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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CODEXIS, INC.,  
Plaintiff,  
v.  
ENZYMWORKS, INC., et al.,  
Defendants.

Case No. [3:16-cv-00826-WHO](#)

**ORDER FINDING DEFENDANTS IN  
CONTEMPT AND AWARDED  
PLAINTIFF COMPENSATORY  
SANCTIONS**

Re: Dkt. No. 190

**INTRODUCTION**

After two years of contentious litigation, the parties entered into a confidential settlement that included a consent judgment of patent infringement, a stipulated permanent injunction, and a stipulated protective order (“SPO”) limiting the parties’ comments on the settlement to an agreed upon statement. Less than two weeks later, plaintiff Codexis, Inc. (“Codexis”) filed this motion to hold defendants EnzymeWorks, Inc. (U.S.) and EnzymeWorks, Inc. (China) a/k/a Suzhou Hanmei Biotechnology Co. Ltd d/b/a EnzymeWorks, Inc. (China) (collectively, “EnzymeWorks”) and Junhua Tao in contempt for violating the SPO because defendants issued press releases that did not use the agreed upon statement and that spun the litigation and parties in a way that the SPO was designed to avoid. Because defendants did not take “every reasonable step” to comply with the SPO, I find them in contempt. In addition to retracting the press releases, they are ordered to compensate Codexis’s counsel for reasonable fees and costs associated in seeking defendants’ compliance with the SPO.

**BACKGROUND<sup>1</sup>**

Codexis is a California biotechnology company that engineers customized enzymes called “biocatalysts.” On February 19, 2016, it filed this action against Junhao Tao and his companies (EnzymeWorks), alleging that Tao, a former trusted partner, took proprietary information from Codexis, including information about its enzymes, corresponding DNA and amino acid sequences, protein engineering and manufacturing processes. Compl. ¶ 15 (Dkt. No. 1). It brought claims for patent infringement of ten patents, trade secret misappropriation, breach of confidence, intentional interference with contractual relations, intentional interference with prospective economic relations, statutory unfair competition, and common law unfair competition. *See generally* Compl.

On April 29, 2016, Codexis filed a first amended complaint (Dkt. No. 32), and two weeks later, defendants moved to dismiss the state law claims and Codexis’s alter ego and agency theories of liability (Dkt. No. 34). I granted the motion in part, dismissing Codexis’s UCL claim under the unfairness prong, and its agency theory of liability. Order Granting In Part and Denying In Part Mot. to Dismiss (Dkt. No. 57). I denied the motion in all other respects. *Id.*

Defendants elected not to contest infringement of the asserted patents. Defs.’ Answer to First Am. Compl. (Dkt. No. 62); Further Joint Case Management St. (Dkt. No. 80). On July 31, 2017, the parties filed a stipulation of partial summary judgment for the patent infringement claims. Stipulation (Dkt. No. 101); Order (Dkt. No. 102).<sup>2</sup>

On August, 11, 2017, Codexis sought leave to amend its complaint to add claims for violation of California’s Uniform Voidable Transfer Act and common law fraudulent transfer against Tao and his son, Andrew Tao, based on information it had discovered during an “independent investigation” of its underlying claims. Dkt. No. 103. On September 25, 2017, I

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<sup>1</sup> I include only relevant background facts, with a more thorough recitation of the procedural history to provide context for resolution of this motion. For a full recitation of the background, see the order granting Codexis leave to amend its complaint. Dkt. No. 127. In its opposition to this motion, EnzymeWorks devotes a significant amount of the background to reciting facts irrelevant to the disposition of this motion, none of which are repeated here. *See* Opp’n to Mot. to Hold EnzymeWorks and Tao in Contempt at 2–6 (Dkt. No. 194).

<sup>2</sup> LiLaw, Inc., present counsel for defendants, replaced defendants’ former counsel on May 22, 2017. Dkt. Nos. 82, 83.

1 granted its request, Order Granting Leave to Amend (Dkt. No. 127), and on September 28, 2017,  
2 Codexis filed its second amended complaint adding these new claims. Second Am. Compl. (Dkt.  
3 No. 129).

4 Two days after I issued the order granting Codexis leave to file an amended complaint,  
5 LiLaw filed a motion for leave to file a motion for reconsideration of that order, Dkt. No. 128,  
6 without asserting any new facts or change of law. While that motion was pending, only 12 days  
7 later, LiLaw repeated that argument in a motion to dismiss the newly added claims, Dkt. No. 137.  
8 By this time, I had received a cascade of discovery disputes since LiLaw, Inc. had entered the  
9 case, including: Discovery Letter Brief *Joint Statement Re: Deposition Travel Costs* (Dkt. No.  
10 93); Statement *re: Discovery of Defendants' Assets* (Dkt. No. 94); Discovery Letter Brief *Joint*  
11 *Statement Re: ENZYMEWORKS MOTION TO COMPEL DISCOVERY* (Dkt. No. 111); Joint  
12 Discovery Letter Brief *re: Codexis's Request for Additional Time to Complete the Deposition of*  
13 *30(b)(6) Witness and Individual Defendant Junha "Alex"* (Dkt. No. 112); Joint Discovery Letter  
14 Brief *(First) Statement re: Issues in Defendants' Discovery Regarding Use of Codexis's Trade*  
15 *Secrets* (Dkt. No. 113); Joint Discovery Letter Brief *(Second) Statement re: Issues in Defendants'*  
16 *Electronic Discovery* (Dkt. No. 114); Joint Discovery Letter Brief *(Third) Statement re: Issues in*  
17 *Defendants' Financial and Alter Ego Discovery* (Dkt. No. 115); Joint Discovery Letter  
18 Brief *(Fourth) Statement re: Issues in Defendants' Responses to Contention Interrogatories* (Dkt.  
19 No. 116); Mot. to Strike Strem Deposition (Dkt. No. 117); Mot. for Disclosure of *Confidential*  
20 *Information to Expert Witness* filed by defendants (Dkt. No. 134); Mot. for Disclosure of  
21 *Confidential Information to Expert Witness* filed by Codexis, Inc. (Dkt. No. 143); Statement by  
22 *Plaintiff Codexis, Inc. re: Defendants' Violation of Court Order on Discovery Disputes* (Dkt. No.  
23 150). I issued numerous orders on those disputes. Dkt. Nos. 79, 96, 118, 151, 160.

24 I denied the motion to reconsider and sanctioned LiLaw in the amount of \$10,000 for  
25 needlessly multiplying this litigation by presenting the same arguments for the third time. Order  
26 on Motions (Dkt. No. 160). I specifically noted that:

27 The manner of litigation that I have witnessed since LiLaw's  
28 appearance in this matter—and on which other courts have

1 previously remarked<sup>3</sup>—greatly disturbs me. This sanction is  
2 undoubtedly far less than what plaintiff’s counsel would have sought  
3 if I allowed full compensation for reasonable attorney’s fees in  
4 opposing the motion. But this should serve as a warning to the  
5 lawyers in this case, particularly at LiLaw, that my patience with the  
6 nitpicking, formalistic, overly aggressive manner that has  
7 characterized the discovery process is at an end.

8 *Id.* at 9–10.

9 On February 5, 2018, the parties notified the court that they had agreed to settlement of the  
10 claims between them.<sup>4</sup> Dkt. No. 181. They filed a stipulated judgment of patent infringement  
11 (Dkt. No. 181), a stipulated permanent injunction (Dkt. No. 182), and the SPO (Dkt. No. 183).  
12 The following day, I issued orders granting the stipulations. Dkt. Nos. 184, 185, 186. Defendants  
13 also filed an unopposed motion to vacate the sanctions award in the December 4, 2017 Order on  
14 Motions. Defs.’ Unopposed Mot. to Vacate ECF 160 Sanction Order (Dkt. No. 179).

15 The SPO provides, in part, that “[t]he parties may make only the agreed statement,  
16 attached as Exhibit 1, to any third party concerning the settlement of the above-captioned action.  
17 The parties are prohibited from making any other statement or disclosure regarding the settlement  
18 of this action to any third party.” Stipulated Protective Order ¶ 3 (Dkt. No. 185). It also explicitly  
19 states that the order “shall be enforceable by motion including, without limitation, a motion for  
20 contempt.” *Id.* ¶ 4. The parties agreed statement follows:

21 Codexis, Inc. (“Codexis”) and EnzymeWorks, Inc. (U.S.), Suzhou  
22 Hanmei Biotechnology Co. Ltd, d/b/a EnzymeWorks, Inc. (China)  
23 (collectively, “EnzymeWorks”), Junhua Tao, and Andrew Tao have  
24 reached a settlement concerning the lawsuit filed by Codexis against  
25 EnzymeWorks, Junhua Tao, and Andrew Tao in the United States

26 <sup>3</sup> *E.g.*, *Raymat Materials, Inc. v. A&C Catalysts, Inc.*, No. 13-00567-WHA, Dkt. No. 110 (N.D.  
27 Cal. May 8, 2014)(granting attorneys’ fees to party opposing civil contempt motion filed by  
28 LiLaw, Inc. because it “was a frivolous motion and reasonable attorney’s fees are justified” and it  
was “not the first time counsel for Raymat has taken an unreasonable position... .”); *Dynetix  
Design Sols. Inc. v. Synopsys Inc.*, No. 11-05973-PSG, Dkt. No. 450 (N.D. Cal. July 11,  
2013)(denying motion for sanctions filed by LiLaw, Inc. and noting that it failed to comply with  
the local rules); *Peake Performance Nutrition v. Mediapower, Inc.*, No. 09-4933-AG (C.D. Cal.  
June 7, 2010) (denying motion for sanctions filed by LiLaw, Inc., and reminding the parties,  
“While litigation is by its nature contentious, no circumstances justify abandoning professionalism  
and civility that help make the legal profession a noble pursuit.”); *EnReach Tech., Inc. v.  
Embedded Internet Sols., Inc.*, No. 04-1255-CW, Dkt. No. 266 (N.D. Cal. Aug. 31, 2005)(denying  
motion for sanctions filed by LiLaw because there was “no basis”).

<sup>4</sup> The parties reached the confidential settlement on February 1, 2018. Stipulated Protective Order  
¶ 1.

1 District Court for the Northern District of California. The parties  
2 have entered into a settlement agreement, the terms of which are  
3 confidential. The parties have also stipulated to a judgment of patent  
4 infringement of all asserted patents against EnzymeWorks, and a  
5 permanent injunction barring any future infringement. The  
6 remaining claims against EnzymeWorks, and all claims against  
7 Junhua Tao, and Andrew Tao including trade secret  
8 misappropriation, breach of contract and voidable transfer have been  
9 dismissed with prejudice.

10 Stipulated Protective Order, Ex. 1 (Dkt. No. 183 at 5).

11 Less than two weeks later, Codexis filed a motion to hold EnzymeWorks and Tao in  
12 contempt for violating the SPO. Mot. to Hold EnzymeWorks and Tao in Contempt for Violating  
13 Court Order (“Mot.”)(Dkt. No. 190). On February 5, 2018, EnzymeWorks and Tao had issued a  
14 press release entitled “EnzymeWorks, Inc. and Codexis, Inc. Reach a Settlement Agreement.”  
15 2/5/18 Press Release (Gross Decl. ¶ 5; *id.*, Ex. B; Dkt. No. 189-2). Rather than using the agreed  
16 statement, the release spins the settlement in a way more favorable to defendants:

17 After nearly two years of litigation, EnzymeWorks, Inc. and  
18 Codexis, Inc. have decided to reach a settlement agreement.

19 All claims against EnzymeWorks’ founder Alex Tao have been  
20 dismissed with prejudice. Claims against EnzymeWorks including  
21 trade secret misappropriation and breach of contract have been  
22 dismissed with prejudice. As for patent infringement, both parties  
23 have stipulated to a judgment. For details please see  
24 <https://www.businesswire.com/news/home/20170811005520/en/EnzymeWorks-Dr.-Alex-Tao-Respond-Press-Release>.  
25 Biocatalysis is a relatively new field, and some guidelines are  
26 coming up to minimize legal risks and make the technology more  
27 attractive for chemical production. Learn more at  
28 [http://www.enzymeworking.com/index.php?\\_m-mod\\_article&\\_a=article\\_content&article\\_id=260](http://www.enzymeworking.com/index.php?_m-mod_article&_a=article_content&article_id=260).

We greatly appreciate our friends and customers’ trust and support during those difficult times, and especially than our legal counsel J. James Li and his team at LiLaw Inc. for their professional services, deep experience and dedication.

With the case behind, EnzymeWorks and Alex Tao will continue to improve the biocatalysis technology making it more efficient for green chemical manufacturing. EnzymeWorks develops its own enzymes and processes via retrosynthetic integration with chemical transformations, and is always committed to taking responsibility for IP.

2/5/18 Press Release.

Codexis’s counsel immediately emailed defense counsel to express their “dismay[ ]” that

1 defendants were “already violating the settlement agreement, mere days after signing it.” 2/5/18  
2 2:21 PM Email from Gross to Li (Gross Decl. ¶ 6; *id.*, Ex. C; Dkt. No. 189-3). Codexis’s counsel  
3 indicated that the press release violates the settlement agreement by deviating from the agreed  
4 upon statement, and makes “demonstrably false statements,” including that the claims against  
5 defendants had been dismissed.<sup>5</sup> *Id.* It requested defendants to immediately retract the press  
6 release, while reserving its right to “seek sanctions, contempt findings, and any other available  
7 remedies, and to bring additional claims arising from [defendants’] unfortunate conduct.” *Id.*

8 Defense counsel responded that he “thought they just wanted to get it done before they  
9 break for Chinese New Year[,]” and indicated that the statements were “not substantively different  
10 from the approved agreement[.]”<sup>6</sup> 2/5/18 3:00 PM Email from Li to Gross (Gross Decl. ¶ 7; *id.*,  
11 Ex. D; Dkt. No. 189-4). But, he agreed that it was “a little premature to use the words ‘have been  
12 dismissed’” since the claims had yet to be dismissed. *Id.*; *see also* Li Decl. ¶ 3. Codexis’s counsel  
13 disagreed with defense counsel’s proposal to address the situation and his characterization of the  
14 press release as merely an issue of “timing.” 2/5/18 3:45 PM Email from Gross to Li (Gross Decl.  
15 ¶ 8; *id.*, Ex. E, Dkt. No. 189-5). Defense counsel reiterated his position, but indicated that he  
16 would “ask the client to withdraw the press release.” 2/5/18 4:04 PM Email from Li to Gross

17 \_\_\_\_\_  
18 <sup>5</sup> Codexis points out several “problems” with the press release, including:

19 (1) violates the parties’ stipulation (and soon-to-issue court order) by  
20 deviating significantly from the “agreed statement”; (2) directs the  
21 reader via a hyperlink to a self-serving press release EnzymeWorks  
22 and Dr. Tao had issued attacking and threatening legal claims  
23 against Codexis and its CEO, and putting its own biased spin on the  
24 admission of infringement; (3) tells the reader that “some guidelines  
25 are coming up to minimize legal risks” in the biocatalysis industry,  
26 with a link to another self-serving article authored by Dr. Tao; (4)  
27 contains a self-laudatory description of EnzymeWorks, including  
28 that it purportedly is a “world leader” in the field; (5) contains  
material false statements, like “EnzymeWorks develops its own  
enzymes and processes via retrosynthetic integration with chemical  
transformation, and is always committed to taking responsibility for  
IP,” “All claims against EnzymeWorks’ founder Alex Tao have  
been dismissed with prejudice,” and “Claims against EnzymeWorks  
including trade secret misappropriation and breach of contract have  
been dismissed with prejudice,” none of which has happened yet.

Mot. at 5–6.

<sup>6</sup> Counsel also spoke on the phone. Gross Decl. ¶ 3.

1 (Gross Decl. ¶ 9; *id.*, Ex. F, Dkt. No. 189-6); *see also* Li Decl. ¶ 3.

2 The next day, EnzymeWorks issued another press release, entitled “CORRECTING and  
3 REPLACING EnzymeWorks, Inc. Resumes Focus on Biocatalysis.” 2/6/18 Press Release (Gross  
4 Decl. ¶ 12; *id.*, Ex. I, Dkt. No. 189-9; Li Decl. ¶ 19; *id.*, Ex. D, Dkt. No. 194-1 at 33). This  
5 version was approved by defense counsel, Li Decl. ¶ 5, who emailed Codexis’s counsel advising  
6 that “the press release issued yesterday was withdrawn” and “a new press release [was] issued to  
7 correct the previous one[.]” 2/6/18 3:45 PM Email from Li to Gross (Gross Decl. ¶ 11; *id.*, Ex. H;  
8 Dkt. No. 189-8); *see also* Li Decl. ¶ 6. The “corrected” press release corrects little:

9 In 2016, Codexis, Inc. (“Codexis”) sued EnzymeWorks, Inc. (U.S.),  
10 Suzhou Hanmei Biotechnology Co. Ltd, d/b/a EnzymeWorks, Inc.  
11 (China) (collectively, “EnzymeWorks”) and EnzymeWorks founder  
12 Dr. Junhua “Alex” Tao in the United States District Court for the  
13 Northern District of California (the “Codexis Lawsuit”) for various  
14 claims. From the very beginning, EnzymeWorks decided not to  
15 oppose the patent infringement claims because of the limited  
16 exposure, but fiercely denied any other liabilities throughout the  
17 case. (See  
18 <https://www.businesswire.com/news/home/20170811005520/en/EnzymeWorks-Dr.-Alex-Tao-Respond-Press-Release>).

19 The Codexis Lawsuit is regarding biocatalysis technology, which is  
20 a relatively new field. Some guidelines are emerging to minimize  
21 legal risks and make the technology more attractive for chemical  
22 production: [http://www.enzymeworking.com/index.php?\\_mod\\_article&\\_a=article\\_content&article\\_id=260](http://www.enzymeworking.com/index.php?_mod_article&_a=article_content&article_id=260).

23 After two years of litigation, the Codexis lawsuit is drawing to a  
24 closure. The parties of the lawsuit have entered into a settlement  
25 agreement, the terms of which are confidential. The parties have  
26 also stipulated to a judgment of patent infringement of all asserted  
27 patents against EnzymeWorks, and a permanent injunction barring  
28 any future infringement. The remaining claims against  
EnzymeWorks, and all claims against Junhua Tao, and Andrew Tao  
including trade secrete misappropriation, breach of contract and  
voidable transfer are set to be dismissed with prejudice.

We greatly appreciate our friends and customers’ trust and support  
during those difficult times, and especially thank our legal counsel J  
James Li, PhD. and his team at LiLaw Inc. for their professional  
services, deep experience and dedication.

With the case behind, EnzymeWorks and Alex Tao will continue to  
improve the biocatalysis technology making it more efficient for  
green chemical manufacturing. EnzymeWorks develops its own  
enzymes and processes via retrosynthetic integration with chemical  
transformations, and is always committed to taking responsibility for  
IP.

1 About EnzymeWorks, Inc.: EnzymeWorks is a world leader in  
2 applying biosynthesis and green chemistry as its core technologies  
3 for contract research and manufacturing services. Its research team  
4 has contributed to over 20 books, filed over 100 patents and  
5 received numerous honors and awards in the field of biocatalysis  
6 and biomanufacturing. We also supply over a dozen cofactors  
7 including NAD, NADP, NADH, NADPH, NR, NMN, UDP  
8 glucose, and UDP glucuronic acid at large scale. Learn more  
9 at [www.enzymeworking.com](http://www.enzymeworking.com).

6 About LiLaw Inc: LiLaw Inc. is an intellectual property, business  
7 litigation and employment law firm based in CA, USA. Learn more  
8 at [www.lilaw.us](http://www.lilaw.us).

8 Contacts  
9 Press Contact:  
10 EnzymeWorks, Inc.  
11 Ling Zhu  
12 +86 512 8883 8789  
13 [services@enzymeworking.com](mailto:services@enzymeworking.com)

11 2/6/18 Press Release.

12 Codexis’s counsel again contacted defense counsel to express its view that the “corrected”  
13 press release “does not resolve the issue” and “is a clear violation of the protective order ... issued  
14 today.” 2/6/18 4:00 PM Email from Gross to Li (Gross Decl. ¶ 14, *id.*, Ex. K, Dkt. No. 189-11).  
15 Defense counsel again “disagree[d].” 2/6/18 4:33 PM Email from Li to Gross (Gross Decl. ¶ 15,  
16 *id.*, Ex. L, Dkt. No. 189-12; Li Decl. ¶ 6, *id.*, Ex. E, Dkt. No. 194-1 at 36). He indicated that “[t]he  
17 press release is not just about the settlement, but about the general topic of the company  
18 refocusing on its core business.” *Id.*

19 A link to the press release appears on the “news” frame of EnzymeWorks’s website, and  
20 clicking it leads to a new version entitled “EnzymeWorks Resumes Focus on Biocatalysis,” dated  
21 February 7. 2/7/18 Press Release (Gross Decl. ¶ 16; *id.*, Ex. M, Dkt. No. 189-13). This version  
22 states:

23 In 2016, Codexis, Inc. (“Codexis”) sued EnzymeWorks, Inc. (U.S.),  
24 Suzhou Hanmei Biotechnology Co. Ltd, d/b/a EnzymeWorks, Inc.  
25 (China) (collectively, “EnzymeWorks”) and EnzymeWorks founder  
26 Dr. Junhua “Alex” Tao in the United States District Court for the  
27 Northern District of California (the “Codexis Lawsuit”) for various  
28 claims. From the very beginning, EnzymeWorks decided not to  
oppose the patent infringement claims because of the limited  
exposure, but fiercely denied any other liabilities throughout the  
case. See  
<https://www.businesswire.com/news/home/20170811005520/en/EnzymeWorks-Dr.-Alex-Tao-Respond-Press-Release>. The Codexis



1 Lawsuit is regarding biocatalysis technology, which is a relatively  
2 new field. Some guidelines are emerging to minimize legal risks and  
3 make the technology more attractive for chemical production:  
4 [http://www.enzymeworking.com/index.php?\\_m=mod\\_article&\\_a=ar](http://www.enzymeworking.com/index.php?_m=mod_article&_a=article_content&article_id=260)  
5 [ticle\\_content&article\\_id=260](http://www.enzymeworking.com/index.php?_m=mod_article&_a=article_content&article_id=260). After two years of litigation, the  
6 Codexis lawsuit is drawing to a closure. The parties of the lawsuit  
7 have entered into a settlement agreement, the terms of which are  
8 confidential. The parties have also stipulated to a judgment of patent  
9 infringement of all asserted patents against EnzymeWorks, and a  
10 permanent injunction barring any future infringement. The  
11 remaining claims against EnzymeWorks, and all claims against  
12 Junhua Tao, and Andrew Tao including trade secret  
13 misappropriation, breach of contract and voidable transfer are set to  
14 be dismissed with prejudice. We greatly appreciate our friends and  
15 customers' trust and support during those difficult times, and  
16 especially thank our legal counsel James Li and his team in LiLaw  
17 Inc. for their professional services, deep experience and dedication.  
18 With the case behind, EnzymeWorks and Alex Tao will continue to  
19 improve the biocatalysis technology making it more efficient for  
20 green chemical manufacturing. EnzymeWorks develop its own  
21 enzymes and processes via retrosynthetic integration with chemical  
22 transformations, and always commit to take responsibility for IP.

23 About EnzymeWorks, Inc.: EnzymeWorks is a world leader in  
24 applying biosynthesis and green chemistry as its core technologies  
25 for contract research and manufacturing services. Its research team  
26 has contributed to over 20 books, filed over 100 patents and  
27 received numerous honors and awards in the field of biocatalysis  
28 and biomanufacturing. We also supply over a dozen cofactors  
including NAD, NADP, NADH, NADPH, NR, NMN, UDP  
glucose, and UDP glucuronic acid at large scale. Learn more  
at [www.enzymeworking.com](http://www.enzymeworking.com).

About LiLaw Inc: LiLaw Inc. is an intellectual property, business  
litigation and employment law firm based in CA, USA. Learn more  
at [www.lilaw.us](http://www.lilaw.us).

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2/7/18 Press Release.

Codexis indicates that “its reputation and good will in the industry have been adversely  
affected” by defendants’ press releases. Nicols Decl. ¶ 5 (Dkt. No. 190-2). It specifies that it has  
received inquiries about the press releases from two individuals at two of the world’s largest  
pharmaceutical companies, but has refrained from “meaningfully respond[ing]” given the court  
order. *Id.* ¶¶ 4–6. It also learned about a mass email “blast” sent to key individuals in the

1 pharmaceutical industry, directing them to EnzymeWorks’s press releases. *Id.* ¶ 6.

2 On February 20, 2018, Codexis filed this motion. Mot. (Dkt. No. 190).

3 **LEGAL STANDARD**

4 A district court has the statutory authority to punish “contempt of its authority,” including  
5 “[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command.” 18  
6 U.S.C. § 401; *see also Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831  
7 (1994)(“Courts thus have embraced an inherent contempt authority... .”); *Reebok Int’l Ltd. v.*  
8 *McLaughlin*, 49 F.3d 1387, 1390 (9th Cir. 1995)(“District courts do, and must, have the authority  
9 to punish contemptuous violations of their orders.”).

10 Civil contempt “consists of a party’s disobedience to a specific and definite court order by  
11 failure to take all reasonable steps within the party’s power to comply[,]” and “[t]he contempt  
12 need not be willful[.]” *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir.  
13 2006)(internal quotation marks and citations omitted). But “a person should not be held in  
14 contempt if his action appears to be based on a good faith and reasonable interpretation of the  
15 court’s order.” *Id.* (internal quotation marks omitted). On the other hand, “[a]n act does not cease  
16 to be a violation of a law and of a decree merely because it may have been done innocently.”  
17 *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949).

18 “Sanctions for civil contempt may be imposed to coerce obedience to a court order, or to  
19 compensate the party pursuing the contempt action for injuries resulting from the contemptuous  
20 behavior, or both.” *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986).  
21 “Compensatory awards are limited to ‘actual losses *sustained as a result of the contumacy.*’” *Id.*  
22 (emphasis in original). And, “[i]f the fine, or any portion of the fine, is coercive, it should be  
23 payable to the court[.]” *Id.*

24 **DISCUSSION**

25 **I. CONTEMPT**

26 Codexis argues that EnzymeWorks’s press releases “can only have been made in bad faith”  
27 because they were deliberately published in knowing violation of a clear court order. Mot. at 9.  
28 EnzymeWorks counters that its press releases reflected mere “style changes” that did not “alter the

1 substances of the approved statement[,]” therefore, “there was not even technical violation under  
2 the rule of good faith and reasonable interpretation.” Opp’n at 1 (Dkt. No. 194). It also urges that  
3 there is no “express provision prohibiting discussing the settlement agreement within the context  
4 of the broader subject matter . . . .” *Id.* In the event that I consider the press release a civil  
5 contempt, EnzymeWorks asks for an order to impose civil contempt on Codexis because “it  
6 spends several pages talking about how strong its case was before the settlement, intending to fuel  
7 the public speculation as to the contents of the settlement agreement.” *Id.* at 2.

8 EnzymeWorks distills the basis for Codexis’s motion down to two issues: “(1) paragraph 2  
9 of the Press Release was not verbatim of the approved statement; and (2) there are other  
10 paragraphs in the same Press Release seems to suggest [sic] that EnzymeWorks has settled the  
11 case in [sic] favorable terms.” Opp’n at 11. Concerning the first point, if the Press Release had  
12 been limited to minor deviations from the agreed statement, then EnzymeWorks’s conduct *might*  
13 be viewed as a “reasonable” attempt to comply with the SPO. I pause to note, however, that even  
14 that characterization stretches what constitutes reasonable considering EnzymeWorks could and  
15 *should* have repeated the statement verbatim, with the solitary tense change to reflect the fact that  
16 the remaining claims had yet to be dismissed. That is what the parties bargained for, and made  
17 enforceable through the SPO. Defendants did not “take all reasonable steps within [its] power to  
18 comply” with the clear and unambiguous language of the SPO. *See Reno Air Racing*, 452 F.3d at  
19 1130.

20 But EnzymeWorks did not limit itself to relatively minor changes between the agreed  
21 statement and paragraph 2 of its Press Release. Rather, it provided its spin on the “broader  
22 context” of the litigation and eventual settlement. EnzymeWorks insists that there is no express  
23 provision barring statements discussing the settlement agreement in a broader context. Opp’n at  
24 13. It breaks the Press Release into four paragraphs—the first describes the lawsuit in general, the  
25 second discusses the settlement, substantively conforming to the agreed statement, the third thanks  
26 customers and friends, and the fourth announces its plan to continue improving biocatalysis. *Id.* at  
27 15. It contends that the Press Release did not disclose any *details of the settlement*, other than  
28 what was contained in the agreed statement. *See* Opp’n at 13 (“The purpose of the Order is to

1 prevent the Parties from disclosing the terms of the settlement agreement.”); *id.* at 14 (“There is no  
2 violation of Section 3 under any good faith and reasonable interpretation of the section... .”); *id.* at  
3 15 (“The style changes discussed above in Paragraph 2 do not in any way convey additional  
4 information as to the contents or terms of the settlement agreement.”); *id.* at 17 (“The public has  
5 not learned anything from the Press Release about the settlement agreement which is not part of  
6 the approved statement.”). In its perspective, it complied with the SPO.

7 But this argument is emblematic of the “formalistic” manner that permeates defense  
8 counsel’s litigation style. *See* Order on Motions at 9–10 (“But this should serve as a warning to  
9 the lawyers in this case, particularly at LiLaw, that my patience with the nitpicking, formalistic,  
10 overly aggressive manner that has characterized the discovery process is at an end.”)(Dkt. No.  
11 160). The SPO unequivocally provides that “[t]he parties may make *only* the agreed statement,  
12 attached as Exhibit 1, to any third party concerning the settlement of the above-captioned action.”  
13 SPO ¶ 3 (emphasis added). It further indicates that “[t]he parties are prohibited from making *any*  
14 *other statement* or disclosure regarding the settlement of this action to any third party.” *Id.*  
15 (emphasis added). EnzymeWorks did not have the discretion to deviate from the statement.

16 Of course each press release must be viewed as a whole. A reasonable interpretation of the  
17 clear edict that “[t]he parties are prohibited from making *any other statement* ... regarding the  
18 settlement” would prevent the parties from making any other statement *on the subject of* the  
19 settlement. Even under EnzymeWorks’s own interpretation of the paragraphs of the Press  
20 Release, *see* Opp’n at 15, each broadly concerns the settlement because it is related to the lawsuit  
21 in general. The first paragraph references EnzymeWorks’s “limited exposure” on the patent  
22 infringement claims and “fierce[] deni[al] [of] any other liabilities... .” And it directs the reader to  
23 a previous press release discussing its negative perspective of Codexis’s claims. The second  
24 paragraph discusses biocatalysis, the subject of the lawsuit (and, necessarily, the settlement), and  
25 points the reader to “some guidelines ... to minimize legal risks... .” The third paragraph begins  
26 with a transitional sentence linking the litigation to the settlement, and then uses part of the agreed  
27 statement to describe the settlement, with the necessary tense change. The fourth paragraph  
28 thanks friends, customers, and LiLaw, and concludes with a “commit[ment] to take responsibility

1 for IP.”

2 EnzymeWorks’s interpretation of the SPO would have me distinguish statements  
3 *regarding the litigation* from statements *concerning the settlement*, and ignore the references to  
4 the previous press releases. Dr. Tao admitted that “[w]e referenced the two previously published  
5 articles in the Press Release *to describe the legal entanglement that had been distracting us from*  
6 *our business for the past two years.*” Tao Decl. ¶ 6 (Dkt. No. 194-2). This approach does not  
7 comply with the SPO. *See, e.g., Bradford Techs., Inc. v. NCV Software.com*, No. C 11-04621  
8 EDL, 2013 WL 75772, at \*7 (N.D. Cal. Jan. 4, 2013)(“There is no ‘substantial compliance’ when  
9 an SPO is directly violated.”). There is no reasonable way to read the press releases and not  
10 conclude that defendants tried to spin the settlement for their benefit, despite having agreed to  
11 something very different in the SPO. Defendants EnzymeWorks and Tao are held in CONTEMPT  
12 OF COURT for their deliberate violations of the SPO.<sup>7</sup>

13 **II. SANCTIONS**

14 Codexis contends that EnzymeWorks should be required to retract all statements made in  
15 violation of the court order, and publish a new press release explaining that the court has found it  
16 in contempt for making the previous statements in violation of the court order. Mot. at 12.  
17 Codexis insists that this explanation “is a reasonable step to take to begin to undo the reputational  
18 harm... .” Mot. at 12. It also seeks a coercive sanction to ensure compliance with future orders,  
19 and a compensatory sanction to reimburse Codexis its reasonable costs and attorneys’ fees in  
20 pursuing this contempt action. *Id.* at 13.

21 I will not issue a coercive sanction in this matter. Defendants shall strictly comply with  
22 this court order. I award Codexis’s counsel the full amount of its reasonable attorneys’ fees and  
23 costs incurred in connection with these contempt proceedings and with their efforts to secure  
24 defendants’ compliance with the SPO. In the event the parties do not reach agreement within ten  
25 days of this Order, Codexis may file an accounting of its recoverable fees and costs with a motion  
26

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27 <sup>7</sup> Defendants’ contention that Codexis violated the SPO by saying more than the agreed statement  
28 in its Motion for Contempt is preposterous. The SPO explicitly provided that it “shall be  
enforceable by motion including, without limitation, a motion for contempt.” SPO ¶ 4.

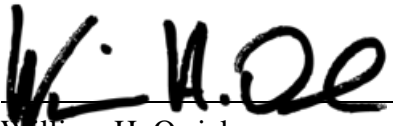
1 for payment of said fees and costs. If the Court grants such a motion, it may include an award of  
2 the fees necessary to compensate Codexis for its additional fees and costs for bringing the fees  
3 motion.

4 **CONCLUSION**

5 In addition to the award of fees described above, EnzymeWorks and Tao are hereby  
6 **ORDERED** to take all reasonable steps within five days of this Order to retract the 2/7/18 Press  
7 Release and all statements containing content that is substantially similar to that Press Release,  
8 using the exact same channels for the retraction through which the Press Release was originally  
9 published or distributed. It is **FURTHER ORDERED** that in the same retraction, they shall  
10 simultaneously publish to all recipients of the Press Release the following statement:  
11 “EnzymeWorks has been ordered by the United States District Court for the Northern District of  
12 California to retract its prior statements and press releases pertaining in any way to the settlement  
13 of the lawsuit filed against it by Codexis, Inc. The Court has found EnzymeWorks’s prior  
14 statements on the matter were made **IN VIOLATION OF A COURT ORDER**, and the Court has  
15 found EnzymeWorks and its founder Junhua “Alex” Tao **IN CONTEMPT OF COURT** as a result  
16 of those prior statements.” EnzymeWorks, Dr. Tao, and their counsel are not to say anything else  
17 in the retractions.

18 **IT IS SO ORDERED.**

19 Dated: March 29, 2018

20  
21 

22 William H. Orrick  
23 United States District Judge  
24  
25  
26  
27  
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