

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NING XI, an individual,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action 2:17-cv-07316-ES-MAH
	:	
INSTITUTE OF ELECTRICAL	:	
AND ELECTRONICS	:	
ENGINEERS, INC., a New York	:	
Non-Profit Corporation, and KAREN	:	
P. BARTLESON, an individual,	:	
	:	
Defendants.	:	

PLAINTIFF'S MOTION FOR CONTEMPT SANCTIONS

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INTRODUCTION

“Defendants shall be restrained from conducting a special meeting—on September 28, 2017 or at any other time—to determine Plaintiff’s membership status (except to the extent any such meeting concerns settlement discussions).”

- Sept. 26, 2017, Injunction Order, Dkt. #18, at 1

“We are setting up 2 meetings. ... *The second meeting is the special meeting of the RAS. The purpose of this meeting is (1) to declare Dr. Xi incapable of fulfilling his duties due to his inability to contact any of the RAS leadership (2) to enact the RAS bylaw making the Pres-Elect effectively the Acting President (3) Removing Dr. Xi from office and (4) Getting a new president permanently in office.*”

- IEEE Managing Director of Technical Activities Mary Ward-Callan, March 2, 2018, attached as Exhibit A (emphasis added).

By its own words, the IEEE violated this Court’s preliminary injunction. This Court forbade the IEEE from conducting any special meetings at any time to determine Dr. Xi’s membership status. Yet that is precisely what the IEEE did: on March 30, 2018, the IEEE violated the Injunction Order by “conducting” a “special meeting” of its Robotics and Automation Society (“RAS”) subdivision to “determine” Dr. Xi’s “membership status” by removing him as President of RAS. Documents recently produced by the IEEE (and discussed in greater detail below) make clear that this “special meeting” was at all times suggested, coordinated, and controlled by IEEE management. And just like the IEEE’s actions at issue in the pending motion to dissolve, *see generally* Dkt. # 127, IEEE took this action by

deliberately concealing the very existence of this Court's injunction from RAS leadership.

By holding a special meeting on March 30, 2018, with the sole purpose of removing Dr. Xi from the RAS Presidency, the IEEE violated this Court's injunction. Presumably, it took this action because it reasoned that Dr. Xi would be convicted of the criminal charges he faced, thus legitimizing the IEEE's conduct after the fact. But that didn't happen — Dr. Xi was cleared of all charges and the Government dismissed its case with prejudice. Now, the IEEE tries to defend its contemptuous conduct by claiming that it never understood the Court's injunction as forbidding it from removing Dr. Xi from the RAS Presidency.

But it clearly did. The IEEE opposed Dr. Xi's injunction motion on the grounds that Dr. Xi would otherwise become RAS President. It argued that Dr. Xi's ascension to the presidency posed such a risk that it warranted Dr. Xi's immediate removal outside the process mandated by the IEEE's own Bylaws. The IEEE asked the Court for a one *million* dollar bond to guard against this alleged risk. And the IEEE even moved for "emergency" dissolution of the Court's injunction, telling the Court that the reason for the emergency motion was to prevent Dr. Xi from becoming RAS President.

Now, the IEEE tells the Court that it could have removed Dr. Xi from the RAS Presidency all along, injunction be damned. Then why didn't it? Why not

simply remove Dr. Xi as RAS President the day after this Court entered its injunction? Why wait?

Because the IEEE always knew and understood that the injunction prevented from removing Dr. Xi as RAS President. The IEEE must be held to account for its violation of the Court's injunction.

BACKGROUND¹

A. This Lawsuit Sought One Thing — Preservation of Dr. Xi's Rights.

Dr. Xi was forced to file this action when Defendants threatened to expel him summarily from the IEEE for reasons they refused to disclose, and pursuant to an *ad hoc* procedure, the conclusion of which was long foregone. *See generally, Compl.*, Dkt. #1. All Dr. Xi has ever sought were the most basic of due process protections, including an articulation of the allegations against him, the evidentiary basis for the allegations, and an opportunity to participate and be heard in an impartial setting. *See id.* at ¶¶ 42-51, 75-85; Vernon Letter to IEEE, Dkt. #1-3, at 3-4. The IEEE seemed determined to ignore its own Bylaws, *see IEEE Bylaws*, Dkt. #1-5, at I-110, and its members' due process rights in the process, and even

¹ Dr. Xi originally moved for contempt on November 8, 2019. Dkt. # 101. On February 5, 2020, this Court administratively terminated Dr. Xi's motion for contempt, stating that it would withhold a decision on the matter until after a settlement conference. Dkt. # 109. Due to the COVID-19 pandemic, that settlement conference was not held until July 13, 2020. The conference was unsuccessful and discovery proceeded.

went as far as to threaten to destroy Dr. Xi's reputation if he dared file suit to enforce his rights. See Lindsay Letter, Dkt. #1-4 (“[L]itigation is conducted in a public forum, and there is a presumption that all court proceedings will be open to the public. ... IEEE is confident in defending itself in public proceedings, but we question whether Dr. Xi rightly maintains that same level of confidence for his own defense.”).

Dr. Xi refused to be intimidated by these bullying tactics. He filed this suit and moved immediately for a restraining order and preliminary injunction. Compl., Dkt. #1; Mot. for TRO, Dkt. #2. After expressing a number of concerns about Defendants' conduct and threatened course of action during the September 26, 2017 injunction hearing, *see generally* TRO Trans., Dkt. #26, the Court granted Dr. Xi's motion and restrained Defendants from proceeding with that course of action, or from meeting “at any other time—to determine Plaintiff's membership status (except to the extent any such meeting concerns settlement negotiations[.]” Order Granting Request for TRO, Dkt. #18.

In its ruling, the Court noted its concern about Defendants' plan to bypass the Ethics and Member Conduct Committee, and proceed before a tainted “presidential committee”:

Quite frankly, what concerns me, is... that IEEE's position seems to be that it can make up the rules as it goes along without regard for what the bylaws saw. It does not allow fellows and members, such as

Dr. Xi, any fair notice regarding what the rules are, and it clearly is not in the process outlined by the detailed bylaws and policies.

Id. at 19. And, like Dr. Xi, the Court expressed consternation about the fact that Defendants refused to afford Dr. Xi any clear notice of the allegations against him, or a fair opportunity to be heard:

[Following the Bylaws] probably would make a whole heck of a lot of sense ... it would be nice to know exactly what you're claiming he did, whether it be conduct unbecoming a member or fellow, whether it is indeed theft, whether you are accusing him of misappropriation of IEEE funds. Let's lay it out. Let him know what those charges are, and then let the process play out. ... Give them the unredacted forensic analysis. Let him see what people are saying he did, and we'll take it from there.

Id. at 54-55.

After the Court granted Dr. Xi's request for a temporary restraining order, the IEEE requested a \$1 million bond to guard against the "irreparable harm" that the IEEE would suffer if Dr. Xi assumed the RAS Presidency. *See Hearing Trans.*, Dkt. #26, at 56-57 (emphasis added). The IEEE specifically justified its bond request by warning that a bond was appropriate due to the risk posed by Dr. Xi's then-pending assumption to the Presidency of the RAS. *See* Dkt. # 20, at 3-4; Dkt. # 25, at 2-3. The Court considered the IEEE's request, ultimately imposed a nominal bond (\$5,000) given the IEEE's financial controls and oversight, and Dr. Xi posted the bond. The Court then converted the restraining order into a preliminary injunction. Preliminary Injunction Order, Dkt. #44

B. The IEEE Tries to Circumvent the Court’s Injunction to Remove Dr. Xi Anyway.

Instead of accepting the Court’s Order, Defendants immediately went to work circumventing it. True to form, they continued to “make up the rules as they went along.” *see* TRO Trans., Dkt. #26, at 19. By October 9, 2017, the IEEE’s in-house counsel had hatched a plan: convince the Board to adopt a Bylaw amendment that they would then use to try to justify Dr. Xi’s expulsion.

As explained in more detail in Dr. Xi’s response to the IEEE’s Motion to Dissolve, *see* Dkt. # 127, at 6-9, 12-15, IEEE’s in-house counsel essentially fed the then-Chair of the Governance Committee (William Walsh) a proposed amendment — without telling him why — and instructed Mr. Walsh to shepherd it through the committee approval process. The IEEE intended to use the amendment as a basis to remove Dr. Xi and a way to circumvent the Court’s injunction. But the IEEE kept Mr. Walsh in the dark about the true purpose of the amendment, and tucked the amendment onto the Board of Directors’ consent agenda to attract as little attention as possible. As is typical for “noncontroversial” items on the consent agenda, it was automatically approved at the beginning of the Board of Directors meeting. Mr. Walsh’s deposition and the IEEE’s discovery responses revealed that the Board of Directors was not even informed of this litigation, let alone the

Court's injunction, until *after* the amendment was passed via consent agenda. *Id.*, at Ex. B, at 143-45.²

The IEEE then waited for three weeks before deciding that the new amendment had created an emergency, and it filed a motion asking this Court to dissolve the injunction. But the IEEE's *only* cited exigency was that it wanted to remove Dr. Xi from becoming president of the Robotics and Automation Society ("RAS") as quickly as possible:

The Court: So what's the exigency?

Mr. Lindsay: And the reason for that is *we still do not want Dr. Xi becoming president of the robotics society... if his membership is terminated, that has the effect that he is no longer eligible to serve as president...* the reason for the exigency is that term is scheduled to begin in January, and the IEEE would prefer to have this matter resolved before he assumed the presidency. But if it can't do that before he assumed the presidency, we want it done... as promptly as possible.

Hearing Trans., Dkt. #55 at 9 (emphasis added). The Court rejected the IEEE's false claims of exigency, and allowed a period of expedited discovery to take place. Crucially, the Court's injunction remained in place for this entire period, including its prohibition on removing Dr. Xi from membership and leadership roles in the RAS. The IEEE understood this to be the effect of the Court's order,

² Exhibits referenced herein are attached to the Declaration of Jeffrey A. Crapko, submitted and filed herewith.

because it did not take any action to remove Dr. Xi from the RAS membership in the following months, despite its stated exigency and desire to do so.

Discovery revealed that Mr. Walsh (the IEEE's designated "originator" of the relevant Bylaw amendment) had little to no understanding of the amendment's true purpose in removing Dr. Xi without due process, and instead understood that the amendment had nothing to do with the disciplinary process at all. *See* Dkt. #6 5, at 9-13. The IEEE refiled its motion to dissolve, and Dr. Xi responded – the matter was fully briefed as of February 12, 2018.

C. The IEEE Decides to Violate the Court's Order Again and Take Matters Into its Own Hands.

On February 23, 2018, Defendants filed a motion seeking judicial notice of the fact that Dr. Xi had been arrested and charged via criminal complaint with actions related to his membership in the IEEE. *See* Dkt. # 68. Apparently emboldened by the Government's action, the IEEE immediately demanded Dr. Xi's resignation "or else": "[I]t is impossible for Dr. Xi to continue serving as RAS president... As a result, IEEE expects Dr. Xi to resign as President of RAS no later [than] noon EST on Saturday, February 24, 2018. ... If Dr. Xi will not resign the Presidency of RAS by the deadline set forth above, action to remove him from that office will be initiated by RAS through the processes specified in the RAS bylaws and IEEE bylaws[.]" Ex. B, February 2018 Correspondence with Bruce Ewing.

Dr. Xi responded, offering to take an immediate and temporary leave of absence from the RAS Presidency. This is indeed provided for in the RAS Bylaws.³ *Id.*; see Ex. C, RAS Bylaws at Bylaw XX. The IEEE rejected this offer, and instead took the position that “the Court’s injunction applies solely to Dr. Xi’s ‘membership status,’ not to his role as President of RAS, and no action is contemplated regarding Dr. Xi’s membership status by either IEEE or RAS at this time. We do not agree that RAS is prohibited from suspending or removing Dr. Xi from the RAS Presidency on the ground of his incapacity or otherwise in a manner compliant with the IEEE and RAS bylaws.” *Id.*

Dr. Xi’s counsel responded and reminded IEEE that “The reason we litigated the bond issue was because of the harm you alleged you might incur as a result of being enjoined from suspending or removing Dr. Xi from the presidency.” Ex. B. Indeed, the IEEE’s counsel had previously made quite clear that he understood that the Court’s injunction would restrain IEEE “from taking actions that would either suspend or remove [Dr. Xi] from the Presidency.” TRO Hearing Trans., Dkt. # 26, at 56. He further stated that this was the only aspect of the injunction that posed a risk of irreparable harm, and that the risk necessitated a

³ In fact, a leave of absence for the President (with the President-elect assuming his duties) has happened several times in RAS history, mostly in instances when the President was sick or had other duties in other positions. After all, RAS leadership is composed of member volunteers, so such arrangements are frequently necessary. In other words, this was not a new concept being suggested to the IEEE.

bond. *Id.* Then, the IEEE's formal bond request stated that the Court's injunction would "deprive[] IEEE of the path that IEEE's Board had selected to address the financial risks that [Dr.] Xi's ascension to the Presidency would pose." Dkt. # 20, at 4. In their reply, they further confirmed that the injunction would place IEEE "at risk of monetary damages" because it prevented IEEE from halting "[Dr.] Xi's assumption of the RAS Presidency. Dkt. #25, at 2-3. Simply put, again and again, the IEEE indicated it understood the Court's injunction to forbid it from removing Dr. Xi from the RAS Presidency.

IEEE ignored this inconvenient history, choosing instead to assert that "the RAS Administrative Committee will decide what to do as it thinks best, consistent with the Bylaws of RAS and IEEE, and we will let you know the outcome when we know it." Ex. B. In other words, the IEEE intended to continue to do whatever it wanted and make up the rules as it went along, despite an injunction to the contrary.

Despite the IEEE's "we-can-do-whatever-we-want" rhetoric, a month passed with no action by the IEEE to alter or remove Dr. Xi from his membership and leadership positions within the IEEE (including RAS). But on March 30, 2018, the IEEE announced a sudden change:

We write primarily to inform you of the outcome of today's meeting of the Administrative Committee (the "AdCom") of the Robotics and Automation Society (RAS). In light of the Order Setting Conditions of Release in *United States v. Ning Xi* (the "Order"), under which Dr.

Xi must avoid “all contact, directly or indirectly” with any victim (which includes IEEE), the AdCom determined that Dr. Xi has become incapable of performing his duties as President (and is therefore incapacitated under Art. V, Sec. 9 of the RAS Constitution). In accordance with IEEE Bylaw I-111.7, AdCom has removed Dr. Xi as President of RAS, with immediate effect.

Ex. D, March 30, 2018 Correspondence from Bruce Ewing. With this email, the IEEE announced that it had taken exactly the action that Dr. Xi had warned against: it had violated the Court’s injunction and altered Dr. Xi’s membership by removing him from the RAS Presidency. This action also had the effect of removing Dr. Xi from the RAS Administrative Committee (“AdCom”), membership that was otherwise guaranteed to Dr. Xi by virtue of his status as a President of RAS. The case was stayed shortly thereafter, ECF # 77, with instructions to notify the Court once the criminal case against Dr. Xi was resolved.

D. Recently Produced Documents Reveal the IEEE Proposed, Managed, and Coordinated Dr. Xi’s Removal as RAS President — Once Again, it Failed to Tell Its Own Governing Body that this Court’s Injunction Even Existed.

On October 12, 2020, the IEEE produced documents that were first requested more than 10 months ago in December 2019. These documents confirmed that IEEE Management was behind Dr. Xi’s removal from the RAS Presidency. They controlled the entire process, despite this Court’s injunction to the contrary. And once again, IEEE Management deliberately concealed from its

governing body the fact that this Court's injunction even existed. The IEEE was determined to do whatever it wanted, and that's exactly what it did.

On February 22, 2018, the former President of the RAS noticed a news article reporting Dr. Xi's arrest. He emailed the RAS Administrative Committee and suggested that the President-Elect, Wolfram Burgard, take over management of the committee while Dr. Xi took a leave of absence. Ex. E, Feb. 22, 2018, Correspondence from Satoshi Tadokoro. In other words, the RAS Administrative Committee was prepared to do the exact same thing that Dr. Xi had asked, on its own and without interference from the IEEE management. It appeared well on its way to handling the issue internally in a way that would not violate the Court's injunction.

But the IEEE had a different idea entirely. IEEE Managing Director of Technical Activities Mary Ward-Callan wrote to senior IEEE Leadership (including Executive Director Stephen Welby, and in-house attorneys Eileen Lach, Jack Bailey, and Jonathan Wiggins) stating: "This just came in. I feel that we need to respond quickly *to stop RAS leadership from taking action immediately.*" Ex. F, Feb. 22, 2018, IEEE Internal Correspondence. Later on in the email chain, she notes that the proposed action in RAS (allowing Mr. Burgard to simply assume the role of acting president) "is not consistent with actions proposed tonight with legal staff, so we want to provide a better plan asap." Ms. Ward-Callan then notes that

the IEEE *already had a plan* “for item 2” (the item concerning Dr. Xi’s continued role as President of RAS), so it needed to step out in front of RAS and control the process. Executive Director Welby agreed and approved Ms. Ward-Callan’s proposed message to the RAS Administrative Committee. *Id.* at IEEE00013594.

Ms. Ward-Callan then sent an email to the RAS Administrative Committee, making clear who was in charge: “IEEE will be providing a recommended plan to the RAS leadership within the next day or so.” Ex. G, February 23, 2018, Email Correspondence from Mary Ward-Callan. Although Ms. Ward-Callan gave the RAS Administrative Committee the veneer of self-determination, she instructed it to make sure to follow the party line: “We ask that further communications and action by the RAS AdCom await this input from the IEEE leadership which will be fully communicating information and the recommended plan of action for RAS on this very serious matter.” *Id.*

Next, Ms. Ward-Callan emailed the RAS President-Elect Wolfram Burgard to continue taking control of the situation.

IEEE will be providing a recommended plan to the RAS leadership. As President-Elect, we are asking that you help us lead the effort needed to move the society forward during this time. ... I will be the lead staff executive supporting RAS through this plan. We have reviewed the RAS governing documents and are prepared to work with the RAS AdCom to move things forward as per these documents.

Ex. H, Feb. 24, 2018 Email Correspondence from Mary Ward-Callan at IEEE00013991. Ms. Ward-Callan then proposed a call with James Jefferies⁴ (then-President of the IEEE) so that Mr. Burgard could receive instruction on how to proceed. *Id.*

The reaction from the RAS Administrative Committee was angry and immediate. Future RAS President, Seth Hutchinson, replied to Ms. Ward-Callan and the rest of the Administrative Committee with a blistering email, objecting to the IEEE's selective disclosure and paternalistic instruction.

I'm not prepared to indulge your requests that we wait, that we remain silent, that we not discuss among ourselves without using you as a mediator. *You have not proven to be an ally. You have not proven to be trustworthy.* You have taken actions that place you in an adversarial relationship to me. *Your motivation seems clearly designed to protect yourselves, regardless of the damage inflicted on my professional Society.* I wonder if you can understand why this provokes a bit of outrage? ... *The days of indulging the paternalistic and condescending attitude of IEEE Leadership to RAS and its AdCom, in my view, will soon draw to a close.*

Ex. I, February 23, 2018, Correspondence from Seth Hutchinson. (emphasis added). Mr. Hutchinson wasn't alone — multiple other RAS Administrative Committee members shared his frustration, with Nancy Amato responding:

Thank you Seth for stating so eloquently what many of us are feeling. *I wholeheartedly second and endorse your message.* I too am

⁴ Recall that James Jefferies was one of the three “neutral” members of the initial disciplinary committee tasked with removing Dr. Xi. Despite his “neutrality,” he was later willing to instruct Mr. Burgard regarding Dr. Xi's removal as President of RAS.

extremely disappointed in how IEEE has handled this entire situation. *I would like to see some process change at the IEEE level to ensure that a situation like this is handled in a way that is less paternalistic and more respectful and responsible with respect to the society.*

Id. Others on the RAS Administrative Committee provided similar statements of support for Mr. Hutchinson’s message. *Id.* (Antonio Bicchi - “I, for one, subscribe completely to the content of Prof. Seth Hutchinson’s message.”).⁵

Ms. Ward-Callan was not comfortable with the flak she was taking for being the IEEE’s messenger. She emailed the IEEE’s then-general counsel, Eileen Lach, asking “Do I need to just accept this?” reminding Ms. Lach that she was simply doing Ms. Lach’s bidding: “I have followed legal advice and this defamation in public is very concerning to me and my reputation.” Ex. J, Feb. 23, 2018 Correspondence from Mary Ward-Callan. Ms. Lach responded “Please call me.”

Id.

The next day was a busy one as the IEEE continued its plan to remove Dr. Xi. IEEE Executive Director Welby emailed Mr. Burgard (again copying Ms. Lach, Mr. Jefferies, and Ms. Ward-Callan) letting Mr. Burgard know that he would “send you a set of public documents that have been filed in the criminal complaint.” Ex. K, Feb. 24, 2018, Correspondence from Stephen Welby. Mr. Welby suggests that Mr. Burgard share the criminal documents with the RAS

⁵ Other messages of support are contained in different email chains responding to Mr. Hutchinson’s message. All are similar to those outlined above, so are not included here for the sake of brevity.

AdCom, which Mr. Burgard later did. Notably, Mr. Welby *did not* send RAS any of the documents in this case, including the injunction preventing RAS and the IEEE from altering Dr. Xi's membership status.

Two days later, then-RAS President Wolfram Burgard wrote to the RAS Administrative Committee to recount a conversation he had with IEEE leadership. Ex. L, February 25, 2018, Email Correspondence from Wolfram Burgard. He noted that the IEEE "suggested" that RAS act to remove and replace Dr. Xi as RAS President. Notably, Mr. Burgard also noted that the IEEE told him that allowing a leave of absence (which Dr. Xi suggested to the IEEE through counsel) "is not possible according to our bylaws"—an assertion that is simply not true. *Id.*; *See Ex. C*, RAS Bylaws at at Bylaw XX. Mr. Burgard also cautioned against the very rush to pre-judgment urged by the IEEE: "*It is important to me that for the case that Ning Xi in fact turns out to be not guilty or appear[s] to be able again to perform his duties as a president, we should as long as we can keep the option that he returns as a president.*" Ex. L (emphasis added). Little did Mr. Burgard know how prescient his observation would be.

On March 2, Ms. Ward-Callan wrote the IEEE senior leadership to let them know that their plan to remove Dr. Xi was proceeding.

I have been working on the crisis communications and follow-up with RAS regarding Dr. Ning Xi arrest [sic] almost non-stop since last week ... *The second meeting is the special meeting of the RAS AdCom.* The purpose of this meeting is 1) to declare Dr. Xi incapable

of fulfilling his duties due to his inability to contact any of the RAS leadership, 2) to enact the RAS bylaw making the Pres-Elect effectively the Acting President 3) *remove Dr. Xi from office* and 4) Getting a new president permanently in office. There are lots of details and Bylaw issues but this is the basic story.

Ex. M, March 2, 2018, Correspondence from Mary Ward-Callan (emphasis added).

On March 7, 2018, Mr. Burgard wrote to the RAS Administrative Committee to announce a “Special Meeting” that would be held on March 30, 2018. “The sole business of the Special Meeting is to develop a way forward for the Society in light of the arrest in the United States of the current President of RAS, Dr. Ning Xi.” Ex. N, March 7, 2018 Correspondence from Wolfram Burgard, at IEEE00014083 (emphasis added). Mr. Burgard laid out item 3 of the agenda as “To remove the current RAS President, Dr. Ning Xi, from office.” *Id.* Lastly, acting at Mr. Welby’s suggestion, Mr. Burgard forwarded the documents in Dr. Xi’s criminal case to the RAS Administrative Committee. *Id.* He did not forward this Court’s injunction, presumably because he was never told of its existence.

A concerned RAS Administrative Committee member responded to Mr. Burgard and asked where the RAS Administrative Committee got the power to elect a new president to replace Dr. Xi. Essentially, the member was asking “*Is this really legal?*” *Id.* at IEEE00014082.

Mr. Burgard responded (copying Ms. Ward-Callan) and assured him that it must have been, because the IEEE said so: “This process was suggested by IEEE. Everything that is not covered by our Bylaws is covered by the IEEE Bylaws. My suggestion would be that Mary Ward-Callan steps in here to clarify things.” *Id.*

Ms. Ward-Callan then responded privately to Mr. Burgard, stating “I believe that the RAS governance documents do not cleanly provide for any way to replace a sitting president, nor do they provide for the removal of the president for cause. ... So in order to remove the sitting president from office, we used the IEEE Bylaws. ... We looked at options for a new president and came up with the only two options that made sense and were in keeping with the basic RAS operations.” Ex. O, March 8, 2018, Correspondence from Mary Ward-Callan. Again, Ms. Ward-Callan demonstrated her ability to direct Dr. Xi’s removal from behind the scenes, emphasizing the IEEE’s control over the RAS.

On March 18, 2018, Ms. Ward-Callan followed up to announce the Special Meeting, “confirm” its process, and “continue our communications about how the Special Meeting will be handled.” Ex. P, March 18, 2018, Correspondence from Mary Ward-Callan. Sure enough, on March 30, 2018, the RAS Administrative Committee had its “Special Meeting,” followed Ms. Ward-Callan’s suggested agenda, and removed Dr. Xi from the RAS Presidency, thereby altering Dr. Xi’s status as RAS President and violating this Court’s injunction.

E. The Criminal Case Ends In a Complete Dismissal With Prejudice in Favor of Dr. Xi.

Although this case was stayed, Dr. Xi remained quite busy battling the IEEE's allegations. Dr. Xi demanded his right to a trial by jury and proceeded to trial on June 18, 2019. Following eight days of trial, on July 1, 2019, the jury announced that it was unable to reach a verdict, and the court declared a mistrial. *See United States v. Ning Xi*, No. 18-00226 (W.D. Mich.), Dkt. # 132. The court further issued a briefing schedule for Dr. Xi's motion for judgment of acquittal under Fed. R. Crim. P. 29(a). *Id.* Eight days later, the Government moved to "dismiss the Indictment with prejudice for the reason that the jury deadlocked after an eight-day trial, and the Government does not reasonably expect that the proofs would meaningfully change in a retrial of this matter or that retrial would produce a different result." *See United States v. Ning Xi*, (W.D. Mich.), Dkt. # 136. On July 11, 2019, the court issued an order of dismissal with prejudice, exonerated Dr. Xi's bond, released all property securing his bond, and dissolved its notice of *lis pendens* and a post-indictment restraining order. *See United States v. Ning Xi*, (W.D. Mich.), Dkt. #142.

The criminal case was therefore fully, finally, and conclusively resolved in Dr. Xi's favor.

F. Communications With Counsel Reveal IEEE’s True Intent to Remove Dr. Xi Without Regard to Any Claimed “Incapacity.”

Following dismissal of all charges, Dr. Xi’s counsel wrote to the IEEE requesting that he be “immediately restore[d] to the RAS Presidency for the remainder of his original term.” Ex. Q, August 30, 2019 Letter to IEEE’s Counsel.⁶ After all, the IEEE’s sole stated reason for removing Dr. Xi was due to his alleged “incapacity” as a result of his pending criminal proceedings and his bond condition forbidding him from any contact with the IEEE. But Dr. Xi’s criminal proceedings had been resolved (in his favor), and all bond conditions and restraints on his actions had been released. *See United States v. Ning Xi*, (W.D. Mich.), Dkt. # 142. So it stood to reason that given that Dr. Xi was no longer “incapacitated,” he could resume his presidency. Additionally, because status as RAS President automatically entitled Dr. Xi to be a member of the RAS AdCom, Dr. Xi’s resumption of the RAS Presidency would have the further effect of restoring him to his rightful place on RAS AdCom.

Although he did not know it at the time, Dr. Xi’s request in this regard was *exactly* the proposal initially circulated by the RAS Administrative Committee, namely a leave of absence with a chance of resuming the RAS Presidency if the criminal case was resolved in Dr. Xi’s favor. *See Ex. E* (proposing that Mr. Burgard act as Acting President); Ex. L (proposing that Dr. Xi be allowed to

⁶ This term was originally to run from 2018 through 2019.

immediately resume his Presidency if the criminal charges were resolved in his favor). Prior to removing Dr. Xi, then-RAS President Mr. Burgard wrote to the RAS Administrative Committee that “*It is important to me that for the case that Ning Xi in fact turns out to be not guilty or appear[s] to be able again to perform his duties as a president, we should as long as we can keep the option that he returns as a president.*” Ex. L (emphasis added). The IEEE’s senior representatives (including Ms. Ward-Callan, Executive Director Welby, and IEEE in-house attorneys Ms. Lach, Mr. Wiggins, and Mr. Bailey) were copied on this email from Mr. Burgard, but ignored his wishes and proceeded with removing Dr. Xi anyway.

The IEEE’s response to Dr. Xi’s counsel made clear that alleged incapacity was never its real concern. It began by reminding Dr. Xi that he had been arrested and charged with crimes, but made no mention that the Government dismissed those charges with prejudice after a jury refused to convict Dr. Xi. Ex. R, September 10, 2019 Response Letter. Then, the IEEE took the bizarre position that Dr. Xi should have sought an additional injunction prohibiting it from determining his membership status as RAS President, even though he already had an injunction doing exactly that. “Despite his advanced [sic] knowledge of [the prospect that the IEEE would remove him from the RAS Presidency], Xi took no action to prevent the RAS from meeting to determine how to conduct its affairs.”

Id. But see Injunction Order, Dkt. #18, at 1 (“Defendants *shall be restrained* from conducting a special meeting—on September 28, 2017 *or at any other time*—to determine *Plaintiff’s membership status* (except to the extent any such meeting concerns settlement discussions).” (emphasis added)). In any event, the IEEE refused to allow Dr. Xi to reassume the RAS Presidency.

STANDARD

Injunctions are “‘extraordinary writs, enforceable by the power of contempt.’” *Gilgallon v. Cty. of Hudson*, 2006 WL 1948985, at *4 (D.N.J. July 12, 2006) (citing *Gunn v. Univ. Comm. to End the War in Vietnam*, 399 U.S. 383, 388–89 (1970)).

“To prove civil contempt the court must find that (1) a valid court order existed, (2) the defendant had knowledge of the order, and (3) the defendant disobeyed the order.” *Harris v. City of Philadelphia*, 47 F.3d 1311, 1326 (3d Cir. 1995). “Contempt must be proved by clear and convincing evidence.” *Robin Woods Inc. v. Woods*, 28 F.3d 396, 399 (3d Cir. 1994). “The validity of the underlying order is not open to consideration.” *Harris*, 47 F.3d at 1326

“[B]ecause ‘civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience,’ they may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard, and require neither a jury trial nor proof

beyond a reasonable doubt.” *Harris*, 47 F.3d at 1328 (quoting *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994)).

ARGUMENT

A. The IEEE Violated this Court’s Order By Removing Dr. Xi from the RAS Presidency.

On September 26, 2017, this Court entered the following temporary restraining order: “Defendants shall be restrained from conducting a special meeting—on September 28, 2017 or at any other time—to determine Plaintiff’s membership status (except to the extent any such meeting concerns settlement discussions)[.]” Dkt. # 18, at 1. On November 22, 2017, this Court converted this temporary restraining order into a preliminary injunction. Dkt. # 44, at 2.

The import of the Court’s ruling in this regard was clear — the IEEE was forbidden from taking any action or holding any “special meetings” “to determine Plaintiff’s membership status.” Dr. Xi’s membership status in the IEEE and all of its constituent entities (including RAS) was frozen until such a time as the IEEE either (A) followed its bylaws regarding the member discipline process, or (B) the Court dissolved its injunctive order.

First, start with the plain language of the Court’s injunction, forbidding the IEEE from holding any special meeting “to determine Plaintiff’s membership status.” The language is intentionally broad, and effectively preserved the *status quo* for Dr. Xi—the very purpose of an injunction. Moreover, at the time the Court

issued its injunction, Dr. Xi’s “membership status” included the following positions with the IEEE: (1) President of RAS, (2) Member of the RAS AdCom, (3) IEEE Fellow, and (4) IEEE basic membership. There is no limitation in the Court’s order restricting its injunction to just one of those categories, even though this was discussed at the TRO Hearing (*see* footnote 3 and accompanying citation, *above*). And to the extent the IEEE now asserts that RAS membership is somehow separate from IEEE membership, it ignores the fact that RAS’s own Constitution makes clear that RAS is a subordinate component of the IEEE: “the IEEE Robotics and Automation Society (RAS) ... shall be governed in accordance with the Constitution and Bylaws of the [IEEE]. ... Membership in the Society shall be available to members of the IEEE in any grade ... subject to applicable IEEE rules and regulations[.]” Ex. S, RAS Constitution, Art. 1, sec. 1; Art. III, Sec. 1-2. The IEEE is the dominant organization in full control of its subordinate interest societies, like RAS. The Court’s order therefore equally applied to Dr. Xi’s membership status within the full ambit of IEEE activities and titles.

Further, the context surrounding this Court’s injunction indicates that the parties always knew the injunction forbade IEEE from removing Dr. Xi as RAS President. “The language of an injunction must be read in the light of the circumstances surrounding its entry: the relief sought by the moving party, the evidence produced at the hearing on the injunction, and the mischief that the

injunction seeks to prevent.” *United States v. Christie Industries, Inc.*, 465 F.2d 1002, 1007 (3d Cir. 1972); *accord AngioDynamics, Inc. v. Biolitec AG*, 823 F.3d 1, 10 n. 7(1st Cir. 2016); *Youakim v. McDonald*, 71 F.3d 1274, 1283 (7th Cir. 1995) (“[W]e must construe injunctions in light of the circumstances that produced them ... courts have found conduct to violate an injunction if it threatens the spirit if not the literal language of the earlier order.”); *United States v. Fuller*, 919 F.3d 139, at *3 (4th Cir. 1990) (table) (“[A]n injunction may not be avoided on merely technical grounds. Moreover, the language of an injunction must be read in the light of the circumstances surrounding its entry.”); *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.3d 981, 983 (2d Cir. 1942) (“[I]t is proper to observe the objects for which the relief was granted and to find a breach of the decree in a violation of the spirit of the injunction, even though its strict letter may not have been disregarded.”).

Like all injunctive relief, this Court’s order was not issued in a vacuum. By the time the Court issued its injunction, it had ample evidence regarding the IEEE’s proposed action: the IEEE unambiguously requested to form a special *ad hoc* committee (or other body) to remove Dr. Xi through a special meeting from membership and fellowship with the IEEE, and to specifically remove him from Presidency of RAS as well. *See Hearing Trans.*, Dkt. # 26, at 67-68 (finding irreparable harm to Dr. Xi for the loss of his Fellow status and rejecting IEEE’s

arguments regarding the RAS Presidency). After, all, IEEE’s counsel specifically argued that the IEEE required a \$1,000,000.00 bond from Dr. Xi to guard against the “irreparable harm” that the IEEE would suffer if Dr. Xi assumed the RAS Presidency. Indeed, IEEE’s counsel specifically conditioned his request for an injunction bond on the premise that the Court would be enjoining the IEEE from affecting Dr. Xi’s membership status in any way:

The Court: What would be the appropriate bond, based on what you’re saying?

Mr. Lindsay: Again, it depends on what your Honor is going to restrain IEEE from doing. If we separate this into three categories, there is membership in IEEE, there is the IEEE fellowship, *there’s the presidency of Robotics and Automation Society.*^[7] For those first two, I’m not going to tell you that there’s some threat of irreparable harm to IEEE, other than damage to its own reputation should the allegations indeed be true.

The Court: I can’t put a number on that.

Mr. Lindsay: We’re concerned about that third category [the RAS Presidency].

...

The Court: So what are you saying?

⁷ Here, as described above, the IEEE’s counsel explicitly acknowledges that the Court’s ruling would affect Dr. Xi’s status as an IEEE Fellow, RAS President, *and* IEEE Member. The Court further mentioned these separate membership concepts as part of its ruling. See Hearing Trans., Dkt. #26, at 67-68.

Mr. Lindsay: So if your Honor's order is that IEEE is restrained from proceeding as to those first two items, then we don't believe any bond would be necessary. *If your Honor's order is that IEEE is restrained from taking actions that would either suspend or remove him from the presidency position, that's a different matter because that's the role that has the financial responsibility in it.*

The Court: What's the bond?

Mr. Lindsay: \$1 million.

Hearing Trans., Dkt. #26, at 56-57 (emphasis added). The Court thereafter ordered supplemental briefing regarding the need for a bond.

The IEEE's supplemental briefs focused on the need for a bond because the Court's injunction restrained it from removing Dr. Xi from the RAS Presidency. Indeed, IEEE declared for the Court that its whole motivation for trying to expel Dr. Xi was based on the "IEEE's Board of Directors determin[ing] that Xi posed a significant financial risk to IEEE if he succeeded to the presidency of IEEE's Robotics & Automation Society (the 'Robotics Society')." Dkt. # 20, at 3-4. It further recognized that "The Court's Order thus deprives IEEE of the path that IEEE's Board had selected to address the financial risks that Xi's ascension to the Presidency of the Robotics Society would pose." *Id.* at 4. The IEEE's entire basis for a bond request was "the [purported] financial risk to which IEEE will be exposed as a result of Xi's assuming the Robotics Society Presidency and his continued membership in IEEE." *Id.* at 8.

Concern over the IEEE's inability to remove Dr. Xi from the RAS Presidency was not an isolated point. In the IEEE's reply, it made sure to emphasize its view that: "*Xi's Assumption of the Robotics Society's Presidency Places IEEE at Financial Risk, from Which the Bond Should Protect IEEE.*" Dkt. # 25, at 3. In doing so, it specifically noted "the serious risk of financial harm that IEEE has identified flowing from Xi's assumption of the Robotics Society Presidency[.]" *Id.* at 2-3. For the next five pages, the IEEE articulated all of the alleged financial dangers that the Court's injunction posed to the IEEE due to Dr. Xi's pending assumption of the RAS Presidency, ultimately renewing its request for a bond. But it clearly understood the Court's order to prohibit it from removing Dr. Xi as RAS President, since it concluded: "The Court has entered a temporary restraining order that places IEEE at risk of monetary damages, and the order should therefore be conditioned upon plaintiff's posting of a sufficient bond." *Id.* at 9.

Plainly, the RAS Presidency was on the IEEE's mind in the immediate aftermath of the temporary restraining order, and the Court was fully advised on this issue. Based on the IEEE's representations regarding these financial risks, the Court entered a bond. Dkt. # 43, at 5; Dkt. # 44, at 1. But the Court did *not* modify the temporary restraining order, and the IEEE consented to the TRO's conversion into a preliminary injunction, without ever seeking a modification of its

terms. Dkt. # 43, at 5 (“Defendant recently clarified that it ‘does not oppose conversion of the temporary restraining order into a preliminary injunction, *except on the grounds previously argued, which this Court has rejected*’ ... Accordingly, the existing TRO ... is converted to a preliminary injunction[.]”) (emphasis added).

The IEEE’s single-minded focus on the RAS Presidency as its major reason for wanting to dissolve the Court’s injunction did not go away. On December 7, 2017, the IEEE moved to dissolve this Court’s injunction, requesting an “expedited hearing.” When asked for the reason it needed “expedited” consideration of a potential dissolution of the injunction, IEEE’s counsel explained:

The Court: So what’s the exigency?

Mr. Lindsay: And the reasons for that is *we still do not want Dr. Xi becoming president of the robotics society. ... And that’s what the primary objective of having – being able to make that determination through the process that now the bylaws permit. The reason for the exigency is that term scheduled is to begin in January, and IEEE would prefer to have this matter resolved before he assumes the presidency. But if it can’t do that before he assumes the presidency, we want it done as — nevertheless, as promptly as possible.*

Dkt. # 55, December 15, 2017, Hearing Trans., at 9 (emphasis added). In other words, as of December 15, 2017, the IEEE wanted to dissolve the Court’s preliminary injunction because it *understood* that preliminary injunction to bar it from preventing Dr. Xi from assuming the RAS Presidency. This is the entire

reason it moved for expedited consideration of its motion to dissolve the injunction in the first place. And the entire reason it demanded that Dr. Xi post a bond was to guard against an alleged “financial risk” that might come to pass if he were allowed to serve as RAS President.

B. The IEEE Held a “Special Meeting” to Remove Dr. Xi as President of RAS, Directing the Process and Never Even Mentioning this Court’s Injunction.

Despite the Court’s injunction, and despite the IEEE’s clear knowledge that the injunction forbade it from removing Dr. Xi from the RAS Presidency, the IEEE forged ahead anyway. From the moment that Dr. Xi’s arrest became public knowledge, IEEE senior management was involved every step of the way in removing Dr. Xi from the RAS Presidency.

First, Mary Ward-Callan intervened in RAS internal deliberations to tell the RAS Administrative Committee that “IEEE will be providing a recommended plan to the RAS leadership within the next day or so” and to instruct them to avoid “further communications and action by the RAS AdCom” until the IEEE provided instruction. Ex. G. In her own words, this was necessary to “to stop RAS leadership from taking action immediately,” action which did not accord with the IEEE’s preferred outcome of altering Dr. Xi’s membership status as RAS President. Ex. F. Ms. Ward-Callan then huddled with IEEE senior leadership, before emailing then-RAS President Burgard to propose a call with then-IEEE

President Jim Jefferies to receive instruction. Shortly thereafter, Mr. Burgard emailed the RAS Administrative Committee to propose a “Special Meeting” wherein they would remove Dr. Xi and replace him as President.

This “Special Meeting” was at all times held pursuant to the IEEE’s direction and control and its “sole business” was to remove Dr. Xi as RAS President. As Ms. Ward-Callan summarized internally: “I have been working on the crisis communications and follow-up with RAS regarding Dr. Ning Xi arrest [sic] almost non-stop since last week ... *The second meeting is the special meeting of the RAS AdCom.* The purpose of this meeting is to ... *remove Dr. Xi from office* ... There are lots of details and Bylaw issues but this is the basic story.” Ex. M, (emphasis added); *see also* Ex. N (“The sole business of the Special Meeting is to develop a way forward for the society in light of the arrest in the United States of the current President of RAS, Dr. Ning Xi.”). Ms. Ward-Callan even identified herself as “The lead staff executive supporting RAS through this plan” which was the “recommended plan” provided by the IEEE. Ex. H.

What is crystal clear from these documents is that the IEEE did *exactly* what this Court’s injunction forbade it from doing — it held a “special meeting” “to determine Plaintiff’s membership status” as RAS President. Dkt. # 18, at 1. The IEEE knew it was a “Special Meeting” regarding Dr. Xi, because it called it such, carried it out, directed its processes, and ultimately ensured that the IEEE’s desired

result (removal of Dr. Xi's membership status as RAS President) was obtained. This was the "sole purpose" of the RAS "Special Meeting" held on March 30, 2018. Indeed, the agenda might as well have been titled "Special Meeting of the RAS to Determine Dr. Xi's Membership Status." The IEEE violated this Court's injunction, plain and simple.

C. The IEEE Knew it Was Violating This Court's Order.

The IEEE claims now that it always interpreted this Court's injunction as forbidding one thing and one thing only — any action regarding Dr. Xi's membership status at the IEEE. By IEEE's strained reading, removal of Dr. Xi from the Presidency of RAS (which itself is a subordinate subdivision of the IEEE and which mandates IEEE membership) is somehow not an action regarding Dr. Xi's membership status within the IEEE.

But this new-found understanding is belied by the record in this case. From the first day of proceedings up until late February 2018, the IEEE consistently interpreted this Court's injunction in the same manner as Dr. Xi. It prohibited Defendants from conducting any special meeting, "on September 28, 2017 *or at any other time*—to determine Plaintiff's membership status[.]" Dkt. # 18, at 1. Apparently "at any other time" did not include March 30, 2018 to IEEE, because it announced that it had removed Dr. Xi as of that date. And, according to the IEEE, the Court's injunction forbidding the IEEE from holding a "special meeting"

regarding Dr. Xi did not include a “special meeting,” the sole business of which was to “remove the current RAS President Dr. Ning Xi” from office and consider “a way to move forward” for RAS.” Ex. N. Defendants say they were justified in taking these actions because the injunction did not specifically prohibit them from removing Dr. Xi from the RAS Presidency. The IEEE’s position that it did not violate the Court’s injunction therefore asks the Court to disregard entirely the “Special Meeting” it held on March 30 to determine Dr. Xi’s status as RAS President — a blatant violation of the Court’s injunction.

The IEEE’s argument is wrong for several reasons. First, it completely conflicts with Defendants’ own conduct and history in this case. From the inception of these proceedings, Defendants have consistently interpreted this Court’s injunction as forbidding them from removing Dr. Xi from the RAS Presidency. They stated as much: (1) during the TRO hearing (Dkt. # 26, at 56-57); (2) during the post-hearing briefing regarding bond (Dkt. # 20, at 3-4, 8; Dkt. # 25, at 2-9); and (3) in their motion to dissolve the injunction (Dkt. # 55, at 9). At all points, Defendants remained focused on dissolving this Court’s injunction so that they could keep Dr. Xi from attaining the RAS Presidency. Up until they took unilateral action in defiance of this Court’s order, that is.

Which begs the question: if (as the IEEE now claims) the Court’s injunction never prohibited the IEEE from holding a “special meeting” the “sole business” of

which was to remove Dr. Xi from the RAS Presidency, *then what was it waiting for?* Why seek a bond to guard against a risk it was never necessary to endure? Dkt. # 20, at 3-4, 8; Dkt. # 25, 2-9. Why seek emergency dissolution of an injunction which did not even prevent taking the action that predicated the perceived emergency? Dkt. # 55, at 9. If the IEEE's true purpose for seeking to remove Dr. Xi was because he "posed a significant financial risk to IEEE if he succeeded to the presidency of IEEE's Robotics & Automation Society" (as the IEEE claimed in one of its first briefs in the case), and if the Court's injunction didn't forbid it from removing Dr. Xi from the RAS Presidency, then why didn't the IEEE take such action *immediately* back in October 2017 thereby mooting the whole issue? *See* Dkt. # 20, at 3.

The answer, of course, is that the IEEE knew what it wasn't supposed to do, but simply got sick of waiting. It was frustrated that the initial injunction forbidding its due-process-free conduct was entered in the first place. It was frustrated the Court didn't impose a ridiculous \$1,000,000 bond due to its manufactured claims of financial risk. It was frustrated that its "emergency" motion to dissolve hadn't gotten immediate consideration. It was frustrated that the Court granted Dr. Xi discovery. And it was most frustrated of all that it still couldn't ignore its own Bylaws and do whatever it wanted to do, irrespective of any "rights" guaranteed to its members.

So the IEEE took a risk — it decided that the criminal proceedings against Dr. Xi had changed the landscape of the litigation, and that it could read the Court’s injunction in a new, “more creative” way. It acted unilaterally to remove Dr. Xi, reasoning that the injunction didn’t *specifically say* that it could not remove Dr. Xi *from the RAS Presidency*. But “[a] defendant ... does not have ‘immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience to the law...’” *Equinox Software Sys., Inc. v. Airgas, Inc.*, No. 96-3399, 1997 WL 12133 (E.D. Pa. Jan. 7, 1997) (*citing McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949)). The IEEE gambled that a criminal conviction of Dr. Xi would change the Court’s view of the case, and that any procedural irregularity would be overlooked in view of such a criminal conviction. But the Government failed to convict Dr. Xi, and all charges were voluntarily dismissed with prejudice. The IEEE gambled poorly.

The IEEE violated this Court’s injunction, plain and simple. The history of the case up until the IEEE took this contemptuous action made clear that it *knew* the Court had prohibited the very action it eventually and unilaterally took. After all, it had confirmed as much in filing after filing, stating over and over again that it needed the injunction lifted to prevent Dr. Xi from becoming RAS President. *United States v. Christie Industries, Inc.*, 465 F.2d 1002, 1007 (3d Cir. 1972) (“The

language of an injunction must be read in the light of the circumstances surrounding its entry: the relief sought by the moving party, the evidence produced at the hearing on the injunction, and the mischief that the injunction seeks to prevent.”). And in removing Dr. Xi from the RAS Presidency, it even internally described that meeting as a “Special Meeting” to “remove Dr. Xi from office.” Ex. A. These understandings were shared by all of the IEEE’s senior leadership, including its legal counsel, who not only approved the plan but specifically chose to share Dr. Xi’s criminal complaint with the RAS Administrative Committee, but failed to so much as note the existence of this Court’s injunction forbidding the IEEE “from conducting a special meeting—on September 28, 2017 or at any other time—to determine Plaintiff’s membership status.” Injunction Order, Dkt. #18, at 1; *see* Ex. K; Ex. F.

There was no ambiguity here — the IEEE’s own words display its contemptuous conduct.

D. This Court Should Hold the IEEE in Civil Contempt

The IEEE knew it was risking civil contempt when it disregarded the Court’s injunction, but it disregarded the injunction anyway. It must be held accountable for its action. If a finding of contempt is made, “the innocent party is entitled to be made whole for the losses it incurs as the result of the contemnors’ violations, including reasonable attorneys’ fees and expenses.” *Halderman by*

Halderman v. Pennhurst State School & Hosp., 49 F.3d 939, 941 (3d Cir. 1995). This Court has “wide discretion in fashioning a remedy” for civil contempt. *International Marketing, Inc. v. Counteract Balancing Beads, Inc.*, 48 F. App’x 372 (3d Cir. 2002); *see also Delaware Valley Citizens’ Council for Clean Air v. Com. of Pa.*, 678 F.2d 470, 478 (3d Cir. 1982). The IEEE’s actions in this litigation have demonstrated that it is hell-bent on removing Dr. Xi from the IEEE by any means necessary. It has shown itself willing to try to change the rules on removal midstream. It has even shown itself willing to hold and coordinate the very “special meeting” to alter Dr. Xi’s membership status as RAS President that the Court forbade in its injunction. Simply put, the IEEE’s management has dedicated itself to doing whatever it wants — it cannot be trusted. Dr. Xi therefore seeks the following relief.

First, Dr. Xi requests that this Court order that the *only* way that his membership status may be changed, altered, or affected is through the procedure laid out in IEEE Bylaw I-110. This was the only procedure by which members could be disciplined when this lawsuit began — and it should be the only procedure by which Dr. Xi may be disciplined now. Dr. Xi further requests that the Court order strict compliance with this Bylaw. The IEEE must be held to account for its “creative” interpretations of its powers and this Court’s orders. If this Court’s injunction mandating that the IEEE be barred from “conducting a

special meeting—on September 28, 2017 or at any other time—to determine Plaintiff’s membership status,” *see* Injunction Order, Dkt. # 18, at 1, was not enough to prevent the IEEE from holding a “special meeting” on March 30, 2018, with the “sole business” as considering and removing Dr. Xi as RAS President, it is not clear what will suffice. This Court needs to make clear to the IEEE that disrespect for its orders will not be tolerated.

Second, Dr. Xi should be immediately restored to the RAS’s Administrative Committee (“AdCom”). Membership in AdCom is a general perk of his membership in RAS and his status as a past president, and he should be restored to this membership forthwith. Ex. C, RAS Bylaws at IV (“The AdCom is Chaired by the President and it is composed of the following voting members: the President, the Junior Past President [and] [a]dditional ex officio AdCom members without vote as are prescribed in these Bylaws.”).

Finally, Dr. Xi should be awarded attorneys’ fees and costs attributable to and incurred in connection with the IEEE’s contempt of this Court’s injunction. Such fees and costs should include all fees incurred in corresponding with the IEEE’s counsel regarding their planned contempt, all fees responding to IEEE’s planned contempt, and all fees incurred in preparing, filing, and arguing this motion.

CONCLUSION

A party disregards a court order at its peril, particularly when it unilaterally determines that it may adopt a reading of that order in utter conflict with the entire history of a case. The IEEE took exactly this course of action when it acted to unilaterally remove Dr. Xi from the Presidency of the RAS. Despite the Court's injunction forbidding the IEEE from holding a "special meeting" "at any time" to determine Dr. Xi's "membership status," the IEEE proceeded with holding a "special meeting" on March 30, 2018, to remove Dr. Xi as RAS President. The IEEE must be held to account for this contemptuous conduct. For the foregoing reasons, this Court should hold IEEE in contempt and order reasonable and just sanctions.

Respectfully submitted,

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