

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

OLEAN WHOLESALE GROCERY
COOPERATIVE, INC., JOHN GROSS AND
COMPANY, INC., and MAPLEVALE
FARMS, INC.,

Plaintiffs,

v.

AGRI STATS, INC., BUTTERBALL LLC,
CARGILL, INC., CARGILL MEAT
SOLUTIONS CORPORATION, COOPER
FARMS, INC., FARBEST FOODS, INC.,
FOSTER FARMS, LLC, FOSTER POULTRY
FARMS, THE HILLSHIRE BRANDS
COMPANY, HORMEL FOODS
CORPORATION, HOUSE OF RAEFORD
FARMS, INC., PERDUE FARMS, INC.,
PERDUE FOODS LLC, TYSON FOODS,
INC., TYSON FRESH MEATS, INC. and
TYSON PREPARED FOODS, INC.,

Defendants

No.

MOTION OF HAGENS BERMAN
SOBOL SHAPIRO LLP, LOCKRIDGE
GRINDAL NAUEN, P.L.L.P, AND ON
POINT INVESTIGATIONS, LLC TO
QUASH SUBPOENA; MEMORANDUM
IN SUPPORT OF MOTION TO QUASH
SUBPOENA

TABLE OF CONTENTS

	Pages
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	3
III. JURISDICTION	6
IV. ARGUMENT	7
A. The Subpoena Should Be Quashed Because It Seeks Materials Protected by Attorney Work Product.....	7
V. CONCLUSION.....	10

Pursuant to Rules 26(c) and 45(d) of the Federal Rules of Civil Procedure, Hagens Berman Sobol Shapiro LLP, Lockridge Grindal Nauen, P.L.L.P. and On Point Investigations, LLC (the “Movants”), move this Court to quash the subpoena for documents issued to the Movants and/or for a Protective Order.

The May 21, 2021 subpoena for documents served on behalf of the Defendants Agri Stats, Inc., Butterball LLC, Cargill, Inc., Cargill Meat Solutions Corporation, Cooper Farms, Inc., Farbest Foods, Inc., Foster Farms, LLC, Foster Poultry Farms, The Hillshire Brands Company, Hormel Foods Corporation, House of Raeford Farms, Inc., Perdue Farms, Inc., Perdue Foods LLC, Tyson Foods, Inc., Tyson Fresh Meats, Inc. and Tyson Prepared Foods, Inc. (hereinafter, “Defendants”), should be quashed. The subpoena requires the Movants to disclose materials protected by the attorney work product privilege in violation of Federal Rule of Civil Procedure 45(d)(3)(A)(iii).

For the reasons set forth in the accompanying Memorandum, the Movants respectfully request that this Court grant their motion and quash the subpoena for documents or, in the alternative, enter an appropriate Protective Order.

Pursuant to Local Rule 37(a)(1), counsel for the Movants attempted to communicate with multiple counsel from different law firms representing Defendants in an effort to meet and confer regarding the scope of the subpoena. However, the Movants and Defendants were unable to reach an agreement.

I. INTRODUCTION

Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) and Lockridge Grindal Nauen, P.L.L.P. (“Lockridge”) are counsel of record for a putative class of direct purchasers in the *Olean Wholesale Grocery Cooperative et al v. Agri Stats, Inc. et al*, No. 1:19-cv-08318 (N.D.

Ill.) (“*Turkey*”).¹ Prior to filing the complaint in that case, counsel retained On Point Investigations, LLC, (“On Point”) a private investigation firm, to assist in conducting a factual investigation. On Point’s investigation was primarily performed by Lael Henterly (“Henterly”), a licensed private investigator. As part of that factual investigation, On Point and Henterly interviewed confidential witnesses and regularly communicated with counsel regarding the investigation. The subsequently filed complaint contained factual allegations based on the work performed by On Point and Henterly.

The Supreme Court has long specifically recognized the important role that investigators play in the adversarial process, and ruled that the attorney work product privilege extends to their work: “attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the [attorney work product] doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.”² Thus, courts routinely hold that materials prepared by investigators, such as summaries of interviews with confidential witnesses, is protected by the attorney work product privilege. *See Hatamian v. Advanced Micro Devices, Inc.*, No. 14-cv-00226-YGR(JSC), 2016 WL 2606830, at *3 (N.D. Cal. May 6, 2016) (Work product protection is not limited to attorneys, either; as long as the documents were created in anticipation of litigation, the doctrine applies to investigators and consultants working for attorneys.) (collecting cases).

Contrary to this long-standing precedent, Defendants have issued a subpoena to private investigators retained by Plaintiffs’ counsel that seeks almost entirely attorney work product. For example, Defendants’ subpoena requests materials such as “all communications with Plaintiffs’

¹ Minute Entry, June 16, 2020, ECF No. 143.

² *United States v. Nobles*, 422 U.S. 225, 238-39 (1975).

Counsel of Record relating to Turkey” and all notes or memoranda relating to the investigation that On Point and Henterly conducted. Pierce Decl.,³ Ex. A. This is exactly the kind of material that courts have specifically recognized is protected by the attorney work product privilege. *See In re Grand Jury Subpoena (Mark Torf/Torf Env't Mgmt.)*, 357 F.3d 900, 907 (9th Cir. 2004) (“The Supreme Court has held that the work product doctrine applies to documents created by investigators working for attorneys, provided the documents were created in anticipation of litigation.”). And, indeed, production of this material – such as communications between attorneys and investigators that may reveal attorneys’ mental impressions and theories - would wreak havoc on the adversarial process, which is exactly the harm that the Supreme Court devised the attorney work product privilege to prevent. *See Hickman v. Taylor*, 329 U.S. 495, 510–11 (1947) (“Not even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney . . . it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.”)

Defendants’ subpoena should therefore be quashed because the only relevant materials that it seeks are protected by the attorney work-product privilege.

II. FACTUAL BACKGROUND

Lockridge and Hagens Berman are counsel of record for a putative class of direct purchasers in the *Turkey Antitrust* litigation, which was first filed on December 19, 2019. The named plaintiffs in this litigation are Olean Wholesale Grocery Cooperative Inc., John Gross and

³ “Pierce Decl.” refers to the Declaration of Rio S. Pierce in Support of Motion of Hagens Berman Sobol Shapiro LLP, Lockridge Grindal Nauen, P.L.L.P. and On Point Investigations, LLC to Quash Subpoena, concurrently filed herewith.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.