

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 20-CV-80148-SINGHAL/MATTHEWMAN**

MEASURED WEALTH PRIVATE  
CLIENT GROUP, LLC,

Plaintiff,

vs.

LEE ANNE FOSTER, *et al.*,

Defendants.

**DEFENDANT LEE ANNE FOSTER’S RESPONSE TO  
PLAINTIFF’S MOTION TO COMPEL FORENSIC EXAMINATION**

Defendant Lee Anne Foster (“Foster”) submits this response in opposition to Plaintiff Measured Wealth Private Client Group, LLC’s (“Measured Wealth”) Motion to Compel Forensic Examination (“Motion to Compel”) [D.E. 154] of Foster’s mobile phone for the time period of January 1, 2019 through December 31, 2019.

Measured Wealth’s Motion to Compel is premised upon mere speculation, laden with mischaracterizations and misrepresentations of the record, and especially revealing of Plaintiff’s ongoing gamesmanship and abusive discovery tactics. As a threshold matter, prior to the filing of this Motion, Plaintiff never requested a forensic examination of Foster’s mobile phone for the *entire year of 2019* as it does now in its Motion to Compel. The relief and inspection now sought is far greater in scope and breadth than that which was sought by Plaintiff in the written discovery requests propounded on Foster in this action; specifically, in Measured Wealth’s Second Request for Production and Inspection of Documents to Foster, Plaintiff’s request for inspection was limited to the period of **April 1, 2019 through July 2019**. (See Exhibit “C” to Plaintiff’s Motion

to Compel [D.E. 154-3], at ¶ 7, requesting Foster to “[p]ermit inspection and for Measured Wealth to make a full disk image of the entire storage capacity of Your cellular or mobile phone(s) that You used during the period of April 1, 2019 through July 31, 2019”). Likewise, Plaintiff’s request to Foster for “all documents showing all telephone calls and text messages sent or received by [Foster]’s cellular or mobile phone(s)” was specifically limited to the same four-month period: from **April 1, 2019 through July 31, 2019**. See id. at ¶ 1. Yet Plaintiff now seeks an unbridled inspection and examination of Foster’s mobile phone for a substantially greater period, *i.e.*, all of 2019. Notably, there was no formal or informal request for such a broad inspection, nor any pre-motion meet-and-confer regarding same. That the relief sought by Plaintiff in its Motion is vastly broader than what it has requested in discovery is further evidenced by the fact that on February 12, 2021 (the same day Plaintiff filed its Motion to Compel), Plaintiff propounded *yet another* set of document requests on Foster—Plaintiff’s Third Request for Production of Documents to Foster—that specifically requests Foster to produce and permit inspection of all communications between Foster and (1) Measured Wealth’s clients, (2) Measured Wealth’s former clients, (3) Defendant Kesner, and (4) Stoever Glass, for the periods of, *inter alia*, “January 1, 2019 through March 31, 2019” and “August 1, 2019 through December 31, 2019.” While Plaintiff cites the Court’s prior Order [D.E. 122] to baldly assert that the Court “already determined Foster’s text messages are relevant,” that Order likewise was limited to the period of April 1, 2019 through July 31, 2019, and related to Foster’s mobile call and text logs.

Plaintiff’s request for a forensic examination of Foster’s mobile phone for an entire twelve-month period (again, far greater than what was ever requested in discovery), aside from being premature and unlimited in scope, is nothing more than a fishing expedition designed to

further harass and invade Foster's privacy and likely to uncover a wide range of personal and private information unrelated to Plaintiff's claims.

Although parties may obtain discovery relevant to a party's claim or defense, this does not give plaintiffs carte blanche to embark on an unbounded fishing expedition over defendants. See Linares v. Broward Cnty. Sheriff's Office, 347 Fed. Appx. 424, 428 (11th Cir. 2009) (quoting Porter, 461 F.3d at 1324) (noting "the discovery rules do not permit [a party] to go on a fishing expedition"). The device Plaintiff requests to inspect is the same mobile phone Foster continues to use today, and any purported basis for Plaintiff to inspect and copy "the entire storage capacity" of that phone and/or any benefit of that requested examination is substantially outweighed by Foster's privacy interests in the contents thereof. See, e.g., Garrett v. Univ. of S. Fla. Bd. of Trs., No. 8:17-cv-2874-T-23AAS, 2018 U.S. Dist. LEXIS 156996, at \*5 (M.D. Fla. Sep. 14, 2018) (denying request for examination of plaintiff's cellphone because discovery benefits of same were not shown to outweigh plaintiff's privacy interests); Ramos v. Hopele of Fort Lauderdale, LLC, 2018 U.S. Dist. LEXIS 44327, \*10 (S.D. Fla. 2018) (denying request for forensic examination of plaintiff's cell phone as not tailored to obtain information that was relevant to any claim or defense in the case); Williams v. Mass. Mut. Life Ins. Co., 226 F.R.D. 144, 146 (D. Mass. 2005) (denying requests to inspect opposing party's computer systems because movant "presented no credible evidence that Defendants are unwilling to produce computer-generated documents, whether now or in the future . . . or that Defendants have withheld relevant information").

That Plaintiff's motives and purpose are oppressive and harassing is further demonstrated by Plaintiff's discovery and motion practices and history in this action. As Plaintiff itself explains in its Motion, Plaintiff's source of information as to the fact and existence of Foster's communication with two (and only two) certain former Measured Wealth clients via text message

are the “logs of Foster’s calls and text messages from January 1, 2019 through December 31, 2019” that Foster’s wireless carrier produced “in response to a subpoena for documents issued by Measured Wealth in connection with this litigation.” These logs and records from AT&T—which were only recently turned over to Defendants by Plaintiff in discovery on February 12, 2021—show that they were generated on *November 18, 2020*; yet Plaintiff still filed a motion to compel Foster to produce the logs containing that very same information nearly a month later on December 21, 2020 [D.E. 119], notwithstanding that Plaintiff appears to have already been in possession thereof by obtaining such records from Foster’s mobile carrier in response to its earlier subpoena. Notably, Plaintiff’s prior motion [D.E. 119] did not request a forensic examination or inspection of Foster’s mobile phone and instead forced Defendants to spend valuable time and resources litigating a moot issue, only to then turn around and file another Motion to Compel and force Defendants, and the Court, to go through the process all over again. Such abuses of the discovery process and the Court’s time and resources should not be tolerated.

In addition to the foregoing, the Declaration of Edward Benway, attached as Exhibit “G” to Plaintiff’s Motion to Compel [D.E. 154-7], shows that an inspection and copying of the “entire storage capacity” of Foster’s mobile phone – whether for the period of April 1, 2019 through July 31, 2019 (as actually requested by Plaintiff in discovery) or for the entire year of 2019 – is anything but warranted or proportionate to the needs of the case. Plaintiff baldly asserts that the Phone Logs demonstrate Foster sent messages to Measured Wealth’s clients before and after she left Measured Wealth and joined Stoeber Glass. Yet in all of Foster’s 2019 text message logs, Plaintiff has identified a grand total of *two* former Measured Wealth clients with whom Foster exchanged any text messages and, notably, none of those messages were dated prior to Foster’s last day at Measured Wealth on July 8, 2019. (See D.E. 154-7, at ¶ 4). Plaintiff’s bald assertion that

“[t]he substance of the messages...prove Foster misappropriated Measured Wealth’s trade secrets” is nothing more than base, unsupported speculation. The mere fact Plaintiff has asserted trade secret claims does not give it free reign to examine all of Answering Defendant’s electronic devices. See, e.g., FCA US LLC v. Bullock, 329 F.R.D. 563, 567-69 (E.D. Mich. 2019). In any event, Foster produced all responsive documents, including messages and communications, in her possession, custody, and control.

To the extent Plaintiff has identified a handful of text messages with two specific former Measured Wealth clients, there are multiple alternative means and mechanisms for Plaintiff to obtain same short of the overbroad, oppressive, and intrusive relief sought in its Motion. For example, Plaintiff could have served subpoenas on these two clients to request production of the text messages identified if still in their possession, custody, or control—something Plaintiff has not shied away from doing in this action, as it has served dozens of third-party subpoenas to date and has contacted numerous former clients seeking information. Alternatively, to the extent Plaintiff contends that Foster is willfully withholding documents in her possession, custody, or control—which she is not—an unbridled, unlimited forensic inspection and examination of her mobile phone for the entire year of 2019, or even the four month period from April 1, 2019 through July 31, 2019, is not appropriate or justified under the circumstances. Rather, at most any such examination and inspection should be limited solely to attempting to uncover the handful of text messages specifically identified by Plaintiff as messages Foster allegedly exchanged with two former Measured Wealth clients in the Declaration of Edward Benway attached to its Motion [D.E. 154-7]. Anything beyond that would be nothing more than a blatant fishing expedition and intrusion upon, and invasion of, Foster’s legitimate privacy interests.

**CONCLUSION**

For the reasons set forth above, Plaintiff's Motion to Compel should be denied.

Respectfully submitted,

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*/s/ Andrew Thomson*

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**CERTIFICATE OF SERVICE**

I CERTIFY that, on February 22, 2021, I served the foregoing through CM/ECF on:

**Peter T. Mavrick, Esq.**

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