

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC; NEIL LINDSAY,  
individually and as an officer of  
Amazon.com, Inc.; RUSSELL  
GRANDINETTI, individually and as an  
officer of Amazon.com, Inc.; JAMIL GHANI,  
individually and as an officer of  
Amazon.com, Inc.,

Defendants.

CASE NO. 2:23-cv-00932-JHC

ORDER

This matter comes before the Court on Plaintiff Federal Trade Commission's Motion for Sanctions due to Defendant Amazon.com, Inc.'s Systematic Abuse of Privilege Claims. Dkt. # 286. The Court has considered the materials filed in support of and in opposition to the motion, the rest of the file, and the governing law.<sup>1</sup> The Court also has also considered the

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<sup>1</sup> The Court did not consider the materials filed by the FTC after the briefing was completed. Dkt. # 394 (sealed).

1 presentations of the parties at oral argument on July 2, 2025. Being fully advised, for the reasons  
2 below, the Court issues the following Order, which supplements the order at Dkt. # 371.

3 Previously, the Court granted the relief requested in the FTC’s motion, without delay or  
4 further explanation, as Amazon had primarily agreed to the relief requested (e.g., 90 additional  
5 days for the FTC to conduct discovery) and time is of the essence as trial is in September. Dkt.  
6 ## 302, 371. The Court reserved on the issue of bad faith. Dkt. # 371.

7 The FTC asks the Court to find that Amazon acted in bad faith in connection with the  
8 discovery at issue. Dkt. # 286 at 13. “District courts have inherent power to control their  
9 dockets. In the exercise of that power they may impose sanctions[.]” *Thompson v. Hous. Auth.*  
10 *of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). Under these inherent powers, a court  
11 may impose sanctions “when a party has acted in bad faith, vexatiously, wantonly, or for  
12 oppressive reasons.” *In re StubHub Refund Litig.*, No. 20-MD-02951-HSG (TSH), 2024 WL  
13 2305604, at \*5 (N.D. Cal. May 20, 2024) (quoting *In re Facebook, Inc. Consumer User Profile*  
14 *Litig.*, 655 F. Supp. 3d 899, 924 (N.D. Cal. 2023)); *see also Fink v. Gomez*, 239 F.3d 989, 994  
15 (9th Cir. 2001) (“Sanctions are available if the court specifically finds bad faith or conduct  
16 tantamount to bad faith.”). A party “demonstrates bad faith by delaying or disrupting the  
17 litigation or hampering enforcement of a court order.” *Leon v. IDX Sys. Corp.*, 464 F.3d 951,  
18 961 (9th Cir. 2006) (quoting *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 649 (9th  
19 Cir. 1997)). And conduct “tantamount to bad faith” includes “a variety of types of willful  
20 actions, including recklessness when combined with an additional factor such as frivolousness,  
21 harassment, or an improper purpose.” *Fink*, 239 F.3d at 994.

22 Although the Ninth Circuit has not addressed the standard of proof required for imposing  
23 sanctions, the clear and convincing evidence standard suffices. *See Lahiri v. Universal Music &*  
24 *Video Distrib. Corp.*, 606 F.3d 1216, 1219 (9th Cir. 2010) (declining to address the standard of

proof issue because clear and convincing evidence supported the district court’s bad faith finding); *In re Lehtinen*, 564 F.3d 1052, 1061 n.4 (9th Cir. 2009) (same); *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1143 n.11 (9th Cir. 2001) (same); *Fink*, 239 F.3d at 989 (same). The attorney-client privilege “protects confidential communications between attorneys and clients, which are made for the purpose of giving legal advice.” *United States v. Richey*, 632 F.3d 559, 566 (9th Cir. 2011). When a communication has more than one potential purpose, a court considers “whether the *primary purpose* of the communication is to give or receive legal advice.” *In re Grand Jury*, 23 F.4th 1088, 1091 (9th Cir. 2021) (emphasis added); *see also TCL Commc’n Tech. Holdings, Ltd. v. Telefonaktiebolaget LM Ericsson*, No. No. SA CV 14–00341–JVS (DFMx), 2016 WL 6922075, at \*2 (C.D. Cal. May 26, 2016) (“Courts generally agree that the privilege applies only if the primary or predominate purpose of the communication is to seek legal advice or assistance.”). “A dual-purpose communication can only have a single ‘primary’ purpose.” *Greer v. Cnty. of San Diego*, 127 F.4th 1216, 1224 (9th Cir. 2025) (quoting *In re Grand Jury*, 23 F.4th at 1091). And privilege claims “must be made and sustained on a question-by-question or document-by-document basis; a blanket claim of privilege is unacceptable. The scope of the privilege should be ‘strictly confined within the narrowest possible limits.’” *United States v. Christensen*, 828 F.3d 763, 803 (9th Cir. 2015) (quoting *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir. 1983)).

The FTC began investigating Amazon in connection with this matter on March 16, 2021. Dkt. ## 90-2 at 27; 53 at 2. During the investigation, Amazon produced 29,998 documents. Dkt. ## 90-2 at 29; 53 at 2. In October 2022, one of Amazon’s in-house attorneys certified under penalty of perjury that Amazon’s privilege logs “set[ ] forth the basis for withholding . . . responsive information” from the FTC. Dkt. # 288-18 at 2. He added that the company’s

1 responses were “complete and true and correct to the best of [his] knowledge, information, and  
2 belief.” *Id.*

3 The FTC filed this action on June 21, 2023. Dkt. # 1. During discovery, Amazon  
4 produced documents in response to the FTC’s requests and provided an updated privilege log for  
5 withheld documents. *See, e.g.*, Dkt. # 288-19. The FTC says that Amazon provided the agency  
6 with most of its privilege log entries on August 16, 2024. Dkt. ## 286 at 5; 288 at 4 ¶ 29. The  
7 agency states that it relied on this privilege log throughout discovery, including in preparation for  
8 and during depositions of key witnesses. Dkt. # 286 at 5.

9 In January and April 2024, the FTC requested that Amazon re-review its privilege logs  
10 given its concerns about some of Amazon’s privilege assertions, including privilege claims  
11 involving Amazon’s in-house counsel. Dkt. ## 288-3, 288-5. Amazon’s outside counsel  
12 responded, “Amazon’s thorough pre-production review led to the production of thousands of  
13 documents with potential indicia of privilege (including documents involving attorneys) . . . The  
14 fact that the FTC has these documents undercuts any assertion that there was any intent to hide  
15 them.” Dkt. # 288-7 at 2. She added that the FTC’s

16 “concern[.]” with Amazon’s privilege log entries where an in-house attorney  
17 received a document but apparently did not respond, Jan. 26 Ltr. at 1, wholly  
18 misunderstands how Amazon’s in-house attorneys — or frankly any other in-house  
19 attorneys — provide legal advice. Amazon’s in-house attorneys routinely provide  
20 legal advice to the Amazon business in a variety of ways, including during meetings  
21 and on calls. The fact that a privilege log entry does not show an attorney’s response  
22 to an email does not mean that the document is not privileged. It could be privileged  
23 for a number of reasons including, but not limited to: the fact that the attorney  
24 provided legal advice in an earlier email in the chain and that advice was reflected  
in or carried through to later emails in the chain; or the fact that the attorney  
provided the advice verbally during a call or meeting. Amazon’s good faith  
privilege claims, as substantiated by our privilege logs, account for these factors.

*Id.* About a year later, Amazon re-reviewed its privilege logs and withdrew its privilege claims  
as to 91% of its log and produced 69,909 documents to the FTC. Dkt. ## 303 at 3 ¶¶ 8, 11; 334

1 at 2. Amazon produced these documents to the FTC on a rolling basis from April 2025 until  
2 May 22, 2025. Dkt. ## 303 at 3 ¶ 9, 304 at 9. Discovery closed on April 25, 2025. Dkt. # 199.  
3 Amazon served its amended privilege logs on May 8, 2025 and May 22, 2025. Dkt. # 303 at 3  
4 ¶ 9.

5 The FTC provided the Court with some of the documents Amazon withheld as privileged  
6 but then produced to the FTC on the eve of or after the discovery cutoff. In one document, an  
7 Amazon non-attorney employee told another non-attorney employee to mark “[a]nything  
8 involving accidental/uninformed sign ups. . . customers settling without realizing it due to auto-  
9 renew. . . is P&C.”<sup>2</sup> Dkt. # 288-11 at 4. He said that the documents are “P&C because of the  
10 subscription clarity issues.” *Id.* He also said that “P&Cing docs sucks” and described P&C as “a  
11 lot of adding lawyers to threads, and creating multiple redacted versions of documents.” *Id.*  
12 This document does not concern the provision of legal advice.

13 In a previously withheld email, Defendant Jamil Ghani shared an article titled, “Amazon  
14 faced questions from the FTC about whether it tricked customers into signing up for Prime.  
15 Internal documents show that some employees felt it had” with Amazon employees. Dkt. # 288-  
16 23 at 2. In that email, Ghani told them to be “diligent” about “marking docs and emails.” *Id.* In  
17 its privilege log, Amazon logged this document as “[d]iscussing or relating to legal advice  
18 regarding Amazon’s company policies.” Dkt. # 288-19 at 2. There is no discussion of legal  
19 advice in the email. Furthermore, during Ghani’s deposition, the FTC asked if he had ever “told  
20 anyone . . . to mark a document as privileged without regard to whether or not they were actually  
21 seeking legal advice?” Dkt. # 288-21 at 3. Ghani stated that he had not. *Id.*  
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24 <sup>2</sup> Presumably, “P&C” means “privileged and confidential.”

1 Amazon also withheld an email chain with the subject line “Prime Customer Confusion.”  
2 Dkt. # 288-8. In one of the emails, a non-attorney Amazon employee added an in-house attorney  
3 to the email chain to “mak[e] it P&C.” *Id.* at 2. There is no apparent legal advice, or request for  
4 it, anywhere in the email chain. *Id.*

5 In another withheld email, an in-house attorney thanked Amazon employees for a “good  
6 meeting” about “unintentional Prime sign-ups.” Dkt. # 288-10 as 2. In that email, she instructed  
7 employees to “delete the PowerPoint document that was distributed [during the meeting] because  
8 of its sensitive content and lack of Privileged & Confidential markings.” *Id.* She told these  
9 employees to confirm via email that they deleted the document. *Id.* The document that she  
10 instructed employees to delete does not contain any legal advice. Dkt. # 288-20.

11 Although Amazon asserts that it withheld these documents because distinguishing  
12 between business and legal advice is “especially difficult,” the company does not share with the  
13 Court any information or explanation about the “complex” or close privilege calls it had to make.  
14 *See generally* Dkt. # 302. The documents mentioned above do not contain any apparent legal  
15 advice or request for it. And Amazon’s privilege log entries for these documents unambiguously  
16 said that these documents reflect legal advice. *See* Dkt. # 288-19.

17 Discovery makes trial “less a game of blind man’s buff and more a fair contest with the  
18 basic issues and facts disclosed to the fullest practicable extent.” *United States v. Procter &*  
19 *Gamble Co.*, 356 U.S. 677, 682–683 (1958). And “[t]he purposes underlying the federal rules  
20 are to avoid surprise and the possible miscarriage of justice and to eliminate the ‘sporting theory  
21 of justice.’” *Brown Badgett, Inc. v. Jennings*, 842 F.2d 899, 902 (6th Cir. 1988) (citing *In re*  
22 *Halkin*, 598 F.2d 176, 192 at n.38 (D.C. Cir. 1979)).

23 Applying the clear and convincing standard, Amazon’s withholding of almost 70,000  
24 documents until the eve of, and after, the April 25, 2025 discovery cutoff—including the

documents identified above—was tantamount to bad faith.<sup>3</sup> Some of these documents have been withheld from the FTC since 2022; at that time, an Amazon in-house attorney certified under penalty of perjury that the company’s responses set forth the basis for why certain documents were being withheld from the FTC and he verified that the company’s responses were “complete and true.” Dkt. # 288-18 at 2. When the FTC raised concerns about Amazon’s privilege log to the company’s outside counsel in 2024, outside counsel informed the agency that Amazon had engaged in a “thorough pre-production review” and even asserted that the agency “misunderstood” how in-house counsel provides legal advice. Dkt. # 288-7 at 2.

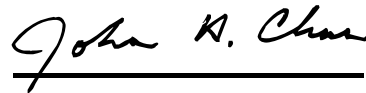
None of Amazon’s proffered justifications explain why the company waited so long to amend its privilege logs and produce tens of thousands of non-privileged documents. Instead, it appears that the desire to gain a tactical advantage led to such conduct. This type of gamesmanship defies the Federal Rules of Civil Procedure, which require the parties to “to put all their ‘cards’ on the table before trial.” *Britz Fertilizers, Inc. v. Bayer Corp.*, 665 F. Supp. 2d 1142, 1170 (E.D. Cal. 2009); *Reyes-Santiago v. JetBlue Airways Corp.*, 932 F. Supp. 2d 291, 298 (D.P.R. 2013) (same). And Amazon’s unjustified decision to withhold these documents has necessitated an additional 90 days of discovery for the FTC, and has consumed a significant amount of this Court’s time. Amazon’s behavior undermined the guiding principle that litigation must be streamlined to “secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1; *see also Nelson v. Adams USA, Inc.*, 529 U.S. 460, 465 (2000).

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<sup>3</sup> Amazon’s outside counsel stated that Amazon re-reviewed its “documents and, on May 8, 2025, served its amended privilege log and produced the corresponding downgraded documents. On May 22, 2025, Amazon supplemented the log and production with a small number of downgraded documents.” Dkt. # 303 at 3 ¶ 9.

1 Since sanctions are rooted in equity, the Court looks at the totality of the circumstances to  
2 determine what sanctions are appropriate. *Younes v. 7-Eleven, Inc.*, 312 F.R.D. 692, 713 (D.N.J.  
3 2015). “Appropriate or ‘just’ sanctions may be a warm friendly discussion on the record, a hard-  
4 nosed reprimand in open court, compulsory legal education, monetary sanctions, or other  
5 measures appropriate to the circumstances.” *Id.* (citing *Langer v. Monarch Life Ins. Co.*, 966  
6 F.2d 786, 811 (3d Cir. 1992) (quotations omitted)). The Court has already granted the FTC the  
7 relief it requested. *See* Dkt. ## 302, 371. Given the totality of circumstances, the Court finds  
8 that Amazon’s behavior warrants no more relief except an admonition by this Court. Amazon  
9 and its counsel are admonished that their conduct during discovery was tantamount to bad faith.  
10 Similar conduct may lead to more serious sanctions.

11 Dated this 10th day of July, 2025.

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14 John H. Chun  
15 United States District Judge  
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