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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 FEDERAL TRADE COMMISSION,
11 Plaintiff,
12 v.
13 AMERIDEBT, INC., et al.,
14 Defendants.

Case No. CV05-80253 misc JSW (EDL)
(Related to PJM 03-3317
USDC, Dist. of MD)

**NON-PARTY MOVANT PETER
BAKER'S EX PARTE MOTION FOR A
PROTECTIVE ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES; AND DECLARATIONS
OF LEO J. PRESIADO, PETER BAKER,
AND ROGER F. FRIEDMAN**

[Request for Judicial Notice; Certificate of
Compliance With Meet and Confer
Requirements; and Proposed Order filed
concurrently]

Date:
Time:
Courtroom: E, 15th Floor

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

MEMORANDUM OF POINTS AND AUTHORITIES 3

I. INTRODUCTION..... 3

II. STATEMENT OF FACTS..... 4

 A. The Google Subpoena, the Motion to Quash, and the Court’s
 Order Authorizing Mr. Baker to Withhold Privileged and
 Private Documents 4

 B. Mr. Baker’s Production of Documents and Privilege Logs 6

 C. ML&A Notified RM&S About the Inadvertent Production of
 Documents, But Has Repeatedly Failed and Refused to Return
 the Documents 8

 D. Mr. Baker’s Engagement of New Counsel, and the Receiver’s
 and ML&A’s Continuing Refusal to Return and Refrain From
 Using the Inadvertently Produced Documents 12

III. ARGUMENT 14

 A. The Court Has The Authority To Issue A Protective Order 14

 B. Good Cause Exists For The Issuance Of A Protective Order 14

 C. Mr. Baker’s Inadvertent Disclosure Does Not Constitute a
 Waiver of The Attorney-Client Privilege or His Right of
 Privacy..... 15

 D. The Totality of the Circumstances Clearly Shows That Mr.
 Baker Did Not Waive The Attorney-Client Privilege or His
 Right of Privacy..... 17

 1. Mr. Baker and his Counsel Used Reasonable
 Precautions to Prevent Inadvertent Disclosure 18

 2. Mr. Baker’s Counsel Acted Quickly to Rectify the Error 18

 3. The Large Scope of Discovery Weighs in Favor of
 Maintaining Privilege..... 19

 4. The Inadvertent Disclosure Covered Most or All of the
 Documents Identified on Mr. Baker’s Privilege Logs 19

 5. Overriding Issues of Fairness Favor Maintaining Mr.
 Baker’s Attorney-Client Privilege and Right of Privacy,
 and Requiring the Return of His Inadvertently Produced
 Documents 20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

E. The Receiver and Its Counsel Are Obligated to Return Mr. Baker's Privileged and Private Documents..... 21

1. Neither the Receiver Nor Its Counsel Have Any Authority to Determine Whether the E-Mails are Properly Included on Mr. Baker's Privilege Log and Should Be Withheld from Production..... 21

2. ML&A is Ethically Obligated to Return the Privileged and Private Documents to Mr. Baker..... 22

F. Sanctions Are Appropriate In This Case..... 23

IV. CONCLUSION..... 25

DECLARATION OF LEO J. PRESIADO 26

DECLARATION OF PETER BAKER..... 31

DECLARATION OF ROGER F. FRIEDMAN..... 34

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

FEDERAL CASES

Bagley v. TRW, Inc.,
204 F.R.D. 170 (C.D. Cal. 2001)..... 16, 17, 20

Beauclair v. Gomez,
534 U.S. 1066 (2001)..... 17, 22, 23, 24

Black v. City & County of Honolulu,
112 F. Supp. 2d 1041 (D. Haw. 2000)..... 16

Blankenship v. First Corp.,
509 F.2d 418 (9th Cir. 1975) 14

Chambers v. NASCO, Inc.,
501 U.S. 32 (1991)..... 24

Ciba-Geigy Corp. v. Sandoz, Ltd.,
916 F. Supp. 404 (D.N.J. 1996) 16

In re Copper Market Antitrust Litigation,
200 F.R.D. 213 (S.D.N.Y. 2001) 16

Dart Industries Company, Inc. v. Westwood Chemical Company, Inc.,
649 F.2d 646 (9th Cir. 1980) 14

Federal Deposit Insurance Corp. v. Fidelity & Deposit Co. of Maryland,
196 F.R.D. 375 (S.D. Cal. 2000) 17

Fink v. Gomez,
239 F.3d 989 (9th Cir. 2001) 24

Flores v. Albertson's Inc.,
2004 U.S. Dist. LEXIS 29083 (C.D. Cal. 2004) 17, 20

Gomez v. Vernon,
255 F.3d 1118 (9th Cir. 2001) 17, 22, 23, 24

Hartford Fire Insurance v. Garvey,
109 F.R.D. 323 (N.D. Cal. 1985)..... 17

Hopson v. Mayor and City Council of Baltimore,
232 F.R.D. 228 (D. Md. 2005)..... 16

Hydraflow, Inc. v. Enidine Incorporated,
145 F.R.D. 626 (W.D.N.Y. 1993) 17

Jepson, Inc. v. Makita Electric Works Ltd.,
30 F.3d 854 (7th Cir. 1990) 14

///

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

	STATE CASES	
	<i>State Compensation Insurance Fund v. WPS, Inc.</i> , 70 Cal. App. 4th 644 (1999)	17, 23, 25
	FEDERAL STATUTES	
	Fed. R. Civil Procedure	
	Rule 26(c).....	1, 2, 14, 24
	Rule 37-1(a)	2, 24
	Rule 37(a)(4).....	24
	Local Rule	
	Rules 37-3, 7-8.....	23

1 TO THE HONORABLE ELIZABETH D. LAPORTE, UNITED STATES
2 MAGISTRATE JUDGE, RECEIVER ROBB EVANS & ASSOCIATES, LLC AND
3 ITS COUNSEL OF RECORD:

4 Movant Peter Baker ("Mr. Baker"), a non-party to the above-captioned case, moves
5 ex parte for a protective order: (1) requiring the immediate return of privileged and private
6 documents inadvertently produced to Receiver Robb Evans & Associates, LLC (the
7 "Receiver") and the Receiver's counsel; and (2) prohibiting the Receiver and its counsel
8 from using any of the inadvertently produced documents in any manner or for any purpose.

9 Mr. Baker requests ex parte relief because the Receiver and its counsel have
10 already attached at least one of the documents in a court filing and are threatening to
11 include more of the privileged and private documents in court filings before the end
12 of August 2006.

13 This Ex Parte Motion is based on Rules 26(c) and 37(a)(4) of the Federal Rules of
14 Civil Procedure ("FRCP"), and is made on the grounds that: (1) the Receiver and its
15 counsel possess privileged and private documents that are identified on Mr. Baker's
16 privilege logs but that were inadvertently produced by Mr. Baker's prior counsel; (2) the
17 Receiver and its counsel have improperly and unjustifiably failed and refused to return the
18 documents; (3) Mr. Baker has not waived any privilege or right of privacy; and (4) the
19 Receiver and its counsel have already used and are threatening to further use the
20 documents in court filings.¹ Accordingly, the Court should grant this Motion and enter a
21 protective order prohibiting further disclosure of the documents and requiring their return.

22 This Motion is based on the attached Memorandum of Points and Authorities and
23 Declarations of Leo J. Presiado, Peter Baker, and Roger F. Friedman, the concurrently
24 filed Request for Judicial Notice and Certificate of Compliance With Meet and Confer

25 ¹ Notwithstanding Mr. Baker's counsel's repeated requests to the Receiver's counsel for
26 the return of all inadvertently produced documents, the Receiver's counsel has filed in the
27 Maryland District Court a declaration containing a description – albeit inaccurate – of at
28 least one of the documents, and has even attached the inadvertently produced document to
the filed declaration. Moreover, the Receiver's counsel is now threatening to further
utilize the inadvertently produced documents in additional court filings before the end of
August 2006.

1 Requirements, and additional evidence and arguments that may be properly presented at or
2 before any hearing on this Motion if the Court schedules a hearing.

3 Mr. Baker makes this Motion following his counsel's good faith efforts to confer or
4 attempt to confer with the Receiver's counsel in an effort to resolve this dispute without
5 Court action, as required by Rule 26(c) of the FRCP, Rule 37-1(a) of the Civil Local
6 Rules, United States Magistrate Judge Elizabeth D. Laporte's "Standing Order" dated
7 July 26, 2005, and Judge Laporte's "Order re Discovery Procedures."

8 WHEREFORE, Peter Baker respectfully requests that the Court enter an order:

9 (1) Granting this Motion;

10 (2) Requiring the Receiver and its counsel to immediately return to Mr. Baker's
11 counsel all the documents identified on Mr. Baker's privilege logs, including any and all
12 copies, print-outs, and electronic copies;

13 (3) Requiring the Receiver and its counsel to delete from all electronic storage
14 media all the documents identified on Mr. Baker's privilege logs, and destroy the relevant
15 portions of such documents or computer files containing summaries of, or quotations from,
16 such documents;


17 (4) Prohibiting the Receiver and its counsel from using, mentioning, or disclosing
18 any of the documents identified on Mr. Baker's privilege logs or the contents of the
19 documents in any manner or for any purpose; and

20 (5) Granting such other and further relief as is just and appropriate under the
21 circumstances of this case.

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Dated: August 22, 2006

Stephen A. Ellis
Roger F. Friedman
RUTAN & TUCKER, LLP

By: 
Roger F. Friedman
Attorneys for Non-Party Movant
PETER BAKER

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The Receiver and its counsel are running roughshod over Mr. Baker's attorney-
4 client privilege and constitutionally protected right of privacy. In the course of a massive
5 document production involving more than 7,000 e-mails and other materials from Mr.
6 Baker's e-mail account with Google, Inc., Mr. Baker's former counsel prepared a privilege
7 log and culled the documents for production, but then in the process of producing the
8 responsive documents in electronic format (via a series of compact disks and a DVD),
9 inadvertently produced all of the materials identified on the privilege logs that should have
10 been withheld from the production. Some of the inadvertently produced documents were
11 attorney-client communications, and some were of a private and personal nature covering
12 matters unrelated to any subject relevant to this action.

13 Promptly upon learning of the mistake, Mr. Baker's former counsel Rus, Miliband
14 & Smith, P.C. ("RM&S") asked the Receiver and the Receiver's counsel, McKenna Long
15 & Aldridge LLP ("ML&A"), to return and/or delete the inadvertently produced
16 documents. Although the Receiver and ML&A readily acknowledge that the documents
17 were inadvertently produced and that they are identified on Mr. Baker's privilege logs, the
18 Receiver and ML&A flatly refused to return and/or delete the documents.

19 Instead, the Receiver and ML&A unilaterally (and incorrectly) decided, without
20 seeking any determination from the Court, that none of the documents should have been
21 withheld or included on Mr. Baker's privilege logs, and thus, according the Receiver and
22 ML&A, they are under no obligation to return the documents or to seek guidance from the
23 Court. To make matters worse, the Receiver and ML&A have filed with the District Court
24 in Maryland a declaration containing a description – albeit inaccurate – of at least one of
25 the inadvertently produced documents, and have attached the document to the declaration.
26 ML&A is now threatening to further utilize the inadvertently produced documents in
27 additional court filings before the end of August 2006.

28 / / /

1 Applicable law and the Court's Orders clearly mandate the Receiver and ML&A, at
2 a minimum, should have returned or isolated the documents, refrained from further
3 reviewing or using them for any purpose, and sought guidance from the Court. Instead, the
4 Receiver and ML&A ignored the law and the Court's Orders, made their own judgments
5 about the nature of the privileged documents, and then trampled on Mr. Baker's attorney-
6 client privilege and right of privacy. The Court should not condone this unilateral and
7 unfair action by the Receiver and ML&A. The Court should enter a protective order to
8 safeguard Mr. Baker's attorney-client privilege and right of privacy.

9 **II. STATEMENT OF FACTS**

10 **A. The Google Subpoena, the Motion to Quash, and the Court's Order**
11 **Authorizing Mr. Baker to Withhold Privileged and Private Documents**

12 On November 1, 2005, the Receiver served a document subpoena on Google, Inc.,
13 requesting all records generated by or pertaining to Mr. Baker's e-mail account (the
14 "Google Subpoena"). [Declaration of Leo J. Presiado ("Presiado Decl."), ¶ 4.] In
15 response to the Google Subpoena, on November 8, 2005 Mr. Baker filed an ex parte
16 application to quash on the basis that the Google Subpoena sought private, confidential,
17 and privileged information, including communications by and between Mr. Baker and his
18 counsel. [*Id.*, ¶ 5.]

19 On January 31, 2006, the Court issued an Order Denying Third Party's Motion To
20 Quash Subpoena (the "Order Denying Motion to Quash"). [Presiado Decl., ¶ 6; Req. for
21 J.N., Exh. "1."] Although the Court denied Mr. Baker's application to quash the Google
22 Subpoena, the Court granted Mr. Baker certain important protections. [Req. for J.N.,
23 Exh. "1," at 6:12 – 7:3.] The Court required Mr. Baker to give his permission to Google to
24 turn over subpoenaed documents to RM&S, subject to RM&S reviewing the documents
25 and withholding from production to the Receiver documents protected from discovery by
26 the attorney-client privilege or a privacy privilege. [*Id.*] The Court also required Mr.
27 Baker to provide a privilege log identifying each document withheld on grounds of
28 privilege or privacy. [*Id.*] The Order Denying Motion to Quash states, in relevant part:

Ex Parte Motion for a Protective Order;
Memorandum of Points and Authorities
Case No. CV05-80253 misc JSW (EDL)

1 Baker's counsel shall review the documents provided by Google and
 2 **withhold only those documents that are shielded from discovery by the**
 3 **attorney-client privilege. In addition, if Baker's counsel determines that**
 4 **some of the documents are truly protected by a privacy privilege (e.g.,**
 5 **an e-mail containing irrelevant, purely personal financial information**
 6 **that is in no way connected to Pukke, Dolphin Development or**
 7 **Sanctuary Bay Estates), he may also withhold these documents. . . .**
 8 Within ten business days of receiving the documents from Google, Baker
 9 shall provide to the Receiver all non-privileged documents obtained from
 10 Google, and a **privilege log documenting each document withheld on**
 11 **attorney-client or privacy grounds.** The privilege log shall conform to the
 12 rules set forth in the Court's Notice Reference re Discovery

8 [Req. for J.N., Exh. "1," at 6:12-21 (emphasis added).]

9 The Order Denying Motion to Quash also states that if the Receiver disagrees with
 10 Mr. Baker's withholding of documents based on privilege or privacy, it may seek Court
 11 intervention and the Court may determine whether the documents should be produced:

12 **Should the Receiver question whether documents were inappropriately**
 13 **withheld, the Court may choose to review all or a subset of randomly-**
 14 **chosen documents in camera, and may order all documents to be produced**
 15 **regardless of privilege assertions if it determines that any of the documents**
 16 **reviewed were improperly withheld.**

15 [Req. for J.N., Exh. "1," at 6:22 – 7:3 (emphasis added).]

16 Mr. Baker's appeal of the Order Denying Motion to Quash was subsequently
 17 dismissed. [Presiado Decl., ¶ 8.] However, on March 13, 2006, while the appeal was
 18 pending, the Court entered an "Order Denying Motion to Stay Discovery Pending Appeal"
 19 (the "Order Denying Stay") [*Id.*; Req. for J.N., Exh. "2"], wherein the Court reiterated Mr.
 20 Baker's right to withhold privileged and private documents:

21 Within five court days of this Order, Baker shall immediately turn over all
 22 documents to the Receiver, **withholding only those documents that are**
 23 **shielded from discovery by the attorney-client privilege, or those which**
 24 **are truly protected by a legitimate privacy interest (i.e., an e-mail**
 25 **containing irrelevant, purely personal information that is in no way**
 26 **connected to Pukke, Dolphin Development or Sanctuary Bay Estates).**
 27 Within ten court days of this Order, Baker shall provide a **privilege log to**
 28 **the Receiver, identifying each document withheld on privilege or privacy**
 29 **grounds.**

26 [Req. for J.N., Exh. "2," at 4:25 – 5:3.]

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1 **B. Mr. Baker's Production of Documents and Privilege Logs**

2 Mr. Baker and RM&S used their best efforts to timely produce all non-privileged,
3 non-private e-mails and a privilege log documenting the e-mails that Mr. Baker intended to
4 withhold from production on privilege and/or privacy grounds. [Presiado Decl., ¶ 10;
5 Declaration of Peter Baker ("Baker Decl."), ¶ 10.] Because of the large volume of
6 documents – approximately 7,000 separate e-mails – the documents and privilege logs
7 were produced in stages. [Presiado Decl., ¶ 10; Baker Decl., ¶ 10.] Also, given the
8 massive amount of data involved, only some of the e-mails were produced in paper form;
9 the vast majority of the e-mails were produced on five separate compact disks. [Presiado
10 Decl., ¶ 10; Baker Decl., ¶ 10.]

11 Mr. Baker and RM&S took great care and implemented reasonable precautions to
12 produce only non-privileged and non-private e-mails. [Presiado Decl., ¶¶ 11, 19; Baker
13 Decl., ¶ 11.] After receiving the e-mails from Google in electronic form on a compact
14 disk, Mr. Baker and RM&S conducted a careful and in-depth review of the content of the
15 e-mails. [Presiado Decl., ¶ 11; Baker Decl., ¶ 11.] Mr. Baker and RM&S created separate
16 computer folders for e-mails identified for production and e-mails they intended to
17 withhold based on privilege and/or privacy. [Presiado Decl., ¶ 11; Baker Decl., ¶ 11.] Mr.
18 Baker and RM&S segregated into a separate computer folder the e-mails that contained
19 confidential attorney-client communications and other information of a private nature,
20 such as Mr. Baker's personal financial information. [Presiado Decl., ¶ 11; Baker Decl.,
21 ¶ 11.] In accordance with the Court's Order Denying Motion to Quash [Req. for J.N.,
22 Exh. "1"], RM&S prepared detailed privilege logs documenting each e-mail that Mr.
23 Baker and RM&S intended to withhold from the production on the basis of attorney-client
24 privilege, privacy grounds, or both. [Presiado Decl., ¶ 11; Baker Decl., ¶ 11.] After a
25 batch of e-mails had been segregated into their respective computer folders, RM&S then
26 had its information technology department copy onto a compact disk the folder containing
27 e-mails that were going to be produced to the Receiver, and RM&S then sent that compact
28 disk to ML&A. [Presiado Decl., ¶ 11.] It took several weeks for Mr. Baker and RM&S to

1 carefully review all the approximately 7,000 e-mails, segregate them into privileged and
2 non-privileged categories, produce documents, and prepare privilege logs identifying all of
3 the e-mails that they intended to withhold from production. [Presiado Decl., ¶ 11; Baker
4 Decl., ¶ 11.]

5 On April 12, 2006, RM&S sent a letter to ML&A, enclosing documents marked as
6 Bates Nos. PB00001 through PB00746. [Presiado Decl., ¶ 12, Exh. "1."] RM&S also
7 enclosed a compact disk marked as Bates No. PB00747, which contained a folder
8 identified as "Sanctuary Bay Contact Forms" containing approximately 3,689 e-mails.
9 [Id.] A true and correct copy of RM&S' April 12th letter and a copy of the compact disk
10 are attached collectively as Exhibit "1" to the Presiado Declaration.

11 On April 21, 2006, RM&S sent a letter to ML&A, enclosing a compact disk marked
12 as Bates No. PB00747A, which contained a folder identified as "Sanctuary Bay (non-
13 forms)" containing approximately 1,106 e-mails. [Presiado Decl., ¶ 13, Exh. "2."] A true
14 and correct copy of RM&S' April 21st letter and a copy of the compact disk are attached
15 collectively as Exhibit "2" to the Presiado Declaration.

