UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

G.K.	*	CIVIL ACTION
VERSUS	*	NO. 21-2242
D.M.	*	SECTION "T" (2)

ORDER AND REASONS

Before me is Intervenors Fishman Haygood, LLP and its attorneys Michael Dodson, Danielle Teutonico, and Monica Bergeron's Motion to Compel. ECF No. 286. Plaintiff G.K. timely filed an Opposition, entitled "Objections." ECF No. 289. Intervenors filed a Reply. ECF No. 290. No party requested oral argument in accordance with Local Rule 78.1, and the court agrees that oral argument is unnecessary.

Having considered the record, the submissions and arguments of counsel, and the applicable law, the motion to compel is GRANTED IN PART AND DENIED IN PART for the reasons stated herein.

I. BACKGROUND

Plaintiff originally filed suit alleging that Defendant falsely represented his HIV status to induce Plaintiff to engage in unprotected sexual relations and infected him with HIV after a sexual encounter on September 1, 2019. ECF No. 3, ¶¶ 5–13, at 8–9. The court entered a default judgment against Defendant D.M. on May 24, 2023, and entered Judgment on November 21, 2023. ECF Nos. 236, 273.

Intervenor filed a Complaint in Intervention asserting a statutory lien and privilege on any recovery on July 26, 2023. ECF No. 249. In Plaintiff's Answer to the Intervention, he asserted various defenses including malpractice. ECF No. 265-1 ¶ 4. On November 30, 2023, Intervenors issued discovery, two topics of which are at issue in this motion: (1) information regarding the

email address spark@gardilaw.com and (2) information and communications between Plaintiff and California attorney Shiloh Bentacourt. ECF No. 286-1 at 4, 6. Movant contends Plaintiff responded with boilerplate objections (specifically, "irrelevant, vague, ambiguous, overly broad, calls for a legal conclusion, calls for speculation, is burdensome and harassing, and subject to varying interpretations"), that he does not have possession of responsive documents, and attorney-client privilege. *Id.* at 4-5. Movant argues relevance and waiver of the privilege. *Id.* at 5-9.

In Opposition, G.K. argues that he has not waived his attorney-client privilege as to his communications with any attorneys other than intervenors. ECF No. 289-1 at 1. G.K. further argues that he has no written or audio communications with Shiloh Bentacourt and that he has never been associated with the email address about which Intervenor seeks information. *Id.* at 2. Plaintiff contends the information sought is irrelevant and is simply harassment, subjecting movant to penalties. *Id.* at 2-3.

In Reply, Intervenors assert that G.K. has repeatedly relied on advice from Bentacourt and they are "entitled to demonstrate both that the basis for their withdrawal was well-founded and that Plaintiff has long been relying on other attorneys to provide him legal advice." ECF No. 290. Intervenors further argue that G.K.'s blanket attorney-client privilege invocation and boilerplate objections are inappropriate and thus should be stricken. *Id.* at 1-2, 5-6. Intervenors also cite two Middle District of Louisiana cases wherein parties were compelled to produce information despite invocation of the attorney-client privilege in order to establish when those parties learned certain information. *Id.* at 3. Intervenors further contend that G.K.'s assertion that the "spark@gardilaw.com" email was "made up" or a filing error should be tested through proper discovery responses rather than *ipse dixit* in an opposition memorandum. *Id.* at 4.

II. APPLICABLE LAW

A. Scope of Discovery

Under Rule 26, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable." FED. R. CIV. P. 26(b)(1).

Rule 26's advisory committee comments make clear that the parties and the court have a collective responsibility to ensure that discovery is proportional. The party claiming it would suffer an undue burden or expense is typically in the best position to explain why, while the party claiming the information is important to resolve the issues in the case should be able "to explain the ways in which the underlying information bears on the issues as that party understands them." FED. R. CIV. P. 26 advisory committee's notes to 2015 amendment. "The court's responsibility, using all the information provided by the parties, is to consider these and all the other factors in reaching a case-specific determination of the appropriate scope of discovery." *Id.*

B. Duty to Respond to Discovery

A party served with written discovery must fully answer each request to the full extent that it is not objectionable and affirmatively explain what portion of an interrogatory or document request is objectionable and why, affirmatively explain what portion of the interrogatory or document request is not objectionable and the subject of the answer or response, and explain whether any responsive information or documents have been withheld.[1] Likewise, a party must

[1] *Lopez v. Don Herring Ltd.*, 327 F.R.D. 567, 580 (N.D. Tex. 2018) (citation omitted).

provide full and complete responses to requests for production within thirty days after being served same unless otherwise stipulated or ordered. FED. R. CIV. P.34(b)(2)(A).

