




**SO ORDERED,**

  
Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: January 13, 2021

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**MAY DAY MOVERS, LLC,**

**CASE NO. 20-02621-NPO**

**DEBTOR.**

**CHAPTER 7**

**ORDER HOLDING DEBTOR IN CIVIL CONTEMPT AND FOR OTHER RELIEF**

This matter came before the Court for hearing on January 12, 2021 (the “Civil Contempt Hearing”), on the Order to Show Cause (the “Order to Show Cause for Contempt”) (Dkt. 28) why sanctions or other relief should not be imposed against the debtor, May Day Movers, LLC, (the “Debtor”) and/or Damion May,<sup>1</sup> for failure to comply with the Order Resolving Orders to Show Cause (the “Order Resolving Show Cause Orders”) (Dkt. 26) entered in the above-referenced bankruptcy case (the “Bankruptcy Case”) on December 17, 2020. At the Civil Contempt Hearing, Jeffrey D. Rawlings appeared on behalf of Lavu, Inc. (the “Creditor”), and Eileen N. Shaffer appeared on behalf of the chapter 7 trustee, Stephen Smith (the “Trustee”). No attorney or other representative appeared at the Civil Contempt Hearing on behalf of the Debtor or Damion May.

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<sup>1</sup> According to the Mississippi Secretary of State website, Damion May is the managing member and sole officer of the Debtor.

The Court took the matter under advisement. The Court finds as follows:

### **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A). Notice of the Civil Contempt Hearing was proper under the circumstances.

### **Facts**

On October 19, 2020, the Creditor filed an Involuntary Petition Against a Non-Individual (the “Involuntary Petition”) (Dkt. 1) against the Debtor, a limited liability company. An amended summons and a copy of the Involuntary Petition were served on the Debtor on October 19, 2020. (Dkt. 7). No responsive pleading or motion was filed by the Debtor within the time provided by Rule 1011 of the Federal Rules of Bankruptcy Procedure. The Court, therefore, entered an order for relief (the “Order for Relief”) (Dkt. 8) under chapter 7 of the Bankruptcy Code on November 13, 2020 pursuant to Rule 1013(b) of the Federal Rules of Bankruptcy Procedure.

After entry of the Order for Relief, the Debtor was required to file a list of creditors (the “Mailing Matrix”) within seven (7) days and a schedule of assets and liabilities, a schedule of current income, a schedule of executory contracts and unexpired leases, and a statement of financial affairs among other documents within fourteen (14) days. *See* 11 U.S.C. § 521(a)(1); FED. R. BANKR. P. 1007(a)(2), (b)(1), (c), (f). Accordingly, the Clerk of the Bankruptcy Court (the “Bankruptcy Clerk”) issued a Deficiency Notice (the “First Deficiency Notice”) (Dkt. 9) on November 13, 2020 notifying the Debtor that no later than November 20, 2020 the Debtor must file the Mailing Matrix required by Rule 1007 of the Federal Rules of Bankruptcy Procedure

(“Rule 1007”). The Bankruptcy Clerk also issued a Deficiency Notice (together with the First Deficiency Notice, the “Deficiency Notices” or the “Second Deficiency Notice”) (Dkt. 11) informing the Debtor that no later than November 27, 2020, the Debtor must file the following additional documents required by Rule 1007:

- (1) Schedules A/B;
- (2) Schedule D;
- (3) Schedule E/F;
- (4) Schedule G;
- (5) Schedule H;
- (6) Summary of Assets and Liabilities; and
- (7) Statement of Financial Affairs.

(collectively with the Mailing Matrix, the “Required Documents”) (Dkt. 11).

When the Debtor failed to file any of the Required Documents, the Court issued the Order to Show Cause (the “First Order to Show Cause”) (Dkt. 17) instructing the Debtor to appear and show cause why the Bankruptcy Case should not be dismissed for failure to comply with the First Deficiency Notice, and the Order to Show Cause (together with the First Order to Show Cause, the “Orders to Show Cause”) (Dkt. 20) instructing the Debtor to appear and show cause why the Bankruptcy Case should not be dismissed for failure to comply with the Second Deficiency Notice. Copies of the Orders to Show Cause were sent to the Debtor and Damion May by first-class mail at the address of record at 53 Northtown Drive, Apt. 35-I, Jackson, MS 39211-3803 (the “Address of Record”).<sup>2</sup> (Dkt. 13, 16); *see* FED. R. BANKR. P. 4002(a)(5) (requiring debtors to file a statement of any change of their address). On December 2, 2020, the Creditor filed the Response to Order to Show Cause (the “Response”) (Dkt. 18). The Court scheduled a hearing on December

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<sup>2</sup> Damion May’s address of record in his individual bankruptcy case is also 53 Northtown Drive, Apt. 35-I, Jackson, MS 39211-3803. (No. 20-02622-NPO, Dkt. 1).

14, 2020 (the “Show Cause Hearing”) on the Orders to Show Cause and the Response.

The Debtor did not file a written response to the Show Cause Orders, and no attorney or other representative appeared on behalf of the Debtor or Damion May at the Show Cause Hearing. On December 17, 2020, the Court entered the Order Resolving Show Cause Orders. A copy of the Order Resolving Show Cause Orders was sent to the Debtor by first-class mail at the Address of Record. (Dkt. 27).

The Order Resolving Show Cause Orders allowed the Debtor twenty-one (21) additional days to file the Required Documents. If the Debtor did not file the Required Documents within the time period, the Order Resolving Show Cause Orders provided that the Court would issue another order to show cause requiring the Debtor to appear at a hearing to determine whether the Debtor and/or Damion May is in civil contempt of the Order Resolving Show Cause Orders.

The Debtor did not comply with the Order Resolving Show Cause Orders, and the Court issued the Order to Show Cause for Contempt ordering the Debtor and Damion May to appear and show cause why it should not be held in civil contempt of the Order Resolving Show Cause Orders. The Debtor and Damion May were provided a copy of the Order to Show Cause Orders for Contempt by first-class mail at the Address of Record. (Dkt. 29). The Order Resolving Show Cause Orders and the Order to Show Cause for Contempt provided that the Court would consider sanctions and/or other actions against the Debtor and/or Damion May pursuant to 11 U.S.C. § 105 and the inherent power of this Court to enforce compliance with its orders, and such actions may include:

- (1) Imposing coercive monetary sanctions, including monetary sanctions that continue each day until the Debtor complies with the Order Resolving Show Cause

Orders;

(2) Requiring payment of any attorney's fees and expenses incurred by other parties during the course of this matter, including those associated with any appeal; and/or

(3) Recommending that the U.S. District Court for the Southern District of Mississippi withdraw the reference in the Bankruptcy Case pursuant to 28 U.S.C. § 157(d) for the limited purpose of considering criminal contempt proceedings or additional civil contempt proceedings against the Debtor.

(Dkt. 26, 28). The Court also provided the Debtor and/or Damion May with notice that failure to appear at the Civil Contempt Hearing may result in the Court issuing a bench warrant directing the U.S. Marshal to apprehend Damion May, as the Debtor's managing member and sole officer, and bring him before the Court. (Dkt. 26, 28).

The Debtor did not file a written response to the Order to Show Cause for Contempt, and no attorney or representative appeared on behalf of the Debtor at the Civil Contempt Hearing. To date, the Required Documents have not been filed.

### **Discussion**

It is well settled that bankruptcy courts within the Fifth Circuit possess civil contempt powers. *Placid Ref. Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 612-13 (5th Cir. 1997). The source of such powers is 11 U.S.C. § 105(a), which provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or

appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613. To establish civil contempt, the following three elements must be shown by clear and convincing evidence: “(1) that a court order was in effect; (2) that the order required certain conduct by the respondent; and (3) that the respondent failed to comply with the court’s order.” *Johnson Cty. Plaintiffs v. Mrs. Baird’s Bakeries (In re Piggly Wiggly Clarksville, Inc.)*, 177 F.3d 380, 382 (5th Cir. 1999). “A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court’s order.” *Id.* (citations & quotations omitted).

The Court finds that the Debtor and Damion May<sup>3</sup> are in civil contempt of the Order Resolving Show Cause Orders. The Debtor and Damion May had knowledge of the Order Resolving Show Cause Orders. The Court sent a copy of the Order Resolving Show Cause Orders to the Debtor and Damion May by first-class mail at the Address of Record, and the Order Resolving Show Cause Orders was not returned by the postal service as “undeliverable.” *See Greyhound Lines Inc. v. Rogers (In re Eagle Bus Mfg., Inc.)*, 62 F.3d 730 (5th Cir. 1995) (holding that a document duly served by mail creates a rebuttable presumption that it reached its destination in the usual time and actually was received by the person to whom the mail was addressed). A

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<sup>3</sup> As previously noted, Damion May is the managing member and sole officer of the Debtor. The Court, therefore, finds that the sanctions imposed against the Debtor are also imposed against him in those capacities. *See Wilson v. United States*, 221 U.S. 361, 376-77 (1911) (“A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience, and may be punished for contempt.”).

review of the docket in the Bankruptcy Case shows that the Debtor has not filed any of the Required Documents. All three elements to establish civil contempt have been met. *In re Piggly Wiggly*, 177 F.3d at 382. No evidence has been presented indicating that there is any “fair ground of doubt” as to the wrongfulness of the failure of the Debtor and Damion May to comply with the Order Resolving Show Cause Orders. *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801-01 (2019). The Court turns next to the issue of civil contempt sanctions.

The sanctions available to a bankruptcy court in response to civil contempt are many and varied. As noted previously, this Court has civil but not criminal contempt powers. A contempt sanction is classified as either civil or criminal, depending on its “character and purpose.” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994). The classification of a contempt sanction as either civil or criminal is important for two reasons. First, as noted previously, bankruptcy courts lack criminal contempt powers, at least as to conduct committed outside their presence. Second, the imposition of criminal contempt sanctions generally requires greater procedural protections.<sup>4</sup> *Bagwell*, 512 U.S. at 831-32.

A contempt sanction is considered civil if its purpose is to coerce a recalcitrant party into compliance with the court’s order or to compensate an injured party for losses resulting from the noncompliance. *Lamar Fin. Corp. v. Adams*, 918 F.2d 564, 566 (5th Cir. 1990). In contrast, a contempt sanction is criminal if its purpose is to punish and to vindicate the authority of the court. *Id.* “[C]riminal contempt is a crime in the ordinary sense.” *Bloom v. Illinois*, 391 U.S. 194 (1963). A criminal contempt prosecution for violation of a court order is separate from the case

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<sup>4</sup> A lesser degree of procedural protection may be appropriate, for example, when contempt is committed in the presence of the Court or when the criminal contempt sanction constitutes a “petty” fine. *Bagwell*, 512 U.S. at 832, 837 n.5, 838-39.

in which the violated order was entered and is punishable under 18 U.S.C. § 401 by fine or imprisonment, or both.

When imposing civil contempt sanctions, the Fifth Circuit advises that courts first apply the least onerous sanction necessary to coerce compliance with its order. *Krim v. First City Bancorporation of Tex. Inc. (In re First City Bancorporation)*, 282 F.3d 864, 867 (5th Cir. 2002). If compliance is not forthcoming, a court may increase the initial penalty or may impose a new penalty appropriate under the circumstances.

Here, the Creditor requested in the Response that the Court issue monetary sanctions against the Debtor and possibly a bench warrant for the arrest and detention of Damion May until he provides the Required Documents. In the Order Resolving Show Cause Orders, the Court afforded the Debtor an additional twenty-one (21) days to produce the Required Documents. The Order Resolving Show Cause Orders also put the Debtor and Damion May on notice that failure to comply with the Order Resolving Show Cause Orders would result in the Court issuing the Order to Show Cause for Contempt and holding the Civil Contempt Hearing.

Given the failure of the Debtor and Damion May to appear at the Civil Contempt Hearing and their continued failure to comply with the Deficiency Notices, the Orders to Show Cause, the Order Resolving Show Cause Orders, and the Order to Show Cause for Contempt, the Court finds that that the Debtor and Damion May shall be liable for a coercive fine of \$100.00 per day, starting January 20, 2021, for each day that the obligations imposed by the Order Resolving Show Cause Orders remain unfulfilled. The Court now considers the sanction of incarceration.

Bankruptcy courts have imposed incarceration as a sanction for civil contempt when there is a history of non-compliance with the court's orders and non-monetary sanctions would be



inadequate. *In re Duggan*, 133 B.R. 671, 673 (Bankr. D. Mass. 1991); *see also Commercial Banking Co. v. Jones (In re Maxair Aircraft Corp. of Ga., Inc.)*, 148 B.R. 353, 359 (M.D. Ga. 1992). Incarceration is a civil contempt sanction so long as such incarceration is limited and the contemnor is released from incarceration upon purging the contempt or upon showing that he is unable to do so. *U.S. Lines, Inc. v. GAC Marine Fuels Ltd. (In re McLean Indus., Inc.)*, 68 B.R. 690, 695 (Bankr. S.D.N.Y. 1986) (holding that compliance with a contempt order is often accomplished by a “purgation provision, whereby a civil contemnor may purge himself of contempt at any time by compliance”).

This purging mechanism distinguishes civil from criminal contempt. For example, in contrast to the fixed term of imprisonment that is characteristic of criminal contempt cases, the contemnor determines how long the incarceration will last in civil contempt cases. The contemnor is said to “possess the keys to the jailhouse.” *Shillitani v. United States*, 384 U.S. 364 (1966); *see Hicks ex rel. Feiock v. Feiock*, 485 U.S. 624, 649 (1988) (holding that the respondent “carries something even better than the ‘keys to the prison’ in his own pocket: as long as he meets the conditions of his informal probation, he will never enter the jail.”).

Because coercive incarceration is the most severe sanction available for civil contempt, most courts impose incarceration as a last resort. *In re Miller*, No. 05-16155, 2007 WL 4322541, at \*4 (Bankr. E.D. Pa. Dec. 11, 2007) (“[E]nhanced economic penalties for continued disobedience is adequate as a starting point but with the understanding that there will be a short window for compliance after which incarceration shall result.”). For example, in *Walsh v. Free (In re Free)*, 466 B.R. 48 (Bankr. W.D. Pa. 2012), the court imposed *per diem* fines for misconduct rather than incarceration but declared that if it “became convinced that compliance can be obtained only by

incarceration,” it would “not hesitate to order the Debtor to be taken into custody” but “[a]t this point in time, the Court is showing mercy on Debtor.” *Id.* at 62.

The Court finds that the conduct of the Debtor and Damion May justifies the issuance of a bench warrant directing the U.S. Marshal to apprehend Damion May as the managing member and sole officer and bring him before the Court. *See Wilson v. United States*, 221 U.S. 361, 376-77 (1911). Because such an arrest could result in Damion May being detained for several days until the Court can schedule a civil contempt hearing, however, certain concerns arise as a result of the current public health crisis.<sup>5</sup> Damion May’s incarceration could place his own health and welfare at risk as well as the health and welfare of law enforcement personnel and prisoners already in the custody of the U.S. Marshals Service.<sup>6</sup> The Court, therefore, will suspend the bench warrant until such time as these concerns can be addressed.

### **Conclusion**

The Court finds that the Debtor and Damion May are in civil contempt of the Order Resolving Show Cause Orders. As sanctions, the Court will impose a daily fine unless and until the Debtor purges the contempt. Because of the failure of either an attorney or representative of the Debtor and/or Damion May to appear at the Civil Contempt Hearing, the issuance of a bench warrant requiring Damion May to appear before the Court is justified but should be suspended given the current public health crisis.

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<sup>5</sup> *See Things to Know About the COVID-19 Pandemic*, Centers for Disease Control & Prevention (Jan. 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/need-to-know.html>.

<sup>6</sup> *See Coronavirus Disease 2019 (COVID-19) How It Spreads*, Centers for Disease Control & Prevention (Jan. 12, 2021) <https://www.cdc.gov/coronavirus/2019-ncov/transmission/index.html>.

IT IS, THEREFORE, ORDERED that the Debtor and Damion May are declared in civil contempt of the Order Resolving Show Cause Orders requiring the Debtor to file the following documents:

- (1) Mailing Matrix;
- (2) Schedules A/B;
- (3) Schedule D;
- (4) Schedule E/F;
- (5) Schedule G;
- (6) Schedule H;
- (7) Summary of Assets and Liabilities; and
- (8) Statement of Financial Affairs.

IT IS FURTHER ORDERED that the Debtor and Damion May shall be jointly and severally liable for a coercive fine of \$100.00 per day, starting January 20, 2021, for each day that the obligations imposed on the Debtor by the Order Resolving Show Cause Orders remain unfulfilled.

IT IS FURTHER ORDERED that the Court shall issue a bench warrant directing the U.S. Marshal to apprehend Damion May and bring him before the Court when the Court's concerns regarding the current public health crisis can be addressed.

IT IS FURTHER ORDERED that the Bankruptcy Clerk is hereby directed to serve a copy of this Order pursuant to Rule 9022 on the Trustee, the Creditor, upon the Debtor by first-class mail addressed to the Debtor at the address of record at 53 Northtown Drive, Apt. 35-I, Jackson, MS 39211-3803, and upon Damion May by first-class mail addressed to Damion May at 53 Northtown Drive, Apartment 35-I, Jackson, MS 39211-3803, the address of record in his individual bankruptcy case. (No. 20-02622-NPO, Dkt. 1).

##END OF ORDER##