

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

NetJets Large Aircraft, Inc.,	:	
et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2:11-cv-1023
	:	
	:	JUDGE EDMUND A. SARGUS, JR.
United States of America,	:	Magistrate Judge Kemp
	:	
Defendant.	:	

OPINION AND ORDER

Companies providing aircraft management and aviation support services to aircraft owners and leaseholders have filed this action against the United States under the Internal Revenue Code, 26 U.S.C. §4261, for refund and abatement of excise taxes, interest and penalties. Before the Court are several motions relating to discovery:

- United States' Motion for Enlargement of Time to Conduct Limited Discovery of Allegedly Similarly Situated Taxpayers, Pending Resolution of United States' Motion for Reconsideration of Magistrate Judge's April 28, 2014 Opinion and Order (Doc. 84);
- Plaintiffs' Motion to Compel the Production of Documents, or Alternatively, to Preclude Defendant from Offering Any Evidence or Argument Relating to Plaintiffs' Claim that the IRS Failed to Provide Clear Guidance Regarding Application of the Section 4261 Ticket Tax to Monthly Management and Fuel Variable Surcharge Fees (Doc. 85);
- Plaintiff Executive Jet Management, Inc.'s Supplemental Motion to Compel Defendant to Produce Documents Withheld on the Basis of the Deliberative Process Privilege, or, Alternatively, to Preclude Defendant from Offering Any Evidence or Argument Relating to EJM's Duty of Clarity Claim (Doc. 141);
- Plaintiffs' Motion to Sanction Defendant for Spoliation of Evidence (Doc. 115); and

- Plaintiffs' Supplemental Motion to Sanction Defendant for Spoliation of Evidence (Doc. 119).

All but one of these motions were filed before the Court issued its January 26, 2015 Opinion and Order (Doc. 136), which resolved certain motions for summary judgment and altered the scope of the pending discovery motions.

Accordingly, on February 3, 2015, the Court issued an order to show cause regarding the motion for extensions of time and the motions for sanctions, and the court ordered a supplemental declaration regarding the scope of the remaining pending discovery motion. (Doc. 139). The parties have completed their supplemental briefing and filed one related, supplemental motion. The motions are considered by the Court below.

#### I. Background

The facts of this case are set forth more fully in this Court's previous Orders. By way of background for this Order, Plaintiffs are companies which provide management services to people and companies that own or lease either whole aircrafts or fractional interests in aircrafts. The owners and fractional owners pay monthly management fees in a fixed amount that does not vary based on the owner's aircraft use and also pay certain variable fees or hourly fees that depend on usage.

The Court's January 26, 2015 Opinion and Order (Doc. 136) granted the motion for summary judgment brought by three of the four Plaintiffs as to one of their claims. That ruling rendered discovery relating to those parties' alternative claims for relief unnecessary. However, the Court did not grant the summary judgment motion filed by the remaining plaintiff, Executive Jet Management, Inc. ("EJM") or the summary judgment motion filed by the United States against EJM. Accordingly, there is no judgment as to any of EJM's claims, and it is still entitled to discovery regarding all of its claims.

EJM is a wholly owned subsidiary of Plaintiff NetJets, Inc. (Doc. 136 at 26). Unlike the three NetJets Plaintiffs, EJM provides aviation services to owners of whole aircrafts (rather than owners of fractional interests in aircrafts) and also operates a commercial air charter business that sells charter flights to the general public. (Doc. 136 at 26). Clients pay a monthly management fee and "pass-through costs." (Doc. 136 at 28).

In January 2010, the IRS assessed a tax pursuant to 26 U.S.C. §4261 against the monthly management fees and pass-through costs that clients who entered their planes into EJM's charter business paid to EJM for a period of just over four years. (Doc. 136 at 28). EJM and the other Plaintiffs filed protests with the IRS, which were denied, and refund claims with the IRS, which were also denied. Plaintiffs then brought this action seeking a refund and abatement of all section 4261(a) taxes paid on occupied hourly fees, monthly management fees, fuel variable surcharges, and pass through costs.

EJM has sought relief in this case on several grounds, but only the second ground is at issue in the discussion of the motions below. That ground asserts:

(2) The IRS failed to provide clear guidance to Plaintiffs that they were required to collect and remit the section 4261 excise tax on the monthly management and fuel variable surcharge fees they received from aircraft owners;

(Doc. 55 at 8-9; see also Doc. 45 at 2). In relation to this request, Plaintiffs sought internal IRS communications relating to the §4261 tax. In the course of discovery, Plaintiffs learned that the United States had erased the computer hard drives of certain former IRS employees and had not been able to locate a box of records relating to a particular lawsuit.

## II. Analysis

### A. Motion to Enlarge Time (Doc. 84)

The first motion addressed by the Court's February 3, 2015 Opinion and Order was the United States' Motion for Enlargement of Time to Conduct Limited Discovery of Allegedly Similarly Situated Taxpayers, Pending Resolution of United States' Motion for Reconsideration of Magistrate Judge's April 28, 2014 Opinion and Order (Doc. 84). The United States concedes that this motion is moot. (Doc. 140). Accordingly, that motion will be denied as moot.

### B. Motion to Compel (Doc. 85)

The next motion at issue is Plaintiffs' Motion to Compel the Production of Documents, or Alternatively, to Preclude Defendant from Offering Any Evidence or Argument Relating to Plaintiffs' Claim that the IRS Failed to Provide Clear Guidance Regarding Application of the Section 4261 Ticket Tax to Monthly Management and Fuel Variable Surcharge Fees (Doc. 85). That motion sought to compel production of unredacted copies of documents that were redacted or withheld because the United States asserted the deliberative process privilege. The documents at issue are responsive to Plaintiffs' requests for internal IRS communications relating to the §4261 tax; such communications are relevant to Plaintiffs' claim that the IRS failed to provide clear guidance to Plaintiffs that they were required to collect and remit the section 4261 excise tax on the monthly management and fuel variable surcharge fees they received from aircraft owners.

In light of the Court's January 26, 2015 ruling, the Court ordered the United States to provide a supplemental declaration identifying the documents that remained relevant to EJM's claims. In response, the United States filed a supplemental declaration by attorney Carina C. Federico (Doc. 140-1), which identified the

documents within the first declaration by Richard G. Goldman (Doc. 101-1) that "relate to the claims of Executive Jet Management, Inc., the application of the tax imposed by 26 U.S.C. §4261 to managers of whole aircraft, or a general application of the §4261 tax." (Doc. 140-1 at ¶B).

On the same day, Plaintiffs filed a response to the Court's February 3, 2015 Opinion and Order. Plaintiffs incorrectly read the Order as directing the parties to inform the Court whether the motion to compel was moot when it had really directed the United States to address the scope of the motion to compel by filing a supplemental declaration. However, in their filing, Plaintiffs identified certain documents from the Goldman Declaration that they believed were relevant to EJM's claims. (Doc. 141-2). Most of those documents were included in the list of documents that the United States identified as relevant to EJM's claims. The Court counts only five documents that Plaintiffs contend are still relevant that were not identified in the United States' Federico Declaration. The Court will consider those documents along with the ones identified in the Federico declaration.

The issue raised by this motion is whether Defendants properly invoked the deliberative process privilege to withhold or redact a subset of responsive documents. The United States Supreme Court has recognized a deliberative process privilege covering "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." Dep't of Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8-9 (2001) (quoting NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975)) (internal quotation marks omitted). In order to be protected by the deliberative process privilege, "a document must be both 'predecisional,' meaning it is 'received by the

decisionmaker on the subject of the decision prior to the time the decision is made,' and 'deliberative,' the result of a consultative process." Rugiero v. U.S. Dep't of Justice, 257 F.3d 534, 550 (6th Cir. 2001) (quoting Schell v. U.S. Dept. of Health & Human Services, 843 F.2d 933, 940 (6th Cir. 1988) (citations omitted)). "Although this privilege covers recommendations, draft documents, proposals, suggestions, and other subjective documents that reflect the opinions of the writer rather than the policy of an agency, the key issue in applying this exception is whether disclosure of the materials would 'expose an agency's decisionmaking process in such a way as to discourage discussion within the agency and thereby undermine the agency's ability to perform its functions.'" Id. (citations omitted).

"The deliberative process privilege does not shield documents that simply state or explain a decision the government has already made or protect material that is purely factual, unless the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations." In re Sealed Case, 121 F.3d 729, 737 (D.C. Cir. 1997) (citations omitted); see also Norwood v. F.A.A., 993 F.2d 570, 577 (6th Cir. 1993) ("purely factual, investigative matters" that are "severable without compromising the private remainder of the documents" do not enjoy the protection of the exemption) (citation omitted). In addition, "[t]he deliberative process privilege is a qualified privilege and can be overcome by a sufficient showing of need." In re Sealed Case, 121 F.3d at 737 (footnote omitted).

The parties are generally in agreement about these legal standards. However, they dispute whether whether the privilege has been asserted properly, whether certain communications are pre-decisional and deliberative, and whether the qualified nature

of the privilege can be overcome in this instance. EJM also raises an argument that if the deliberative process privilege applies, Defendant should be precluded from offering any evidence or argument relating to its duty-of-clear-guidance claim.

1. Whether Defendant Waived or Forfeited the Privilege

First, EJM argues that the United States has not properly asserted the deliberative process privilege because the initial assertion of privilege was made by trial counsel without an affidavit or declaration from the IRS's highest ranking official or an authorized delegate providing specific, document-specific facts to support the assertion of deliberative process privilege. (Doc. 85 at 13). The United States counters that EJM cites to cases from outside of this Circuit, and that this Circuit has not imposed that burden on the Government. (Doc. 88 at 16-18).

The United States provided a document-specific privilege log along with one of its production of documents, but it did not provide an affidavit at that time. (Doc. 85 at 8; Doc. 85-1). Both parties agree that an affidavit or declaration is required from the authorized delegate of the Commissioner of the IRS. See, e.g., Proctor & Gamble Co. v. United States, 2009 WL 5219726, \*8 (S.D. Ohio Dec. 31, 2009) (noting that claims of privilege by litigation counsel for the government are not sufficient, but require that privilege be asserted by the head of agency or that person's authorized delegate who is another "high-ranking agency official") (citations omitted). The United States has now submitted a declaration from Richard Goldman, Acting Deputy Associate Chief Counsel (Procedure and Administration) in the Office of Chief Counsel, Internal Revenue Service, with respect to the documents at issue in the first motion to compel. (Doc. 101-1). Delegation order 30-4, set forth in the Internal Revenue Manual (IRM) pt. 1.2.53.5 (October 1, 2009), delegates the authority to claim the deliberative

process privilege on behalf of the IRS to the Deputy Associate Chief Counsel (Procedure & Administration). (IRM available at [http://www.irs.gov/irm/part1/irm\\_01-002-053.html](http://www.irs.gov/irm/part1/irm_01-002-053.html); see also Doc. 101-1 at ¶2 & Doc. 101-4). Accordingly, the question before the Court is whether this declaration came too late.

This Court is not aware of Sixth Circuit Court of Appeals decisions addressing this question directly. However, some courts in this district have done so. For example, the Court in Proctor & Gamble Co. v. U.S. noted that "ordinarily, the assertion of the deliberative process privilege calls for support by an affidavit from the agency head at the time the privilege is first asserted." In that case, however, the Court declined to find that the Defendant waived the privilege by failing to do so. 2009 WL 5219726, at \*8-9. Rather, the court "engaged in a comprehensive in camera review of the documents and [found] in large part that the Government has not overreached." Id. at \*9. Therefore, although the initial assertion of privilege was made by a member of the litigation team whose credibility might be suspect because of his role in the litigation, "the in camera review has obviated that concern in large part." Id. The Court then required the IRS to present an affidavit of an appropriately high-ranking non-litigation team member within 30 days "affirming under oath, inter alia, that s/he has undertaken a full review of the allegedly privileged documents and affirms that the assertion of the deliberative process privilege is narrowly tailored and proper." Id. Defendant has also pointed to Trevino v. Jones, S.D. Ohio Case 1:08-cv-339, docket entries 44, 46, and 47, a case in which the Court upheld the deliberative process privilege even though Defendants did not provide a declaration of a high-ranking official until after the initial assertion of the privilege.

In addition to the absence of controlling precedent for deeming the deliberative process privilege waived unless all of



the procedural requirements are met when it is initially asserted, there is no compelling reason for imposing that harsh result here. The procedural requirements for assertion of the privilege have been established in order "[t]o ensure that the privilege is not abused." Proctor & Gamble Co. v. United States, No. 1:08-CV-608, 2009 WL 5219726, at \*8 (S.D. Ohio Dec. 31, 2009) (citations omitted). Here, the United States has now cured any initial procedural deficiency, so there is no need to find a waiver in order to ensure that the privilege is not abused. Accordingly, the Court will turn to the merits of the assertion of the deliberative process privilege.

2. Whether the Deliberative Process Privilege Applies

Turning to the question of whether the deliberative process privilege applies to the documents as to which it has been asserted, the first question is whether all of the documents at issue were pre-decisional. EJM asserts that the relevant decision was made on April 1, 2008, and that communications after that date may not be predecisional. In support of this argument, EJM points to the deposition of Annette Schirtzinger, the IRS revenue agent who conducted the tax audit that is the subject of this case. (Doc. 85 at 17 & Doc. 85-3). To counter this, the United States argues that the April 1, 2008 decision she referred to was part of a continuing process of examining IRS policies. (Doc. 88 at 9).

In the context of the executive privilege, the Supreme Court has noted the difficulty of drawing a line between pre-decisional documents and postdecisional ones. N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 151-52 n.18 & n.19 (1975) ("We are aware that the line between pre-decisional documents and postdecisional documents may not always be a bright one.") The Court stated, "[o]ur emphasis on the need to protect pre-decisional documents does not mean that the existence of the privilege turns on the

ability of an agency to identify a specific decision in connection with which a memorandum is prepared. Agencies are, and properly should be, engaged in a continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions; and the lower courts should be wary of interfering with this process." Id. at 151 n.18. However, notwithstanding these challenges, the Court upheld the importance of drawing such a distinction:

This distinction is supported not only by the lesser injury to the decisionmaking process flowing from disclosure of post-decisional communications, but also, in the case of those communications which explain the decision, by the increased public interest in knowing the basis for agency policy already adopted. The public is only marginally concerned with reasons supporting a policy which an agency has rejected, or with reasons which might have supplied, but did not supply, the basis for a policy which was actually adopted on a different ground. In contrast, the public is vitally concerned with the reasons which did supply the basis for an agency policy actually adopted.

N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 152 (1975).

While there is some case law guidance as to specific types of IRS documents that may fit within the deliberative process privilege, the purpose of the privilege makes it difficult to reach a decision as to whether a communication is pre-decisional and deliberative without an in camera review.

### 3. Whether the Privilege Can Be Overcome Here

Many courts have held that the deliberative process privilege is a qualified privilege. See, e.g., In re Sealed Case, 121 F.3d 729, 737 (D.C. Cir. 1997); Marriott Int'l Resorts, L.P. v. United States, 437 F.3d 1302, 1307 (Fed. Cir. 2006); F.T.C. v. Warner Commc'ns Inc., 742 F.2d 1156, 1161 (9th Cir. 1984); E.E.O.C. v. Burlington N., 615 F. Supp. 2d 717, 720 (W.D.

Tenn. 2009), objections overruled sub nom. E.E.O.C. v. Burlington N. & Santa Fe Ry. Co., 621 F.Supp.2d 603 (W.D. Tenn. 2009).

There are several factors to consider in determining whether the deliberative process privilege should be overcome, including (1) the relevance of the evidence sought, (2) the availability of other evidence, (3) the role of the government in the litigation, and (4) the potential consequences of disclosure of the information. See, e.g., F.T.C. v. Warner Commc'ns Inc., supra at 1161 (9th Cir. 1984) ("Among the factors to be considered in making this determination are: 1) the relevance of the evidence; 2) the availability of other evidence; 3) the government's role in the litigation; and 4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions") (citations omitted); see also E.E.O.C. v. Burlington N., supra at 720-21 ("In balancing these competing interests, the court should consider several factors, including (1) the relevance of the evidence sought to be protected; (2) the availability of other evidence; (3) the seriousness of the litigation and the issues involved; (4) the role of the government in the litigation; and (5) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable") (citations omitted); see also United States v. Farley, 11 F.3d 1385, 1389 (7th Cir. 1993) (deliberative process privilege can be overcome if the party requesting the documents can make "a showing that his need for the documents outweighed the government's interest in not disclosing them" (citation omitted)).

In this case, the United States argues that internal agency documents do not really inform the question at issue, but rather the publicly-available documents do. The claim at issue is whether the IRS failed to provide clear guidance to EJM that it was required to collect and remit the section 4261 excise tax on

the monthly management and pass-through cost fees it received. The United States argues that the documents protected by the deliberative process privilege are not relevant and that there is other evidence available that is more relevant to this claim (specifically the public statements by the IRS). The United States also argues that the other factors weigh against overcoming the deliberative process privilege.

The Court cannot conclude that the factors weigh dispositively in one direction without reviewing the documents at issue. If there are deliberations that specifically discuss whether public notice was given and whether Plaintiffs or other similarly situated companies had sufficient guidance, such deliberations would be highly relevant to the question before the Court notwithstanding the fact that the communications were internal to the IRS. After the other factors are weighed, that factor may warrant overcoming the deliberative process privilege. This type of determination requires an in camera review.

#### 4. Whether Defendant Should Be Precluded from Defending Claim

EJM argues that if the United States is permitted to withhold documents under the deliberative process privilege, it should be precluded from offering any evidence or argument regarding EJM's duty-of-clear-guidance claim. EJM appears to argue that the successful assertion of the deliberative process privilege is effectively an admission of a failure to make a decision and, therefore, an admission that it could not have provided clear guidance as to its decision. However, in light of the Supreme Court's discussion of the difficulty of drawing lines between pre-decisional and postdecisional communications in N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 151-52 n.18 & n.19 (1975), the Court cannot conclude that the assertion of the privilege here constitutes such an admission. Furthermore, to the extent that certain pre-decisional deliberations are crucial

to EJM's case, the qualified nature of the deliberative process privilege should protect EJM's interests.

C. Supplemental Motion to Compel (Doc. 141)

In their response to the Court's February 3, 2015 Order, Plaintiffs filed a supplemental motion to compel the production of unredacted copies of additional documents relating to EJM and whole aircraft management that were identified on a privilege log produced on January 27, 2015 as being withheld on the basis of the deliberative process privilege. (Doc. 141). With respect to the documents at issue in the supplemental motion to compel, the United States provided a document-specific privilege log but has not provided an affidavit or declaration from the authorized delegate of the Commissioner of the IRS. (Doc. 141-7). The United States has represented that it will provide such a declaration "within the coming weeks." (Doc. 146 at 18). For the reasons discussed above, the Court declines to find that the United States has waived its right to assert the deliberative process privilege. However, for the reasons discussed above, an affidavit or declaration from the authorized delegate of the Commissioner of the IRS is required. Accordingly, this motion is not ripe for decision, and the Court will order the United States to provide an appropriate declaration within 14 days of the date of this Order.

D. Motions for Sanctions (Docs. 115 & 119)

The Court also ordered the parties to show cause as to why the Court should not deny Plaintiffs' motion and supplemental motion for sanctions (Docs. 115 and 119) without prejudice to their refiling, if appropriate, in a way that would be limited to the documents that are relevant to the remaining claims in the case. The United States does not oppose the dismissal without prejudice of those motions and, in fact, argues that doing so is the better approach. (Docs. 140 & 145). The United States noted

that the Court's January 26, 2015 Opinion and Order resulted in a narrowed scope for the motions for sanctions in that it eliminated the relevance of the box of Justice Department materials from the Executive Jet Aviation case and the emails of former IRS employee, Jim Mann. (Doc. 140 at 2-3). The United States also noted that the remaining issue in the motions for sanctions related to the emails of two former IRS employees, Frank Boland and Frank Falvo, and that the depositions of those two individuals have yet to occur. (Doc. 140 at 3). Finally, the United States notes that emails to and from those individuals have been produced from other individuals' hard drives, and that the deponents for the other upcoming depositions include individuals with knowledge of the application of the §4261 tax to managers of the whole ownership aircraft program, and that the evidence from these sources may mitigate the failure to preserve.

EJM admits that the Court's January 26, 2015 Opinion and Order "narrowed the scope of Plaintiffs' spoliation motion to the Government's destruction of evidence relating to EJM's duty of clarity claim." (Doc. 142 at 2). EJM further restates its claim as being limited to the computer hard drives of Frank Falvo and Frank Boland. (Doc. 142 at 2-3). EJM states that the depositions of six IRS witnesses, including Frank Falvo and Frank Boland, were deferred until after the Government completed its production of documents and privilege disputes were resolved. (Doc. 142 at 4). EJM contends that, because the additional sources of evidence cannot cure any spoliation, the motion is ripe for decision.

The Court concludes that the United States has the better argument as to the timing of the resolution of the motion for sanctions. The depositions of Frank Falvo and Frank Boland and other deponents may shed light on the scope of unpreserved evidence. EJM argues that if the Court decides to have the IRS

depositions occur prior to adjudicating the issue of spoliation, it would be most expeditious to order the parties to supplement their current spoliation briefs with contemporaneous filings within seven days after the last IRS deposition is completed rather than requiring EJM to file a new spoliation motion. The Court agrees that ordering contemporaneous supplemental briefs following the last IRS deposition is a reasonable approach.

### III. Conclusion

For the foregoing reasons, the United States' Motion for Enlargement of Time to Conduct Limited Discovery of Allegedly Similarly Situated Taxpayers, Pending Resolution of United States' Motion for Reconsideration of Magistrate Judge's April 28, 2014 Opinion and Order (Doc. 84) is denied as moot.

Plaintiffs' Motion to Compel the Production of Documents, or Alternatively, to Preclude Defendant from Offering Any Evidence or Argument Relating to Plaintiffs' Claim that the IRS Failed to Provide Clear Guidance Regarding Application of the Section 4261 Ticket Tax to Monthly Management and Fuel Variable Surcharge Fees (Doc. 85) is granted in part and denied in part. It is granted in that the Court Orders Defendant to deliver the unredacted versions of the documents identified in the Federico Declaration (Doc. 140-1) as well as any additional documents highlighted by Plaintiffs in Exhibit 2 to their response to the Court's February 3, 2015 Opinion and Order (Doc. 101-2) to the Court for an in camera inspection within seven days of the date of this Order for purposes of determining which documents, if any, must be produced in unredacted form to Plaintiffs. After the in camera review is completed, the Court will issue a further order concerning whether any of the documents in question must be disclosed to Plaintiffs. The remainder of the motion is denied at this time.

The Court withholds a ruling as to Plaintiff Executive Jet Management, Inc.'s Supplemental Motion to Compel Defendant to

Produce Documents withheld on the Basis of the Deliberative Process Privilege, or, Alternatively, to Preclude Defendant from Offering Any Evidence or Argument Relating to EJM's Duty of Clarity Claim (Doc. 141). The Court further orders the United States to provide, within 14 days of the date of this Order, an appropriate declaration in support of its assertion of the deliberative process privilege for documents relating to the claims of Executive Jet Management, Inc., the application of the tax imposed by 26 U.S.C. §4261 to managers of whole aircraft, or a general application of the §4261 tax, to the extent that it has not already done so in its Goldman Declaration (Doc. 101-1).

The Court withholds a ruling as to Plaintiffs' motion and supplemental motion for sanctions (Docs. 115 and 119). The Court further orders the parties to file any supplement to their current spoliation briefs within seven days after the last IRS deposition is completed.

#### IV. Procedure for Reconsideration

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.



/s/ Terence P. Kemp  
United States Magistrate Judge