

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SCOTT JOHNSON,
Plaintiff,
v.
OAK CREEK INVESTMENTS,
Defendant.

Case No. [5:18-cv-04645-EJD](#)

**ORDER GRANTING DEFENDANT’S
MOTION FOR ADMINISTRATIVE
RELIEF; DENYING PLAINTIFF’S
MOTION TO STRIKE**

Re: Dkt. Nos. 22, 23

On November 22, 2019, Defendant Oak Creek Investments filed a motion for administrative relief requesting that the Court order Plaintiff to provide documentation of attorneys’ fees and costs pursuant to General Order 56. Motion for Administrative Relief and for Monetary Sanctions (“Mot.”), Dkt. 22. The motion also seeks monetary sanctions (reimbursement for the costs associated with bringing this motion) for Plaintiff’s refusal to comply with General Order 56. Plaintiff filed a motion to strike Defendant’s motion for administrative relief, which seeks an order striking Defendant’s motion *and* opposes the merits of Defendant’s motion. Request to Strike Defendant’s Motion for Administrative Relief and Response in Opposition (“Mot. to Strike/Opp.”), Dkt. 23. Defendant filed an opposition to Plaintiff’s motion to strike. Opposition to Plaintiff’s Motion to Strike Defendant’s Motion for Administrative Relief (“Opp. to Mot. to Strike”), Dkt. 25. The Court **GRANTS** Defendant’s Motion for Administrative Relief and **DENIES** Plaintiff’s Motion to Strike.

I. BACKGROUND

On April 15, 2019, this Court granted the Parties’ Joint Consent Decree for Injunctive

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1 Relief, which requires Defendant to remediate the subject-property by December 31, 2019. *See*
2 Dkt. 14. Pursuant to the Joint Decree, the Parties jointly inspected the subject property. After this
3 inspection, Plaintiff “made a demand in excess of \$20,000 to settle the matter in its entirety,
4 without providing any fee or costs support.” Mot. at 2. Pursuant to General Order 56, Defendant
5 requested (on multiple occasions) that any demand for settlement be supported by documents
6 demonstrating attorney’s fees and costs. *Id.* Around September 27, 2019, Plaintiff responded to
7 Defendant’s demands for documentation. *Id.* Plaintiff provided a reduced demand but failed to
8 accompany its counteroffer with “any accompanying fee support documents.” *Id.*

9 On August 26, 2019, Plaintiff filed a notice of need for mediation. This Court referred the
10 case to mediation and set November 25, 2019 as the deadline to complete mediation.

11 In preparation of that mediation, and before submitting their administrative motion,
12 Defendant contacted Plaintiff on November 6, 2019 to “again demand[] fee and cost documents
13 under General Order 56” to allow the parties ample time in advance of the mediation deadline of
14 November 25, 2019 to review the document and attempt good-faith, reasonable settlement. *Id.*,
15 Ex. A. Plaintiff’s counsel responded only after Defendant filed its administrative motion and after
16 the deadline to complete mediation had passed. Mot. to Strike/Opp., Ex. 1. Defendant agreed to
17 withdraw its administrative motion if Plaintiff provided it documentation. *Id.* Plaintiff seemingly
18 refused to do this as it filed the motion to strike instead. Accordingly, as of the date of this Order,
19 Plaintiff has failed to provide Defendant *any* documentation (even a cursory overview of
20 Plaintiff’s counsels’ billing rates) and has only provided Defendant a settlement number.

21 **II. PLAINTIFF’S MOTION TO STRIKE**

22 Plaintiff first argues that this Court should strike Defendant’s motion because it contains
23 information about confidential settlement negotiations. Mot. to Strike/Opp. at 1–2. Plaintiff fails
24 to provide any rule supporting its motion to strike. Based on the briefing, the Court infers that
25 Federal Rule of Evidence 408 underlies Plaintiff’s motion. As a preliminary matter, Plaintiff’s
26 citation to *Johnson v. Holden*, No. 50 5:18-cv-01624-EJD (N.D. Cal. May 9, 2019) as support for

1 its proposition that the inclusion of confidential information warrants striking an entire motion is
2 misplaced. *Johnson v. Holden*, only struck the “portion of Defendants’ statements that describe
3 the settlement negotiations.” Hence, *Johnson v. Holden* lacks the expansive application advocated
4 by Plaintiff.

5 Moreover, as Defendant notes, Federal Rule of Evidence 408, protects compromise
6 negotiations only if they are “offered to prove liability for, invalidity of, or amount of a claim that
7 was disputed as to validity or amount, or to impeach through a prior inconsistent statement or
8 contradiction.” Indeed, “at least some communications made in furtherance of [settlement]
9 negotiations are discoverable, as Rule 408 permits their use in some aspects of trial.” *Phoenix*
10 *Solutions Inc. v. Wells Fargo Bank, N.A.*, 254 F.R.D. 568, 584 (N.D. Cal. Oct. 22, 2008). As the
11 Advisory Committee Notes to Rule 408 explain, “evidence, such as documents, is not rendered
12 inadmissible merely because it is presented in the course of compromise negotiations.” Therefore,
13 mere reference to settlement discussions does not automatically support a motion to strike.

14 Here, Defendant’s reference to settlement discussions and its inclusion of a letter
15 discussing settlement negotiations in its administrative motion is permissible. The purpose of
16 referencing the discussions was not to prove liability or apportion fault (as forbidden by Rule
17 408). Rather, the purpose was to show noncompliance with General Order 56. This purpose is
18 not forbidden by Rule 408. Plaintiff presents no alternative grounds supporting its Motion to
19 Strike. Accordingly, Plaintiff’s Motion to Strike is **DENIED**.

20 **III. DEFENDANT’S ADMINISTRATIVE MOTION**

21 Defendant argues that, pursuant to General Order 56(6), it is entitled to a detailed statement
22 of costs and attorney’s fees. Mot. at 4.

23 General Order 56(6) provides:

24 If the parties reach a tentative agreement on injunctive relief, plaintiff
25 shall forthwith provide defendant with a statement of costs and
26 attorney’s fees incurred to date, and make a demand for settlement of
27 the case in its entirety (including any additional damages not included
28 in the Rule 26(a) disclosures). Plaintiff *should not* require execution
of a formal agreement regarding injunctive relief as a precondition to

1 providing defendant with the statement of costs and attorney’s fees,
2 and additional damages. If requested by defendant, plaintiff *should*
3 provide documentation and support for its attorney’s fees similar to
4 what an attorney would provide in a billing statement to a client.

5 (emphasis added).

6 As noted, on April 15, 2019, this Court granted the Parties’ Joint Consent Decree for
7 Injunctive Relief. *See* Dkt. 14. Hence, a “tentative agreement on injunctive relief” exists between
8 the parties and entitles Defendant to the disclosures discussed in General Order 56(6). Plaintiff
9 does not dispute this. Plaintiff instead argues that General Order 56 does not require him to
10 submit a detailed statement and that attorney-client privilege protects him from submitting such a
11 statement. *See generally* Mot. to Strike/Opp. Specifically, Plaintiff argues that General Order 56
12 use of “should” means he is not required to provide documentation to Defendant. *Id.* at 4.
13 Additionally, he contends that *Los Angeles County Board of Supervisors v. Superior Court*, 386
14 P.3d 773 (Cal. 2016) protects such documentation under attorney-client privilege. Mot. to
15 Strike/Opp. at 2.

16 This case is almost identical to *Johnson v. Maple Tree Investors*, No. 47 5:17-cv-06762-
17 LHK (N.D. Cal. Oct. 28, 2019). There Judge Koh ordered Plaintiff to provide the defendant with
18 a “line-item invoice that identifies the date, the biller, the hourly rate, justification for the hourly
19 rate, the task, and the amount billed per task.” *Maple Tree*, No. 47 5:17-cv-06762-LHK at 4.
20 Judge Koh rejected both Plaintiff’s scope and privilege arguments. *Id.* at 2; *see also supra*. The
21 Court agrees with Judge Koh’s reasoning and rejects Plaintiff’s scope and privilege arguments.

22 **General Order 56’s Requirements.** The Court agrees with Judge Koh that General Order
23 56 requires the plaintiff to provide the defendant with “documentation and support” for attorneys’
24 fees and costs. Plaintiff interprets the “should” in General Order 56 as placing discretion in the
25 plaintiff to decide whether or not to provide the defendant with detailed documentation. The
26 Court reads General Order 56 differently and holds that once parties reach a tentative agreement
27 on injunctive relief; General Order 56 requires the plaintiff to provide the defendant detailed
28 documentation *if* the defendant requests it. Here, Defendant has requested documentation and so

1 Plaintiff is obligated to provide detailed information about costs and attorney’s fees, much like
2 what would be provided to a client. *See* Cal. Bar Rules of Prof’l Conduct r. 1.5.

3 **Attorney-Client Privilege.** Plaintiff next argues that they need not provide documentation
4 to Defendant because this information is protected by attorney-client privilege. The California
5 Supreme Court has held that “[w]hen a legal matter remains pending and active, the privilege
6 encompasses everything in an invoice, including the amount of aggregate
7 fees because . . . [the invoice] might very well reveal . . . investigative efforts and trial
8 strategy.” *L.A. Cty. Bd. of Supervisors*, 386 P.3d at 781 (quotation marks and citation omitted).
9 Even during active litigation, however, “there may come a point when this very same information
10 no longer communicates anything privileged, because it no longer provides any insight into
11 litigation strategy or legal consultation.” *Id.* at 782.

12 Here, the request for billing invoices comes long after the Parties have settled the
13 injunctive relief aspect of this case. *See* Mot. at 3; *L.A. Cty. Bd. of Supervisors*, 386 P.3d at 781
14 (“The same may not be true for fee totals in legal matters that concluded long ago.”). The only
15 issue remaining between the Parties is the amount of damages owed to Plaintiff, which the Parties
16 plan to engage in mediation to resolve. As the docket shows, outside the Joint Consent Decree,
17 Plaintiff has not filed any motions or documents litigating the merits of this case. Thus, as
18 Defendant notes, no significant work has been done by Plaintiff’s counsel since the joint
19 agreement regarding injunctive relief. Hence, there should not be any invoices that reveal
20 “investigative efforts and trial strategy.” Rather, the invoices at hand ought to pertain to billing for
21 work on the settlement, which is “moot” as Defendant has already remedied the subject property.
22 Accordingly, fee information may be disclosed without “provid[ing] any insight into litigation
23 strategy or legal consultation.” *L.A. Cty. Bd. of Supervisors*, 386 P.3d at 782.

24 A contrary interpretation of General Order 56 would allow attorneys to improperly inflate
25 attorney’s fees and hinder the Parties ability to engage in meaningful mediation discussions.
26 Without detailed billing information, Defendant cannot determine if any hours were “excessive,

1 redundant, or otherwise unnecessary.” *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1079 (N.D. Cal.
2 2010). Plaintiff’s refusal to provide *any* documentation only bolsters this concern.

3 **IV. CONCLUSION**

4 The Court **ORDERS** Plaintiff to provide Defendant a line-item fee invoice that identifies
5 the date, the biller, the hourly rate, justification for the hourly rate, the task, and the amount of
6 time billed per task. Plaintiff shall provide this information to Defendant and to the Mediator
7 (Katherine Clark) by **December 31, 2019**. Because the November 25, 2019 mediation deadline
8 has passed, the Parties are **ORDERED** to complete mediation by **January 28, 2020**. *See* Dkt. 26.
9 Plaintiff may describe each task to avoid revealing “the type of research” or other matters directly
10 relevant to “litigation strategy or legal consultation.” *L.A. Cty. Bd. of Supervisors*, 386 P.3d at
11 781–82. For instance, Plaintiff may frame the task descriptions at a high level (*e.g.*, “legal
12 research,” “drafting complaint,” etc.) to mitigate any risk of revealing privileged information.
13 *Maple Tree*, No. 47 5:17-cv-06762-LHK at 4–5.

14 Defense counsel seeks \$3,380.00 for reimbursement of fees and costs related to preparing
15 the motion regarding Plaintiff’s noncompliance and submits a declaration supporting
16 reimbursement. Declaration of Richard D. Schramm ¶¶ 9–12. The Court finds defense counsel
17 billed: (1) a reasonable number of hours, (2) at a reasonable hourly rate, (3) and asks for an
18 appropriate amount in fees. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *United Steelworkers*
19 *of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). The request for fees is
20 **GRANTED** and Defendant shall receive \$3,380.00 in fees associated with bringing this motion.
21 *See also* Mot., Ex. C (Judge Koh ordering Plaintiff’s to pay fees and costs).

22 **IT IS SO ORDERED.**

23 Dated: December 19, 2019

24 
25 EDWARD J. DAVILA
26 United States District Judge