

United States District Court  
For the Northern District of California

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

GEOFFREY PECOVER and JEFFREY LAWRENCE, on Behalf of Themselves and All Others Similarly Situated, No C 08-2820 VRW ORDER

Plaintiffs,

v

ELECTRONIC ARTS INC, a Delaware Corporation

Defendant.

Plaintiffs object (Doc #67) to an August 19, 2009 discovery order (Doc #64) issued by Magistrate Judge Zimmerman that denied them certain historical discovery. At the court's direction, defendant filed a reply to plaintiffs' objection on October 16, 2009. Doc #70.

A district court will modify or set aside a magistrate judge's ruling on a non-dispositive matter if the ruling is found to be clearly erroneous or contrary to law. FRCP 72(a); Rivera v NIBCO, Inc, 364 F3d 1057, 1063 (9th Cir 2004); Cyntegra, Inc v IDEXX Laboratories, Inc, 332 Fed Appx 569, 571 (9th Cir 2009).

1           Plaintiffs contend that the discovery order is both  
2 contrary to law and clearly erroneous because Magistrate Judge  
3 Zimmerman erred in: (1) denying plaintiffs historical discovery  
4 regarding market dynamics, market definition and competition; (2)  
5 assigning the burden to plaintiffs to articulate specific documents  
6 available for the 2001-2003 period; (3) assuming costs of  
7 production would total over one million dollars when defendant did  
8 not provide evidence supporting this assumption and (4) ruling that  
9 the production of documents would be unduly burdensome without  
10 having considered the factors of FRCP 26. Doc # 67 at 9-16.

11           Plaintiffs are correct in stating that they "are entitled  
12 to discovery 'regarding any nonprivileged matter that is relevant  
13 to any party's claim or defense.'" Doc #67 (citing FRCP 26(b)(1)).  
14 But this entitlement is not without limits. FRCP 26(b)(2)(C).

15           Having considered the submissions of the parties, the  
16 court cannot find that Magistrate Judge Zimmerman's ruling was  
17 "clearly erroneous or contrary to law." Plaintiffs' contentions  
18 are insufficient to breach this standard because the August 19  
19 order appears reasonable in its conclusion that the plaintiffs have  
20 not met their burden in establishing that the relevance of the  
21 requested documents justifies any substantial cost. While the  
22 plaintiffs further challenge the accuracy of the August 19 order's  
23 million-dollar figure, Doc # 67 at 14-15, the court is satisfied by  
24 defendant's representations that this figure is but a fraction of  
25 its estimate. Doc #70 at 12-13. To paraphrase Magistrate Judge  
26 Zimmerman, if plaintiffs learn that defendant has not been candid  
27 with the court, plaintiffs may pursue a different sort of remedy at  
28 the conclusion of this case. Doc #64 at 2.

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Accordingly, the court concludes that Magistrate Judge Zimmerman's order was not clearly erroneous or contrary to law. Plaintiffs' objection (Doc #67) is OVERRULED.

IT IS SO ORDERED.



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VAUGHN R WALKER  
United States District Chief Judge