

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 3:22-cv-00487-TJC-MCR

MICHAEL RANDO, VALERIE  
RANDO, PROSPERITY TRAINING  
TECHNOLOGY LLC, ELITE  
CUSTOMER SERVICES, LLC,  
DIGITAL BUSINESS SCALING  
LLC, FIRST COAST  
MATCHMAKERS INC.,  
FIRST COAST MATCHMAKERS  
LLC, FINANCIAL CONSULTING  
MANAGEMENT GROUP LLC,  
RESOURCE MANAGEMENT  
INVESTMENTS, LLC,

Defendants.

**RECEIVER'S MOTION FOR ORDER TO SHOW CAUSE WHY  
DEFENDANTS MICHAEL AND VALERIE RANDO SHOULD NOT BE  
HELD IN CONTEMPT FOR FAILURE TO COMPLY WITH THE  
COURT'S MAY 26, 2022 ORDER**

Comes now, Receiver Maria M. Yip, through undersigned counsel, and files this Motion for Order to Show Cause Why Defendants Michael and Valerie Rando Should Not Be Held in Contempt for Failure to Comply with the Court's May 26, 2022 Order. In support of the motion, the Receiver states as follows:

1. On May 20, 2022, the Receiver filed a Motion to Compel Compliance from the Defendants related to the turnover of certain email accounts pursuant to the terms of this Court's Temporary Restraining Order. ("the Motion")(Dkt. 29).

2. Defendants Michael Rando (a/k/a Mike Singles) and Valerie Rando (a/k/a Valerie Payton, Val Rando, and Val Singles) (collectively "the Defendants") filed their Opposition (Dkt. 34) on May 25, 2022.

3. On May 26, 2022, the Court issued its Order granting in part and denying in part the Motion. ("the Order")(Dkt. 35).

4. In the Order, the Court stated that "No later than **June 1, 2022**, Defendants are directed to provide the Receiver with shared access to the accounts at issue until the business and the personal affairs can be separated."

5. On June 1, 2022, counsel for the Defendants notified undersigned counsel that the Defendants were invoking their Fifth Amendment privilege and therefore declined "to testify, provide any accounting, production or other disclosure within the scope of the privilege."

6. Undersigned counsel, counsel for the FTC and counsel for the Defendants had a conference call to discuss the Defendants' invocation of the Fifth Amendment. It was the position of the Receiver and the FTC that the foregone conclusion rule applied to the facts in this case. Specifically, the Fifth Amendment "does not protect an act of production when any potentially

testimonial component of the act of production - such as existence, custody, and authenticity of evidence – is a ‘foregone conclusion’ that ‘adds little or nothing to the sum total of the Government’s information.’” *See United States v. Apple MacPro Computer*, 851 F.3d 238, 247 (3<sup>rd</sup> Cir. 2017)(quoting *Fisher v. United States*, 425 U.S. 391, 411 (1976)). Counsel for the Defendants disagreed with this analysis.

7. Defendants have failed to provide the Receiver access to the email accounts at issue by June 1<sup>st</sup>, as required by this Court’s Order. It is anticipated that the Defendants will not provide the second tranche of required information due under the Order by June 8<sup>th</sup> as well due to their invocation of the Fifth Amendment.

8. Therefore, Receiver Maria Y. Yip requests that the Court order the Defendants to Show Cause why they should not be held in contempt for failing to follow the Court’s May 26, 2022 Order.

9. Respectfully, the Receiver requests that she and the FTC be given the opportunity to respond to the Defendants’ Show Cause filing.

## **ARGUMENT**

### **Legal Standard**

A court has the inherent power to enforce compliance with its lawful orders and mandates by civil contempt. *See Shillitani v. United States*, 384 U.S. 364, 370 (1966); *S.E.C. v. Pension Fund of America, L.C.*, Case No.

05-20863-CIV, 2006 WL 1104768, at \*7 (S.D. Fla. Mar. 23, 2006); *Fed. Trade Comm'n v. Life Mgmt. Servs. of Orange Cty., LLC*, Case No. 6:16-cv-982-Orl-41GJK, 2021 WL 307357, at \*4 (M.D. Fla. Jan. 29, 2021); *see also*, Fed. R. Civ. P. 70(e) (in proper cases, courts may adjudge a party in civil contempt for failure to perform specific acts required by a judgment). This inherent power is in addition to the Court's broad authority in supervising an equity receivership and determining the appropriate actions to be taken in the administration of the receivership. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see also Fed. Trade Comm'n v. MOBE Ltd.*, Case No. 6:18-cv-862-ORL-37DCI, 2020 WL 8461572, at \*1 (M.D. Fla. Dec. 8, 2020), report and recommendation adopted, 2021 WL 50335 (M.D. Fla. Jan. 6, 2021).

Civil contempt is wholly "remedial," and is intended to coerce compliance with an order of the court. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). A sanction is considered "civil" and "remedial" if it either coerces the defendant into compliance with a court order or compensates the complainant for losses sustained. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). This power is essential to the proper conduct of the judicial function; without it, courts would be unable to preserve decorum or assert their authority by order or decree. *See, e.g., In re Williams*, 306 F.Supp. 617, 618 (D.D.C. 1969). "Without the power to punish

noncompliance with its orders, this Court's authority to issue judgments would be nothing more than a mere mockery." *S.E.C. v. Yun*, 208 F.Supp.2d 1279, 1288 (M.D. Fla. 2002) (quoting *United States v. United Mine Workers*, 330 U.S. 258, 290 n. 56, 67 S.Ct. 677, 91 L. Ed. 884 (1947)) (internal quotation marks omitted). After recounting the contumacious judgment debtor's actions, the *Yun* court noted that through "months of deception, [contemnor] has taken deliberate strides to make a mockery of the jury verdict against her and the judgment of this Court. [Contemnor] has flouted the authority of this Court for far too long. It ends here." *Yun*, 208 F. Supp. 2d at 1288.

A party commits contempt when it or he "violates a definite and specific court order requiring him to perform or refrain from performing a particular act or acts with knowledge of that order." *Whitfield v. Pennington*, 832 F.2d 909, 913 (5th Cir 1987), *cert. denied* 487 U.S. 1205 (1988) (citing *S.E.C. v. First Fin. Grp. of Texas, Inc.*, 659 F.2d 660, 669 (5th Cir. 1981)). In a civil contempt proceeding, the Movant has the burden of establishing by clear and convincing evidence that: (1) a court order was in effect; (2) the order required certain conduct by the respondent; and (3) the respondent failed to comply with the court's order. *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 401 (5th Cir. 1987) (citing *McComb*, 336 U.S. at 191). Contempt is established where there is clear and convincing evidence that the "violated order was valid and lawful; . . . the order was clear and unambiguous;

and the . . . alleged violator had the ability to comply.” *F.T.C. v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010) (ellipses in original) (internal citation and quotation omitted); *see also McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000) (same). This question does not focus on the “subjective belief or intent” of the alleged contemnor, but rather, simply whether or not they complied with the order at issue. *S.E.C. v. Solow*, 682 F.Supp.2d 1312, 1325 (S.D. Fla. 2010); *see also Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990).

Here, the Defendants have failed to abide by the Court’s May 26, 2022 order and should be held in contempt. The Receiver respectfully requests that pursuant to the Court’s discretionary power to supervise an equity receivership, that the Court order the Defendants to show cause why they should not be held in contempt for failing to abide by the Court’s Order.

#### **LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the FTC who does not object to the relief sought. Further, undersigned counsel has conferred with counsel for the Defendants and they do object to the relief sought.

Respectfully submitted,

**/s/ Katherine C. Donlon**

Katherine C. Donlon FBN 0066941

[kdonlon@jclaw.com](mailto:kdonlon@jclaw.com)

JOHNSON, CASSIDY, NEWLON  
& DeCORT P.A.

2802 N. Howard Avenue

Tampa, FL 33607

Tel.: (813) 291-3300

Fax: (813) 235-0462

*Attorney for Receiver Maria Yip*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 6, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to all counsel of record.

**/s/ Katherine C. Donlon**

Attorney