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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Baxter Healthcare Corporation, et al.,
Plaintiffs,
v.
Fresenius Medical Care Holding, Inc.,
Defendants.

No. C 07-1359 PJH (JL)

ORDER

Introduction

All discovery in this case has been referred by the district court (Hon. Phyllis J. Hamilton) pursuant to 28 U.S.C. §636(b). This Court on October 9, 2008, almost four months after the document was e-filed, received a courtesy copy of the parties' Joint Statement regarding Plaintiffs' motion for a more complete privilege log, e-filed at Docket # 176. General Order 45 VI. (G) mandates that a courtesy copy of any electronically filed document be delivered to the chambers of the assigned judge by noon the next business day after it is e-filed. Counsel for Defendants had contacted the Court to inquire and only then learned that the Court had not been advised of the parties' dispute.

Analysis and Conclusion

Plaintiffs ask the Court to order Defendants to enhance their Privilege Log in two ways:

1 First, by separating individual emails within email strings, and identifying each email
2 within the string as Plaintiffs argue is required by *In re Grand Jury Investigation*, 974 F.2d
3 1068, 1070-71 (9th Circuit 1992), and Rule 26(b)(5), Federal Rules of Civil Procedure. They
4 want a “proper privilege log,” identifying each document with: (a) the attorney and client
5 involved, (b) the nature of the document, (c) all persons or entities shown on the document
6 to have received or sent the document, (d) all persons or entities known to have been
7 furnished the document or informed of its substance, and (e) the date the document was
8 generated, prepared, or dated.” *In re Community Psychiatric Centers Securities Litigation*,
9 No. SA CV91-533AHS(RWRX), 1993 WL 497253, at *4 (C.D. Cal. Sept. 15, 1993).

10 Defendants object that it would be an extremely burdensome task to separate
11 complete documents into arbitrary segments - an exercise that Defendants contend is
12 inconsistent with how the documents are kept in the ordinary course of business and far
13 exceeds what is required to determine the applicability of a privilege.

14 This Court finds that Plaintiffs’ request is reasonable. Each email is a separate
15 communication, for which a privilege may or may not be applicable. Defendants cannot
16 justify aggregating authors and recipients for all emails in a string and then claiming
17 privilege for the aggregated emails. This portion of Plaintiffs’ request is granted.

18 Second, Plaintiffs ask the Court to order Defendants to enhance their Privilege Log
19 by identifying the author, recipient or copyee for redacted documents at entries 584 through
20 1047 (464 of the 917 total entries).

21 Defendants respond that Plaintiffs already have these redacted documents in their
22 possession and can discern this information for themselves.

23 The Court finds that it is unreasonable for Defendants again to foist their task onto
24 Plaintiffs. The documents are Defendants’, the claim of privilege is Defendants’, and the
25 obligation properly to identify and justify the factors which render the documents privileged
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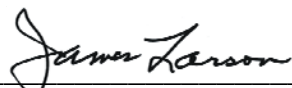
1 is Defendants’.

2 **Order**

3 Accordingly, Plaintiffs’ motion is granted in its entirety. Defendants are ordered to
4 produce, within ten days of this Order, a full and accurate privilege log that separately
5 identifies the author, recipient(s), copyee(s), and blind carbon copyee(s) for each logged
6 email communication regardless of whether the communication is part of an email string
7 and all other information missing from any and all entries on Defendants’ privilege logs or
8 produce any documents for which Defendants refuse to produce an adequate privilege log
9 entry.

10 IT IS SO ORDERED.

11 DATED: October 10, 2008

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13 _____
14 JAMES LARSON
15 Chief Magistrate Judge

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