROUP, LLC,

*Plaintiff,*

v.

STEVEN C. FUSTOLO,

*Defendant*

v.

WINCHESTER SAVINGS BANK,

*Trustee Process Defendant*

v.

JAMES J. FOX & COMPANY LLP; NATIONAL  
TAX INSTITUTE, INC.; CPE MEETINGS, INC.;  
TERRACE HALL PARTNERS, LLC; FIVE HIGH

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STREET, LLC; HUNTINGTON PROPERTIES,  
INC.; PROPERTY TRUST CORPORATION;  
HUNTINGTON PROPERTIES HOLDING  
COMPANY, L.L.C.; 23-25 HIGHLAND AVENUE,  
LLC; FUSTOLO DEVELOPMENT LLC;  
AND ATLAS GARDEN SUPPLY LLC,

*Reach and Apply Defendants*

**FINAL JUDGMENT**  
[as to, Steven C. Fustolo only.]

After notice, and hearing thereon, it is hereby  
ORDERED, ADJUDGED, and DECREED as follows:

1. That judgment is hereby entered in favor of the Plaintiff, The Patriot Group, LLC (“Patriot”), and against the Defendant, Steven C. Fustolo (“Fustolo”), in the amount of \$20,423,216.44, plus interest on the principal sum of \$13,600,000 at the contract rate of nineteen percent (19%) from April 25, 2011, pursuant to Count I of the Verified Complaint;
2. In the event Patriot collects any sums on its judgment against Affinity Investments, LLC (“Affinity”), said sums shall be credited to Fustolo as if paid by him, and if this judgment against Fustolo is satisfied in full, Patriot shall assign its judgment against Affinity (and any execution issued thereon) to Fustolo;

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3. That there is no just reason for delay in the entry of separate and final judgment against Fustolo as set forth herein; and
4. The Trustee Process Defendant, Winchester Savings Bank, is hereby discharged.

***Entered as a separate and final judgment and Order of this Court this 26 day of May, 2011.***

/s/ \_\_\_\_\_

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**EXHIBIT C**

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX SUPERIOR COURT  
WOBURN, MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT  
DOCKET NO.: MICOV-2009-00674

RICHARD MAYER,

*Plaintiff,*

vs.

STEVEN C. FUSTOLO  
23-25 HIGHLAND AVENUE, LLC

*Defendants*

**AGREEMENT FOR JUDGMENT**

The parties in the above-entitled Civil Action hereby stipulate and agree to the following:

1. The Defendants shall pay the Plaintiff \$150,000 together with accrued interest (not compounded) at 18% from September 13, 2008 until the date of payment in full. Said payment in full shall be made on or before December 16, 2011. Interest shall only accrue up to the time of full payment.

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2. The Defendant shall not take any actions to remove the second mortgages on the two multifamily houses in Revere, Massachusetts . The Plaintiff understands that the Defendants cannot control any actions taken by the first mortgage holders.
3. The parties understand that the Court entered a Nisi Dismissal on December 16, 2010. Said dismissal requires the parties to file either an agreement for judgment or a stipulation on or before March 16, 2011.
4. That party shall cooperate in requesting extensions of said order for an additional nine months beyond March 16, 2011 so that the Defendants have one year from the initial entry of this order to make payment in accordance with the terms of the within Agreement for Judgment.
5. The within Agreement for Judgment shall not be filed with the Court unless the Defendants fail to make full payment set forth in Paragraph 1 above on or before December 16, 2011. If the Defendants have failed to make full payment as of December 16 2011, then the Plaintiff shall have the right to file the within Agreement for Judgment with the court. If the Defendants make full payment in accordance with the terms herein, then the parties shall file a Stipulation of Dismissal with Prejudice (and without costs, each party bearing its own attorneys fees) with the court. Further, upon such payment, Plaintiff does hereby remise, release, and forever discharge the Defendants of and from any and all debts, actions,

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causes of action, suits, accounts, covenants, contracts, omissions, liens, controversies, agreements, damages, and any and all claims, sums of money, demands and liabilities whatsoever of every name and nature, both in law and equity, known or unknown, which the Plaintiff now have or ever had, or will have in the future, against the Defendants. Further, upon such payment, Defendants do hereby remise, release, and forever discharge the Plaintiff of and from any and all debts, actions, causes of action, suits, accounts, covenants, contracts, omissions, liens, controversies, agreements, damages, and any and all claims, sums of money, demands and liabilities whatsoever of every name and nature, both in law and equity, known or unknown, which the Defendants now have or ever had, or will have in the future, against the Plaintiff.

6. If the Defendants fail to comply with the terms of the within Agreement and as a result the Plaintiff files the Agreement for Judgment, the Defendants waive any and all rights to appeal said Judgment, all defenses and counterclaims, whether currently alleged in said litigation or not, for a stay of execution and to amend said Agreement to Judgment.

/s/ Richard Mayer 2/8/11  
Richard Mayer, Plaintiff

/s/ Steven C. Fustolo 2/7/11  
Steven C. Fustolo, Defendant  
Individually

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/s/ Steven C. Fustolo 2/7/11  
Steven C. Fustolo, President  
Property Trust Corporation  
As Manager  
of 23-25 Highland Avenue, LLC