Health Concepts Partners Inc. v Stanton & Leone
2020 NY Slip Op 30987(U)
April 21, 2020
Supreme Court, New York County
Docket Number: 155086/2017
Judge: Kathryn E. Freed

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** IAS MOTION 2EFM

Justice

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HEALTH CONCEPTS PARTNERS INC.,

Plaintiff,

- v -

STANTON & LEONE and EMMERMAN, BOYLE & ASSOCIATES, LLC,

Defendants.

----------X

INDEX NO. 155086/2017

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for DISCOVERY.

In this action sounding in accounting malpractice, breach of fiduciary duty, and breach of contract, plaintiff Health Concepts Partners Inc. ("HCP") moves, pursuant to CPLR 3124, to compel defendants Stanton & Leone ("S&L") and Emmerman, Boyle & Associates, LLC ("EBA") to provide responses to discovery demands and interrogatories. S&L and EBA oppose the motion. EBA also cross-moves for a protective order prohibiting HCP from obtaining certain documents and interrogatory responses. After a review of the motion papers, as well as the relevant statutes and case law, the motions are decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

Pursuant to a letter agreement dated April 3, 2012, HCP, a New York corporation which distributes medical devices, retained S&L, an accounting firm, to provide it with services including, inter alia, the calculation of monthly commissions and payroll preparation. Doc. 1.

S&L was paid $4,500 per month for its services, which continued until the end of 2016, at which time HCP allegedly advised S&L that its services were no longer needed. Doc. 1. HCP alleges, inter alia, that S&L negligently directed HCP's payroll processing provider to pay HCP's employees both a draw against future commissions earned, as well as the commissions themselves after they were earned, and that this led to certain employees of HCP being paid their commissions twice. Doc. 1. Thus, claims HCP, as a result of S&L's actions, it overpaid its employees at least $139,750, overpaid approximately $11,000 in payroll taxes arising from the double payments, and paid S&L at least $234,500 for payroll preparation fees to which it was not entitled. Doc. 1.

In its answer filed July 14, 2017, S&L denied all substantive allegations of wrongdoing and asserted numerous affirmative defenses. Doc. 4.

On or about December 8, 2017, HCP moved to amend the complaint to name EBA as a defendant. Docs. 7-8. The motion was granted by order entered January 25, 2018. Doc. 24. In the amended complaint HCP, which alleged the same causes of action and monetary damages as it did in the initial complaint, claimed that EBA, an accounting firm, "merged with and/or acquired S&L in or about 2016." Doc. 10 at pars. 6, 16.[1] At a meeting following the merger or acquisition, EBA's principal advised HCP's principal that the same S&L employees would continue to handle HCP's matters, "now under EBA", and that additional EBA employees would assist on the account as well. Doc. 10 at par. 15. HCP alleged that, given the de facto merger of S&L and EBA, pursuant to which EBA, the successor of S&L, became liable for its

[1] HCP alleges that "Stanton & Leone, CPAS, LLC dissolved and/or became inactive on or about October 11, 2017 and Stanton & Leone Services LLC dissolved and/or became inactive on or about November 16, 2017" and that both of those entities were "affiliates" of S&L. Doc. 10 at par. 17.

obligations "and/or is directly liable for the negligent and improper services it provided to [HCP] after the merger/acquisition." Doc. 10 at par. 20.

S&L and ESA answered the amended complaint in March 2018, denying all substantive allegations of wrongdoing. Docs. 31 and 33.

On April 20, 2018, plaintiff served a "First Request for the Production of Documents to [S&L]" ("HCP's S&L Demands"), as well as a "First Request for the Production of Documents to [EBA]." ("HCP's EBA Demands") (collectively "HCP's Demands"). Doc. 41. The same day, HCP served interrogatories on S&L and EBA ("HCP's S&L Interrogatories" and "HCP's EBA Interrogatories", respectively) (collectively "HCP's Interrogatories"). Doc. 42. When responses to HCP's demands and HCP's interrogatories were not forthcoming, HCP's attorney and counsel for defendants exchanged emails in which defendants' attorneys assured that they would respond to the same. Doc. 43.

A preliminary conference was held on January 22, 2019. Doc. 36. The preliminary conference order directed, inter alia, that all parties were to provide responses to HCP's Demands and HCP's Interrogatories within 40 days, and that this included the demands set forth in defendants' good faith letter dated December 3, 2018. Doc. 36.

On March 6 and 7, 2019, S&L served a response to HCP's S&L Interrogatories and HCP's S&L Demands, respectively. Doc. 45. HCP's attorney deemed the responses deficient, including the fact that the interrogatory responses were not verified, and, on April 11, 2019, wrote to counsel for S&L requesting that the deficiencies be rectified. Doc. 48. Among the deficiencies raised by HCP's attorney was S&L's failure to provide any information regarding the merger between S&L and EBA.

On May 7, 2019, after several good faith requests by HCP's attorney, EBA served responses to HCP's EBA Demand and to HCP's EBA Interrogatories. Doc. 45. HCP's attorney deemed the responses deficient, including the fact that the interrogatory responses were not verified, as required by CPLR 3133(b), and, on May 17, 2019, wrote to counsel for EBA requesting that the deficiencies be rectified. Doc. 48. Among the deficiencies raised by HCP's attorney was S&L's failure to provide any information regarding the merger between S&L and EBA.

At a compliance conference on June 18, 2019, S&L and ESA were directed to respond to HCP's good faith letters dated April 11, May 17, and July 2, 2019. Doc. 37. The order further provided that, if the parties could not resolve their discovery disputes, then they would need to conduct a telephone conference with this Court regarding possible motion practice,[2] and that this Court would consider including preclusion language in future orders if the parties did not act in good faith to exchange discovery. Doc. 37.

By letters dated July 2, 2019, counsel for S&L and EBA wrote to HCP's attorney to assert, inter alia, that the merger between S&L and EBA was irrelevant to this action. Doc. 49.

HCP now moves, pursuant to CPLR 3124, for an order: 1) compelling S&L to produce all documents responsive to HCP's S&L Demand and/or to fully and properly respond to HCP's S&L Interrogatories; (2) compelling EBA to produce all documents responsive to HCP's EBA Demands and/or to fully and properly respond to HCP's EBA Interrogatories; and 3) for such other and further relief as this Court deems just and proper. Doc. 38.

[2] This procedure is required by the Part 2 Rules.

S&L and EBA oppose the motion. Docs. 50, 52. EBA also cross-moves for a protective order prohibiting HCP from obtaining information regarding the merger between S&L. Docs. 51-52. HCP opposes the cross motion.

LEGAL CONCLUSIONS:

"The trial court is vested with broad discretion to regulate pretrial discovery. Such discretion is not, however, unlimited." *Boutique Fabrice, Inc. v Bergdorf Goodman, Inc.*, 129 AD2d 529 (1st Dept 1987). CPLR 3101 (a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action regardless of the burden of proof." The term "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason." *Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 (1968).

> A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is "material and necessary"—i.e., relevant—regardless of whether discovery is sought from another party (*see* CPLR 3101 [a] [1]) or a nonparty (CPLR 3101 [a] [4]; *see e.g. Matter of Kapon v Koch*, 23 NY3d 32 [2014]). The "statute embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for ambush and unfair surprise" (*Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371, 376 [1991]).

Forman v Henkin, 30 NY3d 656, 661 (2018).

Considering the foregoing principles, as well as arguments of the parties as set forth below, this Court will analyze and determine the issues raised by the instant motions.

A. HCP's Motion To Compel

1. HCP's Demands

In HCP's S&L Demands and HCP's EBA Demands, HCP sought, inter alia:

> 6. All proposals, offers, agreements, contracts, promises, obligations, letters of intent and/or understandings between and/or among S&L and EBA concerning the Merger, including all drafts, unexecuted drafts, partially executed drafts and/or fully executed drafts.
>
> 7. All documents, communications and/or documents reflecting communications concerning any negotiations, proposal, offer, agreement, contract, promise, obligation, letter of intent and/or understanding between and/or among S&L and EBA concerning the Merger.
>
> 8. All documents filed or submitted to any federal, state or local government department, bureau, agency, commission and/or other governmental authority concerning the Merger.
>
> 9. All communications and/or documents reflecting communications to employees of S&L and/or EBA concerning the Merger.
>
> 10. All documents, communications and/or documents reflecting communications concerning staffing decisions after the Merger concerning which employees of S&L and/or EBA would work on Plaintiff's matter(s).

Doc. 41.

S&L objected to the said Demands as follows:

> 6. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged and/or proprietary.
>
> 7. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged and/or proprietary.
>
> 8. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged, proprietary and/or obtainable through public record.

9. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, privileged and/or confidential.

10. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged and/or proprietary. Without waiving objection, defendant is not in possession of any documents responsive to this demand.

Doc. 45.

EBA responded to the foregoing demands as follows:

6. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged and/or proprietary. Defendant reserves the right to supplement this response up to and including the time of trial.

7. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged and/or proprietary. Defendant reserves the right to supplement this response up to and including the time of trial.

8. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged, proprietary and/or obtainable through public record. Defendant reserves the right to supplement this response up to and including the time of trial.

9. Defendant objects to this demand as vague, ambiguous, over broad, unduly burdensome, not likely to lead to the discovery of admissible evidence, privileged and/or confidential. Defendant reserves the right to supplement this response up to and including the time of trial.

10. Defendant objects to this demand as vague, ambiguous, overbroad, unduly burdensome, not likely to lead to the discovery of admissible evidence, confidential, privileged and/or proprietary. Defendant reserves the right to supplement this response up to and including the time of trial.

Doc. 45.

HCP argues that defendants must provide discovery regarding the merger of S&L and EBA or the acquisition of EBA by S&L (or vice versa). In furtherance of this argument, HCP points to its allegation in the amended complaint that a merger or acquisition occurred sometime in 2016, at which time S&L was providing services to HCP, and that HCP did not know whether defendants had merged or if one of the defendants acquired the other. Doc. 28. HCP further alleges that, after the merger or acquisition, certain individuals who had worked for HCP as employees of S&L continued to do so for EBA. Doc. 28. In the amended complaint, HCP further claims that EBA is liable for its own malpractice after the merger and for S&L's malpractice before the merger or acquisition based on the theory of successor liability. Doc. 28. Thus, maintains HCP, it is entitled to discovery relating to the merger or acquisition.

In support of its argument, HCP, quoting *Schumacher v Richards Shear Company, Inc.*, 59 N.Y.2d 239, 244 (1983), asserts that "[a] corporation may be held liable for the torts of its predecessor if (1) it expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations", and that it cannot establish successor liability in this matter without the documents demanded.

In addition, asserts HCP, the discovery it seeks is relevant because successor liability may be premised on a "de facto merger" between EBA and S&L. Citing *Fitzgerald v. Fahnestock & Co., Inc.*, 286 A.D.2d 573, 574 (1st Dep't 2001), HCP maintains that the de facto merger doctrine creates an exception to the general principle that an acquiring corporation does not become responsible for the pre-existing liabilities of the acquired corporation. *See Dristas v*

Amchem Prods., Inc., 169 AD3d 526 (1st Dept 2019) citing *Fitzgerald v Fahnestock & Co., Inc., supra.* The de facto merger doctrine applies

> when the acquiring corporation has not purchased another corporation merely for the purpose of holding it as a subsidiary, but rather has effectively merged with the acquired corporation. The hallmarks of a de facto merger include: continuity of ownership; cessation of ordinary business and dissolution of the acquired corporation as soon as possible; assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the acquired corporation; and, continuity of management, personnel, physical location, assets and general business operation. Not all of these elements are necessary to find a de facto merger. Courts will look to whether the acquiring corporation was seeking to obtain for itself intangible assets such as good will, trademarks, patents, customer lists and the right to use the acquired corporation's name. The concept upon which this doctrine is based is "that a successor that effectively takes over a company in its entirety should carry the predecessor's liabilities as a concomitant to the benefits it derives from the good will purchased.

Fitzgerald v Fahnestock & Co., Inc., 286 AD2d 573 at 574-575.

In opposition to the motion, EBA asserts that HCP's EBA Demands are overbroad, that "[t]here is no question that EBA and S&L merged", and that EBA provided accounting services to HCP after the merger, but that "[t]he merger has nothing to do with [HCP's] claims or the [d]efendants' defenses." Doc. 52. EBA further asserts that there is no question that there was a merger between S&L and EBA since it (EBA) produced documentation (Doc. 56) establishing that S&L was dissolved. S&L asserts that HCP's S&L Demands are overbroad insofar as they seek drafts of documents regarding the merger, as opposed to executed documents, as well as communications from S&L to its staff regarding the merger.

Given the foregoing authority, this Court finds that documents concerning the merger between S&L and EBA or the acquisition of one defendant by the other are relevant to the issue of successor liability and, thus, S&L and EBA must respond to Demands numbered 6-10. Although EBA indeed submits proof that Stanton & Leone Services LLC was dissolved in 2017,

there is no proof submitted that this is the same entity as Stanton & Leone, the entity named in the complaint and, even if the said document reflected that S&L had been dissolved, HCP would nevertheless be entitled to discovery regarding successor liability.

HCP further asserts that defendants must respond to items 11, 16, 17, 34 and 35 of HCP's S&L Demands and HCP's CBA Demands.

Demand number 11 seeks documentation regarding which employees of S&L and/or EBA were to work on HCP's account following the merger. Doc. 41. Since such documents may bear upon successor liability, they must also be produced by defendants.

Demands 16 and 17 seek the following:

> 16. All documents, communications and/or documents reflecting communications concerning any or all of the alleged overpayments to any or all of the Subject Employees.
>
> 17. All communications and/or documents reflecting communications discussing any or all of the alleged overpayments to any or all of the Subject Employees.

S&L and EBA object to these demands asserting, inter alia, that, since there were no overpayments to any HCP employees, there is nothing to disclose. Additionally, they assert that the demands are overbroad insofar as they do not specify the identities of the persons communicating or sending or receiving such documents. Thus, assert defendants, such demands would require production of "any document ever prepared in connection with [the] 'alleged overpayments.'" Doc. 50 at par. 22; Doc. 52 at par. 18. Although HCP would be entitled to disclosure of communications and documentation within S&L or EBA, or between S&L and EBA, regarding the alleged overpayments, it finds that HCP's S&L and EBA Demands numbered 16 and 17 are overbroad and that defendants are not required to respond to the same in the form drafted. *See Haller v North Riverside Partners*, 189 AD2d 615 (1st Dept 1993).

HCP's S&L Demand number 34 seeks "[a]ll documents, documents reflecting communications and/or communications concerning, supporting and/or refuting the allegations" in paragraph 27 of S&L's answer. Doc. 41. HCP's S&L Demand number 35 seeks "[a]ll documents, documents reflecting communications and/or communications concerning any 'collateral source', as alleged in paragraph 27" of S&L's answer. Doc. 41. Paragraph 27 of S&L's answer asserts as an affirmative defense that "any past or future costs or expenses incurred or to be incurred by [HCP] for economic loss has been, or will, with reasonable certainty, be replaced or indemnified in whole or in part from a collateral source as defined in [CPLR 4545]." Doc. 33. S&L must respond to these demands, since HCP is entitled to information upon which its affirmative defenses are based. *See New Line Stone Co., Inc. v BCRE Services LLC*, 89 AD3d 581 (1st Dept 2011) (defendants compelled to provide more detailed interrogatory responses regarding their affirmative defenses).

HCP's Demand to EBA numbered 34 seeks "[a]ll documents, documents reflecting communications and/or communications concerning, supporting and/or refuting the allegations" in paragraph 13 of EBA's answer. Doc. 41. HCP's Demand to EBA numbered 35 seeks "[a]ll documents, documents reflecting communications and/or communications concerning, supporting and/or refuting the allegations" in paragraph 14 of EBA's answer. Paragraph 13 of EBA's answer asserts as an affirmative defense that EBA "is not liable for any acts, omissions and/or errors which occurred prior to January 30, 2016 and/or which affected any tax year prior to tax year [sic]." Doc. 31. Since paragraph 13 is obviously incomplete, this Court finds that EBA is not required to respond to HCP's EBA Demand number 34. However, EBA must respond to HCP's EBA Demand number 35 since said demand calls for the facts underlying the

affirmative defense of culpable conduct set forth at paragraph 14 of EBA's answer (Doc. 31).

See New Line Stone Co., Inc. v BCRE Services LLC, 89 AD3d at 581.

2. HCP's Interrogatories

HCP's S&L Interrogatories and HCP's EBA Interrogatories include the following items:

> 3. Describe in detail the transaction by which the Merger occurred, including but not limited to stating: a. Whether it was a merger, consolidation, combination, acquisition (if an acquisition, by which entity) or other form; b. The date(s) the agreement(s) concerning the Merger were executed; c. The date the Merger closed; and d. Whether the Merger included the acquisition of any business location(s), employee(s), management and/or goodwill.
>
> 4. Describe in detail the effect of the Merger on EBA's business operations, including, but not limited to: a. Describing in detail the surviving Person or entity after the Merger, including, but not limited to, the name of the Person or entity which conducted S&L's business operations after the Merger and the addresses of all offices of the surviving Person or entity; b. Identifying the Person or entity (S&L, EBA or a Third Party) which employed S&L's then employees after the Merger; c. Identifying the Person or entity (S&L, EBA or a Third Party) which paid S&L's then employees after the Merger; d. Stating whether any of S&L's physical offices were vacated or closed after the Merger and, if so, the location of such office(s) and the date(s) such office(s) were closed or vacated; and e. Stating whether any business entities owned by or affiliated with S&L or EBA were dissolved or ceased conducting business after the Merger and, if so, provide the name(s) of such entities, a description of its business operations, the date(s) such entities were dissolved or ceased conducting business and the location of their offices.
>
> 5. State whether after the Merger: a. S&L continued doing business under the name Stanton & Leone, or whether it did business under the name EBA or a different name; and b. S&L's then employees email addresses changed, and if so, describe the change in detail (e. g., using S&L's email address (__@stantonleone.com), or EBA's email address (__@eba.nyc).

S&L and EBA objected to these interrogatories on the basis, inter alia, that they sought confidential and/or privileged information. Doc. 46. However, this Court finds that they are

relevant to the successor liability issue discussed above and that S&L and EBA must therefore respond to the same.

HCP's S&L Interrogatories numbered 6, 7 and 8 provided as follows:

> 6. Describe in detail the basis for the allegation, and all of the facts known to S&L which support the allegation, that Plaintiff's damages were "caused in whole or in part by the culpable conduct of plaintiff," as alleged in paragraph 25 of the S&L Answer, and identify all documents concerning or supporting this allegation.
>
> 7. Identify and describe in detail how S&L came to provide professional services to Plaintiff, along with the nature of the agreed upon professional services, including: a. The specific entity retained to perform the work; b. The date(s) retained; c. The nature and extent of the relationship(s); d. The specific work to be performed; e. Whether the work was performed pursuant to a written engagement letter(s); f. The duration of the relationship(s); g. The date(s) and circumstances of the termination of the relationship(s), including by whom, to whom and the method by which such notification or determination was made; and h. Whether, and if so, how it was agreed that S&L would continue to perform services for Plaintiff for a one month transition period and the terms of such agreement, if different from the underlying agreement. Identify and attach any documents related to your response to this interrogatory.
>
> 8. Describe in detail the services S&L provided to Plaintiff.

Doc. 42.

Since S&L responded to paragraph 6 by providing details about HCP's alleged culpable conduct, that branch of HCP's motion seeking to compel a response to this interrogatory is denied as moot.

S&L objected to HCP's S&L Interrogatory number 7 and referred HCP to an April 3, 2012 letter from S&L to HCP describing the services to be provided by S&L to HCP. Doc. 46. However, S&L must nevertheless respond to this interrogatory. S&L must also respond to HCP's S&L Interrogatory number 8 since that item, too, seeks details about the services performed by S&L for HCP.

HCP's EBA Interrogatories numbered 6, 7, 8 and 9 provided as follows:

> 6. Describe in detail the basis for the allegation, and all of the facts known to EBA, which support the allegation that Plaintiff's damages were "caused by the negligence of third parties," as alleged in paragraph 12 of the EBA Answer, and identify all documents concerning or supporting this allegation.
>
> 7. Describe in detail the basis for the allegation, and all of the facts known to EBA, which support the allegation that EBA "is not liable for any alleged acts, omissions and/or errors which occurred prior to January 30, 3016 and/or affected any tax year prior to tax year," as alleged in paragraph 13 of the EBA Answer, and identify all documents concerning or supporting this allegation.
>
> 8. Describe in detail the basis for the allegation, and all of the facts known to S&L which support the allegation, that Plaintiff's damages were "caused in whole or in part by the culpable conduct of plaintiff," as alleged in paragraph 14 of the EBA Answer, and identify all documents concerning or supporting this allegation.
>
> 9. Identify and describe in detail how EBA came to provide professional services to Plaintiff, along with the nature of the agreed upon professional services, including: a. The specific entity retained to perform the work; b. The date(s) retained; c. The nature and extent of the relationship(s); d. The specific work to be performed; e. Whether the work was performed pursuant to a written engagement letter(s); f. The duration of the relationship(s); g. The date(s) and circumstances of the termination of the relationship(s), including by whom, to whom and the method by which such notification of termination was made; and h. Whether, and if so, how it was agreed that S&L would continue to perform services for Plaintiff for a one month transition period and the terms of such agreement, if different from the underlying agreement. Identify and attach any documents related to your response to this interrogatory.[3]

Doc. 42.

EBA responds to paragraphs 6 and 7 by objecting and stating that it cannot respond thereto until its affirmative defenses are developed during discovery. Doc. 46. However, this Court finds that EBA must respond to HCP's EBA Interrogatories numbered 6 and 7 since it is required to provide details supporting its affirmative defenses. *See New Line Stone Co., Inc. v BCRE Services LLC*, 89 AD3d at 581.

[3] HCP mistakenly refers to HCP's Interrogatory numbered 9 as interrogatory number 8. Doc. 39 at par. 48.

EBA responded to HCP's EBA Interrogatory number 8, and, thus, this branch of HCP's motion is denied as moot.

Since HCP's EBA Interrogatory number 9 seeks information regarding the scope of the work performed by EBA, as well as about the transition of the HCP account from S&L to EBA, this interrogatory is proper and EBA must respond to the same.

Given that neither S&L nor EBA verified their interrogatory responses, both defendants must verify the interrogatory responses they already served, as well as any to be served pursuant to this order. See CPLR 3133(b).

B. EBA's Cross Motion

In its cross motion, EBA argues that it is entitled to a protective order against HCP since all of HCP's EBA Demands and Interrogatories seeking information regarding the merger between S&L and EBA are irrelevant to the issues herein. Doc. 52. For the reasons discussed above, this Court disagrees and denies that branch of EBA's cross motion seeking a protective order against disclosure of such information. This Court also denies that branch of EBA's cross motion seeking to avoid responding to HCP's EBA Interrogatories numbered 9 and 10 since both interrogatories seek relevant information, i.e., facts about the services provided to HCP by EBA.

However, for the reasons set forth above, this Court grants the cross motion to the extent of issuing a protective order against HCP's EBA Demands numbered 16 and 17.

Therefore, in light of the foregoing, it is hereby:

ORDERED that HCP's motion to compel is granted to the extent that, within 30 of service of this order by HCP with notice of entry, 1) defendant S&L must respond to HCP's S&L

Demands numbered 6-11 and 34-35; 2) defendant EBA must respond to HCP's EBA Demands numbered 6-11 and 35; 3) defendant S&L must respond to HCP's S&L Interrogatories numbered 3-5 and 7-8; 4) defendant EBA must respond to HCP's EBA Interrogatories numbered 3-7 and 9; and it is further

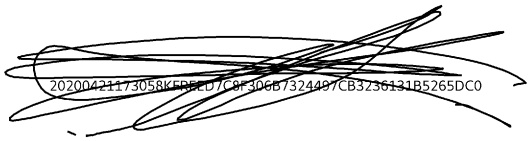
ORDERED that defendants S&L and EBA must verify all interrogatory responses previously served, as well as any served pursuant to this order; and it is further

ORDERED that HCP's motion is otherwise denied; and it is further

ORDERED that EBA's cross motion is granted to the extent that this Court grants a protective order against HCP's EBA Demands numbered 16 and 17, and the motion is otherwise denied; and it is further

ORDERED that the parties are to appear for a previously scheduled status conference on July 21,2020 at 2:15 p.m. at 80 Centre Street, Room 280, we will notify you if this date is changed; and it is further

ORDERED that this constitutes the decision and order of the court.



4/21/2020
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION

[ ] GRANTED [ ] DENIED [ ] GRANTED IN PART [X] OTHER

APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT	☐ REFERENCE