

**APPENDIX TO APPLICATION
FOR EXTENSION OF TIME**

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FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FEB 7 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LOOP AI LABS, INC., a Delaware
corporation,

Plaintiff,

and

VALERIA CALAFIORE HEALY, lead
counsel for plaintiff Loop AI Labs, Inc.,

Appellant,

v.

ANNA GATTI; et al.,

Defendants-Appellees.

LOOP AI LABS, INC., a Delaware
corporation,

Plaintiff-Appellant,

v.

ANNA GATTI; ALMAVIVA S.P.A, an
Italian corporation; ALMAWAVE S.R.L.,
an Italian corporation; ALMAWAVE USA
INC., a California corporation; IQSYSTEM
LLC, a California limited liability company;
IQSYSTEM, INC., a Delaware corporation,

Defendants-Appellees.

No. 17-15608

D.C. No. 4:15-cv-00798-HSG
Northern District of California,
Oakland

ORDER

No. 17-15621

D.C. No. 4:15-cv-00798-HSG

LOOP AI LABS, INC., a Delaware corporation,

Plaintiff-Appellee,

v.

ALMAVIVA S.P.A, an Italian corporation; ALMAWAVE S.R.L., an Italian corporation; ALMAWAVE USA INC., a California corporation,

Defendants-Appellants,

and

ANNA GATTI; IQSYSTEM LLC, a California limited liability company; IQSYSTEM, INC., a Delaware corporation,

Defendants.

LOOP AI LABS, INC., a Delaware corporation,

Plaintiff-Appellee,

v.

IQSYSTEM LLC, a California limited liability company; IQSYSTEM, INC., a Delaware corporation; ANNA GATTI,

Defendants-Appellants,

and

ALMAVIVA S.P.A, an Italian corporation;

No. 17-15743

D.C. No. 4:15-cv-00798-HSG

No. 17-15784

D.C. No. 4:15-cv-00798-HSG

ALMAWAVE S.R.L., an Italian corporation; ALMAWAVE USA INC., a California corporation,

Defendants.

Before: MURGUIA and FRIEDLAND, Circuit Judges, and HINKLE,* District Judge.

Judge Murguia and Judge Friedland have voted to deny the petition for rehearing en banc. Judge Hinkle recommends denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is **DENIED**.

* The Honorable Robert L. Hinkle, United States District Judge for the Northern District of Florida, sitting by designation.

FILED

NOT FOR PUBLICATION

NOV 9 2018

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOOP AI LABS, INC., a Delaware corporation,

Plaintiff,

and

VALERIA CALAFIORE HEALY, lead counsel for plaintiff Loop AI Labs, Inc.,

Appellant,

v.

ANNA GATTI; ALMAVIVA S.P.A, an Italian corporation; ALMAWAVE S.R.L., an Italian corporation; ALMAWAVE USA INC., a California corporation; IQSYSTEM LLC, a California limited liability company; IQSYSTEM, INC., a Delaware corporation,

Defendants-Appellees.

LOOP AI LABS, INC., a Delaware corporation,

Plaintiff-Appellant,

v.

ANNA GATTI; ALMAVIVA S.P.A, an

No. 17-15608

D.C. No. 4:15-cv-00798-HSG

MEMORANDUM*

No. 17-15621

D.C. No. 4:15-cv-00798-HSG

Italian corporation; ALMAWAVE S.R.L., an Italian corporation; ALMAWAVE USA INC., a California corporation; IQSYSTEM LLC, a California limited liability company; IQSYSTEM, INC., a Delaware corporation,

Defendants-Appellees.

LOOP AI LABS, INC., a Delaware corporation,

Plaintiff-Appellee,

v.

ALMAVIVA S.P.A, an Italian corporation; ALMAWAVE S.R.L., an Italian corporation; ALMAWAVE USA INC., a California corporation,

Defendants-Appellants,

and

ANNA GATTI; IQSYSTEM LLC, a California limited liability company; IQSYSTEM, INC., a Delaware corporation,

Defendants.

LOOP AI LABS, INC., a Delaware corporation,

Plaintiff-Appellee,

v.

No. 17-15743

D.C. No. 4:15-cv-00798-HSG

No. 17-15784

D.C. No. 4:15-cv-00798-HSG

IQSYSTEM LLC, a California limited liability company; IQSYSTEM, INC., a Delaware corporation; ANNA GATTI,

Defendants-Appellants,

and

ALMAVIVA S.P.A, an Italian corporation; ALMAWAVE S.R.L., an Italian corporation; ALMAWAVE USA INC., a California corporation,

Defendants.

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted October 10, 2018
San Francisco, California

Before: MURGUIA and FRIEDLAND, Circuit Judges, and HINKLE, ** District Judge.

The plaintiff asserted wide-ranging commercial claims against six defendants. The plaintiff repeatedly violated court orders on discovery and other matters. After issuing a detailed order to show cause and considering the plaintiff's response, the district court dismissed the action. The order of dismissal explained

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Robert L. Hinkle, United States District Judge for the Northern District of Florida, sitting by designation.

the decision at length and determined, without further explanation, that each side would bear its own costs and attorney's fees. The order revoked the plaintiff's attorney's pro hac vice status in this case and said that the district judge would not grant any motion from the attorney to appear pro hac before him in future matters.

The plaintiff has appealed the dismissal. The defendants have appealed the denial of costs and fees. The plaintiff's attorney has appealed the pro hac ruling and statement.

The dismissal was procedurally and substantively proper, not an abuse of discretion. The plaintiff's violations made it impossible for the defendants—all of them—to prepare for trial. Repeated valid orders and warnings had proved insufficient to bring about compliance. After two years of attempting to resolve the parties' numerous discovery disputes and the plaintiff's disregard for its orders, the district court acted well within its discretionary docket-management and discovery authority by dismissing the case. *See Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007).

Considering all the circumstances, including the sanction of dismissal and the overall conduct of the litigation, requiring each party to bear its own costs and fees was not an abuse of discretion. The absence of an explanation might otherwise be grounds for a remand, but the district court plainly paired the decision on costs and fees with the decision to dismiss the action. A remand for an order confirming

the court's rationale would not change the result. Moreover, the defendants made clear at oral argument that they do not seek a ruling in this court that would remand the overall package of sanctions—potentially opening not only the cost-and-fee issue, but also the dismissal. Further litigation that would serve no apparent purpose is precisely what this case does *not* need.

Because we affirm the district court's dismissal, the appeal of the pro hac revocation no longer matters in one sense. The case is over, and, because pro hac status is granted for participation in a particular case, the plaintiff's attorney's pro hac status would have terminated along with the end of the case regardless of any specific ruling on the issue. The issue might therefore be considered moot. Plaintiff's attorney contends, however, that there is ongoing damage to her reputation that makes the revocation a live case or controversy. Taking her representations as true, we agree the case is not moot. We nevertheless affirm because we are persuaded that any error here was harmless. The attorney's conduct that led to her pro hac revocation was all but identical to Loop-AI's conduct that led to the terminating sanctions, so the attorney briefed her personal defenses in response to the order to show cause. Both in her briefing to the district court and in this court, the attorney cites nothing that the district court failed to consider or that she could have said to affect its decision if she had notice that pro hac status would be considered.

Finally, the attorney's challenge to the district court's statement about future pro hac applications is not ripe. There will be time enough in the future for the district court to consider the attorney's application for leave to appear, should the occasion arise.

The parties shall bear their own costs on appeal.

AFFIRMED.

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7 LOOP AI LABS INC,
8 Plaintiff,
9 v.
10 ANNA GATTI, et al.,
11 Defendants.

Case No. 15-cv-00798-HSG

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**ORDER IMPOSING TERMINATING
18 SANCTIONS**

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28 Under Federal Rule of Civil Procedure 37(b) and the Court's inherent authority, the Court issues terminating sanctions dismissing Plaintiff Loop AI Labs Inc.'s action with prejudice. The Court previously issued an order to show cause why terminating sanctions should not issue, Dkt. No. 894, to which Plaintiff responded, Dkt. No. 922. For the reasons discussed below, the Court concludes that Plaintiff's obstructionist discovery conduct, flagrant disregard for the Court's authority, and inability to meet its most basic professional obligations warrant no lesser sanction.

I. BACKGROUND

19 Plaintiff initiated this action in February 2015. Dkt. No. 1. The operative complaint
20 alleges eighteen causes of action including civil conspiracy, fraud, breach of contract, theft of
21 corporate opportunity, misappropriation of trade secrets, and conversion against Defendants Anna
22 Gatti; Almaviva S.p.A, Almawave S.r.l., Almawave USA Inc. (collectively, "Almawave");
23 IQSystem, Inc. ("IQS, Inc."), and IQSystem LLC ("IQS LLC"). *See* Dkt. No. 210 ("SAC").
24 Plaintiff alleges that Defendant Gatti, its now-former CEO, conspired with Defendants to
25 misappropriate Plaintiff's trade secrets and generally sabotage its business prospects. According
26 to Plaintiff, while Gatti pretended to work full time for Loop AI, she was simultaneously
27 providing advisory services for multiple competing startups and took a concurrent CEO position
28 with Defendant Almawave. SAC ¶ 116. Plaintiff contends that Almaviva intended to use Gatti's

1 assistance to buy Loop AI for a “bargain price” or to hire away its key employees and obtain
2 access to its proprietary technology and trade secrets. SAC ¶ 21. Plaintiff alleges that Gatti’s
3 scheme involved sabotaging Plaintiff’s access to funding, sharing Plaintiff’s proprietary
4 information with the other Defendants, and using Plaintiff’s time, property, and other resources to
5 conduct business on behalf of Almawave. SAC ¶¶ 22-23, 29.

6 From the beginning, this case has been marked by a level of dysfunction and inability to
7 work together that is unprecedented in the Court’s experience. *See, e.g.*, Dkt. Nos. 96 & 98
8 (parties filed separate case management statements in contravention of Local Rule 16-9); Dkt. No.
9 101 (inability to conduct Rule 26(f) Meet and Confer); Dkt. No. 157 at 47-57 (Plaintiff’s counsel
10 blocked emails from Defendants, choosing to accept only faxes, letters, and phone calls from
11 opposing counsel, because receiving emails from Defendants was too “intrusive”); Dkt. No. 288
12 (Defendants requested a discovery referee because Plaintiff allegedly “refuses to discuss any items
13 beyond Loop’s own agenda” during meet-and-confer meetings). Magistrate Judge Donna M. Ryu
14 attempted to “impose a workable structure on the parties’ discovery dispute resolution process,”
15 Dkt. No. 271 at 2, and the docket highlights the Court’s many, many attempts to advance this
16 litigation in a productive way.¹ Over the course of the last two years, the Court has tried
17 numerous approaches, such as ordering court-supervised discovery management conferences, Dkt.
18 No. 136 at 2; ordering the parties to audio record meet and confer sessions, Dkt. No. 156 at 2;
19 instituting standing meetings each week to encourage substantive and meaningful meet-and-confer
20 sessions, Dkt. No. 271 at 2; and eventually requiring the parties to provide dial-in information and
21 agendas for the weekly meet-and-confer teleconferences, so that the Court could monitor the
22 parties’ conduct by joining the calls, Dkt. No. 415 at 2.

23 As described more fully below, Plaintiff’s insubordination, through its counsel Valeria C.
24 Healy, was and continues to be particularly egregious, posing a significant obstacle to the progress
25 of this case. The Court has given Plaintiff many chances to litigate in a professional and

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27 ¹ On June 16, 2015, the Court referred all discovery motions to a magistrate judge under Local
28 Rule 72-1. Dkt. No. 113. In this order, all uses of the word “Court” refer either to the District
Court or collectively to Judge Ryu and this Court.

1 productive manner, and has been consistently confronted with counsel's utter disregard for the
2 Court's authority and her persistent refusal to comply with the Court's orders and the Federal
3 Rules. The following section details the key discovery orders serving as the basis of this order.

4 **A. Improper Conduct in Depositions of Three Key Witnesses**

5 As early as December 2015, Judge Ryu gave specific warnings with respect to the issue of
6 privilege during depositions: "there can be no instructions to not answer except for privilege. . . .
7 And it has to be clearly privilege. Because if it's not, again there will be sanctions." Dkt. No. 335
8 at 46.

9 On January 25, 2016, Almawave first deposed Plaintiff's co-founder and CEO Gianmauro
10 Calafiore. Dkt. No. 884 at 1 ("Order 884"). After reviewing the deposition transcript, Judge Ryu
11 issued an order regarding Healy's conduct during the deposition. Dkt. No. 436 ("Order 436").

12 [The deposition transcript] is replete with examples of inappropriate
13 behavior by Plaintiff's counsel, Valeria Calafiore Healy. Ms. Healy
14 made speaking objections, instructed the deponent not to answer
15 questions for reasons other than the invocation of privilege, and
16 repeatedly objected without stating a basis for the objection. The
deponent, Gianmauro Calafiore, was often argumentative and
uncooperative in providing testimony, thereby delaying the
deposition process. Ms. Healy and Mr. Calafiore's obstructionist
conduct repeatedly stymied Alma[w]ave USA's attempts to obtain
discovery through this key deposition.

17 *Id.* at 1. Judge Ryu sanctioned the Plaintiff, ordering five additional hours of deposition and
18 requiring Plaintiff to bear the cost. *Id.* The order again provided specific instructions:

19 In the future, Ms. Healy, and indeed, all attorneys defending
20 depositions in this litigation (1) shall state the basis for an objection,
and no more (e.g., "relevance," "compound," "asked and
21 answered"); (2) shall not engage in speaking objections or otherwise
attempt to coach deponents; and (3) shall not direct a deponent to
refuse to answer a question unless the question seeks privileged
22 information.

23 *Id.* at 2. Judge Ryu further warned that "[g]iven Ms. Healy's repeated inappropriate conduct in
24 her defense of the Calafiore deposition, any further breach" would result in sanctions. *Id.*

25 On August 25, 2016, Judge Ryu issued an order regarding Healy's continued conduct
26 during the deposition of Calafiore, as well as Loop AI's other executives Bart Peintner and Patrick
27 Ehlen. Dkt. No. 884. Leading up to this order, Judge Ryu had already twice directed Plaintiff to
28 produce Peintner and Ehlen for depositions as they "appeared to be percipient witnesses." *See*

1 Dkt. No. 465 (March 10, 2016); Dkt. No. 526 (March 25, 2016). Judge Ryu’s March 25 order
 2 included specific dates, ordering that Ehlen and Peintner appear on March 29 and March 30, and
 3 that Calafiore and any of Plaintiff’s 30(b)(6) witnesses appear either on March 31 or April 1. Dkt.
 4 No. 526. This Court denied Plaintiff’s motion for relief from Judge Ryu’s nondispositive order
 5 regarding the deposition dates. Dkt. No. 533. Plaintiff nonetheless failed to follow Judge Ryu’s
 6 orders. *See* Dkt. No. 555 (Almawave’s letter brief indicating that “Loop and its witnesses refused
 7 to appear for deposition as ordered”). On April 4, 2016, Judge Ryu *again* ordered Plaintiff to
 8 make witnesses Calafiore, Ehlen, and Plaintiff’s corporate representative available. Dkt. No. 564.

9 Order 884 is based on Judge Ryu’s review of the deposition transcripts of these witnesses.
 10 Judge Ryu found that “[i]n direct contravention of the court’s February 29, 2016 order, Healy
 11 instructed witnesses to refuse to answer questions on grounds other than privilege.” Order 884 at
 12 4 (noting, for example, that Healy “instructed Plaintiff’s 30(b)(6) designee (Calafiore) not to
 13 answer certain questions, unilaterally deciding that the questions were outside the scope of the
 14 noticed Rule 30(b)(6) topics”); *id.* at 5 (“[W]hen Almawave asked Ehlen, ‘Can you tell us how
 15 your particular algorithms work?’, Healy instructed him not to answer on the basis of relevance,
 16 again unilaterally taking the topic off the table.”).² Judge Ryu cited Healy’s “numerous improper
 17 speaking objections, in direct contravention of this court’s order that counsel confine objections to
 18 a statement of their basis, (e.g., ‘compound,’ or ‘asked and answered’), and not engage in speaking
 19 objections or otherwise attempt to coach the witness.” *Id.* at 5. Order 884 found “Healy’s
 20 coaching was so effective that the witnesses occasionally repeated her objections, sometimes
 21 verbatim, to the examining attorney,” and that “[o]n other occasions, Healy actually attempted to
 22 answer the question for the witness.” *Id.* at 6-7.³ Order 884 held that Healy improperly asserted
 23

24 ² As the order further explained, “[o]pposing counsel responded by asking Healy to stipulate that the
 25 subject matter would not be raised by Plaintiff at trial (i.e., that the matter was truly irrelevant). Healy
 26 refused, stating that such a request was ‘absolutely absurd.’” Dkt. No. 884 at 5.

27 ³ The order provides numerous examples:

28 “Q: And is it true that, in June 2015, Loop first launched to the
 29 public? Ms. Calafiore Healy: Objection. Vague and ambiguous.
 30 What do you mean launched? A: What do you mean launched?”

“Q: Do you think my clients did anything to interfere with the

1 attorney-client privilege to prevent witnesses from answering, noting that Healy “inexplicably
2 refused to allow the witnesses to respond to questions about their own discussions with other Loop
3 employees or third parties,” and “refused to allow Plaintiff’s witnesses to answer questions about
4 their document collection and production in this litigation” on the basis of attorney-client
5 privilege. *Id.* at 7-8. Judge Ryu concluded that Healy’s conduct, “including instructions not to
6 answer questions and speaking objections and coaching, was both improper and in direct violation
7 of the court’s February 29, 2016 order regarding the conduct of depositions” and “[a]ccordingly, it
8 is sanctionable.” *Id.* at 9. Judge Ryu deferred to this Court as to what sanction should be
9 imposed. *Id.*

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13 potential investments of WI Harper? Ms. Calafiore Healy:
14 Objection. Without revealing attorney work product and attorney-
client privilege, are you asking for his opinion? A: Are you asking
for my opinion?”

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“Q: Did you ever think about having Loop purchased by another
company? Ms. Calafiore Healy: Objection, vague and ambiguous as
to time period. A: During which time period?”

18

19

“Q. Not affiliated with Loop? A. Yeah. Q. Are -- Ms. Calafiore
Healy: And I caution the witness and -- I’m objecting and caution
the witness as to this question because I think he’s confusing with
Manuela Micoli.”

20

21

“Q: Do you know how it would be done, tracking -- Ms. Calafiore
Healy: Objection. Call – calls for speculation. The witness just
testified it not [sic] – it’s not his responsibility. A: Yeah, it’s not
really my area.”

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23

“Q. Which are what? Ms. Calafiore Healy: Cited in the declaration.
A: Yeah, it was cited in the declaration.”

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“Q: Okay. As of today, you don’t know? Ms. Calafiore Healy:
Objection. Objection. Calls for a legal conclusion. As – this is not a
question that – the witness is not here to testify in his capacity as the
CEO of Loop AI for the 30(b)(6) deposition, which is tomorrow. So
he’s asking about – you’re asking here questions about his personal
knowledge, and the witness – and the question calls for a legal
conclusion. A: So the – the answer is that your questions calls [sic]
for a legal conclusion and we will find out.”

28

Order 884 at 6 (citations and parentheticals omitted).

1 **B. Refusal to Properly Respond to Key Interrogatories**

2 On multiple occasions Judge Ryu ordered Plaintiff to amend its responses to four key
 3 interrogatories. With respect to Interrogatory No. 8, Almawave sought the factual bases for
 4 certain allegations in the SAC, including Almaviva's intent to buy Loop for a bargain price or to
 5 hire away Loop's key employees and thereby acquire access to Loop's proprietary technology.
 6 Dkt. No. 428-1. Judge Ryu first ordered Plaintiff on March 2, 2016 to submit an amended
 7 response by March 9, 2016. Dkt. No. 438 ("Order 438").⁴ After receiving notice from Almawave
 8 that Plaintiff had not complied, Judge Ryu issued a second order on March 22, 2016, again
 9 directing Plaintiff to amend its response. Dkt. No. 508.

10 With respect to Interrogatory Nos. 3, 5, and 7, Judge Ryu held that they permissibly sought
 11 the factual bases for Loop's allegations, and she ordered Plaintiff to serve amended responses by
 12 March 15, 2016. Dkt. No. 465 ("Order 465"). On March 24, 2016, Almawave notified Judge Ryu
 13 that Plaintiff had failed to comply with both Order 438 and Order 465. Dkt. No. 523. Following
 14 submission of Almawave's brief and Plaintiff's opposition, Judge Ryu issued an order on May 3,
 15 2016, finding that Plaintiff's responses to the four interrogatories were "plainly and grossly
 16 deficient." Dkt. No. 640 ("Order 640").

17 For each response, Plaintiff responded by directing Almawave to
 18 "all productions by all parties and non-parties in this case, and any
 19 further materials has [sic] may be obtained through discovery or
 20 otherwise." This is improper. An answer to an interrogatory
 21 "should be complete in itself." In response to nos. 3, 7, and 8,
 22 Plaintiff also listed thousands of bates numbers with no explanation.
 23 This is an improper use of Rule 33(d); a responding party "may not
 24 abuse the option . . . by directing the propounding party to a mass
 25 [o]f undifferentiated records."

26 Plaintiff also included nearly 100 pages of allegations that appear to
 27 be cut and pasted from Plaintiff's second amended complaint. This
 28 too, is insufficient. . . .

29 Plaintiff's response to no. 5, which sought the bases for Plaintiff's
 30 claimed damages, is also non-responsive. It simply lists the
 31 categories of damages Plaintiff seeks; it does not answer the
 32 question of how Plaintiff values its business, technology, trade

27 ⁴ According to Defendants, Loop refused to substantively respond. Dkt. No. 428. Plaintiff did not
 28 oppose Almawave's discovery letter brief on this issue, and the Court thus construed the motion as
 unopposed, ordering Plaintiff to respond by March 9, 2016. Dkt. No. 438.

secrets, patents, or confidential information. None of the responses were verified, violating Rule 33. . . .

Id. at 3 (citations omitted) (first ellipsis in original). Judge Ryu concluded that Plaintiff's responses to the interrogatories "are not substantially justified, and are subject to sanctions." *Id.* at 4. Judge Ryu again ordered Plaintiff to provide amended responses:

4. Judge Ryu again ordered Plaintiff to provide amended responses:

Given that discovery has now closed, Plaintiff shall supplement its responses to interrogatory nos. 3, 5, 7, and 8 within seven days of the date of this order. Plaintiff's responses may not include allegations pasted from the operative complaint, and Plaintiff must provide full, complete answers for each interrogatory which are verified under penalty of perjury.

Id.

Notwithstanding Order 640, Plaintiff refused to amend its responses. *See* Dkt. No. 679 (Almawave’s discovery letter brief indicating that Plaintiff has not complied with Order 640); *see also* Dkt. No. 691 (Almawave’s motion for leave to file a motion for terminating sanctions regarding Plaintiff’s alleged refusal to comply with Order 640); Dkt. No. 686 at 4-5 (Plaintiff’s motion for relief maintaining that it “properly responded to the Interrogatories and cannot be compelled to change the factual basis of [sic] supporting its complaint, which is what the interrogatories are directed to”).

On July 21, 2016, Judge Ryu ordered Plaintiff to file a statement indicating whether it had served supplemental and/or amended responses to each of the interrogatories at issue. Dkt. No. 850. Judge Ryu ordered Plaintiff to submit a copy of the supplemental and/or amended responses that it had served along with a proof of service. *Id.* Plaintiff's response confirmed that Plaintiff had refused to amend the interrogatories. *See* Dkt. No. 856 ("[A]fter considering the requirements of Order 640 and reviewing the responses already provided by Loop AI, Loop AI did not possess any further information that was responsive to those interrogatories and did not have any further information to provide as a supplement to the Interrogatories identified.").

C. Failure to Properly and Timely Respond to Requests for Production

On May 3, 2016, Judge Ryu also admonished Plaintiff because its responses to several RFPs failed to comply with Federal Rule of Civil Procedure 34(b)(2). Order 640 at 5-6 (“Plaintiff’s responses render it impossible to determine the extent of Plaintiff’s production and whether Plaintiff has withheld documents responsive to any portions of the RFPs.”). Judge Ryu

1 ordered Plaintiff to amend its responses to comply with Rule 34(b)(2) by May 10, 2016. *Id.* at 6.
 2 Almawave filed a discovery letter brief on May 13, 2016 indicating that Plaintiff had not complied
 3 with Judge Ryu's order to respond to the RFPs. Dkt. No. 679. Plaintiff's motion for relief from
 4 Judge Ryu's order confirmed Plaintiff's refusal to comply with the court's order. *See* Dkt. No.
 5 686 at 5 (insisting that "Loop AI served appropriate discovery responses in compliance with the
 6 Federal Rules of Civil Procedure," and that it "cannot be required to amend discovery responses
 7 served almost a year ago to comply with a new rule"). The Court denied Plaintiff's motion for
 8 relief on May 24, 2016. Dkt. No. 702. On July 21, 2016, Judge Ryu ordered Plaintiff to file a
 9 statement by July 26, 2016 that specified whether Plaintiff had served the RFPs by the court's
 10 May 10 deadline. In its late-filed response, Plaintiff further confirmed its noncompliance:
 11 although the deadline for production was May 10, 2016, Plaintiff stated that it *began* to produce
 12 on May 11, 2016. *See* Dkt. No. 856 at 1 & n.1 (filed July 27, 2016). Moreover, Plaintiff's
 13 production extended far past the May 10 deadline, continuing through early June. Dkt. No. 807 at
 14 3-4.⁵

15 **D. Refusal to Produce Adequate Privilege Log**

16 On March 8, 2016, Almawave filed a discovery letter brief regarding Plaintiff's failure to
 17 provide a privilege log. Dkt. No. 451. Almawave argued:

18 Loop's responses to Almawave's First Set of Requests for
 19 Production of Documents were due and served on August 3, 2015.
 20 Loop's privilege log is now more than seven months overdue, nearly
 one month overdue from when Almawave raised the issue in writing
 via its agenda and over 14 days overdue from when Almawave
 expressly wrote demanding that Loop produce its privilege log.

21 *Id.* In response, Judge Ryu referred the parties to her January 27, 2016 Notice of Amended
 22 Discovery Procedures, which provided that "[i]f a party withholds responsive information by

23
 24 ⁵ Plaintiff contends that its May 11, 2016 production was timely because it added three days to the
 25 deadline for compliance with the court's May 3, 2016 order, due to electronic service of the order.
 26 Dkt. No. 856 at 1 n.1. It cites Federal Rules of Civil Procedure 6(d) and 5(b)(2)(E) for support.
 27 *Id.* The Court does not read these provisions to extend the deadline by which a party must comply
 28 with a court order based on electronic service of the court order. But even giving Plaintiff the
 benefit of the doubt, Plaintiff was still grossly noncompliant. Judge Ryu ordered supplemental
 responses to be submitted *within* 7 days. Dkt. No. 640 at 6. Plaintiff only *began* production on
 May 11, Dkt. No. 856 at 1 n.1, and did not finish until early June, Dkt. No. 807 at 4, thus failing
 by several weeks to meet the court's deadline.

1 claiming that it is privileged or otherwise protected from discovery, that party shall produce a
2 privilege log as quickly as possible, but no later than fourteen days after its disclosures or
3 discovery responses are due, unless the parties stipulate to or the court sets another date.” Dkt.
4 No. 456 (citing Dkt. No. 401 at 4). Judge Ryu ordered Plaintiff to produce the privilege log no
5 later than March 16, 2016. Dkt. No. 456.

6 On March 18, 2016, Almawave filed an administrative motion for leave to file a unilateral
7 discovery letter brief in which it asserted that Plaintiff had refused to comply with the court’s
8 order to produce a privilege log, seeking leave to move to compel Plaintiff’s production of
9 documents over its privilege claims based on waiver. Dkt. No. 498. Plaintiff did not timely
10 oppose Almawave’s administrative motion and did not refute Almawave’s representations about
11 its refusal to produce a privilege log. Dkt. No. 540 (“Order 540”). Accordingly on March 29,
12 2016, Judge Ryu ordered Plaintiff to show cause why it should not be sanctioned for failing to
13 comply with Order 456 and why its failure to produce a privilege log should not be deemed a
14 waiver of any asserted privileges. *Id.*

15 Plaintiff’s response to the order to show cause challenged the validity of Order 540,
16 contending that Defendant’s initial letter brief, Dkt. No. 451, should have been denied. Dkt. No
17 576. Plaintiff also argued that its conduct was “no different than what all the Defendants have
18 done in this case,” and that the “only difference is that Loop AI did not immediately run to the
19 Court to seek sanctions.” *Id.* Finally, Plaintiff represented that it intended to comply with Order
20 456 by April 11, 2016, *id.*, almost a month after the court’s deadline.

21 On April 28, 2016, Almawave filed a third motion related to Plaintiff’s privilege log,
22 seeking leave to file a unilateral brief regarding the sufficiency of Plaintiff’s privilege log, Dkt.
23 No. 630, which Plaintiff opposed, Dkt. No. 637. After reviewing Plaintiff’s privilege log, Judge
24 Ryu issued an order on May 13, 2016, concluding Plaintiff had waived the attorney-client
25 privilege and work-product protection as to most documents withheld from production. Dkt. No.
26 680 (“Order 680”). Order 680 provided three bases for the waiver:

27 [First,] Almawave was literally unable to assess or challenge
28 Plaintiff’s claimed privileges or protection because Plaintiff did not
serve a privilege log until April 2016, approximately seven months
after Plaintiff’s initial production, and after fact discovery closed on

March 29, 2016. Plaintiff's privilege log was thus grossly late. [Second,] Plaintiff's service of its privilege log in April 2016 violated three separate court orders: the June 2015 Notice of Reference and Order re Discovery Procedures, (Docket No. 117); the court's January 2016 Notice of Amended Discovery Procedures; and the court's March 9, 2016 order to produce a privilege log by March 16, 2016. Finally, Plaintiff's privilege log is plainly deficient. It contains no information about the titles and descriptions of the withheld documents, nor does it identify the subject matters addressed in the documents. This is exactly the kind of information that would enable Almawave to assess whether the assertion of privilege or protection is justified. It is also the kind of information that is required by Rule 26(b)(5), as well as the court's standing orders.

8 *Id.* at 4-5. Judge Ryu concluded that Plaintiff must “produce the documents described above for
9 which the court deems the attorney-client privilege and work product production waived within
10 seven days of the date of this order,” i.e., by May 20, 2016. *Id.* at 6 (emphasis omitted).

1 Plaintiff sought reversal of Order 680 by this Court, Dkt. No. 700, which denied the
2 request, Dkt. No. 712. Plaintiff then sought a writ of mandamus in the U.S. Court of Appeals for
3 the Ninth Circuit. *In re: Loop AI Labs, Inc.*, No. 16-cv-71736, Dkt. No. 1 (9th Cir. May 31,
4 2016). On the same day, Almawave filed an administrative motion regarding Plaintiff's failure to
5 produce the documents consistent with Order 680, requesting either the issuance of an order to
6 show cause why terminating sanctions should not be imposed for Plaintiff's failure to comply or
7 leave to file a unilateral brief seeking such relief. Dkt. No. 715. On June 6, 2016, Plaintiff
8 acknowledged that it had refused to comply with Order 680, but asked Judge Ryu to "grant it at
9 least the ability to have its petition reviewed by the Ninth Circuit before entertaining any further
10 motions" on Order 680. Dkt. No. 725. Accordingly, Judge Ryu directed Plaintiff to identify
11 "authority for the position that petitioning for a writ of mandamus to a United States Court of
12 Appeals has the effect of staying a party's duty to comply with the order that is the subject of the
13 writ of mandamus." Dkt. No. 777. Plaintiff's response indicated that it had no such authority.
14 Dkt. No. 804. On July 11, 2016, Almawave filed an opposition to Plaintiff's response, in which it
15 cited authority for the proposition that the filing of the mandamus petition did not impose such a
16 stay. Dkt. No. 808. On December 21, 2016, the Ninth Circuit denied Plaintiff's petition for "the
17 extraordinary remedy of mandamus." *See* Dkt. No. 961 at 2. The Ninth Circuit held that
18 Plaintiff's "general overbreadth objections . . . did not excuse [Plaintiff] from its obligation to
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1 provide a privilege log of documents responsive to proper, more narrow requests for production.”
2 *Id.* at 1.

3 On December 27, 2016, Plaintiff notified that Court that it had “now produced to
4 Defendants all of the documents listed on its privilege log.” Dkt. No. 963. But this was over nine
5 months after Judge Ryu first ordered Plaintiff to produce a proper privilege log, over seven
6 months after Judge Ryu ordered Plaintiff to produce the documents listed in its “plainly deficient”
7 log, and nearly nine months after the March 29, 2016 fact discovery deadline. Plaintiff thus acted
8 in direct defiance of multiple orders.

9 **E. Trade Secrets Disclosure**

10 The eleventh cause of action alleges misappropriation of trade secrets against all
11 Defendants. In accordance with California Code of Civil Procedure § 2019.210, Defendant IQS,
12 Inc. requested that Plaintiff provide trade secret disclosure on multiple occasions. *See, e.g.*, Dkt.
13 Nos. 118, 232. After reviewing Plaintiff’s disclosures, Judge Ryu concluded on December 21,
14 2015 that Plaintiff’s “explanation of the trade secrets in its second amended complaint” did not
15 satisfy § 2019.210’s requirements. Dkt. No. 331 at 6-8 (“Order 331”) (“Plaintiff’s ‘disclosure’
16 through designation of certain paragraphs in pleadings and declarations is no substitute for
17 specifically identifying and describing the actual claimed trade secrets in order to permit
18 [Defendants] to ascertain at least the boundaries within which the secret[s] lie[.]” (some internal
19 quotation marks omitted)). Judge Ryu ordered Plaintiff “to file and serve a statement identifying
20 the specific trade secrets at issue within 21 days of the date of this order.” *Id.* at 7. Judge Ryu
21 warned that “Plaintiff’s identification of trade secrets must be thorough and complete,” and that
22 “[a]ny future amendment to the disclosure will only be permitted upon a showing of good cause.”
23 *Id.*

24 After the court’s deadline passed, Defendant IQS, Inc. moved to enforce Order 331,
25 seeking to require Plaintiff to provide a thorough and complete identification of the trade secrets
26 under § 2019.210. Dkt. No. 459. Defendant IQS, Inc. sought sanctions in the form of (1)
27 preclusion of the introduction of evidence as to the claim and/or (2) the sanction of dismissal for
28 failing to specify the trade secrets. *Id.* at 3. Defendant Almawave joined in Defendant IQS, Inc.’s

1 motion to enforce Order 331. Dkt. No. 472.

2 After reviewing Plaintiff's revised disclosures, Judge Ryu held that Plaintiff's trade secret
3 disclosures fell "far short of the 'reasonable particularity' standard," Dkt. No. 795 at 5 ("Order
4 795"), and that Plaintiff "failed to comply with [Order 331] to provide a 'thorough and complete'
5 identification of the trade secrets at issue in this litigation," *id.* at 12.

6 [T]he fact that Plaintiff publicly filed its trade secret disclosure
7 belies the proposition that it contains information specific enough to
8 be considered 'confidential' trade secrets. . . Plaintiff's attempt to
9 meet its disclosure obligation by pointing to allegations in its
10 pleadings and other court filings was insufficient the first time, and
11 is no more sufficient now. . . Plaintiff's technique of listing general
12 concepts or categories of information is plainly insufficient;
13 Defendants cannot fairly be expected to rebut Plaintiff's trade
14 secrets claim without a reasonably concrete definition of the
15 purported secrets. . . Plaintiff's categorical descriptions render it
16 impossible for Defendants to conduct public domain or other
17 research to challenge the alleged secrecy of the information at issue.

18 *Id.* at 6-11.⁶ Judge Ryu noted that Order 331 had "warned Plaintiff that '[a]ny future amendment
19 to [its] disclosure [would] only be permitted upon a showing of good cause.'" Order 795
20 concluded that Plaintiff had "not sought leave to amend its trade secret disclosure" and its "failure
21 to comply with the court's order [does not] constitute good cause to amend." *Id.* at 12. Finding
22 Plaintiff's disclosures inadequate, Judge Ryu deferred to this Court in determining the
23 ramifications under Federal Rule of Civil Procedure 37(b) of Plaintiff's failure to obey her
24 discovery order. *Id.* at 13.

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⁶ For example, Order 795 explained:

29 Plaintiff identifies categories of information such as "actual and
30 prospective investors and partners," "key contact information . . . at
31 a large Japanese technology company," "key contacts at a major
32 telephone company," "confidential target partner, client, investor,
33 supplier, employee, consultant, advisor information," and "key
34 service providers." Potential investors, clients, suppliers, or contacts
35 theoretically could constitute protectable facts. However, as noted
36 above, Plaintiff's disclosure was unaccompanied by any supporting
37 documentation, and there is no indication that Plaintiffs identified
38 these claimed trade secrets with more specificity. Without more,
39 Defendants are left to guess. Who exactly are the secret companies or
40 individuals?

41 *Id.* at 9 (citations omitted).

1 **II. LEGAL STANDARD**

2 “Federal Rule of Civil Procedure 37 authorizes the district court, in its discretion, to
 3 impose a wide range of sanctions when a party fails to comply with the rules of discovery or with
 4 court orders enforcing those rules.” *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir.
 5 1983). Rule 37 allows for terminating sanctions that dismiss a plaintiff’s action where there has
 6 been willfulness, bad faith, or fault. Fed. R. Civ. P. 37(b)(2)(A)(v); *Conn. Gen. Life Ins. Co. v.*
 7 *New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007); *Fjelstad v. Am. Honda Motor*
 8 *Co.*, 762 F.2d 1334, 1337 (9th Cir. 1985). “Disobedient conduct not shown to be outside the
 9 control of the litigant is sufficient to demonstrate willfulness, bad faith, or fault.” *Jorgensen v.*
 10 *Cassiday*, 320 F.3d 906, 912 (9th Cir. 2003) (internal quotation marks omitted).

11 In determining whether to impose terminating sanctions under Rule 37(b)(2), courts
 12 consider five factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the
 13 court’s need to manage its docket; (3) the risk of prejudice to the party seeking sanctions; (4) the
 14 public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
 15 sanctions.” *Conn. Gen. Life*, 482 F.3d at 1096 (internal quotation marks omitted). “The sub-parts
 16 of the fifth factor are whether the court has considered lesser sanctions, whether it tried them, and
 17 whether it warned the recalcitrant party about the possibility of case-dispositive sanctions.”⁷ *Id.*
 18 “Where a court order is violated, the first and second factors will favor sanctions and the fourth
 19 will cut against them.” *Comput. Task Grp., Inc. v. Brotby*, 364 F.3d 1112, 1115 (9th Cir. 2004)
 20 (per curiam). Thus, the Court’s determination of whether terminating sanctions are appropriate
 21 often turns on the third and fifth factors. *Id.*

22 Moreover, “[d]ue process concerns further require that there exist a relationship between
 23 the sanctioned party’s misconduct and the matters in controversy such that the transgression
 24 ‘threaten[s] to interfere with the rightful decision of the case.’” *Anheuser-Busch, Inc. v. Nat.*

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 27 ⁷ “Like most elaborate multifactor tests, our test has not been what it appears to be, a mechanical
 28 means of determining what discovery sanction is just. The list of factors amounts to a way for a
 29 district judge to think about what to do, not a series of conditions precedent before the judge can
 30 do anything, and not a script for making what the district judge does appeal-proof.” *Valley Eng’g Co. v. Elec. Eng’g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998).

1 *Beverage Distrib.*, 69 F.3d 337, 348 (9th Cir. 1995). Sanctions interfering with a litigant’s claim
2 or defenses violate due process when imposed merely for punishment of an infraction that did not
3 threaten to interfere with the rightful decision of the case. *G-K Props. v. Redev. Agency*, 577 F.2d
4 645, 648 (9th Cir. 1978).

5 Finally, the Ninth Circuit has noted that “an evidentiary hearing on the matter for which a
6 party is sanctioned *might* be required before dismissal if the party had sought to show that it was
7 impossible for them to comply with the discovery order.” *Religious Tech. Ctr. v. Scott*, 82 F.3d
8 423, at *4 (9th Cir. 1996), *as amended on denial of reh’g* (July 5, 1996) (unpublished) (emphasis
9 in original); *see also Wyle*, 709 F.2d at 592 (“When necessary, the district court may hold an
10 evidentiary hearing on a motion for sanctions. Indeed, that method best determines the
11 appropriate sanctions while protecting a party’s due process rights.”). That said, no court “has
12 said that evidentiary hearings are absolutely required prior to a Rule 37 dismissal,” and “the
13 decision whether to hold an evidentiary hearing is well within the court’s discretion.” *Religious*
14 *Tech.*, 82 F.3d at *4 (“*Wyle* does not make an evidentiary hearing an absolute prerequisite to a
15 dismissal sanction, even when issues are in dispute.”); *see also Pac. Harbor Capital, Inc. v.*
16 *Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (holding that a hearing is not
17 necessary so long as the party has had notice and opportunity to be heard).

18 III. DISCUSSION

19 As an initial matter, the Court finds that Plaintiff’s discovery violations were willful. The
20 record illustrates that Plaintiff’s failures to provide a privilege log, submit amended responses to
21 interrogatories or RFPs, provide adequate trade secret disclosures, and proceed in a manner
22 consistent with the Federal Rules during depositions were not outside Plaintiff’s control. *See In re*
23 *Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1233 (9th Cir. 2006)
24 (“Disobedient conduct not shown to be outside the litigant’s control meets this standard.”).
25 Instead, Plaintiff’s refusal to comply clearly can be attributed to Plaintiff counsel’s unrelenting
26 belief that she was right, the Court was wrong, and that her disagreement with the Court excused
27 her from complying with its orders. *See, e.g.*, Dkt. No. 686 at 5 (continued argument that Judge’s
28 Ryu’s discovery orders are in error); Dkt. No. 541 (contending that Order 331 is in error and that

1 Plaintiff's trade secret disclosures were sufficient). But this is not the law. It is well established
2 that “[a]n attorney who believes a court order is erroneous is not relieved of the duty to obey it.”
3 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 133 (9th Cir. 1987); *see also Adriana Int'l Corp. v.*
4 *Thoeren*, 913 F.2d 1406, 1411 (9th Cir. 1990) (rejecting the plaintiff's argument that failure to
5 produce documents or comply fully with production orders was excused because the court's orders
6 were in error, and declaring that “[d]isagreement with the court is not an excuse for failing to
7 comply with court orders”); *Chapman v. Pac. Telephone & Telegraph Co.*, 613 F.2d 193, 197 (9th
8 Cir. 1979) (“An attorney who believes a court order is erroneous is not relieved of the duty to obey
9 it. The proper course of action, unless and until the order is invalidated by an appellate court, is to
10 comply and cite the order as reversible error should an adverse judgment result.”) Because
11 Plaintiff's repeated intentional actions, committed despite the Court's many orders to the contrary,
12 establish the willful conduct necessary for the imposition of terminating sanctions, the Court
13 proceeds to consider the five factors below.

14 **A. First and Second Factors**

15 The first two factors—the public's interest in expeditious resolution of litigation and the
16 Court's need to manage its docket—weigh in favor of dismissal, given that Plaintiff has violated
17 countless orders of the Court. *See Comput. Task Grp.*, 364 F.3d at 1115 (holding that the first two
18 factors were met when party failed to provide clear answers to interrogatories and failed to
19 produce documents as ordered). Plaintiff refused to produce amended responses to its RFPs and
20 interrogatories, insisting (despite several court orders) that its answers were sufficient. Plaintiff
21 failed to provide trade secret disclosures, maintaining (again in the face of many court orders) that
22 its general categories of disclosures were reasonably particular. Plaintiff obstructed the deposition
23 of multiple key witnesses through coaching and improper objections, again undeterred by the
24 Court's repeated admonitions. And this does not even include the many times Plaintiff eventually
25 complied, but only after repeatedly being directed to do so. *See, e.g.*, Dkt. Nos. 501, 584, 587
26 (regarding Judge Ryu's multiple orders that Plaintiff produce documents in a searchable and
27 printable format); Dkt. Nos. 456, 540, 680, 712, 961, 963 (failing to produce an adequate privilege
28 log, or produce the documents listed in the inadequate log, until long after the close of discovery

1 and in defiance of several court orders); *see also Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906
2 (9th Cir. 2002) (“[B]elated compliance with discovery orders does not preclude the imposition of
3 sanctions. Last-minute tender of documents does not cure the prejudice to opponents nor does it
4 restore to other litigants on a crowded docket the opportunity to use the courts.” (citation and
5 internal quotation marks omitted)).⁸

6 The Ninth Circuit has held that “the public has an overriding interest in securing ‘the just,
7 speedy, and inexpensive determination of every action.’” *In re PPA Prods. Liab. Litig.*, 460 F.3d
8 at 1227 (quoting Fed. R. Civ. P. 1).

9 Orderly and expeditious resolution of disputes is of great importance
10 to the rule of law. By the same token, delay in reaching the merits,
11 whether by way of settlement or adjudication, is costly in money,
memory, manageability, and confidence in the process. . . . The goal
is to get cases decided on the merits of issues that are truly
meritorious and in dispute.

12 *Id.* Plaintiff’s conduct has hindered and consistently undermined the Court’s ability to move this
13 case towards orderly disposition. The action is around two years old and yet there are nearly
14 1,000 docket entries to date. Taking the depositions of the three key executives at Loop AI as a
15 representative example, Plaintiff’s behavior necessitated at least six orders directing Plaintiff to
16 comply, to make witnesses available for deposition, to not coach deponents, and to limit
17 objections to non-speaking objections. *See* Dkt. Nos. 436, 465, 526, 533, 564, 884. Similarly,
18 Plaintiff’s interrogatory responses occasioned at least five orders, all of which in some form
19 directed Plaintiff to provide adequate responses under the Federal Rules and this Court’s orders.
20 *See* Dkt. Nos. 428, 438, 508, 465, 640. These orders highlight the enormously disproportionate
21 time and resources the Court has been required to devote to this action. Plaintiff’s unwillingness
22 or inability to comply has hamstrung the Court’s ability to fairly manage its docket for the benefit
23 of *all* litigants with pending cases before the Court. For these reasons, the Court unequivocally

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25 ⁸ Plaintiff’s conduct with respect to the production of expert Robert Pieraccini provides another
26 example. On March 22, 2016, following briefing on a motion to compel, Dkt. Nos. 481, 489,
27 Judge Ryu ordered Plaintiff to produce Pieraccini for up to three hours of deposition. Dkt. No.
28 511. On June 3, 2016, following briefing on a second motion to compel, Judge Ryu held that
Plaintiff had again refused to comply with the court’s previous order and ordered Plaintiff for the
second time to produce Pieraccini for deposition within 7 days. Dkt. No. 720. Judge Ryu
postponed ruling on Almawave’s request for sanctions based on Plaintiff’s noncompliance with
the March 22, 2016 order. *Id.* at 2.

1 and without hesitation finds that the public's interest in expeditious resolution of litigation and the
2 Court's need to manage its docket strongly favor terminating sanctions.

3 **B. Third Factor**

4 The third factor—prejudice to the party seeking the sanction—also favors a terminating
5 sanction. Here, the Court looks to the impact the recalcitrant party's actions have had on the other
6 party. "A defendant suffers prejudice if the plaintiff's actions impair the defendant's ability to go
7 to trial or threaten to interfere with the rightful decision of the case." *Adriana*, 913 F.2d at 1412
8 (holding that the plaintiff's repeated failure to appear at depositions and continuing refusal to
9 comply with court-ordered production of documents interfered with the rightful decision of the
10 case and therefore were prejudicial). Moreover, "[f]ailure to produce documents as ordered . . . is
11 considered sufficient prejudice." *Id.* at 1412. "Late tender is no excuse." *In re PPA Prods. Liab.*
12 *Litig.*, 460 F.3d at 1227.

13 With each discovery violation, Plaintiff prejudiced Defendants' ability to prepare for and
14 defend this case. The Court's deadline for the completion of fact discovery was March 29, 2016,
15 Dkt. No. 411, and yet Plaintiff's refusal to comply with discovery orders extended far past the
16 March deadline. As detailed above, Plaintiff failed to produce, or belatedly and incompletely
17 produced, responses to document requests; failed to provide adequate responses to interrogatories;
18 hindered the depositions of key witnesses; and failed to disclose the trade secrets at issue in the
19 case. These failures have obstructed Defendants' attempts to learn what, if any, support Plaintiff
20 has for its claims.⁹ The Court finds that Plaintiff's conduct prejudiced Defendants' ability to
21 defend themselves and hampered the search for truth, and that Plaintiff's actions were particularly
22 harmful given the discovery deadline and the need to prepare summary judgment motions. *See N.*
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25 ⁹ Along the same lines, Plaintiff's counsel has a persistent habit of dumping hundreds or thousands
26 of documents into the record, which obscures, rather than clarifies, the issues to be decided, and
27 makes it impossible to move the case forward in an orderly manner. *See, e.g.*, Dkt. No. 878
28 (indicating that in the lead-up to a trial then set for September 19, 2016, Plaintiff had designated
3,371 potential exhibits numbering in the tens of thousands of pages); Dkt. Nos. 344-46 (three
motions for relief from nondispositive pretrial orders, all filed on the same day, and totaling 850
pages); Dkt. Nos. 549-552, 651-56 (1,626 pages of documents filed along with Plaintiff's
opposition brief, and subsequently refiled); Dkt. Nos. 781-86 (4,096 pages of documents filed
along with Plaintiff's opposition brief).

1 *Am. Watch Corp. v. Princess Ermine Jewels*, 786 F.2d 1447, 1451 (9th Cir. 1986) (endorsing
2 district court's finding that "willful violation of the discovery order had, given the imminence of
3 the trial date, prejudiced North American's ability to prepare for trial").

4 **C. Fourth Factor**

5 The fourth factor considers the public policy in favor of deciding cases on their merits. On
6 the one hand, dismissal certainly prevents resolution on the merits. At the same time, however,
7 the Ninth Circuit has held:

8 [A] case that is stalled or unreasonably delayed by a party's failure
9 to comply with deadlines and discovery obligations cannot move
10 forward toward resolution on the merits. Thus, we have also
 recognized that this factor 'lends little support' to a party whose
 responsibility it is to move a case toward disposition on the merits
 but whose conduct impedes progress in that direction.

11 *In re PPA Prods. Liab. Litig.*, 460 F.3d at 1228. It is a party's responsibility to respond to
12 discovery, obey court orders, and avoid dilatory tactics, and Plaintiff has failed to discharge these
13 responsibilities. Despite the Court's significant efforts to enable resolution of this case on the
14 merits, Plaintiff has persistently undercut those efforts through repeated refusal to comply with the
15 Court's orders and a chronic and utter disregard for its obligations in this matter. In circumstances
16 such as these, the public policy favoring resolution on the merits does not outweigh Plaintiff's
17 bold refusal to comply with multiple discovery orders. *See Rio Props., Inc. v. Rio Int'l Interlink*,
18 284 F.3d 1007, 1022 (9th Cir. 2002) ("While the public policy favoring disposition of cases on
19 their merits weighs against default judgment, that single factor is not enough to preclude
20 imposition of this sanction when the other four factors weigh in its favor.").

21 **D. Fifth Factor**

22 The fifth factor—availability of less drastic sanctions—weighs strongly in favor of
23 dismissal. The factor involves consideration of three sub-factors: whether the court considered
24 lesser sanctions, whether it tried lesser sanctions, and whether the court warned the disobedient
25 party. *Valley Eng's Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). Although these
26 measures are not necessarily required, *see id.* at 1056-57, the Court has used all of them in an
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1 attempt to foster resolution of this case on the merits.¹⁰

2 Section I of this order illustrates that for each discovery dispute, Judge Ryu gave Plaintiff
3 multiple opportunities to comply. For example, Judge Ryu warned the parties in December 2015
4 that there could be no instruction not to answer except for privilege during depositions. Dkt. No.
5 335 at 46. After Plaintiff failed to heed the court's warning and again obstructed the Calafiore
6 deposition, Judge Ryu issued another warning, instructing Healy that speaking objections, the
7 coaching of deponents, and instructing a deponent not to answer on a basis other than privilege
8 were unacceptable. Order 436. Judge Ryu also issued a lesser sanction, requiring Plaintiff to bear
9 the cost of an additional five hours of deposition. *Id.* Notwithstanding these orders and the
10 sanction, Healy's behavior remained unchanged during the deposition of Loop's key executives.
11 *See Order 884.*

12 Additionally, the Court has issued unambiguous warnings that a refusal to correct course
13 and abide by the local rules, standing orders, court orders, and Federal Rules would result in
14 sanctions. As early as July 25, 2015, Judge Ryu warned during a discovery management
15 conference that "if somebody takes a position that is not substantial[ly] justified, of course, they
16 may open themselves up to Rule 37 sanctions or other sanctions." Dkt. No. 157 at 18.

17 In February 2016, the Court noted that

18 [t]he one-year history of this action reflects a profoundly troubling
19 and unprofessional pattern of behavior. The parties are warned to
20 self-correct the wasteful and dysfunctional discovery dynamic in
21 this case, immediately. *Failure to do so will be punished as severely*
22 *and as often as necessary to ensure the level of professional conduct*
23 *required of those who practice before this Court. See Civ. L-R 11-*
24 *4(a) (attorneys permitted to practice in this Court must "[p]ractice*
25 *with the honesty, care and decorum required for the fair and efficient*
26 *administration of justice").*

27 Dkt. No. 415 at 3 ("Order 415") (emphasis added). The parties were warned that the status quo
28 was "unacceptable" and "unprecedented," and that if the "current conduct continues, the offending

26 ¹⁰ Rule 37(b)(2) does not require that the Court warn the parties that dismissal could be an
27 appropriate sanction. *Valley Eng's*, 158 F.3d at 1056. Rather, the Court has discretion "to make
28 such orders . . . as are just in regard to a party's failure to obey a discovery order, including
dismissal." *Id.* (internal quotation marks omitted). "Thus the central factor in evaluating the
district court order is justice, and everyone has notice from the text of Rule 37(b)(2) that dismissal
is a possible sanction for failure to obey discovery orders." *Id.* at 1056-57.

1 parties and their counsel" would face significant consequences, including the imposition of
2 monetary or other sanctions and referral to the Northern District's Standing Committee on
3 Professional Conduct (Civil Local Rule 11-6(a)(1)). *Id.* at 3. Order 415 spoke to discovery
4 conduct specifically:

5 Consistent with their ethical obligations, the attorneys must treat
6 their discovery obligations with the seriousness and diligence
7 required of them. The parties must act responsibly during
8 discovery, and ensure that their conduct is consistent with the spirit
9 and purposes of the discovery rules (including the parties' personal
obligation "to secure the just, speedy, and inexpensive" determination
of this case). *See Fed. R. Civ. P. 1.* This requires cooperation among the parties, and mandates adherence to the
proportionality requirement of Federal Rule of Civil Procedure Rule
26. . . . Obstructionist behavior will not be tolerated.

10 Dkt. No. 415 at 2.

11 In light of this protracted history (which includes countless discovery orders directing
12 Plaintiff to comply as well as Order 415), the Court concludes that Plaintiff had sufficient notice
13 that continued refusal to follow the Court's orders and rules would lead to terminating sanctions.
14 The Court has considered lesser sanctions as an alternative and has tried alternative sanctions
15 leading up to this order, and finds that they are inadequate in the face of Plaintiff's persistent
16 disregard for the Court's authority. Because Plaintiff has remained undeterred and because there
17 is no reason to believe additional lesser sanctions would be effective, the fifth factor strongly
18 favors terminating sanctions.

19 **E. Due Process Considerations**

20 To begin, the Court finds that no hearing is necessary for it to issue terminating sanctions.
21 *See Religious Tech.*, 82 F.3d at *4. Plaintiff has had multiple opportunities to be heard with regard
22 to the underlying discovery orders, and the Court has reviewed each of Plaintiff's filings and
23 Judge Ryu's related orders in coming to the conclusion that Plaintiff's conduct warrants
24 terminating sanctions.

25 Moreover, the Court finds that terminating sanctions are "just" and "specifically related
26 to the particular 'claim' which was at issue in the order to provide discovery." *See Wyle*, 709 F.2d
27 at 591. The discovery orders described in Section I relate directly to the merits of the underlying
28 action, and Plaintiff's refusal to comply interfered with the rightful decision of the case. For

1 example, Interrogatory No. 8 sought the factual bases for Plaintiff's claims relating to the
2 Almaviva Defendant's alleged intent to buy Loop AI for a bargain price or to hire away Plaintiff's
3 key employees and thereby acquire access to Loop's proprietary technology. Dkt. No. 428-1. The
4 interrogatory goes to the heart of all of Plaintiff's allegations in the SAC. And yet Plaintiff
5 responded to the interrogatory by directing Almawave ““to all productions by all parties and non-
6 parties in this case, and any further materials has [sic] may be obtained through discovery or
7 otherwise,”” and by referring Defendants to ““thousands of bates numbers with no explanation” and
8 ““nearly 100 pages of allegations that appear to be cut and pasted from [the SAC].”” Order 640 at 3.
9 Although Judge Ryu gave Plaintiff multiple opportunities to supplement its response, Plaintiff
10 refused, indicating it had nothing to add to the responses Judge Ryu had found wholly inadequate.
11 See Dkt. No. 856. This representative example illustrates that dismissal of Plaintiff's action is the
12 only way to move forward. Plaintiff's violations have harmed Defendants' ability to prepare a
13 defense and patently obfuscated the basis for Plaintiff's claims, making it impossible to have
14 confidence that Defendants or the Court have access to the facts and that any resolution at trial
15 would be fair and just. Accordingly, “[b]ecause there is a close nexus between [Plaintiff's]
16 misconduct and the merits of [the] case, due process concerns are not implicated.” *Anheuser-*
17 *Busch*, 69 F.3d at 355.

18 On September 26, 2016, the Court ordered Plaintiff's counsel to show cause why
19 terminating sanctions should not be imposed, to allow Plaintiff another opportunity to be heard.
20 Dkt. No. 894. Plaintiff's response reinforces the Court's conclusion that terminating sanctions are
21 warranted and necessary here. Astoundingly, Plaintiff's counsel characterizes “most” of Judge
22 Ryu's orders with which the Court has found counsel failed to comply as “sanction orders issued
23 in violation of Loop AI's rights to due process, the Federal Rules, and the Civil Local Rules.”
24 Dkt. No. 922 at 1-2. In other words, the orders and findings of the United States Magistrate Judge
25 who has spent scores, if not hundreds, of hours managing the incessant discovery squabbling in
26 this case “are not a reliable basis on which the Court can find Loop AI engaged in ‘obstructionist
27 discovery’ conduct or refused to comply with the Court's orders.” *Id.* at 4. Put yet another way,
28 Plaintiff's counsel essentially contends that Judge Ryu's use of the most routine case management

1 tools to keep control of the sprawling and unprecedented discovery battles she confronted here,
2 and her insistence on compliance with the Court’s orders, *in itself* violated counsel’s (unfounded)
3 conception of her client’s due process rights:

4 All of the Magistrate’s Orders result from proceedings in which
5 Loop AI was allowed to make no record, was given no hearing, and
6 was generally prohibited from submitting the briefing and evidence
7 with [sic] the due process, the Federal Rules and the Civil Rules
8 guarantee. Many of the Magistrate’s Orders listed include *sua sponte*
9 arguments (or sanctions) of the Magistrate made for the first
time in the order. All but one of the Magistrate’s Orders listed in
[the OSC] were issued without a duly noticed motion and briefing
that Loop AI was entitled to submit under Civil Local Rule 7. The
procedural deficiencies that permeate the Magistrate’s Orders mean
the Court would violate Loop AI’s due process rights if it relied on
those Orders to issue any further sanctions of any kind.

10 *Id.*

11 This claim that Judge Ryu’s basic, routine discovery management practices resulted in a
12 grievous and comprehensive due process violation is frivolous in the Court’s view. And counsel’s
13 argument that “[r]elying on the Magistrate’s Orders for purposes of a new sanction . . . would be
14 improper because it would alter the procedural posture of the Magistrate’s Orders by suddenly
15 turning them into some sort of report and recommendation under Rule 72(b),” *id.* at 5, is
16 nonsensical. Judge Ryu had full authority to issue orders regarding nondispositive matters, like
17 discovery, under Rule 72(a), and the litigants are bound to follow those orders unless modified or
18 set aside by the district court, period and full stop. Counsel’s bizarre contention that mundane
19 discovery management procedures of the type that occur every day in this district and many others
20 are broadly unconstitutional may explain her documented and repeated failure to comply with
21 Judge Ryu’s orders, but in no way excuses that failure.

22 Counsel also cites *United States v. National Medical Enterprises, Inc.*, 792 F.2d 906, 910
23 (9th Cir. 1986), for the principle that the Court “cannot aggregate orders that relate to different
24 issues” when issuing sanctions. Dkt. No. 922 at 20. But the Ninth Circuit has clarified that
25 consideration of all of the sanctioned party’s conduct is proper where, as here, “all the misconduct
26 is of the same type: discovery abuses.” *Adriana Int’l*, 913 F.2d at 1412.

27 In addition, counsel contends that “the gravamen of the charge leveled in [the OSC]
28 appears to be that Loop AI’s conduct somehow caused the Magistrate do [sic] more work than the

1 Court believes should have been required.” Dkt. No. 922 at 6. But the Court is not saying that
2 plaintiff has simply been a busy litigant. Instead, the record establishes, abundantly, that counsel’s
3 constant failure to follow the Court’s rules and orders has resulted in an unconscionable waste of
4 time and resources for all concerned.

5 Everything about counsel’s response to the OSC reinforces why terminating sanctions are
6 necessary: in the end, counsel simply thinks she knows better than the Court what the law
7 requires, and when she disagrees with a court order, she views compliance as a matter solely
8 within her own discretion. On appeal, counsel can press her arguments that her conduct was
9 justified because of the Court’s allegedly unconstitutional procedures, or because of opposing
10 counsel’s claimed bad behavior, or whatever other grounds she wishes to assert. But the
11 fundamental reality is this: a court cannot effectively manage a case when its orders are viewed
12 by counsel not as mandates to be followed, but as suggestions to be complied with if, when and
13 how counsel’s judgment dictates. *See* Dkt. No. 964 (December 27, 2016 order of Judge Ryu) (“In
14 sum, the record is replete with examples of Plaintiff’s unwillingness or inability to comply with
15 court-ordered procedures regarding discovery dispute resolution, and in particular, the requirement
16 that the parties meet and confer in good faith before seeking court intervention.”).

17 * * *

18 Plaintiff’s conduct has clogged the Court’s docket, protracted this litigation, and made it
19 impossible for this case to proceed to any remotely fair trial. “The most critical factor to be
20 considered in case-dispositive sanctions is whether a party’s discovery violations make it
21 impossible for a court to be confident that the parties will ever have access to the true facts.”
22 *Conn. Gen. Life Ins.*, 482 F.3d at 1097 (internal quotation marks omitted). This is such a case:
23 Plaintiff has “so damage[d] the integrity of the discovery process that there can never be assurance
24 of proceeding on true facts.” *See id.* (internal quotation marks omitted). For these reasons, the
25 Court orders terminating sanctions pursuant to Rule 37(b)(2).

26 **F. Dismissal under the Court’s Inherent Authority**

27 The Court will also address the bases separate from Plaintiff’s discovery conduct that
28 warrant dismissal under the Court’s inherent authority.

1 Courts have the inherent power to impose various non-monetary sanctions, including
2 “outright dismissal of a lawsuit” for conduct that “abuses the judicial process.” *Chambers v.*
3 *Nasco, Inc.*, 501 U.S. 32, 44-45 (1991); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765
4 (1980).

5 Courts of justice are universally acknowledged to be vested, by their
6 very creation, with power to impose silence, respect, and decorum,
7 in their presence, and submission to their lawful mandates. These
8 powers are governed not by rule or statute but by the control
9 necessarily vested in courts to manage their own affairs so as to
10 achieve the orderly and expeditious disposition of cases.

11 *Chambers*, 501 U.S. at 43 (citations and internal quotation marks omitted). These “inherent
12 powers” enable courts “to manage their cases and courtrooms effectively and to ensure obedience
13 to their orders.” *F.J. Hanshaw Enters. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir.
14 2001). Through this power, courts may sanction a party that has “engaged deliberately in
15 deceptive practices that undermine the integrity of judicial proceedings,” *Leon v. IDX Sys. Corp.*,
16 464 F.3d 951, 958 (9th Cir. 2006) (internal quotation marks omitted), and in conduct “utterly
17 inconsistent with the orderly administration of justice,” *Wyle*, 709 F.2d at 589.

18 “Before awarding sanctions pursuant to its inherent power, the court must make an express
19 finding that the sanctioned party’s behavior constituted or was tantamount to bad faith.” *Haeger*
20 *v. Goodyear Tire & Rubber Co.*, 813 F.3d 1233, 1244 (9th Cir. 2016) (internal quotation marks
21 omitted). The Ninth Circuit has “found bad faith in a variety of conduct stemming from ‘a full
22 range of litigation abuses.’” *Id.* (quoting *Chambers*, 501 U.S. at 46). For inherent power
23 sanctions to be proper, “the conduct to be sanctioned must be due to willfulness, fault, or bad
24 faith.” *Anheuser-Busch*, 69 F.3d at 348 (internal quotation marks omitted); *see also* *Evon v. Law*
25 *Offices of Sidney Mickell*, 688 F.3d 1015, 1035 (9th Cir. 2012) (“[I]t is clear that a ‘willful’
26 violation of a court order does not require proof of mental intent such as bad faith or an improper
27 motive, but rather, it is enough that a party acted deliberately.”).

