

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 5801

TOTAL MERCHANT SERVICES, LLC,

Plaintiff,

v.

TMS NC, INC. AND CHRISTOPHER
COLLINS,

Defendants.

**ORDER ON PLAINTIFF TOTAL
MERCHANT SERVICES' MOTION
FOR CIVIL CONTEMPT**

1. **THIS MATTER** is before the Court on Plaintiff Total Merchant Services, LLC's ("Plaintiff" or "TMS") Motion for Civil Contempt and for an Award of Attorneys' Fees, and for Expedited Briefing (the "Contempt Motion") filed 19 May 2022 in the above-captioned case.¹

2. Having considered the Contempt Motion, the briefs, exhibits, and timely affidavits filed in support of the Contempt Motion, the arguments of counsel at a hearing held on the Contempt Motion, and other relevant documents of record, the Court hereby **FINDS** and **CONCLUDES** as follows.

¹ (Mot. for Civil Contempt and for Award of Att'ys' Fees [hereinafter "Contempt Mot."], ECF No. 120.) The Court granted Plaintiff's request for expedited briefing by order dated 23 May 2022. (See Order on Pl.'s Mot. for Expedited Briefing, ECF No. 128.) On 10 June 2022, Plaintiff withdrew its request for an award of attorneys' fees without prejudice to its right to seek the attorneys' fees at issue by separate motion. (Pl.'s Notice Regarding Its Mot. for Civil Contempt, for an Award of Att'ys' Fees, and for Expedited Briefing, ECF No. 141.) As a result, the remaining issue for determination on the Contempt Motion is whether Defendants should be held in civil contempt for their alleged misconduct.

I.

FINDINGS OF FACT

3. TMS initiated this action in Wake County Superior Court on 28 April 2021, asserting claims against Defendants TMS NC, Inc. (“TMS NC”) and TMS NC’s owner Christopher Collins, (“Collins”) (together, “Defendants”) for breach of contract, indemnification, specific performance, preliminary and injunctive relief, and declaratory judgment arising out of Defendants’ alleged breach of an exclusive sales agreement² and TMS’s attempts to enforce its inspection rights pursuant to the Agreement.³ Contemporaneously with the Complaint, TMS filed a Motion for Preliminary Injunction.⁴

4. Before the Motion for Preliminary Injunction was heard, Defendants removed the case to the United States District Court for the Eastern District of North Carolina, Western Division, on 8 June 2021.⁵ The case was later remanded to the Superior Court of North Carolina on 16 December 2021 upon the federal court’s

² In brief, the parties’ predecessors-in-interest entered a Sales Representation Agreement (the “Agreement”) in 2008 by which, in exchange for selling and marketing TMS’s products and services, TMS NC is paid a “residual share,” the difference between certain rates and fees charged to each business customer that TMS NC solicits on behalf of TMS and certain rates and fees that TMS pays to third party credit card associations and other related vendors for those services. (Verified Compl. Ex. A, ECF No. 2; Verified Compl. ¶ 14; TMS NC’s Answer with Countercl. and Third-Party Claims ¶ 13, ECF No. 34.) In 2018, the parties entered into an addendum to the Agreement (the “Exclusivity Addendum”), which increased TMS NC’s residual share percentage in exchange for TMS NC’s promise to exclusively market and sell TMS’s products. (Verified Compl. Ex. B, ECF No. 2.)

³ (*See generally* Verified Compl., ECF No. 2.)

⁴ (Mot. Prelim. Inj., ECF No. 4.)

⁵ (Notice of Removal, ECF No. 29.)

conclusion that the case had been improperly removed and the federal court's resulting imposition of sanctions against Defendants.⁶

5. After remand, on 18 January 2022, TMS filed an Amended Motion for Preliminary Injunction.⁷ The Amended Motion for Preliminary Injunction was heard by the Honorable John W. Smith on 17 March 2022.⁸ Judge Smith did not resolve the Amended Motion for Preliminary Injunction and, at Judge Smith's recommendation, on 21 March 2022, the Chief Justice of the Supreme Court of North Carolina designated this action as a complex business case under Rules 2.1 and 2.2 of the General Rules of Practice for the Superior and District Courts and assigned the case to the undersigned.⁹

6. On 4 April 2022, TMS filed a Second Amended Motion for Preliminary Injunction (the "PI Motion"), which was fully briefed and argued at a hearing held on 22 April 2022.¹⁰ The Court granted the PI Motion in part in an Order dated Friday, 6 May 2022 (the "PI Order").¹¹ Among other things, the PI Order (i) enjoined

⁶ (Order, ECF No. 56.)

⁷ (Am. Mot. Prelim. Inj., ECF No. 17.)

⁸ (*See* Notice of Hr'g, ECF No. 20.)

⁹ (Designation Order, ECF No. 1; Order Staying Case Until Bus. Ct. Accepts or Rejects, ECF No. 24.)

¹⁰ (Second Am. Mot. for Prelim. Inj., ECF No. 72; Scheduling Order and Notice of Hr'g, ECF No. 65.)

¹¹ (Order on Pl. Total Merchant Services' Second Am. Mot. for Prelim. Inj. [hereinafter "PI Order"], ECF No. 98.) The Court subsequently amended the PI Order twice, and the Second Amended PI Order, (Second Am. Order on Pl.'s Second Am. Mot for Prelim. Inj. [hereinafter

Defendants from offering services that compete with TMS's services to customers and (ii) required TMS NC to allow TMS to exercise certain inspection rights within seven days from entry of the order, 13 May 2022.¹²

7. On Monday, 9 May 2022, Plaintiff's counsel emailed Defendants' counsel twice seeking to arrange access to TMS NC's premises and receipt of the material the Court ordered TMS NC to produce to Plaintiff.¹³

8. Plaintiff's counsel emailed Defendants a third time the following day, 10 May 2022.¹⁴ Defendants' counsel responded that same day by email stating: "Your request will need to wait as I am in hearings. I have not had an opportunity to review your request nor speak with my clients. I will respond once my schedule permits. It's unprofessional to assume."¹⁵ Plaintiff's counsel persisted, emailing Defendants' counsel three more times on 11 May and 12 May 2022.¹⁶

9. Defendants' counsel did not respond to Plaintiff's counsel's further emails but filed a Notice of Appeal on 12 May 2022 that purported to appeal the PI

"Second Am. PI Order"], ECF No. 119), is the operative version of the PI Order that the Court will cite to in the remainder of this Order.

¹² (Second Am. PI Order ¶ 70.)

¹³ (Aff. of Joshua P. Gunnemann ¶ 4 [hereinafter "Gunnemann Aff."], ECF No. 122; Gunnemann Aff. Ex. A, ECF No. 122.1.)

¹⁴ (Gunnemann Aff Ex. A.)

¹⁵ (Gunnemann Aff. ¶ 4; Gunnemann Aff. Ex. B, ECF No. 122.2.)

¹⁶ (Gunnemann Aff. Ex. B.)

Order.¹⁷ The interlocutory appeal was made to the North Carolina Court of Appeals, however, rather than the Supreme Court of North Carolina and was therefore without legal effect because it was made to the wrong appellate court. *See* N.C.G.S. § 7A-27(a)(2).

10. At 10:22 AM on 13 May 2022, the deadline for Defendants to permit inspection under the PI Order, Plaintiff's counsel copied Defendants' counsel in an email to the Court advising that Defendants had not yet complied with the PI Order.¹⁸ Later that morning, Plaintiff's counsel emailed Defendants' counsel stating that the purported appeal had not stayed the injunction and included authority in support.¹⁹ That evening at 6:45 PM, Defendants filed a Motion for Temporary Stay Pending Appeal,²⁰ which Defendants amended²¹ approximately an hour later. The Court summarily denied Defendants' motion without prejudice on 16 May 2022 because Defendants failed to comply with the Business Court Rules in presenting the motion.²²

¹⁷ (Gunnemann Aff. ¶ 5; Notice of Appeal, ECF No. 101.)

¹⁸ (Gunnemann Aff. Ex. C, ECF No. 122.3.)

¹⁹ (Gunnemann Aff. Ex. C.)

²⁰ (Defs. TMS NC's and Collins' Mot. for Temp. Stay Pending Appeal, ECF No. 102.)

²¹ (Defs. TMS NC's and Collins' Am. Mot. for Temp. Stay Pending Appeal, ECF No. 105.)

²² (Order Summarily Denying Without Prejudice Defendants TMS NC, Inc.'s and Christopher Collins' Am. Mot. for Temp. Stay Pending Appeal, ECF No. 108.)

11. During a hearing on other motions in this action on 18 May 2022, Plaintiff's counsel offered not to file a motion for contempt for Defendants' failure to comply with the PI Order if Defendants would agree to comply with the terms of the PI Order. Defendants did not agree to comply at the hearing.

12. The Court subsequently amended the PI Order ("Order Amending PI Order") on 19 May 2022 to more accurately reflect Plaintiff's interpretation of the Agreement and to indicate that Plaintiff had paid the required bond. The Court did not otherwise modify the order at that time.²³ Later that same day, Defendants filed an Amended Notice of Appeal, this time properly addressed to the Supreme Court of North Carolina,²⁴ and the Court issued an order clarifying that its Order Amending PI Order did not change the dates for compliance with paragraph 70 of the PI Order and that the deadline for Defendants to comply with the PI Order remained 13 May 2022 (the "Clarifying Order").²⁵ Shortly thereafter, Plaintiff filed the Contempt Motion, with a supporting brief, a proposed order requesting expedited briefing, and an affidavit with exhibits.²⁶

²³ (Verified Compl. Ex. A, ECF No. 2; Order Amending Order on Pl. Total Merchant Services' Second Am. Mot. for Prelim. Inj., ECF No. 115; *see also* Am. Order on Pl. Total Merchant Services' Second Am. Mot. for Prelim. Inj., ECF No. 115.1; Pl. Total Merchant Services' Second Am. Mot. for Prelim. Inj., ECF No. 116.)

²⁴ (Am. Notice of Appeal, ECF No. 117)

²⁵ (Order Clarifying Order Amending Order on Pl. Total Merchant Services' Second Am. Mot. for Prelim. Inj. [hereinafter "Clarifying Order"], ECF No. 118; *see also* Second Am. Order on Pl.'s Second Am. Mot for Prelim. Inj., ECF No. 118.1; Second Am. PI Order.)

²⁶ (Contempt Mot.; Mem. Supp. Pl.'s Mot. for Civil Contempt, for an Award of Att'ys' Fees, And for Expedited Briefing, ECF No. 123; Gunnemann Aff.; [Proposed] Order on Pl.'s Mot. for Expedited Briefing, ECF No. 121; Gunnemann Aff. Exs. A–C.)

13. On 23 May 2022, Defendants filed yet another amended motion to stay the case pending appeal.²⁷ That same day, the Court granted Plaintiff's request for expedited briefing on the Contempt Motion, and the parties timely submitted briefing in accordance with the order.²⁸

14. A hearing on the Contempt Motion (the "Contempt Hearing") was held on 7 June 2022, at which all represented parties were represented by counsel.²⁹

15. Subsequent to the Contempt Hearing, on 1 July 2022, the Court entered an order granting TMS's Amended Motion to Compel Discovery Responses and for Award of Expenses (the "Compel Order").³⁰ In that order, the Court ordered Defendants to produce numerous categories of documents no later than 18 July 2022.

16. On 15 July 2022, Defendants served on Plaintiff supplemental interrogatory answers and produced to Plaintiff 2,907 pages of documents responsive to Plaintiff's discovery requests.³¹ Plaintiff subsequently identified deficiencies in Defendants' production, and Defendants agreed to make a supplemental production

²⁷ (Am. Mot. for Temp. Stay of Case and Enf't of All Orders Pending Appeal [hereinafter "Defs.' Am. Mot. for Stay Pending Appeal"], ECF No. 129.)

²⁸ (Order on Pl.'s Mot. for Expedited Briefing.)

²⁹ (See Notice of Hr'g, ECF 131.)

³⁰ (Order Granting Pl. TMS's Am. Mot. Compel Disc. Resp. and for Award of Expenses, ECF No. 152.)

³¹ (Defs. TMS NC's and Collins' Certification of Compliance ¶ 3, ECF No. 170).

of all outstanding material no later than 3 August 2022 to comply with paragraph 28(a) of the Compel Order.³²

17. Even though the Court issued the PI Order on 6 May 2022, Defendants have refused to comply with the inspection requirements of the PI Order in any respect. Indeed, the parties reflected in the Joint Status Report that “Plaintiff requested dates on which inspection could take place and Defendants’ counsel responded that he was conferring with his clients and did not have dates to offer at this time”³³—this some three months after the Court ordered that the inspection occur no later than 13 May 2022.³⁴ Although Defendants’ counsel represented at the August 2 Status Conference that Defendants have now agreed to permit the ordered inspection, Defendants have made no effort to permit the inspection to proceed despite Plaintiff’s numerous requests to Defendants’ counsel to schedule the inspection.

³² Defendants’ counsel represented in the parties’ Joint Status Report Concerning Compliance with Paragraph 28(b) of the Compel Order (the “Joint Status Report”), (ECF No. 172), that Defendants’ supplemental production would occur during “the first half of [the week of August 1, 2022].” (Joint Status Report 3.) At the status conference held in this case on 2 August 2022 (the “August 2 Status Conference”), the Court ordered, with Defendants’ consent, that this supplemental production must be made no later than 3 August 2022. The Court further ordered Plaintiff to file a supplemental brief no later than 5 August 2022 to indicate the extent to which Defendants’ production of documents has mooted the current Contempt Motion.

³³ (Joint Status Report 4.)

³⁴ (Second Am. PI Order ¶ 70(c).)

18. Although harboring suspicions, Plaintiff has not offered evidence from on or after the entry of the PI Order on 6 May 2022 that Defendants have failed to abide by the Exclusivity Addendum.

19. The Contempt Motion is ripe for resolution.

II.

CONCLUSIONS OF LAW

20. Civil contempt proceedings may be initiated by motion of an aggrieved party, N.C.G.S. § 5A-23(a1), or by order of a judicial official upon a finding of probable cause, N.C.G.S. § 5A-23(a). An aggrieved party bears the burden of proof in a contempt proceeding initiated by its own motion. N.C.G.S. § 5A-23(a1).

21. In a civil contempt proceeding, the judicial official is the trier of fact. N.C.G.S. § 5A-23(d). When civil contempt is found, the judicial official must enter an order finding the facts supporting each element of civil contempt and specifying the action by which the contemnor can purge himself or herself of contempt. N.C.G.S. § 5A-23(e).

A. Whether Defendants Are in Civil Contempt

22. Our statutes define civil contempt as follows:

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

N.C.G.S. § 5A-21.

23. “Civil contempt is designed to coerce compliance with a court order.” *Plasman v. Decca Furniture (USA), Inc.*, 253 N.C. App. 484, 501 (2017). In order to compel compliance with a court’s order, the civil contempt statutes authorize imprisonment as long as the civil contempt continues, subject to certain time limitations. N.C.G.S. § 5A-21(b). A court order holding a person in civil contempt must specify how the contemnor may purge the contempt, and imprisonment cannot continue once the contempt has been purged. N.C.G.S. §§ 5A-22(a), 23(e); *see also Cox v. Cox*, 133 N.C. App. 221, 226 (1999) (stating that a purge provision must clearly specify how the defendant may purge himself of contempt).

24. In relevant part, the PI Order directed Defendants to (i) honor the Exclusivity Addendum, (ii) “allow TMS access to the premises of TMS NC and provide TMS with full and unfettered access to the books, records, accounts, and files of TMS NC pertaining to TMS NC’s performance of the Services for the purpose of TMS inspecting and copying those items” and (iii) “provide TMS current and updated financial and other information on TMS NC and its directors, officers, shareholders, partners, or principals.”³⁵

25. Because Plaintiff has not offered evidence showing that Defendants have breached the Exclusivity Addendum’s non-competition provisions since the PI Order was issued on 6 May 2022, the Court concludes that Plaintiff’s Contempt

³⁵ (Second Am. PI Order ¶ 70(a)–(d).)

Motion shall be denied to the extent it seeks to hold Defendants in contempt for breach of these provisions.

26. In addition, it appears to the Court that Defendants have made a reasonable, good faith effort to comply with the document production requirements of the PI Order, albeit belatedly, and have committed to making a full supplemental production by 3 August 2022. Consequently, the Court elects to defer further consideration of the Contempt Motion to the extent it seeks to hold Defendants in contempt for failure to produce the documents ordered for production under the PI Order pending Defendants' good faith efforts at full compliance. *See Gandhi v. Gandhi*, 244 N.C. App. 208, 214 (2015) (holding that even belated compliance moots the need for civil contempt).

27. The Court next turns to Plaintiff's Contempt Motion to the extent Plaintiff seeks to hold Defendants in contempt for failing to permit the inspection required under the PI Order.³⁶

1. The PI Order Remains in Force

28. The PI Order is still in effect and remains in force. It was entered pending final resolution or other order of the Court, the case remains pending, and the Court has not entered any orders dissolving the PI Order.

³⁶ (Second Am. PI Order ¶ 70(c).)

2. The Purpose of the PI Order Will Be Served by Compliance

29. A primary purpose of the PI Order—to enforce Plaintiff’s contractual inspection rights—will still be served if Defendants comply with this aspect of the PI Order. N.C.G.S. § 5A-21(a)(2).

3. Defendants’ Noncompliance with the PI Order is Willful

30. Noncompliance with a court order is only subject to civil contempt if it is willful. N.C.G.S. § 5A-21(a)(2a). Noncompliance with a court order is willful when it involves “either a positive action (a ‘purposeful and deliberate act’) in violation of a court order or a stubborn refusal to obey a court order (acting with ‘knowledge and stubborn resistance’).” *Hancock v. Hancock*, 122 N.C. App. 518, 525 (1996) (quoting *In re Dinsmore*, 36 N.C. App. 720, 726 (1978)). Willfulness “involves more than deliberation or conscious choice; it also imports a bad faith disregard for authority and the law.” *Id.* at 523 (quotation omitted).

31. Defendants contend in opposition to the Contempt Motion that they are excused from complying with the PI Order because it impacts their substantial rights and has been properly appealed, thereby staying this action. According to our Supreme Court, “a preliminary injunction is interlocutory in nature, and, as a result, issuance of a preliminary injunction cannot be appealed prior to final judgment absent a showing that the appellant has been deprived of a substantial right which will be lost should the order escape appellate review before final judgment.” *Onslow Cnty. v. Moore*, 129 N.C. App. 376, 387 (1998) (cleaned up) (quoting *Clark v. Craven Reg’l Med. Auth.*, 326 N.C. 15, 23 (1990)); see also *Sia Grp., Inc. v. Patterson*, 254 N.C.

App. 85, 87 (2017) (“A trial court’s ruling on a motion for preliminary injunction is interlocutory.” (quoting *Bessemer City Express, Inc. v. City of Kings Mountain*, 155 N.C. App. 637, 639 (2002))).

32. As it expressed twice prior to the Contempt Hearing,³⁷ and as it formalized in its Order Denying Defendants’ Motion to Stay Discovery and Defendants’ Amended Motion for Temporary Stay of Case and Enforcement of All Order Pending Appeal on 27 June 2022 (“Order Denying Stay”), Defendants’ appeal is an interlocutory appeal that does not affect a substantial right.³⁸

33. Moreover, Defendants’ actions reflect their “knowledge and stubborn resistance” in repeatedly refusing to comply with the inspection requirements of the PI Order. *Hancock*, 122 N.C. App. at 525 (quoting *In re Dinsmore*, 36 N.C. App. at 726).

34. First, Defendants have repeated in numerous briefs—including in opposition to the Contempt Motion—the same arguments that the Court rejected in its PI Order in an apparent attempt to relitigate the merits of Plaintiff’s preliminary injunction motion.³⁹

³⁷ (Clarifying Order n.1, ECF No. 118; Second Am. PI Order n.1, ECF No. 119.)

³⁸ (Order Denying Defs.’ Mot. Stay Disc. and Defs.’ Am. Mot. for Temp. Stay of Case and Enf’t of All Orders Pending Appeal, ECF No. 151.) The Court relies upon and incorporates herein by reference its legal analysis in the Order Denying Stay concluding that Defendants’ appeal of the PI Order does not affect a substantial right of Defendants.

³⁹ (*See e.g.*, Reply Mem. Supp. Defs.’ Mot. Stay Disc. 2–3, ECF No. 110 (“[T]his Court should . . . find that the Plaintiffs breach of contract [sic] is invalid and unenforceable, since the ‘Agreement’ was already terminated on June 15, 2020[.]”); Defs.’ Opp’n to Pl.’s Mot. for Civil Contempt 9, ECF No. 135 (stating that enforcing the PI Order would be “a further violation of the Defendants’ substantial rights” because Defendants “terminated the exclusivity agreement on June 15, 2020”); Defs.’ Am. Mot. for Stay Pending Appeal 3 (requesting a

35. Next, after the Court issued the Clarifying Order and Second Amended PI Order, which stated the Court's conclusion that the matter is not stayed pending appeal, Defendants chose not to comply with their inspection duties under the PI Order and instead "improperly [sought] to reargue the merits of [Plaintiff's preliminary injunction motion] . . . and the Court's conclusion that the matter is not stayed pending appeal." *Plasman*, 2016 NCBC LEXIS 20, at *12.

36. Further, Defendants failed to cite to any record evidence from any source in opposition to the Contempt Motion or in its amended motion to stay the case pending appeal and instead sought to challenge the accuracy of existing record evidence, acknowledged to be true in paragraphs 14 and 15 of TMS NC's own Answer, concerning the source of the residual share TMS pays to Defendants.

37. Because Defendants' belabored and continuing refusal to comply with the inspection requirements of the PI Order reflects Defendants' "knowledge and stubborn resistance," the Court concludes that Defendants are in willful noncompliance of the PI Order. *Hancock*, 122 N.C. App. at 525 (quoting *In re Dinsmore*, 36 N.C. App. at 726).

4. Defendants Are Able to Comply with the PI Order

38. Defendants have offered no evidence that they are unable to comply with the inspection requirements of the PI Order or even that compliance would be burdensome or inconvenient. Indeed, the PI Order simply requires Defendants to

discretionary stay and asserting that Plaintiff's claim for breach of contract is invalid because it "relie[s] on emails [from] 2021, during a time period after the Defendants' [sic] terminated" the Exclusivity Addendum.)

comply with a contract commitment they freely and voluntarily made to Plaintiff. The Court concludes that Defendants are fully able to provide Plaintiff its contracted-for inspection rights as required under the PI Order.

B. Defendants Are in Civil Contempt

39. Based on the above, the Court concludes that Defendants are in civil contempt of the inspection requirements of the PI Order.

40. The Court further concludes that it may hold Christopher Collins, as the officer and owner of TMS NC and the person controlling TMS NC's conduct in this litigation,⁴⁰ responsible for TMS NC's contempt. As this Court has recognized:

Injunctions are binding “upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert of participation with them who receive actual notice in any matter of the order by personal service or otherwise.” N.C. R. Civ. P. 65(d). Furthermore, our courts have held that “[a] command to [a] corporation is in effect a command to those who are officially responsible for the conduct of its affairs,” and that if a responsible individual has notice of the court's order “prevent[s] compliance . . . they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt.” *State ex rel. Grimsley v. West Lake Dev., Inc.*, 71 N.C. App. 779, 781–82 (1984) (citing 17 Am. Jur. 2d, Contempt § 12, at 17–18). *See also Trotter v. Debnam*, 24 N.C. App. 356, 362 (1975) (reversing finding of contempt where the contemnor was not a named party and not bound by the underlying injunction pursuant to Rule 65(d)).

Ray Lackey Enters., Inc. v. Vill. Inn Lakeside, Inc., 2016 NCBC LEXIS 9, at *34 (N.C. Super. Ct. Jan. 29, 2016).

41. **WHEREFORE**, having found that Defendants are in willful violation of the inspection requirements of the PI Order pursuant to N.C.G.S. § 5A-21(c), the

⁴⁰ (Compl ¶¶ 9, 13; Def. Collins' Answer and Mot. Dismiss ¶¶ 9, 13, ECF No. 33.)

Court **FINDS** and **CONCLUDES** that Defendants are in civil contempt of Court. Defendants may purge themselves of civil contempt by permitting TMS to enforce its contracted-for inspection rights as required under the express terms of the PI Order. Specifically, Defendants shall:

- a. Allow TMS access to the premises of TMS NC and provide TMS with full and unfettered access to the books, records, accounts, and files of TMS NC pertaining to TMS NC's performance of the Services for the purpose of TMS inspecting and copying those items. These books, records, accounts, and files shall include:
 - i. Pursuant to paragraph 4(d) and the third and fourth sentences of paragraph 4(b) of the Agreement, financial statements, including profit and loss statements and balance sheets, and all other documents showing the assets, liabilities, costs, expenditures, receipts, and other such related matters of TMS NC, for the period 1 October 2018 to the present.
 - ii. Pursuant to paragraph 4(d) and the third and fourth sentences of paragraph 4(b) of the Agreement, documents evidencing the financial compensation of all of TMS NC's subagents for the period 1 October 2018 to the present as they pertain to TMS NC's performance of the Services.
 - iii. Pursuant to paragraph 4(d) and the third and fourth sentences of paragraph 4(b) of the Agreement, any other books, accounts,

records, and files of TMS NC relating to TMS NC's performance of the Services and its obligations under the Agreement for the period 1 October 2018 to the present.

42. If Defendants have not purged themselves of this contempt within fifteen (15) days after the entry of this Order, the Court will, pursuant to N.C.G.S. § 5A-21(b), order the imprisonment of Christopher Collins. Defendants may, however, seek to postpone the date of imprisonment by motion and for good cause shown.

43. In the event that Defendants seek to purge themselves of contempt before the expiration of this fifteen-day period, Defendants shall provide the Court with evidence of their compliance promptly. Plaintiff shall have four business days to respond to Defendants' evidence, if so desired. The Court will withhold issuing an order for imprisonment until it has reviewed the parties' submissions and determined whether the conditions have been met to purge Defendants' civil contempt.

It is **SO ORDERED**, this the 2nd day of August, 2022.

/s/ Louis A. Bledsoe, III

Louis A. Bledsoe, III
Chief Business Court Judge