UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT COLUMBIA

EUGENE H. KIM, Plaintiff, v. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., Defendant.	Case No. 1:23-cv-2420 (TSC)

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65 and District of District of Columbia Local Rule 65.1, Plaintiff Eugene H. Kim respectfully moves this Court for the entry of a temporary restraining order ("**TRO**") and preliminary injunction prohibiting Defendant Financial Industry Regulation Authority, Inc. ("**FINRA**") from prosecuting its "**Enforcement Action**" against Mr. Kim until this Court issues final judgment resolving the constitutional and statutory claims against FINRA alleged in Mr. Kin's Complaint.

The grounds for this "**Motion**" are:

1. Mr. Kim has filed a Complaint alleging that FINRA is violating Sherman Act Section 2 and the Constitution's Separation of Powers, Due Process, and Freedom of Association provisions, including Articles II and III, and Amendments I, V, and VII.

2. Forcing Mr. Kim to participate in an unlawful proceeding is exactly the kind of "here-and-now injury" that warrants his requested TRO and preliminary injunction.

Cf. Axon Enters., Inc. v. FTC, 598 U.S. 175, 191 (2023). Furthermore, FINRA's suspension and / or bar of Mr. Kim would become effective immediately and expel him from his chosen profession. Unless restrained by this Court, FINRA intends to proceed with its unconstitutional, unlawful Enforcement Action, which requires Mr. Kim's active participation no later than August 22, 2023. That timetable would not allow sufficient time for a hearing on Mr. Kim's Motion.

3. Pursuant to Federal Rule of Civil Procedure 65 and District Court for the District of Columbia Local Rules 7(m) and 65.1(a), undersigned counsel respectfully certifies that on August 21, 2023, Mr. Kim provided defendants' counsel with notice by telephone of its intention to seek a TRO in this matter, with actual notice of the time of making this application, and with advance copies of the Complaint and annexed exhibits, this Motion and supporting papers, and the proposed order. FINRA has not indicated its willingness to stipulate to a TRO.

4. Mr. Kim's Motion seeks both the TRO and a preliminary injunction restraining FINRA from proceeding with its unconstitutional, unlawful Enforcement Action until the Court issues final judgment on this Action's merits.

5. The TRO and preliminary injunction are necessary to preserve the status quo, prevent irreparable injury that would result to Mr. Kim by forcing him to participate in the unlawful Enforcement Action, and to enable the Court to render effective relief if Mr. Kim prevails at trial. Particularly because FINRA claims immunity from money damages, Mr. Kim would have no adequate remedy at law, and this Court's ability to

fashion effective relief would be significant impaired, if the Enforcement Action proceeds but is found, after trial, to be unlawful.

6. Any harm to FINRA from enjoining the Enforcement Action would be outweighed by the irreparable harm in which the Enforcement Action would cause Mr. Kim to suffer a "here-and-now injury" that cannot be undone.

7. Granting the requested preliminary relief will serve the public interest.

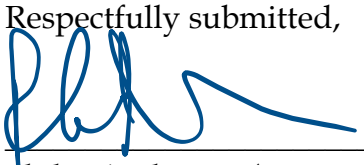
8. 15 U.S.C. § 26 and Federal Rule of Civil Procedure 65(b) authorize the Court to hold that injunctive relief is just under these circumstances and issue a TRO and preliminary injunction.

9. Mr. Kim supports his Motion with the attached Complaint, Memorandum, Declaration of Martin H. Kaplan, Declaration of Eugene H. Kim, and all materials supporting those filings. Mr. Kim is filing a Proposed Order with this Motion.

WHEREFORE, Mr. Kim respectfully prays that the Court temporary and preliminarily restrain FINRA's Enforcement Action, pending this Court's final adjudication of the Complaint's merits.

Dated: August 21, 2023

Respectfully submitted,



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Counsel for Plaintiff Eugene H. Kim

* - Application for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

This certifies that undersigned counsel served a true and correct copy of the foregoing to all parties of record through the Court's ECF system and upon FINRA's counsel via email at:

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Dated: August 21, 2023

/s/ Martin H. Kaplan
Martin H. Kaplan