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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Fidelity National Financial,)
Inc., et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 Colin H. Friedman,)
 individually and as trustee)
 of the Friedman Family Trust)
 UDT, dated July 23, 1987;)
 Hedy Kramer Friedman,)
 individually and as trustee)
 of the Friedman Family Trust)
 UDT, dated July 23, 1987;)
 Farid Meshkatali, an)
 individual; and Anita Kramer)
 Meshkatali, individually and)
 as trustee of the Anita)
 Kramer Living Trust, dated)
 July 23, 1987,)
)
 Defendants.)
_____)

No. CIV 03-1222 PHX RCB

O R D E R

Introduction

Since 2002, plaintiffs, Fidelity National Financial, Inc. and Fidelity Express Network, Inc. ("Fidelity"), have been attempting to enforce a nearly \$8.5 million dollar judgment, which was entered

1 in their favor and against defendants in the United States District
2 Court, Central District of California. Over the past five years,
3 Fidelity has engaged in extensive collection activities in this
4 court and in California federal courts, familiarity with which is
5 assumed. This latest dispute arises out of a February 7, 2007,
6 order of this court wherein it granted Fidelity's motion to compel
7 document production from Yariv Elazar, a non-party. Fidelity
8 National Financial, Inc. v. Friedman, 2007 WL 446134 (D.Ariz. Feb.
9 7, 2007) ("discovery order"). The court also granted Fidelity's
10 motion for sanctions "directing [Mr.] Elazar to pay . . . sanctions
11 in the amount of \$1,170.00 to [Fidelity] for attorney's fees
12 incurred in bringing th[at] motion to compel." Id. at *5.

13 Currently pending before the court is Fidelity's "Motion for
14 an Order to Show Cause [(“OSC”)]" seeking to hold defendants Farid
15 Meshkatalai and Anita Kramer Meshkatalai¹ in civil contempt for
16 violating the discovery order directed to Mr. Elazar. Mot. (doc.
17 191) at 3, ¶ 11. Fidelity is also seeking to hold three non-
18 parties in contempt for supposedly violating that discovery order -
19 - "the Kramer Insurance Trust,²" and attorneys J. Daniel Campbell³
20 and Allen Hyman. Id. Lastly, there is a motion pending by
21

22 ¹ Unless necessary to distinguish between Mr. and Mrs. Meshkatalai, they
23 will be collectively referred to throughout as "the Meshkatalais."

24 ² As just stated, Fidelity refers to this trust as "the Kramer Insurance
25 Trust," but according to the Trustee for the "The Anna and Noach Kramer Irrevocable
26 Insurance Trust," which is opposing this motion, there is no such entity as "the
27 Kramer Insurance Trust." See Spector Decl'n (doc. 204) at 10, ¶ 6. The court is
28 proceeding on the assumption that Fidelity is referring to the former trust entity.
In light of the foregoing, for purposes of this order only, "Trust" shall be read
as meaning "The Anna and Noach Kramer Irrevocable Insurance Trust."

³ Mr. Campbell is the "former attorney[]" for the Meshkatalais,
"[i]ndividually and as trustee of the Anita Kramer Living Trust, and Non-Party
Yariv Elazar[.]" Mot. (doc. 210) at 2:14-16.

1 Fidelity to strike the Meshkatais' response to Fidelity's reply.
2 Mot. (doc. 230).

3 **Background**

4 **I. Request for Judicial Notice**

5 With their response, the Meshkatais filed a Request for
6 Judicial Notice ("RJN") (doc. 218), which is seven inches high and
7 totals more than 1600 pages. This RJN is burdensome, not only
8 because of its volume, but because parts of it are illegible. For
9 example, some but not all of the documents (*i.e.*, copies of checks
10 and transcripts) have been reduced in size to the point where it is
11 almost impossible to read them without magnification. Fidelity
12 objects to this RJN, contending that 11 of the 17 proffered
13 exhibits constitute inadmissible hearsay and are irrelevant. Pl.
14 Obj. (doc. 226-4).

15 When properly employed, RJNs are useful litigation devices.
16 The manner in which the Meshkatais' RJN has been presented has the
17 opposite effect. Thus, the court denies their RJN.⁴

18 **II. Prior Motion to Compel**

19 While conducting investigations as part of their post-judgment
20 collection efforts, in September 2006, Fidelity "apparently learned
21 that the judgment debtors who are Defendants in this action had
22 loaned a large sum of money to [Mr.] Elazar, a third party residing
23 in Scottsdale, Arizona." Fidelity, 2007 WL 446134, at *1 (citation
24 omitted). On October 10, 2006, Fidelity "served Elazar with a
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26 ⁴ If ultimately the court grants this motion for an OSC as to the
27 Meshkatais, and orders an evidentiary hearing as to why they should not be held in
28 contempt, they will, of course, be free to seek to introduce any of those documents
as exhibits. The court will rule on the admissibility of the proffered exhibits
at that time.

1 subpoena issued by this Court for documents related to transactions
2 with the judgment debtors." Id. (citations omitted). One day
3 prior to the date Elazar was to produce those documents, Allen
4 Hyman, a California lawyer who indicated that he represented
5 Elazar, sent a letter to Fidelity objecting to that subpoena. Id.
6 (citation omitted). When Elazar did not comply with the subpoena,
7 eventually, Fidelity filed a motion to compel.

8 On December 4, 2006, J. Daniel Campbell entered an "appearance
9 on behalf of "Non-Party Yariv Elazar" and "on behalf of Defendants
10 Farid Meshkatali and Anita Meshkatali, individually and as trustees
11 of the Anita Kramer Living Trust." Docs. 123 and 124. Attorney
12 Campbell did not appear on behalf of the Trust, however. Mr.
13 Campbell also filed a response to Fidelity's motion to compel,
14 again only on behalf of the Meshkatalis and Mr. Elazar - not on
15 behalf of the Trust. See Doc. 125.

16 **A. Discovery Order**

17 After making a threshold determination that it had
18 jurisdiction over Elazar because attorney Campbell had appeared on
19 his behalf, the court found no merit to any of the objections to
20 the motion to compel. See Fidelity, 2007 WL 446134, at *1 n.1.

21 Recognizing that "the purpose of post-judgment discovery under
22 Rule 69(a) is to discover concealed or fraudulently transferred
23 assets[,] " this court found that Fidelity "made a strong showing
24 that the documents sought from Elazar are both relevant and
25 necessary in light of [its] discovery of a substantial loan from
26 the judgment debtor to Elazar." Id. at *2 (citations omitted).
27 Discounting defendants' suggestion of an "improper motive" by
28 Fidelity in the timing of the Elazar subpoena, the court stated

1 that it "perceive[d] nothing sinister about [Fidelity's] motives"
2 in that regard. Id. at *3. The court explained, "Defendants cast
3 greater doubt on their own motives through their silence on the
4 issue of the alleged loan transaction and their hollow assertions
5 that the documents sought from Elazar are irrelevant." Id.
6 Finally, in granting Fidelity's motion to require Mr. Elazar to pay
7 Fidelity's attorney's fees, the court noted that the "underlying
8 objections to the subpoena served on Elazar border on frivolous."
9 Id. at *4.

10 **B. Alleged Failure to Produce**

11 According to Fidelity, some but not all of the subpoenaed
12 documents were produced. Fidelity maintains that "[k]ey documents
13 were omitted from that production, including documents evidencing
14 the Meshkatais and [the] Trust's violations of an asset freeze" in
15 the California RICO action. See Mot. (doc. 191) at 2, ¶ 8. It
16 therefore, asserts that "[t]here is [u]ndisputed, [c]lear, and
17 [c]onvincing [e]vidence that *Elazar* [v]iolated the Court's
18 [o]rders." Reply (doc. 226) at 2:21 (emphasis added).

19 Despite the foregoing, Fidelity has turned its attention away
20 from Elazar for the moment. Fidelity is seeking to hold the
21 Meshkatais, the Trust and attorneys Campbell and Hyman in contempt,
22 but not Mr. Elazar. As to the Meshkatais, Fidelity maintains that
23 "[w]ithout Elazar's knowledge, Farid Meshkatai produced the
24 documents and Anita Meshkatai paid the sanctions with money from
25 the Trust." Id. at 2, ¶ 7. The copy of the check in the record
26 purporting to be that payment is written on the account of Eliani,
27
28

1 LLC,⁵ however, not on any trust account. Kroll Decl'n (doc. 191-
2 2), exh. 38 thereto.

3 To show Elazar's supposed lack of knowledge as to the claimed
4 incomplete production of documents and payment of the sanctions by
5 Mrs. Meshkatali, Fidelity heavily relies upon Elazar's May 8, 2008,
6 deposition. Apparently Elazar was not represented by counsel then.
7 Id. at 2, ¶ 9; see also Gulden Decl'n (doc. 216) at 19, ¶ 3; Kroll
8 Decl'n (doc. 191-2), exh. 12 thereto at 6:21-23. The record is
9 replete with alleged irregularities surrounding that deposition.

10 Suffice it to say for now that during his deposition, Mr.
11 Elazar was specifically asked whether he knew attorneys Campbell or
12 Hyman. When asked how he knew Mr. Hyman, Elazar testified that he
13 "never met" Hyman, but that Hyman "called" him and Hyman "asked
14 [him] a few questions." Id., exh. 12 thereto at 10:24-25 - 11:1.
15 When asked "what questions" Hyman asked of him, Elazar replied:
16 "What is written on the subpoena and what kind of documents
17 [Elazar] [was] going to send them." Id., exh. 12 thereto at 11:2-
18 4. Mr. Elazar does not think he sent the documents to attorney
19 Hyman. See id., exh. 12 thereto at 11:6-7. In fact, later in his
20 deposition, Mr. Elazar stated that he "want[ed] to make clear[]"
21 that he did not give Mr. Hyman anything. Id., exh. 12 thereto at
22 117:2-10.

23 As to attorney Campbell, Elazar testified that he did not know
24 him. Id., exh. 12 thereto at 11:8-10. Elazar further testified

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26 ⁵ The court is well aware of the seemingly close relationship between
27 Eliani and the Trust. As the Trustee explains, "Eliani is a joint venturer with
28 Elazar of three real estate projects." Spector Decl'n (doc. 204) at 10, ¶ 8.
"Eliani was a joint venture between . . . Elazar and Farid Meshkatali to renovate
houses in Arizona." Id. The Trustee further declares that "[t]he Trust provided
capital to Elazar." Id.

1 that he was unaware that Campbell and another attorney in his
2 office filed a response to Fidelity's motion to compel. Id., exh.
3 12 thereto at 11:13-18. Elazar continued, testifying that he was
4 not aware of this court's discovery order, or the sanctions award.
5 Id. at 12:2-5; and 9-11. When asked if he was "aware that Eliani,
6 LLC paid the fine on [his] behalf[,]" Mr. Elazar responded, "No. I
7 never know that I need to pay something." Id. at 12:12-14. When
8 asked whether he had "any problem with responding to [the subpoena]
9 and producing the documents[,]" Elazar replied, "No." Id. at 13:5-
10 8.

11 Fidelity is seeking five separate forms of relief for the
12 alleged civil contempt. First, it is seeking to hold "contemnors .
13 . . joint[ly] and severally liable" for unspecified "costs incurred
14 to uncover [their] fraud[.]" Mot. (doc. 191) at 17. The other
15 three forms of relief which Fidelity is seeking pertain only to the
16 Meshkatais and the Trust. It seeks a court order requiring them to
17 [p]roduce [d]ocuments [e]videncing [t]ransfers to Elazar and
18 Eliani's [a]ssets." Id. at 17:22-23. Fidelity further seeks that
19 the Meshkatais and the Trust be ordered to "[p]roduce an
20 [a]ccounting for Eliani." Id. at 18:10. Fidelity next requests
21 that the court impose a two day notification on the Meshkatais and
22 the Trust prior to "making any payment on behalf of Eliani or the
23 joint venture with Elazar[.]" Id. at 18:23-24. Finally, it
24 requests that the court order the Meshkatais and the Trust "to pay
25 to the RICO clerk of court [*i.e.*, the clerk for the United States
26 District Court, Central District of California], the amount of the
27 lien they released in violation of the asset freeze and hid by
28 their violations of this Court's orders." Id. at 19:7-9.

1 **C. Meshkatais**

2 The Meshkatais oppose Fidelity's motion, which they assert is
3 based upon "unsupported allegations that [their] former attorney,
4 Allen Hyman . . . , did not produce documents given to him by
5 Elazar, and that Elazar was unaware that Hyman represented him in
6 connection with the" discovery order. Resp. (doc. 216) at 1:17-20.
7 Characterizing Fidelity's motion as "an attempt to prejudice this
8 Court against [them] and vexatiously multiply proceedings in this
9 Court] and in the related California actions, the Meshkatais
10 contend that the court should "summarily" deny this motion. Id. at
11 3:8-10. Alternatively, the Meshkatais seek a hearing during which
12 they want to cross-examine Fidelity's attorney herein, Janice M.
13 Kroll, and "afford [Mr.] Elazar the opportunity to clarify his
14 deposition testimony." Id. at 3:12-13 (footnote omitted).

15 Fidelity responds that it has shown by clear and convincing
16 evidence that the Meshkatais "aided" the violations of this court's
17 discovery order; they are "[l]egally '[i]dentified with Elazar[;]"
18 and they have acted in "bad faith." Reply (doc. 226) at 5:2 and
19 12. Therefore, the court should grant Fidelity's motion and find
20 the Meshkatais in contempt.

21 **D. Attorney Campbell**

22 Mr. Campbell's involvement with the present action appears to
23 have been fairly limited. He represented the Meshkatais and
24 purportedly Mr. Elazar in connection with the motion to compel,
25 after being contacted by California attorney Hyman, who at the time
26 was purportedly representing Elazar. Campbell Aff. (doc. 210-2) at
27
28

1 2-3.⁶ He filed and prepared a response to the motion to compel on
2 their behalf. Id. at 3, ¶ 11 (citation omitted). After entry of
3 the discovery order, Mr. Campbell avers that he "immediately
4 contacted Mr. Hyman to determine the quickest way for the documents
5 to be produced to [Fidelity's] counsel." Id. at 3, ¶ 12. They
6 "decided to produce the documents through Mr. Hyman's office, as he
7 had been more extensively involved in the litigation." Id. Also,
8 given the proximity of Mr. Hyman's office to the office of
9 Fidelity's counsel in California, "Mr. Hyman could get the
10 documents to [Fidelity] faster than" could Campbell's office. Id.
11 According to Mr. Campbell, the documents were produced through
12 Hyman's office on February 22, 2007. Id. at 3, ¶ 13.

13 "At best," attorney Campbell describes Fidelity's motion as "a
14 heavy-handed attempt to intimidate anyone who would stand in its
15 way." Id. at 3:4-5. At worst, according to Campbell, this motion
16 "may constitute a blatant misrepresentation to this Court." Id. at
17 3:6-7 (footnote omitted). Mr. Campbell strongly argues that he
18 should not be held in contempt because the documents were produced
19 and Fidelity did not "suffer[]" any "harm" in that its attorneys
20 were compensated through the award of sanctions. Id. at 5:19-20.
21 Moreover, Campbell asserts that he "acted in good faith," and thus
22 cannot be held in contempt. Id. at 5.

23 Alternatively, as did the Meshkatais, Campbell requests an
24 evidentiary hearing. Id. at 9. He also wants the "opportunity to
25 conduct appropriate discovery[.]" Id. Believing the Elazar's

26
27 ⁶ The court is aware of Fidelity's "Evidentiary Objections" to Campbell's
28 declaration, and its request to strike included therein. Obj. (doc. 225-2) at 2:1.
However, because Fidelity is not objecting to any of the paragraphs from Campbell's
declaration upon which the court is relying herein, it denies this request as moot.

1 deposition "was extremely irregular in the manner in which it was
2 taken[,] " Campbell wants to be allowed to conduct a full
3 investigation into th[at] . . . deposition . . . and the motives of
4 Fidelity in its decision to attack counsel." Id. at 3 n.1.
5 Therefore, he requests that the court grant a scheduling conference
6 in that regard. Id. at 9-10.

7 Fidelity retorts that "clear and convincing evidence shows
8 that Campbell aided" violations of the discovery order. Reply
9 (doc. 225) at 8-9 (emphasis omitted). Moreover, from Fidelity's
10 standpoint, Campbell "failed to insure that Elazar took all
11 reasonable steps to comply with" the discovery order. Id. at 2:3.
12 Further, Fidelity asserts that Campbell "acted recklessly and with
13 an improper purpose[,] " and he "unreasonably multiplied
14 proceedings." Id. at 6:2; and at 7:9-10. In light of the
15 foregoing, Fidelity requests that the court issue an OSC regarding
16 civil contempt as to Mr. Campbell. Id. at 9:24-25.

17 **E. Attorney Hyman**

18 Attorney Hyman did not respond at all to this motion, despite
19 the fact the he was personally served. See Doc. 192 at 2.
20 Fidelity urges this court to use Hyman's silence as a basis for
21 finding that: "Elazar did not retain Hyman; Elazar did not
22 authorize Hyman to oppose the subpoena; Elazar did not authorize
23 Campbell to appear on his behalf; Elazar did not authorize Campbell
24 to oppose the subpoena and the motion to compel; Hyman did not
25 notify Elazar of the [discovery] order, and Elazar did not produce
26 documents to Hyman." Reply (doc. 225) at 6-7. More reasonably,
27 given Hyman's failure to respond, Fidelity believes that the court
28 should issue an OSC as to him.

1 **F. Trust**

2 Fidelity contends that the Trust, another non-party,
3 should be held in contempt because it, along with the Meshkatais,
4 purportedly "concealed Fidelity's judgment from Elazar in order to
5 use Elazar to implement fraudulent transfers and shelter assets
6 from Fidelity." Mot. (doc. 191) at 1:10-11. Fidelity further
7 claims that "the Meshkatais and the Trust simply pretended to this
8 Court that they were Elazar - without Elazar's knowledge, their
9 attorneys appeared for Elazar, objected to the subpoena, and
10 produced only select documents to Fidelity." Id. at 1:12-14
11 (emphasis in original).

12 The Trust first objects to Fidelity's motion for an OSC based
13 upon lack of personal jurisdiction. Second, the Trust objects,
14 arguing that any contempt proceeding as to it should be brought in
15 the Central District of California because if any court order was
16 violated by Mrs. Meshkatai writing the sanctions check, it was an
17 order issued by that court in the RICO action.

18 Fidelity responds by seeking to have the court strike the
19 Trust's response as untimely. If the court denies that request,
20 Fidelity further responds that the court does have personal
21 jurisdiction over the Trust for several reasons, which are set
22 forth below in a brief discussion of that issue. On the merits,
23 Fidelity argues that the Trust is "legally identified with Eliani
24 and" the Meshkatais, and it participated in the alleged "fraud" by
25 supposedly paying "Campbell to represent Elazar[,] and to "pay the
26 Court-ordered sanctions." Reply (doc. 222) at 7:11-13 (citations
27 omitted). Therefore, Fidelity maintains that the court should
28 issue an OSC as to why the Trust should not be held in civil

1 contempt.

2 **Discussion**

3 **I. Motion to Strike**

4 "[T]he Local Rules make no provision for a 'reply to a
5 reply.'" Spain v. EMC Mortg. Co., 2009 WL 464983, at *2 (D.Ariz.
6 Feb. 24, 2009). Those Rules "are explicit in allowing a
7 'Memorandum by Moving Party[;]' a 'Responsive Memorandum[;]' and a
8 'Reply Memorandum' - nothing more." Id. (citing LRCiv 7.2).
9 Therefore, as LRCiv 7,.2(m)(1) allows, the court grants Fidelity's
10 motion to strike the Meshkatai's "Response to Plaintiffs' Reply,"
11 which is docket #228. That "response," despite its title is, in
12 effect, a prohibited "reply to a reply," which the court will not
13 consider.

14 **II. Motion for Order to Show Cause**

15 Before addressing the merits of Fidelity's motion, the court
16 will briefly consider the Trust's lack of personal jurisdiction
17 argument.

18 **A. Personal Jurisdiction**

19 **1. Strike**

20 Preliminarily, the court must consider Fidelity's contention
21 that the court should "strike" the Trust's response. Reply (doc.
22 222) at 2. Invoking LRCiv 7.2(I), Fidelity seeks to have the court
23 "strike" the Trust's response as untimely because it was filed two
24 weeks late. Id. Pursuant to that subsection, a court "may . . .
25 deem[]" failure to fully comply with LRCiv 7.2 "consent to the
26 denial or granting of the motion and the court may dispose of the
27 motion summarily." LRCiv 7.2(I) (emphasis added). That Rule makes
28 no express provision for striking untimely responses, however.

1 Because motions to strike are generally disfavored, see LRCiv
2 7.2(m)(1), the court will not strike the Trust's response.
3 Similarly, in the exercise of its discretion, the court will not
4 deem the Trust's untimely response as consent to granting Fidelity's
5 contempt motion.

6 **2. Merits**

7 After stressing that it is not a party to this action, the
8 Trust asserts that this court should not exercise personal
9 jurisdiction over it because it has never: (1) "appeared before this
10 Court; (2) consented to jurisdiction of this Court; or (3) waived
11 its right to raise lack of personal jurisdiction." Resp. (doc. 204)
12 at 3:5-6. The Trust further states that it "has no ties to the
13 State of Arizona." Id. at 3:8-9. The Trust also claims that it is
14 not domiciled here, and does not do business here. See id. at 3:9.

15 Fidelity counters that the court does have personal
16 jurisdiction over the Trust because it (1) "has waived any
17 objections[;]" (2) "was properly served[;]" (3) "consented to
18 jurisdiction in Arizona[;]" (4) "has regular and continuous contacts
19 in Arizona, does business in Arizona, owns real estate in
20 Arizona[;]" and (5) "the contemptuous conduct which is the subject
21 of this Motion arises out of the Trust's business and real estate
22 holdings in Arizona." Reply (doc. 222) at 2-3; and 5:3.

23 Preliminarily, the court stresses that the Trust's non-party
24 status does not preclude a finding of contempt against it. See,
25 e.g., Peterson v. Highland Music, Inc., 140 F.3d 1313, 1323 (99th
26 Cir. 1998) (internal quotation marks and citations omitted) (non-
27 party respondent may be held in contempt either if he "abet[s] the
28 defendant [in violating the court's order] or [is] legally

1 identified with [the defendant, . . . and . . . the non-party ha[d]
2 notice of the order[]"). In any event, at this juncture, the court
3 finds the Trust's personal jurisdiction arguments "premature"
4 because it deems the process here to be the OSC, which the court has
5 not yet issued. See In re Resource Technology Corp., 2008 WL
6 5411771, at *3 (N.D.Ill. Dec. 23, 2008). Accordingly, the court
7 will leave for another day the Trust's contention that this court
8 lacks personal jurisdiction.

9 **B. Scope of Alleged Contempt**

10 Fidelity's motion can easily be read, as did the Meshkatais, as
11 seeking contempt sanctions for violating orders other than the
12 discovery order issued by this court. Fidelity makes clear in its
13 reply, however, that it is limiting the scope of its contempt motion
14 to alleged violations of this court's discovery order. Reply (doc.
15 226) at 2. Given this clarification, the court will confine its
16 inquiry to whether an OSC should issue for alleged violations of the
17 February 7, 2007 discovery order.

18 **C. Governing Legal Standards**

19 "[C]ourts have inherent power to enforce compliance with their
20 lawful orders through civil contempt." Spallone v. United States,
21 493 U.S. 265, 276 (1990). In a civil contempt proceeding "[t]he
22 moving party has the burden of showing by clear and convincing
23 evidence that the contemnors violated a specific and definite order
24 of the court." Federal Trade v. Enforma Natural Products, 362 F.3d
25 1204, 1211 (9th Cir. 2004) (internal quotation marks and citations
26 omitted). A "mere[] . . . preponderance of the evidence[]" will not
27 suffice. In re Dual-Deck Video Cassette Recorder Antitrust Litig.,
28 10 F.3d 693, 695 (9th Cir. 1993). Generally, a violation is shown

1 by the party's "failure to take all reasonable steps within the
2 party's power to comply." Reno Air Racing Ass'n., Inc. v. McCord,
3 452 F.3d 1126, 1130 (9th Cir. 2006) (internal quotation marks,
4 citation and footnote omitted). Willfulness is not an element of
5 contempt. See id. Once the moving party meets its burden, the
6 burden "shifts to the contemnors to demonstrate why they were unable
7 to comply." Enforma Natural Products, 362 F.3d at 1211 (internal
8 quotation marks and citations omitted).

9 "[C]ivil contempt sanctions, or those penalties designed to
10 compel future compliance with a court order, are considered to be
11 coercive and voidable through obedience, and thus may be imposed in
12 an ordinary civil proceeding upon notice and an opportunity to be
13 heard." Int'l Union v. Bagwell, 512 U.S. 821, 827 (1994). "Neither
14 a jury trial nor proof beyond a reasonable doubt is required." Id.
15 Thus, the Ninth Circuit "has repeatedly held, . . . , that finding a
16 party in civil contempt without a full blown evidentiary hearing
17 does not deny due process of law to a contemnor." United States v.
18 Ayres, 166 F.3d 991, 995 (9th Cir. 1999) (citations omitted). Of
19 particular significance here, however, is the Ninth Circuit's
20 explicit recognition that "a district court ordinarily should not
21 impose contempt sanctions solely on the basis of affidavits[,]"
22 unless those affidavits are uncontroverted. Id. (internal quotation
23 marks and citations omitted).

24 **D. Hearing**

25 In the present case, as earlier noted, if the court does not
26 summarily deny this motion, in the alternative, the Meshkatais and
27 Mr. Campbell request an evidentiary hearing. Fidelity did not
28 respond to these requests. Instead, Fidelity adheres to the view

1 that it has shown by clear and convincing evidence that the
2 Meshkatais, the Trust and attorneys Campbell and Hyman should be
3 held in civil contempt for violating this court's discovery order.

4 The court extensively reviewed these submissions, but even a
5 quick perusal highlights the necessity of a full-blown evidentiary
6 hearing. The sheer volume of the submissions and the widely varying
7 interpretations which Fidelity and each of the respondents cast upon
8 them, especially the Elazar deposition, belies Fidelity's assertion
9 that it has met its burden of proof on this record. The filed
10 submissions are at times contradictory and rife with credibility
11 issues. Given that state of the record, it is impossible and, in
12 fact, it would be impermissible to resolve the issue of civil
13 contempt based solely upon the competing affidavits, declarations
14 and other filed documents. An evidentiary hearing will allow for a
15 fully developed factual record, including credibility assessments.
16 A hearing will serve the additional critical purpose of insuring
17 that Fidelity and the respondents meet their respective burdens of
18 proof.

19 Any discussion of contempt remedies is obviously premature.
20 The court emphasizes, as earlier alluded to though, that Fidelity is
21 overreaching in terms of the scope of the remedies which it purports
22 to seek. To the extent Fidelity is seeking to have this court enter
23 any orders with respect to the related California actions, the court
24 declines to do so, and will not entertain any further requests in
25 that regard. See, e.g., Barrett v. Avco Financial Services
26 Management Co., 292 B.R. 1, 8 (D.Mass. 2003) (citing, *inter alia*,
27 Baker v. Gen. Motors Corp., 522 U.S. 222, 236, 118 S.Ct. 657, 139
28 L.Ed.2d 580 (1998)) ("[I]t is a well-established principle that only

1 the court that issued an order or injunction has subject matter
2 jurisdiction to hold in contempt a violator of that order or
3 injunction.")

4 Conclusion

5 For the reasons set forth herein, IT IS ORDERED that:

6 (1) "Fidelity's Motion to Strike Farid and Anita
7 Meshkatalai's Response to Plaintiff's Reply in
8 Support of Motion for an Order to Show Cause
9 re: Civil Contempt for Violation of the Court's
10 Orders to Yariv Elazar[] as not Authorized by
11 Statute, Rule, or Court Order" (doc. 230) is GRANTED;

12 (2) Fidelity's "Motion for an Order to Show Cause re:
13 Civil Contempt against Farid Meshkatalai, Anita Meshkatalai,
14 the Kramer Insurance Trust, Daniel Campbell, and Allen
15 Hyman for Violations of the Court's Orders to Yariv
16 Elazar" (doc. 191) is GRANTED; and

17 IT IS FURTHER ORDERED that Farid Meshkatalai, Anita Meshkatalai,
18 the Anna and Noach Kramer Irrevocable Insurance Trust, Daniel J.
19 Campbell, and Allen Hyman shall appear, in person or by telephone,
20 for a scheduling conference to be held on April 20, 2009 at
21 10:30 a.m. At that time, among other things, the court will
22 establish a date for a hearing on this Motion and Order to Show
23 Cause.

24 DATED this 30th day of March, 2009.

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28 Robert C. Broomfield
Senior United States District Judge

29 Copies to all counsel of record; Daniel Campbell, III; Allen Hyman;
30 and Denise M. O'Rourke