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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
REAL PROPERTY AND
IMPROVEMENTS LOCATED AT 2366
SAN PABLO AVENUE, BERKELEY,
CALIFORNIA,
Defendant.

Case No. [13-cv-02027-JST](#) (MEJ)
**AMENDED ORDER GRANTING
MOTION TO QUASH SUBPOENA**
Re: Dkt. No. 91

INTRODUCTION

By the present joint letter, Claimant Berkeley Patient’s Group (“BPG”) moves to quash a subpoena that was served by plaintiff United States (the “Government”) on the California State Board of Equalization (“BOE”). Jt. Ltr., Dkt. No. 91. For the reasons discussed below, the Court GRANTS BPG’s request.

BACKGROUND

This is an in rem action for forfeiture of real property pursuant to 21 U.S.C. § 881(a)(7). The United States alleges that since May 2012, BPG has operated a medicinal marijuana dispensary on the real property located at 2366 San Pablo Avenue, in Berkeley, California, in violation of 21 U.S.C. §§ 846 and 856. Jt. Ltr., at 5. The United States commenced this action against the defendant real property on May 2, 2013. *Id.* Thereafter, BPG, filed claims asserting an interest in the property and contesting the forfeiture. Dkt. No. 12.

On November 18, 2013, the Government issued a subpoena to the BOE seeking production of all records pertaining to BPG. Dkt. No. 69. On January 13, 2014, this Court quashed the subpoena because the Government failed to demonstrate a compelling need for the documents “without first exhausting other available discovery mechanisms to obtain the information it seeks

1 request for BOE tax records related to the sales reported to BOE, which the Government believes
2 will identify the products that BPG is authorized to sell. *Id.* The Government does not address
3 BPG’s offer to provide alternate information via interrogatories, or whether the BOE records
4 actually contain the more detailed information it seeks.

5 BPG argues that even though it declined to produce any alternative documents, the
6 subpoena should be quashed because it can supply the Government with the information it
7 requires by providing BPG’s total sales figures if asked to do so in an interrogatory. *Id.* at 3. BPG
8 further argues that the Government has not established that it could obtain BPG’s marijuana sales
9 figures from their tax returns because it has not shown that BOE records contain a breakdown of
10 the types of products a business sells. *Id.*, fn 2.

11 “Tax returns do not enjoy an absolute privilege from discovery.” *Premium Service Corp.*
12 *v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975). Nevertheless, there is a public
13 policy against the unnecessary public disclosure of tax records. *Id.* “Accordingly, the Court may
14 only order the production of [a party’s] tax returns if they are relevant and when there is a
15 compelling need for them because the information sought is not otherwise available.” *Aliotti v.*
16 *Vessel Senora*, 217 F.R.D. 496, 497–98 (N.D. Cal. 2003). “The party seeking production [of the
17 tax returns] ‘has the burden of showing relevancy, and once that burden is met, the burden shifts to
18 the party opposing production to show that other sources exist from which the information is
19 readily obtainable.’” *A. Farber and Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal.
20 2006) (quoting *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 189 (D. Kan. 1997)).

21 Considering the parties’ arguments against this standard, the Court finds that even
22 assuming the Government has made a sufficient showing that the documents are relevant, BPG
23 has demonstrated that the information sought is readily available from another source. At the time
24 of the joint letter, BPG averred that it was willing to provide its total sales figures at the defendant
25 property if the Government served an interrogatory seeking that information. *Jt. Ltr.* at 3. BPG
26 explained that it could not provide this information through the Government’s document requests
27 due to several privilege issues, including the Fifth Amendment and the right to patient privacy. *Id.*
28 at 4. Further, BPG maintains that its total sales figures will provide the same information as the

1 tax records, which do not provide a breakdown of BPG's sales by type. *Id.* at 3. Under these
2 circumstances, the Court finds that the Government is again seeking tax documents relating to
3 BPG without first exhausting other available discovery mechanisms to obtain the information it
4 seeks in the tax records. The established public policy protecting tax records from unnecessary
5 public disclosure requires the Government to utilize and exhaust other less intrusive discovery
6 avenues before it is entitled to obtain the documents.

7 **CONCLUSION**

8 Based on the analysis above, the Court GRANTS BPG's request to quash the subpoena
9 served on the BOE at this juncture. The Court makes no finding as to whether the materials
10 sought in the subpoena are relevant, and this ruling does not preclude the Government from re-
11 serving the subpoena at a later time if it cannot obtain the information from BPG through an
12 interrogatory requesting BPG's total and projected sales figures for the relevant time periods.

13 **IT IS SO ORDERED.**

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15 Dated: June 6, 2014

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18 MARIA-ELENA JAMES
19 United States Magistrate Judge
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