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

10 Express Diagnostics Int'l, Inc.,

NO. C 06-01346 JW

11 Plaintiff,

**ORDER OVERRULING PLAINTIFF'S
OBJECTIONS TO MAGISTRATE
JUDGE'S ORDER**

12 v.

13 Barry Tydings, et al.,

14 Defendants.
_____ /

15 On April 13, 2009, Magistrate Judge Trumbull issued an order denying several of Plaintiff's
16 motions to compel, without prejudice subject to renewal following the parties' adherence to the meet
17 and confer requirement of the Court's Civil Local Rules. (Docket Item No. 336.) Presently before
18 the Court are two Objections to Magistrate Judge Trumbull's Order Denying, Without Prejudice,
19 Plaintiff's Motion to Compel Supplemental Responses and Documents from Defendants. (Docket
20 Item Nos. 337-38.) Plaintiff contends that Judge Trumbull erred in denying its Motion to Compel on
21 the basis of Plaintiff's failure to abide by the applicable meet and confer requirement.

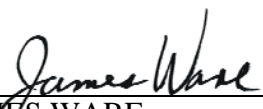
22 A district court may modify a magistrate judge's ruling on a non-dispositive matter, such as
23 an order to compel discovery, if the order is "clearly erroneous" or "contrary to law." 28 U.S.C. §
24 636(b)(1)(A); Fed. R. Civ. P. 72(a); Bahn v. NME Hospitals, Inc., 929 F.2d 1404, 1414 (9th Cir.
25 1991). Pursuant to Civil Local Rule 72-2, the court may not grant a motion objecting to a
26 Magistrate Judge's order without first giving the opposing party an opportunity to brief the matter.¹

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28 ¹ Defendants Tydings and Kisera have filed oppositions to Plaintiff's objections. (See
Docket Item Nos. 341-42.)

1 Upon review of Judge Trumbull's April 13 discovery order, the Court does not find that
2 Judge Trumbull's ruling was either clearly erroneous or contrary to law. At best, Plaintiff is
3 complaining that Judge Trumbull's adherence to the meet and confer requirement was an example of
4 putting form over substance. In so contending, however, Plaintiff does not contend that it had, in
5 fact, met the requirement. Ultimately, the Court notes that Judge Trumbull denied Plaintiff's
6 motions without prejudice, subject to renewal after demonstrating that the meet and confer
7 requirement has been met. Assuming Plaintiff is capable of taking the steps outlined by Judge
8 Trumbull, Plaintiff will have another opportunity to seek the discovery that it desires.

9 Accordingly, Plaintiffs' objections to Judge Trumbull's April 13 Order are OVERRULED.

10
11 Dated: May 15, 2009



JAMES WARE
United States District Judge

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

2 Joanna R. Mendoza jmendoza@theiplawfirm.com
3 Joseph Lawrence Strabala legal@quantumsi.com
4 Martin H. Orlick mho@jmbm.com
5 Richard Allen Nebb rnebb@vierramagen.com
6 William N. Woodson wnw@fsowlaw.com

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8 **Dated: May 15, 2009**

Richard W. Wieking, Clerk

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By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy