

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BUCK G. WOODALL,)	NO. CV 20-3772-CBM(Ex)
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING DEFENDANTS'
)	
THE WALT DISNEY COMPANY,)	MOTION FOR PROTECTIVE ORDER
et al.,)	
)	
Defendants.)	
)	

The Court has read and considered all papers filed in support of and in opposition to "Defendants' Motion for Protective Order, filed March 25, 2022 ("the Motion"). The Court has taken the Motion under submission without oral argument. See Minute Order, filed April 8, 2022.

The parties have agreed on the terms of a protective order, with the exception of two disputed provisions sought by Defendants and opposed by Plaintiff: (1) a provision precluding Mitchell Stein ("Stein") from having access to any documents Defendants designate as "Highly Confidential - Attorneys' Eyes Only"; and (2) a provision that

1 the designating party may designate as confidential an entire document
2 when the document contains both confidential information and
3 information otherwise available to the public or to the receiving
4 party.

5
6 Where there exists "good cause," Rule 26(c) of the Federal Rules
7 of Civil Procedure authorizes the Court to protect parties from "undue
8 burden or expense" in discovery by ordering "that a trade secret or
9 other confidential research, development, or commercial information
10 not be disclosed or be disclosed only in a designated way." See Brown
11 Bag Software v. Symantec Corp., 960 F.2d 1465, 1469-70 (9th Cir.),
12 cert. denied, 506 U.S. 869 (1992); see also Fed. R. Civ. P. 26(c).

13
14 **1. Preclusion of Stein from Having Access to Documents**
15 **Defendants Designate as "Highly Confidential - Attorneys'**
16 **Eyes Only"**

17
18 A privilege log Plaintiff served in February of 2022 indicates
19 that Plaintiff has withheld, under claim of attorney-client privilege,
20 an email from Stein dated December 13, 2021 (see "Declaration of Peter
21 Shimamoto in Support of Defendants' Motion for a Protective Order"
22 ("Shimamoto Dec."), Ex. R). The privilege log also indicates that
23 Plaintiff's brother and two of Plaintiff's attorneys saw or received
24 this email (id.).

25
26 Stein's role in this litigation is somewhat unclear. Plaintiff
27 has offered differing characterizations of Stein: (1) "a member of
28 Plaintiff's outside counsel litigation team" (see Shimamoto Dec., Ex.

1 0); (2) an individual "akin" to a paralegal or clerical staff of
2 counsel of record acting under attorney supervision (id.); (3) a
3 "paralegal and research assistant who is employed and being supervised
4 by Plaintiff's counsel of record" on a "pro bono" basis ("Plaintiff's
5 Supplemental Memorandum, etc.", p. 3); and (4) a "Consultant to
6 Plaintiff's Counsel" (see Shimamoto Dec., Ex. R). Plaintiff does not
7 identify the particular firm which may employ Stein, and Plaintiff
8 does not identify the particular person(s) for whom Stein provides
9 services.

10
11 It is undisputed that Stein was a California attorney and that
12 Stein is currently suspended from practicing law in this State. It is
13 also undisputed that, in 2013, Stein was convicted of multiple
14 felonies involving fraud, for which Stein served a lengthy term in
15 federal prison.

16
17 The Court grants Defendants' unopposed Request for Judicial
18 Notice of the following documents:¹

19
20 1. An "Order of Involuntary Inactive Enrollment," filed
21 December 29, 2011, in the California State Bar Court Hearing
22 Department in In re Mitchell J. Stein, case number 11-TR-18758-RAH

23 ///

24 ///

25 ///

26
27 ¹ See Mir v. Little Company of Mary Hosp., 844 F.2d 646,
28 649 (9th Cir. 1988) (court may take judicial notice of court records).

1 (Shimamoto Dec., Ex. S);²

2

3 2. A "Notice of Disciplinary Charges" filed in the State Bar
4 Court by the State Bar of California Office of the Chief Trial Counsel
5 on December 14, 2012, charging Stein with eleven counts of misconduct
6 in connection with Stein's representation of members of "mass joinder"
7 lawsuits filed against mortgagors relating to alleged mortgage
8 defaults, foreclosures and/or loan modifications (Shimamoto Dec., Ex.
9 T). Stein's alleged misconduct included failure to render promised
10 services, failure to communicate with clients, failure to refund
11 unearned fees, failure to render accounts of client funds and
12 conversion of client funds (id.). The "Notice of Disciplinary
13 Charges" further alleged that, after the State Bar had suspended Stein
14 from the practice of law, Stein had employed two licensed attorneys as
15 "straw men" for the purpose of enabling Stein to continue to practice
16 law sub rosa (id.). The "Notice of Disciplinary Charges" further
17 alleged that, on or about August 15, 2011, the Superior Court assumed
18 jurisdiction over Stein's law practice, and that, on December 29,
19 2011, the State Bar ordered Stein involuntarily enrolled as an
20 inactive member of the State Bar (id.).

21

22 3. A "Transmittal of Records of Conviction of Attorney, etc.,"
23 filed August 14, 2013, in the Office of the California State Bar
24 Court, indicating that, on May 20, 2013, Stein was convicted of crimes

25

26 ² Although the copy of this document submitted by
27 Defendants and the copy of the same document on the State Bar's
28 website do not bear a signature or a signature date, the State
Bar's website confirms that Stein was deemed not eligible to
practice law as of January 1, 2012.

1 of moral turpitude in United States v. Stein, United States District
2 Court for the Southern District of Florida case number 11-CR-80205
3 (Shimamoto Dec., Ex. U); and
4

5 4. An Order of the State Bar of California Review Department,
6 dated September 8, 2013, ordering Stein suspended from the practice of
7 law effective October 1, 2013, pursuant to California Business and
8 Professions Code section 6102, in light of Stein's conviction and
9 "pending final disposition of this proceeding" (Shimamoto Dec., Ex.
10 V).³
11

12 The Court also has reviewed federal and state court dockets,
13 which show the following:⁴

14 ///

15 ///

16 _____
17 ³ Under California Business and Professions Code section
18 6102(c), after a judgment of conviction has become final, "the
19 Supreme Court shall summarily disbar the attorney if the offense
20 is a felony under the laws of California, the United States, or
21 any state or territory thereof, and either: (1) an element of the
22 offense is the specific intent to deceive, defraud, steal, or
make or suborn a false statement, or involved moral turpitude, or
23 (2) the facts and circumstances of the offense involved moral
24 turpitude." Even so, the California Supreme Court apparently has
25 yet to issue a disbarment order against Stein.

26 ⁴ The Court takes judicial notice of the dockets and
27 documents described below. See Mir v. Little Company of Mary
28 Hosp., 844 F.2d at 649; see also Fed. R. Evid. 201(c)(1) (court
"may take judicial notice on its own"). The dockets and imaged
documents in the federal actions are available on the PACER
database at www.pacer.gov. The dockets in the California state
court actions are available on the California courts' website at
www.courts.ca.gov. Documents concerning Stein on the website of
the State Bar of California may be found at
<https://apps.calbar.ca.gov>.

1 1. United States v. Stein, United States District Court for the
2 Southern District of Florida case number 9:11-cr-80205-KAM. An
3 Indictment filed on December 13, 2011, charged Stein with multiple
4 offenses arising out of Stein's involvement with Heart Tronics, Inc.,
5 formerly doing business as Sigalife, Inc. and Recom Managed Systems,
6 LLC, a company allegedly involved in the sale of heart monitoring
7 devices. The Indictment charged Stein with conspiracy to commit wire
8 and mail fraud, three counts of mail fraud, three counts of wire
9 fraud, three counts of securities fraud, three counts of money
10 laundering and one count of conspiracy to obstruct justice, the last
11 count being based on allegations that Stein testified falsely before
12 the SEC on multiple occasions. The Indictment alleged that Stein and
13 others perpetrated a scheme to defraud Sigalife investors by, among
14 other things: (1) artificially inflating the price and demand for
15 Sigalife stock; (2) concealing defendants' ownership and trading of
16 Sigalife stock; (3) misappropriating Sigalife's assets; and
17 (4) testifying falsely to the SEC to conceal their conduct. The
18 Indictment alleged, among other things, that Stein and his
19 coconspirators: (a) created false purchase orders, false and
20 misleading press releases and a false and misleading SEC filing;
21 (b) concealed their ownership and trading of Sigalife stock by false
22 and misleading practices; and (c) misappropriated Sigalife's assets by
23 orchestrating sham agreements through which Sigalife paid cash and
24 stock to third parties.

