

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NO.: 6:20-cv-00771-RBD-GJK

FREEDOM MEDICAL, INC.,

Plaintiff,

v.

MAHESHWAR SEWPERSAUD, a/k/a  
GAVIN SEWPERSAUD, and USINE ROTEC,  
INC. d/b/a ROTEC INTERNATIONAL

Defendants

---

**DEFENDANT USINE ROTEC INC.'S RESPONSE TO ORDER  
TO SHOW CAUSE AND SUPPORTING MEMORANDUM**

Defendant Usine Rotec, Inc. (“Rotec”) hereby responds to the Court’s Order to Show Cause [D.E. 116] and Plaintiff’s Motion for Order to Show Cause (“Motion”) [D.E. 115] by asserting that there is no cause for it to be held in civil contempt. In support of this response, Rotec states as follows:

**INTRODUCTION**

Plaintiff Freedom Medical, Inc. (“Freedom”) asks the Court to find Rotec in contempt for violation of the Court’s temporary restraining order and preliminary injunction (the “Injunction Orders”) because co-defendant Maheshwar “Gavin” Sewpersaud (“Sewpersaud”), while in Rotec’s employ, had contact with three alleged customers of Freedom. What Freedom fails to explain to the Court is that Freedom itself is responsible for such uncertainty surrounding the identity of its customers that it has, in

effect, created a minefield Defendants must navigate in an attempt to avoid inadvertent violations of the Injunction Orders. Specifically, Freedom has:

- Filed a still-pending motion seeking to have the Injunction Orders apply to a list of over 5,000 entities it alleges are actual and prospective customers
  - nearly all hospitals nationwide - based solely on a single, self-serving affidavit by a Freedom employee;
- Insisted that its alleged actual and prospective customer lists be kept secret from Rotec, under “Attorneys’ Eyes Only” (“AEO”) designations, such that Rotec cannot know what entities are off limits to Sewpersaud;
- Repeatedly amended its customer lists to add new information and new entities (but still insisting that the information is AEO);
- Claimed it has a “national contract” with Select Medical Corporation even though the contract does not include all of the group’s hospitals;
- Refused to participate in discovery to assist in settling the disputes regarding Freedom’s claimed actual and prospective customers; and
- Repeatedly insisted that Rotec “knows” the identity of Freedom’s customers while simultaneously demanding that Rotec take Freedom at its word as to what customers should be included in the Injunction Orders.<sup>1</sup>

Under these circumstances, with secret lists and the scope of the Court’s Injunction Orders still undefined, Rotec is nonetheless attempting in good faith to continue to do business without violating the Injunction Orders. Rotec cannot be held responsible for the uncertainty surrounding the customer lists. It should not be found in contempt for Sewpersaud’s communications with two hospitals (Select Hospital, Panama City and the VA Hospital, Coatesville) which Rotec did not know, and could not know, are actual or prospective customers of Freedom. Neither should Rotec be held in

---

<sup>1</sup> Freedom has also refused to answer any of Rotec’s discovery requests for information Rotec needs to defend itself against Freedom’s claims. *See, e.g.*, [D.E. 118]. Rotec is in the process of meeting-and-conferring about Freedom’s discovery responses and will seek appropriate relief from the Court if the parties are unable to resolve the dispute.

contempt for Sewpersaud's limited communication with the Orlando VA, begun before he was served with the temporary restraining order.

Indeed, as explained further below, Select Hospital, Panama City (which was a customer of Rotec well before Sewpersaud's employment), was not on Freedom's secret list at the time Sewpersaud had contact with them. Freedom added it to the sealed list only *after* it discovered that Sewpersaud had providing a brief post-sale training there in response to the customer's request to Rotec (not Sewpersaud). Also, it was only after this training session that Freedom produced to Rotec's counsel its Select Hospital "national contract," subject to an AEO designation.

Similarly, the Veterans Hospital in Coatesville, PA is not included in Freedom's original or amended lists. Even if it had been, of course, it would not have helped Rotec because Rotec is not permitted to see Freedom's AEO customer lists.

Finally, Sewpersaud's communication with the Orlando VA was a nonconsequential email exchange begun before the Defendants became aware of the Court's temporary restraining order, which Freedom sought and received *ex parte*.

These isolated instances, especially under the circumstances described above, do not establish a basis for a contempt finding, and they do not rise to the level necessary for the onerous sanctions sought by Freedom. To be clear, Freedom makes other allegations as to Sewpersaud in its Motion, including claims that Sewpersaud deleted messages from his personal phone. However, Freedom does not allege that Rotec directed, participated in, knew about, or somehow acted in concert with Sewpersaud with respect to those other claims. No evidence has been presented to this Court that Rotec had any involvement, directly or indirectly, with any of the alleged text and email deletions. In fact, Rotec has

no knowledge that such things occurred, and would not have participated in such conduct if it had occurred. .

The clear evidence before this Court establishes that Rotec acted in good faith, did not violate the Court's orders, and should not be held in contempt.

## **BACKGROUND**

### **A. The Parties**

Rotec is a Canadian-based company in the business of manufacturing and selling hospital beds. *See* Declaration of Miguel Valero ("Valero Dec."), attached hereto as Exhibit A, at ¶¶ 3-4 . Until 2019, Rotec had no employees in the United States, selling its products to hospitals in the United States only through distributors and dealers, with the exception of Select Medical to whom Rotec sold directly for many years. *Id.* at ¶¶ 5, 8; Deposition of Miguel Valero ("Valero Dep."), attached hereto as Exhibit B, at p. 160. Sewpersaud was hired in November 2019 as the only Rotec employee based in the United States, and to this day he remains as Rotec's sole U.S. employee. Valero Dec., *Ex. A* at ¶ 16; Valero Dep., *Ex. B*, at p. 160.

Rotec does not perceive Freedom as its competitor, as Freedom is known to primarily lease beds to medical facilities and Rotec, a bed manufacturer/seller, has no leasing business. Valero Dec, *Ex. A*, at ¶ 15. See also Declaration of Richard Fendley, owner of Interior Fusion, LLC ("Fendley Dec."), attached hereto as Exhibit C, at ¶ 19. Much like Toyota Motor Corp. and Enterprise Rent-A-Car do not compete in the same business even though both are in the car industry generally, Rotec and Freedom do not compete. *See* Freedom's webpage, attached hereto as Exhibit D, showing only a bed

rental business; and Rotec's webpage, attached hereto as Exhibit E, showing only a bed sales business.<sup>2</sup>

## **B. The Injunction Orders**

Nevertheless, when Sewpersaud went to work for Rotec, Freedom sought an *ex parte* temporary restraining order [D.E. 2], representing to the Court that Freedom and Rotec were indeed competitors and that Sewpersaud had given Rotec a "trade secret" by divulging the fact that the Orlando VA was had issued a public request for proposal for 30 Rotec beds. *See* Memorandum of Points and Authorities in Support of Freedom's Motion for Temporary Restraining Order [D.E. 3], at p. 20. But the fact that the Orlando VA was looking for a 30-bed bid was also known to a third party, Interior Fusion, LLC, which partners with the Orlando VA for purposes of obtaining the best deals to meet the Orlando VA's needs. *See* Fendley Dec. Ex. C, at ¶¶ 6, 13-16. It was Interior Fusion that did the reasonable thing in obtaining multiple bids for the Orlando VA and eventually received notice that the Orlando VA selected the lower quote provided by Rotec. *Id.* at ¶¶ 13-16. The idea that there was a conspiracy or sharing of trade secrets is based on the erroneous assumptions that Rotec and Freedom are competitors and that Freedom had an

---

<sup>2</sup> Rotec acknowledges and respects that the Court's prior orders found that Freedom had shown a likelihood of success in proving that Rotec and Freedom are competitors. However, Rotec was not a party to the case at the time and believes it will ultimately prevail in demonstrating that the two companies are not competitors. Findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175 (1981). *See also Jones v. Governor of Fla.*, 950 F.3d 795, 832 (11th Cir. 2020) (affirming findings made in granting a preliminary injunction but noting that the court may reach different conclusions upon a full trial on the merits); *David Vincent, Inc. v. Broward Cty., Fla.*, 200 F.3d 1325, 1331 (11th Cir. 2000) ("temporary injunction rulings are generally not conclusive determinations on the merits; they should not bar a more thorough consideration of a claim when the evidence and legal arguments are better developed.").

exclusive agreement with the Orlando VA or Interior Fusion, or that it had a right to a secret bidding process.

With Rotec unable to present contrary evidence, Freedom obtained an *ex parte* temporary restraining order [D.E. 11] and eventually a preliminary injunction [D.E. 73] against Sewpersaud. The preliminary injunction order of June 23, 2020, specifically enjoined Sewpersaud from:

- ii. Soliciting, doing business with, selling to, renting to, or servicing any current or prospective client, customer, or account, who has been solicited or serviced by Freedom Medical or any affiliate of Freedom Medical for a period of one year (1 year) commencing May 6, 2020.

[D.E. 73 at p. 16]. The order also provided:

The parties are directed to meet and confer by Monday, July 6, 2020 and provide the Court with a list of Freedom Medical customers and prospects subject to the constraints of paragraph (ii) above to assist the Court in narrowing the reach of any ongoing injunctive relief.

*Id.*

### **C. Freedom's Customer and Prospect Lists**

It was only after the preliminary injunction hearing and entry of both Injunction Orders that Freedom amended its Complaint to add Rotec as a defendant. *See* [D.E. 72.] Subsequently, Freedom circulated lists of its alleged actual and prospective customers, but refused the Defendants' joint request for documentation to verify that all of the entities named were actual and prospective customers of Freedom during the last year of Sewpersaud's employment. Eventually, on July 13, 2020, Freedom filed its Motion for Approval of Customer List and Prospective Customer List containing over 5000 entries. [D.E. 95.] Freedom insisted that these lists were to be AEO, and not provided to Rotec or Sewpersaud. *See* Freedom's Motion for Leave to File Documents Under Seal [D.E. 89].

See also July 8, 2020 and August 12, 2020 emails from Freedom's counsel, Greg Mathews, collectively attached hereto as Exhibit F, stating that Freedom's customers were designated as AEO and documents so designated cannot be viewed by Rotec. Freedom provided no explanation as to how the Defendants could be required to abide by the Court's Injunction Orders without having the opportunity to know the identities of the customers Sewpersaud would be prohibited from soliciting. In fact, even Rotec's counsel wasn't timely provided all the documents necessary to assess Freedom's claimed customer lists. Freedom did not produce documents to Rotec, including the AEO Select Hospital "national contract," until August 31, 2020, well after the solicitations complained of in Freedom's Motion. (See August 31, 2020 letter to Rotec's counsel, attached hereto as Exhibit G.)

Freedom's Motion for Approval of Customer Lists is pending and therefore the parties' disputes as to those lists have not been resolved.

**D. Meritless Allegations of Rotec's Violations**

Freedom now complains that on May 18 and 19, 2020, Rotec and Sewpersaud were discussing a solicitation for the VA hospital in Coatesville, PA, and that on July 8, 2020, Sewpersaud provided training at Select Specialty Hospital in Panama City, Florida. See Motion at p.6-7. **Again, neither of these hospitals was included in Freedom's list of over 5,000 alleged customers referenced in its Motion for Approval of Customer Lists filed on July 13, 2020.** Freedom did not add the Select Specialty Hospital in Panama City, Florida, to its list until July 22, 2020 when Freedom filed an addendum adding 17 Select hospital entities "inadvertently omitted" from its previously filed prospective customer list; this amendment was made well *after* Sewpersaud provided

training at that hospital. [D.E. 104.] Freedom later made an additional amendment to its customer list, but never added the Coatesville, PA Veterans Hospital. [See D.E. 112.] This begs the question: if Freedom cannot keep an accurate listing of its customers, how are Defendants expected to know them, especially when the lists and amended lists are still sealed and kept secret from them?

Complicating matters further, Freedom contends that Rotec should just accept its word that all Select Hospitals are off limits because of Freedom's "national contract." See Motion at p. 6. That is not what the Court's orders require. Moreover, the so-called "national contract" does not list all Select Hospitals nationwide. In addition, Freedom overlooks the fact that Select Hospitals are longstanding clients of Rotec, beginning long before Sewpersaud was hired.

Finally, Freedom argues that Sewpersaud violated the Court's orders by soliciting the Orlando VA and Interior Fusion. (Motion at 6.) Freedom states that the emails contained in Exhibit 5 to its Motion evidence "continued dealings with the Orlando VA and Interior Fusion." *Id.* However, the submitted emails do not reference Interior Fusion at all. They only reflect that, on May 6, 2020, the same day the Court entered the temporary restraining order, Sewpersaud contacted an Orlando VA representative to say: "This is Gavin from Rotec. I am working on the hand control for bed serial number 086935." Then on May 11, 2020 Sewpersaud again responded to the Orlando VA, stating: "Hope you are going well. I received the hand control for the bed. Let me know when will be a good time to drop it off. I will need to RA the old one as I will have to get that from you." (Motion, at Ex. 5.) This brief conversation was begun before Sewpersaud and Rotec had knowledge of the temporary restraining order, and therefore cannot form

the basis for an order of contempt. *See* D.E. 14, showing service of the temporary restraining order only on Sewpersaud on the evening of May 6, 2020.

Contrary to Freedom's assertions, the evidence shows that Rotec has made every effort to comply with this Court's Injunction Orders despite the uncertainty surrounding the identity of Freedom's customers. Rotec repeatedly reminded Sewpersaud not to solicit or service entities he knew to be Freedom customers. *See* Valero Dep, Ex. B, at pp. 278-279. *See also* email from Miguel Valero to Sewpersaud, attached hereto as Exhibit H.

Further, there is no cause to hold Rotec in contempt for violating or aiding and abetting the violation of any aspect of the Court's orders, to require Rotec to pay any of Freedom's fees or costs, to enjoin Rotec from using the improvements listed in the Sewpersaud spreadsheet (all of which are publicly known and widely discussed customer needs for specialty beds, and some of which are expressly improvements already on other Rotec beds), to require Rotec to somehow guarantee Sewpersaud's compliance beyond what it is already doing, or to extend the life of the preliminary injunction. These excessive sanctions proposed by Freedom against Rotec for three minor instances of disputable violations serve to underscore Freedom's constant and egregious overreaching, and they should be denied.<sup>3</sup>

---

<sup>3</sup> By way of example, Freedom initially sought to enforce a noncompete clause with no geographic limitations [*see* Freedom's Proposed Order, D.E. 4], argued that Sewpersaud would have to move out of Florida in order to comply with the Court's Injunction Orders [*see* Motion for Clarification, D.E. 77], and submitted an initial list of customers with over 6,000 hospitals that it claimed Sewpersaud couldn't solicit [*see* email dated 7/3/2020, from Rotec's counsel to Freedom's counsel, attached hereto as Exhibit I].

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. **Civil Contempt Requires A Clear And Unambiguous Order, And Clear And Convincing Evidence Of A Violation, But Can Be Overcome By A Showing Of Impossibility Of Compliance**

Civil contempt is appropriate only upon a finding that: “(1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order.” *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002).

It is well-established that Fed. R. Civ. P. 65 requires that an injunction “state its terms specifically” and “describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.” Fed. R. Civ. P. 65; *Hughey v. JMS Dev. Corp.*, 78 F. 3d 1523, 1531 (11th Cir. 1996) (vacating permanent injunction because it failed to identify the acts that the company was required to do or refrain from doing). “[T]he specificity provisions of Rule 65(d) are not mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.” *Schmidt v. Lesser*, 414 U.S. 473, 476 (1974). *See also Florida Ass’n of Rehabilitation Facilities, Inc. v. State of Fla. Dept. of Health and Rehabilitative Services*, 225 F. 3d 1208, 1222 (11th Cir. 2000) (“[the] command of specificity is a reflection of the seriousness of the consequences which may flow from a violation of an injunctive order.”) (alteration in original); *American Can Co. v. Mansukhani*, 742 F. 2d 314, 325 (7th Cir. 1984) (holding that Rule 65 and its requirement “is no mere extract from a manual of procedural notice. It is a page from the book of liberty”).

An injunction “should clearly let defendant know what he is ordered to do or not to do. A court order should be phrased in terms of objective actions, not legal conclusions.” *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1203 (11th Cir.2001) (quoting *John H. Harland Co. v. Clarke Checks, Inc.*, 711 F.2d 966, 984–85 (11th Cir.1983)). See *South Beach Suncare, Inc. v. Sea & Skin Corp.*, No. 98-1114, 1999 WL 350458, at \*7 (S.D. Fla. 1999) (J. Turnoff) (concluding that the injunction was not sufficiently clear and ambiguous to warrant a finding of contempt where the parties had different interpretations of the injunction’s meaning).

Even if a plaintiff establishes that the underlying order is clear and unambiguous, it must also establish with clear and convincing evidence that a violation occurred. “A finding of civil contempt – willful disregard of the authority of the court – must be supported by clear and convincing evidence.” *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002).

Then the burden shifts to the party alleged to have violated the court order to “show a present inability to comply.” *Combs v. Ryan’s Coal Co.*, 785 F.2d 970, 984 (11th Cir. 1986). “Once it has been shown that a violation of the order has occurred, the burden shifts to the contemnor to demonstrate an impossibility of compliance.” *In re Lawrence*, 279 F.3d 1294, 1299 (11th Cir. 2002).

A party must show that it has made “in good faith all reasonable efforts to comply.” *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991) (quoting *United States v. Ryan*, 402 U.S. 530, 534 (1971)). See *Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990) (“Conduct that evinces substantial, but not complete, compliance with the court order may be excused if it was made as part

of a good faith effort...”); *Robin Woods Inc. v Woods*, 28 F. 3d 396, 398 (3rd Cir. 1994) (“...plaintiff has a heavy burden to show a defendant guilty of civil contempt and where there is ground to doubt the wrongfulness of the conduct, he should not be adjudged in contempt”).

**II. The Court’s Order Remains Vague Because There Is No Approved Customer List; There Is No Clear And Convincing Evidence Of Violations By Rotec, And Rotec Has Shown An Inability To Comply Despite Good Faith Efforts**

The Court’s Preliminary Injunction Order contemplated the inclusion of a specific list of customers and prospective customers, to provide the Defendants with specific direction and avoid uncertainty. That has not happened yet. Instead, Freedom submitted a list of over 5,000 hospitals with only a single, self-serving affidavit to establish that those entities were actual or prospective customers during the relevant time frame. This has created a prolonged period of confusion, with customer lists being secreted away from the Defendants so that they would be utterly unable to act with a clear understanding of the Court’s orders. Under the circumstances created by Freedom, the Injunction Orders do not presently contain the specificity and detail required by Rule 65.

Further, there is no clear and convincing evidence that Rotec has violated the Court’s Injunction Orders. Freedom complains that Rotec allowed Sewpersaud to deal with two hospitals - Select Hospital in Panama City and the Veteran’s Hospital in Coatesville, Pennsylvania which were allegedly Freedom clients or prospects. However, neither of these hospitals were listed in Freedom’s initial customer lists. Select Hospital

in Panama City was not added until after the conduct complained of.<sup>4</sup> The Veteran's Hospital in Coatesville was never added to Freedom's filed lists.

Moreover, Freedom's complaint regarding Sewpersaud's communications with the Orlando VA is based on an email conversation begun before either of the Defendants had knowledge of the Court's temporary restraining order. That conversation cannot form the basis for a claim of violation when the Order was not yet known.

These isolated instances do not constitute clear evidence of violations of the Court's Injunction Orders and they are not substantial enough to give rise to contempt sanctions. In fact, the evidence establishes that Rotec has acted in good faith, with every intent to abide by the Court's orders. Rotec has repeatedly reminded Sewpersaud of his obligation to follow the Court's directives, providing reminders verbally and in writing. The oversight of Sewpersaud is made difficult by the fact that Rotec's management is physically located in Quebec, Canada, but Rotec has complied with the Court's Injunction Orders in good faith.

### **III. There Is No Basis To Find Rotec In Contempt For Any Alleged Violation Related To The Preservation Of Texts, Messages Or Emails On Sewpersaud's Electronic Devices**

A nonparty to an injunction cannot be held in contempt absent evidence that the nonparty participated, and acted in concert with the enjoined party, in the violating conduct. *See ADT LLC v. Sec. Networks, LLC*, No. 12-81120-CIV, 2017 WL 2113410, at \*3 (S.D. Fla. Mar. 16, 2017) (J. Hurley) (no liability for violating injunction where there

---

<sup>4</sup> While Freedom references a June 25, 2020 letter to Rotec's counsel claiming that "all Select hospitals" should be subject to the nonsolicitation provisions of the preliminary injunction, Freedom did not produce the Select hospital contract to Rotec's counsel until recently, on August 31, 2020. Even then, the produced contract was identified as AEO and not all Select hospitals were listed. In any event, the Court's orders did not require Rotec to take as gospel what Freedom's attorney claims.

was no evidence that the enjoined entity's officer "personally participated in the infringing activities, or that he knowingly directed, authorized, approved[,] ratified ... or was otherwise a moving force in [the] decision to commit the infringing acts"). A party moving for contempt against one who is not the enjoined party has the burden of proving by clear and convincing evidence that the nonparty acted in concert with the enjoined party in the violation of a court order. *Merial Ltd. v. Cipla Ltd.*, No. 3:07-CV-125 CDL, 2011 WL 2489753, at \*7 (M.D. Ga. June 21, 2011), *aff'd*, 681 F.3d 1283 (Fed. Cir. 2012) *Cf. F.T.C. v. Leshin*, 618 F.3d 1221, 1230 (11th Cir. 2010) (affirming an order of contempt only because there was "clear and convincing evidence that the defendants, and the Counseling Center acting in concert, had violated the injunction").

Here, the Injunction Orders were issued against Sewpersaud, therefore Freedom would need to establish by clear and convincing evidence that Rotec acted in concert with Sewpersaud in relation to any alleged violations. As noted above, Rotec denies that the activities surrounding any alleged solicitation of the Orlando VA, Interior Fusion, the VA Hospital in Coatesville, or the Select Hospital in Panama City constitute violations of the Injunction Orders. Further, Freedom has offered no argument or evidence that Rotec acted in concert with Sewpersaud in relation to any other claimed violations.

Freedom sets forth its other allegations that the Court's Injunction Orders were violated in section B of its Motion, entitled "The Second Inspection reveals violations of the Preliminary Injunction." Motion, p. 4. The violation allegations are described in three subsections.

In subsections B(1) to its Motion Freedom alleges that there was a failure to preserve relevant information on Sewpersaud's devices because Sewpersaud changed the

text retention settings and deleted the WhatsApp application on his personal phone.

Freedom makes no mention of Rotec, and submits no evidence that would suggest Rotec had any involvement with Sewpersaud in connection with these activities on his phone.

In subsection B(2) Freedom states that Sewpersaud deleted emails from his personal phone, and that those same emails were in fact retained and produced to Freedom by Rotec. Motion, pp. 5-6; Motion, Ex. 4, ¶ 35. Again, here are there are no allegations that Sewpersaud was acting in concert with Rotec with respect to these emails. To the contrary, Freedom establishes that Rotec independently maintained the emails at issue, and produced them in discovery. *Id.*

Allegations against Rotec are included only in section B(3) which details the alleged solicitations of the Orlando VA, Interior Fusion, the VA Hospital in Coatesville, and Select Specialty Hospital in Panama City, Florida. As discussed, those allegations have no basis in law or fact.

In light of the foregoing, this Court is presented with no basis, no allegations, and no evidence from which it can determine that Rotec acted in concert with Sewpersaud in relation to any alleged failure to preserve evidence or that Rotec may be sanctioned for contempt for an alleged failure to preserve evidence in this matter.

#### **IV. If The Court Is Inclined To Issue Sanctions Rotec Requests A Hearing**

Due process requires a hearing prior to issuance of contempt sanctions.

*In re McLean*, 794 F.3d 1313, 1324 (11th Cir. 2015). *See also S.E.C. v. Pension Fund of Am., L.C.*, No. 05-20863-CIV, 2006 WL 1104768, at \*1 (S.D. Fla. Mar. 23, 2006) (“Due process requires that the court inform the alleged contemnor of the contemptuous conduct and provide a hearing to allow the contemnor to explain why the court should not make a

contempt finding.”) Accordingly, Rotec requests that, if this Court is inclined to issue a sanction order, that a hearing be set to allow Rotec a full opportunity to submit witnesses and further documentary evidence for the court’s consideration.

### CONCLUSION

Based on the foregoing Rotec respectfully requests that this Court find that Defendant Usine Rotec, Inc. has shown that it should not be held in civil contempt for violating the Injunction Orders and Rotec further requests such other relief as this Court deems just and proper.

Dated: September 10<sup>th</sup>, 2020

Respectfully Submitted

By: /s/ Monica L. Irel

Monica L. Irel, Esq  
Florida Bar No.: 0142395  
Dentons US LLP  
Capital Plaza  
10700 N. Kendall Dr. Suite 303  
Miami, Florida 33176  
Tel: (305) 670-4843  
Email: [Monica.irel@dentons.com](mailto:Monica.irel@dentons.com)

***Counsel for Defendant and Counter-Plaintiff Usine Rotec, Inc.***

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of September, 2020, a true and correct copy of the foregoing was electronically filed and served via transmission of Notices of Electronic Filing generated by CM/ECF on all counsel or parties of record.

/s/Monica L. Irel  
Monica L. Irel, Esq.  
Florida Bar No.: 0142395