

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Case No.: 3:18-cv-00028-WGC

4 DANIEL HARRINGTON,
5 PAMELLA HARRINGTON,
6 and NIGHTWATCH MARINE, LLC,

7 Plaintiffs

8 v.

9 DAVID TACKETT,

10 Defendant

11 **Civil Contempt Order**

12 The court issues this order to impose a compensatory civil contempt sanction after
13 finding Tackett in civil contempt of this court's order.

14 **I. BACKGROUND**

15 The court found Tackett to be in civil contempt of the court's orders to return the
16 approximately 130,000 pounds of turquoise ore that is the subject of this litigation to the
17 Plaintiffs. The court initially considered the civil contempt sanction of coercive incarceration;
18 however, the court subsequently determined that under Federal Rule of Civil procedure 4.1(b),
19 the court has authority to serve and enforce an order committing a person for civil contempt in
20 any district if the person is in civil contempt of "a decree or injunction issued to enforce *federal*
21 *law*" and "[a]ny other order in a civil contempt proceeding may be served only in the state where
22 the issuing court is located or elsewhere in the United States within 100 miles from where the
23 order was issued." The civil contempt order was not issued to enforce *federal law*, but was issued
in a diversity action involving a state law breach of contract claim; therefore, the court was
limited to enforcing the arrest warrant within Nevada or within 100 miles of Reno. Tackett

1 resides in Flagstaff, Arizona, which is not within 100 miles of Reno. (See ECF Nos. 147, 175,
2 177, 179.)

3 At the October 13, 2021 hearing, the court discussed other options available to Plaintiffs,
4 including issuing a bench warrant valid in Nevada or within 100 miles of Reno (if Tackett came
5 to Nevada or within 100 miles of Reno), a coercive fine, or a motion to amend the judgment
6 from rescission to damages for breach of contract. (ECF No. 182.) The court gave Plaintiffs an
7 opportunity to advise the court of their preference.

8 Plaintiffs filed a notice on October 28, 2021, requesting the court impose a coercive
9 monetary sanction against Tackett, and suggesting that the court order Tackett to pay \$500 per
10 day for each day that he continues to violate the court's orders. Plaintiffs do, however, wish to
11 preserve their right to bring a motion to amend the judgment from rescission to damages should
12 Tackett not purge his contempt by complying with the court's orders within a reasonable period
13 of time. They ask that they be permitted to move to amend the judgment within one year of the
14 date of any order imposing a coercive monetary sanction. Finally, Plaintiffs ask the court to
15 initiate criminal contempt proceedings against Tackett under 28 U.S.C. § 636(e)(3) and Federal
16 Rule of Criminal Procedure 42, including referral, if necessary, to the United States Attorney for
17 possible prosecution.

18 In his response, Plaintiff maintains that all of the turquoise he received from Plaintiffs is
19 contained on his property in Flagstaff, Arizona, and he remains willing to turn it over. (ECF No.
20 185.) The court has already determined that the turquoise ore that is currently on Plaintiff's
21 property is not in fact that which the Plaintiffs sold him. The court will now address the issue of
22 contempt sanctions.

23

II. DISCUSSION

1
2 First, the court declines to exercise its discretion to initiate criminal contempt
3 proceedings.

4 Second, insofar as Plaintiffs request the imposition of a coercive civil contempt fine,
5 there are two types of civil contempt sanctions: coercive and compensatory. *United States v.*
6 *United Mine Workers of America*, 330 U.S. 258, 303-04 (1947); *Shell Offshore Inc. v.*
7 *Greenpeace, Inc.*, 815 F.3d 623, 628-30 (9th Cir. 2016); *Gen. Signal Corp v. Donallco, Inc.*, 787
8 F.2d 1376, 1380 (9th Cir. 1986); *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770,
9 778-79 (9th Cir. 1983) (citation omitted). Compensatory sanctions are intended to compensate
10 the aggrieved party for the injuries that resulted from the noncompliance with the court's order.
11 "Where compensation is intended, a fine is imposed, payable to the complainant." *United Mine*
12 *Workers*, 330 U.S. at 304. "Such fine must of course be based upon evidence of complainant's
13 actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the
14 outcome of the basic controversy." *Id.*

15 Coercive civil sanctions, in contrast, are intended "to coerce the defendant into
16 compliance with the court's order[.]" *Shell*, 815 F.3d at 629. One type of civil contempt coercive
17 sanction, as Plaintiffs note, is a per diem fine imposed for each day a contemnor fails to comply
18 with a court order. A coercive civil fine, however, is payable to the **court**, and not the opposing
19 party. *See Gen. Signal*, 787 F.2d at 1380 (citing *Winner Corp. v. H.A. Caesar & Co.*, 511 F.2d
20 1010, 1015 96th Cir. 1975); *see also RG Abrams Ins. V. Law Offices of C.R. Abrams*, 2:21-cv-
21 00194-FLA-MAAx, 2021 WL 5213103, at *9 (C.D. Cal. Nov. 9, 2021).

22 Given Tackett's steadfast maintenance that the ore in his possession is that which the
23 Plaintiffs' sold him, as well as his failure to pay other sanctions ordered by the court, the court is

1 Plaintiffs have **30 days** from the date of this Order to submit a memorandum of fees and
2 costs so incurred.

3 Tackett will then have **15 days** to file a response regarding the amount or necessity of the
4 fees/costs incurred.

5 Plaintiffs have **60 days** from the date of this Order to file a motion to alter or amend the
6 judgment under Federal Rule of Civil Procedure 60(b) to seek damages instead of rescission.

7
8 **IT IS SO ORDERED.**

9 Dated: January 10, 2022

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William G. Cobb
United States Magistrate Judge