

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Firdos S. Sheikh, M.D. v. Spinnaker Insurance Company

Sheikh · No. 2:23-cv-01582-TLN-SCR · Decided December 23, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 FIRDOS S. SHEIKH, M.D., No. 2:23-cv-01582-TLN-SCR 12 Plaintiff, 13
v. ORDER & ORDER TO SHOW CAUSE 14 SPINNAKER INSURANCE COMPANY, 15
Defendant. 16 17 Before the Court is Plaintiff’s Ex Parte Application, filed on December 12,
2025, seeking 18 an order requiring Defendant Spinnaker Insurance Company (“Spinnaker”) and
former defendant 19 Hippo Analytics, Inc. (“Hippo”) and their counsel to produce documents
without redactions in 20 advance of upcoming depositions.¹ ECF No. 84.

Defendant Spinnaker filed an opposition on 21 December 18, 2025, which also seeks monetary
sanctions against Plaintiff and her counsel.² ECF 22 No. 86. Plaintiff filed a reply brief on
December 19, 2025. 23 24 1 Plaintiff’s Ex Parte Application sought other relief that the Court
resolved pursuant to a minute order on December 15, 2025. ECF No. 85. 25 2 Defendant notes
that the undersigned’s December 3 order was directed only at Spinnaker.

ECF No. 86 at 18 & n.2. That was not an oversight but rather a reflection that (1) Hippo is no
longer a 26 party to this action and (2) the ex parte application underlying that order did not
clearly indicate a 27 basis for the Court to direct an order to Hippo itself, given that the
subpoenaed date for Hippo’s deposition had passed and Hippo appeared to be cooperating on the
scheduling of its Rule 28 30(b)(6) deposition.

1 The crux of the dispute is whether and to what extent Spinnaker has waived attorney- 2 client
privilege concerning communications with its outside counsel, Todd Austin, through its 3
assertion of an advice of counsel defense.

The dispute also concerns Spinnaker’s alleged 4 redactions of loss reserve information. 5 The
Court DENIES the Ex Parte Application without prejudice because Plaintiff failed to 6 meet and
confer as required and failed to pursue relief through the ordinary discovery process 7 dictated by
the District’s Local Rules.

The Court also ORDERS Plaintiff and Plaintiff’s counsel 8 to show cause as to why they should
not be sanctioned for filing a discovery motion without 9 meaningfully meeting and conferring
and for presenting false information about a non-existent 10 transcript. 11 DISCOVERY ORDER
12 Plaintiff did not meaningfully meet and confer in advance of filing the Ex Parte 13

Application.³ The defenses, redactions, and withholdings at issue in the Ex Parte Application 14 were apparently disclosed to Plaintiff through documents served on February 17, 2025 (ECF No. 15 86-1 at 26, Link to Spinnaker Production); April 2, 2025 (ECF 84-1 at 6, Spinnaker’s Amended 16 Responses to Plaintiff’s Interrogatories); and June 30, 2025 (ECF No. 86-1 at 42, Link to Austin 17 Production).

Yet it appears that Plaintiff did not seek to address this issue with opposing counsel 18 until December 10, 2025, through a conversation after Plaintiff’s deposition. ECF No. 84-1, 19 Almadani Decl. ¶ 2; ECF No. 86-1, Hayek Decl. ¶ 2-3.

On December 11, 2025, in an email time 20 stamped 6:19 p.m., Plaintiff’s counsel then emailed one of Spinnaker’s three counsel of record, 21 David Hayek, and put forward arguments as to the advice of counsel waiver and the loss reserve 22 information. ECF No. 86-1 at 8. That email stated that Plaintiff’s counsel “will be filing an ex 23 parte application requesting ... production by December 29.” Id. It further stated that unless, by 24 11 a.m. the following day, Spinnaker makes “a full commitment to provide all communications 25 3 The Court’s analysis focuses on the disputes that were not adjudicated through the minute order 26 at ECF No. 85.

However, it now appears that Plaintiff could have resolved the scheduling of the 27 Rule 30(b)(6) depositions without seeking ex parte relief. Counsel for Spinnaker had already disclosed the date of one of those depositions in advance of the filing of the Ex Parte Application 28 and had indicated he would likely be able to provide the other later that day. 1 with Clinton and Clinton [Austin’s firm] and the produced documents removing redactions 2 relating to Clinton and Clinton and reserve information by December 29, I will have no choice 3 but to file and [sic] application and also seek sanctions.” Id. 4 On December 12, in an email stamped with the time of 11:00 a.m., Mr. Hayek, now 5 including the other counsel of record, responded that he had told Plaintiff’s counsel at the 6 deposition that he was not involved in the production of the contested documents and that 7 Plaintiff’s counsel should “reach out to my colleagues to meet and confer on that issue.” ECF 8 No. 86-1 at 11.

Mr. Hayek noted that Plaintiff had “not identified any specific redaction or 9 privilege log entry ... making it impossible for Spinnaker to evaluate whether an objection to any 10 particular redaction (or corresponding entry in the privilege log) is valid.” Id. Mr. Hayek stated 11 that, “Either I or my colleagues will review the cases you have cited in your email ... and perform 12 our own due diligence and get back to you once you identify ... those redaction(s) Plaintiff 13 believes are not well taken.” Id. Mr. Hayek also noted that Plaintiff had not referenced 14 California law—which governs the dispute—in the December 11 email.

Mr. Hayek further noted 15 that Plaintiff had not explained why an ex parte “proceeding is appropriate,” as opposed to “the 16 normal process for discovery motions[.]”⁴ Id. 17 There is nothing in the record indicating that Plaintiff’s counsel attempted to further meet 18 and confer

with Spinnaker's counsel on December 12. Plaintiff filed the Ex Parte Application at 19 1:38 p.m. that day.

20 A party moving for an "order compelling disclosure or discovery" must "certif[y] that the 21 movant has in good faith conferred or attempted to confer with the person or party failing to make 22 disclosure or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). 23 The Local Rules of this District further implement this requirement as follows: 24 Requirement of Conferring.

Except as hereinafter set forth, a motion made pursuant to Fed. R. Civ. P. 26 through 37 and 45, including any motion to exceed 25 discovery limitations or motion for protective order, shall not be heard unless (1) the parties have conferred and attempted to resolve their differences, and (2) the parties have 26 set forth their differences and the bases therefor in a Joint Statement re Discovery 27 4 Mr. Hayek's email also anticipated providing dates for the Rule 30(b)(6) depositions that day.

28 ECF No. 86-1 at 12. 1 Disagreement. Counsel for all interested parties shall confer in advance of the filing of The motion or in advance of the hearing of the motion in a good faith effort to resolve the 2 differences that are the subject of the motion. Counsel for the moving party or Prospective moving party shall be responsible for arranging the conference, which shall be 3 held at a time and place and in a manner mutually convenient to counsel.

4 L.R. 251(b). Moreover, the undersigned's Civil Standing Orders explain how Local Rule 251's 5 meet-and-confer requirements may be satisfied: "For discovery matters where all parties raising 6 the discovery matter are represented by counsel, the requirement to confer under Local Rule 251 7 must be done through communication that occurs in-person, by phone, or by video.

Written 8 communication alone does not satisfy the requirement to confer where all parties raising the 9 discovery matter are represented by counsel. Judge Riordan strictly enforces these confer 10 requirements."5 11 While Plaintiff began the meet and confer process by generally identifying the contested 12 issues with opposing counsel and following up with an email, she did not complete that process.

13 In particular, she did not seek to further confer despite the commitment, in Mr. Hayek's email of 14 December 12, that Spinnaker would "review the cases you have cited in your email ... and 15 perform our own due diligence and get back to you once you identify ... those redaction(s) 16 Plaintiff believes are not well taken." Id. Moreover, Plaintiff's failure to engage with the issues 17 raised in Mr. Hayek's email of December 12 prevented the meet and confer from being 18 meaningful.

Plaintiff apparently did not seek to confer directly with Spinnaker's attorneys who 19 Mr. Hayek indicated were responsible for the contested productions; did not respond to the 20 request to

identify specific contested documents, redactions, and privilege logs; and did not 21 respond to the issue of whether state or federal privilege law governs the dispute.

Finally, 22 Plaintiff did not meaningfully confer in-person, by phone, or by video—the brief discussion with 23 Mr. Hayek at the end of Plaintiff’s deposition, without a prior communication to sharpen the 24 issues of contention, did not suffice. 25 A good faith meet-and-confer process might have resolved or narrowed the dispute, given 26 that Spinnaker appears to agree that some waiver of privilege is appropriate in light of the advice 27 5 See United States Magistrate Judge Sean C. Riordan (SCR) - New CAED, Civil Standing 28 Orders at 3.

1 of counsel defense. See ECF No. 86 at 15:6-17. Avoiding needless litigation is the purpose of 2 the meet-and-confer requirement set out in Rule 37(a)(1) and Local Rule 251(b). The unresolved 3 portions of Plaintiff’s Ex Parte Application will accordingly be denied without prejudice. Akkawi 4 v. Sadr, No. 2:20-cv-01034 MCE AC, 2022 WL 2442234, at *1 (E.D. Cal. July 5, 2022) (where a 5 party fails to comply with Local Rule 251, discovery motions are typically denied without 6 prejudice to re-filing).

7 Plaintiff’s application also improperly evades required procedures and timelines. Under 8 this District’s Local Rules, discovery disputes that cannot be resolved through a meet and confer 9 process may be heard on a 21-day timeline. L.R. 251(a). That timeline may be accelerated to 10 hearing within seven days when the notice of motion and motion are filed concurrently with the 11 required joint statement.

Id. In short, discovery motions are by default accelerated relative to 12 other motions and can be accelerated further by good planning and coordination in the 13 preparation of a joint statement. Had Plaintiff proceeded under the Local Rules, she might have 14 seen this dispute resolved in advance of the target disclosure date of December 29. 15 While parties may at times need to seek discovery relief on an ex parte basis, that should 16 occur only under exceptional circumstances.

As in other contexts, whether the party seeking ex 17 parte relief has been diligent is properly a part of the inquiry as to whether such relief is 18 warranted. Cf. C.D. Cal. L.R. 37-3 (“no discovery motions may be filed or heard on an ex parte 19 basis absent a showing of irreparable injury or prejudice not attributable to the lack of diligence 20 of the moving party”).

Courts would otherwise be inviting parties to seek ex parte relief for 21 crises of their own making. 22 To the extent Plaintiff seeks to resolve this dispute through a further meet and confer with 23 Spinnaker’s counsel, the Court trusts that Spinnaker’s counsel will engage in good faith and 24 promptly produce or reproduce (without redactions) any records that properly should be disclosed 25 in light of applicable law.

The parties are reminded that the Court’s informal telephonic 26 discovery conference process remains an option. 27 //// 28 //// 1 ORDER TO SHOW CAUSE 2 Spinnaker seeks \$3,900 in

attorneys' fees as a sanction. ECF No. 86 at 21.

In light of the 3 Court's findings above, Plaintiff will be ordered to show cause ("OSC") as to why such a sanction 4 should not issue. See *Puckett v. Cnty. of Sacramento*, No. 2:22-cv-00350-KJM-DB 2024 U.S. 5 Dist. LEXIS 75679, at *5 (E.D. Cal. April 24, 2024) (even where dispute concerned issue that 6 had been the subject of a prior discovery proceeding, "the court finds the magistrate judge did not 7 commit clear error or make any decisions contrary to law in awarding sanctions because meet and 8 confer requirements were not satisfied").6 9 Plaintiff's counsel should also show cause as to why he should not be sanctioned for citing 10 to a non-existent transcript.

Plaintiff's reply relies on a purported "December 2 hearing 11 transcript" that "show[s] that Defense Counsel led the Court and Plaintiff's Counsel to believe 12 that he would be providing" dates for the Rule 30(b)(6) depositions at the end of the week of 13 December 2. ECF No. 87 at 2. There is no such transcript.

The docket entry to which Plaintiff 14 refers here, ECF No. 82, is the Court's own request for a transcript of the hearing held on April 15 24, 2025, and clearly marked as such. More concerning than the assertion that such a transcript 16 exists is the assertion that a substantive fact—Spinnaker's counsel's purported position—is 17 contained within that non-existent transcript.

Under Rule 11(b)(3), an attorney who signs a legal 18 document certifies that "the factual contents have evidentiary support[.]" If the Court determines 19 that Rule 11(b) has been violated, "after notice and a reasonable opportunity to respond... the 20 court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule 21 or is responsible for the violation." Fed.

R. Civ. P. 11(c)(1). 22 Plaintiff's response to the OSC shall be filed within 14 days of the date of this order and 23 limited to no more than ten double-spaced pages. 24 6 Because the Court is denying Plaintiff relief, the Court will not entertain Plaintiff's request for 25 sanctions against Spinnaker. While the Court understands Plaintiff's complaint about Spinnaker's disclosure of certain information concerning her professional and financial 26 circumstances, and finds that disclosure unnecessary and distasteful, Plaintiff has not cited 27 authority suggesting it is sanctionable.

If Plaintiff believes there are independent grounds for sanctioning Defendant for such disclosure, Plaintiff may pursue such sanctions through a noticed 28 motion before the District Judge. 1 SO ORDERED. 2 | DATED: December 23, 2025 SEAN C. RIORDAN 5 UNITED STATES MAGISTRATE JUDGE 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

