

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 MAURICE CALDWELL,
4

5 Plaintiff,

6 v.

7 CITY OF SAN FRANCISCO, et al.,
8

9 Defendants.

Case No. 12-cv-01892-EDL

**ORDER ON DEFENDANTS' MOTION
TO COMPEL**

Re: Dkt. Nos. 161, 224

9 Following the hearing on September 29, 2015, at which the Court provided considerable
10 guidance, Defendants and Plaintiff's former habeas attorney Paige Kaneb were ordered to meet
11 and confer as to the specific subject matters for which work product protection and attorney-client
12 privilege were waived by Plaintiff's filing of Ms. Kaneb's declarations in support of his petition for
13 compensation pursuant to California Penal Code section 4900 and his request for a finding of
14 innocence pursuant to California Penal Code section 1485.55. On October 27, 2015, the Parties filed
15 a joint letter indicating that they cannot reach agreement.

16 "Disclosing a privileged communication or raising a claim that requires disclosure of a
17 protected communication results in waiver as to all other communications on the same subject."
18 Hernandez v. Tanninen, 604 F.3d 1095, 1100 (9th Cir. 2010) (citing Weil v. Inv./Indicators,
19 Research & Mgmt., 647 F.2d 18, 24 (9th Cir. 1981)). However, "[d]isclosure constitutes a waiver
20 of the attorney-client privilege . . . only as to communications about the matter actually disclosed."
21 Id. (internal quotation marks and citation omitted).

22 The Parties dispute whether Ms. Kaneb is interpreting the scope of the waiver too
23 narrowly. Defendants point to three examples, which instead show that Ms. Kaneb is properly
24 construing the subject matter waiver at issue. First, Defendants cite a portion of Ms. Kaneb's
25 declaration that states: "I have also interviewed [Maritte] Funches twice in person, each time with
26 a different lawyer present. Mr. Funches maintained that he had shot Mr. Acosta in the chest and
27 that [Plaintiff] was neither present, nor involved in any way." Defendants contend that Ms. Kaneb
28 improperly redacted information concerning whether Plaintiff was involved in efforts, after the

1 shooting took place, to intimidate Mary Cobbs, who identified Plaintiff as one of the shooters.
2 However, Ms. Kaneb's declaration only pertains to the shooting itself, not subsequent events.
3 Therefore, Ms. Kaneb's redactions are proper.

4 Second, Defendants cite a portion of the declaration that indicates that Ms. Kaneb spoke
5 with Plaintiff's appellate attorney, who stated that he had interviewed Henry Martin and that all
6 his of files pertaining to that interview were lost in a fire. Although Defendants argue that
7 Plaintiff waived privilege as to the substance of Mr. Martin's conversations with his appellate
8 attorney, the declaration only puts at issue the fact that the interview took place and that records of
9 it were destroyed. Third, Defendants argue that Ms. Kaneb is improperly withholding documents
10 over which privilege was waived by the statement in her declaration that both Maurice Tolliver
11 and Demetrius Jones "described Henry Martin as a 'dope fiend' in 1990." However, Ms. Kaneb
12 properly interprets the scope of the waiver, stating that she has produced "all documents or
13 portions of documents reflecting communications with Tolliver or Jones regarding Henry Martin's
14 drug use and whether he was a 'dope fiend' in 1990."

15 Other than these examples, Defendants point to no other instance in which Ms. Kaneb's
16 interpretation of the scope of the waiver is improper. However, in the joint letter, Ms. Kaneb did
17 not address Defendants' concern that her privilege log indicates that she is "redact[ing] documents
18 that discuss facts simply because she had an impression or opinion of those facts." Defendants
19 point to Ms. Kaneb's notes of an interview with Mr. Martin that appear to redact Mr. Martin's
20 recollection about the night of the murder. Accordingly, Ms. Kaneb is ordered to file a letter of no
21 more than one page addressing this issue by November 6, 2015.

22 **IT IS SO ORDERED.**

23 Dated: November 3, 2015

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26 ELIZABETH D. LAPORTE
27 United States Magistrate Judge
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