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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COPART, INC.,

Plaintiffs,

v.

SPARTA CONSULTING, INC., KPIT  
INFOSYSTEMS, INC., AND KPIT  
TECHNOLOGIES, LTD.,

Defendants.

No. 2:14-CV-00046-KJM-CKD

ORDER

On February 9, 2018, the court heard argument on defendants' motion to bifurcate and the parties' motions in limine filed in anticipation of the trial. The court now resolves the parties' motions as explained below.

I. DEFENDANTS' MOTION TO BIFURCATE

Defendants have moved to bifurcate the trial into two phases. ECF No. 290. Defendants argue if Copart fails to prove its fraudulent inducement claim, limited by the court's previous summary judgment order, ECF No. 264, then Copart's fraud and professional negligence claims are barred due to waiver and the economic loss rule. ECF No. 290 at 3, 4-6. According to defendants, if Copart fails on its fraudulent inducement claim, then the second phase of the bifurcated trial "will be limited to [Copart's] computer hacking and trade secret misappropriation

1 claims, along with Sparta’s contract counterclaims, greatly reducing the scope of trial.” ECF  
2 No. 290 at 6.

3 Defendants assert bifurcation will promote judicial economy and prevent juror  
4 confusion because focus on the sole alleged statement by Sparta that “it would ensure 100%  
5 Copart Auction System [CAS] functionality” during “the Design Phase” would limit evidence  
6 presented in a first phase to the first six months of the two-year AIMOS project, make relevant  
7 fewer than five percent of the exhibits in this case and require calling of only seven out of thirty-  
8 six witnesses. *Id.* at 6-7. This limitation of exhibits and witnesses would result in the first phase  
9 of the trial being “just a few days.” *Id.* at 7. Defendants would suffer prejudice without a  
10 bifurcated trial because Copart could “attempt to throw in every potentially negative comment  
11 and action by Sparta to sow juror confusion over what misrepresentations can support its claims.”  
12 *Id.* at 7-8. Additionally, defendants assert a bifurcated trial would permit Sparta to revive its  
13 barred quasi-contract claims if Copart prevails on fraudulent inducement and parts of the contract  
14 are rescinded or voided. *See id.* at 8 (citing ECF No. 264 at 16-19).

15 In opposition, Copart argues it would have to present the same evidence twice  
16 under defendants’ proposed bifurcation. ECF No. 341 at 1. Copart also contends defendants  
17 misread the court’s order on summary judgment. *Id.* According to Copart, the court’s order does  
18 not preclude Copart’s fraud or professional negligence claims.

19 In reply, defendants acknowledge “[e]vidence presented in the first phase that also  
20 relates to the second phase will have to be presented again.” ECF No. 347 at 2. Defendants  
21 assert this issue “can be addressed by instructing the jury that they are free to consider that  
22 evidence in the second phase of the trial.” *Id.* According to defendants, “If [Copart’s] signoffs  
23 [for Milestones 1-7] were not fraudulently induced, then they bar all claims related to Sparta’s  
24 work product, including breach of contract, fraud, and professional negligence.” *Id.* at 5.

25 A. Legal Standard

26 Rule 42(b) of the Federal Rules of Civil Procedure provides in relevant part:

27 For convenience, to avoid prejudice, or to expedite and economize,  
28 the court may order a separate trial of one or more separate issues,  
claims, crossclaims, counterclaims, or third-party claims.

1           A court “has broad discretion to bifurcate a trial to permit deferral of costly and  
2 possibly unnecessary proceedings pending resolution of potentially dispositive preliminary  
3 issues.” *Jinro America Inc., v. Secure Invs., Inc.*, 266 F.3d 993, 998 (9th Cir.), *amended on*  
4 *denial of reh’g*, 272 F.3d 1289 (9th Cir.2001). Courts are more reluctant to bifurcate proceedings  
5 when there is “an overlap of factual issues.” *Hunter v. City & Cty. of San Francisco*, No. 11-  
6 4911, 2012 WL 4831634, at \*10 (N.D.Cal. Oct.10, 2012). Three factors are relevant to the  
7 inquiry: convenience, prejudice to the parties, and judicial economy. *Id.*; *see also Conboy v.*  
8 *Wynn Las Vegas LLC*, No. 2:11-CV-1649 JCM (CWH), 2013 WL 1701073, at \*14 (D.Nev.  
9 Apr.18, 2013) (stating that a court considering bifurcation weighs “convenience, prejudice,  
10 judicial economy, risk of confusion and whether the issues are clearly separable”).

11           B.     Analysis

12           Defendants’ position is undermined by a misreading of the court’s summary  
13 judgment order. ECF No. 264. The court recounts the relevant portions of that order below.

14           When addressing Copart’s “contract-related claims” in a clearly delineated section  
15 of its summary judgment order, the court determined “Copart may still proceed on the first seven  
16 milestones under a fraudulent inducement theory.” ECF No. 364 at 9, 12. The court concluded,  
17 “Copart may continue to seek a remedy for the first seven milestones, but only under its  
18 fraudulent inducement theory.” *Id.* The court reasoned that Copart had waived “its right to sue  
19 for defects within the deliverables associated with [the first seven] milestones” by accepting the  
20 milestones through signing a “Milestone Sign Off” form. *Id.* at 11. The court also determined  
21 Copart “is precluded from pursuing damages related to the remaining eight milestones for which  
22 it never paid (Milestones 8 through 15).” *Id.* at 13. All of this analysis addressed Copart’s breach  
23 of contract claims.

24           When discussing the parties’ fraud-related claims, also in a clearly delineated  
25 section of its order, *id.* at 19-27, the court first identified six statements that could possibly  
26 support Copart’s various fraud claims. *Id.* at 22. The court then limited Copart’s fraudulent  
27 inducement claim to a single statement: “Sparta’s reassurances that it would ensure ‘100% CAS  
28 functionality.’” *Id.* at 23. Yet the court found Copart could pursue at trial five of the six

1 statements, or representations, related to its fraud claim. *Id.* at 25. The court also addressed  
2 defendants' argument that "the economic loss rule bars Copart's claims." *Id.* Citing to its  
3 previous order, ECF No. 55 at 18-19, the court concluded its "prior order largely precludes"  
4 reliance on the economic loss rule bar. ECF No. 264 at 25. As a specific example, the court  
5 determined Copart can base its fraudulent inducement claim "on statement (3), Sparta's assurance  
6 of '100% CAS functionality.'" *Id.* After identifying that example for Copart's fraudulent  
7 inducement claim, the court concluded, "The economic loss rule does not preclude Copart's  
8 fraud-related claims." *Id.* at 25. The court reiterated the survival of both "Copart's fraudulent  
9 inducement and fraud claims" as limited to "reliance on specific statements," distinct from the  
10 court's limiting recovery "on the first seven milestones" to Copart's "fraud theory." *Id.* at 13  
11 (limiting Copart "to its fraud theory to recover on the first seven milestones" and precluding  
12 contract damages "related to the remaining eight milestones for which it never paid"); *id.* at 23  
13 ("Copart may proceed only on . . . statement (3) for its fraudulent inducement claim, and on all  
14 six statements for its fraud claim."); *id.* at 47 (summarizing order on contract and fraud claims).

15 Also relevant here, the court denied summary judgment on Copart's professional  
16 negligence claim as against Sparta. *Id.* at 48.<sup>1</sup> The court now applies the factors relevant to  
17 determining if bifurcation of the impending trial is warranted.

18 1. Convenience to the Parties

19 Defendant argues "the vast majority of Copart's claims fall like dominoes" if  
20 Copart fails to prove fraudulent inducement. ECF No. 290 at 4. But Copart's fraud claims are  
21 not dependent on proving fraudulent inducement as explained above and previously in the court's  
22 summary judgment order. *See* ECF No. 264 at 9-13, 19-27, 47. Thus, the vast majority of

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23 <sup>1</sup> Although Sparta moved for summary judgment on Copart's fraud-based claims, arguing  
24 in part the economic loss rule barred those claims, neither Sparta nor any other defendant asserted  
25 the economic loss rule bars a professional negligence claim until Sparta provided the following  
26 sentence, without any supporting argument, in its Reply: "Moreover, the professional negligence  
27 claim also is barred by the economic loss rule." ECF No. 233 at 4; *see also* ECF Nos. 184-86  
28 (defendants' motions for summary judgment). The court's order did not address that assertion.  
*See* ECF No. 264; *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1176 & n.4 (9th Cir. 1995) (issues not raised in opening brief may not properly be raised in reply). The court need not address the new stray sentence here to resolve defendants' motion to bifurcate.

1 Copart’s claims do not necessarily fail if Copart fails to prove fraudulent inducement. *See id.* at  
2 47-48 (discussing remaining Copart claims of fraud, unfair competition, unjust enrichment,  
3 breach of implied covenant of good faith and fair dealing, declaratory relief, trade secret  
4 misappropriation, professional negligence, and computer hacking claims). Additionally, the court  
5 has twice rejected defendants’ claims that the economic loss rule bars Copart’s fraud claims.  
6 ECF Nos. 55 at 18-19 & 264 at 25. In light of the claims that will remain in the case even if  
7 Copart fails to prove fraudulent inducement, and the overlap in evidence relevant to defendants’  
8 proposed first and second phases of trial, the court finds bifurcation will not serve the purpose of  
9 convenience.

10 2. Avoiding Prejudice

11 Defendants assert a lack of bifurcation will prejudice the jury because “Copart will  
12 undoubtedly attempt to throw in every potentially negative comment and action by Sparta to sow  
13 juror confusion over what misrepresentations can support its claims” if the court permits Copart  
14 “the opportunity to proceed on both fraudulent inducement and general fraud at once.” ECF  
15 No. 290 at 7-8. And according to defendants, a bifurcated trial “would allow the [c]ourt to revive  
16 Sparta’s quasi-contract claims if Copart prevails on fraudulent inducement” because “[t]he court  
17 barred Sparta from pursuing quasi-contract claims while there is a valid contract at issue.” *Id.*  
18 (citing ECF No. 264 at 16-19.

19 Copart contends even if it could not prove fraudulent inducement, Copart “would  
20 still be able to present much of th[e] same evidence in support of its non-contract claims.” ECF  
21 No. 341 at 5. “[P]resentation of the same evidence to the jury again would result in waste and  
22 confusion . . . .” *Id.* (citing *Hoyt v. Career Sys. Dev. Corp.*, No. 07-CV-1733-BEN (RBB), 2010  
23 WL 2653368, at \*3 (S.D. Cal. July 1, 2010) (denying bifurcation in part because it “would not  
24 preclude having 17 [of 20] witnesses appear and testify to one issue and then return at a later date  
25 to testify again on other issues” despite possibility of shortening second phase of trial). Copart  
26 also asserts defendants will not suffer prejudice due to unavailable quasi-contract claims; Copart  
27 intends not to seek rescission but rather to hold defendants “to the terms of the contract and seek  
28 damages.” ECF No. 341 at 10 (citing ECF Nos. 197, 224, 282-01; other citations omitted). At

1 hearing, the court held Copart bound to this assertion not to seek rescission, with Copart's  
2 agreement. Hr'g Tr. (Feb. 9, 2018) at 6:6-18, ECF No. 359.

3 Although defendants point to the small number of exhibits and relatively few  
4 witnesses needed to try Copart's fraudulent inducement claim, defendants acknowledge  
5 "[e]vidence presented in the first phase that also relates to the second phase will have to be  
6 presented again." ECF No. 347 at 2. Defendants contend any prejudice stemming from a need to  
7 present evidence twice could be cured by a jury instruction. *Id.*

8 Defendants' contention that any prejudice can be cured by a jury instruction also  
9 applies to any prejudice to defendants. *See Afshar v. City of Sacramento*, No. CIV S-04-  
10 1088LKKJFB, 2007 WL 779748, at \*1 (E.D. Cal. Mar. 14, 2007) (denying bifurcation where  
11 "[c]oncerns about potential prejudice to the defendant may be directly addressed with appropriate  
12 limiting instructions" or "a special verdict form"). Copart's consistent position, to which it is  
13 now bound, is that it does not seek rescission but instead seeks contract damages if it proves  
14 fraudulent inducement. This alleviates the risk to Sparta of prejudice from a lack of quasi-  
15 contract claims. The court therefore finds defendants have failed to establish bifurcation will  
16 avoid prejudice to the parties.

### 17 3. Judicial Economy

18 The court finds a bifurcated trial would not improve judicial economy. Bifurcating  
19 the trial into two phases would require "time for deliberations by the jury on [the first] issue . . .  
20 and additional time to again submit the case to the jury." *See Hoyt*, 2010 WL 2653368, at \*3. As  
21 discussed above, a finding against Copart on fraudulent inducement would not dispose of the  
22 majority of Copart's claims. *See Powell v. Union Pac. R. Co.*, No. CIV. 2:09-1857 WBS, 2013  
23 WL 497636, at \*3 (E.D. Cal. Feb. 7, 2013) ("[E]ven if the jury finds that plaintiff was not injured,  
24 that does not necessarily preclude a finding that, for example, [defendant] terminated [plaintiff's]  
25 employment in violation of [statute] . . .").

26 Defendants' motion to bifurcate the trial, ECF No. 290, is therefore DENIED.  
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1       II.       NATURE OF RULINGS ON *IN LIMINE* MOTIONS

2                       The court issues its rulings on motions *in limine* based on the record currently  
3 before the court. Each ruling is made without prejudice and is subject to proper renewal, in whole  
4 or in part, during trial. If a party wishes to contest a pre-trial ruling, it must do so through a  
5 proper motion or objection, or otherwise forfeit appeal on such grounds. See Fed. R. Evid.  
6 103(a); *United States v. Whittemore*, 776 F.3d 1074, 1082 (9th Cir. 2015), *cert. denied*, 136 S. Ct.  
7 89 (2015) (“Where a district court makes a tentative *in limine* ruling excluding evidence, the  
8 exclusion of that evidence may only be challenged on appeal if the aggrieved party attempts to  
9 offer such evidence at trial, which allows the court to make a final ruling.”) (citation and internal  
10 quotation marks omitted).

11       III.       PLAINTIFF’S MOTIONS *IN LIMINE*

12           A.       Plaintiff’s Motion *in Limine* One (ECF No. 273)

13                       Copart moves to exclude internal documents describing Copart Auction System  
14 (CAS) functionality “that Copart generated before hiring Sparta to investigate and document CAS  
15 functionality.” ECF No. 273 at 1 (emphasis removed). Copart identifies these documents as  
16 “CAS Confirmations.” *Id.* Copart moves to exclude this evidence under Federal Rules of  
17 Evidence 401 and 403. *Id.* at 2-3. Copart contends these documents, which contained a list of  
18 documents for a possible contract exhibit that would be a representation of “what is 100% CAS,”  
19 are irrelevant because they “have no bearing on Sparta’s obligations under the ISA  
20 [Implementation Services Agreement] or Design SOW [design project statement of work].” *Id.* at  
21 2-3. Furthermore, these documents “have scant probative value” because “[t]hey were never  
22 shared with Sparta [before discovery in this case],” which reflects “express contract language that  
23 put the onus on Sparta, not Copart, to fully investigate and document 100% CAS Functionality.”  
24 *Id.* at 3. Thus, these documents “would confuse, mislead, and distract the jury about what the  
25 parties actually agreed to, what information Sparta actually relied on, Sparta’s knowledge about  
26 the [documents], and what work Sparta agreed to perform under the express terms of the  
27 contracts.” *Id.*



1 In opposition, defendants contend these CAS Confirmations are relevant in part  
2 because Copart must prove reliance as an element of fraud or fraudulent inducement. ECF  
3 No. 301 at 1, 3-6. Additionally, the CAS Confirmations evince “a shared understanding at the  
4 time of contracting of the role of ‘100 of CAS Functionalities’ as an input to rather than an output  
5 of the design phase.” *Id.* at 6. Defendants argue these “certifications do not contradict the terms  
6 of the Design SOW; they help explain them.” *Id.* at 7.

7 In reply, Copart contends “nothing in the CAS Confirmations can alter the express  
8 terms of the parties’ contracts, which include clear language that puts the onus on Sparta to do a  
9 full investigation of ‘100% CAS’ using the set of documents described in the CAS Confirmations  
10 as an “input,” not an endpoint.” ECF No. 328 at 3.

11 1. Rule 401

12 Under Federal Rule of Evidence 401, evidence is relevant if “it has any tendency  
13 to make a fact more or less probably than it would be without the evidence,” and if “the fact is of  
14 consequence in determining the action.”

15 Here, Copart’s only remaining theory related to its contract claims is its fraudulent  
16 inducement theory. *See* ECF No. 264 at 12, 47. To show fraudulent inducement, Copart must  
17 show “justifiable reliance,” or “reasonable reliance, i.e., circumstances were such to make it  
18 reasonable for the plaintiff to accept the defendant’s statements without an independent inquiry or  
19 investigation.” *OCM Principal Opportunities Fund v. CIBC World Markets Corp.*, 157 Cal. App.  
20 4th 835, 864 (2007), *as modified* (Dec. 26, 2007) (internal quotation marks, alterations and  
21 citation omitted). “The reasonableness of the plaintiff’s reliance is judged by reference to the  
22 plaintiff’s knowledge and experience.” *Id.* (citation omitted). For the court to deny relief to  
23 Copart under this element, “It must appear that [it] put faith in representations that were  
24 preposterous or shown by facts within [its] observation to be so patently and obviously false that  
25 [it] must have closed [its] eyes to avoid discovery of the truth.” *Id.* at 865 (internal quotation  
26 marks and citation omitted); *see also Hoffman v. 162 N. Wolfe LLC*, 228 Cal. App. 4th 1178,  
27 1194 (2014), *as modified on denial of reh’g* (Aug. 13, 2014) (“[A] plaintiff’s particular  
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1 knowledge and experience should be considered in determining whether the reliance upon the  
2 misrepresentation or nondisclosure was justified.”).

3           The CAS Confirmations are highly relevant to determining if Copart justifiably  
4 relied on representations by Sparta that “it would ensure 100% [CAS] functionality, despite  
5 evidence that it intended to complete only that which was in the design documents.” *See* ECF  
6 No. 264 at 22. The CAS Confirmations explain Copart employees’ perspectives on what  
7 constitutes “100% of the functionality of CAS” related to various department and department  
8 functions. *E.g.*, ECF No. 309-2 at 3 (“100% of the functionality of CAS related to the TSS  
9 department”); ECF No. 309-3 at 2 (“100% of the functionality of CAS related to the operations  
10 department and Canadian operations functions”). From these CAS Confirmations, a jury could  
11 determine whether Copart, based on its knowledge, can show justifiable reliance on Sparta’s  
12 assurance of 100% CAS functionality.

13           However, Copart properly argues the CAS Confirmations are irrelevant to  
14 interpreting Sparta’s contract obligations. When engaging in contract interpretation, courts have  
15 repeatedly refused to consider parties’ “undisclosed intent” as irrelevant under California law.  
16 *See, e.g., Hasbro, Inc. v. Sweetpea Entm’t, Inc.*, No. CV133406DMGJCGX, 2014 WL 12580250,  
17 at \*6 (C.D. Cal. Feb. 25, 2014) (declining to reach Rule 403 analysis because “testimony about  
18 undisclosed intent or understanding is *irrelevant* to contract interpretation and would be  
19 inadmissible under Rule 401.”) (emphasis in original); *Salehi v. Surfside III Condo. Owners’*  
20 *Assn.*, 200 Cal. App. 4th 1146, 1159 (2011) (holding declaration failing to “indicate whether  
21 [declarant] had communicated this intent to [opposing party]” contained “no competent extrinsic  
22 evidence” to determine “whether the [agreement] was ambiguous”); *Coremetrics, Inc. v. Atomic*  
23 *Park.com, LLC*, No. C-04-0222 EMC, 2005 WL 3310093, at \*5 (N.D. Cal. Dec. 7, 2005)  
24 (declining to admit declaration provisionally to determine whether contract was fairly susceptible  
25 to more than one interpretation where there was “no evidence showing [declarant] communicated  
26 his belief to [the other party]”). Thus, based on the current record, these CAS Confirmations are  
27 not relevant for the purpose of interpreting Sparta’s contractual obligations to Copart. Because  
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1 the court finds this evidence relevant for one purpose but not for another, the court turns to  
2 analysis under Federal Rule of Evidence 403.

3 2. Rule 403

4 Rule 403 permits a court to exclude evidence “if its probative value is substantially  
5 outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues,  
6 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”  
7 Fed. R. Evid. 403; *see also In re Hanford Nuclear Reservation Litigation*, 534 F.3d 986, 1016  
8 (9th Cir.2008) (excluding evidence under Rule 403 a matter of discretion).

9 First, the court observes at least some risk of confusing the issues and misleading  
10 the jury on the issue of contract interpretation if the court permits defendants to introduce  
11 evidence of the CAS Confirmations never released to defendants before discovery in this case.  
12 Though relevant, the probative value of these CAS Confirmations is not high because the CAS  
13 functionality described in these documents is also present in the contract provisions successfully  
14 negotiated between Copart and Sparta. *See Takenouchi Decl. Ex. 2 (ISA)*, ECF No. 198-2  
15 (stating under § 9.4 “[Sparta] acknowledges and agrees that Copart has delivered or made  
16 available to [Sparta] all information and documents [Sparta] has deemed necessary for [Sparta] to  
17 determine the requirements to achieve the replacement of 100% of CAS Functionalities (as  
18 defined in the initial Statement of Work)”); *Takenouchi Decl. Ex. 3 (Design Statement)*, ECF No.  
19 198-3 at 3, 20 (stating “design must include the following” and listing “100% replacement of  
20 CAS Functionalities”; reciting “[t]he documents and materials that were provided to [Sparta]  
21 include the BP310, BP315 and AP357 documents and CAS menu paths” and stating Sparta “will  
22 request any additional documentation [Sparta] needs to complete the Requirements Traceability  
23 Matrix”).

24 The contract provisions in the ISA and Design Statement provide more  
25 information than that found in the CAS Confirmations, including the “Requirement Traceability  
26 Matrix.” *E.g.*, ECF No. 198-3 at 23 (Design Statement). Copart’s internal company emails  
27 discussing adding “the Requirements Traceability Matrix (RTM) document to [Copart’s] list of  
28 items that make up 100% of CAS,” in response to circulation of the CAS, suggests some risk of

1 misleading and confusing the jury by permitting defendants to introduce the CAS Confirmations.  
2 *See* ECF No. 337-1 at 1-3.<sup>2</sup>

3           Although the court observes some risk of juror confusion, the court is not yet  
4 convinced a risk of confusing the issues and misleading the jury substantially outweighs the  
5 probative value of the CAS Confirmations as evidence of Copart’s knowledge relevant to whether  
6 Copart justifiably relied on Sparta’s representations that Sparta would ensure 100% CAS  
7 functionality. *See Hoffman*, 228 Cal. App. 4th at 1194. The court therefore DEFERS ruling on  
8 Copart’s Motion *in Limine* No. 1, ECF No. 273. The parties shall meet and confer, and Copart  
9 shall propose a limiting instruction should any CAS Confirmations be admitted as evidence. *See*  
10 *United States v. Mende*, 43 F.3d 1298, 1302 (9th Cir. 1995) (observing a limiting instruction  
11 “minimized” any “resultant prejudice” and stating “we must presume that juries will follow  
12 district court’s limiting instructions”); *see also United States v. Smith*, 282 F.3d 758, 769 & n.4  
13 (9th Cir. 2004) (observing court did not abuse discretion when admitting evidence with high  
14 probative value and giving limiting instruction that the evidence only “bears on . . . [defendant’s]  
15 intent or knowledge . . . , and for no other purpose”).

16           B.     Plaintiffs Motion in Limine Two (ECF No 274)

17           Copart moves to exclude evidence or arguments “concerning Copart’s alleged  
18 disputes with unrelated third-party vendors” under Rules 401, 403 and 404. ECF No. 274 at 2.  
19 Copart contends these prior disputes are irrelevant because they involve “entirely different sets of  
20 facts and parties,” “could only be offered as evidence of Copart’s character or reputation” in  
21 violation of Rule 404, and would confuse the jury and waste time under Rule 403. *Id.* at 1-4.

22           In opposition, defendants contend “Copart’s motion, by its own admission, does  
23 not address or impact any evidence related to Accenture, a software company that began  
24 designing and building AIMOS before Sparta was hired.” ECF No. 302 at 1. Sparta requests the  
25 court deny the motion or at least delay ruling on these issues until trial because the motion is

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27           <sup>2</sup> Although this internal email might be inadmissible as a self-serving hearsay statement, at  
28 least two witnesses on Copart’s witness list, Simon Rote and Vincent Phillips, *see* ECF No. 367-  
1, may be able to testify to their understanding as reflected in the email communications.

1 overly broad. *Id.* at 3. Sparta cites examples of what it believes is relevant evidence, including  
2 deposition testimony of witnesses on Copart’s witness list from other litigation “about the  
3 AIMOS project and CAS.” *Id.* at 3. Sparta also refers to a deposition of Copart’s former Director  
4 of Information Technology about negotiation tactics involving disputing or downplaying the  
5 quality and amount of work of the vendor or taking certain legal positions to obtain a lower  
6 payment or avoid payment altogether. *Id.* at 4 (citing ECF No. 281-8). Defendants contend these  
7 past negotiations reflect Copart’s motive or intent in deciding to hire, fire and sue Sparta. *Id.* at 4-  
8 6.

9 Copart disputes defendants’ arguments in reply. ECF No. 330. However, Copart  
10 “agrees that if evidence relevant to Copart’s or Sparta’s or the other defendants’ conduct specific  
11 to the AIMOS Project is presented, that evidence would not be subject to exclusion just because it  
12 arose in the context of, for example, a Lightmaker deposition, or another project.” *Id.* at 330  
13 (emphasis removed).

14 The court has already reviewed the standards for Rules 401 and 403 above. Under  
15 Rule 404(b)(1), “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s  
16 character in order to show that on a particular occasion the person acted in accordance with the  
17 character.” However, “[t]his evidence may be admissible for another purpose, such as proving  
18 motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of  
19 accident.” Fed. R. Evid. 404(b)(2). Other acts evidence may be admissible under Rule 404(b) if  
20 it: (1) tends to prove a material point in issue; (2) is not too remote in time; (3) is proven with  
21 evidence sufficient to show that the act was committed; and (4) if admitted to prove intent, is  
22 similar to the offense charged. *United States v. Beckman*, 298 F.3d 788, 794 (9th Cir. 2002). If  
23 the court finds all four elements established, “[t]he court must then assess the evidence under  
24 [Rule] 403.” *Id.* (citation omitted).

25 First, the court acknowledges Copart’s concession that a separate motion addresses  
26 evidence related to the software company Accenture. Thus, the court’s ruling on this motion *in*  
27 *limine* does not address evidence related to Accenture, which is addressed separately below.  
28

1                   Second, the court questions the admissibility of evidence related to Copart’s  
2 disputes with any third-party vendors other than Accenture or Sparta. Under the *Beckman* test,  
3 the court does not find the evidence offered as examples by defendants “tends to prove a material  
4 point in issue”—that is, Copart’s motive or intent in deciding to hire, fire and sue Sparta. Even if  
5 evidence of disputes with other third-party vendors satisfied all four elements of the *Beckman*  
6 test, the court still finds this evidence substantially more prejudicial than probative. It likely will  
7 confuse issues, mislead the jury, and waste time because the evidence will spawn collateral mini-  
8 trials to disprove or rebut the evidence offered by Sparta of disputes with third-party vendors.

9                   Additionally, the court fails to see how evidence of third-party disputes with  
10 vendors other than Accenture and Sparta could be admitted for a purpose unrelated to propensity.  
11 Because the court must assess this evidence under Rule 403 regardless, the court also finds the  
12 evidence substantially more prejudicial than probative because of the high risk the jury will treat  
13 the evidence as propensity evidence weighed against the relatively low probative value of this  
14 evidence as to Copart’s motives or intent in this case. *See Bioriginal Food & Sci. Corp. v. Biotab*  
15 *Nutraceuticals, Inc.*, No. 213CV05704CASEX, 2015 WL 10733384, at \*5 (C.D. Cal. Aug. 24,  
16 2015) (barring plaintiffs from introducing evidence “to establish that defendants have a pattern  
17 and practice of not paying their vendors” because these disputes were irrelevant to the case as  
18 “collateral matters,” the evidence would “potentially cause undue delay and create a series of  
19 mini-trials on collateral matters that would be wasteful of the Court’s time” and the evidence  
20 appeared “to be more in the nature of propensity evidence which would be unfairly prejudicial to  
21 defendants”).

22                   Defendants’ citation to *Harris v. Lynwood Unified Sch. Dist.*, No. CV0705058  
23 DDPCTX, 2009 WL 10673589, at \*2 (C.D. Cal. Sept. 21, 2009), is unavailing. There, the court  
24 denied defendant’s motion *in limine* to preclude plaintiff from introducing evidence of a board  
25 candidate’s “racially inflammatory language.” *Id.* The court observed that candidate was  
26 “ultimately elected to the Board,” and “the comments [bore] directly on the [defendant’s] motive  
27 and intent in taking the employment actions at issue in this case.” *Id.* The comments there  
28

1 addressed the issues in that case. Here, in contrast, Copart’s interactions with vendors other than  
2 Accenture or Sparta—and unrelated to the AIMOS project—do not address the issues in this case.

3 The court tentatively GRANTS Copart’s motion *in limine* no. 2 and will prohibit  
4 introduction of evidence concerning any dispute between Copart and vendors other than  
5 Accenture or Sparta, unless this evidence is relevant to Copart’s or any of the defendants’ conduct  
6 specific to the AIMOS Project.

7 C. Plaintiff’s Motion *in Limine* Three (ECF No. 275)

8 Copart moves to exclude the termination letter Copart sent to Accenture, a  
9 software company who worked on the AIMOS project before Copart replaced Accenture with  
10 Sparta. ECF No. 275 at 2. Copart advances similar arguments to those described above in  
11 Copart’s Motion *in Limine* No. 2, including arguments to exclude this letter under Rules 401, 403  
12 and 404. *See generally* ECF No. 274.

13 In opposition, defendants distinguish this termination letter from other third-party  
14 vendor evidence. ECF No. 303. The letter explained that Copart terminated the Accenture  
15 contract because of Accenture’s “inability to achieve the very purpose” of the project and alleged  
16 misrepresentations. ECF No. 196-5 at 1- 5; *see* ECF No. 264 at 23. According to defendants, this  
17 letter is relevant to the “justifiable reliance” element of Copart’s fraud claims. ECF No. 303 at 2.  
18 Additionally, the letter shows “Copart’s knowledge, intent, motive, and lack of mistake in hiring,  
19 and later terminating, Sparta” under Rule 404(b)(2). *Id.* at 2. Defendants also contend the letter  
20 is admissible “for credibility and impeachment purposes because of conflicting testimony that  
21 Copart’s witnesses offered at deposition.” *Id.* Defendants advance similar arguments to those in  
22 its opposition to Copart’s Motion *in Limine* No. 2. *See* ECF No. 303.

23 In reply, Copart contends introduction of this letter will require a mini-trial  
24 clarifying the relationship between Copart and Accenture. ECF No. 331 at 2. Copart disputes  
25 defendants’ relevance arguments. *Id.* at 4-5. Copart also disputes defendants can use the  
26 termination letter as evidence of Copart’s lack of credibility, claiming Rule 608(b) prohibits this  
27 use of the letter. *Id.* at 6.

1                   1.       Rules 403 and 404

2                   The court finds this evidence relevant because, as discussed above in relation to  
3 the justifiable reliance element of fraud claims, “[t]he reasonableness of the plaintiff’s reliance is  
4 judged by reference to the plaintiff’s knowledge and experience.” *OCM Principal Opportunities*  
5 *Fun*, 157 Cal. App. 4th at 864 (internal quotation marks, alterations and citation omitted).  
6 Specifically, the termination letter shows Copart had a prior dispute over the meaning of “100%  
7 CAS functionality.” ECF No. 196-5 at 3-4. Copart’s knowledge of a previous issue regarding  
8 achievement of 100% CAS functionality with a third-party vendor is highly relevant to whether  
9 or not Copart justifiably relied on Sparta’s alleged reassurance “it would ensure 100% [CAS]  
10 functionality,” the only statement supporting Copart’s fraudulent inducement claim and one of  
11 five statements supporting Copart’s fraud claim. *See* ECF No. 264 at 22-25 (Order on Summ. J.).  
12 The termination letter addressing 100% CAS functionality therefore qualifies for the  
13 “knowledge” exception under Rule 404(b)(2). Additionally, the relevance of this letter satisfies  
14 the first element of the *Beckman* test: that the evidence “(1) tends to prove a material point in  
15 issue.” *Beckman*, 298 F.3d at 794; *see Aqua Connect, Inc. v. Code Rebel, LLC*, No. CV 11-5764  
16 RSWL MANX, 2013 WL 4663355, at \*5 (C.D. Cal. Aug. 28, 2013) (finding other-act evidence  
17 admissible in part because “the alleged reverse engineering [other act] of Apple’s OS X is  
18 precisely the conduct alleged to have occurred with the ACTS Software” and because this  
19 “alleged reverse engineering . . . establishes [defendant’s] knowledge”).

20                   The termination letter also satisfies the other three *Beckman* elements. This letter  
21 “is not too remote in time” because it is dated only a few months before Copart and Sparta  
22 executed the ISA. *Beckman*, 298 F.3d at 794; *compare* ECF No. 196-5 at 2 (July 26, 2011), *with*  
23 ECF No. 198-2 at 22 (October 6, 2011). The letter is also “reliable enough to show the act was  
24 committed” because Copart’s general counsel signed the letter. *Beckman*, 298 F.3d at 794; *see*  
25 ECF No. 196-5 at 6. And if Sparta introduces this letter “to prove intent,” the termination letter  
26 “is similar to the offense charged” in this case, including a dispute about 100% CAS  
27 functionality, alleged misrepresentations, allegedly deficient work product, and inadequate  
28



1 staffing. Beckman, 298 F.3d at 794; compare ECF No. 196, with Third Am. Comply. (TAC)  
2 ¶¶ 10-11, 33, 51, 110, 193, 196, ECF No. 126.

3 Yet the court must still “assess the evidence under [Rule 403].” *Beckman*, 298  
4 F.3d at 794; *United States v. Cruz-Garcia*, 344 F.3d 951, 956 (9th Cir. 2003) (“Even though  
5 evidence is admissible under 404(b), it may nonetheless be excluded under Rule 403’s balancing  
6 test, which weighs the ‘probative value’ of the evidence against the ‘danger of unfair  
7 prejudice.’”). The court is concerned that the termination letter will mislead the jury if introduced  
8 to show Copart’s intent, not solely Copart’s knowledge as relevant to whether or not Copart  
9 justifiably relied on Sparta’s representations. The court therefore finds a limiting instruction, to  
10 be proposed by Copart after meeting and conferring with defendants, could alleviate concerns  
11 about misleading the jury. *See Smith*, 282 F.3d at 769 & n.4 (observing court did not abuse  
12 discretion when admitting evidence with high probative value and giving limiting instruction that  
13 the evidence only “bears on . . . [defendant’s] intent or knowledge . . . , and for no other  
14 purpose”).

## 15 2. Rule 608

16 Federal Rule of Evidence 608(b) provides that “extrinsic evidence is not  
17 admissible to prove specific instances of a witness's conduct in order to attack or support the  
18 witness’s character for truthfulness.” Fed. R. Evid. 608(b); *see also United States v. Jackson*, 882  
19 F.2d 1444, 1448 (9th Cir. 1989) (finding “[s]pecific instances of misconduct . . . may not be  
20 proved by extrinsic evidence. They may, however, in the discretion of the trial court, if probative  
21 of truthfulness or untruthfulness, be inquired into on cross-examination.”).

22 To the extent defendants seek to introduce the termination letter “for credibility  
23 and impeachment purposes because of the conflicting testimony . . . offered at deposition,” ECF  
24 No. 303 at 2, the Ninth Circuit recognizes a limited doctrine of “impeachment by contradiction,”  
25 which “is properly considered under Rule 607, not Rule 608(b).” *United States v. Castillo*, 181  
26 F.3d 1129, 1133 (9th Cir. 1999). Rule 607 merely provides that “[a]NY party . . . may attack the  
27 witness’s credibility.” This “impeachment by contradiction” doctrine applies to direct testimony  
28 or cross-examination. *See United States v. Williams*, No. 3:13-CR-00764-WHO-1, 2017 WL

1 4310712, at \*1 (N.D. Cal. Sept. 28, 2017) (citing *United States v. Kincaid-Chauncey*, 556 F.3d  
2 923, 933 (9th Cir. 2009)). Rule 608(b) therefore does not preclude defendants from introducing  
3 the termination letter to contradict any direct testimony or cross-examination at trial.

4 The court therefore DENIES Copart's motion *in limine* to exclude the Accenture  
5 termination letter, but Copart may propose a limiting instruction explaining the evidence is  
6 offered only for the purpose of determining whether Copart justifiably relied on Sparta's  
7 assurances of 100% CAS functionality and not for any other purpose, including intent, credibility  
8 or propensity.

9 D. Plaintiff's Motion *in Limine* Four (ECF No. 276)

10 Copart moves to exclude any testimony from Matthew Raabe about the  
11 interpretation of any provisions in the ISA because "Raabe was not privy to either party's  
12 understanding of" the ISA's terms at the time the ISA "was negotiated and executed." ECF  
13 No. 276 at 2. Copart maintains Raabe's unspoken subjective intent is irrelevant to contract  
14 interpretation, and Raabe lacks personal knowledge to speak to Copart's interpretation of ISA  
15 provisions as required by Federal Rule of Evidence 602. *Id.* at 3-4 Additionally, Raabe's  
16 testimony "would create the risk of jury confusion." *Id.* at 4-5.

17 In opposition, defendants assert Raabe "was one of two 'primary' representatives  
18 to draft and negotiate the ISA" and "[h]e sent marked-up drafts to Sparta and negotiated directly  
19 with Sparta over the proposed changes and final terms of the agreements." ECF No. 304 at 2.  
20 Here, defendants contend "the proper course is to object at trial" once specific questions have  
21 been asked. *Id.* Defendants cite multiple portions of Raabe's deposition transcripts as support for  
22 Raabe's role in contract drafting and negotiations, including discussions with Sparta and  
23 "redlining the agreement back and forth" with Sparta. *Id.* at 2-3 (citing Raabe Dep. 24:19-25:5,  
24 122:24-125:5, ECF No. 309-1). Copart also contends Raabe had "contact with Sparta during the  
25 negotiations" of the Design Statement and was "one of the 'primary negotiators'" of the  
26 Implementation Statement of Work related to the ISA. *Id.* (citing Raabe Dep. 24:19-25:5, 26:1-  
27 25).

1 In reply, Copart directs the court’s attention to three statements by Raabe to  
2 support Copart’s motion. ECF No. 332 at 3. First, Raabe did not “have a recollection of [Vincent  
3 Phillips, Copart’s Chief Information Officer] asking questions about a specific section and what it  
4 meant.” Raabe Dep. at 122:16-23. Second, Raabe did “not specifically” recall any meetings with  
5 Sparta employees or representatives about their understanding of any particular contract  
6 provisions. *Id.* at 122:24-123:5. And third, Raabe did not recall any conversations with Vincent  
7 Phillips about his understanding of provisions in Section 15. *Id.* at 162:11-24, 182:17-21, ECF  
8 No. 281 Ex. 8. Copart relies on Raabe’s inability to recall particular provisions to support its  
9 motion. ECF No. 332 at 3-5.

10 The court finds Copart’s motion overbroad. Even if Raabe lacked a recollection  
11 about a specific section of the ISA, *see* ECF No. 276 at 2, Raabe also recalled “walk[ing] through  
12 the documents” with Vincent Phillips and “redlining the agreement back and forth” with Sparta.  
13 Raabe Dep. at 122:22-123:4). *See, e.g., Christopher Corcoran v. CVS Health*, No. 15-CV-03504-  
14 YGR, 2017 WL 3873709, at \*13 (N.D. Cal. Sept. 5, 2017) (witnesses had sufficient knowledge of  
15 contractual agreements “either through their actual involvement in crafting the contracts at issue  
16 or their duties in implementing reimbursement programs between” the parties).

17 Although the court acknowledges that Copart may object to specific statements by  
18 Raabe during Raabe’s testimony on the basis of a lack of personal knowledge, the court DENIES  
19 Copart’s motion *in limine* no. 4, ECF No. 276.

20 Finally, to clarify the parties’ disputes, the court ORDERS the parties to meet and  
21 confer and provide, by the first day of trial, a joint annotated version of the relevant contracts, or  
22 their competing versions, showing contract terms the parties request be construed either by the  
23 court or the jury.

24 E. Plaintiff’s Motion *in Limine* 5 (ECF No. 277)

25 Copart moves to exclude defendants from introducing evidence about or argument  
26 before the jury that Sparta completed “approximately 84% of Milestones 8 through 15.” ECF  
27 No. 277 at 2. Alternatively, Copart moves to exclude any evidence supporting the 84% figure not  
28 identified in defendants’ summary judgment briefing. *Id.*

1                   Specifically, Copart contends Sparta never disclosed its computation of damages  
2 or its alleged 84% completion rate, and Sparta failed to respond to interrogatories requesting these  
3 computations and percentages. *Id.* at 3 (citing ECF No. 281-5 at 16-17 (Interrogatory No. 14)).  
4 Additionally, Sparta’s damages expert never disclosed the basis for calculation of the 84% figure  
5 in his expert report and testified he could not validate the 84% figure. *Id.* at 4 (citing ECF  
6 Nos. 285-11 (“I have been asked to assume, that [Sparta] has completed approximately 84 percent  
7 of the remaining milestones”); 285-21 (Eichmann Dep. at 27:7-28:21)). Sparta’s corporate  
8 designee also refused to explain how Sparta calculated the 84% figure, citing attorney-client  
9 privilege. *Id.* at 4 (citing ECF No. 281-10 (Dep. at 295:4-296:10)).

10                   In opposition, defendants contend Copart raised this identical argument in its  
11 motion for summary judgment, and the court rejected that argument. ECF No. 305 at 2 (citing  
12 ECF No. 264 at 16). Defendants contend a payment request letter Sparta sent to Copart contained  
13 the damage computations, defendants made appropriate initial disclosures, and defendants had no  
14 duty to supplement the disclosures where the damage computations had been otherwise made  
15 known to Copart. *Id.* at 3-5. In interrogatory responses, defendants specifically referenced  
16 “Sparta’s October 18, 2013 letter, which set forth in detail the basis for its damages calculations.”  
17 *Id.* at 5. Defendants also dispute Copart’s characterization of defendants’ expert reports, expert  
18 depositions, and depositions of defendants’ corporate designee. *Id.* at 5-6.

19                   In reply, Copart contends the 84% figure only pertains to “work under Milestone  
20 8,” and “Sparta has never produced a computation supporting its claim that it completed ‘84%’ of  
21 Milestones 8 through 15.” EF No. 333 at 2-3.

22                   1.       Standard

23                   Parties “must” disclose “a computation of each category of damages” and “must  
24 also make available for inspection and copying under Rule 34 the documents or other evidentiary  
25 material” on which the damages are based. Fed. R. Civ. P. 26(a)(1)(A)(iii), 34(a)(1). Rule 26(e)  
26 requires a party to “timely” supplement any responses to “an interrogatory, request for  
27 production, or request for admission . . . if the party learns that in some material respect the  
28 disclosure or response is incomplete or incorrect, and if the additional or corrective information

1 has not otherwise been made known to the other parties during the discovery process or in  
2 writing.” Fed. R. Civ. P. 26(e)(1)(A).

3 Under Rule 37(c)(1), “If a party fails to provide information or identify a witness  
4 as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to  
5 supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially  
6 justified or is harmless.” A party need not show bad faith by the non-disclosing party to obtain an  
7 exclusionary remedy. *See Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106  
8 (9th Cir. 2001).

9 2. Analysis

10 The court previously has observed that on summary judgment, “Sparta provide[d]  
11 competent evidence and calculations supporting its request for damages.” ECF No. 264 at 16  
12 (Order on Summ. J.). There, the court acknowledged Sparta sending to Copart “a payment  
13 request letter explaining two calculation methods,” including one in which Sparta “had passed  
14 approximately eight-four percent of the ‘test cases’ Copart executed across the project’s three  
15 geographic areas.” *Id.*; ECF No. 196-13 (October 26, 2013 letter). This letter was not a brief  
16 summary; Sparta detailed its calculation totals and methods across multiple pages. *See* ECF  
17 No. 196-13 at 5-8. And in its opposition to Copart’s motion for summary judgment, Sparta  
18 submitted a 27-page PowerPoint presentation detailing Sparta’s calculations of its work for  
19 Copart. ECF No. 208-1. The court’s order on summary judgment acknowledged this “evidence  
20 in the record supporting the ‘test cases’ [resulting in the 84% figure] calculation.” ECF No. 264  
21 at 16 (citing ECF No. 208-1 at 10-12).

22 Sparta did provide an initial disclosure, stating Sparta “seeks, among other things,  
23 damages for the work performed and completed by Sparta” under ISA § 15.2. ECF No. 198-87 at  
24 10. Although Sparta had a duty to supplement this disclosure under Rule 26(e), if “the additional  
25 or corrective information has not otherwise been made known to the other parties,” Sparta had no  
26 need to supplement because Sparta had already made known the information to Copart “in  
27 writing.” *See* ECF No. 196-13 (October 26, 2013 letter). Additionally, that Sparta had already  
28

1 made its damages computations known to Copart is evident in Sparta’s incorporation of the  
2 October 18, 2013 letter into its interrogatory response. ECF No. 198-89 at 16-17, 281-5 at 16-17.

