

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 09-23411-CIV-UNGARO**

SEVEN SEAS CRUISES S. DE R. L., *et al.*,

Plaintiffs,

v.

V. SHIPS LEISURE SAM, *et al.*,

Defendants.

/

ORDER AFFIRMING THE MAGISTRATE JUDGE'S REPORT

THIS CAUSE is before the Court upon, Plaintiffs' Renewed Motion to Compel Discovery of Electronically-Stored Information and for Sanctions. (D.E. 278.) The matter was referred to Magistrate Judge Andrea Simonton, who after a holding a hearing, issued a Report granting the Motion to Compel and recommending that the Motion for Sanctions be granted in part. (D.E. 287.) Specifically, Magistrate Judge Simonton recommended that Plaintiffs' request for the sanction of a default judgment be denied and instead that Defendants' pending Motions for Summary Judgment be denied as a sanction. The Defendants have filed objections to Magistrate Judge Simonton's recommendation that their Motions for Summary Judgement be denied as a sanction. (D.E. 40.)

The Court has reviewed the Report and the record *de novo* and agrees in full with the findings, holdings, and recommendations of Magistrate Judge Simonton. Defendants' ongoing inability to "properly conduct complete, thorough and timely searches of ESI responsive to the Plaintiffs' discovery requests" is inexcusable, especially at this stage of litigation and regardless of

whether the failure will ultimately not have prejudiced Plaintiffs.¹ (D.E. 287.) And the undersigned wholly agrees with Magistrate Judge Simonton that the denial of Defendants' Motions for Summary Judgment is the appropriate sanction.

Defendants' objections to the recommendation are essentially two-fold: they did not act in bad faith and that much of the Summary Judgment Motions are not "based solely on the *per se* lack of evidence by the Plaintiffs." (D.E. 296.) The objections are unconvincing. Without delaying adjudication of the motions to allow Plaintiffs to amend their responses, any summary judgment in Defendants' favor would be at best suspect given the amount of discovery outstanding at the time the motions were briefed and the amount of discovery still outstanding as of the filing of Defendants' objections. And the Court will not engage in the adjudication of those motions in the off-chance that Defendants might be entitled to summary judgment on some ground wholly unaffected by the outstanding discovery.

Accordingly, it is

ORDERED AND ADJUDGED that the Magistrate Judge's Report (D.E. 39) is RATIFIED, ADOPTED, and AFFIRMED. Plaintiff's Motion (D.E. 278) is GRANTED IN PART. The Motion to Compel is GRANTED as per Magistrate Judge Simonton's previous orders and the Motion for Sanctions is GRANTED IN PART as follows:

(1) Defendants' Motions for Summary Judgment (D.E. 207 & 208) are DENIED.

It is further

ORDERED AND ADJUDGED that Plaintiffs' Motion to Strike (D.E. 212) and Plaintiff's Motion for Leave to File Sur-Reply (D.E. 277) are DENIED AS MOOT.

¹ The truth is that the failure will certainly have prejudiced Plaintiffs because they will have wasted time, effort, and money litigating these issues and reviewing newly provided discovery.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of February, 2011.

Ursula Ungaro

URSULA UNGARO

UNITED STATES DISTRICT JUDGE

cc: counsel of record