

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

CHAMBERS OF  
WILLIAM M. NICKERSON  
SENIOR UNITED STATES DISTRICT JUDGE

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BALTIMORE, MARYLAND 21201  
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July 19, 2006

To all counsel of Record

Re: United States v. Kotmair, et al.  
Civil Action No. WMN-05-1297

Dear Counsel:

There are numerous motions pending in this action. In this letter, the Court only addresses the most recent procedural motions, in the hope that it will provide some clarity regarding the ongoing briefing of more substantive motions.

On March 22, 2006, the Court issued an amended scheduling order setting out a briefing scheduling for the anticipated cross motions for summary judgment. Consistent with Local Rule 105.2.c, the Court indicated that: Defendants' motions would be filed by May 31, 2006; Plaintiff's motion, and opposition to Defendants' motions, would be filed by June 19, 2006; Defendants' reply in support of their motions, and their opposition to Plaintiff's motion would be filed by July 7, 2006; and Plaintiff's reply in support of its motion would be filed by July 21, 2006. Defendant Kotmair timely filed his motion on May 24, 2006, and Defendant Save-a-Patriot Fellowship filed its motion on May 31, 2006. Although Plaintiff filed a motion requesting an extension of time to oppose those motions, Paper No. 40, it subsequently withdrew that motion and filed a timely motion for summary judgment and opposition to the Defendants' motions on June 19, 2006.

On July 7, 2006, Defendants filed pleadings that were combined oppositions to Plaintiff's motion and replies in further support of their own motions. Save-a-Patriot's pleading was 51 pages in length; with 46 pages of argument, a two page table of contents, a two page table of authorities, and a one page index to exhibits. Mistaking this pleading as simply a reply memorandum, Plaintiff filed a motion asking the Court to strike the pleading as violative of Local Rule 105.3's 25-page limitation on the length of reply memoranda. Paper No. 56. In the alternative, Plaintiff asks that it be permitted to exceed the 25-page limitation when it files its own reply memorandum.

The Court finds that Save-a-Patriot's submission was not in violation of the Local Rule. As an opposition, it was limited by Local Rule's restriction to 50 pages. Because this 50-page limitation excludes table of contents and citations, Save-a-Patriot's memorandum was well within that limitation. Thus, the Court denies Plaintiff's motion on the grounds presented. Should Plaintiff find, however, that it is unable to adequately reply to Defendants' opposition within the 25-page limitation for reply memoranda, the Court will grant an appropriate motion to

reasonably exceed that limitation.

There has also been some misunderstanding as to the briefing of a motion for sanctions. Plaintiff filed a motion for sanctions on June 8, 2006. Paper No. 39. Under the Local Rules, the opposition to that motion was due June 26, 2006. Defendants filed a timely opposition on that date but, because of difficulties in electronically filing some of the exhibits, Defendants re-filed the pleading on June 27, 2006, with the missing exhibits. Plaintiff has moved to strike this second filing as untimely.

This motion is denied. The pleading filed on the 27<sup>th</sup> is identical to the pleading filed on the 26<sup>th</sup>. Plaintiff has shown no prejudice attendant to the one-day delay in receiving a few exhibits, the contents of which were clearly presented in the pleading. While the Court understands the contentious nature of this litigation, it questions whether there was really a need to file such a motion to strike under these circumstances.

Also pending is a motion to strike filed by Defendants, Paper No. 58, related to that same motion for sanctions. Defendants complain that in Plaintiff's reply memorandum in support of that motion, Plaintiff references a Nebraska district court decision<sup>1</sup> that was decided on the same day that Defendants' opposition was due. Because Defendants would not have the opportunity to rebut argument based on that decision, Defendants contend that the argument based upon that decision should be struck or, in the alternative, they should be given leave to file a surreply.<sup>2</sup>

Plaintiff's discussion of the Schulz decision is limited to two sentences. In their motion to strike, which the Court has now read, Defendants have had more than adequate opportunity to respond. Plaintiff's motion to strike is denied.

Finally, the Court addresses some scheduling issues. This case is currently set for a non-jury trial on September 11, 2006. Because of conflicts in the Court's schedule, and because it is likely that the Court's ruling on the pending motions for summary judgment will eliminate the need for a trial, the Court will continue that trial date. Should additional proceeding be necessary after the ruling on the pendencies summary judgment motions, the Court will schedule them at that time.<sup>3</sup>

Notwithstanding the informal nature of this letter, it is an order of the Court and will be

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<sup>1</sup> Schulz v. United States, Civil Action No. 05-530, 2006 WL 1788194 (D. Neb. June 26, 2006).

<sup>2</sup> Defendants also challenge the admissibility of some of the evidence submitted by Plaintiff in its reply. This issue will be addressed, to the extent that it needs to be, when the Court rules on the substance of the motion for sanctions.

<sup>3</sup> In addition to the summary judgment motions, there are several discovery-related motions pending. Because there appears to be some overlap in the issues raised in the discovery and summary judgment motions, the Court will address the discovery motion at the same time it addresses the summary judgment motions. The Court notes that the parties have been able to adequately brief the issues related to summary judgment without the need for the outstanding discovery.

docketed as such.

Sincerely,

/s/

William M. Nickerson  
Senior United States District Judge