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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MG PREMIUM LTD, a limited liability company organized under the laws of the Republic of Cyprus,

Plaintiff,

vs.

VASILY KHARCHENKO, an individual and DOES 1-20, d/b/a DAFTSEX.COM, ARTSPORN.COM,

Defendants.

Case No.: 3:21-cv-05733-BHS

PLAINTIFF MG PREMIUM LTD'S *EX PARTE* MOTION TO RE-OPEN CASE AND ENTER FINDING OF CONTEMPT AND IMPOSE SANCTIONS PURSUANT TO FED.R.CIV.P. 70(e) OR IN THE ALTERNATIVE ISSUE AN ORDER TO SHOW CAUSE

NOTE ON MOTION CALENDAR:
December 20, 2022

Plaintiff MG Premium Ltd. hereby files this motion pursuant to Fed.R.Civ.P. 70(e) and requests the Court to re-open the case for purposes of finding Defendant Vasily Kharchenko in Contempt of this Court's Order of Final Judgment and Permanent Injunction dated November 7, 2022 and impose sanctions or, in the alternative, issue an Order to Show Cause as to why the Court should not hold a contempt hearing.

1 **I. INTRODUCTION**

2 Defendant Vasily Kharchenko owns and/or operates a network of piracy websites known
3 as the Daft Sex Network (previously including Daftsex.com, Artsporn.com, Daxab.com, and
4 Biqle.com). As a result of extensive piracy of MG Premium’s copyrighted works on the Daft Sex
5 Network, this Court entered an Order of Final Judgment and Permanent Injunction, asserting a
6 statutory fine against Defendant Vasily Kharchenko, ordering the domains to be transferred to
7 MG Premium, and ordering Kharchenko to refrain from infringing any copyrighted work of MG
8 Premium.

9 Within days of the Order, Defendant Kharchenko took steps to thwart the Order. A fake
10 letter was sent to the domain registry in an attempt to re-direct the transfer of ownership of the
11 domains away from MG Premium. Shortly after that, the Daft Sex Network was presented on
12 new websites, including Daft.sex, Dsex.to, and Biqle.org. Extremely problematic is that all of
13 MG Premium’s copyrighted works infringed on the original Daft Sex Network, and the subject
14 of the underlying litigation and reason for the Permanent Injunction, are continued to be displayed
15 on new domains comprising the current Daft Sex Network.

16 MG Premium is left with no choice but to move for a finding of contempt of court.

17 **II. FACTS**

18 Plaintiff MG Premium Ltd. initiated this action on October 4, 2021, seeking damages and
19 injunctive relief for claims of copyright infringement. *See* Dkt. No. 1. Therein, MG Premium
20 Ltd. alleged Defendants operated websites Daftsex.com, Artsporn.com, Daxab.com and
21 Biqle.com (the Daft Sex Network). Further, MG Premium alleged that Defendants infringed
22 2,143 of MG Premium’s copyrighted works by unlawfully displaying the works on the Daft Sex
23 Network.

24 Early discovery led to the determination that the owner/operator of the Daft Sex Network
25 is Vasily Kharchenko, who was added as a named Defendant. *See* Dkt. No. 9. Following proper
26 service of the First Amended Complaint, Defendant Kharchenko failed to answer the complaint

1 and otherwise defend this action. As a result, Default was entered against Defendant Vasily
2 Kharchenko on August 1, 2022. *See* Dkt. No. 19.

3 On November 7, 2022, the Court entered an Order of Final Judgment and Permanent
4 Injunction. Dkt. No. 28. Therein, the Court specifically enjoined Defendant Vasily Kharchenko
5 from further use of any of MG Premium’s copyrighted works. The Court further Ordered the
6 operator of the .COM registry, Verisign, Inc., to change the registrar of record to EuroDNS and
7 then EuroDNS to change the registrant of the domain names Daftsex.com, Artsporn.com,
8 Daxab.com, and Biqle.com to MG Premium. *Id.*

9 Unfortunately, the Court Orders have not slowed down or altered Defendant
10 Kharchenko’s infringement practices. While Defendant Kharchenko never appeared in this action
11 it is believed he is watching it closely. On November 10, 2022, just days after this Court entered
12 the Order of Final Judgment and Permanent Injunction, a fraudulent letter was sent to Verisign,
13 Inc. purportedly from MG Premium requesting Verisign, Inc. to unlock the domains and send
14 authorization codes to mgpremiumltd@gmail.com. *Declaration of Steve Salway (“Decl. S.
15 Salway”)*, p 2, ¶¶ 5-6, Ex. A.

16 This is a fake letter, not sent by MG Premium. *Decl. S. Salway*, p 2, ¶¶ 7-8. It is suspected
17 Defendant Kharchenko may have sent this fake letter in an attempt to thwart the Court’s Order
18 and the loss of the domains. In fact, Verisign, Inc. and MG Premium had already been in contact
19 and Verisign provided MG Premium with a copy of this letter to verify it was fraudulent.
20 Verisign, Inc. complied with the Court’s Order and the domains Daftsex.com, Artsporn.com,
21 Daxab.com, and Biqle.com have been ultimately transferred to MG Premium. *Decl. S. Salway*,
22 p 1-2, ¶¶ 4 and 9.

23 The transfer of the domains to MG Premium started the next step of Defendant
24 Kharchenko’s attempts to circumvent the Court’s Order. On November 11, 2022, via Twitter
25 account @DaftPost it was announced that Daftsex was moving to daft.sex, biqle.org and biqle.ru.
26 *Declaration of Jason Tucker (“Decl. J. Tucker”)*, p 4, ¶ 17, Ex. A. On November 22, 2022, it

1 was announced via Twitter account @DaftPost that Daftsex was operational on dsex.to and
2 daft.sex. *Decl. J. Tucker*, p 4, ¶ 18, Ex. B.

3 Daft.sex is now operational. It includes the exact same contact information as did
4 Daftsex.com, copyroster@gmail.com, and the exact same DMCA agent, Jack Brandy, BQL.
5 *Decl. S. Salway*, p 2, ¶ 11; *Declaration of Jason Tucker (“Decl. J. Tucker”)*, p 4, ¶¶ 19-22, Exs.
6 C and D. The web pages broadcast on Daft.sex are the same web pages as were broadcasted on
7 the Daft Sex Network. Daft.sex is a mirror site to Daftsex.com and Artsporn.com. Quite
8 importantly, all 2,143 of MG Premium’s copyrighted works which were displayed on the Daft
9 Sex Network and subject to the instant copyright infringement lawsuit are displayed on Daft.sex.
10 *Decl. S. Salway*, p 2, ¶ 12; *Decl. J. Tucker*, p 4, ¶ 25.

11 ICM Registry is the domain registry for “.sex” domains. ICM Registry is a wholly owned
12 subsidiary of Registry Services, LLC.¹ Registry Services, LLC is registered to do business in
13 Washington State (UBI No. 604 243 537) with its principal office located in Tempe, Arizona.
14 *Decl. J. Tucker*, p 5, ¶ 28.

15 Dsex.to is also now operational. It is a mirror site to Daft.sex, including listing the same
16 contact information and DMCA Agent as both Daft.sex and Daftsex.com. *Decl. S. Salway*, p 2,
17 ¶¶ 13-14; *Decl. J. Tucker*, p 4-5, ¶¶ 19-24, Exs. C, D, E and F. Dsex.to also displays all 2,143
18 of MG Premium’s copyrighted works which were displayed on the Daft Sex Network and subject
19 to the instant copyright infringement lawsuit. *Decl. J. Tucker*, p 5, ¶ 26.

20 Tonic Domains Corp. is the registrar for “.to” domains. Tonic Domains is a California-
21 based company with its principal address in Tiburon, California. *Decl. J. Tucker*, p 5, ¶ 29.

22 Biqle.org is operational. It is also a mirror site of Daft.sex and Dsex.to, displaying all
23 2,143 of MG Premium’s copyrighted works which were displayed on Daftsex.com and
24

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¹ Source: <https://icmregistry.biz/about/policies/privacy-policy/> Last Visited: December 14, 2022.

1 Artsporn.com and subject to the instant copyright infringement lawsuit. *Decl. S. Salway*, p 3, ¶¶
2 15-16; *Decl. J. Tucker*, p 5, ¶ 27.

3 Public Interest Registry is the registrar for all “.org” domains. It is located in Reston,
4 Virginia. *Decl. J. Tucker*, p 5, ¶ 30.

5 MG Premium copyrighted work “An Appetizing Affair” is an example of one of the 2,
6 143 copyright infringements moved from the original Daft Sex Network to new domains. *Decl.*
7 *J. Tucker*, p 5, ¶ 31, Ex. G. This work was infringed on Daxtsex.com (part of the original Daft
8 Sex Network) with the exact same naming convention or file path as the other sites in the
9 Network, 185685320_456240127. Now, after the Court’s Order of Final Judgment and
10 Permanent Injunction, the same work is displayed on Daft.sex, Dsex.to, and Biqle.org, with the
11 exact same naming convention or file path between the three sites, 160586466_456241718. *Decl.*
12 *J. Tucker*, p 5-6, ¶¶ 32-34, Exs. H, I, and J.

13 Defendant Kharchenko took little time to move his entire piracy network to a different set
14 of domains to operate exactly as he did before. There is no valid argument disputing that
15 Defendant Kharchenko has continued to infringe MG Premium’s copyrighted works against the
16 Order of this Court.

17 III. RELIEF REQUESTED

- 18 1. It is respectfully requested that the Court find Defendant Vasily Kharchenko in
19 contempt of the Court’s Order of Final Judgment and Permanent Injunction.
- 20 2. It is respectfully requested that the Court Order the domain registries to change the
21 registrar of Daft.sex, Dsex.to, and Biqle.org to EuroDNS and then EuroDNS to
22 change the registrant of the domains to MG Premium.
- 23 3. It is respectfully requested that the Court Order Twitter, Inc. to permanently disable
24 the account @Daftpost or transfer ownership of the account to MG Premium.
- 25 4. In the alternative of finding Defendant Vasily Kharchenko in contempt based upon
26 the submission of declarations, it is respectfully requested that the Court issue and

1 Order to Show Cause requiring Vasily Kharchenko to submit reasons why he should
2 not be held in contempt and set a contempt hearing.

3 **IV. LAW AND ARGUMENT**

4 **A. Standard of Civil Contempt.**

5 A court may hold a party in contempt for failure to comply with a judgment requiring the
6 party to perform a specific act. Fed. R. Civ. P. 70(e). "The standard for finding a party
7 in civil contempt is well settled: The moving party has the burden of showing by clear and
8 convincing evidence that the contemnors violated a specific and definite order of the court. The
9 burden then shifts to the contemnors to demonstrate why they were unable to comply." *In re*
10 *Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002) (quoting *FTC v. Affordable Media*, 179 F.3d 1228,
11 1239 (9th Cir. 1999)). While "there is no good faith exception to the requirement of obedience of
12 a court order[.] . . . a person should not be held in contempt if his action appears to be based on a
13 good faith and reasonable interpretation of the court's order." *In re Dual-Deck Video Cassette*
14 *Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993) (alteration, citations, and internal
15 quotation marks omitted).

16 A party may be held in civil contempt for failure to take all reasonable steps within the
17 party's power to comply with a specific and definite court order. *See Reno Air Racing Ass'n., Inc.*
18 *v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006); *In re Dual-Deck Video Cassette Recorder*
19 *Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993); *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146
20 (9th Cir. 1983). A person fails to act as ordered by a court when "he fails to take 'all the reasonable
21 steps within [his] power to insure compliance with the [court's] order.'" *Id.* at 1146-
22 47, quoting *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir. 1976), *cert. denied*, 430
23 U.S. 931, 51 L. Ed. 2d 774, 97 S. Ct. 1550 (1977).

24 The "rules" for civil contempt are as follows: (1) did the party against
25 whom contempt sanctions are sought violate a court order (2) beyond substantial compliance (3)
26 not based on a good faith and reasonable interpretation of the order (4) by clear and convincing

1 evidence. *See id.* The proof for civil contempt must be clear and convincing--a higher standard
2 than the preponderance of the evidence standard but less stringent than beyond a reasonable
3 doubt. *United States v. Powers*, 629 F.2d 619, 626 n. 6 (9th Cir.1980) (dictum).

4 "Civil contempt is characterized by the court's desire to compel obedience to a court order,
5 or to compensate the contemnor's adversary for the injuries which result from the
6 noncompliance." *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9th Cir. 1983)
7 (emphasis in original); *see also Shell Offshore, Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th
8 Cir. 2016) (stating that, "[i]n distinguishing between criminal and civil contempt, we must look
9 to the sanction's 'character and purpose'; "[t]he purpose of civil contempt is coercive or
10 compensatory, whereas the purpose of criminal contempt is punitive").

11 Civil contempt is appropriate when a party fails to comply with a specific and definite
12 court order. *Gifford v. Heckler*, 741 F.2d 263, 265 (9th Cir. 1984). Failure to comply consists of
13 not taking "all the reasonable steps within [one's] power to insure compliance with the order
14 []." *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir.1976), *cert. denied*, 430 U.S. 931,
15 97 S. Ct. 1550, 51 L. Ed. 2d 774 (1977).

16 The party alleging civil contempt must demonstrate by clear and convincing evidence that
17 (1) the contemnor violated a court order, (2) the noncompliance was more than technical or de
18 minimis, and (3) the contemnor's conduct was not the product of a good faith or reasonable
19 interpretation of the violated order. *See United States v. Bright*, 596 F.3d 683, 694 (9th Cir.
20 2010); *Inst. of Cetacean Research v. Sea Shepherd Conservation Society*, 774 F.3d 935, 945 (9th
21 Cir. 2014).

22 A court has wide latitude in determining whether there has been contemptuous defiance
23 of its order. *A&M Records, Inc. v. Lamonte*, 366 F. App'x 736, 738 (9th Cir. 2010); *Hook v.*
24 *Arizona Dep't of Corrections*, 107 F.3d 1397, 1403 (9th Cir. 1997); *Neebars, Inc. v. Long Bar*
25 *Grinding, Inc.*, 438 F.2d 47, 48 (9th Cir. 1971).

1 There is little doubt here that Defendant Kharchenko has violated this Court's Order. In
2 fact, the evidence is crystal clear and without possible argument that the Daftsex website (and
3 therefore its mirror sites Artsporn and Biqle) was moved to three new domains running
4 simultaneously: Daft.sex, Dsex.to, and Biqle.org. It is also clear that these sites continue to
5 display the same 2,143 MG Premium copyrighted works as was complained of in the litigation
6 which led to the Permanent Injunction.

7 Defendant Kharchenko did not take reasonable steps to comply with the Court's Order,
8 such as remove MG Premium's works from display on the new sites. Defendant Kharchenko also
9 affirmatively advertised the new sites to the public. All this was *after* a fake letter was sent to
10 Verisign in an attempt to circumvent the transfer of the Daftsex, Artsporn, and Biqle domains to
11 MG Premium.

12 There is no way Defendant Kharchenko's actions are based upon a reasonable
13 interpretation of the Court's Order. It is quite clear that his actions were to thwart the effect of
14 this Court's ruling. By clear and convincing evidence, he is thumbing his nose at this Court and
15 the Court's Order.

16 The rules for finding civil contempt are fulfilled here. The only remaining issue is what
17 to do about the disobedience.

18 **B. Procedures of Civil Contempt.**

19 Generally, "[c]ontempt proceedings are instituted by the issuance of an Order to Show
20 Cause . . . why a contempt citation should not issue and a notice of a date for the hearing." *Alcalde*
21 *v. NAC Real Estate Invs. & Assignments, Inc.*, 580 F. Supp. 2d 969, 971 (C.D. Cal. 2008). The
22 Ninth Circuit has held that "a civil contempt proceeding is 'a trial within the meaning of Fed. R.
23 Civ. P. 43(a) rather than a hearing on a motion within the meaning of Fed. R. Civ. P. 43(e)[;] . . .
24 the issues may not be tried on the basis of affidavits.'" *Pennwalt Corp. v. Durand-Wayland, Inc.*,
25 708 F.2d 492, 495 (9th Cir. 1983) (quoting *Hoffman v. Beer Drivers & Salesman's Local Union*
26 *No. 888*, 536 F.2d 1268, 1277 (9th Cir. 1976)); *see also Peterson v. Highland Music, Inc.*, 140

1 F.3d 1313, 1324 (9th Cir. 1998) ("[A] district court ordinarily should not
2 impose contempt sanctions solely on the basis of affidavits." (citing *Hoffman*, 536 F.2d at 1276-
3 77)). Absent a compelling reason to hold Defendant in contempt solely on the basis of motion
4 and declarations, such declarations absent a hearing do not suffice. *See Salamon v. Creditors*
5 *Specialty Serv., Inc.*, No. C 11-172 CW, 2012 U.S. Dist. LEXIS 146808, 2012 WL 4857810, at
6 *3 (N.D. Cal. Oct. 11, 2012) (denying motion for contempt in part because the movant had not
7 requested an Order to Show Cause).

8 However, a trial court may in a contempt proceeding narrow the issues by requiring that
9 affidavits on file be controverted by counter-affidavits and may thereafter treat as true the facts
10 set forth in uncontroverted affidavits. *Hoffman ex rel NLRB v. Beer Drivers & Salesmen's Local*
11 *Union, etc.*, 536 F.2d 1268, 1277 (9th Cir. 1976).

12 **1. Compelling Reasons to Rely on Declarations to Satisfy Contempt Finding.**

13 In addition to the clear authority of the Court to narrow issues on a contempt motion
14 through declarations or affidavits, and treat uncontroverted facts as true, the Courts have
15 suggested that a compelling reason could exist to determine contempt without a hearing. This
16 case presents such compelling reasons. First and foremost, Defendant Kharchenko has failed to
17 appear in this action. He was properly served with the summons and complaint and chose to
18 completely ignore the matter. Thus, he willingly permitted Plaintiff's allegations in the matter be
19 uncontroverted and accepted as true.

20 Second, as a result of failure to appear in the action, Defendant Kharchenko escaped the
21 process of discovery. Thus, he did not submit to questioning in deposition, did not answer
22 interrogatories, and did not have to respond to requests for production. As he has avoided
23 production of any information which could be challenged in discovery, he should not now be
24 afforded the opportunity to present unchallenged information to the Court.

25 Third, the nature of Defendant Kharchenko's contempt is such that there can be no
26 question that he has violated the terms of the Order. The entire and exact web sites that were

1 displayed on Daftsex.com and Artsporn.com, subject to the underlying lawsuit and the basis for
2 the Court's Order and Injunction, are now displayed at Daft.sex and Dsex.to *including all 2,143*
3 *of MG Premium's copyrighted works of which Defendant was expressly prohibited from*
4 *displaying by the Order.*

5 Given the clear nature of the contempt and continuing infringement and considering
6 Defendant Kharchenko has previously failed to appear or engage in this lawsuit, it is requested
7 the Court dispense with a live hearing and determine contempt based upon the submitted
8 declarations.

9 **2. Alternatively, Plaintiff Requests a Show Cause Order and Hearing.**

10 Should the Court determine that a live hearing consistent with Fed.R.Civ.P. 43(a) is
11 required to determine Defendant Kharchenko's contempt, MG Premium requests to Court to issue
12 an Order to Show Cause, demanding that Defendant Kharchenko show cause as to why he should
13 not be held in contempt and set a hearing for testimony. It is further requested that pursuant to
14 Fed.R.Civ.P. 43(a), the Court permit MG Premium to present witness testimony via Zoom video
15 conferencing as MG Premium's potential witnesses are located in Montreal, England, and
16 Mexico.

17 **C. Sanctions upon Contempt Finding.**

18 Civil contempt sanctions serve may serve two purposes: "to coerce obedience to a court
19 order, or to compensate the party pursuing the contempt action for injuries resulting from the
20 contemptuous behavior, or both." *General Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1380
21 (9th Cir. 1986) (citing *United States v. United Mine Workers*, 330.U.S. 258, 303-04, 67 S. Ct.
22 677, 91 L. Ed. 884 (1947)).

23 Here, there is little purpose to imposing monetary sanctions. The imposition of a judgment
24 of \$32,145,000 (Dkt. No. 28) failed to stop Defendant from continuing to infringe MG Premium's
25 works. Further monetary judgment will have little to no effect and will be difficult to collect.
26 Rather, the Court must force obedience to its Order of Final Judgment and Permanent Injunction.

1 The way to do that is to take away the tools Defendant Kharchenko uses to continue infringement
2 of MG Premium's 2,143 copyrighted works. Therefore, it is requested that the Court order (1)
3 ICM Registry to disable and transfer Daft.sex to MG Premium; (2) Tonic Domains Corp. to
4 disable and transfer Dsex.to to MG Premium; and (3) Public Interest Registry to disable and
5 transfer Biqle.org to MG Premium.

6 Each registry should be ordered to change the registrar to EuroDNS and then EuroDNS
7 should be ordered to change the registrant of the domains Daft.sex, Dsex.to, and Biqle.org to MG
8 Premium. While this may drive Defendant Kharchenko to move his web site to yet different
9 domains, it will send a message that any time the web sites are moved to domains with United
10 States based registries and continue to infringe MG Premium's copyrighted works the domains
11 will be transferred to MG Premium. It is important to note that there is a reason Defendant
12 chooses United States based registries; they are the most commonly recognized domains by
13 United States end users and have the best chance to take advantage of United States Internet
14 traffic. (United States users are generally not going to trust or go to a website with a ".ru"
15 domain.)

16 Further, MG Premium requests that the Court order Twitter, Inc. to either permanently
17 disable the account which advertised the move of the Daftsex web sites, @DaftPost, or transfer
18 the account to MG Premium ownership and control. This Twitter account was used to promote
19 the copyright infringement of MG Premium's works and used to thwart the Order of this Court.
20 It can be expected that any future move by Defendant Kharchenko to thwart the Court's Order
21 and continue his piracy activities will be conveyed to the Daftsex user community via this Twitter
22 account. In order to force obedience with the Order of Final Judgment and Permanent Injunction,
23 the Court should take this avenue away.

24 The Court must unfortunately look at Defendant Kharchekno as an irresponsible teenager
25 who simply cannot follow simple rules nor show any respect to others, including the rule of law.
26 The only way to deal with such misbehavior is to take away the tools that make the behavior

1 possible. To force obedience with the Court's Order, the Court should take away the utilized
2 domains and the Twitter account promoting those domains. There is simply no other way to get
3 this behavior to cease.

4 **V. Conclusion**

5 For the reasons demonstrated above, and based on the supporting evidence, Plaintiff
6 requests that Defendant Vasily Kharchenko be found in civil contempt of the Court's Order of
7 Final Judgment and Permanent Injunction (Dkt. No. 28) based upon the submission of the
8 accompanying declarations. As sanctions for contempt, it is requested that (1) the Court Order
9 the domain registries to change the registrar of Daft.sex, Dsex.to, and Biqle.org to EuroDNS and
10 then EuroDNS to change the registrant of the domains to MG Premium; and (2) the Court Order
11 Twitter, Inc. to permanently disable the account @Daftpost or transfer ownership of the account
12 to MG Premium.
13

14 In the alternative of finding Defendant Vasily Kharchenko in contempt based upon the
15 submission of declarations, it is respectfully requested that the Court issue an Order to Show
16 Cause requiring Vasily Kharchenko to submit reasons why he should not be held in contempt
17 and set a contempt hearing.
18

19 RESPECTFULLY SUBMITTED this 20th day of December 2023.

20 **FREEMAN LAW FIRM, INC.**

21 /s/ Spencer D. Freeman

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