

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**WESTGATE RESORTS, LTD., et al.,**

**Plaintiffs,**

v.

**Case No: 6:17-cv-1467-Orl-37DCI**

**MITCHELL REED SUSSMAN and  
MITCHELL REED SUSSMAN &  
ASSOCIATES,**

**Defendants.**

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**REPORT AND RECOMMENDATION**

This cause comes before the Court for consideration without oral argument on the following motion:

**MOTION:   JOINT MOTION FOR ENTRY OF AGREED  
PRELIMINARY INJUNCTION (Doc. 192)**

**FILED:       February 7, 2019**

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**THEREON it is RECOMMENDED that the motion be GRANTED in part.**

On February 7, 2019, the parties filed a joint motion for entry of an agreed preliminary injunction. Doc. 192. The parties attached the proposed preliminary injunction to the Motion. Doc. 192-1.

To obtain a preliminary injunction, the movant must sufficiently establish that (1) “it has a substantial likelihood of success on the merits”; (2) “irreparable injury will be suffered unless the injunction issues”; (3) “the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party”; and (4) “the injunction would not be adverse

to the public interest.” *Forsyth Cty. v. U.S. Army Corps of Eng'rs*, 633 F.3d 1032, 1039 (11th Cir. 2011) (quoting *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc)). Here, the parties agree that “Plaintiffs could prove the elements necessary to obtain preliminary injunctive relief.”<sup>1</sup> Doc. 192 at 1-2. Therefore, the undersigned finds that Plaintiffs have sufficiently established the elements necessary for the entry of a preliminary injunction.

However, the undersigned finds that the proposed preliminary injunction is overbroad to the extent it could be read to enjoin the independent actions of non-parties to this case. The Court should not enjoin the independent actions of non-parties based upon the agreement of the parties here. So, to clarify this limitation within the preliminary injunction, the Court should add a provision containing limiting language to the preliminary injunction, such as: This preliminary injunction applies to Defendants and to any of Defendants’ agents (including independent contractors and local counsel) to the extent those persons are acting as agents – or otherwise at the direction – of Defendants.

Accordingly, it is **RECOMMENDED** that the Motion (Doc. 192) be **GRANTED in part** to the extent that the Court enter the proposed preliminary injunction (Doc. 192-1), but that the Court should also add limiting language to the scope of the preliminary injunction as set forth in this Report.

### **NOTICE TO PARTIES**

A party has fourteen days from this date to file written objections to the Report and Recommendation’s factual findings and legal conclusions. A party’s failure to file written objections waives that party’s right to challenge on appeal any unobjected-to factual finding or

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<sup>1</sup> The parties note, however, that “Defendants did not admit any of the underlying facts for any other purpose.” Doc. 192 at 1-2.

legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R.

3-1.

Recommended in Orlando, Florida on February 11, 2019.



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DANIEL C. IRICK  
UNITES STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge  
Counsel of Record  
Unrepresented Party  
Courtroom Deputy