SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, Plaintiff, v. **YAZAM INC. d/b/a EMPOWER,** Defendant.	Civil Action No.: 2024–CAB–004751 Judge Shana Frost Matini Next Event: Show Cause Hearing 9/30/25 at 9:30 a.m.

THE DISTRICT OF COLUMBIA'S RESPONSE
TO EMPOWER AND JOSHUA SEAR'S PRE-HEARING MEMORANDUM

INTRODUCTION

This Court ordered Defendant Yazam Inc. d/b/a Empower (Defendant) to "immediately cease operations as a digital dispatch service and private sedan business, to include a prohibition on using the Empower platform to provide any rides which originate or terminate in the District, until such as time as Defendant has registered as a Private Vehicle-For-Hire Company . . . ." Order (Nov. 26, 2024). The Court's Order relied on an April 10, 2024 cease and desist order issued by the Department of For-Hire Vehicles (DFHV) which was upheld by a final order issued by the Office of Administrative Hearings (OAH) on May 22, 2024. When Defendant failed to comply with this Court's November Order, on February 3, 2025, this Court issued a Conditional Order of Contempt levying daily fines against Defendant of $25,000 until Defendant complied with the Order. Defendant continued to defy this Court, and the initial sanctions against Defendant's corporate entity did not compel compliance. So, on March 19, 2025, the Court issued an order levying a daily fine of $5,000 against Defendant's CEO Joshua Sear (Sear). More than six months later, those sanctions have not compelled Defendant or its CEO to comply with the Court's Order as Defendant continues to operate in the District without being

registered with the DFHV. Defendant and Sear remain out of compliance despite the Court of Appeals affirming the DFHV's cease and desist order and OAH's order in a ruling issued on September 25, 2025. That opinion specified that Defendant's lack of registration was, on its own, sufficient to cause immediate and irreparable harm sufficient to uphold the cease and desist order. See Attached DCCA Order issued 9/25/25.

On August 13, 2025, this Court held a motion hearing where it denied Defendant's and Sear's requests for relief. This Court warned that its orders were "not being respected. And so I am fully prepared to increase the sanction here, and the only other sanction available at this point is incarceration." 8/13/25 Mot. Hrg. Trans. at 40:7–10. The Court scheduled a hearing for September 19, 2025. Defendant and Sear requested a continuance, and the hearing was rescheduled to September 30, 2025. The District supports incarceration on that date.

On September 16, 2025, Defendant and Sear filed a memorandum of law in opposition to incarceration. The District now responds.

ARGUMENT

I. Defendant and Sear Once Again Rehash Rejected Arguments to No Avail.

Defendant's and Sear's memorandum consists primarily of a mosaic of rehashed arguments this Court has dismissed time and time again. In fact, much of Defendant's and Sear's motion is pulled *verbatim* from previous filings. Specifically, Defendant and Sear are recycling their arguments concerning (i) the due process clause, (ii) the equitable standards governing civil contempt sanctions, (iii) Empower's incomplete applications for registration, and (iv) the mere existence of an additional cease and desist order invalidating the order currently before this court. All of these arguments have been considered and rejected, repeatedly, by this

Court. These arguments need not be evaluated or considered again and present no reason not to escalate sanctions.

II. Defendant and Sear's Reliance on Criminal Contempt Standards of Due Process is Misplaced.

Insofar as Defendant and Sear make any new arguments, they do so by introducing a misplaced due process claim focused on criminal sanctions. However, the pending consideration of incarceration in this case is coercive not punitive, meaning Defendant and Sear are subject to civil contempt. As the Court's Orders are issued purely to compel compliance and are remedial in nature, the sanction would be for civil contempt, not criminal contempt. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). And the sanction would end as soon as compliance began: Sear would hold the keys to his jailhouse door.

Defendant and Sear try to rely on grand jury proceedings and *Bagwell* to assert that criminal due process considerations must be met before any form of incarceration occurs. This is incorrect. "Imprisonment for a fixed term similarly is coercive when the contemnor is given the option of earlier release if he complies." *Bagwell* at 828 (*quoting Shillitani v. United States*, 384 U.S. 364, 370 (1966) (upholding as civil "a determinate [2-year] sentence which includes a purge clause")). In these circumstances, the contemnor can purge the contempt and obtain his release by committing an affirmative act, and thus "'carries the keys of his prison in his own pocket.'" *Bagwell* at 828 (*quoting Gompers v. Bucks Stove & Range Co*., 221 U.S. 418, 498; *In re Nevitt*, 117 F. 448, 451 (CA8 1902)).

All that is procedurally required to escalate the civil contempt sanctions in this case is notice and an opportunity to be heard, which Sear has undoubtedly received time and again for months now. *See Bagwell* at 827; *see also C.C. v. G.D.*, 320 A.3d 277; 302–04 (D.C. 2024). At the September 30, 2025 hearing, Sear and Defendant will once again have the opportunity to

demonstrate to the Court that they are complying with this Court's orders. If Defendant and Sear can show that they have ceased operating in the District or that they are registered with DFHV, they will be able to successfully purge their contempt and additional sanctions would be unnecessary. If they cannot, then an escalation in coercive sanctions is just as appropriate now as it was back in March, even though the sanctions themselves may take on a new form. This Court has met the procedural requirements to escalate sanctions many times over, and it should give no weight to Sear's demand that he receive enhanced criminal-level due process protections from this civil penalty as those enhanced protections would be contrary to law. *See id.*

III. An Escalation in Sanctions is Appropriate.

Defendant and Sear have refused to obey this Court's order for nearly eleven months and have suffered no consequences which they have deemed meaningful enough to compel them to comply. As of September 30, 2025, Defendant will have been subject to contempt fines for 239 days, totaling $5,975,000 dollars in unpaid contempt fines. Sear will have been subject to contempt fines for 197 days, totaling $985,000 dollars in unpaid contempt fines. Together, they are facing $6,960,000 in contempt fines that they have completely and flagrantly ignored without yet facing any consequence. In past hearings, Defendant and Sear have argued in this Court that there was no irreparable harm that resulted from their noncompliance with the agency's second cease and desist order. *See e.g.* 8/13/25 Mot. Hrg. Trans. at 46:1–2. But Defendant and Sear can no longer rely on this argument as the Court of Appeals upheld that second cease and desist order and OAH's order and definitively ruled that Defendant's nonregistration alone causes immediate and irreparable harm. *See Yazam, Inc. v. D.C. Dep't of For- Hire Vehicles* Appeal No. 24-AA-0582 (D.C. 2025) (attached as Exhibit A).

Defendant and Sear also face additional unpaid fines which have yet to compel compliance with the law. In their memorandum, Defendant and Sear repeatedly claimed imminent victory before OAH in their challenge to DFHV daily issuance of $75,000 in fines. Defendant and Sear cited to Attorney Madden's letter to Judge Sharkey, quoting language that they claimed indicated impending success on the merits. However, OAH has since issued its order in that case, attached hereto as Exhibit B. In fact, on September 17, 2025, Judge Sharkey affirmed each of the fines, dating back to the Court of Appeals' ruling affirming that Defendant needed to register with DFHV. Defendant has not attempted to pay any of the fines. As a result, on September 30, 2025, Defendant will have been subject to DFHV fines for 580 days, totaling $43,500,000 dollars in unpaid agency fines.

Thus, as of the next hearing before this Court, Defendant and Sear will collectively owe the District $50,460,000 in active, unpaid fines. Fines are not working as a sanction to compel Defendant to obey this Court's orders and the law. The District previously sought fines on the Board of Directors as a compulsive tool, but this Court accepted Sear's assertion that he is the only individual who can cause Defendant to comply with this Court's orders. An escalation in sanctions is necessary to compel compliance. Incarceration is the ordinary next step. Therefore, the District supports incarceration of Sear until such time as Defendant has ceased operating in the District without registration.

CONCLUSION

For the foregoing reasons, the Court should escalate sanctions against Defendant and its CEO Joshua Sear to the extent necessary to compel compliance with this Court's Orders and the law, including the incarceration of Joshua Sear.

Dated: September 26, 2025

Respectfully submitted,

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