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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

STEINAR MYHRE,	)	Civil No. 13cv2741 BEN(RBB)
	)	
Plaintiff,	)	<b>ORDER GRANTING IN PART AND</b>
	)	<b>DENYING IN PART PLAINTIFF'S</b>
v.	)	<b>MOTION TO COMPEL</b>
	)	<b>JURISDICTIONAL DISCOVERY FROM</b>
SEVENTH-DAY ADVENTIST CHURCH	)	<b>DEFENDANTS [ECF NO. 42]</b>
REFORM MOVEMENT AMERICAN UNION	)	<b>AND GRANTING IN PART AND</b>
INTERNATIONAL MISSIONARY	)	<b>DENYING IN PART DEFENDANTS'</b>
SOCIETY, a New Jersey	)	<b>MOTION FOR PROTECTIVE ORDER</b>
corporation; INTERNATIONAL	)	<b>[ECF NO. 45]</b>
MISSIONARY SOCIETY SEVENTH-DAY	)	
ADVENTIST CHURCH REFORM	)	
MOVEMENT GENERAL CONFERENCE, a	)	
California corporation; and	)	
DOES 1-100,	)	
	)	
Defendants.	)	
	)	

Plaintiff Steinar Myhre's Motion to Compel Jurisdictional Discovery [ECF No. 42] ("Motion to Compel") was filed on March 5, 2014. Defendants filed their response in opposition [ECF No. 58], and Myhre filed a reply [ECF No. 64].

On March 9, 2014, Defendants Seventh-Day Adventist Church Reform Movement American Union International Missionary Society, a New Jersey Corporation ("IMS-NJ"); The Seventh Day Adventist Church Reform Movement American Union International Missionary Society, a

1 Texas Corporation ("IMS-TX"); The Seventh Day Adventist Church  
2 Reform Movement American Union IMS, Inc., a Georgia Corporation  
3 ("IMS-GA"); Miami Dade Area Seventh Day Adventist Church Reform  
4 Movement, International Missionary Society, Inc., a Florida  
5 Corporation ("IMS-Miami"); and The Seventh Day Adventist Church  
6 Reform Movement American Union International Missionary Society, a  
7 Florida Corporation ("IMS-FL") filed a Motion for Protective Order  
8 Denying or, in the Alternative, Limiting the Discovery of Plaintiff  
9 [ECF No. 45]. Plaintiff filed his opposition [ECF No. 59], and  
10 Defendants filed a reply [ECF No. 63].

11 The hearing on the motions was set for April 7, 2014. The  
12 Court determined the matters to be suitable for resolution without  
13 oral argument, submitted the motions on the parties papers pursuant  
14 to the Local Civil Rule 7.1(d), and vacated the motion hearing.  
15 (Mins., ECF No. 66.) For the following reasons, Plaintiff's Motion  
16 to Compel is **GRANTED in part** and **DENIED in part**, and Defendants'  
17 Motion for Protective Order is **GRANTED in part** and **DENIED in part**.

#### 18 I. FACTUAL BACKGROUND

19 On November 14, 2013, Plaintiff Steinar Myhre filed a  
20 Complaint against Defendants alleging breach of contract, breach of  
21 the covenant of good faith and fair dealing, fraud, interference  
22 with contract, conversion, and civil conspiracy. (Compl. 1, ECF  
23 No. 1.) Plaintiff is a retired pastor who seeks money damages and  
24 injunctive relief for the alleged termination of his pension  
25 benefits by his former employer. (Id. at 3.) Myhre claimed that  
26 he was forced to retire over a theological disagreement in 2009; by  
27 then, he had worked for Defendants for over twenty-seven years as  
28

1 an ordained minister. (Id. at 3-5.) Plaintiff stated that his  
2 retirement payments ceased in 2013. (Id. at 9-10.)

3 Myhre originally named as Defendants two entities: IMS-NJ and  
4 International Missionary Society Seventh Day Adventist Church  
5 Reform Movement General Conference ("IMS-GC"). (Id. at 2.)  
6 Plaintiff alleged that he resides in Colorado, that Defendant IMS-  
7 NJ is a New Jersey corporation headquartered in Georgia and doing  
8 business in various states, including the State of California and  
9 the County of San Diego. (Id.) Myhre also claimed that Defendant  
10 IMS-GC is a California corporation headquartered in Georgia and  
11 doing business in various states, including the State of  
12 California. (Id.) Plaintiff alleged, upon information and belief,  
13 that Defendant IMS-GC has the right and ability to control  
14 Defendant IMS-NJ, and thus IMS-GC has vicarious liability for the  
15 actions of IMS-NJ. (Id.)

16 On January 6, 2014, Plaintiff amended his Complaint, adding  
17 five more Defendants: (1) The Seventh-Day Adventist Church Reform  
18 Movement American Union International Missionary Society, a Texas  
19 corporation ("IMS-TX"); (2) The Seventh-Day Adventist Church Reform  
20 Movement American Union IMS, Inc., a Georgia corporation  
21 ("IMS-GA"); (3) Miami Dade Area Seventh-Day Adventist Church Reform  
22 Movement, International Missionary Society Inc., a Florida  
23 corporation ("IMS-Miami"); (4) The Seventh-Day Adventist Church  
24 Reform Movement American Union International Missionary Society, a  
25 Florida corporation ("IMS-FL"); and (5) Tampa Bay Area Seventh Day  
26 Adventist Church Reform Movement, International Missionary  
27 Society Inc., a Florida corporation ("IMS-Tampa"). (Am. Compl. 2-  
28 3, ECF No. 15.) Myhre's Amended Complaint states that "Defendant

1 entities are part of a singular, hierarchical church organization  
2 that collectively conducts business throughout the United States  
3 and the world, with each level answerable to, and controlled by,  
4 higher levels of the organization." (Id. at 3.) Referring to all  
5 Defendants collectively as "IMS," Plaintiff also alleged, on  
6 information and belief, that "Defendant IMS has officially  
7 registered as a non-profit religious organization in the United  
8 States via a single entity reference, specifically, 'International  
9 Missionary Society Seventh-Day Adventist Church,' EIN 71-  
10 0905495, without any reference therein to either 'American Union'  
11 or 'General Conference.'" (Id.) Myhre's Amended Complaint also  
12 provides:

13           15. Defendants IMS-AU-NJ, IMS-Tampa, IMS-AU-TX,  
14           IMS-AU-GA, IMS- Miami, and IMS-AU-FL are  
15           indistinguishable for purposes of liability under the  
16           facts of this case, and are treated as a single entity by  
17           Plaintiff herein, collectively referred to as "Defendant  
18           American Union" unless otherwise specified in this  
19           Amended Complaint.

20           16. Upon information and belief, and based on  
21           admissions of Defendants, Defendant American Union has  
22           not maintained any principal place of business anywhere  
23           for almost 30 years. However, Defendant American Union  
24           has churches located in various states, including five  
25           churches in California, five in Florida, three in  
26           Georgia, two each in New York and Texas, and one each in  
27           Illinois, Colorado, New Jersey, Rhode Island, Virginia,  
28           and Washington DC.

29 (Id. at 3-4.)

30           Myhre alleged that jurisdiction is proper in this Court  
31           pursuant to 28 U.S.C. § 1332 because the parties are citizens of  
32           different states and the amount of controversy exceeds \$75,000.  
33           (Id. at 4.) Plaintiff claimed that venue is proper in this  
34           district "because Defendant American Union resides in this district  
35           (by virtue of being registered to do business in California, having

1 a church located in Vista, CA in the Southern District of  
2 California, and having further personnel located in Oceanside, CA)  
3 . . . ." (Id.)

4 Currently pending before the Court are four motions to dismiss  
5 filed by the Defendants. Defendant IMS-NJ's Motion to Dismiss for  
6 Lack of Subject Matter Jurisdiction or Improper Venue argues that  
7 because IMS-NJ's principal place of business is in Colorado, it is  
8 a citizen of Colorado and the case must be dismissed for lack of  
9 diversity jurisdiction. (Def. [IMS-NJ's] Mot. Dismiss Attach. #1  
10 Mem. P. & A. 8,<sup>1</sup> ECF No. 31.) In the alternative, IMS-NJ argues  
11 that the case must be dismissed for improper venue because not all  
12 of the corporate Defendants are residents of California. (Id. at  
13 13-14.) Defendant IMS-GC moves to dismiss for failure to state a  
14 claim, arguing that Plaintiff fails to allege any facts against it.  
15 (Def. [IMS-GC's] Mot. Dismiss Attach. #1 Mem. P. & A. 6, ECF No.  
16 32.) IMS-GC also claims that it is a California corporation with a  
17 principal place of business in Georgia, and it seeks dismissal for  
18 improper venue or transfer to the Northern District of Georgia.  
19 (Id. at 11-14.)

20 Defendants IMS-TX, IMS-GA, IMS-Miami and IMS-FL filed a Motion  
21 to Dismiss for Lack of Subject Matter Jurisdiction or Improper  
22 Venue, arguing that both IMS-GA and IMS-FL are citizens of Colorado  
23 for purposes of diversity jurisdiction. (Defs. [IMS-TX, IMS-GA,  
24 IMS-Miami & IMS-FL's] Mot. Dismiss Attach. #1 Mem. P. & A. 12, ECF  
25 No. 34.) Finally, Defendant IMS-Tampa filed a Motion to Dismiss

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27 <sup>1</sup> Because the Defendants' memoranda of points and authorities  
28 in support of their motions to dismiss are not consecutively  
paginated, the Court will cite to each using the page numbers  
assigned by the Court's ECF system.

1 for Improper Venue or, in the Alternative, to Transfer; it claims  
2 that transfer to Florida is proper because its principal place of  
3 business is in Florida. (Def. [IMS-Tampa's] Mot. Dismiss Attach.  
4 #1 Mem. P. & A. 6, ECF No. 39.) In the alternative, it moves to  
5 transfer this case to Georgia because IMS-NJ's<sup>2</sup> principal place of  
6 business is in Georgia. (Id.) These motions are currently set for  
7 a hearing on June 16, 2014, before the Honorable Roger T. Benitez  
8 [ECF No. 61].

9 In response to Defendants' challenges to jurisdiction and  
10 venue, Plaintiff brought this Motion to Compel seeking to  
11 "ascertain[] the facts behind Defendants' conclusory allegations  
12 that (1) any of the Defendants have a principal place of business  
13 in Colorado; and (2) proper corporate formalities were observed as  
14 to each of the Defendants." (Pl.'s Mot. Compel Attach. #1 Mem. P.  
15 & A. 5,<sup>3</sup> ECF No. 42.) The disputed issues require an inquiry into  
16 the citizenship of IMS-NJ, IMS-GA, and IMS-FL for purposes of  
17 diversity jurisdiction, as well as the Defendants' contacts with  
18 the Southern District for purposes of venue. Related questions are  
19 whether a transfer to another forum is appropriate for the  
20 convenience of parties and witnesses, and whether

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25 <sup>2</sup> IMS-Tampa's memorandum of points and authorities refers to  
26 IMS-NJ as "American Union." (Def. [IMS-Tampa's] Mot. Dismiss  
27 Attach. #1 Mem. P. & A. 5-6, ECF No. 39.)

28 <sup>3</sup> Because Plaintiff's brief is not consecutively paginated,  
the Court will cite to it using the page numbers assigned by the  
Court's ECF system.

1 Defendants observed corporate formalities to withstand allegations  
2 that they are alter egos of each other.<sup>4</sup>

3 **II. LEGAL STANDARDS**

4 "Parties may obtain discovery regarding any nonprivileged  
5 matter that is relevant to any party's claim or defense . . . .  
6 Relevant information need not be admissible at the trial if the  
7 discovery appears reasonably calculated to lead to the discovery of  
8 admissible evidence." Fed. R. Civ. P. 26(b)(1). A "relevant  
9 matter" under Rule 26(b)(1) is any item that "bears on, or that  
10 reasonably could lead to other matter that could bear on, any issue  
11 that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders,  
12 437 U.S. 340, 351 (1978).

13 Rule 37 of the Federal Rules of Civil Procedure enables the  
14 propounding party to bring a motion to compel responses to  
15 discovery. Fed. R. Civ. P. 37(a)(3)(B). The party opposing  
16 discovery bears the burden of resisting disclosure. Miller v.  
17 Pancucci, 141 F.R.D. 292, 299 (C.D. Cal. 1992). A district court  
18 has discretion to permit or deny jurisdictional discovery.  
19 Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008).  
20 "[D]iscovery should ordinarily be granted where pertinent facts  
21 bearing on the question of jurisdiction are controverted or where a  
22 more satisfactory showing of the facts is necessary.'" Laub v.  
23 U.S. Dep't of Interior, 342 F.3d 1080, 1093 (9th Cir. 2003)  
24 (quoting Butcher's Union Local No. 498 v. SDC Inv., Inc., 788 F.2d

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25  
26 <sup>4</sup> Plaintiff Myhre alleges he discovered a "web of corporate  
27 entities with almost identical corporate names, overlapping  
28 addresses, overlapping personnel, and overlapping use of the  
employer identification number (EIN) appearing on Plaintiff's W-2  
tax forms, making it impossible to even separate out one  
corporation from another." (Pl.'s Mot. Compel Attach. #1 Mem. P. &  
A. 5, ECF No. 42.)

1 535, 540 (9th Cir. 1986)); Calix Networks, Inc. v. Wi-Lan, Inc.,  
2 No. C-09-06038-CRB (DMR), 2010 WL 3515759, at \*3 (N.D. Cal. Sept.  
3 8, 2010) (quoting Laub, 342 F.3d at 1093)). A plaintiff need only  
4 present a "colorable basis" for jurisdiction to obtain discovery.  
5 Id. at \*4. "It may be an abuse of discretion" to deny discovery  
6 that "'might well demonstrate' jurisdictionally relevant facts."  
7 Id. at \*3 (quoting Rutsky & Co. Ins. Servs., Inc. v. Bell &  
8 Clements Ltd., 328 F.3d 1122, 1135 (9th Cir. 2003)). Discovery is  
9 not warranted, however, if a plaintiff cannot "demonstrate how  
10 further discovery would allow it to contradict the [defendant's]  
11 affidavits." Terracom v. Valley Nat'l Bank, 49 F.3d 555, 562 (9th  
12 Cir. 1995).

### 13 III. DISCUSSION

#### 14 A. Motion to Compel

15 Plaintiff moves to compel the following jurisdictional  
16 discovery:

17 1. Deposition of material witness, Henry Dering,  
18 American Union Vice President, near his residence in  
Sacramento, California;

19 2. A short deposition of either President, Vice  
20 President, Secretary, or Treasurer of Defendant IMS-Texas  
at their principal place of business in Huntington Park,  
California;

21 3. Production of additional documents promised to be  
22 subsequently provided in responses to Requests for  
Production, specifically -

- 23
- 24 a. From Defendant IMS-New Jersey (Nos. 17 and 18);
  - 25 b. From Defendant IMS-Texas (Nos. 2 and 3);
  - 26 c. From Defendant IMS-Georgia (No. 2);
  - 27 d. From Defendant IMS-Florida (Nos. 1-4); and
  - 28 e. From IMS-Miami (Nos. 1-4).

or written confirmation that there are no responsive  
documents.

4. Proper responses to Requests for Production of  
documents directly related to issues of jurisdiction,



1 venue, and alter ego/joint enterprise issues raised in  
2 Defendants' pending motions to dismiss or transfer,  
specifically -

- 3 a. From IMS-New Jersey (Nos. 13, 14, 15, and 21);  
4 b. From IMS-Texas (No. 5 and 8);  
5 c. From IMS-Georgia (Nos. 3 and 5);  
6 d. From IMS-Florida (No. 5); and  
7 e. From IMS-Miami (No. 5).

8 5. Proper responses to identical Interrogatories  
9 propounded to each of Defendants IMS-Texas, IMS-Georgia,  
10 IMS-Florida, and IMS-Miami, also relating to related to  
11 issues of jurisdiction, venue, and alter ego/joint  
12 enterprise issues raised in Defendants' pending motions  
13 to dismiss or transfer, specifically -

- 14 a. Interrogatory No. 2 (requires specification of  
15 "local area");  
16 b. Interrogatory No. 5 (requires identification of  
17 personnel that perform the day-to-day activities of  
18 the corporation);  
19 c. Interrogatory No. 6 (EIN used by Defendants to  
20 compare with Plaintiff's employment records); and  
21 d. Interrogatory Nos. 7 and 8 (location of actual  
22 places of activity).

23 6. Defendants' Initial Disclosures per Fed. R. Civ. P.  
24 Rule 26(a).

25 (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 7-8, ECF No. 42.)

26 Myhre contends that the discovery he propounded relates to the  
27 issues raised in the Defendants' motions. Plaintiff alleges that  
28 Defendants attack the "allegations in the Amended Complaint that  
the Defendants constitute a 'joint enterprise' and contest[]  
diversity jurisdiction and venue for this case." (Id. at 5.)

Plaintiff seeks jurisdictional discovery to address  
Defendants' Motions to Dismiss brought under Rule 12(b)(1) of the  
Federal Rules of Civil Procedure. A challenge to subject matter  
jurisdiction under Rule 12(b)(1) may be raised as either a facial  
or factual attack. See Safe Air for Everyone v. Meyer, 373 F.3d  
1035, 1039 (9th Cir. 2004). "In a facial attack, the challenger  
asserts that the allegations contained in a complaint are

1 insufficient on their face to invoke federal jurisdiction. By  
2 contrast, in a factual attack, the challenger disputes the truth of  
3 the allegations that, by themselves, would otherwise invoke federal  
4 jurisdiction." Id.

5 Here, Defendants challenge the factual allegations in  
6 Plaintiff's Amended Complaint, arguing that Defendants IMS-NJ, IMS-  
7 FL, and IMS-GA are citizens of Colorado. If true, this would  
8 destroy diversity jurisdiction in this case. In opposing Myhre's  
9 Motion to Compel, Defendants contend that none of Plaintiff's  
10 discovery relates to subject matter jurisdiction. (Defs.' Opp'n  
11 Mot. Compel 5,<sup>5</sup> ECF No. 58.)

12 **1. Rule 26(f) conference**

13 Defendants argue that Plaintiff is not entitled to conduct  
14 jurisdictional discovery because he has not held Rule 26(f)  
15 conferences with each of them; furthermore, propounding discovery  
16 on Defendants before obtaining a court order was impermissible.  
17 (Id. at 7-8.) Plaintiff's counsel acknowledges that she and  
18 defense counsel conducted a Rule 26(f) conference "when there were  
19 the original two defendants . . . ." (Pl.'s Opp'n Mot. Protective  
20 Order Attach. #1 Decl. Kramer 2, ECF No. 59.) According to  
21 counsel, she "sought to do a follow-up after additional parties  
22 were added (all represented by the same counsel). They have failed  
23 and refused, however, to complete the process." (Id.) Five  
24 Defendants were added in the Amended Complaint filed on January 16,  
25 2014, and served on the new parties in late January or early  
26

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27  
28 <sup>5</sup> Because Defendants' opposition brief is not consecutively  
paginated, the Court will cite to it using the page numbers  
assigned by the Court's ECF system.

1 February 2014. (Defs.' Opp'n Mot. Compel 8, ECF No. 58.) These  
2 facts will not excuse the Defendants from responding to discovery.

3 First, there is authority that "[n]o Rule 26(f) [conference],  
4 discovery plan or status conference is required in order to conduct  
5 discovery for the jurisdictional inquiry." Cannon v. Fortis Ins.  
6 Co., No. CIV-07-1145-F, 2007 U.S. Dist. LEXIS 87880, at \*8 (W.D.  
7 Okla. Nov. 29, 2007). Second, a separate provision, Rule 26(d)(1),  
8 governs the commencement of discovery. "A party may not seek  
9 discovery from any source before the parties have conferred as  
10 required by Rule 26(f), except . . . when authorized by these  
11 rules, by stipulation, or by court order." Fed. R. Civ. P.  
12 26(d)(1) (emphasis added). In another filing, Defendants  
13 represented that an agreement on discovery had been made with  
14 Myhre.

15 Plaintiff also asks this Court for a scheduling  
16 order that allows him to obtain discovery before having  
17 to file his opposition [to motions to dismiss or  
18 transfer]. This request is moot because the parties  
19 already worked out a discovery schedule that provides  
20 plaintiff with sufficient discovery to prepare his  
21 opposition to defendants' pending motions.

22 (Defs.' Opp'n Pl.'s Ex Parte Appl. 3-4, ECF No. 36.) Judge Benitez  
23 construed Defendants' statements as an agreement to provide  
24 discovery. He wrote, "[Defendants] also state that discovery  
25 responses have been and will be timely served, [and] that Plaintiff  
26 will have sufficient time to review discovery before filing  
27 oppositions . . . ." (Order Ex Parte Appl. Scheduling 2, ECF No.  
28 41.) Finally, the district court directed the parties "to promptly  
address any dispute regarding the scope and timing of discovery to  
[the assigned magistrate judge]." (Id. at 3.) The Court  
authorized the Plaintiff to proceed with discovery. For all these

1 reasons, Defendants' contention that jurisdictional discovery is  
2 precluded because a Rule 26(f) conference has not taken place with  
3 new Defendants is not well taken.

## 4                   **2. Depositions**

5           Defendants oppose Myhre's requests to depose Henry Dering,  
6 IMS-NJ's vice president, and the president or secretary of IMS-TX.  
7 (Defs.' Opp'n Mot. Compel 12-13, ECF No. 58.) Plaintiff alleged,  
8 and Defendants concede, that Henry Dering is currently vice  
9 president of American Union<sup>6</sup> and previously served as its  
10 president. (First Am. Compl. 7, 12, ECF No. 15; Def. [IMS-NJ's]  
11 Mot. Dismiss Attach. #2, Decl. Petkov 3-4, ECF No. 31.) Defendants  
12 agree that deposing an appropriate person is a permissible method  
13 of gathering jurisdictional facts; however, they insist that the  
14 choice of deponent must be left to them. (Defs.' Opp'n Mot. Compel  
15 12, ECF No. 58; see Defs.' Mot. Protective Order Attach. #1 Mem. P.  
16 & A. 17, ECF No. 45.)

17           Defendants cite Orchid Biosciences, Inc. v. St. Louis Univ.,  
18 198 F.R.D. 670, 676 (S.D. Cal. 2001), as authority for their  
19 contention that they designate the person to be deposed on  
20 jurisdictional contacts. The case does not support the claim. In  
21 Orchid Biosciences, the plaintiff served St. Louis University with  
22 "a notice of taking deposition of Defendant through its designated  
23 personnel." Id. at 672 (footnote omitted). Plaintiff listed six

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24  
25           <sup>6</sup> Although Defendants sometimes use the name "American Union"  
26 to refer to the IMS-NJ (see Def. [IMS-GC's] Mot. Dismiss Attach. #1  
27 Mem. P. & A. 3, ECF No. 32), they accuse Plaintiff of creating the  
28 confusion by referring to "American Union." (Defs.' Mot.  
Protective Order Attach. #1 Mem. P. & A. 10, ECF No. 45 ("Plaintiff  
maintains that the rightful defendant has no principal place of  
business because it is actually a web of dispersed corporate  
entities (a web which he confusingly calls 'Defendant American  
Union')".)

1 topics it sought to cover at the deposition. Id. at 677-78. The  
2 defendant moved for a protective order denying or limiting  
3 discovery. Id. at 671. The court directed the defendant to  
4 produce the appropriate person to provide deposition testimony on  
5 four of the six subjects listed in plaintiff's notice. Id. at 676.  
6 There is nothing remarkable about the case; it appears to involve  
7 no more than the taking of deposition testimony from an  
8 organization under Rule 30(b)(6) of the Federal Rules of Civil  
9 Procedure.

10 Myhre is not limited to taking deposition testimony of an  
11 organization under Rule 30(b)(6).

12 A party may still name a particular person to  
13 testify on behalf of the organization by noticing the  
14 deposition under Rule 30(b)(1) . . . . Rule 30(b)(6)  
15 simply gives a party seeking discovery from an  
16 organization or government agency the choice either to  
17 designate an appropriate individual under Rule 30(b)(1),  
18 or to describe the subject matter of the questions to be  
19 asked and allow the deponent to designate its own  
20 spokesperson familiar with the subject matter.

21 7 James Wm. Moore et al., Moore's Federal Practice § 30.25[1], at  
22 30-64 (3d ed. 2013).

23 In moving to dismiss for lack of diversity jurisdiction,  
24 Defendants placed the citizenship of IMS-NJ at issue. Defendant  
25 IMS-NJ claimed that it is a citizen of Colorado. (Def. [IMS-NJ's]  
26 Mot. Dismiss Attach. # 1 Mem. P. & A. 10, ECF 31.) Its  
27 codefendant, IMS-General Conference, claimed that "Defendant  
28 American Union [IMS-NJ] is a corporation organized in New Jersey,  
also with its principal place of business in Georgia." (Def. [IMS-  
GC's] Mot. Dismiss Attach. #1 Mem. P. & A. 5, ECF No. 32.)  
Likewise, IMS-Tampa argued that IMS-NJ's principal place of  
business is in Georgia. (Def. [IMS-Tampa's] Mot. Dismiss Attach.

1 #1 Mem. P. & A. 6, ECF No. 39.) These conflicting statements  
2 create a factual dispute as to the principal place of business of  
3 Defendant IMS-NJ, and thus necessitate jurisdictional discovery.

4 Defendants acknowledge that Plaintiff offered them a choice of  
5 deponents with regard to IMS-TX deposition, but they argue that the  
6 stated subject topics for that deposition were overly broad.

7 (Defs.' Opp'n Mot. Compel 13, ECF No. 58; see Defs.' Mot.

8 Protective Order Attach. #1 Mem. P. & A. 16-17, ECF No. 45.)

9 Plaintiff explains the need for IMS-TX to produce one or more of  
10 its officers for deposition to explain inconsistencies with regard  
11 to Defendant's corporate structure.

12 In November 2012, Tzvetan Petkov, who has also filed  
13 two declarations in this case (Doc. #4-2 and #31-2),  
14 filed a Periodic Report of a Nonprofit Corporation with  
15 the Secretary of State of Texas that used the File Number  
16 belonging to IMS-Texas, the precise name configuration as  
17 IMS-Georgia, stated the corporation was incorporated in  
18 New Jersey (even though IMS-New Jersey has never been  
19 authorized to conduct business in Texas), and a Colorado  
20 address for the "address of its principal office in the  
21 state or country under the laws of which it is  
22 incorporated." See Doc. #37-1, pg. 2:21-3:8 and Exhibit  
23 B thereto. The document also listed as Directors known  
24 officers of the "American Union" in Georgia, New York,  
25 California, and Florida. Id. Despite this document, as  
26 noted above, in its filing in this case, IMS-Texas claims  
27 its principal place of business is in Huntington Park,  
28 CA.

(Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 10-11, ECF No. 42.)

22 Defendants have raised factual challenges to Plaintiff's  
23 jurisdiction and venue allegations. Generally, where "pertinent  
24 facts bearing on the question of jurisdiction are in dispute,  
25 discovery should be allowed." Am. W. Airlines, Inc. v. GPA Grp.,  
26 Ltd., 877 F.2d 793, 801 (9th Cir. 1989); accord Coe v. Philips Oral  
27 Healthcare, Inc., Case No. C13-518-MJP, 2014 U.S. Dist. LEXIS  
28 19186, at \*15 (W.D. Wash. Feb. 14, 2014); Orchid Biosciences, Inc.,

1 198 F.R.D. at 672. In light of the factual dispute as to Defendant  
2 corporations' principal places of business, the Court grants  
3 Plaintiff's request to depose Henry Dering and the president or  
4 secretary of IMS-TX. In Plaintiff's second notice to take  
5 deposition testimony from Defendant IMS-TX, Myhre described topics  
6 to be covered during the deposition and, in effect, requested that  
7 IMS-TX designate one of the two individuals as the appropriate  
8 person to provide deposition testimony. Defendant may select which  
9 officer should be deposed.

### 10 3. Requests for production

11 Plaintiff alleges he has propounded written discovery requests  
12 on all Defendants that involve "almost exclusively matters  
13 regarding the actual location of business operations of each  
14 Defendant and addressing connections between the entities relevant  
15 to an alter ego analysis." (Pl.'s Mot. Compel Attach. #1 Mem. P. &  
16 A. 7, ECF No. 42.) Myhre moves to compel Defendants to produce or  
17 supplement responses to his requests for production of documents.

#### 18 a. IMS-NJ, IMS-TX, IMS-GA, IMS-FL, and IMS-Miami 19 profit and loss statements

20 Plaintiff seeks profit and loss statements for the last ten  
21 years from Defendant IMS-NJ (request thirteen), and for the last  
22 five years from Defendants IMS-TX (request five), IMS-GA (request  
23 five), IMS-FL (request five), and IMS-Miami (request five) to  
24 discover "whether [each] corporation maintains independent  
25 financial records from the co-defendants." (Second Notice of  
26 Resubmission Attach. #1 Ex. A, at 7, ECF No. 44; id. Attach. #2 Ex.  
27 B, at 5-6; id. Attach. #3 Ex. C, at 5-6; id. Attach. #4 Ex. D, at  
28 5-6; id. Attach. #5 Ex. E, at 5-6.) Defendants objected to the

1 requests as overbroad, harassing, and not reasonably calculated to  
2 lead to the discovery of admissible evidence, and they argued that  
3 Plaintiff was seeking private financial information not relevant to  
4 jurisdiction, venue, or the substantive action. (Second Notice of  
5 Resubmission Attach. #1 Ex. A, at 7, ECF No. 44; id. Attach. #2 Ex.  
6 B, at 5-6; id. Attach. #3 Ex. C, at 5-6; id. Attach. #4 Ex. D, at  
7 5-6; id. Attach. #5 Ex. E, at 5-6.) Defendants claim that the  
8 relevant time period for venue purposes is when the Amended  
9 Complaint was filed. (Defs.' Opp'n Mot. Compel 17, ECF No. 58; see  
10 Defs.' Mot. Protective Order Attach. #1 Mem. P. & A. 12, ECF No.  
11 45.) They also argue that the requests are "only tenuously related  
12 to controverted jurisdictional questions" because they are likely  
13 aimed at Plaintiff's alter ego theory. (Defs.' Opp'n Mot. Compel  
14 16-17, ECF No. 58.) In addition, they contend that any information  
15 reflecting donations to the churches should not be made public.  
16 (Id. at 17.)

17       The objection to the time period for profit and loss  
18 statements is not persuasive. The Defendants' reliance on  
19 Technograph Printed Circuits, Ltd. v. Packard Bell Elecs. Corp.,  
20 290 F. Supp. 308, 326 (C.D. Cal. 1968), is misplaced. Technograph,  
21 id., cites Hoffman v. Blaski, 363 U.S. 335 (1960), a case involving  
22 a transfer of venue between districts, as authority for the  
23 proposition that "venue, i.e., 'where [the action] might have been  
24 brought,' is to be determined as of the time of the filing of the  
25 actions . . . ." They read too much into the decision.

26       These Defendants have moved to dismiss for improper venue or  
27 to transfer venue [ECF Nos. 31, 32, 34]. True, to transfer a  
28 matter, the case must be sent to a district "where it might have



1 been brought" at the time of filing. 28 U.S.C.A. § 1404(a) (West  
2 Supp. 2013); see also Technograph, 290 F. Supp. at 326. At issue  
3 before this Court, however, is not whether venue is proper -- that  
4 issue will be ultimately decided by Judge Benitez. This Court need  
5 only decide whether Plaintiff should be allowed to discover facts  
6 pertinent to Defendants' assertions that the case should be  
7 dismissed or transferred for improper venue.

8 For venue purposes, a corporation resides wherever it is  
9 subject to personal jurisdiction, i.e. where it has minimum  
10 contacts. 28 U.S.C.A. § 1391(c)(2) (West Supp. 2013).

11 "A court may assert general jurisdiction over foreign  
12 (sister-state or foreign-country) corporations to hear  
13 any and all claims against them when their affiliations  
14 with the State are so 'continuous and systematic' as to  
15 render them essentially at home in the forum State."  
16 Goodyear Dunlop Tires Operations, S.A. v. Brown, --- U.S.  
17 ----, 131 S.Ct. 2 846, 2851, 180 L. Ed. 2d 796 (2011).  
18 For general jurisdiction to exist, a defendant must  
19 engage in "continuous and systematic general business  
20 contacts," Helicopteros Nacionales de Colombia, S.A. v.  
21 Hall, 466 U.S. 408, 416, 104 S. Ct. 1 868, 80 L. Ed.2d  
22 404 (1984), that "approximate physical presence" in the  
23 forum state, Bancroft & Masters, Inc. v. Augusta Nat'l,  
24 Inc., 223 F.3d 1082, 1086 (9th Cir.2000). "The standard  
25 is met only by 'continuous corporate operations within a  
26 state [that are] thought so substantial and of such a  
27 nature as to justify suit against [the defendant] on  
28 causes of action arising from dealings entirely distinct  
from those activities.'" King v. Am. Family Mut. Ins.  
Co., 632 F.3d 570, 579(9th Cir.2011) (alterations in  
original) (quoting International Shoe, 326 U.S. at 318,  
66 S. Ct. 154). To determine whether a nonresident  
defendant's contacts are sufficiently substantial,  
continuous, and systematic, we consider their  
"[l]ongevity, continuity, volume, economic impact,  
physical presence, and integration into the state's  
regulatory or economic markets." Tuazon v. R.J. Reynolds  
Tobacco Co., 433 F.3d 1163, 1172 (9th Cir. 2006).

26 Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223-24  
27 (9th Cir. 2011). Thus, the minimum contacts analysis includes an

1 inquiry into the longevity and continuity of the Defendants'  
2 presence in the forum. See id. (quoting Tuazon, 433 F.3d at 1172).

3 Plaintiff alleges he discovered a "web of corporate entities  
4 with almost identical corporate names, overlapping addresses,  
5 overlapping personnel, and overlapping use of the employer  
6 identification number (EIN) appearing on Plaintiff's W-2 tax forms,  
7 making it impossible to even separate out one corporation from  
8 another." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 5, ECF No.  
9 42.) In their motions to dismiss, Defendants claimed the Court  
10 lacks subject matter jurisdiction because several Defendants --  
11 IMS-NJ, IMS-GA, and IMS-FL -- are citizens of Colorado, where  
12 Plaintiff resides. (Def. [IMS-NJ's] Mot. Dismiss Attach. #1 Mem.  
13 P. & A. 2, ECF 31; Def. [IMS-TX, IMS-GA, IMS-Miami, and IMS-FL's]  
14 Mot. Dismiss Attach. #1 Mem. P. & A. 3, ECF 34.) They also alleged  
15 that the case was brought in an improper forum because IMS-NJ  
16 "[h]as [n]o [m]inimum [c]ontacts [w]ith the Southern District of  
17 California"; IMS-TX, IMS-GA, IMS-Miami, and IMS-FL "[h]ave [n]o  
18 [m]inimum [c]ontacts [w]ith [t]he Southern District of California";  
19 and IMS-GC "does not have the sufficient 'minimum contacts' for  
20 personal jurisdiction in the Southern District of California."  
21 (See Def. [IMS-NJ's] Mot. Dismiss Attach. #1 Mem. P. & A. 2, ECF  
22 31; Def. [IMS-TX, IMS-GA, IMS-Miami, and IMS-FL's] Mot. Dismiss  
23 Attach. # 1 Mem. P. & A. 3, ECF 34; Def. [IMS-GC's] Mot. Dismiss  
24 Attach. #1 Mem. P. & A. 12, ECF No. 32.) Defendants' venue and  
25 subject matter jurisdiction arguments rely on establishing their  
26 separate corporate identities. Whether each Defendant observed  
27 corporate formalities and can withstand allegations that it is the  
28 alter ego of others is an appropriate inquiry. Contacts beyond

1 those on the date the Complaint or Amended Complaint was filed are  
2 relevant to the tests for personal jurisdiction and venue.

3 b. IMS-NJ document request 14

4 Myhre seeks copies of all Field-Union Officer Election,  
5 Secretarial Six-Month Report, Quarterly Church Missionary Report,  
6 and Church Membership List reports prepared by, submitted to, or  
7 copied to, Defendant IMS-NJ from 2008 to the present. (Pl.'s Mot.  
8 Compel Attach. #1 Mem. P. & A. 14, ECF No. 42; Second Notice of  
9 Resubmission Attach. #1 Ex. A, ECF No. 44.) He alleges that this  
10 request encompasses "routine business reports that identify  
11 business activity" and that such mandatory records are relevant to  
12 both IMS-NJ's and IMS-GC's location of activities in the various  
13 states. (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 14, ECF No.  
14 42.) Defendants object to this request, arguing that they "fail to  
15 see how these documents relate to plaintiff's alter-ego theory."  
16 (Defs.' Mot. Protective Order Attach. #1 Mem. P. & A. 12, ECF No.  
17 45.) IMS-NJ also argues that the request goes outside the relevant  
18 time frame to analyze venue. (Id. at 14.)

19 Defendants again cite Technograph Printed Circuits, Ltd. v.  
20 Packard Bell Elecs. Corp., 290 F. Supp. at 326, for the proposition  
21 that venue is determined as of the time Plaintiff filed the Amended  
22 Complaint. Here, Myhre seeks to discover IMS-NJ's business reports  
23 for the last six years. This inquiry is not overly intrusive and  
24 is relevant to the determination of citizenship and minimum  
25 contacts with this forum. Considering Defendants' arguments raised  
26 in the pending motions to dismiss, particularly the inconsistent  
27 statements relating to Defendant IMS-NJ's principal place of  
28 business, which Plaintiff pointed out in his Ex Parte Application

1 to Shorten Time [ECF No. 46], the Court concludes that Plaintiff  
2 may seek the production of IMS-NJ's business records specified in  
3 request fourteen.

4 c. IMS-NJ document request 15

5 Plaintiff requested from Defendant IMS-NJ a document submitted  
6 to the Department of Homeland Security in 2007 describing the  
7 church organization, specifically, "relating to visa applications  
8 for Neptali Acevedo and/or Humberto Ajucum describing the details  
9 of the International Missionary Society Seventh Day Adventist  
10 Church Reform Movement organization." (Pl.'s Mot. Compel Attach.  
11 #1 Mem. P. & A. 14, ECF No. 42.) Myhre argues that "[s]tatements  
12 to third parties regarding the scope and location of activities of  
13 the church organization [are] directly relevant to jurisdiction,  
14 venue, and alter ego." (Id.)

