UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-CV-81004-MARRA/JOHNSON

DANIEL S. ROSENBAUM,

Plaintiff/Counter-Defendant,

v.

BECKER & POLIAKOFF, P.A.,

Defendant/Counter-Plaintiff.
_____/

BECKER & POLIAKOFF, P.A.,

Counter-Plaintiff/Defendant,

v.

DANIEL S. ROSENBAUM,

Counter-Defendant/Plaintiff,

and

KATZMAN, GARFINKEL &
ROSENBAUM, LLP,

Additional Party Counter-Defendant.
_____/

DEFENDANT/COUNTER-PLAINTIFF BECKER & POLIAKOFF, P.A.'S MOTION FOR PROTECTIVE ORDER IN CONNECTION WITH PLAINTIFF DANIEL S. ROSENBAUM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant, BECKER & POLIAKOFF, P.A. ("B&P"), through its undersigned counsel, hereby moves for a protective order pursuant to Fed. R. Civ. P. 26(c) with respect to certain written discovery requested by Plaintiff Daniel S. Rosenbaum ("Rosenbaum") in his First Request for Production of Documents (the "Request for Production"), and, as grounds therefor, states as follows:

INTRODUCTION

This matter involves a civil enforcement action brought by Plaintiff Daniel S. Rosenbaum ("Rosenbaum"), a former managing shareholder of B&P, for breach of an employment and deferred compensation agreement under the Employee Retirement Income Security Act ("ERISA") and specific provisions of the Employment and Deferred Compensation Agreement (the "Deferred Compensation Agreement") entered into between B&P and Rosenbaum. Rosenbaum filed suit against B&P on September 11, 2008 [DE 1], approximately one month following his abrupt resignation from B&P after 28 years of service.[1] He alleges that he is owed deferred compensation by B&P pursuant to the terms of the Deferred Compensation Agreement. B&P filed its Answer and Affirmative Defenses on October 1, 2008 [DE 4], and was granted leave to amend same on December 9, 2008 [DE 127].

In addition, B&P has asserted counterclaims against Rosenbaum and KGR for breach of fiduciary duty (Count I), aiding and abetting a breach of fiduciary duty (Count II), tortious interference (Count III) and breach of contract (Count IV). The focus of these claims is on the predatory actions taken by Rosenbaum and KGR in connection with Rosenbaum's departure from B&P in August 2008. Rosenbaum had been the managing shareholder of B&P's West Palm Beach office, until he resigned without notice on August 4, 2008 and joined KGR as its new managing partner. In its Counterclaims [DE 32], B&P alleges that Rosenbaum and KGR improperly sought to destroy its relationships with the employees and clients of the West Palm Beach office by, *inter alia*, (1) orchestrating the mass exodus of the *entire* litigation practice group of B&P's West Palm Beach Office without any prior notice to

[1] In July 2008, unbeknownst to B&P, Rosenbaum agreed to become the managing partner of KGR. [DE 32, ¶¶ 18-19). On August 4, 2008, Rosenbaum e-mailed his immediate resignation to the shareholders of B&P. (*Id.*, ¶ 20). Within minutes, the *entire* litigation department of B&P's West Palm Beach office (after being solicited by Rosenbaum and KGR) likewise e-mailed their immediate resignations to the shareholders of B&P. (*Id.*). The departing attorneys did not provide any prior notice. Immediately following their carefully-orchestrated mass resignation, Rosenbaum and the other attorneys and staff physically left B&P's West Palm Beach office and moved down the street to new office space prearranged by KGR. (*Id.*, ¶ 21). The departing attorneys did not leave behind any case lists or calendars from which the status of active cases could be ascertained by B&P. (*Id.*, ¶¶ 23-24).

B&P and without leaving behind any information from which the status of cases could be ascertained, (2) removing and/or concealing client files from B&P's West Palm Beach office; (3) prematurely and unilaterally soliciting the existing clients of B&P's West Palm Beach office, in derogation of Rosenbaum's contractual duties to B&P and the applicable Florida Bar Rules; (4) disseminating false and disparaging information about B&P to its existing clients; (5) filing improper and misleading appearances on behalf of B&P clients in pending actions; (6) improperly usurping corporate opportunities belonging to B&P by delaying the filing of new, but previously-accrued, contingent fee cases for longtime B&P clients, until *after* Rosenbaum had joined KGR; and (7) directing and/or encouraging several of B&P's former employees (who had already been given job offers by KGR) to download sensitive client information from B&P's computer system.

Thus, as framed by the pleadings, the matters at issue in this lawsuit focus **solely** upon the monies allegedly owed to Rosenbaum under the Deferred Compensation Agreement and the actions allegedly taken by Rosenbaum and KGR relative to his departure from B&P in August 2008, and pertaining specifically to the West Palm Beach office of B&P. Notably, this lawsuit is not about *why* Rosenbaum left the employ of B&P or whether he had good cause or justification to do so. Nor does it relate to how B&P is managed or the inner-workings of its other regional offices. This lawsuit is simply about *what* actions Rosenbaum and KGR took (and the legality and consequences of those actions) once Rosenbaum decided to resign from B&P in order to join KGR, and whether he is still owed any monies pursuant to a deferred compensation agreement.

On August 25, 2009, Rosenbaum served his Request for Production upon B&P concerning matters which extend considerably beyond the scope of this action.[2] Among other things, Rosenbaum seeks: (1) a list of *all* clients of B&P for the past four years; (2) *every* client communication since

[2] A true and correct copy of the Request for Production is attached hereto as Exhibit "A."

August 4, 2008 that "relates in any way" to the West Palm Beach office of B&P; (3) the payroll records for *all* employees of B&P, including salary information for each employee; (4) all billing records of *every* time-keeping employee of B&P, including all attorneys and paralegals, for the preceding three years; (5) all expense reports submitted by *every* employee of B&P for the preceding four years; (6) a list of the home addresses of *all* B&P employees; (7) all tax returns and internal financial records of B&P's income and expenses for the preceding five years; (8) all notes, minutes and other records of the Management Committee of B&P for the past three years; and (9) all records of payment made by B&P for certain interior design services and office furniture purchases. These items bear no reasonable relationship or nexus to the claims or defenses at issue in this action, and clearly are a thinly-disguised attempt to harass and unduly burden B&P, as well as secure access to B&P's proprietary information.

On September 24, 2009, B&P served its responses to the Request for Production.[3] In particular, B&P objected to the above-identified requests on the basis that they were overly broad, vague, unduly burdensome, irrelevant, and not reasonably calculated to the lead to the discovery of admissible evidence. In addition, B&P objected on the basis that the document requests sought confidential and proprietary information of B&P, as well as confidential and personal information of its employees, including salary and billing information. These objections are discussed in greater detail herein.

Between September 25, 2009 and September 29, 2009, the parties exchanged at least seven (7) e-mails regarding the foregoing requests and objections.[4] Because B&P and Rosenbaum have been unable to reach an agreement regarding these requests, B&P seeks a protective order forbidding or limiting inquiry into these matters. As reflected by the attached e-mails, the undersigned counsel has conferred with Rosenbaum in a good faith effort to resolve the issues addressed herein, but

[3] A true and correct copy of B&P's response to the Request for Production is attached hereto as Exhibit "B."
[4] A true and correct copy of the pertinent e-mails is attached hereto as Composite Exhibit "C."

was unable to reach any agreement, thereby making the filing of the instant motion necessary.

ARGUMENT

A. General Principles Regarding the Scope of Discovery and Limitations Thereon

The scope of discovery is governed by Federal Rule of Civil Procedure 26, which allows "discovery regarding any matter, not privileged, which is relevant to the claim or defense of any party." Fed. R. Civ. P. 26(b)(1). While the scope of discovery is broad, it is not without limits. *Donahay v. Palm Beach Tours & Transp., Inc.*, 2007 WL 1119206, at *1 (S.D. Fla. Apr. 16, 2007) (Johnson, M.J.) (citing *Washington v. Brown & Williamson Tobacco,* 959 F.2d 1566, 1570 (11th Cir.1992)). As recognized in *Donahay*, "[c]ourts have long held that '[w]hile the standard of relevancy [in discovery] is a liberal one**,** it is not so liberal as to allow a party to 'roam in the shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.'" *Id*. (emphasis supplied). *See also Rosenthal v. Shiraz, Inc.*, 2009 WL 1941272, at *2 (S.D. Fla. July 7, 2009) ("Discovery should be tailored to the issues involved in the particular case.") (citing *Washington,* 959 F.2d at 1570) (emphasis supplied). Accordingly, a "threshold showing of relevance must be made before parties are required to open wide the doors of discovery to produce a variety of information which does not reasonably bear upon the issues of the case." *Hofer v. Mak Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1982). *See also Stern v. O'Quinn*, 253 F.R.D. 663, 670 (S.D. Fla. 2008) (stating that the proponent of the requested discovery must "first demonstrate the relevance of the information sought, as relevance serves as the gate through which all discovery requests must pass.").

Nonetheless, even where requested discovery is relevant, the Court may limit it under Rule 26(b)(2) if it determines that (1) the discovery is "unreasonably cumulative or duplicative," or (2) the burden or expense of the proposed discovery outweighs its likely benefit, taking into

account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the proposed discovery in resolving the issues." Fed. R. Civ. P. 26(b)(2)(C)(i) & (iii); *Stern*, 253 F.R.D. at 670 (stating that the requested discovery "must not impose an undue burden or be unreasonably cumulative."). Indeed, Rule 26(b)(2)(C) "vests the trial court with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery." *Crawford-El v. Britton*, 523 U.S. 574, 599, 118 S.Ct. 1584 (1998). *See also In re Application of Operadora DB Mexico, S.A.*, 2009 WL 2435750, at *11 (M.D. Fla. May 28, 2009) ("Rule 26(b)(2)(B) . . . provides the Court with the discretion to limit discovery requests if such a request is unduly burdensome, unreasonably cumulative, or overbroad.").

Finally, under Rule 26(c), "[a] court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). Pursuant to this Rule, the Court may impose the following limits on discovery; (1) forbidding the disclosure or discovery; (2) specifying terms for the disclosure or discovery; (3) prescribing a discovery method other than the one selected by the party seeking discovery; (4) forbidding inquiry, or limiting the scope of disclosure or discovery, into certain matters; and (5) requiring that a trade secret or other confidential information not be revealed. *Id.* The decision whether to preclude or limit discovery under Rule 26(c) is left to the vast discretion of the trial court, in light of the facts and circumstances of a particular case. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199 (1984) ("Rule 26(c) confers broad discretion upon the trial court to decide when a protective order is appropriate and what degree of protection is required."); *In re Alexander Grant & Co. Litig.,* 820 F.2d 352, 357 (11th Cir.1987) ("A district court has broad discretion when fashioning protective orders."); *Auto-Owners Insurance Co. v.*

Southeast Floating Docks, Inc., 231 F.R.D. 426, 429 (M.D. Fla. 2005) ("The decision to enter a protective order is within the court's discretion and does not depend on a legal privilege.").

B. The Type of Protection Which B&P Seeks for Each Requested Item of Discovery

Pursuant to Local Rule 26.1.H.3, B&P shall, for each separate request for production for which it seeks a protective order, state: (a) verbatim the specific item of discovery sought; (b) the type of protection B&P requests; and (c) the reasons supporting the requested protection, in succession so as to enable the Court to rule individually on each individual item in the motion.

Request No. 1: Client Communications

(a) Specific Request for Production: In Request No. 1, Rosenbaum seeks "[e]very communication received from, or sent to, any client or property manager for a client of Becker & Poliakoff since August 4, 2008, that relates, in any way, in whole or in part, to the staffing of the West Palm Beach office, the departing staff, and/or the circumstances surrounding the departure of the departing staff."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding or limiting the requested discovery.

(c) Reasons supporting the protection: The Request is overly broad and compliance therewith would be unduly burdensome. B&P, in the normal course of its business, does not maintain a separate file for each and every communication it sent to or received from its clients in connection with the staffing of the West Palm Beach office, the departing staff, and/or the circumstances surrounding the departure of the departing staff. (*See* Declaration of Stanford Paul ["Paul Decl.], ¶ 2).[5] There may be thousands of communications between B&P and its clients relating to the subject matter of this Request, and to retrieve each and every one of those

[5] A copy of Mr. Paul's Declaration is attached hereto as Exhibit "D" and is also being filed with the Court under separate cover. Mr. Paul is B&P's Chief Operating Officer. (Paul Decl., ¶ 1).

communications would cause B&P to expend immeasurable time, resources and expense. (*Id.*). In fact, it would be virtually impossible for B&P's information technology department to perform a search of all communications between B&P and its clients relating to the information sought in this Request. Prior to 2009, B&P did not have an archiving system for its e-mails. (*See* Declaration of Avi Solomon ["Solomon Decl."], ¶ 4).[6] At the present time, B&P has over nine (9) million e-mails in its computer system. (*Id.*). During the average month, B&P sends approximately 90,000 e-mails to addresses located outside the firm and receives a similar amount of e-mails from outside senders. (*Id.*). This figure does not take into account internal emails (which exceed 1 million per year), nor does it take into account the deletions or aging of emails. (*Id.*). Further, B&P does not have any tools to measure how many e-mails a particular set of people may have sent outside the firm. (*Id.*).

Moreover, B&P does not have a list of the e-mail addresses of every property manager or management company representative, or every client, nor of every possible client conversation. (*Id.*, ¶ 5). Attempting to gather this information would require a costly and massive undertaking, with no guarantee of results. (*Id.*). In order to accomplish this, B&P would have to know the individual personal email address for all people with whom someone in the firm might have been in communication. (*Id.*). In the absence of archiving, B&P can do limited searches but it would have no way to tell if an email "relates, in any way, in whole or in part, to the staffing of the West Palm beach office, the departing staff, and or the circumstances of the departure," or "relates, in any way to the departing staff or staffing levels," or "to the operation of the West Palm Beach office." (*Id.*). But even to do such limited searches would be costly, time-consuming and unduly burdensome. In order to attempt to find e-mails within those categories,

[6] A copy of Mr. Solomon's Declaration is attached hereto as Exhibit "E" and is also being filed with the Court under separate cover. Mr. Solomon is B&P's Director of Information Technology. (Solomon Decl., ¶ 1).

B&P's information technology department would need to search for emails from specific people, to specific people, and with particular words for which to search. (*Id.*). And even with this information, if a group e-mail went out and a person is no longer a member of that group, B&P would have no way to know whether or not any such individuals received or sent the email at some time in the past when they had been a member of the group. (*Id.*). Further, if any e-mails were part of a chain that included some "BCC" (blind copies), B&P would have a limited ability to accurately produce that data because BCC addresses are not revealed under all circumstances and the results might not reflect what was truly sent or received. (*Id.*).

Request No. 2: Payroll Records of *All* Employees (Not Just Those in West Palm Beach)

(a) Specific Request for Production: In Request No. 2, Rosenbaum seeks "[a]ll payroll records for all employees of Becker & Poliakoff, P.A. from August 4, 2008 to the date of your response to this Request for Production, including salary information for each individual employee, and records of all overtime work performed or expenses incurred, from the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding or limiting the requested discovery.

(c) Reasons supporting the protection: The Request is overly broad, unduly burdensome and irrelevant in that it seeks records for each and every employee regardless of whether or not a particular employee staffed or assisted in re-staffing B&P's West Palm Beach office after Rosenbaum and several attorneys and staff left the West Palm Beach office for KGR. B&P has literally hundreds of employees, very few of whom have any connection to the instant matter. (Paul Decl., Ex. "D," ¶ 3). As framed by the pleadings, the matters at issue in this lawsuit focus **solely** upon the monies allegedly owed to Rosenbaum under a written agreement

and the predatory actions allegedly taken by Rosenbaum and KGR relative to his departure from B&P in August 2008, and pertaining specifically to the West Palm Beach office of B&P. In its Counterclaims, B&P's claimed damages are inextricably linked to Rosenbaum's departure from the West Palm Beach office and the resulting disarray in which he left that office. This required B&P to expend time, money and other resources in cleaning up files and re-staffing that office. (Counterclaim [DE 32], ¶ 45). Not every B&P employee worked on this task. (Paul Decl., Ex. "D," ¶ 3). Yet, Rosenbaum seeks information about *hundreds* of B&P employees who were not involved in that undertaking and have no connection to the instant suit. That would impose an undue burden on B&P, both in terms of resources and expense, to compile such information for such a large number (indeed, hundreds) of employees. (*Id.*). Under similar circumstances, courts have refused to permit discovery of such wholesale payroll information. *See, e.g.*, *Scales v. J.C. Bradford and Co.*, 925 F.2d 901, 907 (6th Cir. 1991) (finding no abuse where the district court limited discovery to payroll records in *one* of defendant company's offices, rather than the master payroll record reflecting the salaries of "approximately 1,000 partners and employees in 51 offices located in 13 states"); *Smith v. City of Chicago,* 2005 WL 3215572 at *l-2 (N.D. Ill. 2005) (prohibiting disclosure of payroll records where irrelevant to racial harassment and discrimination claim); *In re One Bancorp Sec. Litigation,* 134 F.R.D. 4, 12 (D. Me. 1991) (denying motion to compel production of personnel files where movant failed to carry its burden of showing that the material was clearly relevant).

In addition, the information requested by Rosenbaum constitutes a trade secret or other confidential or proprietary commercial information of B&P. *See* Fed. R. Civ. P. 26(c)(1)(G) (authorizing protective orders "requiring that a trade secret or other confidential research, development, or commercial information not be revealed or revealed only in a specified way.");

Andrx Pharmaceuticals, LLC v. GlaxoSmithKline, PLC, 236 F.R.D. 583, 585 (S.D. Fla. 2006) (recognizing that federal courts "have broad discretion to prevent or limit the disclosure of confidential trade secrets."). Information regarding the salaries which B&P pays its employees constitutes highly confidential and proprietary commercial information, particularly in a service-oriented industry such as the legal profession, where the competition to hire talented professionals can be fierce. (Paul Decl., Ex. "D," ¶ 4). If other law firms knew what B&P was paying its employees, such firms would be better-positioned to recruit such employees, thereby damaging B&P's business. (*Id.*). Rosenbaum and KGR are acknowledged competitors of B&P, and are seeking to compete with B&P in the representation of condominium and homeowners' associations, a practice area in which B&P is a dominant player. (*Id.*). If KGR and Rosenbaum (its managing partner) had access to the salary and compensation information of B&P's employees, they could easily use such information in a manner detrimental to the business and operations of B&P, as has already occurred in this case by virtue of their wholesale solicitation of B&P's employees. (*Id.*). Therefore, B&P has a legitimate business and competitive reason for wishing to shield this information from disclosure, particularly to a competitor which has recently engaged in predatory acts against it. (*Id.*).

In addition, the request violates the privacy rights of B&P's employees. B&P has literally hundreds of employees, and its payroll records for each employee include highly personal information, such as each employee's address and telephone number (which might be unlisted), marital status, wage information, medical background, credit history (such as requests for garnishment of wages), and other work-related problems unrelated to Rosenbaum's claims. (Paul Decl., Ex. "D," ¶ 5). "[E]mployees justifiably expect [this type of personal information] to

be kept confidential." *New York Stock Exchange v. Sloan*, 22 Fed.R.Serv.2d 500, 503 (S.D.N.Y. 1976).

Further, it does not take a great deal of imagination to envision the effect that the disclosure of individual's salaries could have on the morale of any workforce, who may be embarrassed, agitated, frustrated or prying to see the pay of each and every co-worker. (Paul Decl., Ex. "D," ¶ 5). Such information is *not* disclosed to other co-workers for these very reasons. (*Id.*). Second, the disclosure of a multitude of non-parties' individual salaries can be devastating. Here, we live in a time where credit card fraud and identity theft have prompted individuals to take daily measures to protect their financial records. In fact, during these times, where privacy of financial information is highly valued and protected by individuals, it seems unusual to argue that there is no protection for this information. To the contrary, the federal courts routinely enter protective orders to safeguard such information. *See, e.g.*, *Noel Knoll v. AT&T Co.*, 176 F.3d 359, 365 (6th Cir. 1999) (finding that confidentiality protection on the dissemination of non-party personnel files are "commonly granted."); *Smith*, 2005 WL 3215572 (in balancing privacy interests of employees and non-party employees against public right of access to federal court proceedings, a court can prohibit or limit the disclosure of personnel files, including social security numbers, salaries and rates of pay, home addresses and telephone numbers, current and former employees, and portions of payroll records).

Request No. 3: Payroll Records of Marni Becker-Avin (who is based in Fort Lauderdale)

(a) Specific Request for Production: In Request No. 3, Rosenbaum seeks "[a]ll payroll records reflecting the compensation, including salary and bonuses, of Marni Becker n/k/a Marni Becker-Avin, from the date of hire to the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery.

(c) Reasons supporting the protection: The reasons supporting the requested protection are the same as those set forth above in response to Request No. 2. In addition, a protective order is sought because the request seeks the disclosure of B&P's confidential proprietary information pertaining to the salary information and compensation of one its employees. Moreover, the disclosure of such information would violate Ms. Becker-Avin's right of privacy concerning such information. For the sake of brevity, B&P adopts and incorporates its response above to Request No. 2 as if it were fully set forth herein.

Moreover, there are no allegations in either the Complaint or Counterclaims which even remotely touch upon Ms. Becker-Avin. As framed by the pleadings, the matters at issue in this action focus **solely** upon the monies allegedly owed to Rosenbaum under a deferred compensation agreement and the actions allegedly taken by Rosenbaum and KGR relative to his departure from B&P in August 2008 with no prior notice, and pertaining specifically to the West Palm Beach office of B&P. Ms. Becker-Avin is B&P's professional development director, based in Fort Lauderdale, Florida. (Paul Decl., Ex. "D," ¶ 6). She does not have an office in West Palm Beach. (*Id.*). There is simply no nexus between Ms. Becker-Avin and the matters at issue in this litigation. Because it is not readily apparent from the request how Ms. Becker-Avin's payroll records have any bearing on this lawsuit, it is Rosenbaum's burden to demonstrate their relevancy. *See Suncast Technologies, L.L.C. v. Patrician Products, Inc.*, 2008 WL 179648, at *5 (S.D. Fla. Jan. 17, 2008) (stating that where "the relevancy of the discovery request was not readily apparent, the party seeking the discovery . . . had the burden to show the relevancy of the request."). He has not adequately done so. The only conceivable reason why

Rosenbaum would request Ms. Becker-Avin's payroll records stems from the fact that she happens to be the daughter of B&P's co-founding shareholder, Alan Becker. That, however, is not a sufficient basis on which to subject the payroll records of Ms. Becker-Avin, a non-party, to disclosure.

Request No. 4: Payroll Records of Keith Poliakoff (who is based in Fort Lauderdale)

(a) Specific Request for Production: In Request No. 4, Rosenbaum seeks "[a]ll payroll records reflecting the compensation, including salary and bonuses, of Keith Poliakoff, from the date of hire to the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery.

(c) Reasons supporting the protection: The reasons supporting the requested protection are the same as those set forth above in response to Request No. 2. In addition, a protective order is sought because the request seeks disclosure of B&P's confidential proprietary information pertaining to the salary information and compensation of one its employees. Moreover, the disclosure of such information would violate Mr. Poliakoff's right of privacy concerning such information. For the sake of brevity, B&P adopts and incorporates its response above to Request No. 2 as if it were fully set forth herein.

There are no allegations in either the underlying Complaint or the Counterclaims which even remotely touch upon Mr. Poliakoff. As framed by the pleadings, the matters at issue in this action focus **solely** upon the monies allegedly owed to Rosenbaum under a deferred compensation agreement and the actions allegedly taken by Rosenbaum and KGR relative to his departure from B&P in August 2008 with no prior notice, and pertaining specifically to the West Palm Beach office of B&P. Mr. Poliakoff is a land-use attorney and B&P shareholder based in

the Fort Lauderdale office. (Paul Decl., Ex. "D," ¶ 7). He does not have an office in West Palm Beach. (*Id.*). There is simply no nexus between Mr. Poliakoff and the matters at issue in this litigation. Because it is not readily apparent from the request how Mr. Poliakoff's payroll records have any bearing on this lawsuit, it is Rosenbaum's burden to demonstrate their relevancy. *See Suncast Technologies*, 2008 WL 179648, at *5. He has not met that burden. In fact, just as with the above request involving Marni Becker-Avin's payroll records, the only conceivable reason why Rosenbaum would request Mr. Poliakoff's payroll records is due to the fact that he happens to be the son of B&P's other co-founding shareholder, Gary Poliakoff. That is not a sufficient basis on which to subject the confidential financial records of a non-party to disclosure.

Request No. 6: Billing Records of *Every* B&P Employee (Regardless of Office Location)

(a) Specific Request for Production: In Request No. 6, Rosenbaum seeks "[a]ll billing records for every timekeeping employee, including attorneys and paralegals, for the past three (3) years from the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, limiting it to those employees who assisted in the re-staffing of B&P's West Palm Beach office following the resignations of Rosenbaum and the departing attorneys and staff, and then only for the period subsequent to August 4, 2008.

(c) Reasons supporting the protection: The reasons supporting the requested protection are the same as those set forth above in response to Request No. 2. In addition, a protective order is sought because the request seeks disclosure of B&P's proprietary information pertaining to the confidential billing records of its employees. For the sake of brevity, B&P adopts and incorporates its response above to Request No. 2 as if it were fully set forth herein. This request

is unduly burdensome for the additional reason that it seeks the billing records of *all* of B&P's time-keeping employees (regardless of office location) for the *past three years*, which is unreasonable both as to scope and time-frame in view of the fact that Rosenbaum and the departing employees were based in West Palm Beach and resigned from B&P only last year. B&P has over 200 time-keeping employees, and most of these employees were not involved in the staffing of the West Palm Beach office following Rosenbaum's departure. (Paul Decl., Ex. "D," ¶ 8).

Request No. 7: Expense Reports of *Every* B&P Employee (Regardless of Office Location)

(a) Specific Request for Production: In Request No. 7, Rosenbaum seeks "[a]ll expense reports submitted to you by any employee, officer or agent of Becker & Poliakoff, P.A. for the past four (4) years from the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, limiting it to those employees who assisted in the re-stabilization of B&P's West Palm Beach office in the aftermath of the resignations of Rosenbaum and the departing attorneys and staff, and then only for the period subsequent to August 4, 2008.

(c) Reasons supporting the protection: The reasons supporting the requested protection are the same as those set forth above in response to Request No. 2. In addition, a protective order is sought because the request seeks disclosure of personal and confidential information pertaining to B&P and its employees which are beyond the scope of this action. For the sake of brevity, B&P adopts and incorporates its response above to Request No. 2 as if it were fully set forth herein. This request is unduly burdensome for the additional reason that it seeks the expense reports of *all* of B&P's time-keeping employees (regardless of office location) for the

past four years, which is an unreasonable time-frame in view of the fact that Rosenbaum and the departing attorneys and staff resigned from B&P only last year. Moreover, B&P has approximately 200 time-keeping employees, and most were not involved in the staffing or re-staffing of the West Palm Beach office following Rosenbaum's departure. (Paul Decl., Ex. "D," ¶ 9). Therefore, it would be unduly burdensome and costly to have to comply with this Request.

Request No. 8: All Tax Returns and Internal Financial Records of B&P

(a) Specific Request for Production: In Request No. 8, Rosenbaum seeks "[a]ll tax returns, Department of Revenue filings, and all internal financial records of income and expenses, of Becker & Poliakoff, P.A, for the past five (5) years from the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, (a) requiring a different method of discovery than the one selected; or (b) limiting the scope of discovery to financial records (such as billing records) specifically mentioning the performance of B&P's West Palm Beach office for the three-year period preceding the request. In addition, as a condition of such disclosure, B&P requests that this Court enter a protective order requiring the parties to enter into a confidentiality stipulation in order to ensure that the private financial information shared by B&P is treated with discretion by Rosenbaum and is not shared with or divulged to any individual or entity not a party to this litigation for any reason.

(c) Reasons supporting the protection: The reasons supporting the requested protection are obvious. Tax returns are considered confidential. *See* 26 U.S.C. 6103(a) (providing that tax returns and return information "shall be confidential . . ."). Their discovery is the exception. *See Securities Exchange Commission v. Cymaticolor Corp.,* 106 F.R.D. 545, 547 (S.D.N.Y. 1985).

While there "is a split of authority with the federal courts . . . as to whether tax returns are entitled to enhanced protection from discovery," there is no question that "[i]ncome tax returns are highly sensitive documents' that courts should be reluctant to order disclosed during discovery." *Camp v. Correctional Medical Services*, 2009 WL 424723, at *2-3 (M.D. Ala. Feb. 17, 2009) (citing *Pendlebury v. Starbucks Coffee Co.,* 2005 WL 2105024, *1-2 (S.D. Fla. Aug. 29, 2005)). "In general, most courts have noted that public policy concerns favor keeping tax returns confidential when possible, and have ordered production only when the relevance of the information is clear and there is a compelling need." *Id.* (citing *Columbus Drywall & Indus., Inc. v. Masco Corp.,* 2006 WL 5157686, at *7 (N.D. Ga. 2006)). Thus, a party should not be required to produce income tax returns absent a showing of compelling need. *Id.*; *Pendlebury*, 2005 WL 2105024, at *1-2; *Dunkin' Donuts Inc., v. Mary's Donuts, Inc.,* 2001 WL 34079319, *2 (S.D. Fla. Nov. 1, 2001).[7]

The relevancy of B&P's tax returns and firm-wide financial statements is tenuous at best. Rosenbaum's main claim is that he is owed deferred compensation pursuant to the terms of a written agreement. His claimed damages have nothing to do with B&P's income or expenses. It is simply a matter of contract. Although B&P's Counterclaims seek damages from Rosenbaum and KGR arising out their predatory actions, such damages relate specifically to the West Palm Beach office of B&P. The income and expenses of B&P's other offices, or even the law firm as

[7] As the *Camp* court noted, several courts, relying on *Maddow v. Proctor & Gamble Co., Inc.,* 107 F.3d 846 (11th Cir.1997), have concluded that the Eleventh Circuit does not require a party to demonstrate compelling need, only relevance, prior to compelling the production of income tax returns. *See, e.g.*, *United States v. Certain Real Property known as and located at 6469 Polo Pointe Way, Delray Beach, Fla.,* 444 F.Supp.2d 1258 (S.D. Fla. 2006) and *Bellosa v. Universal Tile Restoration, Inc.,* 2008 WL 2620735 (S.D. Fla. 2008). According to *Camp*, "[t]hese courts read too much in to *Maddox* which did not hold that relevance is the *sole test* for production of income tax records. There is nothing in *Maddow* which suggests that the issue of compelling need was raised; it certainly was not decided." *Camp*, 2009 WL 424723, at *2-3. *See also Financial Bus. Equip. Solutions, Inc. v. Quality Data Systems, Inc.*, 2008 WL 4663277, at *1-2 (S.D. Fla. Oct. 21, 2008) (adopting the "compelling need" test of *Pendlebury*).

a whole, are not at issue in this action. Moreover, B&P's tax returns do not contain information specific to its West Palm Beach office. (Paul Decl., Ex. "D," ¶ 10). It reports *firm-wide* income only. (*Id.*). Therefore, there is no compelling need for Rosenbaum (a competitor of B&P) to have access to B&P's *firm-wide* tax information and financial statements.

But even if Rosenbaum could demonstrate a compelling need for B&P's tax returns and firm-wide financial statements, there are other ways of obtaining the desired information (*i.e.*, the damages suffered by B&P owing to Rosenbaum's predatory actions specifically targeting B&P's West Palm Beach office) without requiring the disclosure of B&P's confidential tax and financial records to one of its competitors. As recognized in *Pendlebury*, "such information can easily be gleaned through interrogatories. Similarly, Defendant could inquire into these areas at depositions or through requests for admissions." 2005 WL 2105024, at *2. A sworn statement providing financial information is another alternative. *See, e.g.*, *Hamm v. Potampkin*, 1999 WL 249721 (S.D.N.Y. 1999). In the case at bar, the most reliable documentary evidence of the damages suffered by B&P due to Rosenbaum's predatory actions targeting the West Palm Beach office of B&P are those documents pertaining specifically to that office, such as billing records, billing reports, collection reports, productivity analyses, expense reports, invoices, statement of accounts receivable, and the like. The information sought by Rosenbaum (*i.e.*, evidence of B&P's damages) can easily be ascertained through such records without having to subject B&P's confidential tax returns and firm-wide financial statements to the prying eyes of a competitor.

Further, to the extent that the Court requires B&P to produce any confidential financial records, it should be limited to the time-frame relevant to the claims at issue herein. B&P's claimed damages stem from the predatory actions taken by Rosenbaum and KGR in August 2008 specifically targeting B&P's West Palm Beach office. B&P's damages occurred in 2008 and

continue to the present date as a result of Rosenbaum's and KGR's predatory actions. It is not necessary for Rosenbaum to reach back five (5) years in order to assess B&P's damages from actions taken in August 2008. In view of the claims at issue in this litigation, a more reasonable look-back period would be the two-year period preceding Rosenbaum's departure from B&P.

In any event, there should be a confidentiality stipulation and order in place before B&P is required to disclose such highly-sensitive confidential information to one of its competitors, particularly one who has already sought to harm B&P's business. *See Guerra v. Professional Plumbing Corp.*, 2009 WL 2834837, at *1-2 (S.D. Fla. Aug. 27, 2009) (ordering that any private financial information produced by plaintiffs "shall not be shared with or divulged to any individual or entity for any reason outside this litigation, in addition to any other voluntary measures that the parties agree are appropriate to protect the private information provided by Plaintiffs in response to Defendants' request for production."); *Platypus Wear, Inc. v. Clarke Modet & Co., Inc*., 2008 WL 728540, at *3 (S.D. Fla. Mar. 17, 2008) ("This Court recognizes the inherently private nature of tax returns, and notes that any sensitive financial information divulged during the course of discovery may be subject to the terms of the parties' stipulated confidentiality order."). B&P respectfully submits that any such confidentiality order (1) prohibit Rosenbaum and KGR from disclosing or sharing the information with anyone not a party to this litigation (including members of their firm); (2) limit its use to the current litigation, and (3) allow for the redaction of personal and non-relevant information (such as anything not specifically bearing on the financial performance and health of B&P's West Palm Beach office).

Request No. 9: All Notes, Minutes and Other Records of B&P's Management Committee

(a) Specific Request for Production: In Request No. 9, Rosenbaum seeks "[a]ll notes, minutes and other records of meetings of the Management Committee for the past three (3) years from the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, (a) requiring a different method of discovery than the one selected by Rosenbaum; or (b) limiting the scope of discovery only to those Management Committee notes, minutes and records specifically mentioning B&P's West Palm Beach office (and allowing for the redaction of any other matters) for the two-year period preceding the request. In addition, as a condition of such disclosure, B&P requests that this Court enter a protective order requiring the parties to enter into a confidentiality stipulation in order to ensure that the confidential business information shared by B&P is treated with the utmost discretion by Rosenbaum and is not shared with or divulged to any individual or entity who is not a party to this litigation for any reason.

(c) Reasons supporting the protection: The requested protection is warranted because the notes, minutes and records of meetings of B&P's Management Committee are highly-sensitive confidential information pertaining to the business and operations of B&P, including business strategies and proposed plans or courses of action. (Paul Decl., Ex. "D," ¶ 11). Rosenbaum and KGR are acknowledged competitors of B&P, and, as alleged in the Counterclaims, have engaged in predatory actions designed to harm the business of B&P. (*Id.*). If KGR and Rosenbaum (its managing partner) knew what strategic plans and courses of action were being considered by B&P, it could easily use the requested information in a manner detrimental to the business and operations of B&P, as has already occurred in this case by virtue

of their wholesale diversion of B&P's employees and clients, and actions designed to paralyze the West Palm Beach office. (*Id.*). Therefore, B&P has a legitimate business and competitive reason for wishing to shield this information from disclosure, particularly to a competitor. (*Id.*).

The relevancy of B&P's Management Committee records is tenuous at best. There are no allegations in either the Complaint or the Counterclaims which support the production of all of the requested documents. In the Complaint, Rosenbaum alleges that he is owed deferred compensation under a written agreement. B&P's Counterclaims, in turn, seek damages from Rosenbaum as a result of his predatory actions targeting the West Palm Beach office of B&P. The records of B&P's Management Committee are not relevant to these claims. Further, the information sought by Rosenbaum (bearing on the issue of B&P's damages) can be obtained through other less-intrusive means of discovery, such as interrogatories and deposition questions.

Notwithstanding the foregoing, to the extent that the production of the requested documents is ordered, it should be limited to those records specifically mentioning B&P's West Palm Beach office (and allowing for the redaction of any other matters), and it should be further limited to the specific time-frame relevant to the claims and defenses at issue herein. B&P's claimed damages stem from the predatory actions taken by Rosenbaum and KGR in August 2008 specifically targeting B&P's West Palm Beach office. B&P's damages occurred in 2008 and continue to the present date as a result of Rosenbaum's and KGR's predatory actions. It is not necessary for Rosenbaum to reach back three (3) years in order to assess B&P's damages from actions taken in August 2008. In view of the claims at issue in this litigation, a more reasonable look-back period would be the two-year period preceding Rosenbaum's departure from B&P.

In any event, there should be a confidentiality stipulation and order in place before B&P is required to disclose such highly-sensitive information to one of its competitors, particularly

one who has already sought to harm B&P's business. *See Guerra*, 2009 WL 2834837, at *1-2. B&P respectfully submits that any such confidentiality order (1) prohibit Rosenbaum and KGR from disclosing or sharing the information with anyone not a party to this litigation (including members and employees of their firm); (2) limit its use to the current litigation, and (3) allow for the redaction of personal and non-relevant information (such as anything not specifically bearing on the financial performance and health of B&P's West Palm Beach office).

Request No. 10: All Communications Among Members of B&P's Management Committee

(a) Specific Request for Production: In Request No. 10, Rosenbaum seeks "[a]ll communications among members of the Management Committee, which may have included others as well, for the past three (3) years from the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, (a) requiring a different method of discovery than the one selected by Rosenbaum; or (b) limiting the scope of discovery only to those communications specifically mentioning B&P's West Palm Beach office (and allowing for the redaction of any other matters) for the two-year period preceding the request. In addition, as a condition of such disclosure, B&P requests that this Court enter a protective order requiring the parties to enter into a confidentiality stipulation in order to ensure that the confidential business information contained in the foregoing request (if shared by B&P) be treated with discretion by Rosenbaum and is not shared with or divulged to any individual or entity who is not a party to this litigation for any reason.

(c) Reasons supporting the protection: The reasons supporting the requested protection are the same as those set forth above in response in Request No. 9. For the sake of brevity, B&P

adopts and incorporates its response above to Request No. 9 as if it were fully set forth herein. In addition, the requested protection is warranted because the request is overly broad and compliance therewith would be unduly burdensome. B&P, in the normal course of its business, does not maintain a separate file for each and every communication sent between members of its Management Committee. (Paul Decl., Ex. "D," ¶ 12). There could easily be thousands of such communications, and to retrieve each and every one would cause B&P to expend immeasurable time, resources and expense. (*Id.*). Because B&P does not retain archival copies of e-mails, it would be virtually impossible for B&P's IT Department to perform a search of all communications between or among members of B&P's Management Committee. (Solomon Decl., Ex. "E," ¶ 6). Prior to 2009, B&P did not have an archiving system for its e-mails. (*Id.*, ¶ 4). At the present time, B&P has over nine (9) million e-mails in its computer system, which does not take into account deleted e-mails. (*Id.*). Internal e-mails exceed one (1) million annually. (*Id.*). Further, while there is an e-mail group designated as "MGMTCOMM" (comprised of the members of the Management Committee) and a search can be performed using that designation, it would not capture e-mails sent between or among individual members of the Management Committee. (*Id.*). Further, even with specific requests of sender, recipient, approximate date and specific words as search criteria, we cannot produce an e-mail if it has been deleted some time ago. We do not retain archival copies of email. E-mail is maintained individually by the mailbox owner/operator. (*Id.*). In view of the foregoing, attempting to gather the requested information would require a costly and massive undertaking.

Request No. 11: All Records of Payments Made to the Wife of a B&P Shareholder

(a) Specific Request for Production: In Request No. 11, Rosenbaum seeks "[a]ll records of payments made by you to Sherri Poliakoff, or any business affiliated with Sherri Poliakoff, for the past five (5) years."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, limiting the scope of the requested discovery to the preceding two-year period.

(c) Reasons supporting the protection: A protective order is sought because the instant Request is designed to annoy and/or harass B&P. Ms. Poliakoff is the wife of B&P's co-founding shareholder, Gary Poliakoff. (Paul Decl., Ex. "D," ¶ 13). She is not an employee of B&P, nor has she ever been. (*Id.*). Ms. Poliakoff is an interior design professional who has, in the past, rendered services to B&P. (*Id.*). There are no allegations in the Complaint or Counterclaims which even remotely touch upon Ms. Poliakoff. As framed by the pleadings, the matters at issue in this action focus **solely** upon the monies allegedly owed to Rosenbaum under a deferred compensation agreement and the actions allegedly taken by Rosenbaum and KGR relative to his departure from B&P in August 2008 with no prior notice, and pertaining specifically to the West Palm Beach office of B&P. The requested discovery bears no nexus to such claims. Because it is not readily apparent from the request how payments made to Ms. Poliakoff have any bearing on this lawsuit, it is Rosenbaum's burden to demonstrate their relevancy. *See Suncast Technologies, L.L.C. v. Patrician Products, Inc.*, 2008 WL 179648, at *5. He has not adequately done so. The only conceivable reason why Rosenbaum would request records of any payments made to Sheri Poliakoff (going back five years, no less) stems from the fact that she happens to be the wife of B&P's co-founding shareholder, Gary Poliakoff. That,

however, is not a sufficient basis on which to seek discovery, particularly where, as here, they are not even remotely relevant to this action and are designed simply to harass and/or annoy B&P.

Request No. 12: All Records of Payments Made for the Purchase of Furniture

(a) Specific Request for Production: In Request No. 12, Rosenbaum seeks "[a]ll records of payments made by you for, and all communications relating to, office or other furnishings for the past five (5) years, from any furniture store or outlet, including but not limited to the approximate $30,000 purchase for furniture for Alan Becker's office in 2007 and/or 2008 from a furniture store in which Alan Becker or his relatives had an ownership interest of any kind."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, limiting the scope of the requested discovery to the preceding two-year period.

(c) Reasons supporting the protection: A protective order is sought because the instant Request is designed to annoy and/or harass B&P. Alan Becker is the managing shareholder of B&P, and is not himself a party to this action. There are no allegations in either the Complaint or Counterclaims which relate to the office furniture purchased for Mr. Becker's office. As framed by the pleadings, the matters at issue in this action focus **solely** upon the monies allegedly owed to Rosenbaum under a deferred compensation agreement and the actions allegedly taken by Rosenbaum and KGR relative to his departure from B&P in August 2008 with no prior notice, and pertaining specifically to the West Palm Beach office of B&P. The requested discovery bears no nexus to such claims. Because it is not readily apparent from the request how the purchase of office furniture for Mr. Becker's office has any bearing on this

lawsuit, it is Rosenbaum's burden to demonstrate their relevancy. *See Suncast Technologies*, 2008 WL 179648, at *5. He has not adequately done so. In fact, the only conceivable reason why Rosenbaum would delve into the minutia of Mr. Becker's office furniture (and the cost thereof)--which is not even remotely at issue--is to harass and/or annoy B&P. Accordingly, B&P is entitled to a protective order prohibiting such requested discovery.

Request No. 13: All Communications Between B&P and its Employees (Part I)

(a) Specific Request for Production: In Request No. 13, Rosenbaum seeks "[a]ll communications sent by or to any Becker & Poliakoff, P.A. employee from August 4, 2008, relating in any way to the departing staff or staffing level or needs of the West Palm Beach office, to the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding or limiting the requested discovery.

(c) Reasons supporting the protection: The Request is overly broad and compliance therewith would be unduly burdensome. B&P, in the normal course of its business, does not maintain a separate file for (nor does it segregate) each and every communication it sent to or received from its employees in connection with the departing attorneys or the staffing level or needs of the West Palm Beach office. (Paul Decl., Ex. "D," ¶ 14). There are likely thousands of communications between B&P and its employees relating to the subject matter of this Request, and to retrieve each and every one of those communications would cause B&P to expend immeasurable time, resources and expense. (*Id.*). It would be virtually impossible for B&P's information technology department to perform a search of all communications between B&P and its employees relating to the information sought in this Request. (Solomon Decl., Ex. "E," ¶ 7). Prior to 2009, B&P did not even have an archiving system for its e-mails. (*Id.*, ¶ 4). In the

absence of archiving, B&P can do limited searches but it would have no way to tell if an email "relates, in any way, to the departing staff or staffing level or needs of the West Palm Beach office." (*Id.*, ¶ 7). In order to attempt to find e-mails within the scope of this request, B&P's IT department would need to search for emails from specific people, to specific people, and with particular words for which to search. (*Id.*). And even with this information, if a group e-mail went out and a person is no longer a member of that group, B&P would have no way to know whether or not any such individuals received or sent the email at some time in the past when they had been a member of the group. (*Id.*). Further, if any e-mails were part of a chain that included some "BCC" (blind copies), B&P would have a limited ability to accurately produce that data because BCC addresses are not revealed under all circumstances and the results might not reflect what was truly sent or received. (*Id.*). But even to do such limited searches would be costly, time-consuming and unduly burdensome, in view of the fact that there are presently over nine (9) million e-mails in B&P's computer system. (*Id.*).

Request No. 14: All Communications Between B&P and its Employees (Part II)

(a) Specific Request for Production: In Request No. 14, Rosenbaum seeks "[a]ll communications sent by or to any Becker & Poliakoff, P.A. employee from August 4, 2008 to the present, relating in any way to the operation of the West Palm Beach office, to the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding or limiting the requested discovery.

(c) Reasons supporting the protection: The reasons supporting the requested protection are the same as those set forth above in response in Request No. 13. For the sake of brevity,

B&P hereby adopts and incorporates its response above to Request No. 13 as if it were fully set forth herein.

Request No. 15: All Communications Regarding the "12% Pay Deferral"

(a) Specific Request for Production: In Request No. 14, Rosenbaum seeks "[a]ll communications sent by or to any Becker & Poliakoff, P.A. employee from May 1, 2008, regarding the 12% pay deferral, to the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding or limiting the requested discovery.

(c) Reasons supporting the protection: The Request is overly broad and compliance therewith would be unduly burdensome. B&P, in the normal course of its business, does not maintain a separate file for (nor does it segregate) each and every communication it sent to or received from its employees in connection with the 12% salary deferral. (Paul Decl., Ex. "D," ¶ 15). It would be virtually impossible for B&P's information technology department to perform a search of all communications between B&P and its employees relating to the information sought in this Request. (Solomon Decl., Ex. "E," ¶ 8). Prior to 2009, B&P did not even have an archiving system for its e-mails. (*Id.*, ¶ 4). In the absence of archiving, B&P can do limited searches but it would have no way to tell if an e-mail relates to the 12% salary deferral. (*Id.*, ¶ 8). In order to attempt to find e-mails within the scope of this request, B&P's IT department would need to search for emails from specific people, to specific people, and with particular words for which to search, such as the word/phrase 12%, 12 percent, 12 pct, and so forth. (*Id.*). However, there is no guarantee that any of B&P's search engines will be able to search for a character such as "%," and B&P will have to do further testing to see if this is even possible. (*Id.*). In any event, B&P would still require more specifics as to dates, senders and recipients in

order to narrow the search. (*Id.*). And even with this information, if a group e-mail went out and a person is no longer a member of that group, B&P would have no way to know whether or not any such individuals received or sent the email at some time in the past when they had been a member of the group. (*Id.*). Further, if any e-mails were part of a chain that included some "BCC" (blind copies), B&P would have a limited ability to accurately produce that data because BCC addresses are not revealed under all circumstances and the results might not reflect what was truly sent or received. (*Id.*). But even to do such limited searches would be costly, time-consuming and unduly burdensome, in view of the fact that there are presently over nine (9) million e-mails in B&P's computer system. (*Id.*).

To require B&P to undertake such a costly and time-consuming endeavor is not justified given the lack of any connection between the 12% salary deferral and the subject matter of this action. There are no allegations in either the Complaint or Counterclaims which relate to the 12% salary deferral. As framed by the pleadings, the matters at issue in this action focus **solely** upon the monies allegedly owed to Rosenbaum under a deferred compensation agreement and the actions allegedly taken by Rosenbaum and KGR relative to his departure from B&P in August 2008 with no prior notice, and pertaining specifically to the West Palm Beach office of B&P. The requested discovery bears no nexus to such claims. Notably, this lawsuit is not about *why* Rosenbaum left the employ of B&P or whether he had good cause or justification to do so. Nor is it about the temporary 12% salary deferral. This lawsuit is simply about *what* actions Rosenbaum and KGR took (and the legality and consequences of those actions) once Rosenbaum decided to resign from B&P in order to join KGR, and whether he is still owed any monies pursuant to a deferred compensation agreement. Because it is not readily apparent from the request how the 12% salary deferral has any bearing on this lawsuit, it is Rosenbaum's burden to

demonstrate their relevancy. *See Suncast Technologies*, 2008 WL 179648, at *5. He has not adequately done so. In fact, the only reason why Rosenbaum would seek information regarding the 12% salary deferral--which is not even remotely at issue here--is to harass and/or annoy B&P. Accordingly, B&P is entitled to a protective order prohibiting such requested discovery.

Request No. 17: Client Lists

(a) Specific Request for Production: In Request No. 17, Rosenbaum seeks "[a]ll B&P client lists for the years 2005 through and inclusive to the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding the requested discovery, or, alternatively, limiting the requested discovery to a list of those clients which B&P believes were solicited by Rosenbaum or KGR, or whose matters are presently being handled by the latter. In addition, as a condition of such disclosure, B&P requests that this Court enter a protective order requiring the parties to enter into a confidentiality stipulation in order to ensure that the confidential client information shared by B&P is treated with discretion by Rosenbaum and is not shared with or divulged to any individual or entity not a party to this litigation for any reason.

(c) Reasons supporting the protection: The reasons supporting the requested protection are obvious. The information requested by Rosenbaum constitutes a trade secret or other confidential or proprietary information of B&P. *See* Fed. R. Civ. P. 26(c)(1)(G) (authorizing protective orders "requiring that a trade secret or other confidential research, development, or commercial information not be revealed or revealed only in a specified way."). Client lists are the quintessential trade secret. *See Variable Annuity Life Ins. Co. v. Dull*, 2009 WL 3180498, at *4 (S.D. Fla. Sept. 25, 2009) (Marra, J.) ("There is no dispute that . . . customer lists and related

information constitute protectable trade secrets under Florida law.") (citing Fla. Stat. § 688.002(4)). This is especially so in the legal profession, where clients are the most essential asset of any law firm. B&P has gone to great effort and expense to develop its client relationships, and takes reasonable precautions to protect such information from disclosure. (Paul Decl., Ex. "D," ¶16). Rosenbaum and KGR are acknowledged competitors of B&P, and are seeking to compete with B&P in the representation of condominium and homeowners' associations, a practice area in which B&P is a dominant player. (*Id.*, ¶ 4). If KGR and Rosenbaum (its managing partner) were given access to a list of B&P's clients, they could easily use such information in a manner detrimental to the business and operations of B&P, as has already occurred in the instant matter by virtue of the alleged wholesale solicitation of B&P's existing clients. (*See* Counterclaim [DE 32], ¶¶ 27-37). Therefore, B&P has a legitimate business and competitive reason for wishing to shield this information from disclosure, particularly to a competitor which has recently engaged in predatory acts against it.

There is simply no connection between B&P's firm-wide client list and the subject matter of this action. Rosenbaum's main claim is that he is owed deferred compensation pursuant to the terms of a written agreement. His alleged damages have nothing to do with the identity of B&P's clients. It is simply a matter of contract. Although B&P's Counterclaims seek damages from Rosenbaum and KGR arising out their predatory actions, such damages relate specifically to the West Palm Beach office of B&P, and not to the entirety of B&P state-wide practice. The only client relationships implicated by B&P's claims are those clients which were improperly solicited by Rosenbaum and KGR. And B&P has not alleged that *all* of its clients were solicited by KGR and Rosenbaum. Therefore, there is no need for KGR (a competitor of B&P) and Rosenbaum (its managing partner) to have unfettered access to B&P's *firm-wide* list of clients.

At most, Rosenbaum should be entitled to a list of those clients which B&P contends or believes were solicited by Rosenbaum and KGR and/or who switched representation from B&P to KGR.

Request No. 19: Home Addresses of *All* B&P Employees

(a) Specific Request for Production: In Request No. 17, Rosenbaum seeks "[a]ll home addresses of all B&P employees, whether current or former, for the past three (3) years from the date of your response to this Request for Production."

(b) Protection sought: As to this Request, B&P seeks a protective order forbidding or limiting the requested discovery, or, alternatively, requiring a different method of discovery than the one selected by Rosenbaum.

(c) Reasons supporting the protection: The reasons supporting the requested protection are the same as those set forth in response in Request No. 2, in that the requested information seeks personal and confidential information pertaining to B&P's employees. As explained in its response Request No. 2, B&P has literally hundreds of employees, very few of whom have any connection to the instant action. Therefore, the Request is overbroad in that it seeks addresses for *all* B&P employees regardless of their office location or whether they had anything to do with the matters at issue in this action. Indeed, the only B&P employees for whom such personal information should arguably be shared are those employees that were personally involved in re-staffing the West Palm Beach office. And, as to such employees, there clearly are other ways of obtaining the desired information without requiring the disclosure of personal information such as the home address of every employee. For example, Rosenbaum can propound interrogatories seeking the names and business address of all B&P employees having discoverable information. Or, alternatively, Rosenbaum can inquire into this area through focused deposition questions. Either of those discovery vehicles would provide Rosenbaum with the information he seeks (*i.e.*,

the names of potential witnesses) while protecting the privacy of those B&P employees having no connection to the instant action.

CONCLUSION

For the foregoing reasons, Defendant/Counter-Plaintiff BECKER & POLIAKOFF, P.A. respectfully requests that this Court enter a protective order pursuant to Fed. R. Civ. P. 26(c) forbidding or limiting the written discovery requested by Plaintiff/Counter-Defendant Daniel S. Rosenbaum in his First Request for Production of Documents as to which specific objections have been raised herein, together with such other and further relief as this Court deems equitable and just.

GOOD FAITH CERTIFICATION

Pursuant to Local Rule 7.1(A)(3) and Fed. R. Civ. P. 26(c)(1), the undersigned counsel for Defendant/Counter-Plaintiff has conferred with Rosenbaum (who is proceeding *pro se*) in a good faith effort to resolve the issues raised by this motion without court action; however, the parties were unable to reach any agreement, thereby making the filing of the instant motion necessary.

Respectfully submitted,

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Florida Bar No. 389242

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **October 16th, 2009**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record. I also certify that the foregoing document is being served this day on: **DANIEL S. ROSENBAUM, ESQ.** (drosenbaum@kgrlawfirm.com)**,** Pro Se Plaintiff, c/o Katzman Garfinkel Rosenbaum, LLP, 250 Australian Avenue South, Suite 500, West Palm Beach, Florida 33401 and **EDWARD A. MAROD, ESQ.** (ed.marod@marod.com), Edward A. Marod, P.A., counsel for Counter-Defendant KGR, 400 S. Australian Avenue, Suite 750, West Palm Beach, FL 33401 via transmission of Notices of Electronic Filing generated by CM/ECF.

GREENSPOON MARDER, P.A.

By: /s/ Joel Shulman
JOEL L. SHULMAN
Florida Bar No. 389242

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