



1 parties filed a report informing the Court that the lone dispute was the documents  
2 identified in the accompanying privilege log. Dkt. 20. The log consists of documents  
3 that Shafii asserts are protected by the attorney-client privilege, the work-product  
4 privilege, the joint defense privilege, and the common interest privilege. *Id.* at 5–9. The  
5 parties believe that the issues have been fully briefed but will provide additional material  
6 if requested. *Id.* at 3.

7 On April 8, 2018, the Court requested supplemental briefing providing Shafii an  
8 additional opportunity to present specific facts in support of the claimed privileges. Dkt.  
9 21. On April 19, 2019, Shafii responded. Dkt. 22. On April 26, 2019, Lagree replied.  
10 Dkt. 25.

## 11 II. DISCUSSION

### 12 A. Attorney-Client Privilege

13 In Shafii’s privilege log, he asserts attorney-client privilege over every document  
14 regardless of whether he was included in the communication. Dkt. 20 at 5–9. In the  
15 order requesting supplemental briefing, the Court questioned this blanket assertion. Dkt.  
16 21 at 2. Shafii responds that (1) the communications that include Shafii “specifically fall  
17 within the common interest privilege as it relates to attorney/client communications” and  
18 (2) the privilege was asserted “in the interest of caution” over communications that do not  
19 include Shafii. Dkt. 22 at 9–10. Regarding the former response, the attorney-client  
20 privilege has eight essential elements, *Admiral Ins. Co. v. U.S. Dist. Court for Dist. of*  
21 *Arizona*, 881 F.2d 1486, 1492 (9th Cir. 1989), and “[t]he party asserting the privilege  
22 bears the burden of proving each essential element,” *United States v. Ruehle*, 583 F.3d

1 600, 608 (9th Cir. 2009) (citing *United States v. Munoz*, 233 F.3d 1117, 1128 (9th Cir.  
2 2000)). “The fact that a person is a lawyer does not make all communications with that  
3 person privileged.” *United States v. Martin*, 278 F.3d 988, 999 (9th Cir. 2002) (citing  
4 *United States v. Chen*, 99 F.3d 1495, 1501 (9th Cir. 1996)).

5 Shafii utterly fails to meet his burden to establish that the communications in  
6 which he was involved are entitled to the attorney-client privilege. He simply relies on  
7 the fact that the communications involved him and his lawyers. That argument has been  
8 rejected, *Martin*, 278 F.3d at 999, and does not establish the eight elements for each  
9 document withheld. Therefore, the Court concludes that Shafii failed to meet his burden  
10 as to the documents or communication in which he was involved.

11 Regarding his assertion of the privilege over communications in which he was not  
12 involved, Shafii presents an argument wholly without merit. He argues that he asserted  
13 the privilege “in the interest of caution” because communications that originally would  
14 not be covered by the privilege could be covered by the privilege as an extension of the  
15 common interest or joint defense privilege. Dkt. 22 at 9–10. He cites no authority for  
16 this proposition, and it is highly unlikely that any exists such that a communication that is  
17 not between an attorney and his client is protected by the attorney-client privilege *solely*  
18 because it is shared with a party that has a common interest in the proceeding. Therefore,  
19 the Court rejects Shafii’s assertion of the attorney-client privilege.

## 20 **B. Work-Product**

21 “The work product doctrine, codified in Federal Rule of Civil Procedure 26(b)(3),  
22 protects ‘from discovery documents and tangible things prepared by a party or his

1 representative in anticipation of litigation.” *In re Grand Jury Subpoena*, 357 F.3d 900,  
2 906 (9th Cir. 2004) (quoting *Admiral Ins. Co. v. United States District Court*, 881 F.2d  
3 1486, 1494 (9th Cir. 1989)).

4 In this case, Shafii asserts that every document identified in his privilege log is  
5 protected by the work product doctrine. Dkt. 22 at 6–8. The problem with Shafii’s  
6 argument is that he fails to establish that his joint communications with Coreology’s  
7 attorneys is work product in anticipation of or in preparation for *his* litigation. For  
8 example, all the communications could discuss strategies for Coreology to defeat Lagree  
9 in the trademark proceeding, which would seem to make the content of the  
10 communications irrelevant to Lagree’s misappropriation suit against Shafii. Without  
11 facts establishing what he or his counsel prepared in anticipation of his litigation, he fails  
12 to meet his burden to show that the work product doctrine applies to the withheld  
13 documents. Therefore, the Court finds that Shafii’s assertion of the work product  
14 doctrine is also unsupported by the record.

### 15 **C. Common Interest or Joint Defense**

16 “Rather than a separate privilege, the ‘common interest’ or ‘joint defense’ rule is  
17 an exception to ordinary waiver rules designed to allow attorneys for different clients  
18 pursuing a common legal strategy to communicate with each other.” *In re Pac. Pictures*  
19 *Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012). Shafii must establish that the  
20 communications were “part of an on-going and joint effort to set up a common defense  
21 strategy.” *In re Imperial Corp. of Am.*, 167 F.R.D. 447, 455 (S.D. Cal. 1995), *aff’d*, 92  
22 F.3d 1503 (9th Cir. 1996). “It is not sufficient that attorneys for different clients possess

1 ‘a shared desire to see the same outcome in a legal matter.’” *Chandola v. Seattle Hous.*  
2 *Auth.*, C13-557-RSM, 2014 WL 4685351, at \*8 (W.D. Wash. Sept. 19, 2014) (quoting *In*  
3 *re Pacific Pictures Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012)).

4 In this case, Shafii has hired two separate attorneys. Alyosha McClain declares  
5 that she represents Shafii in opposing multiple subpoenas Lagree has served on him, two  
6 of which are the instant subpoena and a similar one from the trademark action pending in  
7 Oregon. Dkt. 23, ¶ 3. Matthew Wolf declares that he represents Shafii in the  
8 misappropriation action in California. Dkt. 24, ¶ 3. Regarding Alyosha McClain, she  
9 declares that Shafii and Coreology had a common interest in preserving the evidence at  
10 issue and responding to the subpoena Lagree served. But Shafii is an unnecessary third  
11 party in the trademark matter, and he fails to show any legal interest in Coreology’s  
12 attempt to deregister Lagree’s trademarks. Other than a potential personal interest in an  
13 adverse ruling against Lagree, which sued Shafii in California, he fails to establish that  
14 deregistration of Lagree’s marks will have any legal ramifications for him. Thus, he has  
15 established at most a common desire to see Lagree lose its intellectual property rights,  
16 which fails to warrant a finding of a common legal interest or joint defense.

17 Regarding Matthew Wolf, Shafii similarly fails to establish a common legal  
18 interest between defense of the misappropriation claims and the trademark action. While  
19 it could be that deregistration of the trademarks would dispose of hypothetical claims of  
20 misappropriating intellectual property, Shafii fails to inform the Court of the exact basis  
21 for the California action. Thus, Shafii has failed to establish a common legal interest  
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1 between the trademark action and the California action, and he is not entitled to assert  
2 this privilege.

3 **D. Deferral**

4 Shafii argues that the Court should defer the matter to the Trademark Trial and  
5 Appeal Board (“TTAB”). Dkt. 9 at 11–12; Dkt. 22 at 11. Shafii, however, fails to  
6 provide any authority for such a deferral. On the other hand, Lagree provides authority  
7 for the proposition that the TTAB lacks authority to modify or quash a subpoena issued  
8 by a district court. Dkt. 15 at 7 n.18 (citing TBMP 404.03(a)(2); *Dan Foam Aps v. Sleep*  
9 *Innovations Inc.*, 106 USPQ2d 1939, 1942 n.4 (TTAB 2013)). To the extent that Shafii  
10 fails to provide any authority or reasonable argument to support his position, the Court  
11 declines to defer the matter to the TTAB.

12 **III. ORDER**

13 Therefore, it is hereby **ORDERED** that Lagree’s motion to compel, Dkt. 1, is  
14 **GRANTED**. The Clerk shall close this case.

15 Dated this 10th day of June, 2019.

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BENJAMIN H. SETTLE  
United States District Judge