

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**ODYSSEUS MARKETING, INC.,
and WALTER RINES,**

Defendants.

Case No. 05-CV-330-SM

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER
HOLDING WALTER RINES, ONLINE TURBO MERCHANT, INC., AND
SANFORD WALLACE IN CIVIL CONTEMPT FOR THEIR VIOLATIONS
OF THIS COURT'S PERMANENT INJUNCTION**

I. Introduction

The Federal Trade Commission (“FTC” or “Commission”) respectfully submits this memorandum in support of its motion for an order holding defendant Walter Rines (“Rines”), his firm, Online Turbo Merchant, Inc. (“OTM”), and his business partner, Sanford Wallace (“Wallace”) (collectively, “contempt defendants”), in civil contempt for violating the Stipulated Final Order for Permanent Injunction (“Permanent Injunction” or “Order”) entered by this Court on October 24, 2006. The contempt defendants repeatedly violated this Court’s Permanent Injunction by downloading computer code to MySpace users without their consent, “pagejacking”

and mousetrapping tactics to drive Internet users from the popular social networking website MySpace.com (“MySpace”) to websites owned or affiliated with the contempt defendants that subjected visitors to numerous online advertisements (the contempt defendants’ “advertising websites”). The contempt defendants’ abusive tactics enabled them to garner at least half a million dollars. However, their tactics also prompted hundreds of consumer complaints, a lawsuit by MySpace, Inc., and the entry of a preliminary injunction against Rines and Wallace by the U.S. District Court for the Central District of California.

In the course of their online advertising scheme, the contempt defendants repeatedly violated specific provisions of this Court’s Permanent Injunction by: (1) distributing online content (or “code”) to MySpace users’ computers without first obtaining those users’ express consent; (2) redirecting users to websites other than those they chose to visit, specifically, the contempt defendants’ advertising websites; (3) modifying the functions of users’ web browser navigation controls, which hindered users from departing the contempt defendants’ advertising websites; and (4) obtaining users’ personal information without first obtaining those users’ express consent. Moreover, defendant Rines further violated the Permanent Injunction by failing to procure a \$500,000 performance bond before participating or assisting in the downloading of content that causes the display of advertisements, among other things.

As discussed further below, the Permanent Injunction entered against defendant Rines binds contempt defendants Wallace and OTM under Federal Rule of Civil Procedure 65(d)(2) because Wallace and OTM received actual notice of the Order and participated with Rines in violating its provisions. Accordingly, in view of the contempt defendants’ order violations, the Commission respectfully requests the entry of a civil contempt order against Rines, Wallace, and OTM, and the disgorgement of the proceeds of their contumacious online advertising scheme.

II. Statement of Facts

A. The Underlying Case

On September 21, 2005, the Commission filed a complaint against defendant Rines and his now-defunct firm, Odysseus Marketing, Inc., charging them with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in the advertising and distribution of software programs. As subsequently amended, the FTC's complaint charged that the defendants engaged in deceptive or unfair practices by surreptitiously downloading "spyware" programs to consumers' computers that, among other things, displayed pop-up and other online advertisements, modified web browser search results, and installed third-party advertising and other programs without notice to consumers. PX01, Am. Compl. at 3-7, 11-13 (Docket #16-1) (exhibits omitted). Among other things, the Commission charged that the defendants' programs captured consumers' personal information, including their names and their email addresses, without their consent. *Id.* at 7.

After the filing of the amended complaint, this Court entered a stipulated Preliminary Injunction, finding that the defendants had likely engaged in the alleged violations and that the FTC was likely to prevail in its law enforcement action against defendant Rines. PX02, Mod. Stip. Prelim. Inj. at 1 ¶ 3 (Docket #22). Thereafter, Rines negotiated a settlement with the Commission through his counsel and agreed to the imposition of a monetary judgment and Permanent Injunction, which the Court entered on October 24, 2006. PX03, Stip. Final Order for Perm. Inj. and Settlement of Claims for Monetary Relief ("Perm. Inj.") (Docket #26).

The Court's Order includes a judg

¹ Defendant Rines is the sole owner, director, and officer of OTM, a New Hampshire corporation. PX33, N.H. Sec'y of State Corp. Records for Online Turbo Merchant, Inc. at 4; PX22, Rines Dep. at 30:16-20. OTM's last reported business address is Rines' home address. ep.

³ A person must register as a member and create a user profile to obtain and use an email account on MySpace. To create a user profile, a person must create a confidential password and provide certain personal information, including his or her name, birth date, and email address. *Id.* at 1 ¶ 4. Each user profile contains a “comments” section in which a user’s friends may leave comments for all viewers to read. MySpace users have the option to delete any comment. *Id.* at 2 ¶ 7. MySpace’s “groups” feature allows a g

those users' accounts to additional users, directing those users to the advertising websites. PX29, Wallace Dep. at 87:6-10, 98:11-19; PX22, Rines Dep. at 79:24-80:1; PX08, Wiley Decl. at 3-4 ¶¶ 7-8; PX10, Frazier Decl. at 1-4 ¶¶ 7-8.

In one phishing exploit, the contempt defendants sent emails and posted comments on MySpace users' profiles, inviting those users to click on a hypertext link, which, when clicked, opened a webpage enticing users to complete a form describing their physical characteristics to generate an electronic "sketch" of themselves. PX10, Frazier Decl. at 1-2 ¶ 5. Although this webpage resided on one of the contempt defendants' websites, the page prominently featured MySpace's logo and trademark, fostering the misleading impression that the page was sponsored by, or was a part of, MySpace. PX11, Printout of Contempt Defendants' "Sketch Page"; PX10, Frazier Decl. at 2 ¶ 5. The sketch page invited users to forward their sketch to other users by entering their MySpace login information, including their email addresses, into an online form. PX10, Frazier Decl. at 1-2 ¶ 5. However, users who completed this form were not actually verifying their login credentials with MySpace; rather, they were handing over their login information to the contempt defendants. PX29, Wallace Dep. at 87:6-10. Additionally, users who tried to leave these pages using their web browser navigational controls were, instead, redirected automatically to the contempt defendants' advertising websites. *Id.*; PX10, Frazier Decl. at 1-2 ¶ 5; *see generally id.* at 2 ¶ 5, 6 ¶ 8; PX12; PX16 at 4-7; PX21, Shing Decl. at 4-7 (depicting examples of advertising websites).

I

down below the holiday

⁷ Upon investigating these complaints, MySpace, Inc. discovered that the contempt defendants used additional phishing ploys to acquire users' personal information and redirect those users to the advertising websites. PX10, Frazier Decl. at 2 ¶ 6, 3-6 ¶ 8 (describing other phishing exploits).

In its investigation, MySpace, Inc. also found that contempt defendant Wallace used automated means to access over 300,000 MySpace user accounts without authorization and post at least 890,000 comments on user profiles with links to the advertising websites. *Id.* at 8 ¶ 13. These comments included computer code that hampered users from deleting the comments. *Id.* Additionally, in Fall 2007, MySpace found evidence that defendant Rines or others acting on his behalf engaged in similar conduct, using phished user accounts to drive traffic to websites registered to Rines. PX21, Shing Decl. at 3-8 ¶¶ 7-8.

Pagejacking. In their scheme, the contempt defendants drove MySpace users to their advertising websites through the use of pagejacking computer code—hidden code that redirected Internet users, without their consent, from webpages that they chose to visit, to webpages that they did not choose to visit. The contempt defendants distributed this code to users through at least two channels—the contempt defendants’ phishing webpages, and MySpace itself.

First, as previously noted, when MySpace users tried to depart the contempt defendants’ phishing webpages, including but not limited to the “sketch” or “eCard” pages described above, the contempt defendants automatically redirected or pagejacked those users to their advertising websites. PX10, Frazier Decl. at 1-2 ¶ 5; PX29, Wallace Dep. at 87:6-10, 98:11-19; *see* PX22, Rines Dep. at 79:24-80:1. The contempt defendants redirected these users by including code in the phishing webpages that was triggered when users attempted to leave those pages. *E.g.*, PX10, Frazier Decl. at 7-8 ¶¶ 11-14; PX21, Shing Decl. at 3-12 ¶¶ 7-9, 13-15.

Second, when MySpace users visited various user profiles or groups on the MySpace website itself, the contempt defendants redirected or pagejacked those users to the advertising websites as well. The contempt defendants redirected those users by adding code, in the form of images known as “overlays,” to cover the contents of numerous MySpace profiles and groups. These overlays, such as a picture of a mountain range that completely covered a user’s profile, or a smeared image that obscured a user’s picture on his profile, contained hidden pagejacking code. PX10, Frazier Decl. at 7 ¶ 11-12; PX17, Printout of Mountain Range Overlay; PX18, Printout of User Profile Overlay. When visitors clicked on these overlays, they were automatically redirected to the advertising websites. PX10, Frazier Decl. at 7 ¶ 11; PX21, Shing Decl. at 2 ¶ 3, 10 ¶ 13.

⁸ The contempt defendants' pagejacking and mousetrapping exploits were not the only instances in which the contempt defendants distributed online content to MySpace users without their consent. The contempt defendants also sent content to MySpace users without their consent by sending them spam emails. Most notably, MySpace technical personnel discovered that contempt defendant Wallace created over 11,000 "dummy" MySpace profiles to send large quantities of spam to other users. PX07 at 4-5 ¶¶ 18-20. Wallace aSpace use

⁹ PX24, Rines Rep. at 2:24-25 (written report of defendant Rines); PX22, Rines Dep. at 29:2-22 (authenticating written report and attesting to veracity of statements in report). Defendant Rines also admitted “maintaining a group of servers at ISP Servint.com that he has made available to Sanford Wallace at Mr. Wallace’s disposal in order to generate I

¹⁰ *Id.* at 31:12-13, 37:3-18; PX29, Wallace Dep. at 88:13-17. Acting for various merchants, online adve

(acknowledging continued operation of advertising scheme in June 2007); PX21, Shing Decl. at 3-11 ¶¶ 6-14 (reporting contempt defendants' phishing, pagejacking, and mousetrapping exploits in August 2007 and thereafter).

The contempt defendants' scheme not only enabled them to obtain a substantial amount of money, it also resulted in a substantial number of consumer complaints. MySpace, Inc. received literally hundreds of complaints from users concerning the contempt defendants' abusive tactics. PX10, Frazier Decl. at 8 ¶ 15 (reporting receipt of over 800 consumer complaints); *see* PX 20, Examples of Consumer Complaints.

Additionally, the contempt defendants' scheme also prompted legal action by MySpace, Inc., resulting in the imposition of a preliminary injunction against the contempt defendants. Last year, MySpace, Inc. initially sued contempt defendant Wallace in the U.S. District Court for the Central District of California, seeking injunctive and other relief for his violations of federal and state laws, including the federal CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.*, in connection with the contempt defendants' online advertising scheme.¹² The court subsequently entered a preliminary injunction, enjoining Wallace from using MySpace user profiles, accessing the MySpace website to send messages, or using MySpace for a commercial purpose, among other things. *MySpace, Inc. v. Wallace*, 498 F. Supp. 2d 1293 (C.D. Cal. 2007); PX04, Prelim. Inj. with Findings of Fact and Concls. of Law, *MySpace, Inc. v. Wallace*, 07-CV-1929 (C.D. Cal.

¹² Among other things, MySpace, Inc. alleged that the contempt defendants redirected MySpace users to their advertising websites with deceptive means, hindered users from departing those websites, and deceived users into divulging their personal information, including login information, and used that information to wrongfully access MySpace accounts and to send spam promoting the advertising websites through victims' MySpace accounts. PX05, Am. Compl., *MySpace, Inc. v. Wallace et al.*, 07-CV-1929 ¶¶ 18-19, 21, 24-27 (C.D. Cal. filed Sept. 26, 2007).

entered July 20, 2007). Thereafter, the court amended its injunction to expressly name de

¹³ “The burden of proving impossibility falls on [the alleged contemnors] and that burden is difficult to meet.” *Dystar Corp. v. Canto*, 1 F. Supp. 2d 48, 55 (D. Mass. 1997). “[S]elf-induced inability . . . does not meet the test.” *In re Power Recovery Sys., Inc.*, 950 F.2d 798, 803 (1st Cir. 1991). Indeed, in *Power Recovery*, the First Circuit affirmed a contempt finding against a contemnor who failed to comply with a court order to remove his equipment from another’s property, even though the contemnor had since sold the equipment. *Id.*

“The law is firmly established in this circuit that good faith is not a defense to civil contempt.” *Goya Foods, Inc. v. Wallack Mgmt. Co.*, 290 F.3d 63, 76 (1st Cir. 2002).

As discussed below, the contempt defendants should be held in civil contempt and should be ordered to disgorge the proceeds of their scheme because they had notice of the Court’s Permanent Injunction and violated numerous, specific provisions of that Order.

