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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIMPLEHUMAN, LLC,
Plaintiff,
v.
ITOUCHLESS HOUSEWARES AND
PRODUCTS, INC., et al.,
Defendants.

Case No. [19-cv-02701-HSG](#) (AGT)

DISCOVERY ORDER

Re: ECF No. 75

Pending before the Court is the parties’ joint discovery dispute letter concerning (1) whether Defendant iTouchless must respond to Plaintiff simplehuman’s Interrogatory No. 15 and (2) the timing of iTouchless’ production of emails for four remaining custodians of record. ECF No. 75. As discussed during the August 21, 2020 Zoom webinar hearing, the Court requires a declaration from iTouchless providing additional information regarding the parties’ second dispute, as outlined further below, before the Court will issue a ruling.

On June 3, 2020, iTouchless represented that it “is currently in the process of conducting e-mail searches based on Plaintiff’s list of custodians and search terms” and “will produce any relevant e-mails on a rolling basis and expects to finish reviewing and producing all relevant emails by June 16, 2020.” ECF No. 65 at 10. On June 16, iTouchless completed its production of emails for one custodian, iTouchless CEO Michael Shek, but it has yet to search or produce emails for the other four custodians, now claiming that it “was unable to access the computers necessary to conduct the searches” because of “the COVID-19 Shelter in Place Order, which required the

1 closure of Defendant’s office.”¹ ECF No. 75 at 6. iTouchless asserts that it “expects to be able to
2 conduct the searches of the remaining custodians once it is authorized to re-open its office” and
3 requests “two months from the lifting of the Shelter in Place Order” to complete its production of
4 emails. *Id.*

5 The Court is not persuaded based on the existing record that iTouchless cannot access and
6 search the remaining custodian email files due to its COVID-19-related office closure, particularly
7 given iTouchless’ representations on June 3—over two months after California’s COVID-19
8 shelter-in-place order went into effect—that its collection and search of custodian emails was
9 underway and that it expected to complete production of those emails by June 16 (and iTouchless
10 was able to search and produce emails for its CEO by that date). iTouchless’ portion of the joint
11 letter does not state what changed since early June and defense counsel was unable to answer with
12 any certainty the Court’s questions about the current status of iTouchless’ office operations, where
13 and how its custodian email files are stored, and why those files cannot be accessed remotely. The
14 Court requires this information to determine an appropriate deadline for iTouchless’ production of
15 these emails. Accordingly, the Court orders the following:

- 16 iTouchless shall file a sworn declaration by **September 8, 2020**, stating in detail:
- 17 1. The status of iTouchless’ San Mateo office operations from June 1, 2020 to the present,
18 including whether iTouchless has authorized any of its employees (including
19 iTouchless CEO Michael Shek) or other individuals to access the office premises
20 during that period;
 - 21 2. Where and how the email files of the four remaining custodians are stored and whether
22 those files can be accessed remotely;
 - 23 3. If those email files cannot be accessed remotely, an estimate of how long it would take
24 to download and/or copy the files from their current storage location(s); and
 - 25 4. Any other information pertinent to iTouchless’ ability to access, search, and produce
26 the remaining custodian emails in a safe and timely manner.

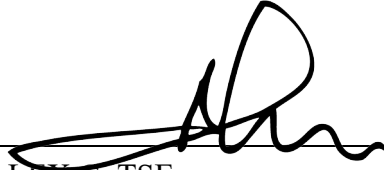
27 _____
28 ¹ During the August 21 hearing, counsel for Plaintiff noted that iTouchless’ office is located in San
Mateo, California.

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Plaintiff may file a rebuttal declaration if it wishes. That declaration may not exceed two pages and is due by **September 15, 2020**. On that date, the Court will consider the matter submitted and will then issue a written order concerning both disputes raised in the parties' joint letter.

IT IS SO ORDERED.

Dated: August 25, 2020



ALEX G. TSE
United States Magistrate Judge