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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VIESTE, LLC, ET AL.,

No. C-09-04024 JSW (DMR)

Plaintiffs,

**ORDER GRANTING MOTION FOR
PROTECTIVE ORDER AND
GRANTING MOTION FOR
DECLARATIONS RE DOCUMENT
PRESERVATION AND COLLECTION
EFFORTS**

v.

HILL REDWOOD DEVELOPMENT, ET AL.,

Defendants.

On January 20, 2011, the parties submitted letter briefs regarding Plaintiffs' motion for declarations regarding Defendants' document preservation and collection efforts. *See* Docket Nos. 173 & 174. On February 1, 2011, the parties submitted a joint letter brief regarding Defendants motion for a protective order regarding the deposition of Jose Manuel Albaldejo Canedo-Arguelles. *See* Docket No. 179. The Court conducted a telephonic hearing on both matters on February 3, 2011, during which the parties were given an opportunity to present their arguments. This Order summarizes the rulings made by the Court on the record during the February 3, 2011 hearing.

The Court finds that the witness, Mr. Canedo-Arguelles, is not a managing agent of Defendants' and therefore Defendants' motion for a protective order is GRANTED.

Plaintiffs' motion for declarations regarding Defendants' document preservation and collection efforts is GRANTED as follows: **by no later than February 14, 2011**, each individual

1 defendant and a representative or representatives with percipient knowledge from each defendant
2 entity and from ZAC Management¹ shall file and serve a **detailed declaration** addressing the
3 following information:

- 4 1. when the individual or entity became aware of Plaintiffs’ lawsuit and how
5 notification occurred;
- 6 2. what steps were taken by the individual or entity to preserve potentially relevant
7 evidence and when the steps were taken;
- 8 3. identify each person whose files were searched for relevant evidence, and for each
9 person, describe the types of relevant records in that person’s possession (i.e.
10 emails/electronically-stored information, hard copies of documents, etc.) and how the
11 files are or were organized, stored, and maintained;
- 12 4. for each person whose files were searched for relevant evidence, describe the
13 approximate number or size of relevant records;
- 14 5. what steps were taken by the individual or entity to gather documents responsive to
15 discovery requests and when the steps were taken;
- 16 6. describe in detail the individual or entity’s standard record retention/destruction
17 policy(ies) and whether the policy(ies) was followed during the pendency of this
18 litigation; and
- 19 7. describe in detail (what, how and why) any intentional or unintentional information
20 destruction (including Defendant RCA’s “server crash” in 2009) that took place from
21 July 2008 to the present and any efforts expended to recover that destroyed
22 information.

23 IT IS SO ORDERED.

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26 ¹ Even though ZAC Management is not an individual defendant in this matter, the Court includes
27 ZAC Management in this Order because Defendants are on record as asserting that ZAC is an agent of
28 Defendants’. *See* Docket No. 148, Defendants’ Opposition to Motion to Compel at 11. This Order should
not be construed as a ruling that ZAC Management is a legal “agent” of Defendants. However, for purposes
of this motion, the Court finds that it is appropriate for Defendants to provide information about ZAC’s
document preservation and collection efforts in this case.

United States District Court
For the Northern District of California

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Dated: February 4, 2011

