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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 SONIX TECHNOLOGY CO. LTD,)

10 Plaintiff,)

11 v.)

12 KENJI YOSHIDA,)

13 Defendant.)
14

Case No. 12cv380-CAB (DHB)

**ORDER REGARDING
DISCLOSURE OF SEALED
DOCUMENTS**

15 Currently pending before the Court is a Joint Motion for Determination of
16 Discovery Dispute. (*See* ECF No. 73.) On April 25, 2014, the Court directed
17 Defendant to file supplemental briefing, and thereafter Defendant sought to file its
18 briefing under seal. On May 9, 2014, the Court granted the parties Joint Motion to
19 File Defendants' Supplemental Brief and the Declaration of Scott M. Daniels under
20 seal, and on May 16, 2014, granted the parties Joint Motion to File the Declaration of
21 Ken-Ichi Hattori under seal (collectively the "Sealed Documents"). (ECF Nos. 79
22 and 87.)

23 During the May 16, 2014, discovery hearing Plaintiff's counsel sought
24 clarification regarding the scope of the orders sealing the documents. Specifically,
25 Plaintiff's counsel requested that he be permitted to share the contents of the Sealed
26 Documents with Plaintiff. Defense counsel objected, and the Court permitted the
27 parties to brief the issue. Both Plaintiff and Defendants have filed supplemental
28 briefing regarding disclosure of the Sealed Documents. (*See* ECF Nos. 93, 94.)

1 The Sealed Documents contain portions of the “engagement letter” between
2 Defendants and their counsel at Westerman, Hattori, Daniels & Adrian LLP
3 (“WHDA”). Defendants argue it is not necessary for Plaintiff to view the sealed
4 content of the engagement letter, and that a general characterization of the nature of
5 the engagement between Defendants and WHDA should suffice. Defendants also
6 contend the Sealed Documents implicate Defendants’ financial posture in this
7 litigation and therefore, disclosure would prejudice Defendants. Plaintiff’s counsel
8 contends that Plaintiff must be permitted to access the Sealed Documents in order for
9 counsel to adequately advise Plaintiff on the ultimate issue underlying the parties’
10 discovery dispute, and to meaningfully meet and confer with Defendants. Plaintiff
11 further contends the Sealed Documents were not designated “CONFIDENTIAL -
12 OUTSIDE COUNSEL ONLY” (“COCO”) under the Protective Order, and should not
13 be treated as such.

14 The Court has considered the parties supplemental briefs, and finds that it is
15 appropriate for Plaintiff’s counsel to share the Sealed Documents with Plaintiff. First,
16 the Court notes that when the parties requested the documents be filed under seal,
17 Defendants only indicated that the documents were “confidential” under section 16
18 of the Protective Order, and not COCO. (ECF Nos. 77 and 84.) Therefore, the sealing
19 orders protect the documents from *public* disclosure.¹ Second, the Court finds the
20 sealed portions of the engagement letter do not fall within the scope of the COCO
21 designation under the Protective Order. The COCO designation is intended to protect
22 a party’s “most sensitive” information, including “trade secret or other confidential
23 research, development, financial, or other highly sensitive commercial or business
24 information and/or Materials.” (ECF No. 56 at 4.) Here, the Sealed Documents
25 describe the legal services WHDA will provide to Defendants, which attorneys will
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27 ¹The cases cited by Defendants discussing when documents should be sealed or unsealed are not
28 applicable to the issue before the Court. Here, Plaintiff has not requested that the documents be
unsealed, but rather has sought clarification regarding the scope of the Court’s sealing orders, and
whether Plaintiff’s counsel may share the Sealed Documents with his client.

1 provide those services, and how WHDA will be compensated. The Court does not
2 find that this information constitutes financial, or highly sensitive commercial or
3 business information of Defendants. Finally, the Court notes that the engagement
4 letter is not privileged. “The Ninth Circuit has repeatedly held retainer agreements are
5 not protected by the attorney-client privilege or work product doctrine.” *Hoot Winc,*
6 *LLC v. RSM McGladrey Fin. Process Outsourcing, LLC*, 2009 WL 3857425, at *2
7 (S.D. Cal. Nov. 4, 2009) (citing *Ralls v. United States*, 52 F.3d 223, 225 (1995)).
8 “Communications between attorney and client that concern the identity of the client,
9 the amount of the fee, the identification of payment by case file name, and the general
10 purpose of the work performed are usually not protected from disclosure by the
11 attorney-client privilege.” *Paul v. Winco Holdings, Inc.*, 249 F.R.D. 643, 654 (D.
12 Idaho Feb. 27, 2008) (quoting *Clarke v. Am. Commerce Nat’l Bank*, 974 F.2d 127, 129
13 (9th Cir. 1992)).

14 Accordingly, IT IS HEREBY ORDERED that the Sealed Documents shall be
15 deemed “Confidential” under the Protective Order. Therefore, Plaintiff’s Counsel is
16 permitted to disclose the Sealed Documents to Plaintiff Sonix Technology Co. Ltd,
17 under the terms of the Protective Order that apply to documents designated as
18 “Confidential.”

19 **IT IS SO ORDERED.**

20 DATED: May 22, 2014

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22 DAVID H. BARTICK
23 United States Magistrate Judge
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