People For The Ethical Treatment of Animals, Inc. v. Dade City's Wild Things, Inc. et al

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UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC., Plaintiff, v. Case No: 8:16-cv-2899-T-36AAS

STEARNS ZOOLOGICAL RESCUE & REHAB CENTER, INC., KATHRYN P. STEARNS and RANDALL E. STEARNS, Defendants. _____/

O R DE R This cause comes before the Court upon the Amended Report and Recommendation filed by Magistrate Judge Amanda Arnold Sansone (Doc. 282). In the Amended Report and Recommendation, the Magistrate Judge recommends the Court grant, in part, Plaintiff People for Why Defendants 1

Should Not Be Held in Contempt (Doc. 76) as follows: (a) enter a default judgment against Defendants; (b) dismiss Amended Counterclaims; (c) award PETA nses incurred as a result of D with the July discovery orders, from the time of the initial discovery violation through the filing

of the March 2018 Report and Recommendation (Doc. 230); and (d) d order to show cause why Kathryn Stearns and Randall Stearns should not be held in contempt. The

1 referred to collectively as -party Kenneth

Magistrate Judge further recommends the Court Why Non-Party Kenneth Stearns Should Not Be Held in Contempt (Doc. 97) based on the

imposition of the other sanctions.

Defendants filed objections to the Amended Report and Recommendation (Doc. 285), to which PETA responded (Doc. 286). Upon consideration, the Court will objections and adopt, confirm, and approve the Amended Report and Recommendation in all

respects.

I. BACKGROUND This case began on October 12, 2016, when PETA, an animal rights group, sued Defendants for alleged violations of the Endangered Species Act, 16 U.S.C. §§ 1531, et seq. (the -run

zoo in Dade City, Florida. Doc. 1; Doc. 37. PETA alleged that separating tiger cubs from their mothers, forcing the cubs to swim with the public for profit, and inadequately housing and caring for the tigers. Doc. 1; Doc. 37. DCWT filed counterclaims against allegedly obtained employment with DCWT to generate and disseminate internal information in

preparation for the filing of this action. Doc. 38.

On June 7, -counsel with a request to conduct a site inspection at DCWT. See Doc. 56-1. Defendants refused the request, and on June 30, 2017, PETA filed a motion to compel entry upon land to conduct a site inspection of DCWT. 2

Doc. 56. PETA

2 The motion sought to: (1) observe the tiger cubs during public encounters, both on land and in the pool, (2) observe the tigers interact with their trainers, both on land and in the pool, (3) observe all tigers interact without trainer interaction, (4) observe the physical condition of the tigers, (5) observe all tigers during meal time, (6) observe all tigers when shifted to off-exhibit areas, (7) observe all tigers when their enclosures are being cleaned, (8) measure the size of the enclosures where the tigers are held, (9) observe areas associated with maintenance of the facility pool, and (10) take water samples from the pool where tiger swims occur. Doc. 56-1.

alleged in its motion to compel that DCWT had indicated Shiva would become too large for swim encounters after the end of July. Id.; Doc. 56-2. Therefore, PETA alleged, time was of the essence. Id.

. Doc. 64. During the hearing, the Magistrate Judge questioned Kathryn Stearns about when tiger cub swim encounters would be ending. Doc. 64 at pp. 13-14. Kathryn Stearns suggested that Shiva, depending on her weight, may be used in swim encounters past the end of July. Id. at p. 13. Kathryn Stearns further represented that there were no time constraints for the site inspection because the tiger cub encounters would be ongoing. 3

Id. When the Magistrate Judge asked whether tiger cub Id. at p. 13. Ultimately, the Magistrate Judge overruled Defe to compel, and ordered that the site inspection occur at DCWT during normal business hours on

July 20, 2017. Doc. 63.

On July 14, 2017, after receiving information that the Stearns were in the process of removing their tigers from DCWT, PETA filed an emergency application for temporary restraining order and preliminary injunction or, in the alternative, emergency motion for an order prohibiting spoliation and preserving evidence. Doc. 67. The motion sought an order directing that the tigers be preserved in their current state and location to ensure PETA would have access to the tigers

3 Specifically, Kathryn Stearns stated:

We will continue to have cubs. I had lined up a second cub that will start when Shiva ends. This is my business, we have always done th awsuit that. Doc. 64 at pp. 13-14.

during the July 20, 2017 site inspection. Id. The Magistrate motion on the same day, ordering that Defend - property and shall not transfer, transport, relocate or in any way harm its twenty-two tigers absent

further order of the C tigers . . . would amount to a direct violation of the C Id. 4

Between July 14, 2017 and July 16, 2017, the Stearns relocated all of their tigers, including Shiva. The f are found in the Amended Report and Amended R&R at pages 13 to 25, which the Court, finding no error, adopts and incorporates herein by reference. 5

arrived at DCWT for the court ordered site inspection, the Stearns denied them access to the facility. Doc. 79 at pp. 8-10. The parties appeared before the Magistrate Judge for a hearing on July 26, 2017. Doc. 78; Doc. 79. At the hearing, the Magistrate Judge directed that the site inspection occur without delay and directed the United States Marshal Service to be present at the rescheduled site inspection to ensure compliance by the Stearns and for any necessary peace- e inspection of DCWT, albeit without tigers, occurred on August 4, 2017. Doc. 83.

PETA filed the Motion for Sanctions and Order to Show Cause Why Defendants Should Not Be Held in Contempt discovery orders. Doc. 76. In that motion, PETA requested the Court enter a default judgment against Defendants, 4

5 As discussed in more detail infra Therefore, the Court adopts the factual findings as set forth in the Amended R&R.

expen why they should not be held in contempt, and order the tigers transported to a sanctuary. Id.

Subsequently, on September 6, 2017, PETA filed the Motion for an Order to Show Cause Why Non-Party Kenneth Stearns Should Not Be Held in C violation of the July discovery orders. Doc. 97. 6

In addition, the motion requested the court enter an order requiring Kenneth Stearns to pay and costs. Id.

The Magistrate Judge considered the sanctions motions at a two-day evidentiary hearing on February 21, 2018 and February 22, 2018. 7

During the two-day hearing, the Magistrate Judge heard testimony from witnesses and received

evidence related to the alleged discovery violations. Doc. 219; Doc. 220. On March 2, 2018, the Magistrate Judge issued a report and recommendation ntered in the record at the evidentiary hearing and making a recommendation to the District Court that it sanction Defendants counterclaims, and awarding PETA reasonab . Doc. 230. Defendants

filed objections to the R&R on March 16, 2018, and PETA filed a response on March 23, 2018.

On March 30, 2018, the Court entered an order deferring ruling on the R&R based on the pendency of two other motions which were filed between the time the Magistrate Judge scheduled the two-day evidentiary hearing and the time the R&R became ripe for review. On February 20, 2018, one day before the Magistrate Judge began the two-day evidentiary hearing, Defendants 6

The Court refers to the two motions for 7 The court had originally scheduled an evidentiary hearing on these motions for November 2017. However, the hearing was delayed to allow discovery and to resolve objections. See Doc. 159.

PETA, Inc. v. Miami Seaquarium, 879 F.3d 1142, 1148, 1150 (11th Cir. 2018). And on March 19, 2018, PETA filed a motion for leave to file a second amended complaint to add allegations about

Given the two pending motions related to the pleadings, the Court questioned whether it would be procedurally proper to accept the recommendation of default judgment. Doc. 230. Therefore, the Court deferred ruling on the R&R and the sanctions motions until it ruled on the Id.

Second Amended Complaint on June 7, 2018. Doc. 254; Doc. 256. Defendants then filed a motion

to dismi to dismiss. Doc. 269; Doc. 270; Doc. 271; Doc. 272. Defendants filed an answer and affirmative defenses, along with its Amended Counterclaims. Doc. 273. PETA then moved to strike strike. Doc. 281.

Once the pleadings were closed, on July 30, 2019, the Magistrate Judge filed the Amended R&R now before the Court. Like the R&R, the Amended R&R includes findings of fact based on the evidence entered in the record at the two-day evidentiary hearing and recommends sanctions in the form of default judgment against Defendants, dismissal of an award of reasonable atto to PETA. Doc. 282. The Magistrate Judge based

II. LEGAL STANDARD t and de novo determination of those portions of the § 636(b)(1)(C); Jeffrey S. v. State Board of Education of State of Georgia, 896 F.2d 507, 512 (11th

Cir. 1990). With regard to those portions of the Report and Recommendation not objected to, the district judge applies a clearly erroneous standard of review. See Gropp v. United Airlines, Inc., 817 F. Supp. 1558, 1562 (M.D. Fla. 1993). The district judge may accept, reject, or modify in whole or in

part, the Report and Recommendation of the Magistrate Judge. Fed. R. Civ. P. 72. The district judge may also receive further evidence or recommit the matter to the Magistrate Judge with further instructions. Id.

Federal courts have authority to impose a variety of sanctions under Federal Rule of Civil

provide or permit di

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or in part; (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Fed. R. Civ. P. 37(b)(2)(A). Instead of or in addition to the sanctions listed in subsections (i) through (vii), the court must order the disobedient party or the party failing to act, the attorney the failure, unless the failure was substantially justified or other circumstances make an award of

Although dismissal of a recalcitrant party s claim is permitted, dismissal with prejudice is the most severe Rule 37 sanction and not favored. Mene v. Marriott Inter., Inc., 238 Fed. Appx. 579, 582 (11th Cir. 2007). However, dismissal with prejudice is appropriate when less drastic remedies have been ineffective or when a party demonstrates a flagrant disregard for the court and the discovery process. Id. (affirming dismissal as sanction under Rule 37 where party had twice disobeyed court orders to appear for depositions and consistently disregarded court-imposed deadlines).

Rasmussen v. Central Fla. Council Boy Scouts of Am., Inc., 412 Fed. Appx. 230, 232 (11th Cir. 2011).

District courts also have inherent authority to impose sanctions upon parties who abuse the judicial process or who perpetrate a fraud upon the court. See Chambers v. NASCO, Inc., 501 U.S. 32, 44-45 (1991). A fraud upon the court occurs adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of

the opposing part Jackson v. Comberg, No. 8:05-cv-1713-T-24TMAP, 2006 WL 8440091, at *2 (M.D. Fla. Aug. 25, 2006) (quoting Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989)). A district court may impose sanctions pursuant to its inherent authority

where a party destroys or conceals evidence or commits perjury. Flury, 427 F.3d at 944-45 (discussing the imposition of sanctions for spoliation of evidence); Qantum Commc ns Corp. v. Star Broad., Inc. n the misconduct

Qantum Commc ns Corp., 473 F. Supp. 2d at 1269.

necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious Purchasing Power, LLC v. Bluestem Brands, Inc., 851 F.3d 1218, 1223 (11th Cir. 2017) (quoting Chambers, 501 U.S. at 43). A district court may exercise its inherent power to sanction the willful disobedience of a court order, and to sanction a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons Id. (quotation marks and citations vindicate judicial authority without resorting to a contempt of court sanction to make the prevailing party whole. Id. (citing Chambers, 501 U.S. at 46).

tive bad faith or Purchasing Power, LLC, 851 F.3d at 1223- ng other things. Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1306 (11th Cir. 2009).

process, requiring fair notice and an opportunity to be heard. Hernandez v. Acosta Tractors Inc.,

898 F.3d 1301, 1306 (11th Cir. 2018) (quotation marks and citations omitted). Further, inherent mere protracted litigation. Purchasing Power, LLC, 851 F.3d at 1225. Rather, sanctions fashioned

Id. Such Roadway Exp., Inc. v. Piper, 447 U.S. 752, 765-

Eagle Hosp. Physicians, LLC, 561 F.3d at 1306 (quotation marks and citations omitted). Nonetheless, dismissal and striking may be appropriate where lesser Id.

III. DISCUSSION Defendants well over a dozen separate arguments. Many of the arguments take issue with insignificant details of fact, raise issues previously addressed by the Court, or lack merit. by a thousand paper cuts fails. The Amended R&R relies upon significant record evidence, properly admitted and not reasonably contested, showing Defendants schemed to remove and transfer their tigers with the knowledge that PETA had a legal right to observe the tigers at DCWT as part of the civil discovery process. The Court agrees with the Magistrate Judge: complete disregard for the rule of law. Severe sanctions are warranted.

A. Defendants re

Overruled As discussed supra, in February 2018, the Magistrate Judge presided over a two-day evidentiary hearing and prepared findings of fact in connection with PE Doc. 282 at pp. 8, 13-25. Defendants argue

because they rely on faulty evidence. The evidence Defendants take issue with are the Declaration of Deborah Warrick, deposition testimony of Joseph Maldonado, and call logs. The Court discusses each of within the context of each disputed

item of evidence in turn.

1. The Warrick Declaration Defendants argue the Magistrate Judge erred on pages 19 and 23 of the R&R by basing her factual findings upon doc. 76-3, the Declaration of Deborah Warrick , because Warrick had reason to lie. Doc. 285 at p. 23. Pages 19 and 23 of the R&R make the following factual findings based on the Warrick Declaration: (1) Warrick did not receive tigers from DCWT and (2) the F-150 truck that hauled a trailer containing tigers Florida tag numbered Y76GNJ. Doc. 282 at pp. 19, 23 (citing Warrick Declaration at ¶¶ 11-12,

21).

As an initial matter, it is unclear why Defendants attempt to dispute the factual finding that Warrick ultimately did not receive tigers since that fact has little relevance. More obvious is hauling tigers to Wynnewood, Oklahoma had a Florida license plate number Y76GNJ, as other evidence in the record links that license plate to Kathryn Stearns. Doc. 76 at Exh. 8.

Regardless of their reasons for disputing the factual findings, Defendants do not elaborate on their assertion that Warrick had reason to lie, instead citing only to excerpts of two deposition testimony transcripts. Doc. 285 at p. 23 (citing Doc. 235-1, Deposition of Gail Bowen, at pp. 108, 144-45; Doc. 235-6, Deposition of Susan Nassivera, at pp. 99-100). But none of the deposition testimony transcript excerpts contradict the statements in the Warrick Declaration. Nor do they

provide sufficient information from which to infer that Warrick concocted two specific lies about her non-receipt of tigers and her receipt of information about the truck license plate number.

No information in the record cited by Defendants suggests the Magistrate Judge erred in crediting evidence from Warrick that she received no tigers and that the truck carrying tigers to Wynnewood, Oklahoma had a license plate number Y76GNJ. The Magistrate Judge did not err in relying on the Warrick Declaration as cited in the Amended R&R.

Even if the Warrick Declaration were deemed not credible, however, there would be no reason for the Magistrate Judge to change the ultimate findings of fact. Additional evidence besides the Warrick Declaration supports the factual findings that Warrick did not receive tigers and that the F-150 truck had a Florida tag numbered Y76GNJ. Stated differently, the Magistrate Judge could have relied on different record evidence to support the same factual findings. See, e.g., doc. 244-5 (form from Gail Bowen listing a tiger delivery license plate as Y76GNJ). Defendants fail to make a meritorious argument as to the Warrick Declaration.

2. Deposition Testimony Defendants also argue the Magistrate Judge erred in basing her factual findings upon the testimony of Joseph Maldonado Amended bility considering facts that arose after

the [two- Id. Those facts, according to Defendants, include that Maldonado was later as well as multiple counts Id.

with respect to this case. Defendants fail to cite any case law in support of their request that the

Court reject the credibility findings of a fact witness based on later, unrelated

occurrences involving the witness. There is no reason to conclude the Magistrate Judge erred in Amended R&R.

3. Cellular Phone Call Logs Defendants also argue the Magistrate Judge relied on inadmissible phone call logs in her findings of fact. Doc. 285 at p. 19. According to Defendants, Kathryn phone call logs, obtained by Kathryn Stearns from Verizon website rather than by subpoena to Verizon are inadmissible hearsay and should have been excluded. Id. Defendants argue the phone call logs do not Evidence 807(a Magistrate Judge failed to make sufficient findings under Rule 807(a) and there was no explanation of what the call logs meant. Id.

Defendants point specifically to page 16 of the R&R which makes a finding based on the phone call logs that, immediately following the July 12 site inspection of DCWT, Kathryn Stearns called Randall Stearns and Kenneth Stearns. Doc. 285

the timing of Kathryn phone call logs Id.

But the Court agrees with PETA ultimately, it does not matter exactly when Kathryn Stearns called her husband and son. Doc. 286 at p. 4. Indeed, it does not even matter that Kathryn Stearns called them that day. Much other record evidence finding that Randall Stearns and Kenneth Stearns knew PETA was entitled to a site inspection and

that the tigers were to remain in place at DCWT but nonetheless assisted Kathryn Stearns in the removal and transfer of tigers from DCWT to other facilities. Doc. 282 at pp. 13-14, 17-18, 20-22. The same is true of other parts of the phone call logs showing to whom and at what time Kathryn

Stearns may have made telephone calls; the Court may instead rely on the wealth of other evidence detailing conversations between Kathryn Stearns and others regarding the transfer of tigers.

In any event, the Magistrate Judge did not err in deciding the phone call logs were admissible pursuant to the residual exception under Rule 807 and, in turn, did not err in admitting the records at the evidentiary hearing and citing to those records in her factual findings. Doc. 225 at p. 47. Under Rule 807(a), a hearsay statement not admissible under Rule 803 or 804 is nonetheless admissible when

(1) the statement is supported by sufficient guarantees of trustworthiness after considering the

totality of circumstances under which it was made and evidence, if any, corroborating the statement; and (2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts. Fed. R. Evid. 807(a)(1)- hen it comes to trustworthiness, its primary concern is that of the declarant. Rivers v. U.S., 777 F.3d 1306, 1314 (11th Cir. 2015). See also Advisory Committee Notes to 2019 Amendments, Rule 807.

Here, the phone call logs are supported by sufficient guarantees of trustworthiness, after considering the totality of the circumstances and corroborating evidence. First, the phone call logs, according to statements from Kathryn Stearns to the Magistrate Judge, came from Verizon, the carrier. Doc. 225 at pp. 46-47. Verizon provided the records to Kathryn Stearns upon request as a customer of Verizon, and Kathryn Stearns provided the records to PETA. Id. Because Verizon, the declarant, had no reason to produce a false copy of a customer phone call logs kept in the course of its business, the phone call logs themselves maintain guarantees of trustworthiness. Second, other record evidence corroborates the material in the phone call logs on which the Magistrate Judge relies, specifically, calls between Kathryn Stearns and others regarding . The Amended R&R discusses statements from a number of witnesses, all who

testify or aver to various telephone discussions between themselves and Kathryn Stearns during the relevant time period in July. See, e.g., Doc. 282 at pp. 13-14, 16-17.

Finally, the phone call logs are more probative on the point for which they were offered than any other evidence that PETA could obtain at the time through reasonable efforts because of the limited time frame in which the parties had to collect evidence before the evidentiary hearing and because of See Doc. 185; Doc. 190; Doc. 209.

Defendants also argue the phone call logs should not have been admitted because Defendants were not provided adequate notice under Rule 807(b) m. Doc. 285 at p. 20, n.13. To the contrary, as the Magistrate Judge explained, Defendants had notice because (1) the phone call logs were provided by Defendants and (2) PETA listed them on its exhibit list in advance of the hearing. Doc. 225 at pp. 47-48.

After the evidentiary hearing, PETA obtained phone call logs directly from Verizon pursuant to a subpoena. Defendants allege those records, attached to their Objections, contradict the informal phone call logs and the Magistra Defendants home in on Id. While zeroing

factual findings, including text messages and witness testimony. None of nitpicking

of the phone records Kathryn Stearns communicated with various people between June and July to arrange the transfer

The Court has conducted a clearly erroneous review of the factual findings of the Magistrate Judge

which were not objected to. In addition, the Court has conducted a de novo

review of the factual findings which Defendants object to. Finding no error, the Court overrules adopts and incorporates by reference the Magistrate in the R&R at pages 13 through 25.

B. dditional Objections are Overruled

1. Bond Requirement s are,

14, 2017 emergency application for temporary restraining order and preliminary injunction or, in the alternative, emergency motion for an order prohibiting without merit. As this Court has already discussed, t nd granted the motion as such.

Doc. 69 at p. 2; Doc. 170 at p. 9. order or a preliminary injunction.

2. ct Defendants make a variety of arguments concerning the sufficiency of the evidence as it relates to . The Court addresses each argument in turn.

i. of the July 14, 2017 order Defendants argue there is no evidence Kathryn Stearns knew before July 17, 2017, or before the tigers were transferred, about the July 14, 2017 order directing Defendants to keep the . Doc. 258 at p. 22. Defendants further argue there is no evidence of

when Kenneth Stearns knew of the July 14, 2017 order, and no evidence that Randall Stearns had knowledge of the July 14, 2017 order. Id. at pp. 22-23.

The Court agrees with the Magistrate Judge that Kathryn Stearns did not know about the July 14, 2017 order before July 17, 2017 is not credible. See Doc. 282 at pp. 14, 20, 23, 25 The evidence cited by the Magistrate Judge shows Kathry-attorney sent Kathryn Stearns two e-mails on July 14, 2017, one other informing her about the order granting the motion. Doc. 282 at p. 21. Kathryn Stearns claims -mail until July 17, 2017; however additional evidence suggests otherwise. Doc. 282 at pp. 13, 21, 24. Record evidence relied on by the Magistrate Judge also advocates the conclusion that Kenneth complete. See id. at pp. 13, 15-17, 20- comments that she would

share information with K moving the tigers).

Even if it were conceivable that none of the Stearns knew the content of the July 14, 2017 order until after the tigers were moved, the facts remain that the Stearns knew litigation specific to at DCWT was ongoing, knew of the granting a site inspection at DCWT, knew the purpose of the site inspection was to view the tigers

at DCWT and, yet, made calculated efforts to intentionally right to discovery. Doc. 282 at pp. 29-31

(citing a variety of evidence, including videos of Kenneth Stearns explaining that the tigers were moved so PETA could not view them and would be unable to prove its case). The Magistrate Judge did not err in relying on the available evidence to conclude the Stearns each acted in bad faith.

ii. Evidence about events prior to July 12, 2017 Defendants argue that the Amended R&R improperly relies on events that occurred before the July 12, 2017 order that are not relevant for purposes of imposing sanctions 23. The Court previously addressed and rejected this argument under a clearly erroneous standard

of review. Doc. 170 at pp. 9-10.

again, now de novo, the Court again disagrees with Defendants. T discussion of evidence about events prior to the date of the July 12, 2017 discovery order sets the stage for the events of that date and beyond. It also discovery; even as Kathryn Stearns told the Magistrate Judge she had no intention of stopping tiger cub swims, she was arranging for the transfer of tigers from DCWT to other facilities. Doc. 282 at pp. 13-16. The evidence of events before the July 12, 2017 order intentions.

Notwithstanding, the evidence concerning those events is minimal compared to the other record evidence and is not what the Magistrate Judge ultimately relied upon in forming the recommended sanctions.

iii. Defendants argue that about the condition of the tigers transported on July 15 are irrelevant because the tigers were transported by an independent carrier, Greg Woody. Doc. 285 at p. 23. Defendants deposition testimony in which she says she had contact with Greg Woody about transportation. Id.

(citing Doc. 235-7 at 158:1-158:5). It is unclear what Defendants expect the Court to glean from assert that someone other than one of the Stearns drove some of the tigers away from DCWT, that does not change the fact that the Stearns played the initiating role in coordinating and executing the transfer of their tigers.

3. Prejudice to PETA Warranting Rule 37 Sanctions Defendants argue Rule 37 sanctions are not warranted because not articulate Doc. 285 at pp. 12-13. This is inaccurate. The Magistrate Judge made specific findings about the

prejudice PETA suffered . Doc. 282 at pp. 30-32. The Court finds no error.

4. inherent authority. As an initial matter, even if Defendants were correct, the outcome would not

change because sanctions are still warranted under Rule 37. Notwithstanding, the Court concludes alternative assessment of spoliation was correct. As such, the Court agrees with the Magistrate Judge

that sanctions are also

i. Spoliation Defendants argue that zoos and living animals may not be spoliated, that the tigers were not spoliated, and that the elements for spoliation sanctions have not been met. Doc. 285 at pp. 3-7. The Court rejects these arguments.

ederal law governs the imposition of spoliation sanctions Flury v. Daimler Chrysler Corp., 427 F.3d 939, 944 (11th Cir. 2005). Spoliation Optowave Co. v. Nikitin, No. 6:05-CV-1083-ORL-

22DAB, 2006 WL 3231422, at *7 (M.D. Fla. Nov. 7, 2006). To find spoliation of evidence, a court

1) whether the evidence existed at one time, 2) whether the spoliator had a duty to preserve the evidence, and 3) whether the evidence was critical to an opposing party being able to prove its prima facie case or a defense Id. at *8.

Here, there is no question that the evidence existed at one time. There is also no question that Defendants had a duty to preserve evidence. Without disagreeing that they had such a general duty, Defendants argue about the scope or reasonability of their duty to preserve the tigers at DCWT.

In summary, Defendants argue that it was not possible for them to preserve the tigers as of being

or growth, nor did Defendants have control over the tornado that came through DCWT, damaging some of the facility. Id. at pp. 4-5 Defendants further argue that certain occurrences, such as veterinary care and transfer of tigers, was a routine occurrence at the facility. Id.

e Court nor PETA expected Defendants

was for Defendants to preserve what they knew they were required to preserve and what was in their control to preserve. Perhaps, as Defendants allege, purchasing and selling a few tigers at a attempt an argument t of a

was business. Doc. 282 at p. 14. process of disposing their twenty-four tigers designed to frustrate the site inspection and eliminate

. It was, however, within their control. Id. at p. 28. Defendants made a deliberate choice to conceal, alter, and destroy evidence that the Court had ordered preserved. This is spoliation.

Defendants also argue the elements for spoliation sanctions have not been met because the Magistrate Judge relies on insufficient evidence to conclude a July 2017 site inspection was crucial case and fails to consider that PETA may prove its claims through other means. The Court rejects these arguments as well.

Defendants suggest PETA could have viewed the tigers at DCWT before July 2017 when the facility was open to the public, or viewed DCWT sometime after July 2017 without the tigers. This is disingenuous. Indeed, PETA had initially attempted to arrange a site inspection without court intervention, but Defendants refused. Doc. 282 at pp. 2-3. After the court intervened and Defendants moved their tigers, Defendants still refused to grant PETA access to DCWT. Id. at p. tiger cub swims, and Kathryn and Kenneth Stearns both commented to others that Defendants

Id. at pp. 14, 17. Until the Magistrate Judge ordered the United States Marshal Service to be present at a rescheduled inspection in August 2017, Defendants had no intention of allowing PETA access to DCWT, with or without tigers.

discovery through its eventual inspections (1) of DCWT without tigers and (2) of the tigers in the new facilities to which they moved is likewise disingenuous. As the Magistrate Judge found, Defendants themselves well understood the cruciality of PETA inspecting DCWT with the tigers

ii. Bad faith Defendants also argue the Magistrate Judge erred in determining sanctions are warranted

which is not binding on this Court. Doc. 285 at p. 11. Indeed, Defendants concede the issue lacks discussion from the applying a standard used in another district court is without merit.

Notwithstanding, the record evidence supports a finding of bad faith by clear and

Amended R&R, which the Court has adopted, provide clear and convincing evidence of bad faith.

5. Due Process

i. presence at the evidentiary hearings Defendants argue the recommended sanctions in the Amended R&R violate Randall nal contempt charges were sought and contemplated at the evidentiary hearing, Randall Stearns was not present at the evidentiary hearing, and the Magistrate Judge relied on deposition testimony from Randall Stearns which was taken at a time when he was not represented.

PETA responds that because the Magistrate Judge did not initiate criminal contempt proceedings, Randall Stearns was fully represented by counsel at the evidentiary hearings, and Defendants fail to explain what might

have been different, or what other evidence may have been considered, had Randall Stearns been present.

The Court agrees with PETA. Although the Magistrate Judge did not rule out the possibility of a

sanction of criminal contempt, the Magistrate Judge did not initiate criminal contempt proceedings during the evidentiary hearing. See doc. 225 at 17:8-17:21. Randall Stearns was represented by counsel throughout the two-day evidentiary hearing. Doc. 201; Doc. 202. Finally, is unpersuasive.

ii. pleading Defendants argue the sanction of striking the Amended Counterclaims does not comply with the mandates of due process because the claims in the Amended Counterclaims are As the Magistrate Judge discusses o comply with the Due Process Clause, a court must impose sanctions that are both just and specifically related to the particular claim which was at issue in the order to Serra Chevrolet, Inc. v. Gen. Motors Corp., 446 F.3d 1137, 1151 (11th Cir. 2006) (internal quotation marks omitted). When imposing sanctions, a district court must state the claim(s) at issue in the violated discovery order(s). Id. at 1152.

Defendants assert the following Amended Counterclaims against PETA: fraud in the inducement, fraud, constructive fraud, unlawful recording of conversations, tortious interference with business and contractual relationships, and conversion. Doc. 273 at ¶¶ 43-90. In the Amended supplemental jurisdiction, are so related to the claims in the action within the form part of the same case or controversy. Id. at ¶ 5.

somewhat telling, the particular question

at DCWT and preserving evidence at DCWT. The Court finds that they are.

overy orders involved requested site inspection at DCWT. Specifically, PETA undertook to observe the tiger cubs during

public encounters, observe the tigers interact with trainers, observe the tigers interact among ysical condition, and observe the tigers in various other locations at DCWT. See doc. 56. The Magistrate Judge granted the motion to compel the site inspection, and then further ordered Defendants to keep their tigers on their property pursuant to the previous order mandating the site inspection proceed. Doc. 63; Doc. 69.

Defendants do not argue that the July discovery orders were not specifically related to put t

But assert that PETA

photographs and video that purportedly depicted abusive treatment of DCWT animals Doc. 273 at ¶¶ 17, 36 Case 8:16-cv-02899-CEH-AAS Document 303 Filed 02/25/20 Page 24 of 27 PageID 6774 false. See id. Thus, have obtained [evidence] during the Court-ordered site inspection [that] would have corroborated

In addition, PETA may have been able to prove

its defense that any customer false campaign against DCWT. Id.

s to the Amended Counterclaims. Counterclaims as a sanction for their misconduct.

6. Recommended Sanctions Defendants argue the recommended sanctions are extreme and inappropriate. The Court disagrees. In calibrating the recommended sanctions, the Magistrate Judge carefully considered sanctions. Doc. 282 at pp. 28-32. Having reviewed the record de novo, the Court agrees with the

C. PETA is Entitled to Default Judgment in its Favor A plaintiff is entitled to a default judgment only if the complaint states a claim for relief. Descent v. Kolitsidas, 396 F. Supp. 2d 1315, 1316 (M.D. Fla. 2005) (citing Nishimatsu Construction Co., Ltd. v. Houston l Bank, 515 F.2d 1200, 1206 (5th Cir.1975)). Allegations

in a complaint liabil Magee v. Maesbury Homes, Inc., No. 6:11-cv-209-Orl-19DAB, 2011 WL 1457173 at

*2 (M.D. Fla. Apr. 15, 2011) (citing Eagle Hosp. Physicians, LLC v. SGR Consulting, Inc., 561 F.3d 1298, 1307 (11th Cir. 2009) (reviewing whether the well-pleaded facts stated a claim where the district court ordered a default judgment pursuant to its inherent powers to sanction litigants)). s discovery violation, a default judgment cannot stand on a complaint that fails to state a claim Chudasama v. Mazda Motor Corp., 123 F.3d 1353, 1371 n.41 (11th Cir. 1997).

for relief and presents sufficient bases to support the entry of a default judgment. 8

See doc. 270; doc. 272. Therefore, the Court may enter default judgment in favor of PETA as a

Accordingly, it is ORDERED: 1. the Amended Report and Recommendation (Doc. 285) are OVERRULED.

2. The Amended Report and Recommendation of the Magistrate Judge dated July 30, 2019 (Doc. 282) is ADOPTED, CONFIRMED, AND APPROVED in all respects. It is made a part of this Order for all purposes, including appellate review.

3. Motion for Sanctions and Order to Show Cause Why Defendants Should Not Be Held in Contempt (Doc. 76) is GRANTED IN PART, as follows:

a. PETA is entitled to default judgment in its favor. A final judgment and

permanent injunction will be entered by separate order; b. Amended Counterclaims are DISMISSED;

8 In its Amended Complaint (Doc. 256), PETA seeks declaratory and injunctive relief expert fees and costs. No demand for monetary damages is made.

c. PETA is entitled to reasonable attorney fees and expenses incurred as a

discovery orders, from the time of the initial discovery violation through the filing of the March 2018 R&R. Within FOURTEEN (14) DAYS of the date of this Order, PETA shall file a memorandum, including affidavits and billing statements, . Defendants shall respond to the memorandum within FOURTEEN (14) DAYS of its filing. The parties are directed to attempt to resolve the amount of SIXTY (60) DAYS of the date of this Order and promptly advise the Court of such settlement. If the parties are unable to agr

4. Stearns should not be held in contempt is DENIED.

5. Motion for an Order to Show Cause Why Non-Party Kenneth Stearns Should Not Be Held in Contempt (Doc. 97) is DENIED.

DONE AND ORDERED in Tampa, Florida on February 25, 2020.

Copies to: Counsel of Record and Unrepresented Parties, if any