

**From:** Catherine McEwen  
**To:** RulesCommittee Secretary  
**Cc:** Scott Myers; Dennis Dow  
**Subject:** Suggestions for amendment to Fed. R. Bankr. P. 9016 (and possibly Fed. R. Civ. P. 45) regarding method of service of subpoena  
**Date:** Tuesday, July 12, 2022 3:11:52 PM

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Rules at issue:

1. Fed. R. Bankr. P. 9016 reads:

Rule 9016. Subpoena

Rule 45 F.R.Civ.P. applies in cases under the Code.

2. Fed. R. Civ. P. 45 reads, in part:

(b) Service.

(1) *By Whom and How; Tendering Fees.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

There is a split of authority on what “delivering” means in Rule 45(b)(1). Some courts require personal service. Some courts hold service by U.S. Mail or other means is okay. See, e.g., a couple examples of the latter from my judicial district: [SEC v. Rex Venture Group, LLC, 2013 U.S. Dist. LEXIS 44564](#); [Codrington v. Anheuser-Busch, Inc., 1999 U.S. Dist. LEXIS 19505](#). Copies of these cases are attached.

I propose that, at least in bankruptcy cases and adversary proceedings (if not for all purposes under Rule 45), service by U.S. Mail or overnight courier be included as a permissible means of service of a subpoena.

Support for the relaxed service rule for subpoenas in bankruptcy cases and adversary proceedings may be found in the relaxed service option under Fed. R. Bankr. P. 7004, which permits service of initial process and the complaint by mail. Arguably, the consequences of a failure of mail service of a summons is more severe than a failure of mail service of a mere subpoena (which can be cured easily with another means of service if a motion to compel is filed). With today's sometimes unreliable mail service, service of initial process might not hit its mark. And if that mail doesn't hit its mark, the defendant might suffer a default judgment and ensuing post-judgment collection activities. Juxtaposed against Rule 7004, then, it makes little sense to require personal service of a subpoena. (And let's not forget Fed. R. Bankr. P. 1001's mandate to ensure the inexpensive determination of disputes.)

Suggested revision to Rule 9016:

Rule 45 F.R.Civ.P. applies in cases under the Code. Delivery of the subpoena may be made in any manner permitted by Rule 7004.

Some related Rules Committee history: The Civil Rules Committee considered the issue of service of subpoenas under Rule 45 in November 2016 under 16-CV-B. 16-CV-B is flagged on [uscourts.gov](http://uscourts.gov) as retained on the agenda for further research. See discussion at Agenda Item 5(c) – page 187 of the agenda book: [https://www.uscourts.gov/sites/default/files/2016-11-civil-agenda\\_book\\_0.pdf](https://www.uscourts.gov/sites/default/files/2016-11-civil-agenda_book_0.pdf).

If submission of my suggestion can be considered separately from an amendment to Rule 45, I hope that it will.

Thank you for your consideration.

Catherine Peek McEwen  
U.S. Bankruptcy Judge  
Middle District of Florida  
801 N. Florida Avenue, Chamber 8B  
Tampa, FL 33602

2013 WL 1278088

Only the Westlaw citation is currently available.  
United States District Court, M.D. Florida,  
Ocala Division.

SECURITIES and EXCHANGE  
COMMISSION, Plaintiff,  
v.

REX VENTURE GROUP, LLC, d/b/a  
ZeekRewards.com, and Paul Burks, Defendant.

No. 5:13-MC-004-WTH-PRL.

March 28, 2013.

**Attorneys and Law Firms**

Nathaniel Woods, Ocala, FL, pro se.

Jeffrey S. York, Melissa W. Nelson, McGuire Woods, LLP,  
Jacksonville, FL, for Defendant.

**ORDER**

PHILIP R. LAMMENS, United States Magistrate Judge.

\*1 This cause is before the Court on Rex Venture Group, LLC's Court-Appointed Receiver's Motion to Compel Non-Party Nathaniel Woods' Compliance with Rule 45 Subpoena (Doc. 1), filed on January 25, 2013. Pursuant to Rule 45(c)(2)(B)(i), Fed.R.Civ.P., Rex Venture asks the Court to compel non-party Mr. Nathaniel Woods' compliance with the Receivers' Rule 45 subpoena and require Mr. Woods to produce the documents listed in the subpoena.

**I. BACKGROUND**

The issues in the instant Motion arise out of an action pending in the United States District Court for the Western District of North Carolina ("N.C. Case").<sup>1</sup> In the N.C. Case, the Securities and Exchange Commission ("SEC") alleges that Paul Burks used Rex Venture Group, LLC to operate an illegal Ponzi and pyramid scheme, which allegedly took more than \$600 million from hundreds of thousands of individuals in dozens of countries. (Doc. 1, ¶ 1). On August 17, 2012, the District Judge in the N.C. Case appointed a Temporary Receiver and gave him the power to "issue subpoenas for

documents and testimony consistent with the Federal Rules of Civil Procedure[.]" (Doc. 1, ¶ 2, 4 & Exh. 1, ¶ 7(H)). Subsequently, on October 30, 2012, the Receiver issued to Mr. Woods a Rule 45 subpoena for production of documents (from the Western District of North Carolina) (Doc. 1, ¶ 6). In response, Mr. Woods filed a Motion to Quash the Subpoena (Doc. 1, ¶ 7 & Exh. 2), arguing various procedural and jurisdictional issues; as such, he did not produce any documents. (Doc. 1, ¶ 7).

Thereafter, on November 27, 2012, the Receiver issued a new subpoena from the United States District Court for the Middle District of Florida, wherein the Receiver narrowed the scope of the requested documents. (Doc. 1, ¶ 8 & Exh. 3). The Receiver served Mr. Woods with the subpoena (issued by this Court) via certified mail and federal express. (Doc. 1, ¶ 10 & Exh. 4). Subsequently, on January 16, 2013, the District Judge in the N.C. Case denied Mr. Woods' Motion to Quash the October 30, 2012 subpoena as moot because the Receiver "re-issued [the subpoena] through different procedures and [the Receiver is now] requiring a different scope of documents to be produced." (Doc. 1, ¶ 11 & Exh. 7).

Further, the record before this Court demonstrates that the Receiver's counsel has contacted Mr. Woods in attempts to obtain the subpoenaed documents without the Court's intervention to no avail. (See e.g., Doc. 1, Exh. 8). Accordingly, the instant Motion to Compel (Doc. 1) was filed in accordance with Rule 45, Fed.R.Civ.P.

Upon initial review of Rex Venture's Motion (Doc. 1), the Court had concerns with whether Mr. Woods was properly served with the subpoena; accordingly, the Court entered an Order to Show (Doc. 3); to which Rex Venture responded. (Doc. 5). In addition, Rex Venture notified the Court that Mr. Woods had filed what appeared to be an objection to Rex Venture's Motion to Compel, but had done so in a different case.<sup>2</sup> (Doc. 2). Based on this Notice, the Court ordered Mr. Woods to notify the Court whether the document titled "Objection to Receiver's Motion to Compel Nathaniel Woods, a Non-Party" was intended to be filed in this action in response to Rex Venture's Motion to Compel. (Doc. 6). In response, Mr. Woods filed a Motion for Clarification (Doc. 7) and his Objection to Receiver's Motion to Compel (Doc. 8). Finally, the Court granted Rex Venture's leave to file a reply, which it has done. (Docs. 10 & 12). This matter is now ripe for review.

## II. DISCUSSION

### *Mr. Woods' Motion for Clarification*

\*2 As an initial matter, Mr. Woods seeks clarification as to where he “should submit pleadings and motions as well as clarification as to the case number which is to be used in the matter.” (Doc. 7, at 4). Mr. Woods represents that he was served with a copy of Rex Venture's Motion to Compel (Doc. 1) without a case number, and thus, he did not know where to file his objection. (Doc. 7). As such, Mr. Woods submits that he filed his Objection in the N.C. Case.

This Court has jurisdiction over enforcing the Rule 45 subpoena issued by this Court, which is dated November 27, 2012. *See Great American Ins. Co. v. General Contractors & Const. Mgmt., Inc.*, 2008 WL 4372884, at \*1 (S.D.Fla. Sept.24, 2008) (finding that “The Advisory Committee note to the 1991 Amendment to Fed.R.Civ.P. 45(a)(2) states that the court in whose name the subpoena issued is responsible for its enforcement.”). Accordingly, Mr. Woods' Motion for Clarification (Doc. 7) is granted to the extent that this Court has jurisdiction over enforcing the subpoena issued by this Court (dated November 27, 2012), which is attached as Exhibit 3 to Rex Venture's Motion to Compel (Doc. 1). To avoid any confusion, the Court has attached to this Order (as “Exhibit A”) the subpoena subject to this Order and the Court's jurisdiction. The case number for this action is indicated on the first page of this Order. Thus, any documents that Mr. Woods would like to file pertaining to the Rule 45 subpoena issued by this Court and dated November 27, 2012 (“Exhibit A”), should be filed in this action.

### *Service of the Subpoena*

Next, the Court must address its concerns (*see doc. 3*) regarding whether Mr. Woods was properly served with the Rule 45 subpoena issued by this Court. Rex Venture represents that it served Mr. Woods with this subpoena via certified mail and federal express, and argues that this service is proper under Rule 45. *See TracFone Wireless, Inc. v. Does*, 2011 WL 4711458, at \*4 (S.D.Fla. Oct.4, 2011) (finding that “service of a Rule 45 subpoena need not be effectuated by personal delivery on the person being subpoenaed.”); *In re Falcon Air Exp., Inc.*, 2008 WL 2038799, at \*4 (Bkrtcy.S.D.Fla. May 8, 2008) (finding that a Rule 45 subpoena does not require personal service, rather service is sufficient where it is “reasonably calculated to insure receipt of the subpoena by the witness.”); *Codrington*

*v. Anheuser-Busch, Inc.*, 1999 WL 1043861, at \*1–2 (M.D.Fla. Oct.15, 1999) (finding that “nothing in the plain language of the Rule requires personal service”).

It does not appear the Eleventh Circuit has addressed this particular issue and the Court finds these cases persuasive, especially since it is clear that Mr. Woods received the subpoena both by federal express and certified mail. Indeed, Mr. Woods specifically states that he “received [two subpoenas] sequentially on November 28th and 29th, 2012, via FedEx and [c]ertified mail.” (Doc. 8, at 2 & 11). Accordingly, the purpose of service—i.e., that Mr. Woods was put on notice—has been effectuated.

### *Mr. Woods' Compliance with the Subpoena*

\*3 Rule 45(c) (2)(B), Fed.R.Civ.P., provides (in relevant part) that, in the event the person upon whom a subpoena is served objects, the party serving the subpoena may, at any time, file a motion to compel production. Here, the Receiver has done just that. On November 27, 2012, this Court issued a subpoena (*see* Doc. 1, Exh. 3), which Mr. Woods acknowledges he received on November 28, 2012 and November 29, 2012 by federal express and certified mail (*see* Doc. 1, Exh. 6(b) & Doc. 8, at p. 11). Mr. Woods then objected to this subpoena. (*See* Doc. 1, Exh. 6(b) & Doc. 8, at pp. 11–14). Notably, the Receiver disclosed Mr. Woods' objection to the Court.<sup>3</sup> (*See* Doc. 1, at ¶ 12 & Exh. 6). Subsequently, on December 19, 2012, the Receiver's counsel emailed Mr. Woods to discuss any objections that he may have (Doc. 1, Exh. 1), to which Mr. Woods responded (Doc. 1, Exh. 9). The Court will now address Mr. Woods' objections. (Doc. 8).

