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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CADENCE DESIGN SYSTEMS, INC.,
Plaintiff,
v.
POUNCE CONSULTING, INC., et al.,
Defendants.

Case No. 17-cv-04732-PJH

**ORDER OVERRULING OBJECTION
TO DISCOVERY ORDER**

Re: Dkt. No. 172, 173

The court is in receipt of plaintiff’s objection to part of Magistrate Judge Laporte’s August 14, 2018 discovery order. In that order, inter alia, Judge Laporte “denie[d] Plaintiff’s request to compel Pounce USA to provide emails sent by [Roger] Viera that Pounce USA does not have **in its** possession, custody, or control.” Dkt. 167 at 2 (emphasis in original). Plaintiff objects to that part of the order because “as an officer and majority owner of Pounce USA, Viera’s documents are necessarily within Pounce USA’s possession, custody or control.” That is true, according to plaintiff, regardless of whether Viera’s emails are stored within Pounce USA’s email account or Pounce Mexico’s email account. Dkt. 173-1 at 1. Without ruling on the merits of that argument, the court overrules plaintiff’s objection for the following reasons.

Magistrate judges’ rulings on nondispositive motions may be set aside or modified by the district court only if found to be “clearly erroneous” or “contrary to law.” FRCP 72(a). The “clearly erroneous” standard applies only to the magistrate judge’s findings of fact. A finding of fact is clearly erroneous if the court has a definite and firm conviction that a mistake has been committed. Burdick v. Commissioner, 979 F.2d 1369, 1370 (9th Cir.1992). The magistrate judge’s legal conclusions are freely reviewable de novo to

1 determine whether they are contrary to law. See United States v. McConney, 728 F.2d
2 1195, 1200-01 (9th Cir.1984).

3 Plaintiff has not shown that Judge Laporte's order was clearly erroneous or
4 contrary to law. Indeed, it is unclear exactly what part of Judge Laporte's order plaintiff
5 contends would meet that standard. Judge Laporte merely "denie[d] Plaintiff's request to
6 compel Pounce USA to provide emails sent by Viera that Pounce USA does not have in
7 **its** possession, custody, or control." Dkt. 167 at 2 (emphasis in original). In other words,
8 Judge Laporte's order confirmed the unremarkable proposition that Pounce USA is only
9 obligated to produce documents within its custody, possession, or control. Plaintiff's
10 objection to that order is really a request for this court to define in the first instance
11 whether "custody, possession, or control" in Judge Laporte's order required Pounce USA
12 to produce responsive Viera documents. While this court finds it unlikely that a
13 corporation can refuse to produce an officer's responsive documents simply because
14 those documents are technically on another company's email account, Judge Laporte
15 has not had the opportunity to definitively resolve that issue. Tellingly, plaintiff's joint
16 letter brief that precipitated Judge Laporte's order did not raise the present argument or
17 cite any of the same cases cited in plaintiff's present objection.

18 In short, Judge Laporte's order requiring Pounce USA to produce documents
19 within its custody, possession or control, is not clearly erroneous or contrary to law and
20 the court declines plaintiff's invitation to define the scope of that order in the first instance.
21 The request is better raised with Judge Laporte as a motion for clarification. Accordingly,
22 plaintiff's objection to Judge Laporte's order is OVERRULED. Good cause appearing,
23 plaintiff's motion to seal is GRANTED.

24 **IT IS SO ORDERED.**

25 Dated: September 6, 2018



26
27 PHYLLIS J. HAMILTON
28 United States District Judge