

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FREEDOM MEDICAL, INC.,

Plaintiff,

v.

Case No. 6:20-cv-771-Orl-37GJK

MAHESHWAR SEWPERSAUD; and  
USINE ROTEC, INC.,

Defendants.

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**ORDER**

Plaintiff Freedom Medical, Inc. ("**Freedom**") moves for an order to show cause why: (1) Defendants should not be held in civil contempt; and (2) why sanctions should not be imposed on Defendant Maheshwar Sewpersaud ("**Sewpersaud**") for repeatedly giving false sworn testimony. (Doc. 115 ("**Motion**").) On review, the Motion is granted.

**I. BACKGROUND<sup>1</sup>**

Sewpersaud worked for Freedom, a medical equipment company, as a salesperson and branch manager. (Doc. 1, ¶¶ 9, 16.) As a condition of his employment, he signed a restrictive covenant that forbid him from working for a competitor while employed for Freedom and for one year post-employment or from soliciting Freedom's customers for his own benefit or the benefit of anyone besides Freedom. (*Id.* ¶ 15; Doc. 1-1.) When

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<sup>1</sup> A more thorough description of the facts can be found in the Court's prior orders. (See Docs. 11, 73.)

Sewpersaud resigned from Freedom in November 2019, he went to work for Defendant Usine Rotec, Inc.'s ("**Rotec**") Orlando office, a competitor to Freedom. (Doc. 56-1, ¶ 28; Doc. 1, ¶¶ 24-27.) Freedom also alleges Sewpersaud stole trade secrets and worked with others, coordinating by text and email, to divert opportunities from Freedom. (See Doc. 1.) So Freedom sued Sewpersaud for misappropriation of trade secrets, breach of contract, breach of fiduciary duty, fraud, and tortious interference. (See *id.*)

On Freedom's request, the Court entered a temporary restraining order against Sewpersaud. (Docs. 9-10; Doc. 11 ("**TRO**").) The TRO enjoined him from "soliciting . . . any current or prospective client, customer, or account, who has been solicited or served by [Freedom] within one (1) year prior to the termination of his employment." (Doc. 11, p. 11.) The Court also directed Sewpersaud to "preserve all documents and information in whatever form it exists relevant to the claims" including "all communications . . . referring or relating to Rotec, KAP Medical, or Interior Fusion." (*Id.* at 11-12.) And Sewpersaud was required to produce his personal computers and smartphones for inspection; Sewpersaud's MacBook Pro and two iPhones were inspected on May 9, 2020 ("**First Inspection**"). (Doc. 11, p. 12; Doc. 61, p. 6; Doc. 115-4, ¶¶ 9-10.)

After an evidentiary hearing, the TRO was converted into a preliminary injunction on June 23, 2020, which reiterated that Sewpersaud was prohibited from soliciting Freedom's clients. (Doc. 69 ("**PI Hearing**"); Doc. 73, pp. 15-16 ("**PI**").) And at the PI Hearing, the Court explained it was critical Sewpersaud understood he had to retain all information related to his misappropriation of trade secrets and must make his personal

electronic devices available for a reasonable period. (Doc. 84, pp. 122:24–123:1.) On June 24, 2020, Freedom filed a Verified Amended Complaint, adding Rotec as a defendant. (Doc. 75.) The next day, Freedom informed Rotec of the PI. (*See* Doc. 115-2.)

The parties then arranged for Sewpersaud to turn his devices over to Freedom for a second inspection on July 10, 2020 (“**Second Inspection**”). (Doc. 115-3, p. 4.) At the Second Inspection, Freedom discovered Sewpersaud had failed to preserve information relevant to his continued solicitation of Freedom customers while working at Rotec. (*See* Doc. 115, pp. 4–5.) Sewpersaud’s iPhone had only 4,056 texts – a dramatic reduction from the 137,063 texts found on the First Inspection.<sup>2</sup> (Doc. 115-4, ¶ 18.) Among the deleted texts were all but one of the incriminating chats referenced in Freedom’s preliminary injunction motion. (*See id.* ¶ 19; Doc. 61, pp. 12–13; Doc. 61-3, pp. 44–52.) The messages are permanently lost because: (1) Sewpersaud changed the retention settings on his phone from “forever” to “30 days” a mere 38 minutes before turning it over for the Second Inspection; and (2) he deleted WhatsApp from his phone, which had 33,420 messages at the First Inspection. (Doc. 115-4, ¶¶ 20–23.) Both these actions required affirmative steps by Sewpersaud. (*Id.*) And according to Freedom, Sewpersaud also deleted incriminating emails. (Doc. 115, pp. 5–6; Doc. 115-4, ¶ 35.)

Freedom says Sewpersaud further violated the Court’s TRO, at the direction Rotec, by continuing to solicit and service Freedom’s customers. (Doc. 115, pp. 6–7; Doc. 11.)

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<sup>2</sup> Freedom was able to recover several messages from Sewpersaud’s computer, but over 40,000 of the messages are still unaccounted for. (Doc. 115-4, ¶ 24.)

Freedom attaches the relevant emails, exchanged May 6 through June 17, in which Sewpersaud, using his Rotec work email, communicates with Freedom's current and prospective customers. (*See* Docs. 115-5 to 115-7.)

On top of violating the TRO and PI, Freedom says Sewpersaud repeatedly lied under oath, citing five instances. (Doc. 115, pp. 8-16.) First, Sewpersaud testified he did not learn Interior Fusion submitted a proposal to the Orlando VA until after he started working for Rotec. (Doc. 115, pp. 8-10; Doc. 56-1, ¶ 31; Doc. 115-10, p. 313:1-8.) Second, he said he didn't fail to follow up with the Orlando VA while working for Freedom. (Doc. 115, p. 11; Doc. 115-10, 321:23-324:3.) Third, he swore a marketing excel spreadsheet was created by him during a brainstorming session with other Rotec employees. (Doc. 115, pp. 12-13; Doc. 115-10, pp. 279:14-280:6.) Fourth, he stated he shared no confidential Freedom information with anyone else. (Doc. 115, pp. 14-15; Doc. 84, p. 64:10-16.) And fifth, he asserted he had to work with a Freedom prospective customer because Rotec's director of sales couldn't travel due to the pandemic. (Doc. 115, pp. 15-16; Doc. 115-10, p. 356:10-21.) Freedom says all these assertions were false, contradicted by contemporaneous evidence like texts, emails, news reports, and computer forensics. (Doc. 115, pp. 8-16.)

So Freedom moves for an order to show cause why Defendants should not be held in civil contempt for violating the TRO and PI, and why Sewpersaud should not be sanctioned for his false testimony. (Doc. 115.)

## II. ANALYSIS

Injunctions are “enforced through the trial court’s civil contempt power.” *Reynolds v. Roberts*, 207 F.3d 1288, 1298 (11th Cir. 2000) (citation omitted). If the plaintiff believes the defendant is violating the court’s injunction, the plaintiff should move “the court to issue an order to show cause why the defendant should not be adjudged in civil contempt and sanctioned.” *Id.* (citation omitted). “If satisfied that the plaintiff’s motion states a case of non-compliance,” the court should order “the defendant to show cause why he should not be held in contempt” and schedule a hearing. *Id.* The court can also order the defendant to respond, which may make a hearing unnecessary. *Id.* at 1298 n.19. Either way, “the court determines whether the defendant has complied with the injunction provision.” *Id.* at 1298 (citation omitted).

Freedom has stated a claim of non-compliance warranting an order to show cause. (See Doc. 115.) Although the TRO and PI only named Sewpersaud, Rotec can be held responsible if it acted in concert or participated with Sewpersaud. See Fed. R. Civ. P. 65(d). And Rotec was aware of the injunction against Sewpersaud. (See Doc. 115-2.) By deleting relevant information and continuing to solicit Freedom customers at Rotec’s direction, Defendants may have violated the Court’s orders. (See Docs. 11, 73, 115.) And sanctions may be warranted against Sewpersaud for his allegedly false testimony. (See Doc. 115, pp. 8-16.) So the Motion is granted.

### III. CONCLUSION

It is **ORDERED AND ADJUDGED**:

1. Plaintiff's Motion for Order to Show Cause (Doc. 115) is **GRANTED**.
2. By Thursday, **September 10, 2020**, Defendants are **ORDERED TO SHOW CAUSE** by written response why they should not be held in civil contempt for violating the Court's temporary restraining order (Doc. 11) and preliminary injunction (Doc. 73).
3. In the same response on civil contempt, Defendant Maheshwar Sewpersaud is **ORDERED TO SHOW CAUSE** why sanctions should not be imposed on him for falsely testifying as detailed in the Motion. (*See* Doc. 115, pp. 8-16.)
4. If necessary, the Court will set a hearing on the matter at a later date.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on August 27, 2020.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
Counsel of Record