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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOANN MARTINELLI, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

JOHNSON & JOHNSON and McNEIL
NUTRITIONALS, LLC,

Defendants.

No. 2:15-cv-1733 MCE DB

ORDER

On February 10, 2017, this matter came before the undersigned for hearing of plaintiff's motion to compel. Attorney Lawrence Fisher appeared on behalf of the plaintiff and attorneys Amanda Villalobos and Mollie Benedict appeared on behalf of the defendants. Oral argument was heard and plaintiff's motion was taken under submission.

As discussed at the February 10, 2017 hearing, plaintiff's motion raises essentially the following three issues.

1) Adequacy of Defendants' Production

Plaintiff argues that defendants have failed to produce responsive documents in violation of the July 28, 2016 order of the previously assigned magistrate judge, granting plaintiff's prior

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1 motion to compel.¹ (ECF No. 67 at 11-14.) Defendants argue that they “have fulfilled their
2 discovery obligations under the terms negotiated by the parties.” (Id. at 14.) In this regard, on
3 April 13, 2016, the court adopted the parties’ stipulated ESI and hard copy protocol. (ECF. No.
4 28.) Defendants contend that they complied with the July 28, 2016 order, by collecting
5 “documents from the 12 agreed upon custodians,” and by applying “the agreed upon list of ESI
6 search terms,” pursuant to the April 13, 2016 stipulated protocol. (ECF No. 67 at 15.)

7 The July 28, 2016 order, however, does not limit defendants’ production to the terms of
8 the protocol. Instead, defendants were ordered to “produce responsive documents.” (ECF No. 41
9 at 8.) However, at the February 10, 2017 hearing, defendants’ counsel explained that defendants
10 do not have a way to locate further responsive documents aside from the use of search terms.
11 Accordingly, defendants are ordered to meet and confer with plaintiff to develop a list of
12 additional search terms and additional custodians, conduct an additional search for responsive
13 documents, and produce responsive documents to plaintiff.

14 **2) Defendants’ Redaction**

15 In previously producing responsive documents, defendants unilaterally “redacted the
16 irrelevant information,” found on roughly 600 pages of the 15,000-page production. (ECF No. 67
17 at 19.)

18 “[T]he court does not welcome the unilateral editing of documents produced in discovery,
19 particularly when there is a protective order in place, given the suspicion and distrust that it
20 generates, which, in turn, leads to unnecessary discovery disputes and burdensome *in camera*
21 inspections.”² Williston Basin Interstate Pipeline Co. v. Factory Mut. Ins. Co., 270 F.R.D. 456,
22 458 (D. N.D. 2010); see also Live Nation Merchandise, Inc. v. Miller, Case No. 13-cv-3936 CW
23 (NC), 2014 WL 1877912, at *3 (N.D. Cal. May 9, 2014) (“The Court agrees with Artists that
24 Live Nation’s redactions of otherwise discoverable documents here are unwarranted because Live
25 Nation’s concern about protecting privacy interests and confidential/proprietary information
26

27 ¹ On August 2, 2016, this action was reassigned from the previously assigned magistrate judge to
the undersigned. (ECF No. 42.)

28 ² The court adopted the parties’ stipulated protective order on January 13, 2016. (ECF No. 16.)

1 could be addressed through a protective order. As courts have recognized, this type of unilateral
2 redaction is disfavored, and a protective order could ensure the confidentiality of sensitive
3 information.”); Islander Group, Inc. v. Swimways Corporation, CIVIL NO. 13-0094 LEK-RLP,
4 2014 WL 12573995, at *3 (D. Hawai’i, Jan. 28, 2014) (“Given the broad standards of
5 discoverability under federal law, unilateral redactions based on relevance by the producing party
6 is not appropriate.”); In re iPhone Application Litig., No. 11-MD-2250 LHK, 2013 WL 1095456,
7 at *2 (N.D. Cal. Mar. 7, 2013) (“In addition to Apple’s failure to produce responsive documents,
8 this Court is also disturbed by Apple’s position ‘that it may redact information that is not
9 relevant.’ Apple asserts that it can redact irrelevant information ‘as long as there’s a process by
10 which the parties can assess whether there’s a good faith claim of relevance or not.’ Apple’s
11 contention that Plaintiffs must surmise based upon a redaction whether Apple redacted the
12 redacted information in good faith is unpersuasive at best.”).

13 Here, the voluminous nature of the redacted documents renders *in camera* review
14 impossible. Instead, defendants are ordered to produce to plaintiff a redaction log, identifying
15 each redaction, including the redaction of email attachments, and explaining why the information
16 was redacted. Defendants are cautioned that, “[w]hen a party has failed to provide adequate
17 justification for redactions to documents containing discoverable information, the court is
18 empowered to order the documents produced *sans* the redactions.” Williston, 270 F.R.D. at 458-
19 59.

20 **3) Identified Custodians**

21 Plaintiff argues that defendants failed to produce documents, or at least substantial
22 documents, from six individuals defendants have identified as likely document custodians. (ECF
23 No. 67 at 21.) Defendants, however, note that not only did they search for and produce
24 responsive documents from these custodians, they also agreed to plaintiff’s request to search for
25 documents from an additional six custodians. (Id. at 23.) At the February 10, 2017 hearing,
26 plaintiff confirmed that her argument is based simply on the dearth of defendants’ production
27 from these individuals and nothing more.

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1 Given defendants' representations that they have conducted the relevant searches, and
2 their cooperation in conducting additional searches, the undersigned finds plaintiff's argument
3 unpersuasive. Plaintiff's motion as to this issue is denied.

4 CONCLUSION


5 Accordingly, upon consideration of the arguments on file and at the hearing, and for the
6 reasons set forth on the record at the hearing and above, IT IS HEREBY ORDERED that:

7 1. Plaintiff's January 5, 2017 motion to compel (ECF No. 56) is granted in part and
8 denied in part;

9 2. Within twenty-eight days from the date of this order, defendants shall meet and confer
10 with plaintiff, develop a list of additional search terms and additional custodians, conduct an
11 additional search for responsive documents, and produce responsive documents to plaintiff; and

12 3. Within twenty-eight days from the date of this order, defendants shall produce to
13 plaintiff a redaction log, identifying each redaction, including the redaction of email attachments,
14 and explaining why the information was redacted.³

15 Dated: February 10, 2017

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18 DEBORAH BARNES
19 UNITED STATES MAGISTRATE JUDGE
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27 ³ At the February 10, 2017 hearing defendants stated that they would need six to eight weeks to
28 complete the redaction log. If defendants are unable to complete the redaction log in the twenty-
eight days provided, defendants may redact fewer documents and/or request additional time to
complete the log.