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5 Attorneys for Plaintiffs  
 SUSAN WYCKOFF and ALEXANDER WYCKOFF

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

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|--|------------------------------------|
| SUSAN WYCKOFF, individually, and as        | ) Case No. C-07-3600 SI            |
| Administratrix of the Estate of PETER      | )                                  |
| WYCKOFF; ALEXANDER WYCKOFF by              | )                                  |
| and through his Guardian ad Litem, SUSAN   | ) <b>[PROPOSED] AMENDED ORDER</b>  |
| WYCKOFF,                                   | ) <b>APPOINTING SPECIAL MASTER</b> |
| Plaintiffs                                 | )                                  |
| vs.  | )                                  |
| UNITED STATES OF AMERICA; DANIEL           | )                                  |
| EARL SPERL and DOES 1 through 10,          | )                                  |
| Defendants.                                | )                                  |
| CHARLIE EAP, heir at law of decedent Holly | ) Case No. C-07-2301 SI            |
| Annie Eap,                                 | )                                  |
| Plaintiff                                  | )                                  |
| vs.  | )                                  |
| UNITED STATES OF AMERICA, DANIEL           | )                                  |
| EARL SPERL,                                | )                                  |
| Defendants.                                | )                                  |

1 On March 10, 2009, the Wyckoff plaintiffs filed an administrative motion for modification  
2 of case management order. In that motion, plaintiffs requested, among other things, that a  
3 "briefing and hearing schedule shall be set for Plaintiffs' Motion for Appointment of Special  
4 Master for Discovery." As grounds therefore, plaintiffs asserted in their motion: "The  
5 importance of the ESI [electronically stored information] evidence on the central issues in the  
6 case, the complexity of the disputed ESI discovery issues, the level of resistance and course of  
7 litigation of the ESI issues by the government, and the resources the discovery proceedings are  
8 taking from the Court all justify consideration of a special discovery master going forward." The  
9 government opposed plaintiffs' administration motion.

10 Plaintiffs' administrative motion was discussed during a telephone conference, which  
11 occurred on March 17, 2009, in which all parties, through their attorneys of record, participated.  
12 During that telephone conference, the Court indicated that it would appoint a Special Master to  
13 handle discovery disputes, and directed the parties to meet and confer regarding candidates for  
14 appointment. On March 19, 2009, the parties advised the Court that they had selected the Hon.  
15 Read Ambler (Ret.) of JAMS.

16 On March 31, 2009, the Court filed its Order appointing the Hon. Read Ambler (Ret.) as  
17 Special Master.

18 The Consent and Affidavit of Special Master Ambler inadvertently was not filed pursuant  
19 to F.R.C.P. 53(b)(3), prior to filing of the Order appointing the Special Master. On April 10,  
20 2009, the Consent and Affidavit of Special Master Ambler was filed.

21 The Consent and Affidavit of Special Master Ambler having been filed, the Court hereby  
22 confirms the appointment of the Hon. Read Ambler (Ret.) as Special Master in this matter,  
23 pursuant to the following terms:

24 Pursuant to F.R.C.P. 53(a)(1)(C), the Court hereby appoints the Hon. Read Ambler (Ret.)  
25 as Special Master to handle all discovery disputes, except as noted below, notwithstanding the  
26 lack of consent by all the parties, because such disputes cannot be effectively and timely  
27 addressed by an available district judge or magistrate judge of the district.

28 The Special Master is directed to proceed with all reasonable diligence.

1           The Special Master is directed to handle all pending and future discovery disputes, except  
2 for (1) the March 31, 2009, telephone conference with Magistrate Judge Zimmerman concerning  
3 plaintiffs' request that the government produce the results of the computer backup tape project in  
4 native file format; and (2) plaintiffs' anticipated motion for sanctions based on alleged spoliation  
5 of evidence.

6           The Special Master may communicate ex parte with the Court but not with the parties,  
7 unless the parties so stipulate.

8           All parties will e-file all filings and materials submitted to the Special Master, and the  
9 Special Master will cause to be e-filed all orders, findings, and recommendations that he may  
10 issue.

11           Consistent with the case management dates set forth in the Court's Second Pretrial Order  
12 attached hereto, the Special Master will establish the procedures for adjudication of the discovery  
13 disputes tendered to him.

14           Unless otherwise directed by the Special Master and approved by the Court, compensation  
15 for the Special Master will be allocated as follows: Wyckoff plaintiffs (25%); Eap Plaintiff  
16 (25%); Defendant Sperl (25%); and Defendant USA (25%).

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