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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPLOYMENT MEDICINE CONSULTANTS,
INC.,

Plaintiff,

v.

CHRISTOPHER PIPES, et al.,

Defendants.

And all related counterclaims.

Civil No. 08cv1959-JAH (BGS)

**ORDER ON JOINT MOTION FOR
DETERMINATION OF DISCOVERY
DISPUTE**

[Doc. No. 95]

Deployment Medicine International (“DMI”) filed this lawsuit alleging that Christopher Pipes (“Pipes”), a former employee, wrote himself unauthorized “checks totaling \$200,000.00 drawn on DMI’s checking account.” Compl. at 4. DMI confronted Pipes about the unauthorized use of funds and Pipes allegedly agreed to “repay the money over time.” *Id.* at 5. DMI agreed to treat the \$200,000.00 as a loan, however, Pipes has refused to repay any part of the money. *Id.* DMI also has a cause of action against Pipes for slander. After DMI terminated Pipes in April, 2008, Pipes allegedly solicited business by telling customers that “DMI was having tax problems with the IRS and that DMI was, in fact, going out of business.” *Id.* at 16.

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1 **Discovery Dispute**

2 On October 29, 2010, Pipes, DMI, and John Haggmann¹ (“Haggmann”) filed a Joint Motion for
3 Determination of Discovery Dispute. (Doc. No. 95.) After extensive meet and confer efforts, DMI
4 withdrew its objections to all but one Request for Production—Request for Production No. 66. (*Id.*)
5 Specifically, DMI agreed to supplement its responses to interrogatory Nos. 5 and 6, and also agreed to
6 produce documents responsive to Request For Production Nos. 65, 69, and 70. (*Id.*) Haggmann also
7 withdrew his objections and agreed to produce documents responsive to Request For Production Nos. 5
8 and 14. The only remaining dispute pertains to Request For Production No. 66.

9 **A. Pipes’ Request for Production No. 66**

10 Request For Production No. 66 asks DMI to produce its “federal and state income tax returns for
11 tax year 2006.” Joint Mot. at 4. Pipes argues that he is entitled to DMI’s entire 2006 tax return in order
12 to “probe the truth of DMI’s allegation that \$200,000.00 in unauthorized checks were paid to Mr. Pipes
13 and that this amount was then considered a loan payable to DMI.” *Id.* Ultimately, Pipes wants to
14 determine how DMI characterized the \$200,000.00 in its disclosure to the IRS. Pipes also argues that he
15 is entitled to the tax return in order to rebut DMI’s claim for slander per se. Pipes allegedly made
16 statements to third-parties that “DMI was ‘going out of business’ and having trouble with the IRS.” *Id.*

17 DMI’s written objection stated the following:

18 This responding party objects to this request on the grounds that it seeks records and
19 documents which are beyond the permissible scope of discovery, not relevant to any
20 party’s claims or defenses or likely to lead to the discovery of admissible evidence,
violates the financial rights of privacy and trade secrets of Deployment Medical
Consultants, Inc. and is oppressive and burdensome.

21 After meeting and conferring, DMI has offered to produce a “redacted version of its 2006 income tax
22 return,” to provide the portion “which may reflect the treatment of a \$200,000 loan....” *Id.* at 5. DMI
23 also states that it has already described the circumstances of the loan in response to two interrogatories.
24 *Id.*

25 **B. Legal Standards and Analysis**

26 Neither party addresses whether the Court should apply federal privilege law or California law to
27 this discovery dispute. Federal Rule of Evidence 501 governs privilege in cases in federal court. The

28 ¹John Haggmann is the founder and director of DMI and a counter-defendant in the case.

1 Rule states, in relevant part, that where “State law supplies the rule of decision, the privilege...shall be
2 determined in accordance with State law.” Fed. R. Evid. 501. This case is in federal court on diversity
3 grounds. There are no federal questions or claims, therefore California law should govern in this
4 instance. Nevertheless, the Court will also analyze the issue under the more relaxed federal standard.

5 **1. California Law**

6 California courts have created an implied privilege against disclosure of tax returns. *Schnabel v.*
7 *Superior Court*, 5 Cal.4th 704, 718-721 (1993). The privilege is not absolute and there are three
8 grounds where courts do not uphold the privilege. “The privilege will not be upheld when (1) the
9 circumstances indicate an intentional waiver of the privilege; (2) the gravamen of the lawsuit is
10 inconsistent with the privilege; or (3) a public policy greater than that of the confidentiality of tax
11 returns is involved.” *Weingarten v. Superior Court*, 102 Cal.App.4th 268, 274 (Cal.Ct.App. 2002); *see*
12 *also Small v. Travelers Property Cas. Co. of Am.*, 08cv1160-BTM, 2010 WL 2523649, at *1 (S.D. Cal.
13 June 21, 2010) (citing *Weingarten*.) The last exception is narrow and California courts have held that
14 the public policy exception only “applies when warranted by a legislatively declared public policy.” *Id.*
15 The “[p]ublic policy favoring discovery in civil litigation is not, by itself, sufficiently compelling to
16 overcome the privilege.” *Fortunato v. Superior Court*, 114 Cal.App.4th 475, 483 (Cal.Ct.App. 2003).
17 Finally, “[a] trial court has broad discretion in determining the applicability of a statutory privilege.”
18 *Weingarten*, 102 Cal.App.4th at 274.

19 Only the third exception is potentially applicable to the facts of this case. Yet, Pipes has not
20 indicated any compelling public policy that warrants ordering disclosure. “The fact that financial
21 records are difficult to obtain or that a tax return would be helpful, enlightening or the most efficient
22 way to establish financial worth is not enough.” *Id.* at 276. Furthermore, DMI agrees to produce
23 relevant financial records and this less intrusive method will likely provide Pipes with the information
24 he seeks. DMI has also agreed to produce portions of the 2006 tax return that reflect the company’s
25 characterization of the \$200,000.00 loan.

26 **2. Federal Law**

27 Pursuant to federal law, discovery of tax returns is not privileged. The Ninth Circuit, however,
28 has maintained that public policy demands a higher standard for the discovery of tax returns than for

1 discovery of other documents. *See Premium Service Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225,
2 229 (9th Cir. 1975); *see also Thornton v. Crazy Horse, Inc.*, 2010 WL 3718945, at *2 (D. Alaska Sept.
3 14, 2010). Discovery of tax returns is allowed when “they are relevant and there is a compelling need
4 for the returns because their information is not otherwise readily attainable from an alternative source.”
5 *Melendez v. Gulf Vessel Management, Inc.*, No. C09-1100-MJP, 2010 WL 2650572, *2 (W.D. Wash.
6 July 1, 2010); *see also A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal.2006).

7 Assuming the tax returns are relevant to establish the veracity of DMI’s claim that it treated the
8 \$200,000.00 as a loan; Pipes has not shown that he has a compelling need for a complete and unredacted
9 version of DMI’s 2006 tax return. DMI has agreed to produce its accounting records for 2006, including
10 its business expense records, travel expense records, and payroll records. Joint Mot. at 3. Additionally,
11 DMI will produce documents reflecting any loans, bonuses, or real estate that DMI made to its
12 employees or subcontractors as a form of compensation. *Id.* at 7. Pipes will also have the opportunity
13 to make inquiries into DMI’s characterization of the \$200,000.00 during depositions.

14 Finally, DMI’s 2006 tax return is not relevant to defend against the slander allegation. The
15 complaint alleges that Pipes made slanderous statements in 2008. DMI’s 2006 tax return is not likely to
16 show that DMI was going out of business or having problems with the IRS in 2008. Pipes has also
17 failed to establish that he has sought information to rebut the slander claim from other, less intrusive,
18 discovery devices such as interrogatories, demands for documents, or inquires during depositions.

19 For the reasons stated above, the Court finds that Pipes’ need for the 2006 tax return does not
20 outweigh the public policy favoring confidentiality of tax returns. There are sufficient alternative
21 sources for the limited information Pipes wants from the tax returns. Most significant, DMI offered to
22 produce a redacted version of its 2006 tax return.

23 **C. Conclusion**

24 DMI must supplement its responses to interrogatory Nos. 5 and 6; produce documents
25 responsive to Request For Production Nos. 65, 69, and 70; and produce the redacted 2006 tax return no
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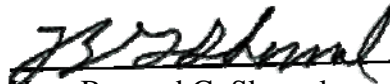
3 **December 10, 2010.** Hagamann must produce documents responsive to Request For Production Nos. 5
4 and 14 no later than **December 10, 2010.**

5 IT IS SO ORDERED.

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7 DATED: November 23, 2010

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Hon. Bernard G. Skomal
U.S. Magistrate Judge
United States District Court

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