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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 SECURITIES AND EXCHANGE
8 COMMISSION,

9 Plaintiff,

10 v.

11 VIDUL PRAKASH,

12 Defendant.

Case No. 23-cv-03300-BLF (SVK)

**ORDER DIRECTING SUBMISSION
OF DOCUMENTS FOR
IN CAMERA REVIEW**

Re: Dkt. No. 63

13 Before the Court is the Parties' joint discovery submission in which Defendant Vidul
14 Prakash seeks to compel the production of interview notes from Plaintiff Securities and Exchange
15 Commission (the "Commission"). *See* Dkt. 63 (the "Submission"). For the reasons set forth
16 below, the Court will review the documents in question *in camera* before ruling on Defendant's
17 request.

18 **Relevant Factual Background.** Non-party View, Inc. ("View"), a manufacturer and
19 seller of "smart" windows, allegedly disseminated false and misleading statements in its filings
20 with the Commission. The statements concerned View's accrual of liabilities reflecting costs
21 incurred to ship and install replacement windows after the company discovered defects in many of
22 its sold windows. One of the central issues in the case concerns whether Defendant, View's
23 former CFO, had been told that View would cover shipping and installation costs for all customers
24 of defective windows, or whether he understood View's coverage of these costs to be on a case-
25 by-case basis. The Commission understands that View's management decided to pay these costs
26 for all customers, and according to Defendant, the Commission bases that understanding on
27 testimony provided by Daniel Purdy, View's former Vice President of Field Operations, in June
28 2022 during the Commission's pre-suit investigation. But about a year before Mr. Purdy provided

1 that testimony, he stated in an interview conducted by View’s audit committee during an internal
2 investigation that the company would pay shipping and installation costs on a case-by-case basis.¹
3 Defendant, therefore, seeks to probe this inconsistency in Mr. Purdy’s statements, as the all
4 costs/case-by-case issue underlies the Commission’s theory of liability against him.

5 At issue in the instant discovery dispute is an interview of Mr. Purdy conducted by the
6 Commission in February 2022, a few months before Mr. Purdy testified before the Commission.
7 Based on an email produced in discovery, Defendant determined that the Commission likely
8 discussed the all costs/case-by-case issue with Mr. Purdy during his February 2022 interview.
9 Defendant questioned Mr. Purdy about the interview at his deposition, but Mr. Purdy testified that
10 he does not remember what he discussed in the interview. The interview is otherwise “unrecorded
11 but for memoranda and notes prepared by three individuals on the [Commission’s] staff”: an
12 attorney, a paralegal and an accountant. *See id.* at 2 & n.3; *see also id.* at 7 (the Commission
13 describing its recordings as notes prepared by three staff members). Defendant accordingly
14 requests that the Court compel the Commission to produce its notes from the interview, and the
15 Commission resists production on the basis of the work-product doctrine.

16 **The Notes Are Work Product.** As documents prepared by the Commission in connection
17 with its pre-suit investigation, the notes constitute protectable work product. *See United States v.*
18 *Richey*, 632 F.3d 559, 567 (9th Cir. 2011) (discussing two-part test to “qualify for work-product
19 protection”). The Court rejects Defendant’s arguments on this point.

20 **First**, Defendant relies on inapposite authorities in arguing that the protection does not
21 apply. *See* Submission at 4. In *SEC v. Thrasher*, No. 92-cv-06987-JFK, 1995 WL 46681
22 (S.D.N.Y. Feb. 7, 1995), the Commission “ma[de] no effort to meet its burden of proffering
23 competent evidence establishing the basis of its work-product claim” such that it was “at least
24 arguable that some or all of the interview notes were not prepared principally or exclusively to

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26 ¹ This statement from Mr. Purdy comes from a memorandum prepared by Cooley, LLP, the firm
27 that conducted the audit committee’s internal investigation. *See* Submission at 2, 6-7. In a recent
28 deposition, Mr. Purdy testified that the memorandum in question “did not accurately reflect his
statements.” *See id.* at 7.

1 assist in anticipated litigation.” *See id.* *3-4. Here, the Court is satisfied on the current record that
2 the Commission prepared the notes because it anticipated litigation. *See also Richey*, 632 F.3d at
3 567-68 (where document created for multiple purposes, work-product determination hinges on
4 “whether the document was created because of anticipated litigation, and would not have been
5 created in substantially similar form but for the prospect of litigation” (quotation marks omitted)).
6 *SEC v. Stratton Oakmont, Inc.*, No. 92-cv-01993-JES, 1992 WL 226924 (S.D.N.Y. June 22,
7 1992), also does not assist Defendant, as the court there issued a short order without providing any
8 analysis.

9 **Second**, Defendant points to narrow disclosures by the Commission in arguing that the
10 Commission waived the protection. *See* Submission at 4. But disclosure of questions asked by
11 the Commission outside of the interview are irrelevant, and disclosure of the subjects potentially
12 discussed in the interview is far different than selectively disclosing portions of the notes
13 memorializing the interview. *Cf. Shenwick v. Twitter, Inc.*, No. 16-cv-05314-JST, 2019 WL
14 3815719, at *4 (N.D. Cal. Apr. 19, 2019) (“Once Plaintiffs waived the protection of the attorney
15 work product doctrine for a confidential witness’s conversation with Plaintiffs’ representatives, the
16 waiver extended to the entire conversation.”).

17 **Defendant May Be Entitled To A Narrow Production.** Courts classify work product
18 into two categories: (1) fact work product; and (2) opinion work product. *See Tremblay v.*
19 *OpenAI, Inc.*, No. 23-cv-03223-AMO, 2024 WL 3159292, at *2 (N.D. Cal. June 24, 2024).
20 Because Defendant seeks to discover only the fact of what Mr. Purdy said during the February
21 2022 interview, the Court will construe his request as concerning only the fact work product (if
22 any) contained within the notes. To obtain fact work product, a party must show “that it has
23 substantial need for the materials to prepare its case and cannot, without undue hardship, obtain
24 their substantial equivalent by other means.” *See* Fed. R. Civ. P. 26(b)(3)(A); *Tremblay*, 2024 WL
25 3159292, at *2. Defendant satisfies these showings. He has a **substantial need** for the notes
26 because Mr. Purdy appears to have discussed a key issue in the case during his interview, and
27 what he said may significantly bolster Defendant’s position. Likewise, Defendant cannot obtain
28 any **substantial equivalent by other means** because there are no other records of the interview,

1 and Mr. Purdy does not remember what he discussed in the interview. The Court rejects the
2 Commission’s counterarguments which rely almost entirely on out-of-circuit, nonbinding
3 authorities, and which impose an overly narrow conception of “substantial need.” *See* Submission
4 at 9-10.

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6 Accordingly, for good cause shown, the Court **ORDERS** the Commission to submit the
7 three sets of notes to the Court via email for *in camera* review by **March 13, 2025**. For those
8 notes that are handwritten, the Commission shall submit a handwritten copy and a transcribed
9 copy, if a transcription already exists. The notes shall contain highlighting for those portions
10 concerning what (if anything) Mr. Purdy said about the all costs/case-by-case issue. The Court
11 will determine whether Defendant is entitled to production of any portion of the notes after
12 completing its *in camera* review. To the extent that Defendant requests the production of “similar
13 interview memos” prepared during the Commission’s pre-suit investigation (*see id.* at 5-6), the
14 Court **DENIES** that request; Defendant offers no explanation of the relevance of or substantial
15 need for those documents, and the Submission focuses almost exclusively on Defendant’s request
16 for the notes memorializing the February 2022 interview of Mr. Purdy.

17 **SO ORDERED.**

18 Dated: March 7, 2025

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22 SUSAN VAN KEULEN
23 United States Magistrate Judge
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