

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-10019-CIV-MOORE/SIMONTON

WEBER DESIGN GROUP, INC.,

Plaintiff,

v.

US WRECKING AND LAND CLEARING,  
INC., et al.,

Defendants.

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**ORDER REQUIRING DEFENDANT CABARROCAS TO  
RESPOND TO PLAINTIFF'S MOTION FOR CONTEMPT  
AND FOR SANCTIONS**

Presently before the Court is Plaintiff's Motion for Contempt and For Sanctions [D.E. 95]. This motion is referred to the undersigned Magistrate Judge pursuant to the Order of Referral for Pretrial Discovery Matters [D.E. 51]. The undersigned has reviewed the Plaintiff's Motion to Compel and the relevant portions of the record.

On November 10, 2008, this Court granted the Plaintiff's Motion to Compel and ordered Defendant David Cabarrocas to produce documents responsive to Plaintiff's Request for Production of Documents by November 17, 2008, and if he was unable to locate responsive documents to Plaintiff's Request #1 provide a written response under oath stating that he did not possess any documents responsive to that Request [D.E. 91]. In addition, Mr. Cabarrocas was directed to provide redacted versions of his 2005-2007 calendars that reflected certain meetings and/or payments relevant to this matter, also by November 17, 2008. *Id.*

On November 20, 2008, Plaintiff filed the pending Motion for Contempt and for Sanctions alleging that Defendant Cabarrocas failed to comply with this Court's November 10, 2008 Order and has not produced any records identified in that Order [D.E.

95]. Plaintiff requests that this Court find Mr. Cabarrocas in contempt and impose sanctions including the imposition of attorney's fees and costs associated with bringing the Motion and enter a finding of liability against Mr. Cabarrocas on Plaintiff's claims.

On November 26, 2008, Defendant Cabarrocas filed a letter stating that he received this Court's November 10, 2008 Order from the Plaintiff via regular mail on November 23, 2008 and that he did not receive a copy of the Order from the Court [D.E. 97]. In addition, the Defendant stated that he has already given the Plaintiff all of the documents that he has, that he does not keep calendars for his appointments and that he only has plans, a copy of the bill and the check related to the job at issue. *Id.* The letter is signed but not made under oath and is written on stationary that has the Defendant's address printed on the side of the letter. *Id.*

Although in his letter, Defendant states that he did not receive this Court's November 10, 2008 Order from the Court, the undersigned notes that the receipt generated by the United States District Court for the Southern District of Florida's on-line filing system (CM/ECF) indicates that a Notice of the Order was sent to Mr. Cabarrocas at the same address included on his stationary on his November 25, 2008 letter sent by him to the Court. The address is also the same address included in a previous letter sent by Mr. Cabarrocas to the Court [D.E. 36].

Further, while Mr. Cabarrocas indicates in his November 25, 2008, letter that he does not possess the documents requested in Plaintiff's First Request for Production and referenced in this Court's November 10, 2008 Order, Mr. Cabarrocas fails to provide a written response under oath stating the efforts that were undertaken in searching for the responsive documents. Finally, while Mr. Cabarrocas states that he does not keep calendars and thus cannot produce them to the Plaintiff, it is unclear whether Mr.

Cabarrocas searched for documents responsive to Plaintiff's Request for Production #1, wherein Plaintiff seeks certain plans, designs, drawings, etc., prepared by Plaintiff Weber Design Group, as he failed to provide a written statement under oath stating what efforts he made to locate documents responsive to that Request, either. Thus, Mr. Cabarrocas has failed to comply with this Court's November 10, 2008 Order.

Accordingly, it is hereby

**ORDERED** that Defendant David Cabarrocas shall file a statement under oath by the close of business December 12, 2008 which complies with this Court's Order dated November 10, 2008, and shall also show cause why he should not be held in contempt of court for failure to comply with this Court's November 10, 2008 Order. If Defendant Cabarrocas fails to timely file his statement under oath in compliance with this Order, the Court may find him in contempt, which may result in the entry of a default judgment against him as to liability on Plaintiff's copyright infringement claims, and/or other sanctions; as well as an award of costs and attorney's fees.

Mr. Cabarrocas is also advised that his Response as well as any other documents he files in this case should be delivered to the United States District Court Clerk's Office, Wilkie D. Ferguson, Jr. United States Courthouse, 400 N. Miami Avenue, 8th Floor, Miami, Florida 33128, rather than being mailed to the Courthouse in Key West, Florida.

**DONE AND ORDERED** in Miami, Florida this 5th day of December, 2008.



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ANDREA M. SIMONTON  
UNITED STATES MAGISTRATE JUDGE

**Copies furnished to:  
The Honorable K. Michael Moore  
United States District Judge**

**All Counsel of Record via CM/ECF  
Defendant David Cabarrocas, *Pro Se*,  
*via Facsimile (305) 666-7112 and CM/ECF***