3 Exclusion under Rule 37 is not appropriate because any failure was harmless, if  
4 not substantially justified. Copart already had the information for Sparta’s calculations. And  
5 Sparta’s expert, Eichmann, explained his reliance on the 84-percent figure based on deposition  
6 testimony, the October 26, 2013 letter, and the PowerPoint presentation previously relied on in  
7 the court’s summary judgment order, thereby undercutting the risk of harm to Copart in the form  
8 of any surprise evidence. *See* Eichmann Dep. at 21:15-29:11, ECF No. 207-33. Moreover,  
9 Copart fails to explain why it did not bring a motion to compel while fact discovery was open if  
10 Sparta’s production was lacking.

11 Although Copart accurately observes defendants have not expressly named  
12 Milestones 9 through 15 in these computations, this level of specificity might not be required by  
13 the ISA. *See* ISA § 15.2 (“Termination for Convenience” requires Copart to pay “only for the  
14 portion of the Services that have been performed and completed as of the termination date[.]”);  
15 ECF No. 264 at 16 (holding on summary judgment “[w]hether Copart ‘agreed’ to Sparta’s work  
16 [under § 15.2] thus becomes a fact-intensive inquiry not susceptible to resolution on summary  
17 judgment”). Additionally, in his deposition, Eichmann explained his understanding that “the  
18 objects that were being tested could be used for all of these remaining milestones as well” based  
19 on the October 26, 2013 letter, PowerPoint presentation, deposition testimony and conversations  
20 with Sparta employees. Eichmann Dep. at 27:17-29:11.

21 Copart’s citation to *Cohen v. Hansen*, No. 2:12-CV01401-JCM-PAL, 2014 WL  
22 1873968, at \*12 (D. Nev. May 8, 2014), is not persuasive. There, plaintiffs “steadfastly  
23 maintained in [that] case that they were not required to provide a damages calculation by category  
24 and method with supporting documentation . . . .” *Id.* In contrast, here, Sparta provided Copart a  
25 computation of Sparta’s damages before litigation occurred. Nor does *Klamut v. Nibecker*,  
26 No. 15-CV-02132-MEJ, 2017 WL 1196725, at \*2 (N.D. Cal. Mar. 31, 2017), help Copart. There,  
27 plaintiff stated he was “still gathering information” in his initial disclosures, then supplemented a  
28 damages number more than a year later without making available “any evidentiary material to

1 support this computation.” *Id.* In contrast, Sparta provided damage numbers and supporting  
2 computations quite early.

3 The court therefore DENIES Copart’s motion *in limine* no. 5, recognizing the  
4 preliminary nature of this ruling, that Copart may object at trial to any evidence it believes “has  
5 not otherwise been made known” to Copart “during the discovery process or in writing” and that  
6 Copart can engage in vigorous cross-examination.

7 F. Plaintiff’s Motion *in Limine* Six (ECF No. 278)

8 Copart moves to exclude testimony or expert opinions from defendants’ expert,  
9 Michael Shamos, about: (1) “other products that allegedly perform functions similar to the  
10 ZCL\_IMAGING code”; (2) “the patentability of the ZCL\_IMAGING code”; or (3) “whether  
11 ZCL\_IMAGING qualifies as a trade secret.” ECF No. 278 at 2, 6. Copart moves to exclude  
12 under Federal Rules of Evidence 702, 401, and 403, challenging Shamos under *Daubert v.*  
13 *Merrill Dow Pharmaceuticals, Inc. (Daubert I)*, 509 U.S. 579, 593-97 (1993). *Id.* at 2-6.

14 Under Federal Rule of Evidence 701, a witness is authorized to provide opinion  
15 testimony that is “(1) rationally based on the witness's perception, and (2) helpful to clearly  
16 understanding the witness's testimony or to determining a fact in issue.” Fed. R. Evid. 701. If an  
17 opinion witness's testimony is based on “scientific, technical, or other specialized knowledge,”  
18 admissibility of the opinion is governed by Rule 104, a general rule regarding preliminary  
19 questions a court must address, and Rule 702, the rule governing expert opinions. Fed. R. Evid.  
20 104, 702. Taken together, Rules 104 and 702 focus attention on whether the expert witness is  
21 qualified to testify, whether such testimony is relevant and whether such testimony is  
22 reliable. *Id.*; *Daubert I*, 509 U.S. at 594-95.

23 In assessing whether an expert has the appropriate qualifications, the court  
24 considers whether the expert offers some special knowledge, skills, experience, training or  
25 education on the subject matter of the testimony contemplated. Fed. R. Evid. 702; *United States*  
26 *v. Hankey*, 203 F.3d 1160, 1168 (9th Cir. 2000). If an expert is not qualified to render an opinion  
27 on a particular question or subject, it follows her opinion cannot assist the trier of fact as to that  
28 particular question or subject. *Morin v. United States*, 534 F. Supp. 2d 1179, 1185 (D. Nev.



1 2005), *aff'd*, 244 F. App'x 142 (9th Cir. 2007) (“Just as a lawyer is not by general education and  
2 experience qualified to give an expert opinion on every subject of the law, so too a scientist or  
3 medical doctor is not presumed to have expert knowledge about every conceivable scientific  
4 principle or disease.”). In assessing whether the expert's testimony will be relevant, the opinion  
5 must “logically advance[] a material aspect of the proposing party's case.” *Daubert v. Merrell*  
6 *Dow Pharm., Inc. (Daubert II)*, 43 F.3d 1311, 1315 (9th Cir. 1995). The basic standard of  
7 relevance is a liberal one. *Daubert I*, 509 U.S. at 587.

8           Scientific evidence is reliable if the principles and methodology used by the expert  
9 proffering it are supported by “appropriate validation” or “good grounds.” *Id.* In *Daubert I*, the  
10 Supreme Court provided a non-exhaustive list of factors for determining whether scientific  
11 testimony is sufficiently reliable to be admitted into evidence, including (1) whether the theory or  
12 methodology can be and has been tested; (2) whether “the theory or technique has been subjected  
13 to peer review and publication;” (3) the “known or potential rate of error;” (4) the “existence and  
14 maintenance of standards controlling” the methodology's operation; and, finally, (5) general  
15 acceptance in the relevant community. *Id.* at 593-94.

16           *Daubert II* elaborated on the *Daubert I* factors, clarifying that experts may  
17 demonstrate scientific reliability of a theory or methodology by showing “the research and  
18 analysis supporting the proffered conclusions have been subjected to normal scientific scrutiny  
19 through peer review and publication.” *Daubert II*, 43 F.3d at 1318. Alternatively, testifying  
20 experts may also show the validity of a theory by explaining “precisely how [the experts] went  
21 about reaching their conclusions and point[ing] to some objective source—a learned treatise, the  
22 policy statement of a professional association, a published article in a reputable scientific journal  
23 or the like—to show that they have followed the scientific method, as it is practiced by (at least) a  
24 recognized minority of scientists in their field.” *Id.* at 1319.

25           In determining reliability, “the expert's bald assurance of validity is not  
26 enough,” *id.* at 1316, a rule meant to ensure “junk science” is kept out of the federal  
27 courtroom. *Id.* at 1321 n.18. Rather, “the party presenting the expert must show that the expert's  
28 findings are based on sound science, and this will require some objective, independent validation

1 of the expert's methodology.” *Id.* at 1316. The trial court is accorded wide discretion when  
2 acting as a gatekeeper for the admissibility of expert testimony. *Kumho Tire Co., Ltd. v.*  
3 *Carmichael*, 526 U.S. 137, 151-52 (1999).

4 “Vigorous cross-examination, presentation of contrary evidence, and careful  
5 instruction on the burden of proof are the traditional and appropriate means of attacking shaky but  
6 admissible evidence,” *Daubert I*, 509 U.S. at 596, and the court may fulfill its gatekeeping role  
7 with a dedicated hearing allowing for voir dire of the expert, *In re Hanford Nuclear Reservation*  
8 *Litig.*, 292 F.3d 1124, 1138 (9th Cir. 2002). The court DENIES this motion without prejudice.  
9 Should Copart wish to renew this *Daubert* challenge at trial, it should alert the court so that it may  
10 schedule limited voir dire outside the presence of the jury before Shamos is called to testify.

11 G. Plaintiff’s Motion in Limine Seven (ECF No. 279)

12 Copart moves to exclude “any testimony or evidence regarding a client in  
13 Colorado for whom Defendants purportedly developed ZCL\_IMAGING.” ECF No. 279 at 2.  
14 Copart contends defendants “raised this theory for the first time in their motion for summary  
15 judgment, and failed to provide any discovery whatsoever to support their specious claim.” *Id.*  
16 Specifically, defendant KPIT Technologies, Inc. (KPIT India) supported its summary judgment  
17 assertion “with a declaration from KPIT employee Manish Kumar,” that another Sparta employee  
18 in Denver, Colorado had developed methodology that came to be known as ZCL\_Imaging. *Id.*  
19 (citing ECF No. 193 ¶ 11). Kumar claims an email supports his statement, but “[t]he email  
20 contains no mention of the ZCL\_IMAGING solution as a whole, of a client in Colorado, or of the  
21 scope of work for any such alleged client.” *Id.* at 3.

22 Copart contends it “served multiple requests for production on Defendants relating  
23 to the development of the imaging materials that were copied from AIMOS into Defendants’  
24 AutoEdge system,” and defendant “Sparta’s initial disclosures never claimed that Sparta had  
25 documents relating to the ‘independent’ development in Colorado of the technology that Sparta’s  
26 documents show was copied from AIMOS.” *Id.* Additionally, defendants’ theory “contradicts  
27 the testimony of Sparta’s 30(b)(6) witness Vaibhav Nadguada, who testified that  
28 ZCL\_IMAGING was created specifically for Copart.” *Id.* Copart concludes by claiming it “was

1 not afforded an opportunity to take discovery regarding [defendants’] new theory,” and permitting  
2 defendants’ witnesses to testify “regarding an unidentified client for whom ZCL\_IMAGING was  
3 allegedly developed” would prejudice Copart and confuse the jury. *Id.* at 5.

4 In opposition, defendants assert Copart had an opportunity to investigate the  
5 development of ZCL\_IMAGING after adding a claim for misappropriated trade secrets as part of  
6 Copart’s third amended complaint. ECF No. 307 at 2. Copart itself identified “Sparta employee  
7 Manish Kumar, who Copart acknowledged could offer testimony regarding . . . ‘use of Copart  
8 property for other purposes.” *Id.* (citing ECF No. 289-3 at 7). Sparta’s disclosures identified one  
9 witness for the first time—Kumar. *Id.* at 3. All other Sparta-disclosed witnesses other than  
10 Kumar had been deposed. *Id.* All three defendants disclosed Kumar as someone having  
11 knowledge of “AutoEdge development; the alleged misappropriation of trade secrets and Copart  
12 proprietary information; [and] the allegedly unauthorized access of Copart’s computer systems.”  
13 ECF Nos. 309-18, 309-20, 309-21. Defendants contend Copart had an opportunity to depose  
14 Kumar and serve interrogatories “focused on the development of the ZCL\_IMAGING code,” but  
15 Copart did not. ECF No. 307 at 3.

16 Federal Rule of Civil Procedure 26 governs Copart’s motion and defendants’  
17 required disclosures. Rule 37(c)(1) prohibits use of any “information or witness to supply  
18 evidence” that the party “fails to provide” under Rules 26(a) or (e) “at a trial, unless the failure  
19 was substantially justified or is harmless.”

20 Here, defendants have directed the court’s attention to evidence “properly  
21 disclosed” under Rule 26: the witness himself, the subject matter of discoverable information for  
22 that witness, and relevant documents about ZCL\_IMAGING.<sup>3</sup> *See* ECF Nos. 193, 193-3, 309-18,  
23

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24 <sup>3</sup> At hearing, defendants also responded to Copart’s argument in its Reply that defendants  
25 “only introduced [their] theory after the close of discovery.” ECF No. 335 at 2. Defendants  
26 directed the court’s attention to defendants’ answers to Copart’s TAC, in which all defendants  
27 asserted an affirmative defense of “Independent Development” of “the information that Copart  
28 alleges [defendants] misappropriated.” *See* ECF Nos. 132 at 57, 137 at 26, 138 at 27; *see also*  
Hr’g Tr. (Feb. 9, 2018) at 40:4-24. Copart asserted defendants should have raised that point in  
their opposition and requested an opportunity to brief this issue separately if the court relies on  
defendants’ argument. The court declines the request for supplemental briefing on this issue.

1 20-21. Copart had the opportunity to depose Kumar, but Copart did not do so, utilizing four of  
2 five depositions available to Copart after filing its third amended complaint adding a claim for  
3 misappropriated trade secrets and before close of fact discovery. *See* ECF No. 307 at 6; ECF  
4 No. 140 at 3.

5 Copart supports its argument that conflicting evidence warrants exclusion by citing  
6 *Clear-View Techs., Inc. v. Rasnick*, No. 13-CV-02744-BLF, 2015 WL 3453529, at \*4 (N.D. Cal.  
7 May 29, 2015). But this case does not apply here. In *Clear-View*, the plaintiff “testified in its  
8 Rule 30(b)(6) deposition that only one sale . . . had been made.” *Id.* The court granted  
9 defendants’ motion in limine excluding evidence “of the purported twelve other orders . . . unless  
10 and until [plaintiff] shows that the evidence supporting those orders were properly disclosed  
11 pursuant to Rule 26’s requirements.” *Id.* In contrast here, even if 30(b)(6) deposition testimony  
12 conflicts with other exhibits or witness testimony about ZCL\_IMAGING, defendants disclosed  
13 the relevant witness, the subject matter of his testimony, and relevant documents. Any  
14 contradiction between 30(b)(6) testimony and defendants’ disclosures goes to the weight and  
15 believability of the evidence, not its admissibility.

16 Because Copart had an opportunity to depose Kumar or pursue other discovery  
17 related to its new misappropriated trade secrets claim, the court finds the prejudicial effect of the  
18 evidence subject to this motion in limine does not substantially outweigh its probative value. The  
19 court also does not find that the evidence at issue will confuse the jury.

20 For the most part, Copart’s citation to multiple cases merely reflects “a general  
21 proposition” that “no party will be allowed to offer facts or documents that were not disclosed in  
22 discovery that go beyond information provided in discovery.” *Memry Corp. v. Kentucky Oil*  
23 *Tech., N.V.*, No. C-04-03843 RMW, 2007 WL 4208317, at \*4 (N.D. Cal. Nov. 27, 2007). These  
24 cases do not apply here, where defendants disclosed the relevant witness, the subject matter of  
25 discoverable information for that witness, and the relevant documents.

26  
27  
28 Kumar’s declaration falls squarely within the parameters of the defense defendants pleaded in  
their answers.

1 In its reply, Copart cites numerous cases to support its arguments. For instance,  
2 *Oracle USA, Inc. v. SAP AG*, 264 F.R.D. 541, 556 (N.D. Cal. 2009), involved a “late disclosure,”  
3 which is inapplicable here. Additionally, *Endurance Am. Spec. Ins. Co. v. LanceKahian & Co.*,  
4 No. CV F 10-1284 LJO DLB, 2011 WL 4375264, \*3-5 (E.D. Cal. 2011), is not analogous  
5 because defendants failed to disclose a damages theory, explicitly required by Federal Rule of  
6 Civil Procedure 26(a)(1)(A)(iii), until after the close of discovery. *See also Accentra Inc. v.*  
7 *Staples, Inc.*, No. CV 07-5862 ABC RZX, 2010 WL 8450890, at \*6 (C.D. Cal. Sept. 22, 2010)  
8 (granting motion in limine to exclude new patent infringement theories never pleaded in  
9 complaint, raised in infringement contentions, or pursued during discovery and to exclude  
10 witnesses identified after close of discovery).

11 Accordingly, Copart’s motion *in limine* no. 7, ECF No. 279, is DENIED.

12 H. Plaintiff’s Motion in Limine Eight (ECF No. 280)

13 For its final motion *in limine*, Copart seeks to exclude “all evidence related to the  
14 damages sought by defendant [Sparta] arising from allegedly unpaid travel expenses and  
15 purportedly unpaid invoices for work outside the scope of the [ISA].” ECF No. 280 at 2. Copart  
16 contends Sparta’s counterclaims for breach of contract and breach of the implied covenant of  
17 good faith and fair dealing are limited to the ISA by Sparta’s own claims. *Id.* (citing ECF No. 132  
18 ¶¶ 102, 114). According to Copart, Sparta only disclosed damages for “services” under the ISA,  
19 which does not include “expenses.” *Id.* at 4. This failure to disclose precludes Sparta from  
20 offering at trial evidence of expenses or work outside the ISA’s scope. *Id.* Additionally, such  
21 evidence is not relevant to Sparta’s reimbursement for services under ISA, and the probative  
22 value of this evidence “is substantially outweighed by the danger of . . . unfair prejudice,  
23 confusing the issues or misleading the jury.” *Id.* at 5.

24 In opposition, defendants contend Copart’s failure to specify what damages it  
25 claims are outside the ISA warrants denying Copart’s motion. ECF No. 308 at 2. Defendants  
26 offer examples of “time and material” contracts identified in an expert report, asserting “some of  
27 [these] contracts, in fact, explicitly mention the ISA or the AIMOS Build SOW.” *Id.* at 3; *see,*  
28 *e.g.*, ECF No. 309-8 (“This Exhibit is subject to the terms and conditions of the [ISA] . . .”).

1 Defendants observe other documents reference a “Master Services Agreement,” which defendants  
2 contend evidence shows to be the ISA. ECF No. 308 at 3. Sparta disclosed this category of  
3 damages and all relevant documents. *Id.* at 3-4 (citing ECF No. 309-11 (referring to  
4 “corresponding unreimbursed expenses”)).

5 This motion is similar in part to Copart’s motion *in limine* no. 5, ECF No. 277. In  
6 both motions, Copart contends Sparta failed to disclose damages computations in violation of  
7 Federal Rule of Civil Procedure 26(a)(1)(A)(iii). Here, Copart contends more specifically that  
8 “Sparta failed to disclose damages computations for expenses and projects outside the scope of  
9 the ISA during discovery and never identified any documents purportedly supporting either  
10 category.” ECF No. 280 at 3. Yet defendants have disclosed these damages computations in  
11 detail through Eichmann’s Expert Report. *See* ECF No. 207-1; *Crescenta Valley Water Dist. v.*  
12 *Exxon Mobil Corp.*, No. CV 07-2630-JST (ANX), 2013 WL 12095206, at \*2 & n.5 (C.D. Cal.  
13 June 24, 2013) (finding plaintiff fulfilled Rule 26(e) obligations to supplement in part through  
14 deposition testimony and deposition exhibits despite not providing this updated information “in  
15 the form that [d]efendants’ [sic] would have liked”).

16 However, this court, in ruling on summary judgment, determined Sparta “may be  
17 entitled to payment for the ‘portion of the Services that have been performed,’ ISA § 15.2, as  
18 referenced in the Statements of Work, *id.* §§ 1.32, 2.1.” ECF No. 264 at 16. The court found  
19 “the Contract’s provisions limit Copart to services payment obligations only, narrowly limit how  
20 additional compensable services may be added to the Contract, and preclude Sparta from  
21 recovering any ‘indirect, incidental, special, or consequential damages’ for services under the  
22 agreement.” *Id.* at 18.

23 The Eichmann expert report does refer to work “outside the scope” of the two  
24 AIMOS phases. *E.g.*, ECF No. 207-1 ¶¶ 19 & n.41, 22, 25. On the other hand, defendants have  
25 offered examples of contracts indicating they are “subject to the terms and conditions of the  
26 [ISA],” list “reimbursable expenses” under “services” the “Assigned Employee shall provide,”  
27 and refer to “Section 15.2 of the ISA.” *E.g.*, ECF Nos. 309-8, 309-9.

1 In light of the uncertainty involving a contract interpretation issue and the apparent  
2 need to allow evidence regarding construction of the term “services” under the ISA, the court  
3 DENIES Copart’s motion. *See Hot Rods, LLC v. Northrop Grumman Sys. Corp.*, 242 Cal. App.  
4 4th 1166, 1175-76 (2015) (“Ordinarily, even in an integrated contract, extrinsic evidence can be  
5 admitted to explain the meaning of the contractual language at issue, although it cannot be used to  
6 contradict it or offer an inconsistent meaning. The language, in such a case, must be ‘reasonably  
7 susceptible’ to the proposed meaning.”) (internal quotation marks and citation omitted). Copart  
8 remains free to engage in vigorous cross-examination, and defendants are on notice that Copart  
9 may object to evidence of work Copart believes is outside the scope of the ISA.

10 IV. DEFENDANTS’ MOTIONS IN LIMINE

11 A. Defendants’ Motion in Limine One (ECF No. 266)

12 Defendants move to exclude evidence of lost profits and an expert report on lost  
13 profits written by Dr. Mohan Rao, Ph.D. (the Rao Report). Defendants first contend this court’s  
14 summary judgment order, ECF No. 264, precludes Copart from pursuing lost profits damages.  
15 Second, defendants contend the Rao Report is not based on sufficient facts or data, and the Rao  
16 Report’s data and methods are unreliable. *See* ECF No. 321 at 5-10.

17 In opposition, Copart argues the court’s summary judgment order does not prohibit  
18 Copart’s pursuit of lost profits damages. ECF No. 310 at 8-9. Additionally, the Rao Report’s  
19 analysis is based on sufficient facts or data and is the product of reliable principles and methods,  
20 reliably applied to the facts here. *Id.* at 9-13.

21 First, the court addresses defendants’ contention that the court’s summary  
22 judgment order prohibits Copart from introducing evidence of lost profits. The court granted  
23 summary judgment on Sparta’s motion for summary judgment, ECF No. 184 at 26, in which  
24 Sparta asserted “Copart suffered no damage resulting from Sparta’s alleged non-performance of  
25 its obligations under [milestones 8 through 15] and “Copart’s breach of contract claim fails as a  
26 matter of law.” ECF No. 264 at 12-13. Moreover, the parties’ own letters to the court after the  
27 hearing on summary judgment reflect an understanding that the court’s questioning about  
28



1 damages for milestones 8 through 15 pertained to “breach of contract damages.” ECF No. 256 at  
2 2 (defendants’ letter); *see* ECF No. 251 at 1-3 (Copart’s letter).

3 Although the court’s order on summary judgment does contain at points some  
4 expansive language, the order addresses Sparta’s motion on damages for milestones 8 through 15  
5 in its analysis of Copart’s contract-related claims. *See* ECF No. 264 at 9-12. The court also  
6 recited California law on proving damages for breach of contract claims. *Id.* at 12. Thus, the  
7 court’s order limited summary judgment against Copart on Milestones 8 through 15 to Copart’s  
8 contract-related claims. *See id.* at 47 (granting in part “Sparta’s motion on Copart’s contract  
9 claims” and concluding Copart “is precluded from pursuing damages related to the remaining  
10 eight milestones for which it never paid”).

11 Defendants’ remaining claims are a challenge to expert testimony falling under  
12 *Daubert I*, 509 U.S. at 593-97. The court has reviewed the standards for these challenges in  
13 analyzing Copart’s motion *in limine* no. 6 (ECF No. 278), as discussed above. Similarly here, the  
14 court recognizes “[v]igorous cross-examination, presentation of contrary evidence, and careful  
15 instruction on the burden of proof are the traditional and appropriate means of attacking shaky but  
16 admissible evidence.” *Daubert I*, 509 U.S. at 596. Additionally, the court may fulfill its  
17 gatekeeping role with a dedicated hearing allowing for voir dire of the expert. *Hanford*, 292 F.3d  
18 at 1138. The court therefore DENIES the motion without prejudice. Should Copart wish to  
19 renew this *Daubert* challenge at trial, it should alert the court so it may schedule limited voir dire  
20 outside the presence of the jury before Rao is called to testify.

21 B. Defendants’ Motion *in Limine* Two (ECF No. 267)

22 Defendants move to exclude percipient expert testimony and opinions of Phatela  
23 Mosothoane, Rama Prasad and Justin Chapman, arguing that they “seek to testify on matters far  
24 beyond their personal knowledge.” ECF No. 267 at 6. Copart responds that “each of the  
25 employees has personal and in-depth exposure to the topics on which they will testify.” ECF  
26 No. 311 at 2. Copart also contends this court’s summary judgment order limited Copart’s  
27 available damages in multiple ways. ECF No. 267 at 9-10.

28

1 On August 17, 2016, the court issued an amended scheduling order. ECF No. 140.

2 There, the court defined “expert as follows:

3 For purposes of this scheduling order, an “expert” is any person  
4 who may be used at trial to present evidence under Rules 702, 703  
5 and 705 of the Federal Rules of Evidence, which include both  
6 “percipient experts” (persons who, because of their expertise, have  
7 rendered expert opinions in the normal course of their work duties  
8 or observations pertinent to the issues in the case) and “retained  
9 experts” (persons specifically designated by a party to be a  
10 testifying expert for the purposes of litigation). A party shall  
11 identify whether a disclosed expert is percipient, retained, or both.

12 *Id.* at 4.

13 Copart filed its expert disclosures on November 23, 2016. *See* ECF No. 169 at 2.

14 The disclosures listed Mosothoane, Prasad and Chapman as employee-experts under Federal Rule  
15 of Civil Procedure 26(a)(2)(C). *Id.* at 2-6. Copart did not serve expert reports for these witnesses  
16 on defendants but instead provided a brief summary of each witness’s background, the subjects  
17 about which each witness would testify and the basis for each witness’s testimony. *Id.* Witnesses  
18 under Rule 26(a)(2)(C) must disclose only “the subject matter on which the witness is expected to  
19 present evidence” and “a summary of the facts and opinions to which the witness is expected to  
20 testify.” Fed. R. Civ. P. 26(a)(2)(C)(i)-(ii). A written report is required only “if the witness is  
21 one retained or specially employed to provide expert testimony in the case or one whose duties as  
22 the party’s employee regularly involve giving expert testimony.” Fed. R. Civ. P. 26(a)(2)(B).  
23 This court previously found Copart’s three employee experts fell under Rule 26(a)(2)(C) and the  
24 written report requirement does not apply to them. ECF No. 182 at 6.

25 1. Legal Standard

26 The 2000 Amendments to Federal Rule of Evidence 701 distinguish between  
27 expert and lay testimony. “[T]he distinction between lay and expert witness testimony is that lay  
28 testimony ‘results from a process of reasoning familiar in everyday life,’ while expert testimony  
‘results from a process of reasoning which can be mastered only by specialists in the field.’” Fed.  
R. Evid. 701 advisory committee’s note on 2000 amendments (citation omitted). Expert opinions  
do not require a report where “the opinion is based on information the expert witness acquired  
through percipient observations” but require a report where “as in the case of retained experts, the

1 opinion is based on information provided by others or in a manner other than by being a  
2 percipient witness to the events in issue.” *United States v. Sierra Pac. Indus.*, No. CIV S-09-2445  
3 KJM EFB, 2011 WL 2119078, at \*4 (E.D. Cal. May 26, 2011). A “non-reporting expert witness”  
4 who offers “expert opinions beyond percipient facts . . . ‘morphs’ into a reporting expert.”  
5 *F.D.I.C. v. Anderson*, No. 2:11-CV-01061-GEB, 2013 WL 146427, at \*5 (E.D. Cal. Jan. 14,  
6 2013) (citing *Goodman v. Staples the Office Superstore, LLC*, 644 F.3d 817, 819-20 (9th Cir.  
7 2011)).

8                   2.       Phatela Mosothoane

9                   Defendants argue that Mosothoane joined Copart almost a year after the  
10 completion of Milestone 7 and “seeks to offer sweeping opinions about Sparta’s documentation  
11 of AIMOS during Milestones 1 through 7.” ECF No. 267 at 7. Defendants contend  
12 Mosothoane’s opinions are not limited to what he learned in the course of his job duties but rather  
13 are grounded in a review of documents produced in this litigation. ECF No. 322 at 9.

14                   In opposition, Copart contends “Mosothoane participated directly in Copart’s  
15 attempts during AIMOS to understand and improve Sparta’s design and build” and can offer  
16 relevant testimony without “having been on the AIMOS Project for its entire two-year lifespan.”  
17 ECF No. 311 at 9-10. According to Mosothoane’s Expanded Disclosure Report, his opinions are  
18 based on his “experience in SAP implementations” and “direct involvement in the Project” as  
19 well as “direct involvement in Copart’s assessment of Sparta’s work after the termination of  
20 Sparta and review of the SAP environment produced by Sparta.” ECF No. 267-2 at 4.

21                   3.       Rama Prasad

22                   Defendants contend that Prasad “proposes to value Copart’s legacy CAS imaging  
23 solution, not the ZCL\_IMAGING code that Copart asserts was stolen,” but that Prasad “did not  
24 work on the CAS legacy system” and has used documents produced in litigation to arrive at the  
25 estimates he proposes. ECF No. 267 at 8. Copart argues that Prasad will testify “about his  
26 assessment of Copart’s imaging technology, and the value of that technology, based on firsthand  
27 use of it.” ECF No. 311 at 10. According to Prasad’s Expanded Disclosure Report, in addition to  
28 his “direct involvement in managing the imaging technology developed by [his] predecessors,”

1 some of his opinions are based off of “Copart documentation (including payroll records and  
2 invoices) concerning imaging development costs” and “analysis of former Copart CIO David  
3 Bauer’s deposition testimony in this action concerning the development of technology.” ECF  
4 267-3 at 3-4.

5 4. Justin Chapman

6 Defendants assert Chapman’s knowledge of the expenses related to the AIMOS  
7 project is limited to his subsequent involvement in Copart’s 2014 capital impairment—an  
8 accounting calculation—process because he “joined Copart in 2014, months after this case began  
9 and years after many of the expenses he opines upon were incurred.” ECF No. 267 at 15.  
10 Additionally, defendants contend Chapman relies on documents produced in this litigation and  
11 second-hand data collection and analysis. *Id.* at 16; *see* ECF No. 26-7 (Chapman deposition).

12 Copart argues Chapman was a “direct participant in the impairment and the  
13 calculation of Copart’s AIMOS costs” and “someone with an intimate knowledge of Copart’s  
14 finances,” easily satisfying Rule 701. ECF No. 311 at 7. According to Chapman’s Expanded  
15 Disclosure Report his opinions are based on his “accounting expertise,” “direct involvement in  
16 Copart’s 2014 capital impairment,” “knowledge of Copart’s expenses and financial records” and  
17 “review of documents produced in this litigation related to Copart’s losses.” ECF No. 267-4 at 3.

18 5. Analysis

19 Defendants argue that all three employee witnesses seek to testify on matters far  
20 beyond their personal knowledge. ECF No. 267 at 6. Copart argues it is well established that  
21 sufficient personal knowledge to testify “can come from review of the contents of files and  
22 records.” ECF No. 311 at 8 (citing *Washington Cent. R. Co. v. Nat’l Mediation Bd.*, 830 F. Supp.  
23 1343, 1353 (E.D. Wash. 1993) (finding personal knowledge sufficient when the declarant was the  
24 official records custodian); *Aniel v. GMAC Mortg., LLC*, No. C 12-04201 SBA, 2012 WL  
25 5373388, at \*6 (N.D. Cal. Oct. 30, 2012).

26 Mosothoane, Prasad and Chapman may not render opinions based on information  
27 obtained outside of their personal knowledge, specifically documents that have been produced in  
28 this litigation, without an expert report filed under Federal Rule of Civil Procedure 26(a)(2)(B).

1 As percipient experts, the witness’s testimony is restricted to expert opinions rendered in the  
2 normal course of their work duties. Courts have previously recognized the opinions of these  
3 witnesses as “historical opinions.” *See, e.g., Johnson v. St. Mary*, No. S-06-0508 WBS EFB PS,  
4 2006 WL 3001872, at \*2 (E.D. Cal. Oct. 19, 2006) (“Percipient experts are . . . limited to  
5 testifying to their historical opinions and the reasons for them” and “may be asked to testify to  
6 their opinions given in the past and the reasons concerning the development of those opinions,”  
7 but “they may not be asked to render a current opinion for the purposes of the litigation.”).

8 Based on the court’s reading of the current record, the court DEFERS ruling on  
9 defendant’s motion *in limine* no. 2, ECF No. 267. The court will discuss this motion with the  
10 parties on the first day of trial to determine if focused voir dire of any of these witnesses will  
11 clarify the contours of their testimony. The court makes the following preliminary observations:

12 Mosothoane may testify based on his experiences working with the AIMOS team,  
13 his experience leading the team at Copart to assess reusability of Sparta’s work product from the  
14 AIMOS project and review of documents as part of his work duties but may not testify based on  
15 any “review of documents produced by defendants” as part of this litigation, including “the SAP  
16 environment produced by Sparta.” *See* ECF No. 267-2 ¶¶ 7, 9, 17, 28, 33-37, 41; *see Goodman*,  
17 644 F.3d at 819 (observing treating doctors “reviewed information provided by [plaintiff’s]  
18 attorney that they hadn’t reviewed in the course of treatment” and holding in that context “Rule  
19 26(a)(2)(B) required disclosure of written reports”). Based on the current record, the court does  
20 not find Mosothoane’s proposed testimony irrelevant or duplicative of testimony of Copart’s  
21 retained expert, LaBaron Hartfield.

22 Prasad may not testify based on his review of any documents produced in this  
23 litigation, including review of David Bauer’s deposition transcript or associated exhibits.  
24 Although the court declines to preclude Prasad from testifying at this stage, the court questions  
25 the probative value of Prasad’s opinions based on his “direct involvement in managing the  
26 imaging technology developed by [his] predecessors,” or Copart’s legacy CAS imaging  
27 technology. ECF No. 267-3 at 3.

28

1 Chapman may testify based on his direct involvement in Copart’s 2014 capital  
2 impairment conducted in April and May of 2014 and his personal knowledge of Copart’s  
3 expenses and financial records, including his calculation of the original impairment charge, but he  
4 may not testify based on his “review of documents produced in this litigation relating to Copart’s  
5 losses.” See ECF No. 267-4 ¶ 7; see also *Teen-Ed, Inc. v. Kimball Int’l, Inc.*, 620 F.2d 399, 403  
6 (3d Cir. 1980) (holding “personal knowledge of appellant’s balance sheets acquired by [witness]  
7 as [appellant’s] accountant was clearly sufficient under Rule 602 to qualify him as a witness  
8 eligible under Rule 701”); *Agfa-Gevaert, A.G. v. A.B. Dick Co.*, 879 F.2d 1518, 1523 (7th Cir.  
9 1989) (holding inferences “that businessmen customarily draw” may count “as personal  
10 knowledge, not hearsay”).

11 Additionally, to the extent Chapman testifies to any facts or opinions relevant to  
12 Copart’s damages suffered from a misappropriation of trade secrets, those facts could only  
13 support “a reasonable royalty rate” to the extent such support is possible. See ECF No. 264 at 31  
14 (holding on summary judgment “the undisputed facts undermine” a claim that “the alleged  
15 misappropriation caused damages” but concluding the alleged trade secrets “would have some  
16 value to support a royalty rate”). Any testimony of Chapman related to Milestones 8 through 15  
17 cannot apply to Copart’s contract claims. See *id.* at 9-12. To the extent Chapman’s testimony  
18 fails to distinguish between Milestones 1 through 7 and Milestones 8 through 15, the court will  
19 entertain a limiting instruction.

20 C. Defendants’ Motion in Limine Three (ECF No. 268)

21 Defendants move to exclude testimony of David Bauer, contending his testimony  
22 is irrelevant and inadmissible because he “has no knowledge of the development costs of  
23 ZCL\_IMAGING, and therefore no information to provide related to a reasonable royalty rate for”  
24 the code at issue here. ECF No. 323 at 3; see ECF No. 268 at 2, 6. Copart opposes, contending  
25 Bauer’s testimony is relevant to prove all three required elements of Copart’s trade secret  
26 misappropriation claim, including damages. ECF No. 312 at 3-6.

27 Copart has defined its alleged trade secret as “a compilation of source code, SAP  
28 objects, and other materials that were included in the ‘class ZCL\_IMAGING’ that Sparta created

1 as part of its deliverables for Copart. This ‘class’ includes a combination of custom and standard  
2 SAP source code, and data tables that replicated the imaging functionality in Copart’s CAS  
3 system.” Opp’n to KPIT India’s Mot. for Summ. J. at 12-13, ECF No. 210. Copart also referred  
4 to “overwhelming evidence that [d]efendants copied the materials from AIMOS into their  
5 AutoEdge system.” *Id.* at 16.

6 Bauer was not familiar with any work Copart, or others on Copart’s behalf, did on  
7 ZCL\_IMAGING before he left in 2011. Bauer Dep. at 134:14-19. Bauer was not working with  
8 Sparta and Copart in May of 2013 on any imaging project. *Id.* at 180:23-25. The relevance of  
9 Bauer’s testimony is questionable, and the probative value of Bauer’s testimony appears to be  
10 low.

11 Bauer did recognize in an internal Sparta email some field names and  
12 abbreviations he used in the database that was part of the CAS imaging system. Bauer Dep. at  
13 167:1-174:4. However, as explained below in discussing Copart’s motion *in limine* no. 8, ECF  
14 No. 288, Copart has not defined its alleged trade secret as the CAS imaging system. And Bauer’s  
15 testimony about CAS imaging development costs could risk substantial prejudice because Bauer  
16 was unable to discuss specifically project development costs across different “key results” for the  
17 CAS imaging system, only one of which relates to ZCL\_Imaging. *See* Bauer Dep. 101:22-  
18 102:23, 111:3-18. Bauer’s testimony regarding project development costs for the CAS imaging  
19 system could confuse the issues or mislead the jury with respect to Copart’s trade secret  
20 misappropriation claim.

21 Despite the court’s skepticism as to the relevance of Bauer’s testimony and its  
22 probative value weighed against the risk of unfair prejudice, confusing the issues or misleading  
23 the jury, the court DEFERS ruling on defendants’ motion *in limine* no. 3, ECF No. 268.

24 D. Defendants’ Motion *in Limine* Four (ECF No. 269)

25 Defendants move to exclude any reference to witness Matthew Raabe’s dismissed  
26 criminal conviction from 1995. Defendants move under Federal Rules of Evidence 402, 403, 404  
27 and 609, arguing discussion of Raabe’s dismissed criminal conviction is irrelevant, unduly  
28 prejudicial and inadmissible. ECF No. 269 at 3. Copart “concedes that Rule 609 precludes



1 Copart from introducing Raabe’s overturned conviction to impeach him at trial” but contends  
2 defendants may “open the door” with testimony by Raabe about whether he was forthcoming to  
3 Copart about his prior work experience. ECF No. 313 at 3. Defendants reply “the door will  
4 remain firmly closed to Mr. Raabe’s hiring process and unrelated tenure in Orange County.” ECF  
5 No. 324 at 2.

6           Between June 2011 and March 2014 Raabe, a potential witness for defendants,  
7 was Copart’s Director of Information Technology. ECF No. 269 at 3. Raabe helped negotiate  
8 and draft contracts at issue here and has testified about Copart’s relationships with vendors like  
9 Sparta. *Id.* Before working for Copart, Raabe was an Assistant Treasurer of Orange County. In  
10 1995, Raabe was indicted and convicted of securities fraud and misappropriating public funds for  
11 his role in Orange County’s bankruptcy. *Id.* at 4. But Raabe prevailed on appeal in 2000, the  
12 case was remanded and the prosecution declined to prosecute. *Id.*

13           Federal Rule of Evidence 609(e) allows convictions pending on appeal be used for  
14 impeachment. Defendants direct the court to an Eleventh Circuit case discussing a conviction  
15 reversed on appeal and subsequently dismissed by the government. There, the court held  
16 “appellants did not and could not seek to introduce [witness’s] prior conviction under Federal  
17 Rule of Evidence 609.” *United States v. Van Dorn*, 925 F.2d 1331, 1337 (11th Cir. 1991). The  
18 Fourth Circuit has also held a reversed conviction is inadmissible under Federal Rule of Evidence  
19 609. *United States v. Russell*, 221 F.3d 615, 620 (4th Cir. 2000) (“[I]t is elementary that once a  
20 conviction has been reversed, it cannot be used to impeach the accused.”). These cases comport  
21 with the Ninth Circuit’s holding in a case pre-dating Rule 609(e) that convictions pending on  
22 appeal are admissible for impeachment “until the judgment of the lower court is reversed.”  
23 *United States v. Allen*, 457 F.2d 1361, 1363 (9th Cir. 1972). This court therefore agrees with the  
24 Eleventh and Fourth Circuits that, under Rule 609(e), “once a conviction has been reversed, it  
25 cannot be used to impeach the accused.” *Russell*, 221 F.3d at 620.

26           Even if Rule 609(e) is not a general bar to admitting successfully appealed  
27 convictions, Rule 609(b) prohibits admitting evidence of Raabe’s successfully appealed  
28 convictions. Rule 609(b) prohibits admitting a conviction or evidence of a conviction more than

1 ten years old unless “the probative value of the conviction supported by specific facts and  
2 circumstances substantially outweighs its prejudicial effect.” Fed. R. Evid. 609(b). Here, a  
3 conviction more than twenty years old that was successfully appealed, with no subsequent  
4 prosecution, has minimal probative value. Weighing that minimal probative value against the  
5 likely prejudicial effect of convictions for securities fraud and misappropriating public funds, the  
6 court finds Rule 609(b) prohibits introducing evidence of Raabe’s successfully appealed  
7 convictions from 1995.

8 Copart maintains Raabe may be impeached under the “opening the door” doctrine.  
9 ECF No. 313 at 3. Defendants state in reply “the door will remain firmly closed.” ECF No. 324  
10 at 2. Under the “opening the door” doctrine, the “introduction of inadmissible evidence by one  
11 party allows an opponent, in the court’s discretion, to introduce evidence on the same issue to  
12 rebut any false impression that might have resulted from the earlier admission.” *United States v.*  
13 *Whitworth*, 856 F.2d 1268, 1285 (9th Cir.1988).

14 The court finds it highly unlikely a 1995 conviction could be introduced to rebut  
15 testimony of honesty to an employer in 2011 when the convictions in question had been  
16 successfully appealed ten years before the employee began working at that company. Moreover,  
17 to the extent any line of questioning could “open the door,” the court observes that a door is not  
18 opened “to otherwise inadmissible evidence by [a witness] doing no more than providing a  
19 truthful answer to a direct question.” *United States v. Osazuwa*, 564 F.3d 1169, 1176 (9th Cir.  
20 2009) (finding defendant’s testimony in response on direct examination as to how much time he  
21 had spent in prison for bank fraud, that he spent one day in prison, did not open door to  
22 prosecution to introduce collateral details of defendant’s bank fraud conviction).

23 Accordingly, defendants’ motion *in limine* no. 4 is GRANTED.

24 E. Defendants’ Motion *in Limine* Five (ECF No. 270)

25 Defendants move to exclude any reference to the expunged assault conviction of a  
26 former Sparta employee’s misdemeanor conviction. ECF No. 270. Copart opposes this motion,  
27 asserting this conviction is relevant because it “made it abundantly apparent” that the employee  
28 “was not qualified to lead” or manage “the AIMOS project” especially in light of complaints by

1 the employee's subordinates during the AIMOS project. ECF No. 318 at 2-3, 5. Copart also  
2 asserts the evidence is admissible under Federal Rule of Evidence 404(b). *Id.* at 5. Copart  
3 clarifies that it does not intend to use this evidence to impeach the employee under Federal Rule  
4 of Evidence 609 based on the prior conviction. *Id.* at 9.

5 In reply, defendants assert "there is no evidence [the employee] managed the  
6 individual who was assaulted, no evidence [the employee] ever physically assaulted or threatened  
7 any Sparta or Copart employees, and no evidence that this one incident bears any relevance to  
8 [the employee's] ability to successfully manage an ERP software implementation." Reply to  
9 Defs.' Mot. in Lim. No. 5 at 5.

10 Under Rule 404(b)(1), "[e]vidence of a crime, wrong, or other act is not admissible  
11 to prove a person's character in order to show that on a particular occasion the person acted in  
12 accordance with the character." However, "[t]his evidence may be admissible for another  
13 purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity,  
14 absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2).

15 Copart fails to show how this evidence offered serves a purpose other than to  
16 prove propensity. *See United States v. Major*, 676 F.3d 803, 808 (9th Cir. 2012). Evidence of the  
17 former Sparta employee's assault shows that same employee was more likely to be an abusive,  
18 ineffective manager during his time at Sparta. The court therefore questions Copart's asserted  
19 purpose under Rule 404(b) for introducing this evidence.

20 Even if the court could admit this evidence under Rule 404(b), the court must still  
21 "assess the evidence under [Rule] 403." *Beckman*, 298 F.3d at 794 (citation omitted). The court  
22 finds the evidence to be of relatively low probative value because it does not relate to any conduct  
23 related to Sparta or the AIMOS project. It is not clear from the record that the former Sparta  
24 employee managed the assault victim, and the connection between an assault at a hair salon  
25 before working on a software project and management of employees for that software project is  
26 tenuous. The probative value of the assault evidence in "establish[ing] that Sparta breached its  
27 contractual commitment to provide only qualified managers and consultants" is even lower.  
28

1 Weighed against the highly prejudicial nature of introducing evidence of a physical assault, the  
2 court finds the evidence inadmissible under Rule 403.

3 Copart remains free to “present evidence about” the employee’s “aggressive and  
4 abusive treatment of AIMOS Project employees” to show the employee “was not qualified to  
5 manage the AIMOS Project and was an ineffective manager.” ECF No. 318 at 5. Copart’s  
6 evidence on this matter, discussed in Copart’s opposition, reveals evidence of the expunged  
7 assault conviction would be “needlessly . . . cumulative evidence” and therefore inadmissible  
8 under Rule 403.

9 Accordingly, the court GRANTS defendants’ motion *in limine* no. 5, ECF  
10 No. 270.

11 F. Defendants’ Motion *in Limine* Six (ECF No. 271)

12 Defendants move to exclude any testimony or argument at trial that the alleged  
13 trade secret in this case was transferred to KPIT Infosystems or KPIT India. ECF No. 271 at 2, 6.  
14 Copart opposes, contending there is clear evidence that KPIT defendants were involved in  
15 misappropriation of materials created for the AIMOS project. ECF No. 314 at 7-8. And Copart  
16 need not show the trade secrets “were copied into a new separate computer system by the KPIT  
17 defendants” to prevail on its trade secret misappropriation claim. *Id.* at 8.

18 At summary judgment, Copart responded to defendants’ statement of undisputed  
19 facts that Copart “lacks knowledge to admit or deny” that the alleged trade secrets were  
20 transferred to KPIT India or KPIT Infosystems computers. ECF No. 325 at 76, 83. Also at  
21 summary judgment, Copart asserted these trade secret materials “were kept in an AutoEdge  
22 system that was accessible to anyone who worked for the Defendants.” ECF No. 213. The court  
23 has previously acknowledged “genuine disputes” about “Copart’s trade secrets and computer  
24 hacking claims, and the evidence of KPIT entities’ involvement in that alleged misconduct is  
25 sufficient for the court to deny summary judgment.” ECF No. 264 at 46-47. The court also  
26 reasoned defendants could not succeed on summary judgment as to Copart’s trade secret  
27 misappropriation claims “by asserting the SAP Code was inoperable and never incorporated into  
28

1 any product.” *Id.* at 29 (citing *Altavion, Inc. v. Konica Minolta Sys. Lab. Inc.*, 226 Cal. App. 4th  
2 26, 65 (2014)).

3 Copart has not provided or referred to any evidence showing the alleged trade  
4 secrets were transferred to KPIT India or KPIT Infosystems computers. Any lay testimony  
5 lacking in personal knowledge would be speculative and inadmissible under Federal Rule of  
6 Evidence 602. *Cal. Found. for Indep. Living Ctrs. v. Cty. of Sacramento*, 142 F. Supp. 3d 1035,  
7 1045 (E.D. Cal. 2015) (“Courts have found lay witness testimony unhelpful and thus inadmissible  
8 if it is mere speculation, an opinion of law, or if it usurps the jury's function.”).

9 However, Copart’s available arguments will depend on evidence admitted at trial.  
10 Thus, defendants’ motion *in limine* no. 6, ECF No. 271, is DENIED. Defendants remain free to  
11 point to Copart’s lack of evidence and defendants’ own evidence on the alleged trade secret  
12 remaining only in the AutoEdge system.

13 G. Defendants’ Motion *in Limine* Seven (ECF No. 272)

14 Defendants move to exclude at trial any evidence and argument related to possible  
15 witness Terry Ash’s retention of a backup file under Federal Rules of Evidence 401 and 402,  
16 404(b) and 608. ECF No. 272 at 3. Copart opposes, arguing Ash’s credibility will be a key issue  
17 at trial and the retention of documents is relevant to Ash’s violating his duties to Copart and his  
18 bias against Copart. ECF No. 319 at 5. Defendants contend Copart’s argument is vague and  
19 “will necessitate an inquiry into how Mr. Ash was put on formal notice of the (unspecified)  
20 duties,” which will in turn “create a lengthy and distracting sideshow”. ECF No. 327 at 2.

21 1. Relevance

22 Evidence is relevant if it has “any tendency to make the existence of any fact that  
23 is of consequence to the determination of the action more probable or less probable than it would  
24 be without the evidence.” Fed. R. Evid. 401. The Ninth Circuit has determined that evidence is  
25 relevant to a matter of consequence to the determination of the case if it has a mere tendency to  
26 impeach a “witness’s credibility by a showing of bias or coercion.” *United States v. Hankey*, 203  
27 F.3d 1160, 1171 (9th Cir. 2000). Defendants argue Ash’s post-employment possession of Copart  
28 documents should be excluded because it is “irrelevant to Sparta’s performance under the

1 Implementation Services Agreement.” ECF No. 272 at 4. Copart argues that Mr. Ash’s “conduct  
2 during the AIMOS project, and his violation of express duties to Copart, are relevant to  
3 credibility, bias and motive.” ECF No. 319 at 4.

4 Bias is “the relationship between a party and a witness which might lead the  
5 witness to slant, unconsciously or otherwise, his testimony in favor of or against a party.”  
6 *Hankey*, 203 F.3d at 1171 (quoting *United States v. Abel*, 469 U.S. 45, 52 (1984)). “[P]roof of  
7 bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has  
8 historically been entitled to assess all evidence which might bear on the accuracy and truth of a  
9 witness’ testimony.” *Id.* Defendants argue that Ash, a former senior Copart executive on the  
10 AIMOS project, “will put to bed Copart’s manufactured allegations.” ECF No. 327 at 3. Copart  
11 argues that the relevance of Ash’s retaining the backup file is that “Ash’s misconduct relates to  
12 the very project at issue in this litigation, and his willingness to put his own pecuniary gain over  
13 the interests of his then-employer and now adversary (Copart). . . is compelling evidence of Ash’s  
14 credibility.” ECF No. 319 at 8. This court finds evidence of Ash’s retaining Copart documents  
15 after his employment ended is probative of potential bias against his former employer and  
16 therefore relevant.

17 2. Rule 608(b)

18 Federal Rule of Evidence 608(b) provides that “[s]pecific instances of the conduct  
19 of a witness, for the purposes of attacking or supporting the witness’s credibility . . . may not be  
20 proved by extrinsic evidence.” Fed. R. Evid. 608(b); *see also United States v. Jackson*, 882 F.2d  
21 1444, 1448 (9th Cir. 1989) (finding “[s]pecific instances of misconduct . . . may not be proved by  
22 extrinsic evidence. They may, however, in the discretion of the trial court, if probative of  
23 truthfulness or untruthfulness, be inquired into on cross-examination.”). While Rule 608(b) is  
24 limited by the prohibition against the use of extrinsic evidence, this rule has been interpreted to  
25 prohibit the admission into evidence of documents or testimony by another witness to prove prior  
26 misconduct not resulting in a conviction. *Id.* Defendants argue the retention of documents here is  
27 inadmissible evidence under Rule 608(b) because it “sheds no light on [Ash’s] truthfulness as a  
28 witness.” ECF 272 at 7. Copart disputes extrinsic evidence “that Ash deceived Copart” is

1 inadmissible to attack Ash’s character and argues that “Ash’s actions after being recruited by  
2 Sparta, and the fact that those actions benefited him and undermined Copart” are admissible to  
3 show bias. ECF No. 272 at 7. Defendants reply Ash’s deception relates only to the seeking of  
4 alternative employment and that “such alleged conduct has nothing to do with the instant  
5 motion.” ECF No. 327 at 4.

6 Rule 608(b) does not bar the introduction of evidence to show that the witness is  
7 biased. Rule 608(b) regulates the admissibility of evidence offered to prove the truthful or  
8 untruthful character of a witness. *United States v. Ray*, 731 F.2d 1361, 1364 (9th Cir.1984); see  
9 also *United States v. Noti*, 731 F.2d 610, 613 (9th Cir. 1984) (“Evidence that happens to include  
10 prior misconduct may be admissible” when “offered to show the witness’s possible bias or self-  
11 interest in testifying). Copart argues Ash’s conduct is relevant to whether his “testimony against  
12 Copart at trial will also be influenced by his pecuniary interests now that Sparta is his employer”.  
13 ECF No. 318 at 6. The court finds Rule 608(b) does not apply here as the Rule is limited to  
14 extrinsic evidence and Copart has not argued it intends to introduce the actual documents that Ash  
15 retained but rather intends to inquire into misconduct on cross-examination.

16 3. Rule 403

17 Rule 403 permits a court to exclude evidence “if its probative value is substantially  
18 outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues,  
19 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”  
20 Fed. R. Evid. 403; *see also In re Hanford Nuclear Reservation Litig.*, 534 F.3d at 1016 (excluding  
21 evidence under Rule 403 is a matter of discretion).

22 Defendants assert that Copart will rely on Ash’s retention of documents to  
23 “conflate Mr. Ash’s alleged wrongdoing with Defendants’ alleged mismanagement of the  
24 AIMOS project,” which will force the defendants to “litigate a multitude of new issues.” ECF  
25 No. 272 at 7. Defendants list eight specific issues that would lead to distracting and time-  
26 consuming litigation at trial if the evidence of Ash’s retention of documents is admitted. ECF  
27 No. 272 at 8. Copart argues that the “evidence is being used to show Ash’s bias, not his liability”  
28 and emphasizes that the evidence bears upon the credibility of the witness. ECF No. 319 at 9.



1           This court finds that any prejudicial effect of the evidence may be mitigated at trial  
2 by Ash's testifying the backup file was for routine "security purposes," he "never used this  
3 backup file" and he did not provide files from the backup file to anyone at Sparta. *Cf. United*  
4 *States v. Licavoli*, 604 F.2d 613, 623 (9th Cir. 1979) (reasoning "counsel was able to mitigate the  
5 prejudicial effect of the testimony through effective cross examination"). Thus, any potential  
6 prejudice to defendants does not substantially outweigh the probative value of this evidence, and  
7 the evidence is admissible under Rule 403.

8           Accordingly, defendants' motion *in limine* seven is DENIED.

9           H.    Defendants' Motion in Limine Eight (ECF No. 288)

10           Defendants move to preclude Copart from departing from its stated definition of  
11 the allegedly misappropriated trade secret in Copart's opposition to summary judgment. ECF  
12 No. 288. Copart opposes, contending it has consistently maintained that the "ZIMAGING" and  
13 "ZIMG" packages were part of the misappropriated trade secrets. ECF No. 339 at 2-3, 5-9. In  
14 reply, defendants contend as part of the meet and confer process for this motion, "Copart  
15 resurrected its previously debunked claims that its trade secrets at issue were: Paymetrics, all of  
16 Copart's imaging functionality, a long list of documents describing parts of its technology, and  
17 the code and objects in the ZIMG and ZIMAGING packages." ECF No. 345 at 2.

18           In its opposition to KPIT Technologies' Motion for Summary Judgment, Copart  
19 defined the trade secret in this case as "a compilation of source code, SAP objects, and other  
20 materials that were included in the 'class ZCL\_IMAGING' that Sparta created as part of its  
21 deliverables for Copart. This 'class' includes a combination of custom and standard SAP source  
22 code, and data tables that replicated the imaging functionality in Copart's CAS system." Opp'n  
23 to KPIT India's Mot. for Summ. J. at 12-13, ECF No. 210.

24           In support of Copart's contention that it is not limited to its own definition offered  
25 at summary judgment, Copart directs the court's attention to its first amended responses to  
26 Sparta's fourth set of interrogatories: "The stolen imaging functionality includes the global class  
27 ZCL\_IMAGING and its dependent tables, and all contents of the 'ZIMAGING' and 'ZIMG'  
28 packages in the AutoEdge "sandbox" produced by Sparta on September 2, 2016." ECF Nos. 288-

1 3 at 5, 342-3 at 5. Copart also refers to a reference in its opposition to KPIT India’s motion for  
2 summary judgment to “ZIMAGING and ZIMG packages in the AutoEdge system” as part of  
3 Copart’s claim that “source code” contained in “the ZCL IMAGING and ZCL packages”<sup>4</sup> was  
4 “Copart’s property under the ISA.” Opp’n to KPIT India’s Mot. for Summ. J. at 15 & n.3. At  
5 hearing on summary judgment, when asked “what’s claimed as the trade secret,” Copart counsel  
6 responded, “The ZCL class, which includes code, tables and custom fields and also the Z image  
7 class, those are both the trade secrets that defendants misappropriated here.” Summ. J. Hr’g Tr. at  
8 33:7-11, ECF No. 255. On summary judgment, Copart “withdr[ew] its claim that Paymetric  
9 credit card functionality is a ‘trade secret.’” Opp’n to KPIT India’s Mot. for Summ. J. at 2 n.3.

10 Judicial estoppel “prevents a party from prevailing in one phase of a case on an  
11 argument and then relying on a contradictory position to prevail in another phase.” *New*  
12 *Hampshire v. Maine*, 532 U.S. 742, 749 (2001). However, “[a] judicial admission must be  
13 deliberate, clear, and unambiguous.” *Dhaliwal v. KS Chandi & Sons, Inc.*, No. 1:13-CV-00484-  
14 LJO, 2014 WL 4968274, at \*4 (E.D. Cal. Sept. 30, 2014). Courts have applied judicial estoppel  
15 to a plaintiff’s definition of trade secrets. *E.g., Stutz Motor Car of Am., Inc. v. Reebok Int’l, Ltd.*,  
16 909 F. Supp. 1353, 1360-61 (C.D. Cal. 1995), *aff’d*, 113 F.3d 1258 (Fed. Cir. 1997) (holding  
17 “plaintiff must be judicially estopped from arguing now, in a desperate attempt to avert summary  
18 judgment, that . . . ‘different’ trade secrets are really the subject of its claims” where the court has  
19 “relied on plaintiff’s previous assertions,” including in its findings “in a written order”).

20 Additionally, California law requires a plaintiff “seeking relief for  
21 misappropriation of trade secrets” to “identify the trade secrets and carry the burden of showing  
22 that they exist.” *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1164 (9th Cir. 1998) (citing  
23 *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 522 (9th Cir.1993)). A plaintiff “should  
24 describe the subject matter of the trade secret with sufficient particularity to separate it from  
25 matters of general knowledge in the trade or of special knowledge of those persons . . . skilled in  
26 the trade.” *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 253 (1968).

27 \_\_\_\_\_  
28 <sup>4</sup> Copart now contends this was a typo, stating Copart intended to write, “ZIMAGING and  
ZIMG packages.” See ECF No. 339 at 6.

1 Here, Copart has consistently maintained that “ZIMAGING” and the “ZIMG”  
2 packages were part of its trade secret claims. The magistrate judge ruled Copart had “sufficiently  
3 identified the trade secrets at issue” in her August 31, 2016 order. ECF No. 146 at 1. And Sparta  
4 had notice of Copart’s definition of the trade secrets at issue after receiving Copart’s first  
5 amended responses to Sparta’s fourth set of interrogatories on December 2, 2016. See ECF Nos.  
6 288-3 at 8, 342-3 at 9. Despite some unclear wording when defining the trade secret at one point  
7 in its opposition to summary judgment, Copart has not indicated it has abandoned its position that  
8 the ZIMAGING and ZIMG packages were part of the trade secrets at issue. Even at the summary  
9 judgment hearing, where the court sought a more precise definition of the trade secrets at issue,  
10 Copart still referred to the “Z image class” as part of the claimed trade secret. See Summ. J. Hr’g  
11 Tr. at 33:7-11. However, Copart has not referred to Copart’s “imaging functionality” more  
12 generally as a trade secret throughout the summary judgment phase of the case, and Copart has  
13 disclaimed the Paymetric credit card functionality as a trade secret.

14 Thus, defendants’ motion *in limine* no. 8 is GRANTED in part, as follows: Copart  
15 may contend at trial that the trade secrets at issue in this case are “a compilation of source code,  
16 SAP objects, and other materials that were included in the ‘class ZCL\_IMAGING’,” including “a  
17 combination of custom and standard SAP source code, and data tables that replicated the imaging  
18 functionality in Copart’s CAS system” and “all contents of the ‘ZIMAGING’ and ‘ZIMG’  
19 packages in the AutoEdge ‘sandbox’ produced by Sparta on September 2, 2016.” Copart may not  
20 revive its abandoned trade secret claim for Paymetric credit card functionality or assert generally  
21 that Copart’s imaging functionality is a trade secret at issue in this case. See *MAI Systems, Inc. v.*  
22 *Peak Computer, Inc.*, 991 F.2d 511, 522 (9th Cir.1993) (identification not specific enough when  
23 plaintiff claimed only that “diagnostic software and operating system” contained valuable trade  
24 secrets); *Swarmify, Inc. v. Cloudflare, Inc.*, No. C 17-06957 WHA, 2018 WL 1142204, at \*3  
25 (N.D. Cal. Mar. 2, 2018) (rejecting categories including “methods for implementing” as “not even  
26 com[ing] close to identifying plausible trade secrets with ‘reasonable particularity’ as required by  
27  
28

1 [California Code of Civil Procedure] [s]ection 2019.210”<sup>5</sup>; *Waymo LLC v. Uber Techs., Inc.*,  
2 No. C 17-00939 WHA, 2017 WL 6887040, at \*8 (N.D. Cal. Nov. 14, 2017) (rejecting assertions  
3 that a trade secret “encompassed not only the information contained in the schematic itself but  
4 also strategies or concepts ‘reflected’ in the schematic”).

5 I. Defendants’ Motion *in Limine* Nine (ECF No. 289)

6 Defendants move to exclude the testimony at trial of four witnesses not disclosed  
7 until Copart listed those witnesses on its trial witness list as part of the parties’ joint pretrial  
8 statement for the final pretrial conference. ECF No. 289; *see* ECF Nos. 282-3, 286. Those four  
9 witnesses are Gene Boyd, Mike Mortensen, Zach Stenzler and Michael Stewart. *Id.* at 2. Copart  
10 opposes, contending Copart complied with disclosure requirements because the witnesses were  
11 identified during depositions, and any non-disclosure was harmless or substantially justified.  
12 ECF No. 340 at 4-5, 6-9.

13 Under Federal Rule of Civil Procedure 26, a party must disclose information for  
14 “each individual likely to have discoverable information—along with the subjects of that  
15 information—that the disclosing party may use to support its claims or defenses.” Fed. R. Civ. P.  
16 26(a)(1)(A)(i). Rule 26(e)(1)(A) requires that a party supplement its disclosures under Rule 26(a)  
17 “in a timely manner if the party learns that in some material respect the disclosure or response is  
18

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19  
20 <sup>5</sup> The magistrate judge determined that “[d]iscovery in this matter is not governed by  
21 California Code of Civil Procedure § 2019.210.” ECF No. 146 at 1. The court is aware of other  
22 cases in this district holding that Section 2019.210 is inapplicable where that statute conflicts  
23 “with the Federal Rules of Civil Procedure.” *AtPac, Inc. v. Aptitude Sols., Inc.*, No. CV S-10-294  
24 WBS KJM, 2010 WL 11571246, at \*1 (E.D. Cal. Sept. 22, 2010) (citing *Funcat Leisure Craft,*  
25 *Inc. v. Johnson Outdoors, Inc.*, 2007 WL 273949 (E.D. Cal. Jan. 29, 2007). However, as the  
26 *Funcat* court observed, binding Ninth Circuit authority in *IMAX Corp.*, 152 F.3d at 1167,  
27 “determined at summary judgment that a trade secret claim was insufficiently set forth” without  
28 reference to Section 2019.210 and “after full federal discovery had been permitted.” 2007 WL  
273949, at \*3 n.3. Although courts in the Northern District of California have applied Section  
2019.210 outside of the discovery context, *e.g.*, *Openwave Messaging, Inc. v. Open-Xchange,*  
*Inc.*, No. 16-CV-00253-WHO, 2018 WL 692022, at \*4 (N.D. Cal. Feb. 2, 2018) (summary  
judgment), the court declines to resolve that issue here, instead relying on the above Northern  
District cases for analogous reasoning.

1 incomplete or incorrect, and if the additional or corrective information has not otherwise been  
2 made known to the other parties during the discovery process or in writing.”

3 Under Rule 37(c)(1), “If a party fails to provide information or identify a witness  
4 as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to  
5 supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially  
6 justified or is harmless.” A party need not show bad faith by the non-disclosing party to obtain an  
7 exclusionary remedy. *See Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106  
8 (9th Cir. 2001).

9 Copart relies on *In re First Alliance Mortgage Co.*, 471 F.3d 977, 1000 (9th Cir.  
10 2006), asserting “it is well established that witnesses should not be excluded from testifying when  
11 their identities are revealed on a pretrial witness list, even though they were not included on initial  
12 or supplemental disclosures.” ECF NO. 340 at 6. However, in that case, the court observed that  
13 the “actual close of discovery” had not yet occurred, observing a party subpoenaing a third-party  
14 witness later. *First Alliance*, 471 F.3d. at 1000 n.3. Courts have also excluded witnesses  
15 disclosed after the discovery cutoff when defendants were unable to depose those witnesses. *E.g.*,  
16 *Sanchez v. California*, No. 1:12-CV-01835-SAB, 2015 WL 2185186, at \*12 (E.D. Cal. May 8,  
17 2015) (excluding witnesses disclosed after discovery cutoff who defendants were unable to  
18 depose); *Good Tech. Corp. v. MobileIron, Inc.*, No. 5:12-CV-05826-PSG, 2015 WL 13376731, at  
19 \*3 (N.D. Cal. July 6, 2015) (“[W]itnesses and evidence disclosed after the close of fact discovery  
20 are out under Fed. R. Civ. P. 37(c).”). Other courts have permitted witnesses learned of through  
21 depositions before discovery closed. *E.g.*, *Brighton Collectibles, Inc. v. Marc Chantal USA, Inc.*,  
22 No. 06-CV-1584 H (POR), 2008 WL 4001066, at \*3 (S.D. Cal. Aug. 28, 2008) (defendant knew  
23 of the witnesses “prior to the close of discovery” because “their identities were discussed and  
24 disclosed” during a deposition); *McKesson Info. Sols., Inc. v. Bridge Med., Inc.*, 434 F. Supp. 2d  
25 810, 812-13 & n.3 (E.D. Cal. 2006) (allowing witnesses that were “disclosed and discussed in  
26 depositions taken of other witnesses” but excluding another witness because he had not “been  
27 previously disclosed during the course of discovery”).  
28

1 Fact discovery first closed in this case for depositions on May 16, 2016. ECF  
2 No. 114. The parties exchanged expert reports related to Copart’s second amended complaint on  
3 May 31, 2016. ECF No. 346-5. Later, the court re-opened discovery only for Copart’s new  
4 claims in the Third Amended Complaint, until October 28, 2016. ECF No. 140 at 3.

5 Here, only one witness was disclosed through a deposition before the close of fact  
6 discovery for claims relevant to that witness. Boyd was referenced once along with the names of  
7 multiple other people in an April 29, 2016 deposition as part of a project not directly related to the  
8 litigation—a project other than the AIMOS project. ECF No. 346-3 at 6. “The mere mention of  
9 an individual during a deposition is insufficient to place the opposing party on notice that that  
10 individual would be called at trial.” *Sanchez v. California*, No. 1:12-CV-01835-SAB, 2015 WL  
11 2185186, at \*12 (E.D. Cal. May 8, 2015) (citing *Ollier v. Sweetwater Union High School*  
12 *Dist.*, 267 F.R.D. 39, 343 (S.D.Cal.2010) *aff’d*, 768 F.3d 843 (9th Cir.2014)); *see Rhodes v. Sutter*  
13 *Health*, 949 F.Supp.2d 997, 1010 (E.D.Cal.2013) (finding deposition testimony not sufficient to  
14 put party on notice even where witness was repeatedly mentioned in depositions).

15 However, at hearing Copart explained it has offered Boyd “for a very limited  
16 purpose,” which is “to show that Copart did . . . have IT security policies in place during the time  
17 of the AIMOS project.” Hr’g Tr. (Feb. 9, 2018) at 55:2-10. Copart stated it “initially disclosed  
18 Dennis Cavanagh as its chief of IT security during the AIMOS project,” and “Cavanagh’s emails  
19 were produced to the other side.” *Id.* at 55:3-6. Yet defendants “never asked to depose Mr.  
20 Cavanagh.” *Id.* at 55:6. Because Cavanagh “is no longer with the company,” Copart has offered  
21 Boyd as a substitute witness for Cavanagh. Copart conceded it would bear the costs associated  
22 with a limited reopening for a short deposition of Boyd. *Id.* at 57:13-16; *see also Paladin*  
23 *Assocs., Inc. v. Montana Power Co.*, 328 F.3d 1145, 1164-65 (9th Cir. 2003) (affirming district  
24 court’s ordering party to pay costs and attorneys’ fees associated with the defendants’ depositions  
25 of witnesses designated after the district court’s deadline).

26 The court therefore DENIES in part defendants’ motion as to Boyd, but ORDERS  
27 the parties to meet and confer to depose Boyd for four hours in California. Copart shall pay all  
28



1 costs and attorneys' fees associated with this deposition. The court now discusses the other three  
2 witnesses subject to this motion.

3 Stewart was identified as Copart's "corporate controller" in a January 4, 2017  
4 deposition, well after the close of all phases of fact discovery. ECF No. 346-2 at 3. Additionally,  
5 Copart's disclosure about Stewart indicates only that he would "testify about Copart's business  
6 and damages." ECF No. 286-1 at 5.

7 Stenzler was disclosed in the Rao Report, served on May 31, 2016, then mentioned  
8 again during Rao's depositions on January 3 and 17, 2017. Rao's depositions occurred after the  
9 close of both fact discovery phases in the case. And the Rao Report was disclosed to defendants  
10 after the close of the first phase of fact discovery.

11 Mortensen also was disclosed in the Rao Report and during Rao's depositions.  
12 Additionally, Mortenson was disclosed during the deposition of Diane Yassa on May 19, 2016.  
13 ECF No. 346-4 at 3. However, these disclosures all occurred after the close of the first phase of  
14 fact discovery.

15 Stewart, Stenzler and Mortenson were not sufficiently disclosed under Federal  
16 Rule of Civil Procedure 26(a) or 26(e). *See, e.g., Ollier v. Sweetwater Union High Sch. Dist.*, 267  
17 F.R.D. 339, 343 (S.D. Cal. 2010), *aff'd*, 768 F.3d 843 (9th Cir. 2014) ("Certainly the mere  
18 mention of a name in a deposition is insufficient to give notice to the opposing party that [the  
19 other party] intend[s] to present that person at trial. To suggest otherwise flies in the face of the  
20 requirements of Rule 26(a) and (e)."); *Rhodes*, 949 F.Supp.2d at 1010 (Even where witness "was  
21 repeatedly mentioned" in "various depositions," and proponent claimed failure to disclose "was  
22 an honest mistake," the opposing party "should be able to rely on Rule 26 disclosures and not be  
23 required to second guess whether a disclosing party has purposefully omitted a potential witness  
24 or done so accidentally").

25 Copart has not identified any justification for failing to disclose these witnesses  
26 and defendants. *See* ECF No. 340 at 8-9. Copart's position that these errors were not harmless,  
27 *id.* at 6-7, is undermined by defendants' inability to depose any of these witnesses before the  
28 close of discovery. Although Copart contends these lack of disclosures were at worst "a



1 reasonable mistake” and Copart exhibited “good faith,” the court need not find bad faith or  
2 willfulness to justify excluding these witnesses from testifying. *See Yeti by Molly, Ltd.*, 259 F.3d  
3 at 1106.

4 Thus, the defendants’ motion in limine no. 9, ECF No. 290, is DENIED in part, as  
5 to Boyd, and otherwise GRANTED as to Stewart, Stenzler and Mortenson. The court ORDERS  
6 the parties to meet and confer to arrange a deposition of Gene Boyd for up to four hours in  
7 California. Plaintiff shall pay all costs and attorneys’ fees associated with this deposition.

8 V. CONCLUSION

9 Defendants’ motion to bifurcate the trial, ECF No. 290, is DENIED.

10 Ruling on Copart’s motion *in limine* no. 1, ECF No. 273, is DEFERRED, and  
11 Copart shall propose a limiting instruction.

12 Copart’s motion *in limine* no. 2, ECF No. 274, is tentatively GRANTED as  
13 explained above.

14 Copart’s motion *in limine* no. 3, ECF No. 275, is DENIED, and Copart shall  
15 propose a limiting instruction as explained above.

16 Copart’s motion *in limine* no. 4, ECF No. 276, is DENIED, but Copart may make  
17 specific objections. The court also ORDERS the parties to meet and confer and provide, by the  
18 first day of trial, the court a joint annotated version of the relevant contracts, or their competing  
19 versions, showing contract terms the parties request be construed either by the court or the jury.

20 Copart’s motion *in limine* no. 5, ECF No. 277, is DENIED.

21 Copart’s motion *in limine* no. 6, ECF No. 278, is DENIED without prejudice to  
22 voir dire of the witness before the witness is called to testify.

23 Copart’s motion *in limine* no. 7, ECF No. 279, is DENIED.

24 Copart’s motion *in limine* no. 8, ECF No. 280, is DENIED.

25 Defendants’ motion *in limine* no. 1, ECF No. 266, is DENIED without prejudice to  
26 voir dire of the witness before the witness is called to testify.

27 Ruling on defendants’ motion *in limine* no. 2, ECF No. 267, is DEFERRED, as  
28 explained above.

1 Ruling on defendant's motion *in limine* no. 3, ECF No. 268, is DEFFERRED, as  
2 explained above.

3 Defendants' motion *in limine* no. 4, ECF No. 269, is GRANTED.

4 Defendants' motion *in limine* no. 5, ECF No. 270, is GRANTED.

5 Defendants' motion *in limine* no. 6, ECF No. 271, is DENIED, as explained above.


6 Defendants' motion in limine no. 7, ECF No. 272, is DENIED.

7 Defendants' motion *in limine* no. 8, ECF No. 289, is GRANTED in part, as  
8 explained above.

9 Defendant's motion in limine no. 9, ECF No. 290, is GRANTED in part and  
10 DENIED in part, as explained above. The court ORDERS the parties to meet and confer to  
11 arrange for a deposition of Gene Boyd for up to four hours in California. Plaintiff shall pay all  
12 costs and attorneys' fees associated with this deposition.

13 IT IS SO ORDERED.

14 DATED: April 19, 2018.

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17 UNITED STATES DISTRICT JUDGE  
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