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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES This Pleading Relates to Included Action: REBECCA LEE WILLIS, on behalf of herself and all others similarly situated, Plaintiff, vs. LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; CITY OF LANCASTER; CITY OF PALMDALE; PALMDALE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; QUARTZ HILL WATER DISTRICT; ANTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; PHELAN PINON HILL COMMUNITY SERVICE DISTRICT; and DOES 1 through 1,000; Defendants.	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408 CASE NO. BC 364553 **APPENDIX OF NON-CALIFORNIA CASES IN SUPPORT OF EX PARTE APPLICATION FOR LEAVE TO FILE MOTION TO COMPEL DISCOVERY AND FOR ORDER SHORTENING TIME FOR HEARING ON MOTION TO COMPEL DISCOVERY.** Date: February 24, 2011 Time: 10:00 a.m. Dept: 1 Judge: Hon. Jack Komar Coordination Trial Judge

Plaintiff Willis hereby submits this appendix of Non-California authorities in Support of Plaintiffs' Ex Parte Application for Leave to File Motion to Compel Discovery and for Order Shortenting Time for Hearing on Motion to Compel Discovery:

Non-California Cases

Amsterdam Project Mgmt. Hum. Found v. Laughrin
2009 (N.D. Cal. 2009) 2009 WL 102816 .....-1-

Clarke v. American Commerce Natl. Bank
1992 (9th Cir. 1992) 974 F.2d 127.....-2-

Real v. Continental Group, Inc.
1986 (N.D. Cal. 1986) 116 F.R.D. 211.....-3-

Dated: February 22, 2011

KRAUSE KALFAYAN BENINK
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/s/Ralph B. Kalfayan
Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class

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Not Reported in F.Supp.2d, 2009 WL 102816 (N.D.Cal.)
(Cite as: 2009 WL 102816 (N.D.Cal.))

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Only the Westlaw citation is currently available.NOT FOR CITATION

United States District Court, N.D. California, San Jose Division.
NEW AMSTERDAM PROJECT MANAGEMENT HUMANITARIAN FOUNDATION, a Dutch non-profit corporation, Plaintiff,
v.
Kelly M. LAUGHRIN, Campbell, Warburton, Fitzsimmons, Smith, Mendell & Pastore, a California Corporation, Defendants.

No. 07-00935-JF (HRL).
Jan. 14, 2009.

Michael D. Dempsey, Heather Margaret Noelte, Stephen Christopher Johnson, Dempsey & Johnson P.C., Los Angeles, CA, for Plaintiff.

Lindy Robin Gonzalez, Richard Martin Williams, Jon Mark Thacker, Ropers, Majeski, Kohn & Bentley, San Jose, CA, for Defendants.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTIONS TO COMPEL DISCOVERY

HOWARD R. LLOYD, United States Magistrate Judge.

FACTUAL BACKGROUND[FN1]

FN1. The "facts" set out in this order are a combination of plaintiff's and defendants' allegations. Where a party gave some support for an allegation, the court has attempted to note the evidence as presented. This court is not making findings of fact.

***1** In 2001, plaintiff New Amsterdam Project Management Humanitarian Foundation ("NAF") invested $10 million dollars with Margaret Laughrin, Clinton Holland (her business partner), Hartford Holding Corporation (controlled by Laughrin and Holland), Riki Graham Mangere, and Euro Capital Markets Limited (Mangere's business). Pursuant to an agreement made with Mangere, NAF wired the money to a U.S. Bank account held by Hartford Holding Company. (Pl's Factual Submission, Exhibit 5.) The money was supposed to be used to purchase Treasury Bills, but it was not. Instead, some $800,000 of the money appears to have been transferred to bank accounts held by C.T. Ventures (another entity Laughrin owned with Holland), Meyer and Connolly (a law firm representing Laughrin), and various others. (*Id.* at Exhibit 6.) Later in the month, $1.5 million dollars was wired to A. Zeegars. (*Id.* at Exhibit 8.) U.S. Bank began questioning the legitimacy of the account once Hartford Holding Corporation attempted to wire around $1 billion dollars into it. (*See Id.* at Exhibits 9-16.) Unsure that the funds were "clean," U.S. Bank refused the transfer and closed the account. (*Id.* at Exhibit 17.) Before the account was closed, $200,00 was wired from it to Kelly Laughrin, Margaret's daughter, $100,000 was wired to Robert MacKay, and the remaining balance was transferred to C.T. Ventures. (*Id.* at Exhibit 18.)

Around the same time that Kelly Laughrin received the $200,000, Margaret retained defendant law firm Campbell, Warburton, Fitzsimmons, Smith, Mendell & Pastore ("Campbell Warburton"), where Kelly was an attorney, to provide legal services to herself, Clinton Holland, Hartford Holding Company and C.T. Ventures. Campbell Warburton received $67,000 from Margaret, apparently as a retainer for estate planning and business consulting services (although the defendants rep-

resented at the hearing that no retainer agreement or document confirming its retention, describing the contemplated services, or detailing the billing arrangement was prepared).

Although it appears that the theft itself took place in the summer of 2001 (immediately after NAF's money was transferred to the U.S. Bank account), NAF did not learn that its money was missing for years, partly because attorneys at Meyer and Connolly helped to cover up the theft. In 2003, NAF filed suit against Margaret Laughrin, Clinton Holland, Rick Mangere, their various entities, and the attorneys that had helped them. NAF obtained a default judgment against Laughrin, Holland, Hartford Holding Corporation, Riki Graham Mangere, and Euro Capital Markets Limited. At some point, NAF learned about the $200,000 transfer to Kelly, and the money Campbell Warburton had received. NAF filed the instant case in 2007, seeking to recover the $267,000 under theories of conversion, unjust enrichment, and common count.

PROCEDURAL HISTORY

The parties were referred to an early settlement conference by the presiding judge, but NAF claimed that discussions would be fruitless until discovery was obtained. NAF requested said discovery, and defendants responded with objections based on various privileges and attorney work-product protection, accompanied by a rather sketchy privilege log. NAF then filed five motions, seeking to compel: (1) additional document production from Kelly Laughrin; (2) additional responses to requests for admission from Kelly Laughrin; (3) additional responses to special interrogatories from Kelly Laughrin; (4) additional responses to special interrogatories from Campbell Warburton; and (5) additional document production from Campbell Warburton. This order addresses all five motions.

