SFI'S MOTION TO COMPEL GOOGLE TO PRODUCE DOCUMENTS, RESPOND TO INTERROGATORIES, AND DESIGNATE 30(B)(6) WITNESS(ES) CONCERNING STORAGE, PRICING, AND COST DATA EXHIBIT A

PUBLIC REDACTED VERSION

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December 5, 2023

VIA E-MAIL

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Re: *Security First Innovations, LLC* v. *Google LLC*, No. 2:23-cv-00097-JKW-RJK (E.D. Va.)

Counsel,

We write concerning Google's November 16 Letter and in response to SFI's November 27 Letter, both in relation to the November 20 meet and confer.

I. Google's Discovery Requests

A. Interrogatory No. 1 and Request for Production Nos. 4, 6, and 8

During the meet and confer, SFI agreed to supplement its response to Interrogatory No. 1 and to supplement production for Requests for Production Nos. 4, 6, and 8 as requested by Google's November 17 Letter.

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B. Interrogatory No. 2

At the meet and confer, SFI re-affirmed that it does not contend that any SFC products practice the Asserted Patents. Because, according to SFI, none of the SFC products practice the Asserted Patents, SFI will not supplement its response to Google's Interrogatory No. 2 or Interrogatory Nos. 3, 11, 13, and 14. And SFI will not amend its Complaint to rectify the confusion as to whether the term "patented technology" in the Amended Complaint refers only to the Asserted Patents, and not SFC products.

C. Interrogatory Nos. 6 and 8

During the meet and confer, SFI agreed to supplement its responses to Interrogatory Nos. 6 and 8 as requested by Google's November 17 Letter.

Also, Google mentioned at the meet and confer confusion about statements that Kaxxa has made. Kaxxa suggested that two SFC entities exist. Kaxxa asserts that [redacted], but a different SFC that was created by Kaxxa. SFI responded that it believes Kaxxa was referring to SFC Trust and SFC Secure Creditor Trust. This does not resolve the confusion. Kaxxa was only referring to SFC, not SFC Trust or SFC Secure Creditor Trust. And Kaxxa asserted that [redacted]. A mix up between SFC Trust and SFC Secure Creditor Trust does not explain this. In any event, we will continue to address this issue with Kaxxa.

D. Interrogatory No. 9

Even though SFI refused to supplement Google's Interrogatory Nos. 2, 3, 11, 13, and 14 and refused to amend its First Amended Complaint, SFI agreed to supplement its response to Google's Interrogatory No. 9 to indicate that the alleged "copying of the SFC's patented technology" (SFI's Corrected First Supplemental Responses to Google's Interrogatory No. 9.) does not refer to copying SFC products.

E. SFC Trust

SFI also mentioned that SFC Trust would provide another production under the "SFCTRUST" production volume label. SFC Trust did provide an additional production on November 22, 2023.

The production did not resolve the "serious gaps" in the document production as detailed in the prior letter. (*See* Google November 16, 2023 Letter from D. Perlson to A. Mayron at 6.) Please provide these documents as requested in that prior letter.

Additionally, it appears that the following documents from the production (by beginning Bates No. only) either contain partial redactions or were withheld entirely on the purported basis of the attorney-client privilege: SFCTRUST_000000182, SFCTRUST_000000186, SFCTRUST_000000283, SFCTRUST_000000285, SFCTRUST_000000286,

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SFCTRUST_000000299, SFCTRUST_000000301, SFCTRUST_000000303, SFCTRUST_000000345, and SFCTRUST_000000348.

But based on what can be discerned from the unredacted portions of the documents, it does not appear that the redacted portions are in fact protected under the attorney-client privilege. For example, certain redacted portions appear within emails that include recipients who are non-lawyers and/or third parties. *E.g.*, SFCTRUST_000000283, SFCTRUST_000000286, SFCTRUST_000000299, SFCTRUST_000000301, SFCTRUST_000000303, SFCTRUST_000000345, SFCTRUST_000000182, SFCTRUST_000000186.

Please provide further context as to the purported claim for privilege relating to the redactions to such documents by December 8.

It also appears that certain documents/communications have been similarly improperly withheld such as SFCTRUST_000000285 and SFCTRUST_000000348. Please promptly produce these documents.

II. SFI's Discovery Requests

A. Financial Data

Google recently produced additional financial data, and it is continuing to conduct a reasonable search for additional responsive documents, including pricing information regarding the accused products. Based on the investigation to date, we believe Google does not [redacted]. If we learn otherwise, we will let you know.

With respect to your request for additional metrics and data regarding data stored by Google (whether or not it utilizes the accused functionality), we note that SFI recently served an interrogatory seeking such information, to which Google will respond at the appropriate time in accordance with the Local Rules and Federal Rules of Civil Procedure. For present purposes, Google notes that SFI has sought—and Google has produced—financial information, including revenue, profit, pricing and cost information, yet SFI now seeks additional cost information that is not specific to any accused product and that relates to Google's data centers generally, irrespective of the extent to which they are storing data utilizing the accused functionality. How is such cost data, if it exists, relevant and proportional to the needs of this case?

B. Marketing and Survey Documents

SFI suggested at the meet and confer that Google's productions are missing internal marketing materials, such as internal consumer surveys. SFI's November 27 letter adds a request for historic marketing materials and surveys. (SFI November 27 Letter at 2-3.) Google is continuing to search for, process, and produce responsive internal marketing materials, including historic marketing materials, to the extent such documents exist and are located in a reasonable search in the relevant timeframe.

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C. Documents Addressed in SFI's November 8 Letter

SFI requested historical versions of two documents—Google's "Default Encryption at Rest" and "Encryption at Rest in Google Cloud Platform" found in SFI-GOOGLE_000003146 and SFI-GOOGLE_000005705, respectively. (SFI November 27 Letter at 3.) As stated at the meet and confer, there are no discrete "versions" of those files as those files are hosted on Google Docs. Due to the nature of how Google Docs works, it is unduly burdensome, if not impossible, to produce or even identify "versions" of those documents. To deal with this inability to retrieve discrete versions, Google and SFI agreed at the meet and confer that SFI would make narrow requests, asking for revisions and comments related to a narrow timeframe and to a sentence or phrase. Google stated that it would check to see if it can identify changes in the documents based on that narrowed request.

Since that meet and confer, Google has been further investigating whether it can provide change logs to the two documents. To the extent it can reasonably provide change logs, it will do so. Google is also investigating whether it has prior versions of the documents as posted for customers (i.e., not the internal "versions," because as I mention above, there are no "versions" but the different versions that were available to the customers on the Internet). To the extent it can find these prior public versions, Google will produce those documents.

Also during the meet and confer, SFI requested earlier versions of three audiovisual files—Google's "Managing Encryption of Data in the Cloud (Google Cloud Next '17)," "Google Cloud Encryption at Rest," and "How Does Encryption Work at Google's Data Centers" found in SFI-GOOGLE_000006070, SFI-GOOGLE_000006064, and SFI-GOOGLE_000006068, respectively–including versions of the underlying scripts. SFI's November 27 Letter adds to this request "any documents used to create these videos, [such as] … the documents used to create the script." (SFI's November 27 Letter at 3.) This is no different than SFI's request in the paragraph immediately above—requesting the documents used by the people responsible for maintaining the "Default Encryption at Rest" and "Encryption at Rest in Google Cloud Platform." Google's answer is the same. These documents are not proportional and are unduly burdensome to obtain. But Google will make a good faith search for, and produce if found, prior public versions of those three files and underlying scripts.

D. License Agreements

Google's production of license agreements is complete.

E. Organizational Charts

Google and SFI agreed at the meet and confer for SFI to specify narrow requests for organizational charts. Google also stated that whether a request was narrow would come down to the request made. The bounds of an acceptable request were not outlined at the meet and confer, and are not simply requests where "SFI specif[ies] certain products or systems," as SFI states in its November 27 Letter.

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SFI now requests in its letter for Google to "produce organizational charts for (1) the Google employees responsible for sales and marketing for each of the Accused Services . . . and (2) the Google employees responsible for designing, developing, and maintaining [redacted] [redacted], [redacted], [redacted], [redacted], and [redacted]." (SFI November 27, 2023 Letter at 4.) Please narrow the requests further.

F. Interrogatory No. 7

As discussed at the meet and confer, SFI requested a supplemental response to SFI's Interrogatory No. 7 to provide the "date . . . which [redacted] and [redacted] were first used for each Accused Service." (SFI November 27, 2023 Letter at 4.) Google will provide a supplemental response to SFI's Interrogatory No. 7.

G. Source Code

As discussed at the meet and confer and as stated in SFI's November 27 Letter, SFI requested source code relating to the "Encryption at Rest functionality for each Accused Service." (SFI November 27, 2023 Letter at 4.) Austin Mayron also sent Google an email about this on November 21. Google responded.

Best,

/s/

Deepa Acharya

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