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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WITHROW NETWORKS, INC.,

Plaintiff,

v.

GOOGLE, LLC and YOUTUBE, LLC,

Defendants.

Case No. 5:24-CV-03203-PCP

**[STIPULATED] ORDER RE:
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION**

1 **PURPOSE**

- 2 1. This Order supplements all other discovery rules and orders. It streamlines
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and
4 inexpensive determination of this action, as required by Federal Rule of Civil Procedure
5 1.”
- 6 2. This Order may be modified in the Court’s discretion or by stipulation. Any such
7 modified Stipulated Order will be titled sequentially as follows, “First Modified
8 Stipulated Order re: Discovery of Electronically Stored Information for Standard
9 Litigation,” and each modified Stipulated Order will supersede the previous Stipulated
10 Order.

11 **COOPERATION**

- 12 3. The parties are aware of the importance the Court places on cooperation and commit to
13 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for
14 the Discovery of ESI.

15 **COST-SHIFTING**

- 16 4. As in all cases, costs may be shifted for disproportionate ESI production requests pursuant
17 to Federal Rule of Civil Procedure 26. A party’s meaningful compliance with this Order
18 and efforts to promote efficiency and reduce costs will be considered in cost-shifting
19 determinations. Likewise, a party’s nonresponsive or dilatory discovery tactics are cost-
20 shifting considerations.

21 **GUIDELINES**

- 22 5. The parties are expected to comply with the District’s E-Discovery Guidelines
23 (“Guidelines”).

24 **LIAISONS**

- 25 6. The parties have identified liaisons to each other who are and will be knowledgeable
26 about and responsible for discussing their respective ESI. Each e-discovery liaison will
27 be, or have access to those who are, knowledgeable about the technical aspects of e-
28 discovery, including the location, nature, accessibility, format, collection, search

methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- a) Only potentially relevant ESI currently in existence and created or received between January 1, 2009 and June 30, 2025 will be preserved.

SEARCH

7. The parties have agreed to filter out ESI that is not subject to discovery.
8. Each party will use its best efforts to filter out common system files and application executable files by using a commercially reasonable hash identification process. Hash values that may be filtered out during this process are located in the National Software Reference Library (“NSRL”) NIST hash set list.
9. Additional filtering of non-human readable files may include, but are not limited to, Bin files, P7S files, and purely audio files (e.g., as in MP3 Files or MP4 Files). For purposes of clarity, text files such as XML and HTML files are excluded from this list.
10. Hyperlinks are not attachments. The parties will meet in good faith to resolve hyperlink issues. This paragraph, however, does not impact a party’s obligations to search for responsive discovery materials under the Federal Rules of Civil Procedure, Local Rules, or any standing order of this Court.

DEDUPLICATION

11. A party is required to produce only a single copy of a responsive document, and a party may de-duplicate responsive ESI across Custodians. To the extent a party produces email, a party may also de-duplicate email threads and attachments as follows: In an email thread, only the most evolved responsive email in a thread will be produced. Where an earlier-in-thread email has a responsive attachment not contained within the most evolved responsive email, the most evolved earlier-in-thread email containing the attachment will

also be produced along with its attachment. An attachment is a file associated with an email for retention and storage as a single message unit.

EMAIL SEARCH

12. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall not include email or other forms of electronic correspondence (collectively “email”). To obtain email parties must propound specific email production requests.

13. Email production requests shall only be propounded for specific issues, rather than general discovery of a product or business.

14. Email production requests shall be phased to occur after the parties have exchanged initial disclosures and basic documentation about the patents, the prior art, the accused instrumentalities, and the relevant finances. While this provision does not require the production of such information, the Court encourages prompt and early production of this information to promote efficient and economical streamlining of the case.

15. Email production requests shall identify the custodian, search terms, and time frame. The parties shall cooperate to identify the proper custodians, proper search terms and proper time frame as set forth in the Guidelines.

16. Each requesting party shall limit its email production requests to a total of five custodians per producing party for all such requests. The parties may jointly agree to modify this limit without the Court’s leave. The Court shall consider contested requests for additional custodians, upon showing a distinct need based on the size, complexity, and issues of this specific case. Cost-shifting may be considered as part of any such request.

17. Each requesting party shall limit its email production requests to a total of five search terms per custodian per party. The parties may jointly agree to modify this limit without the Court’s leave. The Court shall consider contested requests for additional search terms per custodian, upon showing a distinct need based on the size, complexity, and issues of this specific case. The Court encourages the parties to confer on a process to test the efficacy of the search terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company’s name or its product name,

are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., “computer” and “system”) narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., “computer” or “system”) broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., “and,” “but not,” “w/x”) is encouraged to limit the production and shall be considered when determining whether to shift costs for disproportionate discovery. Should a party serve email production requests with search terms beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, this shall be considered in determining whether any party shall bear all reasonable costs caused by such additional discovery.

PRESERVATION

18. These data sources are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but not searched, reviewed, or produced:

- a. backup systems and/or tapes used for disaster recovery; and
- b. systems no longer in use that cannot be accessed.

19. Among the sources of data the parties agree are not reasonably accessible or not proportional to the needs of the case, the parties agree not to preserve, search, review, or produce the following:

- a. voice messages
- b. information from handsets, mobile devices, personal digital assistants, and tablets that is reasonably likely to be duplicative of information that resides in a reasonably accessible data source ;
- c. information from personal account: instant messaging and chat application data;
- d. automatically saved versions of documents and emails;
- e. deleted, slack, fragmented, or other data accessible only by forensics;
- f. systems, server and network logs;

- g. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- h. on-line access data such as temporary internet files, history, cache, cookies, and the like;
- i. dynamic fields of databases or log files that are not retained in the usual course of business; and
- j. data in metadata fields that are frequently updated automatically, such as last opened dates.

PRODUCTION FORMATS

- 20. Images. The parties agree to produce documents in TIFF file format along with image load files that indicate the beginning and ending of each document, and associated multipage text files containing extracted text or OCR containing all requisite information including relevant metadata.
- 21. Hidden Text. All hidden text (e.g., track changes, speaker notes, hidden rows or columns, formulas, comments, markup notes, etc.) shall be produced.
- 22. Metadata. Load files should include, where applicable, the following information: See attached metadata list, **Exhibit A**. However, the parties are not obligated to include metadata for any document that does not contain such metadata in the document as collected.
- 23. Production media and encryption of productions. Unless otherwise agreed, the parties shall provide document production data on CDs, DVDs, external hard drives, SFTP, or other manner of electronic transmission, as appropriate. The producing party may encrypt the production data using encryption with complex passwords, and the producing party may forward the password to decrypt the production data separately from the CD, DVD, external drive, SFTP, or other electronic transmission to which the production data is saved.
- 24. Format for production of documents – hardcopy or paper documents. All documents that are hardcopy or paper files shall be scanned and produced in the same manner as

documents existing in electronic format, above. Reasonable efforts shall be made to scan the pages at or near their original size and so that the image appears straight and not skewed. Physically oversized originals, however, may appear reduced. In addition, reducing image size may be necessary to display production numbers and confidentiality designations without obscuring text.

25. Attachments. If emails are produced, the parties shall produce email attachments together in families.

26. Footer. Each document image shall contain a footer with a sequentially ascending production Bates number and confidentiality designation.

27. Native Files. A party that receives a document produced in a format specified above may make a reasonable request to receive the document in its native format, and upon receipt of such a request, the producing party shall either object or produce the document in its native format to the extent reasonably accessible. The parties will meet and confer to discuss any objections. If the parties are unable to reach agreement with regard to requests for additional documents in native-file format, the parties reserve the right to seek relief from the Court. Documents produced natively shall be represented in the set of imaged documents by a slipsheet indicating the production identification number and confidentiality designation for the native file that is being produced.

28. Classes of Native Documents. Spreadsheets (e.g., Excel, Google Sheets) and Presentations (e.g., PowerPoint, Google Slides) shall be produced in native format.

29. A document produced as a native file must include the following:

- a. Documents produced in native file format will have the file name named the same as the BEGDOC number;
- b. The full path of the native file will be provided in the data file for the NATIVELINK field;
- c. When native files are produced because rendering the file to TIFF or PDF would not result in viewable images, a TIFF or PDF image slip sheet placeholder will be produced endorsed with the file name and the legend "Document Produced in

Native Format” (or something similar);

d. The confidentiality designation applied to any document under a protective order entered in this action will be produced in the load file in the DESIGNATION field and affixed to the placeholder.

30. Alternate Format. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties will not produce non-relevant attachments that are attached to relevant emails. However, if any attachment to an email contains responsive content, then the cover email shall be produced if not privileged, regardless of the cover email’s responsiveness.

31. Requests for hi-resolution documents. The parties agree to respond to reasonable and specific requests for the production of higher resolution images. Nothing in this Stipulation shall preclude a producing party from objecting to such requests as unreasonable in number, timing or scope, provided that a producing party shall not object if the document as originally produced is illegible or difficult to read. The producing party shall have the option of responding by producing a native-file version of the document. If a dispute arises with regard to requests for higher resolution images, the parties will meet and confer in good faith to try to resolve it.

32. The parties agree not to degrade the searchability of documents as part of the document production process.

TECHNOLOGY FOR ESI REVIEW

33. The parties may use technology assisted review to facilitate the more efficient processing and review of documents. Nothing in this Order prevents the parties from further agreeing to use technology assisted review and other techniques insofar as their use improves the efficacy of discovery. For this litigation, the parties agree to not use technology assisted review for the purpose of making a determination as to a document’s responsiveness to a discovery request.

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PRIVILEGE LOG

34. If a party reasonably determines that one or more responsive documents are not discoverable because it is subject to the attorney-client communication privilege or work product doctrine, or otherwise not discoverable on the basis of a recognized protection or privilege (collectively, the “Privileges” and each a “Privilege”), the party shall use reasonable efforts to produce a log for each document or each category of documents withheld for privilege. A Party is not required to log redacted documents.

35. Communications involving counsel or experts retained for the purpose of this litigation that post-date the filing of the first-filed complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually.

36. For email communications, only the last-in-time email in the chain will be set forth on the log.

SOURCE CODE

37. No provision of this Order affects the inspection or production of source code which will be collected and made available consistent with the Protective Order governing this case.

IT IS SO STIPULATED, through Counsel of Record.

Dated: March 14, 2025

/s/ Francisco A. Villegas

Counsel for Plaintiff

Dated: March 14, 2025

/s/ Kate E. Lazarus

Counsel for Defendants

1 **IT IS ORDERED** that the foregoing Agreement is approved.

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3 Dated: March 24, 2025


4 ~~Hon. F. Casey Pitts~~
5 Hon. Virginia K. DeMarchi
6 United States Magistrate Judge
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Exhibit A

Field Label	Field Description
BEGBATES	Beginning Bates Number
ENDBATES	Ending Bates Number
BEGATTACH	Beginning Attachment Number
ENDATTACH	Ending Attachment Number
ALLCUSTODIANS	All custodians
SUBJECT	Email Subject
TITLE	Title from Properties of Document
SENTDATETIME	Sent date and time of an e-mail message Sent Date
RECEIVEDDATETIME	Received date and time of an e-mail message
TO	Recipient
FROM	The name and email address of the sender of the email.
CC	Carbon Copy
BCC	Blind Carbon Copy
AUTHOR	Creator
FILENAME	Saved Name of Document
DATEMOD	Date file was last modified
DATECREATED	Date and time the document was created
NATIVEFILELINK	Link to the Native File
TEXT_PATH	Document Text
CONFIDENTIALITY	Confidentiality assigned to the document.
REDACTED	If redacted

ATTESTATION PURSUANT TO CIVIL L.R. 5-1

The filer attests that the other signatories listed, on whose behalf the filing is also submitted, are registered CM/ECF filers and concur in the filing's content and have authorized the filing.

Dated: March 14, 2025

/s/ Kate E. Lazarus

Counsel for Defendants