

**CIVIL RULES**

**APPENDIX B. SUBMISSION REGARDING REQUEST FOR PRODUCTION**

**See LCR 37**

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JONES ACTOR,

Plaintiff,

v.

BIG ROSE FLOWER COMPANY,

Defendant.

No. C01-9999RSL

LCR 37 SUBMISSION REGARDING  
REQUEST FOR PRODUCTION  
NO. 17  
NOTE ON MOTION CALENDAR:  
[insert date]

**I. MOVING PARTY'S INTRODUCTORY STATEMENT**

Defendant Big Rose Flower Company is the moving party for this submission. Plaintiff Jones Actor is seeking more than \$2.5 million in damages, claiming that at the time he purchased Big Rose stock, Big Rose allegedly failed to disclose that the property owned by Big Rose for growing flowers would be unable to produce a suitable crop in ~~2000~~2014. It is claimed that these alleged misstatements violated Section 10(b) of the 1934 Securities Exchange Act and the Washington Securities Act.

These allegations are untrue. Further, Actor is a director of a company that is also in the flower business, Fleurs 'R' Nous Company, and he was undoubtedly aware of the problems caused by the ~~1999-2013~~ drought, which affected all flower producing companies in the Northwest.

**II. RESPONDING PARTY'S STATEMENT**

Jones Actor purchased nearly \$3 million of stock in Big Rose--stock that is worth less than \$500,000 today. He purchased this substantial amount of stock because of glowing reports from Big Rose regarding its prospects for future profits.

However, things were not as rosy as they seemed. All of Big Rose's land holdings used to produce flowers were not only severely parched by the ~~1999-2013~~ drought, but also contaminated with chemicals because of a mistake in choosing fertilizers. Big Rose knew that it was unlikely that these chemicals could be removed from the soil in time to produce a profitable crop for ~~2000~~2014. When this information was finally disclosed to the public, Big Rose stock plummeted in value.

### III. DISPUTED DISCOVERY REQUESTS

REQUEST FOR PRODUCTION 17: Please produce all income tax returns for 1995-2000 through 2000 2014 for the Fleurs 'R' Nous Company.

RESPONSE: Actor objects to this request on the grounds that it calls for information ~~neither that is both not relevant to any parties claim or defense and not nor reasonably calculated to lead to the discovery of admissible evidence~~ proportional to the needs of the case. This litigation involves claims that Big Rose Flower Company misled investors about its financial profits by omitting information about its property and crops. This request seeks information about the income taxes of a business that is not even a party to the dispute. Discovery of Fleurs 'R' Nous Company's tax returns is not important to resolving the issues in dispute. Further, the information sought is confidential and no compelling reason justifies its disclosure. In addition the request is also overbroad and unduly burdensome because it seeks information spanning 15 years. The claims at issue pertain to at most only a two-year period. For these reasons, all requested tax returns from non-party Fleurs 'R' Nous company are being withheld.

#### Moving Party's Argument

Actor claims that he was deceived by the alleged omissions of information from Big Rose's public statements. To defend against this claim, Big Rose will show that Actor is a sophisticated individual, who was aware of the risks in the flower business and who also had information obtained by Fleurs 'R' Nous regarding the problems that Big Rose was having with its land at the time he was buying Big Rose stock. Defendants in security cases are properly allowed to obtain tax returns, because they help show the plaintiff's degree of sophistication and understanding of the risks of investment. *Davis v. Big Co.*, 123 F.3d 777, 788 (9th Cir. 1999). Further, the tax return may identify individuals with knowledge of Actor's understanding of the industry.

#### Responding Party's Response

While it is true that tax returns may be produced to show the degree of sophistication of a securities plaintiff, the tax returns sought here are not Actor's personal tax returns, but rather the tax returns for a company in which he is a director and part owner. That company is not a party to these proceedings. Non-parties should not be forced to produce their tax returns absent very compelling reasons. *Westminster v. Abbey*, 867 F.3d 309, 312 (9th Cir. 1999). No compelling reasons have been presented. Fleurs 'R' Nous is not a publicly traded company, and its financial and other information is maintained as confidential. It is a competitor of Big Rose, and disclosure of this information through discovery could be harmful. Additionally, the request is overbroad and unduly burdensome. Fifteen years of tax returns are unnecessary and not proportional to the needs of the case when the claims at issue pertain only to a two-year period.

#### Moving Party's Reply

Actor's supposed concern about Fleurs 'R' Nous' confidential information can be addressed through a protective order. Big Rose will agree not to disclose this information to persons other than counsel and experts absent agreement of the parties or further order of the court. While Fleurs 'R' Nous is not a party, its tax returns may contain information about money spent addressing the drought problem that was common to several floral companies. Thus, the information ~~could lead to discovery of admissible evidence~~ is both relevant and proportional to the needs of the case.

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LCR 37 SUBMISSION  
(C01-9999RSL)

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**CERTIFICATION**

I certify that the full response by the responding party has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with LCR 37(a).

DATED:

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Ira Just (WSBA #1234) Attorneys for Big Rose Company Moving Party

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