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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8 AT SACRAMENTO
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10 MILLER MARITAL DEDUCTION
11 TRUST, by and through its trustees, Helen
12 Miller and James Morris; and HELEN
13 MILLER, an individual,
14 Plaintiffs,
15 v.
16 ESTATE OF MARK B. DUBOIS, *et al.*,
17 Defendants.

No. 2:16-cv-01883-SB

**ORDER DENYING MOTION TO
COMPEL**

18 Before the Court is the Miller Marital Deduction Trust's (the "Miller
19 Trust") Motion to Compel Production of Documents, ECF No. 55. The Miller
20 Trust requests the Court compel Defendant Estate of Jack Miller (the "Estate") to
21 produce documents responsive to the Miller Trust's Request for Production
22 ("RFP") related to communications between the Estate's attorneys and insurance
23 claim handlers Jennifer Gilbert and Julie York. For the reasons set-forth below, the
24 Court denies the motion.

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ORDER DENYING MOTION TO COMPEL ^ 1

1 **BACKGROUND**

2 From approximately 1956 to 1985, a dry cleaning business known as the
3 Glo Dry Cleaning System operated on the property located at 6054 Pacific Avenue
4 in Stockton, California (the “Property”). This action arises from the environmental
5 contamination to the Property, and the areas to which the contamination has
6 migrated outside the boundaries of the Property (the “Site”). The parties to this
7 action are the former owners and operators of the dry cleaning business, and the
8 former owners of the Property. Plaintiff, the Miller Trust, is the current owner of
9 the Property, and obtained ownership following the death of Jack Miller.

10 The Miller Trust brought this action against the Estate under California
11 Probate Code §§ 550, *et seq.*, which allows plaintiffs to recover damages against a
12 defendant’s insurance assets if liability and coverage are proven. In this case, Jack
13 Miller has insurance policies issued through Allianz Insurance Company and
14 Zurich American Insurance Company (the “Insurers”). As such, the Insurers are
15 providing a defense on behalf of the Estate.

16 The Insurers appointed two law firms, Wood, Smith, Henning & Berman¹
17 and Crowell & Moring², to defend the Estate against the Miller Trust’s claims.
18 Also involved in this litigation are Darrell McCarley, from Allianz Insurance
19 Company; and Daniel Maly, from Zurich American Insurance Company, who are
20 responsible for handling Miller Trust’s claims against the Estate.

21 **Mary Dubois Counterclaim**

22 On September 20, 2016, Defendant Mary Dubois filed an Answer to the
23 Miller Trust’s Complaint, which included a counterclaim against the Miller Trust
24 (“Dubois Counterclaim”). ECF No. 7. The Insurers agreed to provide a defense to
25 the Miller Trust against the DuBois Counterclaim, and appointed Bassi, Edlin,
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27 ¹ Wood, Smith, Henning & Berman handle the environmental liability aspects of
Plaintiff’s lawsuit.

28 ² Crowell & Moring, handle the insurance coverage aspects of Plaintiff’s lawsuit.

1 Huie & Blum LLP. The Insurers also appointed Jennifer Gilbert, from Allianz
2 Insurance Company; and Julie York, from Zurich American Insurance Company,
3 to handle the counterclaim against the Miller Trust.

4 **Requests for Production**

5 The Miller Trust received information that led it to believe the Estate's
6 counsel improperly communicated with Jennifer Gilbert and Julie York. This
7 prompted the Miller Trust to serve a RFP upon the Estate. At issue are RFP nos. 1-
8 14, seeking production of communications between "YOU" and Jennifer Gilbert
9 and Julie York. The term "YOU" is defined as:

10 the Estate of Jack Miller, Deceased, including: (a) any PERSON or entities
11 acting in the estate's interest or on the estate's behalf including any
12 insurance companies or attorneys; (b) any person or entities over which the
13 estate has custody or control, including without limitation, the estate's past
14 or present investigators, consultants, accountants, bankers, brokers,
15 representatives, agents, officers, directors, employees, advisors, insurers and
16 any representative of the foregoing; or (c) any successor in interest or
17 predecessor in interest of Jack Miller.

18 ECF No. 55-1, Ex. A at 9 ¶ 6. The Estate has objected and refused to respond to
19 the requests at issue, prompting the Miller Trust to file the present motion to
20 compel.

21 **STANDARD**

22 A party may serve on any other party a request to produce documents within
23 the scope of discovery under Rule 26(b). Fed. R. Civ. P. 34(a). Rule 26(b)
24 provides:

25 Unless otherwise limited by court order, the scope of discovery is as
26 follows: Parties may obtain discovery regarding any nonprivileged
27 matter that is relevant to any party's claim or defense and
28 proportional to the needs of the case, considering the importance of
the issues at stake in the action, the amount in controversy, the
parties' relative access to relevant information, the parties' resources,
the importance of the discovery in resolving the issues, and whether
the burden or expense of the proposed discovery outweighs its likely

1 benefit. Information within this scope of discovery need not be
2 admissible in evidence to be discoverable.

3 Fed. R. Civ. P. 26(b)(1). “Evidence is relevant if: (a) it has any tendency to make a
4 fact more or less probable than it would be without the evidence; and (b) the fact
5 is of consequence in determining the action.” Fed. R. Evid. 401.

6 A party responding to a request for production may object to the discovery
7 request. Fed. R. Civ. P. 34(b)(2)(C). Under Rule 37(A), a party may move for an
8 order compelling disclosure of discovery if “a party fails to produce
9 documents . . . as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(b)(iv). The
10 party seeking to compel discovery has the burden of establishing that its request
11 satisfies the relevancy requirements of Rule 26(b). *Soto v. City of Concord*, 162
12 F.R.D. 603, 610 (N.D. Cal. 1995). “The party opposing discovery then has the
13 burden of showing that the discovery should be prohibited, and the burden of
14 clarifying, explaining or supporting its objections.” *Weber v. TMG Logistics, Inc.*,
15 No. 2:15-cv-01829-JAM-AC, 2017 WL 5665847, at *2 (E.D. Cal. Nov. 27, 2017).

16 ANALYSIS

17 The Court finds request nos. 1-14 seek information that is not relevant to
18 any party’s claim or defense. The parties agree the Miller Trust’s claims are
19 brought pursuant to California Probate Code §§ 550, *et seq.* As such, insurance
20 coverage issues are relevant to both the Miller Trust’s claims and the Estate’s
21 affirmative defenses to those claims. The Miller Trust, however, argues the actions
22 of insurance counsel is also relevant. The Court disagrees. Any communications
23 that may have occurred between the Estate’s counsel and Jennifer Gilbert or Julie
24 York, are not relevant to any party’s claim or defense in this case. Accordingly,
25 the Court denies the Miller Trust’s motion to compel.

26 CONCLUSION

27 For the reasons set-forth above, the Court denies the Miller Trust’s Motion
28 to Compel, ECF No. 55, because it seeks information that is not relevant to any

1 party's claim or defense. The Court declines to address whether the Estate
2 possesses documents responsive to request nos. 1-14, or whether such documents
3 are protected by attorney-client privilege and the work product doctrine.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. The Miller Trust's Motion to Compel, ECF No. 55, is **DENIED.**

6 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
7 this Order and provide copies to counsel.

8 **DATED** this 13th day of February 2018.

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12 Stanley A. Bastian
13 United States District Judge
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