A. The Contempt Defendants Had Notice of the Permanent Injunction.

The Court’s Permanent Injunction binds contempt defendants Rines, Wallace, and OTM because they received actual notice of the Order. It is well-settled that a court’s contempt power extends not only to the named parties, but also to non-parties who have notice of a court’s order and the responsibility to comply with it. “Nonparties may be liable for civil contempt notwithstanding their nonparty status.” *Goya Foods*, 290 F.3d at 75. “[D]efendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). As the First Circuit has stated, “it has long been recognized that a nonparty may be held in civil contempt if, and to the extent that, [the non-party] knowingly aids or abets an enjoined party in transgressing a court order.” *Goya Foods*, 290 F.3d at 75 (citing *Gemco Latinoamérica, Inc. v. Seiko Time Corp.*, 61 F.3d 94, 98 (1st Cir. 1995)). Hence, Federal Rule of Civil Procedure 65(d) provides, in pertinent part, that injunctions are binding on the parties to the action and “other persons who are in active concert or participation with [them]” if they “receive *actual notice* of [the order] by personal service or otherwise.” FED. R. CIV. P. 65(d)(2) (emphasis added).

Actual notice is knowledge of an order’s existence, not of its exact terms. *See, e.g., Goya Foods*, 290 F.3d at 75 (“a nonparty must know of the judicial decree”); *Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 646 F.2d 800, 808 (2d Cir. 1981); *FTC v. Neiswonger*, 494 F. Supp. 2d 1067,

1079 (E.D. Mo. 2007) (“All that is required is knowledge of the mere existence of the injunction; not its precise terms.”). Personal service of the order is not required. FED. R. CIV. P. 65(d)(2) (referring to notice “by personal service or otherwise”); *Neiswonger*, 494 F. Supp. 2d at 1079.

In this case, there is clear and convincing evidence that each of the contempt defendants received actual notice of the Permanent Injunction. Defendant Rines negotiated the Permanent Injunction with the assistance of counsel, signed the proposed Order, and attested to receiving the Court’s Order after its entry. PX03, Perm. Inj. at 2 ¶ 8; *id.* at 27; PX22, Rines Dep. at 23-24; PX26, Rines Aff’d at 1-2. Contempt defendant OTM received actual notice of the Permanent Injunction as a matter of law because its sole owner, director, and officer, defendant Rines, had actual notice.¹⁴ Finally, contempt defendant Wallace admitted at his deposition last April that he was aware of the Court’s Order as to defendant Rines. PX29, Wallace Dep. at 118:2-3 (“I also believe that Walt has a separate agreement with FTC . . . Mr. Rines – I know that he’s under order at least I believe he is with the FTC.”), 174:14-21 (“I do know [Rines] entered into a stipulated agreement and I did review [the] stipulated agreement back at the time”); *see also id.* at 53:18-25, 195:1-14. Defendant Rines’ testimony further confirms that Wallace had notice of Rines’ Permanent Injunction. PX22, Rines Dep. at 63:9-24 (“Q: Have you given a copy of the Final Order to Sanford Wallace? A: . . . I believe he told me he looked it up online. . . . I’m

¹⁴ As previously noted, Rines is OTM’s sole owner, director, and officer. PX33, N.H. Sec’y of State Corp. Records at 4; PX22, Rines Dep. at 30:16-20. Consequently, OTM has notice of the Permanent Injunction. *See Dinco v. Dylex Ltd.*, 111 F.3d 964, 972 (1st Cir. 1997) (observing that director’s knowledge may be imputed to firm); *United States v. Bank of New England, N.A.*, 821 F.2d 844, 856 (1st Cir. 1987) (“knowledge obtained by corporate employees acting within the scope of their employment is imputed to the corporation”); *FTC v. Neiswonger*, 494 F. Supp. 2d at 1080 n.18 (imputing officers’ knowledge of order to their company in FTC civil contempt action); *see also Cablevision Sys. Corp. v. Muneyyirci*, No. 90-2997, 1995 WL 362541 at *3 n.1 (E.D.N.Y. Aug. 24, 1990) (holding that firm “had actual notice . . . by virtue of the fact that the people controlling the corporation had actual knowledge of those orders”).

¹⁵ Paragraph II.A expressly enjoins “[d]istributing, installing, or downloading, or causing any user of a covered product to download and install, any software program, code, script, or any other content *unless* such user provides express consent as defined in this Order prior to the distribution, installation, or downloading.” *Id.* (emphasis in original). The phrase

The Court's Order sets forth detailed requ

computers, such as redirecting users' web browsers to advertising websites, modifying and disabling the controls of users' web browser controls, or hindering users from deleting comments promoting the advertising websites. *See supra* pp. 8-9. Nor did the contempt defendants obtain users' advance assent to these effects by having them click a button clearly labeled to convey their consent or take some similar action. *See id.*

Although the contempt defendants provided a "terms of use" statement to some MySpace users—specifically, those users targeted with phishing exploits in the guise of holiday eCards—this statement was limited, misleading, inconspicuous, and patently insufficient to obtain users' express consent to the distribution of online content as required by the Order. First, the "terms of use" statement was very limited. It did not refer to the display of online advertisements, much less disclose the contempt defendants' uses of pagejacking and mousetrapping

before handing over their login information to the contempt defendants. *See id.*¹⁶ The contempt defendants' "terms of use" statement hardly complied with the detailed requirements for express consent agreed to and adopted in this Court's Order. The contempt defendants clearly violated Paragraph II.A of the Permanent Injunction by distributing content to MySpace users without obtaining their express consent.

2. The Contempt Defendants Distributed Content that Redirects Computer Users to Different Websites than those the Users Chose to Visit, in Violation of Permanent Injunction ¶ II.B.1.

The contempt defendants also violated Paragraph II.B.1 of the Permanent Injunction. This provision prohibits defendant Rines and those, like Wallace and OTM, who act in concert with him and have actual notice of the Order, from distributing content that redirects users' computers to different websites than those the users chose to visit. PX03, Perm. Inj. at 9 ¶ II.B.1.

As highlighted above, the contempt defendants distributed code that pagejacked MySpace users, redirecting them from Internet websites that they chose to visit, such as MySpace user profiles, MySpace groups, or holiday eCards ostensibly sent by their friends, to the contempt defendants' advertising websites. *See supra* p. 10. The contempt defendants' pagejacking code automatically redirected users to the advertising websites when users activated the code, either by clicking on MySpace profiles or groups covered with "overlay" images, or by attempting to depart the contempt defendants' holiday eCards and other phishing webpages. The code did not ask users if they wanted to visit the advertising websites, it simply diverted them to

¹⁶ Moreover, the "terms of use" disclosure resembles an end-user license agreement or boilerplate disclosure, which does not comply with the terms of the Permanent Injunction. *See, e.g.*, PX03, Perm. Inj. at 5 ¶ 8.d ("In the case of any disclosure required for purposes of obtaining express consent as defined in this Order, a disclosure made in any End User License Agreement shall *not* constitute a clear and conspicuous disclosure.") (emphasis in original).

those websites. *See id.* Accordingly, the contempt defendants clearly redirected users' computers to different websites than those the users chose to visit, in violation of Paragraph II.B.1 of the Permanent Injunction.

3. The Contempt Defendants Distributed Content that Modifies or Replaces the Functions of a Computer Application, in Violation of Permanent Injunction ¶ II.B.2.

The contempt defendants also violated Paragraph II.B.2 of the Permanent Injunction, which prohibits defendant Rines and those, like Wallace and OTM, who act in concert with him and have actual notice of the Order, from distributing computer code or other content that modifies or replaces any application's functions. PX03, Perm. Inj. at 9 ¶ II.B.2.¹⁷ As discussed in Section II above, the contempt defendants engaged in this prohibited practice by distributing code that mousetrapped computer users, modifying or disabling the navigational controls of their web browsers. *See supra* p. 11. This tactic interfered with the navigational function of the web browser application, hindering users from departing the advertising websites. *See id.* This tactic plainly modified or replaced a function of users' web browsers, thereby violating Paragraph II.B.2 of the Permanent Injunction.

4. The Contempt Defendants Obtained Users' Personally Identifiable Information Without Obtaining Users' Express Consent, in Violation of Permanent Injunction ¶ IV.A.

The Permanent Injunction prohibits defendant Rines and those, like Wallace and OTM, who act in concert with him and received actual notice of the Order, from "obtaining any

¹⁷ Paragraph II.B.2 expressly prohibits the distribution of code that "modifies or replaces any search engine's or other application's search results, search features, or functions." *Id.* ¶ II.B.2. The provision expressly applies to any "application," which includes web browser applications. The provision protects against the modification or replacement of any application's "functions," which includes the navigational functions of the web browser application. *Id.*

personally identifiable information of any person *unless* that person provides express consent . . . prior to the taking and use of the information.” PX03, Perm. Inj. ¶ IV.A (emphasis in original). Despite this prohibition, the contempt defendants obtained MySpace users’ personally identifiable information (“PII”) without first obtaining those users’ express consent.

The Permanent Injunction defines PII as identifiable information from or about an individual, including but not limited to a first and last name, an email address, or other online contact information. To obtain users’ “express consent” to the taking of any PII, the Order requires that the contempt defendants disclose, in advance, the specific information to be obtained and each specific use that will be made of the information. The disclosure must be clear and conspicuous, and unavoidable. Moreover, users must indicate their assent to the taking of their PII by clicking on a button that is labeled to convey “specific consent to the specific taking or use,” or by taking “substantially similar affirmative action authorizing the taking and use of the information.” PX03, Perm. Inj. pp. 4-6.

As discussed in Section II above, the contempt defendants obtained users’ PII in phishing exploits, using online forms that resembled the MySpace login form to cause users to disclose their email addresses and other personal information under the guise of forwarding “sketches” and eCards, or other online content, to other MySpace users. *See supra* pp. 6-9.

The contempt defendants failed to obtain MySpace users’ express consent before taking those users’ PII. First, the contempt defendants did not comply with the order requirement that they disclose each specific use of users’ information. Their phishing websites and the limited “terms of use” statement in their eCards failed to disclose that the contempt defendants would utilize MySpace users’ email addresses and accounts to send other users messages promoting advertising websites such as freevegasclubs.com. The contempt defendants’ “terms of use”

statement merely advised users that they would “[i]ntroduce new entertaining sites.” *See supra*
p. 8. Second, the contempt defendants’ statement regarding how they would utilize users’ PII
was highly inconspicuous and avoidable; as previously

defendant Wallace, as previously discussed, in downloading content to MySpace users that causes the display of advertisements, see *supra* pp. 10-11; modifies and disables the controls of web browser software applications, see *supra* p. 11; and collects MySpace users' PII. See *supra* pp. 6-8. Despite participating in and assisting these activities, Rines failed to secure the required surety bond or to provide that bond to the Commission. Indeed, Rines admitted last year that he had not obtained the bond. PX22, Rines Dep. at 108:4-7; PX24, Rines Rep. at 1-2. Moreover, the FTC has no record of receiving a copy of the required bond from the defendant. PX32, Burton Decl. at 4 ¶¶ 13-15. Rines' failure to secure the required performance bond constitutes another blatant violation of the Permanent Injunction.

C. The Contempt Defendants Should Be Ordered to Disgorge the Proceeds of their Online Advertising Scheme.

In view of the substantial evidence that the contempt defendants have violated numerous, specific provisions of this Court's Permanent Injunction in their online advertising scheme, the contempt defendants should be held in civil contempt and ordered to disgorge the proceeds of their scheme. Civil contempt sanctions may be imposed to coerce compliance with a court order and to compensate for the harm sustained as a result of contemptuous acts. See *In re Power Recovery Sys.*, 950 F.2d at 802; *G&C Merriam Co. v. Webster Dictionary Co.*, 639 F.2d 29, 34-35 (1st Cir. 1980). The proposed civil contempt order would require the contempt defendants to pay disgorgement for the harms caused as a result of their contemptuous acts. The district court has the equitable authority to order disgorgement in a contempt case. See *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 455-57 (1932); *Tom James Co. v. Morgan*, 141 Fed. App'x 894, 899 (11th Cir. 2005); *Manhattan Indus., Inc. v. Sweater Bee*, 885 F.2d 1, 5-6 (2d Cir. 1989) (citing *Leman*, 284 U.S. at 455-57); see also *Brine Inc. v. STX, LLC*, 367 F. Supp. 2d 61,

¹⁸ As previously discussed, defendant Rines maintained a spreadsheet relating to the contempt defendants' scheme. *See supra* pp. 13 n.11. Among other things, this spreadsheet identifies the daily number of users who viewed particular online adve

D. The Court May Enter the Proposed Contempt Order Based on the Testimony, Declarations, and Documentary Evidence if the Contempt Defendants Fail to Raise A Genuine Issue Of Material Fact for Hearing.

The law of this circuit holds that “a party has a right to an evidentiary hearing.”

surrounding the contempt are undisputed and cannot be further elucidated by evidence. *See, e.g., Morales-Feliciano*, 887 F.2d at 6-7.

V. Conclusion

Shortly after the Court entered its Permanent Injunction in this case, defendant Rines joined contempt defendants Wallace and OTM in implementing a pernicious online advertising scheme, targeting MySpace users with phishing, pagejacking, and mousetrapping exploits to drive thousands of users to the contempt defendants' advertising websites in violation of the Court's Order. The contempt defendants enric