

Jie Li (SBN 354432)
Tianyu Ju (SBN: 323817)
Glacier Law LLP
251 South Lake Ave Suite 910
Pasadena, California 91101
Telephone: 312.448.7772
Facsimile: 312.801.4587
Email: iris.ju@glacier.law
jie.li@glacier.law

Dandan Pan (PHV admitted)
Glacier Law LLP
41 Madison Avenue, Ste. 2529
New York, NY 10010
Telephone: 212-927-5033
Email: dandan.pan@glacier.law

Kevin J. O'Connor (PHV admitted)
Peckar & Abramson, P.C.
70 Grand Avenue
River Edge, NJ 07661
Telephone: (201) 343-3434
Email: koconnor@pecklaw.com
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

AIRDOCTOR, LLC, a Delaware
Limited Liability Company,

Plaintiff,

v.

LONNI, et al.,

Defendants.

Case No.: 2:23-cv-00353-GW-AS

**DEFENDANTS' MEMORANDUM
OF LAW IN OPPOSITION
TO *EX PARTE* APPLICATION
FOR PROTECTIVE ORDER**

Judge: Hon. George H. Wu
Magistrate: Hon. Alka Sagar

Deposition Date: September 29, 2025
Fact Discovery Cutoff: September 30,
2025

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendants, Lonni, Inc. (“Lonni”), Shenzhen Dazhan Pengtu Internet Co., Ltd. (“Dazhan”), Shenzhen Mingdao Youshu Ecommerce Co., Ltd. (“Mingdao”) and Dongguanshilianruizhongxinwangluokejiyouxiangongsi (“Lianrui”) (collectively, “Defendants”), by and through their counsel, hereby respectfully submit this Memorandum of Law in opposition to an *ex parte* application for a protective order, or in the alternative to quash, a subpoena issued nearly a month ago on non-party Myra Nishizaki. This application by Plaintiff Airdoctor, LLC (“Plaintiff” or “AirDoctor”) and non-party Ideal Living Management LLC’s (“Ideal Living”, along with AirDoctor, “Movants”) is just the latest salvo in a months’ long effort by Movants to obfuscate, frustrate and delay the search for truth as concerns Plaintiff’s baseless claims of false advertising.

I. INTRODUCTION.

This motion is *not* an emergency—it is litigation gamesmanship, and Plaintiff’s tactics literally know no bounds at all. Movants have filed a motion that is replete with outright false information, half-truths, and misrepresentations. Movants have manufactured the timing pressure concerning a subpoena they received nearly a month ago, and then waited to invoke the extraordinary *ex parte* procedure to exploit the discovery deadline and block a deposition they cannot defeat on the merits.

Ex parte relief is “nearly always improper,” and is available only upon a showing of irreparable prejudice and an absence of fault in creating the crisis. *In re Intermagnetics Am., Inc.*, 101 B.R. 191, 192–93 (C.D. Cal. 1989); *Horne v. Wells Fargo Bank, N.A.*, 969 F. Supp. 2d 1203, 1205 (C.D. Cal. 2013); *Clark v. Time Warner Cable*, No. CV–07–1797–VBF(RCx), 2007 WL 1334965 (C.D. Cal. May 3, 2007). This motion satisfies none of these standards, as shown by even a cursory glance at the case law cited by Movants which, in every respect, commands denial of this application.

1 The record is clear and undisputed. Defendants served a third-party subpoena
2 on September 2, 2025, noticing the deposition for September 23, 2025. (Dkt. 183-
3 5.) Plaintiff waited until September 5, 2025 to send a Rule 37 letter (Dkt. 183-10)
4 in which it took the position that Ms. Nishizaki could not testify to the subjects in
5 the subpoena because such matters were “privileged”. Defendants responded on
6 September 15, 2025 –the very deadline asked for by Plaintiff. (*Id.*; Declaration of
7 Kevin J. O’Connor (“O’Connor Decl.”), Ex. A). To accommodate a request by
8 Plaintiff’s counsel on account of a religious holiday, Defendants agreed to
9 reschedule the deposition to September 29, 2025, and have confirmed that date with
10 the witness. (Dkt. 183-11 at 4–5.)

11 During the September 18, 2025 meet-and-confer, Defendants were asked to
12 consider withdrawing the subpoena without prejudice, provided that Plaintiff
13 promptly identified and made available for deposition on a convenient date, a fully
14 prepared and competent witness to testify on the Rule 30(b)(6) topics that Plaintiff’s
15 previously produced corporate designees wholly failed to address. This was
16 confirmed in an email the very next day. (*Id.*) Plaintiff, however, stalled until
17 September 23, 2025, and offered only a vague “half-day slot” without disclosing a
18 witness name, on a date in October 2025 falling well after the fact-discovery cutoff.
19 (*Id.* at 2.) It then raced off to Court with this *ex parte* application, when it was
20 explained to them that this “proposal” was unworkable and not in keeping with what
21 was offered to them.

22 Plaintiff “buries the lead” in its motion when it tells the Court that it
23 anticipates hearing from Defendants that Plaintiff’s corporate deposition designees
24 were woefully unprepared and lacked knowledge on virtually every subject
25 imaginable. That is a gross understatement of the obfuscation and delay we have
26 seen in this case. (*Id.* at 3, 5.; O’Connor Decl. ¶¶ 3-20) This is a quintessential “self-
27 created emergency” that Local Rule 37 expressly forbids. Movants’ inexplicable
28 delay and their deliberate choice to frame this as an *ex parte* motion confirm that this

1 is a calculated tactic, not a genuine emergency. As this Court has emphasized:
2 “Absent an emergency, *ex parte* applications are not an acceptable method of
3 bringing a discovery dispute to the attention of the Court.” The application should
4 therefore be denied.

5 Even more troubling, Movants’ maneuver is a transparent attempt to evade a
6 fatal threshold defect: they lack standing to quash a third-party subpoena.
7 Defendants advised Plaintiff of this bar, and the sheer folly of Plaintiff’s prior (but
8 since abandoned) claim that Ms. Nishizaki was somehow being asked to provide
9 “privileged” information. (*See* O’Connor Decl., Ex. A.) In response, Plaintiff simply
10 rebranded their request as one for a “protective order” and sprinted, *ex parte*, to try
11 to run out the clock. By proceeding in this manner, Movants undoubtedly sought to
12 accelerate briefing and convince the Court to issue an Order stopping the deposition
13 on a scant, and rushed, record.

14 Further, despite the fact that the subpoena makes clear that the witness’
15 testimony is sought on relevant topics (Dkt. 183-5 at 8)—which Movants themselves
16 expressly acknowledge (Dkt. 183-1 at 4:8–10)—and despite repeated notice from
17 Defendants’ counsel confirming this scope (Dkt. 183-11 at 3, 5, O’Connor Decl.
18 ¶¶16, 20), Movants now misrepresent the record by asserting that Defendants seek
19 to probe prior allegations of discrimination by this long-standing employee of
20 Movant Ideal Living. This distortion is baseless, contradicted by the record, and
21 reflects a calculated attempt by Movants to mislead the Court.

22 Granting the application would effectively hand Movants what they seek by
23 default: if the subpoena is stayed and, as this Court has noted, “Counsel should be
24 mindful that the Magistrate Judge may not alter discovery cut-off deadlines set by
25 the assigned District Judge,” then the discovery cutoff will lapse, extinguishing
26 Defendants’ ability to depose this fact witness. The Court should not permit Movants
27 to profit from such gamesmanship, particularly since Movants have not, and cannot,
28

1 meet the requisite high bar for quashing the subpoena they received nearly a month
2 ago.

3 II. LEGAL STANDARD

4 A. Movants Have Abused the *Ex parte* Procedure by Fabricating an Emergency 5 of Their Own Making.

6 “[N]o discovery motions may be filed or heard on an *ex parte* basis absent a
7 showing of irreparable injury or prejudice not attributable to the lack of diligence of
8 the moving party.”

