

Reilley D. Keating, OSB No. 073762
reilley.keating@stoel.com
Stephen H. Galloway, OSB No. 093602
stephen.galloway@stoel.com
STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone: 503.224.3380
Facsimile: 503.220.2480

Attorneys for Defendant Agate Resources

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

MICHAEL T. BROOKS,

Plaintiff,

v.

AGATE RESOURCES, INC., dba Trillium
Community Health Plan,

Defendant.

Case No.: 6:15-cv-00983-JR

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S REQUEST FOR
DOCUMENTS**

Defendant Agate Resources, Inc. ("Agate") hereby objects and responds to Plaintiff's Request for Documents (the "Requests") as follows:

GENERAL OBJECTIONS AND RESPONSES

As an Initial Objection, Agate objects to Plaintiff's service of a Request for Documents on Agate, and to each and every individual Request, on the grounds that the Requests are untimely because the deadline to complete discovery was August 31, 2017, per the Court's Order

dated March 2, 2017 (Dkt. 56), and that deadline has not been extended by the Court. Defendant objects to any reopening of the discovery deadline, except for the limited purpose of Agate's right to depose Plaintiff, and Agate maintains that it is not obligated to respond to the Requests because they were not served in compliance with the Court's Order. Agate's submission of the below responses and objections to the Requests does not constitute a waiver, and may not be construed as a waiver, of Agate's objections to the untimely service of the Requests or of Agate's assertion that it is not obligated to respond to the Requests. Should the Court reopen discovery at some time in the future, Agate reserves the right to respond to any pending requests within 30 days of the Court's order.

In addition to foregoing Initial Objection, Agate makes the following general objections and responses to the Requests. These objections and responses apply to each and every part of the Requests (including, but not limited to, each individual instruction, definition, and request, where applicable), as if fully set forth in response to each part.

1. In responding to the Requests, Agate does not waive and expressly reserves (a) any objections as to competency, relevancy, materiality, privilege or admissibility with respect to the material requested; (b) the right to object to other discovery procedures involving or related to the subject matter of the Requests; and (c) the right at any time to revise, correct, add to or clarify any of the information provided.

2. Agate generally objects to each Request to the extent it seeks work product, trial preparation materials or material protected by the attorney-client privilege. Agate does not intend to produce any documents that contain such materials and does not waive any objections to the discoverability or admissibility of any such information that is inadvertently produced.

3. Agate generally objects to each Request to the extent it calls for production of information not in the direct possession, custody or control of Agate and/or to information that is equally available to Plaintiff.

4. Agate generally objects to each Request to the extent that it is overly broad, unduly burdensome, and oppressive, such that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

5. Agate generally objects to each Request to the extent it is ambiguous and too vague to adequately apprise Agate of what information is being sought or permit Agate to furnish such information with reasonable effort.

6. Agate generally objects to each Request to the extent it purports to impose any requirements or discovery obligations other than those specifically required under the applicable Federal Rules of Civil Procedure.

7. Agate objects to Plaintiff's request in Instruction No. 3 "to come on site and make copies on external portable hard drives" as unduly burdensome. Agate will handle the collection and production of all responsive documents. Agate further objects to this Instruction on the grounds that Plaintiff's request for the "entire contents of his workstations or information on a server" is overbroad, unduly burdensome and may require the disclosure of confidential or protected health information.

8. Agate objects to the Definition No. 14, of "Other Entities" on the grounds that it is vague, ambiguous and seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

9. Agate objects to the Requests to the extent they seek production of Agate's confidential or proprietary information or protected health information prior to the entry of a suitable HIPAA-compliant protective order.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

The names, officers and board members (past and present), remuneration, and sufficient information to identify any subsidiary business or organization and the officers and board members of said businesses, operated by Terry Coplin, David Cole, Dr. Thomas Wuest, Patrice Korjenek, Dr. Leo Cytrynbaum, Dr. Richard Finkelstein, Dr. Tod Hayes, Dr. Mark Meyers, Dr. Christopher Miller, Rhonda Busek, Eric Hause and any executives or officers of Agate, Agate Healthcare, Agate Healthcare ABN, Trillium CHP, Trillium CCO, LIPA, EHA, Apropro, and Other Entities that profited in, did business with, or otherwise had any contact with Agate Resources, Inc. or any of its subsidiaries, or offshoots, including Health Net, Legacy Health, Tuality Healthcare, the Centene Corporation, and any subsidiaries.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 2:

All documents that concern, refer to, or relate to business dealings between Agate and its subsidiaries, including those to be discovered under Request 1. This will include bank statements, financial records, emails, notes, and documents exchanged between the executives, officers, board members, lobbyists, experts, and any and all outside agents involved.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, vague, ambiguous, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks production of Agate's confidential and proprietary business and financial information.

REQUEST NO. 3:

Any documents, emails, communications, or notes pertaining to any agreement, including "Non Disclosure Agreements", agreements to "forget", agreements to withhold testifying or agreements to stop, balk, or otherwise make difficult producing documents or testimony concerning the Plaintiff and his actions against Agate and its subsidiaries, former supervisors and executives. This is to include whistleblowing, reporting unlawful or unethical activities, the destruction or withholding of evidence in this matter. It will include the name of the author or authors of such agreement, any money paid, favors, or threats of retaliation, the identity of the employee, board member, executive, staff member, or agent, or former employee, former board member, former executive, former staff member, or former agent of the Defendant. This is to include, especially, Dr. John Sattenspiel and other present and former employees of the Medical Management, I.T, Network Administration, Legal, and Analytics Departments.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 4:

All documents that concern, refer to, or relate to any communication at any time between any executive, current or former employee, agent, including lobbyists, or officer with regard

to the Plaintiff, his family, or any other whistleblower or believed whistleblower at Agate, Agate Healthcare, Agate Healthcare ABN, Trillium CHP, Trillium CCO, LIPA, EHA, Apropro, and Other Entities. This is to include telephone recordings, records of email and cloud intrusions, internal or external, any documents, and communications with state or federal agencies, and communications with private investors and those communications.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that the phrase “any other whistleblower or believed whistleblower” is vague and/or ambiguous. Agate further objects to the request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 5:

All emails, notes, or documents sent by the Plaintiff or exchanged with the Plaintiff with Agate or any of its executives between 01/01/2010 and 09/27/2013. These were collected by Nanette Woods during her “investigation” when the Plaintiff was on Administrative Leave and Agate was directed to store these. In particular, the Plaintiff wants (1) the email sent to Amanda Cobb, detailing the Plaintiff’s work assignments, code, dates to be run, emailed to Amanda Cobb in September 2013 (2) the “self assessment” and post evaluation comments, sent to Patrice Korjenek concerning the Plaintiff’s Employee Evaluation, emailed in April 2013; (3) all “Weekly Synopsis” emails sent to Korjenek, (4) emails of reports sent to co-workers in the Analytics Department, including humorous asides, (5) emails requesting to telecommute, (6) emails concerning medical issues and need for treatments, surgery, medication, and time off, (7) emails containing the terms “FMLA” or “ADA”, (8) grievances filed with Agate Human Resources, or any other Agate executive, by the Plaintiff.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that the phrases

“‘Weekly Synopsis’ emails” and “emails of reports” are vague and/or ambiguous. Agate further objects to the request on the grounds that a request for “[a]ll emails, notes, or documents” exchanged during the identified time period is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 6:

Any recording, document, communication, of the Plaintiff or any other person involved in discussions of the Plaintiff or his legal actions, made by Agate or any agent of Agate, state, county, or city actors, or friends of executives acting on behalf of Agate.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is vague, ambiguous, seeks documents not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents protected by the attorney-client privilege and/or attorney work product doctrine.

REQUEST NO. 7:

The documents, notes, emails, or other evidence of complaints filed by, or on behalf of, Amanda Cobb concerning the Plaintiff and any other employee or past employee of Agate, Agate Healthcare, Agate Healthcare ABN, Trillium CHP, Trillium CCO, LIPA, EH A, Apropro, and Other Entities. This shall include metadata showing the true dates created, and dates of any alterations made, the alterations themselves, of any document. This is easily done in Microsoft Word or Pages, or most other word processors.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the production of any metadata other than that regularly maintained by Agate in the ordinary course of its business. Agate further objects to

this request on the grounds that it is vague, overbroad, not limited in time or scope, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 8:

The file, notes, documents, and recordings; the full name, and any current or former contact information of database administrator "Dean" who was terminated by Agate in 2005, under similar circumstances to that of the Plaintiff.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Agate also objects that the phrase, "The file, notes, and recordings," is vague and/or ambiguous.

REQUEST NO. 9:

Any correspondence, email, notes, or recordings of any type, with officials or employees or appointees of any state, federal, or private agency concerning the Plaintiff and will include the names of Agate representatives present, the names of witnesses and other attendees, the dates, times, and places of meetings, telephone conferences, and email exchanges.

This will, in particular, include the meetings with former Governor Kitzhaber in 2013 and 2014. It will also include exchanges and meetings with Anthony Corcoran, "Shelly" from the Oregon Employment Department and anyone directing her; the person(s) requesting a federal I-9 form and the identity of the "authorized agent" requesting it; the Oregon Employment Appeals Board; and conversations between Agate HR and businesses to which the Plaintiff applied to work; the "hearing" with the Oregon Insurance Division concerning the sale, or merger, between Agate and the Centene Corporation.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Agate further objects to the request on the grounds that the phrases, “the meetings with Governor Kitzhaber in 2013 and 2014,” “‘Shelly’ from the Oregon Employment Department,” and “the person(s) requesting a federal I-9 form and the identity of the “authorized agent” requesting it,” are vague and/or ambiguous.

REQUEST NO. 10:

The names of any expert witnesses, private investigators, state actors, or hackers, retained by Agate or cooperating with Agate or their counsel, directed at the Plaintiff and any member of his family, friend, and attorney. This shall include the name of the agent, dates they operated, records, recordings, notes, documents, and details of any intrusions, including email and/or cloud hacks, WIFI “hacks”, IMSI traps, or any other intrusions.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it seeks production of expert testimony in advance of the disclosures required by FRCP 26(a)(2)(D) and objects to Plaintiff’s request for information not in the form of documents.

REQUEST NO. 11:

The hard disk drives from, or the computers, that were used by the Plaintiff the Plaintiff's Windows XP and Window 7 workstations, and his TANK server, covered under a Spoliation Letter issued October 4, 2013 by Arnold Law. If the hard drives are unavailable and a backup was made of that, that Plaintiff demands that AND affidavits from Defendant's executives and network administrators that the contents have not been altered,

deleted, or in any other manner disturbed since, and including, August 16, 2013.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Agate objects to the production of entire hard drives and/or workstations in lieu of responsive documents contained therein. Agate further objects to any demand by Plaintiff that Agate create affidavits in response to his requests.

REQUEST NO. 12:

Telephone, recordings, documents, notes, and emails between Nanette Woods, Patrice Korjenek, Terry Coplin between August 19, 2013 and September 27, 2017. For August 19, 2017, the time the Plaintiff's internet access was requested cut, the actual time it was cut, to whom this was directed and the names of any Agate executives who were informed of or were involved in cutting access, records of telephone calls between Nanette Woods and Patrice Korjenek, Terry Coplin, and any other executive board members, employee, or agent of Agate or any of its subsidiaries.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Agate further objects to Plaintiff's request for information not in the form of documents.

REQUEST NO. 13:

Any documents, emails, informing Agate lobbyists about the Plaintiff's actions with Agate. Agate will, also, provide the names of all lobbyists retained by them, their function.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that the phrase “Agate lobbyists” is vague and/or ambiguous. Agate further objects to Plaintiff’s request for information not in the form of documents. Agate further objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 14:

Medical records accessed by Agate, pertaining to the Plaintiff, including who accessed them, the dates, and emails concerning that, including emails to attorney's, other executives, and outside agents about those records.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it seeks documents already in Plaintiff’s possession, custody, or control. Agate further objects to Plaintiff’s request for information not in the form of documents. Agate further objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 15:

All recordings, documents, drafts, notes, concerning Agate's “investigation” of the Plaintiff when he was placed on administrative leave. This will include a list of the attendees and dates, at each interview.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to this request to the extent it seeks documents

protected by the attorney-client privilege or work product doctrine. Agate further objects to Plaintiff's request for information not in the form of documents.

REQUEST NO. 16:

Documents, including bank statements, receipts, of the true amount paid to any "shareholder" in the sale or merger of Agate, to include any and all subsidiaries, to/with the Centene Corporation. This will, also, include any sale or exchange of "shares" between shareholders between 01/01/2013 up until the present.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 17:

Any documents, on any server, or other store, pertaining to the Plaintiff and his complaints of unlawful activities by Agate. This is to include "Hot Spotter Reports", the Medical Dashboard, records of double billing, especially those stored by the Plaintiff, and any documents, emails, notes, or recordings discussing these.

RESPONSE:

Agate objects to the request on the grounds that it is untimely as stated in the Initial Objection stated above. Agate further objects to the request on the grounds that it is overbroad, unduly burdensome, vague and/or ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence.

DATED: December 7, 2017.

STOEL RIVES LLP

/s/ Stephen H. Galloway

REILLEY D. KEATING, OSB No. 073762
reilley.keating@stoel.com
STEPHEN H. GALLOWAY, OSB No.
093602
stephen.galloway@stoel.com
Telephone: 503.224.3380

Attorneys for Defendant Agate Resources

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT’S RESPONSE TO PLAINTIFF’S REQUEST FOR DOCUMENTS** on the following named person(s) on the date indicated below by:

- mailing with postage prepaid
- overnight delivery
- Email
- notice of electronic filing using the Cm/ECF system

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Michael T. Brooks
32713 Vintage Way
Coburg, OR 97408
Tel: 541-556-6130
Email: mibrooks@mac.com

Plaintiff Pro Se

DATED: December 7, 2017.

STOEL RIVES LLP

/s/ Stephen H. Galloway
STEPHEN H. GALLOWAY, OSB No. 093602
stephen.galloway@stoel.com
Telephone: 503.224.3380

Of Attorneys for Defendant Agate Resources