UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

v.

PENINSULA TOWNSHIP, Michigan Municipal Corporation,

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

Case No: 1:20-cv-01008

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

ORAL ARGUMENT REQUESTED

PLAINTIFFS' BRIEF IN SUPPORT OF SECOND MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM PROTECT THE PENINSULA

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Court Rules

I. INTRODUCTION

PTP was allowed to intervene by convincing the Sixth Circuit that Peninsula Township could not protect its members' interests. But before making those representations, PTP and Peninsula Township had already joined forces; a fact withheld from the Sixth Circuit and this Court. PTP and Peninsula Township signed a joint defense agreement on October 27, 2021, and have been extensively collaborating for years on settlement and trial strategy, brief writing, and legal research. When those facts finally came out, Magistrate Judge Kent ordered PTP to log its communications with the Township. PTP has not provided a sufficient log, likely because it wants to hide the degree of collaboration between it and the Township. PTP's log lists hundreds of emails and attachments that are not properly described.

Additionally, PTP is hiding the ball by invoking associational privilege, ostensibly to protect the identity of its members. But PTP intervened in this case based upon its members. Recent discovery has revealed four of the six members PTP has identified as trial witnesses were recruited to PTP *after* the Wineries filed their initial complaint. The Wineries are entitled to see PTP's recruiting efforts for these witnesses because it affects their credibility.

II. BACKGROUND

A. PTP represented to this Court and the Sixth Circuit that its interests differed from Peninsula Township's.

When it moved to intervene, PTP represented to this Court that "PTP's interests overlap but are not identical to the Township's." (ECF No. 41, PageID.1981.) PTP doubled down at the Sixth Circuit, where its attorney stated "The Township and PTP's interests differ. They don't have the same interest, they don't have the same goal."[1] PTP's counsel went so far as to say "we didn't

[1] Comments beginning at 4:10 of the audio recording of oral argument. Available at https://www.opn.ca6.uscourts.gov/internet/court_audio/aud2.php?link=audio/06-09-2022%20-

know what arguments the Township wouldn't make. How could we?"[2]

The Sixth Circuit relied on that representation. It also relied on the Township's similar statement: "In notifying the district court that it did not oppose Protect the Peninsula's motion to intervene, the Township lingered on its ability to represent the interests of Protect the Peninsula and its members." *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula, Michigan*, 41 F.4th 767, 775 (6th Cir. 2022) (citing ECF No. 47, PageID.2151 (dated March 3, 2021)).

B. PTP refused to produce an unredacted copy of its joint defense agreement with Peninsula Township.

Nearly a year later, during a hearing before Magistrate Judge Kent on June 8, 2023, PTP's counsel disclosed for the first time that PTP and the Township have a joint defense agreement. (ECF No. 378, PageID.14072.) After the hearing, the Wineries served a request to produce the agreement. (ECF No. 372.) On June 29, 2023, PTP filed a heavily redacted copy. (ECF No. 395-1, PageID.14751.) PTP responded to the Wineries' discovery request by pointing to the joint defense agreement. (**Exhibit 1: PTP's Responses to Second Set of Discovery Requests**.) The joint defense agreement was signed on October 27, 2021, more than seven months before PTP represented to the Sixth Circuit that its interests differed from the Township and that PTP "didn't know what arguments the Township wouldn't make. How could we?" Given that PTP and the Township were putting forth a "joint defense," the truthfulness of this representation is questionable. For example, Peninsula Township filed its Motion for Summary Judgment on January 18, 2022. (ECF No. 142.) According to PTP's privilege log, PTP and Township attorneys

%20Thursday/21-1744%20Wineries%20of%20the%20Old%20Mission%20Pe%20v%20Township%20of%20Peninsula%20MI%20et%20al.mp3&name=21-1744%20Wineries%20of%20the%20Old%20Mission%20Pe%20v%20Township%20of%20Peninsula%20MI%20et%20al.

[2] Beginning at 32:00 of the oral argument recording.

were communicating on January 12 and 18 regarding "legal briefing strategy…legal research and precedent [and] factual development." (**Exhibit 2: Second Privilege Log**.)

The Wineries challenge the joint defense privilege between PTP and the Township. Minimally, the Wineries request that PTP provide an unredacted copy of this joint defense agreement. PTP cannot rely on the agreement as evidence to support its claim of privilege but then refuse to produce the agreement.

C. PTP produced different versions of privilege logs containing different information.

PTP produced two privilege logs. The first logs communications with the Township's attorneys before the joint defense agreement was signed. (**Exhibit 3: First Privilege Log**.) It identifies the subject line of each email and provides a description of attachments. It demonstrates that PTP has been ghostwriting the Township's briefs and that they have collaborated significantly even before PTP was allowed to intervene.

The second is a log of email threads—not individual emails or attachments—with the Township's attorneys after the joint defense agreement was signed. (**Exhibit 2: Second Privilege Log**.) Unlike the first log, the second log does not list the subject line of emails. It does not provide any identifying information about the attachments other than to say "Yes" or "No." And it lumps all email threads together.

Finally, PTP produced redacted meeting minutes claiming associational privilege, attorney-client privilege, and attorney work product. (**Exhibit 4: PTP's Meeting Minutes**.) These minutes reveal PTP was recruiting members after the Wineries filed their complaint. (***Id.* at PTP0001977, 1980, 1983, 1987, 2000-2001**.)

D. PTP's witnesses refused to testify about donations to PTP.

During his deposition, John Jacobs—PTP's treasurer—refused to answer questions at the

direction of counsel about donations to PTP, even though Jacobs testified that other PTP members were aware of the donations. (**Exhibit 5: Jacobs Dep., 60:09-69:08**.) Jacobs testified that Mike Dettmer also knows the names of PTP's donors. (***Id.*, 65:16-19**.)

Jacobs' testimony contradicts statements from PTP's attorney that only Mr. Jacobs was aware of PTP donors. (ECF No. 378, PageID.14094.) It also contradicts Jacobs' previous affidavit, which states only he and Mark Nadolski knew the names of donors. (ECF No. 364-5, PageID.13396, ¶¶ 25-26.) The Wineries renew their motion to compel PTP to produce its donor list, which Magistrate Judge Kent previously denied without prejudice. (ECF No. 378, PageID.14096; ECF No. 383, PageID.14127.)

III. ANALYSIS

The Wineries "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case…." Fed. R. Civ. P. 26(b)(1). Where a party fails to provide appropriate discovery responses, the party serving discovery may move for an order compelling that discovery. Fed. R. Civ. P. 37(a)(1).

"An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest." Fed. R. Civ. P. 34(b)(2)(C). "The burden of establishing the existence of the privilege rests with the person asserting it." *United States v. Dakota*, 197 F.3d 821, 825 (6th Cir. 1999). "The attorney-client privilege is waived by voluntary disclosure of private communications by an individual or corporation to third parties." *Id.*

The Wineries request an order compelling PTP to (1) provide a privilege log that meets the requirements of Federal Rule of Civil Procedure 26(b)(5); (2) produce unredacted copies of documents reflecting communications with third parties; (3) produce all communications with Peninsula Township's attorneys because the joint defense privilege does not exist; and (4) produce

unredacted copies of all documents for which PTP claims "associational privilege" because it does not apply in this lawsuit.

A. PTP's privilege log is deficient.

When a party invokes privilege as the basis to withhold discovery responses, it must (1) "expressly make the claim" and (2) "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." Fed. R. Civ. P. 26(b)(5)(A). Generally, this log must include

> (a) The author(s) and all recipients (designated so as to be clear who is the sender and who the receiver), along with their capacities/roles/positions.
>
> (b) The document's date.
>
> (c) The purpose and subject matter of the document.
>
> (d) The nature of the privileged asserted, and why the particular document is believed to be privileged.

Carhartt, Inc. v. Innovative Textiles, Inc., 333 F.R.D. 118, 120 (E.D. Mich. 2019) (citation omitted). Privilege logs for documents withheld under the work product doctrine "must also summarize whether the document contains mental impressions, conclusions, opinions or legal theories of an attorney or other representative of the party concerning the litigation." *Ypsilanti Cmty. Utilities Auth. v. Meadwestvaco Air Sys. LLC*, 2009 WL 3614997, at *4 (E.D. Mich. Oct. 27, 2009) (citing Fed. R. Civ. P. 26(b)(3)(B)).

Finally, when documents are withheld, courts require a description of the document, the date it was prepared, the identity of its author, the identities of the people for whom it was prepared, the purpose of preparing the document, the number of pages in the document, the specific privilege being asserted, and "[a]ny other pertinent information necessary to establish the elements of each asserted privilege." *Cooey v. Strickland*, 269 F.R.D. 643, 649 (S.D. Ohio 2010) (citation and

internal quotations omitted).

PTP's most recent privilege log, sent on July 17, 2023, does not meet these standards. (**Exhibit 2**.) The log contains 287 entries. Unlike PTP's first privilege log, it does not identify the subject line of the emails. It also groups large email threads into one entry and only identifies the most recent senders and recipients. Many of these email threads occurred over long periods of time and it is unclear whether senders and recipients were added or dropped off during the thread. For example,

- PTP Priv Log 00056 started on 3/21/23 and ended on 4/6/23 (spanning 16 days)
- PTP Priv Log 00091 started on 1/23/23 and ended on 2/13/23 (spanning 21 days)
- PTP Priv Log 00100 started on 1/20/23 and ended on 2/3/23 (spanning 14 days)
- PTP Priv Log 00106 started on 8/1/22 and ended on 1/13/23 (spanning 165 days)
- PTP Priv Log 00138 started on 9/26/22 and ended on 10/19/22 (spanning 23 days)

PTP's descriptions of the communications do not sufficiently describe why information is privilege in the first place. Again, for example,

- PTP Priv Log 00054 says "Communication sharing media coverage of litigation."
- PTP Priv Log 00056 says "Communications identifying individuals with potentially discoverable information."

At other times, PTP invokes attorney-client privilege when none of its clients are listed as senders or recipients of documents. For example,

- PTP Priv Log 00005 is an email between TJ Andrews and Holly Hillyer (counsel for PTP), Christopher Patterson and Beau Rajsic (counsel for the Township), and Kaylin Marshall (from Patterson's office).
- PTP Priv Log 00015, 00058, and 00063 are email threads between Christopher Patterson, Holly Hillyer, and TJ Andrews.

Finally, the privilege log does not provide information regarding attachments. Instead, it simply says "Yes" or "No" as to whether an attachment existed. The log does not provide any

identifying information regarding the attachment, state how many attachments are included, the number of pages, who prepared them, or invoke any specific privilege for the attachments. *See Cooey*, 269 F.R.D. at 649.

PTP must prepare a privilege log that sufficiently identifies the senders and recipients of documents, identifies all emails in a thread, and properly identifies all attachments.

B. PTP improperly claimed privilege over communications with third parties.

Communications with third parties are not privileged. "By voluntarily disclosing an attorney's advice to a third party, for example, a client is held to have waived the privilege because the disclosure runs counter to the notion of confidentiality." *360 Const. Co. v. Atsalis Bros. Painting Co.*, 280 F.R.D. 347, 351 (E.D. Mich. 2012). *See also Wolfle v. United States*, 291 U.S. 7, 14 (1934) ("And, when made in the presence of a third party, such communications are usually regarded as not privileged because not made in confidence."). Despite this, PTP is claiming privilege for communications with third parties.

First, David Taft is not a member of PTP, or one of its attorneys. (***See* Exhibit 5: Jacobs Dep., 69:22-70:09** (testifying Taft is not a member of or attorney for PTP); **Exhibit 6: Nadolski Aff., ¶ 3** (listing PTP's members and directors)). Yet Mr. Taft attended multiple PTP Board meetings as a "guest" and PTP redacted the information from the minutes of those meetings. (**Exhibit 4: PTP0002001-2002; PTP0002007-2008**.) None of the information in those meeting minutes is privileged because it was disclosed to Mr. Taft, a third party.

Second, Grant Parsons is not a member of PTP. (**Exhibit 6: Nadolski Affidavit, ¶ 3**.) Both Peninsula Township and PTP disclosed Mr. Parsons as a potential witness. (ECF No. 190, PageID.7398; ECF No. 364-1, PageID.13326.) And PTP has claimed privilege where Mr. Parsons is listed on certain documents. (**Exhibit 3: PTP Priv Log 00099, 00175, 00212, 00234, 00247, 00250, 00252; Exhibit 4: PTP0002007-2008**.) Yet, apparently, Mr. Parsons is also acting as

PTP's attorney in this matter. (**Exhibit 7: Zebell Dep., 9:03-25**.)[3] That dual designation makes the invocation of privilege with respect to Mr. Parsons questionable, at best. It is unclear from the face of the documents in which capacity Mr. Parsons is acting.

Third, PTP has claimed privilege with Robert St. Jean and William Rivard, Jr. (**Exhibit 3: PTP Priv Log 00224, 00237, 00238**.) From their email addresses, they appear to be employees of Sedgwick and Tokio Marine. However, Peninsula Township has only produced an insurance policy issued by Argonaut. Therefore, these communications are either with third parties that are not Peninsula Township's insurers, or Peninsula Township is in contempt of this Court's order to produce "a copy of any insurance policy covering Peninsula Township's litigation expenses in this Lawsuit." (ECF Nos. 94; 336-1, PageID.12279; 392, PageID.14630.) As the Court has warned Peninsula Township that it will be in violation of Magistrate Judge Kent's Order if it does not produce the policies, and because Peninsula Township has never produced any additional policies, the Wineries assume that these are communications with third parties that must be disclosed.

C. Communications with Peninsula Township's attorneys are not privileged.

PTP claims privilege over communications with Peninsula Township's attorneys. After PTP's attorney revealed that PTP and the Township have a joint defense agreement, this issue was put before Magistrate Judge Kent, but he deferred a resolution. (ECF No. 378, PageID.14073). Since that hearing, PTP produced only a heavily redacted version of the joint defense agreement. (ECF No. 395-1.) The Wineries challenge the joint defense privilege and request that this Court compel PTP to produce an unredacted version of the joint defense agreement. PTP cannot rely on a document but yet also refuse to produce it for inspection.

[3] Zebell also testified that she saw a confidentiality agreement during her deposition preparation, but PTP's counsel refused to allow her to answer questions about it. (**Exhibit 7: Zebell Dep., 8:19-11:04**.) It is not clear if this was a different document than the joint defense agreement.

1. The joint defense privilege cannot exist if PTP had the right to intervene.

To enter a joint defense agreement, there must be a "'sufficient commonality of interests' [that] exists between the parties such that the privilege may be asserted." *Younger Mfg. Co. v. Kaenon, Inc.*, 2008 WL 11338146, at *12 (C.D. Cal. Feb. 8, 2008) (citation omitted). "The interest **must be identical, not similar**, and be legal, not solely commercial." *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 152 F.R.D. 132, 140 (N.D. Ill. 1993) (emphasis added).

Relatedly, for the common interest privilege to apply, PTP and the Township "must make the communication in pursuit of a joint strategy in accordance with some form of agreement—whether written or unwritten." *In re Pacific Pictures Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012) (citation omitted). "[A] shared desire to see the same outcome in a legal matter is insufficient to bring a communication between two parties within this exception." *Id.*; *see also Miami Valley Fair Housing Center Inc. v. Metro Development LLC*, 2018 WL 558942, *3 (Jan. 25, 2018, S.D. Ohio); *Waymo LLC v. Uber Technologies, Inc.*, 870 F. 3d 1350, 1359-1360 (Fed. Cir. 2017).

The common interest doctrine "has several limitations." It "applies only when all attorneys and clients have agreed to take a joint approach in the matter at issue." *Burkhead & Scott, Inc. v. City of Hopkinsville*, 2014 WL 6751205, *3 (W.D. Ky., Dec. 1, 2014) (quoting *Cooey*, 269 F.R.D. at 652–53). It "applies only to protect communications regarding the common interest and intended to further that interest. Extraneous communications that do not further the common goal are not privileged." *Id.* Ultimately, "[w]hen the communication is made with non-parties to the litigation, many courts have held an "identical" legal interest is necessary for the doctrine to apply." *Id.*

Other courts follow a similar formulation of the rule. *See Gates Corp. v. CRP Indus., Inc.*, 2018 WL 4697326, at *7–8 (D. Colo. Aug. 10, 2018) (explaining that the "Tenth Circuit has long

held that the common-interest doctrine should be construed narrowly" and requires "the nature of the interest be identical, not similar" (citation omitted); *In re Urethane Antitrust Litig.*, 2013 WL 4781035, at *2 (D. Kan. Sept. 5, 2013) (holding parties had "an identical (albeit general) interest" but not a "'legal interest' of the type protected by the common-interest doctrine"); *Brigham Young Univ. v. Pfizer, Inc.*, 2011 WL 2516935, at *3 (D. Utah June 23, 2011) (similar holding).

PTP represented to this Court that "PTP's interests overlap but are not identical to the Township's." (ECF No. 41, PageID.1981.) PTP represented to the Sixth Circuit that "[t]he Township and PTP's interests differ. They don't have the same interest, they don't have the same goal." PTP and the Township cannot represent they have divergent interests and the Township is unable to protect PTP's interests to force intervention, *see WOMP*, 41 F.4th at 775, and then turn around and claim they have identical interests to come within the privilege. If the joint defense agreement is valid then, implicitly, the representations made by PTP and the Township to support intervention were false. PTP and the Township signed the joint defense agreement after PTP sought intervention but before the Sixth Circuit ruled. Notably, PTP filed two briefs with the Sixth Circuit and presented oral argument after the joint defense agreement was signed. Neither PTP nor the Township disclosed the joint defense agreement to the Sixth Circuit.

PTP is either entitled to either the joint defense privilege or the right to intervene; it cannot have both. If PTP insists on preserving the privilege, it necessarily admits its basis for intervention did not exist. If PTP insists on intervention, it necessarily admits the privilege cannot exist.

2. PTP cannot rely on a redacted document to claim privilege.

Minimally, an unredacted version of the joint defense agreement is necessary. PTP cannot, on one hand, claim that the joint defense agreement allows it to redact or withhold communications with the Township and, on the other hand, claim that the Wineries cannot see the very evidence upon which PTP relies to claim its privilege. That leaves the Wineries with no way to assess

whether the privilege is valid. *See Burkhead*, 2014 WL 6751205, *3 (explaining "the doctrine applies only to protect communications regarding the common interest and intended to further that interest").

D. PTP's meeting minutes are not privileged.

PTP asserts First Amendment associational privilege, attorney work product, and attorney-client privilege for communications among its members during meetings. (***See* Exhibit 4**.) PTP redacted information from every set of minutes. For example:

- **November 24, 2020**: PTP0001972–1974: "First Amendment association privilege – reflects core PTP advocacy strategies and organizing tactics, in particular PTP communications"
- **December 8, 2020**: PTP0001977: "Individual board members will contact one or more of the residents below and gage [sic] their interest as possible board members and/or PTP supporters. Further, the members were asked to add additional resident names as they may occur." PTP redacted the names, stating "First Amendment association privilege – reflects core PTP advocacy strategies and organizing tactics, in particular recruiting potential PTP members and supporters and identity of PTP supporters." This information is relevant because John Jacobs, Scott Phillips, Michelle Zebell, and Barbara Wunsch were not members yet. The Wineries are entitled to see when PTP recruited them.
- **December 21, 2020**: PTP0001979-1980: Redacting potential board members.
- **April 16, 2021**: PTP0001988: Redacting information before listing Dean Johnson as a board member even though he is not listed as a member on Nadolski's affidavit, **Exhibit 6, ¶ 3**.

The Wineries request that this Court compel PTP to produce unredacted versions of the meeting minutes because these privileges were waived and do not apply.

1. PTP waived its privilege arguments.

PTP waived its privilege arguments because it did not raise them before the Wineries initially moved to compel PTP's responses. "It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection." *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992).

PTP first responded to the Wineries' discovery requests on May 3, 2023. (ECF No. 347-1.) PTP did not raise privilege in response to Request to Produce #4 ("Produce all of PTP's meeting minutes and resolutions since January 1, 2000."). (*Id.*, PageID.12589-.12590.) On May 12, 2023, the Wineries moved to compel additional document production from PTP. (ECF No. 346.) In its response, for the first time, PTP raised associational privilege, attorney work-product privilege, and attorney-client privilege. (ECF No. 364-2, PageID.13339.) Because PTP did not raise these privileges in the time required for its responses, PTP waived them. *Richmark*, 959 F.2d at 1473.

2. The associational privilege does not apply.

Even if PTP did not waive privilege, associational privilege does not apply here. The Wineries, as private parties, are not bound by the First Amendment. *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019); *Lansing v. City of Memphis*, 202 F.3d 821, 828 (6th Cir. 2000) ("It is undisputed that First and Fourteenth Amendment protections, codified in 42 U.S.C. § 1983, are triggered only in the presence of state action and that a private entity acting on its own cannot deprive a citizen of First Amendment rights."). Therefore, PTP's claim of associational privilege should fail at the outset.[4]

[4] The Wineries are aware of two courts applying the associational privilege in disputes between private parties. The Tenth Circuit found the associational privilege applied between private parties because "the magistrate's order compelling discovery and the trial court's enforcement of that order provide the requisite governmental action that invokes First Amendment scrutiny." *Grandbouche v. Clancy*, 825 F.2d 1463, 1466 (10th Cir. 1987). The Ninth Circuit applied associational privilege in a suit that was technically between private parties, but only because California government officials refused to defend the law and so private defendants substituted in. The Wineries have been unable to locate any Sixth Circuit case adopting these unique views and request that this Court apply the traditional rule that First Amendment does not apply to private parties. *Halleck*, 139 S. Ct. at 1928; *Lansing*, 202 F.3d at 828.

The associational privilege traditionally protects groups from disclosing their membership to the government. The leading case is *NAACP v. Alabama*, 357 U.S. 449 (1958). Alabama wanted the NAACP to reveal the names and addresses its Alabama members. The Supreme Court protected this from disclosure because "on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." *Id.*at 462. And although Alabama suggested that these reprisals would come from private actors only, the "crucial factor" was the "interplay of governmental and private action." *See also Shelton v. Tucker*, 364 U.S. 479 (1960) (holding law compelling teachers to disclose membership in all organizations violated First Amendment).

Yet even where the government is a party, a group that puts its membership directly at issue cannot invoke associational privilege. For example, a religious group sued a village in Nebraska, arguing that the village violated the Constitution and other laws. *Light of the World Gospel Ministries, Inc. v. Vill. of Walthill, Nebraska*, 336 F.R.D. 567, 570 (D. Neb. 2020). The village requested "the names of prospective congregants, the identity of Plaintiff's volunteers, and monetary gifts Plaintiff received." *Id.* at 571. The religious group objected on associational privilege grounds, but the district court overruled the objection. *Id.* at 571-572. Instead, the district court ruled that the religious groups' "current and prospective members are of consequence in this case because [the group] made them so." *Id.* at 572.

Here, there is no threat of "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility" to PTP's members. *NAACP*, 357 U.S. at 462. Instead, the facts mirror *Light of the World*. PTP, just like the religious group, entered the case on behalf of its members. So instead of fighting against compelled disclosure of its

membership by a state law, as in *NAACP* and *Shelton*, PTP voluntarily injected itself into this dispute to protect its members. PTP put its members identities and interests directly at issue. PTP cannot now claim privilege of that membership and its members' discussions and donations.

This information goes to the credibility of PTP's witnesses. Of the six members that PTP has identified as witnesses in this case, three joined after this lawsuit was filed and a fourth re-joined after being inactive for nearly 20 years. (**Exhibit 5: Jacobs Dep., 23:03-24:02; Exhibit 7: Zebell Dep., 17:17-18:17; Exhibit 8: Phillips Dep., 10:07-15; Exhibit 9: Barbara Wunsch Dep., 11:17-12:18**.) The Wineries are entitled to assess PTP's recruitment efforts of these and other individuals because it bears on the credibility of these witnesses at trial, and on the credibility of PTP itself when it argues that it joined this lawsuit to protect its members. Similarly, information about the donations PTP receives bears on the credibility of its witnesses. If a witness has a financial relationship with other witnesses or parties, such relationship is discoverable.

IV. CONCLUSION

The Wineries request that this Court grant its motion to compel.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

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CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(B)(I)

This Brief complies with the type-volume limitation of L. Civ. R. 7.3(b)(i) because this Brief contains 4,285 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, I filed the foregoing via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
Joseph M. Infante