UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SUMMER INFANT, INC.	:	
	:	
v.	:	C.A. No. 15-218S
	:	
CAROLE E. BRAMSON, et al.	:	

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendants' Joint Motion to Compel Plaintiff to Correct Redactions, Correct Confidentiality Designations and Produce Documents. (Document No. 125). Plaintiff objects. (Document No. 133). A hearing was held on January 19, 2016. After reviewing the parties' arguments and submissions, Defendants' Motion is resolved as follows:

1. Initial Pleading Redactions

DENIED. On May 27, 2015, Chief Judge Smith granted Plaintiff's Motion to file its initial pleadings under seal and that is the law of the case. (Document No. 5). To the extent the need for confidentiality has been reduced by changed circumstances, Defendant's request has arguably been mooted by Plaintiff's proposed reduced redactions. The Clerk shall substitute Exhibits A, B and C (Document Nos. 133-2, 133-3 and 133-4) to Plaintiff's Memorandum in Opposition for the previously docketed versions.

2. Confidentiality Designations

DENIED. The parties stipulated to a Confidentiality Protective Order (Document No. 89) which was intended to "lubricate" the flow of discovery and contains an agreed procedure in paragraph 13 to handle disputes as to confidentiality designations. The parties should follow the

agreed procedure. While the Court agrees that over-designation can be counter-productive, the agreed procedure does not provide a mechanism for a blanket requirement that a party re-review and re-designate documents already produced, and Defendants have not presently made any showing of bad faith that might warrant such extraordinary relief.

3. Privileged Documents Previously Communicated to Defendants

Defendants contend that, although they are presently adverse to Plaintiff, they are entitled to review privileged materials they previously authored or received as officers and directors of Plaintiff. Defendants do not presently argue that the documents are not privileged, that Plaintiff does not hold the privilege, or that Plaintiff has waived its privilege. Rather, they argue for production "because documents they received during their employment are not privileged from disclosure to them" and are necessary to mount a defense to Plaintiff's claims against them.

Defendants' position, and the case law relied upon, is not persuasive. The attorney-client privilege belongs to Plaintiff, and Defendants have not shown any present legal right of access to Plaintiff's privileged documents. See Dexia Credit Local v. Rogan, 231 F.R.D. 269, 277 (N.D. Ill. 2004); see also S.E.C. v. Present, No. 14-14692-LTS, 2015 WL 9294164 (D. Mass. Dec. 21, 2015). Accordingly, Defendants' request for production of privileged documents is DENIED.

4. Personal Email, Text and WhatsApp Messages

Defendants seek an order compelling Plaintiff to search for and produce such communications from a list of thirteen individuals they identify as custodians likely to have responsive documents. Plaintiff objects and argues that Defendants' request is speculative and not proportional to the needs of the case. Plaintiff acknowledges that it has produced such communications for three individuals including its Board Chairman and CEO but that there is no

reasonable basis to conclude that the other custodians identified by Defendants were engaging in any relevant communications in that manner. After considering the parties' arguments in the context of Rule 26(b)(2)(C), Defendants' request is DENIED without prejudice to renewal if subsequent depositions or other discovery reveal that any of the identified individuals did engage in relevant communications through such means.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
February 4, 2016