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FILED
NOV 13 2017
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 11-37360-B-7
)	
DAYA RAM CHANDAR and JASWANTI)	Adversary No. 17-2057
DEVI CHANDAR,)	
)	
Debtor(s).)	
_____		DC No. BHS-1

DOUGLAS M. WHATLEY, in his capacity as Chapter 7 Trustee for the bankruptcy estate of Daya Ram Chandar and Jaswanti Devi Chandar,

Plaintiff(s),

v.

MEYER WILSON CO., LPA, DAYA RAM CHANDAR and JASWANTI DEVI CHANDAR,

Defendant(s).

MEMORANDUM AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Before the court is a motion to compel the production of documents filed by plaintiff Douglas M. Whatley in his capacity as the chapter 7 trustee appointed in the above-referenced chapter 7 case. Plaintiff's motion is opposed by defendants Meyer Wilson Co., LPA, Daya Ram Chandar, and Jaswanti Devi Chandar. The Chandar defendants are also the debtors in the parent chapter 7 case and will be referred to as such when appropriate.

1 A hearing on the plaintiff's motion was held on October 3,
2 2017, and was continued to November 14, 2017. Appearance at the
3 October 3, 2017, hearing were noted on the record. The continued
4 hearing is vacated by this memorandum and order. This memorandum
5 and order also constitutes the court's findings of fact and
6 conclusions of law pursuant to Federal Rule of Civil Procedure 52
7 applicable by Federal Rules of Bankruptcy Procedure 7052 and
8 9014.

9
10 **INTRODUCTION**

11 The present dispute concerns the applicability of the
12 attorney-client and work-product privileges to a request by the
13 plaintiff for the production of documents. Defendants maintain
14 the privileges apply to plaintiff's document request and
15 therefore no document production is required. Plaintiff asserts
16 that defendants have not established that privileges apply. Both
17 parties also dispute who controls and may waive the privileges,
18 *i.e.*, the plaintiff as the chapter 7 trustee in the parent
19 bankruptcy case or the chapter 7 debtor defendants.

20 If this adversary proceeding involved a corporate chapter 7
21 debtor, the answer to the latter dispute would be easy. In
22 Commodity Futures Trading Com'n v. Weintraub, 471 U.S. 343
23 (1985), the U.S. Supreme Court sided with the chapter 7 trustee
24 holding that the trustee controlled the privilege because the
25 trustee controlled the corporate debtor as successor management.
26 Id. at 358. But, as noted, Weintraub was a corporate chapter 7
27 case and in its opinion the Supreme Court also stated that its
28 holding would not necessarily apply in an individual chapter 7

1 case because the trustee does not control an individual in the
2 same manner as the trustee controls a corporate entity after a
3 petition is filed. See id., 471 U.S. at 356-57. That has led to
4 substantial disagreement and no uniformity, including among
5 courts in the Ninth Circuit. Three approaches have developed.

6 Some courts hold that an individual chapter 7 debtor's
7 privileges transfer to the trustee and the trustee controls the
8 privileges as a matter of law. In re Smith, 24 B.R. 3, 5 (Bankr.
9 S.D. Fla. 1982); In re Ingram, 1999 WL 33486089, *5-6 (Bankr.
10 D.S.C. 1999). Citing Weintraub's distinction in the trustee's
11 control over a corporate and individual debtor, other courts hold
12 that an individual chapter 7 debtor's privileges do not transfer
13 to the trustee and therefore remain under the debtor's control.
14 In re Bounds, 443 B.R. 729, 734-35 (Bankr. W.D. Tex. 2010); In re
15 Hunt, 153 B.R. 445, 454 (Bankr. N.D. Tex. 1992). And still other
16 courts take a balancing approach which weighs potential harm to
17 the individual chapter 7 debtor by allowing the trustee to
18 control the debtor's privileges against the trustee's need for
19 privileged information in the administration of the estate.
20 Foster v. Hill (In re Foster), 188 F.3d 1259, 1265-66 (10th Cir.
21 1999); In re Bame, 251 B.R. 367, 376 (Bankr. D. Minn. 2000); In
22 re Miller, 247 B.R. 704, 709 (Bankr. N.D. Ohio 2000); In re Rice,
23 224 B.R. 464, 469 (Bankr. D. Or. 1998).¹

24 Fortunately, this court need not join the fray. The court
25 agrees with plaintiff that defendants have not satisfied their
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27 ¹The balancing approach was recently rejected as
28 inconsistent with Supreme Court and Ninth Circuit authority, and
also noted as inapplicable under California law. See In re
Ginzburg, 517 B.R. 175, 182-83 (Bankr. C.D. Cal. 2014).

