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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 BRIGGS A. MATSKO, et al.,

8 Plaintiffs,

9 v.

10 TESLA, INC., et al.,

11 Defendants.

Case No. 22-cv-05240-RFL (DMR)

**ORDER RE: JOINT DISCOVERY
LETTER BRIEF**

Re: Dkt. No. 131

12 This is a putative consumer class action against Defendants Tesla, Inc., Tesla Lease Trust,
13 and Tesla Finance LLC (collectively, “Tesla”) alleging that Tesla misrepresented the capabilities
14 of its advanced driver assistance systems (“ADAS”) technology. On May 15, 2024, the Honorable
15 Rita F. Lin allowed Plaintiff Thomas LoSavio’s negligence- and fraud-based claims to proceed to
16 the extent they rely on two categories of alleged misrepresentations: (1) statements regarding the
17 hardware needed for full self-driving capability, made on the Tesla website or in Tesla newsletters
18 from October 19, 2016, through LoSavio’s purchase of his Tesla in January 2017; and (2) Tesla
19 CEO Elon Musk’s statement at an October 19, 2016 Tesla news conference that Tesla cars would
20 be able to demonstrate “full [self-driving] autonomy all the way from LA to New York . . . by the
21 end of next year without the need for a single touch.” [Docket No. 96 at 6-7; Docket No. 84-1
22 (Pre-Purchase Misrepresentation Chart) at 1-5, 7-12, 17-19.]

23 LoSavio served his first set of Requests for Production (“RFPs”) on August 30, 2024 and
24 his second set on October 10, 2024. [See Docket No. 131 (“JDL”) at 1.] Tesla responded on
25 October 31 and November 11, 2024, respectively. [Id.] As of April 10, 2025, LoSavio reports
26 that Tesla has produced 44,472 pages of documents but that 39,729 of those pages are Owners
27 Manuals. [Id.] On January 21, 2025, Tesla proposed using certain search terms to identify
28 documents responsive to RFPs 6, 9, 11, 16-19, and 26-28, which concern Tesla’s representations

1 that its vehicles have the hardware needed for autonomous driving, including to drive
2 autonomously across the country. [*Id.*] Tesla also proposed five custodians and collected their
3 emails and work chats over the requested nine-year period. [*Id.* at 1, 3.] The parties have
4 exchanged search term proposals, and Tesla sent its most recent counterproposal on March 12,
5 2025. [*Id.* at 4.] On April 10, 2025, the parties filed a joint discovery letter brief in which
6 LoSavio moves to compel five additional custodians, additional sources of custodial ESI, and
7 adoption of LoSavio’s proposed search terms. This matter is suitable for determination without
8 oral argument. Civ. L.R. 7-1(b). For the following reasons, the motion is granted in part and
9 denied in part without prejudice.

10 **I. LEGAL STANDARD**

11 Federal Rule of Civil Procedure 26 provides:

12 Parties may obtain discovery regarding any nonprivileged matter
13 that is relevant to any party’s claim or defense and proportional to
14 the needs of the case, considering the importance of the issues at
15 stake in the action, the amount in controversy, the parties’ relative
16 access to relevant information, the parties’ resources, the
17 importance of the discovery in resolving the issues, and whether
18 the burden or expense of the proposed discovery outweighs its
19 likely benefit.

17 Fed. R. Civ. P. 26(b)(1). The party seeking discovery has the initial burden of establishing that its
18 request satisfies Rule 26(b)(1)’s relevancy requirement, *La. Pac. Corp. v. Money Mkt. 1*
19 *Institutional Inv. Dealer*, 285 F.R.D. 481, 485 (N.D. Cal. 2012), and the party opposing discovery
20 has the burden of showing that the discovery should not be allowed, *In re Glumetza Antitrust*
21 *Litig.*, No. 19-cv-05822-WHA (RMI), 2020 WL 3498067, at *7 (N.D. Cal. June 29, 2020). “The
22 parties and the court have a collective responsibility to consider the proportionality of all
23 discovery and consider it in resolving discovery disputes.” Fed. R. Civ. P. 26, advisory committee
24 notes to 2015 amendment.

25 **II. DISCUSSION**

26 Tesla proposed five custodians for its ESI searches, all Autopilot engineers: Kalena
27 Brown, Akshay Vijay Phatak, Pete Scheutzow, RJ Sekator, and Dhaval Shroff. [JDL at 1.] Tesla
28 explains that these custodians “include senior members of Tesla’s engineering team,” and that four

1 of them “have worked at Tesla over ten years (and the fifth has worked at Tesla for over five
2 years), and all work with Tesla senior leadership, including directly with Mr. Musk.” [*Id.* at 2.]
3 LoSavio seeks five additional custodians: Elon Musk; three “senior directors reporting directly to
4 Musk,” (Ashok Elluswamy, Andrej Karpathy, and CJ Moore); and Christopher Payne, a senior
5 Autopilot engineer. [*Id.* at 1.] LoSavio explains that these custodians are warranted because
6 “[o]nly Mr. Musk and his direct reports know the basis” for the representations at issue in the case,
7 and that “[i]nformation they exchanged is relevant to show the foundation for these
8 representations, known facts contrary to the advertising, and the actual autonomous capabilities of
9 Tesla vehicles.” [*Id.* at 2.] Tesla argues that the five agreed-on custodians have the relevant
10 information LoSavio seeks related to aspects of its ADAS technology, that LoSavio’s proposal is
11 overbroad and disproportionate because he seeks to double the number of custodians without
12 having reviewed any custodial materials, and that he cannot establish that the custodians he seeks
13 have unique information. [*Id.* at 2-3.]

14 “A party seeking to compel discovery has the initial burden of establishing that the request
15 satisfies the relevancy requirements of Fed. R. Civ. P. Rule 26(b)(1).” *In re Glumetza*, 2020 WL
16 3498067, at *7 (citing *Soto v. City of Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995)).

17 LoSavio has made a sufficient showing that Elluswamy will likely have relevant
18 documents. The Consolidated Third Amended Complaint alleges that Elluswamy testified in
19 another case about one of the representations at issue in this case: a video that Tesla published on
20 its website around October 19, 2016, which purported to show a Tesla driving itself without any
21 human intervention. [Docket No. 102 (“TAC”) ¶ 59.] Elluswamy allegedly testified that he knew
22 the car’s route in the video was “3-D mapped beforehand, that the car drove into a fence, and that
23 the video shows the car having abilities not then possessed by Tesla’s ADAS technology.” [*Id.*
24 (internal quotation marks and footnote omitted).] That Elluswamy is a senior director who reports
25 directly to Musk, and that he has knowledge about the ways in which the October 2016 video
26 promoting Tesla’s ADAS technology was allegedly directed and edited to overstate the vehicle’s
27 self-driving capabilities, are enough to demonstrate relevance to add him as a document custodian.

28 LoSavio has also established relevance to designate Musk as a document custodian. RFP

1 17 seeks the documents that Musk relied on at the October 19, 2016 news conference when he
2 stated that Tesla cars would be capable of driving autonomously from Los Angeles to New York
3 in 2017. [See Docket No. 131-2 at ECF 8.] This statement is one of the primary representations at
4 issue in the case. Tesla argues that LoSavio “offers no basis to find that Mr. Musk’s records will
5 provide relevant information not available from the current custodial sources” [JDL at 3], but it is
6 clear that Musk is best positioned to have documents relevant to statements he made himself.
7 “The idea that responsive documents will necessarily be found in other custodians’ records is not
8 sufficient to defeat a search of his files.” *Shenwick v. Twitter, Inc.*, No. 16-cv-05314-JST (SK),
9 2018 WL 833085, at *1 (N.D. Cal. Feb. 7, 2018) (permitting addition of Twitter CEO Jack Dorsey
10 as a document custodian over defendants’ argument that the existing custodians “have all the
11 relevant documents” and adding Dorsey would be “premature”); *see also id.* (“It is always
12 possible that one custodian will have a document or documents that other custodians have not
13 retained, or even that one custodian may have created a document, such as handwritten notes, that
14 no other custodian possesses.”). Moreover, LoSavio has established that Musk is likely to have
15 relevant information about Tesla’s other October 2016 statements concerning ADAS technology.
16 The TAC alleges that Musk’s involvement in Tesla “far exceeds the typical level of CEO
17 involvement in and direction of the activities of an engineering team within a company.” [TAC
18 ¶ 40.] And, in addition to his October 19, 2016 representation about Tesla vehicles’ cross-country
19 self-driving capabilities, Musk allegedly sent emails instructing Tesla employees about how to edit
20 the October 2016 Tesla self-driving video discussed above. [*Id.* ¶ 59a.]

21 Tesla argues that the information Musk relied on when he made the October 19, 2016
22 statement “is not relevant to whether the challenged statements were misleading or false,” and
23 maintains that “[a] contrary determination would allow plaintiffs to obtain intrusive discovery
24 from apex custodians simply by including statements from those custodians in their pleadings.”
25 [JDL at 3.] These arguments are unpersuasive. LoSavio’s surviving claims are based in fraud and
26 negligence, and LoSavio has alleged not only Musk’s direct involvement in representations about
27 Tesla’s ADAS technology, but also that Musk himself made a statement that is one of the main
28 alleged misrepresentations at issue. The documents that Musk relied on in making his statement

1 are plainly relevant to LoSavio’s claims because they are relevant, among other things, to Musk’s
2 knowledge of his statement’s falsity. The court accordingly grants LoSavio’s motion to compel
3 Musk and Elluswamy as custodians.

4 With respect to the remaining requested custodians, LoSavio has not established they have
5 relevant evidence, at least at this juncture. LoSavio’s only assertion of relevance as to Karpathy,
6 who is not mentioned in the TAC, is that he reports directly to Musk and thus is likely to have
7 relevant communications; Payne also is not mentioned in the TAC and is described only as a
8 senior Autopilot engineer. [*Id.* at 1-2.] These conclusory statements do not establish that
9 Karpathy or Payne are likely to have information relevant to LoSavio’s claims, at least at this time.
10 As to Moore, LoSavio asserts that he is a senior director who reports directly to Musk, and the
11 TAC mentions him in one instance as allegedly having made statements to state regulators on a
12 March 9, 2021 phone call about Musk’s “messaging” regarding Tesla’s self-driving capabilities by
13 the end of the year. [*See* TAC ¶ 101.] That Moore reports directly to Musk and was allegedly
14 involved in a 2021 call about Tesla’s ADAS technology is not enough to show that Moore likely
15 has relevant information about the October 2016 statements at issue. It is possible their relevance
16 as custodians will be revealed during the course of discovery. Therefore, LoSavio’s motion is
17 denied without prejudice as to Karpathy, Payne, and Moore. *See, e.g., Roblox Corp. v. WowWee*
18 *Grp. Ltd.*, No. 22-cv-04476-SI, 2023 WL 5507176, at *3 (N.D. Cal. Aug. 25, 2023) (denying
19 addition of custodian “because plaintiffs only speculate that [he] must have relevant information”).

20 LoSavio next requests that custodial ESI searches “cover not just emails but any other
21 communication system used by these Tesla engineers in their work, including text messages if
22 applicable.” [JDL at 1.] Tesla responds that LoSavio makes an “unqualified and imprecise
23 request” as to sources of custodial ESI that “ignores Rule 26(b)(1)’s proportionality requirement.”
24 [*Id.* at 3.] The undersigned agrees that LoSavio’s request is imprecise and denies this request
25 without prejudice. By now the parties should have reviewed potential sources of custodial ESI as
26 part of their Rule 26(f) meet and confer process, pursuant to this district’s ESI Guidelines and ESI
27 Checklist. The parties’ Stipulated Discovery & Search Protocol and Order even states the parties’
28 “commit[ment] to cooperate in good faith throughout the matter consistent with this Court’s ESI

1 Guidelines.” [Docket No. 113 at 2.] If they have not done so already, the parties must promptly
2 meet and confer to review each potential source of custodial ESI. LoSavio shall not raise this
3 issue again unless he can identify specific sources of custodial ESI and the parties have an
4 opportunity to meet and confer about them. Any dispute about sources of custodial ESI must
5 analyze the Rule 26(b)(1) factors and relevant case law.

6 LoSavio’s motion to compel Tesla to adopt his search terms proposal is also denied
7 without prejudice. Tesla’s most recent March 12, 2025 counterproposal provides a hit report only
8 for the files of the five agreed-on custodians. [JDL at 4-5.] Tesla explains that LoSavio did not
9 reply to this counterproposal prior to the April 3, 2025 meet and confer. [*Id.* at 4.] At the meet
10 and confer, LoSavio states that he requested Tesla move forward with custodial productions for
11 the four agreed-upon searches, and Tesla refused. [*Id.*]

12 This district’s ESI Guidelines emphasize the importance of cooperation in e-discovery
13 precisely because the negotiation of custodians, ESI sources, and/or search terms is an iterative
14 process. Going forward, the parties must demonstrate they participated in this process prior to
15 bringing their disputes to the court. The undersigned directs as follows: Tesla shall collect the
16 files of Musk and Elluswamy and re-run its search terms hit report for all seven document
17 custodians. The parties shall meet and confer about the disputed search terms. Should the parties
18 choose to bring a further dispute about search terms to the undersigned, the dispute must strictly
19 comply with the undersigned’s Standing Order¹ and fully analyze the Rule 26(b)(1) factors, with
20 the parties showing their work. For example, Tesla must substantiate any claim of irrelevance by
21 explaining how it validated its review process—i.e., by using a quality control measure such as
22 sampling to determine whether search terms as-applied are missing relevant ESI or contain
23 substantial amounts of irrelevant ESI. *See In re: Social Media Adolescent Addiction/Personal*
24 *Injury Prods. Liab. Litig.*, No. 22-md-03047-YGR (PHK), 2024 WL 1786293, at *7 (N.D. Cal.
25 Feb. 20, 2024) (discussing validation procedures). Tesla must also substantiate any burden it

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28 ¹ For example, any further joint discovery letter brief should not attach meet-and-confer
correspondence, which is prohibited by this court’s Standing Order.

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claims for the review process, such as by explaining in detail the expense of the required review.

LoSavio first served discovery requests almost eight months ago, and it is in the interests of this case for ESI discovery to move forward expeditiously. Any further dispute as to custodial ESI and/or search terms must be filed no later than **May 19, 2025**.

IT IS SO ORDERED.

Dated: April 18, 2025



Donna M. Ryu
Chief Magistrate Judge