

**Conditionally GRANT in Part and DENY in Part, Opinion Filed November 18, 2016.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-16-00619-CV**

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**IN RE STAFF CARE, INC., Relator**

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**Original Proceeding from the 44th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. 11-03615**

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**MEMORANDUM OPINION**

Before Justices Lang-Miers, Fillmore, and Whitehill  
Opinion by Justice Lang-Miers

Relator Staff Care, Inc. purchased a physician staffing business from one of the real parties in interest. Real parties in interest, defendants in the trial court, started a competing business called Consilium Staffing, Inc. Staff Care sued Consilium and four individuals (“the original defendants”) for breach of contract, theft of trade secrets, tortious interference, and other claims. Later, Staff Care amended its petition to add eight new individual defendants (“the additional defendants”).<sup>1</sup> The underlying litigation has been lengthy and contentious. Two district court judges have presided over the matter, and this is the third original proceeding filed by relator in this Court. *In re Staff Care, Inc.*, 05-13-00987-CV, 2013 WL 4506571 (Tex.

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<sup>1</sup> We will refer to real parties in interest collectively as defendants. Where it is necessary to distinguish among them, we will refer to real parties in interest as Consilium, the original defendants, and the additional defendants

App.—Dallas Aug. 21, 2013, orig. proceeding) (mem. op.) (“Staff Care I”);<sup>2</sup> *In re Staff Care, Inc.*, 422 S.W.3d 876 (Tex. App.—Dallas 2014, orig. proceeding) (“Staff Care II”).<sup>3</sup>

After we issued *Staff Care II*, Staff Care took the depositions of the additional defendants and the key employees. According to Staff Care, those depositions revealed that the defendants can easily access additional matching information regarding the entities and clients contacted by the defendants during their first year of employment with Consilium as well as backup documents reflecting defendants’ contacts with the client matches, physician placements with those client “matches,” names of the physicians placed, and the fees collected and profits realized by Consilium. Staff Care filed two motions to compel discovery of that information – the May 15, 2015 motion and the February 23, 2016 motion (collectively “the 2015/2016 motions”). The trial court ruled on the May 15, 2015 motion on the record at the hearing on that motion and then issued a written order on both motions on May 2, 2016. The trial court granted in part and denied in part Staff Care’s 2015/2016 motions. In this original proceeding, Staff Care seeks relief from those orders.

First, Staff Care complains of the trial court’s denial of Staff Care’s renewed requests for further matching from Consilium and the original defendants. Second, Staff Care complains of the trial court’s denial of Staff Care’s request that defendants produce the Consilium Back-Up Materials (i.e., placement information, bill rates, pay rates, and other underlying data) regarding 92 clients identified in previous discovery responses. Third, Staff Care complains of the trial

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<sup>2</sup> In *Staff Care I*, Staff Care complained of the trial court’s failure to rule on numerous pending motions. *Staff Care I*, 2013 WL 4506571 at \*1. We conditionally granted the petition, directing the trial court to rule on the motions but expressing no opinion on the merits of any of Staff Care’s motions or the associate judge’s order. *Id.* The trial court held a hearing on all of the pending matters on September 4, 2013, and signed a written order dated September 11, 2013. In *Staff Care II*, relator challenged some of the trial court’s eight rulings in the September 11, 2013 order.

<sup>3</sup> In *Staff Care II*, Staff Care complained of the trial court’s denial of (1) Staff Care’s motion to compel production of “matched” physician lists from the original defendants and “matched” physician and client lists from the additional defendants, (2) Staff Care’s motion to compel the depositions of the eight additional defendants and four “key employees” of Consilium, and (3) Staff Care’s appeal of a ruling by an associate judge striking Staff Care’s amended and supplemental disclosure responses. *Staff Care II*, 422 S.W.3d at 876. We conditionally granted the writ in part, holding the trial court abused its discretion by denying the motion to compel depositions of the additional defendants and key employees and by denying Staff Care’s appeal of the associate judge’s order granting defendants’ motion to strike the names of persons that were previously disclosed in discovery from Staff Care’s supplemental and amended disclosures. *Id.* at 886.

court's denial of Staff Care's request for production of documents regarding all Staff Care clients contacted by the defendants during their first year of employment with Consilium regardless of whether a physician placement was made with that client. Finally, Staff Care complains of the trial court's denial of Staff Care's request for the deposition of a Consilium corporate representative.

### **Standards for Mandamus**

Mandamus is an extraordinary remedy that is available only in limited circumstances. *CSR Ltd. v. Link*, 925 S.W.2d 591, 596 (Tex.1996) (orig. proceeding) (citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex.1992) (orig. proceeding)). In order to obtain mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004); *Walker*, 827 S.W.2d at 839–40. Staff Care has met this burden in part. We therefore conditionally grant the writ of mandamus in part and deny it in part.

### **Past Motions to Compel**

In *Staff Care II*, Staff Care sought relief from orders denying Staff Care's supplemented third motion to compel and fourth motion to compel. In those motions, Staff Care sought to further the "matching" process, through which Staff Care sought production of a list of Consilium's clients that could then be "matched" against a list of Staff Care's clients to determine any overlap and, thus, the potential for direct violations of Staff Care's claimed rights and any claimed damages to Staff Care. The supplemented motion sought to compel the original defendants to produce "matched" physician lists based on verified Consilium records, the remaining individual defendants to produce "matched" physician and client lists based on verified Consilium records, and all underlying records supporting the lists, including "documents establishing the pay rates, bill rates, client contracts, client contacts, volume of business, [and]

profits” for each physician and facility named on a “matched list.” *Staff Care II*, 422 S.W.3d at 884. In the fourth motion to compel, Staff Care sought discovery from Consilium and the eight additional defendants, and re-urged Staff Care’s first and second motions to compel that the trial court had previously denied as to the original defendants, summarized as:

Staff Care asks the Court to compel: (1) Consilium’s complete client and provider lists; (2) documents establishing every placement a former Staff Care employee has made for or on behalf of Consilium and the corresponding bill and pay rates for each placement; (3) documents establishing all commission such employees have made off of such placements; (4) all Blue Sky data supporting (2) and (3) above; and (5) supplemental responses to all pending discovery (where applicable).

*Staff Care II*, 422 S.W.3d at 885.

We noted in *Staff Care II* that the matching process was vigorously contested prior to the hearing on the supplemented third motion to compel, and the trial court made clear that it would not permit Staff Care to obtain Consilium’s “entire client base.” *Staff Care II*, 422 S.W.3d at 884. The trial court did, however, require the original defendants to undertake a narrower matching process, which identified an overlap of 92 clients. *Staff Care II*, 422 S.W.3d at 884. The trial court also ordered the deposition of a Consilium corporate representative to testify regarding specific information in Consilium’s client database. Based on these facts, we held that the trial court did not abuse its discretion in denying Staff Care’s motion to compel additional matching information from the original defendants. *Id.* at 884–85. We also held that the trial court did not abuse its discretion by denying the motions to compel additional information from Consilium and the original defendants because the trial court had previously denied production of “complete client and provider lists” and documents revealing “every placement” as overbroad, and the responses Staff Care moved to compel in the fourth motion were simply “the same requests without revision.” *Staff Care II*, 422 S.W.3d at 885. We concluded “that the trial court

did not clearly abuse its discretion in declining to grant motions to compel responses to the same discovery requests it has considered and rejected previously.” *Id.*

With regard to the requests for production from the additional defendants, we held that the trial court did not abuse its discretion in denying the fourth motion to compel because those defendants had responded to the discovery requests, the record did not include those responses, the record did not include Staff Care’s purported request that the additional defendants undertake a “matching” process with a list provided by Staff Care, and the additional defendants would be deposed in light of the Court’s decision to conditionally grant the writ as to depositions of the additional defendants. *Staff Care II*, 422 S.W.3d at 885.

### **The 2015/2016 Motions**

In the 2015/2016 motions at issue here, Staff Care sought discovery from Consilium and the additional defendants following the depositions permitted by *Staff Care II*. Staff Care again sought physician and client lists from Consilium in order to “match” those lists with Staff Care client and physician lists to check for overlap. Staff Care also sought production of back up documents showing the placements of physicians with the clients identified, the pay rates, bill rates, profits, overhead costs, and expenses related to those placements, and Consilium’s total volume of business conducted with each identified entity. Staff Care also argued that defendants should produce documents showing the placements, physicians, and fee information corresponding to the 92 clients<sup>4</sup> identified as matches in Consilium’s interrogatory responses (i.e., “the Consilium Back-Up Materials”), and sought leave to depose a corporate representative

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<sup>4</sup> The trial court described the 92 clients as client contacts the individual defendants did not contact personally but who may have been contacted by someone else at Consilium after the defendant “whispered in someone’s ear. . . .”

of Consilium to provide testimony interpreting the damages information to be provided in the requested discovery responses.<sup>5</sup>

Staff Care also requested interrogatory answers and production of accompanying documents from the additional defendants identifying which of their former Staff Care clients (with whom they personally worked in the last year of their employment) the defendant contacted during the first year of the defendant's employment with Consilium. Staff Care also sought production of documents for each of the overlapping former clients showing (1) the total volume of business conducted with that client while at Consilium, (2) the number of placements made with the client, (3) the identities of the physicians placed at the client, (4) the bill and pay rates for each placement, (5) the amount of Consilium's profits on each placement, and (6) the amount of commissions paid to the additional defendants for each placement. Each of these discovery requests included two exhibits tailored to each defendant containing a list of entities and a list of individuals the defendant had business contacts or communications with during that defendant's last year of employment at Staff Care.

### **The Trial Court's Orders on the 2015/2016 Motions**

At the hearing on the May 15, 2015 motion to compel, the trial court granted the motion in part, ordering the defendants to produce the following:

1. A list identifying each Staff Care client whom each individual defendant testified at his or her deposition that he/she either (1) "yes" contacted the client in the first year since joining Consilium, or (2) didn't know if he or she contacted the client within that time frame.
2. For each client identified, the corresponding placements, doctor, and fee information.

When defendants produced only three contacts that resulted in placements, Staff Care filed the February 23, 2016 motion to compel compliance with the 2015 order. In that motion,

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<sup>5</sup> The trial court had previously ordered the deposition of Consilium's corporate representative, Matt Baade, to testify regarding specific information in Consilium's client database.

Staff Care argued that the production was deficient because defendants identified only contacts that resulted in placements rather than producing a complete list of all clients contacted and the corresponding placements, physician, and fee information. To illustrate the number of contacts identified in the depositions, Staff Care attached Exhibit C to the motion. Exhibit C was a chart listing each additional defendant and the clients to which each defendant in deposition answered “yes” or “I don’t know” to a question regarding whether that defendant contacted the client during the defendant’s first year at Consilium. Staff Care argued defendants were required under the 2015 order to produce underlying data showing placements, physician, and fee information corresponding to each of those client matches (i.e., “the Individual Defendant Back-Up Materials”).

After hearing Staff Care’s February 23, 2016 motion, the trial court ordered the additional defendants to produce the Individual Defendant Back-Up Materials as to most of the client contacts listed in Exhibit C.<sup>6</sup> The trial court limited the production to clients on the list for which a placement was made by a specific defendant within 18 months of that defendant joining Consilium. The trial court did not require the defendants to produce additional documents regarding a client on the list if the defendant did not personally make a placement with that client during the defendant’s first 18 months at Consilium, even if another Consilium employee made a placement with that client during that time period.

The trial court denied Staff Care’s requests for the deposition of a Consilium corporate representative, back-up materials regarding all Staff Care clients contacted by the defendants during their first year of employment with Consilium, regardless of whether a placement was made to that client, and production of the Consilium Back-Up Materials regarding the 92 clients

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<sup>6</sup> The trial court ordered the additional defendants to produce the back-up materials regarding certain clients only after Staff Care provides them clarifying information as to the client’s identity.

previously identified in interrogatory responses as Staff Care client contacts with whom other Consilium employees communicated or attempted to communicate after the original defendants began working at Consilium.<sup>7</sup>

### **Relief Requested Here**

Staff Care now asks the Court to grant a writ of mandamus directing the trial court to compel defendants to do the following:

1. Compare Consilium's client lists to Staff Care's previously-provided client lists and identify all "matches" thereon under an "Attorneys-Eyes' Only Designation.";
2. Provide Staff Care with complete documentation for each "match" under an "Attorneys-Eyes' Only Designation" establishing the following:
  - The name of every physician placed at each "match";
  - The names of all Consilium employees who have contacted, solicited, communicated with, or accepted business from each "match" and the dates of each contact, solicitation, or communication;
  - Explanation as to how each "match" was initially identified by Consilium and/or its employees;
  - The volume of business conducted at each "match";
  - The bill rate(s), pay rate(s), and contracts for each "match";
  - The profits Consilium has earned and the commissions it has paid related to each "match";
3. Compel the deposition of a Consilium corporate representative as to the match information produced in discovery.

### **Further Matching of Consilium's Complete Client Lists and Production of Corresponding Back-up Materials**

Staff Care contends the trial court abused its discretion by denying Staff Care's renewed request for an order compelling defendants to compare Consilium's complete client lists to Staff

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<sup>7</sup> The trial court denied Staff Care's request for back-up materials from Brent Wayne Burrows as to three specific clients. Staff Care provides no argument regarding these specific denials and does not request an order directing the trial court to compel production from Burrows as to those clients. We express no opinion on the propriety of the denial of those requests.



Care's previously-provided client lists, identify all "matches" thereon, and provide "complete documentation" (i.e., complete back-up materials) for each such match. We conclude these requests go beyond the relief requested in the 2015/2016 motions and is a reiteration of Staff Care's prior requests for production of "complete client and provider lists" and documents revealing "every placement." The trial court previously denied those requests as overbroad, and this Court held in *Staff Care II* that it was not an abuse of discretion to deny "motions to compel responses to the same discovery requests it has considered and rejected previously." *Staff Care II*, 422 S.W.3d at 884–85. We conclude that the trial court did not clearly abuse its discretion in denying Staff Care's renewed requests for defendants to conduct a matching process and corresponding production of documents as to Consilium's complete client list.

#### **Consilium Back-Up Materials Related to the 92 Previously-Identified Clients**

In the 2015/2016 motions and in this proceeding, Staff Care again seeks production of back-up materials related to the 92 clients identified by the original defendants. We held in *Staff Care II* that the trial court did not abuse its discretion by denying Staff Care's request for production of the back-up materials related to the 92 clients. *Staff Care II*, 422 S.W.3d at 884–85. Staff Care argues that the depositions of the additional defendants revealed that these back-up materials could be easily generated by Consilium and, thus, should be produced. The ability of the defendants to produce the materials, however, does not make the materials automatically discoverable. The trial court had various bases for denying the prior requests for this information, including a desire not to provide Staff Care with unrestricted access to Consilium's financial and client information. Staff Care has not explained how those concerns are no longer valid. As such, we conclude Staff Care has not met its burden to obtain extraordinary mandamus relief on this issue.

**Individual Back-Up Materials Related to Client Contacts  
Identified on Exhibit C**

Staff Care next complains of the trial court’s order regarding production by the additional defendants of back-up materials regarding client contacts made or possibly made during the defendants’ first year of employment with Consilium. The clients at issue were included on Exhibit C to Staff Care’s 2016 motion to compel. The Exhibit C list was compiled based on the additional defendants’ deposition testimony and listed the Staff Care clients that each additional defendant contacted or may have contacted during the defendants’ first year at Consilium. The trial court granted Staff Care’s request for matching information and back-up materials as to the additional defendants to the extent the defendant made a placement with a listed client during the defendant’s first eighteen months of employment at Consilium. But the court denied Staff Care’s request for production of back-up materials for all client contacts listed on Exhibit C. Staff Care was denied review of back-up materials related to clients the defendant did not contact directly or personally make a placement with during the defendant’s first year of Consilium employment. We conclude the trial court abused its discretion by denying production of back-up materials corresponding to each client listed on Exhibit C for which the trial court allowed limited discovery.

A party is generally entitled to “discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action. . . .” TEX. R. CIV. P. 192.3(a). The information sought must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Because the purpose of discovery is to seek the truth, discovery is not limited only to information that will be admissible at trial. TEX. R. CIV. P. 192.3(a); *Eli Lilly & Co. v. Marshall*, 850 S.W.2d 155, 160 (Tex. 1993); *In re Nolle*, 265 S.W.3d 487, 491–92 (Tex. App.—Houston [1st Dist.] 2008, orig. proceeding). The discovery process aims to ensure that “disputes may be decided by what the facts reveal, not by what facts are concealed.” *In re Nolle*, 265

S.W.3d at 491–92 (citing *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 467 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (citing *Colonial Pipeline*, 968 S.W.2d at 941)). The scope of discovery is limited by the legitimate interests of the opposing party to avoid overly broad requests, harassment, or disclosure of privileged information. TEX. R. CIV. P. 192.4; *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998). As such, although the scope of discovery is broad, requests for discovery must be “narrowly tailored to the dispute at hand.” *In re Allstate County Mut. Ins. Co.*, 227 S.W.3d 667, 669 (Tex. 2007) (per curiam) (orig. proceeding) (citing *In re CSX Corp.*, 124 S.W.3d 149, 153 (Tex. 2003)).

Central to Staff Care’s case is its contention that the defendants obtained client lists, training manuals, and highly confidential pay and rate information while employed at Staff Care and used that information when they joined Consilium to solicit Staff Care’s clients and benefit Consilium. In their depositions, the additional defendants admitted to contacting certain Staff Care clients during their first year of Consilium employment and testified that they did not know if they contacted certain other Staff Care clients during that time period. Exhibit C to Staff Care’s 2016 motion to compel listed which clients each additional defendant affirmatively contacted or may have contacted during the defendant’s first year of employment with Consilium. Staff Care contends it is entitled to discover which of those clients made placements through Consilium during the defendant’s first 18 months of employment and discover details regarding those placements. We agree.

Any placements made to those clients and the placement and fee information for those placements are relevant to Staff Care’s claims and that information is reasonably calculated to lead to admissible evidence showing the placement was made as a result of an additional defendant’s sharing of the client contact with Consilium. The defendants’ deposition testimony indicates that it is not difficult or time-consuming to generate the match and placement

information sought. Staff Care limited the production requested to the client contacts in Exhibit C. We conclude the information sought is relevant to Staff Care's liability and damages theories, reasonably tailored, and likely to lead to the discovery of admissible evidence. Real parties in interest have control of the information and should be compelled to produce it here. Mandamus may issue where a party "is effectively denied the ability to develop the merits of the case." *See In re Colonial Pipeline Co.*, 968 S.W.2d 938, 941-42 (Tex. 1998). We conclude Staff Care has been denied such discovery here, and we sustain Staff Care's complaint regarding the discovery sought from the additional defendants as to the clients listed in Exhibit C.

### **Deposition of Consilium Corporate Representative**

Staff Care previously deposed a Consilium corporate representative but did so before receiving the discovery sought from the additional defendants as to their contacts with clients list in Exhibit C. We conclude the trial court abused its discretion by denying Staff Care's motion to compel the deposition of a Consilium corporate representative to the extent the deposition is limited to the discovery obtained from the additional defendants related to their client contacts listed on Exhibit C and any placement information and back-up materials produced as to those contacts.

### **Conclusion**

Accordingly, we conditionally grant Staff Care's petition for writ of mandamus in part. We direct the trial court to issue an order supplementing its May 2, 2016 discovery order and ordering the additional defendants to produce the information ordered on pages 2 through 14 of the May 2, 2016 discovery order as to any placements made with the client contacts listed by any Consilium employee within eighteen months of the additional defendant joining Consilium. We also direct the trial court to issue an order granting Staff Care's motion to compel the deposition of a Consilium corporate representative, concerning the discovery obtained from the additional

defendants related to the client contacts set out in Exhibit C and the May 2, 2016 order. We deny Staff Care's request for an order compelling defendants to compare Consilium's complete client lists to Staff Care's previously-provided client lists, to identify all "matches" between those lists, and to produce back-up materials as to all such matches. We also deny Staff Care's request for an order compelling production of back-up materials as to any placements made to the matched list of 92 client contacts. A writ will issue only in the event the trial court fails to issue the orders as directed herein within fourteen days of the date of this opinion.

Since we assume the trial court will comply with this opinion, we direct our clerk not to issue the writ of mandamus unless information is received that the district court has not so complied.

/s/ Elizabeth Lang-Miers  
ELIZABETH LANG-MIERS  
JUSTICE

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