UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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CASE NO.: CV 5:18-2104 SJO (PLAx) **DATE:** March 10, 2020

TITLE: Federal Trade Commission v. Jason Cardiff, et al.

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz	Not Present
Courtroom Clerk	Court Reporter
COUNSEL PRESENT FOR PLAINTIFFS:	**COUNSEL PRESENT FOR DEFENDANTS:**
Not Present	Not Present

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PROCEEDINGS (in chambers): ORDER DENYING DEFENDANTS' MOTION FOR RELIEF FROM PRELIMINARY INJUNCTION [ECF No. 265]

This matter comes before the Court on Defendants Eunjung Cardiff's and Jason Cardiff's (collectively, "Cardiff Defendants") Motion to Dissolve Preliminary Injunction ("Motion"), filed on January 20, 2020. (Motion, ECF No. 265.[1]) Plaintiff Federal Trade Commission ("Plaintiff" or "FTC") filed its Opposition to Cardiff Defendants' Motion ("Opposition") on February 3, 2020. (Opposition, ECF No. 277.) Cardiff Defendants filed their Reply to FTC['s] Opposition to Motion to Dissolve Preliminary Injunction ("Reply") on February 13, 2020. (Reply, ECF No. 289.[2]) The Court found this matter suitable for decision without oral argument and vacated the hearing set for February 24, 2020. See Fed. R. Civ. P. 78(b); Scheduling Notice, ECF No. 287. For the following reasons, the Court **DENIES** the Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On October 10, 2018, the FTC filed a Complaint for Permanent Injunction and Other Equitable Relief in connection with Defendants Jason Cardiff, Eunjung Cardiff, a/k/a Eunjung Lee, a/k/a

[1] Defendants filed five documents concurrently, each containing overlapping information: (1) ECF No. 261 (Notice of Motion and Motion to Exceed Page Limitation); (2) ECF No. 262 (Ex Parte Application for Leave to File Memo of Points and Authorities in Excess of 20 pages); (3) ECF No. 263 (Notice of Motion and Motion for Relief from Preliminary Injunction Order); (4) ECF No. 264 (Ex Parte Application to Exceed Page Limitation Memo of Points and Authorities); and this Motion (ECF No. 265). The Court considers ECF No. 265 to be a complete version of the Motion, resolved ECF Nos. 261-64 in ECF No. 270, and has not considered any of ECF Nos. 261-64 in this Order.

[2] Defendants filed an original Reply in Response to Motion to Dissolve Preliminary Injunction (ECF No. 284) that exceeded the page limitation. Pursuant to Defendants' request in ECF No. 288, the Court has not considered ECF No. 284 in this Order.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

CASE NO.: CV 5:18-2104 SJO (PLAx) **DATE: March 10, 2020**

Eunjung No, Danielle Cadiz, a/k/a Danielle Walker, Redwood Scientific Technologies, Inc. (California), Redwood Scientific Technologies, Inc. (Nevada), Redwood Scientific Technologies, Inc. (Delaware), Identify, LLC, Advanced Men's Institute Prolongz LLC, Run Away Products, LLC, and Carols Place Limited Partnership (collectively, "Defendants") for false and unsubstantiated claims for dissolvable film strips advertised for smoking cessation, weight loss, and male sexual performance; a related autoship continuity program resulting in unauthorized shipments and charges; abusive telemarketing through robocalls; and unsubstantiated earnings claims for a multi-level marketing scheme. (Compl., ECF No. 1.)

The same day, the FTC filed its *Ex Parte* Application for (1) Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue and (2) Order Waiving Notice Requirement. (*Ex Parte* Application, ECF No. 3.) The same day, the Court entered the *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO"). (TRO, ECF No. 29.) The TRO, along with other directives, restrained and enjoined Defendants and their officers, agents, employees, attorneys, and parties working in concert or in participation with them, from "disposing of any Assets that are [...] owned or controlled, directly or indirectly, by any Defendant, including, but not limited to, those for which a Defendant is a signatory on the account" ("Asset Freeze"). (TRO 11-12.) The Court also ordered the appointment of Robb Evans & Associates, LLC as the temporary receiver of the Receivership Entities and the Cardiff Defendants' assets and ordered the Receiver to protect the receivership assets, collect receivership assets from third parties, and adjust receivership liabilities. (TRO 18-19.) The Cardiff Defendants were served with the TRO on October 12, 2018 (Declaration of Service, ECF Nos. 38, 39), and Non-Party Jacques Poujade ("Poujade") and Proposed Intervenor were notified of the TRO by Defendant Jason Cardiff that same day (July 31, 2019 Hr'g Tr., ECF No. 188, at 390:8-16). On November 8, 2018, the Court entered a Preliminary Injunction with Asset Freeze, Receiver, and Other Equitable Relief Against Jason Cardiff and Eunjung Cardiff ("PI"), which maintained the Asset Freeze and Receiver appointment. (PI, ECF No. 59.)

On May 20, 2019, at the mandatory Scheduling Conference between the parties, the Court set an April 14, 2020 Discovery Cutoff, a May 11, 2020 Motion Cutoff, a July 8, 2020 Pretrial Conference, and July 14, 2020 jury trial. (Scheduling Conf. Mins., ECF No. 117.)

On June 17, 2019, the FTC filed a Motion for an Order to Show Cause Why Defendants Eunjung and Jason Cardiff and Third Party Jacques Poujade Should Not Be Held in Contempt of the Court's Preliminary Orders and Sanctioned Until They Comply Fully with Those Orders ("Motion for OSC"). (Motion for OSC, ECF No. 134.) The corresponding hearing date was set for July 15, 2019, but was later rescheduled to August 27, 2019. (Continuation Entry, ECF No. 198.) The Motion for OSC argued that the Cardiff Defendants, together with Poujade, had violated the

TRO and PI by, in relevant part, concealing and transferring more than $1.5 million Canadian dollars ("CAD") in assets ordered to be frozen by the Asset Freeze. (Motion for OSC ¶¶ 4-5.) The Court ordered the Cardiff Defendants and Poujade to appear personally before the Court on July 30, 2019. (Order, ECF No. 140.) The Court later advanced the hearing to July 29, 2019. (Hearing Advancement, ECF No. 163.) The parties submitted a voluminous number of filings prior to the hearing. (*See* Order Overruling Objections, ECF No. 237, at 1-3.)

The Court held hearings on July 29, 30, and 31, 2019, during which the Cardiff Defendants and Poujade testified under oath. The Court found that the Cardiff Defendants and Poujade did not testify credibly. (*See, e.g.*, July 31, 2019 Tr. at 390:3-7 ("I've heard carefully from the Cardiffs. Their stories are totally unbelievable. It's pretty clear to the Court that they've lied, that they worked in concert with each other and with others to avoid, violate the conditions of the orders of the Court.").) The Court ordered the FTC to provide findings of fact and conclusions of law specifying, among other things, the assets the Cardiff Defendants failed to disclose to the Court by August 8, 2019, ordered the Cardiff Defendants and Poujade to respond by August 13, 2019, and set a hearing for August 19, 2019. (Minutes, ECF No. 183.) The Court later continued the August 19, 2019 hearing to August 27, 2019. (Text Entry, ECF No. 198.)

On August 27, 2019, the Court ordered, among other things, that counsel for Poujade and Proposed Intervenor transfer $1.56 million CAD ("Disputed Funds") held in trust for Poujade to "the custody and control of the receiver." (Aug. 27, 2019 Hr'g Tr., ECF No. 226-1, at 28.)

II. DISCUSSION

A. Legal Standard

A court "has inherent authority to modify a preliminary injunction in consideration of new facts." *A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002) (citations omitted); *see also Credit Suisse First Bos. Corp. v. Grunwald*, 400 F.3d 1119, 1124 (9th Cir. 2005) (holding, in the context of a preliminary injunction, that "a district judge always has power to modify or to overturn an interlocutory order or decision while it remains interlocutory") (citation omitted). "Because injunctive relief is drafted in light of what the court believes will be the future course of events, . . . a court must never ignore significant changes in the law or circumstances underlying an injunction lest the decree be turned into an instrument of wrong." *Salazar v. Buono*, 559 U.S. 700, 714-15 (2010) (plurality opinion) (citation and internal quotation marks omitted).

B. Discontinued Sales

The Cardiff Defendants argue the PI should be dissolved because they discontinued sales to consumers prior to the FTC's filing of this action. (Motion 5.) The FTC was aware of this when

the FTC represented to the Court that Defendants were violating or about to violate the Act. (Motion 5.) Regarding Cloverstrips Cannabis, it was intended to become a manufacturer of THC and CBD thin strip products. (*Id.*) There was no plan for Cloverstrips Cannabis to market directly to consumers. (*Id.*) Thus, Defendants were no longer doing business, and the Cardiff Defendants were only developing a business that manufactured dissolvable film strips for wholesale distribution. (Motion 5-6.)

Plaintiff responds that the information contained in the Cardiff Defendants' declarations is: (1) not a change in fact following entry of the PI; and (2) contradicted by the factual record and other information. (Opp. 4.) Redwood in fact had not ceased operations before the FTC filed its Complaint. (Opp. 4-6.) Even if it had, this would not be a fact that took place after the PI issued, warranting dissolution. (Opp. 6-7.) Plaintiff also responds that Cardiff Defendants have failed to demonstrate a change in Ninth Circuit law following the PI that warrants dissolution. Plaintiff satisfied the requirements in existing law, which according to *Federal Trade Commission v. Evans Products*, requires a likelihood of recurrence. (Opp. 8 (citing 775 F.2d 1084 (9th Cir. 1985)).) Defendants' active business operations on the day of immediate access satisfied this test. (Opp. 8.) Moreover, *Evans Products* is not a new decision that creates a change in law after the PI, warranting dissolution. (Opp. 9.)

Cardiff Defendants' reply only refers to the statements in Defendant Jason Cardiff's affidavit. (Reply 5; *id.* Ex. A.)

The Court holds that ***first***, any actions of the Cardiff Defendants prior to the entry of the PI cannot constitute a change in factual circumstance warranting dissolution of the PI. Alternatively stated, even if the Cardiff Defendants had ceased operations before the FTC filed its Complaint, such allegations are relevant to whether the PI should have issued in the first place, not whether the PI should now be dissolved. As such, Cardiff Defendants' pre-Complaint allegations cannot constitute a basis for dissolving the PI.

Second, even if such allegations could satisfy the standard for dissolving a PI, the Cardiff Defendants' statements that they were no longer doing business when the FTC filed its Complaint are not credible, and are contradicted by the evidence. The Court, after a multi-day hearing including live testimony by the Cardiff Defendants, concluded that the Cardiff Defendants were "totally unbelievable," had "lied," and had "worked in concert with each other and with others to avoid, violate the conditions of the orders of the Court." (July 31, 2019 Tr. at 390:3-7.) The Court finds no reason to believe the statements in their current affidavits differ in veracity from their previous live testimony, especially in light of the fact that the evidence (including Cardiff Defendants' own prior statements) undermines their position. Defendant Eunjung Cardiff previously stated that on the day of the FTC's immediate access, the office was shut down (in other words, it was operating until the moment the immediate access began), and

that employee paychecks were to be distributed that day, but were seized. (ECF No. 147-2.) As further evidence, numerous declarations submitted by Plaintiff confirm that employees were marketing products, preparing shipping labels for boxes with products, and at least one employee received an order from a customer the morning of the immediate access. (*See, e.g.*, Schools Decl.; Barker Decl.; Kane Decl.; Sands Decl.) Such evidence is inconsistent with Cardiff Defendants' statements that activity had ceased.

Third, even if the Cardiff Defendants' statements were credible, enough evidence exists to satisfy the standard of a likelihood of recurrence. *Evans Products* holds that a Section 13(b) action merits an injunction if the FTC can show a likelihood of recurrence. 775 F.2d at 1087. Even if Defendants had stopped business operations prior to the filing of the Complaint, the presence of products, shipping boxes, labels, and receipt of an order demonstrates that Defendants were likely to engage in future business operations.[3]

Thus, Defendants, to the extent (if any) they discontinued sales prior to the filing of the Complaint, cannot satisfy the standard for dissolving a PI entered ***after*** filing of the Complaint.

C. Section 13(b)

Cardiff Defendants allege Section 13(b) of the FTC Act was originally adopted for use principally for obtaining preliminary injunctions against corporate acquisitions pending completion of FTC administrative hearings. (Motion 8.) They further allege that in *Federal Trade Commission v. Singer*, 668 F.2d 1107, 1113 (9th Cir. 1982), the court dramatically expanded judicial and administrative power to impose not only injunctive relief, but also authority to grant any ancillary relief to accomplish complete justice. (Motion 9.) However, the court did not view the context of *Porter v. Warner*, 328 U.S. 395 (1946) when it relied on it, and the statute at issue in *Porter* permitted as relief a permanent injunction "or other order." (*Id.*) They further allege *Singer* and *Porter* are no longer good law, because they utilized an interpretive approach, which the Supreme Court has since abandoned. (Motion 10.) They allege that *Owner-Operator* holds that ancillary remedies cannot be implied where a statute confines a court's equitable powers to injunctive relief. (Motion 11 (citing *Owner-Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co.*, 632 F.3d 1111 (9th Cir. 2011)).) Moreover, courts may not apply restitutionary relief where the text of a statute is unambiguous. (Motion 12.) The plain meaning of the text does not permit restitution, Section 13(b) is not ambiguous, and Section 19(b) expressly prohibits exemplary or punitive damages. (Motion 17-18.)

[3] Cardiff Defendants' subsequent actions violating orders of this Court likewise demonstrate Cardiff Defendants' likelihood of recurrence. For example, Defendant Jason Cardiff, despite being ordered to surrender all domestic and foreign passports, retained an Irish passport, resulting in his incarceration. (7-29-19 Hr'g Tr. (ECF No. 190) at 153:19-154:14.)

Plaintiff responds that the Ninth Circuit has repeatedly held that the permanent injunction proviso of Section 13(b) permits equitable monetary relief. (Opp. 10 (citing cases).) Cardiff Defendants' assertion that *Porter* and *Singer* are no longer good law is incorrect, because the Ninth Circuit has held ***after*** *Porter* and *Singer* that the FTC is entitled to seek equitable monetary relief. (Opp. 11.) *Meghrig* is distinguishable because the statute at issue, the Resource Conservation and Recovery Act, limits a court's remedial authority, whereas Section 13(b) does not. (Opp. 11-12.) Moreover, the plaintiff was a private plaintiff, and the court held that the money sought by plaintiffs more closely resembled traditional damages, rather than restitution. (Opp. 12.) *Owner-Operator* is likewise distinguishable because it was a private suit pursuant to a statute providing a private right of action to enforce regulations. (Opp. 12-13.) Plaintiff further responds that the Supreme Court has held that a statute authorizing an injunction authorizes equitable monetary relief as well. (Opp. 14.) Plaintiff further responds that the Ninth Circuit has already rejected Cardiff Defendants' argument that restitution under Section 13(b) renders Section 19 a nullity. (Opp. 15-18.)

Cardiff Defendants reply that the Court must re-visit how the FTC Act should be reinterpreted, using principles of statutory construction as analyzed in *Meghrig* and *Owner Operator*. (Reply 1.) The Seventh Circuit's *Federal Trade Commission v. Credit Bureau Center* decision provides an exhaustive analysis of how precedent developed under Section 13(b), including how other courts failed to analyze the plain language of the statute. (Reply 2.[4]) Sections 13(b) and 19 must be read together, in which case the FTC does not have the power to file an injunction, unless it files an administrative complaint within 20 days. (Reply 3-4.) No post-1996 decisions by the Ninth Circuit cite *Meghrig* or *Owner Operator*. (Reply 4.)

As a preliminary matter, the Court holds that Cardiff Defendants have failed to present the type of "significant change[] in the law" meriting dissolution of a PI. *Salazar*, 559 U.S. at 714-15. Instead, Cardiff Defendants' arguments refer to Ninth Circuit authority and arguments contained therein that existed prior to the entry of the PI in this case. Cardiff Defendants' request to dissolve the PI is thus without foundation, as these arguments were relevant to the entry of the PI and do not represent the type of significant change in the law warranting a second look after entry of the PI. This alone is dispositive and merits denial of Cardiff Defendants' request. However, the Court further examines Cardiff Defendants' arguments and notes the following.

Even if Cardiff Defendants' arguments were procedurally proper, the Court finds that the Ninth Circuit has interpreted Section 13(b) to award equitable monetary relief. *Singer*, 668 F.2d at 1113 (upholding asset freeze for restitution). Cardiff Defendants have not pointed to any Ninth

[4] The Court notes that Cardiff Defendants have stated elsewhere that "the 9th Circuit's analysis of implied remedies is consistent with those by the 7th Circuit and Supreme Court." (Cardiff Defendants' Opposition to Receiver's Docketed Motions 274, 275, 276, ECF No. 285 at 5.) Cardiff Defendants' statement appears to be a typographical error, but to the extent it is not, the Court notes Cardiff Defendants' position is inconsistent.

Circuit or Supreme Court authority abrogating *Singer*. To the contrary, recent Ninth Circuit decisions issued following *Singer* have confirmed Section 13(b) permits equitable monetary relief. *See, e.g.*, *Fed. Trade Comm'n v. AMG Capital Mgmt., LLC*, 910 F.3d 417, 426 (9th Cir. 2018); *Fed. Trade Comm'n v. AT&T Mobility*, 883 F.3d 848, 864 (9th Cir. 2018). Cardiff Defendants' cited cases, *Meghrig* and *Owner Operator*, are both inapposite because they involved private parties in private suits, such that damages more closely resembled traditional damages. Both cases also involved different statutes, not Section 13(b) of the FTC Act. Cardiff Defendants' argument that this Court should reevaluate the FTC Act and hold contrary to established Ninth Circuit authority cannot be supported, because the principles of statutory construction utilized in *Meghrig* and *Owner Operator* existed prior to more recent Ninth Circuit authority. While those principles were applied to non-FTC Act statutes in a particular way, this Court declines to extend that application in contravention to established Ninth Circuit authority. Similarly, *Credit Bureau*, even if it stood for Cardiff Defendants' proposition, is not binding and cannot be followed in light of clear Ninth Circuit authority to the contrary.

D. Complaint at Commission

Cardiff Defendants allege the FTC was required to file a complaint with the Commission within twenty days of the issuance of injunctive relief, and because it failed to do so, the Court should dissolve the PI. (Motion 19-20.) Permitting the FTC to seek a permanent injunction pursuant to Section 13(b) renders null Section 19. (Motion 20-22.) Cardiff Defendants seek a recommendation from this Court that *Federal Trade Commission v. Evans*, 775 F.2d 1084 (9th Cir. 1985), be re-evaluated and reversed by the Ninth Circuit. (*Id.* 22.)

Plaintiff responds that it is well-established in the Ninth Circuit that the FTC may seek an injunction in district court without also initiating an administrative action. (Opp. 18.) The administrative adjudication referred to in Section 13(b) is an independent grant of authority to seek judicial remedies instead of administrative relief. (Opp. 18.)

The Court holds that well-established Ninth Circuit authority permits the FTC to seek an injunction in district court, without initiating a concurrent administrative adjudication. *Evans*, 775 F.2d at 1084.

E. Equitable Restitution

Cardiff Defendants argue that the FTC cannot freeze assets and seek equitable restitution if its ultimate goal is to punish and deter defendants. (Motion 23 (citing *Kokesh v. Sec. & Exch. Comm'n*, 137 S. Ct. 1635 (2017)).) *Kokesh* held that an order requiring an individual to pay a non-compensatory sanction to the Government operated as a penalty. (*Id.*) Equitable restitution

is "nothing more than a polite synonym for disgorgement." (Motion 24.) Disgorgement, because it is not obtained in the name of individual consumers, operates as a penalty. (Motion 24-25.)

Plaintiff responds that *Kokesh* is inapposite, because it examined only whether a five-year statute of limitations is applicable to any civil fine, penalty, or forfeiture in an SEC action seeking disgorgement. (Opp. 19-20.) Other courts have rejected the argument that *Kokesh* prohibits equitable monetary relief ancillary to behavioral injunctions. (Opp. 20-21.) Moreover, the Ninth Circuit has repeatedly made clear that Section 13(b) authorizes the FTC to seek equitable monetary relief. (Opp. 21 (citing cases).) Even if *Kokesh* applied, Plaintiff seeks equitable monetary relief to compensate, thus the relief sought is not punitive. (Opp. 21-22.)

The Court finds Plaintiff's arguments persuasive. *Kokesh* is inapposite, and as other courts have held, *Kokesh* does not prohibit equitable monetary relief ancillary to behavioral injunctions, as Plaintiff has sought in this case. The Ninth Circuit has held that Section 13(b) permits equitable monetary relief. Moreover, Cardiff Defendants argue Plaintiff cannot seek equitable restitution if its ultimate goal is to punish and deter defendants—Plaintiff has made clear the equitable monetary relief it seeks is to compensate.

III. RULING

For the foregoing reasons, the Court **DENIES** Cardiff Defendants' Motion.

IT IS SO ORDERED.