***2** This court held a hearing on July 1, 2008. Following the hearing, the court's first interim order required defendants to produce new privilege logs. The court also requested supplemental briefing on two points of law that has been argued at the hearing, but not clearly briefed. In addition, the court invited NAF's counsel to identify those documents that supported its assertion that Margaret had retained Campbell Warburton to aid her in committing fraud. Finally, the court overruled all defendants' objections based on third party privacy rights.

The revised privilege log was submitted in August, as was the supplemental briefing. In its second interim order, the court granted NAF's request for permission to object to the revisions, and allowed defendants to respond. In their response, defendants withdrew their objections to many of the documents originally withheld, and produced them.

In its third interim order, the court considered NAF's argument that the attorney-client privilege was trumped by the crime-fraud exception. There was not yet enough evidence in the record to support such a finding. There was, however, enough evidence to trigger an *in camera* review. To that end, defendants were ordered to produce "all documents defendants have withheld on the basis of privilege created between July and August of 2001, and documents from any other time period that either (1) explain or reference the purpose of Campbell Warburton Warburton's representation of Margaret Laughrin, Clinton Holland, Hartford Holding Company or C.T. Ventures; or (2) indicate that Margaret Laughrin acquired money through either theft or fraud."

NAF asked to submit additional documents that had been produced in the time since it had filed its crime-fraud briefing. In its fourth interim order, the court granted plaintiff's request. Not content to merely submit the docu-

ments, NAF filed seven additional pages of argument. Defendants objected, and asked to respond. In its fifth interim order, the court permitted defendants to respond to plaintiff's unasked-for argument.

Having considered the voluminous moving papers,[FN2] the arguments presented at the hearing, and the numerous supplemental filings, the court now GRANTS IN PART and DENIES IN PART plaintiff's motions.

> FN2. Plaintiff filed three documents asserting evidentiary objections. The first was titled "Objections to Declaration of Kelly M. Laughrin and Nicholas Pastore In Support of Defendants' Opposition to Plaintiff's Motion to Compel." (Docket No. 50). The court OVERRULES objections 1,3, and 5, and SUSTAINS objections 2,4, and 6. The second was titled "Objections to the Declaration of Kelly M. Laughrin." (Docket No. 65). The court OVERRULES all of these objections. Kelly Laughrin was ordered to submit this second declaration to aid the court in determining who the various people listed in the privilege log were. The declaration sets forth Laughrin's subjective understanding to the best of her knowledge. That is what the order required. Finally, NAF made numerous objections to the revised privilege log defendants submitted. Rather than address these objections individually, the court will address them in the context of plaintiff's motions to compel documents, below.

DISCUSSION

A. Defendants' Attorney-Client Privilege and Work Product Objections

As previously noted, the defendants objected overwhelmingly to plaintiff's discovery requests with claims of privilege and attorney work-product protection. The court having overruled defendants' "third party privacy" objections, defendants only asserted attorney-client privilege and work product objections in the revised privilege log. The court addresses these objections as an initial matter, then applies these rulings to the remaining issues.

1. The Crime-Fraud Exception.

Both in its papers and at the hearing, counsel for NAF implored the court to apply the crime-fraud exception to extinguish the attorney-client privileges held by Margaret Laughrin and Hartford Holding Corporation. The attorney-client privilege is one of the "most fundamental" privileges recognized under the Federal Rules of Evidence. *Nowell v. Superior Court,* 223 Cal.App.2d 652, 657, 36 Cal.Rptr. 21, (Cal. Superior Ct., 1964); *In re Napster, Inc. Copyright Litigation,* 479 F.3d 1078, 1090 (9th Cir.2007). It is not, however, absolute.

***3** The party seeking to vitiate a claim of attorney-client privilege with the crime-fraud exception must show: (1) that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme; *Id.* (citing *In re Grand Jury Proceedings,* 87 F.3d 377, 381 (9th Cir.1997) (internal quotations omitted); and (2) that the communication "reasonably relates" to the crime or fraud. *BP Alaska Exploration, Inc. v. Nahama & Weagant Energy Company,* 199 Cal.App.3d 1240, 1268, 245 Cal.Rptr. 682 (1988). "The attorney does not have to be aware of the fraud for the crime-fraud exception to apply." *State Farm Fire & Casualty Co. v. Superior Court* 54 Cal.App.4th 625, 645, 62 Cal.Rptr.2d 834 (1997). If the exception applies, the client's communications with the attorney are no longer protected. The plaintiff must still prove any case it has (on whatever theories it has alleged) against the attorney.

Initially, at the hearing and in its papers, NAF urged the court to extinguish the attorney-client privilege on a theory of collateral estoppel. NAF asserted that the default judgment it received from the Central District of California established that Margaret Laughrin, Clinton Holland and Hartford Holding Corporation were engaged in illegal acts during July 2001, and that defendants could not assert any attorney-client privileges on these clients' behalf. The court was not persuaded because, while the ruling established that these client's were engaged in illegal acts, the ruling did not address how the communications at issue in this case were reasonably related to the illegality. The Central District ruling was made specifically in relation to Laughrin's communications with Meyer and Connolly (the law firm that assisted Laughrin, Holland and Mangere in covering up the theft). The communications plaintiff seeks in these motions were between Margaret Laughrin, Clinton Holland, Hartford Holding Corporation, and C.T. Ventures and the attorneys at Campbell Warburton.

The court is aware that the party challenging the privilege often lacks sufficient evidence to establish the exception because this evidence is likely to be in the hands of whoever is invoking the privilege. Where a plaintiff has made some showing of the client's criminal or fraudulent scheme, and its possible relation to the privileged communications sought, courts have engaged in *in camera* review of the privileged materials. This is precisely what occurred here.

Plaintiff has provided sufficient evidence to meet its burden to establish that Campbell Warburton clients Margaret Laughrin, Clinton Holland and Hartford Holding Corporation were likely engaged in illegal activity in July of 2001, around the time that they sought Campbell Warburton's legal services. Having reviewed the documents defendants submitted, the court also finds that some of the attorney-client communications NAF seeks are sufficiently related to the illegal activity to trump the attorney-client privilege. For example, it appears that Laughrin and Holland may have planned to use, or used, estate-planning devices to conceal monies that originated from NAF. The attorney-client privilege held by Margaret Laughrin, Clinton Holland, Hartford Holding Corporation and C.T. Ventures will be extinguished in each communication that is reasonably related to transfers of monies from accounts that may have housed NAF's money. The *in camera* review also revealed consultations with Campbell Warburton attorneys on matters that were not sufficiently related to such transfers. Since the crime-fraud exception is triggered by the nexus between the illegality and the particular privileged communication, some communications retain their attorney-client privilege.

***4** The court emphasizes that it only finds that plaintiff has established to a preponderant likelihood that Campbell Warburton's clients were engaged in criminal or fraudulent acts, and that these acts were reasonably related to some of the privileged communications defendants are currently withholding. This ruling does not address whether defendants had knowledge of their clients' wrongful activities. Additional responses and production of individual documents will be addressed in the context of plaintiff's motions to compel, below.

2. Work-Product Protection.

Defendants objected to producing a large number of documents and to answering interrogatories on work-product grounds. An objection based on work-product protects trial preparation materials that reveal an attorney's strategy, intended lines of proof, evaluation of strengths and weaknesses, and inferences drawn from interviews. Fed.R.Civ.P. 26(b)(3); *Hickman v. Taylor,* 329 U.S. 495, 511, 67

S.Ct. 385, 91 L.Ed. 451 (1947). "To be protected, the communication must have been prepared in anticipation of litigation. Although commencement of a lawsuit is not required, there must be some *possibility* of litigation." SCHWARZER, WALLACE, AND TASHIMA, FEDERAL CIVIL PROCEDURE BEFORE TRIAL, 11-102 (hereinafter, "Schwarzer").

Nobody argues that Margaret Laughrin, Clinton Holland, Hartford Holding Corporation or C.T. Ventures originally retained Campbell Warburton and its attorneys in anticipation of litigation. Campbell Warburton says that the original purpose of the representation was to assist Margaret Laughrin and Clinton Holland in estate planning, and to provide advice about the corporations. After NAF filed its 2003 lawsuit, Campbell Warburton attorneys drafted proposed settlement agreements, and seem to have advised Margaret Laughrin about the litigation, although they never made an appearance on her behalf. Therefore, some of the communications currently withheld can qualify for work-product protection, however, many of them cannot. Only those documents that were prepared in relation to the 2003 lawsuit can be rightly classified as work-product. The court OVERRULES the objection as to all other communications. As with the ruling on defendants' attorney-client privilege objections, the production of individual responses and documents will be addressed in the context of plaintiff's motions to compel.

B. NAF's Motions to Compel Further Responses from Kelly Laughrin.

NAF sought to compel additional responses to its First Set of Requests for Admission ("RFAs") from Kelly Laughrin in "Discovery Motion 2." NAF specifically takes issue with the answers Kelly gave to RFAs 2-4 and 9-11. When responding to RFAs, a party must admit, deny, or state that she has made a reasonable inquiry and cannot admit or deny. *See* Fed.R.Civ.P. 36(a). Kelly unambiguously denies RFAs 4, 9 and 10, and admits RFA 11. The motion, as to those four RFAs, is DENIED as MOOT.

RFA 2 states "[t]he money transferred into the ... bank account of Kelly Laughrin on or about August 1, 2001, originated from [NAF]" RFA 3 states that "Margaret Laughrin caused [NAF's money] to be wire transferred to Kelly Laughrin." In response to both, Kelly stated that after reasonable inquiry, she could neither admit or deny either RFA. NAF claims that she may not give lack of information or knowledge as a reason for failing to admit or deny unless she also makes a reasonable inquiry. NAF contends that Kelly has documents in her possession that show the money belonged to it, and that Kelly also must ask her mother to tell her whom the money she received belonged to. According to NAF, failure to do so is a failure to make a reasonable inquiry.

***5** The documents that NAF contends show that this was its money are inconclusive. The wire transfer documents in Exhibit 54 show that its money went into a U.S. Bank Account, and that Kelly received $200,000 from that same account. It is not clear, however, that only NAF's money, or that only stolen money, went into that account. NAF's counsel appears to have leapt to this conclusion. While Kelly has an obligation to review whatever documents she has before responding, she is not obliged to make the leap that NAF's counsel has made, or use that conclusion to answer. She also has no obligation to accept a third party's testimony as her own (as NAF suggested, Margaret's answers). *See* Schwarzer at 11-285. Requests for Admission ask for personal knowledge. Kelly has plainly stated she has no personal knowledge of the ownership of the $200,000. The motion, as to RFAs 2 and 3, is

DENIED.

NAF sought to compel Kelly Laughrin to provide additional responses to its interrogatories in "Discovery Motion 3." NAF specifically complains about Kelly's answers to interrogatories 1-4, 6 and 9. Interrogatory 1 asked Kelly what she did with the $200,000. She responded that she put $80,000 toward her house, paid off some credit cards, applied $103,000 toward law school loans, and spent the rest on miscellaneous things. NAF wants more information. Kelly claims she does not remember and has no obligation to find out. The court disagrees. She certainly has the obligation to search all available records and consult sources of information to provide whatever level of detail she can, i.e., the names of the credit card(s), account numbers, the lender of the school loan, the loan number, etc. NAF's motion to compel additional response to Interrogatory 1 is, therefore, GRANTED.

Interrogatory 2 asked for Margaret Laughrin's addresses since January 2001. Kelly objected on the grounds of Margaret's privacy rights, and attorney-client privilege. In its interim order, this court overruled all objections based on third party privacy rights. This leaves only the objection based on attorney client privilege. Generally, the identity of an attorney's client is not privileged unless "disclosure would convey the substance of a confidential professional communication between the attorney and the client." *In re Grand Jury Subpoenas,* 803 F.2d 493, 496-98 (9th Cir.1986). The motion to compel further response to Interrogatory 2 is GRANTED.

NAF's motion to compel additional responses to interrogatories 3, 4, and 6-9 is DENIED. Many of these interrogatories contain discrete sub-parts in violation of Rule 33(a)(1). (For example, interrogatory 3 asks for the facts upon which each of the seventeen affirmative defenses were based; interrogatory 6 asks for the facts upon which each response to the RFAs were based.) Although she objected to the interrogatories for these subparts, Kelly answered them, and provided supplemental responses in some cases. Her responses were adequate.

C. NAF's Motion to Compel Further Responses from Campbell Warburton.

***6** NAF sought to compel further responses to interrogatories from defendant Campbell Warburton in "Discovery Motion 4." NAF takes specific issue with Campbell Warburton's answers to interrogatories 1, 2, 4, and 8-12. Interrogatory 1 asks Campbell Warburton to "state all facts" that it based each of its affirmative defenses on. This interrogatory contains subparts, in excess of the 25-interrogatory limit. Moreover, although Campbell Warburton objected to the interrogatory for this reason, it also responded adequately, and provided a supplemental response. Similarly, Interrogatories 2, 4, 11, and 12 have been adequately answered. No further response is required. NAF's motion, as to interrogatories 1, 2, 4, 11 and 12 is DENIED.

Interrogatory 10 asked defendant to "describe in detail each meeting [it] ever had with Margaret Laughrin." Campbell Warburton objected on the grounds of privacy rights, attorney-client privilege and the work product doctrine. The court previously overruled the privacy rights objection. Plaintiff's motion to compel further response to Interrogatory 10 is GRANTED IN PART. Defendant must disclose the dates and times of all meetings with Margaret Laughrin. As for the "details" of the discussion, the crime-fraud exception extinguishes any privilege in the details defendant has about meetings where estate planning or transfers of monies were discussed, and no work-product protection applies. Defendant may withhold (on attorney-client privilege or work-product protection grounds) protected

details from meetings where litigation or settlement matters were discussed..

Interrogatory 8 requested that Campbell Warburton "identify each communication between [it] and Margaret Laughrin whereby Margaret Laughrin offered or was asked to contribute to or pay for the defense of the within action." Campbell Warburton objected on the grounds of attorney-client privilege and work-product protection. The court overrules Campbell Warburton's objections, and GRANTS the motion as to Interrogatory 8.

Similarly, Interrogatory 9 asked Campbell Warburton to "identify each communication between [it] and Margaret Laughrin whereby Margaret Laughrin offered or was asked to contribute to or pay for a settlement of the within action." Campbell Warburton objected on the grounds of attorney-client privilege and work product protection, in addition to third party privacy rights. The court already overruled the privacy objection, and now overrules the attorney-client privilege and work product objections. Plaintiff's motion, as to Interrogatory 8, is GRANTED.

D. Plaintiff's Motions to Compel Production of Documents.

NAF sought to compel additional production of documents from Kelly Laughrin in "Discovery Motion 1," and from Campbell Warburton in "Discovery Motion 5." The motions were nearly identical. As originally briefed, the motions presented some 73 requests for production.

In response to the court's third interim order, Defendants submitted for *in camera* review both (1) the documents that were responsive to the order, and (2) all remaining documents that they had withheld. In determining the applicability of the crime-fraud exception, the court also performed a *de facto in camera* review of all remaining withheld documents. Therefore, IT IS ORDERED that the defendants produce documents that: (1) do not contain any privileged or work-product protected communications; and (2) do not contain any work-product, where the attorney-client privilege has been nullified by the crime-fraud exception.

*7 Much to the court's surprise, and despite defendants' counsel's representations to the contrary, the *in camera* review revealed that defendants continued to withhold a number of fax cover sheets, phone message slips, and other documents that did not contain any information that was ever protected by attorney-client privilege or work-product exemption. Defendants' *in camera* materials also included nearly 30 pages of billing records. The amount of fees paid to an attorney are not privileged, so billing records are generally discoverable. *Real v. Continental Group, Inc.,* 116 F.R.D. 211, 213-14 (N.D.Cal.1986). These documents should have been produced, and are ordered to be produced in the first section below.

Some of the documents defendants withheld were not attorney work-product, but would have been protected by the attorney-client privilege. Because the court found that these documents were reasonably related to transfers of monies or estate planning, the privilege these documents would have otherwise retained has been extinguished. These documents are ordered to be produced in the second section below.

1. Documents that do not contain any privileged or work-product protected communications, specifically:

CAM00008
CAM00029
CAM00061-63
CAM00065
CAM00070
CAM00142
CAM00148
CAM00208
CAM00216
CAM00288
CAM00296-97
CAM00299
CAM00311
CAM00313-315
CAM00317-18
CAM01111-12
CAM01127
CAM01135
CAM01146-47
CAM00324-25
CAM00328
CAM00361
CAM00410
CAM00610
CAM00683
CAM00723-26
CAM00989-992
CAM01006
CAM01009-10
CAM01021
CAM01070
CAM01086
CAM01093
CAM01097
CAM01155
CAM02000-2027

2. Documents that do not contain any work-product, and where the attorney-client privilege has been nullified by the crime-fraud exception, specifically:

CAM00005
CAM00009-12
CAM00014
CAM00019-20
CAM00022
CAM00026-28
CAM00030-32
CAM00034-37
CAM00040-42
CAM00044-55
CAM00057-60
CAM00067-69
CAM00130
CAM00136
CAM00146
CAM00612-682
CAM00684-722
CAM00737-775
CAM00976-988
CAM00993-1008
CAM01011-1063
CAM01068

All discovery responses and productions are due **not later than January 30, 2009.**

IT IS SO ORDERED.

N.D.Cal.,2009.
New Amsterdam Project Management Humanitarian Foundation v. Laughrin
Not Reported in F.Supp.2d, 2009 WL 102816 (N.D.Cal.)

END OF DOCUMENT

2

974 F.2d 127, 61 USLW 2202, 36 Fed. R. Evid. Serv. 739
(Cite as: 974 F.2d 127)

▷

United States Court of Appeals,
Ninth Circuit.
Robert L. CLARKE, Comptroller of the Currency, Plaintiff-Appellee,
v.
AMERICAN COMMERCE NATIONAL BANK, Anaheim, California, Defendant-Appellant.

No. 91-56327.
Argued and Submitted April 7, 1992.
Decided Sept. 8, 1992.

Office of Comptroller of Currency sued to enforce administrative subpoena issued to regulated bank for production of attorney billing statements from outside counsel. The United States District Court for the Central District of California, Irving Hill, J., granted in part and denied in part motion to enforce subpoena, and appeal was taken. The Court of Appeals, Pregerson, Circuit Judge, held that attorney billing statements which merely contained information on identity of client, case name for which payment was made, amount of fee and general nature of services performed were not protected by privilege.

Affirmed.

West Headnotes

[1] Banks and Banking 52 ⚿235

52 Banks and Banking
52IV National Banks
52k235 k. Regulation and supervision in general. Most Cited Cases
Complaint filed by Office of Comptroller of Currency to compel turn over of bank records was not facially defective, for failing to anticipate and address bank's defense of attorney-client privilege.

[2] Federal Courts 170B ⚿416

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(C) Application to Particular Matters
170Bk416 k. Evidence law. Most Cited Cases
Issues concerning application of attorney-client privilege in adjudication of federal law are governed by federal common law.

[3] Privileged Communications and Confidentiality 311H ⚿100

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk100 k. In general. Most Cited Cases
(Formerly 311Hk106, 410k198(1))
Because attorney-client privilege has effect of withholding relevant information from fact finder, it is applied only when necessary to achieve its limited purpose of encouraging full and frank disclosure by client to his or her attorney.

[4] Privileged Communications and Confidentiality 311H ⚿146

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk144 Subject Matter; Particular Cases
311Hk146 k. Client information; retainer and authority. Most Cited Cases
(Formerly 410k198(2))
Not all communications between attorney and client are privileged; communica-

tions regarding identity of client, amount of fee, identification of payment by case file name, and general purpose of work performed are usually not protected from disclosure.

[5] Privileged Communications and Confidentiality 311H ⚿137

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk135 Mode or Form of Communications
311Hk137 k. Documents and records in general. Most Cited Cases
(Formerly 410k204(2))

Privileged Communications and Confidentiality 311H ⚿139

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk135 Mode or Form of Communications
311Hk139 k. Letters and correspondence. Most Cited Cases
(Formerly 410k204(2))
Correspondence, bills, ledgers, statements and time records of attorney will be protected by privilege, where such records also reveal motive of client in seeking representation, litigation strategy, or specific nature of services provided, such as researching particular areas of law.

[6] Privileged Communications and Confidentiality 311H ⚿173

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk171 Evidence
311Hk173 k. Presumptions and burden of proof. Most Cited Cases
(Formerly 410k222)
Burden of establishing that attorney-client privilege applies to documents in question rests with party asserting privilege.

[7] Privileged Communications and Confidentiality 311H ⚿178

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk175 Determination
311Hk178 k. In camera review. Most Cited Cases
(Formerly 410k223)
District court may conduct in camera inspection of alleged confidential communications to determine whether attorney-client privilege applies.

[8] Privileged Communications and Confidentiality 311H ⚿169

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk169 k. Objections; claim of privilege. Most Cited Cases
(Formerly 410k198(1))
Blanket assertions of attorney-client privilege are extremely disfavored; rather, privilege must ordinarily be raised as to each record sought to allow court to rule with specificity.

[9] Federal Courts 170B ⚿776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial de novo. Most Cited Cases
Court of Appeals reviews de novo district court's rulings on scope of attorney-cli-

ent privilege, as they involve mixed questions of law and fact.

[10] Privileged Communications and Confidentiality 311H ⇐146

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk144 Subject Matter; Particular Cases
311Hk146 k. Client information; retainer and authority. Most Cited Cases
(Formerly 410k204(2))

Attorney billing statements from outside counsel to regulated bank were not protected from disclosure to Office of Comptroller of Currency by attorney-client privilege, where statements merely contained information on identity of client, case name for which payment was made, amount of fee, and general nature of services performed and did not reveal specific research or litigation strategy.

***128** Barbara A. Reeves, Morrison & Foerster, Los Angeles, Cal., for defendant-appellant.

Larry J. Stein, Office of the Comptroller of the Currency, Washington, D.C., for plaintiff-appellee.

Appeal from the United States District Court for the Central District of California.

Before: PREGERSON, D.W. NELSON, and THOMPSON, Circuit Judges.

PREGERSON, Circuit Judge:

This case arises out of the efforts of the Office of the Comptroller of the Currency ("OCC") to investigate the banking practices of American Commerce National Bank ("ACNB" or "Bank"). ACNB appeals the order of the district court requiring it to turn over certain unredacted attorney billing statements to the OCC. The district court concluded that the information fell within the crime/fraud exception to the attorney-client privilege. We affirm, but on the ground that the attorney-client privilege does not protect the attorney billing statements from disclosure.

I. BACKGROUND

The OCC is responsible for the periodic examination of all national banks to assure that they are operated in a safe and sound manner and in accordance with all applicable laws, rules, and regulations. Under 12 U.S.C. § 481 (1988), national bank examiners, as designees of the Comptroller, are authorized to conduct thorough examinations of the affairs of national banking associations. ACNB is a federally-chartered national banking association.

In August 1990, the OCC issued an administrative subpoena requesting, among other things, the production of all billing statements from outside legal counsel to ACNB since January 1, 1989. The OCC believed that the Bank may have improperly paid the personal legal expenses of its chairman, Gerald Garner. ACNB refused portions of this request, asserting the attorney-client privilege. It provided copies of billing statements, but redacted all descriptive information other than dates and fees.

The OCC brought an action in district court for an order to enforce its subpoena. After an in camera inspection of all unredacted attorney billing statements submitted to ACNB between January 1, 1989, and August 30, 1990, together with ACNB's line-by-line justification for asserting the attorney-client privilege, the district court granted in part and denied in part the

OCC's motion to enforce its subpoena. The district court determined that the OCC made a prima facie showing that the bills of certain law firms fell within the crime/fraud exception to the attorney-client privilege. With respect to the bills of other law firms, the district court sustained ACNB's assertion of the attorney-client privilege, finding no basis to believe that the statements contained evidence of criminal or fraudulent conduct. This ruling was without prejudice to a later motion to renew should a basis for disclosure be uncovered.

To accommodate ACNB's anticipated appeal, the district court circled in red those portions of the bills ordered turned over which, when viewed in light of other material, led the district court to conclude that a sufficient prima facie case had been made. The bills remained sealed and were furnished to this court in camera. We stayed the district court's order pending the outcome of this appeal. We have jurisdiction under 28 U.S.C. § 1291 (1988).

ACNB contends that the district court erred in four respects: (1) by denying its motion to dismiss for failure to state a claim; (2) by ordering in camera inspection of its attorney billing statements; (3) by requiring a line-by-line justification for asserting the attorney-client privilege for each redacted item on the billing statements; and (4) by ordering production of the billing statements to the OCC.

II. DENIAL OF MOTION TO DISMISS

[1] ACNB first argues that the district court should have dismissed the OCC's complaint for failure to state a claim. ACNB contends that the complaint is facially defective because it does not address ***129** the issue of attorney-client privilege. We agree with the district court that the OCC was not required to anticipate and address ACNB's defense of attorney-client privilege in its complaint. The district court did not err in denying ACNB's motion to dismiss.

III. ATTORNEY-CLIENT PRIVILEGE

[2][3] Issues concerning application of the attorney-client privilege in the adjudication of federal law are governed by federal common law. *See United States v. Zolin,* 491 U.S. 554, 562, 109 S.Ct. 2619, 2625, 105 L.Ed.2d 469 (1989); *United States v. Hodge and Zweig,* 548 F.2d 1347, 1353 (9th Cir.1977); Fed.R.Evid. 501. Under the attorney-client privilege, confidential communications made by a client to an attorney to obtain legal services are protected from disclosure. *Fisher v. United States,* 425 U.S. 391, 403, 96 S.Ct. 1569, 1577, 48 L.Ed.2d 39 (1976); *United States v. Hirsch,* 803 F.2d 493, 496 (9th Cir.1986). Because the attorney-client privilege has the effect of withholding relevant information from the factfinder, it is applied only when necessary to achieve its limited purpose of encouraging full and frank disclosure by the client to his or her attorney. *Fisher,* 425 U.S. at 403, 96 S.Ct. at 1569; *Tornay v. United States,* 840 F.2d 1424, 1426 (9th Cir.1988).

[4][5][6] Not all communications between attorney and client are privileged. Our decisions have recognized that the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege. *See, e.g., Tornay,* 840 F.2d at 1426; *In re Grand Jury Witness (Salas and Waxman),* 695 F.2d 359, 361-62 (9th Cir.1982); *Hodge and Zweig,* 548 F.2d at 1353; *United States v. Cromer,* 483 F.2d 99,

101-02 (9th Cir.1973). However, correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege. *Salas,* 695 F.2d at 362. The burden of establishing that the attorney-client privilege applies to the documents in question rests with the party asserting the privilege. *Tornay,* 840 F.2d at 1426.

[7] ACNB contends that the district court erred by conducting an in camera inspection of the attorney billing statements and by ordering a line-by-line justification for assertion of the attorney-client privilege. A district court may conduct an in camera inspection of alleged confidential communications to determine whether the attorney-client privilege applies. *See Kerr v. United States Dist. Ct. for N. Dist. of Cal.,* 426 U.S. 394, 404-405, 96 S.Ct. 2119, 2124-2125, 48 L.Ed.2d 725 (1976); *Salas,* 695 F.2d at 362.

[8] ACNB relies on our decision in *Salas,* 695 F.2d at 362, in arguing that the district court had no basis for ordering it to provide a line-by-line justification for each requested redaction. In *Salas,* we stated that the parties seeking to invoke the attorney-client privilege should have provided the court with "an explanation of how the information [contained in the documents subject to the grand jury subpoena] fits within the privilege." *Id.* Nothing in *Salas* indicates that a court is prohibited from requiring individual explanations justifying the assertion of privilege. To the contrary, we have noted that blanket assertions of the privilege are "extremely disfavored." *See id.* The privilege must ordinarily be raised as to each record sought to allow the court to rule with specificity. *United States v. Hodgson,* 492 F.2d 1175, 1177 (10th Cir.1974). *See also United States v. El Paso Co.,* 682 F.2d 530, 541-42 (5th Cir.1982) (attempt to invoke privilege rejected, due in part to the failure to "particularize its assertion of the privilege" with respect to each specific document), *cert. denied,* 466 U.S. 944, 104 S.Ct. 1927, 80 L.Ed.2d 473 (1984).

[9] After in camera inspection of the attorney billing statements, the district court determined that they fell within the ***130** attorney-client privilege.[FN1] We review de novo a district court's rulings on the scope of the attorney-client privilege as they involve mixed questions of law and fact. *Tornay,* 840 F.2d at 1426 (citing *United States v. McConney,* 728 F.2d 1195, 1202 (9th Cir.) (en banc), *cert. denied,* 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984)).

> FN1. Although the ruling was not explicit, the district court's conclusion regarding the crime/fraud exception indicates that it must have found the attorney-client privilege applicable.

[10] We have examined the attorney billing statements ordered disclosed by the district court. We conclude that they do not contain privileged communications between attorney and client. The statements contain information on the identity of the client, the case name for which payment was made, the amount of the fee, and the general nature of the services performed. Our previous decisions have held that this type of information is not privileged. *See, e.g., Salas,* 695 F.2d at 361; *Cromer,* 483 F.2d at 101-02. We find nothing in the statements that reveals specific research or litigation strategy which would be entitled to protection from disclosure.

Accordingly, we hold that the district court erred in concluding that the attorney-client privilege applies to the attorney billing statements subpoenaed by the OCC.[FN2] The district court, however, ordered disclosure based on the crime/fraud exception to the attorney-client privilege. Thus, we affirm the judgment of the district court but on different grounds. Because we have determined that the attorney billing statements are not protected by the attorney-client privilege, and were therefore properly ordered disclosed, we do not reach the issue of the scope of the crime/fraud exception.

> FN2. Because the district court denied in part the OCC's motion for enforcement of its subpoena, the billing statements that were not ordered disclosed are not before us on appeal. We render no opinion as to those documents.

AFFIRMED.

C.A.9 (Cal.),1992.
Clarke v. American Commerce Nat. Bank
974 F.2d 127, 61 USLW 2202, 36 Fed. R. Evid. Serv. 739

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116 F.R.D. 211, 43 Fair Empl.Prac.Cas. (BNA) 926, 44 Fair Empl.Prac.Cas. (BNA) 242, 42 Empl. Prac. Dec. P 36,937
(Cite as: 116 F.R.D. 211)

▷

United States District Court,
N.D. California.

Emil V. REAL, Plaintiff,
v.
The CONTINENTAL GROUP, INC., a corporation, and Continental Can Company, a corporation, Defendants.

No. C-83-2871.
Nov. 10, 1986.

Employee who had prevailed on age discrimination claim filed motion to compel discovery of certain information allegedly relevant to attorney fee application. The District Court, Myron L. Gordon, Senior District Judge for the Eastern District of Wisconsin, held that: (1) defense counsel's hours and hourly rates were at least minimally relevant to employee's fee application; (2) defense counsel's hours and hourly rates were not information protected either by work-product doctrine or attorney-client privilege; but (3) defense counsel's statement of fees and billing printouts were not discoverable by employee, as documents would necessarily reveal nature of legal services provided.

Motion granted in part and denied in part.

West Headnotes

[1] Federal Civil Procedure 170A 1272.1

170A Federal Civil Procedure
170AX Depositions and Discovery
170AX(A) In General
170Ak1272 Scope
170Ak1272.1 k. In General. Most Cited Cases
(Formerly 170Ak1272)
Number of hours expended by defense counsel in age discrimination suit, as well as counsel's hourly rates, were at least minimally relevant to employee's attorney fee application, so as to be discoverable by employee in connection therewith. Fed.Rules Evid.Rule 401, 28 U.S.C.A.; Fed.Rules Civ.Proc.Rule 26(b)(1), 28 U.S.C.A.

[2] Privileged Communications and Confidentiality 311H 146

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk144 Subject Matter; Particular Cases
311Hk146 k. Client Information; Retainer and Authority. Most Cited Cases
(Formerly 170Ak1600(2), 170Ak1600.1)
Defense counsel's statement of fees and billing printouts were not discoverable by employee in age discrimination suit, though documents were allegedly relevant to employee's attorney fee application, where documents would necessarily reveal nature of legal services provided; documents were protected by attorney-client privilege. Fed.Rules Civ.Proc.Rule 26(b)(1), 28 U.S.C.A.

[3] Privileged Communications and Confidentiality 311H 146

311H Privileged Communications and Confidentiality
311HIII Attorney-Client Privilege
311Hk144 Subject Matter; Particular Cases
311Hk146 k. Client Information;

Retainer and Authority. Most Cited Cases
(Formerly 170Ak1600(2), 170Ak1600.1)

⚿1604(1)

170A Federal Civil Procedure
170AX Depositions and Discovery
170AX(E) Discovery and Production of Documents and Other Tangible Things
170AX(E)3 Particular Subject Matters
170Ak1604 Work Product Privilege; Trial Preparation Materials
170Ak1604(1) k. In General. Most Cited Cases
(Formerly 170Ak1600(3), 170Ak1600.2)

Number of hours expended by defense counsel in age discrimination suit and defense counsel's hourly rates were not information protected either by work-product doctrine or attorney-client privilege, so as to be discoverable by employee in connection with attorney fee application. Fed.Rules Civ.Proc.Rule 26(b)(1), 28 U.S.C.A.

[4] Federal Civil Procedure 170A ⚿1483

170A Federal Civil Procedure
170AX Depositions and Discovery
170AX(D) Written Interrogatories to Parties
170AX(D)1 In General
170Ak1483 k. Objections and Grounds for Refusal. Most Cited Cases

Interrogatories submitted by employee in connection with attorney fee application in age discrimination case, which sought disclosure of defense counsel's hours and hourly rates, were not "unduly burdensome." Fed.Rules Civ.Proc.Rule 26(b)(1), 28 U.S.C.A.

***212** Guy Saperstein, Saperstein, Mari & Mayeta, Farnsworth, Saperstein & Seligman, fee counsel for Orrick, Herrington & Sutcliffe, Oakland, Cal., for plaintiff.

Janet Bentley, Thelen, Marrin, Johnson & Bridges, San Francisco, Cal., for defendants.

DECISION and ORDER

MYRON L. GORDON, Senior District Judge for the Eastern District of Wisconsin.

This age discrimination action was filed by the plaintiff, Emil Real, in June 1983. After a jury trial and post-trial motions, judgment was entered in favor of Mr. Real in the amount of $50,000. 627 F.Supp. 434. On September 15, 1986, plaintiff's counsel filed a motion for an award of reasonable attorneys' fees seeking fees in the amount of $570,000, together with costs incurred. Currently before me is a motion to compel certain discovery sought by the plaintiff in conjunction with the attorneys' fees motion. At issue in this motion to compel is the defendant's refusal to comply with certain discovery requests concerning the number of hours, hourly rates and bills and costs paid or incurred by the defendant in this litigation. This motion will be granted in part and denied in part.

In anticipation of an attorneys' fees dispute, the plaintiff served the defendant with a set of interrogatories and a set of document requests in April 1986. The defendant filed responses on June 12, 1986, in which it provided partial answers and asserted general objections to the requests on grounds of irrelevance, privilege and burdensomeness. Each one of these objections will be addressed separately.

However, before considering these ob-

jections, I note that among the plaintiff's discovery requests, certain information and documentation other than information concerning hours, hourly rates and bills and costs paid or incurred by the defendant is requested. For example, information is sought regarding defendants' attorneys' past experience and education. Although the defendant has only provided partial responses to these types of requests, the plaintiff has not specifically identified these answers as areas of concern. In light of this silence, and the substantial period of time that passed between the filing of the defendant's responses and the filing of the instant motion to compel, I assume that the parties have resolved their differences with respect to these matters; I decline to order additional responses from the defendant concerning these matters.

RELEVANCY

[1] Rule 401, Federal Rules of Evidence, defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." In view of this broad definition, I disagree with the defendant's assertion that all information requested by the plaintiff is irrelevant to the plaintiff's extant application for fees and ***213** costs. The starting point for determining the amount of reasonable fees and costs pursuant to federal prevailing party statutes "is the number of hours reasonably expended on the litigation multiplied by a reasonable rate." *Hensley v. Eckerhart,* 461 U.S. 424, 433, 103 S.Ct. 1933, 1939, 76 L.Ed.2d 40 (1983). Defendant's counsel's hours and rates are relevant to this determination.

For instance, in its brief opposing the plaintiff's motion to compel, defendant's counsel characterizes the number of hours it expended on this case as "economical." What constitutes an "economical" number of hours with respect to this case is relevant, in my opinion, to the plaintiff's fee petition. Further, among twelve factors identified by the court of appeals for the ninth circuit as relevant in determining reasonable attorneys' fees is the novelty and difficulty of questions presented by the case. *See Kerr v. Screen Extras Guild,* 526 F.2d 67, 70 (9th Cir.1975). The number of hours recorded by defendant's lawyers in pursuing questions in this case certainly has some tendency to make more or less probable the plaintiff's contention on this factor. Moreover, "[e]ach party must prepare to question the same witnesses, must review the same documents and other evidence, and must anticipate a presentation by the opposition of a complexity related to the facts in issue. Similarly, work on pretrial motions would reflect what volume of work opposing attorneys deemed reasonable." *Stastny v. Southern Bell Telephone & Telegraph Co.,* 77 F.R.D. 662, 663-64 (W.D.N.C.1978). Thus the hours spent on this case, whether it be by the plaintiff's counsel *or* the defendant's counsel, is relevant information.

Defendant's counsel's hourly rate is similarly relevant to a determination of reasonable fees under *Hensley.* Determining what constitutes a reasonable rate requires, among other things, an examination of the community's prevailing hourly rate. *See Kerr, supra,* 526 F.2d at 70. *Accord Blum v. Stenson,* 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984); N.D. Cal. Local Rule 270-2(c) (requiring submission of a statement of "prevailing" hourly rate to support petition for fees). Thus, information regarding the prevailing hourly rate

tends to make more or less probable the plaintiff's assertion on this point.

In the instant case, the hourly rates of defendant's counsel, a San Francisco law firm, should shed some light on the reasonableness of the plaintiff's trial counsel's rates because the latter attorneys are also members of a San Francisco law firm; defendant's hourly legal rates would appear to be germane to the question of the community standard.

Thus, I conclude that the hours expended by the defendant on matters pertaining to this case, counsel's hourly rates, as well as total billings and costs, are at least minimally relevant to the plaintiff's fees and costs petition.

Defendant's counsel argues that the number of hours necessary adequately to represent a defendant in a discrimination case typically exceeds the time required to represent a plaintiff. I am not persuaded that this contention precludes my finding of relevance. The defendant's considerations on this point may be significant in deciding what weight to give the evidence regarding its attorneys' fees and costs, but they do not render such evidence irrelevant.

PRIVILEGE

Pursuant to Rule 26(b)(1), Federal Rules of Civil Procedure, even relevant evidence is not discoverable if such evidence is privileged. The defendant asserts, accordingly, that all information requested by the plaintiff is privileged pursuant to the attorney-client privilege and attorney work-product doctrine. This assertion is overbroad.

The court of appeals for the ninth circuit has held that the attorney-client privilege embraces attorney time, records and statements to the extent that they reveal litigation strategy and the nature of the services provided. "[B]ills, ledgers, statements, time records and the like which also reveal the nature of law, also should fall within ***214** the privilege. On the other hand, a simple invoice requesting payment for unspecified services rendered reveals nothing more than the amount of the fee and would not normally be privileged...." *In re Grand Jury Witness,* 695 F.2d 359, 362 (9th Cir.1982).

[2] Plaintiff seeks "[a]ll documents which record the time expended by any attorney, house counsel, legal assistant, and/or paralegal on behalf of the defendants in this action...." *See* Document Request No. 1. Document Requests Nos. 2 and 3 also request all bills for legal services paid by or submitted to the defendant. Full compliance with these document requests would provide the plaintiff with the defendant's counsel's statement of fees and billing computer printouts. According to the affidavit of Attorney Bentley, the defendant, Continental Group, demands highly detailed itemizations of all work performed on its behalf; production of such bills and printouts would necessarily reveal the nature of legal services provided. These documents are, therefore, privileged under *In re Grand Jury Witness, supra.*

[3] However, simply the number of hours billed, the parties' fee arrangement, costs and total fees paid do not constitute privileged information. *See, e.g., In re Osterhoudt,* 722 F.2d 591 (9th Cir.1983) (amounts and dates of payment of legal fees not privileged); *In re Grand Jury Proceeding,* 721 F.2d 1221 (9th Cir.1983) (fee arrangement not privileged); *United States v. Sherman,* 627 F.2d 189 (9th Cir.1980)

(amount of fees paid not privileged).

Accordingly, I direct defendants to serve and file complete responses to plaintiff's fourth set of interrogatories nos. 1, 2, 4, 5, and 6. However, I decline to order the defendant to respond to the plaintiff's fifth production of documents requests no. 1, 2 and 3, as production of these documents would reveal information protected by the attorney-client privilege.

Moreover, in the interest of economy of time and avoiding a protracted second litigation with respect to attorneys' fees, *see Hensley, supra,* 461 U.S. at 437, 103 S.Ct. at 1941 ("A request for attorneys fees should not result in a second major litigation."), I will not order the defendant to submit the disputed documents to me for an *in camera* inspection. Indeed, the relevant and unprivileged information sought by the plaintiff will be adequately provided through the defendant's completed answers to the interrogatories referred to above.

BURDENSOMENESS

[4] In light of my determination regarding the nondiscoverability of the defendants billing sheets and computer printouts on time, I am satisfied that the discoverable information requested is not overly burdensome. The defendant is directed to respond to five fairly straightforward interrogatories. This is not an unduly burdensome demand.

Therefore, IT IS ORDERED that plaintiff's motion to compel discovery be and hereby is granted with respect to plaintiff's fourth set of interrogatories nos. 1, 2, 4, 5, and 6.

IT IS ALSO ORDERED that defendant serve and file its responses by November 10, 1986.

IT IS FURTHER ORDERED that plaintiff's motion to compel discovery be and hereby is denied with respect to plaintiff's fifth request for production of documents and plaintiff's fourth set of interrogatories no. 3.

IT IS FURTHER ORDERED that each party shall bear its own costs in connection with this motion.

N.D.Cal.,1986.
Real v. Continental Group, Inc.
116 F.R.D. 211, 43 Fair Empl.Prac.Cas. (BNA) 926, 44 Fair Empl.Prac.Cas. (BNA) 242, 42 Empl. Prac. Dec. P 36,937

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