16 On May 1, 2006, RM&S sent a letter to ML&A, enclosing a compact disk marked
17 as Bates No. PB00747B and containing folders identified as "Additional" and
18 "Additional2" which, as stated in the letter, RM&S believed contained approximately
19 1,000 e-mails. [Presiado Decl., ¶ 14, Exh. "3."] A true and correct copy of RM&S' May
20 1st letter and a copy of the compact disk are attached collectively as Exhibit "3" to the
21 Presiado Declaration. RM&S' belief regarding the contents of this compact disk appears
22 to be incorrect – as the folder labeled "Additional2" mistakenly contained virtually all of
23 the approximately 7,000 e-mails that Google had produced to RM&S and Mr. Baker.
24 [Declaration of Roger F. Friedman ("Friedman Decl."), ¶ 5.]

25 On May 5, 2006, RM&S sent a letter to ML&A, enclosing a compact disk marked
26 as Bates No. PB00747C, which contained a folder identified as "Additional3" containing
27 approximately 66 e-mails. [Presiado Decl., ¶ 15, Exh. "4."] RM&S also enclosed a 46-
28 page privilege log documenting e-mails that Mr. Baker contends contain private,

1 privileged, and/or non-responsive information. [*Id.*] A true and correct copy of RM&S'
2 May 5th letter, a copy of the compact disk, and a copy of the privilege log are attached
3 collectively as Exhibit "4" to the Presiado Declaration.

4 On May 12, 2006, RM&S sent a letter to ML&A, enclosing a compact disk marked
5 as Bates No. PB00747D, which contained a folder identified as "Additional4" containing
6 approximately 202 e-mails. [Presiado Decl., ¶ 16, Exh. "5."] RM&S also enclosed a 4-
7 page privilege log itemizing additional e-mails that Mr. Baker contends contain private,
8 privileged, and/or non-responsive information. [*Id.*] A true and correct copy of RM&S'
9 May 12th letter, a copy of the compact disk, and a copy of the privilege log are attached
10 collectively as Exhibit "5" to the Presiado Declaration.

11 On May 24, 2006, RM&S sent a letter to ML&A, enclosing documents marked as
12 Bates Nos. PB00748 through PB00816. [Presiado Decl., ¶ 17, Exh. "6."] RM&S also
13 enclosed a 5-page privilege log itemizing additional e-mails that Mr. Baker contends
14 contain private, privileged, and/or non-responsive information. [*Id.*] This privilege log is
15 an updated version of the 4-page privilege log that RM&S sent to ML&A on May 12,
16 2006. A true and correct copy of RM&S' May 24th letter and a copy of the updated
17 privilege log are attached collectively as Exhibit "6" to the Presiado Declaration.

18 **C. ML&A Notified RM&S About the Inadvertent Production of**
19 **Documents, But Has Repeatedly Failed and Refused to Return the**
20 **Documents**

21 On about June 1, 2006, ML&A sent RM&S a letter notifying RM&S that most or
22 all of the items listed on Mr. Baker's privilege logs appeared to have been produced,
23 including attorney-client communications. [Presiado Decl., ¶ 18, Exh. "7."] ML&A also
24 revealed that **the Receiver and/or ML&A actually reviewed all of the documents**
25 **identified on Mr. Baker's privilege logs – notwithstanding their knowledge that Mr.**
26 **Baker claimed those documents to be covered by his attorney-client privilege and/or**
27 **right of privacy. [*Id.*] The Receiver and ML&A also usurped the Court's authority**
28 **by examining the inadvertently produced documents and unilaterally deciding the**

1 **merits of Mr. Baker's privilege and privacy claims.** ML&A's June 1st letter provides,
2 in relevant part:

3 In addition, it appears that you have inadvertently produced certain
4 **attorney-client communication between Mr. Baker and your office.**
5 Those communications appear to be non-substantive in nature. Please call
6 me to discuss how you wish for us to handle those documents, which were
7 produced in electronic format.

8 **Additionally, it appears that most or all of the other items on your**
9 **privilege logs were also produced. I am unable to tell, based on the**
10 **production and the letters that accompany the production, whether the**
11 **production of these other documents was intentional. Based upon the**
12 **review of those documents undertaken by my client and/or this office,**
13 **the other documents (not including the communications between your**
14 **office and Mr. Baker) do not appear to be protectable under a privacy**
15 **theory or any other basis for non-disclosure.**

16 [Presiado Decl., Exh. "7" (emphasis added).] A true and correct copy of ML&A's June 1st
17 letter is attached as Exhibit "7" to the Presiado Declaration.

18 Upon learning of the inadvertent production, RM&S and Mr. Baker promptly
19 investigated and immediately concluded they did not intentionally produce the e-mails
20 itemized on Mr. Baker's privilege logs. [Presiado Decl., ¶¶ 20-21; Baker Decl., ¶ 12.] On
21 June 23, 2006, RM&S sent a letter to ML&A, stating the e-mails identified on the privilege
22 logs were not produced voluntarily, and requesting ML&A return all of the inadvertently
23 produced e-mails and delete any electronic storage thereof. [Presiado Decl., ¶ 21,
24 Exh. "8."] A true and correct copy of RM&S' June 23rd letter is attached as Exhibit "8" to
25 the Presiado Declaration.

26 On about June 26, 2006, ML&A sent a letter in response. [Presiado Decl., ¶ 22,
27 Exh. "9."] **ML&A stated the Receiver and ML&A had reviewed all the e-mails**
28 **identified on Mr. Baker's privilege logs** (although ML&A claims it did not review
communications between RM&S and Mr. Baker), and had concluded the only e-mails they
would return or delete were the communications between RM&S and Mr. Baker. [*Id.*]
With limited exceptions, ML&A refused to recognize Mr. Baker's claims of privilege
or privacy. [*Id.*] Apparently dissatisfied with Mr. Baker's privilege logs, ML&A insisted
RM&S further explain on a document-by-document basis (for several hundred e-mails)

1 why the e-mails were covered by a privilege or right of privacy, and ML&A stated they
2 would then consider RM&S' request for return of the documents. [*Id.*] A true and correct
3 copy of ML&A's June 26th letter is attached as Exhibit "9" to the Presiado Declaration.

4 On June 27, 2006, RM&S sent another letter, referring ML&A to the Order
5 Denying Motion to Quash [Req. for J.N., Exh. "1," at 6:12 – 7:3], wherein the Court stated
6 Mr. Baker may withhold from production and identify on a privilege log all privileged
7 and/or private e-mails, and that the Receiver may seek Court intervention in the event of a
8 disagreement or question over a designation of an e-mail as privileged or private.
9 [Presiado Decl., ¶ 23, Exh. "10."] RM&S objected to ML&A's unilateral determination of
10 the merits of Mr. Baker's privilege and privacy claims, and again asked ML&A to return
11 and/or delete all the e-mails identified on Mr. Baker's privilege logs. [*Id.*] A true and
12 correct copy of RM&S' June 27th letter is attached as Exhibit "10" to the Presiado
13 Declaration.

14 In a letter dated June 29, 2006, ML&A again refused to recognize Mr. Baker's
15 attorney-client privilege and privacy claims, and again refused to return the inadvertently
16 produced documents. [Presiado Decl., ¶ 24, Exh. "11."] A true and correct copy of
17 ML&A's June 29th letter is attached as Exhibit "11" to the Presiado Declaration. Instead,
18 on July 10, 2006, ML&A sent a letter to RM&S enclosing the original compact disks that
19 RM&S sent to ML&A, while retaining copies of everything on the disks "except for the
20 attorney-client privileged communications between Mr. Baker and your office." [Presiado
21 Decl., ¶ 25, Exh. "12."] A true and correct copy of ML&A's July 10th letter is attached as
22 Exhibit "12" to the Presiado Declaration. ML&A and the Receiver are still in possession
23 of and refusing to return the vast majority of the documents identified on Mr. Baker's
24 privilege logs.

25 Also on July 10, 2006, ML&A sent a separate letter to RM&S, disclosing the
26 Receiver had filed in the Maryland District Court an opposition to a motion to quash a
27 subpoena, or alternatively, for a protective order, and an accompanying declaration of
28 ML&A attorney Gary Owen Caris. [Presiado Decl., ¶ 26, Exh. "13."] The letter further

1 disclosed that **Mr. Caris had attached as an exhibit to his filed declaration one of the**
2 **inadvertently produced documents.** [*Id.*] Although the letter stated Mr. Caris had
3 temporarily filed the declaration under seal, he nevertheless included the inadvertently
4 produced document in a court filing without first seeking any determination from the Court
5 regarding the merits of Mr. Baker's privilege and/or privacy claims. A true and correct
6 copy of ML&A's second July 10th letter is attached as Exhibit "13" to the Presiado
7 Declaration.

8 On July 14, 2006 and July 19, 2006, RM&S and ML&A exchanged letters wherein
9 Mr. Baker repeated his objections to any use of the documents identified on the privilege
10 logs (including the filing of the documents under seal), while ML&A repeated its position
11 the documents were not privileged and could and would be used by the Receiver for any
12 and all purposes. [Presiado Decl., ¶¶ 27-28; Exhs. "14" and "15."] True and correct
13 copies of RM&S' July 14th letter and ML&A's July 19th letter are attached as Exhibits
14 "14" and "15" to the Presiado Declaration.

15 In its July 19th letter [Presiado Decl., Exh. "15"] – despite the Court's Order
16 Denying Motion to Quash, which invited the Receiver to seek Court intervention if it
17 disagreed with any withholding of documents [Req. for J.N., Exh. "1," at 6:22 – 7:3], and
18 despite RM&S' repeated demands for the Receiver and ML&A to return and/or delete the
19 inadvertently produced documents – ML&A insisted that if Mr. Baker did not file a motion
20 within fourteen days, the Receiver would "assume that Mr. Baker has waived or
21 withdrawn his privacy claims, and the Receiver will use the documents produced
22 [inadvertently] for all purposes in the case." [Presiado Decl., ¶ 28, Exh. "15."] ML&A
23 also stated the Receiver would notify the Maryland District Court that Mr. Caris'
24 declaration containing one of the inadvertently produced e-mails could be unsealed and
25 filed as a public record. [*Id.*]

26 RM&S and ML&A exchanged further correspondence on August 1, 2006, which
27 basically reiterated the positions taken by both sides in their prior letters. [Presiado Decl.,
28 ¶¶ 29-30, Exhs. "16" and "17."] RM&S again reminded ML&A that the Order Denying

1 Motion to Quash invited the Receiver to seek Court intervention if it questioned whether
2 any documents had been inappropriately withheld. [*Id.*, Exh. "16."] For its part, ML&A
3 simply disputed RM&S' interpretation of the Order Denying Motion to Quash and the
4 positions taken by Mr. Baker. [Presiado Decl., ¶ 30, Exh. "17."] True and correct copies
5 of the August 1st letters between RM&S and ML&A are attached as Exhibits "16" and
6 "17" to the Presiado Declaration.

7 **D. Mr. Baker's Engagement of New Counsel, and the Receiver's and**
8 **ML&A's Continuing Refusal to Return and Refrain From Using the**
9 **Inadvertently Produced Documents**

10 On or about August 3, 2006, Mr. Baker engaged the law firm of Rutan & Tucker,
11 LLP ("Rutan") to represent him in connection with this matter. [Friedman Decl., ¶ 4.] On
12 August 4, 2006, Mr. Baker, RM&S, and Rutan signed Substitutions of Attorney. [*Id.*] The
13 Substitution of Attorney was filed August 7, 2006 and approved by the Court on about
14 August 9, 2006. [*Id.*]

15 Following receipt of the RM&S case files on August 9, 2006, Rutan attorney Roger
16 F. Friedman reviewed the files in an effort to become familiar with this case, and to try to
17 confirm whether in fact the e-mails identified on Mr. Baker's privilege logs were
18 inadvertently produced. [Friedman Decl., ¶ 5.] In the course of that review, it was
19 discovered that the compact disk marked as Bates No. PB00747B, which RM&S believed
20 contained only approximately 1,000 additional e-mails [Presiado Decl., ¶ 14, Exh. "3"],
21 actually contained two separate folders labeled "Additional" and "Additional2," containing
22 approximately 905 e-mails and 6,989 e-mails, respectively. [Friedman Decl., ¶ 5.] As a
23 result, that disk appears to contain virtually all of the e-mails that Google provided to
24 RM&S, including all of the documents identified as privileged and/or private on the
25 privilege logs. [*Id.*]

26 Neither RM&S nor Mr. Baker is certain how this mistake occurred, but they are
27 both confident that great care was taken to withhold privileged and private documents,
28 including the preparation of detailed privilege logs itemizing each of the documents they

1 intended to withhold, and that neither intended to produce any privileged or private
2 documents and/or waive any of Mr. Baker's privileges or rights. [Presiado Decl., ¶ 11;
3 Baker Decl., ¶ 11.] The production of the e-mails identified on Mr. Baker's privilege logs
4 indeed constitutes an inadvertent production.

5 On August 17, 2006, Rutan attorney Roger F. Friedman sent a letter to ML&A
6 attorney Gary Owen Caris in a good faith effort to "meet and confer" and attempt to
7 resolve, without Court intervention, the discovery dispute regarding the inadvertently
8 produced documents identified on Mr. Baker's privilege logs. [Friedman Decl., ¶ 7,
9 Exh. "18."] Mr. Friedman suggested that counsel discuss the matter on August 28, 29, or
10 September 1, 2006, since Mr. Friedman was scheduled to be out of the office during the
11 week of August 21 through 25, 2006.² [Id.] Mr. Friedman reminded Mr. Caris that Mr.
12 Baker has not waived any privilege or right of privacy concerning the inadvertently
13 produced documents, and Mr. Friedman asked Mr. Caris to "please refrain from reviewing
14 or using in any fashion any of the documents that are identified on Mr. Baker's privilege
15 and privacy logs, until we either reach a mutually agreeable resolution or the Court enters
16 an order regarding this matter." [Id.] A true and correct copy of Rutan's August 17th
17 letter is attached as Exhibit "18" to the Friedman Declaration.

18 On August 17, 2006, Mr. Caris sent a letter to Mr. Friedman agreeing to discuss the
19 matter on August 28, 2006, yet taking the position that Mr. Baker has waived any right to
20 argue that the inadvertently produced documents should be returned on privilege or
21 privacy grounds. [Friedman Decl., ¶ 8, Exh. "19."] Mr. Caris also stated "**we will not**
22 **refrain from reviewing or using the documents** that we have consistently contended
23 were properly produced and are not the subject of any legitimate privilege or privacy
24 claim. . . . [W]e intend on bringing a contempt application against, among others, Mr.
25 Baker before the end of this month and **we fully intend on using some of the documents**
26 **which were produced . . .**" [Id.] A true and correct copy of ML&A's August 17th letter
27

28 ² Mr. Friedman's plans changed in the afternoon of August 18, 2006, so he will now be
in the office during the week of August 21 through 25, 2006.

1 is attached as Exhibit "19" to the Friedman Declaration.

2 **III. ARGUMENT**

3 Because ML&A has repeatedly refused to return the inadvertently produced
4 documents identified on Mr. Baker's privilege logs, and is now threatening to use those
5 documents in court filings before the end of August 2006, Mr. Baker requests that the
6 Court immediately enter a protective order requiring the Receiver and ML&A to return
7 those documents, and prohibiting them from using any of those documents for any
8 purpose, until such time that the Court has an opportunity to properly evaluate the
9 documents with respect to Mr. Baker's privilege and privacy claims.

10 **A. The Court Has The Authority To Issue A Protective Order**

11 Upon motion by the person responding to a discovery request, and for good cause,
12 the Court "may make any order which justice requires to protect a party or person from
13 annoyance, embarrassment, oppression, undue burden or expense." Fed. R. Civ. Proc.
14 26(c). Rule 26(c) of the FRCP provides that a protective order may provide that the
15 discovery sought be had on certain conditions, be limited to particular methods and/or be
16 limited in scope. However, the trial court has wide discretion to impose any other limit on
17 discovery it deems necessary. (*United States v. CBS, Inc.*, 666 F.2d 364, 368-369 (9th Cir.
18 1982).) As set forth below, a protective order is warranted in this case.

19 **B. Good Cause Exists For The Issuance Of A Protective Order**

20 A party seeking limitations to discovery must show "good cause" for its issuance.
21 (Fed. R. Civ. Proc. 26(e); *Jepson, Inc. v. Makita Electric Works Ltd.*, 30 F.3d 854, 858 (7th
22 Cir. 1990).) To show good cause, the moving party must make a clear showing of a
23 particular and specific need for the order. (*Blankenship v. First Corp.*, 509 F.2d 418, 429
24 (9th Cir. 1975).) Good cause exists where the party seeking a protective order can show
25 injury to a legitimate interest. (*Pearson v. Miller*, 211 F.3d 57, 72-73 (3rd Cir. 2000).)
26 Furthermore, it is well settled that when discovery is sought from third parties, such as Mr.
27 Baker, a protective order should be more easily obtainable. (*Dart Industries Company,*
28 *Inc. v. Westwood Chemical Company, Inc.*, 649 F.2d 646, 649 (9th Cir. 1980).)

1 Good cause exists for a protective order in this case. Mr. Baker asserts that the
2 inadvertently produced documents are subject to his attorney-client privilege and/or his
3 right of privacy. The Receiver and ML&A have repeatedly failed and refused to return the
4 inadvertently produced documents, and they have already attached at least one of the
5 inadvertently produced documents to a court filing and are now threatening to do so again.

6 Mr. Baker does not seek an order precluding or preventing the Receiver from
7 obtaining non-privileged, non-private documents. Mr. Baker has already produced all such
8 documents. Unfortunately, it appears that Mr. Baker's prior counsel, RM&S, also
9 inadvertently produced all the privileged and private e-mails identified on Mr. Baker's
10 privilege logs. Mr. Baker simply seeks to protect his legitimate legal rights and recover
11 the inadvertently produced documents that are subject to his attorney-client privilege and
12 right of privacy. Indeed, the Court's Orders provide that Mr. Baker is entitled to withhold
13 privileged and private documents and include them on his privilege log. [Req. for J.N.,
14 Exh. "1," at 6:12-21, Exh. "2," at 4:25 – 5:3.] And if the Receiver questions the propriety
15 of Mr. Baker's privilege and privacy claims, then the Receiver may seek a court order
16 compelling the production of documents. [Req. for J.N., Exh. "1," at 6:22 – 7:3.] The
17 Receiver and ML&A may not, as they have done in this case, unilaterally determine that
18 Mr. Baker's privilege and privacy claims are without merit, and therefore, refuse to return
19 his inadvertently produced documents and use them as they desire. The Receiver and
20 ML&A have already included at least one of the inadvertently produced documents in a
21 court filing, and they are threatening to use more of the inadvertently produced documents
22 in court filings before the end of August 2006. Good cause therefore exists for the
23 issuance of a protective order as requested by Mr. Baker, so that Mr. Baker's legitimate
24 legal interests are fully protected.

25 C. **Mr. Baker's Inadvertent Disclosure Does Not Constitute a Waiver of**
26 **The Attorney-Client Privilege or His Right of Privacy**

27 The right of privacy may be waived only through a "clear, unequivocal, and
28 decisive act" of the party making the waiver. (*Black v. City & County of Honolulu*, 112 F.

1 Supp. 2d 1041, 1053 (D. Haw. 2000).) The party claiming waiver bears the burden of
2 proof. (*Id.* at 1054.) There can never be a waiver of the right of privacy in the absence of
3 knowledge and consent of the person entitled to waive. (*Veilleux v. NBC*, 8 F. Supp. 2d
4 23, 40 (D. Me. 1998).) Furthermore, “courts indulge in every reasonable presumption
5 against waiver of fundamental constitutional rights.” (*Black*, 112 F. Supp. 2d at 1054.)

6 Because there is no uniform position taken by American courts on whether
7 inadvertent production waives privilege protection, care must be taken to identify the
8 controlling law in the applicable jurisdiction. (*Hopson v. Mayor and City Council of*
9 *Baltimore*, 232 F.R.D. 228, 235 (D. Md. 2005).) Three distinct positions have been taken
10 by the courts: (1) the “strict accountability” approach, which almost always finds waiver,
11 even if production was inadvertent; (2) the “lenient” approach, which views waiver as
12 requiring intentional and knowing relinquishment of the privilege, and finds waiver in
13 circumstances of inadvertent disclosure only if caused by gross negligence; and (3) the
14 “balancing” approach that requires the court to examine the totality of the circumstances
15 and make a case-by-case determination of whether the conduct is excusable so that it does
16 not entail a necessary waiver. (*Id.*, at 235-236; *Ciba-Geigy Corp. v. Sandoz, Ltd.*, 916 F.
17 Supp. 404, 410-411 (D.N.J. 1996).) The majority of courts have endorsed the third
18 approach – the “balancing” or “totality of circumstances approach.” (*Bagley v. TRW, Inc.*,
19 204 F.R.D. 170, 177 (C.D. Cal. 2001).) These courts apply a multi-factor test to determine
20 whether disclosure was inadvertent, considering:

- 21 1. the reasonableness of the precautions taken to prevent inadvertent disclosure;
- 22 2. the time taken to rectify the error;
- 23 3. the scope of the production;
- 24 4. the extent of the disclosure; and
- 25 5. overriding issues of fairness.

26 (*Id.*; *In re Copper Market Antitrust Litig.*, 200 F.R.D. 213, 222 (S.D.N.Y. 2001).) “The
27 degree to which the disclosed information has been allowed to ‘weave itself into the fabric’
28 of pre-trial discovery so as to create reliance by the opponent is also an influencing factor.”

1 (*Hydraflow, Inc. v. Enidine Incorporated*, 145 F.R.D. 626, 637 (W.D.N.Y. 1993).)

2 Although the Ninth Circuit has not expressly adopted the five-factor test, the totality
3 of circumstances approach has been employed by district courts within the Ninth Circuit.
4 (*Bagley*, 204 F.R.D. at 178 n.11 (stating “it is likely that the Ninth Circuit would adopt
5 some form of the five-factor test, rather than a strict liability approach, if the question were
6 squarely presented to it”); *see also Flores v. Albertson’s Inc.*, 2004 U.S. Dist. LEXIS
7 29083, *5 n.2, *15-16 (C.D. Cal. 2004) (citing district court cases that use the five-factor
8 balancing test, this court relies on the test to conclude that all inadvertently disclosed
9 documents must be returned); *Federal Deposit Ins. Corp. v. Fidelity & Deposit Co. of*
10 *Maryland*, 196 F.R.D. 375, 378 (S.D. Cal. 2000); *Hartford Fire Ins. v. Garvey*, 109 F.R.D.
11 323, 332 (N.D. Cal. 1985).) Indeed, the Ninth Circuit Court of Appeals has recognized
12 that although inadvertent disclosure can, under certain circumstances, result in waiver of
13 the attorney-client privilege, “the privilege will be preserved if the privilege holder has
14 made efforts reasonably designed to protect the privilege.”³ (*Gomez v. Vernon*, 255 F.3d
15 1118, 1131-1132 (9th Cir. 2001) (internal quotations omitted), *cert. denied sub nom.*
16 *Beauclair v. Gomez*, 534 U.S. 1066 (2001).)

17 **D. The Totality of the Circumstances Clearly Shows That Mr. Baker Did**
18 **Not Waive The Attorney-Client Privilege or His Right of Privacy**

19 In applying the totality of circumstances test, the five factors need not all be met,
20 but are instead a framework to help determine if the production of documents constitutes a
21 waiver of the documents’ confidentiality. (*Flores*, 2004 U.S. Dist. LEXIS 29083 at *4.)
22 Based on the totality of circumstances herein, it is clear that Mr. Baker and his counsel did
23 not waive Mr. Baker’s attorney-client privilege or privacy interest in the e-mails, despite
24 the inadvertent disclosure thereof.

25 ³ Similarly, under California law, a court evaluating whether inadvertent disclosure of
26 privileged information constitutes a waiver of the privilege must examine both the
27 subjective intent of the holder of the privilege and the relevant surrounding circumstances
28 for any manifestation of the holder’s consent to disclose the information. (*State*
Compensation Ins. Fund v. WPS, Inc., 70 Cal.App.4th 644, 652-653 (1999) (holding that
waiver does not include accidental, inadvertent disclosure of privileged information by an
attorney).)

1 **1. Mr. Baker and his Counsel Used Reasonable Precautions to**
2 **Prevent Inadvertent Disclosure**

3 As set forth in detail above, Mr. Baker and RM&S used their best efforts to timely
4 produce all non-privileged, non-private e-mails and a privilege log documenting the e-
5 mails that Mr. Baker and RM&S intended to withhold from production on privilege and/or
6 privacy grounds. [Presiado Decl., ¶ 10; Baker Decl., ¶ 10.] Mr. Baker and RM&S took
7 great care and implemented reasonable precautions to produce only non-privileged and
8 non-private e-mails, and to prevent inadvertend disclosure. [Presiado Decl., ¶¶ 11, 19;
9 Baker Decl., ¶ 11.]

10 Mr. Baker's and RM&S' careful review and segregation of the e-mails and
11 preparation of the privilege logs is strong evidence of Mr. Baker's desire and intent to
12 maintain his privacy. RM&S produced e-mails to the Receiver on five separate compact
13 disks, with the intent to withhold each document listed on the privilege logs. [Presiado
14 Decl., ¶ 11.] Despite this intent, one of the disks – and thus the production – apparently
15 included all of the documents listed on the privilege logs. [Presiado Decl., ¶ 14, Exh. "3";
16 Friedman Decl., ¶ 5.] Notwithstanding the inadvertent production of privileged and
17 private e-mails, Mr. Baker and his counsel took careful steps to ensure the protection of
18 Mr. Baker's attorney-client privilege and right of privacy.

19 **2. Mr. Baker's Counsel Acted Quickly to Rectify the Error**

20 Mr. Baker's former counsel, RM&S, first learned of the inadvertent disclosure on
21 June 1, 2006, when Mr. Leo Presiado received a letter from opposing counsel, Gary Caris
22 of ML&A, notifying Mr. Presiado that all the items on the privilege logs, including
23 attorney-client communications and other private documents, had been produced.
24 [Presiado Decl., ¶ 18, Exh. "7."] Immediately upon learning of the inadvertent production,
25 RM&S and Mr. Baker investigated the matter and concluded that they did not voluntarily
26 produce the e-mails itemized on Mr. Baker's privilege logs. [Presiado Decl., ¶¶ 20-21;
27 Baker Decl., ¶ 12.] RM&S promptly requested that all documents identified on Mr.
28 Baker's privilege logs be returned. [Presiado Decl., ¶ 21, Exh. "8."] On June 23, 2006,

1 RM&S sent a letter to ML&A, stating that the e-mails identified on Mr. Baker's privilege
2 logs were not voluntarily produced, and requesting that ML&A return all of the
3 inadvertently produced e-mails and delete any electronic storage thereof. [*Id.*] An
4 exchange of numerous letters ensued, wherein RM&S repeatedly insisted that the
5 documents appearing on the privilege logs be returned immediately, and ML&A
6 steadfastly refused to return the inadvertently produced documents, except for some
7 communications between RM&S and Mr. Baker. [*Id.* at ¶¶ 22-30, Exhs. 9-17.]

8 **3. The Large Scope of Discovery Weighs in Favor of Maintaining**
9 **Privilege**

10 In this case, there was a large volume of e-mail that RM&S and Mr. Baker were
11 required to review and produce. [Presiado Decl., ¶¶ 10-11; Baker Decl., ¶¶ 10-11.] There
12 were approximately 7,000 individual e-mails, many of which contained multiple pages.
13 [*Id.*] This certainly comprises a large document production. (*See, e.g., Lazar v. Mauney*,
14 192 F.R.D. 324, 330 (N.D. Ga. 2000) (describing a production of 1,000 pages as
15 "voluminous").) It took several weeks for Mr. Baker and RM&S to review all the
16 approximately 7,000 e-mails, segregate them into privileged and non-privileged categories,
17 and to prepare privilege logs identifying all of the e-mails that they intended to withhold
18 from production. [Presiado Decl., ¶ 11; Baker Decl., ¶ 11.] In this case, given the large
19 volume of e-mail that Mr. Baker and RM&S were required to review and produce, Mr.
20 Baker's attorney-client privilege and right of privacy should be maintained
21 notwithstanding the inadvertent production of e-mails contained on Mr. Baker's privilege
22 logs.

23 **4. The Inadvertent Disclosure Covered Most or All of the**
24 **Documents Identified on Mr. Baker's Privilege Logs**

25 Notwithstanding their efforts to segregate all of the privileged and/or private e-
26 mails and their production of privilege logs itemizing all of the e-mails intended to be
27 withheld, it appears that the compact disk marked as Bates No. PB00747B somehow
28 contains virtually all of the e-mails that Google provided to RM&S. The extent of the

1 inadvertent disclosure thus appears to cover most or all of the e-mails that Mr. Baker and
2 RM&S intended to withhold from production. Mr. Baker contends that, although the
3 extent of the disclosure covers most or all of the documents that he and RM&S intended to
4 withhold, the Court should nevertheless find that Mr. Baker did not waive his attorney-
5 client privilege or right of privacy. Even if the Court does not find this factor weighs in
6 Mr. Baker's favor, the other four factors certainly do weigh in his favor, and thus, the
7 totality of the circumstances tips in favor of not finding any waiver. (*Flores*, 2004 U.S.
8 Dist. LEXIS 29083 at *4) (the five factors need not all be met, but are instead a framework
9 to help determine if the production of documents constitutes a waiver of the documents'
10 confidentiality).)

11 **5. Overriding Issues of Fairness Favor Maintaining Mr. Baker's**
12 **Attorney-Client Privilege and Right of Privacy, and Requiring the**
13 **Return of His Inadvertently Produced Documents**

14 The fifth factor focuses on whether the act of restoring immunity to an inadvertently
15 disclosed document would be unfair, not whether the privilege itself deprives parties of
16 pertinent information. (*Flores*, 2004 U.S. Dist. LEXIS 29083 at *14.) "Therefore, the
17 issue of fairness is to be viewed from the disclosing party's point of view." (*Id.*) Here,
18 Mr. Baker has a valuable and important interest in maintaining the privacy of his
19 privileged and personal e-mails. Depriving Mr. Baker of his attorney-client privilege and
20 his constitutionally protected right of privacy, because of his prior counsel's inadvertent
21 disclosure of documents, would be both unfair and unreasonable.

22 Moreover, a party to whom privileged documents are inadvertently produced has no
23 inherent right to keep the documents, and it would be patently unfair from the producing
24 party's perspective to allow the receiving party to keep the documents, unless the
25 producing party waited so long to address the problem after learning of it that the receiving
26 party reasonably changed its position in reliance upon their continued availability.
27 (*Bagley*, 204 F.R.D. at 182.) There was not any delay in this case, such that the Receiver
28 could have reasonably changed its position. Indeed, promptly upon learning of the

1 inadvertent production, RM&S demanded that the Receiver return the documents, and
2 RM&S has been persistently seeking the return of the documents and has repeatedly
3 informed ML&A that Mr. Baker did not waive his attorney-client privilege or right of
4 privacy. Notwithstanding, the Receiver has adamantly refused to return the documents.

5 The Receiver has no legitimate interest in retaining Mr. Baker's inadvertently
6 produced documents. Thus, it would be unreasonable for the Receiver or ML&A to use
7 any of the inadvertently produced documents for any purpose. It would also be patently
8 unjust to permit the Receiver and ML&A to retain and use Mr. Baker's personal and
9 private e-mails, the disclosure of which Mr. Baker did not intend and to which he did not
10 consent.

11 **E. The Receiver and Its Counsel Are Obligated to Return Mr. Baker's**
12 **Privileged and Private Documents**

13 **1. Neither the Receiver Nor Its Counsel Have Any Authority to**
14 **Determine Whether the E-Mails are Properly Included on Mr.**
15 **Baker's Privilege Log and Should Be Withheld from Production**

16 Pursuant to the Court's Order Denying Motion to Quash [Req. for J.N., Exh. "1"],
17 Mr. Baker produced to the Receiver all non-privileged and non-private e-mails that he
18 obtained from Google, and privilege logs listing each document that he intended to
19 withhold on attorney-client privilege or privacy grounds. [Presiado Decl., ¶¶ 10-11; Baker
20 Decl., ¶¶ 10-11.] According to the Court's Order Denying Motion to Quash, if the
21 Receiver questioned whether any documents were inappropriately withheld, the Court (and
22 not the Receiver) may resolve the issue by reviewing all or a subset of randomly-chosen
23 documents in camera, and may order the production of documents if the Court finds they
24 were improperly withheld. [Req. for J.N., Exh. "1," at 6:22 – 7:3.]

25 Contrary to the Court's Order, the Receiver and ML&A have usurped the Court's
26 authority by undertaking a unilateral, in-depth review of all the privileged and private e-
27 mails and making their own biased determination regarding the appropriateness of the
28 privileged and private designations contained in Mr. Baker's privilege logs. Importantly,

1 the Court did not vest the Receiver or ML&A with any authority to determine the propriety
2 of Mr. Baker's privilege and privacy claims. Also, the Court never authorized the
3 Receiver or ML&A to utilize in any manner any of the inadvertently produced documents.
4 Such action by the Receiver and ML&A is contrary to the Court's Order Denying Motion
5 to Quash and is simply unethical. If ML&A contests Mr. Baker's designation of certain e-
6 mails as privileged or private, then ML&A is required to follow the procedures laid out in
7 the Court's Order and ask the Court to review the challenged documents in camera. [Req.
8 for J.N., Exh. "1," at 6:22 – 7:3.] The Court should not permit ML&A to usurp the Court's
9 authority by unilaterally making its own biased determination as to the privileged or
10 private nature of Mr. Baker's personal e-mails.

11 2. ML&A is Ethically Obligated to Return the Privileged and
12 Private Documents to Mr. Baker

13 Rules of ethics applicable to all attorneys require ML&A to immediately return Mr.
14 Baker's privileged and/or private e-mails. An opinion of the American Bar Association
15 Standing Committee on Ethics and Professional Responsibility provides, in relevant part:

16 A lawyer who receives materials that on their face appear to be subject to the
17 attorney-client privilege or otherwise confidential, under circumstances
18 where it is clear that they were not intended for the receiving lawyer, should
refrain from examining the materials, notify the sending lawyer and
abide the instructions of the lawyer who sent them.

19 (ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 368 (1992) (emphasis
20 added) (cited in *Gomez*, 255 F.3d at 1132).) The Committee later reiterated its position,
21 stating:

22 A lawyer who receives on an unauthorized basis materials of an adverse
23 party that she knows to be privileged or confidential should, upon
24 recognizing the privileged or confidential nature of the materials, either
refrain from reviewing such materials or review them only to the extent
25 required to determine how appropriately to proceed; she should **notify her**
adversary's lawyer that she has such materials and should **either follow**
26 **instructions of the adversary's lawyer** with respect to the disposition of the
materials, or **refrain from using the materials until a definitive resolution**
of the proper disposition of the materials is obtained from a court.

27 (ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 382 (1994) (emphasis
28 added) (cited in *Gomez*, 255 F.3d at 1132).)

1 Similarly, under California law, when a lawyer receives materials that obviously
2 appear to be confidential and/or privileged, and where it is reasonably apparent that the
3 materials were provided through inadvertence, “the lawyer receiving such materials should
4 refrain from examining the materials any more than is essential to ascertain if the materials
5 are privileged, and shall immediately notify the sender that he or she possesses material
6 that appears to be privileged.” (*State Compensation Ins. Fund*, 70 Cal.App.4th at 656.)

7 In this case, it should have been quite clear to ML&A that the production of Mr.
8 Baker’s privileged and private personal e-mails was by inadvertence, as the e-mails are
9 clearly detailed in Mr. Baker’s privilege logs. Indeed, ML&A readily acknowledged in its
10 June 1, 2006 letter and subsequently, that the documents were inadvertently produced and
11 appear on Mr. Baker’s privilege logs. [Presiado Decl. at ¶ 18, Exh. 7.] Thus, ML&A had
12 an ethical duty to refrain from examining the e-mails any more than necessary to ascertain
13 that they are included on Mr. Baker’s privilege logs and that he asserts their privileged or
14 private nature. ML&A most certainly had an ethical obligation not to use the documents in
15 court filings when Mr. Baker and his counsel were repeatedly asserting the documents
16 were inadvertently produced. ML&A also had an ethical obligation to return the
17 privileged and private e-mails to Mr. Baker as repeatedly requested by Mr. Baker’s prior
18 counsel, RM&S. ML&A’s retention of the privileged and private personal e-mails
19 constitutes a blatant breach of ML&A’s ethical duties and should not go unpunished.

20 **F. Sanctions Are Appropriate In This Case**

21 Rules 37-3, 7-8, and 7-2 of the Civil Local Rules require a separate motion and 35
22 days notice of a motion for sanctions in connection with a discovery dispute. Given that
23 Mr. Baker is forced – by ML&A’s threats regarding further disclosure of the inadvertently
24 produced documents – to bring this Motion on an ex parte basis, he reserves all rights to
25 seek sanctions against the Receiver and ML&A at a later time. Alternatively, the Court
26 may enter an order against the Receiver and ML&A, requiring them to show cause why
27 sanctions should not be imposed in this case.

28 / / /

1 Rules 26(c) and 37(a)(4) of the FRCP provide authority for the Court to award
2 sanctions against the Receiver and ML&A. (Fed. R. Civ. Proc. R. 26(c), 37(a)(4).) If the
3 Court grants Mr. Baker's motion for a protective order,

4 the court *shall*, after affording an opportunity to be heard, require the party
5 . . . whose conduct necessitated the motion or the party or attorney advising
6 such conduct or both of them to pay to the moving party the reasonable
expenses incurred in making the motion, including attorney's fees

7 (Fed. R. Civ. Proc. R. 37(a)(4) (emphasis added).) Here, the Receiver's and ML&A's
8 steadfast refusal to return Mr. Baker's privileged and/or private documents necessitated
9 this Ex Parte Motion. Mr. Baker and his counsel made repeated good faith efforts to
10 secure the return of the documents and repeatedly advised ML&A of its ethical and legal
11 obligations to return the documents. There is no justification for ML&A's refusal to return
12 the e-mails identified on Mr. Baker's privilege logs. Accordingly, the Court should award
13 Mr. Baker his fees and costs associated with bringing this motion.

14 In addition, a court has the inherent power to sanction a party or its lawyers if it acts
15 in willful disobedience of a court order or when it has acted in bad faith, vexatiously,
16 wantonly, or for oppressive reasons, as well as for willful abuse of the judicial process.
17 (*Gomez*, 255 F.3d at 1133-1134; *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46-47 (1991);
18 *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980).) Sanctions are available where
19 a party acts in bad faith or when recklessness is combined with an additional factor such as
20 frivolousness, harassment, or an improper purpose. (*Gomez*, 255 F.3d at 1134; *Fink v.*
21 *Gomez*, 239 F.3d 989, 993-994 (9th Cir. 2001).) Here, ML&A has not only refused to
22 return the privileged and/or private documents but has, in fact, disclosed the contents of at
23 least one of Mr. Baker's personal e-mails and attached it as an exhibit to a document
24 ML&A filed on behalf of the Receiver in the Maryland District Court. The Receiver's and
25 ML&A's bad faith retention of Mr. Baker's privileged and private documents, in
26 combination with their improper use thereof, justifies the Court's exercise of its inherent
27 discretion to sanction a party or its counsel.

28 / / /

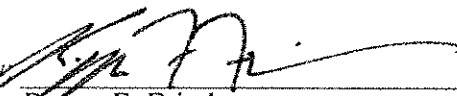
1 Finally, the Court should consider disqualifying ML&A based on its blatant refusal
2 to return Mr. Baker's inadvertently disclosed privileged and private documents. An
3 attorney's willful seizure, inspection, and retention of an adversary's privileged documents
4 would, *alone*, support disqualification. (*In re Truck-A-Way*, 300 B.R. 31, 39 n. 16 (E.D.
5 Cal. 2003) (disqualifying counsel for seizing, inspecting, and retaining documents likely to
6 be protected by the attorney-client privilege).) In an appropriate case (such as the one at
7 hand), disqualification can be justified if an attorney inadvertently receives confidential
8 materials and fails to conduct himself in a manner consistent with his ethical obligations.
9 (*See State Compensation Ins. Fund*, 70 Cal. App. 4th at 657.) Because ML&A has
10 improperly retained Mr. Baker's personal and private e-mails, ML&A should be
11 disqualified from representing the Receiver or any other party in connection with this
12 action.

13 **IV. CONCLUSION**

14 Based on the foregoing, Mr. Baker respectfully requests that the Court grant this Ex
15 Parte Motion and enter a protective order requiring the prompt return to Mr. Baker of all e-
16 mails and documents identified on the privilege logs and otherwise precluding the
17 disclosure or dissemination of any such materials without further order of this Court.

18 Dated: August 22, 2006

Stephen A. Ellis
Roger F. Friedman
RUTAN & TUCKER, LLP

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21 By 
22 Roger F. Friedman
23 Attorneys for Non-Party Movant
24 PETER BAKER
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DECLARATION OF LEO J. PRESIADO

I, Leo J. Presiado, declare as follows:

1. I am an attorney at the law firm of Rus, Miliband & Smith, A Professional Corporation, former counsel of record for Peter Baker ("Mr. Baker"). I am a member in good standing of the State Bar of California and have been admitted to practice before all of the courts of the State of California and the United States District Court for the Northern District of California.

2. I make this Declaration in support of Non-Party Movant Peter Baker's Ex Parte Motion for a Protective Order.

3. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

4. On or about November 1, 2005, Receiver Robb Evans & Associates, LLC (the "Receiver"), the receiver appointed in the above-captioned case, served a document subpoena on Google, Inc., requesting records pertaining to Mr. Baker's e-mail account maintained by Google, Inc. (the "Google Subpoena").

5. On November 8, 2005, Mr. Baker filed with the Court an "Ex Parte Application to Quash Subpoena Seeking Private, Confidential and Privileged Information of Non-Party Individual," and Declarations of Ronald Rus and Leo J. Presiado in support thereof.

6. On January 31, 2006, the Court issued an "Order Denying Third Party's Motion To Quash Subpoena" (the "Order Denying Motion to Quash"). [Req. for J.N., Exh. "1."]

7. On February 2, 2006, RM&S requested of Google that it send to RM&S the contents of Mr. Baker's e-mail account.

8. Mr. Baker appealed the Order Denying Motion to Quash, which appeal was subsequently dismissed. However, on March 13, 2006, while the appeal was pending, the Court entered an "Order Denying Motion to Stay Discovery Pending Appeal" (the "Order Denying Stay"). [Req. for J.N., Exh. "2."]

1 9. Following the Court's Order Denying Motion to Quash and Order Denying
2 Stay, I personally assisted Mr. Baker with the process of reviewing and segregating e-
3 mails into privileged and/or non-privileged categories, producing e-mails, and creating
4 privilege logs itemizing the e-mails that Mr. Baker intended to withhold on privilege
5 and/or privacy grounds.

6 10. RM&S used its best efforts to timely produce all non-privileged, non-private
7 e-mails and a privilege log documenting the e-mails that Mr. Baker intended to withhold
8 from production on privilege and/or privacy grounds. Because of the large volume of
9 documents – approximately 7,000 separate e-mails – the documents and privilege logs
10 were produced in stages. Also, given the massive amount of data involved, only some of
11 the e-mails were produced in paper form; the vast majority of the e-mails were produced
12 on five separate compact disks.

13 11. Mr. Baker and RM&S took great care and implemented reasonable
14 precautions to produce only non-privileged and non-private e-mails. After receiving the e-
15 mails from Google in electronic form on a compact disk, Mr. Baker and RM&S conducted
16 a careful and in-depth review of the content of the e-mails. Mr. Baker and RM&S created
17 separate computer folders for e-mails identified for production and e-mails we intended to
18 withhold based on privilege and/or privacy, such as e-mails containing Mr. Baker's
19 personal financial information. All e-mails set aside to be withheld from production were
20 identified on a privilege log. After a batch of e-mails had been segregated into their
21 respective computer folders, RM&S then had its information technology department copy
22 onto a compact disk the folder containing e-mails that were going to be produced to the
23 Receiver, and RM&S then sent that compact disk to counsel for the Receiver, McKenna
24 Long & Aldridge LLP ("ML&A"). RM&S produced e-mails to the Receiver on five
25 separate compact disks, with the intent to withhold each document listed on the privilege
26 logs. RM&S prepared detailed privilege logs documenting each e-mail that Mr. Baker
27 intended to withhold from the production on the basis of attorney-client privilege, privacy
28 grounds, or both. It took several weeks to carefully review all the approximately 7,000 e-

1 mails, segregate them into privileged and non-privileged categories, produce documents,
2 and prepare privilege logs identifying all of the e-mails that we intended to withhold from
3 production.

4 12. On April 12, 2006, RM&S sent a letter to ML&A, enclosing documents
5 marked as Bates Nos. PB00001 through PB00746. RM&S also enclosed a compact disk
6 marked as Bates No. PB00747. A true and correct copy of RM&S' April 12th letter and a
7 paper copy of the compact disk are attached collectively as Exhibit "1."

8 13. On April 21, 2006, RM&S sent a letter to ML&A, enclosing a compact disk
9 marked as Bates No. PB00747A. A true and correct copy of RM&S' April 21st letter and
10 a paper copy of the compact disk are attached collectively as Exhibit "2."

11 14. On May 1, 2006, RM&S sent a letter to ML&A, enclosing a compact disk
12 marked as Bates No. PB00747B. A true and correct copy of RM&S' May 1st letter and a
13 paper copy of the compact disk are attached collectively as Exhibit "3."

14 15. On May 5, 2006, RM&S sent a letter to ML&A, enclosing a compact disk
15 marked as Bates No. PB00747C. RM&S also enclosed a 46-page privilege log. A true
16 and correct copy of RM&S' May 5th letter, a paper copy of the compact disk, and a copy
17 of the privilege log are attached collectively as Exhibit "4."

18 16. On May 12, 2006, RM&S sent a letter to ML&A, enclosing a compact disk
19 marked as Bates No. PB00747D. RM&S also enclosed a 4-page privilege log. A true and
20 correct copy of RM&S' May 12th letter, a paper copy of the compact disk, and a copy of
21 the privilege log are attached collectively as Exhibit "5."

22 17. On May 24, 2006, RM&S sent a letter to ML&A, enclosing documents
23 marked as Bates Nos. PB00748 through PB00816. RM&S also enclosed a 5-page
24 privilege log. This privilege log is an updated version of the 4-page privilege log that
25 RM&S sent to ML&A on May 12, 2006. A true and correct copy of RM&S' May 24th
26 letter and a copy of the updated privilege log are attached collectively as Exhibit "6."

27 18. On June 1, 2006, ML&A sent RM&S a letter notifying RM&S that most or
28 all of the items listed on Mr. Baker's privilege logs appeared to have been produced,

1 including attorney-client communications. A true and correct copy of ML&A's June 1st
2 letter is attached as Exhibit "7."

3 19. Without conceding the accuracy and/or truth of ML&A's statement made in
4 the June 1, 2006 letter, neither Mr. Baker, I, nor any other attorney or staff member with
5 RM&S intended to produce the documents identified on Mr. Baker's privilege logs. We
6 took great care to withhold privileged and private documents and prepare detailed privilege
7 logs itemizing the documents we intended to withhold. We did not intend to produce any
8 privileged or private documents or waive any of Mr. Baker's privileges or rights.

9 20. Upon receipt of the June 1, 2006 letter, RM&S requested that ML&A
10 provide exact copies of the five disks produced so that RM&S could investigate the matter.

11 21. On June 23, 2006, RM&S sent a letter to ML&A, notifying ML&A that
12 RM&S' investigation indicated that the e-mails itemized on the privilege logs were not
13 produced voluntarily by RM&S or Mr. Baker. A true and correct copy of RM&S' June
14 23rd letter is attached as Exhibit "8."

15 22. RM&S and ML&A subsequently exchanged numerous letters regarding this
16 matter. On about June 26, 2006, ML&A sent a letter to RM&S. A true and correct copy
17 of ML&A's June 26th letter is attached as Exhibit "9."

18 23. On June 27, 2006, RM&S sent a letter to ML&A. A true and correct copy of
19 RM&S' June 27th letter is attached as Exhibit "10."

20 24. On June 29, 2006, ML&A sent a letter to RM&S. A true and correct copy of
21 ML&A's June 29th letter is attached as Exhibit "11."

22 25. On July 10, 2006, ML&A sent a letter to RM&S purportedly enclosing the
23 original compact disks that RM&S sent to ML&A. A true and correct copy of ML&A's
24 July 10th letter is attached as Exhibit "12."

25 26. Also on July 10, 2006, ML&A sent a separate letter to RM&S. A true and
26 correct copy of ML&A's second July 10th letter is attached as Exhibit "13."

27 27. On July 14, 2006, RM&S sent a letter to ML&A. A true and correct copy of
28 RM&S' July 14th letter is attached as Exhibit "14."

1 28. On July 19, 2006, ML&A sent a letter to RM&S. A true and correct copy of
2 ML&A's July 19th letter is attached as Exhibit "15."

3 29. On August 1, 2006, RM&S sent a letter to ML&A. A true and correct copy
4 of RM&S' August 1st letter is attached as Exhibit "16."

5 30. On August 1, 2006, ML&A sent a letter to RM&S. A true and correct copy
6 of ML&A's August 1st letter is attached as Exhibit "17."

7 Executed on August 22, 2006, at Irvine, California.

8 I declare under penalty of perjury under the laws of the United States of America
9 that the foregoing is true and correct.

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12 _____
13 Leo J. Presiado
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DECLARATION OF PETER BAKER

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2 I, Peter Baker, declare as follows:

3 1. I make this Declaration in support of Non-Party Movant Peter Baker's Ex
4 Parte Motion for a Protective Order.

5 2. I have personal knowledge of the facts set forth in this Declaration and, if
6 called as a witness, could and would testify competently to such facts under oath.

7 3. I am not a party to this action, and the Receiver, Robb Evans & Associates
8 (the "Receiver") has not filed any action to assert claims against me.

9 4. I presently maintain an e-mail account with Google, Inc. under the e-mail
10 address Peterbelize@gmail.com. The account is my personal e-mail account that I have
11 used to send and receive numerous attorney-client privileged communications and
12 communications regarding both purely personal business and financial matters that are in
13 no way connected to Andris Pukke, Dolphin Development, or Sanctuary Bay Estates, as
14 well as communications regarding those matters.

15 5. On or about November 1, 2005, the Receiver served a document subpoena
16 on Google, Inc., requesting all records generated by or pertaining to my e-mail account
17 maintained by Google, Inc. (the "Google Subpoena").

18 6. On or about November 8, 2005, my prior counsel, Rus, Miliband & Smith
19 ("RM&S") filed with the Court on my behalf an "Ex Parte Application to Quash Subpoena
20 Seeking Private, Confidential and Privileged Information of Non-Party Individual," and
21 Declarations of Ronald Rus and Leo J. Presiado in support thereof.

22 7. On or about January 31, 2006, the Court issued an "Order Denying Third
23 Party's Motion To Quash Subpoena" (the "Order Denying Motion to Quash"). [Req. for
24 J.N., Exh. "1."]

25 8. RM&S filed on my behalf an appeal of the Order Denying Motion to Quash,
26 which appeal was subsequently dismissed. However, on March 13, 2006, while the appeal
27 was pending, the Court entered an "Order Denying Motion to Stay Discovery Pending
28 Appeal" (the "Order Denying Stay"). [Req. for J.N., Exh. "2."]

1 9. Following the Court's Order Denying Motion to Quash and Order Denying
2 Stay, RM&S attorney Leo J. Presiado assisted me with the process of reviewing and
3 segregating e-mails into privileged and non-privileged categories, producing e-mails, and
4 creating privilege logs itemizing the e-mails that we intended to withhold on privilege
5 and/or privacy grounds.

6 10. I used my best efforts and personal funds to timely produce all non-
7 privileged, non-private e-mails and a privilege log documenting the e-mails that RM&S
8 and I intended to withhold from production on privilege and/or privacy grounds. Because
9 of the large volume of documents – approximately 7,000 separate e-mails – the documents
10 and privilege logs were produced in stages. Also, given the massive amount of data
11 involved, only some of the e-mails were produced in paper form; the vast majority of the
12 e-mails were produced on compact disks.

13 11. RM&S and I took great care and implemented reasonable precautions to
14 produce only non-privileged and non-private e-mails. After receiving the e-mails from
15 Google in electronic form on a compact disk, RM&S and I conducted a careful and in-
16 depth review of the content of the e-mails. We created separate computer folders for e-
17 mails identified for production and e-mails we intended to withhold based on privilege
18 and/or privacy, such as e-mails containing my personal financial information. All e-mails
19 set aside to be withheld from production were identified on a privilege log. I am informed
20 that, after a batch of e-mails had been segregated into their respective computer folders,
21 RM&S then had its information technology department copy onto a compact disk the
22 folder containing e-mails that were going to be produced to the Receiver, and RM&S then
23 sent that compact disk to the Receiver's counsel. After we segregated the e-mails into
24 separate folders, I did not take part in the act of actually creating a compact disk and
25 sending it to the Receiver's counsel – those tasks were handled by RM&S. RM&S
26 prepared detailed privilege logs documenting each e-mail that I intended to withhold from
27 the production on the basis of attorney-client privilege, privacy grounds, or both. It took
28 several weeks to carefully review all the approximately 7,000 e-mails, segregate them into

1 privileged and non-privileged categories, produce documents, and prepare privilege logs
2 identifying all of the e-mails that we intended to withhold from production.

3 12. Upon learning that there might have been an inadvertent production of
4 documents, RM&S and I promptly investigated and immediately concluded that we did not
5 intentionally produce the e-mails itemized on my privilege logs. I did not intend to
6 produce the documents identified on my privilege logs. I took great care to withhold
7 privileged and private documents and prepare detailed privilege logs itemizing the
8 documents RM&S and I intended to withhold. I did not intend to produce any privileged
9 or private documents or waive any of my privileges or rights.

10 Executed on August 22, 2006, at Costa Mesa, California.

11 I declare under penalty of perjury under the laws of the United States of America
12 that the foregoing is true and correct.

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Peter Baker

DECLARATION OF ROGER F. FRIEDMAN

I, Roger F. Friedman, declare:

1. I am an attorney with the law firm of Rutan & Tucker, LLP ("Rutan"), counsel of record for non-party movant Peter Baker. I am a member in good standing of the State Bar of California and have been admitted to practice before all of the courts of the State of California and the United States District Court for the Northern District of California.

2. I make this Declaration in support of Non-Party Movant Peter Baker's Ex Parte Motion for a Protective Order.

3. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

4. On or about August 3, 2006, Mr. Baker engaged Rutan to represent him in connection with this matter. On August 4, 2006, Mr. Baker, Rus, Miliband & Smith ("RM&S"), and Rutan signed Substitutions of Attorney. On August 7, 2006, Rutan filed a Substitution of Attorney in this case, and on or about August 9, 2006, the Court approved the Substitution.

5. RM&S transferred its case files to Rutan, and they arrived at Rutan on August 9, 2006. I have reviewed RM&S' case files in an effort to become familiar with this case, and to try to determine whether RM&S produced to the Receiver the e-mails identified on Mr. Baker's privilege logs, and if so, how it happened. Based on my review of the case files, correspondence, paper copies of compact disks that RM&S sent to the Receiver's counsel, and the compact disks that the Receiver's counsel returned to RM&S, it appears that the compact disk marked as Bates No. PB00747B, which RM&S apparently believed contained approximately 1,000 e-mails, actually contained two separate folders identified as "Additional" and "Additional2" containing approximately 905 e-mails and 6,989 e-mails, respectively. I am informed that compact disk PB00747B thus appears to contain virtually all or all of the approximately 7,000 e-mails that Google provided to RM&S.

1 6. It appears that certain of the other disks produced by RM&S might also
2 contain certain of the e-mails identified on Mr. Baker's privilege logs, but Rutan has not
3 yet fully reviewed the voluminous data contained on the other compact disks.

4 7. On August 17, 2006, I sent a letter to the Receiver's attorney Gary Owen
5 Caris, in a good faith effort to "meet and confer" and attempt to resolve, without Court
6 intervention, the discovery dispute regarding the inadvertently produced documents
7 identified on Mr. Baker's privilege logs. I suggested that we discuss the matter on
8 August 28, 29, or September 1, 2006, since I was scheduled to be out of the office during
9 the week of August 21 through 25, 2006.⁴ I reminded Mr. Caris that Mr. Baker has not
10 waived any privilege or right of privacy concerning the inadvertently produced documents,
11 and I asked Mr. Caris to "please refrain from reviewing or using in any fashion any of the
12 documents that are identified on Mr. Baker's privilege and privacy logs, until we either
13 reach a mutually agreeable resolution or the Court enters an order regarding this matter."
14 A true and correct copy of my August 17th letter is attached as Exhibit "18."

15 8. On August 17, 2006, Mr. Caris sent a letter to me agreeing to discuss the
16 matter on August 28, 2006, yet taking the position that Mr. Baker has waived any right to
17 argue that the inadvertently produced documents should be returned on privilege or
18 privacy grounds. Mr. Caris also stated "we will not refrain from reviewing or using the
19 documents that we have consistently contended were properly produced and are not the
20 subject of any legitimate privilege or privacy claim. . . . [W]e intend on bringing a
21 contempt application against, among others, Mr. Baker before the end of this month and

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28 ⁴ My plans changed in the afternoon of August 18, 2006, so I will now be in the office during the week of August 21 through 25, 2006.

1 we fully intend on using some of the documents which were produced” A true and
2 correct copy of Mr. Caris’ August 17th letter is attached as Exhibit “19.”

3 Executed on August 22, 2006, at Costa Mesa, California.

4 I declare under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct.

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Roger F. Friedman

Coates, Pamela

From: ECF-CAND@cand.uscourts.gov
Sent: Tuesday, August 22, 2006 6:27 PM
To: efilng@cand.uscourts.gov
Subject: Activity in Case 3:05-mc-80253-JSW Federal Trade Commission v. Ameridebt Inc. "Ex Parte Application"

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U.S. District Court

California Northern District

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Case Name: Federal Trade Commission v. Ameridebt Inc.
Case Number: 3:05-mc-80253
Filer: Peter Baker
Document Number: 55

Docket Text:

Ex Parte Application *for a Protective Order* filed by Peter Baker. (Attachments: # (1) Exhibit Exhibits 1-3# (2) Exhibit Exhibit 4, pg. 48-74# (3) Exhibit Exhibit 4, pg. 75-95# (4) Exhibit Exhibits 5-7# (5) Exhibit Exhibits 8-19)(Friedman, Roger) (Filed on 8/22/2006)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Documents and Settings\2303\Desktop\Ex Parte Motion for Protective Order.PDF

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=8/22/2006] [FileNumber=2830551-0]
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Document description:Exhibit Exhibits 1-3

Original filename:C:\Documents and Settings\2303\Desktop\Exhibits 1-3.PDF

Electronic document Stamp:

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Document description:Exhibit Exhibit 4, pg. 48-74

Original filename:C:\Documents and Settings\2303\Desktop\Exhibit 4, pg. 48-74.PDF

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=8/22/2006] [FileNumber=2830551-2]
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8/23/2006

Document description:Exhibit Exhibit 4, pg. 75-95

Original filename:C:\Documents and Settings\2303\Desktop\Exhibit 4, pg. 75-95.PDF

Electronic document Stamp:

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Document description:Exhibit Exhibits 5-7

Original filename:C:\Documents and Settings\2303\Desktop\Exhibits 5-7.PDF

Electronic document Stamp:

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Document description:Exhibit Exhibits 8-19

Original filename:C:\Documents and Settings\2303\Desktop\Exhibits 8-19.PDF

Electronic document Stamp:

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3:05-mc-80253 Notice will be electronically mailed to:

Gary Owen Caris gcaris@mckennalong.com, pcoates@mckennalong.com, efiling@frandzel.com

Roger F Friedman rfriedman@rutan.com, ctennell@rutan.com

Lesley Anne Hawes lhawes@mckennalong.com, pcoates@mckennalong.com, efiling@frandzel.com

Joel S. Miliband miliband@rmsapc.com, mhernandez@rmsapc.com

Leo J. Presiado lpresiado@rmsapc.com, mhernandez@rmsapc.com

Ronald Rus rrus@rmsapc.com, tlangford@rmsapc.com

3:05-mc-80253 Notice will be delivered by other means to: