

Dec 4, 2012
Complaint filed

Dec 6, 2012
RFT CEO gets zip from Sullivan

Dec 19, 2012
RFT CEO: "destroy" email

Aug 26, 2013
HME requests documents

Sep 9, 2013
Appearance of O'Leary for RFT

Oct 18, 2013
RFT doc & rog response

Nov 1, 2013
RFT starts gathering ESI

Nov 25, 2013
RFT begins hard copy doc prod'n

Dec 12, 2013
Supplemental RFT response

Dec 2013–Feb 2014
Assurances of complete production

Mar 2014
RFT's ESI vendor to search 300 GB

Apr 14, 2014
Zip produced at Sullivan depo

Sep 3, 2014
RFT declaration: search with "Boolean limiters"

Sep–Nov 2014
RFT production of 150,000 pages of "confidential" docs withheld

Jan 6, 2015
Plaintiff's motion for Rule 37 sanctions

Jan–Apr 2015
Post-discovery document dump of 375,000 pages

Apr 2015
RFT zip produced with missing files

Jul 24, 2015
Court's own motion re Rule 26(g)(3) sanctions

Aug 4, 2015
Settlement pending - trial off calendar

Aug 5, 2015
Sanction hearing

Aug 7, 2015
Sanction order

2012

2013

2014

2015

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HM ELECTRONICS, INC., a
California corporation,

Plaintiff,

v.

R.F. TECHNOLOGIES, INC., an
Illinois corporation, BABAK
NOORIAN, and individual,

Defendants.

Case No.: 12cv2884-BAS-MDD

ORDER RE MOTIONS RE
SANCTIONS AND CONTEMPT
AGAINST DEFENDANTS AND
THEIR ATTORNEYS FOR
DISCOVERY MISCONDUCT;

AND,

REPORT AND
RECOMMENDATION ON
PLAINTIFF'S REQUEST FOR
ISSUE SANCTIONS AND AN
ADVERSE INFERENCE
INSTRUCTION

[ECF No. 295]

On January 6, 2015, shortly after the close of discovery, Plaintiff filed this joint motion alleging that Defendants intentionally withheld and destroyed highly relevant electronically stored documents (“ESI”). (ECF Nos. 268, 288 (later refiled with redactions at ECF No. 295)). On April 17, 2015, the parties filed a joint supplemental statement

1 pursuant to this Court’s Order. (ECF Nos. 303, 304). On May 8, 2015,
2 Defendants filed an unsolicited supplemental declaration. (ECF No.
3 309).

4 On July 24, 2015, this Court issued an Order setting a hearing on
5 the joint motion and on the Court’s own motion for sanctions under
6 Rule 26(g) against Defendants and their attorneys for improper
7 certifications of discovery responses. (ECF No. 414). On August 5,
8 2015, this Court held a hearing on the motions. (ECF No. 419).

9 Defendants and certain of their attorneys engaged in sanctionable
10 discovery practices in five ways:

11 1. Defendant Noorian, as CEO of Defendant R.F. Technologies,
12 Inc. (“RFT”), signed certifications of discovery responses specifically
13 stating that certain documents did not exist—even though it did; and
14 that Defendant had no knowledge whether certain events occurred—
15 even though it knew that those events, meetings and emails had
16 occurred. In that same vein, Defendants’ attorney Thomas O’Leary
17 certified discovery responses as true, to his knowledge or belief, without
18 conducting a reasonable inquiry. This conduct justifies sanctions
19 against Defendants RFT and Noorian and attorney Thomas O’Leary
20 under Rule 26(g)(3).

21 2. Defendants’ attorneys did not craft and implement a
22 litigation hold, or otherwise communicate to Defendants the importance
23 of preserving relevant documents. Sanctions under Rule 37 are
24 warranted against Defendant RFT, attorney Thomas O’Leary, and the
25 law firm LeClairRyan LLP for this failure.

1 3. Soon after learning of this lawsuit, Defendant Noorian sent
2 an email to Defendant RFT's sales force instructing them to "destroy"
3 documents because they were relevant to this lawsuit. Although
4 Defendants dispute whether any documents were actually deleted, the
5 evidence strongly supports a finding that an unknown number of
6 relevant documents were deleted as a result of Defendant Noorian's
7 instruction and by the failure to implement a litigation hold. Sanctions
8 against Defendant RFT under Rule 37 are warranted for the deletion of
9 ESI pursuant to the email commanding destruction.

10 4. Defendants' attorneys allowed the attorneys and vendors
11 handling the ESI production to use limiting search terms, such as the
12 word "confidential," which was part of every email sent from Defendant
13 RFT, to justify withholding as privileged and without further review,
14 more than 150,000 pages of ESI that were not privileged nor identified
15 in a privilege log. Rule 37 sanctions against Defendant RFT, attorney
16 O'Leary, and the law firm LeClairRyan LLP are warranted for this
17 failure.

18 5. Defendants' attorneys failed to produce over 375,000 pages
19 of ESI until well after the close of discovery because they failed to
20 perform quality control checks or to supervise their ESI vendor.
21 Sanctions under Rule 37 are warranted against Defendant RFT,
22 attorney O'Leary, and the law firm LeClairRyan LLP for this failure.

23 These events were revealed only as a result of Plaintiff's diligence,
24 and despite Defendants' stonewalling. But for Plaintiff's persistence,
25

1 Defendants would have gained a significant and unfair advantage at
2 trial.

3 Even though Plaintiff's diligence forced Defendants eventually to
4 produce the improperly withheld documents, relevant documents
5 remain missing. Plaintiff has been forced to litigate this case with
6 incomplete facts and to expend significant resources hunting down ESI
7 that should have been delivered to Plaintiff years ago.

8 Defendants and their attorneys do not dispute these events; they
9 dispute whether their behavior is sanctionable. Other than admitting
10 at the hearing on these motions that "mistakes were made," they are
11 unrepentant and deny responsibility. As discussed below, the Court
12 finds that sanctions are warranted by Defendants' and their attorneys'
13 behavior. The question is the form and severity of the sanction to be
14 imposed, and against whom.

15 Facts

16 A. Nature of the Case

17 Plaintiff makes drive-thru headset systems, including the ION IQ.
18 Defendant RFT repairs drive-thru headset products manufactured by
19 Plaintiff and by others (most notably, 3M and Panasonic). Defendant
20 Noorian is the CEO and founder of Defendant RFT. Plaintiff's First
21 Amended Complaint ("FAC") asserts claims for trademark
22 infringement, false designation of origin, trade dress infringement,
23 trade libel, unfair competition and interference with prospective
24 economic advantage. (ECF No. 156).

1 A key piece of Plaintiff’s evidence is a document entitled “HM
2 Electronics IQ Failures” (the “Structural Failures Report” or “Report”)
3 and other documents showing the distribution of this Report to
4 Plaintiff’s competitors, customers and prospects. Plaintiff alleges
5 Defendants created the Structural Failures Report and designed it to
6 look like an HME internal quality control document. The Report,
7 purportedly authored by Plaintiff, acknowledged durability problems of
8 its ION IQ product. In fact, Defendants created the document, inserted
9 pictures of an ION IQ headset they had disassembled, and fabricated
10 the durability and lifetime repair cost information they distributed
11 along with the Report. Defendants distributed the fabricated
12 Structural Failures Report and average repair rate information to
13 clients, potential clients, and Plaintiff’s competitors, including
14 Panasonic, who in turn distributed it to over 9,600 recipients.

15 **B. Summary of Discovery Disputes**

16 By the time this Court inherited this case, the docket—now
17 spanning over 400 entries—was riddled with discovery disputes. Many
18 of those disputes relate directly to this motion.

19 The previously assigned magistrate judges have held nine
20 discovery conferences, two settlement conferences, and two case
21 management conferences. (ECF Nos. 29, 32, 38, 50, 62, 64, 65, 71, 76,
22 77, 83, 84, 98). Attorneys Thomas O’Leary and Mark Goldenberg
23 appeared on behalf of Defendant RFT at most of these conferences.
24 (*Id.*). Many of the conferences focused primarily on “the status of
25 defendant’s production of documents.” (*See e.g.*, ECF Nos. 60, 62, 64,

1 65). Magistrate Judge McCurine, originally assigned to the case,
2 focused the parties' attention on "any remaining e-discovery issues" as
3 early as August 22, 2013. (ECF Nos. 38, 36). Following one of the
4 discovery conferences, Magistrate Judge McCurine issued an Order that
5 required Defendant RFT¹ to complete its document production by
6 February 10, 2014, and required its attorneys to complete the privilege
7 log by February 17, 2014. (ECF No. 71). The magistrate judges
8 assigned to this case have also entertained nine motions seeking
9 contempt or sanctions, several motions seeking miscellaneous
10 discovery-related relief, and have continued discovery and pre-trial
11 deadlines four times because of document production issues. (ECF Nos.
12 70, 72, 88, 90, 101, 105, 106, 138, 185-187, 203, 204, 209, 219, 224, 251,
13 268, 295).

14 In a July 3, 2014, discovery Order, Magistrate Judge Burkhardt
15 found Defendant RFT had violated the non-ESI portions of Magistrate
16 Judge McCurine's January 27, 2014, Order requiring it to complete its
17 document production by February 10, 2014. (ECF No. 185). Magistrate
18 Judge Burkhardt declined to find that Defendant RFT had violated the
19 January 27, 2014, Order as to its ESI production because the Order was
20 not specific enough about the search term agreement for the ESI
21 production. (*Id.*). Magistrate Judge Burkhardt ordered Defendant RFT
22 to complete its production—including ESI—by August 4, 2014, and
23

24 ¹ At the time, Defendant RFT was the only named defendant. Roughly
25 one and a half years later, on May 27, 2014, Mr. Noorian was added as
a defendant. (ECF No. 156).

1 ordered Defendant to submit a sworn declaration to Plaintiff certifying
2 that requested documents had been produced, identifying the
3 documents responsive to each request by Bates number, and “mak[ing]
4 a detailed showing as to whether adequate searches were conducted in
5 response to the January 27, 2014, Order, including an explanation of
6 the search terms, custodians, computer drives, or other locations
7 searched.” (ECF No. 185 at 10). Magistrate Judge Burkhardt also
8 awarded Plaintiff \$15,224.62 (half of its requested costs and fees in
9 bringing the motion) as Rule 37 sanctions against Defendant RFT.
10 (*Id.*).

11 **C. Detailed Facts re Discovery Misconduct**

12 **1. The “Destroy” Email**

13 **i. Service of Complaint on Defendants**

14 On December 5, 2012, Plaintiff served Defendant RFT with the
15 summons and complaint in this matter. (ECF No. 5). Defendant
16 Noorian was Defendant RFT’s top executive and its agent for service of
17 process. (*Id.*). Defendant Noorian knew of the lawsuit that day, and
18 understood then that Plaintiff was complaining about RFT’s use of the
19 bogus Structural Failures Report. (ECF No. 288-22 (Exh. 42) at 19:10-
20 17).

21 **ii. December 6, 2012 email to Noorian**

22 That very evening, at 4:50 p.m., Defendant Noorian sent an email
23 to Mark Sullivan, then Director of Sales at RFT, with a courtesy copy to
24 Tony DeLise, President and COO. (ECF No. 268-21 (Exh. 14) at 2).
25 Defendant Noorian wrote: “Mark, HME is claiming that we are,

1 specifically you [sic] certain material that is false and hurtful to their
2 business. Please provide me with ALL the examples of your sales
3 material that relates to HME before end of day tomorrow.” (*Id.*).

4 The next day, Mr. Sullivan responded and attached “a complete
5 zip of materials that pertain to this,” and listed the contents of that zip
6 drive as follows:

7 Benefits of Attune

8 Attune durability and ION mechanical failures

9 Dunkin Brands attune web flyer

10 Numerous emails pushing Attune with attachments of above

11 Example of typical customer dialog about HME breaking down

12 Typical email of RFT superior repairs and cost savings

13 Some Clip lines of copy that are used in various proposals to
14 customers

15
16
17 (*Id.* at 2-3). The bogus Structural Failures Report was included, as
18 were internal emails about RFT’s creation of the Report, pictures RFT
19 had taken of Plaintiff’s product that were used in the Report,
20 statements about the durability and cost of Plaintiff’s product, and
21 emails distributing the Report. The zip drive included five screenshots
22 showing 100+ electronic documents that Mr. Sullivan found on his
23 computer using the search term “attune.” (ECF No. 307-7 (Exh. 54)).
24 Mr. Sullivan used both his marks@rftechno.com and his
25 business.management@rftechno.com addresses in emails included in

1 the zip drive that Defendant Noorian received. (ECF No. 268-21 (Exh.
2 14) at 4 and 11; *see also*, ECF No. 307-7 (Exh. 54) at 11 (screenshot in
3 zip file showing “Emails Pushing Attune Since July 2011” showing
4 “From: business management” regarding the highlighted email).
5 Defendant Noorian looked at the contents of the zip file when he
6 received it from Mr. Sullivan. (ECF No. 288-2 (Exh. 42) at 21:13-17).

7 On December 6, 2012, Defendant Noorian instructed Helen
8 Fansler, his executive assistant, to create a file with Mr. Sullivan’s
9 email and zip file “so we can access it when the time comes.” (ECF No.
10 288-17 (Exh. 35)). Ms. Fansler created both a hard copy and an
11 electronic version of the folder. (ECF No. 288-2 (Exh. 42) at 22:3-16).

12 **iii. Email to employees to “destroy” documents**

13 On December 19, 2012, Defendant Noorian sent Mark Sullivan
14 (former RFT Director of Sales), Philip Tondelli (RFT VP of Sales), and
15 Tony DeLise (RFT President) an email instructing them to destroy all
16 “electronic and printed copies any of you may have” of the “HME failure
17 pictures” in the Structural Failures Report. (ECF No. 288-13 (Exh. 31)).
18 Defendant Noorian sent another email approving Mark Sullivan’s offer
19 to forward the “destroy” instruction to other employees, which he did.
20 (ECF No. 288-14 (Exh. 32); ECF No. 288-15 (Exh. 33)). Defendant
21 Noorian never retracted nor clarified his instructions. (ECF No. 288-22
22 (Exhibit 42) at 13-14, 41-42).

23 Plaintiff has identified, through third party subpoenaed
24 documents, Report-related documents that Defendants failed to produce
25 on their own. (ECF No. 305-1 (Herrera Decl.) ¶ 14). Specifically,

1 Plaintiff points to the Mark Sullivan December 6, 2012, email and zip
2 file containing relevant documents. At his deposition on April 1, 2014,
3 Mark Sullivan produced the email and attached zip file. (ECF Nos.
4 268-21-24 (Exh. 14), 268-25 (Exh. 15)). Attorneys Thomas O’Leary and
5 Mark Goldenberg appeared on behalf of Defendant RFT at Mr.
6 Sullivan’s deposition. (ECF No. 268-25 (Exh. 15) at 4). Defendant did
7 not produce any version of the email until one year later, in April of
8 2015. (*Id.* ¶¶ 14-15; ECF No. 305-2 (Exh. 55)). The version Defendant
9 produced is missing some of the documents in the zip file that were
10 produced by Mr. Sullivan. (*Id.*). Defendants also have not been able to
11 confirm production of all of the 100+ documents shown in the five
12 screen shots. (*Id.*; ECF No. 309 (Vanderhoof Supp. Decl.)).

13 **2. False Verifications and Declarations**

14 Plaintiff first requested the documents at the center of this
15 dispute from Defendant RFT on August 26, 2013, soon after discovery
16 opened. (ECF No. 125-11 at 2). Defendant agreed to begin its rolling
17 document production by October 18, 2013, but did not begin producing
18 documents until November 25, 2013. (ECF Nos. 101-4 at 2; 101-6 at 2;
19 185 at 1-2 (Magistrate Judge Burkhardt’s July 3, 2014, Order); 268-2 ¶
20 4).

21 **i. Written responses to document demands**

22 Defendant RFT served its written responses to the request for
23 production of documents on October 18, 2013. (ECF Nos. 268-17 (Exh.
24 11) at 11). Defendant RFT’s lead counsel Thomas O’Leary signed these
25 written responses on October 16, 2013. (*Id.* at 10).

1 In response to Request No. 23, seeking documents concerning “the
2 creation, receipt, use, publication and/or distribution of the
3 DOCUMENT entitled ‘HM Electronics IQ Structural Failures,’”
4 Defendant asserted objections and then falsely stated that it “may have
5 responsive documents, but is uncertain at this time.” (ECF No. 268-15
6 (Exh. 11) at 15). Defendant provided the same false response to
7 Request No. 25, seeking documents reflecting communications about
8 the Structural Failures Report. (*Id.* at 16). Defendant also falsely
9 responded that it “may have responsive documents, but is uncertain at
10 this time,” in response to Request No. 41 seeking pictures taken of
11 Plaintiff’s product for any purpose. (ECF No. 268-16 (Exh. 11) at 8).

12 RFT refused to provide documents in response to Request No. 26,
13 which sought documents between RFT and Panasonic about the
14 Structural Failures Report, on the grounds that such documents are
15 irrelevant. (ECF No. 268-15 (Exh. 11) at 16-17).

16 In response to Request No. 28, RFT refused to produce documents
17 concerning its “opinions, statements, AND/OR declarations regarding
18 the repair frequency of any HME Drive-Thru Headset Product,” because
19 “it could be thousands of documents every year.” (ECF No. 268-16 (Exh.
20 11) at 1). Defendant refused to produce documents responsive to
21 Request No. 33, calling for communications with third parties about
22 Plaintiff’s products, also on the basis that “it could be thousands of
23 documents every year.” (*Id.* at 3-4). Defendant offered the same
24 response to Request No. 34, which called for communications with third
25

1 parties about Defendant's advertisements concerning Plaintiff or its
2 products. (*Id.* at 4).

3 After Plaintiff challenged the sufficiency of these responses,
4 Defendant RFT provided supplemental responses. (ECF No. 268-18,
5 268-19 (Exh. 12)). Defendant RFT's lead counsel Thomas O'Leary
6 signed the supplemental responses on December 12, 2013, and
7 Defendant Noorian, in his capacity as President of RFT, verified the
8 supplemental responses under penalty of perjury on December 5, 2013.
9 (ECF No. 268-19 (Exh. 12) at 6-7).

10 In response to Request No. 26, concerning documents between
11 RFT and Panasonic about the Structural Failures Report, Defendant
12 falsely supplemented: "Responding Party has produced documents
13 responsive to this Request." (*Id.* at 3).

14 In response to Request No. 28 seeking documents concerning
15 RFT's "opinions, statements, and/or declarations regarding the repair
16 frequency of any HME drive-thru product, for the period January 1,
17 2005 to the present," Defendant's supplemental response stated
18 "Responding Party has no documents responsive to this request." (ECF
19 No. 268-19 (Exh. 12) at 4-5).

20 **ii. Responses to first set of interrogatories**

21 Defendant RFT served interrogatory responses on October 18,
22 2013. (ECF No. 268-11 (Exh. 8) at 11). RFT's lead counsel Thomas
23 O'Leary signed the interrogatory responses on October 16, 2013. (*Id.* at
24 9). Defendant Noorian signed the interrogatory responses under
25 penalty of perjury on October 18, 2013. (*Id.* at 10).

1 In response to Interrogatory No. 13, “identify all persons to whom
2 you provided the ‘HM Electronics IQ Structural Failures’ document or
3 any of the contents set forth therein,” Defendant RFT objected and
4 stated that Mark Sullivan, who was no longer employed with RFT,
5 could identify such persons. (*Id.* at 6).

6 Defendant provided only objections in response to Interrogatory
7 No. 20, “identify all person(s) with Panasonic who may have knowledge
8 regarding the content and distribution of the ‘HM Electronics IQ
9 Structural Failures’ document.” (*Id.* at 8-9).

10 When Plaintiff challenged the sufficiency of these responses,
11 Defendant supplemented them. (ECF No. 268-12 (Exh. 9)). The
12 responses were signed by James C. Hildebrand for Thomas O’Leary,
13 and were verified under penalty of perjury by Defendant Noorian. (*Id.*
14 at 9).

15 Defendant revised Interrogatory No. 13 to falsely state that “Mark
16 Sullivan is the only person with knowledge to whom, if anyone, the ‘HM
17 Electronics IQ Structural Failures’ document was distributed.” (*Id.* at
18 6). Defendant also revised its response to Interrogatory No. 20,
19 responding that RFT “is unaware of any person at Panasonic who may
20 have knowledge regarding the content and distribution of the ‘HM
21 Electronics IQ Structural Failures’ document.” (*Id.* at 8).

22 **iii. Defendant RFT’s initial document collection**

23 Defendant RFT made its first document production in hard copy
24 format on November 25, 2013. (ECF Nos. 101-6 at 2; 185 at 2; 268-2 ¶
25 4). Internal emails show that RFT was gathering ESI for review on

1 November 1, 4, and 5, 2013. (ECF No. 288-18 (Exh. 38); ECF No. 307-3
2 (Exh. 50); ECF No. 307-4 (Exh. 51); ECF No. 307-5 (Exh. 52); ECF No.
3 307-6 (Exh. 53)). Defendant Noorian testified he was not involved in
4 collecting documents for production and that Helen Fansler, Executive
5 Administrator, and Steve Combs, IT Director, “were the key people in
6 gathering the documents.” (ECF No. 288-22 (Exh. 42) at 23:8-12).

7 One email from Helen Fansler to Defendant Noorian entitled
8 “Number 17 of Production,” asks whether Defendant Noorian wants
9 “any more changes made to it,” and that Scott “already took out part
10 numbers and one of the pictures.” (ECF No. 307-3 (Exh. 50) at 2). She
11 finished, “[g]oes with No. 17...Your inspection, testing, repair and
12 maintenance guidelines, procedures and/or instructions (including
13 drafts), for HME’s Drive-Thru Headset Products...” (*Id.*; *see also*, ECF
14 No. 307-5 (Exh. 52)).

15 In two other emails dated November 4, 2013, with subject lines
16 referring to “IQ Failures” from Helen Fansler to Defendant Noorian,
17 she asks Defendant Noorian for his approval to forward attached emails
18 to attorney Mark Goldenberg. (ECF No. 288-18 (Exh. 38) at 11; ECF
19 No. 307-1 (Exh. 47B)). The emails she sought permission to forward to
20 the attorney were Mark Sullivan sales emails to customers attaching
21 the Structural Failures Report and related information. (*Id.*).

22 Another email from Scott Crause, VP of Operations, to Scott
23 Richardson asks for repair procedures for the HME 6000 AIO and the
24 HME 2000 “for the thing I’m working on.” (ECF No. 307-4 (Exh. 51)).
25 Scott Richardson found one, which he attached as “Hs6000

1 procedure.doc,” but could not find the other, acknowledging “I know we
2 had one but it is not in the folder anymore,” so he offered to “type one
3 up quickly.” (*Id.*). A few days later, Ms. Fansler sent Scott Crause an
4 email with an attachment titled “HS6000 laywer (2).doc,” explaining
5 formatting changes she had made. (ECF No. 307-5 (Exh. 52)). A little
6 while later, Scott Crause sent Ms. Fansler an email asking her to
7 “rework this like you did the other one and send back to me.” (ECF No.
8 307-6 (Exh. 53)).

9 Although Defendant RFT gathered all these emails and their
10 attachments in November 2013, it did not produce any of them for over
11 a year. Defendant produced one of them on November 17, 2014, and did
12 not produce the rest of them until January 8, 2015.

13 **iv. Responses to second set of interrogatories**

14 On July 9, 2014, Defendants served responses to Plaintiff’s second
15 set of interrogatories. (ECF No. 288-8 (Exh. 22)). The objections were
16 signed by Thomas O’Leary. (*Id.*). Defendant Noorian verified the
17 responses under penalty of perjury. (*Id.*). Interrogatory No. 23 called
18 for Defendants to identify the participants, date, and location of any
19 meetings from January 1, 2012, to the present between RFT and
20 Panasonic where HME was discussed. (*Id.* at 9). Defendants provided
21 no substantive response, but included a page of objections, including
22 objections to terms like “present,” “meetings,” “discussed,” “mentioned,”
23 “Panasonic Systems Communications Company of North America,” and
24 “referred to” on the grounds that they were “undefined, vague,
25 ambiguous and lack foundation.” (*Id.*).

1 Defendant supplemented this response in August of 2014 with
2 this false statement:

3 RFT does not possess any information within its
4 possession, custody, or control that is responsive to
5 Plaintiff's request identifying the persons present, as
6 well as the date and location of all meetings between
7 Defendant Panasonic, wherein Plaintiff was discussed,
8 mentioned, or referred to from January 1, 2012 to the
9 present date. However, the Defendant can identify that
10 Mark Sullivan and Lillia Taschuk—who are no longer
11 employed by the Defendant—may possess information,
12 if such may exist, responsive to this request because
13 they would have been the individuals involved in any
14 such meetings, had they taken place.

12 (ECF No. 269-2 (Exh. 23) at 10-11). This supplemental response was
13 signed by Thomas O'Leary on August 21, 2014, and verified by
14 Defendant Noorian on August 22, 2014. (*Id.* at 11-12).

15 **v. Document production assurances**

16 In advance of a December 12, 2013, conference with Magistrate
17 Judge McCurine, the parties submitted a joint letter to the court, signed
18 by Brian Vanderhoof of LeClairRyan LLP, in which Defendant RFT
19 stated that it had produced 1004 pages of documents, and insisted that
20 “[a]ll other responsive documents have been made available for review
21 and inspection as they are maintained in the usual course of business”
22 in the form of 200 boxes of hard copy documents in warehouses in
23 Illinois.² (ECF No. 125-11).

24 _____
25 ² The boxes in Illinois warehouses did not contain the ESI documents at
issue in this motion.

1 As of January 9, 2014, Defendant had produced a “grand total” of
2 1,183 documents. (ECF No. 125:13:19-20). Mr. O’Leary wrote
3 Plaintiff’s counsel that “[a]ll documents responsive have been
4 produced..... R.F. Technologies diligently searched for responsive
5 documents....” (ECF No. 268-20 (Exh. 13) at 2). Mr. O’Leary further
6 stated “[n]o responsive documents were withheld on account of
7 privilege.” (*Id.* at 3).

8 On January 22, 2014, Defendant represented in a joint letter to
9 Magistrate Judge McCurine that it would search further for specified
10 categories of documents, including emails regarding the Report or the
11 average repair rate and cost information, as well as communications
12 between RFT and any third party about Plaintiff or its products. (*See*
13 ECF No. 185 (Magistrate Judge Burkhardt’s Order describing contents
14 of January 22, 2014 letter)).

15 During a February 28, 2014, court-ordered meet and confer
16 discussion, the following exchanges took place between counsel:

17 MS. HERRERA: The next topic concerns RFT
18 product durability claims and particularly it’s
19 representations made in their structural failures report
20 and communications regarding the same. And the point
21 we made previously was that your client produced very
22 little documents on this point and you agree to
undertake an ESI search for further responsive
documents. And we’ve seen nothing further.

23 MR. O’LEARY: All right. All e-mails responsive to that
24 have been produced.

25

1 MS. HERRERA: Are you representing that your client
2 did undertake—

3 MR. O'LEARY: I'm not representing anything. I'm
4 saying that all e-mails have been produced.

5 MS. HERRERA: Well, I'm looking at our joint letter to
6 Judge [McCurine] on January 22nd, that you agreed that
7 your client will undertake a further ESI search for
8 responsive documents on RFT server, including, but not
9 limited to, e-mails received by former employee, Mark
10 Sullivan. So my question is did your client do that?

11 MR. O'LEARY: Yes. And the e-mails regarding [the] IQ
12 structural failures report have been produced. And I
13 think we have said in previously meet and confers,
14 Mark Sullivan's work computer had very little on it.

15 MS. HERRERA: Is that the only place you searched is
16 his work computer?

17 MR. O'LEARY: That's not what I said. The e-mails
18 with regard to the IQ structural failure report have been
19 produced.

20 MS. HERRERA: Just so I'm clear, you produced some
21 early on in the Bates label 172 to 262 range.

22 MR. O'LEARY: Yes.

23 MS. HERRERA: Have you produced anything beyond
24 that?

25 MR. O'LEARY: No. All the e-mails with regard to RFT
structural report were produced in the responsive
documents.

1 MS. HERRERA: And a search was undertaken beyond
2 Mark Sullivan's information?

3 MR. O'LEARY: Yes.

4 (ECF No. 268-27 (Exh. 17) at 14-15).

5
6 MS. HERRERA: We're just really surprised that
7 virtually—hardly any third-party communications have
8 been produced.

9 MR. O'LEARY: Everything's been produced.

10 MS. HERRERA: Did your client conduct an ESI search
11 for communication[s]?

12 MR. O'LEARY: Everything has been produced.

13 MS. HERRERA: Well, that's not really my question.

14 MR. O'LEARY: That's my response, though. We
15 produced everything when we did that by checking
16 computers.

17 MS. HERRERA: I'd like to understand the methodology
18 you did conduct.

19 MR. O'LEARY: I didn't conduct the ESI search, so I
20 don't know the methodology. They were told to look for
21 documents on their computer. They did so and we
22 produced them. *** [T]hey obviously conducted the
23 search and produced what they had.

24 (*Id.* at 23:1-21).

25 Defendant had not reviewed or produced its ESI as of the date Mr.
O'Leary made these statements. It was not until March of 2014 that

1 Setec, one of Defendant’s ESI vendors, “was tasked by Thomas O’Leary
2 from LeClairRyan... to perform keyword searches against [data totaling
3 over 300 GB] to isolate and extract potentially relevant
4 communications.” (ECF No. 269-28 (Decl. of Todd Stefan, ESI vendor
5 Setec’s Vice President) ¶ 4). Defendant’s vendor Setec provided the
6 processed data to vendor iDiscover in two batches on April 25 and 28,
7 2014, and iDiscover later provided the processed data to Defendants’
8 attorneys. (*Id.* at ¶ 5).

9 **3. Lack of Litigation Hold**

10 During a December 2014 deposition limited to the purpose of
11 exploring and curing the alleged spoliation, Defendant Noorian could
12 not remember whether any attorney ever told him to preserve
13 information in connection with the lawsuit or told him not to destroy or
14 delete anything. (ECF No. 288-22 (Exhibit 42) at 13:7-20, 41-42). He
15 had never heard the term “Litigation Hold Notice” before. (*Id.* at 13:17-
16 20). When asked if “RFT ever had cause to send out something similar
17 to ¶ a Litigation Hold Notice telling employees to make sure not to
18 destroy and to preserve certain documents,” Defendant Noorian said
19 “no.” (*Id.* at 14:4-10).

20 Before this Court, at the hearing on these motions, the
21 LeClairRyan attorneys conceded that they had not done anything
22 specific to preserve ESI, because they were satisfied with Defendant
23 Noorian’s assertion that RFT does not delete documents in the normal
24 course of business.

25

1 RFT does not have a written policy requiring employees to
2 preserve and not delete data. (*Id.* at 41:10-18, 42:7-11). And, “nothing
3 was sent out” to employees in this case to tell them to preserve
4 documents. (*Id.* at 42:12-20). Defendant Noorian testified that “[a]s far
5 as I know, nobody destroys anything within our company,” but conceded
6 that deletion was possible, because not all employee work is performed
7 on computers backed up by the server, and “I’ve got 60 employees. I
8 can’t possibly check everybody’s behavior.” (*Id.* at 7:1-16, 9:11-20, 12-
9 13, 36:24-37:4, *see also*, 29:1-11; ECF No. 288-25 (Exh. A) at 11:5-12:4).

10 Defendant Noorian also testified that, to his knowledge, no efforts
11 had been made to see if anyone had deleted documents, or to recover
12 any documents that had been deleted. (*Id.* at 30:12-31:1). Defendants
13 have not provided declarations from any RFT employees stating that
14 they did not destroy, delete or alter any documents. At the hearing,
15 Defendants’ attorneys argued that they recently hired a computer
16 forensic expert to analyze Mark Sullivan’s laptop, but they conceded
17 that the computer forensic expert has not analyzed other RFT
18 employees’ computers to determine if documents were deleted.

19 **4. ESI Withheld As Privileged Without Review Based**
20 **Solely On Limiting Search Terms**

21 Defendant RFT’s attorneys withheld more than 150,000 non-
22 privileged documents as privileged even though no privilege review was
23 conducted, simply because they contained search terms like
24 “confidential.” (ECF No. 268-2 ¶ 8 (declaration of Brian Vanderhoof of
25 LeClairRyan LLP describing search term error)). Defendants’ lead

1 counsel temporarily delegated ESI discovery to another firm, which—
2 unbeknownst to anyone except RFT’s IT Director—used 59 exclusionary
3 search terms to withhold documents as privileged. (ECF No. 268-2).
4 Defendant RFT’s email program automatically affixes a confidentiality
5 footer to emails, so emails were withheld merely because they contained
6 the term “confidential.” The other exclusionary search terms similarly
7 resulted in other non-privileged documents being withheld. No one
8 reviewed the withheld documents, or even a sample of them, to
9 determine if they actually were privileged, and they were not listed on a
10 privilege log. (ECF No. 269-4 (Exh. 25) at 3).

11 Even so, Defendants’ lead counsel repeatedly confirmed that all
12 responsive non-privileged documents had been produced. On July 25,
13 2014, in response to Magistrate Judge Burkhardt’s July 3, 2014 Order
14 requiring completion of the document production, Thomas O’Leary sent
15 Plaintiff’s counsel a letter emphasizing that “during the pendency of the
16 Court’s decision on Plaintiff’s motion for discovery sanctions, RFT did
17 indeed produce all of the documents sought by Plaintiff.” (ECF No. 268-
18 30 (Exh. 19) at 4).

19 On August 8, 2014, Thomas O’Leary filed a declaration signed
20 under penalty of perjury in response to Magistrate Judge Burkhardt’s
21 July 3, 2014, discovery Order. (ECF No. 192). He declared, “during the
22 three-month pendency of the Court’s decision on Plaintiff’s motion, RFT
23 did indeed produce all of the documents sought by Plaintiff.” (*Id.* ¶ 3;
24 *see also* ¶¶ 4 and 5 (essentially restating same)). Mr. O’Leary attached
25 and described his July 25, 2014, letter to Plaintiff’s counsel. (*Id.* ¶ 6).

1 Mr. O’Leary then went through the discovery requests at issue one-by-
2 one and serially declared that RFT had produced all responsive
3 documents. For instance, he declared,

4 RFT was ordered to produce all emails and other
5 communications regarding the “HM Electronics IQ
6 Structural Failures” document it published. (Dkt. No.
7 185, p.12:21-22). However, RFT has already produced to
8 Plaintiff’s counsel its emails and other communications
9 regarding the “HM Electronics IQ Structural Failures”
document....

10 (*Id.* ¶ 22; *see also id.* ¶¶ 24, 26, 28, 30). Finally, Mr. O’Leary declared
11 that “RFT has already produced the documents resulting from the
12 [court-ordered] ESI searches to Plaintiff’s counsel.” (*Id.* ¶ 31). Mr.
13 O’Leary concluded by accusing Plaintiff of conducting a “tiresome and
14 incessant ‘discovery war’.” (*Id.* ¶ 33).

15 Also in response to Magistrate Judge Burkhardt’s Order, Stephen
16 Combs, RFT’s Director of IT, signed a declaration on September 3, 2014.
17 (ECF No. 268-5). Mr. Combs declared, in part, that he “provided a
18 wealth of electronic data to RFT’s electronic discovery vendor,”
19 including 4 Exchange Information Stores (including 146 individual
20 email accounts) and 17 PST files that totaled over 300 GB. (*Id.* at ¶ 14).

21 Mr. Combs further declared “[i]t is my understanding that these
22 email accounts were searched using key terms provided by Plaintiff. I
23 am informed and believe that the search terms utilized by the vendor
24 included the following: [listing 21 search terms]. I am further informed
25 and believe that these search terms were later revised to include certain

1 Boolean search limiters.” (*Id.*). Mr. Combs did not explain what
2 limiters were implemented for whom and for what purpose, and the
3 statement did not catch the litigants’ attention at the time. Mr. Combs
4 further declared that he understood that under Magistrate Judge
5 Burkhardt’s Order,

6 RFT must conduct a broad-based ESI search using
7 twenty-two agreed upon search terms, and it must
8 produce documents resulting from such ESI searches.
9 (Dkt. No. 185, p. 13:13-17). As set forth at paragraph 14
10 above, RFT has already produced the documents
11 resulting from the foregoing ESI searches to Plaintiff’s
12 counsel.

13 (*Id.* at ¶ 26).

14 The search term/privilege review error was finally discovered
15 when Plaintiff used Mr. Combs’ Declaration to show an inconsistency
16 between the amount of data Defendant RFT provided its vendor and the
17 amount of data produced, along with a comparison of documents
18 produced by third parties that had not been produced by Defendant. As
19 a result, Defendant produced these documents on a rolling basis from
20 September to November 2014.

21 **5. Post-Discovery Document Dump**

22 Defendant RFT also did not produce over 375,000 pages of
23 responsive documents until after the filing of this motion and the close
24 of discovery. Defendant explains this occurred because the ESI vendor
25 inadvertently failed to export all of the data to be produced. (ECF No.
26 269-28 (Stefan Decl.) ¶ 5). One of the ESI vendor’s employees, believing

1 the data export complete, disconnected the drive before all the data had
2 been exported. Defendants and their vendor discovered the error in
3 December 2014 while preparing their opposition to this motion. They
4 produced the newly-discovered data on a rolling basis between January
5 and April 2015. In May 2015, the Defendants' attorneys produced still
6 more documents that had been improperly withheld. (ECF No. 309).

7 Discussion

8 A. Legal Standard

9 The Court's authority to sanction a party for spoliation of evidence
10 arises from both its inherent power to impose sanctions in response to
11 litigation misconduct and from Rule 37. *See* FED. R. CIV. P. 37(b)(2)(C);
12 *Lewis v. Ryan*, 261 F.R.D. 513, 518 (S.D. Cal. 2009). Rule 37(b)(2)(A)
13 states:

14 If a party or a party's officer, director, or managing
15 agent—or a witness designated under Rule 30(b)(6) or
16 31(a)(4)—fails to obey an order to provide or permit
17 discovery, including an order under Rule 26(f), 35, or
18 37(a), the court where the action is pending may issue
19 further just orders. They may include the following:

- 20 (i) directing that the matters embraced in the
21 order or other designated facts be taken as
22 established for purposes of the action, as the
23 prevailing party claims;
- 24 (ii) prohibiting the disobedient party from
25 supporting or opposing designated claims or
26 defenses, or from introducing designated
27 matters in evidence;
- 28 (iii) striking pleadings in whole or in part;

- 1 (iv) staying further proceedings until the order is
- 2 obeyed;
- 3
- 4 (v) dismissing the action or proceeding in whole or
- 5 in part;
- 6
- 7 (vi) rendering a default judgment against the
- 8 disobedient party; or
- 9
- 10 (vii) treating as contempt of court the failure to obey
- 11 any order except an order to submit to a
- 12 physical or mental examination.

13 Subsection (b)(2)(C) adds:

14 Instead of or in addition to the orders above, the court

15 must order the disobedient party, the attorney advising

16 that party, or both to pay the reasonable expenses,

17 including attorney's fees, caused by the failure, unless

18 the failure was substantially justified or other

19 circumstances make an award of expenses unjust.

20 The Court also has authority to sanction parties and counsel

21 under Rule 26(g). Rule 26(g) requires a signature by a party or its

22 counsel on discovery responses and objections, and states:

23 By signing, an attorney or party certifies that to

24 the best of the person's knowledge, information, and

25 belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and

correct as to the time it is made; and

(B) with respect to a discovery request, response,

or objection, it is:

- 1
- 2 i. consistent with these rules and warranted
- 3 by existing law....;
- 4
- 5 ii. not interposed for an improper purpose, such
- 6 as to harass, cause unnecessary delay, or
- 7 needlessly increase the cost of litigation; and
- 8
- 9 iii. neither unreasonable nor unduly
- 10 burdensome or expensive....

11 FED. R. CIV. P. 26(g)(1). The Court, “on motion or on its own, must
12 impose an appropriate sanction on the signer, the party on whose behalf
13 the signer was acting, or both,” when a certification violates Rule
14 26(g)(1) without substantial justification. FED. R. CIV. P. 26(g)(3). Rule
15 26(g) is “cast in mandatory terms.” *Chambers v. NASCO, Inc.*, 501 U.S.
16 32, 51 (1991); Advisory Committee Notes to 1980 Amendment to FED. R.
17 CIV. P. 26(g) (“Because of the asserted reluctance to impose sanctions on
18 attorneys who abuse the discovery rules,... , Rule 26(g) makes explicit
19 the authority judges now have to impose appropriate sanctions and
20 requires them to use it.”). The mandate extends to *whether* a court
21 must impose sanctions, though not to *which* sanction to impose. *Id.*

22 Federal courts do not require perfection in ESI discovery. *The*
23 *Pension Comm. Of the Univ. of Montreal Pension Plan v. Banc of Am.*
24 *Securities, LLC*, 685 F.Supp.2d 456, 461 (S.D.N.Y.); *see also* Advisory
25 Committee Notes to proposed new Rule 37(e) (noting that “perfection in
preserving all relevant electronically stored information is often
impossible,” and “[t]his rule recognizes that reasonable steps’ to

1 preserve suffice; it does not call for perfection.”). The touchstone of
2 discovery of ESI is reasonableness. (*Id.*). However, as one court noted,

3 If litigants are to have any faith in the discovery
4 process, they must know that parties cannot fail to
5 produce highly relevant documents within their
6 possession with impunity. Parties cannot be permitted
7 to jeopardize the integrity of the discovery process by
8 engaging in halfhearted and ineffective efforts to
9 identify and produce relevant documents.

9 *Bratka v. Anheuser-Busch Co., Inc.*, 164 F.R.D. 448, 463 (S.D. Ohio
10 1995). “Litigation is not a game. It is the time-honored method of
11 seeking the truth, finding the truth, and doing justice.” *Haeger v.*
12 *Goodyear Tire & Rubber Co.*, --F.3d--, 6 n.1 (9th Cir. July 20, 2015)
13 (quoting *Haeger v. Goodyear Tire and Rubber Co.*, 906 F.Supp.2d 938,
14 941 (D. Ariz. 2012)).

15 **B. Analysis**

16 The Court notes that, on August 3, 2015, the parties filed a joint
17 notice that they are in the process of finalizing a settlement. (ECF No.
18 416). The Court’s decision to impose sanctions under Rule 26(g)(3)
19 outlives the anticipated settlement and voluntary dismissal of the case.
20 *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Haeger v.*
21 *Goodyear Tire & Rubber Co.*, --F.3d--, *18-19, No. 12-17718 (9th Cir.
22 July 20, 2015); *In re Exxon Valdez*, 102 F.3d 429, 431 (9th Cir. 1996);
23 *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987); *Heinrichs v.*
24 *Marshall and Stevens, Inc.*, 921 F.2d 418, 420-421 (2d Cir. 1990);
25 *Fosselman v. Gibbs*, No. C 06-0375-PJH-PR, 2010 WL 1008264, *4 (N.

1 D. Cal. March 18, 2010), *aff'd*, 473 Fed. Appx. 639 (9th Cir. 2012). Even
2 if Plaintiff were to withdraw its motion for sanctions under Rule 37,
3 which it did not do in the notice of settlement or at the hearing, (ECF
4 Nos. 416, 419), the Court is required to impose sanctions for Rule 26(g)
5 violations made without substantial justification. FED. R. CIV. P.
6 26(g)(3); *Chambers, supra*, 501 U.S. at 51.

7 **1. Rule 26(g)**

8 The point of Rule 26(g) is to hold someone personally responsible
9 for the completeness and accuracy of discovery responses. Rule 26(g)
10 requires a signature by a party or its counsel on discovery responses
11 and objections, certifying “that to the best of the person’s knowledge,
12 information, and belief *formed after a reasonable inquiry*” the response
13 or objection is “consistent with these rules and warranted by existing
14 law” and “not interposed for an improper purpose, such as to harass,
15 cause unnecessary delay, or needlessly increase the cost of litigation.
16 FED. R. CIV. P. 26(g)(1) (emphasis added). Here, both Defendant
17 Noorian and attorney Thomas O’Leary certified discovery responses on
18 behalf of Defendant RFT that were false, misleading, and made without
19 first conducting a reasonable inquiry.

20 Defendant Noorian knew, from his own personal involvement and
21 from his review of the documents he requested from Mark Sullivan in
22 December 2012, that responsive documents existed, but nevertheless
23 signed discovery responses denying the existence of those documents.
24 Defendant RFT, through its representative Noorian, also falsely signed
25 discovery responses, thereby denying documents that it knew or should

1 have known existed. Attorney Thomas O’Leary signed discovery
2 responses without conducting a reasonable inquiry as required by Rule
3 26. There can be no doubt that Defendants and their attorneys failed to
4 make reasonable inquiries, because Defendants’ lead attorneys were
5 able to identify masses of responsive ESI in September and December
6 when they finally inquired of their vendors about the ESI. These
7 improper certifications contributed to the concealment of documents
8 that were relevant and favorable to Plaintiff, caused unnecessary delay
9 and needlessly increased the cost of litigation.

10 **a. Document Request No. 23**

11 **i. Request**

12 Request No. 23 sought documents concerning “the creation,
13 receipt, use, publication and/or distribution of the DOCUMENT entitled
14 ‘HM Electronics IQ Structural Failures.’” (ECF No. 268-15 (Exh. 11) at
15 16).

16 **ii. Response**

17 Defendant asserted objections and then falsely stated that it “may
18 have responsive documents, but is uncertain at this time.” (ECF No.
19 268-15 (Exh. 11) at 16). Attorney O’Leary signed this response on
20 October 16, 2013. (ECF No. 268-27 (Exh. 11) at 10).

21 **iii. Why Response Was False When Signed**

22 As of the date Mr. O’Leary signed this response, Defendants knew
23 that they had documents concerning the creation, receipt, use, and
24 distribution of the Structural Failures Report. Defendant RFT’s CEO,
25 Noorian, had reviewed Mr. Sullivan’s email and zip file containing these

1 very documents on December 6, 2012, as he admitted two years later
2 during a deposition on December 18, 2014. In his June 11, 2014,
3 deposition, Defendant Noorian testified that he was aware of the
4 Structural Failures Report as of June 5, 2012. Mr. Noorian and many
5 other RFT executives and marketing personnel participated in emails
6 guiding the creation of the Structural Failures Report. (*See e.g.*, ECF
7 No. 268-21 (Exh. 14) at 5 (May 5, 2012 email from Mark Sullivan to
8 Philip Tondelli, Scott Crause, Scott Richardson, Jim Voiner, Michael
9 Murdock, with courtesy copy to Michelle Greenwood, Bob Noorian, Tony
10 DeLise, Emilio Roman, Lauren Lenartowski, Fiona Noorian, Jennifer
11 Morales, Barb Heimkamp, and Kay Prosser discussing creation and
12 planned distribution of Structural Failures Report) and ECF No. 288-6
13 (Exh. 16) (Noorian Deposition acknowledging receipt of several similar
14 emails)). Defendant also should have reviewed its ESI for production in
15 the 10 months since the action had been filed on December 5, 2012.

16 **iv. Inquiry Attorneys Should Have Made**

17 Attorney O'Leary would have known responsive documents
18 existed had he made a reasonable inquiry. At the hearing, attorneys
19 O'Leary and Vanderhoof of LeClairRyan LLP argued primarily that it
20 was reasonable to rely on Mr. Noorian's assertions. They also asserted
21 that it would not have been reasonable to have reviewed all of the ESI
22 at that time.

23 On October 16, 2013, when Mr. O'Leary signed this response to
24 request for document production, the attorneys had not even collected,
25 much less reviewed Defendant RFT's documents. The evidence in the

1 record shows that Defendant RFT collected ESI in November 2013,
2 after attorney O’Leary had already signed the responses in October
3 2013, that Mr. O’Leary did not give the data for processing to the ESI
4 vendors until March 2014, and that the processed data was not
5 returned by the vendors for the attorneys to review until after April
6 2014.

7 The Advisory Committee Notes on Rule 26(g) explain “the
8 signature certifies that the lawyer has made a reasonable effort to
9 assure that the client *has provided* all the information *and documents*
10 available to him that are responsive to the discovery demand.” FED. R.
11 CIV. P. 26, subdivision (g) Advisory Committee Notes (1980
12 Amendment) (emphasis added). At the time Mr. O’Leary signed this
13 response, he had made no effort to assure that Defendant RFT had
14 provided all the documents to the attorneys. The attorneys did not
15 describe what documents they reviewed at the meeting before the initial
16 responses were signed, how those documents were selected, by whom, or
17 why (or whether) they believed those documents to be representative of
18 the ESI. In the court-ordered meet and confer on February 27, 2014, in
19 response to Plaintiff’s question about the methodology used to collect
20 documents in light of the small amount of responsive documents
21 produced, Mr. O’Leary explained simply “I didn’t conduct the ESI
22 search, so I don’t know the methodology. They were told to look for
23 documents on their computer.” (ECF No. 268-27 (Exh. 17) at 23).

24 Although Mr. O’Leary was not required to review every single
25 page of the ESI before signing the written discovery responses, it was

1 not reasonable for him to sign the document production responses
2 before the ESI was even collected. The Court recognizes that Mr.
3 O’Leary and his firm did not substitute into the case as lead counsel
4 until one month before signing these responses. Nevertheless, Mr.
5 O’Leary and his firm should have been more transparent with
6 Plaintiff’s attorneys about the data collection process and the amount of
7 data involved. Defendant’s attorneys should have sought an extension
8 of the time to respond to discovery responses so that the document
9 collection and some sampling could occur prior to certifying responses.
10 Defendant could have filed a motion for protective order or an ex parte
11 discovery motion seeking to extend the time to respond detailing the
12 large amount of ESI, the time and technology constraints, and the
13 Defendant’s proposed collection and processing methodology. Instead of
14 familiarizing himself with his client’s ESI and embracing transparency
15 and collaboration in the discovery process, lead counsel chose to sign
16 false discovery responses without making any efforts to assure that the
17 responses accurately reflected the Defendant’s documents.

18 It was also not reasonable to sign discovery responses denying the
19 existence of documents based solely on Defendant Noorian’s word.
20 While the Advisory Committee Notes on Rule 26(g) do provide that “the
21 attorney may rely on assertions by the client” in making a reasonable
22 inquiry, that is true only “as long as that reliance is appropriate under
23 the circumstances.” FED. R. CIV. P. 26, subdivision (g) Advisory
24 Committee Notes (1980 Amendment). Asking Mr. Noorian and
25 accepting his response without asking other employees or collecting or

1 sampling documents was not reasonable. The attorneys did not explain
2 what questions they asked Mr. Noorian and the other managers at the
3 pre-response meeting, identify which managers were present, or explain
4 why those particular managers were selected rather than other
5 employees to discuss the existence of responsive documents. The
6 attorneys did not say whether they asked any of the other managers at
7 their meetings about these documents and how they responded—a
8 critical point, because there were many other executive level RFT
9 employees besides Noorian who knew responsive documents existed.
10 The attorneys should have asked Philip Tondelli, Steve Crause, Steve
11 Combs, Helen Fansler (Executive Assistant), and Fiona Noorian (all of
12 whom were high level employees privy to responsive emails) whether
13 they knew of the existence of documents. The attorneys could have
14 identified these custodians by virtue of their positions, even without the
15 benefit of reviewing any of the responsive documents. Even if
16 Defendant Noorian lied to his attorneys or forgot about the existence of
17 documents, a reasonable inquiry made to any of these other custodians
18 would have revealed the existence of responsive documents.

19 **b. Document Request No. 26**

20 **i. Request**

21 Request No. 26 sought documents between RFT and Panasonic
22 about the Structural Failures Report. (ECF No. 268-15 (Exh. 11) at 16-
23 17).

1 **ii. Response**

2 Defendant RFT rested on a relevancy objection in refusing to
3 provide documents in response to Request No. 26 for documents
4 between RFT and Panasonic about the Structural Failures Report. (*Id.*
5 at 16-17). Attorney O’Leary signed this response on October 16, 2013.
6 (ECF No. 268-27 (Exh. 11) at 10).

7 **iii. Why Response Was False When Signed**

8 The relevancy objection, signed by Thomas O’Leary on October 16,
9 2013, was meritless, because the distribution of the Structural Failures
10 Report to Panasonic by RFT is central to Plaintiff’s trade libel claim as
11 alleged in the Complaint filed on December 5, 2012. The relevance of
12 the distribution of the Report is so obvious that Defendant Noorian sent
13 an email to Mark Sullivan instructing him to stop distributing and
14 destroy the Report in December 2012, soon after Defendant Noorian
15 reviewed the Complaint on December 5, 2012.

16 **iv. Supplemental Response**

17 In December 2013 Defendant supplemented: “Responding Party
18 has produced documents responsive to this Request.” (*Id.* at 3).
19 Defendant Noorian signed this response on December 5, 2013 and
20 attorney O’Leary signed this response on December 12, 2013.

21 **v. Why Supplemental Response Was False**
22 **When Signed**

23 Although Defendant had produced some documents by mid-
24 December 2013, it did not produce the most pertinent documents, as
25 made apparent by the documents Defendant produced from September

1 2014, through April 2015, following discovery of the search
2 term/privilege review and data export errors. In fact, as of December
3 12, 2013, Defendant had only produced 1004 pages of hard copy
4 documents and Mr. O’Leary had not even provided Defendant’s ESI to
5 the ESI vendors for processing, much less reviewed it to determine
6 whether any responsive documents remained to be produced.

7 **vi. Inquiry Attorneys Should Have Made**

8 Lead counsel should not have certified that all responsive
9 documents had been produced before looking at the client’s ESI data.
10 Although lead counsel was not required to examine each page of ESI
11 prior to signing this response, he or his delegates should have sampled
12 the ESI and let Plaintiff’s counsel and the Court know that the
13 representation that all responsive documents had been produced was
14 based on a sampling, and informed them of the sampling methodology
15 used. Alternatively, lead counsel could have sought an extension based
16 on a detailed explanation of the proposed methodology and the
17 technological and time constraints necessitating extension.

18 **c. Document Request No. 28**

19 **i. Request**

20 Request No. 28 sought documents concerning RFT’s “opinions,
21 statements, and/or declarations regarding the repair frequency of any
22 HME drive-thru product, for the period January 1, 2005 to the present.”
23 (ECF No. 268-16 (Exh. 11) at 1).
24
25

1 **ii. Response**

2 Defendant RFT asserted objections and refused to produce
3 responsive documents on the basis that “it could be thousands of
4 documents every year.” Attorney O’Leary signed this response on
5 October 16, 2013. (ECF No. 268-16 (Exh. 11) at 1).

6 **iii. Why This Response Was Improper**

7 This was an improper certification because neither Defendant nor
8 its attorneys had made any inquiry into whether responsive documents
9 existed or how many responsive documents existed at the time Mr.
10 O’Leary signed the response. The failure to make a reasonable inquiry
11 is patent from the speculative phrase (“could be thousands...”) used. On
12 the date Mr. O’Leary signed this response, Defendant’s ESI had not
13 been collected or reviewed. Defendant was collecting ESI as late as
14 November 2013—one month after this was signed, and Mr. O’Leary did
15 not task the ESI vendor with processing Defendant’s ESI until March
16 2014—several months later. Rather than sign this discovery response
17 refusing to produce documents based on speculation about what their
18 volume might be, Mr. O’Leary should have familiarized himself with his
19 client’s data structures and engaged with Plaintiff’s counsel and the
20 court in meaningful, collaborative discussions about the volume of ESI,
21 the ESI production methodology, and the timetable required.

22 **iv. Supplemental Response**

23 Defendant’s December 2013 supplemental response stated
24 “Responding Party has no documents responsive to this request.” (ECF
25 No. 268-19 (Exh. 12) at 4-5). Defendant Noorian certified this response

1 on December 5, 2013, and attorney O’Leary signed the response on
2 December 12, 2013.

3 **v. Why Supplemental Response Was False**
4 **When Signed**

5 Defendant’s response that it had no documents concerning RFT’s
6 “opinions, statements, and/or declarations regarding the repair
7 frequency of any HME drive-thru product” was false. Mark Sullivan
8 produced emails showing Defendant Noorian knew of such documents
9 no later than December 6, 2012, at his April 1, 2014, deposition. During
10 Defendant Noorian’s June 11, 2014, deposition, he admitted that he was
11 aware of the Structural Failures Report and internal emails containing
12 opinions and statements about HME’s repair frequency as of June 5,
13 2012. (ECF No. 288-6 (Exh. 16) at 5-6). From September 2014, through
14 April 2015, after discovery of the search term/privilege review and data
15 export errors, Defendant produced hundreds of responsive documents.
16 The late-produced documents and Defendant Noorian’s limited purpose
17 deposition show Defendant Noorian knew this response was false when
18 he signed it on December 5, 2013, because he had personally reviewed
19 Mark Sullivan’s December 6, 2012, email and zip file containing
20 responsive documents one year earlier.

21 **vi. Inquiry Attorneys Should Have Made**

22 As explained in the preceding sections, Mr. O’Leary’s reliance on
23 Defendant Noorian’s assertions was not reasonable under the
24 circumstances. Mr. O’Leary should have identified other key employees
25 and asked them whether responsive documents existed. As Defendant

1 Noorian himself admitted during the limited purpose deposition, he
2 cannot control 60 employee's behavior. While Mr. O'Leary did not have
3 to ask every employee whether they had made such statements in
4 writing, it was unreasonable to only ask one person. A reasonable
5 inquiry would have involved asking a few key employees, including at
6 least one marketing employee. Mr. O'Leary also should have made sure
7 at least some sampling of ESI was reviewed before certifying that no
8 responsive documents existed. So certifying before the ESI had even
9 been processed, much less sampled or reviewed, was not reasonable.

10 **d. Interrogatory No. 13**

11 **i. Request**

12 Interrogatory No. 13 demands: "identify all persons to whom you
13 provided the 'HM Electronics IQ Structural Failures' document or any
14 of the contents set forth therein." (ECF No. 268-11 (Exh. 8) at 6).

15 **ii. Response**

16 Defendant RFT objected and stated that Mark Sullivan, who was
17 no longer employed with RFT, could identify such persons. (*Id.* at 6).
18 Defendant Noorian signed the interrogatory responses under penalty of
19 perjury on October 18, 2013, and attorney O'Leary signed the discovery
20 responses on October 16, 2013. (*Id.* at 9, 10).

21 **iii. Why This Response Was False**

22 This response was false because Defendant could have identified
23 the recipients and knew that Mark Sullivan was not the only person
24 who could do so. The ESI productions by RFT from September 2014,
25 through April 2015, included emails that RFT had at the time and could

1 have used to compile a list of recipients or produced in lieu of compiling
2 a list. ESI also showed that Defendants knew Mark Sullivan was not
3 the only RFT employee who distributed the Report. (ECF No. 288-16
4 (Exh. 34)). The documents show Defendant Noorian attended a July
5 2012 meeting, and that Defendant Noorian personally reviewed Mark
6 Sullivan's documents showing distribution in December 2012. Despite
7 acquiring knowledge of responsive documents in July and December
8 2012, Defendant Noorian signed the interrogatory responses under
9 penalty of perjury.

10 **iv. Supplemental Response**

11 Defendant also supplemented this responses after Plaintiff
12 challenged their sufficiency. (ECF No. 268-12 (Exh. 9)). Defendant
13 Noorian signed the supplemental responses on December 5, 2013, and
14 James C. Hildebrand signed them for Thomas O'Leary on December 12,
15 2013. (*Id.*). Defendant revised Interrogatory No. 13 to insist that
16 "Mark Sullivan is the only person with knowledge to whom, if anyone,
17 the 'HM Electronics IQ Structural Failures' document was distributed."
18 (*Id.* at 6).

19 **v. Why The Supplemental Response Was False**

20 Mark Sullivan was not the only person with knowledge of to whom
21 the Report had been distributed, and Defendants Noorian and RFT
22 knew it at the time this supplemental response was signed. Many RFT
23 executives and employees, including Noorian, had knowledge to whom
24 the Report was distributed as a result of participation in the July 3,
25 2012, Panasonic meeting. Defendant Noorian and Helen Fansler also

1 knew of its distribution from Defendant Noorian's review of Mark
2 Sullivan's December 2012, email and zip file. Michael Murdock, RFT's
3 Regional Sales Manager, also had knowledge of the Report recipients,
4 because he personally emailed the Report to at least one prospect.
5 (ECF No. 288-16 (Exh. 34)).

6 **vi. Inquiry Attorneys Should Have Made**

7 Before certifying these responses stating that only Mark Sullivan
8 could identify the recipients of the Report, lead counsel should have
9 asked other RFT employees besides Defendant Noorian, including at
10 least one marketing employee. The attorneys also should have
11 conducted an initial review or sampling of documents. The attorneys
12 also should have worked with opposing counsel and the court in a
13 transparent and collaborative manner to obtain an extension of time to
14 adequately review documents.

15 **e. Interrogatory No. 20**

16 **i. Request**

17 Interrogatory No. 20 requested: "identify all person(s) with
18 Panasonic who may have knowledge regarding the content and
19 distribution of the 'HM Electronics IQ Structural Failures' document."
20 (ECF No. 268-11 (Exh. 8) at 8-9).

21 **ii. Response**

22 On October 16, 2013, RFT's lead counsel Thomas O'Leary signed
23 interrogatory responses that included only objections in response to this
24 request. (*Id.* at 9). Defendant objected that the request was vague,
25 ambiguous and burdensome, that it sought irrelevant information, and

1 that it sought information in the control of third parties and not
2 available to Defendant.

3 **iii. Why This Response Was Improper**

4 These objections were frivolous and false when made. The
5 identity of Panasonic employees who had knowledge of the Report was
6 relevant to the action, and this interrogatory was an appropriate way
7 for Plaintiff to identify who at Panasonic—a large company and one of
8 Plaintiff’s competitor’s—might have discoverable information.

9 Defendant’s objection that the information was not available to it was
10 false, and it knew that response to be false when made. Noorian and
11 other RFT employees had such knowledge from their direct
12 participation in the July 3, 2012, meeting with Panasonic and post-
13 meeting emails, as shown by a July 16, 2012, email produced on
14 September 26, 2014. (ECF No. 288-7 (Exh. 21)).

15 **iv. Supplemental Response**

16 Defendant doubled-down on its response to Interrogatory No. 20,
17 supplementing that RFT “is unaware of any person at Panasonic who
18 may have knowledge regarding the content and distribution of the ‘HM
19 Electronics IQ Structural Failures’ document.” (ECF No. 268-12 (Exh.
20 9) at 7). The supplemental response was signed by Defendant Noorian
21 on December 5, 2013, and by James Hildebrand for Thomas O’Leary on
22 December 12, 2013. (Id. at 7-8).

1 **ii. Response and Supplemental Response**

2 At first, Defendants provided only frivolous objections, and then
3 supplemented this response in August 2014, by insisting that only
4 Mark Sullivan and Lillia Tuschuk had knowledge of any meetings, if
5 any occurred. (ECF No. 269-2 (Exh. 23) at 10-11). The responses were
6 signed July 9, 2014, by Defendant Noorian and attorney Thomas
7 O’Leary. (ECF No. 288-8 (Exh. 24)). The supplemental responses were
8 signed by Defendant Noorian on August 22, 2014, and by attorney
9 O’Leary on August 21, 2014. (ECF No. 269-2 (Exh. 23) at 10-11).

10 **iii. Why Responses Were False**

11 In fact, Defendant Noorian himself attended at least one such
12 meeting with Panasonic on July 3, 2012, along with Philip Tondelli,
13 Mark Sullivan, Michelle Greenwood, and Allen Hege of RFT. (ECF No.
14 288-7 (Exh. 21)). This meeting only came to light when Defendant
15 finally produced an email chain exposing the meeting on September 26,
16 2014. (*Id.*). The email was distributed amongst Michelle Greenwood,
17 Philip Tondelli, Michael Murdock, Mark Sullivan, and Panasonic
18 personnel on July 16, 2012. (*Id.*). The attachments summarize the
19 meeting, list the participants, note Defendant Noorian’s direct
20 participation in the meeting, describe discussions about Plaintiff’s
21 headset repair rates, durability, and quality, and note that Mr. Sullivan
22 provided and discussed a document, the description of which matches
23 the Structural Failures Report. (*Id.*).

24 Before this Court, at the hearing on the instant motions,
25 Defendants’ attorneys asserted that Defendant Noorian did not

1 remember this meeting at the time, and that he only attended the first
2 few minutes of the meeting. Defendants did not offer a declaration from
3 Noorian attesting to these statements. Even if Defendant Noorian only
4 attended a few minutes of this meeting, that does not excuse Defendant
5 or its attorneys from consulting other high level executives, marketing
6 employees, or document custodians to determine if RFT had attended
7 such meetings through employees besides Mr. Noorian. The response
8 was false when made, and a reasonable inquiry of other key RFT
9 employees would have revealed the truth.

10 **g. Offensive Use of False Discovery Responses**

11 Defendants and their attorneys also used the false discovery
12 certifications as a weapon to ward off further inquiry into the
13 sufficiency of the document production. For instance, in its April 14,
14 2014, opposition to Plaintiff's motion to compel further production of
15 documents, Defendant argued:

16 For several of HME's document requests, RFT's
17 counsel has also unequivocally indicated that it does not
18 possess responsive documents. In other words, RFT
19 cannot produce documents it does not have. ...RFT has
20 conducted multiple diligent electronic searches, has
21 scavenged for numerous documents, and has run several
22 reports in order to provide HME with responsive
23 documents.

24 (ECF No. 125 at 5, 6:20-26). There can be no question now that the
25 false responses and improper objections were interposed for the
improper purpose of concealing these critical documents, causing

1 unnecessary delay, or increasing the cost of litigation, and were made
2 without anything remotely approaching “reasonable inquiry.”³

3 **h. Sanctions Are Warranted**

4 Had Defendant correctly answered these discovery requests,
5 Plaintiff would have been able to root out the non-production of the
6 email confirming the meeting earlier during discovery. Defendants and
7 their attorneys, by certifying these improper responses, concealed the
8 existence of documents that they knew or should have known existed,
9 causing unnecessary delay and needlessly increasing the cost of
10 litigation.

11 The Court finds that it must impose appropriate sanctions against
12 Defendants Noorian and RFT for improper certifications of the following
13 responses: Request for Production of Documents Responses Nos. 25, 26
14 and 28; Interrogatory Responses 13, 20 and 23. Further, the Court
15 must impose appropriate sanctions against attorney Thomas O’Leary
16 and Defendant RFT for improper certifications of the following
17 responses: Requests for Production Responses Nos. 23, 25, 26 and 28;
18 Interrogatories Nos. 13, 20 and 23.

19
20
21
22
23 ³ Defendant’s use of the improperly certified discovery responses to
24 conceal documents and evade sanctions was an abuse of discovery and
25 fraud upon the court. Though Rule 11 sanctions may be warranted for
this and similarly false filings noted herein, the Court declines to
consider Rule 11 sanctions in this instance.

1 **2. Rule 37**

2 **a. Current Rule 37**

3 When considering sanctions under Rule 37, courts generally
4 consider three factors: “(1) the degree of fault of the party who altered
5 or destroyed the evidence; (2) the degree of prejudice suffered by the
6 opposing party; and (3) whether there is a lesser sanction that will
7 avoid substantial unfairness to the opposing party.” *Apple v. Samsung*,
8 888 F.Supp.2d 976, 992 (N.D. Cal. 2012) (“*Apple II*”).

9 As Rule 37 is currently applied in the Ninth Circuit, “a party's
10 destruction of evidence need not be in ‘bad faith’ to warrant a court's
11 imposition of sanctions.” *In re Napster, Inc. Copyright Litigation*, 462
12 F.Supp.2d 1060, 1066 (9th Cir. 2006) (citing *Glover v. BIC Corp.*, 6 F.3d
13 1318, 1329 (9th Cir. 1993)). District courts may impose sanctions
14 against a spoliating party that merely had “simple notice of ‘potential
15 relevance to the litigation.’” *Glover*, 6 F.3d at 1329 (quoting *Akiona v.*
16 *United States*, 938 F.2d 158, 161 (9th Cir. 1991)).

17 **i. Fault**

18 **a. Failure to Implement Litigation Hold**

19 Attorneys have a duty to effectively communicate a “litigation
20 hold” that is tailored to the client and the particular lawsuit, so the
21 client will understand exactly what actions to take or forebear, and so
22 that the client will actually take the steps necessary to preserve
23 evidence. *The Pension Comm., supra*, 685 F.Supp.2d at 462; *Philips*
24 *Electronics North America Corp. v. BC Technical*, 773 F.Supp.2d 1149,
25 1195, 1204-1206 (D. Utah 2011) (litigation hold must be directed to

1 appropriate employees, must be conveyed in a manner that ensures
2 recipients read and follow it, must tell them what the case is about, and
3 must identify categories of documents to be preserved).

4 Indeed, the Advisory Committee Notes on the proposed new Rule
5 37(e) advises “[i]t is important that counsel become familiar with their
6 clients’ information systems and digital data—including social media—
7 to address [preservation issues].” The attorney must learn their client’s
8 organizational structure and computer data structure in order to
9 adequately advise the client of the duty and method for preserving
10 evidence. *See, e.g., Qualcomm Inc. v. Broadcom Corp.*, No. 05CV1958-
11 B-BLM, 2010 WL 1336937, at *2-*3 (S.D. Cal. Apr. 2, 2010). After a
12 litigation hold has been implemented, counsel has a continuing duty to
13 monitor a client’s compliance with a litigation hold. *Zubulake v.*
14 *Warburg, LLC*, 229 F.R.D. 422, 423 and 431-432 (S.D.N.Y. 2004)
15 (*Zubulake V*).

