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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
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8 CITY OF SAN JOSE,
9 Plaintiff,
10 v.
11 JUM GLOBAL, LLC,
12 Defendant.

Case No. [16-cv-01462-VKD](#)

**ORDER RE JOINT DISCOVERY
LETTER RE JUM GLOBAL'S BANK
RECORDS**

Re: Dkt. Nos. 73, 74

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14 Defendant JUM Global, LLC (“JUM”) moves to quash plaintiff City of San Jose’s (“City”)
15 subpoena to Compass Bank seeking the production of certain JUM bank records, or in the
16 alternative for a protective order against production of those records. In addition, the City moves
17 to compel the production of bank records directly from JUM. The parties filed a joint discovery
18 letter on August 28, 2018. Dkt. No. 73. The City provided an update on the status of the
19 subpoena on September 13, 2018. Dkt. No. 74.

20 Having considered the submissions of the parties, the Court grants JUM’s request for
21 relief.

22 **I. BACKGROUND**

23 On March 24, 2016, the City sued JUM for breach of contract and fraud arising out of a
24 failed project to develop technology for converting waste materials to energy. Dkt. No. 1. On
25 July 16, 2018, by stipulation and with leave of court, the City filed an amended complaint adding
26 claims for indemnity against JUM. Dkt. No. 69. Jurisdiction here is based on diversity of
27 citizenship. 28 U.S.C. § 1332.

28 JUM has asserted several counterclaims in response to the City’s original complaint,

1 including for breach of contract, slander of title, and interference with contractual relations. Dkt.
2 No. 25. The City answered those counterclaims. Dkt. No. 27. JUM has not responded to the
3 City's amended complaint.

4 On December 7, 2017, the City served requests for production of documents on JUM,
5 including Request No. 8, which asks for:

6 [E]ach and every WRITING which constitutes a bank record of the
7 JUM ability or inability to pay its match share for the purchase of
8 the gasifier unit without the need to receive any funds from the City
in order to make its match share payment.

9 Dkt. No. 73, at ECF p.21. In connection with an earlier discovery dispute between the parties, the
10 Court ordered JUM to "supplement its response to Request No. 8 to make the nature and scope of
11 its objections clear and to respond, as appropriate, to the portions of the request to which it does
12 not object." Dkt. No. 68. JUM's supplemental response to this document request is not part of the
13 party's joint submission, although the City asserts, without contradiction from JUM, that JUM did
14 not object to this request on privacy grounds. Dkt. No. 73 at 6.

15 On July 31, 2018, the City served a subpoena on Compass Bank seeking the following
16 records associated with JUM:

- 17 1. All documents that refer or relate to [JUM's account(s)] from January 2014 through
18 May 2015 inclusive, including but not limited to statements, and all documents
reflecting deposit information, withdrawal information, and loan information.
- 19 2. All documents that refer or relate to any applications by [JUM] to obtaining [sic]
20 financing between January 2014 to May 2015 inclusive, for a renewable energy project
located in San Jose, California.
- 21 3. All documents that refer or relate to any applications for loans of any kind made by
22 [JUM] from January 2013 to June 2015 inclusive, including but not limited to lines of
23 credit.

24 Dkt. No. 73 at ECF p. 13. Apparently, JUM advised Compass Bank that it objected to the bank's
25 production of these records, and Compass Bank has declined to produce the records until those
26 objections are resolved. Dkt. No. 74 at ECF p. 3.

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II. LEGAL STANDARD

With respect to the City’s Request No. 8 to JUM, the scope of discovery is limited to documents that are relevant to a party’s claim or defense and proportional to the needs of the case, taking into account the considerations described in Rule 26(b)(1). Fed. R. Civ. P. 26(b)(1). As the party seeking discovery, the City bears the burden of demonstrating that the discovery it seeks meets the requirements of Rule 26(b)(1).

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With respect to the City’s subpoena to Compass Bank, the permissible scope of a subpoena to a non-party is the same as that for party discovery. See Fed. R. Civ. P. 45, advisory committee notes to 1991 amendment, subdivision (a) (“The non-party witness is subject to the same scope of discovery under this rule as that person would be as a party to whom a request is addressed pursuant to Rule 34.”). Objections to a subpoena must be served within 14 days after service of the subpoena or before the time specified for compliance, whichever is earlier. Fed. R. Civ. P. 45(d)(2)(B).

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In the alternative, a party who is affected by a subpoena to a non-party (but not subject to it) may file a motion to quash or modify the subpoena, assuming the party has standing to do so. Fed. R. Civ. P. 45(d)(3)(B). Rule 45(d)(3)(A) identifies circumstances in which a court must grant a motion to quash or modify a subpoena, while Rule 45(d)(3)(B) identifies circumstances in which a court may grant such a motion. Fed. R. Civ. P. 45(d)(3)(A) & (B). The court may also issue a protective order limiting discovery under Rule 26(c). Fed. R. Civ. P. 26(c). JUM bears the burden of demonstrating that its motion to quash meets the requirements of Rule 45(d)(3) or that it is entitled to a protective order under Rule 26(c). See, e.g., Koh v. S.C. Johnson & Son, Inc., Case No. C-09-00927-RMW, 2011 WL 940227 at *2 (N.D. Cal., Feb. 18, 2011); Finley v Pulcrano, Case No. C-08-0248-PVT, 2008 WL 4500862 at *1 (N.D. Cal., Oct. 6, 2008).

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III. DISCUSSION

The City seeks discovery of JUM’s bank records in support of its fraud claim against JUM. Specifically, the City argues that although JUM agreed to expend over \$2.8 million of its own funds to match the portion of a grant the City received from another source, JUM never had the financial ability to meet its contractual “match” obligations, and could only meet those obligations

1 by invoicing the City for funds JUM was not entitled to receive. The City expects that the bank
2 records it seeks will include evidence from which JUM’s intent to commit fraud may be inferred.
3 The City contends that JUM does not have standing to challenge the subpoena to Compass Bank,
4 and that JUM has waived any right to object on privacy grounds to production of documents
5 responsive to Request No. 8. Dkt. No. 73 at 5.

6 JUM raises two objections to the City’s discovery requests. First, it argues that the
7 subpoena and Request No. 8 seek documents that are irrelevant to the City’s fraud claim as
8 actually pled, which JUM says concerns a single invoice submitted in January 2015. Second,
9 JUM argues that the City’s subpoena and Request No. 8 implicate JUM’s privacy rights in its bank
10 records, and discovery should not be permitted for that reason as well. Dkt. No. 73 at 2. Neither
11 JUM nor Compass Bank makes any other objections to the subpoena or Request No. 8.

12 **A. JUM’s Standing to Move to Quash the Subpoena to Compass Bank**

13 JUM asserts that it has a privacy interest in the bank records described in the City’s
14 subpoena to Compass Bank, and that this interest confers standing on JUM to challenge the
15 subpoena. The City responds that organizational entities, such as corporations or LLCs, do not
16 have a constitutional right of privacy under California law, and JUM has not identified any other
17 authority for asserting a privacy right in its bank records.

18 The parties’ focus on whether JUM has a constitutional right of privacy under California
19 law is unnecessarily narrow. A party affected by a subpoena issued to an entity that is not a party
20 to the action has standing to challenge the subpoena under Rule 45(d)(3) if disclosure of the
21 documents implicates the party’s “rights or privileges.” As the City acknowledges, privacy
22 interests are the kind of “right or privilege” that permits a party to challenge a subpoena issued to
23 another. Dkt. No. 73 at 4. And, as the City also acknowledges, JUM has a privacy interest in its
24 bank records, even if that interest is not a constitutional right of privacy. See *id.* at 4-5, citing
25 *Ameri-Medical Corp. v. Workers’ Comp. Appeals. Bd.*, 42 Cal. App. 4th 1260, 1287-88 (Cal. App.
26 1996) (reaffirming that “artificial entities” have non-constitutional privacy rights that are context-
27 dependent). Moreover, a party may obtain a protective order under Rule 26(c) if it can
28 demonstrate its own interests are jeopardized by the discovery sought by the subpoena, including

1 an interest in preventing the discovery of irrelevant information. See, e.g., *In re REMEC, Inc. Sec.*
2 *Litig.*, Case No. CIV 04CV1948 JLS AJB, 2008 WL 2282647 at *1 (S.D. Cal. May 30, 2008)
3 (collecting authority).

4 JUM asserts an interest in preventing its confidential bank records from being disclosed to
5 the City on the grounds that the records are confidential and are not relevant to this action. It has
6 standing to challenge the subpoena to Compass Bank on those grounds.

7 **B. Relevance of JUM Bank Records**

8 The parties dispute whether the records the City seeks by subpoena to Compass Bank and
9 Request No. 8 to JUM are relevant to the City's claim of fraud. The City bears the burden, in the
10 first instance, to demonstrate that the discovery it seeks is relevant to a claim or defense.

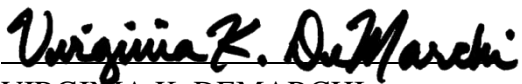
11 The Court has reviewed the operative complaint (Dkt. No. 69). The City's fraud claim, as
12 well as its claim for negligent misrepresentation, are limited to JUM's alleged false representations
13 with respect to the invoice it submitted for payment to the City on January 20, 2015. Dkt. No. 69,
14 ¶¶ 17-20, 34-50. The complaint does not include the more expansive allegations of fraud that the
15 City recites in the parties' joint submission. For this reason, the Court finds that JUM's objection
16 to Request No. 8 and its challenge to the Compass Bank subpoena on relevance grounds is well-
17 taken. JUM need not produce documents responsive to Request No. 8, and the City may not
18 enforce the subpoena against Compass Bank.

19 Because the Court finds the discovery the City seeks is not relevant to its fraud claim, as
20 currently pled, the Court does not reach the question of whether the City would otherwise be
21 entitled to obtain discovery of the bank records that JUM contends are confidential and therefore
22 protected from disclosure.

23 **IT IS SO ORDERED.**

24 Dated: September 21, 2018

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VIRGINIA K. DEMARCHI
United States Magistrate Judge