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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 LEFT COAST WRESTLING, LLC,  
12 Plaintiff,  
13 v.  
14 DEARBORN INT'L LLC,  
15 Defendant.

Case No.: 17cv466-LAB (NLS)

**ORDER DENYING WITHOUT  
PREJUDICE MOTION TO AMEND  
JUDGMENT**

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17 This case concerns a youth wrestling tournament and intellectual property rights  
18 associated with it.

19 After the Court entered judgment for Plaintiff Left Coast Wrestling, counsel for Left  
20 Coast began contacting chambers and referring to a need for emergency relief. Counsel  
21 first requested a hearing date for a motion to hold Defendants Dearborn International, LLC  
22 and Duke Minh Le in contempt. But rather than file that, on July 19 they filed a lengthy *ex*  
23 *parte* Motion (Docket no. 50) seeking to amend the judgment. The Motion characterizes  
24 the situation as urgent and requests that the Court grant its motion by July 25.

25 The 18-page Motion is supported by a 10-page declaration and 59 pages of exhibits.  
26 It seeks new and different relief based on events that have occurred from May of this year  
27 onward.

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1 Defendants' youth wrestling tournament is to be held from July 27 through 29. In  
2 brief, the Motion says Defendants moved the tournament to a new location two miles away  
3 and changed the name and web address, but are using different means to cause confusion  
4 between their tournament and the Battle on the Midway. It also alleges that Defendants are  
5 not complying with the Court's order, and identifies a number of things Defendants were  
6 ordered to do that they have not done. And it characterizes Defendants' behavior and  
7 attitudes as hostile to both Left Coast and the Court's rulings. The way to deal with this,  
8 the Motion urges, is to change the wording of the Court's order, and to do so right away.  
9 If not, the Motion says, Defendants will be rewarded for their unlawful conduct not only  
10 in 2018, but into the indefinite future.

11 Although the Motion includes frantic and alarmist language, nothing about the  
12 situation suggests the Court should act in haste.

13 First, Left Coast has known about the tournament for quite some time. Although the  
14 Motion tries to characterize Left Coast as waiting on a dilatory court,<sup>1</sup> the truth is that Left  
15 Coast has not treated the issue as urgent. On August 31, 2017, after warning Dearborn  
16 and Le about the consequences, the Court granted Defendants' counsel's request to  
17 withdraw. On October 19, Left Coast requested entry of default against Dearborn, merely  
18 because it was unrepresented. The Court denied the request, pointing out that entry of  
19 default was reserved for defendants who had not appeared (which did not apply), or who  
20 had failed to defend. The Court's order pointed out that failure to defend had not been  
21 addressed, but permitted Left Coast to file another request for default, or to seek discovery  
22 sanctions if Dearborn was failing to comply with its discovery obligations.

23 Left Coast then on December 12 moved to dismiss Dearborn's and Le's  
24 counterclaims and to enter "default" on the complaint. The Court issued an order pointing  
25 out that the motion conflated entry of default with default judgment. It ordered Dearborn  
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28 <sup>1</sup> "Plaintiff patiently waited over a year to allow the justice system to speak." (Motion at 1:9–10.)

1 and Le to show cause why default should not be entered against them. It also construed  
2 Left Coast's motion as requesting default judgment solely as a sanction for discovery  
3 abuse. After ordering Defendants to respond and receiving none, the Court on January 16,  
4 2018 directed an entry of default, and referred the discovery sanction issue to Magistrate  
5 Judge Stormes.

6 On January 9, Left Coast had filed a motion for a protective order concerning the  
7 confidentiality of discovery, and Magistrate Judge Nita Stormes set a briefing schedule for  
8 it.

9 Then on February 16, Left Coast filed a motion for default judgment against Le and  
10 Dearborn, citing their failure to respond to various orders and for discovery abuses.  
11 Because the motion sought default judgment both for failure to defend and for discovery  
12 abuse, it was referred to Judge Stormes, whose duties include overseeing discovery, for a  
13 report and recommendation.

14 Judge Stormes on May 23 issued an initial report and recommendation, as well as a  
15 supplemental report and recommendation concerning costs and attorney's fees. After the  
16 time for objections passed, the Court adopted it, entered default judgment, and directed  
17 Left Coast to submit a proposed order that included the relief outlined in the two reports  
18 and recommendations. The Court, after reviewing the proposed order to confirm it  
19 corresponded with the reports and recommendations, issued it.

20 Counsel for Left Coast then requested a hearing date for an order holding Defendants  
21 in contempt, for violation of the injunction. Then they withdrew their request, and instead  
22 filed this Motion. The next day, two attorneys filed a notice of appearance for Le and  
23 immediately objected to the motion.

24 Left Coast's prosecution of its claims can fairly be described as unhurried. As to the  
25 initial order granting relief, there appeared to be no particular urgency. What is more, Left  
26 Coast obtained the relief it asked for, and the Court issued the order Left Coast proposed.  
27 The problem from Left Coast's perspective appears to be that the order it asked for and got  
28 is not the order it now wants.

1 The Motion represents that Dearborn and Le are openly defiant towards the Court  
2 and its orders and are refusing to comply. Rather than seeking to enforce the existing  
3 injunction, however, Left Coast wants the Court to allow Left Coast to obtain control of  
4 Defendants’ online accounts by authorizing or ordering third party hosts to hand them over  
5 to Left Coast. Left Coast also asks that the Court add language broadening the scope of the  
6 injunction. And Left Coast requests an award of fees and costs.

7 Left Coast submitted a proposed order incorporating its requests. Even assuming  
8 Left Coast is entitled to some kind of additional relief, many of the changes are either  
9 unnecessary or unacceptable. First, the language of the injunction is clear enough as it  
10 stands. Adding language that broadens it is unnecessary and is also likely to be  
11 unenforceable because it is either directed at non-parties or else is vague about who is being  
12 enjoined or what it applies to. The proposed changes make it sound much more like a  
13 contract than an order of the Court. But while ambiguous contracts may be enforced,  
14 unclear injunctions are unenforceable. *See Premier Communications Network v. Fuentes*,  
15 880 F.2d 1096, 1100 (9th Cir. 1989) (holding that the language of injunctions must be  
16 “reasonably clear so that ordinary persons will know precisely what action is proscribed.”).

17 By way of example, some provisions are directed not only at Dearborn and Le, but  
18 also at their “officers, directors, owners, employees, agents, and all those working in  
19 concert with” them. (*See, e.g.*, Docket no. 50-2 at 16:22–24; 17:15–17.) Many of those  
20 people are already covered by the existing order. For example, an injunction against  
21 Dearborn is also effective against its officers, directors, employees and agents acting on its  
22 behalf. *See* Fed. R. Civ. P. 65(d)(2)(B) and (C). But as to “all those working in concert”<sup>2</sup>  
23 with Dearborn or Le — even assuming they have notice of the order — it’s unclear how  
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26 <sup>2</sup> Although Rule 65(d) provides that injunctions apply to those in “*active* concert with” enjoined parties  
27 (emphasis added), it is not enough to approximate the language of the rule. The language of injunctions  
28 must be understandable to any ordinary person to whom it is directed. *Premier Communications Network*, 880 F.2d at 1100. In this situation, it may not be clear to people Dearborn or Le do business with, such as vendors or internet hosts, whether they are covered.

1 those people are to know who they are and whether the injunction applies to them. *See* Fed.  
2 R. Civ. P. 65(d)(2) (requiring “actual notice” of an injunction “by personal service or  
3 otherwise”).

4 The proposed order also instructs a broad range of third parties that they are  
5 “authorized *and ordered* to assist in facilitating the purpose of this order . . . .” (Docket no.  
6 50-2 at 18:18–19:1) (emphasis added). What’s meant by “assist[ing] in facilitating the  
7 purposes of this order” is not spelled out; it includes, but is not limited to transferring  
8 various kinds of tangible and intangible property and also taking “commercially reasonable  
9 measures” necessary to prevent Defendants’ using that property. And in any event, the  
10 Court has no authority to order third parties to do this. *See Zepeda v. United States I.N.S.*,  
11 753 F.2d 719, 727 (9th Cir. 1983) (holding that a court may enjoin only parties it has  
12 personal jurisdiction over, and may not enjoin parties not before it).

13 Furthermore, the Motion does not make clear that Dearborn and Le are now  
14 infringing on Left Coast’s “Battle on the Midway” service mark. It cites social media posts  
15 and other communications suggesting bravado and a defiant or contemptuous attitude  
16 towards Left Coast and the Court. But holding the tournament under a different name and  
17 under a different location mitigates a good deal of the harm. The Motion suggests that  
18 Defendants may be engaged in confusing the public somewhat in order to steer wrestlers  
19 and their families towards Defendants’ tournament. But any infringement appears to be  
20 less blatant than before. Furthermore, much of the activity the Motion documents occurred  
21 before the Court issued its injunction. The fact that Defendants were planning certain  
22 activities that the injunction now forbids does not by itself show what they will do now that  
23 the injunction has issued.

24 In sum, the relief Left Coast seeks does not seem to be commensurate with the threat  
25 of harm, nor was all of it contemplated earlier in this action. Those too are reasons the  
26 Motion will be denied.

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1 The Motion seeks to amend the award of attorney's fees and costs associated with  
2 preparing and filing the Motion. Even if the Court agrees that costs and fees should be  
3 awarded, the amount has to be documented and justified. The proposed order leaves blanks  
4 where a dollar figure should be, and the Motion has not properly documented either  
5 amount.

6 Nothing in the Motion shows either Defendant was served with the Court's orders  
7 (Docket nos. 46 and 48.) The Court will not sanction Defendants or hold them in contempt  
8 except on proof that they violated the Court's orders after having been served with them,  
9 or otherwise having received actual notice. *See* Fed. R. Civ. P. 65(d)(2).

10 Assuming *arguendo* that, as Left Coast says, Defendants are bent on disobeying the  
11 Court's injunction, enforcing the existing injunction would be far preferable to amending  
12 it in the way Left Coast proposes. The Court has the power to enforce its injunctions by  
13 imposing sanctions or holding Defendants in contempt. Nothing prevents Left Coast from  
14 seeking sanctions or contempt, if it has reason to think they are merited. If it does so, it  
15 should file proof that Defendants had actual notice of the Court's orders, by personal  
16 service or otherwise, before Defendants violated them.

17 Finally, Le has attempted to oppose the Motion, claiming that entry of default and  
18 default judgment were procured by fraud. Although Le's attorneys appeared rather than  
19 substituting in as ordered, and although the objection appears to be at least somewhat  
20 misguided about how default and default judgment were entered, the fact that the Motion  
21 is opposed and that Le contests the facts does make a difference.

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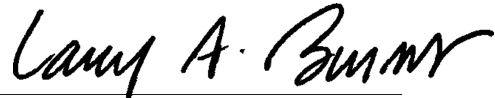
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1           If the Court had been inclined to grant the Motion, it would have given Le more time  
2 to respond. But the Motion is being denied for other reasons, and Le will have a chance to  
3 respond to any motion Left Coast files later.

4           The Motion is **DENIED WITHOUT PREJUDICE.**

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6           **IT IS SO ORDERED.**

7 Dated: July 23, 2018



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9 Hon. Larry Alan Burns  
United States District Judge

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