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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Satmodo, LLC,

12 Plaintiff,

Case No.: 17-cv-0192-AJB-MSB

13 **ORDER DENYING DEFENDANTS’**
OBJECTIONS

14 v.

(Doc. No. 58)

15 Whenever Communications, LLC, dba
16 Satellitephonestore.com and Henna
17 Blanco,

Defendants.

18 Following the magistrate judge’s order on a jointly submitted discovery dispute,
19 (Doc. No. 57), Defendants Whenever Communications, LLC and Henna Blanco filed an
20 objection, arguing several of the magistrate judge’s findings were wrong. (Doc. No. 58.)
21 For the reasons stated below, the Court **OVERRULES** defendants’ objections.
22 (Doc. No. 58.)

23 **I. BACKGROUND**

24 Plaintiff sought to discover information about defendants’ computer devices, which
25 they have alleged defendants used to engage in a click-bait scheme. Defendants opposed
26 any such discovery and the parties filed a joint motion for determination of discovery
27 dispute before the magistrate judge. (Doc. No. 51.) The magistrate judge entered an order,
28 which in part included an inspection protocol for the parties to follow such that plaintiff

1 could inspect defendants’ computers. (Doc. No. 57.) Defendants then objected to that order
2 and the parties were ordered to brief their objections before this Court.

3 **II. LEGAL STANDARDS**

4 Under 28 U.S.C. § 636(b), “[a] judge of the court may reconsider any pretrial matter
5 under this subparagraph (A) where it has been shown that the magistrate judge’s order is
6 clearly erroneous or contrary to law.”

7 **III. DISCUSSION**

8 Defendants filed eight objections to the discovery order. (Doc. No. 58 at 2–3.)

9 **1. Supplemental Declaration Objection (Objection No. 1)**

10 First, defendants argue “[t]he Magistrate should have sustained, and not overruled,
11 the objection to the Supplemental Declaration of Scott J. Ivy submitted after the Joint
12 Motion and in violation of the Local Rules and Chamber Rules of the Magistrate.”
13 (Doc. No. 58 at 2.)

14 After the joint motion was filed, Scott J. Ivy—Satmodo’s attorney—filed a
15 supplemental declaration. (Doc. No. 53.) Mr. Ivy’s declaration concerns a deposition he
16 took of “Thikra Boles, the head of the billing department for Defendant Whenever
17 Communications.” (*Id.* ¶ 3.) He believed information given during the deposition “had a
18 direct bearing on the issues presented in the Joint Motion” and that the information was not
19 available when the motion was filed, as the deposition was taken the same day.
20 (Doc. No. 62 at 8–9.) Defendants filed a subsequent objection conclusively stating the
21 declaration was “untimely, not allowed under the court’s joint motion procedure, irrelevant
22 and hearsay.” (Doc. No. 58 at 2.) The magistrate judge’s order overruled these objections
23 in a footnote. (Doc. No. 57 at 5 n.5.)

24 Although the magistrate judge overruled defendants’ objections without analysis,
25 the Court finds the decision to allow Mr. Ivy’s declaration to be filed and considered under
26 these circumstances reasonable and not contrary to the law. Thus, the Court **OVERRULES**
27 defendants’ first objection.

1 **2. Inspection Protocol Objections (Objections No. 2, 3, 4, 5, 6)**

2 The next five objections are based on the magistrate judge’s ordered inspection
3 protocol. (Doc. No. 58 at 2.) Defendants argue the magistrate judge: (2) failed to give the
4 opportunity for a response or hearing before fashioning the protocol; (3) should not have
5 ordered the onsite inspection of defendants’ computer or the inspection of devices owned
6 by employees; (4) should not have allowed the inspection to determine the computer’s
7 model and serial number, the operating system, the browsers installed, and the IP address
8 associated with it; (5) should not have allowed plaintiff’s expert to determine if certain
9 things specified in the order, (Doc. No. 57 ¶¶ 3(a)–(e)), would be revealed by further
10 forensic analysis; and (6) should have allowed plaintiff’s expert to determine if the
11 computers should be imaged.

12 Pertaining to these issues, the magistrate judge held that inspection was permitted
13 because defendants are the only party who can access the information needed. The order
14 states:

15 Defendants have sole and exclusive access to devices and control over the
16 information they share; inspection of the devices could resolve the issues of
17 the case; and the Court finds that any burden and expense associated with the
18 discovery is proportionate to the needs of the case, will be borne primarily by
the Plaintiff, and will be important to the resolution of the issues.

19 (Doc. No. 57 at 8.) The magistrate judge considered both defendants’ privacy interests and
20 business interests in its analysis. Moreover, as the order states, fashioning an inspection
21 protocol is within the discretion of the magistrate judge. (Doc. No. 57 at 8 (listing cases).)
22 Reviewing both the magistrate judge’s analysis and inspection protocol, the Court finds
23 the order and protocol reasonable and containing no error. Accordingly, the Court agrees
24 with the magistrate judge’s findings and instructions. The Court, thus, **OVERRULES**
25 defendants’ objections 2–6.

26 **3. Imaging Devices Owned by Employees Objection (Objection No. 7)**

27 Defendants next object that the magistrate judge had no authority to order the
28 imaging of devices owned by defendants’ employees. (Doc. No. 58 at 2.) Again, while

1 defendants failed to give any argument as to why this order was improper, plaintiff states
2 the objection is likely based on the argument that defendants lack possession, custody, or
3 control of such devices. (Doc. No. 62 at 11.) Plaintiff notes that this argument is improperly
4 before this Court because it was never presented to the magistrate judge. *Rodriguez v.*
5 *Pataki*, 293 F. Supp. 2d 313, 315 (S.D.N.Y 2003) (denying the defendant’s requests for
6 rulings on issues not addressed by magistrate where court had referred all discovery
7 disputes in the case to the magistrate since he is in the best position to review them in the
8 first instance). Plaintiff also notes that this argument is now an about-face from what
9 defendants argued in the original motion—which was that it had possession, custody, and
10 control of their employee’s devices. (Doc. No. 62 at 12.) Plaintiff argues that defendants
11 had inspected those devices but would not produce the devices to plaintiff to conduct
12 inspections. (*Id.*) The magistrate judge’s order states that “Defendants have sole and
13 exclusive access to devices and control over the information they share.” (Doc. No. 57 at
14 6.) The issue before the magistrate judge was whether access could be provided to plaintiff
15 and plaintiff’s experts—not whether defendants had custody and control. The magistrate
16 judge held that these devices were used in the scope of business and thus subject to
17 inspection. Defendants fail to rebut any of these findings or plaintiff’s arguments in its
18 reply. (Doc. No. 63.)

19 Again, reviewing the magistrate judge’s analysis and findings, the Court finds the
20 order well-reasoned and thorough. As the objecting party, defendants have failed to make
21 any argument, other than a conclusory one, that the magistrate judge’s order was in legal
22 error. Thus, the Court **OVERRULES** this objection.

23 **4. Defendants’ Objection that the Order is Unenforceable**
24 **(Objection No. 8)**

25 Finally, defendants object stating “[t]he Magistrate’s limitation of the scope of
26 inspection of the imaged computer information is unenforceable and thus virtually
27 meaningless given the fact the parties are direct competitors.” (Doc. No. 58 at 3.) However,
28 in its objection and its reply, defendants fail to give any authority or argument as to the fact


1 that the competition between the parties invalidates a federal judge's order. Thus, the Court
2 **OVERRULES** this objection.

3 **IV. CONCLUSION**

4 As stated herein, the Court **OVERRULES** each of defendants' objections.
5 (Doc. No. 57). As previously instructed, the parties are ordered to contact magistrate judge
6 Berg's chambers within three days of this order to reset discovery-related deadlines.
7 (Doc. No. 68.)

8 **IT IS SO ORDERED.**

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10 Dated: February 27, 2019

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12 Hon. Anthony J. Battaglia
13 United States District Judge
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