

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THOMAS L. TAYLOR, III, in his
Capacity as Court-appointed receiver
for Breitling Energy Corp.,

Plaintiff,

v.

No. 3:19-cv-01594-D

ROTHSTEIN KASS & COMPANY,
PLLC and BRIAN MATLOCK,

Defendants.

ORDER REQUIRING JOINT REPORT

Defendant Rothstein, Kass & Company PLLC has filed a Motion to Compel Document Production (ECF No. 39) from the Receiver. Specifically, Movant asks the Court to order the Receiver to produce documents in response to its Request for Production (RFP) No. 31 seeking “[a]ny and all communications between the Receiver and any claimants in *SEC v. Faulkner*, 3:16-cv-01735-D (N.D. Tex.) at any time since June 24, 2016.” The Receiver objected to Movant’s request on the grounds that the RFP: (1) seeks information that is “entirely irrelevant” to the parties’ claims and defenses; (2) is overbroad and burdensome; and 3) seeks “confidential information pertaining to the victims of the Breitling fraud, who are not parties to [this] case.” *See* Mot. 3. The certificate of conference accompanying the Motion indicates that counsel for the parties have communicated by email regarding this dispute, but they have not been able to resolve the matters

presented. Accordingly, to facilitate the prompt and efficient disposition of Plaintiff's motion, the Court ORDERS:

1. Counsel for Plaintiff and counsel for Defendant must confer by telephone (email communications will not satisfy this conference requirement) in an attempt to resolve the discovery matter in dispute without further court intervention. This conference must occur on or before **May 12, 2020**. Counsel must negotiate in a good-faith attempt to reach an agreement as to the discovery dispute.

2. To assist counsel in their discussions, the Court reminds them: "Unless otherwise limited by court order, . . . [p]arties 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); *accord Samsung Elecs. Am. Inc. v. Yang Kun "Michael" Chung*, 325 F.R.D. 578, 589 (N.D. Tex. 2017). Therefore, the party resisting discovery must show specifically how each discovery request is not relevant or otherwise objectionable. *See McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990). And the party resisting discovery must show how the requested discovery is overly

broad, unduly burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of the burden. *See Merrill v. Waffle House, Inc.*, 227 F.R.D. 475, 477 (N.D. Tex. 2005); *see also S.E.C. v. Brady*, 238 F.R.D. 429, 437 (N.D. Tex. 2006) (“A party asserting undue burden typically must present an affidavit or other evidentiary proof of the time or expense involved in responding to the discovery request.”). “Failing to do so, as a general matter, makes such an unsupported objection nothing more than unsustainable boilerplate.” *Heller v. City of Dallas*, 303 F.R.D. 466, 490 (N.D. Tex. 2014).

3. The parties must submit a joint report on or before **May 19, 2020**. This report must contain the following information: (a) the names of the attorneys who participated in the discovery conference; (b) the date the conference was held and the amount of time the parties conferred; (c) the matters that were resolved by agreement; (d) the specific matters that need to be heard and determined; (e) a detailed explanation of the reasons why agreement could not be reached as to those matters; and (f) whether the parties believe oral argument or a conference with the Court would be helpful in resolving any outstanding disputes. The joint report must be signed by all participating attorneys. Any attorney who fails to sign the report will be subject to sanctions.

The purpose of the joint report is to enable the Court to determine each party’s position on the discovery dispute in a single written submission. Therefore, the parties should present all their arguments and authorities in the body of the report. Supporting evidence and affidavits may be submitted in a separate


appendix. **The filing of the joint report replaces the separate filing of a response and a reply to the Motion to Compel.**

4. If this discovery dispute is resolved by agreement, the parties shall submit a proposed agreed order on the Motion to Compel, signed by all counsel of record, in lieu of a joint report, by **May 19, 2020**.

Any questions regarding this Order should be directed to the law clerk at 214-753-2410.

SO ORDERED.

April 23, 2020.



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE