UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. 2:24-cv-02219-DSF-MAR Date: December 20, 2024

Title: *William Tong, et al. v. State Farm General Insurance Company, et al.*

Present: The Honorable: MARGO A. ROCCONI, UNITED STATES MAGISTRATE JUDGE

| Valerie Velasco | N/A |
|---|---|
| Deputy Clerk | Court Reporter / Recorder |
| Attorneys Present for Plaintiffs: N/A | Attorneys Present for Defendant: N/A |

**Proceedings:** **(In Chambers) ORDER RE: PLAINTIFFS' MOTION TO COMPEL AND DEFENDANT'S MOTION FOR A PROTECTIVE ORDER, DKTS. 40, 41.**

## I.
## BACKGROUND

William Tong, and his wife, Malinee Dibbayawan ("Plaintiffs"), live with their two children in a house insured by State Farm General Insurance Company ("Defendant"). ECF Docket No. ("Dkt.") 40-2 ("Joint Stip.") at 9.[1] On March 3, 2024, a water supply line underneath Plaintiffs' kitchen burst, causing extensive water damage. Id. at 19. Plaintiffs' home no longer had running water, and a large portion of the kitchen and underlying portions of slab had to be demolished to find the leak. Id. at 22. On March 8, 2024, Defendant sent an adjuster, Gerald Acosta ("Acosta"), to inspect the home and damage. Id. at 21. Acosta, with the approval of his supervisor Jim Moratto ("Moratto"), sent a written letter denying Plaintiffs' insurance claim partly because of a policy exclusion for leaks stemming from failed lines "below the surface of the ground;" Plaintiffs' policy only covered losses stemming from water lines located "inside the slab, or within [twelve] inches below the slab [if] the line is located in fill material, and not dirt." Id. at 21–23. The inspection, combined with Plaintiffs' plumber's initial invoice that stated the ruptured water line was located underneath the concrete slab, led Acosta to believe the damage was excluded under the policy. Id. at 29.

After the initial denial, Plaintiffs' plumber and a leak detection company discovered that the failed line was inside the slab, and therefore the leak did not fall within Defendant's policy exclusion. Id. at 25. Despite this new information, and orders from Moratto to return to Plaintiffs' home, Acosta determined that he did not

1 All citations to electronically filed documents refer to the CM/ECF pagination.

need to conduct a reinspection and that the denial would stand. Id. at 26. Plaintiffs then filed this lawsuit on March 19, 2024. Dkt. 1. Moratto again ordered Acosta to reinspect the home, but Acosta never did, and Moratto never followed up with Acosta to ensure that he did. Joint Stip. at 30. Seven months later, on August 20, 2024, after Plaintiffs deposed Acosta and Moratto, Defendant reversed course and decided to tender benefits to Plaintiffs in the amount of $274,000. Id. at 28, 31. Plaintiffs' third amended complaint brings a single insurance bad faith claim against Defendant for its alleged violations of the implied covenant of good faith and fair dealing. Dkt. 33 ("Compl.") at 11–13.

Plaintiffs served Sets One, Two, and Four of their Requests for Production ("RFPs") in July 2024. Id. at 31. Defendant responded to Sets One and Two in August, and to Set Four on October 4, 2024. Id. However, Defendant has objected to several RFPs on various grounds, and made clear it will not produce documents responsive to several RFPs until a protective order is in place. Id. at 43–46, 56–59, 80–84, 133–140, 150–161. Since August, the parties have met and conferred several times regarding Plaintiffs' RFPs. Id.; Dkt. 40-1, Declaration of Dylan Schaffer in Support of Plaintiffs' Motion to Compel ("Schaffer Decl."), at 2–5. The parties have also discussed a potential protective order. Plaintiffs initially contacted Defendant about a protective order on August 21, 2024, and stated that they would stipulate to an entry of this Court's model protective order. Id. at 78. On September 17, 2024, Defendant responded with a modified version of the Court's standard protective order, which Plaintiffs rejected. Id. After discussing the modified protective order, Defendant submitted a second version in October, which Plaintiffs again rejected. Id. at 84.

The parties remain at an impasse regarding Plaintiffs' RFPs and a potential protective order. Thus, Plaintiffs filed this instant motion to compel on November 26, 2024, which is before this Court on the parties' joint stipulation. Dkt. 40. Plaintiffs seek to compel production of documents and further responses to its RFPs. Id. at 11–12. Plaintiffs and Defendant each filed a supplemental memorandum on December 4, 2024, respectively. Dkts. 44 ("Def. Supp. Memo"); 45 ("Pl. Supp. Memo"). Separately, on November 26, 2024, Defendant filed a motion for entry of a protective order. Dkt. 44.

The Court finds these matters suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); Local Rule 7-15. Accordingly, the January 15, 2025 hearing is hereby **VACATED**. For the reasons discussed below, Defendant's motion is **GRANTED** and Plaintiffs' motion is **GRANTED** in part and **DENIED** in part.

## II.
## GENERAL STANDARD

Generally, under the Federal Rules of Civil Procedure,

> 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).

Relevancy is broadly defined to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). However, a court "must limit the frequency or extent of discovery otherwise allowed" if "(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(C). "A party seeking discovery may move for an order compelling an answer, ... production, or inspection." Fed. R. Civ. P. 37(a)(3)(B)(iii), (iv). "[A]n evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer or respond." Fed. R. Civ. P. 37(a)(4).

"In moving to compel the production of documents, the moving party bears

the burden of demonstrating 'actual and substantial prejudice' from the denial of discovery." Grossman v. Dirs. Guild of Am., Inc., No. EDCV 16-1840-GW (SPx), 2018 WL 5914242, at *4 (C.D. Cal. Aug. 22, 2018) (citing Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)). In other words, the moving party bears the burden of demonstrating the sought discovery is relevant. Cabrales v. Aerotek, Inc., No. EDCV 17-1531-JGB (KKx), 2018 WL 2121829, at *3 (C.D. Cal. May 8, 2018). In addition, "[r]elevancy alone is no longer sufficient to obtain discovery, the discovery requested must also be proportional to the needs of the case." Centeno v. City of Fresno, No. 1:16-CV-653-DAD (SAB), 2016 WL 7491634, at *4 (E.D. Cal. Dec. 29, 2016) (citing In re Bard IVC Filters Prod. Liab. Litig., 317 F.R.D. 562, 564 (D. Ariz. 2016)). However, ultimately, "[i]t has long been settled in this circuit that the party resisting discovery bears the burden of showing why discovery should not be allowed." United States ex rel. Poehling v. UnitedHealth Grp., Inc., No. CV 16-8697-MWF (SSx), 2018 WL 8459926, at *9 (C.D. Cal. Dec. 14, 2018) (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975) ("The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.")).

## III.
## DISCUSSION

### A. DEFENDANT'S MOTION FOR A PROTECTIVE ORDER

#### 1. Applicable law

In the absence of a court order to the contrary, "the fruits of pretrial discovery are . . . presumptively public." Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002) (citing San Jose Mercury News, Inc. v. U.S. Dist. Ct.–N. Dist. (San Jose), 187 F.3d 1096, 1103 (9th Cir. 1999)). However, a court may for good cause enter a protective order under Rule 26(c) to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," which may include "requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way." Fed. R. Civ. P. 26(c)(1), (c)(1)(G). The party seeking to limit or prevent

discovery bears the burden of demonstrating good cause for entry of a protective order. Roe v. Puig, No. CV 20-11064-FMO (MRWx), 2021 WL 4557229, at *1 (C.D. Cal. Aug. 13, 2021) (citing Fed. R. Civ. P. 26(c)(1)); see also Kamakana v. City and Cnty. of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006) (noting that Rule 26(c) requires a "particularized showing" of good cause for the entry of a protective order).

If the parties disagree about the entry of a protective order, the court must first determine whether specific prejudice or harm will result if no protective order is granted. Phillips ex rel. Ests. of Byrd, 307 F.3d at 1210–11. Then, if the court finds that particularized harm may result from disclosure, it must "balance the public and private interests to decide whether [maintaining] a protective order is necessary." In re Roman Cath. Archbishop of Portland in Or., 661 F.3d 417, 424 (9th Cir. 2011). To balance the public and private interests, courts consider the following factors:

> (1) whether disclosure will violate any privacy interests; (2) whether the information is being sought for a legitimate purpose or for an improper purpose; (3) whether disclosure of the information will cause a party embarrassment; (4) whether confidentiality is being sought over information important to public health and safety; (5) whether the sharing of information among litigants will promote fairness and efficiency; (6) whether a party benefitting from the order of confidentiality is a public entity or official; and (7) whether the case involves issues important to the public.

Id. at 424 n.5 ("Glenmede/Archbishop factors") (quoting Glenmede Tr. Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995)). Furthermore, when "confidential commercial information is involved, the court will balance the risk of disclosure to competitors against the risk that a protective order will impair prosecution or defense of the claims." Nutratech, Inc. v. Syntech (SSPF) Int'l, Inc., 242 F.R.D. 552, 555 (C.D. Cal. 2007). Under Rule 26(c), the Court has "broad discretion . . . to decide when a protective order is appropriate and what degree of protection is required." Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984).

///
///

### 2. Analysis

Here, Defendant has the burden to demonstrate good cause for its desired protective order. While Plaintiffs appear open to a protective order generally, they have opposed Defendant's proposed order, which makes several modifications to this Court's standard order. Joint Stip. at 78; Mot. at 7; Dkt. 41-5, Declaration of Daniel T. Balmat in Support of Defendant's Motion for Entry of a Protective Order ("Balmat Decl."), Exs. H (Dkt. 41-13), N (Dkt. 41-19). Defendant's amendments primarily seek to ensure that any confidential information disclosed during this litigation will not be disseminated to others absent a court order and will be returned or destroyed once this lawsuit concludes. Balmat Decl., Ex. H at 6, 14–15. The amendments make clear that a court order does not include "a subpoena issued by a private attorney and challenged by any [p]arty or third party." Id.

Defendant argues that Plaintiffs seek documents "containing[ing] sensitive commercial information" that Defendant created and owns, and that if these documents are made available to the public, it could harm Defendant's competitiveness. Dkt. 41-1 ("Mot.") at 7. To support its showing of good cause, Defendant submits the Declaration of Christopher L. Thomas, a Learning Team Manager in Claims Training at State Farm. Dkt. 41-4, Declaration of Christopher L. Thomas in Support of Defendant's Motion for Entry of a Protective Order ("Thomas Decl."), at 2. Thomas explains that "highly experienced claims and legal professionals" created Defendant's training materials "for the exclusive use of [Defendant's] claim personnel." Id. Thomas emphasizes that these documents are unique because Defendant "develops its own industry policies rather than using standard Insurance Service Office forms." Id. at 3. Thomas notes that Defendant considers these documents to be a form of intellectual property and undergoes extensive efforts to keep them confidential. Id. at 3–5.

Furthermore, Defendant contends that it needs additional protections not called for in this Court's model protective order after Plaintiffs' counsel issued a subpoena to a third party, attorney Sander Dawson, who represents other parties in Mojica v. State Farm General Insurance Co., case number 3:22-cv-10997-L, a separate action against Defendant pending in the U.S. District Court of the Southern District

of California. Mot. at 5. Defendant objected to the subpoena because it sought confidential documents related to Defendant's policies for water loss claims that were produced subject to a protective order in Mojica. Id.; Balmat Decl., Ex. I (Dkt. 41-14). Plaintiffs eventually withdrew the subpoena after Defendant indicated it would move to quash it. Mot. at 6. Defendant also argues the enhanced protections are necessary here because, in two similar actions against Defendant, Plaintiffs' counsel failed to certify that they destroyed certain confidential information pursuant to the protective orders in place; Defendant alleges that they only destroyed the documents after Defendant repeatedly contacted Plaintiffs' counsel, months after the deadlines. Id.; Dkt. 41-2, Declaration of Sandra E. Stone in Support of Defendant's Motion for Entry of a Protective Order ("Stone Decl.") at 3–7. Also, a list of Defendant's "confidential training material and claims guidelines identical to a list compiled by Plaintiffs' counsel [in another case] . . . appeared as a blog post on the website of another plaintiffs' [law] firm who also frequently handled cases against [Defendant]." Stone Decl., at 3.

The Court finds that Defendant has sufficiently described the harm that may result from the disclosure of its training materials and claims guidelines absent a protective order. Additionally, the Court finds good cause to grant a protective order based on the facts that Defendant created these internal guidelines and materials itself, strives to keep them confidential, and may suffer competitive harm if they are disclosed. See Kai v. Allstate Ins. Co., CV No. 20-00302 WRP, 2020 WL 9762913, at *3 (D. Haw. Dec. 11, 2020) (citing In re Adobe Sys., Inc. Sec. Litig., 141 F.R.D. 155, 158 (N.D. Cal. 1992)) (finding a party established "good cause for a protective order designating its claims manuals, handbooks, and/or guides as 'confidential' because they contain business information about [the party]'s handling of specific insurance claims that is not publicly available and may result in competitive harm . . . if publicly disclosed").

Furthermore, the Court finds that the balance of public and private interests weighs in favor of entering a protective order limiting the dissemination of Defendant's materials and guidelines. In coming to this conclusion, the Court places significant weight on the potential violation of Defendant's privacy interests if its guidelines and materials were publicly disclosed. See Venti v. Xerox Corp., No. 1:21-

CV-00131-DKG, 2022 WL 3446104, at *6 (D. Idaho Aug. 17, 2022) (finding the public disclosure of a document detailing a corporation's restructuring and business objectives would "cause particularized harm . . . by revealing the respective strengths and weakness of the company" and "adversely affect[ing]" "any competitive advantage [the corporation] had cultivated from its internal research and through processes used to develop the . . . strategies contained in the document). The Court also finds it necessary to include Defendant's additional protections given Plaintiffs' counsel's belated compliance with protective orders in other cases against Defendant and their efforts to subpoena Attorney Dawson in the Mojica matter to obtain Defendant's confidential information outside the limitations of a protective order. Mot. at 5–6; Stone Decl. at 3–7. Additionally, the publication of a list identical to Plaintiffs' counsel's list of Defendant's guidelines and materials shows that there is a legitimate risk that Defendant's confidential commercial information will be disclosed to its competitors. Stone Decl. at 3. Thus, considering the foregoing, and the fact that Plaintiffs do not contend that a protective order would impair their ability to effectively litigate this case, the Court **GRANTS** Defendant's motion and will enter its proposed protective order.

## B. PLAINTIFFS' MOTION TO COMPEL

### 1. Request for Production ("RFP"), Set One, No. 5

RFP No. 5 seeks Defendant's file for Plaintiffs' water damage claim. Joint Stip. at 32. Defendant initially produced the claim file on May 15, 2024. Id. at 33. However, Plaintiffs argue that the claim file Defendant initially produced was neither complete nor accurate because Defendant's "claim diary end[ed] on April 18, 2024" and the file did not memorialize Defendant's denial of Plaintiffs' claim on March 8, 2024. Id. at 34. The file showed that Plaintiffs' claim was still open as of March 4, 2024, suggesting the claim file was not up to date. Id. Plaintiffs argue that Defendant was obligated to update and supplement this initial disclosure with a complete and accurate claim file. Id. at 35.

On October 29, 2024, Plaintiffs contacted Defendant seeking a complete and updated claim file. On November 21, 2024, Defendant produced the updated and

complete claim file. Id. at 36; Dkt. 40-3, Declaration of Daniel Balmat in Support of Defendant's Motion to Compel ("Balmat MTC Decl."), Ex. X. Thus, because Defendant has produced the requested document, the Court **DENIES** Plaintiffs' motion as moot with respect to RFP No. 5. See Jafari v. Fed. Deposit Ins. Corp., No. 12-CV-2982-LAB (RBB), 2014 WL 7176460, at *4 (S.D. Cal. Dec. 5, 2014) (denying plaintiff's motion to compel as moot once defendant had produced the requested documents).

**2. RFP, Set One, No. 44**

RFP No. 44 seeks "any template or form" that "property claim adjusters or supervisors . . . use in drafting water loss claim denials on the basis of any policy exclusion." Joint Stip. at 36.

In their depositions, both Acosta and Moratto discussed how Defendant's claims adjusters work from templates when drafting individualized claim denial letters. When asked his process for writing a claim denial letter, Acosta stated he "[wrote] the first part," but that he would use "a template" for the second part. Schaffer Decl., Ex. C, Deposition of Gerald Acosta ("Acosta Dep."), 165:12–16. Acosta explained that Defendant has templates that claim adjusters can use for water loss claims. Id. at 165:17–166:7. Moratto confirmed Acosta's testimony, explaining that the "forms and correspondence section of the . . . claim file . . . contains templates [that adjusters] can use." Schaffer Decl., Ex. D, Deposition of James M. Moratto ("Moratto Dep."), at 108:4–11.

Plaintiffs argue that Defendant's templates for water loss claim denials are clearly relevant here considering Acosta and Moratto's deposition testimony. Joint Stip. at 41. Plaintiffs contend the templates could provide highly probative evidence to support its bad faith claim and counter Defendant's defense that it was simply Acosta's and Moratto's mistakes, and not institutional practices, that led to the improper denial of Plaintiffs' claims. Id. at 41–42.

Defendant conceded that Plaintiffs may discover the template Acosta explicitly testified as to relying upon and agreed to produce the document once a protective

order is in place. Joint Stip. at 44. However, Defendant objects to RFP No. 44 insofar as it seeks production of other templates Acosta did not reference or use. Id. at 43–45. Defendant argues that the "denial template identified in the deposition testimony of . . . Acosta and . . . Moratto . . . is the only template potentially relevant to the issue of bad faith." Id. at 43. Defendant emphasizes the fact that Acosta only referenced and reviewed a single template for all water loss claims, and that even though "Moratto testified generally that templates are available to adjusters, [he] did not testify that multiple templates . . . could have appli[ed] to . . . Plaintiffs' claim." Id. at 43–44. Defendant also maintains that RFP No. 44 is overbroad, both temporally and substantively, since the language "any template or form" could apply to numerous irrelevant documents from across the country. Id. at 43.

First, regarding the template Acosta explicitly relied upon, Defendant concedes that the template is relevant and agreed to produce it once a protective order is in place. Id. at 44. Thus, since the Court granted Defendant's motion for entry of a protective order as discussed above in subsection III.A.2, the Court **DENIES** Plaintiffs' motion as moot with respect to this template. See Olson v. City of Bainbridge Island, No. C08-5513-RJB, 2009 WL 1770132, at *7 (W.D. Wash. June 18, 2009) (denying plaintiff's motion to compel in part as moot because "[p]laintiffs assert[ed], and [d]efendants d[id] not dispute, that the parties ha[d] come to an agreement on this Request").

Second, it appears that Plaintiffs have satisfied Rule 26's low bar for relevancy with respect to any other water loss claim denial templates available to Acosta in the "forms and correspondence section" of Plaintiffs' claim file. "In a bad faith insurance claim settlement case, the strategy, mental impressions[,] and opinion of [the insurer's] agents concerning the handling of the claim are directly at issue." Holmgren v. State Farm Mut. Auto. Ins. Co., 976 F.2d 573, 577 (9th Cir. 1992) (internal quotations and citations omitted). If Acosta had multiple water loss claim denial templates to choose from when responding to Plaintiffs' claim, his decision to choose one template over another would shine light on his strategy for handling Plaintiffs' claim. Furthermore, these templates are clearly relevant to Plaintiffs' bad faith claim because they likely reflect and implement Defendant's policies and guidelines and would definitively show Defendant's practices regarding water loss claim denials. See Int'l Game Tech.

v. Ill. Nat'l Ins. Co., No. 2:16-cv-02792-APG-NJK, 2017 WL 5505039, at *4 (D. Nev. Nov. 16, 2017) ("Claims manuals and claim handling information are relevant in breach of contract cases.") (citing Renfrow v. Redwood Fire & Cas. Ins. Co., 288 F.R.D. 514, 521–22 (D. Nev. 2013) (finding claim manuals, training materials, and explanations and analyses of the claim denial were relevant and discoverable)). Ultimately, contrary to Defendant's assertion, the template Acosta used is not the only document that is relevant; templates that were "in effect" at the time Plaintiffs' claim was denied are relevant. Vandervert Constr., Inc. v. Allied World Specialty Ins. Co., No. 2:21-CV-00197-MKD, 2022 WL 18781103, at *5 (E.D. Wash. Feb. 14, 2022) (ordering an insurance company to produce "any and all claims manuals, memoranda, directives, letters, or other . . . communications that were in effect at the time the claim in the case was evaluated and denied and which governed the handling and determination of the claim at issue"); see also Sec. Nat'l Ins. Co. v. Constr. Assocs. of Spokane, Inc., No. 2:20-CV-0167-SMJ, 2021 WL 1823106, at *4 (E.D. Wash. May 6, 2021) (emphasizing that "manuals and guidelines are relevant in insurance bad faith cases" and ordering the insurance company "to produce any manuals, guidelines, or materials that apply generally to its handling of the type of claims at issue in this case").

However, the Court does agree with Defendant that, as currently written, RFP No. 44 appears vague and overbroad. The language "any template or form" could apply to numerous documents that are not relevant to Plaintiffs' bad faith claim. Furthermore, there are no temporal or geographical limits in RFP No. 44. Typically, it is not the Court's job to rewrite overbroad discovery requests. See Finkelstein v. Guardian Life Ins. Co. of Am., No. C07-1130-CRB (BZ), 2008 WL 2095786, at *2 (N.D. Cal. May 14, 2008) ("Rule 26 does not require the Court to rewrite discovery requests for the parties."); Kilby v. CVS Pharmacy, Inc., No. 09-cv-2051, 2017 WL 1424322, at *4 n.3 (S.D. Cal. Apr. 19, 2017) ("Particularly when a party stands on an overly broad request and does not make a reasonable attempt to narrow it or to explain the need for such a broad range of documents and/or information, the Court will not rewrite a party's discovery request to obtain the optimum result for that party. That is counsel's job.") (internal citations and quotation marks omitted). However, in the interest of preventing future motion practice in what has already been a fraught discovery period, the Court will modify this request as follows:

**REQUEST FOR PRODUCTION, SET ONE, NO. 44**

> DOCUMENTS containing any water loss claim denial letter template that existed in March 2024, whether stored in hard or digital form, and were available for use by Gerald Acosta in California to draft the Tongs' water loss claim denial on the basis of any policy exclusion. [DOCUMENT is defined to mean the same as "writing" as defined in Section 250 of the California Evidence code.].

Ultimately, regarding RFP No. 44 and Plaintiffs' attempts to discover other water loss claim denial templates, the Court **DENIES** Plaintiffs' motion as written but **GRANTS** the motion **in part**, as modified above.

**3. RFP, Set One, Nos. 25–28, 39–42**

RFP Nos. 25–28 and 39–42 seek the personnel files of both Acosta and Moratto, as well as Defendant's performance metrics, goals, and evaluations applicable to Acosta and Moratto's job positions. Joint Stip. at 45–51.

Plaintiffs, citing to extensive case law, argue that "the personnel files of the claims staff who are responsible for investigating and adjusting [a plaintiff's] claims," and "job performance, compensation, evaluation, discipline, training, educational background, work duties and hours," and "documents that explain the criteria and process[es] used in . . . evaluations" are routinely discoverable in bad faith insurance cases. Id. at 51–52. In its initial response, Defendant offered numerous boilerplate objections, but now primarily argues that Plaintiffs have failed to show a "compelling need" for Acosta's and Moratto's personnel files, and that the requests are overbroad because they "are not limited to goals set for adjusters" when Acosta and Moratto were in those positions. Id. at 46–51, 56–59.

"[A] federal court sitting under diversity jurisdiction in California will apply California law as to the right of privacy." Madrigal v. Allstate Indem. Co., No. CV 14-4242-SS, 2015 WL 12746225, at *6 (C.D. Cal. Apr. 22, 2015). "Under California law, personnel records of employees are protected by California's constitutional right of

privacy." Grobee v. Corr. Corp. of Am., No. 13-cv-1060-GPC (DHB), 2014 WL 229266, at *2 (S.D. Cal. Jan. 17, 2014) (citing Cal. Const., art. I, § 1). "To resolve privacy objections to a discovery request, courts must balance 'the need for the information sought against the privacy right asserted'." Martin v. Dos Amigos, No. 17-cv-1943-LAB (LL), 2019 WL 669791, at *2 (S.D. Cal. Feb. 19, 2019) (citations omitted). While California law previously "required the party seeking discovery to show a 'compelling' interest or need for the private information," the California Supreme Court has explained that a compelling interest is only necessary "to justify 'an obvious invasion of an interest fundamental to personal autonomy'." Lieberman v. Unum Grp., No. EDCV 20-1798-JGB (SPx), 2021 WL 4807643, at *7 n. 4 (C.D. Cal. Oct. 14, 2021); Williams v. Superior Ct., 3 Cal. 5th 531, 556 (2017). An employee's privacy interest in their personnel file is not essential to personal autonomy. See Lieberman, 2021 WL 4807643, at *7 n. 4 (citing Hill v. NCAA, 7 Cal. 4th 1, 34 (explaining that certain privacy rights, like the "freedom from involuntary sterilization or the freedom to pursue consensual familial relationships," are fundamental to personal autonomy and that lesser privacy interests are subject to "general balancing tests")).

Here, contrary to Defendant's assertions, the "compelling need" standard does not apply, and this Court must simply balance Plaintiffs' need for the personnel files, performance metrics, and evaluations against the privacy interests of Defendant's employees. See Lieberman, 2021 WL 4807643, at *4 (overruling a party's privacy objections to producing personnel records after balancing a party's need for the documents against employees' privacy interests); see also Martin, 2019 WL 669791, at *5 (conducting same balancing test when it came to party's financial records).

Case law is clear that employee records and evaluations are generally discoverable in bad faith insurance cases. See Pac. Coast Surgical Ctr., L.P. v. Scottsdale Ins. Co., No. CV 18-03904-PSG (KSx), 2019 WL 1199024, at *2 (C.D. Cal. Mar. 11, 2019) (explaining that requested evaluations of employees who handled insurance claim "ha[ve] 'routinely been found to be relevant and discoverable' in bad faith actions") (internal citations omitted); Beaver v. Delicate Palate Bistro, Inc., No. 3:17-CV-644-PK, 2017 WL 4011208, at *2 (D. Or. Sept. 12, 2017) (noting that "the courts of the Ninth Circuit generally allow discovery of employment records

notwithstanding such privacy and public policy concerns"). Plaintiffs can discover Defendant's employee's personnel files because they "may reveal an inappropriate reason . . . for [D]efendant's action with respect to [P]laintiff[s'] claim," or "an improper company culture" with "improper incentives, financial or otherwise, to deny a claim." Park v. State Farm Fire & Cas. Co., No. 2:23-CV-01564-TL, 2024 WL 4494877, at *6 (W.D. Wash. Oct. 15, 2024) (citing Lieberman, 2021 WL 4807643, at *7). Here, the requested documents will help Plaintiffs determine whether Acosta and Moratto mistakenly denied the claim or did so for an improper reason or in accordance with improper company values or policies. Joint Stip. at 14, 54. Furthermore, the relevance and need for the requested documents outweighs any privacy concerns here, particularly given that this Court has granted entry of a protective order. See above, subsection III.A.2; Martin, 2019 WL 669791, at *2 ("When conducting this balancing test, court may cure any outstanding privacy concerns by granting discovery subject to an appropriate protective order."). Ultimately, given the clear relevance of the requested information and that a protective order is now in place, the Court finds that Plaintiffs' need for the requested documents outweighs Defendant's privacy interests.

Additionally, the Court does not find that Plaintiffs' requests are overbroad. Some of Plaintiffs' requests seek documents dating back to 2020, while Acosta only became a claims adjuster in July 2023, and Moratto only began supervising adjusters in early 2023. Joint Stip. at 20, 47, 50. However, evaluations and trainings created or in place since 2020 may provide evidence of an "improper company culture" "with improper incentives" that impacted Acosta's and Moratto's trainings and performance evaluations. Notably, Defendant has not provided any details as to how this request is potentially burdensome. Thus, the Court **GRANTS** Plaintiffs' motion with respect to RFP, Set One, Nos. 25–28, 39–42.

### 4. RFP, Set One, Nos. 15, 17, 19, 21, 23, 29, 31, 33, 35, 37

The RFPs listed above seek Defendant's claims handling policies, manuals, trainings, and guidelines. Joint Stip. at 59–74. Defendant has stated it "will produce responsive documents pursuant to the [protective] order ultimately entered." Id. at 84. Thus, considering that this Court granted Defendant's motion for a protective

order above, the Court **DENIES** Plaintiffs' motion with respect to RFP Nos. 15, 17, 19, 21, 23, 29, 31, 33, 35, and 37, as moot. See above, subsection III.A.2.

### 5. RFP, Set One, Nos. 18, 20, 22, 24, 32, 34, 36, 38 and RFP, Set Four, Nos. 92–94, 126, 145–46

The RFPs listed above can be divided into two main categories. The first category, the RFPs from Set One, seek claim handling guidelines that were available to Acosta and Moratto at the time Plaintiffs submitted their water loss claim. Joint Stip. at 84–99. The second category, the RFPs from Set Four, seek documents related to what Plaintiffs describe as the "Water Initiative," an alleged years-long plan and scheme Defendant has implemented to improperly deny its insureds' water loss claims. Id. at 99–112.

#### a. Claims handling guidelines

Regarding the first category, Defendant objected to each request as overboard in terms of each RFP's "scope (types of claims and insurance coverage), time (not limited by the period of time when this claim was handled), and geographic area (not limited to California)." Id. at 85, 87, 89, 90, 92, 94, 96, 97. Defendant also objected that each request was "not reasonably tailored to include only matters relevant to . . . this lawsuit and is potentially unduly burdensome." Id.

The Court does not find Defendant's objections to these RFPs persuasive. Each RFP is specifically tailored to the guidelines available to Acosta and Moratto at the time of Plaintiffs' water loss claim and those that specifically dealt with water loss claims and the policy exclusions that Acosta cited to justify his initial coverage denial. The requests do not appear overboard, and the guidelines are clearly relevant to Plaintiffs' claims that Defendant denied their claim in bad faith. See Ro v. Everest Indem. Ins. Co., No. C16-0664RSL, 2017 WL 368349 (W.D. Wash. Jan. 25, 2017) (explaining that an insurer's guidelines and "advice regarding how these claims should be handled [are] relevant to a determination of whether [the insured] and its agent behaved reasonably and/or in bad faith"); see also Kagan v. State Farm Mut. Auto. Ins. Co., No. CV 08-04903-GAF (MANx), 2009 WL 10675116, at *2 (C.D. Cal. Nov.

12, 2009) (denying insurer's motion in limine and explaining that both the "failure to adopt and implement reasonable standards for the prompt investigation and processing of claims," and an "adjustor's failure to adhere to reasonable standards established by the company . . . [constitute] evidence relevant to the issue of bad faith").

In any case, despite Defendant's initial objections, the parties appear to have come to an agreement regarding these RFPs. Plaintiffs agreed to limit the scope of their RFPs to "materials applicable to California claims and a reasonable time period reflective of the short work histories of [Acosta and Moratto]." Schaffer Decl. at 2. Defendant understood this "reasonable time period" as "2023 to the present," since that is when Acosta and Moratto "handled water claims," and has agreed to produce documents upon entry of a protective order. Joint Stip. at 134–35. The Court finds the proposed temporal limitation reasonable, given that is how long Acosta and Moratto have worked as adjusters. Thus, since the parties no longer appear to disagree on the breadth of these requests and the Court has granted Defendant's motion for entry of a protective order, the Court **DENIES** Plaintiffs' motion with respect to RFP, Set One, Nos. 18, 20, 22, 24, 32, 34, 36, 38 **as moot**.

### b. The "Water Initiative"

The second category of RFPs seek documents that relate to Defendant's alleged "Water Initiative." Plaintiffs' primary argument in this case is that Acosta and Moratto did not simply mishandle Plaintiffs' claim, but rather Plaintiffs' "experience reflects a years-long scheme to reduce [Defendant's] water-loss exposure, known inside State Farm as the 'Water Initiative'." Joint Stip. at 10–11. Plaintiffs assert that Defendant "acknowledged the existence of and explained the significance of" the initiative in a discovery response in the Los Angeles County Superior Court case Jacobs v. State Farm General Insurance Co., Case No. 22STCV23445. In response to a discovery request in Jacobs, Defendant stated:

> The "water initiative" may refer to one or more efforts in California beginning in or around 2017 to help ensure consistency in the handling of water claims in California. Claims handling personnel were provided

> training that focused on reinforcing existing principles relating to proper investigation and documentation of water loss claims. Topics included the quality first contact, gathering the facts of loss, plumbing issues, additional investigation, determining coverage, estimatics, and damage evaluation. In 2020, the settlement authority of claims handlers on water loss claims was temporarily reduced. During that period, team managers reviewed claims specialists' water loss claims for conformance with quality claim handling expectations.

Schaffer Decl., Ex. P, at 332. Defendant went on to identify numerous training materials that related to these efforts. Id. at 332–33.

Additionally, in Wise/Russell v. State Farm General Insurance Co., No. 4:23-cv-00163-HSG (N.D. Cal.), Defendant "produced a training transcript for an adjuster in the claim, which revealed the existence of a 'Water Loss Skill Review' test." Schaffer Decl. at 9; Schaffer Decl., Ex. Q, at 340. Defendant eventually produced a "Study Guide" mentioned in the test, which referenced thirty "categories of training and guidelines concerning water loss claims." Schaffer Decl. at 9; Schaffer Decl., Ex. Q, Appendix C, at 344.

Lastly, in Stickney v. State Farm General Insurance Co., 30-2021-01231896-CU-IC-CXC (Orange County Superior Court), Plaintiffs' counsel obtained eighty-nine pages of documents related to the Water Initiative in a nearly identical bad faith insurance case. Joint Stip. at 121–22. Plaintiffs second category of RFPs seek all these documents, along with any reports or recommendations that Defendant's employees or the consulting firm McKinsey & Company created since 2010. Id. at 110–111.

Defendant argues that Plaintiffs' requests are disproportionate since only the "policies, training, and guidelines upon which Acosta and/or Moratto relied or could have relied" are relevant. Id. at 134. Defendant emphasizes the fact that Plaintiffs did not ask Acosta or Moratto about the Water Initiative in their depositions, "which undermines the lack of foundation for broad-brushed discovery beyond the facts and circumstances of this matter." Id. at 138. Defendant contends that these RFPs are

overbroad, vague, and unduly burdensome because they would "implicate an enormous number of documents." Id. at 139.

Here, Plaintiffs' RFPs appear directly relevant to their allegations that their claim was wrongly denied as part of Defendant's "years-long scheme to reduce its water loss exposure." Joint Stip. at 10. Also, even if Plaintiffs' RFPs seek documents that Acosta or Moratto did not rely upon, information regarding Defendant's policies and practices, and how they impacted the "policies, training, and guidelines" that Acosta or Moratto relied upon, would be relevant to Plaintiffs' allegations of bad faith. Furthermore, the information is relevant to rebut Defendant's defenses that the Water Initiative did not exist, and that Plaintiffs' claim was simply mishandled. Id. at 13–14.

Additionally, the Court finds most of Defendant's objectives unpersuasive. First, Plaintiffs' requests are not rendered disproportional merely because they are large in number or could require a large volume of responsive documents. See SGII, Inc. v. Martin, No. 819CV00541JVSKESX, 2021 WL 1593246 (C.D. Cal. Mar. 3, 2021) (finding party resisting discovery had failed to demonstrate a burden imposed by the production of directly relevant materials where the party cited only the volume of documents to show burden). Rather, Fed. R. of Civ. P. 26(b)(1) instructs that the proportionality analysis should include consideration of "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." Fed. R. of Civ. P. 26(b)(1). Defendant does not substantively address any of these factors and simply asserts that it would have to produce "an enormous number of documents." Joint Stip. at 139. Second, Defendant's vagueness and overbreadth objections ring hollow because Plaintiffs' RFPs seek documents that Defendant has already identified or produced in the Wise, Jacobs, and Stickney cases; indeed, Plaintiffs have even identified the documents in their RFPs as they appear in Defendant's previous productions and identifications.

However, the Court does agree that RFP, Set Four, Nos. 145–46 appear temporally overbroad, since they seek presentations from 2010 onward, whereas

Plaintiffs themselves allege that the Water Initiative efforts only began in 2017. Presentations created starting in 2016, a year before the initiative efforts began, appear to be the only presentations that would be relevant to Plaintiffs' claims.

Given that the RFPs seek information obviously relevant and apparently proportional to claims clearly pled in the complaint, the RFPs seek allowable discovery within the scope of Rule 26. Defendant failed to show that the requests were overbroad, vague, or unduly burdensome. The Court does note that Defendant agreed to "produce materials in accordance with its objections and responses upon the entry of an appropriate protective order." Joint Stip. at 140. Thus, the Court **DENIES** Plaintiffs' motion as moot as it relates to any documents Defendant intends to produce now that a protective order is in place and **DENIES** the motion **in part** regarding presentations created before 2016. However, the Court **GRANTS** the remaining portion of Plaintiffs' motion regarding RFP, Set Four, Nos. 92–94, 126, 145–46.

### 6. Request for Inspection ("RFI"), Set 2, Nos. 80–81

Federal Rule of Civil Procedure 34 allows a party to request "to inspect, copy, test or sample," "any . . . electronically stored information" "in the responding party's possession, custody, or control." Fed. R. Civ. P. 34(a), (a)(1), (a)(1)(A). However, Rule 34 "is not meant to create a routine right of direct access to a party's electronic information system, although such access might be justified in some circumstances." Fed. R. Civ. P. 34 advisory committee's note to 2006 amendment, subdivision (a). Rule 26 also specifically states that 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." Fed. R. Civ. P. 26(b)(2)(B). Once a party makes this showing though, the court may still "order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C)." Id.

Courts have found good cause to grant an RFI of another party's electronic information system if "a responding party's discovery responses have been incomplete or inconsistent." Han v. Futurewei Techs., Inc., No. 11-CV-831-JM JMA,

2011 WL 4344301, at *5 (S.D. Cal. Sept. 15, 2011) (citing In re Weekley Homes, L.P., 295 S.W.3d 309, 317 (Tex. 2009) (observing that under federal case law, direct access to a party's electronic storage device requires a showing by the requesting party that the responding party has "defaulted in its obligation to search its records and produce the requested data"). Courts have also found good cause when "the electronic information . . . is relevant to a plaintiff's claims." Brocade Commc'ns Sys., Inc. v. A10 Networks, Inc., No. 10-CV-03428-LHK, 2012 WL 70428, at *2 (N.D. Cal. Jan. 9, 2012) (finding good cause to grant plaintiff's RFI because they showed "forensic imaging and analysis of the deleted files is relevant to at least" two of plaintiff's claims and "to testing the veracity of" defendant's factual defenses) (citing Ameriwood Indus., Inc. v. Liberman, No. 4:06–CV–524–DJS, 2006 WL 3825291, at *1 (E.D. Mo. Dec. 27, 2006) ("Considering the close relationship between plaintiff's claims and defendants' computer equipment, and having cause to question whether defendants have produced all responsive documents, the Court will allow an independent expert to obtain and search a mirror image of defendants' computer equipment."); Balboa Threadworks, Inc. v. Stucky, No. 05–11157–JTM–DWB, 2006 WL 763668, at *3 (D. Kan. Mar. 24, 2006) ("Courts have found that such access is justified in cases involving both trade secrets and electronic evidence, and granted permission to obtain mirror images of the computer equipment which may contain electronic data related to the alleged violation.")).

RFI Nos. 80–81 seek to search Defendant's intranet, known as SFNET, and Electronic Claims System ("ECS") to determine each platform's structure and any "training and guidelines resources available to claims adjusters and managers involved in [investigating] or [adjusting] P[laintiffs' claim]." Joint Stip. at 140, 142. These RFIs appear to seek information directly relevant to Plaintiffs' allegations that their water loss claim was denied as part of Defendant's Water Initiative. Defendant's systems, and the guidelines and trainings within them, could include critical information regarding Defendant's institutional policies and practices and prove the existence of the Water Initiative, which would be relevant to the bad faith and punitive damages determinations. Furthermore, these RFIs would likely uncover information to rebut Defendant's factual defenses that Acosta and Moratto uniquely mishandled Plaintiffs' claim and that the Water Initiative does not exist.

Defendant objects to Plaintiffs' RFIs on numerous grounds, but none are persuasive. First, Defendant argues that the RFIs would give Plaintiffs "access to information and data that have nothing to do with this case," "private information regarding other individual policyholders and their claims," "proprietary, confidential[,] and trade-secret information," and potentially privileged information. Joint Stip. at 154. These arguments ring hollow because, as discussed above, the structure of SFNET and ECS, and how adjusters utilize them, along with any trainings and guidelines stored within them, would be clearly and directly relevant to Plaintiffs' allegations about how their insurance claim was handled. Furthermore, Plaintiffs' RFIs do not intend to search for other policyholders' personal information about themselves or their claims. There is no mention of other policyholders in either RFI, and Defendant can take steps to ensure that Plaintiffs cannot access other policyholders' information during any inspection. Lastly, regarding any potentially proprietary, confidential, trade-secret, or privileged information, a protective order is now in place, and Defendant can still assert any privilege objections and otherwise take action to ensure that Plaintiffs cannot access any privileged information.

Defendant also contends that the RFIs are disproportionate to the needs of this case and would explode the cost and time of discovery. Joint Stip. at 159–163. Defendant argues that these RFIs would seek "information developed long before" Acosta and Moratto "began handling water claims," but the RFIs are clearly limited to information available to Acosta and Moratto at the time they handled Plaintiffs' claim. Id. at 140, 142, 160. Defendant maintains these RFIs will allow Plaintiffs to go on a fishing expedition; however, as currently constructed, the RFIs are explicitly limited to understanding the structure of Defendant's platforms and discovering trainings or guidelines available to adjusters when Plaintiffs filed their claim. The RFIs are sufficiently tailored to discover only information that is clearly relevant to Acosta and Moratto's handling of Plaintiffs' claims and the alleged Water Initiative.

Furthermore, Defendant protests that it will have "to devote significant resources . . . to provide the access Plaintiffs seek, to educate them about how to use [its] systems, and to monitor their activity." Id. at 162. While there will surely be some burden on Defendant if this Court grants Plaintiffs' motion as to the RFIs, Defendant offers nothing in the way of specifics when describing this potential

burden. Defendant does not provide any details about the monetary or temporal costs of allowing Plaintiffs to inspect the SFNET and ECS.

Additionally, while it does not appear that Defendant has shown there is an undue burden, even if it has, Plaintiffs have shown that good cause exists to order discovery here. Plaintiffs' counsel's declaration shows that Defendant has "defaulted in its obligation to search its records," and that across numerous cases, its "discovery responses have been incomplete or inconsistent." For example, Plaintiffs' counsel explains that in this case, Wise, and Varela v. State Farm General Insurance Company, No. 1:19-CV-00617-DAD-EPG, (E.D. Cal.), Defendant, when asked to produce training and guidelines materials related to the investigation of water losses, agreed to produce "portions of its (a) Operations Guides, (b) Standard Claim Processes, and (c) Jurisdictional References." See, e.g., Joint Stip. at 87, 91, 93; see also Schaffer Decl., Exs. N, P. In each case, Defendant did not certify that it searched for and produced all non-privileged responsive documents. Schaffer Decl., at 7–8. Then, in the Wise case, Defendant eventually produced the "Water Loss Skill Review," a test for claims adjusters, and an accompanying study guide, both of which it initially failed to produce in response to relevant discovery requests. Id. at 9. Defendant did not produce those documents in response to similar request in the Varela case. Id. The test and study guide mentioned numerous other documents related to water loss claims that Defendant failed to produce in both Varela and Wise. Id. at 9–10. Then, in the Jacobs matter, Defendant identified numerous documents associated with the Water Initiative that it had not produced in Wise or in Varela. Id. at 10–11; Schaffer Decl., Ex. P. Later, Plaintiffs' counsel also received eighty-nine pages of documents Defendant produced in Stickney that related to water loss claim trainings and guidelines that Defendant had not produced in Wise or Varela. Schaffer Decl. at 15.

Given that Defendant has inconsistently produced clearly responsive documents to similar discovery requests in cases involving nearly identical water loss claims and denials and has yet to certify in any case that it has diligently searched for and produced all responsive documents, Plaintiffs' RFIs appear warranted here. See Advante Int'l Corp. v. Mintel Learning Tech., No. 5–CV–01022–JW (RS), 2006 WL 3371576, at *1 (N.D. Cal. Nov. 21, 2006) (granting RFI of another party's hard drive because the party seeking discovery showed "that serious questions exist[ed] both as

to the reliability and the completeness of materials produced in discovery"). Furthermore, it is too little too late for Defendant, in the face of Plaintiffs' RFIs, to now offer to certify that it has "conducted a full and diligent search of its relevant electronic systems." Joint Stip. at 158. Defendant's offer to belatedly certify its search does not change the fact that Defendant has inconsistently, belatedly, and incompletely responded to discovery requests across several bad faith water loss claim settlement cases. See Burnett v. United States, No. EDCV 15-1707-CAS (KKx), 2016 WL 3392263, at *6 (C.D. Cal. June 14, 2016) (noting the responding party has a duty to undertake a diligent search and reasonable inquiry in order to produce documents within its possession, custody, or control).

Ultimately, given that Plaintiffs seek to inspect Defendant's electronic systems for documents directly relevant to their claims and have established good cause to do so, the Court **GRANTS** Plaintiffs' motion with respect to RFI, Set Two, Nos. 80–81. Still, the Court emphasizes that Plaintiffs are "not entitled to set the conditions of the inspection unilaterally nor to select the person who will perform it." Brocade, 2012 WL 70428, at *3 (quoting Advante, 2006 WL 3371576, at *1). Therefore, the parties are ordered to meet and confer "to attempt to agree on a protocol for the [inspection], analysis, and subsequent production of responsive documents," that "minimize[s] the burden and inconvenience to [Defendant]." Brocade, 2012 WL 70428, at *3.[2] These protocols and procedures could include appointment of a neutral third party to conduct the inspection but should ultimately "be designed to preserve claims of attorney-client privilege and protect the confidentiality of personal information . . . that is not related to . . . the present case." Robinson v. City of Ark. City, Kan., No. 10-1431-JAR-GLR, 2012 WL 603576, at *17(D. Kan. Feb. 24, 2012).

To expedite the parties' conference regarding the inspection, the Court will order the following general procedures. Any documents found during the inspection "should all be produced first to counsel for [Defendant] for its review as to relevance, responsiveness, and privilege, prior to any disclosure to [Plaintiffs]." Advante, 2006

2 Before beginning discussions and negotiations, the Court suggests the parties review the procedures and protocols discussed in Playboy Enters., Inc. v. Welles, 60 F. Supp. 2d 1050, 1054–55 (S.D. Cal. 1999); Antioch Co. v. Scrapbook Borders, Inc., 210 F.R.D. 645, 653–54 (D. Minn. 2002); and Simon Prop. Grp. L.P. v. mySimon, Inc., 194 F.R.D. 639, 641–43 (S.D. Ind. 2000).

WL 3371576, at *1. In making objections, Defendant should consider the findings that the Court made in this order, and should not raise any objections that are likely to be frivolous. Prior to the inspection, the parties should clearly define the temporal scope of the inspection, as well as any other limits to ensure Plaintiffs' inspection focuses solely on the information described in the RFIs and does not become an unbounded review of Defendant's electronic systems. See Joint Stip. at 161. Lastly, the protective order in place will ensure Plaintiffs do not share information learned during the inspection to those outside this litigation. The parties are encouraged to modify the protective order as necessary to ensure any information learned during the inspection is not disclosed to third parties.

## C. COSTS AND FEES

Pursuant to Fed. R. of Civ. P. 37(a)(5)(C) ("Rule 37"), "[i]f the motion is granted in part and denied in part, the court may . . . after giving an opportunity to be heard, apportion the reasonable expenses for the motion." Fed. R. of Civ. P. 37(a)(5)(B). Here, Plaintiffs' motion to compel was granted in part and denied in part, showing that each side was warranted in seeking resolution as to some of the discovery disputes. As such, the Court declines to award costs and each party will be responsible for its own costs incurred.

## IV.
## ORDER

**IT IS THEREFORE ORDERED** that:

1) Defendant's motion for entry of a protective order is **GRANTED**;
2) Plaintiffs' motion is **DENIED as moot** with respect to RFP, Set One, No. 5
3) Plaintiffs' motion is **DENIED as moot in part, DENIED as written in part**, and **GRANTED in part as modified** with respect to RFP, Set One, No. 44
4) Plaintiffs' motion is **GRANTED** with respect to RFP, Set One, Nos. 25–28, 39–42;
5) Plaintiffs' motion is **DENIED as moot** with respect to RFP, Set One,

Nos. 15, 17, 19, 21, 23, 29, 31, 33, 35, and 37;

6) Plaintiffs' motion is **DENIED as moot** with respect to RFP, Set One, Nos. 18, 20, 22, 24, 32, 34, 36, 38;

7) Plaintiffs' motion is **DENIED in part as moot** and **GRANTED in part** regarding RFP, Set Four, Nos. 92–94, 126, 145–46;

8) Plaintiffs' motion is **GRANTED** with respect to RFI, Set Two, Nos. 80–81; and

9) the Court declines to apportion fees and costs. Each party shall bear its own costs.

**IT IS SO ORDERED.**

| | |
|---|---|
| | : |
| **Initials of Preparer** | vv |