

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Luis M. Garces,	)	No. 1:06-cv-1038-JAT
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
Degadeo, Officer Bott, Smith,	)	
	)	
Defendants.	)	
	)	

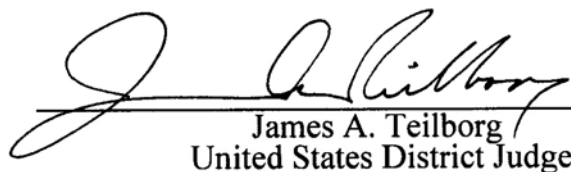
Additionally, Defendants seek reconsideration of the Court's holding that Defendants have waived the right to use any documents that they claim were not in their custody and control for purposes of summary judgment or trial. The Court will not reconsider this holding. Finally, Defendants seek to have the Court reconsider its holding that Defendants may not supplement their discovery responses. The Court never held that Defendants would be precluded from filing supplemental responses; thus, the Court need not reconsider this holding.

1 To clarify, the Court's order that Defendants had waived the right to use any  
2 documents that they claim are not in their custody and control for summary judgment or at  
3 trial was intended to refer to documents to which they currently have access. As to  
4 documents to which Defendants may gain access later, each document would be considered  
5 on a case by case basis; including when Defendants requested the documents, when  
6 Defendants received the documents, and when Defendants supplemented their responses.  
7 For example, the Court would likely preclude Defendants from using documents that Plaintiff  
8 sought in discovery that Defendants claimed were not in their custody and control, but when  
9 Defendants requested the documents from their employer after the close of discovery, they  
10 were given to Defendants. To show a lack of custody and control, Defendants would need  
11 to make a showing that they sought and were denied access to the documents during  
12 discovery; otherwise their request for and receipt of the documents after the close of  
13 discovery would imply that they were really in their "control" all along. However, the Court  
14 will not give an advisory opinion on this issue, and will consider each document based on  
15 the facts surrounding it.

16 Therefore,

17 IT IS ORDERED that Defendants' motion for clarification (Doc. #99) is granted;  
18 Defendants' request for reconsideration (Doc. #99) is denied.

19 DATED this 23<sup>rd</sup> day of September, 2009.

20  
21   
22 \_\_\_\_\_  
23 James A. Teilborg  
24 United States District Judge  
25  
26  
27  
28