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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE GOOGLE RTB CONSUMER  
PRIVACY LITIGATION

Case No. [21-cv-02155-YGR](#) (VKD)

**ORDER RE MAY 10, 2023 DISCOVERY  
DISPUTE RE SOURCE CODE  
CHANGES**

Re: Dkt. No. 506

Further to the Court’s April 28, 2023 order (Dkt. Nos. 494, 495), the parties ask the Court to resolve their dispute about plaintiffs’ request for summaries of all source code changes Google has made to the RTB bid request and bid response fields for which Google has (or will) produce data in this case. Dkt. No. 506. This matter is suitable for resolution without oral argument. Civil L.R. 7-1(b).

In their prior submission, plaintiffs asserted that Google tracks the changes it makes to RTB-related source code for bid request and bid response fields, and can easily prepare a summary of such changes. Dkt. No. 473 at 3-4. In the current submission, they argue that “these changes will show what data fields were included in bid requests and bid responses during what time period, how the information contained in those fields may have changed during the class period, and reveal when certain fields of user data were ‘deprecated’ (ceased to be used) from passing through RTB.” Dkt. No. 506 at 2. Plaintiffs say that “[s]ource code changes pertaining to the particular RTB bid request and bid response fields that are the subject of discovery in the case are called for in a number of RFPs, including RFP Nos. 91, 92, 94, 97, 99, and 100.” *Id.* at 2, Ex. A. They contend that while Google has produced some source code change information, it refuses to confirm that it has produced documents sufficient to show all such changes. *Id.* at 2. Plaintiffs say

1 that the burden of producing the summaries is minimal. *Id.*

2 Google responds that none of the requests for production plaintiffs cite call for the production  
3 of information about changes to RTB-related source code. *Id.* at 3. It says that it has already produced  
4 documents responsive to all of these requests, and that plaintiffs have not explained why this  
5 information is not sufficient to show which fields were included during the class period. *Id.* Finally,  
6 Google disputes plaintiffs’ assertion that it can produce the summaries plaintiffs demand with minimal  
7 burden. Rather, Google claims that “attempting to generate such a log of all changes to relevant  
8 source code would require individual investigations and a time-intensive, manual process.” *Id.*<sup>1</sup>  
9 Nevertheless, Google has offered to produce records of source code changes for up to six data fields.  
10 *Id.* at 4.

11 The Court has reviewed the requests for production plaintiffs identify as calling for the  
12 production of source code change summaries. None of them expressly calls for the production of  
13 source code or changes to source code. As Google points out, RFPs 91, 92, 94, 97, and 100 call for  
14 “documents sufficient to show” how Google selects and discloses data to RTB participants via a bid  
15 request and how user opt-out or consent signals impact the disclosure process, *id.*, Ex. A., and the  
16 Court limited RFP 99 to documents “sufficient to show” “the filters or restrictions that Google uses to  
17 exclude user-specific data from bid requests” and “how they have changed, if at all, over time,” *see*  
18 Dkt. No. 352 at 7. Presumably, Google could have produced source code or source change summaries  
19 in responding to these requests, but it was not required to do so. Google was only required to produce  
20 documents sufficient to show the responsive information.

21 The question is whether Google has already produced documents sufficient to show the  
22 information requested in RFPs 91, 92, 94, 97, 99 and 100 for bid requests, including changes during  
23 the class period.<sup>2</sup> Google says it has “reasonably complied” with plaintiffs’ requests because it has  
24 produced many responsive documents already, including documents showing changes. *See* Dkt. No.

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26 <sup>1</sup> Google also says that because some of the bid request fields it has produced are not relevant to  
27 any issues in the case, it would serve no purpose to require Google to produce a summary of all  
28 source code changes for these irrelevant fields. Dkt. No. 506 at 3.

<sup>2</sup> None of the requests plaintiffs cite calls for the production of information about bid responses.

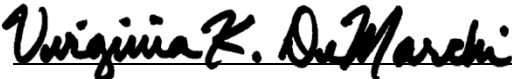
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506 at 3. But it is not clear whether Google’s production is sufficient to show all relevant changes to responsive information during the class period, or just some of them. Plaintiffs say that “the discovery Google has produced to date is not sufficient because . . . [Google] has refused to confirm that it has produced documents sufficient to show *all source code changes* relating to RTB” bid request and bid response fields previously produced. *Id.* at 2 (emphasis added). But, as noted above, the requests do not require the production of source code or changes to source code.

If it has not already done so, Google must produce documents sufficient to show the information responsive to RFPs 91, 92, 94, 97, 99, and 100 (as previously ordered), including documents sufficient to show changes to that responsive information during the class period.

**IT IS SO ORDERED.**

Dated: May 26, 2023

  
VIRGINIA K. DEMARCHI  
United States Magistrate Judge