

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

BLOCK COMMUNICATIONS, INC., * Case No. CI 11-6113
Plaintiff, *
v. * Judge Gary G. Cook
THOMAS F. POUNDS, *et. al.*, * JOURNAL ENTRY
Defendants. *

JOURNAL ENTRY: 1) DENYING DEFENDANTS' MOTION FOR A PROTECTIVE ORDER OR AN IN CAMERA REVIEW TO THE EXTENT SET FORTH HEREIN; 2) GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES TO THE EXTENT SET FORTH HEREIN; AND 3) DENYING DEFENDANTS' MOTIONS TO QUASH SUBPOENAS AND FOR A PROTECTIVE ORDER TO THE EXTENT SET FORTH HEREIN

Now before the Court are the following decisional motions: 1) Defendants/Counter-Plaintiffs Thomas F. Pounds ("Mr. Pounds"), The Toledo Free Press LLC ("TFP"), and Michael S. Miller's ("Mr. Miller") (collectively, "Defendants") December 5, 2012, Motion for a Protective Order or an In Camera Review;¹ 2) Defendants' May 10, 2013, Motion to Quash Subpoenas Duces Tecum, Request for Protective Order and Request for Hearing;² 3) Defendants' June 19, 2013, Motion to

¹Plaintiff filed a memorandum in opposition to Defendants' Motion for a Protective Order or an In Camera Review, with Exhibit 4 to said memorandum in opposition being filed under seal. While Defendants have not yet filed a reply to Plaintiff's memorandum in opposition, the requisite time frame within which to do so has passed. Further, the Court conducted a hearing on Defendants' Motion for a Protective Order or an In Camera Review on February 21, 2013, pursuant to the request for such hearing set forth therein.

²Plaintiff filed a memorandum in opposition to Defendants' May 10, 2013, Motion to Quash Subpoenas Duces Tecum, Request for Protective Order and Request for Hearing, and Defendants filed a reply to said memorandum in opposition. Further, the Court conducted a hearing on Defendants' May 10, 2013, Motion to Quash Subpoenas Duces Tecum, Request for Protective Order and Request for Hearing on August 26, 2013, pursuant to the

Quash Subpoenas Duces Tecum, Request for Protective Order and Request for Hearing;³ and 4) Plaintiff/Counter-Defendant Block Communications, Inc. d/b/a The Toledo Blade Company's ("BCI" or "Plaintiff") July 10, 2013, Motion to Compel Discovery Responses.⁴

I. Background

As relevant here, Plaintiff's Complaint sets forth various claims against Defendants, including a claim against Mr. Pounds for breach of his Separation Agreement, Waiver, and General Release ("Separation Agreement") with Plaintiff based upon Mr. Pounds' alleged breach of Paragraphs 4 and 5 thereof. (See Compl., at ¶ 13, 15, 35-40.) Pursuant to Paragraph 4, Mr. Pounds agreed that he would not disclose any of Plaintiff's confidential information. (See *id.* at ¶ 14.) Paragraph 5 provides that Mr. Pounds "must not disparage or take, directly or indirectly, any action intended to harm the Company, its parent, divisions, subsidiaries, or affiliates, or any of their directors, officers, shareholders, or employees." (See *id.*, at ¶ 15.) The Separation Agreement also provides that, if Mr. Pounds were to breach any of his obligations under Paragraphs 4 or 5, he would repay certain payments received and forfeit any and all rights to any future payments and benefits under the Separation Agreement. (See *id.*, at ¶ 14-15.)

In support of Mr. Pounds' alleged breach of Paragraph 5 of the Separation Agreement, Plaintiff's Complaint alleges:

request for such hearing set forth therein.

³Plaintiff filed a memorandum in opposition to Defendants' June 19, 2013, Motion to Quash Subpoenas Duces Tecum, Request for Protective Order and Request for Hearing, and Defendants filed a reply to said memorandum in opposition. Further, the Court conducted a hearing on Defendants' June 19, 2013, Motion to Quash Subpoenas Duces Tecum, Request for Protective Order and Request for Hearing on August 26, 2013, pursuant to the request for such hearing set forth therein.

⁴Defendants filed a memorandum in opposition to Plaintiff's Motion to Compel Discovery Responses, and Plaintiff filed a reply to said memorandum in opposition. Further, the Court conducted a hearing on Plaintiff's Motion to Compel Discovery Responses on August 26, 2013.

17. As President and Publisher of the Toledo Free Press and as an owner of the TFP, Pounds has direct and indirect control and influence over the published content of the * * * [TFP]. Pounds is not permitted to direct, allow or permit TFP employees, agents or other surrogates to engage in conduct that he is contractually prohibited from engaging in directly.

* * *

19. As Editor in Chief of the * * * [TFP], Miller is held out to the public as being subordinate to Pounds and under Pounds' supervisory control. Miller has acted as Pounds' surrogate and is the actual, implied or apparent agent of Pounds.

20. As President and Publisher of the * * * [TFP] and as owner of [the] TFP, Pounds has directly and indirectly used the * * * [TFP] and/or its members or employees as his instruments and agents to disseminate disparaging comments regarding Plaintiff, its owners, shareholders, directors, and employees. Knowing he cannot directly engage in disparaging and harmful conduct, Pounds has also used Miller, [the] TFP and its employees to do so directly.

* * *

33. On September 4, 2011, Pounds and Miller jointly appear on the TFP's 'Publisher's Statement' column. Miller's picture and title appear in this version of the 'Publisher's Statement' even though he is identified as the editor in chief of the TFP, not its publisher. The column quoted the Chairman of the Lucas County Democratic Party as saying that James Ruvolo would fight to 'block Republican attempts to prevent citizens from losing their right to vote.' Pounds and Miller then state that they assumed the 'choice of the word 'block' is pure coincidence.' The joint statement was a reference to the Block family and was intended to disparage the Block family by suggesting that they would somehow attempt to disenfranchise voters. * * *

34. Pounds has blatantly ignored his contractual obligations to the Blade and * * * [Plaintiff], its owners, shareholders and employees, while offering as an excuse for his conduct that he has no control over the other employees of [the] TFP or the content of the * * * [TFP]. * * *

(Compl., at ¶ 17, 19-20, 33-34.)

In support of Mr. Pounds' alleged breach of Paragraph 4 of the Separation Agreement as well, Plaintiff's Complaint alleges:

22. In November 2010, Pounds directly or indirectly authorized, caused to be

published or permitted * * * [the TFP] to post on its website confidential information belonging to The Blade. The information published had been prepared by internal staff of The Blade and BCI and its publication destroyed its confidentiality and was presented in such a manner as to disparage The Blade.

23. The publication of this confidential information was an action taken by Pounds, directly or indirectly, that was intended to disparage and harm The Blade and/or BCI.

(Compl., at ¶ 22-23.)

As also relevant here, the Court, via a Journal Entry filed on November 16, 2012, granted Plaintiff's September 25, 2012, Motion to Compel Discovery Responses from Defendants, including with respect to Interrogatory Numbers 4 and 9 and Request for Production Number 4 of Plaintiff's First Set of Requests for Admissions, Interrogatories, and Requests for Production of Documents. (See Nov. 16, 2012, Journal Entry.) Interrogatory Number 4 asks Defendants to "[i]dentify all * * * [TFP] directors, members, managers, officers or employees that are the supervisors and subordinates of Pounds." (Mot. to Compel, Ex. 2 at 5.) Defendants had objected to this interrogatory on the ground that the "information sought is overly broad and not reasonably calculated to lead to admissible evidence," but, without waiving the objection, had stated that Mr. Miller and Mr. Pounds "are both employees of the * * * [TFP] and act independent of each other" and that "[t]here are no directors of the * * * [TFP]." (*Id.* at 6.) Interrogatory Number 9 asks Defendants to "[i]dentify all members of the * * * [TFP]." (*Id.* at 7.) Defendants had objected to this interrogatory on the grounds that it was "not reasonably calculated to lead to admissible evidence"; that "members of the * * * [TFP] have limited liability and are immune from the claims raised in BCI's lawsuit against the Defendants"; and that "discovery of these individuals would subject them to attacks by the Plaintiff or [T]he [Toledo] Blade." (*Id.*) Request for Production Number 4 asks Defendants to "[p]roduce all documents reflecting or identifying members of * * *

[the TFP]." (*Id.* at 9.) Defendants had objected to this document request, once again, on the ground that it was "not reasonably calculated to lead to admissible evidence" and that "[m]embers of the * * * [TFP] have limited liability and are immune from the claims raised in BCI's lawsuit against the Defendants." (*Id.*) Notably, Defendants did not assert any claims of privilege or trade-secret status with respect to any of these discovery requests.

In granting Plaintiff's motion to compel, the Court found none of Defendants' objections to any of those discovery requests to be well-taken for the reasons set forth in Plaintiff's motion filings. (See Nov. 16, 2012, Journal Entry at 2; see also Resp. to Motion to Compel at 5-9 (simply arguing that those discovery requests are irrelevant to any issue in the case, are an "unwarranted fishing expedition," and are intended to harass, disparage, and harm Defendants and the members of the TFP). For instance, in support of those discovery requests, Plaintiff had argued that:

* * * [P]ursuant to the TFP Operating Agreement, Pounds is appointed the General Manager and given the authority to supervise the day-to-day operations of [the] TFP. His management, however, is 'subject to the general supervision and control of the Members and shall carry out the policy decision made by the Members.' Given this oversight by [the] TFP's members, the identity of those members is highly relevant. Additionally, it is notable that[,] pursuant to Miller's accepted offer letter, the 'officers of the company' reserve the right to terminate his employment.

* * * [The] TFP's members have reserved to themselves certain managerial and supervisory rights and are not merely passive investors for the purpose of limited liability.

(Mot. to Compel at 4-6; see also Ex. 4 to Protective Order Resp. filed under seal, Operating Agreement, entered into as of March 1, 2005, and Second Amended Operating Agreement, entered into as of June 1, 2006.) In addition, Plaintiff specifically had maintained that "[t]he actions and identities of [the] TFP's members and officers" are relevant to: 1) Plaintiff's claims regarding the underlying issue of Mr. Pounds' alleged control over the TFP and Mr. Miller; 2) Defendants' denials

with respect to Plaintiff's claims in that each Defendant has denied that Mr. Pounds has "direct and indirect control and influence over the published content of the TFP"; and to 3) Mr. Pounds' counterclaims alleging that Plaintiff has made oral and written "false and defamatory statements regarding the extent of Pounds' management, ownership, and/or control of the TFP." (Reply at 3; see Am. Answers at ¶ 17; Pounds Am. Counterclaim at ¶ 13, 19.)

Moreover, Plaintiff had underscored that the parties had entered into a Stipulated Protective Order governing the exchange and limiting the use of any confidential information on or about June 13, 2012. (Reply at 2.) For example, Paragraph 6(a) of that Order provides that "[d]ocuments designated 'Confidential Information' or 'Confidential Information-Attorneys' Eyes Only' * * * shall not be used or disclosed by the parties, counsel for the parties, or any other persons identified in ¶ 6(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof." (Stipulated Protective Order at 3-4.) Further, as Plaintiff had argued, the mere disclosure of the requested information is not, in itself, harassing, and, if the information were actually used to harass or harm Defendants or the members of the TFP, then such conduct would be actionable; however, "a prior restraint on providing simple discovery of relevant information because of the alleged *possibility* of future harassment is not a legal basis for avoiding discovery." (Reply at 4.)

II. Motion for Protective Order or In Camera Review

In their instant Motion for a Protective Order or an In Camera Review, Defendants request that the Court issue a protective order precluding the disclosure of the identities and ownership interests of the TFP's members or, "in the event that no [such] protective order is issued, that the Court conduct an *in camera* hearing to determine if disclosure of said identities and ownership

interests is necessary." (Mot. at 2, 8-9.) The Court will address each supporting argument with its corresponding counter-argument seriatim.

