

UNITED STATES DISTRICT COURT  
Northern District of California

SERVICE EMPLOYEES,

Plaintiff(s),

No. C 09-00404 WHA (MEJ)

v.

**DISCOVERY ORDER RE: DKT. #454**

SEIU UNITED HEALTHCARE WORKERS,

Defendant(s).

On January 12, 2010, Plaintiffs filed a letter regarding, among other disputes, Plaintiffs request for Defendant Dan Martin to turn over a computer or its image to Plaintiffs' consultants. (Dkt. #454.) Upon review of Plaintiffs' letter, the Court ordered Martin to either: (1) file a declaration, attesting under penalty of perjury, that (a) the computer identified as his wife's in Plaintiffs' letter is exclusively used by her, and (b) he has never used the computer for any purpose, including non-UHW-related business; or (2) alternatively, if Mr. Martin has used the computer for any purpose, including non-UHW-related business, to produce it by January 19, 2010, under the terms of the existing Protective Order and protocol about how to handle non-UHW property on Defendants' electronic devices. (Dkt. #458.)

The Court is now in receipt of the parties' further briefing on this issue. (Dkt. ## 464, 468, 469.) Plaintiffs state that Martin has neither filed a declaration as set forth above nor produced the computer. (Dkt. # 464.) In response, Defendants offer an alternative to the Court's previous order. Specifically, Defendants propose that Martin either produce his wife's computer for imaging by

1 Plaintiffs or produce all of his documents from that computer to defendants' counsel, who will then  
2 produce all relevant documents.

3 The Court is concerned that Defendant Martin has previously declared that the computer is  
4 his wife's, (Dkt. #440), but his counsel is now stating that they will produce his documents from that  
5 computer. However, when given the opportunity to declare that he does not use the computer, he  
6 failed to respond. Further, although the Court recognizes Martin's wife's privacy concerns, there is  
7 a protective order in place that addresses such concerns. Accordingly, the Court hereby ORDERS as  
8 follows:

- 9 1) Dan Martin shall provide the computer to defense counsel, who shall then retrieve all  
10 relevant information for production to Plaintiffs. Defense counsel shall then serve a  
11 declaration attesting under penalty of perjury the method(s) used to retrieve all information  
12 and that all relevant information has been produced; OR  
13 2) Dan Martin shall produce the computer, as previously ordered, under the terms of the  
14 existing protective order.

15 Martin's choice of the two options shall be completed within seven (7) days from the date of this  
16 Order. Failure to comply with this Order may result in sanctions and Mr. Martin being held in  
17 contempt.

18 **IT IS SO ORDERED.**

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20 Dated: February 2, 2010

  
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Maria-Elena James  
Chief United States Magistrate Judge