SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: October 12, 2023 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

***New information* (please read)**: To set future motion hearings, you no longer need to file your motion before receiving a hearing date. Phone lines are now open for you to call and reserve a hearing date *before filing and serving* your motion. Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve your date. This will obviate the need to file and serve a separate amended notice at a later time. Please note: if your motion papers are not filed within five business days of reserving the hearing date, the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV366698	Lee Harris v. Joseph Nader et al.	Order of examination of Joseph Nader: parties to appear *in person* in Dept. 10.
LINE 2	20CV366698	Lee Harris v. Joseph Nader et al.	Order of examination of Norma Nader: parties to appear *in person* in Dept. 10.
LINE 3	19CV349792	Division of Labor Standards Enforcement v. Capital Mailing Services, Inc. et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	20CV373696	Jerry Ivy, Jr. v. Jerry Ivy, Sr. et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	22CV393460	Henry Lippincott v. Arash Hassibi et al.	Click on LINE 5 or scroll down for ruling in lines 5-8.
LINE 6	22CV393460	Henry Lippincott v. Arash Hassibi et al.	Click on LINE 5 or scroll down for ruling in lines 5-8.
LINE 7	22CV393460	Henry Lippincott v. Arash Hassibi et al.	Click on LINE 5 or scroll down for ruling in lines 5-8.
LINE 8	22CV393460	Henry Lippincott v. Arash Hassibi et al.	Click on LINE 5 or scroll down for ruling in lines 5-8.
LINE 9	22CV398683	Satrajit Chatterjee v. Google LLC	Click on LINE 9 or scroll down for ruling.
LINE 10	22CV404219	JPMorgan Chase Bank, N.A. v. Peter Q. Nguyen	Motion to deem admitted plaintiff's requests for admissions: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. Moving party to prepare the formal order.

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LINE 11	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Motion to file confidential Adult Protective Services documents under seal (originally filed June 6, 2023): there does not appear to be any amended notice of hearing on file, as required by local rule. The court has received no response to this motion. Parties to appear to address the apparent notice defect.

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Calendar Line 3
Case Name: *Division of Labor Standards Enforcement v. Capital Mailing Services, Inc. et al.*
Case No.: 19CV349792

I. BACKGROUND

This is a civil enforcement action brought by the Division of Labor Standards Enforcement ("DLSE"), a division of the California Department of Industrial Relations. The main action is brought by DLSE against Defendants Capital Mailing Services, Inc. ("CMS"), Perice Sibley ("Sibley"), and Prosper Equity, Inc. (two separate entities, a Wyoming corporation and a Virginia corporation) to enforce judgments for unpaid wages obtained by former CMS employees. The Virginia entity is hereinafter referred to as "PEV."

Based on the operative third amended complaint ("TAC"), DLSE brought a motion for summary judgment or summary adjudication, which was heard on July 6, 2023. In a formal order issued that same day, the court denied summary judgment but granted summary adjudication to DLSE as to the first and fourth causes of action. The court denied summary adjudication as to the second and third causes of action, because the motion was focused on purported violations of the Uniform Voidable Transfer Act ("UVTA") (Civil Code section 3439 *et seq.*), but the court found that the TAC alleged only common law claims for fraudulent transfer.

Defendant PEV filed its first answer to the TAC on the evening of July 10, 2023. On July 19, 2023, DLSE submitted an ex parte application for leave to file a fourth amended complaint, which would have replaced the common law causes of action for fraudulent transfer in the TAC with statutory causes of action for violation of the UVTA. The court denied the ex parte application on July 28, 2023.

On August 10, 2023, DLSE filed a motion for summary adjudication as to the second and third causes of action in the TAC, now addressing them as common law causes of action for fraudulent transfer rather than statutory causes. That motion is currently set for hearing on October 26, 2023.

PEV now brings this motion to strike DLSE's pending motion for summary adjudication.[1] The court concludes that there is no such thing as a "motion to strike a motion," as opposed to a motion to strike a pleading. PEV's motion is therefore DENIED.

II. REQUEST FOR JUDICIAL NOTICE

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory form is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision

[1] The court has not considered the "amended" memorandum filed by PEV on September 27. The court has until recently required the filing of an amended *notice* of motion, once a hearing date has been assigned, to ensure the opposing party is made aware of the assigned hearing date. The parties have no ability, absent leave of court, to "amend" the substance of an already-filed motion.

(b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

PEV has submitted a request for judicial notice of three documents, attached as Exhibits 1-3 to a declaration from counsel. They are: (1) a copy of the memorandum supporting DLSE's March 16, 2023 motion for summary judgment; (2) a copy of the court's July 6, 2023 order on DLSE's previous summary adjudication motion; and (3) a copy of the memorandum supporting DLSE's pending motion for summary adjudication.

Judicial notice of Exhibits 1 and 3 is GRANTED pursuant to Evidence Code section 452, subdivision (d), but only as to the existence of the documents and their filing dates. Judicial notice cannot be taken of their contents. Judicial notice of Exhibit 2 is also GRANTED pursuant to Evidence Code section 452, subdivision (d). As a court order, Exhibit 2 may be noticed as to its contents and legal effect, but not as to the truth of any factual findings. (See *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749; *Kilroy v. State of Calif.* (2004) 119 Cal.App.4th 140, 145-148.)

III. PEV'S MOTION TO STRIKE DLSE'S MOTION

PEV brings its motion to strike pursuant to Code of Civil Procedure sections 435, 436, 437 and 437c(f)(2). (See Notice of Motion at p. 2:6-7.) None of these code provisions supports the granting of this motion.

Code of Civil Procedure section 435 states in pertinent part: "(a) As used in this section; (1) The term 'complaint' includes a cross-complaint. (2) The term 'pleading' includes a demurrer, answer, complaint, or cross-complaint." It further states in subdivision (b)(1) that: "Any party, within the time to respond to a pleading may serve and file a motion to strike the whole or any part thereof, but this time limitation shall not apply to motions specified in subdivision (e)." Subdivision (e), which is not relevant to the current motion, refers to motions for judgment on the pleadings brought under section 438.

Section 436 states: "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court."

Section 437 states, in subdivision (a): "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Emphasis added.)

In short, all of these sections refer explicitly to "pleadings" as being subject to a motion to strike. None of these sections states that a *motion* may also be subject to a motion to strike. Because a motion for summary adjudication is not a "pleading" under sections 435, 436, and 437, it may not be the target of a motion to strike. The portion of section 437c(f)(2) that PEV relies upon, part of the summary judgment statute, states: "A party shall not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion." This may be a basis for arguing against a summary judgment motion (or a summary adjudication motion that addresses all remaining causes of action, such as DLSE's), but it still

does not form the basis of a motion to *strike*. Nothing in this language, or in section 437c more generally, supports the idea that a motion to strike can be brought against a motion "for summary judgment based on issues asserted in a prior motion for summary adjudication and denied." PEV cites no supporting case law, either. The two cases PEV relies upon, *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108 and *Schachter v. Citigroup, Inc.* (2005) 126 Cal.App.4th 726, do not say anything about the possibility of moving to strike another motion.

IV. CONCLUSION

The court denies PEV's motion. To the extent that PEV believes that DLSE's pending motion for summary adjudication is contrary to Code of Civil Procedure section 437c(f)(2), the appropriate place to make that argument is in its brief opposing that motion, not in a separate motion to strike.

Finally, as a postscript, the court feels compelled to address a couple of extraneous points raised in PEV's briefs on this motion. First, PEV repeatedly asks the court to "move the trial date out two months." (E.g., Opening MPA at p. 2:9.) The court has already denied PEV's multiple requests for a further continuance of the trial date, which have previously been made without good cause. Simply repeating the request over and over does not suddenly imbue the request with good cause. On April 13, 2023, the court granted PEV's original request to continue the trial date, and the court found that a continuance to November 27, 2023 was sufficient. Nothing material has changed the court's view since then.

Second, PEV complains repeatedly about the fact that the court had to advance the date of DLSE's summary adjudication motion, given that it was originally set by the clerk's office to be heard after the trial date (as a result of severe backlogs in the court's Civil Division, exacerbated by cases, *such as this one*, that have engendered an unduly burdensome number of motions and ex parte filings in the clerk's office). Under *Cole v. Superior Court* (2022) 87 Cal.App.5th 84, the court was required either to advance the motion hearing date or continue the trial date, and the court concluded that the former was less problematic. Notwithstanding PEV's numerous complaints of "extreme prejudice" and "sudden and extreme prejudice" (Opening MPA at pp. 2:8, 4:17), PEV will have had 75 days + 2 court days between the date of service of the motion by overnight delivery (August 10, 2023) and the hearing date on the motion (October 26, 2023). This complies with Code of Civil Procedure section 437c, subdivision (a)(2). Moreover, in response to PEV's most recent ex parte application to continue the trial, filed on September 27, 2023, the court extended PEV's deadline to file an opposition to the summary adjudication motion by four days (October 16 instead of October 12), further alleviating any alleged prejudice. Finally, to the extent that any lingering prejudice may remain, the court finds that it is prejudice of PEV's counsel's own making, given the inordinate time that has apparently been spent on lengthy papers in support of this procedurally improper motion to strike. This is time that could more valuably have been spent on the opposition to the motion for summary adjudication itself.

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Calendar Line 4
Case Name: *Jerry Ivy, Jr. v. Jerry Ivy, Sr. et al.*
Case No.: 20CV373696

1. Background

This is a motion to compel compliance with the court's September 6, 2022 discovery order, brought by plaintiff Jerry Ivy, Jr. ("Plaintiff"). (Although the order was file-stamped by the clerk's office on September 9, 2022, Judge Kirwan signed it on September 6, 2022.) Plaintiff argues that Defendants Jerry Ivy, Sr., Deborah J. Ivy, and Edward Ivy ("Defendants") have failed to produce documents that are sufficient to show the profits that they earned—either directly or through trusts that they own—from the "AC Master Franchise," and that this information is needed in order for him to calculate and prove damages in this case. Plaintiff notes that Judge Kirwan's order specifically found that "the profits earned by Defendants (and/or entities they own and control) from the AC Master Franchise" are "directly relevant to Plaintiff's damages claims." (September 6, 2022 Order at p. 3:22-28.)

Defendants argue that they have complied with the court's prior order, because they produced documents showing their direct, individual earnings from the AC Master Franchise. They argue that they are not required to produce documents showing their *indirect* earnings—*i.e.*, through their trusts—because their trusts are not parties to the case. They also claim that they "do not possess" this information. (Opposition at p. 1:7.)

2. The May 5, 2023 Informal Discovery Conference

This disagreement was the subject of an informal discovery conference (IDC) on May 5, 2023, where the parties solicited the court's (the undersigned's) interpretation of Judge Kirwan's order. The undersigned's recollection of that IDC is consistent with Plaintiff's: that the undersigned interpreted the September 6, 2022 order as requiring "Defendants to produce documents sufficient to show the amount of profits they earned, whether directly or indirectly, including through any personal trusts for their benefit," and that if a motion were brought by Plaintiff on this issue, the court "would grant it." (MPA at pp. 2:7-11; 5:1-5.)

As a result, the court is incredibly surprised to see that this issue from more than five months ago is still unresolved. When the court signed the August 25, 2023 order advancing the hearing on this motion from January 18, 2024 to October 12, 2023, it did not realize that the subject of the motion was the very same discovery issue that had already been discussed months earlier. The court assumed, instead, that this motion raised a new issue, not having seen the motion in the file (which was apparently uploaded later that day by the clerk's office), and this is partly why the tone of the court's August 25 order was so pointed.

3. Final Interpretation of the September 6, 2022 Order

The court's interpretation of the September 6, 2022 order has not changed as a result of the unsound arguments in Defendants' opposition brief. The court disagrees with Defendants that their trusts were required to be named as *parties* in order to obtain discovery from the individual Defendants about those trusts. The court also disagrees that lack of *possession* absolves Defendants of the duty to produce these highly relevant documents. The standard for discovery is possession, *custody, or control*, and the court finds that Defendants undoubtedly have either custody or control over their trust documents (as to which they are apparently the

sole trustees, and as to which they are also beneficiaries). Although the court is not certain that the Schedule K-1 forms are the most appropriate documents to be produced, the point is that Defendants must produce documents "sufficient to show" the profits paid to the Defendants' personal trusts as a result of their holdings in the AC Master Franchise, and if the Schedule K-1 forms are the best (or only) source of this information, then they are what should be produced. The court agrees with Plaintiff that these documents are not subject to the California tax return privilege because Schedule K-1s are generally *not* filed with a tax return and are not considered a part of the return (instead, the individual taxpayer is supposed to keep the Schedule K-1 for their records).

Because of the trial date of November 27, 2023, and because of Defendants' extreme delay in producing these documents, the court orders Defendants to produce these documents by no later than **October 18, 2023**—*i.e.*, one week from the tentative ruling on this motion.

4. Sanctions

The court also finds that monetary sanctions are appropriate, as Defendants did not act with "substantial justification" in failing to comply with the September 6, 2022 order. Any colorable argument regarding Defendants' good-faith belief in a contrary interpretation of that order went out the window once the parties had the IDC on May 5, 2023 and heard the undersigned's interpretation. By now, Defendants have been acting inconsistently with two different judges' determinations regarding discovery, and there is *no* justification for this. The court does find that Plaintiff's requested amount of $29,145 is rather high, particularly for a single-issue, single-item motion to compel. Although the court has no doubt that Plaintiff has in fact incurred this amount in connection with this motion, and the court does not mean to suggest in any way that Plaintiff's counsel spent an excessive amount of time on this motion, the court nevertheless concludes that **$15,000** is a more appropriate sanction, based on the scope of this particular dispute (*e.g.*, 30 hours at a billing rate of $500/hour). Defendants shall pay this amount within 30 days of notice of entry of this order.

The court declines Plaintiff's request to order a "self-executing issue-preclusion sanction" in the event that Defendants do not comply with this order, for a number of reasons. First, the court expects Defendants to comply; at this point, there is no room for any other action. Second, if Defendants do not fully comply but somehow comply only *in part*, the question of what sanctions are appropriate can be addressed then, either in this court or in the ultimate trial department, based on the facts to be presented at that time. Third, and relatedly, the question of the exact *form* of the issue sanction has not been sufficiently briefed and needs to be fleshed out in greater detail—it appears at the very end of Plaintiff's opening brief but is not addressed at all in Defendants' brief. Finally, the court has never issued a "self-executing" sanction for potential future behavior and is not about to do so now for the first time, without a compelling showing of circumstances that necessitate such an unprecedented and extraordinary remedy.

5. Conclusion

The court GRANTS the motion to compel compliance. Defendants shall produce the responsive documents by October 18, 2023.

The court GRANTS IN PART Plaintiff's request for monetary sanctions. Defendants shall pay Plaintiff $15,000 within 30 days of notice of entry of this order.

The court DENIES Plaintiff's request for a "self-executing" issue sanction.

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Calendar Lines 5-8
Case Name: *Henry Lippincott v. Arash Hassibi et al.*
Case No.: 22CV393460

Defendants Joinedapp, Inc. and Arash Hassibi ("Defendants") bring four nearly identical motions to compel responses to employment form interrogatories, general form interrogatories, special interrogatories, and document requests. In addition, Defendants request monetary sanctions in the amount of $12,075.00 (between $2,000 and $5,000 for each motion). Plaintiff Henry Lippincott ("Lippincott") has filed four nearly identical opposition briefs, acknowledging that substantive responses have not yet been provided for any of this discovery but arguing that Defendants' motions are "premature and unnecessary," given Lippincott's pending motion for a default judgment "and [motion] to deny Defendants discovery due to their default in the arbitration whence this case sprang." (Oppositions at p. 1:4-6.) That motion is currently scheduled to be heard in five days, on Tuesday, October 17, 2023.

Most critically, Lippincott indicates that he has "repeatedly made clear to Defendants . . . that [he] would provide substantive responses within fifteen (15) days if the court denied [the] motion to deny discovery." (Oppositions at p. 1:17-19.) In other words, if the court denies Lippincott's motion on Tuesday, he has promised to provide substantive responses to all of this discovery by November 1, 2023.

That essentially settles the matter. As a general rule, a party cannot engage in self-help and unilaterally postpone discovery deadlines in the hope that the court will rule in his or her favor on a motion for a default judgment or a motion to deny discovery. Nevertheless, even if the court were to grant Defendants' motions in their entirety at this time, the court would still likely order Lippincott to provide substantive responses within two or three weeks—*i.e.*, by approximately November 1, 2023, which is the date that Lippincott has already offered. Defendants complain (in their four nearly identical reply briefs) that "[i]f a party objects to discovery requests, it can seek a protective order from the court . . . . Plaintiff failed to seek such an order." (Replies at p. 1:3-6.) At the same time, the court observes that Lippincott's pending motion for a default judgment and to deny discovery is basically the functional equivalent of a motion for protective order, even though it is styled as a "motion for expenses and sanctions."

In short, the court GRANTS the motions to compel and orders Lippincott to provide substantive responses by November 1, 2023, unless the court orders otherwise on October 17, 2023 (the court expresses no view regarding the merits of the October 17 motion at this time). The court also agrees with Lippincott that these four motions were unnecessary and therefore DENIES Defendants' multiple and excessive requests for monetary sanctions.

Finally, the court notes that there was absolutely no need for Defendants to file four virtually identical motions, opening briefs, and reply briefs, and absolutely no need for Lippincott to respond with four virtually identical opposition briefs. All of these issues could have been presented in a single motion, well within the page limits (with a single, omnibus separate statement) and a single opposition and reply brief. Although these filings were not technically improper in any way, they imposed an unnecessary burden on all of the court's staff, including the clerk's office. The court urges counsel to exercise some common sense in how they present these types of issues in the future. [*The court will not include this last*

paragraph in the court's final order. It is included only in this tentative ruling in an attempt to provide some practical guidance to counsel.]

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Calendar Line 9
Case Name: *Satrajit Chatterjee v. Google LLC*
Case No.: 22CV398683

Defendant Google LLC ("Google") moves to amend the stipulated protective order and for a discovery protocol for electronically stored information (ESI). It argues that the original stipulated protective order was a "stopgap" measure to allow for anti-SLAPP discovery, and that a more "robust" order is now needed. Plaintiff Satrajit Chatterjee objects to many of the proposed amendments, as well as to the ESI protocol as a whole.

The court has reviewed the parties' submissions, including the proposed protective order and protocol, and now rules on the disputed provisions as follows:

- Paragraph 3: The proposed amendment to this paragraph of the protective order creates an "outside counsel only" tier of protection for the most highly confidential information. As a general matter, the court has no problem with the creation of an "attorneys' eyes only"-level tier in the protective order, as such a tier is common in cases involving highly technical and/or sensitive information. As for who may access such documents, that issue is addressed in the discussion of paragraph 8 below.

- Paragraph 7: The previous version of the protective order required Chatterjee to notify Google in advance of providing confidential information to a non-testifying expert, if that expert was an employee of Google. The new version expands that to "current or former" Google employees. The court does not see a need for such an expansion and denies the request to add "or former." To the extent that this language was intended to prevent Chatterjee himself from circumventing the protective order by serving as his own non-testifying consultant or expert, the court notes that Chatterjee himself may *not* serve as a "consultant," "expert," or "independent contractor" under the protective order, which is limited to third-party consultants, experts, or contractors. Explicit language to that effect may be added to the protective order, if necessary, instead of this language regarding "former" employees.

- Paragraph 8: This paragraph governs access to "outside counsel only" documents. The court believes that a carve-out may be necessary for any documents that are designated under this category that Chatterjee himself authored, received, or accessed while he was still employed at Google. Chatterjee should be permitted to review any such documents with counsel in this case. The court is not equipped with enough information to know how to phrase such a carve-out and invites the parties to address it at the hearing. The carve-out should include documents that are contemporaneous with Chatterjee's employment and that were worked on by his "team" at Google (the court needs assistance in defining whether that is a "team," "group," division, subdivision, department, or some other grouping of employees) and should also include contemporaneous documents related to the *Nature* paper or Chatterjee's work at Google in connection with the *Nature* paper. With this carve-out, the court otherwise has no issue with the revisions in this paragraph.

- Paragraph 12: The court agrees with Chatterjee that there is no need for Google's proposed deadlines of *45 days* by which to challenge a confidentiality designation or raise it with the court. Sometimes, it may reasonably take longer than that to realize

that there may be a specific issue with a specific confidentiality designation on a specific page of a document. Sometimes much longer than 45 days. The court also agrees with Chatterjee that the ultimate burden of persuasion regarding the confidentiality of a document should be on the party making the designation. Nevertheless, the court agrees with Google that the *initial* burden of raising the issue with the court should be on the party challenging the confidentiality designation. The challenging party must also articulate a prima facie argument that the document has been improperly designated. In other words, the initial burden of production should be on the challenging party, but the ultimate burden of persuasion is on the designating party.

- Paragraph 19: The court agrees with Chatterjee that there is no need for monetary sanctions and attorney's fees to be built into the protective order. Any violation of the court's orders may be addressed, if necessary, by measures that are already in place under the law (*e.g.*, contempt proceedings or a report to the State Bar, if the violation rises to that level).

- Paragraph 20: Sometimes, parties agree in advance that drafts of expert reports and communications with testifying experts will not be discovered by either side, for the sake of the mutual convenience of the parties. The court understands that amendments to the Federal Rules of Civil Procedure several years ago explicitly make that the default rule. The rule in California is different. It appears that Chatterjee is unwilling to stipulate to such a provision, and so the court will not force him to. It is an issue that cuts both ways, and if Chatterjee wishes to take the more arduous path, then both sides will have to. These revisions cannot be forced by one party on another.

- Paragraphs 21/22: Chatterjee argues that Google's proposed paragraph 21 puts the burden on "the *non-designating party* to engage in motion practice in support of the *designating party's* confidentiality designations as a prerequisite to using such documents at trial or in motion practice." (Opp. at p. 15:11-13; italics in original.) Although the court understands that such a practice may commonly be used in some federal courts, this court does not read proposed paragraph 21 (and/or paragraph 22) as instituting such a practice. Unless the court is missing something, it appears that the proposed language simply places the burden of bringing a motion to seal on the party who "seeks to have the record containing such information sealed," in accordance with the normal practice under Rule 2.551 of the California Rules of Court. As a result, Chatterjee's objection to these paragraphs is overruled.

- ESI protocol: Chatterjee argues that the provisions of paragraph 5 purportedly allow for the spoliation of evidence by Google. The court finds this claim to be unduly melodramatic and without foundation. First, the court assumes that Google has already instituted a "litigation hold" for any potentially relevant documents for this case. Second, the court reads the proposed ESI protocol as simply taking account of a typical corporate document retention policy. In all material respects, the proposed protocol appears to be standard and unremarkable. Chatterjee fails to show why a customary document retention policy would be problematic here—he points to document preservation issues that arose in an unrelated and much broader antitrust case involving Google in federal district court. The discovery issues in that case have nothing to do with discovery in the present case, and the court finds zero probative value in

something that happened in another court involving completely different people. Citing that case as an example of potential "spoliation" in this case is unpersuasive.[2]

With these caveats, the court GRANTS Google's motion to amend the protective order and for an ESI protocol IN PART. Google will submit a final proposed order that incorporates the foregoing modifications.

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[2] The court denies Chatterjee's request for judicial notice, which attaches briefing, rather than court orders, from unrelated and irrelevant litigation involving Google and other parties.