25
26 Although Stein was represented by several attorneys before and
27 after trial, Stein represented himself during trial (with the
28 assistance of standby counsel). On May 20, 2013, a jury found Stein

1 guilty on all counts. Thereafter, Stein filed numerous pro se
2 posttrial motions, including several motions for a new trial. In one
3 order, the court denied Stein's motion for a new trial, two amended
4 motions for a new trial and a "second" motion for a new trial, finding
5 the motions "not only to be baseless, but also offensive." See "Order
6 Denying Posttrial Motions" filed June 9, 2014 (Dkt. No. 340). On
7 December 8, 2014, the court sentenced Stein to a prison term of 204
8 months plus two years' supervised release. In an "Amended Judgment"
9 filed April 8, 2015, the court imposed restitution in the sum of
10 \$13,186,025.85.

11
12 The United States Court of Appeals for the Eleventh Circuit
13 affirmed the conviction, but vacated Stein's sentence and remanded for
14 resentencing. See United States v. Stein, 846 F.3d 1135 (11th Cir.
15 2017), cert. denied, 138 S. Ct. 556 (2017). On remand, the district
16 court resentenced Stein to 150 months' imprisonment plus three years'
17 supervised release, and imposed restitution in the sum of \$1,029,570.
18 See United States v. Stein, 964 F.3d 1313 (11th Cir.), cert. denied,
19 141 S. Ct. 954 (2020). The Eleventh Circuit affirmed the judgment.
20 See id.

21
22 2. Securities and Exchange Commission v. Heart Tronics, Inc.,
23 United States District Court for the Central District of California,
24 case number SA CV 11-1962-SVW(KESx), filed on December 20, 2011 (a
25 week after the filing of the Florida criminal case). In this civil
26 enforcement action against various defendants, including Stein and his
27 wife, the SEC alleged that: (1) Stein was Heart Tronics' purported
28 outside counsel, de facto controlling officer and husband of its

1 majority shareholder; and (2) Stein engaged in a fraudulent scheme to
2 inflate the price of Heart Tronics stock in order to profit from
3 selling its securities to investors, by creating false purchase orders
4 with fictitious companies as the basis for SEC filings and for press
5 releases touting sales of Heart Tronics' heart monitoring system. See
6 Securities and Exchange Comm'n v. Stein, 906 F.3d 823, 826 (9th Cir.
7 2018), cert. denied, 140 S. Ct. 245 (2019). Following Stein's
8 conviction in the Southern District of Florida, the district court
9 granted the SEC's motion for summary judgment on a number of the
10 securities fraud claims on the ground that the doctrine of collateral
11 estoppel precluded Stein from contesting the SEC's allegations in the
12 civil case. See id. at 828. The Ninth Circuit affirmed. Id. at 934.

13
14 3. In the Matter of Mitchell J. Stein, State Bar Court of
15 California Hearing Department case number 1-TR-18758-RAH. As
16 indicated above, the State Bar's website contains an "Order of
17 Involuntary Inactive Enrollment" regarding Stein, filed December 29,
18 2011. The Order references an October 26, 2011 order of the Los
19 Angeles County Superior Court assuming jurisdiction over Stein's law
20 practice. The State Bar Court ordered Stein involuntarily enrolled as
21 an inactive member of the State Bar. The copy of the Order contained
22 on the State Bar's website is not dated or signed. However, the
23 website confirms that Stein was deemed "not eligible to practice law"
24 as of January 1, 2012.

25
26 4. In the Matter of Attorneys Suspended or Disbarred by the
27 State Bar of California, etc., United States District Court for the
28 Southern District of California case number 3:12-mc-00230. On

1 April 4, 2012, the court issued an order disbaring Stein from that
2 court.

3
4 5. In re Mitchell J. Stein., United States District Court for
5 the Central District of California case number CV 12-mc-00132-ABC.
6 On May 7, 2012, the Court issued an order disbaring Stein from this
7 Court.

8
9 6. MGM Grand Hotel LLC v. Stein, United States District Court
10 for the District of Nevada case number 2:07-cv-01349-JCM-LRL. In a
11 complaint filed in state court on March 29, 2007, the plaintiff
12 alleged that Stein had delivered to it six negotiable credit
13 instruments in the total sum of \$600,000 which were returned
14 dishonored and unpaid. Stein removed the action to federal court
15 where his attorney subsequently obtained a court order permitting the
16 attorney to withdraw. Stein filed no opposition to the plaintiff's
17 motion for summary judgment, which the court granted. An Amended
18 Judgment was entered on December 19, 2008, awarding the plaintiff
19 damages in the sum of \$570,000.00, plus attorneys' fees and costs.⁵

20
21 7. State of California v. Stein, Los Angeles County Superior
22 Court case number LS021817. On August 15, 2011, the State Bar filed a
23 verified petition and application for assumption of jurisdiction over
24 defendant's law practice under Business and Professions Code section
25 6190 et seq. See People v. Stein, 2018 WL 2214715, at *4 (Cal. App.

26
27 ⁵ The plaintiff subsequently filed a certification of the
28 judgment in this Court, in MGM Grand Hotel LLC v. Stein, United
States District Court for the Central District of California case
number SACV 09-mc-00001-UA.

1 May 15, 2018), cert. denied, 139 S. Ct. 828 (2019). On October 13,
2 2011, the trial court issued permanent orders authorizing the State
3 Bar to assume jurisdiction over defendant's law practice. Id.
4

5 8. People v. Stein, Los Angeles County Superior Court case
6 number LC094571. The State of California filed charges against Stein
7 and others on August 15, 2011, the same day the State Bar filed suit
8 seeking to assume jurisdiction over Stein's practice. The State
9 alleged that the defendants had engaged in unfair business and
10 advertising practices in connection with the solicitation of
11 distressed homeowners to participate in "mass joinder" lawsuits
12 against mortgage lenders. See People v. Stein, 2018 WL 2214715. All
13 of the defendants settled except Stein. Id. Following the criminal
14 prosecution and civil enforcement actions against Stein, and after
15 obtaining provisional relief, the State indicated a willingness to
16 dismiss the action against Stein, observing that Stein allegedly was
17 "judgment-proof." Id. at *3. However, the State did obtain summary
18 judgment against Stein on a claim for attorneys' fees, which the Court
19 of Appeal affirmed. Id.
20

21 9. Working for Help v. Cain, United States District Court for
22 the Central District of California case number CV 11-6677-SVW(SSx).
23 Stein and another attorney, Erickson Davis, represented the
24 plaintiffs, purported charitable enterprises, in this putative class
25 action filed on August 15, 2011. The complaint alleged civil rights
26 violations against: the SEC Chairman; SEC employees; an officer of
27 "Recom Managed Systems" Lee Ehrlichman; Recom's counsel; and unknown
28 postal inspectors and FBI agents. The complaint, among other things,

1 alleged that the defendants had committed the murder or manslaughter
2 of one million Americans, and further alleged that the plaintiffs had
3 suffered damages in excess of a trillion dollars. On December 7, 2012
4 (after the State Bar had assumed jurisdiction over Stein's practice
5 and after the State Bar had deemed Stein ineligible to practice law),
6 Stein and his co-counsel filed a first amended complaint bearing
7 Stein's signature and identifying Stein as counsel. Thereafter, the
8 SEC Defendants moved to dismiss and also to disqualify counsel,
9 arguing that Stein was not authorized to practice law in California
10 and was the defendant in an SEC enforcement action and a criminal
11 prosecution in Florida, both of which concerned Recom. On
12 February 28, 2012, the plaintiffs filed a notice of voluntary
13 dismissal.

14
15 The website of the Federal Bureau of Prisons ("BOP") shows that
16 Stein was released on January 13, 2022.⁶ Thus, at the time Stein
17 purportedly authored the December 13, 2021 email identified on
18 Plaintiff's privilege log, Stein evidently was still in BOP custody.

19
20 Presently, Stein is unconstrained by the rules of professional
21 responsibility governing the conduct of attorneys in this Court. See
22 Cal. State Bar Rules of Professional Conduct, Rule 1.0 (stating that
23 the "rules together with any standards adopted by the Board of
24 Trustees pursuant to these rules shall be binding upon all lawyers");

25
26 ⁶ The Court takes judicial notice of the contents of the
27 "Find an Inmate" section of the BOP's website, available at
28 www.bop.gov. See United States v. Basher, 629 F.3d 1161, 1165 &
n.2 (9th Cir. 2011) (taking judicial notice of information from
BOP inmate locator).

1 Local Rule 83-3.1.2 (adopting, for "each attorney," "the standards of
2 professional conduct required of members of the State Bar of
3 California and contained in the State Bar Act, the Rules of
4 Professional Conduct of the State Bar of California, and the decisions
5 of any court applicable thereto"); Allergan, Inc. v. Teva Pharms. USA,
6 2017 WL 772486, at *4 (E.D. Tex. Feb. 28, 2017) (denying motion to
7 amend protective order to permit non-attorney employees of party to
8 access documents designated as confidential, observing that the non-
9 parties were not officers of the court, were not bound by the same
10 Code of Professional Responsibility, and were not subject to the same
11 sanctions as licensed attorneys).
12

13 The Court finds that Stein's history reflects such a level of
14 untrustworthiness and moral turpitude as to warrant the preclusion of
15 Stein from having access to documents designated by Defendants as
16 "Highly Confidential - Attorneys' Eyes Only" in this case.⁷ Stein's
17 access to such documents, which may well include valuable intellectual
18 property, would pose an unreasonable risk of disclosure of the
19 documents to others, including Defendants' competitors. Cf. Smith v.
20 Shartle, 2020 WL 6781608, at *1 (D. Ariz. Nov. 18, 2020) (in an action
21 brought by the spouse and the estate of a BOP inmate, granting motion
22 for "Attorneys' Eyes Only" provision in protective order prohibiting
23 the spouse from having access to discovery information where the
24 spouse previously had violated a court order). There is no indication
25 on this record that a preclusion of Stein's access to documents

26
27 ⁷ The evidence of Stein's untrustworthiness dates back
28 many years. However, there is no evidence before the Court that
Stein became more trustworthy while in prison or after his recent
release therefrom.

1 designated by Defendants as "Highly Confidential - Attorneys' Eyes
2 Only" would impair Plaintiff's prosecution of this case in any
3 appreciable respect. Plaintiff is represented by multiple law firms
4 which presumably can call upon the services of multiple competent
5 paralegals, clerks, research assistants and consultants other than
6 Stein. In sum, good cause exists for a protective order precluding
7 Stein from having access to documents designated by Defendants as
8 "Highly Confidential - Attorneys' Eyes Only."⁸

9
10 **2. Provision That the Designating Party May Designate an Entire**
11 **Document as Confidential When the Document Contains Both**
12 **Confidential Information and Information Otherwise Available**
13 **to the Public or to the Receiving Party**
14

15 Plaintiff already has served thousands of document requests in
16 this case (see Shimamoto Dec., Ex. C; see also "Plaintiff's Motion to
17 Compel Production of Documents" filed March 12, 2022, Joint
18 Stipulation, p. 2). The Court declines to require Defendants
19 initially to separate out from their presumably thousands or hundreds
20 of thousands of confidential, responsive documents those pages or
21 portions of pages which may contain non-confidential information. See
22 Fed. R. Civ. P. 26(b)(1) (discovery must be proportional to the needs
23 of the case); F.R.C.P. 26(b)(2)(C) (authorizing protective order
24 limiting discovery which is "outside the scope permitted by Rule
25

26 ⁸ This Court encourages the employment and the
27 rehabilitation of ex-felons, and Plaintiff remains at liberty to
28 trust Stein with Plaintiff's most confidential information.
However, for the reasons discussed herein, Plaintiff should not
be at liberty to force Defendants to trust Stein with theirs.

