UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

S.W., A MINOR, BY CHELSEA WINDHAM AND VINCENT C. WINDHAM, *individually as natural guardians and next friends*

Plaintiffs

v.

WANABANA LLC, DOLLAR TREE STORES, INC *et al.*

Defendants

CIVIL ACTION NO. 25-mc-00028 (MAJ)

Related Action (Pending in the Southern District of Florida): *S.W., A MINOR, BY CHELSEA WINDHAM AND VINCENT C. WINDHAM, individually as natural guardians and next friends v. WANABANA LLC, et al.*, Case No: 1:24-cv-20526-KMM (S.D. Fla.)

DOLLAR TREE STORES, INC.'S MOTION TO COMPEL GRUPO NAVIS LLC TO COMPLY WITH SUBPOENA

Pursuant to Rules 45 and 34(c) of Federal Rules of Civil Procedure, Dollar Tree Stores, Inc. ("Dollar Tree") moves this Court for entry of the Proposed Order Granting its Motion to Compel Grupo Navis LLC ("Grupo Navis") to Comply with Subpoena ("Proposed Order"), attached hereto as Exhibit A. This Motion concerns a subpoena for documents (the "Subpoena") served on Respondent Grupo Navis LLC ("Grupo Navis") on August 15, 2024 (and re-served on September 17, 2024), requesting the production of documents relevant to the claims and defenses raised by the parties in *S.W., a minor, by Chelsea Windham and Vincent C. Windham v. Wanabana LLC, et al.*, No. 1:24-cv-20526-KMM (S.D. Fla.) (the "Florida Litigation"). *See* Subpoena (Ex. 1).

Dollar Tree has made a reasonable and good faith effort to reach an agreement with Grupo Navis on the matters set forth in this Motion. The undersigned counsel exchanged various written communications and held multiple telephone conferences with counsel for Grupo Navis in an effort to resolve the discovery dispute but was unable to resolve any of the issues raised in this Motion. In support of its Motion, Dollar Tree states as follows:

FACTUAL BACKGROUND

A. The Florida Litigation.

The Florida Litigation is a product liability action arising out of the recall of apple-cinnamon fruit puree pouches (the "Product") distributed in the United States by WanaBana USA LLC ("WanaBana USA"), a defendant in the Florida Litigation, and sold by Dollar Tree Stores, Inc., also a defendant. *See* Compl., Florida Litigation, ECF No. 1-2. WanaBana LLC ("WanaBana") is similarly a named defendant in the Florida Litigation, and an affiliated entity of WanaBana USA. The Florida Litigation Plaintiffs' claims are based on allegations that their minor daughter consumed lead contaminated Product manufactured and imported by the WanaBana Defendants and sold by Dollar Tree, and that she suffered injuries as a result of having elevated blood lead levels. *See id.* at ¶¶ 21–38. The Florida Litigation Plaintiffs allege claims for strict liability manufacturing defect, strict liability failure to warn, and breach of express and implied warranties against Dollar Tree for its sale of the Product. *Id.* at ¶¶ 110–34, 144–63. They allege the same causes of action against the WanaBana Defendants[1] based on their design, testing, labeling, advertising, development, manufacture, inspection, and distribution of the Product, in addition to alleging a cause of action for negligence. *See id.* at ¶¶ 110–63. Dollar Tree filed a crossclaim against the WanaBana Defendants for common law and contractual indemnification, Answer and Defenses to Pls.' Compl. with Cross-cls., Florida Litigation at 30–36, ECF No. 14, has asserted an affirmative defense of comparative fault and the fault of nonparties, *id.* at 28, ¶¶ 5, 11, and has sought leave to amend its affirmative defenses to specifically assert the fault of non-parties Austrofood and Negasmart, *see* Def. Dollar Tree Stores, Inc.'s Mot. for Leave to Amend Answer and Affirmative Defenses to Plead the Fault of Non-Parties (Dec. 23, 2024), ECF No. 74.

[1] "WanaBana Defendants" refers collectively to WanaBana and WanaBana USA.

On December 30, 2024, plaintiffs in the Florida Litigation filed a Motion for Leave to Amend and Incorporated Memorandum of Law. *See* ECF No. 75. Their proposed First Amended Complaint alleges the same claims as the prior complaint, but also names additional defendants—including Grupo Navis, WanaBana Exchange LLC, Austrofood, Caribbean Produce Exchange, and Negasmart—and adds a claim for violation of Florida's Deceptive and Unfair Trade Practices Act, § 501.201, *et seq.*, Fla. Stat. *See* ECF No. 75-1.[2]

Respondent Grupo Navis is a Puerto Rico-based limited liability company. Grupo Navis and WanaBana are the two members of WanaBana USA. *See* Declaration of Francisco Peña Cordovez ("Cordovez Decl.") ¶ 6 (attached as Ex. 2);[3] Grupo Navis LinkedIn Page ("[C]o-owns with the Peña family from Ecuador Wanabana Exchange and Wanabana USA") (attached as Ex. 3).

On May 27, 2024, WanaBana and WanaBana USA filed voluntary Chapter 7 bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware. On May 29, 2024, the WanaBana Defendants filed a Suggestion of Bankruptcy in the Florida Litigation, advising the court that they had commenced bankruptcy actions. *See* Suggestion of Bankruptcy, Florida Litigation, ECF No. 40. On May 30, 2024, Judge K. Michael Moore issued an automatic stay as to the WanaBana Defendants in the Florida Litigation. *Id.*, ECF No. 41.

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[2] On January 2, 2025, the Florida Litigation plaintiffs filed an amended Motion for Leave to Amend and Incorporated Memorandum of Law to reflect Dollar Tree's opposition to their motion *See* ECF No. 76. The Court has not yet ruled on that Motion and Grupo Navis is not a party to the litigation, nor will they necessarily become one.

[3] This declaration was originally filed in the *Jessica Smith & Joseph Smith ex. rel. J.S., a minor v. WanaBana LLC, et al.* case, No. 1:24-cv-02196 ("*Smith* Case"), in support of removal to the Northern District of Illinois (Dkt. No. 1-5). The *Smith* case also arose out of the same recall of the Product. Grupo Navis is also listed as a member, with WanaBana, on the unanimous written consent filed by WanaBana USA in its bankruptcy petition. *See In re WanaBana USA LLC*, No. 1:24-bk-11093 (Bankr. D. Del. May 24, 2024), ECF No. 1 at 7.

At a July 9, 2024, meeting of the bankruptcy creditors, Angel Santiago Colón, the Chief Executive Officer of Grupo Navis, **appeared on behalf of WanaBana USA as a WanaBana USA representative**, and made the following sworn representations to the bankruptcy court:

- Grupo Navis is a 50% owner of WanaBana USA;
- That Grupo Navis has WanaBana financial and non-financial documents and records in its possession, and some of those documents including third-party testing results;[4] and
- All of WanaBana USA's physical records and documents are currently being stored at Grupo Navis's offices in Puerto Rico, and that most of WanaBana USA's electronic files are stored on the cloud in various Drop Box (or Drop Box-like) folders and in QuickBooks.

See pp. 5, 13-14, 19-20, 26, 33-34, 37, Tr. of 7/9/2024 Meeting of the Creditors (Ex. 4).

On August 15, 2024, the bankruptcy Trustee filed a report in each of the bankruptcy cases, both of which concluded "that there is no property available for distribution from the estate." *See* Docket Text, *In re WanaBana LLC*, No. 1:24-bk-11092 (Bankr. D. Del. Sept. 17, 2024) ("WanaBana Bankruptcy Case"), ECF No. 14; Docket Text, *In re WanaBana USA LLC*, No. 1:24-bk-11093 (Bankr. D. Del. Sept. 17, 2024) ("WanaBana USA Bankruptcy Case"), ECF No. 14 (collectively, Ex. 5). That same day, in light of the sworn testimony of Grupo Navis's CEO representing that Grupo Navis has possession of documents from the WanaBana Defendants, Dollar Tree served the Subpoena on Grupo Navis, requesting documents regarding the testing, manufacture, sourcing, development, and importing of the Product, among other categories of documents relevant to the Florida Litigation. *See* Subpoena (Ex. 1).

On September 17, 2024, the bankruptcy court closed both WanaBana Defendants' bankruptcy cases, accepting the reports of the Trustee, discharging the Trustee from any further

[4] Before the bankruptcy case was closed, Dollar Tree requested relevant documents from the Trustee, but the Trustee had no such documents to produce. *See* Joint Discovery Status Report, Florida Litigation, ECF No. 53 at 9-10.

duties, and closing the bankruptcy estates. *See* Docket Text, WanaBana Bankruptcy Case (Sept. 17, 2024); Docket Text, WanaBana USA Bankruptcy Case (Sept. 17, 2024) (included in Ex. 5). The Florida Litigation court lifted the bankruptcy stay on September 26, 2024. Florida Litigation, ECF Nos. 52, 54.

After the stay was lifted, Dollar Tree served Requests for the Production of Documents and a Notice of Deposition on each of the WanaBana Defendants; however, those Defendants have not responded to any of Dollar Tree's discovery. On November 8, 2024, counsel for the WanaBana Defendants filed a Motion to Withdraw as Counsel, stating that the WanaBana Defendants "stopped operating, are defunct and are unable to sustain the expense of legal representation." *Id.*, ECF No. 65.[5] On December 6, 2024, WanaBana filed a Motion to Withdraw Answer and Affirmative Defenses, requesting to withdraw their responsive pleading to the Plaintiffs operative complaint and "consent to a default judgment with damages." *Id.*, ECF No. 70. On December 10, 2024, the Florida Litigation court granted WanaBana's Motion. *Id.*, ECF No. 71. On December 16 and 17, 2024, WanaBana USA and WanaBana failed to produce corporate representatives at Dollar Tree's noticed 30(b)(6) depositions of both entities. *See* Certificates of Non-Appearance (Ex. 6). Dollar Tree anticipates that default judgment will be entered against the WanaBana Defendants in the Florida Litigation.

B. Dollar Tree's Subpoena to Grupo Navis.

Dollar Tree first served its Subpoena to Grupo Navis on an individual named Jose Náter on August 15, 2024. On August 29, 2024, counsel for Grupo Navis sent a letter to counsel for Dollar Tree (the "Letter"), which stated that the Subpoena was not properly served because Mr.

[5] The Florida Litigation court denied WanaBana's counsel's Motion to Withdraw. *See* ECF No. 66.

Náter was not authorized to accept service. *See* Letter at 1 (Ex. 7). Grupo Navis's counsel also objected to all of the document requests in the Subpoena and refused to produce any documents in response to the Subpoena. *See id.* Counsel for Dollar Tree and Grupo Navis had their first telephonic meet and confer on August 30, 2024, but counsel for Grupo Navis had more to discuss with her client before she could meaningfully meet and confer. Thereafter, counsel for Dollar Tree continued to follow up via email to ascertain Grupo Navis's position, and set up another conference call. *See* Email Chains between Counsel for Dollar Tree R. Forman and Counsel for Grupo Navis S. Santiago (Ex. 8).

On September 17, 2024, Dollar Tree served an identical subpoena on Grupo Navis, this time on Marta R. Candelas, a registered agent authorized to accept service. *Id.* On September 18, 2024, counsel for Dollar Tree had another meet and confer with counsel for Grupo Navis about the newly served subpoena and explained that the requests are identical to the last subpoena, but counsel for Grupo Navis represented that she needed time to review and confirm. *Id.* Thereafter, counsel for Dollar Tree continued to follow up via email, which resulted in another telephone conference on October 15, 2024. *Id.* During that call, counsel for Grupo Navis represented that Grupo Navis was willing to produce QuickBooks records of WanaBana to satisfy the Subpoena in return for Dollar Tree dropping all other document requests. *Id.* The WanaBana QuickBooks documents which Grupo Navis offered to produce are extremely limited in scope and are insufficient to satisfy the Subpoena and Dollar Tree's document requests, nor do they go to the heart of the claims and defenses in the Florida Litigation.[6] Thus, Counsel for Dollar Tree said that was not sufficient and continued to follow up inquiring whether Grupo Navis would cooperate in

[6] Grupo Navis has not, in fact, provided any WanaBana QuickBooks documents.

responding to the document requests since the documents sought are within Grupo Navis's possession, custody, or control. *Id.*

Hearing nothing, on November 6, 2024, counsel for Dollar Tree told counsel for Grupo Navis that it would seek court intervention to compel compliance with the Subpoena. *Id.* On November 7, 2024, counsel for Grupo Navis emailed counsel for Dollar Tree representing that Grupo Navis was not waiving its initial objections stated in the Letter, but was willing to discuss producing "responsive documents found in the accounting records that were prepared through Mr. Náter's professional services agreement" with the WanaBana Defendants pertaining to WanaBana USA's sale of the Product to Dollar Tree. *Id.* Local counsel for Dollar Tree likewise made one last attempt at a meet and confer but that was not fruitful either.

Throughout the meet and confer process, counsel for Dollar Tree explained to counsel for Grupo Navis that: (1) Grupo Navis is one of only two members of WanaBana USA, the Product's distributor; (2) Grupo Navis's CEO represented under oath to a United States bankruptcy court that Grupo Navis has WanaBana documents in its possession, custody, and control; (3) Grupo Navis is the only entity from which Dollar Tree can obtain the highly relevant documents regarding the testing, manufacture, sourcing, development, and importing of the Product; and (4) Dollar Tree has a substantial need for these documents, which are critical to its defense in the Florida Litigation. Despite Dollar Tree's efforts, by the undersigned local counsel as well as its counsel in the Florida Litigation, to meet and confer with counsel for Grupo Navis on the Subpoena on numerous occasions over the course of four months, Grupo Navis stands on its objections and refuses to produce responsive documents.

ARGUMENT

A. The WanaBana Documents Sought are Within the Possession, Custody, and Control of Grupo Navis and the Court Should Overrule Grupo Navis's General Objections that State Otherwise.

The core of this discovery dispute relates to Grupo Navis's position that it has no legal obligation to produce documents of the WanaBana Defendants that are responsive to Dollar Tree's document requests. Grupo Navis has said as much in its General Objections Nos. 4 and 7-11, and in its objections to the Subpoena's definition of "You" and "Your" which include WanaBana USA and WanaBana. *See* Letter at General Objections Nos. 4, 7-11, 13-14. Contrary to these general objections, the Subpoena properly requests that Grupo Navis produce responsive WanaBana documents that are within its possession, custody, and control.

First, the CEO of Grupo Navis, Angel Santiago Colón, affirmatively represented under oath before a United States bankruptcy court that Grupo Navis (1) has WanaBana USA physical records and documents at Grupo Navis's offices in Puerto Rico and that most of the electronic files are stored on the cloud in various Drop Box folders (or Drop Box-like folders); (2) Grupo Navis has WanaBana financial documents; and (3) that Mr. Santiago promised to send information about WanaBana USA's testing of the Product to the Trustee, necessarily conceding that Grupo Navis has access to WanaBana USA documents regarding the testing of the Product. Given Mr. Colón's representations that Grupo Navis **is in actual possession and custody of WanaBana USA documents**, it is unreasonable for Grupo Navis to take the position in response to this Subpoena that it has no legal obligation or ability to produce responsive WanaBana Defendants' documents. This is especially true when Grupo Navis is the only known entity that can produce the documents since the WanaBana Defendants have failed to respond to Dollar Tree's discovery requests, are

"defunct," have no money to pay legal fees, and have abandoned defending themselves in the Florida Litigation and in litigation across the country regarding the Product.[7]

Second, even if Grupo Navis was not in the physical possession and custody of the WanaBana Defendants' documents, it is certainly within Grupo Navis's control to obtain them. "Control" within the meaning of Federal Rule of Civil Procedure 34(a)(1) is not limited to actual physical possession of a document. Indeed, "[l]egal ownership or actual physical possession is not required; documents are considered to be under a party's 'control' when that party has the right, authority or ability to obtain those documents upon demand." *Colon v. Blades*, 268 F.R.D. 129, 132 (D.P.R. 2010) (citation omitted). Grupo Navis is one of only two members of WanaBana USA, so the objection that Grupo Navis does not have custody, possession, or control of *any* of the documents requested strains credulity. Moreover, Grupo Navis position is directly contrary to the sworn testimony of its CEO, as Mr. Santiago represented under oath that he could obtain testing documents for the Trustee.

Where there is as close of a corporate relationship between two entities as there is here between Grupo Navis and the WanaBana Defendants, courts within the First Circuit and in other jurisdictions have held that a corporation has control over the documents of another corporation for purposes of document production. *See, e.g.*, *Addamax Corp. v. Open Software Found., Inc.*, 148 F.R.D. 462 (D. Mass. 1993) ("Where the relationship is thus such that the agent-subsidiary can secure documents of the principal-parent to meet its own business needs and documents helpful for use in litigation, the courts will not permit the agent-subsidiary to deny control for

[7] *See* Mot. to Withdraw Answer and Affirmative Defenses, *Smith* Case (Dec. 9, 2024), ECF No. 74; Mot. to Withdraw Answer and Affirmative Defenses, *Skylar Horton & Tyler Turner ex rel. Tristan Turner v. Austrofood S.A.S., et al.*, No. 1:24-cv-00221-RP (W.D. Tex. Dec. 9, 2024), ECF No. 83.

purposes of discovery by an opposing party."); *Costa v. Kerzner Int'l Resorts, Inc.*, 277 F.R.D. 468, 472 (S.D. Fla. 2011) (collecting cases) (stating that "[n]umerous courts have addressed the concept of 'control' as between corporate entities; virtually all of the published decisions have required production by the nonparty corporation" and compelling party to produce documents of nonparty affiliates because the documents were within the party's control); *In re Subpoena Duces Tecum to Ingeteam, Inc.*, No. 11–36, 2011 WL 3608407, at *1–2 (E.D. Wis. Aug. 16, 2011) (granting motion to compel production of documents held by foreign parent); *Flavel v. Svedala Indus., Inc.*, No. 92–1095, 1993 WL 580831, at *4–5 (E.D. Wis. Dec. 13, 1993) (granting motion to compel documents possessed by the defendant's parent); *Ferber v. Sharp Electronics Corp.*, No. 84 Civ. 3105(RO), 1984 WL 912479, at *1 (S.D.N.Y. Nov. 28, 1984) (granting motion to compel production of documents and answers to interrogatories that were in possession of corporate parent).

Finally, Dollar Tree has a substantial need for the documents in the Florida Litigation and Grupo Navis is Dollar Tree's **only avenue to obtain them.** In the Florida Litigation, Dollar Tree—an innocent retailer—is being sued for a manufacturing defect in the Product, its failure to warn about the dangers of the Product, and for breach of express and implied warranties regarding the Product. Compl. ¶¶ 110–34, 144–63, Florida Litigation, ECF No. 1-2. It is undisputed that Dollar Tree is only a party to the case simply because it sold the Product on its shelves. *Id.* ¶¶ 11, 15, 24. The WanaBana Defendants, however, were the importers of the Product; were responsible for the design, development, manufacture, and sale of the Product; and contractually agreed with Dollar Tree that they would ensure the Product complied with all applicable laws and regulations of the United States, which included testing the Product for the presence of lead. *Id.* ¶¶ 9–10, 13–14; Requests Nos. 5–7, 9–14, Def. Dollar Tree Stores, Inc.'s First Set of Reqs. for Admission to Def.

WanaBana LLC, Florida Litigation (served Oct. 18, 2024) (deemed admitted under Fed. R. Civ. P. 36(a)(3)); Requests for Admission Nos. 5–7, 9–14, Def. Dollar Tree Stores, Inc.'s First Set of Reqs. for Admission to Def. WanaBana USA LLC, Florida Litigation (served Oct. 18, 2024) (deemed admitted under Fed. R. Civ. P. 36(a)(3)). Indeed, Dollar Tree has asserted a crossclaim against WanaBana in the Florida Litigation for contractual and common law indemnification based on the WanaBana Defendants' contractual representations and obligations regarding the Product. Answer and Defenses to Pls.' Compl. with Cross-cls., Florida Litigation at 30–36, ECF No. 14. And Dollar Tree has asserted affirmative defenses of comparative fault and the fault of non-parties under Florida law. *Id.* at 28, ¶¶ 5, 11; *see* Def. Dollar Tree Stores, Inc.'s Mot. for Leave to Amend Answer and Affirmative Defenses, Florida Litigation (Dec. 23, 2024), ECF No. 74.

To meet its burden of proof on its defenses and have a percentage of fault apportioned on the verdict form to (1) the WanaBana Defendants, and (2) the other non-party entities that had a role in the manufacturing process and that WanaBana USA vetted and contracted with, it is essential that Dollar Tree discover and obtain the WanaBana Defendants' or other related documents that go to those issues. But given the WanaBana Defendants' procedural posture in the Florida Litigation—that they are defunct, out of money, and are willing to consent to a default judgment resulting in a finding of liability—Dollar Tree has no other avenue to obtain relevant WanaBana documents except from the only non-defunct closely related entity—Grupo Navis—that has acknowledged having possession, custody, and control of those documents.

B. The Court Should Overrule Grupo Navis's Other General Objections to Dollar Tree's Document Requests.

In its Letter objecting to the document requests in the Subpoena, Grupo Navis asserts numerous general, boilerplate objections. As an initial matter, "[b]oilerplate, generalized objections to an opponent's discovery requests are inadequate." *Romero-Acosta v. Bottles,*

Kindred Spirits, Inc., No. CV 23-1163 (JAG/BJM), 2024 WL 4425869, at *2 (D.P.R. Oct. 4, 2024) (citations omitted). On that basis alone, Grupo Navis's general and boilerplate objections to the document requests should be overruled and not considered by the Court. Setting that aside, Grupo Navis's general objections are without merit. Dollar Tree addresses each in turn, below:

General Objection No. 1.

Grupo Navis objects to the Subpoena to the extent it imposes obligations inconsistent with the federal or local rules, or any "Order issued in this case" or any "other applicable laws or rules." *See* Letter at General Objections No. 1. Grupo Navis's nonspecific objection makes zero attempt to identify any rule, law, or order that Dollar Tree's document requests are inconsistent with—likely because there are none. For that reason alone, the Court should overrule this objection.

General Objections Nos. 2 and 3.

Grupo Navis objects on the grounds that the Subpoena "could be interpreted as a violation of the automatic stay" pending the WanaBana Defendants' bankruptcy proceedings. *See* Letter at General Objections Nos. 2 and 3. Even if Grupo Navis—a non-party, non-bankrupt entity—had standing to assert this objection, it is no longer valid as the stay has been lifted. *See supra* at pp. 4-5.

General Objections Nos. 5, 17, 18.

Grupo Navis objects to the Subpoena "to the extent that it purports to require the production of information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity under federal, state or commonwealth statutory, constitutional or common law." Letter at General Objections No. 5. Even if such a privilege has been properly invoked, it does not relieve Grupo Navis from promptly producing any non-confidential materials.

"But the party who invokes the privilege bears the burden of establishing that it applies . . . and that it has not been waived." *In re Keeper of Records (Grand Jury Subpoena Addressed to XYZ Corp.)*, 348 F.3d 16, 22 (1st Cir. 2003). "Whatever quantum of proof is necessary to satisfy this obligation, a blanket assertion of privilege is generally insufficient." *In re Grand Jury Subpoena (Mr. S.)*, 662 F.3d 65, 71 (1st Cir. 2011). Indeed, "[w]hen a party objects to discovery requests on the basis of privilege, the party must, (i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." *Autoridad de Carreteras y Transportacion v. Transcore Atl., Inc.*, 319 F.R.D. 422, 430 (D.P.R. 2016) (citations and internal quotation marks omitted). Grupo Navis asserts a blanket privilege objection, which fails to provide any support for the applicability of any privilege to the requests.

Similarly, Grupo Navis objects to the requests to the extent they seek confidential and/or proprietary information. *See* Letter at General Objections No. 17-18. But to adequately assert such an objection, Grupo Navis must "identify with specificity the legal protection it invokes and satisfy the pertinent and strict requirements for invoking a . . . protection. . . . [and] specifically describe the nature of the documents, communications or tangible things not produced or disclosed." *C-Fuels, LLC v. Puma Energy Caribe LLC*, No. CV 19-2057 (MDM), 2021 WL 5879458, at *8 (D.P.R. Dec. 13, 2021). It has not done so here. Moreover, simply because a document contains confidential or protected information does not mean it is not relevant nor discoverable. If Grupo Navis has confidential or other protected documents in its possession, the burden is on Grupo Navis to identify those documents and establish why those documents should not be produced even if an appropriate protective order is in place.

General Objections Nos. 6, 12, 15.

Grupo Navis objects on the grounds of the "overbreadth and undue burden of the Subpoena." *See* Letter at General Objections No. 6. It also objects on the basis that the Subpoena is "broader than the relevant time period to be used by the parties to the Action" and seeks information and documents "outside the scope of the contested matters of the Action." *Id.* at Nos. 12 and 15. But "[i]t is well settled that[] [t]he party resisting production bears the burden of establishing lack of relevancy or undue burden . . . . [T]he mere statement by a party that the interrogatory [or request for production] was overly broad, burdensome, oppressive and irrelevant is not adequate to voice a successful objection." *Aponte-Navedo v. Nalco Chem. Co.*, 268 F.R.D. 31, 36 (D.P.R. 2010) (internal quotation marks omitted). Grupo Navis has done nothing more than assert the most disfavored and baseless boilerplate objection.

The documents requested are limited insofar as they relate to the Product, and all issues related to the Product are relevant to the Florida Litigation. As detailed above, the Florida Litigation is centered on the sale and distribution of the Product by the WanaBana Defendants through Dollar Tree. Thus, the requests in the Subpoena are focused on the corporate structure and legal relationships of the WanaBana Defendants and related entities, including Grupo Navis; the testing, manufacture, sourcing, development, and importing of the Product and its constituent raw materials; government investigations and legal claims involving the Product; and insurance policies covering any claims involving the Product. *See generally* Subpoena. The requests properly seek nonprivileged documents which are relevant to the claims and defenses and are proportional to the needs of the Florida Litigation. *See Glob. Sales Grp., Corp. v Senci Power USA, Inc.*, No. 23-1213 (SCC), 2024 WL 4696126, at *1 (D.P.R. Nov. 6, 2024) (citing Fed. R. Civ. P. 45(a)) ("Rule 45(a) of the Federal Rules of Civil Procedure allows a party to serve a

nonparty a subpoena to produce documents."); *P.R. Ports Auth. v. P/V Norwegian Epic*, No. 21-1056 (RAM), 2022 WL2704477, at *2 (D.P.R. July 12, 2022) ("A Rule 45 subpoena is subject to the scope of discoverable information set forth in Fed. R. Civ. P. 26(b)(1)" which "states that '[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.'" (citing *Smith v. Turbocombustor Tech., Inc.*, 338 F.R.D. 174, 176 (D. Mass. 2021))).

Because the requests are limited in scope to documents regarding the Product, they are necessarily limited to the time period of the Product's development, manufacture, and sale. The Product was only on the market in the United States for a short duration (only within the last five years). Moreover, several of the requests explicitly limit the time period to the past two years because the Product was only brought to market in Dollar Tree stores in December 2022. *See* Subpoena at 6–7 (Requests 2, 4, 6).

Further, nowhere does Grupo Navis explain the undue burden the Subpoena poses beyond "mere assertion[s] that compliance would be burdensome and onerous without showing the manner and extent of the burden and the injurious consequences of insisting upon compliance." *Sterling Merch. Inc. v. Nestle, S.A.*, No. 06-1015(SEC), 2008 WL 1767092, at *2 (D.P.R. Apr. 15, 2008) (finding that defendant had failed to show undue burden because it had sufficient resources to comply with a subpoena). Grupo Navis has to explain how the requests in the Subpoena pose an undue burden, but to the extent there is an undue burden, it is outweighed by Dollar Tree's "substantial need for the . . . material that cannot be otherwise met without undue hardship." Fed.

R. Civ. P. 45(d)(3)(C)(i).[8] The Court should overrule Grupo Navis's relevance, overbreadth and undue burden objections.

General Objections Nos. 13, 14, 16.

Finally, Grupo Navis asserts numerous boilerplate objections to the definitions and instructions to the requests, and to the timeframe Grupo Navis had to respond to the Subpoena. Most of the objections to the definitions and instructions relate to Dollar Tree's direction that Grupo Navis must look for and produce responsive documents of the WanaBana Defendants. As to that point, Dollar Tree rests on its argument asserted *supra* pp. 8-11. As to Grupo Navis's objection that it could not respond to the Subpoena within the timeframe provided by Dollar Tree, Grupo Navis could have requested additional time to comply at any time, but instead took the approach of wholesale objecting to the Subpoena and standing on those objections. It has now been four months since Dollar Tree served the Subpoena, which would have been more than adequate for Grupo Navis to comply with its obligations. Instead, it remains steadfast in its refusal to comply.

C. The Court Should Overrule Grupo Navis's Specific Objections to Dollar Tree's Document Requests.

In addition to improperly incorporating its general objections to each document request, Grupo Navis has asserted specific objections to the requests, which should likewise be overruled. Dollar Tree addresses those specific objections below:

[8] To the extent this Court does find that the Subpoena poses an undue burden on Grupo Navis, which as explained herein it should not, Dollar Tree agrees to "reasonably compensate[]" Grupo Navis within the meaning of Fed. R. Civ. P. 45(d)(3)(C)(ii).

Request No. 1.

Request No. 1 seeks organizational charts setting forth the structure and membership of Grupo Navis and the WanaBana Defendants or other entities retained or owned (wholly or in part) by them, that were involved in any manner with the Product, including, but not limited to the manufacture, marketing, distribution, development, sale or regulatory affairs related to the Product. In response, Grupo Navis asserts specific objections that are largely repetitive of its general objections. Those objections fail for the reasons stated above. *See supra* at pp. 8-16.

As to Grupo Navis's relevance objection, this request is well within the scope of discoverable documents because the corporate entities within the Grupo Navis or WanaBana corporate family with **any** connection to the design, development, manufacture, labeling, marketing, and importation of the Product are directly related to the claims and defenses in the Florida Litigation. Dollar Tree is entitled to know who those corporations are, how they are related to the Product, and what specific role they played in the Product being brought to market. If no such organizational charts exist, then Grupo Navis can produce any other type of document that provides the information sought. As discussed above with respect to Grupo Navis' general objections, the lack of a time frame in the request is not objectionable. *See supra* at pp. 8-16.

Requests Nos. 2, 3, 4, 5.

Requests 2 through 5 request documents and communications relating to: (1) the testing, including analytical testing results, of the Product, raw material intended to be used to manufacture the Product, or any other lead-containing products over the past two years; (2) the background and history of how Negasmart was chosen as a cinnamon supplier for the Product; (3) the results of the testing that Negasmart or any other supplier did on the cinnamon supplied for products in the

past two years; and (4) the relevant practices, policies, and standards regarding the testing of raw material sources for the WanaBana Defendants' products.

In response, Grupo Navis asserts specific objections that are largely repetitive of its general objections. Those objections fail for the reasons stated above. *See supra* at pp. 8-16. Setting that aside, these requests are highly relevant to the claims in the Florida Litigation, including Dollar Tree's affirmative defense regarding the comparative fault of the WanaBana Defendants, Austrofood, and Negasmart. Indeed, the FDA found that Negasmart, an Ecuadorian company, adulterated the cinnamon it supplied to Austrofood, S.A.S ("Austrofood") and WanaBana to be used in the manufacture of the Product with lead for economic gain.[9] Moreover, as explained *supra* the requests are reasonably limited in time and scope and are not cumulative of any other documents sought. Moreover, there is no other source that Dollar Tree can reasonably obtain this information from—the information must come from the WanaBana Defendants' files.[10]

Requests Nos. 6 and 15.

Requests 6 and 15 seek documents and communications that Grupo Navis, WanaBana USA or WanaBana, or any other affiliated entity, has exchanged with any government agencies relating to the Product, including relating to the recall of the Product, or any other lead containing product, in the past two years continuing to the present; and memoranda, reports, or studies that Grupo Navis, WanaBana USA or WanaBana, or any other affiliated entity, has submitted to any government agencies relating to the Product.

In response, Grupo Navis asserts specific objections that are largely repetitive of its general objections. Those objections fail for the reasons stated above. *See supra* at pp. 8-16. In addition,

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[9] *See* https://www.fda.gov/food/outbreaks-foodborne-illness/post-incident-response-activities-elevated-lead-and-chromium-levels-cinnamon-applesauce-pouches.

[10] Both Austrofood and Negasmart are Ecuadorian corporations.

all of Grupo Navis's specific objections fail because the requests are extremely limited in time (Request No. 6 is two years) and scope (only relates to the Product at issue or other lead containing products) and is highly relevant. Both the North Carolina Department of Health and Human Services, among health departments in other states, and the Food and Drug Administration conducted investigations into the Product and issued warning letters to WanaBana and Austrofood regarding the Product.[11] All lots of the Product were ultimately recalled from the United States market in November 2023.[12] Dollar Tree has taken efforts to obtain similar documents directly from North Carolina and the FDA, but the FDA maintains that any documents the entities submitted to FDA about the Product are confidential and cannot be released. North Carolina did not produce any WanaBana documents. Simply, these requests are highly probative, as government agency investigations triggered the discovery of the lead contamination of certain lots of the Product and the subsequent recall of the Product from the United States market.

Requests Nos. 7, 8, 9, 10.

Requests 7 through 10 seek documents and communications between Grupo Navis, WanaBana USA, WanaBana, or any other affiliated entity and the Product manufacturer Austrofood, regarding a number of topics relevant to the Florida Litigation, including:

- Agreements, contracts, billing records, payment records, and related amendments entered into relating to the manufacture of the Product or any other lead containing product;

[11] https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/wanabana-usa-llc-680548-11042024 (FDA warning letter to WanaBana); https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/austrofood-sas-679052-08092024 (FDA warning letter to Austrofood); https://www.fda.gov/food/outbreaks-foodborne-illness/investigation-elevated-lead-chromium-levels-cinnamon-applesauce-pouches-november-2023 (FDA investigation into the Product).

[12] https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/wanabana-recalls-wanabana-weis-and-schnucks-apple-cinnamon-fruit-puree-pouches-cinnamon-apple-sauce (describing that all lots of the Product were recalled by the company on November 9, 2023).

- The assessment, testing, inspection of, and certification of Austrofood as a manufacturer, including but limited to GMP or cGMP certifications, SSO certifications, and Austrofood's status as a manufacturer;

- The sourcing of the Product and any other lead containing product, and the process of finding and acquiring raw material suppliers; and

- The development of the Product and any other lead containing product.

In response, Grupo Navis asserts specific objections that are largely repetitive of its general objections. Those objections fail for the reasons stated above. *See supra* at pp. 8-16. Curiously, Grupo Navis specifically objects to various terms in each of the requests as vague and ambiguous—terms such as "billing records" or "payment records," which have absolutely no ambiguity. And if, in fact, there was any confusion as to what Dollar Tree was requesting by these terms, Dollar Tree remained available during the entire meet and confer process to clarify. Counsel for Grupo Navis never sought clarification (and, indeed, offered to but never produced the QuickBooks records (i.e., financial records) of WanaBana).

As to Grupo Navis's relevance objections, any documents and communications between Grupo Navis, WanaBana USA, WanaBana, or any other affiliated entity and Austrofood is highly relevant to the Florida Litigation. Austrofood actually manufactured and assembled all of the allegedly defective Product at Austrofood's facility in Ecuador, and Austrofood is the manufacturer that WanaBana USA and WanaBana chose to "vet" and contract with to manufacture the Product. Tellingly, the FDA actually found common ownership of Austrofood and the WanaBana Defendants. Specifically, the FDA found that "[d]uring the investigation, it was reported that Austrofood (manufacturer) and WanaBana (importer) are owned and operated by the same individual" and that "Austrofoods CIA LDA (Ecuador) is a processing facility owned by the

same partners as WanaBana USA LLC (Jacksonville, FL)."[13] Grupo Navis has no basis to represent that the documents sought fall outside the scope of the Florida Litigation.

Requests Nos. 11, 13, 14.

Requests 11, 13 and 14 seek documents and communications relating to the import of the Product or any other lead containing product into the United States by Grupo Navis, the WanaBana Defendants, or any affiliated entity; and agreements, contracts, billing records, payment records, or legal arrangements entered into between Grupo Navis, the WanaBana Defendants, or any affiliated entity and Dollar Tree or any other retailer for the sale of the Product. In response, Grupo Navis asserts specific objections that are largely repetitive of its general objections. Those objections fail for the reasons stated above. *See supra* at pp. 8-16.

As to Grupo Navis's relevance objection, the documents requested fall squarely within the scope of the Florida Litigation and are highly relevant to Dollar Tree's affirmative defenses regarding the conduct of the WanaBana Defendants and whether they acted as reasonable importers of the Product into the United States, complying with all applicable safety laws and regulations. What is more, if there is evidence that these entities unreasonably allowed other lead containing products to be imported into the United States, that is certainly relevant to the issues in this case as well. Moreover, as discussed above with respect to Grupo Navis's general objections, the lack of time frame stated in the request is not objectionable. *See supra* at pp. 8-16.

Requests Nos. 12 and 17.

Requests 12 and 17 seek documents and communications regarding claims and complaints, civil and criminal actions regarding injuries caused by the Product, including any such actions

[13] U.S. FOOD & DRUG ADMIN., LEAD AND CHROMIUM/FRUIT PUREE POUCHES/NOV. 2023 EXECUTIVE INCIDENT SUMMARY 3, 10 (Feb. 13, 2024) (Ex. 9).

against cinnamon supplier Negasmart. In response, Grupo Navis asserts specific objections that are largely repetitive of its general objections. Those objections fail for the reasons stated above. *See supra* at pp. 8-16.

As to Grupo Navis's relevance objection, the requested documents are relevant to the Florida Litigation because they concern claims similar to those alleged in the Florida Litigation regarding injuries caused by the Product. "The 'widely-accepted view' among federal courts is that discovery of other litigation is permissible 'where it involves (1) the same or similar claims arising from (2) the same or similar products at issue.'" *BPP Retail Properties, LLC v. N. Am. Roofing Servs., Inc.*, 300 F.R.D. 59, 62 (D.P.R. 2014). And "[f]or discovery purposes, the court need only find that the circumstances surrounding the other accidents or products are similar enough that the discovery concerning those incidents is reasonably calculated to lead to the uncovering of substantially similar occurrences." *Id.* At least some of the units of the Product were unquestionably contaminated with lead, therefore any claim or complaint or action arising out of injuries from the Product's lead contamination are discoverable. Moreover, other civil and criminal actions arising out of the Product are probative of Dollar Tree's affirmative defenses of comparative fault of the WanaBana Defendants, and the fault of non-parties Austrofood and Negasmart.

Finally, as discussed above with respect to Grupo Navis' general objections, the lack of time frame stated in the request is not objectionable. *See supra* at pp. 8-16.

Requests No. 16.

Request 16 seeks documents and communications regarding insurance policies that may cover any claim related to the Product or any other lead-containing products. The existence of insurance policies which may cover claims related to the Product at issue in the Florida Litigation

is highly relevant to the Florida Litigation, as any insurance policies may offset any judgment entered against Dollar Tree.

CONCLUSION

Dollar Tree prepared the attached Proposed Order Granting Motion to Compel Grupo Navis LLC to Comply with Subpoena, which compels Grupo Navis to produce documents in its possession which are responsive to Dollar Tree's Subpoena. Dollar Tree seeks this Court's entry of the Proposed Order.[14]

DATED: January 14, 2025

Respectfully submitted,

/s/Miguel A. Rangel Rosas

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[14] To the extent the documents produced by Grupo Navis are confidential, Dollar Tree agrees to abide by the Stipulated Confidentiality Order entered on September 19, 2024 in the Florida Litigation with respect to those documents. ECF No. 50.

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LOCAL RULE 26 CERTIFICATION

We hereby certify that Ms. Rachel Forman serves as counsel to Dollar Tree Stores, Inc., and formally represents Dollar Tree Stores, Inc. in the proceedings before the Southern District of Florida. Pursuant to Local Rule 26(b), before bringing this Motion, the undersigned counsel for Movant Dollar Tree Stores, Inc. conferred with counsel for Grupo Navis LLC about the relief sought herein.

Dated: January 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

We hereby certify that on the 14th day of January 2025, we electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, and that the foregoing document has been served upon counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

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