IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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BARBARA UEBELACKER,

Plaintiff,

v.

PAULA ALLEN HOLDINGS, INC., *et al.*

Defendants.

ORDER

06-C-316-C

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Before the court is defendant's multipart motion to compel discovery and to protect from plaintiff's discovery demands. *See* dkt. 18. Plaintiff opposes virtually every aspect of this motion and has asked for cost-shifting. *See* dkt. 22. Having read every submission from both sides, I am granting the motion in part, denying it in part and not shifting costs.

As a starting point, I find that defendants' December 6, 2006 letter to plaintiff was their attempt to resolve the discovery disputes without court intervention; plaintiff's December 11, 2006 letter response showed that there wasn't much common ground. This is corroborated by plaintiff's response to the motion, in which she chides defendants for not trying harder to resolve the matter without court intervention, but doesn't suggest what accommodation the parties would have reached without the court's input. So here it is:

**Plaintiff's response to defendants' interrogatories**: Depending on whether and how one counts the subparts of plaintiff's interrogatories, there are between 14 and 43. It makes no difference: the limit of 25 is a default number that rarely is honored in civil litigation of this nature. Given the breadth, depth and stakes involved in plaintiff's claims, defendant is entitled

to obtain the requested information. Plaintiff forthwith shall respond to all of defendants' interrogatories.

**Discovery of Defendants' Financial Status:** defendants don't want to turn over this highly confidential information until the court has ruled on their planned motion for summary judgment on plaintiff's punitive damages claim. Taking into account the motion deadline, the briefing schedule and the time it will take for the court to issue its decision, the earliest a ruling on summary judgment would issue would be mid to late March. Plaintiff contends that this is inefficient because it would require two depositions of each witness and she needs this information other than for punitive damages, but she does not sufficiently support either contention. If plaintiff would like to supplement her submission with a specific, detailed proffer as to the relevance of defendants' financial information to some issue other than punitive damages, I will reconsider my decision.

At this point, however, the cost/benefit favors deferring this discovery until the court rules on whether plaintiff may seek punitive damages at trial. The court already has noted the high burden of proof plaintiff must meet to obtain punitive damages in this defamation case. Until the court has determined whether the punitive damages claim actually may proceed to trial, defendants will not be required to disclose their financial information to plaintiff. Defendants should have this information readily accessible for prompt disclosure if so ordered by the court in the spring. If plaintiff can establish that some witnesses actually need to be re-deposed, then defendants will have to make those witnesses available.

**Postponing the Scheduled Depositions:** Defendants asked plaintiff to postpone the depositions until after the January 15, 2007 mediation session. Plaintiff refused. Now defendants want this court to order plaintiff to back off. The court will not do this: it is not up to the court to micro-manage a party's approach to voluntary mediation. For whatever reason, Plaintiff wants everyone to incur the expenses of these depositions before mediation, which she predicts is going to fail. Given this attitude, maybe the pertinent question is whether the parties should cancel their mediation session as a waste of time and money.

**Rule 30(b)(6) Depositions from the Workstream defendants** : Defendants claim that the Workstream defendants have no involvement in this case. Plaintiff seems to contend otherwise in her response, although she seems to focus mainly on the financial information issue, which I have put off limits until after the summary judgment decision on punitive damages. Even so, this court cannot say that plaintiff will be unable to adduce *any* relevant information from the Workstream defendants on career marketing contracts and technical systems used with plaintiff. Plaintiff, however, cannot just go on a fishing expedition in light of defendants' proffer: if, after carefully considering the matter, plaintiff still is convinced that she likely will adduce relevant evidence from these depositions, then she is free to take them. Prior to these depositions, plaintiff's attorney must send a letter to defendants' attorney outlining the relevant information she expects to adduce from the Workforce witnesses. I will not, however, quash these depositions at this time.

**The 30(b)(6) document request:** It is not appropriate to direct a 30(b)(6) witness to bring with him or her every document in the company's possession that is relevant to the

lawsuit. Plaintiff already has made her rule 34 document requests, which cover the same ground. It is up to her to sort and use the documents already provided. If she has some more specific requests to make, she may re-frame here request. At this juncture, however, defendants' witnesses need not bring any additional documents to the scheduled depositions.

**Rule 45 subpoenas for Tom Madison and Bricelyn Shafron**: Defendants contend that these two witnesses are former employees who no longer are in their control. Plaintiff contends that these people nonetheless are "party witnesses" because that are witnesses *for* a party. That's not what the term means. Because Madison and Shafron no longer work for defendants, they are entitled to receive process under Rule 45. That defendants have agreed to accept service is a routine–and expected–courtesy, but it does not change the status of Madison and Shafron. Plaintiff responds that if this is the case, then she is entitled to the witnesses' telephone numbers, as required by Rule 26(a)(1)(A). Good point: defendants cannot have it both ways. They must provide plaintiff with last known telephone numbers for Madison and Shafron.

Finally, pursuant to Rule 37(a)(4) , I find that because defendants adequately attempted to resolve this dispute before filing their motion and because both sides prevailed in part, each side will bear its own costs in making and responding to defendant's motion.

Entered this 3rd day of January, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge