

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DISH NETWORK L.L.C.)	
and NAGRASTAR LLC,)	Civil Case No. 8:18-cv-1332-VMC-AAS
)	
Plaintiffs,)	
)	
v.)	
)	
NELSON JOHNSON, JASON)	
LABOSSIERE, SET BROADCAST)	
LLC, STREAMING)	
ENTERTAINMENT TECHNOLOGY)	
LLC, DOE 1, as Trustee for Chateau)	
Living Revocable Trust, and DOE 2,)	
as Trustee for Macromint Trust,)	
individually and collectively d/b/a)	
www.setvnow.com,)	
)	
Defendants.	/	

**PLAINTIFFS’ MOTION FOR REINSTATEMENT OF ACTION
AND ORDER TO SHOW CAUSE WHY CONTEMPT SANCTIONS
SHOULD NOT BE IMPOSED FOR VIOLATING PERMANENT
INJUNCTION**

Plaintiffs DISH Network L.L.C. and NagraStar LLC (collectively, “DISH”) move this Court to reinstate this case to active status and order Defendant Jason LaBossiere and his cohorts Sean Beaman and Stefan Gollner to show cause why they should not be held in contempt for their blatant and repeated violations of this Court’s permanent injunction entered on October 24, 2018. (Doc. 84.) LaBossiere, Beaman and Gollner’s willful disregard of this Court’s authority is no accident, as they continue to engage in the same illicit conduct that prompted this lawsuit, was adjudged by this Court to be infringing and unlawful, and which they

admitted was a willful and malicious violation of the Federal Communications Act, notwithstanding this Court's permanent injunction clearly enjoining their conduct. An immediate response to their contumacious non-compliance with this Court's order is warranted because their continuing violations cause significant harm by depriving DISH of legitimate, paying subscribers and subscription revenues.

I. CASE BACKGROUND

DISH filed this case on June 4, 2018 for violations of the Federal Communications Act, 47 U.S.C. § 605 et seq., based upon Defendants' operation of an illicit streaming service known as SetTV, whereby Defendants acquired DISH's satellite communications of television programming and rebroadcast that DISH Programming over the internet to users of their SetTV service without DISH's authorization. (Doc. 1.) Defendants profited from their scheme through the sale of device codes or subscriptions used to access the SetTV service, which Defendants sold directly and through their reseller network. (*Id.*)

The Court entered a temporary restraining order against Defendants on June 4, 2018 that enjoined them from operating the SetTV service. (Doc. 15.) In addition, the Court ordered Defendants to preserve evidence and froze their assets based in part on evidence of Defendants' extensive criminal backgrounds and long history of violating court orders. (*Id.*) The TRO was converted into a preliminary injunction on July 2, 2018. (Doc. 63.)

The parties moved for an agreed final judgment and permanent injunction on October 24, 2018, wherein Defendants stipulated to the following facts:

a. “The SetTV streaming service distributed DISH Programming without authorization from DISH. . . . Defendants knew that DISH Programming was being taken from DISH’s satellite broadcasts and redistributed without authorization on their SetTV streaming service at the time these actions were taking place.”

b. “Defendants knew that the unauthorized distribution of DISH Programming on their SetTV streaming service was certain to harm DISH by depriving DISH of legitimate, paying subscribers and corresponding equipment and subscription revenues.”

c. “Defendants violated 47 U.S.C. § 605(a) by operating the SetTV streaming service, which distributed DISH Programming without authorization.”

d. “Defendants also violated 47 U.S.C. § 605(e)(4) by selling SetTV subscriptions and set-top boxes, which are required or intended for accessing the SetTV streaming service that distributed DISH Programming without authorization.”

e. “Defendants’ violations of 47 U.S.C. § 605(a) and (e)(4) were willful, malicious, and for the purpose of commercial financial advantage and private financial gain.”

(Doc. 83 [emphasis added].) The Court entered a \$90,199,000 final judgment and permanent injunction against Defendants on October 24, 2018. (Doc. 84.)

II. FACTS ESTABLISHING CONTEMPT

A. LaBossiere Co-Owned SetTV With Sean Beaman and Stefan Gollner.

Sean Beaman

DISH was allowed to conduct financial-related discovery in the early stages of the case to determine the extent of Defendants' noncompliance with the Court's asset freeze. (Doc. 49, 60.) Through subpoenas served on financial institutions, DISH discovered that Sean Beaman co-owned and was involved in the day-to-day operation of the SetTV streaming service along with the named Defendants Jason LaBossiere and Nelson Johnson. Among other things, discovery revealed that nearly \$4.7 million was transferred from SetTV bank accounts to Beaman's companies during the one-year period leading up to the lawsuit. (Gedeon Decl. ¶ 7a, Exs. 1-4.) And, more than \$800,000 was transferred from SetTV bank accounts to Beaman's companies immediately after the case was filed in violation of the asset freeze. (*Id.* ¶ 7b, Exs. 5-6.) Profit distributions were regularly paid from SetTV's bank accounts in fixed percentages to Beaman (41%), LaBossiere (34%), and Johnson (25%). (*Id.* ¶ 7c, Exs. 7-8.)

DISH was poised to move for contempt against Defendants and Beaman in September 2018 based on their violations of the TRO, as established by the \$3.4 million that was transferred from their accounts in violation of the Court's asset freeze. (*Id.* ¶ 8.) DISH's contempt motion was provided to Defendants' counsel and shortly thereafter Defendants and Beaman engaged in settlement discussions with DISH. (*Id.*, Exs. 9-10.) DISH entered into a confidential settlement

agreement with Defendants and Beaman on October 23, 2018 that obviated the need for the contempt motion and instead called for the filing of the agreed final judgment and permanent injunction, in addition to the payment of a confidential settlement sum by Defendants and Beaman. (*Id.* ¶ 9, Ex. 11.) Beaman agreed as part of the settlement to be bound by the Court's permanent injunction entered on October 24, 2018. (*Id.*)

Stefan Gollner

SetTV profit distributions intended for Beaman were often deposited into the Wells Fargo account held in the name of a company that was one-half owned by Beaman and his wife Jessica, and one-half owned by Stefan Gollner. (*Id.* ¶ 10, Exs. 2, 12.) The deposit of SetTV profit distributions into this Wells Fargo account was typically followed by two withdrawals – one transfer of funds to another company owned by Beaman and one transfer of funds to Gollner. (*Id.* ¶ 11, Ex. 2.) Gollner's ownership in the SetTV business is further established by an operating agreement prepared for Defendant Set Broadcast LLC that identifies four owners: LaBossiere (34%), Johnson (25%), Beaman (25%), and Gollner (16%). (*Id.* ¶ 12, Ex. 13.) The foregoing ownership structure is consistent with Beaman's receipt of 41% of the SetTV profit distributions – equivalent to his 25% and Gollner's 16% ownership interests in SetTV. (*Id.* ¶ 12.) Gollner's participation in the SetTV business was established after DISH settled with LaBossiere and Beaman and moved for the final judgment and permanent injunction in October 2018 – hence, Gollner was not part of those proceedings.

B. LaBossiere, Beaman, and Gollner Violated the Permanent Injunction Through Their Operation of ExpediteTV.

LaBossiere, Beaman, and Gollner never exited the illicit streaming business in October 2018 as required by the Court’s permanent injunction – they instead transitioned their users to a new, rebranded service called ExpediteTV that, like their recently shutdown SetTV service, retransmitted DISH Programming without authorization.

1. Retransmission of DISH Programming on ExpediteTV.

The ExpediteTV service was advertised and offered for sale at the web domain ExpediteTV.com, where it was touted as the “BEST Deal on IPTV,” offering “800+ Channels” at prices as low as \$24/month. (*Id.* ¶ 13, Ex. 14.) DISH acquired access to the ExpediteTV service by purchasing device codes to access the service at ExpediteTV.com. (*Id.* ¶ 15.) DISH used those device codes to periodically monitor a sampling of channels on the ExpediteTV service between January 2019 and February 2020 and identified DISH Programming. (*Id.* ¶ 16.) Watermarks inserted into DISH’s satellite communications for the purpose of analyzing the ExpediteTV service were detected when viewing DISH Programming on ExpediteTV, confirming the DISH Programming retransmitted on the ExpediteTV service originated from DISH’s satellite communications. (*Id.* ¶ 16, Ex. 17.) DISH also identified instances in February 2020 where the ExpediteTV service was configured to retransmit DISH Programming that originated from the internet communications of DISH’s affiliate, streaming services provider Sling TV L.L.C, as

confirmed by observing identifiers unique to Sling’s internet communications when selecting programming on ExpediteTV. (*Id.* ¶ 17, Ex. 18.)

2. LaBossiere, Beaman, Gollner, and Others Worked Together to Operate ExpediteTV.

ExpediteTV Payment Processing

DISH obtained evidence from brothers Roy “Ken” Clemons and Brent Clemons that establishes the Clemons brothers were retained by LaBossiere, Beaman, and Gollner to process credit card payments, at first for their SetTV service and later for their additional streaming services such as ExpediteTV. (*Id.* ¶ 18.) The Clemons brothers were tasked by LaBossiere, Beaman, and Gollner with setting up entities and establishing bank and merchant accounts in the names of those entities to receive money in connection with the streaming services. (*Id.* ¶¶ 18-20e, Exs. 19-30.) The evidence includes, among other things, text messages where Beaman discusses ExpediteTV with Ken Clemons and instructs him to transfer money to a specified Wells Fargo account that Gollner created on November 9, 2018 — about one month after the Court entered the permanent injunction. (*Id.* ¶¶ 19c-20d, Exs. 22-30.) At least eighty-six payments explicitly referencing ExpediteTV were deposited into that Wells Fargo account between January 22, 2019 and May 28, 2019, totaling more than \$1 million. (*Id.* ¶ 20e, Ex. 23.)

LaBossiere, Beaman, and Gollner also processed payments for their ExpediteTV service through other businesses associated with them (as opposed to

using the Clemons brothers). (*Id.* ¶ 21.) DISH, for example, purchased a device code to the ExpediteTV service in July 2020 and the credit card payment recipient was identified as “UptickTV” – a name that corresponds with a web domain name registered by Beaman and a fictitious business name registered to LaBossiere’s address in Largo, Florida. (*Id.* ¶¶ 21a-21f, Exs. 31-40.) LaBossiere, Beaman, and Gollner also used the same messaging service to market and distribute device codes for the ExpediteTV and UptickTV services, as discussed below. (*Id.* ¶¶ 22-22g, Exs. 42, 44-45.) In sum, DISH’s credit card payment for the ExpediteTV device code was made to an account associated with LaBossiere, Beaman, and Gollner – albeit an account held in the name of their related business involving UptickTV.

ExpediteTV Device Code Distribution & Marketing

DISH obtained evidence in May 2021 from Avochato, a text/SMS messaging and live chat service, that shows LaBossiere, Beaman, and Gollner used Avochato to deliver ExpediteTV device codes and market the ExpediteTV service to their customers. (*Id.*) The Avochato account was created by Beaman, the sources of payment associated with the Avochato account included Beaman’s credit cards and Gollner’s Wells Fargo account discussed above, and the Avochato account users included Beaman, LaBossiere, and Gollner. (*Id.* ¶¶ 22a-22d, Exs. 42-45.)

The Avochato service was used to deliver device codes to ExpediteTV users, as shown in communications such as “Thank you for your order from ExpediteTV . . . Here are your login details” and “ExpediteTV Login: <http://app.expeditetv.com>

Service ID: XXX User Name: XXX Password: XXX Expire Date: 27th December 2018 Thank You.” (*Id.* ¶ 22e, Exs. 44-45.) The Avochato service was also used to remind ExpediteTV users to renew their device codes and to otherwise market the ExpediteTV service, as shown in communications such as “Your TV subscription from ExpediteTv.com is expiring ... Please renew your subscription by clicking ...” and “Try ExpediteTV \$15/month. 800 Channels+ VOD Movies.” (*Id.* ¶ 22f, Ex. 44.)

LaBossiere’s Jailhouse Conversations Regarding ExpediteTV

DISH obtained telephone recordings from the Pinellas County Sheriff’s Office in May 2021 that show inmate LaBossiere discussing with Beaman and Osivette Brito the ExpediteTV service and legal action by DISH. (*Id.* ¶ 23, Exs. 47-50.) Brito previously worked with LaBossiere, Beaman, and Gollner as a reseller of device codes for their SetTV service and allegedly developed the software application used with their ExpediteTV service. (*Id.* ¶ 20d, Exs. 22, 29-30.) LaBossiere made 850 telephone calls in April and May 2021 that included 68 calls to Beaman and 81 calls to Brito. (*Id.* ¶ 23a, Ex. 47.) Among other things, Brito informed LaBossiere that Brent Clemons “open[ed] his mouth,” that DISH was enforcing the SetTV judgment, and advised LaBossiere to speak with his counsel because “[t]hey know Sean. They know you. They know everything.” (*Id.* ¶ 23b, Ex. 48 [emphasis added], *see also* ¶ 23c, Ex. 50 [similar conversation between LaBossiere, Beaman, and Gollner].) Notably, DISH sent correspondence to LaBossiere’s counsel two days earlier concerning LaBossiere and Beaman’s involvement in ExpediteTV. (*Id.* ¶ 23b, Ex. 49.)

C. LaBossiere, Beaman, and Gollner Continue to Violate the Permanent Injunction Through Their Operation of Mundo TV and Must TV.

1. Retransmission of DISH Programming on Mundo TV / Must TV.

The Mundo TV service is advertised and offered for sale at the web domain Mundo-TV.com, where it is marketed as “[a]ll your favorite movies, series and sports events in one place,” offering “400+ channels” as an alternative to “expensive cable or a satellite dish.” (*Id.* ¶ 24, Ex. 51.) The Must TV service is advertised and offered for sale at the web domain Must-TV.com, which is virtually identical in appearance to the Mundo TV website and uses the same domain name registrar and web services provider. (*Id.* ¶ 25, Ex. 52.) The same software application, offered for download at Mundo-TV.com and Must-TV.com, is used to access the Mundo TV and Must TV services – further establishing these are essentially the same services. (*Id.* ¶¶ 31a-31b, Exs. 51-54.)

DISH acquired access to the Mundo TV and Must TV services by purchasing a device code to each service at the respective websites, Mundo-TV.com and Must-TV.com. (*Id.* ¶¶ 27-28, Exs. 55-56.) The Mundo TV service was analyzed on November 22, 2021, the Must TV service was analyzed on January 20, 2022, and each service was retransmitting DISH Programming acquired from the internet communications of DISH or its affiliate Sling TV L.L.C., as confirmed by observing identifiers unique to DISH and Sling internet communications when viewing

channels on the Mundo TV and Must TV services. (*Id.* ¶¶ 29-30; Duval Decl. Exs. 1-2.)

2. LaBossiere, Beaman, Gollner, and Others Work Together to Operate Mundo TV / Must TV.

DISH received an unsolicited email on May 30, 2021 offering subscriptions for purchase to the Mundo TV service. (*Id.* ¶ 32, Ex. 57.) The email was sent to the same email address that DISH used when purchasing device codes to the ExpediteTV service and, having not solicited any communication from Mundo TV, was likely received because of DISH's prior device code purchases from LaBossiere, Beaman, and Gollner. (*Id.*) DISH's credit card payment for the Mundo TV device code was processed by a Florida company having connections to LaBossiere, Beaman, and Gollner. (*Id.* ¶¶ 34a-34d, Exs. 55, 59-62.)

DISH was directed to Must-TV.com when attempting to renew a device code for the PingTV service at Uptickrenew.com. (*Id.* ¶ 35, Ex. 63.) PingTV was operated by LaBossiere, Beaman, and Gollner. (*Id.* ¶ 35a, Ex. 45.) Uptickrenew.com is a web domain name associated with LaBossiere, Beaman, and Gollner's UptickTV service, as discussed above. (*Id.* ¶¶ 21a, 35b, Exs. 32-33, 63.) DISH's credit card payment for the Must TV device code was processed by a Florida company having connections to Mundo TV and LaBossiere, Beaman, and Gollner. (*Id.* ¶¶ 35c-35d, Exs. 55-56, 64-65.)

In sum, Mundo TV and Must TV are related services operated by LaBossiere, Beaman, and Gollner that – like their earlier SetTV and ExpediteTV services –

provide users with unauthorized access to DISH Programming. If not held in contempt for their violations of this Court’s permanent injunction, LaBossiere, Beaman, and Gollner will undoubtedly continue retransmitting DISH Programming and rebranding their streaming services in an attempt to prevent DISH from discovering their illicit activity. LaBossiere, Beaman and Gollner’s repeated violations of this Court’s permanent injunction warrant further injunctive relief and the imposition of sanctions pursuant to this Court’s inherent authority to enforce compliance with its orders.

IV. ARGUMENT

A. Legal Standard Governing Civil Contempt.

“[I]njunctions are enforced through the district court’s civil contempt power. . . . If a party contends that another party is violating an injunction, the aggrieved party should move the court for an order to show cause why the other party should not be held in contempt.” *Thomas v. Blue Cross & Blue Shield Ass’n*, 594 F.3d 823, 829 (11th Cir. 2010) (internal citations omitted).

“A finding of civil contempt must be based upon clear and convincing evidence that: ‘1) the allegedly violated order was valid and lawful; 2) the order was clear, definite, and unambiguous; and 3) the alleged violator had the ability to comply with the order.’” *Zow v. Regions Fin. Corp.*, 595 F. App’x 887, 889 (11th Cir. 2014) (citation omitted). “Once a prima facie showing of a violation has been made, the burden of production shifts to the alleged contemnor, who may defend his failure on the grounds that he was unable to comply.” *Commodity Futures*

Trading Comm'n v. Wellington Precious Metals, Inc., 950 F.2d 1525, 1529 (11th Cir. 1992). “[S]ubstantial, diligent, or good faith efforts are not enough; the only issue is compliance.” *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010).

B. LaBossiere, Beaman, and Gollner’s Violations of the Permanent Injunction Constitute Contempt.

1. The Permanent Injunction Is a Valid and Lawful Order.

The Court’s permanent injunction is a valid and lawful order authorized under the FCA, 47 U.S.C. § 605(e)(3)(B). *See, e.g., Carnival Corp. v. McCall*, No. 18-24588-CIV, 2020 WL 5505448, at *10 (S.D. Fla. Aug. 25, 2020), *report and recommendation adopted*, No. 18-CV-24588-UU, 2020 WL 5409150 (S.D. Fla. Sept. 9, 2020) (finding permanent injunction was a valid and lawful order for purposes of imposing contempt where the injunction was issued pursuant to a federal statute). Moreover, LaBossiere and Beaman agreed to the Court’s entry of the permanent injunction. (Doc. 83; Gedeon Decl. ¶ 9, Ex. 11.) Likewise, Gollner was a co-owner involved in the operation of Defendant Set Broadcast LLC, which also agreed to the Court’s entry of the permanent injunction. (Doc. 83; Gedeon Decl. ¶ 12, Ex. 13.) Accordingly, LaBossiere, Beaman, and Gollner are in no position to challenge the validity or lawfulness of the Court’s permanent injunction. *See, e.g., Fed. Trade Comm’n v. Williams, Scott & Assocs. LLC*, No. 1:14-CV-1599-HLM, 2014 WL 12625459, at *4 (N.D. Ga. Dec. 2, 2014) (finding first requirement for contempt satisfied where defendants stipulated to the terms of a preliminary injunction that was entered by the court).

2. The Permanent Injunction Is Clear and Unambiguous.

“A clear and unambiguous order is one that leaves ‘no uncertainty in the minds of those to whom it is addressed, . . . who must be able to ascertain from the four corners of the order precisely what acts are forbidden.’” *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1203 (11th Cir. 2001) (citation omitted). To this end, an “injunction should clearly let [a] defendant know what he is ordered to do or not to do.” *Id.* (citation omitted). The Court’s permanent injunction is clear, definite, unambiguous, and not susceptible to any interpretation that would explain why LaBossiere, Beaman, and Gollner failed to comply with the order.

The Court’s permanent injunction clearly defines the group of persons bound by the order: “Defendants, and any of their officers, agents, servants, employees, or other persons acting in active concert or participation with any of the foregoing that receive[] actual notice of the order.” (Doc. 84.) *See* Fed. R. Civ. P. 65(d)(2) (defining persons bound by injunction in similar terms). LaBossiere is a named defendant and thus bound by the permanent injunction. Beaman and Gollner are bound by the injunction because they are “officers, agents, servants, [or] employees” of Defendant Set Broadcast LLC. (Gedeon Decl. ¶¶ 7-12.) Beaman and Gollner are also bound by the injunction because each were “acting in active concert or participation with” LaBossiere (and each other) in violating the injunction. *See supra* Parts III.B-C; *Waffenschmidt v. MacKay*, 763 F.2d 711, 717 (5th Cir. 1985) (“An injunction binds not only the parties subject thereto, but also non-parties who act with the enjoined party.”); *see also N.L.R.B. v. Laborers’ Int’l*

Union of N. Am., AFL-CIO, 882 F.2d 949, 954 (5th Cir. 1989) (“[A]ny party who knowingly aids, abets, or conspires with another to evade an injunction or order of a court is also in contempt of [] court.”).

Furthermore, LaBossiere, Beaman, and Gollner each received actual notice of the Court’s permanent injunction. LaBossiere and Beaman were parties to the settlement agreement and expressly agreed to the terms of the permanent injunction, which were incorporated in and attached to the settlement agreement. (Gedeon Decl. ¶ 9, Ex. 11.)¹ Gollner, as an owner and member of Set Broadcast LLC, also received actual notice of the Court’s permanent injunction and consented to the injunction because Set Broadcast LLC’s operating agreement requires the unanimous approval of its members before entering into any settlement agreement or incurring any substantial liability. (*Id.* ¶ 12, Ex. 13.) The permanent injunction was served on Mr. Shapiro – the attorney representing LaBossiere, Beaman, and Set Broadcast LLC during the settlement discussions – and on Mr. Faehner – the attorney serving as Set Broadcast LLC’s registered agent at the time the injunction was entered. (Docs. 83, 84; Gedeon Decl., Exs. 9-10.) Thus, LaBossiere, Beaman, and Gollner received requisite notice of the permanent injunction. *See, e.g., Leshin*, 618 F.3d at 1236 (finding district court did not abuse its discretion in holding that non-party entity had notice of injunction where non-party was owned

¹Beaman’s stipulation to abide by the Court’s permanent injunction as part of the settlement further demonstrates that Beaman is in fact bound by that injunction.

by one of the defendant entities and the individual defendants served as its officers and controlled or supervised its actions).

In addition, the Court's permanent injunction clearly identifies the conduct prohibited by the order, which includes:

a. receiving, retransmitting, copying, or assisting others in receiving, retransmitting, or copying, any of DISH's satellite or over-the-top Internet transmissions of television programming or any content contained therein without authorization;

b. manufacturing, assembling, modifying, importing, exporting, selling, or distributing any passcode, subscription, set-top box, application, or any other device or equipment that is primarily of assistance in, or that is intended to be used for, receiving or assisting in receiving DISH's satellite or over-the-top Internet transmissions of television programming or any content contained therein without authorization.

(Doc. 84 ¶ 3.)

LaBossiere, Beaman, and Gollner violated subpart 3(a) of the Court's permanent injunction by, among other things, receiving, retransmitting, and assisting users to receive DISH Programming as part of their ExpediteTV, Mundo TV, and Must TV services without DISH's authorization. *See supra* Parts III.B-C. LaBossiere, Beaman, and Gollner also violated subpart 3(b) of the Court's permanent injunction by, among other things, distributing devices codes and software applications that were used in receiving DISH Programming through their ExpediteTV, Mundo TV, and Must TV services without DISH's authorization. *Id.* There can be no doubt that LaBossiere, Beaman, and Gollner knew their conduct was prohibited by the permanent injunction because it was the same type

of conduct that gave rise to this lawsuit concerning their earlier SetTV service and the same type of conduct stipulated to be unlawful and permanently enjoined. (Doc. 83.) *See, e.g., Tracfone Wireless, Inc. v. Technopark Co.*, 313 F.R.D. 680, 688 (S.D. Fla. 2016) (finding permanent injunction was clear and unambiguous order for contempt purposes where it permanently enjoined defendant from engaging in conduct that was substantively identical to the previously-enjoined conduct that prompted suit).

3. The Permanent Injunction Could Have Been Followed.

LaBossiere, Beaman, and Gollner each had the ability to comply with the Court's permanent injunction by simply discontinuing their involvement with the unauthorized streaming services that provide DISH Programming – all they had to do was exit the infringing business in which they were involved at the time the injunction was entered. Rather than leave the business, however, LaBossiere, Beaman, and Gollner transitioned their SetTV users to their rebranded ExpediteTV service and continued to retransmit DISH Programming and profit from their sale of device codes at the expense of DISH. (Gedeon Decl., ¶¶ 22e-22g, Exs. 44-45.) LaBossiere, Beaman, and Gollner had the ability to comply with the Court's permanent injunction, but purposefully chose to violate the injunction and therefore are properly held in contempt. *See, e.g., Fed. Trade Comm'n v. Nat'l Urological Grp., Inc.*, No. 1:04-CV-3294-CAP, 2017 WL 6759868, at *22 (N.D. Ga. Oct. 10, 2017), (finding defendants were able to comply with permanent injunction in several ways, including by “refraining from selling the[] products altogether”),

aff'd, 786 F. App'x 947 (11th Cir. 2019); *see also Chanel, Inc. v. Krispin*, No. 08-23439-CIV, 2009 WL 10667789, at *3 (S.D. Fla. July 31, 2009) (holding third contempt factor met where defendants “had the ability to comply with the Court’s Permanent Injunction by simply refraining from engaging in the unauthorized advertisement, promotion, and offering for sale of merchandise using the Plaintiffs’ respective trademarks”), *report and recommendation adopted*, No. 08-23439-CIV, 2009 WL 10668629 (S.D. Fla. Aug. 31, 2009).

C. LaBossiere, Beaman, and Gollner’s Contempt Warrants Sanctions.

The Eleventh Circuit has made clear that “[d]istrict courts have broad discretion in fashioning civil contempt sanctions.” *Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1519 (11th Cir. 1990). District courts have the “authority to impose sanctions designed to ensure compliance . . . among them: a coercive daily fine, a compensatory fine, attorney’s fees and expenses . . . and coercive incarceration.” *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1304 (11th Cir. 1991) (internal citations omitted). “When fashioning a sanction to secure compliance, a district court should consider ‘the character and magnitude of the harm threatened by continued contumacy and the probable effectiveness of any suggested sanction in bringing about the result desired.’” *Id.*

1. DISH Should Be Awarded a Daily Coercive Fine.

DISH establishes by clear and convincing evidence that – despite this Court’s permanent injunction – LaBossiere, Beaman, and Gollner continue to

engage in the operation of services that retransmit DISH Programming without authorization. *See supra* Part III. LaBossiere, Beaman, and Gollner have repeatedly thumbed their noses at the legal process and shown absolute disrespect for this Court's orders in several ways.

First, the Court granted DISH's motion for temporary restraining order on June 4, 2018, which ordered Defendants to cease operating their SetTV service, preserve evidence, and freeze their assets. (Docs. 3, 15.) The Court entered the TRO premised on Defendants' extensive criminal backgrounds and histories of violating court orders in other contexts. (Doc. 15.) A day later, on June 5, 2018, after being served with notice of the Court's TRO, Defendants and Beaman immediately began transferring SetTV's assets in violation of the TRO — ultimately, transferring more than \$3.4 million from their accounts. (*Id.*; Gedeon Decl. ¶ 8, Exs. 9-10.) Defendants and Beaman transferred these assets despite be warned that **“any act by them in violation of any of the terms of this Order . . . may be considered and prosecuted as contempt.”** (Doc. 15 [emphasis in original].)

Second, LaBossiere, Beaman and Gollner made a calculated decision to circumvent any investigation into the magnitude of their illicit streaming operation by settling with DISH — agreeing to the entry of a \$90,199,000 final judgment and a permanent injunction enjoining their illicit conduct — all while having no intention of complying with either by simultaneously orchestrating plans to continue their illicit streaming operation in contravention of this Court's orders. (Gedeon Decl. ¶¶ 13–35; *see supra* Parts III. B-C.)

Third, notwithstanding this Court's entry of a TRO, preliminary injunction, and permanent injunction, LaBossiere, Beaman and Gollner continue to engage in the same type of infringing conduct that gave rise to this lawsuit, that this Court deemed unlawful, and that they stipulated to be willful and malicious violations of the FCA – undertaken for their own commercial advantage and private financial gain, while paying nothing for the rights that they continue to exploit. (See Gedeon Decl. ¶¶ 18-35.)

LaBossiere, Beaman, and Gollner's contumacious conduct warrants the imposition of a coercive sanction of \$1,000 per day for each day that LaBossiere, Beaman, or Gollner fails to comply with this Court's permanent injunction, commencing 14 days after this Court's order finding them in contempt. This sanction is consistent with the imposition of other coercive fines awarded by courts for similar egregious and willful misconduct, notwithstanding the entry of injunctive relief. *See, e.g., Simone v. VSL Pharms., Inc.*, No. CV TDC-15-1356, 2016 WL 3466033, at *28 (D. Md. June 20, 2016) (imposing coercive fine of \$1,000 per day as a contempt sanction for every day after court's entry of order that infringing ads containing trademark or any variation thereof persisted in internet search results), *modified sub nom., De Simone v. VSL Pharms., Inc.*, No. CV TDC-15-1356, 2018 WL 4567111 (D. Md. Sept. 24, 2018); *SEC v. Lauer*, No. 03-80612-CIV-MARRA, 2006 WL 2457671, at *8 (S.D. Fla. Jan. 24, 2006) (imposing coercive daily fine of \$1,000 for each day of non-compliance after twenty days), *aff'd*, 240 F. App'x 355 (11th Cir. 2007); *see also NuScience Corp. v. Henkel*, No.

CV 08-2661 R (FFMx), 2015 WL 103378, at *1 (C.D. Cal. Jan. 5, 2015) (ordering, after 14 days-notice to non-party contemnors, the payment of a coercive fine of “\$5,000 *per diem*” until “(a) all offending websites . . . and other Internet material are taken down; and (b) the Court is provided with satisfactory sworn evidence of the removal of the offending material and the steps taken to prevent its reappearance”).

2. DISH Should Be Awarded Attorneys’ Fees and Costs.

LaBossiere, Beaman, and Gollner’s blatant disregard of this Court’s permanent injunction further warrants an award of attorneys’ fees and costs incurred by DISH in bringing this motion. The Eleventh Circuit has held an award of attorney’s fees to a complainant in civil contempt proceedings to be an appropriate sanction within a district court’s discretion where such fees “are limited to those reasonably and necessarily incurred . . . to enforce compliance.” *Abbott Labs. v. Unlimited Bevs., Inc.*, 218 F.3d 1238, 1242 (11th Cir. 2000) (affirming award of attorney’s fees as a contempt sanction for defendant’s violation of consent judgment in trade dress infringement lawsuit); *see also Sizzler Family Steak Houses v. W. Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1535 (11th Cir. 1986) (affirming contempt finding and imposition of sanctions, including attorney’s fee award for defendant’s violation of order restricting its use of a service mark).

DISH should not be required to shoulder the costs of compelling LaBossiere, Beaman, and Gollner to comply with the permanent injunction entered in this case. LaBossiere, Beaman, and Gollner should be held jointly and severally liable for

DISH's attorneys' fees and costs incurred in connection with this motion. DISH will file a motion pursuant to L.R. 7.01(c) establishing the amount of attorney's fees and costs to be awarded to DISH.

V. CONCLUSION

DISH respectfully requests that the Court reinstate this case and order LaBossiere, Beaman, and Gollner to show cause why they should not be held in contempt for violating the permanent injunction. Upon finding contempt, DISH requests that the Court issue an order: (i) holding LaBossiere, Beaman, and Gollner in contempt of court for their violations of paragraphs 3(a) and 3(b) of the Final Judgment and Permanent Injunction entered on October 24, 2018; (ii) directing that LaBossiere, Beaman, and Gollner promptly comply with the permanent injunction and, within fourteen (14) days of this Court's order finding them in contempt, provide satisfactory sworn evidence of their removal of DISH Programming from their streaming services and the measures taken to prevent its recurrence; (iii) assessing a coercive fine of \$1,000 per day pending LaBossiere, Beaman, and Gollner's full compliance with this Court's contempt order, with such fine not to commence until 14 days after entry of this Court's order finding them in contempt; (iv) awarding coercive incarceration in the event LaBossiere, Beaman,

or Gollner fail to comply with this Court's contempt order²; and (v) awarding DISH its attorneys' fees and costs incurred in connection with this motion.

LOCAL RULE 3.01(g) CERTIFICATION

DISH's counsel conferred with Joseph Shapiro, counsel of record for Defendants that also represented Beaman, on February 24, 2022 by telephone and was informed that he no longer represents Defendants or Beaman. As a courtesy, DISH's counsel also conferred with David Delrahim, an attorney representing LaBossiere in matters outside of this case, on February 24, 2022 by telephone and on February 25, 2022 by email, but was unable to resolve the issues presented in the motion.

Dated: February 28, 2022

Respectfully submitted,

/s/ Timothy M. Frank

Chad M. Hagan (*pro hac vice*)

Timothy M. Frank (*pro hac vice*)

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² See, e.g., *Commodity Futures Trading Comm'n*, 950 F.2d at 1530 - 31 (court affirmed order incarcerating defendant for failure to comply with disgorgement order); see also *Blanco GMBH+CO. KG v. Vlanco Indus., LLC*, No. 12-61580-CIV, 2022 WL 488934, at *5 (S.D. Fla. Jan. 19, 2022) (recommending coercive incarceration as appropriate sanction in the event of contemnor's failure to comply with order, based on contemnor's history of noncompliance).

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