

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAT BROOKS, et al.,
Plaintiffs,

v.

THOMSON REUTERS CORPORATION,
et al.,
Defendants.

Case No. 21-cv-01418-EMC (KAW)

**ORDER REGARDING 5/19/2023
DISCOVERY LETTER**

[Discovery Letter No. 3]

Re: Dkt. No. 207

The instant case concerns the operation of CLEAR, an online platform that “provides access to both public and non-public information about hundreds of millions of people . . .” (First Amend. Compl. (“FAC”) ¶ 2, Dkt. No. 145.) On May 19, 2023, the parties filed the instant discovery letter as to whether Defendants were required to “supplement” their responses to requests for production (“RFPs”) propounded by Plaintiffs in 2021 and 2022. (Discovery Letter at 1, Dkt. No. 207.) Defendants produced responsive documents from 2015 through 2021 or 2022. (*Id.*) The parties now dispute whether Defendants are required to supplement their responses with documents created since their production.

As an initial matter, the Court is unclear as to why this discovery letter was filed **before** a complete response by Defendants was provided. The parties state that Defendants requested that Plaintiffs propound new discovery requests as to the updated information they seek. (Discovery Letter at 1.) Plaintiffs, in turn, disagreed that they were required to serve new requests, yet state that they did so on April 29, 2023. (*Id.*) Defendants’ response was due on May 30, 2023, after this letter was filed. On June 7, 2023, Plaintiffs filed an update stating that Defendants had agreed to provide certain information, narrowing the scope of the discovery letter. (Dkt. No. 211.) Thus, it would appear the dispute was not ripe at the time the discovery letter was filed, which is not

1 appropriate.

2 Federal Rule of Civil Procedure 26(e) imposes a duty to supplement a discovery response
3 “if the party learns that in some material respect the disclosure or response is incomplete or
4 incorrect, and if the additional or corrective information has not otherwise been made known the
5 parties during the discovery process or in writing[.]” That duty, however, “is triggered only if [the]
6 prior production is materially incomplete or incorrect.” *In re Google RTB Consumer Priv. Litig.*,
7 No. 21-cv-2155-YGR (VKD), 2023 WL 3046793, at *2 (N.D. Cal. Apr. 21, 2023); *see also*
8 *Reinsdorf v. Skechers U.S.A., Inc.*, No. CV 10-7181 DDP (SSX), 2013 WL 12116416 (C.D. Cal.
9 Sept. 9, 2013) (“documents created after the close of discovery must be produced pursuant to the
10 duty to supplement where documents exist that undermine or contradict the earlier response”);
11 *Switch Commc'ns Grp. v. Ballard*, No. 2:11-CV-00285-KJD, 2012 WL 2342929 (D. Nev. June 19,
12 2012) (“A party is not, however, required to supplement a prior discovery response with later
13 acquired or created information or documents that do not render its previous responses materially
14 incorrect or incomplete.”). In other words, “nothing in [Rule 26] imposes a never-ending
15 obligation to produce documents continuously as they are created[.]” *Dong Ah Tire & Rubber Co.*
16 *v. Glasforms, Inc.*, No. C06-3359-JF (RS), 2008 WL 4786671, at *2 (N.D. Cal. Oct. 29, 2008).

17 Here, Plaintiffs fail to demonstrate that the documents at issue render Defendants’ prior
18 production “materially incomplete or incorrect.” Rather, Plaintiffs primarily assert that there may
19 be “updates to undisputedly relevant information,” and that such information “could substantially
20 affect or alter Plaintiffs’ discovery plan or trial preparation.” (Discovery Letter at 2.) The mere
21 “fact that responsive documents similar to those previously produced by a custodian have
22 continued to accumulate in that custodian’s files during the course of litigation does not
23 automatically render the prior production materially incomplete or incorrect,” even if such new
24 documents are relevant. *In re Google RTB Consumer Priv. Litig.*, 2023 WL 3046793, at *2.
25 Plaintiffs also fail to demonstrate that “there is an objectively reasonable likelihood that the
26 additional or corrective information could substantially affect or alter [their] discovery plan or trial
27 preparation.” *L.A. Terminals, Inc. v. United Nat’l Ins. Co.*, 340 F.R.D. 390, 396 (C.D. Cal. 2022).
28 Likewise, while Plaintiffs assert that they need to know Defendants’ current unfair business

1 practices, Plaintiffs cite nothing that would suggest that there have been any new developments or
2 changes in CLEAR's design and operation since Defendants' production. (Discovery Letter at 1;
3 *compare with In re Google RTB Consumer Priv. Litig.*, 2023 WL 3046793, at *3 ("nothing in the
4 parties' joint submission suggests that there has been some new development or change in
5 Google's RTB design and operation since Google's prior production that supports plaintiffs'
6 present demand for a supplemental production").

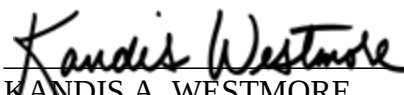
7 Plaintiffs also seek to require Defendant to "update" information in certain documents.
8 (Discovery Letter at 3.) Defendant, however, states that the documents at issue were effectively
9 one-time, ad hoc reports from 2012, 2015, 2017, and 2018. (*Id.* at 5.) To require Defendants to
10 update such documents would be to effectively require Defendants to create new documents,
11 which is not required for responses to RFPs. In any case, as stated above, Plaintiffs have not
12 demonstrated that Defendants are required to supplement their prior production.

13 Absent a demonstration that Defendants' prior discovery responses are materially
14 incomplete or incorrect, the Court DENIES Plaintiffs' request that the Court order that Defendants
15 "supplement" their discovery responses.

16 This order disposes of Dkt. No. 207.

17 IT IS SO ORDERED.

18 Dated: June 29, 2023

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20 RANDIS A. WESTMORE
21 United States Magistrate Judge
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