

1 and Denying in Part Plaintiffs' Motion to Dismiss First Amended
2 Counterclaims, Dkt. No. 46.) Relevant here, in December 2015, the
3 parties entered into a stipulated protective order. (Dkt. No. 57.)
4 In February 2016, Defendants-Counterclaimants filed a motion
5 challenging the Plaintiffs-Counterdefendants' designation of
6 certain third party discovery materials as "Attorneys' Eyes Only"
7 rather than "Confidential" under the protective order. (Dkt. No.
8 70.) On March 16, 2016, after the motion was fully briefed, the
9 Magistrate Judge issued a detailed minute order deciding the motion
10 without a hearing. (Dkt. No. 82.) The Magistrate Judge denied
11 Defendants-Counterclaimants' motion and held that good cause
12 supported Plaintiffs-Counterdefendants' designation of the
13 discovery materials as "Attorneys' Eyes Only." (Id.) On April 4,
14 2016, Defendants-Counterclaimants filed this Motion for
15 Reconsideration of the Magistrate Judge's decision. (Dkt. No. 87.)

16 **II. LEGAL STANDARD**

17 A district judge may refer certain nondispositive pretrial
18 matters to a magistrate judge. 28 U.S.C. § 636(b)(1)(A). After
19 the referral, the district judge can reconsider the magistrate
20 judge's decision only if "it has been shown that the magistrate
21 judge's order is clearly erroneous or contrary to law." Id.
22 "Nondispositive issues include discovery sanctions" and other
23 discovery matters. See Bhan v. NME Hosps., Inc., 929 F.2d 1404,
24 1414 (9th Cir. 1991).

25 **III. DISCUSSION**

26 The Magistrate Judge's decision held that the third party-
27 produced documents that had been designated as "Attorneys' Eyes
28 Only" by Plaintiffs-Counterdefendants were appropriately

1 designated. (Dkt. No. 82.) Plaintiffs-Counterdefendants claimed
2 that the designation was necessary to prevent the individual
3 Defendants-Counterclaimants, Grace Kim Brandi and her new company,
4 Iconic Brands, Inc., from gaining confidential cost and pricing
5 information on Plaintiffs-Counterdefendants' KAH tequila. (Id. at
6 2.) The designation was limited to only those produced documents
7 "that could be used to determine the individual cost basis of a
8 bottle of KAH tequila." (Id.) Plaintiffs-Counterdefendants sought
9 to limit Defendants-Counterclaimants' access to that cost
10 information because the parties are competitors in the tequila
11 industry. (Id.)

12 The Magistrate Judge found the designation appropriate because
13 protective orders and designations are "common in litigation
14 between competitors in order to limit access to sensitive
15 information to counsel and experts." (Id. (citing Nutrastech, Inc.
16 v. Syntech Int'l, Inc., 242 F.R.D. 552, 555 (C.D. Cal. 2008)).)
17 The Magistrate Judge then balanced the "risk of competitive harm to
18 [Plaintiff-Counterdefendant] Elements from disclosure of
19 competitive information to [Defendant-Counterclaimant] Brandi,
20 against the risk to [Defendants-Counterclaimants] Iconic brands and
21 Brandi that a restriction of access to counsel and experts will
22 impair their ability to litigate this action." (Id. (citing Brown
23 Bag Software v. Symantec Corp., 960 F.2d 1465, 1470 (9th Cir.
24 1992)).)

25 The Magistrate Judge found that the parties were competitors
26 at the wholesale level and that the documents at issue involved
27 wholesale pricing and cost for KAH tequila. (Id.) The Magistrate
28 Judge held that "[t]he risk of competitive harm from disclosure is

1 substantial because a competitor with knowledge of a rival's cost
2 and price to a retailer would have an obvious advantage in
3 soliciting that customer's business." (Id.) The Magistrate Judge
4 held that "[n]onpublic wholesale pricing/cost information qualifies
5 as confidential commercial information" under Federal Rule of Civil
6 Procedure 26(c)(1)(G) and Nutratch. (Id. (quoting FRCP 26 to say
7 that the rule applies to "a trade secret or other confidential
8 research, development, or commercial information").)

9 Further, the Magistrate Judge found that Defendants-
10 Counterclaimants had not shown that "their ability to prosecute
11 this litigation will be impaired if Brandi does not have access to
12 her competitor's wholesale cost/price information." (Id. at 2-3.)
13 Defendants-Counterclaimants had argued that Brandi was "the person
14 most qualified to evaluate Elements' accounting" but the Magistrate
15 Judge found that Brandi was not an accountant and her expertise
16 based on industry experience did not mean that an accounting expert
17 who is not a competitor of Plaintiffs-Counterdefendants would not
18 also be qualified to review Elements' accounting, thus lessening
19 any prejudice. (Id. at 3 (quoting Joint Stipulation at 18).)

20 Defendants-Counterclaimants now argue on reconsideration that
21 the Magistrate clearly erred in striking the balance between the
22 parties' competing concerns. (Mot. Reconsideration, Dkt. No. 87.)
23 Defendants-Counterclaimants argue that the District Court had held
24 that Brandi had "properly pled a right to an accounting from
25 plaintiffs, and the documents which plaintiffs want to conceal from
26 Brandi are directly relevant to such an accounting." (Id. at 2;
27 see also id. at 5-6, 10-13.) Further, Defendants-Counterclaimants
28 claim that designating the documents as "Confidential" rather than

1 "Attorneys' Eyes Only" better strikes the balance between the risk
2 of harm to Plaintiffs-Counterdefendants and of prejudice to
3 Defendants-Counterclaimants because designating the documents as
4 "Confidential" would prevent Brandi from using the information in
5 any way not connected to the litigation and would keep the
6 information nonpublic so that other competitors would not find out
7 the cost information. (Id.)

8 The Court recognizes that Defendants-Counterclaimants'
9 arguments are valid considerations. However, these concerns were
10 properly evaluated by the Magistrate Judge under the proper legal
11 standard. Thus, there is no evidence of clear error or a decision
12 contrary to law in the Magistrate Judge's ruling on this matter.
13 Even if the information in the protected documents is relevant to
14 the case, the information can still be accessed by an accounting
15 expert and attorneys in order to litigate the case with minimal
16 prejudice to both sides. Therefore, the Court declines to
17 reconsider the Magistrate Judge's well-reasoned decision.

18 **IV. CONCLUSION**

19 For the reasons stated above, Defendants-Counterclaimants'
20 Motion for Reconsideration is DENIED.

21

22 IT IS SO ORDERED.

23

24 Dated: May 9, 2016

25

26

27

28



DEAN D. PREGERSON
United States District Judge