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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Advanced Microtherm, Inc., et al.,

NO. C 04-02266 JW

Plaintiffs,

**ORDER REMANDING TO MAGISTRATE  
JUDGE FOR RECONSIDERATION**

v.

Norman Wright Mechanical Equipment  
Corp., et al.,

Defendants.

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Presently before the Court are Defendants' Objections to and Requests for Reconsideration of Magistrate Judge Trumbull's January 12, 2009 (1) Order to Defendants to Comply with Prior Order and (2) Order Granting Plaintiffs' Motion for Shortened Time for Hearing on Rule 26 Motion. (Docket Item Nos. 859, 861.)

On January 12, 2009, Judge Trumbull issued an Order in which she continued a discovery conference based on Defendants' failure to file a discovery proposal by a January 7, 2009 deadline. (hereafter, "Jan. 12 Order," Docket Item No. 858.) Judge Trumbull also granted a motion by Plaintiffs to shorten the time for hearing a pending motion to compel. (*Id.*) In doing so, Judge Trumbull stated that Defendants had filed no opposition to Plaintiffs' motion to shorten time. Defendants contend that they had, in fact, filed the requisite discovery proposals and oppositions, such that Judge Trumbull's January 12 Order was in error.


A district court may modify a magistrate judge's ruling on a non-dispositive matter, such as an order to compel discovery, if the order is "clearly erroneous" or "contrary to law." 28 U.S.C. §

1 636(b)(1)(A); Fed. R. Civ. P. 72(a); Bahn v. NME Hospitals, Inc., 929 F.2d 1404, 1414 (9th Cir.  
2 1991). Pursuant to Civil Local Rule 72-2, the court may not grant a motion objecting to a  
3 Magistrate Judge's order without first giving the opposing party an opportunity to brief the matter.  
4 See Civ. L.R. 72-2.

5 The Court has reviewed the docket for the presence of the disputed filings. First, the Court  
6 finds that Defendants did, in fact, file discovery proposals by the January 7, 2009 deadline. (See  
7 Docket Item No. 847.) Second, the Court finds that Defendant Norman Wright did file an  
8 opposition to Plaintiffs' administrative motion to shorten time on January 9, 2009. (See Docket Item  
9 No. 852.) Plaintiffs' motion was made on January 6, 2009, Defendant's opposition was made within  
10 the three days required by Civil Local Rule 7-11. (See Docket Item No. 844.)

11 In light of what is reflected in the docket entries, the Court REMANDS this issue to the  
12 Magistrate Judge for reconsideration of its January 12, 2009 Order.

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14 Dated: January 16, 2009

  
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JAMES WARE  
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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20 **Dated: January 16, 2009**

**Richard W. Wieking, Clerk**

21  
22 **By:         /s/ JW Chambers**  
**Elizabeth Garcia**  
**Courtroom Deputy**

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