IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

HIBBETT PATIENT CARE, LLC, *et al.*,	:	
Plaintiffs,	:	
vs.	:	CA 16-00231-WS-C
PHARMACISTS MUTUAL INSURANCE COMPANY,	:	
Defendant.	:	

ORDER

This matter is before the undersigned on Hibbett Patient Care, LLC's, and Hibbett Patient Care, II, LLC's ("Hibbett" and "Hibbett II," respectively), Motion to Compel, (Doc. 36), filed on October 19, 2016. The Court entered a submission order, (Doc. 37), on October 21, 2016, and Defendant Pharmacists Mutual Insurance Company ("PMIC") filed its response, (Doc. 38), on October 31, 2016, and Plaintiffs Hibbett and Hibbett II filed their reply, (Doc. 39), on November 4, 2016. Following consideration of all relevant pleadings in this case, it is determined that Plaintiffs' Motion to Compel, (Doc. 36), should be **GRANTED IN PART AND DENIED IN PART.**

BACKGROUND

The instant action was removed, based on diversity and federal question jurisdiction[1], to this Court from the Mobile County Circuit Court on May 19, 2016. (Doc. 1). Plaintiffs Hibbett and Hibbett II bring three causes of action against PMIC, which include breach of contract, bad faith failure to investigate, and bad faith denial of a claim. (Doc. 1-2, at 1-4). Defendant filed its answer,

[1] The Court sua sponte ordered Defendant PMIC to supplement its notice of removal as to federal

(Doc. 9), on June 9, 2016; its amended answer and counterclaim, (Doc. 13), on June 28, 2016; and its second amended answer and counterclaim, (Doc. 20), on August 11, 2016, which the Court struck by Order, (Doc. 21), on August 11, 2016, for failure to secure consent from the opposing party or the Court's leave.

The parties filed their Rule 26(f) report, (Doc. 15), on July 28, 2016, and the Court set the matter for a settlement conference to be held on September 8, 2016, (Doc. 16). The Court entered a Rule 16(b) Scheduling Order, (Doc. 27), on September 9, 2016, and Defendant PMIC filed its motion for leave to file a second amended answer and counterclaim, (Doc. 28), on September 14, 2016, which was granted by the Court, (Doc. 29), September 16, 2016.

Plaintiffs Hibbett and Hibbett II filed their instant motion to compel, (Doc. 36), on October 9, 2016; the Court entered a submission order, (Doc. 37), on October 21, 2016; Defendant PMIC filed its response, (Doc. 38), on October 31, 2016; Plaintiffs filed their reply, (Doc. 39), on November 4, 2016; and the Court took the motion under submission on November 8, 2016. Plaintiffs' motion to compel seeks supplemented responses to its Requests for Production 3, 6, 7, 10, 17, 19, 22, and 24. (Doc. 36). The Court will address the merits of each request for production.

LEGAL STANDARD

As a general rule, Rule 26(b)(1), FED. R. CIV. P., states, "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . . Information within this scope of discovery need not be admissible in evidence to be discoverable." "[T]he court should and ordinarily does interpret 'relevant' very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation." 4 J. Moore, Federal Practice ¶

26.56 [1], p. 26-131 n. 34 (2d ed. 1976); *see Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 98 S. Ct. 2380, 2389, 57 L. Ed. 2d 253 (1978) ("The key phrase in this definition [of Rule 26(b)(1)] – "relevant to the subject matter involved in the pending action" – has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." (citation omitted)). "[D]istrict courts have broad discretion in fashioning discovery rulings, they are bound to adhere 'to the liberal spirit of the [Federal] Rules.'" *Adkins v. Christie*, 488 F.3d 1324, 1331 (11th Cir. 2007) (quoting *Burns v. Thiokol Chem. Corp.*, 483 F.2d 300, 305 (5th Cir. 1973)). "Rule 26 . . . is not a blanket authorization for the court to prohibit disclosure of information whenever it deems it advisable to do so, but is rather a grant of power to impose conditions on discovery in order to prevent injury, harassment, or abuse of the court's processes." *Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1416 (11th Cir. 1984) (quoting *Bridge C.A.T. Scan Assocs. v. Technicare Corp.*, 710 F.2d 940, 944-45 (2d Cir. 1983)).

