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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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7 SPPI-SOMERSVILLE, INC. AND
8 SOMMERSVILLE-GENTRY, INC.,

No. C 04-2648 SI

9 Plaintiffs,

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL DISCOVERY**

10 v.

11 TRC COMPANIES, INC., *et al.*,

12 Defendants.
13 _____/

14 By letter brief, defendants TRC Companies and GBF Holdings, LLC (“defendants”) move to
15 compel further testimony by Albert Seeno III and the production of the September 2, 2008 letter from
16 Albert Seeno, Jr., plaintiffs’ principal, to Jim Jakel, the City Manager for Antioch. The letter, which
17 plaintiffs inadvertently produced in discovery, relates to the remediation of Markley Creek and the
18 Highlands Ranch Phase II development, which includes the property that is at issue in this case.
19 Plaintiffs oppose the motion.¹

20 Plaintiffs contend that both the deposition testimony and the letter are privileged and protected
21 settlement communications. Plaintiffs contend that settlement communications should be protected
22 from discovery due to the public policy encouraging the confidentiality of such negotiations. To support
23 this contention, plaintiffs cite *Goodyear Tire & Rubber v. Chiles Power Supply, Inc.*, 332 F.3d 976 (6th
24 Cir. 2003), which held that settlement communications were privileged and protected. *See id* at 978.
25 Neither party has cited any Ninth Circuit authority on this point, and district courts within the Ninth
26 Circuit have disagreed on whether settlement communications are discoverable.

27 Plaintiffs also contend that the Court should deny defendants’ motion in order to harmonize Fed.
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¹ The parties’ letter briefs are found at Docket Nos. 267 and 273.

1 R. Evid. 408 and Fed. R. Civ. P. 26. However, the present question is not whether the evidence will
2 ultimately be admissible in litigation but whether it is discoverable at this time. *See Abbott Diabetes*
3 *Care, Inc. v. Roche Diagnostics Corp.*, 2007 WL 4166030, at *3 (N.D.Cal. Nov. 19, 2007) (“The
4 question before the Court today is the discoverability, not the admissibility, of the settlement
5 agreement.”). Furthermore, Fed. R. Evid. 408 does not require any particular restriction on Fed. R. Civ.
6 P. 26 because the rules of evidence do not necessarily affect the rules of discovery. *See Phoenix*
7 *Solutions, Inc.*, 254 F.R.D. 568, 584 (N.D. Cal. 2008) (holding that Rule 408 does not warrant protecting
8 settlement negotiations from discovery.) At this time, therefore, the Court need only apply the standard
9 for discovery, which is more flexible and broader than the standard under Rule 408. *See Epstein v.*
10 *MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995) (Fed. R. Civ. P. 26 creates broad right of discovery.)

11 Here, defendants have made an adequate showing that the questions asked in deposition and the
12 corresponding letter are reasonably calculated to lead to the discovery of admissible evidence: “. . . [t]he
13 potential acquisition of GBF’s property through condemnation, a highly questionable transaction into
14 which TRC and GBF should be allowed to inquire since it involves their property interests.”
15 Defendants’ Motion to Compel, pg. 2. Defendants’ motion only requests that the letter and testimony
16 be discovered, and the Court expresses no view on the ultimate admissibility of the document and any
17 related testimony.²

18 Accordingly, the Court compels plaintiffs to produce the September 2, 2008 letter from Albert
19 Seeno, Jr. to Jim Jakel. The Court also compels Albert Seeno III to respond to questions at deposition
20 as they relate to the remediation of Markley Creek, the development of the subject property, and the
21 potential tie to condemnation of defendant GBF’s land. The parties shall meet and confer regarding the
22 scheduling of Mr. Seeno’s deposition.

23 **IT IS SO ORDERED.**

24 Dated: July 2, 2009

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27 SUSAN ILLSTON
28 United States District Judge

27 ² The Court notes that while the letter does appear to be a informal settlement communication,
28 the letter was not between counsel and does not contain any statement or reference that it was a
confidential settlement communication.