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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GUARDANT HEALTH, INC.,
Plaintiff,
v.
NATERA, INC.,
Defendant.

Case No. 21-cv-04062-EMC (SK)
**ORDER REGARDING JOINT
DISCOVERY LETTER**
Regarding Docket Nos. 510

The parties brought this dispute about discovery to the Court. Plaintiff Guardant Health, Inc. (“Guardant”) seeks to compel production of documents from Howard S. Hochster, expert witness for Defendant Natera, Inc. (“Natera”). In addition, Guardant seeks production of documents, specifically electronically stored information, from Matthew Rabinowitz, a founder and former CEO of Natera, and Guardant seeks a full-day deposition of Rabinowitz, and Guardant’s request includes the requirement that he use the same search terms that other custodians of documents used in this case. There was a hearing on this matter on April 22, 2024.

The Court GRANTS IN PART and DENIES IN PART the motion to compel documents from Hochster. With respect to all categories of documents except Request 18, Natera represented at the hearing on this matter that Hochster had searched his electronic files using the search terms recommended by Guardant and that Hochster found no responsive documents. Thus, the Court cannot compel production of documents that do not exist. However, in Request 18, Guardant seeks documents sufficient to show the date, time, activities, and compensation that Hochster received from Natera. The Court ORDERS that Hochster search for and produce responsive documents, within 14 business days of this Order.

The Court DENIES the request by Guardant to depose Rabinowitz for a full day and DENIES the request by Guardant to compel Rabinowitz to search for his electronically stored

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information, with the same search terms used for other custodians. Because the District Court has limited Rabinowitz’s testimony at trial on a very narrow basis, such a search is not appropriate. Although Natera did not include him on its disclosures provided under Fed.R.Civ.P. 26, his existence and the fact that, as a founder and former CEO during part of the time that the events relevant to this case took place, he had knowledge of the relevant issues should not have been a surprise to Guardant. Guardant may take a half-day deposition of Rabinowitz.

IT IS SO ORDERED.

Dated: April 23, 2024



SALLIE KIM
United States Magistrate Judge