9 L.R. 37-3 Hearing on Motion. “*Ex parte* applications are nearly always
10 improper, and the opportunities for legitimate [ones] are extremely limited.” *ELT*
11 *Sight, Inc. v. EyeLight, Inc.*, 2019 WL 7166063, at *2 (C.D. Cal. Oct. 29, 2019)
12 (modification in original). Unlike regularly noticed motions, applications for *ex*
13 *parte* relief are “inherently unfair” and “pose a threat to the administration of justice”
14 because “the parties’ opportunities to prepare are grossly unbalanced.” *Mission*
15 *Power Eng’g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 490 (C.D. Cal. 1995).
16 The opposing party “can rarely make its best presentation” on the short notice
17 accompanying an *ex parte* application. *Id.* at 491.

18 Finally, “[*e*]*x parte* applications are not intended to save the day for parties
19 who have failed to present requests when they should have....” *Id.* at 193. “*Ex parte*
20 applications are a form of emergency relief that will only be granted upon an
21 adequate showing of good cause or irreparable injury to the party seeking relief.”
22 *Clark*, 2007 WL 1334965 (citing *Mission Power*, 883 F.Supp. at 492). The moving
23 party must be “without fault” in creating the need for *ex parte* relief or establish that
24 the “crisis [necessitating the *ex parte* application] occurred as a result of excusable
25 neglect.” *Id.*

26 Here, Movants demonstrate none of these prerequisites. There is no
27 “irreparable injury” or “emergency”. Instead, the record shows only Movants’
28 tactical delay, which they then used to justify rushing into court a few days before

1 the return date on a subpoena for a deposition that would have already occurred had
2 it not been adjourned as a courtesy to Plaintiff's counsel. (O'Connor Decl. ¶¶7-17,
3 ¶20) Movants—not Defendants—created this timeline. Movants also fail to establish
4 any of the three elements necessary for *ex parte* relief: (1) an immediate or
5 irreparable injury; (2) a danger that notice would result in the destruction of evidence
6 or flight; or (3) a need for a routine procedural order that cannot be obtained through
7 a regularly noticed motion (such as leave to file an overlong brief or shorten time).
8 *See Horne*, 969 F. Supp. 2d 1203.

9 **B. Movants Lack Standing To Move To Quash the Subpoena.**

10 Movants lack standing to move to quash the subpoena to Ideal Living's former
11 long-standing marketing executive, as they are not the party subject to the subpoena.
12 Under Federal Rule of Civil Procedure 45(c)(3)(A), only the party subject to the
13 subpoena may bring a motion to quash. Fed. R. Civ. P. 45(c)(3)(A); *see also*
14 *California Sportfishing Prot. All. v. Chico Scrap Metal, Inc.*, 299 F.R.D. 638, 643
15 (E.D. Cal. 2014) (recognizing the general rule that a party has no standing to quash
16 a subpoena served upon a third party, except as to claims of privilege relating to
17 documents being sought) (internal citations omitted.); *Nicholson v. City of Los*
18 *Angeles*, 2017 WL 10575213, at *2 (C.D. Cal. Jan. 4, 2017) ("Plaintiffs present an
19 argument relating only to timeliness, not any privilege, and therefore do not have
20 standing.") (citing *In Re Rule 45 Subpoena Issued to JP Morgan Chase Bank, N.A.*,
21 319 F.R.D. 132, at *3 (S.D.N.Y. 2016) (stating that a movant "lack[ed] standing to
22 object to [a third party's] compliance simply because, in his view, [the requesting
23 party] could also have obtained the records elsewhere or in a more timely fashion")).

24 Plaintiff appears to have done its homework only after it sent the Rule 37 letter
25 because, therein, it frivolously claimed that the subpoena was improper because it
26 sought "privileged" information from Ms. Nishizaki. (Dkt. 183-10, Farnese Decl.,
27 Ex. G, at 2 (asserting that the subpoena "is a transparent 'sidestep' to obtain
28 privileged information from Plaintiff and/or Ideal Living through Ms. Nishizaki").

1 The Court has likely noticed that Plaintiff has jettisoned this argument on the current
2 application.

3 Of course, there is no conceivable “privilege” that applies to anticipated
4 testimony from this witness. As concerns the alleged confidentiality agreement the
5 witness signed with Ideal Living, Plaintiff lacks standing to invoke it as a basis to
6 block discovery. (Dkt. 183-3.) Even if the agreement were relevant, in compliance
7 with applicable law, it expressly disclaims any restriction on disclosure of
8 confidential information in response to a valid subpoena. (*Id.* at 3.) Courts have
9 consistently rejected a party’s effort to use the existence of a confidentiality
10 agreement to shield a witness from being questioned. *See Erickson v. Microaire*
11 *Surgical Instruments LLC*, No. C08-5745BHS, 2010 WL 1881946, at *3 (W.D.
12 Wash. May 6, 2010) (In the event the provision provides that documents may be
13 produced and testimony given pursuant to a subpoena or court order, then the
14 Ericksons’ claim of confidentiality fails.). Moreover, there is a Stipulated Discovery
15 Order in place in this case, should it need to be invoked.

16 Lastly, it bears mentioning that while the Farnese Declaration asserts in
17 paragraph 20 that there is a purported “settlement agreement” between the witness
18 and Ideal Living “which included a confidentiality provision related to proprietary
19 information stemming from Ms. Nishizaki’s prior employment agreement with Ideal
20 Living,” (Dkt. 183-4, at 3), this argument must be disregarded for multiple reasons.
21 First, it was not asserted as part of any Rule 37 letter we received. Second, that
22 agreement has not been furnished to the Court or to Defendants. *See Erickson*, 2010
23 WL 1881946 at 3 (rejecting a similar attempt to quash a subpoena based on a
24 confidentiality provision where the moving party failed to provide the agreement,
25 noting that “[t]he party who moves to quash a subpoena has the burden of
26 persuasion”).

27 Third, while Mr. Farnese claims that the witness had an “employment
28 agreement” with Ideal Living, no such agreement is provided to the Court, and such

1 an assertion is belied by the other materials in the record which appear to
2 conclusively show that she was an at will employee. Lastly, it bears mentioning that
3 California law narrowly proscribes an employer's ability to include strict
4 confidentiality in a settlement agreement in connection with a discrimination claim.
5 *See, e.g.*, Cal. Code of Civil Procedure § 1001 (rendering void "a provision within a
6 settlement agreement that prevents or restricts the disclosure of factual information
7 related to a claim [for workplace harassment or discrimination] filed in a civil action
8 or a complaint filed in an administrative action...").

9 Movants' failure to provide any alleged agreement as part of their application
10 prohibits any serious consideration of their vague argument that the witness could
11 violate her agreement by answering questions truthfully about her experiences at
12 Ideal Living and its overall relation to the Plaintiff in this action, its corporate
13 structure during the time she worked there; and how replacement air filter products
14 were manufactured, marketed and sold.

15 **C. Neither Movants' Attempt to Quash the Subpoena Nor Their Protective**
16 **Order Argument Has Merit**

17 Movants also lack standing to object to the Nishizaki subpoena on the basis
18 that it purportedly seeks "irrelevant, overbroad, or disproportionate" information.
19 Courts in this Circuit have consistently rejected such attempts, and this is shown in
20 spades in each of the cases upon which Movants erroneously rely. *See Eclat Pharms.,*
21 *LLC v. West-Ward Pharm. Corp.*, 2014 WL 12607663, at *1 (C.D. Cal. March 26,
22 2014) (denying motion to quash subpoenas on the grounds that they are overbroad,
23 not properly limited in time, and seek irrelevant and duplicative information because
24 defendants did not have standing to move to quash the subpoenas served on the third
25 parties on the proffered bases); *see also Erickson*, 2010 WL 1881946, at *2 (A party
26 generally does not have standing to object to a subpoena served on a nonparty on
27 grounds of the undue burden imposed on the nonparty, especially where the nonparty
28 itself has not objected.).

1 Movants may not properly invoke “irrelevance” or “burden” objections that
2 belong, if at all, to the non-party witness. *See id.* (where relevance is in doubt, the
3 Court should be permissive in allowing discovery); *see also* Fed. R. Civ. P. 26(b)(1).
4 The witness has confirmed her availability to testify and is willing to comply on the
5 date her deposition was arranged, after consulting with Plaintiff as to the
6 convenience of said date.

7 In any event and putting aside this standing problem, the subpoena topics are
8 not irrelevant, overbroad, or burdensome. To the contrary, they are narrowly tailored,
9 directly relevant to the claims and defenses, and proportional to the needs of the case.
10 Rule 26 permits discovery “regarding any nonprivileged matter that is relevant to
11 any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). This Rule clearly “establishes
12 a liberal discovery policy.” *S.M. v. Tamaqua Area Sch. Dist.*, 2023 U.S. Dist. LEXIS
13 93017, 2023 WL 3689607, at *1 (M.D. Pa. May 26, 2023). The federal courts have
14 long permitted broad and liberal discovery. *Doe v. Princeton Univ.*, 349 F.R.D. 92,
15 96 (D.N.J. 2025). Defendants’ anticipated examination is confined to identifying the
16 key players within the Plaintiff’s company and its affiliates during the relevant
17 period (whom the Court can easily see involve Ideal Living), clarifying their
18 interrelationships, determining the scope and extent of financial and marketing
19 records that the witness knew to exist when she worked there (very little of which
20 have ever been produced, despite demand), and determining who possesses relevant
21 knowledge (Dkt. 183-5 at 8)—subjects squarely within the scope of permissible
22 discovery. (O’Connor Decl. ¶¶7, 9, 10, 16).

23 To show the type of gamesmanship being employed here, Movants seek to
24 confuse the Court into thinking that the recipient of the subpoena is not
25 knowledgeable of operations at Movants’ companies during the relevant period
26 (2021 through 2023). For this argument, they cite to her testimony (Dkt. 183-9)
27 where she gives the approximate number of employees in the organization when she
28 left in 2023. Because she conceded, on February 25, 2025, that she did not as of that

1 date know how many employees the companies had (*id*), she is somehow deemed
2 by Movants not to have any knowledge on any topic. Just to state this argument
3 shows its absurdity.

4 Critically, the information sought from this non-party witness is in multiple
5 areas that three of Plaintiff's designated Rule 30(b)(6) witnesses woefully failed to
6 provide competent testimony about in a series of depositions that were taken in this
7 case. There is a long list of topics that those witnesses failed and refused to testify
8 to, despite days of depositions. (O'Connor Decl., ¶ 9). Against this factual backdrop,
9 Movants' argument that "Defendants cannot use a non-party subpoena to sidestep
10 party discovery" (Dkt. 183-1 at 10, 11) is entirely disingenuous. Far from
11 sidestepping, third-party discovery is necessitated by Plaintiff's own failure to
12 produce knowledgeable witnesses, making Ms. Nishizaki's testimony not only
13 proper, but essential.

14 Further, Ms. Nishizaki has personal knowledge of Movants' combined
15 operations and, in particular, will be essential in establishing that Plaintiff is not the
16 real party in interest in this case. As will be made abundantly clear in future
17 dispositive motion practice, Defendants believe they will show that this action was
18 filed by the wrong party. Plaintiff seeks to recover damages for alleged false
19 advertising, but discovery (including, upon information and belief, what this witness
20 will further corroborate) shows that no damages could be proven and, even if there
21 were actual damages, any economic injury was suffered not by Plaintiff, but by a
22 group of affiliated companies *that are not plaintiffs* in this action. Efforts to get
23 information from Plaintiff's corporate designees have not been fruitful as each and
24 every one of them has eschewed any knowledge at all of the relationship, or how
25 Plaintiff could claim even a penny of damages.

26 Under the Lanham Act and Rule 17 of the Federal Rules of Civil Procedure,
27 only the entity that sustains a direct commercial injury is the proper plaintiff. This
28 witness will likely assist Defendants in further cementing the fact that Plaintiff has

1 been unable to show a loss of sales, damage to reputation, and damage to goodwill,
2 precisely because *it is not even an operating company*. As is shown by her complaint
3 against Ideal Living (Dkt. 183-7), she was a long-time, trusted employee of Ideal
4 Living (Senior Brand Manager) who “expressed concerns to her superiors about
5 potential financial and illegal improprieties within the company.” (*Id.*, ¶ 12). Ideal
6 Living even acknowledged in its complaint against David Najar that Ms. Nishizaki
7 “worked for Ideal Living on and off since 2006, and was most recently employed by
8 Ideal Living from 2019 to 2023.” (Dkt. 183-6, ¶ 8). In her complaint against Ideal
9 Living, Ms. Nishizaki alleged that the manner in which the company was keeping
10 its financial records and its relationship with affiliates was done to avoid income tax
11 liability. (Dkt. 183-7, ¶ 13).

12 Having worked for the companies around eight years, this employee is
13 uniquely positioned to provide information concerning the affiliations between the
14 entities, the preparation and maintenance of financial records, the individuals with
15 the most relevant knowledge (including a long list of employees who have since
16 departed) concerning the testing and marketing of products, the true nature of the
17 manufacturing and distribution process, and the role of certain undisclosed persons
18 in China in that process. None of this critical information was elicited from the three
19 unprepared corporate designees Plaintiff produced. (Dkt. 183-11, O’Connor Decl.,
20 ¶9).

21 Movants disingenuously suggest that Ms. Nishizaki has no knowledge of the
22 Air Doctor filters because she does not mention the filters specifically in her
23 complaint of discrimination. (Dkt. 183-1, at 7)(“In fact, the complaint in the
24 Nishizaki Lawsuit does not use the word “AirDoctor” one time.”). Ostensibly this
25 argument was made in the hopes the Court did not examine the complaint filed by
26 Ideal Living against Mr. Najar wherein Ideal Living affirmatively stated that *it* was
27 the true owner of the AirDoctor “engineered and manufactured products” (the very
28 antithesis of what is alleged in Plaintiff’s operative complaint) and wherein Ideal

1 Living laid out in detail Ms. Nishizaki’s alleged involvement in recruiting Najjar “as
2 a commissioned, outside sales representative for Ideal Living, to sell “AirDoctor®”
3 air purifier units...” (Dkt. 183-6, ¶ 8). That same pleading alleges that Ms. Nishizaki
4 had accused Plaintiff’s owner of “having false financial statements” and of
5 “concealing the true ownership of Ideal Living...” (*Id.*, ¶ 9).

6 Equally without merit is the new assertion by Movants that Ms. Nishizaki’s
7 testimony is not relevant because Mr. Sweet belatedly disclosed on September 3,
8 2025 that there was some alleged “restructuring” that occurred this past summer,
9 rendering “irrelevant” the structuring of the company prior. This argument is,
10 frankly, absurd.

11 First of all, the Court has likely noticed that in the highly redacted excerpt of
12 Mr. Sweet’s testimony (Dkt. 183-8), Plaintiff disclosed for the first time the
13 existence of a vague transaction whereby a “third-party investor” allegedly
14 purchased a “minority share” of Ideal Living Holdings. When pressed for any details,
15 the witness feigned ignorance altogether, as is shown by the page that Movants
16 conveniently left out of the record. (O’Connor Decl., Ex. B). As is set forth in the
17 enclosed Declaration, after the Sweet deposition, Defendants received a Rule 37
18 letter wherein Plaintiff mysteriously suggested that there had been a “restructuring”
19 such that it wished to now switch up who the Plaintiff is. A meet and confer ensued,
20 and Plaintiff has thus far failed and refused to provide any actual evidence of any
21 so-called “restructuring.” In the weeks that have followed, Plaintiff has now
22 abandoned its efforts to amend the complaint. (*Id.*, ¶¶ 18-20).

23 Yet, now the Court is expected to accept as true that this limited testimony
24 about a vague “investment” of an unnamed “minority purchaser” somehow changes
25 the need to explore who the real party in interest is in this case, how that entity was
26 “damaged,” what “lost profits” that entity is claiming to have, etc.

27 In sum, while Movants emphasize alleged “corporate restructuring” that
28 allegedly occurred in July 2025, and putting aside that the witness had no knowledge

1 at all of what that was, such “restructuring” does not diminish the critical relevance
2 of the pre-2023 operations at issue in this case. What matters for purposes of
3 discovery is Plaintiff’s operations, their affiliates, the facts surrounding the
4 manufacture of Plaintiff’s supposedly superior air filters and the alleged “rigorous,
5 independent third-party testing” that supposedly sets it apart from Defendants’ filters,
6 and why it is that Plaintiff is unable to furnish financial records that make any sense
7 at all.

