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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADTRADER, INC., et al.,
Plaintiffs,
v.
GOOGLE LLC,
Defendant.

Case No. [17-cv-07082-BLF](#) (VKD)

**FURTHER ORDER RE PLAINTIFFS'
MOTION TO EXCLUDE EVIDENCE**

Re: Dkt. Nos. 311, 362

By order dated October 25, 2021, this Court denied Plaintiffs' motion to exclude evidence, but found that Google had committed a discovery violation that warranted alternative remedies or sanctions. Dkt. Nos. 350 (sealed), 354 (redacted). As directed, the parties advise that they have conferred about possible alternative remedies but do not agree. Dkt. No. 362.

As the Court observed in its prior order, the appropriate remedy for Google's discovery violation must afford Plaintiffs an opportunity to explore the facts responsive to SCB's Interrogatories Nos. 15-17, including how Google derived the information on which it relies in its supplemental responses, as well as an opportunity to modify their damages calculation to account for the supplemental responses, including supplementing their expert's opinions. In addition, Google must reimburse Plaintiffs' reasonable attorneys' fees and costs associated with these efforts. The Court has considered the parties' respective proposals, and now orders as follows:

1. Fact discovery: Google will promptly produce Michael Spaulding and Felix Chang for deposition regarding the underlying data and processes on which Google relied to arrive at the numbers it included in both its original supplemental responses to SCB's Interrogatories Nos. 15-17, including the matters described in Messrs. Spaulding and

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Change’s respective declarations. Dkt. Nos. 316-6, 316-8. Each deposition may not exceed three hours. Alternatively, at Plaintiffs’ election, Google will produce a Rule 30(b)(6) designee to testify regarding the same subject matter, and such deposition will not exceed four hours.

2. Expert discovery: Plaintiffs’ expert, Dr. Kneuper, may prepare a supplemental expert report incorporating any new information learned from the additional fact discovery authorized above. The supplemental expert report must be served no later than 21 days after completion of the last deposition unless the parties agree otherwise.
3. The parties shall cooperate in seeking a modification of the case schedule to reopen fact and expert discovery for the sole purpose of completing the additional discovery authorized above.
4. Google will reimburse the reasonable attorneys’ fees and costs incurred by Plaintiffs in connection with the additional discovery authorized above, as follows:
 - a. cost of court reporter and videographer for the deposition(s);
 - b. reasonable attorneys’ fees for time spent taking the deposition(s);
 - c. reasonable attorneys’ fees for time spent preparing to take deposition(s) (not to exceed 5 hours);
 - d. expert fees for time spent by Dr. Kneuper in preparing a supplemental expert report (not to exceed 15 hours); and
 - e. reasonable attorneys’ fees for time spent working with Dr. Kneuper to prepare a supplemental expert report (not to exceed 15 hours).

IT IS SO ORDERED.

Dated: November 19, 2021


VIRGINIA K. DEMARCHI
United States Magistrate Judge