

In *Stone Brewing Co., LLC v. MillerCoors LLC*, 2019 WL 4450754 (S.D. Cal. Sept. 17, 2019), Magistrate Judge Linda Lopez granted in part plaintiff’s motion to compel and for sanctions in connection with its discovery requests pertaining to defendant’s historical marketing materials for Keystone beer but denied plaintiff’s request to inspect certain historical records on site at defendant’s premises.

This discovery dispute arose in a trademark suit in which plaintiff Stone Brewing Company, LLC, sued defendant MillerCoors LLC, producer of Keystone beers, for trademark infringement. According to plaintiff, defendant withheld “critical” evidence in violation of its discovery agreements by refusing to produce images of the full range of historical marketing materials and producing what plaintiff claimed were a “cherrypicked selection of Keystone materials.” *Id.* at *3. According to plaintiff, “the missing material [including an on-site inspection of the MillerCoors’s archive] is critically relevant to MillerCoors’s claim to be the senior user of the Stone® mark.” Plaintiff therefore requested that the magistrate judge order “(1) a full production of historical Keystone materials encompassing the full universe of marketing, packaging, and advertising, not just those that refer to Stone or Stones; (2) an on-site inspection of the historical items in their locations in the Coors archive; and (3) an additional deposition of Ms. Harris [defendant’s 30(b)(6) witness and archivist] after all historical materials have been produced.” *Id.* (internal quotation marks omitted).

In response, defendant argued that the magistrate judge should deny plaintiff’s motion for four reasons: “(1) it [was] untimely; (2) Defendant ha[d] complied with Plaintiff’s discovery requests as they never requested all historical marketing materials for Keystone dating back to 1989; (3) Plaintiff [was] not entitled to an inspection of the Coors Archive (nor a third deposition of Ms. Harris) because Plaintiff never served a request to inspect either the archives or any of the items in the archives; and (4) there [was] no basis to impose sanctions on MillerCoors because there [was] no violation of a court order regarding the discovery in question.” *Id.* at *4 (internal quotation marks omitted).

First, as to defendant’s timeliness objection, Magistrate Judge Lopez agreed with plaintiff that “the withholding of responsive documents was only revealed at the expert deposition of Ms. Harris,” and plaintiff timely sought relief less than 30 days after receiving the final transcript of that deposition. *Id.* at *5.

Second, Magistrate Judge Lopez also agreed with plaintiff and overruled defendant’s second objection that the terms used were vague and ambiguous or overbroad and burdensome. Moreover, defendant did not state in its objections to plaintiff’s discovery requests that it was withholding any responsive materials. Indeed, defendant represented that “it would produce additional, responsive, non-privileged documents, if any, capable of being identified and located following a reasonable search of relevant custodians and sources likely to contain such documents.” In light of these facts, Magistrate Judge Lopez concluded that defendant had not met its discovery obligations and granted plaintiff’s request for a “full production of historical Keystone materials.”

Third, Magistrate Judge Lopez denied plaintiff’s request for an on-site inspection of the historical items in their locations, noting that plaintiff’s argument seeking access to the archive itself lacked

any supporting authority. Fourth, Magistrate Judge Lopez granted plaintiff's request for an additional deposition of Harris, concluding that it was "appropriate in light of Defendant's failure to provide timely and complete discovery responses." *Id.* at *7. But Magistrate Judge Lopez declined plaintiff's request for sanctions. In her view, "It is not clear from Plaintiff's briefing whether Plaintiff's request for evidentiary preclusion sanctions is an alternative to the discovery sought." Further, this was the first time this discovery issue had been raised, and, in Magistrate Judge Lopez's view, defendant's conduct was not so egregious as to warrant the imposition of preclusionary evidence or monetary sanctions.