8 Ms. Nishizaki, who remained with Ideal Living until February 2023 (Dkt.
9 183-1 at 9:18–19) and was employed by at least July 2011 as reflected in the
10 purported confidentiality agreement (Dkt. 183-3 at 8), has first-hand knowledge of
11 precisely these subjects. To be sure, Ms. Nishizaki is not being questioned on alleged
12 “restructuring” from a few months ago that Plaintiff’s own “Director of Legal Affairs”
13 could not even explain to us.

14 Accordingly, Defendants have shown a substantial need for this testimony.
15 *See Gonzales v. Google, Inc.*, 234 F.R.D. 674 (N.D.Cal.2006). Movants’ attempt to
16 recharacterize these narrowly focused topics as improper is nothing more than an
17 effort to conceal deficiencies in their own corporate testimony. Blocking the
18 subpoena would reward that non-compliance and perpetuate an asymmetry of
19 information that the Federal Rules of Civil Procedure are designed to prevent.
20 Granting the motion will only serve to reward a disturbing pattern of obfuscation,
21 frustration and delay that should never be countenanced.

22 **D. Movants Unduly Delayed, and Have Waived, Objections to the Subpoena by**
23 **Changing the Grounds Upon Which They Objected to the Subpoena, and**
24 **then Passing the Statutory Deadline.**

25 Under Rule 45, a non-party served with a subpoena *duces tecum* must serve
26 objections “before the earlier of the time specified for compliance or 14 days after
27 the subpoena is served.” Fed. R. Civ. P. 45(c)(2)(B). Only upon a timely motion may
28 the court quash or modify a subpoena. Fed. R. Civ. P. 45(c)(3)(A). “Once the person
subpoenaed objects to the subpoena ... the provisions of Rule 45 come into play.”

Pennwalt Corp. v. Durand–Wayland, Inc., 708 F.2d 492, 494 n. 5 (9th Cir.1983). A nonparty’s failure to timely make objections to a Rule 45 subpoena *duces tecum* generally requires the court to find that any objections have been waived. *See In re DG Acquisition Corp.*, 151 F.3d 75, 81 (2d Cir.1998); *Creative Gifts, Inc. v. UFO*, 183 F.R.D. 568, 570 (D.N.M.1998).

Here, Movants—not the subpoenaed witness—delayed until well after the 14-day deadline and then sought *ex parte* relief on the eve of the adjourned date of deposition (past the original return date of that subpoena). This delay is fatal. Movants have not shown, nor can they show, any justification for their untimely objections. The subpoena is narrowly tailored and squarely within the permissible scope of discovery. Movants’ strategic delay therefore results in waiver, and their objections should not be heard.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Movants’ *ex parte* application for a protective order, or in the alternative to quash, the subpoena issued non-party Myra Nishizaki in its entirety.

Date: 9/25/2025

/s/ Jie Li

Jie Li (SBN 354432)
Tianyu Ju (SBN: 323817)
Glacier Law LLP
251 South Lake Ave Suite 910
Pasadena, California 91101
Telephone: 312.448.7772
Facsimile: 312.801.4587
Email: iris.ju@glacier.law
jie.li@glacier.law

Dandan Pan (PHV admitted)
Glacier Law LLP
41 Madison Avenue, Ste. 2529
New York, NY 10010

1 Telephone: 212-927-5033
2 Email: dandan.pan@glacier.law

3 Kevin J. O'Connor (PHV admitted)
4 Peckar & Abramson, P.C.
5 70 Grand Avenue
6 River Edge, NJ 07661
7 Telephone: (201) 343-3434
8 Email: koconnor@pecklaw.com

9 *Attorney for Defendants and*
10 *Counterclaim Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September 2025, I caused the foregoing to be filed electronically with the Clerk of Court and to be served via the Court's Electronic Filing System upon all counsel of record.

Date: 9/25/2025

/s/ Jie Li

Jie Li

Glacier Law LLP

*Attorney for Defendants and
Counterclaim Plaintiffs*