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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PERINATAL MEDICAL GROUP INC., et al., CASE NO. 1:09-cv-1273-LJO-MJS
al.,

Plaintiff,

v.

CHILDREN'S HOSPITAL CENTRAL CALIFORNIA INC., et al.,

Defendants.

Memorandum Decision and Order Granting Defendant Children's Hospital of Central California's Motion to Compel Community Regional Medical Center's Compliance with Subpoena Duces Tecum

(ECF No. 75)

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I. INTRODUCTION

On April 26, 2011, Defendant Children's Hospital of Central California filed a motion seeking to compel compliance with a subpoena served on non-party Community Regional Medical Center. (ECF Nos. 75-78.) Community filed its Opposition to the Motion to Compel on May 5, 2011. (ECF Nos. 79-81.) On May 6, 2011, Children's and Community filed a Joint Statement of Discovery Dispute. (ECF No. 83.) Children's filed a reply to the opposition on May 9, 2011. (ECF No. 84.)

The Court considered Defendants' motion on the record without a hearing pursuant to Local Rule 230(g). The Court carefully reviewed and considered all papers filed by the

1 parties, including all arguments, points, authorities, declarations, and objections.¹

2 **II. BACKGROUND**

3 Plaintiffs formerly provided neonatal intensive care services for Children's,
4 Community, and other hospitals in the Central Valley of California. However, in February
5 2009, Children's did not renew Plaintiffs' contract for the provision of such services.
6 Instead, Children's contracted for such services with another neonatal group. Plaintiffs
7 continued providing neonatal intensive care services at Community.
8

9 Plaintiffs subsequently brought suit against Children's and related entities alleging,
10 among other things, that Defendants had caused Plaintiffs financial loss and harmed
11 competition in the market for neonatal intensive care services by excluding Plaintiffs from
12 practicing neonatology at Children's. Defendants dispute these claims and assert, in
13 essence, that Plaintiffs have not lost business but instead successfully diverted business
14 from Children's to Community and thereby improved not only Community's competitive
15 position but competition within the market for neonatology services generally.
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17 The present dispute revolves around Children's attempts to discover information
18 related to the volume of patients and overall revenue generated by Community's neonatal
19 intensive care unit during periods at issue in the case. On November 3, 2010, Children's
20 served on Community a subpoena requesting some twenty-nine categories of information
21 relating to Plaintiffs' relationship with Community. After Community and Plaintiffs objected
22 to the subpoena, the parties engaged in negotiations that resolved much of the dispute
23 over which documents should be produced. The only remaining disagreement is with
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26 ¹ Lack of reference to a particular piece of evidence, argument, or other filing should not be read
27 to suggest the Court did not consider same. The Court reviewed, considered, and applied the evidence it
found to be admissible, material, and appropriate to the motion. The Court will not rule on objections
raised in the context of this motion because no such ruling is necessary for resolution of the motion.

1 respect to the following categories:

2 Category No. 21: Any and all documents concerning the number of patients treated
3 by Perinatal Medical Group in Community Regional Medical Center's neonatal intensive
4 care unit from December 1, 2008 to the present date.

5 Category No. 25: Any and all documents relating to the patient count in Community
6 Regional Medical Center's neonatal intensive care unit from December 1, 2008 to the
7 present date.

8 Category No. 26: All documents that reflect the total revenue from Community
9 Regional Medical Center's neonatal intensive care unit each month between December 1,
10 2008 to the present date.

11 Category No. 27: All documents that reflect the total number of patients at
12 Community Regional Medical Center's neonatal intensive care unit who required the
13 highest level of neonatal care Community Regional Medical Center could provide from
14 December 1, 2008 to the present.

15 (ECF No. 77 at 7-22.)

16 Community's objections and their opposition to this motion rest essentially on two
17 grounds: relevancy and privacy. Children's has responded to the latter objection by
18 agreeing to make Community a party to an existing protective order between Plaintiffs and
19 Defendants, to bring documents produced by Community within the protection of the
20 protective order, and to limit disclosure of such documents to Defendants' attorneys and
21 experts only. Community claims that such protections are inadequate.

22 **III. LEGAL STANDARD AND ANALYSIS**

23 For the reasons set forth below, the Court finds that the four categories of
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1 information requested in the subpoena and set out above are properly discoverable and
2 that Community's legitimate privacy concerns are adequately protected by the terms of the
3 protective order, as supplemented below.

4 **A. Relevancy**

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6 Federal Rule of Civil Procedure 26(b)(1) provides for discovery in civil actions, as
7 follows:

8 Parties may obtain discovery regarding any matter, not
9 privileged, which is relevant to the subject matter involved in
10 the pending action, whether it relates to the claim or defense
11 of the party seeking discovery or to the claim or defense of any
12 other party, including the existence, description, nature,
13 custody, condition, and location of any books, documents, or
14 other tangible things in the identify and location of persons
having knowledge of any discoverable matters. The
information sought need not be admissible at the trial if the
information sought appears reasonably calculated to lead to
the discovery of admissible evidence.

15 Relevance in this context refers to information that might reasonably help a party
16 prepare, evaluate, or settle a case. Thomas v. Hickman, 2007 U.S. Dist. LEXIS 95796
17 (E.D. Cal. 2007). Rule 26 permits the discovery of information which "may simply relate
18 to the *credibility* of a witness or other evidence in the case." SCHWARZER, TASHIMA &
19 WAGSTAFF, CALIFORNIA PRACTICE GUIDE: FEDERAL CIVIL PROCEDURE BEFORE TRIAL § 11.21
20 (1994 revised) (emphasis in original).

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22 The purpose of discovery is to remove surprise from trial preparation so the parties
23 can gather evidence and evaluate and resolve the dispute. Moon v. SCP Pool Corp., 232
24 F.R.D. 633, 636 (C.D. Cal. 2005). Toward this end, Rule 26(b) is liberally interpreted to
25 permit broad discovery of all information reasonably calculated to lead to discovery of
26 admissible evidence, even if the information itself is not admissible at trial. Oakes v.
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1 Halvorsen Marine Ltd., 179 F.R.D. 281, 283 (C.D. Cal. 1998). “A request for discovery
2 should be considered relevant if there is any possibility that the information sought may be
3 relevant to the subject matter of this action. Discovery should ordinarily be allowed under
4 the concept of relevancy unless it is clear that the information sought can have no possible
5 bearing upon the subject matter of this action.” Jones vs. Commander, Kansas Army
6 Ammunitions Plant, 147 F.R.D. 248, 250 (D. Kan. 1993).

8 It can not be said that the documents requested here have no possible bearing upon
9 the subject matter of this action. Plaintiffs claim that Children’s has violated antitrust law
10 by limiting Plaintiffs’ performance of services at Children’s. (First Am. Compl. (ECF No. 24)
11 ¶¶ 48, 67.) Such claims necessarily raise the issue of whether Plaintiffs have been
12 foreclosed from a substantial portion of the relevant market. See Jefferson Parish Hosp.
13 Dist. No. 2 v. Hyde, 466 U.S. 2, 45 (1984) (“Exclusive dealing is an unreasonable restraint
14 on trade only when a significant fraction of buyers or sellers are frozen out of a market by
15 the exclusive deal.”). The number and type of services provided by Plaintiffs along with the
16 number of patients treated by Plaintiffs at Community’s neonatal intensive care unit could
17 shed light on the extent to which Defendants’ actions resulted in foreclosure of the market.
18 The Court finds that such information could assist the parties in evaluating, preparing for
19 trial, and/or attempting to settle the case. Community’s opposition papers do not cite any
20 authority providing a reasonable basis for a different conclusion.

23 Therefore, it is the Court’s finding that the information sought in categories 21, 25,
24 26 and 27 of the subpoena is relevant.

25 **B. Privacy**

26 Community also claims that the requested documents are protected from disclosure
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1 by Community's right to privacy. Both parties recognize, as does the Court, that Community
2 has a legitimate interest in protecting the privacy of the confidential, financial, and
3 proprietary information being sought here, and that those interests must be balanced
4 against Children's need and right to discover relevant evidence.
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6 This district has addressed the need to balance the right to privacy with the parties'
7 rights to discovery:

8 While this court is of the view that such a balancing is
9 appropriate, this court is also mindful of the fact that, by its
10 very nature, litigation has a tendency to make public the sort of
11 information that individuals otherwise would prefer to keep
12 private. Public disclosure, in the end, is not only natural and
13 generally unavoidable but also necessary and healthy to a
14 process so dependant on accuracy and truth. Nonetheless, the
initiation of a law suit, does not, by itself, grant plaintiffs the
right to rummage unnecessarily and unchecked through the
private affairs of anyone they choose. A balance must be
struck.

15 Cook vs. Yellow Freight System, Inc., 132 F.R.D. 548, 551 (E.D. Cal. 1990). In striking that
16 balance, the "scope of disclosure will be narrowly circumscribed; such an invasion of the
17 right to privacy must be drawn with narrow specificity and is permitted only to the extent
18 necessary for a fair resolution of the lawsuit." Id. at 552. Logic and case law dictate that
19 the balancing be done with particular sensitivity here because Community is not a party to
20 the litigation in which the information is sought and, further, Community directly competes
21 with Children's in the area that is the subject of this subpoena. See U.S. v. Amodeo, 71
22 F.3d 1044, 1048 (2d Cir. 1995) (recognizing the need to guard more carefully the privacy
23 interests of individuals that are not parties to the litigation); Burka v. New York City Transit
24 Auth., 110 F.R.D. 660, 665 (S.D.N.Y. 1986) ("A litigant himself must reasonably anticipate
25 that his personal matters will be disclosed, while a non-party having no stake in the
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