

1 of settlement agreements in *Hubbard v. Plaza Bonita* ([] 09-cv-1581 JLS (WVG)).”¹ Thus, Defendant
2 claims the documents sought are relevant in determining whether attorney Hubbard makes a practice
3 of suing those who complain about him to the Bar. [Opp’n at 4.]

4 While Defendant states it is willing to stipulate to a modified subpoena, Plaintiff maintains the
5 subpoena must be quashed in its entirety.

6 II. LEGAL STANDARDS

7 Federal Rule of Civil Procedure 45 applies to subpoenas. A court must quash or modify a
8 subpoena that requires privileged or protected matter. Fed. R. Civ. P. 45(3)(A)(iii). California
9 State Bar Procedural Rule 2302 states, “Except as otherwise provided by law or these rules,
10 information concerning inquiries, complaints, or investigations is confidential.” However, “The
11 Chief Trial Counsel or designee or the President of the State Bar, after private notice to the
12 member, may waive confidentiality” in cases where “[a] member or non-member has caused, or is
13 likely to cause, harm to client(s), the public, or to the administration of justice, such that the public
14 or specific individuals should be advised of the nature of the allegations.” Rule 2302(d)(1)(A).

15 Although the issue of relevance is not listed as a consideration in Rule of Civil Procedure
16 45, “courts have incorporated relevance as a factor when determining motions to quash a
17 subpoena.” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D.Cal, 2005) (internal citations and
18 quotations omitted).

19 III. DISCUSSION

20 As an initial matter, the Court rejects Defendant’s contention that Plaintiff has no standing
21 to bring this motion to quash. Courts have taken the position that while a motion to quash a
22 subpoena is normally to be made by the person or entity to which the subpoena is directed an
23 exception applies “where the party seeking to challenge the subpoena has a personal right or
24 privilege with respect to the subject matter requested in the subpoena.” *Smith v. Midland Brake,*
25 *Inc.*, 162 F.R.D. 683, 685 (D.Kan.1995); *see also Brown v. Braddock*, 595 F.2d 961, 967 (5th Cir.

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27 ¹ In *Plaza Bonita*, Judge Gallo sanctioned attorney Hubbard for unreasonably and vexatiously
28 multiplying the proceedings and reported Hubbard to the State Bar of California and the Court’s
Standing Committee on Discipline to see if Hubbards’ behavior required further sanctioning. [*Plaza*
Bonita, 09-CV-1581, Doc. No. 188. at 25.]

1 1979); *U.S. v. Gordon*, 247 F.R.D. 509 (E.D.N.C. 2007); *Durand v. Wal-Mart Associates, Inc.*,
2 2009 WL 2181258 at * 1 (S.D. Miss. July 22, 2009). Defendant is attempting to invalidate
3 Plaintiff's claims by collecting evidence to show attorney Hubbard brought this lawsuit for the
4 unethical purpose of retaliation. Thus, Plaintiff Kohler's right to bring his action on the merits and
5 attorney Hubbard's interest in the confidentiality of his state bar records are implicated in the
6 subject matter of the subpoena and create standing to challenge the subpoena.

7 Prior to the filing of Plaintiff's Motion to Quash, Defendant filed a Motion to Disqualify
8 attorney Hubbard based on allegations of wrongdoing in the *Plaza Bonita* case. [Doc. No. 55.]
9 Judge Gonzalez has since issued a ruling denying the motion to disqualify. [Doc. No. 83.] Judge
10 Gonzalez stated she could not conclude the sanctions imposed on attorney Hubbard in the *Plaza*
11 *Bonita* case would "impair the parties' ability to secure a fair resolution of the dispute that gave
12 rise to this case," or that attorney Hubbard had in fact actually violated any ethical duties that
13 would warrant further sanction. [*Id.* at 4-5.] Thereafter, on June 22, 2011, Scottlyn Hubbard
14 substituted in as counsel for Plaintiff in place of Lynn Hubbard. [Doc. No. 85.]

15 The confidential documents sought by the subpoena do not pertain to the substantive
16 claims raised in this case; their only function would be to prove that Plaintiff filed this case in
17 retaliation for Defendant's exposure of attorney Hubbard's wrongdoing in *Plaza Bonita*. Judge
18 Gonzalez has already held that the sanctions imposed in *Plaza Bonita* will have "no immediate
19 impact" on Plaintiff's representation in this matter. [Doc. No 83 at 4.] At this juncture, the
20 investigation of attorney Hubbard's conduct is a matter for those bodies to pursue.

21 Accordingly, the Court **HEREBY GRANTS** Plaintiff's Motion to Quash and **FURTHER**
22 **SETS** a Mandatory Settlement Conference for **July 11, 2011 at 9:30 am.** Counsel shall follow
23 chambers' rules regarding settlement conferences, as posted on the Court's website.

24 **IT IS SO ORDERED.**

25 DATED: June 30, 2011

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27 Hon. Nita L. Stormes
28 U.S. Magistrate Judge
United States District Court

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