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AND ASSOCIATES LLC

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JASON CARDIFF, et al.,

Defendants.

Case No. 5:18-cv-02104-DMG-PLA

**JOINT VPL OPERATING REPORT
AS OF APRIL 28, 2021**

Hon. Dolly M. Gee

Date: May 7, 2021

Time: 10:00 a.m.

Place: Courtroom 8C (by Zoom)

**TO: THE HONORABLE DOLLY M. GEE, JUDGE OF THE UNITED
STATES DISTRICT COURT:**

In its April 2, 2021, Minute Order (Doc. # 566), the Court directed the parties to file a joint status report on April 30, 2021, for the hearing on May 7, 2021. In its April 22, 2021, in chambers minute order (Doc. #573), the Court further amplified on the scope of the topics that the Court expected to be addressed in the April 30 joint status report and at the hearing in this matter on May 7, 2021.

The Receiver's joint status report required by the Court is attached hereto as Exhibit A. The FTC /Cardiff/VPL joint statement is attached as Exhibit B. The Cardiff/VPL separate statement is attached as Exhibit C. The FTC separate statement is attached as Exhibit D. The FTC proposed form of order is attached as Exhibit E.

DATED: April 30, 2021

FRANDZEL ROBINS BLOOM & CSATO, LC

By: /s/ Michael Gerard Fletcher
MICHAEL GERARD FLETCHER
Attorneys for Robb Evans & Associates
LLC, Acting in its capacity as the duly
appointed Receiver over VPL

EXHIBIT A

Joint Status Report As Of April 28,2021

Robb Evans & Associates LLC
Receiver of
Redwood Scientific Technologies, Inc. et al.
and
VPL Medical, Inc.

RECEIVER'S JOINT REPORT OF VPL MEDICAL, INC.
UPDATE ON OPERATIONS
Dated as of April 28, 2021

Status of Sales Contracts

As of April 28, 2021, no sales contracts have been executed.

The Receiver has been advised by VPL Management of the following:

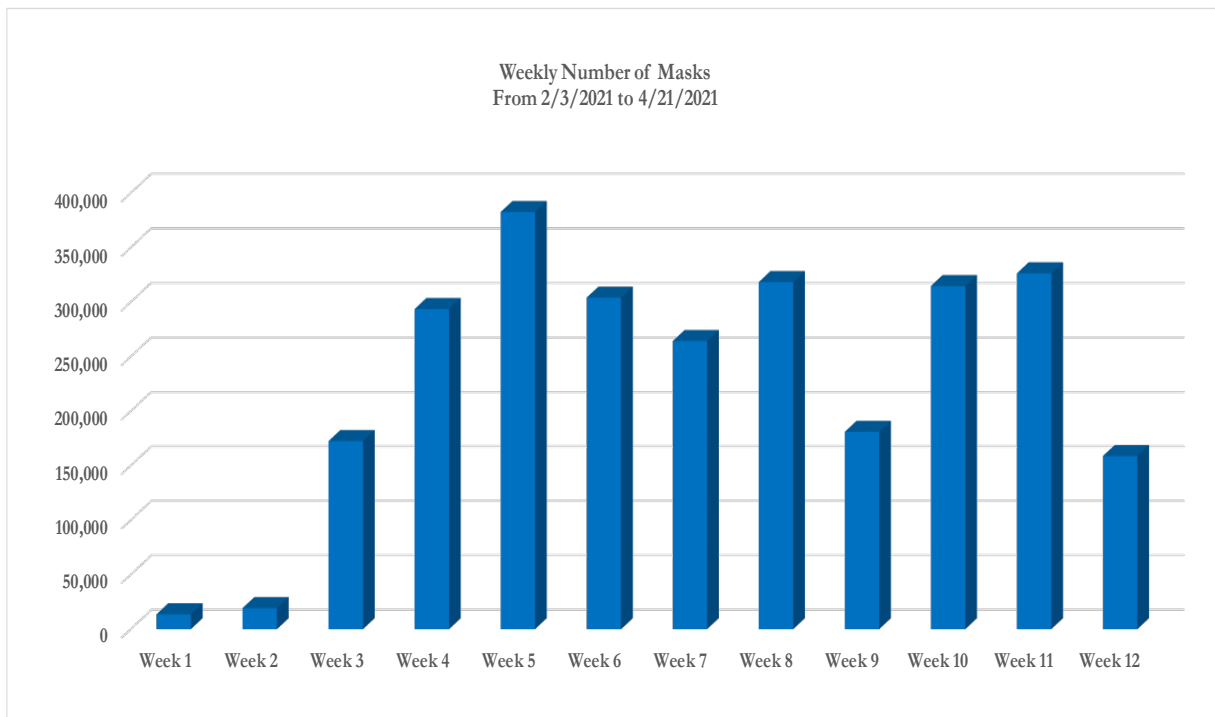
- VPL has retained a new lobbyist group to work with the State of California for supplying the State of California and HHS of California with Made in California made in the USA 3 ply masks. The new lobbyist along with several California Politicians will be at VPL on April 28th.
- VPL is working with a east coast group for a factory buy out to take over all the production lines of VPL for their own goods. This group is due to visit VPL in mid-May for a site visit and contract approval.
- VPL has submitted a bid through a local broker for the purchase of the 2.8 million masks on hand as well as additional 5 million masks per month. This transaction is currently being negotiated by VPL.
- VPL has submitted a bid to the Newport Mesa School district for 3 years of PPE supplies and is awaiting the results due in mid-May.

The Number of Masks Manufactured

Up to February 2, 2021, 130,800 masks were manufactured. From February 3, 2021, to April 21, 2021, 2,749,322 masks were manufactured during this 12-week period and the weekly production is summarized and charted below.

Upon learning of the Supreme Court decision in the matter of *AMG Capital Mgmt., LLC v. FTC*, the Receiver withdrew its representative from the production facility and, therefore, the Receiver does not have a verified production count after April 21.

<u>Week</u>	<u>Date</u>	<u>Number of Masks</u>
Week 1	2/3/21~2/5/21	13,662
Week 2	2/8/21~2/12/21	19,310
Week 3	2/15/21~2/20/21	172,512
Week 4	2/22/21~2/26/21	293,638
Week 5	3/1/21~3/5/21	382,600
Week 6	3/8/21~3/12/21	304,100
Week 7	3/15/21~3/19/21	264,250
Week 8	3/22/21~3/26/21	318,350
Week 9	3/29/21~4/2/21	181,050
Week 10	4/5/21~4/9/21	314,700
Week 11	4/12/21~4/16/21	326,350
Week 12	4/19/21~4/21/21	158,800
Total		<u>2,749,322</u>



Financial Information

The table below sets forth funds collected and expenses incurred from the inception of the Receivership through April 28, 2021. Total VPL disbursements to date are about \$1.5 million.

	Previously Reported and Approved	11/1/20~ 3/22/21	3/23/21~ 4/28/21	TOTAL
Corporate & Defendant Assets				
BizTank Group LLC	377,648.74	30,000.00	-	407,648.74
VPL Medical Inc.	2,659,975.51	99,500.00	-	2,759,475.51
Jason & Eunjung Cardiff	793.06	-	-	793.06
Advanced Mens Institute	25,238.89	-	-	25,238.89
Carols Place Limited Partnership	213,357.88	-	-	213,357.88
Identify LLC	1,264.48	-	-	1,264.48
Intel Property LLC	68,487.60	-	-	68,487.60
Owl Enterprises LLC	92,898.92	-	-	92,898.92
People United for Christians	29,711.05	-	-	29,711.05
Redwood Scientific Technologies	171,985.78	-	-	171,985.78
Smoke Stop LLC	1,786.82	-	-	1,786.82
Top Hill Shop LTD	4,677.76	-	-	4,677.76
Cash from Defendant	6,715.00	-	-	6,715.00
Petty Cash/Cash on Hand	2,033.00	-	-	2,033.00
Proceeds from auction	24,309.59	-	-	24,309.59
Worker Comp Premium Refund	4,206.25	0.00	0.00	4,206.25
Total Corporate & Defendant Assets	3,685,090.33	129,500.00	-	3,814,590.33
Jason Cardiff VPL Payroll Held **	37,149.00	52,115.00	27,345.00	116,609.00
Asset Turn Over by J. Poujade *	1,205,984.80	-	-	1,205,984.80
Interest Income	710.93	195.26	41.25	947.44
Total Fund Collected	4,928,935.06	181,810.26	27,386.25	5,138,131.57
Expenses				
Court Approved Living Expenses	-	55,941.44	10,109.70	66,051.14
Payments for VPL Medical Inc.				
Mileage	-	-	47.60	47.60
Boxes & Packaging Supplies	-	4,710.00	6,076.11	10,786.11
Accounting	1,370.00	-	-	1,370.00
Cleaning	1,615.00	8,431.72	2,201.36	12,248.08
Court Approved Legal Fees & Costs	-	91,205.00	-	91,205.00
Equipment	120,200.79	25,648.99	-	145,849.78
Internet Service	444.73	694.13	189.07	1,327.93
Insurance	46,494.60	10,720.45	14,862.91	72,077.96
Office Expenses	332.82	6,672.79	3,186.85	10,192.46
Office Equipment	2,015.72	2,968.60	-	4,984.32
Payments to Bobby Bedi	15,000.00	-	-	15,000.00

	Previously Reported and Approved	11/1/20~ 3/22/21	3/23/21~ 4/28/21	TOTAL
Payroll				
Salaried Employees				
Bobby Bedi	40,666.67	90,000.00	30,000.00	160,666.67
Jason Cardiff	40,666.67	90,000.00	30,000.00	160,666.67
Faryal Khan	0.00	31,500.00	10,500.00	42,000.00
Salvador Quezada	0.00	0.00	4,500.00	4,500.00
Christopher White	0.00	27,000.00	6,394.33	33,394.33
Frank Woodson	2,272.73	500.00	0.00	2,772.73
Total Salaried Employees	83,606.07	239,000.00	81,394.33	404,000.40
Hourly Employees	0.00	46,347.37	68,563.38	114,910.75
Employer Tax VPL	7,063.05	25,386.75	14,076.12	46,525.92
Total Payroll	90,669.12	310,734.12	164,033.83	565,437.07
Payroll Processing Costs	218.88	764.05	653.44	1,636.37
Raw Material	0.00	72,673.13	39,356.36	112,029.49
Rent	32,033.70	47,965.00	9,593.00	89,591.70
Repair & Maintenance	13,041.83	63,375.47	21,157.94	97,575.24
Set Up Costs	221,204.02	16,169.55	0.00	237,373.57
Shipping	125.70	577.46	0.00	703.16
Taxes	0.00	800.00	5,500.94	6,300.94
Testing Costs	0.00	12,184.75	(1,648.00)	10,536.75
Utilities	5,657.15	6,027.06	1,990.93	13,675.14
Total Payments for VPL Medical Inc.	550,424.06	682,322.27	267,202.34	1,499,948.67
401K Plan Fees & Costs	11,891.13	0.00	0.00	11,891.13
700 W 25th St. Upland, CA	6,766.05	0.00	0.00	6,766.05
Corporate Office Rent	2,564.78	0.00	0.00	2,564.78
Payroll Expenses	1,946.63	0.00	0.00	1,946.63
States Taxes	6,589.00	3,200.00	(25.00)	9,764.00
Receiver's Fees & Costs				
Receiver Fees	382,085.16	188,685.90	59,528.25	630,299.31
Receiver Costs	33,060.18	26,000.19	488.72	59,549.09
Legal Fees	844,279.80	165,104.00	21,188.65	1,030,572.45
Legal Costs	23,864.67	2,312.30	23.70	26,200.67
Total Receiver's Fees & Costs	1,283,289.81	382,102.39	81,229.32	1,746,621.52
Total Expenses	1,863,471.46	1,123,566.10	358,516.36	3,345,553.92
Fund Balance	<u>3,065,463.60</u>			<u>1,792,577.65</u>

* The Balance includes \$1,205,984.80 turned over by True Pharmastrip and Jacques Poujade, which is being held pending further order from the Court.

** Balance in J. Cardiff payroll holding account after April 30th salary is \$50,557.86.

The Cardiff Residence

There has been no material change in the status of the Cardiff residence in the Receiver's opinion and judgment. The Receiver concluded last year that it was unlikely that continuance of the marketing effort for the residence would yield a material benefit for the estate. Accordingly, the Receiver notified the Court and the parties that it had suspended the marketing effort. When the listing agreement by the Receiver's real estate broker expired in November 2020 it was not extended or renewed. The Receiver has not changed its evaluation that given the likely prices to be obtained for a sale of the residence, the deteriorated state of the property, and the amounts owed that are secured by liens against the property, there is unlikely to be a material benefit from a sale. The Receiver notified the existing major lien holders, of the mortgage and Intermedia, that the Receiver would not oppose (and might well support) a motion by them to modify augment the Cardiff preliminary injunction so as to enable either of them to take enforcement actions against the residence. To date, no one has indicated that they wanted to modify the injunction or to take such enforcement actions. The Receiver also notified the parties that it did not intend to renew the insurance on the residence when it expired early in 2021. The Receiver is informed, but has not verified, that the mortgage holder placed insurance against the residence. The Receiver holds a lien against the residence based on the Cardiff/Carol's Place preliminary injunction and receiver appointment. The Receiver has attempted several times to negotiate a stipulation with the Cardiffs and FTC as to the residence and its status, cessation of marketing, and allowance of residence enforcement actions --- without any success. In part that stems from concerns expressed by both the Cardiffs and the FTC about what might happen (and, as to FTC, what the Cardiffs might do) if the residence is no longer covered by the injunction. Those expressed concerns also inform the Receiver's conclusion that the estate's lien on the residence ought to remain in place pending other actions by the Cardiffs, FTC, and/or the other lien holders. The Receiver has not assumed or rejected any executory or loan agreements associated with the residence, and would not intend to do so.

EXHIBIT B

FTC and Cardiff/VPL Joint Statement

Joint Statement¹

The parties agree that the Supreme Court’s decision in *AMG Capital Mgmt., LLC v. FTC*, No. 19-508, 2021 U.S. Lexis 2108 (April 22, 2021), now forecloses the FTC from obtaining equitable monetary relief under Section 13(b) of the FTC Act for Complaint Counts I – XII, XIV, and XVI. The parties further agree that in light of the Ninth Circuit’s April 28, 2021, Order vacating the VPL Preliminary Injunction (“VPL PI”) (Dkt. 389), the Court should order the Receiver to wind up the VPL Receivership in an orderly fashion.

The parties disagree, however, on the remaining issues in the case. To promote a productive discussion at the May 7, 2021, status conference, the parties’ differences on these issues are previewed below in separate sections.

¹ In July 2020, the Court permitted VPL to intervene in this case solely for the purpose of protecting its interests in connection with the then-pending Order to Show Cause, to the extent that Jason Cardiff did not adequately represent VPL’s interests. Dkt. 368, p. 2. The Commission believes that the matters addressed in this Joint Status Report overlap sufficiently with the issues on which the Court granted VPL’s limited intervention to warrant VPL’s participation in this Report.

EXHIBIT C

VPL/Cardiff Separate Comment

Cardiff/VPL Separate Comment

1. The Supreme Court's decision in *AMG Capital Management, LLC v. FTC*, ___ U.S. ___, 2021 U.S. LEXIS 2108 (2021) holds that Section 13(b) does not allow for monetary remedies in consumer protection cases. Because the receivership was established to freeze corporate and personal assets for restitution to consumers, the receivership must be dissolved and the remaining assets returned to their rightful owners. On April 28, 2021, the Ninth Circuit's vacated the Preliminary Injunction as to VPL and Jason Cardiff, remanding the case for further proceedings consistent with *AMG*.
2. The FTC's claim that it brought a claim for monetary relief under Section 19 is frivolous. The FTC now apparently claims that the Court should sustain a monetary award under Section 19 based on its allegations of rules violations under Section 18. However, after three years of litigation, the FTC totally failed to invoke the enforcement provisions of Section 19 in its pleadings. The FTC relied solely on Section 13(b) in a section of the Complaint entitled: **"THIS COURT'S POWER TO GRANT RELIEF."** Dkt. 1, Complaint ¶129. If the FTC intended to plead enforcement authority under Section 19, *it was an extremely well-kept secret until March 2, 2021*.
3. The FTC failed to mention Section 19 as authority for monetary redress in any of its pleadings, including its summary judgment motion. The subject of using Section 19 as authority for consumer redress did not even come up until March 2, 2021 during oral argument before the Ninth Circuit. At that time, the Court asked: "Have you invoked Section 19 in this? I didn't see it in the Complaint in this case, would that be a safety net for you or any part of his this..." Oral Argument, 19:58. FTC counsel, Mark Hegedus admitted that: "We have not invoked Section 19 in this case your honor." Oral Argument 20:08. Simply stated, the doctrine of judicial estoppel precludes the FTC from claiming that

Rule 19 was invoked in this case after telling the Ninth Circuit that Section 19 was not invoked. *CLU v. Masto*, 670 F.3d 1046 (9th Cir. 2012). Moreover, the doctrines of res judicata and collateral estoppel bar re-litigation on the FTC's authority to seek monetary redress. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 n. 5, 327-328 (1979).

4. The FTC asserts that ROSCA provides authority for monetary redress. This claim is without merit. Section 18 of the FTC ACT merely provides the Commission authority to prescribe rules and general statements of policy. 15 U.S.C. §57a(a). It does not provide any remedy. The Court must read the plain language of the statute and cannot rewrite the statute to suit the desires of any party. The FTC is trying to rewrite the statute to delete the bedrock requirement that an administrative agency cannot seek remedies without establishing its authority to proceed in a lawsuit seeking monetary remedies. In *AMG*, the Supreme Court rejected this exact notion of implying remedies that did not exist. The Court should not adopt the FTC's unsupported and bald assertion that an allegation of a rules violation under Section 18 automatically alleges authority to enforce the statute under Section 19. If the FTC had intended to bring an action under Section 19, it should have done so in its complaint and in every pleading in response to the Defendants challenges of Section 13(b). After being challenged numerous times on Section 13(b) the FTC failed to seek amendment of the complaint within the deadlines set by the Court. The FTC's attempt to circumvent the rules of pleading and constitutional notice should be rejected by this Court.
5. VPL's Funds Should be Released: The FTC agrees to release VPL but wants the Court to keep all funds in the Receiver's possession for distribution to consumers. Bobby Bedi owns all of the Company and his company should not be penalized further. VPL funds must be released to give this company a chance to repair the damage done by an unauthorized receivership. **Otherwise**

the Ninth Circuit's ruling dissolving injunctive relief as to VPL and Cardiff will be meaningless. The FTC had its day in court and lost. AMG dictates that frozen funds seized or held for monetary redress must be returned to VPL. Similarly, the property seized from the Redwood companies and the Cardiffs must be returned to the rightful owners.

6. **Receivership Fees:** The FTC wants the Receiver's fees to be paid from the Receivership Estate, which was involuntarily imposed over Defendants' objections. This Court followed Ninth Circuit precedent at the time of imposing injunctive relief. In the wake of *AMG*, however, it is now clear that Section 13(b) did not authorize monetary remedies and that Congress never approved the nature and scope of remedies under Section 13(b).

Indeed, the funds distributed as costs and fees to the Receiver and its law firm always belonged to Redwood, VPL and the Cardiffs. No further funds should be distributed to the Receiver for an unauthorized receivership. The Receivership was created at the behest of the FTC, and the Receiver voluntarily undertook this assignment knowing that its fees were subject to court approval. In *Netsphere, Inc. v. Baron*, 703 F.3d 296 (5th Cir. 2012) the Fifth Circuit held that a receiver's fees in an unauthorized receivership must be paid by the party who sought to establish the receivership. *Id.* at 311-312 ((When a receivership is improper or the court lacks equitable authority to appoint a receiver, the party that sought the receivership at times has been held accountable for the receivership fees and expenses)(citing *W.F. Potts & Co. v. Cochrane*, 59 F.2d 375, 377-78 (5th Cir. 1932)). Stated differently, if there was no authority to establish an equity receivership, a court sitting in equity must take steps to restore funds distributed to a receiver. In this case, Defendants ask the Court to order the FTC to either reimburse Defendants or compensate the Receiver.

7. The Cardiff and Redwood receivership should also be dissolved because the November, 2018 injunction was the primary authority for granting the VPL

receivership. In its Motion to impose a receivership over VPL, the FTC cited the provisions and supporting evidence from the November, 2018 injunction as its primary authority to impose a receivership over VPL.

8. Lastly, Defendants want to provide analysis to the extent that the *AMG* decision impacts the imposition of injunctive relief under the facts of this case.

EXHIBIT D
FTC Separate Comment

FTC Separate Comment

The Court granted summary judgment last year in favor of the FTC on all sixteen Counts in the Commission’s Complaint, including the Counts alleging that Defendants violated ROSCA (Count XIII) and the Telemarketing Sales Rule (Count XV). Dkt. 511, p. 26, 27.

In light of the Supreme Court’s decision in *AMG*, the Commission is no longer entitled to monetary relief under Section 13(b) of the FTC Act for Counts I-XII, XIV, and XVI. For these counts, the FTC continues to seek the *injunctive* relief specified in the proposed final judgment submitted at summary judgment (Dkt. 423-1).

The Commission is still entitled to monetary relief on Count XIII of the complaint – the ROSCA violations – because monetary relief for that count has a basis independent of Section 13(b).² The FTC’s Complaint specifically pled those violations and sought relief for them under ROSCA, and this Court granted the FTC summary judgment on liability on the ROSCA Count. ROSCA specifically states that violations of the statute shall be treated as violations of a rule under Section 18 of the FTC Act and that the FTC is entitled to all relief available under the FTC Act for such violations. 15 U.S.C. § 8404(a), (b). Among the remedies the Commission may seek for violations of a rule are the very same remedies included in the Commission’s Prayer for Relief (Dkt. 1, p. 51, lines 13-17). These remedies, stated in Section 19(b) of the FTC Act, 15 U.S.C. § 57b(b), include “such relief as the court finds necessary to redress injury to consumers.... Such relief may include rescission or reformation of contracts, the refund of money or return of property, the

² Although an independent basis also exists for the Commission to seek monetary relief for Count XV (the robocall violations of the TSR), it does not intend to pursue monetary relief for those violations.

payment of damages.....”

Having pled and proven a violation of ROSCA, the Commission is entitled to the above relief. The Commission’s Complaint is sufficient under Rule 8. All that is required is a plain statement showing the entitlement to relief and a demand for the relief sought. The Complaint adequately put Defendants on notice of the alleged ROSCA violations and the Prayer for Relief put them on notice of the remedies the Commission was seeking. *See Alvarez v. Hill*, 518 F.3d 1152, 1157 (9th Cir. 2008) (“Notice pleading requires the plaintiff to set forth in his complaint *claims for relief*, not causes of action, statutes or legal theories.”) (emphasis in original). *See also, e.g., La Raza Unida of Southern Alameda County v. Volpe*, 440 F. Supp. 2d. 904, 912 n.20 (N.D. Cal. 1977) (“The fact that plaintiffs did not specifically allege in their complaint a violation of section 1983 premised upon noncompliance with federal statutes does not bar relief. Modern rules of notice pleading require only a statement of facts upon which relief may be granted, not a definitive statement as to the plaintiffs’ theory of the case. *See United States v. Howell*, 318 F.2d 162, 166 (9th Cir. 1963); 2A Moore’s Federal Practice P 8.14 (2d ed. 1948); Fed.R.Civ.P. 54(c).”).

In addition, under Rule 54(c), the Court should grant the FTC relief to which it is entitled, even if the Commission did not cross-reference Section 19 in its Prayer for Relief. Rule 54(c) provides:

(c) Demand for Judgment; Relief to Be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. *Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.*

(Emphasis added.) *Z Channel Limited Partnership v. Home Box Office*, 931 F.2d 1338, 1341 (9th Cir. 1991) (relief for damages was available under Rule 54(c) even though plaintiff had originally requested only declaratory and injunctive relief); *Arley v. United Pacific Ins. Co.*, 379 F.2d 183, 187 (9th Cir. 1967) (citing

Rule 54(c), the court decided that district court had the “power, indeed . . . [the] duty, to render such judgment as on the entire record the law required to finally determine the litigation”); *Travis v. Gary Community Mental Health Center, Inc.*, 921 F.2d 108, 112 (7th Cir. 1990) (“Rule 54(c) requires courts to award the relief to which the prevailing party is entitled, even if that party did not request the relief or relied on the wrong statute.”); 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1255 (3d ed.) (“under Rule 54(c), except in default judgment cases, the district court may grant any relief to which the evidence shows a party is entitled, even though that party has failed to request the appropriate remedy or remedies in his pleading.”) (footnote omitted); *see also Bayer v. Neiman Marcus Grp.*, 861 F.3d 853, 869 (9th Cir. 2017) (nominal damages were authorized as a matter of law and failure to seek such damages in the complaint was not determinative of the court’s power to award them where plaintiff “asserted a claim for damages and a general prayer for such other relief as the district court deemed proper”).

The Commission seeks relief in the form of rescission of contracts and the refund of money for Defendants’ violations of ROSCA (Dkt. 1, p. 51, lines 13-17).³ Because the FTC is entitled to monetary relief under ROSCA, assets sufficient to cover that amount must be safeguarded in the Receivership Estate created by the Court in the Cardiff Preliminary Injunction (Dkt. 59).⁴ Using data from Defendants’

³ Defendants will argue prejudice but they are not unfairly prejudiced because: (1) *AMG* did not change the elements necessary to prove a ROSCA violation, Defendants had the opportunity to defend, and the Court already found them liable; (2) the relief the Commission seeks was, and continues to be, equitable monetary relief; (3) the amount (revenues due to Defendants’ ROSCA violations) is subsumed by the \$18.2 million that the Commission sought prior to the Supreme Court’s decision in *AMG*; and (4) the evidence for determining the amount – Defendants’ own records – is the same.

⁴ The November 2018 Cardiff Preliminary Injunction remains in effect because the Ninth Circuit’s Order only addressed the subject of that appeal: the

Customer Relationship Management records, the Commission has preliminarily calculated that Defendants' ROSCA violations resulted in consumer injury of at least \$1.9 million (a figure that exceeds the amount currently frozen under the November 2018 Cardiff Preliminary Injunction).⁵ For this reason, the Commission respectfully submits that all assets currently frozen and controlled by the Receiver pursuant to the November 2018 Cardiff Preliminary Injunction must be preserved at this time.

The Commission also respectfully requests an opportunity to fully brief the foregoing subjects – as well as any argument by Defendants that the Commission is estopped from raising ROSCA as an independent basis for monetary relief. – pursuant to the briefing schedule proposed jointly by the parties.⁶ The Commission was not successful in obtaining Defendants' agreement on a proposed briefing schedule, but is including a proposed schedule in its [Proposed] Order being submitted with this Joint Status Report.

A. The November 2018 Cardiff Preliminary Injunction Should Remain In Effect Pending Full Briefing on the Issues

The November 2018 Cardiff Preliminary Injunction, including the asset freeze, should remain in effect until entry of a Final Judgment. Because ROSCA provides an independent basis for monetary relief, the Commission is entitled to a preliminary injunction to preserve those monetary remedies. In fact, in *H.N. Singer*, the Ninth Circuit specifically noted that the FTC was entitled to an asset freeze to

VPL PI (Dkt. 389).

⁵ The Commission expects to be able to confirm this figure by the May 7 status conference.

⁶ Counsel for the Cardiff Defendants has expressed in communications with the Commission that he anticipates arguing that the Commission has waived its right to raise the ROSCA issue or is estopped from doing so now. The FTC disagrees.

preserve its remedies under either Section 19 or Section 13(b). *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982) (“Rescission is a possible remedy for violation of the Franchise Rule under § 19. Hence, there is a basis for the order freezing assets”). Nothing in *AMG* affects the Ninth Circuit’s holding regarding the FTC’s entitlement to an asset freeze under provisions other than 13(b). In addition, an asset freeze is appropriate to preserve final relief as long as such relief is equitable. *See Ellipso Inc. v. Mann*, 480 F.3d 1153, 1160 (D.C. Cir. 2007) (freezing assets is permissible when a party shows likelihood of success on the merits of an equitable claim).⁷

Given the Cardiffs’ history of lying and failing to account for their assets (indeed, they remain in contempt of the Court’s Order to account for their assets), the equities tip heavily in favor of retaining the asset freeze pending full briefing on these issues. *See SEC v. Liu*, 2020 WL 8125530 (C.D. Cal. 2020) (on remand after the Supreme Court’s decision regarding the scope of disgorgement remedy available to SEC, the district court re-imposed an asset freeze pending final determination of disgorgement amount; the court noted that the SEC had proven the violations and that defendants had a history of dissipating assets, and that balance tipped in favor of freeze while it determined the final amount to be disgorged), *aff’d*, --- Fed.Appx. ----, 2021 WL 943743 (9th Cir. 2021) (noting freeze of all assets not overbroad even though net profit amount not yet fixed, given defendants’ history of expatriating assets and refusal to provide financial information that would enable the district court to tailor a narrower freeze).

B. VPL Preliminary Injunction

In light of the Ninth Circuit’s April 28, 2021 Order and the paucity of funds

⁷ Although violations of ROSCA entitle the FTC to both legal (damages and civil penalties) and equitable remedies (rescission and the refund of monies), the FTC is pursuing only the equitable remedies outlined in its Prayer for Relief.

left in the in the VPL portion of the Receivership Estate, the FTC agrees that receivership over VPL should be wound up in an orderly fashion.

