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6 **UNITED STATES DISTRICT COURT**  
7 **WESTERN DISTRICT OF WASHINGTON**  
8 **AT SEATTLE**

9 STARBUCKS CORPORATION,  
10 a Washington corporation,  
11 Plaintiff,

12 v.

13 ADT SECURITY SERVICES, INC.,  
14 a Delaware corporation,  
15 Defendant.

NO. 08-cv-900-JCC

AMENDED DISCOVERY  
ORDER NO. 3

16 I. BACKGROUND

17 This matter comes before the Court on plaintiff's Motion to Compel Discovery. Dkt.  
18 No. 31. On March 13, 2009, the Honorable John C. Coughenour referred the motion to the  
19 undersigned Magistrate Judge. Plaintiff's motion has three components. First, plaintiff  
20 Starbucks Corporation ("Starbucks") sought to compel Messrs. Zarkos and Bradford,  
21 employees of defendant ADT Security Services, Inc. ("ADT") to appear on a date specific for  
22 their depositions. Second, Starbucks sought to compel ADT to answer Interrogatories 2 and 4,  
23 which inquired about cost and profit information regarding the VISTA 20 and Safewatch 3000  
24 security alarm units discussed in further detail below. Third, Starbucks sought production of  
25 email from the years 2003 through 2006 regarding five specifically identified current and  
26 former ADT employees.

1           On March 26, 2009, this Court entered an order directing Messrs. Zarkos and Bradford  
2 to appear for a videotaped deposition at the offices of plaintiff’s counsel on March 30 and 31,  
3 2009 respectively. In addition, after reviewing ADT’s less-than responsive answers to  
4 Interrogatories 2 and 4, the Court ordered ADT to designate a 30(b)(6) deponent to address  
5 directly the subject matter of the Interrogatories, with the cost to be borne by ADT. The  
6 parties were also directed to produce all documents that have been requested not later than  
7 April 30, 2009, with the sole exception of the archived emails which is the subject of this  
8 discovery order. *See* Discovery Order No. 1 (Dkt. No. 43).

9           II.     ADT’S ESI

10           A.     Allegations in Amended Complaint Relevant to Discovery Issues

11           The third component of plaintiff’s motion is the most contentious. The Amended  
12 Complaint (Dkt. No. 34) charges ADT with multiple claims of breach of contract, fraud,  
13 misrepresentation, Washington Consumer Protection Act violations, and tortious interference  
14 with contractual relations all relating to ADT’s decision to install and use the allegedly  
15 proprietary “Safewatch 3000” alarm panels in lieu of the non-proprietary “VISTA 20” alarm  
16 panel in Starbucks stores throughout the country. According to Starbucks, in 1997, it entered  
17 into a contract with Holmes Protection, Inc. (“Holmes”), which was acquired by ADT the  
18 following year, to provide installation and monitoring of security systems in Starbucks retail  
19 establishments. Holmes installed the VISTA 20 panels, which Starbucks insisted upon, so that  
20 the system could be monitored by any security monitoring provider with full-system  
21 functionality. After its acquisition of Holmes, according to the amended complaint, ADT  
22 began installing the proprietary Safewatch 3000 system, which allegedly ties Starbucks into  
23 using the services of ADT. Starbucks asserts that in emails from 2000 and into 2003, it asked  
24 about ADT’s use of the name “Safewatch” and was assured by ADT that this was simply an  
25 ADT internal name, and that there were no product deviations. In 2004, Starbucks and ADT  
26 entered into a contract to replace, among other things, the former Holmes agreement, and the

1 contract called for use of equipment that would be “commercially available equipment.”  
2 Starbucks contends that the Safewatch system fails the intended purpose of being a non-  
3 proprietary system and does not otherwise use “commercially available” equipment. Starbucks  
4 further alleges that ADT’s services were inadequate, and in 2005, it notified ADT that it was  
5 going to convert its security systems to a new provider. At that time, Starbucks claims it first  
6 learned that it was unable to do so because the system installed was proprietary and not  
7 otherwise based on the use of commercially available equipment easily transferrable to another  
8 provider. ADT denies that it breached its agreements with Starbucks, and claims Starbucks  
9 owes it money for payments that have not been made.

10 This action was filed on June 6, 2008. Dkt. No. 1. In June and July 2008, ADT’s  
11 counsel were informed about the scope of discovery that Starbucks would be seeking. Rule 37  
12 Good Faith Certification of Penny Fields, (“Fields Decl.”) Dkt. No. 32, Exs. A and B. In those  
13 letters, ADT was placed on notice that Starbucks believed the temporal scope of discovery  
14 extended from 1997, when Starbucks entered into the agreement with Holmes, through the  
15 present. In September 2008, ADT was informed that there were five key ADT current or  
16 former employees as to whom key documents were sought. These individuals were Bob  
17 Zarkos, Matthew Kucera, Angela Kale, Kelton Durham and John Bradford. *Id.*, Ex. E. All  
18 five were either regional, national or major account representatives of ADT who dealt directly  
19 with Starbucks on the alarm panel issues. Specific search terms were also provided to assist in  
20 the recovery of electronically stored information (“ESI”).

21 B. ADT’s ESI Archival System

22 The focus of the immediate discovery dispute is on ADT’s ESI from August 2003  
23 through March 2006. As discussed above, this is the time that Starbucks and ADT were  
24 negotiating, consummating, and implementing a new Agreement to replace the Holmes  
25 agreement. This also includes the time period during which, according to the Amended  
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1 Complaint, ADT was notified of Starbuck’s dissatisfaction and its desire to shift to a new  
2 vendor.

3 John Mitchell is ADT’s Manager of Information Technology. He filed an initial  
4 declaration that identified some of the limitations of ADT’s information retrieval systems. The  
5 availability of ADT-archived ESI is divided out into three time periods. For the period of  
6 January 1997 through August 2003, company emails were not stored on an archival system.  
7 Accordingly, unless they were stored on individual hard drives or laptops, they do not exist.  
8 To the extent that they continue to reside on individual systems, ADT committed to search and  
9 produce the ESI. For the period from March 2006 to present, ADT has a new archival email  
10 system, and ADT has been “or will be” producing them.<sup>1</sup> The third time period is from August  
11 2003 through March 2006. During this period, ADT archived its ESI on a “Plasmon System,”  
12 that is so cumbersome, ADT argues that it is not “reasonably accessible because of undue  
13 burden or cost.” F.R.Civ. P. 26(b)(2)(B). Joel Mitchell Decl. ¶ 5, Dkt. No. 37.

14 In 2003, ADT acquired a software system called Zantaz EAS, which utilized a  
15 hardware platform called a “Plasmon System.” The Plasmon System is analogized to an  
16 “optical jukebox” that contains approximately 500 double-sided DVDs, which are accessed  
17 using a robotic arm, much like a jukebox. Dkt. No. 62, p. 2, Mitchell Decl. ¶ 5. The system  
18 was designed to be searchable, but because it requires that each individual DVD be retrieved  
19 by a robotic arm, and then installed into a reader for restoration, it has failed in this essential  
20 purpose. *Id.* Ultimately, due to its short-comings and lack of functionality, ADT was required  
21 to replace the Plasmon System with its current system, but it has not migrated archived ESI  
22 data from the Plasmon System to its new system.

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25 <sup>1</sup> Both the first and second category of archived and non-archived ESI were included in  
26 the temporal scope of Discovery Order No. 1, directing full production not later than April 30,  
2009. It is only the archived ESI during the period of 2003-06 which are on the ADT Plasmon  
System that were exempted from this production date.

1 III. LEGAL ANALYSIS

2 A. Discovery of ESI

3 Under Rule 34, a party may request discovery of any document, including writings  
4 ...and other data compilations....” The inclusive description of the term “document” is  
5 consistent with the Rule adapting to changing technology, and applies to electronic data  
6 compilations. “That is true not only of electronic documents that are currently in use, but also  
7 of documents that may have been deleted and now reside only on backup disks.” *Zubulake v.*  
8 *UBS Warburg LLC.*, 217 F.R.D. 309 (S.D.N.Y. 2003). In 2006, Congress added Fed.R.Civ.P.  
9 26(b)(2)(B) in response to concerns that the broad discovery principles in Rule 26(b)(1) could  
10 cause parties required to respond to discovery to incur unreasonable costs in producing  
11 electronically stored information.

12 Rule 26(b)(2)(B) provides in part:

13 A party need not provide discovery of electronically stored information from  
14 sources that the party identifies as not reasonably accessible because of undue  
15 burden or cost. On motion to compel discovery or for a protective order, the  
16 party from whom discovery is sought must show that the information is not  
17 reasonably accessible because of undue burden or cost. If that showing is made  
18 the court may nonetheless order discovery from such sources if the requesting  
19 party shows good cause, considering the limitations of Rule 26(b)(2)(C).

18 Rule 26(b)(2)(C) provides in part:

19 the court must limit the ...extent of discovery ...if it determines that :

- 20 (i) the discovery sought is unreasonably cumulative ... or  
21 can be obtained from some other source that is more  
22 convenient, less burdensome, or less expensive;
- 23 (ii) the party seeking discovery has had ample opportunity to  
24 obtain the information by discovery in the action; or
- 25 (iii) the burden or expense of the proposed discovery  
26 outweighs its likely benefit, considering the needs of the  
case, the amount in controversy, the parties’ resources,  
the importance of the issues at stake in the action, and the  
importance of the discovery in resolving the issues.

1 ADT claims that “undue expense and burden” associated with the retrieval of  
2 documents from its Plasmon System require the Court to find that the information is not  
3 reasonably accessible. With some operational adjustments described below, the Court does not  
4 so find. Further, were the Court to reach this conclusion, it would still require production of  
5 the requested material based on good cause, and after considering the factors set forth in Rule  
6 26(b)(2)(C).

7 B. ADT Has Failed to Establish That the Discovery Sought by Starbucks Is Not  
8 Reasonably Accessible

9 To deal with the question posed by Rule 26(b)(2)(B) of whether the data is reasonably  
10 accessible based undue burden or cost attributable to problems presented by the Plasmon  
11 System, the undersigned directed Starbucks to take a 30(b)(6) deposition of a designated ADT  
12 information technology representative. Discovery Order No. 1, Dkt. No. 43. Mr. Mitchell was  
13 selected as that representative. After the deposition, Starbucks requested ADT to provide  
14 information regarding the mailbox size of the five identified individuals on the Plasmon  
15 System. In its “Response to Plaintiff’s Supplemental Briefing” (Dkt. No. 62, p. 4), ADT stated  
16 that Angela Kale, who left ADT in 2003, had no emails on the system, John Bradford had  
17 51,499, Bob Zarkos had 31,746, Kelton Durham had 6,600 and Matt Kucera had 3,042.

18 Mr. Mitchell described a fairly laborious process that he claims would be required to  
19 reconstruct the email libraries for each individual, as to which specific terms would then be  
20 used as a filter, resulting in the identification of the relevant ESI. According to him, because  
21 emails of the four individuals could be stored on any of the as many as 500 double-sided DVD  
22 disks, the Plasmon System robotic arm might have to individually pull each disk, place it in the  
23 reader for restoration, and then have ESI copied. Moreover, because of the system’s  
24 “instability” only one custodian’s email could be recovered at the same time. Furthermore, he  
25 asserts, this could disrupt on-going ADT business operations, because while this was taking  
26 place, it would mean ADT business personnel would be unable to access archived emails,

1 creating, in Mr. Mitchell's estimation, "an unacceptable level of disruption to ADT's ongoing  
2 business." *Id.* at ¶ 12. Continuing on, he states that when more than one user tries to access  
3 the archived email, it "generally causes" the equipment to freeze, ultimately requiring a  
4 complete system restart that is time-consuming and excessively burdensome to the company.  
5 Notwithstanding this apparently normal reaction to accessing archived email, he then suggests  
6 that because of the "substantial impact" on business activities and apparent need for the  
7 archived email, any restoration could take place 11 hours per day (presumably when ADT  
8 personnel did not need access to it) and the restoration rate would only average 8 emails per  
9 hour. Accordingly, the restoration time for an estimated 25,000 emails would be 284 days. If  
10 all 5 custodians had this number, it would take nearly 4 years to restore the emails, according  
11 to Mr. Mitchell. *Id.* at ¶ 14. He also stated it would not be possible for ADT to provide the  
12 relevant DVDs to a third-party vendor to restore offsite, because many of the DVDs could only  
13 be read by proprietary equipment owned by ADT and ADT would not be able to be without the  
14 information stored on the DVDs during the time required to retrieve and restore the ESI  
15 requested by Starbucks. *Id.* at ¶ 15.

16 In October 2008, counsel for ADT described the deficiencies of the Plasmon System  
17 and advised plaintiff that production of the requested ESI regarding the five employees could  
18 cost \$88,000. Supp. Fields. Decl., Ex. A, Dkt. No. 40. This cost data would, in the mind of  
19 ADT counsel, make the ESI "not reasonably accessible" as defined by Rule 26. However, just  
20 six months later and after the motion to compel was filed, Mr. Mitchell decided to up the ante.  
21 He identified the potential cost at \$834,285. Mitchell Decl. ¶ 16, Dkt. No. 37.

22 After the 30(b)(6) deposition, the Court scheduled another discovery conference, which  
23 took place on April 20, 2008. At that time, the Court was advised of two alternatives to  
24 complete restoration. First, it appears that ADT can produce email "stubs," without an  
25 inordinate amount of difficulty. Production of email stubs would not require pulling each  
26 individual email. The stubs remain in the relevant custodians' mailbox on the server. The

1 stubs, however, contain very limited data. That data consists of the “To,” “From,” “Subject  
2 Matter” data and about 80 characters of the email. The email stub could be retrieved relatively  
3 quickly, and ADT has suggested this as an alternative, subject to a claw-back agreement.<sup>2</sup>  
4 Once the stubs were reviewed, specific relevant ESI could be ordered. However, this would  
5 still involve production delays apparently inherent with use of the Plasmon System.

6 The second possibility that surfaced was the fact that many of the 500 double-sided  
7 DVD disks on the system were not, in fact, Plasmon-format disks. Instead, more than half of  
8 the DVD disks utilize a Universal Data Format (“UDF”). At the hearing, the Court inquired as  
9 to whether the UDF disks could be copied to a different non-proprietary medium, such as a  
10 hard drive, and then searched. At the Court’s request, Mr. Mitchell supplied a supplemental  
11 declaration. Dkt. No. 67. In his declaration, he stated that if the 510 UDF disks were at  
12 capacity, there would amount to approximately 2 terabytes of data in UDF format. He also  
13 stated that because the UDF disks were high volume DVDs they could not be read by all  
14 equipment, and it would take a long time to copy them, measured in hours rather than minutes.  
15 He further opined that if ADT were able to copy a disk every hour, it would take over 500  
16 hours to copy all the disks and ADT would be required to purchase an appropriate hardware  
17 system with sufficient capacity to store the 2 terabytes of data. Mr. Mitchell knew that this  
18 would require an external vendor for assistance, and asked for an estimate from a vendor  
19 named Navigant Consulting. According to Mr. Mitchell, Navigant estimated it could cost  
20 several hundred thousands of dollars just to make the copies and thousands more to purchase a  
21 hardware system to house the data. *Id.*

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<sup>2</sup> Because the ESI would be produced quickly, and perhaps without the complete  
25 review for privileged materials that might otherwise accompany production, a claw-back  
26 agreement permits the party producing to reclaim privilege on otherwise potentially privilege-  
waived material. At the hearing on April 29, 2008, the parties agreed that each would have  
claw-back rights relating to production of privileged materials.

1 In response, Starbucks submitted the declaration of Christine Hunt regarding the UDF  
2 formatted disks. Dkt No. 68. Ms. Hunt takes Mr. Mitchell's estimates to task. Regarding the  
3 data-copying estimate attributed to Navigant, she correctly points out that the Navigant  
4 proposal was not attached. She also suggested that the cost figures from Mr. Mitchell were  
5 over-inflated and submitted a proposal from the Oliver Group, indicating that all 510 UDF-  
6 formatted DVDs could be copied in 3-5 business days at a cost of \$35 per DVD or a total of  
7 \$17,850. This copying assumes the ability of a vendor to copy more than one DVD at a time,  
8 which is an imminently reasonable assumption, if one is attempting to handle the project  
9 efficiently. Ms. Hunt also asked a second company – RenewData—to submit an estimate.  
10 Their estimate for copying all of the UDF-formatted data was \$25,500, slightly more than the  
11 cost projected by Oliver Group, but a small fraction of the cost allegedly proffered by  
12 Navigant. RenewData also indicated it could store the 2 terabytes of data for \$2,550.  
13 Furthermore, based on an industry standard of 7 pages per email (including any attachment),  
14 the approximate 92,887 emails would result in approximately 11 gigabytes of searchable data.  
15 Outside vendors, it was proffered, can generally search restored data at the price of \$95.00 per  
16 gigabyte of data. Therefore, a vendor could run all of the search terms at the same time,  
17 thereby resulting in a data search costs of \$1,100. Significantly, actual proposals to  
18 accomplish these tasks were attached to the Declaration of Ms. Hunt. Also significantly, these  
19 costs are much more aligned (although even less than that amount) with the estimated costs  
20 that ADT first reported in October 1998. Mr. Mitchell has, at every turn, provided exaggerated  
21 reasons and exaggerated expenses as to why ADT allegedly cannot and should not be ordered  
22 to comply with its discovery obligations. He simply is not credible. Indeed, even the Navigant  
23 Consulting estimate referred to in his final declaration but not attached, is one-quarter of Mr.  
24 Mitchell's earlier projected cost.

25 As a final proposition, it is difficult to conclude that the ESI sought in this case is "not  
26 reasonably accessible" in light of the fact that the Plasmon System continues to be used by

1 ADT personnel. It is not simply a disaster back-up system. The fact that a company as  
2 sophisticated as ADT (which is wholly-owned by Tyco, International, Ltd. (Dkt. No. 4), a  
3 Fortune 500 company) chooses to continue to utilize the Plasmon System instead of migrating  
4 its data to its now-functional archival system should not work to plaintiff's disadvantage. In  
5 *AAB Joint Venture v. U.S.*, 75 Fed. Cl. 432, 2007 U.S. Claims LEXIS 56, the court noted "the  
6 Court cannot relieve Defendant of its duty to produce those documents merely because  
7 Defendant has chosen a means to preserve the evidence which makes ultimate production of  
8 relevant documents expensive." ... "To permit a party to 'reap the business benefits of such  
9 technology and simultaneously use that technology as a shield in litigation would lead to  
10 incongruous and unfair results." *Id.* at \* 7, 10 (citations omitted). The same is true here.

11 C. Good Cause Would Require Production Even if the Information Were to Be  
12 Deemed Not Reasonably Accessible

13 Even if the Court were to rule that the discovery sought was not reasonably accessible  
14 due to undue burden and expense, the Court would also find that "good cause" exists to order  
15 production, considering the factors set out in Rule 26(b)(2)(C). ADT argues that alternatives to  
16 production of ESI could include information derived from depositions of key ADT personnel  
17 and information derived by way of interrogatories. In addition, ordering production of the ESI,  
18 ADT argues, could be duplicative of email already in the possession of Starbucks. These  
19 arguments are non-responsive to Starbucks's needs for ESI sent or received by ADT  
20 representatives as to which Starbucks's representatives were not copied. Simply deposing  
21 ADT personnel without benefit of the ADT's ESI does not allow Starbucks to discover what a  
22 witness knew, to challenge the testimony that he or she provides, or to provide the accurate  
23 contemporaneous thoughts of ADT decision-makers. As to interrogatories, based on the less-  
24 than-forthcoming responses to interrogatories previously provided, this Court already ordered  
25 ADT personnel to sit for 30(b)(6) depositions on Interrogatories 2 and 4 at ADT's expense.  
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1 See Discovery Order No. 1, Dkt. No. 43. This route is hardly an alternative to deal with  
2 Starbucks's legitimate discovery needs.

3 When balancing the cost versus the likely benefit as set forth in 26(b)(2)(C)(iii), it is  
4 significant that the ESI critical to this case was created during a time period which means that  
5 it is housed on the Plasmon System. Moreover, ADT concedes that Starbucks is seeking at  
6 least one million dollars in damages, ADT has a counterclaim seeking at least \$400,000, and  
7 there is no question that both parties in this case have the substantial resources necessary to  
8 conduct this litigation. Finally, it is important to note that Starbucks has attempted to limit the  
9 burden on ADT by narrowly limiting the number of ADT employees or former employees  
10 involved and further providing search term filters for those persons. There is no evidence that  
11 it is attempting to leverage ADT's ESI problems.

12 D. Starbucks is Awarded Costs and Fees Associated With Its Motion to Compel

13 Rule 37(a)(5) provides in part:

14 If the motion [for an Order to Compel] is granted...the court must, after giving  
15 an opportunity to be heard, require the party ...whose conduct necessitated the  
16 motion, the party or attorney advising that conduct, or both to pay the movant's  
17 reasonable expenses incurred in making the motion, including attorney's fees.  
18 But the court must not order payment if: . . . (ii) the opposing party's  
19 nondisclosure, response, or objection was substantially justified.

18 Here, Starbucks was required to file the pending motion to require depositions of  
19 Messrs. Bradford and Zarkos, to require Answers to Interrogatories 2 and 4, and to require  
20 production of the ESI stored on the Plasmon system. Starbucks was successful. In addition,  
21 the opposition by ADT was not substantially justified. In light of ADT's failure to answer  
22 Interrogatories 2 and 4, the Court directed ADT to designate a representative pursuant to Rule  
23 30(b)(6) to testify to the same, at ADT's expense. As to the ESI, ADT initially stated the data  
24 was inaccessible because it would cost \$88,000 to produce. Subsequently, that figure climbed  
25 to ten times that amount. It was only after the Court ordered a 30(b)(6) deposition of ADT's  
26 Information Technology Manager that alternatives regarding email stubs and the UDF-

1 formatted disks surfaced. The opposition offered by ADT was not substantially justified, and  
2 costs and attorneys' fees for making this motion, including the costs and fees attendant to the  
3 30(b)(6) deposition of ADT's information technology officer are awarded to Starbucks.

#### 4 IV. CONCLUSION

5 For the reasons set forth in this opinion, ADT is directed to implement an immediate  
6 plan to make copies of the archived UDF-formatted disks, and to save them to an appropriate  
7 searchable storage medium. This can be accomplished by use of outside vendors, and ADT  
8 may use the vendors identified by Ms. Hunt to accomplish the task. If the vendors identified in  
9 Ms. Hunt's declaration are used, the UDF-formatted ESI will at all times be subject to ADT's  
10 exclusive control.

11 The Court notes that requiring the copying of the UDF-formatted disks provides several  
12 advantages to ADT. First, it should make searches of the separately-stored ESI easier to  
13 accomplish. Second, copying of ESI contained therein should be much easier and faster than  
14 using the Plasmon System. Third, searching and copying from this alternative storage system  
15 will substantially reduce the impact and potential disruption to ADT operations once the data is  
16 copied. It will require that the Plasmon System be potentially disabled for the period necessary  
17 to copy the UDF-formatted disks, but will certainly be less intrusive, in the long run, to ADT's  
18 operational needs for access to its archived data.

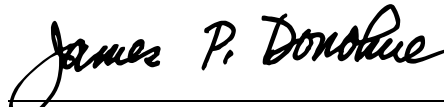
19 The restoration of the UDF files, however, does not complete the process. As  
20 discussed above, while the majority of the DVD disks are in UDF format, the remaining disks  
21 are in a Plasmon-format. The restoration process is cumbersome, and ability to subsequently  
22 search and copy the ESI stored on the Plasmon-formatted disks is also cumbersome. Because  
23 of this, complete restoration, in order to accomplish appropriate searches, is inappropriate at  
24 this time. Instead, ADT will produce email stubs for the four identified custodians, filtered by  
25 use of agreed upon search terms. These email stubs will be produced to Starbucks not later  
26 than May 13, 2009. Starbucks will have until not later than May 27, 2009 to designate which

1 emails it wishes to be produced based on its review of the email stubs. Once they are  
2 identified, copying and production of this ESI will have priority over all other uses of the ADT  
3 Plasmon System until production is completed.

4 ADT's compliance with implementing immediate steps to copy the UDF-formatted  
5 disks will have the added benefit of minimizing the impact on ADT's business operations.  
6 After review of the email stubs, production of the designated ESI can be copied first from the  
7 alternative storage location. Reliance on the Plasmon System that is allegedly often breaking  
8 down will be restricted to ESI stored on the Plasmon-formatted disks. This should reduce the  
9 number of system crashes attributable to ADT's litigation production responsibilities, and will  
10 hasten restoration of access to the Plasmon System to ADT for its business needs.

11 As to the actual award of attorneys' fees and costs in connection with this motion, the  
12 parties are directed to meet and confer to see if they can agree on fees and costs due Starbucks  
13 pursuant to this Order. If they are unable to do so, then a motion for requested fees and costs  
14 claimed with proper documentation should be served and filed with the undersigned and noted  
15 on the regular motions calendar.

16 DATED this 30th day of April, 2009

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19 JAMES P. DONOHUE  
20 United States Magistrate Judge  
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