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SNOPEs MEDIA GROUP, INC., formerly known and
having appeared as BARDAV INC

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO, CENTRAL DIVISION

12 PROPER MEDIA, LLC, a California limited
liability company, CHRISTOPHER RICHMOND,
13 an individual, and DREW SCHOENTRUP, an
individual,

14 Plaintiffs,

15 v.

16 BARDAV INC., a California corporation, and
17 DAVID MIKKELSON, an individual,

18 Defendants,

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22 AND RELATED CROSS-ACTIONS
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/25/2018 at 10:08:00 AM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

Case No. 37-2017-00016311-CU-BC-CTL

**EX PARTE APPLICATION OF
DEFENDANT/CROSS-
COMPLAINANT SNOPEs MEDIA
GROUP, INC. FOR ORDER TO
SHOW CAUSE REGARDING
CONTEMPT AGAINST
PLAINTIFFS/CROSS-DEFENDANTS
DREW SCHOENTRUP AND PROPER
MEDIA, LLC**

**(REDACTED FOR PUBLIC FILING;
UNREDACTED VERSION LODGED
CONDITIONALLY UNDER SEAL)**

Date: April 26, 2018
Time: 8:45 a.m.
Dept.: C-68
Judge: Hon. Judith F. Hayes

Complaint Filed: May 4, 2017
Trial Date: August 24, 2018

IMAGED FILE

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on April 26, 2018 at 8:45 a.m. or as soon thereafter as the
3 matter may be heard, in Department C-68 of the above-captioned Court, located at 330 W.
4 Broadway, San Diego, California 92101, Defendant/Cross-Complainant SNOPEs MEDIA
5 GROUP, INC., formerly known and having appeared as BARDAV INC (“Snopes”) will and
6 hereby does apply *ex parte* for an order directing Plaintiffs/Cross-Defendants DREW
7 SCHOENTRUP (“Schoentrup”) and PROPER MEDIA, LLC (“Proper Media”) (collectively,
8 “Plaintiffs”) to show cause why Schoentrup and Proper Media should not be held in contempt of
9 this Court for their failure to comply with this Court’s September 7, 2017 Order of Preliminary
10 Injunction (the “Injunction”).

11 This application is made pursuant to Code of Civil Procedure sections 1209 *et seq.*, on the
12 grounds that, in violation of the Injunction, Proper Media and its agents, servants, representatives,
13 successors, assigns, employees, and all persons acting in concert or participating with it—including
14 Schoentrup—willfully withheld from Snopes revenues procured from the placement of
15 advertisement on the Snopes.com website in contravention of the Court order.

16 This Motion is based on this Application, as well as the concurrently-filed the Declaration
17 of Paul A. Tyrell in support thereof, all papers, records, and pleadings on file herein, and upon such
18 further oral and documentary evidence as may be presented at the time of the hearing.

19
20 DATED: April 25, 2018

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

21
22
23 By: _____



Paul A. Tyrell
Ryan C. Caplan
P. Jacob Kozaczuk
Attorneys for Defendant/Cross-Complainant,
SNOPEs MEDIA GROUP, INC., formerly
known and having appeared as BARDAV INC

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§ 121110

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1 **I. INTRODUCTION**

2 Snopes brings the instant *Ex Parte* Application because Schoentrup and Proper Media have
3 willfully failed and refused to comply with this Court’s earlier Injunction. The Injunction enjoins
4 Proper Media and its agents from withholding from Snopes all advertising revenues earned on the
5 Snopes.com website, except for costs expressly allowed under the parties’ contract and “hard
6 costs” incurred in collecting the revenues. In an ill-conceived attempt to rationalize their
7 contemptuous behavior, Plaintiffs manufactured an untenable interpretation of the Injunction to
8 justify redirecting hundreds of thousands of dollars of advertising revenue from Snopes to Proper
9 Media. Despite extensive meeting and conferring, Plaintiffs continue to withhold substantial sums
10 required to be released under the Injunction.

11 With permission of the Court, Snopes took a limited purpose deposition of Proper Media’s
12 person most knowledgeable (“PMK”) regarding its compliance with the Injunction. Schoentrup
13 appeared as Proper Media’s PMK and testified that he reviewed the Injunction and made the
14 decisions to redirect hundreds of thousands of dollars from Snopes to Proper Media to pay various
15 *soft* costs, general business expenses and overhead such as rent, janitorial costs, employer 401(k)
16 plan, office meals, and health, dental and vision plans for Proper Media’s own employees, among
17 many other intercompany payments and gratuitous costs that are in no way “hard costs” permitted
18 under the Injunction. Schoentrup’s shocking testimony and incomplete records produced during
19 the deposition unequivocally demonstrates Plaintiffs’ deliberate noncompliance with this Court’s
20 order.

21 Despite the clear prohibition against withholding amounts unless expressly authorized
22 under the Injunction, Plaintiffs are withholding well over \$500,000 from Snopes. There are ample
23 grounds for the Court to issue an OSC regarding why Schoentrup and Proper Media should not be
24 held in contempt for their willful disobedience of the Injunction.

25 **II. PERTINENT FACTUAL BACKGROUND**

26 **A. The General Service Agreement**

27 Snopes owns the popular Snopes.com website. On August 11, 2015, Snopes (under its
28 former name, Bardav Inc) and Proper Media entered into a written one-year contract entitled the

1 General Service Agreement (“GSA”). (Tyrell Decl., Exhibit A [GSA].) Under the GSA, Proper
2 Media agreed to provide certain services to Snopes for the Snopes.com website during the term of
3 the agreement, including representing Snopes with respect to advertisement procurement,
4 placement, and management, subject to Snopes’s ultimate discretion. (GSA § 3, p. 2.) The GSA
5 had an initial one-year term, and either party could terminate it with or without cause upon 60
6 days’ notice. (GSA § 7.1, p. 4.)

7 Compensation under the GSA was structured so that Proper Media would invoice and
8 collect all advertising revenue generated by the Snopes.com website. (GSA § 4.1, p. 3.) Proper
9 Media was required to distribute advertising revenue to Snopes on a monthly basis under a
10 specified formula (the “Agent Commission Rate”):

11 3.5. Agent Commission Rate: The Agent shall pay to Publisher all
12 amounts invoiced or to be invoiced by the Agent to advertisers for
13 advertising placed on the Website up to \$85,000 per month (the
“Baseline”) and fifty (50) percent of all amounts above the Baseline,
calculated on a monthly basis (“Net Revenue”).

14 (GSA § 3.5, p. 3.) This profit sharing formula constituted the entirety of Proper Media’s
15 compensation under the GSA (other than specified authorized expense reimbursements). (GSA
16 § 3.7.) Among the authorized expenses to be paid by Snopes was a \$2,500 monthly fee
17 encompassing the theme and template design commissioned by Snopes, plus certain other expenses
18 incurred by Proper Media for website development, upon approval by Snopes. (GSA §§ 5.2, 5.4.)

19 **B. Termination of the GSA**

20 On or about March 9, 2017, Snopes notified Proper Media, in writing, that it was
21 terminating the GSA, effective in sixty (60) days (i.e., on May 8, 2017). Notwithstanding the
22 termination, Proper Media unlawfully held the website hostage and refused to relinquish control of
23 Snopes’s website or its email accounts. Proper Media also improperly withheld all advertising
24 revenues from Snopes—effectively cutting off Snopes’s primary source of income and inflicting
25 severe financial distress on the company.

26 **C. The Preliminary Injunction**

27 As a result of this unlawful conduct, Snopes was forced to seek preliminary injunctive
28 relief. On June 29, 2017, Snopes applied for a temporary restraining order and order to show cause

1 re: preliminary injunction, seeking to enjoin Proper Media from withholding advertising revenues
2 and access to the Snopes.com website and email accounts. The Court granted the TRO in part,
3 requiring Proper Media to turn over \$100,000 pending further briefing and a hearing on the OSC.

4 On September 7, 2017, after supplemental briefing and hearings, the Court granted
5 Snopes's request and issued its Injunction. (Exhibit B [Injunction].) The Injunction unequivocally
6 enjoins Proper Media and its agents from, among other things:

7 (1) Withholding from Bardav any revenues procured from the
8 placement of advertisement on the Snopes.com website except for
9 those expressly authorized to be withheld pursuant to the formula set
10 forth in the Agent Commission Rate provisions of the parties'
11 written General Services Agreement ("GSA") up through the
12 effective date of the GSA's termination on May 8, 2017.

11 (2) Withholding from Bardav any revenues procured from the
12 placement of advertisement on the Snopes.com websites occurring
13 after the effective date of the GSA's termination on May 8, 2017,
14 except for hard costs incurred.

13 (Exhibit B [Injunction], p. 1.)

14 **D. Plaintiffs Fail to Comply with the Preliminary Injunction**

15 On September 15, 2017, Proper Media wired \$541,240.28 to Snopes, purportedly in
16 satisfaction of the Injunction. (Tyrell Decl., ¶ 6.) In response, Snopes advised that this amount
17 was significantly less than what was owed. (*Id.* at ¶ 7.) Specifically, because Snopes had the
18 ability to monitor advertising revenues earned on the website through an online portal established
19 by Proper Media, it knew what advertising revenues had been earned in the months following the
20 termination of the GSA, which totaled approximately \$1,323,198.88 by that time. (*Ibid.*)

21 Snopes requested Proper Media immediately relinquish the remaining amounts owed or
22 provide justification for withholding those sums. (Tyrell Decl., ¶ 8.) Proper Media responded by
23 creating and transmitting "invoices" for each month identified by Snopes. (*Id.* at ¶ 9; Ex. E.)
24 However, these "invoices" included—for the first time ever—numerous expenses and deductions
25 that were neither "hard costs" nor anything that Proper Media had ever charged to Snopes in the
26 past. Put simply, Proper Media was padding its alleged "expenses" to justify withholding
27 additional sums due under the Injunction.

1 On November 7, 2017 Snopes sent a detailed response to Proper Media’s “invoices,”
2 challenging many of the expenses claimed and requesting explanations of others. (Tyrell Decl.,
3 ¶ 10; Ex. F.) On November 27, 2017, Proper Media responded that it was standing by each of the
4 improper deductions claimed in its “invoices.” (*Id.*, ¶ 11; Ex. G.)



5 **E. Snopes Media Group’s Ex Parte Application and Limited Purpose Deposition**

6 On January 3, 2018, Snopes appeared *ex parte* to obtain guidance from the Court regarding
7 compliance with the Injunction in order to prompt Plaintiffs to comply with the Court’s order and
8 avoid costly contempt proceedings. The Court declined to provide guidance at the hearing, but
9 ordered each side “to conduct a maximum 3-hour deposition of 1 person most knowledgeable” in
10 anticipation of contempt proceedings. (Tyrell Decl., ¶ 12; Ex. H.)

11 Prior to noticing the limited purpose deposition, Snopes requested Proper Media provide
12 updated information regarding additional funds collected and withheld since the earlier “invoices”
13 provided in September 2017. (Tyrell Decl., ¶ 13.) In response, Proper Media provided
14 unsubstantiated “invoices” for August, September, and October 2017. (*Id.*, ¶ 14; Exs. I, G.)
15 Appallingly, these “invoices” indicate that Proper Media withheld every dollar of advertising
16 revenue generated by Snopes.com in the month of October 2017 for purported “hard costs,”
17 including a cost entitled “Barbara Mikkelson Settlement Payment” in the amount of \$159,008.60.
18 In addition to withholding all October advertising revenue, the August 2017 “invoice” states that
19 Proper Media withheld an additional \$33,966.31 of Snopes’s advertising revenue in August as a
20 “Shortage from October 2017.”

21 On February 8, 2018, Snopes noticed the limited purpose deposition of Proper Media’s
22 PMK and requesting all documentation supporting the “hard costs” and other withholdings stated
23 in Proper Media’s invoices. (Tyrell Decl., ¶ 15; Ex K.) On February 16, 2018, Proper Media
24 noticed its own PMK deposition of Snopes with requests for production of documents. (*Id.* at ¶ 16;
25 Ex. L.)

26 **F. Deposition of Schoentrup as Proper Media’s Person Most Knowledgeable**

27 At the March 5, 2018 limited purpose deposition, 
28 

1 [REDACTED]. (Tyrell Decl., ¶ 15; Ex. I: 13-16). Far from justifying
2 Plaintiffs' conduct, Schoentrup's testimony confirmed these purported "hard costs" are not *hard*
3 costs at all, let alone costs attributable to the Snopes.com website. Rather than explain how these
4 withholdings were permissible under the Injunction, Schoentrup repeated the same conclusory
5 remark that [REDACTED] (*E.g.*, Exhibit N:
6 67:3, 77:5, 77:22, 79:20, 80:21-22, 91:2-3, 112:4-5.)

7 In addition, Plaintiffs failed to produce documents explicitly requested in the deposition
8 notice. [REDACTED] Plaintiffs' production left out key documentation to
9 substantiate and authenticate the vast majority of alleged "hard costs." (*E.g.*, Exhibit N: 60:13
10 [REDACTED], 63:3 [REDACTED], 120:5 [REDACTED].) The incomplete
11 documents Plaintiffs did produce, including never-before-seen spreadsheets Schoentrup prepared,
12 further demonstrate how Plaintiffs' withholdings were prohibited by the Injunction.

13 **G. The Instant *Ex Parte* Application and Notice of the Same**

14 As a result of Plaintiffs' continued refusal to comply with the Court's order, Snopes seeks
15 an Order to Show Cause as to why Schoentrup and Proper Media should not be held in contempt
16 for failing to comply with the Injunction. Notice of this Application was given to all parties on
17 April 23, 2018. (Tyrell Decl., ¶ 21; Ex. Q.)

18 **III. PLAINTIFFS SHOULD BE HELD IN CONTEMPT FOR WILLFULLY**
19 **DISOBEYING THIS COURT'S EARLIER INJUNCTION**

20 There is ample support for this Court to issue an Order to Show Cause why Schoentrup and
21 Proper Media should not be held in contempt for their willful disobedience of the Injunction.
22 "Disobedience of any lawful judgment, order, or process of the court" is contempt. Code Civ.
23 Proc. § 1209(a)(5). Code of Civil Procedure sections 1209 *et seq.* provide this Court with the
24 power to punish acts, such as the acts of Schoentrup and Proper Media, which are in "disobedience
25 of any lawful . . . order of the court." (Code Civ. Proc. § 1209(a)(5).)

26 When contempt is not committed in the immediate view and presence of the court, an
27 affidavit or declaration shall be presented to the court setting forth the facts constituting contempt.
28 (Code Civ. Proc. §§ 1211, 2015.5.) The declaration "need only make a prima facie showing of the

1 elements of contempt.” (*Crawford v. WCAB* (1989) 213 Cal.App.3d 156, 169.) The declaration
2 must show: (1) the rendition of a valid order; (2) actual knowledge of the order; (3) the ability to
3 comply with the order; and (4) willful disobedience of the order. (*Conn v. Superior Court* (1987)
4 167 Cal.App.3d 774, 784.) As demonstrated below, these conditions are met here.

5 **A. The Court’s Preliminary Injunction Is Valid and Enjoins Plaintiffs**

6 The Injunction was an order of this Court that was valid when rendered and remains fully
7 enforceable today. (Exhibit B.) The order explicitly provides that “Proper Media and its agents,
8 servants, representatives, successors, assigns, employees, and all persons acting in concert or
9 participating with it, are **ENJOINED** pending trial in this action from,” among other things,
10 withholding advertising revenues procured from the Snopes.com website both before and after
11 termination of the GSA. (*Id.* at 1.) Schoentrup—Proper Media’s CFO—is Proper Media’s agent,
12 servant, representative, successor, assign, employee, or a person acting in concert or participating
13 with Proper Media, as demonstrated by his testimony at his PMK deposition.

14 **B. Schoentrup and Proper Had Actual Notice of the Order**

15 There can be no dispute that Schoentrup and Proper Media had actual knowledge of the
16 Injunction. On September 8, 2017, one day after the Injunction was issued, Snopes Media Group
17 posted an undertaking in the amount of \$50,000 with the Court. (Tyrell Decl., ¶5; Ex. C.) That
18 same day, Snopes served counsel for Schoentrup and Proper Media with a notice of the Injunction
19 and posting of the undertaking. (*Ibid.*)

20 At Proper Media’s limited scope deposition, Schoentrup testified [REDACTED]
21 [REDACTED] (Exhibit N: 13:13-14:1.) Plaintiffs cannot,
22 [REDACTED] deny having actual knowledge of the Court’s order.

23 **C. Schoentrup and Proper Media Had the Ability to Comply with the Injunction**

24 Schoentrup and Proper Media clearly had the ability to comply with the Injunction, which
25 required no affirmative action from Plaintiffs other than to cease withholding Snopes’s advertising
26 revenue. At all relevant times, Proper Media received revenue from advertising placed on
27 Snopes.com, as evidenced by the invoices prepared by Schoentrup, which “show amounts
28 received” by Proper Media. (Exhibits E, J [collectively, “Invoices”].) Having received these funds

1 in the first place, Plaintiffs had the ability to release them to Snopes as required under the
2 Injunction. [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 (Exhibit N: 14:4-16:1).

16 Thus, Plaintiffs not only received the advertising revenues, but Schoentrup even prepared
17 invoices explicitly acknowledging the revenues generated each month and enumerating the
18 hundreds of thousands of dollars he decided to withhold from Snopes Media Group as “hard costs.”
19 (See Invoices.)

20 The Injunction mandated Plaintiffs’ compliance within five court days following notice of
21 the order and posting of Snopes’s undertaking. (Injunction, p. 2.) Snopes served this notice on
22 September 8, 2017. (Tyrell Decl., ¶ 5; Ex. C.) Thus, Plaintiffs’ compliance was required by no
23 later than September 15, 2017.

24 Plaintiffs might argue they were not able to comply with the Injunction because Plaintiffs
25 already spent or otherwise disposed of the advertising revenue generated from Snopes.com.¹
26 However, Plaintiffs actually withheld *more* of the advertising revenue received *after* compliance

27 ¹ Plaintiffs have argued it is not “withholding” revenue because Proper Media already spent or otherwise disposed of it.
28 Plaintiffs cannot avoid compliance by simply spending the revenue, much of which it received *after* the Injunction was issued.

1 was ordered. For instance, on September 19, 2017, Plaintiffs informed Snopes that no advertising
2 revenue for August 2017 had been received. (Tyrell Decl. ¶ 9, Exhibit E.) Therefore, Proper
3 Media had not received any advertising revenue for August, September, and October prior to
4 receiving notice of the Injunction, and thus Plaintiffs could not have “inadvertently” spent that
5 revenue when it came in after the Injunction.

6 Plaintiffs acknowledge receipt of [REDACTED]

7 [REDACTED] (Invoices, Nos. 24-25.) At Schoentrup’s direction, [REDACTED]
8 [REDACTED] an

9 amount greater than Proper Media could have withheld under the GSA.² Therefore, there can be
10 no dispute Plaintiffs had the *ability* to cease withholding the advertising revenue, as ordered.

11 **D. Schoentrup and Proper Media Willfully Disobeyed the Preliminary Injunction**

12 Willful disobedience is not limited to a deliberate intention to disregard a court order, but
13 also encompasses “an indifferent disregard of the duty to obey [a court order] promptly.
14 [Citation.]” (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.) A disclaimer of the intent to commit
15 contempt is no defense where contempt clearly appears from the circumstances constituting the act.
16 (*City of Vernon v. Superior Court* (1952) 38 Cal.2d 509, 518.) Thus, when parties have knowledge
17 of the terms of an injunction and fail to comply, “it can be reasonably inferred that their inaction
18 was intentional, despite express disclaimers of contemptuous intent.” (*Ibid.*) Further, even
19 diligent, yet unsuccessful efforts to comply are not sufficient to avoid a finding of contempt.
20 (*McFarland v. Superior Court of Merced County* (1924) 194 Cal. 407, 422-23.)

21 Here, the restrictions placed on Plaintiffs’ withholding of revenue from Snopes.com are
22 specific and limited, and apply to both Schoentrup and Proper Media. The order’s restrictions on
23 Plaintiffs’ withholding stem from an agreement Proper Media made freely and voluntarily, and for
24 which Proper Media has already been compensated. As cited above, the Injunction requires
25 Plaintiffs to turn over revenues to Snopes falling under two categories:

26
27
28 ² [REDACTED]

- Prior to May 8th, 2017: all advertising revenues procured except as expressly authorized to be withheld under the GSA's Agent Commission Rate formula; and
- After May 8th, 2017: all advertising revenues procured from the placement of advertisement on the Snopes.com websites except for hard costs incurred.

(Injunction, p. 1.)

Nothing prevented Proper Media from complying with the Injunction. The order required no affirmative action from Plaintiffs other than to simply release Snopes's advertising revenue to Snopes. Instead, Schoentrup and Proper Media actively employed an incorrigible accounting of Proper Media's own expenses and on that basis withheld and professedly spent hundreds of thousands of dollars of Snopes's advertising revenue—money the Injunction unequivocally directed Plaintiffs to return to Snopes. Indeed, Schoentrup's own "invoices" demonstrate that Plaintiffs' withholding of advertising revenue was not inadvertent, but rather was a calculated decision in violation of the Injunction.

(See generally, Exhibit I.)

1. Schoentrup and Proper Media Intentionally Withheld Hundreds of Thousands of Dollars

Plaintiffs' [redacted] states Proper Media received [redacted] from advertisement procured from Snopes.com. (Invoices, No. 25.) However, this same invoice states

Proper Media [redacted]

(Ibid.) Appallingly, Plaintiffs [redacted]

(Id., No. 24.)

Most notably, the [redacted]

(Invoices, No. 25.) Schoentrup added [redacted]

(Id., Nos. 18-

25.) Unsurprisingly, such a payment is nowhere to be found in the GSA, and certainly has nothing

1 to do with “hard costs” incurred in the collection of advertising revenues as permitted under the
2 Injunction. [REDACTED]

3 [REDACTED] (Exhibit I: 69:22-70:9.) When questioned about these settlement payments,

4 Schoentrup testified:

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 (Exhibit N: 68:4-18, 81:12-20.)

12 Schoentrup provided no evidence or testimony to show how Plaintiffs’ withholding of
13 hundreds of thousands of dollars from Snopes to [REDACTED]

14 [REDACTED] qualifies as a “hard cost” incurred pursuant to the
15 Injunction. Schoentrup is also [REDACTED]

16 [REDACTED] Of course, the answer is obvious. As the
17 Order itself explains, the “injunction is to be viewed as prohibitory in nature.” (Injunction, p. 2.)

18 Far from negatively impacting Plaintiffs’ ability to comply with the Injunction, [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Schoentrup further testified that [REDACTED]
22 [REDACTED] (Exhibit N: 70:10-21) Ignoring for the moment that

23 Plaintiffs produced no evidence to support this impossibility, Schoentrup’s contention is beside the
24 point.³ In issuing the Injunction, this Court did not carve out an exception allowing [REDACTED]

25 [REDACTED]
26 [REDACTED] Rather the Court enjoined withholding of advertising revenue subject to narrow exceptions

27 _____
28 ³ In any event, even assuming arguendo that Snopes Media Group did somehow owe money to Barbara Mikkelson, it does not follow that Plaintiffs would then have authority to withhold revenue belonging to Snopes Media Group.

1 pre- and post-GSA termination. The Court even ordered Snopes to post an undertaking to mitigate
2 against the risk of under-withholding. Cash-strapped, Snopes nevertheless posted the undertaking
3 as ordered, and yet Schoentrup and Proper Media continue to withhold hundreds of thousands of
4 dollars of advertising revenue from Snopes in contravention of the Injunction.

5 **a. "Settlement Payments" are Not Hard Costs**

6 These settlement payments have nothing to do with the "placement of advertisement on the
7 Snopes.com" website or for hosting the website after the Injunction issued. Nevertheless, Plaintiffs
8 knowingly withheld these revenues after the GSA was terminated and provided no documentation
9 to controvert what is clearly a willful defiance of this Court's order. (See Exhibit N: 79:11-81:10.)
10 Schoentrup abused his position of control over Snopes's revenue and withheld hundreds of
11 thousands of dollars the Court explicitly ordered Plaintiffs to release. As a result, Snopes suffered
12 the very financial stress the Injunction was designed to remedy.

13 **b. "Settlement Payments" are Not Permitted under the GSA**

14 These improper "settlement payment" line items are even more egregious for the periods
15 prior to termination the GSA. By its terms, the GSA's Agent Commission Rate provisions do not
16 "expressly authorize" settlement payments to Barbara Mikkelson, rendering this withholding
17 prohibited under the Injunction. Nevertheless, from [REDACTED]

18 [REDACTED]
19 [REDACTED] (Exhibit N:
20 100:14-17, 101:10-14.) This includes the
21 [REDACTED] (Invoices, No. 18.) Schoentrup
22 admitted "
23 [REDACTED]
24 [REDACTED] (Exhibit N: 103:1-

25 6.) Regardless, Schoentrup's testimony is irrelevant for purposes of this Injunction. The Court
26 explicitly limited Plaintiffs' pre-GSA termination withholding to the Commission Rate Formula,
27 and yet Plaintiffs fabricated numerous line items in contravention of the Court order to justify
28 withholding additional advertising revenue.

1 **2. Plaintiffs Improperly Withheld Revenues for Extraneous Expenses**

2 The Injunction limited any withholding of Snopes.com advertising revenue to only “hard
3 costs” incurred following the May 8th termination date, including hard costs for “hosting of the
4 Snopes.com website” for the fifty-day period following the Injunction. (Injunction, pp. 1-2.) In
5 turn, Plaintiffs interpreted the Court’s narrow language to encompass *any and all costs they could*
6 *conceivably relate to the operation of Proper Media’s entire business.* According to the
7 unsubstantiated invoices prepared by Schoentrup, these costs include allocations for “personnel
8 expense” and “office expense”—neither of which could be construed as hard costs incurred in the
9 collection of Snopes’s advertising revenues. When questioned about these exorbitant “expenses”
10 during the PMK Deposition, Schoentrup testified:

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 (Exhibit N: 25:9-26:13, 30:10-15.)

24 [REDACTED]

25 [REDACTED] and were produced for the first time at the PMK deposition. (*See ibid.*) As
26 confirmed by Schoentrup’s testimony, the enumerated expenses could not be further from “hard
27 costs” and [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 (Id. at 25:9-26) Schoentrup admitted
3 [REDACTED]

4 (Id. at 30:10-15) Nevertheless, Plaintiffs insists these are “hard costs”
5 and continue to withhold this revenue from Snopes.

6 Additionally, Proper Media identified multiple other cost “allocations” it deducted from
7 Snopes’s advertising revenues, including [REDACTED]

8 [REDACTED] These systems were in place prior to the GSA. Proper Media offered no evidence that
9 the revenue withheld from Snopes for these allocations is directly attributable to the Snopes.com
10 website. In fact, the “hard costs” enumerated in the invoices and spreadsheets show no variance in
11 accounting for the fifty-day period following the Injunction as compared to earlier post-GSA
12 periods. (See Invoices.)

13 Notably, these amounts are significantly greater than amounts Proper Media attributed to its
14 overhead expenses prior to the issuance of the Injunction. Under the GSA, infrastructure costs
15 were set in the amount of \$2,500—an amount dwarfed by sums Proper Media has improperly
16 withheld from the payments required under the Injunction. (Ex. B [GSA] at § 5.2.) To the extent
17 Proper Media had additional expenses attributable to collecting ad revenue for Snopes’s website, it
18 was required to provide a budget and get approval from Snopes before charging Snopes for those
19 costs. (Id. at § 5.3.) It is particularly telling that Proper Media never invoiced Snopes for the
20 expenses it is now claiming during the term of the GSA.

21 The obvious reason is that these costs constitute general overhead and are not “hard costs”
22 as allowed by the Court. Proper Media’s attempts to withhold funds by manufacturing
23 “allocations” it never previously charged Snopes is nothing but a transparent effort to circumvent
24 the clear directive of the Injunction.

25 **3. Proper Media Improperly Applied Profit Sharing Post-Termination**

26 During the term of the GSA, monthly advertising revenues were paid pursuant to Agent
27 Commission Rate, under which the first \$85,000 went to Snopes and the remaining revenues were
28 split 50/50 between Snopes and Proper Media. (GSA § 3.5.) Snopes terminated the GSA effective

1 May 8, 2017, and the Injunction was clear that Proper Media was enjoined from withholding
2 advertising revenues “after the effective date of the GSA’s termination on May 8, 2017, except for
3 hard costs incurred.” (Injunction, p. 1 [emphasis added].)

4 Despite this clear prohibition, Proper Media continues to withhold 50% of advertising
5 revenues received in May *after* the May 8th termination date, contending without any support that it
6 was entitled to a “full month” of revenue sharing for May because “a partial month of service is not
7 contemplated” under the GSA. (*See Invoices.*) This argument fails for a number of reasons.

8 First, the Injunction is an order of the Court, and Proper Media has no authority to rewrite
9 the Court’s clear and unequivocal mandate to withhold additional sums. Second, the GSA does not
10 require full “calendar months” as self-servingly suggested by Proper Media. Nothing in the GSA
11 delays the effective date of termination until the end of the calendar month in which it falls.

12 Third, even assuming any termination under the GSA extends to the end of a monthly
13 period (it does not), each monthly period would end on the 11th of any given month, not the last
14 calendar day. The parties entered into the GSA on August 11, 2015 for an initial one-year term and
15 month-to-month terms thereafter. (Exhibit A, p. 1.) As a result, each monthly term ran from the
16 11th to the 10th of each successive month. Therefore, the *most* additional time Proper Media could
17 possibly manufacture (in contravention of the express Injunction language) would be to May 10,
18 2017—two additional days.

19 Regardless, the Injunction clearly enjoins Proper Media from withholding *any* revenues
20 after the May 8th termination date, except for hard costs which do not include profit sharing.
21 Plaintiffs knowingly flouted the termination date explicitly stated in the Injunction to engage in
22 self-dealing and withhold additional advertising revenues from May of 2017.

23 **IV. CONCLUSION**

24 Schoentrup and Proper Media’s willful disregard of this Court’s Injunction has gone on
25 long enough. The Court issued the Injunction to remedy and prevent the irreparable harm Snopes
26 was suffering as a result of Proper Media’s unlawful withholding of its advertising revenues and
27 control of its website. Schoentrup and Proper Media have taken untenable positions with respect to
28 the Injunction to avoid compliance and further misappropriate Snopes’s advertising revenue.


1 Plaintiffs will not stop violating this Court's orders until they are faced with a meaningful contempt
2 order. Snopes respectfully requests that this Court issue and Order to Show Cause re: Contempt as
3 to the following issues:

- 4 - Plaintiffs' withholding of advertising revenue after the May 8, 2017 termination date; and
- 5 - Plaintiffs' withholding of advertising revenue for periods governed by the GSA.

6
7 DATED: April 25, 2018

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

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