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US DISTRICT COURT ORLANDO
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

FILED

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10 UNITED STATES DISTRICT COURT
11 MIDDLE DISTRICT OF FLORIDA

JED MARGOLIN,)	Case No. 6:12-mc-00047-JA-DAB
)	
Plaintiff,)	MOTION TO STRIKE
)	
vs.)	
)	
NATIONAL AERONAUTICS AND)	
SPACE ADMINISTRATION,)	
)	
Defendant.)	
)	

12
13
14 Comes now Plaintiff, Jed Margolin (“Margolin”), appearing *pro se*, and files his Motion
15 to Strike DEFENDANT’S RESPONSE TO PLAINTIFF’S OBJECTION TO PROPOSED
16 FINDINGS AND RECOMMENDATIONS (#4). The RESPONSE (#6) by Defendant National
17 Aeronautics and Space Administration (“NASA”) is an undisguised¹ and untimely² Opposition
18 to Margolin’s Motion for Writ of Execution (#2). NASA’s RESPONSE (#6) also contains
19 immaterial, impertinent, and scandalous allegations.

¹ NASA ends its RESPONSE with the words, “For the reasons argued above, this Court should deny the motion for writ of execution. (#4).” (See #6 at 5)

² Margolin mailed a copy of his Motion for Writ of Execution to NASA’s counsel (Holly A. Vance, Assistant U.S. Attorney for the District of Nevada) on April 24, 2012. NASA failed to oppose his motion and no one representing NASA has even made an appearance in this present case until now (#6).

1 **Background**

2 **A.** This present case arises from a Freedom of Information Act action, Case Number 3:09-cv-
3 00421-LRH-(VPC), heard in U.S. District Court For the District of Nevada. In an Order released
4 November 4, 2011 the Nevada District Court ordered NASA to pay Margolin costs of \$525.06 .
5 (For the certified copy of the Order see #1 and #1-1).

6
7 **B.** In that Order (*id.*) the Nevada District Court ruled that Margolin had substantially prevailed.

8
9 **C.** The “Openness Promotes Effectiveness in the National Government Act of 2007,” also
10 referred to as the OPEN Government Act of 2007 (Public Law 110-175 – December 31, 2007),
11 amended several procedural aspects of the Freedom of Information Act. Section 4(b) requires
12 that when a complainant has substantially prevailed the Agency must pay assessed costs from
13 agency funds. The costs are not to be paid by the Claims and Judgment Fund of the United States
14 Treasury. (See Public Law 110-175 Section 4(b) - RECOVERY OF ATTORNEY FEES AND
15 LITIGATION COSTS.)

16
17 **D.** On January 6, 2012 Margolin sent an email to various NASA staff, including General
18 Counsel Michael C. Wholley and NASA Deputy Administrator Lori Garver. See #2-1, Exhibit 2
19 at 11. In part of that email Margolin reminded NASA that they had not complied with the
20 Court’s Order to pay him \$525.06. Margolin sent the email using the “Request Read Receipt”
21 feature of Windows Mail. Margolin received a Read Receipt from several recipients but not from
22 Mr. Wholley. (See #2-1, Exhibit 3 at 14-17). This shows that NASA’s mail server received
23 Margolin’s email but that several recipients refused to acknowledge receiving it. Margolin
24 received no response to his email.

1 **E.** On February 6, 2012 Margolin filed two motions in U.S. District Court for the District of
2 Nevada: **Motion to Compel NASA to Disclose Assets in the State of Nevada** (USDC-Nevada
3 Document 74) and **Motion Requesting NASA Be Held in Contempt** (USDC-Nevada
4 Document 75).

5
6 **F.** On February 22, 2012 NASA filed their **Response to Motion to Compel NASA to Disclose**
7 **Assets in the State of Nevada** (USDC-Nevada Document 76) and **Response to Motion**
8 **Requesting NASA Be Held in Contempt** (USDC-Nevada Document 77).

9
10 In NASA's **Response to Motion to Compel NASA to Disclose Assets in the State of Nevada**
11 (USDC-Nevada Document 76) they argued:

12 This Court awarded Plaintiff \$525.06 in costs in an order dated November 3, 2011.
13 (#73). NASA had 60 days to appeal from that order. F.R.A.P. 4(a) (giving federal agency 60
14 days to file notice of appeal). NASA did not complete its evaluation of whether to appeal
15 from the judgment awarding Plaintiff costs until early January 2012. (Vance Dec. ¶ 4).
16 Moreover, the government generally requires at least eight weeks to process a judgment for
17 payment. (Vance Dec. ¶ 5). Given the 60-day appeal time and the eight-week period to
18 process the judgment for payment, NASA anticipates that Plaintiff will be paid in March
19 2012. (Vance Dec. ¶ 6). Because NASA fully intends to pay Plaintiff, there is no need to
20 require NASA to disclose its Nevada assets.
21

22 **G.** By the end of April 2012 NASA had not paid Margolin the Judgment ordered by the U.S.
23 District Court for the District of Nevada so Margolin registered the Nevada Court's Judgment
24 here in the Middle District of Florida (#1, #1-1) and moved for a Writ of Execution (#2, #2-1,
25 and #2-2).

26
27 **H.** On May 17, 2012 the Nevada Court ordered NASA to file a status report on the matter. (See
28 USDC-Nevada Document 80, and current case #5-1 at 13).

1 **I.** NASA replied that the reason they had not paid Margolin was because:

2 **1.** Margolin had refused to give NASA his Social Security Number.

3 **2.** Courtney Graham (NASA) did not know until early January 2012 that the law requires that
4 the funds come from NASA agency appropriations, and not from the Judgment Fund.

5
6 NASA further stated their intention to pay Margolin “within 10 working days.”

7 (See USDC-Nevada Document 81 and current case #5-1 at 15-16).

8
9 **J.** Margolin filed a Reply to NASA’s Status Report. In it he explained, among other things, that:

10
11 **1.** Margolin had received a telephone message asking for his Social Security Number. The
12 telephone message purported to come from the office of the U.S. Attorney for Nevada (not from
13 NASA) and said that Margolin’s Social Security number was needed by their Department. This
14 made it appear that the U.S. Attorney’s office was proposing to pay the Judgment. Since the law
15 requires that the Judgment be paid by NASA, not by DOJ, it was reasonable for Margolin to
16 believe that this message came from an individual using pretexting in an illegal attempt to obtain
17 his Social Security Number. The failure by NASA’s Counsel to respond to his subsequent email
18 on this matter provided further evidence that this was an attempt at pretexting.

19 **2.** NASA’s Counsel failed to explain why she ignored Margolin’s March 2 email about the
20 telephone message.

21 **3.** In Margolin’s Reply he informed the Court (and NASA) that he had registered the November
22 2011 Judgment in U.S. District Court for the Middle District of Florida and moved for a Writ of
23 Execution, and that he had incurred additional costs in the amount of \$107.99 in doing so.

1 Margolin also asked the Nevada Court whether the Nevada Court or the Florida Court now had
2 jurisdiction over the payment of the judgment.

3
4 (For Margolin's Reply to NASA's Status Report see USDC-Nevada Document 82 and current
5 case #5-1 at 24. Margolin reported he had incurred additional costs of \$107.99 in registering the
6 Judgment in the present Court in USDC-Nevada Document 82 at 10, line 13 and current case #5-
7 1 at 33, line 13. The additional costs are documented in USDC-Nevada Document 82 Exhibit 12
8 at 77, reproduced here as Exhibit 1 at 17.)

9
10 **K.** On June 25, 2012 the Nevada Court issued an Order to Margolin which required him to state
11 if NASA had paid him. (See USDC-Nevada Document 84).

12
13 **L.** On June 26, 2012, since NASA hadn't paid Margolin he told the Court that NASA hadn't
14 paid him. (See USDC-Nevada Document 85).

15
16 **M.** On June 27, 2012 NASA filed a Notice that they had mailed Margolin a check for \$525.06
17 on June 26, the previous day. (See USDC-Nevada Document 86). By an amazing coincidence
18 NASA mailed the check the same day Margolin reported he had not been paid. It was also the
19 day after the Court made its inquiry, and when NASA was facing the possibility of being held in
20 contempt.

21
22 **N.** On June 28, 2012 the Nevada Court ordered (USDC-Nevada Document 87):

23 Before the court are Plaintiff Jed Margolin's Motion to Compel NASA to Disclose Assets in
24 the State of Nevada (#74) and Motion Requesting NASA Be Held in Contempt (#75), filed
25 on February 6, 2012. The motions involve Margolin's attempt to enforce this court's Order
26 (#73) of November 4, 2011, taxing costs in the amount of \$525.06. In response to the court's
27 Order (#84) of June 25, 2012, the same day Margolin filed a declaration (#85) indicating

1 that satisfaction of the costs award had not yet occurred. However, on June 27, 2012, NASA
2 submitted notice and proof (#86) that payment of the costs award was mailed to Margolin on
3 June 26, 2012.

4 IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel (#74) and Motion
5 Requesting NASA Be Held in Contempt (#75) are hereby DENIED.

6 The Nevada Court failed to address the issue of whether the Middle District of Florida now had
7 jurisdiction of the payment of the additional costs Margolin had incurred in registering the
8 Judgment in the Middle District of Florida, so the Middle District of Florida it is.

9
10 Q. On July 11, 2012 the present Court's Magistrate recommended that Margolin's Motion for a
11 Writ of Execution be denied and that Margolin's Motion to be allowed to register for and use the
12 Court's CM/ECF system also be denied (#4).

13
14 P. On July 18, 2012 Margolin filed his Objection to the Magistrate's Recommendation (#5).

15
16 Q. On August 2, 2012 NASA (through their new Counsel) filed DEFENDANT'S RESPONSE
17 TO PLAINTIFF'S OBJECTION TO PROPOSED FINDINGS AND RECOMMENDATIONS
18 (#4) {Court Document #6}.

19 **Argument**

20 A. NASA's new Counsel, the Assistant U.S. Attorney for the Middle District of Florida, asserts
21 that NASA's Counsel, Assistant U.S. Attorney Holly A. Vance, was not served with Margolin's
22 Objection (#6 at 2, Footnote 1).

23 1. NASA's new Counsel does not dispute that Margolin properly served NASA's Counsel
24 Assistant U.S. Attorney Holly A. Vance with a copy of his Motion for Writ of Execution (#2).

1 2. NASA's new Counsel does not dispute that NASA's Counsel Assistant U.S. Attorney Holly
2 A. Vance would also have known that Margolin had registered the Court Judgment in the present
3 Court and moved for a writ of execution when Margolin disclosed this information in his
4 REPLY TO NASA'S STATUS REPORT (#81) filed with USDC-Nevada on June 2, 2012. (See
5 USDC-Nevada Document 82 at 9 and current case #5-1 at 32, line 20).

6
7 3. NASA's new Counsel does not dispute that NASA's Counsel Assistant U.S. Attorney Holly
8 A. Vance failed to file an Opposition to Margolin's Motion for Writ of Execution (#2).

9
10 4. NASA's new Counsel does not assert that Assistant U.S. Attorney Holly A. Vance has even
11 made an appearance in this case.

12
13 5. When this Court sent Margolin his copy of the Magistrate's Report and Recommendations
14 (#4) the document contained a cover sheet from the Court's CM/ECF system showing that the
15 document had been delivered to Margolin "by other means", but that notice had not been
16 electronically sent to anyone. See Exhibit 2 at 23. This indicates that no one had made an
17 appearance for NASA by that time (July 11). Indeed, even now PACER indicates that only
18 NASA's new Counsel, Assistant U.S. Attorney Ralph E. Hopkins, has made an appearance for
19 NASA in this present case, and that he did not make his appearance until August 2, 2012. See
20 Exhibit 3 at 25.

21
22 6. Therefore, when Margolin filed his Objection (#5) there was no Counsel of Record
23 representing NASA to send it to.

24

1 **7.** If Margolin had been allowed to register for and use the Court's CM/ECF system, then the
2 Court's CM/ECF would not have sent a copy of Margolin's Objection (#5) to NASA Counsel
3 Assistant U.S. Attorney Holly A. Vance either.

4
5 **8.** The assertion made by NASA's new Counsel that Margolin failed to serve Assistant U.S.
6 Attorney Holly A. Vance with a copy of his Objection suggests that Margolin had a duty to do
7 so, and by not doing so Margolin had failed to follow the Rules (Federal Rules of Civil
8 Procedure and/or this Court's Local Rules). This tactic by NASA's new Counsel (who has only
9 recently appeared in this case) is immaterial, impertinent, and scandalous.

10
11 **9.** Since NASA had no Counsel of Record for Margolin to serve, he sent a copy of his
12 Objection to the NASA Administrator because, according to the National Aeronautics and Space
13 Act of 1958, Public Law #85-568, 72 Stat., 426, Sec 202(a):

14 Under the supervision and direction of the President, the Administrator shall be responsible
15 for the exercise of all powers and the discharge of all duties of the Administration, and shall
16 have authority and control over all personnel and activities, thereof.
17

18 Sending first class mail to the NASA Administrator is a problem. According to the NASA Web
19 site http://www.nasa.gov/centers/hq/about/mailing_tips.html (reproduced as Exhibit 4 at 27):

20 NASA HQ Mailing and Address Tips

21

22 Getting to NASA Headquarters

23

24 WHAT IS OUR ADDRESS?

25

26 It depends... NASA Headquarters has two different addresses: an official mailing address
27 and a delivery address. Using the correct address can be crucial. Items being express-mailed
28 or hand carried need to include the street address.

29

30 Mailing Address

1 Items mailed through the U.S. Postal Service (including registered or certified) should be
2 addressed as

3
4 Name/Title
5 Office (Division, Branch, Section, Unit)
6 Office ID
7 NASA Headquarters
8 Washington DC 20546-0001

9
10 Delivery Address

11
12 Items mailed by express mail, commercial delivery, or courier delivery should be addressed
13 as:

14
15 Name/Title
16 Office (Division, Branch, Section, Unit)
17 Office ID
18 Attn: Receiving & Inspection
19 NASA Headquarters
20 300 E Street SW
21 Washington DC 20024-3210

22
23 Therefore, when sending standard first class mail to the NAA Administrator it should be
24 addressed as:

25 Name/Title
26 Office (Division, Branch, Section, Unit)
27 Office ID
28 NASA Headquarters
29 Washington DC 20546-0001

30
31 However, NASA does not provide the public with the necessary information to address mail this
32 way, i.e. "Office ID." There is a Web page with what promises to be a link to the information at
33 <http://www.hq.nasa.gov/hq/directories.html>. (See Exhibit 5 at 29). The following is from that
34 Web page.

1 HQ Directory
2 The NASA Headquarters Directory contains a structured listing of HQ organizations,
3 personnel, and services arranged by category. This directory is published, distributed, and
4 posted online twice a year.
5 + Read More
6

7 Unfortunately the link goes to a page at http://www.hq.nasa.gov/itcd/hq_directory.html which
8 says the directory is not available online. (See Exhibit 6 at 31)

9 Without the addressing information that NASA requires (and refuses to give to the Public)

10 Margolin addressed service to:

11 Charles F. Bolden, Administrator
12 National Aeronautics and Space Administration
13 300 E Street SW
14 Washington, DC 20024-3210
15

16 This caused a problem for the U.S. Postal Service and, although Margolin mailed it on July 16
17 using USPS Priority Mail, it was not delivered until July 23. (See Exhibit 7 at 33). If NASA did
18 not receive its copy of Margolin's Objection (#5) in a timely manner, it was NASA's own fault
19 for requiring mailing information that it refuses to provide.

20
21 **B.** NASA's new Counsel has selectively quoted Pub. L. 110-175, 121 Stat. 2425 (2007) to
22 change its intent (#6 at 3, first full paragraph):

23 Moreover, costs assessments in FOIA cases are required to be paid "only from funds
24 annually appropriated for any authorized purpose for the Federal agency against which a
25 claim or judgment has been rendered." Pub. L. 110-175, 121 Stat. 2425 (2007).
26

27 The full quote from Pub. L. 110-175, 121 Stat. 2425 (2007) is:

28 Notwithstanding section 1304 of title 31, United States Code, no amounts may be obligated
29 or expended from the Claims and Judgment Fund of the United States Treasury to pay the
30 costs resulting from fees assessed under section 552(a)(4)(E) of title 5, United States Code.

1 Any such amounts shall be paid only from funds annually appropriated for any authorized
2 purpose for the Federal agency against which a claim or judgment has been rendered.

3
4 The reason Congress put this in the law was to give agencies an incentive to comply with the
5 Freedom of Information Act. Presumably, agencies will be more likely to comply with the
6 Freedom of Information Act if judgments against them are paid with their own money and not
7 from the Claims and Judgment Fund of the United States Treasury. Congress probably thought
8 this would give agencies sufficient incentive and did not consider that agencies might go rogue,
9 as NASA has done here.

10
11 C. NASA's new Counsel asserts that Margolin's writ of execution is barred by sovereign
12 immunity and particularly that "Plaintiff has failed to show that NASA has waived its sovereign
13 immunity and consented to be sued via a writ of execution." (#6 at 4). As Margolin points out in
14 his Objection (#5) at 2, line 3:

15 A. The United States has waived Sovereign Immunity in Freedom of Information Act
16 actions brought under 5 U.S.C. §552(a)(4)(B) and, absent statutory exceptions, is subject to
17 the civil process under the Federal Rules of Civil Procedure and the Court's Local Rules
18 which includes the use of a Writ of Execution to satisfy a judgment as contained in Federal
19 Rules of Civil Procedure Rule 69.

20
21 NASA's new Counsel appears to be asserting that NASA has their own right to sovereign
22 immunity apart from the United States. If NASA is not an agency of the United States then they
23 must be an agency of some other sovereign state. NASA should therefore be required to state
24 what sovereign state they are an agency of. Note that NASA did not assert sovereign immunity
25 when Margolin brought an action against them in U.S. District Court for the District of Nevada.

26

1 **D.** NASA’s new Counsel asserts that Margolin did not argue before the Magistrate that he is
 2 entitled to \$107.99 in costs (#6 at 4).

3 **1.** In Margolin’s Objection he cited USDC-Nevada Document 82 and said (#5 at 9, line 8):

4 d. In Margolin’s Reply (*Id.*) he informed the Court (and NASA) that he had registered the
 5 November 2011 Judgment in U.S. District Court for the Middle District of Florida and
 6 moved for a Writ of Execution, and that he had incurred additional costs in the amount of
 7 \$107.99 in doing so. Margolin also asked the Nevada Court whether the Nevada Court or the
 8 Florida Court now had jurisdiction over the payment of the judgment. (See Exhibit 3 at 24)
 9

10 Margolin reproduced USDC-Nevada Document 82 in #5 Exhibit 3 but omitted several exhibits
 11 due to their length. Because Margolin cited USDC-Nevada Document 82 it should be considered
 12 as being incorporated by reference in his Objection. USDC-Nevada Document 82 Exhibit 12 is
 13 reproduced here as Exhibit 1 at 17.

14
 15 **2.** Since then, Margolin has incurred additional expenses, such as the expenses in mailing his
 16 Objection (#5) and in using Pacer to track the case. These additional expenses consist of:

07/16/2012	Mailing cost to U.S. District Court for the Middle District of Florida	\$6.05
07/16/2012	Mailing cost to serve NASA/Administrator Bolden	\$6.05
07/16/2012	Mileage to and from Post Office in Virginia City 12.8 miles at 0.55/mile	\$7.04
5/9/2012 – 6/28/2012	Pacer for MDFL	\$6.50
	Total	\$25.44

17
 18 See Exhibit 8 at 35 for the receipts for these additional expenses.

19
 20 There will undoubtedly be more of these expenses unless Margolin’s motion to be allowed to
 21 register for and use the Court’s CM/ECF system (#5) is granted. Indeed, as long as Margolin is
 22 required to mail his filings Margolin cannot know the final post judgment expenses (and submit
 23 receipts) without violating the Principle of Causality.

1 **E.** NASA's new Counsel asserts that (#6 at 4):

2 D. The District of Nevada judgment for \$525.06 has been satisfied and Plaintiff offers no
3 evidence that he incurred \$107.99 in additional costs. Plaintiff readily admits that the
4 \$525.06 judgment from the District of Nevada has been satisfied. (#5 p. 10, line 4).
5

6 **1.** As detailed above in Section D, Margolin did present the Magistrate with evidence that he
7 had incurred \$107.99 in additional costs.

8
9 **2.** NASA paid the \$525.06 judgment only after Margolin incurred the additional costs of
10 registering the judgment and moving for a writ of execution in the Middle District of Florida.
11 NASA's new Counsel has failed to mention that fact, which makes his report of Margolin's
12 admission that the judgment has been paid immaterial, impertinent, and scandalous.

13
14 **F.** The RESPONSE (#6) by NASA's new Counsel is an undisguised and untimely Opposition to
15 Margolin's Motion for Writ of Execution (#2).

16
17 **1.** NASA ends its RESPONSE with the words, "For the reasons argued above, this Court should
18 deny the motion for writ of execution. (#4)." (See #6 at 5)

19 **2.** Margolin mailed a copy of his Motion for Writ of Execution (#2) to NASA's counsel in the
20 Nevada case (Holly A. Vance, Assistant U.S. Attorney for the District of Nevada) on April 24,
21 2012. It was Ms. Vance's decision not to oppose Margolin's Motion or even to make an
22 appearance in the present case. Apparently, Ms. Vance also failed to notify her superiors that
23 someone needed to handle the present case. As a result NASA failed to oppose Margolin's
24 Motion for Writ of Execution within the time limit prescribed by this Court's Local Rules.
25 (Local Rule 3.01(b) specifies 14 days to oppose a motion.) Margolin mailed a copy of his

1 Motion for a Writ of Execution (#2) to NASA Counsel Assistant U.S. Attorney Holly A. Vance
2 on April 24, 2012. NASA's new Counsel filed NASA's Response (#6) on August 2, 2012. There
3 are approximately 100 days between the two dates, so NASA was approximately 86 days late
4 with their opposition. If Margolin were 86 days late with a filing would his filing be accepted?

5
6
7

Conclusion

8 For the foregoing reasons Margolin respectfully requests that this Court strike NASA's
9 DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO PROPOSED FINDINGS
10 AND RECOMMENDATIONS (#4).

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Respectfully submitted,



Jed Margolin, plaintiff pro se
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775-847-7845
jm@jmargolin.com

Dated: August 7, 2012

1

Certificate of Mailing

2 I hereby certify that a copy of the foregoing MOTION TO STRIKE has been sent by first-class
3 mail to the following addressee on August 7, 2012:

4

5 Ralph E. Hopkins
6 Assistant United States Attorney
7 501 W. Church St. Ste., 300
8 Orlando, FL 32805

9

10 
11 _____

12
13 Jed Margolin