"Under Fed. R. Civ. P. 26(b)(1) a court may limit discovery of relevant material if it determines that the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive, or the burden of expense of the proposed discovery outweighs the likely benefit." *Henderson v. Holiday CVS, L.L.C.*, 269 F.R.D. 682, 686 (S.D. Fla. 2010) (citing FED. R. CIV. P. 26(b)(1)). "'The party resisting discovery has a heavy burden of showing why the requested discovery should not be permitted . . . [with] '[t]he onus [ ] on the party resisting discovery to demonstrate specifically how the objected-to information is unnecessary, unreasonable or otherwise unduly burdensome." *Rosen v. Provident Life &*

Accident Ins. Co., 308 F.R.D. 670, 678 (N.D. Ala. 2015) (alterations in original) (citations omitted). "Thus, to even merit consideration, 'an objection must show specifically how a discovery request is overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden.'" *Henderson*, 269 F.R.D. at 686 (quoting *Coker v. Duke & Co.*, 177 F.R.D. 682, 686 (M.D. Ala. 1998)). "Once the resisting party meets its burden, the burden shifts to the moving party to show the information is relevant and necessary." *Henderson*, 269 F.R.D. at 686 (citations omitted).

If any party withholds discovery on the basis of the attorney-client privilege, this Court has stated:

> Rule 501 of the Federal Rules of Evidence addresses privilege in general and states, in relevant part, that "in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision." In [a] diversity action, the law of the State of Alabama supplies the rule of decision. In that regard, Rule 502 of the Alabama Rules of Evidence governs the attorney-client privilege in Alabama. The Rule states in pertinent part as follows:
>
> > (b) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client, (1) between the client or a representative of the client and the client's attorney or a representative of the attorney, or (2) between the attorney and a representative of the attorney, (3) by the client or a representative of the client or the client's attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party concerning a matter of common interest, (4) between representatives of the client and between the client and a representative of the client resulting from the specific request of, or at the express direction of, an attorney, or (5) among attorney and their representatives representing the same client.
>
> ALA. R. EVID. 502(b).

> Under Alabama law, the existence of a privileged communication "is a question of fact to be determined by the trial court from the evidence presented." *Exxon Corp. v. Dep't of Conservation & Nat. Res.*, 859 So. 2d 1096, 1103 (Ala. 2003) (citation omitted). . . . [T]he "party asserting the attorney-client privilege bears the burden of establishing that the privilege attaches to the documents requested." *Ex parte Tucker*, 66 So. 3d 750, 753 (Ala. 2011) (citation omitted).

Hand Arendall, LLC v. Joiner, No. 11-0150-KD-C, 2012 WL 3779031, at *6 (S.D. Ala. Aug. 31, 2012) (footnote omitted). "Thus, when asserting the privilege, it is incumbent upon the proponent to specifically and factually support his claim." *Henderson*, 269 F.R.D. at 687 (citing *In re Grand Jury Subpoena (Lipnak)*, 831 F.2d 225, 227 (11th Cir. 1987)). "A blanket claim of privilege is improper. The privilege must be specifically asserted with respect to particular documents." *Henderson*, 269 F.R.D. at 687 (citations and internal quotations omitted). In order to properly support an assertion of the attorney-client privilege, the party asserting the privilege must produce a "'detailed privilege log stating the basis of the claimed privilege for each document in question, together with an accompanying explanatory affidavit from counsel.'" *Carnes v. Crete Carrier Corp.*, 244 F.R.D. 694, 698 (N.D. Ga. 2007) (quoting *Triple Five of Minn., Inc. v. Simon*, 212 F.R.D. 523, 528 (D. Minn. 2002)).

DISCOVERY AT ISSUE

The Court will address the discovery requests at issue in the manner in which Plaintiffs present them in their Motion to Compel, (Doc. 36), due to the overlap in arguments presented. Specifically, the Court will address Plaintiffs' Requests for Production Nos. 3, 6, 7, 10, and 24, first, and then address Plaintiffs' Requests for Production Nos. 17, 19, and 22.

Request for Production No. 3

Plaintiffs' Request for Production No. 3 asks Defendant to "[p]roduce any and all memos, messages, electronic exchanges or writings of any kind pertinent to the filing of the claim by the Plaintiffs on policy number BOP 0115227 03." (Doc. 36-1, at ¶ 3). Defendant's response was as follows:

> Defendant objects to this Request [as] vague, overbroad and not relevant to any party's claim or defense or proportional to the needs of the case as required by Fed. Rule Civ. P. 26(b). Defendant also objects to the extent this Request is invasive of the attorney-client privilege. Without waiving said objections, see previously produced documents bates numbered at PMIC 000001-000156 and the attached documents bates numbered at PMIC 000157-000160.

