UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-80612-Civ-MARRA/VITUNAC

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

vs.

MICHAEL LAUER,
LANCER MANAGEMENT GROUP, LLC, and
LANCER MANAGEMENT GROUP II, LLC,

Defendants

and

LANCER OFFSHORE, INC.,
LANCER PARTNERS, LP,
OMNIFUND, LTD.,
LSPV, INC., and LSPV, LLC,

Relief Defendants.
_____/

In re:

LANCER PARTNERS L.P.

Debtor.
_____/

ORDER AFFIRMING IN PART MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THIS CAUSE is before the Court upon

1) Order to Show Cause Why Defendant Michael Lauer Should Not be Held in Contempt of the Court's Asset Freeze Order (DE 647), filed December 3, 2004;

Lauer's Response to Plaintiff's Application for an Order to Show Cause Why Lauer Should Not be Held in Contempt of the Court's Asset Freeze Order (DE 685), filed December 27, 2004;

Securities and Exchange Commission's ("SEC") Reply to Defendant Lauer's Opposition to Plaintiff's Application for an Order to Show Cause (DE 727), filed January 18, 2005;

Supplement to Plaintiff's Application for an Order to Show Cause Why Defendant Lauer Should Not be Held in Contempt of the Court's Asset Freeze Order (DE 728), filed January 18, 2005;

Receiver's Joinder With Plaintiff SEC's Application for an Order to Show Cause Why Defendant Lauer Should Not be Held in Contempt of the Court's Asset Freeze Order (DE 759), filed February 1, 2005;

2) Order to Show Cause Why Defendant Michael Lauer Should Not be Held in Contempt of the Court's December 3, 2004 Order Requiring Him to Provide a Disclosure Statement Within Five Days (DE 691), filed December 23, 2004;

Respondent Lauer's Compliance With Rule 26(a)(1) of the Federal Rules of Civil Procedure (DE 703), filed January 3, 2005;

3) Order to Show Cause Why Respondent Should Not be Held in Contempt for Violating the November 8, 2004 Order (DE 675), filed December 17, 2004;

Lauer's Response to the Court's Order to Show Cause Why the Respondent Should Not be Held in Contempt for Violating the November 8, 2004 Order (DE 726), filed January13, 2005;

SEC's Reply to Lauer's Opposition in Response to the Court's Order to Show Cause Why Lauer Should Not be Held in Contempt for Violating the November 8, 2004 Order (DE 738), filed January 24, 2005;

4) Order to Show Cause Why Lauer Should Not be Held in Contempt of this Court's December 22, 2004 and January 5, 2005 Orders Requiring Him to Appear for His Duly Noticed Deposition (DE 719), filed January 13, 2005;

Lauer's Response Affidavit to Court's Order to Show Cause Why the Respondent Should Not be Held in Civil Contempt (DE 754), filed January 27, 2005;

SEC's Reply to Lauer's Opposition to the Court's order to Show Cause why Lauer Should Not be Held in Contempt of the Court's December 22, 2004 and January 4, 2005 Orders Requiring Him to Appear for His Duly Noticed Deposition (DE 770), filed February 4, 2005.

5) The SEC's Notice that Defendant Michael Lauer Has Failed to Produce Responsive Documents in His Custody, Possession, or Control in Response to the Court's February 28, 2005 Order (DE 897) filed April 5, 2005.

THESE MATTERS were referred to the Honorable Ann E. Vitunac, Chief United States Magistrate Judge. Reports and Recommendations dated March 23, 2005 (DE

872) and May 27, 2005 (DE 956) were filed recommending, in pertinent part, that the Court hold Lauer in contempt and sanction him as follows:

1. Incarcerate Lauer until such time that he fully complies with all outstanding Court Orders;

2. Require Lauer to pay a daily monetary fine in the amount of $1,000.00 until such time that Lauer complies with all outstanding Court Orders;

3. Require Lauer to reimburse the SEC for its fees and costs incurred because of Lauer's contemptuous behavior including, but not limited to, the travel costs and expenses incurred in traveling to New York for the January 5-6, 2005 depositions;

5. Strike Lauer's answer and affirmative defenses.

An evidentiary hearing was conducted before the undersigned on December 6, 2005 wherein clear and convincing evidence was presented of Lauer's refusal, over more than a two year period, to comply with clear and unambiguous Court orders to fully and completely answer interrogatories; to produce documents; to appear for deposition; to disclose numerous assets; and of Lauer's diversion of at least $172,258 from the asset freeze. Lauer testified for several hours. His answers were evasive and when confronted with his alleged contemptuous behavior, his attempts to explain his actions were feeble. In addition, Lauer did not present evidence of any reasonable efforts made by him to comply with the court's orders compelling him to appear at the

continuation of his deposition, to answer truthfully and completely interrogatories, to assist the SEC in procuring documents, or to comply with the asset freeze order.

Federal Rule of Civil Procedure 37(b)(2) provides that a court may issue sanctions for failure to obey an order to provide or permit discovery, including an order compelling discovery issued under Rule 37(a). Rule 37(b)(2) specifically authorizes the following sanctions:

(a) an order that the matters regarding the order or any other designated facts be taken to be established for the purposes of the action;

(b) an order refusing the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

(c) an order striking the pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action, or rendering a judgment by default against the disobedient party;

(d) an order of contempt against the party for failing to obey a court order; and

(e) in certain cases, an order requiring a party to produce another person for examination.

Fed.R.Civ.P. 37(b)(2). In addition, Rule 37(b)(2) provides that courts shall require the party that failed to comply with the court's discovery order to pay all reasonable

expenses, including attorney's fees, unless substantial justification is shown for the failure to comply.

The sanctions listed in Rule 37(b)(2) are not mutually exclusive. Courts are not limited to these sanctions and have broad discretion in imposing sanctions under Rule 37. *See National Hockey League v. Metropolitan Hockey Club, Inc*, 427 U.S. 639, 643 (1976) (dismissal upheld where plaintiffs had acted in "flagrant bad faith" and counsel "had behaved with 'callous disregard' of [his] responsibilities");*Guidry v. Continental Oil Co.*, 640 F.2d 523, 533 (5th Cir. 1981), *cert. denied*, 454 U.S. 818 (1982); *Dorey v. Dorey*, 609 F.2d 1128, 1135 (5th Cir. 1980).

The extensive sanctions available to courts under Rule 37 for failure to comply with discovery orders are necessary to, among other things, facilitate discovery and deter abuse of the discovery process.[1] Additionally, it is important that the non-offending party be compensated by the offending party for the added expenses caused by the violation of discovery orders. *Pesaplastic v. Cincinnati Milacron Co.*,

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[1] As stated by the Supreme Court, even 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 deterrent." *National Hockey League*, 427 U.S. at 643. *Accord Gratton v. Great American Communications*, 178 F.3d 1373, 1374-75 (11th Cir. 1999)("The district court also has broad authority under Rule 37 to control discovery, including dismissal as the most severe sanction");*BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 130 F.R.D. 153, 154 (S.D. Fla.1990) ("Enforcement of the sanctions order is necessary to serve the punishment and deterrence goals of the rule and to vindicate the integrity of the Court and discovery process").

799 F.2d 1510 (11th Cir. 1986) (court ordered defendant and defense counsel to pay costs incurred in applying for relief for violation of discovery orders). Moreover, it is proper in appropriate cases to strike pleadings and enter default judgment against parties who violate discovery orders. *Adolph Coors Co. v. Movement Against Racism,* 777 F.2d 1538 (11th Cir. 1985)(court ordered default judgment because defendants refused to comply with discovery order);*Buchanan v. Bowman,* 820 F.2d 359 (11th Cir. 1987) (court struck answer and issued default judgment for failing to comply with court order compelling discovery). Finally, parties can be held in contempt for refusing to comply with discovery orders. *See In re Southeast Banking Corp.*, 204 F.3d 1322, 1335 (11th Cir. 2000); *Securities and Exchange Commission v. First Fin. Group of Texas, Inc.*, 659 F.2d 660 (5th Cir. 1981). As stated by the Supreme Court in*Gompers v. Buck's Stove & Range*, 221 U.S. 418, 450 (1911), "the power of courts to punish for contempts is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law."*See also Roadway Express v. Piper*, 447 U.S. 752, 764 (1980).

Similarly, the Eleventh Circuit recognizes the purposes sanctions should serve. They include: "1) compensating the court and other parties for the added expense caused by the abusive conduct; 2) compelling discovery; 3) deterring others from engaging in similar conduct; and 4) penalizing the guilty party or attorney."*See Carlucci v. Piper Aircraft Corp.*, 775 F.2d 1440, 1453 (11th Cir. 1985).

In order to hold a person in contempt, the Court must determine whether there is clear and convincing evidence that (1) the allegedly violated order was valid and lawful;[2] (2) the order was clear, definite and unambiguous;[3] and (3) the alleged violator had the ability to comply with the order. *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000); *see also Citronelle- Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991); *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 984 (11th Cir.), *cert. denied*, 479 U.S. 853 (1986). Once the moving party makes a prima facie showing that the other party violated the court's discovery order, the non-moving party must prove that it was impossible to comply in order to avoid sanctions. *In re Chase & Sanborn Corp. et al*, 872 F.2d 397, 400 (11th Cir. 1989); *United States v. Rylander*, 460 U.S. 752, 756-57 (1983); *United States v. Roberts*, 858 F.2d 698, 701 (11th Cir. 1988); *United States v. Hayes*, 722 F.2d 723, 725 (11th Cir. 1984). Moreover, the non-moving party must show that all reasonable efforts were made to comply with the court's order. *See Hayes*, 722 F.2d at 725. The non-moving party cannot prove impossibility to comply with the discovery order through mere assertions. *Id.*; *see also In re Chase & Sanborn Corp.*, 872 F.2d at 400 (respondent failed to meet burden of production of impossibility to comply in merely asserting that compliance with discovery order would violate its domestic laws). The burden shifts back to the initiating party only upon a

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[2] Lauer has not asserted that the orders compelling his compliance were invalid or unlawful.

[3] Again, Lauer has not alleged that any order was unclear or ambiguous.

sufficient showing by the alleged contemnor. The party seeking to show contempt, then, has the burden of proving ability to comply. *Combs,* 785 F.2d at 984 ("The party seeking the contempt citation retains the ultimate burden of proof ...").

The trial court's discretion regarding discovery sanctions is not unbridled. *Pesaplastic, C.A., v. Cincinnati Milacron Co,* 799 F.2d 1510, 1519 (11th Cir. 1986). The Eleventh Circuit has consistently held that while district courts have broad powers under the rules to impose sanctions for a party's failure to abide by court orders, dismissal is justified only in extreme circumstances and as a last resort. *Malautea v. Suzuki Motor Co.,* 987 F.2d 1536, 1542 (11th Cir.) *cert. denied,* 510 U.S. 863 (1993); *Ford v. Fogarty Van Lines, Inc.,* 780 F.2d 1582, 1583 (11th Cir. 1986); *State Exchange Bank v. Hartline,* 693 F.2d 1350, 1352 (11th Cir. 1982).

Dismissal is warranted only where noncompliance with discovery orders is due to willful or bad faith disregard for those orders. *Cox v. American Cast Iron Pipe Co.,* 784 F.2d 1546, 1556 (11th Cir.), *cert. denied,* 479 U.S. 883 (1986); *Wouters v. Martin County, Fla.,* 9 F.3d 924, 933-34 (11th Cir. 1993).

Document Production

At the evidentiary hearing, it was established by clear and convincing evidence that Lauer has violated numerous court orders, including Judge Vitunac's clear and unambiguous February 28, 2005 Order granting the SEC's Emergency Motion to Compel Lauer to produce all responsive documents in his custody, possession, or control to the

SEC's First and Second Requests for Production (DE 827). Lauer violated this Order by failing to provide his SFT Bank records, his signed IRS tax returns, and additional documents that he attached to his various pleadings. Lauer failed to provide any evidence that he attempted in good faith to follow the Court's directive[4].

Asset Freeze

It was further established by clear and convincing evidence that Lauer violated the July 17, 2003 Preliminary Injunction Order that froze all of Lauer's assets. This asset freeze acted as a blanket freeze on all "assets or property owned by, controlled by, or in the possession" of Lauer (DE 22 at 5-6). Evidence was presented which showed by clear and convincing evidence that Lauer violated this injunction by diverting into a Lauer/Carens account the proceeds from the sale of a Mini Cooper automobile ($21,500), proceeds from the sale of a BMW motorcycle ($11,500), and $139,258 recouped from surrendering a $412,467 life insurance policy[5].

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[4] For a detailed review of the interactions between Lauer and the SEC regarding the requests for production, please see The SEC's Emergency Motion to Compel Lauer to Produce documents in response to the first and second requests for production (DE 740) and Judge Vitunac's Orders dated February 28, 2005 (DE 827) and March 23, 2005 (872).

[5] The evidence regarding proceeds from the sale of furniture from a New York City condominium was inconclusive and will not be included in the amount required to be repatriated. The Court also finds that the use of dividend income from Millennium shares held by Lauer was not a violation of the Asset Freeze Order.

Appearance at Deposition

If was further established by clear and convincing evidence that Lauer was aware of the deposition scheduled for January 5-6, 2005 and deliberately did not appear. There is no argument that the order compelling him to appear was clear and unambiguous. The day before his deposition was scheduled, Lauer filed a Motion For Reconsideration of the Magistrate Judge's Order compelling him to appear. The Order denying his Motion for Reconsideration was e-mailed, faxed and sent via Federal Express to Lauer on January 4, 2005, the very same day Lauer filed the motion for reconsideration. The Court expressly finds that Lauer received timely notice of the deposition as well as the Order denying his Motion For Reconsideration and rejects Lauer's claim to the contrary. Lauer also testified that he felt the Magistrate Judge was misled to believe that he had not yet fulfilled his obligation to sit for depositions and she had erroneously compelled him to continue when he had already submitted to four days. This assertion does not justify his failure to appear as ordered.

Lauer's unilateral decision to not appear was in willful disregard of the Order compelling him to appear for the January 5-6, 2005 depositions and the Magistrate Judge's Order denying his motion for reconsideration of the matter. Lauer did not present any credible evidence of a good faith effort made by him to comply with the order compelling him to appear for deposition. Indeed, quite to the contrary, Lauer's

testimony demonstrated willful contempt of the order and complete disregard of its mandate.

Interrogatories

It was further established by clear and convincing evidence that Lauer stonewalled the SEC for two years by refusing to answer interrogatories fully and completely. On July 10, 2003, the SEC served its First Set of Interrogatories upon Lauer. On December 10, 2003, the SEC requested that Lauer answer the interrogatories by January 10, 2004. After Lauer failed to do so, the SEC filed a Motion to Compel (DE 130). The Court entered an Order granting the Motion to Compel and specifically ordered Lauer to provide full and complete responses to the interrogatories no later than March 3, 2004 (DE 184). The SEC stated that Lauer provided wholly inadequate responses to the interrogatories, and thus, the SEC filed a motion to hold Lauer in contempt. On May 10, 2004, the Court issued an Order (DE 332) giving Lauer until May 28, 2004 to serve full and complete responses to the interrogatories. The Court also warned Lauer that if he failed to comply with the Order, the Court would entertain an appropriate motion for sanctions. On June 2, 2004, Lauer filed a Request to Extend Time for a More Comprehensive Response to the SEC's Interrogatories (DE 372). On August 19, 2004, the Court issued an Order (DE 491) extending the deadline to September 22, 2004. On September 22nd, Lauer again filed a Motion to Extend the Amount of Time to respond to the interrogatories. On November 8, 2004, this Court

entered an Order (DE 596) requiring Lauer to respond to Plaintiff's interrogatories by no later than November 22, 2004. Lauer failed to follow this Court's instructions. On December 16, 2004, this Court granted the SEC's Application for an Order to Show Cause (DE 675).

Lauer responds that he answered the interrogatories to the best of his ability. However, Lauer admits that he refused to answer interrogatories that he considered irrelevant or too broad. Thus, rather than seeking specific redress from the Court, Lauer chose to ignore certain interrogatories. Further, Lauer attempted to gain an extension of time by claiming that he required copies of certain documents in order to answer the interrogatories. These documents had been lawfully seized by the Receiver. Upon receiving compact discs containing the documents requested, Lauer was dissatisfied because the discs did not contain an index nor a directory. Lauer filed a Motion to Compel an index or directory for the documents contained on the discs. The Court denied Lauer's Motion.[6]

Importantly, Lauer does not assert that he is unable to comply with the Order requiring answers to interrogatories. Instead, Lauer continues to maintain that the scope of the SEC's interrogatories should be limited and narrowed. In doing so, Lauer

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[6] The Court found that no such index nor directory existed prior to the Receiver lawfully seizing the documents in question. The Court refused to order the Receiver to expend the time and resources required to create such an index. Although Lauer suggests that the Court has not yet ruled on his Motion to Compel (Lauer's Response to Order to Show Cause, at 4), the Court clearly denied Lauer's Motion. *See* DE 596.

attempts to challenge the actual Order to Show Cause rather than establish that he has made in good faith all reasonable efforts to meet the terms of the Order.

The SEC has demonstrated by clear and convincing evidence that Lauer has acted in bad faith throughout the discovery process. The SEC sent Lauer a form which would release his signed IRS tax records to them, but he never signed or returned the form. At the hearing, Lauer did not have any explanation as to why he did not reveal, in response to the interrogatory which asked into which accounts he deposited funds, the existence of the Lauer/Carens account. When asked about his SFT off shore bank account, Lauer stated he did not reveal the existence of that account because he understood the interrogatory to ask for the accounts which were active and he considered the SFT account inactive. This account is, however, open and should have been revealed. Lauer never made any effort to supplement his answers to interrogatories, even after promising the undersigned he would in an expeditious manner at the August 2004 hearing.

The SEC urges this Court, in view of the totality of Lauer's actions (including his steadfast refusal to this day to provide required documents, answer interrogatories, appear for deposition and his violations of the asset freeze order), to incarcerate Lauer until he repays the money he has illegally diverted. The SEC also urges this Court to strike Lauer's answer and affirmative defenses.

The SEC met its burden of demonstrating Lauer's violations by clear and convincing evidence. The burden then shifted to Lauer to show why he was unable, over a two and one-half year period, to comply with Court Orders. Other than excuses which were clearly contrived, the best he could was promise to comply now. Lauer agreed, if requested by the Court, to ask his wife to turn over the money deposited into the Lauer/Carens account for the assets which were frozen but sold by Lauer; he promised to sign the IRS waiver, and he agreed to sit for two more days of deposition. Lauer's attorney begged for mercy and urged the Court to be lenient because of Lauer's pro se status.

The Court notes that Lauer has been instructed that he was not excused from compliance with Court Orders and the Federal Rules of Civil Procedure, and warned of the consequences of noncompliance despite his pro se status. Lauer is a sophisticated and savvy businessman who is not timid when it comes to asserting his rights, seeking extensions of time or filing lengthy motions for reconsideration. *See* DE 184. Lauer has acted in bad faith, failed to fulfill his obligations in the discovery process, and repeatedly and blatantly ignored this Court's specific orders. Lauer has not offered any credible evidence for the reasons of his noncompliance.

Federal Rules of Civil Procedure 37(d) authorizes the imposition of sanctions, including rendering judgment by default against the disobedient party, when a party fails to do just one of the discovery violations Lauer has been found to have violated.

This Circuit, and others, has repeatedly affirmed the imposition of extreme sanctions for just some of the flagrant discovery violations seen in this case. *See United States v. $239,500 In U.S. Currency*, 764 F.2d 771 (11th Cir.1985) (dismissal of claims for failure to attend deposition);*Hashemi v. Campaigner Publications, Inc.*, 737 F.2d 1538 (11th Cir. 1984) (dismissal for plaintiff's failure to appear at scheduled depositions); *Bonaventure v. Butler*, 593 F.2d 625 (5th Cir.1979) (plaintiff's suit dismissed for refusals to appear for scheduled depositions);*Shawmut Boston International Banking Corporation v. Duque-Pena*, 767 F.2d 1504 (11th Cir.1985) (default judgment entered against defendant as a Rule 37 sanction for*inter alia*, failure to attend deposition); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987) (striking of the answer and entry of default judgment warranted where the defendant had failed to appear at his first and second court ordered deposition, and failed to respond to interrogatories and requests for production of documents);*Properties Intern. Ltd. v. Turner*,706 F.2d 308, 310 (11th Cir. 1983) (dismissal of the assignee's complaint seeking foreclosure of its mortgage affirmed for failing to provide witnesses at depositions/hearings and incompletely replying to interrogatories);*Jaffe v. Grant*, 793 F.2d 1182, 1189 (11th Cir. 1986) (district court did not abuse its discretion in entering order striking answer and defenses to counterclaim as sanctions for plaintiffs' refusal to comply with discovery orders).

The SEC, as well as this Court, has been more than patient and has given Lauer the benefit of every doubt. At this stage in the case, extreme sanctions are required. Without them, Lauer clearly will continue to act with impunity. This Court believes that Lauer is precisely the type of litigant that the United States Supreme Court had in mind when it held that "Rule 37 sanctions must be applied diligently . . . to penalize those whose conduct may be deemed to warrant such a sanction . . ." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980). Lauer's appeal for one last opportunity to comply with the Orders he has knowingly, wilfully, intentionally and repeatedly violated comes too late.

While the striking of Lauer's defenses is a severe sanction, as the SEC characterized it at the hearing, Lauer's actions in this case demonstrate a "perfect storm" of discovery abuse. Lauer's multitude of transgressions clearly evidence willful disobedience to the rules of civil procedure and to direct court orders. Lauer's flagrant and willful disregard for his discovery obligations and the Court's Asset Freeze Order cannot be countenanced. Not only does it display contempt for the judicial process, but it severely prejudices the SEC's ability to pursue this litigation. Lauer's actions prevent the SEC from being able to prepare adequately to meet his defenses. While the entry of a default judgment would be justified based upon Lauer's actions, the Court will not today impose such a severe sanction. The SEC has asserted serious charges against Lauer. Although Lauer's actions have seriously prejudiced the SEC's

ability to meet his defenses, they should have minimal impact on the SEC's ability to prove its claims which, presumably, it was prepared to do when it filed this case. Hence, while Lauer's actions should preclude him from asserting his defenses to the SEC's claims, it should not give the SEC a victory by default. The SEC should be required to prove its case on the merits to the extent it has not been prejudiced in doing so by Lauer's contemptuous actions. In accordance with the findings above, it is hereby

ORDERED AND ADJUDGED as follows:

The Magistrate Judge's Reports and Recommendations (DE 872 & 956) are AFFIRMED in part. The Court will exercise its broad discretion and finds as follows:

1. Lauer is found to be in contempt of Court.
2. Lauer's affirmative defenses are stricken.
3. At trial, Lauer will not be permitted to present any witness or introduce any evidence that has not already been disclosed and produced by him to the SEC. Lauer shall, however, be permitted to cross-examine and attack the credibility of the evidence presented by the SEC.
4. Lauer shall return all assets that he transferred since his assets were frozen on July 10, 2003. At a minimum $172,258 must be placed into an escrow account controlled by the Receiver, Marty Steinberg, within twenty (20) days of this Order ($21,500 Mini Cooper automobile, $11,500

BMW motorcycle and $139,258 recouped from surrendering life insurance policy). If this money is not placed into the escrow account as mandated here, on the twenty-first day, Lauer shall additionally pay a daily monetary penalty of $1,000 per day until the money is deposited.

5. Lauer shall reimburse the SEC its attorney's fees and costs in connection with the bringing of the contempt proceeding, plus the SEC's travel costs and expenses incurred in traveling to New York for the January 5-6 depositions.[7]

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 24th day of January, 2006.

KENNETH A. MARRA
United States District Judge

copies to:

Magistrate Judge Vitunac

Michael Lauer, *pro se*

Christopher Martin, Esq.

Attorney Andrew D. Zaron, of Hunton & Williams, shall serve copies of this Order upon all parties of interest, and shall file a Certificate of Service with the Court confirming such service.

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[7] When a motion compelling disclosure or discovery is granted, in addition to any other sanction, the judge is required to order the responsible party to pay the reasonable expenses incurred because of any noncompliance with Rules. See Fed.R.Civ.P. 37(a)(4). The amount of the award will be determined once the SEC submits its schedule of attorneys' fees, costs and expenses. *Jaffe v. Sundowner Properties, Inc.* 808 F.2d 1425, 1427 (11th Cir. 1987).