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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 SHERRIS MINOR,
8 Plaintiff,

9 v.

10 BAKER MILLS, INC., et al.,
11 Defendants.

Case No. [20-cv-02901-RS](#) (AGT)

DISCOVERY ORDER

Re: Dkt. Nos. 60, 61

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13 Before the Court is defendants Kodiak Cakes, LLC and Baker Mills, Inc. (collectively,
14 “Kodiak”) and plaintiff’s joint discovery dispute letter concerning three sets of discovery—
15 Kodiak’s requests for production (“RFPs”), Kodiak’s interrogatories, and plaintiff’s RFPs.
16 Dkt. 60. Also pending is plaintiff’s motion to quash Kodiak’s subpoenas to six nonparties.
17 Dkt. 61. The Court held a discovery hearing on these disputes on June 25, 2021, and now rules as
18 follows.

19 **A. Joint Discovery Letter**

20 **1. Kodiak’s RFP Nos. 27, 28, 37**

21 In the three RFPs at issue, Kodiak asks plaintiff to produce all documents that concern her
22 consumption of high protein foods (RFP No. 27); that identify any other product she purchased on
23 the basis that the product is high in protein, including product labels, packaging, and receipts (RFP
24 No. 28); and that relate to the foods/drinks she consumes (RFP No. 37). Dkt. 60 at 2.¹ Kodiak
25 asserts that the requested documents go to “the merits/certification, materiality, reliance,

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27 ¹ The parties’ joint letter attached excerpts of the specific Kodiak RFPs and interrogatories at issue
28 but omitted the definitions that accompanied those discovery requests. *See* Dkt. 60, Exs. 1 & 2.
Kodiak submitted the missing definitions after the June 25 hearing at the Court’s request. *See*
Dkts. 69, 70.

1 knowledge, habits, and credibility,” and argues that plaintiff “put her eating habits directly at
2 issue” by alleging that she “was attracted to the [Kodiak] Products because, when given a choice,
3 she prefers to buy quick and easy breakfast items that support her active physical fitness levels and
4 high protein diet.” *Id.* (citing Dkt. 45, FAC ¶ 66). Kodiak asserts it “is entitled to test the veracity
5 of these allegations” and claims that it “is looking for a *representative sampling* of food receipts”
6 so it can determine plaintiff’s eating and food purchasing habits and probe whether she was in fact
7 misled or cared about protein. *Id.* (emphasis in original).

8 Plaintiff does not dispute that documents concerning her purchases of the Kodiak products
9 at issue in this action are relevant and must be produced if within her possession, custody, or
10 control.² Nor is there any dispute that Kodiak is entitled to test the veracity of plaintiff’s alleged
11 reliance on Kodiak’s protein labeling representations. However, plaintiff argues, and the Court
12 agrees, that Kodiak’s “attempts to seek evidence of every food purchase and dietary habit of her
13 lifetime is harassing, and not proportional to the needs of the case.” *Id.* at 4–5. At the hearing,
14 Kodiak reported that it has agreed to narrow its document requests to the time period of 2015 to
15 the present, and stated that it is only interested in plaintiff’s purchases and consumption of foods
16 and drinks that have some nexus to protein. But even as narrowed, Kodiak’s RFPs still require
17 plaintiff to sort, inventory, and produce all labels, packaging, and receipts for *all* foods and drinks
18 containing protein that plaintiff has consumed and/or purchased since 2015 (and as Kodiak
19 acknowledges, “[m]ost food products have protein,” *id.* at 2). The Court finds that the burden of
20 this proposed discovery outweighs its likely benefit. To the extent such information is relevant to
21 this case, “the less burdensome means of discovering the same basic information is to question
22 Plaintiff[] about these issues at [her] deposition.” *In re Coca-Cola Prod. Mktg. & Sales Prac.*
23 *Litig. (No. II)*, 2015 WL 5043846, at *5 (N.D. Cal. Aug. 26, 2015) (James, M.J.).

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28 ² Plaintiff represented at the discovery hearing that she does not have any receipts or other
documentary proof of purchase for the Kodiak products she alleges she bought.

1 **2. Kodiak’s Interrogatory Nos. 1, 6, 9, 11–13, 15–19**

2 Interrogatory No. 1 asks plaintiff to state all “product purchase details” for each Kodiak
3 product at issue in this action that she purchased in her lifetime.³ As discussed during the hearing,
4 this interrogatory is undeniably overbroad as to time frame. Accordingly, the Court limits the
5 relevant time frame to the proposed class period—April 9, 2016 to the present. Plaintiff’s current
6 response identifies the types of Kodiak products she purchased (blueberry muffin cups, buttermilk
7 flapjack and waffle mix, and blueberry muffin mix), but it does not provide any other “product
8 purchase details” as requested. Plaintiff must provide those details to the extent they are known or
9 reasonably available to her; referring Kodiak to allegations in her complaint is not sufficient.

10 For Interrogatory Nos. 6, 12, 13, and 15, plaintiff’s existing responses are sufficient.

11 Interrogatory No. 9 asks plaintiff to state the basis for her belief that she was not getting
12 enough protein from Kodiak products “in the time period before [she] met her counsel,” and
13 Interrogatory No. 11 asks her to state all facts explaining how her consumption of Kodiak
14 products prevented her “from maintaining ‘active physical fitness levels’ as stated in paragraph 66
15 of the [FAC].” The Court limits the relevant time frame to the proposed class period and directs
16 plaintiff to answer these interrogatories.

17 For Interrogatory Nos. 16 and 18, the Court agrees with plaintiff that these requests are
18 overbroad and unduly burdensome. To the extent the requested information is relevant, Kodiak
19 may obtain it through questioning plaintiff at her deposition.

20 Interrogatory No. 17 asks plaintiff to state all facts why she “cannot rely [on] or trust the
21 nitrogen method for testing protein content that is used to calculate the amount of protein in the
22 foods/drinks that [she] consume[s].” Interrogatory No. 19 asks her to state all facts explaining
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25 ³ Kodiak’s interrogatories define “product purchase details” as “(1) all purchase date or dates, (2)
26 all PRODUCT purchase locations (including the name of the store and address) or name of the
27 websites, (3) all the names of any other person accompanying the Plaintiff when he or she
28 purchased if at a physical store location, (4) all the methods of purchase (cash, credit, debit, etc.),
(5) whether a loyalty card or loyalty program was scanned during the purchase such as scanning a
Ralph’s Rewards Card or Vons Club Card and what loyalty card was scanned for each purchase,
(6) all the specific PRODUCT or PRODUCTS purchased, and (7) the amount paid for the
PRODUCT or PRODUCTS purchased for each purchase.” Dkt. 69 at 4.

1 why the Kodiak products at issue contain an inaccurate quantity of protein. These contention
2 interrogatories seek relevant information and plaintiff must answer them to the fullest extent
3 possible.

4 Plaintiff must amend her interrogatory responses as set forth above within 14 days.

5 **3. Plaintiff's First Set of RFPs**

6 Plaintiff states that Kodiak is withholding hundreds of responsive documents on the basis
7 that they contain consumer email addresses which require redaction or an opt-out notice to
8 affected consumers prior to production. Kodiak is ordered to redact the email addresses and
9 produce the responsive documents within 14 days.

10 **B. Plaintiff's Motion to Quash Nonparty Subpoenas**

11 Plaintiff moves to quash document subpoenas served by Kodiak on six nonparties:
12 Safeway, and food delivery services Amazon, Grubhub, Doordash, Maplebear d/b/a Instacart, and
13 Uber Technologies. Dkt. 61. The Safeway subpoena requests (1) documents identifying the
14 "specific products Sherris Minor (Safeway rewards number [***] and/or [***]) purchased at
15 Safeway for the period 1/1/2015 through 4/1/2021," and (2) documents showing her receipts from
16 Safeway during the same time period. Dkt. 61-1, Ex. A. Kodiak's subpoenas to the food delivery
17 services request (1) documents identifying "the specific food products Sherris Minor of California
18 ordered or purchased through you or any of your subsidiaries for the period of 1/1/2015 through
19 4/1/2021," and (2) documents showing food purchase receipts during the same time period. *Id.*,
20 Exs. B–F. Kodiak argues that plaintiff has not provided any receipts or "substantive information
21 on her food purchases of any Kodiak products," and so it was "forced to subpoena various food
22 companies to gather this evidence." Dkt. 65 at 5.

23 *Safeway subpoena.* Safeway is the only subpoenaed nonparty from which plaintiff alleges
24 to have purchased Kodiak products. *See* FAC ¶ 64 ("Plaintiff has purchased muffin cups and at
25 least ten of Defendants' Kodiak Cakes flapjack and muffin mixes from various Sprouts Farmers
26 Market, Target, and Safeway stores throughout the East Bay in Northern California over the past
27 year."). While plaintiff agrees that Safeway records reflecting her purchases of Kodiak products
28 are relevant, she contends that the Safeway subpoena—requesting her entire Safeway purchase

1 history of all food and non-food items over a six-year period—is harassing, invasive, and seeks
2 irrelevant information. During the hearing, plaintiff proposed a compromise whereby she would
3 subpoena Safeway herself (in lieu of Kodiak) and then produce to Kodiak the subpoenaed
4 Safeway records in redacted form, showing only her purchases of Kodiak products. Kodiak did
5 not object to this proposal, and the Court finds plaintiff’s alternative course of action to be an
6 acceptable compromise. Accordingly, the Court grants plaintiff’s motion to quash Kodiak’s
7 subpoena to Safeway, and orders plaintiff to subpoena Safeway by **July 23, 2021**. Plaintiff must
8 simultaneously provide Kodiak with a copy of the Safeway subpoena and, within seven days of
9 receiving the requested records from Safeway, plaintiff must produce to Kodiak all documents
10 reflecting her purchases of Kodiak products during the class period, if such documents exist.
11 Plaintiff may redact any portions of those documents that reflect her purchases of non-Kodiak
12 products.

13 *Food Delivery Service subpoenas.* Plaintiff’s motion to quash Kodiak’s subpoenas to
14 Amazon, Grubhub, Doordash, Maplebear, and Uber—which she challenges on relevance,
15 proportionality, and privacy grounds—is also granted. As plaintiff emphasized in her briefing and
16 reiterated during the hearing, she does not allege she *ever used* the subpoenaed food delivery
17 services for any purpose, let alone to purchase Kodiak products.⁴ See Dkt. 61 at 7; Dkt. 66 at 8.
18 Kodiak made no effort to refute (or even address) these assertions, and the Court is not persuaded
19 that the delivery service subpoenas seek relevant information that is proportional to the needs of
20 the case.

21 **IT IS SO ORDERED.**

22 Dated: July 14, 2021

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26 ALEX G. TSE
United States Magistrate Judge

27 ⁴ Tellingly, Kodiak’s subpoena cover letter to Safeway states that “plaintiff Sherris Minor shops at
28 Safeway and has bought Kodiak Cakes products from Safeway,” Dkt. 61-1, Ex. A, whereas
Kodiak’s cover letters to the subpoenaed food delivery services speculate that plaintiff “*may have*
bought Kodiak Cakes products” from them, *id.*, Exs. B–F (emphasis added).