1 burden of establishing that the attorney-client and work-product
2 privileges apply. Therefore, for the reasons explained below,
3 plaintiff's motion to compel the production of documents will be
4 granted in part and denied in part and defendants' objections to
5 plaintiff's request for the production of documents will be
6 overruled in part and sustained in part.

7
8 **BACKGROUND²**

9 The debtors filed a voluntary chapter 7 petition on July 14,
10 2011. The debtors' discharge was entered on October 31, 2011.

11 On November 16, 2011, Daya Chandar and Meyer Wilson entered
12 into an Engagement Agreement in which Meyer Wilson agreed to
13 pursue claims against World Group Securities ("WGS").³ According
14 to the Engagement Agreement, those claims are based on conduct
15 that occurred between October 2005 and December 2009. Thus, the
16 claims that Meyer Wilson agreed to pursue under the Engagement
17 Agreement were all based on conduct that occurred before the
18 debtors filed their chapter 7 petition in July of 2011.

19 The debtors' chapter 7 case was closed on November 21, 2011,
20 five days *after* Daya Chandar and Meyer Wilson entered into the
21 Engagement Agreement. The bankruptcy case was reopened on June
22 4, 2015, and plaintiff was appointed the trustee on June 5, 2015.

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24 _____
25 ²Facts that follow are based on defendants' admission of
26 allegations in plaintiff's complaint which are judicial
27 admissions in this adversary proceeding. American Title Ins. v. Lacelaw, 861 F.2d 224, 226 (9th Cir. 1988). The court also takes
judicial notice of the docket in this adversary proceeding and in
the parent chapter 7 case.

28 ³A copy of the Engagement Agreement is attached as Exhibit A
to the complaint.

1 The complaint that commenced this adversary proceeding was
2 filed on April 12, 2017. Defendants answered the complaint on
3 June 30, 2017. The seventeenth affirmative defense in that
4 answer is relevant. It states as follows: "DEFENDANTS are
5 informed and believe and thereon allege that he relied in good
6 faith upon the advice of counsel with regard to the allegations
7 in Plaintiff's Complaint." Dkt. 29, ¶ 70, at 9.

8 The present discovery dispute arises out of a request for
9 production of documents that plaintiff served on defendants on
10 July 11, 2017. That document request states as follows:

11 REQUEST NO. 1: Any and all records, pleadings and
12 correspondence (including, but not limited to, letters,
13 facsimiles, emails and text messages) contained in
14 Meyer Wilson's client file for Daya Ram Chandar and
15 Jaswanti Devi Chandar, as listed on Defendants Initial
16 Disclosures of documents.

17 REQUEST NO. 2: Any and all pleadings and Settlement
18 Agreement from FINRA Arbitration Case against
19 Transamerica Financial Advisors, Inc./World Group
20 Securities and checks representing payment of net
21 proceeds, as listed on Defendants Initial Disclosures
22 of documents.

23 REQUEST NO. 3: Any and all records and files relating
24 to the Adversary proceeding, entitled "Prasad v. Singh"
25 case no. 10-02785, as listed on Defendants Initial
26 Disclosures of documents.

27 REQUEST NO. 4: Each and every document you intend to
28 introduce as either an exhibit or evidence at the trial
on this matter.

Defendants responded to plaintiff's document request on
August 17, 2017. Defendants withheld certain documents on the
basis of the attorney-client and work-product privileges. The
parties met and conferred between September 7, 2017, and
September 12, 2017.

1 DISCUSSION

2 Defendants, as proponents, have the burden of establishing
3 the applicability of the attorney-client privilege and the
4 nonwaiver of it. Weil v. Investment/Indicators, Research and
5 Management, 647 F.2d 18, 25 (9th Cir. 1981); Cargill, Inc. v.
6 Budine, 2008 WL 2856642, *2 (E.D. Cal. 2008). The work-product
7 proponent also has "[t]he burden of establishing protection of
8 materials as work product[,]" Riverkeeper v. U.S. Corp. of Army
9 Engineers, 38 F. Supp. 3d 1207, 1217 (D. Or. 2014) (quotations
10 omitted), and nonwaiver. McMorgan & Co. v. First Calif. Mortg.
11 Co., 931 F. Supp. 703, 707 (N.D. Cal. 1996). See also Skynet
12 Elec. Co. Ltd. v. Flextronics Int'l, Ltd., No. C, 2013 WL
13 6623874, at *2 (N.D. Cal. 2013) (party asserting work-product
14 privilege bears burden of establishing applicability and
15 nonwaiver); accord Hanson v. Wells Fargo Home Mortg., Inc., 2013
16 WL 5674997, *5 (W.D. Wa. 2013). Defendants have not satisfied
17 this burden with regard to either privilege.

18 I. Waiver of the Privileges.

19 Defendants' answer asserts an "advice of counsel" defense.
20 Asserting the "advice of counsel" defense waives the attorney-
21 client privilege as to communications and documents within the
22 scope of counsel's advice. Bittaker v. Woodford, 331 F.3d 715,
23 719 (9th Cir. 2003) ("[s]ubstantial authority holds the
24 attorney-client privilege to be impliedly waived where the client
25 asserts a claim or defense that places at issue the nature of the
26 privileged material.") (emphasis in original); Chevron Corp. v.
27 Pennzoil Co., 974 F.2d 1156, 1162-63 (9th Cir. 1992). The work-
28 product privilege may also be waived, Hernandez v. Tanninen, 604

1 F.3d 1095, 1100 (9th Cir. 2010); Coleman v. Brown, 2013 WL
2 597491, *5 (E.D. Cal. 2013) (citations omitted). And it too is
3 similarly waived by asserting the "advice of counsel" defense.
4 In re EchoStar Communications Corp., 448 F.3d 1294, 1304 (Fed.
5 Cir. 2006). Indeed, as the district court stated in Chiron Corp.
6 v. Genentech, Inc., 179 F. Supp. 2d 1182 (E.D. Cal. 2001), with
7 regard to both privileges: "Fairness requires that a party who
8 seeks to be absolved of [liability] because it relied on
9 counsel's advice pay the discovery price. The party asserting
10 the defense waives attorney-client privilege and work product
11 immunity to the broadest extent consonant with direct relevance
12 to the advice of counsel itself." Id. at 1188-89.⁴

13 As noted above, the seventeenth affirmative defense in the
14 defendants' answer asserts an "advice of counsel" defense. Based
15 on the manner in which the defense is stated, i.e., "that he
16 relied in good faith upon the advice of counsel with regard to
17 the allegations in Plaintiff's Complaint[,] " the court reads the
18 defense as an assertion by Daya Chandar that he relied on Meyer
19 Wilson's advice with regard to all matters alleged in the
20 complaint. Therefore, as to the subject of all matters alleged
21 in the complaint, defendants have failed to establish the
22 nonwaiver of the attorney-client and work-product privileges, at

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24 ⁴Federal law governs privileges in a bankruptcy case. See
25 Fed. R. Bankr. P. 9017; Fed. R. Evid. 501; Ginzburg, 517 B.R. at
26 180. However, the result would be the same even if California
27 law applied. Under California law, "the deliberate injection of
28 the advice of counsel into a case waives the attorney-client
privilege as to communications and documents relating to the
advice." Transamerica Title Ins. Co. v. Sup.Ct. (Bank of the
West), 188 Cal. App. 3d 1047, 1053 (1987). Same with regard to
the work-product privilege. See Wellpoint Health Networks, Inc.
v. Superior Court, 59 Cal. App. 4th 110, 128 (1997).

1 least as between Daya Chandar and Meyer Wilson. But that does
2 not end the inquiry.

3 The waiver resulting from an "advice of counsel" defense is
4 an implied waiver, and because of that Bittaker instructs as
5 follows:

6 The court imposing the waiver does not order disclosure
7 of the materials categorically; rather, the court
8 directs the party holding the privilege to produce the
9 materials if it wishes to go forward with its [defense]
10 implicating them. The court gives the holder of the
privilege a choice: If you want to [defend against]
this claim, then you must waive your privilege to the
extent necessary to give your opponent a fair
opportunity to [challenge or refute the defense].

11 Bittaker, 331 F.3d at 720.

12 Consistent with Bittaker, the court would typically give
13 defendants the option of retaining the "advice of counsel"
14 defense and producing documents withheld under the attorney-
15 client and work-product privileges or amending the answer to
16 eliminate the defense and preclude the use of such documents in
17 this adversary proceeding. However, doing so here would be
18 futile because defendants have also failed to establish an
19 additional element necessary for both privileges to apply in the
20 first instance.

21 II. Existence of the Privileges.

22 An element of the attorney-client privilege is the existence
23 of an attorney-client relationship. In other words, "[f]irst and
24 foremost, the attorney-client privilege applies only if an
25 attorney-client relationship exists." Bare v. Cruz, 2012 WL
26 1138591, *3 (E.D. Pa. 2012).⁵ Similarly, if "the parties did not

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28 ⁵In order to establish the existence of the attorney-client
privilege, the Ninth Circuit requires proof of eight elements.

1 form an attorney-client relationship, there is no basis . . . to
2 assert . . . the work product doctrine." Sol v. Whiting, 2013 WL
3 12098752, *5 (D. Ariz. 2013) (citations omitted).⁶ Defendants
4 have not satisfied their burden on this element for either
5 privilege.

6 A. The Engagement Agreement violated § 362(a)(3) of
7 the Bankruptcy Code which means its it void and
8 which also means there is no contractual basis
9 shown for an attorney-client relationship.

10 Section 362(a)(3) of the Bankruptcy Code prohibits "any act
11 to obtain possession of property of the estate or of property
12 from the estate or to exercise control over property of the
13 estate[.]" 11 U.S.C. § 362(a)(3). Actions that violate the
14 automatic stay are void *ab initio*. Schwartz v. United States (In
15 re Schwartz), 954 F.2d 569, 570-72 (9th Cir. 1992); see also
16 Griffin v. Wardrobe (In re Wardrobe), 559 F.3d 932, 934 (9th Cir.
17 2009); In re Sundquist, 566 B.R. 563, 585 (Bankr. E.D. Cal.
18 2017). This includes so-called "technical" violations, *i.e.*,
19 acts that violate the automatic stay without knowledge of pending

20 "The attorney-client privilege exists where: '(1) [] legal
21 advice of any kind is sought (2) from a professional legal
22 adviser in his capacity as such, (3) the communications relating
23 to that purpose, (4) made in confidence (5) by the client, (6)
24 are at his instance permanently protected (7) from disclosure by
25 himself or by the legal adviser, (8) unless the protection be
26 waived.'" U.S. v. Richey, 632 F.3d 559, 566 (9th Cir. 2011)
27 (quoting U.S. v. Graf, 610 F.3d 1148, 1156 (9th Cir. 2010)); see
28 also Lopez v. Vieira, 688 F. Supp. 2d 1050, 1058 (E.D. Cal.
2010). The second and fifth elements contemplate the existence
of the attorney-client relationship.

29 ⁶Indeed, in Upjohn Co. v. U.S., 449 U.S. 383, 397 (1981),
the U.S. Supreme Court stated that the work-product privilege
protects from discovery "written statements, private memoranda
and personal recollections prepared or formed by an adverse
party's counsel *in the course of his legal duties*." Id. at 397
(emphasis added).

1 bankruptcy proceedings or the automatic stay. In re Lezzi, 504
2 B.R. 777, 792 (Bankr. E.D. Pa. 2014); In re Magallanez, 403 B.R.
3 558, 561 (Bankr. N.D. Ill. 2009); In re Brown, 282 B.R. 880, 883
4 (Bankr. E.D. Ark. 2002). Moreover, a later expiration or
5 termination of the automatic stay does not revive or validate a
6 void act resulting from a stay violation. See Sundquist, 566
7 B.R. at 585-86.

8 The claims against WGS identified in the Engagement
9 Agreement are based on conduct that occurred before the debtors
10 filed their chapter 7 petition. Those prepetition claims
11 undeniably became property of the estate when the debtors filed
12 their petition. See 11 U.S.C. § 541(a); Cusano v. Klein, 264
13 F.3d 936, 945 (9th Cir. 2001); Cobb v. Aurora Loan Services, LLC,
14 408 B.R. 351, 354 (Bankr. E.D. Cal. 2009) (citing cases). They
15 vested exclusively in the chapter 7 trustee, see 11 U.S.C. §
16 323(a), and at least while the bankruptcy case was open on
17 November 16, 2011, only the trustee had standing to prosecute
18 those claims. See Estate of Spirtos v. One San Bernardino Cnty.
19 Superior Court Case Numbered SPR 02211, 443 F.3d 1172, 1176 (9th
20 Cir. 2006) (bankruptcy code endows bankruptcy trustee with
21 exclusive right to sue on behalf of the estate).

22 Defendants' position in this adversary proceeding confirms
23 that the prepetition claims against WGS identified in the
24 Engagement Agreement were property of the estate when the
25 Engagement Agreement was signed on November 16, 2011. Throughout
26 this adversary proceeding, defendants have repeatedly asserted
27 that the prepetition claims against WGS identified in the
28 Engagement Agreement were abandoned under § 554(c) of the

1 Bankruptcy Code when the debtors' chapter 7 case was closed on
2 November 21, 2011. See Dkt. 43 at p. 3; see also Dkt. 10 at pp.
3 10-11. That issue is not decided by this memorandum and order;
4 however, defendants' theory is telling. Property of the estate
5 is a statutory element to any abandonment under Bankruptcy Code §
6 554. Thus, to the extent defendants assert that the prepetition
7 claims against WGS identified in the Engagement Agreement left
8 the estate on November 21, 2011, and then left through an
9 abandonment, defendants inherently recognize those prepetition
10 claims were property of the estate five days earlier when the
11 Engagement Agreement was signed on November 16, 2011.

12 Defendants also point out that the Engagement Agreement was
13 signed after their discharge was entered in October 2011, as if
14 to suggest that the entry of the discharge gave the debtors
15 authority and standing to administer property of the estate on
16 November 16, 2011. See Dkt. 43 at 4:1-3, 9:1-3. Not so. Entry
17 of the discharge does not terminate the automatic stay as to
18 property of the estate which remains protected by the automatic
19 stay after the discharge is entered and until it is no longer
20 property of the estate. Bigelow v. C.I.R., 65 F.3d 127, 128 (9th
21 Cir. 1995) ("Under § 362(c)(1), an automatic stay prohibits
22 "act[s] against property of the [bankruptcy] estate" following an
23 order of discharge. 11 U.S.C. § 362(c)(1)."); In re Rich, 544
24 B.R. 436, 440 n.6 (Bankr. E.D. Cal. 2016); In re Burke, 2016 WL
25 3536618, *3 (Bankr. D. Nev. 2016) ("When the Discharge Order was
26 entered on June 11, 2012, the automatic stay only terminated as
27 to the Debtor, but remained with respect to all property of the
28 Debtor's bankruptcy estate.").

1 The point is this: When the Engagement Agreement was signed
2 on November 16, 2011, the prepetition claims against WGS
3 identified in that agreement were property of estate. That makes
4 the Engagement Agreement, and the agreement by Meyer Wilson
5 therein to pursue the prepetition claims against WGS, an act to
6 obtain or exercise control over property of the estate. That act
7 - and thence the Engagement Agreement itself - violated §
8 362(a)(3) of the Bankruptcy Code. At a minimum, that means the
9 Engagement Agreement is void.⁷ And that also means the
10 Engagement Agreement cannot establish a contractual basis for an
11 attorney-client relationship. But again, that does not end the
12 inquiry.

13 B. Defendants have also failed to carry their burden
14 of establishing an implied-in-fact attorney-client
relationship.

15 Neither a retainer nor a formal agreement is required to
16 establish an implied-in-fact attorney-client relationship.
17 Farnham v. State Bar, 17 Cal. 3d 605, 612 (1976); Kane, Kane &
18 Kritzer, Inc. v. Altagen, 107 Cal. App. 3d 36, 40-42 (1980).
19 However, one of the most important criteria for finding an
20 implied-in-fact attorney-client relationship is the consulting
21 individual's expectation, as based on the appearance of the
22 situation to a reasonable person in the individual's position.
23 Responsible Citizens v. Superior Court, 16 Cal. App. 4th 1717,
24 1733 (1993). In other words, while the purported client's

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26
27 ⁷It is void even if Daya Chandar and Meyer Wilson were (or
28 they could claim they were) unaware that the prepetition claims
against WGS were still property of the estate on November 16,
2011, or that the debtors' chapter 7 case was open and pending on
that date. And it would remain void.

1 subjective view may have some relevance, the test of whether an
2 attorney-client relationship implicitly formed is ultimately a
3 question of law and an objective one. Sky Valley Ltd.

4 Partnership v. ATX Sky Valley Ltd., 150 F.R.D. 648, 652 (N.D.
5 Cal. 1993).

6 Defendants have failed to articulate how, if at all, it is
7 objectively reasonable for an individual chapter 7 debtor in a
8 pending and open bankruptcy case to believe that he may retain an
9 attorney to pursue prepetition claims that are property of the
10 estate, that by operation of federal bankruptcy law vested
11 exclusively in the chapter 7 trustee, and that as a matter of law
12 only the trustee had standing to prosecute. Nor have the
13 defendants articulated how it is objectively reasonable for an
14 individual chapter 7 debtor in an administratively insolvent case
15 to believe that he has standing to administer prepetition claims
16 that are property of the estate. Defendants offered a subjective
17 explanation during the hearing on the plaintiff's motion to
18 compel, *i.e.*, that Daya Chandar believed he retained Meyer Wilson
19 as his attorneys. But even if that is the case, by itself, that
20 subjective belief is insufficient to establish an implied-in-fact
21 attorney-client relationship.

22 III. Scope of Production Ordered

23 Having failed to establish two critical elements, defendants
24 have failed to carry their burden of proving that the attorney-
25 client and work-product privilege are applicable to plaintiff's
26 document request. Therefore, subject to the conditions and
27 modifications explained below, defendants will be ordered to
28 produce all documents that plaintiff requested within the scope

1 of the subject matter of the complaint and which were withheld
2 under the attorney-client and work-product privileges.

3 Defendants' production of documents will be subject to an
4 appropriate protective order. Plaintiff will be ordered to not
5 disclose documents that the defendants produce in compliance with
6 this order to any third-party (other than plaintiff's attorney)
7 and plaintiff shall not use any documents produced in any
8 proceeding other than this adversary proceeding without further
9 order of the court. The parties will be given an opportunity to
10 stipulate to an appropriate protective order that provides for
11 these terms and any other terms the parties deem appropriate. If
12 the parties are unable to agree on the terms of a protective
13 order, this matter may be brought before the court on three (3)
14 days' notice.

15 Within the foregoing parameters, the court turns to the
16 specific requests in this case.

17 Request No. 1 is overbroad in that it asks defendants to
18 produce all records, pleadings, and correspondence in the client
19 file. This could include matters outside the scope of the
20 complaint. The court will narrow this request to all records,
21 pleadings, and correspondence in the client file related to the
22 subject matter of the allegations in the complaint.

23 Request No. 2 is valid because it is limited to documents
24 related to the FINRA arbitration which relates to the central
25 allegations in the complaint.

26 Request No. 3 is valid because it relates to the adversary
27 proceeding referenced in Ex. A to the complaint and therefore is
28 part of the complaint.

1 Request No. 4 is overbroad in that it fails to satisfy the
2 "reasonable particularity" requirement of Federal Rule of Civil
3 Procedure 34(b)(1)(A), which is applicable by Federal Rule of
4 Bankruptcy Procedure 7034.

5 IV. Attorney's Fees and Costs

6 Federal Rule of Bankruptcy Procedure 7037, which
7 incorporates Federal Rule of Civil Procedure 37(a)(5)(C), permits
8 the court to "apportion the reasonable expenses for the motion
9 [to compel production]." Although not decided, the opposition
10 raised an unsettled issue which the court was required to
11 address. Moreover, because the requested documents were withheld
12 under a claim of privilege, defendants' written opposition,
13 nondisclosure, and objection to production were substantially
14 justified. Therefore, the court makes no award to either party
15 of attorney's fees and costs and apportions to each party their
16 own attorney's fees and costs incurred in connection with the
17 plaintiff's motion to compel.

18
19 **CONCLUSION**

20 For all the foregoing reasons,

21 IT IS ORDERED that plaintiff's motion to compel is GRANTED
22 IN PART AND DENIED IN PART:

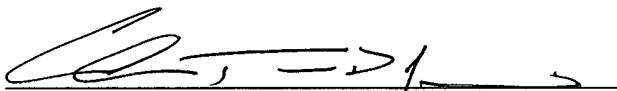
- 23 (1) GRANTED, and within fourteen (14) days of the entry of
24 this order defendants shall produce all documents
25 previously withheld under a claim of the attorney-
26 client and/or work-product privileges, as follows: (i)
27 documents in response to Request No. 1 as modified
28 hereinabove; (ii) documents in response to Request No.
2 (1) DENIED, and defendants' objection to the production of
documents under Request No. 4 is sustained.
(3) DENIED, as to any award to either party of attorney's

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fees and costs and the parties shall bear their own attorney's fees and costs incurred in connection with plaintiff's motion and defendants' opposition.

IT IS FURTHER ORDERED that the continued hearing set for November 14, 2017, at 9:30 a.m. is VACATED.

Dated: November 13, 2017.



UNITED STATES BANKRUPTCY JUDGE

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INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Barry H. Spitzer
980 9th Street, Suite 380
Sacramento CA 95814

Kristin L. Iversen
88 Kearny St 10th Fl
San Francisco CA 94108