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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRUCE F. BICKOFF,
Plaintiff,
v.
WELLS FARGO BANK, N.A., *et al.*,
Defendants.

) Civil No. 14-CV-1065-BEN (WVG)
)
) ORDER GRANTING PLAINTIFF’S
) *EX PARTE* APPLICATION FOR AN
) ORDER TO QUASH THE
) DEPOSITION SUBPOENAS AS TO
) JAIME STEWARD AND REMY
) BICKOFF
) [DOC. NO. 27]

I. BACKGROUND

On August 15, 2014, this Court issued a Scheduling Order, and set the fact discovery cutoff date for March 27, 2015. (Doc. No. 11 at 2.) In the Scheduling Order, the Court instructed the parties that “completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure must be initiated a sufficient period of time in advance of the cut-off date, so that it may be completed by the cut-off date, taking into account the times for services, notice, and response as set forth in the Federal Rules of Civil Procedure. Id. The Court also instructed that all disputes concerning discovery shall be brought to the Court’s attention no later than 30 days following the date upon which the event giving rise to the discovery dispute occurred. Id. The Court ordered counsel to meet and confer pursuant to the requirements of Fed. R. Civ. P. 26 and Local Rule 26.1(a), if a discovery dispute arose. Id.

1 **II. EX PARTE APPLICATION**

2 On March 18, 2015, Plaintiff filed an *Ex Parte* Application for an Order to Quash the
3 Deposition Subpoenas as to Remy Bickoff and Jaime Steward. (Doc. No. 27.) Plaintiff
4 seeks to quash the deposition subpoenas served upon Mr. Remy Bickoff for a March 19,
5 2015, deposition, and upon Ms. Steward for a March 20, 2015, deposition. *Id.* Ms.
6 Steward's subpoena is accompanied by 28 requests for production of documents. (Doc. No.
7 27-1 at 8.)

8 Mr. Remy Bickoff is Plaintiff's son and an attorney who was Plaintiff's counsel of
9 record at the outset of this lawsuit. Although Plaintiff has retained new counsel, according
10 to Plaintiff, Mr. Remy Bickoff also remains Plaintiff's personal counsel, assisting Plaintiff's
11 current counsel of record in legal strategy and overview of documents related to the instant
12 case. (Doc. No. 27-1 at 10.) Ms. Steward, also an attorney, was married to Plaintiff from
13 2008 to sometime in 2010 or 2011, and was also Plaintiff's legal counsel. *Id.* at 3. She
14 represented Plaintiff in a separate dispute had with Defendant over untimely construction
15 draws and permanent financing guarantee. *Id.*

16 Plaintiff argues that the two subpoenas for deposition and requests for documents
17 should be quashed because all of the information sought has already been produced through
18 written discovery and other witnesses who have been deposed. (Doc. No. 27-1 at 4.)
19 Further, Plaintiff claims that the deponents would reveal an enormous amount of sensitive
20 litigation strategy and privileged attorney-client communication. *Id.* Plaintiff asserts that
21 he has not, and does not, waive his attorney-client privilege, nor does he waive his marital
22 privilege rights. *Id.* at 6.

23 **III. DISCUSSION**

24 **A. PRIVILEGES**

25 Both Mr. Remy Bickoff and Ms. Steward have represented Plaintiff in litigation
26 related to the instant case, or have represented Plaintiff in the instant case. Plaintiff claims
27 that Mr. Remy Bickoff is still acting as his counsel in the instant case. The attorney-client
28 privilege protects confidential disclosures from a client to his attorney in order to obtain legal

1 advice. U.S. v. Ruehle, 583 F.3d 600, 607 (9th Cir.2009). The attorney-client privilege is
2 strictly construed because it impedes full and free discovery of the truth. Id.

3 Further, Ms. Steward was married to Plaintiff during a time when the underlying facts
4 of the litigation were occurring. Partly based on Federal Rule of Evidence 501, federal
5 courts recognize a marital communications privilege that exists to “protect[]the integrity of
6 marriages and ensur[e] that spouses freely communicate with one another.” United State v.
7 White, 974 F.2d 1135, 1138 (9th Cir. 1992). The marital communications privilege protects
8 from disclosure private communications between spouses and may be invoked by the non-
9 testifying spouse. United States v. Griffin, 440 F.3d 1138, 1143-1144 (9th Cir. 2006).

10 Defendant was undoubtedly aware that Mr. Remy Bickoff was, at least at one time,
11 Plaintiff’s counsel in this litigation. Mr. Remy Bickoff was Plaintiff’s counsel of record in
12 this case until September 8, 2014. (Doc. No. 13.) Plaintiff claims in his *Ex Parte*
13 Application that Defendant was aware that his ex-wife, Ms. Steward, also represented
14 Plaintiff in matters against Defendant. Plaintiff claims that all communications in 2008 and
15 2009 from Ms. Steward to Defendant, in which she identified herself as Plaintiff’s legal
16 counsel, have been produced to Defendant in written discovery and were discussed in
17 Plaintiff’s deposition on April 14, 2014. (Doc. No. 27-1 at 3.) Therefore, Defendant was
18 aware of the likelihood that Plaintiff, Mr. Remy Bickoff, or Ms. Steward would raise
19 attorney-client privileges and/or the marital communications privilege in response to the
20 deposition subpoenas and requests for documents.

21 **B. TIMELINESS**

22 Under Federal Rule of Civil Procedure 45, a nonparty served with a subpoena may
23 make objections within 14 days after service, or before the time for compliance if it is less
24 than 14 days. Fed. R. Civ. P. 45(c)(2)(B). Pursuant to Rule 45, a party or attorney
25 responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing
26 undue burden or expense on a person subject to the subpoena. Fed.R.Civ.P. 45(d)(1). The
27 court for the district where compliance is required must enforce this duty and impose an
28 appropriate sanction on a party or attorney who fails to comply. Id.

1 Here, the fact discovery deadline is March 27, 2015. (Doc. No. 11 at 2.) Plaintiff
2 claims that Defendant served Ms. Steward with the deposition subpoena on March 10, 2015,
3 to appear for a deposition on March 20, 2015, and that Plaintiff's counsel did not receive a
4 copy of Ms. Steward's deposition subpoena until late on March 16, 2015. The Court finds
5 that the subpoena does not allow Ms. Steward or Plaintiff enough time to file a proper
6 objection or protective order. Although Plaintiff does not appear to allege that Mr. Remy
7 Bickoff's deposition subpoena was untimely served, Defendant was still aware of the
8 potential complications with the service of a deposition subpoena upon Plaintiff's counsel.

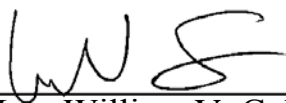
9 **IV. RULING**

10 For the reasons stated above, the Court hereby **GRANTS**, without prejudice to
11 Defendant, Plaintiff's *Ex Parte* Application for an Order to Quash the Deposition Subpoenas
12 as to Remy Bickoff and Jaime Steward.

13 Due to the urgency of this matter because of the deposition dates, the Court makes this
14 decision without hearing from Defendant. Per this Court's Chambers Rules, after service of
15 an *ex parte* application, opposing counsel will be given until 5:00p.m. on the next business
16 day to respond. Judge Gallo's Chambers Rule VI. Therefore, should Defendant wish to
17 augment the record with a Response to Plaintiff's *Ex Parte* Application, any Response shall
18 be filed by **March 19, 2015**, at **5:00 p.m.**

19 IT IS SO ORDERED.

20 DATED: March 18, 2015

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Hon. William V. Gallo
25 U.S. Magistrate Judge
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