

United States District Court  
For the Northern District of California

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

BAKHTIARI CORPORATION, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
REGISTER TAPES UNLIMITED, INC., et al, )  
 )  
Defendants. )

Case No.: 5:12-cv-05183-LHK (PSG)  
**ORDER GRANTING MOTIONS TO  
COMPEL**  
**(Re: Docket Nos. 43, 47)**

RTU, LP DOING BUSINESS AS )  
CARTVERTISING, )  
 )  
Counterclaimants, )  
 )  
v. )  
 )  
BAKHTIARI CORPORATION, BAKHTIARI )  
L.L.C., YORK ENTERPRISES SOUTH, INC., )  
 )  
Counter-defendants. )



1 falls within the scope of this order. In issuing its earlier orders regarding this documentation, the  
2 court held specifically that any assertions of privilege were inappropriate.<sup>6</sup>

3 Cartvertising represents in its brief that it is now willing to produce the documents.<sup>7</sup> In any  
4 event, Cartvertising shall produce the documents in question, as well as *any and all other*  
5 *documents* in its custody or control relating to its relationship with Michael Rush.

6 **2. Docket No. 47: Motion to Compel Production of Financial Information and Contracts**

7 Bakhtiari's second motion seeks the production of two different sets of documents. First,  
8 Bakhtiari wants access to any documentation regarding Cartvertising's profits and losses from  
9 2009-2012, and second, it wants to review Cartvertising's contracts with major grocers.

10 Cartvertising objects to both of these requests as overbroad, privileged, irrelevant, and premature.<sup>8</sup>

11 The federal rules set a broad standard for discovery, one which the Supreme Court has  
12 construed to include "any matter that bears on or that reasonably could lead to another matter that  
13 could bear on, any issue that is or maybe in the case."<sup>9</sup> The court has previously ruled that  
14 Cartvertising's profits and losses are relevant to the issue of punitive damages, and on that basis, it  
15 required the production of profit and loss statements from 2010.<sup>10</sup> Those documents raised new  
16 concerns for Bakhtiari, and in order to resolve those concerns, it wants to look into the years  
17 around 2010.<sup>11</sup> Given the acknowledged relevance of Cartvertising's financial health and the  
18 targeted nature of the request, the court finds that this additional discovery is warranted.<sup>12</sup>

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20 <sup>6</sup> See Docket No. 30, at 4.

21 <sup>7</sup> See Docket No. 46, at 6.

22 <sup>8</sup> See Docket No. 49; *see also* Docket No. 55, at 4-8.

23 <sup>9</sup> *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

24 <sup>10</sup> See Docket No. 30, at 5.

25 <sup>11</sup> See Docket No. 47, at 3.

26 <sup>12</sup> The court has already ruled that Cartvertising's financial statements are not protected by the  
27 attorney-client or work product privilege, and indeed cautioned Cartvertising against over assertion  
28 of these privileges. See Docket No. 30, at 2-3. The court has also already ruled that production of  
financial data is not premature at this stage. See Docket No. 33, at 2.

1 As for the contracts between Cartvertising and the grocery stores, Cartvertising itself put  
2 those documents at issue. It asserts that under the contracts, the stores retain a large portion of the  
3 cart advertising space, such that it was unable to meet the terms of its contracts with Bakhtiari.<sup>13</sup>  
4 Bakhtiari now wants to verify the authenticity of this claim.<sup>14</sup> It is well-established Ninth Circuit  
5 law that when a party puts a document at issue, he may be compelled to produce it, even if it would  
6 otherwise be subject to the attorney-client privilege.<sup>15</sup> It would belie all notions of fairness to  
7 allow Cartvertising to assert a contractual claim as a defense in this action, but deny Bakhtiari the  
8 opportunity to vet that claim. Cartvertising shall therefore produce the contracts requested.<sup>16</sup>

9 No later than December 27, 2013, Cartvertising shall produce any and all other documents  
10 in its custody or control relating to its relationship with Michael Rush, any documentation related  
11 to its profits and losses from 2009-2012, and its 2010 and 2011 contracts with Safeway, Von's, and  
12 Ralph's grocery stores.

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14 **IT IS SO ORDERED.**

15 Date: December 20, 2013

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17 Paul S. Grewal  
18 United States Magistrate Judge

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<sup>13</sup> See Docket No. 47, at 5.

24 <sup>14</sup> See *id.*

25 <sup>15</sup> See *United States v. Amlani*, 169 F.3d at 1195 (citing *Home Indem. Co. v. Lane Powell Moss &*  
26 *Miller*, 43 F.3d 1322, 1326 (9th Cir. 1995)).

27 <sup>16</sup> If Cartvertising is concerned about the misuse of its confidential information outside of this  
28 litigation, the court is willing to entertain a motion for a protective order to govern its use.