17-669

17-1587 (Consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

JOSEPH K. RENSIN,
Defendant-Appellant,

BLUEHIPPO FUNDING, LLC, BLUEHIPPO CAPITAL, LLC,
Defendants.

On Appeal from the United States District Court
for the Southern District of New York

PAGE PROOF BRIEF OF THE
FEDERAL TRADE COMMISSION

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QUESTIONS PRESENTED

This case involves two consolidated appeals from a proceeding to determine whether Joseph Rensin should be held in contempt for failing to comply with an earlier contempt order. In the first appeal, No. 17-669, Rensin challenged the district court's order that his eleventh-hour bankruptcy filing did not stay the contempt proceeding under the governmental regulatory power exception to the automatic bankruptcy stay. 11 U.S.C. § 362(b)(4). That case was fully briefed and argued in 2018.

In the second appeal, No. 17-1587, Rensin challenges the district court's order finding him in contempt of its earlier contempt sanctions order. Rensin repeats much of his argument from the first appeal in his opening brief here. Although the FTC believes the issues regarding the automatic stay were fully explored in the earlier briefing and that the Court should not consider further briefing on them, this brief answers both the new arguments in Rensin's brief and those restated from his brief in No. 17-669. The new issues are:

1. Whether the district court correctly held Rensin in contempt; and

2. Whether the district court's contempt order must be vacated as void.

The issue previously briefed in No. 17-669 is:

3. Whether Rensin's bankruptcy filing precluded the district court from adjudicating whether he was in contempt of the court's earlier contempt sanctions order.

STATEMENT OF THE CASE

Eleven years ago, the district court entered a permanent injunction to stop Joseph Rensin and his company, BlueHippo, from illegally deceiving consumers. Rensin ignored the order and continued his deceit, reaping over $13 million in unlawful gains. Ten years ago, the FTC asked the district court to hold Rensin and BlueHippo in contempt, which it did more than eight years ago.[1] Three years ago, it imposed a contempt sanction that Rensin pay back $13 million to consumers.[2] Again, Rensin ignored the court's order. Now, the FTC has asked the court to find Rensin in contempt of the sanctions order, and Rensin has tried to thwart that proceeding with a last-minute bankruptcy petition. With this appeal, Rensin seeks to delay, yet again, any consequence from his deceptive business practices and his total disregard for the district court's orders.

A. The FTC's law enforcement action, the consent order, and Rensin's contempt of the consent order

Rensin was the CEO of BlueHippo, a company that sold computers to consumers with poor credit while misleading them about the material terms and conditions of their purchases. Among other things, BlueHippo told consumers that they could easily finance a computer purchase without a credit check and receive the

[1] *See FTC v. BlueHippo Funding, LLC*, 762 F.3d 238, 242-243 (2d Cir. 2014).

[2] *See FTC v. Rensin*, 687 Fed. App'x 3 (2d Cir. Apr. 12, 2017).

computer within a few weeks. A.0035-36.[3] In reality, BlueHippo imposed onerous terms to "qualify" for credit, including a series of nonrefundable payments which BlueHippo illegally required to be made by preauthorized debit. A.0043. Most consumers failed to qualify and received nothing for their money. A.0040, A.0049. For those who did qualify, BlueHippo failed, for months on end, to ship the computers it had promised. A.0041-42. In 2008, the FTC sued to halt the deceptive practices, which violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and other consumer protection laws. Dkt. 1. BlueHippo did not contest the charges but instead agreed to a consent order that required it to cease its unlawful practices and pay equitable monetary relief for consumer injury. Dkt. 2.

Under Rensin's direction, BlueHippo ignored the consent order and continued its deceptive tactics. In 2009, the FTC asked the district court to hold BlueHippo and Rensin in contempt and to impose a contempt sanction to compensate injured consumers. Dkt. 41. The district court held Rensin in contempt in 2010, ordering him to pay a compensatory sanction for which he was jointly and severally liable with BlueHippo. A.0045-46.

[3] Citations to "A.___" refer to the two-volume appendix previously filed in No. 17-669. The parties have agreed to the deferred filing of a third appendix volume for nonduplicative materials relevant to the appeal in No. 17-1587, to be paginated consecutively from the earlier volumes.

Following the FTC's successful appeal of the sanctions amount, *FTC v. BlueHippo Funding, LLC*, 762 F.3d 238 (2d Cir. 2014), the district court in 2016 ordered Rensin to pay $13.4 million in restitution to injured consumers. A.0047-55. The order required Rensin, within seven days, "to pay a portion of the sanction"—$8 million—"subject to securing the remainder of the judgment through a letter of credit or bond." A.0051-54. If Rensin failed to satisfy these conditions, the court ordered, he would be required to "immediately pay the full amount of the judgment . . . to the Commission to be deposited in the Redress Fund." A.0054. This Court affirmed that order. *FTC v. Rensin*, 687 Fed. App'x 3 (2d Cir. 2017) (summary order).

B. Rensin's failure to comply with the contempt sanctions order

Rensin did not comply with the district court's order. He did not pay $8 million—or any portion of the sanction—within seven days, as the court had directed him to do. A.0421. He did not secure the balance of the sanction—or any other amount—through a letter of credit or bond, as the court had directed him to do. *Id.* Having failed to comply with those directives, the district court's conditional order that Resin immediately pay the full $13.4 million in redress became effective. Rensin entirely ignored that command as well. *Id.*; A.0117.

Rensin had resources that he could have used to comply with the district court's sanctions order. At the time of the order, he owned a house valued at ap-

proximately $1 million; annuities worth approximately 2 million (funded by Rensin's offshore trust) which paid him $15,000 per month; and several other investment and bank accounts. A.0421. What's more, Rensin deliberately attempted to put those assets out of the court's reach. For example, when this Court's 2014 decision signaled that the district court was likely to award a much greater sanction than it had initially, Rensin moved to Florida (which has laws highly protective of homeowners against creditors) and paid cash for a million-dollar house there. A.0131. He then used $2 million from his offshore trust to purchase annuities issued by an offshore insurance company. A.0118-120. And on the very day that the district court in a telephonic hearing outlined the contempt order that it intended to enter, *see* Dkt. 128, Rensin cleared out his primary bank account and moved the funds into a new account that he claimed was exempt from attachment under Florida law. A.0133-134; A.0196-198; A.0200-201; A.0182-183. Just four days after Rensin was forced in discovery to disclose that account's existence to the FTC, he withdrew most of the money, moved it to a new account at another bank, and claimed that was exempt from attachment. A.0207; *see also* A.0168, 170, 174.

At the same time, Rensin burned through money that could have been returned to consumers, dining at pricey restaurants, taking vacations, and leasing a series of expensive cars. *E.g.*, A.0209-227; A.0131-132; A.0140-141; A.0143-144.

C. The second contempt proceeding

In November 2016, the FTC moved to hold Rensin in contempt for his disregard of the sanctions order. Dkt. 146. In light of Rensin's persistent refusal to follow the court's orders, the FTC asked the court order him incarcerated until he purged his contempt. *Id*.

The district court held an evidentiary hearing and set a schedule for post-hearing briefs. Dkt. 154; A.0417. Two days before his post-hearing brief was due, Rensin filed a Chapter 7 bankruptcy petition in the Southern District of Florida and a suggestion of bankruptcy in the district court, asserting that the contempt proceeding "may" be subject to the automatic bankruptcy stay under 11 U.S.C. § 362(a). In response, the FTC asked the district court to rule that the bankruptcy filing did not automatically stay the entire contempt proceeding. But the FTC modified its request for relief: instead of asking that Rensin be incarcerated to compel payment, the agency asked the district court to hold Rensin in contempt but stay any coercive sanction pending resolution of the bankruptcy proceeding. A.0264. The district court held that the automatic stay did not apply because the contempt proceeding fell within the government regulatory exception to the automatic stay, 11 U.S.C. § 362(b)(4). Rensin filed a notice of appeal, docketed in this Court as No. 17-669. He then moved for a stay pending appeal in both the district court and this Court. On March 20, 2017, the district court denied the motion. Dkt. 171. On

March 27, this Court issued a temporary administrative stay pending the determination of Rensin's motion on the merits by a three-judge panel. The panel later granted a stay pending the appeal in No. 17-669.

Apparently unaware that a temporary stay had been entered the day before, the district court issued its decision on the merits of the contempt motion on March 28, 2017. A.0417-432. The court held that its initial contempt order was "clear and unambiguous." A.0420. The court noted that it had ordered Rensin to pay $8 million to the FTC within seven days of that order and to secure the remaining balance of the sanction, and, failing those conditions, to pay the full amount of the redress, but found that Rensin had "not paid nor secured any portion" of that amount. A.0420-421. The court held further that despite his contrary contentions, Rensin had assets that could have been applied to the sanctions amount, including the Florida home, the offshore trust, and several other accounts. A.0421-422.

The court determined that the FTC could seek to enforce the sanctions order through contempt and was not required to use the collection procedures of the Federal Debt Collection Practices Act. A.0423. Contempt was an appropriate means to enforce the earlier order so long as the relief is of "the kinds that are traditionally available in equity." A.0422 (quoting *Ecopetrol S.A. v. Offshore Exploration & Prod. LLC*, 172 F. Supp. 3d 691, 695 (S.D.N.Y 2016)). Indeed, the court noted that

in the prior appeal, this Court had characterized the relief that the FTC sought "as a form of disgorgement or equitable restitution." A.0422.

The district court reiterated its earlier holding that the proceedings are within the governmental regulatory power exception to the automatic bankruptcy stay, which therefore "does not bar this Court from determining that Rensin is in contempt." A.0423. But the court held that the FTC "may not effectuate or enforce" the contempt sanctions during the bankruptcy. A.0423. "Rensin's bankruptcy filing," the court explained, "does not strip this Court of its ability to exercise its civil contempt powers to vindicate its authority." A.0424.

The court concluded that Rensin should be held in contempt in light of clear and convincing evidence that he had failed to comply with the earlier unambiguous sanctions order. A.0425. The court rejected Rensin's argument that the sanctions order was ambiguous about whether it was ordering disgorgement. *Id.* The court found that the language was "specific and definite enough to apprise [Rensin] of the conduct that is being proscribed." A.0426 (quoting *New York State NOW v. Terry*, 886 F.2d 1339, 1352 (2d Cir. 1989) (alteration in original)).

The court found "no dispute that Rensin has paid no money to the FTC," and concluded that "[t]he evidence of Rensin's noncompliance with the April 19, 2016 Order is clear and convincing." A.0426. The court further held that Rensin failed to establish an inability to comply. *Id.* It rejected Rensin's claims that he was unable

to pay because of the bankruptcy petition and that he did not control his offshore trust. A.0427-428. The court found that in the period following the sanctions order, "Rensin has controlled various assets and decided to spend money on travel, food, a luxury car rental, and hotels," and that "[a]ny of these assets could have been used to make payments, however small, towards satisfaction of the April 19, 2016 Order." A.0428. Accordingly, the court found that "Rensin has not met his burden of establishing 'complete inability, due to poverty or insolvency, to comply.'" *Id.* (quoting *Huber v. Marine Midland Bank*, 51 F.3d 5, 10 (2d Cir. 1995)).

The court determined that the appropriate sanction would be an order that Rensin meet with the FTC to negotiate a payment schedule in good faith, but stayed that order until "termination or modification of the automatic stay under 11 U.S.C. § 362(c) or (d)." A.0431.

Upon learning of the temporary stay this Court had issued the day before, the district court entered a text-only order staying the contempt order "in its entirety." A.0031.

D. Relevant bankruptcy proceedings

The FTC initiated an adversary proceeding in Rensin's bankruptcy case, arguing that the entire amount of the contempt sanction imposed by the district court was not dischargeable in bankruptcy. The bankruptcy court agreed, holding that the full amount of the contempt sanction "is excepted from discharge in this bankrupt-

cy case pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6).” Final Judgment, *FTC v. Rensin*, No. 17-ap-1185, ECF No. 113 (Bankr. S.D. Fla. Dec. 14, 2018), *appeal docketed*, No. 19-80001-RLR, (S.D. Fla. Dec. 28, 2018).

SUMMARY OF THE ARGUMENT

1. The district court’s decision to hold Rensin in contempt for failing to comply with its earlier sanctions order was well within its discretion. The order was clear and unambiguous: it directed Rensin to make an initial payment to the FTC and secure the remaining amount; if he failed to comply, he was required to pay the full sanction at once. Rensin ignored those instructions. He made no attempt to comply despite having assets that he could have used to do so.

The district court correctly rejected Rensin’s defense that he was unable to comply with the sanctions order. It was Rensin’s burden to prove his inability-to-comply defense through evidence that is clear, plain, and unmistakable, and he failed to meet it. As the district court found, even if Rensin could not pay the full amount, he had to pay what he could. Before he filed his bankruptcy petition, Rensin indisputably had at his disposal assets that could have been used to pay part of the sanction. Rather than make any attempt to comply, Rensin spent lavishly and sought to shelter those assets.

Rensin is not excused from contempt because his assets are now under control of the bankruptcy trustee and he lacks the “present ability” to comply. A self-

imposed inability to comply is not a defense to contempt. Moreover, Rensin's bankruptcy petition does not excuse his non-compliance *before* he filed the petition.

The contempt order was not a "money judgment" equivalent to damages that could be enforced only through attachment and not through contempt. This case has always been an equitable claim for an injunction and equitable monetary relief under § 13(b) of the FTC Act; the agency never sought legal damages. Indeed, in an earlier proceeding in this matter, the Court described the monetary sanction at issue as "disgorgement or equitable restitution." *BlueHippo*, 762 F.3d at 245.

The Court need not and should not vacate the order holding Rensin in contempt simply because the district court had not yet registered this Court's temporary administrative stay. Instead, to avoid needless delay and the waste of party and judicial resources, the Court should either retroactively lift the temporary stay to remove the timing conflict, or alternatively, construe the district court's order as an indicative ruling and enter a limited remand under Rule 12.1(b) so that the district court may re-enter it.

2. The parties briefed and argued the applicability of the automatic bankruptcy stay in No. 17-669 and the Court should not consider further argument, which amounts to an impermissible surreply. The automatic bankruptcy stay does not apply to the contempt proceeding because it was brought by a governmental

agency exercising its regulatory powers. 11 U.S.C. §§ 362(a)(1); 362(b)(4). Specifically, the FTC brought this case under Section 13(b) of the FTC Act to stop BlueHippo's deceptive practices. The initial contempt proceeding was a continuation of that proceeding and sought to halt the same practices (which had continued). This contempt proceeding is a further continuation and the same government interest is at stake—protecting consumers from economic injuries due to deceptive practices.

The contempt proceeding does not fall within the "exception to the exception" that applies when the government seeks to enforce a money judgment. 11 U.S.C. § 362. As this Court's cases illustrate, the exception to the exception applies when the government tries to seize or attach the defendant's property. For example, the government may not seek an order to repatriate funds held offshore. *SEC v. Brennan*, 230 F.3d 65, 73 (2d Cir. 2000). By contrast, the government may seek to freeze assets because that only temporarily burdens the use of the frozen funds. *SEC v. Miller*, 808 F.3d 623, 632 (2d Cir. 2015). Here, the district court's order holding Rensin in contempt does not even rise to the level of a burden on Rensin's assets. It therefore did not amount to enforcement of a money judgment and does not fall within the exception to governmental regulatory power exception to the automatic stay.

STANDARD OF REVIEW

This Court reviews the district court's findings of fact for clear error, its interpretation of its prior order *de novo*, and its ultimate finding of contempt for an abuse of discretion. *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD RENSIN IN CONTEMPT.

A party may be held in civil contempt for failure to comply with a court order if the order was clear and unambiguous, proof of noncompliance is clear and convincing, and the party did not diligently attempt to comply in a reasonable manner. *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004). Each of those conditions is met here.

The inability to comply with an order is "a long-recognized defense to a civil contempt citation, but the burden is on defendants to substantiate their claimed inability plainly and unmistakably." *Donovan v. Sovereign Sec., Ltd.*, 726 F.2d 55, 59 (2d Cir. 1984) (cleaned up). Rensin failed to establish that he was unable to comply with the sanctions order. Because the FTC made a "proper showing to warrant civil contempt," and "the heavy burden of demonstrating inability to comply was not met," the district court correctly "entered an order holding [Rensin] in contempt." *Id.* at 59-60.

A. The sanctions order was clear and unambiguous.

In the contempt sanctions order, the district court imposed a straightforward set of requirements. It ordered Rensin to pay $8 million to the FTC for deposit into a fund for consumer redress. A.0052. It directed Rensin to make that payment within 7 days of April 19, 2016, when the order was issued. *Id.* The court further ordered Rensin to secure the remainder of the sanction ($5.4 million) through a letter of credit or performance bond within 30 days of the order. A.0052-54. That amount was to be turned over to the FTC for deposit into the consumer redress fund upon the FTC's showing that the initial $8 million would be exhausted. A.0054. The court ordered that if Rensin failed to obey those directives, he would have to pay the full amount immediately. *Id.* Each of those requirements is clear. There is nothing ambiguous about them.

Rensin argues that the facial clarity of the district court's directives is not enough. Rather, he claims, the order must also have been clear and unambiguous that the sanction was ordered *as disgorgement*. Br. 33-36, 45-47. Rensin does not explain why that description would have made his obligations under the sanctions order any clearer, or how its absence renders the order ambiguous. He cites no authority suggesting that the clarity of an order depends on how or whether the district court characterized the relief in a particular way, and we are aware of none. To the contrary, the "long-standing rule" is that "a contempt proceeding does not open

to reconsideration the legal or factual basis of the order alleged to have been disobeyed." *United States v. Rylander*, 460 U.S. 752, 756 (1983) (cleaned up). Accordingly, Rensin cannot defend his failure to obey the district court's clear orders by claiming that the legal basis for the sanction was unclear.[4]

B. Rensin failed to comply or make any reasonable attempt to comply with the sanctions order.

There is no dispute that Rensin did not even attempt to comply with the district court's sanctions order. He did not make any payment to the FTC within 7 days of the sanctions order. Nor did he obtain a letter of credit or bond securing any amount within 30 days of the order. Rensin's failure to make the initial payment as ordered triggered the district court's conditional order that he immediately pay the full amount of the sanction. Rensin did not obey that part of the order either. He has never complied with the court's order in any way.

Rather than complying with the sanctions order, Rensin actively sought to *avoid* complying by moving his assets beyond the court's reach. He paid nearly $1 million in cash for a house (which he claims is exempt from attachment under Florida law), moved $2 million dollars into offshore annuities, cleaned out his bank accounts, and spent money lavishly. *See* A.0118-120; A.0133-134; A.0196-198, A.0200-201; A.0182-183, A.0207; A.0209-227; A.0131-132; A.0140-141;

[4] As explained in part I.D below, Rensin's argument that the contempt sanction was necessarily a money judgment rather than disgorgement is incorrect.

A.0143-144. His utter disregard for the district court's order is both egregious and uncontested.

C. Rensin did not establish that he was unable to comply.

Rensin argues that by virtue of his bankruptcy petition, he lacked (and still lacks) the "present ability to comply" with the district court's sanctions order because his assets are now under the control of the bankruptcy trustee. That is no defense.

A defendant in a contempt proceeding who claims he is unable to comply "bears the burden of producing evidence of his inability," and he must do so "clearly, plainly, and unmistakably." *Huber v. Marine Midland Bank*, 51 F.3d 5, 10 (2d Cir. 1995). A court considering a claimed inability to comply "is not required to credit the alleged contemnor's denials if it finds them to be incredible in context." *Id.* (quotation marks omitted). Nor must the court accept a claim of poverty or insolvency that is "attributable to the fault of the party charged." *In re Sobol*, 242 F. 487, 489 (2d Cir. 1917). "Self-induced inability is not a defense to a contempt proceeding." *United States v. Asay*, 614 F.2d 655, 660 (9th Cir. 1980); *see In re 1990's Caterers Ltd.*, 531 B.R. 309, 320 (Bankr. E.D.N.Y. 2015). The district court correctly held that Rensin failed to show an inability to comply with the sanctions order.

First, Rensin's failure to pay any portion of the sanction *before* his bankruptcy petition was grounds enough to reject the claim that he was unable to comply with the sanctions order. Rensin was ordered to pay the contempt sanction to the FTC in April 2016. If he could not pay the entire amount, then he had to pay all that he could. *SEC v. Musella*, 818 F. Supp. 600, 602 (S.D.N.Y. 1993). Rensin does not argue that he lacked any assets or that he was unable to pay any part of the sanction when it was ordered or until he filed his bankruptcy petition in late February 2017. He does not challenge the district court's finding that, pre-bankruptcy, he "controlled various assets and decided to spend money on travel, food, a luxury car rental, and hotels," rather than pay any part of the sanction. A.0428. Standing alone, Rensin's failure to pay what he could, when he could, precluded his inability-to-pay defense. *Musella*, 818 F. Supp. at 602.

Second, Rensin's sole claim on appeal—that he lacks the "present ability to pay" because his assets are now part of the bankruptcy estate (Br. 47-49)—does not establish that he was unable to comply. To the extent that Rensin's assets are now controlled by the bankruptcy trustee, Rensin induced that himself when he filed a bankruptcy petition in the middle of the contempt proceeding. A self-induced inability to comply is not a defense to contempt. *Asay*, 614 F.2d at 660; *Sobol*, 242 F. at 489.

Moreover, Rensin's contention that it would violate *SEC v. Brennan*, 230 F.3d 65 (2d Cir. 2000), to use his offshore trust or his post-petition income from the trust to pay the sanction amount (Br. 49-51) is misplaced. The district did not order either of those things. *See* A.0428-430.

With regard to the trust itself, Rensin argues that under *Brennan*, "the lower court could not take any steps to order repatriation" because it would violate the automatic bankruptcy stay. Br. 49. But the court did not take any steps to order repatriation.[5] It found only that Rensin's claimed lack of control did not establish an inability to pay. A.0428. That holding was correct. When a party has moved his assets into an offshore trust, "the burden on the party asserting an impossibility defense will be particularly high because of the likelihood that any attempted compliance with the court's orders will be merely a charade rather than a good faith effort to comply. Foreign trusts are often designed to assist the settlor in avoiding being held in contempt of a domestic court while only feigning compliance with the court's orders." *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1241 (9th Cir. 1999). Rensin argues that the FTC "presented no evidence that Rensin has the ability to control" the trust. Br. 50. But that was not the FTC's burden. It was Rensin's burden to establish "clearly, plainly, and unmistakably" that he was unable to

[5] As explained in section II.B below, the automatic bankruptcy stay does not apply to this case.

comply. *Huber*, 51 F.3d at 10. Rensin points to his own testimony to show he lacked control of the trust (Br. 50), but the district court is not required to credit an alleged contemnor's self-serving denials. *Huber*, 51 F.3d at 10. As explained in *Affordable Media*, the court's wariness of Rensin's claim that he lacked control was fully justified because offshore trusts are often designed precisely to assist contemnors in making such claims. 179 F.3d at 1241.

Turning to Rensin's post-petition trust income, the district court did not order Rensin to use that income to satisfy the contempt sanction either. *See* A.0430-431. While it did express a belief that "a reduction in his monthly annuity payments of $15,000 . . . would [not] impoverish Rensin," it offered that view as part of its order—which it stayed during the course of the bankruptcy—that Rensin "meet in good faith with the FTC and negotiate a payment schedule." A.0430. In other words, the court contemplated (but did not order) that the trust income might be used to satisfy the judgment, but only *after* the bankruptcy stay is lifted or modified. That statement is not inconsistent with *Brennan*, which involved the repatriation of assets *during* a bankruptcy case.

D. The sanctions order was an equitable remedy enforceable in contempt, not a legal remedy enforceable only through a writ of execution.

"There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Shillitani v. United States*,

384 U.S. 364, 370 (1966). The Federal Rules thus provide a district court with discretion to hold a "disobedient party in contempt" when, as here, the party "fails to comply" with an order to perform a specific act "within the time specified." Fed. R. Civ. P. 70(e).

Nevertheless, Rensin argues that the district court abused its discretion when it held him in contempt because the sanctions order cannot be enforced through the contempt power at all. According to Rensin, because the sanctions order was a "compensatory damages" order rather than a "disgorgement order," it was a "money judgment." Br. 33-41. Further, the argument goes, this means that the district court could not enforce its order through contempt; the FTC must seek a writ of execution under Federal Rule of Civil Procedure 69 and the Federal Debt Collection Practices Act. Br. 41-44.

In support of his argument that the sanctions order was necessarily a "money judgment," Rensin invokes the historical divide between law and equity, arguing that "[a] plaintiff cannot transform a claim for damages into an equitable action by asking for an injunction that orders the payment of money." Br. 36 (quoting *Ecopetrol S.A. v. Offshore Exploration & Prod. LLC*, 172 F. Supp. 3d 691, 695 (S.D.N.Y. 2016)). But this case never involved "a claim for damages." The complaint sought the quintessential equitable remedy of an injunction under Section 13(b) of the FTC Act. Section 13(b) permits courts to grant, in addition to an in-

junction, "ancillary equitable relief, including *equitable* monetary relief." *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 365 (2d Cir. 2011) (emphasis added).

The 2008 consent order that resulted from the FTC's complaint then imposed *equitable* remedies for BlueHippo's violations of the FTC Act. And this Court held in an earlier appeal that the FTC's power to seek *equitable* monetary relief on behalf of consumers in this very case extended to the initial contempt proceeding. *BlueHippo Funding*, 762 F.3d at 243. That contempt proceeding resulted in the sanctions order that Rensin now stands in contempt of. It was never "a claim for damages" on behalf of the FTC, and the sanction that Rensin ignored was not merely a "money judgment." It was an order for equitable relief enforceable by contempt.

Rensin's argument that the contempt sanction was a "money judgment" and could not be "disgorgement" because the sanction would be used to compensate consumers (Br. 33-41) is directly contrary to this Court's decision in *Bronson Partners*. There, the Court explained that the monetary relief sought by the FTC "comports with the equitable remedy of disgorgement" and that the agency may "attempt to return as much of the disgorgement proceeds as possible" to consum-

ers. 654 F.3d at 373.[6] In an earlier appeal in this case, the Court likewise described the relief that would be ordered as a result of Rensin's contempt as "disgorgement or equitable restitution." *BlueHippo*, 762 F.3d at 245.

Rensin's heavy reliance on the district court's description of the sanction as "compensatory damages" (Br. 33-34, 36) is likewise misplaced. The district court's description was inaccurate and immaterial. It was inaccurate for the reasons discussed above. It was immaterial as explained in *Bronson Partners*, where the Court held that the substance of the monetary relief, not its description, controls. 654 F.3d at 372 ("[A]n error in terminology can be harmless so long as the substantive legal standard applied was the correct one."). As in *Bronson Partners*, and as the Court said earlier in this very case, the substance of the sanction, which sought to make consumers whole, is an equitable remedy. *Id.* at 373; *BlueHippo*, 762 F.3d at 245.

Indeed, even the *Ecopetrol* case—which Rensin principally relies on to argue that the sanctions order could only be enforced through a writ of execution—

[6] Rensin's claim that the sanctions order could not be disgorgement because he did not receive all the proceeds of the fraud himself (Br. 35, 38-39) is contrary to the Court's holding that "the Commission has no need to rely on common law theories of unjust enrichment," *Bronson Partners*, 654 F.3d at 371. It also conflicts with the Court's earlier decision in this case that contempt sanctions should seek to "mak[e] whole the victims of the contumacious conduct." *BlueHippo*, 762 F.3d at 243. The harm from Rensin's contempt was not limited to the amount he personally received.

acknowledges that "contempt is appropriately imposed for the violation of courts' orders to render payment" in cases seeking equitable remedies, and "those arising under a statutory scheme that implements an important national policy." *Ecopetrol*, 172 F. Supp. 3d at 697. This case falls into both of those categories.

E. The Court should retroactively lift its temporary stay or construe the district court's order as an indicative ruling.

Finally, Rensin asks the Court (Br. 31-32) to vacate the order finding him in contempt on the ground that it was entered after this Court had temporarily stayed the contempt proceeding. The Court should decline to do so. To be sure, the two courts' orders crossed in the mail, and as a result the district court technically lacked jurisdiction to enter the contempt order, though it did not know it at the time. By then, however, the district court had already spent considerable time on this matter; had it acted a few hours earlier, its jurisdiction would not be in question. That error of timing does not justify throwing away the district court's efforts to decide the contempt proceeding and giving Rensin a do-over.

Instead, this Court can and should validate the district court's efforts and preserve the parties' and judicial resources, in one of two ways: It can either exercise its discretion to retroactively lift the temporary stay, or it can construe the district court's order as an indicative ruling under Federal Rule of Appellate Procedure 12.1(b) and issue a limited remand so that the district court may enter the contempt order.

First, the Court can exercise its "inherent power to enter an order having retroactive effect" to lift the temporary stay, *nunc pro tunc*, for the period between the temporary stay and the district court's contempt order. *Iouri v. Ashcroft*, 464 F.3d 172, 182 (2d Cir. 2006). Retroactive relief is appropriate to ensure "that the parties shall not suffer" due to the timing of a judicial decree. *See Mitchell v. Overman*, 103 U.S. 62, 65 (1881). A "*nunc pro tunc* order should be granted or refused, as justice may require, in view of the circumstances of the particular case." *Weil v. Markowitz*, 829 F.2d 166, 175 (D.C. Cir. 1987) (quoting *Mitchell*, 103 U.S. at 65).[7]

Justice would be served by a retroactive modification of the temporary stay. It is only through happenstance that the stay preceded the contempt order rather than the other way around. Indeed, the court had fully adjudicated Rensin's contempt *before* the stay. Over the course of four months, the district court (1) considered the FTC's motion for an order to show cause and Rensin's opposition (Dkt. 146, 147, 151, 152); (2) held an evidentiary hearing (Dkt. 154); (3) accepted the parties' post-hearing briefs (Dkt. 158, 169, 170); and (4) prepared a 16-page opinion and order (Dkt. 173). The only step that remained was to issue the written or-

[7] Relatedly, a bankruptcy judge may retroactively lift the automatic bankruptcy stay to "validate proceedings or actions that would otherwise be deemed *void ab initio*." *E. Refractories Co. v. Forty Eight Insulations*, 157 F.3d 169, 172 (2d Cir. 1998). That power is not directly applicable here because it is this Court's temporary stay at issue and, as explained below, the automatic bankruptcy stay did not apply to the adjudication of Rensin's contempt.

der, and the district court did that only a short time after this Court's temporary stay. Given that interval, it is clear that the court had already decided the case when the temporary stay issued.

Retroactive relief would not prejudice Rensin. He has not suffered any consequence from the contempt order and would suffer no harm if the Court retroactively lifted the temporary stay. By its terms, the contempt order stayed the limited sanction the district court found appropriate (requiring that Rensin negotiate in good faith with the FTC). And after learning of the temporary stay, the court stayed the order in its entirety for good measure. Because he has suffered no consequence, vacating the order would not provide Rensin any genuine relief. It would, however, result in additional delay and a waste of judicial and party resources. There is no reason to think that the district court would come to a different conclusion if the order were vacated, so it would likely enter the very same order, prompting yet another appeal and another round of needless, repetitive briefing.

Alternatively, if the court does not find a retroactive modification of the temporary stay appropriate, it should construe the district court's order to be an indicative ruling under Federal Rule of Appellate Procedure 12.1(b), issue a limited remand so that the district court may re-enter the contempt order, and then proceed to consider the appeal on its merits.

Federal Rule of Appellate Procedure 12.1(b) permits the Court to remand a case to the district court, while still retaining jurisdiction, for the limited purpose of allowing that court to make a final ruling on the matter based on an earlier indicative ruling. This procedure is often employed along with Federal Rule of Civil Procedure 62.1, which allows parties to seek an indicative ruling from a district court that lacks jurisdiction due to an appeal, but a prior motion is not mandatory. Courts regularly construe district court decisions rendered during an appeal as indicative rulings despite the lack of a motion for an indicative ruling in the district court. For example, finding that "the district court's intent . . . was clear," the Eleventh Circuit recently construed an order (which the district court lacked jurisdiction to enter) as an indicative ruling, and entered a limited remand so that the district court could enter that order. *FTC v. Vylah Tec LLC*, No. 19-10325 (11th Cir. Feb. 26, 2019). Other courts likewise "have been willing to construe district court actions as indicative rulings even when no FRCP 62.1 motion . . . was filed." *Mendia v. Garcia*, 874 F.3d 1118, 1121 (9th Cir. 2017) (collecting cases). If the Court declines to retroactively modify the temporary stay, it should employ that procedure here to avoid the waste of time and resources that would result from vacating the district court's order.

II. THE CONTEMPT PROCEEDING IS NOT SUBJECT TO THE AUTOMATIC STAY

As the FTC explained in its brief in No. 17-669, the automatic bankruptcy stay did not apply to the contempt proceeding in the district court. Because that question has been fully briefed and argued, Rensin's opening brief on the issue amounts to an impermissible surreply and the Court should not consider it. In any case, his arguments remain flawed for the reasons we have already set forth.

A. The Bankruptcy Code's automatic stay, the governmental unit exception, and the "exception to the exception"

Section 362(a) of the Bankruptcy Code imposes an automatic stay of most legal proceedings against a debtor who files a petition for bankruptcy. 11 U.S.C. § 362(a). Specifically, section 362(a)(1) stays "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy] case . . . or to recover a claim against the debtor that arose before the commencement of the [bankruptcy] case."11 U.S.C. § 362(a)(1). The automatic stay is designed to centralize in the bankruptcy court all disputes concerning property of the debtor's estate, prevent dissipation of assets, and provide for an orderly distribution to the debtor's creditors. *Brennan*, 230 F.3d at 70.

The stay does not apply, however, to actions brought by an agency of the government to enforce its "police and regulatory power." In particular, the bankruptcy code exempts from the automatic stay:

> the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power[.]

11 U.S.C. § 362(b)(4).

The purpose of this exception is to prevent a debtor from "frustrating necessary governmental functions by seeking refuge in bankruptcy court." *City of New York v. Exxon Corp.*, 932 F.2d 1020, 1024 (2d Cir. 1991) (internal quotation marks omitted). Accordingly, a bankruptcy petition does not stay an action by the government to enforce its regulatory power unless the government's action is the "enforcement of . . . a money judgment." 11 U.S.C. § 362(b)(4). The enforcement-of-money-judgment proviso is commonly referred to as the "exception to the exception."

B. The contempt proceeding was exempt from the automatic stay under the governmental regulatory power exception.

The governmental regulatory power exception applies here. As this Court has explained, Congress intended that the automatic stay would not apply "where a governmental unit is suing a debtor to prevent or stop violation of fraud, . . . con-

sumer protection, . . . or similar police or regulatory laws, or attempting to fix damages for violation of such a law." *Brennan*, 230 F.3d at 71 (citing H.R. Rep. No. 95-595, at 343 (1977); S. Rep. No. 95-989, at 52 (1978)).

That describes this case. The contempt proceeding at issue in this appeal is not separate from the underlying FTC enforcement action—they are parts of the same case. The contempt proceeding advances the very same government enforcement interests as the earlier phases of the case: "to protect consumers from economic injuries" arising from Rensin's deceptive practices. *BlueHippo Funding*, 762 F.3d at 243. The contempt proceeding is thus no less an exercise of the FTC's regulatory power than the underlying enforcement action or the initial proceeding that found Rensin and BlueHippo in contempt of the district court's consent order.

At each step of the enforcement process, the FTC has sought to protect consumers from harm resulting from BlueHippo's unfair and deceptive acts or practices by seeking remedies appropriate to the posture of the case. The FTC originally sued BlueHippo for practices that violated the FTC Act, seeking an injunction under Section 13(b) of the Act. Courts have consistently held that such proceedings

fall within the exception to the automatic stay.[8] When Rensin continued those practices despite the order that prohibited them, the FTC sought to halt the violation—and Rensin's disobedience of the district court's order—by seeking an order holding Rensin in contempt. Dkt. 42. The FTC brought the contempt proceeding in the same case as the FTC's original 13(b) action and it sought to halt the same deceptive practices. *Id.*

The second contempt was a continuation of the same regulatory proceeding. By ignoring the district court's sanctions order—indeed, doing more to evade than comply—Rensin prolonged the harm to consumers wrought by his violations of the earlier consent order (which were also violations of the FTC Act in their own right). Once again, the FTC sought a contempt order in the same case as the original 13(b) complaint. And as in the earlier phases of the case, the Commission's ef-

[8] *See*, *e.g.*, *FTC v. Consumer Health Benefits Ass'n*, No. 10-cv-3551, 2011 WL 2341097 (E.D.N.Y. June 8, 2011); *FTC v. Holiday Enters., Inc.*, No. 1:06-cv-2939, 2008 WL 953358, at *12 (N.D. Ga. Feb. 5, 2008); *FTC v. AmeriDebt, Inc*., 343 F. Supp. 2d 451, 458-59 (D. Md. 2004); *In re First Alliance Mortg. Co*., 264 B.R. 634 (C.D. Cal. 2001); *FTC v. U.S. Rarities, Inc.*, No. 92–363–CIV, 1992 WL 696965 (S.D. Fla. Feb. 24, 1992); *FTC v. R.A. Walker & Assocs., Inc*., 37 B.R. 608, 610 (D.D.C. 1983).

fort to halt the continuing harm from Rensin's conduct was an exercise of its regulatory power to protect consumers.[9]

In the analogous context of securities fraud, courts have consistently held that contempt proceedings fall within the governmental unit regulatory exception *See*, *e.g.*, *SEC v. Bilzerian*, 131 F. Supp. 2d 10, 14-15 (D.D.C. 2001) (civil contempt proceeding to address defendant's violation of a securities-fraud disgorgement order);[10] *SEC v. Kenton Capital, Ltd.*, 983 F. Supp. 13, 14-15 (D.D.C. 1997) (same). Notably, in *Brennan* —a contempt action for violations of an SEC disgorgement order—this Court accepted without question that the proceeding was an exercise of the agency's "police and regulatory power." 230 F.3d at 71. The only question was whether a particular order in that proceeding fell within the "exception to the exception." *Id*. As explained next, the contempt proceeding here did not.

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[9] In *FTC v. Trudeau*, No. 1:03-cv-3904 (N.D. Ill. Apr. 26, 2013), the court held that an FTC contempt action for failure to pay a compensatory contempt sanction was not stayed because its principal purpose was to redress the economic harm to consumers caused by the defendant's fraudulent practices. (The opinion in *Trudeau* was submitted to the district court and can be found at A.0273-280).

[10] In *Bilzerian*, the court held that the contempt proceeding was excepted from the automatic stay both because it involved government enforcement and also because contempt would vindicate the court's own authority to enforce its orders. The court found that Congress could not have intended to "permit a party to blatantly violate direct orders of the court and then seek shelter" through a bankruptcy stay, and held that a "court must retain the ability to compel compliance with its orders" and that bankruptcy is not a "free [pass] to run rampant in flagrant disregard of the powers of the court." 131 F. Supp. 2d at 15 (citation omitted).

C. The contempt proceeding was not within the "exception to the exception."

The Bankruptcy Code provides a narrow exception to the exception for governmental "enforcement" of a "money judgment." 11 U.S.C. § 362(b)(4). Contrary to Rensin's argument, the proceeding to determine his contempt of the district court's sanctions order does not qualify.

1. The contempt order does not enforce a money judgment.

As the Third Circuit has explained, "[t]he paradigm" for a proceeding to enforce a money judgment "is when, having obtained a judgment for a sum certain, a plaintiff attempts to seize property of the defendant in order to satisfy that judgment. It is this seizure of a defendant-debtor's property . . . which is proscribed by subsection 362(b)(5)."[11] *Penn Terra, Ltd. v. Dep't of Envtl. Res.*, 733 F.2d 267, 275 (3d Cir. 1984). The application of the "exception to the exception" thus depends on whether a proceeding following an order of monetary relief in favor of the government is (or is analogous to) an attempt to seize the defendant's property.

This Court's decisions illustrate the difference between orders that fall within the exception to the exception and those that do not. In *Brennan*, for example, the Court determined that a post-judgment order requiring the defendant to repatriate assets he had moved abroad amounted to the enforcement of a money judgment

[11] Congress incorporated subsection (b)(5) into subsection (b)(4) in 1998. *See* Pub.L. No. 105-277, § 603, 112 Stat. 2681 (1998); *Brennan*, 230 F.3d at 74.

and therefore violated the automatic stay. 230 F.3d at 71. Because the order reached the defendant's funds, the Court determined, it amounted to an effort to "satisfy at least part of" the judgment. *Id*. at 73. In *Miller*, by contrast, the Court held that an asset freeze order did not fall within the exception to the exception because it "neither transfers ownership, nor vests control over assets in the courts, nor . . . entirely deprives the [defendants] of their use." 808 F.3d at 632. Although it "temporarily burden[ed]" the use of some funds, it did not seek "to modify or transfer assets in any way," and thus did not "rise to the level of impermissible *enforcement* of a money judgment." *Id.*

The contempt order here was not within the exception to the exception for the same reason as the order at issue in *Miller*. It simply memorializes the fact of Rensin's contumacious failure to comply with the district court's order and requires Rensin to meet with the FTC *after* the bankruptcy case is resolved. It does not transfer ownership or vest control over any assets in the courts. It does not even "temporarily burden the use" of any assets.[12] *See id.*

Moreover, *Miller* held that the application of the exception to the exception depends on the actual effect of the order on appeal, not, as Rensin argues (Br. 15-17), simply whether the underlying order directed a specific amount of monetary

[12] For the same reason, the Court should reject Rensin's argument (Br. 18-19) that the district court's contempt order somehow gives the FTC preferential treatment over other creditors in the bankruptcy proceeding.

relief against a particular party. Thus, the Court analyzed the order at issue to determine whether it amounted to "impermissible enforcement of a money judgment" or instead was simply one of the "many or most aspects of statutorily unstayed governmental unit actions." 808 F.3d at 632. The Court looked to the particular relief sought, the procedural posture of the case, and the policy concerns behind the stay and the regulatory exception. *See id*. at 632-635.

Rensin is also incorrect to argue (Br. 17-20) that all proceedings following the entry of an order for monetary relief are prohibited. He relies heavily on this Court's statement that "anything beyond the mere entry of a money judgment against a debtor is prohibited by the automatic stay" Br. 17 (quoting *Brennan*, 230 F.3d at 71). But the Court has rejected Rensin's reading of that statement as a temporal restriction. In *Miller*, the Court explained that it "did not intend in *Brennan* to impose a one-factor timing test whereby orders entered pre-judgment are always exempt from the automatic stay provision while orders entered (or with continuing force) post-judgment are always subject to the stay."[13] 808 F.3d at 633. The Court must address the *effect* of the order, not the date on which it issued.

[13] In *Brennan*, the district court had entered an order to repatriate assets and to show cause why Brennan should not be held in contempt, but the latter part of the order was not on appeal. 230 F.3d at 70 ("Brennan challenges the April 7, 2000 Order of the District Court *only* insofar as it requires him to repatriate . . . ."). Thus, *Brennan*'s reference to "anything beyond the mere entry of a money judgment" cannot be read to preclude the adjudication of Rensin's contempt when it did not preclude the contempt determination in *Brennan* itself.

In sum, the adjudication of Rensin's contempt was not "enforcement of a money judgment" simply because it occurred after the sanctions order, nor because the order directed a specific amount of monetary relief. To hold otherwise would give wrongdoers in government enforcement cases the power to "frustrate[] necessary governmental functions by seeking refuge in bankruptcy court," while blocking the court's ability to do anything about the flouting of its orders. *City of New York v. Exxon Corp.*, 932 F.2d at 1024 (internal quotation marks omitted).

2. The Court has rejected Rensin's "plain text" argument.

Rensin is incorrect (Br. 25-27) that the contempt proceeding falls within "plain language" of the exception to the exception. Referring to the text of 11 U.S.C. § 362(b)(4), he argues that a bankruptcy petition "operates as a stay of the *commencement* or *continuation* of judicial proceedings attempting to enforce a money judgment, not a stay solely of the remedy which results from the enforcement proceedings." Br. 26. He argues that because the contempt "proceeding" was "commenced to enforce a money judgment," it does not matter that the FTC modified the relief it requested after the bankruptcy petition, nor does it matter what relief the district court ultimately imposed. *Id.* ("[N]othing in the law provides for a post-hoc analysis of the lower court's remedy in determining whether the stay is applicable.").

Rensin's argument is foreclosed by this Court's decision in *Miller*, which "decline[d] to adopt" that very argument. The Court rejected the idea that every aspect of a proceeding is stayed "so long as the initial complaint sought monetary relief." 808 F.3d at 632. The Court explained instead that its "focus remains whether a given *order* constitutes 'enforcement of a judgment other than a money judgment.'" *Id.* at 633 (emphasis added). Likewise in *Brennan*, the Court analyzed the particular order on appeal, not the entirety of the contempt proceeding. *See* 230 F.3d at 70.

The contempt proceeding fits within the text of the governmental unit exception to the bankruptcy stay precisely because it is the "continuation" of the 13(b) action to enforce the FTC's regulatory power. 11 U.S.C. §362(b)(4). The "continuation" includes the "enforcement of a judgment" such as the sanctions order that the FTC sought to enforce here, so long as, the enforcement did not "rise to the level of impermissible enforcement of a money judgment" by reaching Rensin's assets. *Miller*, 808 F.3d at 632.

3. Contempt proceedings are not always within the exception to the exception.

In the cases cited above and others, numerous courts have held that contempt proceedings in government enforcement actions are exempt from the bankruptcy

stay, and not within the exception to the exception.[14] Rensin nevertheless argues that the exception to the exception always applies because "actions for civil contempt are considered private collection devices and within the ambit of the automatic stay." Br. 22-23 (quoting *In re Siskin*, 231 B.R. 514, 519 (Bankr. E.D.N.Y. 1999)). Not so.

To begin with, case that Rensin quotes involved private parties; neither the governmental regulatory power exception nor the exception to the exception was at issue. *See Siskin*, 231 B.R. at 519. The bankruptcy court's statement about "actions for civil contempt" which are not subject to an exception cannot therefore be read to apply to government enforcement actions like this one. Moreover, the court in that case found only that the debtors' "arrest and detainment post-petition" violated the automatic stay. *Id.* The court did not suggest that the contempt finding itself violated the automatic stay. *See id.* The district court's order is therefore consistent with *Sisken*; the court stopped at the finding of contempt and stayed any coercive sanction.

The other case that Rensin relies on did not involve contempt at all. *See In re Massenzio*, 121 B.R. 688 (Bankr. N.D.N.Y. 1990). There, the court held that a state insurance department had revoked a debtor's license to sell insurance in "to serve

[14] *See*, *e.g.*, *Trudeau*, A.0273-280; *Bilzerian*, 131 F. Supp. 2d at 14; *Kenton Capital*, 983 F. Supp. at 14-15.

the purpose of an individual creditor" and thus was not "seeking to protect the 'health, safety and welfare' of the public." *Id.* at 692. There is no similar suggestion here.

D. The contempt action is also exempt as an action to uphold the dignity of the district court.

The district court has its own strong interest in vindicating its authority. Even when a court cannot require compliance with an order to pay money, it "has the right to determine whether or not [a] defendant . . . has defrauded the Court by not paying the disgorgement due well before the bankruptcy stay." *Kenton Capital*, 983 F. Supp. at 15; *accord Bilzerian*, 131 F. Supp. 2d at 14; *Stovall v. Stovall*, 126 Bankr. 814, 815 (N.D. Ga. 1990) (contempt action intended to uphold dignity of court not stayed even though payable to opposing party).

Rensin is wrong to claim that vindication is not a proper purpose for civil contempt proceedings. Br. 26-27. To the contrary, the contempt power serves to "protect the due and orderly administration of justice and to maintain the authority and dignity of the court." *CBS Broad., Inc. v. FilmOn.com, Inc.*, 814 F.3d 91 (2d Cir. 2016) (cleaned up). That interest "activates immediately in each action in which the court's authority is defied, in each instance in which the court's authority is defied, and as to each actor through whom the court's authority is defied." *United States v. Coulton*, 594 F. App'x 563, 567 (11th Cir. 2014). In short, a compensatory civil contempt sanction is a "[v]indication of [the court's] authority

through enforcement of its decree." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 194 (1949).

CONCLUSION

The district court's order holding that the automatic bankruptcy stay did not apply and its order adjudging Rensin in contempt should be affirmed. With regard to the latter order, the Court should retroactively lift the temporary stay issued in No. 17-669 for March 28, 2017, the day the contempt order was filed by the district court. Alternatively, the Court should construe the district court's order to be an indicative ruling, retain jurisdiction during a limited remand to allow the district court to enter that order, and then affirm it.

Respectfully submitted,

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March 18, 2019

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with Federal Rule of Appellate Procedure 32(a)(7), in that it contains 9,171 words.

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CERTIFICATE OF SERVICE

I certify that I filed and served this brief on March 18, 2019, through the Court's CM/ECF system. Counsel of record for appellant are CM/ECF users.

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