

3. A decision from the Eastern District of Texas granting in part a motion to compel the plaintiff to produce sales information from an Oracle database where the plaintiff did not substantiate its claims of undue burden with any specific information regarding the cost of production or the time and resources it would take to comply with the request.

In *TIGI Linea Corp. v. Professional Products Group, LLC*, 2021 WL 1947341 (E.D. Tex. May 14, 2021), U.S. Magistrate Judge Kimberly C. Johnson granted in part a motion to compel Plaintiff to produce sales information from an Oracle database where Plaintiff had not substantiated its claims of undue burden with any specific information regarding the cost of production, how many employees would be required to work on the production, how much time the production would consume, or the volume of the information that Plaintiff would be required to review in order to comply.

In this action for fraud and breach of fiduciary duty, Plaintiff, a manufacturer of cosmetic products, alleged that Defendant, one of its distributors, conspired with one of Plaintiff's former employees to enter into a backdated exclusive distribution agreement that Plaintiff was never made aware of. *Id.* at \*1. Defendant counterclaimed, alleging breach of the exclusive distribution agreement, among other claims.

Among other requests, Defendant sought from Plaintiff disclosure of ESI from Plaintiff's sales transactions databases with all complete, detailed sales information for all direct or indirect sales of Plaintiff's product in the "North American Retail Market" from 2008 to the present. *Id.* at \*4. Plaintiff objected to this request on the grounds that the request was "a harassing attempt to force [Plaintiff] to provide even more irrelevant and duplicative information" and "blatantly overbroad and hopelessly vague." Plaintiff also objected on the ground that the request would require Plaintiff "to create information that does not exist in the ordinary course of [Plaintiff's] business."

Magistrate Judge Johnson began her analysis by describing the applicable standards in Federal Rule of Civil Procedure 26(b), under which "discoverable matter must be both relevant and proportional to the needs of the case — which are related but distinct requirements." *Id.* at \*3 (quoting *Samsung Elecs. Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017)). "To be relevant under Rule 26(b)(1), a document or information need not, by itself, prove or disprove a claim or defense or have strong probative force or value. If it were otherwise, it would make little sense for Rule 26(b)(1) to direct courts to consider whether discovery that is relevant to any party's claim or defense is also important in resolving the issues." ... Proportionality is determined by "considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* (citing Rule 26(b)(1)). "Thus, the primary inquiries in discovery disputes are relevance and proportionality, not admissibility." *Id.* (citing cases).

Starting with the issue of relevance, Magistrate Judge Johnson found that Defendant's request for the sales information "clearly encompasses documents relevant to [Defendant's] counterclaims." *Id.* at \*4. She noted that the exclusive distribution agreement at issue granted Defendant an exclusive right to sell Plaintiff's products to distributors and wholesalers and that Defendant claimed this contractual right was breached. Therefore, "[t]o determine whether [Plaintiff] is, in fact, in breach of the Exclusive Agreement, it is necessary for Defendant to obtain

information regarding direct and indirect sales of [Plaintiff's] products ... to prove or disprove its counterclaims."

Turning to the issue of proportionality, Magistrate Judge Johnson first agreed with Plaintiff's argument that producing all sales information falling under the umbrella of the "North American Retail Market" was not proportional to the needs of the case. *Id.* at \*5. She noted that the exclusive distribution agreement to a market referred to as the "North American Mass Retail Market," not the general "North American Retail Market." Accordingly, the production would be limited to the "North American Mass Retail Market."

Magistrate Judge Johnson then turned to Plaintiff's argument that producing the requested sales information would be unduly burdensome. She described the general rule that a "party resisting discovery must show how the requested discovery is overly broad, unduly burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of the burden." She noted that summary or broad-based nonspecific objections usually fall short of meeting an objector's burden. "The failure to submit affidavits or other evidentiary proof, as a general matter, makes such an unsupported objection nothing more than unsustainable boilerplate." In this context, Magistrate Judge Johnson noted that Plaintiff had not submitted any "affidavits or otherwise illuminating information to show the burdensome nature of producing these materials," leaving her with no indication of "how much money it would cost for [Plaintiff] to comply with [Defendant's] request, how many employees would be required to work on this production request, how much time production would consume, or the volume of the information through which [Plaintiff] would be required to wade." *Id.* at \*6 (citing cases).

Magistrate Judge Johnson further found that the record suggested production of the requested sales information would, in fact, be "relatively easy." She noted that Defendant's request asked only for sales information "created in the ordinary course of business" and would not require Plaintiff to generate materials outside of its usual practice. She also noted that deposition testimony in the case reflected that Plaintiff maintains sales information in an Oracle database and that Plaintiff's employees routinely retrieve the requested information. Magistrate Judge Johnson found that this testimony belied Plaintiff's argument that compliance would be unduly burdensome.