

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**IN RE DELTA/AIRTRAN BAGGAGE) CIVIL ACTION FILE
FEE ANTITRUST LITIGATION) NUMBER 1:09-md-2089-TCB**

**SPECIAL MASTER'S ORDER ON PLAINTIFFS' MOTION FOR
RECONSIDERATION OF REPORT AND RECOMMENDATION**

Bruce P. Brown
Special Master
December 15, 2014

Table of Contents

I. INTRODUCTION.....	2
II. DISCUSSION	3
A. DOJ CID AND DUTY TO PRESERVE (STATEMENTS 1 AND 14).....	3
B. NON-ATLANTA EMAIL - DATA SOURCE NO. 11 (STATEMENT 2)	5
C. 53 TAPES -- DATA SOURCE NO. 13 (STATEMENT 3).....	6
D. FILE & PRINT SERVERS - DATA SOURCE NO. 22 (STATEMENT 4).....	6
E. DUTY TO PRESERVE GENERALLY (STATEMENT 5)	7
F. SLOT SWAP DATA - DATA SOURCE NO. 8 (STATEMENT 6).....	10
G. SECONDARY COMPUTERS - DATA SOURCE NO. 16 (STATEMENT 7).....	11
H. USER DOCUMENTS - DATA SOURCE NO. 17 (STATEMENT 8).....	11
I. ORIGINAL DATA – DATA SOURCE NO. 6 (STATEMENT 9)	12
J. USB AND SHAREPOINT - DATA SOURCES NOS. 14 AND 15 (STATEMENTS 10 AND 11).....	12
K. IBM CUSTODIANS’ DOCUMENTS -- DATA SOURCE NO. 18 (STATEMENT 12).....	13
L. AIRPORT COMMITTEES -- DATA SOURCE NO. 21 (STATEMENT 13).	14
M. MANUALLY DELETED EMAILS - DATA SOURCE NO. 20 – (STATEMENT 15)	15
N. THE DATE DELTA INSTRUCTED IBM – ALLEGED MISREPRESENTATION (STATEMENT 16).....	16
O. PWC TAPE SEARCH – ALLEGED MISREPRESENTATION (STATEMENT 17)	16
P. EVIDENCE LOCKER SPREADSHEET – ALLEGED MISREPRESENTATION (STATEMENT 18).....	17
Q. LITIGATION HOLD SERVER BACKUP TAPES - DATA SOURCE NO. 10 (STATEMENT 19)	18
III. CONCLUSION	19

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE DELTA/AIRTRAN BAGGAGE) CIVIL ACTION FILE
FEE ANTITRUST LITIGATION) NUMBER 1:09-md-2089-TCB

**SPECIAL MASTER’S ORDER ON PLAINTIFFS’ MOTION FOR
RECONSIDERATION OF REPORT AND RECOMMENDATION**

The undersigned issued his Report & Recommendation (“R&R”) [520] on Plaintiffs’ Motion for Sanctions [413] on November 21, 2014. On November 24, 2014, Plaintiffs filed a Motion for Reconsideration, arguing that the R&R overlooked some of the Reply Appendices attached to Plaintiffs’ Reply in Support of Motion for Discovery Sanctions (“Plaintiffs’ Reply” [479]), particularly the document captioned Reply to Appendix A (“Reply Appendix A” [479-2]). Plaintiffs contend that the “R&R misstates the record and Plaintiffs’ arguments.” [521-1, page 1].

On December 11, 2014, Delta filed a Response to Plaintiffs’ Motion for Reconsideration. [522]. Delta states: “The Special Master was not required to cite to every one of Plaintiffs’ filings, and given the volume of their filings it is not reasonable to expect him to have done so.” [522, page 1].

For the reasons set forth below, the Special Master has reconsidered the R&R in light of Plaintiffs' Motion but has concluded that no substantive change to the R&R is warranted.

I. INTRODUCTION

The extensive arguments and evidence presented by the Plaintiffs in their Reply Appendix were considered by the Special Master. The materials in the reply appendices were largely duplicative of arguments the Plaintiffs had made earlier in their initial Motion for Discovery Sanctions [413], or had made later in their Pre-Hearing Brief [492], or had made during the hearing itself, which lasted the better part of five days. It was not possible or necessary for the R&R to discuss every argument or counter-argument that the parties advance. The R&R instead focuses upon those arguments that the parties emphasized in their briefs, in the testimony, and in their presentations at the hearings.

Plaintiffs' Motion is well-taken, however, because the R&R does not cite to the Reply Appendices where it might have, and the R&R should have addressed several of the arguments Plaintiffs raised in their Reply Appendix more directly. In light of Plaintiffs' Motion, it is appropriate to

review carefully those instances in which Plaintiffs assert that their arguments and evidence were not considered.

II. DISCUSSION

In support of the Motion for Reconsideration, Plaintiffs have appended a table that lists 19 statements from the R&R and, for each statement, a corresponding citation to argument or evidence in the Reply Appendix that Plaintiffs contend was not addressed. [521-2]. What follows is a response to each statement, reorganized and numbered¹ for clarity and ease of presentation.

A. DOJ CID and Duty to Preserve (Statements 1 and 14)

In Plaintiffs' Motion for Discovery Sanctions [413], Plaintiffs asserted claims relating to two data sources (No. 9 and No. 19) that had already been addressed and rejected by the Court in *In re Delta/AirTran Baggage Fee Antitrust Litigation*, 770 F. Supp.2d 1299 (N.D. Ga. 2011) ("*Delta 2011*").²

¹ Attached as Schedule 1 is a copy of Plaintiffs' Exhibit 1 that has been edited to include statement numbers for ease of reference.

² As explained in the R&R [520, pages 11 to 13], this Court in *Delta 2011* rejected Plaintiffs' claim that Delta spoliated evidence prior to the initiation of this lawsuit on three broad grounds: 1) Delta's duty to Plaintiffs to preserve evidence was not triggered until Plaintiffs filed suit; 2) Plaintiffs failed to show prejudice; and 3) Plaintiffs failed to show bad faith.

With respect to Data Source No. 9, the R&R states: “Plaintiffs advance no reason to revisit the issue.” [520, page 50]. With respect to Data Source No. 19, the R&R states: “Plaintiffs have pointed to no new evidence that would support a reconsideration of the Court’s ruling.” [520, page 64]. In the Motion for Reconsideration, Plaintiffs contend that these statements ignored the following statement Plaintiffs made in Reply Appendix A:

On both occasions where a DOJ CID related to price fixing was based on public information, class action lawsuits followed.

[479-2, page 25]. Since this sentence could be read as an argument that *Delta 2011* was decided incorrectly on this point, the R&R should not have stated that Plaintiffs advanced “no reason.” Plaintiffs’ argument on this point, however, was thoroughly considered and was the subject of an exchange between the Special Master and Plaintiffs’ counsel at the October 7, 2014 hearing. (Tr. 142 - 143).

In any event, the Plaintiffs’ have not advanced a persuasive argument for overturning *Delta 2011*. Plaintiffs do not even discuss *Delta 2011* in the Reply Appendix or explain how this evidence, under the law, warrants reversal. Plaintiffs also do not address the grounds for overturning the other two independent bases for this Court’s *Delta 2011* decision – prejudice and bad faith. *See supra* note 2. Finally, Plaintiffs do not explain

why they should be excused from filing a formal motion for reconsideration with the Court.

B. Non-Atlanta Email - Data Source No. 11 (Statement 2)

Statement 2 concerns what Plaintiffs call “Non-Atlanta E-mail Exchange Server E-mail Backup Tapes” (Data Source No. 11). [479-2, page 15]. As to this claim, the R&R states: “Plaintiffs did not explain this issue in their briefs, did not address it at the hearing, and Mr. Pixley’s two sentence description of the issue in his expert report gives no detail and cites no evidence. [434-2, page 28].” [520, page 51]. Plaintiffs do not challenge this statement. The R&R goes on to state that “Plaintiffs appear to contend that the emails for ‘non-Atlanta’ custodian Gail Grimmatt were not preserved because she moved to New York.” [*Id.*] This was a mistake, Plaintiffs now contend, because the Reply Appendix makes it clear that the “Non-Atlanta” custodians that Plaintiffs were referring to in their initial submission were from Minneapolis, not New York. [479-2, pages 15-16]. Yet neither Plaintiffs’ initial submission [413-2, page 21], nor their Reply Appendix [479-2, pages 15-16], identifies the subset of non-Atlanta Delta employees that it deems to be “relevant custodians,” the basis for that designation, or the source of Delta’s obligation to preserve these

unidentified employees' data. As stated in the R&R, Plaintiffs have failed to carry their burden on this issue.

C. 53 Tapes -- Data Source No. 13 (Statement 3)

Statement 3 concerns Data Source No. 13, the "53 tapes collected in 2011." The R&R states: "Plaintiffs do not respond on this issue in their Reply Brief [479 *passim*]." [520, pages 53-54]. Plaintiffs do not challenge this statement, but contend that Plaintiffs did address this issue in their Reply Appendix, on page 17-18, which the R&R does not cite or address. This is true, but the R&R does cite and discuss the identical argument advanced by Plaintiffs in their Pre-hearing Brief. [Doc. 520, page 53 (citing 492-1)]. In any event, Plaintiffs' claim relating to the 53 tapes is directly contrary to the testimony of Mr. Wilkinson of PwC. The undersigned found Mr. Wilkinson's testimony on this point to be credible. (Tr. 467-468).

D. File & Print Servers - Data Source No. 22 (Statement 4)

The R&R states: "Delta cites evidence to the effect that no custodial data is maintained on File & Print servers. [434, page 60]. Plaintiffs offer no rebuttal evidence." [520, page 54]. In their Motion for Reconsideration, Plaintiffs point out that, in Reply Appendix A, Plaintiffs identified a person named Mike Becker as having a home directory on a file and print server.

[521-2, page 1, citing 479, page 27]. Yet Plaintiffs identified Mr. Becker in their original appendix as having a home directory on a file and print server. [413-2, page 37]. Delta pointed out in response that Mr. Becker worked for pre-merger Northwest, not Delta. [434-1, page 42]. Plaintiffs' Reply Appendix A simply identifies Becker again without explaining what duty Delta had to preserve his data.

E. Duty to Preserve Generally (Statement 5)

The majority of the statements in the R&R that Plaintiffs challenge concern Plaintiffs' failure to establish Delta's duty to preserve certain data sources that were concededly destroyed or lost. These eight data sources are discussed in Part III(A)(4) of the R&R. The introduction to Part III(A)(4) states:

With respect to some data sources, Delta concedes that it did not preserve them but contends that it never had the duty to do so. As discussed in greater detail below, with respect to each of these data sources, Plaintiffs have failed to establish the source of Delta's obligation. Plaintiffs acknowledge that Delta did not have the duty to save every scrap of paper relating to first-bag fees, but do not articulate a less expansive theory.

[520, pages 54-55].

In the Motion for Reconsideration, Plaintiffs include this statement as one of the "Instances in Which the Report and Recommendation Does Not

Address Evidence or Arguments in the Reply Appendices.” Plaintiffs do not explain why this quoted text does not address evidence or arguments in the Reply Appendices, except to cite to Appendix H [479-1] and several scattered pages of Reply Appendix A. The appendices have been reviewed again. There is nothing in the Appendix H or Reply Appendix A that is contrary to the quotation from the R&R above.

The first section of Appendix H is entitled “Agreements to Preserve or Search,” and identifies only two³ sources allegedly giving rise to Delta’s duty to preserve. [479-1, pages 1-2]. The first is a March 5, 2010 letter that documents an agreement between Delta and Plaintiffs pursuant to which Delta agreed to collect (or confirmed that it had already collected) paper and electronic files from certain custodians. [479-1, page 1]. This is an important document, but the fact that Delta had a duty to produce these data sources does not appear to be contested, and the data sources discussed in Part III(A)(4) of the R&R fall outside the scope of the March 5,

³Reply Appendix H also lists as a purported “Agreement to Preserve or Search” a statement made by Delta in a brief to the effect that Delta in 2011 instructed PwC to collect backup tapes. Plaintiffs do not explain how this action by Delta (which appeared to be unilateral) constituted an agreement with Plaintiffs. In any event, the subject matter of this “agreement” does not relate to the data sources discussed in Part III(A)(4) of the R&R.

2010 letter. Plaintiffs do not, in their Motion for Reconsideration, explain why the R&R should have cited the March 5, 2010 communication.

The second document referenced is a March 9, 2010 email from Delta's Scott McClain to Plaintiffs' counsel in which Mr. McClain states "we'll search shared drives where the custodians store files." [479-1, page 2]. The Reply Appendix cites this email repeatedly as the source of Delta's obligation to preserve a wide variety of data sources. [See *e.g.*, 479-2, page 18 n.94; 479-2, page 19 n.102; 479-2, page 21 n.117; 479-2, page 22 n.124; 479-2, page 27 n.148].

The R&R did not overlook this email – it is quoted on page 57. [520, page 59 n.17]. This email also was the subject matter of extensive testimony and argument at the hearings. Plaintiffs' counsel cross-examined Mr. McClain on the email, and he testified, credibly, about the context of the email and stated that Delta did what it said it would do (Tr. 450-451). The March 9, 2010 email was specifically referenced in exchanges between Plaintiffs' counsel and the Special Master (Tr. 622), between Defendants' counsel and the Special Master (Tr. 704-707), and between Mr. McClain and the Special Master (Tr. 707-708).

The R&R did not fail to address this evidence, as Plaintiffs' Motion for Reconsideration asserts. The R&R simply does not read this single email as obligating Delta to produce virtually every shred of paper or electronically stored piece of information in the company, or the particular data sources that are discussed in Part III(A)(4). Upon reconsideration, it is abundantly clear that Plaintiffs have failed to establish that Delta had the duty to preserve the data sources discussed in Part III(A)(4).⁴

F. Slot Swap Data - Data Source No. 8 (Statement 6)

On the failure of Delta to preserve the slot swap data, the R&R states that Plaintiffs did not even mention the issue in their main brief and mentioned it only in passing in their Reply Brief. [520, pages 56-57]. Plaintiffs do not challenge this statement. Instead, Plaintiffs point out that Plaintiffs did address the claim in Reply Appendix A [479-2], on pages 9 through 11. That discussion, however, does not bolster Plaintiffs' spoliation claim and does not refute the evidence presented at the August 12, 2014 hearing that the data was duplicative of the snapshot that Delta took in July 2009. (Tr. 228).

⁴ The pages cited by Plaintiffs in connection with Statement 5 address other issues, but Plaintiffs do not explain whether, how or why reconsideration is sought with respect thereto. These pages have been reviewed, however, and do not warrant any revision to the R&R.

G. Secondary Computers - Data Source No. 16 (Statement 7)

Plaintiffs contend that the discussion on page 56 of the R&R about deletions from secondary computers [520, page 58], does not address Reply Appendix A. The R&R does not cite Reply Appendix A on this point, but it does cite and address the evidence Plaintiffs cite in Reply Appendix A – Mr. Pixley’s Supplemental Report. “There is no indication in the record that Mr. Pixley conducted a similar forensic examination of these computers or, if he did, found any evidence of deletions. [See Pixley Supplemental Report, Plaintiffs’ Hearing Exhibit 1, page 16].” [520, page 58].

H. User Documents - Data Source No. 17 (Statement 8)

The R&R describes Plaintiffs’ claim relating to so-called “User Created Documents on Hard Drives and Documents on Shared Drives Not Collected in CSIRT’s Narrow Collection” as “incomprehensible” and that, based on Plaintiffs’ submission, “it is not possible to determine what duty Delta had to preserve this data or what data might have been lost by its destruction.” [520, page 59]. In their Motion for Reconsideration, Plaintiffs contend that Reply Appendix A provides the missing narrative and the source of Delta’s duty. On the contrary: Reply Appendix A provides no additional evidence or explanation – it cites the same evidence as the

original submission and does not provide evidence that Delta agreed to preserve this data or that any relevant data was lost. [479-2, pages 22-23].

I. Original Data – Data Source No. 6 (Statement 9)

The R&R recommended rejection of this claim because Plaintiffs acknowledged that Delta had kept a copy of any allegedly destroyed evidence. Plaintiffs do not dispute this finding, but instead note that Plaintiffs had “withdrawn” this claim in Reply Appendix A. This is true, but Plaintiffs in their Pre-hearing Brief, filed months after Reply Appendix A, listed the claim again as a category of “Delta’s Sanctionable Misconduct.” [492-1, page 2].

J. USB and SharePoint - Data Sources Nos. 14 and 15 (Statements 10 and 11)

In the papers filed with their Motion for Discovery Sanctions, including the Appendices, Plaintiffs accused Delta of spoliating “USB Devices” and “Data from SharePoint Sites” without identifying – or even addressing – Delta’s duty to preserve these data sources in the first instance. [See 413-2, pages 26-27]. Indeed, it is not even clear from Plaintiffs’ initial motions papers what Delta is accused of doing wrong, what duty it breached, or how any breach caused Plaintiffs harm. Even though

this failure to state a prima facie claim for relief could have been fatal, the R&R considered additional evidence and argument on these issues.

Yet even in the Motion for Reconsideration, Plaintiffs do not explain the elements of these claims or why the R&R's conclusions are incorrect. It is not clear whether Plaintiffs' position is that Delta had the duty to preserve every USB, and image the SharePoint site, or whether Delta simply had to search those data sources for responsive documents. It would not be fair to sanction Delta for spoliation for its failure to comply with such uncertain and inconsistent demands. Moreover, Plaintiffs' entire "argument" for reconsideration on these issues is composed of two citations with cryptic parentheticals; and one of these parentheticals (relating to SharePoint sites) appears to support Delta's position.

**K. IBM Custodians' Documents -- Data Source No. 18
(Statement 12)**

In the Motion for Discovery Sanctions, Plaintiffs argued that Delta failed to preserve files of three unnamed IBM employees relating to "Delta's preservation and collection efforts." In support of this claim, Plaintiffs cited only Mr. Pixley's report. Mr. Pixley stated, without evidentiary support, that files of three unnamed IBM employees had been lost or destroyed. [413-2, page 30, citing 434-2, pages 39-40]. The R&R concludes

that the claim is without merit because, among other reasons, Delta submitted substantial evidence establishing their efforts to obtain documents from IBM and “Plaintiffs do not offer any evidence refuting Delta’s exhaustive submission on this issue.” [520, page 62].

In the Motion for Reconsideration, Plaintiffs contend that this statement does not address Plaintiffs’ argument on page 24 of Reply Appendix A. The Reply Appendix has been reviewed again, and the statement in the R&R is correct. The Reply Appendix does not present evidence rebutting Delta’s submission on its efforts to obtain documents from IBM. Instead, the Reply Appendix simply cites again to the same pages of Mr. Pixley’s Report that Plaintiffs cited in their initial submission.⁵

L. Airport Committees -- Data Source No. 21 (Statement 13).

With respect to this claim, Plaintiffs contend in the Motion for Reconsideration that Reply Appendix A “gives specifics” responding to Delta’s rebuttal. [521-2, page 2]. Reply Appendix A has been reviewed

⁵ Reply Appendix A also cites to testimony of Mr. Friedberg, Delta’s expert, to the effect that Delta may have intended to preserve and produce more evidence than reflected in the collection documentation. [470-2, page 24 n.131]. Plaintiffs do not explain how this observation relates to its claims generally, or specifically its claim relating to IBM.

again and it cites the same two documents cited in Plaintiffs' initial submission. [479-2, page 27 nn.146, 147; *compare* 413-2, page 36].

M. Manually Deleted Emails - Data Source No. 20 – (Statement 15)

The R&R recommended the rejection of Plaintiffs' claim that custodians had manually deleted emails because Plaintiffs had not pointed to any evidence supporting the claim, which, the R&R states, "they appear to have abandoned." [520, page 66]. The Motion for Reconsideration correctly notes that Plaintiffs had not abandoned this claim, and the R&R's suggestion to the contrary was incorrect. Reply Appendix A does not, however, point to any evidence supporting the claim. Reply Appendix A references deleted documents that Mr. Pixley recovered [479, page 26], but these documents are about the second bag fee, not the first bag fee, and are all dated in 2009, long after the decision involved in this case. [See 484, pages 10-11]. Plaintiffs point to no evidence establishing their contention that "Delta custodians deleted relevant documents after receiving a litigation hold." [413-2, page 35].

N. The Date Delta Instructed IBM – Alleged Misrepresentation (Statement 16)

The R&R states: “Plaintiffs do not offer any reason to revisit” the issue of whether Delta had misrepresented the date that it instructed IBM to preserve backup tapes because the issue was decided by the Court in *Delta 2011*. [520, page 68]. See 770 F.Supp.2d at 1304 n.5 (“The Court has carefully reviewed the documents,” and “will not reject Delta’s verified representation that the instruction was issued sometime between May 19 and June 5, 2009.”)

In the Motion for Reconsideration, Plaintiffs contend that they describe “new evidence” in Reply Appendix B. [521-2, page 3]. In Reply Appendix B, Plaintiffs discuss Mr. Pixley’s interviews in 2013 with three IBM employees, who told Pixley that they did not remember the date almost four years before when they were told to preserve backup tapes. [479-3, pages 1-2]. Mr. Pixley’s interviews provide no basis upon which to reconsider *Delta 2011*.

O. PwC Tape Search – Alleged Misrepresentation (Statement 17)

Plaintiffs contend that the R&R failed to address the evidence in Reply Appendix B explaining why certain testimony by Mr. McClain about

the 340 tapes was incorrect. Yet Reply Appendix B does not even mention Mr. McClain in its discussion of the 340 tapes and its discussion on the issue, frankly, is incomprehensible. [479-3, page 3]. Plaintiffs have completely failed to (a) identify a statement of purported fact or (b) explain why or how such a statement was false.

P. Evidence Locker Spreadsheet – Alleged Misrepresentation (Statement 18)

As is now more clear from Plaintiffs’ Motion for Reconsideration, Plaintiffs contend that Delta committed a sanctionable misrepresentation when it told the Court on September 24, 2012 that “[d]ocuments reflecting when and what documents were placed in or removed from the Evidence Locker, including all versions of the Evidence Locker Contents spreadsheet have been produced.” [413-3, page 329]. This statement may be read as suggesting that Delta’s documentation was sufficient to determine the contents of the Evidence Locker – which clearly was not the case. On balance, however, Delta’s counsel’s statement does not reflect bad faith. Particularly in context, Delta’s counsel’s response is appropriate and correct: Delta was not withholding production of documents reflecting what documents were placed in or removed from the Evidence Locker.

Q. Litigation Hold Server Backup Tapes - Data Source No. 10 (Statement 19)

The R&R concludes that Delta was negligent in failing to preserve the Litigation Hold Email Exchange Server Email Backup Tapes, but that Plaintiffs had failed to show prejudice. Plaintiffs alleged that the emails of some employees (whom Plaintiffs called “custodians”) had been lost, but the R&R concluded: “Plaintiffs do not explain who these additional custodians were or what role they might have had in the first-bag fee decision.” [520, page 49 n.14].

In the Motion for Reconsideration, Plaintiffs take issue with this statement and suggest that the missing information can be found on pages 14 and 23 the Reply Appendix A. [521-2, page 3]. Page 14 identifies no individuals, referring instead to “most of the original 25 custodians.” [479-2, page 14]. The discussion on page 23 is not about the Litigation Hold Email Server Backup Tapes. Footnote 127 on page 23 mentions seven Delta employees who had been added to the original list of 25 custodians, but Plaintiffs do not say whether these seven were among those whose emails were missing (or even if their email was on the Litigation Hold Server in the first place). There is no apparent connection between this footnote and the Litigation Hold Server Backup Tape issue. The argument and evidence in

Reply Appendix A does not have an impact upon the R&R's findings or conclusions relating to the Litigation Hold Server Backup Tapes.

III. CONCLUSION

The undersigned has considered Plaintiffs' Motion for Reconsideration and concludes that no substantive change to the Report and Recommendation is warranted.

This 15th day of December, 2014.



Bruce P. Brown
Special Master

Schedule 1
Asserted Instances in Which the Report and Recommendation Does Not Address Evidence or Arguments in the Reply Appendices
[Plaintiffs' Motion, Exhibit 1]

Order on Reconsideration Statement Number	From Plaintiffs' Motion for Reconsideration: Instance in Which the Report and Recommendation Does not Address Evidence or Arguments in the Reply Appendices	From Plaintiffs' Motion for Reconsideration: Corresponding Argument and Evidence in Reply Appendix that Report and Recommendation Did Not, but Should Have, Addressed:
1	p. 48. "Plaintiffs advance no reason to revisit the issue [of duty triggered by DOJ CID]."	Reply to App. A at 25-26 & nn.139-141 (Dkt. #479-2) (citing new facts and law showing that a duty was triggered by the DOJ CID).
2	p. 49. "Plaintiffs do not explain this issue [of Non- Atlanta Email Exchange Server Email Backup Tapes] . . . Plaintiffs appear to contend that the emails for 'non- Atlanta' custodian Gail Grimmett were not preserved because she moved to New York."	Reply to App. A at 15-16 (addressing Minneapolis custodians, not Gail Grimmett).
3	pp. 51-52. "Plaintiffs do not respond [to Delta's Exhibit 1] on this issue in their Reply Brief"	Reply to App. A at 17-18 (providing a response).
4	p. 52. "Delta cites evidence to the effect that no custodial data is maintained on File & Print servers. [434, page 60]. Plaintiffs offer no rebuttal evidence."	Reply to App. A at 27-28 (offering rebuttal evidence and citing an example of a custodial home share located on a file and print server).
5	pp. 52-53. "Plaintiffs have failed to establish the source of Delta's obligation. Plaintiffs acknowledge that Delta did not have the duty to save every scrap of paper relating to first-bag fees, but do not articulate a less expansive theory."	App. H (Dkt. #479-1); Reply to App. A at 9, 18-22, 24, 26-27.
6	pp. 54-55. "Plaintiffs do not discuss this [slot swap] issue in their main brief, [413], and mention it only in passing in their reply." "At the hearing, Plaintiffs' . . . did not offer evidence that any of the data was unique."	Reply to App. A at 9-11 (detailed discussion of the slot swap data and citing admission that some of the data was unique).
7	p. 56. "Plaintiffs do not . . . offer any evidence to support this assertion [that data was deleted from secondary computers between May and September, 2009.]"	Reply to App. A at 21 & n.119 (citing evidence in Pixley's Supplemental Report regarding evidence of deletion of recoverable deleted items).
8	p. 57. "Plaintiffs' one-page abbreviated description of this allegedly destroyed data source, is, frankly, incomprehensible." "Based on Plaintiffs' submission, it is not possible to determine what duty Delta had to preserve this data or what data might have been lost by its destruction."	Reply to App. A at 22-23 (providing narrative explanation and describing the basis for the duty to preserve).
9	p. 58. "Plaintiffs claim that Delta . . . destroyed an unknown amount of data . . . from CSIRT's network server."	Reply to App. A at 8-9 ("Withdrawn.").

10	p. 59. "Plaintiffs contend that Delta had the obligation to preserve every USB and to make a forensic image of the entire SharePoint site."	Reply to App. A at 18-20 ("Delta never interviewed custodians to determine whether they stored responsive documents on USB devices Only some of the SharePoint sites would have contained responsive documents, and those sites would have been identified by custodian interviews.").
11	p. 59. "Plaintiffs have not explained the source of Delta's duty to preserve the USB devices or the SharePoint site"	Reply to App. A at 18-21 (explaining the source of Delta's duty to preserve USB devices and SharePoint sites); Appendix H (Dkt. #479-1) (same).
12	p. 60. "Plaintiffs do not offer any evidence refuting Delta's exhaustive <u>submission on this issue.</u> "	Reply to App. A at 24 (refuting Delta's arguments).
13	p. 61. "Plaintiffs . . . give no specifics . . . and provide no response to Delta's effective rebuttal."	Reply to App. A at 26-27 (giving specifics and responding to Delta's rebuttal).
14	p. 62. "Plaintiffs have pointed to no new evidence that would support a reconsideration of the Court's ruling."	Reply to App. A at 25 & n.139 (citing new evidence showing that litigation was reasonably foreseeable based on the DOJ CID).
15	p. 64. "Plaintiffs do not, however, point to any evidence supporting this claim, which they appear to have abandoned."	Reply to App. A at 26 & n.144 (citing evidence and maintaining the claim).
16	p. 68. "Plaintiffs do not offer any reason to revisit this issue [of the instruction to IBM]."	Reply to App. B at 1-2 (Dkt. #479-3) (describing new evidence related to the instruction to IBM).
17	p. 73. "Plaintiffs do not point to any statement by Mr. McClain that was incorrect."	Reply to App. B at 3 (explaining that Mr. McClain testified incorrectly when he stated that tapes could be eliminated and culled based on the time frame or server without scanning because the labels did not accurately reflect the time frame or server).
18	p. 77. "Plaintiffs do not explain how this statement [about producing documents reflecting what was placed in or removed from the evidence locker] was false – Delta produced the Evidence Locker Spreadsheet"	Reply to App. B at 2 (stating that the false certifications were "that <i>all</i> documents reflecting when and what documents were placed in or removed from the evidence locker had been produced").
19	p. 47 n.14. "Plaintiffs do not explain who these additional custodians were or what role they might have had in the first-bag fee decision."	Reply to App. A at 14 ("the date coverage of the remaining tapes is very limited, and does not include <i>any</i> tapes during the key May 21 to November 5, 2008 time period for the majority of relevant custodians, <i>including most of the original 25 custodians</i> ") (second emphasis added); <i>id.</i> at 23 n.127 (describing the role of some first bag fee custodians added after the initial 25).