

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:19-cv-3268-CMA-KMT

JUANITA RAMOS, individually and derivatively on behalf of defendant WHOLE HEMP COMPANY LLC d/b/a FOLIUM BIOSCIENCES,

Plaintiff,

v.

WHOLE HEMP COMPANY LLC d/b/a FOLIUM BIOSCIENCES, FOLIUM EQUITY HOLDING LLC, KASHIF SHAN, and QUAN NGUYEN,

Defendants.

And

WHOLE HEMP COMPANY LLC d/b/a FOLIUM BIOSCIENCES, FOLIUM EQUITY HOLDING LLC, KASHIF SHAN, and QUAN NGUYEN,

Counterclaim-Plaintiffs,

v.

JUANITA RAMOS,

Counterclaim Defendant.

**PLAINTIFF JUANITA RAMOS'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS RESPONSIVE TO HER FIRST REQUESTS FOR PRODUCTION**

Plaintiff/Counterclaim-Defendant Juanita Ramos, by and through counsel, hereby moves pursuant to Federal Rules of Civil Procedure 26 and 34 to compel the production of documents responsive to her First Requests for Production. See July 22, 2020 Decl.

of David Olsky, Ex. 1 (the “Requests”). After the parties conferred over several months (described herein) and an informal conference with the Court, on June 29, 2020, Magistrate Judge Tafoya authorized Ramos to file this Motion.

PRELIMINARY STATEMENT

Through this Motion, Ramos seeks the production of documents that are responsive to Requests No. 7, 10,15 (as modified), 20 and 25. As set forth below, each Request seeks relevant documents that are not overly burdensome to produce.

Ramos also seeks an Order requiring that Defendants produce the documents responsive to all Requests on or before August 31, 2020. It has been five months since the Requests were first served and the Defendants have yet to make a substantial production, or provide a timetable on when they expect to complete production – even for documents they agreed to produce in March.

Defendants appear to be “slow walking” or avoiding production altogether. Remarkably, Defendants have produced responsive documents in related litigation, but have objected to counsel using those same documents in this litigation – and have failed to produce them here. The Court should grant the Motion and require swift production so that the case is not delayed further and Ramos further prejudiced.

I. SUMMARY OF RELEVANT ALLEGATIONS¹

Ramos brings claims on her own behalf and, for certain claims, derivatively on behalf of the members of Defendant Whole Hemp Company LLC d/b/a Folium

¹ Ramos summarizes here only the allegations from the First Amended Verified Complaint and the Defendants’ Answers, Affirmative Defenses, and Counterclaims that are relevant to the present discovery dispute.

Biosciences (“Folium”) against Defendant Kashif Shan (Folium’s CEO), and Quan Nguyen (Folium’s second highest ranking executive). Folium is a producer, manufacturer, and distributor of bulk cannabinoid extracts (“CBD”) derived from hemp. First Am. Verified Compl. ¶ 2.

Ramos was previously employed by Folium as a senior executive, with responsibilities for government relations. First Am. Verified Compl. ¶¶ 1, 3, 38-40. On or around July 28, 2017, she became a 1% member of the limited liability company through an equity grant as a reward for her work. First Am. Verified Compl. ¶¶ 41-42. She was promised distributions as a member, but received almost nothing. First Am. Verified Compl. ¶¶ 43, 53. On August 28, 2018, Ramos was terminated for her refusal to participate in Folium’s illegal conduct (which included planning the kidnapping and murder of a former employee), and threatened by Shan that Folium would retaliate if she did not keep quiet. First Am. Verified Compl. ¶¶ 54-57. Folium refused to issue her the equity she was granted in July 2017. First Am. Verified Compl. ¶ 58.

Ramos further alleges that Shan and Nguyen, in violation of the Federal RICO Act and Colorado Organized Crime Control Act (COCCA) and in breach of their fiduciary duties, have transported illegal hemp biomass (*i.e.*, biomass containing over the legal limit of 0.3% THC) across state lines, from which they extracted CBD products for distribution (First Am. Verified Compl. ¶¶ 6, 64-78); knowingly shipped CBD products with mislabeled ingredients through U.S. and international commerce (First Am. Verified Compl. ¶¶ 88-89); altered Certificates of Analysis (“COA”) to show that Folium’s CBD Oil and Isolates were essentially free of THC, when in fact they were not (First Am.

Verified Compl. ¶¶ 86-87); illegally shipped CBD Oil and Isolates to foreign countries, and knowingly prepared fraudulent certificates to foreign customers and governments that Folium's CBD Oil and Isolates met international standards when they did not (First Am. Verified Compl. ¶¶ 95-96); and operated a secret, unlicensed and unpermitted extracting facility in Rocky Ford, Colorado when their initial facility was red tagged by the Hazmat department of the Colorado Springs Fire Department (First Am. Verified Compl. ¶¶ 79-85).

Ramos further alleges that Shan and Nguyen defrauded investors, employees, the Internal Revenue Service, and members of Folium (including Ramos) by (among other things) diverting a substantial percentage of Folium's CBD products for personal sale, with the proceeds ending up in the bank accounts of Shan, Nguyen and their immediate relatives (First Am. Verified Compl. ¶¶ 97-105); changing numerous employees including Ramos, without notice or consent, from W-2 employment to independent contractors (and vice versa), even though their responsibilities did not change (First Am. Verified Compl. ¶¶ 106-108); keeping three sets of books and records so as to facilitate a fraud on members (including Ramos) (First Am. Verified Compl. ¶ 98); and distributing to themselves and family members millions of dollars in purported "distributions" that were not given to other members (such as Ramos) (First Am. Verified Compl. ¶ 102). Ramos further alleges that Shan and Nguyen have attempted to cover up their behavior through illegal surveillance of employees (including Ramos), and, at one point, seeking to kidnap and/or kill a former senior executive with whom they had a dispute. (First Am. Verified Compl. ¶¶ 109-116).

Folium has filed counterclaims against Ramos. Ramos contests the allegations in the Counterclaims – and looks forward to disproving them -- but they are relevant to the Requests. Attempting to turn Ramos’ allegations back on her, Folium alleges, among other things, that Ramos was terminated because she (not Shan and Nguyen) was in discussions with the former senior executive to murder Folium’s general counsel, she purportedly had discussions with a competitor, she improperly submitted expenses to be reimbursed, and recruited Folium personnel to be part of other joint ventures. *E.g.*, Counterclaims ¶¶ 2-4. Folium further asserts that Ramos is, at most a 0.25% member and that her membership was “involuntarily withdrawn” when she was terminated. *E.g.*, Counterclaims ¶¶ 137-141.

II. The Court Should Compel Defendants to Produce Their Documents by August 31, 2020.

The Requests were served on February 18, 2020 (*i.e.*, four days after the parties exchanged initial disclosures). Defendants served written objections and responses on March 19, 2020. Olsky Decl., Ex. 2 (“Responses”). Despite having received the Requests more than five months ago and despite serving written responses about four months ago, Defendants have produced almost nothing.

The delay makes little sense. By April 2, 2020 – almost four months ago -- the Parties had agreed on all but a few of the email terms and custodians to be searched. Olsky Decl. ¶ 4 & Ex. 3 (J. Bailey/D. Olsky 4/2/2020 email string concerning custodians and terms). Counsel for each party had a call on April 6, 2020 in which they went over the areas of disagreement and possible resolutions. Olsky Decl. ¶ 5. In a nutshell, the result was that (a) with respect to email, the parties agreed on all but three of the terms

and three of the custodians to be searched; and (b) Defendants' counsel pledged to follow up on his clients' response to the Requests, including those that are the subject of the Motion. Olsky Decl. ¶ 5 & Ex. 4 (J. Bailey 4/14/2014 email to D. Olsky). On May 5, 2020, at Defendants' counsel's request, Plaintiff's counsel provided a suggested protocol for the formatting of ESI productions in this case (such as the use of TIFF or PDF files, bates numbering of attachments, the format of redacted documents, and similar mechanical issues). Olsky Decl. ¶ 7 & Ex. 5.

On May 15, 2020 – more than a month after the parties had agreed on the vast majority of search terms and custodians – Plaintiff's counsel asked for the status of the production. Olsky Decl. ¶ 8 & Ex. 6. In follow-up emails and a call on May 18, 2020, Defendants' counsel said that he planned to start a rolling production in June. Olsky Decl. ¶ 8 & Ex. 6 (J. Bailey 5/18/20 email to D. Olsky). There were further emails about the ESI protocol for productions, which the parties finalized around June 25, 2020. Olsky Decl. ¶ 9.

Notwithstanding that the email search terms and custodians have basically been set for almost four months and the ESI protocol was finalized a month ago, Defendants have produced to date only: (1) seven (7) audio files; (2) an electronic copy of Ramos' personnel file, and (3) and an electronic scan of a binder of Certificates of Analysis stored at the company. Olsky Decl. ¶ 10. Defendants have yet to commit to producing any documents by any date, or a date for completion. Notably, no documents have been forthcoming from the personal files, emails, or texts of Defendants Shan or Nguyen.

Defendants have not produced relevant documents in this litigation that they produced in related state court litigations, *Takio v. Whole Hemp Company LLC* and *Young v. Whole Hemp Company LLC*. Olsky Decl. ¶ 11. Relevant documents in those litigations include documents containing information about distributions to Folium's members, financial statements, and emails concerning the acquisition by Folium Equity Holding, among others. Olsky Decl. ¶ 11.

Plaintiffs in those cases are represented by the same counsel as in this litigation, and thus Ramos counsel has some (but hardly all) responsive documents in its possession. Olsky Decl. ¶ 12. However, citing protective orders, Defendants have objected to Ramos counsel using relevant documents produced in those litigations in the present litigation. Olsky Decl. ¶ 13.

Defendants have argued that they need time to finish review of email. While that is typically understandable, it makes no sense that the Defendants have not been able to produce a single email in the nearly four months since the parties had largely agreed on search terms and custodians. Defendants have already produced responsive documents in related litigation but are refusing, in a bit of gamesmanship, to allow them to be used here.

Further, it was not until the informal discovery conference on June 29, 2020, that the Defendants attempted to look at the few responsive documents that they have produced to date. There are many other non-email responsive documents in their possession, such as accounting records.

Defendants have also argued that they could not begin production because of the delay in finalizing the ESI protocol. The ESI protocol covers only mechanical issues involving the format of production, not the substantive searches. If Defendants had been diligent in responding to the Requests, they would have undertaken the collection and search of documents regardless of whether the particular format of the final production (such as whether to produce in TIFF or PDF) had been agreed among the parties, and then produced as soon as the protocol was completed last month. They did not do so.

It must be noted that while Defendants have delayed, Ramos has received documents from third parties pursuant to subpoena indicating that Defendants likely have a significant number of documents that are responsive. Ramos subpoenaed 5 Star Bank, which maintains certain bank accounts for Defendants. It produced documents showing that Shan and Nguyen opened an account for a new entity called “Folium Biosciences LLC” (as opposed to Whole Hemp Company LLC d/b/a Folium Biosciences). Olsky Decl. ¶ 14-15 & Ex. 7. Shan and Nguyen submitted to the bank an operating agreement for “Folium Biosciences LLC” that is a copy of the agreement for Whole Hemp Company LLC attached to the Counterclaims, but with a different name for the company. Olsky Decl. ¶ 14-15 & Ex. 7. It also reflects that Ramos is a 1% member of this entity, although Ramos was unaware of being a member of that limited liability company. Defendants have produced no documents concerning this entity or how Ramos purportedly became a 1% member of “Folium Biosciences, LLC.”

The bank records appear to reflect that in April 2019, Quan Nguyen received over \$4.5 million in funds from Folium investors directly into his personal account, which

he subsequently transferred to Shan, to other insiders and to another personal account. Olsky Decl. ¶ 16 & Ex. 8. Defendants have produced no documents concerning these financial transactions, even though the Individual Defendants Shan and Nguyen must have such documents in their possession, custody or control.

Defendants may not avoid the requirements of litigation by either delaying or otherwise refusing to produce documents responsive to the Requests. Defendants should thus be required to finish production no later than August 31, 2020.

III. The Court Should Compel Defendants to Produce Documents Responsive to Request #7.

Request #7 is to “Produce all Documents related to Hemp Purchases from April 1, 2017 to the Present, including without limitation any Hemp Purchases in Colorado or Kentucky, the transportation of Hemp Biomass to Colorado, and the subsequent extraction.”

Ramos defines “Hemp Purchases” in the Requests as “the purchase of Hemp Biomass from a third party, whether directly or through brokers, independent farmers, and otherwise.” Requests at Definition #20. “Hemp Biomass” is defined as “the remaining organic material (stalks & leaves) after the flowers and/or seeds have been harvested from the plant.” Requests at Definition #21.

Defendants have raised two primary objections to producing any documents responsive to this Request: relevance, and the scope of the Request. Defendants’ counsel has indicated that his clients might reconsider their initial refusal to produce responsive documents (but no response has yet been provided).

The objections are meritless. To be clear, the Requests do not require that Folium produce every document relating to extracted hemp. Folium asserts that it is “the largest known vertically-integrated producer, manufacturer, and global distributor of hemp oil in North America.” Counterclaims ¶ 10 (emphasis supplied). That is, Folium asserts that it grows its own hemp and then extracts CBD, and sells oil, isolate and finished products across the United States.

The Request only seeks documents relating to the purchase of hemp from third parties. It is our understanding, from documents that Folium has produced in related proceedings, that Folium has only made a handful of such purchases.

These hemp purchases are highly relevant to Ramos’ RICO and COCCA claims, and in particular her allegations that Defendants have been obtaining illegal hemp biomass from third parties, transporting them across state lines, and then extracting the CBD from that biomass. See First Am. Verified Compl. ¶¶ 64-75. See Fed. R. Civ. P. 26(b)(1) (courts must consider “the importance of the issues at stake in the action” in determining discoverability of documents). The Court should compel their production.

IV. The Court Should Compel Defendants to Produce Documents Responsive to Request #10.

Request #10 seeks “[A]ll Documents related to the activities, operations, and/or business that occurred at 20094 Highway 50, Rocky Ford, Colorado 81067, from April 1, 2017 to the present.” Ramos asked that the term “Rocky Ford” be used as a search term in email from relevant custodians; Defendants refused.

Defendants have objected to producing any documents responsive to this Request on the basis of relevancy and undue burden. The documents are relevant to

Ramos' RICO, COCCA, and breach of fiduciary duty allegations, which allege as a predicate act that Defendants have been running an unlicensed extraction facility in Rocky Ford. See First Am. Verified Compl. ¶¶ 79-85. Those documents are relevant.

With respect to burden, Defendants argue that there are purportedly 17,000 emails containing the search term "Rocky Ford" in the custodians selected by the parties. This is not burdensome given that the operation of the Rocky Ford facility is one of the key issues in the case. See Fed. R. Civ. P. 26(b)(1) (courts must consider "the importance of the issues at stake in the action" in determining discoverability of documents). Further, it is unclear whether the term "Rocky Ford" is found in emails that contain search terms that Defendants have already agreed to produce. And there are many ways to review 17,000 emails without undue burden, such as by using a discovery vendor, predictive coding, deduplication and spam filters. The Court also entered a Rule 502(d) Order that allows the Defendants to do as much or as little privilege review as they consider appropriate without waiving that privilege. The Court should compel their production.

V. The Court Should Compel Documents Responsive to Request #15 (as modified).

Request No. 15 seeks "all documents related to customer complaints regarding the quality of the products, including the product's THC levels and the product's label, from April 2017 to the present." After Defendants objected to this Request as overly broad, Ramos modified this Request to seek documents related to customer complaints specifically about the THC levels in the CBD products sold by Folium.

As modified, the documents sought are relevant to Ramos' allegations that Folium (at the direction of Shan and Nguyen) have been doctoring COAs to reflect lower THC levels than is in their products. First Am. Verified Compl. ¶¶ 86-87. The doctoring of COAs to customers is a predicate act for Ramos' RICO, COCCA, and breach of fiduciary duty claims, *i.e.*, mail and wire fraud. *Id.* These documents are relevant and the Request is not burdensome as modified. The documents should be produced.

VI. The Court Should Compel Documents Responsive to Request #20.

Request No. 20 seeks the production of "all Documents related to the changing of the tax treatment of Folium's employees from 1099 to W-2 or from W-2 to 1099, from January 1, 2017 to the present." These documents are relevant to the allegations that Shan and Nguyen have engaged in fraud on the IRS and their employees by changing employees' status from W-2 to 1099 (and vice versa) without notice and without changing those employees' job responsibilities, so Folium does not have to pay their employees' unemployment taxes. First Am. Verified Compl. ¶¶ 106-08. Ramos was one of the employees affected by this action. First Am. Verified Compl. ¶ 108.

Defendants have refused to produce any documents. Ramos sought a list of employees that were converted from W-2 to 1099, but Defendants claimed that they did not have a list. It has recently been disclosed by the SBA, however, that Folium received a loan under the Paycheck Protection Program ("PPP"). To obtain a loan under the SBA, an applicant must provide its lender with supporting documentation in which it lists the W-2 and 1099 employees for at least 2019, which is then used to calculate the loan amount. See, e.g., <https://about.bankofamerica.com/promo/assistance/faqs/small->

[business-paycheck-protection-program#Preparing](#). At the least, the PPP loan application and the documents supporting that application will be responsive and should be produced. This application should also be produced because it is responsive to Requests to which Defendants have not objected. See, e.g., Request No. 17.

Ramos also seeks to compel Folium to search the emails of agreed custodians that contain both “1099” and “W-2.” Defendants have objected on the basis of burden because there are 10,000 hits on these specific terms. This is not burdensome given that the fraud on the IRS is one of the predicate acts for her RICO, Fraud, and Breach of Fiduciary Duty claims. See Fed. R. Civ. P. 26(b)(1) (courts must consider “the importance of the issues at stake in the action” in determining discoverability of documents). Further, Defendants have not disclosed whether the emails containing these search terms also contain other search terms that they have already agreed to produce. From counsel’s experience, 10,000 emails is not overly burdensome to review and produce, particularly if counsel uses discovery vendors, deduplication, spam filters, and predictive coding. The Court should compel production of responsive documents.

VII. The Court Should Compel Documents Responsive to Request #25.

Request #25 seeks the production of “all Documents relating to Australis Capital’s decision not to proceed with the reverse merger with Folium, including documents or information produced in due diligence.”

On December 11, 2019, Australis Capital (“Australis”) and Folium announced a reverse merger whereby Australis would purchase the outstanding equity of Folium that it did not already own, and Folium members would receive publicly-traded shares of

Australis. Olsky Decl., Ex. 9; Counterclaims ¶ 24. The reverse merger did not close. Counterclaims ¶ 24. On January 17, 2020, Australis announced that it terminated its Chief Financial Officer, Mark Carlotti. Olsky Decl. Ex. 10. On February 18, 2020, Australis announced that it had terminated the reverse merger, stating that Australis “recently discovered new relevant information with regard to Folium and, on that basis, AUSA has decided to not proceed with the merger.” Olsky Decl. Ex.11.

Defendants have objected to this Request on the basis of relevance. This objection is also without merit. Documents concerning the Australis decision to pull out of the merger are central to Ramos’ claim and the Counterclaims filed against her. Ramos has alleged that Defendants were engaged in an accounting fraud and diverting tens of millions of dollars to themselves at the expense of other members. First Am. Verified Compl. ¶¶ 97 - 108. Australis appears to have identified information consistent with Ramos’ allegations. Defendants have produced material in a related litigation providing further information about the relevance of Australis’ termination of the merger, but have objected to Ramos using the evidence in this motion. Olsky Decl. ¶ 20.

Further, the collapse of the Australis merger features prominently in the Counterclaims. Defendants blame Ramos for the failed merger, alleging “upon information and belief, partially because of Ramos’ continued hostile actions towards Defendants, including the widely-disseminated baseless allegations contained in her original Complaint and Amended Complaint, Australis pulled out of the planned merger” Counterclaims ¶ 24. This allegation appears to be a major component of the \$19 million in damages claimed against Ramos. See, e.g., Counterclaims ¶ 114 (seeking

\$19 million for “the loss of business suffered as a result of Ramos’ false allegations against the company, and the diminution in value of Folium and Folium Equity as going concerns as a result of Ramos’ false allegations”).

The documents responsive to this Request should thus be produced, including without limitation the due diligence provided by Folium to Australis and Australis’ communications with Folium concerning the merger. Ramos needs them to prosecute her claims and to defend herself from Defendants’ specious Counterclaims.

CONCLUSION

For the reasons stated herein, the Court should grant the Motion, compel the production of documents responsive to Requests 7, 10, 15 (as modified), 20 and 25, and set the deadline for production of all responsive documents as August 31, 2020.

Dated this 23rd day of July, 2020.

Respectfully submitted,

FORTIS LAW PARTNERS, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2020, I electronically filed the foregoing **PLAINTIFF JUANITA RAMOS'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO HER FIRST REQUESTS FOR PRODUCTION** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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