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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAM BESS,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

No. 2:07-cv-1989 JAM JFM

ORDER DENYING REQUEST FOR  
RECONSIDERATION

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Matthew Cate and David Shaw ("Defendants") filed a Request for Reconsideration of a Magistrate Judge's Order issued on November 26, 2008 ("Order") granting a Motion to Compel and awarding attorneys' fees. Docket at 78. Sam Bess ("Plaintiff") opposed the Request for Reconsideration. Federal Rule of Civil Procedure 72 requires a district court to modify or set aside any part of a magistrate judge's order that is "clearly erroneous or contrary to law."

In this case, the Order relied on extensive case law from this district. In a few instances, the cases upon which the

1 Order relied even involved the Defendants raising identical  
2 arguments to those raised in this matter. Accordingly,  
3 Defendants have failed to demonstrate that the Order was clearly  
4 erroneous or contrary to law.  
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6 Furthermore, given Plaintiff's numerous efforts to meet and  
7 confer, Defendants refusal to produce a single document or a  
8 privilege log over an eight month period, and Defendants failure  
9 to take into account established precedent, Defendants have not  
10 demonstrated that their nondisclosure was "substantially  
11 justified." See Fed.R.Civ.P. 37(a)(5)(A)(ii). Accordingly,  
12 that portion of the Magistrate Judge's Order directing Plaintiff  
13 to file a statement of his reasonable expenses, including  
14 attorney's fees, incurred in making the Rule 37 motion was  
15 appropriate.  
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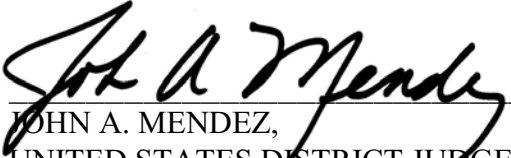
18 Defendants' Request for Reconsideration is DENIED.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings, recommendations and order filed November  
21 26, 2008 are adopted in full;
- 22 2. Plaintiff's October 30, 2008 motion to compel discovery  
23 (docket no. 66) is granted. Defendants shall produce the  
24 documents requested for inspection and copying, without  
25 further objection, within ten (10) calendar days from  
26 the date of this order (docket no. 96); and  
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1 3. Having received no request for reconsideration by any  
2 party, the Magistrate-Judge's Order filed December 12,  
3 2008 is final and Defendants Cate and Shaw shall pay  
4 plaintiff's reasonable attorneys' fees and costs in the  
5 amount of \$8,175.83.  
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8 Dated: January 8, 2009  
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10 JOHN A. MENDEZ,  
11 UNITED STATES DISTRICT JUDGE  
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