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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STANLEY E. REDICK, III,

Plaintiff,

v.

LOWES HOME CENTERS, LLC,

Defendant.

Case No. 1:21-cv-00358-SAB

ORDER DENYING DEFENDANT’S
MOTION TO QUASH SUBPOENA

ORDER VACATING SEPTEMBER 7, 2022
HEARING

(ECF No. 52)

I.

INTRODUCTION

Plaintiff Stanley E. Redick, III, proceeding *pro se* and *in forma pauperis*, filed this action on March 8, 2021, against Defendant Lowe’s Home Centers, LLC. On August 25, 2022, Defendant filed a motion to quash Plaintiff’s subpoena that was directed at the Sonora Police Department, a nonparty. (ECF No. 52.) The matter was set for hearing on September 7, 2022, at 11:00 a.m. in Courtroom 9.¹ A joint statement of the parties was filed concurrently with the notice of the motion. (Joint Statement (“JS”), ECF No. 52-1.) The Court finds this matter suitable for decision without oral argument. See Local Rule 230(g). Accordingly, the hearing set for September 7, 2022, will be vacated, and the parties will not be required to appear at that time. Having considered the joint statement, the declaration and exhibits attached thereto, as

¹ The Court hears civil motions at 10:00 a.m. on Wednesdays, not 11:00 a.m.

1 well as the Court's file, Defendant's motion to quash shall be denied.

2 **II.**

3 **LEGAL STANDARDS**

4 Rule 45 of the Federal Rules of Civil Procedure authorizes the issuance of a subpoena to
5 command a nonparty to "produce designated documents, electronically stored information, or
6 tangible things in that person's possession, custody, or control. . . ." Fed. R. Civ. P.
7 45(a)(1)(A)(iii). In response to the subpoena, the nonparty must serve objections to the request
8 before the earlier of the time specified for compliance or fourteen days after the subpoena is
9 served. Fed. R. Civ. P. 45(d)(2)(B.) If an objection is made, the serving party may move for an
10 order compelling compliance in the court for the district where compliance is required. Fed. R.
11 Civ. P. 45(b)(1)(B(i).

12 It is well settled that the scope of discovery under a subpoena is the same as the scope of
13 discovery under Rule 26(b) and 34. Goodyear Tire & Rubber Co. v. Kirk's Tire & Auto Service
14 Center, 211 F.R.D. 648, 662 (D. Kan. 2003) (quoting Advisory Committee Note to the 1970
15 Amendment of Rule 45(d)(1) that the amendments "make it clear that the scope of discovery
16 through a subpoena is the same as that applicable to Rule 34 and the other discovery rules.").
17 Rule 34(a) provides that a party may serve a request that is within the scope of Rule 26. Under
18 the Federal Rule of Civil Procedure 26:

19 Parties may obtain discovery regarding any nonprivileged matter
20 that is relevant to any party's claim or defense and proportional to
21 the needs of the case, considering the importance of the issues at
22 stake in the action, the amount in controversy, the parties' relative
23 access to relevant information, the parties' resources, the
24 importance of the discovery in resolving the issues, and whether
25 the burden or expense of the proposed discovery outweighs its
26 likely benefit. Information within this scope of discovery need not
27 be admissible in evidence to be discoverable.

25 Fed. R. Civ. P. 26(b)(1).

26 Relevancy is broadly defined to encompass any matter that bears on, or that reasonably
27 could lead to other matter that could bear on, any issue that is or may be in the case.
28 Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Although relevance is broadly

1 defined, it does have “ultimate and necessary boundaries.” Gonzales v. Google, Inc., 234 F.R.D.
2 674, 680 (N.D. Cal. 2006) (quoting Oppenheimer Fund, Inc., 437 U.S. at 351). While discovery
3 should not be unnecessarily restricted, discovery is more limited to protect third parties from
4 harassment, inconvenience, or disclosure of confidential documents. Dart Industries Co., Inc. v.
5 Westwood Chemical Co., Inc., 649 F.2d 646, 649 (9th Cir. 1980). In deciding discovery
6 disputes, courts must be careful not to deprive the party of discovery that is reasonably necessary
7 to their case. Dart Industries Co., Inc., 649 F.2d at 680. “Thus, a court determining the propriety
8 of a subpoena balances the relevance of the discovery sought, the requesting party’s need, and
9 the potential hardship to the party subject to the subpoena.” Gonzales, 234 F.R.D. at 680.

10 Rule 45(d)(3)(A) sets forth the bases for a court to quash or modify a subpoena, which
11 provides, in pertinent part, that “[o]n timely motion, the court for the district where compliance is
12 required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; . .
13 . or (iv) subjects a person to undue burden. Fed. R. Civ. P. 45(d)(3)(A); see also Fed. R. Civ. P.
14 45(d)(1) (“A party or attorney responsible for issuing and serving a subpoena must take
15 reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena
16 [and] [t]he court for the district where compliance is required must enforce this duty and impose
17 an appropriate sanction--which may include lost earnings and reasonable attorney’s fees--on a
18 party or attorney who fails to comply.”).

19 “Although irrelevance is not among the litany of enumerated reasons for quashing a
20 subpoena found in Rule 45, courts have incorporated relevance as a factor when determining
21 motions to quash a subpoena.” Moon, 232 F.R.D. at 637 (citing Goodyear Tire & Rubber Co. v.
22 Kirk’s Tire & Auto Servicenter, 211 F.R.D. 658, 662 (D. Kan. 2003)). Thus, in determining
23 undue burden, the Court should weigh the burden of the subpoenaed party against the requested
24 information’s relevance, need of the serving party for the information, the breadth of the
25 information requested, the time period covered by the request, and the particularity with which
26 the request is made. Moon, 232 F.R.D. at 637.

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1 **III.**

2 **DISCUSSION**

3 Defendant seeks to quash the motion proffering: the subpoena was served after the
4 nonexpert discovery deadline; the subpoena fails to comply with Federal Rule of Civil Procedure
5 45(a)(2)-(3) because it was not signed by the Clerk of the Court; the subpoena is defective as it
6 fails to identify the Court from which it issued under Federal Rule of Civil Procedure
7 45(a)(1)(A)(i); and because it fails to specify the time and place for compliance in violation of
8 Federal Rule of Civil Procedure 45(a)(1)(A)(iii).

9 The Court’s scheduling order, issued on January 23, 2022, set the deadline for completion
10 of all nonexpert discovery as July 18, 2022. (ECF No. 44.) As noted in the Joint Statement,
11 Plaintiff attempted to first serve a subpoena on or about July 18, 2022, that was not signed by the
12 Clerk of the Court, and subsequently, the Clerk of the Court issued a new subpoena to Plaintiff
13 for the same body cam footage, on or about July 22, 2022. (JS at 3.)

14 While it appears Plaintiff served the subpoena after the nonexpert discovery deadline, it is
15 not clear whether the *pro se* Plaintiff would be able to show diligence and good cause to amend
16 the scheduling order. The bodycam footage appears relevant to the Plaintiff’s claims, if
17 hypothetically, the Court were to extend the nonexpert discovery deadline, or the parties
18 stipulated to a limited extension, and the *pro se* Plaintiff is allowed a reasonable amount of time
19 to correct potential deficiencies and re-serve the subpoena.

20 However, the Court will not further opine on these issues because it is not clear whether
21 the Defendant has standing to bring the motion, as currently presented in the form of a motion to
22 quash a subpoena directed at a different nonparty to this action.

23 Generally, a party does not have standing to bring a motion to quash a subpoena that is
24 directed to a nonparty, unless the party is asserting a privilege or some other ground that
25 establishes standing. See United States v. Tomison, 969 F. Supp. 587, 596 (E.D. Cal. 1997) (“A
26 party only has standing to move to quash the subpoena issued to another when the subpoena
27 infringes upon the movant’s legitimate interests . . . Accordingly the government lacks standing
28 to raise the exclusive grounds for quashing the subpoena, since it lacks the sine qua non of

1 standing, an injury in fact relative to those grounds.”); California Sportfishing Prot. All. v. Chico
2 Scrap Metal, Inc., 299 F.R.D. 638, 643 (E.D. Cal. 2014) (“The Ninth Circuit has yet to address
3 the question of whether a party has standing to bring a motion to quash since usually only the
4 subpoenaed non-party may move to quash. The general rule, however, is that a party has
5 no standing to quash a subpoena served upon a third party, except as to claims of privilege
6 relating to the documents being sought.”). As recently explained:

7 Under Federal Rule of Civil Procedure 45(a)(1)(C), a party may
8 subpoena a nonparty to produce documents, electronically stored
9 information, and tangible things. The court “must” quash or
10 modify a subpoena if it “requires disclosure of privileged or other
11 protected matter, if no exception or waiver applies.” Fed. R. Civ.
12 P. 45(d)(3)(A)(iii). The Ninth Circuit has “yet to address the
13 question of whether a party has standing to bring a motion to quash
14 since usually only the subpoenaed non-party may move to quash.
15 The general rule, however, is that a party has no standing to quash
16 a subpoena served upon a third party, except as to claims of
17 privilege relating to the documents being sought.” California
18 Sportfishing Prot. All. v. Chico Scrap Metal, Inc., 299 F.R.D. 638,
19 643 (E.D. Cal. 2014) (citing Windsor v. Martindale, 175 F.R.D.
20 665, 668 (D. Colo. 1997)); see also Peccia v. Dep’t of Corr. &
21 Rehab., No. 2:18-cv-3049 JAM AC, 2020 WL 2556751, at *1
(E.D. Cal. May 20, 2020) (citing California Sportfishing, 175
F.R.D. at 643); Robertson v. Catholic Cmty. Servs. of W.
Washington, No. C19-1618 RSM, 2020 WL 1819842, at *5 (W.D.
Wash. Apr. 10, 2020) (same). Under this general rule, plaintiff
lacks standing to object to the subpoena on grounds of relevance or
undue burden. Wells Fargo & Co. v. ABD Ins., No. C 12-03856
PJH DMR, 2012 WL 6115612, at *2 (N.D. Cal. Dec. 10, 2012). A
party cannot seek to quash a Rule 45 subpoena except to the extent
that it has “a personal right or privilege in the information sought
to be disclosed.” Freed v. Home Depot U.S.A., Inc., No. 18cv359-
BAS (LL), 2019 WL 582346, at *2 (S.D. Cal. Feb. 13, 2019)
(quoting Chevron Corp. v. Donziger, 2013 WL 4536808, at *4
(N.D. Cal. Aug. 22, 2013)).

22 Krenitsky v. Kirsch, No. 218CV0690WBSDBP, 2020 WL 5017270, at *1 (E.D. Cal. Aug. 25,
23 2020). Noted in Krenitsky, “[i]n contrast to a motion to quash, a party has standing to seek a
24 protective order to limit discovery from a third party.” Id. at *1 n.1 (citing Auto-Owners Ins. Co.
25 v. Southeast Floating Docks, Inc., 231 F.R.D. 426, 429 (M.D. Fla. 2005)).

26 Indeed, in the Joint Statement, Plaintiff asserts the lack of standing as a primary
27 argument, stating: “**Direct Rebuttal:** Respondent’s argument for an order to quash fails for two
28 major reasons: lack of standing and lack of merit.” (JS at 9 (citing Auto-Owners Ins., 231 F.R.D.

1 at 429-30).)

2 Defendant does not directly address Plaintiff's argument or standing at all. Rather,
3 Defendant cites one case wherein the plaintiff filed a motion to quash subpoenas served by the
4 defendant on two non-party entities, and the court granted the motion to quash on the grounds
5 the scheduling order made clear that discovery was to be completed by the deadline, like the
6 scheduling order here. Beecham v. Roseville City Sch. Dist., No. 2:15-cv-1022-KJM-EFB, 2017
7 U.S. Dist. LEXIS 77673, at *2 (E.D. Cal. May 22, 2017) ("The subpoenas at issue were not
8 served until April 2017, well after the deadline for completion of discovery . . . [c]onsequently,
9 the subpoenas issued by Van Wagner are untimely under the court's scheduling order.").
10 However, the order did not discuss standing. Two cases were cited by the court. In the first, the
11 subpoena was directed at the chief executive officer of the defendant movant company, and the
12 defendant asserted privilege. Crayton v. Rochester Med. Corp., No. 1:07-CV-1318 OWW GSA,
13 2010 WL 392341, at *1 (E.D. Cal. Jan. 25, 2010). The other involved a party's motion to
14 compel compliance with the subpoena, not a motion to quash. nSight, Inc. v. PeopleSoft, Inc.,
15 No. 3:04CV3836MMC(MEJ), 2006 WL 988807, at *4 (N.D. Cal. Apr. 13, 2006).

16 The weight of the caselaw and the bases of the motion as submitted counsel the Court to
17 deny the motion for lack of standing. The Court considered offering Defendant an opportunity to
18 submit supplemental briefing on this issue or to address at the hearing, however, the Court finds
19 Defendant had a full opportunity to address the issue of standing in light of Plaintiff's argument
20 raised in the Joint Statement, and did not do so. Defendant had notice of the issue of standing.
21 Defendant either neglected to address the issue, or avoided the issue by only offering one case
22 that did not discuss standing. Further, given the hearing on this motion is scheduled less than
23 fourteen (14) days prior to the notice of motion, the Court finds it more prudent to deny on the
24 grounds of lack of standing sooner than later. In that regard, the Court takes no position on the
25 merits of Defendant's arguments as potentially applicable to a motion to quash brought by the
26 target of the subpoena, though the Court again notes it is not clear whether the *pro se* Plaintiff
27 may be able to show diligence and good cause to reopen discovery for this limited apparently
28 relevant evidence.

1 **IV.**

2 **ORDER**

3 Accordingly, it is HEREBY ORDERED that:

- 4 1. Defendant's motion to quash (ECF No. 52) is DENIED; and
5 2. The hearing set for September 7, 2022, at 11:00 a.m., in Courtroom 9, is
6 VACATED.

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8 IT IS SO ORDERED.

9 Dated: August 29, 2022



UNITED STATES MAGISTRATE JUDGE

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