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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LEFT COAST WRESTLING, LLC, a  
California limited liability company,  
  
Plaintiff,  
  
v.  
  
DEARBORN INTERNATIONAL LLC, a  
California limited liability company, a/k/a  
and/or d/b/a TRI TITANS; DUKE MINH  
LE, an individual,  
  
Defendants.

Case No.: 3:17-cv-00466-LAB-NLS  
  
**REPORT AND  
RECOMMENDATION ON MOTION  
FOR CONTEMPT**  
  
**[ECF Nos. 68, 87]**

Before the Court is Plaintiff’s motion for contempt. ECF No. 68. Plaintiff’s motion was referred to the undersigned for Report and Recommendation. ECF No. 87. The Court held an evidentiary hearing on July 23, 2019. ECF No. 104. Plaintiff was represented by John D. Alessio and Zagros S. Bassirian. Id. Defendant Dearborn International, LLC (individually referred to as “Tri-Titans”) has a default judgment entered against it, is not represented by counsel, and is therefore unable to appear. ECF Nos. 47, 48, 60, 87. Defendant Mr. Duke Minh Le (individually referred to as “Mr. Le”) also has default judgment entered against him, and appeared representing himself. ECF Nos. 47, 48, 60, 87, 104. Tri-Titans and Mr. Le are collectively referred to as

1 Defendants. Also present were witnesses Mr. Aaron Root, Mr. Perry Watson, and Mrs.  
2 Barbara Trieu-Le.

3 **I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

4 This case arises from a dispute regarding the use of “Battle on the Midway” as a  
5 trademark and alleges claims for False Designation of Origin under the Lanham Act, with  
6 attendant state law claims including violation of the California Business & Professions  
7 Code § 17200, common law trademark infringement, conversion, breach of fiduciary  
8 duty and declaratory relief. ECF No. 1. Plaintiff alleges that “Battle on the Midway”  
9 was developed by and is a common law trademark of Plaintiff, Left Coast Wrestling,  
10 LLC (“Left Coast”), an LLC of which Defendant Mr. Duke Le was once a member. *Id.*  
11 at 4.

12 At the outset of this case, Defendants were represented by counsel. Shortly after  
13 the Early Neutral Evaluation conference, counsel requested and was granted permission  
14 to withdraw. ECF Nos. 17 and 18. The case proceeded, as it must, and Defendants  
15 failed to participate. Plaintiff filed a request for entry of default. ECF Nos. 21. The  
16 District Judge did not immediately grant the request for entry of default, and instead  
17 issued an order to show cause, again requiring written response from Defendants and  
18 advising of the consequences of failure to respond. ECF Nos. 22, 25. Defendants did not  
19 file a response, and default was entered. ECF Nos. 30, 31.

20 Following appropriate notice and motion practice, and receiving no response from  
21 Defendants, default judgment, a monetary award, and a permanent injunction were  
22 entered against Defendants. ECF Nos. 37, 38, 40, 41, 42, 43, 44, 46, 47, 48. In relevant  
23 part, the permanent injunction, which is incorporated herein by reference (ECF No. 48)  
24 and discussed in greater detail below, requires Defendants to cease use of the “Battle on  
25 the Midway” trademark, return intellectual property in the form of social media accounts  
26 and access and control of the accounts to Plaintiff, and that Defendants not host wrestling  
27 events at or near the U.S.S. Midway/Broadway Pier for a period of three years.

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1           Following entry of judgment and the permanent injunction, Mr. Le retained new  
2 counsel for himself as an individual only, and moved to set aside the default and default  
3 judgment. ECF Nos. 51, 56, 58, 59, 61. Significant motion practice ensued regarding the  
4 motion to set aside (ECF Nos. 61, 62, 63, 65, 76, 78). During this time Plaintiff also filed  
5 a motion for contempt, arguing Defendants were in violation of the injunction. ECF No.  
6 68. Mr. Le’s motion to set aside the default was denied, and the motion for contempt was  
7 referred to the undersigned. ECF No. 87. Shortly thereafter, Mr. Le’s counsel requested  
8 and was granted substitution of counsel. Mr. Le is now proceeding pro se.

## 9           **II. LEGAL STANDARDS**

### 10           **a. Contempt**

11           “Civil contempt . . . consists of a party’s disobedience to a specific and definite  
12 court order by failure to take all reasonable steps within the party’s power to comply.”  
13 *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 945 (9th  
14 Cir. 2014) (quoting *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d  
15 693, 695 (9th Cir. 1993)). A district court has the inherent authority to enforce its orders  
16 through civil contempt. *Shillitani v. United States*, 384 U.S. 364, 370 (1966); see also  
17 *Primus Auto. Fin. Servs. v. Batarse*, 115 F.3d 644, 648 (9th Cir. 1997) (“The most  
18 common utilization of [a federal court’s] inherent powers is a contempt sanction levied to  
19 ‘protect the due and orderly administration of justice’ and ‘maintain the authority and  
20 dignity of the court.’”) (internal quotation omitted).

21           “The district court has wide latitude in determining whether there has been  
22 contemptuous defiance of its order.” *Hook v. Arizona Dep’t of Corr.*, 107 F.3d 1397,  
23 1403 (9th Cir. 1997). The standard for finding a party in civil contempt is well settled:

24           The moving party has the burden of showing by clear and convincing evidence  
25 that the contemnors violated a specific and definite order of the court. The  
26 burden then shifts to the contemnors to demonstrate why they were unable to  
comply.

27 *FTC v. Affordable Media LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999) (quoting *Stone v.*  
28 *City and County of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992)).

1           “A party’s actions ‘need not be willful’ and there is no good faith exception to the  
2 requirement of obedience to a court order.” *In re Dual-Deck Video Cassette Recorder*  
3 *Antitrust Litig.*, 10 F.3d at 695 (internal quotation omitted); *Perry v. O’Donnell*, 759 F.2d  
4 702, 705 (9th Cir. 1985). A party may not, however, be held in civil contempt if he “has  
5 taken ‘all reasonable steps’ to comply with the court order.” *General Signal Corp. v.*  
6 *Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986); see *Kelly v. Wengler*, 822 F.3d  
7 1085, 1096 (9th Cir. 2016); *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10  
8 F.3d at 695 (“a person should not be held in contempt if his action ‘appears to be based  
9 on a good faith and reasonable interpretation of the [court’s order].’ [] ‘Substantial  
10 compliance’ . . . is not vitiated by ‘a few technical violations’ where every reasonable  
11 effort has been made to comply.”) (internal quotations omitted). Additionally, an alleged  
12 contemnor may defend against a finding of contempt by demonstrating a present inability  
13 to comply. See *United States v. Ayres*, 166 F.3d 991, 994 (9th Cir. 1999). “Ability to  
14 comply is the crucial inquiry, and a court should weigh all the evidence properly before it  
15 determines whether or not there is actually a present ability to obey.” *Id.* (quoting  
16 *United States v. Drollinger*, 80 F.3d 389, 393 (9th Cir. 1996)).

### 17           **b. Evidentiary Hearing**

18           Civil contempt sanctions “are considered to be coercive and voidable through  
19 obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an  
20 opportunity to be heard.” *Int’l Union v. Bagwell*, 512 U.S. 821, 827 (1994). “Neither a  
21 jury trial nor proof beyond a reasonable doubt is required.” *Id.* Thus, the Ninth Circuit  
22 has repeatedly held “that finding a party in civil contempt without a full blown  
23 evidentiary hearing does not deny due process of law to a contemnor.” *Ayres*, 166 F.3d  
24 at 995.

25           “At the contempt hearing, the propriety of the underlying order is not at issue;  
26 rather, the question for the Court is whether the respondent has the present ability to obey  
27 the Court’s order.” *United States v. Posner*, No. 16cv2387 BTM, 2017 U.S. Dist. LEXIS  
28 138207, at \*4-6 (S.D. Cal. Aug. 23, 2017); see, e.g., *United States v. Rylander*, 460 U.S.

1 752, 756 (1983) (quoting *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948)). A “contempt  
2 proceeding does not open to reconsideration the legal or factual basis of the order alleged  
3 to have been disobeyed and thus become a retrial of the original controversy.” *Rylander*,  
4 460 U.S. at 756-57 (quoting *Maggio*, 333 U.S. at 69).

### 5 **III. EVIDENTIARY HEARING & FINDINGS OF FACT**

#### 6 **a. Notice**

7 Federal Rule of Civil Procedure 65 establishes the “persons bound” by an  
8 injunction as follows:

9 Persons Bound. The order binds only the following who receive actual  
10 notice of it by personal service or otherwise:

11 (A) the parties;

12 (B) the parties’ officers, agents, servants, employees, and attorneys; and

13 (C) other persons who are in active concert or participation with anyone  
described in [Rule 65\(d\)\(2\)\(A\)](#) or (B).

14 The permanent injunction was issued on July 13, 2018. ECF No. 48. The record makes  
15 clear that actual notice of the injunction was provided to the parties, Mr. Le and Tri-  
16 Titans, as Mr. Le (who remains the agent of service for Tri-Titans) briefly employed an  
17 attorney to move to set aside the judgment and amend the injunction. ECF Nos. 51-52.  
18 The undersigned takes judicial notice of these filings, as stated on the record. ECF No.  
19 109 at 3:5-10.

20 At the hearing, Mr. Le initially disputed actual notice of the injunction via receipt  
21 of the emails from Plaintiff’s counsel at either the [dukel@tri-titans.com](mailto:dukel@tri-titans.com)<sup>1</sup> or  
22 [dukele@dearbornint.com](mailto:dukele@dearbornint.com) email addresses. ECF No. 109 at 4:14-18. In particular, Mr.  
23 Le testified that he has not used the [dukele@dearbornint.com](mailto:dukele@dearbornint.com) email for approximately  
24 two years. *Id.* at 5:18-25. This testimony was not credible. Mr. Le’s own declaration  
25 submitted in support of his motion to set aside states explicitly that he received notice of  
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27  
28 <sup>1</sup> This was not an accurate email as the final ‘e’ in Mr. Le’s last name was omitted.

1 the injunction via email from counsel dated July 13, 2018 at the [dukele@dearbornint.com](mailto:dukele@dearbornint.com)  
2 address. ECF No. 61-1 at 8, ¶ 35 (“After that Order was entered, I received a letter from  
3 Plaintiff’s counsel, Mr. Zagros Bassirian, on July 13, 2018, in which he informed me that  
4 a default judgment had been entered against me. I received that letter via email at  
5 [dukele@dearbornint.com](mailto:dukele@dearbornint.com).”). In that same declaration, he states in reference to his  
6 [dukele@dearbornint.com](mailto:dukele@dearbornint.com) email address that he has “continually used that email address  
7 to send and receive email” and that he receives “a high volume of emails daily, typically  
8 fifty (50)” at that address. ECF No. 61-1 at 3, 6.

9 In addition, throughout Mr. Le’s testimony he acknowledged that he was aware of  
10 and received the judgment and injunction and took actions in response to the contents.  
11 See, e.g., *id.* at 18:8-10 (“I had planned on running the tournament for 2018 at the  
12 Broadway Pier until I got the Court order to stop running the tournament.”). Several of  
13 these actions pre-dated the issuance of the final permanent injunction on July 13, 2018.  
14 For instance, Plaintiff presented evidence of Facebook posts and Mr. Le’s emails, which  
15 Mr. Le authenticated. Exhs. 10, 11. Exhibit 11 is a July 10, 2018 Facebook post  
16 regarding securing a new location, which predates the official entry of the injunction.

17 In light of the evidence and Mr. Le’s testimony, the Court finds Mr. Le had actual  
18 notice of the judgment and injunction as of the date it was entered, July 13, 2018.

### 19 **b. Evidence of Contempt**

20 The permanent injunction entered by the District Judge is a specific and definite  
21 court order. ECF No. 53 (“the language of the injunction is clear enough as it stands”).  
22 Plaintiff’s moving papers argue Defendants are in contempt of parts 1.c through 1.h of  
23 the permanent injunction. ECF No. 68-1 at 23. Accordingly, the Court will evaluate  
24 each term and determine whether Plaintiff has presented clear and convincing evidence of  
25 a violation. If so, the burden shifts to the contemnor to demonstrate why he was unable  
26 to comply. *FTC v. Affordable Media LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999).

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1                   1.c        “Defendants shall immediately return to Plaintiff by facilitating  
2                   the transfer of the rights with the host company or otherwise, any and  
3                   all media related intellectual property of Plaintiff...”

4                   This paragraph of the injunction continued to enumerate known social media  
5 accounts subject to this transfer, including the “Battle on the Midway Facebook page”  
6 (1.c.i); “Battle on the Midway Instagram account” (1.c.ii); “any and all web hosting  
7 accounts” (1.c.iii); “any and all URL hosting accounts” (1.c.iv); “any TrackWrestling  
8 databases” (1.c.v); and “any and all Battle on the Midway tournament registration  
9 databases” (1.c.vi). Defendants were ordered to “transfer the rights... together with all  
10 codes, passwords, credentials or other information necessary to fully implement and  
11 operate” the various forms of media.

12                   On questioning, Mr. Le initially stated that in response to the injunction and with  
13 respect to transferring the rights of the media related items including the Facebook page,  
14 that “[i]mmediately, when my attorney advised me of what I needed to do in regards to a  
15 letter of the Court, I went ahead and acted on it right away. I did everything I could  
16 within my means.” ECF No. 109 at 36:7-10. This testimony was not credible, and  
17 immediately belied by Mr. Le’s subsequent testimony. When next asked what he did to  
18 transfer the Instagram page, he responded “I didn’t know Battle on the Midway had an  
19 Instagram page.” Id. at 36:20. When asked if he transferred  
20 [www.battleonthemidway.com](http://www.battleonthemidway.com) he first stated, “I haven’t done anything. What I was  
21 instructed, that the Court ordered, I did at the time.” Id. at 17:4-10. When asked again  
22 later if he transferred information necessary to operate the website, he responded simply,  
23 “No, I did not.” Id. at 36:21-24. When asked if he transferred the TrackWrestling  
24 databases, he initially testified he did not remember transferring anything, and then later  
25 he confirmed he had not. Id. at 17:11-16; 37:4-10.

26                   Plaintiff offered evidence that not only were transfers of social media accounts  
27 never facilitated, but some accounts have since been destroyed. Plaintiff presented  
28 Exhibit 27, a print out of what appears if one attempts to go to the

1 [www.battleonthemidway.com](http://www.battleonthemidway.com) web address now, which is a GoDaddy screen that asks “Is  
2 this your domain?” Exh. 27. Mr. Le confirmed that he was the original registrant of the  
3 website and the Dunbrook address<sup>2</sup> was used; but the registrant is currently “unlisted”  
4 and located only in California. Compare Exh. 8 with Exh. 29. Mr. Le later testified that  
5 he stopped paying for the domain hosting, and so he presumes that GoDaddy took down  
6 the site. ECF No. 109 at 37:17-18.

7 In all, there is clear and convincing evidence that Mr. Le did not comply with  
8 paragraph 1.c of the injunction and took no action to transfer any content. The burden  
9 therefore shifts to Mr. Le.

10 To the extent Mr. Le offered testimony as to why he was unable to comply with the  
11 injunction, he explained that the social media accounts and administrative rights for  
12 media related content are held by a separate corporation, Dearborn Vietnam JSC. ECF  
13 No. 109 at 8:11-9:2. Mr Le was asked directly if Dearborn Vietnam JSC was a member  
14 of Dearborn International, LLC and he responded flatly, “no.” Id. at 9:11-15.

15 Mr. Le’s testimony on this matter is not credible, inconsistent, and contradicts his  
16 own submissions to the Court. Mr. Le’s opposition to the initial motion for contempt  
17 offered in his declaration similar testimony that a third party, “Dearborn Vietnam JSC,”  
18 was employed to set up and maintain the social media accounts. However, attached to  
19 his declaration are copies of his correspondence with Dearborn Vietnam JSC. Notably  
20 the person he corresponds with has an email signature that states plainly: “Dearborn  
21 Vietnam: A member of Dearborn International LLC, USA.” ECF No. 75-2 at 4.

22 In addition, Mr. Aaron Root testified on behalf of Plaintiff that prior to submission  
23 of the opposition, he was unaware of any involvement of Dearborn Vietnam JSC. ECF  
24 No. 109 at 41:16-18. Mr. Root testified that Mr. Eljay Pena was hired and paid  
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27 <sup>2</sup> The Dunbrook address is the address registered with the California Secretary of State for Tri-Titans,  
28 and was the subject of much dispute in Mr. Le’s motion to set aside. See ECF Nos. 61, 62, 63, 65, 87.



1 approximately \$4,000 to create social media accounts for Left Coast Wrestling when it  
2 was initially formed. Id. at 41:9-15. Mr. Root’s testimony is consistent with the  
3 allegations of the complaint (ECF No. 1 at 8<sup>3</sup>) which Defendants have admitted by  
4 operation of default. Parkford v. Rothluebbbers, No. 17-CV-2480 W (BLM), 2018 WL  
5 7286507, at \*4 (S.D. Cal. Apr. 17, 2018) (“Defendant's default operates as an admission  
6 of the allegations in the Complaint, save those relating to damages.”).

7 Finally, even if Mr. Le’s testimony that Dearborn Vietnam JSC had complete  
8 control of the website and social media pages was true, Mr. Le’s testimony was that he  
9 has not asked to be provided with credentials for the websites:

10 Q: Have you asked anyone at Dearborn Vietnam JSC to provide  
11 you with the credentials for these websites?

12 A: No, I haven't had to.

13 Q: Why not?

14 A: There's no reason for me to ask for it.

15 ECF No. 109 at 12:10-16. While inability to comply with the terms of an injunction can  
16 preclude a finding of contempt, the party must first take “all reasonable steps” to comply  
17 with the order. Requesting the credentials from the party that Mr. Le purports has control  
18 would be the first reasonable step.<sup>4</sup> Mr. Le similarly testified he was not in possession of  
19 TrackWrestling credentials and had not contacted TrackWrestling for credentials. ECF  
20 No. 109 at 15:24-16:2.

21 The undersigned finds that Defendants are in contempt of the Court’s order. The  
22 injunction required the transfer of social media, webpages, and databases. Deletion is not  
23 compliant, and Mr. Le fails to present any evidence of reasonable steps to accomplish

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25 <sup>3</sup> “Plaintiff retained Eljay Pena (“Mr. Pena”) as its Marketing Director, who was in charge of, without  
26 limitation, creating and maintaining Plaintiff’s website, designing posters and logos for the tournament,  
27 and creating and managing Plaintiff’s social media accounts, including Facebook and Instagram.” ECF  
28 No. 1 at 8, ¶ 16.

<sup>4</sup> Mr. Le’s testimony on this point remains contradicted by his own evidence. In an email dated two  
months after the injunction was issued, he does request Dearborn Vietnam JSC provide credentials for  
websites and social media. ECF No. 75-2 at 5.

1 transfer. Mr. Le also fails to present sufficient evidence of inability to comply to  
2 preclude a finding of contempt. Evidence demonstrates Mr. Le has, or had, custody or  
3 control over the items that were the subject of paragraph 1.c. For instance, Mr. Le was  
4 the initial registrant of the website and admits that he instructed or “hired” Dearborn  
5 Vietnam JSC or Mr. Pena to create and set up websites and social media accounts. ECF  
6 No. 109 at 9:24-10:1; 11:16-20. However, he purports to have no ability, while admitting  
7 he never inquired, to engage with either Dearborn Vietnam JSC or Mr. Pena to now  
8 accomplish transfer. Id. at 12:10-16.

9 In the end, the website was not transferred and has been deleted. The deletion  
10 occurred either at Mr. Le’s direction or with his knowledge, but Mr. Le continues to hold  
11 the domain name, as the payment for the use of [www.battleonthemidway.com](http://www.battleonthemidway.com) is paid  
12 through April 1, 2021. Compare Exh. 8 (Registered to Duke Le, “Registrar Registration  
13 Expiration Date: 2021-04-01”) with Exh. 29 (Registrant blank, “Registrar Registration  
14 Expiration Date: 2021-04-01”). Mr. Le’s continued control of the website such that it can  
15 be deleted and the url held hostage until 2021 is evidence that he had the ability and  
16 control necessary to transfer the pages as well.

17 The undersigned finds there is clear and convincing evidence Mr. Le is in  
18 contempt of paragraph 1.c of the injunction, and no reasonable steps were taken to  
19 accomplish transfer of the media content.

20 1.d *“Defendants shall immediately cease, desist and disable any*  
21 *cross links from the Battle on the Midway website or search terms to*  
22 *Defendants’ websites or social media portals and locations”*

23 Plaintiff’s motion for contempt states that as of the date of that filing, September  
24 10, 2018, “[w]hen an interested person attempts to visit [www.battleonthemidway.com](http://www.battleonthemidway.com),  
25 they are still to this day automatically redirected to [www.ultimatesummerseries.com](http://www.ultimatesummerseries.com).”  
26 ECF No. 68-1 at 23; Decl. Bassirian ¶ 24. Plaintiff argued that the crosslinks prevented  
27 Plaintiff from operating its own tournament under the trademark name that is the subject  
28 of this litigation.

1 The injunction was entered on July 13, 2018. ECF No. The motion for contempt  
2 was filed on September 10, 2018, and at that time the cross link had not been disabled.  
3 ECF No. 68. As of the date of the filing of the supplemental brief, March 18, 2019,  
4 Plaintiff represents that the crosslinks had been removed, but since that time the  
5 webpages had been completely deleted, rendering cross links irrelevant.

6 Mr. Le's testimony was that he did disable the cross links. Mr. Le did not address  
7 the timing of his compliance. Defendant was ordered to "immediately cease, desist and  
8 disable" the cross links. In review of the evidence previously submitted by Defendant, he  
9 again pointed to the "third party vendor," Dearborn Vietnam JSC, as the party with the  
10 ability to disable the crosslinks. Mr. Le's evidence shows that he did not take action to  
11 comply "immediately." Despite his knowledge of the order as of July 13, 2018, the email  
12 he sent to Dearborn Vietnam JSC requesting the crosslinks be disabled is dated more than  
13 two months later, September 28, 2018, and explicitly states it was sent at the "instruction  
14 of his attorneys." ECF No. 75-2 at 4 (email dated Sept. 28, 2018).

15 In the context of a Court Order that requires "immediate" action and provides clear  
16 direction, evidence of a two-month delay is not reasonable. Mr. Le offered no evidence  
17 of inability to comply. Even if Dearborn Vietnam JSC was the only party with the ability  
18 to disable the crosslinks, Mr. Le's own evidence shows an unreasonable two-month delay  
19 before requesting any action. There is clear and convincing evidence that Mr. Le was in  
20 contempt of paragraph 1.d of the injunction by failing to take immediate action, and  
21 waiting at least two months.

22 1.e Defendants shall post a copy of this Order and Permanent  
23 Injunction on the Ultimate Summer Series Website  
24 ([www.ultimatesummerseries.com](http://www.ultimatesummerseries.com))

25 Plaintiff's motion argues that a copy of the injunction was not posted as of the date  
26 the motion was filed, September 10, 2018. ECF No. 68. In his opposition to the motion  
27 for contempt, filed on October 15, 2018, Mr. Le states that he posted a copy of the  
28 injunction to [www.ultimatesummerseries.com/legal](http://www.ultimatesummerseries.com/legal). ECF Nos. 75, 75-1 at 4. Mr. Le

1 does not state a date that he posted the injunction, but there is an exhibit attached to Mr.  
2 Le's declaration dated September 28, 2018 wherein he requests that someone at Dearborn  
3 Vietnam JSC post a a copy of the order. ECF No. 75-2 at 5.

4 Plaintiff's supplemental brief (dated March 18, 2019) acknowledges the post at  
5 that address, but argues it is not good faith compliance because the order was only  
6 assessible if the browser typed in that specific, direct web address. ECF No. 89. There  
7 was no way for a user who found themselves on the [www.ultimatesummerseries.com](http://www.ultimatesummerseries.com)  
8 webpage to link to or otherwise view the injunction. Id.

9 At the hearing, Mr. Le testified that he had posted a copy of the injunction and  
10 confirmed that the [www.ultimatesummerseries.com](http://www.ultimatesummerseries.com) website had since been taken down.  
11 When asked if the order was posted in a manner that required typing in the exact url in  
12 order to find the injunction he responded: "I am not sure. Whatever was instructed, we  
13 followed what the Court asked for, and we did it." ECF No. 109 at 16:10-11.

14 The language of the injunction required that the order be posted on  
15 [www.ultimatesummerseries.com](http://www.ultimatesummerseries.com). For the injunction to be considered posted there, it  
16 must be on, or at a minimum, assessible from, that page. Mr. Le's attempt at technical  
17 compliance in a manner that prevented the injunction from ever being seen is not a  
18 reasonable interpretation of the Court's order. In re Dual-Deck Video Cassette Recorder  
19 Antitrust Litig., 10 F.3d at 695 ("a person should not be held in contempt if his action  
20 'appears to be based on a good faith and reasonable interpretation of the [court's  
21 order].'). Posting the injunction in a manner that renders it completely inaccessible is  
22 neither in good faith nor a reasonable interpretation. It is an attempt at technical  
23 compliance and simultaneous evasion of any intended effect of the order. See Inst. of  
24 Cetacean Research v. Sea Shepherd Conservation Socy., 774 F.3d at 954-55 (rejecting  
25 technical compliance and finding civil contempt).

26 As the website no longer exists, neither does the posting of the injunction. Thus,  
27 while Mr. Le may not still be in contempt of this provision, there is clear and convincing

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1 evidence that Mr. Le was in contempt of paragraph 1.e of the injunction, and that his  
2 technical compliance was neither reasonable nor in good faith.

3 1.f Defendants shall provide a copy of this Order and Permanent  
4 Injunction to all distributors, wholesalers, retailers or other agents  
5 participating in the marketing and distribution of infringing products

6 To the extent evidence was presented regarding this section, Mr. Le was asked if  
7 he provided a copy of the injunction to the Port of San Diego, the Sheraton, or ABM.<sup>5</sup>  
8 Mr. Le testified that he did not provide a copy of the order to the Port of San Diego, but  
9 was travelling when he was informed that the event would not be permitted to proceed  
10 there. ECF No. 109 at 28:3-12. When asked if provided the order to the Sheraton or  
11 ABM he replied that he “didn’t know I had to.” ECF No. 109 at 28:13-15.

12 By the plain language of this provision, notice to the venue does not appear to be  
13 required. The venue host holds a passive role and Plaintiff presents no evidence that  
14 either the Sheraton or ABM was an active “participant” in the “marketing or distribution”  
15 of anything related to the tournament.

16 The Court finds there is insufficient evidence to hold Defendant in contempt of this  
17 section.

18 1.g Defendants shall immediately return to Plaintiff via electronic  
19 format and thereafter permanently delete and cease the use of any and  
20 all databases that include contact information for attendees or  
21 spectators for the 2016 or 2017 wrestling event together with all codes,  
22 passwords, credentials or other information necessary to fully access,  
23 implement and operate the same

24 Plaintiff asserts that Defendants never returned, and continued to use the attendee  
25 and spectator databases, using the 2016 information to hold both the 2017 and 2018  
26  
27

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28 <sup>5</sup> ABM is the company that manages the parking lot where the 2018 tournament was ultimately held.

1 events. ECF No. 68. Plaintiff requests that considering the 2018 tournament went  
2 forward built upon the 2016 and 2017 information, the 2018 attendee and spectator data  
3 should be turned over as well. Id.

4 On questioning, Mr. Le admitted he could access the contact information for the  
5 2016-2018 tournaments. ECF No. 109 at 38:7. However, he then testified that he “didn’t  
6 know I was instructed to return anything to Left Coast in terms of tournament  
7 information that I ran.” Id. at 38:10-12.

8 This testimony is not credible as the language of the injunction is plain and clear.  
9 The information related to the 2016 and 2017 tournaments was expressly required to be  
10 returned and deleted. The purported lack of knowledge also lacks credibility because Mr.  
11 Le’s prior declaration indicates he was indeed aware of this requirement: “I do not have  
12 any other Battle on the Midway tournament registration databases or other databases that  
13 have contact information for attendees or spectators from the Battle on the Midway.”  
14 ECF No. 75-1 at 4, ¶ 9. The declaration also contradicts Mr. Le’s hearing testimony that  
15 he has access to the contact information of spectators and attendees of the 2016 and 2017  
16 tournaments. The injunction is silent on the contact information for the 2018 tournament,  
17 and so there is no evidence of contempt related to any failure to provide that information.

18 In sum, Plaintiffs have not received contact information for the 2016 and 2017  
19 tournaments as required. Mr. Le presents neither credible evidence of a reasonable  
20 attempt to comply with the order, nor any evidence of inability to comply. The  
21 undersigned finds there is clear and convincing evidence of contempt of paragraph 1.g of  
22 the injunction.

23 1.h Defendants shall immediately return to Plaintiff any and all  
24 products belonging to Plaintiff, LEFT COAST WRESTLING, LLC,  
25 including products with the Battle on the Midway logo

26 Plaintiff submits that pop-up tents, pull carts, apparel, iPads, and credit card  
27 scanners have not been returned. ECF No. 68. Mr. Le testified that he was under the  
28 impression that his prior counsel “reached out to Procopio to arrange for all that”

1 however, admitted that he maintains possession of those items. ECF No. 109 at 17:17-  
2 18:4. Mr. Le indicated that “supposedly there was an arrangement to deliver or pick up,  
3 whatever it may be. To this date, I don't know what happened.” Id. at 38: 19-21.

4 The terms of this paragraph are clear, simple, and finite. Mr. Le was ordered to  
5 immediately return property to Plaintiff. While Mr. Le testified that his counsel “made  
6 arrangements,” he then continued that the arrangements may have been to “deliver or  
7 pick up.”<sup>6</sup> This testimony is ambiguous. If, as his testimony indicates is a possibility,  
8 Mr. Le was supposed to “deliver” the goods per the arrangement his former counsel  
9 made, that is very different than preparing the items for “pick up.” ECF No. 109 38: 19-  
10 21.<sup>7</sup> What is clear is that nothing has happened since then to facilitate the return of these  
11 items. Regardless of the “arrangement” that may have been made, Mr. Le remained  
12 obligated to ensure his own compliance with the terms of the injunction, particularly after  
13 his counsel withdrew.

14 Mr. Le testified he believes he still has the items. ECF No. 109 at 17:23-18:1.  
15 Neither counsel’s withdrawal nor Mr. Le’s lack of understanding of any “arrangement”  
16 relieved Mr. Le of his obligation to return the goods, which he continues to retain. Mr.  
17 Le presents no evidence or testimony that he was unable to comply. The undersigned  
18 finds this is clear and convincing evidence of contempt of paragraph 1.h of the injunction.

19 1.i Defendants shall immediately cease from coordinating,  
20 promoting, or hosting wrestling tournaments at or near the U.S.S.  
21 Midway Museum and/or the Broadway Pier and shall be enjoined from  
22 directly or indirectly performing wrestling tournaments at that finite  
23 location for a period of three (3) years

24 Plaintiff argues that the location of the 2018 tournament on Harbor Island is “near”  
25

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26 <sup>6</sup> Counsel for Plaintiff offered that the arrangement was that the items could be dropped off at either  
27 Procopio office location. Id. at 43:16-23.

28 <sup>7</sup> Mr. Le’s opposition states: “Mr. Le has also, through counsel, reached out to Left Coast in an effort to  
**deliver** some medals from the Battle on the Midway, ...” ECF No. 75 at 7 (emphasis added).

1 the U.S.S. Midway and Broadway Pier and was in violation of the injunction. This is an  
2 argument that Plaintiff has presented previously. See ECF No. 50. Plaintiff previously  
3 argued that the injunction should be modified to extend a 4-mile radius “as the crow  
4 flies” from the Midway. The District Judge denied this request, noting that Left Coast  
5 got “the order it asked for” and that to the extent Defendant was to proceed with the  
6 tournament it was under a different name and at a different location. ECF No. 53 at 3, 5.

7 The undersigned concludes that moving the tournament to Harbor Island was  
8 reasonable. Plaintiff argues that any location along San Diego Bay qualifies as “near” the  
9 Midway and Broadway Pier. See ECF No. 80 at 7. This is too broad a construction. So  
10 too is a 4-mile radius “as the crow flies” from the Midway, which would not only  
11 encompass much of San Diego Bay but a good portion of Coronado.

12 The location where the 2018 tournament was held is approximately 3 miles from  
13 the Midway. In the context of the issuance of the injunction, and when told the event  
14 could not proceed at the Broadway Pier, Mr. Le moved the tournament to a new location.  
15 The injunction does not forbid a tournament along San Diego Bay. The new location was  
16 beyond the area that is associated with the Pier or other water features near the Midway  
17 to the north (e.g., the Maritime Museum and the Star of India) and was not in the park  
18 locations near the Midway to the south (e.g. Seaport Village and the Embarcadero). Mr.  
19 Le’s choice of Harbor Island was a reasonable response to the injunction, and the  
20 Plaintiff does not present enough evidence that the Harbor Island location was “near” the  
21 Midway to support a finding of contempt.

### 22 **c. Liability of Non-Parties**

23 In addition to Defendants, Plaintiff moves for contempt against 4 non-parties:  
24 Mrs. Barbara Trieu-Le, Mr. Eljay Pena, Mr. Steven Lawson, and O3T.

25 Non-parties with notice may also be held liable for aiding and abetting a party’s  
26 violation of an injunction. *Inst. of Cetacean Research v. Sea Shepherd Conservation*  
27 *Socy.*, 774 F.3d at 949 (“It has long been settled law that a person with notice of an  
28 injunction may be held in contempt for aiding and abetting a party in violating it.”) see



1 also, *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945) (“defendants may not nullify  
2 a decree by carrying out prohibited acts through aiders and abettors, although they were  
3 not parties to the original proceeding.”); *Wright & Miller, Federal Practice and*  
4 *Procedure*, § 2956 *Persons Bound by an Injunction or Restraining Order*, 11A *Fed. Prac.*  
5 *& Proc. Civ.* § 2956 (3d ed.) (“The only significant exception to this rule involves  
6 nonparties who have actual notice of an injunction and are guilty of aiding or abetting or  
7 acting in concert with a named defendant or the defendant's privy in violating the  
8 injunction. They may be held in contempt.”).

9         At the hearing, to the extent any third parties were mentioned, Mr. Le testified that  
10 his wife signed the contract on behalf of O3T with ABM to secure the 2018 event  
11 location. However, in light of the conclusion that the Harbor Island location did not  
12 violate the injunction, Mrs. Le and O3T’s participation to secure the location is not  
13 evidence of contempt.

14         Plaintiffs did not present evidence that either Mr. Lawson or Mr. Pena acted in  
15 concert with Mr. Le to aide in violating the injunction after receiving actual notice of the  
16 injunction.

17         The undersigned therefore recommends the District Judge **deny** Plaintiff’s motion  
18 for contempt as to Mrs. Barbara Trieu-Le, Mr. Eljay Pena, Mr. Lawson, and O3T.

#### 19         **IV. RECOMMENDATION**

20         The undersigned concludes there is clear and convincing evidence of Mr. Le’s  
21 contempt of the Court’s order and permanent injunction, specifically paragraphs l.c, d, e,  
22 g, and h. In evaluating the testimony presented by Mr. Le, the undersigned finds he is not  
23 credible. In addition to the inconsistent, contradictory testimony outlined above, Mr. Le  
24 was impeached on the stand for claiming he was never a member of Left Coast  
25 Wrestling<sup>8</sup> when the documents and emails Mr. Le confirmed he sent clearly identified  
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28 <sup>8</sup> ECF No. at 53:12-13 (“Q: You were never a member of Left Coast Wrestling?  
A: Absolutely not, sir.”).

1 his participation, he directed the incorporation of Left Coast as an LLC and asked to be  
2 named vice president. See Exh. 21.

3 It is clear that Mr. Le failed to comply with the Court's order and in particular,  
4 failed to transfer items such as the Facebook page, Instagram account, TrackWrestling  
5 databases, attendee and spectator databases, all of which have value to the promotion and  
6 continuation of a tournament for Plaintiff. However, these items require the transfer of  
7 electronic information, and no evidence was presented at the hearing on how to  
8 accomplish that type of transfer. For example, while there is evidence that what is  
9 currently the USS Ultimate Summer Series Facebook page was previously the Battle on  
10 the Midway page, no evidence was presented on how to accomplish transfer such that the  
11 compliance could be compelled.

12 Unfortunately, in light of Mr. Le's failure to comply with orders of the Court thus  
13 far and the apparent destruction of websites or other information, the undersigned has no  
14 confidence that further orders to compel would be effective. In their post-hearing  
15 briefing, Plaintiff presents the same concern, arguing that "due to Defendants' history of  
16 non-compliance, an order authorizing third parties to transfer Plaintiff's property directly  
17 to Plaintiff is warranted...." ECF No. 108 at 6.

18 Plaintiff may be correct that an order authorizing third parties to transfer the  
19 information directly is the only way for Plaintiff to obtain the information that was the  
20 subject of the injunction. But Plaintiff is in the midst of a joint venture to hold a 2019  
21 tournament, "D-Day on the Midway." ECF No. 109 at 46:10-21. Plaintiff is clearly able  
22 to hold and promote a tournament absent the information and social media ownership that  
23 is the subject of the injunction. The Court is concerned that absent evidence supporting  
24 how transfer could be accomplished, it is not clear Plaintiff knows precisely what is  
25 necessary (see ECF No. 108 at n.1, correcting a Facebook url address in the post-hearing  
26 briefing). The undersigned is not inclined to recommend an order that is imprecise.  
27 Without evidence regarding what, exactly is required for third parties to accomplish data  
28 transfer, this option is not appealing.

1 Mr. Le is in contempt of the Court's injunction and the undersigned, like Plaintiff,  
2 has little faith in Mr. Le will abide by a Court order compelling him to do now what he  
3 was ordered to do previously. Contempt should have significant consequences.  
4 However, rather than direct action that will only invite further dispute regarding whether  
5 or not Mr. Le complied, or what scope of action is required by third parties the  
6 undersigned recommends a significant flat fee be added to the judgment. To the extent  
7 Plaintiffs lost Facebook or Instagram followers, funds could be used for marketing and  
8 advertising and a new page can be created. To the extent goods were lost, they can be  
9 replaced. Accordingly, the undersigned recommends that a flat fee of **\$40,000.00** be  
10 added to the judgment. This amount is ten times the cost to Plaintiff of setting up its  
11 original social media accounts. That seems a fair assessment of the loss to Plaintiff  
12 caused by Mr. Le's failure to transfer and in some instances delete the information in  
13 violation of the Court's order.

14 The only item that the undersigned recommends action on is the domain name:  
15 [www.battleonthemidway.com](http://www.battleonthemidway.com). The undersigned recommends that the District Judge's  
16 order authorize GoDaddy to transfer the registration of this domain, and instruct that  
17 GoDaddy can and should work with Plaintiff's counsel to accomplish same.

18 In addition to the flat fee, the undersigned recommends that Plaintiff be awarded  
19 the full costs and attorneys' fees sought in connection with bringing the motion for  
20 contempt. Pursuant to the Plaintiff's post hearing brief, this amount totals **\$28,557.00**.  
21 ECF No. 108-1 at ¶¶ 4-5; Exhs. 25, 31-32.

## 22 V. CONCLUSION

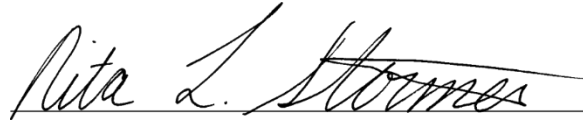
23 This report and recommendation is submitted to the United States District Judge  
24 assigned to this case pursuant to 28 U.S.C. § 636 and ECF No. 87.

25 **IT IS ORDERED** that no later than **August 15, 2019**, any party to this action may  
26 file written objections and serve a copy on all parties. The document should be captioned  
27 "Objections to Report and Recommendation."  
28

1           **IT IS FURTHER ORDERED** that any reply to the objections must be filed and  
2 served on all parties no later than **August 23, 2018**. The parties are advised that failure to  
3 file objections within the specified time may waive the right to raise those objections on  
4 appeal of the Court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

5           **IT IS SO ORDERED.**

6 Dated: August 1, 2019

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8 Hon. Nita L. Stormes  
9 United States Magistrate Judge  
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