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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SAN DIEGO COMIC-CONVENTION,
12 etc.,
13 Plaintiff,
14 v.
15 DAN FARR PRODUCTIONS, etc., et
16 al.,
17 Defendants.

18 AND RELATED COUNTERCLAIM.

Case No.: 14CV1865 AJB (JMA)

**ORDER REGARDING JOINT
MOTIONS FOR DETERMINATION
OF DISCOVERY DISPUTE
[ECF Nos. 72, 73]**

19 Presently before the Court are two joint motions for determination of
20 discovery dispute brought by Plaintiff/Counter-Defendant San Diego Comic-Con
21 (“SDCC”) and Defendant/Counterclaimant Dan Farr Productions, LLC (“DFP”).
22 (ECF Nos. 72, 73.) The Court hereby **ORDERS** as follows:

23 **A. DFP’s Responses to SDCC’s First Set of Requests for**
24 **Production of Documents**

25 Request No. 25: This request seeks “all YouTube videos concerning” Salt
26 Lake Comic Con. DFP can only be required to produce information in its
27 possession, custody, or control. See Fed. R. Civ. P. 34(a)(1). Thus, to the
28 extent this request seeks the production of videos about Salt Lake Comic Con

1 posted by third parties, the request is overbroad. Moreover, such videos are
2 equally accessible by SDCC via YouTube as they are by DFP. As for videos
3 created or controlled by DFP, DFP has responded that its YouTube videos
4 concerning Salt Lake Comic Con are located online and are publically available.
5 DFP does not download or store an archive of YouTube videos, and states that if
6 someone at DFP wanted a copy of a YouTube video related to Salt Lake Comic
7 Con, he or she would be required to locate and access it through ordinary public
8 internet access. Jacques Decl., ¶¶ 6-7. SDCC has provided no argument or
9 reason it cannot obtain the information it seeks by accessing the videos on
10 YouTube. Therefore, SDCC's request for an order compelling DFP to produce
11 YouTube videos concerning its Salt Lake Comic Convention is denied.

12 Request Nos. 26, 40, 42, and 44: Request No. 26 seeks "communications
13 by anyone" concerning Salt Lake Comic Con including communications
14 appearing on "third party websites, on your website, weblogs, Facebook page,
15 Twitter page, or any form of social media." Request Nos. 40, 42, and 44 seek "all
16 complaints, comments or postings" concerning the 2013, 2014, and 2015 Salt
17 Lake Comic Cons, respectively, posted on DFP's website, Facebook page, or
18 Twitter feed. The Court first observes that Request No. 26, as phrased, is
19 extremely overbroad as it seeks information not in DFP's possession, custody, or
20 control, as well as information that is equally available online to both parties.
21 Moreover, communications made on sites and accounts controlled by DFP,
22 including its Salt Lake Comic Con website, Facebook page, Twitter account, and
23 other social media, are, in large part, publically available and thus equally
24 accessible online by SDCC as they are by DFP. Joint Mot. at 1-2.

25 As for communications concerning Salt Lake Comic Con that are not
26 publically available, DFP does not contend such information should not be
27 produced; rather, it argues SDCC should be required to inspect such information
28 in its offices in Salt Lake City. Joint Mot. at 10. This proposal, however, is not

1 consistent with Rule 1, which requires “the just, speedy, and inexpensive
2 determination of every action and proceeding,” nor does it recognize the current
3 and commonplace practice of producing copies of documents or electronically
4 stored information in lieu of permitting inspection of such items. See Fed. R. Civ.
5 P. 34 (Advisory Committee Notes, 2015 Amendment). SDCC has provided a
6 copy of Facebook’s procedures for accessing Facebook data, which provide that
7 a user can download the data on its account, including information hidden from
8 public view such as chats, items hidden from a user’s news feed, and messages.
9 Herrera Decl., Ex. 1. This appears to be the least burdensome, cost-efficient,
10 and orderly means for DFP to produce the information sought by SDCC.
11 Therefore, the Court orders DFP to download all communications regarding Salt
12 Lake Comic Con made on its Facebook page that are restricted from public view,
13 and produce such information to SDCC by January 13, 2017.

14 SDCC has also provided a copy of Twitter’s procedures for users to access
15 their Twitter data. Herrera Decl., Exs. 2, 4. The Court believes the only items on
16 DFP’s Salt Lake Comic Con Twitter account that are not publically accessible by
17 SDCC are “direct messages,” which are private. The Court orders DFP to
18 access, download, and produce to SDCC its direct messages made via Twitter
19 relating to Salt Lake Comic Con. DFP shall also employ any similar procedures
20 to obtain and produce information not publically accessible on its other Salt Lake
21 Comic Con social media accounts by January 13, 2017.

22 Based on the record before the Court, it does not appear possible to order
23 DFP to produce communications made on its Salt Lake Comic Con Facebook
24 page which were subsequently deleted. According to Facebook, “You will not
25 find information or content that you have deleted because this is deleted from
26 Facebook’s servers.” Herrera Decl., Ex. 1. And, according to DFP, “it does not
27 maintain records of complaints, comments or postings that are posted on the Salt
28 Lake Comic Con website, Facebook page, or Twitter feed, apart from what is

1 located online and publically available.” Resp. to Req. for Prod. Nos. 40, 42, 44.

2 **B. SDCC’s Responses to DFP’s First Set of Requests for**
3 **Production of Documents**

4 Request Nos. 40 and 50: These requests seek documents reflecting “any
5 lessening of good will or brand degradation” and “any lost revenue” experienced
6 by SDCC as a result of Salt Lake Comic Con. SDCC states it has already
7 agreed to produce some documents that fall within the scope of these requests
8 through its responses to other document requests propounded by DFP. Joint
9 Mot. at 13. For example, it has agreed to produce documents reflecting
10 complaints SDCC received from attendees of Salt Lake Comic Con who believed
11 the parties’ conventions were related, and other reports of confusion. Id.
12 Although other responsive documents apparently exist, SDCC has declined to
13 produce them because the requests seek information that will be the subject of
14 expert testimony to be disclosed at the time and in the matter set forth in the
15 scheduling order. Id. at 14-15. SDCC states, “It is unduly burdensome and
16 patently unfair . . . to demand that SDCC produce this information now before its
17 experts have even had an opportunity to determine which documents are
18 relevant to their opinions.” Id. at 15. The Court disagrees. Any nonprivileged
19 documents or ESI responsive to these requests are relevant to the claims and
20 defenses in this case and should be produced now notwithstanding that they may
21 eventually become the source of expert opinion and testimony. SDCC shall
22 produce any such documents by January 13, 2017.

23 Request Nos. 54-63: These requests seek documents reflecting
24 complaints, requests for refunds, actual refunds, and complaints or investigations
25 undertaken by any governmental entity regarding SDCC’s conventions. DFP
26 seeks this information in order to establish that complaints and negative
27 experiences can occur at any convention, including SDCC’s own conventions.
28 Joint Mot. at 10. DFP further contends it is “hypocritical” and “predatory” for

1 SDCC to seek production of these categories of documents from DFP while
2 objecting to requests for production of the same types of documents from DFP.
3 The Court wholeheartedly disagrees. The issue in this case is whether SDCC
4 was injured by reason of DFP's conduct vis-à-vis Salt Lake Comic Con. Any
5 complaints, requests for refunds, actual refunds, or investigations undertaken
6 regarding SDCC's conventions have no bearing on this issue. As these requests
7 seek information that is irrelevant to the claims and defenses in this case, DFP's
8 request for an order compelling the production of documents in response to
9 these requests is denied.

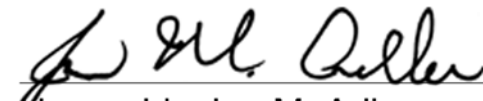
10 Meet and Confer Requirement: As set forth in the undersigned's
11 Chambers Rules:

12 The Court expects strict compliance with the meet and
13 confer requirement, as it is the experience of the Court
14 that the vast majority of disputes can be resolved by
15 means of that process. Counsel must **thoroughly** meet
16 and confer and shall make every effort to resolve all
17 disputes without the necessity of court intervention.

18 It is not clear to the Court that the parties with complied with this
19 requirement. The Court emphasizes the parties must thoroughly comply with the
20 meet and confer requirement and make every effort to resolve any disputes
21 without the necessity of court intervention.

22 **IT IS SO ORDERED.**

23 Dated: January 6, 2017

24 
25 Honorable Jan M. Adler
26 United States Magistrate Judge
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