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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FLUENCE ENERGY, LLC,

Plaintiff,

v.

M/V BBC FINLAND, bearing
International Maritime Organization No.
9593684 (the “Vessel”), its cargo,
apparel, tackle, and appurtenances, etc. in
rem,

Defendant.

Lead Case No.: 21-cv-01239-BEN-JLB

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION TO COMPEL
DEFENDANTS’ DISCOVERY
RESPONSES**

[ECF No. 136]

BBC CHARTERING CARRIERS GMBH
& CO. KG,

Plaintiff,

v.

FLUENCE ENERGY, LLC, et al.

Defendant.

Member Case No.: 21-cv-02014-BEN-JLB

Before the Court is a motion to compel filed by Plaintiff Fluence Energy, LLC (“Fluence”). (ECF No. 136.) Fluence moves the Court to compel Defendant SchenkerOcean Limited (“SchenkerOcean”) to fully respond to Fluence’s third sets of

1 interrogatories and requests for production (“RFPs”). (*Id.* at 3.) SchenkerOcean filed an
2 opposition. (ECF No. 141.) For the reasons set forth below, the Court **GRANTS IN**
3 **PART** and **DENIES IN PART** Fluence’s motion to compel.

4 **I. BACKGROUND**

5 On July 26, 2022, Fluence served its third set of interrogatories on SchenkerOcean,
6 which contains the following three interrogatories:

7 **Interrogatory No. 13:** Identify all directors and officers of SchenkerOCEAN
8 Ltd. and state their affiliation (e.g., employee, director, and/or officer), if any,
9 with any other Schenker entities and their roles and titles with
10 SchenkerOCEAN Ltd. and any other Schenker entities.

11 **Interrogatory No. 14:** State the amount of rent that SchenkerOCEAN Ltd.
12 pays to any other Schenker entity (including Schenker China Ltd.) for use of
13 any physical and/or office space.

14 **Interrogatory No. 15:** Identify all income streams of SchenkerOCEAN Ltd.
15 other than \$1.50 that SchenkerOCEAN Ltd. receives per group of bills of
16 lading and/or sea waybills, as referenced in the Rule 30(b)(6) deposition of
17 SchenkerOCEAN Ltd.'s representative Christoph Hilgers.

18 (ECF No. 136-1.)

19 On August 25, 2022, SchenkerOcean served objections. (ECF No. 136-3.) To each
20 interrogatory, SchenkerOcean objected on the basis of relevance and harassment. (*Id.*)
21 SchenkerOcean further stated:

22 [T]here has been no claim by any of the Schenker entities that
23 SchenkerOCEAN is not provided coverage under the Protection and
24 Indemnity membership previously disclosed in this litigation. None of the
25 Schenker entities has attempted to separate or distinguish itself from the others
26 for liability assessment, and as such, the information responsive to this request
27 has no bearing whatsoever on this litigation.

28 (*Id.*)

On July 2, 2022, Fluence served its third set of RFPs on SchenkerOcean, which
contains the following RFPs:

///

1 **RFP No. 51:** SchenkerOCEAN Ltd.'s articles of incorporation and bylaws.

2 **RFP No. 52:** All notices of shareholder meetings issued by SchenkerOCEAN
3 Ltd. from 2018 to present.

4 **RFP No. 53:** All meeting minutes of SchenkerOCEAN Ltd.'s board of
5 directors from 2018 to present.

6 **RFP No. 54:** All corporate resolutions and/or other documents issued by
7 SchenkerOCEAN Ltd.'s board of directors.

8 **RFP No. 55:** All contracts entered into between SchenkerOCEAN Ltd. and
9 Schenker Deutschland AG.

10 **RFP No. 56:** All balance sheets for SchenkerOCEAN Ltd. from 2018 to
11 present.

12 **RFP No. 57:** All financial statements for SchenkerOCEAN Ltd. from 2018 to
13 present.

14 **RFP No. 58:** All profit and loss statements for SchenkerOCEAN Ltd. from
15 2018 to present.

16 **RFP No. 59:** All schedules of assets and liabilities for SchenkerOCEAN Ltd.
17 from 2018 to present.

18 **RFP No. 60:** All tax returns for SchenkerOCEAN Ltd. from 2018 to present.

19 **RFP No. 61:** All powers of attorney and/or contracts authorizing any
20 Schenker entity to act on behalf of SchenkerOCEAN Ltd., as referenced in
21 the Rule 30(b)(6) deposition of SchenkerOCEAN Ltd.'s representative
22 Christoph Hilgers.

23 **RFP No. 62:** All insurance agreements and/or policies, as well as coverage
24 declarations pages for such agreements/policies, under which any insurance
25 company and/or business may be liable: (1) to satisfy all or part of a possible
26 judgment in this action against SchenkerOCEAN Ltd., and/or (2) to indemnify
27 or reimburse for payments made to satisfy, in whole or in part, any judgment
28 that may be entered in this action against SchenkerOCEAN Ltd.

RFP No. 63: Produce documents evidencing and/or constituting payment of
SchenkerOCEAN Ltd.'s corporate dues, fees, charges, and similar items to the
jurisdiction under whose law SchenkerOCEAN Ltd. is incorporated.

1 **RFP No. 64:** All documents submitted to the jurisdiction under whose law
2 SchenkerOCEAN Ltd. is incorporated since 2018 that identify
3 SchenkerOCEAN, Ltd., its directors, its officers, and/or its purpose.

4 (ECF No. 136-2.)

5 On August 25, 2022, SchenkerOcean served objections. (ECF No. 136-4.)
6 SchenkerOcean objected to each request, except for RFP No. 62, on the basis of relevance
7 and harassment. (*Id.*) SchenkerOcean further stated:

8 [T]here has been no claim by any of the Schenker entities that
9 SchenkerOCEAN is not provided coverage under the Protection and
10 Indemnity membership previously disclosed in this litigation. None of the
11 Schenker entities has attempted to separate or distinguish itself from the others
12 for liability assessment, and as such, the information responsive to this request
has no bearing whatsoever on this litigation.

13 (*Id.*) For RFP No. 62, SchenkerOcean objected to the request as duplicative of prior
14 requests and therefore unduly burdensome and harassing. (*Id.* at 11.) On the basis of its
15 objections, SchenkerOcean did not produce any documents. (ECF No. 136 at 3.)

16 The parties raised the present dispute with the Court on October 28, 2022. (ECF No.
17 131.) The Court held a Discovery Conference to address this dispute on
18 November 21, 2022. (ECF Nos. 133, 134.) As agreed during the Conference,
19 SchenkerOcean produced any powers of attorney between Schenker AG and
20 SchenkerOcean, partially resolving RFP No. 61. (ECF No. 136 at 4.) The Court thereafter
21 ordered the parties to continue to meet and confer and set a briefing schedule to resolve
22 their remaining disputes. (ECF No. 134.)

23 **II. LEGAL STANDARD**

24 The Federal Rules of Civil Procedure authorize parties to obtain discovery of any
25 nonprivileged information discoverable under Rule 26 if it is (1) relevant, and (2)
26 proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). Rule 26(b)(1), as amended
27 in 2015, provides that parties—

28 may obtain discovery regarding any nonprivileged matter that is relevant to

1 any party's claim or defense and proportional to the needs of the case,
2 considering the importance of the issues at stake in the action, the amount in
3 controversy, the parties' relative access to the information, the parties'
4 resources, the importance of the discovery in resolving the issues, and whether
the burden or expense of the proposed discovery outweighs its likely benefit.

5 *Id.*

6 Evidence must be "relevant to any party's claim or defense" to fall within the scope
7 of permissible discovery. *Id.* The 2015 amendment to Rule 26(b) deleted the phrase
8 "reasonably calculated to lead to the discovery of admissible evidence" because it was
9 often misconstrued to define the scope of discovery and had the potential to "swallow any
10 other limitation." Fed. R. Civ. P. 26(b)(1) advisory committee notes to 2015 amendment.
11 *See also San Diego Unified Port Dist. v. Nat'l Union Fire Ins. Co. of Pittsburg, PA*, No.
12 15CV1401-BEN-MDD, 2017 WL 3877732, at *1 (S.D. Cal. Sept. 5, 2017). The
13 amendment replaced this phrase with the statement that information "need not be
14 admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1) advisory committee
15 notes to 2015 amendment.

16 Information must also be "proportional to the needs of the case" to fall within the
17 scope of permissible discovery. Fed. R. Civ. P. 26(b)(1). When analyzing the
18 proportionality of a party's discovery requests, a court should consider the importance of
19 the issues at stake in the action, the amount in controversy, the parties' relative access to
20 the information, the parties' resources, the importance of the discovery in resolving the
21 issues, and whether the burden or expense of the proposed discovery outweighs its likely
22 benefit. *Id.*

23 Under Federal Rule of Civil Procedure 34, a party may request the production of
24 documents within the scope of Rule 26(b). Fed. R. Civ. P. 34(a). Under Federal Rule of
25 Civil Procedure 33, any party may serve interrogatories that relate to any matter that may
26 be inquired into under Rule 26(b). Fed. R. Civ. P. 33(a)(2). If a party fails to produce
27 documents pursuant to Rule 34 or answer an interrogatory under Rule 33, the propounding
28 party may bring a motion to compel. *See Fed. R. Civ. P. 37(a).*

1 **III. DISCUSSION**

2 **A. Parties' Arguments**

3 Fluence argues that its discovery requests are relevant to determining whether
4 SchenkerOcean is the alter ego of Defendant Schenker Deutschland AG (“Schenker AG”).
5 (ECF No. 136 at 5.) Fluence contends that during the Federal Rule of Civil Procedure
6 30(b)(6) deposition of the representative for the various Schenker Defendants,¹ Christoph
7 Hilgers, Mr. Hilgers provided testimony suggesting that SchenkerOcean could be an alter
8 ego of Schenker AG or another Schenker entity. (*Id.* at 3.) According to Fluence, Mr.
9 Hilgers’s testimony revealed that:

10 (1) other than two directors, SchenkerOcean has no officers or employees,
11 Hilgers Dep. 23:19–24:13, 4:24–25:6 (May 24, 2022); (2) SchenkerOcean
12 only works for other Schenker entities, Hilgers Dep. 36:25–37:7 (May 5,
13 2022); (3) SchenkerOcean has given powers of attorney to other Schenker
14 entities, and those entities, not SchenkerOcean, negotiate the contracts
15 evidenced by SchenkerOCEAN shipping documents, Hilgers Dep. 30:22–
16 31:10 (May 24, 2022); (4) SchenkerOcean’s two directors do not prepare the
17 shipping documents that SchenkerOcean issues, Hilgers Dep. 38:8-11 (May
18 5, 2022); (5) SchenkerOcean’s sole shareholder is another Schenker entity,
19 Hilgers Dep. 22:22–23:8 (May 24, 2022); and (6) SchenkerOcean’s directors
20 hold positions with other unknown Schenker entities, *id.* at 25:9–22.

21 Moreover, Mr. Hilgers revealed that SchenkerOcean receives only \$1.50 per
22 set of bills of lading or sea waybills that it issues, regardless of the value of
23 the cargo. *Id.* at 46:13–47:6. Here, this means that SchenkerOCEAN likely
24 received just \$1.50 for issuing four sea waybills relating to the shipment of
25 nearly \$110 million in cargo that resulted in 8-figure damages.

26 (ECF No. 136 at 3–4.)

27 In response, SchenkerOcean argues that Mr. Hilgers never suggested during his
28 deposition that SchenkerOcean was inadequately capitalized. (ECF No. 141 at 2.)
SchenkerOcean contends that Mr. Hilgers testified during his deposition that

¹ SchenkerOcean, Schenker, Inc. and Schenker Deutschland AG are all parties to this case.

1 SchenkerOcean was incorporated in Hong Kong in 2004 and that the company “serves as
2 a non-vessel operating common carrier (NVOCC)^[2] for the entire Schenker group of
3 companies through representation agreements.” (*Id.*) SchenkerOcean further contends that
4 it has provided Fluence with substantial information, including public information
5 regarding its incorporation, directors, annual returns, ownership of shares, and registered
6 office, and advised Fluence that further information is publicly available from the Hong
7 Kong Corporate Registry and Federal Maritime Commission. (*Id.* at 2–3.)³

8 On November 17, 2022, Schenker sent Fluence a “link to a financial report by
9 SchenkerOcean’s ultimate parent, Deutsche Bahn—the national railway company of
10 Germany,” which shows that “Deutsche Bahn owns 100% of SchenkerOcean’s equity of
11

12
13 ² “An NVOCC is an intermediary between the shipper of goods and the operator of
14 the vessel that will carry the goods.” *All Pac. Trading, Inc. v. Vessel M/V Hanjin Yosun*, 7
15 F.3d 1427, 1429 (9th Cir. 1993). “Generally, an NVOCC combines the goods of various
16 shippers into a single shipment, contracts with a vessel for the transportation of the goods,
17 and delivers the goods to the vessel, usually in a sealed container.” *Id.* A NVOCC is
18 defined by statute as “a common carrier that—(A) does not operate the vessels by which
19 the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean
20 common carrier.” 46 U.S.C.A. § 40102(17).

21 ³ As noted above, as part of its discovery responses, SchenkerOcean stated, “None of
22 the Schenker entities has attempted to separate or distinguish itself from the others for
23 liability assessment, and as such, the information responsive to this request has no bearing
24 whatsoever on this litigation.” (*See* ECF Nos. 136-3; 136-4.) However, SchenkerOcean
25 has not made this argument in its opposition to this motion. The Court declines to address
26 any objections raised in SchenkerOcean’s discovery responses that it did not reassert within
27 its opposition brief to the instant motion. *Cf. Hall v. Marriott Int’l, Inc.*, No. 19-cv-01715-
28 JLS-AHG, 2021 WL 1906464, at *9 (S.D. Cal. May 12, 2021) (quoting *SolarCity Corp. v.*
Doria, No. 16-cv-3085-JAH-RBB, 2018 WL 467898, at *3 (S.D. Cal. Jan. 18, 2018))
 (“When ruling on a motion to compel, courts in this district ‘generally consider[] only
those objections that have been timely asserted in the initial response to the discovery
request and that are subsequently reasserted and relied upon in response to the motion to
compel.’”); *Sherwin-Williams Co. v. Earl Scheib of Cal., Inc.*, No. 12-cv-2646-JAH-JMA,
2013 WL 12073836, at *2, n.1 (S.D. Cal. Mar. 4, 2013) (deeming all objections raised in
response to the discovery requests but not addressed in opposing the discovery motion to
be moot or waived, limiting its review to arguments presented in the parties’ briefs).

1 7,245,000 HKD (roughly \$1M USD).”⁴ (*Id.* at 3.) SchenkerOcean contends that the
2 corporate records provided corroborate Mr. Hilgers’s testimony regarding the composition
3 of the board and the ownership of the company. (*Id.*) Lastly, on December 1, 2022,
4 Schenker also produced an internal “representation agreement” between SchenkerOcean
5 and Schenker AG, which includes a requirement for indemnification of SchenkerOcean by
6 Schenker AG. (*Id.*)

7 **B. Alter Ego**

8 “Admiralty courts may pierce the corporate veil in order to reach the ‘alter egos’ of
9 a corporate defendant.” *Chan v. Soc’y Expeditions, Inc.*, 123 F.3d 1287, 1294 (9th Cir.
10 1997). “Federal courts sitting in admiralty generally apply federal common law when
11 examining corporate identity.” *Id.* “Corporate separateness is respected unless doing so
12 would work injustice upon an innocent third party.” *Id.* (quoting *Kilkenny v. Arco Marine*
13 *Inc.*, 800 F.2d 853, 859 (9th Cir. 1986)).

14 To pierce the corporate veil, a party must show that (1) “the controlling corporate
15 entity exercise[s] total domination of the subservient corporation, to the extent that the
16 subservient corporation manifests no separate corporate interests of its own,”(2) “injustice
17 will result from recognizing [the subservient entity] as a separate entity,” and (3) the
18 controlling entity “had a fraudulent intent or an intent to circumvent statutory or contractual
19 obligations.” *Pac. Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893,
20 898 (9th Cir. 2021) (internal citations omitted). “Whether these elements are established
21 is a fact-intensive inquiry, requiring the court to consider the totality of the record and
22 circumstances.” *Id.*

23 The following non-exhaustive list of factors are considered in determining whether
24 to pierce the corporate veil:

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26
27 ⁴ See Deutsche Bahn 2021 Integrated Report, available at
28 <https://www.dbschenker.com/resource/blob/780838/3e8cd9940577b99a6ab72560fd096c30/integrated-report-2021-en-data.pdf>, p. 247.

1 (1) disregarding corporate formalities such as, for example, in issuing stock,
2 electing directors, or keeping corporate records; (2) capitalization that is
3 inadequate to ensure that the business can meet its obligations; (3) putting
4 funds into or taking them out of the corporation for personal, not corporate,
5 purposes; (4) overlap in ownership, directors, officers, and personnel; (5)
6 shared office space, address, or contact information; (6) lack of discretion by
7 the allegedly subservient entity; (7) dealings not at arms-length between the
8 related entities; (8) the holding out by one entity that it is responsible for the
9 debts of another entity; and (9) the use of one entity's property by another
10 entity as its own.

11 *Id.*

12 **C. Analysis**

13 SchenkerOcean’s financial and corporate information is relevant to the alter ego
14 determination. The parties do not appear to dispute this position. Rather, SchenkerOcean
15 argues that it has already provided Fluence with much of the information sought and the
16 remaining requests are unduly burdensome and amount to nothing more than a “fishing
17 expedition.” (ECF No. 141.) The Court will address each request below.

18 1. Interrogatory No. 13

19 In Interrogatory No. 13, Fluence requests that SchenkerOcean “[i]dentify all
20 directors and officers of SchenkerOCEAN Ltd. and state their affiliation (e.g., employee,
21 director, and/or officer), if any, with any other Schenker entities and their roles and titles
22 with SchenkerOCEAN Ltd. and any other Schenker entities.” (ECF No. 136-3 at 4.)
23 Fluence argues that this interrogatory is relevant to the issue of “overlapping ownership
24 and personnel,” one of the *Pac. Gulf Shipping Co.* factors. (ECF No. 136 at 8.) Fluence
25 contends that Mr. Hilgers testified that other than two directors, SchenkerOcean has no
26 officers or employees and that these directors hold positions with other unknown Schenker
27 entities. (ECF No. 136 at 3–4.)

28 SchenkerOcean objected to this request; however, SchenkerOcean states in its
opposition that the interrogatory is “unnecessary” because it has already provided Fluence
with this information in other contexts. (ECF No. 141 at 3–4.) Specifically,
SchenkerOcean’s Rule 30(b)(6) witness, Mr. Hilgers, testified as to the identities of the

1 directors, their roles in other Schenker entities, and the ownership of SchenkerOcean, and
2 Fluence has produced corporate records identifying the board members and the ownership
3 of all stock in SchenkerOcean. (*Id.* at 4.)

4 The Court finds that the interrogatory is relevant and proportional to the needs of the
5 case. Moreover, SchenkerOcean has not demonstrated that responding to the interrogatory
6 would be unduly burdensome. *See, e.g.*, Fed. R. Civ. P. 33(d) (a party may answer an
7 interrogatory by specifying records from which the answers may be obtained and by
8 making the records available for inspection). Accordingly, Fluence’s motion to compel is
9 granted as to Interrogatory No. 13.

10 2. Interrogatory No. 14

11 In Interrogatory No. 14, Fluence requests that SchenkerOcean “[s]tate the amount of
12 rent that SchenkerOCEAN Ltd. pays to any other Schenker entity (including Schenker
13 China Ltd.) for use of any physical and/or office space.” (ECF No. 136-3 at 5.) Fluence
14 argues that this interrogatory is relevant to the issues of “shared office space, dealings not
15 made at arms-length, and shared property,” which are three of the *Pac. Gulf Shipping Co.*
16 factors. (ECF No. 136 at 8.)⁵ Fluence contends that Mr. Hilgers testified that other than
17 two directors, SchenkerOcean has no officers or employees. (ECF No. 136 at 3.)

18 SchenkerOcean does not address whether this interrogatory is relevant to Fluence’s
19 alter ego theory; it simply argues that this interrogatory is not relevant to cargo damage on
20 the BBC Finland. (ECF No. 141 at 4.)

21 The Court finds that the relevance of the requested information is minimal,
22 particularly in these circumstances where it is unclear if SchenkerOcean even rents space
23 from another Schenker entity. The Court further notes that Fluence argues in its motion
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26 ⁵ As noted by the Ninth Circuit, “[c]ourts have . . . found that ‘superficial indicia of
27 interrelatedness’ such as shared office space and phone numbers are ‘not dispositive of the
28 [alter-ego] question,’ instead looking to a corporation’s ‘practical operation’ as ‘more
instructive.’” *Pac. Gulf Shipping Co.*, 992 F.3d at 898 (quoting *Coastal States Trading, Inc. v. Zenith Nav. S. A.*, 446 F. Supp. 330, 334 (S.D.N.Y. 1977)).

1 that its requests are “calculated to lead to the discovery of admissible evidence determining
2 whether [] SchenkerOcean is merely the alter ego of Schenker AG.” (ECF No. 136 at 5
3 (emphasis added).) As such, Fluence has not demonstrated the relevance of rent paid to
4 Schenker China Ltd. or another Schenker entity.

5 For the foregoing reasons, the Court grants in part Interrogatory No. 13.
6 SchenkerOcean shall respond to this Interrogatory, but only as to Schenker AG and limited
7 in time between 2020⁶ and the present.

8 3. Interrogatory No. 15

9 In Interrogatory No. 15, Fluence requests that SchenkerOcean “[i]dentify all income
10 streams of SchenkerOCEAN Ltd. other than \$1.50 that SchenkerOCEAN Ltd. receives per
11 group of bills of lading and/or sea waybills, as referenced in the Rule 30(b)(6) deposition
12 of SchenkerOCEAN Ltd.’s representative Christoph Hilgers.” (ECF No. 136-3 at 5.)
13 Fluence argues that this interrogatory is relevant to the issue of “inadequate capitalization,”
14 which is one of the *Pac. Gulf Shipping Co.* factors. (ECF No. 136 at 8.)

15 SchenkerOcean argues that this interrogatory is not relevant to any claim or defense.
16 (ECF No. 141 at 4.) SchenkerOcean further argues that Mr. Hilgers never suggested that
17 SchenkerOcean was inadequately capitalized. (*Id.* at 2.) In this regard, SchenkerOcean
18 claims that in meet and confer calls, counsel for Schenker explained that SchenkerOcean
19 “issues hundreds of thousands of Bills of Lading and seaway bills in a largely automated
20 process.” (*Id.*) Therefore, although the fee is low, the volume is high. (*Id.* at 4.)
21 SchenkerOcean further notes that a financial report issued by SchenkerOcean’s parent,
22 Deutsche Bahn, indicated that SchenkerOcean has an equity of roughly one million dollars.
23 (*Id.* at 3.)

24 Although SchenkerOcean makes an argument for adequate capitalization, that issue
25 is not before the Court. The Court finds that the interrogatory is relevant and proportional
26

27 ⁶ Fluence contracted with Schenker for the cargo shipment at issue in February 2021.
28 (*See* ECF No. 1 at 4; ECF No. 77 at 8–9.)

1 to the needs of the case. Fluence contends that Mr. Hilgers testified that SchenkerOcean
2 only works for other Schenker entities. (ECF No. 136 at 3.) As such, identifying all income
3 streams apart from the Bills of Lading and seaway bills prepared for Schenker entities
4 should not be unduly burdensome. Accordingly, Fluence’s motion to compel is granted as
5 to Interrogatory No. 15.

6 4. RFPs Nos. 51–54, 63 and 64

7 Fluence argues that RFPs Nos. 51–54, 63 and 64 seek the production of certain
8 corporate records of SchenkerOcean which are relevant to the “potential disregard of
9 corporate formalities” by SchenkerOcean, which is one of the *Pac. Gulf Shipping Co.*
10 factors. (ECF No. 136 at 8–9.)

11 In RFP No. 51, Fluence seeks “SchenkerOCEAN Ltd.’s articles of incorporation and
12 bylaws.” (ECF No. 136-4 at 4.) In RFP No. 52, Fluence seeks “[a]ll notices of shareholder
13 meetings issued by SchenkerOCEAN Ltd. from 2018 to present.” (ECF No 136-4 at 5.)
14 In RFP No. 53, Fluence seeks “[a]ll meeting minutes of SchenkerOCEAN Ltd.’s board of
15 directors from 2018 to present.” (*Id.*) In RFP No. 54, Fluence seeks “[a]ll corporate
16 resolutions and/or other documents issued by SchenkerOCEAN Ltd.’s board of directors.”
17 (ECF No 136-4 at 6.)

18 In RFP No. 63, Fluence seeks all “documents evidencing and/or constituting
19 payment of SchenkerOCEAN Ltd.’s corporate dues, fees, charges, and similar items to the
20 jurisdiction under whose law SchenkerOCEAN Ltd. is incorporated.” (ECF No 136-4 at
21 11.) In RFP No. 64, Fluence seeks “[a]ll documents submitted to the jurisdiction under
22 whose law SchenkerOCEAN Ltd. is incorporated since 2018 that identify
23 SchenkerOCEAN, Ltd., its directors, its officers, and/or its purpose.” (*Id.*)

24 SchenkerOcean asserts that many of the requested documents are in Fluence’s
25 possession, and many of the corporate records are online and equally available to Fluence.
26 (ECF No. 141 at 4.) SchenkerOcean further asserts that these RFPs are not proportional to
27 the needs of the case, in that they seek “years of documents because of a ‘potential
28

1 disregard’ of formalities” and not even a “shred of evidence that any corporate formality
2 was disregarded.” (*Id.*)

3 SchenkerOcean has already produced its Certificate of Incorporation, Statement on
4 Compliance on Incorporation of a Company, Memorandum and Articles of Association,
5 Annual Returns for 2019–2022, and notices for change of company secretary and director
6 and change of address. (*Id.* at 2–3.) SchenkerOcean has further informed Fluence that
7 additional records are available online with the Hong Kong Corporate Registry and Federal
8 Maritime Commission. (*Id.* at 3.)

9 Given the foregoing, the Court finds that although the foregoing requests are relevant
10 to determining whether SchenkerOcean has complied with corporate formalities, they are
11 not proportional to the needs of the case. SchenkerOcean has substantially provided
12 Fluence with the information requested and directed Fluence to additional publicly
13 available information. Production of the remainder of the documents requested would be
14 burdensome and not supported by the potential value, where Fluence has not pointed to
15 any evidence of a failure to comply with corporate formalities. Accordingly, the Court
16 denies Fluence’s motion to compel further response to these RFPs.

17 5. RFPs Nos. 56–60

18 Fluence argues that RFPs Nos. 56–60 seek the production of certain financial records
19 of SchenkerOcean which are relevant to showing “inadequate capitalization,” which is one
20 of the *Pac. Gulf Shipping Co.* factors. (ECF No. 136 at 9.)

21 In RFP No. 56, Fluence seeks “[a]ll balance sheets for SchenkerOCEAN Ltd. from
22 2018 to present.” (ECF No 136-4 at 7.) In RFP No. 57, Fluence seeks “[a]ll financial
23 statements for SchenkerOCEAN Ltd. from 2018 to present.” (ECF No 136-4 at 8.) In RFP
24 No. 58, Fluence seeks “[a]ll profit and loss statements for SchenkerOCEAN Ltd. from 2018
25 to present.” (*Id.*) In RFP No. 59, Fluence seeks “[a]ll schedules of assets and liabilities
26 for SchenkerOCEAN Ltd. from 2018 to present.” (ECF No 136-4 at 9.) In RFP No. 60,
27 Fluence seeks “[a]ll tax returns for SchenkerOCEAN Ltd. from 2018 to present.” (*Id.*)
28

1 As previously stated, SchenkerOcean argues that Mr. Hilgers never suggested that
2 SchenkerOcean was inadequately capitalized or might serve as the alter ego of another
3 entity. (ECF No. 141 at 2.) SchenkerOcean further states that it has provided Fluence with
4 Annual Returns for 2019–2022, which include information reflecting, *inter alia*,
5 SchenkerOcean’s total amount of indebtedness, share capital, and ownership of shares, as
6 well as a financial report from SchenkerOcean’s parent company showing its capitalization
7 and argues that the search for the additional documents requested would require efforts
8 disproportionate to the needs of the case. (*Id.* at 2–3, 4–5.) In addition, SchenkerOcean
9 points out that Fluence should not be able to rely on *Pac. Gulf Shipping Co.* for the
10 production of these documents because that case does not address the proper scope of
11 discovery and Fluence has made no showing of ill intent on behalf of any of the Schenker
12 entities, which is one of the alter ego factors. . (*Id.* at 5.)⁷

13 In light of SchenkerOcean’s representations regarding its production, the Court finds
14 that SchenkerOcean has provided Fluence with sufficient information regarding its
15 capitalization. Any further production is not proportional to the needs of this case.
16 Accordingly, the Court denies Fluence’s motion to compel further responses to these RFPs.

17 6. RFP No. 61⁸

18 In RFP No. 61, Fluence seeks “[a]ll powers of attorney and/or contracts authorizing
19 any Schenker entity to act on behalf of SchenkerOCEAN Ltd., as referenced in the Rule
20 30(b)(6) deposition of SchenkerOCEAN Ltd.’s representative Christoph Hilgers.” (ECF
21 No 136-4 at 10.) Fluence argues that RFP No. 61 seeks the production of information
22

23 ⁷ See *Pac. Gulf Shipping Co.*, 992 F.3d at 899 (in order to pierce the corporate veil a
24 party must demonstrate “injustice from failing to pierce the veil and ill intent on the part
25 of the dominating entity” as well as domination and control).

26 ⁸ As an initial matter, during the informal Discovery Conference in this matter,
27 SchenkerOcean agreed to produce any powers of attorney between Schenker AG and
28 SchenkerOcean, partially resolving the dispute as to this RFP. (*See* ECF No. 136 at 4.)
Although SchenkerOcean does not mention this resolution in their opposition, the Court
assumes these documents have been produced.

1 which is relevant to showing “lack of discretion and dealings not made at arms-length,”
2 which are two of the *Pac. Gulf Shipping Co.* factors. (ECF No. 136 at 9.) Fluence contends
3 that Mr. Hilgers testified that SchenkerOcean has given powers of attorney to other
4 Schenker entities, and those entities, not SchenkerOcean, negotiate the contracts, as
5 evidenced by SchenkerOcean shipping documents. (*Id.* at 3.)

6 In response, SchenkerOcean contends that the request expansively seeks *all*
7 agreements between SchenkerOcean and any other Schenker entity. (ECF No. 141 at 5.)
8 SchenkerOcean argues that the “burden of searching for and producing agreements with
9 all Schenker entities is not proportional to the needs of this case.” (*Id.*) SchenkerOcean
10 contends that Mr. Hilgers testified during his deposition that SchenkerOcean “serves as a
11 non-vessel operating common carrier (NVOCC) for the entire Schenker group of
12 companies through representation agreements.” (ECF No. 141 at 2 (emphasis added).)
13 SchenkerOcean further represents that it has already produced the representation
14 agreement between SchenkerOcean and Schenker AG. (*Id.*)

15 Given the foregoing and taking into consideration the prior partial resolution of this
16 dispute, the Court denies Fluence’s motion to compel a further response to this RFP.
17 SchenkerOcean has already produced its representation agreement with Schenker AG and
18 has agreed to produce any powers of attorney between itself and Schenker AG. For the
19 reasons stated above, Fluence has not demonstrated the relevance of powers of attorney
20 and/or contracts with any other Schenker entity. In addition, the Court finds that the
21 production of additional agreements between SchenkerOcean and Schenker AG would not
22 be proportional to the needs of the case.

23 7. RFP No. 62

24 Lastly, in RFP No. 62, Fluence seeks “[a]ll insurance agreements and/or policies, as
25 well as coverage declarations pages for such agreements/policies, under which any
26 insurance company and/or business may be liable: (1) to satisfy all or part of a possible
27 judgment in this action against SchenkerOCEAN Ltd., and/or (2) to indemnify or
28 reimburse for payments made to satisfy, in whole or in part, any judgment that may be

1 entered in this action against SchenkerOCEAN Ltd.” (ECF No 136-4 at 10.) Fluence
2 argues that RFP No. 62 seeks the production of information which is relevant to showing
3 “lack of discretion, dealings not made at arms-length, and Schenker AG’s responsibility
4 for SchenkerOcean’s debt,” which are three of the *Pac. Gulf Shipping Co.* factors. (ECF
5 No. 136 at 9.)

6 In response, SchenkerOcean represents that in July 2022, Schenker provided Fluence
7 with the Certificate of Entry for Schenker Deutschland AG from Gard. (ECF No. 141 at
8 5.) The certificate states: “The cover shall at the request of the Assured(s) be extended to
9 liabilities, losses, costs and expenses incurred by a person or company affiliated or
10 associated with the Assured(s).” (*Id.*) The representation agreement between
11 SchenkerOcean and Schenker AG referenced above further “requires Schenker AG to
12 indemnify SchenkerOcean for claims related to cargo shipments.” (*Id.* at 6.) As such,
13 SchenkerOcean argues that “Fluence has not explained why it needs any further documents
14 or what those documents would be.” (*Id.*)

15 Under Rule 26(a)(1)(A)(iv), a party to a civil action must produce to other parties at
16 the outset of the litigation “any insurance agreement under which an insurance business
17 may be liable to satisfy all or part of a possible judgment in the action or to indemnify or
18 reimburse for payments made to satisfy the judgment.” Fed. R. Civ. P. 26(a)(1)(A)(iv).
19 Given the foregoing, the Court grants Fluence’s motion to compel further response from
20 SchenkerOcean with respect to clause RFP No. 62, to the extent such an insurance
21 agreement exists.

22 **IV. CONCLUSION**

23 For the reasons set forth above, the Court **GRANTS IN PART** and **DENIES IN**
24 **PART**, Fluence’s motion to compel. Within seven (7) days of the date of this Order,
25 SchenkerOcean shall provide updated responses to Fluence’s Third Set of Interrogatories

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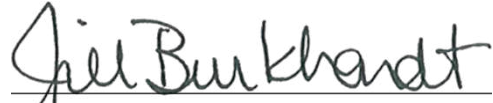
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1 and produce all documents responsive to Fluence’s Third Set of Requests for Production
2 of Documents, as set forth above.

3 **IT IS SO ORDERED.**

4 Dated: June 22, 2023

5 
6 Hon. Jill L. Burkhardt
7 United States Magistrate Judge
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