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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WELLS FARGO EQUIPMENT
FINANCE, INC., a Minnesota corporation,

No. 2:20-cv-00143-TLN-DB

Plaintiff,

ORDER

v.

VIRK SYSTEMS, INC. a California
corporation; LAKHWINDER SINGH
VIRK, an individual,

Defendants.

This matter is before the Court on Defendant Lakhwinder Singh Virk’s¹ (“Defendant”) Motion for Relief from the Court’s Bench Warrant. (ECF No. 73.) Plaintiff Wells Fargo Equipment Finance, Inc. (“Plaintiff”) has filed an opposition. (ECF No. 76.) Defendant has not filed a timely reply. For the reasons set forth herein, Defendant’s motion is DENIED.

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¹ Defendant Virk Systems, Inc. is also a named defendant in this action. The Court will refer to both defendants collectively as “Defendants.”

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 The instant action arises from Defendant’s failure to appear for a judgment debtor
3 examination. On January 21, 2020, Plaintiff filed the instant action for breach of contract, claim
4 and delivery, conversion, and breach of guaranty. (ECF No. 1.) Defendants were served and did
5 not respond to the Complaint. Accordingly, on March 18, 2021, the Court entered a default
6 judgment for \$604,237.60, as amended on June 9, 2021. (ECF Nos. 8, 16.) Plaintiff thereafter
7 applied for and obtained an Order for Appearance and Examination (“ORAP”) of each
8 Defendant, as amended (“Amended ORAP”). (ECF Nos. 25, 26, 34, 35.) Plaintiff personally
9 served Defendant with the ORAP and Amended ORAP in July 2021 and October 2021,
10 respectively. (ECF Nos. 30, 31, 38.)

11 Defendant failed to appear for his judgment debtor examination. The magistrate judge
12 subsequently issued an Order to Show Cause (“OSC”) requiring Defendant to show cause as to
13 why he should not be held in contempt and sanctioned for failing to appear. (ECF No. 40.) The
14 OSC required Defendant to appear via Zoom or telephonically on January 28, 2022, and
15 cautioned him that “failure to timely comply with this order may result in the imposition of
16 sanctions, including confinement.” (*Id.* at 3.) Plaintiff personally served Defendant with this
17 OSC. (ECF No. 41.) Defendant failed to appear on January 28, 2022. Plaintiff requested the
18 magistrate judge to issue a bench warrant in response to Defendant’s failure to appear, and the
19 magistrate judge entered an order stating that “only a district court may hold a party in contempt.”
20 (ECF No. 43 at 2.)

21 Plaintiff filed a motion for bench warrant on February 10, 2022. (ECF No. 44.) After
22 holding a hearing on March 10, 2022, this Court granted Plaintiff’s motion, finding that
23 Defendant failed to comply with the magistrate judge’s orders, and entered its Contempt Order.
24 (ECF Nos. 49, 50.) The Contempt Order instructs the Clerk of the Court to issue a bench warrant
25 for Defendant’s arrest and incarceration pending his compliance with the Amended ORAP and
26 OSC by submitting to a judgment debtor examination and producing documents related thereto as
27 set forth in the Amended ORAP. (ECF No. 50 at 2.) The Court also set bail at \$604,237.60, the
28 amount of the Judgment. (*Id.*)

1 The Clerk issued the bench warrant. (ECF No. 51.) Since then, Plaintiff has diligently
2 provided the Court with weekly status reports on its efforts to serve Defendant with the Contempt
3 Order. (See ECF Nos. 52–72, 74, 75.) Defendant filed the instant motion to vacate the bench
4 warrant on August 16, 2022. (ECF No. 73.)

5 **II. ANALYSIS**

6 Defendant requests the Court recall, rescind, suspend, or otherwise nullify the bench
7 warrant issued, arguing he was unable to attend his debtor examination because he did not get
8 notice and was not in the country. (ECF No. 73 at 4.) Defendant states that “[h]e wishes to
9 meaningfully participate in another debtor examination, but he is fearful of being arrested and
10 incurring more costs and expenditures that can be avoided.” (*Id.*) Defendant requests in the
11 alternative that the Court issue a protective order pursuant to California Civil Procedure Code §
12 708.200 staying enforcement of the bench warrant until he is able to attend another debtor
13 examination. (*Id.*)

14 In opposition, Plaintiff argues the Court should not vacate the bench warrant because
15 Defendant had knowledge and notice of the ORAP, Amended ORAP, and OSC as he was
16 personally served with each of them. (ECF No. 76 at 6–7.) Plaintiff further argues that
17 Defendant has not provided clear and convincing evidence to rebut the presumptions of valid
18 service. (*Id.* at 7.) Plaintiff finally asserts that the Court should not enter a protective order
19 because Defendant has provided no evidence or valid reason why the bench warrant should be
20 stayed, and the bench warrant is having the desired effect of coercing him to comply with the
21 orders. (*Id.* at 8–9.)

22 The purpose of civil contempt is remedial or compensatory, while the purpose of criminal
23 contempt is punitive. *Shillitani v. United States*, 384 U.S. 364, 369–70 (1966). A contempt
24 proceeding is civil if its purpose is to coerce persons into doing what they are supposed to do. *Id.*
25 “[T]he justification for coercive imprisonment as applied to civil contempt depends upon the
26 ability of the contemnor to comply with the court’s order.” *Id.* at 371. In contrast, if the purpose
27 is to vindicate the authority of the court by punishing the wrongdoer, the proceeding is for
28 criminal contempt. *United States v. United Mine Workers of Am.*, 330 U.S. 258, 302 (1947). The

1 same sanctions (*i.e.*, a fine and imprisonment) are imposed for civil contempt as well as criminal
2 contempt, but in the former instance they are employed “as coercive sanctions to compel the
3 contemnor to do what the law made it his duty to do.” *Penfield Co. of Cal. v. Sec. and Exch.*
4 *Comm ’n*, 330 U.S. 585, 590 (1947). “[A] contempt sanction is considered civil if it is remedial,
5 and for the benefit of the complainant.” *F.T.C. v. Kuykendall*, 371 F.3d 745, 752 (10th Cir. 2004)
6 (en banc) (internal citations and quotation marks omitted). “Civil contempt sanctions, however,
7 are only appropriate where the contemnor is able to purge the contempt by his own affirmative
8 act and carries the keys of his prison in his own pocket.” *United States v. Ayres*, 166 F.3d 991,
9 997 (9th Cir. 1999) (citing *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821,
10 826–31 (1994)) (internal quotation marks omitted).

11 In the instant case, the Court agrees with Plaintiff that Defendant is essentially attempting
12 to condition his compliance with the orders on the Court’s vacating the bench warrant or entering
13 a protective order to stay the warrant. (*See* ECF No. 76 at 2, 9.) Plaintiff is correct that
14 Defendant’s explanation for his noncompliance is vague and unbelievable, as he states he was
15 “out of the country” but does not state when he was out of the country or how that impacted his
16 ability to comply with the orders. (ECF No. 76 at 7.) Further, the Court finds persuasive
17 Plaintiffs’ argument that it is questionable when exactly Defendant was out of the country as his
18 declaration accompanying the instant motion states that it was signed in Sacramento. (*Id.* (citing
19 ECF No. 73-1).) Defendant has thus far shown that he is unwilling to appear before the Court or
20 for his judgment debtor examination. Therefore, the Court does not trust Defendant’s statement
21 that “[h]e wishes to meaningfully participate in another debtor examination.” (ECF No. 73 at 4.)
22 With an active bench warrant, the Court is only attempting to compel Defendant “what the law
23 made it his duty to do.” *See Penfield Co. of Cal.*, 330 U.S. at 590.

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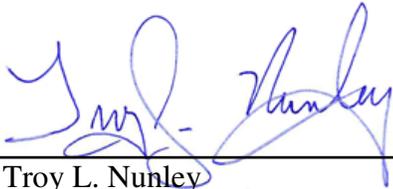
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III. CONCLUSION

For the reasons set forth above, Defendant’s Motion for Relief from the Court’s Bench Warrant is DENIED. (ECF No. 73.)

IT IS SO ORDERED.

DATED: September 14, 2022



Troy L. Nunley
United States District Judge