

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-mc-00225-RBJ-KLM

JENNIFER WEDDLE,

Movant,

v.

LULA WILLIAMS,
GLORIA TURNAGE,
GEORGE HENGLE,
DOWIN COFFY, and
MARCELLA P. SINGH,
on behalf of themselves and all others similarly situated,

Respondents.

REPLY IN SUPPORT OF MOTION TO QUASH

Even if Plaintiffs¹ agreed to narrow their Subpoena's scope, as they now state they have, *Opp'n to Mot. to Quash* [#12] at 2, the Subpoena would still seek information that is privileged, confidential, irrelevant and disproportionate to the underlying litigation, and not within Ms. Weddle's control. Ms. Weddle has never represented Mr. Martorello personally or given him legal advice in an individual capacity. *Decl. of Jennifer Weddle*, attached as Ex. C, at ¶ 4.² Mr. Martorello therefore has no privilege to waive, and Ms. Weddle possesses no information relevant to his good-faith defense. Even if he could validly waive privilege as to Bellicose, Ms.

¹ Respondents are the plaintiffs in the litigation from which their subpoena issued, and this reply refers to them as "Plaintiffs."

² The motion to quash mistakenly states that "Ms. Weddle has represented Mr. Martorello and his companies." *Mot. to Quash* [#1] at 7. In fact, before 2018, Greenberg Traurig had not given Mr. Martorello legal advice in an individual capacity. Ex. C, at ¶ 4. And that legal advice relates only to another class-action lawsuit. *Id.*

Weddle and Greenberg Traurig deleted the client files for Bellicose, as required by a 2015 merger contract between that entity and the Lac Vieux Desert Band of Lake Superior Chippewa Indians (“the Tribe”). *Id.* at ¶¶ 7-8.

I. ARGUMENT

A. Plaintiffs’ Subpoena Impermissibly Seeks Documents and Communications That are Privileged and Confidential, Even if Narrowed

Even if Plaintiffs “agreed to limit their Subpoena to communications and information relating to the individuals and entities involved in [*Williams*],” *Opp’n to Mot. to Quash* [#12] at 2, as they now say they do, the documents they seek would still be privileged and confidential. Since 2011, Greenberg Traurig has represented Mr. Martorello’s entities, including Bellicose, SourcePoint VI LLC, and Eventide Credit Acquisitions, LLC, in certain matters. *Aff. of Jennifer Weddle* [#1-1] at ¶ 6. And in 2018, Mr. Martorello individually became a Greenberg Traurig client. Ex. C, at ¶ 4. None of these present or former clients has waived privilege as to Greenberg Traurig’s representation.³

Plaintiffs offer no argument as to why their narrowed demand would not infringe on the privilege held by these clients. Instead, they contend that Mr. Martorello has waived the attorney-client privilege individually, and that the information the Subpoena seeks is relevant to his good-faith defense. *Opp’n to Mot. to Quash* [#12] at 9-12. But Mr. Martorello has no such privilege to waive over legal advice given before the 2015 merger and for years after; he became a Greenberg Traurig client individually only in 2018. Ex. C, at ¶ 4. Before then, Greenberg Traurig had not given him legal advice in an individual capacity. *Id.* While a *client*, as the holder

³ As a result of the 2015 merger, the Tribe holds any privilege relating to Greenberg Traurig’s representation of Bellicose, and the Tribe has not waived its privilege.

of the attorney-client privilege, may waive the privilege expressly or impliedly, *e.g.*, *State Farm Fire & Cas. Co. v. Griggs*, 419 P.3d 572, 575 (Colo. 2018), Mr. Martorello was not a Greenberg Traurig client before 2018. Thus, he cannot validly waive the attorney-client privilege as to any legal advice that Greenberg Traurig gave to its clients in the years leading up to the 2015 merger.

Plaintiffs also fail to respond at all to Ms. Weddle’s argument that she may not, consistent with Colorado Rule of Professional Conduct 1.6, disclose confidential documents. Ms. Weddle “shall not reveal information relating to the representation of a client unless the client gives informed consent,” Colo. RPC 1.6(a), which her and Greenberg Traurig’s clients have not.

Because the Subpoena, even if narrowed, impermissibly seeks the disclosure of privileged and confidential material, this Court must quash it. Fed. R. Civ. P. 45(d)(3)(A)(iii).

B. Plaintiffs Fail to Show How Their Subpoena Satisfies the Relevance and Proportionality Requirements, Even if Narrowed

Plaintiffs respond to Ms. Weddle’s relevance and proportionality arguments, *Mot. to Quash* [#1] at 9-10, only in part. In response to the relevance argument, Plaintiffs assert that Mr. Martorello’s assertion of a good-faith defense makes the information they request relevant. *Opp’n to Mot. to Quash* [#12] at 12. And in response to the proportionality argument, they state that they “were unable to obtain many crucial documents because they were destroyed.” *Id.* at 11 (citing [#11-5]). Both responses fail to establish how Plaintiffs’ Subpoena, even if narrowed as they now propose, satisfies the relevance and proportionality requirements.

Plaintiffs’ proposed demand of “communications and information relating to the individuals and entities involved in [Williams],” *Opp’n to Mot. to Quash* [#12] at 2, goes well beyond what is relevant to the claims and defenses in *Williams*. As stated, Greenberg Traurig has represented or is representing Mr. Martorello and his entities in certain matters. Even if Mr.

Martorello could validly waive the privilege as to Greenberg Traurig's representation of Bellicose before the 2015 merger, Plaintiffs make no showing as to why their Subpoena, even if narrowed, can validly demand the production of information relating to *other* Greenberg Traurig matters. Even with their proposed narrowed demand, Plaintiffs have failed to show, as they must, that their Subpoena satisfies Rule 26's relevance requirement.

The same is true for Rule 26's proportionality requirement. Plaintiffs argue that their demands are proper because they "were unable to obtain many crucial documents because they were destroyed." *Opp'n to Mot. to Quash* [#12] at 11 (citing [#11-5]). This response offers only a vague reference to Plaintiffs' attempts to obtain discovery from Mr. Martorello. Absent from Plaintiffs' response is any discussion of its attempts to obtain discovery from the Tribe, which has asked the Fourth Circuit to stay discovery pending its appeal of the *Williams* court's denial of its assertion of tribal sovereign immunity. *See Williams, et al. v. Big Picture Loans, LLC, et al.*, No. 18-1827 (4th Cir.), *Mot. to Stay* [#48-1] at 8-9. If the Fourth Circuit stays discovery, Plaintiffs could not subvert that stay by seeking information in Ms. Weddle's possession to which the Tribe claims privilege. If the Fourth Circuit declines to stay discovery, Plaintiffs could seek information relating to Greenberg Traurig's representation of Bellicose from the Tribe. Plaintiffs make only a partial showing as to why they cannot obtain discovery from a party, so they fail to show that their Subpoena seeks discovery proportional to the needs of their case. Accordingly, even Plaintiffs' narrowed demands fail to the proportionality requirement.

Notable too is Plaintiffs' lack of response to Ms. Weddle's argument that the information Plaintiffs seek is within the clients' control and must be demanded from them. *Mot. to Quash* [#1] at 8-9. Ms. Weddle does not personally control or possess her clients' files. *See Colo. RPC*

1.16(d). And she has “no responsive documents that are personal or unrelated to [her] employment by Greenberg Traurig.” *Aff. of Jennifer Weddle* [#1-1] at ¶ 8. Yet Plaintiffs directed their Subpoena at her, demanding that she produce documents responsive to their incredibly broad requests, which, even if narrowed, implicate Greenberg Traurig attorneys across the country. Plaintiffs cannot demand that Ms. Weddle produce documents clearly not within her control, but instead must demand them from the clients themselves, to the extent they may lawfully do so.

C. Compliance with Plaintiffs’ Subpoena Would Impose an Undue Burden on Ms. Weddle, Even if Narrowed

Greenberg Traurig deleted or disposed of files from its Bellicose matters in 2016. *Ex. C*, at ¶ 8. Yet even Plaintiffs’ narrowed demands seek much more than those files, and compliance would impose an undue burden on Ms. Weddle. It would be unduly burdensome for Ms. Weddle to sort through the files in Greenberg Traurig’s 11 matters relating to Mr. Martorello or his entities, nine of which are multi-year representations involving numerous Greenberg Traurig attorneys, current and former. *Aff. of Jennifer Weddle* [#1-1] at ¶ 6. Plaintiffs demand too much, especially given that Ms. Weddle is not a party to the action and Plaintiffs make no showing of their efforts to obtain the documents from the Tribe. The Court must quash even the narrowed Subpoena for this reason too. Fed. R. Civ. P. 45(d)(3)(A)(iv).

II. CONCLUSION

For the reasons stated in this reply and in her motion to quash, Ms. Weddle respectfully requests that the Court quash Plaintiffs’ Subpoena.

Dated: January 24, 2019

Respectfully submitted,

s/ William D. Hauptman

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Attorneys for Movant Jennifer Weddle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 24, 2019, I electronically filed the foregoing **REPLY IN SUPPORT OF MOTION TO QUASH** with the Clerk of Court via the CM/ECF System, which will send electronic notice of the same to the following counsel of record:

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I further certify that the following counsel for interested parties were served with the foregoing via email as follows:

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s/ William D. Hauptman

Exhibit C

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on behalf of themselves and all others similarly situated,

Respondents.

DECLARATION OF JENNIFER WEDDLE

I, Jennifer Weddle, hereby state and declare the following.

1. I am over twenty-one years of age, of sound mind, and competent to testify.

Unless otherwise stated, I have personal knowledge of the facts stated in this declaration.

2. I am a shareholder in the Denver office of Greenberg Traurig, LLP (“Greenberg Traurig”) and the Co-Chair of Greenberg Traurig’s nationwide American Indian Law Practice, a role I have held since I joined the firm in 2009.

3. Between 2011 and 2015, Greenberg Traurig represented Bellicose Capital, LLC (“Bellicose”). At that time, Matt Martorello was a principal of Bellicose. In the course of that representation, Greenberg Traurig created and acquired documents relating to that representation and had communications regarding Bellicose with Mr. Martorello and other persons and entities.
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4. Mr. Martorello individually became a client of Greenberg Traurig only in 2018, when he retained Greenberg Traurig as counsel in *Cumming et al. v. Big Picture Loans, LLC et al.*, No. 5:18-cv-03476 (N.D. Cal.), a class-action lawsuit with allegations nearly identical to those that the issuers of the Subpoena assert in their Eastern District of Virginia litigation. Prior to that time, Greenberg Traurig had not given Mr. Martorello legal advice in an individual capacity.

5. In 2016, Mr. Martorello, on behalf of Bellicose, informed Greenberg Traurig that Bellicose had entered into an Agreement and Plan of Merger with the Lac Vieux Desert Band of Lake Superior Chippewa Indians (“the Tribe”), and that, as required by the merger contract, he was required to certify that all company files were to be transferred to the Tribe or destroyed.

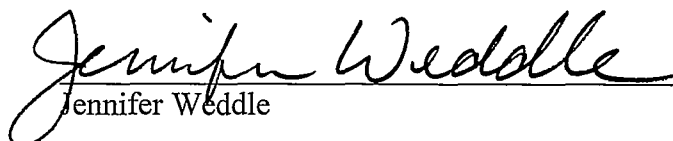
6. Greenberg Traurig did not represent Bellicose or any other entity or person in connection with the merger.

7. Upon receipt of notice of the merger from Bellicose, I contacted counsel for the Tribe, as the acquirer, and inquired if the Tribe wished to retain Greenberg Traurig as counsel for Bellicose and if not, I requested to know the Tribe’s instructions as to its files in Greenberg Traurig’s custody. The Tribe advised me that it would not engage Greenberg Traurig going forward and did not desire to review or transfer our files because they understood them to be working files and/or duplicative of documents they had already acquired as a result of the 2015 sale. The Tribe directed that we delete the files in our possession consistent with the sale documents, with respect to which GT represented no party and was provided only after the transaction closed.

8. Greenberg Traurig promptly complied with that direction, and all timekeepers who had worked on Bellicose matters deleted electronic files and disposed of hard-copy files by secure methods.

9. I declare under penalty of perjury and under 28 U.S.C. § 1746 that the foregoing statements are true and correct.

Executed on this 24th day of January 2019.


Jennifer Weddle