UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-21985-CIV-MORENO/D'ANGELO

WORLD MEDIA ALLIANCE LABEL, INC.,

Petitioner,

vs.

ELLO ENTERTAINMENT GROUP, LLC,

Respondent.
_____/

REPORT AND RECOMMENDATION
DENYING PETITIONER'S RENEWED MOTION FOR CONTEMPT

THIS CAUSE is before the Court on Petitioner World Media Alliance Label, Inc.'s Renewed Verified Motion for Order of Contempt of Court filed on January 3, 2025 (DE 28).[1] Respondent Ello Entertainment Group, LLC filed its response on January 17, 2025 (DE 31). Petitioner filed its reply on January 24, 2025 (DE 33). Petitioner is seeking an Order of Contempt based on Respondent's failure to satisfy an arbitration award that was confirmed by the Court. Having considered the Parties' arguments, the relevant legal authorities, and the pertinent portions of the record, and being otherwise fully advised in the premises, for the reasons stated below, it is respectfully recommended that Petitioner's Renewed Motion for Contempt be **DENIED**.

I. PROCEDURAL BACKGROUND

On August 23, 2022, Petitioner filed its statement of claim in arbitration against Respondent, asserting one count for breach of contract (DE 1 ¶ 6). The Parties proceeded to arbitrate their dispute, which led to a March 3, 2023 interim award of $400,000 in favor of

[1] On January 14, 2025, the Motion was referred to the undersigned Magistrate Judge for a Report and Recommendation (DE 29).

Petitioner (*id.* Ex. 2 at 4). On April 12, 2023, the arbitrator issued a Final Award, awarding Petitioner its costs but declining to award Petitioner attorneys' fees (*id.* Ex. 3). The Final Award in favor of Petitioner was $400,070.18 (*id.* at 5). On May 29, 2023, Petitioner filed its Verified Petition for an Order Confirming an Arbitral Award, seeking confirmation of the Final Award in this Court (DE 1). After serving Respondent, a Clerk's Entry of Default was entered against Respondent when it failed to appear (DE 9). Petitioner then moved for the entry of final judgment in the amount of $400,070.18 (DE 10). On August 17, 2023, the Court entered an Order confirming the arbitration award "in its entirety" and issuing a final judgment (DE 11). On September 9, 2023, Petitioner applied for a writ of execution for $400,070.18 (DE 15), which the Clerk of Court issued the same day (DE 16).

On January 22, 2024, Petitioner filed its first Motion for Contempt against Respondent (DE 17). On February 5, 2024, Respondent filed its response in opposition (DE 19), and Petitioner filed its reply six days later on February 11, 2024 (DE 20). On September 5, 2024, the Court denied the Motion for Contempt without prejudice after it had been pending for more than seven months and Petitioner's counsel, the moving party, was not physically present in the Southern District of Florida due to other matters (DE 27). On January 3, 2025, Petitioner filed its Renewed Motion for Contempt (DE 28). Petitioner asserts that Respondent is violating this Court's August 17, 2023 Order confirming the arbitration award by "engaging in hide and seek tactics" and refusing to pay the award (*id.* at 16). Petitioner requests that the Court: (i) issue and order holding Respondent in contempt of court, (ii) order Respondent to pay a fine of $500 per day until Respondent satisfies the arbitration award, (iii) order limited discovery of bank records showing Respondent's current ability to provide funds to Petitioner; and (iv) order Respondent to pay Petitioner's legal fees (*id.* at 17).

II. LEGAL STANDARD

"A party seeking civil contempt bears the initial burden of proving by clear and convincing evidence that the alleged contemnor has violated an outstanding court order." *Commodity Futures Trading Comm'n v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992) (citing *Citronelle–Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991)); *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002) ("A finding of civil contempt—willful disregard of the authority of the court—must be supported by clear and convincing evidence." (citing *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000))). "The clear and convincing evidence must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order." *Id.* (citing *McGregor*, 206 F.3d at 1383). "In determining whether a party is in contempt of a court order, the order is subject to reasonable interpretation, though it may not be expanded beyond the meaning of its terms absent notice and an opportunity to be heard." *Id.* (citing *United States v. Greyhound Corp.*, 508 F.2d 529, 537 (7th Cir. 1974)).

"Once a prima facie showing of a violation has been made, the burden of production shifts to the alleged contemnor, who may defend his failure on the grounds that he was unable to comply." *Wellington Precious Metals, Inc.*, 950 F.2d at 1529 (citing *United States v. Rylander*, 460 U.S. 752, 757 (1983)). "In order to succeed on the inability defense, the alleged contemnor 'must go beyond a mere assertion of inability,' and establish that he has made 'in good faith all reasonable efforts' to meet the terms of the court order he is seeking to avoid." *Id.* (citing *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 984 (11th Cir. 1986)). "The burden shifts back to the initiating party only upon a sufficient showing by the alleged contemnor. The party seeking to show contempt, then, has the burden of proving ability to comply." *Id.* (citing *Combs*, 785 F.2d at 984).

"'[W]hen there are no disputed factual matters that require an evidentiary hearing, the court might properly dispense with the hearing prior to finding the defendant in contempt and sanctioning him.'" *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Olympia Holding Corp.*, 140 F. App'x 860, 864 (11th Cir. 2005) (quoting *Mercer v. Mitchell*, 908 F.2d 763, 769 n.11 (11th Cir. 1990)).

The United States Court of Appeals for the Eleventh Circuit has explained that "when a party fails to satisfy a court-imposed money judgment the appropriate remedy is a writ of execution, not a finding of contempt." *Combs*, 785 F.2d at 980 (citation omitted). A monetary judgment "provides for a sum certain, non-contingent 'payment of money . . . that the court found to be due and owing.'" *U.S. Commodity Futures Trading Comm'n v. Escobio*, 946 F.3d 1242, 1253 (11th Cir. 2020) (quoting *Combs*, 785 F.2d 980)). Rule 69(a) of the Federal Rules of Civil Procedure directs that "[a] money judgment is enforced by a writ of execution, unless the court directs otherwise." Fed. R. Civ. P. 69(a). Accordingly, "a federal court should not . . . enforce a money judgment by contempt or methods ther [sic] than a writ of execution, except in cases where established principles so warrant." *Combs*, 785 F.2d at 980 (quoting *J. Moore, Moore's Federal Practice* ¶ 69.02[2] at 69-10 to –10.1 (2d ed. 1985)). "Whether a district court can invoke its civil contempt power to enforce a judgment depends on the nature of that judgment."[2] *U.S. Commodity Futures Trading Comm'n v. Escobio*, 946 F.3d 1242, 1251 (11th Cir. 2020).

[2] In *Escobio*, the Eleventh Circuit stated, "Injunctions, and other coercive equitable remedies, have historically been enforceable via the court's civil contempt powers." 946 F.3d at 1251. The Eleventh Circuit went on to clarify that "[a] court can use its power of contempt in ancillary proceedings in aid of enforcement." *Id.* For example, "if the Court used its contempt power to coerce the appellants into paying the money judgment, it was improperly entered. If, however, the Court used its contempt power to coerce the appellant into providing financial records, then it was a proper use of the contempt power." *Id.*

III. DISCUSSION

Petitioner argues that on August 17, 2023, this Court entered an order "directing . . . [Respondent] to pay the arbitration award" (DE 28 at 16). Instead of paying, Respondent, and its principal Val Segal,[3] refused to pay and engaged in "hide-and-seek" tactics (*id.*). Petitioner contends that it subpoenaed JP Morgan Chase in 2024, which produced documents showing that Respondent, and Segal, transferred funds while Petitioner attempted to confirm the arbitration award before this Court (*id.* at 5). Petitioner maintains that Respondent and Segal's relocation of funds continued on August 17, 2023, when the Court confirmed the arbitration award (*id.* at 6). Petitioner also claims that "[i]nstead of paying the arbitration award or refunding $400,000 upon the Order on August 17, 2023 . . . [Respondent's] principal, Segal, contacted. . . [Petitioner] on several occasions to discourage the expectation of that payment" (*id.* at 13). In other words, Respondent should be held in contempt, because it is violating the August 17, 2023 Order from this Court by refusing to satisfy the arbitration award (*see generally id.*).

Respondent maintains that the Court's contempt power does not apply to the enforcement of a money judgment, as a writ of execution is the appropriate remedy (DE 31 at 4). Respondent argues that when the Court confirmed the arbitration award on August 17, 2023, it required Respondent to pay a definite sum of money to Petitioner, which is outside the Court's contempt power (*id.* at 6). According to Respondent, except for one writ of execution, Petitioner has not attempted to collect on the underlying judgment (*id.* at 7). Instead of availing itself of the mechanisms under the Federal Rules of Civil Procedure and Florida law, Respondent explains that Petitioner "would rather have this Court act as its collection agent by employing sanctions to

[3] According to Petitioner, Segal is the sole principal of Respondent, which is a limited liability company (DE 28 at 1). Segal is not a party to this action in his individual capacity.

compel payment of a money judgment in direct conflict with well-established case law and rules to the contrary" (*id.* at 7-8). As to Segal, Respondent explains that at no time has Petitioner obtained any award or judgment against Segal and "therefore, he should not be part of this matter and it is improper to include his personal financial information in the Contempt Motion" (*id.*).

The August 17, 2023 Order cannot be enforced through the Court's contempt power under binding Eleventh Circuit precedent. In *Combs v. Ryan's Coal Co. Inc.*, the Eleventh Circuit examined "the precise scope of a trial court's power to find parties in contempt and to order sanctions in order to secure compliance with that court's orders." 785 F.2d at 973. There, the plaintiffs filed an action against the defendant under the Employment Retirement Income Security Act. *Id.* The parties ultimately agreed to a consent decree and order including "$492,754.91 to be paid in installments with interest."[4] *Id.* After the defendant failed to meet the terms of the consent decree, the plaintiff filed a petition for contempt. *Id.* The Eleventh Circuit held that the order pursuant to the consent decree was "properly characterized as a money judgment" and that a money judgment is not enforced through contempt but through a writ of execution. *Id.* at 980, 982.

Here, the August 17, 2023 Order confirmed the arbitration award in favor of Petitioner against Respondent for $400,070.18 (DE 1, Ex. 3 at 5). Therefore, the August 17, 2023 Order operates as a final monetary judgment that required Respondent to pay Petitioner a sum certain—$400,070.18. *See Evol Nutrition Assocs., Inc. v. Supplement Ctr., LLC*, No. 17-CIV-01572, 2020 WL 10459811, at *4 (N.D. Ga. Feb. 6, 2020) ("A money judgment is an order that identifies the parties for and against whom judgment is made and provides the fixed sum to be paid."). Since

[4] A written judgment in favor of the plaintiffs would later be entered for $728,395.14. *Combs*, 785 F.2d at 975. The Eleventh Circuit explained that "[h]ad the trial court actually entered a finding of contempt for the failure of the appellants to pay the approximately $725,000 there would have been reversible error." *Id.* at 980.

the August 17, 2023 Order is a monetary judgment, the enforcement of it falls outside the Court's contempt power. *See Combs*, 785 F.2d at 982 ("[A] money judgment is not properly enforced except by a writ of execution"); *Escobio*, 946 F.3d at 1253-55 (explaining that it was reversible error for the district court to use its contempt power to enforce a restitution order which was properly characterized as a money judgment); *Ricci v. Exch. Miami, LLC*, No. 18-CIV-24146, 2020 WL 13401241, at *2 (S.D. Fla. July 29, 2020) ("Nevertheless, it is important to note that when a party fails to satisfy a court-imposed money judgment, the Eleventh Circuit has established that 'the appropriate remedy to enforce a money judgment is via a writ of execution.'" (citing *Combs*, 785 F.2d at 980)); *Brown v. Omni Mgmt. Grp., LLC*, No. 18-CIV-1772, 2020 WL 7401272, at *2 (M.D. Fla. Nov. 12, 2020) ("[T]he Eleventh Circuit has made clear that it is reversable error for a court to use its contempt power to coerce payment of a money judgment.").

Respondent's reliance on *Gottlieb v. Janney Montgomery Scott LLC* is instructive. No. 06-CIV-80941, 2007 WL 9701897 (S.D. Fla. Sept. 10, 2007). In *Gottlieb*, the defendant won an arbitration award against the plaintiff, and the award directed the plaintiff to pay the defendant $239,884.00 with interest. *Id.* at *1. Later, without paying the award, the plaintiff filed a case, which was removed to federal court. *Id.* The plaintiff moved to vacate or amend the arbitration award, and the defendant moved to enforce the award, which the Court did. *Id.* After denying the plaintiff's motion for reconsideration, the Court again ordered the plaintiff to pay the arbitration award "within twenty-five days from the entry of the Order." *Id.* After the plaintiff failed to pay, the defendant moved to hold the plaintiff in contempt. *Id.* *2. Relying on *Combs*, the Court ruled that a money judgment cannot be enforced through contempt but instead, through a writ of execution. *Id.* *2. The Court reasoned that "[i]n the instant case, . . . Plaintiff was ordered to pay

a definite sum of money" and the enforcement of that order fell outside the Court's contempt power. *Id.* at *2-3. Thus, the Court denied the defendant's motion for contempt. *Id.* at *3.

The instant matter is analogous to *Gottlieb*, as both orders confirmed an arbitration award requiring the payment of a definite sum of money, which falls outside the Court's contempt power. *See United States v. Bradley*, 644 F.3d 1213, 1310-11 (11th Cir. 2011) ("'A federal court should not . . . enforce a money judgment by contempt or methods [other] than a writ of execution, except in cases where established principles so warrant.'" (citing *Combs*, 785 F.2d at 980)). This well-established principle has been routinely adhered to by courts in this District. *See, e.g., Nat'l Lab. Rels. Bd. v. Tropical Wellness Ctr., LLC*, No. 18-CIV-14099, 2019 WL 2254921, at *5 (S.D. Fla. Mar. 11, 2019), *report and recommendation adopted*, No. 18-CIV-14099, 2019 WL 2255566 (S.D. Fla. Mar. 29, 2019) (explaining that an order awarding attorneys' fees was a money judgment "for which civil contempt remedies are not the appropriate means of relief"); *Allen v. Goard*, No. 14-CIV-61147, 2016 WL 11784266, at *1 (S.D. Fla. Feb. 19, 2016) ("The Court's May 5, 2015 Final Judgment awards the Plaintiff money. Accordingly, the appropriate process for securing satisfaction is a writ of execution, not a finding of contempt."); *Carnival Corp. v. McCall*, No. 18-CIV-24588, 2020 WL 5505448, at *9 (S.D. Fla. Aug. 25, 2020), *report and recommendation adopted*, No. 18-CIV-24588, 2020 WL 5409150 (S.D. Fla. Sept. 9, 2020) ("However, it is not necessary for the Court to resolve the factual dispute concerning whether the defendant has the ability to pay the $40,000.00 because the enforcement of a monetary judgment is not the proper subject of a contempt proceeding."). Therefore, Petitioner's request that the Court use its contempt power to enforce the August 17, 2023 Order, which operates as a monetary judgement based on the arbitration award, must be denied.

The cases cited by Petitioner in support of its Renewed Motion for Contempt are unpersuasive and distinguishable, as none of the cases involve using the Court's contempt power to enforce a monetary judgment. *See PlayNation Play Sys., Inc. v. Velex Corp.*, 939 F.3d 1205, 1208 (11th Cir. 2019) (affirming the district court's order holding the defendants, and its officers, in civil contempt for violating a permanent injunction); *Matthews v. State Farm Fire & Cas. Co.*, 817 F. App'x 731, 738 (11th Cir. 2020) (affirming the denial of a motion for contempt as the plaintiffs failed to make a prima facie showing that a court order was violated); *Lego A/S v. Best-Lock Constr. Toys, Inc.*, No. 22-CIV-20582, 2023 WL 6909255, at *3 (S.D. Fla. Oct. 19, 2023) (denying the plaintiffs motion for contempt without prejudice until the plaintiff could properly document its efforts of serving the defendant with the court's order requiring the defendant to fill out the fact information sheet); *PNC Bank, N.A. v. Colmenares Bros., LLC*, No. 21-CIV-24229, 2023 WL 6783397, at *2 (S.D. Fla. Oct. 13, 2023) (holding the defendants in civil contempt for violating the court's order to show cause and order requiring them to fill out the fact information sheet); *Mesa v. Luis Garcia Land Serv., Co*., 218 F. Supp. 3d 1375, 1381 (S.D. Fla. 2016) (holding a non-party witness in civil contempt for failing to comply with the court's order requiring her to sit for a deposition, while she also failed to comply with the court's order to show cause and failed to appear at the order to show cause hearing); *Sandoval Wholesales, Inc. v. Farm Fresh Packers, LLC*, No. 19-CIV-80394, 2020 WL 13401918, at *3 (S.D. Fla. Aug. 19, 2020) (recommending that the plaintiff's motion for contempt be granted by issuing an order to show cause as the defendant failed to appear at a court ordered deposition and telephonic hearing). Petitioner also briefly argues that the law of the case doctrine applies, as "this Court has already rejected the contention that it lacks the power to entertain contempt against . . . [Respondent and Segal] under the circumstances of this case" (DE 28 at 10). In support, Petitioner claims that the Court has

already found that Petitioner met its initial burden of proving civil contempt by clear and convincing evidence (*id.* at 10-11).

"Under the law of the case doctrine, both district courts and appellate courts are generally bound by a prior appellate decision in the same case." *Alphamed, Inc. v. B. Braun Med., Inc.*, 367 F.3d 1280, 1285-86 (11th Cir. 2004) (citing *Venn v. St. Paul Fire & Marine Ins. Co.*, 99 F.3d 1058, 1063 (11th Cir. 1996)). The doctrine provides that "findings of fact and conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or on a later appeal." *Heathcoat v. Potts*, 905 F.2d 367, 370 (11th Cir. 1990) (quoting *Westbrook v. Zant*, 743 F.2d 764, 768 (11th Cir. 1984)). "The doctrine 'is based on the salutary and sound public policy that litigation should come to an end.'" *Alphamed, Inc.*, 367 F.3d at 1285-86 (quoting *White v. Murtha*, 377 F.2d 428, 431 (5th Cir. 1967)). "If it were not for the law of the case doctrine, 'there would be no end to a suit [because] every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions or speculate of chances from changes in its members.'" *Id.* "The law of the case doctrine can be overcome if, but only if: (1) since the prior decision, new and substantially different evidence is produced, or there has been a change in the controlling authority; or (2) "the prior decision was clearly erroneous and would result in a manifest injustice." *United States v. Schwarzbaum*, 127 F.4th 259, 287 (11th Cir. 2025) (quotations and citation omitted).

Petitioner's argument that the law of the case doctrine precludes this Court from following binding Eleventh Circuit precedent is misplaced. The law of the case doctrine only applies to a case *after* an appellate court makes legal conclusions. *See Pope v. Sec'y, Fla. Dep't of Corr.*, 752 F.3d 1254, 1264 n.3 (11th Cir. 2014) ("[T]he law-of-the-case doctrine requires that we follow legal conclusions reached in a prior appellate decision in the same case" (citing *This That & The Other*

Gift & Tobacco, Inc. v. Cobb Cnty., Ga., 439 F.3d 1275, 1283 (11th Cir. 2006)). In this case, there has been no appellate decision, and the Eleventh Circuit has not made any legal conclusions that would bind subsequent proceedings in this matter. *See DR Distributors, LLC v. 21 Century Smoking, Inc.*, No. 12-CIV-50324, 2015 WL 5123652, at *7 (N.D. Ill. Sept. 1, 2015) (explaining that the law of the case doctrine was "inapplicable here because there was no appeal."). Therefore, the law of the case doctrine does not preclude the Court from adhering to well-settled law in the Eleventh Circuit that prevents the Court from using its contempt power to enforce a monetary judgment.

Even though the Court cannot coerce Respondent to satisfy a money judgment through its contempt power based on *Combs* and its progeny, Petitioner has all the tools available to it under the Federal Rules of Civil Procedure and Florida law to continue its efforts to collect on the judgment confirming the arbitration award.[5] Petitioner also raised significant allegations regarding intentionally false and misleading statements that Respondent and its counsel made to the Court in a series of filings. The undersigned directed Petitioner to set forth those allegations in a separate Motion to the Court (DE 39), which Petitioner has (DE 44). Accordingly, Petitioner's allegations regarding Respondent's intentionally false and misleading statements may be addressed in conjunction with that Motion.

IV. CONCLUSION

For the foregoing reasons, it is respectfully recommended that Petitioner's Renewed Motion for Contempt (DE 28) be **DENIED**.

[5] Petitioner made a passing request for limited discovery in the requested relief section of its Motion; however, nowhere in Petitioner's Motion or Reply does it discuss the parameters of this limited discovery, specify what exactly Petitioner is seeking, or provide citations to any authority in support of its request. Therefore, to the extent that Petitioner has not abandoned the request, the undersigned respectfully recommends that it be denied.

V. OBJECTIONS

The Parties will have fourteen (14) days from this Report and Recommendations to file written objections, if any, with the Honorable Federico A. Moreno, United States District Judge. Failure to file objections timely shall bar the parties from a *de novo* determination by the District Judge of an issue covered in this Report and shall bar the Parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report, except upon grounds of plain error, if necessary, in the interest of justice. *See* 28 U.S.C. § 636(b)(1)*; Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED in Chambers in Miami, Florida on this 21st day of March, 2025.

Ellen D'Angelo

ELLEN F. D'ANGELO
UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record