

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

PLATINUM PROMOTIONS &
MARKETING, LLC,

Plaintiff,

vs.

RYAN BROWN

Defendant.

Case No. 12-CV-C-04-0412

JUDGE WHITNEY

JAN ANTONOPLOS
CLERK

2013 FEB - 8 AM 7:54

COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED

E-FILED

DEFENDANT AND THIRD-PARTY PLAINTIFF RYAN BROWN'S MOTION FOR EXPEDITED DISCOVERY RELATED TO PLAINTIFF'S MOTION TO SHOW CAUSE

Defendant and Third-Party Plaintiff, Ryan Brown ("Brown"), respectfully requests that the Court order Plaintiff Platinum Promotions & Marketing, LLC ("PPM") to answer discovery requests related to PPM's Motion to Show Cause within fourteen days of service. Brown served the discovery on PPM on February 7, 2013. Accordingly, Brown respectfully requests that the Court order PPM to answer his discovery requests by February 22, 2013. The reasons for Brown's request for expedited discovery are explained in the attached memorandum in support of this motion.

Respectfully submitted,

/s/ Danny L. Caudill

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Attorneys for Defendant Ryan Brown

MEMORANDUM IN SUPPORT

1. PPM seeks to have Brown held in indirect, criminal contempt of court.

The Court has set a hearing on PPM's show cause motion for March 12, 2012. In its motion, PPM seeks to have Brown held in contempt of court for alleged violations of the Agreed Preliminary Injunction issued by the Court on April 30, 2012. The alleged acts were committed "outside the presence of the Court" – thus, PPM's motion alleges *indirect* contempt. See Bierce v. Howell, 2007 Ohio 3050, *P16 (5th Dist., June 15, 2007). Furthermore, PPM's motion is *criminal* and not *civil* in nature because PPM does not ask the Court to compel Brown to perform some affirmative act nor does PPM make any specific request for remedial relief. "The key feature of civil contempt is that a sanction for civil contempt must allow the contemnor the opportunity to purge him or herself of contempt." State v. Yambrisak, 2011 Ohio 5373, at *P13 (5th Dist., October 17, 2011). Here, there is no opportunity for Brown to purge his contempt. Therefore, the purpose of PPM's motion is punitive in nature – asking the Court to "punish" Brown for alleged "past failures to comply with the Court's order." See, Howell, 2007 Ohio 3050, at *P17. In other words, PPM seeks to have Brown held in *criminal* contempt of court.

It is well-established that due process rights attach to *indirect, criminal* contempt proceedings. See Forrer v. Buckeye Speedway, Inc., 2008 Ohio 4770 (9th Dist., September 22, 2008). For instance, the burden of proof in an *indirect criminal contempt* proceeding is *proof beyond a reasonable doubt*. See Forrer, 2008 Ohio 4770 at *P23 (citing Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 444, 31 S. Ct. 492, 55 L. Ed. 797 (1911)). A party charged with criminal contempt *cannot be compelled to testify against himself in violation of his Fifth*

Amendment rights. See Yambrisak, 2011 Ohio 5373 at *P10. Additionally, evidence offered in support of a contempt motion *must be admissible under the Rules of Evidence*. See State v. McGee, 2011 Ohio 1465 at *P69-*P71 (7th Dist., March 28, 2011). Hearsay evidence is generally inadmissible, unless permitted by an exception recognized by the Evidence Rules. Id. at *P70.

2. **Brown needs expedited discovery to prepare his defense to a contempt charge because (1) PPM has pointed to no record evidence in its show cause motion, (2) PPM has attached no affidavits or other supporting materials to the motion, and (3) PPM has never provided any relevant or admissible evidence supporting its motion during discovery.**

The events PPM points to in support of its show cause motion appear to have occurred prior to November 16, 2012, when PPM alleges it lost all of its clients. [See PPM's Motion to Show Cause pg. 2-3; PPM's Motion for Leave to Amend Complaint pg. 1; and, PPM's Second Amended Complaint ¶ 26.] But the Court has already instructed that no operative injunction existed prior to November 2, 2012, when PPM finally posted the required \$100,000.00 bond after a six-month delay. [Tr. Nov. 2, 2012 Hearing, pg. 25] More specifically, the Court held:

My understanding of the law is the injunction does not have any legal effect, that means your client can do anything he wanted to up until they post the \$100,000.00, then he has to stop, he's enjoined. [Tr. pg. 25, lines 3-6]

Both Civil Rule 65 and Ohio appellate courts agree with this Court:

No temporary restraining order or preliminary injunction is operative until the party obtaining it gives a bond executed by sufficient surety, approved by the clerk of the court granting the order or injunction, in an amount fixed by the court or judge allowing it, to secure to the party enjoined the damages he may sustain, if it is finally decided that the order or injunction should not have been granted. See North Electric Co. v. United Steel Workers of America, et al., 28 Ohio App. 2d 253 (Third Dist., August 31, 1971); and, Cochran v. Marion Production Credit Assoc., et al., 1985 Ohio App. LEXIS 7677 (Fifth Dist., May 9, 1985)(unreported case attached hereto).

In short, it appears the relevant events that could support PPM's show cause motion had to have occurred between November 2, 2012 (when the injunction became operative) and November 16, 2012 (when PPM asserts it lost all of its clients as a result of Brown's alleged violations of the injunction). But PPM has provided Brown no relevant, admissible evidence in discovery that could support a criminal contempt charge related to that time period.¹ Accordingly, Brown is concerned that PPM either intends to rely on materials that are irrelevant and/or inadmissible or has withheld discovery materials and failed to honor its continuing duty to supplement its earlier discovery responses. Either way, Brown simply has no idea what evidence PPM intends to present to support a charge of criminal contempt. Thus, Brown will have no fair opportunity to prepare a proper defense. See Mosier v. Mosier, 2009 Ohio 1195, *P35 (5th Dist., March 13, 2009)("More particularly, 'due process requires that the alleged contemnor has the right to notice of the charges against him or her, a reasonable opportunity to defend against or explain such charges, representation by counsel, and the opportunity to testify and to call other witnesses, either by way of defense or explanation.").

3. Brown's discovery requests are reasonably tailored to evidence relating to PPM's show cause motion and expedited discovery is supported by the Local Rules.

Local Rule of Criminal Procedure 50.02 instructs that "discovery should be provided in fourteen days from the date of demand...." The Court should apply Local Rule 50.02 in this instance because the show cause hearing requested by PPM clearly has criminal implications. PPM and its counsel are both located in Central Ohio and the evidence they intend to use should be readily at hand. Furthermore, both PPM and Brown have conducted discovery through the

¹ The only evidence PPM has provided regarding contact between Brown and persons and entities listed in the Preliminary Injunction involve contacts that occurred before PPM posted the bond for Brown's protection on November 2, 2012. Some of that evidence is the subject of Brown's federal and State wiretapping claims and Brown's associated Motion for Protective Order.

use of e-mail. So, it should be no problem for PPM to provide the requested documents, answer the propounded interrogatories and identify the anticipated witnesses within fourteen days of receiving Brown's discovery requests. Brown's discovery requests are attached hereto for the Court's review.

Respectfully submitted,

/s/ Danny L. Caudill

Danny L. Caudill (0078859)

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Attorneys for Defendant Ryan Brown

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served upon Counsel for Plaintiff by e-mail on February 8, 2013.

/s/ Danny L. Caudill

Danny L. Caudill (0078859)

Attorney for Defendant Ryan Brown

**IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO**

PLATINUM PROMOTIONS &
MARKETING, LLC,

Plaintiff,

vs.

RYAN BROWN

Defendant.

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: Case No. 12-CV-C-04-0412
:
: JUDGE WHITNEY
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:
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**DEFENDANT RYAN BROWN'S SECOND SET OF INTERROGATORIES, SECOND
REQUEST FOR PRODUCTION OF DOCUMENTS AND SECOND REQUEST FOR
ADMISSIONS TO PLAINTIFF**

Pursuant to Rules 33, 34 and 36 of the Ohio Rules of Civil Procedure, Defendant hereby submits the following Interrogatories, Requests for Production of Documents and Request for Admissions to the Plaintiff. Plaintiff is requested to answer the following Interrogatories, separately and fully, in writing and under oath, within FOURTEEN days (14) days after service hereof. Plaintiff is requested to produce the documents and other materials requested in the following Requests for Production of Documents at the offices of DANNY L. CAUDILL, ATTORNEY AT LAW, LLC, Suite 120, Dublin, Ohio 43017, within FOURTEEN (14) days after service hereof. Plaintiff is requested to answer the following Requests for Admissions within FOURTEEN DAYS (14) after service hereof.

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INSTRUCTIONS

1. With respect to all Interrogatories, Requests for Production of Documents, and Request for Admissions all information and documents are to be divulged which are within your knowledge, possession or control, or within the knowledge, possession or control of your attorney, or other representatives.

2. When an Interrogatory calls for an answer in one or more parts, the parts should be separated in the answer so that they are clearly understandable.

3. Where a document is used as a source of an answer, you are to provide the following information relevant to the document: (1) its location; (2) the name and title of the custodian of the document; (3) the date or dates of the document; (4) the document's author or publisher; (5) the document's length; and (6) a synopsis of the contents.

4. The space for the answer following each Interrogatory is not intended to limit your response or to suggest in any way the length of the answer that is required. If additional space is required to answer as fully as needed, please attach a separate sheet to the page upon which the Interrogatory appears and indicate on such sheet the number of the Interrogatory to which the answer relates.

5. If a request is made for the identification or production of documents which are no longer in the possession or subject to the control of the Plaintiff, please state when such documents were most recently in the possession or subject to the control of the Plaintiff, what has become of them, and identify the persons presently in possession or control of the documents. If any documents have been destroyed, please state when such documents were

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destroyed, identify the person who destroyed the documents and the person who directed that the documents be destroyed, and state the reason(s) the documents were destroyed.

6. If you object to providing the answer to any Interrogatory, in whole or in part, please state clearly the basis for the objection. If a privilege is claimed, please identify any document or communication for which a privilege is claimed, and set forth the nature of the privilege asserted.

7. These discovery requests shall be deemed to be continuing to the extent permitted by the Ohio Rules of Civil Procedure. You are under a continuing duty to supplement seasonably your responses to these Interrogatories, including your responses with respect to any question relating to the identity and location of persons having knowledge of discoverable matters, and to correct any response which you know or later learn to be incorrect.

8. Where the context herein makes it appropriate, each singular word shall include its plural and each plural word shall include its singular. All words and phrases shall be construed as masculine, feminine, or neutral gender according to the context. "And", as well as "or", shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each Interrogatory or Document Request which might otherwise be construed to be outside the scope.

9. According to the requirements of Rule 36 of the Ohio Rules of Civil Procedure, the written answers or objections to each request must be signed by you or your counsel. If objection is made, the reasons therefore must be stated. If the answer is anything other than an unqualified admission the answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter. Any denials must fairly meet the substance of

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the request for admission, and when good faith requires you to qualify your answer, or deny only part of the matter of which an admission is requested, you shall specify so much of it as is true and qualify or deny the remainder. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable it to admit or deny. You may not object to any request solely upon the ground that the matter upon which an admission has been requested presents a genuine issue for trial.

According to Rule 37 of the Ohio Rules of Civil Procedure, if a party, after being served with the request for admissions, fails to admit the genuineness of any document or the truth of the matter, the party so failing to admit may be required to bear the reasonable expenses incurred in making the proof, including reasonable attorneys' fees.

DEFINITIONS

Unless a contrary meaning appears in the context of a specific Interrogatory or Document Request, the following definitions apply:

1. "Document" refers to all writings, tapes, tape recordings, graphic representations, drawings or printed data of any kind whatsoever, however produced or reproduced, that now or ever have been in your possession, including, but not limited to: correspondence, statements, reports, letters, notes, e-mails, memoranda, telephone conversations, telegrams, telexes, messages, diary notebooks or other tangible things, included within the meaning of Rules 33 and 34 of the Ohio Rules of Civil Procedure.

2. “Identify” used in reference to a person means to state the person’s name, present residence address, present residence telephone, present employer, address of employer, and job position with employer. If the present residence address and telephone number or present employer of any such person is unknown, please state his or her last known residence address and telephone number or is last known employer, as may be appropriate.

3. “Identify” used in reference to a document means to state the author (or publisher), date, subject matter, type of document (e.g., letter, report, telephone conversations, notes from meetings, drawings, etc.), present location and the name and job title of the present custodian(s) of the document. If any such document was, but no longer is in your possession or control, please state where the document is now located and the identity of the person who has possession and control of the document, or what disposition was made of the document, as may be appropriate. In identifying documents, please include not only every document in your possession or control, but also every document of which you have knowledge which relates or refers to any of the facts in question.

4. “**You**” and “**Plaintiff**” both refer to the Plaintiff in this action, Platinum Promotions & Marketing, LLC.

5. “**Brown**” refers to the named Defendant in this action, Ryan Brown.

INTERROGATORIES

1. Identify each and every person who participated in answering these Interrogatories.

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2. In accordance with the above instructions, identify any and all documents which in any way relate to Plaintiff's motion to show cause filed on January 31, 2013.
3. Identify any and all documents which you relied upon in support of Plaintiff's motion to show cause.
4. Identify any and all documents which Plaintiff anticipates using as an exhibit, as evidence, or for any other purpose at the hearing on Plaintiff's motion to show cause.
5. Identify any and all witnesses which Plaintiff anticipates calling to testify at the hearing on Plaintiff's motion to show cause.
6. Specifically identify any and all individuals that you believe might have knowledge regarding the allegations which form the bases for Plaintiff's motion to show cause and indicate what personal knowledge each such person might have.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce any and all statements, whether written or recorded, prepared by or on behalf of any person identified in response to Interrogatories No. 5 and 6 above which relate to Plaintiff's motion to show cause.
2. Please produce any and all documents and other tangible things which Plaintiff relied upon in support of Plaintiff's motion to show cause.

3. Please produce any and all documents which Plaintiff anticipates using as an exhibit, as evidence, or for any other purpose at the hearing on Plaintiff's motion to show cause.

REQUEST FOR ADMISSIONS

1. Admit that your answer to Interrogatory No. 2 above identifies any and all documents which in any way relate to Plaintiff's motion to show cause as requested in the Interrogatory.
2. Admit that your answer to Interrogatory No. 3 above identifies any and all documents which you relied upon in support of Plaintiff's motion to show cause as requested in the Interrogatory.
3. Admit that your answer to Interrogatory No. 4 above identifies any and all documents which Plaintiff anticipates using as an exhibit, as evidence, or for any other purpose at the hearing on Plaintiff's motion to show cause as requested in the Interrogatory.
4. Admit that your answer to Interrogatory No. 5 above identifies any and all witnesses which Plaintiff anticipates calling to testify at the hearing on Plaintiff's motion to show cause as requested in the Interrogatory.
5. Admit that your answer to Interrogatory No. 6 above specifically identifies any and all individuals that you believe might have knowledge regarding the allegations which form the bases for Plaintiff's motion to show cause as requested in the Interrogatory.
6. Admit that your answer to Interrogatory No. 6 above fully indicates what personal knowledge each person identified in response to Interrogatory No. 6 above might have, to the best of your knowledge, as requested in the Interrogatory.

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7. Admit that your response to Request for Production of Documents No. 1 above produced any and all documents requested in Request for Production of Documents No. 1 above.

8. Admit that your response to Request for Production of Documents No. 2 above produced any and all documents as requested in Request for Production of Documents No. 2 above.

9. Admit that your response to Request for Production of Documents No. 3 produced any and all documents as requested in Request for Production of Documents No. 3 above.

Respectfully submitted,

/s/ Danny L. Caudill
Danny L. Caudill (0078859)
(dlcaudill@caudillfirm.com)
Greg R. Mansell (0085197)
(Greg.Mansell@Ohio-EmploymentLawyer.com)
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Facsimile: (614) 448-4544

Attorneys for Defendant Ryan Brown

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served upon Counsel for Plaintiff by e-mail on February 8, 2013.

/s/ Danny L. Caudill

Danny L. Caudill (0078859)
Attorney for Plaintiff

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STATE OF _____)

COUNTY OF _____) ss:

VERIFICATION

Now comes _____ and being first duly cautioned and sworn, deposes and states that he/she has answered the foregoing interrogatories and that he/she has read the answers and further, that the answers contained herein are complete, true and correct as he/she verily believes.

Printed Name: _____

Title: _____

Sworn to before me and subscribed in my presence this ____ day of _____
2013.

Notary Public