

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STRYKER ORTHOPAEDICS, :
: Plaintiff, :
: :
v. : : CIVIL NO. 3:11MC10 (AWT)
: :
SCOTT NIZOLEK, :
: :
Defendant. :
:

**ORDER RE: STRYKER ORTHOPAEDICS'S "EMERGENCY MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA"**

Pending before the court is the plaintiff Stryker Orthopaedics's "Emergency Motion to Compel Compliance with Subpoena" filed on January 28, 2011. Attached to the motion is a copy of a subpoena seeking the production of documents dated November 15, 2010 and served on non-party Michael Simonzi, the subject of the instant motion.

According to the plaintiff, Mr. Simonzi has failed to respond whatsoever to the subpoena. The plaintiff seeks an order compelling Mr. Simonzi to produce the documents specified in the subpoena. In the event that Mr. Simonzi fails to produce the documents, the plaintiff requests that the court hold him in civil contempt. (Doc. #1 at 7.)

A person who fails to comply with a lawfully issued subpoena may be found in contempt. Fed. R. Civ.P. 45(e) ("The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena."). See also

PaineWebber Inc. v. Acstar Ins. Co., 211 F.R.D. 247, 249 (S.D.N.Y. 2002) (Where a person fails to object to a subpoena and also fails to comply, he "may be held in contempt, pursuant to Rule 45[(e)], and sanctions may therefore be imposed.") "A subpoenaed person found to be in contempt could be subject to sanctions, including imposition of a fine, attorney's fees and costs. [T]he Court could issue a warrant of arrest." Freund v. Weinstein, No. 08cv1469 (FB) (MDG), 2009 WL 4065585, at *2 (E.D.N.Y. Nov. 23, 2009). See also Musalli Factory for Gold & Jewelry Co. v. New York Financial LLC, No. 06 Civ. 82(AKH), 2010 WL 2382415, at *4 (S.D.N.Y. June 14, 2010) ("arrest is an appropriate" coercive sanction to compel compliance with the subpoena).

If Mr. Simonzi fails to comply with the subpoena and produce the requested documents, the plaintiff and Mr. Simonzi are ORDERED to appear before the undersigned for a hearing on the plaintiff's motion to compel on February 24, 2011 at 11:00 in the East Courtroom.

The plaintiff shall cause a copy of this order to be served on Mr. Simonzi by February 11, 2011 and shall file proof of service.

SO ORDERED at Hartford, Connecticut this 8th day of January, 2011.

/s/
Donna F. Martinez
United States Magistrate Judge