

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YEDIDA KHADERA, KEVIN HUDSON and
SAM RICHARDSON,

Plaintiffs,

v.

ABM INDUSTRIES INCORPORATED and
AMERICAN BUILDING MAINTENANCE
CO. - WEST,

Defendants.

No. 2:08-CV-00417-MJP

**STIPULATED AND [PROPOSED]
ORDER EXTENDING DEADLINES
FOR PRODUCTION OF
ELECTRONIC MAIL AND CLASS
CERTIFICATION MOTION**

WHEREAS by its Order Granting CR 37 Joint Submission regarding Plaintiffs' various discovery requests (May 27, 2009) (dkt. no. 170), the Court has ordered Defendants ABM Industries Incorporated and ABM Janitorial Services–Northwest, Inc.¹ (together, “ABM”) to produce all electronic mail of designated custodians responsive to certain of Plaintiffs' discovery requests by July 1, 2009;

WHEREAS ABM has been working diligently to comply with the Court's Order. ABM has now collected, restored, indexed, and processed most of the data for 24 custodians, and has conducted searches using 64 search terms, as ordered by the Court. ABM also has contracted with a third-party document review services company to provide what ABM currently expects will be approximately 40 attorneys to assist in the review of documents for production to the

¹ The legal name of Defendant American Building Maintenance Co.-West has now changed to ABM Janitorial Services - Northwest, Inc.

1 Plaintiffs. To date, just the indexing, processing, and preliminary searching of the data,
2 including vendor labor costs, have cost ABM tens of thousands of dollars. The next step is for
3 ABM's defense team to review the documents using an advanced computer-based culling tool
4 (known as "Clearwell") in order to eliminate documents that are clearly not responsive, as this is
5 much less time-consuming than having the documents reviewed for responsiveness by human
6 eyes and thus speeds production.

7 WHEREAS, despite the expense and time expended by ABM on this project to date and
8 arrangements made for additional processing and review, it will not be able to complete
9 production by the July 1, 2009 deadline, unless review is limited, leading to several undesirable
10 results. First, even with an army of attorneys deployed, ABM faces the very real prospect of
11 having to produce documents to the Plaintiffs that have not been reviewed by any attorneys, and
12 certainly not attorneys of record. This may result in the production of documents containing
13 confidential and sensitive business information that, in most cases, will have no bearing on
14 Plaintiffs' claims here, and/or privileged documents. The existing deadline will likely result in
15 an unnecessary addition to Plaintiffs' review burden, and potential damage to ABM's business
16 interests.

17 WHEREAS the parties agree additional time will enable ABM to fully comply with the
18 Court's May 27 Order while avoiding these undesirable consequences, and will further allow
19 ABM to make productions to Plaintiffs on a rolling basis;

20 WHEREAS the parties recognize that an extension of the production deadline warrants
21 an extension of the class certification briefing schedule, and that a six-week extension of the
22 deadline for Plaintiffs to file an amended motion for class certification is reasonable in light of
23 the extension of the production deadline and Plaintiffs' counsels' other obligations;

24 WHEREAS the following deadlines are currently set pursuant to the Court's Order
25 Granting Plaintiffs' Motion for Relief From Deadline for Filing Amended Motion for Class
26 Certification (May 27, 2009) (dkt. no. 169): Plaintiffs' amended motion for class certification is

1 due 30 days after the completion of ABM's production, or on July 31, 2009. Defendants'
2 response is due on August 28, 2009. Plaintiff's reply must be submitted no later than September
3 11, 2009.

4 WHEREAS the parties are working to avoid further continuances and do not currently
5 foresee any need for additional time.

6 Therefore the parties agree and stipulate as follows:

7
8 **I. STIPULATION**

9 The parties agree that good cause exists to continue the deadline for ABM's production
10 of electronic mail and briefing deadlines on Plaintiffs' amended motion for class certification as
11 follows:

- 12 • July 31, 2009: Defendants will complete production of electronic mail as outlined in
13 the Court's May 27, 2009 Order, following rolling productions on July 10 and 20;
- 14 • September 14, 2009: Plaintiffs file their amended motion for class certification;
- 15 • October 16, 2009: Defendants file their response to Plaintiffs' motion; and
- 16 • November 2, 2009: Plaintiffs file their reply in support of their motion.

17 Dated this 10th day of June, 2009

18 TERRELL MARSHALL & DAUDT PLLC

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10 *Counsel*

11 II. ORDER

12 Based on the foregoing stipulation of the parties, and good cause appearing, therefore,

13 IT IS HEREBY ORDERED THAT the deadline for ABM's production of electronic mail
14 and briefing deadlines on Plaintiffs' motion for class certification shall be continued to the
15 following dates:

- 16 • July 31, 2009: Defendants will complete production of electronic mail as outlined in
- 17 the Court's May 27, 2009 Order, following rolling productions on July 10 and 20;
- 18 • September 14, 2009: Plaintiffs file their amended motion for class certification;
- 19 • October 16, 2009: Defendants file their response to Plaintiffs' motion; and
- 20 • November 2, 2009: Plaintiffs file their reply in support of their motion.

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22 DATED this 15th day of June, 2009.

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25 Marsha J. Pechman
26 United States District Judge