15 Defendant challenges this request as overly intrusive and  
16 argues that there are other methods for Plaintiff to ascertain the  
17 church organization. (Defs.' Opp'n Mot. Compel 14, ECF No. 58.)  
18 It also claims that this document is not relevant to the disputed  
19 jurisdictional issues and goes outside the relevant time period for  
20 venue purposes. (Id.) The only case Defendant IMS-NJ cites as  
21 authority for objections to request fifteen is Technograph Printed  
22 Circuits. As explained above, the case does not support  
23 Defendant's argument. IMS-NJ has created the dispute concerning  
24 its principal place of business and the extent of its contacts in  
25 California and this district. Plaintiff reasonably assumes that  
26 information IMS-NJ supplied to the Department of Homeland Security  
27 in 2007 that describes the church and its activities will be  
28 accurate. Given the conflicting assertions by the Defendant, which

1 are now the subject of a Rule 11 Motion brought by Plaintiff [ECF  
2 No. 62], Defendant IMS-NJ must produce the document described in  
3 request for production fifteen.

4 d. IMS-NJ document requests 17, 18, and 21

5 IMS-NJ objected to Myhre's requests for production of  
6 documents identifying the location of any bank accounts held  
7 directly or indirectly by IMS-NJ in California (request seventeen),  
8 and documents disclosing identifying information for all real  
9 property in California in which IMS-NJ held a beneficial interest  
10 over the last ten years (request eighteen). (Defs.' Opp'n Mot.  
11 Compel 14-16, ECF No. 58.) Plaintiff moves to compel, arguing  
12 these records are directly relevant to establish IMS-NJ's presence  
13 in California for the purpose of jurisdiction and venue. (Pl.'s  
14 Mot. Compel Attach. #1 Mem. P. & A. 11-12, ECF No. 42.)

15 Defendant claims these requests do "not relate to disputed  
16 issues of venue because the parties do not dispute that defendant  
17 IMS-New Jersey is a resident of California for venue purposes."  
18 (Defs.' Opp'n Mot. Compel 15, ECF No. 58.) This Defendant omitted  
19 "southern district" from its statement that it "is a resident of  
20 California for venue purposes." (See id.) The suggestion that  
21 venue is not disputed is irreconcilable with IMS-NJ's motion to  
22 dismiss for lack of subject matter jurisdiction or improper venue;  
23 it claims that IMS-NJ "has no minimum contacts in the Southern  
24 District of California which would subject it to personal  
25 jurisdiction there." (Def. [IMS-NJ's] Mot. Dismiss Attach. #1 Mem.  
26 P. & A. 20, ECF No. 31.) Plaintiff is entitled to inquire into  
27 Defendant's contacts with the forum over a span of years; the  
28 request is relevant.

1           IMS-NJ claims that Plaintiff's request for bank accounts held  
2 indirectly "appears designed to harass church members by inquiring  
3 into their private financial affairs." (Defs.' Opp'n Mot. Compel  
4 15, ECF No. 58.) Plaintiff alleged that the Defendant church  
5 organization has at times held church real property and monies in  
6 the name of individuals. (Pl.'s Mot. Compel Attach. #2 Decl.  
7 Kramer 3, ECF No. 42.) Thus, Plaintiff's objective is not to  
8 discover church members' private information; he seeks to ascertain  
9 whether Defendant holds an interest in any bank accounts or  
10 property in California.

11           Defendant also argues that the real property locations are  
12 equally available to Plaintiff through searches of public records  
13 or the church's website. (Defs.' Opp'n Mot. Compel 16, ECF No.  
14 58.) "A court may refuse to order production of documents of  
15 public record that are equally accessible to all parties." 7 James  
16 Wm. Moore, et al., Moore's Federal Practice, § 34.12[5][b], at  
17 34-53 (3d ed. 2013) (footnote omitted). "However, production from  
18 the adverse party may be ordered when it would be excessively  
19 burdensome . . . for the requesting party to obtain the documents  
20 from the public source rather than from the opposing party." Id.  
21 (footnote omitted). Defendant does not identify where in the  
22 public records Myhre can locate documents showing beneficial  
23 interests it held in real property during the last ten years. This  
24 information is not equally available to Plaintiff. IMS-NJ is in a  
25 far better position to ascertain the location of records  
26 identifying its California property.

27           Finally, Defendant objects to the request on the ground that  
28 it seeks documents for ten years, an irrelevant time frame.

1 (Def's.' Opp'n Mot. Compel 16, ECF No. 58.) IMS-NJ also objected to  
2 Myhre's request for all documents over the last ten years relating  
3 to work done, contacts made, church services held, or any other  
4 presence in the Southern District of California, on the ground of  
5 irrelevant time period. (Id.) As stated earlier, the minimum  
6 contacts analysis required for a venue determination may involve an  
7 inquiry into longevity and continuity of Defendant's presence in  
8 the forum. Mavrix Photo, Inc., 647 F.3d at 1223-24 (quoting  
9 Tuazon, 433 F.3d at 1172). For the reasons described above, the  
10 objection is overruled.

11 e. IMS-GA document request 3

12 Defendant IMS-GA objected to Plaintiff's request to produce  
13 its corporate records reflecting the election of officers or  
14 directors since incorporation, arguing that these records are not  
15 relevant to the controverted venue issue. (Def's.' Opp'n Mot.  
16 Compel 17-18, ECF No. 58.) Plaintiff claims that the documents  
17 relate to whether Defendants are alter egos of each other and  
18 whether proper corporate formalities have been observed. (Pl.'s  
19 Mot. Compel Attach. #1 Mem. P. & A. 15, ECF No. 42.) Defendant  
20 argues that to the extent this information is sought to show that  
21 IMS-GA's directors overlap with other Defendants, the fact is  
22 insufficient to allow corporate veil piercing. (Def's.' Opp'n Mot.  
23 Compel 18, ECF No. 58.) The question before this Court is not  
24 whether IMS-GA maintained a separate corporate identity, but  
25 whether Myhre should be allowed to discover facts related to this  
26 issue.

27 The Defendant overlooks case law holding that "[a]lter egos  
28 are treated as a single entity for purposes of personal

1 jurisdiction." Cardell Fin. Corp. v. Suchodolski Assocs., 09 Civ.  
2 6148 (VM)(MHD), 2012 U.S. Dist. LEXIS 188295, at \*47 (S.D.N.Y. July  
3 17, 2012). Other courts have permitted plaintiffs to take  
4 jurisdictional discovery to support an alter ego and agency theory  
5 of personal jurisdiction. See Circle Click Media LLC v. Regus  
6 Mgmt. Grp. LLC, No. 12-04000 SC, 2013 U.S. Dist. LEXIS 1604, at  
7 \*13-14 (N.D. Cal. Jan. 3, 2013).

8 Defendant IMS-GA's objections are overruled. Defendant is to  
9 produce the records described in request for production three;  
10 however, the production may be limited to either the last ten years  
11 or since incorporation, whichever is shorter.

12 f. IMS-TX document request 8

13 Defendant IMS-TX objected to Myhre's request for production of  
14 "[a]ll documents reflecting the ownership of property in, ownership  
15 or rental of any real estate or meeting space in, employees or  
16 agents in, bank accounts held in, beneficial interest, presence in,  
17 or any other interaction involving Responding Party and the State  
18 of California in the past 10 years, either directly or indirectly."  
19 (Defs.' Opp'n Mot. Compel 18, ECF No. 58.) IMS-TX claims this  
20 request violates Rule 34(b)'s requirement of particularity because  
21 it consists of seven distinct requests. (Id. at 18-19.)

22 Rule 34 requires requests for production to "describe with  
23 reasonable particularity each item or category of items to be  
24 inspected." Fed. R. Civ. P 34(b)(1)(A). Here, Plaintiff's request  
25 is aimed at determining IMS-TX's ties to California and is  
26 reasonably related to disputed venue and jurisdictional issues.  
27 The request is not so vague that it would not allow Defendants to  
28 determine which documents in their control Plaintiff seeks. See,



1 e.g., K'napp v. Adams, No. 1:06-cv-01701-LJO-GSA-PC, 2014 WL  
2 950353, at \*6 (E.D. Cal. Mar. 11, 2014) (denying request for  
3 production of "all documents related to Defendants' affirmative  
4 defenses" for failure to comply with Rule 34's particularity  
5 requirements). This objection is overruled.

6 Nevertheless, IMS-TX responded to request eight by stating  
7 that it "has no documents that are responsive to this request in  
8 its possession, custody, or control." (Defs.' Opp'n Mot. Compel  
9 19, ECF No. 58.) Plaintiff's motion ignores this response. (See  
10 Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 14-15, ECF No. 42.)  
11 "This Court cannot compel the production of documents that do not  
12 exist." Banks v. Beard, Civil No. 3:CV-10-1480, 2013 U.S. Dist.  
13 LEXIS 99905, at \*6 (M.D. Pa. July 17, 2013). Myhre's Motion to  
14 Compel a further response to request for production number eight to  
15 IMS-TX is DENIED.

#### 16 4. Interrogatories

17 Plaintiff propounded identical interrogatories to Defendants  
18 IMS-TX, IMS-GA, IMS-FL, and IMS-Miami. (Pl.'s Mot. Compel Attach.  
19 #1 Mem. P. & A. 16, ECF No. 42; Second Notice of Resubmission  
20 Attach. #6 Ex. F, ECF No. 44; id. Attach. #7 Ex. G; id. Attach. #8  
21 Ex. H; id. Attach. #9 Ex. I.) Myhre argues that Defendants  
22 provided vague and nonresponsive answers to the questions.

##### 23 a. Interrogatory 2

24 Myhre seeks to compel Defendants to provide "proper responses"  
25 to interrogatory number two, which asked Defendants IMS-TX, IMS-GA,  
26 IMS-FL and IMS-Miami, "Why was the Responding Party created?"  
27 (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 16, ECF No. 42.) Each  
28 Defendant's response to the interrogatory states:

1           Objection. This request is not reasonably  
2           calculated to lead to the discovery of admissible  
3           evidence. It is directed to a church congregation which  
4           is not a proper party to this action. Decisions relating  
5           to plaintiff at issue in this case were made at the level  
6           of the American Union, which is a distinct entity and  
7           separately named defendant Seventh-day Adventist Church  
8           Reform Movement American Union International Missionary  
9           Society, a New Jersey Corporation ("American Union").  
10          The responding party is a local church - a group of  
11          members, which, like numerous other local churches  
12          throughout the country, exists within the geographical  
13          area, namely the United States of America and Puerto  
14          Rico, covered by the American Union. Subject to and  
15          without waiving any objections, Responding party was  
16          created in order to serve the local area with the message  
17          of the Church.

18 (Id.) (citation omitted).

19           Plaintiff asks for clarification of the term "local" as used  
20           by Defendants in reference to churches and the area they serve.

21 (Id. at 16-17.) Defendants argue that this interrogatory is  
22 "extremely broad" and claim that "it is apparently aimed at proving  
23 that these four churches did not have independent reasons for  
24 opening, again in furtherance of plaintiff's alter-ego theory."

25 (Defs.' Opp'n Mot. Compel 19, ECF No. 58.) To the extent  
26 Defendants argue this question is not related to jurisdictional  
27 issues, the Court disagrees. As discussed earlier, Defendants'  
28 motions to dismiss necessarily raise a factual dispute regarding

Defendants' citizenship and contacts with this forum. The  
Defendants' "[a]nswers must be responsive, complete, and not  
evasive." 7 James Wm. Moore, et al., Moore's Federal Practice,  
§ 33.101, at 33-72 (3d ed. 2013) (footnote omitted) (internal  
citation omitted). Their common answer to this interrogatory is  
not informative. Plaintiff is entitled to a further response from  
each. The Motion to Compel is GRANTED.

//

1                                    b. Interrogatories 4 and 5

2            In interrogatory number four, Plaintiff asks Defendants IMS-  
3 TX, IMS-GA, IMS-FL, and IMS-Miami to describe "the day-to-day  
4 activities of Responding Party." (Pl.'s Mot. Compel Attach. #1  
5 Mem. P. & A. 17, ECF No. 42.) Plaintiff does not address the  
6 deficiencies in Defendants' responses to interrogatory four. (Id.  
7 at 17-18.) Also, it is unclear whether Myhre is seeking a further  
8 answer to the interrogatory. Interrogatory number five asks for  
9 the name, address, and role of any "employees, independent  
10 contractors, or other agents that conduct the day-to-day activities  
11 . . . ." (Id. at 18.) Plaintiff seeks to compel responses to  
12 interrogatory number five to show the location of Defendants'  
13 activities, their principal places of business, and corporate  
14 separateness. (Id.)

15            Defendants oppose the request to compel, stating that "[t]he  
16 question has nothing to do with whether the defendant corporations  
17 have minimum contacts in California." (Defs.' Opp'n Mot. Compel  
18 20, ECF No. 58.) They also claim this request is "totally  
19 unrelated to plaintiff's alter-ego allegations because the  
20 employees, independent contractors, or other agents that are the  
21 subject of this interrogatory by definition would not control the  
22 subject corporation." (Id.) Both contentions are incorrect. See  
23 Cardell, 2012 U.S. Dist. LEXIS 188295, at \*47. Furthermore,  
24 "[m]inimum contacts of a non-resident employer's agents or  
25 employees, including contracts negotiated with or torts committed  
26 against residents of the forum state, are imputed to the employer  
27 and subject the non-resident employer to local jurisdiction."  
28 Edwards v. Sisto, Nos. C 08-2841 WHA (PR), C 08-2842 WHA (PR), 2011

1 U.S. Dist. LEXIS 47745, at \*24 (N.D. Cal. Apr. 28, 2011) (citing  
2 Ochoa v. Martin & Sons Farms, Inc., 287 F.3d 1182, 1189 (9th Cir.  
3 2002). Plaintiff is entitled to a further response to  
4 interrogatory five from each Defendant.

5 c. Interrogatory 6

6 Myhre seeks to compel disclosure of tax identification numbers  
7 or employer identification numbers used by Defendants IMS-TX, IMS-  
8 GA, IMS-FL, and IMS-Miami. (Pl.'s Mot. Compel Attach. #1 Mem. P. &  
9 A. 18, ECF No. 42.) Plaintiff claims he discovered through public  
10 records "that the same EIN has been used in corporate filings by  
11 IMS-Texas, IMS-Miami, and IMS-New Jersey." (Id.) Defendants  
12 oppose this request, arguing that Plaintiff can use the same public  
13 records to find EINS used by IMS-TX and IMS-Miami. (Defs.' Opp'n  
14 Mot. Compel 21, ECF No. 58.) By way of example, Defendants cite to  
15 an Internal Revenue Service publication which presumably contains  
16 the relevant information.

17 Defendants do not contend that Plaintiff's request for  
18 individual tax identification numbers is unduly burdensome.  
19 Instead, they assert that the information is equally available to  
20 Myhre. (Id.)

21 "A party answering interrogatories has an affirmative duty to  
22 furnish any and all information available to the party." Franklin  
23 v. Smalls, Civil No. 09cv1067 MMA(RBB), 2012 U.S. Dist. LEXIS  
24 150312, at \*18 (S.D. Cal. Oct. 18, 2012) (quoting 7 James Wm. Moore  
25 et al., Moore's Federal Practice § 33.102[1], at 33-72 (3rd ed.  
26 2012)). Rule 33(d) of the Federal Rules of Civil Procedure  
27 discusses options available to a responding party when the burden  
28

1 of answering an interrogatory is substantially the same for the  
2 requesting and answering parties.

3 If the answer to an interrogatory may be determined  
4 by examining, auditing, compiling, abstracting, or  
5 summarizing a party's business records . . . , and if the  
6 burden of deriving or ascertaining the answer will be  
7 substantially the same for either party, the responding  
8 party may answer by:

9 (1) specifying the records that must be  
10 reviewed, in sufficient detail to enable the  
11 interrogating party to locate and identify them as  
12 readily as the responding party could; and

13 (2) giving the interrogating party a reasonable  
14 opportunity to examine and audit the records and to  
15 make copies, compilations, abstracts, or summaries.

16 Fed. R. Civ. P. 33(d). Furthermore, "it is 'not usually a ground  
17 for objection that the information is equally available to the  
18 interrogator or is a matter of public record.'" Petruska v.  
19 Johns-Manville, 83 F.R.D. 32, 35 (E.D. Pa. 1979) (quoting 8 Wright  
20 & Miller, Federal Practice & Procedure, Civil § 2014 at 111).  
21 Accordingly, Defendants' objection is overruled. Defendants must  
22 answer interrogatory six, or if they can establish that the burden  
23 of deriving the answer is substantially the same, they may specify  
24 and produce records under Rule 33(d).

25 d. Interrogatory 7

26 Plaintiff also asked Defendants IMS-TX, IMS-GA, IMS-FL, and  
27 IMS-Miami to identify all officers and directors since the  
28 incorporation. (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 19, ECF  
No. 42.) Defendants oppose this request as unrelated to the  
jurisdiction or venue issues. (Defs.' Opp'n Mot. Compel 21, ECF  
No. 58.) They also argue the request goes beyond the relevant time  
period for venue determination. (Id. at 22.) Defendants'  
objections are without merit. As mentioned before, the issue

1 before this Court is not whether venue was proper at the time of  
2 filing of the action, but only whether Plaintiff should be allowed  
3 to discover facts pertinent to Defendants' assertions that the case  
4 should be dismissed for lack of subject matter jurisdiction, or  
5 transferred for improper venue. Defendants are to answer this  
6 interrogatory, however, the response may be limited to either the  
7 last ten years or since incorporation, whichever is shorter.

8 e. Interrogatory 8

9 Myhre sought to discover all actual office locations of  
10 Defendants IMS-TX, IMS-GA, IMS-FL, and IMS-Miami where day-today-  
11 activities are carried out. (Pl.'s Mot. Compel Attach. #1 Mem. P.  
12 & A. 19, ECF No. 42.) Defendants objected to this interrogatory as  
13 not related to the disputed issues. (Defs.' Opp'n Mot. Compel 22,  
14 ECF No. 58.) They also argue that "[c]hurch locations are a matter  
15 of public record[,] and therefore "plaintiff can just as easily  
16 discover these documents on his own." (Id. at 23.)

17 Defendants' responses to Plaintiff's interrogatories state  
18 that each Defendant has "multiple church locations." (Second  
19 Notice of Resubmission Attach. #6 Ex. F, ECF No. 44; id. Attach. #7  
20 Ex. G; id. Attach. #8 Ex. H; id. Attach. #9 Ex. I.) Even if  
21 Plaintiff were easily able to discover all the multiple locations,  
22 it is not clear how he should ascertain whether Defendants actually  
23 carry out their day-to-day activities in any of the locations.  
24 Defendants do not explain how the locations of their day-to-day  
25 activities are matter of public record. The actual locations of  
26 Defendants' daily activities are relevant to jurisdiction and  
27 venue. Accordingly, their objections are overruled; the  
28 interrogatory shall be answered.

1                   **5. Unopposed requests**

2           Plaintiff has requested that Defendants supplement their  
3 production and provide the following corporate records: (1) bylaws  
4 or governing documents for Defendants IMS-TX, IMS-GA, IMS-FL, and  
5 IMS-Miami; (2) articles of incorporation and any amendments for  
6 Defendants IMS-FL and IMS-Miami; (3) corporate records reflecting  
7 election of directors and/or officers since incorporation for  
8 Defendants IMS-TX, IMS-FL, and IMS-Miami; and (4) annual reports  
9 filed with any secretary of state since the date of incorporation  
10 for Defendants IMS-FL and IMS-Miami. (Pl.'s Mot. Compel Attach. #1  
11 Mem. P. & A. 12, ECF No. 42.) Myhre claims that Defendants  
12 promised, but failed to provide, the responsive documents. (Id.)

13           Neither Defendants' Opposition brief nor their Motion for  
14 Protective Order addresses these requests for supplemental  
15 production. Plaintiff represents that Defendants had agreed to  
16 produce these documents; they do not dispute this contention.  
17 Accordingly, Plaintiff's Motion to Compel production of the  
18 corporate documents listed above is GRANTED.

19                   **B. Motion for Protective Order**

20           Defendants seek a protective order under Federal Rule of Civil  
21 Procedure 26(c)(1)(B) and (D), arguing that they should not be  
22 required to produce Henry Dering or the officers of IMS-TX  
23 for deposition, provide any further responses to Plaintiff's  
24 written discovery, or submit disclosures under Rule 26. (Defs.'  
25 Mot. Protective Order Attach. #1 Mem. P. & A. 4, ECF No. 45.)  
26 Defendants' Motion for Protective Order mirrors their Opposition to  
27 Plaintiff's Motion to Compel, although it specifically addresses  
28 only some of Myhre's requests. Defendants seek a protective order

1 denying Plaintiff's request to depose Henry Dering and IMS-TX.  
2 (Id. at 8-9, 16-17.) For the reasons above, the Motion is DENIED  
3 as to this request.

4 Defendants also ask the Court to deny the following requests  
5 for production: (1) profit and loss statements for the last ten  
6 years for IMS-NJ, and for the last five years for IMS-TX, IMS-GA,  
7 IMS-FL, and IMS-Miami; (2) "[c]opies of all Field-Union Officer  
8 Election, Secretarial Six-Month Report, Quarterly Church Missionary  
9 Report, and Church Membership List reports prepared by, submitted  
10 to, or copied to, Responding Party from 2008 to the present" from  
11 Defendant IMS-NJ; (3) a "copy of document submitted by Responding  
12 Party in or around June 2007 to Department of Homeland Security  
13 relating to visa applications for Neptali Acevedo and/or Humberto  
14 Ajucum describing the details of the International Missionary  
15 Society Seventh Day Adventist Church Reform Movement organization"  
16 from Defendant IMS-AU-NJ; and (4) a "copy of all corporate records  
17 reflecting election of directors and/or officers of Responding  
18 Party since incorporated" from Defendant IMS-GA. (Id. at 12-14.)  
19 As discussed earlier, Plaintiff is entitled to further responses to  
20 the specified requests for production, and the Motion for  
21 Protective Order is DENIED as to these.

22 Defendants IMS-TX, IMS-GA, IMS-FL, and IMS-Miami seek a  
23 protective order with regard to interrogatories two, four, five,  
24 six, and seven. (Id. at 14-16.) Their request is denied as to  
25 interrogatories two, five, and six for the reasons articulated  
26 above. Plaintiff is not seeking to compel responses to  
27 interrogatory four; accordingly, Defendants' request to limit  
28 responses to interrogatory four is GRANTED. The Court DENIES



1 Defendants' request to limit their response to interrogatory seven,  
2 except as specified in this Order in connection with Plaintiff's  
3 Motion to Compel.

4 Defendants also ask that the Court bar Plaintiff from  
5 propounding further discovery or noticing any further depositions  
6 pending a ruling on Defendants' motions to dismiss. (Id. at 19.)  
7 Because there is no indication that Plaintiff intends to propound  
8 further discovery, this request is premature. The Court declines  
9 to issue a forward-looking ban at this time. Defendants will be  
10 able to raise any specific concerns regarding further discovery in  
11 the future.

#### 12 IV. CONCLUSION

13 For the reasons stated above, the Court **GRANTS in part** and  
14 **DENIES in part** Plaintiff's Motion to Compel Jurisdictional  
15 Discovery [ECF No. 42], and **GRANTS in part** and **DENIES in part**  
16 Defendants' Motion for Protective Order [ECF No. 45]. Defendants  
17 are ordered to provide or supplement their discovery responses as  
18 described in this Order on or before May 8, 2014. Depositions are  
19 to be taken by May 15, 2014.

20 **IT IS SO ORDERED.**

21 Dated: April 17, 2014



\_\_\_\_\_  
Ruben B. Brooks  
United States Magistrate Judge

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23 cc: Judge Benitez  
24 All Parties of Record

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