28 Plaintiff’s refusal to follow the Court’s orders has been pervasive and egregious. Even if
29 Plaintiff’s discovery failings had not cast doubt on the action’s merits, Plaintiff’s refusal to obey
30 Court orders and proceed in a professional manner has created an untenable situation. The record
31 is riddled with examples of unprofessionalism that make clear that no adequate lesser sanction is

1 available.

2 Plaintiff's actions evince a persistent belief that it is above any obligation to obey the
3 Court's orders, deadlines, or rules. For example, Plaintiff's oppositions to the motions for
4 summary judgment were due on July 4, 2016. Plaintiff had earlier asked for a three-week
5 extension to respond to the motions, which the Court denied. Dkt. No. 766. Plaintiff then asked
6 the Court for an extension until July 4, which the Court granted. Dkt. No. 772. On July 5, 2016,
7 however, Plaintiff notified the Court that it would not meet the Court's deadlines. Dkt. No. 788.
8 Plaintiff then proceeded by rules of its own creation, assuming the Court's role in setting deadlines
9 and informing the Court when it would file its oppositions. *See* Dkt. No. 788 ("I will be able to
10 file all remaining summary judgment briefing and materials by close of business today, and Loop
11 AI's Opposition to the Motion to Strike by no later than tomorrow."). Such a deliberate and
12 willful refusal to follow the Court's orders was not an isolated occurrence. *See, e.g.*, Dkt. No. 796
13 (opposition brief filed two days late); Dkt. No. 802 ("errata" of opposition brief filed three days
14 late); Dkt. No. 802-2 (redline of "errata" showing that substantial changes were made to
15 opposition brief, including the insertion of numerous new legal authorities); Dkt. No. 807
16 (declaration of Plaintiff's counsel in support of opposition brief, and six attached exhibits, filed six
17 days late and one day before the reply brief was due); *see also* Dkt. No. 850 (Judge Ryu orders a
18 response to be filed by July 26, 2016); Dkt. No. 856 (Plaintiff files the response on July 27, 2016).

19 In August 2015, Judge Ryu described Plaintiff's refusal to follow the court's instructions
20 when briefing a dispute. Dkt. No. 175 at 1 ("Order 175"). Order 175 provided:

21 Plaintiff Loop AI, Inc. did not provide full argument on several of
22 the disputes. Instead, as to one of the disputes, Plaintiff requested
23 leave to fully brief its position on a protective order, and attached an
24 exhibit containing its redline of changes to Defendants' proposed
25 protective order, along with one page of annotations explaining
26 certain edits, essentially granting itself additional pages of argument.
The court previously ordered the parties to follow the structure and
limits of its joint letter process because it requires the parties to
focus on the most important issues, and to make appropriate
compromises. The court is concerned that Plaintiff continues to
disregard this guidance.

27 *Id.* (citations omitted).

28 In April 29, 2016, this Court admonished Plaintiff's blatant disregard for the Court's rules

1 regarding page limits:

2 [T]he single-spaced argument on pages 18-21 of Plaintiff's
3 opposition blatantly circumvents the local rules page requirement
4 and reflects complete disregard for the Court's filing rules. *See* Civ.
L-R 3-4(c) ("Text must appear on one side only and must be double-
spaced with no more than 28 lines per page . . .").

5 Dkt. No. 633 ("Order 633").

6 In another incident, Plaintiff again confirmed its refusal to follow the Court's instructions
7 and local rules. In April 2016, the Court struck Plaintiff's declaration, exhibits, and appendix
8 attached to its opposition to Defendants' motion to dismiss for lack of jurisdiction. Order 633
9 (citing Civ. L.R. 7-5). The Court held:

10 In violation of part (a) [of Civil Local Rule 7-5], Plaintiff's attached
11 exhibits and appendix, which include emails, screenshots taken from
12 company websites, contracts, and other evidentiary materials, are
13 largely unauthenticated; there is no sworn testimony or averment by
14 a competent witness that each attached item is a true and correct
15 copy of what Plaintiff purports it to be. Additionally, in violation of
16 part (b), the declaration consists almost entirely of legal conclusions
17 and argument.

18 *See id.* In the interest of resolving the motion to dismiss on the merits (rather than based on
19 counsel's compliance failures), the Court permitted Plaintiff to file revised declarations and
20 exhibits. *Id.* Yet again, despite the Court's admonition, Plaintiff did not follow the Court's order,
21 submitting the *same* exhibits (including an unsworn 32-page chart in timeline form that in no way
22 complied with Order 633 or the local rules), and filing no declaration at all. *See* Dkt. Nos. 651-56;
23 Dkt. No. 717 ("Order 717") (holding that despite the fact that "Order 633 was narrowly directed to
24 the straightforward requirements of the local rules[,] . . . Plaintiff refused to follow the order,
25 instead filing an exasperatingly off-point 14-page response addressing Almawave's arguments and
26 a host of issues simply irrelevant" to Order 633's limited scope). The Court held that it would be
fully justified in striking Plaintiff's filing in its entirety and granting the motion to dismiss based
on an absence of evidence in the record, but provided Plaintiff yet another opportunity to comply,
explaining that it wanted the record to be crystal clear that Plaintiff had been given multiple
opportunities to comply with the local rules and the Court's order. Order 717.

27 Additionally, Plaintiff has demonstrated a willingness to shade the truth when
28 communicating with the Court. For example, regarding whether Plaintiff's counsel and Defendant

1 had met and conferred, Plaintiff's counsel alleged that when "Loop AI returned counsel's calls,
2 they were not answered; when messages were left, there were no returned calls." Dkt. No. 589.
3 Counsel for Defendant IQS, Inc. filed a response indicating that she called Plaintiff's counsel
4 fifteen times between March 7 and March 31, 2016 attempting to meet and confer, and that
5 Plaintiff did not return her calls. Dkt. No. 596. Judge Ryu ordered the parties to submit call,
6 phone, and email records supporting their allegations. Dkt. No. 612. The submitted evidence
7 substantiated IQS, Inc.'s position only, establishing that its counsel "called Plaintiff's counsel's
8 office numerous times between March 7, 2016 and March 31, 2016, and that most calls lasted
9 between three and four minutes because she left messages each time." Dkt. No. 625. Plaintiff's
10 evidence, however, did not substantiate its position. "Plaintiff submitted evidence of only one
11 telephone call to IQS[, Inc.]'s counsel from March 7, 2016 through March 31, 2016: on March 22,
12 2016, Plaintiff's counsel called IQS[, Inc.]'s counsel's office and left a message." Dkt. No. 625.
13 Contrary to Plaintiff's suggestion to the court, Healy did not make multiple calls, IQS, Inc. made
14 multiple calls to Healy, and there was no evidence showing that IQS, Inc. refused to participate in
15 the court's joint letter process. Dkt. No. 625.¹¹

16 Finally, Plaintiff's counsel's conduct is unbecoming a member of the bar and the officers
17 that practice in this Court. On July 15, 2016, Healy filed a letter with the Court indicating that she
18

19 ¹¹ As another example, Plaintiff's motion for an extension indicated that she repeatedly reached
20 out to Defendants without a response. Dkt. No. 753. Almawave's response, however, included
21 the email communications between the parties showing that Defendant in fact responded multiple
22 times. Dkt. No. 763. Almawave argued:

23 Counsel for the Almawave Defendants repeatedly asked Loop to
24 provide a proposed stipulation. Loop states that "[n]o counsel has
25 agreed to stipulate to this request or to any extension of time" and
"the Defendants refused to agree [to] any briefing schedule." Dkt.
753 at 2:14-15 and 2:26-27. This is true only because Loop refused
to schedule a time for a recorded call and never provided a proposed
stipulation.

26 *Id.* (emphasis and brackets in original). The attached email communications confirmed
27 Almawave's characterization of their communications. *See* Dkt. No. 763-2. Contrary to
28 Plaintiff's representation to the Court, it was Plaintiff's counsel who failed to respond
appropriately: given the Court's order requiring calls to be recorded, Dkt. No. 156 at 2, it was
disingenuous to repeatedly purport to seek to communicate via unrecorded calls, *see* Dkt. No. 763-
2 at 1.

1 had become so upset during a deposition that she “slammed” her coffee on the table and spilled
 2 the contents of her beverage allegedly on Almawave’s counsel. Dkt. No. 832. The transcript
 3 reveals that Almawave’s counsel told Healy to “Be quiet,” that Healy threatened to leave the
 4 deposition with the deponent, and that Almawave’s counsel advised the deponent to stay because
 5 he was there under Court order. Dkt. No. 840-1 at 40. Then the following exchange ensued:

6 [Almawave’s Counsel to deponent]: Sir, I think you should take five
 7 and think about it [before leaving the deposition with your counsel].

8 [Healy]: No. I think you should take a fucking break. You should
 9 take --

10 (Interruption in proceedings.)

11 [Almawave’s Counsel]: Oh, my goodness.

12 [Healy]: Take a fucking break.

13 [Almawave’s Counsel]: I need help. She just threw her coffee at me.
 14 She’s going crazy. Sir, you should get a lawyer. You’re a witness.
 15 Oh, my God. Sorry about that. We’re going to go off the record.

16 *Id.* at 414. When the deposition resumed, the deponent confirmed that Healy threw her coffee in
 17 opposing counsel’s direction, *id.* at 42, and that he saw coffee on opposing counsel’s bag,
 18 computer, and person, *id.* at 46. By affidavit, the court reporter stated that Healy “threw a large
 19 cup of iced coffee across the room,” that the beverage “landed on a chair beside Attorney
 20 Wallerstein,” that “coffee was all over the chair, the rug, dripping down Mr. Wallerstein’s
 21 suitcase, across the width of the suitcase, on his phone, computer, and on the table,” and that “the
 22 side of his shirt and his pants were also wet.” Dkt. No. 840-3 (Sambataro Decl.).

23 As Judge Ryu observed, “such an inappropriate outburst would lead most people to
 24 apologize on the spot – something along the lines of ‘I’m so sorry. Are you okay? I lost my
 25 temper, and I shouldn’t have done that. Let me pay for any damage I caused.’ Unfortunately, that
 26 did not happen here.” Dkt. No. 977 (“Order 977”) at 3. Instead, Plaintiff’s counsel sought to
 27 justify her behavior and called the resulting sanctions motion “outrageous” and “baseless.” Dkt.
 28 No. 853 at 1.¹² The Local Rules require every attorney practicing before this Court to “[c]omply

¹² Judge Ryu ordered Plaintiff’s counsel to pay Almawave’s counsel \$250 in damages caused by her act, while deferring to the undersigned regarding whether more serious additional sanctions

1 with the standards of professional conduct” imposed by the State Bar of California; “[c]omply
2 with the Local Rules of the Court”; “[p]ractice with the honesty, care, and decorum required for
3 the fair and efficient administration of justice”; and “[d]ischarge his or her obligations to his or her
4 client and the Court[.]” Civ. L.R. 11–4(a). Healy has failed to meet these standards as exhibited
5 by her behavior towards opposing counsel during this deposition. No excuse (not even Healy’s
6 belief that Almawave’s counsel “insulted her” by telling her to “be quiet”) can justify Healy’s on-
7 the-record use of profanity and the ensuing outburst that resulted in her hurling her coffee in
8 opposing counsel’s direction. And while these actions were “shocking and inappropriate,”
9 Healy’s subsequent defiance was even more concerning: she “repeatedly refused to take
10 responsibility for her conduct, as she has done throughout this case.” Order 977 at 4. Judge Ryu
11 aptly summarizes the arguments in Plaintiff’s sanctions opposition brief as follows: (1) “[t]he
12 devil (my opposing counsel) made me do it”; (2) “I apologized (sort of)”; (3) “[i]t wasn’t that
13 bad”; and (4) “[d]on’t take it out on my client.” *Id.* at 4-7 (emphasis omitted); *see also* Dkt. No.
14 853 (brief).¹³ Overall, the behavior of Plaintiff’s counsel during and following her outburst is part
15 of a consistent and case-long lack of professional judgment, and a persistent unwillingness to meet
16 the standards of conduct required of attorneys practicing in this District.

17 When Healy’s conduct is viewed in the context of this case, the Court finds that only one
18 remaining sanction is fitting. Healy’s unprofessional conduct, her refusal to obey the Court’s
19 deadlines, rules, and orders, and her inability to practice “with the honesty, care, and decorum
20 required for the fair and efficient administration of justice” underscore the necessity of terminating
21 sanctions in this action. Accordingly, the Court concludes pursuant to its inherent power that
22 terminating sanctions are appropriate.

23
24 _____
25 were warranted in light of the order to show cause regarding terminating sanctions. Order 977 at
26 7.
27 ¹³ Plaintiff’s counsel finally apologized at the sanctions hearing before Judge Ryu. *See* Dkt. No.
28 946 at 39-40. Much of her apology, however, centered on her belief that her reputation had been
harmed by Almawave counsel’s “false allegations” as well as her belief that she had already “been
sanctioned by the public.” *Id.* at 40. At any rate, the apology came over three months after her
outburst and the filing of Plaintiff’s remarkably remorseless sanctions opposition brief. *See* Dkt.
No. 853. Judge Ryu appropriately characterized the apology as “too little, and far too late.” *See*
Order 977 at 5 n.7.

1 In addition, the Court exercises its discretion to revoke Healy's *pro hac vice* admission in
 2 this case and will not grant such admission in any future cases before the undersigned. *See Civ.*
 3 L.R. 11-3(c) ("The assigned judge shall have discretion to accept or reject the [pro hac vice]
 4 application."); *see also Brooks v. Motsenbocker Advanced Devs., Inc.*, 378 F. App'x 753 (9th Cir.
 5 2010) (noting that the district judge below revoked the *pro hac vice* admission of Plaintiff's
 6 counsel with respect to that case only).¹⁴

7 **IV. CONCLUSION**

8 Dismissal is a harsh sanction warranted in only extreme circumstances. *In re PPA Prods.*
 9 *Liab. Litig.*, 460 F.3d at 1226. The Supreme Court has held that "the most severe in the spectrum
 10 of sanctions provided by statute or rule must be available to the district court in appropriate cases,
 11 not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to
 12 deter those who might be tempted to [engage in] such conduct in the absence of such a deterrent."
 13 *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976). This case presents
 14 such "extreme circumstances." Dismissal is appropriate not only as a sanction for Plaintiff's
 15 flagrant disregard for its responsibilities, but also as a deterrent to others and to ensure the
 16 integrity of the judicial process. The Court, therefore, **DISMISSES** Plaintiff's action with
 17 prejudice. Each party will bear its own fees and costs. In addition, the Court **REVOKEs** the *pro*
 18 *hac vice* admission of Valeria C. Healy in this case and will not grant such admission in any future
 19 cases before the undersigned.

20 To the extent not already resolved, the following motions are **MOOT**: the summary
 21 judgment motions, Dkt. Nos. 733, 737, 740; the motion to strike or exclude Plaintiff's evidence,
 22 Dkt. No. 738; Almaviva's motion for Rule 11 sanctions, Dkt. No. 801; Almawave's motion for
 23 relief from Plaintiff's refusal to comply with pretrial orders and IQS, Inc.'s related joinder, Dkt.
 24 Nos. 869 and 871; Plaintiff's *Daubert* motion, Dkt. No. 875; Defendants' motion for default
 25 judgment, Dkt. No. 897; Plaintiff's motion for entry of judgment, enforcement of anti-SLAPP fee
 26 award orders, and related remedies, Dkt. No. 957; Plaintiff's motion for partial judgment on the
 27

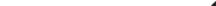
28 ¹⁴ As an unpublished Ninth Circuit decision, *Brooks* is not precedent, but can be considered for its
 persuasive value. *See Fed. R. App. P. 32.1; CTA9 Rule 36-3.*

pleadings, Dkt. No. 986; several motions to withdraw or substitute counsel, Dkt. Nos. 892, 955, 956; Plaintiff's motion to file objections to the declaration of Judge Ryu's law clerk, Dkt. No. 938; Plaintiff's motions for relief from nondispositive trial orders and objections pursuant to Federal Rule of Civil Procedure 72, Dkt. Nos. 836, 846, 889, 905, 909, 968, 972, 974, 980, 984¹⁵; various administrative motions to file under seal, Dkt. Nos. 490, 535, 626, 729, 735, 736, 799, 803, 805, 810, 857, 910; and several other miscellaneous administrative motions, Dkt. No. 593 (regarding order on stipulation); Dkt. No. 629 (to enforce protective order); Dkt. No. 794 (to file answer out of time).

The case is hereby **CLOSED**. No motion for reconsideration regarding this order will be entertained by the Court.

IT IS SO ORDERED.

Dated: March 9, 2017


HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California

¹⁵ Even if Plaintiff's motions for relief from nondispositive trial orders were not moot, the Court would nonetheless deem all of them denied. *See Civ. L.R. 72-2* ("If no order denying the motion or setting a briefing schedule is made within 14 days of filing the motion, the motion shall be deemed denied."); *see also* Dkt. No. 984 (Plaintiff's most recent motion for relief from nondispositive trial order, filed more than 14 days ago, on February 14, 2017).

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7 LOOP AI LABS INC,
8 Plaintiff,
9 v.
10 ANNA GATTI, et al.,
11 Defendants.

Case No.15-cv-00798-HSG

ORDER TO SHOW CAUSE

12 The Court **ORDERS** Plaintiff's counsel to show cause why terminating sanctions are not
13 warranted under Federal Rule of Civil Procedure 37(b) and the Court's inherent authority, in light
14 of Plaintiff's documented history of obstructionist discovery conduct and persistent refusal to
15 follow Court orders notwithstanding repeated warnings. As a result of counsel's conduct, the
16 Court has expended a grossly disproportionate and unreasonable amount of time and resources on
17 this case. Multiple orders were required to obtain compliance on several issues, and in many
18 instances Plaintiff simply continues to refuse to comply with the Court's orders and the Federal
19 Rules. The record abounds with examples:

20 **Improper Conduct during Depositions**

- 21 ■ Order¹ 436 (describing counsel's inappropriate behavior, imposing a sanction, and
22 warning that any further breach would result in further sanctions)
23 ■ Orders 465, 526, 564 (repeated orders directing Plaintiff to produce executives Bart
24 Peintner and Patrick Ehlen for depositions)
25 ■ Order 884 (describing the reoccurrence of counsel's obstructive and inappropriate
26 deposition conduct in direct violation of Order 436)

27
28 ¹ "Order" refers to the docket number.

1 Refusal to Properly Respond to Key Interrogatories

- 2
- 3 Orders 438, 508 (directing Plaintiff to amend its response to Interrogatory No. 8)
 - 4 Order 465 (directing Plaintiff to serve amended responses to Interrogatory Nos. 3, 5, 7)
 - 5 Order 640 (noting that Plaintiff's responses to Interrogatory Nos. 3, 5, 7, 8 were "plainly and grossly deficient")
 - 6 Dkt. No. 856 (Plaintiff confirms refusal to amend deficient interrogatories, claiming that it has no information to provide as a supplement to the interrogatories)

10 Failure to Properly and Timely Respond to Requests for Production

- 11
- 12 Order 640 (ordering Plaintiff to amend its responses to RFPs for failure to comply with the requirements of the Federal Rules of Civil Procedure)
 - 13 Dkt. No. 807 (Plaintiff's production *starts* on May 11, 2016 and extends through early June, even though Judge Ryu ordered the supplemental responses to be submitted *within* 7 days of May 3, 2016).

16 Refusal to Produce Privilege Log

- 17
- 18 Order 456 (directing Plaintiff to produce the privilege log by March 16, 2016)
 - 19 Dkt. No. 576 (Plaintiff's response to an order to show cause for failure to produce the privilege log states that Plaintiff intends to comply with Order 456 by April 11, 2016, almost a month after the Court's deadline)
 - 20 Order 680 (finding Plaintiff's privilege log "plainly deficient," and ordering Plaintiff to produce the waived documents within seven days)
 - 21 To date, Plaintiff has still not complied with Orders 456 and 680.

24 Trade Secrets Disclosure

- 25
- 26 Order 331 (finding Plaintiff's trade secret disclosure insufficient and ordering Plaintiff to amend its disclosure, by identifying the specific trade secrets at issue)
 - 27 Order 795 (finding Plaintiff's revised disclosures still fell far short of the standard)

1 Other Examples of Plaintiff's Disregard for the Court's Authority

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- Order 501, 584, 587 (repeated orders directing Plaintiff to produce documents in a searchable and printable format)
 - Orders 551, 720 (repeated orders directing Plaintiff to produce Robert Pieraccini for depositions)
 - Order 175 (describing Plaintiff's refusal to follow the Court's instructions when briefing a dispute)
 - Order 633 (describing Plaintiff's inability to follow the local rules and the Court's orders)
 - Dkt. No. 788 (Plaintiff states that it will not meet the Court's filing deadline, and proceeds by rules of its own creation, setting its own deadline for filing opposition briefs)

13 * * *

14 The Court issues this order to show cause in light of counsel's pervasive and repeated
15 disregard for the Court's authority and obstructionist discovery conduct. Plaintiff's counsel must
16 file a statement of no more than 25 pages within seven days of the date of this order, setting forth
17 its position as to why terminating sanctions are not warranted. Defendants shall not file any
18 response. This matter will be submitted following Plaintiff's filing of its statement unless
19 otherwise ordered by the Court.

20 IT IS SO ORDERED.

21 Dated: 9/26/2016

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HAYWOOD S. GILLIAM, JR.
United States District Judge