UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

DANIEL S. ROSENBAUM,

Plaintiff

v.

BECKER & POLIAKOFF, P.A.,

Defendant.

BECKER & POLIAKOFF, P.A.,

Counter-Plaintiff,

v.

DANIEL S. ROSENBAUM and
KATZMAN GARFINKEL ROSENBAUM, LLP,

Counter-Defendants.

ORDER ON DEFENDANT/COUNTER-PLAINTIFF BECKER & POLIAKOFF, P.A.'S MOTION FOR PROTECTIVE ORDER AND PLAINTIFF/COUNTER-DEFENDANT DANIEL S. ROSENBAUM'S MOTION TO COMPEL

THIS CAUSE is before the Court on Defendant/Counter-Plaintiff Becker & Poliakoff, P.A.'s (B&P) Motion for Protective Order (DE 74), and Plaintiff/Counter-

Defendant Daniel S. Rosenbaum's (Rosenbaum) Motion to Compel (DE 78), which are now ripe for adjudication. The court finds it appropriate to treat these two Motions in one adjudication because they pertain to the same discovery requests, i.e., Rosenbaum's First Request for Production to B&P. After considering the parties' arguments, the court grants in part and denies in part the relief sought by each Motion.

I. BACKGROUND

Plaintiff brought this civil enforcement action for damages in a one count Complaint for breach of employment and deferred compensation agreement under the Employee Retirement Income Security Act (ERISA) in connection with specific provisions of the Employment and Deferred Compensation Agreement (Compensation Agreement) entered into between Rosenbaum and B&P. B&P filed a five count Counterclaim against Rosenbaum alleging breach of fiduciary duty (Count I); aiding and abetting against Katzman, Garfinkel & Rosenbaum (KGR) (Count II); tortuous interference with business and/or contractual relations against Rosenbaum and KGR (Count III); breach of contract against Rosenbaum (Count IV); and seeking declaratory judgment on the validity of certain provisions under the Compensation Agreement (Count V). [1]

II. STANDARD OF REVIEW

[1] B&P allege in Counts IV and V of the Counterclaim that the provisions in paragraph twelve of both the October 1983 and January 1994 Stockholders' Agreements, mirror those of paragraph Sixteen in the 1994 Compensation Agreement upon which Rosenbaum bases his Complaint.

The Federal Rules of Civil Procedure strongly favor a full and broad scope of discovery whenever possible, allowing a party to obtain discovery of "any matter, not privileged, that is relevant to the claim or defense of any party." FED. R. CIV. P. 26(b)(1); Farnsworth v. Procter & Gamble Co., 758 F.2d 1545, 1547 (11th Cir. 1985); Stern v. O'Quinn, 253 F.R.D. 663, 687 (S.D. Fla. 2008) (citing Dunkin' Donuts, Inc. v. Mary's Donuts, Inc., 206 F.R.D. 518 (S.D. Fla. 2002).[2] The information sought must be relevant, not overly burdensome to the responding party, and tailored to the issues involved in the particular case. Washington v. Brown & Williamson Tobacco Corp., 959 F.2d 1566, 1570 (11th Cir. 1992) (citations omitted).[3] "Relevancy" under Rule 26(b)(1) is "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978) (citation omitted).[4] In addition, federal courts superimpose "a balancing of interests approach for Rule 26's good cause requirement," whereby the court balances one party's interest in accessing data against the other's keeping of the information confidential. Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1313 (11th Cir.

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[2] It is a basic tenet that "[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." Hickman v. Taylor, 329 U.S. 495, 507-08 (1947).

[3] The intent of the Federal Rules was to "make trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practical extent." U.S. v. Procter & Gamble Co., 356 U.S. 677, 682 (1958) (citing Hickman v. Taylor, 329 U.S. at 501).

[4] The Advisory Committee Notes to Rule 26 approve the concept that "the . . . Rules permit 'fishing for evidence as they should.'" Adv. Com. Notes, 1946 Amend. (citation omitted); see also Hickman v. Taylor, 320 U.S. at 507 (indicating "cry of 'fishing expedition'" can no longer serve to prevent inquiry into underlying facts of opponent's case).

2001) (citing Farnsworth, 758 F.2d at 1547). Thus, ordinarily, discovery based on relevance should be allowed "unless it is clear that the information sought has no possible bearing on the claims and defenses of the parties or otherwise on the subject matter of the action." Tate v. United States Postal Serv., No. 04-61509, 2007 W.L. 521848, at *1 (S.D. Fla. Feb. 14, 2007) (citing Dunkin Donuts, Inc. v. Mary's Donuts, Inc., No. 01-0392, 2001 WL 34079319 (S.D. Fla. No. 1, 2001)). [5]

Indeed, "discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues . . . . Nor is discovery limited to the merits of a case, for a variety of fact-oriented issues may arise during litigation that are not related to the merits." Oppenheimer Fund, 437 U.S. at 351. In short, information can be relevant and, therefore, discoverable, even if not admissible at trial, so long as the information is reasonably calculated to lead to the discovery of admissible evidence. Dunbar v. United States, 502 F.2d 506, 509-10 (5th Cir. 1974) (citations omitted).[6]

Furthermore, a district court has broad discretion to prevent or limit the disclosure of confidential trade secrets. FED. R. CIV. P. 26(c)(7). Nonetheless, entry

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[5] In order to sustain objections to discovery, the party seeking the protection must show the absence of any possible bearing of the information sought to the claims and defenses of the case. Tate v. United States Postal Serv., 2007 WL 521848, at *2 (citations omitted). Such a showing requires either demonstrating that the information is outside Rules 26's broad scope of relevance, or that it "is of such marginal relevance that the potential harm occasioned by discovery would far outweigh the ordinary presumption in favor of broad disclosure." Id.

[6] Fifth Circuit decisions as they existed as of the close of business on September 30, 1981, are binding precedent on all federal courts within the Eleventh Circuit. Bonner v. City of Prichard, Alabama, 661 F.2d 1206, 1207 (11th Cir. 1981).

of a protective order does not depend on a legal privilege. Farnsworth, 758 F.2d at 1548. A party requesting a protective order has the burden of demonstrating good cause, and must make "a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements" in order to obtain entry of the protective order. U.S. v. Garrett, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978).

The work product doctrine, first articulated in Hickman v. Taylor, 329 U.S. 495 (1947), has been codified under FED. R. CIV. P. 26(b)(3), protecting the disclosure of materials prepared in anticipation of litigation by a party or by its representative, which includes its "attorney, consultant, surety, indemnitor, insurer, or agent." FED. R. CIV. P. 26(b)(3)(A). The doctrine "reflects the strong 'public policy underlying the orderly prosecution and defense of legal claims.'" United Kingdom v. United States, 238 F.3d 1312, 1321 (11th Cir. 2001) (citing Hickman v. Taylor, 329 U.S. at 510)). In performing his duties, it is essential for a lawyer to work "with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel," to and including assembling information and sifting through facts to separate what the lawyer considers to be relevant and irrelevant, to prepare a legal theory, and to plan strategy. Platypus Wear, Inc. v. Clarke Modet & Co., Inc., Hickman v. Taylor, 329 U.S. at 510-11. An attorney's thoughts, therefore, must remain "inviolate." Id. at 511. Despite that protection, a litigant cannot use the work product doctrine "as a sword to cut out the heart of an opposing party's case while simultaneously brandishing it as a shield from disclosure of any Achilles heels." Stern v. O'Quinn,

253 F.R.D. at 677 (citations omitted).

Consequently, "[w]here relevant and non-privileged facts remain hidden in an attorney's file and where production of those facts is essential to the preparation of [a] case, discovery may be properly . . . had. Such written statements and documents might, under certain circumstances, be admissible in evidence or give clues as to the existence or location of relevant facts . . . . Or they might be useful for purposes of impeachment or corroboration." Hickman v. Taylor, 329 U.S. at 511. In such instances, "production might be justified where the witnesses are no longer available or can be reached only with difficulty." Id. If production of such material were to be precluded, "the liberal ideas of the deposition-discovery portions of the Federal Rules of Civil Procedure would be stripped of much of their meaning." Hickman v. Taylor, 329 U.S. at 511-12. To overcome the protection afforded by the work product doctrine a petitioner must show both a "substantial need" for the information and "undue hardship" in obtaining it. FED. R. CIV. P. 23(b)(3); Castle v. Sangamo Weston, Inc., 744 F.2d 1464, 1467 (11th Cir. 1984) (citations omitted).

III. DISCUSSION

The Court begins by addressing several minor issues which crop up at different times and in different areas throughout the pleadings. By resolving these largely minor issues quickly and at the outset, the Court will be better able to focus its attention on the real issues at stake.

The first such issue to address and quickly put to rest is B&P's request that

Rosenbaum's Motion be stricken for allegedly failing to comply with Local Rule 7.1.C.2's twenty-page limitation "since it liberally utilizes 'single-spacing ' throughout the motion... makes use of a reduced type-size... . [and]...uses the vehicle of his affidavit...as a place to insert additional argument and details... ." (D.E. #104, pp.5-6). The fact Rosenbaum's Motion is heavy with quotation-laden paragraphs that correctly and necessarily appear on the page in single-space type, is hardly indicative to this Court of "a plot afoot" to circumvent the Local Rule's requirement that motions may not exceed twenty pages without court approval. Nor does the Court read into Rosenbaum's use of reduced type-size, and employment of additional support through affidavit, some sinister plan on his part to knowingly and intentionally "flout" the Local Rules on page limitations. Indeed, such a plot seems all the more remarkable when one considers the liberality with which the undersigned typically views motions to exceed page limits, and when one considers that the Motion B&P uses to launch its "over 20 page" attack, albeit filed after first obtaining court approval, is itself 45 pages in length. Under these circumstances, the question must be asked, why would Rosenbaum resort to clever ploys and deceitful machinations to obtain relief which is so easily and frequently obtained? The answer is he wouldn't, and B&P's suggestion to the contrary, if not quite propelled by paranoia, certainly borders on the fanciful.

Equally without merit is B&P's suggestion that Rosenbaum's " 'Pro Se' Motion be stricken as unauthorized under Local Rule 11.1D.4," in that Rosenbaum,

allegedly having been represented by counsel initially in the case, may not now represent himself *pro se* without first obtaining an order of substitution from the court. Initially, the Court notes that it's not even entirely clear from the pleadings filed that Rosenbaum, individually, was ever, as B&P claims, "represented" by an attorney. It's just as likely from a review of the docket sheet and pleadings filed that Rosenbaum, individually, was at all times representing himself *pro se,* and that he simply didn't insert the "pro se" tag-line after his name on earlier pleadings because he thought that fact was self explanatory. Under this theory, it was only after Rosenbaum's firm was brought in as a party that Rosenbaum felt the need to distinguish between his *pro se* representation as applied to him individually, and his firm's representation by outside counsel, which caused him to add the words *pro se* after his name . In any event, based on the peculiar posture of this case, to the extent B&P believes an order of substitution by the Court is necessary, consider the within Order to *sua sponte,* relieve Rosenbaum's firm from its representation of Rosenbaum in this case, if same ever existed, and allow Rosenbaum, to the extent he hasn't already been so authorized, to proceed in this case *pro se.*

Other issues, while not classified as "minor," warrant early resolution as the questions they raise are common to many of the objections asserted and, once resolved in the initial stages of this order, need not be addressed again. One such issue warranting early resolution is the objection raised by B&P in an almost perfunctory manner, that much of the discovery sought is subject to protection by

virtue of the attorney client privilege and work product doctrine. To the extent that B&P's failure to provide Rosenbaum with a privilege log identifying those documents it deems subject to protection has not doomed the objections from the start, the objections fail by virtue of the doctrine of issue injection.[7]

Florida Courts have long observed the doctrine of waiver by issue injection which, simply stated, forbids one party from placing blame or intent on another, i.e., brandishing a sword, while at the same time allowing that party to hide behind the shield of attorney client protection in justification of not having to divulge the very information that may prove harmful to its position. GAB Business Services, Inc. v. Syndicate 627, 809 F.2d 755, 762 (11th Cir. 1987)(applying Florida law)(noting that the attorney client privilege " 'was intended as a shield, not a sword.' " (quoting Pitney-Bowes, Inc. v. Mestre, 86 F.R.D. 444, 446 (S.D. Fla. 1980)). See also Laughner v. U.S., 373 F.2d 326, 327 (5th Cir. 1967)(noting that the "[attorney client] privilege is not an inviolable seal upon the attorney's lips" and, in fact, must be overridden if the application of the privilege would serve to eliminate the one source of evidence likely to contradict the client's allegations); Baratta v. Homeland

[7] Fed. R. Civ. P. 26(b)(5) requires that when documents are withheld on a claim of privilege, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced, which is sufficient to enable the demanding party to contest the claim. Id. Here, B&P's failure to provide a description of the nature of the withheld documents in the form of a privilege log may be held to result in a waiver of the privilege as it relates to the withheld documents. See Universal City Development Partners, Ltd. v. Ride & Show Engineering, Inc., 230 F.R.D. 688 (M.D. Fla. 2005)(attorney-client and work product privileges waived because of failure to timely provide privilege log).

Housewares, L.L.C., 242 F.R.D. 641 (S.D. Fla. 2007)(same).

In this case B&P has alleged that it sustained $4 million in damages by Rosenbaum's actions, including lost profits, lost revenues, overhead expenses, personnel wages, etc. In his defense, Rosenbaum claims that any damages sustained by B&P were caused by B&P's mismanagement, the bad economy, lack of productivity, poor morale, wasteful expenditures, excessive salary packages, etc., and not by his actions.[8] Simply put, B&P may not attack Rosenbaum with charges of contractual breach, fiduciary breach, and tortious interference resulting in millions of dollars worth of damages on the one hand, and then when Rosenbaum attempts to refute these charges by pointing to other factors that could be responsible for such damages, with its other hand lift its shield in defense of its right to protect from disclosure those facts which may harm its cause. The law simply does not permit B&P to maintain such a convenient position, in frustration of Rosenbaum's right to discovery of critical facts and information that cannot be obtained from any source other than from the files and testimony of B&P attorneys. GAB Business Services, Inc., 809 F.2d at 762.

This brings the Court to the issue of relevancy as it relates to B&P's objections and suggested limitations on the types of documents and information Rosenbaum

[8] Incidentally, although B&P appears to argue otherwise, the fact Rosenbaum has not raised any of these defenses of mismanagement, excessive salary, wasteful expenditures, and the like, as a formal affirmative defense, or by counterclaim, is of no moment. By raising these defenses here, they become relevant for purposes of defeating B&P's damage claims.

should be entitled to discover, as well as to B&P's objections on grounds of overbreadth, as relates to the time period and the office from which such discovery might fairly be limited. B&P looks to the allegations of the Complaint/Counterclaim and any formal affirmative defenses that have been raised and, based strictly on these pleadings, offers what the Court believes to be a constrained view of the issues involved for purposes of discovery. See, e.g., B&P's Mtn. for Prot. Order (D.E. #74), p.13 in which B&P argues that, "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." Id.(emphasis in original)

What appears to have been overlooked by B&P in making this argument, is the basic mantra recited in nearly every court order in federal court involving relevancy and that is, "relevancy" under Rule 26(b)(1) is "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case."[9] Indeed, the Supreme Court has already addressed and rejected the precise argument raised by B&P here when, in the seminal case of Oppenheimer Fund, the Court elaborated that discovery, more than simply "broad" "is not limited to issues raised by the pleadings,

[9] Oppenheimer Fund,, 437 U.S. at 351.

for discovery itself is designed to help define and clarify the issues . . . . Nor is discovery limited to the merits of a case, for a variety of fact-oriented issues may arise during litigation that are not related to the merits." Id. 437 U.S. at 351.

Accordingly, in this case, where B&P has alleged that it sustained $4 million in damages by Rosenbaum's actions, including lost profits, lost revenues, overhead expenses, personnel wages, and the like, the available avenues of discovery are not limited, as B&P claims, to what monies, if any, are owed Rosenbaum under the subject deferred compensation agreement and to the actions taken by Rosenbaum and KGR incident to their departure from B&P in August 2008. Instead, discovery is "broad," allowing Rosenbaum the opportunity to discover facts and evidence to support his defenses, both formal and informal, as well as to discover facts and evidence that may support other developing theories of the case. Oppenheimer Fund, 437 U.S. at 351. At its very basic, this would include discovery of the sort sought by Rosenbaum here, aimed at providing support for Rosenbaum's assertion that any damages sustained by B&P were not caused by Rosenbaum, but by B&P's mismanagement, the bad economy, lack of productivity, poor morale, wasteful expenditures, excessive salary packages, and/or other circumstances not in any way related to any action or inaction on the part of Rosenbaum.

In almost all of B&P's objections there is a contention made that the request as framed is over-broad. To the extent B&P's objection on this basis as to any particular request relates to its demand that the request be limited in scope to its

West Palm Beach office, B&P's request, unless otherwise stated herein, is denied. A Protective Order issued pursuant to Fed.R.Civ.P. 26(c) is based on the standard of "good cause," which calls for a "sound basis or legitimate need" to limit discovery of the subject information. In re Alexander Grant & Co. Litigation, 820 F.2d 352, 356 (11th Cir. 1987). In this respect the burden is on the party seeking the protective order to demonstrate good cause for its issuance. See Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002); In re Agent Orange Products Liability Litigation, 821 F.2d 139, 145 (2d Cir. 1987); 19th Street Baptist Church v. St. Peters Episcopal Church, 190 F.R.D. 345, 348 (E.D. Penn. 2000). Rosenbaum has explained at page 5 of his Response to B&P's Motion for Protective Order how B&P's purported lost profits and revenues cannot be isolated to an analysis of only the West Palm Beach office because the general expenses of the B&P firm operations are allotted to each attorney and their profitability is in turn dependent on the amount of general firm expense allocation ultimately decided upon. Id. (D.E. #94) and Rosenbaum Aff. attached thereto. Inasmuch as B&P has not rebutted this contention in any meaningful way, it has failed to meet its burden of demonstrating cause for a protective order to issue.

In this regard the Court has considered the affidavit of Gilma Moreno, attached as Ex. "G" to B&P's Resp. in Opp. to Rosenbaum's Mtn. to Comp., (D.E. #104) and finds it does not dispel Rosenbaum's contentions as detailed in his affidavit to the contrary. Even based upon the affidavit testimony of Ms. Moreno, it is clear that the

law firm's various offices are interrelated and the law firm's revenues and profits only determinable after the income, expenses and profits all the offices have taken into account. Even if Ms. Moreno's Affidavit were otherwise and she had refuted the allegations made in Rosenbaum's Affidavit regarding determination of the law firm's profits and losses, that would still not end the inquiry as the result of dueling affidavits would simply be the emergence of a question of fact, which is not an issue the court determines at the discovery stage of the proceedings in any event.

Finally, while not always cited by B&P as an initial basis for objection to a particular request, in some instances B&P has asserted in subsequent pleadings on the issue, concerns over production of what it claims to be confidential and proprietary business information. According to B&P, while ordinarily a protective order or confidentiality agreement protecting disclosure of the information would "ameliorate the harm" to B&P,...[b]ecause Rosenbaum is now purporting to proceed on a pro se basis after having previously been represented by counsel(albeit by KGR), a confidentiality agreement will be of limited benefit here, even if it is limited to 'attorneys' eyes only,' since Rosenbaum is both the attorney and the client(given his pro se status), as well as a direct competitor of B&P." B&P's Resp. to Rosenbaum's Mtn. to Comp., (D.E. #104), p.5.

The parties are hereby put on notice that the undersigned has instituted certain requirements, discussed in more detail subsequently, as relates to the parties' entry into a mutually agreeable confidentiality agreement. The related

argument addressed above, however, that Rosenbaum as both *pro se* attorney and client can not be "trusted" to comply with any confidentiality agreement and/or order that may be entered, is rejected out of hand. The Court has been presented with no basis, well-reasoned or otherwise, to question the integrity of Mr. Rosenbaum. All counsel involved in this case, including Mr. Rosenbaum, are well respected, highly skilled practitioners with substantial experience in the area of civil litigation, fully aware of their duties and responsibilities as relates to their respective roles as attorneys before the Court. The undersigned sees no reason why any of them, Mr Rosenbaum included, cannot mount a vigorous defense of their respective clients while at the same time conduct themselves in a responsible and professional manner, duly mindful of the ethical obligations imposed upon all members of the Bar.

The foregoing treatment of issues such as relevancy, overbreadth, confidentiality concerns, proprietary interests, attorney-client and work product is meant to serve as a guideline for dealing with the issues to follow; It is not meant to be exhaustive. To the extent the Court's pronouncements and findings above address and resolve a particular issue raised, the Court shall state as much. To the extent additional analysis is required, the Court shall provide same where needed.

REQUEST NUMBERS 1, 13, 14 AND 15

The following requests involve communications regarding the circumstances

surrounding Rosenbaum's departure from the B&P law firm. Request No. 1 asks for every communication received from or sent to, any client, or to a client's property manager, which pertains in any way to the staffing of the West Palm Beach office, the departing staff, and/or the circumstances surrounding the departure of the departing staff. Similarly Request No. 13 asks for all communications between B&P employees regarding the departing staff and/or the circumstances surrounding their departure. In Request No. 14 Rosenbaum has requested all communications of B&P employees regarding the Palm Beach office. Request No. 15, meanwhile, seeks all communications regarding the "12% pay deferral." The time frame for each of these requests is the same: "since August 4, 2008." to the present.[10]

B&P objects to the above requests, arguing they are overly broad, vague, unduly burdensome, and that the information requested is subject to protection by virtue of the attorney client privilege and the work product doctrine. In later pleadings on the issue, B&P contends the information requested should not be compelled for the reason it is not relevant to the claims and/or defenses as pled. With the exception of Request No. 14, the Court finds the requests at issue directly relevant to these proceedings and subject to production.

Request No. 14, which seeks all communications of B&P employees regarding the West Palm Beach office, while it may be marginally relevant, is so broadly worded that the burden imposed on B&P in having to produce the documents

[10] It was allegedly on August 4, 2008, that Rosenbaum and departing staff left B&P to join KGR.

responsive to this request far outweighs the limited benefit Rosenbaum would obtain by their production. The way the request reads: "all communications of B&P employees regarding the Palm Beach office," would result in the production of every document generated during the time in question which references, in any way and for whatever reason, the Palm Beach office. This is simply too broad. The requests referenced above seek similar type information for ostensibly the same reasons, but are more narrowly tailored to reach those documents that will likely be relevant. Given the tremendous burden of producing the requested information, (as described in more detail below), coupled with its tenuous connection to the issues in this case, the Court declines to compel a response to this request. See, e.g., World Triathlon Corp. v. SRS Sports Centre SDN, BHD, Case No. 8:04-cv-1594-T-24TBM, 2005 U.S. Dist. LEXIS 15412, at *2 (M.D. Fla. July 29, 2005)("the court may limit discovery upon the determination that the discovery sought is unreasonably burdensome or expensive or the expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving issues."); Priest v. Rotary, 98 F.R.D. 755, 761 (N.D. Cal. 1983)("When a discovery request '[a]pproaches the outer bounds of relevance and the information requested may only marginally enhance the objectives of providing information to the parties or narrowing the issues, the Court must then weigh that request with the hardship to the party from whom the discovery is sought.'")(quoting Carlson Cos., Inc. v. Sperry

& Hutchinson Co., 374 F.Supp. 1080, 1088 (D.Minn. 1974)); 10 Federal Procedure, Lawyer's Edition § 26:70 (1994 & Supp. 2005)("the district courts should not neglect their power to restrict discovery where justice requires protection for a party ... from undue burden or expense.").

Except in minor ways discussed in greater detail below, the remainder of the requests in this category are unobjectionable. In this regard, B&P's objections on the grounds of irrelevancy, vagueness, work product doctrine and attorney client privilege are rejected. For the reasons discussed previously, the information sought is relevant to Rosenbaum's defense to B&P's claim that Rosenbaum's departure from the B&P firm caused B&P to suffer damages. The information requested is further relevant for purposes of refuting B&P's claims that after his departure, Rosenbaum wrongfully contacted B&P clients attempting to solicit their business, provided disparaging information about B&P to B&P clients, and continued to try to solicit B&P clients after they had declined to shift their representation.

Other than making a blanket objection that the requests as framed are "vague," B&P nowhere explains in what way the requests are confusing or otherwise incapable of comprehension. As one of the primary issues in this suit involves the circumstances surrounding Rosenbaum's departure from the B&P firm, or what B&P apparently referred to in communications with its clients as, the "staffing" changes in the West Palm Beach office, the Court is satisfied that the request, as framed and in context, can be easily understood by B&P and that it is not in any way ambiguous

or vague as claimed. As with B&P's objections on relevancy grounds, B&P's privileged-based objections are rejected for the reasons outlined previously relating to waiver by issue injection and B&P's failure to provide a privilege log.

B&P's final objection, that the requests as framed are unduly burdensome, is in some respects well-taken and, at least, with regard to some areas more specifically delineated below, the request at issue shall be limited. In support of its claim that the request as framed is unduly burdensome, B&P submits the affidavit of its Director of Information Technology, Mr. Avi Solomon, See Declaration of Avi Solomon, attached as Ex. "E " to B&P's Resp. to Rosenbaum's Mtn. to Comp. (D.E. #104). Mr. Solomon testifies that it would be virtually impossible to search for the information in question due to the number of e-mails currently on the system (over 9 million), the lack of an archival system prior to 2009, and the natural limitations of using search terms to find the broad-based documents sought here. Id. Solomon admits, however, that B&P can produce some responsive e-mails to clients, property managers, or other representatives by conducting a search of its system, but sees as problematic the fact he may not be able to "recapture" "every" responsive document. As Rosenbaum correctly observes, however, the fact that not "every" responsive document will be found is not grounds for not searching for *any* documents responsive to the request. B&P is ordered to attempt to locate the documents in its system by using appropriate search terms and inputting, where possible, the e-mail addresses of those individuals B&P believes were contacted

regarding the "staffing" issue at issue in this case. In this regard the Court notes that B&P is not expected to produce that which it is incapable of locating.

As for Rosenbaum's suggestion that B&P conduct a search of its correspondence files, in which are kept hard copies of client correspondence, the Court notes that to the extent such production would be duplicitive of the electronic discovery that's already been sought on the issue, B&P may elect the one method it believes will be less burdensome to it, i.e. production of either electronic files or hard copies. If, after production has been made, Rosenbaum can demonstrate a good faith reason why additional search methods should be tried to locate the subject documents, Rosenbaum may move the court for appropriate relief at that later time.

Finally, the Court agrees with B&P that at least insofar as time period, the request as framed, is over-broad. Rosenbaum seeks documents for a 15-month time span. B&P argues the only relevant time frame should be the four-day period between August 4th and August 8th, 2008, and not the entire 15-month period sought, "since the Counterclaim alleges that Rosenbaum began unilaterally contacting clients on August 6, 2008, two days after his departure from B&P... ." B&P's Resp. to Rosenbaum's Mtn. to Comp. (D.E. #104) pp.8-9. Once again, B&P improperly focuses on the formal allegations raised by way of Claim and Counter-Claim, when the scope of discovery in federal court is significantly broader: encompassing "any matter that bears on, or that reasonably could lead to other matters that could bear

on, any issue that is or may be in the case." Oppenheimer Fund,, 437 U.S. at 351. In this case, the four day time period proposed is far too short as it fails to take into consideration the events leading up to the departure and the "fall-out" resulting from such departure, all of which likely would have resulted in communications and/or discussions regarding the departing firm members.

Nonetheless, noting that Fed. R. Civ. P. 26(b)(2)(C) imposes a "rule of proportionality" which requires discovery to be restricted where the burden or expense outweighs the proposed benefit or the information can be obtained from another, less burdensome source, the Court finds a limitation placed on the applicable time period from the 18 months requested to a 6 month period beginning May 4, 2008 (two months prior to Rosenbaum's departure) to December 4, 2008 (4 months after Rosenbaum's departure), reasonable under the circumstances. See Emerson Elec. Co. v. Le Corbone Lorraine, S.A., 2009 WL 435191, *1 (D.N.J. Feb. 18, 2009)(limiting discovery based on "rule of proportionality"); Takacs v. Union County, 2009 WL 3048471, at *1 (D. N. J. Sept. 23, 2009)(same).

In limiting the time from the year and a half sought by Rosenbaum, to 6 months the Court has once again taken into account the Declaration of Avi Solomon, *supra*,[11] wherein he attests to the enormous time and cost involved in searching for the requested information, and states that such a massive undertaking would take

[11] Solomon Aff. attached as Ex. "E " to B&P's Resp. to Rosenbaum's Mtn. to Comp. (D.E. #104).

weeks to accomplish, require several people employed on a full-time basis to complete, and would have no guaranty of results. Id. These burdens must be balanced against the importance of the requested discovery to the moving party and the ability to obtain the information through less burdensome means. See World Triathlon Corp. v. SRS Sports Centre SDN, BHD, Case No. 8:04-cv-1594-T-24TBM, 2005 U.S. Dist. LEXIS 15412, at *2 (M.D. Fla. July 29, 2005)("the court may limit discovery upon the determination that the discovery sought is unreasonably burdensome or expensive, or the expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving issues."); Priest v. Rotary, 98 F.R.D. 755, 761 (N.D. Cal. 1983)("When a discovery request '[a]pproaches the outer bounds of relevance and the information requested may only marginally enhance the objectives of providing information to the parties or narrowing the issues, the Court must then weigh that request with the hardship to the party from whom the discovery is sought.'")(quoting Carlson Cos., Inc. v. Sperry & Hutchinson Co., 374 F.Supp. 1080, 1088 (D.Minn. 1974)); 10 Federal Procedure, Lawyer's Edition § 26:70 (1994 & Supp. 2005)("the district courts should not neglect their power to restrict discovery where justice requires protection for a party ... from undue burden or expense.").

In accordance with the above and foregoing it is hereby ordered that with respect to Rosenbaum's Request Nos. 1, 13, 14 and 15, B&P's objections are

granted in part and rejected in part, in accordance with the terms hereof. To the extent the Court has ordered production, B&P has twenty (20) days from the date hereof in which to comply. Accordingly, Rosenbaum's Motion to Compel and B&P's Motion for Protective Order with respect to these requests, are granted in part and denied in part, consistent with the terms of this Order.

REQUEST NUMBERS 9 & 10

_____These documents relate to management committee members and meetings. Request Number 9 seeks all Management Committee notes, minutes and other records of meetings for the past three years from the date of response. Request Number 10 asks for all communications among B&P Management Committee members for the same time period. B&P objects, arguing the information is not relevant, and that to the extent it is, the relevancy is so tenuous that it does not justify the great burden that would be imposed on B&P were the Court to order production. B&P also contends the documents should be protected due to their "highly sensitive confidential information." B&P's Mtn. Prot. Order (D.E. #74), p.21. Finally, B&P requests that if the Court allows the discovery in question, the time period be limited to two years prior to Rosenbaum's departure from the firm and limited to Management Committee documents mentioning the West Palm Beach Office only.

For the reasons stated previously, the Court finds the information sought relevant in that it goes to Rosenbaum's defenses of mismanagement, dampening morale, and wasteful expenditures. According to Rosenbaum, it was a dissatisfaction felt by many B&P employees about the way B&P was being managed, which caused the "staffing changes," rather than anything that Rosenbaum did. To prevent Rosenbaum from the discovery sought by these requests would be to deny him the opportunity to test this theory as well as deny him the opportunity to uncover documents or other evidence to support his claims and/or defenses. Meanwhile any confidentiality concerns can be addressed by the parties' entering into a confidentiality agreement which will limit disclosure of the documents to the parties, their counsel and their agents and only for purposes of this case.

In this regard, the Court notes that there is presently a confidentiality/protective order in effect in this case. Counsel for the parties are ordered to immediately confer and within twenty four (24) hours of this Order, to determine as an initial matter and between themselves, whether said confidentiality/protective order is sufficient to protect the documents in question consistent with the Court's pronouncements above, i.e., limiting disclosure of the documents to the parties, their counsel and their agents and only for purposes of this case. To the extent said confidentiality/protective order is deemed by all counsel involved to offer sufficient protections for the documents in question, in accordance with the Court's pronouncements above, B&P is ordered to produce the documents

subject to the above requests within fifteen (15) days from the date hereof. To the extent said confidentiality/protective order is deemed by counsel for any party to not offer protections for the subject documents in accordance with the Court's pronouncements above, counsel for the parties are ordered to immediately confer and together reach agreement on the terms of a confidentiality agreement which would limit disclosure of the documents to the parties, their counsel and their agents and only for purposes of this case (the "Confidentiality Agreement"). This Confidentiality Agreement shall be executed by the parties and their respective counsel within five (5) days from the date hereof. B&P shall then have fifteen (15) days from the date of execution of such Confidentiality Agreement to produce the documents in question.

As for B&P's request that the Court limit any production in scope to two years and to only the West Palm Beach Office, said request is denied. As Rosenbaum correctly observes, the two year limitation suggested by B&P is unrealistic in these circumstances, where, because of the worldwide economic downturn experienced over the last year and a half, it would be impossible to determine from a two-year window, whether any losses suffered by B&P resulted from Rosenbaum's actions or were simply the consequence of a bad economy, mismanagement, wasteful firm spending, etc. Similarly, just as the proposed limitation on time might give a skewed result, so would the proposed limitation on office locale. Because all of the firm offices are interrelated, no one particular office will reflect the true condition of the

entire firm, so that limiting production to just the West Palm Beach Office could result in an incomplete and possibly misleading "story."

Even so, the Court does agree with B&P that the requests, as framed, are overly broad and unduly burdensome. As framed, the requests will "catch in their nets", *all* documents circulated among Management Committee members, either at a Management Committee Meeting or elsewhere. This will result in the production of thousands of responsive documents, the great majority of which will likely have nothing whatsoever to do with the subject matter of this suit.[12] This is akin to using a machete in place of pruning shears to give shape to an ornamental shrub. Accordingly, the requests, as framed, are hereby limited as follows: instead of requesting "all" documents in the particular categories, the requests are limited to seeking those documents which involve or relate in any way to the subject matter of this suit, to Rosenbaum, to any "staff changes" that occurred at the firm, or to any concerns relating to firm management, firm profit, or firm morale.

In accordance with the above and foregoing, it is hereby ordered that with respect to Rosenbaum's Request Nos. 9 & 10, B&P's objections are granted in part and rejected in part in accordance with the terms hereof. Accordingly, Rosenbaum's Motion to Compel and B&P's Motion for Protective Order with respect to these

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[12] The Declaration of John R. Scerba, furnished by B&P for purposes of technology search, is persuasive that as these Requests are currently phrased a possible total number of 19,823,880 documents is an unrealistic result for communications "between and/or among up to eight discreet individuals, each with different e-mail addresses." (DE 113-2 at 2, ¶ 2.)

requests, are granted in part and denied in part, consistent with the terms of this Order.

REQUEST NUMBERS 2, 3, 4, 6, 7 & 8

These requests seek extensive payroll records for the employees employed by the B&P law firm on a state-wide basis: Request No. 2 seeks all employees' payroll records from August 4, 2008, to the date of response (all B&P offices implicated here); Request No. 3 seeks the payroll records of Marni Becker-Avin (B&P shareholder Alan Becker's daughter) from the date of hire to the date of the response (Ms. Becker-Avin is based in the Ft. Lauderdale office); Request No. 4 seeks all payroll records of Keith Poliakoff (the son of head partner Gary Poliakoff) from his date of hire to the date of the response (Mr. Poliakoff is based in the Ft. Lauderdale office); Request No. 6 seeks all billing records for all timekeepers for the past three years, from the date of the response (all B&P offices implicated here)[13]; Request No. 7 seeks all expense reports of every B&P employee for the past 3 years (all B&P offices implicated here); and, Request No. 8 seeks all of B&P's tax returns and related financial records for the past five (5) years. B&P objects to these requests arguing such requests, as framed, are over-broad and unduly burdensome, irrelevant insofar as any of the requests seek records for "each and every employee

[13] Rosenbaum, however, qualifies the request by indicating that he does not seek "the actual itemized invoices depicting attorneys' services sent to B&P's clients" (DE 94 at 8), later reiterating that what he needs are "the financial records of the lawyers and paralegals, not their time records depicting entries of work for clients" (DE 78 at 2, emphasis in original).

regardless of whether or not a particular employee staffed or assisted in re-staffing B&P's West Palm Beach Office,"[14] constitute "trade secret or other confidential or other proprietary commercial information of B&P,[15] and violate the "privacy rights of B&P employees." [16]

Where the relevancy of a request is not readily apparent on its face, the burden falls on the moving party to establish relevancy. See Suncast Technologies, L.L.C. v. Patrician Products, Inc., 2008 WL 179648, at *5 (S.D. Fla. Jan. 17, 2008). To the extent the relevancy of these requests is not readily apparent, the Court finds Rosenbaum has met his burden of establishing relevancy by his showing that the requests, inasmuch as they seek information relating to the B&P firm's profitability, amount devoted to employee salaries and benefits, and compensation paid to relatives of the firm partners, are relevant to Rosenbaum's allegations of waste, mismanagement, and dampening employee morale. Accordingly, B&P's objection on the ground of relevancy is rejected.

B&P's contention that the requests are over-broad in that they seek records for employees not in any way connected with the Palm Beach office or with the re-staffing issue which is the subject matter of this action is also rejected. For the reasons previously mentioned regarding the interrelationship of the B&P law firm's

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[14] B&P's Resp. To Mtn to Comp. (D.E. #104), p. 14.

[15] Id. at 18.

[16] Id.

various offices and the Court's conclusion that B&P's true financial picture can not be had unless *all* its offices are taken into account, the Court finds the requests as framed, to the extent they seek state-wide employee records, not in any way over-broad. In this regard the Court notes again the conclusion reached previously that for purposes of discovery, Rosenbaum's Affidavit (Exh. Att. to D.E. #94), attesting to the fact the B&P law firm's revenues and profits are only determinable after the income, expenses and profits of all the offices have been taken into account, which the undersigned found was not sufficiently rebutted by the Affidavit of Gilma Moreno (Exh. "G" to D.E. 104), presented by B&P, justifies the discovery sought by these requests. Accordingly, the Court rejects B&P's suggestion that the requests be limited to those documents involving employees who worked out of the West Palm Beach office or were in some way assisting in or involved with the re-staffing of the West Palm Beach Office.

Notwithstanding the foregoing, the Court finds B&P's objections on the related bases that the requests, as framed, are over-broad, unduly burdensome and needlessly infringe on the confidentiality concerns and privacy interests of the B&P employees well-taken. In this regard the undersigned once again raises the "rule of proportionality" which requires discovery be restricted where the burden or expense outweighs the proposed benefit or the information can be obtained from another, less burdensome source. See Emerson, 2009 WL 435191, *1; Takacs, 2009 WL 3048471, at *1. In this regard the Court has considered the affidavit of B&P Human

Resources Generalist, Ann Mezadieu, attached as Exh. "F" to B&P's Resp. to Mtn. To Comp. (D.E. #104), in which Ms. Mezadieu attests to the fact that since August 4, 2008, B&P has employed 487 people, including attorneys, paralegals, and support staff, and that to produce the payroll records associated with each one of those employees would be an enormous and time-consuming task requiring the compilation of tens of thousands of documents by several B&P employees dedicated solely to the task at hand on a full-time basis for at least a week. Id. The Court has also taken into account the confidentiality and privacy concerns B&P has raised, and in this regard sees no reason why Rosenbaum would need the names, social security numbers, and other personal information of the firm's employees, when the information ostensibly sought, namely, how much B&P paid out in salaries and bonuses for each of its attorneys and paralegal staff in a given year, can be obtained without inclusion of this confidential information.

In balancing the above-stated concerns as they relate to burdensomeness and privacy against the importance of the requested discovery to the moving party and the ability to obtain the information through less burdensome means,[17] the Court

[17] World Triathlon Corp., 2005 U.S. Dist. LEXIS 15412, at *2 ("the court may limit discovery upon the determination that the discovery sought is unreasonably burdensome or expensive, or the expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving issues."); Priest, 98 F.R.D. 755, 761("When a discovery request '[a]pproaches the outer bounds of relevance and the information requested may only marginally enhance the objectives of providing information to the parties or narrowing the issues, the Court must then weigh that request with the hardship to

finds the payroll and payroll-related records of the B&P firm need not be produced in the wholesale-fashion requested. Instead, in accordance with the Court's previous pronouncement regarding relevancy, the Court limits the documents sought to those documents which will provide information regarding the B&P firm's profitability, amount devoted to employee salaries and benefits, and compensation paid to relatives of the firm partners. In this regard the Court orders that B&P produce the following documents as relates to all of its offices, all of which unless otherwise mentioned herein, shall be in redacted form, redacting therefrom any and all personally identifying information including employees names, addresses, social security numbers and other personal information: (1) copies of B&P's income tax returns for the past five (5) year period; (2) copies of B&P's Profit and Loss Statements for the past (5) year period; (3) copies of B&P's General Ledgers for the past five (5) year period; (4) copies of those portions of the payroll records which show as to each attorney and paralegal, the years in practice or years of experience, the salary paid, the billing rate, the regular hours billed, any overtime hours billed, and benefits and/or other compensation received, for the past five (5) year period (again names and personally identifiable information redacted); and, (5) as to those employees specifically named in Rosenbaum's request, to wit, Marni Becker-Avin and Keith Poliakoff, the same payroll records as indicated above in un-redacted form as to them. In this regard, the Court finds that Rosenbaum has sufficiently

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the party from whom the discovery is sought.'")(citations omitted).

explained why the requests as to these specifically identified attorneys are relevant to Rosenbaum's claims and defenses and why identification of the specific attorney involved as relates to his or her records is necessary for purposes of establishing low employee morale and firm waste as relates to the issue of nepotism.

The same confidentiality agreement referred to previously herein shall operate to maintain the confidentiality of any records produced incident to these requests. In accordance with the above and foregoing, it is hereby ordered that with respect to Rosenbaum's Request Nos. 2, 3, 4, 6, 7 & 8, B&P's objections are granted in part and rejected in part in accordance with the terms hereof. Accordingly, Rosenbaum's Motion to Compel and B&P's Motion for Protective Order with respect to these requests, are granted in part and denied in part, consistent with the terms of this Order. B&P is ordered to produce the subject documents within twenty (20) days from the date hereof.

REQUEST NUMBERS 11 & 12

Request No. 11 seeks all records of payments made to Mr. Poliakoff's wife, Sherri Poliakoff, as the firm's decorator. In related fashion, Request No. 12 seeks all records of payment for office furniture purchased from a business identified as owned by firm partner Alan Becker's relative, or from any other business. B&P objects to these requests arguing they are unduly burdensome, irrelevant to any claims, defenses, or issues in this case and designed solely for purposes of

harassment and annoyance. This Court agrees.

Where the relevancy of a request is not readily apparent on its face, the burden falls on the moving party to establish relevancy. See Suncast Technologies, 2008 WL 179648, at *5 . In the instant case Rosenbaum has failed to satisfactorily explain the relevance of the information sought to the litigation at issue. Given the tremendous burden of producing the requested information, coupled with its tenuous connection to the issues in this case, the Court declines to compel a response to these requests. See, e.g., World Triathlon Corp., 2005 U.S. Dist. LEXIS 15412, at *2 ("the court may limit discovery upon the determination that the discovery sought is unreasonably burdensome or expensive or the expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving issues."); Priest, 98 F.R.D. at 761("When a discovery request '[a]pproaches the outer bounds of relevance and the information requested may only marginally enhance the objectives of providing information to the parties or narrowing the issues, the Court must then weigh that request with the hardship to the party from whom the discovery is sought.'").

In accordance with the above and foregoing, it is hereby ordered that with respect to Rosenbaum's Request Nos. 11 & 12, B&P's objections are granted in their entirety. Accordingly, Rosenbaum's Motion to Compel in this respect is denied and B&P's Motion for Protective Order in this respect is granted.

REQUEST NO. 16

Request No. 16 seeks full, unedited presentations by Perry Adair or anyone else at 2008 and/or 2009 B&P retreats, gatherings, or meetings of any kind. Although this Request is not addressed by B&P in its Motion for Protective Order, it is presented to the court by Rosenbaum in his Motion to Compel. (D.E. 78, pp. 16-17.) Apparently, Mr. Adair has made humorous presentations to B&P attorneys in the past and, according to Rosenbaum, he and the departing attorneys who joined KGR were the cause of "jokes" by B&P's management and attorneys. Id.

B&P states that it only has the PowerPoint slides for Mr. Adair's presentations at issue and that it is willing to provide them to Rosenbaum. Accordingly, as to this portion of the request, the issue is moot. The balance of the request, seeking "full and unedited presentations by Peter Adair and any other persons at the 2008 and/or 2009 [B&P] retreats...gatherings or meetings of any kind," is objected to by B&P on grounds of relevancy. The Court agrees with B&P that the request is not relevant to any issues, claims and/or defenses in this litigation, and therefore upholds B&P's objection in this regard. The Court further adds that if there was an accepted legal objection along the lines of "foolishness" the Court would uphold that as well. The last time the Court checked there was no claim made by Rosenbaum for slander or libel, and in the absence of these claims the Court is hard-pressed to understand what possible relevance the requested information has to the suit at issue. In accordance with the above and foregoing, it is hereby ordered that with respect to

Rosenbaum's Request No. 16, B&P's objection is upheld. Accordingly, Rosenbaum's Motion to Compel in this respect is denied and B&P's Motion for Protective Order in this respect is granted.

REQUEST NUMBER 17

Request No. 17 asks for all B&P client lists from 2005 through the date of the instant response. B&P objects to the request as framed, arguing same is overly broad, but offers to instead furnish Rosenbaum "with a list of all clients which it believes were improperly solicited by Rosenbaum, and/or who switched representation from B&P to KGR."[18] B&P further argues the information should be protected on account of the highly sensitive and proprietary information involved. The Court agrees with B&P that the request as framed is overly broad and finds the solution proposed by B&P reasonable under the circumstances. By narrowing the request in this way, the names of the individuals and/or entities involved will necessarily be limited to those directly involved in this action. Once again, the parties are reminded that the Confidentiality Agreement referred to previously herein shall operate to protect the confidential and proprietary nature of the information disclosed. In accordance with the above and foregoing, it is hereby ordered that with respect to Rosenbaum's Request No. 17, B&P's objections are granted in part and rejected in part in accordance with the terms hereof. Accordingly, Rosenbaum's

[18] Production of this information apparently resulted from B&P's response to a Second Request for Production. (D.E. #113, p.20.)

Motion to Compel and B&P's Motion for Protective Order with respect to this request is granted in part and denied in part, consistent with the terms of this Order. B&P is ordered to produce the subject documents within twenty (20) days from the date hereof.

REQUEST NUMBER 18

Request No. 18 asks for all calendars, electronic or otherwise, for all of the staff departing from B&P to KGR. This is another request that is addressed only in Rosenbaum's Motion to Compel and not in B&P's Motion for Protective Order. In any event, B&P has no objection to providing the information in question, but simply asks that said production be subject to a confidentiality order. In light of the Confidentiality Agreement previously mentioned that will operate to protect all documents disclosed in response to the foregoing requests, this issue has been rendered moot. In accordance with the above and foregoing, it is hereby ordered that with respect to Rosenbaum's Request No. 18, B&P's objections are granted in part and rejected in part in accordance with the terms hereof. Accordingly, Rosenbaum's Motion to Compel and B&P's Motion for Protective Order with respect to this request is granted in part and denied in part, consistent with the terms of this Order. B&P is ordered to produce the subject documents within twenty (20) days from the date hereof.

In accordance with the above and foregoing findings and conclusions, it is

hereby **ORDERED AND ADJUDGED** as follows:

(1) B&P's Motion for Protective Order (D.E. # 74) is **GRANTED IN PART AND DENIED IN PART** in accordance with the terms and conditions as set forth herein; and,

(2) Rosenbaum's Motion to Compel (D.E. #78) is **GRANTED IN PART AND DENIED IN PART** in accordance with the terms and conditions as set forth herein.

DONE AND ORDERED in Chambers, at West Palm Beach, Florida this23rd day of February, 2010.

LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

Copies to: Honorable Kenneth A. Marra, United States District Judge
All Counsel of Record