

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES – GENERAL

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
Courtroom Clerk

Not Present
Court Reporter

COUNSEL PRESENT FOR PLAINTIFFS:

COUNSEL PRESENT FOR DEFENDANTS:

Not Present

Not Present

=====
PROCEEDINGS (in chambers): ORDER RE: (1) RECEIVER'S MOTION APPROVING SETTLEMENT [ECF No. 274]; (2) RECEIVER'S MOTION FOR ORDER AUTHORIZING THE RECEIVER TO SELL RESIDENCE [ECF No. 275]

This matter comes before the Court on two motions by Receiver Robb Evans & Associates LLC ("Receiver"). Receiver filed its Motion for an Order Approving Settlement Between Receiver and Third-Party Inter/Media Time Buying Corporation ("Motion for Settlement") on January 31, 2020. (Motion for Settlement, ECF No. 274.) Receiver also filed its Motion for an Order Authorizing the Receiver to Sell, Subject to the Court's Final Confirmation, Defendants Cardiffs' Residence Located at 700 West 25th Street, Upland, California ("Motion for Sale of Upland Residence") on January 31, 2020. (Motion for Sale of Upland Residence, ECF No. 275.) Third Party Inter/Media Time ("Inter/Media") filed its Joinder to Receiver's Motion for Settlement and Motion for Sale of Upland Residence ("Inter/Media's Joinder") on February 7, 2020. (Inter/Media's Joinder, ECF No. 280.) Defendants Jason Cardiff and Eunjung Cardiff (collectively, "Cardiff Defendants") filed their Opposition to Receiver's Motions ("Opposition") on February 10, 2020. (Opposition, ECF No. 286.) Receiver filed its Reply to the Opposition of Defendants Jason Cardiff and Eunjung Cardiff to Receiver's Motion for Settlement and Motion for Sale of Upland Residence ("Receiver's Reply") on February 14, 2020. (Receiver's Reply, ECF No. 290.) Inter/Media filed its Reply in Support of Receiver's Motion for Settlement and Motion for Sale of Upland Residence ("Inter/Media's Reply") on February 14, 2020. (Inter/Media's Reply, ECF No. 295.) On February 19, 2020, the Court found this matter suitable for decision without oral argument and vacated the hearing set for March 2, 2020. See Fed. R. Civ. P. 78(b); Scheduling Notice, ECF No. 296.

For the following reasons, the Court **GRANTS** Receiver's Motion for Settlement and **GRANTS** Receiver's Motion for Sale of Upland Residence.

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I. FACTUAL AND PROCEDURAL BACKGROUND

A. FTC Action

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 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.)

B. Previous Inter/Media Action

Inter/Media's separate action against the Cardiff Defendants stems from Cardiff Defendants' failure to pay for Inter/Media's services, and fraud connected thereto. (Inter/Media's Reply 2.)

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Inter/Media claims Cardiff Defendants stalled in finalizing the settlement in that case, in order to effectuate a transfer of assets outside Inter/Media's reach. (*Id.*) Specifically, although Cardiff Defendants represented that they were not trustees of the Jurikel Family Trust, and although they agreed not to transfer assets so as to prejudice Inter/Media's rights, they transferred the property located at 700 West 25th Street, Upland, California 91784 ("Upland Residence") to themselves (as trustees of Carols Place Trust) before the court's entry of judgment. (*Id.* 2-3.) Inter/Media recorded an abstract of judgment against Cardiff Defendants and claims a judgment lien against the Upland Residence. *Inter/Media v. Redwood etc. et al.*, Los Angeles County Superior Court Case No. LC102377 (entering judgment of \$970,725.93 for Inter/Media against Cardiff Defendants); *Inter/Media v. Jason Cardiff and Eunjung Cardiff*, Los Angeles County Superior Court Case No. LC107302.

C. Upland Residence

Each of Receiver and Inter/Media claims to hold liens to the Upland Residence. As of November 15, 2019, Inter/Media is owed \$817,330.47 from Cardiff Defendants. (Declaration of Brick Kane in Support of Motion of Receiver Robb Evans & Associates LLC ("Kane Decl."), ECF No. 274-1, Ex. 1.) Defendant Jason Cardiff listed the Upland Residence for sale for \$2,745,000 in May 2018, then valued the Upland Residence at \$1,600,000 as of July 2019. (*Id.* ¶ 15; *id.* Ex. 2.) Cardiff Defendants owe \$1,510,000 on the current loan for the Upland Residence. (*Id.*) The monthly mortgage payment is \$12,152.36. (*Id.*) Cardiff Defendants stopped making mortgage payments after being served with the TRO by the Receiver.

On January 21, 2020, Receiver and Inter/Media entered into a Settlement Agreement and Release ("Settlement Agreement"), which provides that if the Court approves a sale of the Upland Residence, Inter/Media will receive 50% of the net sale proceeds, and the receivership estate shall receive the remainder. The settlement is subject to this Court's approval by March 31, 2020 and the Court's authorization of the Receiver to sell the Upland Residence.

II. DISCUSSION

A. Legal Standard

"[A] district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad." *Sec. & Exch. Comm'n v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). Local Rule 66-8 states, "[e]xcept as otherwise ordered by the Court, a receiver shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy." Accordingly, bankruptcy procedure informs the Court's approval of proposed settlements. Federal Rule of Bankruptcy Procedure 9019 governs compromises and settlements reached in

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bankruptcy court and provides that a court may approve a compromise or settlement on motion and following notice and a hearing. In examining a proposed settlement, the Court must evaluate four factors:

- (a) [t]he probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation, as well as the expense, and the expense, inconvenience and delay necessarily attending it; [and]
- (d) the paramount interest of creditors, giving proper deference to their reasonable views [regarding the proposed compromise].

United States v. Edwards, 595 F.3d 1004, 1012 (9th Cir. 2010) (quoting *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir.1986)).

"The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims." *Id.* In general, compromises are favored in bankruptcy actions. *In re Stein*, 236 B.R. 34, 37 (D. Or. 1999). Accordingly, the Court generally gives deference to a trustee's business judgment, and will approve a compromise that falls within the "range of reasonableness." *In re Pac. Gas & Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004). The Second Circuit has defined "range of reasonableness" as "a range [that] recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.1972). Approval of a compromise will not be disturbed on appeal where the compromise falls within the range of reasonableness. *See id.*

Although the Court may not simply "rubber-stamp" the decision to enter into a settlement, it need not conduct an exhaustive investigation, hold a mini-trial on the merits of the claims sought to be compromised, or require that the settlement be the best that could possibly be achieved. *In re Walsh Const., Inc.*, 669 F.2d 1325, 1328 (9th Cir.1982). Rather, the Court "need only find that the settlement was negotiated in good faith and is reasonable, fair and equitable." *Pac. Gas*, 304 B.R. at 417.

B. Local Rule 7-3

Cardiff Defendants argue that Receiver's motions did not comply with Local Rule 7-3, where Receiver exchanged emails in September 2019 with counsel for Cardiff Defendants who is now withdrawn. (Opp. 2.) Because there was no meaningful meet and confer, the motions should be denied. (*Id.* 3.)

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Receiver responds that the Opposition's argument regarding Local Rule 7-3 ignores the declarations of Receiver's counsel, Hal D. Goldflam (and that Cardiff Defendants already attempted the same argument re lack of meet and confer in response to a different motion, ECF No. 131 at 3). (Receiver's Reply 2.) Specifically, Mr. Goldflam contacted Mr. White on November 8, 2019 to inform him of the terms of the Inter/Media settlement, and to determine whether the Cardiff Defendants would consent to the Court approving the settlement. (Receiver's Reply 3.) After some back and forth, counsel for Cardiff Defendants did not provide an ultimate response regarding the terms of the settlement, the sale of the Upland Residence, or the proposed nondisclosure agreement sent by Receiver's counsel (sent in order for Cardiff Defendants' counsel to view the average of three appraisals conducted by Receiver). *Id.* 3-4.)

The Court finds Cardiff Defendants' arguments meritless. First, contrary to Cardiff Defendants' allegations that emails were only exchanged in September 2019 with Cardiff Defendants' counsel who has now withdrawn, Receiver attached an email exchange from November 2019 with Mr. James White, who is current counsel of record. (ECF No. 274-1 at Ex. 5.) In that email exchange, Receiver sent Mr. White a non-disclosure agreement (to permit Mr. White to view appraisals obtained by Receiver), and Mr. White responded, "I will get back to you later this week." (*Id.*) It does not appear from either party that Mr. White did so. Thus, the Court finds that Receiver made an effort to meet and confer pursuant to Local Rule 7-3. Second, even if Receiver had failed to do so, it remains unclear to the Court how any further meet and confer would have avoided the need for a motion. In fact, it is clear to the Court that a further meet and confer would not have been helpful, as evident from the papers and from Cardiff Defendants' failure to set forth any explanation for how Receiver's motions could have been avoided.

C. Motion for Settlement

While Receiver and Inter/Media each disagrees with the other about who is entitled to the equity in the Upland Residence, including their respective claims and contentions, "both agree that there is no equity in the [Upland Residence] for the Cardiffs, . . . that preservation of the equity in the [Upland Residence] for creditors of the Cardiffs is a paramount concern, and that it would not be cost effective for the Receiver and Inter/Media to litigate their differences and disputes to a final determination, conclusion, and judgment." (Motion for Settlement 13.) The *Girsch* factors (for class action settlements) weigh in favor of approving the settlement because the Receiver states the settlement is a reasonable compromise of the disputed claims, avoids expensive litigation, and minimizes depletion in equity of the Upland Residence being caused by the Cardiff Defendants' failure to make mortgage and property tax payments on the property. (Motion for Settlement 16-19.)

Inter/Media joins Receiver's Motion for Settlement, alleging that Cardiff Defendants, as trustees of the Jurikel Family Trust, transferred the Upland Residence to the Carols Place Trust.

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(Inter/Media's Joinder 2.) Inter/Media further alleges that the transfer is void as a fraudulent transfer, such that Inter/Media's recordation of Abstract of Judgment in its litigation against Cardiff Defendants created a judgment lien as to the Upland Residence. (*Id.*) Inter/Media further alleges that Receiver's efforts to sell the Upland Residence at this time are "unambiguously in the best interests of the receivership estate and its creditors." (*Id.* 3.)

Cardiff Defendants do not appear to directly respond to Receiver's Motion for Settlement, thus the Court incorporates by reference Cardiff Defendants' arguments in opposition to Receiver's Motion for Sale of Upland Residence, to the extent they are relevant. (*See infra*, Section II.D.)

Receiver replies that Cardiff Defendants did not address the Motion for Settlement or the settlement terms. (Receiver's Reply 2.)

The Court finds that no real opposition to the Settlement Agreement has been presented.¹ Receiver's Motion for Settlement (and supporting declarations) were posted to its website publicly, served on all parties, served on all known creditors and interested parties, and listed contact information for parties wishing to obtain written copies of declarations and the request for judicial notice. (Motion for Settlement 4.) Other than Cardiff Defendants, no party filed an opposition. And Cardiff Defendants' Opposition addresses the sale of the Upland Residence (*see infra*, Section II.D), not the Settlement Agreement itself. Thus, because the sale of the Upland Residence is the only disputed issue, and because the Court approves the sale for the reasons discussed below, the Court finds that in its broad discretion, the Settlement Agreement is fair and should be approved. *Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009).

D. Motion for Sale of Upland Residence

Receiver asks for authority to sell the Upland Residence to the highest bidder and states good cause exists for the Court to exercise its sound discretion and grant the request. (Motion for Sale of Upland Residence 8.) As of July 28, 2019, Defendant Jason Cardiff stated the Upland Residence is worth approximately \$1.6 million. (Kane Decl., Ex. 2.) On the same date, Cardiff Defendants owed \$1,510,000 on the current loan for the Upland Residence. (*Id.*) The monthly mortgage payment is \$12,152.36. (*Id.*) Cardiff Defendants stopped making mortgage payments after being served with the TRO by the Receiver. (Motion for Sale of Upland Residence 8.) Thus, Receiver argues that its duty to preserve the assets of the receivership mandate the immediate sale of the Upland Residence. The Court has broad deference in its supervisory role

¹ Although the Receiver states that "there is no dispute that the mortgage holder needs to be paid," the Court notes that the mortgage holder has not filed any objection to the Receiver's motions. (Motion for Sale of Upland Residence 15.)

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in equity receiverships, and reasonable procedures are generally upheld. (Motion for Sale of Upland Residence 13 (citing *Sec. & Exch. Comm'n v. Hardy*, 803 F.2d 1034 (9th Cir. 1986)).) To the extent Cardiff Defendants rely on *Kutzner*, *Kutzner* is inapposite because the court held no party satisfied its burden of showing how a sale of the property, prior to determination of liability, would maintain status quo. (*Id.* 14 (citing *Fed. Trade Comm'n v. Kutzner*, No. cv 16-000999-BRO, ECF No. 202 (C.D. Cal. Mar. 10, 2017) ("*Kutzner*").) Here, failure to sell immediately would result in a continuing loss in equity of roughly \$12,000 per month in the Cardiff Defendants' failed mortgage payments. (*Id.* 14.) Receiver argues that no controlling law bars a court of equity from exercising its discretion and permitting a pre-judgment sale to preserve receivership assets. (*Id.* 15.) In fact, Local Rule 66-8 directs administration as nearly as possible with administration of estates in bankruptcy, and the pre-judgment sale preserves value for the estate. (*Id.* 15-16.)

Inter/Media joins Receiver's Motion for Sale of Upland Residence, for the same reasons noted above. (*See supra*, Section II.C.)

Cardiff Defendants respond that no authority supports a prejudgment sale of Cardiff Defendants' residence, and *Kutzner* directly refutes Receiver's position because *Kutzner* held a prejudgment sale contradicted the purpose of a preliminary injunction, which is to maintain status quo. (*Id.* 3-4.) Cardiff Defendants further respond that *Kutzner* measured the value of property by its market value, rather than equity. (*Id.* 4.) Cardiff Defendants further respond that the FTC overreached when it sought to obtain a PI (*id.* 5-6); the PI was unwarranted because the active ingredient in the accused products works to a demonstrable extent (*id.* 6); no Redwood funds were used to purchase the Upland Residence (*id.* 7); Defendant Jason Cardiff attempted to take out a loan against a seized life insurance policy purchased with funds not generated by Redwood (*id.* 7); \$50,000 should be released to perform testing to prove the active ingredient in the accused products works (*id.* 7-8); and seizing the amount of total receipts for restitution (rather than a lesser amount) constitutes overreach (*id.* 8).

Receiver replies that none of Cardiff Defendants' various arguments prevent the Court from exercising its broad powers to preserve equity for the receivership. (Receiver's Reply 4.) Receiver already distinguished *Kutzner*, in which neither plaintiff nor receiver demonstrated how a prejudgment sale would maintain the status quo. (*Id.* 4-5.) Here, a prejudgment sale would maintain status quo because Cardiff Defendants do not dispute: equity in the amount of \$12,000 per month is being lost due to Cardiff Defendants' failure to make mortgage payments, Inter/Media has an \$817,000 judgment against Cardiff Defendants and a claim to the Upland Residence, and the Settlement Agreement would avoid litigation expenses. (*Id.* 5.) Moreover, Cardiff Defendants do not dispute that applicable bankruptcy laws empower a trustee to sell an estate's property, including if the interest is in a *bona fide* dispute. (*Id.* 5-6.) Cardiff Defendants' arguments that their business schemes were not fraudulent are contradicted by the Court's

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preliminary determinations, which found probable validity of the FTC claims, and continuing contempt by Cardiff Defendants. (*Id.* 6.)

Inter/Media replies that *Kutzner* is distinguishable because there was no evidence that the residence's market value was decreasing. (Inter/Media's Reply 4.) By contrast here, in May 2018, the Cardiffs listed the Upland Residence for sale at \$2,745,000, and now claim the home is worth no more than \$1,600,000. (*Id.*) Additionally, unlike in *Kutzner*, here, a judgment creditor holds a lien against the Upland Residence. (*Id.* 5.)

The Court finds that the factors utilized in evaluating a proposed settlement under bankruptcy principles favor a pre-judgment sale of the Upland Residence. Specifically, the Cardiff Defendants have not disputed that: (1) the Cardiff Defendants listed the Upland Residence for sale at \$2,745,000 in May 2018; (2) they subsequently claimed in July 2019 the Upland Residence is worth \$1,600,000; (3) they are not making their mortgage payments of \$12,152.36 per month; (4) the outstanding balance on the loan is \$1,510,000; and (5) Inter/Media has an \$817,000 judgment against Cardiff Defendants and asserts a claim to the Upland Residence. Taken together, these undisputed facts weigh in favor of a prejudgment sale, for several reasons.² First, by the Cardiff Defendants' own representations, the market value of the home is decreasing rapidly—more than \$1.1 million in just over one year. Second, the outstanding mortgage on the Upland Residence is nearly equal to the value the Cardiff Defendants placed on the home. With the mortgage now going unpaid, the equity is being depleted, and the home risks going underwater. This does not maintain the status quo of Cardiff Defendants' assets, as instructed by the PI. Third, Cardiff Defendants do not dispute that Inter/Media has obtained a claim to the Upland Residence through separate litigation. Fourth, Receiver disputes Inter/Media's claim to the Upland Residence, and the competing claims would otherwise necessitate litigation and the associated costs to each party to resolve their claims. The agreed-upon Settlement Agreement avoids litigation expenses incurred against the receivership. Thus, rather than permitting the equity in the Upland Residence to decrease, and litigation expenses to be incurred, the Court exercises its broad discretion and finds that the prejudgment sale of the Upland Residence proposed by Inter/Media and Receiver appears fair. *Edwards*, 595 F.3d at 1012.

Moreover, Cardiff Defendants' arguments in their Opposition are not persuasive. First, Cardiff Defendants rely on *Kutzner* for the proposition that the Upland Residence should not be sold before entry of judgment. Although *Kutzner* did not ultimately authorize a prejudgment sale, it noted the court's "broad authority to supervise and authorize the administration of a receivership," and concluded, based on a factual analysis, that a prejudgment sale was not

² The Court notes that its outcome would not change under an analysis of the *Girsch* factors for class action settlements.

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warranted based on the specific facts of that case. (*Kutzner* 9.) Specifically, *Kutzner* did not involve a third party asserting a claim to property from a separate, prior lawsuit, as well as the litigation fees avoided by entering into a settlement. *Kutzner* also noted that no evidence had been put forth to demonstrate a decrease in market value, only "mere conjecture." (*Kutzner* 11.) Here, according to Cardiff Defendants' own statements, the market value has decreased by over \$1 million in just over one year. Additionally, this Court has already performed a preliminary evaluation of the merits of the case based on multiple days of hearing and live testimony, ultimately concluding the Cardiffs were "totally unbelievable." (July 31, 2019 Tr. at 390:3-5.) Taking all of these factors together, the Court finds *Kutzner* inapposite. Second, Cardiff Defendants complain about the hardship caused by selling the Upland Residence, but present no real dispute regarding the factors for settlement.³ Third, Cardiff Defendants' remaining arguments regarding the ultimate merits of the claims would have been relevant to whether the PI should be entered, not to the Motion for Sale of Upland Residence. Cardiff Defendants' arguments are unpersuasive because they are procedurally untimely, and even if not, their claims are unsubstantiated because they are made only by Cardiff Defendants and their attorney.⁴ Fourth and finally, any objection regarding the amount of money to be distributed by the Receiver should be addressed at a later time. For all of these reasons, the Court finds a prejudgment sale of the Upland Residence is merited in this case.

III. RULING

For the foregoing reasons, the Court **GRANTS** Receiver's Motion for Settlement and **GRANTS** Receiver's Motion for Sale of Upland Residence.

IT IS SO ORDERED.

³ The fact that Cardiff Defendants listed the Upland Residence for sale in May 2018, while not dispositive, weighs against a finding that a sale of the Upland Residence would cause undue hardship.

⁴ Cardiff Defendants' allegations, even if considered, would not change the Court's concurrently-issued Order re Cardiff Defendants' Motion to Dissolve Preliminary Injunction (ECF No. 274).