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20		
21	IN RE GOOGLE PLAY STORE ANTITRUST LITIGATION	Case No. 3:21-md-02981-JD
22	This Document Relates To:	DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
23	Epic Games Inc. v. Google LLC et al., Case No.	SANCTIONS MOTION FOR
24	3:20-cv-05671-JD	
25	In re Google Play Consumer Antitrust Litigation, Case No. 3:20-cv-05761-JD	Judge: Hon. James Donato
26 27	State of Utah et al. v. Google LLC et al., Case No. 3:21-cv-05227-JD	
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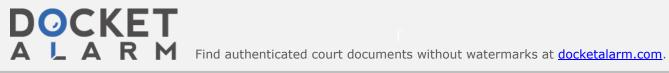


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I. <u>INTRODUCTION</u>

Google fully complied with its discovery obligations by taking robust steps to preserve relevant chats, including by issuing litigation hold notices regarding chat preservation and automatically preserving certain categories of chats. As a result of its efforts, Google has produced thousands of chats and *millions* of other documents in this litigation.

Plaintiffs disregard Google's preservation efforts and contend that Google is required to automatically preserve every chat from every custodian, regardless of relevance. But that is not the law; Rule 37 requires "reasonable steps" not "perfection." Adv. Comm. Notes to 2015 Amend. of Fed. R. Civ. P. 37(e). Nor do Plaintiffs show that Google acted with the "intent to deprive" Plaintiffs of information in this litigation—a prerequisite for imposing the extreme sanction of an adverse inference instruction. To the contrary, Google's efforts to preserve and produce chats and other information dispel any notion that Google sought to deprive Plaintiffs of evidence. The Court should deny this meritless motion.

First, Google took reasonable steps to preserve relevant ESI. Google automatically preserved relevant employees' emails, custodial documents, and certain categories of chats. In addition, Google issued timely litigation hold notices and reminders to custodians regarding the preservation of chats. As a result of these efforts, Google has produced over 3.1 million documents in this litigation, including 3,084 relevant chats from a collection of over 176,000 chats. Plaintiffs appear to contend these efforts were not just inadequate, but also irrelevant—that Google was subject to a per se rule requiring preservation of every chat by every custodian. Mot. at 6. That is not the law, and Plaintiffs do not cite any case establishing this purported per se rule.

In fact, Rule 37(e) "does not call for perfection," and recognizes that "reasonable steps to preserve suffice." Adv. Comm. Notes to 2015 Amend. of Fed. R. Civ. P. 37(e). As deposition testimony in this case confirms, unlike emails, chats are typically used by Google employees to discuss *non-substantive* issues and coordinate simple logistics, such as employees' availability for meetings or video calls. In light of this fact, Google reasonably relied on a combination of litigation hold instructions regarding chats and automatic preservation for some categories of chats (as accurately described in Google's retention policy, contrary to Plaintiffs' selective misquoting).



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