UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

HALLMARK INSURANCE COMPANY,

Plaintiff,

v. **Case No: 6:16-cv-2063-Orl-37GJK**

MAXUM CASUALTY INSURANCE COMPANY,

Defendant.

ORDER

This cause came on for consideration on oral argument on August 10, 2017, on the following motion:

MOTION:	**PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND/OR IN CAMERA INSPECTION AND FOR SANCTIONS (Doc. No. 62)**
FILED:	**June 21, 2017**

THEREON it is **ORDERED** that the motion is **GRANTED IN PART AND DENIED IN PART**.

I. BACKGROUND.

This is a bad faith insurance action. Plaintiff is the excess insurer for Southern Pride. Doc. No. 10 at ¶ 7. Defendant is the primary insurer. *Id.* at ¶ 6. On February 8, 2013, Andrea Salickram was injured when she drove into the back of a tractor trailer owned by Southern Pride and driven by Travis Crawford. *Id.* at ¶ 5. Defendant "retained attorney Chris Barkas of the Carr Allison firm to defend Southern Pride and Mr. Crawford." *Id.* at ¶ 12. Mr. Barkas was retained in February 2013. Doc. No. 66 at 2. In April 2016, Plaintiff became involved in the underlying action. *Id.* at

14; Doc. No. 10 at ¶ 27. Around April 13, 2016, Defendant retained Hinshaw & Culbertson to represent it against any possible bad faith claims from Plaintiff. Doc. No. 62-3 at 2; Doc. No. 62-4 at 10; Doc. No. 62-5.

On May 20, 2016, the claim against Southern Pride was settled for $1.4 million over the primary insurance policy, which Plaintiff paid.[1] Doc. No. 62 at ¶ 5. Plaintiff brings this suit against Defendant to recover the $1.4 million, alleging that there would not have been a settlement in excess of the primary insurance if Defendant had promptly settled the case. Doc. No. 10 at ¶¶ 36-41. Plaintiff alleges one claim against Defendant for equitable subrogation. *Id.* at 5-7. Defendant asserts several affirmative defenses, including the following:

> Fourteenth Affirmative Defense: [Defendant] asserts that Salickram's damages were reasonably evaluated by defense counsel to be significantly lower than [Defendant]'s policy limit.
>
> Fifteenth Affirmative Defense: [Defendant] asserts that liability for Southern Pride and Crawford in the underlying action was highly contested and a complete defense verdict was considered more than likely by defense counsel.
>
> Sixteenth Affirmative Defense: [Defendant] asserts that its handling of the underlying action was commensurate with the relevant facts and in reliance on defense counsel's analysis and recommendations regarding settlement, liability, and the value of Salickram's claim.

Doc. No. 47 at 7.

Plaintiff sent a request to produce to Defendant, asking for "[a]ny and all non-privileged portions of [Defendant]'s claims file(s) pertinent to the Salickram v. Crawford claim." Doc. No. 62-2 at 10. Defendant objected based on the request being vague, ambiguous, and overbroad;

[1] In the Amended Complaint, the settlement date is listed as May 18, 2016, Doc. No. 10 at ¶ 29, but it is listed as May 20, 2016, in the Motion to Compel, Doc. No. 62 at ¶ 5. At the hearing on the Motion to Compel, the Court stated the settlement date was May 20, 2016, and neither party objected.

irrelevant;[2] and requesting information protected by the attorney-client privilege, work product doctrine, and trade secret privilege. *Id.*

II. MOTION TO COMPEL.

On June 21, 2017, Plaintiff filed a Motion to Compel Production of Documents and/or an In Camera Inspection and for Sanctions (the "Motion"). Doc. No. 62. Plaintiff requests that the Court overrule Defendant's objections and award sanctions, including attorney's fees, to it for Defendant's discovery conduct. Doc. No. 62 at 20. On July 10, 2017, Defendant filed a response to the Motion, asking the Court to deny it and award Defendant its attorney's fees incurred in responding to the Motion, or, in the alternative, delaying production of any documents until after an in camera review. Doc. No. 66 at 17-18. On August 7, 2017, with the Court's permission, Plaintiff filed a reply to the response. Doc. No. 74. On August 10, 2017, the Court held a hearing on the Motion, at which counsel for both parties appeared. Doc. No. 75.

A. Work Product Protection

While Rule 501, Federal Rules of Evidence, provides that a state's law of privilege governs in federal diversity cases, the work product doctrine is a limitation on discovery in federal cases and, thus, federal law provides the primary decisional framework. *Kemm v. Allstate Prop. & Cas. Ins. Co.*, Case No. 8:08-cv-299-T-30EAJ, 2009 WL 1954146, at *2 (M.D. Fla. July 7, 2009) (citing *Auto Owners Ins. Co. v. Totaltape, Inc.*, 135 F.R.D. 199, 201 (M.D. Fla. 1990)); *but see Cozort v. State Farm Mut. Auto. Ins. Co.*, 233 F.R.D. 674, 676 (M.D. Fla. 2006) (applying Florida law in determining whether the work product protection shielded documents from discovery in a bad faith action).[3] Under federal law, Rule 26(b)(3)(A) governs the application of the work product

[2] As Defendant does not raise its vague, ambiguous, overbroad, and relevancy objections in its response to the Motion, Doc. No. 66, the Court does not consider them.

[3] Although expressing the opinion that Rule 26 did not apply, in *Cozort* the Court performed an alternative analysis

protection, and states:

> Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:
>
> (i) they are otherwise discoverable under Rule 26(b)(1); and
>
> (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

Rule 26(b)(3) further provides that if the court orders discovery of the material described above, "it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation." The party asserting the work product protection bears the initial burden of demonstrating that the requested materials are protected work product. *U.S. Fid. & Guar. Co. v. Liberty Surplus Ins. Corp.*, 630 F. Supp. 2d 1332, 1336-1337 (M.D. Fla. 2007). If the work product protection applies to the materials being sought, then the moving party must demonstrate that the materials are discoverable under Rule 26(b)(1), there is a substantial need for the materials to prepare its case, and that it cannot, without undue hardship, obtain the substantial equivalent by other means.[4] Fed. R. Civ. P. 26(b)(3)(A).

While federal law provides the framework for assessing the applicability of the work product doctrine and whether it has been overcome in a diversity case, state law nevertheless

---

pursuant to Rule 26(b)(3), which yielded the same result. *Cozort*, 233 F.R.D. at 676.

[4] There are two different types of work product—fact and opinion. "While opinion work product enjoys almost absolute immunity, extraordinary circumstances may exist that justify a departure from this protection." *Williamson v. Moore*, 221 F.3d 1177, 1182 (11th Cir. 2000). Several courts in this District have found opinion work product to be discoverable in an insurance bad faith case. *Cozort*, 233 F.R.D. at 676-77 (finding that based on the reasoning in *Ruiz* exceptional circumstances justified discovery of the mental impressions of the insurer's counsel in a bad faith action); *Mendez v. Unitrin Direct Prop. & Cas. Ins. Co.*, Case No. 8:06-cv-563-T-24MAP, 2006 WL 4449538, at *2 (M.D. Fla. Dec. 8, 2006) (conducting in camera review and ordering production of "classic opinion work product" that dealt solely with underlying state court litigation). Neither party in this proceeding distinguishes between fact work product and opinion work product.

remains instructive in determining whether there is a substantial need for materials otherwise protected by the privilege. *See Gates v. Travelers Commercial Ins. Co.*, Case No. 3:12-cv-349-J-32TEM, 2012 WL 6186415, at *3 (M.D. Fla. Dec. 12, 2012) (considering state and federal authority when applying Rule 26(b)(3), Federal Rules of Civil Procedure, in determining applicability of work product protection in insurance bad faith action); *Cozort*, 233 F.R.D. at 676 (same). Specifically, state law provides guidance as to what materials would be essential in proving the elements of a state cause of action or defending against a state cause of action. *See Gates*, No. 3:12-cv-349-J-32TEM, 2012 WL 6186415 at *3 (examining issues presented in state law claim when determining whether there is a substantial need for the party to prepare its case as set forth in Rule 26(b)(1)).

Both Florida state courts and federal courts have consistently held that the work product protection is overcome by the substantial need of the plaintiffs in bad faith cases. *Allstate Indem. Co. v. Ruiz*, 899 So. 2d 1121, 1130 (Fla. 2005); *McMullen v. GEICO Indem. Co.*, No. 14-CV-62467, 2015 WL 2226537, at *4 (S.D. Fla. May 13, 2015). The work product doctrine does protect information that is not related to the underlying claim, however, such as information produced "to assist the insurer's defense of itself in a bad-faith lawsuit . . . ." *Trujillo v. USAA Cas. Ins. Co.*, No. 11-80320-CIV, 2012 WL 3516511, at *4 (S.D. Fla. Aug. 14, 2012); *Baxley v. Geico Gen. Ins. Co.*, No. 5:09CV343/RS/MD, 2010 WL 9549253, at *1 (N.D. Fla. June 17, 2010).

Defendant argues that although work product-protected materials are discoverable in a bad faith action, those materials are not discoverable if they were "generated to assist the insurer's defense of itself in a bad faith lawsuit . . . ." Doc. No. 66 at 14. Defendant contends that any materials created on or after April 6, 2016, were generated to assist its defense in this bad faith lawsuit, as this is when Plaintiff became involved in the underlying action and thus when

Defendant "anticipated a potential bad faith claim against it." *Id.*

The Court finds that, under *Ruiz* and the facts of this case, Plaintiff satisfied the requirements Rule 26(b)(3) for obtaining discovery of the work product-protected documents listed on the privilege log regarding the *underlying action*. The pertinent date for such materials is May 20, 2016, however, as this is the date that the underlying action was settled. Doc. No. 62 at ¶ 5; *Ruiz*, 899 So. 2d at 1129-30. Furthermore, the work product doctrine does protect against discovery any such documents prepared regarding the bad faith claim against Defendant.

B. Attorney-Client Privilege

Federal courts sitting in diversity cases follow state law to determine whether the attorney-client privilege applies. Under the Florida Supreme Court case *Genovese v. Provident Life & Accident Insurance Co.*, 74 So. 3d 1064, 1068 (Fla. 2011), *as revised on denial of reh'g* (Nov. 10, 2011), "when an insured party brings a bad faith claim against its insurer, the insured may not discover those privileged communications that occurred between the insurer and its counsel during the underlying action." *Genovese* applies to third party bad faith discovery disputes. *Maharaj v. GEICO Cas. Co.*, 289 F.R.D. 666, 670 (S.D. Fla. 2013), *aff'd*, No. 12-80582-CIV, 2013 WL 1934075 (S.D. Fla. Apr. 5, 2013) (although *Genovese* limited its holding to first party bad faith litigation, "[b]ased on the Florida Supreme Court's language in *Ruiz* and the rationale in *Genovese*, . . . the holding in *Genovese*, which protects attorney-client privileged documents in an insurer's claim file in a first-party bad faith action, should be equally applicable in a third-party bad faith action. . . . [T]he Court sees no reason why the legal analysis utilized in *Genovese* regarding the application of the attorney-client privilege to the insurer's claims file would not be equally relevant in a third-party bad faith case. In fact, it would seem incongruous to uphold the attorney-client privilege in a first-party bad faith action and eviscerate it in a third-party bad faith action."); *Boozer*

v. Stalley, 146 So. 3d 139, 148 (Fla. 5th DCA 2014) (holding that attorney-client privilege applies to protect discovery in third party bad faith litigation).

Plaintiff argues in its reply that "*Genovese* is expressly limited to first-party bad faith actions brought pursuant to § 624.155, Fla. Stat." Doc. No. 74 at ¶ 12. Plaintiff asserts that in a first party bad faith action, the insurer does not owe its insured a fiduciary duty because their positions are adversarial to each other, but in a third party bad faith action, the insurer owes a fiduciary duty to its insured because the insurer controls the settlement negotiations and the insured's defense and may expose the insured to an excess judgment. *Id.* The Court rejects this argument; as this case aptly demonstrates, in a third party bad faith action, the insurer is in an adversarial relationship with the opposing party, whether the opposing party is the insured or an entity stepping into the insured's shoes. Thus, the attorney-client privilege applies to documents between Defendant and its counsel regarding the underlying action.

In this case, Defendant's counsel represented at the hearing that Defendant retained Hinshaw & Culbertson in April 2016 to represent Defendant in a possible bad-faith action. Thus, any communications between Defendant and Hinshaw & Culbertson regarding a bad-faith claim against Defendant are protected by the attorney-client privilege.

C. Waiver

"[A] client may voluntarily waive [the attorney-client privilege] expressly or by implication by voluntarily disclosing or consenting to disclosure of the privileged matter or a 'significant part' thereof." *Batchelor v. Geico Cas. Co.*, 142 F. Supp. 3d 1220, 1243 (M.D. Fla. 2015). Under Federal Rule of Evidence 502(a), a disclosure waives the attorney-client privilege as to undisclosed communications if "the waiver is intentional; the disclosed and undisclosed

communications . . . concern the same subject matter;" and the disclosed and undisclosed communications "ought in fairness to be considered together."

Defendant argues that there was no wavier of its attorney-client privilege due to its disclosure of some documents to Plaintiff because Southern Pride and Mr. Crawford, Defendant's co-clients with Carr Allison in the underlying action, did not waive the privilege, and the privilege cannot be waived unilaterally by one co-client. Doc. No. 66 at 11-12.

Around April 13, 2016, Defendant retained Hinshaw & Culbertson to represent it against any possible bad faith claims from Plaintiff. Doc. No. 62-3 at 2; Doc. No. 62-4 at 10; Doc. No. 62-5. In a letter to Plaintiff dated May 6, 2016, Hinshaw & Culbertson stated the following:

> When [Defendant] first learned about [Plaintiff's] policy, we *immediately instructed defense counsel Christopher Barkas to provide you with everything known by us and defense counsel* in this matter. *[Defendant's] goal has been and continues to be sharing all relevant information* that will assist [Plaintiff] in properly evaluating the likely exposure in this matter and responding prudently. Indeed it is our understanding that *Mr. Barkas has gone above and beyond in providing you with a complete briefing of this case*. *We know he met with you personally and has also provided extensive documentation, including his complete 19 page evaluation dated April 18, 2016*. If you are not willing to accept our representations, *we encourage you to follow-up with your insured's defense counsel, Mr. Barkas*, who can confirm everything we have communicated.

Doc. No. 62-5 at 1 (emphasis added). Copies of this letter were sent to Mr. Barkas, Southern Pride, and Mr. Crawford.[5] *Id.* at 4. There is no evidence before the Court that Defendant, Mr. Barkas, Southern Pride, or Mr. Crawford objected to Mr. Barkas's disclosures or to Hinshaw & Culbertson telling Plaintiff that it would disclose "everything known by us and defense counsel."

[5] Hinshaw & Culbertson also state in the letter, "So that [Plaintiff] has all the information simultaneously with [Defendant], we would suggest you attend the depositions and you are of course always free to contact Mr. Barkas. He represents your insureds, Southern Pride and Mr. Crawford, not Maxum." Doc. No. 62-5 at 3. This contradicts Defendant's argument in its response to the Motion that Defendant was Mr. Barkas's client. Doc. No. 66 at 11-12.

In *Chase v. City of Portsmouth*, 236 F.R.D. 263, 268 (E.D. Va. 2006), a city councilmember emailed his fellow councilmembers and the city attorney that he would be discussing a letter from the attorney at the public city council meeting the next day. At the meeting, the city councilmember did just that. *Id.* In later litigation, when he was questioned about these remarks during his deposition, the councilmember attempted to avoid answering by asserting the attorney-client privilege. *Id.* In finding that the privilege was waived, the court noted that neither the city attorney nor the other councilmembers objected to the comments, either before the public meeting when they had notice of what would be said, or during the meeting itself. *Id.* The court rejected the argument that one councilmember could not alone waive the privilege where they all had notice of the disclosure and none of them objected to it. *Id.* at 269. This failure "evinces an intent that this letter was not to be protected." *Id.* at 268 (citing *United States v. Suarez*, 820 F.2d 1158, 1160-61 (11th Cir. 1987)). Thus, the privilege was waived. *Id.*

When Hinshaw & Culbertson told Plaintiff that Mr. Barkas was instructed to give Plaintiff everything, and none of Mr. Barkas's clients objected to this instruction, the attorney-client privilege was waived as to all of Mr. Barkas's clients. As in *Chase v. City of Portsmouth*, the Court views the lack of objections as an intent to waive the privilege. Additionally, the waiver was not limited, as Hinshaw & Culbertson represented that Plaintiff could have everything. Doc. No. 62-5 at 1. This is not a case where less than all of the clients have waived the privilege; instead, it is a case where Carr Allison's disclosures and Hinshaw & Culbertson's confirmation of the disclosures without objection from any of the clients waives the privilege as to all of the clients. The Court also finds that the disclosed communications, i.e., Mr. Barkas's evaluation report, concern the same subject matter as the documents listed on the privilege logs, and that they ought in fairness to be considered together. The requirements of Federal Rule of Evidence 501 have been met, and

the Court finds that the attorney-client privilege does not protect those communications between Defendant and Carr Allison.

"[U]nder the 'at issue' doctrine, the discovery of attorney-client privileged communications between an insurer and its counsel is permitted where the insurer raises the advice of its counsel as a defense in the action and the communication is necessary to establish the defense." *Genovese*, 74 So. 3d at 1069; *see also GAB Bus. Servs., Inc. v. Syndicate 627*, 809 F.2d 755, 759 (11th Cir. 1987) (finding that insurer "waive[d] its attorney-client privilege when it inject[ed] into this litigation an issue that require[d] testimony from its attorneys on the reasonableness of its attorneys' conduct."). Here, Defendant asserts three affirmative defenses that allege its reliance on the advice, evaluations, and recommendations of "defense counsel." Doc. No. 47 at 7. The Court interprets the phrase "defense counsel" to refer to the Carr Allison firm, which was retained to provide a defense to Defendants' insureds. Doc. No. 10 at ¶ 12. Thus, Defendant also waived its attorney-client privilege as to its communications with the Carr Allison firm regarding the underlying action by pleading affirmative defenses that put those communications at issue.

D. Trade Secret Privilege

Although Defendant asserts the trade secret privilege, it fails to support it with any evidence. As the party resisting discovery, Defendant bears the burden to show that the information sought is confidential and that the disclosure would be harmful. *Glober v. City of Leesburg*, 197 F.R.D. 519, 521 (M.D. Fla. 2000). Defendant did not move for a protective order or offer any evidence, such as an affidavit, showing that responding to the request to produce would constitute disclosure of its trade secrets or that the information is confidential. Rather, Defendant offered only bare-bones conclusory statements that documents responsive to the request are confidential

and constitute trade-secrets. Doc. No. 66 at 12-13. Thus, its assertion of the trade secret privilege does not prevent discovery of the documents for which it was asserted. Nevertheless, in an abundance of caution, Defendant is permitted to designate documents as trade secrets or confidential and their use is limited to this case.

E. Requests for Sanctions

The Court finds that neither party is entitled to an award of sanctions in connection with the Motion because the positions of both parties were not substantially justified. *See* Fed. R. Civ. P. 37(a)(5)(ii). Plaintiff's position that the attorney-client privilege does not apply in this bad faith case was not substantially justified based on *Genovese* and the cases extending it to third party bad faith actions, and Defendant's position that there was no waiver of the attorney-client privilege was not substantially justified based on its affirmative defenses and the actions of its counsel in disclosing and offering to disclose protected information to Plaintiff.

III. CONCLUSION.

Based on the above, the Court sets forth its rulings as to each document listed on Defendant's Privilege Log, Doc. No. 62-3, and Defendant's Supplemental Privilege Log, Doc. No. 62-4. The parties fail to show at this time that an in camera review is warranted. *Porter v. Ray*, 461 F.3d 1315, 1324 (11th Cir. 2006) (indicating that the party requesting an in camera review must demonstrate the need for such a review). At the hearing, Defendant's counsel represented that Hinshaw & Culbertson's scope of engagement was solely limited to handling the bad faith claim and, therefore, did not involve the investigation or handling of the underlying claim or case (counsel did express that some communications between Defendant and Hinshaw & Culbertson may be discoverable because those included communications with Carr Allison.) Defendant is cautioned that if it is discovered that the scope of Hinshaw & Culbertson's representation exceeded

that which was represented to the Court, then Defendant has an obligation to disclose that information to the Court, as Defendant may not assert work product protection regarding the investigation or handling of the underlying claim or case. *Batchelor v. Geico Cas. Co.*, 142 F. Supp. 3d 1220, 1242 (M.D. Fla. 2015) ("Insurers that retain attorneys to defend them in coverage and bad faith litigation may assert [the attorney-client privilege] as to communications regarding litigation, but not with respect to communications concerning claims-handling.").[6]

One reason for the difficulty in ascertaining which documents listed on the privilege logs should be produced and which should be protected is that counsel did not provide sufficient descriptions of the documents. For an instructive discussion on what the Court needs to effectively consider claims of privilege and protection from discovery, counsel should review *Craig v. Rite Aid Corp.*, No. 4:08-CV-2137, 2012 WL 426275 (M.D. Penn. Feb. 9, 2012), specifically page *20, where the court explains the information that is missing for a determination of whether documents involving non-attorneys may qualify for protection under the work product doctrine. Sufficient information must be disclosed for opposing counsel to ascertain whether the protections against discovery apply. Fed. R. Civ. P. 26(b)(5)(A)(ii).

In sum, documents regarding the investigation or handling of the underlying claim or case must be produced, as the work product protection does not apply and the attorney-client privilege was waived. Documents regarding these subjects should be produced even if they were generated after May 20, 2016. Additionally, the attorney-client privilege has been waived regarding any

[6] For an example of how an inaccurate disclosure regarding the scope of counsel's representation in a bad faith case can derail a case, see *Batchelor*, 142 F. Supp. 3d at 1227, 1245 (M.D. Fla. 2015), where the insurance company's counsel represented to the Court that the retained attorney's role was limited to defending the uninsured motorist claim, so the Court did not conduct an in camera review of the contested documents, but at trial the retained attorney represented that he investigated the uninsured motorist claim, which testimony resulted in a mistrial. It is thus imperative for counsel to review the scope of Hinshaw & Culbertson's representation of Defendant.

documents given to or generated by Carr Allison before the date of settlement. Plaintiff, however, did not waive the attorney-client privilege or work product protection regarding its communications solely with Hinshaw & Culbertson regarding the bad faith claim.

Accordingly, it is **ORDERED** that:[7]

I. The Motion (Doc. No. 62) is **GRANTED** as to the following documents:

A. As listed on Defendant's Privilege Log (Doc. No. 62-3):

1. PRIVMXM 000001 through 000108

2. PRIVMXM 000113 through 000130

3. PRIVMXM 000152 through 000198

4. PRIVMXM 000208 through 000213

B. As listed on Defendant's Supplemental Privilege Log (Doc. No. 62-4):

1. SUPPRIV 000001 through 000547

2. SUPPRIV 000652 through 000671

3. SUPPRIV 000713 through 000715

4. SUPPRIV 000723 through 000735

5. SUPPRIV 000771 through 000783

6. SUPPRIV 000794 through 000823

7. SUPPRIV 000851 through 000877

8. SUPPRIV 000884 through 000929

[7] In an effort to expedite the progress of this litigation, the Court announced its rulings on the documents listed on Defendant's Supplemental Privilege Log at the hearing. Thus, the Court did not address Defendant's Privilege Log during the hearing, but does so in this Order. To the extent that there is any conflict between the Court's oral pronouncements and this Order, the provisions of this Order prevail.

C. Defendant shall produce the documents listed above to Plaintiff on or before August 25, 2017;

II. After a careful review of the following documents, in light of the Court's rulings, if Defendant still contends that the documents, or only portions of the documents, are protected from discovery, then Defendant shall supplement the privilege logs on or before August 21, 2017, with information commensurate with the requirements enumerated in *Craig v. Rite Aid Corp.*, No. 4:08-CV-2137, 2012 WL 426275 (M.D. Penn. Feb. 9, 2012),[8] and, if appropriate, request an in camera review:

A. As listed on Defendant's Privilege Log (Doc. No. 62-3):

1. PRIVMXM 000147 through 000151
2. PRIVMXM 000199 through 000203
3. PRIVMXM 000332 through 000456
4. MXM 000184 through 000219

B. As listed on Defendant's Supplemental Privilege Log (Doc. No. 62-4):

1. SUPPRIV 000594 through 000649
2. SUPPRIV 000693 through 000712
3. SUPPRIV 000736 through 000740
4. SUPPRIV 000759 through 000765
5. SUPPRIV 000767 through 000770
6. SUPPRIV 000844 through 000847

[8] Close attention should be paid to the portions of the *Rite Aid* opinion detailing submitting "declarations addressing in a particularized way the application of the privilege to a specific document . . . ." No. 4:08-CV-2137, 2012 WL 426275, at *8.

7. 2NDSUP 000275 through 000310

III. The following documents are protected from discovery:

A. As listed on Defendant's Privilege Log (Doc. No. 62-3):

1. PRIVMXM 000109 through 000112

2. PRIVMXM 000131 through 000146

3. PRIVMXM 000204 through 000207

4. PRIVMXM 000214 through 000331

5. PRIVMXM 000457 through 000482

B. As listed on Defendant's Supplemental Privilege Log (Doc. No. 62-4):

1. SUPPRIV 000548 through 000593

2. SUPPRIV 000650 through 000651

3. SUPPRIV 000672 through 000692

4. SUPPRIV 000716 through 000722

5. SUPPRIV 000741 through 000758

6. SUPPRIV 000766

7. SUPPRIV 000784 through 000793

8. SUPPRIV 000824 through 000843

9. SUPPRIV 000848 through 000850

10. SUPPRIV 000878 through 000883

IV. In all other respects, the Motion is **DENIED**.

DONE and **ORDERED** in Orlando, Florida, on August 14, 2017.

GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record
Unrepresented Parties