

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEFFREY COX,

Plaintiff,

v.

ROADRUNNER INTERMODAL SERVICES, LLC, a Delaware limited liability company, CENTRAL CAL TRANSPORTATION, LLC, a Delaware limited liability company, and DOES 1 through 50,

Defendants.

Case No. 1:17-cv-01056-DAD-BAM

ORDER DENYING T.G.S. TRANSPORTATION, INC.'S MOTION TO COMPEL DISCOVERY RESPONSES

(Doc. Nos. 114, 116)

ROADRUNNER INTERMODAL SERVICES, LLC, a Delaware limited liability company,

Defendant/Counter-Plaintiff,

v.

JEFFREY COX,

Plaintiff/Counter-Defendant.

ROADRUNNER INTERMODAL SERVICES, LLC, a Delaware limited liability company,

Plaintiff,

v.

T.G.S. TRANSPORTATION, INC., a California corporation, and DOES 1-10,

Defendants.

///

1 **I. Background**

2 Currently before the Court for resolution is T.G.S. Transportation, Inc.’s (“TGS”) Motion to
3 Compel Discovery Responses from Roadrunner Intermodal Services, LLC (“Roadrunner”), which was
4 filed on August 10, 2018. (Doc. No. 114.) By the motion, TGS seeks a court order compelling
5 Roadrunner to provide the following discovery responses: (1) substantial completion of Roadrunner’s
6 document production in response to TGS’s Requests for Production served March 12, 2018 and
7 answered by Roadrunner on June 25, 2018; (2) production of Roadrunner’s documents and
8 communications on which Roadrunner will rely to show the existence of confidential and trade secret
9 information that TGS allegedly used to interfere with Roadrunner’s contracts (First Amended Complaint
10 (ECF 21) ¶ 36) and prospective economic relationships (id. ¶ 41), came to unjustly possess (id. ¶ 44),
11 and convert (id. ¶ 51); (3) production of Roadrunner’s documents on which Roadrunner will rely to
12 show reasonable security measures supporting the existence of trade secrets that TGS allegedly came to
13 unjustly possess (First Amended Complaint (ECF 21) ¶ 44) and convert (id. ¶ 51); and (4) a
14 supplemental response to TGS’s interrogatory providing the factual basis for Roadrunner’s damages
15 theories, specifically with regard to its lost profits theory wherein Roadrunner will seek to recover for
16 its alleged diminution in profits, and as such is based on documents that are presently in Roadrunner’s
17 possession and were the subject of Roadrunner’s expert opinion on that issue filed with this Court on
18 October 31, 2017 (see ECF 61, 62). (Doc. No. 114 at p. 2.)¹ On August 24, 2018, T.G.S. and Roadrunner
19 filed a Joint Statement re Discovery Disagreement. (Doc. No. 116.)

20 Thereafter, on August 28, 2018, the Court set a telephonic discovery conference to discuss the
21 instant motion to compel, along with other motions to compel that had been filed by the parties. (Doc.
22 No. 120.) At the August 28 conference, the Court directed counsel with binding authority for each party
23 to personally appear on September 27, 2018, to meet and confer and resolve any outstanding or
24 impending discovery motions. (Doc. No. 123.)

25 On September 27, 2018, counsel for the parties appeared to meet and confer regarding discovery
26 disputes between the parties. Following the meet and confer proceedings, the parties informed the Court
27

28 _____
¹ All page numbers are based on document pagination by the Court’s CM/ECF system.

1 that with respect to the instant motion, the issue of substantial completion of Roadrunner's document
2 production in response to TGS's Requests for Production served March 12, 2018 and answered by
3 Roadrunner on June 25, 2018, had been resolved.² However, the parties had been unable to resolve the
4 remaining issues raised in the motion to compel. (Doc. No.131.) Therefore, the instant motion to
5 compel has been taken under submission and is limited to resolution of Roadrunner's responses to TGS's
6 Request for Production Nos. 19-21 (trade secrets) and Interrogatory No. 4 (lost profits)

7 **II. MOTION TO COMPEL PRODUCTION**

8 Pursuant to Federal Rule of Civil Procedure 26(b), the scope of discovery is as follows:

9 Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
10 party's claim or defense and proportional to the needs of the case, considering the
11 importance of the issues at stake in the action, the amount in controversy, the parties'
12 relative access to relevant information, the parties' resources, the importance of the
discovery in resolving the issue, and whether the burden or expense of the proposed
discovery outweighs its likely benefit.

13 Fed. R. Civ. P. 26(b)(1). Information within the scope of discovery need not be admissible in evidence
14 to be discoverable. Id. However, the court must limit the extent of discovery if it determines that (1) the
15 discovery sought is unreasonably cumulative, duplicative or can be obtained from other source that is
16 more convenient, less burdensome, or less expensive, (2) the party seeking discovery has had ample
17 opportunity to obtain the information by discovery, or (3) the proposed discovery is outside the
18 permissible scope. Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii).

19 A party may serve on any other party a request within the scope of Rule 26(b) to produce and
20 permit the requesting party or its representative to inspect, copy, test, or sample the following items in
21 the responding party's possession, custody or control: any designated documents or tangible things.
22 Fed. R. Civ. P. 34(a)(1).

23 An interrogatory may relate to any matter that may be inquired into under Rule 26(b), and an
24 interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact
25 or the application of law to fact. Fed. R. Civ. P. 33(a)(2) (quotation marks omitted). Parties are obligated
26 to respond to interrogatories to the fullest extent possible under oath, Fed. R. Civ. P. 33(b)(3), and any
27

28 ² TGS's motion to compel with respect to this issue is therefore DENIED as moot based on the parties' resolution.

1 objections must be stated with specificity, Fed. R. Civ. P. 33(b)(4); Davis v. Fendler, 650 F.2d 1154,
2 1160 (9th Cir. 1981) (“objections should be plain enough and specific enough so that the court can
3 understand in what way the interrogatories are alleged to be objectionable”). A responding party is not
4 generally required to conduct extensive research in order to answer an interrogatory, but a reasonable
5 effort to respond must be made. Gorrell v. Sneath, 292 F.R.D. 629, 632 (E.D. Cal. 2013). Further, the
6 responding party has a duty to supplement any responses if the information sought is later obtained or
7 the response provided needs correction. Fed. R. Civ. P. 26(e)(1)(A).

8 **A. TGS’s Requests for Production Nos. 19-21**

9 The parties have grouped the three requests together because they invoke a common issue:
10 whether and to what extent TGS may seek discovery related to the confidential and trade secret
11 information that TGS allegedly came to possess through the acts alleged in Roadrunner’s complaint.
12 (Doc. No. 116 at p. 18.)

13 **REQUEST FOR PRODUCTION NO. 19:**

14 Any and ALL DOCUMENTS that ROADRUNNER claims contain trade secret and/or confidential or
15 proprietary information that TGS is alleged to have unjustly obtained and/or converted.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

17 Roadrunner incorporates by reference its General Objections set forth above. Roadrunner further objects
18 to this request to the extent it calls for information protected by the attorney-client privilege, the attorney
19 work product doctrine, or any other applicable privilege or exemption from discovery. Roadrunner
20 further objects to this Request as overly broad, unduly burdensome and seeking information that is
21 neither relevant to this action nor likely to lead to the discovery of admissible evidence.

22 Roadrunner further objects to this Request as overbroad in time and/or scope. Roadrunner further objects
23 to this Request to the extent it seeks the premature disclosure of expert discovery or information known
24 to Defendant, publicly available or equally available to Defendant, or that is otherwise designed to
25 harass, vex and annoy Roadrunner. Roadrunner further objects to this request as irrelevant to the extent
26 it seeks disclosure of trade secrets, as Roadrunner did not assert a trade secret misappropriation claim
27 here.

28 ///

1 **REQUEST FOR PRODUCTION NO. 20:**

2 Any and ALL COMMUNICATIONS that ROADRUNNER claims contain trade secret and/or
3 confidential or proprietary information that TGS is alleged to have unjustly obtained and/or converted.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

5 Roadrunner incorporates by reference its General Objections set forth above. Roadrunner further objects
6 to this request to the extent it calls for information protected by the attorney-client privilege, the attorney
7 work product doctrine, or any other applicable privilege or exemption from discovery. Roadrunner
8 further objects to this Request as overly broad, unduly burdensome and seeking information that is
9 neither relevant to this action nor likely to lead to the discovery of admissible evidence.

10 Roadrunner further objects to this Request as overbroad in time and/or scope. Roadrunner further objects
11 to this Request to the extent it seeks the premature disclosure of expert discovery or information known
12 to Defendant, publicly available or equally available to Defendant, or that is otherwise designed to
13 harass, vex and annoy Roadrunner. Roadrunner further objects to this request as irrelevant to the extent
14 it seeks disclosure of trade secrets, as Roadrunner did not assert a trade secret misappropriation claim
15 here.

16 **REQUEST FOR PRODUCTION NO. 21:**

17 DOCUMENTS sufficient to show the security measures placed by ROADRUNNER on its tangible and
18 intangible property.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

20 Roadrunner incorporates by reference its General Objections set forth above. Roadrunner further objects
21 to this request to the extent it calls for information protected by the attorney-client privilege, the attorney
22 work product doctrine, or any other applicable privilege or exemption from discovery. Roadrunner
23 further objects to this Request as overly broad, unduly burdensome and seeking information that is
24 neither relevant to this action nor likely to lead to the discovery of admissible evidence.

25 Roadrunner further objects to this Request as vague and ambiguous with respect to the undefined terms
26 “sufficient,” “show,” “security measures,” “placed,” “tangible property,” and “intangible property.”

27 Roadrunner further objects to this Request to the extent it seeks premature disclosure of expert
28 discovery. Roadrunner also objects to this Request because it impermissibly lacks particularity and fails

1 to designate the information sought with sufficient specificity—thus imposing an undue burden on
2 Roadrunner.

3 **1. Summary of TGS’s Argument**

4 TGS contends that production is warranted because Roadrunner has accused it of
5 misappropriating Roadrunner’s confidential, proprietary, and trade secret information, and then using
6 that information to interfere with Roadrunner’s worker and customer relationships. TGS also contends
7 that “misappropriation forms the lynchpin of every single one of Roadrunner’s stand-alone causes of
8 action against TGS, such as tortious interference with contract, tortious interference with prospective
9 economic advantage, unjust enrichment and conversion. TGS asserts that it will defend against these
10 allegations by showing that Roadrunner has not established that the information in question is
11 confidential or trade secret, and even if the information once held that status, it was not subject to
12 reasonable security methods. TGS argues that the documents sought by the requests are relevant and
13 proportional to Roadrunner’s unjust enrichment and conversion claims.

14 **2. Summary of Roadrunner’s Counterargument**

15 Roadrunner counters that it does not assert a cause of action for trade secret misappropriation,
16 and thus its trade secrets are not at issue in this action and the requests are irrelevant and not proportional
17 to the needs of the case. Roadrunner contends that the burden it would suffer from disclosing its trade
18 secret information to TGS, a direct competitor, outweighs any nominal benefit TGS may derive from
19 the information.

20 **3. Discussion**

21 Having considered the parties’ arguments, the Court finds that TGS’s motion to compel
22 responses to Requests for Production 19 and 20 should be denied. Requests 19 and 20 require
23 Roadrunner to produce documents that “TGS is alleged to have unjustly obtained and/or converted.”
24 The requests essentially seek information that likely would *already be in TGS’s possession*, since it is
25 the party alleged to have unjustly obtained Roadrunner’s trade secret/confidential/proprietary
26 information. It is thus contrary to the rules of discovery to order production in response to these requests,
27 and Rule 26(b) mandates that the Court limit discovery when it determines that the discovery sought
28 “can be obtained from some other source that is more convenient, less burdensome, or less expensive.”

1 Fed. R. Civ. P. 26(b)(2)(C)(i). In addition, the burden that Roadrunner would suffer from further
2 disclosing its trade secret or confidential information to TGS, a direct competitor, outweighs any
3 litigation benefit TGS may derive from the information.

4 The Court also finds that TGS’s motion to compel a response to Request for Production 21
5 should be denied. Request 21 seeks documents sufficient to show the security measures placed by
6 Roadrunner on its tangible and intangible property. Although partially relevant to Roadrunner’s claim
7 that it “took measures to secure its confidential information,” [(Doc. 116 at p. 22) (discussing content
8 of Roadrunner’s verified responses to interrogatories)], the request is not proportional to the needs of
9 the case and seeks information well-beyond the scope of permissible discovery in this action.

10 Roadrunner asserted that it maintained certain “electronic protections” or that access to
11 confidential information on “electronic systems” was strictly controlled. (Doc. No. 116 at p. 22.)
12 However, Request 21 is not limited solely to Roadrunner’s claim of electronic protections. Rather, it
13 seeks information regarding security measures for *all of Roadrunner’s property*, tangible or intangible.
14 The request does not contain temporal or other property limitations to ensure that it seeks only relevant
15 information or that the benefit of the discovery is not outweighed by the burden of production.

16 **B. TGS Interrogatory No. 4**

17 **INTERROGATORY NO. 4:**

18 State the factual basis for YOUR contention that TGS tortuously interfered with the SPA [Stock
19 Purchase Agreement] as alleged in the First Cause of Action to the COMPLAINT, including in your
20 answer an explanation of (1) the relevant contract provision(s) or contractual undertaking(s), (2) the
21 identity of the PERSON(S) with whom ROADRUNNER had executed the subject contract provision(s)
22 or contractual undertaking(s), (3) ROADRUNNER’S basis for asserting that TGS had knowledge of the
23 relevant contract provision(s) or contractual undertaking(s), (4) the alleged intentional acts by TGS
24 designed to induce a breach or disruption of the relevant contractual relationship(s) or to prevent
25 compliance with the undertaking(s), (5) the alleged actual breach or disruption of the relevant
26 contractual relationship(s), and (6) the nature and amount of the alleged resulting damage to
27 ROADRUNNER.

28 ///

1 **RESPONSE TO INTERROGATORY NO. 4:**

2 Roadrunner incorporates by this reference its General Objections set forth above. Roadrunner further
3 objects to this interrogatory to the extent that it seeks information protected by the attorney-client
4 privilege and/or attorney work product doctrine. Roadrunner further objects to this interrogatory as
5 compound, in that it comprises at least seven (7) separate interrogatories. Roadrunner further objects to
6 the extent this interrogatory seeks all facts and information related to each and every allegation
7 applicable to the subject cause of action, including a detailed narrative of every witness and document
8 that supports each such fact or piece of information, and is thus facially burdensome and oppressive,
9 particularly at this stage in the litigation where each party is engaged in discovery and conducting
10 investigations.

11 Roadrunner further objects to this interrogatory to the extent it seeks information that is equally available
12 to TGS, and is therefore oppressive and burdensome to Roadrunner.

13 Without waiving these general and specific objections, and subject to them, Roadrunner responds as
14 follows:

15 (1) The relevant contractual provisions include Section 7.4 (“Non-Competition, Non-Solicitation
16 and Non-Disclosure”) of the SPA.

17 (2) Jeffrey Cox, David B. Chidester, Central Cal Transportation, and Double C Transportation.

18 (3) In Court filings and TGS' deposition, TGS admitted it knew about the SPA and the provisions
19 in Section 7.4 as early as June 1st, the day after Cox left his position at Roadrunner.

20 (4) Working with Cox to acquire detailed, specific confidential, proprietary and trade secret
21 information from Cox regarding Roadrunner's business operations, customers, employees, and drivers,
22 (2) use Cox's relationships to solicit Roadrunner's customers, employees, and drivers, and (3) hiring
23 Cox.

24 (5) Despite its knowledge of the SPA and the SPA's noncompete provisions, TGS worked in
25 secret with Cox for over a month—mining Cox for customer, employee, and driver contact, rate, salary
26 and other such information, and using Cox to make introductions to Roadrunner/Central Cal's
27 employees, drivers, and customers—and then, despite knowing that the applicable provisions of Cox's
28 noncompete agreement ran through the end of 2017, hired Cox to work for TGS and continue the

1 foregoing activities, in July of that year, in clear violation of the SPA.

2 (6) In addition to seeking injunctive relief and relief commanding TGS disclose, return, and/or
3 destroy Roadrunner's confidential and proprietary information, Roadrunner seeks monetary recovery
4 from TGS due to TGS' unfair competition, tortious interference with the contractual relationship
5 between Roadrunner and Cox, tortious interference with Roadrunner's prospective economic
6 relationships with Roadrunner's current, former and prospective customers, unjust enrichment, and
7 conversion, in one or more of the following forms: (1) Roadrunner's lost profits; (2) TGS' unjust
8 enrichment (i.e., TGS' profits); (3) a reasonable royalty for TGS use of Roadrunner's confidential
9 information and/or trade secrets; (4) exemplary and punitive damages, (5) pre- and post-judgment
10 interest and/or (6) attorneys' fees and expenses. Those damages cannot be reasonably or reliably
11 calculated at the present time because Roadrunner will need discovery from at least TGS and Cox.
12 Roadrunner's investigation is ongoing, and Roadrunner expressly reserves the right to supplement these
13 responses and promptly disclose this information as it becomes known to Roadrunner.

14 **1. TGS's Position**

15 TGS reports that during the meet and confer discussion, Roadrunner reportedly represented that
16 much of the information on which a response would be based has or will be produced in response to
17 TGS's requests for production, Nos. 22-32. The parties then explored a compromise whereby
18 Roadrunner would identify the requisite documents by Bates number, along with a summary table
19 showing the alleged changes in gross revenue, net revenue, and profits garnered by Roadrunner's
20 Fresno-based operation that comprise the lost profits Roadrunner is seeking to recover in this action.
21 TGS reports that this compromise would have ameliorated its concerns if Roadrunner had followed
22 through with the compromise.

23 **2. Roadrunner's Position**

24 Roadrunner reports that on August 21, 2018, it amended its interrogatory responses, and noted
25 for Interrogatory No. 4 that Roadrunner's "lost profits" include "lost profits and monies" in "RRIS-
26 TGS0005013-4, 3807-3811, and 4947." Roadrunner therefore contends that TGS's arguments and
27 positions with respect to this interrogatory are now moot. Roadrunner also contends that if TGS
28 complies with Roadrunner's Requests for Production, Set Two and produces documents that shed

1 additional light on Roadrunner's calculations of lost profits, Roadrunner will further supplement its
2 amended responses to reflect the impact of that newly required information.

3 **3. Discussion**

4 Having considered the parties' arguments, the Court finds that TGS's motion to compel a further
5 response to Interrogatory No. 4 should be denied. Roadrunner amended its response to Interrogatory
6 No. 4 and identified responsive documents by Bates number. Roadrunner also has acknowledged its
7 obligation, pursuant to Federal Rule of Civil Procedure 26(e)(1)(A), to supplement its response if it
8 acquires additional information regarding its lost profits calculation during discovery. Accordingly, the
9 Court will not compel a further response to Interrogatory No. 4 at this time. If Roadrunner's response
10 has not resolved the issue, then the parties may address the dispute at the conference currently scheduled
11 for November 9, 2018. Roadrunner also is cautioned that it will not be able to rely on additional
12 documents supporting its calculations of alleged lost profits for the purposes of either a summary
13 judgment motion or at trial absent disclosure of those documents to TGS.

14 **IV. Conclusion and Order**

15 For the reasons stated above, TGS's motion to compel (Doc. 114) is HEREBY DENIED.

16
17 IT IS SO ORDERED.

18 Dated: November 5, 2018

19 /s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE