

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Kevin Scott Karsjens, David Leroy Gamble,  
Jr., Kevin John DeVillion, Peter Gerard  
Lonergan, James Matthew Noyer, Sr.,  
James John Rud, James Allen Barber,  
Craig Allen Bolte, Dennis Richard Steiner,  
Kaine Joseph Braun, Christopher John  
Thuringer, Kenny S. Daywitt, Bradley Wayne  
Foster, Brian K. Hausfeld, and all others  
similarly situated,

Civil No. 11-3659 (DWF/JJK)

Plaintiffs,

v.

**ORDER**

Lucinda Jesson, Dennis Benson, Kevin  
Moser, Tom Lundquist, Nancy Johnston,  
Jannine Hébert, and Ann Zimmerman,  
in their official capacities,

Defendants.

This matter is before the Court on Defendants' objections (Doc. No. 730) to Part II of Magistrate Judge Jeffrey J. Keyes's December 15, 2014 Text Only Order (Doc. No. 706) and accompanying Minute Entry (Doc. No. 705) denying Defendants' Motion Seeking Relief from Spoliation. Plaintiffs filed a response to Defendants' objections on January 6, 2015. (Doc. No. 738.)

The Court must modify or set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); D.Minn. LR 72.2(a). This is an "extremely deferential standard." *Reko v. Creative Promotions, Inc.*, 70 F. Supp. 2d 1005, 1007 (D. Minn. 1999). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire

evidence is left with the definite and firm conviction that a mistake has been committed.”

*Chakales v. Comm’r of Internal Revenue*, 79 F.3d 726, 728 (8th Cir. 1996) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Defendants argue that the Magistrate Judge improperly denied their motion because the Magistrate Judge erroneously based his decision on a requirement of bad faith when he found that Mr. Braun had not destroyed documents with an intent to suppress the truth. (*See* Doc. No. 730 at 5-6.) Plaintiffs, on the other hand, argue that the Magistrate Judge properly denied Defendants’ motion because “Defendants failed to satisfy any of the elements required for a spoliation claim” and “the relief sought – an explanation of the litigation hold information – has already been provided to Defendants.” (*See* Doc. No. 738 at 4, 9.)

The Court concludes that Defendants have failed to demonstrate that the Magistrate Judge’s Orders are either clearly erroneous or contrary to law. Therefore, the Court overrules Defendants’ objections and affirms Magistrate Judge Keyes’s December 15, 2014 Orders in all respects.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendants’ objections (Doc. No. [730]) to Magistrate Judge Jeffrey J. Keyes’s December 15, 2014 Orders are **OVERRULED**.
2. Magistrate Judge Jeffrey J. Keyes’s December 15, 2014 Text Only Order (Doc. No. [706]) and Minute Entry (Doc. No. [705]) are **AFFIRMED**.

Date: January 13, 2015

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge