

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 07-22433-CIV-HUCK/O'SULLIVAN

LARRY KLAYMAN,

Plaintiff,

vs.

FREEDOM'S WATCH, INC., BRADLEY
BLAKEMAN, ARI FLEISCHER, MEL
SEMBLER, WILLIAM P. WEIDNER, and
MATTHEW BROOKS,

Defendants.

ORDER AFFIRMING IN PART REPORT AND RECOMMENDATION
AND REMANDING IN PART FOR FURTHER PROCEEDINGS

THIS CAUSE comes before the Court upon Plaintiff's Objections to the Report and Recommendation of the Honorable John J. O'Sullivan, United States Magistrate Judge (D.E. #184), filed September 9, 2008 and the Defendants' Objection to Report and Recommendation Concerning Defendants' Amended Motion for Taxation of Costs (D.E. #185), filed September 9, 2008. Magistrate Judge O'Sullivan's Report and Recommendation addressed Defendants' Amended Motion for Taxation of Costs, wherein he recommended the Defendants be awarded costs in the amount of \$18,394.26.

Having reviewed *de novo* Plaintiff's objections, Defendants' objections, the Report and Recommendation, the record, and being otherwise duly advised, this Court agrees with Judge O'Sullivan's Report and Recommendation in part and is remanding the issue of reimbursement of electronic discovery expenses back to Magistrate Judge O'Sullivan for further review.

Plaintiff's request for an evidentiary hearing on the amount of costs is denied. Further, Plaintiff's objection with respect to the false advertising claims is overruled because the Court finds that the Defendants were the prevailing parties for the purposes of taxing costs. Plaintiff's objections with respect to the timeliness of Defendants' filing of their motion for costs is overruled and Magistrate Judge

O'Sullivan's Report and Recommendation analysis is affirmed. The Court finds that Defendants filed their motion within the time prescribed by the Local Rules and further finds that even if the filing was not timely, the Court would have granted an extension of time in the interest of justice. Further, Plaintiff's request for a hearing on the issue of timely filing of Defendants' Amended Motion for Taxation of Costs is denied.

Plaintiff's request for a stay of the taxation of costs pending appeal is granted in part and denied in part. The Court affirms the costs awarded in Magistrate Judge O'Sullivan's Report and Recommendation but will grant a stay of collection of those costs until Plaintiff's appeal has been resolved.

With respect to the Defendants' objection concerning electronic discovery expenses, the Court is remanding that issue to Magistrate Judge O'Sullivan as it appears that the parties did not provide sufficient information to Magistrate Judge O'Sullivan with respect to that claim. The Defendants shall file an amended motion addressing electronic discovery expenses by September 22, 2008 and Plaintiffs shall respond to Defendants' amended motion by October 2, 2008.

Accordingly, it is hereby

ORDERED that the Report and Recommendation of Magistrate Judge O'Sullivan be RATIFIED, AFFIRMED as to all issues except the issue of electronic discovery expenses made the Order of the District Court, and REMANDED to Magistrate Judge O'Sullivan with respect to the issue of electronic discovery expenses. It is further ORDERED that Plaintiff's request for a stay of taxation is GRANTED IN PART AND DENIED IN PART, the Court affirms the award of costs in the Report and Recommendation of Magistrate Judge O'Sullivan and orders a stay of collection of costs until Plaintiff's appeal is resolved.

DONE in Chambers, Miami, Florida, this 12th day of September, 2008.



Paul C. Huck
United States District Judge

Copies furnished to:
Magistrate Judge John J. O'Sullivan
Counsel of Record