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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WAYMO LLC,
Plaintiff,
v.
UBER TECHNOLOGIES, INC., et al.,
Defendants.

Case No. [17-cv-00939-WHA](#) (JSC)

**ORDER RE: DECLARATION FROM
UBER REGARDING LATE-PRODUCED
LEVANDOWSKI EMAILS AND
DOCUMENTS**

At a telephonic discovery hearing on September 28, 2017, the Court learned that on September 27, 2017—less than two weeks before trial--Uber advised Waymo that it had just located 15,000 Anthony Levandowski Ottomotto emails and approximately 85 gigabytes of Anthony Levandowski Ottomotto Google drive documents that Uber had not previously produced (“Levandowski Otto Accounts”). Uber agreed to produce the Levandowski Otto Accounts by that evening, September 28, 2017, and the Court assumes it did so. At the September 28, 2017 hearing, the Court ordered Uber to file by noon today, September 29, 2017, a declaration that details how the emails and documents were found, where they were found, and why Uber did not find them earlier. (Dkt. No. 1890 at 7.)

Uber did not file a declaration by noon as ordered and it did not seek an extension of time. Instead, shortly after 2:00 p.m., it filed a declaration from Kevin Faulkner, a Managing Director and head of the New York digital forensics lab at Stroz Friedberg. Mr. Faulkner submitted a declaration in support of Uber’s opposition to Waymo’s motion for a preliminary injunction. He also prepared an expert report opining on whether Waymo’s confidential material migrated to Uber’s computer systems. (Dkt. No. 1894 ¶ 2.)

Faulkner’s declaration is inadequate. It is replete with hearsay regarding what unidentified

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Uber people supposedly said or did. (*See, e.g., id.* ¶¶ 4, 8, 10, 13, 14.) Even that hearsay, however, does not explain what information Uber had regarding the Levandowski Otto Accounts. Accordingly, Uber is ordered to submit a declaration or declarations from in-house and/or litigation attorneys that address in detail how and why the Levandowski Otto Accounts did not get produced until less than two weeks before trial despite their significance to this case. **These declarations shall be filed on or before 10:00 a.m. on Monday, October 2, 2017.**

IT IS SO ORDERED.

Dated: September 29, 2017



JACQUELINE SCOTT CORLEY
United States Magistrate Judge