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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LOOP AI LABS INC,
Plaintiff,
v.
ANNA GATTI, et al.,
Defendants.

Case No. 15-cv-00798-HSG

ORDER

Having reviewed the record of the discovery disputes in the above-titled action, and having conferred with Magistrate Judge Donna Ryu, the Court issues this order as a final warning.

The discovery system depends absolutely on good faith and common sense from counsel. The courts, sorely pressed by demands to try cases promptly and to rule thoughtfully on potentially case dispositive motions, simply do not have the resources to police closely the operation of the discovery process. The whole system of Civil adjudication would be ground to a virtual halt if the courts were forced to intervene in even a modest percentage of discovery transactions. That fact should impose on counsel an acute sense of responsibility about how they handle discovery matters. They should strive to be cooperative, practical and sensible, and should turn to the courts (or take positions that force others to turn to the courts) only in extraordinary situations that implicate truly significant interests.

In re Convergent Techs. Sec. Litig., 108 F.R.D. 328, 331 (N.D. Cal. 1985). The discovery record illustrates the parties' pervasive inability to comply with these general principles. The parties' failure to meet their most basic professional obligations, and the enormous waste of resources that has resulted, must stop. Accordingly, the Court ORDERS as follows:

1. By February 12, 2016, all parties must submit for *in camera* review all client financial information necessary for the Court to independently assess any claim of inability to pay a Special Master's fees. This includes information about any person or entity who is in any way funding or promising to fund a party's litigation costs. Each party must also submit its engagement letter

1 with counsel for *in camera* review. The burden of showing inability to pay rests entirely on the
2 party making such a claim.

3 2. By February 12, 2016, each party shall submit a brief of no more than 5 pages regarding
4 the Court's authority to require the parties to bear the cost of a discovery Special Master absent the
5 parties' agreement to do so. The Defendants may submit a single consolidated brief if they wish.
6 The parties must cite specific authority in support of their positions, and their arguments cannot
7 rely on generalized principles regarding the Court's overall authority to control its docket. The
8 parties should cite specific examples of orders addressing this question if they find any.

9 3. The Court ORDERS the parties to provide the Court (the undersigned and Judge Ryu)
10 dial-in information and an agenda for the standing meet-and-confer teleconference 24 hours before
11 each call. The parties will provide this information to Judge Gilliam's and Judge Ryu's deputy
12 clerks by e-mail. The Court may join these calls at any time without notice to monitor the parties'
13 conduct.

14 4. Consistent with their ethical obligations, the attorneys must treat their discovery
15 obligations with the seriousness and diligence required of them. The parties must act responsibly
16 during discovery, and ensure that their conduct is consistent with the spirit and purposes of the
17 discovery rules (including the parties' personal obligation "to secure the just, speedy, and
18 inexpensive" determination of this case). *See* Fed. R. Civ. P. 1. This requires cooperation among
19 the parties, and mandates adherence to the proportionality requirement of Federal Rule of Civil
20 Procedure Rule 26. To this end, the parties are expressly ORDERED to prioritize determining
21 what can be provided without controversy first, and then produce that material expeditiously,
22 rather than using formalistic discovery disputes and objections at the margins as an excuse to
23 delay *any* production. Obstructionist behavior will not be tolerated.

24 5. As the Court explained at the February 2, 2016 case management conference, the status
25 quo is entirely unacceptable, and unprecedented. If the current conduct continues, the offending
26 parties and their counsel will face significant consequences, and the Court will consider all
27 options, including:

28 a. Evidentiary hearings to determine which party is at fault. For example, the Court

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may hold a hearing, at which counsel and the parties will be required to testify, to assess whether a party's failure to timely attend and begin a deposition was obstructionist or in bad faith.

b. Imposition of monetary or other sanctions on the parties and counsel.

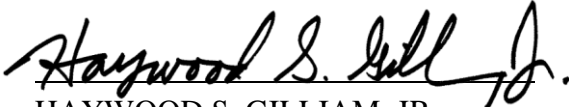
c. Referral to the Northern District's Standing Committee on Professional Conduct (Civil Local Rule 11-6(a)(1)).

d. Appointment of a Special Master at the parties' expense, with the Special Master given the authority to assess fees entirely to one side or the other in his or her discretion based on fault (*i.e.*, for a legitimate dispute costs would be assessed 50-50, while a party raising an unreasonable position would bear 100% of the costs associated with that dispute).

The one-year history of this action reflects a profoundly troubling and unprofessional pattern of behavior. The parties are warned to self-correct the wasteful and dysfunctional discovery dynamic in this case, immediately. Failure to do so will be punished as severely and as often as necessary to ensure the level of professional conduct required of those who practice before this Court. *See* Civ. L-R 11-4(a) (attorneys permitted to practice in this Court must "[p]ractice with the honesty, care and decorum required for the fair and efficient administration of justice").

IT IS SO ORDERED.

Dated: 2/5/2016


HAYWOOD S. GILLIAM, JR.
United States District Judge