

2020 WL 2838806

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United States District Court, N.D. California,
San Jose Division.

OPTRONIC TECHNOLOGIES, INC., Plaintiff,

v.

NINGBO SUNNY ELECTRONIC
CO., LTD., et al., Defendants.

Case No. 16-cv-06370-EJD (VKD)

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Signed 06/01/2020

Attorneys and Law Firms

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ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SANCTIONS

Re: Dkt. No. 624

[VIRGINIA K. DEMARCHI](#), United States Magistrate Judge

*1 Plaintiff Optronic Technologies, Inc. (“Orion”) seeks sanctions pursuant to [Rule 26\(g\) of the Federal Rules of Civil](#)

[Procedure](#) against defendant Ningbo Sunny Electronic Co., Ltd. (“Ningbo Sunny”) and its counsel Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin”). For the reasons explained below, the Court grants Orion’s motion for sanctions with respect to Ningbo Sunny’s responses to Orion’s document requests but denies the motion with respect to Ningbo Sunny’s responses to Orion’s interrogatory.

I. BACKGROUND

The conduct for which Orion seeks sanctions concerns Ningbo Sunny’s written responses to Orion’s post-judgment document requests and one post-judgment interrogatory. After the presiding judge entered judgment in Orion’s favor on its antitrust claims, Orion served document requests and interrogatories on Ningbo Sunny seeking discovery directed to enforcement of the judgment.

This discovery first came to the Court’s attention on February 24, 2020, when the parties filed three joint discovery dispute letters seeking the Court’s assistance. Dkt. Nos. 585-587. As relevant to the pending sanctions motion, the parties disputed the sufficiency of Ningbo Sunny’s response to Orion’s Interrogatory No. 4 (Dkt. No. 585) and the sufficiency of Ningbo Sunny’s collection, review, and production of documents responsive to Orion’s document requests (Dkt. No. 587). A brief summary of each dispute and the Court’s resolution of it follows.

A. Ningbo Sunny’s response to Interrogatory No. 4

Orion’s Interrogatory No. 4 asked Ningbo Sunny: “Have you or your agents had any non-written communications with the Synta Entities, or their agents, related to this litigation within the last six (6) months? If so, please describe who the participants were and what was discussed.” Dkt. No. 585-2 at 4. Ningbo Sunny responded as follows: “Ningbo Sunny employees and management have not had any non-written communications with the Synta Entities regarding this litigation in the past six months. Ningbo Sunny’s attorneys have occasionally communicated with attorneys for Synta Entities to provide information or a status update regarding proceedings in this case.” *Id.* Orion argued that Ningbo Sunny should be required to identify the date, participants, and substance of each responsive communication. Dkt. No. 585 at 2. Ningbo Sunny objected that it had made a reasonable effort to respond, and that requiring it to provide further detail would be unduly burdensome. *Id.* at 3.

On March 4, 2020, the Court granted the relief Orion sought and ordered Ningbo Sunny to amend its response to Interrogatory No. 4:

While the additional information Orion seeks is likely to be of marginal relevance, in view of Ningbo Sunny's current response to Interrogatory No. 4, the Court concludes that providing additional responsive information would not be unduly burdensome for Ningbo Sunny or its counsel. The interrogatory covers a limited period of time during which responsive communications occurred only "occasionally." The Court anticipates that the approximate dates, participants, and subject matter of those occasional communications are likely reflected in counsel's billing records, notes, or calendar entries, and that these materials are reasonably available to counsel.

*2 Dkt. No. 593 at 2.

In its supplemental response to Interrogatory No. 4 on March 17, 2020, Ningbo Sunny provided this answer: "Ningbo Sunny employees and management have not had any non-written communications with the Synta Entities regarding this litigation in the past six months. Ningbo Sunny's outside counsel have occasionally conferred with outside counsel for certain Synta Entities since July 1, 2019 as follows (to the best of the recollection of Ningbo Sunny's outside attorneys who are working on the above captioned matter) [.]" Dkt. No. 624-3 at ECF 5. Ningbo Sunny's supplemental response includes a list of 18 communications with various subject matters indicated, including "introduction," "exchange of pleasantries," "trial preparation and potential cooperation," "status of post-trial briefing, discovery and judgment enforcement," "Orion settlement discussions," "threatened class action litigation and potential settlement," and "continuity of" and "potential disruptions to" Ningbo Sunny's supply of telescopes to Celestron. *Id.* at ECF 5-7.

B. Ningbo Sunny's document production

Orion also served post-judgment document requests on Ningbo Sunny seeking responsive documents for the period from "November 1, 2016 to the present." Dkt. No. 587-1 at ECF 7. Ningbo Sunny provided written responses to these document requests on January 30, 2020 and produced approximately 9200 documents. Dkt. No. 587 at 5. Orion raised several issues with Ningbo Sunny's document production, but its principal contention was that Ningbo Sunny's production was incomplete. *Id.* at 4-5. In addition, Orion argued that Ningbo Sunny's counsel had not taken a sufficiently active role in supervising Ningbo Sunny's collection and production of documents and demanded that counsel be ordered to direct and control Ningbo Sunny's collection, review, and production of documents. *Id.* at 5. Ningbo Sunny responded that its document production was complete, although it disagreed with Orion about the time period covered by Orion's requests. *Id.* at 5. Ningbo Sunny acknowledged that its counsel had not personally collected the documents but had instead provided guidance to Ningbo Sunny and Ningbo Sunny's Chinese counsel about what to collect for production. *Id.* at 6.

On March 4, 2020, the Court granted some, but not all, of the relief Orion sought. Dkt. No. 595. With respect to the parties' dispute about the time period covered by the requests, the Court ordered the parties to "confer promptly regarding a reasonable cutoff date for Ningbo Sunny's collection and production of responsive documents," such that the cutoff date is "late enough to include documents that reflect Ningbo Sunny's post-judgment activities that reasonably may impact Orion's ability to collect on the judgment." *Id.* at 2-3. With respect to counsel's role in collection, review, and production of responsive documents, the Court first observed that "[c]ounsel have significant responsibility to ensure that a client complies with its discovery obligations," but that "[p]recisely what is required in a given case depends on the particular circumstances." *Id.* at 4. The Court concluded that it did not have enough information about Ningbo Sunny's document search and collection efforts to resolve the parties' dispute. Accordingly, the Court ordered Ningbo Sunny to "submit a declaration from a person with knowledge describing with specificity how Ningbo Sunny conducted a search for documents responsive to Orion's post-judgment document requests." *Id.* at 5.

*3 The parties subsequently advised that they had agreed to specific cutoff dates for responsive documents. Dkt. No. 600. However, Ningbo Sunny did not comply with the Court's order to provide more information about how it searched

for responsive documents. Instead, Ningbo Sunny filed a noticed that stated: “According to Ningbo Sunny’s Chinese counsel James Zou, Ningbo Sunny has been unable to locate any individual competent to sign a declaration describing with specificity how Ningbo Sunny conducted a search for documents responsive to Orion’s post-judgment document requests.” Dkt. No. 603 at 1.

II. LEGAL STANDARD

The Federal Rules of Civil Procedure require a party’s attorney of record to sign the party’s written discovery responses. [Fed. R. Civ. P. 26\(g\)](#). Counsel’s signature operates as a certification “to the best of [counsel’s] knowledge, information, and belief formed after a reasonable inquiry” that the discovery response is:

- (i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
- (ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
- (iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

[Fed. R. Civ. P. 26\(g\)\(1\)\(B\)\(i\)-\(iii\)](#). The Advisory Committee Notes accompanying [Rule 26\(g\)](#) reflect that the “reasonable inquiry” standard is satisfied “if the investigation undertaken by the attorney and the conclusions drawn therefrom are reasonable under the circumstances.” [Fed. R. Civ. P. 26](#) advisory committee’s note, 1983 amdt., subdivision (g). The reasonableness of counsel’s inquiry is measured by an objective standard and does not require a showing of bad faith. [National Ass’n of Radiation Survivors v. Turnage](#), 115 F.R.D. 543, 555 (N.D. Cal. 1987).

“If a certification violates this rule without substantial justification, the court ... must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both.” [Fed. R. Civ. P. 26\(g\)\(3\)](#).

III. DISCUSSION

Orion moves for sanctions based on alleged violations of the attorney certification requirements of [Rule 26\(g\)](#). It does not seek sanctions under Rule 37 or the Court’s inherent authority.

A. [Rule 26\(g\)\(1\)\(A\)](#)

Orion argues that by signing Ningbo Sunny’s responses to Orion’s interrogatories and document requests, Sheppard Mullin falsely certified that those responses were complete and correct at the time they were made. *See* Dkt. No. 624 at 1. With respect to Ningbo Sunny’s response to Interrogatory No. 4, Orion argues that counsel’s certification of the original response to the interrogatory was “intentionally false” because the supplemental response includes “repeated substantive communications between [Ningbo Sunny’s] lawyers and lawyers for the Synta Entities” that are not merely information or status updates about the case. *Id.* at 9-10. With respect to Ningbo Sunny’s responses to document requests, Orion argues that counsel improperly certified as “truthful and accurate” Ningbo Sunny’s representations that it would produce all responsive documents. *Id.* at 7.

The problem with these arguments is that Orion relies on [subsection \(1\)\(A\) of Rule 26\(g\)](#), which applies only to initial disclosures under [Rule 26\(a\)\(1\)](#) and pretrial disclosures under [Rule 26\(a\)\(3\)](#). [Rule 26\(g\)\(1\)\(A\)](#) requires counsel to certify “with respect to a *disclosure*” that the disclosure is “complete and correct as of the time it is made.” [Fed. R. Civ. P. 26\(g\)\(1\)\(A\)](#) (emphasis added). This subsection does not apply to discovery responses, which are governed by subsection (1)(B).

*4 Accordingly, the Court denies Orion’s motion for an award of sanctions for alleged violation of the certification of completeness and correctness required for disclosures under [Rule 26\(g\)\(1\)\(A\)](#).

B. [Rule 26\(g\)\(1\)\(B\)](#)

Orion does not address the certification requirements of [Rule 26\(g\)\(1\)\(B\)](#) or identify which requirements it believes Ningbo Sunny’s counsel violated. Rather, Orion argues generally that Ningbo Sunny’s counsel failed to take steps to ensure that Ningbo Sunny complied with Orion’s discovery requests. The Court will analyze that argument using the framework of subsection (1)(B), and consider whether Sheppard Mullin undertook a reasonable inquiry regarding whether Ningbo Sunny’s discovery responses were (i) consistent with the Federal Rules of Civil Procedure and warranted by existing law, (ii) not interposed for an improper purpose, and (iii) neither unreasonable nor unduly burdensome or expensive. *See* [Fed. R. Civ. P. 26\(g\)\(1\)\(B\)](#).

1. Responses to document requests

The Court first considers Ningbo Sunny's responses to Orion's post-judgment document requests and Sheppard Mullin's certification of those responses.

The presiding judge has already found that Ningbo Sunny deliberately withheld from production two documents that showed Ningbo Sunny acted in a manner inconsistent with prior representations to the Court. *See* Dkt. No. 598 at 5 (“Ningbo Sunny’s failure to produce both the Qiu Email and the Remittance in discovery is evidence of consciousness of guilt—that Ningbo Sunny understood that the documents would show [its] conduct contradicted the Ni Declaration.”). Such conduct is not consistent with the requirements of Rule 34(b)(2) which, among other things, requires a party to produce the documents it says it will produce.¹ *See Fed. R. Civ. P. 34(b)(2)(B)*. Likewise, a discovery response that indicates responsive documents will be produced is both “interposed for an improper purpose” and “unreasonable” if the responding party then deliberately withholds some responsive documents. Ningbo Sunny’s continued refusal to explain to the Court how it conducted a search for responsive documents and otherwise complied with its discovery obligations only serves to reinforce the Court’s impression that Ningbo Sunny did *not* comply with its discovery obligations and did not search for and produce the responsive documents it said it would produce.

The question, then, is whether Sheppard Mullin failed to make the reasonable inquiry required by [Rule 26\(g\)](#) when signing Ningbo Sunny’s document request responses representing that all responsive documents would be produced. “[Rule 26\(g\)](#) does not require the signing attorney to certify the truthfulness of the client’s factual responses to a discovery request. Rather the signature certifies that the lawyer has made a reasonable effort to assure that the client has provided all the information and documents available to him that are responsive to the discovery demand.” *Fed. R. Civ. P. 26* advisory committee’s note, 1983 amdt., subdivision (g).

*5 Sheppard Mullin argues that it made the necessary reasonable inquiry, which it describes as follows:

Shortly after receiving Orion’s post-judgment document requests on December 31, 2019, Sheppard Mullin

held a lengthy videoconference with Ningbo Sunny and its new outside Chinese counsel, James Zou, to discuss each of Orion’s requests in detail and issues relating to the search and collection process, the details of which are privileged and protected. That videoconference included discussions about specific custodians with potentially responsive documents and noncustodial company files and archives where potentially responsive documents may reside. Following that videoconference, Sheppard Mullin was available to answer any questions and provide further guidance as Ningbo Sunny collected responsive documents, and Sheppard Mullin did in fact provide additional guidance. While detailed discussions relating to the document collection and production are privileged and confidential, Sheppard Mullin can represent that Ningbo Sunny made certain decisions about how to proceed and no ediscovery vendor was involved in the initial collection and production. After receiving documents from Mr. Zou on behalf of Ningbo Sunny, Sheppard Mullin followed up with Ningbo Sunny and Mr. Zou in an effort to make sure that all documents had been collected. Subsequently, additional documents were provided to Sheppard Mullin by Mr. Zou. Sheppard Mullin’s understanding was that Ningbo Sunny had searched for responsive documents from six custodians and from Ningbo Sunny archives and noncustodial files. Sheppard Mullin received 21,856 documents totaling 57,468 pages from Ningbo Sunny and produced all of it to Orion. Following the Court’s order granting Orion’s motion to compel, Sheppard Mullin reproduced all of

these documents after processing by e-discovery vendor FTI Consulting, Inc.

Dkt. No. 632 at 5 (internal citations omitted). Sheppard Mullin insists that it did not know that Ningbo Sunny had withheld certain responsive documents from production. Dkt. Nos. 633, 648.

Orion argues that Sheppard Mullin cannot fulfill its obligations under [Rule 26\(g\)](#) if it does not know, and does not inquire into, what Ningbo Sunny did to search for responsive documents or whether Ningbo Sunny followed its advice. The Court agrees. The Court finds no fault in Sheppard Mullin's description of the direction and guidance it gave to Ningbo Sunny. However, Sheppard Mullin has candidly acknowledged that it does not know what decisions Ningbo Sunny made about how to proceed with document collection or how it conducted the search for responsive documents. Dkt. No. 623 (transcript of March 17, 2020 hearing) at 12:24-13:5; *see also* Dkt. No. 633 ¶10 (“While detailed discussions relating to the document collection and production are privileged and confidential, Ningbo Sunny made certain decisions about how to proceed and no ediscovery vendor was involved in the initial collection and production.”). It is not enough for counsel to provide advice and guidance to a client about how to search for responsive documents, and then not inquire further about whether that advice and guidance were followed. This is particularly true here, where Ningbo Sunny and its counsel knew that both Orion and the Court were concerned about steps Ningbo Sunny might take to frustrate enforcement of the judgment against it. *See* Dkt. No. 598 at 2-3 (discussing prior proceedings regarding enforcement of the judgment and location of Ningbo Sunny's assets). Most of Orion's post-judgment discovery requests were directed to obtaining information and documents necessary to enforce the judgment, including confirming that Ningbo Sunny had not transferred assets outside of the United States. Dkt. No. 624-2. Sheppard Mullin says that it followed up with Ningbo Sunny “in an effort to make sure that all documents had been collected,” but if that follow up did not include inquiring about what the client did (and by Sheppard Mullin's own account it did not) then the follow up was not reasonable in these circumstances.

*6 The Court does not conclude that counsel must always personally conduct or directly supervise a client's collection, review, and production of responsive documents. *See* Dkt. No. 595 at 4 (discussing relevant authority). However, in the

circumstances presented here, the Court finds that Sheppard Mullin did not make a reasonable effort to ensure that Ningbo Sunny produced all the documents responsive to Orion's requests and thus violated its obligations under [Rule 26\(g\)\(1\)\(B\)](#).

The Court considers below whether sanctions should be imposed, and if so, what sanctions are appropriate.

2. Response to Interrogatory No. 4

With respect to Ningbo Sunny's response to Interrogatory No. 4, the Court is not persuaded that Ningbo Sunny's original response to the interrogatory is inconsistent with the federal rules, made for an improper purpose, or otherwise unreasonable. The parties disputed whether Ningbo Sunny's original response was sufficiently responsive, and Orion successfully moved to compel a supplemental response. Dkt. No. 593. Ningbo Sunny complied and provided a supplemental response. Dkt. No. 624-3. The Court does not agree that the supplemental response, which purports to include every non-written communication between Ningbo Sunny's attorneys and attorneys for the Synta Entities during the past six months, demonstrates that the original response, which characterized the communications collectively and at a high level, was “false”. The supplemental response is more detailed and more complete, which is exactly the relief Orion sought in its motion compel.

As the Court finds no violation of [Rule 26\(g\)\(1\)\(B\)](#), the Court denies Orion's motion for sanctions with respect to counsel's certification of Ningbo Sunny's response to Interrogatory No. 4.

C. Orion's Request for Sanctions Under [Rule 26\(g\)\(3\)](#)

Orion argues that Sheppard Mullin's violation of the certification requirement for Ningbo Sunny's discovery responses warrants the imposition of sanctions under [Rule 26\(g\)\(3\)](#). Orion asks for two forms of sanctions: (1) that the Court order Sheppard Mullin to “direct and control” Ningbo Sunny's production of documents responsive to Orion's post-judgment document requests and certify that it has done so in compliance with [Rule 26\(g\)](#), and (2) that the Court order Ningbo Sunny and Sheppard Mullin to pay the attorneys' fees and expenses Orion incurred in moving to compel Ningbo Sunny's collection, review, and production of responsive documents and in making its motion for sanctions. Dkt. No.

624 at 11; Dkt. No. 624-1; Dkt. No. 639-1. Sheppard Mullin argues that its conduct was substantially justified and that, in any event, the Court should exercise discretion not to award monetary sanctions against it. Dkt. No. 632.

Under [Rule 26\(g\)\(3\)](#), the Court *must* impose appropriate sanctions for violation of counsel’s certification obligations unless it finds “substantial justification” for the violation. [Fed. R. Civ. P. 26\(g\)\(3\)](#); *see Rojas v. Town of Cicero*, 775 F.3d 906, 909 (7th Cir. 2015). Substantial justification may be found, for example, where there is a genuine dispute about compliance with a discovery request or a breakdown in the attorney-client relationship that prevents counsel from fulfilling their obligations. *See, e.g., Tolerico v. Home Depot*, 205 F.R.D. 169, 175-76 (M.D. Pa. 2002) (sanctions not warranted where compliance is genuinely disputed); *ECIMOS LLC v. Nortek Global HVAC LLC*, No. 2:14-cv-02703-SHM, 2017 WL 3468563 at *9-10 (W.D. Tenn. Aug. 11, 2017) (finding sanctions award unjust based on counsel’s role in the case and a clear record of “contumacious” conduct by the client). According to the Advisory Committee Notes accompanying [Rule 26\(g\)](#), “[t]he nature of the sanction is a matter of judicial discretion to be exercised in light of the particular circumstances.” [Fed. R. Civ. P. 26](#) advisory committee’s note, 1983 amdt., subdivision (g). The sanctions *may* include monetary sanctions, including an award of attorneys’ fees and expenses caused by the violation. [Fed. R. Civ. P. 26\(g\)\(3\)](#).

1. Substantial justification

*7 The Court first considers whether Sheppard Mullin has shown substantial justification for the violation of its obligations under [Rule 26\(g\)\(1\)\(B\)](#) with respect to Ningbo Sunny’s responses to Orion’s document requests. Citing its then-pending motion to withdraw as counsel, Sheppard Mullin argues that a material conflict with Ningbo Sunny prevents it from fully responding to Orion’s motion for sanctions because “many of the facts and communications relating to Sheppard Mullin’s oversight of those RFP responses are confidential, privileged, and potentially prejudicial to [Ningbo Sunny].” Dkt. No. 632 at 4. However, in the very next section of its opposition, Sheppard Mullin asserts that “non-confidential and non-privileged information” demonstrates Sheppard Mullin’s compliance with [Rule 26\(g\)](#). *Id.* Significantly, while Sheppard Mullin refers to circumstances that have rendered its continued representation of Ningbo Sunny “unreasonably difficult,” including a “breakdown in communication” between counsel

and client (*id.* at 7), Sheppard Mullin does *not* contend that it was prevented from complying with its duty of reasonable inquiry with respect to the document production at issue because it was unable to communicate effectively with Ningbo Sunny about the collection of responsive documents or to supervise Ningbo Sunny’s compliance. *See generally* Dkt. Nos. 632, 633. Such an assertion would require no disclosure of privileged information and its omission is conspicuous.

The Court concludes that Sheppard Mullin has not offered a substantial justification for the certification violation and that sanctions are warranted.

2. Sanctions

In considering the nature of the sanctions, the Court’s principal concern is ensuring that Ningbo Sunny fully complies with its obligations to produce documents responsive to Orion’s post-judgment document requests consistent with the representations it has made in response to those requests. *See* Dkt. No. 624-2; *see also* Dkt. No. 600. While this motion for sanctions was under submission, the presiding judge granted Sheppard Mullin’s motion to withdraw as counsel of record,² and new counsel have appeared for Ningbo Sunny in this case. *See* Dkt. Nos. 655, 666. Requiring Sheppard Mullin to actively supervise the collection, review, and production of Ningbo Sunny’s responsive documents, as Orion demands, would be inconsistent with the order of withdrawal and ineffective, given the presiding judge’s findings in support of Sheppard Mullin’s motion to withdraw. For this reason, the Court orders Ningbo Sunny’s new counsel of record to undertake an independent effort to ensure that Ningbo Sunny fully complies with Orion’s post-judgment document requests. Specifically, Ningbo Sunny must redo, with the direction and supervision of counsel, its collection, review, and production of responsive documents.

Ningbo Sunny’s document production shall be completed no later than **June 26, 2020** and all responsive documents that have not yet been produced shall be produced to Orion by that date. On or before **June 26, 2020**, Ningbo Sunny shall file with the Court a declaration of a person with knowledge describing with specificity what Ningbo Sunny did to search for and collect responsive documents.

In addition, the Court finds that monetary sanctions are appropriate to compensate Orion for the attorneys' fees and costs it incurred with respect to: (1) preparing the portion of the joint discovery dispute letter (Dkt. No. 587) directed to Ningbo Sunny's failure to comply with its obligations to produce responsive documents; (2) the portion of the March 17, 2020 hearing concerning Ningbo Sunny's document production and failure to comply with the Court's March 4, 2020 order (Dkt. Nos. 612, 613); and (3) the briefing and hearing on the portion of Orion's motion for sanctions that concerns Sheppard Mullin's failure to conduct a reasonable inquiry regarding Ningbo Sunny's compliance with its obligation to produce responsive documents (Dkt. No. 624). Although Orion has submitted declarations of its counsel concerning attorneys' fees and costs incurred (Dkt. Nos. 624-1, 639-1), these declarations do not separately account for fees and costs incurred with respect to Ningbo Sunny's document request responses, as to which the Court finds a violation, and Ningbo Sunny's interrogatory response, as to which the Court finds no violation.

*8 No later than **June 12, 2020**, Orion shall submit an application for the fees and costs incurred with respect to matters the Court finds compensable, as indicated above. The application must include information sufficient for the Court to determine that the fees and costs claimed are reasonable. See *Vieste, LLC v. Hill Redwood Development*, No. C-09-04024 JSW (DMR), 2011 WL 588145 at *4 (N.D. Cal. Feb. 10, 2011) (describing requirements for assessing reasonable attorneys' fees and costs). Alternatively, the parties may stipulate to the amount of monetary sanctions and so advise the Court. As permitted by [Rule 26\(g\)\(3\)](#), the Court awards monetary sanctions jointly against Ningbo Sunny and Sheppard Mullin.

IT IS SO ORDERED.

All Citations

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Footnotes

- 1 For example, Orion's Request No. 4 asks Ningbo Sunny to produce "[d]ocuments [c]oncerning all payments made to each Defendant by or on behalf of its respective customers or distributors located in the United States." Ningbo Sunny responded in relevant part that it "will produce relevant, non-privileged documents responsive to this request, to the extent such documents are located in the course of a reasonable search." Dkt. No. 624-2 at 6.
- 2 On May 8, 2020, the presiding judge issued an order permitting Sheppard Mullin to withdraw as counsel for Ningbo Sunny "on the condition that Sheppard Mullin will continue to represent Ningbo Sunny until such time as the sanctions motion pending before Judge DeMarchi is resolved, or 30 days from the date of this order, whichever is sooner." Dkt. No. 655 at 2.