

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 4:09-CV-10095 MOORE/SIMONTON

JOHN DOLAN-HEITLINGER

Plaintiff,

v.

NATIONAL CREDIT UNION
ADMINISTRATION as Conservator for
Keys Federal Credit Union,

Defendant.

_____ /

**PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO PROVIDE BETTER
ANSWERS TO INTERROGATORIES 1-10 OF PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND INCORPORATED MEMORANDUM OF LAW¹**

Plaintiff, JOHN DOLAN-HEITLINGER, by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 26 and 33, S.D.Fla.L.R.26.1, and the Court's Orders of October 29, 2009 [D.E. 7] and December 14, 2009 [D.E. 9], moves this Court for an Order to Compel Defendant to Provide Better Answers to Interrogatories Nos. 1-10 of Plaintiff's Second Set of Interrogatories, and in support thereof states:

¹ Plaintiff filed a motion seeking substantially the same relief as this motion in Circuit Court for the 16th Judicial Circuit of Florida on or about June 30, 2008. The motion is being re-filed pursuant to this Court's Orders of October 29, 2009 [D.E. 7] and December 14, 2009 [D.E. 9]. A copy of Plaintiff's state court motion, without exhibits, is attached hereto as Appendix "A."

1. This is an action for breach of contract. Plaintiff JOHN DOLAN-HEITLINGER alleges that KEYS FEDERAL CREDIT UNION ("KFCU"),² after renewing Plaintiff's employment contract on or about September 1, 2007 terminated his employment without cause on or about November 9, 2007. Plaintiff does not challenge KFCU's authority to terminate his employment without cause but claims that, pursuant to the "no cause" termination provision of the employment contract between the parties, he is entitled to six months' earnings and accrued benefits. DOLAN-HEITLINGER also seeks compensation owed and payable to him in the event of a "no cause" termination under his Deferred Compensation Plan with KFCU. Defendant asserts that it terminated DOLAN-HEITLINGER's employment for cause and does not owe him any monies.

2. Plaintiff filed and served the Complaint in this action for breach of contract on or about February 12, 2008.

²] On October 5, 2009, the NATIONAL CREDIT UNION ADMINISTRATION as Conservator for Keys Federal Credit Union was substituted in the state court as the proper defendant in this action. Defendant then removed the action to Federal Court on October 6, 2009. The action was stayed. [D.E. 6.] On October 29, 2009, the Court entered an order pursuant to Local Rule 7.2 providing that Plaintiff may re-file his discovery motions pending from state court 10 days after the lifting of the stay and after consulting with opposing counsel regarding the issues raised in the motions. [D.E. 7.] Subsequently, following a Joint Motion for Extension [D.E. 8.], the Court extended the time for Plaintiff to file the pending motions until January 11, 2010. [D.E. 9.]

3. On March 3, 2008, Defendant served its Answer and Affirmative Defenses on Plaintiff on March 3, 2008.

4. In its Answer and Affirmative Defenses, KFCU asserted seven affirmative defenses. Defendant's First Affirmative Defense purportedly sets forth the reasons asserted by Defendant for terminating Plaintiff's employment. Defendant's First Affirmative Defense is reproduced in its entirety in Appendix "B."

5. Plaintiff served his Second Set of Interrogatories on Defendant on March 24, 2008.

6. Interrogatories Nos.1-10 of Plaintiff's Second Set of Interrogatories to Defendant are reproduced verbatim below. Each Interrogatory is directed at an assertion made by Defendant in its First Affirmative Defense and seeks facts which Defendant contends supports the assertion and the identity witnesses with knowledge of the facts supporting Defendant's assertion. The referenced interrogatories seek the factual bases which Defendant contends support the various reasons cited by Defendant in its First Affirmative Defense for its termination of Plaintiff's employment. As such, Interrogatories 1-10 are directed at the facts underlying the core dispute in this lawsuit.

INTERROGATORY NO.1

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense³ that Plaintiff "us[ed] Keys Federal's premises for residential arrangements in violation of National Credit Union Association ("NCUA") regulations" and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO.2

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “continu[ed] to use Keys Federal’s premises for unlawful purposes after being warned, in writing, to cease the unlawful conduct” and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO.3

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “actively conceal[ed] from the Board of Directors the formation of the creation of a not-for-profit corporate subsidiary of Keys Federal without obtaining the necessary approval and resolution from the Board of Directors in direct violation of internal procedures” and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO.4

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “approv[ed] and actively conceal[ed] from the Board of Directors unlawful compensation packages for Keys Federal personnel,” identify all Keys Federal personnel whom you contend received unlawful compensation packages, and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO.5

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “actively conceal[ed] from the Board of Directors an authorized report from an independent consultant stating that the compensation packages he approved were grossly excessive” and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO.6

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “willfully obstruct[ed] the administrative investigation by Keys Federal into Heitlinger’s [sic] conduct and activities by directly or indirectly communicating with Keys Federal employees concerning the investigation;” identify each and every Keys Federal employee you contend Plaintiff improperly contacted; indicate the date on which you contend Plaintiff contacted the employee; indicate the manner (e.g., in person, in writing, by telephone, via e-mail) by which you contend Plaintiff contacted the employee; state the nature and substance of the communication; and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO. 7

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “mishandl[ed] a sexual harassment claim against the Keys Federal Director of Human Resources by, among other things, failing to conduct a full investigation or to interview the complainant, and actively concealing the investigation from the Board of Directors;” identify the person making the “sexual harassment claim;” the date on which the “sexual harassment claim” was made; the allegations made in the “sexual harassment claim;” and identify each and every document describing or explaining the “sexual harassment claim;” the author of each such document; the date on which the document was created or signed; the person to whom

the document was addressed; and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO.8

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “appoint[ed] a Human Resources Director who was neither trained in, nor experienced with, the administration of human resources or the applicability of employment related laws” and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO.9

State each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff “negligently handl[ed] substantial construction contracts for Keys Federal without any prior experience or qualifications, and without the active aid of outside counsel or construction experts,” identify each and every “substantial construction contract” referenced in your Affirmative Defense, and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

INTERROGATORY NO. 10

State each and every fact which you contend supports or tends to support the assertions in your First Affirmative Defense that Plaintiff “authoriz[ed] the purchase of real estate without retaining real estate counsel or monitoring the performance of an employee assigned to handle the purchase who was unqualified and inexperienced” and that as a result, “the land was purchased without clear title and has exposed Keys Federal to liability and substantial expenses with respect to its desired future use of the land;” identify with specificity “the land” referenced in the Affirmative Defense; indicate the

nature and substance of the "liability" referenced in the Affirmative Defense; and specify the full amount of the "substantial expenses" referenced in the Affirmative Defense; and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion.

7. Defendant served its Answers and Objections to Plaintiff's First Set of Interrogatories on June 12, 2008. Defendant provided the same general blanket answer to each of the Interrogatories:

In lieu of answering Interrogatory No. ___, Keys Federal refers Plaintiff to the facts outlined in its Affirmative Defenses to the Complaint, and to its correspondence to Robert Weisberg dated November 11, 2007.⁴ Keys Federal also refers Plaintiff to its Answers to Interrogatories No. 1, 2, 5 and 6.⁵

⁴] Michael Lozoff's letter of November 15, 2007 is reproduced and attached hereto as "Appendix C." As confirmed by correspondence from Defendant's counsel of June 27, 2008, Defendant's references to Mr. Lozoff's November 11, 2007 letter are incorrect and should have referred instead to Mr. Lozoff's letter to Mr. Weisberg dated November 15, 2007.

⁵] Interrogatories 1, 2, 5, and 6 and Defendant's answers thereto are reproduced and attached as Appendix "D." Defendant's answer to Interrogatory 5 of Plaintiff's First Set of Interrogatories referenced minutes of Defendant's Board meetings. Defendant did not provide the minutes. Accordingly, Defendant's answer, as filed, was inadequate and evasive. On January 6, 2010, Defendant's counsel, Natalie J. Carlos represented that Defendant would make those meeting minutes available for inspection and copying. See

On June 27, 2008, while the action was pending in state court, in response to Plaintiff's counsel to resolve the discovery dispute, Defendant's counsel added the following to its Answers to Interrogatories 1-10:

Contrary to your assertion, the answers referring Plaintiff to documents, including Michael D. Lozoff's letter . . . are proper and an acceptable substitute for sworn answers under the rules. See Fla. R. Civ. P. 1.340(c).

