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17 **IN THE UNITED STATES DISTRICT COURT**
18 **THE CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**
19

20 THE TOLKIEN TRUST and
21 THE TOLKIEN ESTATE
22 LTD
23
24 Plaintiffs,
25
26 v.
27 DEMETRIOUS POLYCHRON,
28 Defendant.

Case No. 2:23-cv-04300-SVW(Ex)

**NOTICE OF MOTION AND
MOTION TO HOLD DEFENDANT
IN CONTEMPT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on Monday, February 5, 2024, at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Stephen V. Wilson in Courtroom 10A of the above-entitled court, located at 350 W. 1st Street, 10th Floor, Los Angeles, California 90012, plaintiffs The Tolkien Estate Limited and The Tolkien Trust will move this Court to hold defendant Demetrious Polychron in contempt of Court for failure to obey this Court’s Order for Permanent Injunction entered December 13, 2023 (the “Order”).

This motion is based on this Notice; the Memorandum of Points and Authorities below; the Declaration of Lacy H. Koonce, III dated January 12, 2024 (“Koonce Decl.”); on all pleadings, files and records in this action, and on any such authorities and arguments that may be presented in any reply and at any hearing on this motion.

CERTIFICATE OF COMPLIANCE

This motion was made following unsuccessful attempts to meet and confer with counsel for Defendant pursuant to L.R. 7-3, as further detailed herein.

Dated: January 12, 2024

/s/ Lacy H. Koonce, III
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*Attorneys for Plaintiffs the
Tolkien Estate and the Tolkien
Trust Limited*

I. INTRODUCTION

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In flagrant disregard of this Court’s Order enjoining Defendant Demetrious Polychron from any exploitation of his infringing book *The Fellowship of the King* (the “Infringing Work”) and requiring Defendant to file a declaration certifying that he has permanently destroyed all physical and electronic copies of the Infringing Work within ten days of such Order, Defendant has failed to take a single step to comply with any aspect of the Court’s Order, and the Infringing Work continues to be available for sale online. Further, Defendant’s counsel of record has refused to meet and confer with the Estate’s counsel with respect to his non-compliance or to discuss the instant motion, as required under the Local Rules.

In light of the above, Plaintiffs seek to hold Defendant in contempt of Court for his failure to comply with the Court’s clear Order.

II. FACTUAL BACKGROUND

On September 19, 2023, the Estate filed a Motion for Summary Judgment and Permanent Injunction to prevent further infringement of the Estate’s copyright interests by Defendant. Defendant opposed the Estate’s Motion. After the Estate filed a Reply, the Court granted the Estate’s motion on December 13, 2023, and entered an Order permanently enjoining Defendant from:

- a. Copying, distributing, selling, performing, displaying, or otherwise exploiting his book *The Fellowship of the King* [or] any derivative thereof, including his planned book entitled *The Two Trees* and any subsequent books in the planned series;
- b. Copying, distributing, selling, performing, displaying, or preparing any derivative works based on any copyrighted work by Professor J.R.R. Tolkien, including *The Lord of the Rings*. (Dkt. 48).

The Court further ordered Defendant, within ten business days of the date of the Order, to:

- 1 a. Permanently destroy all physical and electronic copies of the Infringing
2 Work;
3 b. File a declaration, under penalty of perjury, with the Court certifying his
4 compliance with these terms. *Id.*

5 There is no dispute that Defendant received notice of the Order. As a threshold
6 matter, the December 13 entry of the Order on the electronic docket constituted
7 service to Defendant through his counsel of record, Katie Charleston (who
8 previously requested, but has not yet been granted, leave to withdraw as counsel).
9 Additionally, Ms. Charleston has confirmed to counsel for Plaintiffs in writing that
10 she provided Defendant with a copy of the Order.

11 Counsel for Plaintiffs has also attempted to discuss Defendant's non-
12 compliance with the Order with Ms. Charleston.¹ However, after at first failing to
13 respond, Ms. Charleston responded that she "no longer represented Mr. Polychron"
14 and would not make herself available for a call. This email exchange is attached as
15 Exhibit B to the Koonce Declaration.

16 The Order was issued nearly one month ago. Defendant's declaration to the
17 Court certifying that all copies of the Infringing Work have been destroyed was due
18 on December 27, 2024. To date, Defendant has failed to comply with any of the
19 Court's demands, and the Infringing Work remains available for sale and download
20 on Google Play for \$17.95. See Exhibit A to the Koonce Declaration.

21 III. ARGUMENT

22 A. Defendant's Refusal to Obey the Court's Order Merits a Finding of 23 Contempt

24 Courts have the power to enforce their orders through civil contempt. *See*
25 *Spallone v. United States*, 493 U.S. 265, 276, 110 S.Ct. 625, 107 L.Ed.2d 644 (1990)
26 (citing *Shillitani v. United States*, 384 U.S. 364, 370, 86 S.Ct. 1531, 16 L.Ed.2d 622

27 _____
28 ¹ Counsel also sought to discuss with Ms. Charleston how her client intended to satisfy the attorneys fee award in the Related Case.

1 (1966)). In the Ninth Circuit, the relevant inquiry is whether the contemnor has
2 performed “all reasonable steps within their power to insure compliance” with the
3 Court’s orders. *Bademyan v. Receivable Mgmt. Servs. Corp.*, No.
4 CV0800519MMMRZX, 2009 WL 605789, at *1 (C.D. Cal. Mar. 9, 2009), citing
5 *Stone v. City of San Francisco*, 968 F.2d 850, 856 (9th Cir.1992). The moving party
6 bears the burden of establishing that the contemnor has violated the Court’s “clear
7 and definite” order “by clear and convincing evidence”. *Bademyan* at *2. Once such
8 evidence has been presented, “the burden then shifts to the contemnor to demonstrate
9 that he took every reasonable step to comply, and to articulate reasons why
10 compliance was not possible.” *Id.*

11 First, the Court’s Order is unambiguously clear and definite here, as it plainly
12 states that Defendant must cease all forms of distribution and exploitation of all
13 forms and mediums of the Infringing Work, and that he must file a declaration with
14 the Court certifying compliance with the same. Dkt. 48. Defendant has been on
15 notice of this Order since as early as December 13, 2023. There is nothing in the
16 Order that raises any question as to Defendant’s obligations, or as to when he was
17 required to comply.

18 Second, and notwithstanding the clear and definite terms of the Order,
19 Defendant has thumbed his nose at the Court’s requirements and has taken no steps
20 at all to comply with any aspect of them. He has not refrained from exploiting the
21 Infringing Work, and indeed is continuing to *profit* from any sales of that work, as
22 evidenced by the fact that the Infringing Work is still being offered for sale on at
23 least one prominent, easily accessible website. His failure to remove the Infringing
24 Work from this website confirms that he has failed to permanently delete all copies
25 of the work. Just as egregiously, he has failed to file the required declaration with
26 the Court certifying to his compliance.

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1 **B. Defendant’s Refusal to Obey the Court’s Order Merits the Imposition**
2 **of Coercive Sanctions**

3 Civil coercive sanctions may be imposed “to coerce defendant into
4 compliance with the court’s order, and to compensate the complainant for losses
5 sustained”. *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992),
6 quoting *United Mine Workers*, 330 U.S. at 303–04, 67 S.Ct. at 701–02 (1947).
7 Sanctions designed to coerce compliance are by their nature “conditional,” in that
8 they only operate “if and when a person found in contempt violates the order in the
9 future.” *Id.* By contrast, compensatory sanctions are intended to compensate the
10 complainant for losses suffered as a result of the contemptuous conduct, and may
11 include plaintiffs’ costs to bring the contempt proceeding, including reasonable
12 attorneys’ fees. *Portland Feminist Women’s Health Center v. Advocates for Life,*
13 *Inc.*, 877 F2d 797, 790 (9th Cir. 1989). Here, while Defendant continues to recognize
14 at least some ill-gotten monetary gains from his infringement, Plaintiffs at present
15 do not seek compensatory sanctions or their attorneys’ fees on this motion, but
16 merely seek to have Defendant comply with the Order.

17 In determining an appropriate amount of a coercive sanction, the Court may
18 consider the “character and magnitude of the harm threatened by continued
19 contumacy, and the probable effectiveness of any suggested sanction.” *Fed. Trade*
20 *Comm’n v. Gill*, 183 F. Supp. 2d 1171, 1186 (C.D. Cal. 2001). In this case, the Estate
21 proposes a \$250 sanction for each day that Defendant continues to violate the
22 injunctive provisions of the Court’s Order, with the daily sanction doubling every
23 seven days of non-compliance. *See Fed. Trade Comm’n v. Productive Mktg., Inc.*,
24 136 F.Supp.2d 1096, 1113 (C.D. Cal. 2001) (ordering sanction doubling every day
25 of non-compliance); *see also China Central Television v. Create New Technology*
26 *(HK) Ltd.*, 2015 WL 6755188, *6 (C.D. Cal. Nov. 4, 2015) (ordering \$5000 per day
27 sanctions in copyright infringement case). Given the wastefulness of this ongoing
28 litigation and the fact that Defendant has shown nothing but disdain for this Court’s

1 Order by utterly ignoring the requirements imposed on him, the irreparable harm
2 suffered by the Estate that led to a permanent injunction in the first place continues,
3 and will continue, until Defendant is forced to comply. A coercive sanction of \$250
4 per day, doubling every seven days, for the purpose of coercing such compliance, is
5 therefore appropriate and necessary.

6 IV. CONCLUSION

7 Defendant was put on notice of the Court's Order on December 13, 2023. The
8 Order is crystal clear in restricting Defendant from continuing to exploit the
9 Infringing Work in any medium and ordering him to certify that he had permanently
10 deleted all copies thereof by no later than December 27, 2023. Defendant has
11 violated each and every provision in the Order, which are specific and definite. He
12 should therefore be found liable for contempt for violation of the Order and ordered
13 to pay an amount of \$250 per day for each day after entry of this motion during
14 which he remains in non-compliance, with the amount doubling every five days if
15 he remains in contempt. The Estate respectfully requests that its Motion to Hold
16 Defendant in Contempt be granted in its entirety.

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January 12, 2023

Respectfully submitted,

/s/ Lacy H. Koonce, III

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