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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Charles M. Brewer, Ltd. Restated Pension) No. CV 09-144-PHX-MHM
10 Plan, et al.,)

11 Plaintiffs,)

ORDER

12 vs.)

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14 CBIZ, Inc., et al.,)

15 Defendants.)

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18 Pending before the Court is Plaintiffs’ Motion to Strike CBIZ’s Response to Plaintiffs’
19 Objections to Magistrate Judge’s 16 April 2010 Order. (Doc. # 89) Relying on General
20 Motors Corporation v. Johnson Matthey, Inc., 887 F. Supp. 1240, 1243 (E.D. Wisc. 1995),
21 Plaintiffs argue that the language of Federal Rule of Civil Procedure 72(a), as compared with
22 that of subsection 72(b), “does not contemplate or allow responses to the objections.”¹

23 The Court declines to follow General Motors and instead will follow the long-standing
24 practice of allowing a party that prevailed before a magistrate judge to respond to any

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¹ Federal Rule of Civil Procedure 72(a) provides in pertinent part:

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A party may serve and file objections to the [magistrate judge’s] order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

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1 objections filed by the opposing party. Indeed, the Advisory Committee Note to Rule 72(a),
2 90 F.R.D. 451, 495 (1981) states that “[i]t is also contemplated that a party who is successful
3 before the magistrate [judge] will be afforded an opportunity to respond to objections raised
4 to the magistrate[] [judge’s] ruling.” Accordingly, the Court will deny Plaintiffs’ Motion to
5 Strike and will consider Defendants’ Response.

6 The Court further declines Plaintiffs’ request in the alternative to strike Exhibits 4 -
7 11 attached to the Response because, they argue, none of these exhibits were before
8 Magistrate Judge Duncan for consideration.² The Court will determine and consider all
9 appropriate arguments and evidence in reviewing the Magistrate Judge’s decision. The Court
10 will allow Plaintiffs to file a Reply.

11 Plaintiffs are reminded of their obligations under Federal Rule of Procedure 11(b) and
12 are warned that any future frivolous motions that simply result in a delay of the proceedings
13 may result in sanctions.

14 Based on the foregoing,

15 **IT IS ORDERED** denying Plaintiffs’ Motion to Strike CBIZ’s Response to Plaintiffs’
16 Objections to Magistrate Judge’s 16 April 2010 Order. (Doc. # 89)

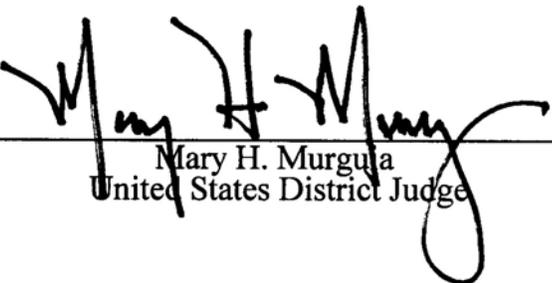
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21 ² Exhibits 4 - 11 are as follows: (4) Letter from Leo Beus to James Trimble dated 3 January
22 2005 enclosing Tolling Agreement; (5) Letter from Daniel Morgan to Charles Brewer dated 22 May
23 2001; (6) Letter from Daniel Morgan to Jay Beltz, Ross Gordon & Assoc. (predecessor to CBIZ)
24 dated 22 May 2001; (7) Invoice from Reish to Brewer dated 7 September 2001; (8) Internet
25 biography of Joseph C. Faucher, a Reish attorney; (9) Fax cover sheet from Jay Beltz to Martin
26 Heming, a Reish attorney, dated 9 August 2001, without the attached 6 pages; (10) Fax cover sheet
27 from Jay Beltz to Martin Heming, a Reish attorney, dated 10 August 2001, without the attached 18
28 pages; and (11) a compilation of invoices from Reish to Brewer dated 8 October 2001, 8 November
2002, 9 December 2002, 8 January 2003, 7 February 2003, and 26 February 2003. (* The January
8, 2003 invoice is not part of the request to strike.)

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IT IS FURTHER ORDERED granting Plaintiffs leave to file a Reply to Defendants' Response to Plaintiffs' Objections to Magistrate Judge's 16 April 2010 Order.

DATED this 10th day of June, 2010.



Mary H. Murgula
United States District Judge