(Doc. 36-1, ¶ 3). Plaintiffs argue that Defendant should produce a privilege log and that "Defendant cannot assert advice of counsel as a defense and then refuse to produce documents that relate to the advice received from its legal counsel." (Doc. 36, ¶¶ 1-3). Plaintiffs cite to Rule 26(b)(5)[2], FED. R. CIV. P., in support of its argument. Defendant avers that it has produced "all responsive documentation . . . and therefore no privilege log is necessary." (Doc. 38, at 2); however, Plaintiffs contend that Defendant has not produced all the requested documents based on the documents that it did produce. (Doc. 38, at 2).

In support of Plaintiffs' claim that Defendant has not produced all the requested documents from Plaintiffs' Requests for Production Nos. 3, 6, 7, 10, and 24, they cite to PMIC 000189, (Doc. 39-1, at 33), a billing statement from Merry, Farnen & Ryan, P.C. to PMIC dated June 14, 2014, which indicates that

[2] Rule 26(b)(5) reads, in relevant part, as follows:
(b) Discovery Scope and Limits
. . .
(5) Claiming Privilege or Protecting Trial-Preparation Materials
(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:
(i) expressly make the claim; and
(ii) 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 claims.

Michael Ryan, Esquire, the attorney who wrote the coverage opinion for Defendant PMIC, composed three separate email correspondences to Renee Graves, an adjuster for the Defendant. Also, Plaintiffs cite to PMIC 000191, (Doc. 39-1, at 35), another billing statement from Merry, Farnen & Ryan, P.C. to PMIC dated November 8, 2014, which indicates additional correspondence. The aforementioned correspondences are direct examples of documents that were not produced by Defendant that can be extrapolated from those documents that were produced.

The Court agrees with Plaintiff's counsel that it does not appear accurate to say that all electronic exchanges related to the relevant claim have been produced. Specifically, as to the e-mails of May 6, 2014, May 9, 2014, and May 10, 2014 between Michael Ryan and Ms. Renee Graves, an adjuster for the defendant, that are referenced in Mr. Ryan's statement of June 14, 2014, there is no evidence that they have not been produced. (Doc. 39-1, at 33). In addition, a produced document does reference an e-mail request for records sent to Ms. Graves on or about October 17, 2014. (Doc. 39-1, at 35). Likewise, there is no evidence that this e-mail has been produced. Since all objections to the production of these e-mails have been withdrawn, they are to be produced. Therefore, Defendant is hereby **ORDERED** to produce those memos, messages, electronic exchanges or writings of any kind pertinent to the filing of the claim that have not been produced, including those correspondences between Michael Ryan and PMIC, and Renee Graves, referenced in PMIC 000189 and PMIC 000191.

Request for Production No. 6

Plaintiffs' Request for Production No. 6 asks Defendant to "[p]roduce all communications between any investigator and any other person regarding the claim made the basis of this suit." (Doc. 36-1, ¶ 6). Defendant's response was as follows:

> Defendant objects as "this claim" is unclear as to whether this term refers to the claims made in the underlying lawsuit or the claim for insurance coverage that is the subject of the current lawsuit. Without waiving said objection, Megan Miller received the original claim information, which was subsequently assigned to Renee Graves. Renee Graves consulted with Justin Davis regarding the request for coverage. Mike Ryan was then consulted for an independent coverage opinion. For document production, see Response to Request No. 3.

(Doc. 36-1, ¶ 6). Plaintiffs' counsel emailed to Defendant's counsel an explanation of the term "claim" used in Plaintiffs' Request for Production No. 6, (Doc. 36-2, at 1), which has not elicited a supplement, (Doc. 36, ¶ 4). Plaintiffs reassert that not all the documents were produced by Defendant based on the information provided in PMIC 000189, (Doc. 39-1, at 33), and PMIC 000191, (Doc. 39-1, at 35).

Defendant has withdrawn any previously imposed objections and informs the Court it "has confirmed that all responsive documents have been produced and refers Plaintiffs to PMIC 000187-000188 and 000203-000210. Defendant will supplement its Response to this Request to reference these documents accordingly. No privilege log is necessary for this Request." b(Doc. 38, at 3). Since counsel has assured the Court that his client will formally supplement its response to inform that all responsive documents to this request have been produced and there is no evidence that additional communications with investigators exist, the Court is satisfied that an order to compel a supplemental production is unnecessary.

Therefore, Plaintiff's motion to compel a second production as to Request for Production No. 6 is **DENIED** as unnecessary.

Request for Production No. 7

Plaintiffs' Request for Production No. 7 asks Defendant to "[p]roduce all recordings made as a result of the claim made the basis of this suit." (Doc. 36-1, ¶ 7). Defendant's response was as follows: "Defendant objects to this Request as vague and unclear." (Doc. 36-1, ¶ 7). Plaintiffs' counsel emailed to Defendant's counsel an explanation of the term "recording" used in Plaintiffs' Request for Production No. 7, (Doc. 36-2, at 2), which has not elicited a supplement, (Doc. 36, ¶ 5). Plaintiffs reassert, as evidence that recordings have been withheld, that not all the documents were produced by Defendant based on the information provided in PMIC 000189, (Doc. 39-1, at 33), and PMIC 000191, (Doc. 39-1, at 35).

Defendant has withdrawn any previously imposed objections and informs the Court it "has confirmed that no audio or visual recordings were made as a result of the claim for coverage that made the basis for this lawsuit. Defendant will supplement its Response to this Request to state the same." (Doc. 38, at 3). Since counsel has assured the Court that his client will formally supplement its response to inform that there are no responsive recordings available for production, the Court is satisfied that an order to compel a supplemental production is unnecessary.

Therefore, Plaintiff's motion to compel a second production as to Request for Production No. 7 is **DENIED** as unnecessary.

Request for Production No. 10

Plaintiffs' Request for Production No. 10 asks Defendant to "[p]roduce all notes, memos, or electronically generated exchanges or writings of any kind

reflective of any conversations between any persons investigating this claim." (Doc. 36-1, ¶ 10). Defendant's response was as follows: "Defendant objects to this Request as overbroad, vague, and remote in time. Defendant also objects to the extent this Request is invasive of the attorney-client privilege. Without waiving said objection, see documents bates numbered as PMIC 000187-000188 and 000203-000210." (Doc. 36-1, ¶ 10).

Defendant has withdrawn any previously imposed objections and informs the Court it "has now confirmed that all responsive documentation has been produced and therefore no privilege log is necessary for this Request." (Doc. 38, at 3). Since counsel has assured the Court that his client will formally supplement its response to inform that there are no additional documents responsive to this request, and there is no evidence that there are, the Court is satisfied that an order to compel a supplemental production is unnecessary.

Therefore, Plaintiff's motion to compel a second production as to Request for Production No. 10 is **DENIED** as unnecessary.

Request for Production No. 24

Plaintiffs' Request for Production No. 24 asks Defendant to "[p]roduce a complete copy of your entire claims file concerning this matter including but not limited to notes, correspondence, reports, contracts, e-mails, texts, statements and/or electronic exchanges of any kind." (Doc. 36-1, ¶ 24). Defendant's response was as follows: "Defendant objects to this Request as invasive of the attorney client privilege and not relevant to any party's claim or defense or proportional to the needs of the case as required by Fed. Rule Civ. P. 26(b)." (Doc. 36-1, ¶ 24). Plaintiffs reassert that not all the documents were produced by

Defendant based on the information provided in PMIC 000189, (Doc. 39-1, at 33), and PMIC 000191, (Doc. 39-1, at 35).

The Court agrees with Plaintiff's counsel that it does not appear accurate to say that the entire claims file has been produced. Specifically, the e-mails of May 6, 2014, May 9, 2014, and May 10, 2014, between Michael Ryan and Ms. Renee Graves, an adjuster for Defendant, that are referenced in Mr. Ryan's statement of June 14, 2014, have not been produced. (Doc. 39-1, at 33). In addition, there appears to be an e-mail request for records sent to Ms. Graves on or about October 17, 2014, that has not been produced. (Doc. 39-1, at 35). Since all objections to the production of these e-mails have been withdrawn, they are to be produced. Therefore, Defendant is hereby **ORDERED** to produce any portion of the claims file that has not been produced to date, which would clearly cover the e-mails ordered produced pursuant to Request for Production No. 3.

Request for Production No. 17

Plaintiffs' Request for Production No. 17 asks Defendant to "produce all writings pertinent to Michael T. Ryan or his law firm's evaluation of any Pharmacists Mutual claim" from the past ten years. (Doc. 36-1, ¶ 17). Defendant's response was as follows: "Defendant objects to this Request as overbroad, unduly burdensome, and invasive of the attorney-client privilege. Additionally, the requested information is beyond the scope of permissible discovery as Michael Ryan is a consulting expert under Fed. Rule Civ. P. 26(b)(4)(D)." (Doc. 36-1, ¶ 17). In Defendant's response to Plaintiffs' motion to compel, Defendant withdraws its claim that Mr. Ryan is a consulting expert under Rule 26(b)(4)(D) but maintains its assertion that the discovery request is overly broad and unduly burdensome. (*See* Doc. 38, at 4 ("Defendant objected to

these requests as vague, overly broad, and unduly burdensome, and beyond the scope of permissible discovery as Mr. Ryan is a consulting expert. (Doc. 36-1 ¶¶17, 19, 22). . . . Defendant maintains its position as to the overly broad and unduly burdensome objections.)). Additionally, Defendant argues that Plaintiffs' Requests for Production No. 17, 19, and 22 "are not narrow in temporal scope, do not specify a geographical location, and do not specify any certain type of policy in [an] effort to limit the requested information to that which is reasonable and relevant." (Doc. 38, at 6).

Defendant cites to *Graham & Co., LLC v. Liberty Mut. Fire Ins. Co.*, No. 2:14-cv-02148-JHH, 2016 WL 1319697 (N.D. Ala. Apr. 5, 2016), in support of its argument.[3] The Court in *Graham & Co., LLC*, found the plaintiff's discovery

[3] The discovery requests at issue and those cited in Defendant's argument in Graham & Co., LLC, an insurance recovery and bad faith action, are as follows:

> Interrogatory 9. For every lawsuit arising out of a commercial property claim, including but not limited to any claim for equipment breakdown coverage, where Liberty (companywide) has been sued for bad faith and/or other tortious conduct from 2005 to present, please state:
>
> (a) Case name and CV number;
> (b) The court and jurisdiction in which it was filed;
> (c) The names, addresses, and telephone number of all parties, including the plaintiff and defendants;
> (d) The names, addresses, and telephone numbers of all attorneys for the plaintiffs and defendants;
> (e) The present status or disposition of the lawsuit;
> (f) The name and address of each person or entity having possession, custody or control of any records relating to such action.
>
> . . .
>
> Request 16. Copy of all Complaints and claims files from every lawsuit involving a denial of a claim for commercial property coverage, included but not limited to claims for equipment breakdown coverage where you have been sued for bad faith and/or tortious conduct from 2005 to present.
>
> . . .
>
> Request 19. Any and all correspondence with any State Department of Insurance and/or Commission that involves alleged bad faith and/or tortious conduct in the adjustment and payment of claims for commercial property coverage since 2005.
>
> . . .
>
> Request 43. Produce a list of all claims asserted against Liberty for bad faith or tortious conduct in connection with Liberty's handling, processing and adjusting of claims.
>
> . . .

requests to be overbroad and that the burden on the defendant outweighed the likely need for such a broad scope of information and ordered the plaintiff to "narrow the scope of the information sought" by defining terms, limiting the geographic scope, limiting the scope of the entities requested of, and shortening the temporal scope. *Id.* at *4-5.

First, the objection as to burdensomeness is **OVERRULED** as unsupported.

As to the objection of scope, the requests in this case are not determined to be as broad as those in *Graham & Co., LLC*, because they involve one law firm's claims evaluations for a single company within a defined time period. On the other hand, the suggested limitations as to the scope of this request are found to be reasonable as a first step in determining if a more limited and less expensive production will suffice. Accordingly, the motion to compel is **GRANTED** to the extent that Defendant shall produce for inspection all writings pertinent to Michael T. Ryan or his law firm's evaluation of claims involving Alabama insureds that were presented to PMIC within five years of the date of the evaluation that is relevant to this action. In addition, the evaluations and other writings responsive to this request are also limited to those involving policies of insurance that may be characterized as similar to the policy issued to the Plaintiffs.

Therefore, the motion to compel with regard to Request for Production No. 17 is **GRANTED IN PART AND DENIED IN PART**. The production of

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> Request 47. Produce the complete claims file for each claim and/or case responsive to Interrogatory Nos. 9 [. . .].

Graham & Co., LLC, 2016 WL 1319697, at *3-4 (alteration in original).

information is limited to similar policies of insurance written to Alabama residents that were presented within five years prior to the evaluation by Mr. Ryan that is relevant to this action.

Request for Production No. 19

Plaintiffs' Request for Production No. 19 asks Defendant to "produce the amounts paid to Michael T. Ryan or his law firm on each claim in which he or his law firm provided assistance and claim review for Pharmacists Mutual" from the past ten years. (Doc. 36-1, ¶ 19). Defendant's response was as follows: "Defendant objects to this Request as overly broad and the requested information is beyond the scope of permissible discovery as Michael Ryan is a consulting expert under Fed. Rule Civ. P[.] 26(b)(4)(D)." (Doc. 36-1, ¶ 19). In Defendant's response to Plaintiffs' motion to compel, Defendant withdraws its claim that Mr. Ryan is a consulting expert under Rule 26(b)(4)(D) but maintains its assertion that the discovery request is overly broad and unduly burdensome. (*See* Doc. 38, at 4).

Defendant has not attempted to demonstrate how the discovery requested here would be unduly burdensome. That objection is **OVERRULED**. The scope of the request should be limited, however, to a five-year period instead of the ten-year period requested. Therefore, it is **ORDERED** that Defendant produce the amounts paid to Michael T. Ryan or his law firm on each claim in which he or his law firm provided assistance and claim review for PMIC for the five-year period prior to his evaluation that is presented in this case.

Request for Production No. 22

Plaintiffs' Request for Production No. 22 asks Defendant to "[p]roduce all writings, records and/or claims wherein Michael T. Ryan recommended a denial

in coverage and produce all documentation and/or writings pertinent to the claim." (Doc. 36-1, ¶ 22). Defendant's response was as follows: "Defendant objects as this Request is vague, unclear, and overly broad. Additionally, the requested information is beyond the scope of permissible discovery as Michael Ryan is a consulting expert under Fed. Rule Civ. P[.] 26(b)(4)(D). Without waiving said objection, see documents bates numbered PMIC 000203-000210." (Doc. 36-1, ¶ 22). In Defendant's response to Plaintiffs' motion to compel, Defendant withdraws its claim that Mr. Ryan is a consulting expert under Rule 26(b)(4)(D) but maintains its assertion that the discovery request is overly broad and unduly burdensome. (*See* Doc. 38, at 4).

Defendant has not attempted to demonstrate how the discovery requested here would be unduly burdensome. That objection is **OVERRULED**. The scope of the request should be limited, however, to the same degree as the limits imposed in Request for production No. 17. It is so **ORDERED**.

CONCLUSION

Plaintiffs Hibbett's and Hibbett II's Motion to Compel, (Doc. 36), is hereby **GRANTED IN PART AND DENIED IN PART**. The documents ordered produced hereinabove, are to be produced for inspection no later than **February 10, 2017.** That is also the date for the Defendant to formally supplement its response to the requests for production as assured in the response to the Motion to Compel. Defendant shall also be ever mindful of its duty to supplement should additional responsive documents be uncovered.

Since a portion of this motion has been granted, "the court must, after giving an opportunity to be heard, require the party . . . whose conduct necessitated the motion, the party or attorney advising that conduct, or both to

pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." FED. R. CIV. P. 37(a)(5)(A). If Plaintiffs maintain that they are entitled to an award of attorney's fees, it is to supply this Court with a specific request for attorney's fees evidencing the reasonableness of the fees it incurred in filing the motion to compel; such request must be filed not later than **February 10, 2017**. Upon the filing of such motion/request, the Court will extend to Defendant an "opportunity to be heard[.]" *Id.* In this regard, if the Plaintiffs "filed the motion before attempting in good faith to obtain the disclosure or discovery without court action[,]" FED. R. CIV. P. 37(a)(5)(A)(i), as required by this Court (*see* Doc. 17, at 6 n. 4) ("[S]imply corresponding with opposing counsel is not considered a good-faith attempt to confer or have a conference to resolve discovery disputes[;]" instead, counsel for the movant must attempt to have a telephone or face-to-face conference with opposing counsel about the discovery dispute)), such request for payment may not be granted.

DONE and **ORDERED** this the 26th day of January 2017.

s/WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE