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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

 Petitioner,

 v.

RAGHVENDRA SINGH,

 Respondent.

No. 2:15-cv-287-TLN-EFB PS

ORDER, FINDINGS AND CERTIFICATION
RE: CIVIL CONTEMPT

This case was before the court on March 16, 2016, for hearing on the court’s order directing respondent Singh to show cause why he should not be found in contempt for failure to comply with the court’s July 21, 2015 order.¹ ECF No. 39. Also before the court for hearing was Singh’s request for issuance of an order directing the Internal Revenue Service (“IRS”) to show cause why the agency and its counsel should not be held in contempt. ECF No. 41. Trial Attorney Nithya Senra of the Tax Division of the United States Department of Justice appeared on behalf of the government; respondent Singh appeared pro se.

For the following reasons, Singh’s request for issuance of an order to show cause is denied. Further, the court finds that Singh has willfully violated the court’s July 21, 2015 order and he continues to refuse compliance. Accordingly, as discussed below, the court finds that

¹ This case is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(9). See 28 U.S.C. § 636(b)(1).

1 Singh is in civil contempt and that alternatives other than incarceration will not achieve
2 compliance with the court's order.

3 I. Background

4 On February 4, 2015, the United States filed a petition to enforce an IRS summons. ECF
5 No. 1. According to the petition, Revenue Agent David Palmer has been assigned to collect the
6 assessed federal income tax (Form 1040) liabilities for Mr. Raghvendra Singh and Ms. Rawat for
7 tax years 2008, 2009, and 2010. *Id.* ¶ 4. Agent Palmer issued an Internal Revenue Service
8 summons directing Singh to appear before the agent on January 8, 2015, to give testimony and
9 produce for examination books, papers, records or other data relevant to Singh and Rawat's
10 assessed tax liabilities. *Id.* ¶¶ 5, 8. Singh appeared before Agent Palmer on that date but refused
11 to produce any document or provide testimony. *Id.* ¶ 11.

12 Following the government's application for an order to show cause, Singh was ordered to
13 appear before the court to show cause why he should not be ordered to comply with the
14 summons. ECF No. 9. In response to the IRS's petition for enforcement and the court's order to
15 show cause, Singh filed a counterclaim against the IRS (ECF No. 5), multiple motions requesting
16 the court stay the IRS's debt collection efforts (ECF Nos. 7, 10, 22), a motion to discharge the
17 court's order to show cause (ECF No. 11), a motion to quash the IRS summons (ECF No. 19),
18 and several requests that sanctions be imposed against the IRS (ECF Nos. 7, 10, 11, 12, 22).
19 Singh appeared before the court on May 20, 2015, but failed to provide any reasonable
20 justification for his failure to comply with the summons.

21 Accordingly, on July 21, 2015, the court enforced the IRS summons and ordered Singh to
22 appear before Agent Palmer on August 12, 2015, at the United States Attorney's office in
23 Sacramento. ECF No. 32. Singh was also ordered to give testimony on that date, and to produce
24 for examination and copying the books, checks, records, papers and other data demanded by the
25 summons. *Id.* at 2. That order also dismissed Singh's counterclaim and denied his various
26 motions. *Id.*

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1 Singh appeared before Agent Palmer on August 12, 2015, but again failed to produce any
2 document or provide any meaningful testimony.² Declaration of David Palmer ISO Req. for
3 Order to Show Cause (“Palmer Decl.”), ECF No. 38-2 ¶¶ 6-12, 14. Also on that date Singh filed
4 a notice of appeal, seeking review of the court’s July 21, 2015 order. ECF No. 33. However,
5 Singh failed to pay the required filing fees, and consequently the U.S. Court of Appeals for the
6 Ninth Circuit dismissed his appeal on December 15, 2015. ECF No. 37. The following month,
7 the government filed an application for an order directing Singh to appear before the court to
8 show cause why he should not be held in contempt for failure to comply with the court’s July 21,
9 2015 order. ECF No. 38. The court granted the application and directed Singh to appear on
10 March 16, 2016. ECF No. 39.

11 Prior to the hearing, Singh filed an opposition to the government’s motion for an order to
12 show cause (ECF No. 40, 43), as well as a motion for an order directing the IRS to show cause
13 why it should not be held in civil contempt (ECF No. 41).

14 II. Singh’s Application for an Order to Show Cause

15 Singh’s request that the IRS and its counsel be ordered to show cause why they should not
16 be held in contempt (ECF No. 41) is unintelligible. The motion is replete with hyperbole but
17 essentially argues that the IRS has interfered with court orders regarding child support payments
18 and “employees’ Tax.” *Id.* at 41 at 1-2. Singh also claims that the IRS is abusing the processes
19 of the court, defrauding the courts, and “wants to take Singh’s freedom forever.” *Id.*

20 Singh’s motion, however, fails to demonstrate that IRS has failed in any way to comply
21 with any court order or has engaged in other conduct warranting contempt proceedings.

22 Accordingly, Singh’s request is denied.

23 III. Order to Show Cause

24 Singh has been ordered to show cause why he should not be found in contempt for failure
25 to comply with the court’s July 21, 2015 order. Although Singh appeared as ordered, he simply

26 ² Singh provided verbal responses to Agent Palmer’s questions, but his answers were
27 consistently evasive. For example, Palmer asked: “What entities are you writing checks on behalf
28 of? What are the banks and accounts?” ECF No. 38-2. Singh’s response was: “Even if I give
you the information or not it is going to waste your time.” *Id.*

1 attempted to reargue the merits of the underlying order. He has failed to show any justification
2 for his willful disobedience of that order. Therefore, it is recommended that he be found in
3 contempt and subjected to the sanction of incarceration to compel his compliance.

4 A. Legal Standards

5 “A court has the inherent power to punish for civil or criminal contempt any obstruction
6 of justice relating to any judicial proceedings.” *Lambert v. Montana*, 545 F.2d 87, 88 (9th Cir.
7 1976). Civil contempt “consists of a party’s disobedience to a specific and definite court order by
8 failure to take all reasonable steps within the party’s power to comply.” *Reno Air Racing Ass’n,*
9 *Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). A sanction for civil contempt is intended to
10 coerce the party in contempt to comply with the court’s order in the future, with the sanction
11 conditioned on continued noncompliance. *Richmark Corp. v. Timber Falling Consultants*, 959
12 F.2d 1468, 1481 (9th Cir. 1992). Thus, a party imprisoned for contempt “carries the keys of his
13 prison in his own pocket because civil contempt is intended to be remedial by coercing the
14 defendant to do what he had refused to do.” *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1110 (9th
15 Cir. 2005).

16 “The moving party has the burden of showing by clear and convincing evidence that the
17 contemnors violated a specific and definite order of the court.” *Federal Trade Comm’n v.*
18 *Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). To establish that civil contempt is
19 appropriate, the government must demonstrate “(1) that [Singh] violated the court order, (2)
20 beyond substantial compliance, (3) not based on a good faith and reasonable interpretation of the
21 order, (4) by clear and convincing evidence.” *United States v. Bright*, 596 F.3d 683, 694 (9th Cir.
22 2010). Once the government makes this showing, the burden shifts to Singh to demonstrate that
23 he “took all reasonable steps within his power to insure compliance with” the court’s order. *Hook*
24 *v. Arizona Dept. of Corrections*, 107 F.3d 1397, 1403 (9th Cir. 1997).

25 “The choice among the various sanctions rests within the discretion of the district court,”
26 *United States v. Sumitomo Marine & Fire Ins. Co.*, 617 F.2d 1364, 1369 (9th Cir. 1980), and the
27 Ninth Circuit “defer[s] considerably to the judgment of the district court in fashioning the
28 appropriate sentence because of its proximity to the events out of which contempt springs.”

1 *United States v. Flores*, 628 F.2d 521, 527 (9th Cir. 1980). However, a “district court should
2 apply the least coercive sanction (e.g., a monetary penalty) reasonably calculated to win
3 compliance with its orders.” *Id.*

4 Pursuant to 28 U.S.C. § 636(e)(6)(B)(iii), where a party’s conduct “constitutes a civil
5 contempt, the magistrate judge shall forthwith certify the facts to a district judge and may serve or
6 cause to be served, upon any person whose behavior is brought into question under this
7 paragraph, an order requiring such person to appear before a district judge upon a day certain to
8 show cause why that person should not be adjudged in contempt by reason of the facts so
9 certified.” At the hearing, “[t]he district judge shall thereupon hear the evidence as to the act or
10 conduct complained of and, if it is such as to warrant punishment, punish such person in the same
11 manner and to the same extent as for a contempt committed before the district judge.” *Id.*

12 B. Discussion

13 The court finds that Singh willfully disobeyed the court’s July 21, 2015 order. The terms
14 of that order were clear and definite. It specifically provided that the IRS summons served on
15 Singh is enforced, and that Singh was to appear before Revenue Agent David Palmer on August
16 12, 2015, to “give testimony . . . , and to produce for examination and copying the books, checks,
17 records, papers and other data demanded by the summons.” ECF No. 32. The summons clearly
18 identifies all documents that Singh was to produce for examination. ECF No. 1-2 at 7. The
19 summons describes the scope of the information sought, both temporally and by topic. It also sets
20 forth the specific examples of the documents which must be produced.³

21 ³ The summons states: “This Summons requires production of records related to
22 RAGHVENDRA SINGH and KIRAN RAWAT and all trusts and business entit[i]es which
23 RAGHVENDRA SINGH and KIRAN RAWAT are involved with in any form, including but not
24 limited to all bank statements; Copies of all rental agreements; List of all renters and contact
25 information including the amount of rent they pay; List of all occupants of properties owned;
26 Copies of all trust documents, bank statements for all trusts, copies of tax returns filed for all
27 trusts; list of all real property including property address, equity, lender contact information, List
28 of all creditors and debtors including the amount owed, last payment made and copies of
statements to/from creditors and debtors.

All documents and records you possess or control regarding assets, liabilities, or accounts
held in the taxpayer’s name or for the taxpayer’s benefit which the taxpayer wholly or partially
owns, or in which the taxpayer has a security interest. These records and documents include but
are not limited to: all bank statements, checkbooks, canceled checks, saving account passbooks,

1 There is no dispute that Singh received the court’s order directing him to comply with the
2 summons as he appeared before Agent Palmer on August 12, 2015. Declaration of David Palmer
3 (“Palmer Decl.”) ¶ 6. Despite the court’s order to provide testimony and produce documents,
4 Singh refused to provide meaningful answers to Mr. Palmer’s questions and failed to provide a
5 single document responsive to the summons. *Id.* ¶¶ 8-12, 14.

6 Singh asserts several reasons for why he did not comply with the court’s order. First, he
7 advances several arguments challenging the reasoning of the underlying order. ECF No. 40 at 1.
8 He claims that the taxes the IRS seeks to collect are illegal and cannot be collected and essentially
9 attempts to relitigate the basis for the July 21, 2015 order.⁴ *Id.* at 1-2. However, disagreement
10 with or rearguing the merits of the underlying order is not a justification for disobeying the order.
11 The contempt proceeding is not an opportunity to revisit the factual and legal basis underlying the
12 court’s July 21, 2015 order. *See United States v. Rylander*, 460 U.S. 752, 756 (1983) (“It would
13 be a disservice to the law if we were to depart from the long-standing rule that a contempt
14 proceeding does not open to reconsideration the legal or factual basis of the order alleged to have
15 been disobeyed and thus become a retrial of the original controversy.”) (quoting *Maggio v. Zeitz*,
16 333 U.S. 56, 69 (1948)). Accordingly, respondent’s challenges to July 21 order must be rejected.

17 Singh also argues that he did not comply with the court’s order because he “was and is
18 unable to provide any record.” ECF No. 40 at 2. Respondent states that he “lost the records in
19 the fires, thefts and seizures particularly in the year of 2015.” *Id.* at 3. Singh reiterated these
20 contentions at the hearing. “Because a proceeding to enforce an IRS summons is an adversary
21 proceeding in which the defendant may contest the summons ‘on any appropriate ground,’ and
22 because lack of possession or control of records is surely such a ground, the issue may not be
23 raised for the first time in a contempt proceeding.” *Rylander*, 460 U.S. at 757 (citations omitted).

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26 records or certificates of deposit for the period ... of January 1st, 2013 to date of compliance with
27 the Summons.” *Id.*

28 ⁴ Singh sought review of that order in the Ninth Circuit and his appeal was dismissed.
ECF No. 37.

1 “While the court is bound by the enforcement order, it will not be blind to evidence that
2 compliance is now factually impossible. Where compliance is impossible, neither the moving
3 party nor the court has any reason to proceed with the civil contempt action. It is settled,
4 however, that in raising this defense, the defendant has a burden of production.” *Id.*

5 Singh has not met his burden. He has failed to produce any persuasive evidence
6 demonstrating that compliance with the court’s order is factually impossible. He has ever
7 evolving and contradictory explanations. In his two declarations, Singh states that he “does not
8 and is not allowed to have the records” (ECF No. 40 at 8) and yet also represents in other filings
9 and at the hearing that all of his records were stolen or burned in a fire. He presented at the
10 hearing what purports to be some record of a fire but submits no evidence that all copies that he
11 either possesses or controls of the bank statements, rental agreements, lists of all renters,
12 contracts, trust documents, tax returns, etc., were destroyed in this fire. Indeed, that
13 representation is contradicted by his statement to the court in a document he filed the evening
14 before the hearing. In his “Second Reply to Order to Show Cause” he states “**If District Court**
15 **finds that Singh has some documents and Singh should provide such documents to IRS, Singh**
16 **will provide such documents to IRS.**” ECF No. 45 at 2 (emphasis in original). Yet, to date
17 Singh has not produced a single document responsive to the IRS summons, nor has he provided
18 the required testimony. ECF No. 38-2 at 6. Instead, he continues to insist that he “was and is
19 unable to provide any records.” ECF No. 40 at 8. These vague and general statements are
20 insufficient to demonstrate that compliance with the court’s order is factually impossible.

21 Furthermore, even if the court were to find Singh’s contentions credible (which they are
22 not), the destruction of some documents would not excuse his noncompliance with the summons.
23 The tax summons requires Singh to produce, among other things, records regarding assets
24 liabilities and accounts, including all bank statements, checkbooks, canceled checks, savings
25 accounts, and records related to all trusts and business entities. Singh has not shown that he lacks
26 the ability to obtain documents from any financial entity with which he holds accounts. Nor is he
27 incapable of identifying those entities or providing lists of all renters and the amounts of rent they
28 pay.

1 Singh also argues that “disclosure of the records is privileged.” ECF No. 40. Singh does
2 not invoke any particular privilege, nor explain why he believes all his documents are privileged.
3 This conclusory argument does not justify his disregard of the court’s order.

4 Singh also contends that he has no money for the IRS to collect and that he needs money
5 for child support payments and medical expenses. ECF No. 40 at 2, 8. Singh’s claims of
6 insolvency are simply not responsive. The court did not order respondent to pay any sum of
7 money. Instead, Singh was ordered to appear before Agent Palmer to answer questions and
8 produce documents. Allegations of insolvency do not provide justification for refusing to provide
9 the information and records he was ordered to produce.

10 Lastly, Singh contends that he “seeks bankruptcy protection.” ECF No. 40 at 2. Singh
11 has filed nothing with the court to show that he has filed a bankruptcy petition. In fact,
12 examination of the Bankruptcy Court’s docket reveals that in December 2011, the United States
13 Bankruptcy Court for the Eastern District of California issued a pre-filing order barring Singh
14 from filing any further bankruptcy cases for a period of eight years unless prior authorization is
15 obtained from the Chief Bankruptcy Judge. *In re Singh*, No. 10-28544-E-13L, ECF No. 182. In
16 February 2016, Singh moved to set aside that pre-filing order, but to date that order remains in
17 place. *Id.* at ECF No. 209.⁵ Accordingly, it does not appear that Singh recently filed a
18 bankruptcy petition. Thus, the conclusory statement that he seeks bankruptcy protection does not
19 excuse his lack of compliance with the court’s order.

20 Based on the foregoing, the court finds by clear and convincing evidence that Singh,
21 without legal justification, is willfully refusing to comply with the court’s July 21, 2015 order,
22 and is in civil contempt of that order. The court further finds that imposition of monetary
23 sanctions will not achieve Singh’s compliance. Singh has repeatedly refused to cooperate with
24 the IRS in its attempt to collect delinquent taxes. The very purpose of this proceeding is to

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26 ⁵ That motion was heard by the bankruptcy court on February 17, 2016. *In re Singh*, No.
27 10-28544-E-13L, ECF No. 216. Although a formal order has not issued, the civil minutes
28 indicate that Singh’s motion will be denied. *Id.* (“After oral argument the court determined that
the Motion is denied. The court will issue a written Memorandum Opinion and Decision, and a
separate order thereon.”).

1 compel disclosure of assets that could satisfy, at least in part, Singh's tax debt. Despite the past
2 accrual of interest and penalties, Singh has obstinately refused to cooperate in the disclosure of
3 his finances and assets. Simply entering an order adding to the amount of his indebtedness
4 provides no realistic prospect that he will then comply with the order to disclose his assets. While
5 daily fines increasing his indebtedness to the government might well increase the incentive to
6 continue refusing to provide that information, it strains credulity that he would be motivated to
7 suddenly cooperate by a monetary penalty adding additional dollars to the amount he owes the
8 government.

9 Thus, incarceration for civil contempt is the only remaining alternative to compel Singh to
10 produce documents and provide testimony that he was ordered to provide. Accordingly, Singh is
11 directed to appear before Judge Nunley to show cause why he should not at that time be
12 incarcerated for civil contempt until such time that he complies with the court's order.

13 It is crucial to note that Singh may purge himself of contempt and he may do so prior to, or even
14 after, his incarceration. "Civil contempt is characterized by the court's desire to compel
15 obedience to a court order or to compensate the contemnor's adversary for the injuries which
16 result from the noncompliance." *United States v. Bright*, 596 F.3d at 695-96 (quoting *Falstaff*
17 *Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9th Cir. 1983)). To purge himself of
18 contempt, Singh need only disclose the financial information sought by the underlying summons
19 and ordered produced by the court's July 21, 2015 order. In that sense, as the Ninth Circuit has
20 previously explained, a party imprisoned for contempt "carries the keys of his prison in his own
21 pocket because civil contempt is intended to be remedial by coercing the defendant to do what he
22 had refused to do." *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1110 (9th Cir. 2005).

23 C. Fees and Costs

24 In addition to seeking imprisonment, the government also requests that Singh be ordered
25 to reimburse it the reasonable expenses it incurred in bringing its motion for an order to show
26 cause. ECF No. 38-1 at 10. "An award of attorney's fees for civil contempt is within the
27 discretion of the district court." *Harcourt Brace Jovanovich Legal & Prof. Pub., Inc. v.*
28 *Multistate Legal Studies, Inc.*, 26 F.3d 948, 953 (9th Cir. 1994); *see also Perry v. O'Donnell*, 759

1 F.2d 702, 704-705 (9th Cir. 1985) (holding that “civil contempt need not be willful to justify a
2 discretionary award of fees and expenses as a remedial measure.”).

3 In determining whether a request for attorney’s fees is reasonable, the court employs the
4 “lodestar” method. Under this method, “a district court must start by determining how many
5 hours were reasonably expended on the litigation, and then multiply those hours by the prevailing
6 local rate for an attorney of the skill required to perform the litigation.” *Moreno v. City of*
7 *Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). “In addition to computing a reasonable
8 number of hours, the district court must determine a reasonable hourly rate to use for attorneys
9 and paralegals in computing the lodestar amount.” *Gonzalez v. City of Maywood*, 729 F.3d 1196,
10 1205 (9th Cir. 2013). “The Supreme Court has consistently held that reasonable fees ‘are to be
11 calculated according to the prevailing market rates in the relevant community.’” *Van Skike v.*
12 *Dir. Off. Of Workers’ Comp. Programs*, 557 F.3d 1041, 1046 (9th Cir. 2009).

13 The government seeks \$189.70 per hour for the six hours it expended in preparing and
14 filing its motion, but explains that it is likely to expend additional time and resources in order to
15 obtain Singh’s compliance with the court’s order. *Id.*

16 An award of attorney’s fees as a remedial measure is appropriate to compensate the
17 government for Singh’s deliberate disregard of this court’s order. However, given that the
18 government is unable to calculate the total amount of expenses incurred at this juncture,
19 determination of the amount to be awarded should be deferred until after these contempt
20 proceedings have been resolved.

21 IV. Conclusion

22 For the reasons state above, it is hereby ORDERED that:

- 23 1. Respondent Raghvendra Singh’s request for issuance of an order directing the IRS to
24 show cause why the agency and its counsel should not be held in contempt (ECF No.
25 41) is denied.

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2. Respondent Raghvendra Singh is ordered to appear before Judge Nunley on April 7, 2016 at 2:00 p.m. in Courtroom No. 2, to show cause why Singh should not be incarcerated for civil contempt until he fully complies with the court's July 21, 2015 order.
3. Respondent Raghvendra Singh shall file no later than March 28, 2016, any evidence he may have to demonstrate that he has purged himself of contempt.
4. Petitioner may file a response no later than March 31, 2016.
5. Upon completion of these contempt proceedings, the government may renew its request for an award of fees and costs.

DATED: March 21, 2016.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE