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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,)	NO. CV-05-3061-MWL
et al.,)	
)	ORDER
Plaintiffs,)	
)	
vs.)	
)	
GLOBAL HORIZONS, INC., et)	
al.,)	
)	
Defendants.)	
_____)	

Before the Court is Plaintiffs' April 30, 2007 motion to hold Defendants Global Horizons, Inc. and Mordechai Orian ("Defendants") in contempt for the failure to comply with the Court's April 19, 2007 order. (Ct. Rec. 423). Pursuant to Local Rule 7.1(c) and this Court's May 7, 2007 order (Ct. Rec. 442), Defendants were permitted to file a response to the instant motion no later than **May 11, 2007**. Defendants filed a response in opposition on May 14, 2007. (Ct. Rec. 453). Although this Court's April 5, 2007 order addressed the failure of Defendants' counsel to follow court procedures and specifically ordered that all future filings that do not comply with this Court's procedures shall be stricken and disregarded by the Court (Ct. Rec. 363), because of the nature of this motion the Court has reviewed and considered Defendants' untimely response.

1 The exact nature of the scope of Defendants' failure to
2 comply with the orders to compel discovery is uncertain. This
3 will be addressed later in this order. However, it is clear and
4 uncontroverted that the emails have not been produced as ordered.
5 In Defendants' response, counsel states that "the only group of
6 documents that I know for sure have not been turned over are the
7 emails." (Ct. Rec. 452, pp. 8-9). After multiple orders from
8 this Court to produce the emails, Defendants have continually
9 failed to do so. On March 20, 2007, the Court granted Plaintiffs'
10 motion to compel discovery and ordered Defendants to provide all
11 email relevant to this litigation within five calendar days. (Ct.
12 Rec. 298). Defendants were put on notice as early as March 20,
13 2007, that they were required, by Court order, to provide
14 Plaintiffs' with all email relevant to the litigation no later
15 than March 25, 2007. While Defendants later filed a motion for
16 relief from judgment (Ct. Rec. 340) and a motion for
17 reconsideration (Ct. Rec. 354) with respect to this discovery and
18 other discovery at issue, the Court denied these motions and
19 Defendants were again ordered on April 5, 2007, to promptly
20 produce all discovery previously ordered (Ct. Rec. 363). By
21 Defendants' own admission (Ct. Rec. 453), as of May 14, 2007, this
22 has not been accomplished.

23 During the April 17, 2007 hearing on Plaintiffs' motion for
24 contempt and sanctions this Court indicated that all previously
25 requested discovery was to be produced by the end of the day on
26 April 20, 2007. Attorney Shiner then advised the Court that his
27 client was out of the state or going out of the state and
28 requested some additional time to meet with his client so they

1 could presumably comply with the Court's order. The Court, upon
2 being so advised, advised the parties that Defendants would have
3 until the close of business on Monday, April 23, 2007, to fully
4 and completely comply with the Court's order.

5 Further, as a result of discussions between Attorney Kuhling
6 and Attorney Shiner at the April 17 hearing, the Court indicated
7 that if the parties were able to agree to a method or process with
8 respect to the email production no later than the close of
9 business on April 23, 2007, the Court would consider such an
10 agreement to be compliant with the Court's order. Attorney Shiner
11 asked for clarification regarding his client's responsibility to
12 produce the emails if an agreement could not be reached. The
13 Court advised Attorney Shiner that the emails must then be fully
14 produced by the close of business on April 23, 2007.

15 Following the April 17 hearing, the Court issued an order for
16 Defendants to comply with this Court's previous orders and produce
17 all documents previously ordered no later than the close of
18 business on April 23, 2007. (Ct. Rec. 404). Defendants were
19 forewarned that their failure to comply in this manner would
20 result in daily sanctions of \$500.00 until they fully complied
21 with the Court's order. (Ct. Rec. 404).

22 The declaration of Mr. Shiner in opposition to the instant
23 motion incredibly states that "had [Global] or I been told at the
24 beginning that Navigent was going to cost upwards of between
25 \$30,000 and \$50,000, [Global] could have begun to dig out the
26 emails much earlier and saved everyone a lot of hassle and time."

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1 (Ct. Rec. 452, p. 6).¹ Counsel's comments appear to indicate that
2 Defendants had not "begun to dig out the emails" despite this
3 Court's earlier orders to produce them. (Ct. Rec. 452, p. 6). As
4 indicated above, Defendants were first put on notice that they
5 were required to produce this information on March 20, 2007 (Ct.
6 Rec. 298), and that requirement was restated by the Court on April
7 5, 2007 (Ct. Rec. 363). There is no excuse for Defendants to not
8 have taken steps to comply with these discovery matters months
9 earlier.

10 Defendants had argued earlier that to comply with this
11 production request would result in the expenditure of "hundreds of
12 man-hours" which would have the effect of "shutting down the
13 normal course of the business of Global Horizons, Inc." (Ct. Rec.
14 398, pp. 11-12). From Mr. Shiner's current declaration on this
15 motion, it appears that one individual, the information technology
16 specialist at Global, spent a few days to acquire the emails and
17 made them available for review on or about May 1, 2007. (Ct. Rec.
18 452, pp. 3-4). Accordingly, it appears that earlier assertions by
19 counsel were misstatements. It would also appear at the time that
20 those statements were made by counsel that no effort had yet been
21 made by Defendants to comply with the Court's earlier orders.
22 Again, why the emails were not made available when this discovery
23 was initially requested or, at a minimum, when initially ordered
24 to be produced has never been explained.

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26 ¹This statement apparently refers to discussions between counsel
27 regarding an agreement concerning the production of the emails. The Court has
28 no knowledge of the details and was not involved in those discussions. The
Court only allowed an agreement between the parties regarding the emails as an
alternate way of complying with a portion of the Court's order and avoiding
monetary sanctions.

1 Mr. Shiner indicates that the emails were made available for
2 him "to do a privilege review" as early as May 1, 2007. (Ct. Rec.
3 452, p. 4). However, for various reasons given, Mr. Shiner states
4 that he has been unable to perform a privilege review but will do
5 so "[j]ust as soon as [he] can." (Ct. Rec. 452, p. 5). While Mr.
6 Shiner indicated that he would do his review as soon as he can, he
7 had not done so as of May 14, 2007, about two weeks after he
8 obtained the emails from his client. Mr. Shiner's statement that
9 he will do so "[j]ust as soon as [he] can" is itself a concern to
10 this Court. It demonstrates that Mr. Shiner and/or his client do
11 not believe the monetary sanctions previously ordered will be
12 enforced and that the orders of this Court do not need to be
13 promptly complied with. Such statements, in the context of all
14 that has occurred with discovery issues in this case, severely try
15 the patience of this Court. The Court expects prompt compliance
16 with its orders and will enforce the same. Moreover, the time to
17 assert any privilege has long since expired. Though the privilege
18 issue has been raised **after** the Court ordered production of
19 discovery, defense counsel has not made any proposal to this Court
20 regarding any privileged materials that may be produced pursuant
21 to the Court's orders. Further, Defendants have not produced the
22 requested emails, let alone those for which they may belatedly
23 assert a privilege. The orders of this Court were for the emails
24 to be produced. Defendants' counsel has taken unilateral action
25 delaying compliance with this Court's orders which has only
26 resulted in increased monetary sanctions. The emails shall be
27 immediately produced as ordered by the Court. The withholding of
28 these documents since April 23, 2007, has subjected Defendants to

1 daily sanctions of \$500.00 and that sanction continues until there
2 has been full production of discovery as ordered by the Court.

3 Although Defendants suggest fault on the part of Plaintiffs'
4 counsel for Defendants' failure to comply with this Court's order,
5 the Court was very clear with respect to Defendants' obligations²
6 and the penalty for continued noncompliance. There is no basis
7 for Defendants' continued refusal to provide the production of
8 documents as repeatedly ordered by the Court.

9 For the reasons set forth herein, sanctions against
10 Defendants in the amount of \$500.00 per day, each calendar day
11 since April 23, 2007, are warranted. Defendants shall be assessed
12 daily sanctions in the amount of \$500.00 as previously indicated
13 by the Court (Ct. Rec. 404) until all discovery previously ordered
14 to be produced is produced, and Defendants will continue to be in
15 violation of this Court's order. Plaintiffs' indicate that
16 "Defendant Global has failed to fully comply because it still has
17 not produced all the documents and has failed to pay the \$2,000
18 sanction." However, it is unclear, from the state of the current
19 record, as to what documents Defendants have and have not
20 produced.³ What is apparent, as conceded by Defendants, is that
21 Global has not complied with the Court's order by producing the
22 emails at issue. (Ct. Rec. 453, p. 3).

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26 ²The Court held that "Defendants shall produce all of the documentation,
27 as previously ordered, or promptly have an established agreement with counsel
for Plaintiffs with respect to these discovery issues." (Ct. Rec. 404, p. 7).

28 ³The clear reference from both parties' pleadings is that some of the
ordered discovery has been proffered.

1 To create a clearer picture of the current issue, and to
2 assist the Court in considering any subsequent motions with
3 respect to Defendants' noncompliance with this Court's orders,
4 counsel for Plaintiffs and counsel for Global are ordered to meet
5 and confer with respect to the underlying issue. The parties are
6 ordered to thereafter file an outline of what items have not been
7 produced as previously ordered by the Court. This joint statement
8 shall be filed with the Court on or before May 29, 2007.

9 Based on the foregoing, **IT IS ORDERED** as follows:

10 1. Plaintiffs' motion to hold Defendants in contempt for
11 the failure to comply with the Court's April 19, 2007 Order (**Ct.**
12 **Rec. 423**) is **GRANTED in part and DENIED in part.**

13 2. Defendants shall immediately produce all documents as
14 previously ordered by this Court.

15 3. Defendants shall immediately pay to Plaintiffs the
16 **\$2,000.00** for the sanctions that were previously imposed by the
17 Court.

18 4. In addition, Defendants shall, by **June 1, 2007**, pay to
19 Plaintiffs sanctions in the amount of **\$1,000.00** for the cost of
20 bringing the instant motion.

21 5. Sanctions are imposed against Defendants for the
22 continued refusal to comply with the Court's order regarding
23 discovery in the amount of **\$12,500.00**, calculated at \$500.00 per
24 day for each calendar day since April 23, 2007 to the date of this
25 order. A check payable to the United States District Court,
26 Eastern District of Washington, from Defendants, in the amount of
27 \$12,500.00 is due no later than **June 1, 2007.**

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