

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ELI ATTIA, ET AL.,  
Plaintiffs,  
v.  
GOOGLE LLC, et al.,  
Defendants.

Case No. [17-cv-06037-BLF](#) (VKD)

**ORDER RE JOINT DISCOVERY  
LETTER #6**

Re: Dkt. No. 122

Defendant Google LLC (“Google”) moves to compel plaintiffs Eli Attia and Eli Attia Architects PC (“Attia PC”) to produce documents responsive to certain document requests served by Google. The parties have submitted a joint discovery letter describing their respective positions. Dkt. No. 122.

The Court grants in part and denies in part Google’s motion to compel, as set forth below.

**I. BACKGROUND**

The parties submit three discrete disputes to the Court for resolution.

First, the parties dispute whether plaintiffs should be required to produce financial, tax, and bankruptcy records. Second, the parties dispute whether plaintiffs have produced all responsive documents reflecting Mr. Attia’s disclosure of the alleged trade secrets to third parties. Third, the parties dispute whether Mr. Attia should be required to produce documents relating to his license to practice architecture.

**II. LEGAL STANDARD**

A party may obtain discovery of any matter that is relevant to a claim or defense and that is “proportional to the needs of case, considering the importance of the issues at stake in the action,

1 the amount in controversy, the parties' relative access to relevant information, the parties'  
2 resources, the importance of the discovery in resolving the issues, and whether the burden or  
3 expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Here,  
4 Google bears the burden of demonstrating that the discovery it seeks is both relevant to the claims  
5 or defenses in the action and proportional to the needs of the case.

6 **III. DISCUSSION**

7 **A. Plaintiffs' Financial, Tax, and Bankruptcy Records**

8 Google seeks documents from both Mr. Attia and Attia PC responsive to the following  
9 document requests:

10 Request for Production No. 80: All DOCUMENTS and THINGS related to any  
11 time YOU filed for bankruptcy.

12 Request for Production No. 81: All DOCUMENTS and THINGS related to any  
13 outstanding tax liens against YOU.

14 Request for Production No. 82: All DOCUMENTS sufficient to show the  
15 amounts of all outstanding judgments, liens, or other debts outstanding against  
16 YOU.

17 Request for Production No. 83: All DOCUMENTS sufficient to show YOUR  
18 financial condition, including assets and debts, as of January 1, 2011.

19 Dkt. No. 122, Ex. A (Requests for Production to Mr. Attia); *see also id.*, Ex. A (Requests for  
20 Production Nos. 81-84 to Attia PC). Google says that plaintiffs not only seek damages for lost  
21 profits and lost business opportunities due to Google's alleged misappropriation of trade secrets,  
22 but they also blame Google generally for plaintiffs' financial ruin. *Id.* at 2. Google argues that it  
23 needs discovery of documents responsive to the above requests to rebut plaintiffs' damages  
24 contentions.

25 Plaintiffs object to production of these documents on two grounds. First, they say that  
26 Google misrepresents the position plaintiffs have taken on damages in this case. They say they  
27 have *not* taken the position that Google is generally responsible for plaintiffs' poor financial  
28 circumstances, but have made specific allegations of harm. Second, plaintiffs argue that the  
information Google seeks has no bearing on the value of Mr. Attia's trade secrets, and that  
because some of this information (e.g., tax records) is particularly sensitive, Google has not

1 demonstrated a sufficiently compelling need for production of these documents. *Id.* at 5–6.

2 The Court has reviewed the operative complaint. Plaintiffs seek contract damages for  
3 breach of the parties’ “Inbound Services Agreement” and “Statement of Work” agreements,  
4 compensatory damages (including lost profits or reasonable royalty) and disgorgement of profits  
5 for trade secret misappropriation, treble damages for the alleged RICO violations, and exemplary  
6 damages for willful conduct. *See* Dkt. No. 120 ¶¶ 84, 88, 105, and Prayer for Relief. The Court  
7 finds no allegations suggesting that plaintiffs seek damages for other more generalized harm to  
8 Mr. Attia personally or to Attia PC’s business.<sup>1</sup> Rather, the crux of plaintiffs’ damages case seems  
9 to be that Google benefitted unjustly from misappropriation of plaintiffs’ trade secrets, did not  
10 compensate plaintiffs for the trade secrets it took, and destroyed the value that the trade secrets  
11 might have had to plaintiffs by publicly disclosing and using them in Google’s own venture.

12 Google is certainly entitled to discovery relating to the value or lack of value of the alleged  
13 trade secrets and plaintiffs’ other allegations of harm, including plaintiffs’ prior unsuccessful  
14 efforts to commercialize the alleged trade secrets and the financial benefits (or lack thereof) that  
15 plaintiffs obtained from the alleged trade secrets. The problem is that Google’s broad requests for  
16 all of plaintiffs’ financial, tax, and bankruptcy records are not reasonably tailored to plaintiffs’  
17 actual claims for damages in this case. The broad scope of discovery Google seeks is neither  
18 relevant nor proportional to the needs of the case, although some subset of records falling within  
19 the scope of these document requests may be.

20 **B. Public Disclosures of Engineered Architecture**

21 The parties agree that plaintiffs should be required to produce all documents reflecting  
22 their prior disclosure to third parties of any portion of the alleged trade secrets. Dkt. No. 4 at 6–7.  
23 Google says that plaintiffs’ production to date is incomplete because plaintiffs have not identified  
24 or produced the documents referenced in a 2000 email exchange between Mr. Attia and his  
25 advisor that refers to “information reviewed” by a prospective investor (ATTIA002020).

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Google cites to statements purportedly made by Mr. Attia in an unrelated unlawful detainer  
action, to the effect that his financial troubles are all Google’s fault. However, that claim appears  
not to have been made in this case.

1 Plaintiffs respond that no documents were ever attached to that email, and the documents reviewed  
2 by the prospective investor would not have been substantively different from documents plaintiffs  
3 have already produced that were shared with other investors.

4 Google remains suspicious that some documents associated with the review by the investor  
5 are missing. Plaintiffs insist that there are no additional or different documents to identify or  
6 produce in connection with the 2000 email. At the same time, they suggest that Google serve a  
7 formal discovery request for the information or ask about it in a deposition—an argument that is at  
8 odds with plaintiffs’ representation that it has already produced everything it has reflecting  
9 disclosures of the trade secrets. Dkt. No. 122 at 7.

10 The Court is not able to resolve this dispute on the present record. Suffice it to say that  
11 Request for Production No. 5 to Mr. Attia and Request for Production No. 6 to Attia PC would  
12 appear to encompass any documents disclosing the alleged trade secrets, including those shared  
13 with investors. *See id.*, Ex. B. All such documents should be produced in without the need for  
14 further document-specific requests. The Court appreciates that counsel may not be in a position to  
15 say definitively what information is or is not being referenced in the 2000 email. However, Mr.  
16 Attia and Attia PC are in a position to provide a definitive, factual response. If, after serving an  
17 interrogatory regarding the information referenced in the 2000 email and/or deposing witnesses  
18 with knowledge of the matter described in the 2000 email, Google has reason to believe that  
19 responsive documents associated with that email were not produced or have not been identified, it  
20 may seek further relief from the Court.<sup>2</sup>

21 **C. Documents Related to Mr. Attia’s License to Practice Architecture**

22 Google served Request for Production No. 54 on Mr. Attia, seeking “all documents and  
23 things relating to your licensure as an architect, including but not limited to time periods of  
24 licensure, jurisdiction of licensure, suspension of licensure, and complaints received by any state  
25 regarding any licensure.” *Id.*, Ex. C. Although Mr. Attia objected to the breadth and burdensome

26  
27 \_\_\_\_\_  
28 <sup>2</sup> If Google has already reached the limit of interrogatories it is permitted to serve in this action,  
the Court hereby gives Google leave to serve one more interrogatory on Mr. Attia and/or Attia PC  
to address this specific issue.

1 of this request, he represented he would comply with it. *Id.*

2 In the dispute before the Court, Google asks that Mr. Attia be ordered to produce the  
3 NCARB Certificate identified in his response to Google’s Interrogatory No. 21, and any other  
4 documents that relate to Mr. Attia’s license to practice architecture in 2011. *Id.* at 4. Google  
5 points out that Mr. Attia portrays himself as a leading architect and as an expert in building design,  
6 and that he so represented himself to Google in 2011. Dkt. No. 120 ¶¶ 1, 23, 42. Google also  
7 notes that it has specifically pled as an affirmative defense that Mr. Attia misrepresented his  
8 credentials to Google. Dkt. No. 1-2 at 82. Mr. Attia objects that the documents Google seeks are  
9 not relevant to any issue in the case. Dkt. No. 122 at 6.

10 The Court is persuaded that evidence tending to rebut Mr. Attia’s claim that he possesses  
11 the credentials and expertise of a leading architect is relevant to the claims and defenses in this  
12 case. Moreover, Mr. Attia has waived his objections to the specific documents Google seeks here  
13 by agreeing to produce all documents within the scope of Google’s Request for Production No. 54.

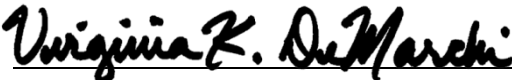
14 **IV. CONCLUSION**

15 Accordingly, the Court orders as follows:

- 16 1. Google’s motion to compel production of all financial, tax, and bankruptcy records  
17 encompassed by Requests for Production Nos. 80-83 to Mr. Attia and Requests for  
18 Production Nos. 81-84 to Attia PC is denied at this time.
- 19 2. Google’s motion to compel production of documents reflecting the disclosure of trade  
20 secrets referenced in a 2000 email exchange between Mr. Attia and his advisor  
21 (ATTIA002020) is denied at this time.
- 22 3. Mr. Attia shall produce the NCARB Certificate identified in his response to Google’s  
23 Interrogatory No. 21, and any other documents that relate to Mr. Attia’s license to  
24 practice architecture in 2011.

25 **IT IS SO ORDERED.**

26 Dated: September 4, 2018

27   
28 VIRGINIA K. DEMARCHI  
United States Magistrate Judge