

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NO. 651,069

SECTION 22

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

VERSUS

TERRY S. SHILLING, et al

**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL BY
GROUP RESOURCES, INC.**

Defendant, Group Resources, Inc. ("GRI"), respectfully submits the following Memorandum in Opposition to Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc.'s ("Plaintiff") Motion to Compel.

Contrary to Plaintiff's broad mischaracterizations, GRI has not withheld "secure" emails. GRI has responded fully and forthrightly to each of Plaintiff's discovery requests to the extent they are permissible in scope and do not implicate the attorney-client privilege or work product doctrine. Rather, Plaintiff's Motion to Compel stems largely from Plaintiff's mistaken belief that GRI has additional information to produce. GRI has already produced all of the responsive emails it possesses that went through the PGP server. Accordingly, as explained more fully below, the breadth and depth of information Plaintiff covets is an effort to wrongfully brand GRI with trying to withhold critical information that Plaintiff has overlooked. Plaintiff has not identified a single broken email thread or any other evidence that even remotely suggests that all of the information produced is in any other respect deficient. GRI's response to Request No. 5 confirms their production.¹ Plaintiff's motion is an attempt to harass and badger GRI, not obtain

¹ Attached hereto as **Exhibit 1** in globo is a small sample of the secure emails that GRI has produced for the Court's review and examination.

information. Plaintiff's objective may be to muddy the water and embark on a needless fishing expedition based on a critically flawed premise that there is additional production.

Plaintiff's Motion should be denied in its entirety. The Court should instead, pursuant to Louisiana Code of Civil Procedure articles 1426 and 1469, enter a protective order declaring that GRI need not furnish additional responses to the discovery requests identified in Plaintiff's Motion to Compel.

I. RELEVANT BACKGROUND

The PGP server Plaintiff refers to is a hardware appliance that sits outside the firewall at GRI and is used to deliver email from GRI's internal Exchange server, containing PHI (personal health information), in an encrypted manner. When it sends an e-mail outside of GRI that may contain PHI, it precedes the subject line with [pgp]. The pgp server stops the e-mail after it leaves GRI Exchange server, encrypts it, stores it for an interim period, and sends a message to the recipient that they have received a secure message. The recipient clicks a link in their e-mail, which takes them to the login screen that appears as seen in the screen shot attached hereto as **Exhibit 2**. The recipients then login and the e-mail, as sent from GRI's Exchange server, appears to them. They can download the email itself by copy and pasting, or as text, and can download any attachments in the form sent. GRI had absolutely no control over whether LAHC saved any of the secured messages or how LAHC personnel may have gone about saving the secured messages. LAHC, not GRI, was responsible for accessing and preserving the secure messages as they saw fit.

All e-mails that went onto the PGP server would be contained in the "sent items" folder of the person that sent the e-mail from GRI. GRI has produced all sent items that are responsive to Plaintiff's discovery responses from the GRI personnel that had worked on the LAHC account. So, GRI is withholding nothing. Plaintiff has all of the responsive outbound "encrypted" e-mails sent through the secure server. Plaintiff's motion to compel further response to Request for Production No. 5 seek to compel GRI to reproduce information already provided to Plaintiff.

Though replete with innuendo and conclusory accusations, the Motion to Compel and accompanying Memorandum in Support ("Plaintiff's Memo") are scant on legal authority, based a faulty premise and do not demonstrate a reasonable basis for compelling further

production. In lieu of identifying specific incomplete email thread(s), specific subject matter, or specific documents it contends are missing Plaintiff without evidence provides a broad category of what Plaintiff has mistakenly deemed "secure" Emails that GRI has refused to produce. Plaintiff's Memo at 2. Specifically, Plaintiff asserts that:

- GRI has not provided access to critical emails. (citing Plaintiff's Request for Production No. 5.²
- GRI's Answer to Interrogatory No. 9 is incomplete (citing Plaintiff's Interrogatory No. 9). [GRI is in the process of supplementing and amending its response to Plaintiff's Interrogatory No. 9]
- GRI has not stated unequivocally that all documents, data, and materials within its control have been produced (citing Plaintiff's Request for Production of Documents No. 19) [GRI is in the process of supplementing and amending its response to Plaintiff's Request for Production No. 19 and other responses to clarify it has produced documents as opposed to "will produce"].

What Plaintiff neglects to mention, however, is that GRI provided thousands of pages of information that includes the secure email communications that went through the PGP server. **Exhibit 1** to this Opposition consists of a small sample of those documents. The production shows that Plaintiff overlooked all of the secure emails produced by GRI and has wrongfully alleged that GRI is withholding critical information. LAHC personnel may not have taken it upon themselves to preserve the secured emails. This may be what led Plaintiff to the incorrectly conclude that GRI has not fully complied with Plaintiff's Request for Production No. 5. In fact, all of the [PGP] emails GRI possesses that are responsive to Plaintiff's requests have been produced.

Plaintiff also asks the Court to enter an order compelling GRI to amend its Answer to Interrogatory No. 9, "identify all other health insurers, other than LAHC for which [GRI] performed TPA services." GRI is in the process of supplementing and amending its Response to Interrogatory No. 9 to cure the alleged deficiency that will render this portion of plaintiff's motion to compel moot.

² GRI's Answers to Plaintiff's Interrogatories and Response to Request for Production of Documents Propounded To GRI are attached to Plaintiff's Memorandum in Support of Motion To Compel as **Exhibit A**. GRI's First Supplemental and Amended Responses To Plaintiff's Request for Production of Documents Propounded to GRI are attached to Plaintiff's Memorandum in Support of Motion to Compel as **Exhibit B**.

Plaintiff also asks the Court to enter an order compelling GRI to amend its responses to request for production to clarify that no additional production is forth coming. Specifically, plaintiff urges the court to order GRI to change multiple responses that state "GRI will produce" to "GRI has produced." The reason the words "will produce" were used in prior responses is because GRI's responses preceded the completion of all of the documents being loaded in connection with the production. GRI is in the process of supplementing and amending its responses to confirm that all documentation has been produced. Thus, Plaintiff's motion will also be moot in this regard.

For these reasons, the Court should not enter an order compelling further responses to any of the requests identified in Plaintiff's Motion. His overarching effort to force GRI to produce for examination a piece of electronic equipment that is currently being used to encrypt highly sensitive personal health information not related in any way to services performed for or on behalf of LAHC reaches issues and information that cannot be relevant and thus exceeds the scope of permissible discovery. GRI has already fully and completely responded to Request for Production No. 5. The Motion should thus be denied.

II. LAW AND ANALYSIS

A. Standard on Motion to Compel

Louisiana Code of Civil Procedure Article 1422 enables a party to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." If the responding party fails to fully comply with a discovery request, the party propounding discovery may move for an order compelling an answer or production pursuant to Louisiana Code of Civil Procedure Article 1469(2). However, upon denying a motion to compel in whole or in part, a court may "make such protective order as it would have been empowered to make on a motion made pursuant to Article 1426." *Id.* Article 1426(A) provides:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,

The Article empowers the court to preclude or limit the requested discovery. La. C.C.P. art. 1426(A)(1), (2).

Courts routinely grant protective orders excusing parties from discovery that is overbroad, unduly burdensome, or otherwise superfluous. *See, e.g., St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., LLC*, 2017-0388 (La.App. 4 Cir. 04/18/18); 246 So. 3d 23, 29-30 (granting protective order over discovery requests for information relating to information relating to alleged overbilling by attorneys where requests were "unduly burdensome, expensive, and unnecessary, given that other discovery methods, such as the depositions of experts and billing attorneys, are available"); *Belonga v. Crescent City Dodge, L.L.C.*, 00-3419 (La. 03/09/01); 781 So. 2d 1247 ("A cursory review of plaintiffs' requests for production indicate that in many instances, plaintiffs seek information of questionable relevance which has the potential to subject relators to annoyance, embarrassment, oppression, or undue burden or expense."); *Holloway v. Alexandria*, 506 So. 2d 234, 237 (La. App. 3 Cir. 1987) (denying motion to compel answer to interrogatory where defendant city had made some information available and full compliance with interrogatory "would impose an undue burden upon the City"); *Amitech v. Nottingham Constr. Co.*, 2005 1981 (La.App. 1 Cir. 02/14/07); 2007 La. App. Unpub. LEXIS 424 (quashing portion of subpoena that asked for "all" communications between contractors as overly broad); *cf. Godfrey v. Reggie*, 11-1575 (La.App. 3 Cir. 05/02/12); 94 So. 3d 82, 88 (staying discovery where plaintiff failed to establish relevance of discovery requests to exceptions being tried). As such, the Court should deny Plaintiff's Motion to Compel in its entirety and reject Plaintiff's unsupported and unwarranted effort to harass GRI and enter a protective order in favor of GRI.

Respectfully submitted,



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Douglas J. Cochran (La. Bar Roll No. 20751)
Michael W. McKay (La. Bar Roll No. 9362)
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Facsimile: (225) 490-5860
Email: bmason@stonepigman.com

Attorneys for Defendant, Group Resources, Inc.

CERTIFICATE

I hereby certify that a copy of the above and foregoing Motion to Compel and Incorporated Memorandum in Support was served upon all counsel of record by electronic mail and/or United States mail, postage pre-paid and properly addressed, this 22 day of June, 2020.



W. BRETT MASON

Mason, W. Brett

From: Andy Willoughby
Sent: Monday, May 11, 2015 9:08 AM
To: Pat Powers
Subject: [pgp] RE: Need a 5-5-15 data base
Attachments: MEM_LHC_20150505_Member.txt

Please see attached.

Andy Willoughby
Senior Vice President & Chief Operating Officer
678 475 3606 - andy@groupresources.com

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For Healthier Employees and Healthier Businesses

From: Pat Powers [mailto:patsekal@gmail.com]
Sent: Saturday, May 09, 2015 8:17 AM
To: Andy Willoughby
Subject: Need a 5-5-15 data base

Andy you time next week to discuss what I'm finding and help me understand the variances, please? Thanks. Pat.

Thanks and hope you have a great day.

Pat Powers
9572 Wesson Street
Baton Rouge LA 70809
225.933.8260



Mason, W. Brett

From: Gail McDougal
Sent: Tuesday, May 10, 2016 8:45 AM
To: nwells@mylahc.org
Subject: [pgp] Mrs. Jon Briley X21733135 Collections
Attachments: Document.pdf

Member called stating the attached claim is being turned over to collections for a \$375 copay that was applied in error on claim USDLHC155B009200. Member had called in November about her out of pocket and after recalculation only \$17.63 was needed to complete her out of pocket maximum. An adjustment was performed on claim U01LHC15CF000200 to pay an additional \$357.37, but it is pending release.

Provider name: St. Tammany Parish Hospital (985) 898-4157

Contact method: Mail

Claim copy: attached

Gail McDougal
LAHC Member Services
gmcdougal@groupresources.com

(855) 475-3702 (select the member's prompt #2, then select option # 2)

Fax (770) 623-3768

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For Healthier Employees and Healthier Businesses

-----Original Message-----

From: GAIL MCDUGAL [mailto:gmcdouga@groupresources.com]
Sent: Tuesday, May 10, 2016 10:20 AM
To: Gail McDougal
Subject:

Mason, W. Brett

From: LaToya Hicks
Sent: Wednesday, September 16, 2015 9:56 AM
To: Nadine Wells
Subject: [pgp] DAVID FONTENOT // Z02023248
Attachments: DAVIDFONTENOT.xls

Importance: High

Hello Nadine,

I just spoke to this member with the Market Place on a conference call. They advised that effective 8/31/2015 the member has been termed with us. (see aug 834 file attached above) Also effective 9/1/2015-9/30/2015 the member will be enrolled with United Health Care. He will be termed with UHC effective 9/30/2015. This member wants coverage with LAHC again effective 10/1/2015. The Market Place shows there is an enrollment freeze for this member. The member wants to know what he has to do to enroll back with LAHC effective 10/1/2015-12/31/2015. Thanks for your help!

Have a blessed day!

Thanks,
Latoya Hicks
Member Services
LHicks@GroupResources.com
Fax Line 678-623-4022

Mason, W. Brett

From: Andy Willoughby
Sent: Friday, August 15, 2014 7:41 AM
To: Eve Lion (elion@mylahc.org)
Subject: [pgp] John Palmer 0001813292
Attachments: 201408150823.pdf

We have this gentleman in the system paid through 3/31, covered through 4/30. Can we use the attached as a termination effective 4/11, or do we need to have something from the FFM?

Andy Willoughby
Senior Vice President & Chief Operating Officer
678 475 3606 - andy@groupresources.com

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For Healthier Employees and Healthier Businesses

Mason, W. Brett

From: Ryan Ryser
Sent: Monday, September 28, 2015 1:44 PM
To: LAHC (stheriot@mylahc.org); LAHC (spuente@mylahc.org); LAHC (sblount@mylahc.org); LAHC (pkennedy@mylahc.org); LAHC (kjones@mylahc.org); LAHC (kmccall@mylahc.org)
Cc: Andy Willoughby; Aline Cook
Subject: [pgp] 7100
Attachments: 71001411_csvRLHCF9S1.xlsx; 71001411_Register_RLHCF9S1.DOC

Attached is your check register dated 09/28/15.

Below are the claims that I would recommend for further review:

Check Date	Check #	Amount	DCN	D.O.S.	Pay-To	Provider Name	Rer
9/28/2015	186122	504.00	MSDLHC159B050100	20150817	800018400	APEX ANESTHESIA ASSOCIATES LLC	APE
9/28/2015	186123	504.00	MSDLHC159B072800	20150817	800018400	APEX ANESTHESIA ASSOCIATES LLC	APE
9/28/2015	185534	70.20	MSDLHC158Q080500	20141103	721111417	BATON ROUGE CLINIC	BA1
9/28/2015	185543	37.02	N01LHC1591000100	20141103	721111417	BATON ROUGE CLINIC	BA1
9/28/2015	184446	83.00	MSDLHC158Q052000	20150819	720276883	OCHSNER CLINIC LLC NO	OCI
9/28/2015	184449	77.49	MSDLHC158Q061000	20150819	720276883	OCHSNER CLINIC LLC NO	OCI
9/28/2015	185245	185.39	MSDLHC1583023500	20150525	720839724	SOUTH LOUISIANA MEDICAL	SOL
9/28/2015	185274	215.07	N01LHC156G027100	20150525	720839724	SOUTH LOUISIANA MEDICAL	SOL
9/28/2015	185258	363.60	MSDLHC158K023700	20150617	720839724	SOUTH LOUISIANA MEDICAL	SOL
9/28/2015	185260	363.60	MSDLHC158K031300	20150617	720839724	SOUTH LOUISIANA MEDICAL	SOL

Please send any authorizations to release checks to: checks.release@groupresources.com

Let me know if you have any questions.

Thanks!

Ryan Ryser
Accounting
Group Resources, Inc.
(678) 475-3716
rryser@groupresources.com

Mason, W. Brett

From: Andy Willoughby
Sent: Thursday, June 26, 2014 3:05 PM
To: Williams, Kenifet
Cc: Laurel, Ruben; Jim Starnes
Subject: [PGP] RE: Introductions
Attachments: GRI_to_PDHI_Proprietary_Test_File.txt

Attached please find the test file. I have a voice mail from Rene and will be calling him shortly.

Andy Willoughby
Senior Vice President & Chief Operating Officer
678 475 3606 - andy@groupresources.com

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For Healthier Employees and Healthier Businesses

From: Williams, Kenifet [mailto:kwilliams@callcarenet.com]
Sent: Thursday, June 26, 2014 3:05 PM
To: Andy Willoughby
Cc: Laurel, Ruben; Jim Starnes; Williams, Kenifet
Subject: RE: Introductions

Good afternoon Andy,

Ruben and I were able to connect with our FTP team and his response is below. Ruben has also reached out to Steve Kemp and learned that he is OTO today as well. I was able to successfully create my access into the secure email you sent me however I do not see an attachment. Is it possible that you send it again to me? Thanks K

K,
I have called Group Resources FTP contact Steve Kemp and have received his VM the last few days. Per the secretary at G.R. he is out of town. She transferred me to someone else in his department, but I received VM with him as well. Lastly I asked to speak to Andy Willoughby and received his VM as well. I left both my work and cell contact information on all VM's and left a high importance message with the secretary to pass along.

I will update you when/If I am contacted.
Thank you
Rene

Rene Saenz | Manager
Production Support



Welcome to PGP Universal Web Messenger

In order to gain access to your account and messages you must first enter your email and passphrase associated with this account.

Please login to access your secure inbox:

Email Address:

Passphrase:

[I lost my passphrase](#)

Login

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