

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 RITA C HO,

5 Plaintiff,

6 v.

7 MARK PINSUKANJANA, et al.,

8 Defendants.

Case No. 17-cv-06520-PJH (TSH)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
QUASH AND FOR A PROTECTIVE
ORDER**

Re: Dkt. Nos. 68, 69, 72

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10 Defendants filed a motion to quash and a motion for a protective order seeking to limit
11 Plaintiff's December 7, 2018 document subpoena to the Robert Tat Gallery. ECF Nos. 68 (motion
12 to quash), 69 (motion for protective order), 69-1 Ex. A (subpoena). The Court ordered the parties
13 to meet and confer, and if they could not resolve their dispute, to submit a joint letter brief. ECF
14 No. 70. On January 17, 2019, the parties filed a joint letter brief. ECF No. 72. The Court had a
15 telephonic hearing on the matter on January 23, 2019, and now issues this order.

16 In the letter brief, Defendants argued that the subpoena invades third party privacy rights
17 and seeks commercially sensitive information, attorney-client privileged communications, client
18 lists, tax returns, and so on. However, none of the five requests for production can fairly be read
19 that broadly. The five requests are all about the gallery's purchase of Fan Ho prints from the
20 Defendants, or the resale of those prints by the gallery back to the Defendants. To be sure, that
21 includes associated documents such as invoices and emails about the sales, but the requests for
22 production are simply not as broad as Defendants argued.

23 At the telephonic hearing, Defendants clarified their objections to the subpoena. First, they
24 seem to concede that sales *by them to or through* the gallery are relevant, but they contend that
25 resales *by the gallery back to the Defendants* are irrelevant. Second, they argue that the time
26 period covered by the requests (2000 to present) is overbroad. Plaintiff responds to the first point
27 by contending that resales back to the Defendants are necessary to understand the full picture of
28 the transactions at issue. As to the time period, Plaintiff argues there was an oral agreement

1 between the parties (whose terms are disputed) prior to the 2012 written contract referred to in the
2 complaint, and Plaintiff also asserts Defendants concealed their wrongdoing and that this tolled
3 the applicable statutes of limitations.

4 On the first issue, the Court agrees with the Defendants. The complaint alleges that the
5 decedent, Fan Ho, provided Defendants with thousands of photographic images and that
6 Defendants sold unauthorized copies of prints made from those images and kept all the proceeds
7 from those sales despite their obligation to pay commissions. Compl., ECF No. 7, ¶¶ 22, 42, 43,
8 46, 49. Thus, sales by the Defendants of Fan Ho prints to or through the gallery are plainly
9 relevant since those transactions are part of the alleged misconduct and form part of Plaintiff's
10 damages. But the alleged misconduct does not include the acquisition of Fan Ho prints from other
11 sources. Plaintiff argues these resales are necessary to understand if the original sales were truly
12 sales and that they are also relevant to the extent that Defendants may try to sell a particular work
13 for a second time. But the requests for documents about the original sales necessarily include
14 documents about whether they were real sales and what the terms truly were. And if Defendants
15 bought back some Fan Ho prints from the gallery and then sold them to someone else, those
16 further sales are not within the scope of this subpoena anyway. The repurchase of the prints by the
17 Defendants is not by itself relevant.

18 On the second issue, the time period of the subpoena is overbroad. Discovery into each
19 sale of a Fan Ho print to or through the gallery is principally an issue of damages. However, the
20 Court will not limit the relevant time period to the longest statute of limitations before the date the
21 complaint was filed because the statute of limitations for at least some of Plaintiff's claims starts
22 running upon discovery of the wrongdoing, *see Roley v. New World Pictures, Ltd.*, 19 F.3d 479,
23 481 (9th Cir. 1994) (copyright infringement), and there is no information before the Court about
24 when Plaintiff learned of the sales to or through the gallery.

25 Nonetheless, the time period of 2000 to the present for requests for production 1, 2, 3 and
26 5, and the unlimited time period for request for production 4 are unreasonable. The complaint
27 alleges dealings between the decedent and Defendants starting with a written agreement in 2012.
28 Compl. ¶ 41. It also alleges an oral agreement in 2014 to inventory the images in Defendants'

1 possession and work out a plan for delinquent payments owed under the 2012 written agreement.
2 *Id.* ¶ 45. The complaint alleges that wrongdoing began to occur by at least November 2013, again
3 referencing the failure to pay sums owed under the 2012 written agreement. *Id.* ¶ 44. But there is
4 no reference to an oral agreement between Fan Ho and the Defendants prior to 2012, and breach of
5 such an agreement does not form a part of any of Plaintiff's claims as pleaded. Based on the
6 allegations in the complaint, there is no justification for the subpoena to reach back earlier than
7 2012.

8 To be clear, both sides agree that there was an oral agreement prior to the 2012 written
9 agreement. Defendants allege it was entered into in or around 2000. Counterclaims, ECF No. 24,
10 ¶ 27. But in their telling, the dealings between them and the decedent all went fine under the oral
11 agreement, and it was the attempt to reduce it to writing in 2012 that led to the later breakdown in
12 the business relationship. *Id.* ¶¶ 36-48. Thus, Defendants' counterclaims do not make this
13 discovery relevant, and as noted, Plaintiff's claims as alleged also are not based on the earlier oral
14 agreement.

15 Accordingly, the Court **ORDERS** that Defendants' motions to quash and for a protective
16 order are **GRANTED IN PART AND DENIED IN PART** as follows:

- 17 1. Request for production No. 1 is limited to purchases from 2012 to the present.
- 18 2. Request for production No. 2 is quashed in its entirety.
- 19 3. Request for production No. 3 is limited to purchases from 2012 to the present and
20 excludes resales by the gallery.
- 21 4. Request for production No. 4 is limited to 2012 to the present and excludes resales by
22 the gallery.
- 23 5. Request for production No. 5 is limited to purchases from 2012 to the present and
24 excludes resales by the gallery.

25 **IT IS SO ORDERED.**

26 Dated: January 24, 2019

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28 THOMAS S. HIXSON
United States Magistrate Judge