APPENDIX TABLE OF CONTENTS

APPENDIX A

United States Court of Appeals
For the First Circuit

No. 22-1066

DORA L. BONNER,

Plaintiff, Appellant,

v.

TRIPLE S MANAGEMENT CORPORATION,
TRIPLE-S VIDA, INC.,

Defendants, Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Bruce J. McGivern, U.S. Magistrate Judge]

Before

Montecalvo and Lipez, Circuit Judges.
Burroughs,* District Judge.

Monica A. Santiago Vazquez and Dora L. Bonner for appellant.

Maria D. Trelles-Hernandez, with whom Jorge I. Peirats, Julian R. Rodriguez-Munoz, and Pietrantoni Mendez & Alvarez LLC were on brief, for appellees.

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* Of the District of Massachusetts, sitting by designation.

May 19, 2023

Burroughs, District Judge. This appeal follows a grant of summary judgment by the district court against Appellant Dora L. Bonner and in favor of Appellees Triple-S Management Corporation ("TSM") and Triple-S Vida, Inc. ("TSV") (collectively "Appellees" or "Triple-S").[1] In the underlying action, Bonner brought several claims alleging that Triple-S denied her millions of dollars of proceeds from certain certificates, which TSM allegedly invested, and devised a scheme to defraud her by requiring Bonner to pay management fees that purportedly were necessary to release the proceeds to Bonner. Bonner now challenges the district court's (i) denial of her motion to compel discovery and extend the discovery deadline, as well as the motion for reconsideration of that denial, and (ii) determination that Triple-S was entitled to summary judgment because Triple-S had established as a matter of law that the individuals behind the fraudulent scheme were not related to Triple-S. Finding that the district court did not abuse its discretion in denying Bonner's discovery-related motions and properly considered the evidence at the summary judgment stage, we affirm.

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[1] The parties consented to proceed before a magistrate judge. See 28 U.S.C. § 636(c).

I. Background

A. Facts

TSM is an independent licensee of the Blue Cross Blue Shield Association and a holding company for several insurance companies that offer health, life, and property casualty insurance in Puerto Rico, including TSV, which offers life insurance. In 2013, TSV acquired Atlantic Southern Insurance Company ("ASI"), which sells health, life, and cancer insurance.

In March 2015, Bonner was contacted by an individual who introduced himself as Albert Gamboa Spencer ("Gamboa") and stated that he was an employee at TSV who previously worked at ASI.[2] Gamboa said that he was reaching out to Bonner because someone had attempted to change the beneficiary designation on an investment certificate held by TSV in Bonner's name that was worth more than $8 million.[3]

Following this initial discussion, Bonner undertook to retrieve the funds referenced by Gamboa. To this end, from March 2015 through approximately August 2015, Bonner participated in many phone calls and over one hundred emails with Gamboa and other individuals who claimed to be Triple-S employees, including people who claimed the following names and titles: Feliciano Zelaya, a Financial Manager at TSM;

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[2] Gamboa's initial emails to Bonner following the call identified him as the Head of Legal Department, Country Director for Triple-S. His later emails identified him as a Policy Manager.

[3] Bonner was later informed that there were multiple investment certificates in her name.

Ramon Ruiz, Chief Executive Officer for TSM; Eugenio Cerra, Jr., "chairman" for TSM; and Emilio Aponte, a TSM board member.

In April 2015, Zelaya instructed Bonner to pay a management fee of $65,438.50 to someone named Maria Elena Ramos de Chang for the funds to be released. Bonner alleges that she paid the fee, but that the funds were nonetheless not released to her. The individuals communicating with Bonner repeatedly claimed various issues prevented them from transferring the funds and directed her to pay more management fees to secure their release. Ultimately, Bonner, after never receiving any funds back from TSM or the people who had identified themselves to her as affiliated with TSM, claimed damages of over $1 million.

B. Procedural History

In June 2019, Bonner filed an Amended Complaint against Triple-S in the United States District Court for the District of Puerto Rico alleging fraud, breach of contract, and breach of fiduciary duty under Texas state law, as well as violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*, all predicated on her belief that TSM and its employees refused to transfer investment proceeds to her, and solicited and received funds from her as a prerequisite for the transfer.

On May 14, 2020, Triple-S filed its Answer to the Amended Complaint raising several affirmative defenses, including that: (1) Triple-S does not invest

assets on behalf of individuals; (2) TSM has no record of ever producing a certificate for over $8 million to Bonner; (3) the individuals who contacted Bonner about the certificate were not then and had never been employees or agents of Triple-S; and (4) Bonner was the victim of an advanced-fee scam by individuals impersonating Triple-S's employees and executives in aid of their fraud.

On February 18, 2021, Bonner served Triple-S with her First Set of Interrogatories and a Request for the Production of Documents ("First Set"). The district court granted Triple-S an extension to April 10, 2021, to respond to the First Set. On April 20, 2021, Triple-S noticed its Responses and Objections to Bonner's First Set, in which it objected to a significant portion of the discovery requests as being overly broad, vague, unduly burdensome, irrelevant, and in some instances, seeking privileged or confidential information.

On July 6, 2021, Bonner filed a "Motion to Compel Defendants to Respond to Interrogatories and Request for Production of Documents, and for an Extension of Discovery Deadline" ("Motion to Compel"), in which she asserted that Triple-S's responses to the First Set were untimely and inadequate, and requested at least a 90-day extension of the discovery deadline from the date of the court's hearing on the motion. Triple-S opposed the motion.

On September 9, 2021, while the Motion to Compel was still pending, Triple-S filed a Motion for Summary Judgment, arguing that the uncontested facts showed

that Bonner was never in contact with actual Triple-S employees or executives, but was instead the victim of a fraud perpetrated by third parties unrelated to TSM.

On September 21, 2021, the district court denied most of Bonner's Motion to Compel with prejudice, with the exception of three interrogatories and two requests for production ("RFPs"). As to those, the district court denied the motion without prejudice and gave the parties ten days to exhaust efforts to resolve the dispute.

About two weeks later, on October 6, 2021, Bonner filed a "Motion for Reconsideration of Order Denying Motion to Compel Discovery" ("Motion for Reconsideration"), maintaining that Triple-S had waived its right to object to the interrogatories and RFPs by failing to answer in a timely manner and by not properly objecting. The district court denied Bonner's Motion for Reconsideration on November 17, 2021.

On December 17, 2021, finding no genuine issue of fact as to whether those behind the fraud were actually associated with TSM, the district court granted summary judgment in favor of Triple-S and dismissed the case.

This appeal followed.

II. Discussion

Bonner seeks review of (i) the district court's denial of her Motion to Compel and the Motion for Reconsideration of that denial and (ii) the district court's

grant of summary judgment in favor of Triple-S. We address each in turn.

A. Motion to Compel and Motion for Reconsideration

"The trial court has 'broad discretion in ruling on pretrial management matters,' and we review the court's denial of [the] motion to compel 'for abuse of its considerable discretion.'" Wells Real Estate Inv. Tr. II, Inc. v. Chardon/Hato Rey P'ship, S.E., 615 F.3d 45, 58 (1st Cir. 2010) (quoting Ayala-Gerena v. Bristol Myers-Squibb Co., 95 F.3d 86, 91 (1st Cir. 1996)). "This standard of review is 'not appellant-friendly,' and we 'will intervene in such matters only upon a clear showing of manifest injustice, that is, where the lower court's discovery order was plainly wrong and resulted in substantial prejudice to the aggrieved party.'" Id. (quoting Dennis v. Osram Sylvania, Inc., 549 F.3d 851, 860 (1st Cir. 2008)).

On appeal, with regard to both the district court's denial of her Motion to Compel and Motion for Reconsideration, Bonner largely relies on the argument made in the Motion for Reconsideration, namely that Triple-S waived its right to object to the discovery (1) by providing untimely responses to the First Set after the April 10, 2021 deadline and (2) by failing to properly object to the interrogatories and RFPs.

As to timeliness, "[i]f the responding party fails to make a timely objection, or fails to state the reason for an objection, he may be held to have waived any or all

of his objections." Marx v. Kelly, Hart & Hallman, P.C., 929 F.2d 8, 12 (1st Cir. 1991) (emphasis added). Whether the objections are waived, however, remains in the court's discretion. See id. at 10 ("The choice of sanctions for failing to comply with an order of the district court lies within the sound discretion of the court."). In this case, where Triple-S noticed its responses and objections within 10 days of the deadline to respond and Bonner did not show prejudice from the delay, the district court did not abuse its discretion in finding that Triple-S did not waive its objections based on untimeliness.

The district court also did not abuse its discretion in denying Bonner's Motion to Compel and then the Motion for Reconsideration based on Triple-S's objections of overbreadth and lack of relevance. The Federal Rules of Civil Procedure permit broad discovery, but "discovery, like all matters of procedure, has ultimate and necessary boundaries." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978) (quoting Hickman v. Taylor, 329 U.S. 495, 507 (1947)). Although Bonner was no doubt entitled to discovery related to her claims, "this warranted discovery does not open the floodgates for cascading discovery of every type and kind." Emigrant Residential LLC v. Pinti, 37 F.4th 717, 727 (1st Cir. 2022).

Federal Rule of Civil Procedure 33(a)(2) provides that "[a]n interrogatory may relate to any matter that may be inquired into under [Federal Rule of Civil Procedure] 26(b)." Fed. R. Civ. P. 33(a)(2). Federal Rule of Civil Procedure 34, which regulates RFPs, is similarly

limited in scope by Rule 26(b). See Fed. R. Civ. P. 34(a). Rule 26(b), in turn, provides that:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1).

"[T]o be discoverable, information need only appear to be 'reasonably calculated to lead to the discovery of admissible evidence.'" Remexcel Managerial Consultants, Inc. v. Arlequin, 583 F.3d 45, 52 (1st Cir. 2009) (quoting Cusumano v. Microsoft Corp., 162 F.3d 708, 716 n.5 (1st Cir. 1998)). Bonner relies on the "reasonably calculated" language to argue that her discovery requests were proper.

In reviewing the discovery requests in aid of resolving the Motion to Compel, the district court grouped together Interrogatory 4 and RFPs 2 through 10 by type of information sought and then found that all those requests were overly broad and, in some instances, overly burdensome and not relevant to

Bonner's claims.[4] In short, the court equated many of Bonner's discovery requests to a fishing expedition in contravention of Rule 26(b).

Bonner relies on Hickman v. Taylor, 329 U.S. 495 (1947), to counter the district court's characterization of her requests. The issue in that case was "the extent to which a party may inquire into oral and written statements of witnesses, or other information, secured by an adverse party's counsel in the course of preparation for possible litigation after a claim has arisen." Id. at 497. In Hickman, the Court adopted the attorney work product doctrine, providing for the protection of written materials obtained or prepared by an attorney, unless such information was essential to opposing

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[4] As examples, in RFP 2 and RFP 3, Bonner requested all call logs, call records, and other evidence of communication, and all email and text-based chats, respectively, between Triple-S and its subsidiaries in Costa Rica from March 1 to December 31, 2015. RFP 7 asked for any call records between Triple-S or ASI and the FBI, United States Department of the Treasury, United States Homeland Security, or the Nicaraguan government related to victims of scams for the same period. The court denied Bonner's motion as to the three RFPs finding that Bonner could not request "all communications in all forms without tailoring her request as to content or to the specific parties in the communication."

Similarly, in RFP 5, Bonner asked for the production of evidence of all investments that Triple-S or ASI made for its benefit or on behalf of individual clients from January 1 to December 31, 2015. In RFP 8, she requested any documents related to penalties and fines that were imposed by any government entity on Triple-S or ASI related to wire or ACH transfers during the period of March 1 to December 31, 2015. The district court found that these RFPs sought "sweeping categories of Defendants' financial records" and lacked relevance where Triple-S had certified that neither it nor ASI invest assets on behalf of individuals.

counsel's case and could not be obtained through other means without an undue burden. See id. at 511-12. The work product doctrine is not implicated in this case, and the holding in Hickman has no bearing on the analysis here. Bonner is correct that, in its discussion of the attorney work product doctrine, the Hickman Court acknowledged that "deposition-discovery rules are to be accorded a broad and liberal treatment," but that Court also stressed that "discovery, like all matters of procedure, has ultimate and necessary boundaries." Id. And one of those boundaries is Rule 26(b), which provides limitations "when the inquiry touches upon the irrelevant." Id. at 508.

Moreover, under a 2000 amendment to Rule 26(b)(1), "when an objection arises as to the relevance of discovery" it becomes the job of the court "to determine whether the discovery is relevant to the claims or defenses and, if not, whether good cause exists for authorizing it, so long as it is relevant to the subject matter of the action." In re Subpoena to Witzel, 531 F.3d 113, 118 (1st Cir. 2008) (quoting Fed. R. Civ. P. 26 advisory committee's note to 2000 amendment). That is precisely what the district court did here.

To the extent that Bonner argues that the requests are relevant based on subject matter, she has not provided the good cause required under Rule 26(b). For instance, RFP 6 asks that Triple-S produce all wire transfers and ACH transfers sent from Triple-S and ASI to any account in the United States, any account of the United States Treasury, or any account in Costa Rica for the relevant period. Bonner argues that her

claims involve the same subject matter as the requested materials – that is, wire transfers – but she offers no explanation, and thus no "good cause," for seeking information about such a broad swath of transactions.

Bonner also faults Triple-S for not producing the records it reviewed to certify that there is no reference to Bonner at Triple-S or ASI. But to require Triple-S to produce the documents it identified as unrelated to Bonner's claims in order to prove the negative to her satisfaction would upend Rule 26(b).

Accordingly, Bonner has not shown that the district court abused its discretion in denying her Motion to Compel or her Motion for Reconsideration as to Interrogatory 4 and RFPs 2 through 10 based on overbreadth, burdensomeness, and relevance.

Before the district court, Triple-S in part opposed Bonner's remaining discovery requests – Interrogatories 1, 2, and 3, and RFPs 1 and 11 – on the grounds that Bonner had not met her obligations under Local Rule 26(b) and Federal Rule of Civil Procedure 37(a)(1), which require that the moving party certify that it has made a good faith effort to resolve the discovery dispute before seeking court intervention. Finding that Bonner had not complied with the local or federal meet-and-confer rule prior to filing her motion, the district court denied without prejudice Bonner's Motion to Compel as to those five discovery requests and instructed the parties to meet and confer within ten days to resolve the dispute. Bonner did not file

another motion to compel either after the mandated meet and confer or once the ten days had elapsed.

Given that Bonner did not dispute Triple-S's assertion that she failed to meet her obligations under Local Rule 26(b) and Federal Rule of Civil Procedure 37(a)(1) for Interrogatories 1, 2, and 3, and RFPs 1 and 11, the district court did not abuse its discretion in denying without prejudice Bonner's Motion to Compel as to those interrogatories and RFPs.[5]

B. Motion for Summary Judgment

"When reviewing a grant of summary judgment, we often first consider challenges to the district court's evidentiary rulings, as such rulings define the record on which the summary judgment rests." Livick v. Gillette Co., 524 F.3d 24, 28 (1st Cir. 2008). The district court's evidentiary rulings are reviewed for abuse of discretion. See Vazquez v. Lopez-Rosario, 134 F.3d 28, 33 (1st Cir. 1998) (citing Gen. Elec. Co. v. Joiner, 522 U.S. 136, 141 (1997)). "Under that standard, we will not disturb the district court's ruling unless the record demonstrates an error of law or a serious lapse of judgment on the part of the court." Livick, 524 F.3d at 28. "Once we determine what evidence can properly be

[5] Likewise, while Bonner's Motion for Reconsideration contends that at the June 4, 2021 meet and confer she "discussed the lack of documents produced," it too fails to assert that she discussed her specific objections to Triple-S's responses to Interrogatories 1, 2, and 3, and RFPs 1 and 11. Accordingly, the district court also did not abuse its discretion in denying her motion for reconsideration as to those requests.

considered, we review the district court's decision to grant summary judgment de novo." Vazquez, 134 F.3d at 33.

Bonner contends that the affidavits submitted by Triple-S in support of its motion for summary judgment do not meet the requirements of Federal Rule of Civil Procedure 56(c) (4) and that the district court improperly discredited her factual evidence.

a. Triple-S's Affidavits

Rule 56(c) (4)provides that "[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c) (4). "[T]he requisite personal knowledge must concern facts as opposed to conclusions, assumptions, or surmise." Perez v. Volvo Car Corp., 247 F.3d 303, 316 (1st Cir. 2001).

"As we've explained before, district courts must apply Rule 56(c)(4) 'to each segment of an affidavit, not to the affidavit as a whole,' and approach the declaration with 'a scalpel, not a butcher's knife,' disregarding only those portions that are inadmissible and crediting the remaining statements." Rodriguez-Rivera v. Allscripts Healthcare Sols., Inc., 43 F.4th 150, 170 (1st Cir. 2022) (quoting Perez, 247 F.3d at 315).

Consistent with this instruction, the district court recognized that "Bonner does correctly point out that

some of the purported facts advanced by Triple-S are presented in a wholly conclusory [manner] or are not fully supported by the evidence on hand" and then "excised" those supposed facts.[6]

Reviewing the affidavits at issue, we conclude that the district court did not abuse its discretion in crediting portions of the affidavits that were properly based on the affiants' personal knowledge. For instance, Iraida T. Ojeda-Castro, Vice President of Human Resources with TSM, swore under oath that she had reviewed the employment records from Triple-S and ASI and that there was no record of Cerra, Zelaya, Gamboa, Ramos de Chang, Aponte, or the other individuals identified by Bonner as having ever worked at TSM.

Bonner contends that to accept Ojeda-Castro's attestation as to the employment records would be inconsistent with our reasoning in Hernandez-Santiago v. Ecolab, Inc., 397 F.3d 30 (1st Cir. 2005). That case, however, concerned an affidavit that was not based on personal knowledge but instead attested only that a review of the relevant records had taken place, albeit not by the affiant. Id. at 35. This is not the case here

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[6] To the extent that Bonner now complains about portions of the affidavits that the district court did not rely on, we see no need to reach the issue as its resolution has no bearing on the outcome here or below. As we explain infra, if admissible, the affidavits of Ojeda-Castro and Ruiz-Comas along with Gilberto R. Negron-Rivera's December 2015 affidavit provide a sufficient basis to grant summary judgment to Triple-S. As such, we focus our discussion on these three affidavits and see no reason to pass on the admissibility of the other affidavits submitted with Triple-S's motion for summary judgment.

where Ojeda-Castro, the affiant, had personally reviewed the employment records. Bonner's contention that Ojeda-Castro does not sufficiently describe the documents she reviewed is unpersuasive where Ojeda-Castro attested that she "reviewed the employment records" for TSM, its subsidiaries, and ASI, and there is "no record or indication" that such individuals "ever" worked there.

Ojeda-Castro further attested that the position identified in Gamboa's initial emails, "Head of Legal, Country Director," does not exist at TSM, ASI, or any of their subsidiaries. According to the affidavit of Gilberto R. Negron-Rivera, an attorney with TSM, as of April 2015, the Vice President of Finance and CFO for TSM was Amilcar L. Jordan-Perez, not Zelaya, and in May 2015, TSM's Chairman of the Board was Luis A. Clavell-Rodriguez, M.D., not Cerra.

Although an individual named Ramon M. Ruiz-Comas served as President and Chief Executive Officer of TSM from May 2002 until December 2015, Ruiz-Comas stated under oath that he has never met, spoken, emailed, or corresponded in any way with Bonner or instructed anyone else to prepare documents or make transfers for her, nor had he ever met, spoken, or communicated with anyone named "Feliciano Zelaya," or instructed anyone by that name or anyone else to prepare a certificate of investment for Bonner. Ruiz-Comas also swore under oath that the email address used by the individual who introduced himself to Bonner as Ramon Ruiz was not Ruiz-Comas's email address at that time and included a domain name that was not

used by TSM.[7] Ruiz-Comas also attested that the "Ramon Ruiz" signature in the evidence put forth by Bonner is not actually his handwriting and that it is his "habit and practice" to sign his full last name, "Ruiz-Comas," and not simply "Ruiz."

Finally, Ruiz-Comas attested that TSM does not invest funds on behalf of individuals and did not have a corporate account or corporate credit with the bank used by the individual identifying himself as Ruiz. See Jefferson Constr. Co. v. United States ex rel. Bacon, 283 F.2d 265, 267 (1st Cir. 1960) ("We might be prepared to say that the affidavit of a president of a corporation that the books and records of the company show

[7] Bonner asserts that the district court improperly treated a 2015 World Intellectual Property Organization ("WIPO") Arbitration and Mediation Center proceeding as preclusive. In that proceeding, TSM filed a complaint against the owner of the domain name used by the individuals who communicated with Bonner, and an arbitrator ordered that the disputed domain name be transferred to TSM. The district court, however, did not rely upon that proceeding or the arbitrator's findings to resolve a factual dispute in this case, but merely took judicial notice of that proceeding, which is permissible. See Kowalski v. Gagne, 914 F.2d 299, 305 (1st Cir. 1990) ("It is well-accepted that federal courts may take judicial notice of proceedings in other courts if those proceedings have relevance to the matters at hand."). Bonner remained free to create a factual dispute by submitting evidence to suggest that Triple-S had control of the domain name before the arbitration proceeding. The issue for Bonner is not that the arbitration decision was given preclusive effect, but rather her lack of admissible evidence to rebut Triple-S's showing that it did not have control over the domain name during the relevant time period.

certain facts to be so satisfies [the admissibility and personal-knowledge] requirements.").

Bonner quotes Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962), for the proposition that "[t]rial by affidavit is no substitute for trial by jury." However, Poller involved a "complex antitrust litigation where motive and intent play leading roles," and the Court in that case could not say on that record that "it is quite clear what the truth is" as there was "no conclusive evidence supporting the respondents' theory." Id. at 472-73. Such is not the case here, where the affidavits establish that the individuals Bonner spoke with did not work at Triple-S, that no one from Triple-S spoke with Bonner and, finally, that Triple-S did not have a contract with or do business with Bonner.

We thus conclude that the district court did not abuse its discretion in parsing the affidavits and accepting those statements in the affidavits that were based on personal knowledge.

b. Bonner's Evidence

Bonner further contends that the district court improperly discounted her factual evidence, including transcribed phone conversations and email correspondence with appended documents, put forth by her to rebut Triple-S's affiants' statements and establish that she spoke with Triple-S employees.

Relying on Greenburg v. Puerto Rico Maritime Shipping Authority, 835 F.2d 932 (1st Cir. 1987), Bonner argues that the district court improperly weighed the parties' evidence rather than resolving all conflicts in her favor. But Bonner's reliance on Greenburg is misplaced. In Greenburg, we affirmed the uncontroversial rule that at summary judgment there is "no room for credibility determinations, no room for the measured weighing of conflicting evidence such as the trial process entails, no room for the judge to superimpose his own ideas of probability and likelihood (no matter how reasonable those ideas may be) upon the carapace of the cold record." Id. at 936.

The question here, however, is not whether the district court weighed evidence, but rather whether it improperly failed to consider Bonner's evidence. "Evidence that is inadmissible at trial, such as inadmissible hearsay, may not be considered on summary judgment." Vazquez, 134 F.3d at 33 (citing Fed. R. Civ. P. 56(e) and FDIC v. Roldan Fonseca, 795 F.2d 1102, 1110 (1st Cir. 1986)). Federal Rule of Evidence 801(c) defines "hearsay" as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c).

As proof that the individuals Bonner communicated with were employed at Triple-S, Bonner proffered emails, including those sent to her by the individuals who identified themselves as Zelaya, Ruiz, and Gamboa, as well as transcribed conversations

between Bonner and various individuals who identified themselves as Triple-S employees. Such evidence constitutes hearsay and would therefore only be admissible under an exception to the hearsay rule.[8]

Under the Federal Rules of Evidence, admissions by a party-opponent are not hearsay. See Fed. R. Evid. 801(d)(2). "For a statement to be an admission under Rule 801(d)(2), the statement must be made by a party, or by a party's agent or servant within the scope of the agency or employment." Vazquez, 134 F.3d at 34. Bonner, however, did not properly authenticate the statements under the Rules of Evidence or establish that any of the statements were made or adopted by actual Triple-S employees or associates. Indeed, the district court detailed several ways by which Bonner could have, but did not, authenticate the statements, including by providing evidence that the calls were made to the number assigned to a particular person or business or by authenticating Ruiz's voice. Despite this guidance, Bonner failed to credibly cite an applicable exception to the hearsay rule that would have made the transcriptions, emails, and other documents at issue admissible.

Thus, we conclude that the district court did not abuse its discretion in determining that a majority of

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[8] The case Bonner cites – United States v. Doyon, 194 F.3d 207, 212 (1st Cir. 1999) – to assert that the court improperly considered the admissibility of the transcribed conversations is inapposite where Doyon considered whether the recording device was in proper working order and not whether the statements made in the conversation were true.

the evidence offered by Bonner was inadmissible hearsay and therefore could not be relied upon to establish a material factual dispute.

c. Summary Judgment

"A court may grant summary judgment only if the record, construed in the light most amiable to the nonmovant, presents no 'genuine issue as to any material fact and reflects the movant's entitlement to judgment as a matter of law.'" Irobe v. U.S. Dep't of Agric., 890 F.3d 371, 377 (1st Cir. 2018) (first quoting McKenney v. Mangino, 873 F.3d 75, 80 (1st Cir. 2017) and then citing Fed. R. Civ. P. 56(a)). "A fact is 'material' if it 'has the capacity to change the outcome of the [factfinder's] determination.'" Id. (alteration in original) (quoting Perez v. Lorraine Enters., 769 F.3d 23, 29 (1st Cir. 2014)). "An issue is 'genuine' if the evidence would enable a reasonable factfinder to decide the issue in favor of either party." Id. (citing Perez, 769 F.3d at 29).

Bonner mistakenly asserts that there is a material factual dispute because "Triple-S says it is not Triple-S employees" behind the fraud and "Bonner says, yes it is." As discussed in detail above, Triple-S provided affidavits, based on personal knowledge, that supported its position that neither Triple-S nor its employees were involved in a scheme to defraud Bonner. On the other hand, Bonner did not provide admissible evidence in support of her allegation that actual Triple-S employees were the perpetrators.

We sympathize with Bonner, but her belief that Triple-S and its employees received her wires or are holding money that is rightfully hers, without more, does not create a material factual dispute sufficient to defeat summary judgment. "Although we draw all reasonable inferences in the nonmovant's favor, we will not 'draw unreasonable inferences or credit bald assertions. . . .'" Lopez-Hernandez v. Terumo P.R. LLC, 64 F.4th 22, 28 (1st Cir. 2023) (quoting Caban Hernandez v. Philip Morris USA, Inc., 486 F.3d 1, 8 (1st Cir. 2007)). Accordingly, on the record before us, we detect no genuine dispute of material fact, and the district court therefore properly granted summary judgment in favor of Triple-S.[9]

III. Conclusion

For the reasons given, we conclude that the district court did not abuse its discretion in denying Bonner's Motion to Compel and Motion for Reconsideration. And, as noted above, the court did not err in granting summary judgment for appellees.

Affirmed.

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[9] Triple-S's request that we sanction Bonner under Rule 38 of the Federal Rules of Appellate Procedure is denied without prejudice. Rule 38 requires that a party make such a request in a separately filed motion. Fed. R. App. P. 38; see also Prouty v. Thippanna, No. 21-1724, 2022 WL 19037643, at *1 (1st Cir. Dec. 15, 2022).

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 22-1066

DORA L. BONNER,

Plaintiff, Appellant,

v.

TRIPLE S MANAGEMENT CORPORATION,
TRIPLE-S VIDA, INC.,

Defendants, Appellees.

JUDGMENT

Entered: May 19, 2023

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's denials of Dora L. Bonner's motions to compel and for reconsideration of that denial and its grant of summary judgment in favor of Triple S Management Corporation and Triple-S Vida, Inc. are affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: Monica Amelia Santiago Vazquez, Dora Bonner, Maria Dolores Trelles-Hernandez, Diego Murgia-Diaz, Julian R. Rodriguez-Munoz

APPENDIX C

United States Court of Appeals
For the First Circuit

No. 22-1066

DORA L. BONNER,

Plaintiff-Appellant,

v.

TRIPLE-S VIDA, INC.;
TRIPLE-S MANAGEMENT CORPORATION,

Defendants-Appellees.

Before

Barron, Chief Judge,
Lipez, Kayatta, Gelpi,* Montecalvo, Circuit Judges,
and Burroughs,** District Judge.

ORDER OF COURT

Entered: June 23, 2023

The petition for panel rehearing is denied.

As it appears that there may be no quorum of circuit judges in regular active service who are not recused who may vote on appellant's request for rehearing en banc, the request for rehearing en banc is

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* Judge Gelpi is recused and did not participate in the consideration of this matter.

** Of the District of Massachusetts, sitting by designation.

also denied. See 28 U.S.C. § 46(d); 1st Cir. R. 35.0(a)(1). In any event, a majority of judges in regular active service do not favor en banc review.

By the Court:

Maria R. Hamilton, Clerk

cc:
Monica Amelia Santiago Vazquez, Dora Bonner, Maria D. Trelles-Hemandez, Diego MurgiaDiaz, Julian R. Rodriguez-Munoz

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

DORA L. BONNER, Plaintiff, v. **TRIPLE-S MANAGEMENT CORPORATION** and **TRIPLE-S VIDA INC.**, Defendants.	Civil No. 19-1228 (BJM) (Filed Dec. 17, 2021)

OPINION & ORDER

Dora L. Bonner ("Bonner") brought this action against insurance companies Triple-S Management Corporation ("TSM") and Triple-S Vida Inc. ("TSV") (collectively "Triple-S"), alleging that Triple-S committed fraud, breach of contract, and breach of fiduciary duty under Texas state law, and civil violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 *et seq.* Docket Nos. ("Dkts.") 5, 17. Triple-S has moved for summary judgment, Dkt. 55, supplementing the motion with a statement of purportedly uncontested facts. Dkt. 54. Bonner has opposed the motion, Dkt. 69, and submitted a memorandum in opposition to Triple-S's statement of uncontested facts. Dkt. 70. Triple-S has also submitted a reply in response to Bonner's opposition. Dkt. 76. This case is before me by consent of the parties. Dkts. 39, 40,

44. For the reasons set forth below, Triple-S's motion for summary judgment is **GRANTED**.

APPLICABLE LEGAL STANDARDS

Summary judgment is appropriate when the movant shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. § 56(a). A dispute is "genuine" only if it "is one that could be resolved in favor of either party." *Calero-Cerezo v. U.S. Dep't of Justice*, 355 F.3d 6, 19 (1st Cir. 2004). A fact is "material" only if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party has the initial burden of "informing the district court of the basis for its motion, and identifying those portions" of the record "which it believes demonstrate the absence" of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The moving party may meet its burden by either producing evidence disproving an element of the nonmoving party's case or by pointing out that there is an absence of evidence to support the nonmoving party's case. *See id.* at 325. Once the moving party shows the absence of any disputed material fact, the burden shifts to the non-moving party to place at least one material fact into dispute. *Burgos Martinez v. City of Worcester*, 502 F. Supp. 3d 606, 614 (D. Mass. 2020).

The court does not act as trier of fact when reviewing the parties' submissions and so cannot

"superimpose [its] own ideas of probability and likelihood (no matter how reasonable those ideas may be) upon" conflicting evidence. *Greenburg v. P.R. Mar. Shipping Auth.*, 835 F.2d 932, 936 (1st Cir. 1987). Rather, the court must "view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor." *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990). And the court may not grant summary judgment "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

Designed to "relieve the district court of any responsibility to ferret through the record to discern whether any material fact is genuinely in dispute," Local Rule 56 requires a party moving for summary judgment to accompany its motion with a brief statement of facts, set forth in numbered paragraphs and supported by citations to the record, which the movant contends are uncontested and material. *CMI Capital Market Inv. v. Gonzalez-Toro*, 520 F.3d 58, 62 (1st Cir. 2008); D.P.R. L. Civ. R. 56(b), (e). The opposing party must admit, deny, or qualify those facts, with record support, paragraph by paragraph. D.P.R. L. Civ. R. 56(c), (e). The opposing party may also present, in a separate section, additional facts, set forth in separate numbered paragraphs. *Id.* 56(c). While the "district court may forgive a party's violation of a local rule," litigants ignore the local rule "at their peril." *Mariani-Colón v. Dep't of Homeland Sec. ex rel. Chertoff*, 511 F.3d 216, 219 (1st Cir. 2007).

Bonner raises fraud, breach of contract, breach of fiduciary duty, and RICO claims, arguing that Texas state law applies to her claims. In order to successfully bring a fraud claim under Texas state law, a plaintiff must show that "(1) [the defendant] made a material representation that was false; (2) it knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth; (3) it intended to induce [the plaintiff] to act upon the representation; and (4) [the plaintiff] actually and justifiably relied upon the representation and thereby suffered injury." *Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 577 (Tex. 2001). "The elements of a breach of contract claim are: (1) a valid contract; (2) performance or tendered performance; (3) breach of the contract; and (4) damages resulting from the breach." *Myan Mgmt. Grp., L.L.C. v. Adam Sparks Fam. Revocable Tr.*, 292 S.W.3d 750, 754 (Tex. App. 2009). "Generally, the elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary duty, (2) breach of the duty, (3) causation, and (4) damages." *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017). A RICO violation "requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985) (footnote omitted).

FACTUAL FINDINGS

The following facts are taken from Triple-S's "Statement of Uncontested Facts," Dkt. 54, and

accompanying exhibits and affidavits submitted by Triple-S; Bonner's amended complaint, Dkt. 17, and accompanying exhibits; and Bonner's memorandum in opposition to Triple-S's Statement of Uncontested Facts, Dkt. 70, and accompanying exhibits at Dkt. 69. I have disregarded statements of fact, denials, and qualifications that were not supported by a record citation. *See Davila v. Potter*, 550 F.Supp.2d 234, 239 (D.P.R. 2007). Where parties' record citation does not support or exaggerates the corresponding statement of fact, I have disregarded it. I have also disregarded legal conclusions presented as statements of fact.

Bonner purports to contest nearly all of the supposed facts that Triple-S claims are supported by the affidavits, but in practice Bonner almost exclusively contests the facts via references to phone and email conversations she had with individuals claiming to be Triple-S employees or associates. All of the conversations cited by Bonner are fully consistent with the facts and case theory put forth by Triple-S and do not actually serve to contest the facts alleged by Triple-S. However, in certain instances Bonner does correctly point out that some of the purported facts advanced by Triple-S are presented in a wholly conclusory matter or are not fully supported by the evidence on hand. Those supposed "facts" have been excised from the following summary. I have also made reference to allegations raised by Bonner in her amended complaint while generally drawing all reasonable inferences in her favor.

TSM is an independent licensee of the Blue Cross Blue Shield Association and a holding company for

several insurance companies that offer health, life, and property casualty insurance in Puerto Rico, including TSV, a company that offers life insurance. Dkt. 54-1 at ¶ 2. Neither TSM nor its subsidiaries invest assets on behalf of individuals. *Id.* at ¶ 3; Dkt. 54-6 at 8. TSV does assist individuals with making deposits into an individual retirement account for retirement purposes. Dkt. 54-1 at ¶ 3. However, TSV does not offer other investment services to individuals seeking financial guidance, such as investments of millions of dollars. *Id.* Management of growth funds and individual investments is outside the scope of Triple-S's business practices, and TSM does not have a "Triple-S Growth Fund." *Id.* at ¶¶ 9, 11.

In 2013, TSV acquired Atlantic Southern Insurance Company ("ASI"). *Id.* at ¶ 4. ASI sells life and cancer insurance to individuals as well as individual and group health insurance. *Id.* Like TSM and its subsidiaries, Atlantic Southern does not offer investment and financial services to individuals seeking to invest large sums of money. *Id.* TSV is the direct parent company for ASI. *Id.* ASI has an office in Costa Rica, but it does not have a Nicaragua location. *Id.*

The issues before the court first arose in March 2015, when Bonner was contacted by an individual claiming to be associated with Triple-S. During a conversation on March 11, 2015 between Bonner and a person identifying himself as Albert Gamboa Spencer ("Gamboa"), Gamboa said that he was employed by TSV as a lawyer and that TSV had purchased the company he formerly worked for, ASI. Dkt. 17 at ¶ 7, 14.

Bonner claims to have previously sent money to ASI. *Id.* at ¶ 11. Gamboa claimed that he had called Bonner because someone had attempted to change the beneficiary on a certificate held by TSV with Bonner's personal identification attached to it. *Id.* at ¶ 8. Gamboa told Bonner the account number and the amount of the certificate. *Id.* He also told her that the money was being held in Costa Rica. *Id.* Gamboa then told Bonner that he was aware that she had already sent money to ASI and that he would work with her to try to release her funds. *Id.* at ¶¶ 11, 23. Bonner was eventually told that she actually had two certificates in her name and not just one. *Id.* at ¶ 15. The funds were allegedly in TSM's "Triple-S Growth Fund." Dkt. 17-1.

In 2015, Carmen M. Ayala-León ("Ayala") was employed by TSV as the Executive Assistant to the Vice President of Legal Affairs. Dkt. 54-7 at ¶ 1. On March 10, 2015, Ayala received an email from Bonner, inquiring about a transaction that, according to Bonner, had been "initiated out of ASI-Nicaragua." *Id.* at ¶ 2. Ayala replied to the email that same day, telling Bonner that the company would investigate her request and then contact her. *Id.* On March 24, 2015, Ayala attempted to respond to Bonner and inform her that the company was not able to find anything in its systems related to the information she had provided. *Id.* at ¶ 3. However, Bonner alleges that Ayala responded to the wrong email address. Dkt. 70 at 23. Ayala did not receive any further communications from Bonner. Dkt. 54-7 at ¶ 4.

From March 11, 2015 until sometime in August 2015, Bonner engaged in phone calls and emails with

individuals claiming to be associated with Triple-S and stating they were working in Costa Rica, Nicaragua and Puerto Rico. Dkt. 17 at ¶ 13. These individuals included a person identifying himself as Feliciano Zelaya ("Zelaya"), purportedly the Financial Manager and Vice President of Finance for TSM; a person claiming to be Eugenio Cerra, Jr. ("Cerra"), the supposed "chairman" for TSM; a person claiming to be Emilio Aponte ("Aponte"), allegedly a board member for TSM; and a person saying he was Ramon Ruiz, the Chief Executive Officer of TSM. *Id.* at ¶¶ 15, 17-20, 98. In all, Bonner participated in over 70 phone calls and over 150 emails between her and these individuals. *Id.* at ¶¶ 20-21.

In April 2015, Zelaya told Bonner that she would need to pay a "management fee" in order to release the certificates. *Id.* at ¶ 30. To satisfy this payment, Bonner was told to transfer $65,438.50 to a Maria Elena Ramos de Chang by wire, which Bonner did on April 20, 2015. *Id.* at ¶¶ 32-33. On April 21, 2015, Bonner was told that she would receive one of the certificates at her local bank within the hour, but she did not. *Id.* at ¶ 35. Zelaya subsequently told Bonner that there was an issue with a form and that she would have to pay an additional management fee in order to cash out and release the certificates. *Id.* at ¶ 37. This time Zelaya told Bonner that she would need to pay $68,710.43. *Id.* at ¶ 38. However, on May 6, 2015, Cerra and the individual claiming to be Ruiz contacted Bonner and told her that the certificates had been blocked from being deposited with her bank yet again; they also told her that she would need to pay yet another

management fee. *Id.* at ¶ 42. Cerra and Zelaya then offered Bonner the chance to purchase a third certificate for $134,000.00, supposedly as a form of reinvestment to recoup the lost management fees. *Id.* at ¶ 43.

Cerra and Zelaya subsequently contacted Bonner again and discussed potential options for her to regain her lost money. *Id.* at ¶ 44. Zelaya eventually claimed that they were running out of options unless Bonner paid them a fee yet again; Bonner replied that this was not an option for her. *Id.* Zelaya subsequently called again and claimed that if Bonner did not pay, she could lose her funds to the FBI; he told her that she needed to come up with at least $50,000.00. *Id.* at ¶ 45. Bonner replied that the most she could pay was $10,000.00. *Id.* The individual claiming to be Ruiz then called, saying that he would attempt to transfer the certificates again; he also said that the FBI was requesting that the certificates be turned over to them, but that the FBI had not provided him with a subpoena yet and that he had refused as a result. *Id.* at ¶¶ 46-47. Soon afterwards, Cerra and the person claiming to be Ruiz then called saying that the money had been sent back to TSM and asking yet again for more money with which to pay management fees. *Id.* at ¶ 48.

On July 1, 2015, Bonner received a call from Aponte, who said that he had been instructed to help get the money out of TSM and to Bonner. *Id.* at ¶ 50. Aponte claimed that the strategy he would use to do so cost $13,000.00, a fee that would allow him to prepare the necessary documents. *Id.* at ¶ 51. Bonner began to pay the $13,000.00 in installments, while Aponte

called her back at regular intervals to update her on his supposed progress and ask her for the balance of the $13,000.00. *Id.* at ¶¶ 52-58. Bonner eventually paid the full balance of the $13,000.00. *Id.* at ¶¶ 53-54, 80. In all, Bonner claims to have paid out over $1,000,000.00 in supposed "management fees."[1] *Id.* at ¶ 81. However, nothing was ever transferred to her in return.

Employment records from TSM, TSM's subsidiaries, and ASI do not indicate that individuals identifying as Eugenio Cerra, Jr., Feliciano Zelaya, Albert G. Spencer, Ms. Ramos de Chang, or Emilio Aponte have ever worked for TSM, TSV, ASI, or any of their subsidiaries. Dkt. 54-5 at ¶ 2. As of April 2015, the Vice President of Finance and CFO for TSM was Amílcar L. Jordán-Pérez, not Zelaya. Dkt. 54-1 at ¶ 6. In May 2015, TSM's Chairmen of the Board was Luis A. Clavell-Rodriguez, M.D., not Cerra. TSM uses titles such as "General Counsel," "Acting General Counsel," "Associate General Counsel," and "Attorney" for its in-house attorney positions. Dkt. 54-5 at ¶ 3. As such, there is no such position as "Head of Legal, Country Director" at TSM, TSV, ASI, or any Triple-S companies or subsidiaries, despite Gamboa identifying himself to Bonner as the "Head of Legal Department, Country Director." *Id.*; Dkt. 17 at ¶ 89.

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[1] It is unclear how Bonner arrived at this sum. I suspect that she is actually claiming that she spent over $100,000.00 in supposed management fees, not $1,000,000.00, but her amended complaint does not clearly explain precisely how much money she ultimately sent to the individuals that she was in contact with.

A Ramon M. Ruiz-Comas ("Ruiz") did serve as President and Chief Executive Officer of TSM from May 2002 to December 31, 2015. Dkt. 54-6 at ¶ 2. However, Ruiz has stated under oath that he has never met or spoken, either by telephone or in person, with Bonner. *Id.* at ¶ 3. Ruiz also swears that the email address shown in the interactions between Bonner and the individual claiming to be Ramon Ruiz, "r.ruiz@asisss.net," was not his email address at that time. *Id.* at ¶ 6. He avers that he has never emailed Bonner, corresponded with her in any way, read any letters or documents from her, written her any letters, or sent her any documents. *Id.* at ¶ 3. He also claims that he has never instructed anyone else to prepare documents for Bonner or attempted to make any transfers on Bonner's behalf. *Id.* at ¶¶ 3, 7. In fact, Ruiz says that he had never heard of Bonner until Bonner first filed suit against TSM. *Id.* at ¶ 3. Ruiz also specifically swears that he has never met, spoken to, or communicated with anyone named Feliciano Zelaya, and that he did not instruct Feliciano Zelaya or anyone else to prepare a certificate of investment for Bonner. *Id.* at ¶ 5. Ruiz claims that his purported signature in the evidence provided by Bonner is not actually in his handwriting. *Id.* at ¶ 4. He also states that it is his habit and practice when signing his name to sign his full last name, "Ruiz-Comas," and not just "Ruiz." *Id.*

TSM does not bank with Bank of America, does not have a corporate account there, and does not have a corporate credit card with Bank of America. Dkt. 54-1 at ¶ 12; Dkt. 54-6 at ¶ 8. TSM does not bank with Wells

Fargo either. Dkt. 54-1 at ¶ 17. TSM has no record of the Wells Fargo account number 3173354402 or routing number 121-000-248. *Id.* TSM has no record of ever producing a certificate for over $8 million to a Dora Bonner. *Id.* at ¶ 15. TSM also has no record of holding any certificates labeled "2M1505135" or "TSM-89563 Dora Bonner." *Id.*

Regarding the phone number and address shown on the wire transfer documents purportedly given to Bonner by TSM, *see* Dkt. 17-1, the phone number is not a valid TSM company phone number, and TSM is located in San Juan, not Guaynabo. *Id.* at ¶ 12; Dkt. 54-6 at ¶ 8. Furthermore, there is no such address as "1441 Franklin Delano Roosevelt" in Guaynabo despite the documents provided by Bonner listing that address. Dkt. 54-1 at ¶ 12. It is also TSM's usual business practice to require two signature authorizations for wire transfers despite the attempted wire transfers to Bonner not including two such signatures. *Id.* at ¶ 13; Dkt. 17-1; Dkt. 54-6 at ¶ 8.

The individuals who emailed Bonner used the email domain "asi-sss.net." *See* Dkt. 17-1. The domain "asi-sss.net" was not a domain used by TSM and its subsidiaries in 2015. Dkt. 54-1 at ¶ 7; Dkt. 54-6 at ¶ 6. TSM employees used the "ssspr.com" domain. Dkt. 54-1 at ¶ 7. The following email addresses are not valid TSM addresses: (1) f.zelaya@asi-sss.net; (2) albert.gspencer@asi-sss.net; and (3) r.ruiz@asi-sss.net. *Id.*; Dkt. 54-6 at ¶ 6. These were the email addresses used by Zelaya, Gamboa, and the person claiming to be Ruiz. *See* Dkt. 17-1. On January 5, 2016, TSM filed a

complaint against Who is Privacy Protection Services, Inc. and Nathan Stringer, the then-owner of the @asi-sss.net domain name, in the World Intellectual Property Organization ("WIPO") Arbitration and Mediation Center. Dkt. 54-8. TSM requested that the @asi-sss.net domain be transferred to TSM because the domain name evoked TSM's "Triple-S" name as well as TSV subsidiary Atlantic Southern Insurance; TSM also claimed that the domain name had been registered and was being used in bad faith. *Id.* An arbitrator determined that the respondents "intentionally registered and used the Disputed Domain Name to create confusion regarding the source of sponsorship, affiliation, or endorsement of the website linked to the Disputed Domain Name, and to use the goodwill and reputation generated by the Complainant to carry out fraudulent transactions." Dkt. 54-9. Accordingly, the arbitrator ordered that the disputed domain name (asi-sss.net) be transferred to TSM. *Id.*

DISCUSSION

There is no genuine dispute as to any material fact presented above. It is clear that an injustice has happened and that Bonner has suffered as a result. However, it is not clear that Triple-S was involved in perpetrating this injustice. The story that Triple-S tells is almost entirely consistent with the story that Bonner tells. The only arguable source of significant disagreement is not a factual one, or at least it is not over facts that have been established in the record. Rather, it is that Bonner is convinced that the individuals she

talked to were who they said they were – that is, that the individuals worked for Triple-S or otherwise had some connection with Triple-S. Triple-S denies this. Unfortunately for Bonner, she offers no evidence to suggest that Triple-S was involved in defrauding her beyond the statements of the individuals that she spoke to over the phone and via email as well as documents sent to her by the individuals. Triple-S, on the other hand, offers several affidavits to the effect that these statements and documents were fallacious and that the individuals were not actually associated with Triple-S. In doing so, Triple-S has not disputed the facts averred by Bonner, but rather shown that it is impossible that the individuals who spoke with Bonner told the truth about their relationship with Triple-S. The burden has therefore shifted back to Bonner to place at least one material fact into dispute. Unfortunately for Bonner, she has failed to do so.

Moreover, the statements of the individuals that Bonner spoke to over the phone are inadmissible hearsay, as are the signatures that Bonner claims belong to Ruiz and others. "Evidence that is inadmissible at trial, such as inadmissible hearsay, may not be considered on summary judgment." *Vazquez v. Lopez-Rosario*, 134 F.3d 28, 33 (1st Cir. 1998). Hearsay is "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Fed. R. Evid. § 801. Bonner has offered the statements of the individuals as proof that they were who they said they were, or (put another way)

that she was in contact with Triple-S. When an otherwise inadmissible hearsay statement is made by a party-opponent, it could potentially be admitted as an opposing party's statement; however, in order to qualify, the party moving for inclusion of the otherwise inadmissible statement must establish that it was made by the party (or the party's agent, employee, coconspirator, or an individual authorized to do so by the party) or that the party manifested that it adopted or believed the statement. Fed. R. Evid. § 801(d)(2).

Bonner has not established that any of the statements were actually made or adopted by Triple-S employees or associates, and the statements do not fall under any hearsay exceptions; as a result, they are hearsay. *See Hansen v. PT Bank Negara Indonesia (Persero)*, 706 F.3d 1244, 1249 (10th Cir. 2013) (confirming the district court's ruling granting summary judgment to the defendants and holding that phone conversations between the plaintiff and two individuals claiming to be agents of the defendants were inadmissible hearsay). Bonner could authenticate the telephone conversations if she had "evidence that a call was made to the number assigned at the time to: (A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or (B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone." Fed. R. Evid. § 901(b)(6). However, Bonner has no evidence that the numbers she called were actually assigned to Triple-S or to any of Triple-S's employees or associates.

Similarly, Bonner could offer her opinion about Ruiz's voice if the opinion was "based on hearing the voice at any time under circumstances that connect it with the alleged speaker." Fed. R. Evid. § 901(b)(5). However, Bonner has not alleged that she has ever heard Ruiz's voice other than during the phone conversations that gave rise to the present matter. Ruiz's purported signature is also unauthenticated, as are the other signatures; a nonexpert's opinion that handwriting is genuine must be based on a familiarity with it that was not acquired for the current litigation. Fed. R. Evid. § 901(b)(2). Bonner has not claimed that she ever saw Ruiz's handwriting except within the evidence she offers in support of her case. Regardless, Bonner has also failed to allege that any such hearsay exceptions would apply to the statements. As a result, I find that the statements are hearsay.

The emails and other documents sent to Bonner by the individuals she spoke with are also inadmissible hearsay. The emails and other documents do not fall clearly under any hearsay exception, and Bonner does not offer any theory as to why they would be admissible. Records of a regularly conducted activity may be excepted from hearsay, but only if the record was made at or near the time by someone with knowledge; the record was kept in the course of a regularly conducted activity of a business; making the record was a regular practice of that activity; all of these conditions are shown by the testimony of the custodian or another qualified witness; and the opponent does not show that the source of information indicates a lack of

trustworthiness. Fed. R. Evid. § 803(6). Bonner has not claimed that the materials in question are records of a regularly conducted activity, she has not shown that any of the materials in question were kept as part of a regular practice, she has not identified anyone who could testify as to the existence of the conditions that she must establish, and Triple-S has shown that the sources of the emails and other documents are at least potentially untrustworthy. Other theories appear to provide at least equally improbable grounds for admission, and Bonner does not allege any other theories for admissibility anyway. Since Bonner has raised no theory as to why the emails and other documents are admissible and since the materials do not fall clearly under any hearsay exception, I find that they are inadmissible hearsay.

Bonner has raised fraud, breach of contract, breach of fiduciary duty, and RICO claims. However, all four of Bonner's claims are destined to fail for the same reason: that no reasonable factfinder or jury could find that the individuals who defrauded Bonner were associated with Triple-S. Each of these claims relies on some form of association between the accuser and the accused; fraud would require Bonner to detrimentally rely on a false statement by Triple-S, breach of contract would require a valid contract between Bonner and Triple-S, a breach of fiduciary duty would require the existence of a duty on the part of Triple-S towards Bonner, and a RICO violation would require Triple-S to engage in some form of conduct that constituted racketeering activity and involved Bonner. The

evidence and the narrative provided by Bonner are not sufficient to establish such associations.

Although I take no position regarding the credibility of the evidence and testimony offered by Triple-S and Bonner, I do find that Triple-S has sufficiently shown that the parties do not disagree as to any material fact, while Bonner has failed to establish that Triple-S disagrees with her as to any material fact; I also find that the majority of the evidence Bonner cites in support of her case is not only insufficient to implicate Triple-S, but also hearsay. *See Burgos Martinez v. City of Worcester*, 502 F. Supp. 3d 606, 618 (D. Mass. 2020) ("It is not the Court's role to evaluate the credibility of witness testimony, but I must evaluate the strength of the evidence which supports that testimony to determine whether there is enough support for the Plaintiff's claims to proceed to trial"). Since there is no genuine dispute as to any material fact in this case and since the material facts lead to the conclusion that Triple-S did not engage in illicit interactions with Bonner, Triple-S is entitled to judgment as a matter of law.

Again, Bonner apparently has been victimized by unscrupulous criminals. However, though Bonner has my sympathy, Triple-S has sufficiently established that Triple-S is nothing more than an uninvolved entity that was impersonated by the real offenders in this matter. Accordingly, I grant summary judgment in favor of Triple-S, and Bonner's suit against Triple-S is dismissed.

CONCLUSION

For the foregoing reasons, Triple-S's motion for summary judgment is **GRANTED** and Bonner's suit against Triple-S is dismissed with prejudice.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 17th day of December 2021.

S/ *Bruce J. McGiverin*
BRUCE J. McGIVERIN
United States Magistrate Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

DORA L. BONNER, Plaintiff, v. **TRIPLE-S MANAGEMENT CORPORATION** and **TRIPLE-S VIDA, INC.**, Defendants.	Civil No. 19-1228 (BJM) (Filed Sep. 21, 2021)

ORDER

Before the Court is a motion made by Plaintiff Dora L. Bonner ("Bonner") to compel responses to interrogatories and production of documents from Triple-S Management Corporation ("TSM") and TSM's subsidiary, Triple-S Vida, Inc. ("TSV") (collectively "Defendants"). Docket No. ("Dkt.") 51. Bonner maintains that Defendants' initial responses to her discovery requests were inadequate. *Id.* Defendants opposed the motion. Dkt. 52. This matter was referred to me for decision on all further proceedings, including entry of judgment. Dkt. 44.

For the reasons set forth below, Bonner's motion to compel is DENIED with prejudice, except that parties are instructed to exhaust efforts to resolve the dispute on interrogatories 1, 2, and 3 and requests for

production of documents ("RFP") 1 and 11 within ten days of the date of this order.

DISCUSSION[1]

Bonner alleges that Defendants have defrauded her of thousands of dollars and has filed suit against Defendants for RICO violations, fraud, breach of contract, and breach of fiduciary duty. Dkt. 51 at 1. Defendants deny these allegations, stating that they were never in contact with Bonner before these actions were filed and alleging that Bonner was actually the victim of a scam in which the scammers claimed to be Defendants' employees.[2] Dkt. 52 at 2. Bonner originally brought these claims in a suit against TSM before the United States District Court for the Southern District of Texas, but the court dismissed the case for lack of personal jurisdiction.[3] *Id.* Prior to dismissing the case, in an evidentiary hearing the court found that "Bonner was not in contact with the actual [d]efendant in this case." *Bonner v. Triple-S Mgmt. Corp.*, 181 F. Supp. 3d

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[1] Dkt. 23 includes a synopsis of the facts of this case.

[2] As stated by the Fifth Circuit in a prior proceeding between Bonner and Defendants regarding similar allegations, "Bonner . . . was the victim of a 4-1-9 scam, where scammers, posing as agents of a known entity, offer the victim a large sum of money in exchange for a smaller transaction fee." *Bonner v. Triple-S Mgmt. Corp.*, 661 F. App'x 820, 821 n. 2 (5th Cir. 2016).

[3] Bonner originally filed in the District Court for the 149th Judicial District of Brazoria County, Texas, but TSM removed the case to the United States District Court for the Southern District of Texas under diversity jurisdiction. Dkt. 52 at 2, 10.

371, 375 (S.D. Tex.), aff'd, 661 F. App'x 820 (5th Cir. 2016).

Discovery may encompass "any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). However, the Federal Rules of Civil Procedure limit discovery's scope, requiring discovery to be "proportional to the needs to the case, considering the importance of the issues at stake in the action, . . . the importance of discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* "When the discoverability of information becomes the subject of dispute, the party seeking to compel discovery has the burden of establishing that its request satisfies the relevancy requirements of Rule 26(b)(1)." *Javo Beverage Co. v. California Extraction Ventures, Inc.*, No. 19-CV-1859-CAB-WVG, 2020 WL 2062146, at *7 (S.D. Cal. Apr. 29, 2020). "The scope of discovery is broad, and to be discoverable, information need only appear to be `reasonably calculated to lead to the discovery of admissible evidence.'" *Remexcel Managerial Consultants, Inc. v. Arlequin*, 583 F.3d 45, 52 (1st Cir. 2009) (quoting *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 716 n.5 (1st Cir. 1998)) (some quotation marks omitted). However, "[t]rial courts enjoy a broad measure of discretion in managing pretrial affairs, including the conduct of discovery." *Mack v. Great Atl. & Pac. Tea Co.*, 871 F.2d 179, 186 (1st Cir. 1989).

(a) Interrogatory 4 and Requests for Production 2, 3, 6, 7, and 9

In order to resist production of discovery, a party must "show specifically how each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive." *Aponte-Navedo v. Nalco Chemical Co.*, 268 F.R.D. 31, 36-38 (D.P.R.2010) (quoting *Sánchez-Medina v. UNICCO Serv. Co.*, 265 F.R.D. 24, 27 (D.P.R.2009)). The authenticity of a discovery request may be in doubt if the moving party merely requests broad categories of information. *See*, *e.g.*, *Commonwealth of Puerto Rico v. United States*, 490 F.3d 50, 66 (1st Cir. 2007). "Open ended reviews of corporate records are not allowed." *Aponte-Navedo*, 268 F.R.D. at 37 (citing *Briddell v. Saint Gobain Abrasives Inc.*, 233 F.R.D. 57, 60 (D.Mass.2005)). Furthermore, a plaintiff is not permitted "to `go fishing' and [the] trial court retains discretion to determine that a discovery request is too broad and oppressive." *Del Carmen Taboas v. Fiddler, Gonzalez & Rodriguez, PSC*, 2014 WL 12889572, at *3 (D.P.R. Apr. 2, 2014) (quoting *Marshall v. Westinghouse Elec. Corp.*, 576 F.2d 588, 592 (5th Cir. 1978)).

Bonner moves to compel Defendants to produce all call logs, call records, and other evidence of communication (RFP 2) and all email and text-based chats (RFP 3) between Defendants and their subsidiaries in Costa Rica between March 1 and December 31, 2015. Dkt. 51 at 7-8. Similarly, RFP 7 requests any call records between Defendants and the Federal Bureau of Investigation, United States Department of Homeland

Security, United States Department of the Treasury, and the Nicaraguan government for the same period. *Id.* at 11. These requests are broad and sweeping in nature; Bonner requests all communications in all forms without tailoring her request as to content or to the specific parties in the communication.

Interrogatory 4 and RFP 6 also contain broad and sweeping requests. In Interrogatory 4, Bonner requests the identification of all escrow accounts in the name of TSM, TSV, or subsidiary company Atlantic Southern Insurance ("ASI") that were in existence between March 1 and December 31, 2015. Dkt. 51 at 4. Similarly, RFP 6 requests all wire and AHC transfers from TSM, TSV, or ASI accounts to any United States, Costa Rica, or United States Treasury accounts within the same period. *Id.* at 10. Bonner cannot `go fishing' for information by making overly broad and sweeping requests such as those in interrogatory 4 or in RFPs 2, 3, 6 and 7 and expect to receive discovery. *See Del Carmen*, at 3.

Furthermore, "the Court cannot compel what does not exist." *Updatecom, Inc. v. FirstBank Puerto Rico, Inc.*, 2012 WL 12996276, at *4 (D.P.R. Sept. 27, 2012). Defendants certify that they have investigated whether TSM or their subsidiaries participated in any communications pertaining to Bonner or to her allegations and that no such communications exist. Dkt. 52 at 15-17, 22. Defendants have also offered a sworn statement under which they aver that no communications akin to those described in RFPs 2 and 3 exist relating to Bonner or to her allegations. *Id.* at 15-16. To

further support this claim, certain of Defendants' employees signed affidavits in the Texas district court proceedings in which they denied ever having any contact with Bonner. *Id.* at 2. Defendants' avowal that the communications, accounts, and transfers that Bonner requests do not exist underscores the already overbroad nature of these requests.

Lastly, Bonner's RFP 9 requests "a complete file of the purchase or acquisition of ASI . . . by [TSV] and/or [TSM], including, but not limited to, due diligence and closing documents." Dkt. 51 at 13. Bonner argues that RFP 9 is relevant because her claim "is based on certificates which were part of the purchase of [ASI]." *Id.* Bonner's claims do involve certificates that were allegedly recorded during the purchase and acquisition of ASI by TSV and TSM. *See* Dkt. 51 at 13, Dkt. 17 at 5-18. However, Bonner's request makes no effort to tailor discovery to those certificates and other pertinent information; instead, her request comprises a host of documents, including a large swath of confidential information regarding many of Defendants' and ASI's investors, employees, and clients. Therefore, Bonner's request for the entire file of purchase and acquisition documents is overly broad. Bonner again appears to be "fishing" for evidence or information even beyond the scope of what she has claimed may exist.

Additionally, when a party is seeking confidential information from the opposition, it "must make a . . . showing that [their] `claim of need and relevance is not frivolous.'" *In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.*, 249 F.R.D. 8, 12 (D. Mass.

2008) (quoting *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 716 (1st Cir. 1998)). The court will then balance the movant's need and the desire for free-flowing information against the objector's confidentiality interests, *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 597-98 (1st Cir. 1980), and the proportionality of the request. *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 523 (D. Md. 2010). Any claim Bonner makes as to need for and relevance of most of the "complete files" she asks for is arguably frivolous and is disproportional to the burden of providing the material in discovery. Additionally, much of the information in the file would without a doubt be highly confidential. Even though there may be discoverable material contained in the alleged certificates within RFP 9, Bonner's request for the entire file is overly broad and disproportionate to the burden of providing her with the entire file and granting her access to confidential investor, employee, and client information.

Given Defendant's certification that pertinent communications and exchanges do not exist, the affidavits from Defendants' employees, and the overly broad nature of Bonner's request, the motion to compel as to Interrogatory 4 and RFPs 2, 3, 6 7, and 9 is DENIED.

(b) Requests for Production 4 and 10

Under RFP 4 and RFP 10, Bonner moves to compel discovery of all human resource files for each of Defendants' and ASI's employees as well as any financial

record of employees' earnings and tax payments. Dkt. 51 at 8, 14. During the Texas district court proceedings, Bonner referenced seven individuals who were supposedly part of the scam against her that she alleged were employees of Defendants, but only one of these individuals, Ramon Ruiz ("Ruiz"), is on record as ever being employed by TSM or TSM's subsidiaries. Dkt. 52 at 17-18. At the Texas district court proceedings, Ruiz made a sworn statement in which he stated that he has "never met or spoken, either by telephone or in person, with anyone named Dora Bonner." *Id.* Dkt. 52 Ex. C, at 1. Bonner now requests to see *all* of the employee files and financial information for TSM, TSV, and ASI even though she has cited a limited set of specific individuals as participating in the scam against her, and there is no evidence that any of those individuals except for one worked at those companies; furthermore, the individual exception has sworn under oath that he has never had any contact with her. *Id.*; Dkt. 51 at 8, 14. Bonner's request is also overly broad and sweeping (see above analysis regarding interrogatory 4 and RFPs 2, 3, 6, 7, and 9).

Moreover, Defendants rightfully allege that sharing the files in question would lead to an undue invasion of the privacy of third parties. Dkt. 52 at 24. "Courts have considered the privacy interests of non-party employees when deciding whether to order discovery of their personnel files." *Diaz-Garcia v. Surillo-Ruiz*, 45 F. Supp. 3d 163, 168 (D.P.R. 2014) (referencing *Whittingham v. Amherst Coll.*, 164 F.R.D. 124, 127-28 (D.Mass.1995); *Gehring v. Case Corp.*, 43 F.3d 340, 342

(7th Cir.1994); *Barella v. Vill. of Freeport*, 296 F.R.D. 102, 106 (E.D.N.Y.2013); *Glenn v. Williams*, 209 F.R.D. 279, 282 (D.D.C.2002); *Miles v. Boeing Co.*, 154 F.R.D. 112, 115 (E.D.Pa.1994)). Generally, courts favor "the nondisclosure of income tax returns" on public policy and privacy grounds when the request is not material nor relevant to the claims. *In re Sunrise Sec. Litig.*, 130 F.R.D. 560, 578 (E.D. Pa. 1989) (quoting *DeMasi v. Weiss*, 669 F.2d 114, 119 (3d Cir.1982)). Additionally, employee personnel files are generally only discoverable "when the personnel file sought is that of an employee directly involved with the incident that gave rise to the action." *Vazquez-Fernandez v. Cambridge Coll., Inc.*, 269 F.R.D. 150, 159 (D.P.R. 2010).

Given the broad and burdensome nature of Bonner's request, as well as the privacy interests of the thousands of employees who do not figure in Bonner's allegations, the motion to compel as to RFPs 4 and 10 is DENIED.

(c) Requests for Production 5 and 8

RFPs 5 and 8 from Bonner's motion involve requests for sweeping categories of Defendants' financial records from March 1 to December 31 of 2015, including any investments that Defendants made on behalf of individual clients and any documents related to penalties and fines that were imposed by any government entity on Defendants or ASI. Dkt. 51 at 9, 12. Defendants argue that these records are irrelevant because they include no financial information that pertains to

Bonner or her allegations. Dkt. 52 at 19-20, 22-23. For discovery requests to be "relevant to the subject matter involved in the pending action" the information sought must meet the standard that it "bears on, or . . . reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). The party seeking discovery has the burden of establishing that their request satisfies the relevancy requirement in Rule 26(b). *Javo Bev.*, at *26 (2020). Defendants have certified that neither they nor ASI invest assets on behalf of individuals in the range of the sums involved in this case (four to eight million dollars). *Id.* at 19, Ex. B, at 7. Bonner has not challenged this claim. Therefore, information related to investments that Defendants have made on behalf of individual clients would not reasonably lead to matters that bear on this case absent any implication that Defendants' claim is false.

Furthermore, Defendants have already responded to RFP 8 by affirming that no penalties, fines, or violations of law exist and therefore cannot be produced. Dkt. 52 at 23; *see Updatecom, Inc.*, 2012 WL 12996276, at *4 (holding that "the Court cannot compel what does not exist").

Given that Bonner has failed to offer anything to challenge Defendants' avowal that her requests lack relevance to her claims or the previous attestations from Defendants that part or all of the information in question does not exist, Bonner's motion to compel as to RFPs 5 and 8 is DENIED.

(d) Meet and confer requirement under Local Rule 26(b)

Local Rule 26(b) and Federal Rule of Civil Procedure 37(a)(1) require that, before filing a motion to compel, the moving party must certify that it "has made a reasonable and good-faith effort to [try and solve the discovery dispute] with opposing counsel" without the court's intervention. Local Rules of the U.S. Dist. Court for the Dist. of P.R. Rule 26(b); *see* Fed.R.Civ.P. 37(a)(1); *Brenford Envtl. Sys. L.P. v. Pipeliners of P.R.*, 269 F.R.D. 143, 147 (D.P.R. 2010). "An attempt to confer will not suffice." Local Rule 26(b); *Vázquez-Fernández v. Cambridge Coll., Inc.*, 269 F.R.D. 150, 163 (D.P.R. 2010). Local Rule 26(b) makes it clear that unresolved discovery disputes are to be presented to the court only "[a]fter efforts to resolve the dispute have been exhausted." Local Rules of the U.S. Dist. Court for the Dist. of P.R. Rule 26(b). Moreover,

> The purpose of good faith conferral is to enable the parties to narrow, if not resolve, their dispute, and thereby obviate the need to file wide-ranging motions to compel. . . . It is not up to the Court to expend its own energies when the parties have not sufficiently expended their own. The costs of litigation are too high and there are too many demands on the Court's time to adjudicate needless motions to compel that might not have been filed if counsel put forth a good faith effort.

A.J. Amer Agency, Inc. v. Astonish Results, LLC, No. CA 12-351S, 2013 WL 9663951, at *2-3 (D.R.I. Feb. 25, 2013) (citations omitted). "[Plaintiffs'] failure to comply with the meet and confer requirements constitutes sufficient reason to deny the [motion] to compel." *Velazquez-Perez v. Developers Diversified Realty Corp.*, 272 F.R.D. 310, 312 (D.P.R. 2011) (citation and internal quotation marks omitted).

On February 18, 2021, Bonner served the Defendants with her first set of interrogatories and RFPs, including a definitions section spelling out the exact information that she requested. Dkt. 51 at 1, Ex. 1. Defendants responded with their objections to Bonner's requests on April 20, 2021. Dkt. 51 at 2. On June 4, 2021, Bonner and Defendants held a conference in compliance with the meet and confer requirement set forth in Local Rule 26(b) to discuss Bonner's standing discovery requests. Dkt. 52 at 3. At the conference, Defendants allege that they explained to Bonner that they had no documents relevant to her claim in their possession; Defendants also confirmed this under oath in the Texas district court proceedings. *Id.* The day after the conference, Defendants allegedly informed Bonner they could not offer her any alternate form of production of the documents and information that she requested. Dkt. 51 at 2.

Defendants now allege that at the conference and subsequently, Bonner never raised any of the concerns that she raises here regarding Defendants' answers to several of her interrogatories and RFPs before she filed her motion to compel. Dkt. 52 at 5, 6, 8, 14, 25.

According to Defendants' letter in opposition to Bonner's motion to compel, Bonner did not address her wish to be provided with the additional information that Bonner now requests in Interrogatories 1, 2, and 3 and RFPs 1 and 11. *Id.* Because the parties have not yet exhausted all options in attempting to reach an agreement and resolve the discovery dispute outside of court, Bonner's motion to compel as to Interrogatories 1, 2, and 3 and RFPs 1 and 11 is DENIED without prejudice. The parties are to meet and confer in good faith within the next ten days in order to attempt to resolve their dispute over Interrogatories 1, 2, and 3 and RFPs 1 and 11.

CONCLUSION

For the foregoing reasons, the motion to compel in regard to Interrogatory 4 and RFPs 2 through 10 is **DENIED** with prejudice. The motion as to interrogatories 1, 2, and 3 as well as RFPs 1 and 11 is **DENIED** without prejudice. The parties are to meet and confer in good faith within the next ten days to attempt to resolve their dispute over interrogatories 1, 2, and 3 and RFPs 1 and 11.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 21st day of September, 2021.

S/ *Bruce J. McGiverin*
BRUCE J. McGIVERIN
United States Magistrate Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

DORA L. BONNER **Plaintiff,** **v.** **TRIPLE S MANAGEMENT CORPORATION & TRIPLE S VIDA INC.,** **Defendants.**	**Civil No. 19-1228 (GAG)** (Filed Mar. 30, 2020)

OPINION AND ORDER

On March 13, 2019, Dora L. Bonner ("Bonner" or "Plaintiff") filed the above-captioned action against insurance companies Triple-S Management Corporation ("Triple-S Management") and Triple-S Vida Inc. ("Vida"), collectively Defendants, alleging they incurred in civil violations, under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 *et seq.*, fraud, breach of contract and fiduciary duty, under Texas state law. (Docket Nos. 5; 17). Plaintiff seeks treble damages and damages for the remaining claims. Id.

Defendants move to dismiss Bonner's claims arguing that she fails to state a claim upon which relief can be granted, pursuant to FED. R. CIV. P. 12(b)(6). (Docket Nos. 12; 18). Specifically, Defendants contend that: (1) its companies and subsidiaries have never entered in

a contractual, or otherwise, relationship with Plaintiff; (2) Bonner's civil RICO claims fail to meet the express distinctness requirement, and (3) Plaintiff's complaint ignores that enterprises cannot be held liable under 18 U.S.C. §1962(c). Id.

After reviewing the parties' submissions, record and applicable law, this Court **DENIES** Defendants' motions to dismiss for failure to state a claim at Docket Nos. 12 and 18.

I. Relevant Factual and Procedural Background

For purposes of this motion to dismiss, the Court accepts as true all the factual allegations in the Complaint and construes all reasonable inferences in favor of Plaintiff. See Beddall v. State St. Bank & Trust Co., 137 F.3d 12, 16 (1st Cir. 1998).

a. The Alleged Fraud Scheme

On March 11, 2015, Bonner received a call, originating in Costa Rica, from Albert Gamboa Spencer, who identified himself as a Vida employee that had previously worked at Atlantic Southern Insurance (ASI), a company Plaintiff had been trying to contact for months. (Docket No. 17 ¶¶ 8-10). Spencer told Bonner that someone had attempted to change the beneficiary on her investment certificates held by Vida. Id. Plaintiff alleges, Spencer explained to her that Vida had originally been purchased by Triple-S Management, on or about 2013, and later relocated the

company to its wholly owned subsidiary, after it went through a name change to Vida. Id. ¶ 9. Following this initial conversation, Spencer promised Plaintiff to call back the next day with an investigator present who would assist and advise her on how to proceed with the investments. Id. ¶ 12.

Between March 11, 2015 and until about September 1, 2015, Bonner engaged in phone conversations, originating from Costa Rica, Nicaragua and the Commonwealth of Puerto Rico, with several individuals that purportedly worked for Triple-S Management and were going to assist with her investment situation. Id. ¶ 13. These individuals also exchanged emails and documents with Bonner bearing Triple-S Management's name and supposed email address. Id. These individuals allegedly included: (1) Albert Gamboa Spencer, an attorney for Vida; (2) Feliciano Zelaya, a Triple-S Financial Manager; (3) Ramon Ruiz Comas, Triple-S Management's CEO; (4) Eugenio Cerra, Jr., Triple-S Management's chairman, and (5) Emilio Aponte, a member Triple-S Management board of directors who worked at Puerto Rico's Treasury Department. (Docket No. 17 ¶¶ 17; 19).

Plaintiff's allegations lay out a detailed explanation of the alleged fraud scheme committed against her. Id. ¶¶ 15-81. In general terms, Bonner was asked to pay thousands of dollars in transfer fees to wire transfer to her bank account a judgment award. She alleges having paid the fees, but never received the money judgment. During Plaintiff's exchanges with these individuals, Bonner was told not to talk to

representatives from her bank, that the initial management fees invested were intercepted by the Federal Bureau of Investigation (FBI) and that the FBI had requested Triple-S Management to turn over the certificates. Id. ¶¶ 42; 45; 47.

Plaintiff also allegedly engaged directly with an FBI agent who advised her that the funds had not been intercepted but were rather blocked from being deposited on her account. Id. ¶ 48. After the initial amount of money, $10,000, was sent to the individuals, a new "strategy" was developed to help Bonner recover her investments, Id. ¶¶ 50-51; 53-54, sending more money for management fees, including requesting a quick loan, or otherwise the funds would be turned over to the FBI. Id. ¶¶ 54; 56-59. At this point, Plaintiff opposed, stating that sending additional money was not an option and eventually filed suit in Texas state court against Triple-S Management for breach of contract. Id. ¶ 58.

To support these allegations, Bonner posits that she received over fifty phone calls and one-hundred fifty emails from these individuals -representing Defendants- to execute several schemes to defraud her. Id. ¶ 60. Plaintiff's complaint includes as exhibits, nineteen of the most relevant email conversations to her claims, which show the receipts of disbursement contracts copies concerning the certificates Triple-S Management allegedly possessed, written agreements between Bonner and Triple-S Management, wiring instructions, and copies of payments actually sent to

Triple-S Management and her compliance with those requests. (Docket No. 17 ¶¶ 61-81).

In sum, Bonner posits that these conversations demonstrate that Triple-S Management, through and in association with its employees and agents, collected unlawful debts in furtherance of the scheme to defraud her. Id. ¶ 61.

b. The Texas case

In the Texas case proceedings, Bonner sued Triple-S Management for breach of contract, alleging it had promised to transfer certain funds to her account and failed to do so. See Bonner v. Triple-S Mgmt. Corp., 181 F. Supp. 3d 371 (S.D. Tex. 2016).[1]

Triple-S Management, the sole defendant in that case, moved to dismiss for lack of personal jurisdiction under FED. R. CIV. P. 12(b)(2). Id. After an evidentiary hearing, the District Court dismissed and held that "Bonner has failed to demonstrate that Triple-S [Management] has sufficient contacts to support the exercise of specific jurisdiction." Id. at 375. Plaintiff appealed and the Fifth Circuit affirmed the lower court's decision. See Bonner v. Triple-S Mgmt. Corp., 661 F. App'bx 820 (5th Cir. 2016). The Court of Appeals for the Fifth Circuit affirmed the District Court's determination stating: "we don't doubt that Bonner was defrauded, the evidence unfortunately reveals that

[1] Plaintiff originally filed suit at the Texas state court and was later removed to federal district court. Id.

Bonner was not in contact with the actual Defendant in this case." Id. at 823 (citations and internal quotation marks omitted). Noteworthy, the Fifth Circuit stated that "[t]he facts alleged by Bonner suggest that she was the victim of a 4-1-9 scam, where scammers, posing as agents of a known entity, offer the victim a large sum of money in exchange for a smaller transaction fee." Id. at 821, n. 2.

II. Standard of Review

When considering a motion to dismiss for failure to state a claim upon which relief can be granted, FED. R. CIV. P. 12(b)(6), the Court analyzes the complaint in a two-step process under the context-based "plausibility" standard established by the Supreme Court. See Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012); see also Ashcroft v. Iqbal, 556 U.S. 662 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). First, the Court must "isolate and ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements." Schatz, 669 F.3d 50 at 55. A complaint does not need detailed factual allegations, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678-79. Second, the Court must then "take the complaint's well-[pleaded] (i.e., nonconclusory, nonspeculative) facts as true, drawing all reasonable inferences in the pleader's favor, and see if they plausibly narrate a claim for relief." Schatz, 669 F.3d at 55.

Plausible, means something more than merely possible, and gauging a pleaded situation's plausibility is a context-specific job that compels the court to draw on its judicial experience and common sense. Id. (citing Iqbal, 556 U.S. at 678-79). This "simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of" the necessary element. Twombly, 550 U.S. at 556. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]'-'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)). If, however, the "factual content, so taken, 'allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,' the claim has facial plausibility." Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 12 (1st Cir. 2011) (quoting Iqbal, 556 U.S. at 678).

III. Discussion

Defendants primarily posit that they have never entered into a contractual relationship with Bonner. (Docket No. 12 at 8-9). To support this claim, Triple-S Management and Vida put forward their own statement of facts. Id. at 4-8. These factual allegations are partially based on an affidavit filed during the Texas case proceedings by Triple-S Management's then legal counsel Gilberto R. Negron Rivera. Id. at 5. He declared that: (1) Neither Triple-S Management, Vida, nor any another Triple-S Management's subsidiary invests assets on behalf of individuals and (2) ASI, similarly, does

not offer financial services to individuals seeking to invest large sums of money. Id. Based on these assertions, Defendants argue that it does "not offer the products or services that Bonner claims were the object of her agreement with [Triple-S Management] [and thus] it is impossible for Defendants to be parties to the referenced agreements and letters." Id.

Likewise, Defendants allege that, pursuant to a World Intellectual Property Organization ("WIPO") Arbitration and Mediation Center's Administrative Panel Decision, the domain name used to contact Bonner is not a valid Triple-S Management or Vida e-mail address and was not owned by Triple-S Management during the relevant period. Id. at 5-7. Finally, Defendants posit that except for former Triple-S Management President and CEO Ramon Ruiz Comas, the individuals Bonner names in her Complaint are not and have never been Triple-S Management or Vida employees. (Docket No. 12 at 7-8). Specifically, Ruiz Comas stated in an affidavit during the Texas case proceedings that he had never met or spoken, either by telephone, in person or written communication, with anyone named Dora Bonner. Id.

After amending the Complaint, Plaintiff opposed this argument stating that Defendants attempt to set up impermissible affirmative defenses. (Docket No. 19 ¶ 8). Relying on PPV Connection, Inc. v. Rodriguez, et al., 607 F. Supp. 2d 301 (1st Cir. 2009), Bonner posits that Defendants fail to point out pleading deficiencies in the Complaint. (Docket No. 19 ¶¶ 9-10). She further avers that this Court should disregard the Texas

district court's decision because it only found that it lacked in *personam* jurisdiction over defendant Triple-S Management. Id. ¶¶ 11-14. As to the WIPO's decision, Bonner contends that she was not a party to the decision and is not bound by the findings of a world organization who has no personal jurisdiction over her or the person who was defaulted in the ruling. Id. ¶¶ 17-19.

Defendants filed a supplemental motion to dismiss (Docket No. 18) and replied thereafter to Plaintiff's opposition (Docket No. 20). Bonner replied to Defendants' supplemental motion to dismiss. (Docket No. 21). In all these motions, the parties reiterated their position as to this issue.

The Court agrees with Plaintiff's position and finds that Bonner is entitled to discovery in order to adequately respond Defendants' proposed statement of facts and exhibits in support thereof.

It is well-established that affirmative defenses may be raised in a motion to dismiss for failure to state a claim. See Keene Lumber Co. v. Leventhal, 165 F.2d 815, 820 (1st Cir. 1948); see also LaChapelle v. Berkshire Life Ins. Co., 142 F.3d 507, 508 (1st Cir. 1998). However, "it is equally well settled that, for dismissal to be allowed on the basis of an affirmative defense, the facts establishing the defense must be clear 'on the face of the plaintiff's pleadings.'" Blackstone Realty LLC v. F.D.I.C., 244 F.3d 193, 197 (1st Cir. 2001) (citing Aldahonda-Rivera v. Parke Davis & Co., 882 F.2d 590, 591 (1st Cir. 1989)). Moreover, when reviewing the

complaint, along with any other documents properly considered under FED. R. CIV. P. 12(b)(6), it must "leave no doubt" that plaintiff's action is barred by the asserted defense. LaChapelle, 142 F.3d at 508.

On the face of the Complaint, Plaintiff has established a plausible set of facts that show a more than possible scenario where Defendants, in association with the alleged racketeers named in the Complaint, incurred in RICO civil violations, fraud, breach of contract and fiduciary duty. In other words, Bonner narrates a plausible claim for relief and there is a reasonable expectation that discovery may reveal evidence of the necessary elements to prove her allegations. Twombly, 550 U.S. at 556; see also Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 17 (1st Cir. 2011). Defendants' contention as to the fact that Bonner never engaged in a contractual relationship with them, but rather with a third party, can be easily addressed through discovery that would allow Plaintiff to fill-out any holes as to whether the individuals described in the Complaint had any professional or work relationship with Defendants. See Garcia-Catalan v. United States, 734 F.3d 100, 105 (1st Cir. 2013) ("[I]t is reasonable to expect that modest discovery may provide the missing link") (citations and internal quotations marks omitted)).

After discovery, Defendants may renew its affirmative defenses and then the Court will address them. As Plaintiff argues, moving the case forward allows her to have "one bite at the apple" to litigate this matter. (Docket No. 19 ¶ 15).

Lastly, this Court reminds the parties that a complaint should not be "dismissed merely because [it] believes that the case is legally or factually doubtful or that it is unlikely that the plaintiff will prevail in the action on the merits." Twombly, 550 U.S. at 554.

For the reasons abovementioned, this Court **DENIES** Defendants motions to dismiss at Docket Nos. 12 and 18 as to the lack of contractual relationship claim.

a. Distinctness requirement and "enterprise" liability under RICO

As a threshold procedural matter, the Court notes that after Defendants filed their initial motion to dismiss (Docket No. 12), Plaintiff amended her Complaint to specifically address Defendants' argument as to the distinctness requirement under RICO (Docket No. 17). Triple-S Management and Vida renewed their motion to dismiss claiming that Plaintiff still failed to plead this requirement. (Docket No. 18).

Plaintiff then responded in opposition to Defendants first motion to dismiss (Docket No. 19); Defendants replied. (Docket No. 20). Later, Plaintiff responded to the supplemental motion to dismiss (Docket No. 21). The parties' position as to these issues remains the same throughout these motions.

In their submissions to the Court, Triple-S Management and Vida argue that Bonner "misunderstands the relationship between 'person' and 'enterprise' in

the RICO statutory context." (Docket Nos. 12 at 9-10; 18 ¶ 4; 20 ¶ 4). According to Defendants' position, under RICO's Section 1962(c), "the 'person' is he who is employed by or associated with the 'enterprise' and conducts or participates in the conduct of the enterprise's affairs through a pattern of racketeering or collection of unlawful debt." (Docket No. 18 ¶ 4). Thus, they aver that Bonner has it "backwards" because if Plaintiff's allegations are taken as true, they "evince that the 'persons' who are conducting the 'enterprises' through a pattern of racketeering are the individuals she mentions as 'employees' [of Triple-S Management] and [Vida] and that the 'enterprises' these individuals allegedly conduct the affairs of are [Triple-S Management] and [Vida]." (Docket No. 20 ¶¶ 4-55). Finally, under this analysis, Defendants posit that an enterprise cannot be liable for the acts of the persons, pursuant to Schofield v. First Commodity Corp. of Boston, 793 F.2d 28 (1st Cir. 1986). (Docket Nos. 12 at 10; 18 ¶ 4).

In turn, Plaintiff contends that under the elements laid out in Libertad v. Welch, 53 F.3d 428 (1st Cir. 1995), she correctly identifies, for RICO statutory purposes, Triple-S Management and Vida as "persons" and the individuals, *e.g.* Gamboa Spencer, Zelaya, Ruiz Comas, Cera, Aponte and others, as the "enterprise" (Docket No. 19 ¶¶ 24-25). To further her contention, Bonner discusses Corporación Insular de Seguros v. Reyes-Muñoz, 826 F. Supp. 599 (D.P.R 1993), which, in her view, presents a similar procedural background to the present case. Id. ¶¶ 27-30. Finally, Bonner concludes that, similar to Corporación Insular de Seguros,

she "did not sue both the corporations and the members of the enterprise, therefore, there is not issue of liability based on an enterprise." Id. ¶ 30.

The Court, once again, agrees with Plaintiff's position. RICO's Section 1962 (c) states that:

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962. To state a civil RICO claim, a plaintiff must allege "four elements required by the statute: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity." Kenda Corp. v. Pot O'Gold Money Leagues, Inc., 329 F.3d 216, 233 (1st Cir. 2003) (citations omitted) or "a single collection of an unlawful debt." United States v. Weiner, 3 F.3d 17, 24 (1st Cir.1993); see also Home Orthopedics Corp. v. Rodriguez, 781 F.3d 521, 528 (1st Cir. 2015).

A RICO "enterprise" is defined broadly and includes any "individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Such an enterprise need not be a formal corporation, group or organization. Instead, the statute is satisfied by a showing a formal or informal group of persons, "associated for a common

purpose of engaging in a course of conduct" which then functions as a "continuing unit." United States v. Turkette, 452 U.S. 576, 583 (1981). In other words, there are two possible types of RICO enterprises: legal entities and associations-in fact. Libertad, 53 F.3d at 44. See also Marrero-Rolón v. Autoridad de Energía Eléctrica de P.R., Civil No. 15-1167 (JAG/SCC), 2015 WL 5719801, at *10 (D.P.R. 2015).

However, before the discovery stage, when assessing an "enterprise" *pleading* under RICO, what ultimately matters is that plaintiff can sufficiently establish "the existence of two distinct entities: (1) a 'person;' and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name." Cedric Kushner Promotions, Inc. v. King, 533 U.S. 158, 161 (2001). The First Circuit has held that the so-called "distinctness or distinctiveness requirement" entails that:

> [T]he word "person," as used in the statute to describe one who "conducts" an "enterprise," does not apply to the enterprise itself. An "enterprise" does not "*conduct or participate . . . in the conduct of*" that same enterprise's affairs. Rather, only some "person" *other than* the "enterprise" can conduct or help conduct that enterprise's affairs. Hence the unlawful enterprise itself cannot also be the person the plaintiff charges with conducting it.

Arzuaga-Collazo v. Oriental Fed. Sav. Bank, 913 F.2d 5, 6 (1st Cir. 1990) (emphasis in original).

After carefully reviewing Plaintiff's allegations, the Court finds that Plaintiff meets the distinctness requirement under RICO and has plausibly plead RICO civil violations pursuant to Section 1962(c) and the applicable case law. The statute requires that the "person" (i.e. Triple-S Management and Vida) engaged in racketeering be distinct from the "enterprise" (in this case, Gamboa Spencer, Zelaya, Ruiz Comas, Cera, Aponte and others, which are *not a defendant*) whose activities they seek to conduct through racketeering. See Miranda v. Ponce Federal Bank, 948 F.2d 41, 44-45 (1st Cir. 1991) ("the same entity cannot do double duty as both the RICO defendant and the RICO enterprise"); see also Compagnie De Reassurance D'Ile de France v. New England Reinsurance Corp., 57 F.3d 56, 92 (1st Cir. 1995). In other words, Triple-S Management and Vida (the named defendants) cannot be the entities that conduct its own affairs through a pattern of racketeering activity. See Odishelidze v. Aetna Life & Cas Co., 853 F.2d 21, 23 (1st Cir. 1988).

Plaintiff explicitly makes a distinction in her Amended Complaint as to the role the "individuals" (which seem to fit the category of "association-in-fact enterprise") and "Triple-S Management and Vida" (the "persons") played in the alleged racketeering scheme and she was further cognizant *from the beginning* to not name these "individuals" as Defendants in the present case. (Docket Nos. 5; 17). The Court finds these allegations meet the RICO distinctness requirement at this stage of the proceedings.

After discovery, the Court may revisit this argument, if Defendants so request it during the summary judgment stage, given that the enterprise "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." Ponce Fed. Bank, F.S.B. v. Ramiro Colon, Civil No. 92-1331 (DRD), 1996 WL 590274, at *17 (D.P.R. Sept. 26, 1996) (citing Libertad, 53 F.3d at 26).[2] Finally, Defendants do not contest whether Plaintiff failed to plead the remaining elements required to establish civil RICO claims and hence, the Court need not address them.

Consequently, given that Bonner meets the RICO distinctness requirement, the Court also finds that she has sufficiently alleged the existence of defendants (Triple-S Management and Vida), whom could be found liable for racketeering activity. See 18 U.S.C. §1962(c) (establishing liability for "any person employed by or *associated with*" the enterprise) (emphasis added).

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[2] The Court is also acquainted with the fact that:

> If the plaintiff chooses to identify the corporation as the enterprise through which its employees, as persons, conducted the RICO activity, the corporation is insulated from liability. It is for this reason that plaintiffs often try to prove the more intricate association-in-fact, in order to save as defendants all the corporate entities in the scheme, often the deep pockets. The association-in-fact route, however, provides its own hazards.

Rodriguez v. Banco Cent., 777 F. Supp. 1043, 1054 (D.P.R. 1991) (citations omitted).

For these reasons, this Court **DENIES** Defendants motions to dismiss at Docket Nos. 12 and 18 as to their claims concerning the distinctness requirement and "enterprise" liability under RICO's section 1962 (c).

IV. Conclusion

Accordingly, the Court holds that this case should proceed forward with discovery and thus, **DENIES** Defendants' motions to dismiss for failure to state a claim at Docket Nos. 12 and 18.

SO ORDERED.

In San Juan, Puerto Rico this 30th of March, 2020.

s/ Gustavo A. Gelpi
GUSTAVO A. GELPI
United States District Judge