

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
BCD-CV-14-61

ALEC T. SABINA and
EMMA SABINA, On behalf
Of Themselves and All Others
Similarly Situated,

Plaintiffs

v.

**ORDER ON DEFENDANT'S MOTION
FOR PROTECTIVE ORDER**

JPMORGAN CHASE, N.A.

Defendant

Before the Court is Defendant's Motion for Protective Order allowing them to withhold from disclosure two documents. The first is a document referred to as "GLR State Compliance Matrix" and the other is the "Borrower Return Matrix." The Plaintiffs are represented by Attorneys Michael Bosse, Dan Mitchell and Meredith Eilers.

Defendant is represented by Attorneys Jeff Goldman, Robert Brochin, and Brian Ercole.

Defendant makes the same arguments as to both documents, namely that they do not need to be produced on the grounds of the attorney-client privilege and because they are work product. The Court has reviewed the parties' filings, the last of which were received by the Court on June 15, 2017. The Court has also conducted an in-camera review of the documents and issues the following Order granting the motion.

FINDINGS AND CONCLUSIONS

The review of the documents makes clear that they were prepared by Chase's in-house counsel to advise Chase employees how to comply with the law in Maine (and other jurisdictions) regarding the return of certain documents (including mortgage lien releases) to borrowers upon satisfaction of a mortgage. Exhibit A is the state matrix and Exhibits C and D provide legal advice about how to process a specific kind of documents returned to borrowers.

After initial briefing, the Court spoke telephonically with counsel and asked whether there was an issue of relevance given the nature of the statute that is at issue in this case, 33 M.R.S. 551. The parties supplemented their briefing on that issue. After consideration of their arguments, the Court finds that the documents do meet the definition of relevant. The Court concludes that if an employee is advised to perform his or her duties in a certain way in order to comply with a law, that advice may make it more likely that the employee behaved in a certain way.

However, the Court finds that the communications from Chase's in-house counsel are privileged as they were "made to facilitate the provision of legal services" to its employees. Me. R. Evid. 502(a)(5). The Court disagrees with the Plaintiff's characterization of the documents as "primarily" business and not legal documents. They contain explicit advice from a Chase attorney to Chase's employees concerning how to comply with various statutes.

They were also communicated to a vendor, Nationwide Title Clearing (NTC) and the Plaintiff argues that Defendant has therefore waived the privilege. The Court finds that NTC is a "representative" of Chase under its agreement with Chase. It is undisputed

that NTC contracted with Chase to provide lien release services, including recording and returning releases to the borrowers. Plaintiff’s reliance on *Harris Management, Inc. v. Coulombe*, 2016 ME 166 is misplaced. The finding in *Harris* that an individual was not a “representative” within the meaning of the Rule turned on the fact that for at least a period of time the individual was not even employed by the business who was claiming the privilege. The Court held that the person could not be a “representative” of the business during a time period he worked for a different employer.

The facts of this case are more akin to *Kohl’s Department Stores, Inc. v. Liberty Mutual Ins. Co.*, 2012 WL 6650619 (Me. B.C.D. Oct. 11, 2012) and other cases where Courts have extended the privilege to contractors. *A.F. v. Providence Health Plan*, 173 F. Supp. 3d 1061,1084 (D. Or. 2016). The Court would also note that that NTC was contractually obligated to comply with Maine law.

Because the Court concludes that the attorney-client privilege applies to the documents, and that the privilege extends to NTC and was not waived, it is not necessary for the Court to address other arguments raised by the Plaintiff.

The entry will be: Defendant’s Motion for Protective Order is GRANTED.

June 30, 2017

DATE

/S

SUPERIOR COURT JUSTICE
BUSINESS AND CONSUMER COURT