

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.

OPINION

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