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7 IN THE UNITED STATES DISTRICT COURT
 8 EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,
 10
 11 Petitioner,
 12 v.
 13 BRIAN E. TORRANCE,
 14 Respondent.

Case No. 2:18-CV-01631-JAM-EFB

ORDER

16 Petitioner United States of America filed this action seeking to enforce an Internal Revenue
 17 Service summons served on Respondent Brian Torrance. (ECF No. 1). On April 22, 2020, the
 18 magistrate judge issued proposed Findings and Recommendations, finding that Torrance had willfully
 19 violated two court orders requiring him to produce documents demanded by the IRS summons. (ECF
 20 No. 75). Torrance filed an objection to the Findings and Recommendations (ECF No. 78), and the
 21 United States filed a reply. (ECF No. 83). On November 24, 2020, the Court held a hearing on this
 22 matter. Assistant United States Attorney Steven Tennyson appeared on behalf of the United States.
 23 Torrance appeared pro se.

24 As stated below and for the reasons stated on the record, the Court adopts the proposed Findings
 25 and Recommendations in full, holds Torrance in contempt, and imposes a \$350.00 daily fine on
 26 Torrance until he complies with the Court's orders. In order to give Torrance one final opportunity to
 27 comply with the Court's orders, the Court stays the impact of this order for thirty days.

1 **I. Standard of Review**

2 The Court reviews de novo those portions of the proposed findings of fact to which objection
3 has been made. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines*,
4 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). As to any portion of the
5 proposed findings of fact to which no objection has been made, the court assumes its correctness and
6 decides the motions on the applicable law. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir.
7 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Britt v. Simi Valley*
8 *Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

9 **II. Facts**

10 On June 5, 2018, the government initiated this case by filing a petition to enforce an IRS
11 summons. (ECF No. 1). The magistrate judge found that the United States had satisfied the factors
12 under *Powell*, and recommended that the IRS summons be enforced. (ECF No. 20 at 2-3) (citing *United*
13 *States v. Powell*, 379 U.S. 48 (1964)). On October 4, 2019, the Court adopted the magistrate judge’s
14 proposed Findings and Recommendations and ordered that the IRS summons be enforced. (ECF No.
15 25). The Court also ordered Torrance to appear before IRS Revenue Officer David Palmer to give
16 testimony and produce documents demanded by the summons. (*Id.* at 2).

17 On December 18, 2019, Torrance appeared for an examination before Officer Palmer. (ECF No.
18 31-2 at ¶ 2). During that examination, Torrance refused to provide testimony or produce documents
19 demanded by the summons, claiming that all of the information sought was privileged under the Fifth
20 Amendment. (*Id.* at ¶¶ 5, 6).

21 The United States then moved to compel Torrance’s compliance with the Court’s October 4,
22 2019 order, arguing that Torrance’s blanket privilege assertion was improper. (ECF No. 31). On April
23 22, 2020, the magistrate judge granted the motion to compel and ordered Torrance to produce, by no
24 later than May 14, 2020, the documents and data demanded by the summons. (ECF No. 37 at 3). That
25 order also required Torrance to provide a privilege log, if he withheld documents on the basis of any
26 privilege. (*Id.*)

27 Claiming that Torrance had failed to comply with the October 4, 2019 and April 22, 2020 orders,
28

1 the United States filed a motion to hold Torrance in contempt. (ECF No. 51). The magistrate judge held
2 a hearing on that motion on October 8, 2020. (ECF No. 75 at 1). The magistrate judge found that
3 Torrance had “confirmed that he has not produced any of the documents demanded by the summons.”
4 (*Id.* at 3). Further, the magistrate judge found that Torrance made no attempt to show that he was
5 unable, despite efforts, to comply with the October 4, 2019 and April 22, 2020 orders. (*Id.* at 5) The
6 magistrate judge therefore found that clear and convincing evidence demonstrates that Torrance, without
7 legal justification, had willfully violated the Court’s October 4, 2019 and April 22, 2020 orders. (*Id.*)
8 Further, the magistrate judge recommended that the Court impose a daily coercive contempt fine of
9 \$350, as a lesser sanction might not motivate Torrance to comply with the Court’s orders in light of
10 Torrance’s assessed tax liabilities. (ECF No. 75 at 6-7).

11 On November 24, 2020, the Court held a hearing in this case. (ECF No. 85). At that hearing,
12 Torrance suggested that he possessed certain documents responsive to the summons and that he intended
13 to comply with the Court’s orders.

14 **III. Discussion**

15 The Court has the inherent power to hold parties in civil contempt. *Lambert v. Montana*, 545
16 F.2d 87, 88 (9th Cir. 1976). Civil contempt “consists of a party’s disobedience to a specific and definite
17 court order by failure to take all reasonable steps within the party’s power to comply.” *Reno Air Racing*
18 *Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). The purpose of a civil contempt sanction is
19 to coerce the party in contempt to comply with the court’s order in the future, with the sanction
20 conditioned on continued noncompliance. *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d
21 1468, 1481 (9th Cir. 1992).

22 “The moving party has the burden of showing by clear and convincing evidence that the
23 contemnors violated a specific and definite order of the court.” *Federal Trade Comm’n v. Affordable*
24 *Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). To establish that civil contempt is appropriate, the
25 government must demonstrate “(1) that [Torrance] violated the court order, (2) beyond substantial
26 compliance, (3) not based on a good faith and reasonable interpretation of the order, (4) by clear and
27 convincing evidence.” *United States v. Bright*, 596 F.3d 683, 694 (9th Cir. 2010). Once the government
28 has made this showing, the burden shifts to Torrance to demonstrate that he “took all reasonable steps

1 within his power to insure compliance with” the court’s orders. *Hook v. Arizona Dept. of Corrections*,
2 107 F.3d 1397, 1403 (9th Cir. 1997).

3 Here, clear and convincing evidence demonstrates that Torrance has entirely failed to comply
4 with the Court’s orders. (ECF Nos. 25, 37). First, Torrance’s filings have acknowledged that he knows
5 what these orders required. (*See, e.g.*, ECF No. 44 at 1). Yet, he has “confirmed that he has not
6 produced any of the documents demanded by the summons.” (ECF No. 75 at 3). Second, rather than
7 demonstrate substantial compliance, Torrance has “made no attempt to show that he was unable, despite
8 efforts, to comply with the October 4, 2019 and April 22, 2020 orders.” (*Id.* at 5). Third, Torrance’s
9 noncompliance is not based on a misinterpretation of the Court’s orders. Instead, he has asserted
10 meritless arguments challenging the court’s jurisdiction, even though the Court has repeatedly-rejected
11 these arguments. (*See, e.g.*, ECF No. 46). The Court’s prior rejection of these arguments is binding and
12 precludes Torrance’s reassertion of these arguments at the contempt stage. *United States v. Brown*, 918
13 F.2d 82, 83 (9th Cir. 1990). Accordingly, Torrance is in civil contempt.

14 If a party is found to be in civil contempt, a court may impose coercive sanctions, which are
15 designed “to coerce obedience to a court order.” *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376,
16 1380 (9th Cir. 1986). Coercive civil sanctions “generally take the form of conditional fines.” *Shell*
17 *Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016). Where a courts issue a coercive
18 fine, they consider the harm threatened by continued contumacy, the probable effectiveness of any
19 suggested sanction, and the contemnor’s financial resources. *General Signal Corp. v. Donallco, Inc.*,
20 787 F.2d 1376, 1380 (9th Cir. 1986) (citing *United States v. United Mine Workers*, 330 U.S. 258, 304
21 (1947)).

22 Considering these factors, the Court finds that the magistrate judge’s recommended daily fine of
23 \$350 is appropriate. *See United States v. Bright*, 596 F.3d 683, 696 (9th Cir. 2010) (holding “the district
24 court’s imposition of a \$500 daily fine . . . was well within the range of appropriate sanctions to secure
25 compliance with a tax summons”). First, the harm threatened by Torrance’s continued contumacy is
26 substantial. By violating the Court’s orders, Torrance is frustrating the United States’ attempt to collect
27 his assessed tax liabilities, which approach nearly one million dollars. (ECF No. 75 at 6). Second,
28 given the scale of this debt, a lesser sanction is unlikely to be effective. Third, Torrance has violated the

1 Court's orders requiring him to produce information showing his financial resources. The Court
2 declines to reward this conduct by reducing the sanction amount on this basis.

3 In response to the magistrate judge's proposed Findings and Recommendations, Torrance asserts
4 two objections. First, he contends that the Court erred by enforcing the IRS summons. (ECF No. 78 at
5 1-8). Second, he suggests that he cannot comply with the Court's orders because he does not have all of
6 the information demanded by the summons. (*Id.* at 1 n.2). The Court overrules both objections for the
7 reasons stated below.

8 Torrance's contention that the Court erred by enforcing the summons is misguided. In affirming
9 a contempt finding from this district long ago, the United States Supreme Court held that a "contempt
10 proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been
11 disobeyed." *United States v. Rylander*, 460 U.S. 752, 757 (1983) (citing *Maggio v. Zeitz*, 333 U.S. 56,
12 69 (1948)). This is because "disagreement with . . . the merits of the underlying order is not a
13 justification for disobeying the order." *United States v. Singh*, 2016 WL 1089153, at *4 (E.D. Cal. Mar.
14 21, 2016). Accordingly, this proceeding is not an opportunity to "revisit the factual and legal basis
15 underlying the court's . . . order." *Id.*

16 Here, Torrance disagrees with the merits of the underlying order. He complains that the
17 magistrate judge "failed to mention *Powell* and its four mandatory elements." (ECF No. 78 at 1). This
18 argument lacks merit, as the Court considered the *Powell* factors. (*See* ECF No. 20 at 3, 5). But in any
19 case, Torrance's dispute with the underlying order does not justify his noncompliance here. *Rylander*,
20 460 U.S. at 757.

21 Next, Torrance's bare allegation that he does not possess any responsive documents does not
22 excuse his noncompliance. In "a civil contempt proceeding such as this, of course, a defendant may
23 assert a present inability to comply with the order in question." *Rylander*, 460 U.S. at 757. But in
24 raising this defense, Torrance bears the burden of production. *Id.* (collecting cases).

25 Torrance fails to meet this burden because he offers "vague and general statements" about not
26 possessing certain books and records, which are "insufficient to demonstrate that compliance with the
27 court's order is factually impossible." *Singh*, 2016 WL 1089153, at *4. Additionally, Torrance "has not
28 shown that he lacks the ability to obtain documents from any financial entity with which he holds

1 accounts.” *Id.* Finally, Torrance further undermined this defense during the November 24, 2020
2 hearing, when he represented to the Court that he has certain documents demanded by the summons and
3 that he intends to comply with the Court’s orders.

4 **IV. Conclusion**

5 The Court has reviewed the applicable legal standards and, good cause appearing, concludes that
6 it is appropriate to adopt the proposed Findings and Recommendations in full. Accordingly, it is

7 ORDERED that:

- 8 1. The proposed Findings and Recommendations (ECF No. 75) are adopted.
- 9 2. Torrance is adjudged to be in contempt of court.
- 10 3. In order to provide Torrance with one final opportunity to comply with the October 4,
11 2019 and April 22, 2020 orders, the Court stays the impact of this order for thirty days.
- 12 4. Unless Torrance complies with the October 4, 2019 and April 22, 2020 orders within that
13 30 day period, Torrance shall pay a coercive daily fine of \$350 for each day that he fails to comply with
14 those orders to the Clerk of Court.
- 15 5. Torrance is admonished that further violations of the Court’s orders may result in
16 additional sanctions, including incarceration.
- 17 6. The United States shall file a status report within thirty days from the entry of this order.

18 IT IS SO ORDERED

19
20 DATED: December 11, 2020

/s/ John A. Mendez

21 THE HONORABLE JOHN A. MENDEZ
22 UNITED STATES DISTRICT COURT JUDGE
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