16 The State Bar of California recently issued a Formal Opinion that
17 advises: “Prompt issuance of a litigation hold may prevent spoliation of
18 evidence, and the duty to do so falls on both the party and the outside
19 counsel working on the matter.” California State Bar Formal Opn. No.
20 2015-193 at 3 n.6. Though the opinion is new, the principles and
21 guidance in the opinion are not new. The Opinion summarizes,

22 Attorneys handling e-discovery should be able to
23 perform (either by themselves or in association with
24 competent counsel or expert consultants) the following:

- 25 • Initially assess e-discovery needs and issues, if any;

- 1 • *Implement/cause to implement appropriate ESI*
- 2 *preservation procedures;*
- 3 • *Analyze and understand a client’s ESI systems and*
- 4 *storage;*
- 5 • *Advise the client on available options for collection*
- 6 *and preservation of ESI;*
- 7 • *Identify custodians of potentially relevant ESI;*
- 8 • Engage in competent and meaningful meet and
- 9 confer with opposing counsel concerning an e-
- 10 discovery plan;
- 11 • Perform data searches;
- 12 • *Collect responsive ESI in a manner that preserves*
- 13 *the integrity of the ESI;* and
- 14 • Produce responsive non-privileged ESI in a
- 15 recognized and appropriate manner.

16 *Id.* at 3-4 (emphasis added).

17 Defendants’ attorneys ignored these basic principles. Defendants’
18 attorneys apparently never sent Defendants a “litigation hold” letter—
19 much less one tailored to the data and organizational structures of this
20 client. Defendants’ lead counsel never learned the infrastructure of the
21 Defendant’s ESI nor advised Defendants on the proper methodology for
22 searching ESI, and did not monitor compliance. Defendant Noorian and
23 Mr. O’Leary should both have been key players in data collection, yet
24 both claim to have had no involvement in gathering ESI. To the extent
25 lead counsel chose to delegate its data preservation and litigation hold
duties, it was incumbent on lead counsel to supervise the employees and
attorneys to whom those duties were delegated. *See, e.g., id.* at 5
(describing duty to supervise delegates).

1 Yet, even after the client was ordered to conduct an ESI search,
2 and while assuring the court and opposing counsel that an ESI search
3 had occurred, Thomas O’Leary could not answer simple questions about
4 the ESI search methodology used. (ECF No. 268-27 (Exh. 17) at 23).
5 Worse, he disavowed any involvement or knowledge of the search
6 methodology. (*Id.*). It is no surprise Mr. O’Leary could not answer
7 questions about the ESI search methodology used; it had not even
8 begun. It was not until the next month that Mr. O’Leary himself tasked
9 the vendor who later performed the ESI searches. The record shows
10 that lead counsel remained hands-off while and after the ESI searches
11 occurred. And there is nothing in the record to suggest Defendants’
12 attorneys ever instructed Defendants to not destroy documents that
13 could be relevant to this action. The attorneys’ total abdication of their
14 obligation to communicate the duty to preserve evidence to their clients
15 in an effective manner warrants severe sanctions.

16 **b. Intentional Destruction of ESI**

17 It is well established that litigants must preserve all potentially
18 relevant records as soon as they become aware that a case may be filed.
19 *See e.g., Zubulake v. UBS Warburg LLC*, 2003 WL 22410619, *2
20 (S.D.N.Y. October 22, 2003) (*Zubulake IV*); *Zubulake V, supra*, 229
21 F.R.D. 422; *Philips Electronics North America Corp., supra*, 773
22 F.Supp.2d at 1195; *Thompson v. U.S. Dept. of Housing and Urban*
23 *Development*, 219 F.R.D. 93, 99-100 (D. Md. 2003). Defendants do not
24 dispute—and the evidence shows—that after learning about this
25

1 lawsuit, Defendants specifically instructed employees to destroy highly
2 relevant documents because of their relevance to Plaintiff's claims.

3 Defendants argue that the spoliation was not intentional. They
4 contend that "RFT produced over 1 million pages of information," and
5 the "small fraction of that information that was produced recently does
6 not support inferences of misconduct." (ECF No. 288 at 56:3-5).

7 Defendants' exaltation of form over substance is misguided. "Producing
8 1.2 million pages of marginally relevant documents while hiding 46,000
9 critically important ones does not constitute good faith and does not
10 satisfy either the client's or attorney's discovery obligations."

11 *Qualcomm Inc. v. Broadcom Corp.*, No. 05cv1958-B-BLM, 2008 WL
12 66932, at *1 (S.D. Cal. Jan. 7, 2008), *vacated in part*, No. 05cv1958-
13 RMB-BLM, 2008 WL 638108 (S.D. Cal. Mar. 5, 2008). The volume of
14 Defendants' production does not relieve them of fault.

15 Defendants also claim that they are not at fault because
16 Defendant Noorian did not really mean "destroy," but instead meant
17 that his sales force should stop distributing the document outside of the
18 company. Defendants' contention contradicts the unequivocal command
19 in Defendant Noorian's email. Though Defendant Noorian also stated
20 that he did not "want anyone at RFT using the HME failure pictures
21 effective immediately," that does not negate the mandate to "destroy
22 any electronic or printed copies any of you may have" that followed.

23 The only support for Defendants' position is Defendant Noorian's
24 self-serving interpretation delivered during the limited purpose
25 deposition held after this motion was filed. Defendant Noorian could

1 not explain during deposition why he issued the “destroy” command
2 when it would have been just as easy and effective to issue an
3 instruction to stop distributing the documents. Defendants’ testimony
4 that Defendant Noorian’s motive was “to make sure the ‘damn thing’
5 wasn’t sent out again,” is also inconsistent with a Panasonic marketing
6 employee’s testimony, delivered by a disinterested party before the
7 issue of sanctions arose, that Defendants never requested that
8 Panasonic stop distributing the materials. (ECF No. 288 at 63; ECF
9 No. 288-4 (Exh. 7) 14:18-22). If Defendants’ intention was to curtail the
10 distribution of the Report, as opposed to intentionally destroying
11 relevant evidence, then it follows that they would have asked Panasonic
12 to stop distributing the Report.

13 Moreover, Defendant Noorian approved Mr. Sullivan’s act of
14 letting “the other guys know” to destroy the documents. And Defendant
15 Noorian never clarified his intention to the employees who received the
16 instruction. As a result, Mark Sullivan instructed Philip Tondelli and
17 Michael Murdock both to “destroy our copies of this *and* do not send it
18 out for any further reasons.” (ECF No. 288-15 (Exh. 33) (emphasis
19 added)). All of this occurred on December 19, 2012, after the duty to
20 preserve evidence arose.

21 Even setting aside whether Defendant Noorian actually intended
22 that documents be destroyed, the sales force would not have understood
23 his unambiguous command as anything less than a directive to destroy
24 the Structural Failures Report and related documents. There is
25 nothing to suggest the sales staff failed to carry out the “destroy”

1 command in this instance. Defendants do not offer a declaration from
2 employees stating that they did not delete emails, or they only deleted
3 certain types of documents. There is also nothing in the record to
4 suggest Defendant Noorian made any attempt to modify or retract the
5 “destroy” instruction. There is no evidence that the employees had been
6 advised of a litigation hold. Defendants have produced no evidence to
7 support their speculation that only duplicate copies of the Structural
8 Failures Report were deleted. The Court concludes that Defendant
9 Noorian intended for RFT’s sales force to destroy relevant documents.

10 Finally, the evidence shows that Defendants have not ever
11 produced a complete version of the attachments to the December 6,
12 2012, Mark Sullivan email, and Defendants have not been able to
13 identify all of the documents referenced in the five screen shots. The
14 absence of these documents, combined with the surrounding
15 circumstances, raises the reasonable inference that Defendants deleted
16 other documents including or referencing the HME failure pictures that
17 are relevant to this action and favorable to Plaintiff. This Court
18 concludes that Defendants deleted relevant evidence intentionally and
19 in bad faith.

20 **c. Withholding Non-privileged**

21 **Documents As Privileged**

22 It is fundamental that litigants must produce responsive non-
23 privileged documents in a timely manner. Attorneys have a
24 corresponding duty to supervise associates, staff, and contractors who
25 are involved in the document collection, review, and production process.

1 When attorneys employ “keywords or any other technological solution to
2 ediscovery, *counsel must design an appropriate process*, including use of
3 available technology, *with appropriate quality control testing*, to review
4 and produce relevant ESI while adhering to Rule 1 and Rule 26(b)(2)(C)
5 proportionality.” *Rio Tinto PLC v. Vale S.A.*, 306 F.R.D. 125, 126
6 (quoting *Da Silva Moore v. Publicis Groupe & MSL Grp.*, 287 F.R.D.
7 182, 193 (S.D.N.Y.2012)) (emphasis added). The State Bar of
8 California’s Formal Opinion No. 2015-193 confirms that attorneys have
9 long had a “duty to supervise the work of subordinate attorneys and
10 non-attorney employees or agents,” and that this “duty to supervise can
11 extend to outside vendors or contractors, and even to the client itself.”
12 California State Bar Formal Opn. No. 2015-193 at 5. The attorneys’
13 duty to supervise the work of consultants, vendors and subordinate
14 attorneys is non-delegable. *Id.* “An attorney must maintain overall
15 responsibility for the work...,” and,

16 must do so by *remaining regularly engaged* in the
17 expert’s work, by *educating everyone involved in the e-*
18 *discovery workup about the legal issues in the case, the*
19 *factual matters impacting discovery, including witnesses*
20 *and key evidentiary issues, the obligations around*
21 *discovery imposed by the law or by the court*, and of any
22 relevant risks associated with the discovery tasks at
23 hand. *The attorney should issue appropriate*
24 *instructions and guidance and, ultimately, conduct*
25 *appropriate tests* until satisfied that the attorney is
meeting his ethical obligations prior to releasing ESI.

Id. (emphasis added).

1 Counsel must also prepare and provide to opposing counsel a
2 privilege log if documents are withheld as privileged. FED. R. CIV. P.
3 26(b)(5)(A); *see also Brown v. Tellermate Holdings Ltd.*, No. 2:11-CV-
4 1122, 2014 WL 2987051, at *11 (S.D. Ohio July 1, 2014) (noting that
5 party that failed to produce privilege log had waived all claims of
6 privilege).

7 The Court finds that sanctions against Defendant RFT and its
8 attorneys, LeClairRyan LLP and Thomas O’Leary, are appropriate for
9 this misconduct under Rule 37. Although the Court will not sanction
10 attorneys Brian Vanderhoof of LeClairRyan LLP and Mark Goldenberg
11 of Goldenberg Heller Antognoli & Rowland, P.C., their conduct deserves
12 a dishonorable mention.

13 Though this tardy document production resulted from Defendants’
14 attorneys’ failure to oversee assisting attorneys, Defendants⁴ share
15 fault. First, “[a]ny attempt by [the sanctionee] to argue that the district
16 court abused its discretion in preventing [the sanctionee] from passing
17 the blame to its attorneys is unavailing. [A sanctionee] ‘is deemed
18 bound by the acts of its lawyers and is considered to have ‘notice of all
19

20 ⁴ Defendant Noorian objects on the basis that Rule 37 sanctions cannot
21 be imposed against him personally, because Magistrate Judge
22 Burkhardt’s order was only issued against Defendant RFT. (ECF No.
23 185 at 1 (Order); ECF No. 308 at 21 (argument)). Perhaps because
24 Defendant never raised this argument until the supplemental brief,
25 Plaintiff offers no counterpoint. Because the Court finds that
Defendant Noorian can be sanctioned under Rule 26(g)(3), the Court
does not reach the issue of whether Defendant Noorian can be
sanctioned under Rule 37.

1 facts, notice of which can be charged upon the attorney.”” *Haeger*,
2 *supra*, --F.3d-- at 25 (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 634
3 (1962), and citing *Lockary v. Kayfet*, 974 F.2d 1166, 1169-1170 (9th Cir.
4 1992)). Second, Defendants ignored red flags and signed discovery
5 responses and declarations that contained what turned out to be false
6 and misleading statements about the existence of these documents.

7 Defendant Noorian, on behalf of Defendant RFT, concealed the
8 existence of the missing documents when he verified incorrect written
9 discovery responses denying the existence of some documents, denying
10 that meetings with Panasonic occurred, and identifying Mark Sullivan
11 as the only employee involved in the alleged misconduct. Had
12 Defendant Noorian acknowledged his involvement in the underlying
13 events, Defendants’ attorneys and the court may have been more
14 vigilant when documentation of his involvement did not surface. Also,
15 the evidence shows Defendant Noorian was involved in the collection of
16 documents for production and that he reviewed the very documents
17 Defendants have not been able to find in their production immediately
18 after learning of this lawsuit. Yet he made no effort to ensure that
19 these highly probative documents were produced.

20 When Plaintiff complained that the December 6, 2012, email and
21 zip file from Mark Sullivan to Defendant Noorian had not been
22 produced, Defendants dug in their heels rather than review their
23 production for errors. Steve Combs signed a declaration stating under
24 penalty of perjury that all documents had been produced, even though a
25 cursory investigation would have revealed otherwise.

1 The Court further finds Thomas O’Leary and LeClairRyan LLP
2 responsible for the delayed productions. Defendants’ lead counsel
3 delegated critical discovery tasks, without appropriate monitoring or
4 quality control, to temporarily-involved attorneys who made the
5 unreasonable decision to withhold responsive documents as privileged
6 on the sole basis that they contained words like “confidential,” then
7 compounded the problem by not reviewing the documents withheld as
8 privileged and not creating a privilege log of the excluded documents.
9 Had Defendants’ counsel reviewed even a sample of the documents set
10 aside as privileged the error would have been obvious. It is alarming
11 that lead counsel aggressively defended this fundamentally-flawed ESI
12 production despite Plaintiff’s persistent calls for more documents, a
13 review of methodology, and a privilege log. In addition, the Court is
14 alarmed by Defendants’ counsel’s refusal to take any responsibility for
15 the errors.

16 At the hearing, attorney Vanderhoof argued that LeClairRyan and
17 Mr. O’Leary should not be held responsible for this error, because the
18 paralegals at the temporarily-involved firm did not tell the LeClairRyan
19 attorneys that there were documents that needed review, and there was
20 some chaos caused by the transitioning between firms.

21 This excuse shows LeClairRyan attorneys did not, and still do not,
22 comprehend that it is their duty to become actively engaged in the
23 discovery process, to be knowledgeable about the source and extent of
24 ESI, and to ensure that all gathered data is accounted for, and that
25 these duties are heightened—not diminished—when there is a

1 transition between firms or other personnel critical to discovery. As
2 lead counsel, Thomas O'Leary and LeClairRyan LLP should have asked
3 the paralegals at the temporarily-involved firm about the privilege
4 review, including whether one was conducted, what privilege review
5 methodology was used, the amount and type of documents withheld as
6 privileged, and the updating of the privilege log. Lead counsel should
7 have asked the paralegals about whether there were any additions to
8 the privilege log, which Thomas O'Leary had signed on February 14,
9 2014. (ECF No. 125-3 at 4). When attorney O'Leary signed the
10 privilege log, it had 21 entries, after approximately 18,500 pages had
11 been produced. (ECF No. 125 at 17, 125-13). Lead counsel should have
12 been suspicious that no additional documents were being withheld for
13 privilege after approximately 330,000 pages of ESI were produced,
14 given that the earlier smaller production had resulted in 21 privileged
15 documents.

16 Further, lead counsel was present at Mark Sullivan's and
17 Defendant Noorian's depositions, and should have been surprised and
18 concerned when Plaintiff's counsel used as exhibits documents that
19 Defendants should have had in their ESI but had not produced.

20 Lead counsel also should have noticed that the amount of data Mr.
21 O'Leary provided to the ESI vendors did not approximate the data
22 returned to the attorneys. Lead counsel had access to numbers that
23 they should have noticed did not add up.

24 Plaintiff noticed these red flags and waved them. This shows that
25 the inconsistencies were obvious to anyone paying attention. Plaintiff's

1 protests are yet another flag that Defendants' attorneys should not have
2 ignored. Instead of inquiring further of its vendors, lead counsel
3 chastised Plaintiff for its diligence. The ease with which lead counsel
4 could have discovered this problem is revealed by how quickly and
5 easily the problem was discovered when Mr. Vanderhoof finally did
6 make inquiries to the vendors.

7 Thomas O'Leary of LeClairRyan was the attorney who initially
8 provided the raw ESI to the vendor Setec, and, as lead counsel, it was
9 incumbent on him and his firm to remain involved in the data
10 processing as necessary to ensure that the data the given to the vendors
11 roughly equated to the data returned by the reviewing attorneys and
12 vendors, and to notice when no privileged documents were added to the
13 privilege log he had signed after a large ESI production. Though
14 attorneys Goldenberg and Vanderhoof also abdicated their duties and
15 were also involved in the discovery conferences, depositions, and the
16 ESI process, as lead counsel, the responsibility falls on Mr. O'Leary and
17 his firm.

18 **d. Post-Discovery Document Dump**

19 Rule 37 sanctions are also appropriate against Defendant RFT
20 and its attorneys for the post-discovery document dump of more than
21 half of the documents they ultimately produced in this action, which
22 they admit should have been produced much earlier. Defendant RFT—
23 despite sworn assurances that it had already complied with Magistrate
24 Judge Burkhardt's Order requiring completion of its document
25 production by August 4, 2014—failed to produce well over 375,000

1 pages of responsive documents until after the filing of this motion and
2 the close of discovery.

3 Defendants explain the bulk of the documents were inadvertently
4 withheld because the ESI vendor accidentally failed to export all of the
5 data to be produced. (ECF No. 269-28 (Stefan Decl.) ¶ 5).

6 The data export error is strikingly similar—but even more
7 egregious—than the uploading error that occurred in *In re*
8 *Delta/AirTran Baggage Fee Antitrust Litigation*, 846 F.Supp.2d 1335,
9 1342 (N.D. Ga. 2012). In that case, Delta’s attorney instructed Delta’s
10 IT department to upload the custodian’s hard drives to Clearwell, the
11 document management and search tool they were using for document
12 production. Two weeks later, Delta’s attorney followed up with the IT
13 department to make sure all of the data that had been collected had
14 indeed been uploaded to Clearwell. Despite confirmation from the IT
15 department, not all of the data had been uploaded. The uploading
16 error, combined with a failure to review two hard drives and backup
17 tapes, resulted in the late production of 60,000 pages of documents.
18 The *In re Delta* court found fault and prejudice, and exercised its
19 authority under Rule 37 to reopen discovery and impose monetary
20 sanctions, including the moving party’s reasonable costs and attorneys’
21 fees, against Delta. Likewise, this Court finds Defendants and their
22 attorneys at fault for failing to monitor the document production and
23 the ESI vendor. The error was concealed and compounded by their
24 blind assurances that all documents had been produced.

25

1 Moreover, Defendants and their attorneys are at fault for the
2 delay in producing the May 2015 data set. Defendants' attorneys
3 attribute the delay in producing the May 2015 document subset to four
4 problems: 1) the ESI vendor mistakenly did not provide a subfolder of
5 data it had prepared when investigating its prior error in December
6 2014, 2) data searches did not include Mark Sullivan's
7 "business.management" email address, 3) data searches did not include
8 the term "attune," and 4) non-privileged attachments to privileged
9 emails were withheld in error. (*Id.*).

10 Counsel claims they did not search (or instruct vendors to search)
11 Mark Sullivan's "business.management" email account, because counsel
12 was unaware that Mark Sullivan used both the "MarkS" and the
13 "business.management" email addresses. Counsel should have known
14 to search the "business.management" address because Mark Sullivan
15 produced emails with that address during his deposition in April 2014.
16 (ECF No. 268-21 (Exh. 14)). Defendants knew Mr. Sullivan used the
17 address, because Defendant RFT issued it to him and Defendant
18 Noorian reviewed emails Mr. Sullivan sent using that address in the zip
19 file on December 6, 2012. (*Id.*). Defendant and counsel should also
20 have known to include "attune" as a search term in their ESI
21 production, because that is the term Mark Sullivan used in his email
22 and zip file search. Defendant Noorian knew this from his December 6,
23 2012 review of Mark Sullivan's files, and Defendants attorneys, and Mr.
24 O'Leary and Mr. Goldenberg specifically, should have known this after
25

1 Mark Sullivan produced the documents relying on attune as a search
2 term.

3 The Court concludes that Defendants and their attorneys are at
4 fault for the post-discovery document dump. Mr. O’Leary and his firm’s
5 abdication of their roles in crafting and implementing an effective
6 discovery process warrants sanctions. Mr. Goldenberg’s efforts fell
7 woefully short of his responsibilities to ensure an ESI methodology was
8 crafted that adequately captured responsive data, particularly because
9 Mr. Goldenberg was the only attorney involved from the start and had a
10 long-time relationship with Defendants that granted him familiarity
11 with Defendants and their data. Mr. Vanderhoof also failed in his duty
12 to craft, implement, and test a reasonable ESI protocol. Nevertheless,
13 the Court finds sanctions are not warranted against Mr. Goldenberg
14 and Mr. Vanderhoof personally.

15 **ii. Prejudice**

16 The Court finds that sanctions are necessary because Plaintiff was
17 precluded by Defendants’ conduct from fully discovering the extent and
18 impact of distribution of the Structural Failures Report and average
19 repair rate information. Prejudice is determined by evaluating whether
20 the spoliating party's actions impaired the non-spoliating party's ability
21 to go to trial, threatened to interfere with the rightful decision of the
22 case, or forced the non-spoliating party to rely on incomplete and spotty
23 evidence. *In re Hitachi Television Optical Block Cases*, No. 08cv1746-
24 DMS-NLS, 2011 WL 3563781, *6 (S.D. Cal. August 12, 2011) (citing
25 *Leon v. IDX Systems Corp.*, 464 F.3d 951, 959 (9th Cir. 2006)).

1 Spoliation of evidence raises the presumption that the destroyed
2 evidence goes to the merits of the case, and that such evidence was
3 adverse to the party that destroyed it. *Apple II, supra*, 888 F.Supp.2d
4 at 998 (citing *Hynix Semiconductor v. Rambus*, 591 F.Supp.2d 1038,
5 1060 (N.D. Cal. 2006), *vacated on other grounds in* 645 F.3d 1336 (D.C.
6 Cir. 2011)).

7 Defendants contend that sanctions are not appropriate, because
8 the documents have now all been produced and trial has yet to occur, or
9 will not occur because of the anticipated settlement.

10 Plaintiff counters that not all documents have been produced and
11 it has been “exceedingly difficult for HME to identify sales it may have
12 lost as a result of” Defendants’ distribution of the Structural Failures
13 Report and related information, because the spoliation prevented
14 Plaintiff from identifying all of the recipients.

15 Defendants respond that Plaintiff was able to identify hundreds of
16 customers or potential customers in Plaintiff’s opposition to Defendants’
17 summary judgment motion. Indeed, in opposition to the summary
18 judgment motion, Plaintiff’s expert declared that he was provided lists
19 of “overlapping customers,” which included HME customers or
20 prospects who made purchases from RFT or Panasonic for the first time
21 while the trade libel is alleged to have occurred. (ECF No. 275-1 ¶6-9).

22 Plaintiff could have used these lists to identify sales lost to
23 Defendant RFT and Panasonic, but the overlapping customer lists are
24 useless for determining sales lost to other competitors. And the Report
25 may be in the hands of potential customers who had not yet made a

1 purchase from RFT and Panasonic when the overlapping customer lists
2 were prepared. Although the difficulty in identifying lost sales
3 attributable to the missing documents has been alleviated by the
4 overlapping customer lists, the prejudice has not been cured. It
5 remains unknown how widely the Structural Failures Report was
6 distributed, to whom, and how it influenced their purchasing behavior.

7 Plaintiff also emphasizes that Defendant did not produce the
8 Sullivan email and attached zip file until April 14, 2015, and that it is
9 incomplete. Defendants' inability to find documents known to be
10 missing raises the unrebutted presumption that other unidentified
11 relevant documents that are favorable to Plaintiff are also missing.
12 Even if Defendants have now completed production of all non-destroyed
13 documents, Defendants did not do so until months after the close of
14 discovery. As a result, Plaintiff did not have the benefit of those
15 documents while selecting deponents, taking depositions, conducting
16 third party discovery, and preparing its trial strategy and pre-trial
17 documents. Plaintiff has had to divert resources to pursuing the
18 missing documents and reviewing—on an expedited basis—the
19 documents Defendant dumped on Plaintiff at the last minute. The
20 diversion of resources necessitated by the spoliation distraction creates
21 a further “risk of erroneous judgment on this claim.”

22 In addition, Plaintiff has expended significant resources in
23 compelling Defendants to comply with their discovery obligations.
24 Plaintiff conservatively estimates its costs and fees at approximately
25 \$52,000. Defendants and their attorneys have made no offer to

1 voluntarily cover any of the Plaintiff's costs and fees that were
2 necessitated by the discovery problems.

3 On the other hand, the fact that Plaintiff did not ask the Court to
4 re-open discovery suggests that Plaintiff's ability to go to trial is no
5 longer impaired. It may also be that evidence that Plaintiff would have
6 obtained absent Defendants' misconduct would merely be cumulative of
7 the evidence Plaintiff now has.

8 The Court concludes Defendants' spoliation has not impaired
9 Plaintiff's ability to go to trial, but has *threatened* to interfere with the
10 rightful decision of the case, and may force Plaintiff to rely on
11 incomplete and spotty evidence. *See Leon, supra*, 464 F.3d at 959.

12 Consequently, the Court finds Defendant RFT and its attorneys
13 responsible under Rule 37 for the spoliation of relevant documents
14 favorable to Plaintiff and for violating Magistrate Judge Burkhardt's
15 July 3, 2014 Order. The Court finds Plaintiff was prejudiced by the
16 destruction and late production of documents, and further finds that the
17 tardy production of documents has not fully cured the prejudice to
18 Plaintiff. The Court also finds that Defendants' destruction of
19 documents and failure to timely provide ESI did not result from "the
20 routine, good-faith operation of an electronic information system." *See*
21 FED. R. CIV. P. 37(e).

22 **b. Proposed Amended Rule 37**

23 In anticipation of the amendment of Rule 37, the Court further
24 finds that it would reach the same result under the proposed amended
25 Rule 37. The proposed changes to Rule 37 are expected to take effect on

1 December 1, 2015, absent unforeseen circumstances. Subsection (b) of
2 Rule 37, under which this Court has analyzed this motion, is expected
3 to remain unchanged. But the new Rule 37(e) states:

4
5 **(e) Failure to Preserve Electronically Stored**
6 **Information.** If electronically stored information that
7 should have been preserved in the anticipation or
8 conduct of litigation is lost because a party failed to take
9 reasonable steps to preserve it, and it cannot be restored
10 or replaced through additional discovery, the court:

- 11 (1) upon finding prejudice to another party from
12 loss of the information, may order measures
13 no greater than necessary to cure the
14 prejudice; or
- 15 (2) only upon finding that the party acted with the
16 intent to deprive another party of the
17 information's use in the litigation may:
- 18 (A) presume that the lost information was
19 unfavorable to the party;
- 20 (B) instruct the jury that it may or must
21 presume the information was unfavorable
22 to the party; or
- 23 (C) dismiss the action or enter a default
24 judgment.

25 Proposed amended Rule 37(e) as submitted to Congress on April 29,
2015, after adoption by the U.S. Supreme Court, *available at*
<http://www.uscourts.gov/file/document/congress-materials> (last accessed
on June 16, 2015).

1 The new Rule 37 and its Advisory Committee Notes do not
2 address the interplay of subsection (b) with subsection (e). In this
3 instance, subsection (b) would apply because Defendant and its
4 attorneys violated Magistrate Judge Burkhardt's Order to produce the
5 ESI at issue.

6 Even if subsection (e) applied instead of subsection (b), the Court
7 would reach the same result on this record. The Court has already
8 found that Plaintiff was prejudiced by the destruction and delayed
9 production of documents. The Court further finds that Defendants
10 intended to deprive Plaintiff of the use of the information the sales force
11 deleted in response to Defendant Noorian's command. Defendant
12 Noorian asked for and commanded the deletion of these documents
13 specifically because they were relevant to this lawsuit. Accordingly, the
14 Court finds Plaintiff has made a sufficient showing under the proposed
15 amended Rule 37 to warrant the same sanctions that the Court finds, in
16 the following section, are appropriate under the current Rule 37.

17 **3. Sanctions**

18 Sanctions imposed by the court "should be designed to: (1) deter
19 parties from engaging in spoliation; (2) place the risk of an erroneous
20 judgment on the party who wrongfully created the risk; and (3) restore
21 the prejudiced party to the same position he would have been in absent
22 the wrongful destruction of evidence by the opposing party." *West v.*
23 *Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999).

24 Plaintiff requests various forms of sanctions. Plaintiff does not
25 seek the most extreme type of relief: an outright entry of judgment

1 against Defendants. Plaintiff also does not seek the least extreme type
2 of relief: the re-opening of discovery. The Court has considered the
3 various types of sanctions Plaintiff seeks, and finds that monetary
4 sanctions, issue sanctions, and an adverse inference instruction are
5 appropriate, as set forth below.

6 **a. Monetary Sanctions**

7 As provided by current Rule 37(b)(2)(C), the Court is required to
8 impose reasonable expenses, including attorney' fees, upon "the
9 disobedient party, the attorney advising that party, or both." The Court
10 must impose costs unless the failure to comply with the court order was
11 "substantially justified or other circumstances make an award of
12 expenses unjust." *Id.* Similarly, Rule 26(g)(3) requires an award of
13 reasonable fees and costs.

14 The Court finds that sanctions must be imposed against
15 Defendant RFT (the disobedient party) and the LeClairRyan LLP firm
16 and Thomas O'Leary personally under Rule 37.⁵ The Court further
17 finds that sanctions must be imposed against Defendants Noorian, RFT,
18 and attorney Thomas O'Leary under Rule 26(g)(3).

19 Due to the duration, frequency and severity of the discovery
20 abuses, tracing the direct causal link between the pervasive misconduct
21 and the fees and costs incurred is not possible. *See Chambers, supra*,
22 501 U.S. at 56; *Haeger, supra*, --F.3d-- at 26-38. The Court will award
23 compensatory sanctions in the form of all attorneys' fees and costs
24

25 ⁵ Rule 37 sanctions will not be imposed on Noorian. *See*, n.4, above.

1 incurred by Plaintiff in seeking discovery from Defendants from October
2 18, 2013, when Defendant served its first discovery responses
3 containing false certifications, to date. Because the Defendants'
4 discovery was intentionally flawed from the beginning, the Court is
5 imposing all monetary sanctions concurrently under both Rule 26(g)(3)
6 and Rule 37. Each disciplinary authority is independently sufficient to
7 warrant the full extent of monetary sanctions imposed. The Court will
8 determine the amount and apportionment of the award by separate
9 order following receipt of the necessary information from counsel for
10 Plaintiff.

11 **b. Contempt**

12 Plaintiff also seeks a finding of contempt against Defendants
13 based on their failure to comply with Magistrate Judge Burkhardt's
14 July 3, 2014, Order. In this request, Plaintiff appears to be seeking civil
15 (*i.e.*, coercive) rather than criminal (*i.e.*, punitive) contempt. (*See* ECF
16 No. 288 at 39:23 (relying on the standard for finding civil contempt)).
17 The Court agrees with Plaintiff that Defendant RFT violated
18 Magistrate Judge Burkhardt's specific and definite Order, that
19 Defendant RFT did not take every reasonable step to comply with that
20 order, and that compliance was possible. Nevertheless, the Court is not
21 persuaded that Defendant Noorian can be held in contempt for violating
22 the Order requiring Defendant RFT to complete its production. The
23 Court is also not persuaded that either Defendant has the ability to
24 satisfy a civil contempt order requiring them to produce additional
25 documents.

1 To the extent that Plaintiff's request is geared towards coercing
2 the production of the missing documents, the filing of the motion has
3 had the intended effect. In addition, Plaintiff has not shown that
4 Defendants have the ability to comply with a contempt order crafted to
5 coerce further production of documents. If, as it appears, Defendants
6 destroyed documents, then Defendants have no ability to produce the
7 destroyed documents. Thus, a coercive contempt order would be
8 inappropriate with respect to the destroyed documents.

9 The Defendants also argue that all missing documents have now
10 been produced. If true, Defendants lack the ability to produce more
11 documents. The Court is wary of Defendants' claim that there are no
12 more documents to produce, given this record. But Plaintiff has not met
13 its burden to show that Defendant has relevant documents that
14 survived destruction and have not now been produced.

15 Accordingly, the Court finds a civil contempt finding
16 inappropriate. Plaintiff's motion for a contempt certification from this
17 Court to the District Judge is **DENIED**.

18 **c. Report and Recommendation for Issue Sanctions**
19 **and Adverse Inference Instruction**

20 **i. Introduction**

21 This Report and Recommendation is submitted to United States
22 District Judge Cynthia Bashant pursuant to 28 U.S.C. §636 and Local
23 Civil Rule 72.1(c) of the United States District Court for the Southern
24 District of California. In this Report and Recommendation, this Court
25 **RECOMMENDS** that the district court **GRANT** Plaintiff's request for

1 issue sanctions and an adverse inference instruction against
2 Defendants if the settlement is not finalized and the matter proceeds to
3 trial.

4 The Court has considered whether lesser sanctions are sufficient,
5 and finds they are not. Specifically, Magistrate Judge Burkhardt
6 already imposed monetary sanctions on Defendant RFT for failure to
7 comply with a discovery order concerning these documents. The
8 imposition of monetary sanctions had, at best, a fleeting effect on
9 Defendants and their attorneys. Moreover, the imposition of monetary
10 sanctions alone will not cure the prejudice to Plaintiff.

11 **ii. Issue Sanctions**

12 The Court **RECOMMENDS** finding that Plaintiff's requested
13 issue sanction in the form of a finding that the Report is false is
14 appropriate. Plaintiff has shown that the spoliated documents relate to
15 RFT's creation of the Report and show that it was not an internal report
16 prepared by Plaintiff. Because Defendants destroyed the documents
17 that they knew related directly to Plaintiff's claims after (and because)
18 this case was filed, the parties and the Court cannot review the contents
19 of the destroyed documents. Therefore, it is appropriate to transfer the
20 risk of uncertainty from Plaintiff to Defendant as to whether the
21 destroyed documents included a party admission by RFT that the
22 Structural Failures Report was false.

23 The Court further finds sufficient grounds for establishing as a
24 fact that Defendants fabricated the average rate of repair and lifetime
25

1 cost of the ION IQ as presented in materials created by Defendants, and
2 did so with knowledge that the figures had no reliable basis.

3 Accordingly, this Court **RECOMMENDS GRANTING** Plaintiff's
4 motion to establish as a fact that the Structural Failures Report is false,
5 and that Defendants fabricated the average rate of repair and lifetime
6 cost figures.

7 **iii. Adverse Inference Instruction Standard**

8 Adverse inference instructions are appropriate when a party
9 destroys evidence or refuses to timely produce documents. *Residential*
10 *Funding Corp, v. DeGeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir. 2002);
11 *but see* Committee Note to proposed new Rule 37(e)(2) (rejecting
12 *Residential Funding* on other grounds). Specifically, Plaintiff requests
13 “an adverse inference instruction that (1) relevant documents
14 Defendants failed to timely produce, or to produce at all, are harmful to
15 Defendants, and (2) Defendants were aware of the falsity of the
16 Structural Failures document and the average repair rate information,
17 and encouraged distribution of the same.” (ECF No. 288 at 39:16-20).

18 The Court finds that the first instruction requested is warranted.
19 The majority of courts, including many courts in the Ninth Circuit,
20 apply “the three-part test set forth in *Zubulake v. UBS Warburg, LLC*,
21 220 F.R.D. 212, 216 (S.D. N.Y. 2003), for determining whether to grant
22 an adverse inference spoliation instruction.” *Apple v. Samsung*, 881
23 F.Supp.2d 1132, 1138 (N.D. Cal. 2012) (“*Apple I*”); *Lewis v. Ryan*, 261
24 F.R.D. 513, 518 (S.D. Cal. 2009); *Zest IP Holdings, LLC v. Implant*
25 *Direct Mfg., LLC*, No. CIV. 10-0541-GPC WVG, 2013 WL 6159177, at *5

1 (S.D. Cal. Nov. 25, 2013), report and recommendation adopted in part,
2 No. CIV. 10-541-GPC WVG, 2014 WL 6851607 (S.D. Cal. June 16,
3 2014).

4 In *Zubulake IV*, the court stated:

5 A party seeking an adverse inference instruction
6 (or other sanctions) based on the spoliation of evidence
7 must establish the following three elements: (1) that the
8 party having control over the evidence had an obligation
9 to preserve it at the time it was destroyed; (2) that the
10 records were destroyed with a ‘culpable state of mind’
11 and (3) that the evidence was ‘relevant’ to the party's
claim or defense such that a reasonable trier of fact
could find that it would support that claim or defense.

12 *Zubulake IV*, 220 F.R.D. at 220 (citing *Residential Funding Corp. supra*,
13 306 F.3d at 108); *see also Apple II*, 888 F.Supp.2d at 989–90; *but see*
14 Advisory Committee Notes to proposed new Rule 37(e)(2) (rejecting
15 cases such as *Residential Funding* “that authorize the giving of adverse-
16 inference instructions on a finding of negligence or gross negligence.”).

17 “When evidence is destroyed in bad faith, that fact alone is
18 sufficient to demonstrate relevance.” *Zubulake IV, supra*, 220 F.R.D. at
19 220. “By contrast, when the destruction is negligent, relevance must be
20 proven by the party seeking the sanctions.” *Id.*

21 Under current Rule 37, to find a “culpable state of mind,” a court
22 need only find that a spoliator acted in “conscious disregard” of its
23 obligations to not destroy documents. *Apple II*, 888 F.Supp.2d at 989–
24 990, (citing *Hamilton v. Signature Flight Support Corp.*, 2005 WL
25 3481423, at *7 (N.D. Cal. 2004); *Io Group v. GLBT, Ltd.*, 2011 WL

1 4974337, at *7 (N.D. Cal. 2011)). Where, however, a non-spoliating
2 party fails to show a degree of fault and level of prejudice, negligent
3 destruction of documents does not warrant an adverse inference
4 instruction or evidence preclusion. *Apple II*, 888 F.Supp.2d at 993.

5 If spoliation is shown, the burden of proof shifts to the guilty party
6 to show that no prejudice resulted from the spoliation, because that
7 party “is in a much better position to show what was destroyed and
8 should not be able to benefit from its wrongdoing.” *Apple II*, 888
9 F.Supp.2d at 998 (citing *Hynix Semiconductor v. Rambus*, 591
10 F.Supp.2d 1038, 1060 (N.D. Cal.2006), *vacated on other grounds in* 645
11 F.3d 1336 (D.C. Cir. 2011)); *In re Hitachi*, 2011 WL 3563781, at *6.

12 **iv. Analysis re Adverse Inference Instruction**

13 As explained earlier in this Order, the Court finds that spoliation
14 of evidence that Defendants controlled occurred after the duty to
15 preserve it arose and that Defendants acted with a culpable state of
16 mind. Plaintiff is prejudiced by the destruction of the Structural
17 Failures Report related documents, because the contents of these
18 documents are directly relevant to showing lost sales with respect to the
19 trade libel and unfair competition claims at issue in this litigation. As a
20 result, Plaintiff is now forced to go to trial while relying on incomplete
21 evidence.

22 Defendants attempt to rebut the presumption of prejudice by
23 stating that they produced all of the documents that were missing as a
24 result of errors, that Plaintiff has not shown that any specific emails or
25 documents are still missing, and that any documents that were

1 destroyed were merely “copies” of the Structural Failures Report that
2 Plaintiff already has. None of these contentions actually rebut the
3 presumption. Defendants’ assumption that the employees only deleted
4 identical copies of the Structural Failures Report is unsupported
5 conjecture. Defendants did not offer any forensic evidence to support
6 their position. Further, Plaintiff has pointed to the incomplete zip file
7 and missing documents captured in the five screen shots. It is not
8 possible for Plaintiff to point to additional specific documents that were
9 destroyed precisely because Defendants destroyed them before Plaintiff
10 could review them. Plaintiff has submitted sufficient evidence for this
11 Court to determine that documents relevant to the claims in this action
12 were destroyed because of Defendants' culpable conduct.

13 **v. Recommended Adverse Inference Instruction**

14 As a sanction for Defendants’ spoliation of relevant evidence, the
15 Court **RECOMMENDS GRANTING** Plaintiff’s motion that an adverse
16 inference instruction should be read to the jury. An adverse inference
17 instruction for spoliation of evidence can take many forms, ranging in
18 degrees of harshness. *Pension Comm., supra*, 685 F.Supp.2d at 470–71.
19 Based on Defendants' intentional deletion of documents it knew to be
20 relevant, the Court **RECOMMENDS** that the jury be instructed as
21 follows:

22 Defendants, after learning that Plaintiff had sued
23 Defendant RFT, destroyed relevant evidence for Plaintiff's
24 use in this litigation. The deleted evidence pertains to the
25 creation and distribution of the Structural Failures Report

1 and the average repair rate of Plaintiff's products, which
2 pertains to Plaintiff's unfair competition and trade libel
3 claims.

4 You should presume from that destruction that the
5 evidence destroyed was relevant to Plaintiff's case and that
6 the destroyed evidence was favorable to Plaintiff.

7 You may, if you deem appropriate, take the destruction
8 of documents into account in assessing the elements of
9 Defendants' intent and knowledge, of whether the Structural
10 Failures Report or average repair rate information were a
11 substantial factor in causing Plaintiff damage, whether
12 Plaintiff was damaged, and the amount of damage Plaintiff
13 suffered.

14 *See E.I. du Pont de Nemours and Co. v. Kolon Indus., Inc.*, 803
15 F.Supp.2d 469, 509 (E.D. Va. 2011); *Food Service of America, Inc. v.*
16 *Carrington*, No. CV-12-00175-PHX-GMS, 2013 WL 4507593, at *22 (D.
17 Ariz. Aug. 23, 2013); *Chamberlain v. Les Schwab Tire Center of*
18 *California*, No. 2:11-CV-03105-JAM, 2012 WL 6020103 at *6 (E.D. Cal.
19 Dec. 3, 2012); *Zest IP Holdings, LLC, supra*, 2013 WL 6159177, at *5.

20 Conclusion

21 In conclusion, the Court **GRANTS** in part and **DENIES** in part
22 Plaintiff's request for sanctions, and **DENIES** Plaintiff's request for a
23 certification of contempt findings.

24 Specifically, the Court **GRANTS** Plaintiff's request for reasonable
25 attorneys' fees and costs incurred as a result of Defendants' discovery

1 misconduct, pursuant to Rules 26(g)(3) and 37. The Court will award
2 compensatory sanctions that represent all reasonable fees and costs
3 Plaintiff incurred in collecting discovery from Defendants from October
4 18, 2013 to date. The Court will determine the amount and
5 apportionment of the award by separate order. Plaintiff must file a
6 motion for attorneys' fees and costs within fourteen (14) days of the date
7 of this Order. The motion should contain the necessary documentation
8 and declarations regarding costs and fees. *See* ECF 185 at 16; *Blum v.*
9 *Stenson*, 465 U.S. 886, 895 n.11 (1984); *Haeger v. Goodyear Tire and*
10 *Rubber Co.*, Case No. 2:05-cv-02046-ROS, ECF No. 1125 (D. Ariz.
11 August 26, 2013). Defendants and counsel may file an opposition to the
12 fees motion no later than fourteen (14) days following the filing of the
13 motion.


14 In the event that the parties do not finalize their noticed
15 settlement, the Court further **RECOMMENDS** that the district judge
16 issue an order: (1) **ADOPTING** the Report and Recommendation
17 contained in this Order, (2) **GRANTING** Plaintiff's motion for an issue
18 sanction against Defendants that the Structural Failures Report is false
19 and an issue sanction that the Defendants fabricated the HME ION IQ
20 average rate of repair and lifetime cost figures in sales materials, and
21 did so with knowledge that the figures had no reliable basis, and (3)
22 **GRANTING** Plaintiff's request for the adverse inference as
23 recommended herein. Any objections to the Report and
24 Recommendation contained in this Order must be filed with the district
25 court judge within 14 days of a notification from the parties that their

1 noticed settlement did not come to pass. FED. R. CIV. P. 72(a); CIV. L.R.
2 72.1(b). The parties are advised that failure to file objections within the
3 specified time may waive the right to raise those objections on appeal of
4 the court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 In addition, any party objecting to this Order or the Report and
6 Recommendation in this Order is **ORDERED** to deliver to the district
7 judge's chambers a complete set of the papers relating to this motion,
8 included docket entries cited in this Order, in fully-tabbed, well-
9 organized binders within one business day of the date the party files
10 their objections.

11
12 **IT IS SO ORDERED.**

13
14
15 Dated: August 7, 2015


16 Hon. Mitchell D. Dembin
17 United States Magistrate Judge
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25

Docket

**U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:12-cv-02884-BAS-MDD**

HM Electronics, Inc. v. R.F. Technologies, Inc.
Assigned to: Judge Cynthia Bashant
Referred to: Magistrate Judge Mitchell D. Dembin
Demand: \$100,000
Cause: 15:0044

Date Filed: 12/04/2012
Jury Demand: Both
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

HM Electronics, Inc.
a California Corporation

represented by **Callie A Bjurstrom**
Pillsbury Winthrop Shaw Pittman LLP
501 West Broadway
Suite 1100
San Diego, CA 92101-3575
619-234-5000
Fax: 619-236-1995
Email: callie.bjurstrom@pillsburylaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kathryn Ashley Nyce
Pillsbury Winthrop Shaw Pittman LLP
501 West Broadway
Suite 1100
San Diego, CA 92101-3575
(619)234-5000
Fax: (619)236-1995
Email: kathryn.nyce@pillsburylaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kelly Wong Craven
Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street
Suite 2800
Los Angeles, CA 90071-2627
(213) 488-7585
Fax: (213) 629-1033
Email: kelly.craven@pillsburylaw.com
TERMINATED: 06/29/2015
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew Robert Stephens
Pillsbury Winthrop Shaw Pittman LLP
501 W. Broadway
Suite 1100
San Diego, CA 92101
619-544-3196

Fax: 619-819-4364
Email: matthew.stephens@pillsburylaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian David Martin
Pillsbury Winthrop Shaw Pittman
501 West Broadway
Suite 1100
San Diego, CA 92101-3575
(619)234-5000
Fax: (619)236-1995
Email: brian.martin@pillsburylaw.com
ATTORNEY TO BE NOTICED

Michelle Ann Herrera
Pillsbury Winthrop Shaw Pittman LLP
501 West Broadway
Suite 1100
San Diego, CA 92101-3372
619-544-3132
Fax: 619-236-1995
Email: michelle.herrera@pillsburylaw.com
ATTORNEY TO BE NOTICED

V.

Defendant

R.F. Technologies, Inc.
an Illinois Corporation

represented by **Allan E Anderson**
Arent Fox LLP
555 West 5th Street
Los Angeles, CA 90013
(213) 629-7400
Fax: (213) 629-7401
Email: anderson.allan@arentfox.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Grant Bayles
Arent Fox LLP
555 West 5th Street
48th Floor
Los Angeles, CA 90013
(213)629-7406
Fax: (213) 629-7401
Email: bayles.david@arentfox.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Keith Glen Wileman
Veatch Carlson
700 South Flower Street
22nd Floor

Los Angeles, CA 90017
(213) 381-2861
Fax: (213) 383-6370
Email: kwileman@veatchfirm.com
TERMINATED: 09/24/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Stephen Gerard Larson
Arent Fox LLP
555 W. 5th Street
48th Floor
Los Angeles, CA 90013
213-443-7616
Email: Stephen.Larson@arentfox.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas M. O'Leary
LeClairRyan LLP
725 S. Figueroa Street, Suite 350
Los Angeles, CA 90017
213-488-0503
Fax: 213-624-3755
Email: thomas.oleary@leclairryan.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian C. Vanderhoof
LeclairRyan LLP
725 S. Figueroa Street, Suite 350
Los Angeles, CA 90017
(213) 488-0503
Fax: (213) 624-3755
Email: brian.vanderhoof@leclairryan.com
ATTORNEY TO BE NOTICED

Howard E. Silverman
Greenberg Traurig LLP
77 West Wacker Drive
Suite 3100
Chicago, IL 60601
(312) 456-8400
Email: silvermanh@gtlaw.com
TERMINATED: 08/01/2014
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kevin J O'Shea
Greenberg Traurig, LLP
77 West Wacker Drive
Suite 3100
Chicago, IL 60601
(312) 456-1025

Fax: (312)456-8435
Email: Kevin.oshea@icemiller.com
TERMINATED: 08/01/2014
PRO HAC VICE
ATTORNEY TO BE NOTICED

Mark C. Goldenberg
Goldenberg Heller Antognoli & Rowland,
P.C.
2227 South State Route 157
Edwardsville, IL 62025
(618)650-7102
Fax: (618)656-6230
Email: mark@ghalaw.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant

Babak Noorian

represented by **Allan E Anderson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David Grant Bayles
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Stephen Gerard Larson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian C. Vanderhoof
(See above for address)
ATTORNEY TO BE NOTICED

Thomas M. O'Leary
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/04/2012	1	COMPLAINT with Jury Demand against R.F. Technologies, Inc. (Filing fee \$ 350 receipt number 0974-5399454.), filed by HM Electronics, Inc. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A - Trademark Registration Numbers) The new case number is 3:12-cv-2884-MMA-WMC. Judge Michael M. Anello and Magistrate Judge William McCurine, Jr. are assigned to the case. (Bjurstrom, Callie)(cxl) (Entered: 12/04/2012)
12/04/2012	2	Corporate Disclosure Statement by HM Electronics, Inc. (cxl) (Entered: 12/04/2012)
12/04/2012	3	REPORT on the filing or determination of an action regarding patent and/or trademark

		number(s) *2,960,213*, *1,499,393* cc:USPTO (cxl) (Entered: 12/04/2012)
12/04/2012	4	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (cxl) (Entered: 12/04/2012)
12/11/2012	5	SUMMONS Returned Executed by HM Electronics, Inc.. R.F. Technologies, Inc. served. (Bjurstrom, Callie) (leh). (Entered: 12/11/2012)
01/02/2013	6	Joint MOTION for Extension of Time to File Answer re 1 Complaint, <i>filed</i> by R.F. Technologies, Inc.. (Wileman, Keith) (leh). (Entered: 01/02/2013)
01/02/2013	7	<u>ORDER granting 6</u> Motion for Extension of Time to Answer. Defendant R.F. Technologies, Inc., shall file a responsive pleading to the Complaint no later than January 24, 2013. So Ordered by Judge Michael M. Anello on 1/2/13.(no document attached) (ajf) (Entered: 01/02/2013)
01/10/2013	8	PRO HAC VICE APPOINTED: Mark C. Goldenberg appearing for Defendant R.F. Technologies, Inc. (All non-registered users served via U.S. Mail Service)(vam) (Entered: 01/10/2013)
01/25/2013	9	MOTION to Dismiss for Failure to State a Claim , <i>to Strike, or for a More Definite Statement</i> by R.F. Technologies, Inc.. (Attachments: # 1 Memo of Points and Authorities In Support Thereof)(Wileman, Keith) Modified on 1/28/2013 atty contacted re: missing pos, atty to file pos with Court (leh). (Entered: 01/25/2013)
01/25/2013	10	NOTICE of Party With Financial Interest by R.F. Technologies, Inc. (Wileman, Keith) Modified on 1/28/2013 atty contacted re: missing pos, atty to file pos with Court (leh). (Entered: 01/25/2013)
01/25/2013	11	ORDER Setting Briefing Schedule re 9 MOTION to Dismiss for Failure to State a Claim , <i>to Strike, or for a More Definite Statement</i> :Opposition due 2/25/2013, Reply due 3/4/2013. Signed by Judge Michael M. Anello on 1/25/13.(All non-registered users served via U.S. Mail Service)(kaj) (Entered: 01/25/2013)
01/26/2013	12	NOTICE by R.F. Technologies, Inc. re 11 Order Setting Briefing Schedule, <i>Proof of Electronic Service on Defendant's Co-Counsel</i> (Wileman, Keith) Modified on 1/28/2013 atty contacted re: doc not required to be filed (leh). (Entered: 01/26/2013)
01/27/2013	13	NOTICE by R.F. Technologies, Inc. re 8 Pro Hac Vice Appointed <i>E-Mail Address of Counsel Mark C. Goldenberg</i> (Wileman, Keith) Modified on 1/28/2013 atty contacted re: doc not required to be filed, pro hac atty to register for CM/ECF (leh). (Entered: 01/27/2013)
01/28/2013	14	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. as to 10 Notice of Party with Financial Interest (Attachments: # 1 Notice)(Wileman, Keith) Modified on 1/29/2013 to link to doc(leh). (Entered: 01/28/2013)
01/28/2013	15	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. as to 9 Motion to Dismiss (Attachments: # 1 Notice)(Wileman, Keith) Modified on 1/29/2013 to link to doc(leh). (Entered: 01/28/2013)
02/25/2013	16	RESPONSE in Opposition re 9 MOTION to Dismiss for Failure to State a Claim , <i>to Strike, or for a More Definite Statement</i> filed by HM Electronics, Inc. (Attachments: # 1 Proof of Service)(Bjurstrom, Callie)(leh). (Entered: 02/25/2013)
03/04/2013	17	DOCUMENT STRICKEN PER ORDER ON 3/4/2013 - REPLY to Response to Motion re 9 MOTION to Dismiss for Failure to State a Claim , <i>to Strike, or for a More Definite Statement</i> filed by R.F. Technologies, Inc. (Wileman, Keith) Modified on 3/4/2013 to strike doc and remove image(leh). (Entered: 03/04/2013)

03/04/2013	18	Notice of Document Discrepancies and Order Thereon by Judge Michael M. Anello: Rejecting Document, from Defendant R.F. Technologies, Inc., re 17 Reply to Response to Motion. Non-compliance with local rule(s), ECF 2(f): Lacking proper signature, OTHER: Civ. L. Rule 7.1(h): Reply brief exceeds permissible page length. IT IS HEREBY ORDERED: The document is rejected. It is ordered that the Clerk STRIKE the document from the record, and serve a copy of this order on all parties. Signed by Judge Michael M. Anello on 3/4/2013.(leh) (Entered: 03/04/2013)
03/04/2013	19	NOTICE of Appearance by Kathryn Ashley Nyce on behalf of HM Electronics, Inc. (Nyce, Kathryn)(leh). (Entered: 03/04/2013)
03/05/2013	20	<u>Minute Order Taking Matter Under Submission</u> . Currently set for hearing before the Court on April 2, 2013, is Defendant's 9 MOTION to Dismiss for Failure to State a Claim, to Strike, or for a More Definite Statement. The Court finds this matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1.d.1. Accordingly, the April 2, 2013, hearing is VACATED; no appearances are required. SO ORDERED by Judge Michael M. Anello on March 5, 2013.(no document attached) (ajf) (Entered: 03/05/2013)
03/08/2013	21	[DOCUMENT STRICKEN PER ORDER ON 3/8/2013] - REPLY to Response to Motion filed by R.F. Technologies, Inc.. (Wileman, Keith) Modified on 3/8/2013 to strike doc and remove image (leh). (Entered: 03/08/2013)
03/08/2013	22	Notice of Document Discrepancies and Order Thereon by Judge Michael M. Anello: Rejecting Document, from Defendant R.F. Technologies, Inc., re 21 Reply to Response to Motion. Non-compliance with local rule(s), ECF 2(f): Lacking proper signature, OTHER: (1) Brief is untimely. Pursuant to Court Order, see Doc. No. 11, Defendants Reply was due on March 4, 2013. (2) No leave of Court. Plaintiff may not file a document after a Court-ordered filing deadline without leave of Court. (3) Matter has been taken under submission. (4) Violation of Federal Rule of Civil Procedure 11(a). Document is not signed and must be stricken as a result. IT IS HEREBY ORDERED: The document is rejected. It is ordered that the Clerk STRIKE the document from the record, and serve a copy of this order on all parties. Signed by Judge Michael M. Anello on 3/8/2013.(leh) (Entered: 03/08/2013)
03/18/2013	23	ORDER Granting in Part and Denying in Part 9 Motion to Dismiss for Failure to State a Claim, Strike, or For a More Definite Statement. The Court Hereby Rules that Plaintiff's Second Claim for Federal common law trademark infringement is Dismissed with Leave to Amend. Leave to amend is for the sole purpose of asserting a California common law infringement claim if Plaintiff wishes to assert such a claim. If necessary, Plaintiff shall file a First Amended Complaint within 7 days of the date of this Order. Defendant's motion to strike is Denied. Based on the Court's rulings on the motion to dismiss, no basis exists to grant the motion to strike. Defendant's motion for a more definite statement is Denied. Signed by Judge Michael M. Anello on 3/15/2013. (leh) (Entered: 03/18/2013)
04/19/2013	24	ANSWER to 1 Complaint, with Jury Demand by R.F. Technologies, Inc..(Wileman, Keith) Modified on 4/22/2013 atty contacted re: missing pos, atty to file pos (leh). (Entered: 04/19/2013)
04/22/2013	25	NOTICE AND ORDER for Early Neutral Evaluation Conference: It is hereby ordered that an Early Neutral Evaluation will be held on 5/13/2013 at 9:30 AM in the Chambers of Magistrate Judge William McCurine Jr. Signed by Magistrate Judge William McCurine, Jr on 4/22/2013. (leh) (jcj). (Entered: 04/22/2013)
04/23/2013	26	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 24 Answer to Complaint (Wileman, Keith) (leh). (Entered: 04/23/2013)
05/08/2013	27	Ex Parte MOTION to Allow the Use of Electrical Equipment in the Courtroom <i>for Early Neutral Evaluation Conference</i> by HM Electronics, Inc. (Attachments: # 1 Proof of Service)

		(Bjurstrom, Callie) (leh). (Entered: 05/08/2013)
05/09/2013	28	ORDER Granting 27 Ex Parte Motion to Allow the Use of Electrical Equipment in the Courtroom for Early Neutral Evaluation Conference. Plaintiff may bring the following equipment into the Courtroom on 5/13/2013: a laptop computer with a built-in camera; power cord; two drive-thru headsets; and two drive-thru timers. Signed by Magistrate Judge William McCurine, Jr on 5/8/2013. (cc: USM) (leh) (Entered: 05/09/2013)
05/13/2013	29	Order Setting Settlement Conference: The Court conducted an Early Neutral Evaluation Conference on 5/13/2013. The Court will conduct an in-person Settlement Conference on 6/10/2013 at 9:30 AM before Magistrate Judge William McCurine Jr. In preparation for the conference, counsel will submit a proposed stipulated injunction by 6/5/2013. Signed by Magistrate Judge William McCurine, Jr on 5/13/2013.(leh) (jcj). (Entered: 05/13/2013)
05/13/2013	30	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Early Neutral Evaluation Conference held on 5/13/2013. Order issued.(CD# 5/13/2013 n/a). (Plaintiff Attorney Callie A. Bjurstrom, Kathryn A. Nyce). (Defendant Attorney Keith G. Wileman). (no document attached) (rab) (Entered: 05/20/2013)
06/10/2013	32	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Settlement Conference held on 6/10/2013. Order issued.(CD# 6/10/2013 n/a). (Plaintiff Attorney Callie A. Bjurstrom). (Defendant Attorney Keith G. Wileman). (no document attached) (rab) (Entered: 06/12/2013)
06/11/2013	31	Order Following ENE: The Court held an Early Neutral Evaluation Conference on 5/13/2013, and conducted a follow-up settlement conference on 6/10/2013. The parties did not reach settlement. The Court hereby Orders a Telephonic Case Management Conference set for 8/8/2013 at 4:30 PM before Magistrate Judge William McCurine Jr. The Court instructs Plaintiff's Counsel to initiate a joint call to the Court. Signed by Magistrate Judge William McCurine, Jr on 6/11/2013.(leh) (Entered: 06/11/2013)
06/12/2013	33	ORDER Continuing Case Management Conference: The CMC is continued to 8/21/2013 at 4:30 PM before Magistrate Judge William McCurine Jr. The Court instructs Plaintiff's Counsel to initiate the joint call to Court. Signed by Magistrate Judge William McCurine, Jr on 6/12/2013.(leh) (Entered: 06/12/2013)
07/23/2013	34	ORDER Continuing Case Management Conference: The Telephonic CMC is continued to 8/22/2013 at 4:30 PM before Magistrate Judge William McCurine Jr. The Court instructs Plaintiff's Counsel to initiate the joint call to Court. Signed by Magistrate Judge William McCurine, Jr on 7/23/2013.(leh) (Entered: 07/23/2013)
08/07/2013	35	MOTION for Preliminary Injunction by HM Electronics, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Daren Haas, # 3 Index of Exhibits, # 4 Exhibit 1 to Haas Declaration, # 5 Exhibit 2 to Haas Declaration, # 6 Exhibit 3 to Haas Declaration, # 7 Exhibit 4 to Haas Declaration, # 8 Exhibit 5 to Haas Declaration, # 9 Exhibit 6 to Haas Declaration, # 10 Exhibit 7 to Haas Declaration, # 11 Exhibit 8 to Haas Declaration, # 12 Exhibit 9 to Haas Declaration, # 13 Exhibit 10 to Haas Declaration, # 14 Exhibit 11 to Haas Declaration, # 15 Exhibit 12 to Haas Declaration, # 16 Exhibit 13 to Haas Declaration, # 17 Exhibit 14 to Haas Declaration, # 18 Proof of Service)(Bjurstrom, Callie)(leh). (Entered: 08/07/2013)
08/22/2013	38	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Case Management Conference held on 8/22/2013. Order issued. (Plaintiff Attorney Callie A. Bjurstrom). (Defendant Attorney Keith G. Wileman). (no document attached) (rab) (Entered: 09/09/2013)
08/23/2013	36	ORDER Setting Telephonic Status Conference: The Court will conduct a telephonic status conference set for 9/9/2013 at 4:30 PM before Magistrate Judge William McCurine Jr. The

		parties should be prepared to discuss any remaining e-discovery issues and setting the pretrial and discovery schedule. Signed by Magistrate Judge William McCurine, Jr on 8/23/2013.(leh) (Entered: 08/23/2013)
08/29/2013	37	NOTICE of Unavailability of Counsel by R.F. Technologies, Inc. (Wileman, Keith) Modified on 8/30/2013 atty contacted re: unauthorized s/ signature (leh). (Entered: 08/29/2013)
09/09/2013	39	NOTICE by R.F. Technologies, Inc. Association of Counsel (O'Leary, Thomas)Attorney Thomas M. O'Leary added to party R.F. Technologies, Inc.(pty:dft) (yeb). (Entered: 09/09/2013)
09/09/2013	50	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Status Conference held on 9/9/2013. Order issued.(CD# 9/9/2013 n/a). (Plaintiff Attorney Kathryn A. Nyce). (Defendant Attorney Thomas O'Leary, Mark Golenburg). (no document attached) (rab) (Entered: 10/01/2013)
09/16/2013	40	RESPONSE in Opposition re 35 MOTION for Preliminary Injunction filed by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Babak Noorian in Opposition to Plaintiff's Motion for Preliminary Injunction, # 2 Objections to the Declaration of Daren Haas, # 3 Proposed Order Re: Objections to the Declaration of Daren Haas)(O'Leary, Thomas) Modified on 9/17/2013 atty contacted re: missing pos, atty to file pos, proposed orders should not be e-filed(leh). (Entered: 09/16/2013)
09/17/2013	41	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 40 Response in Opposition to Motion, for Preliminary Injunction (O'Leary, Thomas) Modified on 9/18/2013-Attorney contacted re unauthorized s/ (vam). (Entered: 09/17/2013)
09/18/2013	42	SCHEDULING ORDER Regulating Discovery and Pretrial Proceedings: A Mandatory Settlement Conference will not be scheduled at this time. However, the parties may contact the assigned magistrate judge ex parte at any time to set a settlement conference. The Memorandum of Contentions of Fact and Law is due by 6/9/2014. The Proposed Pretrial Order is due by 6/23/2014. The Final Pretrial Conference is set for 6/30/2014 at 2:30 PM in Courtroom 3A before Judge Michael M. Anello. A trial date will be given at the Pretrial Conference.Signed by Magistrate Judge William McCurine, Jr on 9/18/2013.(leh) (jrl). (Entered: 09/18/2013)
09/23/2013	43	REPLY to Response to Motion re 35 MOTION for Preliminary Injunction filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Daren Haas (Supplemental) and Index of Exhibits, # 2 Exhibit 15 to Haas Supplemental Declaration, # 3 Exhibit 16 to Haas Supplemental Declaration, # 4 Exhibit 17 to Haas Supplemental Declaration, # 5 Declaration of Callie A. Bjurstrom and Index of Exhibits, # 6 Exhibit A to Bjurstrom Declaration, # 7 Supplement Response to Defendant's Objections to the Haas Declaration, # 8 Proof of Service)(Bjurstrom, Callie) (vam). (Entered: 09/23/2013)
09/24/2013	44	Motion to Substitute Attorney changed from NOTICE by R.F. Technologies, Inc. CONSENT ORDER GRANTING SUBSTITUTION OF ATTORNEY (Attachments: # 1 [Proposed] Order Granting Substitution of Attorney)(O'Leary, Thomas) Modified on 9/24/2013-add motion and edit text (vam). (Entered: 09/24/2013)
09/24/2013	45	ORDER Granting Substitution of Attorney 44 . Added attorney Thomas M. O'Leary for R.F. Technologies, Inc. Attorney Keith Glen Wileman has been terminated. Signed by Judge Michael M. Anello on 9/24/2013. (vam) (cap). (Entered: 09/24/2013)
09/25/2013	46	MOTION to Allow the Use of Electrical Equipment in the Courtroom for Preliminary Injunction Hearing by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Bjurstrom, Callie) (vam). (Entered: 09/25/2013)
09/26/2013	47	ORDER Granting Plaintiff's Motion to Use Electronic Equipment in the Courtroom 46 . The

		Court Grants Plaintiff's motion to permit the use of electronic equipment during the preliminary injunction hearing on September 30, 2013. Plaintiff may bring Multiple drive-thru headsets, Two drive-thru beltbacks, and a Drive-thru base station. Signed by Judge Michael M. Anello on 9/26/2013. (vam) (cap). (Entered: 09/26/2013)
09/30/2013	48	NOTICE and ORDER Providing Tentative Ruling re 35 MOTION for Preliminary Injunction filed by HM Electronics, Inc. The Court advises the parties that this ruling is tentative. The Court will entertain additional argument at the hearing on September 30, 2013. Signed by Judge Michael M. Anello on 9/30/2013.(leh) (Entered: 09/30/2013)
09/30/2013	49	Minute Entry for proceedings held before District Judge Michael M. Anello: Motion Hearing for Preliminary Injunction held on 9/30/2013. Court takes matter under submission. (Court Reporter/ECR Elizabeth Cesena). (Plaintiff Attorney Callie A. Bjurstom). (Defendant Attorney Thomas M. O'Leary). (no document attached) (ibf) (Entered: 09/30/2013)
10/03/2013	51	ORDER Granting Plaintiff's Motion for Preliminary Injunction 35 . The Court Grants Plaintiff's motion for preliminary injunction. The Court issues a preliminary injunction pending trial with the above terms. Plaintiff shall post a bond in the amount of \$50,000 within 5 business days of the date of this order. Signed by Judge Michael M. Anello on 10/3/2013. (vam) (cap). (Entered: 10/03/2013)
10/09/2013	52	Letter of Undertaking by HM Electronics, Inc. (vam) (Entered: 10/09/2013)
10/16/2013	53	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings (Motion Hearing) held on 9/30/2013, before Judge Michael M. Anello. Court Reporter/Transcriber: Elizabeth Cesena. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 11/6/2013. Redacted Transcript Deadline set for 11/18/2013. Release of Transcript Restriction set for 1/14/2014. (akr) (Entered: 10/16/2013)
11/22/2013	54	ORDER Setting Telephonic Conference (Telephonic Discovery Conference set for 11/25/2013 01:45 PM before Magistrate Judge William McCurine Jr.). Signed by Magistrate Judge William McCurine, Jr on 11/22/2013.(kcm) (jrl). (Entered: 11/22/2013)
11/25/2013	55	ORDER Setting Telephonic Discovery Conference. The Court will conduct a telephonic discovery conference on 11/26/2013 at 4:00 p.m. Defendant's counsel will initiate the joint call to chambers. Signed by Magistrate Judge William McCurine, Jr on 11/25/2013.(vam) (Entered: 11/26/2013)
11/25/2013	56	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Discovery Conference held on 11/25/2013. Order issued.(CD# 11/25/2013 n/a). (Plaintiff Attorney Callie Bjurstrom). (Defendant Attorney Thomas O'Leary, Mark C. Goldenberg). (no document attached) (rab) (Entered: 11/29/2013)
12/06/2013	57	NOTICE of Appearance by Michelle Ann Herrera on behalf of HM Electronics, Inc. (Herrera, Michelle)Attorney Michelle Ann Herrera added to party HM Electronics, Inc. (pty:pla) (vam). (Entered: 12/06/2013)
12/06/2013	58	PROTECTIVE ORDER. Signed by Magistrate Judge William McCurine, Jr on 12/4/2013. (vam) (Entered: 12/06/2013)
12/09/2013	59	ORDER Setting Telephonic Discovery Conference. At the request of the parties, the Court will conduct a telephonic discovery conference on 12/12/2013 at 3:30 p.m. The parties must submit a joint, neutral statement of the dispute to chambers no later than 12:00 p.m. on

		12/11/2013. Signed by Magistrate Judge William McCurine, Jr on 12/9/2013.(vam) (Entered: 12/09/2013)
12/12/2013	61	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Discovery Conference held on 12/12/2013. Order issued.(CD# 12/12/2013 n/a). (Plaintiff Attorney Callie A. Bjurstrom, Michelle Herrera). (Defendant Attorney Thomas M. O'Leary, Mark Goldberg). (no document attached) (rab) (Entered: 12/23/2013)
12/17/2013	60	ORDER Following Telephonic Discovery Conference. Attorney Goldenberg will prepare and serve an affidavit, under oath, that explains his client's process of collecting and storing repair requests in any form for each year at issue. The deadline to prepare and serve the affidavit is 1/7/2014. The Court will conduct a telephonic status conference to discuss this issue on 1/10/2014 at 9:30 a.m. The Court will conduct a telephonic status conference on 12/19/2013 at 4:45 p.m. to check on the status of defendant's production of documents. Signed by Magistrate Judge William McCurine, Jr on 12/17/2013.(vam) (Entered: 12/17/2013)
12/19/2013	62	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Status Conference held on 12/19/2013.(CD# 12/19/2013 n/a). (Plaintiff Attorney Callie A. Bjurstrom, Michelle Herrera). (Defendant Attorney Thomas M. O'Leary). (no document attached) (rab) (Entered: 12/23/2013)
01/10/2014	63	****DOCUMENT WITHDRAWN PER ENTRY 69 **** MOTION to Quash <i>Subpoena</i> by <i>Third Party Commercial Electronics, Inc.</i> by HM Electronics, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Adam Baer, # 3 Proof of Service)(Herrera, Michelle) (kcm). Modified on 1/27/2014 (vam). (Entered: 01/10/2014)
01/10/2014	65	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Status Conference held on 1/10/2014. Order issued.(Plaintiff Attorney Callie A. Bjurstrom, Michelle Herrera). (Defendant Attorney Thomas M. O'Leary). (no document attached) (rab) (Entered: 01/15/2014)
01/13/2014	64	ORDER Following Telephonic Discovery Conference (Telephonic Status Conference set for 1/16/2014 04:30 PM before Magistrate Judge William McCurine Jr.). Signed by Magistrate Judge William McCurine, Jr on 1/13/2014.(kcm) (Entered: 01/13/2014)
01/17/2014	66	ORDER Continuing Telephonic Discovery Conference. Due to a conflict in the Court's calendar, the Court continues the telephonic status conference from 1/16/2014 to 1/23/2014 at 1:30 p.m. Counsel must jointly submit to chambers an updated list of discovery issues by 1/22/2014. Signed by Magistrate Judge William McCurine, Jr on 1/17/2014.(vam) (Entered: 01/17/2014)
01/21/2014	67	Joint MOTION to Continue <i>Extend Discovery and Pretrial Deadlines</i> by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Bjurstrom, Callie) (vam). (Entered: 01/21/2014)
01/23/2014	68	ORDER Setting Telephonic Status Conference. The Court will conduct a telephonic status conference on 1/27/2014 at 4:15 p.m. Plaintiff's counsel must initiate the joint call to chambers on the day and time indicated above. Signed by Magistrate Judge William McCurine, Jr on 1/23/2014.(vam) (Entered: 01/23/2014)
01/23/2014	70	ORDER Granting Joint Motion to Extend Discovery and Pretrial Deadlines 67 . Memorandum of Contentions of Fact and Law due by 9/1/2014. Final Pretrial Conference is set for 9/29/2014 at 2:30 PM before Judge Michael M. Anello. Signed by Magistrate Judge William McCurine, Jr on 1/23/2014. (vam) (Entered: 01/24/2014)
01/23/2014	76	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Status Conference held on 1/23/2014. Order issued.(CD# 1/23/2014 n/a). (Plaintiff Attorney Callie A. Bjurstrom, Michelle Herrera). (Defendant Attorney Thomas M. O'Leary). (no document attached) (rab) (Entered: 01/31/2014)

01/24/2014	69	NOTICE by HM Electronics, Inc. of <i>Withdrawal of Motion by Third Party Commercial Electronics, Inc. to Quash Subpoena</i> (Attachments: # 1 Proof of Service)(Herrera, Michelle) (vam). (Entered: 01/24/2014)
01/24/2014	72	MOTION for an Order to Show Cause why Defendant R.F. Technologies, Inc. Should not be Held in Contempt by HM Electronics, Inc. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Callie A. Bjurstorm, # 3 Declaration of Daren Haas, # 4 Proof of Service)(vam) (Entered: 01/28/2014)
01/27/2014	71	ORDER Following Telephonic Status Conference. On January 27, 2014, the Court held a telephonic discovery/status conference. Defendant must complete the outstanding document production discussed during the conference no later than 2/10/2014. Defendant's counsel must complete the privilege log no later than 2/17/2014. Signed by Magistrate Judge William McCurine, Jr on 1/27/2014.(vam) (Entered: 01/27/2014)
01/27/2014	77	Minute Entry for proceedings held before Magistrate Judge William McCurine, Jr: Telephonic Status Conference held on 1/27/2014. Order issued.(CD# 1/27/2014 n/a). (Plaintiff Attorney Calie A. Bjurstrom, Michelle Herrera). (Defendant Attorney Thomas M. O'Leary, Mark Goldenberg). (no document attached) (rab) (Entered: 01/31/2014)
01/28/2014	73	MOTION to File Documents Under Seal (With attachments)(sjt) (sxr-v). (Entered: 01/28/2014)
01/28/2014	74	ORDER granting 73 Motion to File Documents Under Seal. Signed by Judge Michael M. Anello on 1/27/2014. (sjt) (Entered: 01/28/2014)
01/31/2014	78	Ex Parte MOTION to Continue <i>Hearing on the Application for an Order to Show Cause Re: Contempt</i> by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Thomas M. O'Leary ISO Ex Parte Application for Order to Continue Hearing on Plaintiff's Application for OSC Re: Contempt, # 2 Declaration of Brian C. Vanderhoof, # 3 Declaration of Babak Noorian, # 4 Proposed Order)(O'Leary, Thomas) Modified on 2/3/2014-QC mailer to attorney regarding proposed order (vam). (Entered: 01/31/2014)
01/31/2014	80	Transfer Order. It is hereby ordered that the following listed cases are transferred from the calendar of the Honorable William McCurine, Jr. to the calendar of the Honorable Ruben B. Brooks for all further proceedings. The new case number is 12cv2884-MMA(RBB). All future conference or hearing dates set before Magistrate Judge McCurine, if any, are vacated and will be rescheduled before Magistrate Judge Brooks. Counsel will contact the Chambers of Judge Brooks to reschedule any conferences or hearings within five days of the entry of this Order. Any dates set before the District Judge remain unchanged. Signed by Magistrate Judge William McCurine, Jr on 1/31/2014. (jao) (Entered: 02/03/2014)
02/03/2014	79	RESPONSE in Opposition re 78 Ex Parte MOTION to Continue <i>Hearing on the Application for an Order to Show Cause Re: Contempt</i> filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera, # 2 Proof of Service)(Herrera, Michelle) (vam). (Entered: 02/03/2014)
02/04/2014	81	ORDER Vacating and Resetting Hearing Date and Setting Special Briefing Schedule 78 . The Court vacates and resets the hearing date of Plaintiff's motion for contempt and sanctions to 3/10/2014 at 2:30 p.m. Additionally, the Court sets the special briefing schedule as follows: Defendant's opposition is due 2/21/2014 and Plaintiff's reply is due 3/3/2014. Signed by Judge Michael M. Anello on 2/4/2014. (vam) (Entered: 02/04/2014)
02/21/2014	82	RESPONSE in Opposition re 72 MOTION for Contempt filed by R.F. Technologies, Inc.. (Attachments: # 1 Objections to the Declaration of Daren Haas in Support of Plaintiff HM Electronics, Inc.'s Application for an Order to Show Cause, # 2 Declaration of Fiona Noorian, # 3 Declaration of Babak Noorian, # 4 Declaration of Michelle Greenwood, # 5 Brian C.

		Vanderhoof, # 6 Declaration of Scott Crause, # 7 Proof of Service)(Vanderhoof, Brian) (vam). (Entered: 02/21/2014)
02/25/2014	83	MINUTE ORDER: An attorneys-only discovery conference is set for 3/10/2014 at 3:00 p.m. The parties are ordered to meet and confer in person on for before 2/28/2014. Discovery conference briefs are to be lodged with the chambers of Magistrate Judge Ruben B. Brooks by 3/4/2014. Signed by Magistrate Judge Ruben B. Brooks on 2/25/2014.(vam) (av1). (Entered: 02/25/2014)
02/26/2014	84	MINUTE ORDER: An attorneys-only discovery conference is set for March 10, 2014, at 3:00 p.m. Signed by Magistrate Judge Ruben B. Brooks on 2/26/2014.(knb) (Entered: 02/26/2014)
03/03/2014	85	REPLY to Response to Motion re 72 MOTION for Contempt filed by HM Electronics, Inc.. (Attachments: # 1 Supplement HM Electronics, Inc.'s Response to Defendant's Objections to the Declaration of Daren Haas in Support of Plaintiff's Application for an Order to Show Cause, # 2 Supplement Plaintiff's Objections to the Declarations of Babak Noorian, Fiona Noorian, Scott Crause and Michelle Greenwood, # 3 Declaration (Reply) of Michelle Herrera and Index of Exhibits, # 4 Exhibit A to the Reply Declaration of Michelle Herrera, # 5 Exhibit B to the Reply Declaration of Michelle Herrera, # 6 Exhibit C to the Reply Declaration of Michelle Herrera, # 7 Exhibit D to the Reply Declaration of Michelle Herrera, # 8 Exhibit E to the Reply Declaration of Michelle Herrera, # 9 Exhibit F to the Reply Declaration of Michelle Herrera, # 10 Exhibit G to the Reply Declaration of Michelle Herrera, # 11 Exhibit H to the Reply Declaration of Michelle Herrera, # 12 Exhibit I to the Reply Declaration of Michelle Herrera, # 13 Exhibit J to the Reply Declaration of Michelle Herrera, # 14 Exhibit K to the Reply Declaration of Michelle Herrera, # 15 Declaration (Reply) of Daren Haas and Index of Exhibits, # 16 Exhibit I to Reply Declaration of Daren Haas, # 17 Exhibit J to Reply Declaration of Daren Haas, # 18 Exhibit K to Reply Declaration of Daren Haas, # 19 Exhibit L to Reply Declaration of Daren Haas, # 20 Proof of Service)(Bjurstrom, Callie) (vam). (Entered: 03/03/2014)
03/04/2014	86	NOTICE of Appearance by Brian C. Vanderhoof on behalf of R.F. Technologies, Inc. (Vanderhoof, Brian)Attorney Brian C. Vanderhoof added to party R.F. Technologies, Inc. (pty:dft) (vam). (Entered: 03/04/2014)
03/04/2014	87	NOTICE by R.F. Technologies, Inc. re 86 Notice of Appearance of <i>Brian C. Vanderhoof</i> (O'Leary, Thomas) (vam). (Entered: 03/04/2014)
03/04/2014	88	Ex Parte MOTION an Order Continuing Third Party Depositions <i>and Declaration of Michelle A. Herrera</i> by HM Electronics, Inc.. (Attachments: # 1 Exhibit A-B to Herrera Declaration, # 2 Proof of Service)(Herrera, Michelle) (vam). (Entered: 03/04/2014)
03/04/2014	89	MINUTE ORDER: The Ex Parte Application is Granted in part (Re: Doc. No. 88). Absent an agreement between the parties or further order of the Court, the California depositions are stayed. The parties are reminded of the mutual obligations pursuant to Local Rules 83.4(1)(e), (g) and 84.4(2)(d). Signed by Magistrate Judge Ruben B. Brooks on 3/4/2014. (vam)(jrd) (Entered: 03/04/2014)
03/05/2014	90	Ex Parte MOTION to Quash <i>Plaintiff's Third-Party Subpoenas</i> by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Brian C. Vanderhoof ISO Defendant R.F. Technologies, Inc.'s Ex Parte Application to Quash Plaintiff's Third-Party Subpoenas, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Proposed Order) (Vanderhoof, Brian) Modified on 3/6/2014-QC mailer sent to attorney regarding missing POS and proposed order attached to filing (vam). (Entered: 03/05/2014)
03/05/2014	91	RESPONSE in Opposition re 90 Ex Parte MOTION to Quash <i>Plaintiff's Third-Party Subpoenas and Declaration of Michelle A. Herrera</i> filed by HM Electronics, Inc.. (Attachments: # 1 Exhibit 1-4 to the Declaration of Michelle A. Herrera, # 2 Proof of Service)

		(Herrera, Michelle) (vam). (Entered: 03/05/2014)
03/06/2014	92	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 90 Ex Parte MOTION to Quash <i>Plaintiff's Third-Party Subpoenas</i> (Vanderhoof, Brian) (vam). (Entered: 03/06/2014)
03/06/2014	93	MINUTE ORDER: The subpoenas in this case require compliance outside of this district; the Southern District of California is not the proper forum for filing the motion to quash. Accordingly, the Ex Parte Application 90 is Denied. Signed by Magistrate Judge Ruben B. Brooks on 3/6/2014. (vam) (Entered: 03/06/2014)
03/07/2014	94	NOTICE AND ORDER Providing Tentative Ruling Regarding Plaintiff's Motion for Contempt and Sanctions Against Defendant 72 . Signed by Judge Michael M. Anello on 3/7/2014.(vam)(jrd) (Entered: 03/07/2014)
03/07/2014	95	MOTION to Allow the Use of Electrical Equipment in the Courtroom <i>for Hearing on Plaintiff's Application for an Order to Show Cause Re Contempt</i> by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Bjurstrom, Callie) (vam). (Entered: 03/07/2014)
03/07/2014	96	ORDER Granting Plaintiff's Motion to Use Electrical Equipment in the Courtroom 95 . Plaintiff may bring three drive-thru headsets into the courtroom. Signed by Judge Michael M. Anello on 3/7/2014. (vam)(jrd) (Entered: 03/07/2014)
03/10/2014	97	Minute Entry for proceedings held before District Judge Michael M. Anello: Motion Hearing held on 3/10/2014 re 72 MOTION for Contempt filed by HM Electronics, Inc. Motion Hearing continued to 4/7/2014 02:30 PM in Courtroom 3A before Judge District Michael M. Anello.(Court Reporter/ECR Elizabeth Cesena). (Plaintiff Attorney Callie A. Bjurstom, Michelle Herrera). (Defendant Attorney Thomas M. O'Leary, Brial C. Vanderhoof, Marc Goldenberg-Pro Hac). (no document attached) (ibf) (Entered: 03/10/2014)
03/11/2014	98	MINUTE ORDER: The Court set an attorneys-only discovery conference for 3/10/2014. Each side lodged discovery conference briefs on 3/4/2014, which are filed contemporaneously with this order. The Court concludes that the remaining disputes are not suitable for resolution at an informal discovery conference. The parties may file a noticed motion on whatever discovery matters they determine appropriate. Signed by Magistrate Judge Ruben B. Brooks on 3/11/2014. (Attachments: # 1 Plaintiff's Discovery Brief, # 2 Defendant's Discovery Brief) (vam) (Entered: 03/11/2014)
03/12/2014	99	ORDER Regarding Continued Hearing. On 3/10/2014, the Court heard oral argument on Plaintiff's motion for contempt and sanctions against Defendant for violations of the Court's Order 51 . As discussed during the hearing the Court Orders that the hearing on this matter be continued to 4/7/2014 at 2:30 p.m. On or before 3/24/2014, Defendant shall file the sworn affidavit(s) regarding its compliance with the preliminary injunction. On or before 3/31/2014, Plaintiff shall file a response to Defendant's submission. Signed by Judge Michael M. Anello on 3/12/2014.(vam) Modified on 3/12/2014 (vam). (av1). (Entered: 03/12/2014)
03/17/2014	100	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings (Motion Hearing) held on 3/10/2014, before Judge Michael M. Anello. Court Reporter/Transcriber: Elizabeth Cesena. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 4/7/2014. Redacted Transcript Deadline set for 4/17/2014. Release of Transcript Restriction set for 6/16/2014. (akr) (Entered: 03/17/2014)
03/20/2014	101	MOTION for Sanctions <i>for Failing to Comply with Discovery Order; Request for Award of Expenses</i> by HM Electronics, Inc.. (Attachments: # 1 Memo of Points and Authorities,

		# 2 Declaration of Michelle A. Herrera and Index of Exhibits, # 3 Exhibit A to Herrera Declaration, # 4 Exhibit B to Herrera Declaration, # 5 Exhibit C to Herrera Declaration, # 6 Exhibit D to Herrera Declaration, # 7 Exhibit E to Herrera Declaration, # 8 Exhibit F to Herrera Declaration, # 9 Exhibit G to Herrera Declaration, # 10 Exhibit H to Herrera Declaration, # 11 Exhibit I to Herrera Declaration, # 12 Exhibit J to Herrera Declaration, # 13 Exhibit K to Herrera Declaration, # 14 Exhibit L to Herrera Declaration, # 15 Exhibit M to Herrera Declaration, # 16 Exhibit N to Herrera Declaration, # 17 Exhibit O to Herrera Declaration, # 18 Exhibit P to Herrera Declaration, # 19 Exhibit Q to Herrera Declaration, # 20 Exhibit R to Herrera Declaration, # 21 Exhibit S to Herrera Declaration, # 22 Exhibit T to Herrera Declaration, # 23 Exhibit U to Herrera Declaration, # 24 Proof of Service)(Herrera, Michelle)(vam). (Entered: 03/20/2014)
03/24/2014	102	DECLARATION re 99 Order,, <i>Preliminary Injunction Hearing</i> by Defendant R.F. Technologies, Inc.. (Vanderhoof, Brian) (vam). (Entered: 03/24/2014)
03/24/2014	103	DECLARATION re 99 Order,, <i>Preliminary Injunction Hearing</i> by Defendant R.F. Technologies, Inc.. (Vanderhoof, Brian) (vam). (Entered: 03/24/2014)
03/24/2014	104	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 102 Declaration, 103 Declaration of <i>Mark Goldenberg and Babak Noorian</i> (Vanderhoof, Brian) (vam). (Entered: 03/24/2014)
03/27/2014	105	MOTION to Compel <i>Plaintiff to Produce Documents in Response to Requests for Production of Documents, Set One; Request for Sanctions</i> by R.F. Technologies, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Brian C. Vanderhoof, # 3 Exhibit A to Declaration of Brian C. Vanderhoof, # 4 Exhibit B to Declaration of Brian C. Vanderhoof, # 5 Declaration of Vikram Subramanian, # 6 [Proposed] Order)(Vanderhoof, Brian) Modified on 3/28/2014-QC mailer sent to attorney regarding emailing proposed order and correct initials of Magistrate Judge in the caption (vam). (Entered: 03/27/2014)
03/27/2014	106	MOTION to Compel <i>Third Party Commercial Electronics, Inc. to Produce Documents in Response to Subpoena; Request for Sanctions</i> by R.F. Technologies, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Brian C. Vanderhoof, # 3 Exhibit A to Declaration of Brian C. Vanderhoof, # 4 Exhibit B to Declaration of Brian C. Vanderhoof, # 5 Exhibit C to Declaration of Brian C. Vanderhoof, # 6 Declaration of Vikram Subramanian, # 7 [Proposed] Order)(Vanderhoof, Brian) Modified on 3/28/2014-QC mailer sent to attorney regarding emailing proposed order and correct initials of Magistrate Judge in the caption (vam). (Entered: 03/27/2014)
03/28/2014	107	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 105 MOTION to Compel <i>Plaintiff to Produce Documents in Response to Requests for Production of Documents, Set One; Request for Sanctions</i> (Vanderhoof, Brian) (vam). (Entered: 03/28/2014)
03/28/2014	108	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 106 MOTION to Compel <i>Third Party Commercial Electronics, Inc. to Produce Documents in Response to Subpoena; Request for Sanctions</i> (Vanderhoof, Brian) (vam). (Entered: 03/28/2014)
03/28/2014	109	TRANSFER ORDER. IT IS HEREBY ORDERED that the following case is transferred from the calendar of the Honorable Ruben B. Brooks to the calendar of the Honorable Jill L. Burkhardt for all further proceedings. All future conference or hearing dates set before Magistrate Judge Brooks, if any, are VACATED and will be rescheduled before Magistrate Judge Burkhardt. Any dates set before the District Judge remain unchanged. The new case number is 12cv2884-MMA(JLB). Signed by Magistrate Judge Ruben B. Brooks on 3/28/2014. Motions set before Jill L. Burkhardt.(jao) (Entered: 03/28/2014)
03/28/2014	110	ORDER: Setting Briefing Schedule for Motion for Sanctions and Motions to Compel. (Re:

		Doc. 101 , 105 , 106) The Court hereby sets the following briefing schedule before the undersigned: A. Motion for sanctions (ECF No. 101) 1. Defendant's opposition brief shall be filed on or before April 14,2014; 2. Plaintiffs reply brief shall be filed on or before April 21, 2014; B. Motion to compel (ECF No. 105) 1. Plaintiff's opposition brief shall be filed on or before April 14, 2014; 2. Defendant's reply brief shall be filed on or before April 21, 2014; C. Motion to compel (ECF No. 106) 1. Plaintiff's opposition brief shall be filed on or before April 14, 2014; 2. Defendant' s reply brief shall be filed on or before April 21, 2014. For each of the above motions, there will be no oral argument unless requested by the Court. Signed by Magistrate Judge Jill L. Burkhardt on 3/28/2014.(aef) (Entered: 03/31/2014)
03/31/2014	111	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) (sjt). (Entered: 03/31/2014)
03/31/2014	112	(Filed as Sealed Document 115 on 4/1/2014) SEALED LODGED Proposed Document re: 111 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (Herrera, Michelle) (sjt). (Main Document 112 replaced on 4/1/2014) (sjt). Modified to add filing date of lodgement on 4/1/2014 (sjt). (Entered: 03/31/2014)
03/31/2014	113	SUPPLEMENTAL BRIEFING by Plaintiff HM Electronics, Inc. re 99 Order,, <i>Plaintiff HM Electronics, Inc.'s Response to Declarations of Mark C. Goldenberg and Babak Noorian in Connection With the Continued Motion Re Contempt</i> . (Attachments: # 1 Exhibit A to Plaintiff's Response to Goldenberg and Noorian Declarations, # 2 Proof of Service)(Herrera, Michelle) (vam). (Entered: 03/31/2014)
04/01/2014	114	ORDER granting 111 Motion to File Documents Under Seal. Signed by Judge Michael M. Anello on 4/1/2014. (sjt) (Entered: 04/01/2014)
04/01/2014	116	ORDER Vacating and Resetting Continued Hearing on Plaintiff's Motion for Contempt and Sanctions. The Court vacates and resets the continued hearing on Plaintiff's motion for contempt 72 to 4/14/2014 at 2:30 p.m. Signed by Judge Michael M. Anello on 4/1/2014.(vam) (Entered: 04/01/2014)
04/09/2014	117	Ex Parte MOTION to Allow the Use of Electrical Equipment in the Courtroom <i>for Hearing on Plaintiff's Application for an Order to Show Cause</i> by R.F. Technologies, Inc.. (Vanderhoof, Brian) (vam). (Entered: 04/09/2014)
04/09/2014	119	ORDER Granting Defendant's Ex Parte Motion to Use Electronic Equipment in the Courtroom 117 . Defendant may bring three drive-thru headsets and two belt (battery) packs to the 4/14/2014 hearing. Signed by Judge Michael M. Anello on 4/9/2014. (vam) (Entered: 04/10/2014)
04/10/2014	118	MOTION to Allow the Use of Electrical Equipment in the Courtroom <i>for Hearing on Plaintiff's Motion for Contempt and Sanctions</i> by HM Electronics, Inc.. (Bjurstrom, Callie) (vam). (Entered: 04/10/2014)
04/10/2014	120	ORDER Granting Plaintiff's Ex Parte Motion to Use Electronic Equipment in the Courtroom 118 . Plaintiff may bring four drive-thru headsets and for belt packs to the 4/14/2014 hearing. Signed by Judge Michael M. Anello on 4/10/2014. (vam) (Entered: 04/10/2014)
04/10/2014	121	NOTICE of Appearance by Kelly Wong Craven on behalf of HM Electronics, Inc. (Craven, Kelly)Attorney Kelly Wong Craven added to party HM Electronics, Inc. (pty:pla) (vam). (Entered: 04/10/2014)
04/11/2014	122	NOTICE AND ORDER Providing Tentative Ruling Regarding Plaintiff's Motion for Contempt and Sanctions Against Defendant. Signed by Judge Michael M. Anello on 4/11/2014.(vam) (Entered: 04/11/2014)

04/14/2014	123	RESPONSE in Opposition re 105 MOTION to Compel <i>Plaintiff to Produce Documents in Response to Requests for Production of Documents, Set One; Request for Sanctions</i> filed by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle) (vam). (Entered: 04/14/2014)
04/14/2014	124	RESPONSE in Opposition re 106 MOTION to Compel <i>Third Party Commercial Electronics, Inc. to Produce Documents in Response to Subpoena; Request for Sanctions</i> filed by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle) (vam). (Entered: 04/14/2014)
04/14/2014	125	RESPONSE in Opposition re 101 MOTION for Sanctions <i>for Failing to Comply with Discovery Order; Request for Award of Expenses</i> filed by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Brian C. Vanderhoof in Support of Opposition to Plaintiff's Motion for Sanctions, # 2 Exhibit A to Declaration of Brian C. Vanderhoof, # 3 Exhibit B to Declaration of Brian C. Vanderhoof, # 4 Exhibit C to Declaration of Brian C. Vanderhoof, # 5 Exhibit D to Declaration of Brian C. Vanderhoof, # 6 Exhibit E to Declaration of Brian C. Vanderhoof, # 7 Exhibit F to Declaration of Brian C. Vanderhoof, # 8 Exhibit G to Declaration of Brian C. Vanderhoof, # 9 Exhibit H to Declaration of Brian C. Vanderhoof, # 10 Exhibit I to Declaration of Brian C. Vanderhoof, # 11 Exhibit J to Declaration of Brian C. Vanderhoof, # 12 Exhibit K to Declaration of Brian C. Vanderhoof, # 13 Exhibit L to Declaration of Brian C. Vanderhoof, # 14 Exhibit M to Declaration of Brian C. Vanderhoof, # 15 Exhibit N to Declaration of Brian C. Vanderhoof, # 16 Exhibit O to Declaration of Brian C. Vanderhoof, # 17 Exhibit P to Declaration of Brian C. Vanderhoof, # 18 Exhibit Q to Declaration of Brian C. Vanderhoof, # 19 Exhibit R to Declaration of Brian C. Vanderhoof, # 20 Exhibit S to Declaration of Brian C. Vanderhoof, # 21 Exhibit T to Declaration of Brian C. Vanderhoof, # 22 Exhibit U to Declaration of Brian C. Vanderhoof, # 23 Exhibit V to Declaration of Brian C. Vanderhoof, # 24 Exhibit W to Declaration of Brian C. Vanderhoof, # 25 Exhibit X to Declaration of Brian C. Vanderhoof, # 26 Exhibit Y to Declaration of Brian C. Vanderhoof, # 27 Exhibit Z to Declaration of Brian C. Vanderhoof, # 28 Declaration of Steve Combs in Support of Opposition to Plaintiff's Motion for Sanctions, # 29 Certificate of Service)(Vanderhoof, Brian) (vam). (Entered: 04/14/2014)
04/14/2014	126	Minute Entry for proceedings held before Judge Michael M. Anello: Motion Hearing held on 4/14/2014 re 72 Motion for Contempt filed by HM Electronics, Inc. Court takes matter under submission. Court to issue written order. (Court Reporter/ECR Elizabeth Cesena). (Plaintiff Attorney Callie Bjurstrom and Michelle Herrera). (Defense Attorney Thomas O'Leary, Mark Goldberg and Brian Vanderhoof). (no document attached) (pdc) (Entered: 04/14/2014)
04/18/2014	127	ORDER: Affirming Tentative Rulings (Doc. Nos. 94 , 122); Granting Plaintiff's Motion for a Finding of Civil Contempt and Sanctions 72 . The Court finds Defendant in contempt of court for its failure to comply with the Court's October 3, 2013 preliminary injunction. The Court further finds that civil contempt sanctions are appropriate at this time. The Court imposes a daily fine in the amount of \$2,500 against Defendant. Unless Defendant purges the contempt beforehand, the daily fine shall commence on April 23, 2014 and shall continue for each day Defendant continues to violate the fifth term of the preliminary injunction. On or before May 19, 2014, Plaintiff shall file a separately noticed motion for compensatory sanctions seeking reasonable attorneys' fees and the disgorgement of Defendant's profits during the period of noncompliance. Signed by Judge Michael M. Anello on 4/18/2014. (vam) (Entered: 04/18/2014)
04/21/2014	128	RESPONSE in Support re 101 MOTION for Sanctions <i>for Failing to Comply with Discovery Order; Request for Award of Expenses</i> filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and index of exhibits, # 2 Exhibit V of Herrera Declaration, # 3 Exhibit W of Herrera Declaration, # 4 Exhibit X of Herrera Declaration, # 5 Proof of Service)(Herrera, Michelle) (vam). (Entered: 04/21/2014)

04/21/2014	129	REPLY to Response to Motion re 105 MOTION to Compel <i>Plaintiff to Produce Documents in Response to Requests for Production of Documents, Set One; Request for Sanctions</i> filed by R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service)(Vanderhoof, Brian) (vam). (Entered: 04/21/2014)
04/21/2014	130	REPLY to Response to Motion re 106 MOTION to Compel <i>Third Party Commercial Electronics, Inc. to Produce Documents in Response to Subpoena; Request for Sanctions</i> filed by R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service)(Vanderhoof, Brian) (vam). (Entered: 04/21/2014)
04/21/2014	131	NOTICE by R.F. Technologies, Inc. re 129 Reply to Response to Motion, <i>Notice of Errata re Certificate of Service re Defendant's Reply in Support of its Motion to Compel Production of Documents Against HM Electronics, Inc.</i> (Attachments: # 1 Certificate of Service re: Notice of Errata)(Vanderhoof, Brian) (vam). (Entered: 04/21/2014)
04/22/2014	132	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings (Motion Hearing) held on 4/14/2014, before Judge Michael M. Anello. Court Reporter/Transcriber: Elizabeth Cesena. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 5/13/2014. Redacted Transcript Deadline set for 5/23/2014. Release of Transcript Restriction set for 7/21/2014. (akr) (Entered: 04/22/2014)
04/22/2014	133	DECLARATION re 127 Order on Motion for Contempt,, <i>Declaration of Mark Goldenberg in Response to the Court's Order Granting Plaintiff's Motion for a Finding of Civil Contempt and Sanctions</i> by Defendant R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service re: Declaration of Mark Goldenberg)(O'Leary, Thomas) (vam). (Entered: 04/22/2014)
04/22/2014	134	DECLARATION re 127 Order on Motion for Contempt,, <i>Declaration of Babak Noorian in Response to the Court's Order Granting Plaintiff's Motion for a Finding of Civil Contempt and Sanctions</i> by Defendant R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service re: Declaration of Babak Noorian)(O'Leary, Thomas) (vam). (Entered: 04/22/2014)
04/25/2014	135	MINUTE ORDER: Motions Submitted 106 MOTION to Compel Third Party Commercial Electronics, Inc. to Produce Documents in Response to Subpoena; Request for Sanctions, 105 MOTION to Compel Plaintiff to Produce Documents in Response to Requests for Production of Documents, Set One; Request for Sanctions, 101 MOTION for Sanctions for Failing to Comply with Discovery Order; Request for Award of Expenses. No oral argument required. (no document attached) (rab) (Entered: 04/25/2014)
04/28/2014	136	Joint MOTION to Continue / <i>Extend Expert Report Disclosure Deadlines and Proof of Service</i> by HM Electronics, Inc.. (Bjurstrom, Callie) (vam). (Entered: 04/28/2014)
04/28/2014	137	MOTION for Leave to File <i>Plaintiff HM Electronics, Inc.'s Notice of Motion and Motion for Leave to File First Amended Complaint</i> by HM Electronics, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 First Amended Complaint, # 3 Declaration of Callie A. Bjurstrom) (Craven, Kelly) (vam). (Entered: 04/28/2014)
05/06/2014	138	ORDER Granting Joint Motion to Extend Expert Report Disclosure Deadline 136 . Signed by Magistrate Judge Jill L. Burkhardt on 5/6/2014. (vam) (Entered: 05/06/2014)
05/13/2014	139	NON Opposition re 137 MOTION for Leave to File <i>Plaintiff HM Electronics, Inc.'s Notice of Motion and Motion for Leave to File First Amended Complaint</i> filed by R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service re: Non-Opposition to Plaintiff's Motion for Leave to File First Amended Complaint)(Vanderhoof, Brian) (vam). (Entered: 05/13/2014)

05/13/2014	140	ORDER Granting Plaintiff's Motion for Leave to File a First Amended Complaint 137 . The Court vacates the 5/27/2014 hearing and grants Plaintiff's motion. Plaintiff shall file a First Amended Complaint with fourteen (14) days of the date of this Order. Signed by Judge Michael M. Anello on 5/13/2014. (vam) (Entered: 05/13/2014)
05/14/2014	141	NOTICE of Appearance by Brian David Martin on behalf of HM Electronics, Inc. (Martin, Brian)Attorney Brian David Martin added to party HM Electronics, Inc. (pty:pla) (vam). (Entered: 05/14/2014)
05/16/2014	142	ORDER OF TRANSFER. Judge Michael M. Anello is no longer assigned. Case reassigned to Judge Cynthia Ann Bashant for all further proceedings. Pending hearings previously set before the original Judge have been vacated. The new case number is 12cv2884-BAS-JLB. Signed by Judge Michael M. Anello on 5/16/2014.(vam) (Entered: 05/16/2014)
05/16/2014	143	ORDER Setting Pleading Schedule. Court reinstates the previously vacated deadline re 140 Order on Motion for Leave to File First Amended Complaint, and orders that within 14 days from 5/13/2014, Pla shall file an amended complaint. Pla was previously ordered to file separately noticed motion for compensatory sanctions seeking reasonable attys' fees and the disgorgement of Dft's profits during the period of noncompliance by 5/19/2014, Court orders reinstatement of the same deadline of by 5/19/2014 for such motion. Signed by Judge Cynthia Ann Bashant on 5/16/2014. (jah) (Entered: 05/16/2014)
05/19/2014	144	MOTION for Attorney Fees Incurred in the Investigation and Prosecution of the Contempt Application by HM Electronics, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Callie A. Bjurstrom and Exhibit A, # 3 Declaration of Michelle A. Herrera, # 4 Declaration of Brian D. Martin, # 5 Proof of Service)(Bjurstrom, Callie). (jah). (Entered: 05/19/2014)
05/19/2014	145	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) qc email requesting pos be filed using the appropriate signature on 5/19/2014 (rlu). (Entered: 05/19/2014)
05/19/2014	146	[FILED AS SEALED DOCUMENT ON 6/11/2014] SEALED LODGED Proposed Document re: 145 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle) (rlu). Modified on 6/12/2014 - Added file date of lodgment (jah). (Main Document 146 replaced on 6/12/2014) (jah). (Entered: 05/19/2014)
05/19/2014	147	MOTION to Disgorge Defendant R.F. Technologies, Inc.'s Profits Earned During Period of Non-Compliance With Preliminary Injunction Order by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit A to Herrera Declaration, # 3 Exhibit B to Herrera Declaration, # 4 Exhibit C to Herrera Declaration, # 5 Proof of Service)(Herrera, Michelle). (jah). (Entered: 05/19/2014)
05/19/2014	148	NOTICE of Errata re 149 Amended Motion to File Documents Under Seal by HM Electronics, Inc. (Attachments: # 1 Proof of Service)(Herrera, Michelle). Modified on 5/20/2014 - Added document link and corrected text (jah). (Entered: 05/19/2014)
05/19/2014	149	Amended MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle). Modified on 5/20/2014 - Edited to reflect as amended (jah). (Entered: 05/19/2014)
05/19/2014	150	ORDER Setting Deadline re 147 MOTION to Disgorge Defendant R.F. Technologies, Inc.'s Profits Earned During Period of Non-Compliance With Preliminary Injunction Order filed by HM Electronics, Inc.. Dft R.F. Technologies, Inc. must file opposition by 6/9/2014. Plaintiff must file reply by 6/16/2014. Court will decide the matter on the papers submitted and without oral argument, unless the parties are notified otherwise. Signed by Judge Cynthia Ann Bashant on 5/19/2014. (jah). Modified on 5/20/2014 - Corrected file date (jah). (Entered: 05/19/2014)

		05/20/2014)
05/23/2014	151	PRO HAC VICE APPOINTED: Kevin J O'Shea appearing for Defendant R.F. Technologies, Inc., Receipt # 62784. (jao) (Entered: 05/23/2014)
05/23/2014	152	PRO HAC VICE APPOINTED: Howard E. Silverman appearing for Defendant R.F. Technologies, Inc., Receipt # 62703. (jao) (Entered: 05/23/2014)
05/23/2014	153	STRICKEN ON 5/28/2014 PER ORDER 157 - FIRST AMENDED COMPLAINT with Jury Demand against R.F. Technologies, Inc., Babak Noorian, filed by HM Electronics, Inc.. (Attachments: # 1 Proof of Service). New Summons Requested. (Bjurstrom, Callie). Modified on 5/27/2014 - Removed extra text. Summons issued (jah). (Main Document 153 replaced on 5/29/2014) (jah). Modified on 5/29/2014 - Stricken. Images removed. (jah). (Entered: 05/23/2014)
05/27/2014	154	Summons Issued on First Amended Complaint. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jah) (Entered: 05/27/2014)
05/27/2014	155	NOTICE of Errata re: 153 First Amended Complaint by HM Electronics, Inc. (Attachments: # 1 Proof of Service)(Bjurstrom, Callie). Modified on 5/28/2014 - No provision for acceptance of Errata in this District. Motion to Amend needed to be filed. QC Email sent. Added link to First Amended Complaint (jah). (Entered: 05/27/2014)
05/27/2014	156	FIRST AMENDED COMPLAINT with Jury Demand against Babak Noorian, R.F. Technologies, Inc., filed by HM Electronics, Inc.. (Attachments: # 1 Exhibit A to First Amended Complaint, # 2 Proof of Service)New Summons Requested. (Bjurstrom, Callie). Modified on 5/28/2014 - Duplicate Entry. First Amended Complaint 153 previously filed on 5/23/2014 (jah). Modified on 5/29/2014 - Amended Summons issued. Corrected text (jah). (Entered: 05/27/2014)
05/28/2014	157	ORDER STRIKING FRIST AMENDED COMPLAINT. Plaintiff HM Electronics, Inc.'s 153 First Amended Complaint filed on 5/23/2014 is incomplete. Court orders First Amended Complaint 153 stricken. The operative complaint is the First Amended Complaint 156 filed on 5/27/2014. Signed by Judge Cynthia Bashant on 5/28/2014. (jah) (Entered: 05/29/2014)
05/29/2014	158	Amended Summons Issued on First Amended Complaint. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jah) (Entered: 05/29/2014)
06/03/2014	159	SUMMONS Returned Executed by HM Electronics, Inc.. Babak Noorian served. (Martin, Brian). (jah). (Entered: 06/03/2014)
06/09/2014	160	RESPONSE in Opposition re 144 MOTION for Attorney Fees Incurred in the Investigation and Prosecution of the Contempt Application filed by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Brian C. Vanderhoof, # 2 Exhibit A to the Declaration of Brian C. Vanderhoof, # 3 Exhibit B to the Declaration of Brian C. Vanderhoof, # 4 Certificate of Service)(Vanderhoof, Brian). Modified on 6/9/2014 - Edited attachment description to remove duplicative text (jah). (Entered: 06/09/2014)
06/09/2014	161	MOTION to File Documents Under Seal (With attachments)(O'Leary, Thomas) (sjt). (Entered: 06/09/2014)
06/09/2014	162	[FILED AS SEALED DOCUMENT ON 6/11/2014] SEALED LODGED Proposed Document re: 161 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(O'Leary, Thomas)(sjt). Modified on 6/12/2014 - Added file date of lodgment (jah). (Main Document 162 replaced on 6/12/2014) (jah). (Entered: 06/09/2014)

		06/09/2014)
06/09/2014	163	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 162 Sealed Lodged Proposed Document (O'Leary, Thomas). (jah). (Entered: 06/09/2014)
06/11/2014	164	DECLARATION of Babak Noorian in Support of Opposition to Plaintiff's Motion for Disgorgement of Profits re 162 Sealed Lodged Proposed Document by Defendant R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service)(O'Leary, Thomas). Modified on 6/12/2014 - Edited text (jah). (Entered: 06/11/2014)
06/11/2014	165	ORDER granting 149 Amended Ex Parte Motion to File Documents Under Seal; granting 161 Ex Parte Motion to File Documents Under Seal. Pla is ordered to file a redacted version of its Memorandum of Points and Authorities by 6/16/2014. Dft ordered to file a redacted version of its Memorandum of Points and Authorities by 6/16/2014. Signed by Judge Cynthia Bashant on 6/11/2014. (jah) (Entered: 06/12/2014)
06/16/2014	168	MEMORANDUM of Points and Authorities [Redacted] re 147 MOTION to Disgorge Defendant R.F. Technologies, Inc.'s Profits Earned During Period of Non-Compliance With Preliminary Injunction Order by HM Electronics, Inc. (Attachments: # 1 Proof of Service) (Bjurstrom, Callie) Qc mailer sent re: incorrected event used; Edited text on 6/17/2014(cxl). (Entered: 06/16/2014)
06/16/2014	169	REPLY to Response to Motion re 144 MOTION for Attorney Fees Incurred in the Investigation and Prosecution of the Contempt Application filed by HM Electronics, Inc.. (Attachments: # 1 Declaration Reply of Callie A. Bjurstrom and index of exhibits, # 2 Exhibit 1-3 to Bjurstrom Reply Declaration, # 3 Declaration Reply of Michelle A. Herrera, # 4 Declaration Reply of Brian D. Martin, # 5 Proof of Service)(Bjurstrom, Callie) (cxl). (Entered: 06/16/2014)
06/16/2014	170	RESPONSE in Opposition re 147 MOTION to Disgorge Defendant R.F. Technologies, Inc.'s Profits Earned During Period of Non-Compliance With Preliminary Injunction Order <i>Redacted</i> filed by R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service) (O'Leary, Thomas)qc mailer re: s/(cxl). (Entered: 06/16/2014)
06/16/2014	171	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) (sjt). (Entered: 06/16/2014)
06/16/2014	172	(Filed as Sealed Document 190 on 7/25/2014) SEALED LODGED Proposed Document re: 171 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle) (sjt). (Main Document 172 replaced on 7/25/2014) (sjt). Modified to add filing date of lodgement on 7/25/2014 (sjt). (Entered: 06/16/2014)
06/16/2014	173	REPLY to Response to Motion re 168 MOTION Disgorge Profits Earned During Period of Non-Compliance with Preliminary Injunction Order re 147 MOTION to Disgorge Defendant R.F. Technologies, Inc.'s Profits Earned During Period of Non-Compliance With Preliminary Injunction Order filed by HM Electronics, Inc.. (Attachments: # 1 Exhibit D-F to Herrera Declaration, # 2 Supplement Objections to Declarations of Babak Noorian and Deborah Dickson, # 3 Proof of Service)(Herrera, Michelle). Modified on 6/18/2014 - Edited to remove duplicative text (jah). (Entered: 06/16/2014)
06/18/2014	174	REDACTED REPLY to Response Motion to Disgorge Defendant R.F. Technologies, Inc.'s Profits Earned During Period of Non-Compliance with Preliminary Injunction Order re 172 Sealed Lodged Proposed Document by HM Electronics, Inc. (Attachments: # 1 Proof of Service)(Herrera, Michelle). Modified on 6/18/2014 - Wrong event. QC Email sdent. Corrected entry (jah). (Entered: 06/18/2014)
06/18/2014	175	Joint MOTION to Extend Certain Discovery and Pretrial Deadlines by HM Electronics, Inc..

		(Attachments: # 1 Proof of Service)(Bjurstrom, Callie). Modified on 6/18/2014 - Edited text (jah). (Entered: 06/18/2014)
06/20/2014	176	ANSWER with Jury Demand to 156 First Amended Complaint, by R.F. Technologies, Inc., Babak Noorian. (Attachments: # 1 Proof of Service)(O'Leary, Thomas). Attorney Thomas M. O'Leary added to party Babak Noorian (pty:dft). Modified on 6/23/2014 - Edited text (jah). (Entered: 06/20/2014)
06/24/2014	178	ORDER granting 175 Joint Motion to Continue Certain Discovery and Pretrial Deadlines. All discovery, including expert discovery, shall be completed by all parties by 10/17/2014. All motions, other than motions to amend or join parties, or motions in limine shall be filed by 11/17/2014. Any Daubert motions shall be filed along with motions for summary judgment unless no motions for summary judgment will be filed, in which case parties may file Daubert motions along with motions in limine. Mandatory Settlement Conference set for 10/29/2014 09:00 AM before Magistrate Judge Jill L. Burkhardt. Memorandum of Contentions of Fact and Law due by 1/12/2015. Proposed Pretrial Order due by 2/2/2015. Final Pretrial Conference set for 2/16/2015 11:00 AM before Judge Cynthia Bashant. All motions in limine are due by 3/2/2015. All responses to the motions in limine are due by 3/16/2015. Parties shall submit by 3/16/2015: 1) joint proposed jury instructions, 2) proposed verdict form, 3) voir dire questions, 4) statement of the case, and 5) exhibit binders. Hearing for the motions in limine is scheduled for 4/6/2015 at 10:30 AM. Jury Trial set for 4/14/2015 09:00 AM before Judge Cynthia Bashant. Signed by Magistrate Judge Jill L. Burkhardt on 6/24/2014. (jah) (Entered: 06/25/2014)
06/25/2014	177	Minute Order for proceedings held before Magistrate Judge Jill L. Burkhardt regarding PLAINTIFF HM ELECTRONICS, INC.'s MOTION FOR SANCTIONS 101 : By no later than today's date, 6/25/2014, PLAINTIFF HM ELECTRONICS, INC. is granted leave to file a sufficiently detailed declaration with sufficiently detailed supporting evidence to enable the court to consider all the factors necessary in setting reasonable fees under Federal Rule of Civil Procedure 37 and pertinent case law. (no document attached) (smm) (Entered: 06/25/2014)
06/25/2014	179	Minute Order for proceedings held before Magistrate Judge Jill L. Burkhardt: The Court hereby SETS a deadline of Friday, 6/27/2014, for DEFENDANT R.F. TECHNOLOGIES, INC. to file a response to the 6/25/2014 declaration and evidence, if any, submitted by Plaintiff regarding its motion for sanctions 101 . (no document attached) (smm) (Entered: 06/25/2014)
06/25/2014	180	SUPPLEMENTAL DECLARATION of Michelle A. Herrera re 101 MOTION for Sanctions for Failing to Comply with Discovery Order; Request for Award of Expenses by Plaintiff HM Electronics, Inc.. (Attachments: # 1 Exhibit A, # 2 Proof of Service)(Herrera, Michelle). Modified on 6/26/2014 - Edited to remove duplicative text (jah). (Entered: 06/25/2014)
06/26/2014	181	Unopposed MOTION to Withdraw as Attorney by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Kevin J. O'Shea, # 2 Proof of Service)(O'Shea, Kevin). (jah). (Entered: 06/26/2014)
06/27/2014	182	RESPONSE re 180 Declaration of Michelle A. Herrera (Supplemental)filed by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Brian C. Vanderhoof, # 2 Certificate of Service)(Vanderhoof, Brian). Modified on 6/30/2014 - Edited attachment description (jah). (Entered: 06/27/2014)
06/30/2014	183	Minute Order for proceedings held before Magistrate Judge Jill L. Burkhardt:The Court hereby SETS a deadline of Tuesday, 7/1/2014, for PLAINTIFF to file a reply, not to exceed 5 pages in length, to DEFENDANT R.F. TECHNOLOGIES, INC.'S RESPONSE TO THE DECLARATION OF MICHELLE A. HERRERA AND SUPPORTING EVIDENCE SUBMITTED BY PLAINTIFF REGARDING ITS MOTION FOR SANCTIONS.

		See 182 , 101 . (no document attached) (smm) (Entered: 06/30/2014)
07/01/2014	184	REPLY to Response to Motion re 101 MOTION for Sanctions <i>for Failing to Comply with Discovery Order; Request for Award of Expenses to the Declaration of Michelle A. Herrera and Supporting Evidence Submitted by Plaintiff Regarding its Motion for Sanctions</i> filed by HM Electronics, Inc.. (Attachments: # 1 Declaration Additional Reply Declaration of Michelle A. Herrera, # 2 Proof of Service)(Herrera, Michelle) (jao). (Entered: 07/01/2014)
07/03/2014	185	ORDER granting in part and denying in part 101 Plaintiff's Motion for Sanctions. Signed by Magistrate Judge Jill L. Burkhardt on 7/3/14. (cge) (Entered: 07/03/2014)
07/03/2014	186	ORDER granting in part and denying in part 105 Motion to Compel Plaintiff to Produce Documents and Requesting Sanctions. Signed by Magistrate Judge Jill L. Burkhardt on 7/3/14. (cge) (Entered: 07/03/2014)
07/03/2014	187	ORDER granting in part and denying in part 106 Defendant's Motion to Compel Third Party Commercial Electronics to Produce Documents in Response to Subpoena and Request for Sanctions. Signed by Magistrate Judge Jill L. Burkhardt on 7/3/14. (cge) (Entered: 07/03/2014)
07/10/2014	188	TRANSFER ORDER. Pursuant to GO 640, it is hereby ordered that the following case is transferred from the calendar of the Honorable Jill L. Burkhardt, to the calendar of the Honorable Mitchell D. Dembin, for all further proceedings. All scheduling dates such as discovery deadlines, and any hearing or deadline dates set before any district judge, remain unchanged. All conference or hearing dates currently set before Magistrate Judge Burkhardt that require telephonic or personal appearances, if any, are VACATED and will be rescheduled before Magistrate Judge Dembin. The new case number is 12cv02884-BAS-MDD. Signed by Magistrate Judge Jill L. Burkhardt on 7/8/2014. Signed by Magistrate Judge Mitchell D. Dembin on 7/8/2014. Signed by Chief District Judge Barry Ted Moskowitz on 7/9/2014 (cx1) (Entered: 07/10/2014)
07/25/2014	189	ORDER granting 171 Motion to File Documents Under Seal. Signed by Judge Cynthia Bashant on 7/25/2014. (sjt) (Entered: 07/25/2014)
08/01/2014	191	ORDER granting 181 GreenBerg Traurig, LLP's Motion to Withdraw as R.F. Technologies, Inc.'s Counsel.. Signed by Judge Cynthia Bashant on 8/1/2014. (cx1) (Entered: 08/01/2014)
08/04/2014	192	DECLARATION of Thomas M. O'Leary re 185 Order on Motion for Sanctions by Defendant R.F. Technologies, Inc.. (Attachments: # 1 Exhibit A to the Declaration of Thomas M. O'Leary, # 2 Exhibit B to the Declaration of Thomas M. O'Leary, # 3 Exhibit C to the Declaration of Thomas M. O'Leary, # 4 Proof of Service)(O'Leary, Thomas). Modified on 8/6/2014 - Edited attachment descriptions (jah). (Entered: 08/04/2014)
08/07/2014	193	RESPONSE re 192 Declaration of Thomas M. O'Leary filed by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle). (jah). (Entered: 08/07/2014)
08/25/2014	194	NOTICE of Appearance by David Grant Bayles on behalf of R.F. Technologies, Inc. (Bayles, David). Attorney David Grant Bayles added to party R.F. Technologies, Inc. (pty:dft). Modified on 8/26/2014 - No proof of service. QC Email sent to file proof of service (jah). (Entered: 08/25/2014)
08/25/2014	195	NOTICE of Appearance by Allan E Anderson on behalf of R.F. Technologies, Inc. (Anderson, Allan). Attorney Allan E Anderson added to party R.F. Technologies, Inc. (pty:dft). Modified on 8/26/2014 - - No proof of service. QC Email sent to file proof of service (jah). (Entered: 08/25/2014)
08/26/2014	196	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 194 Notice of Appearance of David Bayles. (Bayles, David). Modified on 8/26/2014- Edited text (jah). (Entered: 08/26/2014)

		08/26/2014)
08/26/2014	197	CERTIFICATE OF SERVICE by R.F. Technologies, Inc. re 195 Notice of Appearance of Allan E. Anderson. (Anderson, Allan). Modified on 8/26/2014 - Edited text (jah). (Entered: 08/26/2014)
08/26/2014	198	NOTICE of Appearance by Stephen Gerard Larson on behalf of R.F. Technologies, Inc. (Attachments: # 1 Proof of Service)(Larson, Stephen). Attorney Stephen Gerard Larson added to party R.F. Technologies, Inc. (pty:dft). (jah). (Entered: 08/26/2014)
09/02/2014	199	Joint MOTION for Extension of Time to Complete Discovery and Increase the Number of Depositions by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proposed Order, # 2 Proof of Service)(Vanderhoof, Brian). Attorney Brian C. Vanderhoof added to party Babak Noorian (pty:dft). Modified on 9/3/2014 - Proposed Order attached. QC Email sent to email proposed order to Chambers. Edited attachmnet description (jah). (Entered: 09/02/2014)
09/02/2014	200	NOTICE of Appearance by Stephen Gerard Larson on behalf of Babak Noorian (Attachments: # 1 Proof of Service)(Larson, Stephen). Attorney Stephen Gerard Larson added to party Babak Noorian (pty:dft). (jah). (Entered: 09/02/2014)
09/02/2014	201	NOTICE of Appearance by Allan E Anderson on behalf of Babak Noorian (Attachments: # 1 Proof of Service)(Anderson, Allan). Attorney Allan E Anderson added to party Babak Noorian (pty:dft). (jah). (Entered: 09/02/2014)
09/02/2014	202	NOTICE of Appearance by David Grant Bayles on behalf of Babak Noorian (Attachments: # 1 Proof of Service)(Bayles, David). Attorney David Grant Bayles added to party Babak Noorian (pty:dft). (jah). (Entered: 09/02/2014)
09/05/2014	203	MOTION for Sanctions Against Plaintiff HM Electronics, Inc.; MOTION for Award of Expenses by R.F. Technologies, Inc.. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Brian C. Vanderhoof, # 3 Exhibit A to Vanderhoof Declaration, # 4 Exhibit B to Vanderhoof Declaration, # 5 Exhibit C to Vanderhoof Declaration, # 6 Exhibit D to Vanderhoof Declaration, # 7 Exhibit E to Vanderhoof Declaration, # 8 Exhibit F to Vanderhoof Declaration, # 9 Exhibit G to Vanderhoof Declaration, # 10 Certificate of Service)(Vanderhoof, Brian). Added MOTION on 9/8/2014. Modified on 9/8/2014 - Multi part motion, only one part filed. Added missing motion. Removed duplicative text and attachment descriptions. (jah). (Entered: 09/05/2014)
09/08/2014	204	MOTION for Order to Show Cause Why Third Party Commercial Electronics, Inc. Should not be Held in Contempt, MOTION for Award of Expenses by R.F. Technologies, Inc.. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Brian C. Vanderhoof, # 3 Exhibit A to Declaration of Brian C. Vanderhoof, # 4 Exhibit B to Declaration of Brian C. Vanderhoof, # 5 Exhibit C to Declaration of Brian C. Vanderhoof, # 6 Exhibit D to Declaration of Brian C. Vanderhoof, # 7 Exhibit E to Declaration of Brian C. Vanderhoof, # 8 Exhibit F to Declaration of Brian C. Vanderhoof, # 9 Exhibit G to Declaration of Brian C. Vanderhoof, # 10 Certificate of Service)(Vanderhoof, Brian). Added MOTION on 9/9/2014 (jah). Modified on 9/9/2014 - Multi part motion, one part filed. Wrong event. QC Email sent. Corrected event, added missing motion, and corrected text (jah). (Entered: 09/08/2014)
09/21/2014	205	ORDER Re: 1) Defendant to Properly Notice Commercial Electronics, of its Pending Motion; 2) Plaintiff's Deadline to Respond to Defednant's Pending Motions. The Court Orders Defendant to provide proper notice of its motion filed 9/8/14 directly to Commercial Electronics on or before 9/24/14. Plaintiff may file responses/oppositions to the pending motion on or before 9/29/14. Signed by Magistrate Judge Mitchell D. Dembin on 9/21/14. (cap) (Entered: 09/22/2014)
09/24/2014	206	CERTIFICATE OF SERVICE re Application for an Order to Show Cause why Third Party

		Commercial Electronics, Inc. Should Not Be Held in Contempt and other Supporting Documents re 205 Order, Set Motion and R&R Hearings/Deadlines. Served upon Commercial Electronics, Inc. on 09/23/2014, filed by Babak Noorian, R.F. Technologies, Inc.. (O'Leary, Thomas). Modified on 9/25/2014 - Wrong event. Not linked to applicable document. QC Email sent. Corrected text and added link to Order (jah). (Entered: 09/24/2014)
09/29/2014	207	RESPONSE in Opposition re 203 MOTION for Sanctions Against Plaintiff HM Electronics, Inc., MOTION for Award of Expenses filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle Herrera, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration, # 5 Exhibit 4 to Herrera Declaration, # 6 Exhibit 5 to Herrera Declaration, # 7 Exhibit 6 to Herrera Declaration, # 8 Exhibit 7 to Herrera Declaration, # 9 Exhibit 8 to Herrera Declaration, # 10 Proof of Service)(Herrera, Michelle). Modified on 9/30/2014 - Double wording in text. QC Email sent. Corrected text (jah). (Entered: 09/29/2014)
09/29/2014	208	RESPONSE in Opposition re 204 MOTION for Order to Show Cause Why Third Party Commercial Electronics, Inc. Should not be Held in Contempt MOTION for Award of Expenses filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle Herrera, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration , # 4 Exhibit 3 to Herrera Declaration, # 5 Proof of Service)(Herrera, Michelle). Modified on 9/30/2014 - Double wording in text. QC Email sent. Corrected text (jah). (Entered: 09/29/2014)
10/02/2014	209	Joint MOTION for Determination of Discovery Dispute by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Brian C. Vanderhoof)(Vanderhoof, Brian). Modified on 10/3/2014 - Wrong motion. Corrected entry (jah). (Entered: 10/02/2014)
10/02/2014	210	Notice of Filing of Surety Rider to BOND No. 80000334 in the amount of \$50,000 posted by Plaintiff HM Electronics, Inc. (Attachments: # 1 Surety Rider) (jah) (Entered: 10/03/2014)
10/03/2014	211	RESPONSE in Opposition re 209 Joint MOTION for Determination of Discovery Dispute re Defendant's Motion to Compel Further Responses to Request for Production of Documents, Set Two filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera, # 2 Proof of Service)(Herrera, Michelle). Modified on 10/3/2014 - Edited attachment description (jah). (Entered: 10/03/2014)
10/06/2014	212	REPLY to Response to Motion re 203 MOTION for Sanctions Against Plaintiff HM Electronics, Inc. MOTION for Award of Expenses, 204 MOTION for Order to Show Cause Why Third Party Commercial Electronics, Inc. Should not be Held in Contempt MOTION for Award of Expenses filed by R.F. Technologies, Inc.. (Attachments: # 1 Declaration, # 2 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 10/06/2014)
10/09/2014	213	ORDER on 199 the Parties' Joint Stipulation to Continue the Time to Complete Discovery and Increase the Number of Depositions. The time to complete discovery is continued from October 17, 2014 to November 21, 2014. Signed by Magistrate Judge Mitchell D. Dembin on 10/9/14. (cap) (Entered: 10/09/2014)
10/24/2014	214	ORDER for Mandatory Settlement Conference. Mandatory Settlement Conference set for 12/9/2014 09:30 AM before Magistrate Judge Mitchell D. Dembin. Confidential settlement conference briefs are due on or before December 2, 2014, either hand-delivered to chambers or emailed. Signed by Magistrate Judge Mitchell D. Dembin on 10/24/14.(kas) (Entered: 10/24/2014)
11/03/2014	215	Joint MOTION to Continue Mandatory Settlement Conference by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Anderson, Allan). (jah). (Entered: 11/03/2014)

11/06/2014	216	ORDER granting 215 Joint Motion to Continue Mandatory Settlement Conference. Upon review, the Court finds good cause to continue the Mandatory Settlement Conference currently scheduled for December 9, 2014, to December 16, 2014, at 9:30 a.m. All requirements for the personal appearance of parties with full settlement authority remain unchanged. Confidential Settlement Conference briefs are due to chambers on or before December 10, 2014. Signed by Magistrate Judge Mitchell D. Dembin on 11/6/14. (no document attached) (atk) (Entered: 11/06/2014)
11/07/2014	217	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle). (jah). (Entered: 11/07/2014)
11/07/2014	218	[FILED AS SEALED DOCUMENT ON 12/15/2014] SEALED LODGED Proposed Document re: 217 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (Herrera, Michelle). (jah). (Main Document 218 replaced on 12/16/2014) (jah). Modified on 12/16/2014 - Added file date of lodgment (jah). (Entered: 11/07/2014)
11/07/2014	219	Ex Parte MOTION to Specially Set Conference to Address Defendants' Violation of Stipulated Protective Order by HM Electronics, Inc.. (Attachments: # 1 Declaration, # 2 Proof of Service)(Herrera, Michelle) (cxl). (Entered: 11/07/2014)
11/10/2014	220	ORDERED STRICKEN ON 11/13/2014 PER ORDER 229 - Ex Parte MOTION to Shorten Time to Bring a Noticed Motion to Strike/Exclude Plaintiff HM Electronics, Inc.'s Belated Supplemental Disclosures by R.F. Technologies, Inc.. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Vikram Subramanian, # 3 Exhibit A to Declaration, # 4 Proof of Service)(O'Leary, Thomas). Modified on 11/12/2014 - Removed duplicative attachment descriptions (jah). (Main Document 220 replaced on 11/13/2014) (jah). Modified on 11/13/2014 - Edited to reflect as stricken. Images removed. Motion and judge association termed (jah). (Entered: 11/10/2014)
11/10/2014	221	MOTION to Strike 220 Ex Parte MOTION to Shorten Time to Bring a Noticed Motion to Strike/Exclude Plaintiff HM Electronics, Inc.'s Belated Supplemental Disclosures by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Vikram Subramanian, # 2 Proof of Service)(O'Leary, Thomas). Modified on 11/12/2014 - Removed duplicative attachment descriptions (jah). (Entered: 11/10/2014)
11/11/2014	222	MOTION to File Documents Under Seal (With attachments)(O'Leary, Thomas). (jah). (Entered: 11/11/2014)
11/11/2014	223	[FILED AS SEALED DOCUMENT ON 12/15/2014] SEALED LODGED Proposed Document re: 222 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(O'Leary, Thomas). (jah). Modified on 12/16/2014 - Added file date of lodgment. Decl. of Vikram Subramanian, Exhibit B and Proposed Order ordered not sealed (jah). (Main Document 223 replaced on 12/16/2014) (jah). (Entered: 11/11/2014)
11/11/2014	224	Ex Parte MOTION to Shorten Time to Bring a Noticed Motion to Strike/Exclude Plaintiff's Belated Supplemental Disclosures by R.F. Technologies, Inc.. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Proof of Service)(O'Leary, Thomas). Modified on 11/12/2014 - Edited to removed extra attachment description (jah). (Entered: 11/11/2014)
11/11/2014	225	MOTION to File Documents Under Seal (With attachments)(O'Leary, Thomas). (jah). (Entered: 11/11/2014)
11/11/2014	226	[FILED AS SEALED DOCUMENT ON 12/15/2014] SEALED LODGED Proposed Document re: 225 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (O'Leary, Thomas). (jah). Modified on 12/16/2014 - Added file

		date of lodgment (jah). (Main Document 226 replaced on 12/16/2014) (jah). (Entered: 11/11/2014)
11/11/2014	227	RESPONSE in Opposition re 219 Ex Parte MOTION to Specially Set Conference to Address Defendants' Violation of Stipulated Protective Order filed by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Thomas M. O'Leary, # 2 Proof of Service)(O'Leary, Thomas). Modified on 11/12/2014 - Edited attachment description (jah). (Entered: 11/11/2014)
11/12/2014	228	NON Opposition re 220 Ex Parte MOTION to Shorten Time to Bring a Noticed Motion to Strike/Exclude Plaintiff HM Electronics, Inc.'s Belated Supplemental Disclosures filed by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle). (jah). (Entered: 11/12/2014)
11/13/2014	229	ORDER granting Defendant's 221 Motion to Strike 220 Ex Parte MOTION to Shorten Time to Bring a Noticed Motion to Strike/Exclude Plaintiff HM Electronics, Inc.'s Belated Supplemental Disclosures. Signed by Magistrate Judge Mitchell D. Dembin on 11/13/2014. (jah) (Entered: 11/13/2014)
11/13/2014	230	REPLY to Response to Motion re 219 Ex Parte MOTION to Specially Set Conference to Address Defendants' Violation of Stipulated Protective Order filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Ex. 4, # 2 Proof of Service) (Herrera, Michelle). Modified on 11/13/2014 - Wrong event. QC Email sent. Corrected text (jah). (Entered: 11/13/2014)
11/13/2014	231	RESPONSE in Opposition re 224 Ex Parte MOTION to Shorten Time to Bring a Noticed Motion to Strike/Exclude Plaintiff's Belated Supplemental Disclosures filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Exhibit 1, # 2 Proof of Service)(Herrera, Michelle). (jah). (Entered: 11/13/2014)
11/17/2014	232	MOTION for Partial Summary Judgment by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Brian C. Vanderhoof, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G, # 10 Proof of Service)(Larson, Stephen). (jah). (Entered: 11/17/2014)
11/17/2014	233	MOTION to Exclude Expert Testimony of Aimee Drolet Rossi by HM Electronics, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Brian D. Martin, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Proof of Service)(Martin, Brian). (jah). (Entered: 11/17/2014)
11/19/2014	234	Supplemental DECLARATION of Brian D. Martin re 233 MOTION to Exclude Expert Testimony of Aimee Drolet Rossi by Plaintiff HM Electronics, Inc.. (Attachments: # 1 Exhibit 5, # 2 Proof of Service)(Martin, Brian). Modified on 11/20/2014 - Edited text and attachment description (jah). (Entered: 11/19/2014)
11/21/2014	235	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle). (jah). (Entered: 11/21/2014)
11/21/2014	236	SEALED LODGED Proposed Document re: 235 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle). Modified on 11/24/2014 - Proof of Service has s/ of staff (jah). (Entered: 11/21/2014)
11/21/2014	237	ORDERED STRICKEN ON 11/24/2014 PER DISCREPANCY ORDER 240 - MOTION for (1) Issue Sanctions and Evidentiary Sanctions Against Defendants Pursuant to Fed R. Civ. P. 37(b); and (2) An Adverse Inference Instruction Regarding Defendants' Withholding of Documents and Spoliation of Evidence by HM Electronics, Inc.. (Herrera, Michelle). Modified on 11/24/2014 - Edited text (jah). Modified on 11/24/2014 - Edited to reflect as

		stricken. Images for motion and attachment removed. Motion and judge associations termed (jah). (Main Document 237 replaced on 11/24/2014) (jah). (Entered: 11/21/2014)
11/21/2014	238	NOTICE Regarding Exhibit Attachment by HM Electronics, Inc. re 237 MOTION for (1) Issue Sanctions and Evidentiary Sanctions Against Defendants Pursuant to Fed R. Civ. P. 37(b); and (2) An Adverse Inference Instruction Regarding Defendants' Withholding of Documents and Spoliation of Eviden (Attachments: # 1 Exhibit 14 to Herrera Declaration, # 2 Exhibit 15 to Herrera Declaration, # 3 Exhibit 16 to Herrera Declaration, # 4 Exhibit 17 to Herrera Declaration, # 5 Exhibit 18, part 1 to Herrera Declaration, # 6 Exhibit 18, part 2 to Herrera Declaration, # 7 Exhibit 19 to Herrera Declaration, # 8 Exhibit 20 to Herrera Declaration, # 9 Exhibit 21 to Herrera Declaration, # 10 Exhibit 22, part 1 to Herrera Declaration, # 11 Exhibit 22, part 2 to Herrera Declaration, # 12 Exhibit 23 to Herrera Declaration, # 13 Exhibit 24, part 1 to Herrera Declaration, # 14 Exhibit 24, part 2 to Herrera Declaration, # 15 Exhibit 24, part 3 to Herrera Declaration, # 16 Exhibit 25, part 1 to Herrera Declaration, # 17 Exhibit 25, part 2 to Herrera Declaration, # 18 Exhibit 26 to Herrera Declaration, # 19 Exhibit 27 to Herrera Declaration, # 20 Exhibit 28 to Herrera Declaration, # 21 Exhibit 29 to Herrera Declaration, # 22 Exhibit 30 to Herrera Declaration, # 23 Exhibit 31 to Herrera Declaration, # 24 Exhibit 32 to Herrera Declaration, # 25 Exhibit 33 to Herrera Declaration, # 26 Exhibit 34 to Herrera Declaration, # 27 Exhibit 35 to Herrera Declaration, # 28 Exhibit 36, part 1 to Herrera Declaration, # 29 Exhibit 36, part 2 to Herrera Declaration, # 30 Exhibit 37 to Herrera Declaration, # 31 Exhibit 38, part 1 to Herrera Declaration, # 32 Exhibit 38, part 2 to Herrera Declaration, # 33 Proof of Service)(Herrera, Michelle). (jah). (Entered: 11/21/2014)
11/21/2014	239	NOTICE Regarding Exhibit Attachment by HM Electronics, Inc. re 238 Notice Regarding Exhibit Attachment, 237 MOTION for Sanctions (1) Issue Sanctions and Evidentiary Sanctions Against Defendants Pursuant to Fed R. Civ. P. 37(b); and (2) An Adverse Inference Instruction Regarding Defendants' Withholding of Documents and Spoliation of Evidence (Attachments: # 1 Exhibit 13, part 1 to Herrera Declaration, # 2 Exhibit 13, part 2 to Herrera Declaration, # 3 Exhibit 13, part 3 to Herrera Declaration, # 4 Exhibit 13, part 4 to Herrera Declaration, # 5 Exhibit 13, part 5 to Herrera Declaration, # 6 Exhibit 13, part 6 to Herrera Declaration, # 7 Proof of Service)(Herrera, Michelle). Modified on 11/24/2014 - Edited text (jah). (Entered: 11/21/2014)
11/24/2014	240	Notice of Document Discrepancies and Order Thereon by the Chambers of Judge Cynthia Bashant Rejecting re 237 MOTION for Sanctions for (1) Issue Sanctions and Evidentiary Sanctions Against Defendants Pursuant to Fed R. Civ. P. 37(b); and (2) An Adverse Inference Instruction Regarding Defendants' Withholding of Documents and Spoliation of Evidence, from Plaintiff HM Electronics, Inc.. Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting documentation, Failure to obtain a hearing date (Local Rule 7.1(b)). Failure to indicate judge to whom motion is addressed (Local Rule 5.1(j)(4)). IT IS HEREBY ORDERED: The document is rejected. It is ordered that the Clerk STRIKE the document from the record, and serve a copy of this order on all parties. (jah) (Additional attachment(s) added on 11/24/2014: # 1 Rejected Document) (jah). (Entered: 11/24/2014)
11/26/2014	241	ORDER denying as moot 235 Plaintiff's Motion to File Documents Under Seal. Signed by Magistrate Judge Mitchell D. Dembin on 11/26/2014. (sjt) (Entered: 11/26/2014)
12/08/2014	242	ORDER Vacating Mandatory Settlement Conference. Based upon the status of the case, the mandatory settlement conference currently scheduled for December 16, 20014 is vacated. Signed by Magistrate Judge Mitchell D. Dembin on 12/8/14. (cap) (Entered: 12/08/2014)
12/11/2014	243	***DOCUMENT STRICKEN PER ORDER 245 *** Joint MOTION Regarding Deposition Scheduling and Costs in Conjunction with the Possible Re-Filing of Plaintiff HM Electronics, Inc.'s Motion for (1) Sanctions Against Defendants Pursuant to Fed. R. Civ. P. 37(b); and (2)

		an Adverse Inference Instruction by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle) (Main Document 243 replaced on 12/12/2014) (kas). Modified on 12/12/2014 to strike document (kas). (Entered: 12/11/2014)
12/11/2014	244	Joint MOTION Amended Joint Motion Regarding Deposition Scheduling and Costs in Conjunction with the Possible Re-Filing of Plaintiff HM Electronics, Inc.'s Motion for (1) Sanctions Against Defendants Pursuant to Fed. R. Civ. P. 37(b); and (2) an Adverse Inference Instruction by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle) (vam). (Entered: 12/11/2014)
12/12/2014	245	ORDER granting 244 Amended Joint Motion Regarding Deposition Scheduling and Costs in Conjunction with the Possible Re-Filing of HM Electronics, Inc.'s Motion for Sanctions and an Adverse Inference Instruction, and Striking Document No. 243 . Signed by Magistrate Judge Mitchell D. Dembin on 12/11/14. (kas) (Additional attachment(s) added on 12/12/2014: # 1 Stricken Document) (kas). (Entered: 12/12/2014)
12/15/2014	246	RESPONSE in Opposition re 233 MOTION to Exclude Expert Testimony of Aimee Drolet Rossi filed by R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Brian C. Vanderhoof, # 2 Exhibit A to Vanderhoof Declaration, # 3 Exhibit B to Vanderhoof Declaration, # 4 Exhibit C to Vanderhoof Declaration, # 5 Exhibit D to Vanderhoof Declaration, # 6 Proof of Service)(Vanderhoof, Brian).Modified on 12/16/2014 - Edited attachment description (jah). (Entered: 12/15/2014)
12/15/2014	247	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) (sjt). (Entered: 12/15/2014)
12/15/2014	248	[FILED AS SEALED DOCUMENT ON 1/21/2015] SEALED LODGED Proposed Document re: 247 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle) (sjt). Modified on 1/22/2015 - Added file date of lodgment (jah). (Main Document 248 replaced on 1/22/2015) (jah). (Entered: 12/15/2014)
12/15/2014	249	DECLARATION of Sandra V. Edge re 247 MOTION to File Documents Under Seal filed by HM Electronics, Inc.. (Attachments: # 1 Exhibit 1 to Edge Declaration, # 2 Exhibit 2 to Edge Declaration, # 3 Exhibit 3 to Edge Declaration, # 4 Exhibit 4 to Edge Declaration, # 5 Exhibit 5 to Edge Declaration, # 6 Exhibit 6 to Edge Declaration, # 7 Exhibit 7 to Edge Declaration, # 8 Exhibit 8 to Edge Declaration, # 9 Exhibit 9 to Edge Declaration, # 10 Exhibit 10 to Edge Declaration, # 11 Exhibit 11 to Edge Declaration, # 12 Proof of Service)(Herrera, Michelle). Modified on 12/16/2014 - Wrong event. QC Email sent. Corrected text to match pleading (jah). (Entered: 12/15/2014)
12/15/2014	250	DECLARATION of Michelle A. Herrera and Index of Exhibits by HM Electronics, Inc. re 249 Response in Opposition to Motion,, (Attachments: # 1 Exhibit 1 to Herrera Declaration, # 2 Exhibit 2 to Herrera Declaration, # 3 Exhibit 3 to Herrera Declaration, # 4 Exhibit 4 to Herrera Declaration, # 5 Exhibit 5 to Herrera Declaration, # 6 Exhibit 6 to Herrera Declaration, # 7 Exhibit 7 to Herrera Declaration, # 8 Exhibit 8 to Herrera Declaration, # 9 Exhibit 9, part 1 to Herrera Declaration, # 10 Exhibit 9, part 2 to Herrera Declaration, # 11 Exhibit 10 to Herrera Declaration, # 12 Exhibit 11 to Herrera Declaration, # 13 Exhibit 12 to Herrera Declaration, # 14 Exhibit 13 to Herrera Declaration, # 15 Exhibit 14 to Herrera Declaration, # 16 Exhibit 15 to Herrera Declaration, # 17 Exhibit 16, part 1 to Herrera Declaration, # 18 Exhibit 16, part 2 to Herrera Declaration, # 19 Exhibit 17 to Herrera Declaration, # 20 Exhibit 18 to Herrera Declaration, # 21 Exhibit 19 to Herrera Declaration, # 22 Exhibit 20 to Herrera Declaration, # 23 Exhibit 21 to Herrera Declaration, # 24 Exhibit 22 to Herrera Declaration, # 25 Exhibit 23 to Herrera Declaration, # 26 Exhibit 24 to Herrera Declaration, # 27 Exhibit 25 to Herrera Declaration, # 28 Exhibit 26 to Herrera Declaration, # 29 Proof of Service)(Herrera, Michelle). Modified on 12/16/2014 - Wrong event. QC Email

		sn et. Corrected text (jah). (Entered: 12/15/2014)
12/15/2014	251	ORDER granting 203 Motion for Sanctions and Motion Award of Expenses; granting 204 Motion for Order to Show Cause and Motion Award of Expenses. The Magistrate Judge certifies findings for the District Judge to consider whether contempt proceedings are appropriate. Pla and its attys are ordered to pay Dft's reasonably incurred fees necessitated in bringing the motion against Pla in the amount of \$8,875. CE and its attys are ordered to pay Dft's reasonably incurred fees necessitated by bringing the motion against CE in the amount of \$2,475; granting in part and denying in part 209 Joint Motion for Determination of Discovery Dispute; granting 217 Motion to File Documents Under Seal; denying in part 219 Ex Parte Motion to Specially Set Conference to Address Defendants' Violation of Stipulated Protective Order. Court also construes the motion as a request to amend the Protective Order. The Motion to Amend the Protective Order is granted; granting in part and denying in part 222 Motion to File Documents Under Seal; granting in part 224 Ex Parte Motion to Shorten Time to Bring Motion to Strike or Exclude Plaintiff's Supplemental Disclosures. The Motion to Strike or Exclude Pla's Supplemental Disclosures is deemed filed as of 11/11/2014 and Pla's opposition to the Motion to Shorten Time is also construed as opposition to the Motion to Strike Supplemental Disclosures. Dft's Motion to Strike Pla's Supplemental Disclosures is denied; granting 225 Motion to File Documents Under Seal. Signed by Magistrate Judge Mitchell D. Dembin on 12/15/2014. (jah) (Entered: 12/16/2014)
12/16/2014	255	REPORT AND RECOMMENDATION Re Defendant's Motion and Certification of Facts Pursuant to 28 USC 635(e) as to 251 Order on Motions, 203 MOTION for Sanctions Against Plaintiff HM Electronics, Inc., MOTION for Award of Expenses filed by R.F. Technologies, Inc., 204 MOTION for Order to Show Cause Why Third Party Commercial Electronics, Inc. Should not be Held in Contempt, MOTION for Award of Expenses filed by R.F. Technologies, Inc.. Court recommends that the District Judge impose sanctions in the form of prospective coercive fines of \$1,000 per contemnor per day, beginning 5 business days after the entry of the contempt order and continuing until the contempt is purged. Court recommends that the District Judge consider the certified facts against Pla or its counsel or CE or its counsel for willfully disobeying court's orders and for obstructing the discovery process. Objections to the Report and Recommendation may be filed by 12/31/2014. Any reply to the objections shall be filed by 1/9/2015. Signed by Magistrate Judge Mitchell D. Dembin on 12/16/2014. (jah) (Entered: 12/16/2014)
12/16/2014	256	ORDER granting Plaintiff's 144 Motion for Attorney Fees and 147 Motion to Disgorge Profits Earned During Period of Non-Compliance with Preliminary Injunction Order. Court awards compensatory damages of \$151,744.50 and \$669,241.00, respectively, to Plaintiff. Signed by Judge Cynthia Bashant on 12/16/2014. (jah) (Entered: 12/17/2014)
12/19/2014	257	REDACTION of Exhibit A to Declaration of Vikram Subramanian in Support of Ex Parte Application for an Order Shortening Time to Bring a Noticed Motion to Strike/Exclude Plaintiff's Belated Supplemental Disclosures by R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(O'Leary, Thomas). Modified on 12/22/2014 - Not properly captioned. No cover page. QC Email sent re: Local Rule 5.1 and ECF 2.k (jah). (Entered: 12/19/2014)
12/22/2014	258	Joint Statement of Undisputed Material Facts by Babak Noorian, R.F. Technologies, Inc., re 232 MOTION for Partial Summary Judgment . (Attachments: # 1 Proof of Service)(Bayles, David) (knb). (Entered: 12/22/2014)
12/22/2014	259	MOTION to File Documents Under Seal (With attachments)(Bayles, David) (QC mailer sent re: proposed order submitted (sjt). (Entered: 12/22/2014)
12/22/2014	260	[FILED AS SEALED DOCUMENT ON 1/21/2015] SEALED LODGED Proposed Document re: 259 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Bayles, David) (sjt). (Main Document 260 replaced on

		1/22/2015) (jah). Modified on 1/22/2015 - Added file date of lodgment(jah). (Entered: 12/22/2014)
12/22/2014	261	REPLY to Response to Motion re 233 MOTION to Exclude Expert Testimony of Aimee Drolet Rossi filed by HM Electronics, Inc. (Attachments: # 1 Proof of Service)(Bjurstrom, Callie) (knb). (Entered: 12/22/2014)
12/29/2014	262	RESPONSE to Objections to Evidence Submitted by Plaintiff in Opposition to Defendants' Motion for Partial Summary Judgment re 260 Sealed Lodged Proposed Document filed by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle). Modified on 12/29/2014 - Edited text (jah). (Entered: 12/29/2014)
12/31/2014	263	OBJECTION by HM Electronics, Inc. re 255 Report and Recommendation Re Defendants' Motions for Contempt Against Plaintiff and Third Party Commercial Electronics, Inc. and Certification of Facts Pursuant to 28 U.S.C. 636(e). (Attachments: # 1 Declaration of Michelle A. Herrera, # 2 Proof of Service)(Herrera, Michelle). Modified on 1/2/2015 - Removed duplicate text (jah). (Entered: 12/31/2014)
12/31/2014	264	Ex Parte MOTION for Oral Argument on Objections to Report and Recommendation Re Defendant's Motions for Contempt Against Plaintiff and Third Party Commercial Electronics, Inc. and Certification of Facts Pursuant to 28 U.S.C. 636(e) by HM Electronics, Inc.. (Attachments: # 1 Declaration Michelle A. Herrera, # 2 Proof of Service)(Herrera, Michelle). Modified on 1/2/2015 - Edited text (jah). (Entered: 12/31/2014)
01/02/2015	265	NOTICE of Compliance of Court's Order Dated December 15, 2014 in Connection with Modifications to the Protective Order by HM Electronics, Inc. re 251 Order on Motions (Attachments: # 1 Proof of Service)(Bjurstrom, Callie). Modified on 1/2/2015 - Edited text (jah). (Entered: 01/02/2015)
01/06/2015	266	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle). (jah). (Entered: 01/06/2015)
01/06/2015	267	[FILED AS SEALED DOCUMENT ON 2/10/2015] SEALED LODGED Proposed Document re: 266 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle). Modified on 1/7/2015 - Proof of Service has s/ of staff member. QC Email sent re ECF signature policy (jah). Modified on 2/11/2015 - Added file date of lodgment (jah). (Main Document 267 replaced on 2/11/2015) (jah). (Entered: 01/06/2015)
01/06/2015	268	MOTION to Issue Sanctions and Evidentiary Sanctions Against Defendants Pursuant to FRCP 37(b) by HM Electronics, Inc.. (Attachments: # 1 Declaration of Stephen M. Combs, # 2 Declaration of Brian C. Vanderhoof, # 3 Declaration of Michelle A. Herrera and Index of Exhibits, # 4 Exhibit 1 to Herrera Declaration, # 5 Exhibit 2 to Herrera Declaration, # 6 Exhibit 3 to Herrera Declaration, # 7 Exhibit 4 to Herrera Declaration, # 8 Exhibit 5 to Herrera Declaration, # 9 Exhibit 6 to Herrera Declaration, # 10 Exhibit 7 to Herrera Declaration, # 11 Exhibit 8 to Herrera Declaration, # 12 Exhibit 9 to Herrera Declaration, # 13 Exhibit 10, part 1 to Herrera Declaration, # 14 Exhibit 10, part 2 to Herrera Declaration, # 15 Exhibit 11, part 1 to Herrera Declaration, # 16 Exhibit 11, part 2 to Herrera Declaration, # 17 Exhibit 11, part 3 to Herrera Declaration, # 18 Exhibit 12, part 1 to Herrera Declaration, # 19 Exhibit 12, part 2 to Herrera Declaration, # 20 Exhibit 13 to Herrera Declaration, # 21 Exhibit 14, part 1 to Herrera Declaration, # 22 Exhibit 14, part 2 to Herrera Declaration, # 23 Exhibit 14, part 3 to Herrera Declaration, # 24 Exhibit 14, part 4 to Herrera Declaration, # 25 Exhibit 15 to Herrera Declaration, # 26 Exhibit 16 to Herrera Declaration, # 27 Exhibit 17, part 1 to Herrera Declaration, # 28 Exhibit 17, part 2 to Herrera Declaration, # 29 Exhibit 18 to Herrera Declaration, # 30 Exhibit 19 to Herrera Declaration, # 31 Exhibit 20 to Herrera Declaration, # 32 Proof of Service)(Herrera, Michelle). Modified on 1/7/2015 - Wrong event, not a Motion. QC Email sent. Termed motion and judge association. Corrected entry (jah).

		Modified on 1/21/2015 (jah). Modified on 1/21/2015 - Changed to Motion (jah). Modified on 3/5/2015 - Added term date, Atty filed Redacted Motion 295 (jah). (Entered: 01/06/2015)
01/06/2015	269	NOTICE Regarding Exhibit Attachment by HM Electronics, Inc. re 268 Memorandum of Points and Authorities in Support of Request for (1) Issue Sanctions and Evidentiary Sanctions Against Defendants Pursuant to Fed.R.Civ.P. 37(b); (2) An Adverse Inference Instruction Regarding Defendants' Withholding of Documents: Exhibit 21 to Herrera Declaration (Attachments: # 1 Exhibit 22 to Herrera Declaration, # 2 Exhibit 23 to Herrera Declaration, # 3 Exhibit 24 to Herrera Declaration, # 4 Exhibit 25 to Herrera Declaration, # 5 Exhibit 26, part 1 to Herrera Declaration, # 6 Exhibit 26, part 2 to Herrera Declaration, # 7 Exhibit 27 to Herrera Declaration, # 8 Exhibit 28 to Herrera Declaration, # 9 Exhibit 29 to Herrera Declaration, # 10 Exhibit 30 to Herrera Declaration, # 11 Exhibit 31 to Herrera Declaration, # 12 Exhibit 32 to Herrera Declaration, # 13 Exhibit 33 to Herrera Declaration, # 14 Exhibit 34 to Herrera Declaration, # 15 Exhibit 35 to Herrera Declaration, # 16 Exhibit 36 to Herrera Declaration, # 17 Exhibit 37 to Herrera Declaration, # 18 Exhibit 38 to Herrera Declaration, # 19 Exhibit 39 to Herrera Declaration, # 20 Exhibit 40 to Herrera Declaration, # 21 Exhibit 41, part 1 to Herrera Declaration, # 22 Exhibit 41, part 2 to Herrera Declaration, # 23 Exhibit 43 to Herrera Declaration, # 24 Exhibit 44 to Herrera Declaration, # 25 Exhibit 45 to Herrera Declaration, # 26 Exhibit 46 to Herrera Declaration, # 27 Exhibit 47 to Herrera Declaration, # 28 Declaration of Todd Stefan, # 29 Proof of Service)(Herrera, Michelle). Modified on 1/7/2015 - Edited text (jah). (Entered: 01/06/2015)
01/07/2015	270	Joint MOTION to Continue to Reset the Pretrial Conference Date and Certain Pretrial Deadlines by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Bjurstrom, Callie). (jah). (Entered: 01/07/2015)
01/12/2015	271	MOTION for Reconsideration re 256 Order on Motion for Attorney Fees, Order on Motion for Miscellaneous (Other 1),, by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Memo of Points and Authorities in Support of Motion for Reconsideration of This Courts December 16, 2014 Sanctions Order, # 2 Certificate of Service)(Anderson, Allan) (sjt). (Entered: 01/12/2015)
01/13/2015	272	ORDER Granting 264 Ex Parte Application for Oral Argument. Hearing set for 1/22/2015 11:00 AM in Courtroom 4B before Judge Cynthia Bashant for oral argument on Judge Dembin's Report. Signed by Judge Cynthia Bashant on 1/13/2015. (knb) (Entered: 01/13/2015)
01/20/2015	273	ORDER granting 270 Joint Motion to Reset Pretrial Conference and Certain Pretrial Deadlines. FRCP 26(a)(3) Pretrial Disclosures and Memorandum of Contentions of Fact and Law due by 2/2/2015. Proposed Pretrial Order due by 2/23/2015. Final Pretrial Conference set for 3/9/2015 11:00 AM before Judge Cynthia Bashant. Motion in Limine due by 3/9/2015. Responses to Motion in Limine due by 3/2/2015. All other pretrial deadlines, as well as trial date, remain as set in the Fourth Amended Scheduling dated 6/24/2014. Signed by Judge Cynthia Bashant on 1/20/2015. (jah) (Entered: 01/20/2015)
01/21/2015	274	ORDER granting 247 Motion to File Documents Under Seal; granting 259 Motion to File Documents Under Seal. Parties are ordered to file redacted versions of all documents sealed by this Order by 2/20/2015. Signed by Judge Cynthia Bashant on 1/13/2015. (jah) (Entered: 01/22/2015)
01/22/2015	277	Minute Entry for proceedings held before Judge Cynthia Bashant: Motion Hearing held on 1/22/2015. Denying 203 MOTION for Sanctions Against Plaintiff HM Electronics, Inc. and Denying 204 MOTION for Order to Show Cause Why Third Party Commercial Electronics, Inc. Should not be Held in Contempt. Denying 255 Report and Recommendation. Court finds no contempt. Granting Objections 263 to the Report and Recommendation. (Court Reporter/ECR Dana Peabody). (Plaintiff Attorney Callie Bjurstrom). (Defendant Attorney

		Allan Anderson and Brian Vanderhoof). (no document attached) (sxm) (Entered: 01/22/2015)
02/02/2015	278	MEMORANDUM OF FACTS AND CONTENTIONS OF LAW by Babak Noorian, R.F. Technologies, Inc.. (Anderson, Allan). Modified on 2/3/2015 - No Proof of Service. QC Email sent to file Proof of Service (jah). (Entered: 02/02/2015)
02/02/2015	279	MEMORANDUM OF FACTS AND CONTENTIONS OF LAW by HM Electronics, Inc.. (Attachments: # 1 Exhibit 1, # 2 Proof of Service)(Herrera, Michelle). (jah). (Entered: 02/02/2015)
02/02/2015	280	Exhibit List by Babak Noorian, R.F. Technologies, Inc.. (Anderson, Allan). Modified on 2/3/2015 - No proof of service. QC Email sent to file proof of service (jah). (Entered: 02/02/2015)
02/02/2015	281	Witness List by Babak Noorian, R.F. Technologies, Inc.. (Anderson, Allan). Modified on 2/3/2015 - Has s/ of different atty, not filing atty's. No proof of service. QC Email sent re ECF signature policy and to file proof of service (jah). (Entered: 02/02/2015)
02/02/2015	282	Pretrial Disclosures Pursuant to FRCP 26(a)(3) by HM Electronics, Inc. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Proof of Service)(Herrera, Michelle). Modified on 2/3/2015 - Edited text (jah). (Entered: 02/02/2015)
02/03/2015	283	CERTIFICATE OF SERVICE by Babak Noorian, R.F. Technologies, Inc. re 281 Witness List (Anderson, Allan). (jah). (Entered: 02/03/2015)
02/03/2015	284	CERTIFICATE OF SERVICE by Babak Noorian, R.F. Technologies, Inc. re 278 Memorandum of Facts and Contentions of Law (Anderson, Allan). (jah). (Entered: 02/03/2015)
02/03/2015	285	CERTIFICATE OF SERVICE by Babak Noorian, R.F. Technologies, Inc. re 280 Exhibit List (Anderson, Allan). (jah). (Entered: 02/03/2015)
02/09/2015	286	RESPONSE in Opposition re 271 MOTION for Reconsideration re 256 Order on Motion for Attorney Fees, Order on Motion for Miscellaneous (Other 1), filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Proof of Service)(Herrera, Michelle). (jah). (Entered: 02/09/2015)
02/10/2015	287	ORDER granting in part and denying in part Plaintiff's 266 Motion to File Documents Under Seal. Courts orders Pla to file (not under seal) the redacted Joint Motion, redacting only the designated quoted text and any discussion disclosing the contents of the designated materials by 2/20/2015. The Joint Motion is deemed filed as of 1/6/2015, and the unredacted version shall be filed under seal on the docket. Pla's motion to seal Exhibits 5, 6, 7, 16, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 42, 43, 44, and A is granted without prejudice to Court modifying this Order at a later time. Signed by Magistrate Judge Mitchell D. Dembin on 2/10/2015. (jah) (Entered: 02/11/2015)
02/11/2015	289	REDACTED REPLY to Response to Motion re 232 MOTION for Partial Summary Judgment filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Certificate of Service) (Skelton, Timothy). (jah). (Entered: 02/11/2015)
02/11/2015	290	REDACTED OBJECTION to Evidence by Babak Noorian, R.F. Technologies, Inc. re 232 MOTION for Partial Summary Judgment. (Attachments: # 1 Certificate of Service) (Skelton, Timothy). Modified on 2/12/2015 - Double wording in text. QC Email sent. Edited text (jah). (Entered: 02/11/2015)
02/13/2015	291	ORDER denying Defendant's 271 Motion for Reconsideration re 256 Order on Motion for Attorney Fees. Court orders Dft to pay the entirety of the compensatory sanctions awarded in its previous Order by 2/21/2015. Dft is reminded that these consist of attys' fees and costs of

		\$151,744.50 and \$669,241.00 in disgorged profits. Signed by Judge Cynthia Bashant on 2/13/2015. (jah) (Entered: 02/13/2015)
02/17/2015	292	OBJECTION to Defendants' Pretrial Disclosures by HM Electronics, Inc. (Attachments: # 1 Exhibit 1)(Herrera, Michelle). Modified on 2/18/2015 - No proof of service. QC Email sent to file proof of service. Edited text (jah). (Entered: 02/17/2015)
02/17/2015	293	OBJECTION by Babak Noorian, R.F. Technologies, Inc. re 282 Pretrial Disclosures. (Attachments: # 1 Exhibit A, # 2 Proof of Service)(O'Leary, Thomas). Modified on 2/18/2015 - Edited text (jah). (Entered: 02/17/2015)
02/17/2015	294	Pretrial Disclosures re: Designation of Deposition Testimony of Michelle Greenwood Defendants May Use at Trial by Babak Noorian, R.F. Technologies, Inc. (Attachments: # 1 Proof of Service)(O'Leary, Thomas). Modified on 2/18/2015 - Edited text to match pleading (jah). (Entered: 02/17/2015)
02/18/2015	295	Redacted Joint MOTION for Issue Sanctions and Evidentiary Sanctions Against Dfts Pursuant to FRCP 37(b), Adverse Inference Instructions Re: Dfts' Withholding of Documents and Spoliation of Evidence, Finding of Contempt against Dfts, Award of Expenses by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle). Modified on 2/18/2015 - Edited to fit into motion text (jah). (Entered: 02/18/2015)
02/18/2015	296	Redacted RESPONSE in Opposition re 232 MOTION for Partial Summary Judgment filed by HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle). (jah). (Entered: 02/18/2015)
02/18/2015	297	Redacted DECLARATION of Patrick F. Kennedy, Ph.D. re 296 Response in Opposition to Motion by Plaintiff HM Electronics, Inc.. (Attachments: # 1 Proof of Service)(Herrera, Michelle). Modified on 2/18/2015 - Edited to removed duplicative text (jah). (Entered: 02/18/2015)
03/02/2015	298	OBJECTION to Defendants' Untimely and Improper Pretrial Disclosures by HM Electronics, Inc.. (Attachments: # 1 Exhibit 1 to Plaintiff's Objections, # 2 Exhibit 2 to Plaintiff's Objections, # 3 Proof of Service)(Martin, Brian). (jah). (Entered: 03/02/2015)
03/05/2015	299	ORDER Vacating Pretrial and Trial dates. Court vacates the 3/9/2015 hearing, the 4/14/2015 trial date, and the dates set in the 1/20/2015 Order 273 . Court will reset these dates after ruling on Dft's summary judgment motion. Signed by Judge Cynthia Bashant on 3/5/2015. (jah) (Entered: 03/05/2015)
04/03/2015	300	ORDER Requiring Supplemental Joint Statement re 295 Redacted Joint MOTION for Issue Sanctions and Evidentiary Sanctions against Dfts Pursuant to FRCP 37(b), Adverse Inference Instructions Re Dfts Withholding of Documents and Spoliation of Evidence, Finding of Contempt against Dfts, Award of Expenses. Court orders the parties to file joint statement addressing status of discovery and what remains of the dispute raised in the joint motion. Court orders supplemental joint statement to be filed by 4/17/2015. Signed by Magistrate Judge Mitchell D. Dembin on 4/3/2015. (jah) (Entered: 04/03/2015)
04/17/2015	301	ORDER denying Defendant's 232 Motion for Partial Summary Judgment. Signed by Judge Cynthia Bashant on 4/17/2015. (jah) (Entered: 04/17/2015)
04/17/2015	302	ORDER granting in part and denying in part Plaintiff's 233 Motion to Exclude the Expert Report of Dr. Aimee Drolet Rossi. Pla's motion in granted in part, and Court orders all portions of Dr. Aimee Drolet Rossi's report that do not conradict or rebut the opinions of Dr. Susan Schwartz McDonald to be stricken from the record. To the extent Dr. Rossi's report contradicts or rebuts the opinions of Dr. McDonald, Pla's motion is denied. Signed by Judge Cynthia Bashant on 4/17/2015. (jah) (Entered: 04/17/2015)

04/17/2015	303	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) (sjt). (Entered: 04/17/2015)
04/17/2015	304	[FILED AS SEALED DOCUMENT ON 4/21/2015] SEALED LODGED Proposed Document re: 303 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle) (sjt). (Main Document 304 replaced on 4/21/2015) (jah). Modified on 4/21/2015 - Added file date of lodgment (jah). (Entered: 04/17/2015)
04/17/2015	305	DECLARATION of Brian C. Vanderhoof in Support of Defendants' Portion of Supplemental Briefing re 304 Sealed Lodged Proposed Document by Plaintiff HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 47-55 to the Declaration of Michelle A. Herrera, # 3 Proof of Service)(Herrera, Michelle). Modified on 4/20/2015 - Corrected text to match pleading (jah). (Entered: 04/17/2015)
04/21/2015	306	ORDER granting in part and denying in part Plaintiff's 303 Motion to File Documents Under Seal. Court orders Plaintiff to file a redacted joint supplemental statement and proof of service by 4/24/2015. Supplemental joint statement is deemed filed 4/17/2015. The unredacted version of the joint supplemental statement and exhibits provisionally filed under seal shall remain sealed on the docket. Signed by Magistrate Judge Mitchell D. Dembin on 4/21/2015. (jah) (Entered: 04/21/2015)
04/22/2015	308	Redacted SUPPLEMENTAL JOINT STATEMENT Regarding Request for (1) Issue Sanctions and Evidentiary Sanctions Against Defendants Pursuant to Fed R.Civ. P. 37(b); (2) an Adverse Inference Instruction Regarding Defendants' Withholding of Documents and Spoliation of Evidence; (3) a Finding of Contempt Against Defendants; and (4) an Award of Expenses by Plaintiff HM Electronics, Inc. re 306 Order on Motion to File Documents Under Seal. (Attachments: # 1 Proof of Service filed under seal on 4.17.15, # 2 Proof of Service) (Herrera, Michelle). Modified on 4/23/2015 - Edited text (jah). (Entered: 04/22/2015)
05/08/2015	309	Supplemental DECLARATION of Brian C. Vanderhoof in Support of Defendants' Portion of Supplemental Briefing re 300 Order, by Defendants Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Exhibits, # 2 Proof of Service)(Vanderhoof, Brian). Modified on 5/8/2015 - Edited to removed duplicate text (jah). (Entered: 05/08/2015)
05/19/2015	310	AMENDED SCHEDULING ORDER: Proposed Pretrial Order due by 6/8/2015. Final Pretrial Conference set for 6/22/2015 11:00 AM before Judge Cynthia Bashant. All motions in limine are due by 7/6/2015. All responses to the motions in limine are due by 7/20/2015. Parties shall submit by 7/20/2015: 1) joint proposed jury instructions, 2) proposed verdict form, 3) voir dire questions, and 4) statement of the case. Motion In Limine Hearing set for 8/10/2015 10:30 AM before Judge Cynthia Bashant. Jury Trial set for 8/18/2015 09:00 AM before Judge Cynthia Bashant. Signed by Magistrate Judge Mitchell D. Dembin on 5/19/2015. (jah) (Entered: 05/19/2015)
06/16/2015	311	NOTICE of Appearance by Matthew Robert Stephens on behalf of HM Electronics, Inc. (Stephens, Matthew). Attorney Matthew Robert Stephens added to party HM Electronics, Inc. (pty:pla). (jah). (Entered: 06/16/2015)
06/22/2015	312	Minute Entry for proceedings held before Judge Cynthia Bashant: Pretrial Conference held on 6/22/2015. Court to issue order. Defense request for the Court to order an additional mediation granted.(Court Reporter/ECR Dana Peabody). (Plaintiff Attorney Callie Bjurstrom). (Defendant Attorney Thomas OLeary). (no document attached) (sxm) (Entered: 06/22/2015)
06/22/2015	313	PRETRIAL ORDER. Signed by Judge Cynthia Bashant on 6/22/15. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(dlg) (Entered: 06/22/2015)
06/29/2015	314	NOTICE of Withdrawal of Kelly W. Craven as Counsel by HM Electronics, Inc. (Craven,

		Kelly). Modified on 6/29/2015 - Wrong event. No Proof of Service. QC Email sent to file Proof of Service. Edited text (jah). (Entered: 06/29/2015)
07/06/2015	315	In Limine MOTION to Exclude No. 3 of 16 to Exclude Evidence and Argument Regarding the Alleged Absence of Pecuniary Loss as a Defense to Lanham Act Violations and as a Limitation on the Recovery of Defendants' Profits as a Remedy Under the Lanham Act by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	316	In Limine MOTION to Preclude No. 4 of 16 to Preclude Defendants from Arguing a "But For" Requirement in Connection with Plaintiff's Recovery of R.F. Technologies, Inc.'s Profits Under the Lanham Act by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	317	In Limine MOTION to Preclude No. 5 of 16 to Preclude Defendants from Presenting Evidence and Argument that Plaintiff Must Prove Actual Confusion in Order to Recover Defendants' Profits as a Remedy Under the Lanham Act by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	318	In Limine MOTION to Exclude No. 6 of 16 to Preclude Defendants from Submitting Evidence and Argument that Plaintiff Must Establish Willfulness in Connection with its Lanham Act Claims or Damage Claim Based on Defendants' Profits by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	319	In Limine MOTION to Exclude No. 7 of 16 to Exclude References to HM Electronics, Inc.'s Alleged Motive for Filing Lawsuit by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	320	In Limine MOTION to Exclude No. 8 of 16 to Exclude Evidence and Argument Regarding Third Parties' Alleged Failure to Comply with FCC Rules and Regulations Applicable to Wireless Drive-Thru System Equipment by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	321	In Limine MOTION to Exclude No. 9 of 16 to Exclude Evidence and Argument Regarding Alleged Wrongful Conduct by Third Party Commercial Electronics, Inc. to Support Defendants' Unclean Hands Defense by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	322	In Limine MOTION to Preclude No. 10 of 16 to Preclude Defendants from Offering Expert Testimony Through Babak Noorian, Scott Crause and/or Any Other Employee of Defendant R.F. Technologies, Inc. by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	323	In Limine MOTION to Exclude No. 11 of 16 to Exclude Testimony of Defendants' Expert Witness Aimee Rossi that: (1) Includes Opinions not Previously Expressed; (2) is Based on Evidence Reviewed Post-Deposition; or (3) Exceeds the Scope of Rebuttal by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	324	In Limine MOTION to Preclude No. 13 of 16 to Preclude Defendants from Introducing Evidence or Argument in Support of a Classic Fair Use Defense to Plaintiff's Lanham Act Claims by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	325	In Limine MOTION to Preclude No. 14 of 16 to Preclude Defendants from Introducing Evidence or Argument that HME's Trademarks are not Distinctive or that the Trademarks

		Lack Secondary Meaning by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration, # 5 Exhibit 4 to Herrera Declaration, # 6 Exhibit 5 to Herrera Declaration, # 7 Exhibit 6 to Herrera Declaration, # 8 Exhibit 7 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	326	In Limine MOTION to Exclude No. 16 of 16 to Exclude References to the Size and/or Resources of HM Electronics, Inc. or its Counsel by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	327	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) (sjt). (Entered: 07/06/2015)
07/06/2015	328	[FILED AS SEALED DOCUMENT ON 7/7/2015] SEALED LODGED Proposed Document re: 327 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle) (sjt). (Main Document 328 replaced on 7/7/2015) (jah). Modified on 7/7/2015 - Added file date of lodgment(jah). (Entered: 07/06/2015)
07/06/2015	329	In Limine MOTION to Preclude No. 15 of 16 to Preclude Defendants from Offering Late Desingated and Improper Deposition Testimony at Trial re 328 Sealed Lodged Proposed Document, 327 MOTION to File Documents Under Seal by HM Electronics, Inc.. (Attachments: # 1 Declaration Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration (filed under seal), # 5 Exhibit 4 to Herrera Declaration, # 6 Exhibit 5 to Herrera Declaration (filed under seal), # 7 Exhibit 6 to Herrera Declaration, # 8 Exhibit 7 to Herrera Declaration (filed under seal), # 9 Exhibit 8 to Herrera Declaration (filed under seal), # 10 Exhibit 9 to Herrera Declaration, # 11 Exhibit 10 to Herrera Declaration, # 12 Exhibit 11 to Herrera Declaration, # 13 Exhibit 12 to Herrera Declaration (filed under seal), # 14 Exhibit 13 to Herrera Declaration (filed under seal))(Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	330	TRIAL BRIEF to Determine the Viability of Mitigation as an Affirmative Defense to Plaintiff's Claims and if Viable, Permission to Offer Evidence of HME's Efforts to Mitigate in its Case in Chief by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	331	TRIAL BRIEF for a Determination that Defendants May Not Present Equitable Arguments to the Jury Against an Award of Defendants' Profits as a Remedy Under the Lanham Act by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	332	CERTIFICATE OF SERVICE by HM Electronics, Inc. re 328 Sealed Lodged Proposed Document (Herrera, Michelle). Modified on 7/6/2015 - Corrected text to remove description of sealed documents (jah). (Entered: 07/06/2015)
07/06/2015	333	In Limine MOTION to Bifurcate No. 1 of 16 by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	334	In Limine MOTION No. 2 of 16 to Preclude Defendants from Presenting Evidence and Argument that HME's Lanham Act Claims are Barred by Statute of Limitations by HM Electronics, Inc.. (Herrera, Michelle). Modified on 7/7/2015 - Removed duplicate text (jah). (Entered: 07/06/2015)
07/06/2015	335	MOTION to File Documents Under Seal (With attachments)(Vanderhoof, Brian) (QC mailer sent re; no sealed lodged proposed document; proposed order attached)(sjt). (Entered: 07/06/2015)
07/06/2015	336	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle). (jah). (Entered: 07/06/2015)

07/06/2015	337	In Limine MOTION to Exclude Evidence of or Related to the Preliminary Injunction (MIL No. 1) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service) (Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	338	In Limine MOTION to Exclude Untimely Disclosed Damages Theories (MIL No. 2) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	339	[FILED AS SEALED DOCUMENT ON 7/7/2015] SEALED LODGED Proposed Document re: 336 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle). (jah). (Main Document 339 replaced on 7/8/2015) (jah). Modified on 7/8/2015 - Added file date of lodgment (jah). (Entered: 07/06/2015)
07/06/2015	340	In Limine MOTION to Exclude Evidence Sourced from the "Wayback Machine" (MIL No. 3)by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service) (Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	341	In Limine MOTION to Exclude Evidence of Defendants' Ownership of Certain Vehicles (MIL No. 4) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service) (Vanderhoof, Brian).(jah). (Entered: 07/06/2015)
07/06/2015	342	In Limine MOTION to Exclude Expert Testimony by Patrick Kennedy Based on Unsupportable Assumptions (MIL No. 5) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	343	In Limine MOTION to Exclude Evidence of Prior FCC Investigations and Findings (MIL No. 6) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service) (Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	344	In Limine MOTION to Exclude Admission of Call Logs (MIL No. 7) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	345	In Limine MOTION to Exclude Plaintiff's 807(b) Offer of Evidence at Trial (MIL No. 8) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	346	In Limine MOTION to Exclude Evidence of Damages Under the Lanham Act Prior to December 4, 2009 (MIL No. 9) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	347	In Limine MOTION to Exclude Documents Produced by Non-Party Panasonic at Trial (MIL No. 10) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service) (Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	348	In Limine MOTION to Exclude No. 12 of 16 to Exclude Expert Opinions of Deborah Dickson by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration, # 5 Exhibit 4 to Herrera Declaration, # 6 Exhibit 5 to Herrera Declaration, # 7 Exhibit 6 to Herrera Declaration, # 8 Exhibit 7 to Herrera Declaration, # 9 Exhibit 8 to Herrera Declaration, # 10 Exhibit 9 to Herrera Declaration, # 11 Exhibit 10 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	349	In Limine MOTION to Exclude Evidence of Mr. Noorian's Financial Condition Unless and Until a Finding of Liability is Rendered Against Him (MIL No. 11) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/06/2015)

07/06/2015	350	In Limine MOTION to Exclude Evidence or Argument Regarding Treble Damages (MIL No. 12) by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service) (Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	351	In Limine MOTION to Exclude Testimony of Chris Harvey (MIL No. 13)by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/06/2015)
07/06/2015	352	CERTIFICATE OF SERVICE re: Exhibits 1, 2, 3, 4, 5, 6, 7, 9 and 10 to the Declaration of Michelle A. Herrera in Support of Plaintiff HM Electronics, Inc.'s Notice of Motion and Motion in Limine No. 12 of 16 to Exclude Expert Testimony of Deborah Dickson by HM Electronics, Inc. (Herrera, Michelle). (jah). (Entered: 07/06/2015)
07/06/2015	353	DECLARATION of Brian C. Vanderhoof re 346 In Limine MOTION to Exclude Evidence of Damages Under the Lanham Act Prior to December 4, 2009 (MIL No. 9), 347 In Limine MOTION to Exclude Documents Produced by Non-Party Panasonic at Trial (MIL No. 10), 345 In Limine MOTION to Exclude Plaintiff's 807(b) Offer of Evidence at Trial (MIL No. 8), 343 In Limine MOTION to Exclude Evidence of Prior FCC Investigations and Findings (MIL No. 6), 344 In Limine MOTION to Exclude Admission of Call Logs (MIL No. 7), 340 In Limine MOTION to Exclude Evidence Sourced from the "Wayback Machine" (MIL No. 3), 348 In Limine MOTION to Exclude No. 12 of 16 to Exclude Expert Opinions of Deborah Dickson, 349 In Limine MOTION to Exclude Evidence of Mr. Noorian's Financial Condition Unless and Until a Finding of Liability is Rendered Against Him (MIL No. 11), 337 In Limine MOTION to Exclude Evidence of or Related to the Preliminary Injunction (MIL No. 1), 338 In Limine MOTION to Exclude Untimely Disclosed Damages Theories (MIL No. 2), 350 In Limine MOTION to Exclude Evidence or Argument Regarding Treble Damages (MIL No. 12), 342 In Limine MOTION to Exclude Expert Testimony by Patrick Kennedy Based on Unsupportable Assumptions (MIL No. 5), 351 In Limine MOTION to Exclude Testimony of Chris Harvey (MIL No. 13), 341 In Limine MOTION to Exclude Evidence of Defendants' Ownership of Certain Vehicles (MIL No. 4) by Defendants Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Exhibit A to Vanderhoof Declaration, # 2 Exhibit B to Vanderhoof Declaration, # 3 Exhibit C to Vanderhoof Declaration, # 4 Exhibit D to Vanderhoof Declaration, # 5 Exhibit E to Vanderhoof Declaration, # 6 Exhibit F to Vanderhoof Declaration, # 7 Exhibit G to Vanderhoof Declaration, # 8 Proof of Service)(Vanderhoof, Brian). Modified on 7/7/2015 - Edited text (jah). (Entered: 07/06/2015)
07/07/2015	354	[FILED AS SEALED DOCUMENT ON 7/7/2015] SEALED LODGED Proposed Document re: 335 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (Vanderhoof, Brian) (sjt). (Main Document 354 replaced on 7/8/2015) (jah). Modified on 7/8/2015 - Added file date of lodgment (jah). (Entered: 07/07/2015)
07/07/2015	355	ORDER granting Plaintiff's 327 Ex Parte Motion to File Documents Under Seal. Clerk directed to file the currently seal-lodged documents under seal. Signed by Judge Cynthia Bashant on 7/6/2015. (jah) (Entered: 07/07/2015)
07/07/2015	357	CERTIFICATE OF SERVICE by Babak Noorian, R.F. Technologies, Inc. re 354 Sealed Lodged Proposed Document (Vanderhoof, Brian). Modified on 7/7/2015 - Edited to remove description of sealed document (jah). (Entered: 07/07/2015)
07/07/2015	358	ORDER granting 335 Ex Parte Motion to File Documents Under Seal; granting 336 Ex Parte Motion to File Documents Under Seal. Court grants the parties' ex parte application without prejudice to Court modifying this Order at a later time. Clerk directed to file the seal-lodged document under seal. Signed by Judge Cynthia Bashant on 7/7/2015. (jah) (Entered: 07/08/2015)
07/20/2015	361	RESPONSE to Motion re 337 In Limine MOTION to Exclude Evidence of or Related to the

		Preliminary Injunction (MIL No. 1) filed by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	362	RESPONSE to Motion re 343 In Limine MOTION to Exclude Evidence of Prior FCC Investigations and Findings (MIL No. 6) filed by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	363	Conditional NON-OPPOSITION TO MOTION re 349 In Limine MOTION to Exclude Evidence of Mr. Noorian's Financial Condition Unless and Until a Finding of Liability is Rendered Against Him (MIL No. 11) filed by HM Electronics, Inc.. (Herrera, Michelle). Modified on 7/20/2015 - Wrong event. QC Email sent. Corrected text (jah). (Entered: 07/20/2015)
07/20/2015	364	RESPONSE to Motion re 350 In Limine MOTION to Exclude Evidence or Argument Regarding Treble Damages (MIL No. 12) filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera, # 2 Supplement Index of Exhibits, # 3 Exhibit 1 to Herrera Declaration, # 4 Exhibit 2 to Herrera Declaration, # 5 Exhibit 3 to Herrera Declaration, # 6 Exhibit 4 to Herrera Declaration, # 7 Exhibit 5 to Herrera Declaration) (Herrera, Michelle) . (jah). (Entered: 07/20/2015)
07/20/2015	365	RESPONSE to Motion re 340 In Limine MOTION to Exclude Evidence Sourced from the "Wayback Machine" (MIL No. 3) filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration, # 5 Exhibit 4 to Herrera Declaration, # 6 Exhibit 5 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	366	RESPONSE to Motion re 344 In Limine MOTION to Exclude Admission of Call Logs (MIL No. 7) filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	367	NOTICE of filing Joint Statement of the Case Submitted by Plaintiff HM Electronics, Inc. and Defendants R.F. Technologies, Inc. and Babak Noorian by HM Electronics, Inc. (Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	368	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) (sjt). (Entered: 07/20/2015)
07/20/2015	369	(Filed as Sealed Document 401) SEALED LODGED Proposed Document re: 368 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle) (sjt). (Main Document 369 replaced on 7/22/2015) (sjt). Modified on 7/22/2015 (sjt). (Entered: 07/20/2015)
07/20/2015	370	DECLARATION re 368 MOTION to File Documents Under Seal, 369 Sealed Lodged Proposed Document by Plaintiff HM Electronics, Inc.. (Attachments: # 1 Exhibit to Herrera Declaration (filed under seal), # 2 Exhibit 2 to Herrera Declaration)(Herrera, Michelle). Modified on 7/20/2015 - Edited to remove name of sealed document from text (jah). (Entered: 07/20/2015)
07/20/2015	371	NOTICE of Filing Proposed Special Verdict Form by HM Electronics, Inc. (Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	372	RESPONSE in Opposition re 333 In Limine MOTION to Bifurcate No. 1 of 16 filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	373	RESPONSE in Opposition re 334 In Limine MOTION No. 2 of 16 to Preclude Defendants

		from Presenting Evidence and Argument that HME's Lanham Act Claims are Barred by Statute of Limitations filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	374	RESPONSE in Opposition re 315 In Limine MOTION to Exclude No. 3 of 16 to Exclude Evidence and Argument Regarding the Alleged Absence of Pecuniary Loss as a Defense to Lanham Act Violations and as a Limitation on the Recovery of Defendants' Profits as a Remedy Under the Lanham Act filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	375	RESPONSE to Motion re 345 In Limine MOTION to Exclude Plaintiff's 807(b) Offer of Evidence at Trial (MIL No. 8) filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Brian D. Martin and Index of Exhibits, # 2 Exhibit 1 to Martin Declaration, # 3 Exhibit 2 to Martin Declaration)(Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	376	RESPONSE in Opposition re 316 In Limine MOTION to Preclude No. 4 of 16 to Preclude Defendants from Arguing a "But For" Requirement in Connection with Plaintiff's Recovery of R.F. Technologies, Inc.'s Profits Under the Lanham Act filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	377	RESPONSE in Opposition re 317 In Limine MOTION to Preclude No. 5 of 16 to Preclude Defendants from Presenting Evidence and Argument that Plaintiff Must Prove Actual Confusion in Order to Recover Defendants' Profits as a Remedy Under the Lanham Act filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	378	RESPONSE in Opposition re 318 In Limine MOTION to Exclude No. 6 of 16 to Preclude Defendants from Submitting Evidence and Argument that Plaintiff Must Establish Willfulness in Connection with its Lanham Act Claims or Damage Claim Based on Defendants' Profits filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	379	RESPONSE to Motion re 351 In Limine MOTION to Exclude Testimony of Chris Harvey (MIL No. 13) filed by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	380	RESPONSE in Opposition re 319 In Limine MOTION to Exclude No. 7 of 16 to Exclude References to HM Electronics, Inc.'s Alleged Motive for Filing Lawsuit filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	381	RESPONSE in Opposition re 320 In Limine MOTION to Exclude No. 8 of 16 to Exclude Evidence and Argument Regarding Third Parties' Alleged Failure to Comply with FCC Rules and Regulations Applicable to Wireless Drive-Thru System Equipment filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	382	RESPONSE in Opposition re 321 In Limine MOTION to Exclude No. 9 of 16 to Exclude Evidence and Argument Regarding Alleged Wrongful Conduct by Third Party Commercial Electronics, Inc. to Support Defendants' Unclean Hands Defense filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	383	RESPONSE in Opposition re 322 In Limine MOTION to Preclude No. 10 of 16 to Preclude Defendants from Offering Expert Testimony Through Babak Noorian, Scott Crause and/or Any Other Employee of Defendant R.F. Technologies, Inc. filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)

07/20/2015	384	RESPONSE in Opposition re 323 In Limine MOTION to Exclude No. 11 of 16 to Exclude Testimony of Defendants' Expert Witness Aimee Rossi that: (1) Includes Opinions not Previously Expressed; (2) is Based on Evidence Reviewed Post-Deposition; or (3) Exceeds the Scope of Rebuttal filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Brian C. Vanderhoof in Support of Opposition, # 2 Exhibit A to Vanderhoof Declaration, # 3 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	385	MOTION to File Documents Under Seal (With attachments)(O'Leary, Thomas) (QC mailer sent re: missing proof of service) (sjt). (Entered: 07/20/2015)
07/20/2015	386	Proposed Voir Dire by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	387	(Filed as Sealed Document 411 on 7/22/2015) SEALED LODGED Proposed Document re: 385 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(O'Leary, Thomas)(sjt). (Main Document 387 replaced on 7/22/2015) (sjt). Modified to add filing date on on 7/22/2015 (sjt). (Entered: 07/20/2015)
07/20/2015	388	RESPONSE to Motion re 347 In Limine MOTION to Exclude Documents Produced by Non-Party Panasonic at Trial (MIL No. 10) filed by HM Electronics, Inc.. (Attachments: # 1 Declaration of Michelle A. Herrera and Index of Exhibits, # 2 Exhibit 1 to Herrera Declaration, # 3 Exhibit 2 to Herrera Declaration, # 4 Exhibit 3 to Herrera Declaration, # 5 Exhibit 4 to Herrera Declaration)(Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	389	RESPONSE in Opposition re 348 In Limine MOTION to Exclude No. 12 of 16 to Exclude Expert Opinions of Deborah Dickson filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Declaration of Brian C. Vanderhoof in Support of Opposition, # 2 Exhibit A to Vanderhoof Declaration, # 3 Exhibit B to Vanderhoof Declaration, # 4 Exhibit C to Vanderhoof Declaration, # 5 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	390	RESPONSE to Motion re 346 In Limine MOTION to Exclude Evidence of Damages Under the Lanham Act Prior to December 4, 2009 (MIL No. 9) filed by HM Electronics, Inc.. (Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	391	CERTIFICATE OF SERVICE by Babak Noorian, R.F. Technologies, Inc. re 387 Sealed Lodged Proposed Document (O'Leary, Thomas). Modified on 7/21/2015 - Ed9ted to remove name of sealed documents(jah). (Entered: 07/20/2015)
07/20/2015	392	RESPONSE in Opposition re 324 In Limine MOTION to Preclude No. 13 of 16 to Preclude Defendants from Introducing Evidence or Argument in Support of a Classic Fair Use Defense to Plaintiff's Lanham Act Claims filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	393	RESPONSE in Opposition re 325 In Limine MOTION to Preclude No. 14 of 16 to Preclude Defendants from Introducing Evidence or Argument that HME's Trademarks are not Distinctive or that the Trademarks Lack Secondary Meaning filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	394	RESPONSE in Opposition re 329 In Limine MOTION to Preclude No. 15 of 16 to Preclude Defendants from Offering Late Desingated and Improper Deposition Testimony at Trial filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	395	RESPONSE in Opposition re 326 In Limine MOTION to Exclude No. 16 of 16 to Exclude References to the Size and/or Resources of HM Electronics, Inc. or its Counsel filed by Babak

		Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	396	RESPONSE re 330 Trial Brief to Determine the Viability of Mitigation as an Affirmative Defense filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). Modified on 7/21/2015 - Edited text (jah). (Entered: 07/20/2015)
07/20/2015	397	RESPONSE re 331 Trial Brief for a Determination that Defendants May Not Present Equitable Arguments to the Jury Against an Award of Profits Under the Lanham Act filed by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). Modified on 7/21/2015 - Edited text (jah). (Entered: 07/20/2015)
07/20/2015	398	NOTICE of Filing of Proposed Special Verdict Form by Babak Noorian, R.F. Technologies, Inc. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	399	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	400	Proposed Voir Dire by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). (jah). (Entered: 07/20/2015)
07/20/2015	401	(Filed as Sealed Document 412 on 7/22/2015) SEALED LODGED Proposed Document re: 399 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle). (jah). (Main Document 401 replaced on 7/22/2015) (sjt). (Main Document 401 replaced on 7/22/2015) (sjt). Modified to add filing date of lodgement on 7/22/2015 (sjt). (Entered: 07/20/2015)
07/20/2015	402	DECLARATION of Michelle A. Herrera re 342 In Limine MOTION to Exclude Expert Testimony by Patrick Kennedy Based on Unsupportable Assumptions (MIL No. 5), 401 Sealed Lodged Proposed Document, 399 MOTION to File Documents Under Seal by Plaintiff HM Electronics, Inc.. (Attachments: # 1 Exhibit 1 to Herrera Declaration, filed under seal, # 2 Exhibit 2 to Herrera Declaration)(Herrera, Michelle). Modified on 7/21/2015 - Edited text (jah). (Entered: 07/20/2015)
07/20/2015	403	MOTION to File Documents Under Seal (With attachments)(Herrera, Michelle) (sjt). (Entered: 07/20/2015)
07/20/2015	404	(Filed as Sealed Document 413 on 7/22/2015) SEALED LODGED Proposed Document re: 403 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Herrera, Michelle)(sjt). (Main Document 404 replaced on 7/22/2015) (sjt). Modified to add filing date of lodgement on 7/22/2015 (sjt). (Entered: 07/20/2015)
07/20/2015	405	DECLARATION of Michelle A. Herrera re 338 In Limine MOTION to Exclude Untimely Disclosed Damages Theories (MIL No. 2), 403 MOTION to File Documents Under Seal, 404 Sealed Lodged Proposed Document by Plaintiff HM Electronics, Inc.. (Attachments: # 1 Exhibit 1 to Herrera Declaration, # 2 Exhibit 2 to Herrera Declaration, filed under seal, # 3 Exhibit 3 to Herrera Declaration, filed under seal)(Herrera, Michelle). Modified on 7/21/2015 - Edited text (jah). (Entered: 07/20/2015)
07/20/2015	406	PROPOSED JURY INSTRUCTIONS by HM Electronics, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Herrera, Michelle). (jah). (Entered: 07/20/2015)
07/20/2015	407	NOTICE of Lodgment of Recorded Calls Identified in the Declaration of Brian D. Martin by HM Electronics, Inc.. Submitted t/w Thumb Drives containing call recordings. (jah) (Entered: 07/21/2015)
07/20/2015	408	NOTICE of Non-Compliance with Local Rule 5.4(a) Mandatory Electronic Filing, re 407 Notice of Lodgment filed by HM Electronics, Inc.. (jah) (Entered: 07/21/2015)

07/22/2015	409	ORDER granting Motions to File Documents Under Seal 368 ; 385 ; 399 ; 403 . Signed by Judge Cynthia Bashant on 7/22/2015. (sjt) (Entered: 07/22/2015)
07/24/2015	414	ORDER Setting Hearing on Court's Own Motion for Sanctions Under Rule 26(g), and 295 Redacted Joint MOTION for Issue Sanctions and Evidentiary Sanctions against Dfts Pursuant to FRCP 37(b), Adverse Inference Instructions Re Dfts Withholding of Documents and Spoliation of Evidence, Finding of Contempt against Dfts, Award of Expenses: Motion Hearing set for 8/5/2015 10:30 AM in Courtroom 1E before Magistrate Judge Mitchell D. Dembin. Signed by Magistrate Judge Mitchell D. Dembin on 7/24/2015. (jah) (Entered: 07/24/2015)
08/03/2015	415	NOTICE AND ORDER Providing Tentative Ruling re 350 In Limine MOTION to Exclude Evidence or Argument Regarding Treble Damages (MIL No. 12) filed by Babak Noorian, R.F. Technologies, Inc., 346 In Limine MOTION to Exclude Evidence of Damages Under the Lanham Act Prior to December 4, 2009 (MIL No. 9) filed by Babak Noorian, R.F. Technologies, Inc., 334 In Limine MOTION No. 2 of 16 to Preclude Defendants from Presenting Evidence and Argument that HME's Lanham Act Claims are Barred by Statute of Limitations filed by HM Electronics, Inc.. Court tentatively denies HME's [334 motion to preclude evidence of the statute of limitations, RFT's 350 motion to exclude evidence of treble damages, and RFT's 346 motion to limit damages to the period beginning on 12/4/2009. Signed by Judge Cynthia Bashant on 8/3/2015. (jah) (Entered: 08/03/2015)
08/03/2015	416	Joint MOTION to Vacate All Hearings and Trial Date; Joint MOTION for a Follow-Up Telephonic Status Conference by Babak Noorian, R.F. Technologies, Inc. (Attachments: # 1 Proof of Service)(Vanderhoof, Brian). Added MOTION for Hearing on 8/4/2015 (jah). Modified on 8/4/2015 - Attached is a Request, should be filed as Motion. QC Email sent re correct events. Changed to motion, corrected text (jah). (Entered: 08/03/2015)
08/04/2015	417	ORDER granting in part and denying in part 416 Joint Motion to Vacate All Hearings and Trial Date, and 416 Joint Motion for Follow-Up Status Conference. Hearing on 295 Redacted Joint Motion to Issue Sanctions and for Evidentiary Sanctions Against Dft remains on calendar before Magistrate Judge Dembin, and will be held 8/5/2015 10:30 AM. All other dates, including Motion in Limine Hearing and Trial Date are vacated. Joint Motion for Dismissal due by 8/31/2015. If Joint Motion for Dismissal is not submitted by 8/31/2015, then a Telephonic Settlement Disposition Conference will be held. Telephonic Settlement Disposition Conference set for 8/31/2015 09:15 AM before Magistrate Judge Mitchell D. Dembin. Signed by Magistrate Judge Mitchell D. Dembin on 8/4/2015. (jah) (Entered: 08/04/2015)
08/04/2015	418	NOTICE of Teleconference Information Sheet, re 417 ORDER granting in part and denying in part 416 Joint Motion to Vacate All Hearings and Trial Date, and 416 Joint Motion for Follow-Up Status Conference. (cap) (Entered: 08/04/2015)
08/05/2015	419	Minute Entry for proceedings held before Magistrate Judge Mitchell D. Dembin: Motion Hearing held on 8/5/2015. Order to follow. (CD# 8/5/2015 MDD:10:30-11:31). (Attorneys Michelle Herrera and Callie Bjurstrom representing Plaintiff HM Electronics, Inc.). (Attorneys Brent Vanderhoof and Thomas O'Leary representing defendant R.F. Technologies, Inc.). (Attorney Allan Anderson representing Defendant Babak Noorian). (no document attached) (cap) (Entered: 08/05/2015)
08/07/2015	420	ORDER granting in part and denying in part 295 Redacted Joint MOTION for Issue Sanctions and Evidentiary Sanctions Against Dfts Pursuant to FRCP 37(b), Adverse Inference Instructions Re: Dfts' Withholding of Documents and Spoliation of Evidence, Finding of Contempt against Dfts, Award of Expenses by HM Electronics, Inc., and granting 414 the Court's sua sponte Motion for Sanctions under Rule 26(g). As provided in the attached Order, Defendant R.F. Technologies, Inc. ("RFT"), Defendant Babak Noorian, and attorney Thomas

		O'Leary of the LeClairRyan, LLP law firm, are subject to sanctions under Fed. R. Civ. P. 26(g). Defendant RFT, the law firm of LeClairRyan, LLP and attorney Thomas O'Leary are subject to sanctions under Rule 37. All reasonable attorney's fees and costs incurred by Plaintiff in collecting discovery from Defendants beginning on October 18, 2013, the date of the first false discovery certifications and responses, are recoverable as sanctions. A final Order with the actual amount and the apportionment of the sanctions will be issued following submission by Plaintiff of a statement of fees and costs together with supporting documentation and declarations as required by law. Plaintiff is to submit this information, in the form of a motion for fees and costs, no later than August 24, 2015. Defendants may respond no later than September 8, 2015. The Court will set the matter for hearing, if appropriate, after reviewing the papers. The Court DENIES Plaintiff's Motion insofar as it requests that this Court certify a finding of civil contempt. The Court also GRANTS Plaintiff's Motion insofar as it requests that this Court RECOMMEND to the district court, in the event this case proceeds to trial, that the district court instruct the jury that certain facts shall be deemed admitted and provide an adverse inference instruction to the jury. Objections to this Recommendation must be filed within 14 days of notification to the Court that the noticed settlement of this action will not be consummated. Signed by Magistrate Judge Mitchell D. Dembin on 8/7/15. (Dembin, Mitchell) (Entered: 08/07/2015)
08/10/2015	421	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings (Motion Hearing) held on 8/5/2015, before Magistrate Judge Mitchell D. Dembin. Court Reporter/Transcriber: Debra M. Henson. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 8/31/2015. Redacted Transcript Deadline set for 9/10/2015. Release of Transcript Restriction set for 11/9/2015. (akr) (Entered: 08/10/2015)
08/21/2015	422	MOTION Review of Magistrate Judge's Sanctions Order re 420 Order on Motion for Sanctions,,,,,, <i>Defendants Motion Objecting To Magistrate Judge Dembins August 7, 2015 Order Re Motions Re Sanctions And Contempt And Report And Recommendation On Plaintiffs Request For Issue Sanctions And An Adverse Inference Instruction</i> by Babak Noorian, R.F. Technologies, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Allan E. Anderson, # 3 Proof of Service)(Anderson, Allan) (kcm). (Entered: 08/21/2015)
08/21/2015	423	MOTION for Attorney Fees <i>and Costs [Fed. R. Civ. P. 26(g)(3), 37(b)(2)]</i> by HM Electronics, Inc.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Callie A. Bjurstrom, # 3 Declaration of Jose L. Patino, # 4 Declaration of Michelle A. Herrera and Index of Exhibits, # 5 Exhibit 1 to Herrera Declaration, # 6 Exhibit 2 to Herrera Declaration, # 7 Exhibit 3 to Herrera Declaration, # 8 Exhibit 4 to Herrera Declaration, # 9 Exhibit 5 to Herrera Declaration, # 10 Exhibit 6 to Herrera Declaration, # 11 Exhibit 7 to Herrera Declaration, # 12 Proof of Service)(Herrera, Michelle) (kcm). (Entered: 08/21/2015)
08/21/2015	424	MOTION re 420 Order on Motion for Sanctions,,,,,, <i>Objection to Magistrate Judge Mitchell D. Dembin's August 7, 2015 Order re: Motions re: Sanctions and Contempt</i> by LeClairRyan LLP, Thomas M O'Leary. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Thomas M. O'Leary, # 3 Exhibit A to O'Leary Declaration, # 4 Proof of Service) (Vanderhoof, Brian)Attorney Brian C. Vanderhoof added to party LeClairRyan LLP(pty:obj), Attorney Brian C. Vanderhoof added to party Thomas M O'Leary(pty:obj) (kcm). (Entered: 08/21/2015)
08/28/2015	425	Ex Parte MOTION to Stay Proceedings Regarding Sanctions Pending Rule 72 Review re 420 Order on Motion for Sanctions, by LeClairRyan LLP, Thomas M O'Leary.

		(Attachments: # 1 Proof of Service)(Vanderhoof, Brian). Modified on 8/31/2015 - Removed duplicate text (jah). (Entered: 08/28/2015)
08/28/2015	426	RESPONSE re 425 Ex Parte MOTION to Stay Proceedings Regarding Sanctions Pending Rule 72 Review re 420 Order on Motion for Sanctions, filed by HM Electronics, Inc.. (Herrera, Michelle). Modified on 8/31/2015 - Edited text (jah). (Entered: 08/28/2015)
08/31/2015	427	Minute Entry for proceedings held before Magistrate Judge Mitchell D. Dembin: Telephonic Settlement Disposition Conference held on 8/31/2015. Order to follow.(Plaintiff Attorney Callie Bjurstrom). (Defendant Attorney Thomas O'Leary, Mark Goldenberg, David Bayles). (no document attached) (atk) (Entered: 08/31/2015)
08/31/2015	428	ORDER Following Settlement Disposition Conference. Telephonic Settlement Disposition Conference was held on 8/31/2015. After hearing from counsel regarding the status of the case, Further Telephonic Settlement Disposition Conference set for 9/18/2015 09:15 AM before Magistrate Judge Mitchell D. Dembin. Signed by Magistrate Judge Mitchell D. Dembin on 8/31/2015. (jah) (Entered: 08/31/2015)
08/31/2015	429	NOTICE of Teleconference Information Sheet. Teleconference is set for Settlement Disposition Conference on 9/18/2015 at 09:15 AM before Magistrate Judge Mitchell D. Dembin. (yeb) (Entered: 08/31/2015)
09/01/2015	430	ORDER granting 425 Defendants' Ex Parte MOTION to Stay Proceedings Regarding Sanctions Pending Rule 72 Review re Order on Motion for Sanctions. Further proceedings before this Court regarding the Order on Motion for Sanctions is stayed pending resolution of the objections to that Order in the District Court. Signed by Magistrate Judge Mitchell D. Dembin on 9/1/15. (no document attached) (Dembin, Mitchell) (Entered: 09/01/2015)
09/18/2015	431	Minute Entry for proceedings held before Magistrate Judge Mitchell D. Dembin: Telephonic Settlement Disposition Conference held. Order to follow. (Plaintiff Attorney Callie Bjurstrom). (Defendant Attorney Mark Goldenberg). (no document attached) (atk) (Entered: 09/18/2015)
09/18/2015	432	Order Scheduling Settlement Disposition Conference. Telephonic Settlement Disposition Conferences were held on 8/31/2015 and 9/18/2015. Joint Motion for Dismissal due: 10/2/2015. If a Joint Motion for Dismissal and Proposed Order for Dismissal are not submitted by 10/2/2015, then a Settlement Disposition Conference shall be held. Telephonic Settlement Disposition Conference set for 10/2/2015 09:15 AM before Magistrate Judge Mitchell D. Dembin. Signed by Magistrate Judge Mitchell D. Dembin on 9/18/2015. (jah) (Entered: 09/18/2015)
09/18/2015	433	NOTICE of Teleconference Information Sheet, re 432 Order Scheduling Settlement Disposition Conference. (cap) (Entered: 09/18/2015)
10/02/2015	434	Minute Entry for proceedings held before Magistrate Judge Mitchell D. Dembin: Telephonic Settlement Disposition Conference held on 10/2/2015. (Plaintiff Attorney Brian Martin). (Defendant Attorneys Mark Goldenberg, Brian Vanderhoof). (no document attached) (atk) (Entered: 10/02/2015)
10/22/2015	435	MOTION to File Documents Under Seal (With attachments)(Vanderhoof, Brian) (sjt). (Entered: 10/22/2015)
10/22/2015	436	SEALED LODGED Proposed Document re: 435 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (Vanderhoof, Brian) (sjt). (Entered: 10/22/2015)
10/22/2015	437	SUPPLEMENT TO OBJECTION by LeClairRyan LLP, Thomas M O'Leary re 424 MOTION and <i>Objection to Magistrate Judge Mitchell D. Dembin's August 7, 2015 Order re: Motions</i>

		<i>re: Sanctions and Contempt .</i> (Attachments: # 1 Exhibit A, # 2 Proof of Service)(Vanderhoof, Brian) (Modified on 10/23/2015 to edit docket text to match filing) (dls). (Entered: 10/22/2015)
10/22/2015	438	CERTIFICATE OF SERVICE by LeClairRyan LLP, Thomas M O'Leary re 436 Sealed Lodged Proposed Document <i>Exhibit A to Supplement to Objection by LeClairRyan and Thomas M. O'Leary to Magistrate Judge Mitchell D. Dembin's August 7, 2015 Order re: Motions re: Sanctions and Contempt</i> (Vanderhoof, Brian)(dls). (Entered: 10/22/2015)
10/27/2015	439	SUPPLEMENTAL DOCUMENT to Objection by LeClairRyan LLP, Thomas M O'Leary re 424 MOTION, re 420 Order on Motion for Sanctions. (Attachments: # 1 Proof of Service) (Vanderhoof, Brian). Modified on 10/28/2015 - Edited to remove duplicative text (jah). (Entered: 10/27/2015)