

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PENNY GARDNER (*f/k/a*  
Rodriguez),  
  
Plaintiff,

NO. 2:22-CV-0144-TOR

ORDER GRANTING PROTECTIVE  
ORDER

v.

ISRAEL RODRIGUEZ and STATE  
OF WASHINGTON, acting through  
and d/b/a various State Agencies,  
  
Defendants.

---

BEFORE THE COURT is Defendant’s Motion for a Protective Order (ECF No. 63). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, the protective order is granted in part and denied in part.

**BACKGROUND**

This motion for a protective order arises out of a dispute between Plaintiff Penny Gardner (né Rodriguez) and her ex-husband and former colleague,

1 Defendant Israel Rodriguez. Plaintiff is suing Defendant for his purported  
2 mismanagement of the pediatric care facility, Weeping Ridge North, LLC (WRN)  
3 which they formerly owned and operated together. In her second amended  
4 complaint, Plaintiff charges Defendant with (1) breach of fiduciary duty, unjust  
5 enrichment, and constructive fraud; (2) interference with a business expectancy;  
6 (3) fraudulent concealment; (4) intentional infliction of emotional distress; and (5)  
7 outrage. *See* ECF No. 58 at 50-56, ¶¶ 4.1-4.35

8 According to Plaintiff, Defendant Rodriguez and various Washington State  
9 licensing agencies colluded to extinguish the licensure of WRN in exchange for  
10 Defendant Rodriguez receiving lucrative State adult care contracts. *See* ECF No.  
11 70 at 5. WRN's license was suspended on July 5, 2019, and formally revoked on  
12 June 25, 2020, apparently without any advance notice to Gardner despite her equal  
13 ownership status. ECF No. 58 at 38-40. Plaintiff also alleges that Defendants  
14 entered an illegal agreement in December 2021 which proscribed her from seeking  
15 any future licenses from the Department of Children, Youth, and Families without  
16 her participation or approval. *Id.* at 42, ¶¶ 2.138-2.142.

## 17 DISCUSSION

18 Defendant objects to four of Plaintiff's discovery requests, which ask him to  
19 produce: (1) all licenses issued to him by the State of Washington from 2020  
20 through the present, including any licenses issued to his businesses since July 5,

1 2019; (2) all tax returns for the foregoing entities from 2020 through the present  
2 date; (3) all profit and loss statements for the foregoing entities through 2023; and  
3 (4) all personal income tax returns filed since July 5, 2019, including all K1s, W-2s  
4 and 1099 forms. ECF No. 64 at 65-69. The Court grants Defendant’s motion for  
5 a protective order as to requests for production (1) through (4).

6 Under Federal Rule of Civil Procedure 26(b)(1), “[p]arties may obtain  
7 discovery regarding any nonprivileged matter that is relevant to any party’s claim  
8 or defense and proportional to the needs of the case.” Courts consider whether  
9 information is relevant and proportional by looking to “the importance of the  
10 issues at stake in the action, the amount in controversy, the parties’ relative access  
11 to relevant information, the parties’ resources, the importance of the discovery in  
12 resolving the issues, and whether the burden or expense of the proposed discovery  
13 outweighs its likely benefit.” *Id.*

14 Recipients of a discovery request may move for a protective order to block  
15 the disclosure of evidence or narrow the scope of information sought. FED. R. CIV.  
16 P. 26(c)(1). A protective order will issue for good cause, including to avoid  
17 “annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* The  
18 burden of establishing good cause rests with the movant seeking the protective  
19 order, who must establish that specific prejudice or harm will result in the absence  
20 of protective measures. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.

1 2003); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir.  
2 2003). The mere fact that information would be inadmissible at trial does not  
3 remove it from the scope of discovery. FED. R. CIV. P. 26(b)(1). Additionally, the  
4 movant must certify that it attempted to confer in good faith with affected parties  
5 prior to seeking judicial intervention. FED. R. CIV. P. 26(c)(1). If the motion is  
6 warranted, the Court may forbid discovery, limit the scope of discovery, or specify  
7 the terms and procedures of disclosure. FED. R. CIV. P. 26(c)(1)(A)-(H).

8 Although Defendant Rodriguez did not explicitly certify that the parties  
9 attempted to confer with another, the record shows that the parties attempted to  
10 come to an independent resolution of their issues before seeking court intervention.  
11 *See* ECF No. 64 at 76-79 (e-mail chain discussing the issues).

12 Plaintiff makes a second, preliminary argument that the Court should not  
13 consider the merits of Defendant's motion because Defendant failed to attach a  
14 proposed protective order. ECF No. 70 at 2. Although it may be customary for  
15 parties to supply a proposed order for the Court to adopt, nothing in the Federal  
16 Rules of Civil Procedure or in our local rules requires advance submission of a  
17 disputed proposed protective order. The Court therefore turns to the merits of  
18 Defendant's motion.

19 Plaintiff's first request for production asks Defendant to propound:

20 [A]ll licenses issued to you and any other individual with whom you  
were or are working, by the State of Washington to operate a health

1 care facility in the State of Washington for each year of 2020 through  
2 the present, including any licenses issued to any business, LLC,  
3 partnership, joint venture, or corporate interest of any kind, in which  
4 you have an ownership, dividend, distribution or income interest of any  
kind, since the State suspended the license for [WRN] on July 5, 2019,  
[and] [later] revoked that license. This is to include, but is not limited  
to, any licensing for the following known entities . . . :

- 5 a) Weeping Ridge LLC;
- 6 b) Weeping Ridge Home Health, LLC;
- 7 c) Weeping Ridge Lake Spokane, LLC;
- 8 d) Weeping Ridge West, LLC;
- 9 e) Weeping Ridge West, Inc.;
- f) Weeping Ridge Estate Adult Family Home, Inc.;
- g) Grande Manor Care, Inc.;
- h) IPRI, LLC; and
- i) Any other business in which you have an ownership.

10 ECF No. 64 at 65.

11 Defendant argues this request is overbroad because the only entity relevant  
12 to this action is WRN and the other listed entities were awarded to him during the  
13 dissolution process, rather than through his alleged collusion with the State. ECF  
14 No. 63 at 8. Additionally, he objects that the information sought goes beyond the  
15 scope of Plaintiff's suit, which he believes relates to conduct prior to WRN's  
16 suspension. ECF No. 64 at 66. Plaintiff broadly responds that the information  
17 sought is covered because it pertains to the "economic deal-making between the  
18 Defendant State and Defendant Rodriguez . . . in exchange for the Defendant State  
19 giving Defendant Rodriguez hundreds of thousands of dollars in adult care  
20 contracts." ECF No. 70 at 5.

1 The Court grants Defendant's motion as to this first request for production.  
2 In fact, many of the listed entities existed prior to the revocation of WRN's license.  
3 *See, e.g.*, ECF No. 64 at 9-10, ¶ 22.1.01, ¶¶ 22.1.03-07. The second amended  
4 complaint does not allege that the State conditioned license approval for new  
5 facilities on Defendant Rodriguez's agreement to enter into a settlement with the  
6 State. As such, the Court finds that Plaintiff's first request for production is  
7 irrelevant and unduly burdensome.

8 Plaintiff's second and third requests for production focus on the pecuniary  
9 gain Defendant obtained through his purported conspiracy with the State:

10 **Request for Production No. 2:** Produce tax returns for each year of  
11 2020 through the present for all of the foregoing entities in which you  
12 have an ownership interest and which have been licensed by the  
13 Defendant State of Washington since the State suspended the license  
14 for [WRN] on July 5, 2019, then revoked that license.

15 ...

16 **Request for Production No. 3:** Produce year-end profit and loss  
17 statements for each business and each business entity in which you have  
18 an ownership interest, including the 2023 year-to-date profit and loss.

19 ECF No. 64 at 66-67.

20 Defendant objects to these requests as beyond the scope of discovery in this  
matter, arguing that Plaintiff intends to use the information for the ulterior purpose  
of acquiring financial support for her separate divorce action currently pending  
before the state court of appeals. ECF Nos. 63 at 9-10; 64 at 66; *see also* ECF No.

1 64 at 55, ¶ 31 (Plaintiff indicating in state court affidavit of financial need that this  
2 action might result in the production of Defendant’s “financial information and [ ]  
3 state contracts,” which she believes will show that “he is financially flourishing  
4 with our adult care properties.”). Defendant also argues that the contracts in issue  
5 were awarded by the superior court as part of the divorce decree, not by the State.  
6 ECF No. 71 at 7.

7 The Court finds that the financial information sought is not relevant to  
8 Plaintiff’s claims. Plaintiff alleges that the State colluded with Defendant by  
9 “transferring State contracts and income to him through [his] vulnerable person  
10 facilities” in exchange for relinquishing WRN’s licensure. ECF No. 58 at 44, ¶  
11 2.151. Defendant presses that this allegation is false. The financial information  
12 sought is not related to Plaintiff’s allegation that the State promised to support  
13 Defendant’s businesses as *quid pro quo* in exchange for the revocation of WRN’s  
14 license. The superior court awarded Defendant the above-listed facilities in its  
15 divorce decree.

16 Last is Plaintiff’s fourth request for production, which asks Defendant to  
17 produce his “personal income tax returns, including all K-1s, W-2s and 1099 forms  
18 filed since July 5, 2019.” ECF No. 64 at 67. Defendant argues that this  
19 information is irrelevant, and the Court agrees. Defendant’s personal financial  
20 information is only tenuously related to the claim that the State offered financial

1 assistance to his businesses *quid pro quo*, and seems more relevant to Plaintiff's  
2 state application of financial need. Accordingly, Defendant's motion as to  
3 Plaintiff's fourth request for production is granted.

4 Both parties seek an award of attorney's fees. ECF Nos. 63 at 11; 70 at 10-  
5 11; *see also* FED. R. CIV. P. 37(a)(5)(C) ("If the motion is granted in part and  
6 denied in part, the court may . . . , after giving an opportunity to be heard, apportion  
7 the reasonable expenses for the motion."). However, because all positions were  
8 justifiable, each party will bear their own litigation expenses in raising and  
9 defending against this motion.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 11 1. Defendant Rodriguez's motion for a protective order (ECF No. 63) is  
12 **GRANTED** as to Requests for Production Nos. 1 through 4.  
13 2. The Court denies the award of attorney fees to either party.

14 The District Court Executive is directed to enter this Order and furnish  
15 copies to counsel.

16 DATED November 17, 2023.



20  
*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge