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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CRYSTAL LAKES,

Plaintiff,

v.

BATH & BODY WORKS, LLC,

Defendant.

No. 2:16-cv-2989 MCE GGH

ORDER

Introduction and Summary

This case involves candles which allegedly explode or otherwise combust in such a violent fashion that persons using them can be burned by hot wax smattering exposed areas of their bodies—hereafter “flashovers.” Plaintiff made a discovery request, and later a motion, attempting to acquire information relating to all of the candles distributed by defendant Bath & Body Works, including design, manufacture and similar information, as well as an attempt to ferret out information pertinent to all flashover incidents for candles of any types which defendant placed in the stream of commerce. Defendant opposed in the main with a burden argument with respect to all requests arguing, in essence, that the sheer number of candles (hundreds of millions over the years) distributed by defendant made compliance with plaintiff’s “any candle” discovery very unreasonably burdensome. The undersigned accepted, in significant part, the proffer of

1 burden and significantly narrowed the scope of the discovery requests, i.e., to only candles
2 employing three wicks, the type of candle with which plaintiff claims injury.

3 One of the important series of requests by plaintiff involved requests for incidents reports
4 of candle flashovers involving other persons. These particular incident requests were also
5 opposed on burden/lack of proportionality grounds, and in particular, opposed because of the
6 necessity of manually identifying the “relevant” flashover incidents.

7 After obtaining the initial, limiting discovery order, plaintiff went about taking depositions
8 of various of defendant’s personnel, including persons working in a related corporation who
9 engaged in consumer interaction for defendant’s products as well as products of sister
10 corporations. Through efforts other counsel may not have employed, plaintiff discovered the
11 computerized incident “reason codes” for the consumer interaction complaint data base, and
12 much potentially relevant discovery about flashover incidents was eventually disclosed. The
13 irony of this sanctions motion is that, as it turned out, ferreting out flashover incidents for any
14 candle was easier to identify as opposed to ascertaining those incidents for just three wick candles
15 or Eucalyptus Spearmint three wick candles. Defendant had created incident codes for product
16 complaints, and specific codes had been developed for flashovers and other abnormal candle
17 flame incidents for all candles distributed by defendant. Further manual investigation of the text
18 of complaints, if any was indeed necessary, was a defendant self-created burden.

19 Plaintiff *ultimately* may not have been harmed in terms of discovery production substance,
20 given that purposeful misinformation was initially given counsel with respect to flashover
21 incidents in pre-hearing discovery resolution efforts and later in court, i.e., plaintiff ultimately
22 received a comprehensive list of flashover incidents for at least three wick candles. Nevertheless,
23 plaintiff has moved for sanctions asserting that defendant and counsel deceived counsel and the
24 court in the discovery process. At the very least, plaintiff asserts that defendant was not
25 substantially justified in maintaining the position that identification of flashover incidents was
26 burdensome.

27 For the reasons set forth herein, sanctions are appropriate for 50% of plaintiff’s counsel’s
28 costs in the initial motions to compel and the motion for sanctions.

1 ***The Discovery Requests and Responses***

2 As stated above, the fairly comprehensive discovery requests, primarily requests for
3 Production of documents, sought to discover much information about all of defendant's other
4 distributed candles. For example:

5 Request No. 14

6 Please produce all DOCUMENTS EVIDENCING the design of the CANDLE,
7 including but not limited to design drawings, shop drawings, and manufacturing
8 specifications.¹

9 Defendant opposed producing any information other than that for the specific candle
10 which plaintiff alleged injured her, i.e., a three wick candle with a Eucalyptus mint fragrance.

11 A good portion of the discovery requests sought to ascertain information about flashover
12 incidents:

13 Request No. 6

14 Please produce all DOCUMENTS, including but not limited to all
15 COMMUNICATIONS, EVIDENCING any investigation of other incidents in which a
16 candle marketed, sold, or distributed by DEFENDANT allegedly caused personal injury
17 or property damage.

18 ¹ The definition of "CANDLE" included much more than the specific candle which injured
19 plaintiff. As set forth in the Joint Statement, ECF No. 36 at 8-9:

20 Plaintiff broadly defines "candle" in this case by referring to the original wax
21 concept patents filed with the U.S.P.T.O. in 1998 and 2001, thereby tagging every
22 candle incarnation sold by BBW over the last twenty years:

23 "CANDLE" means or refers to the Bath & Body Works "World's Best
24 Candle," covered by United States Patent Nos. 6,284,007,
25 6,497,735, and/or 6,730,137, including but not limited to the candle
26 identified, sold, or marketed as a three-wick "aromatherapy
27 eucalyptus spearmint scented candles" and/or a three-wick
28 "aromatherapy" scented candle.

29 The patents referenced by plaintiff relate to the base wax that is incorporated into
30 every candle sold by BBW (and many other candle retailers!) over the past two decades.
31 This is the equivalent of demanding information about a particular type of sandwich
32 bread by defining it as any product containing "flour."

33 Defendant objected to plaintiff's definition of candle and then answered all of
34 Plaintiff's requests with the unilaterally determined, very limited definition of "candle,"-- the
35 actual candle system at issue, namely the three-wick aromatherapy eucalyptus spearmint
36 scented candles.

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Request No. 12

Please produce all DOCUMENTS EVIDENCING any sudden, unexpected flaring of the CANDLE, including but not limited to the OTHER CANDLE INCIDENTS.

Request No. 13

Please produce all documents EVIDENCING the cause of any sudden, unexpected flaring or any alleged sudden, unexpected flaring of the CANDLE, including but not limited to OTHER CANDLE INCIDENTS.

As set forth in footnote 1, defendant responded only as if each request specified the specific type of candle which injured plaintiff:

“Objection. Overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, this request is vague and ambiguous and key terms are not defined. Plaintiff’s definition of “the CANDLE” is so broad that it includes a great number of different and dissimilar products. ... Defendant agrees to search for and produce documents or communications evidencing any investigation relating to claims involving allegations of personal injury or property damage as a result of a high flame or sudden high flaming, associated with the use of the *candle at issue*.”

ECF No. 36 at 14-15 specifically responding to Request 6 (emphasis added).

The Motion to Compel Further Responses

Although it is not precisely clear, defendant appeared to have initially produced only flashover incident information for seven three wick Eucalyptus Spearmint flashover incidents, and sixteen Consumer Product Safety Commission public noted incidents for any candle.

Plaintiff moved to compel discovery for the universe of flashover incidents.

Defendant opposed the “flashover” incident requests as broadly defined by plaintiff on the following grounds -

1. The requests were burdensome and not proportional to the needs of the case in that plaintiff had not made any showing that all candles had a similar flashover potential;
2. Privacy interests of third parties would be impinged;
3. Post-incident information was not relevant at all.

1 Given that the primary thrust of the discovery was plaintiff's desire to obtain information
2 about other flashover incidents, defendant proffered two declarations - Steven Smith, who
3 discussed the millions of candles distributed by defendant, as well as the difficulties in
4 extrapolating flashover tendencies of different type of candles, and Tabitha Vaughn who focused
5 on the difficulties of supplying flashover information even of just three-wick Eucalyptus
6 Spearmint candles. Importantly, the Vaughn declaration (ECF No. 36-8) proffered:

7 6. Unfortunately, the database does not allow for Boolean searches to be
8 conducted. In order for a particular product to be tracked, a filter is applied for
9 that product's SKU number.

10 7. If a product is not identified by a consumer, or if the SKU is not known, then
11 the consumer or customer service representative sometimes refer to the product in
12 the "case text" section of the VOC.

13 8. The search process is therefore part automatic and part manual. First, a filter
14 search is applied to narrow the retailer (i.e. BBW) and product type. Then, a
15 manual review of all "case text" sections occurs to look for a product that is
16 similarly named as what is being searched for. This process is time intensive and
17 requires significant resources.

18 9. By way of illustration, I searched the database for all consumer concerns
19 identifying "Eucalyptus Spearmint." The preliminary results included all types of
20 candles, lotions, sprays, soaps, wall plug-ins, car fragrances and body washes with
21 that fragrance.

22 10. A manual review was then required to separate the non-candle concerns.

23 11. It is important to note that the database captures all consumer concerns and
24 comments. This varies from positive experiences with a product to potentially
25 negative incidents. By way of illustration, a customer may report that they don't
26 like the strength of a fragrance, or that they referred an old container that is now
27 discontinued.

28 12. When the consumer's concern is entered into the database, the system tracks

1 each consumer's comment separately. This means that any given phone call can
2 produce several entries for one consumer. If a consumer calls about more than one
3 product, the system runs a report for each concern or comment the consumer
4 detailed. By way of example, if a consumer contacted BBW about a Vanilla Bean
5 lotion and informed us they did not like the smell, and thought the lotion was too
6 thin, that would register as two separate entries in the system.

7 13. It took two people nearly 10 days to search for and compile results of all
8 consumer claims related to the Eucalyptus Spearmint, 3-wick candle alone.
9 Another 10-12 hours on these Eucalyptus Spearmint results is anticipated to filter
10 the results for accuracy and responsiveness to plaintiff's request. We are in the
11 process of producing those results to counsel for production in this case.

12 14. Accordingly, the process to respond to specific requests for each any every
13 candle system sold by BBW would be extraordinarily cumbersome, time
14 consuming and burdensome.

15 *The Hearing*

16 I will point out, Judge, something that may have gone unnoticed here, but there was an
17 affidavit from a Ms. Tabitha Vaughn, in-house at L Brands, I think. And it's attached to
18 the Joint Statement. And she talks about, "Oh, this is a great burden on, on this company
19 to have to go through and -- 'cause the way we've set up our system it's difficult to find
20 claims relating to this product and to this particular candle. And then when we get that
21 particular candle we have to, in many instances, manually read all of the entries to see if it
22 involves unexpected flaring or explosions."

23 Plaintiff's Counsel Argument, ECF No. 49 at 9.

24 MR. OSTERMAN: Sure. And that's what we tried to address in the Tabitha Vaughn
25 affidavit. What she's saying is, "For us to check our claim system," okay, "for us to, to
26 check our claim system, we are looking for, first of all, what product. We can't search by
27 eucalyptus mint because we sell -- we're a fragrance company. We're, we're a company
28 that sells fragrant products. So we sell air fresheners in cars. We sell lotions, creams, lot
of things that have the word eucalyptus mint. We've got to look for eucalyptus mint

1 candle. And sometimes that's checked in a -- that is something that -- that the -- that is
2 supposed to be checked, but it's not always and faithfully entered that way. So the only
3 way we can be sure of what product we're looking for when we first narrow it to
4 eucalyptus mint, that can take the claims database for, for a company that sells thousands
5 of different products a year and

6 ***

7 So every, everything that comes up as eucalyptus mint candle they're then going into and
8 they have to read because they can't search for, they can't do string searches. They can
9 search for the word, as I understand it, they can do one-word searches, but we get things
10 like "flame" or "fire." For every candle claim, or a high percentage of them, is going to be
11 talking about, "I didn't like how it burned. It produced soot. The flame went out. The
12 flame was too high. The flame was too low. The flame seemed off center. It was up
13 against the glass." Those are all kinds of things that get, that get entered in and somebody
14 has to manually go through and look for something that's consistent with what they're
15 describing. That's what Tabitha Vaughn explained to us and what we were trying to put
16 into the affidavit to her, that it is a labor intensive, time-intensive process to search for all
17 that.

18 Defense Counsel Argument, ECF No. 49 at 19-20.

19 ***The Order***

20 Despite not specifically referencing the Vaughn declaration, the undersigned was
21 persuaded by that declaration and the Smith declaration that permitting a search of all candles for
22 flashover events was not proportional to the needs of the case in terms of burden—especially
23 because of the necessary manual search. As set forth in the first discovery order:

24 ...and Defendant has shown that to respond with regard to all of the various
25 iterations of candle it markets would be a daunting exercise, the court will, at this
26 point limit the scope of production to that involving all triple wick candles
27 regardless of fragrance as the similarities between this formulation of candle
28 would appear to the court to be most relevant to Plaintiff's ultimate burden of
proof.¹ Defendant need not, therefore, produce documents regarding other candle
configurations at this point. [Fn 2]

ECF 40 at 4

1 Footnote 2:

2 Defendant protested at hearing that even this limited discovery is too much.
3 Defendant contends that although its product files, or complaint files, are
4 somewhat computerized, it is not possible to perform a Boolean search (key word
5 search) on these files. If this is so-- time to retain an IT expert who can perform
6 this task if a manual search is too burdensome. Also, for the first time, after
7 exclaiming in its part of the Joint Statement that the candle market is comprised of
8 a great many types of candles, and this is why the burdensome, non-proportional
9 discovery should be denied, Defendant's counsel at hearing asserted that three
10 wick candles comprise the vast, vast majority of its candles sold, and that the
11 court's proffered limitation is unworkable. This different assertion is too little-too
12 late, unverified, and seemingly doubtful.

13 ***Post-Order Discovery***

14 Plaintiff's counsel, focusing on candle mishaps, engaged in post-order discovery to
15 ascertain whether there was indeed a computerized method to discover flashover incidents. And
16 indeed there was.

- 17 • Customer comments are assigned a "reason code" in BBW's customer database
18 system (Exhibit 2, Tabatha Vaughan Dep. Tr. 21:13-24:13,31:7-20, 42:6-9, 44:15-
19 46:2 (Mar. 14, 2018));
- 20 • BBW has at least two reason codes for sudden and unexpected flaring. The first
21 is the code for a candle fire (CPR CD FRE). The second is the code for a candle
22 flashover (CPRU CN FLS) (id. at 29:2-8, 31:7-13);
- 23 • By running a search for candle fires and candle flashovers, all noncandle
24 products would be eliminated (id. at 32:23-33:11, 75:24-76:6, 77:4-79:15);
- 25 • BBW could identify all candle fires and candle flashovers involving the
26 Eucalyptus Spearmint candle by applying only two filters: reason code and product
27 SKU (id.);
- 28 • BBW could identify all candle fires and candle flashovers of its three wick
candles using the same two filters (id.);
- It did not take two people "nearly 10 days" to search for consumer claims
regarding the Eucalyptus Spearmint, three-wick candles. Instead, those two
employees only worked one-to-two hours per day in each of those 10 days and

1 devoted the rest of their time to their regular work duties (id. at 95:13-25.)

2 Plaintiff's Motion for Sanctions, ECF No. 57 at 3.

3 Defendant proffered its version of the important facts from the Vaughn deposition:

4 Q. How long did it take for [the head of IT] to gather all the entries relating to
5 candle fires or flashovers?

6 A. It took an estimated 8 to 10 hours. Originally, we thought it would be 10 to 12,
7 but it was a little less than that.

8 Q. Do you know the process that he used to pull all of the entries that had reason
9 codes CDFRE or CDFLSH?

10 A. Yes. I know it's a very tedious process.

11 Q. And can you describe the process to me?

12 A. So we're able to go into E Power Center and set up a filter with columns based
13 on what type of information we're requesting. So we would request the two reason
14 codes that we've shared here, and then we have to create more columns for the
15 dates received. So whatever dates the reports are requested from.

16 Q. Is that, the date --

17 MR. OSTERMAN: Were you done with your answer?

18 THE WITNESS: No.

19 MR. STANNER: That's okay.

20 BY MR. STANNER: The date that you just talked about, that date is in the system,
21 right?

22 Vaughan Dep. Tr. at 32:23-33:19.

23 [Defendant's Argument] The premise of Plaintiff's sanction motion is that Ms.
24 Vaughan and BBW could have been more efficient. See Dkt. No. 57 at 5 ¶ 11 ("There was no
25 need to manually search the narrative sections."). But Plaintiff's contention completely ignores
26 Ms. Vaughan's testimony:

27 So part of the reason it could also take longer for this is if a
28 customer emails us regarding a eucalyptus spearmint candle, lotion,

1 doesn't matter what, and we don't speak to that individual directly
2 but we just have their complaint, we use a reason code that would
3 not categorize under the candle reason codes. And they don't
4 contact us after that. That could produce a whole list of
5 uncategorized reason codes. So that's part of it, too. So I want to
6 be clear. While we search by those two candle reason codes, we
7 could have it where they've emailed us in, and that would go under
8 our basic reason code. Until we actually speak to them and update
9 to candle, it could fall under that category as well. So that's more
10 of time, too. It's very time consuming to run a filter on all of those
11 things and weed out the candles. That's another reason we had to
12 go that route which is more time consuming. So I want to make
13 sure that I'm sharing that, because it's a big part of what we did.

14 Vaughan Dep. Tr. at 87:23-88:21.

15 Ms. Vaughan further testified that the process was time consuming and tedious because
16 she also needed to search the case notes to eliminate materials that were not relevant:

17 Q. You described at the beginning of Paragraph 6 [of your affidavit], you say,
18 unfortunately, the database does not allow for Boolean searches to be conducted,
19 and therefore filters were applied for the product SKU number. That's a true
20 statement?

21 A. Yes.

22 Q. Okay. You then go on to describe how, because of the limitations in the system, you
23 were required to review the case text and narrative form for each of the entries that came
24 back on your initial search, correct?

25 A. Yes.

26 Q. And what things were you looking for in the case text in order to provide information
27 responsive to what you were being asked to provide?

28 A. Looking for key words. We wanted to make sure we were identifying 3-wick candles.
So if we did a search by the two reason codes, that could display case texts for all candles,
votives, single-wicks, two-wicks. So we had to search that case text to eliminate anything
that would not be relevant to the report that was being requested.

Q. Okay. And so you were reviewing that to make sure – you said you applied, the first
filter you applied, was the SKU for eucalyptus spearmint, because that's what you
understood was the product at issue in the case, right?

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A. Yes.

Q. And [Plaintiff's counsel] is making the point that you could have applied as a first filter a candle fire code, and that would have brought back just candles and not all of the other products that eucalyptus spearmint is in. You understand that's the point he's making?

A. Yes, I understand that. In looking back, I could have done that. But at the end of the day we still had to look through the case text to get a true reflection of what we were trying to bring forward.

Q. Okay. And were you trying to deceive anybody with the affidavit that was submitted?

A. No.

* * *

Q. So no matter which filter you applied first, you would have still had to manually review the case text in order to satisfy yourself that you were being inclusive and responsive to the request, correct?

A. Yes. It is a Court order. We want to make sure that we're providing all accurate information.

Q. And you were -- in many instances the SKU is not known. So you may know it's a candle related claim.

A. Mm-hmm.

Q. But you have no idea if it was related to eucalyptus spearmint or if it was a 3-wick candle, correct?

A. Correct.

Q. So the only way to determine if it was eucalyptus spearmint and a 3-wick candle, if there's no SKU number in the database, was for you to do a manual review of the case text?

A. Correct.

Q. And that's what you were trying to describe in the affidavit as being time consuming, and I think you used the word today tedious?

A. Yes, it is tedious. And to even go more up on that is if one of our associates doesn't state it it's a 3-wick. So let's say Mary says 3-wick and Amy next to her says candle, it's going to display different results, because I'm searching by 3-wick and I have to search by

1 a regular candle, and then it could be a votive, single-wick, and then we have to go in and
2 determine.

3 Q. Okay. And you estimate that you've given us today is that that took you between 10
4 and 20 hours to comply with the original effort of the search limited to eucalyptus
5 spearmint, correct?

6 A. Yes.

7 Q. And [the head of IT], you estimate, spent a similar amount of time, another 10 to 20
8 hours?

9 A. So myself and [the head of IT] together spent 10 to 20 hours

10 ECF No. 59 at 3-7

11 Ultimately, a nearly 600 page spread sheet (computer generated in the main) of 1,280
12 candle flashover incidents was given to plaintiff's counsel. The court is unsure whether this
13 represents the number of 3 wick candle incidents or whether there are other one or two wick
14 incidents as well.

15 ***Discussion***

16 A. The Proper Basis for Sanctions

17 Plaintiff asserts several bases for the imposition of sanctions: Rule 11 (false certification
18 in pleadings), the inherent power of the court to punish false statements, and ultimately, Fed. R.
19 Civ. P 37 (without differentiation). ECF No. 57 at 1. Although plaintiff later discussed Rule
20 37(b) as opposed to (a), the thrust of the motion included all of Rule 37. In the reply brief, ECF
21 No. 63 at 6, plaintiff made this clear.

22 However, by the very words of Fed. R. Civ. P. 11, this rule does not apply to discovery
23 disputes. Rule 11(d).

24 The court need not endeavor to determine whether it should utilize its inherent authority to
25 rectify a false statement before the court, as the "falsity" did not stem from a perjurious statement,
26 but rather occurred as a result of an evasive or incomplete disclosure.

27 Rule 37(a) (4) expressly lists the evasive or incomplete disclosure as a basis for a motion
28 to compel further discovery, i.e., such a response is treated as a "failure to disclose, answer or

1 respond.” Rule 37(a)(5) *requires* the imposition of sanctions unless the “failure to disclose etc.”
2 was substantially justified or the imposition of sanctions would be otherwise unjust. Subsection
3 (C) of Rule 37(a)(5) allows a court to “apportion” sanctions if the entire discovery response was
4 partially not substantially unjustified. While some cases have determined that the “losing party”
5 has the burden of proving substantial justification, Easley v. U.S. Home Corp., 2012 WL 3245526
6 (D.Nev. 2012), the better formulation in this case where each party was partially successful on the
7 issue upon which sanctions are sought is that the party against whom sanctions are sought has the
8 burden to demonstrate substantial justification. Zig Zag Holdings LLC v. Hubbard, 2014 WL
9 3724800 *1 (N.D. Cal. 2014), *citing* Hyde and Drath v. Baker, 24 F.3d 1162, 1171 (9th Cir.
10 1994). This is especially true in situations where the basis for the sanctions motion is a failure to
11 disclose.

12 B. Whether Sanctions Are Substantially Justified

13 Defendant, at the very least, and despite the request made for “all candle” flashover
14 incidents, purposefully shot itself in the foot when it maintained its initial position that it would
15 not produce any information except scattered incidents of public record, or otherwise information
16 about *only* three wick Eucalyptus Spearmint candles. It then argued that producing information
17 about even the very candle at issue, the three wick Eucalyptus Spearmint candles, was overly
18 burdensome. As it turned out, and as demonstrated by the Vaughn declaration testimony, it was
19 logistically more burdensome to maintain this position than it would have been simply to turn
20 over the computer generated information of candle flashover incidents—something plaintiff had
21 initially requested. Ultimate production of the flashover spreadsheet objectively demonstrates
22 this fact. In essence, defendant created its own logistical burden by fashioning a self-created,
23 manual search burden as a reason to preclude discovery into seemingly a substantial number of
24 flashover incidents.²

25 As the undersigned discussed at hearing on the sanctions motion, he felt misled on the

26 _____
27 ² Whether or not plaintiff can actually prove a design connection or general dangerous propensity
28 of defendant distributed three wick candles, or candles in general, is not at issue here. As the
court indicated in its initial discovery order, the lack of proving her case during the discovery
phase was not a reason to deny discovery into at least three wick candles in general.

1 arguments defendant was making at the initial motion to compel with respect to the discovery
2 related to flashover incidents. Combined with the “millions of candles distributed” testimony of
3 Steven Smith, there was at the initial motion to compel process, a nearly complete emphasis on
4 the need for a very burdensome manual search; there was no discussion of the computer
5 generated reason codes which could have been implemented to greatly reduce this proffered
6 burden. The conversation about having to manually winnow candles from other types of
7 fragrance products, and even then manually determine whether the incident was one responsive to
8 the flashover requests, and then manually limiting such search to three wick Eucalyptus
9 Spearmint three wick candles was at best an obfuscation. It appears to have been born of a
10 steadfast desire to keep from view in this litigation the number of flashover incidents in general.³

11 The undersigned considered and relied upon defendant’s arguments on the initial motion
12 to compel when it stated that defendant had “won the day” (at least in significant part), and
13 limited discovery to three wick candles. If the information about reason codes had been imparted
14 during the initial motion to compel proceedings, the undersigned might well not have made even
15 that limitation with respect to the discovery requests for flashover incidents.⁴

16 Therefore, with respect to the important discovery about other candle flashover incidents,
17 the undersigned does not find that defendant’s positions in the discovery meet and confer, nor in
18 its arguments in papers or at hearing, to be substantially justified.

19
20 ³ The undersigned has considered plaintiff’s motion to supplement the record, ECF No. 83, in
21 which plaintiff sets forth the quote that “at that time,” presumably at the time the Vaughn
22 affidavit was crafted, defendant’s counsel was unaware of the “reason codes” which would have
23 made easy what defendant argued then was very hard. Such a statement by defendant’s counsel
24 strains credulity. The court would be asked to believe that when the initial motion to compel was
under consideration, or even earlier, defendant’s information personnel knew of a hard way to
obtain requested information and an easy way, but nevertheless advised counsel only of the hard
way.

25 The above desire to keep incidents away from public scrutiny is also supported by the
26 undisputed fact that personnel in the call center were instructed to deliver a scripted response to
complainants involved in flashover incidents which included the statement: this has never
happened before, but can we get more information....

27 ⁴ This would not have been the case with respect to requests for product information per se, e.g.,
28 design information, for “all candles.” This motion for sanctions does not relate to this non-
flashover incident discovery.

