

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Senior Judge Wiley Y. Daniel**

Civil Action No. 15-cv-1044-WYD-MJW

ALVARO J. ARNAL,

Plaintiff,

v.

ASPEN VIEW CONDOMINIUM ASSOCIATION, INC.;  
ASPEN SNOWMASS CARE, INC., d/b/a FIRST CHOICE PROPERTIES &  
MANAGEMENT, INC.,

Defendants.

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**ORDER RECOMMENDING THE MATTER TO THE MAGISTRATE JUDGE WITH  
INSTRUCTIONS REGARDING RELIANCE ON HIPAA PRIVACY RULE**

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THIS MATTER is before the Court in connection with Magistrate Judge Michael J. Watanabe's Order Regarding Plaintiff's Motion to Compel (ECF No. 38) ("Order"), issued on December 3, 2015, which is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Watanabe reviewed Plaintiff's Motion to Compel (ECF No. 29), the response and reply, and reviewed *in camera* the disputed documents and Defendant's privilege logs, and ultimately sustained all of Defendant's evidentiary objections. In Plaintiff's objection to the Order, Plaintiff noted that nineteen documents or groups of documents were redacted in part or in whole by Defendant on the basis of the HIPAA privacy rule. Plaintiff argues that since Defendants are not "covered entities" under the rule, Defendants cannot use the rule as a basis to withhold documents. See *Weatherspoon v. Provincetown Master Owners Ass'n, Inc.*, 2010 WL 936109 (D. Colo.

March 15, 2010); *Stonebarger v. Union Pacific Corp.*, 2014 WL 3579374 (D. Kan. July 21, 2014); *Ehrlich v. Union Pacific Railroad Co.*, 302 F.R.D. 620 (D. Kan. 2014).

Defendants did not address this argument in their response to the motion to compel or in the response to the objection to the Order. Similarly, Magistrate Judge Watanabe did not specifically address the applicability of the HIPAA privacy rule to the withheld documents, nor did he indicate that he instead found the withheld documents were rightfully withheld under some other privilege after consideration by *in camera* review. Since Magistrate Judge Watanabe had the benefit of reviewing the documents *in camera*, he is in the best position to provide further clarification as to whether and if the HIPAA privacy rule was appropriately relied upon by Defendants in withholding the documents in question.

Accordingly, the Magistrate Judge's Order is hereby Recommended for further clarification on the Defendants' reliance on the HIPAA privacy rule in withholding information in the documents in question.

Dated: April 6, 2016

BY THE COURT:

s/ Wiley Y. Daniel

Wiley Y. Daniel

Senior United States District Judge