

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 31, 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 GRANTING-IN-PART AND DENYING-IN-PART PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS EUNJUNG CARDIFF AND JASON CARDIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT AND COERCIVELY INCARCERATED UNTIL THEY COMPLY WITH THE COURT'S ORDERS [ECF No. 300]

This matter comes before the Court on Plaintiff Federal Trade Commission's ("Plaintiff" or "FTC") Motion for an Order to Show Cause Why Defendants Eunjung Cardiff and Jason Cardiff Should Not Be Held in Contempt of Court and Coercively Incarcerated Until They Comply with the Court's Orders ("Motion"), filed on March 2, 2020. (Motion, ECF No. 300.) Defendants Eunjung Cardiff and Jason Cardiff (collectively, "Cardiffs" or "Cardiff Defendants") filed their Response to FTC Motion for Issuance of Show Cause to Hold Cardiffs in Contempt of Court ("Response") on March 3, 2020. (Response, ECF No. 301.) Third Party Inter/Media Time Buying Corporation ("Inter/Media") filed a Conditional Non-Opposition to Plaintiff's Motion ("Joinder") on March 9, 2020. (Joinder, ECF No. 303.) The Court found this matter suitable for decision without oral argument and vacated the hearing set for March 30, 2020. See Fed. R. Civ. P. 78(b); Scheduling Notice, ECF No. 314. For the following reasons, the Court **GRANTS-IN-PART** and **DENIES-IN-PART** 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 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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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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.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

CASE NO.: CV 5:18-2104 SJO (PLAx)

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(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.)

On March 19, 2020, the Court modified certain calendar and pretrial dates, such that the following deadlines are now in place: June 1, 2020 Discovery Cutoff, July 27, 2020 Motion Cutoff, October 9, 2020 Final Pretrial Conference, and October 20, 2020 Bench Trial. (Order, ECF No. 313.)

II. DISCUSSION

A. Legal Standard

"A court has the inherent power to punish for civil or criminal contempt any obstruction of justice relating to any judicial proceeding." *Lambert v. Montana*, 545 F.2d 87, 88 (9th Cir. 1976). "Civil contempt . . . consists of a party's disobedience to a specific and definite court order by failure to take all reasonable steps within the party's power to comply." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). "Civil contempt is characterized by the court's desire to compel obedience to a court order, or to compensate the contemnor's adversary for the injuries which result from the noncompliance." *Falstaff Brewing Corp. v. Miller Brewing Co.*, 712 F.2d 770, 778 (9th Cir. 1983). There is no requirement that a violation be willful and "there is no good faith exception to the requirement of obedience to a court order." *Id.* Nevertheless, "'substantial compliance' with the court order is a defense to civil contempt, and is not vitiated by 'a few technical violations' where every reasonable effort has been made to comply." *Id.* (quoting *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982)).

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

CASE NO.: CV 5:18-2104 SJO (PLAx)

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B. Contempt

Plaintiff argues that the Cardiffs violated the TRO and PI by: (1) failing to identify the true source of funds they are currently spending in furtherance of their luxurious lifestyle; (2) dissipating assets subject to the Asset Freeze by spending freely on luxurious personal expenses and unapproved living expenses and attorneys' fees; and (3) allowing their Upland Residence to waste by refusing to pay the mortgage. (Motion 3.) First, shortly after October 2018, the Cardiffs began paying their bills through a new Alphatech account at US Bank, following which the Cardiffs began paying their bills through a brand new, cash-funded credit union account ("FCCU Account") in the name of Jason Cardiff's 90 year old father, Gerald Cardiff. (Motion 4.) Since inception, the FCCU Account's funds have only been used to pay expenses for Jason and Eunjung Cardiff, and strikingly, the FCCU Account does not pay the rent for Gerald Cardiff's retirement home. (Motion 5-6.) Second, the Cardiffs are spending nearly \$17,000 per month on Bentley, Porsche, and Range Rover lease payments, private elementary school tuition, restaurants, phone and cable bills, salons and spas, pet grooming, a 5-star hotel in New York City, music lessons, taekwondo lessons, ride shares, movie theaters, and other lavish expenditures. (Motion 5-6.) The Cardiffs are also using the FCCU Account to pay for new, undisclosed credit cards and attorneys' fees. (Motion 6-7.) Third, as detailed in a separate motion by Receiver, the Cardiffs are not paying their almost \$12,000 per month mortgage on their Upland Residence. (Motion 4.) The Cardiffs' actions violate Sections VII, XVII, XVIII, and XX of the TRO and PI, by failing to identify the true source of the FCCU Account funds, failing to deliver the FCCU Account funds the Receiver, failing to provide the Receiver a list of all assets and accounts, and interfering with the Receiver's efforts. (Motion 10.) The Court should immediately incarcerate the Cardiffs, given the Cardiffs' repeated disregard of the Court's Orders. (Motion 11-12.)

The Cardiffs respond that the FTC knows the funds were received from Gerald Cardiff, who is "entitled to help his son." (Opp. 1-2.) Gerald Cardiff appears to be supported by one of his three other sons, but the nature and extent of the help is unknown. (Opp. 2.) The PI does not restrain the Cardiffs from using credit cards to pay routine living expenses, however the Cardiffs are unable to pay their mortgage because they lack cash flow. (Opp. 3.) The Court's contempt power should be used sparingly, and not here, where the FTC can pursue discovery to determine facts. (Opp. 4.)

Inter/Media does not oppose Plaintiff's Motion, provided the Court directs Cardiff Defendants to pay money directly to the Receiver for mortgage arrearages or mortgage payments going forward, and requires Receiver to pay such funds to the mortgage holder. (Joinder 2.)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

CASE NO.: CV 5:18-2104 SJO (PLAx)

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The Court easily finds the Cardiffs in contempt of the Court's TRO and PI. The Cardiffs do not dispute that they have incurred nearly \$17,000 per month in expenses, a substantial amount of which the Court determines are non-essential expenses. They do not dispute that they are using funds from Gerald Cardiff to pay for these non-essential expenses. And they allege that, despite spending \$38,604 over eight months on three luxury car lease payments (seemingly for two adults and a second grader), they lacked the cash flow to pay their \$12,000 monthly mortgage. The Court has already determined that the Cardiffs are "totally unbelievable," "lied" to the Court, and "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.) Nothing about the Cardiffs' behavior appears to have changed.

Nevertheless, the Court declines to take the extreme step of coercive incarceration at this time.¹ Instead, the Court finds that the Cardiffs may purge their contempt by taking the following actions, no later than thirty days following entry of this Order:

- Identify the source of each and every cash deposit into the FCCU Account (as labeled in Plaintiff's Motion);
- To the extent Gerald Cardiff is the source for any cash deposit into the FCCU Account, identify each and every source from which he deposited funds into the FCCU Account;
- Turn over all Cardiff assets to the Receiver, including assets that have to be repatriated from abroad; and
- Replenish the Receivership Estate for any and all unpaid mortgage payments on the Upland Residence, until the date of sale of the Upland Residence (as authorized by ECF Nos. 306, 309).

The Cardiffs are, yet again, expressly warned that the sanctions in any subsequent contempt order against the Cardiffs could include, but not necessarily be limited to, incarceration until they purge themselves of their contempt.

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¹ The Court notes as a factor weighing against incarceration at this time the unprecedented circumstance of COVID-19 as a global pandemic, and the growing concern of rapid spread within correctional facilities.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

CASE NO.: CV 5:18-2104 SJO (PLAx)

DATE: March 31, 2020

III. RULING

For the foregoing reasons, the Court **GRANTS-IN-PART AND DENIES-IN-PART** Plaintiff's Motion. The Court holds Cardiff Defendants in contempt, which may be purged by satisfying the conditions set forth in this Order, no later than thirty days following entry of this Order. The Court declines to coercively incarcerate Cardiff Defendants at this time, but expressly warns Cardiff Defendants that the sanctions in any subsequent contempt order against the Cardiffs could include, but not necessarily be limited to, incarceration until they purge themselves of their contempt.

IT IS SO ORDERED.