

DOCKET NO. FST-CV-155014808-S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS)	J. D. OF STAMFORD/NORWALK
)	
v.)	AT STAMFORD
)	
PARTNER WEALTH MANAGEMENT, LLC)	
ET AL.)	SEPTEMBER 16, 2015

DEFENDANTS' MOTION TO QUASH SUBPOENAS DUCES TECUM

Defendants Partner Wealth Management, LLC ("PWM"), Kevin G. Burns, James Pratt-Heaney and William Loftus (the "Individual Defendants" and, together with PWM, "the Defendants") hereby respectfully move this Honorable Court pursuant to Practice Book § 13-28 for an order quashing the subpoenas *duces tecum* that Plaintiff William Lomas ("Plaintiff") caused to be served on each of the Defendants on September 4, 2015 (the "Subpoenas"). Copies of the Subpoenas served on PWM, Kevin Burns, James Pratt-Heaney and William Loftus are attached hereto as Exhibits "A" through "D," respectively.

All four of the subpoenas, which are identical in the eighteen document requests leveled at each of the Defendants, are grossly overbroad, oppressive in scope and seek documents that are privileged and irrelevant in that they are not reasonably calculated to lead to the discovery of admissible evidence. In addition, a portion of the documents are outside the Defendants' possession, custody or control.

Most importantly, the Subpoenas seek documents from the Defendants to verify the Management Fee earned by PWM in 2014. The gravamen of Plaintiff's damage claim is the price the Defendants are required to pay to repurchase his 25% membership interest in PWM. The Management Fee earned by PWM in 2014 is the fact on which the repurchase price is based, whether calculated by Plaintiff or by the Defendants. Accordingly, for purposes of the Plaintiff's Application for Prejudgment Remedy, Defendants will stipulate to the amount of the Management Fee for 2014.

On these grounds, Defendants respectfully move this Court to quash each of the Subpoenas, at least in part.

FACTUAL BACKGROUND

1. Plaintiff and the Individual Defendants entered into the Partner Wealth Management LLC Limited Liability Company Agreement dated November 30, 2009 (the "Original Operating Agreement").
2. On October 13, 2014, Plaintiff notified PWM and the Individual Defendants that he was withdrawing as a member of PWM effective January 13, 2015.
3. At all relevant times prior to January 13, 2015, each of the Plaintiff and the Individual Defendants owned a 25% membership interest in PWM.

4. Section 8.5 of the Original Operating Agreement required Plaintiff to sell and PWM and the Individual Defendants to purchase Plaintiff's 25% membership interest following his withdrawal.

5. In his Complaint, Plaintiff asserts that the purchase price for his 25% membership interest under the Original Operating Agreement was \$4,159,791.25. The Original Operating Agreement based this price on 25% of the Company Value. The Original Operating Agreement defines the Company Value to be five times the Management Fee earned by PWM in 2014.

6. Based on Plaintiff's assertion of the value of his membership interest, Plaintiff necessarily asserts that the Management Fee earned by PWM in 2014 was \$3,327,833.

7. The Operating Agreement expressly authorized members holding a sixty-five percent or greater interest in the company to amend any provision of that agreement. Specifically, the last sentence of Article VII of the Original Operating Agreement states "[t]he Management Committee may, with the approval of Members holding at least sixty-five percent (65%) of the Percentage Interests, amend any provision of this Agreement." Pursuant to this authority, effective January 1, 2015, the Individual Defendants amended and restated the Original Operating Agreement, effective as of January 1, 2015 (the "Restated Operating Agreement").

8. Among other changes, the Restated Operating Agreement revised the method by which the repurchase price of each member's membership interest is calculated. The price,

however, is still determined based on the Management Fee. Accordingly, the purchase price for Plaintiff's 25% membership interest under the Restated Operating Agreement is \$3,156,543.95. Plaintiff is claiming damages equal to the difference between the two prices, \$1,003,247.30.

9. Plaintiff served the Subpoenas to obtain documents in connection with his Application for a Prejudgment Remedy to establish at an evidentiary hearing the damages he seeks in this action.

ARGUMENT

In this Application for a Prejudgment Remedy, Plaintiff assumes the burden of establishing the price for the repurchase of his 25% membership interest. Under both the Original Operating Agreement and the Restated Operating Agreement, the repurchase price of Plaintiff's membership interest is based on the PWM's 2014 Management Fee.

Plaintiff acknowledges this fact because every one of his eighteen document requests is calculated to determine and validate PWM's 2014 Management Fee.

- Request Nos. 1 and 2 seek documents to calculate the Company Value, which is a multiple of the Management Fee.
- Request Nos. 3 and 4 seek documents to calculate the Management Fee.
- Request Nos. 5, 6 and 7 seek documents in which the calculation of the Management Fee is discussed in correspondence sent or received by Jeff Fuhrman or Focus Financial Partners, LLC ("Focus").

- The Management Fee is a percentage of the EBPC^{1/} of LLBH Private Wealth Management (“LLBH”) under the Management Agreement between PWM and LLBH and Request Nos. 8 and 9 seek documents to calculate the EBPC (LLBH is the Focus-owned entity for which PWM provides management services. The Management Fee is equal to 52.5% of EBPC).
- Request Nos. 10 and 11 seek documents to calculate the EBITDA^{2/} of LLBH, which is not relevant to and does not affect the calculation of the Management Fee.
- Request No. 12 seeks promissory notes under which PWM is the obligor, which amounts are subtracted from the Company Value. There are no promissory notes that would affect the 2014 Management Fee.
- Request Nos. 13 and 14 seek communications related to the calculation of the purchase price of Plaintiff’s membership interest (which is based on the Management Fee).
- Request Nos. 15, 16 and 17 seek discovery of the year end reconciliation between LLBH and PWM, which confirms the final amount of the Management Fee earned by PWM in 2014.

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^{1/} “EBPC” is an acronym for “Earnings Before Partner Compensation.”

^{2/} Plaintiff’s Subpoenas use the term “EBITA,” but the term used in the document referenced by Plaintiff is “EBITDA.” “EBITDA” is an acronym for “Earnings Before Interest, Taxes, Depreciation and Amortization.”

- Finally, Request No. 18 seeks discovery of the audited financial statements for 2014 of each of Focus, LLBH and PWM.

Plaintiff seeks for each one of these requests all “documents” that might be relevant to the request. Plaintiff defines “documents” to include “handwritten, typed, printed, or graphic material of any kind; (b) electronically, magnetically, or mechanically recorded material of every type and description, however produced or reproduced, including e-mail and photographs; and (c) every non-identical copy of the foregoing.” In short, the Subpoenas could be fairly read to require production of every document underlying every expense incurred and every dollar earned in 2014 by LLBH in order to verify the Management Fee, as well as any document reflecting any communication that relates to those expenses and earnings, in the individual or the aggregate.

Moreover, the Subpoenas’ instructions state “[u]nless further specified herein, the time period applicable to this subpoena *duces tecum* is January 1, 2014 through the present.” Thus, this request does not simply seek documentation of company value for year-end 2014 contained in PWM’s books and ledgers, but rather, seeks every conceivable form of document generated since the beginning of 2014 through the present, including all manner of emails, informal communications, notes and other materials, that might potentially “show” PWM’s value for the year.

Notably, the Management Fee on which the repurchase price of Plaintiff’s equity is based derives from the 2014 financial performance of LLBH. The Subpoenas therefore in large part

seek documents in the custody and control of LLBH. LLBH is not a party to this action. No subpoena was served on LLBH. Plaintiff has no legal authority to cause LLBH to comply with a subpoena directed to PWM.

In an effort to alleviate the excessive burden imposed on PWM as a result of the over breadth of the Subpoenas, PWM and the Individual Defendants will stipulate for purposes of Plaintiff's application, only, that the Management Fee earned by PWM for 2014 was \$3,327,833 and that under the Original Operating Agreement, the maximum repurchase price of Plaintiff's membership interest in PWM is \$4,159,791.25, as alleged in his Complaint. In addition, Plaintiff will agree to produce for the evidentiary hearing entries from PWM's and LLBH's respective financial books and records sufficient to verify the foregoing Management Fee and the EBPC for LLBH on which the Management Fee is based.

The Defendants object to the specific document requests below. Given that each of the four subpoenas is identical in their eighteen separate document requests to each of the Defendants, the Defendants are objecting to each of the document requests collectively, as follows:

- 1. Documents showing PWM's "Company Value" as defined in Article VIII, Section 8.8 of the Agreement for the year-ended 2014.**

Request No. 1 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object

that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of PWM. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records that show the "Company Value."

2. Documents sufficient to determine PWM's "Company Value" as defined in Article VIII, Section 8.8 of the Agreement for the year-ended 2014.

Request No. 2 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of PWM. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records that are sufficient to confirm the "Company Value."

3. Documents showing PWM's "Management Fee" as defined in Article 3, Section 3.1 of the Management Agreement for the year-ended 2014.

Request No. 3 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object that this request's demand for all "documents" is overly broad and unduly burdensome in that it

seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of PWM and LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records that show the "Management Fee." Further, the Defendants will stipulate for purposes of the Plaintiff's Application for a Prejudgment Remedy that the Management Fee for PWM in 2014 is \$3,327,833.

4. Documents sufficient to determine PWM's "Management Fee" as defined in Article 3, Section 3.1 of the Management Agreement for the year-ended 2014.

Request No. 4 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of PWM and LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records that show the "Management Fee." Further, the Defendants will stipulate for purposes of the Plaintiff's

Application for a Prejudgment Remedy that the Management Fee for PWM in 2014 is \$3,327,833.

5. Documents authored and/or sent to Jeffrey M. Fuhrman, Chief Operating Officer and Chief Financial Officer of LLBH Private, evidencing, addressing, and/or discussing the calculation and/or determination of the “Management Fee” for the year-ended 2014.

Request No. 5 is vague, ambiguous, overbroad, unduly burdensome and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. This request seeks all “documents” regardless of date or context and therefore also implicates attorney-client privileged communications. Further, the volume of documents likely to be identified as potentially responsive to this request are likely substantial in number and would be nearly impossible to review and produce in the time frame available prior to the evidentiary hearing scheduled for Plaintiff’s Application and are also not likely relevant to Plaintiff’s burden at that hearing. In addition, Mr. Fuhrman is an employee of LLBH, which is not a party to this action and the request, therefore, seeks documents that are in the custody and control of a non-party. Accordingly, this Court should quash the Subpoenas and not require the Defendants to produce any documents responsive to this request at or prior to the hearing.

6. Documents received by and/or addressed to Jeffrey Fuhrman, Chief Operating Officer and Chief Financial Officer of LLBH Private, evidencing, addressing, and/or discussing the calculation and/or determination of the "Management Fee" for the year-ended 2014.

Request No. 6 is vague, ambiguous, overbroad, unduly burdensome and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. This request seeks all "documents" regardless of date or context and therefore also implicates attorney-client privileged communications. Further, the volume of documents likely to be identified as potentially responsive to this request are likely substantial in number and would be nearly impossible to review and produce in the time frame available prior to the evidentiary hearing scheduled for Plaintiff's Application and are also not likely relevant to Plaintiff's burden at that hearing. In addition, Mr. Fuhrman is an employee of LLBH, which is not a party to this action and the request, therefore, seeks documents that are in the custody and control of a non-party. Accordingly, this Court should quash the Subpoenas and not require the Defendants to produce any documents responsive to this request at or prior to the hearing.

7. Documents sent to Focus evidencing, addressing and/or discussing the calculation and/or determination of the “Management Fee” for the year-ended 2014.

Request No. 7 is vague, ambiguous, overbroad, unduly burdensome and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. This request seeks all “documents” regardless of date or context and therefore also implicates attorney-client privileged communications. Further, the volume of documents likely to be identified as potentially responsive to this request are likely substantial in number and would be nearly impossible to review and produce in the time frame available prior to the evidentiary hearing scheduled for Plaintiff’s Application and are also not likely relevant to Plaintiff’s burden at that hearing. In addition, this request seeks documents from Mr. Fuhrman, who is an employee of LLBH, and from Focus. Neither LLBH nor Focus is a party to this action. The request, therefore, seeks documents that are in the custody and control of a non-party. Accordingly, this Court should quash the Subpoenas and not require the Defendants to produce any documents responsive to this request at or prior to the hearing.

8. Documents showing “EBPC” as defined in Article 3, Section 3.1, of the Management Agreement for the year-ended 2014.

Request No. 8 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object

that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records that show the "EBPC."

9. Documents sufficient to determine "EBPC" as defined in Article 3, Section 3.1 of the Management Agreement for the year-ended 2014.

Request No. 9 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records sufficient to determine the "EBPC."

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10. Documents showing "EBITA," as defined in the Asset Purchase Agreement, for the year-ended 2014.

Request No. 10 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Finally, neither LLBH's EBITDA nor the determination of LLBH's EBITDA is relevant to this action. Plaintiff's claim is based on the price at which the Defendants are required to repurchase his membership interest in PWM. That price in both the Original Operating Agreement and the Restated Operating Agreement is calculated from PWM's 2014 Management Fee. The Management Fee is determined from LLBH's EBPC. LLBH's EBITDA is not included in the calculation. Accordingly, Defendants should not be required to produce documents responsive to this request and the request should be quashed.

11. Documents sufficient to determine "EBITA," as defined in the Asset Purchase Agreement, for the year-ended 2014.

Request No. 11 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object

that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Finally, neither LLBH's EBITDA, nor the determination of LLBH's EBITDA is relevant to this action. Plaintiff's claim is based on the price at which the Defendants are required to repurchase his membership interest in PWM. That price in both the Original Operating Agreement and the Restated Operating Agreement is calculated from PWM's 2014 Management Fee. The Management Fee is determined from LLBH's EBPC. LLBH's EBITDA is not included in the calculation. Accordingly, Defendants should not be required to produce documents responsive to this request and the request should be quashed.

12. All promissory notes reflecting outstanding debts owed by PWM as of the year-ended 2014.

Defendants do not have any documents responsive to Request No. 12.

13. All documents showing PWM's calculation or determination of the purchase price of Lomas' interest in PWM upon his withdrawal.

As set forth above concerning the Subpoenas' definition of "document" and the applicable time period, Request No. 13 is vague, ambiguous, overbroad, unduly burdensome and seeks documents that are not relevant or reasonably calculated to lead to the discovery of

admissible evidence. Defendants further object because this request implicates attorney-client privileged communications. Finally, Defendants object to this request to the extent it is redundant of other requests. Nevertheless, Defendants will produce relevant, non-privileged documents that show the calculation of the purchase price of Plaintiff's 25% membership interest under the Restated Operating Agreement that are within their possession, custody or control.

14. All documents reflecting communications between and among any of the Members addressing, discussing or evidencing their obligations to Lomas as a result of his withdrawal.

Request No. 14 is vague, ambiguous, overbroad, unduly burdensome and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. This request seeks all "documents" regardless of date or context and therefore also implicates attorney-client privileged communications. Further, the volume of documents likely to be identified as potentially responsive to this request are likely substantial in number and would be nearly impossible to review and produce in the time frame available prior to the evidentiary hearing scheduled for Plaintiff's Application and are also not likely relevant to Plaintiff's burden at that hearing. Finally, Defendants object to the extent that this request seeks documents that are as readily available to Plaintiff as they are to Defendants. Accordingly, this Court should quash the Subpoenas and not require the Defendants to produce any documents responsive to this request at or prior to the hearing.

- 15. Documents showing the Partner Wealth Management, LLC Make-Whole Payment Distribution prepared on April 14, 2015, including the data underlying the 2014 compensation numbers, the 2014 partner expenses, and the 2014 partner distributions.**

Request No. 15 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of PWM and LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records that show the PWM members' compensation, expenses and distributions for 2014.

- 16. The LLBH Management Fee Reconciliation, 2014 signed by Bill Loftus as the Management Company Representative and Justin Ferri as the Focus Representative on April 8, 2015,**

Defendants will produce relevant, non-privileged documents responsive to Request No. 16 that are within their possession, custody or control.

17. Documents sufficient to support the line item entries on the LLBH Management Fee Reconciliation, 2014 signed by Bill Loftus as the Management Company Representative and Justin Ferri as the Focus Representative on April 8, 2015.

Request No. 17 is vague, ambiguous and seeks documents that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object that this request's demand for all "documents" is overly broad and unduly burdensome in that it seeks production of every document underlying the entry of every item of expense and revenue entered in the books and records of PWM and LLBH. The request is further overbroad in that the Subpoenas seek discovery from LLBH, a non-party to this action. Notwithstanding the foregoing objections and without waiving them, Defendants will produce financial statements and documentation set forth in PWM's accounting books and records supporting the line item entries on the LLBH Management Fee Reconciliation.

18. Audited financials for the year-ended 2014 for the following entities:

- (a) PWM**
- (b) Focus**
- (c) LLBH Private**

Request No. 18 seeks documents that are within the exclusive possession of non-parties over whom Defendants have no control and, therefore, Defendants cannot be made to produce

such documents. Defendants should only be required to produce audited financials for PWM for the year-ended 2014. This Court should quash the Subpoenas to the extent that they seek the audited financials of non-parties LLBH and Focus. Notwithstanding the foregoing objection, Focus did provide a copy of their 2014 audited financials to the Individual Defendants and to Plaintiff in connection with their ownership of Focus shares. Accordingly, Defendants will produce the Focus financial statements in the form received by the Individual Defendants.

In any case, neither PWM nor LLBH has any documents responsive to the request because neither PWM nor LLBH prepares audited financial statements. PWM does have unaudited annual financial statements, however, and PWM will produce them in response to this request.

CONCLUSION

WHEREFORE, Defendants respectfully pray that the Subpoenas be quashed, as specified above, and that this Honorable Court grant such other and further relief as it finds appropriate.

Respectfully submitted,
THE DEFENDANTS



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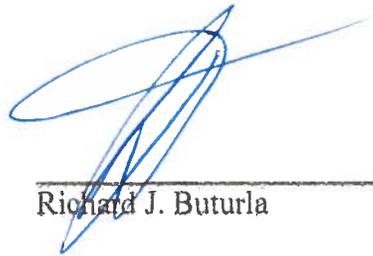
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2015, I caused the foregoing Motion to Quash Subpoenas *Duces Tecum* to be served via electronic mail on counsel as follows:

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