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

RICHARD W. BERGER and BRANT W.
BERGER,

No. C 07-05279 JSW (MEJ)

Plaintiffs,

**ORDER RE: DEFENDANTS'
INTERROGATORIES**

vs.

**ORDER RE: PLAINTIFFS'
DOCUMENT PRODUCTION
REQUESTS**

SEYFARTH SHAW LLP, et al.,

Defendants.

The Court is in receipt of the parties' two joint discovery dispute letters, filed on January 26, 2009 (Dkt. #134), and October 6, 2008 (Dkt. #121). In connection with the letters, the Court conducted a telephonic conference with the parties on February 11, 2009. (Dkt. # 136.) The Court shall address each letter herein.

A. Defendants' Request for Further Responses to Interrogatory No. 2.

In the joint letter dated January, 26, 2009, Defendants Seyfarth Shaw LLP and Jack Slobodin ("Seyfarth") seek an order compelling further responses to Seyfarth's Interrogatory No. 2, and Plaintiffs seek an order compelling Defendants to produce documents from an out-of-state third-party that Defendants have in their possession.

1. Interrogatory No. 2

As to Interrogatory No. 2, Defendants request that the Court order Plaintiffs to state sufficient facts to support their claim that Defendants agreed to supervise Douglas Alan, Plaintiffs' prior counsel. Although Plaintiffs contend that their supplemental response cured any deficiencies to Defendants' original interrogatory, Defendants argue that the supplemental response is still

1 deficient. After considering both arguments, the Court hereby ORDERS Plaintiffs to serve a
2 supplemental response to Interrogatory No. 2 by March 6, 2009. Specifically, the response shall
3 include: (1) newly discovered facts obtained from Douglas Alan's deposition; and (2) all available
4 facts supporting Plaintiffs' contention that Seyfarth represented Plaintiffs during the underlying
5 litigation against Rossignol Ski Company. Plaintiffs shall be bound by their response unless new or
6 additional facts are obtained through further investigation, and Plaintiffs are subsequently diligent in
7 supplementing their responses.

8 2. Third Party Documents

9 As to the third party documents, Plaintiffs request an order compelling Defendants to
10 produce emails obtained from an out-of-state third-party. Plaintiffs argue they are entitled to the
11 emails because they may contain relevant information. In response, Defendants object to allowing
12 Plaintiffs to benefit from Defendants' efforts to produce the documents.

13 In resolving this issue, the Court notes that Defendants spent considerable time negotiating
14 the production of documents and unilaterally bore the \$10,000 cost to obtain the documents. The
15 Court also notes that Plaintiffs refused Defendants's request to share this cost. Although Plaintiffs
16 have not attempted to subpoena any documents from the third-party on their own, the Court
17 recognizes that it would not be burdensome for Defendants to produce the emails. Thus, the Court
18 hereby ORDERS the parties to meet and confer on this issue no later than March 6, 2009. At the
19 meet and confer session, the parties should come prepared to meaningfully discuss and resolve
20 Plaintiffs' request for Defendants to produce the third-party documents and Defendants' request for
21 Plaintiffs to contribute the cost of producing the documents. Plaintiffs should be mindful that they
22 must negotiate the cost issue in good faith, and that the Court reserves the right to order Plaintiffs to
23 contribute part or all of the cost if the parties are unable to reach an agreement.

24 **C. Plaintiffs' Request for Documents Concerning Internal Seyfarth Communications.**

25 In the letter dated October 6, 2008, Plaintiffs seek the production of documents concerning
26 internal Seyfarth communications listed on Seyfarth's privilege log. Defendants claim protection
27 under the attorney-client privilege and the attorney-work-product doctrine.

1 In the parties' joint letter, Defendants offer to provide a more detailed description of the
2 documents that Defendants claim are privileged. (Dkt. #121.) The Court finds Defendants' offer
3 reasonable and, before ruling on this issue, shall permit the parties a further opportunity to reach an
4 amicable resolution. Accordingly, the Court hereby ORDERS Defendants to serve on Plaintiffs and
5 electronically file with the Court a more detailed description of the documents that Defendants claim
6 are privileged no later than March 6, 2009. Specifically, Defendants shall identify: (1) all persons
7 making and receiving the privileged or protected communication; (2) the steps taken to ensure the
8 confidentiality of the communication, including affirmation that no unauthorized persons have
9 received the communication; (3) the date of the communication; (4) the subject matter of the
10 communication; (5) why the communication is privileged. Subsequently, the parties shall meet and
11 confer no later than March 17, 2009. If any disputes remain after the meet and confer session, the
12 parties shall file a joint meet and confer letter by March, 26, 2009.

13 **IT IS SO ORDERED.**

14
15 Dated: February 25, 2009


16 MARIA ELENA JAMES
17 United States Magistrate Judge