

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES ex rel. STROM,

No. C05-3004 CRB (JSC)

Plaintiffs,

**ORDER RE: SEPTEMBER 15, 2011
AND SEPTEMBER 17, 2011 JOINT
LETTERS**

v.

SCIOS, INC. and JOHNSON & JOHNSON,

Defendants.

Now pending before the Court are the parties' joint letters of September 15, 2011 and September 17, 2011. After carefully considering the parties' positions, the Court rules as set forth below.

A. September 15, 2011 Joint Letter

Defendants have withheld from production on attorney-client privilege grounds an email chain relating to a third party's complaint regarding the promotion of Natrecor. At the parties' request the Court has reviewed the withheld emails in their entirety *in camera* and finds that they do not involve communications seeking legal advice and thus must be produced. See United States v. Graf, 610 F.3d 1148, 1156 (9th Cir. 2010). The copying of the email to in-house counsel does not mean the email necessarily involved the seeking of legal advice. See United States v. ChevronTexaco Corp., 241 F.Supp.2d 1065, 1075 (N.D. Cal. 2002).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Upon production of the email chain the parties shall meet and confer regarding whether any depositions need to be reopened in light of the production. The depositions, if any, may take place after the September 23, 2011 discovery cut-off.

B. September 17, 2011 Letter

Plaintiff's motion to quash Defendants' deposition subpoena on Dr. Peacock is denied. Since Plaintiff contends it cannot reasonably be ready for Dr. Peacock's deposition on September 23, 2011, the parties shall meet and confer as to a mutually convenient date in October. The parties shall reach agreement as to the date of Dr. Peacock's deposition on or before September 23, 2011.

IT IS SO ORDERED.

Dated: September 19, 2011



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE