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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. BERGER and BRANT W.  
BERGER,

Plaintiffs,

v.

SEYFARTH SHAW, LLP ET AL,

Defendants.

No. C 07-05279 JSW

**SECOND ORDER GRANTING  
OBJECTIONS, REVERSING  
DISCOVERY ORDER AND  
REMANDING FOR FURTHER  
PROCEEDINGS**

Now before the Court are the objections filed by Defendant Seyfarth Shaw, LLP (“Seyfarth”) to Magistrate Judge Maria-Elena James’ Discovery Order dated September 3, 2008 (the “Discovery Order”). Having carefully reviewed the parties’ papers and considered their arguments and the relevant legal authority, and good cause appearing, the Court hereby GRANTS Seyfarth’s objections and REVERSES the Discovery Order and REMANDS for further proceedings.

The District Court may modify or set aside any portion of a magistrate’s ruling on non-dispositive pre-trial motions found to be “clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a); *see also, e.g., Grimes v. City and County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). A ruling is clearly erroneous if the reviewing court, after considering the evidence, is left with the “definite and firm conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

1           Upon review of the parties’ multiple submissions and after a careful review of the  
2 Discovery Order, this Court finds that Seyfarth has adequately demonstrated that the disputed  
3 documents are relevant. “Parties may obtain discovery regarding any matter, not privileged,  
4 that is relevant to the claim or defense of any party.” Fed. R. Civ. P. 26(b)(1). “Relevant  
5 information for purposes of discovery is information reasonably calculated to lead to the  
6 discovery of admissible evidence.” *Survivor Media, Inc. v. Survivor Productions*, 406 F.3d  
7 625, 635 (9th Cir. 2005) (internal quotes and citation omitted).

8           Seyfarth represents that the documents at issue involve John Branton and are pertinent  
9 to his financial interests in this matter. Seyfarth also represents that Mr. Branton is a key  
10 percipient witness in this litigation. Consistent with federal privilege law, fee-payment  
11 arrangements are relevant to credibility and bias, and discoverable. *Bryant v. Mattel, Inc.*, 2007  
12 WL 5430886, \*20 (C.D. Cal., June 27, 2007) (citing *United States v. Biackman*, 72 F.3d 1418,  
13 1424 (9th Cir. 1995) (“As a general rule, client identity and the nature of the fee arrangement  
14 between attorney and client are not protected from disclosure by the attorney-client  
15 privilege.”)). Plaintiffs contend that Seyfarth had failed to present the issue of potential bias to  
16 the Magistrate Judge because the majority of Seyfarth’s argument was based upon the  
17 contention that any fee-shifting arrangement between Plaintiffs and Mr. Branton was  
18 unenforceable as against public policy. The Court, without hunting for truffles buried in the  
19 briefs, was able to ascertain that, among other arguments of relevance, Seyfarth sought  
20 production of the disputed documents because they potentially bear on the issue of bias. The  
21 Court finds that argument that one line in a two-page argument is too obscure to be  
22 unpersuasive.

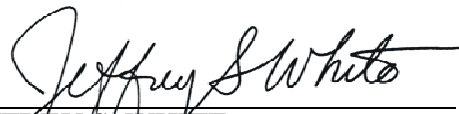
23           The Court concludes that the documents sought may contain information reasonably  
24 calculated to lead to the discovery of admissible evidence. Therefore, the Court GRANTS  
25 Seyfarth’s objections and REVERSES the Discovery Order. As a result of the finding that the  
26 disputed documents were not relevant, the Discovery Order never reached the issue the merits  
27 of the contested privilege issue, the issue of bias, or the determination whether Branton shared a  
28 common legal interest with Plaintiffs. Therefore, the Court REMANDS the matter to

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Magistrate Judge James for a further ruling on the merits.

**IT IS SO ORDERED.**

Dated: October 14, 2008

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE