

ORDER granting 126 Plaintiff's motion to compel; denying 149 Defendants' cross-motion for a protective order; granting 175 Plaintiff's motion to withdraw its motion to strike; finding as moot 107 Plaintiff's motion to strike, given that the motion to strike has been withdrawn. To begin, on the record at the motion hearing on July 28, 2023, the Court granted ECF No. 126 , Plaintiff's motion to compel production of documents responsive to request numbers 11, 12, 13, and 34 of Plaintiff's first set of document requests, as narrowed, see ECF No. 126-6 at 3, and denied ECF No. 149 , Defendants' cross-motion for a protective order. Federal Rule of Civil Procedure 26(b)(1) allows a party to a civil litigation to obtain discovery on any relevant and nonprivileged matter that is proportional to the needs of the case. For the purpose of this Rule, relevance "has been construed broadly to include 'any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.'" Cole v. Towers Perrin Forster & Crosby, 256 F.R.D. 79, 80 (D. Conn. 2009) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)). "When a party files a motion to compel, it bears the initial burden to show the relevance of the information it seeks," at which point the party resisting discovery "then bears the burden of showing why discovery should be denied." Alberty v. Hunter, 343 F.R.D. 1, 6 (D. Conn. Nov. 17, 2022) (cleaned up). The district court "has broad discretion in deciding a motion to compel discovery." Metcalf v. Yale Univ., No. 15-CV-1696 (VAB), 2017 WL 627423, at *2 (D. Conn. Feb. 15, 2017) (citing Grand Cent. P'ship v. Cuomo, 166 F.3d 473, 488 (2d Cir. 1999)).The document requests at issue generally seek documents discussing Defendants' consideration of whether to participate in tiered networking programs. Defendants contend that the requested documents are not relevant following the Court's dismissal of Plaintiff's separate antitrust claims relating to this issue. Although Plaintiff's theory of relevance is a bit attenuated, the Court ultimately agrees that the requested documents pertaining to those programs have relevance to Plaintiff's surviving antitrust claims. Documents responsive to Plaintiff's requests for production could reasonably lead to relevant discoverable matters related

to whether Defendants in fact had a significant market power and whether they wielded that market power in an anticompetitive way. Specifically, documents suggesting that Defendants did not want to participate in tiered networking programs because they believed such programs would dilute their market power, or documents suggesting that Defendants believed they could defeat the market-wide efficacy of such programs by refusing to participate in them, could reasonably lead to evidence supporting Plaintiff's claims that Defendants in fact had and wielded an anticompetitive degree of market power. Although Defendants contend that the requests at issue are disproportionate to the needs of the case, their conclusory contention of burden and overbreadth is not enough to avoid discovery of those relevant materials, given the absence of a supporting affidavit explaining the factual basis for such a contention. *Doe v. Wesleyan Univ.*, No. 3:19-CV-01519 (JBA) (TOF), 2021 WL 4704852, at *4 (D. Conn. Oct. 8, 2021).

Moreover, the document requests are not overly broad or unduly burdensome on their face; rather, they appear to require review of only 4,000 additional documents, which are not many documents for an antitrust case of this size. See *United States v. Int'l Bus. Machs. Corp.*, 66 F.R.D. 186, 189 (S.D.N.Y. 1974) (observing that "discovery in antitrust litigation is most broadly permitted and the burden or cost of providing the information sought is less weighty a consideration than in other cases" (citations and internal quotation marks omitted)). Accordingly, the Court granted Plaintiff's motion to compel production of documents responsive to request numbers 11, 12, 13, and 34 of Plaintiff's first set of document requests, as narrowed, and denied Defendants' cross-motion for a protective order on this issue. At the motion hearing, the Court also decided to hold the following motions in abeyance pending further briefing from the parties. First, with respect to Defendants' motion to compel production of the complete personnel files of certain physicians formerly employed by Plaintiff and Trinity, ECF No. 136, the Court ordered Defendants to meet and confer with Plaintiff and Trinity again regarding specific categories of documents Defendants anticipate would be in the personnel files, bearing

in mind the limited nature of the information about which Plaintiff's counsel expressed concern at the motion hearing. By August 11, 2023, Defendants shall file either a notice representing that the dispute has been resolved, or a supplemental brief identifying the specific categories of documents they anticipate would be in the personnel files that Plaintiff and Trinity have refused to provide. In addition, the Court holds both parties' motions to seal, ECF Nos. 133 and 161 , in abeyance pending further filings from Defendants. With respect to Defendants' motion to seal at ECF No. 133 , the Court will hold the motion in abeyance until Defendants file a public version of Exhibit D redacting only those portions of the exhibit that truly warrant sealing under Local Rule 5(e). With respect to Plaintiff's motion to seal at ECF No. 161 , the Court first admonishes Plaintiff for overburdening the Court with excessive pages of exhibits. Because the documents were designated confidential by Defendants, Defendants must file a response to the motion to seal by August 11, 2023, in which they identify the specific parts of the documents that warrant sealing under Local Rule 5(e). The Court will enter a separate order instructing the parties on how to file sealed documents and motions to seal going forward in this case. At the motion hearing, the Court also set certain deadlines regarding case management. If necessary, Defendants shall move to compel production of documents by Plaintiff's affiliate SoNE by September 8, 2023. In addition, the parties shall file a joint status report on the status of discovery and any percolating discovery disputes by October 30, 2023. Signed by Judge Sarala V. Nagala on 7/31/2023. (Rennie, Carolyn) (Entered: 07/31/2023)