

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 4285

RELATION INSURANCE, INC. and
RELATION INSURANCE
SERVICES OF NORTH CAROLINA,
INC.,

Plaintiffs,

v.

PILOT RISK MANAGEMENT
CONSULTING, LLC; PILOT
FINANCIAL BROKERAGE, INC.
d/b/a PILOT BENEFITS; KYLE
SMYTHE; ROBERT CAPPS;
LYNETTE KINNEY; EDWARD
MILES GURLEY; SEAN KELLY;
TYLER CROOKER; MICHELLE
LINTHICUM; LINDA MICHELLE
SNEED; TONI KING; and
JOHNATHAN LANCASTER,

Defendants.

**ORDER ON DEFENDANTS' BCR 10.9
SUBMISSION**

1. **THIS MATTER** is before the Court upon Defendants' 9 June 2023 submission under Business Court Rule ("BCR") 10.9 in the above-captioned matter.
2. Defendants emailed the Court on 9 June identifying several unresolved discovery disputes between the parties. Counsel for the parties subsequently notified the Court that they had resolved their disagreement as to all but two of the issues raised in Defendants' 9 June submission.
3. On 16 June 2023, the Court conducted a Webex conference (the "June 16 Conference") with counsel for all parties. The Court now enters this Order to memorialize its rulings during the June 16 Conference.

4. The first issue concerns Defendants' contention that the following interrogatory response by Plaintiffs is inadequate:

11. Describe and identify any and all alleged trade secrets allegedly misappropriated by each of the Defendants, and identify all documents, communications and electronic data related to such misappropriation.

ANSWER: Plaintiffs object to this interrogatory to the extent that it seeks to impose obligations upon Plaintiffs beyond those contemplated by the North Carolina Rules of Civil Procedure and/or the local rules of the Court, including to the extent it calls for legal conclusions. Plaintiffs object to this interrogatory to the extent that it seeks information or documents protected from disclosure by the attorney-client privilege or work-product doctrine. Plaintiffs do not intend to waive any such privileges by disclosing or producing documents or information. Plaintiffs object to any attempt to require them to undertake efforts to obtain responsive information in excess of the requirements of the North Carolina Rules of Civil Procedure. In providing this response, Plaintiffs have made a reasonable and good faith effort to locate responsive information and documents in their possession, custody, or control. This response is based upon information reasonably available to Plaintiffs and susceptible to retrieval through reasonable efforts. Plaintiffs object to this interrogatory because all of Defendants' misappropriation is not currently known to Plaintiffs. Plaintiffs further object to this interrogatory to the extent it asks for "all" such documents, communications, and electronic data. Without waiving the foregoing objections, Plaintiffs refer Defendants to the definition of Trade Secret provided in the Former Employees' employment agreements and pursuant to the federal Defend Trade Secrets Act and the North Carolina Trade Secrets Protection Act. Further, to the extent this interrogatory seeks identification of specific trade secrets beyond those identified in the Former Employees' employment agreements, the Complaint, the Motion for Preliminary Injunction, and exhibits to the same, Plaintiffs refer Defendants to the nonprivileged, relevant, responsive documents that have been produced. The trade secrets misappropriated by the Defendants include the documents that the Defendants took from Plaintiffs and/or emailed themselves prior to the end of their employment at Relation—namely those comprising a compilation of Plaintiffs'

information, including client information and pricing rates, and documents containing pricing and bidding formulas—such as “Customer List 2020.xlsx,” “JL Client Renewal List for TK Accts.xlsx,” detailed production reports, “FS-1 Codes.xls,” “Net rate calculations.xlsx,” and “Carrier Contacts List 7.28.2020.xlsx.”

5. It is well established that “[p]ursuant to Rules 26, 33, and 34 [of the North Carolina Rules of Civil Procedure], [parties] have an affirmative obligation to timely and properly respond to discovery requests served on their counsel[.]” *Lexington Hous. Auth. V. Gerald*, No. 19 CVS 1032 ¶ 12 (N.C. Super. Ct. June 5, 2020). “Answers to interrogatories must be responsive to the questions asked and forthcoming in all material respects.” G. Gray Wilson, 1 North Carolina Civil Procedure § 33-3.

6. Plaintiffs’ assertion that Defendants misappropriated trade secrets obtained during their employment with Relation lies at the heart of Plaintiffs’ claims in this action. As such, Interrogatory No. 11 is a proper attempt by Defendants to obtain discoverable information regarding the basis for this claim.

7. Plaintiffs’ answer to Interrogatory No. 11 is not fully responsive. After a plethora of objections, Plaintiffs simply refer Defendants to various documents and then list several categories of documents as examples of trade secrets allegedly misappropriated. The response, as presently worded, falls short of Plaintiff’s obligation to provide a full and complete response to this interrogatory. Defendants are entitled to have Plaintiffs provide them with a definitive list of all trade secrets that they believe Defendants have misappropriated along with an identification of all non-privileged documents evidencing such misappropriation. Moreover, the Court

notes that discovery in this case has been ongoing for almost an entire year, and Plaintiffs have had a full opportunity to ascertain this information.

8. Therefore, the Court, in its discretion, **ORDERS** that Plaintiffs shall supplement their response to Interrogatory 11 no later than **23 June 2023**. The supplemental response shall contain a clear and complete response to Interrogatory No. 11.

9. The second issue discussed at the June 16 Conference relates to Plaintiffs' previously stated intention to file a motion seeking an allocation of discovery costs in this case. In the 9 June submission, counsel for Defendants asserts that Plaintiffs' counsel has not yet provided him with full documentation relating to such costs. However, no present discovery dispute actually exists regarding this issue. As such, no ruling from the Court is necessary.

SO ORDERED, this the 19th day of June, 2023.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases