

Larson's deposition; and (2) the Wineries' formerly identified trial exhibits (*see* ECF No. 326). For the following reasons, the Court will deny the motion.

The scope of discovery encompasses "any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). If a party declines to produce certain discovery, "[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection." Fed. R. Civ. P. 37(a)(3)(B). "The proponent of a motion to compel discovery bears the initial burden of proving that the information sought is relevant." *See, e.g., Vamplew v. Wayne State Univ. Bd. of Governors*, No. 12-14561, 2014 WL 266407, at *1 (E.D. Mich. Jan. 24, 2014).

PTP asserts that it does not request "financial documentation' related to Winery operations (*e.g.*, tax returns, cash flow, and profit and loss and other financial statements)" (ECF No. 326 at PageID.11917).¹ Instead, PTP seeks Mr. Larson's report and all related attachments and documents, including his deposition testimony, as well as documents the Wineries previously identified as trial exhibits. Regarding Mr. Larson's report about the Wineries' estimated damages, PTP contends that this report and related documents will show "which Wineries claim to be injured by which provisions in the zoning ordinance, under which legal theory, since when, and to what extent" (*Id.* at PageID.11922). PTP argues that this information about which sections of the Ordinances caused which Wineries how much in damages will help PTP assert its lack of standing, laches, and statutes of limitations defenses. As for the documents the Wineries previously intended to rely on at trial in August

¹ Even if PTP requested these documents, the Court would hold that they are not relevant to PTP and would not order the Wineries to compel such documents.

2022, PTP contends that it should access such documents because “PTP is entitled to all documents the Wineries may rely upon at trial, including those related to events, sales, historic activities, and more. The requested documents relate to the Wineries’ claims and injuries, and they are not sensitive ‘financial documents.’” (*Id.* at PageID.11923). Finally, to the extent that any of the requested information is sensitive, PTP asserts that the Wineries will be protected by the existing protective order, which allows the parties to designate certain discovery material as “confidential” or “attorneys’ eyes only” (*Id.* at PageID.11928).

The Wineries, on the other hand, argue that Mr. Larson’s report—which solely concerns the Wineries’ estimated damages—is not relevant to PTP. The Wineries are concerned that if PTP—which allegedly called itself the “political enemy” of the Wineries during oral argument at the Sixth Circuit (see ECF No. 339 at PageID.12481), and whose farmer-members compete with the Wineries—could access the Wineries’ confidential merchandise and food sales data, grape sales and purchasing data, pricing information, and event information, PTP would benefit from such information and use it for purposes outside the scope of this litigation. Because such information is not relevant to PTP and because the Court has the authority to restrict an intervenors’ access to discovery, the Wineries argue that PTP should not be permitted access to such information.

In the Court’s opinion, the documents that PTP seeks to compel are not relevant to PTP. First, with respect to Mr. Larson’s report and accompanying documents, the connection between the report and its related attachments and PTP’s interests in this litigation is far too tenuous. The Sixth Circuit permitted PTP to intervene based on PTP members’ “property interests,” including maintaining property values, quiet enjoyment, and

preserving their farms. *See Wineries of the Old Mission Peninsula, Ass'n, v. Twp. of Peninsula*, 41 F.4th 767, 771-72, 775 (6th Cir. 2022). In fact, the Sixth Circuit noted one of the most compelling reasons why the Township and PTP's interests are not identical: "The Township faces the possibility of damages. Protect the Peninsula's members do not . . . It is not difficult to see how the two entities' interests could diverge." *Id.* at 777. Mr. Larson's expert report, which calculates the Wineries' estimated damages, is not relevant to the reasons that PTP has been permitted to intervene in this matter. How much the Wineries are seeking in damages, and what sections of the Ordinances those damages arise from, is simply not relevant to PTP's protection of its property interests.² Though PTP argues that its members, who are taxpayers that live in Peninsula Township, will be "ultimately responsible for the bill" regarding the Wineries' damages (*see* ECF No. 326 at PageID.11932), the Sixth Circuit did not allow PTP to intervene because they are taxpayers. Because the Township is solely responsible for paying any damages to which the Wineries are entitled, the Court sees no reason why PTP should access an expert report concerning the Wineries' damages—a report that is irrelevant to PTP.³

Second, with respect to the documents the Wineries previously identified as trial exhibits, the Court also finds that these documents are no longer relevant to the current

² With respect to PTP's argument that it should be allowed access to Mr. Larson's report in order to form its lack of standing, laches, and statutes of limitations defenses, the Court finds that other means of discovery—such as taking depositions, document requests, and requests for admission, which the Court has allowed PTP to do—are more than sufficient means to help PTP form its defenses.

³ The Court also disagrees that if PTP members, some of whom are farmers competing with the Wineries, were permitted access to the Wineries' purchasing data, food sales data, pricing information, etc., the protective order will adequately protect the Wineries. Once PTP members are permitted access to such data, which PTP argues is inappropriate for an "attorneys' eyes only" designation (*see* ECF No. 326 at PageID.11928), the Court is concerned how this data may be used by PTP members in the future.

proceedings, given how the landscape of this case has changed. Back when the Wineries prepared their former trial exhibits in preparation for the August 2022 trial, this case possessed an entirely different procedural posture. PTP had yet to intervene, and the Court had resolved all pending motions for summary judgment, leaving very few issues ripe for trial. When this case eventually proceeds to trial again, it is entirely possible that totally different issues will be ripe for trial. The Court finds that these former trial exhibits, which may never be introduced at the upcoming trial, are not relevant to the current proceedings, and PTP therefore need not access them at this stage in the litigation. Of course, if the Wineries eventually choose to use such documents at the upcoming trial, they will be expected to disclose them at an appropriate time, which the Wineries appear to concede (see ECF No. 339 at PageID.12483) (“It is true that, eventually, some or all of these documents may be introduced as trial exhibits. But perhaps not. PTP’s intervention has pushed back the trial, and the Wineries’ proposed trial exhibits may change . . . That one day they may be trial exhibits does not mean that PTP has a right to see them now.”).

Because PTP has failed to establish that the documents it seeks to compel are relevant to PTP, the Court will deny PTP’s motion. Accordingly,

IT IS HEREBY ORDERED that PTP’s motion to compel access to certain discovery material (ECF No. 326) is **DENIED**.

IT IS SO ORDERED.

Date: May 8, 2023

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge