

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 ELAINE DENNIS and COURTNEY  
12 WHITE, on behalf of themselves and  
13 others similarly situated,  
14 Plaintiffs,  
15 v.  
16 GOOD DEAL CHARLIE, INC., et al.,  
17 Defendants.

Case No.: 21-cv-01760-BEN-JLB

**ORDER GRANTING PLAINTIFFS'  
MOTION TO QUASH SUBPOENA  
AND FOR A PROTECTIVE ORDER**

**[ECF No. 1]**

18  
19 Before the Court is a Motion to Quash Subpoena *Duces Tecum* to Non-Party  
20 Investigator Wolfram Worms and for a Protective Order (the "Motion") filed by Plaintiffs  
21 Elaine Dennis and Courtney White ("Plaintiffs"). (ECF No. 1.) Plaintiffs seek to quash a  
22 Federal Rule of Civil Procedure 45 subpoena served on their non-party investigator  
23 Wolfram Worms by Defendant Good Deal Charlie, Inc. ("Defendant") in the underlying  
24 action pending in the Northern District of Oklahoma, *Dennis, et al. v. Good Deal Charlie,*  
25 *Inc., et al.*, Case No. 20-cv-00295-GKF-JFJ (N.D. Okla. 2020). (*Id.*) Plaintiffs also request  
26 a protective order pursuant to Federal Rule of Civil Procedure 26. (*Id.*)

27 For the following reasons, the Court **GRANTS** Plaintiffs' Motion to Quash the  
28 Subpoena and for a Protective Order (ECF No. 1).

1 **I. BACKGROUND**

2 **A. Relevant Facts**

3 Plaintiff Elaine Dennis (“Dennis”) filed this putative class action on June 18, 2020,  
4 in the Northern District of Oklahoma. (*See* ECF No. 6 at 11 n.4.) Plaintiff Courtney White  
5 (“White”) joined Dennis in filing their Amended Class Action Complaint on August 27,  
6 2020. (ECF No. 1-4 at 26.) This case centers around Plaintiffs’ allegation that Defendant  
7 represented and sold mattresses “as new, ‘scratch and dent’ and/or factory second or  
8 irregular mattresses” when, in reality, the mattresses “were previously used, had not been  
9 adequately cleaned and sanitized, were not clearly and properly labeled as ‘used,’ and were  
10 unfit for consumer use.” (*Id.* at 27 ¶ 2.) Plaintiffs bring multiple counts against Defendant,  
11 including a violation under the Oklahoma Consumer Protection Act, statutory deceit,  
12 negligent misrepresentation, unjust enrichment, negligence, negligence *per se*, and breach  
13 of implied contract. (*See id.* at 42–55 ¶¶ 55–119.)

14 Prior to the initial filing of this lawsuit in June 2020, Plaintiffs’ counsel James M.  
15 Evangelista was engaged by another client, Robert Hettick. (*See* ECF Nos. 6-1 at 96; 7 at  
16 2 n.1.) In July 2019, while he was employed as one of Defendant’s regional managers, Mr.  
17 Hettick requested legal advice from Mr. Evangelista regarding “what [he could] do about  
18 these used mattresses that [were] being sold from [Defendant].” (*See* ECF Nos. 6-1 at 96;  
19 7-3 at 2 ¶ 2.) In September 2019, Mr. Evangelista hired Wolfram Worms, an attorney and  
20 private investigator employed by WW Investigations in San Diego, California, “to  
21 determine whether [Defendant’s] customers in different states had similar experiences . . .  
22 and whether those experiences were consistent with information provided by [Mr.  
23 Hettick].” (ECF Nos. 7-1 at 2 ¶ 2; 7-2 at 2 ¶ 3.) Through Mr. Worms’s investigation,  
24 Dennis and White were identified in 2020 as members of the potential class action. (ECF  
25 Nos. 6-1 at 66; 7-2 at 3 ¶ 5.)

26 On June 16, 2021, Defendant filed a motion in the Northern District of Oklahoma  
27 seeking to compel “the identity and contact information for all third parties with whom  
28 communications, information, or knowledge was had or received regarding the allegations

1 in the Amended Complaint.” (ECF No. 6-1 at 69.) On September 23, 2021, Magistrate  
2 Judge Jodi F. Jayne granted Defendant’s motion to compel. (*Id.* at 70–71.) Following Judge  
3 Jayne’s order, Plaintiffs’ counsel stated in an email to Defendant on October 11, 2021, “that  
4 the only source of information for the Amended Complaint was Robert Hettick, whom”  
5 Defendant deposed on October 1, 2021. (ECF No. 6-1 at 87.)

### 6 **B. Subpoena to Mr. Worms**

7 On September 27, 2021, Defendant properly served an amended non-party subpoena  
8 *duces tecum* (the “Subpoena”) on Mr. Worms seeking information related to his  
9 investigation in this case.<sup>1</sup> (ECF No. 1-4 at 2, 5.) The Subpoena requested the following:

- 10 1. All investigative materials or reports concerning, regarding or related to  
11 the Defendants, individually or collectively. This includes, but is not  
12 limited to, all expense, compensation, and travel records.
- 13 2. All investigative materials or reports concerning, regarding or related to  
14 any mattress allegedly sold by the Defendants, individually or collectively.
- 15 3. All investigative materials or reports delivered, issued, given or sold to  
16 Plaintiffs’ Attorneys concerning, regarding or related to the Defendants,  
17 individually or collectively.
- 18 4. All investigative materials or reports delivered, issued, given or sold to any  
19 third persons concerning, regarding or related to the Defendants,  
20 individually or collectively.
- 21 5. All communications with Dennis of any information or knowledge  
22 concerning, regarding or related to the Defendants, individually or  
23 collectively, or any mattress allegedly sold by the Defendants, individually  
24 or collectively.
- 25 6. All communications with White of any information or knowledge  
concerning, regarding or related to the Defendants, individually or

---

26 <sup>1</sup> It appears Defendant’s original subpoena was provided to Mr. Worms on September  
27 22, 2021. (*See* ECF No. 1-4 at 5.) The Subpoena served on September 27, 2021, was  
28 “amended to reflect a change in place of production but [was], in all other aspects,  
identical” to the original subpoena. (*Id.*)

1 collectively, or any mattress allegedly sold by the Defendants, individually  
2 or collectively.

- 3 7. All communications with Plaintiffs' Attorneys of any information or  
4 knowledge concerning, regarding or related to the Defendants,  
5 individually or collectively, or any mattress allegedly sold by the  
6 Defendants, individually or collectively.
- 7 8. All communications with any other persons of any information or  
8 knowledge concerning, regarding or related to the Defendants,  
9 individually or collectively, or any mattress allegedly sold by the  
10 Defendants, individually or collectively.
- 11 9. The identity of all persons with whom you had a communication of any  
12 information or knowledge concerning, regarding or related to the  
13 Defendants, individually or collectively, or any mattress allegedly sold by  
14 the Defendants, individually or collectively.
- 15 10. All communications with Defendants, individually or collectively,  
16 including any of Defendants' past or present employees or agents.
- 17 11. All investigative materials or reports delivered, issued, given or sold to  
18 any third persons concerning, regarding or related to the sale of "scratch  
19 and dent" bedding.
- 20 12. All investigative materials or reports delivered, issued, given or sold to  
21 any Plaintiffs' Attorneys concerning, regarding or related to the sale of  
22 "scratch and dent" bedding.
- 23 13. All investigative materials or reports delivered, issued, given or sold to  
24 any third persons concerning, regarding or related to the sale of secondary  
25 bedding.
- 26 14. All investigative materials or reports delivered, issued, given or sold to  
27 Plaintiffs' Attorneys concerning, regarding or related to the sale of  
28 secondary bedding.
15. All documents depicting any original material prepared by, or prepared  
for, Overstock. This includes, but is not limited to: bills of lading; receipts;  
invoices; account statements; customer information; and complaints,  
including resolutions or potential resolutions.

1  
2 16. All documents provided – directly or indirectly – by any Overstock  
3 employee either past or present.

4 17. All correspondence with, by, or between Overstock customers. This  
5 includes any memoranda or affidavits relating thereto.

6 18. All documents relating to any governmental body’s oversight or  
7 regulation of Overstock – whether state, federal, county, tribal, or  
8 otherwise. This includes all correspondences, referrals, and complaints  
9 pertaining thereto.

10 (*Id.* at 15–16.)

11 On October 12, 2021, Plaintiffs filed the instant Motion, arguing that Defendant’s  
12 Subpoena seeks non-discoverable attorney work product. (ECF No. 1.) On November 12,  
13 2021, Defendant filed an opposition (ECF No. 6), and Plaintiffs filed a reply on November  
14 19, 2021 (ECF No. 7). On January 5, 2022, a telephonic hearing regarding the Motion was  
15 held before Magistrate Judge Jill L. Burkhardt. (ECF No. 12.)

## 16 **II. LEGAL STANDARD**

17 Federal Rules of Civil Procedure 26 and 45 govern discovery from non-parties by  
18 subpoena. *See Exxon Shipping Co. v. U.S. Dep’t of Interior*, 34 F.3d 774, 779 (9th Cir.  
19 1994) (applying both rules to motion to quash subpoena). As to discovery from third  
20 parties, “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant  
21 to any party’s claim or defense . . .” Fed. R. Civ. P. 26(b)(1). But a party cannot access  
22 information “prepared in anticipation of litigation or for trial by or for another party or its  
23 representative.” Fed. R. Civ. P. 26(b)(3)(A). A subpoena seeking such information must  
24 be quashed or modified if it “requires disclosure of privileged or other protected matter, if  
25 no exception or waiver applies.” Fed. R. Civ. P. 45(d)(3)(A)(iii).

## 26 **III. DISCUSSION**

### 27 **A. Attorney Work Product**

28 “The work-product doctrine protects from discovery documents and tangible things  
prepared by a party or his representative in anticipation of litigation.” *United States v.*

1 *Richey*, 632 F.3d 559, 567 (9th Cir. 2011) (internal quotation marks and citation omitted);  
2 Fed. R. Civ. P. 26(b)(3). To qualify for protection against discovery under the work-  
3 product doctrine, documents must have two characteristics: (1) they must be “prepared in  
4 anticipation of litigation or for trial”; and (2) they must be prepared “by or for another party  
5 or its representative.” Fed. R. Civ. P. 26(b)(3); *see also In re Grand Jury Subpoena*, 357  
6 F.3d 900, 907 (9th Cir. 2003). Federal Rule of Civil Procedure 26(b)(3) distinguishes  
7 between ordinary work product and opinion work product. Ordinary work product is  
8 discoverable if the requesting party “shows that it has substantial need for the materials to  
9 prepare its case and cannot, without undue hardship, obtain their substantial equivalent by  
10 other means.” Fed. R. Civ. P. 26(b)(3)(A)(ii). However, as to opinion work product, courts  
11 are obligated to “protect against disclosure of the mental impressions, conclusions,  
12 opinions, or legal theories of a party’s attorney or other representative concerning the  
13 litigation.” Fed. R. Civ. P. 26(b)(3)(B). “A party seeking opinion work product must make  
14 a showing beyond the substantial need/undue hardship test required under Rule 26(b)(3)  
15 for non-opinion work product.” *Holmgren v. State Farm Mutual Auto. Ins. Co.*, 976 F.2d  
16 573, 577 (9th Cir. 1992) (agreeing with other courts “that have concluded that opinion  
17 work product may be discovered and admitted when mental impressions are *at issue* in a  
18 case and the need for the material is compelling” (emphasis in original)). Notably, the  
19 identity of witnesses interviewed can be opinion work product, in that it can reveal “which  
20 witnesses counsel considers important, revealing mental impressions and trial strategy.”  
21 *Local 703, I.B. of T. Grocery and Food Employees Welfare Fund, et al. v. Regions*  
22 *Financial Corp. et al.*, No. 12cv1561 H (NLS), 2012 WL 13027572, at \*2 (S.D. Cal. Sept.  
23 11, 2012) (citations omitted).

24 The “anticipation of litigation” test requires “more than a remote possibility of  
25 litigation.” *Natural-Immunogenics Corp. v. Newport Trial Group, et al.*, No. SACV 15–  
26 02034 JVS (JCGx), 2019 WL 11743217, at \*4 (C.D. Cal. Mar. 1, 2019) (citations omitted);  
27 *see also Arfa v. Zionist Org. of Am.*, No. CV 13–2942 ABC (SS), 2014 WL 815496, at \*4  
28 (C.D. Cal. Mar. 3, 2014) (“The work product rule does not apply merely because there is a

1 remote prospect of future litigation.”); *Health v. F/V ZOLOTOI*, 221 F.R.D. 545, 549  
2 (W.D. Wash. 2004) (“More than the mere possibility of litigation must be evident for  
3 materials to be considered immune from discovery under the work-product doctrine.”  
4 (citation and internal quotations omitted)); *Fox v. Cal. Sierra Fin. Servs.*, 120 F.R.D. 520,  
5 524 (N.D. Cal. 1988) (“There is no requirement that the litigation have already commenced  
6 in order for the work-product doctrine to be operative, however, there must be more than a  
7 remote possibility of litigation.”).

8 Plaintiffs argue the information sought in Defendant’s Subpoena is protected as  
9 work product. (ECF No. 1-2 at 6, 8–13.) Plaintiffs’ counsel hired Mr. Worms to  
10 investigate—at the direction of counsel—information supporting Mr. Hettick’s allegations  
11 that Defendant was selling “used, unlabeled[,] and unsanitized” mattresses to consumers  
12 as new. (ECF Nos. 6-1 at 96; 7 at 3; 7-1 at 2 ¶ 3.) Defendant argues that the work product  
13 doctrine is inapplicable because Plaintiffs’ counsel, Mr. Evangelista, had not engaged a  
14 client at the time he hired Mr. Worms as an investigator, and that therefore, Mr. Worms’s  
15 findings were not made in “anticipation of litigation.” (ECF No. 6 at 9–12.)

16 As an initial matter, the Court finds that, for purposes of analyzing the applicability  
17 of the work-product privilege, an attorney-client relationship existed between Mr.  
18 Evangelista and Mr. Hettick when Mr. Evangelista directed Mr. Worms to conduct the  
19 investigation. “An attorney-client relationship is formed when an attorney renders advice  
20 directly to a client who has consulted him seeking legal counsel.” *Ultimate Fitness Center,*  
21 *LLC v. Wilson*, No. 16-CV-418 JLS (JMA), 2016 WL 6834001, at \*3 (S.D. Cal. Nov. 21,  
22 2016) (citing *Waggoner v. Snow, Becker, Kroll, Klaris & Krauss*, 991 F.2d 1501, 1505 (9th  
23 Cir. 1993)). “A formal contract is not necessary to show that an attorney-client relationship  
24 has been formed.” *Id.* (citing *Bernstein v. State Bar*, 50 Cal. 3d 221, 229–30 (1990)). “The  
25 court may look to the intent and conduct of the parties to determine whether the relationship  
26 was actually formed.” *Id.* (citing *Hecth v. Super. Ct.*, 192 Cal. App. 3d 560, 565 (1987)).  
27 Here, Mr. Hettick stated in both his Declaration to Plaintiffs’ Reply and his deposition  
28 conducted by Defendant on October 1, 2021, that he sought legal advice from Mr.

1 Evangelista beginning in July 2019 regarding the allegations at issue in the underlying  
2 litigation. (See ECF Nos. 6-1 at 96; 7-3 at 2 ¶ 2.) Further, Mr. Hettick stated in his  
3 deposition that Mr. Evangelista told him that “he would look into what [Mr. Hettick] was  
4 asking him for” regarding Defendant’s sale of used mattresses. (ECF No. 6-1 at 96.)  
5 Plaintiffs concede there was no formal attorney-client contract between Mr. Hettick and  
6 Mr. Evangelista until 2021 (see ECF Nos. 7 at 2; 7-1 at 2 ¶ 2), however, the Court  
7 nonetheless finds that an implied attorney-client relationship formed after Mr. Evangelista  
8 agreed to investigate Mr. Hettick’s allegations against Defendant in July 2019.

9 Although it is true that Mr. Evangelista had not formed an attorney-client  
10 relationship with either of the named Plaintiffs until 2020, the Court is not persuaded by  
11 Defendant’s argument that Mr. Worms’s investigation was not conducted in anticipation  
12 of litigation. The record evidence indicates Mr. Evangelista had not engaged Mr. Worms  
13 as his investigator until August or September 2019 (see ECF Nos. 6 at 5; 7-1 at 2 ¶ 2; 7-2  
14 at 2 ¶ 3), which was after Mr. Hettick sought his advice. Thus, the Court concludes that  
15 Mr. Worms conducted his investigation in anticipation of litigation.

16 Defendant’s Subpoena essentially requests all investigative materials and  
17 communications from Mr. Worms’s investigation on behalf of Plaintiffs, even  
18 communications Mr. Worms had with Plaintiffs’ counsel. Further, if Plaintiffs had to turn  
19 over the names of witnesses not mentioned or relied on in the Amended Complaint,  
20 Defendant “could easily determine Plaintiffs’ investigation and figure out which witnesses  
21 Plaintiffs thought important and credible, and which they did not. Such information is  
22 classic work product and not discoverable.” See *Local 703*, 2012 WL 13027572, at \*4.

23 Defendant’s only argument that the subpoenaed material does not constitute work  
24 product stems from the factually erroneous position that Mr. Evangelista had not retained  
25 Mr. Worms’s investigative services in anticipation of litigation. Therefore, the Court finds  
26 that the information sought in Defendant’s Subpoena qualifies as work product.

27 ///

28 ///



1           **B. Substantial Need and Undue Hardship**

2           As Plaintiffs have met their burden of showing the subpoenaed material constitutes  
3 attorney work product, the burden now shifts to Defendant to establish that an exception to  
4 the ordinary protection afforded to work product applies. Specifically, Defendant must  
5 show that it has “substantial need for the materials to prepare its case and cannot, without  
6 undue hardship, obtain their substantial equivalent by other means.” Fed. R. Civ. P.  
7 26(b)(3)(A)(ii).<sup>2</sup>

8           Defendant argues that “disclosure of the identity, and quantity, of these individuals  
9 [interviewed by Worms] is necessary to determine the potential class size and whether  
10 these collective individuals satisfy the class action requirements under [Fed. R. Civ. P.]  
11 23(a)(1)-(4).” (ECF No. 6 at 14.) Defendant asserts that “Plaintiffs failed, or otherwise  
12 refused to reveal, any information indicative of the identities of witnesses.” (*Id.*)  
13 Defendant also argues it “will certainly suffer undue hardship if ordered to obtain the  
14 substantial equivalent of the subpoenaed information by alternative means” because “at  
15 this stage of the proceedings, there are no alternative means of obtaining the subpoenaed  
16 documents and things.” (*Id.* at 15.) Plaintiffs argue that there is no substantial need as  
17 “Defendant has acknowledged that Mr. Hettick was the sole source of information for the  
18 Amended Complaint (other than the two plaintiffs), that all of the evidentiary materials  
19 provided to Plaintiffs’ counsel have been produced to Defendant[], and that Mr. Hettick  
20 has been deposed.” (ECF No. 7 at 5.)

21           The Court agrees with Plaintiffs. Plaintiffs have repeatedly notified Defendant, in  
22 discovery responses and pleadings, and confirmed for the Court at the hearing in this  
23

---

24  
25  
26 <sup>2</sup> This is the standard for obtaining ordinary work product; the standard for opinion  
27 work product is higher. Defendant’s Subpoena would seem to call for both ordinary work  
28 product and opinion work product. Because Defendant has not met the standard to obtain  
ordinary work product, the Court does not parse between ordinary work product and  
opinion work product.

1 matter, that the only witnesses Mr. Worms interviewed about Oklahoma activities<sup>3</sup> by the  
2 Defendant were the named Plaintiffs—Dennis and White—and Mr. Hettick. Nothing has  
3 been presented to the Court which calls the veracity of this representation into question.  
4 Ultimately, Defendant shows no “substantial need for the particular information sought,  
5 beyond [its need to] reduc[e] [its] investigative costs by riding on Plaintiffs’ coattails[.]”  
6 *Local 703*, 2012 WL 13027572, at \*4 (quoting *Gen-Probe v. Becton, Dickinson & Co.*, No.  
7 09cv2319 BEN (NLS), 2011 U.S. Dist. LEXIS 27961, at \*9 (S.D. Cal. 2011)). Thus,  
8 Defendant has not met its burden of showing that the work product protection should be  
9 invaded.

### 10 **C. Protective Order**

11 A protective order is a remedy that is available to “any person” who is able to  
12 establish good cause for issuance of the protective order “to protect a party or person from  
13 annoyance, embarrassment, oppression, or undue burden or expense . . . .” Fed. R. Civ. P.  
14 26(c)(1). Because the requested documents and materials created by Mr. Worms as part of  
15 his investigation would constitute work product, good cause exists to issue the Protective  
16 Order.

### 17 **D. Request for Sanctions**

18 The Court construes Plaintiffs’ request that they be awarded “costs and attorneys’  
19 fees related to their filing and serving of this Motion,” as a request for sanctions pursuant  
20 to Federal Rule of Civil Procedure 45. (ECF Nos. 1-2 at 13 n.6; 7 at 5.) Rule 45 states that  
21 a party or attorney responsible for issuing and serving a subpoena “must take reasonable  
22 steps to avoid imposing undue burden or expense on a person subject to a subpoena. The  
23 court for the district where compliance is required must enforce this duty and impose an  
24 appropriate sanction—which may include lost earnings and reasonable attorney’s fees—  
25 on a party or attorney who fails to comply.” Fed. R. Civ. P. 45(d)(1); *see also Mount Hope*

---

27  
28 <sup>3</sup> The putative class is limited to “persons and entities that have purchased used  
mattresses from Overstock in the state of Oklahoma.” (ECF No. 1-4 at 40 ¶ 49.)

1 *Church v. Bash Back!*, 705 F.3d 418 (9th Cir. 2012); *High Tech Med. Instrumentation, Inc.*  
2 *v. New Image Indus., Inc.*, 161 F.R.D. 86 (N.D. Cal. 1995).

3 Since the 2013 amendments, which moved and modified the provisions formerly in  
4 subdivision (c) to subdivision (d),<sup>4</sup> “the district where compliance is required” has been  
5 defined as the location of the subpoenaed person or entity, in keeping with Rule 45’s  
6 purpose of protecting local non-parties and resolving disputes locally. *See generally Raap*  
7 *v. Brier & Thorn, Inc.*, No. 17-MC-3001, 2017 WL 2462823 (C.D. Ill. July 7, 2017); *see*  
8 *also XTO Energy, Inc. v ATD, LLC*, No. 14-1021 JB/SCY, 2016 WL 1730171, at \*20  
9 (D.N.M. Apr. 1, 2016); *Agincourt Gaming, LLC v Zynga, Inc.*, No. 14-CV-0708-RFB-  
10 NJK, 2014 WL 4079555, at \*4 (D. Nev. Aug. 15, 2014). Thus, this Court must enforce  
11 the duty to avoid imposing an undue burden and impose sanctions if appropriate.

12 “Because [Rule 45(d)(1)] gives ‘specific application’ to Rule 26(g), it follows that a  
13 violation of any one of the Rule 26 duties will be relevant to assessing the propriety of  
14 sanctions under [Rule 45(d)(1)]’s ‘undue burden’ language. This approach is consistent  
15 with the interpretation of other courts.” *Mount Hope Church*, 705 F.3d at 425 (internal  
16 citation omitted). Federal Rule of Civil Procedure 26(g) provides:

17 Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request,  
18 response, or objection must be signed by at least one attorney of record in the  
19 attorney’s own name—or by the party personally, if unrepresented . . . By  
20 signing, an attorney or party certifies that to the best of the person’s  
21 knowledge, information, and belief formed after a reasonable inquiry . . . with  
22 respect to a discovery request, response, or objection, it is:

- 23 (i) consistent with these rules and warranted by existing law or by a  
24 nonfrivolous argument for extending, modifying, or reversing existing  
25 law, or for establishing new law;

---

26  
27 <sup>4</sup> In contrast to the current version of subdivision (d), subdivision (c)(1) provided that  
28 “the issuing court must enforce” the duty to avoid imposing undue burden rather than “the  
court for the district where compliance is required.”

- 1 (ii) not interposed for any improper purpose, such as to harass, cause  
2 unnecessary delay, or needlessly increase the cost of litigation; and
- 3 (iii) neither unreasonable nor unduly burdensome or expensive, considering  
4 the needs of the case, prior discovery in the case, the amount in  
5 controversy, and the importance of the issues at stake in the action.

6 Fed. R. Civ. P. 26(g).

7 “Per the terms of Rule 26(g)(3), violation of any one of these duties without  
8 substantial justification results in sanctions.” *Mount Hope Church*, 705 F.3d at 425. Courts  
9 have found “that the mere fact that a subpoena was ultimately quashed does not, standing  
10 alone, require the imposition of sanctions” (*see Black v. Wrigley*, No. 18-CV-2367 GPC-  
11 BGS, 2019 WL 1877070, at \*7 (S.D. Cal. Apr. 26, 2019), citing *Alberts v. HCA Inc.*, 405  
12 B.R. 498, 502–03 (D.D.C. 2009); *Scherer v. GE Capital Corp.*, 185 F.R.D. 351, 352 (D.  
13 Kan. 1999)), but “[a] court may . . . impose sanctions when a party issues a subpoena in  
14 bad faith, for an improper purpose, or in a manner inconsistent with existing law.” *Legal*  
15 *Voice v. Stormans Inc.*, 738 F.3d 1178, 1185 (9th Cir. 2013) (citing *Mount Hope Church*,  
16 705 F.3d at 425, 428; *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 814 (9th Cir.  
17 2003)).

18 Reviewing the record, it does not appear the Subpoena served on Mr. Worms was  
19 facially defective. (*See* ECF No. 1-4 at 2, 5.) Further, Plaintiffs have not demonstrated  
20 undue burden or that Defendant served its Subpoena on Mr. Worms based on a frivolous  
21 argument or for an improper purpose. *See Mount Hope Church*, 705 F.3d at 429 (“Absent  
22 undue burden imposed by an oppressive subpoena, a facially defective subpoena, or bad  
23 faith on the part of the requesting party, [Rule 45 (d)(1)] sanctions are inappropriate.”)  
24 Therefore, the Court finds that Rule 45 sanctions are not warranted.

25 ///

26 ///

27 ///

28 ///

1 **IV. CONCLUSION**

2 For good cause shown, the Court **GRANTS** Plaintiffs’ Motion to Quash the  
3 Subpoena and for a Protective Order (ECF No. 1).

4 **IT IS SO ORDERED.**

5 Dated: January 6, 2022

6   
7 Hon. Jill L. Burkhardt  
8 United States Magistrate Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28