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17 *Attorneys for Defendant: Otto Trucking LLC*

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 Waymo LLC,
22 Plaintiff,
23 v.
24 Uber Technologies, Inc.; Ottomotto LLC; Otto
Trucking LLC,
25 Defendants.

Case No. 3:17-cv-00939-WHA

**OTTO TRUCKING'S SUPPLEMENT TO
ITS MOTION FOR SUMMARY
JUDGMENT**

Courtroom: 8 (19th Floor)
Judge: Hon. William Alsup
Trial Date: October 10, 2017

1 Defendant Otto Trucking LLC (“Otto Trucking”) respectfully submits the following
2 Supplement to its Motion for Summary Judgment in light of deposition testimony from Lior Ron,
3 and in response to arguments made by counsel for plaintiff Waymo LLC at the hearing held on
4 September 20, 2017.

5 At the hearing on Otto Trucking’s motion for summary judgment, counsel for Waymo
6 argued that the Stroz report suggested access to protected materials by Anthony Levandowski after
7 February 1, the date on which Otto Trucking was formed. *See* Declaration of Neel Chatterjee in
8 Support of Otto Trucking’s Supplement to its Motion for Summary Judgment, Ex. 1, 9/20/17
9 Hearing Tr., at 60:1-62:5; *see also* Ex. 2 (Lior Ron Rough Tr.) at 374:13-16. The Court asked
10 certain questions relating to whether Mr. Levandowski was wearing his “Otto Trucking hat” when
11 he is alleged to have access those materials. *See id.* at Ex. 1, 9/20/17 Hearing Tr., at 63:8-18.

12 Mr. Lior Ron, Otto Trucking’s Chief Executive Officer and General Manager, was
13 deposed again yesterday. His testimony makes clear that Mr. Levandowski was not wearing any
14 such “hat” at that time, because neither Otto Trucking, nor its subsidiary Otto Transport LLC, was
15 engaging in any research and development activities relating to LiDAR:

16 • Q. What is Otto Trucking LLC?

17 A. Otto Trucking LLC is an entity that was formed to hold the interest of the Otto
18 Trucking shareholders or members in a potential trucking or logistics business at
19 Uber. *Id.* at Ex. 2 at 374:8-12.

20 • Q. So between the time that Otto Trucking was formed, I think you
21 testified earlier around February 2016, and the time that -- let's say, August 2016,
22 did either Otto Trucking or Otto Transport do any R&D activity with respect to
23 LiDAR systems?

24 A. No. Those entities did not engage in any LiDAR activities, nor did they have
25 any employees throughout those months. *Id.* at Ex. 2 at 380:15-23.

26 • Q. So between the time that Otto Trucking was formed, you testified
27 earlier February 2016, and the date of this agreement, April 6th, 2016, what was
28 the business of Otto Trucking, if any?

MR. CHERNY: Objection; leading.

THE WITNESS: It was basically a legal holding company that we've formed for

1 potentially engaging in trucking business activity in the future. But Otto Trucking
2 LLC did not have any R&D activities or any employees at the time.

3 Q. So during the same time period that I just asked about in my prior question, did
4 Otto Trucking do any work on developing any LiDAR systems?

5 MR. CHERNY: Objection; leading.

6 THE WITNESS: No, I don't believe so. As I said before, Otto Trucking didn't
7 have any employees, didn't engage in any R&D activities and, as pertains to both,
8 didn't have any LiDAR activity whatsoever." *Id.* at Ex. 2 at 376:12-377:6.

9 • Q. And what is Otto Transport LLC?

10 A. I think Otto Transport LLC was an entity we formed to hold some of the self-
11 driving trucks, so the trucks that Otto Trucking had or that Otto Trucking leased.
12 *Id.* at Ex. 2, 377:16-20.

13 For these reasons, and for the reasons stated in Otto Trucking's motion, reply and
14 accompanying papers, Otto Trucking respectfully requests that the Court grant its motion
15 for summary judgment.

16 Dated: October 3, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **October 3, 2017**. I further certify that all participants in the case are registered CM/ECF users and that service of the publicly filed document will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **October 3, 2017**.

/s/ Neel Chatterjee
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Attorneys for Defendant: Otto Trucking LLC

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 WAYMO LLC,

21 Plaintiff,

22 v.

23 UBER TECHNOLOGIES, INC.;
24 OTTOMOTTO LLC; OTTO TRUCKING
LLC,

25 Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF NEEL CHATTERJEE
IN SUPPORT OF OTTO TRUCKING'S
SUPPLEMENT TO ITS MOTION FOR
SUMMARY JUDGMENT**

Courtroom: 8 (19th Floor)
Judge: Hon. William Alsup
Trial Date: October 10, 2017

1 I, Neel Chatterjee, declare as follows:

2 1. I am a partner at the law firm of Goodwin Procter LLP, counsel of record for
3 Defendant Otto Trucking, LLC (“Otto Trucking”). I make this declaration based upon matters
4 within my own personal knowledge and if called as a witness, I could and would competently
5 testify to the matters set forth herein. I make this declaration in support of Otto Trucking’s
6 Supplement to Its Motion for Summary Judgment.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts to the transcript
8 of this Court’s September 20, 2017 hearing on motions for summary judgment.

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts to the rough
10 transcript of the October 2, 2017 deposition of Lior Ron. As Mr. Ron’s deposition was taken
11 yesterday, only the rough transcript was available.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct. Executed this 3rd day of October, 2017 in Menlo Park, California.

14
15 /s/ Neel Chatterjee
16 NEEL CHATTERJEE
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I certify under penalty of perjury that the foregoing is true and correct. Executed on **October 3, 2017**.

/s/ *Neel Chatterjee*
NEEL CHATTERJEE

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before the Honorable William H. Alsup, Judge

WAYMO LLC,)
)
 Plaintiff,)
)
 VS.)
)
 UBER TECHNOLOGIES, INC.;)
 OTTOMOTTO LLC; OTTO TRUCKING)
)
 Defendants.)
 _____)

No. C 17-0939 WHA

BOUND SEPARATELY
PAGES 95 - 145 (UNDER SEAL)

San Francisco, California
Wednesday, September 20, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(Appearances continued on next page)

Reported By: Katherine Powell Sullivan, CSR No. 5812, RMR, CRR
Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporters

1 reflect any other investigation beyond the scope of his
2 declaration, that material has been redacted, withheld as
3 work product."

4 We were very clear with him what our position on the work
5 product and privilege waiver was.

6 And one final point. With respect to Judge Corley's
7 rulings, she ruled that a lot of these materials were
8 privileged. She asked us -- ordered us to produce them as a
9 matter of fairness, just because it's hard to slice and dice
10 out some of these waiver issues.

11 So there were certain documents where there were
12 privileged information, and she asked us to unredact it as a
13 matter of fairness because it was wrapped up in what she
14 decided was within the scope of the waiver.

15 **THE COURT:** All right. We've got to move to the
16 motion on Otto Trucking. That's your motion. So we go to that
17 motion. Otto Trucking.

18 **MR. CHATTERJEE:** So I'm going to have Mr. Brun argue
19 that motion.

20 **THE COURT:** Very well. Thank you.

21 **MR. BAKER:** Thank you, Your Honor.

22 **THE COURT:** All right.

23 **MR. BRUN:** Good morning, Your Honor. Shane Brun for
24 Otto Trucking.

25 **THE COURT:** Please, go ahead on that motion.

1 **MR. BRUN:** Excuse me, Your Honor.

2 **THE COURT:** It looks like it's unopposed.

3 **MR. BRUN:** It should be unopposed.

4 **THE COURT:** Someone is going to stand up, but you go
5 ahead.

6 **MR. BRUN:** Thank you, Your Honor.

7 Your Honor, so Waymo's claims in this case have been
8 solely focused on Uber and Ottomotto. More specifically, they
9 have been focused on the Fuji and the Spider systems. That's
10 what they claim uses the trade secrets.

11 There's not a single fact to suggest that Otto Trucking
12 uses a trade secret. There's not -- Otto Trucking, as the
13 facts have shown now that discovery is over, separate company.
14 It's a holding company. Only holds trucks. That's all it
15 does.

16 **THE COURT:** Do these trucks, are they equipped with
17 LiDAR?

18 **MR. BRUN:** They're equipped with a third-party LiDAR
19 system, Your Honor. There's not a single fact to suggest --
20 it's undisputed, I don't think they contest the fact that an
21 Otto Trucking truck has never been equipped with either the
22 Fuji or the LiDAR or the Spider system. And there's no
23 suggestion they have otherwise ever been equipped with any
24 system that uses the trade secrets.

25 **THE COURT:** All right. So stay right there and

1 let's -- Ms. Baily; right?

2 **MR. BAILY:** That's correct, Your Honor.

3 **THE COURT:** Please tell me what you think is the
4 answer.

5 **MR. BAILY:** Excuse me.

6 First of all, Your Honor, the emphasis on use is
7 misplaced. Use is not the only way that you can misappropriate
8 a trade secret.

9 And I do want to point out something that was actually
10 very misleading, I believe, in Otto Trucking's briefing on
11 this. They basically said, look at Waymo, they're only
12 pointing to Spider and Fuji. Look at their response to
13 Interrogatory No. 9.

14 They didn't attach what the actual interrogatory asked.
15 They just attached a portion of our answer. The interrogatory
16 only asked about use. It did not ask about other theories of
17 misappropriation, including acquisition of the trade secrets.

18 And there is a lot of evidence, including the Stroz
19 report -- and we can talk about that -- that Otto Trucking
20 acquired the trade secrets improperly and knowingly
21 improperly --

22 **THE COURT:** Well, help me understand what that
23 evidence is. Give me just one item of evidence that Otto
24 Trucking, as opposed to Levandowski, but Otto Trucking ever
25 acquired any of these trade secrets.

1 **MR. BAILY:** Well, Your Honor, let me just start -- I
2 do need to tell you a few things in order to make those
3 connections.

4 So let me start at the Stroz report, which we just
5 received. And we did receive it after we filed our opposition
6 to the motion for summary judgment.

7 So I just heard him say that discovery is closed.
8 Discovery is absolutely not closed. And it was not closed when
9 they said that in their motion or in their reply.

10 So now we have the Stroz report because discovery was not
11 closed. And the Stroz report, at the bottom of page 11, talks
12 about a very narrow subset of all of the documents that
13 Levandowski was found to have on his devices.

14 So it talks about a narrow subset of 347 files from his
15 self-identified data. The paragraph on the bottom of page 11
16 describes those files. And it describes them as containing
17 proprietary information related to Levandowski's work at Google
18 on the Chauffeur project. And then it lists some examples,
19 including system files, software files, code, confidential
20 presentations, confidential diagrams.

21 Then there is an analysis, in Exhibit 16 to the Stroz
22 report, of access to those files. More than a third of those
23 files were accessed after Levandowski left Google. So they
24 were not accessed for Levandowski's work at Google; they were
25 accessed after that. February, March. So after he resigned

1 from Google in January.

2 What was Mr. Levandowski doing at that time? He was
3 talking to Uber and setting up Otto Trucking and Ottomotto.

4 **THE COURT:** But wasn't Ottomotto already -- I mean,
5 one of their points is that Otto Trucking got set up -- give me
6 the date again. What's the date of Otto --

7 **MR. BAILY:** February 1st.

8 **THE COURT:** February 1st of 2016?

9 **MR. BAILY:** That's correct.

10 **THE COURT:** When Ottomotto set up? Wasn't that
11 earlier?

12 **MR. BAILY:** It was a few weeks earlier, I believe.

13 **THE COURT:** All right. So take the time period after
14 Otto Trucking was set up.

15 **MR. BAILY:** Exactly. Taking that time --

16 **THE COURT:** What is your point? What does the Stroz
17 report say?

18 **MR. BAILY:** After February 1st, when Otto Trucking was
19 set up, more than a third of this narrow subset of documents
20 that are described as containing Google proprietary
21 information, Google software files, Google code, Google system
22 files, more than a third of those were accessed after
23 February 1st.

24 So I went through Exhibit 16 --

25 **THE COURT:** When you say "accessed," accessed by who?

1 **MR. BAILY:** Accessed by Mr. Levandowski.

2 What was Mr. Levandowski doing at that time? He was
3 working on Ottomotto and Otto Trucking. He was no longer at
4 Google.

5 And he accessed more than a third of just even that narrow
6 subset of files after he left Google, while what he was doing
7 was talking to Uber and setting up these entities. Which just
8 weeks after he was accessing these files, there's an agreement
9 about -- you know, about Uber acquiring these companies.

10 So there was the agreement about Uber acquiring Ottomotto.
11 And there's also an agreement -- I think I might be straying
12 into confidential material here about, you know, a potential
13 acquisition of Otto Trucking. I believe that much is public.

14 **THE COURT:** Can you tell, from what you have, which
15 particular files were accessed?

16 **MR. BAILY:** So that's exactly the problem. And this,
17 of course, dovetails with the continuance motion.

18 I can show you the exhibit that we have attached to the
19 Stroz report, which lists out the files. But it actually
20 doesn't tie together. We need more discovery. It lists out
21 the file types, and there's this general description.

22 But we don't have yet the dots to connect -- but we know
23 that we can get them, now, from the materials that are being
24 produced -- to connect the documents listed that are just
25 listed by file type and for which there's this general

1 description that confirms that these are all confidential
2 Google materials to the actual documents and files and source
3 code that they actually are.

4 **THE COURT:** Well, see, where I'm heading was, can you
5 trace one of those to one of the many trade secrets that you
6 listed?

7 **MR. BAILY:** And that is what we need to do. We need
8 to actually draw the dots from -- you know, so we've obviously
9 had some time to process the Stroz report that was produced
10 late last week. So there's -- I forget how many exhibits. I
11 think Your Honor has seen it. There's lots of exhibits. We've
12 been through those.

13 Exhibit 16 is this analysis of access that proves that
14 Levandowski was accessing what Stroz describes as our
15 confidential materials after he left Google, while he was
16 focused on Ottomotto and Otto Trucking.

17 Exhibit 16 lists these files in a generic way. And I
18 don't have the file names; right. We need to get this
19 discovery to map the file names.

20 Well, what exactly was Levandowski looking at? Which
21 pieces of source code was he looking at? Which files was he
22 looking at on March 22nd, 2016, while he's talking to Uber
23 about acquiring his Ottomotto and Otto Trucking companies.
24 And, you know, why else is he looking at these files on
25 March 22nd, 2016?

1 We need the time to actually connect the dots because
2 they're not connected in the Stroz report themselves. There's
3 the general description that all of this is confidential to
4 Waymo and that it was accessed on specific dates after
5 February 1st --

6 **THE COURT:** All right.

7 **MR. BAILY:** -- but we now need to connect the further
8 dots.

9 **THE COURT:** Hold that very thought.

10 What's your answer to what I just heard about confidential
11 Waymo information was accessed by Mr. Levandowski after Otto
12 Trucking was formed?

13 **MR. BRUN:** Well, with respect to the Stroz report,
14 Your Honor, there's nothing in the Stroz report that changes
15 the facts with respect to Otto Trucking.

16 Otto Trucking is separate from Ottomotto. Otto Trucking
17 is just a holding company that holds trucks. Doesn't have any
18 engineers. Doesn't do any R&D.

19 **THE COURT:** Why was Levandowski accessing that
20 information? Was he doing it for his personal account? Was he
21 doing it for Otto Trucking? Was he doing it for Ottomotto?
22 What's the answer to that?

23 **MR. BRUN:** Well, he wouldn't be doing it for Otto
24 Trucking, Your Honor.

25 **THE COURT:** How do we know that though?

1 **MR. BRUN:** Otto Trucking, all it does --

2 **THE COURT:** You're using the present tense. What was
3 it doing back then? What was its possible plans back then?

4 **MR. BRUN:** I can't speak as to what Mr. Levandowski
5 was doing as described in the Stroz report. But, again, it
6 doesn't have any impact at all on our motion with respect to
7 Otto Trucking.

8 **THE COURT:** Well, but conceivably -- conceivably, he
9 was sitting there wearing his hat as Otto Trucking, thinking
10 that he was going to sell Otto Trucking to Uber, and that he
11 was accessing these files for the purpose of -- maybe he was
12 just doing it for himself, Otto Trucking, Ottomotto.

13 And how do we sort all that out at this point? I
14 appreciate the way Otto Trucking has developed Velodyne LiDAR
15 Plus trucks has almost nothing to do with this case. But, on
16 the other hand, back then, when things were still in flux and
17 in play, maybe they did, maybe Otto Trucking did access and
18 acquire these files.

19 **MR. BRUN:** Again, Your Honor, Otto Trucking -- let's
20 talk about the two companies that Mr. Levandowski formed.
21 Ottomotto, which is an operational company, that was the entity
22 that was going to be developing lasers or LiDAR systems. That
23 was that aspect of the company.

24 Mr. Levandowski, as you'll recall from throughout this
25 case, he left Google to set up a trucking company, Your Honor.

1 He wanted to focus on trucks. Otto Trucking itself was set up
2 just as holding company, to hold the assets for that trucking
3 business.

4 It's been established through -- even though the Stroz
5 report just came out and they want to say they need more
6 discovery on the Stroz report, doesn't change that structure of
7 Otto Trucking and what Otto Trucking's business is. It's just
8 to hold trucks. And that's all it does. And they can't
9 dispute that.

10 **THE COURT:** Why did Levandowski access that material?
11 And how can we be a hundred percent positive he didn't do it
12 for purposes of Otto Trucking?

13 **MR. BRUN:** Again, if you look at the -- what they're
14 trying to do -- so there's no evidence that any trade secret
15 ever got to Otto Trucking. There's no claims of direct
16 misappropriation in this case.

17 **THE COURT:** Well, that's possibly right. But,
18 nevertheless, if somebody at Otto Trucking is there reading the
19 trade secrets, wearing their hat as Otto Trucking, that's
20 acquisition.

21 **MR. BRUN:** But the issue isn't he couldn't have been
22 wearing his hat as Otto Trucking, given what Otto Trucking's
23 business is. If they wanted to hold Otto Trucking vicariously
24 liable for Mr. Levandowski's supposed use of the trade secrets,
25 it has to be within the scope of Otto Trucking's business.

1 **THE COURT:** Where does that rule come from?

2 **MR. BRUN:** We cite it in several cases, Your Honor.

3 **THE COURT:** What if there's a plumber's unit that goes
4 and steals trade secrets, and they're not in the business of
5 that trade secret, but they're being used as a conduit somehow?
6 Maybe that acquisition for that sinister purpose is enough.

7 I don't know. I question the proposition that you have to
8 be in the business of the trade secret in order to be guilty of
9 stealing trade secrets.

10 **MR. BAILY:** Your Honor, if I may, Otto Trucking was in
11 the business of the trade secret, regardless of that question,
12 which I also --

13 **THE COURT:** But that's not right because they just
14 hold trucks.

15 **MR. BAILY:** But that's not right. So the evidence
16 that Otto Trucking submitted includes a framework agreement.
17 It was submitted under seal. I'd like to read from it.

18 **THE COURT:** Go ahead.

19 You lawyers put so much stuff under seal and abuse the
20 process. Go ahead. Read it.

21 **MR. BAILY:** So part of the framework agreement between
22 Uber and Otto Trucking and Uber Freight concerns the trucking
23 AV business. Trucking --

24 **THE COURT:** Say that again.

25 **MR. BAILY:** Trucking AV business.

1 **THE COURT:** Like audiovisual? What do you mean AV?

2 **MR. BAILY:** Autonomous vehicle.

3 **THE COURT:** Autonomous vehicle. All right.

4 **MR. BAILY:** And here we have Otto Trucking renting the
5 sensors and related hardware that are owned by the division at
6 Uber that does autonomous vehicles and related to the trucking
7 AV business. So we're -- we're not just holding trucks here.
8 We are renting from Uber the sensors that are related to
9 autonomous driving.

10 The notion that Otto Trucking was set up not for
11 autonomous trucking is laughable. I mean, we just heard Otto
12 Trucking's counsel say, Levandowski set up the company to do
13 autonomous trucking. And here we have an agreement where they
14 are renting from Uber the sensors for autonomous trucking.

15 The notion that Levandowski, sitting with his Otto
16 Trucking hat on -- and, by the way, Otto Trucking can't do
17 anything without Levandowski's consent; right.

18 The notion that Levandowski is, you know, separate from
19 Otto Trucking is in some ways laughable in and of itself. Even
20 more laughable is Otto Trucking has nothing to do with
21 autonomous trucking.

22 **THE COURT:** But I thought he said that they did. Now
23 I'm getting confused.

24 **MR. BAILY:** Well, if he did, then we agree.

25 **THE COURT:** Isn't that true, that it was autonomous

1 trucking, that they would drive themselves with LiDAR?

2 **MR. BRUN:** Again, Counsel is confusing and sort of
3 misstating what Otto Trucking is and what is going on. So let
4 me try to explain, Your Honor.

5 So Otto Trucking, again, was set up as a holding company
6 to hold the assets that Ottomotto and then ultimately Uber are
7 using to develop a trucking business.

8 Otto Trucking doesn't have any employees. The LiDAR
9 systems that are put onto Otto Trucking's trucks are put on
10 there by Uber employees. And they're running tests, and there
11 are other operations done with those trucks by Uber employees
12 and Uber's development of its trucking business.

13 Otto Trucking does not have any development, does not have
14 any employees that work on LiDAR systems. Again, it's simply a
15 holding company. And there is no evidence in the record, no
16 evidence to be had, that they ever had access to any of the
17 trade secrets, that they ever used any of the trade secrets.

18 **THE COURT:** There is access -- there is this evidence
19 that Levandowski downloaded a lot of files at a time period
20 that Otto Trucking existed. And, for all we know, he was
21 wearing his Otto Trucking hat when he downloaded those.

22 **MR. BRUN:** I think it goes to the point of exactly
23 what they're really trying to do here, Your Honor, is, they're
24 trying to hold Otto Trucking liable simply because
25 Mr. Levandowski was the founder of Otto Trucking and the

1 majority shareholder.

2 But you can't impute the knowledge, his knowledge. And
3 you shouldn't -- we cited the *Drager* case, Your Honor, in our
4 papers. And just so I get it exactly accurate, let me read
5 this, because this is exactly what they're trying to do here,
6 Your Honor. In *Drager* the Ninth Circuit said:

7 "It is generally not appropriate to direct a jury to
8 impute an agent's knowledge of a secret to the principal.
9 Such an instruction would permit recovery even when the
10 trade secret was not actually communicated to or used by
11 the principal."

12 That's what they're trying to do, Your Honor. Otto
13 Trucking -- there's not a single piece of evidence to suggest
14 that Otto Trucking has ever used the trade secret or that the
15 trade secret was actually communicated to Otto Trucking as the
16 principal.

17 They're trying to say Otto Trucking is, in fact,
18 Mr. Levandowski. And they're wanting to hold Otto Trucking
19 liable just based on that.

20 **THE COURT:** All right. We need to let our court
21 reporter rest her fingers for a bit.

22 We also have a motion on Trade Secret Number 9. I guess
23 we have to do that in an empty courtroom. Also, Trade Secret
24 96 we've got to deal with. That's, likewise, going to be in an
25 empty courtroom. Then we may have more to say on the issue of

1 continuing the trial date.

2 Now, we're going to come back to the continuing the trial
3 date point after the break. And I'm not making a ruling now.
4 And I am not going to make a ruling today because I want you
5 lawyers to try hard to keep the October 10th date and do
6 whatever you have got to do to get the discovery done.

7 But I also am going to monitor this very carefully. And
8 if it turns out I genuinely think that even though Waymo has
9 done everything it can possibly do, it genuinely needs more
10 time on account of the other side having stonewalled on the due
11 diligence report, then we're going to give them more time.

12 But we're not there yet. And I sometimes think that Waymo
13 is exaggerating this because they have ulterior motives to try
14 to fix up other parts of their case.

15 I don't know. I am not making a ruling now. But here's
16 why I'm bringing this up: I want you to tell me after the
17 break what specific schedule, as prompt as possible, would
18 work, taking into account whatever else it is -- so, in other
19 words, if Waymo says, okay, we want to change our list of trade
20 secrets because we realize we've got some losers in there, and
21 we want to go with a different group of trade secrets, and we
22 want to take more discovery from Stroz, and we want to take --
23 adjust our expert reports, in 15 minutes or so you need to give
24 me a specific schedule that would work.

25 And I will not consider one that puts this way out there.

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CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Wednesday, September 20, 2017



Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter



Jo Ann Bryce, CSR #3321, RMR, CRR
U.S. Court Reporter

EXHIBIT 2

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1 REPORTER'S NOTE: SINCE THIS DEPOSITION
2 HAS BEEN REALTIMED AND YOU MAY BE IN POSSESSION OF A
3 ROUGH DRAFT FORM, PLEASE BE AWARE THAT THERE MAY BE
4 A DISCREPANCY REGARDING PAGE AND LINE NUMBERS WHEN
5 COMPARING THE REALTIME SCREEN, THE ROUGH DRAFT,
6 ROUGH ASCII, AND THE FINAL TRANSCRIPT. ALSO PLEASE
7 BE AWARE THAT THE REALTIME SCREEN AND THE UNEDITED,
8 UNCERTIFIED ROUGH DRAFT TRANSCRIPT MAY CONTAIN
9 UNTRANSLATED STENO, AN OCCASIONAL REPORTER'S NOTE, A
10 MISSPELLED PROPER NAME, AND/OR NONSENSICAL ENGLISH
11 WORD COMBINATIONS. THESE ARE NOT "MISTAKES" MADE BY
12 THE REPORTER BUT ARE CAUSED BY THE ENGLISH LANGUAGE
13 AND THE LIMITATIONS IMPOSED BY WRITING IT
14 PHONETICALLY. ALL SUCH ENTRIES ARE CORRECTED ON THE
15 FINAL CERTIFIED TRANSCRIPT.

16 IF THE DEPOSITION HAS BEEN VIDEOTAPED, THE
17 REALTIME DRAFT OF THE VIDEOTAPE, IF ANY, WILL BE
18 COMPARED AGAINST THE AUDIO OF THE VIDEOTAPE IN ORDER
19 TO ASSURE COMPLETE ACCURACY ON THE FINAL TRANSCRIPT.

20 PLEASE NOTE IN THE CODE OF CIVIL PROCEDURE
21 2025 (R)(2): "WHEN PREPARED AS A ROUGH DRAFT
22 TRANSCRIPT, THE TRANSCRIPT OF THE DEPOSITION MAY NOT
23 BE CERTIFIED AND MAY NOT BE USED, CITED, OR
24 TRANSCRIBED AS THE CERTIFIED TRANSCRIPT OF THE
25 DEPOSITION PROCEEDINGS. THE ROUGH DRAFT TRANSCRIPT

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15 MR. CHERNY: Thank you, Mr. Ron. 18: 33: 08

16 THE WITNESS: Thank you very much.

17 MR. SCHUMAN: I have a few questions. You can

18 put the monitor -- can we switch, so he's not

19 looking --

20 MR. CHERNY: Sure. Sure. Do I need to clean 18: 33: 19

21 up over here? I'm happy to.

22 MR. SCHUMAN: No. No.

23 THE REPORTER: Can we go off the record?

24 Otherwise I have to write everything you say.

25 MR. SCHUMAN: Let's stay on the record. 18: 33: 28

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1 THE REPORTER: Okay. 18: 33: 28

2 EXAMINATION {

3 BY MR. SCHUMAN:

4 Q. Good evening, Mr. Ron.

5 A. Good evening. 18: 33: 55

6 Q. We met before. Obviously, I represent

7 Otto Trucking LLC.

8 What is Otto Trucking LLC?

9 A. Otto Trucking LLC is an entity that was

10 formed to hold the interest of the Otto Trucking 18: 34: 15

11 shareholders or members in a potential trucking or

12 logistics business at Uber.

13 Q. When was Otto Trucking LLC formed, if you

14 remember?

15 A. I believe it was formed in early 2016, in 18: 34: 34

16 maybe around February 2016, if I'm not mistaken.

17 Q. Okay. And what was the business

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18 activities, if any, of Otto Trucking LLC around the
19 time that it was formed?

20 A. Otto Trucking didn't have much business 18: 34: 59
21 activities, if any. It was really a legal holding
22 entity that didn't engage in any R&D activities
23 whatsoever.

24 Q. Just to follow up on that last answer, did
25 Otto Trucking, around the time that it was formed, 18: 35: 15

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1 do any work involve LiDAR development? 18: 35: 16

2 MR. CHERNY: Objection; Leading.

3 THE WITNESS: No. As I said, Otto Trucking did
4 not have any R&D activities whatsoever. It didn't
5 have any employees. And as such, it also didn't 18: 35: 29
6 engage in any LiDAR development whatsoever.

7 BY MR. SCHUMAN:

8 Q. Now, at some point, did Otto Trucking LLC
9 create an LLC agreement?

10 MR. CHERNY: Objection; Leading. 18: 35: 45

11 THE WITNESS: I believe so, yes.

12 BY MR. SCHUMAN:

13 Q. Do you remember when that was, when the
14 agreement was executed?

15 A. I don't remember the exact date, but it 18: 35: 58
16 was also in early 2016.

17 Q. I'm going to show you a document that's
18 previously been marked so we don't need to mark it
19 again. I can't make out the name of which

Li or Ron30b6Vol II_Rough.txt
20 deposition it was marked at, but it says 18: 36: 13

21 Exhibit 475.

22 (Defendants' Exhibit 475 was previously
23 marked.)

24 BY MR. SCHUMAN:

25 Q. Do you recognize Exhibit 475, Mr. Ron? 18: 36: 17

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1 (Witness reviews document.) 18: 36: 45

2 A. Yes.

3 Q. What is Exhibit 475?

4 A. It is basically the LLC, or the limited
5 liability company, agreement of Otto Trucking. 18: 36: 58

6 Q. Does anything in this document refresh
7 your recollection regarding the exact date that the
8 Otto Trucking LLC agreement was executed?

9 A. Yes. As I said before, this was in early
10 2016. And the agreement here refreshed my memory. 18: 37: 12
11 It was on April 6th, 2016.

12 Q. So between the time that Otto Trucking was
13 formed, you testified earlier February 2016, and the
14 date of this agreement, April 6th, 2016, what was
15 the business of Otto Trucking, if any? 18: 37: 31

16 MR. CHERNY: Objection; Leading.

17 THE WITNESS: It was basically a legal holding
18 company that we've formed for potentially engaging
19 in trucking business activity in the future. But
20 Otto Trucking LLC did not have any R&D activities or 18: 37: 50
21 any employees at the time.

22 BY MR. SCHUMAN:

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23 Q. So during the same time period that I just
24 asked about in my prior question, did Otto Trucking
25 do any work on developing any LiDAR systems? 18:38:01

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1 MR. CHERNY: Objection; Leading. 18:38:03

2 THE WITNESS: No, I don't believe so. As I
3 said before, Otto Trucking didn't have any
4 employees, didn't engage in any R&D activities and,
5 as pertains to both, didn't have any LiDAR activity 18:38:14
6 whatsoever.

7 BY MR. SCHUMAN:

8 Q. What titles did you hold during this time
9 period with Otto Trucking LLC?

10 A. I believe I was the president and the 18:38:27
11 general manager.

12 Q. Were you also the chief executive officer?

13 MR. CHERNY: Leading.

14 THE WITNESS: Correct.

15 BY MR. SCHUMAN: 18:38:36

16 Q. And what is Otto Transport LLC?

17 A. I think Otto Transport LLC was an entity
18 we formed to hold some of the self-driving trucks,
19 so the trucks that Otto Trucking had or that Otto
20 Trucking leased. 18:39:04

21 Q. Do you know when Otto Transport LLC was
22 formed?

23 A. I believe around August 2016.

24 Q. Going to show you a document that I don't

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25 believe has been marked before. So -- 18:39:22

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1 MR. SCHUMAN: Are you marking it or am I 18:39:26
2 supposed to mark it?

3 THE REPORTER: I'll mark it.

4 MR. SCHUMAN: Does anybody know what number
5 we're up to? For convenience, we're just going to 18:39:46
6 call it 10000. My apologies.

7 (Defendants' Exhibit 10,000 was marked.)

8 BY MR. SCHUMAN:

9 Q. Mr. Ron, do you recognize Exhibit 10,000?

10 A. Yes, I do. 18:40:19

11 Q. What is it?

12 A. I believe that's the formation document or
13 the agreement for the limited liability company
14 called Otto Transport.

15 Q. What was the relationship, if any, between 18:40:39
16 Otto Transport LLC and Otto Trucking LLC?

17 A. I believe that Otto Transport was owned by
18 Otto Trucking LLC.

19 Q. Did Otto Transport LLC do any research and
20 development activity? 18:41:12

21 A. No. Otto Transport did not have any R&D
22 activities or any research activities and
23 specifically did not engage in any LiDAR development
24 whatsoever.

25 Q. You said Otto Transport's business was to 18:41:31

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1 own some trucks. 18: 41: 33
2 Do you know how many trucks?
3 MR. CHERNY: Objection; foundation.
4 THE WITNESS: I think it owned around four
5 trucks, more or less. I don't know if that was 18: 41: 49
6 exact number, but I believe around that number.
7 BY MR. SCHUMAN:
8 Q. And what did Otto Transport do with those
9 trucks?
10 MR. CHERNY: Objection; vague. 18: 42: 04
11 THE WITNESS: Actually don't know how many of
12 those were actually active. But those were all
13 trucks that were developed by Uber or Ottomotto, and
14 then Otto Transport potentially operated from time
15 to time. 18: 42: 24
16 BY MR. SCHUMAN:
17 Q. Did any of those trucks have any LiDAR
18 systems used in connection with them?
19 MR. CHERNY: Objection; form.
20 THE WITNESS: I don't know for sure if there 18: 42: 49
21 was any LiDAR system. I know early on there was
22 none. And specifically what I do know is that those
23 trucks never had any developed LiDAR system. If it
24 had any LiDAR system, it was off-the-shelf LiDAR
25 components from commercial companies. 18: 43: 09

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1 BY MR. SCHUMAN: 18: 43: 15
2 Q. Just to follow up on that last answer, did
3 any of the Otto Transport-owned trucks -- were any
4 of them ever outfitted with Uber's Spider LiDAR
5 system? 18: 43: 29
6 A. No. None of the Otto Transport trucks
7 were ever outfitted with any LiDAR technology
8 developed by either Otto or Uber specifically. No,
9 they were not outfitted with any Spider technology.
10 Q. How about Fuji? Were any of the Otto 18: 43: 41
11 Transport trucks outfitted at any point with Fuji --
12 the Fuji LiDAR system?
13 A. No. None of the Otto Transport trucks
14 were outfitted with any LiDAR technology.
15 Q. So between the time that Otto Trucking was 18: 44: 01
16 formed, I think you testified earlier around
17 February 2016, and the time that -- let's say,
18 August 2016, did either Otto Trucking or Otto
19 Transport do any R&D activity with respect to LiDAR
20 systems? 18: 44: 21
21 A. No. Those entities did not engage in any
22 LiDAR activities, nor did they have any employees
23 throughout those months.
24 MR. SCHUMAN: That's all I have.
25 MR. CHERNY: Do you have any questions? 18: 44: 39

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1 MR. RABIN: Read and sign. 18: 44: 40
2 MR. CHERNY: No questions for me.
3 THE VIDEOGRAPHER: This concludes today's

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4 deposition of the individual testimony of Li or Ron.

5 Total number of media used is one. Going off the

18:44:48

6 record at 6:44 p.m.

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