UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-21199-CIV-ALTONAGA/O'Sullivan

ANDREA ROSSI, *et al.*,

Plaintiffs,

v.

THOMAS DARDEN, *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Plaintiffs, Andrea Rossi and Leonardo Corporation's Appeal of March 24, 2017 Order [ECF No. 240]. On March 23, 2017, the parties appeared at a hearing [ECF No. 227] before Magistrate Judge O'Sullivan to address Plaintiffs' request for sanctions against Defendants, Cherokee Investment Partners and IPH International, B.V., for their failure to comply with Federal Rule of Civil Procedure 30(b)(6). The next day, Judge O'Sullivan entered an Order ("Appealed Order") [ECF No. 218] agreeing with Plaintiffs the testimony given by Cherokee Investment Partners and by IPH International was insufficient. Judge O'Sullivan selected a remedy. He ruled Plaintiffs were permitted to re-depose the Rule 30(b)(6) witnesses for Defendants by April 7, 2017 and Defendants would bear the costs of the depositions and one Plaintiffs' attorney for attendance at each deposition. (*See id.*).

Despite the ruling in their favor, Plaintiffs contend "the relief provided does not undo the prejudice to Plaintiffs" (Appeal 2), and appeal the Order in an effort to secure sanctions prohibiting Defendants from introducing any witness testimony or exhibits regarding the topics for which they failed to provide substantive testimony (*see id.* 1). Under Rule 72, the Court

reviews the appeal *de novo* and must "modify or set aside any part of the order that is clearly erroneous or is contrary to law." FED. R. CIV. P. 72(a).

Plaintiffs use about half of their Appeal to retread the history of Defendants' Rule 30 violations — *i.e.*, they resubmit seemingly word-for-word the Motion for Sanctions [ECF No. 179] denied by the Court on March 20, 2017 as an inappropriate discovery-related motion. (*See* Order [ECF No. 180]). These matters were brought to the attention of Judge O'Sullivan at the March 23 Hearing, and he ruled in Plaintiffs' favor. (*See generally* Mar. 23, 2017 Hear'g Tr.; Appealed Order). Alas, Plaintiffs do not focus on the actual subject of their Appeal, that is, why the remedy provided in the Appealed Order is clearly erroneous or contrary to law.

Plaintiffs do not cite any authority, and the Court is not aware of any, standing for the proposition it is clearly erroneous to fashion a remedy consisting of the re-taking of depositions for Rule 30(b)(6) violations. Plaintiffs seemingly offer *QBE Insurance Corp. v. Jorda Enterprises*, 277 F.R.D. 676 (S.D. Fla. 2012), to suggest the only appropriate sanction for a Rule 30(b)(6) violation is prohibiting Defendants from introducing testimony or exhibits. (*See* Appeal 2–3, 8–10; Mar. 23, 2017 Hear'g Tr. 54:15–55:17). It does not follow from one case providing Plaintiffs' preferred remedy that it is the *only* allowable remedy for a Rule 30(b)(6) violation.

Accordingly, it is

ORDERED AND ADJUDGED that the Appeal **[ECF No. 240]** is **DENIED**.

DONE AND ORDERED in Miami, Florida this 6th day of April, 2017.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record