UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC,

Plaintiff,

v.

THE UPS STORE, INC.; HERRING VENTURES, LLC d/b/a THE UPS STORE; AUSTIN ELSEN; TAMMIE ELSEN; COURTNEY HERRING; DIANE LOFTON; CHANDLER WESTOVER; RAWLINGS & MACINNIS, PA; TAMMY VINSON; and JEANNIE CHISHOLM,

Defendants.

Case No. 3:19-cv-00364-CWR-FKB

Arising out of Case No. 3:18-cv-252, *Securities and Exchange Commission v. Arthur Lamar Adams and Madison Timber Properties, LLC*

Hon. Carlton W. Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENAS OR, ALTERNATIVELY, MOTION FOR PROTECTIVE ORDER

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"), through undersigned counsel, respectfully files this reply in support of her motion to quash subpoenas issued by The UPS Store, Inc., or alternatively, for relief under Federal Rule of Civil Procedure 26(c).

INTRODUCTION

UPS does not cite any legal authority for the discovery in dispute.

It also does not address the legal authority the Receiver cited, which holds the discovery UPS seeks is not relevant.

This is a case about whether UPS notaries stamped fake timber deeds and thereby aided and abetted the Madison Timber Ponzi scheme. What Madison Timber's victims might have told the Receiver after-the-fact—after Adams surrendered; after the Receiver was appointed—is not relevant to whether UPS notaries stamped fake timber deeds. *Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-cv-00580, 2018 WL 7893052, at *8 (D. Or. Dec. 10, 2018), *aff'd,* 2019 WL 1442222 (D. Or. Feb. 21, 2019).[1]

UPS has long threatened to depose all 184+ victims of Madison Timber. Previously, UPS contended that it was entitled to inquire of each victim whether they relied on a timber deed's notary stamp in making their investment decision. The victims, however, are not plaintiffs here—the Receiver is. The Receiver alleges simply that UPS notaries aided and abetted Lamar Adams and Madison Timber. Reliance is not an element of the Receiver's claims. UPS does not, in its response to the instant motion, contend that it needs the disputed discovery to disprove reliance.

UPS now instead contends that it needs the disputed discovery to disprove damages. But the damages are the Receiver's (more specifically, the Receivership Estate's). How Madison Timber's victims characterized their losses is not relevant to the Receivership Estate's damages. *Ciuffitelli*, 2018 WL 7893052, at *3 (citing cases). Even the Receiver herself has never asked such personal questions of victims.

[1] The Receiver cited *Ciuffitelli* in her opening memorandum and attaches it here as Exhibit A.

How the Receiver calculated damages is no mystery. The Receiver has never bounced back-and-forth between $85 million and $100 million, and UPS misleads the Court when it says so. The Receiver's complaint, like every complaint that she has filed, states that the Receivership Estate's damages are "**more than** $85 million" and then explains:

> The evidence at Adams's sentencing established that of the $164.5 million that Madison Timber received in its last year of operation, it paid back approximately $79.5 million, leaving an $85 million difference. **The outstanding principal and interest owed to investors is necessarily higher.**[2]

The Receiver filed her complaint before she finally accounted for all of Madison Timber's outstanding promissory notes. She eventually did that in preparation for last month's first distribution. How she conducted the accounting is no secret; her motion for first distribution explained it plainly.[3] She concluded that 184 investors hold 485 promissory notes with approximately $100,198,437 still due.

UPS has or very soon will receive all the documents on which the Receiver relied to conclude that 184 investors hold 485 promissory notes with approximately $100,198,437 still due. Indeed, as of this filing, the Receiver's counsel is preparing a virtual data room in which it will deposit, among other things, Madison Timber's QuickBooks files; statements from Madison Timber's Trustmark, First National Bank of Clarksdale, RiverHills Bank, and Southern Bancorp bank accounts; any promissory notes obtained from victims; any documents, including emails, obtained from persons described as Madison Timber's "recruiters"; any documents, including emails, obtained from any accounting or law firm with which Madison Timber had a relationship;

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[2] Doc. 14 at 2 (emphasis added).

[3] Doc. 265 at 4–5, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss.).

and any documents obtained from the FBI.[4] The information will not be redacted. With few exceptions,[5] UPS—and every other defendant—will have access to everything the Receiver has, provided they agree to its confidentiality.

The fact that UPS will not agree to the confidentiality of victims' identifying information really proves UPS's true purpose here. Make no mistake, no one is preventing UPS or any other defendant from "discovering the facts that dispel [the Receiver's] claims." The reality is UPS, as its subpoenas make clear, is not interested in the Receiver's claims so much as intimidating the persons who stand to benefit, the victims.

The Receiver has consulted with the S.E.C., which jointly filed a motion for protective order in the separate but related case, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss.). The S.E.C.'s counsel shares the Receiver's concern that, without a valid reason (which UPS has not articulated), UPS appears to be using the tools of discovery to shame victims. The S.E.C. is not a party to this case, but if it would be helpful, the Court might like to hear its position if it holds a hearing on the instant motion.

In the meantime, the Receiver responds to UPS's arguments more specifically below, in the order UPS makes them:

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[4] All the documents that the Receiver obtained from the FBI are now unclassified. The Receiver advised the FBI that she intends to provide the documents to defendants. The FBI asked only that the Receiver ask defendants to execute non-disclosure agreements to protect victims' personal information.

[5] For example, the Receiver has not decided how to handle internal emails that she obtained from individual defendants including BankPlus and Trustmark. She intends to consult with their counsel first.

1. The Receiver has standing.

UPS acknowledges, as it must, that a party has limited standing to object to subpoenas served on non-parties. *See Field v. Anadarko Petroleum Corp.*, No. 4:20-cv-00575, 2020 WL 4937122, at *2 (S.D. Tex. Aug. 24, 2020) ("Parties unquestionably have limited standing to quash subpoenas served on non-parties pursuant to Rule 45."). A party has standing to challenge a subpoena issued to a non-party if the party "has a personal right or privilege in the subject matter of the subpoena or a sufficient interest in it." *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, No. 5:07-cv-191, 2008 WL 2944671, at *1 (E.D. Tex. July 25, 2008) (citing *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979)).

Even if no privilege exists between the Receiver and Madison Timber's victims, which the Receiver does not concede, the Receiver still has standing to challenge UPS's subpoenas because her motion relies not only on Rule 45 but also on Rule 26. *See Field*, 2020 WL 4937122, at *2 (quoting *Bounds v. Cap. Area Fam. Violence Intervention Ctr., Inc.*, 314 F.R.D. 214, 218 (M.D. La. 2016)) ("I need not concern myself with whether Anadarko has a personal right or privilege in the subject matter of the subpoena or a sufficient interest in it. That is because Anadarko does not rely solely on Rule 45. Anadarko has alternatively asked the Court to issue a protective order under Rule 26(c). This is significant because 'a party has standing to move for a protective order pursuant to Rule 26(c) . . . even if the party does not have standing pursuant to Rule 45(d).'").[6]

[6] To be sure, there are many instances in which a common interest privilege exists between, for example, a trustee and creditors, *see, e.g.*, *Coan v. Dunne*, No. 3:15-cv-00050, 2019 WL 276203, at *2 (D. Conn. Jan. 22, 2019) ("[T]he common interest rule applies here because the Trustee and the creditors and OA have a common legal interest in maximizing the value of Dunne's bankruptcy estate."); *In re Superior Nat. Ins. Gr.*, 518 B.R. 562, 577–78 (Bankr. C.D. Cal. 2014) ("Several courts have applied the common interest doctrine on the theory that the Committee's role requires that debtor be able to share information without waiving privilege and that the Debtor and the Committee share the common obligation of maximizing the estate."); *In re Leslie Controls, Inc.*, 437 B.R. 493, 502 (Bankr. D. Del. 2010) (debtor-in-possession, creditors, and future claimants' representative "shared a common interest in maximizing the asset pool"), or a receiver, class representative plaintiff-investors, and putative class members, *Ciuffitelli*, 2018 WL 7893052, at *8.

Like the court in *Field*, this Court need not concern itself whether the Receiver has standing under Rule 45, for two reasons. First, UPS does not contest the Receiver's ability to challenge the subpoenas under Rule 26, making its standing argument under Rule 45 "largely irrelevant." *Id.* (quoting *Garcia v. Prof. Contract Servs., Inc.*, No. A-15-cv-585, 2017 WL 187577, at *1 (W.D. Tex. Jan. 17, 2017)) ("Given that Field does not challenge Anadarko's standing under Rule 26, his standing argument under Rule 45 is largely irrelevant." (internal alterations omitted)). Second, Rule 26(c) empowers the Court to act on its own to enter an appropriate order limiting irrelevant, protected, or otherwise burdensome discovery like victims face here. Fed. R. Civ. P. 26(c) ("On motion *or on its own*, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule . . . " (emphasis added)).

2. The Receiver's concerns are valid.

UPS asks the Court to disregard the Receiver's concerns for victims' privacy. It contends that the Receiver only "baldly" asserts that victims want privacy but has not provided "a whit of evidence from even one [victim] who objects to any aspect of the [s]ubpoenas." It contends "not one [victim] who contacted [UPS's] counsel about the [s]ubpoenas stated their objection[s]."

Surely UPS does not intend to suggest that the Receiver has been untruthful in her representations to the Court. Nevertheless, if it would be helpful, the Receiver would be glad to testify to victims' concerns if the Court holds a hearing on the instant motion. The fact that some victims already responded to the subpoenas (UPS's counsel's own declarations do not state how many) does not mean that they or any other victim does not want privacy. The subpoenas had a return date of July 8 and demanded compliance under penalty of jail or fine. The subpoenas did not inform victims that they had a right to designate as confidential any documents that they produced.

If victims did not complain to UPS's counsel, it is likely because they are more comfortable complaining to the Receiver, with whom they have a longstanding relationship and to whom they look to protect their interests. If the Receiver misunderstands her duties to include protecting victims' interests, the Receiver asks that the Court tell her and them.

3. UPS's subpoenas are disproportional to its needs.

UPS contends the "amounts at stake" warrant the discovery it seeks. But Rule 26 does not ask "how much is at stake?"; it asks instead, "what is relevant?" The "amounts at stake" does not, by itself, justify discovery.

The Receiver does not dispute that the Receivership Estate's damages are substantial, or that UPS is entitled to information on which the Receiver relies to calculate those damages. But UPS has or will have that information.

Again, how the Receiver accounted for all of Madison Timber's outstanding promissory notes is no secret. Her motion for first distribution explained it plainly:

> A straightforward Ponzi scheme makes for a straightforward investor accounting. Any promissory note executed on or before March 15, 2017 (13 months prior to April 15, 2018) was paid in full. Any promissory note executed after March 15, 2017 (13 months prior to April 15, 2018) still has amounts due.
>
> The Receiver reviewed a variety of records—including Madison Timber's QuickBooks files; statements from Madison Timber's Trustmark, First National Bank of Clarksdale, RiverHills Bank, and Southern Bancorp bank accounts; and records [meaning promissory notes] provided by investors and persons described as Madison Timber's "recruiters"—to account for investments in Madison Timber from July 1, 2010 to April 20, 2018.
>
> The Receiver concluded 184 investors hold 4853 promissory notes with amounts still due.[7]

[7] Doc. 265 at 4–5, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss.).

UPS already has any promissory notes that victims provided to the Receiver. It also has or very soon will have Madison Timber's QuickBooks files as well as statements from Madison Timber's Trustmark, First National Bank of Clarksdale, RiverHills Bank, and Southern Bancorp bank accounts.

UPS even has a copy of every letter that the Receiver has sent to Madison Timber's victims since her appointment. Among those is a letter dated February 19, 2021, in which the Receiver advised that she was providing each victim a statement of their losses, reflecting every promissory note ever held by the victim, along with amounts due. The Receiver encouraged victims to study their information closely and to contact the Receiver immediately if their information was incorrect. The Receiver advised that after 30 days, but no later than March 31, 2021, she would deem their information final. A few victims did provide specific information in response to the Receiver's February 19, 2021 letter, and the Receiver agrees to provide that specific information to UPS, too.[8]

In short, UPS has or will have everything on which the Receiver relied to determine the "amounts at stake." There is nothing else. The "amounts at stake" do not justify the additional broad and invasive discovery that UPS seeks.[9]

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[8] *See, e.g., Ciuffitelli*, 2018 WL 7893052, at *6 (motion to compel production personal communications between investor-plaintiffs and receiver denied, where "they have provided all direct, personal communications with the Receiver related to their personal Aequitas investments" and "any remaining responsive documents are communications between them and the Receiver concerning litigation and settlement strategies that are protected by various privileges and confidentiality agreements, or are not relevant to any claims in dispute in this case and Deloitte's motion must be denied."; at *8 ("Deloitte has not established that any documents (beyond the investor packets Plaintiffs already have provided) evidencing communications between Plaintiffs and the Receiver are relevant to any claim or defense at issue in this case. Deloitte has not demonstrated that documents created by Receiver (appointed in April of 2016) are relevant to whether Aequitas sold securities to Plaintiffs in violation of Oregon Securities law and whether Deloitte participated or materially aided in the sale of those securities. And, Deloitte has not offered any argument to explain how the requested documents from Plaintiffs that concern the Receiver's asset recovery strategy after Aequitas entered receivership is probatively tied to Plaintiffs' underlying securities fraud claims. Deloitte's motion to compel these documents is denied.").

[9] E.g.:

4. UPS's subpoenas seek information that is not relevant.

UPS contends that the information it seeks from individual victims is relevant to damages. But the Receiver, not any individual victim, is the plaintiff here. The Receiver's damages are the Receivership Estate's debts. Those debts are amounts due under 485 outstanding promissory notes. The Receiver never asked individual victims to calculate any amounts due; she did it herself, note by note and check by check, using primarily Madison Timber's QuickBooks files and bank statements. The Receiver's accounting is what it is, but UPS does not have "to take the word of the [Receiver]." Again, UPS already has or will have all the same information; it will see for itself how much of any amounts due is principal versus interest.

There is nothing else. The Receiver never asked victims how they characterized their losses on their personal taxes; it is not her business. The Receiver never asked victims about net worth and sophistication; she treats all victims equally and their net worth and sophistication are irrelevant to the Receivership Estate's accounting. UPS might well assume that that every victim

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3. All DOCUMENTS that RELATE TO your decision to investment [sic] with ADAMS and/or MADISON TIMBER.

5. All DOCUMENTS that you have received from, or provided to, the RECEIVER, including but not limited to any COMMUNICATIONS between you and the RECEIVER.

8. All DOCUMENTS reflecting or referring to any occasions you communicated with the RECEIVER.

9. All DOCUMENTS referring to or relating to any investment with ADAMS or MADISON TIMBER.

10. All DOCUMENTS reflecting or relating to YOUR accounting treatment of any investments with ADAMS or MADISON TIMBER, including but not limited to any COMMUNICATIONS with any accountants that RELATE to YOUR investment with ADAMS or MADISON TIMBER.

11. All DOCUMENTS reflecting or relating to YOUR tax treatment of any investment with ADAMS or MADISON TIMBER.

13. All DOCUMENTS that RELATE to any other PERSONS who invested with ADAMS or MADISON TIMBER.

is wealthy and sophisticated—even if true, that fact would not reduce the Receivership Estate's damages nor, certainly, excuse UPS notaries for having stamped fake timber deeds.

UPS contends that the information it seeks from individual victims "might be useful in cross-examination at trial."[10] It posits that individual victims might have made "admissions" to the Receiver. Respectfully, what "admissions" might an individual victim make? Does UPS truly blame individual victims for the fact that UPS notaries stamped fake timber deeds? This is precisely the sort of victim-blaming the Receiver (and the S.E.C.) worries about and this Court should shut down.

5. UPS's subpoenas seek information that is private.

UPS cannot dispute that information pertaining to one's personal taxes, including their personal communications with their accountant, is private.

UPS defends its requests on the pretense that if this lawsuit had been filed by an individual victim, the individual victim "would not be able to resist" such discovery. Maybe, but that is precisely the point: the Receiver, not any individual victim, is the plaintiff here. No individual victim invited UPS's inquiry, and UPS has articulated no valid reason for prying into their private affairs. UPS contends that it needs the information it seeks to calculate damages, but the damages are the Receivership Estate's debts—that is, the amounts due under 485 outstanding promissory

[10] *See, e.g., Ciuffitelli*, 2018 WL 7893052, at *4 ("Deloitte has not demonstrated its need to test Plaintiffs' credibility at this juncture. Deloitte has not established that any factual basis for using the Financial Condition Documents as impeachment evidence presently exists. … [Deloitte] offers only unsubstantiated speculation that at least some Plaintiffs have lied about being accredited investors. Deloitte's unsupported suggestion is without merit, and is not relevant to any claim or defense in the case.") (citing cases).

notes. How individual victims characterized their person losses is not relevant to calculating those amounts.

UPS says: "In all events, in return for $100,000,000, Investors must expect to incur some burden."[11] Respectfully, we are talking about victims of a crime here. Whatever UPS makes of it, the losses are indisputably substantial. Certainly individual victims have felt the burden of those losses differently, but no one deserves to be subjected to UPS's counsel's unrelenting scrutiny "just because." UPS makes no pretense of caring that UPS employees aided and abetted a Ponzi scheme. UPS's sole defense strategy is to blame, shame, and "burden" victims themselves.

UPS complains that the Receiver "does not cite any legal authority" for the proposition that documents that individual victims received from and provided to, among other government agencies, the FBI, U.S. Attorney's Office, and U.S. Probation Office, are private. The Receiver merely suggested that the Court inquire of those government agencies whether they object before the Court orders victims to turnover such documents. For what it is worth, the Receiver herself has never requested such documents from victims or the Government.

6. UPS is limited to 12 depositions.

UPS is limited to 12 depositions but has noticed (subpoenaed) at least 32. It cannot do that.

UPS's counsel recently asked that the Receiver agree to permit each defendant to take 50 depositions. Understandably, the Receiver did not agree. That would be 500 depositions for defendants only—380 more than permitted by the case management order. If every defendant in every case did the same, that would be 1,450 depositions! It is becoming increasingly clear this is the path we are on, unless this Court stops it.

[11] Doc. 224 at 5.

CONCLUSION

No one is preventing UPS or any other defendant from "discovering the facts that dispel [the Receiver's] claims." Soon UPS—and every other defendant—will have access to almost everything in the Receiver's possession.

As shown, the disputed discovery is not relevant to the Receiver's claims or UPS's defense. Without a valid reason for it, one can only assume that UPS seeks it for the highly improper purpose of blaming, shaming, and burdening victims. The fact that UPS will not agree to treat victims' identifying information as private (UPS could simply identify victims by number!) makes plain its intentions.

This Court does not need special legal authority to ensure that the tools of discovery are not misused. Rule 26(c) instructs the Court to enter an appropriate order "[o]n motion or on its own." The Receiver has provided ample grounds for that here, but the Court might very well have good grounds of its own, including the avoidance of waste of judicial resources as these issues, without intervention, likely will require the Court's constant attention.

July 7, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: July 7, 2021

/s/ Kristen D. Amond

2018 WL 7893052
Only the Westlaw citation is currently available.
United States District Court, D. Oregon,
Portland Division.

Lawrence P. CIUFFITELLI, for himself and as Trustee of Ciuffitelli Revocable Trust; Greg and Angela Julien; James and Susan MacDonald, as Co-Trustees of the MacDonald Family Trust; R.F. MacDonald CO.; Andrew Nowak, for himself and as Trustee of the Andrew Nowak Revocable Living Trust U/A 2/20/2002; William Ramstein; and Greg Warrick, for himself and, with Susan Warrick, as Co-Trustees of the Warrick Family Trust, individually and on behalf of all others similarly situated; Plaintiffs,

v.

DELOITTE & TOUCHE LLP; Eisneramper LLP; Sidley Austin LLP; Tonkon Torp LLP; TD Ameritrade, Inc.; Integrity Bank & Trust; and Duff & Phelps, LLC; Defendants.

Case No. 3:16-cv-00580-AC
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Signed 12/10/2018

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ORDER ON DEFENDANT'S MOTIONS TO COMPEL

JOHN V. ACOSTA, United States Magistrate Judge

***1** Presently before the court are two Motions to Compel (ECF Nos. 364 & 383) filed by Defendant Deloitte & Touche, LLP ("Deloitte"). The matters have been fully briefed, and the court heard oral argument on the motions on November 13, 2018. For the reasons that follow, Deloitte's motions are denied.

Pertinent Factual Background

The parties and the court are well acquainted with the facts of this case and the court discusses here only facts pertinent to resolution of the parties' current discovery dispute. Plaintiffs seek to represent a class of investors who purchased various securities from Aequitas Capital Management and its affiliated entities ("Aequitas"). Plaintiffs allege Deloitte and the other Defendants participated or materially aided the sale of Aequitas securities by means of untrue statements of material fact or omissions of material fact and are liable under Oregon Revised Statutes ("ORS") § 59.115(2).

In its first motion to compel, Deloitte seeks documents pertaining to Plaintiffs' financial condition and Plaintiffs' claims for damages.[1] Deloitte previously filed a motion to compel concerning these documents, but withdrew that motion in exchange for Plaintiffs' agreement to produce damages documents in accordance with an order by the Honorable Kathleen M. Dailey in a related case, *Wurster*

et al. v. Deloitte & Touche, LLP, et al., 16CV25290 (Mult. Co. Cir. Ct.) (" *Wurster*"). (Decl. Gavin Masuda Supp. Deloitte Mot. Compel ("Masuda Decl.") Ex. 5, ECF No. 365). Deloitte contends that Plaintiffs have provided insufficient information pertaining to Plaintiffs' financial condition. In its second motion to compel, Deloitte seeks documents pertaining to communications between Plaintiffs' counsel and the court-appointed Receiver in a related case, *SEC v. Aequitas Mgmt., LLC*, Case No. 3:16-cv-00438-JR (D. Or. filed March 10, 2016) (the "SEC action").

In response, Plaintiffs contend that their financial condition documents are not relevant to any claim or defense in this case. Plaintiffs also argue that the documents requested in Deloitte's second motion are covered by the attorney-client privilege, the common-interest doctrine, the work-product doctrine, and are not relevant. For all these reasons, Plaintiffs argue that Deloitte's motions to compel should be denied.

Legal Standards

Under Federal Rule of Civil Procedure ("Rule") 37(a)(3)(B), a party may move for an order compelling the production of requested documents. Fed. R. Civ. P. 37(a)(3)(B)(iv). The party seeking to compel discovery has the burden of establishing its request is relevant under Rule 26(b)(1). *Sarnowski v. Peters*, Case No. 2:16-cv-00176-SU, 2017 WL 4467542, at *2 (D. Or. Oct. 6, 2017). The party opposing discovery has the burden of showing that discovery should not be allowed and has the burden of clarifying, explaining, and supporting its objections. *Id.*; *Yufa v. Hach Ultra Analytics*, No. 1:09-cv-3022-PA, 2014 WL 11395243, at *1 (D. Or. Mar. 4, 2014) ("If a party elects to oppose a discovery request, the opposing party bears the burden of establishing that the discovery is overly broad, unduly burdensome, or not relevant. Boilerplate, generalized objections are inadequate and tantamount to not making any objection at all." (citation and quotation omitted)). If a party objects to a discovery request, it is the burden of the party seeking discovery on a motion to compel to demonstrate why the objection is not justified. *Weaving v. City of Hillsboro*, No. CV-10-1432-HZ, 2011 WL 1938128, at *1 (D. Or. May 20, 2011).

***2** In general, the party seeking to compel discovery must inform the court which discovery requests are the subject of the motion to compel, and, for each disputed request, inform the court why the information sought is relevant and why the objections are not meritorious. *Id.*

Rule 26(b)(1) provides in relevant part:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Among the limitations Rule 26(b) provides is the direction that the court must limit the extent of discovery if it determines that the discovery sought is outside the scope of Rule 26(b)(1) or if it is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(C)(i); *Quaiz v. Rockier Retail Group, Inc.*, Case No. 3:16-cv-01879-SI, 2017 WL 960360, at *1 (D. Or. Mar. 31, 2017). Also the court has discretion to limit the scope of discovery if "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 litigation, and the importance of the proposed discovery in resolving the issues." Fed. R. Civ. P. 26(b)(2)(C)(iii).

Discussion

I. Motion to Compel ECF No. 364

In this motion, Deloitte seeks an order compelling Plaintiffs to produce documents responsive to its Request for Production No. 13 ("RFP 13") in its First Set of Request for Production. RFP 13 seeks documents pertaining to Plaintiffs' financial condition at the time of their Aequitas security purchases or sales ("Financial Condition Documents"), and provides:

> Documents sufficient to show Your financial condition at the time of all of Your transactions of any Aequitas Security or any other Transaction with any Aequitas Entity, including without limitation Your federal income tax returns from the two years prior to such Transaction, Your investment, bank, or other account statements showing Your income, assets, or liabilities, or any other documentation sufficient to show Your income, assets, or liabilities. (Masuda Decl. Ex. 1 at 9.)

Deloitte argues that it is entitled to documents pertaining to Plaintiffs' financial condition for three primary reasons. First, Deloitte argues that to establish its defense that the Aequitas securities were not required to be registered under Rule 506, it must demonstrate that it offered the securities to "accredited investors." Deloitte contends that Plaintiffs were required to affirm that they were "accredited investors" (*i.e.*, their net worth was over $1million or their income was over $200,000 for two years) when they signed their Aequitas PPM subscription agreements. Thus, Deloitte argues the Financial Condition Documents are relevant to Deloitte proving the securities were exempt from registration.

***3** Second, Deloitte argues that Plaintiffs' financial condition and investment experience is relevant to Plaintiffs' knowledge and understanding of the risks of their investments. Deloitte contends that "accredited investors" are deemed to have a certain amount of financial sophistication, and thus, the requested documents are relevant to test Plaintiffs' assertion that they did not know or understand the alleged misstatements in the securities they purchased.

Third, Deloitte contends that the Financial Condition Documents are relevant to class certification. Deloitte maintains that any unique defenses or credibility challenges it has against the lead Plaintiffs could impact Plaintiffs' ability to represent the putative class. Deloitte argues that it is entitled to impeach the credibility of any Plaintiffs who misrepresented their "accredited investor" status.

In response, Plaintiffs contend that their accredited investor status is not relevant to any claim or defense because they are challenging the Rule 506 exemption based on Aequitas engaging in general solicitations and advertising, not their accredited investor status. Plaintiffs have offered to stipulate to being accredited investors, an invitation Deloitte thus far has declined. Additionally, Plaintiffs argue that their financial condition documents are not relevant whatsoever to whether they knew of any untrue statements or omissions relating to Aequitas and its financial condition. And, Plaintiffs assert that their Financial Condition Documents do not bear on any issue pertaining to class certification because the affirmative defenses of unclean hand and *in pari delicto* posited by Deloitte are not available under Oregon Securities law.

The court denies Deloitte's motion with respect Plaintiffs' Financial Condition Documents in RFP 13. As Plaintiffs correctly indicate, they are challenging whether Aequitas's securities were exempt under Rule 506 because they engaged in general advertising or general solicitations. Accordingly, Plaintiffs status as accredited investors is not an issue in dispute, and the requested documents are simply not relevant to establishing that the securities were exempt.

Deloitte's second argument similarly fails. Deloitte has not demonstrated that the requested Financial Condition Documents as they relate to Plaintiffs' "accredited investor" status are relevant to any claim or defense in this case. Deloitte suggests that accredited investors are imputed with a certain amount of knowledge, sophistication, and understanding of risks. But, the authorities Deloitte relies upon involve publicly traded federal securities fraud claims under Rule 10b-5. 17 C.F.R. § 240.10b-5; *see, e.g., City of Alameda v. Nuveen Municipal High Income Opportunity Fund*, No. C. 08-4575-SI, 2010 WL 4955605, at *1 (N.D. Cal. Dec. 1, 2010) (granting motion to compel to inquire into plaintiff's purchases of RBANs as relevant to "sophisticated investor" status under federal securities law); *see also Dura Pharms, Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005) (stating elements of 10b-5 claim, including that plaintiff must have relied on the misstatement or omission). Unlike Rule 10b-5 claims, in claims brought under ORS § 59.115(1)(b), only a purchaser's actual knowledge of a misrepresentation or omission is relevant, and the statute provides for strict liability for nonsellers who participate or materially aid the sale. *See Towery v. Lucas*, 128 Or. App. 555, 563-64 (1994) (providing that ORS § 59.115(1)(b) does not contain obligation to make an inquiry; rather buyer's actual knowledge is critical); *Prince v. Brydon*, 307 Or. 146, 148(1988) (holding that "[k]nowledge becomes an element of liability only in the form of an affirmative defense, to be proved by a nonseller"). Thus, any suggestion that Plaintiffs' status as "accredited investors" is relevant is mistaken.

***4** Deloitte's third rationale also fails. Deloitte has not demonstrated its need to test Plaintiffs' credibility at this juncture. Deloitte has not established that any factual basis for using the Financial Condition Documents as impeachment evidence presently exists. *See U.S. v. Bundy*, 3:16-cv-00051-BR, 2016 WL 9049598, at *2 (D. Or. July 15, 2016) (denying defendants' request for documents they contended could have been used as impeachment evidence or to show bias because the credibility of witnesses was not yet at issue); *Lemanik, S.A. v. McKinley Allsopp, Inc.*, 125 F.R.D. 602, 610 (S.D.N.Y. 1989) (noting evidence of investor sophistication is relevant to elements of deception and reliance in Rule 10b-5 case, but denying defendant's request for documents evidencing plaintiff's financial transaction experience because defendant

"failed to present any factual basis for its speculations that the wide ranging discovery it seeks" would lead to evidence relevant to credibility). Here, Deloitte similarly offers only unsubstantiated speculation that at least some Plaintiffs have lied about being accredited investors. Deloitte's unsupported suggestion is without merit, and is not relevant to any claim or defense in the case. (Masuda Decl., Ex. 4 at 9-10 (*Wurster* Tr. April 6, 2018, at 8-9)) (finding that whether plaintiffs lied about being accredited investors and should not have purchased Aequitas investment was not a defense at issue in the case; denying discovery of financial condition documents).

Likewise, the court concludes that the Financial Condition Documents are not relevant any unique defenses or knowledge possessed by a particular Plaintiff that somehow bears on class certification issues. At oral argument, Deloitte insisted that it could assert an unclean hands or *in pari delicto* defense if it discovered that a Plaintiff was not an accredited investor. Deloitte, however, has failed to demonstrate that such defenses are distinct from comparative negligence. Deloitte has not established that under Oregon law any equitable defenses are available as part of the statute's design or purpose. *Hall v. Johnston*, 758 F.2d 421, 423 (9th Cir. 1985) (finding that equitable defenses run counter to Oregon's interests and are not applicable under ORS § 59.115).

Finally, Deloitte has not demonstrated that the Financial Condition Documents will lead to any information of probative value that advances the claims or defenses at issue in this case. The court finds that Deloitte's request does not justify the cost and time required for Plaintiffs to produce their Financial Condition Documents. Thus, the court also concludes that Deloitte's request is not proportional to the needs of the case. Fed. R. Civ. P. 26(b)(2)(C)(iii).

Accordingly, Deloitte's motion to compel the production of Plaintiffs' Financial Condition Documents responsive to RFP No. 13 is denied.

II. Motion to Compel ECF No. 383

In this motion, Deloitte moves to compel the production of all nonprivileged documents responsive to Requests Nos. 22 and 23 contained in its Second Set of Requests for Production of Documents ("Second RFP"). Deloitte seeks two sets of documents: (1) Plaintiffs' and their lawyers' communications with Ronald L. Greenspan, the court-appointed Receiver (the "Receiver") in the SEC action and documents related to those communications; and (2) documents related to certain Plaintiffs' involvement in the Receiver's Investor Advisory Committee ("LAC"). Deloitte asserts that the Receiver has played a large and undisclosed role in this litigation and such communications are relevant and not covered by privilege or work product protections.[2]

Specifically, Request No. 22 seeks: "All documents Relating to any Communications between You and the Receiver." (Decl. Gavin M. Masuda Supp. Deloitte's Mot. Compel ("Masuda Decl.") Ex. 11 at 10, ECF No. 384.) Request No. 23 provides the following:

> All documents Relating to Your involvement in the Receiver's Investor Advisory Committee ("IAC"), including all Documents Relating to any Communications between You and any Person in the IAC.

(*Id.*) In response, Plaintiffs assert the requested information is not relevant; is protected by the attorney-client privilege, the common-interest doctrine and settlement privilege; and that Deloitte's request is over-broad.

A. Background of the Receiver and the IAC

***5** This lawsuit is one of several following the collapse of Aequitas. The SEC filed a complaint against Aequitas and its principals, Robert J. Jesnick, Brian A. Oliver, and N. Scott Gillis in the SEC action (the "Individual Defendants"). On March 16, 2016, the court in the SEC action entered a "Stipulated Interim Order Appointing Receiver" naming Mr. Greenspan as Receiver of the "Receivership Entity," and the "Extended Entities." (Masuda Decl. Ex. 2.) Broadly, the Receiver was appointed to marshal and preserve Aequitas assets. The interim order also included a stay of any ancillary litigation proceedings. (*Id.* at 8-9.) On March 18, 2016, several of the Plaintiffs in this case, (listed as "interested parties" in the SEC action), filed a motion for relief from the litigation stay in the SEC action, seeking to assert Oregon Securities Law claims against non-receivership (non-Aequitas) parties. (*Id.* Ex. 3.)

On April 14, 2016, the court in the SEC action entered a final Order Appointing Receiver ("Final Order"). (*Id.* Ex. 6.) The Final Order contains a revised litigation stay, permitting "civil legal proceedings" that have accrued or are accruing to parties other than the Receiver and brought against "third party professionals, registered investment advisors, and others in which the Receivership Entity has no direct or indirect ownership interest." (*Id.* Ex. 6 at ¶ 23.) In a September 14, 2016 Receiver's Report, the Receiver noted that he "has undertaken efforts to maximize recovery under the various

insurance policies while, at the same time, clearing a path for investors to pursue recovery on claims against third party professionals which are not held by the Receivership Entity." (*Id.* Ex. 7 at 9.)

The Receiver formed the Investor Advisory Committeee ("IAC") to "facilitate regular communication regarding significant opportunities, challenges and actions" and is comprised of about 50 members, including registered investment advisors ("RIAs"), "individual investors representing approximately 1,100 of the investors and more than $406 million in investor funds." (*Id.* Ex. 7 at 31.) In the Receiver's September 14, 2016 Report, the Receiver indicated that IAC meetings occurred on March 6, 2016 (pre-receivership), April 27, 2016, June 22, 2016, and August 24, 2016. (*Id.*) In that Report, the Receiver also indicated that he also "provides substantially similar information to interested counsel immediately following IAC meetings" in order to "convey information regarding the receivership and also discuss strategy to maximize recovery to the Receivership Entity." (*Id.* at 32.) The Receiver indicated in the Report that:

> Copies of presentation materials utilized in the meetings were provided to SEC staff, and an SEC staff-representative attended the April 27, 2016 meeting in person. The Receiver and his counsel regularly apprise SEC staff of significant developments affecting the Receivership Entity. In addition, the Receiver provided an in-person report to SEC staff at the SEC's San Fransico office on May 9, 2016.

(*Id.*)

In the July 31, 2018 Receiver's Report, the Receiver indicates that he consolidated all digital information into a centralized database to which 250 users have access, including Deloitte and Plaintiffs' counsel. (*Id.* Ex. 8 at 9 & n.6.) In that Report, the Receiver also indicated that he has negotiated settlements between Aequitas Investors, the Individual Defendants, the Receivership Entity, and the responsible insurance carriers in an effort to maximize recovery and minimize litigation expenses. (*Id.* at 10.)

In its motion, Deloitte contends that members of the IAC include at least one Plaintiff from this action (James MacDonald), plaintiffs from the Multnomah County actions, registered investment advisors Keith Barnes and William Ruh, and representatives from Defendant Integrity Bank and Trust. Deloitte complains that it is unknown who is invited to attend the IAC meetings with counsel. Deloitte argues that the Receiver has been providing information to Plaintiffs to support their allegations, that the Receiver has assisted Plaintiffs in fulfilling their document production obligations, and that the Receiver was a key player in brokering the Tonkon partial settlement currently under the court's review. (Masuda Decl. Ex. 13 at 5; Am. Mot. Preliminary Approval of Partial Settlement, ECF No. 350.) Deloitte argues that the *pro tanto* bar order was the Receiver's idea, and that it has the effect of pushing off Tonkon's liability to the other non-settling Defendants.[3] (Masuda Decl. Ex. 8 at 27.) Deloitte further argues that the Receiver and the IAC have played key roles in the instant action, and therefore the documents requested in RFP Nos. 22 and 23 are relevant and discoverable.

***6** Plaintiffs respond that they have provided all direct, personal communications with the Receiver related to their personal Aequitas investments. Plaintiffs contend that any remaining responsive documents are communications between them and the Receiver concerning litigation and settlement strategies that are protected by various privileges and confidentiality agreements, or are not relevant to any claims in dispute in this case and Deloitte's motion must be denied.[4]

B. Analysis

Deloitte contends that the Plaintiffs and the Receiver have been in communication about the lawsuit and relevant topics since before Mr. Greenspan was appointed as Receiver. It appears that Deloitte seeks information pertaining to IAC presentation materials to SEC staff, documents from the Receiver supporting litigation positions, documents relating to the valuation and sale of ACOF, documents pertaining to forensic findings shared with IAC and Plaintiffs' counsel, and documents relating to the settlement between Plaintiffs and Tonkon. (Def. Deloitte Mot. Compel at 6-7, ECF No. 383.) According to Deloitte, to the extent that any documents could be covered by privilege, the privilege has been waived.

Plaintiffs contend that the documents requested by Deloitte in RFP Nos. 22 and 23 fall into several categories: (1) communications between the Receiver and Plaintiffs' counsel relating to mediations or settlements of claims against Defendants and others; (2) communications between the Receiver and Plaintiffs' counsel regarding claims against Defendants; and (3) communications between the Receiver and his counsel and Plaintiff MacDonald in his role as member of the IAC. Plaintiffs argue that the requested documents contain confidential mediation communications,

contain communications protected by the common-interest doctrine, or are covered by the work-product doctrine. Finally, Plaintiffs submit that to extent that any documents are discoverable, Deloitte's requests are overbroad.

1. mediation/settlement communications between Receiver, Plaintiffs, and Plaintiffs' counsel

Deloitte contends that it is entitled to discovery of any documents created at any mediation involving Plaintiffs and the Receiver. Deloitte argues such documents are necessary to establish that the Plaintiffs' settlement with Defendant Tonkon is coercive and prejudicial to the non-settling Defendants.

Plaintiffs acknowledge they have made the settlement reached with Defendant Tonkon available in the public record. Information submitted by Plaintiffs includes the settlement amount. (Am. Mot. Preliminary Approval Partial Settlement at 3-4, ECF No. 350.) Plaintiffs submit that they have participated along with the Receiver in a second mediation. Plaintiffs add that the Receiver acted as a third-party mediator to assist a smaller group of investors to settle their claims against Tonkon and that Plaintiffs participated in that mediation as well. Plaintiffs argue that any communications at the various mediations are privileged, non-discoverable, and inadmissible. The court agrees.

***7** Pursuant to ORS § 36.220(1), "[m]ediation communications are confidential and may not be disclosed to any other person." ORS § 36.220(1)(a). If a communication is confidential under ORS § 36.220, it is inadmissible in "any subsequent adjudicatory proceeding." *Alfieri v. Solomon*, 358 Or. 383, 395-96 (2015) (*en banc*) (discussing mediation communications under ORS § 36.222(1)). Likewise, federal courts recognize a "strong public policy favoring settlement of disputed claims dictates that confidentiality agreements regarding such settlements not be lightly abrogated." *See Thomasian v. Wells Fargo Bank, N.A.*, No. 3:12-cv-01435-HU, 2013 WL 4498667, at *2 (D. Or. Aug. 22, 2013).

Plaintiffs have demonstrated that they and the Receiver were parties to two mediations conducted by third-party mediators, and that all statements, documents, and other written materials submitted at those mediations are privileged, non-discoverable, and inadmissible. ORS §§ 36.110(7), 36.222(1). To the extent that settlement amounts received by Plaintiffs become relevant to a post-judgment reduction of damages, that issue may be addressed at a later time. *See Thomasian*, 2013 WL 4498667, at *2 (concluding that issues of off-set could be resolved post-trial and potential credibility issues could be resolved by court's *in camera* review; denying motion to compel settlement agreements); *Contreras v. Kohl's Dept. Stores, Inc.*, No. EDCV 16-2678-JGB (KKx), 2017 WL 6372646, at *3 (C.D. Cal. Dec. 12, 2017) (same); *Peters v. Equifax Info. Servs. LLC*, No. EDCV 12-1837-TJH (OPx), 2013 WL 12169355, at *3 (C.D. Cal. Dec. 13, 2013) (same). Deloitte's motion to compel is denied.

2. communications between the Receiver and Plaintiffs' counsel regarding claims against Defendants

The parties do not precisely define documents in this category. Here, Deloitte seeks documents concerning the Receiver's meetings "with counsel for the various investor interests" to "convey information regarding the receivership" and discussing "strategy to maximize recovery into the Receivership Entity." (Masuda Decl. Ex. 7 at 32.) Deloitte argues that the common-interest doctrine does not apply to these documents because Plaintiffs' interests and those of the Receiver are directly adverse. Deloitte maintains that the Receiver's interests are adverse because the IAC comprises Aequitas insiders, registered investment advisors (including Barnes and Ruh), and Defendant Integrity Bank. Additionally, Deloitte contends that any documents between the Receiver and Plaintiffs' counsel cannot be protected by the work-product doctrine because the Receiver cannot play a role in helping Plaintiffs prepare for litigation. Further, Deloitte contends that Plaintiffs have not prepared a privilege log.

Plaintiffs argue that Deloitte's request is simply an effort to probe into Plaintiffs' and the Receiver's litigation strategies. Plaintiffs contend that the documents are not relevant to any claim asserted by the Plaintiffs or any affirmative defense asserted by Deloitte. Additionally, Plaintiffs contend that even if responsive documents are relevant, they are covered by the common-interest doctrine. Plaintiffs argue they share common interests with the Receiver because they are trying to maximize assets in order to repay Plaintiffs and the potential investor class. Additionally, Plaintiffs contend that their interests align with the Receiver because the Receiver also has claims against Deloitte and the other Defendants in this action. Plaintiffs highlight that their interests need not be identical, just sufficiently similar. Finally, Plaintiffs assert that it is contrary to common practice to create a privilege log for documents prepared during the course of litigation.

***8** The court finds that on the current record, Deloitte has not established that any documents (beyond the investor packets Plaintiffs already have provided) evidencing communications between Plaintiffs and the Receiver are relevant to any claim or defense at issue in this case. Deloitte has not demonstrated that documents created by Receiver (appointed in April of 2016) are relevant to whether Aequitas sold securities to Plaintiffs in violation of Oregon Securities law and whether Deloitte participated or materially aided in the sale of those securities. And, Deloitte has not offered any argument to explain how the requested documents from Plaintiffs that concern the Receiver's asset recovery strategy after Aequitas entered receivership is probatively tied to Plaintiffs' underlying securities fraud claims. Deloitte's motion to compel these documents is denied.

3. communications between the Receiver, the IAC, and others

In Request No. 23, Deloitte seeks documents pertaining to any Plaintiffs' involvement on the IAC, and all documents relating to any communications between Plaintiffs and any person on the IAC. Deloitte argues that even if the IAC materials are covered by the attorney-client or common-interest privilege, it has been waived. To that end, Deloitte contends that the Receiver has acknowledged providing certain IAC materials to SEC staff on April 27, 2016, and any documents related to an in-person report between the Receiver and SEC staff on May 9, 2016. (Masuda Decl. Ex. 7 at 32.) And, Deloitte contends that the Receiver has shared preliminary "forensic findings" with Plaintiffs and the IAC before they were made public. (Masuda Decl. Ex. 8 at 31.) Deloitte also appears to argue that the Receiver had communications with the IAC about the valuation and sale of ACOF.

Plaintiffs respond that their attorneys do not participate in IAC meetings; the IAC meetings are attended by IAC members, the Receiver, and the Receiver's attorneys. Plaintiffs contend that Mr. MacDonald's participation in IAC meetings is conditioned on the confidentiality of all information shared. Plaintiffs submit that documents the Receiver has provided to Mr. MacDonald as a member of the IAC are labeled "Privileged and Confidential" and constitute the Receiver's work product. Alternatively, Plaintiffs argue that information the Receiver shared with IAC members is not relevant to the issues in this lawsuit and, therefore, Deloitte is not entitled to discovery of those documents. Plaintiffs submit that any valuation of ACOF during Aequitas's receivership is simply not relevant to the claims at issue in the current litigation, which only relates to the pre-receivership valuation of ACOF.

As the court stated above, Deloitte has failed to demonstrate that its requests for documents revealing communications between Plaintiffs, the Receiver, and the IAC are relevant to any claim or defense at issue in this case. Deloitte has not shown that any documents provided at any IAC meeting are relevant to whether Aequitas sold securities in violation of Oregon Securities law and whether Deloitte participated or materially aided in the sale of those securities. And, contrary to Deloitte's suggestion that the Receiver assisted Plaintiffs with their document production in this case, the Receiver created a database of information publicly available to multiple parties, including Deloitte.

Deloitte likewise has failed to explain why it has not requested or subpoenaed its requested documents directly from the Receiver, who could then provide the documents or assert any claims of privilege, work product, or objections he may have. For example, Deloitte contends that the Receiver shared its preliminary "forensic findings" and discussed the valuation of ACOF with the IAC. However, it appears on the limited record before the court that the Receiver may assert such drafts are protected by a work-product privilege. Deloitte's attempt to obtain them through a motion directed at Plaintiffs in this action, as opposed to seeking them from the Receiver is inefficient, inconvenient, and not proportional. Thus, the court concludes that Deloitte has not demonstrated its request for the IAC documents will yield probative information that advances the claims or defenses that justify the cost and time required to produce it. Deloitte has failed to show its request cannot be obtained from another source that is less burdensome and more proportional to the needs of the case. Fed. R. Civ. P. 26(b)(2)(C). Therefore, on the record as it currently stands, Deloitte's motion to compel is denied.

Conclusion

***9** Based on the foregoing, Deloitte's Motion to Compel (ECF No. 364) is DENIED. Deloitte's Motion to Compel (ECF No. 383) is DENIED.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2018 WL 7893052

Footnotes

1 Shortly before oral argument, the parties filed a Joint Stipulation indicating that they resolved their disagreement concerning the requested damages documents. (Joint Stipulation Resolving Mot. Compel in Part, ECF No. 405.) Consequently, the court does not consider the parties arguments concerning the damages documents.

2 Deloitte has similarly moved to compel production of these documents in the Multnomah County actions. (*See* Def.'s Mot. Compel at 9 n.9, ECF No. 383.)

3 The court notes that in the July 31, 2018 Receiver's Report, the Receiver indicated that the Individual Defendants (Jesnick, Oliver, and Gillis) and the SEC had reached a tentative resolution of the claims presented in the SEC action. (Masuda Decl. Ex. 8 at 10.) In the July 31, 2018 Report, the Receiver recommended that the Stay of Litigation against the Individual Defendants and the Receivership Entity not be lifted until sometime after September 30, 2018. (Masuda Decl. Ex. 8 at 11.)

4 Plaintiffs also contend that Deloitte did not adequately confer pursuant to Local Rule 7-1 (a) prior to filing this motion. Information submitted by Deloitte in support of its motion reveals that the parties exchanged letters concerning RFP Nos. 22 and 23. (Masuda Decl. Exs. 13 & 14.) While the court always encourages parties to attempt to reach resolution, the court concludes that given the serious nature of the parties' dispute, further discussions were unlikely to do so in this instance.