

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
7

8 TODD SCHUENEMAN, et al.,
9 Plaintiffs,
10 v.
11 ARENA PHARMACEUTICALS, INC., et al.,
12 Defendants.

Case No.: 10cv1959-CAB (BLM)

ORDER

**(1) DENYING LEAD PLAINTIFF'S
MOTION TO COMPEL**

AND

**(2) GRANTING DEFENDANTS' MOTION
TO COMPEL**

[ECF Nos. 113, 117]

13
14
15
16
17 Currently before the Court is Lead Plaintiff's "Motion to Compel" [ECF No. 117-1 ("Pl.'s
18 MTC")], Defendants' "Motion to Compel Response to Interrogatory No. 8 Relating to Confidential
19 Witnesses" [ECF No. 113-1 ("Defs.' MTC")], Defendants' opposition to Lead Plaintiff's motion
20 [ECF No. 120 ("Defs.' Oppo."), and Lead Plaintiff's opposition to Defendants' motion [ECF No.
21 121 ("Pl.'s Oppo.")] For the reasons set forth below, Lead Plaintiff's motion is **DENIED** and
22 Defendants' motion is **GRANTED**.

23 **FACTUAL BACKGROUND**

24 The facts set forth are taken from the Consolidated Amended Class Action Complaint [ECF
25 No. 43 ("Compl.")] and Second Amended Complaint [ECF No. 59 ("SAC")] or documents
26 incorporated therein. The Consolidated Amended Class Action Complaint and the SAC allege
27 that Arena Pharmaceuticals, Inc. ("Arena") and its senior executives violated Section 10(b) and
28

1 20(a) of the Securities and Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated
2 thereunder by making materially false statements and/or omitting to disclose material facts
3 concerning the safety and the completeness of the data needed for the U.S. Food and Drug
4 Administration's ("FDA") approval of Arena's developmental weight loss drug, Lorcaserin.¹
5 Compl.; SAC; see also Schueneman v. Arena Pharms., Inc., 840 F.3d 698, 709 (9th Cir. 2016)
6 (finding that Lead Plaintiff's theory is that "Defendants intentionally withheld information
7 material to the market's assessment of whether and when the FDA would likely approve
8 [L]orcaserin").

9 To obtain FDA approval to market Lorcaserin, Arena had to demonstrate Lorcaserin's
10 safety and efficacy based on non-clinical/pre-clinical animal studies and clinical trials on humans.
11 Compl. at 12-13. As part of Lorcaserin's new drug application to the FDA, Arena was required
12 to conduct a long-term study of the potential carcinogenesis on rats ("Rat Study"). Id. at 14.
13 The Rat Study was a two-year non-clinical/pre-clinical carcinogenicity study on rats that began
14 in 2007 and was designed to approximate a lifetime of human use and to assess the risk to
15 humans. SAC at 5, 17.

16 By February 2007, the Rat Study indicated that Lorcaserin caused mammary, brain, skin,
17 and nerve-sheath tumors, including lethal, malignant mammary and brain tumors. Id. at 6. In
18 September 2007, the FDA told Arena it was concerned that the Rat Study data reflected potential
19 effects in humans and that Arena needed to dispel this concern with data on animals and humans
20 exposed to Lorcaserin. ECF No. 61-5 at 7, Exhibit D.

21 In April 2008, the FDA and Arena representatives met to discuss the causes of mammary
22 tumors in rats and the FDA's concern about the tumors' significance to humans. ECF No. 61-5
23 at 8. The FDA approved Arena's written warning to humans in the clinical trials and told Arena
24 that animal mechanistic studies and continued clinical studies of humans exposed to Lorcaserin
25

26
27 ¹ Lorcaserin is intended for weight loss and maintenance of weight loss, representing "the first
28 in a new class of selective serotonin 2C receptor agonists." Compl. at 12.

1 could dispel its concern about the Rat Study data. Id. At that time, Arena representatives
2 hypothesized that the tumors were attributable to a rodent-specific mechanism. Id. The FDA
3 did not halt Lorcaserin's ongoing human clinical trials, but did request bi-monthly updates. SAC
4 at 7-9, 18-20.

5 Arena provided the bi-monthly updates until completion of the Rat Study and submission
6 of the draft report on the Rat Study to the FDA on February 3, 2009. ECF No. 61-4 at 14, Exhibit
7 C. Arena's bi-monthly updates included "initial reads" of data that were not reviewed by outside
8 pathologists. Compl. at 20-22. The Rat Study concluded that "breast tumors developed at all
9 doses, and that Lorcaserin caused brain tumors as well as many other malignant tumors." SAC
10 at 9, 22. Arena's final report to the FDA included a peer-reviewed analysis by "three [non-
11 Arena] veterinary pathologists" who concluded there were fewer malignant tumors than Arena
12 initially reported to the FDA, but there was an "apparent increase in aggressiveness of
13 adenocarcinoma in rats administered Lorcaserin." Compl. at 5, 8. Plaintiffs allege that the data
14 submitted to the FDA failed to show that the results of the Rat Study were irrelevant to humans.
15 SAC at 22.

16 In December 2009, Defendants filed Lorcaserin's New Drug Application ("NDA") and the
17 FDA appointed the Advisory Committee, comprised of physicians and scientists, to discuss and
18 vote on whether to recommend FDA approval for Lorcaserin. Compl. at 7. The Advisory
19 Committee was scheduled to meet on September 16, 2010. Id. Investors first learned about
20 the Rat Study data in September 2010, when the Advisory Committee voted 9-5 against
21 recommending approval for Lorcaserin. Id. at 6-8.

22 In October 2010, Arena publicly disclosed that the FDA completed its review of the NDA
23 and found that it could not approve the NDA "in its present form" because it failed to
24 demonstrate that the Rat Study was irrelevant to humans. Id. at 19-22.

25 Plaintiffs allege that Defendants knew by the beginning of the Class Period (March 17,
26 2008 through January 27, 2011) that the Rat Study indicated that Lorcaserin caused cancer and
27 yet failed to disclose that information to investors. Compl. at 14. Plaintiffs further allege that
28

1 the negative results of the Rat Study and the FDA's concerns over the data constituted material
2 facts that should have been, but were not, disclosed to investors and that instead of disclosing
3 this information, Defendants repeatedly falsely represented that Lorcaserin was safe and made
4 materially false and misleading representations about non-clinical study results. Id. at 54-55.
5 Additionally, Plaintiffs allege that when the misrepresentations were disclosed and became
6 apparent on the market, Arena's securities declined precipitously. Id. Plaintiffs allege that as a
7 result of their purchases of Arena securities during the Class Period, they suffered economic
8 loss. Id.

9 **LEGAL STANDARD**

10 The scope of discovery under the Federal Rules of Civil Procedure is defined as follows:
11 Parties may obtain discovery regarding any nonprivileged matter that is relevant
12 to any party's claim or defense and proportional to the needs of the case,
13 considering the importance of the issues at stake in the action, the amount in
14 controversy, the parties' relative access to relevant information, the parties'
15 resources, the importance of discovery in resolving issues, and whether the burden
16 or expense of the proposed discovery outweighs the likely benefit. Information
17 within this scope of discovery need not be admissible in evidence to be
18 discoverable.²

19 Fed. R. Civ. P. 26(b)(1).

20 District courts have broad discretion to determine relevancy for discovery purposes. See
21 Hallet v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad discretion

22 ² Lead Plaintiff states that "[t]he Federal Rules of Civil Procedure generally allow for broad
23 discovery, authorizing parties to obtain discovery regarding 'any nonprivileged matter that is
24 relevant to any party's claim or defense.'" Pl.'s MTC at 7 (quoting Eclipse Grp. LLP v. Target
25 Corp., 2017 WL 2692883, at *1 (S.D. Cal. June 21, 2017)). Lead Plaintiff cuts the quotation from
26 that case short to leave out the portion stating that discovery also must be "proportional to the
27 needs of the case" Eclipse Grp. LLP v. Target Corp., 2017 WL 2692883, at *1 (S.D. Cal.
28 June 21, 2017). Lead Plaintiff's statement is both inaccurate and misleading. As counsel for
Lead Plaintiff hopefully knows, the Federal Rules of Civil Procedure were modified in 2015 and
Rule 26 now requires both relevancy and proportionality. The Court will utilize the correct
standard.

1 to limit discovery to prevent abuse. See Fed. R. Civ. P. 26(b)(2) (instructing that courts must
2 limit discovery where the party seeking the discovery “has had ample opportunity to obtain the
3 information by discovery in the action” or where the proposed discovery is “unreasonably
4 cumulative or duplicative,” “obtain[able] from some other source that is more convenient, less
5 burdensome, or less expensive,” or where it “is outside the scope permitted by Rule 26(b)(1)”).

6 Pursuant to Federal Rule of Civil Procedure 37, “a party may move for an order compelling
7 disclosure of discovery.” Fed. R. Civ. P. 37(a)(1). The party seeking to compel discovery has
8 the burden of establishing that its request satisfies the requirements of Rule 26. Soto v. City of
9 Concord, 162 F.R.D. 603, 610 (N.D. Cal. July 17, 1995). Thereafter, the party opposing
10 discovery has the burden of showing that the discovery should be prohibited, and the burden
11 on “clarifying, explaining, and supporting its objections.” DIRECTV, Inc. v. Trone, 209 F.R.D.
12 455, 458 (C.D. Cal. 2002) (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)).

13 **DISCUSSION**

14 The Court will first address Lead Plaintiff’s motion to compel the production of documents
15 responsive to requests 34-37. Then, the Court will address Defendants’ motion to compel a
16 response to Interrogatory Number 8.

17 **A. LEAD PLAINTIFF’S MOTION TO COMPEL**

18 The documents at issue concern Arena’s application to market Lorcaserin in the European
19 Union. Pl.’s MTC at 4. In March 2012, Arena applied to market Lorcaserin within the European
20 Union. Defs.’ Oppo. at 8. A committee of the European Medicines Agency (“EMA”) provided
21 Arena with a list of “outstanding issues” in 2013, which included concerns about the Rat Study,
22 valvulopathy, and other matters that “the FDA believed Arena had adequately addressed given
23 its approval of the drug.” Id. Arena determined that it could not resolve the issues in the time
24 prescribed by the EMA and withdrew its application. Id.

25 On January 20, 2017, Lead Plaintiff served Requests for the Production of Documents
26 (“RFP”) on Defendants. Pl.’s MTC at 6. Requests 34-37 seek “all documents concerning” 1) the
27 application for approval from the EMA to market the drug in the European Union, 2) the EMA’s
28

1 objections to the “nonclinical and clinical issues concerning Lorcaserin,” 3) Defendants’ belief
2 that they could not resolve the EMA’s objections, and 4) the reasons for Defendants’ withdrawal
3 of their application. Id. at 6-7. Defendants timely objected to RFPs 34-37 on May 26, 2017, on
4 the grounds that the information sought is irrelevant and disproportional. Id. at 6; Defs.’ Oppo.
5 at 9. The parties met and conferred on June 5, 2017 and June 13, 2017, but were unable to
6 resolve the dispute. Pl.’s MTC at 7.

7 Lead Plaintiff argues that the requested documents are relevant because they involve the
8 same Rat Study evidence presented to the FDA and “the EMA’s objections and discussion of the
9 relevance of the Rat Study to humans directly bear on the issue of Defendants’ interpretation of
10 the nonclinical studies and whether Defendants had a ‘good faith’ basis to make their
11 misstatements.” Pl.’s MTC at 9. Lead Plaintiff also asserts that the requested documents are
12 relevant “to the issue of whether the misleading statements ‘were rebutted by contrary
13 information’ [,] whether Defendants’ statements were truthful[,], and whether Defendants
14 were ‘justified’ in making these misstatements.” Id. Lead Plaintiff further asserts that the fact
15 that the documents post-date the Class Period is irrelevant because they discuss events that
16 occurred during the Class Period and may shed light on the veracity of statements made during
17 the Class Period. Id. Lead Plaintiff does not address the proportionality of his requests. See
18 Pl.’s MTC.

19 Defendants counter that Lead Plaintiff’s “theory ‘is that Defendants intentionally withheld
20 information material to the market’s assessment of whether and when **the FDA** would likely
21 approve [L]orcaserin.’” Defs.’ Oppo. at 9 (citation omitted) (emphasis in original). Accordingly,
22 Defendants argue that only the FDA’s concern about Lorcaserin is relevant and that “[w]hatever
23 other regulators may have later thought, based on their own standards and guidelines, cannot
24 change that in the slightest.” Id. (citation omitted). Defendants also argue that the requested
25 discovery is not proportional to the needs of this case as it seeks “‘all’ documents that ‘concern’”
26 four broad categories of documents and the requested documents have limited, if any,
27 relevance. Id. at 10-11.

1 To the extent Lead Plaintiff is arguing that the Ninth Circuit's decision in this case requires
2 the production of the requested documents relating to Arena's application to market Lorcaserin
3 in the European Union, Lead Plaintiff is incorrect. See Pl.'s MTC at 4. While the Ninth Circuit's
4 decision held that Defendants had an obligation to disclose the Rat Study results when they
5 made representations regarding other animal studies which indicated a likelihood of FDA
6 approval, the Ninth Circuit did not address the relevance, if any, of the effect of the Rat Study
7 on the EMA and Arena's application for approval within the European Union. See Schueneman,
8 840 F.3d at 704-709 (9th Ci r. 2016) ("Defendants may not have had a duty to disclose the Rat
9 Study had they not been representing that animal studies supported [L]orcaserin's safety and
10 therefore its likelihood of being approved."). Lead Plaintiff states that the EMA's objections bear
11 on the veracity of Defendants' statements made during the FDA approval process and whether
12 Defendants were justified in making the statements, but Lead Plaintiff does not explain that
13 conclusion given the different standards utilized by the EMA and the FDA and the different time
14 frames of the statements. Moreover, Lead Plaintiff's requests are very broad and he does not
15 explain how documents presented to the EMA, especially those unrelated to the Rat Study, are
16 relevant to the issue in this case of whether Defendants "intentionally withheld information
17 material to the market's assessment of whether and when the FDA would likely approve
18 [L]orcaserin." Id. at 709. Finally, with regard to the Rat Study documents, Lead Plaintiff does
19 not explain what discovery already has been produced in relation to the FDA application and the
20 relevance of non-repetitive documents provided to the EMA. The Court therefore finds that the
21 four document requests are overbroad and seek a large amount of irrelevant information, and
22 the relevance of the remaining responsive documents is minimal given the EU medical standards
23 and the time frames.

24 Lead Plaintiff also fails to establish that requests 34-37 are proportional to the needs of
25 this case as required by Fed. R. Civ. P. 26(b)(1). See Pl.'s MTC. As previously stated, the
26 requests at issue are extremely broad. See Pl.'s MTC, Declaration of Mario M. Choi in Support
27 of Lead Plaintiff's Motion to Compel ("Choi Decl."), Exhibit B. Defendants indicate that they
28

1 already have produced thousands of documents and are currently reviewing 200,000 emails and
2 attachments from 16 custodians to produce. Defs.' Oppo. at 11. Defendants explain that they
3 ran test searches on documents already collected and identified 43,000 emails and attachments
4 potentially responsive to Plaintiff's requests at issue. Id. Moreover, Defendants estimate that
5 reviewing material responsive to requests 34-37 for relevance and privilege would take weeks
6 and cost more than \$80,000. Id. Given the extremely broad discovery requests, including the
7 fact that the requests are not limited to the Rat Study, the minimal relevance of statements
8 made after the class period in an application in the European Union involving drug standards
9 that are different from those in the United States, and the large number of potentially responsive
10 documents, the Court finds that requests 34-37 are not proportional to the needs of the case.

11 The Court therefore **DENIES** Plaintiff's motion to compel a response to RFP numbers 34-
12 37 on the grounds that the requested documents have little, if any, relevance to Lead Plaintiff's
13 theory that "Defendants intentionally withheld information material to the market's assessment
14 of whether and when the FDA would likely approve [L]orcaserin" and are not proportional to the
15 needs of this case. See Schueneman, 840 F.3d at 709.

16 **B. DEFENDANTS' MOTION TO COMPEL**

17 Plaintiffs relied heavily in their SAC on six Confidential Informants ("CI") to plead their
18 claims with particularity. SAC at 5-10, 18-22. These CIs allegedly have information supporting
19 Plaintiffs' claims that Defendants made misrepresentations of material facts which caused
20 economic damages to Plaintiffs. See SAC. Plaintiffs did not identify the CIs by name. See id.

21 At issue in Defendants' motion to compel is Defendants' Interrogatory 8, which states:
22 "Identify each person identified as a confidential informant in the complaint, including but not
23 limited to, (i) the name of each confidential informant, (ii) the telephone number of each
24 confidential informant, and (iii) the address of each confidential informant." Defs.' MTC,
25 Declaration of Ryan E. Blair in Support of Defendants' Motion to Compel Response to
26 Interrogatory No. 8 Relating to Confidential Witnesses ("Blair Decl."), Exhibit 1 at 10. In
27 response, Lead Plaintiff objects on the grounds that identifying the CIs would violate the attorney
28

1 work product doctrine. Pl.'s Oppo. at 7.

2 Lead Plaintiff's initial disclosures list more than 60 individuals, 52 of which are current
3 and former Arena employees, who are believed to have discoverable information. Defs.' MTC
4 at 11; Pl.'s Oppo. at 15. While Lead Plaintiff concedes that the six CIs are on that list, Defendants
5 argue they should not be required to depose dozens of witnesses to determine who the CIs are.
6 Defendants also dispute Lead Plaintiff's objections.

7 **1. Relevance**

8 The threshold discovery issue is whether identifying the CIs is relevant information.
9 Defendants assert that this information is relevant because Lead "Plaintiff quotes or paraphrases
10 the CIs in nearly two dozen paragraphs of the Complaint and they "unquestionably have relevant
11 information.'" Id. at 9 (citing In re Amgen Inc. Sec. Litig., 2013 WL 12139088, at *3 (C.D. Cal.
12 Dec. 2, 2013)). Notably, Lead Plaintiff does not dispute that the identities of the six CIs are
13 relevant. See Pl.'s Oppo.

14 The Court finds that the SAC demonstrates that the identities of the six CIs are relevant.
15 The SAC quotes and/or paraphrases the CIs extensively regarding the Rat Study, Arena's
16 knowledge of the Rat Study data, and Arena's alleged misrepresentation of Lorcaserin. SAC at
17 at 5-10, 18-22. The SAC also devotes several footnotes setting out, to various degrees, the
18 backgrounds and qualifications of each of the CIs. Id. at 5 ns.1 & 2, 7 n.3, 8 n.4, 9 n.5, 10 n.6.

19 In light of these details, Rule 26(b)(1) requires that the names of the six CIs be produced,
20 unless they are held to be privileged. Knowing identities of the CIs will help the defense find
21 and interview and/or depose them. Lead Plaintiff has represented that the six CIs have firsthand
22 knowledge of specific facts tending to establish Defendants' liability for securities fraud and such
23 interviews or depositions are likely to constitute or reveal admissible, and possibly highly
24 probative, evidence. It is also reasonable to expect that Defendants would pursue leads from
25 information provided by the CIs, and that this might yield other admissible evidence. See In re
26 Marsh & McLennan Sec. Litig., 2008 WL 2941215, at *3 (S.D.N.Y. July 30, 2008) ("[b]ecause
27 Lead Plaintiffs relied upon the CWs in drafting the [Complaint], the CWs possess discoverable
28

1 information”) (citations omitted); In re Harmonic, Inc. Secs. Litig., 245 F.R.D. 424, 427 (N.D.
2 Cal. 2007) (holding that “the identities of the [confidential witnesses] are relevant to Plaintiff’s
3 claims,” and required to be revealed in response to interrogatories); In re Aetna, Inc. Sec. Litig.,
4 1999 WL 354527, at *2 (E.D. Pa. May 26, 1999) (names and addresses of confidential informants
5 to whom factual allegations are attributed in the Complaint are “obviously `relevant to the subject
6 matter involved in the pending action”). Additionally, identifying the CIs might help Defendants
7 assess the strength of the SAC’s claims. Finally, Lead Plaintiff has not argued or established
8 that Defendants’ request is not proportional. See Pl.’s Oppo.

9 **2. Work-Product Doctrine**

10 The Court therefore turns to whether the names of the six CIs referenced in the SAC are
11 protected from disclosure under the attorney-work product doctrine.

12 “[A] party may not discover documents and tangible things that are prepared in
13 anticipation of litigation or for trial by or for another party or its representative (including the
14 other party’s attorney, consultant, surety, indemnitor, insurer, or agent).” Fed. R. Civ. P.
15 26(b)(3)(A). Nevertheless, those materials may be discovered if “(i) they are otherwise
16 discoverable under Rule 26(b)(1); and (ii) the party shows that it has substantial need for the
17 materials to prepare its case and cannot, without undue hardship, obtain their substantial
18 equivalent by other means.” Id. However, even when substantial need for work product has
19 been shown, the court must still “protect against disclosure of the mental impressions,
20 conclusions, opinions, or legal theories of a party’s attorney or other representative concerning
21 the litigation.” Fed. R. Civ. P. 26(b)(3)(B).

22 The work product doctrine does not protect materials assembled in the ordinary course
23 of business. Rather, the *primary* motivating purpose behind the creation of the materials must
24 be as an aid in possible future litigation. See Griffith v. Davis, 161 F.R.D. 687, 698-99 (C.D. Cal.
25 June 9, 1995) (citations omitted). That is, work product protection applies only to material “that
26 would not have been generated but for the pendency or imminence of litigation.” See id. (citing
27 Kelly v. City of San Jose, 114 F.R.D. 653, 659 (N.D. Cal. Feb. 26, 1987)). Further, “a mere
28

1 allegation that the work product rule applies is insufficient to invoke its protection.” Medina v.
2 County of San Diego, 2014 WL 4793026, at *17 (S.D. Cal. Sept. 25, 2014) (citation omitted).

3 Defendants contend that the attorney work product doctrine does not protect the identity
4 of witnesses when their statements appear in the complaint. Defs.’ MTC at 10. Even if the work
5 product doctrine were to apply, Defendants argue that the qualified protection is overcome
6 because they have a substantial need for the information and obtaining the information by other
7 means would result in an undue hardship. Id. at 9-10. Lead Plaintiff argues that the disclosure
8 of the CIs’ identities would reveal counsel’s opinions regarding the importance of these
9 witnesses, thereby violating the work product doctrine. Pl.’s Oppo. at 11. Further, Lead Plaintiff
10 asserts that Defendants cannot show a substantial need or undue burden required to overcome
11 the qualified privilege. Id. at 12-16. Finally, Lead Plaintiff argues that disclosure of the CIs’
12 identities would go against public policy. Id. at 16-17.

13 The names, phone numbers, and addresses of the persons identified in the SAC as CIs
14 are not entitled to work product protection. Lead Plaintiff disclosed the fact that the six CIs (as
15 well as approximately 54 other people) likely possess discoverable information because they
16 identified them by name in the initial disclosures. See Pl.’s Oppo. at 15. The SAC also already
17 disclosed important aspects of what the six CIs have stated about the events at issue in this
18 case and their backgrounds and qualifications. See SAC. All that Defendants seek are the
19 names, phone numbers, and addresses of the six CIs described in the SAC. Defs.’ MTC, Blair
20 Decl., Exhibit 1 at 6. This would expedite the discovery process by allowing Defendants to focus
21 its depositions immediately on these important witnesses, rather than having to engage in a
22 costly process of elimination in which it would take numerous depositions simply to determine
23 which of the disclosed names are the six CIs.

24 Contrary to Lead Plaintiff’s argument, revealing the identity of the CIs would not reveal
25 Lead Plaintiff’s counsel’s mental impressions, opinions, or trial strategy.³ See Plumbers &

26
27 ³ In support, Lead Plaintiff cites to Ferruza v. MTI Technology, 2002 WL 32344347 (C.D. Cal.
28

1 Pipefitters Local Union No. 630 Pension-Annuity Trust Fund v. Arbitron, Inc., 278 F.R.D. 335,
2 340 (S.D.N.Y. Nov. 14, 2011) (finding the work product doctrine inapplicable to the identity of
3 confidential informants listed in a complaint). It is both proper and common for a plaintiff to
4 rely on CIs in a complaint, however, "once the discovery phase begins, the balance of interests
5 shifts. The priority becomes reciprocal and robust fact-gathering as the parties seek to discover
6 relevant evidence." Novak v. Kasaks, 216 F.3d 300, 314 (2d Cir. 2000); Plumbers & Pipefitters
7 Local Union No. 630 Pension-Annuity Trust Fund, 278 F.R.D. at 341 (citing IPO Securities
8 Litigation, 220 F.R.D. 30, 37 (S.D.N.Y. Oct. 30, 2003)). A party who attempted to satisfy the
9 pleading requirements by including statements from CIs "may not thereafter refuse to disclose
10 who they are" on the grounds of work product. Ross v. Abercrombie & Fitch Co., 2008 WL
11 821059, at *3 (S.D. Ohio Mar. 24, 2008).

12 Accordingly, the Court finds that the work product doctrine is not implicated by granting
13 Defendants' motion to compel. See In re Grand Jury Subpoena Dated July 6, 2005, 510 F.3d
14 180, 183-84 (2d Cir. 2007); Plumbers & Pipefitters Local Union No. 630 Pension-Annuity Trust
15 Fund, 278 F.R.D. at 340; In re Aetna, 1999 WL 354527, at *2 (enforcing interrogatories that
16 sought the names of witnesses identified in the complaint by such terms as "a former regional
17 general manager at Aetna" or "a former Aetna vice-president of sales and customer service" and
18 finding that the names of these individuals were not protected by the work product doctrine);

19 _____
20 June 13, 2002). In Ferruza, the court found that six confidential informants' identities were
21 protected work product because they "simply referenced former employees to provide a credible
22 basis and specific context for allegations that will be proved with admissible evidence at a later
23 date." Id. at *5. The instant case differs because the SAC quotes and/or paraphrases the CIs
24 as a basis for proving Defendants' alleged misconduct. See SAC. Lead Plaintiff also cites to In
25 re Ashworth, Inc. Securities Litigation, 213 F.R.D. 385 (S.D. Cal. Aug. 6, 2002). In that case,
26 Defendants did not seek the identity of CIs specifically listed in the complaint, but sought the
27 identity of each former or current employee who provided information which formed the basis
28 for any of the allegations in the second amended complaint, which formed the basis for plaintiff's
belief in the truth of any of the facts alleged in the second amended complaint, and sought each
and every lay witness whose testimony might be used at trial. Id. at 386. In contrast,
Defendants' request is much narrower and specifically limited to the six CIs heavily relied upon
in the SAC. See Defs.' MTC, Blair Decl., Exhibit 1.

1 In re Theragencies Corp. Secs. Litig., 205 F.R.D. 631 (N.D. Ga. 2002) (enforcing interrogatories
2 which sought the names of persons referenced, but not named, in the complaint and rejecting
3 the claim that the information was core work product); In re Harmonic, 245 F.R.D. at 427
4 (enforcing interrogatories as to the names of five CIs, finding the work product doctrine
5 inapplicable and noting that CI identities constitute factual, as opposed to opinion, work product,
6 and contain "minimal substantive content"); In re Marsh & McLennan, 2008 WL 2941215, at *3
7 n.5 (S.D.N.Y. July 30, 2008) (enforcing a discovery demand seeking production of "documents
8 sufficient to identify each and every" of the 17 CIs referenced in the complaint" and rejecting
9 Plaintiff's contention that revelation of the identity of a CI reveals more about an attorney's
10 mental processes than does the identification of a witness by name in the complaint itself).

11 **3. Conclusion**

12 Because the identities of the six CIs listed in the SAC are relevant and do not implicate
13 protection under the work product doctrine, the Court **GRANTS** Defendants' motion to compel.

14 **CONCLUSION**

15 For the reasons stated herein, the Court finds that:

16 1. Lead Plaintiff's motion to compel production of documents responsive to requests
17 34-37 [ECF No. 117] is **DENIED**; and

18 2. Defendants' motion to compel disclosure of the names, addresses, and phone
19 numbers of the CIs [ECF No. 113] is **GRANTED**. The CIs' names, addresses, and phone
20 numbers are to be provided to the defense by **July 28, 2017**.

21 **IT IS SO ORDERED.**

22
23 Dated: 7/21/2017


24 Hon. Barbara L. Major
25 United States Magistrate Judge