

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**  
**FINDING DEFENDANTS WORLD LEADERSHIP GROUP, LLC**  
**AND HUBERT HUMPHREY IN CONTEMPT**

Before the Court is Plaintiff's Motion to Find Defendants World Leadership Group, LLC and Hubert Humphrey in Contempt (Doc. #69) ("Motion for Contempt" or "Motion"). The Court conducted a hearing on June 22, 2009.

**Facts**

The basis for the Motion is the failure of World Leadership Group, LLC ("WLG") and Hubert Humphrey ("Humphrey") (collectively "Defendants") to answer interrogatories and produce documents in accordance with orders issued by this Court. See Motion at 1. On April 23, 2009, this Magistrate Judge granted motions filed by Plaintiff to compel Defendants to answer interrogatories and to provide responses to requests for production which had been served upon Defendants on or about February 11, 2009. See Order Re Pending Motions (Doc. #64) ("Order of 4/23/09") at 1-2; see also Plaintiff's Motion to Compel Answers to Interrogatories from

Defendants World Leadership Group, LLC and Hubert Humphrey (Doc. #52) at 1 (stating that interrogatories were propounded "on February 11, 2009"); Plaintiff's Motion to Compel Production of Documents from Defendants World Leadership Group, LLC and Hubert Humphrey (Doc. #55) ("Motion to Compel Documents") at 1 (stating that the requests for documents were propounded "on February 11, 2009"). The Court ordered Defendants to provide the answers and the documents by April 29, 2009. See Order of 4/23/09 at 1-2.

In selecting the April 29<sup>th</sup> compliance date, the Court was influenced by the fact that the depositions of Defendants, which had been rescheduled three times, were to be conducted on May 4, 2009, in Atlanta, Georgia, and Plaintiff wanted the documents prior to that date. See Motion to Compel Documents at 1. The Court was also influenced by the fact that Defendants' counsel suggested the April 29<sup>th</sup> date. See Order of 4/23/09 at 1 n.1.

On April 29, 2009, Defendants filed an emergency motion, seeking 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 to Comply with Order and Memorandum in Support Thereof (Doc. #65) ("Defendants' Emergency Motion"). District Judge William E. Smith granted the enlargement on May 1, 2009. See Docket. However, Defendants failed to provide the answers and responses even by this enlarged deadline.

On May 4, 2009, the depositions went forward in Atlanta,

Georgia, without Plaintiff having the answers and responses which the Court had ordered. See June 22, 2009, Hearing Exhibit ("Hearing Ex.") #2 (Deposition of S. Hubert Humphrey) at 75-76 (reflecting Plaintiff's counsel's suspension of the deposition because he had not received the ordered discovery responses); Hearing Ex. #3 (Rule 30(b)(6) Deposition of World Leadership Group) at 5 (reflecting Humphrey's counsel's acknowledgment that "certain discovery of this particular deponent remains outstanding from this past Friday's order at 2:00 p.m. to compel answers to interrogatories and requests -- or responses to requests for production"). 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 WLJ, 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 WLJ had,<sup>1</sup> see

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<sup>1</sup> A designated area of inquiry for the Rule 30(b)(6) deposition was "Finances of World Leadership Group, Inc. for the past five years." Rule 30(b)(6) Deposition of World Leadership Group ("Hearing Ex. #3"), Schedule A. Humphrey, who was the president and leader of WLJ in 2005 and 2006, see Hearing Ex. #2 at 10, claimed not to know the amount of WLJ's revenue and further responded that "You would have to talk with the financial people." Hearing Ex. #3 at 36. When asked whether WLJ showed a deficit every year, he answered: "I couldn't speak to that. I don't know that. I don't think it did, but I don't know that. You would have to talk with my financial people." Id. at 33; see also id. at 25 (responding to the question of whether WLJ owed money to any creditors, Humphrey stated: "I don't know any of the financial details of it at all."); cf. Black Horse Lane Assoc., L.P. v. Dow Chem. Corp., 228 F.3d 275, 304 (3<sup>rd</sup> Cir. 2000) ("[I]f a Rule 30(b)(6) witness is unable to give useful information, he is no more present for the deposition than would be a deponent who physically

Hearing Ex. #3 at 36; whether WLG had infused money into Global Lending Equity Lending, Inc. ("Global Equity Lending"),<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup>

Plaintiff filed the instant Motion for Contempt on May 6, 2009. Defendants filed a response on May 26, 2009, which stated that as of that date they had filed responses to the

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appears for the deposition but sleeps through it."). Humphrey identified Robert Dollar as being the most knowledgeable person about WLG's financial matters and Wood Montgomery as most knowledgeable about the general management of WLG. See Hearing Ex. #3 at 9 10.

<sup>2</sup> This topic was also a designated area of inquiry for the Rule 30(b)(6) deposition. See Hearing Ex. #3, Schedule A. In addition, Robert Dollar, who was WLG's controller and also the controller/chief financial officer at Defendant Global Equity Lending, Inc. ("Global Equity Lending"), testified at the Rule 30(b)(6) deposition of Global Equity Lending on August 5, 2008, that WLG injected \$800,000 into Global Equity Lending. See Hearing Ex. #1 (Rule 30(b)(6) Deposition of Global Equity Lending) at 4, 8, 26.

<sup>3</sup> See n.2.

<sup>4</sup> Humphrey testified that WLG is "a defunct company that's insolvent, does no business." Hearing Ex. #3 at 26.

interrogatories and requests for production of documents. See Response to Plaintiff's Motion for Contempt (Doc. #73). However, Defendants' responses contain objections to many of the interrogatories and requests for production. See Hearing Ex. #4 (S. Hubert Humphrey, Jr.'s Responses to Plaintiff's First Set of Interrogatories); Hearing Ex. #5 (World Leadership Group, Inc.'s Responses to Plaintiff Domestic Bank's First Set of Interrogatories); Hearing Ex. #6 (Defendant S. Hubert Humphrey's Responses to Plaintiff's Requests for Production of Documents); Hearing Ex. #7 (World Leadership Group, Inc.'s Responses to Plaintiff's First Request for Production of Documents).

#### **Discussion**

Defendants' objections are clearly untimely. See Fed. R. Civ. P. 33(b)(2) ("The responding party must serve its answers and any objections within 30 days after being served with the interrogatories."); Fed. R. Civ. P. 34(b)(2)(A) (listing same time period for responding to requests for production). Given that the interrogatories and requests for production had been served upon Defendants more than 100 days earlier, that the Court had ordered Defendants to provide answers and responses by April 29<sup>th</sup>, and that Defendants were then granted an extension to May 1<sup>st</sup> at 2:00 p.m. which they also did not meet, their belated attempt to raise objections fails. Accordingly, the objections

are waived.<sup>5</sup> See Fed. R. Civ. P. 33(b)(4) (stating that “[a]ny ground not stated in a timely objection is waived, unless the court, for good cause shown, excuses the failure.”<sup>6</sup>).

It is also indisputable that Defendants 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 Defendants missed the May 1<sup>st</sup> deadline by more than three weeks. Defendants’ failure is even more egregious because the Court selected the original deadline of April 29<sup>th</sup> in part because it has been suggested by Defendants’ counsel. Accordingly, the Court finds that Defendants are in contempt for failing to comply with the above specified Orders.

The Court further finds 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. Such conduct is sanctionable.<sup>7</sup> See Black Horse Lane

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<sup>5</sup> Many of the objections lack merit. See, e.g., Hearing Ex. 4 (objecting to numerous interrogatories which seek relevant information on the ground that they request information in which Humphrey “maintains an expectation of privacy”).

<sup>6</sup> No good cause has been shown to excuse Defendants’ failure to comply with the requirements of the Rules of Civil Procedure and the Orders of this Court.

<sup>7</sup> It is well established that a 30(b)(6) deponent has an affirmative obligation to educate himself about the matters noticed for the deposition:

Rule 30(b)(6) explicitly requires [a company] to have persons testify on its behalf as to all matters known or reasonably available to it and, therefore, implicitly requires persons to

Assoc., L.P. v. Dow Chem. Corp., 228 F.3d 275, 304 (3<sup>rd</sup> 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)) (alteration in original).

#### **Choice of Sanction**

The failure to provide the materials prior to the May 4,

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review all matters known or reasonably available to it in preparation for the 30(b)(6) deposition. This interpretation is necessary in order to make the deposition a meaningful one and to prevent the “sandbagging” of an opponent by conducting a half hearted inquiry before the deposition but a thorough and vigorous one before the trial. This would totally defeat the purpose of the discovery process .... [P]reparing for a Rule 30(b)(6) deposition can be burdensome. However, this is merely the result of the concomitant obligation from the privilege of being able to use the corporate form in order to conduct business .... [A company] does not fulfill its obligations at the Rule 30(b)(6) deposition by stating that it has no knowledge or position with respect to a set of facts or area of inquiry within its knowledge or reasonably available  
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Calzaturificio S.C.A.R.P.A. S.P.A. v. Fabiano Shoe Co., 201 F.R.D. 33, 36 (D. Mass. 2001) (quoting United States v. Taylor, 166 F.R.D. 356, 362 (M.D.N.C. 1996), aff’d, 166 F.R.D. 367 (M.D.N.C. 1996)) (alterations in original); see also Buycks Robertson v. Citibank Fed. Sav. Bank, 162 F.R.D. 338, 343 (N.D. Ill. 1995) (stating that the duty to present and prepare a Rule 30(b)(6) designee goes beyond matters personally known to that designee or to matters in which that designee was personally involved).

2009, depositions clearly placed Plaintiff's counsel at a substantial disadvantage in those proceedings. Thus, Plaintiff has been prejudiced by Defendants' violation of the Court's orders.

Plaintiff requests that default be entered against Defendants as a sanction for their contempt. See Motion at 2. In the alternative, Plaintiff's counsel indicated at the hearing that Plaintiff seeks: 1) to have all objections to the interrogatories and requests for production stricken and Defendants ordered to provide complete discovery; 2) to have Global Equity Lending, Inc.'s Response to Plaintiff's Requests for Admissions stricken and to deem the requests for admissions admitted pursuant to Rule 36(a)(3); 3) to require Defendants to pay the prior attorney's fee awarded by the Court, see Order of 1/14/09 (Doc. #42) (granting, among other motions, Plaintiff's Motion for Attorney's Fees (Doc. #35)); 4) to require Defendants to pay Plaintiff's attorney's fees and costs related to Defendants' non-compliance with discovery, including but not limited to the costs of the May 4, 2009, Atlanta deposition and the instant Motion, and 5) to require Defendants to produce WLG's Chief Financial Officer, Robert Dollar, and its Executive Vice President, Wood Montgomery, and Hubert Humphrey for deposition in Rhode Island at Defendants' expense prior to the expiration of discovery.

Defendants argue that default is too harsh a sanction for the violations. At this juncture, the Court agrees. See Stewart v. Astrue, 552 F.3d 26, 28 (1<sup>st</sup> Cir. 2009) ("federal law favors the disposition of cases on the merits, and, as a result, 'a default judgment is a drastic sanction that should be employed only in an extreme situation'" (quoting Affanato v. Merrill Bros., 547 F.2d 138, 140 (1<sup>st</sup> Cir. 1977)); Affanato, 547 F.2d at 140 ("The essential 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.'" (quoting Richman v. Gen. Motors Corp., 437 F.2d 196, 199 (1<sup>st</sup> Cir. 1971))). There are other remedies available which the Court is satisfied will effectively sanction Defendants' contempt and cure the prejudice which Plaintiff has suffered. Accordingly, to the extent that the Motion seeks to have default entered against Defendants, the Motion is DENIED.

To the extent that Plaintiff seeks alternative sanctions, the Motion is GRANTED as indicated below:

1. Defendants' objections to Plaintiff's requests for production of documents and Plaintiff's first set of interrogatories are stricken. Defendants are ordered to provide complete responses to the requests for production and the

interrogatories within 21 days of the date of this Order.<sup>8</sup>

2. Defendants are ordered to pay Plaintiff's attorney's fees for the bringing of the instant Motion. Plaintiff's counsel is directed to submit an itemized statement of the time expended in connection with the instant Motion.

3. Plaintiff shall be allowed to take another deposition of Humphrey or one or more fully and completely prepared Rule 30(b)(6) designees of WLG.<sup>9</sup> All fees and costs associated with the taking of this deposition (including the cost of travel, meals, and lodging for Plaintiff's counsel) will be borne by WLG because its failure to prepare Humphrey necessitates the need for the additional questioning. See In re Application of Michael Wilson & Partners, Civil Action No. 06-cv-02575-MSK-KMT, 2009 WL 1193874, at \*5 (D. Colo. Apr. 30, 2009) (imposing all fees and costs on party whose failure to properly prepare Rule 30(b)(6) representative necessitated the need for additional questioning); Great Am. Ins. Co. of New York v. Vegas Constr. Co., 251 F.R.D. 534, 543 (D. Nev. 2008) (noting available sanction of "requiring a corporation to redesignate an adequately prepared witness to

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<sup>8</sup> By separate order issued this date, the Court is extending the following deadlines: fact discovery will close on August 1, 2009; Dispositive motions are due on August 15, 2009; and pretrial memoranda are due thirty days following a decision on dispositive motions, or if no dispositive motions are filed, by August 29, 2009.

<sup>9</sup> The Court imposes this requirement because WLG either failed to reasonably prepare Humphrey for the 30(b)(6) deposition or he was deliberately evasive in responding to questions concerning areas of inquiry noticed for the deposition.

testify in the new deposition at the corporation's expense"); Steinman v. Spinal Concepts, Inc., No. 05CV774S, 2007 WL 4198186, at \*7 (W.D.N.Y. Nov. 7, 2007) (noting that "monetary sanctions are mandatory under Rule 37(d) if corporate party fails to produce a knowledgeable Rule 30(b)(6) representative"); Marker v. Union Fid. Life Ins. Co., 125 F.R.D. 121, 126-27 (M.D.N.C. 1989) (requiring defendant, which failed to provide knowledgeable representative at first deposition, to produce knowledgeable person for further deposition, either in the district where action was pending or, if defendant paid plaintiff's counsel's expenses including travel time, at defendant's headquarters in Pennsylvania).

In addition, because the Court has concerns about WLG's compliance with this Order (based on WLG's failure to comply with previous orders), Plaintiff's counsel shall provide WLG's counsel with a good faith estimate of the fees and costs (including attorney's fees for travel time and conducting the deposition) associated with the reconvened Rule 30(b)(6) deposition prior to Plaintiff's incurring such costs and fees. WLG shall deposit such amount in the Registry of the Court within fourteen days of being notified by Plaintiff's counsel of the estimate.<sup>10</sup>

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<sup>10</sup> Plaintiff's counsel may utilize the fees and costs which were incurred in connection with the Rule 30(b)(6) deposition conducted on May 4, 2009, as a basis for part of Plaintiff's good faith estimate. To this amount, Plaintiff shall add the estimate of attorney's fees for travel time and conducting the deposition.

To the extent that Plaintiff seeks to have the Court order WLG to produce its Chief Financial Officer, Robert Dollar, its Executive Vice President, Wood Montgomery, and Humphrey for deposition in Rhode Island at WLG's expense as a sanction for failing to provide a properly prepared and knowledgeable Rule 30(b)(6) witness on May 4, 2009, the Court declines to grant this relief. While Humphrey testified that Dollar was most knowledgeable about financial matters and that Montgomery had knowledge about the corporation, the Court doubts that it has the authority to force WLG to designate a particular Rule 30(b)(6) deponent.

4. Plaintiff shall be allowed to reconvene the deposition of Humphrey. Because the reconvening is necessitated by Humphrey's non-compliance with the Court's orders, all fees and costs associated with the taking of this deposition (including Plaintiff's attorney's fees for travel time and conducting the deposition) will be borne by Humphrey.<sup>11</sup> In addition, because the Court has concerns about Humphrey's compliance with this Order (based on Humphrey's failure to comply with previous orders), Plaintiff's counsel shall provide Humphrey's counsel with a good faith estimate of such fees and costs (including

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<sup>11</sup> The Court imposes this sanction because Humphrey failed to provide answers to interrogatories and responses to requests for production prior to his May 4, 2009, deposition despite the two orders of this Court. Plaintiff's counsel was disadvantaged and hindered in his examination of Humphrey by the absence of these documents.

attorney's fees for travel time and conducting the deposition) prior to incurring them, and Humphrey shall deposit such amount in the Registry of the Court within fourteen days of being notified by Plaintiff's counsel of that estimate.<sup>12</sup> In lieu of depositing such amount, Humphrey may present himself for deposition in Providence, Rhode Island, within thirty days of the date of this Order.<sup>13</sup> In such case, he shall only be liable for the costs and fees of conducting the deposition and attorney's fees for the conduct of the deposition.

Lastly, to the extent Plaintiff seeks: a) to have Global Equity Lending, Inc.'s Response to Plaintiff's Requests for Admissions stricken and the requests for admissions deemed admitted, and b) to require Defendants to pay the prior attorney's fee awarded by the Court against Global Equity Lending, the Motion is DENIED. The Court is unclear at this juncture as to the extent to which Defendants may be responsible for or control Global Equity Lending. With respect to the

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<sup>12</sup> With respect to the estimates referenced in paragraphs 3 and 4 of this Order, the Court expects that Plaintiff's counsel will make one trip to Atlanta and accomplish both reconvened depositions. Thus, Plaintiff's counsel should provide Defendants' counsel with a good faith estimate for the cost of one round trip airfare ticket to Atlanta, meals, lodging, attorney's fees, and the cost of the court reporter for each deposition. Humphrey shall be responsible for depositing 50% of that amount into the Court Registry and WLG shall be responsible for depositing the other 50%.

<sup>13</sup> Humphrey, however, may only so present himself after he has provided complete responses to the interrogatories and the requests for production.

requests for admissions, the Court also declines to impose this additional sanction because Defendants' counsel disputes that the responses were not submitted within the requisite time. The Court declines to decide this disputed issue of fact without a further hearing.

ENTER:

/s/ David L. Martin  
DAVID L. MARTIN  
United States Magistrate Judge  
June 29, 2009