

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

3
4 SECURITIES & EXCHANGE COMMISSION,

No. C 11-4941 CW

5 Plaintiff,

ORDER DENYING
MOTION FOR RELIEF
FROM NON-
DISPOSITIVE

6 v.

PRETRIAL ORDER OF
MAGISTRATE JUDGE
(Docket No. 92)

7 CHRISTOPHER SELLS, et al.,

8 Defendants.

9 _____/

10 Plaintiff Securities and Exchange Commission (SEC) moves for
11 relief from the non-dispositive pretrial order of a magistrate
12 judge. Defendant Tim Murawski, at the Court's invitation, filed
13 an opposition to the motion. After considering all of the
14 parties' submissions, the Court now denies SEC's motion.

15 BACKGROUND

16 SEC seeks relief from Judge Cousins' February 4, 2013 order
17 directing the agency to respond to three of Murawski's
18 interrogatories. Docket No. 91. The interrogatories seek
19 information obtained by SEC during three interviews that it
20 conducted during its pre-filing investigation of Murawski in 2010.
21 SEC contends that the information Murawski requests in those
22 interrogatories is protected by the work product doctrine.

23 On February 25, 2013, this Court issued an order inviting
24 Murawski to respond to SEC's motion. Docket No. 96. That order
25 asked Murawski to explain why he could not obtain the information
26 requested in the interrogatories by simply taking depositions of
27 the three witnesses that SEC interviewed in 2010.

28

1 Murawski filed his response on March 4, 2013. Docket No. 97.
2 In it, he argues that Judge Cousins' order should stand because
3 (1) Judge Cousins previously granted a similar discovery request
4 in this case, (2) the information Murawski seeks is not protected
5 by the work product doctrine, and (3) Murawski has a "substantial
6 need" for this discovery. Murawski's only explanation for why he
7 cannot obtain the information he seeks through depositions is that
8 "the Court ruled that depositions in this case must be coordinated
9 with the related class action," Curry v. Hansen Med., Inc., Case
10 No. 09-5094, "and Curry Defendants have suggested that a PSLRA
11 stay of discovery is in effect." Docket 97, at 2. He does not
12 cite any statement by the Court or Curry Defendants indicating
13 that a discovery stay is actually in effect.

14 DISCUSSION

15 Murawski has not adequately explained why he cannot take
16 depositions of the three SEC witnesses. Discovery has not been
17 stayed in this case or in Curry and PSLRA only provides for such a
18 stay when, unlike here, a motion to dismiss is pending. See 15
19 U.S.C. § 78u-4(b)(3). In short, Murawski's contention that he
20 cannot take depositions of the three SEC witnesses is baseless.

21 Nevertheless, Judge Cousins' order directing SEC to respond
22 to the interrogatories is not contrary to law. His order
23 specifically distinguishes Hickman v. Taylor, 329 U.S. 495, 508-09
24 (1947), the principal case on which SEC relies in its motion. As
25 the order explains, "this case presents a stark contrast to
26 Hickman" because SEC, unlike the producing party in Hickman, has
27 failed to produce any of the information Murawski seeks in its
28 previous responses to his discovery requests. Docket No. 91, at

1 2-3. Furthermore, Judge Cousins found that Murawski, unlike the
2 party seeking discovery in Hickman, had "presented more than
3 'adequate reasons' to justify production." Id. at 3. In light of
4 these differences between Hickman and the present case, Judge
5 Cousins' order is adequately supported by law.

6 Critically, Judge Cousins' order does not direct SEC to turn
7 over its attorneys' actual notes from the 2010 interviews; rather,
8 it directs the agency to respond to Murawski's interrogatories.¹
9 This diminishes SEC's concerns about disclosing protected work
10 product because it allows the agency to withhold or redact any
11 documents that would reveal the contemporaneous thoughts and
12 opinions of the attorneys who conducted the 2010 interviews. The
13 order only requires SEC to disclose the specific information
14 Murawski requested in his interrogatories.

15 CONCLUSION

16 For the foregoing reasons, SEC's motion for relief from the
17 non-dispositive pretrial order of a magistrate judge (Docket No.
18 92) is DENIED. SEC must respond to Murawski's Interrogatories
19 8-10 within ten days of this order.

20 IT IS SO ORDERED.

21
22 Dated: 4/8/2013

23 
24 CLAUDIA WILKEN
25 United States District Judge

26 _____
27 ¹ Murawski contends in his response that "SEC is withholding from
28 production more than one hundred pages of its summaries of the
interviews." Docket No. 97, at 2. However, as noted above, Judge
Cousins' order does not direct SEC to produce these summaries -- it only
directs it to respond to Murawski's interrogatories. Nothing in Judge
Cousins' order suggests that these interrogatories should be construed
as requests for production.