

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA (Fresno)

Luis M. Garces,) No. 1:06-cv-1038-JAT

ORDER

Degadeo, Officer Bott, Smith,

Defendants.

15 On September 3, 2009, Defendants moved for reconsideration of this Court's order
16 denying Plaintiff's motion to compel. First, Defendants include a quote that was not in the
17 order, so the Court will disregard that portion of the motion. Next, Defendants seek
18 clarification of whether the Court intended that they be bound by Federal Rule of Civil
19 Procedure 26(a). The Court clarifies that Defendants were not required to comply with
20 Federal Rule of Civil Procedure 26(a).

21 Additionally, Defendants seek reconsideration of the Court’s holding that Defendants
22 have waived the right to use any documents that they claim were not in their custody and
23 control for purposes of summary judgment or trial. The Court will not reconsider this
24 holding. Finally, Defendants seek to have the Court reconsider its holding that Defendants
25 may not supplement their discovery responses. The Court never held that Defendants would
26 be precluded from filing supplemental responses; thus, the Court need not reconsider this
27 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 23rd day of September, 2009.



James A. Teilborg
United States District Judge