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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PARKSIDE/EL CENTRO  
HOMEOWNERS ASSOCIATION,  
  
Plaintiff,  
  
v.  
  
TRAVELERS CASUALTY  
INSURANCE COMPANY OF  
AMERICA,  
  
Defendant.

Case No.: 20cv1732-JAH(RBB)  
  
**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
COMPEL [ECF NO. 49]**

Presently before the Court is a Motion to Compel filed by Defendant Travelers Casualty Insurance Company of America (“Travelers”), in which Travelers seeks an order compelling Plaintiff Parkside/El Centro Homeowners Association (“Parkside” or “HOA”) to respond to Travelers’ Request for Production Nos. 1, 2, 4, and 13, Interrogatory No. 10, and Requests for Admission Nos. 15-17, on August 30, 2021 [ECF No. 49]. Parkside filed an opposition [ECF No. 59], and Travelers filed a reply [ECF No. 62].

For the reasons set forth below, Travelers’ Motion to Compel is GRANTED IN PART and DENIED IN PART.

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1 I. BACKGROUND

2 A. **Factual Background**

3 This bad faith case arises out of an insurance policy issued by Travelers to  
4 Parkside that included a Directors and Officers Liability Owners Association Claims  
5 Made Form endorsement (“D&O Coverage”). (Compl. 4, ECF No. 1.) On July 25, 2014,  
6 a member of the Parkside HOA discovered that the HOA had been suspended by the  
7 California Secretary of State, and the Franchise Tax Board had a collection account open  
8 due to the HOA’s failure to pay taxes. (Def.’s Req. Judicial Notice Attach. #1 [Cross-  
9 Compl.], at 10, ECF No. 20.) On August 14, 2014, the HOA terminated the employment  
10 of Linda Heater, a part-time employee of Parkside who had served as the HOA’s  
11 manager since 1988. (Id. at 7, 10.) Shortly thereafter, Parkside terminated its  
12 relationship with Martin Mohamed, the HOA’s accountant and Heater’s son-in-law. (Id.  
13 at 8, 10.) After Heater’s employment was terminated, a new HOA Board discovered that  
14 Heater had embezzled \$80,000 from the HOA from January 2010 through July 2014, and  
15 later realized that she had embezzled at least \$228,000 from 1990 through 2009. (Id. at  
16 11.) On October 2, 2014, Parkside reported Heater to the police. (Cinco Decl. Supp.  
17 Def.’s Opp’n Pl.’s Mot. Summ. J. Ex. 3 [police report], at 2, ECF No. 21.) Almost two  
18 years later, on August 26, 2016, Heater pleaded no contest to a felony charge of  
19 embezzlement under Cal. Penal Code section 504, committed between January 1, 2010,  
20 and July 11, 2014. (Pl.’s Opp’n Attach. #1 Steinberg Decl. Ex. 10 [Heater plea  
21 agreement], at 39-40, ECF No. 59.)

22 On April 26, 2016, before the criminal charges against Heater were resolved and in  
23 response to a civil lawsuit brought by Heater against the HOA, Parkside filed a cross-  
24 complaint against Heater, Mohamed, and three of its former directors and officers, Dale  
25 Erlenbusch, Scott Devoy, and Hernan Mendez. (Def.’s Req. Judicial Notice Attach. #1  
26 [Cross-Compl.], at 1, ECF No. 20.) The HOA alleged that the former directors were  
27 negligent and breached their fiduciary duties to Parkside and caused Parkside financial  
28 losses by failing to properly supervise and control the activities of Heater and Mohamed.

1 (Id. at 15-17, 19-20.) On March 2, 2017, Travelers declined to indemnify the three  
2 former directors for any losses in the lawsuit filed by Parkside against them. (Compl., 6,  
3 ECF No. 1.)

4 In July 2018, the former directors stipulated to liability and causation, and agreed  
5 to permit a referee to determine damages. (Def.'s Req. Judicial Notice Attach. #2  
6 [Statement of Decision], at 5, ECF No. 20.) On April 13, 2019, the three former  
7 directors, who Parkside contends are insureds under the policy, assigned their claims  
8 under the Travelers D&O policy to Parkside. (Compl. 4, 6, ECF No. 1.) On November  
9 15, 2019, a final judgment in favor of Parkside against the former directors for \$688,931  
10 was entered. (Id.)<sup>1</sup> On May 11, 2020, Travelers denied the former directors' claims and  
11 the HOA's claim for indemnification under the D&O policy. (Id.) On September 3,  
12 2020, Parkside initiated this lawsuit against Travelers for breach of contract and breach of  
13 the implied covenant of good faith and fair dealing. (Id. at 1.)

## 14 II. LEGAL STANDARDS

15 Under Rule 26 of the Federal Rules of Civil Procedure,

16 Parties may obtain discovery regarding any nonprivileged matter that is  
17 relevant to any party's claim or defense and proportional to the needs of the  
18 case, considering the importance of the issues at stake in the action, the  
19 amount in controversy, the parties' relative access to relevant information,  
20 the parties' resources, the importance of the discovery in resolving the  
issues, and whether the burden or expense of the proposed discovery  
outweighs its likely benefit.

21 Fed. R. Civ. P. 26(b)(1). Relevant information need not be admissible at trial to be  
22 discoverable. Id. Relevance is construed broadly to include any matter that bears on, or  
23 reasonably could lead to other matters that could bear on, any issue that may be in the  
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26 <sup>1</sup> The \$688,931 is comprised of \$371,922 in damages (\$173,107 for unauthorized amounts paid to  
27 Heater/lost assessment income, \$22,341 for tax penalties and interest, \$5,125 for costs related to  
28 preparation of HOA tax returns, \$22,621 in increased insurance costs, and \$148,728 in prejudgment  
interest); \$269,755 in attorney's fees, and \$47,254 in costs. (Def.'s Req. Judicial Notice Attach. #2  
[Statement of Decision], at 8-9, 13-16, ECF No. 20.)

1 case. See Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350-51 (1978) (footnote and  
2 citation omitted). District courts have broad discretion to determine relevancy for  
3 discovery purposes and to limit the scope of discovery. See Hallett v. Morgan, 296 F.3d  
4 732, 751 (9th Cir. 2002); see also Fed. R. Civ. P. 26(b)(2)(C) (allowing courts to limit  
5 discovery when it is unreasonably cumulative or duplicative, or can be obtained from  
6 some other source that is more convenient, less burdensome, or less expensive; the  
7 requesting party has had ample opportunity to obtain the information in discovery; or the  
8 discovery sought is beyond the scope of Rule 26(b)(1)).

### 9 III. DISCUSSION

#### 10 A. Request for Production No. 1

11 This request seeks “All liability insurance policies issued to YOU from January  
12 2014 to December 2018.” Whether Parkside made a claim under other insurance policies  
13 between the time the embezzlement was discovered in 2014 and the stipulation to  
14 liability by the former directors in 2018 is relevant. Accordingly, Travelers’ request for  
15 an order compelling a response to Request No. 1 is GRANTED.

#### 16 B. Request for Production No. 2

17 This request seeks “All DOCUMENTS CONCERNING Linda Heaters’ [sic]  
18 conduct as alleged in the UNDERLYING ACTION.” Heater’s conduct formed the basis  
19 of the cross-complaint against the former directors and is relevant to Travelers’ defense  
20 in this litigation. As to Parkside’s contention that it has “two 40-inch-long horizontal file  
21 drawers” of documents and that Travelers’ intent is to burden Parkside and its counsel  
22 with this discovery, (see Pl.’s Opp’n 6, ECF No. 59), Rule 34 permits the producing party  
23 to produce copies of responsive documents or permit an inspection of responsive  
24 materials. Fed. R. Civ. P. 34(b)(2)(B). Providing the documents for inspection by  
25 Travelers will lessen any burden on Parkside. Travelers’ request for an order compelling  
26 a response to Request No. 2 is GRANTED.

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1 **C. Request for Production No. 4**

2 This request seeks “All DOCUMENTS CONCERNING Martin Niaz Mohamed’s  
3 conduct (i.e., “employee defalcation”) as alleged in the UNDERLYING ACTION. As  
4 with Request for Production No. 2, Mohamed’s conduct formed the basis of the cross-  
5 complaint against the former directors and is relevant to Travelers’ defense. Parkside’s  
6 response that “Mr. Mohamed made no D&O claim and there are no documents  
7 responsive to this request” is not responsive to the request and is not an adequate  
8 response. Travelers’ request for an order compelling a response to Request No. 4 is  
9 GRANTED.

10 **D. Request for Production No. 13**

11 This request seeks “All DOCUMENTS CONCERNING the UNDERLYING  
12 ACTION.” Rule 34 requires requests for production to “describe with reasonable  
13 particularity each item or category of items to be inspected[.]” Fed. R. Civ. P.  
14 34(b)(1)(A). “The test for reasonable particularity is whether the request places a party  
15 upon ‘reasonable notice of what is called for and what is not.’” Bruggeman ex rel.  
16 Bruggeman v. Blagojevich, 219 F.R.D. 430, 436 (N.D. Ill. 2004) (quoting Parsons v.  
17 Jefferson–Pilot Corp., 141 F.R.D. 408, 412 (M.D.N.C. 1992)). The party requesting the  
18 production of documents must provide “sufficient information to enable [the party to  
19 whom the request is directed] to identify responsive documents.” Parsons, 141 F.R.D. at  
20 412. This request fails to provide sufficient information to enable Parkside to identify  
21 responsive documents and thus is overbroad. Relevant documents relating to the  
22 underlying action will be produced pursuant to Request Nos. 2 and 4. Travelers’ request  
23 for an order compelling a response to Request No. 13 is DENIED.

24 **E. Interrogatory No. 10**

25 This interrogatory requests that Parkside “IDENTIFY all PERSONS that have  
26 served as YOUR directors and/or officers, and their dates of service, from January 1998  
27 to present.” Given that Heater apparently embezzled over many years, the identity of  
28 other Parkside HOA directors and officers who may have failed to supervise Heater and

1 discover the embezzlement is relevant. Travelers has not, however, established why it  
2 needs the identities of directors and officers after 2018, when Erlenbusch, Devoy, and  
3 Mendez stipulated to liability. Parkside must therefore identify all Parkside HOA  
4 directors and officers, and their dates of service, from January 1998 through 2018.  
5 Travelers' request for an order compelling a response to Interrogatory No. 10 is  
6 accordingly GRANTED IN PART and DENIED IN PART.

7 **F. Requests for Admission Nos. 15, 16, and 17**

8 Request for Admission No. 15 states: "Admit that YOU had the option of not  
9 filing a cross-complaint against YOUR former directors in the UNDERLYING  
10 ACTION." Request for Admission No. 16 states: "Admit that YOU exercised YOUR  
11 discretion in filing YOUR cross-complaint against YOUR former directors in the  
12 UNDERLYING ACTION." Request for Admission No. 17 states: "Admit that YOUR  
13 act of filing YOUR cross-complaint against YOUR former directors in the  
14 UNDERLYING ACTION was YOUR intentional act." Rule 36 permits a party to "serve  
15 on any other party a written request to admit, for purposes of the pending action only, the  
16 truth of any matters within the scope of Rule 26(b)(1) relating to[] facts, the application  
17 of law to fact, or opinions about either[.]" Fed. R. Civ. P. 36(a)(1). These requests seek  
18 admissions regarding the application of law to fact and relate to Travelers' defense in the  
19 case. Accordingly, Travelers' motion for an order compelling a response to Requests for  
20 Admission Nos. 15, 16, and 17 is GRANTED.

21 **III. CONCLUSION**

22 For the reasons set forth above, Travelers' Motion to Compel is GRANTED IN  
23 PART and DENIED IN PART.

24 **IT IS SO ORDERED.**

25  
26 Dated: January 11, 2022

27   
28 Hon. Ruben B. Brooks  
United States Magistrate Judge