

1 Allstate, Allstate has agreed to defend both Ms. Wang and David in the Underlying Tort Action.²
2 Docket No. 22 (“Jordan Decl.”) ¶ 6.

3 In this federal action, Allstate seeks a declaratory judgment that it owes no duty to defend or
4 indemnify Ms. Wang in the Underlying Tort Action because she is not an “insured person” under
5 David’s umbrella policy. Complaint ¶¶ 16-21. So far, and despite its counsel’s efforts, Allstate has
6 not been able to locate and serve Ms. Wang, who Allstate believes is a resident of France. Docket
7 No. 20 (“MTC”) at 4-5 (citing Docket No. 23 (“Barnes Decl.”) ¶¶ 2-13). Its previous efforts
8 fruitless, Allstate sought to obtain her location from David through two subpoenas: the first required
9 David to produce documents related to Ms. Wang’s location by January 20, 2011, and the second
10 required David to appear for deposition on February 3, 2011.³ Barnes Decl, Exs. J (the “Document
11 Subpoena”), K (the “Deposition Subpoena”).

12 David did neither. Instead, on January 18, 2011, David and Ms. Wang filed their own suit
13 against Allstate (and other defendants) in state court in which they allege that Ms. Wang is entitled
14 to coverage under David’s insurance policies. See Wang, et al. v. Allstate Ins. Co., et al., No. 1-11-
15 cv-191982, Santa Clara County Superior Court (filed January 18, 2011). This new suit, they claimed
16 in a letter to Allstate sent the next day, rendered Allstate’s subpoenas to David in this action moot,
17 so he did not produce any documents or appear for deposition. Barnes Decl., Ex. L; see also id., Exs.
18 M, N.

19 Allstate now moves for an order compelling David to comply with the subpoenas it served
20 on him. See MTC. David opposed the motion. Docket No. 27 (“Opp’n”). Pursuant to Civil Local
21 Rule 7-1(b), the Court finds the matter suitable for determination without oral argument, and the
22 April 5, 2011 hearing is vacated.

23 ² Allstate agreed to defend Ms. Wang subject to a reservation of its right to dispute coverage under
24 David’s umbrella policy. Jordan Decl. ¶ 6.

25 ³ Allstate’s Document Subpoena requested that David produce “ALL DOCUMENTS which reflect,
26 reveal, show, contain or could lead to the discovery of residence address, business address, phone
27 number (including a cellular or mobile number), email address, fax number, location or whereabouts
28 of SHUNK HUENG WANG as of the date of this subpoena.” Barnes Decl., Ex. J. And while
Allstate’s deposition subpoena did not specify any particular topics (see Barnes Decl., Ex. K), David
has never objected to the vagueness of the subpoena; in fact, based on their papers, it appears that
the parties acknowledge that Allstate wants to depose David about (1) his mother’s whereabouts and
(2) whether she resided in his household at the time of the underlying automobile accident.

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LEGAL STANDARD

Rule 45 of the Federal Rules of Civil Procedure authorizes the issuance of a subpoena commanding a non-party to attend and testify; produce designated documents, electronically stored information, or tangible things in that non-party’s possession, custody or control; or permit the inspection of premises. FED. R. CIV. P. 45(a)(1)(A)(iii). The scope of discovery through a Rule 45 subpoena is the same as that applicable to the other discovery rules. FED. R. CIV. P. 45 advisory committee’s note (1970).

In that regard, parties may obtain discovery about any nonprivileged matter that is relevant to any party’s claim or defense. FED. R. CIV. P. 26(b)(1). “Relevance under Rule 26(b)(1) is construed more broadly for discovery than for trial.” Truswal Sys. Corp. v. Hydro-Air Eng’g, Inc., 813 F.2d 1207, 1211 (Fed. Cir. 1987). “Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” FED. R. CIV. P. 26(b)(1). Discovery is not unfettered, however. A court must limit the extent or frequency of discovery if it finds that: (a) the discovery sought is unreasonably cumulative or duplicative or can be obtained from a source that is more convenient, less burdensome or less expensive; (b) the party seeking discovery has had ample opportunity to obtain the information through discovery; or (c) the burden or expense of the discovery sought outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake, and the importance of the discovery in resolving those issues. FED. R. CIV. P. 26(b)(2)(C)(i)-(iii).

DISCUSSION

David was properly served with Allstate’s subpoenas, and he has cited no legal authority for why he should not comply with them. Rather, David presents several practical reasons for why he should not have to do so.

His reasons are not compelling. First, Allstate’s subpoenas are not “moot,” as discovery has been stayed in David and Ms. Wang’s new state court suit pending a full hearing on Allstate’s motion to stay that case. See Docket No. 34 (“Martin Decl.”) ¶ 6. Second, Allstate’s subpoenas were timely served and their compliance dates were well within the fact discovery cutoff (July 25, 2011) set by Judge Ware in his scheduling order (Docket No. 16); Allstate did not fail to act diligently, as

1 David contends. Third, David’s objections to the document subpoena — contained in a January 20,
2 2011 letter from his counsel to Allstate’s counsel (Barnes Decl., Ex. M) but not mentioned in his
3 opposition brief at all — are all boilerplate, unsupported, and/or groundless.⁴ Since David has failed
4 to provide any viable reason for why he should not comply with the subpoenas, this Court will grant
5 Allstate’s motion.

6 In a supplemental brief, filed without prior approval of this Court, David also makes two
7 requests: (1) that this Court stay this action pending resolution of the Underlying Tort Action; and
8 (2) should this Court require that his deposition proceed, that this Court limit the scope of his
9 deposition to the topic of whether Ms. Wang was a member of his household for purposes of
10 insurance coverage and prevent Allstate from questioning him about Ms. Wang’s whereabouts.
11 Docket No. 35 at 3-4. This Court refuses both of his requests. As for the first one, David has not
12 directed his request to the proper decision-maker; it is for Judge Ware, as presiding judge, to decide
13 whether to stay this action. And as for the second, Ms. Wang’s location is relevant to this action and
14 Allstate has sufficiently demonstrated that, despite its efforts, it has been unable to locate through
15 other means.

18 ⁴ David objected to Allstate’s document subpoena on the following grounds: (1) “[t]he time allowed
19 for compliance is insufficient and unreasonable”; (2) “[t]he scope of the demand is overbroad,
20 burdensome, and potentially seeks documents that are subject to legal protection, are confidential,
21 and subject to laws of privacy”; (3) “[t]he demand is overbroad and burdensome, as described
22 above, and harassing, and available to Allstate and its counsel, SNR Denton US LLP, by other
23 means that impose less or no burden on non party David Wang”; (4) “[t]he demand seeks
24 documents and information not reasonably related to the merits and substance of any disputed issue
25 in the subject action”; and (5) “[a]ny need for information about [Ms. Wang], the person about
26 which documents are sought, is moot, as she has brought an action against Allstate in the Superior
27 Court of Santa Clara County, California (No. 111CV191982) to resolve the coverage issues; her
28 lawsuit includes all the reasonably necessary parties, including those not joined by Allstate in this
action.” Barnes Decl., Ex. M. Regarding (1), David had ample time (9 days) to respond to Allstate’s
subpoena requesting only documents related to Ms. Wang’s location. Regarding (2), (3), and (5),
David has never explained how the documents requested are confidential or privileged, nor has he
persuaded the Court that Allstate — which has been unable to locate Ms. Wang — has any other
less burdensome way of learning of her location, especially since discovery has been stayed in the
new state court suit. Finally, regarding (4), Ms. Wang’s location is relevant and/or would lead to the
discovery of admissible evidence in this case.

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CONCLUSION

Based on the foregoing, Allstate's motion is GRANTED. Wang shall respond to Allstate's document subpoena within 7 days from the date of this order. Wang also shall appear for his deposition within 21 days from the date of this order.⁵

IT IS SO ORDERED.

Dated: March 31, 2011



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

⁵ Within 7 days from the date of this order, the parties shall meet and confer to schedule a mutually convenient date and time to do so.

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