IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Civil Action No. 15-cv-1775-WJM-MJW

ERIC VERLO,
JANET MATZEN, and
FULLY INFORMED JURY ASSOCIATION,

Plaintiffs,

v.

CHIEF JUDGE MICHAEL MARTINEZ, in his official capacity as chief judge of the Second Judicial District,

Defendant.

ORDER FINDING DENVER IN CONTEMPT

Plaintiffs Eric Verlo, Janet Matzen, and the Fully Informed Jury Association ("FIJA") (collectively, "Plaintiffs") ask this Court to hold former Defendants City and County of Denver and Denver Police Chief Robert C. White in his official capacity (together, "Denver") in contempt for certain actions taken by Denver law enforcement officers on March 16, 2016, allegedly in violation of the Preliminary Injunction (ECF No. 28) that was then in place.[1] The Court held an evidentiary hearing on April 19, 2017. (*See* ECF No. 162.) For the reasons explained below, the Court finds that the individual law enforcement officers involved in the March 16, 2016 incident did not behave

[1] The Preliminary Injunction was dissolved earlier today. (*See* ECF No. 173.) This has no bearing on these contempt proceedings because the Preliminary Injunction was in full force on the day in question. *See, e.g.*, *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber, Cork, Linoleum & Plastic Workers of Am.*, 461 U.S. 757, 766 (1983) ("An injunction issued by a court acting within its jurisdiction must be obeyed until the injunction is vacated or withdrawn."); *Howat v. Kansas*, 258 U.S. 181, 189–90 (1922) (contempt of a later-vacated order is still contempt).

contemptuously. Denver itself, however, failed to educate its police force regarding the Preliminary Injunction and, as a result, caused its police officers to unknowingly violate the Injunction. Denver will therefore be held in contempt and will be required to pay Plaintiffs' attorneys' fees. In the present circumstances, the Court may not award any greater sanction than that.

I. PROCEDURAL BACKGROUND

Plaintiffs' original complaint was filed against Denver alone. (ECF No. 1.) The complaint was motivated by the pending prosecution of two activists, Eric Brandt ("Brandt") and Mark Iannicelli ("Iannicelli"), whom the State of Colorado had accused of jury tampering by handing out jury nullification literature in front of Denver's Lindsey-Flanigan Courthouse ("Courthouse"), where Colorado's Second Judicial District holds most of its criminal proceedings. (*Id*. ¶¶ 14–19.) Plaintiffs wished to engage in similar jury nullification advocacy in front of the Courthouse, but feared prosecution, given Brandt's and Iannicelli's experience. (*Id*. ¶¶ 20–22.) On the same day they filed their complaint, Plaintiffs also moved for a preliminary injunction. (ECF No. 2.)

Two days later, Plaintiffs amended their complaint ("Amended Complaint") to add the Second Judicial District as a defendant and to set forth allegations regarding a Second Judicial District administrative order recently posted on the Courthouse doors. (ECF No. 13-1 ¶ 2.) The order, designated "CJO 15-01" and dated August 14, 2015, was titled "Chief Judge Order Regarding Expressive Activities at the Lindsey-Flanigan Courthouse." (ECF No. 24-1.) This order was amended on August 21, 2015, hours before the preliminary injunction hearing in this Court, and was admitted as an exhibit in the preliminary injunction hearing ("Plaza Order"). (*See* ECF No. 25-1.) The Plaza

Order prohibits most expressive activities in a specified geographic area leading up to the Courthouse's two public entrances ("Restricted Area").

One day before the preliminary injunction hearing, Plaintiffs and Denver submitted a joint stipulation ("Stipulation") that the Courthouse Plaza (comprising the Restricted Area and certain additional surroundings) "is a public forum and any content-based regulations must be narrowly drawn to effectuate a compelling state interest and reasonable time, place and manner regulations." (ECF No. 23 ¶ 1.) Plaintiffs and Denver further stipulated "that Plaintiffs' proposed intent of peacefully handing out jury nullification literature to or discussing jury nullification with passersby at the Plaza, without more, does not violate Colorado law." (*Id*. ¶ 2.) And finally, as relevant here, Denver stipulated that "it does not intend to enforce the [Second Judicial District's Plaza Order] as written and will only impose content and viewpoint neutral reasonable time, place and manner restrictions on the use of the Plaza, and/or other exterior areas surrounding the Plaza if Denver determines that a compelling need exists to do so." (*Id*. ¶ 4.) In other words, Denver had essentially taken sides with Plaintiffs against the Second Judicial District.

Following a preliminary injunction hearing between Plaintiffs and the Second Judicial District, the Court entered the Preliminary Injunction against the Second Judicial District and against Denver, enjoining any efforts to enforce the portion of the Plaza Order against Plaintiffs' intended jury nullification advocacy:

> . . . Defendants shall not enforce [the speech restrictions contained in] the Plaza Order against any Plaintiff (including any FIJA member) physically located in the Restricted Area to the extent he or she is otherwise lawfully seeking to distribute and/or orally advocate the message contained in

> the pamphlets titled "Fresh Air for Justice" and/or "Your Jury Rights: True or False?"

(ECF No. 28 at 25.) The Court did not enjoin portions of the Plaza Order regarding, *e.g.*, obstructing entryways, erecting tents, or using sound amplification equipment. The Second Judicial District subsequently re-posted the Plaza Order at the Courthouse's main entrance, but with the enjoined portions redacted. (*See* Defendant's Exhibit ("DX") F.)

Several months later, this Court granted Denver's motion to dismiss for lack of jurisdiction. (ECF No. 97.) The Court reasoned that the Stipulation rendered Plaintiffs' claims against Denver moot, and that any possibility that Denver might still somehow enforce the Plaza Order was too speculative to sustain standing. (*Id*. at 4–10.) The Court also adopted the Stipulation as an order. (ECF No. 98.)

II. FINDINGS OF FACT

Having listened attentively to each witness; having carefully judged each witness's credibility; and having reviewed the hearing transcript and the exhibits admitted into evidence, the Court finds as follows:

The incident that precipitated this contempt proceeding took place on March 16, 2016, at 8:28 a.m., according to the timestamp on the audio-less security video that captured the incident. (*See* Plaintiffs' Exhibit ("PX") 4.) At that moment, Iannicelli and an unidentified man were standing outside the Courthouse's main entrance (roughly 10 feet from the door itself), and Iannicelli was offering pamphlets to a succession of three individuals entering the Courthouse, each about three or four seconds apart.

The last of these three individuals turned out to be Madison Wilkins ("Wilkins"), a 73-year-old African-American woman. As with the previous two individuals, Iannicelli

casually held out a jury nullification pamphlet. Her attention grabbed, Wilkins slowed down for perhaps half-a-second and turned slightly toward Iannicelli, but she then turned toward the Courthouse door and entered. Iannicelli's pamphlet may have brushed Wilkins's sleeve as she turned toward the door, although nothing in the video shows this clearly, nor does the video show that Iannicelli made any intentional motion in this regard. The entire interaction between Iannicelli and Wilkins, from the time that Iannicelli noticed Wilkins to the time she turned and headed for the door, lasted about five seconds.

Roughly an hour later, Brandt joined Iannicelli on the Courthouse Plaza. Brandt was there to gather signatures for a petition.

At 9:50 a.m., a succession of three women (but not Wilkins) approached Sheriff's Deputy Jason Foos ("Foos"), who works at the Courthouse and was at that time assigned to "hall patrol" inside the building. These women reported that a man outside the Courthouse was directing vulgarities at passersby and otherwise harassing them. Apparently Foos was located in a place where he could see out onto the Courthouse Plaza. As he scanned the Courthouse Plaza, he noticed Brandt and Iannicelli, whom he knew from previous interactions. Foos also knew that Brandt had previously been accused of the sort of harassment the women were reporting that day, so Foos and a few other deputies went outside to investigate.

Brandt and Foos have interacted many times previously, and do not have a friendly relationship. As Foos approached and announced his purpose, Brandt immediately began shouting and cursing at him. Apparently by coincidence, Wilkins was exiting the Courthouse at about the same time and approached Foos of her own

accord. Wilkins reported that she too had been harassed earlier that day. Wilkins did not specifically say that Brandt had harassed her, but Foos inferred from Brandt's immediate and vocal defensiveness that he had been Wilkins's harasser.

Foos directed another Sheriff's Deputy, whom the parties have never named, to escort Wilkins inside the Courthouse and to confirm whether she wanted to press charges. The other Deputy did so, and radioed Foos a few minutes later to report that Wilkins indeed wanted to press charges. Foos then handcuffed Brandt and brought him to a holding cell in the Courthouse basement.

About this time, another Sheriff's Department employee stationed at the Courthouse, Captain Derek Wynn ("Wynn"), was informed by radio that someone was pressing charges against Brandt. Wynn was asked to come to the "security room" of the Courthouse. When he arrived at the security room, Wynn encountered Wilkins and learned that she was the complainant. Wynn asked Wilkins to describe what happened. Wilkins reported that someone had three times tried to force her to take literature, and had actually "somehow struck [her] in the stomach area" on the third occasion. Wynn then asked a nearby security guard to pull up the video of the event (the same video later introduced at the contempt hearing as PX 4). Wynn, who had seen Brandt several times before, and had also seen Iannicelli on a few occasions, immediately recognized that the person in the video offering literature to Wilkins was not Brandt. Wynn claims that he only watched the video long enough to recognize the potential mistaken identity, and that he did not watch the entire five-second interaction between Wilkins and her alleged assailant.

Apparently Wilkins had not been watching the video along with Wynn. Wynn

therefore returned to Wilkins and asked her to describe the clothing worn by the man who had been allegedly forcing literature at her. Her answers confirmed to Wynn that the relevant suspect was Iannicelli, not Brandt. Wynn went to the Courthouse basement, explained the mistake to Brandt, and released him. Wynn also went out onto the Courthouse Plaza, found Iannicelli, handcuffed him, and brought him to the Courthouse basement.[2]

Soon after, Corporal Paul Waldock ("Waldock") of the Denver Police Department, along with his trainee, Officer Chase Magalis ("Magalis"), arrived at the Courthouse's security room. The Sheriff's Department had summoned the police to the Courthouse because it is the Police Department's responsibility to decide whether to institute formal criminal proceedings.

Waldock and Magalis obtained a written statement from Wilkins that Iannicelli had offered her a pamphlet and Wilkins had responded,

> I don't want it. This man told me to read it. I said for the second time I don't want to read it, or take it. I have to open the door. I was followed to the door before I was allowed to get him away from me. . . . He had put the [pamphlet] against me as I walked through the door.

(PX 3 at 2.) Waldock and Magalis also watched the video of the incident (again, the same video later introduced at the contempt hearing as PX 4). Apparently they watched the entire interaction between Iannicelli and Wilkins, unlike Wynn's claim of only watching the first couple of seconds. Finally, a Sheriff's Deputy (identity unknown) handed to Waldock and Magalis a copy of the Plaza Order and stated that Iannicelli had

[2] It is not clear whether Wynn first released Brandt and then arrested Iannicelli or vice versa. The order of these two events is not material.

violated it "by confronting and interfering with the victim's movement into the building." (PX 3 at 14.)[3]

Although the video of the encounter between Iannicelli and Wilkins does not support the Sheriff's Deputy's characterization of the event, it is true that the non-enjoined portions of the Plaza Order prohibit obstructing ingress and egress. However, the copy of the Plaza Order given to Waldock and Magalis was an *unredacted* copy. (*See* PX 3 at 4–9.) In other words, Waldock and Magalis received a copy that, on its face, was fully in force, including its speech and expression restrictions. It is not clear why such a copy still existed.[4] Moreover, Waldock and Magalis had not been informed (*e.g.*, by their Police Department supervisors) about the Preliminary Injunction's effect on the Plaza Order.

Reading the Plaza Order themselves and comparing it to what they saw on the security video, Waldock and Magalis concluded that Iannicelli had violated the Plaza Order's speech restrictions by distributing literature in the Restricted Area. (PX 3 at 13–14.) They accordingly charged Iannicelli with two offenses: (1) disturbing the peace, in violation of Denver Municipal Code § 38-89(a) ("It shall be unlawful for any person to disturb or tend to disturb the peace of others by violent, tumultuous, offensive or obstreperous conduct or by loud or unusual noises or by unseemly, profane, obscene or offensive language calculated to provoke a breach of the peace . . . ."); and (2) violation

[3] PX 3 is Magalis's later police report. Although it bears Magalis's name, Waldock confirmed at the evidentiary hearing that he supervised Magalis's preparation of the report, given Magalis's trainee status.

[4] All of the Sheriff's Deputies who testified at the hearing understood at the time of the incident in question that the speech restrictions in the Plaza Order were unenforceable.

of a court order, as prohibited by Denver Municipal Code § 38-43(a) (forbidding violation of a "valid written [court] order . . . which restrains and enjoins any person from contacting in any manner . . . any other person or which requires a person to leave certain premises, or refrain from entering or remaining on such premises").[5] (PX 3 at 1; PX 5.)

Waldock and Magalis issued a corresponding summons and complaint to Iannicelli and then released him from Courthouse detention. The charges against Iannicelli were dropped five days later.

III. LEGAL STANDARD

"To prevail in a civil contempt proceeding, the plaintiff has the burden of proving, by clear and convincing evidence, that a valid court order existed, that the defendant had knowledge of the order, and that the defendant disobeyed the order." *Reliance Ins. Co. v. Mast Const. Co.*, 159 F.3d 1311, 1315 (10th Cir. 1998) (citation omitted) ("*Reliance II*"). "Any ambiguities or omissions in the order will be construed in favor of [the person charged with violating the order]." *Reliance Ins. Co. v. Mast Const. Co.*, 84 F.3d 372, 377 (10th Cir. 1996) ("*Reliance I*").

IV. ANALYSIS

A. Preliminary Matters

Before the Court can address the substance of Plaintiffs' contempt assertion, three matters require discussion.

[5] The latter ordinance seems targeted at violations of personal restraining orders. Nonetheless, the Plaza Order arguably falls within the ordinance's literal language.

1. The Relevant Order

This contempt proceeding could conceivably encompass a violation of the Preliminary Injunction and a violation of the Stipulation. Plaintiffs, however, have focused entirely on the alleged violation of the Preliminary Injunction. The Court will therefore do the same.

2. Standing

The Preliminary Injunction explicitly protects "any Plaintiff (including any FIJA member)" and no one else. (ECF No. 28 at 25.) As the Court previously stated, "This language was intentionally narrow, responding precisely to Plaintiffs' concerns and preserving the Second Judicial District's discretion as much as possible." (ECF No. 54 at 9.)

Brandt and Iannicelli are not named plaintiffs in this lawsuit. Therefore, to fall within the Preliminary Injunction's scope, they must be FIJA members. The Court therefore asked both Brandt and Iannicelli at the evidentiary hearing whether they are FIJA members. Iannicelli testified that he is a FIJA member. Brandt testified that he (Brandt) is not, and expressed some uncertainty about whether FIJA has members "other than their attorneys."

The Court could locate no settled test for determining whether an individual is a "member" of an organization claiming associational standing. *See* 13A Charles Alan Wright et al., *Federal Practice & Procedure* § 3531.9.5 nn.70–75 and accompanying text (3d ed., Apr. 2017 update). The Court agrees with Professors Freer and Cooper, however, that

> [t]here are so many varieties of more or less formal organizations in our society, and so many variations in the

> forms of affiliation with real people, that practical experience may often justify a focus on the nature of the relationships that justify representation as to a particular claim rather than on more abstract theories of membership as such.

Id. Here, Iannicelli testified that Kirsten Tynan, FIJA's executive director, made an "executive decision" to admit him into the organization and he has since distributed FIJA literature both in Colorado and in Oregon. Moreover, Iannicelli's jury nullification advocacy set in motion the events that led to his arrest on March 16, 2016. Under the circumstances, this is enough to establish Iannicelli's FIJA membership for purposes of seeking contempt.

Brandt, by contrast, simply denies membership in FIJA. The Court sees no reason to disregard Brandt's own view of his membership. Accordingly, Brandt lacks standing to seek contempt for any Denver officer's actions directed at him.

3. Notice

Plaintiffs' contempt motion specifically asks that Denver, Magalis, Foos, and Wynn be held in contempt. (ECF No. 108 ¶ 16.) Waldock was never mentioned. To the extent Plaintiffs also seek to hold Waldock in contempt, that request is denied because Waldock did not receive appropriate notice.[6]

B. Individual Officers' Culpability

It was essentially uncontradicted at the evidentiary hearing that, up until Waldock and Magalis received an unredacted version of the Plaza Order, the investigation into Brandt and Iannicelli on the day in question focused entirely on whether one of them had committed some sort of assault, harassment, or obstruction offense against Wilkins.

[6] In any event, the Court would deny the request on its merits for the reasons explained in Part IV.B.

Such an investigation did not implicate the Preliminary Injunction. Nonetheless, most of the evidentiary hearing focused on whether any law enforcement officer had probable cause to suspect Iannicelli of committing a crime against Wilkins. In particular, Plaintiffs' counsel repeatedly pointed out that various officers had listened to Wilkins's account or read her statement (or both) and then watched the video, which contradicts most of Wilkins's story.

If this had been a suppression hearing, the Court would have been inclined to agree with Plaintiffs' counsel that a comparison of Wilkins's account to the video eliminates probable cause for any of the crimes that law enforcement officers seem to have been considering. This is further supported by Waldock's admission during the hearing that he had previously interacted with Wilkins and had already formed the impression that she is easily offended.

But the eventual citation for the crime of disturbing the peace is not a violation of the Preliminary Injunction. To be sure, the citation for violating the Plaza Order's enjoined speech restrictions *is* a violation of the Preliminary Injunction, but the Court finds that it was not a contemptuous violation because the Court finds Waldock credible in his assertion that he had not been made aware of the effect of the Preliminary Injunction on the Plaza Order. Therefore, when handed an unredacted version of the Plaza Order, he had no reason to know that Iannicelli's pamphleteering was protected under the Preliminary Injunction.

This conclusion is further supported by the language Magalis used in his later report. Magalis forthrightly wrote, "The arrestee was handing out the literature approximately 10 feet from the [Courthouse's main entrance], which is within the area

the court order forbids doing so." (PX 3 at 13; *see also id*. at 14 ("The suspect was also distributing literature which is a prohibited activity on any walkway to the Courthouse. . . . The [video] footage depicted the suspect handing out the literature approximately 10 feet from the door, which is within the area the court order forbids doing so.").) The Court finds it implausible that a police officer aware of the Preliminary Injunction would so plainly justify his decision to charge based on the enjoined part of the Plaza Order.

Plaintiffs have argued that the various officers' actions could have been intended as retaliation for Iannicelli's exercise of his free-speech rights. (*See* ECF No. 108 ¶¶ 12–13.) Plaintiffs seem to be saying, in other words, that a highly suspect probable cause determination for a crime such as disturbing the peace could be a pretext for a desire to suppress free speech.

Plaintiffs have failed to present clear and convincing evidence of this theory of liability. It is undisputed that Foos first began investigating Brandt that morning based on three complaints about what Foos assumed to be Brandt's behavior on the Courthouse Plaza. Then Foos heard Wilkins's accusation and assumed that Wilkins was accusing Brandt in light of Brandt's immediate vocal reaction—a reasonable assumption under the circumstances. Foos then delegated to another deputy the task of getting more detail from Wilkins and a commitment to press charges, and all of that interaction between Wilkins and the other deputy took place out of Foos's presence. He then heard from the other deputy that Wilkins would press charges, and he relied on that to detain Brandt—also a reasonable action, under the circumstances.

At this point, Foos apparently dropped out of the picture, but Wynn took over and quickly realized by watching the video that Brandt was the wrong suspect. Wynn

promptly released Brandt and detained Iannicelli instead.

The Court is highly skeptical of Wynn's claim that he only watched the video long enough to recognize the mistaken identity. The entire interaction happens so quickly that it would be difficult to *stop* the video before seeing all of it. Nonetheless, the Court cannot say that this provides clear and convincing evidence of Wynn's intent to retaliate against Iannicelli for exercising the rights granted him under the Preliminary Injunction.[7] Even if Wynn was not testifying truthfully about the amount of video he watched, it would seem to be evidence of nothing more than a stubborn unwillingness to accept what he likely understands was a poor probable cause determination. The Court discerns nothing more sinister than that.

Finally, as for Waldock and Magalis, the Court has already concluded above that they acted in good faith based on ignorance of the Preliminary Injunction's effect on the Plaza Order. Consequently, Plaintiffs have failed to show clear and convincing evidence of retaliatory motive.

For all of these reasons, none of the individual officers will be held in contempt.

C. Denver's Culpability

The analysis is different as to Denver itself. Waldock testified that he and Magalis had never been informed about the Preliminary Injunction or its potential effect on the Plaza Order. This was approximately seven months after the Preliminary Injunction issued—far more than enough time to educate the officers of Police District 6, which covers the Courthouse, and to put in place a system by which officers assigned to

[7] Brandt, who confronts Sheriff's Deputies at the Courthouse frequently, gave his opinion at the hearing that Wynn "is a pretty reasonable law enforcement officer."

District 6 in the future would likewise be educated. That these officers would be required to respond to calls at the Courthouse was certain. Accordingly, Denver's failure in this regard must be deemed a willful disregard of the Preliminary Injunction.

At the contempt hearing, Denver's counsel contended that the Preliminary Injunction did not specify to whom within Denver it needed to be distributed. This argument is completely disingenuous. The Preliminary Injunction specifically binds "[t]he City and County of Denver, [and] its police chief, Robert C. White, in his official capacity," along with "their respective officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with any of them." (ECF No. 28 at 25.) It was thus Denver's duty to ensure that all of those officers, agents, etc., knew of the Injunction. Or to put it somewhat differently, Denver cannot plausibly claim that it thought the Preliminary Injunction only applied to the extent that Police Chief White or one of Denver's attorneys *became aware of* a Denver Police officer attempting to enforce the Plaza Order. Such a narrow interpretation would all but undermine the Preliminary Injunction.

The Court accordingly finds Denver in contempt. The more difficult question is the appropriate remedy. It was once said in this District that "[a] district court has broad discretion in using its contempt powers to require adherence to court orders." *Cook v. Rockwell Int'l Corp.*, 907 F. Supp. 1460, 1463 (D. Colo. 1995). If the Court's discretion was as a broad as it sounds in this statement, the Court would order Denver to account for its failure to educate District 6 regarding the Preliminary Injunction, and to propose for this Court's review and approval comprehensive administrative procedures for properly educating the appropriate Denver officials and employees about the

requirements of this Court's injunction orders.

However, in reality, the Tenth Circuit takes a somewhat crabbed approach to contempt sanctions. Such sanctions "may only be employed for either or both of two distinct remedial purposes: (1) to compel or coerce obedience to a court order; and (2) to compensate the contemnor's adversary for injuries resulting from the contemnor's noncompliance." *O'Connor v. Midwest Pipe Fabrications, Inc.*, 972 F.2d 1204, 1211 (10th Cir. 1992) (internal quotation marks omitted; alterations incorporated). To levy any sanction of the first variety, "the court must 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. . . . [C]oercive civil sanctions may only continue until terminated by compliance." *Id*. This language plainly assumes that contempt is ongoing. It thus precludes the possibility of a "coercive" sanction for a contempt that took place while an injunction was in force but was not adjudged as a contempt until after the injunction was dissolved.

Earlier today, this Court entered its Final Findings of Fact and Conclusions of Law regarding the substantive dispute between Plaintiffs and the Second Judicial District, and the Court there concluded that the Preliminary Injunction must be dissolved. Consequently, the Court may no longer issue a coercive sanction against Denver, such as a requirement that it put in place a program to educate its officers regarding relevant injunctions.[8]

[8] Moreover, "[i]f the beneficiaries of a contempt sanction are the courts and the public interest, the contempt at issue is usually criminal contempt." *Smith v. Union Pac. R. Co.*, 878 F. Supp. 171, 173 (D. Colo. 1995) (internal quotation marks omitted). The Court did not institute criminal contempt proceedings in this matter.

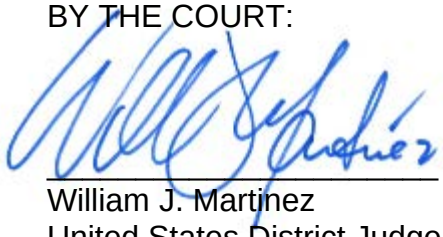
The Court is therefore left solely with the possibility of compensatory sanctions. Iannicelli offered no evidence of losing money on account of his detention and short-lived prosecution. Thus, the Court cannot award compensatory sanctions to Iannicelli. Nonetheless, it is well established that "[a] complainant may recover attorneys' fees and expenses incurred in prosecuting a contempt." *Premium Nutritional Prod., Inc. v. Ducote*, 571 F. Supp. 2d 1216, 1220 (D. Kan. 2008); *see also In re Aramark Sports & Entm't Servs., LLC*, 725 F. Supp. 2d 1309, 1318 (D. Utah 2010) (awarding fees); *Bad Ass Coffee Co. of Hawaii v. Bad Ass Coffee Ltd. P'ship*, 95 F. Supp. 2d 1252, 1257 (D. Utah 2000) (awarding fees as well as costs associated with gathering evidence of contempt). Indeed, although the Court has found that Denver's contempt was willful, the Court could award fees even if the contempt was not willful. *See John Zink Co. v. Zink*, 241 F.3d 1256, 1262 (10th Cir. 2001) ("a finding of willfulness is not required to award attorney fees in a civil contempt proceeding"). Accordingly, Plaintiffs will be awarded their fees and expenses reasonably incurred in the course of these contempt proceedings.

V. CONCLUSION

For the reasons set forth, above the Court finds Denver IN CONTEMPT of the Court's Preliminary Injunction (ECF No. 28) and, as a sanction, awards Plaintiffs their reasonable attorneys' fees and expenses upon compliance with D.C.COLO.LCivR 7.1(a) and 54.3. Plaintiffs shall claim their reasonable expenses as part of their fees motion, not through a bill of costs.

Dated this 27th day of July, 2017.

BY THE COURT:



William J. Martínez
United States District Judge