

<b>Paris Enters. USA, Inc. v Unique Designs, Inc.</b>
2020 NY Slip Op 30325(U)
January 8, 2020
Supreme Court, New York County
Docket Number: 656084/2017
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. GERALD LEBOVITS PART IAS MOTION 7EFM**

*Justice*

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INDEX NO. 656084/2017

PARIS ENTERPRISES USA, INC.,  
Plaintiff,

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003 004

- v -

UNIQUE DESIGNS, INC., KIRAN JEWELS, INC.,  
SDIL, INC.

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to COMPEL DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113

were read on this motion to QUASH SUBPOENA.

*Akerman LLP*, New York, NY (Scott M. Kessler and Jamie B. Shyman of counsel), for plaintiff.  
*Archer & Greiner, P.C.*, New York, NY (Michael J. Lauricella and Patrick Papalia of counsel),  
for defendants.

Gerald Lebovits, J.:

These motions arise out of a dispute between the parties in this contract action that largely centers around how much discovery defendants (Unique Designs, Inc., Kiran Jewels, Inc., and SDIL, Inc.) should have to provide plaintiff (Paris Enterprises USA, Inc.).

Defendants sell and distribute jewelry. In September 2016, defendant Unique hired Paris to provide sales and marketing services, pursuant to a two-year written agreement between them. By September 2017, however, the relationship between Paris and Unique had broken down: Paris accused Unique of breaching the terms of the contract and failing to pay Paris for work it had properly performed; Unique accused Paris of performing incompetent work that alienated Unique's customers in violation of Paris's contractual obligations.

Paris brought this action in December 2017, asserting claims for breach of contract, anticipatory contractual repudiation, and unjust enrichment. In support of its breach-of-contract claim, Paris alleged among other things that Unique, Kiran, and SDIL were alter egos of one another and that the three defendants had improperly booked sales facilitated by Paris to avoid

paying Paris commissions that Unique owed under the contract. Paris also alleged that defendants had asked Paris to perform various extra-contractual services, both for the customers of defendants identified in the contract and other entities, and that defendants had refused to compensate Paris properly for those extra-contractual services.

In June 2018, this court granted defendants' motion to dismiss in part and denied it in part. During the ensuing written-discovery process, substantial disputes developed between the parties that they were unable to resolve notwithstanding repeated meet-and-confer sessions. Paris moved to compel, alleging that defendants' discovery responses were deficient in a large number of respects; defendant cross-moved for a protective order and to compel Paris to supplement its responses to a smaller number of discovery requests. That motion and cross-motion is motion sequence 003.

Shortly afterward—before motion sequence 003 had even been argued before this court—Paris served subpoenas on a number of defendants' customers, seeking some of the same information it was pursuing from defendants directly through motion sequence 003. Defendants wrote to its customers directing them not to respond to the subpoena, and moved to quash the subpoena under CPLR 2304 and for a protective order under CPLR 3103. That motion is motion sequence 004.

Motion sequences 003 and 004 are consolidated here for disposition.

## **I. Paris's Motion to Compel and Defendants' Cross-Motion**

In motion sequence 003, Paris moves to compel defendants to supplement their responses to Paris's document requests and interrogatories; and defendants cross-move for a protective order and to compel Paris to supplement its responses to certain of defendants' discovery requests.

The parties' briefing on the motion and cross-motion focuses on certain larger-scale disagreements over the extent to which defendants have responded and should be required to respond to Paris's discovery requests; those disagreements are discussed in § I.A, *infra*. Paris also contends—and defendants dispute—that defendants should be required to provide additional materials and information in response to particular itemized discovery requests. That disagreement is discussed in § I.B, *infra*. The parties' more limited disagreement about the outstanding discovery requests made by defendants of Paris is discussed in § I.C, *infra*.

### **A. The Parties' Larger-Scale Discovery Disagreements**

#### **1. Updated general ledger for Unique**

Paris asks this court to direct Unique to provide additional information about Unique's sales to the customers identified in Schedule A of the contract between Paris and Unique (the "customer accounts"). Paris contends that Unique is required to provide it with a general ledger with sales information for the customer accounts for the full term of the contract between Paris and Unique (*i.e.*, through September 2018), but that Unique has produced a ledger only for the

period September 1, 2016, to September 30, 2017. (*See* NYSCEF No. 66, at 16-17.) Unique does not dispute that Paris is entitled to production of a general ledger covering the full contract term. Instead, Unique contends that it has already produced an updated ledger for the remaining period between September 2017 and September 2018. (*See* NYSCEF No. 73, at 8-9.) Paris asserts, though, that this updated ledger “does not appear to be similar in form to the other general ledgers produced by Defendants”: for example, it assertedly “omit[s] columns indicating ‘sales,’ ‘net sales’ and ‘payment.’” (NYSCEF No. 78, at 5.)

To the extent that the October 2017-September 2018 general ledger produced by Unique as document D002440 does set out different categories of information from Unique’s other, earlier-produced general ledger, Unique must within 30 days produce a general ledger for the period October 1, 2017, to September 30, 2018, that contains the same categories of information as the other ledgers. To the extent that the general ledger produced as D002440 contains the same information, but merely labels it differently, Unique must within 30 days provide Paris with a full, detailed explanation of these labeling differences, to enable Paris to understand the relationship between this ledger and the earlier ledger.

## **2. General ledgers from Kiran and SDIL**

The parties also dispute whether defendants should be required to produce equivalent customer-account general ledgers, covering the full contract term, for defendants Kiran and SDIL. Defendants have declined to produce such ledgers. Defendants take the position that Paris’s contract was with Unique in particular, not all three defendants, and therefore that sales information from Kiran and SDIL is not relevant to Paris’s claims against Unique.

Paris’s complaint alleges, however, that (i) Unique, Kiran, and SDIL were alter egos of one another, such that defendants cannot (as they attempt) meaningfully distinguish between sales of Unique and sales of Kiran and SDIL; (ii) sales made in reality by Unique could in some circumstances end up booked as sales of Kiran or SDIL; and (iii) Paris was asked by the principals of the three defendants to provide marketing and sales services to Kiran and SDIL on the same basis as Paris’s services for Unique. (*See* Am. Compl., NYSCEF No. 24, at ¶¶ 34-45.) These allegations sufficiently establish, at least for purposes of discovery, that the sales information contained in general ledgers for Kiran and SDIL is relevant to Paris’s breach-of-contract claims against Unique.

Counsel for defendants represented in a letter to counsel for Paris that Unique, Kiran, and SDIL merged effective March 30, 2018. (*See* NYSCEF No. 64, at 1.) Defendants therefore must within 30 days produce general ledgers for Kiran and SDIL (containing the same information as the general ledger already produced by Unique) for the period September 1, 2016, to March 30, 2018.

## **3. Underlying sales data for the Unique general ledger**

Paris argues that in addition to the general ledger for the customer accounts, Unique should be required to provide it with the sales documentation (invoices, credit memorandums, and the like) underlying that ledger. This court is not persuaded.

Paris advances two rationales for its position. *First*, Paris contends that the contract between Paris and Unique provides for compensation to Paris as a percentage of sales to the customers identified in Schedule A to the contract, but the Unique general ledger produced to Paris indicates that Unique calculated Paris's commissions "on the basis of 'payments' from the Customer Accounts instead of 'sales'" to those accounts. (NYSCEF No. 66, at 18 [emphasis added].) Paris claims it is entitled to seek the underlying documentation to reconcile the calculation of "sales" and "payments." But determining whether the difference between "sales to customers" and "payments from customers" is one of substance or merely of terminology, and (should a substantive difference exist) obtaining information on "sales to customers," is more appropriately addressed through supplemental interrogatories and document requests limited to that specific issue. Paris does not explain why it should instead be entitled to force Unique to produce thousands of invoices and other documents to achieve the same goal—particularly since Paris has not identified any instance of inaccurate or deceptive information in the general ledger Unique has already produced.

*Second*, Paris contends that because of the (asserted) intermingling of funds and customers among Unique, Kiran, and SDIL, Paris cannot be sure that the Unique general ledger alone captured all sales for which Paris is entitled to commissions. (See NYSCEF No. 78, at 6-7.) This argument is academic in light of this court's conclusion, discussed above, that defendants must produce general ledgers for Kiran and SDIL as well.

This court concludes that, on this record, the burden that would be imposed upon Unique to identify and produce every document underlying its general ledger outweighs Paris's need for those documents. The court therefore grants defendants' cross-motion for a protective order with respect to Paris's demand that Unique produce all of the documents underlying Unique's general ledger. (See *Ambac Assurance Corp. v Countrywide Home Loans, Inc.*, 118 AD3d 644, 645 [1st Dept 2014].) Should Paris wish to propound supplemental discovery requests to address its concerns about Unique's accounting methods as reflected in the already-produced general ledger, Paris may do so within 30 days.

#### **4. Sales information from the "other customer accounts"**

Paris also claims that in addition to the three customer-account general ledgers discussed above, defendants should each be required also to generate and produce general ledgers for sales to a set of additional customers *not* identified in the contract (the "other customer accounts"). (See NYSCEF No. 66, at 18-19.) Paris contends that (i) the complaint alleges that Paris provided extra-contractual services for defendants, related to the other customer accounts, for which Paris is entitled to compensation under its unjust-enrichment claim; and (ii) the sales information pertaining to those accounts is relevant to this unjust-enrichment claim because "the data and documents will reveal the degree to which Defendants unjustly benefitted from Paris' marketing and other extra-contractual efforts." (NYSCEF No. 8-9.) This court concludes, however, that Paris has not established that the other-customer-account general ledgers that Paris seeks would be relevant to its unjust-enrichment claim. This court therefore grants defendants' cross-motion for a protective order as to the demand for these additional general ledgers.

Paris's claim with respect to the other customer accounts is, in essence, that at defendants' request Paris performed certain services relating to those accounts, and therefore that "[e]quity requires that plaintiff recover for its services in quantum meruit in order to avoid the unjust enrichment of defendants at its expense." (*Curtis Props. Corp. v Greif Cos.*, 212 AD2d 259, 266 [1st Dept 1995]; see NYSCEF No. 24, at ¶¶ 49-52, 56, 61, 71-78.) But the measure of a party's compensation in quantum meruit is "the reasonable value of the services performed"—not, as Paris argues, the extent by which defendants benefitted from those services. (*Freedman v Pearlman*, 271 AD2d 301, 304 [1st Dept 2000]; accord *Aquino v Douglas Elliman Realty, LLC*, 155 AD3d 472, 473 [1st Dept 2017].)

Paris suggests in passing that its claim sounds only in unjust-enrichment and not in quantum meruit. (See NYSCEF No. 78, at 10 n 5.) And it quotes language from a 1988 decision of the U.S. District Court for the Southern District of New York stating that "damages for unjust enrichment are calculated by reference to the actual value of the benefit to the defendant and not the market value of the services rendered by plaintiff." (*Id.* at 9, citing *Precision Testing Labs., Ltd. v Kenyon Corp. of Am.*, 1988 WL 34825, at \*2 [SDNY April 6, 1988].) This court is skeptical that one could distinguish Paris's claim here from one sounding in quantum meruit. But even if such a distinction were to exist, the court still would not agree that Paris has demonstrated that the measure of its damages would be defendants' sales revenue garnered using Paris's services, rather than the reasonable value of the services themselves.

To the contrary, "[r]ecovery on a claim premised upon quasi-contract *or* unjust enrichment is limited to the reasonable value of the services rendered by the plaintiff." (*Collins Tuttle & Co. v Leucadia, Inc.*, 153 AD2d 526, 526 [1st Dept 1989] [emphasis added]<sup>1</sup>; accord *DG&A Mgt. Servs., LLC v Securities Indus. Assn Compliance & Legal Div.*, 78 AD3d 1316, 1318 [3d Dept 2010] [noting that the "proper measure of plaintiff's damages" for both quantum-meruit *and* unjust-enrichment claims "is the reasonable value of the services performed for defendant"]; *Davis v Cornerstone Telephone Co., LLC*, 78 AD3d 1263, 1264 [3d Dept 2010] [same].) Recent decisions of the Court of Appeals also have emphasized that a plaintiff's

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<sup>1</sup> This court does not agree with Paris's contention that *Collins Tuttle*'s holding rests on "a special circumstance applicable to real-estate brokerage commissions." NYSCEF No. 78, at 10. *Collins Tuttle* dealt with a renting agent for certain premises who prepared a sales brochure that proved helpful in bringing about the sale of the premises, but who did not actually broker the sale itself. The court held that (i) plaintiff had stated a claim for unjust enrichment; (ii) plaintiff's recovery was limited to the reasonable value of its services; and (iii) because the record indicated that plaintiff's services related to the sale was not sufficient to elevate plaintiff "to the status of co-broker on the transaction," plaintiff was "limited to recovery of the value of the brochure . . . which it prepared," rather than half of the brokerage commission paid on the sale. 153 AD2d at 526. That is, the court in *Collins Tuttle* was clear that plaintiff's damages in unjust enrichment were limited to the reasonable value of plaintiff's services; the nature of the brokerage commission was relevant only to the issue of determining that value, rather than creating a special rule that limits unjust-enrichment damages in the particular context of real estate.

recovery in unjust enrichment is limited to that increment of defendant's overall gains accruing to defendant *at plaintiff's expense*, in particular.<sup>2</sup>

Thus, whether one treats Paris's claim as sounding in unjust enrichment or quantum meruit, Paris's recovery (if any) is measured only by the reasonable value of the sales, marketing, and other services that it provided to defendants with respect to the "other customer accounts." On this record, Paris has not established (or even sought to establish) that the reasonable value of its extra-contractual services for the other customer accounts is a share of defendants' sales revenue. It is not sufficient for this purpose that Paris's compensation for the *contractual* services it provided defendants for the customer accounts included a sales commission, absent a showing that the contractual and extra-contractual services were sufficiently similar that they should be valued by the same measure. (*See Gerald v Melamid*, 212 AD2d 575, 576 [2d Dept 1995] [holding that an unjust-enrichment plaintiff could not establish the reasonable value of extra-contractual consulting services by relying on a monthly fee he had been paid for a previous consulting engagement "in view of his failure to establish that he performed the same tasks for the defendant as he had performed in his previous position"].)

Since Paris has not established that the measure of its recovery in unjust enrichment is a share of defendants' sales revenue from the other customer accounts, the documentation of defendants' sales to those accounts is not relevant to Paris's unjust-enrichment claim. Paris is therefore not entitled at this time to require defendants to produce those sales-related documents in discovery.

## B. Specific Discovery Requests

Paris also seeks to compel defendants to supplement their responses to particular document requests and interrogatories. (*See* NYSCEF No. 66, at 1 & n 2.) The court's conclusions on each of these discovery requests are set forth below.

### 1. Paris's document requests

**Document Request Nos. 7-9:** In the absence of any contrary suggestion from defendants, this court assumes for now that the product-specification services alleged in Paris's complaint pertained to the particular jewelry collections identified in these requests. Nonetheless, as framed, these requests are overly broad: they appear on their face to encompass materials unrelated to any product-specification work done by Paris, and Paris has not attempted to establish the relevance of non-Paris related "documents, correspondence and communications

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<sup>2</sup> *E.J. Brooks Co. v Cambridge Security Seals* (31 NY3d 441, 456-457 [2018]) held that a plaintiff may not recover in unjust enrichment "the costs that the defendant avoided due to its unlawful activities," as opposed to the value of what plaintiff lost due to those activities. Similarly, in *IDT Corp. v Morgan Stanley Dean Witter & Co.*, (12 NY3d 132, 142 [2009]), the Court held that plaintiff could not recover in unjust enrichment the value of fees that defendant allegedly earned through misappropriating plaintiff's confidential information, because plaintiff had not paid those fees.

relating to product specifications.” Defendants therefore need only provide Paris with documents, correspondence, and communications concerning or relating to Paris’s provision of services with respect to product specifications for the three identified jewelry collections in Request Nos. 7-9.

Contrary to defendants’ objection, these requests are limited in time by Instruction No. 10 in Paris’s document request to the “period covered by the pleadings.” (NYSCEF No. 51, at 7.) Also, in light of the so-ordered confidentiality agreement between the parties, that the requests “seek[] confidential and proprietary information” (NYSCEF No. 53, at 7) is not a valid objection—at least in the absence of any explanation why that agreement is somehow not sufficient protection for defendants’ interests in the confidentiality of these materials.

**Document Request No. 12:** This court agrees with defendants that this request is not reasonably calculated to lead to the discovery of admissible evidence. The request, as currently framed, extends far beyond defendants’ alleged efforts to prevent Paris from managing, servicing, or receiving commissions from sales to the “customer accounts,” or to transfer customer accounts to Paris. This is not to say that Paris is barred from pursuing discovery related to those alleged efforts—or even that this particular discovery request is *necessarily* overbroad. At the very least, though, Paris has not yet articulated to this court why all of the materials encompassed by this broad request would bear on the allegations to which the request pertains. Nor does this court have a workable basis itself to prune back the request.

**Document Request Nos. 13-14:** As discussed above (*see supra* at Subsection I.A.3), Paris is not currently entitled to require defendants to produce the sales data for the “customer accounts” that underlies defendants’ general ledgers, with the exception of the limited sample of underlying data as chosen by Paris. To the extent that these requests would require production of additional sales information beyond the general ledgers and the sales-data sample, defendants need not now respond to the requests.

**Document Request Nos. 15-17:** For the same reason as Request No. 12, this court agrees with defendants that they should not have to respond to these requests because the requests are overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

**Document Request Nos. 19-20:** As discussed above (*see supra* at Subsection I.A.4), Paris is not currently entitled to require defendants to produce sales data for the “other customer accounts.” Defendants need not respond to these requests.

**Document Request No. 22:** This document request is overly broad for the same reasons as Request Nos. 12 and 15-17. Again: the court does not intend here to rule out the possibility that Sagnil Khara’s potential involvement in sales to the customer accounts is connected to defendants’ alleged efforts to prevent Paris from managing/selling to the customer accounts. But given that Paris has not articulated and supported such a connection, this court declines at this time to require defendants to produce documents responsive to this request.

**Document Request No. 23:** This request is overly broad for the same reason as Request No. 22.

**Document Request Nos. 25-26:** These requests are overly broad for the same reasons as Request Nos. 22 and 23.

**Document Request No. 28:** As framed, this request is overly broad and burdensome: on its face, it encompasses materials extending well beyond Paris's alleged provision of services to "facilitat[e] the transition of JSN customer accounts" to defendants, which is Paris's articulated basis for propounding this request. (NYSCEF No. 56, at 6.)

**Document Request No. 30:** This request is overly broad for the same reason as Request No. 22.

**Document Request Nos. 31-33:** Given Paris's alter-ego allegations pertaining to Kiran and SDIL, and the relevance of those allegations for Paris's breach-of-contract and unjust-enrichment claims, the court agrees with Paris that this request is reasonably calculated to lead to the discovery of admissible evidence. The court also agrees that absent an additional showing by defendants, the so-ordered confidentiality agreement between the parties is adequate to protect defendants' confidentiality interest in the information sought in these requests.

That said, the requests as currently framed are somewhat overbroad. Defendants must produce only documents, correspondence, and communications sufficient to identify each of the three defendants' financial interest and/or ownership stake in each other prior to the merger of the defendants on March 30, 2018 (*see* NYSCEF No. 64, at 1).

**Document Request No. 34:** Defendants must produce any responsive organization chart or similar documents if they exist. If no such documents exist, defendants need not create them.

**Document Request Nos. 35-38:** Defendants must produce documents containing the requested information as it existed prior to defendants' merger on March 30, 2018.

**Document Request No. 39:** This court agrees with defendants that as framed, this request is overly broad and vague. Defendants need not respond at this time.

**Document Request No. 40:** This court agrees with defendants that this request is not reasonably calculated to lead to the discovery of admissible evidence, at least absent further articulation by Paris of why the lease of office space by one defendant or its officers from another defendant would support Paris's allegations that defendants are alter egos of one another.

**Document Request No. 41:** This request is overly broad and burdensome; and Paris has not established how this information would lead to the discovery of any admissible evidence beyond Request Nos. 31-33, 35, and 36.

**Document Request No. 42:** Defendants must respond to this request in full.

## 2. Paris's interrogatories

**Interrogatory Nos. 3-5:** As currently framed, these interrogatories are unduly broad and burdensome—particularly to the extent they would require defendants to identify, date, and describe the substance of a broad range of oral communications.

Defendants are required only to (i) identify the persons with knowledge of the drafting, negotiation, execution, and purported termination of the Independent Contractor Agreement (Interrogatory No. 3); (ii) identify the drafts, amendments, and/or ancillary agreements to the Independent Contractor Agreement (if any) (Interrogatory No. 4); (iii) identify all persons with knowledge of and communications concerning the drafting, negotiation, and/or execution of any such amendments or agreements (Interrogatory No. 4); and (iv) identify all persons with knowledge concerning Paris's rendering of "Services" (as defined in the Independent Contractor Agreement) and/or Marketing Services with respect to Unique, Kiran, and SDIL (Interrogatory No. 5). To the extent that the interrogatory calls for information provided to answer other interrogatories or document requests, defendants must specify which information responsive to this interrogatory was previously produced in response to which other interrogatories or document requests.

**Interrogatory No. 6:** The court does not agree with defendants that this interrogatory is unduly broad and burdensome; nor that defendants' conclusory objection that the "interrogatory calls for speculation," without more, is a valid reason for refusing to respond. Defendants must respond to this interrogatory in full. To the extent that the interrogatory requests communications that defendants believe to be privileged, defendants must provide a privilege log identifying those communications. To the extent that the interrogatory calls for information provided to answer other interrogatories or document requests, defendants must specify which information responsive to this interrogatory was previously produced in response to which other interrogatories or document requests.

**Interrogatory Nos. 7-9:** Though this interrogatory is framed more narrowly than Nos. 3-5, the court agrees with defendants that to the extent this interrogatory would require defendants to identify, date, and describe the substance of a potentially large number of oral communications, the interrogatory is still overly burdensome. The court does not, however, agree with defendants that conclusory objections that the interrogatory "calls for speculation" and "seeks confidential and proprietary information," without more, is a valid reason for refusing to respond.

Defendants must (i) identify all persons with knowledge of and who had communications concerning the provision of product specifications for the three specified jewelry collections; (ii) state when such provision of product specifications was performed; and (iii) identify any witnesses to oral communications concerning the provision of product specifications to the extent possible. To the extent that the interrogatory calls for information provided to answer other interrogatories or document requests, defendants must specify which information responsive to this interrogatory was previously produced in response to which other interrogatories or document requests. To the extent that the interrogatory seeks information about

written communications that were *not* previously produced in response to other document requests, defendants must provide the dates of any such communications and their sender(s) and recipient(s), and must summarize the communications' substance. To the extent that the interrogatory requests communications that defendants believe to be privileged, defendants must provide a privilege log identifying those communications.

**Interrogatory Nos. 12-13:** This court agrees with defendants that these interrogatories, as currently framed, are not reasonably calculated to lead to the discovery of admissible evidence, for the reasons set forth above with respect to Document Request Nos. 12, 15, 22, and 25.

**Interrogatory Nos 14 and 15:** As currently framed, these interrogatories are overly broad. The interrogatories seek significant information that is not relevant to Paris's claims against defendants, but that might instead serve only as a starting point for a follow-up discovery request that might later obtain relevant information about defendants' alleged transfer of sales responsibilities for customer accounts from Paris to other representatives. Paris may not, however, require defendants to respond to an interrogatory merely on speculation that relevant information ultimately will turn up down the line. Paris is not barred, of course, from serving narrower or more focused supplemental interrogatories on these topics, or from renewing its motion to compel a response to these interrogatories based on additional factual material that might adequately justify their scope. But defendants need not respond to these interrogatories in their current form.

**Interrogatory No. 16:** This court agrees with defendants that as currently framed, this interrogatory is unduly broad and burdensome. Defendants are required only to identify all persons with knowledge concerning Paris's rendering of extra-contractual marketing services to the list of retailers provided by counsel for Paris in her e-mail dated December 24, 2018, reproduced in NYSCEF No. 63, at 3-4. To the extent that the interrogatory calls for information provided to answer other interrogatories or document requests, defendants must specify which information responsive to this interrogatory was previously produced in response to which other interrogatories or document requests.

**Interrogatory No. 17:** This court concludes that in light of this court's determination above that (i) the measure of Paris's damages on its unjust enrichment claim is the reasonable value of its extra-contractual services, and (ii) Paris has not established that the reasonable value of those services includes sales commissions (*see supra* at I.A.4), on this record the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 18:** This court does not agree with defendants that this interrogatory is unduly broad and burdensome. Nor is this court persuaded by defendants' conclusory objections that the interrogatory is not valid because it "calls for speculation" or "is argumentative and assumes facts not admitted." Defendants must respond to this interrogatory in full. To the extent that the interrogatory calls for information provided to answer other interrogatories or document requests, defendants must specify which information responsive to this interrogatory was previously produced in response to which other interrogatories or document requests.

**Interrogatory No. 19:** This court agrees with defendants that as currently framed, this interrogatory is overly broad and appears to seek information not reasonably calculated to lead to the discovery of admissible evidence, for the reasons set forth above with respect to Document Request No. 28. To the extent that the interrogatory calls for information provided to answer other interrogatories or document requests, defendants must specify which information responsive to this interrogatory was previously produced in response to which other interrogatories or document requests. Defendants need not otherwise respond to this interrogatory at this time.

**Interrogatory No. 20:** In light of the alter ego allegations in Paris's complaint (and this court's discussion above of the significance of those allegations, *see supra* at I.A.2), the court does not agree with defendants that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Nor is this court persuaded that defendants need not respond to this interrogatory merely based upon the conclusory objection that the interrogatory "is argumentative and assumes facts not admitted." And, as discussed above in this court's ruling on Interrogatory Nos. 7-9, in light of the so-ordered confidentiality agreement between the parties, the objection that the interrogatory "seeks confidential information" is not, without more, a valid reason to decline to respond. Defendants must respond to this interrogatory in full.

### C. Defendants' Discovery Requests

In addition to seeking a protective order, defendants also cross-move on motion sequence 003 to compel Paris to supplement its responses to certain interrogatories and document requests propounded by defendants. In response to this cross-motion, Paris agreed to supplement its responses to most of the contested items of discovery. (*See* Aff. of Brian Chisholm, NYSCEF No. 76; *see also* NYSCEF No. 78, at 12.) This court notes that defendants did not submit a reply in support of its cross-motion contesting the sufficiency of Paris's supplemental responses. As to those discovery requests, therefore, defendants' cross-motion to compel is denied as academic.

Paris did decline, however, to provide supplemental responses to defendants' Document Request Nos. 15 and 36. A live dispute thus remains as to those requests. Upon considering the parties' submissions on these requests in light of the complaint, the court agrees with Paris that Request Nos. 15 and 36 pertain only to background facts set forth in the complaint, rather than seeking materials that might be relevant to Paris's claims, defendants' counter-claims, or any party's defenses in the action. Defendants' cross-motion is therefore denied on the merits as to those requests.

## II. Defendants' Motion to Quash

While the cross-motions to compel on motion sequence 003 were pending, Paris served subpoenas on a number of defendants' customers—some of which were "customer accounts" identified in Schedule A to the contract between Paris and Unique, and some of which were "other customer accounts"—seeking documents on a wide range of topics. (*See* NYSCEF No. 83 [copies of subpoenas]; *see also id.* at 10 [listing categories of documents to be produced].)

Defendants have moved to quash on behalf of the subpoenaed customers under CPLR 2304 and for a protective order under CPLR 3103 (motion sequence 004).

As an initial matter, Paris contends that the motion to quash should be denied because defendants' counsel failed to engage sufficiently in good faith with counsel for Paris prior to moving to quash. (*See* Opp. to Mot. to Quash, NYSCEF No. 112, at 10-11.) In the circumstances of this litigation, Paris's contention is groundless. The parties previously engaged in extensive discussion and negotiation about the scope of discovery and document production, which failed to resolve the parties' disagreements. The parties moved and cross-moved to compel discovery, as discussed above. Paris then served the subpoenas at issue here *while its own motion to compel was pending*. Any further effort by counsel for defendants to resolve amicably the dispute between the parties arising from service of these subpoenas plainly would have been futile.<sup>3</sup>

On the merits, each of Paris's subpoenas here contain the same 15 document demands. (*See* NYSCEF No. 83, at 8.) The demands can be sorted into three rough baskets: (i) agreements between the subpoenaed party and defendants (such as vendor buying agreements) from 2013 to present (Document Demand Nos. 1-3); (ii) documentation of sales (purchase orders, invoices, proof of payments) made by defendants to the subpoenaed party between September 1, 2016, to September 30, 2018 (Document Demand Nos. 4-12); (iii) documents and communications reflecting interactions between the subpoenaed party and personnel either of Paris or of defendants between September 1, 2016, to September 30, 2018 (Document Demand Nos. 13-15). (*Id.* at 7 [¶ 12], 8.)

This court concludes that, as discussed further below, at least some of the materials sought in Paris's subpoenas are relevant to claims and defenses in the action. The court therefore declines to quash the subpoenas outright under CPLR 2304. This court also concludes, though, that on this record a substantial portion of the materials sought in the subpoenas is clearly *not* relevant to the action. The court therefore grants defendants' motion for a protective order under CPLR 3103 narrowing the scope of the subpoenas to the extent indicated below.

Paris directed its subpoenas at both "other customer accounts" and "customer accounts." Although Paris seeks the same documents from both types of accounts, the relevance of the materials sought varies based on the category into which the subpoenaed party falls. This court's analysis, therefore, discusses the two sets of subpoenas separately.

#### **A. The Branch of Defendants' Motion for Protective Order Aimed at the "Other Customer Accounts" Subpoenas**

As discussed above, Paris's complaint contains a claim for unjust enrichment, alleging that at defendants' request, Paris performed extra-contractual services for defendants relating to

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<sup>3</sup> Paris also suggests, in a footnote, that "it is doubtful that Defendants have standing to file the Motion to Quash." NYSCEF No. 112, at 1 n 1. But Paris neither squarely asserts that defendants in fact lack standing, nor argues that defendants' motion to quash the subpoena or for a protective order should be denied on that basis. This court therefore declines to reach the issue of standing.

“other customer accounts”—*i.e.*, customers of defendants who were not specifically identified in the agreement—but that Paris has not received proper compensation relating to these services. Paris directed two of its subpoenas to “other customer accounts” (Fred Meyer and Kay Jewelers).

### 1. Document Demand Nos. 1-3

With respect to Document Demand Nos. 1-3 as directed to Fred Meyer and Kay Jewelers, this court concludes that these documents are potentially relevant to Paris’s defense against defendants’ breach-of-contract counterclaim. The court grants, however, the branch of defendants’ motion that seeks a protective order as to Fred Meyer and Kay Jewelers to the extent of limiting the temporal scope of the demand to September 1, 2016, through September 30, 2017.

In opposing the motion to quash, Paris articulates three ways in which these document demands seek relevant information. (*See* NYSCEF No. 112, at 20.) *First*, the agreements sought could potentially establish that the subpoenaed parties are “new” customers as to which Paris is entitled to a 1% sales commission under the contract; *second*, that the agreements sought could bear on Paris’s allegation that defendants improperly limited their payment of commissions to Paris obtaining new customer accounts, rather than also paying commissions for sales on existing accounts; and *third*, the agreements might refute defendants’ allegation in support of its counterclaims that Paris failed to perform competently its contractual obligations in part by failing to generate new sales or open new accounts for Unique (*see* Ans. to Am. Compl., NYSCEF No. 44, at 13).

The first two articulated purposes are not relevant to Fred Meyer and Kay Jewelers: as Paris itself contends, its claims arising from services relating to relating to Fred Meyer and Kay Jewelers sound in unjust enrichment because the services were *outside* the scope of the contract between Paris and Unique. (*See* NYSCEF No. 112, at 17-18.) On the other hand, if defendants entered into sales agreements with Fred Meyer and Kay Jewelers during the contract’s term, that would potentially be relevant to Paris’s defenses against defendants’ counterclaims.

This court concludes, however, that the demands should be limited to seeking agreements entered into between Fred Meyer or Kay Jewelers and defendants between September 1, 2016, through September 30, 2017—*i.e.*, the period between the effective date of the contract and when the dispute between Paris and Unique crystallized. (*See* Am. Compl., NYSCEF No. 24, at 9-10.) Only agreements entered into during that period would potentially be relevant to a competent-contractual-performance defense against defendants’ counterclaims.

### 2. Document Demand Nos. 4-12

With respect to Document Demand Nos. 4-12 as directed to Fred Meyer and Kay Jewelers, the court concludes that on the current record these documents are not relevant to Paris’s unjust-enrichment claims. Paris claims that the documents are relevant because the extra-contractual services that Paris (assertedly) provided to Fred Meyer and Kay benefitted defendants, and the existence and extent of that benefit is a contested issue as to which Paris is entitled to discovery. (*See* NYSCEF No. 112, at 18-19.) As discussed above, however (*see supra* at I.A.4), the relevant question for Paris’s unjust-enrichment claims pertaining to the other

customer accounts is *not* whether and how much defendants benefitted from Paris's extra-contractual services, but the reasonable value of any extra-contractual services that Paris performed without compensation. Since Paris has not shown (or attempted to show) that the reasonable value of its extra-contractual services is tied to defendants' sales to the other customer accounts, on this record the documentation of those sales is not relevant to Paris's claims for unjust enrichment. The branch of defendants' motion for a protective order aimed at Document Demand Nos. 4-12 as directed to Fred Meyer and Kay Jewelers is granted.

### 3. Document Demand Nos. 13-15

Document Demand No. 13 seeks documents relating to Fred Meyer and Kay Jewelers' "selection of samples, models, SKUs, or products" sold by defendants during the term of the contract. (NYSCEF No. 83, at 8.) As Paris itself suggests (*see* NYSCEF No. 112, at 18), this demand might go to the extent of the benefit that defendants received from Paris's asserted extra-contractual services; but it is not relevant to the reasonable value of those services. The branch of defendants' motion for protective order aimed at Document Demand No. 13 as directed to Fred Meyer and Kay Jewelers is granted.

Document Demand No. 14 seeks all documents and communications between Fred Meyer or Kay Jewelers and Paris's principal Brian Chisholm during the term of the contract. (*See* NYSCEF No. 83, at 7, 8.) This demand is relevant to showing the extent of the services provided by Paris to the other customer accounts—and thus the reasonable value of those services.

Defendants argue that this demand should nonetheless be stricken as redundant because Paris (assertedly) already has Chisholm's "entire email during his time working with Unique," and also could obtain directly from Chisholm any other documents sent by Fred Meyer or Kay Jewelers to him. (*See* NYSCEF No. 95, at 13.) Paris has represented, however, that neither it nor Chisholm has access to his full email archives from the period in which he was working with defendants pursuant to the contract. (*See* NYSCEF No. 65, at 1.) This court is not aware of any contrary proof provided by defendants. The court therefore declines to strike Demand No. 14 on this ground. As with Document Demand Nos. 1-3, though, this demand should be limited to documents and communications exchanged between September 1, 2016, and September 30, 2017. Paris has not alleged or established that it provided extra-contractual services to the other customer accounts after September 2017.

Document Demand No. 15 seeks all documents "concerning or relation to presentations by any sales representatives of Unique, Kiran, and/or SDIL" during the term of the contract. (*Id.*) For the reasons set forth above, these documents are relevant to Paris's claims for unjust enrichment only to the extent that they discuss or mention Paris in relation to sales presentations by defendants between September 1, 2016, and September 30, 2017, because only that subset of documents would show the extent (and thus reasonable value) of the extra-contractual services provided by Paris to Fred Meyer and Kay Jewelers. The scope of this demand to Fred Meyer and Kay Jewelers is limited accordingly.

## **B. The Branch of Defendants' Motion for Protective Order Aimed at the "Customer Accounts" Subpoenas**

### **1. Document Demand Nos. 1-3**

The remaining subpoena recipients are each "customer accounts" listed in Schedule A to the contract. With respect to Document Demand Nos. 1-3, this court concludes that these documents are potentially relevant to Paris's defense against defendants' breach-of-contract counterclaim.

These agreements cannot be relevant to the first two of Paris's three articulated grounds for relevance—that the agreements might show that the subpoenaed parties are "New" customers for purposes of Paris's contractual commissions, or that the agreements might support Paris's allegations that defendants were failing to pay commissions on existing accounts. (*See supra* at II.A.1.) Schedule A lists each of the "customer accounts" subpoena recipients by name (along with the corresponding commission rate for sales to those recipients), and also separately lists "New" accounts (and the commission rate for sales to such accounts). (*See generally* NYSCEF No. 83 [subpoenas]; NYSCEF No. 25, at 7 [Schedule A].) The "customer accounts" recipients therefore by definition cannot be "New" for purposes of sales commissions. Nor would any agreements between defendants and the "customer account" subpoena recipients be relevant to Paris's allegation that defendants improperly limited commission payments to sales to "New" accounts.

That said, as with the subpoenas directed to the "other customer accounts," to the extent that one or more of the customer-account subpoena recipients entered into new sales agreements with defendants during the term of the contract between Paris and Unique, those agreements would potentially be relevant to Paris's defenses against defendants' counterclaims. (*See supra* at II.A.1.) The court concludes, though, for the reasons discussed above, that only agreements entered between September 1, 2016, and September 30, 2017, would be potentially relevant to those counterclaim defenses. The branch of defendants' motion for a protective order aimed at Document Demand Nos. 1-3, as directed to the customer-account recipients, is therefore granted only to the extent of limiting the demands to this time period, and otherwise denied.

### **2. Document Demand Nos. 4-12**

These demands seek original sales and payment documentation for each transaction between defendants and the subpoena recipients during the term of the contract—*i.e.*, the documents that would underlie the Unique general ledger and any equivalent Kiran or SDIL general ledgers. In motion sequence 003, Paris sought to compel defendants to produce this underlying documentation of defendants' transactions with their customers. Here, Paris is simply subpoenaing the customers directly for the same documentation.

Yet whether the source of these sales documents is the seller or the customer, the burden of compiling and producing the documents still outweighs Paris's need for the documents to support its contract claims—particularly in light of this court's directive to defendants to produce general ledgers for Kiran and SDIL. (*See supra* at I.A.3.) Although New York's policy is to

permit broad pretrial discovery, “competing interests must always be balanced” and the “need for discovery must be weighed against any special burden to be borne by the opposing party.” (*Kavanagh v Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954 [1998].) On this record, the burden that Paris’s subpoenas would require defendants’ customers to bear in compiling all “purchase orders made” for jewelry from Unique, Kiran, or SDIL during the contract term, all “invoices or costs sheets received for [these] purchase orders,” and all “documents concerning or relating to payments made” to Unique, Kiran, or SDIL, is excessive in relation to Paris’s need for these broad swaths of documents. (*See* NYSCEF No. 83, at 8.) This court therefore grants defendants’ motion for a protective order aimed at Document Demand Nos. 4-12 as directed to the customer-account subpoena recipients.

### 3. Document Demand Nos. 13-15

Document Demand No. 13 seeks all documents concerning or relating to the customer-account recipients’ “selection of samples, models, SKUs, or products” sold by defendants during the term of the contract. (NYSCEF No. 83, at 8.) To the extent that these documents discuss or mention Paris, the documents could be relevant either to Paris’s anticipatory-repudiation claim that Unique improperly prevented Paris from servicing the customer accounts assigned to it, or to Paris’s counterclaim defense that it competently provided marketing and other services to defendants’ customers as required by the contract. Otherwise, though, this demand seeks an expansive range of documents that are not relevant to the claims or defenses in this action. The demand is therefore limited to only those documents concerning or relating to the customer-account recipients’ “selection of samples, models, SKUs, or products” that discuss or mention Paris, within the period September 1, 2016, to September 30, 2017.

Document Demand No. 14 seeks communications between the customer-account recipients and Brian Chisholm. The branch of defendants’ motion for a protective order aimed at this demand is granted only to the extent of limiting the demand to the period September 1, 2016, to September 30, 2017, and is otherwise denied, for the same reasons as the corresponding Demand No. 14 directed to Fred Meyer and Kay Jewelers. (*See supra* at II.A.3.)

Document Demand No. 15 seeks “all documents concerning or relating to presentations by any sales representatives” of defendants during the term of the contract. As with Demand No. 13, these documents are relevant only if they discuss or mention Paris—at least between September 2016 and September 2017, when Paris was potentially in a position to have made such presentations to the customer accounts—and otherwise do not bear on the claims and defenses in the action. This demand therefore is limited in the same manner as Demand No. 13.

Accordingly, for the foregoing reasons it is hereby

ORDERED that Unique must within 30 days either supplement its already-produced general ledger for the period September 2017 to September 2018, or further explain the way in which the already-produced general ledger for that period describes the categories of information contained in that ledger, as set forth at Paragraph I.A.1, *supra*; and it is further

ORDERED that Paris may within 30 days propound limited, supplemental discovery requests about how and why the Unique general ledger lists customer transactions as involving payments *by* customers rather than sales *to* customers, as set forth in Paragraph I.A.3, *supra*; and it is further

ORDERED that defendants must within 30 days provide general ledgers for Kiran and SDIL for the period September 1, 2016, to March 30, 2018, containing the same information as the general ledger for Unique, as set forth in Paragraph I.A.2, *supra*; and it is further

ORDERED that the branch of Paris's motion to compel (motion sequence 003) seeking to require Unique to provide all of the sales documentation underlying its general ledger is denied; and it is further

ORDERED that the branch of Paris's motion to compel (motion sequence 003) seeking to require Unique to provide a general ledger and underlying sales documentation for certain customers of defendants who are not mentioned in the contract between Paris and Unique is denied; and it is further

ORDERED that the branch of Paris's motion to compel (motion sequence 003) seeking to require defendants to supplement their responses to Paris's Document Requests is decided as follows, and defendants must within 30 days supplement their responses to Paris's document requests accordingly:

- (i) The motion to compel is granted in full as to Request No. 42;
- (ii) The motion to compel is granted only to the extent indicated in Paragraph I.B.1, *supra*, as to Request Nos. 7-9 and 31-38; and
- (iii) The motion to compel is denied in full as to Request Nos. 12-17, 19, 20, 22, 23, 25, 26, 28, 30, and 39-41;

and it is further

ORDERED that the branch of Paris's motion to compel (motion sequence 003) seeking to require defendants to supplement their responses to Paris's Interrogatories is decided as follows, and defendants must within 30 days supplement their responses to Paris's Interrogatories accordingly:

- (i) The motion to compel is granted in full as to Interrogatory Nos. 6, 18, and 20;
- (ii) The motion to compel is granted only to the extent indicated in Paragraph I.B.2, *supra*, as to Interrogatory Nos. 3-5, 7-9, and 16; and
- (iii) The motion to compel is denied in full as to Interrogatory Nos. 12, 13-15, 17, and 19;

and it is further

ORDERED that the branch of defendants' cross-motion (motion sequence 003) seeking a protective order is granted in part and denied in part as set forth above; and it is further

ORDERED that the branch of defendants' cross-motion (motion sequence 003) seeking to compel Paris to supplement its discovery responses is denied in part as academic, and denied in part on the merits, as set forth in Section I.C., *supra*; and it is further

ORDERED that the branch of defendants' motion (motion sequence 004) seeking to quash Paris's subpoenas under CPLR 2304 is denied; and it is further

ORDERED that the branch of defendants' motion (motion sequence 004) seeking a protective order limiting the scope of Paris's subpoenas directed to Fred Meyer and Kay Jewelers under CPLR 3103 is decided as follows, and the recipients of the subpoenas must within 45 days respond accordingly:

(i) The motion for a protective order is granted in full as to Demand Nos. 4-12; and

(ii) The motion for a protective order is granted only to the extent indicated in Paragraphs II.A.1 and II.A.3;

and it is further

ORDERED that the branch of defendants' motion (motion sequence 004) seeking a protective order limiting the scope of Paris's remaining subpoenas (*i.e.*, the subpoenas to the "customer accounts") is decided as follows, and the recipients of the subpoenas must within 45 days respond accordingly:


(i) The motion for a protective order is granted in full as to Demand Nos. 4-12; and

(ii) The motion for a protective order is granted only to the extent indicated in Paragraphs II.B.1 and II.B.3;

and it is further

ORDERED that the parties appear for a status conference in Part 7 of this court, Room 345, 60 Centre Street, on March 11, 2020, at 10:00 a.m.

1/8/2020  
DATE

  
GERALD LEBOVITS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	