

legal theories” of Plaintiff’s counsel, Fed. R. Civ. P. 26(b)(3)(B), the memorandum is “core” work product and should not be produced. Accordingly, it is hereby ORDERED that the memorandum shall be produced in redacted form to protect against the disclosure of such core work product. Moreover, to the extent the document, which was apparently sent to Plaintiff by e-mail, contains counsel’s legal advice to Plaintiff, such advice should also be redacted, to protect against disclosure of privileged communications.

The Court notes that Defendants have also argued that, by reading a portion of the document at Mr. Gonzalez’s deposition, as a means to refresh the witness’s recollection, any privilege or work product protection afforded to the document has been waived. The Court finds that Plaintiff’s counsel did not waive attorney-client privilege, as he did not, at the deposition, reveal any privileged communications that may have been contained in the memorandum. Nor did Plaintiff’s counsel reveal any of the “opinion” work product that is set forth in the document. Nor has there been any showing that Plaintiff’s counsel provided the witness with a copy of the written memorandum in advance of his deposition, in order to prepare him for his testimony, or during his testimony, to refresh his recollection. *See* Fed. R. Evid. 612. To the extent Plaintiff has waived work product immunity by revealing, orally, certain factual statements contained in the memorandum, the limited production required above (which would include the production of all factual statements made by the witness during his prior interview) is consistent with the scope of disclosure that would be required based upon such a waiver.

Also before the Court is a request by Plaintiff that Defendant be compelled (1) to produce a copy of defendant Trabitiz’s file regarding Plaintiff’s claim sufficiently in advance of defendant Trabitiz’s continued deposition date to enable adequate deposition preparation by Plaintiff’s counsel, (2) to produce the original of this file for inspection at the deposition, and (3) to compel

Defendants to produce a copy of the report that Sergeant O'Connor prepared regarding his investigation into Plaintiff's claim. The first two of these requests are granted. If defendant Trabit's file has not already been produced, Defendants are directed to provide it to Plaintiff's counsel at least two business days before the rescheduled deposition, and Defendants are also directed to produce the original file at the deposition. As for Plaintiff's third request, unless the Court hears an objection from Defendants by the close of business on April 13, 2009, Defendants shall produce Sergeant O'Connor's report to Plaintiff no later than April 15, 2009.

Dated: New York, New York
April 10, 2009

SO ORDERED


DEBRA FREEMAN
United States Magistrate Judge

Copies to:

Hon. Shira A. Scheindlin, U.S.D.J.

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