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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANIELLE MAILHOIT,)	No. CV 11-03892 DOC (SSx)
)	
Plaintiff,)	ORDER GRANTING IN PART AND DENYING
)	IN PART DEFENDANT'S MOTION TO
v.)	COMPEL FURTHER RESPONSES TO
)	DEFENDANT'S REQUEST FOR PRODUCTION
HOME DEPOT U.S.A., INC., et)	REGARDING SOCIAL NETWORKING SITE
al.,)	MATERIAL (SET ONE)
)	
Defendants.)	(Dkt. No. 105)
)	
)	

I.
INTRODUCTION

On August 7, 2012, Defendant filed a Motion to Compel Further Responses to Defendant's Request for Production of Documents (Set One). (Dkt. No. 105). The parties filed a Joint Stipulation concurrently with the Motion pursuant to Local Rule 37, ("Jt. Stip."), including the declarations of Elizabeth A. Falcone in support of the Motion, (Dkt. No. 107), and Kenneth Helmer in opposition to the Motion. (Dkt. No. 110).

1 The Court held a hearing on the Motion on August 28, 2012. For the
2 reasons stated below, the Motion is GRANTED IN PART and DENIED IN PART.

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4 **II.**

5 **THE PARTIES' CONTENTIONS**

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7 Defendant requests an Order compelling Plaintiff to produce
8 documents responsive to Requests for Production Nos. 46-49, which
9 collectively seek:

10
11 (1) Any profiles, postings or messages (including status updates,
12 wall comments, causes joined, groups joined, activity streams,
13 blog entries) from social networking sites from October 2005
14 (the approximate date Plaintiff claims she first was
15 discriminated against by Home Depot), through the present,
16 that reveal, refer, or relate to any emotion, feeling, or
17 mental state of Plaintiff, as well as communications by or
18 from Plaintiff that reveal, refer, or relate to events that
19 could reasonably be expected to produce a significant emotion,
20 feeling, or mental state;

21
22 (2) Third-party communications to Plaintiff that place her own
23 communications in context;

24
25 (3) All social networking communications between Plaintiff and any
26 current or former Home Depot employees, or which in any way
27 refer [or] pertain to her employment at Home Depot or this
28 lawsuit; or

1 (4) Any pictures of Plaintiff taken during the relevant time
2 period and posted on Plaintiff's profile or tagged¹ or
3 otherwise linked to her profile.
4

5 (Jt. Stip. at 2).²
6

7 Defendant argues that it is entitled to Plaintiff's communications
8 posted on social networking sites ("SNS") such as Facebook and LinkedIn
9 to test Plaintiff's claims about her mental and emotional state. (Id.
10 at 1). According to Defendant, Plaintiff testified at her deposition
11 that she suffers from post traumatic stress disorder, depression and
12 isolation, and has cut herself off from communication with friends
13 because of Defendant's alleged wrongdoing. (Id.). Defendant argues
14 that SNS communications are particularly likely to contain relevant
15 information because "in this day and age, many communications between
16 friends and/or about an individual's emotional state are communicated
17 via social media." (Id.). Defendant states that it has evidence
18 suggesting that Plaintiff maintains Facebook and LinkedIn accounts and
19

20 ¹ "'Tagging' is the process by which a third party posts a picture
21 and links people in the picture to their profiles so that the picture
22 will appear in the profiles of the person who 'tagged' the people in the
23 picture, as well as on the profiles of the people who were identified in
the picture." EEOC v. Simply Storage Mgmt., LLC, 270 F.R.D. 430, 436
n.3 (S.D. Ind. 2010).

24 ² As written, Requests for Production Nos. 46-49 appear to require
25 production of the entire contents of Plaintiff's SNS accounts and are
26 overbroad, as Defendant appears to have recognized. (See Jt. Stip. at
27 4, 15-16, 26 & 37). The instant Motion is limited to a request for an
28 Order compelling production of only the four categories of documents
described above, which arguably overlap several different requests for
production as originally written. (See Jt. Stip. at 2, 9). The Court
will therefore address these four categories instead of the four
original production requests that they supersede.

1 that publicly available information from those sites undermines
2 Plaintiff's claims of isolation and loss of friendship. (Id. at 8).

3

4 Plaintiff acknowledges that "social media is discoverable to the
5 extent it is adequately tailored to satisfy the relevance standard," but
6 argues that Plaintiff's requests are impermissibly overbroad. (Id. at
7 11). According to Plaintiff, rather than tailor its requests, Defendant
8 seeks "to rummage through the entirety of [Plaintiff's] social media
9 profiles and communications in the hope of concocting some inference
10 about her state of mind." (Id. at 3). Plaintiff further argues that
11 the requested discovery is unduly burdensome because she has already
12 testified about her emotional distress, as well as produced or agreed to
13 produce "documents and communications pertaining to her emotional
14 distress damages going as far back as 2004," (id.), which Plaintiff
15 maintains constitute "sufficiently relevant responses." (Id. at 14).
16 In particular, Plaintiff asserts that she has already responded to
17 requests for her communications with sixteen different current or former
18 Home Depot employees, which Plaintiff contends "presumably" include her
19 communications via social media. (Id.).

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1 III.

2 DISCUSSION

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4 A. Discovery Requests For Social Networking Site Content Must Be
5 Reasonably Calculated To Lead To The Discovery Of Admissible
6 Evidence And Describe The Information To Be Produced With
7 "Reasonable Particularity"
8

9 A party may "obtain discovery regarding any nonprivileged matter
10 that is relevant to any party's claim or defense -- including the
11 existence, description, nature, custody, condition, and location of any
12 documents or other tangible things." Fed. R. Civ. P. 26(b)(1).
13 Relevancy is construed broadly to encompass "any matter that bears on,
14 or that reasonably could lead to other matter[s] that could bear on any
15 issue that is or may be in the case." Chavez v. DaimlerChrysler Corp.,
16 206 F.R.D. 615, 619 (S.D. Ind. 2002) (internal quotations omitted). The
17 Supreme Court has instructed that the limitation on discovery to
18 "relevant" materials must be "firmly applied," as "the discovery
19 provisions, like all of the Federal Rules of Civil Procedure, are
20 subject to the injunction of Rule 1 that they 'be construed to secure
21 the just, speedy, and inexpensive determination of every action.'" Herbert v. Lando,
22 441 U.S. 153, 177, 99 S. Ct. 1635, 60 L. Ed. 2d 115
23 (1979) (quoting Fed. R. Civ. P. 1) (emphasis in original).

24
25 Pursuant to Federal Rule of Civil Procedure 34(a), a party may
26 request documents "in the responding party's possession, custody, or
27 control." Rule 34(b) requires the requesting party to describe the
28 items to be produced with "reasonable particularity" and specify a

1 reasonable time, place, and manner for the inspection. Fed. R. Civ. P.
2 34(b)(1-2). "The test for reasonable particularity is whether the
3 request places a party upon 'reasonable notice of what is called for and
4 what is not.'" Bruggeman ex rel. Bruggeman v. Blagojevich, 219 F.R.D.
5 430, 436 (N.D. Ill. 2004) (quoting Parsons v. Jefferson-Pilot Corp., 141
6 F.R.D. 408, 412 (M.D. N.C. 1992)); see also Regan-Touhy v. Walgreen Co.,
7 526 F.3d 641, 649-50 (10th Cir. 2008) ("Though what qualifies as
8 'reasonabl[y] particular' surely depends at least in part on the
9 circumstances of each case, a discovery request should be sufficiently
10 definite and limited in scope that it can be said 'to apprise a person
11 of ordinary intelligence what documents are required and [to enable] the
12 court . . . to ascertain whether the requested documents have been
13 produced.'" (quoting Wright & Miller, 8A Federal Practice and Procedure
14 § 2211, at 415). "'All-encompassing demands' that do not allow a
15 reasonable person to ascertain which documents are required do not meet
16 the particularity standard of Rule 34(b)(1)(A)." In re Asbestos
17 Products Liability Litigation (No. VI), 256 F.R.D. 151, 157 (E.D. Pa.
18 2009).

19
20 The Court recognizes that social networking site content may be
21 subject to discovery under Rule 34. "Generally, SNS content is neither
22 privileged nor protected by any right of privacy." Davenport v. State
23 Farm Mut. Auto. Ins. Co., 2012 WL 555759 at *1 (M.D. Fla. Feb. 21,
24 2012). However, "[d]iscovery of SNS requires the application of basic
25 discovery principles in a novel context." Simply Storage Mgmt., 270
26 F.R.D. at 434. In particular, several courts have found that even
27 though certain SNS content may be available for public view, the Federal
28 Rules do not grant a requesting party "a generalized right to rummage at

1 will through information that [the responding party] has limited from
2 public view" but instead require "a threshold showing that the requested
3 information is reasonably calculated to lead to the discovery of
4 admissible evidence." Tompkins v. Detroit Metropolitan Airport, 278
5 F.R.D. 387, 388 (E.D. Mich. 2012); see also Davenport, 2012 WL 555759 at
6 *1 ("A request for discovery [of SNS content] must still be tailored
7 . . . so that it 'appears reasonably calculated to lead to the discovery
8 of admissible evidence.'" (quoting Fed. R. Civ. P. 26(b)(1));
9 Mackelprang v. Fidelity Nat'l Title Agency of Nevada, Inc., 2007 WL
10 119149 at *7 (D. Nev. Jan 9, 2007) ("Ordering . . . release of all of
11 the private email messages on Plaintiff's Myspace.com internet account
12 would allow Defendants to cast too wide a net for any information that
13 might be relevant and discoverable.").

14

15 Where discovery requests seek SNS communications in connection with
16 claims involving the responding party's mental or emotional health,
17 several courts have also found that "the simple fact that a claimant has
18 had social communication is not necessarily probative of the particular
19 mental and emotional health issues in the case. Rather, it must be the
20 substance of the communication that determines relevance." Simply
21 Storage Mgmt., 270 F.R.D. at 435; Holter v. Wells Fargo and Co., 281
22 F.R.D. 340, 344 (D. Minn. 2011). As one court reasoned, "To be sure,
23 anything that a person says or does might in some theoretical sense be
24 reflective of her emotional state. But that is hardly justification for
25 requiring the production of every thought she may have reduced to
26 writing, or, indeed, the deposition of everyone she may have talked to."
27 Rozell v. Ross-Holst, 2006 WL 163143 at *3-4 (S.D. N.Y. Jan. 20, 2006).
28 Thus, while a party may conduct discovery concerning another party's

1 emotional state, the discovery itself must still comply with the general
2 principles underlying the Federal Rules of Civil Procedure that govern
3 discovery.

4
5 "A court can limit discovery if it determines, among other things,
6 that the discovery is: (1) unreasonably cumulative or duplicative; (2)
7 obtainable from another source that is more convenient, less burdensome,
8 or less expensive; or (3) the burden or expense of the proposed
9 discovery outweighs its likely benefit." Favale v. Roman Catholic
10 Diocese of Bridgeport, 235 F.R.D. 553, 558 (D. Conn. 2006) (internal
11 citations and quotation marks omitted). "The district court enjoys
12 broad discretion when resolving discovery disputes, which should be
13 exercised by determining the relevance of discovery requests, assessing
14 oppressiveness, and weighing these factors in deciding whether discovery
15 should be compelled." Id. (internal citations and quotation marks
16 omitted).

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18 **B. The Majority Of Defendant's Social Media Requests Fail Rule**
19 **34(b)(1)(A)'s Reasonable Particularity Requirement And Therefore**
20 **Are Not Reasonably Calculated To Lead To The Discovery Of**
21 **Admissible Evidence**

22

23 The Court finds that three of the four categories of SNS
24 communications sought by Defendant fail Rule 34(b)(1)(A)'s "reasonable
25 particularity" requirement, and, as such, are not reasonably calculated
26 to lead to the discovery of admissible evidence. Consequently, the
27 Court DENIES Defendant's Motion with respect to Categories 1, 2 and 4 of
28 the revised requests. (See Jt. Stip. at 2).

1 Category 1 seeks any "profiles, postings or messages (including
2 status updates, wall comments, causes joined, groups joined, activity
3 streams, blog entries)" from any social networking site from October
4 2005 through the present "that reveal, refer, or relate to any emotion,
5 feeling, or mental state of Plaintiff, as well as communications by or
6 from Plaintiff that reveal, refer, or relate to events that could
7 reasonably be expected to produce a significant emotion, feeling, or
8 mental state." (Jt. Stip. at 2). Plaintiff has placed her emotional
9 state at issue in this action and it is conceivable that some SNS
10 communications may support or undermine her claims of emotional
11 distress. Nonetheless, the extremely broad description of the material
12 sought by this category fails to put a "reasonable person of ordinary
13 intelligence" on notice of which specific documents or information would
14 be responsive to the request, and therefore fails to satisfy Rule
15 34(b)(1)(A)'s requirement that production requests be stated with
16 reasonable particularity.

17

18 Even if the first part of this category, which seeks communications
19 relating to "any emotion," could be understood to encompass only
20 communications containing specific emotive words (which the request does
21 not identify), the category would still arguably require the production
22 of many materials of doubtful relevance, such as a posting with the
23 statement "I hate it when my cable goes out." The second part of the
24 category, which seeks communications relating to "events" that could
25 "reasonably be expected to produce a significant emotion," is similarly
26 vague and overbroad. Arguably, watching a football game or a movie on
27 television is an "event" that may produce some sort of "significant
28 emotion," but it is unclear whether Plaintiff would be required to

1 produce messages relating to such activities. Without more specific
2 guidance, Category 1 is not "reasonably particular." The language of
3 the request does not provide sufficient notice to the responding party
4 of what should be considered responsive material. Defendant fails to
5 make the "threshold showing" that the request at issue is reasonably
6 calculated to lead to the discovery of admissible evidence.

7

8 Category 2, which requests "third-party communications to Plaintiff
9 that place her own communications in context," also fails. To the
10 extent that the reference to Plaintiff's "own communications" means
11 communications regarding "emotions" produced in response to Category 1,
12 Category 2 is entirely predicated on Category 1 and fails for the same
13 vagueness concerns discussed above. Apart from these deficiencies, even
14 if the universe of documents referred to as Plaintiff's "own
15 communications" could be reasonably circumscribed and understood, the
16 phrase "in context" is vague and also fails to provide notice to
17 Plaintiff of which specific third party communications are and are not
18 called for by the request.

19

20 Finally, Category 4, which requests "any pictures of Plaintiff
21 taken during the relevant time period and posted on Plaintiff's profile
22 or tagged or otherwise linked to her profile," is impermissibly
23 overbroad. Defendant fails to make the threshold showing that every
24 picture of Plaintiff taken over a seven-year period and posted on her
25 profile by her or tagged to her profile by other people would be
26 considered relevant under Rule 26(b)(1) or would lead to admissible
27 evidence. See Simply Storage Mgmt., 270 F.R.D. at 436 ("[A] picture
28 posted on a third party's profile in which a claimant is merely

1 'tagged' [] is less likely to be relevant.") (footnote omitted). "All
2 encompassing" production requests do not meet Rule 34(b)(1)(A)'s
3 reasonably particularity requirement, In re Asbestos Products Liability
4 Litigation (No. VI), 256 F.R.D. at 157, and discovery rules do not allow
5 a requesting party "to engage in the proverbial fishing expedition, in
6 the hope that there might be something of relevance in [the producing
7 party's] Facebook account." Tompkins, 278 F.R.D. at 388 (emphasis in
8 original).³

9
10 In contrast, Category 3, which requests all SNS communications
11 "between Plaintiff and any current or former Home Depot employees, or
12 which in any way refer . . . to her employment at Home Depot or this
13 lawsuit," adequately places Plaintiff on notice of the materials to be
14 produced and is reasonably calculated to lead to the discovery of
15 admissible evidence. Plaintiff notes that she has already responded to
16 requests for communications between Plaintiff and sixteen different
17 current or former Home Depot employees, which "would presumably include

18
19 ³ The Court acknowledges that Categories 1, 2 and 4 are closely
20 modeled after three categories of SNS communications that the court in
21 Simply Storage Mgmt. ordered produced. See Simply Storage Mgmt., 270
22 F.R.D. at 436. That court recognized, however, that the categories were
23 not "drawn . . . with the precision litigants and their counsel
24 typically seek." Id. The court admonished counsel to make "judgment
25 calls" "in good faith" pursuant to the guidelines articulated by the
26 court in carrying out the order and stated that the requesting party
27 could challenge the production if it believed it fell short of those
28 guidelines. Id. These admonishments suggest that the court itself was
concerned about the parties' ability to carry out the order. As noted
in the discussion above, this Court finds that the requests suggested in
Simply Storage Mgmt. are overbroad and vague. These requests fail to
provide enough direction to the responding party to comply with Rule
34(b)(1)(A). Accordingly, this Court declines to compel responses to
the discovery modeled on requests described in the Simply Storage Mgmt.
case.

1 communications via social media." (Jt. Stip. at 36). Plaintiff's
2 responses to those requests indicate that a search for the
3 communications described in Category 3 is both technically feasible and
4 not overly burdensome. (See, e.g., Helmer Decl., Exh. A at 8-9).
5 Plaintiff did not provide argument or evidence to the contrary in
6 opposition to the current motion. Consequently, the Court GRANTS
7 Defendant's Motion with respect to Category 3.

8
9 **IV.**

10 **CONCLUSION**

11
12 For the foregoing reasons, Defendant's Motion to Compel Further
13 Responses to Defendant's Request for Production of Documents (Set One)
14 is GRANTED IN PART and DENIED IN PART. Defendant's Motion is DENIED
15 with respect to Categories 1, 2 and 4. Defendant's Motion is GRANTED
16 with respect to Category 3. Plaintiff is ORDERED to serve a written
17 response and to produce documents responsive to Category 3, if any
18 exist, within fourteen (14) days of the date of this Order.

19
20 IT IS SO ORDERED.

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22 DATED: September 7, 2012

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24 /S/
25 SUZANNE H. SEGAL
26 UNITED STATES MAGISTRATE JUDGE
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