

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **ED CV 18-2104-DMG (PLAx)**

Date September 9, 2020

Title ***Federal Trade Commission v Jason Cardiff, et al.***

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Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN

NOT REPORTED

Deputy Clerk

Court Reporter

Attorneys Present for Appellant(s)
None Present

Attorneys Present for Appellee(s)
None Present

Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS JASON CARDIFF AND EUNJUNG CARDIFF’S NOTICE RE CONTEMPT [469]

On June 19, 2020, Plaintiff the Federal Trade Commission (“FTC”) filed a Motion to Incarcerate Defendants Jason Cardiff and Eunjung Cardiff [Doc. # 346], for failure to comply with the Court’s prior contempt order issued on March 31, 2020 (the “March 31 Purge Contempt Order”) [Doc. # 315]. On July 24, 2020, the Court found, by clear and convincing evidence, that:

1. The PI, October 29 Purge Contempt Order, and March 31 Purge Contempt Order (“Prior Orders”) are specific and definite orders of this Court;
2. Jason Cardiff has failed to comply with the accounting, turnover, and reimbursement provisions of the March 31 Purge Contempt Order;
3. Eunjung Cardiff has failed to comply with the accounting, turnover, and reimbursement provisions of the March 31 Purge Contempt Order; and
4. Because Jason Cardiff and Eunjung Cardiff have not purged their contempt, the sanctions outlined in the March 31 Purge Contempt Order will be imposed as set forth below.

July 24, 2020 Order at 10 [Doc. # 417].

Accordingly, the Court provisionally granted in part Plaintiff’s motion to incarcerate and gave the Cardiffs a final opportunity to comply with the Court’s Prior Orders by noon on August 31, 2020 by (1) producing a detailed *truthful* accounting of all their assets held by, for the benefit of, or otherwise controlled, directly or indirectly, by the Cardiffs, including the true source of any funds paying their expenses through the date they purge themselves of their contempt¹; (2) turning over *all* their assets to the Receiver to be managed during the pendency of this litigation according

¹ “The detailed accounting shall include each deposit/credit to, and each withdrawal/debit from, all accounts, including the source of each deposit/credit, the recipient or beneficiary of each withdrawal/debit, and the purpose of each debit, and shall include the production of primary source documents (e.g., bank statements, copies of fronts and backs of checks, wires), evidencing all debits and credits from all accounts, and not merely secondary source documents, such as ledgers.” October 29 Purge Contempt Order at 2.

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to the terms of the PI; and (3) replenishing the Receivership Estate for any and all unpaid mortgage payments on the Upland Residence due until the date of the sale of the Residence as authorized by the Court's Orders [Doc. ## 306, 309]. The Court warned that if the Cardiffs did not comply, it would issue a writ of bodily detention and warrant for civil arrest under its contempt power directing the U.S. Marshal Service to arrest and incarcerate Jason Cardiff until his contempt is purged or the Court finds that continued incarceration no longer serves a coercive purpose. *Id.*

On August 29, 2020, the Cardiffs filed a Notice that they had submitted documents to purge their contempt, including a declaration by Jason Cardiff and hundreds of pages of bank statements, credit card statements, and spreadsheets of the Cardiffs' personal finances. [Doc. # 469] (under seal).² The Cardiffs continue to assert that Jason's father Gerald Cardiff is the source of the First City Credit Union cash, they have turned over all assets to the Receiver, and they have no obligation to pay the mortgage arrearages because the Receiver seized the funds paid to Jason's consulting firm, Biztank Group LLC ("Biztank"), and the Cardiffs have no source of income to pay the mortgage. *Id.*

The FTC correctly notes in its response to the Cardiffs' Notice that these documents show no meaningful effort to purge the Cardiffs' contempt. [Doc. # 482.] The Cardiffs continue to trot out the tall tale that Gerald Cardiff is the source of the First City Credit Union cash, which the Court already previously rejected, and their unsolicited Reply filed on September 5, 2020 does not say anything new. [Doc. # 483.] Therefore, according to the terms of the July 24, 2020 Order, the Court should order Jason Cardiff incarcerated until he finally complies with the Court's Orders.

Recently, however, there has been one significant development impacting this case—the parties and the Receiver's joint stipulation to pursue the legal and potentially profitable operation of Virus Protection Labs, Inc. ("VPL"). [Doc. # 466.] The joint stipulation, based on the business projections submitted by the Receiver, hopefully permits the Receivership Estate to grow, thereby increasing potential recovery for consumers should the FTC ultimately prevail on its claims, while paying a salary to Jason Cardiff that would permit him to pay his mortgage and replenish the wasting asset of his residence. Although the stipulation has no effect on the Cardiffs' ability to purge their contempt regarding truthful disclosure of sources of funds, it does enhance the Cardiffs' ability to replenish the Receivership Estate with lawfully earned funds, as well as potentially enhance the size and scope of the equitable recovery the FTC may obtain in this action.

Because civil contempt sanctions should be "for the benefit of the complainant," *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994) (citation omitted), and the FTC appears to benefit more from Jason's freedom than his incarceration so long as VPL's

² An amended, redacted version is filed at Doc. # 481, although Exhibit 4 to that document remains sealed in its entirety due to yet another sloppy, careless unredacted filing of Cardiffs' own minor children's sensitive personal information. The Cardiffs are hereby **ORDERED** to file forthwith a redacted version of Doc. # 481-4.

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profits inure to the benefit of the Receivership Estate and a portion of Jason's salary goes towards paying his mortgage, the Court defers an order of incarceration at this time.³ Instead, the Court will order periodic reports from the Receiver regarding the status of VPL's operations and income to enable it to continually assess whether the benefit derived from Jason's freedom outweighs that which would result from his incarceration.

The Court wants to make crystal clear that the Cardiffs have not purged their contempt, and if the FTC later uncovers additional funds that the Cardiffs did not disclose, the Court will immediately incarcerate Jason for civil contempt until he truthfully discloses all sources of income. But under the Court's "broad equitable power to order appropriate relief in civil contempt proceedings," the Court does not find that incarceration is the most beneficial course at this juncture. *Sec. & Exch. Comm'n v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003), *opinion amended on denial of reh'g*, 335 F.3d 834 (9th Cir. 2003).

To facilitate the Court's oversight of the joint stipulation regarding VPL's operation and the Cardiffs' anticipated monthly mortgage payments, **IT IS HEREBY ORDERED** that the Receiver shall file status reports every 60 days beginning on October 1, 2020. *See* Preliminary Injunction at 29 [Doc. # 59] (requiring the Receiver to file "timely reports with the Court at reasonable intervals or as otherwise directed by the Court"). The Receiver shall provide updates on VPL's business operations, income/expenses, and earnings projections, and an accounting of the amounts withheld from Jason's salary for the purpose of reducing the mortgage arrearages and paying their monthly mortgage.

IT IS SO ORDERED.

³ The Court is aware that the parties and Receiver plan to meet and confer regarding the amount of reasonable living expenses Jason will be paid and if they are unable to reach a stipulation, the Cardiffs will file a motion seeking payment of such expenses. Joint Stipulation ¶ E [Doc. # 467-1]. A stipulation, if any, should provide for the withholding of portions of Jason's salary to cover monthly mortgage payments and paydowns of the arrearages.