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United States District Court
For the Northern District of California

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

Darla Padgett, et al.,
Plaintiffs,
v.
Brian Loventhal, et al.,
Defendants.

NO. C 04-03946 JW

**ORDER OVERRULING PLAINTIFFS’
OBJECTION TO RECOMMENDED
DISCOVERY ORDER NO. 36**

The parties have been working through a Special Master to complete discovery, and, in particular, to disclose to Plaintiffs certain documents found on Defendants’ hard drives. The Special Master has the authority to resolve all discovery disputes and to establish a procedure for identification and disclosure of privileged documents for the Court’s review. (See Order Appointing Tom Denver as Special Master, Docket Item No. 306.)

Presently before the Court is Plaintiffs’ Objection to Special Master’s Recommended Discovery Order No. 36 and Request for District Court to Reconsider Plaintiffs’ Motion for Sanctions and Reallocation of Costs. (hereafter, “Objection,” Docket Item No. 570.)


In Discovery Order Number 36, the Special Master determined that charges incurred by Plaintiffs’ computer expert should not be reallocated between Plaintiffs and Defendants. (Discovery Order No. 36 at 2-3, Docket Item No. 562.) The Special Master found that a prior order had directed Plaintiffs to bear the costs of their own computer expert and that case law did not support reallocation in light of the prior order. The Special Master also considered Plaintiffs’ two-year delay in applying for reallocation and the substantial expense Plaintiffs had incurred in the interim. (Id. at

1 2.) In addition, the Special Master declined to sanction Defendants for their alleged production of
2 non-complaint privilege logs and for their alleged filing of a frivolous appeal of the Court's denial of
3 Defendants' summary judgment motion. (Id. at 4-5.)

4 Plaintiffs object to Discovery Order Number 36 on a variety of grounds, including, *inter alia*,
5 Defendants' alleged spoliation of evidence, the Special Master's allegedly incorrect reliance on the
6 Court's December 28, 2006 Order, and the Special Master's allegedly improper application of
7 relevant case law. (See Objection at 3-17.)

8 Upon review of both the Special Master's Order and Plaintiffs' Objections, the Court finds
9 that the Special Master's ruling is not an abuse of discretion. Accordingly, the Court OVERRULES
10 Defendants' Objection to Discovery Order Number 36.

11
12 Dated: January 9, 2009



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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7 **Dated: January 9, 2009**

Richard W. Wieking, Clerk

8 **By: /s/ JW Chambers**
9 **Elizabeth Garcia**
10 **Courtroom Deputy**

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