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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 INSURANCE KING AGENCY, INC.,  
12 Plaintiff,  
13 v.  
14 DIGITAL MEDIA SOLUTIONS, LLC, et  
15 al.,  
16 Defendants.

Case No.: 21-cv-1539-BAS-DEB

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION TO COMPEL**

**[DKT. NO. 31]**

17  
18 **I. INTRODUCTION**

19 Before the Court is Plaintiff Insurance King Agency, Inc.'s Motion to Compel  
20 Defendant Digital Media Solutions, LLC Responses to Request for Production, Set One.  
21 Dkt. No. 31. Defendants (collectively "Digital Media Solutions") filed an Opposition. Dkt.  
22 No. 32. Having considered the parties' submissions and supporting exhibits, the Court  
23 GRANTS in part and DENIES in part Insurance King's Motion to Compel.

24 **II. BACKGROUND**

25 This is a suit for alleged Lanham Act and related California unfair competition  
26 violations. Insurance King (an insurance broker specializing in automobile insurance)  
27 claims Digital Media Solutions uses Insurance King's trademarked name in advertisements  
28 to generate "leads" that Digital Media Solutions sells to third-party insurance companies.

1 Dkt. No. 24 at 8–9.<sup>1</sup> Insurance King alleges Digital Media Solutions “places bids through  
2 Google Adwords’ Pay Per Click [(“PPC”)] program” for Insurance King’s trademarked  
3 name “specifically targeting customers searching for [Insurance King].” *Id.* at 7. Once a  
4 web user searches for Insurance King, Digital Media Solutions’ advertisements “deceive  
5 [that] web user[ ] into the mistaken belief that by clicking through the online advertisement  
6 the web user is communicating with [Insurance King].” *Id.* Digital Media Solutions then  
7 sells those leads to third-party insurance companies, who are Insurance King’s competitors.  
8 *Id.* at 8. Insurance King also alleges Digital Media Solutions’ advertisements “falsely lead  
9 consumers [who searched for Insurance King] to believe [Digital Media Solutions] itself is  
10 an insurance company or broker/agent offering . . . the ‘lowest quotes’ from ‘top rate  
11 providers’ ‘in under 60 seconds’ at ‘\$1/Day,’” but Digital Media Solutions is not an  
12 insurance company, broker, or agent, and it does not “evaluate whether [its] . . . ads . . . are  
13 true . . . .” *Id.* at 8–9.

14 At issue here are Insurance King’s requests for production of documents (“RFP”)   
15 seeking: Digital Media Solutions’ gross revenues (RFP No. 26); agreements with and   
16 investigations of the third parties to whom Digital Media Solutions sells its leads (RFP   
17 Nos. 2 and 3); consumer complaints regarding third parties and PPC advertisements (RFP   
18 Nos. 10 and 14); evidence certain third-party insurance companies are Digital Media   
19 Solutions’ clients (RFP Nos. 17 through 22); and support for Digital Media Solutions’   
20 claims that third parties are “top rated providers” and offer the “lowest insurance quotes”   
21 (RFP Nos. 7 and 9).

22 Defendants objected to each RFP based on relevance, overbreadth, proportionality,   
23 privilege, and privacy. Defendants also provided substantive responses to RFP Nos. 7, 9,   
24 and 26.

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28 <sup>1</sup> When referencing page numbers for documents filed with the Court, the Court’s   
citation refers to the page numbers assigned by the Court’s CM-ECF system.

1 The Court held a discovery conference (Dkt. No. 30), and Insurance King’s Motion  
2 to Compel followed.

3 **III. LEGAL STANDARD**

4 “[B]road discretion is vested in the trial court to permit or deny discovery . . . .”  
5 *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (quotation omitted). “Parties may  
6 obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim  
7 or defense and proportional to the needs of the case . . . .” Fed. R. Civ. P. 26(b)(1). Even  
8 after the 2015 amendments to Rule 26, “discovery relevance remains a broad concept.”  
9 *Fed. Nat’l Mortg. Ass’n v. SFR Invs. Pool 1, LLC*, No. 14-cv-02046-JAD-PAL, 2016 WL  
10 778368, at \*2 n.16 (D. Nev. Feb. 25, 2016); *see also Odyssey Wireless, Inc. v. Samsung*  
11 *Elecs. Co., Ltd*, No. 15-cv-01735-H-RBB, 2016 WL 7665898, at \*2 (S.D. Cal.  
12 Sept. 20, 2016) (“Relevance is construed broadly to include any matter that bears on, or  
13 reasonably could lead to other matters that could bear on, any issue that may be in the  
14 case.”) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350–51 (1978)).

15 The party seeking to compel discovery has the burden of establishing its request  
16 satisfies the relevancy requirements of Rule 26(b)(1). *Soto v. City of Concord*, 162 F.R.D.  
17 603, 610 (N.D. Cal. July 17, 1995). “Once the propounding party establishes that the  
18 request seeks relevant and proportional information, “[t]he party who resists discovery has  
19 the burden to show discovery should not be allowed, and has the burden of clarifying,  
20 explaining, and supporting its objections.” *Cancino Castellar v. McAleenan*, No. 17-cv-  
21 491-BAS-AHG, 2020 WL 1332485, at \*4 (S.D. Cal. Mar. 23, 2020) (quoting *Superior*  
22 *Commc’ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217 (C.D. Cal. 2009)).

23 A request for production of documents may relate to any matter that may be inquired  
24 into under Rule 26(b). Fed. R. Civ. P. 34(a)(1). For each request for production, “the  
25 response must either state that inspection and related activities will be permitted as  
26 requested or state with specificity the grounds for objecting to the request, including the  
27 reasons.” Fed. R. Civ. P. 34(b)(2)(B).

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1       **IV. DISCUSSION**

2           Insurance King contends Digital Media Solutions refuses to provide responsive  
3 information to RFPs seeking its “gross revenue information that is attributable to  
4 [Defendants’] wrongful activity” (RFP No. 26). Dkt. No. 31 at 5. Insurance King further  
5 contends Digital Media Solutions is improperly withholding information regarding the  
6 third parties that purchase consumer leads (RFP Nos. 2 and 3), consumer complaints (RFP  
7 Nos. 10 and 14), other insurance carriers (RFP Nos. 17 through 22), and certain  
8 representations on Digital Media Solutions’ website (RFP Nos. 7 and 9). *Id.* at 13–14.

9           **A. Digital Media Solutions’ Gross Revenues (RFP No. 26)**

10          Insurance King’s RFP No. 26 seeks:

11                   DOCUMENTS which CONCERN or REFLECT financial  
12 information as to the revenues and profits YOU have realized  
13 through the sale of LEADS including the term ‘KING’, and  
14 similar words, in your pick per click advertisements for auto  
insurance.

15 Dkt. No. 31-2 at 21.

16          Defendants raised various objections to this request (i.e., privacy, privilege,  
17 relevance, and proportionality), but proceeded to respond, “[a]fter conducting a diligent  
18 search and reasonable inquiry, [Digital Media Solutions] states that it will produce  
19 documents responsive to this Request.” *Id.* at 22. Digital Media Solutions then  
20 supplemented its response as follows: “After conducting a diligent search and reasonable  
21 inquiry, [Digital Media Solutions] states that it produced documents sufficient to show the  
22 revenues and profits to [Digital Media Solutions] associated with the ads placed for auto  
23 insurance that related to the search term ‘King.’” Dkt. No. 31-3 at 7.

24          Insurance King argues Digital Media Solutions “indicated initially in its response  
25 that it would produce” the gross revenue information “from the sale of *all leads*” but it  
26 “ultimately reneged” and produced only “revenues specifically related to only Insurance  
27 King leads.” Dkt. No. 31 at 11–12 (emphasis added). Defendant contends it complied with  
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1 the request, which is “limited to revenues and profits from the sale of leads generated as a  
2 result of ads using the term ‘King’ and similar words.” Dkt. No. 32 at 16.

3 The parties’ dispute, therefore, is whether this RFP seeks all gross revenues (as  
4 Insurance King contends), or gross revenues generated from “King” leads (as Digital  
5 Media Solutions contends). Dkt. Nos. 31 at 11–12; 32 at 16–17.

6 Digital Media Solutions’ reading is consistent with the plain language of the request:  
7 “revenues and profits . . . realized through the sale of leads including the term ‘KING’, and  
8 similar words.” Digital Media solutions represents it produced documents reflecting  
9 revenues and profits “related to the search term ‘King.’” Dkt. Nos. 31-2 at 22; 31-3 at 6–  
10 7. That complies with the RFP. The Court, therefore, DENIES Insurance King’s Motion to  
11 Compel further responses to RFP No. 26.

12 **B. Documents Relating to Third-Party Agreements and Investigations**  
13 **(RFP Nos. 2 and 3)**

14 Insurance King’s RFP Nos. 2 and 3 seek:

15 RFP No. 2: DOCUMENTS reflecting any agreements between  
16 YOU and any THIRD PARTIES to whom you send or sell any  
17 LEADS resulting from YOUR pay per click Internet advertising  
18 for auto insurance.

19 RFP No. 3: DOCUMENTS evidencing any investigation or  
20 examination by YOU of the background, business reputation,  
21 financial status, products offered or reviews of the THIRD  
22 PARTIES to whom you sell or offer to sell the LEADS for auto  
23 insurance.

24 Dkt. No. 31-2 at 6–7.

25 Digital Media Solutions objects that the requests: (1) seek “confidential business or  
26 commercial documents and/or proprietary information”; (2) are irrelevant; (3) seek  
27 documents protected from disclosure by the attorney client privilege and work product  
28 doctrine; (4) are overbroad; (5) are unduly burdensome; and (6) are disproportionate to the  
needs of the case. *Id.*

1 Insurance King explains these requests seek discovery into Digital Media Solutions’  
2 representations that third parties purchasing Digital Media Solutions’ leads are “top rated  
3 providers.” Dkt. No. 31 at 13. The Court agrees this is relevant discovery as it pertains to  
4 Insurance King leads. To the extent the requests seek broader information (e.g., documents  
5 relating to third parties not involved in Digital Medial Solutions’ sale of Insurance King  
6 leads), however, these requests are overbroad and not proportionate to the needs of this  
7 case. The misrepresentations alleged in Plaintiff’s First Amended Complaint all arise out  
8 of allegedly misappropriated Insurance King leads. Dkt. 24 at 12–13 and 25. Plaintiff’s  
9 RFPs, however, seek documents regarding third parties not associated with Insurance King  
10 leads.

11 The Court, therefore, sustains Digital Media Solution’s overbreadth and  
12 proportionality objections and limits both requests to third parties to whom Digital Media  
13 Solutions sold leads and advertising implicating Insurance King’s trademarked name. *See*  
14 *Green v. Baca*, 219 F.R.D. 485, 490 (C.D. Cal. 2003) (“It is within the discretion of a court  
15 ruling on a motion to compel to narrow the requests rather than sustain the responding  
16 party’s objections to them in toto. In doing so, the court effectively sustains an objection  
17 that the requests are . . . overbroad in part, and overrules it in part.”).<sup>2</sup>

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20 <sup>2</sup> The Court overrules the remainder of Digital Media Solutions’ objections. Digital  
21 Media Solutions’ objection that third-party discovery requests seek “highly sensitive  
22 commercial information” about Insurance King’s competitors (Dkt. No. 32 at 21–22) is  
23 mitigated by the Court’s Protective Order (Dkt. No. 19). *See Lauter v. Rosenblatt*, No. 15-  
24 cv-08481-DDP-KSx, 2019 WL 4138020, at \*15 (C.D. Cal. July 1, 2019) (“The purpose of  
25 a protective order during discovery is to preserve rights of privacy and confidentiality as  
26 to the disclosure for personal and/or commercially sensitive information.”). Digital Media  
27 Solutions’ privilege and unduly burdensome objections are waived because Digital Media  
28 Solutions did not raise them in its Opposition and there is no evidence Digital Media  
Solutions provided Insurance King a privilege log. *See Sherwin-Williams Co. v. Earl  
Scheib of Cal. Inc.*, No. 12-cv-2646-JAH-JMA, 2013 WL 12073836, at \*2 n.1 (S.D. Cal.  
Mar. 4, 2013) (objections raised in response to the discovery requests but not addressed in  
the discovery motion are moot or waived; limiting its review to arguments in the parties’  
briefs); *Cartwright v. Viking Industries, Inc.*, 2008 WL 4283614 at \*2 (E.D. Cal.

1 Therefore, on or before **July 15, 2022**, Digital Media Solutions must produce  
2 responsive documents to the following revised RFP Nos. 2 and 3:

3 Revised RFP No. 2: DOCUMENTS reflecting any agreements  
4 between YOU and any THIRD PARTIES to whom you send or  
5 sell LEADS arising out of the term “KING,” and similar words,  
6 in your pay per click advertisements for auto insurance.

7 Revised RFP No. 3: DOCUMENTS evidencing any  
8 investigation or examination by YOU of the background,  
9 business reputation, financial status, products offered or reviews  
10 of the third parties to whom you send or sell LEADS arising out  
11 of the term “KING,” and similar words, in your pay per click  
12 advertisements for auto insurance.

13 **C. Consumer Complaints Regarding Third Parties and PPC  
14 Advertisements (RFP Nos. 10 and 14)**

15 Insurance King’s RFP Nos. 10 and 14 seek:

16 RFP No. 10: COMMUNICATIONS to YOU or DOCUMENTS  
17 which evidence or refer to any complaints by consumers  
18 regarding any of the THIRD PARTIES to whom YOU have sold  
19 LEADS regarding auto insurance.

20 RFP No. 14: COMMUNICATIONS to YOU or DOCUMENTS  
21 which evidence same of any complaints by consumers regarding  
22 any of the pay per click ads you have placed on the Internet  
23 regarding the sale or availability of auto insurance.

24 Dkt. No. 31-2 at 11, 13. Digital Media Solutions objects, in pertinent part, that the requests  
25 are overbroad and seek irrelevant information. *Id.*

26 Insurance King argues “these requests are directly relevant to the veracity of th[e]  
27 statement [that the third parties purchasing Defendants’ leads are ‘top rated providers’],  
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Sept. 11, 2008) (The failure to produce a privilege log to support an assertion of privilege  
“may be deemed to waive it.”).

1 whether [Digital Media Solutions] had any basis for this statement, and if there has been  
2 actual consumer confusion . . . .” Dkt. No. 31 at 13.

3 Insurance King’s requests are overbroad because they seek all consumer complaints,  
4 regardless of whether those complaints relate to the allegations in Plaintiff’s First Amended  
5 Complaint.

6 The Court sustains Digital Media Solution’s overbreadth objection and limits the  
7 requests to complaints with Insurance King’s trademarked name.<sup>3</sup> Therefore, on or before  
8 **July 15, 2022**, Digital Media Solutions must produce responsive documents to the  
9 following revised RFP Nos. 10 and 14:

10 Revised RFP No. 10: COMMUNICATIONS to YOU or  
11 DOCUMENTS which evidence or refer to any complaints by  
12 consumers regarding any of the THIRD PARTIES to whom you  
13 have sold LEADS for auto insurance arising out of pay per click  
advertisements including the term “KING,” and similar words.

14 Revised RFP No. 14: COMMUNICATIONS to YOU or  
15 DOCUMENTS which evidence any complaints by consumers  
16 regarding the pay per click ads for auto insurance you have  
17 placed on the Internet that included the term “KING,” and similar  
words.

18 **D. Documents Showing Digital Media Solutions’ Clients (RFP Nos. 17–22)**

19 Insurance King’s RFP Nos. 17 through 22 seek documents relating to whether  
20 Adriana’s Insurance, Pronto Insurance, Law Familia Insurance, Kemper Insurance, Fred  
21 Loyas Insurance, and AMAX Auto Insurance are Defendants’ clients. Without providing  
22 responsive documents, Digital Media Solutions objected that these RFPs are overbroad,  
23 unduly burdensome, not proportional, irrelevant, and seek privileged and private  
24 information.

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28 <sup>3</sup> The Court overrules Digital Media Solutions’ remaining objections (privacy,  
privilege, and unduly burdensome) for the same reasons discussed in footnote 2 above.



1 Insurance King does not assert the listed entities are among the third parties to whom  
2 Digital Media Solutions sold leads. Instead, Insurance King “believes . . . [Digital Media  
3 Solutions] has no relationship with these insurance brokers/carriers, but simply uses their  
4 names in its advertising as a deceptive practice” the same way Digital Media Solutions  
5 “has used Insurance King’s trademark to deceive consumers . . . .” Dkt. No. 31 at 14.  
6 Insurance King argues this information is “directly relevant to” Defendants’ “mental state”  
7 (i.e., why would Digital Media Solutions “essentially admit its practice is wrongful by  
8 agreeing to be enjoined from the practice vis-à-vis Insurance King but then continue to  
9 engage in the same practice vis-à-vis other brokers”?). *Id.*

10 Insurance King has not carried its burden of establishing the relevance of these  
11 requests. Whether Digital Media Solutions violated the rights of other brokers after  
12 agreeing to an injunction with Insurance King is not relevant to any claim in this case. To  
13 the extent the requested discovery has any arguable relevance, the Court exercises its  
14 discretion to disallow the discovery here in light of its tangential nature. *See Strategic*  
15 *Partners, Inc. v. FIGS, Inc.*, No. 19-cv-2286-GW-KSx, 2021 WL 4813646, at \*4 (C.D.  
16 Cal. Aug. 12, 2021) (“In resolving discovery disputes, the court may exercise its discretion  
17 in determining the relevance of discovery requests, assessing oppressiveness, and weighing  
18 those facts in deciding whether discovery should be compelled.”) (quotation omitted);  
19 *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 16-cv-01058-JAD-GWF, 2017 WL  
20 3174914, at \*9 (D. Nev. July 26, 2017) (“If the requirement for proportionality in discovery  
21 means anything . . . it must mean that burdensome, tangential discovery should not be  
22 permitted based on the mere possibility that something may turn up to support what is  
23 otherwise only speculation.”).

24 The Court, therefore, denies Insurance King’s Motion to Compel further responses  
25 to RFP Nos. 17 through 22.

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1                   **E. Documents Supporting Digital Media Solutions’ Claims that Third**  
2                   **Parties Are “top rated providers” and Offer the “lowest insurance**  
3                   **quotes” (RFP Nos. 7 and 9)**

4                   Insurance King’s RFP Nos. 7 and 9 (seeking documents “which support . . . that  
5 consumers will obtain the ‘lowest insurance quotes’” and “which identify ‘top rated  
6 providers’”) (Dkt. No. 31-1 at 9–11) are not properly before the Court. Defendants claim  
7 the parties have not met and conferred regarding them (Dkt. No. 32 at 20), and they were  
8 neither discussed during the Court’s Discovery Conference nor included in the Court’s  
9 subsequent briefing schedule.<sup>4</sup> The Court agrees. The parties must comply with the Court’s  
10 chambers rules, local rules, and Federal Rules of Civil Procedure prior to raising any  
11 discovery dispute with the Court. The Court, therefore, DENIES Insurance King’s Motion  
12 to Compel further response to RFP Nos. 7 and 9. *Shaw v. Cty. of San Diego*, No. 06-cv-  
13 2680-IEG-POR, 2008 WL 9411414, at \*2 (S.D. Cal. Oct. 9, 2008) (denying plaintiff’s  
14 motion to compel for failing to meet and confer).

15                   **V. CONCLUSION**

16                   Based on the foregoing, the Court GRANTS in part and DENIES in part Insurance  
17 King’s Motion to Compel. Dkt. No. 31. On or before **July 15, 2022**, Digital Media  
18 Solutions must provide responsive information to Insurance King’s RFP Nos. 2, 3, 10, and  
19 14 as revised herein.

20                   **IT IS SO ORDERED.**

21                   Dated: June 30, 2022

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23                   \_\_\_\_\_  
24                   Honorable Daniel E. Butcher  
25                   United States Magistrate Judge

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27                   <sup>4</sup>                   Additionally, based on Digital Media Solutions agreement to “produce all  
28                   documents responsive” (Dkt. No. 31-2 at 10), any issues regarding this RFP appear moot.