Mr. Woods objects contending that he has received three subpoenas, which are redundant and serve as harassment. The Court disagrees. As a point of clarification, the subpoena issued on October 30, 2012, in the N.C. Case was found moot because the Receiver “re-issued [the subpoena] through different procedures ....” (*See* Doc. 1, ¶ 11 & Exh. 7). The subpoena issued by this Court, which is dated November 27, 2012, and located in the record at Doc. 1, Exh. 3, is the subpoena at issue here. It is clear from the record that this subpoena (Doc. 1, Exh. 3) was merely provided to Mr. Woods both by certified mail and federal express to ensure his receipt of it.

Mr. Woods also argues that he did not receive prior notice of the subpoena as required by Rule 45. Rule 45(b)(1) requires prior notice to each party “[i]f the subpoena commands the

production of documents, electronically stored information, or tangible things or the inspection of premises before trial ....” Here, Mr. Woods is *not* a party. Accordingly, Rule 45(b)(1) does not contemplate that he should get prior notice.

Mr. Woods' other arguments include that the Receiver's requests are overly broad, irrelevant, create an undue burden and expense, that the Receiver already has the information, and that some of the information is privileged. (Doc. 8).

At the outset it is important to note that the scope of discovery is broad “in order to provide parties with information essential to the proper litigation of all relevant facts, to eliminate surprise and to promote settlement.” *Coker v. Duke & Co., Inc.*, 177 F.R.D. 682, 685 (M.D.Ala.1998). The Federal Rules of Civil Procedure “strongly favor full discovery whenever possible.” *Farnsworth v. Proctor & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985). Federal Rule of Civil Procedure 26(b)(1) allows parties to “obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.” Relevance is “construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978). A discovery request “should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action.” *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296 (E.D.Pa.1980); *see also* *Deitchman v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556 (7th Cir.1984).

\*4 Objections to discovery must be “plain enough and specific enough so that the court can understand in what way the [discovery is] alleged to be objectionable.” *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1559 (11th Cir.1985) (quoting *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir.1981)). Objections to discovery on the grounds that it is over broad and not relevant are not sufficient, the objecting party should state why the discovery is overly broad or not relevant. *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir.1982).

Mr. Woods' objections to the Receiver's requests 1, 2, and 4–10, are similar, so the Court will address them together. (Doc. 8, at 8–9, 12–14). Specifically, Mr. Woods suggests that these requests are “overly broad” and create an “undue

burden” because he does not have any information and that the Receiver already has this information. The Court overrules Mr. Woods' objections. The Receiver's requests all appear to be aimed at ascertaining Mr. Woods' involvement with Rex Venture, which seems to be a relevant issue in the N.C. Case. To the extent that Mr. Woods has information in his possession pertaining to these requests, Mr. Woods *must* produce such information. To the extent that Mr. Woods does not have information, he *must* respond to the Receiver's subpoena and notify the Receiver whether he *ever* had the information, provide a description of the information, and explain what happened to the information.

Mr. Woods objects to the Receiver's request 3 and contends that the Receiver has this information because the Receiver has called and emailed him.<sup>4</sup> (Doc. 8, at 8 & 12). The Court overrules Mr. Woods' objections. Simply because the Receiver has emailed and called Mr. Woods does not mean that the Receiver has the information that it seeks.<sup>5</sup> Mr. Woods *must* provide the Receiver with information responsive to this request. At this time, however, Mr. Woods is not required to disclose any of his passwords. If the Receiver still seeks Mr. Woods' passwords, the Receiver *shall* file a supplemental brief with this Court within **twenty-one (21) of the date of this Order** providing legal authority which would authorize the Court to compel Mr. Woods to disclose his passwords.

Mr. Woods objects to the Receiver's requests 11–13, contending that these requests are irrelevant. (Doc. 8, at 9 & 14). The Court disagrees and overrules Mr. Woods' objections. The Receiver's requests all appear to be aimed at ascertaining Mr. Woods involvement with Rex Venture, which seems to be a relevant issue in the N.C. Case. Accordingly, Mr. Woods shall produce documents and other information responsive to these requests. Lastly, Mr. Woods contends that the documents responsive to the Receiver's request 12–13 are privileged. (Doc. 8, at 4). Due to the nature of the case, the Court disagrees, overrules Mr. Woods' objection, and requires Mr. Woods to provide the requested information to the Receiver.

#### *Attorney's Fees*

\*5 Finally, Rex Venture seeks “the Receiver's attorneys' fees incurred in preparing, filing[,] and pursuing this Motion be taxed to Mr. Woods ....” (Doc. 1, at 5–6). However, Rex Venture is not entitled to such an award. “Although Rule 45(c) (2)(B)(i) authorizes the serving party to ‘move the issuing

court for an order compelling production or inspection,' there is no provision in Rule 45 for an award of expenses for bringing such a motion." See *Bailey Industries, Inc. v. CLJP, Inc.*, 270 F.R.D. 662, 672 (N.D.Fla.2010) (citing Fed.R.Civ.P. 45). In addition, although Rule 37(a)(5)(A), authorizes an award of "the movant's reasonable expenses incurred in making [a] motion [to compel], including attorney's fees," courts in this circuit have held that Rule 37(a) "does not appear to govern motions to compel production of documents made pursuant to Rule 45." See *id.*; see also *Kona Springs Water Distrib., Ltd. v. World Triathlon Corp.*, 2006 WL 905517, at \*2 (M.D.Fla. Apr.7, 2006) (court granted in part and denied in part motion to compel compliance with subpoena under Rule 45 and denied motion for sanctions, finding "to the extent that Defendant seeks sanctions under Rule 37, ... the rule [is] inapposite") (citations omitted). Accordingly, Rex Venture's request for fees is due to be denied.

III. CONCLUSION

In light of the foregoing, Mr. Woods' Motion for the extent set forth herein. Rex Venture's Motion to Compel (Doc. and DENIED IN PART. The Motion is granted to the extent ordered to comply with the subpoena issued by the United States District of Florida ("Exhibit A") on or before April 11, 2013, to the the Motion is denied to the extent that Rex Venture seeks fees. The copy of this Order to Mr. Nathaniel Woods at 216 SW 11th Avenue, Ocala, Florida 34471.

IT IS SO ORDERED.

DONE and ORDERED.

AD 202 (Rev. 06/08) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

**UNITED STATES DISTRICT COURT**  
For the  
Middle District of Florida

**SECURITIES AND EXCHANGE COMMISSION**  
Plaintiff,  
v.  
**REX VENTURE GROUP, LLC, C/O  
ZEBEKREARNS.COM and PAUL BURKS**  
Defendant

Civil Action No. 13-142312-SCM  
Of the United States District Court, Middle District of Florida

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Nathaniel Woods

If Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronic data stored information, or objects, and permit their inspection, copying, testing, or sampling of the material.  
SEE EXHIBIT A

Place: <b>McGowan Woods, LLP 60 North Lacey Street, Suite 2500 Jacksonville, FL 32202-2821</b>	Date and Time: <b>12/14/2012 9:00 pm</b>
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If Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the responding party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(d), relating to your protection as a person subject to a subpoena, and Fed. R. Civ. P. 45(e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/27/2012

CLERK OF COURT  
OR *[Signature]*  
Signature of Clerk or Deputy Clerk (Scriber's Signature)

To the name, address, e-mail, and telephone number of the attorney representing you or other Respondent of Rex Venture Group, LLC (Respondent), send this subpoena, or the latest of requests for subpoena, to:  
McGowan Woods, LLP, 60 North Lacey Street, Suite 2500, Jacksonville, FL 32202; contact@mcgowanwoods.com; (904) 221-7691.



AD 202 (Rev. 06/08) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Proof of Service)

Civil Action No. 13-142312-SCM

**PROOF OF SERVICE**  
(This section should not be filed with the court unless required by Fed. R. Civ. P. 45)

This subpoena for service of production (not inspection) was served by me on (date) \_\_\_\_\_

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_ on (date) \_\_\_\_\_, or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was served on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
Scriber's Signature  
Printed name and title  
Scriber's address

Additional information regarding attempted service, etc.

AO 88B (Rev. 6/05) Subject to Public Oversight, Monitoring, or Disciplinary Proceedings as Provided in 5 C.F.R. 2635.504(a)

Federal Rules of Civil Procedure 45 (b), (c), and (d) (Effective 12/1/07)

- (c) Protecting a Person Subject to a Subpoena.
  - (1) *Overriding Likelihood of Harm or Expense Exception.* A party or attorney responsible for locating and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The hearing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party if attorney who fails to comply.
  - (2) *Concerned in Protecting Interests or Privacy Exception.*
    - (A) *Appearance Not Required.* A person encouraged to produce documents, electronically stored information, or tangible things, or to provide the location of production, need not appear in person at the place of production or inspection unless the court orders to appear for a deposition, hearing, or trial.
    - (B) *Objections.* A person encouraged to produce documents or tangible things or to search for or retrieve them may move to the party or attorney designated in the subpoena a written objection to inspecting, copying, taking or receiving any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objections must be served before the start of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
      - (i) At any time, an action to the compelled person, that serving party may move the hearing court for an order compelling production or production.
      - (ii) There shall be no required only as directed in the order, and the order shall protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.
    - (C) *Defining or Identifying if Subpoena.*
      - (i) *When Directed to the Party or Officer.* The hearing court must quickly to modify a subpoena that:
        - (A) fails to allow a reasonable time to comply;
        - (B) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly conducts business in person — except that, before the Rule 606(b)(2)(C) test, the person may be encouraged to attend a trial by traveling from any such place within the state where the trial is held;
        - (C) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
        - (D) requires a person to produce records.
      - (ii) *When Directed to a Third Party.* To protect a person subject to or affected by a subpoena, the hearing court may, on motion, quickly to modify the subpoena if it requires:
        - (A) disclosure of a trade secret or other confidential research, development, or commercial information;
        - (B) disclosure of an account or other financial records; or
        - (C) disclosure of specific communications by email or text messages that were not requested by a party; or
        - (D) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.
      - (iii) *Protective Conditions or an Alteration.* In the circumstances described in Rule 606(b)(2)(C), the court may, instead of modifying a subpoena, or the appearance or production under specified conditions if the serving party:
        - (A) files a motion to set aside the subpoena or extend the court to return to and without undue hardship; and
        - (B) certifies that the subpoenaed person will be reasonably compensated.
  - (d) *Defining in Responding to a Subpoena.*
    - (1) *Protecting Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information.
      - (A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must replace lost or destroyed documents to the extent possible in the form.
        - (i) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
        - (ii) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.
        - (iii) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the responding party shows good cause, including the limitations of Rule 606(b)(2)(C). The court may specify conditions for the discovery.
      - (B) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trade-secret information must:
        - (i) expressly make the claim; and
        - (ii) describe the nature of the withheld documents, communications, or tangible things in a way that, without revealing information that is privileged or protected, will enable the parties to assess the claim.
      - (C) *Information Produced in Response to a Subpoena is Subject to a Claim of Privilege or of Protection as Trade-Secret Information.* The person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly review, acquire, or disclose the specified information and may inform the court, in writing or by discovery, of the basis for the claim. If the court finds that the party took reasonable steps to protect the information if the party disclosed it before being notified, and may promptly proceed for information to the next step and for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
      - (D) *Discovery.* The hearing court may hold a protective hearing before being notified, this without adequate notice to the subpoenaed person. It shall be the duty of the subpoenaed person to preserve the information to be produced in a form that is not a copy of the original.

concealment of receivership property. Further, the Receiver was granted the power to issue subpoenas for documents and testimony in connection with those efforts. This subpoena and request for documents and things is issued pursuant to that great of authority.

**INSTRUCTIONS**

In responding to each of the following requests please provide all requested information in your possession, custody or control or within the possession, custody or control of your attorneys, representatives, or other agents. If requested documents or things are readily available to you or your attorneys, representatives or agents, but you contend that they are not within your possession, custody or control you should describe where the documents can be obtained if you are unwilling to produce them.

In the event you are unable to respond completely to any of these requests, you must respond to each to the fullest extent possible, specifying the reason or reasons for your inability to respond to the remainder of the request.

If you assert a privilege or otherwise decline to provide an answer on the basis of some other legal objection, then:

- (a) Identify and describe the document or communication in question, including its title, its general subject matter, its date, and its author;
- (b) describe the basis for the asserted privilege or objection;
- (c) identify every person to whom the document was sent, or every person present when the communication was made; and
- (d) identify the present custodian of the document, if any, and include sufficient facts for the court to make a full determination of whether the claim or objection is valid.

If you contend that any one or more of these requests is objectionable on the grounds of privilege, over breadth, vagueness or any similar ground, you are to respond to each such request as returned to conform with the objection.

Unless otherwise indicated in a specific interrogatory or request, the relevant time period for all requests is January 1, 2010 to the present.

**DEFINITIONS**

A. "You," "your," and "yourself" shall mean the individual or entity to whom the subpoena is issued, all entities controlled by that individual or entity and all other agents, attorneys, representatives and Persons acting or purporting to act on behalf or under the control of the individual or entity subpoenaed.

B. "RVG" shall mean Rex Venture Group, LLC; any businesses or business names under which it does business or are related to its business, including but not limited to ZeekRewards.com and Zeekler.com; and all entities it controls or in which it has an ownership interest, including but not limited to all subsidiaries, partnerships, and related or affiliated unincorporated entities, including business lines or businesses operated via internet websites.

C. "Person" or "persons" shall mean all natural persons and entities, including without limitation corporations, companies, partnerships, limited partnerships, joint ventures, trusts, estates, associations, public agencies, departments, bureaus, and boards.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

CIVIL ACTION NO. 3:12-cv-519 (Western District of North Carolina)

SECURITIES AND EXCHANGE COMMISSION,  
 Plaintiff,  
 vs.  
 REX VENTURE GROUP, LLC d/b/a ZEEKREWARDS.COM, and PAUL R. BURKS  
 Defendant.

**EXHIBIT A**

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

On August 17, 2012, the United States District Court for the Western District of North Carolina issued an Agreed Order in the matter of Securities and Exchange Commission against Rex Ventures Group, LLC d/b/a ZeekRewards.com and Paul Burks, (Civil Action No. 3:12 cv 519) appointing Ken Bell as the Receiver for and over the assets, rights, and all other interests of the estate of Rex Ventures Group, LLC, d/b/a ZeekRewards.com, any of its subsidiaries, and any businesses or business names under which it does business (the "Receivership Defendants"). In that Order the Court granted the Receiver the powers and duties to investigate, pursue and recover all potential claims and other assets of the receivership estate, recover and take into possession from third parties all receivership property and relevant records and prevent the dissipation or

D. In addition to bearing its customary and colloquial meaning, the word "document(s)" shall include all items subject to discovery pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, including any responsive electronic data and electronic mail, as well as the original files and or containers in which said "documents" are maintained and any and all drafts of responsive "documents."

E. "Communication" shall mean every manner or means of disclosure, transfer or exchange, and every disclosure, transfer, or exchange of information whether orally or face-to-face or by telephone, mail, electronic mail, personal delivery, document, computer transmission, interactive medium transmittal, or other means.

F. "Relating to" or "concerning" shall mean relating to, referring to, concerning, constituting, comprising, identifying, dealing with, containing, embodying, illustrating, reflecting, stating, commenting on, describing, discussing, responding to, supporting, evidencing, analyzing, or pertaining in any way to.

G. "Belonging to" shall mean owned by you, in your possession, or for your benefit, whether now or in the future.

DOCUMENTS REQUESTED

1. All documents constituting or relating to any communication involving or related to RVG.

2. All documents constituting or related to any communication to any affiliate, vendor, customer or client of RVG related to RVG.

3. Documents sufficient to show all user names, passwords, email addresses and accounts used by you in connection with RVG. (This request is not meant to include passwords to third party financial accounts used in connection with RVG; however,

documents sufficient to show the location and account number of such accounts should be included in your response).

4. All documents relating to your performing any work or giving any assistance, advice or counsel to RVG as an employee, independent contractor, vendor or agent of RVG.

5. All documents constituting or related to any employment or other contract or agreement between you and RVG and any salary or compensation received from RVG.

6. All documents constituting or related to any contract or agreement or governing rules or terms between you and RVG as a customer, affiliate, agent or vendor.

7. All documents relating to any financial transactions of any kind between you and RVG, including documents sufficient to show all payments made to and received from RVG and the account and user name to which each payment relates. These documents should include, without limitation, all money or other consideration paid to RVG and money or other consideration received from RVG in connection with anyone's participation as a ZeekRewards "affiliate"; participation in the ZeekRewards "Retail Profit or Points Pool"; participation in a "matrix" in connection with ZeekRewards; enrollment in a ZeekRewards subscription plan; participation in ZeekRewards or Zeekler.com penny auctions; and the purchase or sale of Zeekler.com bids and/or ZeekRewards VIP bids or any other bids in connection with ZeekRewards or Zeekler.com. (This request is not meant to include passwords to third party financial accounts used in connection with RVG; however, documents sufficient to show the location and account number of such accounts should be included in your response).

8. All documents related to any sale, gift, transfer or assignment of "bids" to be used in connection with ZeekRewards.com or Zeekler.com, or the placement of advertisements for Zeekler.com or ZeekRewards.

9. All documents related to the recruitment of any Persons to join or otherwise participate in ZeekRewards or Zeekler.com.

10. All documents that describe ZeekRewards or Zeekler.com, including their activities, programs, subscriptions or potential income opportunities.

11. Documents sufficient to describe your interest in any partnerships, joint ventures, or limited liability companies during the period from January 1, 2012 or the date you first became involved in RVG (whichever is earlier) to the present.

12. Your bank, savings or credit union account; investment or brokerage account; credit card and other financial account statements during the period from July 1, 2012 to the present.

13. All documents constituting any current financial statement (since January 1, 2012) or other statement describing your financial assets or liabilities, including any statements prepared in connection with seeking a loan, mortgage or other form of financing or credit.

All Citations

Not Reported in F.Supp.2d, 2013 WL 1278088



### Footnotes

- 1 *Securities and Exchange Commission v. Rex Venture Group, LLC d/b/a ZeekRewards.com and Paul Burks*, No. 3:12-cv-519 (W.D.N.C.2012).
- 2 In its Notice (Doc. 2), Rex Venture represents that it takes no position as to whether this document should have been filed in this case; rather, Rex Venture submits that it is simply filing the Notice "so as not to prejudice" Mr. Woods, who is acting *pro se*. (Doc. 2, ¶¶ 5-6).
- 3 Mr. Woods contends that the Receiver did not notify the Court of his objections. This is simply not the case. The Receiver specifically states that Mr. Woods filed a " 'Request for Judicial Notice' objecting to the [s]ubpoenas that had issued from the Middle District of Florida and again refused to produce any documents." (See Doc. 1, at 12 & Exh. 6). Moreover, the objections attached to the Request for Judicial Notice (Doc. 1, Exh. 6) are identical to the objections that Mr. Woods attached to his Objection to Receiver's Motion to Compel (Doc. 8).
- 4 Request 3 seeks "[d]ocuments sufficient to show all user names, passwords, email addresses, and accounts used by Mr. Woods in connection with [Rex Venture]. (This request is not meant to include passwords to third party financial accounts used in connection with [Rex Venture]; however, documents sufficient to show the location and account number of such accounts should be included in your response.)" (See Doc. 1, Exh. 3, ¶ 3).
- 5 Notably, Mr. Woods also argues that the Receiver's attorney contacted him by email in violation of the Federal Rules. (Doc. 8, at 5). The Court disagrees and finds no apparent violation of the Federal Rules.

1999 WL 1043861  
United States District Court,  
M.D. Florida.

Courtney C. CODRINGTON, et al., Plaintiffs,

v.

ANHEUSER-BUSCH, INC., a  
foreign corporation, Defendant.

No. 98-2417-CIV-T-26F.

|  
Filed Nov. 25, 1998.

|  
Oct. 15, 1999.

#### Attorneys and Law Firms

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Thomas W. Dickson, for Harold W. Shepherd, plaintiff.

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Thomas W. Dickson, for Lenzo R. Canty, plaintiff.

Thomas W. Dickson, for Henry Marks, plaintiff.

Thomas W. Dickson, for Robert B. Houghton, plaintiff.

Thomas W. Dickson, for George Harrison, plaintiff.

Thomas W. Dickson, for Edgar Giles, plaintiff.

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C. Felix Miller, Equal Employment Opportunity  
Commission, St.Louis District Office, St.Louis, MO, for  
EEOC, movant.

ORDER

SCRIVEN, Magistrate J.

\*1 THIS CAUSE comes on for consideration of Plaintiffs'  
Motion to Compel (Dkt.12) and the EEOC's memorandum in  
opposition thereto (Dkt.13).

Plaintiffs, former employees of Defendant, Anheuser-Busch,  
filed this action on November 25, 1998. Plaintiffs claim  
that Defendant discriminated against them on the basis of  
Plaintiffs' age in violation of the Age Discrimination in  
Employment Act, 29 U.S.C. § 621, *et seq.*

On June 14, 1999, Plaintiffs served the EEOC, a non-party to  
this action, with a subpoena *duces tecum* requiring the EEOC  
to produce documents relating to approximately 25 charges  
brought by other employees against Defendant. Plaintiffs also  
requested that the EEOC produce any and all charges or  
records of any other charge of discrimination filed against the  
Defendant, originating in Tampa, Florida, from December 1,  
1995 to the present. The subpoena advised that the EEOC  
could comply by "providing legible copies of the items to  
be produced to the attorney whose name appears on this  
subpoena on or before the scheduled date of production."

On June 24, 1999, the EEOC served its objection to the  
subpoena. The EEOC contends as follows: (1) the subpoena  
is procedurally defective in that it was not personally served  
on the EEOC Record's custodian, but rather was served by  
U.S. Mail; (2) the subpoena is procedurally defective in  
that the Plaintiffs did not include a check for attendance  
fees and mileage; (3) certain of the documents requested  
are confidential pursuant to Section 107(a) of the ADA and  
pursuant to Title VII; and (4) certain documents are not  
discoverable under the Freedom of Information Act, 5  
U.S.C. § 552. Plaintiffs now move to compel the EEOC to  
comply with the subpoena. The Court addresses each of the  
EEOC's objections in turn below.

#### I. The Alleged Procedural Defects

As indicated, the EEOC contends that the subpoena is  
procedurally defective in that Plaintiffs did not personally  
serve the subpoena on the EEOC, but served the subpoena via  
first class U.S. Mail and, further, the subpoena did not include  
a check for attendance and mileage. After a review of Rule 45  
and the case authority cited by the parties, the Court rejects  
the EEOC's arguments.

Rule 45(b)(1), Fed.R.Civ.P., provides in pertinent part as follows: "Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law...." The Undersigned respectfully disagrees with the court's decision in *In re Nathurst*, 183 B.R. 953, 955 (M.D.Fla.1995), in which the court found that "a subpoena cannot be effectively served by mail even if sent by certified mail." Instead, the Court finds that nothing in the plain language of the Rule requires personal service. See *King v. Crown Plastering Corp.*, 170 F.R.D. 355, 356 (E.D.N.Y.1997)(no need for personal service of Rule 45 subpoena "so long as service is made in a manner that reasonably insures actual receipt of the subpoena by the witness"); *Doe v. Hersemann*, 155 F.R.D. 630, 630-631 (N.D.Ind.1994) ("The plain language of the rule requires only that the subpoena be delivered to the person served by a qualified person").

\*2 Furthermore, the EEOC has not demonstrated any prejudice resulting from Plaintiffs' service of the subpoena by mail. Specifically, it is undisputed that the EEOC received actual notice of the subpoena, as evidenced by the EEOC's timely objection to the subpoena. At this point, requiring the Plaintiffs to personally serve the subpoena would result in mere undue delay.

Additionally, the Court rejects the EEOC's contention that the subpoena is defective in that Plaintiffs did not include a check for fees and mileage. As indicated, the subpoena notified the EEOC that it could comply with the subpoena by merely mailing the documents to Plaintiffs' counsel. Thus, an EEOC representative was not required to travel to Tampa, Florida, to personally deliver the documents. Moreover, Plaintiffs state that they will reimburse the EEOC for its copying costs upon notification of the amount.

Having found that the subpoena is not procedurally defective, the Court turns to the EEOC's substantive arguments.

## II. Confidentiality

### A. Information Relating to Charges Under Title VII or the ADA

The EEOC contends that some of the requested documents relate to Title VII and ADA charges by persons who are not parties to the instant lawsuit, and, as such, the documents

cannot be disclosed. The EEOC specifically relies on 42 U.S.C. § 2000e-8(e), which provides that it is unlawful for an officer or employee of the EEOC "to make public in any manner whatever information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information...." This provision is also applicable to cases brought pursuant to the ADA. See 42 U.S.C. § 12117(a).

Plaintiffs respond that the prohibition of 42 U.S.C. § 2000e-8(e) does not forbid an officer or employer of the EEOC from disclosing materials to a charging party if the documents relate to other charges against the same respondent that are like and related to the charging party's allegations of discrimination. (Dkt.12, p. 5.)

The EEOC correctly points out, however, that the Supreme Court rejected such an argument in *Equal Employment Opportunity Commission v. Associated Dry Goods Corp.*, 449 U.S. 590, 101 S.Ct. 817, 66 L.Ed.2d 762 (1980). Specifically, while the Court found permissible the disclosure of EEOC investigative information in a charging party's file to the party himself, the Court also found that "nothing in the statute or its legislative history reveals any intent to allow the Commission to reveal to that charging party information in the files of other charging parties who have brought claims against the same employer." *Id.* at 603 (footnote omitted). The Court continued that "there is no reason why the charging party should know the content of any other employee's charge, and he must be considered a member of the public with respect to charges filed by other people. With respect to all files other than his own, he is a stranger." *Id.*

\*3 Thus, given the limited disclosure of certain EEOC files permitted by *Associated Dry Goods*, this Court DENIES the Plaintiffs' motion to the subpoena to the extent that Plaintiffs request the files of persons who are not parties to this action and who claimed violations of Title VII or the ADA against his Defendant. If it has not already done so, the EEOC shall produce, however, any files and/or documents relating to the named Plaintiffs. Furthermore, if there is information contained in files of charging parties other than the named Plaintiffs that is generally relevant to the named Plaintiffs and the Defendant in this case and is used by the agency in consideration of the Plaintiffs' charge, but due to administrative convenience is not contained in the named Plaintiffs' files, it too shall be produced. See *EEOC v. Associated Dry Goods Corp.*, 499 U.S. 590, 604 (1981). In

*Associated Dry Goods*, the Court specifically noted that by including information about an employer's general practices that would be relevant to each charging party in each party's file, the Commission can fully comply with the statute while giving each party the information necessary to evaluate the strength of his or her case. *Id.*

#### B. Charges Under the ADEA Only

Both Plaintiff and the EEOC recognize that the ADEA does not contain a similar confidentiality provision to that contained in Title VII and the ADA. The EEOC argues, however, that to the extent that Plaintiff requests information relating its investigation of charges filed under the ADEA, the disclosure of such information would constitute an unwarranted invasion of privacy under the Freedom of Information Act and should not be required. See 5 U.S.C. § 552(b)(7)(C) (exempting from disclosure to the public "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of personal privacy...") Plaintiffs respond that this exemption of the FOIA provides that requests for open EEOC case files are exempt from public disclosures as investigatory records but does not apply to closed files. Plaintiffs contend that they do not seek any information from open files and, as such, the documents must be produced. Neither party points this Court to any authority in support of its position.

First, the Court rejects Plaintiffs' claim that § 552(b)(7)(C) applies solely to open files. As indicated, Plaintiffs fail to point this Court to any authority supporting their contention. Nothing in the plain language of § 552(b)(7)(C) suggests that the exemption is limited to "open" files. Furthermore, this Court's own research has failed to locate any authority suggesting such a limitation. While the exemption located at § 552(b)(7)(A) appears to apply solely to pending investigations, see *Frito-Lay v. U.S. Equal Employment Opportunity Commission*, 964 F.Supp. 236, 238 (W.D.Ken.1997), there simply is no similar limitation with regard to § 552(b)(7)(C). The Court therefore turns to the EEOC's contention that the information is not subject to disclosure because it would likely result in an unwarranted invasion of privacy.

\*4 As the philosophy behind the FOIA is to allow broad disclosure, the courts interpret the exemptions of the FOIA narrowly. See *Nadler v. U.S. Department of Justice*, 955 F.2d 1479, 1484 (11th Cir.1992). The government agency seeking to withhold the information requested has the burden of proving the applicability of an exception to the FOIA. *Id.* In this case, the EEOC must demonstrate that the information sought was compiled for law enforcement purposes and that its disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." See *Rosenglick v. Internal Revenue Service*, No. 97-747-Civ-Orl-18A, 1998 WL 773629, \*2 (M.D.Fla. March 10, 1998). "The determination of whether the agency has met its burden is difficult, so several tools have been developed to aid the courts. Available methods for determination include a Vaughn index, ex parte in camera review of the requested documents in their unredacted form, or fact-specific affidavits of the parties. The trial court must find an adequate factual basis to support a finding or privilege, but the use of the described methods is discretionary." *Cappabianca v. Commissioner, United States Customs Service*, 847 F.Supp. 1558, 1561 (M.D.Fla.1994)

Plaintiffs do not appear to dispute that the information sought was compiled for law enforcement purposes. Thus, the Court turns to whether its disclosure would constitute an unwarranted invasion of personal privacy. In meeting its burden with respect to this prerequisite, the government agency need not demonstrate "to a certainty that release will lead to an unwarranted invasion of personal privacy..." *Id.* at 1448 (citation omitted). Rather, the EEOC need only demonstrate a "reasonable expectation" of such an invasion. *Id.*

To determine whether the disclosure of documents will result in an unwarranted invasion of privacy, the court must balance the individual's privacy interest against the public interest in disclosure of the information. See *O'Kane v. United States Customs Service*, 169 F.3d 1308, 1309 (11th Cir.1999); *Nadler*, 955 F.2d at 1487. "Only the interest of the general public, and not that of the private litigant, is relevant to [the court's] inquiry." *Id.* at 1489. "Disclosure of the requested information is in the public interest only if it furthers the public's statutorily created right to be informed about what their government is up to." *Id.* (citation omitted).

### I. Individuals' Privacy Interests

While this Court is unaware of any published or unpublished opinion where a court found that EEOC files relating to ADEA claims were exempt from disclosure under 552(b)(7)(C), courts have found information relating to other investigations is exempt. For instance, information gathered during an internal investigation relating to allegations of harassment and retaliation has been found to be exempt from disclosure. See *Cappabianca v. Commissioner, United States Customs Service*, 847 F.Supp. 1558 (M.D.Fla.1994). Similarly, information relating to an OSHA investigation has been afforded protection. See *L & C Marine Transport*, 740 F.2d at 922.

\*5 The Eleventh Circuit has found that an individual has a substantial privacy interest where disclosure would lead to the type of harm, embarrassment and possible retaliation. *L & C Marine Transport*, 740 F.2d at 922 (names and other identifying information related to an OSHA investigation exempt from disclosure). The court explained that, "[t]here can be little doubt that an employee will feel more free to talk with federal law enforcement officials about possible employer violations if he feels his name will not be attached to his statements. *Id.* The court further found that an individual does not lose his/her privacy interest simply because his identity may be discovered through other means. *L & C Marine Transport*, 740 F.2d at 922. See *Lloyd & Henniger v. Marshall*, 526 F.Supp. 485 (M.D.Fla.1981) (home addresses of witnesses and employees interviewed by OSHA could be withheld under 552(b)(7)(C) where disclosure of home addresses would subject the persons to precisely the harm the exemption was intended to prevent).

#### ii. Public Interest

"In order to compel release of materials, there must be a public interest because 'something, even a modest privacy interest outweighs nothing every time.' " *Cappabianca v. Commissioner, United States Customs Service*, 847 F.Supp. 1558, 1564 (M.D.Fla.1994) (citation omitted).

The court in *Nadler* found that the government properly utilized the exemption under 552(b)(7)(c) where disclosure of identities of FBI witnesses would disclose virtually nothing about the conduct of the government. *Id.* The court explained, "Enabling the public to learn about the conduct of private citizens is not the type of public interest the FOIA was intended to serve." *Id.* Similarly, the court in *L & C Marine Transport* found that information, including the names of employee witnesses of an accident who were interviewed by OSHA, falls within the 7(c) exemption where there was no public interest in the identities of the witnesses. 740 F.2d at 922. The court acknowledged the plaintiff's contention that it needed the information to use as evidence in pending litigation, but explained that the private needs of a company plays no part in the determination of whether disclosure is appropriate. *Id.* Accord *Cappabianca v. Commissioner, United States Customs Service*, 847 F.Supp. 1558 (M.D.Fla.1994). See *Lloyd & Henniger v. Marshall*, 526 F.Supp. 485 (M.D.Fla.1981) ("[T]he disclosure provisions of FOIA are not a substitute for discovery, and a party's asserted need for documents in connection with litigation will not affect, one way or the other, a determination of whether disclosure is warranted under FOIA.") (citation omitted).

Like in *L & C Marine Transport*, Plaintiffs fail to present any evidence as to how disclosure of the information will serve the public interest. Rather, it appears that Plaintiffs seek the requested information solely for use in the instant litigation.

\*6 It is ORDERED as follows:

The Plaintiffs' Motion to Compel (Dkt. 12) is DENIED, except as set forth on page five (5) herein, in accordance with the foregoing. Production required by this order shall be made within (15) days of the date of this order. Each party shall bear its own fees and costs associated with the filing of this motion.

#### All Citations

Not Reported in F.Supp.2d, 1999 WL 1043861, 81 Fair Empl.Prac.Cas. (BNA) 263, 80 Empl. Prac. Dec. P 40,461