A. General Objections to Relevancy and/or Purpose

As an initial matter, Defendants generally contend that Plaintiff's claims "hinge upon Mr. Pounds' alleged control of the TFP, not the TFP's control of Mr. Pounds"; that Plaintiff "has consistently failed to explain how knowing the names of the members of the TFP would advance * * * [its] claims"; and that, should Plaintiff "gain access to the names of the TFP's members," Plaintiff or its subsidiary, The Toledo Blade, "can and will use that information to harm those individuals." (Mot. at 4, 8.) In response, Plaintiff essentially argues that the Court has already found the requested information to be relevant to certain of Plaintiff's claims and Mr. Pounds' counterclaims, and rejected Defendants' unsubstantiated and speculative objection to its disclosure based upon the alleged future misuse of such information; that the instant motion is tantamount to a motion for reconsideration in this regard; and that there is no basis for the Court to reconsider and reverse its rulings on these objections. (See Resp. at 1-3, 12.)

At the hearing, Defendants stated that they believe that this lawsuit, from its inception, simply has been about putting the TFP out of business. Plaintiff, in response, underscored that it does, in fact, have a good-faith basis for its Complaint under Civil Rule 11, including its claim against Mr. Pounds for breach of the Separation Agreement. According to Plaintiff, pursuant to the Separation Agreement, Mr. Pounds accepted a great deal of money from Plaintiff in consideration for agreeing not to disclose any of Plaintiff's confidential information and not to disparage Plaintiff, whether directly or indirectly, but breached both aspects of that Agreement as outlined in the Complaint.

Upon reconsideration, the Court finds Defendants' general objection to the requested discovery based upon either its relevancy⁵ or Plaintiff's alleged future misuse of it to be not well-taken for the reasons set forth by Plaintiff.

B. Specific Objection to Relevancy

Second, Defendants state that, "[i]n the interest of advancing this case * * * and in complying with the Court's November 1 [6] [Journal] Entry, Defendants are willing to admit that Mr. Pounds owns a majority (more than 60%) of the ownership interest of the TFP," and that he is the General Manager of the TFP. (Mot. at 4-5; *id.*, Ex. A, Pounds Affidavit at ¶ 6-7.) Specifically, Mr. Pounds' Affidavit avers, among other things, that, "[c]urrently, * * * [his] interest in the * * * [TFP] totals an amount greater than 60% of the total ownership interest of the * * * [TFP]," and that, "[i]n addition to serving as the publisher of the * * * [TFP], * * * [he also has] served in the role as the * * * [TFP's] General Manager since it was formed in 2004." (Mot., Ex. A at ¶ 6-7.) (emphasis added). Moreover, Defendants point out that Section 9.2 of the TFP's 3rd Amended Operating Agreement, entered into as of February 1, 2010, provides:

Each member shall have votes equal to their Membership Interest in the Company at the time of the Vote. Except as otherwise provided in this Agreement, any action taken by the Members shall be the valid act of the Company if approved by the Members holding a majority of the Membership Interest of the Company.

(Mot. at 5; *id.*, Ex. B at 11.) Defendants argue that, "[a]s a result, managerial and supervisory rights are vested in Pounds, who holds a majority of the TFP's membership interest and, thus, actions taken

⁵See also Civil Rule 26(B)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, *whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including * * * the identity and location of persons having knowledge of any discoverable matter.* It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.") (emphasis added).

by the TFP's members can only be the valid act of the TFP if Pounds participates." (Mot. at 6.) According to Defendants, "[t]he disclosure of this information, without identifying the remaining members of the TFP, protects those members from any actions taken by BCI, its subsidiaries, or its owners against those individuals while providing BCI with the information [that] it needs to know as to who has a controlling interest in the TFP's ownership." (*Id.* at 4, 8.)

In response, Plaintiff maintains that Defendants' admission as to Mr. Pounds' "current" ownership interest in the TFP does not resolve the issue of control in that "[t]he conduct at issue dates as far back as May 2004" when Mr. Pounds executed the Separation Agreement and "the fact that Mr. Pounds is *presently* in control and [the] majority owner does not resolve the issue of whether he had similar control back in May 2004." (Resp. at 4.) According to Plaintiff, "[w]ithout the requested information, Plaintiff has no ability to determine who owned what percentage of the company, when that percentage was owned, and when Mr. Pounds secured his 60% ownership interest." (*Id.*) Moreover, Plaintiff contends that, "[r]egardless of when Mr. Pounds became majority owner, under the *original* Operating Agreement[,] all members had the authority to manage the business of the company and had management rights to take action related to the conduct of the company's business or affairs," and whether any of the members actually exercised such power is a relevant issue. (*Id.*)(emphasis added). Further, Plaintiff contends that Defendants' argument *improperly* limits the relevancy of the requested information to the issue of "managerial and supervisory rights" (*i.e.*, the control or indirect-action issue) and that such information is also relevant to Plaintiff's claims that Mr. Pounds breached the Separation Agreement by *directly* making disparaging remarks about Plaintiff and/or The Toledo Blade and disclosing confidential information, including to other members of the TFP. (*Id.* at 4-5.) As Plaintiff points out, "if the

undisclosed members of [the] TFP remain secret, Plaintiff would be prevented from receiving *any* [otherwise responsive] discovery relating to these members," including any emails and/or conversations between Mr. Pounds and the members of the TFP disparaging Plaintiff and/or The Toledo Blade and/or disclosing confidential information; any disparaging statements about Plaintiff and/or The Toledo Blade that members of the TFP heard Mr. Pounds make to third parties; what and how decisions were made within the TFP with respect to the articles identified in Plaintiff's Complaint; what the members of the TFP believe and know about the actual management and control of the TFP; and any other relevant information that the members of the TFP may have about Plaintiff's claims and/or Defendants' counterclaims. (*Id.* at 4-6.) In short, Plaintiff maintains that the members of the TFP, as members of a named party, "are potential witnesses and are believed to have information that is relevant to this case," and that the requested information is a type of information that "is routinely exchanged as part of discovery."⁶ (*Id.* at 6-7.)

⁶Citing *Dir. of Highways v. Lordstown Realty Co.* (1970), 11th Dist., 23 Ohio App. 2d 233, 239 (holding that the trial court erred in not requiring that the names and addresses of the partners of a substituted defendant partnership be disclosed but finding this error harmless absent the plaintiff showing any prejudice therefrom); *Johnson v. Columbia Properties Anchorage, LP* (9th Cir. 2006), 437 F.3d 894, 899 (recognizing that a limited liability company "is a citizen of every state of which its owners/members are citizens" for the purpose of determining federal diversity jurisdiction); *Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc.*, 8th Dist., 134 Ohio App. 3d 673, 680 (holding that requested discovery "regarding the names and addresses of possible witnesses * * * [c]learly * * * is relevant to appellant's claims, is not proprietary or confidential information, and is readily ascertainable by appellees"); *Exact Software N. Am., Inc. v. Infocon, Inc.* (N.D. Ohio 2006), 479 F. Supp. 2d 702, 706-07 (noting that it previously had compelled the production of discovery about the relationship between the plaintiff and its parent company and that "[a]n understanding of inter-corporate relationships is * * * important to ascertain[] the location of discoverable information about the transactions underlying the counter-complaint and the identity of potential witnesses"); *Ohio Elections Comm. v. Ohio Chamber of Commerce* (2004), 10th Dist., 158 Ohio App. 3d 557 (enforcing subpoenas issued by the Ohio Elections Commission against two defendant political advertisement sponsors to produce contributor lists in a case involving the issue of whether the defendants operated as a PAC under Ohio law and rejecting the defendants' objections based upon First Amendment interests, relevancy, undue burden, and alleged fear of threats or reprisals); *Simmons v. Merrill Lynch, Pierce, Fenner and Smith* (1977), 8th Dist., 53 Ohio App. 2d 91, 92-95 (holding that the trial court erred in failing to sanction the defendant for not complying with its order compelling the defendant to produce a list of the alleged beneficial owners of certain stock because such information was "within the exclusive knowledge of and under the complete control of" the defendant; "[o]nly through a discovery of the list of alleged beneficial owners could the * * * [plaintiff] prove his contention that the stock was not held beneficially for others, but rather for the benefit of" the defendant; and, by failing to

Upon due consideration, the Court finds Defendants' specific challenge to the relevancy and/or the necessity of the requested discovery in light of Mr. Pounds' Affidavit and the terms of the 3rd Amended Operating Agreement to be not well-taken for the reasons set forth by Plaintiff.

C. Objection based upon Current Section 15.4

Third, Defendants maintain that Section 15.4 of the TFP's current or 3rd Amended Operating Agreement, entered into as of February 1, 2010, provides that "[n]o Member shall disclose the names of other Members of the Company" (*i.e.*, the TFP) and that, if "any Member becomes legally compelled to disclose * * * the names of the Members[,] they shall provide the Company with prompt notice so that the Company may seek a protective order or other appropriate remedy * * *." (Mot. at 4-5; *id.*, Ex. B at 21.) However, Section 15.4 also provides that the Company, upon receiving such notice, "may * * * waive compliance with the terms of this Agreement." (Mot., Ex. B at 21.) Moreover, it also provides: "If, in the absence of a protective order or the receipt of a waiver hereunder, and the Member or such other person becomes nonetheless legally required to disclose * * * the names of the Members to any tribunal or else stand liable for contempt or suffer other censure or penalty, such information may be disclosed to such tribunal without liability hereunder." (*Id.*) Further, Plaintiff, in response, underscores that prior versions of the TFP's Operating Agreement did not contain any such provision prohibiting a member from disclosing the names of the other members such that this prohibition "was not even in existence prior to February [of] 2010." (Resp. at 10)(also arguing that the new prohibition set forth in Section 15.4 of TFP's 3rd

sanction the defendant, the trial court prevented the plaintiff "from possibly proving his cause of action in fraud"). See also Civil Rule 26(B)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, *whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including * * * the identity and location of persons having knowledge of any discoverable matter. * * **")(emphasis added).

Amended Operating Agreement "apparently" does not apply to Mr. Pounds, his former wife, or Mr. Miller as discussed more below)(See also *id.*, Ex. 4, filed under seal, Operating Agreement, entered into as of March 1, 2005, and Second Amended Operating Agreement, entered into as of June 1, 2006.). According to Defendants, Section 15.4 also "provides that each member is aware that they [sic] may become knowledgeable of facts and circumstances which are confidential and/or constitute trade secrets of the TFP and have a duty not to disclose any such information to third parties." (Mot. at 5.) However, Section 15.4 actually provides:

Each Member recognizes that he/she/it may become knowledgeable of facts and circumstances which are confidential and/or constitute trade secrets of the Company, recognize that they have a duty to the Company and to each other not to disclose such to any third parties *without having first received the written approval of the General Manager, and warrant that they will not make any disclosures without such prior written approval.*

(Mot., Ex. B at 21.) (emphasis added).

Upon due consideration, the Court does not find Section 15.4 of the TFP's 3rd Amended Operating Agreement, in itself, to be particularly determinative with respect to whether the Court should grant or deny the instant motion for a protective order.

D. Objection based upon Alleged Trade Secret Status

Last, Defendants assert that "[a] protective order or *in camera* review should also be ordered because the names of the * * * [TFP's] members constitute a protected trade secret, the disclosure of which would result in serious harm to the TFP, all without advancing this case in any way." (Mot. at 6.) As an initial matter, the Ohio Uniform Trade Secrets Act ("OUTSA"), R.C. 1333.61, *et. seq.*, defines a "trade secret" as:

* * * information, including * * * any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both

of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.^[7]
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 1333.61(D). Further, the Ohio Supreme Court has established the following "six-factor test for determining whether information constitutes a trade secret pursuant to R.C. 1333.61(D):"

- (1) The extent to which the information is known outside the business;
- (2) the extent to which it is known to those inside the business, i.e., by the employees;
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) the savings effected and the value to the holder in having the information as against competitors;
- (5) the amount of effort or money expended in obtaining and developing the information; and
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Al Minor & Assoc., Inc. v. Martin, 117 Ohio St. 3d 58, 2008-Ohio-292, at ¶ 16 (citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App.3d 131, 134-135). Moreover, "[i]n a discovery dispute, those asserting that the materials sought constitute trade secrets that are privileged from discovery bear the burden of establishing trade secret status." *Arnos v. MedCorp, Inc.*, 6th Dist., 2010-Ohio-1883, at ¶ 20, 28 (underscoring that "[c]onclusory statements as to trade secret factors without supporting factual evidence are insufficient to meet the burden of establishing trade secret status," and citing *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 404, 2000-Ohio-207, and *Svoboda v. Clear Channel Communications, Inc.*, 6th Dist., 2003-Ohio-6201, at ¶ 17).

As to R.C. 1333.61(D)'s first requirement for a trade secret, Defendants contend that:

⁷See generally Merriam-Webster Online Dictionary (defining "independent" to include "not requiring or relying on something else" or "not contingent"); *Electro-Craft Corp. v. Controlled Motion, Inc.* (Minn. 1983), 332 N.W.2d 890, 900 (holding that this statutory element, in requiring that a trade secret derive "independent economic value from not being generally known and not being readily ascertainable," "carries forward the common law requirement of competitive advantage" from secrecy).

There is no doubt that independent economic value is retained by the TFP by the restricted knowledge of its members' identities. The TFP is able to source funding for its services from its members, who have a vested interest in remaining anonymous, particularly with regards to [the] company that owns The Toledo Blade, a competitor with the TFP. The potential for BCI or the Blade to target the TFP's members if they become aware of those individuals' identities certainly exists and in fact is a very real possibility, particularly since BCI has previously striven to limit the TFP's ability to compete in the Toledo market, as identified in the Defendants' counterclaims. Thus, disclosure of the members' identities would destroy the TFP's ability to source funding and retain members * * * .^{8]}

(Mot. at 6-7.) In response, Plaintiff contends that:

Defendants present no evidence that the yet to be disclosed portion of the member list has *independent economic value not generally known to other persons who could obtain economic value from its disclosure or use.*^{9]} * * * [W]hile Defendants cite to the economic value *they* attached to the partial member list * * * , they fail to identify how Plaintiff or others could economically benefit from actual use of this information. * * * Knowing the names of an owner of a competitor company is not a competitive advantage. This knowledge will not give Plaintiff an advantage in the newspaper marketplace[,] * * * allow Plaintiff to sell more copies of The Blade[,] * * * allow Plaintiff to obtain more cable subscribers[,] * * * [or] allow Plaintiff to sign up more telephone or internet customers. While Defendants may consider the identities of some of their members 'private' information, the partial list of these names does not constitute a trade secret.

(Resp. at 11.)

As to R.C. 1333.61(D)'s second requirement for a trade secret, Defendants argue that "there is no question that the TFP's members have taken significant steps to limit the disclosure of their identities, as evidence[d] by the inclusion of Section 15.4 of the TFP's [3rd] Amended Operating Agreement, which precludes identification of members." (Mot. at 7.) In response, Plaintiff

⁸At the hearing, Defendants specifically argued that, if the identities of the TFP's members were disclosed, Plaintiff would use that information to publish negative information about such individuals, several of whom have businesses in the public eye, so as to affect their businesses negatively and to cause them to withdraw from membership in the TFP and to deter others from investing in the TFP.

⁹Citing *R.G. Eng. & Mfg. v. Rance*, 7th Dist., 2002-Ohio-5218, at ¶ 44)(holding that the plaintiffs "provided no evidence that the pricing information or customer list had independent economic value not generally known to other persons who could obtain economic value from its disclosure or use").

underscores that prior versions of the TFP's Operating Agreement did not contain any such provision prohibiting a member from disclosing the names of the other members such that this prohibition "was not even in existence prior to February [of] 2010." (*Id.* at 10; see also *id.*, Ex. 4, Resp. filed under seal, Operating Agreement, entered into as of March 1, 2005, and Second Amended Operating Agreement, entered into as of June 1, 2006.) Further, as noted above, Section 15.4 of the TFP's 3rd Amended Operating Agreement also provides that the Company, upon receiving such notice, "may * * * waive compliance with the terms of this Agreement." (Mot., Ex. B at 21.) Moreover, Plaintiff points out that Mr. Pounds' Affidavit actually attests to his membership status in the TFP, and that the "public domain is littered with instances where the TFP disclosed Mr. Pounds as a member of the company." (Resp. at 9; Pounds Affidavit at ¶ 2; Resp., Ex. 1.) Plaintiff maintains that, similarly, "Mr. Pounds' ex-wife, who is believed to have been a member of the TFP at one time, disclosed her interest in the TFP in Court filings accessible to the public," and that Mr. Miller disclosed "his purported status as co-owner of the TFP on his LinkedIn page." (Resp. at 9; *id.*, Exs. 2 and 3.) Plaintiff argues that, as a result, Defendants did not take reasonable steps to guard the secrecy of the identities of the members of the TFP.¹⁰ (Resp. at 9-10.)

As to the relevant six-factor test set forth above, Defendants, without any factual or evidentiary support, maintain that: 1) "the identities of the members are not known outside of the

¹⁰Citing *Columbus Bookkeeping & Business Serv., Inc. v. Ohio State Bookkeeping, LLC*, 10th Dist., No. 11AP-227, 2011 Ohio App. Lexis 5655, at *10-16 (recognizing that, "once material has been publicly disclosed, it loses any status it ever had as a trade secret," and that disclosure to third parties, such as "potential or actual customers, absent a confidentiality agreement or understanding, will destroy any protection of that information as a trade secret," and holding that the plaintiff's client list was not entitled to trade secret protection and reasoning, in part, that the plaintiff "readily permitted members of the public access to the names of at least some of its clients through social functions, through the office and computers, through business cards on the receptionist's desk, and through unlocked cabinet files"); *State v. Ohio Dept. of Edn.* (1998), 81 Ohio St. 3d 527, 601 (recognizing that, "once material is publicly disclosed, it loses any status it ever had as a trade secret").

business, and that knowledge is limited even within the TFP"; 2) "[t]he economic value in keeping the TFP's members' identities confidential is absolute; without members' involvement in the company, the TFP could not function"; and 3) "the amount of effort and money and time that it would take BCI or others to determine the members is absolutely in favor of the TFP, as the information is confidential and cannot be replicated absent internal information being disclosed to BCI." (Mot. at 7-8.) Defendants assert that Plaintiff has not advanced any compelling reason for the disclosure of the names of the TFP's members for the reasons set forth above. (*Id.* at 8-9.) In response, Plaintiff essentially contends that the six-factor test actually counsels in favor of finding that the identities of the TFP's members do not constitute a trade secret for the reasons set forth above, and underscores that Defendants have not cited and cannot cite to a single case in support of the proposition that the identities of the members of a limited liability company constitute a trade secret. (Resp. at 2, 8-11.) Further, Plaintiff reiterates that disclosure of the identities of the TFP's members "is necessary for prosecution of Plaintiff's claims and to defend the pending counterclaims filed against it." (*Id.* at 2.)

Upon due consideration, the Court finds Defendants' objection to the requested discovery based upon its alleged status as a trade secret to be not well-taken, including for the reasons set forth by Plaintiff. In so ruling, the Court notes that it is highly mindful of the important interests that are involved in this case, and that this appears to be a novel issue of first impression in that neither the parties nor the Court has found any case law expressly addressing whether or under what circumstances the identities and/or ownership interests of members of a limited liability company

or similar business entity constitute a trade secret.¹¹ This ruling, therefore, is particularly well-suited for appellate review and guidance.

As an initial matter, the Court finds that the matter of federal diversity jurisdiction under 28 U.S.C. § 1332¹² in cases involving a limited liability company counsels in favor of finding that the identities and/or ownership interests of the members of a limited liability company do not, at least as a general proposition, constitute a trade secret. Specifically, as the Sixth Circuit Court of Appeals has held, for the purpose of determining federal diversity jurisdiction, "a limited liability company has the citizenship of each of its members." *Delay v. Rosenthal Collins Group, LLC* (6th Cir. 2009), 585 F.3d 1003, 1005 (noting that, in so holding, it is joining every other circuit that has addressed the issue). Accordingly, as the Sixth Circuit has made clear, "[w]hen [federal] diversity jurisdiction is invoked in a case in which a limited liability company is a party, the [federal] court needs to know the citizenship of each member of the company," and, "because a member of a limited liability company may itself have multiple members--and thus may itself have multiple citizenships--the

¹¹Defendants, at the hearing, relied upon the Ohio Supreme Court's ruling in *State ex rel. Besser v. Ohio State University*, that a certain document listing "the names of the top patient-volume physicians of Park Medical Center and their characteristics" constituted a trade secret in support of their assertion that the identities and/or ownership interests of the members of the TFP constitute a trade secret here. However, the Court finds this trade-secret finding to be distinguishable. See *Besser*, 89 Ohio St.3d at 402 (finding that a document listing "the names of the top patient-volume physicians of Park Medical Center and their characteristics" constitutes a trade secret, and underscoring that its disclosure would "permit OSU's competitors to determine which physicians affiliated with Park Medical Center produce the most revenue, and competitors could target these physicians in order to increase their revenues, to the detriment of OSU" and that the "list is similar to a business's customer list, which constitutes an intangible asset that is presumptively a trade secret when the owner of the list takes measures to prevent its disclosure in the ordinary course of business to persons other than those selected by the owner").

¹²See 28 U.S.C. § 1332 (a) (providing that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$ 75,000, exclusive of interest and costs, and is between * * * [c]itizens of different States," among other specified parties); see also 28 U.S.C. § 1441(a) (providing that, "[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending," subject to certain limitations set forth in subparagraph (b)).

federal court needs to know the citizenship of each 'sub-member' as well." *Id.* (directing the limited liability company "to submit a jurisdictional statement identifying the citizenship of all of its members"). Further, as the Sixth Circuit has recognized, the parties may dispute the underlying facts necessary for subject-matter jurisdiction and, in such a situation, a federal court "has 'wide discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve disputed jurisdictional facts'" for the purpose of determining such jurisdiction. See *Ohio Natl. Life Ins. Co. v. United States* (6th Cir.), 922 F.2d 320, 325. Thus, it would seem that, without knowing at least the identities of the members and/or sub-members of a limited liability company in a case involving such a company, it would be virtually impossible for the other party to determine or dispute such members' and/or sub-members' citizenships for the purpose of demonstrating or refuting the existence of federal diversity jurisdiction.¹³

Moreover, the Court finds that the fact that certain individuals voluntarily came together to form a limited liability company under Ohio law for the purpose of availing themselves of the legal benefits that accompany conducting business as such an entity counsels against, at least as a general proposition, thereafter allowing such members to claim that their identities and/or ownership interests constitute a trade secret that is not subject to any disclosure. Rather, it would seem that, upon accepting the benefits of conducting business as such an entity, the members of a limited liability company, in fairness, should equally bear the burdens that are a natural consequence of

¹³Also cf. Federal Rule of Civil Procedure 7.1(a) (requiring "[a] nongovernmental corporate party" to file "a disclosure statement that * * * identifies any parent corporation and any publicly held corporation owning 10% or more of its stock * * * [or] states that there is no such corporation"); *id.*, Advisory Committee Notes on 2002 Amendments (noting that "the information required by Rule 7.1(a) reflects the 'financial interest' standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges" and "will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c)," but that it "does not cover all of the circumstances that may call for disqualification under the financial interest standard").

conducting business as such an entity, such as waiving whatever anonymity the members would otherwise have and exposing themselves to potential personal liability or, at a minimum, being potential witnesses with respect to the conduct of the business.¹⁴ Indeed, while members of a limited liability company are not, solely by virtue of such membership, personally liable for the debts, obligations, or liabilities of the company,¹⁵ they can still be held personally liable for their own actions or omissions or the debts, obligations, and liabilities of the company if their behavior "merits disregarding, or piercing, the entity's limited liability structure."¹⁶ Notably, at issue here is the

¹⁴Cf. generally Civ. R. 26(B)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, *whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including * * * the identity and location of persons having knowledge of any discoverable matter. * * **") (emphasis added); *Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc.*, 8th Dist., 134 Ohio App. 3d 673, 680 (holding that requested discovery "regarding the names and addresses of possible witnesses * * * [c]learly * * * is relevant to appellant's claims, is not proprietary or confidential information, and is readily ascertainable by appellees"); *Exact Software N. Am., Inc.* (N.D. Ohio 2006), 479 F. Supp. 2d at 706-07 (noting that it previously had compelled the production of discovery about the relationship between the plaintiff and its parent company and that "[a]n understanding of inter-corporate relationships is * * * important to ascertain[] the location of discoverable information about the transactions underlying the counter-complaint and the identity of potential witnesses"); *Lordstown Realty Co.*, 11th Dist., 23 Ohio App. 2d at 239 (holding that the trial court erred in not requiring that the names and addresses of the partners of a substituted defendant partnership be disclosed but finding this error harmless absent the plaintiff showing any prejudice therefrom); and *Simmons*, 8th Dist., 53 Ohio App. 2d at 92-95 (holding that the trial court erred in failing to sanction the defendant for not complying with its order compelling the defendant to produce a list of the alleged beneficial owners of certain stock because such information was "within the exclusive knowledge of and under the complete control of" the defendant; "[o]nly through a discovery of the list of alleged beneficial owners could the * * * [plaintiff] prove his contention that the stock was not held beneficially for others, but rather for the benefit of" the defendant; and, by failing to sanction the defendant, the trial court prevented the plaintiff "from possibly proving his cause of action in fraud").

¹⁵See R.C. 1705.48(A), and (B) ("The debts, obligations, and liabilities of a limited liability company * * * are solely the debts, obligations, and liabilities of the limited liability company," and "[n]either the members of the limited liability company nor any managers of the limited liability company are personally liable to satisfy any judgment, decree, or order of a court for, or are personally liable to satisfy in any other manner, a debt, obligation, or liability of the company solely by reason of being a member or manager of the limited liability company.")

¹⁶See *e.g.*, R.C. 1705.48(C) ("Nothing in this chapter affects any personal liability of a member of a limited liability company or any manager of a limited liability company for the member's or manager's own actions or omissions."); *Huttenbauer Land Co., LLC v. Harley Riley, LTD.*, 1st Dist., 2012-Ohio-4585, at ¶ 15 ("Members of a limited liability company may only be reached individually if the plaintiff demonstrates that the behavior of the members merits disregarding, or piercing, the entity's limited liability structure. What is referred to as the corporate veil may be pierced when: (1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the

identities and/or ownership interests of the *members* or *owners* of the TFP as a *limited liability company organized under Ohio law*, not the identities of mere financial benefactors or supporters, who, at least arguably, might have greater or more legitimate expectations of anonymity. Further, here, the TFP's original and Second Amended Operating Agreements expressly made Mr. Pounds' management as the General Manager "subject to the general supervision and control of the Members" and required that he "carry out the policy decision made by the Members." (See Ex. 4 to Protective Order Resp. filed under seal, Operating Agreement, entered into as of March 1, 2005, and Second Amended Operating Agreement, entered into as of June 1, 2006.)

In any event, upon due consideration, the Court finds that Defendants have failed to meet their burden of establishing that the identities and/or ownership interests of the TFP's members actually constitute a trade secret under R.C. 1333.61(D) or the relevant six-factor test set forth above, including for the reasons set forth by Plaintiff.¹⁷ Accordingly, the Court finds that the identities and/or ownership interests of the TFP's members do not constitute a trade secret and are subject to disclosure, with the "Confidential Information" designation discussed below.

Moreover, the Court notes that, as discussed at the hearing, despite having requested an *in camera* review and having had ample time to do so, Defendants have not yet submitted any of the otherwise-responsive documents that they are withholding from production based upon their alleged trade-secret status to the Court for such review. In any event, the Court finds that, to the extent that

corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.") (citing *Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Co. Inc.*, 67 Ohio St. 3d 274, 1993 Ohio 119).

¹⁷See generally *Arnos*, 2010-Ohio-1883, at ¶ 20, 28 (underscoring that, "[i]n a discovery dispute, those asserting that the materials sought constitute trade secrets that are privileged from discovery bear the burden of establishing trade secret status," and "[c]onclusory statements as to trade secret factors without supporting factual evidence are insufficient to meet the burden of establishing trade secret status").

Defendants request that the Court, in the event that it does not issue a protective order, "conduct an *in camera* hearing to determine if disclosure of said identities and ownership interests is *necessary*," the Court finds that the requested *in camera* hearing would not serve any useful purpose here and/or would not be well-taken.¹⁸ (See Mot. at 2, 8-9.) (emphasis added). Defendants' instant motion for a protective order solely relates to the disclosure of the identities and ownership interests of the TFP's members (whether to such information in itself or as contained in otherwise-responsive requested discovery) based upon Defendants' objections to such disclosure, including on the alleged ground that such identities and ownership interests constitute a trade secret. However, Defendants are requesting the *in camera* hearing only for the purpose of determining the *necessity* of disclosing the identities and ownership interests of the TFP's members, not for the purpose of determining whether such identities and ownership interests actually constitute a trade secret in the first instance. Indeed, Defendants have not even suggested that an *in camera* review of the withheld discovery would add anything to the trade-secret determination itself. Further, as to Defendants' express purpose for the requested *in camera* hearing, the Court already has found the requested discovery to be "necessary" for and/or relevant to Plaintiff's claims and Mr. Pounds' counterclaims as discussed above, and cannot see how the requested *in camera review* could or would alter this finding.

In addition, the Court finds that, even if Defendants were to have discharged their burden of demonstrating that the identities and/or ownership interests of the TFP's members constitute a trade

¹⁸See generally *Piatt v. Miller*, 6th Dist., 2010-Ohio-1363, at ¶ 18 ("[B]efore engaging in an in-camera inspection of the material, 'the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person' that in camera review of the materials may reveal evidence establishing an applicable privilege or that the privilege is outweighed by other rights.' This is because the party opposing the discovery request has the burden to establish that the requested information would not reasonably lead to discovery of admissible evidence. Thus, if the trial court believes there is not a good faith belief that a review of the materials may reveal privileged material, then it does not need to conduct an in-camera inspection of those materials.").

secret, Plaintiff's need for the information would outweigh the potential harm to the TFP, particularly in light of the parties' Stipulated Protective Order.¹⁹ In the Court's view, while any documents containing the identities and/or ownership interests of the TFP's otherwise undisclosed members would not, by virtue of such information in itself, qualify for the "Confidential Information-Attorneys' Eyes Only" designation²⁰ under the parties' Stipulated Protective Order, such documents would fall within the less restrictive "Confidential Information" designation²¹ thereunder.²² (See

¹⁹See *Alpha Benefits Agency, Inc. v. King Insurance Agency, Inc.* (1999), 134 Ohio App. 3d 673, 677-83 (discussed in detail below). See generally Civil Rule 26(C) ("Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; * * * (7) that a trade secret or other confidential research, development, or commercial information *not be disclosed or be disclosed only in a designated way* * * * .) (emphasis added); *id.*, Staff Notes, Excerpts, Federal Rules Advisory Committee's Note, Federal Rule 26, 1967 Preliminary Draft ("The new reference to trade secrets and other confidential commercial information reflects existing law. The courts have not given trade secrets automatic and complete immunity against disclosure, but have in each case weighed their claim to privacy against the need for disclosure. Frequently, they have been afforded a limited protection. See, e.g., *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993 (10th Cir. 1965); *Julius M. Ames Co. v. Bostitch, Inc.*, 235 F.Supp. 856 (S.D.N.Y. 1964).).

²⁰See Stipulated Protective Order at ¶ 4 ("Any party may designate [d]ocuments as 'Confidential Information-For Attorneys' Eyes Only' upon making a good faith determination that the [d]ocuments contain information, the disclosure of which is likely to cause harm to the competitive position of the designating party, or which materials meet the definition of a trade secret under applicable Ohio or federal law. This limitation is to be applied strictly. Such information will be of the type reasonably likely to harm the designating party's competitive position or to otherwise be injurious to the designating party if disclosed to the other parties.").

²¹See Stipulated Protective Order at ¶ 3 ("Any party may designate [d]ocuments as 'Confidential Information' upon making a good faith determination that the [d]ocuments contain information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, medical or psychiatric information, personnel records, sensitive commercial information, or proprietary information that is not public available. Public records and other information or documents that are publicly available may not be designated as 'Confidential Information.'").

²²At the hearing, Plaintiff also outlined the serious difficulties and prejudice that Plaintiff would experience in prosecuting its claims and defending against Defendants' counterclaims if the identities and/or ownership interests of the TFP's members were subject to a "Confidential Information-Attorneys' Eyes Only" designation under the Stipulated Protective Order and objected to any such designation for those reasons.

Defendants, at the hearing, objected to the disclosure of the identities and/or ownership interests of the TFP's members even with a "Confidential Information" or "Confidential Information-Attorneys' Eyes Only" designation on the ground that the members of the TFP have been assured anonymity and the disclosure of their identities and/or ownership interests, if even only to attorneys, would violate this assurance and have a "chilling effect" on prospective members. However, the Court does not find this objection based upon the members' alleged right or expectation of anonymity to be particularly persuasive here, including for the reasons set forth in the section

Stipulated Protective Order at 2-3.) The Stipulated Protective Order expressly provides that any documents "designated as 'Confidential Information' * * * shall not be used or disclosed by the parties, counsel for the parties, or any other persons identified in ¶ 6(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof," and any breach thereof would certainly be actionable. (Stipulated Protective Order at 3-4.) (also providing that "[t]he parties and counsel for the parties shall not disclose or permit the disclosure of any [d]ocuments designated 'Confidential Information' to any third person or entity," subject to certain specified limited exceptions).

Accordingly, for all of the reasons set forth herein, and to the extent set forth herein, the Court hereby DENIES Defendants' Motion for a Protective Order or In Camera Review and ORDERS Defendants to produce any and all requested documents within their possession, custody, or control within thirty (30) days of the filing of this Journal Entry. However, the Court finds that, under the circumstances, any award of expenses under Civil Rule 37(A)(4) with respect to such denial would be unjust.²³

III. Motion to Compel Discovery Responses

In its July 10, 2013, Motion to Compel Discovery Responses, Plaintiff seeks to compel Defendants to produce documents in response to Plaintiff's Third Set of Requests for Production of Documents Numbers 29, 31, 32, and 33. In response, Defendants request that, to the extent that the Court otherwise finds Plaintiff to be entitled to the requested discovery, the Court conduct an *in*

relating to Section 15.4 of the TFP's 3rd Amended Operating Agreement.

²³See Civ. R. 26(C) (providing that "[t]he provisions of Civ.R. 37(A)(4) apply to the award of expenses incurred in relation to" a motion for a protective order).

camera review of the requested discovery to further "determine its discoverability" and/or grant Defendants leave to designate the requested discovery as "Confidential Information-Attorneys' Eyes Only" pursuant to the parties' Stipulated Protective Order. (Resp. at 12.)

A. Financial Statements or Reports

Taking this document request first, Document Request Number 33 asks Defendants to "[p]roduce all reports or financial statements provided to members of" the TFP. (Mot. to Compel, Ex. 1.) In responding to the document request, Defendants objected to it on the grounds that the request "is not reasonably calculated to lead to the discovery of admissible evidence"; the request "is overly vague in that it does not specify a date range for the documents sought"; and the requested documents "contain confidential business information and are therefore proprietary in nature and protected as trade secrets."²⁴ (*Id.*, Ex. 4)

In its motion, Plaintiff contends that Document Request Number 33 is reasonably calculated to lead to the discovery of admissible evidence in that the TFP has asserted counterclaims against Plaintiff for tortious interference with business relations, alleging that the TFP has suffered substantial damages, including lost profits, as a proximate result of Plaintiff's alleged actions, and that Plaintiff has a right to review the TFP's financial statements in order fully to defend itself against these allegations. (Mot. to Compel at 6.)

In response, Defendants assert that, while the TFP "will be obligated to demonstrate the damages * * * [that] it has sustained as a result of Plaintiff's actions and has the burden of proving

²⁴In a letter to Plaintiff, Defendants further asserted that, although Plaintiff's Complaint seeks damages for such things as the TFP's alleged violation of Ohio's Deceptive Trade Practices Act, Plaintiff "has refused to disclose its [requested] balance sheets, income statements or financial statements on the ground[] that this information is protected by" the OUTSA. (*Id.*, Ex. 3.) According to Defendants, their position is, therefore, in line with Plaintiff's own position with respect to its own requested financial documents. (*Id.*) At the hearing, Plaintiff represented that it would be withdrawing its trade-secret objection to Defendants' discovery request for Plaintiff's financial information.

those damages," this burden "simply does not require * * * [the TFP] to disclose its financial records to Plaintiff." (Resp. at 10.) According to Defendants, this document request "is, once again, simply a fishing expedition related to Plaintiff's repeated efforts to * * * obtain the names of the" TFP's members, as further evidenced by the fact that the document request only seeks those documents that were provided to the TFP's members rather than the TFP's complete financial records. (*Id.*)

In reply, Plaintiff asserts that certain Ohio case law demonstrates that Defendants' objection to the requested financial information based upon its alleged irrelevancy is not well-taken.²⁵ (Reply at 6-7.) Further, Plaintiff aptly argues that the TFP "should not be permitted to hide what it perceives to be unfavorable evidence [(during discovery)] and only produce documents [(in the course of actually proving its alleged damages)] that it deems helpful." (*Id.* at 6.)

At the hearing, Defendants again argued that the Court could simply prohibit Defendants from introducing into evidence at trial, for the purpose of proving their alleged damages, any otherwise-requested financial documents that Defendants did not produce to Plaintiff during discovery, and that Defendants could simply present the testimony of Mr. Pounds and Mr. Miller, both of whom have already been deposed, on the matter of damages, without the need to rely upon any withheld financial documents. However, as Plaintiff essentially argued at the hearing, this would allow Defendants to "cherry-pick" only the favorable documentary evidence in support of their damages claim while preventing Plaintiff from discovering potentially unfavorable documentary evidence to refute that claim and/or to impugn Mr. Pounds' and/or Mr. Miller's oral testimony.

²⁵Citing *Nilavar v. Osborn* (2000), 2nd Dist., 137 Ohio App. 3d 469, 498-99 (holding that the trial court committed prejudicial error in denying the plaintiff's motion to compel discovery of financial records from the defendants, including tax returns and corporate financial documents, on the ground that the requested financial documents were irrelevant and reasoning that such documents were, in fact, relevant to the plaintiff's breach-of-contract claim for lost profits or "anticipated income").

In its motion, Plaintiff maintains, as to any of Defendants' objections based upon privilege, that Defendants had not, as of then, provided Plaintiff with the requisite privilege log. (Mot. to Compel at 4.) In response, Defendants assert that, contrary to Plaintiff's assertion, they have provided Plaintiff with three separate privilege logs per Plaintiff's request, with the last such privilege log having been provided to Plaintiff two days after Defendants responded to Plaintiff's third set of discovery requests. (Resp. at 6; *id.*, Exs C, D, and E.) However, as discussed at the hearing, this privilege log, which merely contains three entries, is inadequate under Civil Rule 26(B)(6)(a)²⁶ in that, along with simply identifying the "Custodian" as the TFP, the "Date Created" as "Multiple," and the alleged privilege at issue, the entries simply state for the "Description," respectively: 1) "Multiple attorney-client communications"; 2) "Multiple communications containing information identifying journalistic sources" (R.C. 2739.12); and 3) "Multiple documents containing information protected as trade secrets." (See Resp., Ex. E.) The privilege logs in the record do not address each particular withheld document or contain sufficient descriptions with respect thereto to enable either Plaintiff or the Court to determine the validity of any claim of privilege or trade-secret status with respect to each particular withheld document.²⁷ Indeed, at the hearing, Defendants stated that they were not, at that time, able to address what the particular documents covered in the privilege logs are, to which the Court responded that neither then could the Court nor Plaintiff.

Further, as Plaintiff aptly noted at the hearing, unless a responsive document, in its entirety,

²⁶See Civ. R. 26(B)(6)(a) ("When information subject to discovery is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.")

²⁷Indeed, as Plaintiff argued at the hearing, the privilege logs do not even identify who prepared each of the withheld documents and, to the extent that any withheld documents were prepared by an outside third party, whether there was a confidentiality agreement in place with such third party.

were to be privileged, only those portions of any responsive document that actually contain the privileged information would be subject to protection (*i.e.*, redaction) while the remainder of the document would be subject to disclosure. Here, the privilege log identifies, for example, "[m]ultiple documents *containing information protected as trade secrets*," thereby suggesting that the withheld documents also contain some unprotected information that still has not been disclosed (subject to redaction of the allegedly privileged information).

In their response, Defendants also contend that "reports or financial statements provided to members of" the TFP constitute trade secrets in that they are "financial information" deriving "independent value * * * from not being generally known to * * * other persons who can obtain economic value from [their] disclosure or use," and the TFP has "taken reasonable steps to maintain the secrecy of its financial information and [has] not made that information publicly available." (Resp. at 11.) In reply, Plaintiff contends that Defendants have not discharged their burden of demonstrating, with the requisite specificity, that the requested financial documents constitute trade secrets in that, for example, they have offered no specific explanation as to how the financial documents "would provide some competitive advantage to Plaintiff." (Reply at 6.)

At the hearing, the Court repeatedly advised Defendants, when arguing in mere generalities, that such arguments are insufficient and the Court would need to hear more detailed arguments as to why particular requested documents are not discoverable or constitute trade secrets and exactly how Plaintiff could misuse or benefit from such particular documents according to Defendants. Defendants, in response, argued (albeit somewhat generally) that the requested financial and business-related documents contain information about the prices at which advertisements in the TFP

are actually sold²⁸ and about the financial health of the TFP (*e.g.*, the costs to publish the paper; staff costs; revenue; overhead expenses) such that the documents would be a "road map" for Plaintiff, a direct competitor, to determine the prices at which to lower its advertisements for the purpose of luring the TFP's advertisers away and putting the TFP out of business. Defendants acknowledged that Plaintiff is free to contact any of the advertisers in the TFP on an individual basis and ask them what they are paying the TFP to place their advertisements there for the purpose of trying to underbid such advertisement prices and lure the advertisers away from the TFP to the Blade. However, Defendants contended that they should not be required to actually help Plaintiff do this by turning such collective information over to Plaintiff and that such information, along with the information about the TFP's financial health, would give Plaintiff a "road map" for how to run the TFP out of business.

In response, Plaintiff inquired as to whether, given Defendants' request for an *in camera* review of the withheld documents based upon their alleged trade-secret status, Defendants had proffered such documents to the Court for such a review to enable the Court to corroborate Defendants' mere oral representations, through counsel, that the requested financial and business-related documents contain such specific and detailed information about advertisement charges and the TFP's financial health. Plaintiff also expressed doubt as to whether such documents would actually contain such information. Further, Plaintiff underscored that it was improper for Defendants simply to make factual assertions or representations through counsel on the record in support of their trade-secret claims and that Defendants must submit evidence, such as an affidavit, in support of

²⁸Defendants acknowledged that the TFP's "rate sheet" is publicly available but that would not indicate whether and to what extent any particular advertiser actually paid below that rate for advertisements.

such representations.

Defendants stated that, at the time of the hearing, they did not have the withheld documents to submit to the Court for the *in camera* review that they had requested and did not know that they were responsible for doing that but could do so if the Court were to order such a review. Plaintiff argued that Defendants bear the burden of producing the otherwise-responsive documents that they are withholding from production based upon their alleged trade-secret status to the Court for the requested *in camera* review and, despite having had an ample opportunity to do so, have not done so.

The Court essentially underscored that, until Defendants first gave a sufficient description of what the alleged trade secrets are and showed a factual basis that is adequate to support their assertion that such information constitutes a trade secret, the requested *in camera* review would not only be unwarranted but the Court would not know what to look for in reviewing any of the submitted documents, especially given the woefully deficient privilege logs.²⁹

Upon due consideration, the Court finds that Defendants have not discharged their burden of demonstrating that the documents sought by Plaintiff's Document Request Number 33 (*i.e.*, "all reports or financial statements provided to members of" the TFP) are not reasonably likely to lead

²⁹See generally *Piatt v. Miller*, 6th Dist., 2010-Ohio-1363, at ¶ 18 ("[B]efore engaging in an in-camera inspection of the material, 'the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person' that in camera review of the materials may reveal evidence establishing an applicable privilege or that the privilege is outweighed by other rights.' This is because the party opposing the discovery request has the burden to establish that the requested information would not reasonably lead to discovery of admissible evidence. Thus, if the trial court believes there is not a good faith belief that a review of the materials may reveal privileged material, then it does not need to conduct an in-camera inspection of those materials."); Civ. R. 26(B)(6)(a) ("When information subject to discovery is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.").

to the discovery of admissible evidence for the reasons set forth by Plaintiff.³⁰ Further, the Court finds that Defendants have failed to meet their burden of establishing that any of these requested documents constitute trade secrets under R.C. 1333.61(D) or the relevant six-factor test set forth above for the reasons set forth by Plaintiff.³¹

Moreover, the Court finds the Eighth District Court of Appeals' decision in *Alpha Benefits Agency, Inc. v. King Insurance Agency, Inc.* (1999), 134 Ohio App. 3d 673, 677-80, to be particularly instructive here. In that case, the plaintiff had asserted a breach-of-contract claim against the defendants based upon the defendants' alleged failure to pay the plaintiff his proportionate share of a profitability bonus paid to the defendants by a certain health insurance company, and the defendants had asserted a counterclaim against the plaintiff for negligent or fraudulent misrepresentation that sought damages for the defendants' alleged lost profits and "substantial additional expenses and costs of overhead and administration." *Id.* at 677-78. The plaintiff sought certain related discovery from the defendants, such as the amount of the bonuses and commissions paid to the plaintiff by the defendants and how those commissions and bonuses were calculated, the amount of business that defendants wrote for the insurance company, any profitability bonuses paid to the defendants by the insurance company and the method of computing those bonuses. *Id.* at 678. The trial court denied the plaintiff's motion to compel such discovery and granted the defendants'

³⁰See generally *State ex. rel. Fisher v. Rose Chevrolet, Inc.*, 12th Dist., 82 Ohio App. 3d 520, 523 (holding that the party resisting discovery has "the burden to establish that the requested information would not reasonably lead to the discovery of admissible evidence"); *Piatt v. Miller*, 6th Dist., 2010-Ohio-1363, at ¶ 18 (recognizing, based upon *Fisher*, that "the party opposing the discovery request has the burden to establish that the requested information would not reasonably lead to discovery of admissible evidence").

³¹See generally *Arnos*, 2010-Ohio-1883, at ¶ 20, 28 (underscoring that, "[i]n a discovery dispute, those asserting that the materials sought constitute trade secrets that are privileged from discovery bear the burden of establishing trade secret status," and "[c]onclusory statements as to trade secret factors without supporting factual evidence are insufficient to meet the burden of establishing trade secret status").

motion for a protective order with respect to such discovery. *Id.* at 679.

In finding that the trial court, in so ruling, had abused its discretion, the Eighth District found that the requested profitability discovery was not only relevant but "essential" to the plaintiff's claim and the defendants' counterclaim. 134 Ohio App. 3d at 681. As to the defendants' argument that the requested profitability discovery constituted a trade secret, the Eighth District held that, even if it were a trade secret, the trial court was still required to "balance the competing interests to be served by allowing the discovery to proceed against the harm which may result." *Id.* at 682. The Eighth District held that, because the requested profitability discovery was indispensable for the plaintiff both to prove his claim and to defend against the defendants' counterclaim and was within the defendants' "exclusive knowledge and control," the plaintiff's need for the discovery outweighed the potential harm to the defendants. *Id.* at 682-83. According to the Eighth District, the trial court abused its discretion in granting the defendants' motion for a protective order in its entirety, "rather than fashioning an appropriate protective order that would allow * * * [the plaintiff] to make its case and defend against * * * [the defendants'] counterclaim while still protecting * * * [the defendants'] trade secrets." *Id.* As the Eighth District underscored:

a trial court has broad authority to fashion a protective order that protects the secrecy of a trade secret. R.C. 1333.65 provides that a court may preserve the secrecy of an alleged trade secret by reasonable means, including holding in camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret. Civ.R. 26(C) provides that a court may order that discovery be had 'on terms or conditions as are just.' Thus, pursuant to the court's authority to regulate discovery, the court may, for example, order that use of the discovered information be limited to the lawsuit, limit the persons who have access to the information, limit or prohibit the reproduction of documents, require a bond to protect against the risk of injury from the disclosure of the trade secrets and designate who shall serve as custodian of the records.

Id. at 683. Notably, the Eighth District also underscored that it was not "unmindful of * * * [the

defendants'] contention that disclosure of the information sought by * * * [the plaintiff] *to competing agencies such as* * * * [the plaintiff] would cause serious harm to * * * [the defendants]," but that the defendants "cannot first allege that they suffered lost profits and then refuse to disclose their profitability information to * * * [the plaintiff] by claiming that it is a trade secret." *Id.* at 683 (emphasis added).

Thus, following *Alpha Benefits Agency, Inc.*, the Court finds that, even if Defendants were to have discharged their burden of demonstrating that the documents sought by Plaintiff's Document Request Number 33 (*i.e.*, "all reports or financial statements provided to members of" the TFP) constitute trade secrets of the TFP, Plaintiff's need for the information would outweigh the potential harm to the TFP, particularly in light of the parties' Stipulated Protective Order.³² In the Court's view, a good-faith argument could be made that the disclosure of the documents sought by Plaintiff's Document Request Number 33 could cause harm to the TFP's competitive position (regardless of whether such documents actually rise to the level of a trade secret) such that the documents could be designated as "Confidential Information-Attorneys' Eyes Only" under the Stipulated Protective Order, subject to any challenge by Plaintiff to such designation, on a document-by-document basis,

³²See also Civil Rule 26(C) ("Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; * * * (7) that a trade secret or other confidential research, development, or commercial information *not be disclosed or be disclosed only in a designated way* * * * .) (emphasis added); *id.*, Staff Notes, Excerpts, Federal Rules Advisory Committee's Note, Federal Rule 26, 1967 Preliminary Draft ("The new reference to trade secrets and other confidential commercial information reflects existing law. The courts have not given trade secrets automatic and complete immunity against disclosure, but have in each case weighed their claim to privacy against the need for disclosure. Frequently, they have been afforded a limited protection. See, *e.g.*, *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993 (10th Cir. 1965); *Julius M. Ames Co. v. Bostitch, Inc.*, 235 F.Supp. 856 (S.D.N.Y. 1964).).

in accordance with the process outlined in said Order.³³ Thus, the Court hereby GRANTS Plaintiff's Motion to Compel with respect to Plaintiff's Document Request Number 33 and ORDERS Defendants to produce any responsive documents within their possession, custody, or control within thirty (30) days of the filing of this Journal Entry.

B. Member Meeting Documents

Document Request Number 29 asks Defendants to "[p]roduce all agendas, notes, and minutes of any meeting of the members of the" TFP. (Mot. to Compel, Ex. 1.) In responding to the document request, Defendants objected to it on that ground that the requested documents "contain confidential business information and are therefore proprietary in nature and protected as trade secrets or are protected by the attorney-client privilege," and stated that, "[w]ithout waiving the * * * objection, the * * * [TFP] has no documents responsive to this request." (*Id.*, Ex. 4.) In a letter to Plaintiff, Defendants further asserted that the requested "agendas are not relevant to any issue in this case," and are "not reasonably calculated to lead to the discovery of admissible evidence." (*Id.*, Ex. 3.)

In its motion, Plaintiff contends that the document request is reasonably likely to lead to the discovery of admissible evidence, "especially evidence of disparagement or disclosure of confidential information of * * * [Plaintiff] by Mr. Pounds to the members." (Mot. to Compel at 4.) Plaintiff

³³See Stipulated Protective Order at ¶ 4 ("Any party may designate [d]ocuments as 'Confidential Information-For Attorneys' Eyes Only' upon making a good faith determination that the [d]ocuments contain information, the disclosure of which is likely to cause harm to the competitive position of the designating party, or which materials meet the definition of a trade secret under applicable Ohio or federal law. This limitation is to be applied strictly. Such information will be of the type reasonably likely to harm the designating party's competitive position or to otherwise be injurious to the designating party if disclosed to the other parties."); *id.* at ¶ 8-9 (setting forth the process by which a party or nonparty with standing to object may challenge a "'Confidential Information' or 'Confidential Information-Attorneys' Eyes Only' designation," and allowing for a motion to be filed with the Court for an order relating to any documents with such a designation).

also contends that the requested documents are relevant to the issue of Mr. Pounds' control over Mr. Miller and the TFP. (Reply at 3.) Defendants, in their response, do not address the relevancy of the requested documents.

Rather, in their response, Defendants contend that the requested documents clearly constitute trade secrets under the OUTSA in that: 1) the requested "agendas, notes, and minutes of any meeting of the members of the" TFP constitute "business information or plans" under R.C. 1333.61; and 2) "any information discussed at member meetings would almost certainly be information which derives value by not being known to a competitor newspaper and which the * * * [TFP] has certainly kept confidential." (Resp. at 4-5.) In reply, Plaintiff argues that the parties' Stipulated Protective Order would fully address Defendants' concerns about the disclosure of confidential information in that, under that Order, Defendants may designate any documents believed to be trade secrets for attorneys' eyes only. (Reply at 3.) Further, Plaintiff maintains that Defendants have failed to discharge their burden of demonstrating, with the requisite specificity, that the requested documents constitute trade secrets.³⁴ (Reply at 3-4.) (arguing, for example, that just because documents were created within the course of business does not necessarily mean that they derive some independent economic value).

In its motion, Plaintiff underscores that Mr. Pounds confirmed, during his deposition, that he prepared agendas for TFP member meetings such that the TFP does, in fact, have responsive documents within its possession, custody, or control. (Mot. to Compel at 4.) However, in response, Defendants maintain that, "[w]hile agendas were originally prepared for member meetings,

³⁴Citing *State ex rel. Besser v. Ohio State Univ.* (2000), 89 Ohio St.3d at 400 ("An entity claiming trade secret status bears the burden to identify and demonstrate that the material is included in categories of protected information under the statute and additionally must take some active steps to maintain its secrecy.").

Defendants are unaware of any copy of any agenda which still exists today." (Resp. at 6.) Further, Defendants otherwise maintain that they "are no longer in possession of any documents which are responsive" to Plaintiff's Document Request Number 29 (*i.e.*, "agendas, notes, and minutes of any meeting of the members of the" TFP). (*Id.*) Plaintiff, in its reply, has not addressed this assertion.

Upon due consideration, the Court finds that Defendants have not discharged their burden of demonstrating that the documents sought by Plaintiff's Document Request Number 29 (*i.e.*, "agendas, notes, and minutes of any meeting of the members of the" TFP) are not reasonably likely to lead to the discovery of admissible evidence for the reasons set forth by Plaintiff.³⁵ Further, the Court finds that Defendants have failed to meet their burden of establishing that any of these requested documents constitute trade secrets under R.C. 1333.61(D) or the relevant six-factor test set forth above for the reasons set forth by Plaintiff.³⁶

In any event, the Court finds that, even if Defendants were to have discharged their burden of demonstrating that the documents sought by Plaintiff's Document Request Number 29 constitute trade secrets, Plaintiff's need for the information would outweigh the potential harm to the TFP, particularly in light of the parties' Stipulated Protective Order.³⁷ In the Court's view, a good-faith argument could be made that the disclosure of the documents sought by Plaintiff's Document Request Number 29 could cause harm to the TFP's competitive position (regardless of whether such documents actually rise to the level of a trade secret) such that the documents could be designated as "Confidential Information-Attorneys' Eyes Only" under the Stipulated Protective Order, subject

³⁵See generally *State ex. rel. Fisher*, 82 Ohio App. 3d at 523; *Piatt*, 2010-Ohio-1363, at ¶ 18.

³⁶See generally *Arnos*, 2010-Ohio-1883, at ¶ 20, 28.

³⁷See *Alpha Benefits Agency, Inc.*, 134 Ohio App. 3d at 677-83. See also generally Civil Rule 26(C); *id.*, Staff Notes, Excerpts, Federal Rules Advisory Committee's Note, Federal Rule 26, 1967 Preliminary Draft.

to any challenge by Plaintiff to such designation, on a document-by-document basis, in accordance with the process outlined in said Order.³⁸ Thus, to the extent that Defendants have any of the documents sought by Plaintiff's Document Request Number 29 within their possession, custody, or control, the Court hereby GRANTS Plaintiff's Motion to Compel with respect to that Document Request and ORDERS Defendants to produce such documents within thirty (30) days of the filing of this Journal Entry.

C. Documents to Prospective Owners, Investors, or Lenders

Document Request Number 31 asks Defendants to "[p]roduce all documents provided to prospective owners, investors or lenders of" the TFP. (Mot. to Compel, Ex. 1.) In responding to the document request, Defendants objected to it on the grounds that the request "is not reasonably calculated to lead to the discovery of admissible evidence"; the request "is overly vague in that it does not specify a date range for the documents sought"; and the requested documents "contain confidential business information and are therefore proprietary in nature and protected as trade secrets." (*Id.*, Ex. 4.) In a letter to Plaintiff, Defendants further asserted that the document request "amounts to nothing more than a fishing expedition in an attempt to force * * * [the TFP] to disclose confidential information and proprietary business information to one of its competitors." (*Id.*, Ex. 3.)

In its motion, Plaintiff contends that Document Request Number 31 (*i.e.*, "all documents provided to prospective owners, investors or lenders of" the TFP) is reasonably likely to lead to the discovery of admissible evidence, "which may include evidence of disparagement or disclosure of confidential information of * * * [Plaintiff] by Mr. Pounds to third parties." (Mot. to Compel at 4.)

³⁸See Stipulated Protective Order at ¶ 4, 8-9.

In response, Defendants argue that, while Plaintiff contends that the requested documents "may" contain "evidence of disparagement or disclosure of confidential information," this contention is "absurdly weak" in that Plaintiff "has no evidence, nor has it even alleged, that Mr. Pounds ever disclosed confidential information or made disparaging statements to prospective members[,] * * * investors," or lenders of the TFP. (Resp. at 4, 7-8.) Defendants essentially underscore that, for the requested documents to be relevant here, they must be "reasonably calculated to lead to the discovery of admissible evidence," and contend that "Plaintiff has entirely failed to demonstrate a *likelihood* that [the requested] documents * * * will somehow show Mr. Pounds' breach of" the Separation Agreement. (*Id.* at 7.) (emphasis added). Defendants also assert that this document request "is nothing more than a transparent attempt * * * yet again [to] try to determine the names of the members of the" TFP, thereby suggesting that this is the real relevance of the documents for Plaintiff. (*Id.* at 8.) Defendants further underscore that the request is overly broad in that it seeks "all documents provided to prospective owners, investors or lenders of" the TFP, a request encompassing "three distinct groups of individuals and apparently * * * every document which may have been provided to them." (*Id.*) As Defendants argue, since the requested discovery is overly broad and Plaintiff has failed to demonstrate a likelihood that it will lead to relevant or admissible evidence, the Court may restrict the requested discovery to prevent such a "fishing expedition."³⁹ (*Id.*)

In reply, Plaintiff aptly underscores that, under Ohio law, the burden to establish that the requested discovery is not reasonably likely to lead to the discovery of admissible evidence falls on

³⁹Citing *Drawl v. Cleveland Orthopedic Ctr.* (1995), 11th Dist., 107 Ohio App. 3d 272, 277-78 (holding that, pursuant to Civil Rule 26(C), "trial courts may limit discovery to prevent 'fishing expeditions' where the requested discovery is broad and the party requesting the discovery fails to demonstrate a likelihood that relevant evidence will be obtained").

the party opposing the discovery.⁴⁰ (Reply at 2, 5.) According to Plaintiff, Defendants have failed to discharge their burden of establishing that any of the requested discovery is irrelevant. (Reply at 2, 5.) Further, Plaintiff argues that "a primary issue in this case is whether [Mr.] Pounds (either individually or through [the] TFP or [Mr.] Miller) violated his contractual obligations by disclosing confidential materials to others or disparaging Plaintiff." (Reply at 4.) Plaintiff asserts that, it would be "impossible for [Mr.] Pounds to solicit funding without discussing the only competitor newspaper in town-the Blade." (*Id.*) According to Plaintiff, it "believes that the disclosure of correspondence with potential owners and investors [and lenders] will reveal what information was actually disclosed to third parties," and that "this information is absolutely necessary for Plaintiff to effectively litigate its claims and, without such information, Plaintiff will be materially prejudiced." (*Id.*) Further, the financial documents included in this document request would be relevant for the reasons already discussed.

In its motion, Plaintiff argues that the requested documents "are not proprietary in that they were shared with third-party investors and lenders of the TFP."⁴¹ (Mot. to Compel at 4.) In response, Defendants contend that they should not be compelled to disclose "sensitive and confidential information to one of its biggest competitors merely because Plaintiff filed a lawsuit and claims that everything about its competitor's business practices is somehow 'relevant' to the case."

⁴⁰Citing *State ex. rel. Fisher*, 82 Ohio App. 3d at 523.

⁴¹Citing *Columbus Bookkeeping & Business Serv., Inc. v. Ohio State Bookkeeping, LLC*, 10th Dist., No. 11AP-227, 2011 Ohio App. Lexis 5655, at *10-16 (recognizing that, "once material has been publicly disclosed, it loses any status it ever had as a trade secret," and that disclosure to third parties, such as "potential or actual customers, absent a confidentiality agreement or understanding, will destroy any protection of that information as a trade secret," and holding that the plaintiff's client list was not entitled to trade secret protection and reasoning, in part, that the plaintiff "readily permitted members of the public access to the names of at least some of its clients through social functions, through the office and computers, through business cards on the receptionist's desk, and through unlocked cabinet files") (emphasis added).

(Resp. at 7.) In reply, Plaintiff reiterates that the requested documents, by virtue of being shared with third parties without any evidence of any confidentiality agreement or understanding, were disclosed to the public such that they do not merit trade-secret protection. (Reply at 4.) Plaintiff also underscores that Defendants, in their response, have not addressed this argument. (*Id.*)

At the hearing, Plaintiff reiterated that Defendants have not discharged their burden of demonstrating, with the requisite specificity, that the requested documents provided to prospective owners, investors, or lenders of the TFP constitute trade secrets in that, for example, they have not produced any evidence of any confidentiality agreement or understanding with such third parties. Defendants, through counsel, represented on the record that the potential owners and investors had signed non-disclosure agreements with respect to the information that they had received from the TFP. Defendants stated that, to the extent that they could redact the names of the potential owners and investors, they would be more than happy to submit the non-disclosure agreements to the Court for its review. Defendants, through counsel, represented that there were no non-disclosure agreements with the lenders, but suggested that there was some understanding of confidentiality with the lenders in the the sense that banks will not produce that kind of information without being ordered to do so. Defendants, through counsel, also represented that, while a bookkeeper has access to the TFP's financial documents, he or she has signed a non-disclosure agreement. Plaintiff, in turn, underscored that it was improper for Defendants, through counsel, simply to make factual assertions or representations on the record in support of their trade-secret claims and that Defendants must have evidentiary support, such as an affidavit, for such representations.

Upon due consideration, the Court finds that Defendants have not discharged their burden of demonstrating that the documents sought in Plaintiff's Document Request Number 31 (*i.e.*, "all

documents provided to prospective owners, investors or lenders of" the TFP) are not reasonably likely to lead to the discovery of admissible evidence for the reasons set forth by Plaintiff.⁴² Further, the Court finds that Defendants have failed to meet their burden of establishing that any of these requested documents constitute trade secrets under R.C. 1333.61(D) or the relevant six-factor test set forth above for the reasons set forth by Plaintiff.⁴³

In any event, the Court finds that, even if Defendants were to have discharged their burden of demonstrating that the documents sought by Plaintiff's Document Request Number 31 constitute trade secrets, Plaintiff's need for the information would outweigh the potential harm to the TFP, particularly in light of the parties' Stipulated Protective Order.⁴⁴ In the Court's view, a good-faith argument could be made that the disclosure of the documents sought by Plaintiff's Document Request Number 31 could cause harm to the TFP's competitive position (regardless of whether such documents actually rise to the level of a trade secret) such that the documents could be designated as "Confidential Information-Attorneys' Eyes Only" under the Stipulated Protective Order, subject to any challenge by Plaintiff to such designation, on a document-by-document basis, in accordance with the process outlined in said Order.⁴⁵ Thus, the Court hereby GRANTS Plaintiff's Motion to Compel with respect to Document Request Number 31 and ORDERS Defendants to produce any and all responsive documents within their possession, custody, or control within 30 (thirty) days of the filing of this Journal Entry.

⁴²See generally *State ex. rel. Fisher*, 82 Ohio App. 3d at 523; *Piatt*, 2010-Ohio-1363, at ¶ 18.

⁴³See generally *Arnos*, 2010-Ohio-1883, at ¶ 20, 28.

⁴⁴See *Alpha Benefits Agency, Inc.*, 134 Ohio App. 3d at 677-83. See also generally Civil Rule 26(C); *id.*, Staff Notes, Excerpts, Federal Rules Advisory Committee's Note, Federal Rule 26, 1967 Preliminary Draft.

⁴⁵See Stipulated Protective Order at ¶ 4, 8-9.

D. Business Plans

Document Request Number 32 asks Defendants to "[p]roduce all business plans of" the TFP. (Mot. to Compel, Ex. 1.) In responding to the document request, Defendants objected to it on the grounds that the request "is not reasonably calculated to lead to the discovery of admissible evidence"; the request "is overly vague in that it does not specify a date range for the documents sought"; and the requested documents "contain confidential business information and are therefore proprietary in nature and protected as trade secrets." (*Id.*, Ex. 4; see also *id.*, Ex. 3.)

In its motion, Plaintiff argues that the requested business plans are reasonably calculated to lead to the discovery of admissible evidence, which "may include evidence of disparagement or disclosure of confidential information of * * * [Plaintiff] by Mr. Pound," given that Mr. Pounds testified that the business plans included information relating to competitors of the TFP. (Motion to Compel at 5.) In response, Defendants contend that, once again, this document request is overly broad and Plaintiff has failed to demonstrate a likelihood that the requested documents will lead to admissible evidence such that the Court may restrict the requested discovery to prevent such a "fishing expedition."⁴⁶ (Resp. at 8.) According to Defendants, Plaintiff's mere assertion that the requested documents "may" contain evidence of disparagement or disclosure of confidential information is "certainly not sufficient to warrant the risk of harm which the * * * [TFP] would incur if it were forced to turn over its [confidential and highly sensitive] business plans to a competitor." (*Id.* at 9.) In reply, Plaintiff argues that "the business plans contain information relating to competitors of [the] TFP (as testified [to] by [Mr.] Pounds) and are therefore likely to include evidence of disparagement or disclosure of confidential information by [Mr.] Pounds." (Reply at

⁴⁶Citing *Drawl*, 107 Ohio App. 3d at 277-78.

5.)

In its motion, Plaintiff contends that the TFP's business plans are not protected trade secrets simply by virtue of the fact that they may contain the names of the members of the TFP, a contention that is correct in light of the Court's ruling set forth above. (Mot. to Compel at 5.) Further, Plaintiff underscores that Mr. Pounds confirmed, during his deposition, that he had prepared business plans for the TFP and that the plans covered the time period of 2004-2009. (*Id.*) According to Plaintiff, given the time period of the requested business plans, they "cannot be said to disclose any proprietary information that would somehow give * * * [Plaintiff] a competitive advantage in *today's* marketplace." (*Id.*) In response, Defendants argue that Plaintiff's assertion that, "because the date range of the business plans is 2004-2009, * * * disclosure of the plans to a competitor could not harm the * * * [TFP] is pure speculation and not compelling." (Resp. at 9.) Plaintiff, in reply, argues that Defendants have not discharged their burden of demonstrating, with the requisite specificity, that the requested documents constitute trade secrets in that, for example, Defendants have to explain sufficiently "how business plans from 2004-2009 derive independent economic value in 2013." (Reply at 5.)

Upon due consideration, the Court finds that Defendants have not discharged their burden of demonstrating that the documents sought by Plaintiff's Document Request Number 32 (*i.e.*, "all business plans of" the TFP) are not reasonably likely to lead to the discovery of admissible evidence for the reasons set forth by Plaintiff.⁴⁷ Further, the Court finds that Defendants have failed to meet their burden of establishing that any of these requested documents constitute trade secrets under R.C.

⁴⁷See generally *State ex. rel. Fisher*, 82 Ohio App. 3d at 523; *Piatt*, 2010-Ohio-1363, at ¶ 18.

1333.61(D) or the relevant six-factor test set forth above for the reasons set forth by Plaintiff.⁴⁸

In any event, the Court finds that, even if Defendants were to have discharged their burden of demonstrating that the documents sought by Plaintiff's Document Request Number 32 constitute trade secrets, Plaintiff's need for the information would outweigh the potential harm to the TFP, particularly in light of the parties' Stipulated Protective Order.⁴⁹ In the Court's view, a good-faith argument could be made that the disclosure of the documents sought by Plaintiff's Document Request Number 32 could cause harm to the TFP's competitive position (regardless of whether such documents actually rise to the level of a trade secret) such that the documents could be designated as "Confidential Information-Attorneys' Eyes Only" under the Stipulated Protective Order, subject to any challenge by Plaintiff to such designation, on a document-by-document basis, in accordance with said Order.⁵⁰ Thus, the Court hereby GRANTS Plaintiff's Motion to Compel with respect to Document Request Number 32 and ORDERS Defendants to produce any and all responsive documents within their possession, custody, or control within 30 (thirty) days of the filing of this Journal Entry.

Accordingly, for all of the reasons set forth herein, and to the extent set forth herein, the Court hereby GRANTS Plaintiff's Motion to Compel Discovery Responses and ORDERS Defendants to produce any and all of the requested documents within their possession, custody, or control within thirty (30) days of the filing of this Journal Entry. However, the Court finds that, under the circumstances, any award of expenses under Civil Rule 37(A)(4) with respect to such

⁴⁸See generally *Arnos*, 2010-Ohio-1883, at ¶ 20, 28.

⁴⁹See *Alpha Benefits Agency, Inc.*, 134 Ohio App. 3d at 677-83. See also generally Civil Rule 26(C); *id.*, Staff Notes, Excerpts, Federal Rules Advisory Committee's Note, Federal Rule 26, 1967 Preliminary Draft.

⁵⁰See Stipulated Protective Order at ¶ 4, 8-9.

motion would be unjust.

IV. Motion to Quash Subpoenas and Request for Protective Order

In their May 10, 2013, and June 19, 2013, Motions to Quash Subpoenas Duces Tecum and Requests for Protective Order, Defendants ask the Court to quash, under Civil Rule 45, certain subpoenas duces tecum that Plaintiff had issued to Fifth Third Bank, FirstMerit Bank, PNC Bank, Signature Bank, N.A., and KeyBank seeking "all loan documents, including but not limited to, loan applications, member lists, financial statements, forecast documents, balance sheets, profit and loss statements, cash flow statements and work papers" related to any loans sought by the TFP ("Subpoenas"). (See May 10, 2013, Motion Exs. A and B; June 19, 2013, Motion Exs. A, B, and C.) Defendants contend that the Subpoenas improperly seek irrelevant and highly confidential, proprietary, and trade-secret business and financial information, including information subject to Defendants' Motion for a Protective Order or an In Camera Review (*i.e.*, the identities and/or ownership interests of the TFP's members). (May 10, 2013, Motion at 1-9; June 19, 2013, Motion at 3-4.) Defendants also request that the Court grant them a protective order preventing the disclosure of any documents in response to the Subpoenas and "precluding any further attempts by the Plaintiff to compel any financial institution or other person or entity to disclose documents or information related to the Defendants' financial, banking or business information without first obtaining leave of this Court to do so." (May 10, 2013, Motion at 2; June 19, 2013, Motion at 2, 4.)

In response, Plaintiff contends that, "[u]nder well-established Ohio law, the information sought by Plaintiff is relevant, discoverable, and does not constitute confidential or proprietary

information, especially since it is in the possession of a third party."⁵¹ (May 24, 2013, Resp. at 2; June 24, 2013, Resp. at 2.) Plaintiff further contends that "Defendants previously testified * * * that the member names were never disclosed to the banks" such that, by Defendants' own admission, "any information produced by the banks should not contain what * * * [Defendants] argue are 'trade secrets.'" (May 24, 2013, Resp. at 1-2; June 24, 2013, Resp. at 1-2.) According to Plaintiff, even if Defendants' motions were otherwise well-taken, the subpoenaed banks have "already responded to the [S]ubpoenas indicating that they have no responsive documents" such that Defendants' motions are moot and Defendants should withdraw them. (May 24, 2013, Resp. at 2; *id.*, Exs; June 24, 2013, Resp. at 2; *id.*, Exs.)

In reply, Defendants underscore that their motions are not moot because Plaintiff has not withdrawn its [S]ubpoenas nor instructed the banks "not to disclose any information or documents sought by the [S]ubpoenas should they become aware of such information in the future." (June 4, 2013, Reply at 2; July 1, 2013, Reply at 2.) Defendants further underscore that they also have moved for a protective order "precluding any further attempts by the Plaintiff to compel any financial institution or other person or entity to disclose documents or information related to the Defendants' financial, banking or business information without first obtaining leave of this Court to do so." (June 4, 2013, Reply at 2; July 1, 2013, Reply at 2.)

⁵¹Citing *Columbus Bookkeeping & Business Serv., Inc.*, 10th Dist., 2011 Ohio App. Lexis 5655, at *10-16 (recognizing that, "once material has been publicly disclosed, it loses any status it ever had as a trade secret," and that disclosure to third parties, such as "potential or actual customers, absent a confidentiality agreement or understanding, will destroy any protection of that information as a trade secret," and holding that the plaintiff's client list was not entitled to trade secret protection and reasoning, in part, that the plaintiff "readily permitted members of the public access to the names of at least some of its clients through social functions, through the office and computers, through business cards on the receptionist's desk, and through unlocked cabinet files"), and *Alpha Benefits Agency, Inc.*, 134 Ohio App. 3d at 680 (holding that requested discovery "regarding the names and addresses of possible witnesses * * * [c]learly * * * is relevant to appellant's claims, is not proprietary or confidential information, and is readily ascertainable by appellees").

As an initial matter, the Court finds that Defendants' May 10, 2013, and June 19, 2013, Motions to Quash Subpoenas Duces Tecum and Requests for Protective Order are not moot for the reasons set forth by Defendants. In response to such motions, Plaintiff also requested that the Court grant Plaintiff "an additional 10 days to submit a brief fully addressing, outlining, and responding to the issues raised by Defendants" should the Court disagree with Plaintiff's mootness argument. (May 24, 2013, Resp. at 2; June 24, 2013, Resp. at 2.) In reply, Defendants essentially argued that Plaintiff already had an opportunity to respond to Defendants' objections to the Subpoenas on their merits and had failed to "demonstrate any need or reason to warrant disclosure of any" of the requested information. (June 4, 2013, Reply at 3; July 1, 2013, Reply at 2-3.) At the August 9, 2013, pretrial, upon being granted leave of Court to do so, Plaintiff represented that it either would file a supplemental brief on the merits of Defendants' May 10, 2013, and June 19, 2013, Motions to Quash Subpoenas Duces Tecum and Requests for Protective Order before the August 26, 2013, hearing or it would waive any right to file same and would stand on its filings to date and oral argument. By not filing any such supplemental brief within the time frame specified, Plaintiff elected to do the latter.

At the hearing, Plaintiff argued that the Subpoenaed loan documents are relevant to the TFP's counterclaim against Plaintiff for tortious interference with business relations and, in particular, the underlying allegation that the TFP suffered lost profits as a proximate result of Plaintiff's alleged actions, and that Plaintiff has a right to review the Subpoenaed loan documents in order fully to defend itself against these allegations. Further, Plaintiff argued that, although Mr. Pounds testified during his deposition that the TFP had applied for financing and/or had obtained financing from Fifth Third Bank and FirstMerit Bank, both of these banks stated that they had not received any loan

applications from the TFP such that the Subpoenaed loan documents are also relevant to Mr. Pounds' credibility.

Upon due consideration, the Court finds Defendants' May 10, 2013, and June 19, 2013, Motions to Quash Subpoenas Duces Tecum and Requests for Protective Order to be not well-taken, including for the reasons set forth by Plaintiff. The Court finds that Defendants have not discharged their burden of demonstrating that the Subpoenaed loan documents are not reasonably likely to lead to the discovery of admissible evidence for the reasons set forth by Plaintiff.⁵² Further, the Court finds that Defendants have failed to meet their burden of establishing that any of the Subpoenaed loan documents constitute trade secrets under R.C. 1333.61(D) or the relevant six-factor test set forth above for the reasons set forth by Plaintiff.⁵³

In any event, as discussed above, with respect to the Subpoenaed loan documents that relate to and/or contain the identities and/or ownership interests of the TFP's members (*e.g.*, "member lists"), the Court finds that, even if Defendants were to have discharged their burden of demonstrating that such information constitutes a trade secret, Plaintiff's need for the information would outweigh the potential harm to the TFP, particularly in light of the parties' Stipulated Protective Order and the "Confidential Information" designation available thereunder for such information.⁵⁴ Moreover, as discussed above, regarding the Subpoenaed loan documents that relate to and/or contain the TFP's financial information (*e.g.*, "financial statements, forecast documents, balance sheets, profit and loss statements, cash flow statements"), the Court finds that, even if

⁵²See generally *State ex. rel. Fisher*, 82 Ohio App. 3d at 523; *Piatt*, 2010-Ohio-1363, at ¶ 18.

⁵³See generally *Arnos*, 2010-Ohio-1883, at ¶ 20, 28.

⁵⁴See *Alpha Benefits Agency, Inc.*, 134 Ohio App. 3d at 677-83. See also generally Civil Rule 26(C); *id.*, Staff Notes, Excerpts, Federal Rules Advisory Committee's Note, Federal Rule 26, 1967 Preliminary Draft.

Defendants were to have discharged their burden of demonstrating that such information constitutes a trade secret, Plaintiff's need for the information would outweigh the potential harm to the TFP, particularly in light of the parties' Stipulated Protective Order and the "Confidential Information-Attorneys' Eyes Only" designation available thereunder for such information.⁵⁵

Accordingly, for all of the reasons set forth herein, the Court hereby DENIES Defendants' Motions to Quash Subpoenas Duces Tecum and Requests for Protective Order to the extent set forth herein. However, the Court finds that, under the circumstances, any award of expenses under Civil Rule 37(A)(4) with respect to such motions would be unjust.⁵⁶

JOURNAL ENTRY

It is **ORDERED** that:

1) Defendants/Counter-Plaintiffs Thomas F. Pounds, The Toledo Free Press LLC, and Michael S. Miller's December 5, 2012, Motion for a Protective Order or an In Camera Review is hereby **DENIED** to the extent set forth herein;

2) Plaintiff/Counter-Defendant Block Communications, Inc. d/b/a The Toledo Blade Company's July 10, 2013, Motion to Compel Discovery Responses is hereby **GRANTED** to the extent set forth herein; and

3) Defendants/Counter-Plaintiffs Thomas F. Pounds, The Toledo Free Press LLC, and Michael S. Miller's May 10, 2013, and June 19, 2013, Motions to Quash Subpoenas Duces Tecum

⁵⁵See *Alpha Benefits Agency, Inc.*, 134 Ohio App. 3d at 677-83. See also generally Civil Rule 26(C); *id.*, Staff Notes, Excerpts, Federal Rules Advisory Committee's Note, Federal Rule 26, 1967 Preliminary Draft.

⁵⁶See Civ. R. 26(C) (providing that "[t]he provisions of Civ.R. 37(A)(4) apply to the award of expenses incurred in relation to" a motion for a protective order).

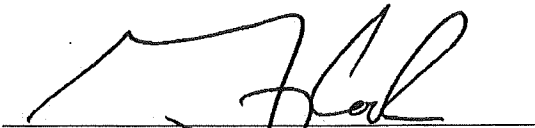
and Requests for Protective Order are hereby **DENIED** to the extent set forth herein.

It is further **ORDERED** that Defendants shall produce any and all of the requested documents within their possession, custody, or control within thirty (30) days of the filing of this Journal Entry.

In addition, there being no just reason for delay, this Journal Entry constitutes a final and appealable order.

SO ORDERED.

Dated: 9-6-13



Judge Gary G. Cook