19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.: 651,069 SECTION 22

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

VERSUS

TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CALVI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC, AND TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

FILED: _____ _____
DEPUTY CLERK

BUCK GLOBAL, LLC'S REPLY MEMORANDUM IN SUPPORT OF MOTIONS TO COMPEL LOUISIANA DEPARTMENT OF INSURANCE AND LEWIS & ELLIS TO COMPLY WITH SUBPOENAS DUCES TECUM

Buck Global, LLC f/k/a Buck Consultants, LLC ("Buck") respectfully submits this Reply Memorandum in support of its Motions to Compel the Louisiana Department of Insurance ("LDI") and Lewis & Ellis, Inc. ("L&E") to comply with Buck's subpoenas duces tecum, currently set for Zoom hearing before this Honorable Court on Friday, February 12, 2021.[1] LDI's and L&E's joint opposition memorandum simply regurgitates their boilerplate objections without explanation and fails to articulate any credible argument to justify their blanket refusal to comply with Buck's subpoenas duces tecum. Such conclusory assertions fail to preserve any objection or argument. Buck has fully demonstrated that the documents under subpoena are, at minimum, relevant and/or reasonably calculated to lead to the discovery of admissible evidence. Under the principles of broad, liberal, and open discovery that control this case, Buck need show nothing more.

L&E reviewed "very detailed" information and, after its review, concluded that Buck's work was "reasonable." LDI and L&E seek to withhold such information from Buck, contending: (1) that such very detailed information –demonstrating that Buck was never negligent – is not "relevant" to any question in the case; and (2) that even knowledge of the existence of such information is privileged and confidential *despite being disclosed on LDI's externally facing website*.

[1] Buck files this single reply memorandum to address LDI and L&E's joint opposition, as well as the Receiver's memorandum filed in support of that opposition.

LDI and L&E have not presented a single credible or legally supported argument for refusing to produce responsive materials. The LDI's meaningless public records production most certainly does *not* satisfy LDI's or L&E's obligations under the subpoenas and no credible contrary argument can be made. The public records production, which encompassed a *mere 60 documents* consisting of mostly employment/biographical material, was incomplete and wholly inadequate as a response to Buck's subpoenas duces tecum. Further, as this Court has already recognized, its January 12, 2021 ruling striking "Regulator Fault" affirmative defenses was not dispositive of the discoverability of LDI or L&E documents. Therefore, LDI's and L&E's reliance on that ruling, *without more*, is not a valid justification for noncompliance with the outstanding subpoenas.

Presumably recognizing the deficiencies in LDI's and L&E's opposition, the Receiver – even though it lodged ***no*** objections to Buck's or Milliman's subpoenas - filed an eleventh hour "Memorandum in Support of LDI and Lewis & Ellis' Opposition to Buck and Milliman's Motions to Compel." The Court need not and should not consider the Receiver's memorandum. Having thoroughly wed himself to his "separate capacity" from the LDI – he cannot now supply objections on behalf of LDI that LDI itself has *never* asserted or preserved. And the Receiver himself previously waived any such objections and arguments by undertaking to and promising to produce LDI materials that are in his "possession and control."

Accordingly, for all the reasons discussed herein, in addition to the reasons set forth in Buck's and Milliman's original briefing, this Court should grant Buck's Motions to Compel and order LDI and L&E to comply with Buck's subpoenas duces tecum in full.[2]

I. Law and Argument

A. LDI and L&E have failed to properly preserve objections and arguments and have failed to address or refute Buck's substantive arguments.

LDI and L&E offer ***no rebuttal*** to Buck's arguments asserted in support of its motions to compel. Their opposition fails to even attempt to show precisely how or why Buck's subpoena requests do not fall within the broad and liberal scope of permissible discovery. Buck's and Milliman's original supporting memoranda identified numerous specific examples illustrating that the documents under subpoena are relevant to issues of negligence, fault, liability, comparative fault of others, causation, comparative causation by others, and damages. The opposition's

[2] Buck adopts and incorporates by reference the arguments in Milliman's January 7, 2021 Memorandum in Support of Motion to Compel LDI's Compliance with its *subpoena duces tecum,* as well as the arguments in Milliman's Reply Memorandum.

conclusory assertion that the documents are "not relevant and are not reasonably calculated to lead to the discovery of admissible evidence" does not preserve any contrary argument or objection. *See Dickey v. Apache Indus. Servs., Inc.*, No. 18-572, 2019 WL 4261117, at *3 (M.D. La. Sept. 9, 2019) (General objections to discovery requests that fail to include specific reasons for objecting are insufficient and are waived.).

The Court should grant Buck's motions to compel based on this insufficiency alone. *See, e.g., Grubaugh v. Central Progressive Bank*, No. 13-3045, 2013 WL 12234636 (E.D. La. Dec. 4, 2013) (granting motion to compel discovery responses as unopposed and finding that all objections were waived); *Scie v. United States*, No. 14-1570, 2015 WL 711819 (E.D. La. Feb. 18, 2015) (The court has "authority to grant a motion as unopposed."); *United States v. $65,995 in U.S. Currency*, No. 87-4158, 1988 WL 59861 (E.D. La. June 3, 1988) (granting motions to compel as unopposed).

The minimal assertions included in the opposition memorandum are not supported by legal authority and fail to demonstrate that LDI's or L&E's noncompliance was substantially justified. Accordingly, Buck's motions to compel should be granted. *See Choice, Inc. of Tex. v. Graham*, No. 04-1581, 2005 WL 589578, at *1 (E.D. La. Mar. 8, 2005) (granting motion to compel compliance with subpoena because the court was unable to determine whether the noncompliance was substantially justified).

Moreover, Buck has demonstrated that its document requests are necessary and proper. In this action brought on behalf of Louisiana Health Cooperative, Inc. ("LAHC") in Rehabilitation, the Receiver seeks to hold Buck and its co-defendants jointly and severally liable for LAHC's insolvency and losses and alleges that they caused LDI to place the company in rehabilitation. The Receiver's core allegations against Buck assert that Buck's reports supporting rate filings that were *filed with the LDI* were misleading and contravened actuarial standards. Given that LDI oversaw the operations of LAHC and received Buck's rate filings, and L&E contemporaneously evaluated them, both entities undoubtedly possess documents, data, and other information bearing on these accusations. These documents are, at minimum, relevant or potentially relevant to these issues, bringing them well within the ambit of the broad and liberal discovery permitted under Louisiana law. Buck need show nothing more. *Francois v. Norfolk S. Corp.*, 2001–1954 (La. App. 4 Cir. 3/6/02), 812 So. 2d 804 (holding that a trial court may abuse its discretion if it denies a motion to compel seeking relevant information that is properly discoverable).

B. LDI and L&E have failed to justify their blanket refusal to comply with Buck's subpoenas.

The LDI/L&E joint opposition regurgitates its boilerplate objections without a scintilla of analysis as to their applicability to the specific document requests in question and without responding to any of the points raised or legal authorities cited in Buck's supporting briefs. LDI's and L&E's objections are not properly articulated or supported and should be overruled. *See Quest Diagnostics Inc. v. Factory Mut. Ins. Co*., No. CV 07-3877, 2009 WL 10680157, at *6 (E.D. La. Apr. 1, 2009) ("[T]he burden shifts to the party resisting discovery to show why the discovery is irrelevant, overly broad, or unduly burdensome or oppressive, and thus should not be permitted."); *Luv N' Care, Ltd. v. Precious Moments, Inc*., No. 17-1592, 2019 WL 8112675, at *3 (W.D. La. Mar. 25, 2019) ("[T]o escape the production requirement, a responding party must interpose a valid objection to each contested discovery request. Conclusory objections . . . do not suffice.").

1. LDI's prior public records production was meaningless.

LDI's and L&E's generic citations to the Commissioner's public records request fail to satisfy their obligation to comply with the subpoenas duces tecum. In addition to the extensive shortcomings Buck identified in its supporting briefs, the L&E contract attached as an exhibit to the joint opposition brief is decisive proof that the public records production was incomplete and wholly inadequate. As L&E concedes, the L&E contract "is a public record of LDI." Opposition, Ex. 5. Yet, inexplicably, this document and a host of other responsive documents were not produced in the prior, meaningless public records production.

2. Boilerplate citations to inapplicable statutes are futile.

LDI's and L&E's boilerplate citation to La. R.S. § 22:2045 is equally futile. Not only is the statute improperly cited because it pertains to documents produced in the course of a rehabilitation or liquidation action, but also LDI and L&E fail to identify or assert any privilege applicable to the documents at issue. *Maldonado v. Kiewit La. Co.*, 2012-1868 (La. App. 1 Cir. 5/30/14), 152 So. 3d 909, 927, *writ denied*, 2014-2246 (La. 1/16/15), 157 So. 3d 1129 ("Under Louisiana law, the party asserting the privilege has the burden of proving that the privilege applies. Further, the party asserting the privilege must adequately substantiate the claim and cannot rely on a blanket assertion of privilege."). So any and all such privileges are waived.

Further, any confidentiality attaching to the documents under subpoena may be preserved through the protective order already entered in this case

Additionally, LDI's publication on its public website of L&E's review of Buck's 2015 rate projections shows that such information is not privileged or confidential, or at a minimum, waives any claim of confidentiality or privilege as to that and related information. *See Estate of Manship v. U.S.*, 237 F.R.D. 141, 144 (M.D. La. 2006) (citing *Nguyen v. Excel Corp.*, 197 F.3d 200 (5th Cir. 1999) (Disclosure of any significant portion of a confidential communication waives the privilege as to the whole)). The joint opposition totally ignores this critical point.

3. The subpoenaed documents are discoverable notwithstanding the striking of "Regulator Fault" affirmative defenses.

Nor can LDI and L&E justify their noncompliance by citing La. R.S. § 22:2043.1(B) and this Court's ruling striking "Regulator Fault" affirmative defenses. LDI and L&E state in *conclusory fashion* that the documents under subpoena "all relate to regulatory action or inaction taken by LDI or on its behalf, [and] are not legally relevant as a matter of law." Opposition, p. 4. The defendants are not required to simply take LDI's and L&E's "word for it." Under the controlling principles of broad, liberal and open discovery, Buck and the other defendants are entitled to see the responsive materials in order to test this supported, *ipse dixit* assertion.

Furthermore, La. R.S. § 22:2043.1(B) and the Court's ruling are explicitly limited to *defenses*. Neither can be reasonably read as an all-encompassing bar to *discovery* of documents relevant to the Commissioner's allegations. In fact, this Court made clear that its "Regulator Fault" ruling was not dispositive of the discoverability issue. And state and federal receivership cases from around the nation have consistently held that such documents fall within the broad scope of liberal discovery even when "regulator fault" affirmative defenses are barred.[3] The opposition fails to cite a single case or legal authority to the contrary.[4]

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[3] *See* Buck's Memorandum in Support of it Motion to Compel LDI, pp. 10-13 (collecting cases).

[4] The opposition's unexplained citations to *Wooley v. Lucksinger*, 2009-0571 (La. 4/1/11), 61 So.3d 507; *A-1 Nursery Reg., Inc. v. United Teacher Assocs. Ins. Co.*, 96-488 (La. App. 3 Cir. 11/6/1996), 682 So. 2d 929, offer no support for LDI's or L&E's attempt to evade discovery. As an initial matter, *Lucksinger* is procedurally incomparable. In relevant part, the Louisiana Supreme Court's review was limited to whether the district court erred in "failing to instruct the jury on the issue of regulator fault as an affirmative defense." *Id.* at. 605. Contrary to the present case, the Court's review was of jury instruction after a full and fair opportunity for discovery was provided. Indeed, the court of appeal in *Lucksinger* found that that the district court "erred by not designating the allegations of governmental tort, or the fault of the regulators, as an affirmative defense." *Id.* (citing *Wooley v. Lucksinger*, 2006-1167 (La. App. 1 Cir. 5/4/07), 961 So. 2d 1228, 1245). Despite this ruling, however, the Supreme Court ultimately held that the lack of jury instructions on regulator fault was not prejudicial error. The opinion cannot be read to preclude discovery of LDI documents.

Buck and Milliman have already provided numerous examples specifically illustrating the relevance of the subpoenaed documents on issues of negligence, comparative fault of others, liability and causation that are not predicated on affirmative defenses of regulator "action or inaction." The LDI/L&E opposition memorandum totally ignores these relevance arguments and so fails to preserve any objection on their behalf.

For example, Plaintiff's *prima facie* case against Buck hinges on the allegation in ¶ 116 of the Second Amended Petition that it was unreasonable for Buck to disregard certain claims experience that was "not statistically credible." Failing this critical allegation, Plaintiff has no case and Buck needs no defense. No doubt Plaintiff hopes to find an expert who, with the benefit of hindsight, will say Buck should have considered this non-credible data. On this specific point, L&E opined: "Since experience was no [sic] available, the consulting actuaries used its [sic] proprietary pricing software to develop the rate manual. We were provided very detailed assumptions, final allowed costs by service category, final adjustments and the weighting between the POS and HMO products. After our review we concluded the final manual rate allowed costs were reasonable."[5] In other words, Buck was not negligent.

Given that L&E is the only other actuary who did, or ever can, evaluate this question without knowing what would subsequently occur, *the **basis** upon which L&E reached this conclusion* – that Buck was never negligent – cannot possibly be irrelevant. Nor is this basis an issue of action or inaction by the regulator, or regulator fault. It is a simple fact in the case, not related to any defense, and completely independent of whether LDI approved Buck's rates. And whether or not L&E's own documents are admissible is not the question – there is no doubt that L&E's analysis may *lead to other* admissible evidence supporting its conclusion. *See Wollerson v. Wollerson*, 29,183 (La. App. 2 Cir. 1/22/97), 687 So. 2d 663, 665 ("The test of discoverability is not whether the particular information sought will be admissible at trial, but whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence.").

4. This suit works a waiver of regulatory privileges or objections.

The joint opposition likewise ignores the authority cited in Buck's supporting memoranda holding that the Commissioner's filing of the instant suit works a *waiver* of

[5] *See* Exhibit J to Buck's Motion to Compel LDI at p. 5.

regulatory privileges or objections to production of materials that bear upon the Commissioner's accusations.[6] Permitting the Commissioner to sue defendants for supposedly causing the insolvency of LAHC while depriving them of plainly relevant materials under the control of LDI and L&E would deprive Buck and other defendants of their federal and state constitutional due process rights. *See Benjamin v. Sawicz*, 823 N.E.2d 879, 887 (Ohio Ct. App. 2004) (firmly rejecting the Superintendent of Insurance's argument that he should be allowed "to take control of a privately owned company, put it out of business, [and] sue its officers for failing to run the company properly," while denying them access to department of insurance regulatory records pertaining to the company).

C. The Receiver cannot now be heard to supply objections and/or arguments that LDI and L&E failed to preserve or assert.

Despite receiving service copies of Buck's subpoenas when they were served on LDI and L&E months ago, the Receiver failed to assert or preserve ***any*** objection to Buck's subpoenas and took no legal action of any kind to prevent LDI or L&E from complying with them in full.[7] Now, perceiving the total inadequacy of LDI's and L&E's objections and arguments, the Receiver attempts to belatedly assert objections on their behalf.

It is well-settled law that "discovery objections are waived if a party fails to timely object." *Shaw Grp. Inc. v. Zurich Am. Ins. Co.*, No. CIV.A. 12-257-JJB, 2014 WL 1891543, at *1 n.1 (M.D. La. May 12, 2014) (citing *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989)); *see also Aubin v. Columbia Cas. Co.*, No. 16-290, 2017 WL 1682661, at *6 (M.D. La. Apr. 25, 2017) (objections waived where written responses were provided over one month after the filing of the motion to compel). The Court need not consider the Receiver's memorandum because any objections urged by the Receiver are untimely and, thus, are waived. La. Code Civ. Proc. art. 1354(B)(objections to subpoena duces tecum must be served within 15 days of service of the subpoena); *Payne v. Forest River, Inc.*, No. CIV.A. 13-679-JWD, 2014 WL 7359059, at *4 (M.D. La. Dec. 23, 2014)

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6 *See* Buck's Memorandum in Support of its Motion to Compel LDI, p. 18.

7 Notably, the Receiver's counsel repeatedly represented to this Honorable Court that the appropriate vehicle for obtaining LDI documents is through a third-party subpoena. *See* Exhibit G to Buck's Motion to Compel LDI at p. 20 ("[Plaintiff] would suggest to [the court] regardless of the ultimate decision on custody. . . there are other vehicles. I mean, a third-party subpoena. . . Nothing prevents the defendants from issuing a third-party subpoena to the Department of Insurance, which would be bound by the discovery rules set by Your Honor."); *see also* Ex. G at pp. 28, 34, 35, 38, 40 (Plaintiff advising the Court that Defendants have relief through a subpoena).

(quoting *La. Generating, L.L.C. v. Ill. Union Ins. Co*., No. 10–516, 2011 WL 6259052, at *2 (M.D. La. Dec. 14, 2011) (untimely objections to a subpoena are waived)).

The Receiver's memorandum is improper and without merit.

Having steadfastly asserted his "separate capacity" from that of the LDI, the Receiver cannot now be heard to attempt to supply objections or arguments that the LDI and L&E have failed to make or preserve. The Receiver does not have standing to assert its belated objections to Buck's subpoenas. *See Porter v. Becnel*, No. 15-69-JWD-RLB, 2016 WL 1729549 (M.D. La. Jan. 15, 2016) (Parties have limited standing to challenge discovery sought from a non-party.); *Frazier v. RadioShack Corp*., No. 10–855, 2012 WL 832285, at *1 (M.D. La. Mar. 12, 2012) ("[A] plaintiff cannot challenge a Rule 45 subpoena directed to a third party on the basis that . . . the subpoena is overly broad, or that the subpoena seeks information that is irrelevant because only the responding third party can object and seek to quash a Rule 45 subpoena on those grounds.").

Even if the Court is inclined to consider the Receiver's memorandum, his arguments fail to support LDI's and/or L&E's refusal to comply with the subpoenas. The Receiver erroneously relies on La. R.S. § 22:2043.1(B) as a complete bar to discovery. It is not, as this Court has already stated. Under the broad and liberal discovery principles that control this case, the defendants are not required to "take the Receiver's word for it" that the LDI documents under subpoena relate solely to "how well or poorly the regulator may have performed his respective job." Buck is entitled to see the documents in order to test that wholly unsupported conclusion.

And Buck and Milliman have both provided numerous examples of how LDI materials may relate to the financial condition of LAHC and the causes of its insolvency; conduct of other persons to whom fault may be allocable – including former directors and officers, third party administrators, and the federal government; and other evidence of the true causes of LAHC's insolvency and alleged related damages. *See Resolution Trust Corp. v. KPMG Peat Marwick*, 845 F. Supp. 621, 625 (N.D. Ill. 1994) (recognizing that despite its striking of affirmative defenses, defendants were entitled to discovery of regulatory materials going to whether their conduct caused or contributed to the institution's insolvency: "an assertion of this type is not an affirmative defense; it is an assertion that RTC cannot prove a necessary element of its claim.").

The Commissioner's suit places all of these issues in play and makes them fair game for discovery from both LDI and L&E, as numerous state and federal courts in other receivership cases cited by Buck have uniformly held. This is true whether or not those materials were or are

"unknown to Milliman and Buck." It is precisely because these relevant materials are "unknown to Milliman and Buck" that they are discoverable. In all events, they are, at minimum, relevant or potentially relevant. Buck and Milliman need show nothing more.

The Receiver now asserts that La. R.S. § 22:1983(J) makes "any kind of regulatory work undertaken by the LDI [] 'strictly confidential' and 'not subject to subpoena.'" Neither LDI nor L&E, in *either* their objections to the subpoenas or in their opposition briefing – has made any reference to that statute or asserted any objection based upon it. Such objections were waived *months ago*, and they cannot now be supplied by the Receiver on behalf of LDI – a separate entity under the Receiver's own "separate capacities" theory. Again, the Receiver lacks standing or right to supply any objection or argument that LDI and L&E failed to assert and preserve.

Even if not waived, La. R.S. § 22:1983(J), which refers to the "confidential treatment" of certain "examination" documents, does not preclude the LDI's or L&E's disclosure of documents. *See Stewart v. Mitchell Transp.*, No. 01-2456, 2002 WL 1558210, at *5 (D. Kan. July 11, 2002) ("[D]ocuments are not shielded from discovery on the basis of confidentiality."). Indeed, a Louisiana federal district court directly rejected the Receiver's argument that "La. R.S. 22:1983(J) protects all documents from disclosure." In *La. Health Servs. & Indem. Co. v. Blue Cross & Blue Shield of Miss., Inc.*, the United States District Court for the Middle District of Louisiana concluded that examination documents were **not** protected under La. R.S. § 22:1302(j) [now codified as La. R.S. § 22:1983(J)] and ordered the Louisiana Department of Insurance to comply with the subpoena. No. 96-31131, 129 F.3d 609 (5th Cir. 1997) (unpublished) (appeal rendered moot by the actual production of the documents).

Further, the Receiver himself waived any objection to production of LDI materials when, months ago, he undertook and promised to produce LDI regulatory materials that are in his possession and control.[8] Such bureaucratic equivocation and waffling should not be countenanced. LDI's and L&E's objections and failures to object are binding on them, as is the Receiver's previous promise to produce LDI materials in his possession and control. If such evidence in the Receiver's possession is relevant and discoverable as the Receiver has already conceded, the same

[8] *See* Exhibit I to Buck's Motion to Compel LDI, Excerpts of Commissioner's Response to Buck's Written Discovery Requests, Interrogatory No. 4. The Commissioner's Responses to Buck's Interrogatory Numbers 5-8, 19, 22 and Request for Production Numbers 3-4, 12-16, 28, 31-33, 34, 37, and 38 similarly promised, subject to stated objections, to produce responsive LDI records that were in the Commissioner's "possession and control."

categories of evidence are relevant and discoverable from the LDI and L&E. Additionally, the Receiver does not contest that the protective order already entered in this case will protect the confidential nature of materials to be produced by LDI and L&E.

Finally, the Receiver has no standing to demand that Defendants pay LDI's costs of complying with the subpoena duces tecum, particularly given the fact that the LDI itself has not demanded the payment of production costs and has not asserted, and therefore has waived, any undue burden objection. The Receiver simply has no right to assert such arguments on behalf of the regulatory entity from which he has labored so hard to separate himself.[9] Here again, such bureaucratic machinations should not be countenanced.

And because Buck's motions to compel were and are substantially justified, the LDI and L&E are not entitled to an award of expenses and/or attorney's fees and so that request should be denied.

II. CONCLUSION

For the foregoing reasons and those set forth in Buck's original briefing, Buck's Motions to Compel should be granted and the LDI's and L&E's request for an award of expenses and attorney's fees should be denied.

Respectfully submitted,

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[9] *See Stogner v. Surdivant*, No. 10-125, 2011 WL 4435254, at *6 (M.D. La. Sept. 22, 2011) (holding that Plaintiff had no standing to object to the subpoenas directed to her health care providers/pharmacy on the grounds of burden and overbreadth since she is not the responding party); *Pub. Serv. Co. of Okla. v. A Plus, Inc.*, No. 10-651, 2011 WL 691204, at *5 (W.D. Okla. Feb. 16, 2011) (finding that defendants lacked standing to challenge subpoenas directed to third-parties on the basis that the subpoenas are unduly burdensome); *Keybank Nat'l Ass'n v. Perkins Rowe Assocs., L.L.C.*, Civ. A. No. 09-497, 2011 WL 90108, at *2 (M.D. La. 2011) (holding that defendants lacked standing to challenge third-party subpoenas on grounds of relevance or undue burden to the subpoenaed non-party); *Streck, Inc. v. Research & Diagnostic Sys., Inc.*, No. 8:06CV458, 2009 WL 1562851, at *3 (D. Neb. June 1, 2009) (concluding that movant lacked standing to contest third-party subpoenas on grounds of undue burden or inconvenience).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been served upon all counsel of record by e-mail and upon counsel for LDI and Lewis & Ellis, Mr. Ashley Moore, by e-mail this 9th day of February, 2021.

/s/ James A. Brown