

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SALITA PROMOTIONS CORP.,

Plaintiff,

Case No. 2:20-cv-12547-LJM-EAS

Hon. Laurie J. Michelson

v.

SHOHJAHON ERGASHEV and
OLEG BOGDANOV,

Defendants.

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**PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS
AGAINST DEFENDANTS FOR INTENTIONALLY VIOLATING
THIS COURT'S INJUNCTIVE ORDER**

NOW COMES Plaintiff, Salita Promotions Corp. (“Plaintiff”), by its attorneys, Clark Hill PLC, and for its Motion for Contempt and Sanctions Against Defendants Shohjahon Ergashev (“Ergashev”) and Oleg Bogdanov’s (“Bogdanov”) (collectively, “Defendants”) for Intentionally Violating this Court’s Injunctive Order hereby relies upon the brief in support, attached hereto.

Plaintiff has sought concurrence in this matter, as the parties met and conferred on March 4, 2021 and again on April 5, 2021. In both instances, Defendants did not concur in Plaintiff’s requested relief.

WHEREFORE, Plaintiff, Salita Promotions Corp., respectfully requests that this Court order Defendants to show cause as to why they should not be held in Contempt, grant Plaintiff all attorney’s fees, costs, expenses incurred in filing this Motion, and award Plaintiff any other relief the Court may deem appropriate due to Defendants’ willful misconduct.

Respectfully submitted,

CLARK HILL PLC

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Dated: April 5, 2021

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SALITA PROMOTIONS CORP.,

Plaintiff,

Case No. 2:20-cv-12547-LJM-EAS

Hon. Laurie J. Michelson

v.

SHOHJAHON ERGASHEV and
OLEG BOGDANOV,

Defendants.

**PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION FOR CONTEMPT
AND SANCTIONS AGAINST DEFENDANTS FOR INTENTIONALLY
VIOLATING THIS COURT'S INJUNCTIVE ORDER**

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Gompers v. Buck's Stove & Range Co., 221 U.S. 418 (1911)

STATEMENT OF ISSUES PRESENTED

Should this Court find Defendants in contempt of this Court's preliminary injunction and order Defendants to show cause why they should not be held in contempt where: (1) Defendants were on notice of this Court's preliminary injunction at all material times; (2) Defendants intentionally disregarded this Court's order by participating in a November 16, 2020 bout; and (3) Defendants continue to disregard this Court's injunctive order by apparently conspiring to solicit plans for another bout?

Plaintiff answers: YES

I. INTRODUCTION

The circumstances necessitating this motion are not in dispute: on November 15, 2020, this Court granted a preliminary injunction that prohibited Defendant Ergashev's participation in, among other things, a November 16, 2020 boxing match without Plaintiff's consent. What the Court required was not a particularly onerous task—all Defendants needed to do to comply was not fight unless they obtained Plaintiff's consent. However, despite notice and an opportunity to participate in the preliminary injunction hearing, Defendant Ergashev and his manager, Defendant Bogdanov, disobeyed this Court's preliminary injunction by fighting Dzmitry Miliusha on November 16, 2020 – a fight not approved or promoted by Plaintiff.

Now, upon information, knowledge, and belief Defendants appear to be planning yet another unsanctioned bout, again in violation of the parties' exclusive Promotional Agreement (the "Agreement") and this Court's preliminary injunction. Such disregard not only continues to run afoul of the parties' Agreement, but also plainly violates this Court's preliminary injunction. In light of such willful and unexcused conduct, Plaintiff requests that this Court order Defendants to show cause why they should not be held in contempt, and grant Plaintiff its attorneys' fees and costs incurred as a result of Defendants' willful misconduct.

II. FACTUAL HISTORY

The Court is well-versed in the factual history that necessitated the ordering

of an emergency TRO and subsequent preliminary injunction. In early September 2020, Plaintiff discovered Defendants' surreptitious and unsanctioned plans to fight in Moscow. [ECF No. 2, Page ID 36]. Soon thereafter, Plaintiff filed its Verified Complaint and contemporaneously sought a temporary restraining order to prevent the fight. *See* [ECF No. 1, Page ID 14]; [ECF No. 2, Page ID 23]. This Court granted the emergency TRO, stating in part that, "absent an injunction, Salita will suffer irreparable harm." [ECF No. 8, Page ID 84]. The Court further stated that "any prejudice to Ergashev from missing the September 21 bout is partly his own doing." [ECF No. 8, Page ID 85].

Every day beginning from the Court's temporary restraining order on September 18, 2020 through September 21, 2020, Plaintiff provided a copy of the order to Defendants through social media, text messages, phone calls, etc. to provide him notice. [*See, e.g.*, ECF No. 17, Page ID 135]. These efforts were ultimately successful, as Defendants waived the towel and called off the fight. [ECF No. 17, Page ID 132].

However, such measures were only temporary. In early November 2020, Defendant Ergashev again began posting on social media about a November 16, 2020 fight against Dzmitry Miliusa. [*Id.* at 133]. In effect, Defendant Ergashev had continued his obstinate refusal to abide by the Agreement, opting instead to merely reschedule his previously canceled bout. [*Id.*]

Such actions predicated Plaintiff's motion for a preliminary injunction, which this Court granted on November 15, 2020. [*See id.* at 141–42].¹ In granting Plaintiff's preliminary injunction, this Court stated that Ergashev “clearly had notice of the suit, this motion, and the November 13 hearing” and that “Ergashev [clearly] has actual notice of the motion and was given ample opportunity to oppose it.” [*Id.* at 135].² Furthermore, the Court found that (1) Plaintiff would suffer irreparable harm absent an injunction; (2) Defendant Ergashev's services are unique and extraordinary to Plaintiff; (3) Ergashev's current reverence and opportunities in the boxing realm are largely attributable to Plaintiff; and (4) Plaintiff's damages are likely uncertain and/or incalculable. [*Id.* at 136–39]. Accordingly, the Court ordered that “Ergashev is restrained from participating in the November 16, 2020 bout [against Dzmitry Miliusa]” and is further “restrained from directly or indirectly, whether alone or in concert with others, violating the terms of the Promotional Agreement.” [*Id.* at 141].

Upon entry of the Court's order, Plaintiff immediately emailed Defendants

¹ As has been established by this Court, Ergashev “clearly had notice of [this] suit, this motion, and the November 13 hearing. Salita and its counsel have made numerous attempts to contact Ergashev and Bogdanov via email, phone, and Whatsapp messages. Although neither defendant has acknowledged the messages about this suit, Bogdanov has replied from the same email address to emails about scheduling bouts.” [ECF No. 17, Page ID 135].

² Each time that this Court held hearing on the matter at hand, Defendants declined to appear, only to then reappear on February 26, 2021 to file their motion to dismiss. [*See* ECF No. 17, Page ID 134–35]; [ECF No. 30]

with notice of the order for two consecutive days leading up to the November 16, 2020 bout. *See Exhibit C*, Email Notice of Preliminary Injunction. Both emails were sent to the email addresses at which Defendants have previously responded. *Compare id.*, with [ECF No. 11-4].

Despite receiving notice of the injunction, Defendant Ergashev nevertheless proceeded to flagrantly violate the Agreement and this Court's preliminary injunction by fighting in the November 16, 2020 bout. *See infra* n. 5. The bout was well-publicized, and even endorsed by Defendant Ergashev himself through social media. *See id.*; [ECF No. 17, Page ID 133] ("Recently, Ergashev began posting on Instagram about his participation in an upcoming bout on November 16, 2020 in Moscow, Russia that Salita did not arrange or approve.") (citing [ECF No. 11, Page ID 101–02]).

Perhaps more troublingly, all indications suggest that Defendants' cavalier actions will continue. *See Exhibit B*, Ergashev Instagram Message (stating that a fight will be held on May 15, 2021 in Tashkent, Uzbekistan against Ponce Deleon). As suggested by Ergashev's social media accounts (and by numerous other Boxing news outlets), Defendant Ergashev appears primed to continue with another unsanctioned fight. *See id.* Perhaps unsurprisingly, Plaintiff has had no hand in organizing this bout, nor has it blessed any such actions.

In sum, Defendants have now wrought upon themselves (and Plaintiff) the exact, self-defeating consequences that Plaintiff and this Court have attempted to avoid. Unfortunately, these efforts have been to no avail, and by all accounts it appears Defendants' malfeasance will continue. Despite being on notice of this Court's injunction, Defendants' have exercised³ and continue to exercise⁴ complete disregard for the requirements its preliminary injunction imposed.

Accordingly, Plaintiff seeks an order from this Court ordering Defendants to show cause as to why they should not be held in contempt of the Court's preliminary injunction order, and further granting Plaintiff attorney's fees, expenses, costs, and any other relief the Court may deem appropriate.

III. ANALYSIS

A. Standards of Review

A decision on a motion for contempt lies within the sound discretion of the court. *See Elec. Workers Pension Trust Fund of Local Union # 58 v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003); *see also* Fed. R. Civ. P. 70(e) ("The court may also hold the disobedient party in contempt."). The Supreme Court has stated that "the power to punish for contempt is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the

³ *See infra* n.5.

⁴ *See Exhibit B*, Ergashev Instagram Message.

duties imposed on them by law.” *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 450 (1911); *see also Gary’s Elec. Serv.*, 340 F.3d at 378. Contempt proceedings are used to “enforce the message that court orders and judgments are to be complied with in a prompt manner.” *Gary’s Elec. Serv.*, 340 F.3d at 378. In civil contempt proceedings, judicial sanctions may be imposed for either or both of two purposes: to coerce the defendant into compliance with the Court’s order and to compensate the movant for the losses sustained. *Id.* at 379 (citing *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303–04 (1947)).

To hold a litigant in contempt, the movant must produce clear and convincing evidence to show a violation of a definite and specific order of the court requiring the litigant to perform or refrain from performing a particular act or acts with knowledge of the court’s order. *Id.* (citing *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir. 1987)). “Once the movant establishes his prima facie case, the burden shifts to the contemnor who may defend by coming forward with evidence showing that he is presently unable to comply with the court’s order.” *Id.* (emphasis in original). To meet the burden of production in the Sixth Circuit, contemnors must show “categorically and in detail” why they are unable to comply with the Court’s order. *Id.* (quoting *Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716 720 (6th Cir. 1996)). The court must consider whether the contemnor took all reasonable steps within his power to comply with the court’s Order. *Id.*

B. Plaintiff Has Demonstrated Defendants’ Breach of the Preliminary Injunction by Clear and Convincing Evidence.

As stated by this Court in its preliminary injunction, “[Defendant] Ergashev is restrained from participating in the November 16, 2020 bout at the Vegas City Hall in Moscow, Russian Federation.” [ECF No. 17, Page ID 141]. Furthermore, “Ergashev is restrained from directly or indirectly, whether alone or in concert with others, violating the terms of the Promotional Agreement [which provides for Plaintiff’s exclusive right to organize Defendant Ergashev’s bouts]” [*Id.*] And importantly, “this preliminary injunction will remain in place until trial or further order of the Court.” [*Id.* at 142].

A cursory Google search reveals any number of independent sources all pointing to the same conclusion: Defendant Ergashev participated in a November 16, 2020 bout against Dzmitry Miliusha in Vegas City Hall, Moscow, Russia.⁵ This point is not and cannot be in serious dispute, rendering Defendant Ergashev in direct violation of the preliminary injunction.

⁵ Relevant Internet Links (**Exhibit A**): *see, e.g.*, <https://boxrec.com/en/proboxer/742016> [Ergashev official boxing record]; <http://boxingtalk.com/Ergashev-gets-win-in-violation-of-court-order>; <https://www.badlefthook.com/2020/11/16/21566508/bad-left-hook-boxing-rankings-nov-16-2020-terence-crawford-wins-again-franco-moloney-katie-taylor>; <https://www.boxingscene.com/shohjahon-ergashev-breaks-down-stops-miliusha-two--153314>; <https://www.asianboxing.info/videos/shohjahon-ergashev-vs-dzmitry-miliusha> [video of fight]; <https://www.dailymotion.com/video/x7xzk3d> [video of fight].

Critically, Defendant Ergashev proceeded with the November 16, 2020 fight *in spite* of having full knowledge of the Court’s preliminary injunction. *See Exhibit C*, Email Notice of Preliminary Injunction. There is no dispute that Defendants are fully aware of (1) the present suit; (2) Plaintiff’s previous motions for temporary restraining orders; and (3) Plaintiff’s motion for preliminary injunction. [*See* ECF No. 17, Page ID 134–35]. Therefore, it should come as no surprise to Defendants—particularly when they have repeatedly foregone any and all opportunities to participate in this Court’s hearings, *and* the Court previously enjoined Defendants from participating in the same fight a month earlier (i.e. the temporary restraining order)—that a preliminary injunction was issued precluding their participation in the November 16, 2020 bout against Dzmitry Miliusha. *See Exhibit C*, Email Notice of Preliminary Injunction; [*see* ECF No. 17, Page ID 134–35]; [*id.* at 131] (“Ergashev has failed to appear and contest the motion.”); [ECF No. 11-4]; [ECF No. 14]; [ECF No. 15]. Circumstances notwithstanding, Defendants received this Court’s preliminary injunction twice via email prior to Defendant Ergashev’s November 16, 2020 bout. *See Exhibit C*, Email Notice of Preliminary Injunction.

Together, these events amount to clear and convincing evidence of Defendants’ knowledge and subsequent breach of the Court’s preliminary injunction.

Incidentally, there does not appear to be any end in sight for these violations. As demonstrated on Defendant Ergashev's social media, and upon information and belief, Defendants are developing plans for further bouts in violation of the preliminary injunction and the parties' Agreement. *See Exhibit B*, Ergashev Instagram Message (stating that a fight will be held on May 15, 2021 in Tashkent, Uzbekistan against Ponce Deleon). Defendants' contemplated actions are similarly in violation of the preliminary injunction, particularly where it "remain[s] in place until trial or further order of the Court." [ECF No. 17, Page ID 142]. Accordingly, not only is contempt appropriate for Defendants' delinquent November 16, 2020 bout, but it is also necessary to ensure future compliance with the Court's order. *See Gary's Elec. Serv.*, 340 F.3d at 379.

These considerations notwithstanding, Defendants still cannot justify their continued breach of the parties' Agreement (something that the preliminary order also precluded). [See ECF No. 17, Page ID 141]. There is no dispute that Plaintiff retains exclusivity for promoting Defendant Ergashev's bouts or that Plaintiff did not sanction or promote the November 16th bout and is not currently able to promote any bout for Ergashev since Ergashev continues to ignore Plaintiff's requests for fight opportunities. Much like Defendants' willful violation by participating in the November 16, 2020 bout, Defendants' continued breach of the parties' Agreement equally constitutes a violation of Court's preliminary injunction. Regardless, in

either case, Plaintiff has established a prima facie case of Defendants' breach of the Court's preliminary injunction. Therefore, the burden falls upon Defendants to propound evidence that they were unable to comply with the preliminary injunction.

C. Defendants Have No Evidence Excusing Their Failure to Comply with the Court's Preliminary Injunction.

"Once the movant establishes his prima facie case, the burden shifts to the contemnor who may defend by coming forward with evidence showing that he is presently unable to comply with the court's order." *Gary's Elec. Serv.*, 340 F.3d at 379. Here, Defendants cannot demonstrate by any evidence that they were unable to comply with the Court's order.

In fact, any evidence suggesting that Defendants were unable to comply results in Catch-22 worthy logic: as established *supra*, Defendants were fully aware of the preliminary injunction proscribing participation in the November 16, 2020 bout. *See Exhibit C*, Email Notice of Preliminary Injunction; *see also* [ECF No. 17, Page ID 135] ("[Ergashev] clearly had notice of this suit, this motion, and the November 13 hearing."); [ECF No. 11-4]; [ECF No. 14]; [ECF No. 15]. Therefore, *all Defendants had to do to comply with the preliminary injunction was not fight on November 16, 2020.* [*Id.* 141]. Yet even given this simple task, Defendants intentionally refused to comply. *See supra* n. 5. For Defendants to provide any evidence to the contrary would result in a vexing conclusion: specifically, the only way Defendants could prove they could *not* comply with the preliminary injunction

is if they proved they were *required* to fight. But under no circumstances could Defendants be *required* to fight on November 16, 2020 when the parties' Agreement explicitly precludes as much. [ECF No. 1, Page ID 18]. Simply, there can be no excuse for Defendants willful disregard of this Court's order. Consequently, Defendants can set forth no reasonable excuse—much less any “reasonable steps” or detailed and categorical explanations—that rise to a level warranting its noncompliance. All Defendants had to do was abstain from fighting, and yet they refused to do so. Therefore, Defendants' continued noncompliance with the Court's preliminary injunction remains clear and convincing.

IV. CONCLUSION

To date, Defendants have conducted themselves with a knowing, ostentatious disregard of the parties' Agreement and the Court's preliminary injunction. Yet absent judicial intervention, such violations do not appear to be ending imminently. Where a party fails to abide by court orders, the Court may “enforce the message that court orders and judgments are to be complied with in a prompt manner.” *Gary's Elec. Serv.*, 340 F.3d at 378. Respectfully, Plaintiff requests exactly that in its present motion.

WHEREFORE, Plaintiff, Salita Promotions Corp., respectfully requests that this Court hold Defendants in contempt, order Defendants to show cause, and grant

Plaintiff all attorney's fees, costs, expenses incurred, and any other relief the Court may deem appropriate due to Defendants' willful misconduct.

Respectfully submitted,

CLARK HILL PLC

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Attorneys for Plaintiff

Dated: April 5, 2021

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2021, my assistant, electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the counsel on record.

Respectfully submitted,

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