

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

SAMUEL K. LIPARI,)	
)	
)	Plaintiff,
)	
vs.)	Case No. 07-CV-02146-CM-DJW
)	
U.S. BANCORP, and)	
)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

DEFENDANTS’ REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PROTECTIVE ORDER

Defendants U.S. Bancorp and U.S. Bank National Association, by and through their attorneys of record, Shughart Thomson & Kilroy, P.C., file this Reply Brief in support of their Motion for Protective Order. Defendants’ Motion should be granted. Plaintiff’s discovery requests are facially overly broad, unduly burdensome and fail to identify a specific category of documents sought. The vagueness of plaintiff’s requests, combined with little, if any, relevance to the issues in dispute justifies the entry of a Protective Order pursuant to Rule 26(c).

I. PLAINTIFF’S DISCOVERY REQUESTS ARE FACIALLY OVERLY BROAD AND UNDULY BURDENSOME

Kansas courts have repeatedly held that requests which seek “all documents relating to” or “all documents pertaining to” a general category of information are facially overly broad and unduly burdensome. *See, e.g., Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533, 535 (D. Kan., 2003); *Cardenas v. Dorel Juvenile Group, Inc.*, 232 F.R.D. 377, 382 (D. Kan., 2005). As the plaintiff correctly points out, non-descriptive terms such as “relating to” or “pertaining to” are acceptable if they modify “a *sufficiently specific type* of information, document, or event

rather than large or general categories of information or documents . . .” *Cardenas*, 232 F.R.D., at 382 (emphasis added).

Contrary to plaintiff’s argument, his requests fall far short of identifying a specific category of documents. For example, Request for Production No. 1 literally requests all documents relating to the plaintiff, his former attorney Brett Landreth, and plaintiff’s now dissolved corporation Medical Supply Chain, Inc. This is precisely the type of request that Kansas courts have deemed facially overly broad and unduly burdensome because it requires the respondent “to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably [be relevant] to the request.” *See, Cardenas*, 232 F.R.D. at 382, n.25 (citing *Pulsecard, Inc. v. Discover Card Services*, 1996 WL 397567, at *6 (D. Kan., July 11, 1996) where the court held a request seeking “all documents concerning plaintiff” was facially over-broad). Defendants have addressed the validity of each discovery request in their Memorandum in Support of their Motion to Compel and will not re-argue each request here. But the above example is demonstrative of the overly broad and burdensome nature of plaintiff’s requests.

Plaintiff’s discovery requests are so overly broad that the plaintiff himself cannot decipher what he requested. On page 7 of his response brief, plaintiff argues that personnel files are discoverable, and argues that “The plaintiff specifies which employees’ files are required.” *See, Response Brief, Doc. No. 65, pg 7.* But nowhere does the plaintiff request employment files. In fact, the terms “employment files” or “employee files” are not found in the requests. The defendants cannot be expected to respond to plaintiff’s discovery when the plaintiff himself does not know what is sought.

It should be especially noted that plaintiff makes no attempt to specifically address the validity of each request. Rather, plaintiff offers broad and general arguments on issues such as employee conduct, official misconduct, and criminal jeopardy – all of which have no bearing on any issue in this suit. This further shows that the plaintiff himself cannot articulate why his discovery requests are proper under FRCP 34 and the cited case law. Therefore, this Court should grant defendants’ Motion for Protective Order.

II. THE DEFENDANTS DO NOT NEED FACTUAL OR EVIDENTIARY SUPPORT TO OBTAIN A PROTECTIVE ORDER ON FACIALLY OVERLY BROAD AND UNDULY BURDENSOME REQUESTS.

Plaintiff attempts to argue that defendants’ Motion for Protective Order should be denied because defendants have failed to offer any factual or evidentiary support to show the need for a Protective Order. While it is true that a party seeking a Protective Order normally must show factual or evidentiary support for such an Order, courts routinely hold such as showing is not required when the request is facially overly broad and unduly burdensome. *See, Aikens*, 217 F.R.D. at 538; *Contracom Community Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 665-666 (D. Kan., 1999) (“A party resisting facially over broad or unduly burdensome discovery need not provide specific, detailed support.”).

The requests are overly broad and unduly burdensome on their face and plaintiff fails to otherwise demonstrate how his requests pertain to a specific category or type of documents. Therefore, specific factual support is not necessary the defendants request this Court grant their Motion for a Protective Order.

III. PLAINTIFF’S REQUESTS LACK RELEVANCE TO THE SUBJECT MATTER OF THE DISPUTE

When a request is overly broad on its face, the party seeking discovery has the burden to show the relevancy of the request. *Johnson v. Kraft Foods North America, Inc.*, 236 F.R.D. 535,

542 (D. Kan. 2006). If a request is overly broad and unduly burdensome on its face, a party is entitled to a Protective Order if “the burden or expense is unreasonable in light of the benefits to be secured from discovery.” *Hammond v. Lowe’s Home Centers, Inc.*, 216 F.R.D. 666, 674 (D. Kan. 2003). *See also, G.D. v. Monarch Plastic Surgery, PA*, 239 F.R.D. 641, 645 (D. Kan., 2007) (“When relevancy is *not* readily apparent, however, the party seeking discovery has the burden of showing the relevancy of the discovery request.” [emphasis in original]); 8 *Charles Allen Wright and Arthur R. Miller, Federal Practice and Procedure* § 2036 (recognizing that “even very slight inconvenience may be unreasonable if there is no occasion for the inquiry and it cannot benefit the party making it.”). Despite his affirmative burden, plaintiff fails to show the relevance of his requests.

On pages 9 – 12, the plaintiff cites numerous cases and authorities relating to prior amendments to the Federal Rules of Civil Procedure; how relevancy is defined under Rule 26; the discoverability of intent in construing contracts; and the relevance of intent for prior bad acts. But at no point does plaintiff attempt to apply the cited law to his individual requests and show how they are relevant under his cited authorities.

In short, plaintiff’s response is nothing more than a collection of quotes from a litany of cases and secondary sources that have no application to the specific requests or the dispute at issue. The Court should therefore grant defendants’ Motion for Protective Order.

IV. CONCLUSION

Plaintiff’s discovery requests are facially overly broad, unduly burdensome, and lack any relevance to the issues at dispute in this lawsuit. Plaintiff fails to address or demonstrate how each of his requests relate to a specific type or category of documents or are otherwise relevant. For these reasons, and for the reasons set forth in defendants’ Motion for Protective Order,

defendants request this Court grant their Motion for Protective Order and grant all the relief to which they are justly entitled.

Respectfully submitted,

s/ Jay E. Heidrick

MARK A. OLTHOFF KS # 70339
SHUGHART THOMSON & KILROY, P.C.
120 W 12th Street, Suite 1700
Kansas City, Missouri 64105-1929
Telephone: (816) 421-3355
Facsimile: (816) 374-0509

ANDREW M. DeMAREA KS #16141
JAY E. HEIDRICK KS #20770
SHUGHART THOMSON & KILROY, P.C.
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, Kansas 66210
Telephone: (913) 451-3355
Facsimile: (913) 451-3361

ATTORNEYS FOR DEFENDANTS
U.S. BANCORP and
U.S. BANK NATIONAL ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was served via email postage prepaid, upon the plaintiff this 10th day of April, 2008, to:

Mr. Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064

s/ Jay E. Heidrick
Attorney for Defendants