--Letter of Natalie J. Carlos, Esq., Defendant's counsel, to Jose F. Torres, counsel for Plaintiff, June 27, 2008, a copy of which is attached hereto as Appendix "E."

On January 6, 2010, Defendant's counsel, via letter to Plaintiff's counsel, added:

With respect to Interrogatory Nos. 1-10 (Second Set), the reference and incorporation of the documents set forth in our prior objections is proper pursuant to Federal Rule of Civil Procedure 33(d).

-- Letter of Natalie J. Carlos, Esq., Defendant's counsel, to Jose F. Torres, counsel for Plaintiff, January 6, 2010, Appendix "F."

8. As more fully set forth below, Defendant's general blanket answer to Interrogatories 1-10 (Second Set) is inadequate, evasive, and fails to meet the requirements or the spirit of the federal rules on discovery in a civil case.

9. Interrogatory 1 (Second Set) requests Defendant to "state each and every fact which you contend supports or tends to support the assertion in your First Affirmative

Carlos letter, attached hereto as Appendix "F." In reliance on Ms. Carlos' representation, Plaintiff does not address that deficiency in Defendant's Answer in the present motion.

Defense⁶ that Plaintiff 'us[ed] Keys Federal's premises for residential arrangements in violation of National Credit Union Association ('NCUA') regulations' and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in the Interrogatory. Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 1 (Second Set), set forth the facts requested. Defendant's Answer to Interrogatory 1 (First Set) lists persons with knowledge of the allegations in Defendant's affirmative defenses in the aggregate but avoids any reference to the substance of each listed person's knowledge.

10. Interrogatory 2 (Second Set) requests Defendant to state "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'continu[ed] to use Keys Federal's premises for unlawful purposes after being warned, in writing, to cease the unlawful conduct' and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in the Interrogatory. Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 2, set forth the facts requested or identify the witnesses having knowledge of those facts.

11. Interrogatory 3 (Second Set) requests Defendant to provide "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'actively conceal[ed]' from the Board of Directors the formation of the creation of a not-for-profit corporate subsidiary of Keys Federal without obtaining the necessary approval and resolution from the Board of Directors in direct violation of internal procedures' and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in the Interrogatory. Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 3 (Second Set), set forth the facts requested or identify with requisite specificity the witnesses having knowledge of those facts.

12. Interrogatory 4 (Second Set) requests Defendant to provide "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'approv[ed] and actively conceal[ed]' from the Board of Directors unlawful compensation packages for Keys Federal personnel,' identify all Keys Federal personnel whom you contend received unlawful compensation packages, and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in the Interrogatory. Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its

answer to Interrogatory 4 (Second Set), set forth the facts requested or identify with requisite specificity the witnesses having knowledge of those facts.

13. Interrogatory 5 (Second Set) requests Defendant to state "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'actively conceal[ed] from the Board of Directors an authorized report from an independent consultant stating that the compensation packages he approved were grossly excessive' and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in the Interrogatory. Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 5 (Second Set), set forth the facts requested or identify with requisite specificity the witnesses having knowledge of those facts.

14. Interrogatory 6 (Second Set) requests Defendant to state "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'willfully obstruct[ed] the administrative investigation by Keys Federal into Heitlinger's [sic] conduct and activities by directly or indirectly communicating with Keys Federal employees concerning the investigation;' identify each and every Keys Federal employee you contend Plaintiff improperly contacted; indicate the date on which you contend Plaintiff contacted the employee; indicate the manner (e.g., in person, in writing, by telephone, via e-mail) by which you contend Plaintiff contacted the employee; state the nature and substance of the communication; and

identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in the Interrogatory. Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 6 (Second Set), set forth the facts requested or identify the KFCU employees whom Defendant contends Mr. Heitlinger contacted improperly; the manner in which Defendant contends Mr. Heitlinger contacted the person; the nature and substance of the purportedly improper communication; or identify with requisite specificity the witnesses with knowledge of the facts which Defendant claims support its assertion.

15. Interrogatory 7 (Second Set) requests Defendant to state "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'mishandl[ed] a sexual harassment claim against the Keys Federal Director of Human Resources by, among other things, failing to conduct a full investigation or to interview the complainant, and actively concealing the investigation from the Board of Directors;' identify the person making the 'sexual harassment claim;' the date on which the 'sexual harassment claim' was made; the allegations made in the 'sexual harassment claim;' and identify each and every document describing or explaining the 'sexual harassment claim;' the author of each such document; the date on which the document was created or signed; the person to whom the document was addressed; and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference

in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in Interrogatory 7 (Second Set). Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 7 (Second Set), set forth the facts requested or indicate the date on which the 'sexual harassment claim' was made; the allegations made in the 'sexual harassment claim;' identify the document(s) describing or explaining the 'sexual harassment claim;' or identify all witnesses who have knowledge of the facts which Defendant claims support its assertion.

16. Interrogatory 8 (Second Set) requests Defendant to state "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'appoint[ed] a Human Resources Director who was neither trained in, nor experienced with, the administration of human resources or the applicability of employment related laws' and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in the Interrogatory. Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 8 (Second Set), set forth the facts requested or identify with requisite specificity the witnesses having knowledge of those facts.

17. Interrogatory 9 (Second Set) requests Defendant to state "each and every fact which you contend supports or tends to support the assertion in your First Affirmative Defense that Plaintiff 'negligently handl[ed] substantial construction contracts for Keys

Federal without any prior experience or qualifications, and without the active aid of outside counsel or construction experts,' identify each and every 'substantial construction contract' referenced in your Affirmative Defense, and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in Interrogatory 9 (Second Set). Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 9 (Second Set), set forth the facts requested, identify the "substantial construction contracts," or identify all witnesses who have knowledge of the facts which Defendant claims support its assertion.

18. Interrogatory 10 (Second Set) requests Defendant to state "each and every fact which you contend supports or tends to support the assertions in your First Affirmative Defense that Plaintiff 'authoriz[ed] the purchase of real estate without retaining real estate counsel or monitoring the performance of an employee assigned to handle the purchase who was unqualified and inexperienced' and that as a result, 'the land was purchased without clear title and has exposed Keys Federal to liability and substantial expenses with respect to its desired future use of the land;' identify with specificity 'the land' referenced in the Affirmative Defense; indicate the nature and substance of the 'liability' referenced in the Affirmative Defense; and specify the full amount of the 'substantial expenses' referenced in the Affirmative Defense; and identify all witnesses who have knowledge of, or whom you believe may have knowledge of, the facts which you claim support that assertion." The evasive and circular reference in Defendant's

Answer back to the very language in the Affirmative Defense which is the subject of the Interrogatory, does not fairly meet the request posed in Interrogatory 10 (Second Set). Also, none of Plaintiff's answers to the First Set of Interrogatories, referenced in its answer to Interrogatory 10 (Second Set), set forth the facts requested, identify the "land;" indicate the nature and substance of the "liability;" specify the amount of the "substantial expenses;" or identify all witnesses who have knowledge of the facts which Defendant claims support its assertion.

19. Defendant's Answers to each of Plaintiff's Interrogatories refers Plaintiff to Fed. R. Civ. P. 33(d) and to a letter sent by Michael D. Lozoff, as counsel to Keys Federal Credit Union, to Robert E. Weisberg, counsel for Plaintiff on November 15, 2007. [Appendix "C."]

20. Fed. R. Civ. P. 33(d), reproduced in its entirety below,⁷ permits a party responding to an interrogatory, a limited option to produce records in lieu of a written

⁷] Fed. R. Civ. P. 33(d):

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the

answer to the interrogatory, providing that certain conditions are met. *See also*, S.D. Fla. L.R. General Appendix A, Discovery Practices Handbook, Section IV-A, "Interrogatories."

21. Mr. Lozoff's letter is not a business record as contemplated by Rule 33(d). This fact alone removes the letter and Defendant's Answer, from the ambit of Rule 33(d).

22. Unlike business records as contemplated by Rule 33(d) which Plaintiff could examine to ascertain the answer to a specific interrogatory, the Lozoff letter merely summarizes some or all of Defendant's purported reasons for terminating Plaintiff as Mr. Lozoff understands those reasons. In contrast, Rule 33(d) gives Plaintiff the right to examine the underlying documents on which the Lozoff letter is based.

23. Mr. Lozoff's letter is labeled in capital bold letters across the top of the first page, "COMMUNICATION IN FURTHERANCE OF SETTLEMENT." In the body of the letter, Mr. Lozoff writes:

This letter is intended solely in furtherance of settlement discussions.

Accordingly, it shall not be admissible in any legal proceeding pertaining to the employment – or termination -- of John Dolan-Heitlinger, or used in any manner which would be prejudicial to the credit union's legal rights.

24. Moreover, Mr. Lozoff expressly states that the representations he makes in the letter "are not intended to represent statements made by KFCU." Rule 33(b) requires that interrogatories must be answered by the party to whom they are directed or if that party is

records and to make copies, compilations, abstracts, or summaries.

a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent [of the corporation, partnership, association, or government agency], who must furnish the information available to the party. Fed. R. Civ. P. 33(b)(1)(A) and (1)(B).

25. Mr. Lozoff's letter also contains a further set of qualifiers, which render it an inadequate and improper response to Plaintiff's Interrogatories. For example, Mr. Lozoff says that his statements are summaries reflecting his understanding of "a number of the reasons given⁸ for John's termination" which "should not be considered exhaustive"

26. Mr. Lozoff's letter is not signed under oath. Rule 33 provides that each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. Fed. R. Civ. P. 33(b)(3).

27. Defendant must comply with Rule 33. Toward that end, Defendant should provide better answers to Plaintiff's Interrogatories Nos. 1-10. The answers must set forth a factual response to each of the requests in the Interrogatories, and be signed, under oath, by an officer or agent of Defendant.

28. Pursuant to this Court's Orders of October 29, 2009 [D.E. 7] and December 24, 2009 [D.E. 9], Plaintiff's counsel have consulted with opposing counsel in an attempt to resolve the issues raised in this motion but the Parties have not been able to resolve the issues.

⁸] The letter does not identify who gave the statements, to whom the statements were given, or any of the appurtenant circumstances thereof.

WHEREFORE Plaintiff respectfully requests that this Court enter an Order to compel Defendant to serve a better answer to Plaintiff's Interrogatories 1-10 (Second Set) in compliance with Fed. R. Civ. P. 33 within seven (7) calendar days of the date of the Court's Order on this motion.

Certificate of Service

We hereby certify that a true and correct copy of the above was served on counsel of record on the attached service list via electronic filing with the United States District Court for the Southern District of Florida on this 11th day of January, 2010.

s/ Robert E. Weisberg

Robert E. Weisberg, Esq.
LAW OFFICES OF ROBERT E. WEISBERG
2701 Bayshore Drive, Ste. 403
Miami, Florida 33133
Reweisberg@aol.com
305-666-6095
305-666-6096 [FAX]

and

s/ Jose F. Torres

Jose F. Torres, Esq.
LAW OFFICES OF CAMPBELL & MALAFY
1000 Ponce de Leon Blvd., Ste. 205
Coral Gables, FL 33134
torreslaw@mac.com
305-447-8580
786-472-5789 [fax]

ATTORNEYS FOR PLAINTIFF

Counsel of Record

Alan Rosenthal, Esq.
CARLTON FIELDS, P.A.

100 S.E. Second Street
Miami, Florida 33131
arosenthal@carltonfields.com

Natalie J. Carlos, Esq.
CARLTON FIELDS, P.A.
100 S.E. Second Street
Miami, Florida 33131
ncarlos@carltonfields.com

Robert E. Weisberg, Esq.
LAW OFFICES OF ROBERT E. WEISBERG
2701 Bayshore Drive, Ste. 403
Miami, Florida 33133
reweisberg@aol.com

Jose F. Torres, Esq.
LAW OFFICES OF CAMPBELL & MALAFY
1000 Ponce de Leon Blvd., Ste. 205
Coral Gables, FL 33134
torreslaw@mac.com