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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: MACBOOK KEYBOARD
LITIGATION

Case No. [18-cv-02813-EJD](#) (VKD)

**ORDER RE FEBRUARY 15, 2019
DISCOVERY LETTER BRIEF**

Re: Dkt. No. 87

Plaintiffs seek an order compelling defendant Apple, Inc. to produce all documents, including electronically stored information (“ESI”), responsive to plaintiffs’ first set of document requests by no later than March 15, 2019. Dkt. No. 87. Plaintiffs also seek an order requiring Apple to produce all of the responsive ESI that Apple has already identified by no later than March 1, 2019. *Id.*

The parties agree that, for the purposes of this dispute, the outstanding requests for production are plaintiffs’ Requests Nos. 3-6, which plaintiffs served on August 15, 2018. *Id.* at 2, 4, Ex. A. Plaintiffs say that Apple’s delay in completing its production of responsive documents prevents plaintiffs from scheduling depositions, serving follow-up discovery, and moving expeditiously for class certification. *Id.* at 2.

Apple states that it “will produce on February 15 all documents that could be readily identified as responsive to Plaintiff’s documents requests through targeted collection.”¹ *Id.* at 4. However, Apple says that it cannot complete its production of ESI responsive to Requests Nos. 3-6 until it completes an “ESI process” which it says is “well underway.” *Id.* at 6. Apple points out

¹ The parties jointly submitted their dispute to the Court on February 15, 2019, so presumably Apple has already made this production.

1 that no case management schedule has been set in this case and that Apple’s motion to dismiss is
2 pending before Judge Davila. *Id.* at 7.

3 This dispute illustrates the critical need for parties to discuss the details of collection,
4 review, and production of ESI early in the case, and to avoid treating this issue as a *pro forma*
5 obligation that does not require serious effort and discussion. *See* Fed. R. Civ. P. 26(f)(3)(C).
6 With respect to this particular dispute, Apple has known of the document requests at issue since
7 mid-August 2018, and discovery has not been stayed pending resolution of Apple’s motion to
8 dismiss. It is not clear from the parties’ submission whether Apple has discussed a proposed list
9 of ESI custodians and search parameters with plaintiffs, or whether plaintiffs have made any
10 counterproposals. *See id.* at 6 (describing February 13 conference of counsel). However, Apple
11 concedes that it has not made sufficient progress on its ESI process to be able to provide a
12 completion date for the production of responsive ESI. This is not acceptable, given the amount of
13 time these document requests have been outstanding.

14 Accordingly, the Court orders the following:

- 15 1. Apple shall produce by no later than **March 1, 2019** all responsive ESI that it has
16 identified to date.
- 17 2. If Apple has not already done so, by no later than **March 1, 2019**, Apple shall provide
18 plaintiffs with a concrete proposal for collection, review, and production of the
19 remaining ESI responsive to plaintiffs’ Requests Nos. 3-6, including but not limited to
20 proposed custodians, search terms, and other search parameters. If Apple has made
21 feasibility assessments regarding the use of particular parameters (e.g., certain search
22 terms yield an excessive number of false positives), it must provide that information to
23 plaintiffs. Apple’s proposal shall include estimated dates for the production of
24 responsive documents on a rolling basis and an estimated date of completion of
25 production.
- 26 3. If plaintiffs object to Apple’s proposal, the parties shall confer about the proposal by no
27 later than **March 6, 2019**, unless they mutually agree to a different date for the
28 conference. Plaintiffs shall provide a counterproposal to Apple sufficiently in advance

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of the March 6, 2019 conference to allow for a productive and meaningful conference.

4. If the parties have not resolved their dispute regarding the collection, review and production of responsive ESI following the March 6, 2019 conference, the Court will conduct a telephonic discovery conference on **March 12, 2019 at 1:30 p.m.** to resolve the dispute. Parties shall arrange for appearances via CourtCall (866-582-6878). If the parties do resolve their dispute prior to the March 12, 2019 telephonic discovery conference, they shall so advise the Court, and the conference will be taken off calendar.

IT IS SO ORDERED.

Dated: February 26, 2019


VIRGINIA K. DEMARCHI
United States Magistrate Judge