

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

Securities and Exchange Commission v. Prakash

Case No. 23-cv-03300-BLF (SVK) (N.D. Cal. Mar. 7, 2025) · No. 23-cv-03300-BLF (SVK) · Decided March 7,
2025

OPINION

Securities And Exchange Commission v. Prakash

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 SECURITIES AND EXCHANGE Case No. 23-cv-03300-BLF (SVK)

COMMISSION,

8 Plaintiff, ORDER DIRECTING SUBMISSION

9 OF DOCUMENTS FOR

v. IN CAMERA REVIEW

10 VIDUL PRAKASH, Re: Dkt. No. 63 11 Defendant. 12 Before the Court is the Parties’ joint
discovery submission in which Defendant Vidul 13 Prakash seeks to compel the production of
interview notes from Plaintiff Securities and Exchange 14 Commission (the “Commission”). See
Dkt. 63 (the “Submission”). For the reasons set forth 15 below, the Court will review the
documents in question in camera before ruling on Defendant’s 16 request. 17 Relevant Factual
Background. Non-party View, Inc. (“View”), a manufacturer and 18 seller of “smart” windows,
allegedly disseminated false and misleading statements in its filings 19 with the Commission. The
statements concerned View’s accrual of liabilities reflecting costs 20 incurred to ship and install
replacement windows after the company discovered defects in many of 21 its sold windows. One
of the central issues in the case concerns whether Defendant, View’s 22 former CFO, had been
told that View would cover shipping and installation costs for all customers 23 of defective
windows, or whether he understood View’s coverage of these costs to be on a case- 24 by-case
basis. The Commission understands that View’s management decided to pay these costs 25 for all
customers, and according to Defendant, the Commission bases that understanding on 26 testimony
provided by Daniel Purdy, View’s former Vice President of Field Operations, in June 27 2022
during the Commission’s pre-suit investigation. But about a year before Mr. Purdy provided 1 that
testimony, he stated in an interview conducted by View’s audit committee during an internal 2
investigation that the company would pay shipping and installation costs on a case-by-case basis.1
3 Defendant, therefore, seeks to probe this inconsistency in Mr. Purdy’s statements, as the all 4
costs/case-by-case issue underlies the Commission’s theory of liability against him. 5 At issue in

the instant discovery dispute is an interview of Mr. Purdy conducted by the 6 Commission in February 2022, a few months before Mr. Purdy testified before the Commission. 7 Based on an email produced in discovery, Defendant determined that the Commission likely 8 discussed the all costs/case-by-case issue with Mr. Purdy during his February 2022 interview. 9 Defendant questioned Mr. Purdy about the interview at his deposition, but Mr. Purdy testified that 10 he does not remember what he discussed in the interview. The interview is otherwise “unrecorded 11 but for memoranda and notes prepared by three individuals on the [Commission’s] staff”: an 12 attorney, a paralegal and an accountant. See *id.* at 2 & n.3; see also *id.* at 7 (the Commission 13 describing its recordings as notes prepared by three staff members). Defendant accordingly 14 requests that the Court compel the Commission to produce its notes from the interview, and the 15 Commission resists production on the basis of the work-product doctrine. 16

The Notes Are Work Product. As documents prepared by the Commission in connection 17 with its pre-suit investigation, the notes constitute protectable work product. See *United States v. 18 Richey*, 632 F.3d 559, 567 (9th Cir. 2011) (discussing two-part test to “qualify for work-product 19 protection”). The Court rejects Defendant’s arguments on this point. 20 First, Defendant relies on inapposite authorities in arguing that the protection does not 21 apply. See *Submission at 4*. In *SEC v. Thrasher*, No. 92-cv-06987-JFK, 1995 WL 46681 22 (S.D.N.Y. Feb. 7, 1995), the Commission “ma[de] no effort to meet its burden of proffering 23 competent evidence establishing the basis of its work-product claim” such that it was “at least 24 arguable that some or all of the interview notes were not prepared principally or exclusively to 25 26 1 This statement from Mr. Purdy comes from a memorandum prepared by Cooley, LLP, the firm that conducted the audit committee’s internal investigation. See *Submission at 2, 6-7*. In a recent 27 deposition, Mr. Purdy testified that the memorandum in question “did not accurately reflect his 1 assist in anticipated litigation.” See *id.* *3-4. Here, the Court is satisfied on the current record that 2 the Commission prepared the notes because it anticipated litigation. See also *Richey*, 632 F.3d at 3 567-68 (where document created for multiple purposes, work-product determination hinges on 4 “whether the document was created because of anticipated litigation, and would not have been 5 created in substantially similar form but for the prospect of litigation” (quotation marks omitted)). 6 *SEC v. Stratton Oakmont, Inc.*, No. 92-cv-01993-JES, 1992 WL 226924 (S.D.N.Y. June 22, 7 1992), also does not assist Defendant, as the court there issued a short order without providing any 8 analysis. 9 Second, Defendant points to narrow disclosures by the Commission in arguing that the 10 Commission waived the protection. See *Submission at 4*. But disclosure of questions asked by 11 the Commission outside of the interview are irrelevant, and disclosure of the subjects potentially 12 discussed in the interview is far different than selectively disclosing portions of the notes 13 memorializing the interview. Cf. *Shenwick v. Twitter, Inc.*, No. 16-cv-05314-JST, 2019 WL 14 3815719, at *4 (N.D. Cal. Apr. 19, 2019) (“Once Plaintiffs waived the protection of the attorney 15 work product doctrine for a confidential witness’s conversation with Plaintiffs’ representatives, the 16 waiver extended to the entire conversation.”). 17 Defendant May Be

Entitled To A Narrow Production. Courts classify work product 18 into two categories: (1) fact work product; and (2) opinion work product. See Tremblay v. 19 OpenAI, Inc., No. 23-cv-03223-AMO, 2024 WL 3159292, at *2 (N.D. Cal. June 24, 2024). 20 Because Defendant seeks to discover only the fact of what Mr. Purdy said during the February 21 2022 interview, the Court will construe his request as concerning only the fact work product (if 22 any) contained within the notes. To obtain fact work product, a party must show “that it has 23 substantial need for the materials to prepare its case and cannot, without undue hardship, obtain 24 their substantial equivalent by other means.” See Fed. R. Civ. P. 26(b)(3)(A); Tremblay, 2024 WL 25 3159292, at *2. Defendant satisfies these showings. He has a substantial need for the notes 26 because Mr. Purdy appears to have discussed a key issue in the case during his interview, and 27 what he said may significantly bolster Defendant’s position. Likewise, Defendant cannot obtain] and Mr. Purdy does not remember what he discussed in the interview. The Court rejects the 2 |} Commission’s counterarguments which rely almost entirely on out-of-circuit, nonbinding 3 authorities, and which impose an overly narrow conception of “substantial need.” See Submission 4 |} at 9-10. 5 ok 6 Accordingly, for good cause shown, the Court ORDERS the Commission to submit the 7 || three sets of notes to the Court via email for in camera review by March 13, 2025. For those 8 || notes that are handwritten, the Commission shall submit a handwritten copy and a transcribed 9 || copy, if a transcription already exists. The notes shall contain highlighting for those portions 10 || concerning what (if anything) Mr. Purdy said about the all costs/case-by-case issue. The Court 11 will determine whether Defendant is entitled to production of any portion of the notes after 12 || completing its in camera review. To the extent that Defendant requests the production of “similar 13 interview memos” prepared during the Commission’s pre-suit investigation (see id. at 5-6), the 14 || Court DENIES that request; Defendant offers no explanation of the relevance of or substantial 3 15 || need for those documents, and the Submission focuses almost exclusively on Defendant’s request 16 || for the notes memorializing the February 2022 interview of Mr. Purdy. i 17 SO ORDERED. 18 || Dated: March 7, 2025 19 20 Syston yout
SUSAN VAN KEULEN

21 United States Magistrate Judge 22 23 24 25 26 27 28