A party responding to discovery must produce responsive documents not only that are within that party's actual, physical possession, but also documents that are within the party's constructive possession, custody or control. FED. R. CIV. P. 26(a)(1)(A)(ii); 34(a)(1). For each request, the respondent must either state that the inspection or production will be permitted or state with specificity the grounds for objection, including the reason. FED. R. CIV. P. 34(b)(2)(B). If a party fails to produce documents, respond that inspection will be permitted, or permit inspection, the party seeking discovery may, on notice to other parties and certification that the parties participated in a Rule 37 conference in good faith, move for an order compelling an answer, designation, production, or inspection. FED. R. CIV. P. 37(a).

The Federal Rules of Civil Procedure take a "demanding attitude toward objections,"[2] and courts have long interpreted the rules to prohibit general, boilerplate objections.[3] When a party objects to a request for production, the "objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest."[4] Objections interposed without also indicating whether any document or information is being withheld are improper.[5] Responses must also clearly state whether any responsive materials are being withheld and the specific basis for objecting and not

[2] 8B CHARLES WRIGHT & ARTHUR MILLER, *Federal Practice and Procedure: Civil* § 2173 (3d ed. 2021).
[3] *See, e.g.*, *Chevron Midstream Pipelines LLC v. Settoon Towing LLC,* Nos. 13-2809, 12-3197, 2015 WL 269051, at *3 (E.D. La. Jan. 21, 2015) (noting that an objection is boilerplate and insufficient "when it merely states the legal grounds for the objection without: (1) specifying how the discovery request is deficient and (2) specifying how the objecting party would be harmed if it were forced to respond to the request.") (citation omitted); *see also McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485–86 (5th Cir. 1990) (simply objecting to requests as "overly broad, burdensome, oppressive and irrelevant," without showing "specifically how each [request] is not relevant or how each question is overly broad, burdensome or oppressive" is inadequate to "voice a successful objection.") (citations omitted).
[4] FED. R. CIV. P. 34(b)(2)(C); *Orchestrate HR, Inc. v. Trombetta*, 178 F. Supp. 3d 476, 507 (N.D. Tex. 2016), *objs. overruled sub nom. Orchestratehr, Inc. v. Trombetta*, No. 13-2110, 2016 WL 5942223 (N.D. Tex. Oct. 13, 2016).
[5] *See Chevron*, 2015 WL 269051 at *4 (holding that objections fall short of party's burden when party objected based on privilege but failed to state whether any documents were withheld or the nature of withheld documents).

producing same.[6] Further, it is improper for parties responding to discovery to provide responses with the caveat that they are given "subject to and without waiving" objections. Courts have repeatedly recognized that such language is improper and inconsistent with the Federal Rules.[7]

III. ANALYSIS

In response to Intervenors' discovery requests regarding G.K.'s communications with attorney Bentacourt and the owner of the spark@gardilaw.com email address, G.K. lodged various unexplained objections, including relevance, vagueness, ambiguity, overbreadth, speculation, and undue burden; claimed that he has no responsive information in his possession; and asserted the attorney-client privilege. ECF No. 286-9. In his Opposition Memorandum, G.K. reiterates his attorney-client privilege invocations, insists that he has no written or audio communications with Bentacourt, asserts that he does not know who owns the e-mail address at issue and has never been associated with same, repeats his boilerplate objections, and seeks sanctions against Intervenors for filing the motion to compel. ECF No. 289-1.

Intervenors argue that Plaintiff waived the attorney-client privilege by alleging an affirmative defense of legal malpractice in his Answer to the Complaint in Intervention, "thereby putting Intervenors' legal representation of Plaintiff at issue." ECF No. 286-1 at 1.

Initially, G.K.'s unsubstantiated boilerplate objections are improper and thus overruled. Any responsive information withheld in reliance on these objections must be produced within fourteen (14) days. Moreover, Plaintiff attempts to both argue that he never engaged Bentacourt as counsel and has no association with the legal email address while at the same time arguing that

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[6] *Id*. (citation omitted) ("Objections that fail to provide an appropriate basis make it difficult for the parties to even informally discuss any alleged defects in a discovery request or response in hope of fixing the defects.").

[7] *Heller v. City of Dallas*, 303 F.R.D. 466, 486 (N.D. Tex. 2014) (citations omitted) ("The practice of asserting objections and then answering 'subject to' and/or 'without waiving' the objections–like the practice of including a stand-alone list of general or blanket objections that precede any responses to specific discovery requests–may have developed as a reflexive habit . . . [but the practice] 'manifestly confuses (at best) and mislead[s] (at worse), and has no basis at all in the Federal Rules of Civil Procedure.'").

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