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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 **Federal Trade Commission,**)
19 Plaintiff,)
20 v.)
21 **Jason Cardiff, et al.,**)
22 Defendants.)
23)
24)
25)
26)
27)
28)

SUBMITTED *IN CAMERA*
No. ED 5:18-cv-02104-DMG-PLAx
**PLAINTIFF’S EMERGENCY NON-
NOTICED *EX PARTE* APPLICATION
FOR TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE AND
OTHER EQUITABLE RELIEF AND
ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE**

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1 ***EX PARTE APPLICATION***

2 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local
3 Rule 7-19.2, Plaintiff, the Federal Trade Commission (“FTC” or “Commission”),
4 applies to this Court for an emergency non-noticed *ex parte* Temporary Restraining
5 Order (“Proposed TRO”) freezing the assets of VPL Medical, Inc. (“VPL”), a
6 recently-created entity controlled by Defendant Jason Cardiff and for which he is
7 “CEO,” contrary to information he reported to the Receiver and the FTC. The
8 Proposed TRO would also temporarily put VPL under the Receiver’s control and
9 management and redirect imminent payments to the Receiver, in order to maintain
10 the status quo pending a noticed preliminary injunction hearing. The Proposed
11 TRO would also require holders of relevant company documents to provide them
12 to the Receiver and the FTC on an expedited basis and permit the Receiver and the
13 FTC to take limited expedited discovery in advance of the preliminary injunction
14 hearing.

15 Through VPL, Jason Cardiff is in the business of supplying surgical face
16 masks and personal protective equipment, including to U.S. government agencies
17 such as the U.S. Department of Veterans Administration (“VA”) and the U.S.
18 Department of Health and Human Services (“HHS”). The business appears to be
19 unrelated to the underlying conduct alleged in the Commission’s Complaint.
20 Nevertheless, the evidence submitted with this application shows that Defendant
21 Jason Cardiff controls VPL and that he stands to benefit from its profits; thus,
22 pursuant to the plain language of this Court’s November 8, 2018 Preliminary
23 Injunction (Dkt. 59), the company and its assets are Receivership Property that is
24 to be managed by the Receiver. The evidence also shows that VPL was recently
25 paid more than \$3 million by the VA that Jason Cardiff did not report to the
26 Receiver. Another \$3 million payment from the VA to VPL is imminent and will
27 likely issue before the end of this week.

1 This *ex parte* application is justified because the FTC will suffer irreparable
2 prejudice if its application for a TRO is heard according to regular noticed motion
3 procedures. *See Mission Power Eng'g Co. v. Continental Cas. Co.*, 883 F. Supp.
4 488, 492 (C.D. Cal. 1995). Ample evidence in the record demonstrates that if Jason
5 Cardiff is alerted that his assets are in jeopardy, he will move them before they can
6 be seized. Certification of Counsel, p. 3-4, ¶¶ 11-17. He has also ordered the
7 destruction of evidence in defiance of Court Orders. *Id.*, p. 3, ¶ 8. Additionally, the
8 FTC is without fault in creating the crisis that requires *ex parte* relief. *See Mission*
9 *Power*, 883 F. Supp. at 492. The urgency of this application is not a result of lack
10 of diligence on the FTC's part. Despite Jason Cardiff's misleading disclosures to
11 the FTC and Receiver about his face mask business, the FTC has been able to
12 quickly obtain evidence of Jason Cardiff's control of and involvement in VPL. The
13 Commission learned on Thursday of last week that the VA payment of \$3 million
14 to VPL would likely be made as early as this week and as late as the following
15 week, then learned on Monday of this week that the VA has certified the payment,
16 making it likely to issue this week. *See Settlemyer Decl.*, p. 2, ¶ 10. The timing of
17 this payment presents a narrow window of opportunity to temporarily freeze VPL's
18 assets, redirect payment to the Receiver, and put the business under temporary
19 control and management of the Receiver, pending a noticed preliminary injunction
20 hearing.

21 The drastic step of issuing the Proposed TRO without notice is necessary
22 because of Jason Cardiff's repeated lies under oath and violations of the
23 Preliminary Injunction and Asset Freeze, even under the threat of incarceration.
24 Any notice of this action will almost certainly result in the dissipation of whatever
25 assets are available in VPL accounts. Therefore, a limited delay (not to exceed
26 seven days) of notice and filing of the Proposed TRO, if granted, is necessary and
27 justified to avoid asset dissipation and document spoliation. Putting the business
28 under temporary control and management of the Receiver, and allowing the

1 Receiver and the FTC to obtain information about the business on a limited
2 expedited basis, is necessary to ascertain the full scope of Jason Cardiff's
3 involvement and the amount of money that can be frozen for the possibility of
4 equitable monetary relief. These steps will permit the Court to craft an appropriate
5 order to protect the interests of Defendants' consumer victims and potentially any
6 affected third parties. A non-noticed TRO with a noticed preliminary injunction
7 hearing will also strike the right balance of minimizing the risk that Jason Cardiff
8 will dissipate assets and destroy evidence upon receiving notice of this action,
9 while providing all parties an opportunity to be heard once the VPL assets are
10 secured.

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1 **MEMORANDUM**

2 **I. THE RECEIVERSHIP AND JASON CARDIFF’S PREVIOUS**
3 **ASSET FREEZE VIOLATIONS**

4 In the Temporary Restraining Order (“TRO”) (Dkt. 29) and Preliminary
5 Injunction (“PI”) (Dkt. 59), the Court froze Defendants’ assets and appointed a
6 Receiver who is directed and authorized to, among other things, “[c]onserve, hold,
7 manage, and prevent the loss of all Receivership Property, and perform all acts
8 necessary or advisable to preserve the value of those Assets. . . .” The PI grants the
9 Receiver “full power to sue for, collect, and receive, all Receivership Property[.]”
10 Dkt. 59, p. 23-24, Section XVI.D. It defines “Receivership Property,” in pertinent
11 part, as:

12 any Assets, wherever located, that are: (1) owned, controlled, or held
13 by or for the benefit of . . . Jason Cardiff, . . . in whole or in part; (2)
14 in the actual or constructive possession of . . . Jason Cardiff . . . ; or
15 (3) owned, controlled, or held by, or in the actual or constructive
16 possession of, or otherwise held for the benefit of, any corporation,
17 partnership, trust, or other entity directly or indirectly owned or
18 controlled by . . . Jason Cardiff

19 Dkt. 59, p. 9, Definition M. *See also* Dkt. 59, p. 22, lines 8-21, Section XV,
20 Continuation of the Receivership (continued service of Receiver with full powers
21 of an equity receiver over Jason Cardiff’s assets, including those owned,
22 controlled, or held for his benefit, directly, indirectly, or through business entities
23 that he controls) and Dkt. 5, p. 63-64 (discussing need for receivership over all of
24 the Cardiffs’ assets).

25 The Asset Freeze is designed to preserve funds for the possibility of
26 consumer redress at the conclusion of the case. It covers all assets (1) owned or
27 controlled, directly or indirectly, (2) held, in part or in whole, for the benefit of, or
28 (3) in the actual or constructive possession of any Defendant. It also covers all

1 assets (4) owned or controlled by, in the actual or constructive possession of, or
2 otherwise held for the benefit of any corporation, partnership, asset protection
3 trust, or other entity that is directly or indirectly owned, managed, or controlled by
4 any Defendant. Dkt. 59, p. 14-15, Section VII.A.

5 Importantly, in contrast to the other Defendants whose assets were also
6 frozen, the TRO and PI's Asset Freeze and Receivership cover *all* Cardiff assets,
7 regardless of when acquired, as opposed to only assets in existence at the time the
8 TRO was entered. Dkt. 59, Section VII.D, p. 15, lines 20-27. This distinction, and
9 the extraordinary remedy of placing the Cardiffs' individual assets under a
10 receivership, were factually justified by evidence in the record revealing, among
11 other things, the Cardiffs' use of elaborate asset protection vehicles designed to
12 shield their assets from creditors and potential creditors (Dkt. 5 at 62) and then
13 proven fully warranted by their immediate, documented violations of the TRO,
14 including Jason Cardiff's attempt to wire more than \$200,000 to third parties,
15 including \$40,000 destined for outside the jurisdiction of the U.S., as reported in
16 the Receiver's October 23, 2018 Affidavit of Noncompliance (Dkt. 206).

17 Since entry of the PI, the Cardiffs have twice been found in contempt for
18 failing to disclose, failing to turn over to the Receiver, and dissipating and wasting
19 assets covered by the PI. Dkts. 238, 315. The first contempt involved an elaborate
20 scheme to hide the Cardiffs' control of a Canadian company, Clover Cannastrip
21 Thin Film Technologies (later called True Pharmastrip), while maintaining that
22 Jason Cardiff was merely an unpaid consultant to the operation, and for the
23 movement of \$1.56 million Canadian ("CAD") out of a company bank account for
24 which the Cardiffs were the only two signatories, in concert with their friend
25 Jacques Poujade and in violation of the asset freeze. This Court rejected as totally
26 incredible the tale the Cardiffs and Poujade told, finding all three in contempt and
27 setting purge conditions, including turning over the \$1.56 million CAD to the
28 Receiver and providing "a full and detailed accounting, under oath, of all assets

1 held by, for the benefit of, or otherwise controlled, directly or indirectly, by
2 Eunjung Cardiff or Jason Cardiff (or both) for the period from July 31, 2018 to the
3 date of this Order.” Dkt. 238, p. 4-5. The Order also directed the Cardiffs and
4 Jacques Poujade to provide an accounting of the bank accounts of the ongoing film
5 strip business venture (i.e., Pharmastrip and True Pharmastrip bank accounts).

6 The second contempt laid bare that the Cardiffs were refusing to pay their
7 mortgage, resulting in significant dissipation of the Upland House asset, yet
8 spending freely on nonessential living expenses such as three luxury car leases (for
9 a two-driver household) from funds of a dubious origin. Dkt. 300, p. 6-9. The
10 Cardiffs were ordered to reimburse the Receivership Estate for their unpaid
11 mortgage (Dkt. 315, p. 5), but they have not done so.

12 In addition to the above, Jason Cardiff was held in contempt a third time for
13 obtaining a new Irish passport in violation of the Order requiring him to surrender
14 his passports to the Receiver. Dkt. 190-1, p. 151-155.

15 **II. JASON CARDIFF CONTROLS VPL MEDICAL**

16 **A. Evidence from Government Agencies and Public Sources Showing** 17 **Jason Cardiff Is VPL Medical’s “CEO” and Controls the** 18 **Company**

19 In addition to Jason Cardiff’s own reports about the surgical face mask
20 business to the FTC, Receiver, and this Court, described in Sections II.B and II.C,
21 *infra*, the FTC has obtained documents showing that he controls VPL. He has, in
22 fact, been held out to be its “CEO.” On April 16 and 17, 2020, ten days before
23 Jason Cardiff disclosed VPL to the FTC and Receiver, VPL was awarded contracts
24 with the VA and HHS¹ for up to \$6.3 million and \$14.5 million, respectively, to
25

26 ¹ HHS has advised the FTC that it has documents that refer to Jason Cardiff and
27 that may be relevant to the question of whether he controls VPL. HHS believes,
28 however, that it might not be authorized to allow the use of those documents in

1 supply those agencies with surgical face masks. Settlemyer Decl., p. 1, ¶ 3, Att. 1.
2 VPL also had made sales of gowns and goggles to the Federal Emergency
3 Management Agency (“FEMA”) on or about April 28, 2020. Settlemyer Decl.,
4 p. 1, ¶ 5, Att. 3.

5 VA documents evidence Jason Cardiff’s control over VPL. Multiple emails
6 that Stacey Barker, VPL’s “VP Enterprise Sales” or “Enterprise Account
7 Executive,” sent between April 8 and May 1, 2020 to officials at the VA about its
8 contract carbon copy “Jason Cardiff” using a “jc@vplmedical.com” email address.
9 No other individual associated with VPL is copied on these emails to the VA.
10 Settlemyer Decl., p. 1, ¶ 4, Att. 2. These emails relate to VPL’s vendor
11 information, anticipated delays in VPL’s shipment of masks it was importing from
12 China, and shipment and delivery of those masks to the VA. *Id.*

13 Even more tellingly, Ms. Barker stated in an April 28, 2020 email replying
14 to a FEMA representative about a VPL invoice for gowns and goggles, “Cc’ing my
15 CEO on this.” The only person cc’d was Jason Cardiff, at the
16 “jc@vplmedical.com” email address. Settlemyer Decl., p. 1, ¶ 5, Att. 3. Jason
17 Cardiff’s approximately 600 phone calls to Ms. Barker, totaling nearly 2,000
18 minutes of talk time between March 25 and the end of May 2020, further evidence
19 his control of VPL. Sands Decl. p. 4, ¶¶ 12-17 and Tables 1, 2.

20 Finally, Jason Cardiff has served from the outset as VPL’s public point of
21 contact. As early as March 21, 2020, three days before its articles of incorporation
22 were filed in California (Sands Decl. p. 1, ¶ 3, Att. 18), VPL published Twitter
23
24

25 _____
26 connection with this case without a court order or subpoena. Settlemyer Decl., p. 2,
27 ¶ 8. The Proposed TRO includes a provision requiring HHS to turn those
28 documents over to the Receiver and the FTC.

1 posts listing “jc@vplmedical.com” as its contact person.² This evidence is
2 consistent with a recent in-depth investigative article reporting that Jason Cardiff
3 represents VPL in business dealings with other potential mask buyers.³

4 This evidence thus shows that Jason Cardiff is VPL’s principal,
5 notwithstanding the omission of this fact from his reports of new business activity
6 and court filings, discussed below.

7 **B. Jason Cardiff’s Reports and Statements to the Court About the**
8 **Mask Business Hide His Control of VPL Medical**

9 On March 2, 2020, counsel reported⁴ Jason Cardiff’s intent to create “a
10 business entity that will manufacture and market disposable sanitary masks to be
11

12 ² Sands Decl. p. 4, ¶ 4, Att. 19 (“Mr. President We are VPL a USA based company
13 As stated I we [sic] can make Masks and we are able to manufacture up to 1
14 million masks per day we have a full set of Eqi I just need to know who to talk to
we can be up in 4 weeks (Made in America for America) jc@vplmedical.com”).

15 ³ See J. David McSwane, The Secret, Absurd World of Coronavirus Mask Traders
16 and Middlemen Trying To Get Rich Off Government Money (June 1, 2020),
17 [https://www.propublica.org/article/the-secret-absurd-world-of-coronavirus-mask-](https://www.propublica.org/article/the-secret-absurd-world-of-coronavirus-mask-traders-and-middlemen-trying-to-get-rich-off-government-money)
18 [traders-and-middlemen-trying-to-get-rich-off-government-money](https://www.propublica.org/article/the-secret-absurd-world-of-coronavirus-mask-traders-and-middlemen-trying-to-get-rich-off-government-money) (“Zelonka had
19 previously told me he was working out a time to meet with a VPL representative,
Jason Cardiff, to examine the firm’s product, this time for far more effective KN95
20 masks the company advertised. Bedi confirmed Cardiff works for VPL as a
‘consultant.’”). Settlemyer Decl., p. 1, ¶ 6, Att. 4. See also Cheryl W. Thompson,
21 et al., Feds Spend Billions On COVID-19 Contracts, Often Without Fully
Competitive Bidding (June 9, 2020),
22 [https://www.npr.org/2020/06/09/869052415/feds-spend-billions-on-covid-19-](https://www.npr.org/2020/06/09/869052415/feds-spend-billions-on-covid-19-contracts-often-without-fully-competitive-biddin)
23 [contracts-often-without-fully-competitive-biddin](https://www.npr.org/2020/06/09/869052415/feds-spend-billions-on-covid-19-contracts-often-without-fully-competitive-biddin) (quoting Bobby Bedi, who “had
24 never done business with the federal government. But he started . . . , VPL Medical
Inc., in April, and within a couple of weeks had contracts that were ‘not competed’
25 and worth up to \$21 million.”). Settlemyer Decl., p. 1, ¶ 7, Att. 5.

26 ⁴ Section XIV of the Preliminary Injunction requires Cardiff to report to the FTC
27 and the Receiver information on any new business including: (1) the name of the
28 business entity; (2) the address and telephone number of the business entity; (3) the

1 marketed and sold wholly to distributors and wholesalers of the mask. Jason will
2 be the owner, principal, and agent for the business” Sanger Decl., p. 1, ¶ 3.

3 On April 27, 2020, Jason Cardiff submitted to the FTC and the Receiver a
4 report (“April 27 Report”) concerning his involvement in a business venture
5 supplying face masks. Sanger Decl., p. 1, ¶ 4, Att. 2.⁵ On its face, the April 27
6 Report outlines a byzantine but not fully formed structure for multiple entities to
7 carry out this mask business.⁶ Tellingly, Jason Cardiff downplayed his role,
8 referring to it as “consulting,” a term he has used in the past to obscure his control
9 of other entities.⁷ Notably, the April 27 Report provides no details of Jason
10 Cardiff’s role at VPL, even as he serves as CEO of that company while securing
11 millions of dollars in government contracts using that entity. The April 27 Report,
12 in fact, gives the impression that he is not VPL’s principal and that he does not
13 control its activities.

14 _____
15 names of the business entity’s officers, directors, principals, managers, and
16 employees; and (4) a detailed description of the business entity’s intended
17 activities. Dkt. 59, Section XIV, p. 21-22.

18 ⁵ Jason Cardiff resubmitted the same report on April 28, 2020. *See* Sanger Decl.,
19 p. 1, ¶ 5, Att. 3.

20 ⁶ The April 27 Report states that Jason Cardiff formed a California LLC, “Biztank
21 Group, LLC,” which he solely owns, to provide “business consulting services,”
22 including to Accent Imports, Inc. (“Accent Imports”) and “a company by the name
23 of VPL Medical, Inc.” It also states that he would be operating his “consulting
24 business” from his home, but that “Accent Imports, Inc. and VPL Medical, Inc.
25 both temporarily operate from the business office of the incorporator, Edward
26 Jimenez. The April 27 Report describes the leadership structure and ownership
27 stakes that Jason Cardiff and Bobby Bedi would take in Accent Imports via their
28 respective LLCs.

⁷ This, of course, was the same term he used to hide his controlling role in
Pharmastrip, the CBD and THC film strip business venture, and which the Court
found totally incredible in holding him in contempt of the PI. Dkt. 188-1, p. 390.

1 The April 27 Report elides any discussion of VPL’s principals or managers,
2 and offers only a vague indication that Jason Cardiff “contemplate[s]” taking
3 shares in VPL:

4 As to [VPL], the incorporator has not yet designated directors and the
5 organizational meeting has not yet occurred. Thus, there is no other
6 information available as to its formal officers, directors, principals,
7 managers, and employees. Both [Bobby] Bedi and Mr. Cardiff
8 contemplate becoming shareholders taking shares in their respective
9 LLC’s, for non-cash services rendered.

10 The April 27 Report goes on to state that Accent Imports “intends to pursue
11 the acquisition of specialized equipment to manufacture surgical masks, to import
12 the equipment into the U.S. from China, to set up the equipment in California,
13 acquire raw materials, commence the manufacturing of surgical masks and sell the
14 masks.” It merely states that VPL “intends to pursue, obtain and fill orders for
15 medical masks from potential wholesale customers.”⁸

16 In the Cardiffs’ May 19, 2020 filing with this Court, Jason Cardiff again
17 described the mask business, predicting that the new business would generate
18 “significant income,” but failing to disclose that he was, in fact, the principal of
19 VPL, and that VPL was due to be paid millions from government contracts. Dkt.
20 340, p. 6, lines 9-12.

21 Furthermore, Jason Cardiff lied in the April 27 Report when he claimed that
22 this new business did not involve any other individual involved in the Redwood or
23 Pharmastrip businesses. The April 27 Report identifies Bobby Bedi as having a
24 major role in the face mask business; in fact, Bobby Bedi worked for Jason Cardiff

25
26 ⁸ Similarly, VPL’s publicly available incorporation documents list Bobby Bedi and
27 Edward Jimenez as contacts, and do not list Jason Cardiff.
28

1 at Redwood. Specifically, Mr. Bedi wrote blog posts about weight loss and quitting
2 smoking designed to drive traffic to Defendants' Redwood Scientific website
3 (including a post titled, "How to Lose Weight Fast Without Dieting or Exercising?
4 Let's Find Out!") and provided search engine optimization services in August-
5 October 2017. Sands Decl., p. 3, ¶ 9, Atts. 1-17. He helped launch the Rengalife
6 multi-level marketing scheme, was given a board seat, and named Head of
7 Technology by Jason Cardiff. He also helped Defendant Redwood apply for
8 merchant accounts. *Id.*

9 **III. VPL MEDICAL AND PAYMENTS TO IT ARE RECEIVERSHIP**
10 **PROPERTY THAT SHOULD BE TURNED OVER TO THE**
11 **RECEIVER**

12 **A. The Court is Authorized to Treat VPL Medical and Payments**
13 **Made To It as Receivership Property and To Freeze Its Assets**

14 Section 13(b) of the FTC Act authorizes the Court to order assets frozen
15 when the record shows that, absent a freeze, defendants will dispose of, or conceal,
16 or send abroad, moneys that they have obtained from their victims. *FTC v. H.N.*
17 *Singer*, 668 F.2d 1107, 1113 (9th Cir. 1982). It gives the Court equitable authority
18 "to grant any ancillary relief necessary to accomplish complete justice." *Id.*

19 Pursuant to this authority, the Court can freeze a defendant's assets and
20 subject them to a receivership estate even if those assets are not traceable to the
21 defendant's unlawful conduct. *See, e.g., FTC v. IAB Mktg. Assocs., LP*, 972 F.
22 Supp. 2d 1307, 1315-16 (S.D. Fla. 2013) (denying motion to exclude from
23 preliminary asset freeze home that defendant acquired before his involvement in
24 unlawful acts); *FTC v. J.K. Publs., Inc.*, No. CV 99-00044 ABC (AJWx), 2009
25 U.S. Dist. LEXIS 36885, *13-15 (C.D. Cal. Apr. 13, 2009) (holding defendant's
26 interest as an intestate heir that vested several years after judgment to be a
27 receivership asset). *See also SEC v. Lauer*, 445 F. Supp. 2d 1362, 1369-70 (S.D.
28 Fla. 2006) (collecting cases holding that there is no requirement that frozen assets

1 be traceable to the fraudulent activity underlying the lawsuit). *See also SEC v.*
2 *Santillo*, No. 18-CV-5491 (JGK), 2018 U.S. Dist. LEXIS 116290, *8-12 (S.D.N.Y.
3 July 11, 2018) (court denied request to unfreeze defendant’s revenue to be derived
4 in the future from commissions on legitimate sales by a company that defendant
5 owned and claimed was untainted by alleged fraud where defendants lacked
6 sufficient assets to pay amount sought for disgorgement; court authorized
7 defendant’s withdrawal of limited funds to pay for living expenses).

8 The court may exercise its equitable power only over property causally
9 related to the wrongdoing. *Lauer*, 445 F. Supp. 2d at 1369. However,
10 the requirement of a causal relationship between a wrongful
11 act and the property to be disgorged does not imply that a court
12 may order a malefactor to disgorge only the actual property
13 obtained by means of his wrongful act. Rather, *the causal*
14 *connection required is between the amount by which the*
15 *defendant was unjustly enriched and the amount he can be*
16 *required to disgorge.*

17 *SEC v. Banner Fund Int’l*, 211 F.3d 602, 617 (D.C. Cir. 2000) (emphasis added).
18 *See also Lauer*, 445 F. Supp. 2d at 1370 (the amount of assets that should be frozen
19 before liability is conclusively established is determined not by whether the funds
20 themselves are traceable to the fraudulent activity underlying the lawsuit, but by
21 showing a reasonable approximation of the amount by which the defendant was
22 unjustly enriched). This is because “disgorgement is an equitable obligation to
23 return a sum equal to the amount wrongfully obtained, rather than a requirement to
24 replevy a specific asset. . . .” *Id.*⁹

25
26 ⁹ A traceability requirement would lead to the absurd result that, for example, “a
27 defendant who was careful to spend all the proceeds of his fraudulent scheme,
28 while husbanding his other assets, would be immune from an order of

1 Exercise of the Court’s equitable authority to freeze assets regardless of
2 whether they are traceable to a defendant’s unlawful conduct is particularly
3 appropriate when a defendant fails to account for funds and has a history of
4 controlling and using assets held in the names of third parties for her own benefit.
5 *See SEC v. Lee*, No. 14-cv-347-LAB-BGS, 2019 U.S. Dist. LEXIS 173966, *19,
6 22-23 (S.D. Cal. Oct. 7, 2019) (denying defendant relief from asset freeze,
7 imposed after disgorgement order, to allow her to pay attorney fees from
8 supposedly untainted credit cards).

9 **B. The Record Shows that VPL Medical is Receivership Property**
10 **and that the Court Should Freeze Payments Made To It**

11 The Receiver estimates that the Cardiffs’ film strip business caused \$18.2
12 million in consumer injury from January 1, 2015 through October 12, 2018. Dkt.
13 53, p. 9.¹⁰ At this point, the only funds that have been preserved for potential
14 equitable monetary relief are \$312,942.09 frozen in accounts with financial
15 institutions, \$248,789.07 frozen in accounts with credit card merchant processors
16

17 _____
18 disgorgement.” *J.K. Pubs.*, 2009 U.S. Dist. LEXIS 36885, at *15, quoting *Banner*
19 *Fund*, 211 F.3d at 617. This “would be a monstrous doctrine for it would
perpetuate rather than correct an inequity.” *Banner Fund*, 211 F.3d at 617.

20 ¹⁰ The FTC believes the Supreme Court’s decision in *Liu v. SEC*, No. 18-1501,
21 2020 U.S. LEXIS 3374 (June 22, 2020) does not affect this ex parte application. In
22 *Liu*, the Supreme Court affirmed the Security and Exchange Commission’s
23 authority to disgorge ill-gotten gains under a statute authorizing equitable relief.
24 The opinion generally limited disgorgement to net profits but noted that courts
25 would not have to reduce an award by expenses that merely “fuel[ed] a fraudulent
26 scheme.” *Id.* at *30. Such is the case before the Court, in which Defendants’
27 expenses furthered their deceptive scheme without providing value to consumers.
28 Thus, the \$18.2 million amount the Receiver noted remains the upper bound of
assets that can be frozen to effectuate final relief. It represents both disgorgement
of ill-gotten gains and the amount of restitution to consumers.

1 (which could be reduced due to future chargebacks) (Dkt. 52, p. 13),¹¹ and \$1.56
2 million CAD (which, following last summer’s contempt proceedings, is held by the
3 Receiver in a segregated account). This falls far short of the \$18.2 million
4 estimated consumer injury caused by Defendants’ unlawful conduct.

5 As discussed above, the Cardiffs used elaborate asset protection vehicles
6 designed to shield their assets from creditors and potential creditors (Dkt. 5 at 62)
7 and immediately violated the monetary restrictions of the TRO, as reported in the
8 Receiver’s October 23, 2018 Affidavit of Noncompliance (Dkt. 206). They have
9 twice been found in contempt for failing to disclose, failing to turn over to the
10 Receiver, and dissipating and wasting assets covered by the PI, Dkts. 238, 315, and
11 Jason Cardiff was separately held in contempt for failing to turn over his newly-
12 obtained Irish passport. That Jason Cardiff has convinced other individuals to serve
13 as titular officials of VPL and has proffered a tortured explanation of his
14 relationship to VPL as a mere “consultant” – actions that are strongly reminiscent
15 of prior contempt proceedings in this case, where the Cardiffs and Jacques Poujade
16 claimed that Poujade was CEO of the Pharmastrip venture, and Jason Cardiff a
17 mere “consultant” – does not change the fact of his actual control of VPL.

18 There was, and continues to be, a very real risk that the Cardiffs will shield
19 their assets outside the jurisdiction of the U.S. and refuse to pay any final monetary
20 judgment entered against them in the underlying consumer protection action. For
21 that reason, the Court should freeze VPL’s funds before its principal, Jason
22 Cardiff, has the chance to remove them from the Court’s jurisdiction. According to
23 information that the VA provided to the FTC, VPL has now invoiced the VA for
24 approximately \$6 million, of which approximately \$3 million was paid to VPL on
25 May 26, 2020, with approximately \$3 million more to be paid imminently – likely
26

27 ¹¹ These figures do not account for the court-approved expenses of the Receiver.
28

1 before the end of this week. Settlemyer Decl., p. 2, ¶ 10. These VPL funds are, per
2 the terms of the PI, Receivership Property subject to the Receiver’s management
3 and control.¹² Thus, VPL’s assets should be frozen, and VPL temporarily put under
4 the Receiver’s management and control pending a preliminary injunction hearing.

5 **IV. CONCLUSION AND PROPOSED ORDER**

6 Without visibility into the VPL bank account, the FTC cannot determine
7 how much of the funds from the VA’s first \$3 million payment remain, or whether
8 any of the funds have been transferred to other accounts or used to pay for Cardiff
9 expenses. The VA’s payment of the second \$3 million is imminent. The FTC likely
10 cannot discover much more about Jason Cardiff’s surgical face mask business
11 before he has effective notice of this application, and his past actions in response to
12 learning of the October 2018 TRO’s Asset Freeze indicate that he likely will take
13 steps to move money out of the VPL account as soon as he learns of the FTC’s
14 application to this Court. Therefore, the funds must be frozen before he receives
15 notice of this application or the Proposed TRO, if granted.

16 As summarized below, the FTC’s Proposed TRO provides for such a freeze,
17 appoints the Receiver as a temporary receiver over VPL and its assets, would
18 facilitate the FTC’s and the Receiver’s access to relevant documents in preparation
19 for a preliminary injunction hearing on this matter, and would order Defendant
20 Jason Cardiff to show cause why VPL and its assets should not be treated as
21 Receivership Property. These measures are necessary for the Receiver to ascertain
22 the scope of Jason Cardiff’s involvement in VPL and the amount of money that has
23 accrued to his benefit.

24
25
26
27 ¹² The VA has provided to the FTC information about the bank account VPL used
28 to receive contract payments. Settlemyer Decl., p. 2, ¶ 9.

1 **Section I** of the FTC’s Proposed TRO would temporarily freeze VPL’s
2 assets by restricting Jason Cardiff, VPL, and his Biztank Group, LLC from
3 transferring those assets, other than to the Receiver. Section I, however, expressly
4 allows the shipment, delivery, or passing of title by the Receiver to any VPL
5 customer of any goods for which orders were placed or contracts were fully
6 executed prior to service of the order on VPL.

7 **Section II** of the FTC’s Proposed TRO would prohibit third-party holders of
8 VPL assets from transferring them, other than to the Receiver, and requires that
9 they preserve VPL records, and make expedited, limited disclosures about those
10 assets to the Receiver and the FTC.

11 **Section III** would require parties who hold documents submitted by or on
12 behalf of VPL, or sent by, to, or on behalf of VPL, to promptly provide them to the
13 Receiver and the FTC. **Section IV** would require Jason Cardiff, VPL, and his
14 Biztank Group, LLC to preserve documents relating to VPL.

15 **Sections V – VII** of the FTC’s Proposed TRO are modeled on the
16 receivership language in the Court’s October 2018 TRO and November 2018 PI.
17 These sections would temporarily appoint the Receiver in this case as the receiver
18 of VPL and its assets, set forth the Receiver’s duties and authority, including
19 entering and taking possession of its business locations,¹³ and require the transfer
20 of VPL and its assets to the Receiver. **Section VI.E.** would specifically give the
21 Receiver exclusive custody, control, and possession of any payments made, due, or
22 owing to VPL, including by the U.S. Department of Veterans Affairs or the U.S.
23 Department of Health and Human Services.

24
25 ¹³ The U.S. Food and Drug Administration’s website’s publicly accessible data
26 files list a VPL facility at 9087 Arrow Route, Suite 150, Rancho Cucamonga, CA,
27 91730 (Sands Decl. p. 3-4, ¶¶ 10-11), which is different from the company’s
28 registered corporate address. Both addresses are include in the proposed Order.

1 **Section VIII** is also modeled on the October 2018 TRO. It would permit the
2 Receiver and the FTC to take limited, expedited discovery regarding Jason
3 Cardiff's involvement with and relationship to VPL, the nature, location, status,
4 disposition, and extent of VPL's Assets and compliance with the Proposed TRO.

5 **Section IX** would permit service of the Proposed TRO by any means,
6 including on VPL, any VPL asset holders, and any government agency or other
7 person with documents submitted by or exchanged with VPL. It also permits delay
8 of service and filing of the Proposed TRO by up to seven days following entry of
9 the order.

10 **Section X** of the FTC's Proposed TRO would require Defendant Jason
11 Cardiff to show cause why the Court should not find that VPL's assets are
12 Receivership Property that is subject to the PI.

13 **Section XI** sets out the FTC's address for receipt of correspondence and
14 service, **Section XII** sets out the duration and scope of the order, and **Section XIII**
15 provides that this Court shall retain jurisdiction of this matter for all purposes.

16 For the reasons stated above, the FTC respectfully requests that the Court
17 enter the concurrently-submitted Proposed TRO without notice to the Defendants
18 or VPL.

19 Respectfully submitted,

20 Dated: June 24, 2020

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