

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NFA GROUP INC. dba BUYDRM,

Plaintiff,

- against -

LOTUS RESEARCH, INC.

Defendant.

Index No. 524718/2017

Motion Sequence No. 001

**SECOND AFFIRMATION OF
MATTHEW J. PICKEL IN
SUPPORT OF ORDER TO
SHOW CAUSE**

I, MATTHEW PICKEL, an attorney duly admitted to practice before the Courts of the State of New York and not a party to the above-captioned action, hereby affirm the following to be true, under penalty of perjury, pursuant to New York Civil Practice Law & Rules 2106:

1. I am an associate at the law firm of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022, counsel for Defendant Lotus Research, Inc. (“Lotus”) in the above-captioned matter. I respectfully submit this Second Affirmation in Support of Defendant’s Order to Show Cause.

2. On June 14, 2018, defendant Lotus Research Inc. (“Lotus”), by and through its counsel Latham & Watkins LLP, filed an Order to Show Cause in this matter seeking an order:

- Vacating the default judgment entered against Lotus in this matter on June 1, 2018 (the “Default Judgment”).
- Restoring this case to the appropriate calendar and setting a date by which Lotus must answer or otherwise move with the respect to the Complaint;
- Staying enforcement of the Default Judgment and the execution thereof with respect to any of Lotus’ assets pending a decision on this Order to Show Cause;

- Granting a Temporary Restraining Order (“TRO”) directing the lifting of the restraints on Lotus’ bank accounts and preventing Plaintiff from further interfering with Lotus’ assets; and
- Granting a preliminary injunction that extends the TRO during the pendency of this action.

3. On June 15, on behalf of Lotus, I appeared at the New York Supreme Court, Kings County to present Lotus’ application. I was instructed by the Court to return on Monday, June 18.

4. Consistent with the Court’s instructions, counsel for Lotus intends to appear at the New York Supreme Court, Kings County, 360 Adams St., Brooklyn, NY (the “Kings County Courthouse”) **at 12 p.m. Eastern Time on Monday, June 18** to present Lotus’ application to the Court.

5. Pursuant to Section 202.07(f) of the Uniform Rules of the New York State Trial Courts, this affirmation shall serve as notice to Plaintiff NFA Group Inc. dba BuyDRM (“Plaintiff”) of the time and place at which Lotus will present its Order to Show Cause and application for temporary injunctive relief. In addition, I affirm that my colleague Steven J. Pacini, also of Latham & Watkins LLP, emailed Plaintiff’s counsel at approximately 2:45 p.m. on Friday, June 15, to provide notice that Lotus will present its Order to Show Cause and application for temporary injunctive relief at the time and place indicated herein.

6. I note that, among other relief sought by Lotus, the Order to Show Cause requests a TRO lifting the restraints that Plaintiff caused to be placed on certain banking accounts maintained by Lotus at JP Morgan Chase (“Chase Bank”), and enjoining Plaintiff from any further attempts to restrain or otherwise interfere with Lotus’ assets pending a determination on Lotus’ Order to Show Cause and application for preliminary injunctive relief. On Friday, June

15, Plaintiff's counsel represented to my colleague Steven Pacini that Plaintiff intended to withdraw the restraining notice issued against Lotus' accounts at Chase Bank.

7. As of the filing of this Affirmation, Lotus has not received confirmation from Chase Bank that Lotus' accounts have been unfrozen. While this is a developing situation and circumstances may change (and Lotus will certainly try to keep the Court apprised as best as it can), at this time Lotus is not withdrawing its request for injunctive relief for at least three reasons: (i) as noted above, Lotus has not yet received any confirmation that the restraints on its accounts have actually been lifted; (ii) even if Plaintiff has sought to revoke the restraining notice issued against Lotus' accounts, there is a possibility that Plaintiff could attempt to reissue such notice at any time; and (iii) absent injunctive relief, nothing prevents Plaintiff from taking other steps to interfere with Lotus' assets.

8. Pursuant to CPLR 2217, no prior application for the relief requested in Lotus' Order to Show Case has been made in this or any other action.

9. Pursuant to CPLR Section 6001, no provisional remedy has been sought or obtained in this case against the same Plaintiff.

10. For the Court's convenience, attached hereto as **Exhibit A** is a copy of the Default Judgment in this matter that Lotus is seeking to vacate.

Dated: June 15, 2018
New York, New York

/s/ Matthew J. Pickel

Matthew J. Pickel