

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

PATRICIA SANFORD,)
)
Plaintiff,)
)
vs.)
)
MEMBERWORKS INCORPORATED,)
)
Defendant,)
)
WEST CORPORATION,)
)
Movant.)

8:08CV302
(02CV601, S.D. Cal.)

ORDER

This matter is before the court on the plaintiff's Motion [1] to Compel West Corporation's production of documents which West has already produced in related state court litigation. The underlying litigation (the *Sanford* class action) originated in the Southern District of California, Case No. 02CV601. All remaining claims in the *Sanford* class action were dismissed by order entered September 29, 2008.

Memberworks, Incorporated and West Corporation have filed copies of the dispositive order in response to the court's October 3, 2008 scheduling order, and they agree that the Motion to Compel should be denied as moot. (*See* Docs. 41, 42, 43 & 44). The plaintiffs filed a status report (Doc. 45) in which they contend the matter is not moot because the district court has not entered the final judgment in the *Sanford* class action and they intend to file a motion for reconsideration.

Having considered all of the parties' written arguments on the merits and on the question of mootness, the court finds that the Motion to Compel should be denied as moot.¹

IT IS ORDERED:

1. Plaintiffs' Motion to Compel (Doc. 1) is denied as moot, without prejudice to reassertion if the dispositive order filed September 29, 2008 in the *Sanford* class action is vacated or set aside.

2. West Corporation's motion for leave to file a surreply brief (Doc. 38) is denied as moot.

Pursuant to [NECivR](#) 72.2, a party may appeal this order by filing an "Appeal of Magistrate Judge's Order" within ten (10) days after being served with the order. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law. *See* NECivR 72.2(d).

DATED October 14, 2008.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**

¹If the matter were not rendered moot by the dismissal of all the plaintiffs' claims, it is likely that the motion would have been denied on its merits.