UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS *et al.*, **Plaintiffs,** **v.** **FELD ENTERTAINMENT, INC.,** **Defendant.**	**Civil Action No. 03-2006 (EGS/JMF)**

MEMORANDUM ORDER

I. INTRODUCTION

The issue before the Court is whether plaintiffs should be held in contempt for failing to follow the Court's orders of August 23, 2007 and December 3, 2007. Following an evidentiary hearing that was held over the course of three days (February 26, 2008; March 6, 2008; and May 30, 2008) and after careful review of the parties' submissions, the Court concludes that Defendant's Motion to Enforce the Court's August 23, 2007 Order [DE[1] 223] and Defendant's Motion to Enforce the Court's December 3, 2007 Order [DE 247] are both without merit and no further action should be taken.

[1] Docket Entry.

II. THE COURT'S PRIOR ORDERS

The Court's August 23, 2007 Order [DE 178] required plaintiff Tom E. Rider to produce: "All responsive documents and information concerning his income and payments from other animal advocates and animal advocacy organizations, except that Rider may redact the names of individual donors or organizations unless they are parties to this litigation, attorneys for any of the parties, or employees or officers of any of the plaintiff organizations or WAP [Wildlife Advocacy Project]." Order (8/23/07) at 3.

That Order also required plaintiffs, the American Society for the Prevention of Cruelty to Animals ("ASPCA"), the Animal Welfare Institute ("AWI"), the Fund for Animals ("FFA") and the Animal Protection Institute ("API") (the "Organizational Plaintiffs") to produce: "All responsive documents and information concerning payments to Tom Rider, regardless of whether such payments were made directly to him or indirectly through other means such as WAP, except that plaintiffs may redact the names of individual donors or organizations unless they are parties to this litigation, attorneys for any of the parties, or employees or officers of any of the plaintiff organizations or WAP." Id. at 6-7.

It also provided that: "All responsive documents and information concerning relevant, non-privileged communications regarding the subject matter of this lawsuit between plaintiffs, Rider, WAP, and plaintiffs' counsel, except that plaintiffs need not produce documents or further information related to any media or legislative strategies or communications or any documents or information about litigation strategy or communications that are properly protected by the attorney-client or work product

privileges, including under the 'common interest doctrine' as defined by this Circuit." Id. at 7.

The Court's August 23, 2007 Order [DE 178] concluded that Rider's funding and the role of the Organizational Plaintiffs and WAP in such funding are relevant to this case and that defendant Feld Entertainment, Inc. ("FEI") is entitled to such information. Id. at 4 ("The Court finds that Rider's funding for his public education and litigation efforts related to defendants is relevant."); id. at 5 ("As Rider is a plaintiff in this case and the financing of his public campaign regarding the treatment of elephants is relevant to his credibility in this case, Rider's relevant financial information shall be produced without a protective order but with appropriate redactions approved by this Order."); id. at 8 ("Defendant, however, is entitled to information concerning the payments made to Tom Rider and the role of the organizational plaintiffs and WAP in those payments.").

The Court's December 3, 2007 Order [DE 231] required the Humane Society of the United States ("HSUS") to produce all documents "that pertain to Tom Rider's 'funding for his public education and litigation efforts' provided the funding came from 'a party, any attorney for any of the parties, or any officer or employee of the plaintiff organizations or WAP' or that pertain to payments made to Rider by any such person, with the understanding that the names of donors will be redacted if the donor is not 'a party, any attorney for any of the parties, or any officer or employee of the plaintiff organizations or WAP.'" Order (12/3/07) at 1-2.

It also required HSUS to produce (1) "all documents that 'refer, reflect or relate' to Tom Rider, including all communications with or to him, and documents that pertain to payments made to him," (2) "any documents that fall within Judge Sullivan's August

23, 2007, order that pertain to WAP [DE 178 at 8] that are in HSUS's possession, custody, or control." Order (12/3/07) at 2. This information consisted of "non-privileged documents related to 'payments or donations for or to and expenses of Tom Rider in connection with this litigation or his public relations efforts in connection with this litigation or his public education efforts related to the Circus's treatment of elephants.'" Memorandum Opinion (12/3/07) [DE 232] at 5.

III. THE PARTIES' POSITIONS

A. FEI'S POSITION

The parties differ radically in their interpretation of the obligations imposed by these Orders. According to FEI: "There is no ambiguity in what was required—*all* documents relating to Rider's funding *regardless of whether the purpose of the payments was for media or legislative efforts*. Nor were these production orders limited to only those documents that would reflect each payment made." Feld Entertainment Inc.'s Memorandum in Support of its Proposed Findings of Fact and Conclusions of Law ("FEI Mem.") at 12 (emphasis in original). To the contrary, according to FEI, it is not enough for plaintiffs to produce documents that reflect payments to Rider; they must also produce "all documents related to payments." Id. at 13.

As to Rider, FEI argues that he had to produce (1) documents that would reflect payments made to him by any "animal advocate," (2) a description of all income, compensation, or other items he received from such an advocate, and (3) "any communication he has had with an animal advocate regarding defendant." Id. at 12.

B. PLAINTIFFS' POSITION

Plaintiffs disagree entirely. Their position has several elements.

They insist that whether they can be held in contempt is a function of all the circumstances surrounding the issuance of Judge Sullivan's August 23, 2007 Order and my Order of December 8, 2007 that followed it. Plaintiffs' Post-Hearing Brief Regarding Plaintiffs' Compliance with the Court's August 23, 2007 Order ("Pl. Br.") at 2. They point to the following circumstances.

They begin with the proposition that FEI cannot interpret these Orders to impose upon them an obligation greater than the discovery FEI had propounded in the first place. Id. They point out that FEI never propounded any interrogatories or requests for production of documents that sought information or documents that reflected communications among the plaintiffs about payments to Rider. Id. at 5. Instead, they insist that FEI propounded an interrogatory that asked them to describe communications they had with other animal advocates about the treatment of elephants at circuses and demanded documents sufficient to show the resources plaintiffs had expended in advocating better treatment for animals held in captivity, including animals used for entertainment purposes. Id. at 6.

Plaintiffs indicated that they objected to these demands on the grounds (inter alia) that they were overbroad and sought information protected by the First Amendment and by the attorney-client and work product privileges. Id. Nevertheless, they produced information that advised FEI about "Tom Rider's activities and funding." Id. Specifically, FEI learned that the ASPCA was funding his road expenses as he traveled

from town to town speaking about the training and abuse of elephants by the circus. Id. at 6-7.

As to Rider, an interrogatory asked him to identify compensation he received from an animal advocate. Id. at 8. In response, he said that he had never received any such compensation but offered to provide FEI with information regarding funding that he admittedly received from plaintiffs, deeming it a grant to cover his expenses while he traveled, speaking about the circus's mistreatment of elephants. Id. at 8-9. He and plaintiffs provided such information prior to Judge Sullivan's August 27, 2008 Order. Id. at 9 n.5.

Plaintiffs then underline the importance of their First Amendment objection to being forced to produce information that pertained to the efforts they were making to lobby legislators to protect elephants and to influence the media to report on their efforts favorably. Id. at 13. They also point out that on the same day as he issued the August 27, 2008 order Judge Sullivan rejected FEI's attempt to amend their Answer to assert a RICO counterclaim and an unclean hands defense, predicated on the proposition that "the organizational plaintiffs were not really funding Mr. Rider's efforts to speak about the treatment of circus animals but, rather, were engaged in an 'elaborate scheme' to pay [] Tom Rider for his participation as a key fact witness in this lawsuit." Pl. Br. at 15-16 (quoting DE 176 at 4). Therefore, Judge Sullivan's rejection of FEI's effort was based on his desire not to permit discovery and the production of evidence that would go substantially beyond the evidence that had already been produced by Rider and the organizational plaintiffs as to the payments made by the latter to Rider. See id. at 16.

According to plaintiffs, the confluence of all these factors led Judge Sullivan to issue an order that had several purposes. See id. First, it continued and completed the process of flushing out every payment made to Rider by the plaintiff organizations or their counsel. See id. Second, it protected plaintiffs against the production of information that pertained to their legislative and media efforts because that information was irrelevant to the only issue presented by the case—whether FEI had "taken" certain elephants in violation of the Endangered Species Act, 16 U.S.C. §1531 et seq.,[2] and could not serve to impeach Rider's credibility. See id. Third, it put to rest any notion that the information that would have to be produced had the RICO claim survived would nevertheless have to be produced despite the dismissal of the RICO claim. See id.

IV. ANALYSIS

The result of these diametrically opposed views of the meaning of the August 27, 2008 Order is stark, as can be illustrated by the following example.

Assume a representative of ASPCA e-mailed a representative of the AWI to indicate that the Florida legislature was considering legislation that would ban performing animals. Assume further that the ASPCA representative suggested that it would be a good idea for Rider to hold a press conference in Tallahassee, Florida, to talk about the circus's mistreatment of elephants and proposed that the two organizations share the cost (estimated at $1,000) to fly Rider to Florida.

Plaintiffs would say that this is an archetype of the information that Judge Sullivan intended to exclude from discovery as information pertaining to legislative and media efforts. They would go further and contend that a discussion about a payment proposed to be made in the future cannot be construed as information concerning a

[2] All references to the United States Code are to the electronic versions that appear in Westlaw or Lexis.

payment to Rider under the August 27, 2008 Order since that potential payment cannot be relevant to the only surviving issue in this case—the taking of the elephants—and cannot be used to impeach Rider.

On the other hand, according to FEI, such an e-mail, a document suggesting that it would be useful to pay Rider $1,000 would be excludable because it concerned a payment to Rider, assuming, as FEI must, that Judge Sullivan intended to include payments to be made to Rider in the future with payments already made to him when he ordered the production of information regarding payments to Rider.

Plaintiffs' interpretation of the meaning of the word "regarding" in the August 27, 2008 Order is a reasonable and defensible one when that Order is viewed in light of the circumstances in which it was issued. Indeed, I must say that when I was called upon to interpret it in my December, 2007 Order, I interpreted it as plaintiffs do, concluding that Judge Sullivan intended to compel information that showed a specific payment to Rider.[3]

"'[C]ivil contempt will lie only if the putative contemnor has violated an order that is clear and unambiguous' and the violation must be proved by clear and convicting evidence." Armstrong v. Executive Office of the President, 1 F.3d. 1274, 1289 (D.C. Cir. 1993) (quoting Project B.A.S.I.C. v. Kemp, 947 F.2d 11, 16 (1st Cir. 1991) and Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co., 626 F.2d 1029, 1031 (D.C. Cir. 1980)). Accord Athridge v. Aetna Cas. & Sur. Co., 184 F.R.D. 181, 198 (D.D.C. 1998). It would have to follow that plaintiffs' could be held in contempt only if it was unquestionably clear that Judge Sullivan's and my orders

[3] I must now admit that, in light of the convincing case plaintiffs make as to Judge Sullivan's intentions when he issued the August 27, 2007 Order, one portion of my December 2007 Order, requiring HSUS to produce communications to or from Rider, was not as precise as it should have been in narrowing the communications to be produced to only those pertaining to a payment made to him.

demanded that they produce the documents that FEI accuses them of not producing. While it must be said that in civil contempt, unlike criminal contempt, intent is irrelevant and in that sense plaintiffs' good faith is irrelevant,[4] it must also be said that FEI has to prove clearly and convincingly that Judge Sullivan's and my orders compelled the production they did not receive. Having presided over the hearing, and, much more significantly, having presided over the discovery in this case for several years, I am certain that unless Judge Sullivan's and my orders are read in the limited manner plaintiffs read them, it is impossible to effectuate Judge Sullivan's intent to force the parties to focus on information pertaining to actual payments to Rider, information that could be used to impeach him, and his intent to preclude any discovery of plaintiffs' efforts, through Rider or otherwise, to influence legislators and the media of the validity of their complaint about FEI's treatment of elephants. The latter, whether protected by the First Amendment or not, had nothing to do with Rider's credibility or the only issue left in the case—whether FEI's treatment of the elephants constitutes a taking under the Endangered Species Act?

V. PROPOSED FINDINGS OF FACT

An examination of the Findings of Fact FEI has proposed further establishes why they are not entitled to the contempt citation they seek.

I have created a chart, attached to this Opinion, which summarizes most of FEI's proposed finding and plaintiffs' objections to them. As the chart makes clear again and again, FEI seeks to hold plaintiffs in contempt for not describing and producing documents that pertained to discussions they had among themselves or with Rider as to,

[4] See Food Lion, Inc. v. United Food and Commercial Workers Int'l Union, 103 F.3d 1007, 1017-18 (D.C. Cir. 1997).

for example, potential payments to be made to Rider, the division among themselves of such payments, and discussions of how to raise money to pay him. See, e.g., JMF Chart, Findings Nos. 60, 63-69, 87-89, 91-98. The chart entries indicate that if the information demanded by FEI had to be produced, Judge Sullivan's intent to limit discovery to information that would impeach Rider and to exclude information pertaining to efforts to use him to influence public opinion would be obviated. Every piece of paper that in any way pertained to a payment to Rider would have had to be produced and the exclusion Judge Sullivan fashioned for legislative and media strategy materials rendered nugatory, even thought it is impossible for the information FEI claims that plaintiffs should have produced to impeach Rider or prove that FEI does or does not mistreat the elephants.

The entries on the chart also disclose two other fallacious contentions FEI makes in support of its demand for contempt. First, FEI proceeds on the premise that if an organizational plaintiff did not produce a document but there is other evidence that it exists the organizational plaintiff's not producing it is contumacious. See, e.g., JMF Chart, Findings Nos. 51, 54, 61, 77, 81. But, this ignores that the representatives of the organizational plaintiffs testified that they made a conscientious and diligent effort to search for the documents that Judge Sullivan required to be produced but could not find any other than the ones they produced. Having heard their testimony, I fully credit[5] their testimony and conclude that they did make a diligent search and fully complied with the

[5] Note that since Rider did not testify, I could not assess his credibility. I have, however, carefully reviewed the record evidence collected in FEI's proposed findings and in plaintiffs' response and find absolutely no basis for the assertion that Rider defied Judge Sullivan's order. To the contrary, that evidence convinces me that he too conscientiously complied with Judge Sullivan's order and that FEI's assertion that he did not is based on the same fallacies that underlie its claim that the organizational plaintiffs disobeyed that order. Indeed, Rider has given exhaustive deposition testimony about payments made to him and produced an accounting of them. See Plaintiffs' Response to Defendant's Proposed Findings of Fact and Conclusions of Law at 7, 10 (court read transcript of Rider's deposition and found that it addressed funding for Rider's media efforts exhaustively).

obligations Judge Sullivan imposed. That they did not find every possible piece of paper, despite such a search, is hardly contumacious.

Second, FEI challenges testimony either at the evidentiary hearing before me or in depositions as not being correct. See, e.g., JMF Chart, Findings Nos. 53, 85, 87. The assertion is based on the contradiction between what the witness said and a document that shows the contrary. That a witness's testimony is contradicted by a document or another witness's testimony is hardly unusual; it happens in every trial because human beings forget some things and misapprehend others. To deduce from such a contradiction that every word out of their mouths is therefore a lie and must be discredited is naïve. Again, I must state that despite the few contradictions to which FEI points, I find plaintiffs' witnesses eminently credible and trustworthy.

I therefore find that I cannot and will not accept the findings of fact that FEI has proposed. To complete my obligation to consider FEI's contempt effort, however, I must turn to the four instances noted in its brief that it claims establish that the plaintiffs did not take "all reasonable steps within their power to comply with the court's order." FEI Mem. at 14.

VI. FEI'S CONTENTIONS

A. WEISBERG'S TESTIMONY

The first instance pertains to the answer to interrogatory number 16, in which the ASPCA was asked to describe every communication it had with "any current or former employee of the defendants since 1996." Transcript of evidentiary hearing of February 26, 2008 ("Tr. 2/26/08") at 46. The witness, Lisa Weisberg, indicated that she had not disclosed any conversations she had with representatives of FFA and AWI about

financial arrangements with Rider. Id. at 47. Her attention was then brought to her deposition where she indicated that during certain meetings she had discussed financial arrangements between ASPCA and Rider. Id. at 48. In her deposition, she had also explained that the attendants at the meeting had "discussed some of his expenses and certainly for budgeting purposes what the projected expenses would be and his being able to meet with the media across the country." Id. She then explained that she had not disclosed these conversations, that she described as "discussions in-house for budgeting purposes for the following year," id., as proprietary and indicated that her association had previously objected to the production of such information. Id. at 48-49.

It is true that the objection that Weisberg advanced at the hearing—that the discussions she referred to were proprietary—was not advanced in response to the discovery sought, although it should have been. But, it hardly follows that a contempt citation is appropriate.

First, discussions among Weisberg, as a representative of ASPCA, and representatives of FFA and AWI of Rider's projected expenses so that he could meet with media falls within the exclusion for legislative and media efforts. On the other hand, discussions about a budget of projected expenses to include payment to Rider does not fall within Judge Sullivan's definition of "information concerning payments to Rider with individual donors redacted," a phrase that connotes that the information that is to be produced must be evidence of an actual payment to him, with the name of the donor redacted, unless the donor was a party, attorney, employee or officer of one of the plaintiff organizations. As I have already explained, it certainly cannot be said that the order so clearly called for the production of information pertaining to the discussions

Weisberg described that her failure to produce it can be described as disobedience to the unequivocal command of a judicial order. At most, it can be said that Weisberg's belated assertion of a proprietary objection to the production of that information was a mistake that did not harm the defendants and certainly does not warrant a contempt citation.

The second instance is that portion of Weisberg's testimony, in which she described how ASPCA conducted its search for responsive information. Id. at 24. She searched her e-mails and notes she took during telephone conversations. Id. Her colleague, Nancy Blainey, searched her e-mail and they searched "[a]ny correspondence or e-mails we would have had with our president at the time." Id. She then indicated that the president at the time of the search was Mr. Hawk but she did not believe that his paper correspondence files were searched. Id. She also indicated that she did not know whether they still existed. Id. at 24-25. Neither party returned to the topic of Hawk's correspondence files. There is therefore no evidence whatsoever regarding when he left his job, what kind of files he kept, whether e-mails to or from him were not already in the documents disclosed and why there was any reason to believe that his files contained any documents to which the defendants were entitled.

B. THEW'S TESTIMONY

The third instance involved Michelle Thew, who was the CEO of API from October of 2003 to November, 2006. Tr. 2/26/08 at 92. Defendants characterize the testimony at pages 131 to 132 of the hearing transcript as establishing that the API did not search the computer of their former CEO. FEI Mem. at 14. In fact, the transcript at those pages reflects that the witness, Noel Paquette, indicated that API joined the lawsuit in February, 2006 and that when Thew left, she left her files to Paquette, who explained:

> Well, when she left her files went to me. So then when I saw, I obviously checked her files because they were integrated into my files.

Tr. 2/26/08 at 131.

Paquette conducted this search in December, 2006 and January 2007. Id. Thew took her computer with her when she left to finish up some work and when she returned it, it did not have any e-mails on it, id., but Thew then explained:

> It had some work documents on it, but then her work documents were transferred initially when she left to Sandy Haynes, her executive assistant, so I was able to have access and those were searched. And then with respect to her e-mails she just wouldn't have had any. I was the point person. And so she and I did not e-mail. We just talked about it in the office. So she, I would have received any type of e-mail from our lawyers about it. And she would not have been on any of those e-mails.

Id. at 132.

Paquette then explained that API did not have her e-mails to check because API did not have the computer with the e-mails on it. Id.

Thus, the correct characterization of the testimony is that the witness did not believe that there were any pertinent e-mails on Thew's computer and that all of Thew's electronically-stored work was ultimately transferred to Paquette and she was able to search all of it. Therefore, defendant's characterization of that testimony as API's not having searched the computer of their former CEO, FEI Mem. at 14, is incorrect.

C. THE FUNDRAISER

The next instance is a repeated reference to the testimony discussed above by Weisberg, in which she indicated that she considered certain conversations pertaining to budgeting and projected expenses for Rider's meeting with media proprietary. See Tr.

2/26/08 at 48. Defendant cites that testimony for the proposition that "AWI withheld emails [sic] concerning fundraiser." FEI Mem. at 14. But, there is not a word in the testimony cited in which Weisberg indicated that she withheld an e-mail concerning a fundraiser. Indeed, on the pages cited by the defendants she does not even use the words "e-mail" or "fundraiser."

D. AN E-MAIL AND A LETTER

Finally, defendants point to an e-mail, submitted by defendant at the February 26, 2008 hearing as exhibit 51, and a letter from HSUS's Jonathan Lovvorn to plaintiffs' counsel, Eric Glitzenstein, submitted by defendant as exhibit 65 at the same hearing. As to the e-mail, the witness, Mark Markarian, President of FFA, testified that it did not turn up in the search of the electronic files of FFA or HSUS. Transcript of May 30, 2008 hearing at 12-13. As to the letter, the witness testified that he did not have a copy of it. Id. at 42. Thus, the only deficiencies that FEI can point to after several days of hearings are two pieces of paper which witnesses testified did not show up during their searches.

E. FEI'S ULTIMATE SHOWING IN ITS BRIEF

Thus, reduced to its essentials, FEI seeks a contempt citation based on (1) an assertion by a witness that a certain document was proprietary; (2) a passing reference to plaintiffs' not searching the paper files of its department president, although the witness testified that she and her colleague searched their e-mail and correspondence files for any e-mails or correspondence with Rider; (3) the fact that the computer of another departed CEO was not searched, although all of her files were ultimately transferred to the witness who searched them for responsive material and who testified that there would not have been any e-mail correspondence between them; (4) an incorrect statement about a

computer not being searched; (5) a misstatement of a witness's testimony as to a fundraiser and an e-mail, and (6) the fact that two pieces of paper did not turn up in what I have found to be a conscientious search for responsive information.

There are nevertheless two arrows left in the defendant's quiver. The parties had battled over whether certain documents were or were not to be produced. Tired of their bickering, on June 3, 2008, I ordered defendant to submit for my in camera review the documents that plaintiffs sought to compel and that plaintiffs produce the documents defendant had moved to compel. Order of June 3, 2008 and Order of June 5, 2008. By my order of August 4, 2008, I then ruled on whether each document was or was not responsive or, if asserted, protected by a privilege. Order (8/4/08).

As best as I can understand its argument, FEI argues that plaintiffs' ability to collect the documents that they initially resisted producing for my in camera inspection proves that "plaintiffs were thus capable of producing [the documents subject to defendants' motion to enforce] but chose not to." FEI Mem. at 15. The argument is *non-sequitur*, that plaintiffs claimed that documents were not responsive or privileged but produced them for my inspection has nothing whatsoever to do with whether they violated a court order by not producing them to the defendant. Indeed, insofar as I sustained plaintiffs' objections or claims of privilege, I concluded that plaintiffs did not have to produce them to the defendant in the first place.

Finally, FEI protests that it is inconceivable that plaintiffs could have paid $120,000 to Rider with "little or no written communications about such payments," and that therefore there must be e-mails, pertaining to payments to Rider, that they did not produce. Id.

I have pointed out in a similar context that the argument that there must be more e-mails or documents than were produced is speculative and an insufficient basis upon which to order additional discovery. See Nuskey v. Lambright, 251 F.R.D. 3, 10 (D.D.C. 2008) ("Indeed, in every case there 'could be' relevant communications made years after an employee's termination. That alone cannot possibly be sufficient; if it were, there could never be an end point for discovery requests absent some cataclysmic event that foreclosed the ability of human interaction."); Hubbard v. Potter, 247 F.R.D. 27, 29 (D.D.C. 2008) ("[I]f the theoretical possibility that more documents exist sufficed to justify additional discovery, discovery would never end. Instead of chasing the theoretical possibility that additional documents exist, courts have insisted that the documents that have been produced permit a reasonable deduction that other documents may exist or did exist and have been destroyed."); Washington v. Thurgood Marshall Acad., 232 F.R.D. 6, 11 (D.D.C. 2005) ("[P]laintiff's speculation that more e-mails exist does not entitle her to more and, therefore, the court will not compel defendant to produce more e-mails.").

If the speculation that "there must be more" is insufficient to justify additional discovery, it cannot possibly be the basis for a finding by clear and convincing evidence that the plaintiffs violated a court order.

Thus, there is absolutely no showing that plaintiffs did anything but attempt to find whatever was responsive to defendant's demands and the Court's order and produce it.

V. CONCLUSION

As I pointed out in Athridge, when confronted with a request for a contempt citation, a magistrate judge's power is limited to certifying to the district court whether

the putative contemnor's actions have risen to the level that justifies a referral to the District Court for further contempt proceedings. Athridge, 184 F.R.D. at 198. For the reasons stated in this opinion, I find no basis for such a referral and recommend that the District Court take no further action on Defendant's Motion to Enforce the Court's August 23, 2007 Order [DE 223] and Defendant's Motion to Enforce the Court's December 3, 2007 Order [DE 247].

/S/
JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated: October 16, 2008