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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEOFFREY PECOBER, et al.,)
)
Plaintiff(s),)
)
v.)
)
ELECTRONIC ARTS INC.,)
)
Defendant(s).)
_____)

No. C08-2820 VRW (BZ)
THIRD DISCOVERY ORDER

Before the Court is plaintiffs' request for the production of certain pricing and marketing documents for the 2001-2004 period. In its opposition, defendant agreed to produce many of the requested documents. In their reply, plaintiffs state that the defendant's proposed production is deficient in four respects.

First, they find defendant's representation that certain documents do not exist not credible. However, the Court takes the representation at face value under Rule 11 and will not order further production merely because plaintiffs believe documents must exist. If in discovery, plaintiffs learn that the requested documents do exist and defendant has not been

1 candid with the Court, plaintiffs will have their remedy.

2 Second, plaintiffs complain that defendant has not
3 specified a production date. **IT IS HEREBY ORDERED** that the
4 additional documents described in the opposition shall be
5 produced by August 24, 2009.

6 Third, this ruling does not affect future discovery.

7 Fourth, plaintiff is correct that defendant has not
8 provided the Court with a precise estimate of how expensive
9 or burdensome producing the remaining documents would be.

10 However, the Court is satisfied that defendant has shown that
11 the cost is likely to exceed a million dollars. More
12 importantly, plaintiffs have not met their burden of
13 establishing that the relevance of the requested documents
14 justifies any substantial cost. Essentially, Professor
15 MacKie-Mason makes two related points in his somewhat
16 conclusory declaration. He declares that absent further
17 documents for him to review, his opinion will be subject to
18 challenge on the grounds that had he reviewed documents from
19 earlier years, his opinions would have been more reliable and
20 his damage estimates might have been more conservative. The
21 solution to these concerns is not to require defendant to
22 spend more than a million dollars but to preclude defendant
23 from challenging any opinion that Professor MacKie-Mason
24 renders on such grounds.

25 Accordingly, **IT IS ORDERED** that plaintiffs' request for
26 additional documents is **DENIED**. However, defendant is
27 precluded from challenging any opinions that Professor
28 MacKie-Mason renders on the grounds that those opinions would

1 have been different or more reliable had he reviewed
2 documents from the 2001-2004 time period which defendants
3 objected to producing and did not produce because of this
4 Order.

5 Dated: August 18, 2009

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8 Bernard Zimmerman
United States Magistrate Judge

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