C. Commission's Proposed Order

The Commission respectfully requests that the Court issue the [Proposed] Order (attached separately below as Exhibit E): (1) establishing a briefing schedule, (2) confirming that the November 2018 Cardiff Preliminary Injunction remains in effect, and (3) directing the Receiver to wind up the VPL Receivership in an orderly fashion.

EXHIBIT E
FTC Separate Form of Order

FTC Form of Order

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

Federal Trade Commission,
Plaintiff,
v.
JASON CARDIFF, et al.,
Defendants.

No. ED 5:18-cv-02104-DMG-PLAx

**[PROPOSED] ORDER AS TO THE
CARDIFF PRELIMINARY
INJUNCTION AND THE VPL
RECEIVERSHIP, AND BRIEFING
SCHEDULE**

On November 8, 2018, the Court entered a Preliminary Injunction with Asset Freeze, Receiver, and Other Equitable Relief against Jason Cardiff and Eunjung Cardiff (“the Cardiffs”). Dkt. 59. On June 24, 2020, the Court entered a Temporary Restraining Order that imposed on asset freeze on VPL Medical, Inc. (“VPL”) and appointed a Receiver over VPL and its assets with full powers of an equity receiver. Dkt. 352. On July 7, 2020, the Court entered a Preliminary Injunction continuing the VPL asset freeze and Receivership. Dkt. 389. On April 28, 2021, the Court of Appeals for the Ninth Circuit issued an Order vacating the VPL Preliminary Injunction.

On April 30, 2021, pursuant to the Court’s Order of April 22, 2021 (Dkt.

573), the Receiver, Plaintiff Federal Trade Commission (“FTC” or “Commission”), the Cardiff Defendants, and VPL submitted a Joint Status Report. The Report explained that the Commission, the Cardiff Defendants, and VPL agreed: (1) that the Supreme Court’s decision in *AMG Capital Mgmt., LLC v. FTC*, No. 19-508, 2021 U.S. Lexis 2108 (April 22, 2021), now forecloses the FTC from obtaining equitable monetary relief under Section 13(b) of the FTC Act for Complaint Counts I – XII, XIV, and XVI; and (2) that in light of the Ninth Circuit’s April 28, 2021 Order vacating the VPL Preliminary Injunction, the Court should direct the Receiver to wind up the VPL Receivership in an orderly fashion. The parties were not in agreement on any other issues (including the status of the November 2018 Cardiff Preliminary Injunction), with the Commission and the Cardiffs each previewing their positions on these issues.

Accordingly, IT IS HEREBY ORDERED as follows:

1. The parties shall fully brief their respective positions regarding the status of the November 2018 Cardiff Preliminary Injunction and the appropriate remedies for final judgment in this case according to the following schedule: FTC brief due May 21, 2021; Cardiff opposition due June 4, 2021; FTC reply due June 11, 2021.
2. The November 2018 Preliminary Injunction shall remain in place pending the Court’s consideration of the parties’ briefs as outlined above; and
3. Upon entry of this order, the Receiver shall address the VPL portion of the Receivership in an orderly fashion as follows:
 - A. The Receiver shall turn over to VPL, Jason Cardiff, and Bobby Bedi physical possession of the VPL manufacturing site, VPL operations going forward, and VPL tangible physical property at the manufacturing site, including VPL inventory and equipment.
 - B. From the assets on hand in the Receivership Estate, the Receiver shall pay or arrange to be paid the VPL operating expenses invoices on hand up to such order entry date; calculate payroll up to such order entry date; and

transfer that calculated payroll funding to a new VPL bank account established by VPL, Jason Cardiff, and Bobby Bedi, for them to make the payroll. Transfer of such funding absolves the Receiver and the Receivership Estate from any such liabilities.

C. The Receiver shall turn over VPL accounting in Excel format and control of payroll processing with ADP to VPL, Jason Cardiff, and Bobby Bedi after the order entry date.

D. Any and all other VPL expenses and VPL assets, including cash, if any, remaining undisbursed and Receiver's remaining unpaid fees, costs, and expenses, shall be the subject of a filed Receiver's final report and accounting, and noticed motion request to settle the same, as to VPL from the date of the entry of the initial VPL TRO on June 24, 2020, to the date of the entry of this order, including without limitation federal and state tax considerations and required filings.

IT IS SO ORDERED.

Dated: May __, 2021

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE