UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DOMESTIC BANK, Plaintiff,	:	
v.	:	CA 07-355 S
GLOBAL EQUITY LENDING, INC., et al., Defendants.	:	

MEMORANDUM AND ORDER

GRANTING MOTION FOR ENTRY OF DEFAULT

Before the Court are two motions filed by Plaintiff Domestic Bank ("Plaintiff" or "Domestic") which seek to have default entered pursuant to Fed. R. Civ. P. 37(b) and 55(b):

1. Plaintiff's Motion to Default Defendants World Leadership Group, Inc. and Hubert Humphrey (Doc. #96) ("Motion to Default WLG and Humphrey"), and

2. Plaintiff's Motion to Default Defendant Global Equity Lending, Inc. (Doc. #97) ("Motion to Default Global") (collectively the "Motions to Default").

Defendants Global Equity Lending, Inc. ("Global"), World Leadership Group, Inc. ("WLG"), and Hubert Humphrey ("Humphrey"), (collectively "Defendants") have filed objections to the Motions to Default. See Response/Objection to Motion to Default and Supporting Memorandum (Doc. #107) ("Global Objection"); Response/Objection to Motion to Default and Supporting Memorandum (Doc. #109) ("WLG/Humphrey Objection").

The Motions to Default have been referred to me for determination. The Court conducted a hearing on January 28, 2010. For the reasons stated below, I order that the Motions to Default be granted.

I. Facts and Travel[1]

This is an action for breach of contract, fraud, negligence, breach of fiduciary duty, fraudulent conveyances, declaratory judgment, and interference with contract. See First Amended Complaint (Doc. #24) at 7-14. Domestic is a federally chartered banking institution authorized to do business in Rhode Island with a principal place of business in Cranston, Rhode Island. Id. ¶ 1. Global is a Georgia corporation with a principal place of business in Suwanee, Georgia. Id. ¶ 2. WLG is also a Georgia corporation with a principal place of business in Suwanee, Georgia. Id. ¶ 3. Humphrey is the CEO of WLG and a major shareholder in Global. Id. ¶ 4.

On or about June 8, 2005, Domestic and Global entered into a Broker Agreement (the "Agreement"), id. ¶ 8, pursuant to which Plaintiff made several loans originated by Global, see id. ¶ 13; Response to First Amended Complaint (Doc. #37) ("Defendants' Answer") ¶ 13. Plaintiff alleges that certain of these loans are

[1] The Court recites only the facts and travel relevant to resolution of the instant Motions to Default. See Gaudette v. Panos, 852 F.2d 30 (1st Cir. 1988)(noting that the "merits of the case are ... irrelevant" because dismissal was premised on "failure to comply with a discovery order").

in default. See First Amended Complaint ¶¶ 15, 17, 20, 22. Plaintiff further alleges that it has demanded that Global repurchase the loans or otherwise compensate Domestic but that Global has refused, see id., which allegations Global denies, see Defendants' Answer ¶¶ 15, 17, 20, 22.

On September 19, 2007, Plaintiff filed in this Court a complaint which alleged breach of contract, fraud, and negligence and which originally named only Global as defendant. See Complaint (Doc. #1); see also Docket. Global answered the Complaint on November 9, 2007. See Answer of Global Equity Lending, Inc. to Plaintiff's Complaint (Doc. #5); see also Docket. After conducting its first Rule 30(b)(6) deposition, see Supplemental Memorandum of Plaintiff in Support of Motion to Default Defendants (Doc. #112) ("Plaintiff's Supp. Mem.") at 1-2, Domestic sought and received leave to file an amended complaint, see Docket. It did so on October 7, 2008, see id., adding WLG and Humphrey as defendants, see First Amended Complaint ¶¶ 3-4. Global, WLG, and Humphrey filed Defendants' Answer to the First Amended Complaint on November 28, 2008. See Docket.

In the meantime, on July 31, 2008, Global's original counsel moved to withdraw. See Motion to Withdraw (Doc. #18). In a Notice and Order dated September 11, 2008, the Court stated that it would grant the Motion to Withdraw on October 13, 2008, and ordered Global to obtain new counsel by that date. See Notice

and Order ("Notice and Order of 9/11/08") at 1-2. The Notice and Order of 9/11/08 further stated that "[i]f new counsel has not entered an appearance for [Global] by October 13th, [Global] may be defaulted." Id. at 2. Global's counsel was directed to send a copy of the Notice and Order of 9/11/08 to its Atlanta counsel. See id. Global failed to comply with the Notice and Order of 9/11/08, see Order to Show Cause (Doc. #29) ("Show Cause Order of 11/3/08"), and the Court ordered Global to appear on November 24, 2008, and show cause why default should not be entered, see id. The Court directed Plaintiff to send a copy of the Show Cause Order of 11/3/08 to Global's Atlanta counsel. See id. On November 23, 2008, William J. Delaney, Esq. ("Defendants' counsel"), entered his appearance on behalf of all defendants. See Entry of Appearance and Request for All Notices and Pleadings (Doc. #32). On November 24, 2008, after hearing from both attorneys and entertaining an oral request by Domestic for costs, to which Global did not object, the Court continued the matter until December 16, 2008, and directed Plaintiff to file a written motion for costs. See Docket Entry for 11/24/08. Plaintiff did so on November 26, 2008. See Plaintiff's Motion for Attorney's Fees (Doc. #35). After hearing, in an order dated January 14, 2009, the Court granted the motion and directed Global to pay Domestic attorney's fees in the amount of $1,575.00. See Order (Doc. #42) ("Order of 1/14/09").

During this interval, Domestic had propounded its Second Request for Production of Documents to Global on or about August 13, 2008. See Plaintiff's Motion to Compel Production (Doc. #23). When no response was forthcoming, Domestic filed Plaintiff's Motion to Compel Production. See id. Global subsequently filed general objections to Plaintiff's Second Request for Production of Documents. See Plaintiff's Motion to Strike (Doc. #36). The Court conducted a hearing on November 3, 2008, with no counsel for Global present, and granted Plaintiff's Motion to Compel Production, directing Global to produce the documents by November 24, 2008. See Order (Doc. #30) ("Order of 11/6/08"). The Court directed Plaintiff to send a copy of the Order of 11/6/08 to Global's Atlanta counsel. See Docket. The Order of 11/6/08 specifically stated that "[Global] may be defaulted for failure to comply." Id. On November 23, 2008, Defendants filed a motion for an enlargement of time in which to comply with the Court's Order of 11/6/08. See Motion for Enlargement of Time to Comply with Order and Memorandum in Support Thereof (Doc. #33). Three days later, Plaintiff filed a motion to strike Domestic's general objections to its Second Request for Production of Documents. See Plaintiff's Motion to Strike (Doc. #36). After conducting a hearing on December 16, 2008, see Docket, the Court granted both motions, see Order Granting Motion for Enlargement of Time to Comply with Order

(Doc. #40) ("Order of 1/7/09"); Order of 1/14/09.

On February 18, 2009, Domestic filed a motion to hold Global in contempt for failing to pay the attorney's fees which it had been ordered to pay by the Order of 1/14/09. See Plaintiff's Motion for Contempt (Doc. #43). The Court conducted two hearings on the Motion for Contempt, on April 1, 2009, and April 16, 2009. See Docket. At the first hearing, Domestic requested that default be entered against Global for its failure to comply with the Order of 1/14/09. See Notice of Further Hearing (Doc. #54) ("Notice of 4/2/09"); Order Denying without Prejudice Motion to Adjudge in Contempt (Doc. #56) ("Order of 4/16/09") at 1. The Court found that default was an inappropriate sanction because "there was not a close nexus between the non-compliance and the merits of Global's defense." Order of 4/16/09 at 1-2. The Court stated that "the Motion for Contempt is denied without prejudice to being renewed if Plaintiff is able to identify a sanction which may be imposed upon Global for its non-compliance with the Order of 1/14/09." Id. at 2 (bold omitted).

Also in February of 2009, Domestic propounded interrogatories and requests for production of documents to WLG and Humphrey. See Plaintiff's Motion to Compel Answers to Interrogatories from Defendants World Leadership Group, LLC and Hubert Humphrey (Doc. #52); Plaintiff's Motion to Compel Production of Documents from Defendants World Leadership Group,

LLC and Hubert Humphrey (Doc. #55). By leave of court responses were due on or before April 6, 2009. See Docket. When no responses were received, Domestic filed motions to compel on April 2, 2009. See Plaintiff's Motion to Compel Answers to Interrogatories from Defendants World Leadership Group, LLC and Hubert Humphrey; Plaintiff's Motion to Compel Production of Documents from Defendants World Leadership Group, LLC and Hubert Humphrey. Domestic also filed a motion to compel the attendance of Humphrey and a Rule 30(b)(6) designee for WLG at depositions noticed for April 29, 2009.[2] See Plaintiff's Motion to Compel Attendance of Defendants Hubert Humphrey and World Leadership Group, LLC (Doc. #53). After a telephonic conference on April 23, 2009, the Court granted the three motions to compel and ordered that the responses be provided by April 29, 2009. See Order Re Pending Motions (Doc. #64) ("Order of 4/23/09") at 1-2. The Court noted that the April 29th compliance date had been suggested by Defendants' counsel. See id. at 1 n.1. The Court also directed WLG and Humphrey to attend the depositions, which had been rescheduled for May 4, 2009, apparently as a result of discussions between counsel. See id. at 1-2; see also id. at 2 n.2. On April 29, 2009, Defendants filed an "emergency motion"

[2] Domestic states that the depositions were originally noticed for March 30 and April 13, 2009, and were changed at Defendants' request. See Plaintiff's Motion to Compel Attendance of Defendants Hubert Humphrey and World Leadership Group, LLC (Doc. #53).

in which they sought an enlargement of time to May 1, 2009, at 2:00 p.m. to comply with the Order of 4/23/09. See Emergency Motion to Enlarge Time Comply with Order and Memorandum in Support Thereof (Doc. #65). By text order entered on May 1, 2009 ("Order of 5/1/09"), Judge Smith granted the Motion to Enlarge Time Comply with Order and Memorandum in Support Thereof. See Docket. Defendants missed the May 1st deadline and also failed to produce the discovery responses at the May 4th depositions. See Plaintiff's Motion to Find Defendants World Leadership Group, LLC and Hubert Humphrey in Contempt (Doc. #69). Thereafter, Plaintiff filed a motion to find WLG and Humphrey in contempt, stating that "[t]he corresponding sanction should be default." Id. at 2. Defendants filed a response to the motion on May 26, 2009, in which they stated that as of that date they had filed responses to the interrogatories and requests for production of documents, albeit with objections. See Response to Plaintiff's Motion for Contempt (Doc. #73). The Court conducted a hearing on the motion on June 22, 2009. See Docket. The Court found that Defendants' objections to Plaintiff's discovery requests were "clearly untimely," Memorandum and Order Finding Defendants World Leadership Group, LLC and Hubert Humphrey in Contempt (Doc. #80) ("Memorandum and Order of 6/29/09") at 5 (citing Fed. R. Civ. P. 33(b)(2)); that Defendants failed to comply with the Court's Order of 4/23/09 and Order of 5/1/09, id. at 6; and that Humphrey

"was either unable or unwilling to provide factual information about WLG which Plaintiff had noticed as areas of inquiry for the Rule 30(b)(6) deposition," id., which conduct was "sanctionable," id. The Court further found that Defendants' failure to produce the discovery materials prior to the May 4th depositions "clearly placed Plaintiff's counsel at a substantial disadvantage in those proceedings," id. at 8, and that, as a result, Plaintiff had been prejudiced by Defendants' violations of the Court's orders, id.

Defendants argued that default was "too harsh a sanction for the violations." Id. at 9. The Court stated that "**[a]t this juncture**, [it] agrees." Id. (bold added). The Court granted the motion to the extent that it sought alternative sanctions. Id. Specifically, the Court ordered that: (1) Defendants' objections to Plaintiff's discovery requests be stricken and that Defendants provide complete responses to the discovery requests within twenty-one days of the date of the order, id. at 9-10; (2) Defendants pay Plaintiff's attorney's fees for bringing the motion, id. at 10; (3) Plaintiff be allowed to take another deposition of Humphrey or another "fully and completely prepared Rule 30(b)(6) designee[] of WLG," id., at Defendants' expense,[3]

[3] The Court instructed Plaintiff's counsel to provide Defendants with a good faith estimate of the fees and costs of such deposition, which sum Defendants were ordered to deposit in the Registry of the Court within fourteen days of the date of the order. Memorandum and Order Finding Defendants World Leadership Group, LLC and Hubert Humphrey in Contempt (Doc. #80) ("Memorandum and Order of 6/29/09") at 11.

id. at 11; and (4) Plaintiff be allowed to reconvene the deposition of Humphrey, at Humphrey's expense,[4] id. at 12.

Plaintiff filed the instant Motions to Default on November 24, 2009. See Docket. On January 28, 2010, the Court conducted a hearing on the Motions to Default. See id. After listening to argument, the Court requested that the parties submit supplemental memoranda. See id. The parties complied, and thereafter the Court took the matter under advisement.

II. Law

A. Jurisdiction

1. Subject Matter

Plaintiff invokes the diversity jurisdiction of this Court pursuant to 28 U.S.C. § 1332,[5] see First Amended Complaint ¶ 5, "as the parties are citizens of different states[6] and the amount

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[4] See n.3.

[5] Section 1332 provides, in relevant part, that:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between
>
> (1) citizens of different States;
>
> ....

28 U.S.C. § 1332(a).

[6] As noted previously, Domestic is a federally chartered banking institution authorized to do business in Rhode Island with a principal place of business in Cranston, Rhode Island. First Amended Complaint ¶ 1. Global and WLG are Georgia corporations with principal places of business in Suwanee, Georgia. Id. ¶¶ 2 3. Humphrey is the CEO of

in controversy, exclusive of interest and costs, is greater than $75,000.00," id. Defendants do not contest Plaintiff's allegation that subject matter jurisdiction exists. See Defendants' Answer ¶ 5. Accordingly, I find that subject matter jurisdiction exists.

2. Personal

"Under the Fourteenth Amendment, a court may obtain personal jurisdiction over a defendant through general jurisdiction, specific jurisdiction, personal service upon defendant within the forum state, through specific consent, or through waiver by the defendant." Microfibres, Inc. v. McDevitt-Askew, 20 F.Supp.2d 316, 320 (D.R.I. 1998). Plaintiff alleges that "Global has sufficient minimum contacts with Rhode Island to properly invoke the jurisdiction and venue of this court pursuant to [2]8 U.S.C. § 1391 and pursuant to the express agreement of the parties."[7]

WLG, a major shareholder in Global, and presumably a resident of Georgia. See id. ¶ 4. The Court notes that, according to Plaintiff, Defendants have not produced an accurate address for Humphrey. See Supplemental Memorandum of Plaintiff in Support of Motion to Default Defendants (Doc. #112) ("Plaintiff's Supp. Mem.") at 3; see also id., Attachment 1 (Affidavit of Due Diligence).

[7] According to Plaintiff:

> *Paragraph 23* of the Broker Agreement between the parties that is the subject of this litigation addresses governing law, jurisdiction and venue as follows:
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> > "THIS AGREEMENT AND LENDER'S GUIDELINES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF RHODE ISLAND AND THE OBLIGATION, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF RHODE ISLAND, EXCEPT TO

First Amended Complaint ¶ 6. Defendants admit that Global is subject to the jurisdiction of this Court and that venue in this Court is proper. See Defendants' Answer ¶ 6. With regard to Humphrey and WLG, Plaintiffs allege that "Global is the *alter ego* of Defendants Hubert Humphrey and World Leadership Group, Inc.," First Amended Complaint ¶¶ 41, 48, 59; see also id. ¶¶ 64 ("Defendants Hubert Humphrey and World Leadership Group, Inc. controlled Global's marketing, finances, winding down and transfer of assets and personnel to such a pervasive degree that Global was their *alter ego* and instrumentality."), 72 ("At all times pertinent, Defendants Humphrey and/or World Leadership Group, Inc. controlled Global."), allegations which Defendants deny, see Defendants' Answer ¶¶ 41, 48, 59, 64, 72. Defendants also deny that personal jurisdiction exists as to Humphrey and WLG. See id. ¶ 6.

"[E]ven a defending party who seasonably asserts Rule 12 defenses [including lack of personal jurisdiction] in his answer may forfeit those defenses by his subsequent actions." Plunkett

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> THE EXTENT PREEMPTED BY FEDERAL LAW. In the event of any litigation to the parties in this Agreement, such litigation may only be brought in the state or federal courts located in Providence, Rhode Island[,] and for such purposes Broker hereby submits itself to the jurisdiction of such courts and agrees that service of process may be made upon it by certified mail, return receipt requested."

First Amended Complaint ¶ 7. Defendants admit the existence of the Broker Agreement and that ¶ 23 is correctly quoted. Defendants' Answer ¶ 7.

v. Valhalla Inv. Servs., Inc., 409 F.Supp.2d 39, 41 (D. Mass. 2006); see also Broadcast Music, Inc. v. M.T.S. Enters., Inc., 811 F.2d 278, 279 (5th Cir. 1987)("counsel's involvement in the litigation on [defendants]' behalf constituted an appearance, thereby waiving any defect pertaining to personal jurisdiction"); Jackson v. Hayakawa, 682 F.2d 1344, 1347 (9th Cir. 1982) ("[d]efendants can waive the defect of lack of personal jurisdiction by appearing generally without first challenging the defect in a preliminary motion"); Pruco Life Ins. Co. v. Wilmington Trust Co., 616 F.Supp.2d 210, 214 (D.R.I. 2009)("A defendant may waive the personal jurisdiction defense through conduct, failing to assert it seasonably, or through formal submission to the proceedings.")(citing Marcial Ucin, S.A. v. SS Galicia, 723 F.2d 994, 996 (1st Cir. 1983)); Matthews v. Brookstone Stores, Inc., 431 F.Supp.2d 1219, 1223 (S.D. Ala. 2006)(noting that personal jurisdiction may be waived, "even if a defendant has nominally preserved the defense by reciting it in an answer, if that defendant substantially participates in the litigation without actively pursuing its Rule 12(b)(2) defense"; Microfibres, Inc., 20 F.Supp.2d at 322 ("In Rhode Island when a party makes an appearance in court for any purpose other than to attack the jurisdiction of the court, the right to challenge personal jurisdiction is waived.").

"The critical question, then, is whether [a party's] conduct

gives rise to an implicit waiver of the personal jurisdiction defense, even after it has been properly raised in a responsive pleading." Matthews, 431 F.Supp.2d at 1223. "Determining what constitutes waiver by conduct is more art than a science to be sure, and there is no bright line rule. The Court must consider the passage of time and a defendant's procedural moves in larger context of the case as a whole." Pruco, 616 F.Supp.2d at 216; see also Matthews, 431 F.Supp.2d at 1224 (noting that "the cases are far from uniform" and that "the result seems to turn on the particular circumstances of a particular case")(quoting Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure: Civil 3d § 1391); id. ("Thus, [w]hen considering whether a defendant has forfeited the defense of lack of personal jurisdiction, despite that defendant's technical compliance with Rule 12(h)[8] ..., the court examines all of the relevant

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[8] Fed. R. Civ. P. 12(h) provides in relevant part that:

A party waives any defense listed in Rule 12(b)(2) (5) by:
(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or
(B) failing to either:
(i) make it by motion under this rule; or
(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

Fed. R. Civ. P. 12(h)(1). However, "Rule 12(h) merely sets the outer limits of waiver, without precluding waiver by implication." Matthews, 431 F.Supp.2d at 1223 n.4; see also id. ("[I]t does not suffice to comport with the letter of Rule 12(h); rather, litigants must adhere to its spirit by pursuing a personal jurisdiction defense in a reasonably prompt fashion to expedite and simplify proceedings in the Federal Courts. If a defendant fails to do so, then he may be

circumstances.")(alterations in original)(internal quotation marks omitted).

"[T]wo clear organizing principles for the 'waiver-by-conduct' analysis," Matthews, 431 F.Supp.2d at 1224, have emerged:

> First, courts pay close attention to the length of time that elapses between service of process and a defendant's pursuit of a personal jurisdiction defense via a Rule 12(b)(2) motion. The longer the time interval, the more likely it is that courts will find a waiver. By contrast, the shorter the intervening time period, the more likely it is that no waiver will be construed.
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> Second, in addition to the sheer passage of time, courts assessing whether there is a waiver by conduct look to the extent of the objecting defendant's involvement in the action. The more active a defendant has been in litigating a case, the more likely it is that the defendant will be deemed to have waived defects in personal jurisdiction and impliedly consented to a court's jurisdiction.

Id. at 1224-25 (internal citations and footnote omitted); see also Plunkett, 409 F.Supp.2d at 42 ("In Hamilton, the Second Circuit Court of Appeals held that it was not solely the length of time but also the conduct of the defending party throughout the litigation that determined whether that party had forfeited its Rule 12 defenses. Among the kinds of conduct the Hamilton Court found relevant in its analysis were participation in discovery and pretrial proceedings and the filing of motions.") (citing Hamilton, 197 F.3d 58, 61).

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found to have waived his personal jurisdiction defense, notwith standing its inclusion in a responsive pleading.")(internal citations and quotation marks omitted).

Here, lack of personal jurisdiction over Humphrey and WLG was asserted as an affirmative defense in Defendants' Answer, filed on November 28, 2008. See Defendants' Answer at 9. Prior to that date, on November 23, 2008, Defendants' counsel had entered his appearance "on behalf of Global Equity Lending, Inc., World Leadership Group[,] LLC[,] and Hubert Humphrey." Entry of Appearance and Request for All Notices and Pleadings (Doc. #32). That same day, Defendants filed two motions. See Docket. The following day, Defendants' counsel participated in a previously-scheduled hearing before this Magistrate Judge, see id., and on December 3, 2008, in a status conference before Judge Smith, see id. Since that time, Defendants have participated fully in the proceedings, filing numerous motions, objections, and stipulations and taking part in multiple hearings, telephonic conferences, status conferences, and a settlement conference. See Docket. Thus, not only the length of time, close to fifteen months, weighs in favor of a finding that Humphrey and WLG have waived their personal jurisdiction defense, see Plunkett, 409 F.Supp.2d at 42 (stating that participating in litigation for more than one year forfeits right to litigate issue of personal jurisdiction)(citing In Re Complaint of Rationis Enters., Inc. of Panama, 210 F.2d 421, 429 (S.D.N.Y. 2002)), but their conduct in vigorously litigating the matter also supports a finding of waiver, see Manchester Knitted Fashions, Inc. v. Amalgamated

Cotton Garment & Allied Indus. Fund, 967 F.2d 688, 692 (1st Cir. 1992)("Besides making the appearances noted above, the Fund conducted itself in a way demonstrating that it unmistakably submitted itself to the jurisdiction of the New Hampshire court. By jointly entering a stipulation ... and then subjecting itself to the court's authority for a hearing ... the Fund clearly submitted itself in the cause through its conduct."); Pruco, 616 F.Supp.2d at 216 (noting that defendant "made initial Rule 26 disclosures, participated in negotiation of a protective order, responded to discovery requests and attended a Rule 16 conference"); Plunkett, 409 F.Supp.2d at 42 (finding that defendants had abandoned their defense of lack of personal jurisdiction by "1) participat[ing] in a scheduling conference and engag[ing] in a colloquy with the Court with respect to the nature of the case, 2) conduct[ing] discovery, 3) consent[ing] to Alternative Dispute Resolution, 4) enter[ing] into a stipulation and protective order with the plaintiff[,] and 5) mov[ing] the Court to allow its [sic] Ohio counsel to appear *pro hac vice*").

Based on the foregoing, I find that WLG and Humphrey have waived their personal jurisdiction defense. I therefore find that personal jurisdiction exists as to Global, WLG, and Humphrey.

B. Default

Plaintiff moves to default Global, WLG, and Humphrey

pursuant to Fed. R. Civ. P. 37(b) and 55(b). See Motions to Default. The Federal Rules of Civil Procedure authorize the district court where an action is pending to sanction a party, its officer, director, or managing agent, or a witness designated under Rule 30(b)(6), for disobeying an order to provide discovery, including orders under Rules 26 and 37. See Fed. R. Civ. P. 37(b)(2).[9] Among the listed sanctions are orders

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[9] Fed. R. Civ. P. 37(b) provides in relevant part:

(b) Failure to Comply with a Court Order.

....

(2) Sanctions in the district where the action is pending.

(A) For not obeying a Discovery Order. If a party or a party's officer, director, or managing agent or a witness designated under Rule 30(b)(6) or 31(a)(4) fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters into evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the

"dismissing the action or proceeding in whole or in part; [or] rendering a default judgment against the disobedient party ...." Fed. R. Civ. P. 37(b)(2)(A); see also United States v. Palmer, 956 F.2d 3, 6-7 (1st Cir. 1992)("[I]n the ordinary case, where sanctions for noncompliance with discovery orders are imposed on a plaintiff, the standard judgment is dismissal of the complaint, with or without prejudice, while a judgment of default typically is used for a noncomplying defendant."). Rule 55 authorizes the entry of default and default judgment against a party who has "failed to plead or otherwise defend ...." Fed. R. Civ. P. 55(a).[10] The rule contemplates a two-step process: first, entry

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> failure to obey any order except an order to submit to a physical or mental examination.
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> ....

Fed. R. Civ. P. 37(b).

[10] Fed. R. Civ. P. 55 provides in relevant part:

> (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.
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> (b) Entering a Default Judgment.
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> (1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk on the plaintiff's request, with an affidavit showing the amount due must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.
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> (2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default

of default, and, second, entry of default judgment. See Fed. R. Civ. P. 55(a), (b); see also Halvajian v. Hillman, No. Civ.A. 03-5880(HAA), 2006 WL 827853, at *3 (D.N.J. Mar. 30, 2006)("By its express terms, the Rule contemplates entry of a default when a defendant 'has failed to plead or otherwise defend.' Fed. R. Civ. P. 55(a). After a default has been entered, the clerk of the court may enter default judgment if the plaintiff's claim is for a sum certain; otherwise, the court may enter default judgment upon application of the non-defaulting party. Fed. R. Civ. P. 55(b)."); Chanel, Inc. v. Craddock, No. Civ.A. 05-1593 HAA, 2006 WL 469952, at *2 (D.N.J. Feb. 27, 2006)(same).

A default judgment, however, is "a drastic sanction that should be employed only in an extreme situation." Affanato v. Merrill Bros., 547 F.2d 138, 140 (1st Cir. 1977). "The essential

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> judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals preserving any federal statutory right to a jury trial when, to enter or effectuate judgment, it needs to:
>
> (A) conduct an accounting;
> (B) determine the amount of damages;
> (C) establish the truth of any allegation by evidence; or
> (D) investigate any other matter.
>
> ....

Fed. R. Civ. P. 55(b).

reason for the traditional reluctance of the courts to default a party is the 'policy of the law favoring the disposition of cases on their merits.'" Id. (quoting Richman v. Gen. Motors Corp., 437 F.2d 196, 199 (1st Cir. 1971)); cf. Marx v. Kelly, Hart & Hallman, P.C., 929 F.2d 8, 10 (1st Cir. 1991)("[D]ismissal with prejudice 'is a harsh sanction' which runs counter to our 'strong policy favoring the disposition of cases on the merits.'") (quoting Figueroa Ruiz v. Alegria, 896 F.2d 645, 647 (1st Cir. 1990)). "Discovery abuse, while sanctionable, does not require as a matter of law imposition of [the] most severe sanctions available." Coyante v. Puerto Rico Ports Auth., 105 F.3d 17, 23 (1st Cir. 1997)(citing Anderson v. Beatrice Foods Co., 900 F.2d 388, 396 (1st Cir. 1990)); Affanato v. Merrill Bros., 547 F.2d 138, 141 (1st Cir. 1977)("isolated oversights should not be penalized by a default judgment").

Nevertheless, "[t]he law is well established in this circuit that where a noncompliant litigant has manifested a disregard for orders of the court and been suitably forewarned of the consequences of continued intransigence, a trial judge need not first exhaust milder sanctions before resorting to dismissal." Marcello v. DeSano, No. CA 05-004 ML, 2006 WL 1582404, at *9, (D.R.I. Mar. 23, 2006)(alteration in original). The Supreme Court has stated that "the most severe in the spectrum of sanctions provided by statute or rule must be available to the

district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643, 96 S.Ct. 2778 (1976); see also Communispond, Inc. v. Kelley, No. 96 CIV. 1487(DC), 1998 WL 473951, at *4 (S.D.N.Y. Aug. 11, 1998)("Sanctions under Rule 37 are intended to ensure that a party does not benefit from its failure to comply, and to deter those who might be tempted to such conduct in the absence of such a deterrent.")(internal quotation marks omitted).

"[A] party's disregard of a court order is a paradigmatic example of extreme misconduct." Torres-Vargas v. Pereira, 431 F.3d 389, 393 (1st Cir. 2005); see also Malot v. Dorado Beach Cottages Assocs., 478 F.3d 40, 44 (1st Cir. 2007)("Without a doubt, the disregard of court orders qualifies as extreme behavior ...."); Young v. Gordon, 330 F.3d 76, 81 (1st Cir. 2003) ("[D]isobedience of court orders is inimical to the orderly administration of justice and, in and of itself, can constitute extreme misconduct.")(citing Tower Ventures, Inc. v. City of Westfield, 296 F.3d 43, 46 (1st Cir. 2002); Cosme Nieves v. Deshler, 826 F.2d 1, 2 (1st Cir. 1987)). Thus, "a party flouts a court order at his peril." Torres-Vargas, 431 F.3d at 393; accord Young v. Gordon, 330 F.3d at 82 ("it is axiomatic that 'a litigant who ignores a case-management deadline does so at his

peril.'")(quoting Rosario-Diaz v. Gonzalez, 140 F.3d 312, 315 (1st Cir. 1998)).

When noncompliance with an order occurs, "the ordering court should consider the totality of events and then choose from the broad universe of available sanctions in an effort to fit the punishment to the severity and circumstances of the violation." Young v. Gordon, 330 F.3d at 81 (citing Tower Ventures, Inc. v. City of Westfield, 296 F.3d at 46). The appropriateness of an available sanction depends upon the facts of the particular case. Torres-Vargas v. Pereira, 431 F.3d at 392; see also Marcello v. DeSano, No. CA 05-004 ML, 2006 WL 1582404, at *10 (D.R.I. Mar. 23, 2006)(citing Torres-Vargas, 431 F.3d at 392).

III. Discussion

A. Global

In the instant matter, Plaintiff has moved for entry of default against Global for "failing to comply with this Court's Order of November 3, 2008[,] to produce all documents on or before November 24, 2008[,] requested under Plaintiff's Second Request for Production." Motion to Default Global at 1. According to Plaintiff:

> The parties have discussed compliance with this Order several times in the past year yet the documents have not been produced as required. Moreover, Plaintiff's counsel traveled to Atlanta, Georgia[,] in August 2009, to review these documents at Defendant's warehouse in Alpharetta, Georgia. Accounts payable, bank records, corporate records, ownership records, and proof of tax payments were not furnished notwithstanding their apparent

> existence. This conduct was willful and in bad faith.
> ...
>
> ....
>
> The present Motion goes to the merits of this case. The documents being withheld relate to control of Defendant Global Equity Lending, Inc. by its affiliates and principals, namely, Defendants World Leadership Group, Inc. and S. Hubert Humphrey, Jr. who operated Global Equity Lending, Inc. in several respects as an alter ego.

Id. at 1-2. In addition, Plaintiff notes that the Court on September 11, 2008, stated that it would grant Global's original counsel's motion to withdraw on October 13, 2008, and ordered Global to obtain new counsel by that date, see Plaintiff's Supp. Mem. at 2; Notice and Order of 9/11/08, but that it "failed to do so in accordance with the Court's directive ...,"[11] Plaintiff's Supp. Mem. at 2. Domestic further notes that the Court granted Plaintiff's Motion for Attorney's Fees (Doc. #35) on January 14, 2009, see Order of 1/14/09, which sanction has yet to be paid,[12]

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[11] Global's new counsel, William J. Delaney, Esq., entered his appearance on November 23, 2008. See Entry of Appearance and Request for All Notices and Pleadings (Doc. #32).

[12] Plaintiff asserts that Global has "steadfastly refused to pay a sanction of $1,575 payable to Plaintiff in connection with a prior Motion to Compel." Motion to Default Global at 1 2; see also Order of 1/14/09. Global has represented, and continues to represent, that it is unable to pay the sanction. See Response to Plaintiff's Motion for Contempt (Doc. #44) (stating that Global "lacks the financial wherewithal to comply with the prior Order of this Court compelling Global to tender payment of Plaintiff's counsel's fees"); Recording of 1/28/10 Hearing. Because the United States Supreme Court has differentiated between inability to comply with an order and unwillingness to do so, see Societe Internationale pour Participations Industrielles et Commerciales v. Rogers, 357 U.S. 197, 211, 78 S.Ct. 1087 (1958)("Rule 37 should not be construed to authorize dismissal of this complaint because of petitioner's noncompliance with a pretrial

see Plaintiff's Supp. Mem. at 2.

Plaintiff notes that "Global Equity Lending, Inc.'s objections to Plaintiff's Second Request for Production of Documents were stricken by the Court for untimeliness and inappropriateness."[13] Motion to Default Global at 1. Plaintiff further observes that "Global Equity Lending, Inc. is the initial Defendant in this action, has had over two years to produce these documents, is purportedly judgment-proof, but remains a viable entity." Id. at 2. Global responds that it "on November 24, 2009, caused to be delivered by local counsel to the Plaintiff a disc containing certain account information as propounded in a prior outstanding discovery request." Global Objection at 1. Global further represents that, after email messaging among counsel,

> on December 11, 2009, Georgia counsel to [Global] sent via electronic mail, with attachments, to Plaintiff's counsel Defendant Global Equity Lending's check registers for 2006, 2007[,] and 2008 for review and comments. No documents have been requested thus far. When the documents referenced in the List have been requested, and following delivery to local counsel and review, they will

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production order when it has been established that failure to comply has been due to inability, and not to willfulness, bad faith, or any fault of petitioner."); see also Gaudette, 852 F.2d at 32 (quoting Societe Internationale); Cotton States Mut. Ins. Co. v. Sellars, No. 2:07-CV-868-WKW, 2008 WL 4601015, at *3 (M.D. Ala. Oct. 15, 2008)("A violation of a discovery order caused by simple negligence, misunderstanding, or inability to comply will not justify a Rule 37 default judgment or dismissal."), the Court does not rely on Global's non payment of the monetary sanction in recommending entry of default against Global.

[13] The objections were ordered stricken in the Order of 1/14/09.

be delivered to Plaintiff's counsel.

Id. at 2. Global represents that "it is ... acting in good faith and is aware of its continuing obligations under the discovery rules of the Federal Rules of Civil Procedure," id. at 2; see also Interim Status Update (Doc. #113) at 2 ("The Defendants, by and through their counsel, hereby reiterate counsel's position that he will accede to all discovery requests by the Plaintiff in as expeditious manner as possible. The Defendants also hope that their actions reflected in this Update demonstrate to the Court their continuing conscientiousness to comply with their obligations to supplement their discovery responses ...."). Defendants, however, acknowledge that they "cannot erase their prior conduct relative to prior orders of this Court regarding discovery propounded by the Plaintiff." Response/Reply of Defendants to the Plaintiff's Supplemental Memorandum (Doc. #117) ("Defendants' Reply") at 3.

As noted previously, Plaintiff's Second Request for Production of Documents was originally propounded in August of 2008. The Court ordered production of these documents by November 24, 2008. See Order of 11/6/08. Exactly a year later, Global produced a computer disc containing "certain account information ...." Global Objection at 1. At the January 28, 2010, hearing on the Motions to Default, Plaintiff's counsel stated that the documents at issue still had not been produced,

that Global's partial production–namely, the disc of bank registers–did not include accounts payable,[14] ownership documents, corporate records, or even an accurate address for Humphrey.[15] He further stated that he had made four trips to Atlanta, the last being to conduct the third-party deposition of Wayne Stewart, the outside accountant for Defendants, which "would not have been necessary if Defendants had complied with the rules of discovery and applicable Court Orders." Plaintiff's Supp. Mem. at 3.

Global's belated partial production is, simply put, too little too late. It is clear that Global has not complied with

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[14] According to Plaintiff:

> Opposing counsel promised through an email dated December 29, 2009[,] to produce Global's Accounts Payable in Providence for inspection. That has not occurred. Defendant's co counsel did, however, leave a voicemail message on Plaintiff's counsel's cell phone which was received while counsel was en route to Atlanta on Thursday, January 21, 2010, asking whether Plaintiff's counsel would inspect those Accounts Payable on Friday, January 22, which was already scheduled for Wayne Stewart's deposition. Defendant's counsel had three weeks prior notice of the January 22 deposition but did not raise the possibility of an inspection until the 11th hour when it was too late.

Plaintiff's Supp. Mem. at 4 n.1. Defendants state that on February 3, 2010, Defendants' counsel received six bankers' boxes of documents and notified Plaintiff's counsel that the documents were available for review. Interim Status Report (Doc. #113) at 2.

[15] The address which was provided by Atlanta counsel for Humphrey proved to be inaccurate. See Plaintiff's Supp. Mem., Attachment ("Att.") 1 (Affidavit of Due Diligence). The constable whom Domestic engaged to effect service on Norma Humphrey at that address stated under oath that: "THE CURRENT RESIDENT IS JOHN GUALDONI WHO STATED THAT HE HAS RESIDED AT THE ABOVE ADDRESS SINCE 2002 AND DOES NOT KNOW THE SUBJECT." Id.

the Order of 11/6/08 or the Order of 1/14/09, nor did it timely comply with the Notice and Order of 9/11/08. It is also clear that Plaintiff has been prejudiced by the failure of Global to produce the requested documents in compliance with this Court's Order of 11/6/08. Plaintiff conducted Rule 30(b)(6) depositions of Global's president and chief financial officer without having seen the requested documents. Plaintiff also recently deposed Mr. Stewart, who produced documents pursuant to the deposition subpoena which Plaintiff states "should have been produced by the Defendants who have had control over Mr. Stewart's files at all times pertinent to this action." Plaintiff's Supp. Mem. at 4. Thus, Domestic's preparation of its case has been unnecessarily delayed. See Robertson v. Doe, No. 05 Civ. 7046(LAP), 2008 WL 2519894, at *7 (S.D.N.Y. June 19, 2008)("When a defendant hinders the discovery of relevant information, the plaintiff suffers prejudice as a result of an involuntary delay in prosecuting its action."); id. (noting that defendant's noncompliance "has cost [p]laintiff a tremendous amount of time and what one can only assume to be a tremendous amount of money").

Moreover, the Court has been prejudiced by Global's conduct. It has conducted numerous hearings and telephone conferences with counsel. Such proceedings have been time-consuming and have taken the Court's attention away from other matters. See Affanato, 547 F.2d at 140 ("[I]n considering whether default is

an appropriate sanction[,] other factors must also be borne in mind, such as the time and energies of our courts and the rights of would-be litigants awaiting their turns to have other matters resolved.")(internal quotation marks omitted); Hoxworth v. Binder, Robinson & Co., 980 F.2d 912, 918 (3rd Cir. 1992)("[A] trial judge, responsible for the orderly and expeditious conduct of litigation, must have broad latitude to impose the sanction of default for non-attendance ....")(alterations in original); see also Weisberg v. Webster, 749 F.2d 864, 871 (D.C. Cir. 1984) (noting that if "parties are allowed to flout their obligations, choosing to wait to make a response until a trial court has lost patience with them, the effect will be to embroil trial judges in day-to-day supervision of discovery, a result directly contrary to the overall scheme of the federal discovery rules")(quoting Dellums v. Powell, 566 F.2d 231, 235-36 (D.C. Cir. 1977)); Damiani v. Rhode Island Hosp., 704 F.2d 12, 16 (1st Cir. 1983) ("The day has long since passed when we can indulge lawyers the luxury of conducting lawsuits in a manner and at a pace that best suits their convenience. The processing of cases must proceed expeditiously if trials are to be held at all.").

Plaintiff argues that lesser sanctions have not been effective. Plaintiff's Supp. Mem. at 10-11. The Court is constrained to agree. Global has been ordered to provide responses, had its objections stricken, had a monetary sanction

imposed, and been threatened with a finding of contempt and entry of default. It has still taken until February, 2010, for Plaintiff to receive the documents it requested in August of 2008. Moreover, there can be no doubt that Global was warned of the potential consequences of its behavior. See Notice and Order of 9/11/08 at 2 ("If new counsel has not entered an appearance for Defendant by October 13th, [Global] may be defaulted."); Show Cause Order of 11/3/08 (ordering Global to appear and "show cause why default should not be entered")(bold omitted); Order of 11/6/08 (ordering Global to produce documents and stating that it "may be defaulted for failure to comply"). While the Court previously declined to impose default for Global's non-compliance "because there was not a close nexus between the non-compliance and the merits of Global's defense," Order of 4/16/09 at 1-2, Domestic has convincingly argued that the documents in question go to the merits of Plaintiff's allegations regarding control of Global, see Motion to Default Global at 2 ("The documents being withheld relate to control of Defendant Global Equity Lending, Inc. by its affiliates and principals, namely, Defendants World Leadership Group, Inc. and S. Hubert Humphrey.").

The Court concludes that no lesser sanction would be effective and that default at this point is appropriate. See Malot, 478 F.3d at 45 ("[T]he law is well established in this circuit that where a noncompliant litigant has manifested a

disregard for orders of the court and been suitably forewarned of the consequences of continued intransigence, a trial judge need not first exhaust milder sanctions ....")(quoting HMG Prop. Investors, Inc. v. Parque Indus. Rio Cañas, Inc., 847 F.2d 908, 918 (1st Cir. 1988))(alteration in original); Damiani, 704 F.2d at 15 ("There is nothing in [Rule 37] that states or suggests that the sanction of dismissal can be used only after all the other sanctions have been considered or tried."). Accordingly, I order that Domestic's Motion to Default Global be granted and that the Clerk enter default against Global.

B. WLG and Humphrey

Plaintiff moves to default WLG and Humphrey for "for violation of this Court's discovery Orders ...," Motion to Default WLG and Humphrey at 1, pertaining to Plaintiff's first request for production of documents and first set of interrogatories to WLG and Humphrey, see id. Plaintiff argues that:

> By Order dated June 29, 2009, Magistrate Judge Martin ruled as follows: "Defendants' objections to Plaintiff's request for production of documents and Plaintiff's first set of interrogatories are stricken. Defendants are ordered to provide complete responses to the request for production and interrogatories within 21 days of the date of this Order."
>
> These violations go to the merits of this controversy regarding ownership and control of Global Equity Lending, Inc. by World Leadership Group, Inc. and Humphrey, fraudulent conveyances, breach of contract, alter ego and breaches of fiduciary duty to creditors. The stonewalling on these issues has been willful and in bad faith, justifying the sanction of default.

Plaintiff's Motion to Default WLG and Humphrey at 1. In addition, Plaintiff notes that "[o]n May 4, 2009, [WLG]'s 30(b)(6) designee in Atlanta was unprepared to answer questions about World Leadership Group and Mr. Humphrey professed near compete ignorance of his financial affairs." Plaintiff's Supp. Mem. at 7-8.

In its Memorandum and Order of 6/29/09 the Court summarized at length the conduct which led Domestic to file a motion to find WLG and Humphrey in contempt. See Memorandum and Order of 6/29/09 at 1-5. In striking WLG's and Humphrey's objections to Plaintiff's discovery requests as untimely, see id. at 5, the Court stated that:

> Given that the interrogatories and requests for production had been served upon [WLG and Humphrey] more than 100 days earlier, that the Court had ordered [WLG and Humphrey] to provide answers and responses by April 29th, and that [WLG and Humphrey] were than granted an extension to May 1st at 2:00 p.m.[,] which they also did not meet, their belated attempt to raise objections fails.

Id. at 5; see also id. at 6 ("It is ... indisputable that [WLG and Humphrey] failed to comply with the Court's Orders of 4/23/09 and 5/1/09 to provide the discovery materials at issue. This noncompliance was substantial as [WLG and Humphrey] missed the May 1st deadline by more than three weeks. [WLG's and Humphrey's] failure is even more egregious because the Court selected the original deadline of April 29th in part because it

ha[d] been suggested by Defendants' counsel."). The Court noted that Defendants' counsel acknowledged during Humphrey's May 4, 2009, deposition that "certain discovery of [Humphrey] remains outstanding ...." Id. at 3 (quoting 6/22/09 Hearing Ex. #3 at 5).

The Court also found in its Memorandum and Order of 6/29/09 that at the Rule 30(b)(6) deposition of WLG "Humphrey was either unable or unwilling to provide factual information about WLG which Plaintiff had noticed as areas of inquiry for the Rule 30(b)(6) deposition," id. at 6, and noted that such conduct was "sanctionable," id. (citing Black Horse Lane Assoc., L.P. v. Dow Chem. Corp., 228 F.3d 275, 304 (3rd Cir. 2000)("[T]he purpose behind Rule 30(b)(6) undoubtedly is frustrated in the situation in which a corporate party produces a witness who is unable and/or unwilling to provide the necessary factual information on the entity's behalf."); id. (holding "that when a witness is designated by a corporate party to speak on its behalf pursuant to Rule 30(b)(6), '[p]roducing an unprepared witness is tantamount to a failure to appear' that is sanctionable under Rule 37(d)")(quoting United States v. Taylor, 166, F.R.D. 356, 363 (M.D.N.C. 1996)))(alterations in original); see also Hoxworth, 980 F.2d at 920 ("Rather than select an informed witness, [defendants] designated a [corporate] director who had no knowledge of the relevant facts.").

The Court ultimately found WLG and Humphrey in contempt for failure to comply with the Order of 4/23/09 and the Order of 5/1/09, see Memorandum and Order of 6/29/09 at 6, but also found that default was not appropriate "[a]t this juncture ...," id. at 9. Since that time, however, as noted previously Domestic's counsel made an additional trip to Atlanta on January 22, 2010, to depose Defendants' outside accountant. Plaintiff's Supp. Mem. at 3. According to Domestic, "[t]he third-party deposition of the CPA would not have been necessary if Defendants had complied with the rules of discovery and the applicable Court Orders," id., and the documents produced pursuant to the deposition subpoena "should have been produced by the Defendants who have had control over Mr. Stewart's files at all times pertinent to this action," id. at 4. Notwithstanding this third-party document production, Domestic represents that as of February 1, 2009, the date it filed Plaintiff's Supp. Mem., "several categories of requested documents ... exist but have not been produced as required." Id. at 3 (listing categories).

Domestic was clearly prejudiced by being put in a position of conducting depositions on May 4, 2009, without having reviewed, or even received, the requested discovery materials beforehand, forcing its counsel to suspend Humphrey's deposition. See Memorandum and Order of 6/29/09 at 2-3. Moreover, Humphrey "professed a lack of knowledge or uncertainty about many matters

...," id. at 3, when being deposed "personally and also in his capacity as the Rule 30(b)(6) designee for WLG ...," id.,[16] thereby necessitating another trip to Atlanta by Plaintiff's counsel to depose Defendants' accountant. In addition, the discussion above regarding prejudice to the Court is equally applicable here. See Discussion section III.A. supra at 28-29.

Plaintiff argues that the monetary sanctions previously imposed on WLG and Humphrey have not ended the discovery abuse and that "[t]he Defendants remain undeterred." Plaintiff's Supp. Mem. at 10-11. Thus, in Plaintiff's view, Defendants' misconduct "warrants exceeding the prior sanctions." Id. at 11. The Court agrees.

The Court has already compelled production of the requested documents, answers to Plaintiff's interrogatories, and attendance

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[16] With regard to Humphrey's testimony, the Court stated that:

> A review of the deposition transcripts reveals that Humphrey, who was deposed both personally and also in his capacity as the Rule 30(b)(6) designee for WLG, professed a lack of knowledge or uncertainty about many matters, including whether he was being sued by anyone other than Plaintiff, see Hearing Ex. #2 at 6; what revenue WLG had, see Hearing Ex. #3 at 36; whether WLG had infused money into [Global], see Hearing Ex. #2 at 31 32; where WLG's headquarters was located as of the date of the deposition, id. at 35; whether corporate records were kept over the last five years, id. at 45; where the records of WLG, including financial records, were being held or kept, see Hearing Ex. #3 at 18; how frequently there were board meetings of WLG in 2005 and 2006, see id. at 22 23; who was on WLG's board, see id. at 23; what, if any, transactions were approved by the board of directors between 2005 and 2008, see id. at 24; whether WLG was current with its creditors, see id. at 25; and whether WLG had an address, see id. at 26.

Memorandum and Order of 6/29/09 at 3 4 (internal footnotes omitted).

at depositions. See Order of 4/23/09; Order of 5/1/09. WLG and Humphrey missed both deadlines for production, see Memorandum and Order of 6/29/09 at 7-8, eventually provided responses with objections (which the court struck as untimely), id. at 8, and produced a Rule 30(b)(6) deponent who was at best unprepared and at worst evasive, see id. at 8-9. WLG and Humphrey have been fined twice. See Plaintiff's Supp. Mem. at 2. The Court has found WLG and Humphrey in contempt for failure to comply with the Order of 4/23/09 and the Order of 5/1/09. See Memorandum and Order of 6/29/09 at 6. WLG and Humphrey were on notice that default could be entered by virtue of the fact that Domestic sought default as a sanction in its motion for contempt, see id. at 8, and the Court's statement that default was too harsh a sanction "[a]t this juncture ...," id. at 9. Although WLG and Humphrey "represent they are acting in good faith and are aware of their continuing obligations under the discovery rules of the Federal Rules of Civil Procedure," WLG/Humphrey Objection at 2; see also Defendants' Reply at 3-4, the Court has doubts that WLG and Humphrey, as opposed to Defendants' counsel, will, in fact, comply with their discovery obligations. Default, therefore, is now appropriate. Accordingly, I order that Plaintiff's Motion to Default WLG and Humphrey be granted and that the Clerk enter default against WLG and Humphrey.

IV. Attorney's Fees

Domestic requests that it be awarded its attorney's fees and costs associated with bringing the Motions to Default. See Motion to Default WLG and Humphrey at 9; Motion to Default Global at 5. The Court finds such award appropriate. See Bryant v. City of Marianna, Florida, 532 F.Supp. 133, 137 (N.D. Fla. 1982) ("Federal Rule of Civil Procedure 37 also allows for imposition of costs and attorney's fees upon parties who fail to provide discovery. That sanction, too, is appropriate here. [The plaintiffs'] attorney has been forced to spend a great deal of time and effort seeking discovery. The defendants' behavior has been inexcusable and is responsible for the attorney time and money expended.").

V. Conclusion

For the reasons stated above, Domestic's Motions to Default are GRANTED. The Clerk is directed to enter default against Global, WLG, and Humphrey.

I further order that Domestic be awarded its attorney's fees and costs associated with bringing the Motions to Default. Domestic is directed to submit to the Court an affidavit detailing its attorney's fees and costs related to the instant Motions to Default within ten (10) days of the date of this Memorandum and Order. The Court will then issue an order directing Defendants to pay the fees the Court determines are

reasonable.

ENTER:

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
April 2, 2010