

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BETTY’S BEST, INC.,
Plaintiff,

v.

THE FACEBOOK ADVERTISERS
LISTED ON SCHEDULE A, et al.,
Defendants.

Case No. 23-cv-04716-JSC

**ORDER RE: DEFENDANTS’ MOTION
TO QUASH**

Re: Dkt. No. 42

Plaintiff Betty’s Best, Inc., filed an ex parte motion to enjoin the infringement of Plaintiff’s intellectual property by 592 Facebook Advertisers. (Dkt. No. 16.)¹ The Court granted Plaintiff leave to subpoena Meta Platforms, Inc. (Meta) for the identifying information of 592 Facebook Advertisers. (Dkt. No. 40.) Before the Court is Certain Defendants’ motion to quash the subpoena. (Dkt. No. 42.) Having carefully considered the briefing, and with the benefit of oral argument on January 4, 2024, the Court DENIES the motion. Certain Defendants fail to demonstrate quashal or modification of Plaintiff’s Rule 45 subpoena is required or permissible because Certain Defendants’ identifying information is neither privileged nor commercial information warranting protection, and the subpoena does not pose an undue burden.

DISCUSSION

The Court granted Plaintiff leave to subpoena Meta for the identifying information of 592 Facebook Advertisers, including their names, email addresses, telephone numbers, and physical addresses if available. (Dkt. No. 40 at 1.) Plaintiff contends such identifying information is necessary to serve Defendants. (Dkt. No. 16 at 2, 8, 27-28.) The Court granted each Defendant 30

¹ Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 days to contest the subpoena. (Dkt. No. 40 at 2.) Certain Defendants move to quash the subpoena
 2 on the grounds Plaintiff already has the information necessary to serve Certain Defendants through
 3 *Betty's Best, Inc. v. The Individuals, Partnerships, and Unincorporated Associations Identified on*
 4 *Schedule A*, Docket No. 1:23-cv-22322 (S.D. Fla.) (Florida Action). (Dkt. No. 42 at 4 (“Plaintiff
 5 has not identified any information sought from this Subpoena regarding Defendants that it does
 6 not already have or cannot readily obtain through the Florida Action.”).)

7 Federal Rule of Civil Procedure 45 governs discovery of nonparties by subpoena. “The
 8 scope of discovery under Rule 45 is the same as under Rule 26(b).” *Beaver Cnty. Emps. Ret.*
 9 *Fund v. Tile Shop Holdings, Inc.*, No. 16-MC-80062-JSC, 2016 WL 3162218, at *2 (N.D. Cal.
 10 June 7, 2016). Under Federal Rule of Civil Procedure 26(b), a party may obtain discovery
 11 concerning any nonprivileged matter relevant to any party’s claim or defense provided it is

12 proportional to the needs of the case, considering the importance of
 13 the issues at stake in the action, the amount in controversy, the parties’
 14 relative access to relevant information, the parties’ resources, the
 15 importance of discovery in resolving the issues, and whether the
 burden or expense of the proposed discovery outweighs its likely
 benefit.

16 Fed. R. Civ. P. 26(b)(1). The Court must quash or modify a subpoena requiring disclosure of
 17 privileged or protected matter if no exception or waiver applies, or the subpoena poses an undue
 18 burden. Fed. R. Civ. P. 45(d)(3)(A). The Court may quash or modify a subpoena requiring
 19 disclosure of commercial information. Fed. R. Civ. P. 45(d)(3)(B).

20 Because Certain Defendants do not assert the subpoena requires disclosure of privileged or
 21 protected matter or poses an undue burden, Rule 45(d)(3)(A) does not require quashal or
 22 modification of the subpoena. Certain Defendants also do not move to quash on the basis the
 23 subpoena requires disclosure of commercial information, which would permit quashal or
 24 modification under Rule 45(d)(3)(B). Instead, Certain Defendants argue the subpoena should be
 25 quashed because it seeks unnecessary information. (Dkt. No. 42 at 5 (“[Certain] Defendants have
 26 already identified themselves.”)).

27 Certain Defendants claim Plaintiff already knows their identity and contact information
 28 based on their appearance and corporate disclosure statements in the Florida Action. Defendants

1 in this action are identified by their Facebook Advertiser accounts, whereas defendants in the
2 Florida Action are identified by their websites. Certain Defendants are 90 Facebook Advertisers
3 corresponding to 85 websites. Of all Certain Defendants now moving to quash the subpoena, only
4 60 are named as corresponding websites in the Florida Action. *Betty's Best, Inc. v. The*
5 *Individuals, Partnerships, and Unincorporated Associations Identified on Schedule A*, Docket No.
6 1:23-cv-22322 (S.D. Fla.). Thirty Certain Defendants are unnamed in the Florida Action, so the
7 Florida Action provides Plaintiff with no information regarding these 30 Certain Defendants.
8 Only 55 of the 60 Certain Defendants named as corresponding websites in the Florida Action filed
9 corporate disclosure statements, and none of those corporate disclosure statements provide any
10 contact or physical address information. *Id.* at Dkt. Nos. 91, 93, 94, 95, 96, 97, 98, 99, 100, 101,
11 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 114, 115. This directly contradicts Certain
12 Defendants' claim "Plaintiff already knows the identity and contact information regarding
13 Defendants." (Dkt. No. 42 at 6.) The Florida Action fails to provide information sufficient for
14 Plaintiff to serve Certain Defendants.

15 Moreover, Certain Defendants have not authorized their counsel in the Florida Action to
16 accept service for this action. In essence, Certain Defendants seek to prevent service by
17 suppressing the disclosure of their identifying information. Good cause thus exists to subpoena
18 Meta for the identifying information of Certain Defendants so Plaintiff may initiate service. *See*
19 *UMG Recording, Inc. v. Doe*, 2008 WL 4104214, *4 (N.D. Cal. 2008); *Arista Records LLC v.*
20 *Does 1-19*, 551 F. Supp. 2d 1, 6–7 (D.D.C. 2008) (applying a "good cause" standard to permit
21 expedited discovery).

22 Certain Defendants fail to demonstrate quashal or modification of Plaintiff's Rule 45
23 subpoena is required or permissible because Certain Defendants' identifying information is neither
24 privileged nor commercial information warranting protection, and the subpoena does not pose an
25 undue burden.

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CONCLUSION

Accordingly, Certain Defendants’ motion is DENIED.

IT IS SO ORDERED.

Dated: January 4, 2024

Jacqueline Scott Corley
JACQUELINE SCOTT CORLEY
United States District Judge

United States District Court
Northern District of California

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