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 RESPONSE TO PLAINTIFF/COUNTER-DEFENDANT DANIEL S. ROSENBAUM'S MOTION TO COMPEL DOCUMENTS IN RESPONSE TO FIRST REQUEST FOR PRODUCTION

Defendant/Counter-Plaintiff, BECKER & POLIAKOFF, P.A. ("B&P"), through its undersigned counsel, respectfully submits this response in opposition to *Plaintiff/Counter-Defendant, Daniel S. Rosenbaum's Motion to Compel Documents in Response to Plaintiff/Counter-Defendant, Daniel S. Rosenbaum's First Request for Production to Defendant/Counter-Plaintiff, Becker &*

Poliakoff, P.A. and Incorporated Memorandum of Law [D.E. 78], and hereby states as follows:

INTRODUCTION

In *Donahay v. Palm Beach Tours & Transp., Inc*., 2007 WL 1119206 (S.D. Fla. Apr. 16, 2007), this Court cautioned that "'[w]hile the standard of relevancy 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*. at *1. Magistrate Judge Johnson's admonition has apparently not been heeded by Rosenbaum, who, under the guise of a purported "mismanagement" affirmative defense, is seeking to use discovery as a referendum on the *entire* business practice of B&P (including those aspects of the law firm having nothing to do with the West Palm Beach office), and, even worse, to secure access to the confidential business records and trade secrets of his former employer and now-competitor, B&P, as evidenced by his requests seeking, *inter alia*, (1) a list of *all* of B&P's clients for the past four years (Request No. 17); (2) the payroll and billing records for *all* of B&P's present and former employees for the past three years (and not just those who worked in the West Palm Beach office) (Request Nos. 2-4, 6 & 7); (3) the home addresses of *all* of B&P's present and former employees for the preceding four years (Request No. 19); (4) all tax returns and internal financial records of B&P (Request No. 8); and (5) all notes, minutes, communications and other records of B&P's Management Committee, *regardless of subject matter* (Request Nos. 9 & 10).

These items, as well as many of the other requested items in the First Request for Production, bear no reasonable relationship to the claims or defenses at issue in this action, and are clearly a thinly-disguised attempt to harass and unduly burden B&P, as well as secure access to B&P's proprietary information. 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 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 *how* Rosenbaum left--i.e., *what* actions Rosenbaum took (and the legality and consequences of those actions) once he 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.

Despite the limited nature of this action, Rosenbaum attempts to justify his need for B&P's confidential and proprietary business information by claiming that they relate to his anticipated, but not-yet-asserted, defenses of "mismanagement, morale problems and wasteful expenditures of firm monies."[1] Rosenbaum also claims that such proprietary records are relevant to the issue of the B&P's claimed damages, as evidenced by his repeated, but no less disingenuous, declaration that "it will be necessary to look at **the entire operations of B&P** to see whether [its claimed damages] were the result of B&P's mismanagement, the bad economy, the lack of productivity from bad morale, wasteful expenditures, attorneys working on uncollectible client matters, how much the firm spent on salaries and myriad other considerations related to law firm operations."[2] Rosenbaum's claimed justification is nothing but a smokescreen designed to distract attention from his alleged misconduct and to inject issues in this case which are not remotely pertinent to whether or not he breached his fiduciary obligations as a shareholder of B&P and tortiously interfered with B&P's business relationships.

Rosenbaum has not asserted any "mismanagement" defense in this case. Nor can he. "Mismanagement" is not a recognized affirmative defense to a claim for tortious interference with business and/or contractual relations, breach of fiduciary duty, or breach of contract. Its use

[1] *See* Rosenbaum's Motion to Compel [DE 78], at pp. 7-10; Rosenbaum's Response to B&P's Motion for Protective Order [DE 94], at pp. 5 7, 8, 11 13, 14 & 16.
[2] *Id.*

here by Rosenbaum is simply a misdirection designed to unduly burden B&P and gain access to its proprietary information and trade secrets for use by a competitor. No one is claiming here that Rosenbaum did not have the right to leave B&P. The gravamen of the Counterclaim is not that Rosenbaum *left* B&P, whatever his reason for doing so, but, rather, it is the *manner* in which he left the firm. In other words, it is not *that* he left, but *how* he left--*i.e.*, (a) taking employees in direct violation of his contract; (b) seeking and taking clients without compensation to the firm, also in direct violation of his contract; (c) unilaterally soliciting clients in contravention of the ethical rules governing same; (d) approaching employees to join him at KGR while he was still purporting to act as a managing shareholder of B&P, and (e) deliberately leaving behind utter chaos, in violation of his fiduciary duties owed to B&P as a managing shareholder. As such, Rosenbaum's purported justification for the requested documents is nothing but a smokescreen.[3]

Equally problematic is the fact that much of the information which Rosenbaum seeks is highly-confidential and proprietary business information belonging to B&P, such as customer lists, employee salary information and strategic planning objectives. Rosenbaum and KGR are acknowledged competitors of B&P, and, as alleged in the Counterclaims, have already engaged in predatory actions designed to harm the business of B&P. If KGR and Rosenbaum knew the identity and contact information of B&P's clients, the salaries they pay their key employees, and what strategic plans and courses of action were being considered by B&P, they could very easily use such information in a manner detrimental to the business and operations of B&P, as has

[3] While completely irrelevant to this action, Rosenbaum devotes nearly 12 pages of his Affidavit to a detailed recitation of the various instances of purported "mismanagement" at B&P. B&P vehemently disagrees with the statements contained in Rosenbaum's Affidavit, and while wishing to refrain from providing a detailed response in order to avoid giving those irrelevant statements more attention than they warrant, nonetheless feels compelled to respond briefly to such false statements, lest the Court give any credence to them should they remain unchallenged. For that reason only, and not because of any relevance to the issues in this action, B&P submits the accompanying Declarations of Gary Poliakoff (Exhibit "A"), Steven Lesser (Exhibit "B") Jennifer Bales Drake (Exhibit "C"), and Eileen Durance (Exhibit "D") solely for the purpose of rebutting the myriad false statements contained in Rosenbaum's Affidavit.

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. Therefore, B&P has a legitimate business and competitive reason for wishing to shield this proprietary business information from disclosure, particularly to a direct competitor. *See 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.").

A confidentiality stipulation and order will not ameliorate the harm to B&P should any of the requested confidential information be disclosed to Rosenbaum. Because Rosenbaum is now purporting to proceed on *pro se* basis after having previously being represented by counsel (albeit, by KGR),[4] a confidentiality stipulation will be of little 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. In other words, a confidentiality stipulation (in view of Rosenbaum's *pro se* status) will not protect the very thing which it would normally be designed to protect--*i.e.,* the disclosure of confidential information to a competitor. Once he is given access to such confidential information, Rosenbaum cannot be expected to "unlearn" it.

Finally, Rosenbaum's Motion should be denied because it violates two of this Court's Local Rules--one pertaining to page limitations and the other pertaining to unauthorized motions. First, Rosenbaum's Motion flouts Local Rule 7.1.C.2's twenty-page limitation since it liberally utilizes "single-spacing" throughout the motion (indeed, there is single-spacing on nearly every page) and also makes use of a reduced type-size (thereby enabling Rosenbaum to fit more than 30 lines of text on each page). Without such plainly obvious manipulations of the type-size and

[4] Although KGR was listed as Rosenbaum's counsel of record in the Civil Cover Sheet and in all filings made on Rosenbaum's behalf through September 15, 2009 [DE 60], covering more than one year of litigation activity, Rosenbaum began referring himself as "pro se" beginning with the filing of his first motion to compel on October 7, 2009 [D.E. 68]. Despite referring to himself as "pro se" and making several recent filings in that capacity, neither KGR nor Rosenbaum has sought leave of court to withdraw KGR's appearance as counsel of record for Rosenbaum.

spacing, Rosenbaum's Motion to Compel would have easily exceeded twenty (20) pages. In addition, Rosenbaum uses the vehicle of his Affidavit not for its ostensible purpose--which is to provide factual support for the statements contained in his motion--but, rather, as a place to insert additional argument and details which, if included in the motion, would have caused it to exceed twenty pages by a considerable margin. Indeed, throughout his motion, Rosenbaum frequently exhorts the Court to refer to his Affidavit for "*additional information*." (*See* Rosenbaum Motion to Compel, at p. 12 (stating that "[t]he Affidavit of Rosenbaum addresses this in more detail."). This is clearly designed to circumvent the twenty-page limit expressed in Local Rule 7.1.C.2.

Second, Rosenbaum's "Pro Se" Motion should be stricken as unauthorized under Local Rule 11.1.D.4. That Rule states that "[w]henever a party has appeared by attorney, the party cannot thereafter appear or act on the party's *own behalf* in the action or proceeding, or take any step therein, unless an order of substitution shall have been first been made by the Court, after notice to the attorney of such party, and to the opposite party; provided, that the Court may in its discretion hear a party in open court, notwithstanding the fact that the party has appeared or is represented by an attorney." S.D. Fla. L. R. 11.1.D.4 (emphasis supplied). It is undisputed that KGR represented Rosenbaum in this action from the inception of this case; its name is listed as counsel of record in the Civil Cover Sheet, and it continued to be listed as Rosenbaum's counsel until October 7, 2009, when Rosenbaum first began referring to himself as "pro se" even though KGR did not seek leave of court to withdraw its prior appearance. *See* S.D. Fla. L. R. 11.1.D.3 ("No attorney shall withdraw the attorney's appearance in any action or proceeding except by leave of court after notice served on the attorney's client and opposing counsel."). Since no order of substitution had been entered by this Court, or even requested by Rosenbaum, at the time he filed his motion to compel, any filings made by him under his self-declared *pro se* status, including the motion to

compel, are to be given no effect by the Court and must be stricken under Local Rule 11.D.1.4. *See Smith v. Grand Bank & Trust of Fla*., 2005 WL 6106148, at *12 (S.D. Fla. Apr. 28, 2005).

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*, 2007 WL 1119206, at *1. 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). 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, as is applicable here (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); *see also Emerson Elec. Co. v. Le Carbone Lorraine, S.A.,* 2009 WL 435191, *1 (D.N.J.Fed.18, 2009) (noting that Rule 26(b)(2)(C) imposes a "rule or 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 purpose of the rule is "to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry." *Takacs v. Union County*, 2009 WL 3048471, at *1 (D.N.J. Sept. 23, 2009) (citing several cases); *Public Service Enterprise Group, Inc. v. Philadelphia Elec. Co.,* 130 F.R.D. 543, 551 (D.N.J. 1990) (employing rule of proportionality to exclude "marginally relevant evidence" from the scope of discovery).

Request No. 1: All Communications Between B&P and its Clients Since August 4, 2008

Rosenbaum seeks *every* communication between B&P and its clients 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."

Such request--which is not simply restricted to the departure of Rosenbaum and his subordinates, but covers potentially any client communication in which the "staffing" of B&P's West Palm Beach office is discussed (such as what attorney may be handling a specific matter)--is overbroad and disproportionate to any marginal relevance that such documents may potentially have. According to Rosenbaum, the requested documents are relevant to "show that B&P contacted the clients *before* Rosenbaum and what B&P told those clients and what the clients told B&P." (Rosenbaum Motion to Compel [DE 78], p. 4). If that is to be believed, then the only relevant time-frame should be August 2008 (and, in particular, the four-day period between

August 4, 2008 and August 7, 2008) and not the entire 15-month period which follows, since the Counterclaim alleges that Rosenbaum began unilaterally contacting clients on August 6, 2008, two days after his departure from B&P and in derogation of Florida Bar Rule 4-5.8.[5] (Counterclaim [DE 32], ¶ 33 & Ex. E). Despite the fact that the Counterclaim alleges that these improper solicitations occurred during the first week of August 2008, Rosenbaum seeks B&P's client communications for a 15-month period (and potentially much longer than that in view of B&P's duty to supplement its discovery responses) ostensibly to show that B&P contacted the clients before he did. If Rosenbaum is to be taken at his word and that what he really seeks are communications establishing that B&P "beat him to the punch" and began contacting its clients *before* he did (as is alleged in the Counterclaim), that would necessarily limit the relevant time-frame to August 2008, and, specifically, to the first week of that month.[6] Thus, to the extent that the Request seeks documents beyond August 2008, it is both overbroad and irrelevant.

Further, as B&P argued in its Motion for Protective Order [DE 74], compliance with the Request would be unduly burdensome given the expansive time-frame requested. As explained in its Motion for Protective Order, B&P, in the normal course of its business, does not maintain a separate file for each and every communication 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. (D.E. 74, at p. 7). There may be thousands of communications between B&P and its clients relating to the subject matter of this Request, and since B&P has several thousand clients, the attempted retrieval of each and every one of those

[5] Florida Bar Rule 4-5.8(c) provides that absent a specific agreement otherwise, a lawyer leaving a law firm is not permitted to unilaterally notify clients and must work together with his former firm in developing a joint communication that goes to the clients. The Rule further provides that only after "bona fide negotiations" have proven unsuccessful can the departing lawyer begin contacting clients of his former firm. *Id.*

[6] Rosenbaum implicitly concedes that August 2008 is the relevant time-frame associated with the requested documents, given his citation to and reliance on correspondence sent by Gary Poliakoff to certain B&P clients on August 7, 2008 and August 13, 2008, respectively. (*See* Rosenbaum's Motion to Compel [DE 78], at p. 4).

communications would cause B&P to expend considerable time, resources and expense. (*Id.*). Since the only conceivably relevant time period is August 2008 (as alleged in the Counterclaims and conceded by Rosenbaum in his Motion to Compel), the burden and expense associated with checking thousands of client files for correspondence spanning a 15-month period is grossly disproportionate to the marginal relevance that any such documents might yield, particularly since the allegations of improper client solicitation center on the first week of August 2008. *See, e.g.*, *Am. Int'l Specialty Lines Ins. Co. v. NWI-I, Inc.*, 240 F.R.D. 401, 411-13 (N.D. Ill. 2007) (applying proportionality principle to limit discovery where the requesting party's document demand would have required the disclosing party to review over 19,000 boxes of documents).

With respect to electronically-stored information, the undue burden on B&P is even greater. Under Rule 26(b)(2)(B), a responding party is not required to produce information stored on electronic "sources [which are] not reasonably accessible because of undue burden or cost." Fed. R. Civ. P. 26(b)(2)(B); *see also Petcou v. C.H. Robinson Worldwide, Inc.*, 2008 WL 542684, at *1 (N.D. Ga. 2008) ("A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost."). Congress enacted Rule 26(b)(2)(B) in 2006 "in response to concerns that the broad discovery principle announced in [Rule 26(b)(1)] could cause responding parties to incur unreasonable costs in producing electronically stored information." *Mikron Industries, Inc. v. Hurd Windows & Doors, Inc.,* 2008 WL 1805727, at *1 (W.D. Wash. Apr. 21, 2008) (citing Advisory Committee's Notes on 2006 Amendment to Rule 26(b)(2)). Thus, if the responding party demonstrates that the information sought is not "reasonably accessible," then the burden shifts to the requesting party to show "good cause: why the information should nevertheless be produced. *U&I Corp. v. Advanced Medical Design, Inc.*, 251 F.R.D. 667, 674 (M.D. Fla. 2008).

In deciding whether to permit discovery of electronically stored information, a court must consider whether the burden or expense of the proposed discovery outweighs the likely benefit, taking into account the needs of the case, the amount of in controversy, the parties' resources, the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues. *Id.* (citing Rule 26(b)(2)(B)). A court may also specify conditions for the discovery of electronically stored information, such as the shifting of all costs of the production to the requesting party. *See Mikron*, 2008 WL 1805727, at *1 ("If the responding party meets its burden, the court may consider a range of options, including cost-shifting, to alleviate the responding party's hardship."); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 283 (S.D.N.Y. 2003) (stating that "[although 'the presumption is that the responding party must bear the expense of complying with discovery requests,' requests that run afoul of the Rule 26(b)(2) proportionality test may subject the requesting party to protective orders under Rule 26(c), "including orders conditioning discovery on the requesting party's payment of the costs of discovery.")

B&P has met its burden of demonstrating that that the electronically stored information sought in Request No. 1 is not reasonably accessible because of either undue burden or cost. As explained in its previously-filed Motion for Protective Order [DE 74], it would be virtually impossible for B&P's information technology department to perform a search of all electronic communications between B&P and its clients relating to the information sought in Request No. 1. (*Id.*, at p. 8). Prior to 2009, B&P did not even have an archiving system for its e-mails. (*Id.*). At the present time, B&P has over nine 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 e-mails between B&P users (which exceed 1 million per year), nor does it take into account the deletions or aging of e-mails. (*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.*). Attempting to gather this information would require a costly and massive undertaking, literally taking weeks to complete, with no guarantee of results. (*Id.*). In order to accomplish this undertaking, B&P would have to know the individual personal e-mail addresses for all client contacts (of which there could be thousands) with whom someone in the firm might have been in communication. (*Id.*). In the absence of archiving, B&P's information technology department could perform limited searches but it would have no way to tell if an e-mail "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 and time-consuming. In order to attempt to find e-mails within those categories, B&P's information technology department would need to search for e-mails from specific people, to specific people, and with particular words for which to search. (*Id.*, at p. 9). 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 e-mail 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" (meaning '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.*).

The bottom line is that producing all of the electronically stored information requested by Rosenbaum would require a massive undertaking by B&P's information technology department, (a) taking many weeks to complete, and (b) involving several people committed to that task on a full-time basis (thereby depriving B&P of their services for the entirety of such period), with no guarantee of results. (Second Declaration of Avi Solomon, dated November 23, 2009, Exhibit "E" hereto, at ¶ 5). Such Request clearly violates the "rule of proportionality" embodied in Rule 26(b)(2)(C) since it seeks client communications for the 15-month period subsequent to August 4, 2008, even though (a) the Counterclaim alleges that the improper client solicitations occurred on or about August 6, 2008, and (b) Rosenbaum's Motion to Compel likewise focuses on the August 2008 time-frame when it argues that the requested documents are relevant to show that B&P contacted its clients *before* the date (in August 2008) that Rosenbaum is alleged to have solicited B&P's clients. By seeking electronically-stored information covering a 15-month period (and counting) when the only conceivably relevant time-period (as framed by the pleadings) is limited to August 2008, Rosenbaum's request is grossly disproportionate to the usefulness of the requested information. Accordingly, the Court should deny this aspect of Rosenbaum's motion, or, alternatively, limit the production to communications for the two-week period subsequent to August 4, 2008, or, alternatively, require Rosenbaum to reimburse B&P for all the costs of the requested discovery. *Quinby v. WestLB AG*, 245 F.R.D. 94, 106 (S.D.N.Y. 2006) ("Narrowing plaintiff's document request pursuant to Rule 26(b)(2) does not preclude the Court from also granting a protective order in the form of cost-shifting for those documents that were ordered to be produced.").

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

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."

This Request is overbroad, 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. Since August 4, 2008, B&P has employed 487 people (Declaration of Ann Mezadieu ["Mezadieu Decl.], Exhibit "F" hereto, ¶ 3), very few of whom have any connection to the instant matter. 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. (*See* B&P's Motion for Protective Order [74], at p. 10). 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.

Because it is not readily apparent from this request how the payroll records of *every* firm employee have any bearing on this lawsuit, it is Rosenbaum's burden to demonstrate relevancy. *See Suncast Technologies, L.L.C. v. Patrician Products, Inc.*, 2008 WL 179648, at *5 (S.D. Fla.

Jan. 17, 2008) (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."). Here, Rosenbaum argues that the payroll records of *every* employee are relevant to show how much overhead was allocated to each employee, for the purpose of determining the profitability of each individual lawyer. (*See* Rosenbaum's Motion, at p. 7 [claiming that "the general expenses of the B&P firm operations are allocated to each attorney and their profitability depends in great part on the amount of the general firm expense allocation," and, noting, for example, that B&P allocates $160,000 per attorney for the general expenses of the firm). Even assuming this were true, which it is not,[7] it would not justify subjecting the *entirety* of B&P's confidential payroll records, covering some 487 people, to the prying eyes of a competitor. First, the amount of allocated overhead is *the same* for every attorney, regardless of their office location. (Moreno Decl., ¶ 4). Second, the above-referenced "overhead" figure has no relationship to the profitability of each regional office or attorney, or to the firm as a whole. (*Id.*, ¶ 5). B&P's accounting department separately determines the actual profitability of each office based on the receipt of cash into that office (from the result of attorneys and billing paralegals' collection of revenues for that office) less the cost of actual expenditures for that office (including the actual rent paid for that office, actual utilities, and a pro rata--based on number of attorneys--allocation of support departments. (*Id.*). Thus, for example, if the actual collected revenues for a particular office (such as West Palm Beach) go down, and actual expenses for that office go up, as was the case with West Palm Beach for the one-year period subsequent to August 4, 2008, B&P can provide accurate figures

[7] Rosenbaum misstates the amount of overhead which is allocated to each B&P attorney. It is not $160,000 per attorney, as claimed by Rosenbaum, but, rather, is $132,244 per attorney. (*See* Declaration of Gilma Moreno, Exhibit "G" hereto, ¶ 4). However, that figure is not actual overhead for any office, attorney or the firm It is merely an average compiled of all expenses not allocable to any single attorney. *Id.* For example, the rents of all offices combined, all utilities for all offices, all insurances for all offices, all back office personnel for all offices divided by the number of attorneys (with some adjustment for billing paralegals). *Id.* It is not a "real" overhead number so much as a tool used to determine the relative profitability of one lawyer to another. *Id.*

for those changes and the profit or loss of that office as a result thereof, and the information requested by Rosenbaum has nothing whatsoever to do with such calculations. (*Id.*, ¶ 6). Similarly, the amount of allocated general overhead has no bearing on the actual profit or loss of B&P for tax purposes. (*Id.*., ¶ 7). Since B&P is a cash basis tax payer, its profit or loss is determined by the amount of cash receipts during a year and the amount of actual cash expenditures (with adjustments for non deductible or depreciable expenses such as capital improvements). The real profit and loss of the firm is as reported for income tax purposes. (*Id.*). B&P's tax returns do not segregate the performance of any single office and no information on the firm's tax return will reveal anything about the relative performance, profit or loss, attributable to the West Palm Beach office between August, 2008 and December 31, 2009. (*Id.*).

In addition, Rosenbaum argues that the payroll records for *every* B&P employee are relevant to show the "hours billed" and "hourly rates" for attorneys from B&P's other offices, and, in particular, the Orlando office since one of the attorneys from that office transferred to West Palm Beach following Rosenbaum's resignation. (*See* Rosenbaum's Motion to Compel, at p. 7 ["the Orlando office may have had less hours billed in Orlando from attorneys being sent to West Palm [Beach], but those attorneys may have billed higher rates or worked on more profitable cases, thus showing the Orlando office to be more profitable, effectively transferring the profit from West Palm Beach to Orlando."]). However, Rosenbaum does not need the payroll records of all 487 employees to determine the billing information of the *one* Orlando-based attorney who transferred to the West Palm Beach office following Rosenbaum's departure. Simply requesting the billing records of that *one* attorney would have sufficed. Therefore, Rosenbaum's request clearly violates the rule of proportionality embodied in Rule 26(b)(2)(C).

Rosenbaum next argues that the payroll records of *every* B&P employee is relevant because "how much the firm spends on employee salaries is directly related to B&P's lost profit claim since employee compensation . . . makes up 70% of law firm expenses." (*Id.*). However, even if that statement were accurate, Rosenbaum does not need to have the payroll records of all 487 of the firm's employees to ascertain *the total amount* which B&P paid in employee salaries in a given year. Such information can just as easily be obtained from a redacted copy of B&P's 2008 income tax return, without subjecting the entirety of the firm's payroll records to the prying eyes of a competitor. Thus, Rosenbaum's request again violates the rule of proportionality.

Complying with this Request would also impose an undue burden on B&P, both in terms of resources and expense. Since August 4, 2008, B&P has employed 487 people. (Mezadieu Decl., Ex. "F" ¶ 3). To produce the payroll records of each one of 487 employees is an enormous and time-consuming undertaking requiring several employees in B&P's Human Resources Department (which only has four employees) dedicated to the task on a virtual full-time basis for at least one week (if not longer), and involving tens of thousands of pages at a minimum. (*Id.*). Such an enormous undertaking is simply not warranted here in view of the fact that only a handful of B&P employees worked in the West Palm Beach office. Under similar circumstances, the federal 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* B&P's Motion for Protective Order [DE 74], at pp. 10-11). Normally, in such circumstances, the parties will enter into a confidentiality stipulation to ensure that such information is not disclosed to a competitor or other third-party. Here, however, a confidentiality stipulation will not ameliorate the harm to B&P should any of the requested information be disclosed to Rosenbaum. Because Rosenbaum is now purporting to proceed on *pro se* basis after having previously being represented by counsel, a confidentiality stipulation will be of little 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. In other words, a confidentiality stipulation (in view of Rosenbaum's *pro se* status) will not protect the very thing which it would normally be designed to protect--*i.e.,* the disclosure of confidential information to a competitor. Once he is given access to such confidential information, Rosenbaum cannot be expected to "unlearn" it.

Finally, complying with the Request also violates the privacy rights of B&P's employees, none of whom are a party to these proceedings. The payroll records for each B&P 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. (*Id.*, at p. 11). "[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), and the federal courts routinely shield such information from disclosure.

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)

In Request No. 3, Rosenbaum seeks "[a]ll payroll records reflecting the compensation, including salary and bonuses, of Marni Becker . . . [B&P's Director of Professional Development], from the date of hire to the date of your response to this Request for Production."

Since this Request likewise seeks confidential payroll records, B&P hereby incorporates its response above to Request No. 2 as if fully set forth herein. In addition, the requested payroll records are not relevant to any claim or defense asserted in this action. 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 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. (*See* Motion for Protective Order [DE 74], at p. 13). 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,*, 2008 WL 179648, at *5. He has not adequately met such burden. Here, Rosenbaum argues that the payroll records of Ms. Becker-Avin are relevant to Rosenbaum's unasserted "mismanagement" defense, because they will show that Ms. Becker-Avin--the daughter of B&P co-founder, Alan Becker--was given "preferential treatment." (*See* Rosenbaum's Motion to Compel, at p. 8). In particular, Rosenbaum claims that that Ms. Becker-Avin "was given very significant funding for her position and department, to the chagrin of many, at the expense of substantial firm resources and employee morale." *Id.* This purported justification for seeking Ms. Becker-Avin's confidential payroll records does not pass muster. Rosenbaum has not asserted any "mismanagement" defense in this case. Nor can he do so. "Mismanagement" is not a recognized defense to a claim for tortious interference with business and/or contractual relations, breach of fiduciary duty, or breach of contract. It is nothing more than a smokescreen designed to distract attention from Rosenbaum's alleged misconduct and to inject issues in this case which are not remotely pertinent to whether or not he breached his fiduciary obligations as a shareholder of B&P and tortiously interfered with B&P's business relationships.

Rosenbaum's injection of Ms. Becker-Avin into this lawsuit is deeply disturbing, and is nothing but an attempt to harass B&P because she is the daughter of B&P's co-founder, Alan Becker. Ms. Becker-Avin has been a colleague of Rosenbaum's for nearly nine years, and only after leaving the employ of B&P does Rosenbaum make so much as a peep about the modest level of her compensation, which is at the low-end of the salary scale for professional development directors in similarly-sized firms. But, even assuming arguendo, that what Rosenbaum is saying is true, and that she is "overpaid" or receives "preferential treatment" at B&P because she is the daughter of Alan Becker, that still would not justify Rosenbaum's actions. No one is claiming here that Rosenbaum did not have the right to leave B&P, regardless of whether it was the most mismanaged and oppressive environment or

the most professional, stable and profitable firm in Florida. The gravamen of the Counterclaim is not that Rosenbaum *left* B&P, whatever his reason for doing so, but, rather, it is the *manner* in which he left. In other words, it is not *that* he left, but *how* he left--*i.e.*, (a) taking employees in direct violation of his contract; (b) seeking and taking clients without compensation to the firm, also in direct violation of his contract; (c) unilaterally soliciting clients in contravention of the ethical rules governing same; (d) approaching employees to join him at KGR while he was still purporting to act as a managing shareholder of B&P, and (e) deliberately leaving behind utter chaos, in violation of his fiduciary duties owed to B&P as a managing shareholder. As such, Rosenbaum's purported justification for the requested documents is nothing but a smokescreen.

Moreover, as a former managing shareholder of a B&P office, Rosenbaum is well aware of the salary and other compensation that Ms. Becker-Avin is paid by B&P, having been a colleague of hers for nearly nine years and being privy to such records by virtue of his management position within the firm. Further, Ms. Becker-Avin's payroll records will not shed any light on the "funding" that her department receives, which is the underpinning of Rosenbaum's relevance argument. (*See* Rosenbaum's Motion, at p. 8). Ms. Becker-Avin's payroll records will simply reveal Ms. Becker-Avin's salary and other compensation, which Rosenbaum, by virtue of his former position, should already know (though, perhaps, not since he overstated it by 25% in his similarly unresponsive and meandering response to a Bar Complaint).

In addition, the information requested by Rosenbaum constitutes a trade secret or other confidential or proprietary commercial information of B&P. (*See* B&P's Motion for Protective Order [DE 74], at pp. 12-14). The same analysis contained in B&P's Motion for Protective Order (and in B&P's response above to Request No. 2) above applies with equal force to the confidential payroll records of Ms. Becker-Avin, and is hereby incorporated herein by reference.

Finally, complying with this Request and producing her confidential payroll records also violates the privacy rights of Ms. Becker-Avin, who is not a party to these litigation proceedings. (*Id.*)

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

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."

The same arguments advanced by B&P in response to Request No. 3 above (with respect to the payroll records of Marni Becker-Avin) apply with equal force to the payroll records of Keith Poliakoff, and are hereby incorporated herein by reference. Like Ms. Becker-Avin, Mr. Poliakoff is the child of one of the co-founding shareholders of B&P. And, like Ms. Becker-Avin, Mr. Poliakoff has been a colleague of Rosenbaum's for approximately nine (9) years. Although Rosenbaum is ostensibly seeking Mr. Poliakoff's payroll records to seek to bolster his "mismanagement" defense by claiming that Mr. Poliakoff is overpaid and/or receives preferential treatment from B&P, it should be noted that Mr. Poliakoff's billings and originations for 2007 and 2008 were comparable to Rosenbaum's for the same time-period, even though he earned less than half the salary as Rosenbaum. In any event, there is simply no nexus between Mr. Poliakoff and any of the matters at issue in this lawsuit. Just as with the prior request involving Ms. Becker-Avin's payroll records, the only conceivable reason why Rosenbaum would request Mr. Poliakoff's confidential payroll records is due to the fact that he happens to be one of the children of a B&P co-founding shareholder. And, just as the similar request for Ms. Becker-Avin's payroll records is totally irrelevant to any claim or defense in this action, so, too, here is the request for the confidential payroll records of one of the other children of a B&P co-founder.

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

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."

The arguments advanced above by B&P in connection with Request No. 2 [as to payroll records] apply with equal force to the billing records of all employees. For the sake of brevity, B&P adopts and incorporates its response above to Request No. 2 as if fully set forth herein. In addition, B&P notes that the scope of Rosenbaum's request for billing records [as set forth in Request No. 6] is considerably broader than his request for payroll records [as set forth in Request No. 2], as the requested look-back period is *three years* for the former and only one year for the latter. There is no logic behind the broader time-frame here since the underpinning of Rosenbaum's relevance argument--*i.e.*, that B&P is mismanaged--is the same for both requests.

Although Rosenbaum argues that such records are relevant to his as-yet-asserted defense of "mismanagement," that is not a valid basis for compelling the production of three years' worth of billing records (covering hundreds of firm employees, most of whom have never worked in the West Palm Beach office) since "mismanagement" is not a recognized defense to a claim of tortious interference with business relations, breach of fiduciary duty, or breach of contract. Moreover, whether or not B&P was "mismanaged" is irrelevant to any claim or defense in this action. No one is claiming here that Rosenbaum did not have the right to leave B&P, regardless of whether it was the most mismanaged and oppressive environment, or the most professional, stable and profitable law firm in the State of Florida. The gravamen of the Counterclaims is not that Rosenbaum *left* B&P, whatever his reason for doing so, but, rather, it is the *manner* in which he left--*i.e.*, (a) taking employees in direct violation of his contract; (b) seeking and taking clients

without compensation to B&P, also in direct violation of his contract; (c) unilaterally and prematurely soliciting clients when he left B&P, in contravention of the Florida Bar Rules; (d) approaching employees to join him at KGR while he was still purporting to act as a Managing Shareholder of B&P, and (e) deliberately leaving the West Palm Beach office of B&P in utter chaos he resigned, in violation of his fiduciary duties owed to B&P as a managing shareholder. Even if B&P were "mismanaged," that would not justify any of the foregoing actions. As such, Rosenbaum's purported justification for the requested documents is nothing but a smokescreen.

Complying with this Request would also impose an undue burden on B&P, both in terms of resources and expense. During the preceding three years, B&P has employed 242 attorneys and paralegals. (Moreno Decl., Ex. "G" ¶ 8). Since Rosenbaum is requesting monthly billing records for each of these timekeeping employees going back three years, the request will necessarily involve the production of over 6,000 pages of documents. (*Id.*). To produce the monthly billing records for every such timekeeping employee over a three-year period is an enormous and time-consuming undertaking which will require several employees in B&P's Accounting Department dedicated to the task on a full-time basis for several days. (*Id.*). Such an enormous undertaking is simply not warranted here in view of the fact that only a handful of B&P employees worked in the West Palm Beach office. The only billing records that are even remotely relevant here are those records associated with the attorneys and paralegals who worked in the West Palm Beach office for the one-year period prior to August 4, 2008 (when Rosenbaum resigned), and for all attorneys and paralegals who billed time on clients for that office in the 15 months since then. Accordingly, the Court should deny this aspect of Rosenbaum's motion, or, alternatively, limit the production to billing reports associated with those B&P employees who worked in the West Palm Beach between August 4, 2007 and the

present date, or, alternatively, require Rosenbaum to reimburse B&P for all of the costs of the requested discovery. *See Quinby*, 245 .R.D. at 106.

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

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."

The arguments advanced above by B&P in connection with Request No. 2 [as to payroll records] and Request No. 6 [as to billing records] apply with equal force to the expense reports for all employees. For the sake of brevity, B&P adopts and incorporates its responses above to Request Nos. 2 and 7 as if fully set forth herein. In addition, B&P notes that the time-frame associated with Rosenbaum's request for expense reports is broader than his request for payroll records [set forth in Request No. 2] and billing records [set forth in Request No. 6], as the requested look-back period is *four years* for expense reports and only one year and three years for the latter. There is no logic behind the broader time-frame here since the underpinning of Rosenbaum's relevance argument--*i.e.*, that B&P is mismanaged--is the same for each request. Further, since Rosenbaum left the employ of B&P on August 4, 2008, any expense reports submitted after that date are wholly irrelevant to any claim or defense he could conceivably raise.

Although Rosenbaum argues that such records are relevant to his as-yet-asserted defense of "mismanagement," that is not a valid basis for compelling the production of four years' worth of expense reports (covering hundreds of firm employees, most of whom have never worked in the West Palm Beach office) since "mismanagement" is not a recognized defense to a claim of tortious interference with business relations, breach of fiduciary duty, or breach of contract. Moreover, whether or not B&P was "mismanaged" is irrelevant to any claim or defense in this

action. No one is claiming here that Rosenbaum did not have the right to leave B&P, regardless of whether it was the most mismanaged and oppressive environment, or the most professional, stable and profitable law firm in the State of Florida. The gravamen of the Counterclaims is not that Rosenbaum *left* B&P, whatever his reason for doing so, but, rather, it is the *manner* in which he left--*i.e.*, (a) taking employees in direct violation of his contract; (b) seeking and taking clients without compensation to B&P, also in direct violation of his contract; (c) unilaterally and prematurely soliciting clients when he left B&P, in contravention of the Florida Bar Rules; (d) approaching employees to join him at KGR while he was still purporting to act as a Managing Shareholder of B&P, and (e) deliberately leaving the West Palm Beach office of B&P in utter chaos he resigned, in violation of his fiduciary duties owed to B&P as a managing shareholder. Even if B&P were "mismanaged," that would not justify any of the foregoing actions. As such, Rosenbaum's purported justification for the requested documents is nothing but a smokescreen.

Rosenbaum's motion to compel implicitly concedes the overreaching of his request, both in terms of scope and time-frame. Despite seeking the production of expense reports for *every* employee going back four years, he concedes that the true focus of the request is on the travel and entertainment expenses incurred by members of B&P's Management Committee for a two-year period. *See* Rosenbaum's Motion to Compel, at p. 8 ["Expense reports of previous years for every employee [for four years] are relevant to show a large increase in 2007 and 2008 for travel and entertainment, especially by the attorneys on the Management Committee. The members of the Management Committee received special privileges and treatment, especially as it related to travel with their spouses, thereby wasting large amounts of firm money."]). If Rosenbaum is to be taken at his word and that what he really seeks here are expense reports of the various members of the Management Committee submitted in 2007 and 2008, that would necessarily

limit the scope of his request to just a few attorneys and for only a two-year period. Thus, to the extent that Rosenbaum seeks expense reports for employees not on the Management Committee or for periods other than 2007 and 2008, Rosenbaum's request is both irrelevant and overbroad.

Complying with this Request would also impose an undue burden on B&P, both in terms of time and resources. During the past four years, B&P has employed 768 people, including attorneys, paralegals and support staff. (Mezadieu Decl., Ex. "F" ¶ 4). Since Rosenbaum is requesting monthly expense reports for all B&P employees for four years, the request will necessarily involve the production of several thousand reports. (Moreno Decl., Ex. "G" ¶¶ 8-9). To produce four years' worth of expense reports for every single B&P employee would be an enormous and time-consuming undertaking requiring several employees dedicated to this task on a full-time basis for at least one week (if not longer), and involving tens of thousands of pages of documents at a minimum. (*Id.*). The only expense reports that are even remotely relevant here are those records associated with the attorneys and paralegals who worked in the West Palm Beach office for the one-year period prior to August 4, 2008 (when Rosenbaum resigned), and for all attorneys and paralegals who billed time on clients for that office in the 15 months since then. Accordingly, the Court should deny this aspect of Rosenbaum's motion, or, alternatively, limit the production to those expense reports submitted by B&P employees who worked in the West Palm Beach between August 4, 2007 and the present date, or, alternatively, require Rosenbaum to reimburse B&P for all of the costs of producing the requested discovery. *See Quinby*, 245 .R.D. at 106.

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

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."

The arguments advanced by B&P in its previously-filed Motion for Protective Order [DE 74] with respect to Request No. 8 apply with equal force and effect here. [D.E. 74, at pp. 17-20). For the sake of brevity, B&P hereby adopts and incorporates the complete argument and analysis from its Motion for Protective Order pertaining to Request No. 8, as if fully set forth herein.

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

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."

As explained in its previously-filed Motion for Protective Order [DE 74], the notes, minutes and records of B&P's Management Committee are highly-sensitive confidential information pertaining to the business and operations of B&P, containing the various business strategies and proposed plans or courses of action for the law firm. (DE 74, at p. 21). 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 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 other actions designed to paralyze the West Palm Beach office of B&P. (*Id.* at 21-22). Therefore, B&P has a legitimate business and competitive reason

for wishing to shield this information from disclosure, particularly to a competitor. (*Id.*). *See also Andrx Pharmaceuticals*, 236 F.R.D. at 585 (recognizing that federal courts "have broad discretion to prevent or limit the disclosure of confidential trade secrets.").

Moreover, a confidentiality stipulation and order will not ameliorate the harm to B&P should any of this confidential information be disclosed to Rosenbaum. Because Rosenbaum is now purporting to proceed on *pro se* basis after having previously being represented by counsel, a confidentiality stipulation will be of little 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. In other words, a confidentiality stipulation will not serve its intended purpose, thereby rendering B&P's proprietary information vulnerable to exploitation by Rosenbaum, who, after having seen the confidential information, cannot just simply "unlearn" it.

But, even more fundamentally, the records of B&P's Management Committee are hardly relevant to this action. There are no allegations in either the Complaint or the Counterclaims which even allude to any of the decisions made by the Management Committee. *See Suncast Technologies,*, 2008 WL 179648, at *5 (stating that where it is not readily apparent from the demand how the requested records have any bearing on the lawsuit, it is the requestor's burden to demonstrate their relevancy). 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 have no bearing on any of these claims (or defenses thereto), and, even if they did, the information sought by Rosenbaum can be obtained through other less-intrusive means of discovery, such as interrogatories and deposition questions.

Rosenbaum's relevance argument is specious. As he has done with virtually every other request, Rosenbaum argues that the requested records are necessary to support his as-yet-asserted "mismanagement" defense. (Rosenbaum's Motion, at pp. 12-13 [stating that the Management Committee records for the past three years "are relevant to show the management decisions that B&P made, and thus establish the truth of Rosenbaum's statement about B&P's management."]). This purported justification for seeking the confidential records of B&P's Management Committee does not pass muster since Rosenbaum has not asserted any "mismanagement" defense in this case. Nor can he possibly do so. "Mismanagement" is not a recognized defense to a claim for tortious interference with business and/or contractual relations, breach of fiduciary duty, or breach of contract. As used here by Rosenbaum, it is nothing more than a smokescreen designed to distract attention from Rosenbaum's alleged misconduct and to inject issues in this case which are not remotely pertinent to whether or not he breached his fiduciary obligations as a managing shareholder of B&P and/or tortiously interfered with B&P's business relationships.

Notwithstanding the foregoing, to the extent that the production of B&P's Management Committee records 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 confidential 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 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.

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

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&P respectfully refers this Court to its argument set forth in response to Request No. 9 above and to the argument contained in its previously-filed Motion for Protective Order [DE 74] with respect to Request No. 10, which apply with equal force here. (DE 74, at pp, 23-24). For the sake of brevity, B&P hereby adopts and incorporates the complete argument and analysis contained in its above-stated response to Request No. 9 and in its previously-filed Motion for Protective Order [DE 74] pertaining to Request No. 10, as if it were fully set forth herein.

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

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."

This is, perhaps, the most outlandish of Rosenbaum's document requests. As explained in its previously-filed Motion for Protective Order, Sherri Poliakoff is the wife of B&P's co-founding shareholder, Gary Poliakoff. (DE 74, at p. 25). 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 or any interior design services rendered by her. 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 predatory actions 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,* 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 Ms. 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 or annoy B&P.

Rosenbaum's relevance argument is specious. As he has done with virtually every other request, Rosenbaum argues that the requested records are necessary to support his as-yet-asserted "mismanagement" defense. (*See* Rosenbaum's Motion to Compel, at p. 14 [arguing that"[t]he requested records of payments to Sherri Poliakoff, the wife of Gary Poliakoff, another Managing Shareholder, are relevant to the allegations of mismanagement and the use of firm money for large payments to the family members of Managing Shareholders.") However, as explained previously, Rosenbaum has not interposed any "mismanagement" defense in this case. Nor can he do so. "Mismanagement" is not a recognized defense to a claim for tortious interference with business or contractual relations, breach of fiduciary duty, or breach of contract. As used here by Rosenbaum, it is nothing more than a smokescreen designed to distract attention from Rosenbaum's alleged misconduct and to inject issues in this case which are not remotely pertinent to whether or not he breached his fiduciary obligations as a shareholder of B&P and tortiously interfered with B&P's business relationships.

Rosenbaum's injection of Sherri Poliakoff into this lawsuit is deeply disturbing, and is nothing but an attempt to harass B&P because she is the wife of B&P's co-founder, Gary Poliakoff. It is not as

though Rosenbaum was recently surprised by the fact that Sherri Poliakoff receives a fee for designing the firm's offices, as she has been performing those services for nearly 40 years, beginning 13 years before Rosenbaum ever joined B&P and continuing throughout the entirety of his employment. But, even assuming *arguendo*, that what Rosenbaum is saying is true, and that Sherri Poliakoff received preferential treatment as the firm's decorator because she is the wife of Gary Poliakoff, it still would not justify Rosenbaum's actions. No one is claiming here that Rosenbaum did not have the right to leave B&P, regardless of whether it was the most mismanaged and oppressive environment or the most professional, stable and profitable firm in Florida. The gravamen of the Counterclaim is not that Rosenbaum *left* B&P, whatever his reason for doing so, but, rather, it is the *manner* in which he left. In other words, it is not *that* he left, but *how* he left--*i.e.*, (a) taking employees in direct violation of his contract; (b) seeking and taking clients without compensation to the firm, also in direct violation of his contract; (c) unilaterally soliciting clients in contravention of the ethical rules governing same; (d) approaching employees to join him at KGR while he was still purporting to act as a managing shareholder of B&P, and (e) deliberately leaving behind utter chaos, in violation of his fiduciary duties owed to B&P as a managing shareholder. As such, Rosenbaum's purported justification for the requested documents is nothing but a smokescreen.

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

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."

This request lacks any relevance whatsoever. Alan Becker is the managing shareholder of B&P, and is not himself a party to this action. (*See* Motion for Protective Order, at p. 26). Further, there are no allegations in either the Complaint or Counterclaims which relate to the 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 predatory actions 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 furniture for Mr. Becker's office (which occurred one full year before Rosenbaum abruptly resigned from B&P) has any bearing on the issues in 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 remotely at issue--is to harass and/or annoy B&P.

Rosenbaum's relevance argument is specious. As he has done with virtually every other request, Rosenbaum argues that the requested records are necessary to support his as-yet-asserted "mismanagement" defense. (*See* Rosenbaum's Motion to Compel, at p. 14 [arguing that"[t]he requested documents are relevant to the allegations regarding firm mismanagement. Specifically, Alan Becker's relatives had a furniture company from which Mr. Becker purchased approximately $30,000 for his office, using firm money . . . . This wasteful and lavish expense was unnecessary and unreasonable, was to benefit the Becker family, and wasted firm money."]). However, Rosenbaum has not interposed any "mismanagement" defense in this case. Nor can he do so. "Mismanagement" is not a recognized defense to a claim for tortious interference with

business or contractual relations, breach of fiduciary duty, or breach of contract. As used here by Rosenbaum, it is nothing more than a smokescreen designed to distract attention from Rosenbaum's alleged misconduct and to inject issues in this case which are not remotely pertinent to whether or not he breached his fiduciary obligations as a shareholder of B&P and tortiously interfered with B&P's business relationships.

But even assuming *arguendo*, that what Rosenbaum is saying is true, and that the office furniture purchased for Alan Becker's office was too expensive, it still would not justify Rosenbaum's tortious actions. No one is claiming that Rosenbaum did not have the right to leave B&P, regardless of whether it was the most mismanaged and oppressive environment or the most professional, stable and profitable firm in Florida. The gravamen of the Counterclaim is not that Rosenbaum *left* B&P, whatever his reason for doing so, but, rather, it is the *manner* in which he left. In other words, it is not *that* he left the firm, but *how* he left--*i.e.*, (a) taking employees in direct violation of his contract; (b) seeking and taking clients without compensation to the firm, also in direct violation of his contract; (c) unilaterally soliciting clients in contravention of the ethical rules governing same; (d) approaching employees to join him at KGR while he was still purporting to act as a managing shareholder of B&P, and (e) deliberately leaving behind utter chaos, in violation of his fiduciary duties owed to B&P as a managing shareholder. As such, Rosenbaum's purported justification for the requested documents is nothing but a smokescreen.

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

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&P respectfully refers this Court to its argument set forth in response to Request No. 1 above and to the argument contained in its previously-filed Motion for Protective Order [DE 74] with respect to Request No. 13, which apply with equal force here. (DE 74, at pp, 27-28). For the sake of brevity, B&P hereby adopts and incorporates the complete argument and analysis contained in its above-stated response to Request No. 1 and in its previously-filed Motion for Protective Order [DE 74] pertaining to Request No. 13, as if it were fully set forth herein.

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

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&P respectfully refers this Court to its argument set forth in response to Request No. 1 above and to the argument contained in its previously-filed Motion for Protective Order [DE 74] with respect to Request Nos. 13 and 14, which apply with equal force here. [DE 74, pp, 27-29]. For the sake of brevity, B&P hereby adopts and incorporates the complete argument and analysis contained in its above-stated response to Request No. 1 and in its previously-filed Motion for Protective Order [DE 74] pertaining to Request Nos. 13 and 14, as if fully set forth herein.

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

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."

The arguments advanced by B&P in its previously-filed Motion for Protective Order [DE 74] with respect to Request No. 15 apply with equal force and effect here. [DE 74, at pp. 29-31].

For the sake of brevity, B&P hereby adopts and incorporates the complete argument and analysis from its Motion for Protective Order pertaining to Request No. 15, as if fully set forth herein. In addition, to the extent that Rosenbaum seeks "e-mails" evidencing such communications, B&P respectfully refers this Court to its argument contained above in response to Request No. 1 pertaining to "electronically-stored information," as such argument applies here with equal force.

But, even more fundamentally, any internal communications regarding the 12% salary deferral are hardly relevant to this action. There are no allegations in either the Complaint or the Counterclaims which refer 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 (or any defenses thereto). 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. And, as he has done with virtually every other request, Rosenbaum argues that the requested records are necessary to support his as-yet-asserted "mismanagement" defense. (*See* Rosenbaum's Motion to Compel, at p. 16). However, as stated above, Rosenbaum has not asserted any "mismanagement" defense in this case. Nor can he do

so. "Mismanagement" is not an affirmative defense to a claim for tortious interference with business and/or contractual relations, breach of fiduciary duty or breach of contract. It is nothing more than a smokescreen designed to distract attention from Rosenbaum's alleged misconduct and to inject issues in this case which are not remotely pertinent to whether or not he breached his fiduciary obligations as a shareholder of B&P and tortiously interfered with B&P's business relationships.

But even assuming *arguendo*, that what Rosenbaum is saying is true, and that the 12% salary deferral played a role in Rosenbaum's decision to resign from B&P, it still would not justify Rosenbaum's tortious actions. No one is claiming that Rosenbaum did not have the right to leave B&P, regardless of whether it was the most mismanaged and oppressive environment or the most professional, stable and profitable firm in Florida. The gravamen of the Counterclaim is not that Rosenbaum *left* B&P, whatever his reason for doing so, but, rather, it is the *manner* in which he left. In other words, it is not *that* he left the firm, but *how* he left--*i.e.*, (a) taking employees in direct violation of his contract; (b) seeking and taking clients without compensation to the firm, also in direct violation of his contract; (c) unilaterally soliciting clients in contravention of the ethical rules governing same; (d) approaching employees to join him at KGR while he was still purporting to act as a managing shareholder of B&P, and (e) deliberately leaving behind utter chaos, in violation of his fiduciary duties owed to B&P as a managing shareholder. As such, Rosenbaum's purported justification for the requested documents is nothing but a smokescreen.

Request No. 16: Humorous Presentations by Perry Adair at Firm Retreats

In Request No. 14, Rosenbaum seeks "[f]ull and unedited presentations by Perry Adair and any other persons at the 2008 and/or 2009 B&P Retreats or at other Becker & Poliakoff, P.A. gatherings or meetings of any kind."

The requested documents are not relevant to any claim or defense at issue in this action. There are no allegations in either the Complaint or Counterclaims which relate to "presentations" made at any of the firm's annual retreats. 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 predatory actions 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 satirical presentations made by Perry Adair at the annual firm retreats have any bearing on this lawsuit, it is Rosenbaum's burden to demonstrate their relevancy. *See Suncast Technologies*, 2008 WL 179648, at *5. Rosenbaum has not met this burden. Although he argues that the requested information is relevant to show how other B&P attorneys "truly perceived" the departure of Rosenbaum and the other West Palm Beach attorneys and staff, and whether it was the subject of "jokes" by B&P management and attorneys during the firm's retreat (Rosenbaum's Motion to Compel, at p. 16), that does not mean it is relevant to any "claim" or "defense" in this action. Rosenbaum has not even hinted how such records would tend to prove or disprove any particular claim or defense. But even assuming, *arguendo*, that Mr. Adair (or others) made several humorous remarks at Mr. Rosenbaum's expense during the firm's retreat, what would that exactly prove or disprove?

Moreover, B&P has already advised Rosenbaum that it does not record the presentations made by Mr. Adair. Rosenbaum argues that this is "unresponsive" because the presentations are saved as a "PowerPoint" file. Indeed, B&P does have the PowerPoint slides which accompanied Mr. Adair's presentation at the firm's annual retreat. But that is not what Rosenbaum asked for--he specifically asked for "*full and unedited presentations*." The PowerPoint slides simply

contained "still" photographs, without any accompanying commentary. Nonetheless, B&P will produce the PowerPoint slides to Rosenbaum, despite the absence of any prior request for same or so much as a single phone call from Rosenbaum requesting such slides following his receipt of B&P's response to his First Request for Production. *See* S.D. Fla. L. R. General Appx. A.I.A(1) ("Courtesy suggests that a telephone call is appropriate before taking action that might be avoided by agreement of counsel."). Clearly, if Rosenbaum had believed that B&P's response to Request No. 16 was insufficient or incomplete, he simply could have contacted the undersigned counsel requesting the PowerPoint slides. He did not do so. Instead, he waits until filing this motion before raising it as a possible compromise. Such behavior constitutes a violation of Local Rule 7.1(A)(3), and warrants the denial of this aspect of Rosenbaum's motion and an award of attorneys' fees to B&P. *See Williams v. Ocean View Title Co.*, 2007 WL 1805792, at *1 (S.D. Fla. June 22, 2007) ("Failure to comply with the requirements of Rule 7.1(A)(3) is sufficient cause for the denial of the motion as well as imposition of an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorneys' fee.").

Request No. 17: Client Lists

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."

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. Moreover, that list was already provided to Rosenbaum by B&P in a Request for Production recently served upon him. Anything beyond that is well beyond the scope of this action.

In addition, the information requested by Rosenbaum constitutes a trade secret or other confidential or proprietary information of B&P. 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."). This is especially so in the legal profession, where clients are the most essential asset of any law firm. As explained in its previously-filed Motion for Protective Order [DE 74], B&P has gone to great effort and expense to develop its client relationships, and takes reasonable precautions to protect such information from disclosure. [DE 74, at p. 32]. B&P respectfully refers this Court to its previously-filed Motion for Protective Order with respect to Request No. 17, which applies with equal force here. For the sake of brevity, B&P hereby adopts and incorporates the complete argument contained in its previously-filed Motion for Protective Order pertaining to Request No. 17, as if it were fully set forth herein.

A confidentiality stipulation and order will not ameliorate the harm to B&P should any of this confidential and proprietary information be disclosed to Rosenbaum. Because Rosenbaum is now purporting to proceed on *pro se* basis after having previously being represented by counsel,

a confidentiality stipulation will be of little 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. In other words, a confidentiality stipulation will not serve its intended purpose, thereby rendering B&P's most vital asset (*i.e.*, its client lists) vulnerable to exploitation by Rosenbaum, who, after having seen the confidential information, cannot just simply "unlearn" it.

Request No. 18: Calendars of the Departing Staff

In Response No. 18, Rosenbaum seeks "[a]ny and all calendars, electronic or otherwise, for all the departing staff."

B&P did not object to the production of these calendars, as its response plainly indicated. Rather, it simply conditioned the production of the requested calendars on the parties entering into a suitable confidentiality stipulation and order approved by this Court. Several weeks ago, the undersigned counsel prepared a proposed confidentiality stipulation and transmitted a copy to Rosenbaum for his review. Despite several follow-up e-mails, Rosenbaum has still not agreed to a confidentiality order, nor has he proposed changes to the draft submitted by B&P. Therefore, Rosenbaum's oral statement that he "agrees" to the keep the documents confidential and limited to this litigation is simply too vague and simplistic, and subject to various loopholes, to be relied upon by B&P. Therefore, the Court should deny this aspect of Rosenbaum's motion to compel, pending the parties' execution of a mutually-agreeable confidentiality stipulation and order.

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

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&P respectfully refers this Court to its argument set forth in response to Request No. 2 above and to the argument contained in its previously-filed Motion for Protective Order [DE 74] with respect to Request Nos. 2 and 19, which apply with equal force here. [DE 74, at pp. 33-34]. For the sake of brevity, B&P hereby adopts and incorporates the complete argument and analysis contained in its above-stated response to Request No. 2 and in its previously-filed Motion for Protective Order [DE 74] pertaining to Request Nos. 2 and 19, as if fully set forth herein.

Rosenbaum's relevance argument is specious. He claims to need the home addresses of literally hundreds of B&P employees in order "to perfect service on and locate potential witnesses unknown to Rosenbaum." (Motion to Compel, at p. 18). Such an explanation flies in the face of the fact that, until he resigned late last year, Rosenbaum had been employed by B&P for some 28 years, many of them as a managing shareholder. By virtue of such lengthy tenure, Rosenbaum should presumably know which B&P employees have discoverable information about any of the claims or defenses asserted in this case. It strains credulity for Rosenbaum to suggest that some B&P witnesses may be "unknown" to him in light of his lengthy tenure with B&P, spanning some 28 years. But, to the extent that any B&P employees remain "unknown" to him after all this time (as unlikely as that is), Rosenbaum can easily obtain the desired information simply by propounding an interrogatory upon B&P seeking the names and addresses of all B&P employees who worked in the West Palm Beach office or otherwise have discoverable information. *See* Fed. R. Civ. P. 26(c)(1)(C) (authorizing a federal district court judge to issue an order "prescribing a discovery method other than the one selected by the party seeking discovery."). He does not need the private personal information of nearly 800 present and former B&P employees in order to accomplish that limited objective.

CONCLUSION

For the foregoing reasons, B&P respectfully requests that this Court enter an Order denying *Plaintiff/Counter-Defendant, Daniel S. Rosenbaum's Motion to Compel Documents in Response to Plaintiff/Counter-Defendant, Daniel S. Rosenbaum's First Request for Production to Defendant/Counter-Plaintiff, Becker & Poliakoff, P.A. and Incorporated Memorandum of Law* [D.E. 78], and awarding B&P its attorneys' fees and costs incurred in opposing the motion in accordance with Fed. R. Civ. P. 37(a)(5)(B) and Local Rule 7.1(A)(3).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **November 23rd, 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)**,** 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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