

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Lopez v. Harley-Davidson, Inc.

Lopez · No. 24-cv-04320-RS (LJC) · Decided March 11, 2025

SUMMARY

The United States District Court for the Northern District of California resolves a discovery dispute concerning Harley-Davidson’s deposition subpoena to Plaintiff’s counsel regarding efforts to preserve a motorcycle at issue in the litigation. The Court declines to require compliance with the subpoena at this time and instead directs the parties to establish a deadline and scope for a declaration describing the preservation efforts and destruction circumstances, with possible follow-up discovery.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Lisa J. Cisneros
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 11, 2025
DOCKET	24-cv-04320-RS (LJC)
DISPOSITION	other
PROCEDURAL POSTURE	The court resolved a joint discovery letter concerning Harley-Davidson's deposition subpoena to the law firm representing plaintiffs.
PRECEDENTIAL VALUE	unpublished_nonprecedential
PARTIES	Oksana Lopez, et al. v. Harley-Davidson, Inc.

TOPICS

- discovery dispute
- evidence
- civil procedure
- commercial litigation

PRACTICE AREAS

- civil procedure
- evidence
- commercial litigation

QUESTIONS PRESENTED

1. Whether Harley-Davidson should be permitted to proceed immediately with a deposition subpoena directed to plaintiffs' counsel concerning preservation and destruction of the motorcycle.

2. Whether a detailed declaration concerning the law firm's preservation efforts and the circumstances of the motorcycle's destruction would be an appropriate initial means of addressing the asserted spoliation concerns.
3. What procedure should govern any request for supplemental discovery, including a further declaration or deposition, after the declaration is provided.

HOLDINGS

1. Walkup, Melodia, Kelly & Schoenberger need not comply with Harley-Davidson's deposition subpoena at that time.
2. A declaration may provide suitable evidence to address concerns about the preservation and collection of evidence, although gaps in the declaration may support further inquiry.

KEY QUOTATIONS

“WMKS need not comply with the subpoena at this time. Instead, within seven days, the parties shall meet and confer to determine a deadline for Doris Cheng to provide a declaration with a detailed explanation of her firm’s efforts to preserve the decedent’s motorcycle and the circumstances under which it was destroyed.”

(at 1)

FACTUAL BACKGROUND

The action concerns a motorcycle that Harley-Davidson contends was not adequately preserved and was later destroyed. Harley-Davidson sought to depose plaintiffs' counsel, Walkup, Melodia, Kelly & Schoenberger, regarding the firm's preservation efforts. Harley-Davidson also raised concerns that records from Interstate Services contained redactions and omissions.

PROCEDURAL HISTORY

Harley-Davidson subpoenaed Walkup, Melodia, Kelly & Schoenberger, plaintiffs' counsel, seeking information concerning efforts to preserve a motorcycle at issue in the action and the circumstances of its destruction. The parties submitted a joint discovery letter, and the court ordered that the subpoena need not be complied with at that time, instead requiring a declaration and providing a procedure for requesting limited supplemental discovery.

DISPOSITION

other

CASES CITED

- Google, Inc. v. Am. Blind & Wallpaper Factory, Inc., No. C 03-5340, 2007 WL 1848665, at *2 (N.D. Cal. June 27, 2007)
- 2198257, at *1, *5 (N.D. Cal. June 2011)

OPINION

Lopez v. Harley-Davidson, Inc.

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 OKSANA LOPEZ, et al., Case No. 24-cv-04320-RS (LJC) 8 Plaintiffs,

ORDER RESOLVING DISCOVERY

9 v. DISPUTE

10 HARLEY-DAVIDSON, INC., Re: ECF No. 31

Defendant. 11 12 13 Pending before the Court is the parties' joint discovery letter, ECF No. 31, regarding 14 Defendant Harley-Davidson, Inc.'s deposition subpoena to Walkup, Melodia, Kelly & 15 Schoenberger (WMKS), Plaintiff's counsel. Harley-Davidson argues that the deposition is 16 necessary to its efforts to collect and evaluate facts related to WMKS's efforts to preserve a 17 motorcycle that is at issue in this action. See also ECF No. 25 (previous Order addressing another 18 subpoena seeking information about the motorcycle's destruction). Having considered the parties' 19 joint letter and attachments, and the relevant authorities, the Court ORDERS as follows: 20 WMKS need not comply with the subpoena at this time. Instead, within seven days, the 21 parties shall meet and confer to determine a deadline for Doris Cheng to provide a declaration with 22 a detailed explanation of her firm's efforts to preserve the decedent's motorcycle and the 23 circumstances under which it was destroyed. When the parties meet and confer, they shall also 24 address the topics that the declaration should cover. Harley-Davidson has flagged concerns that 25 Interstate Services' records contained redactions and other omissions. ECF No. 31 at 5. This 26 district has recognized that declarations may provide suitable evidence to address spoliation 27 concerns, though gaps in information contain therein may indicate an effort to evade the discovery 1 2198257, at *1, *5 (N.D. Cal. Jun. 2011) (finding that defendants had failed to provide adequately 2 || detailed declarations regarding their document preservation and collection efforts); Google, Inc. v. 3 || Am. Blind & Wallpaper Factory, Inc., No. C 03-5340, 2007 WL 1848665, at *2 (N.D. Cal. Jun. 4 || 27, 2007) (noting the court's prior order requiring declarations regarding what the company's 5 || employees did to preserve and collect documents). To ensure that Harley-Davidson has a 6 sufficient opportunity to explore the issues of concern, no later than seven days after Ms. Cheng 7 provides the declaration, Harley-Davidson may request further discovery, such as a supplemental 8 declaration or a deposition of Ms. Cheng, if it believes that follow up is needed. If Harley- 9 Davidson makes such a request, the parties shall meet and confer regarding the scope of the 10 supplemental discovery. If the parties disagree as to the need for this supplemental discovery, 11 they may file a joint letter no later than fourteen days after Ms. Cheng provides her declaration. 12 If a deposition remains necessary, the Court anticipates that Ms. Cheng's declaration will 5 13 help the parties and, if necessary, the Court to determine suitable topics and boundaries for the 14 || deposition. IT IS SO ORDERED. a 16 Dated: March

11, 2025 Ms, | hari —

A J. CISNEROS

19 nited States Magistrate Judge 20 21 22 23 24 25 26 27 28

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