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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HEATHER L NEWTON,
Plaintiff,
v.
AMERICAN DEBT SERVICES, INC, et al.,
Defendants.

Case No. 11-cv-03228-EMC (JCS)

DISCOVERY ORDER

Re: Dkt. Nos. 234, 235

I. INTRODUCTION

In this individual and class action, Plaintiff Heather L. Newton (“Newton”) and Defendants Rocky Mountain Bank & Trust (“RMBT”) and Global Client Solutions, LLC (“GCS”) submitted two joint letters regarding discovery disputes, which the Court construes as Newton’s motions to compel responses to several Requests for Production (“RFPs”) and one Request for Admission (“RFA”). *See* Dkt. Nos. 234, 235. These motions are presently before the Court on an order of reference from Judge Edward M. Chen, presiding in this case. *See* Dkt. Nos. 236. For the reasons explained below, the Court GRANTS Newton’s motion to compel RMBT to comply with RFP Nos. 31 and 36 and GCS to comply with RFP No. 30; GRANTS IN PART AND DENIES IN PART Newton’s motion to compel RMBT to comply with RFP No. 32 and GCS to comply with RFP No. 41; and GRANTS Newton’s motion to compel GCS to respond to RFA No. 28.

II. BACKGROUND

The factual background of this case is set out more fully in Judge Chen’s previous orders on motions for summary judgment and motions to dismiss, and only a summary is presented here. *See* Dkt. Nos. 204 at 2–4 (“Order on MSJ”), 223 at 1–3 (“Order on MTD”).

In August 2009, Plaintiff signed up with American Debt Services (“ADS”) for “debt

1 settlement and restructure services,” which “consist[ed] of negotiating with creditors on behalf of
2 [Newton] for reduction of debt and formulation of a payment plan.” *See* Order on MSJ at 2 (citing
3 Dkt. No. 146-1). Quality Support Services (“QSS”) provided certain “customer service functions”
4 and other functions to ADS clients. *See* Order on MSJ (citing Dkt. No. 185). When Newton signed
5 up for the debt settlement services with ADS, she authorized RMBT to create a custodial bank
6 account. *See* Order on MSJ at 3 (citing Dkt. Nos. 144, 145-1). Newton also authorized GCS to
7 transfer and disburse funds from her primary checking account into the RMBT account. *See* Order
8 on MSJ at 3 (citing Dkt. No. 163-1). Newton then stopped making payments to and ceased
9 communications with her creditors, per Defendants’ instructions. *See* Order on MSJ at 3–4 (citing
10 Dkt. No. 163).

11 After Newton was contacted by or contacted three of her creditors regarding her debts—
12 apparently, Defendants had never contacted them—Newton terminated her account with ADS. *See*
13 Order on MSJ at 4 (citing Dkt. Nos. 146-4, 163). Ultimately, Newton paid a total of \$4,206.50 to
14 Defendants, of which \$2,200 was paid to one of her creditors, \$70.04 was refunded to her, and the
15 balance was kept by Defendants. *See* Order on MSJ at 4 (citing Dkt. No. 146-4).

16 Previously, in April 2009, RMBT had consented to a Federal Deposit Insurance
17 Corporation (“FDIC”) order to “cease and desist from . . . unsafe or unsound banking practices
18 and violations of laws and/or regulations.” *See* Dkt. No. 164-1 at 2 (“Cease and Desist Order”).
19 Paragraph 13 of the Cease and Desist Order provided that RMBT’s “board of directors shall
20 provide adequate and effective oversight over the Bank’s third-party relationships, specifically
21 focusing on monitoring the activities of third-party payment processors and their customers . . .
22 [and] [e]nsuring . . . compliance with Federal and state consumer protection laws, regulations, and
23 policies.” *See id.* ¶ 13.

24 In June 2011, Newton brought this suit against ADS, QSS, RMBT, and GCS for violations
25 of state and federal consumer protection laws in connection with debt settlement services. *See*
26 Order on MSJ at 4. For the purposes of this order, two sections of the so-called “Proraters Law” of
27 the California Financial Code are at issue. First, the Proraters Law requires the licensure of
28 “proraters,” who are defined as “person[s] who, for compensation, engage[] in whole or in part in

1 the business of receiving money or evidences thereof for the purpose of distributing the money or
2 evidences thereof among creditors in payment or partial payment of the obligations of the debtor.”
3 *See* Order on MSJ at 17 (quoting Cal. Fin. Code § 12200). Second, the Proraters Law mandates a
4 ceiling above which proraters cannot charge consumers for services; the relevant ceiling in this
5 case is twelve percent for the first \$3,000 distributed to creditors. *See* Order on MSJ at 17 (citing
6 Cal. Fin. Code § 12314). There is evidence that ADS and QSS directly violated the Proraters Law.
7 *See, e.g.*, Order on MSJ at 21 (noting evidence to support proposition that RMBT and GCS knew
8 of ADS and QSS’s violations of the Proraters Law).

9 Following RMBT and GCS’ motions for summary judgment and motions to dismiss, Judge
10 Chen ruled that although GCS and RMBT cannot be directly liable for violations of the Proraters
11 Law, the following claims could proceed to trial: (1) RMBT could be liable for aiding-and-
12 abetting a violation of the Proraters Law; (2) GCS could be liable aiding-and-abetting a violation
13 of the Proraters Law; and (3) GCS could be liable for conspiring to violate the Proraters Law. *See*
14 Order on MTD at 3, 8.

15 **III. DISCUSSION**

16 Newton moves to compel RMBT to comply with RFP Nos. 31, 32, and 36, and GCS to
17 comply with RFP Nos. 30 and 41. *See* Dkt. Nos. 234, 235. Newton also moves to compel GCS to
18 respond to RFA No. 28. RMBT and GCS make various objections.

19 **A. Documents Received From or Provided to Federal Regulatory Authorities**

20 For the reasons explained below, Newton’s motion to compel RMBT to comply with RFP
21 Nos. 31 and 36 and GCS to comply with RFP No. 30 is GRANTED.

22 RFP No. 31 requests RMBT to “[p]roduce all documents mentioning debt settlement that
23 RMBT received from or provided to any Federal regulatory authority between June 29, 2007 and
24 December 31, 2013.” *See* Dkt. No. 234-1 at 2. RMBT has represented that the only responsive
25 documents fall into two categories: (1) documents and communications exchanged between
26 RMBT and the FDIC pertaining to the Cease and Desist Order, and (2) certain requests for
27 information from the FDIC pertaining to various debt resolution companies. *See* Dkt. No. 234 at 1,
28 2. RMBT objects to the first category on the basis that such documents are protected from

1 disclosure by FDIC regulations; namely, 12 C.F.R. § 309 *et seq.* *See id.* at 2. RMBT objects to the
2 second category on the basis that the documents are irrelevant to the claim that RMBT aided and
3 abetted ADS and QSS in violating the Proraters Law, because none of the documents pertain to
4 those two companies. *See id.* at 3. RMBT also objects to the time period of June 29, 2007 to
5 December 31, 2013 as being overbroad because the class period ends on June 29, 2011, and
6 RMBT ceased providing services to California residents in July 2010. *See id.* RMBT also objects
7 to the scope because it is not limited to California consumers or services. *See id.* Ex. 1. at 2.

8 RFP No. 36 requests RMBT to “[p]roduce all documents relating to actions RMBT took to
9 comply with Paragraph 13, entitled ‘Third-Party Risks,’ of the [FDIC] Order to Cease and
10 Desist” *See id.* at 6. RMBT objects on the same bases that it asserts for RFP No. 31. *See* Dkt.
11 No. 234 at 3. RMBT also objects on the basis that the terms “relating to actions RMBT took” and
12 “documents” are vague, burdensome, and overly broad. *See id.* Ex. 1 at 6–7.

13 RFP No. 30 requests GCS to “[p]roduce all documents mentioning debt settlement that
14 GCS received from or provided to any Federal regulatory authority between June 29, 2007 and
15 December 31, 2013.” *See* Dkt. No. 235-1 at 2. GCS objects on the basis that such documents are
16 irrelevant to the claims of whether GCS conspired with or aided and abetted ADS or QSS in
17 violating the Proraters Law. *See* Dkt. No. 235 at 2. GCS also objects on the basis that the
18 documents are protected from disclosure by Office of the Comptroller of the Currency’s (“OCC”)
19 regulations; namely, 12 C.F.R. § 4.31 *et seq.* *See id.* GCS also objects to the time period as being
20 overbroad because the class period ends on June 29, 2011 and RMBT ceased providing services to
21 California residents in July 2010. *See id.* GCS also objects on the basis that the term “documents”
22 is vague, burdensome, and overly broad. *See id.* Ex. 1 at 2–3. GCS also objects to the scope
23 because it is not limited to California consumers or services. *See id.* at 3.

24 **1. Relevance and overbreadth**

25 As to RFP No. 31 seeking records from RMBT, the Court finds that the records sought are
26 relevant and not overbroad. As to the first category of documents identified by RMBT, documents
27 and communications with the FDIC regarding debt settlement services and the Cease and Desist
28 Order could contain evidence that RMBT had knowledge of ADS and QSS’s violations of the

1 Proraters Law. *See* Order on MTD at 7 (citing Cease and Desist Order ¶ 13) (in discussion of
2 claim that RMBT aided and abetted the Proraters Law, noting that Cease and Desist Order gave
3 RMBT notice that its relationship with debt settlement companies should be monitored). Such
4 records may also contain evidence that RMBT provided “substantial assistance” to ADS and QSS.
5 *See* Order on MSJ at 22 (noting that ordinary business transactions—such as provision of banking
6 services that enabled the debt settlement enterprise—could constitute “substantial assistance”).

7 As to the second category of documents identified by RMBT, requests made by the FDIC
8 pertaining to various debt resolution companies, even if not pertaining to ADS or QSS, could shed
9 light on the types of information RMBT kept in its records regarding the debt resolution
10 companies that it worked with. *See* Dkt. No. 234 at 2. *See also* Order on MTD at 7 (citing Cease
11 and Desist Order ¶ 13) (noting that RMBT should apprise itself of the risks that debt settlement
12 companies may pose to consumers).

13 As to both categories of RFP No. 31, Newton argues that documents generated after the
14 class period are relevant because “any enforcement would have happened *after* the offending
15 conduct.” *See* Dkt. No. 235 at 1 (emphasis in original). The Court agrees that the time period is
16 not overbroad. Communications with federal agencies regarding any enforcement or other
17 inquiries occurring after the class period could contain evidence relevant to RMBT or GCS’s
18 actions or knowledge during the class period.

19 As to RFP No. 36 seeking records from RMBT, the Court finds that the records sought are
20 relevant and not overbroad. Documents relating to RMBT’s actions to comply with the provisions
21 of the Cease and Desist Order that pertained to third-party risks could contain evidence that
22 RMBT assisted or had knowledge of ADS and QSS’s violations of the Proraters Law.

23 As to RFP No. 30 seeking records from GCS, the Court finds that the records sought are
24 relevant and not overbroad. Documents and communications with federal regulatory agencies
25 could contain evidence that GCS had business relationships with or had knowledge of ADS and
26 QSS’s violations of the Proraters Law.

27 2. Federal regulations governing disclosure

28 In addition to their relevance and overbreadness objections, RMBT and GCS argue that the

1 documents sought by Newton are protected from disclosure by FDIC and OCC regulations
 2 governing the release of non-public information. *See* Dkt. Nos. 234 at 2 (citing FDIC regulations
 3 at 12 U.S.C. § 309 *et seq.*), 235 at 2 (citing OCC regulations at 12 U.S.C. § 4.31 *et seq.*). Newton
 4 argues that a controlling Ninth Circuit decision precludes these arguments. *See* Dkt. Nos. 234 at 1
 5 (citing *Exxon Shipping Co. v. U.S. Dep’t of Interior*, 34 F.3d 774 (9th Cir. 1994)), 235 (same). The
 6 Court agrees with Newton. As a practical matter, the issue boils down to whether the agencies’
 7 regulations or the Federal Rules of Civil Procedure should control when the two conflict. There is
 8 a split in authority on this issue but, in the Ninth Circuit, the Federal Rules of Civil Procedure
 9 generally trump the regulations.¹ *See Exxon*, 34 F.3d at 780.

10 Rule 26 of the Federal Rules of Civil Procedure provides that “[p]arties may obtain
 11 discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense,” and
 12 that, “[f]or good cause, the court may order discovery of any matter relevant to the subject matter
 13 involved in the action.” Fed. R. Civ. P. 26(b)(1).

14 The FDIC and the OCC, like several other banking-related agencies, have regulations that
 15 govern the release of non-public information. Specifically, the FDIC regulations provide that
 16 records related to examination, operating, or condition reports prepared by, on behalf of, or for the
 17 use of the FDIC are exempt from disclosure. *See* 12 C.F.R. § 309.5(g). The regulations further
 18 provide that a person seeking “disclosure of exempt records or testimony in litigation to which the
 19 FDIC is not a party” must submit a request to be decided at the FDIC’s discretion. *See id.*
 20 § 306.6(b)(8). The OCC regulations provide that certain records, such as “[a] report of
 21 examination, supervisory correspondence, an investigatory file compiled by the OCC . . . in
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23 ¹ *See Wultz v. Bank of China, Ltd.*, — F.R.D. —, 2013 WL 1453258, at *2 (S.D.N.Y. 2013),
 24 *reconsideration denied*, 291 F.R.D. 42 (S.D.N.Y. 2013) (citing *Touhy v. Ragen*, 340 U.S. 462
 25 (1951)) (in case involving OCC regulations at 12 U.S.C. § 4.31 *et seq.*, stating that “[s]etting aside
 26 the details of the doctrinal disputes that underlie the various Circuits’ positions, the practical effect
 27 of the disagreement is that the Second, Fourth and Tenth Circuits as a general rule give primacy to
 28 agencies’ *Touhy* regulations over the Federal Rules of Civil Procedure when the two conflict,
 requiring litigants to exhaust their administrative remedies before moving to compel production
 from a governmental agency, while the D.C., Ninth, and Sixth Circuits generally give primacy to
 the Federal Rules over conflicting *Touhy* regulations.”) (citations omitted).

1 connection with an investigation,” are non-public. *See id.* § 4.32(b)(1)(iii). The regulations further
2 provide that a person seeking non-public OCC information must submit a request to be decided at
3 the OCC’s discretion. *See id.* § 4.33.

4 These regulations were promulgated under the so-called “Housekeeping Statute,” 5 U.S.C.
5 § 301, which provides:

6 The head of an Executive department or military department may
7 prescribe regulations for the government of his department, the
8 conduct of its employees, the distribution and performance of its
9 business, and the custody, use, and preservation of its records,
10 papers, and property. *This section does not authorize withholding*
information from the public or limiting the availability of records to
the public.

11 5 U.S.C. § 301 (emphasis added). According to legislative history, the second sentence was added
12 in 1958 because the statute had been “twisted from its original purpose as a ‘housekeeping’ statute
13 into a claim of authority to keep information from the public” *Exxon*, 34 F.3d at 777 (quoting
14 2 U.S. Code Cong. & Admin. News 3352 (1958)).

15 In *Exxon*, the Ninth Circuit addressed several agencies’ regulations, also promulgated
16 under § 301, which provided that an agency employee may not be deposed unless an agency head
17 authorizes it. *See Exxon*, 34 F.3d at 776. The defendant in an ongoing federal case brought suit
18 against the agencies to compel certain employees’ depositions under the Federal Rules of Civil
19 Procedure, but the district court held that the agencies’ regulations prevented this discovery. *See*
20 *id.* at 775. The Ninth Circuit reversed, holding that § 301 “does not create an independent
21 privilege to withhold government information.” *Id.* at 780. The court explained that “district courts
22 should apply the federal rules of discovery when deciding on discovery requests made against
23 government agencies, whether or not the United States is a party to the underlying action.” *Id.* The
24 court further explained that courts should use the federal rules’ balancing test to prevent discovery
25 where it would create an undue burden, and that other independent privileges—such as the state
26 secrets privilege or qualified executive privilege—should be upheld where applicable. *Id.*

27 For the purposes of this order, the critical holding in *Exxon* is that § 301 does not create an
28 independent privilege. *See id.* at 780. In making this holding, the Ninth Circuit observed that “the

1 1958 amendment explicitly sought to eliminate any perception that [§ 301] created an executive
 2 privilege.” *See id.* at 777 (citing *Harvey Aluminum v. NLRB*, 335 F.2d 749, 755 (9th Cir. 1964);
 3 *NLRB v. Capitol Fish Co.*, 294 F.2d 868, 875 (5th Cir. 1961)). Following *Exxon*, the Sixth Circuit
 4 specifically addressed regulations promulgated pursuant to § 301 that are similar to those at issue
 5 in this case. *See In re Bankers Trust Co.*, 61 F.3d 465 (6th Cir. 1995). In *In re Bankers Trust*, the
 6 Sixth Circuit held that Federal Reserve regulations governing disclosure of non-public documents
 7 exceeded the statutory authority of § 301. *See id.* at 470–71. In so holding, the court concluded
 8 that “Congress did not empower the Federal Reserve to prescribe regulations that direct a party to
 9 deliberately disobey a court order, subpoena, or other judicial mechanism requiring the production
 10 of information.” *Id.* at 470. The court reasoned that “[t]o allow a federal regulation issued by an
 11 agency to effectively override the application of the Federal Rules of Civil Procedure and, in
 12 essence, divest a court of jurisdiction over discovery, the enabling statute must be more specific
 13 than a general grant of authority as found here.” *See id.* (citing *Resolution Trust Corp. v. Deloitte*
 14 *& Touche*, 145 F.R.D. 108, 110 (D. Colo. 1992)). *See also Marketing Investors Corp. v. New*
 15 *Millennium Bank*, No. 3:11-cv-1696-D, 2012 WL 1357502, at *7 (N.D. Tex. Apr. 16, 2012)
 16 (holding that FDIC regulations at 12 C.F.R. § 309 *et seq.* exceeded congressional delegation of
 17 authority and “do not create an exemption or privilege from discovery for the responsive records
 18 and information in Defendant’s possession, custody or control that belong to the FDIC in this
 19 case”).

20 Here, RMBT and GCS assert that the FDIC and OCC regulations at 12 C.F.R. § 309 *et seq.*
 21 and 12 C.F.R. § 4.31 *et seq.*, promulgated under 5 U.S.C. § 301, create a privilege that protects the
 22 requested documents. *See* Dkt. Nos. 234 (citing FDIC regulations, arguing that “the privilege from
 23 disclosure belongs to the FDIC and it is the FDIC that has the discretion to waive that privilege”),
 24 235 (citing OCC regulations, arguing that “because the privilege belongs to the OCC, Plaintiff
 25 must make a request to the OCC before seeking any documents or information from GCS”)
 26 (emphasis removed). However, RMBT and GCS misunderstand the law. In the Ninth Circuit,
 27 § 301 and regulations promulgated pursuant to its authority do not create an independent privilege.
 28 *See Exxon*, 34 F.3d at 780.

1 RMBT and GCS appear to conflate the regulations with the bank examination privilege,
 2 which is an independent privilege that is held by the agencies, and which should be analyzed
 3 separately. *See, e.g., In re Bankers Trust*, 61 F.3d at 471–72 (after determining that FDIC
 4 regulations were not independent basis for defendant bank to withhold information, separately
 5 analyzing whether documents were protected by bank examination privilege); *Marketing Investors*
 6 *Corp.*, 2012 WL 1357502, at *5 (same). *See also In re JPMorgan Chase Mort. Modification*
 7 *Litigation*, 11-md-02290-RGS, 2012 WL 5947757, at *2 (D. Mass. Nov. 27, 2012) (in denying
 8 motion to compel production from defendant bank, requiring plaintiffs to follow OCC procedures
 9 to obtain records protected by bank examination privilege; court had previously ordered bank to
 10 produce all non-privileged records before requiring adherence to OCC procedures).

11 Other than the attempt to assert the FDIC and OCC regulations as privileges, RMBT and
 12 GCS assert no other privileges. Because no valid privileges have been asserted over the requested
 13 materials, and because RMBT and GCS do not dispute that they have possession, custody, or
 14 control of the requested documents, the Court orders their production under Rule 26 of the Federal
 15 Rules of Civil Procedure. *See Fed. R. Civ. P. 26(b)(1)* (“Parties may obtain discovery regarding
 16 any *nonprivileged* matter that is relevant to any party’s claim or defense.”) (emphasis added), 34
 17 (parties may request documents in responding party’s “possession, custody or control”);
 18 *Marketing Investors Corp.*, 2012 WL 1357502, at *5 (rejecting defendant bank’s argument that as
 19 a result of FDIC regulations, it did not have “possession, custody, or control” within the meaning
 20 of Fed. R. Civ. P. 34, and ordering production). *See also Wultz*, 2013 WL 1453258, at *6
 21 (acknowledging that in the Second Circuit, the OCC was protected from disclosing materials by its
 22 regulations and sovereign immunity, but ordering defendant bank to produce materials because
 23 regulations did not protect private litigants).

24 The Court acknowledges that there are authorities supporting RMBT and GCS’s position
 25 that § 301 creates an independent privilege. *See, e.g., Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*
 26 *v. Midland Bancor, Inc.*, 159 F.R.D. 562, 571 (D. Kan. 1994) (on motion to compel production
 27 from FDIC, finding that 12 C.F.R. § 309 *et seq.* created an independent privilege and requiring
 28 plaintiff to seek records through administrative process); *F.D.I.C. v. Flagship Auto Ctr., Inc.*, 3:04

1 CV 7233, 2005 WL 1140678, at *5–*6 (N.D. Ohio May 13, 2005) (on motion to compel
2 production from Federal Reserve, assuming that agency’s regulations promulgated under 5 U.S.C.
3 § 301 created independent privilege and requiring plaintiff to seek records through administrative
4 process). To the extent that these authorities conflict with the Ninth Circuit’s holding in *Exxon* that
5 § 301 does not create an independent privilege, this Court declines to follow them.

6 The Court also acknowledges that there are authorities to support the position that a litigant
7 must comply with agency regulations before seeking the court’s assistance in obtaining records
8 from banks or agencies. *See, e.g., Am. Sav. Bank v. Painewebber Inc.*, 210 F.R.D. 721, 723 (D.
9 Haw. 2001) (finding that plaintiffs were required to request unpublished Office of Thrift
10 Supervision records through administrative process before matter was ripe for court to decide); *In*
11 *re Countrywide Fin. Corp. Sec. Litig.*, 07-CV-5295-MRP MANX, 2009 WL 5125089, at *2 (C.D.
12 Cal. Dec. 28, 2009) (citing *Painewebber*, finding that plaintiffs were required to request non-
13 public OCC records through administrative process before matter was ripe for court to decide);
14 *Bay Bank v. f/v ORDER OF MAGNITUDE*, C05-5740-RBL, 2007 WL 737344, at *2 (W.D. Wash.
15 Mar. 7, 2007) (finding that plaintiffs were required to request FDIC records through administrative
16 process before matter was ripe for court to decide); *Raffa v. Wachovia Corp.*, 242 F. Supp. 2d
17 1223, 1225 (M.D. Fla. 2002) (finding that plaintiffs were required to request non-public OCC
18 records through administrative process before matter was ripe for court to decide); *Union Planters*
19 *Bank, N.A. v. Cont’l Cas. Co.*, 02 CV 2321 MA/P, 2003 WL 23142200, at *2 (W.D. Tenn. Nov.
20 26, 2003) (same, following *Raffa*); *W Holding Co., Inc. v. Chartis Ins. Co. of Puerto Rico*, CIV.
21 11-2271 GAG/BJM, 2013 WL 6001087, at *2 (D.P.R. Nov. 12, 2013) (in denying motion to
22 compel production from non-party bank, recognizing split in authority and adopting approach
23 requiring exhaustion of administrative procedures, “especially in light of the fact that [FDIC in its
24 corporate capacity] is a party to this litigation . . .”).

25 However, the Court disagrees that exhaustion of administrative procedures is required in
26 this case. Unlike the agencies in several of the above-cited cases, the agencies here have not
27 asserted any privileges or otherwise stated a position on the disclosure of the requested documents.
28 *Cf. Painewebber*, 210 F.R.D. at 722 (counsel for Office of Thrift Supervision filed letter); *In re*

1 *Countrywide Fin. Corp. Sec. Litig.*, 2009 WL 5125089, at *1 (counsel for Federal Reserve Board
2 and OCC filed letters); *Union Planters Bank*, 2003 WL 23142200, at *1 (counsel for OCC
3 appeared at hearing). Further, the Court agrees with those cases that have found it “illogical” to
4 abandon the federal rules and instead require a litigant to follow the “much more cumbersome
5 procedure[s]” prescribed by the regulations under similar circumstances. *See In re Bankers Trust*,
6 61 F.3d at 471. *See also Marketing Investors Corp.*, 2012 WL 1357502, at *6 (finding “no
7 compelling reason to discard the relatively straight-forward discovery methods under the federal
8 rules for the FDIC’s much more cumbersome procedure in this case”).

9 Accordingly, Newton’s motion to compel RMBT to comply with RFP Nos. 31 and 36 and
10 GCS to comply with RFP No. 30 is GRANTED.

11 **B. Documents Exchanged Between Defendants**

12 RFP No. 32 requests RMBT to “[p]roduce all documents that RMBT sent to or received
13 from any other defendant in this action between June 29, 2007 and December 31, 2013, related to
14 debt settlement services.” *See* Dkt. No. 234-1 at 4. As to documents exchanged with ADS and
15 QSS, RMBT represents that it has no documents sent to or received from these companies. *See id.*
16 at 4. As to documents exchanged with GCS, RMBT objects on the basis that any documents
17 exchanged between it and GCS do not pertain to “debt settlement services” because neither
18 company is in the debt settlement services industry. *See id.* RMBT also objects on the basis that
19 the request is overbroad in seeking documents that are not limited to California consumers of ADS
20 and QSS, and that are outside the defined class period. *See id.* RMBT represents that the only
21 documents exchanged with GCS pertain to traditional banking services by RMBT and account
22 maintenance services by GCS. *See id.* RMBT also objects on the basis that the term “document” is
23 vague, burdensome, and overly broad. *See id.*

24 RFP No. 41 requests GCS to “[p]roduce all documents that GCS sent to or received from
25 any other defendant in this action between June 29, 2007 and December 31, 2013, related to debt
26 settlement services.” *See* Dkt. No. 235-1 at 12. GCS objects on the basis that the phrases
27 “documents” and “related to debt settlement services” are vague, burdensome, and overbroad. *See*
28 Dkt. No. 235 at 3. GCS further argues that because this request is not narrowed by subject, it

1 would be required to locate and review “tens of thousands of documents” to comply. *See id.*

2 The Court finds that these requests are overbroad because they would include records
3 irrelevant to the issues of whether RMBT or GCS aided or abetted ADS or QSS in violating the
4 Proraters Law. As to RFP No. 32, the discoverable records are those “related to debt settlement
5 services” between RMBT and GCS relating to custodial bank accounts for California clients
6 within the requested time period. As to RFP No. 41, the discoverable records are those “related to
7 debt settlement services” between GCS and other Defendants relating to California clients within
8 the requested time period.

9 Accordingly, Newton’s motion to compel RMBT to comply with RFP No. 32 and GCS to
10 comply with RFP No. 41 is GRANTED IN PART AND DENIED IN PART, as described above.

11 **C. Request for Admission**

12 Request for Admission No. 28 requests GCS to “[a]dmit that between June 29, 2007 and
13 June 29, 2011, GCS administered accounts established for the debt settlement programs of QSS’s
14 California clients, at banks other than RMBT.” *See* Dkt. No. 235-2 at 8. GCS objects on the basis
15 that the only bank relevant to this lawsuit is RMBT. *See id.* Newton argues that one of GCS’s
16 defenses is that it is RMBT’s agent, and evidence that other banks also controlled GCS makes it
17 less likely that GCS was actually RMBT’s agent. *See* Dkt. No. 235 (citing *Cox v. Kaufman*, 77
18 Cal. App. 2d 449, 452 (1946)).

19 The Court agrees with Newton and finds that the information sought is relevant because
20 could provide evidence that GCS was not RMBT’s agent. *See CenterPoint Energy, Inc. v.*
21 *Superior Court*, 157 Cal. App. 4th 1101, 1118 (2007) (citing 3 Witkin, Summary of Cal. Law
22 (10th ed. 2005) Agency, § 93, at 140–141) (“The existence of agency or employment is mainly a
23 question of fact The significant test of an agency relationship is the principal’s right to
24 control the activities of the agent.”).

25 Accordingly, Newton’s motion to compel GCS to respond to RFA No. 28 is GRANTED.

26 **IV. CONCLUSION**

27 For the reasons explained above, Newton’s motion to compel RMBT to comply with RFP
28 Nos. 31 and 36 and GCS to comply with RFP No. 30 is GRANTED; Newton’s motion to compel

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RMBT to comply with RFP No. 32 and GCS to comply with RFP No. 41 is GRANTED IN PART AND DENIED IN PART; and Newton’s motion to compel GCS to respond to RFA No. 28 is GRANTED. Within fourteen days of this order, RMBT and GCS shall produce the documents and provide the responses in accordance with this order.

IT IS SO ORDERED.

Dated: May 13, 2014



JOSEPH C. SPERO
United States Magistrate Judge