

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Peter Attia v. Ouraring Inc., et al.

Attia · No. 23-cv-03433-HSG (LJC) · Decided October 21, 2025

OPINION

Attia

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 PETER ATTIA, Case No. 23-cv-03433-HSG (LJC) 8 Plaintiff,

ORDER RESOLVING ECF NO. 114

v. 9 Re: Dkt. No. 114 10 OURARING INC., et al., Defendants. 11 12 13 Before the Court is
Plaintiff Dr. Peter Attia's and Defendants Oura Health Ltd. (Oura 14 Health)¹ and Oura Ring,
Inc.'s joint discovery letter disputing whether Plaintiff may depose Oura 15 Health's Chief Legal
Officer and Corporate Secretary, Avonte Campinha-Bacote, and whether Mr. 16 Campinha-Bacote
must produce his communications with Defendants' board members and 17 employees. ECF No.
114. For the following reasons, Plaintiff's request to depose Mr. Campinha- 18 Bacote and for
production of Mr. Campinha-Bacote's communications with current and former 19 employees and
members of Defendants' Board is denied.

20 I. BACKGROUND

21 Defendants are the entities behind Oura Ring, a wearable device that tracks users' health 22
metrics. Plaintiff is a physician-turned-wellness-guru who alleges that he served as an advisor for
23 Defendants pursuant to an agreement with Defendants' former CEO, Harpreet Rai. ECF No. 75
24 (Second Am. Compl.) ¶¶ 28, 36, 41. Specifically, Plaintiff alleges that in October 2018, Mr. Rai
25 emailed Plaintiff to inform him that Defendants' Board approved issuing Plaintiff stock options
26 27 1 Defendants identify this entity as "Oura Health Oy" rather than "Oura Health Ltd." See
ECF No. 1 "equal to [Plaintiff's] previous total investments" in the company. Id. ¶¶ 45-47. Mr.
Rai sent 2 Plaintiff a stock option agreement (Stock Option Agreement), which Plaintiff signed in
February 3 2019. Id. ¶¶ 49-50. Plaintiff alleges that he continued to provide medical and technical
advice to 4 Defendants and promoted Oura Ring products to his social media followers based on
his 5 understanding that he would be compensated for his work pursuant to the Stock Option 6
Agreement. See Id. ¶¶ 55, 61-69. Mr. Rai left Defendants in December 2021, and, Plaintiff 7
alleges, Defendants have refused to honor the Stock Option Agreement. Id. ¶¶ 73-80. Defendants
8 allege, among other things, that their Board never agreed to the Stock Option Agreement, that

the 9 Agreement is invalid under Finnish and American laws, and that Plaintiff is barred under the 10 doctrines of unclean hands and estoppel from recovering against them. See ECF No. 89 (Am. 11 Answer to Second Am. Compl.) at 9-16. 12 Mr. Campinha-Bacote is Defendant Oura Health's Chief Legal Officer and Corporate 13 Secretary. ECF No. 100-7 (Campinha-Bacote Decl.) ¶ 1. He has held these positions since

14 January 2024. Id. He served as Oura Health's General Counsel from February 2020 to December

15 2023. Id. In his current role, he oversees "all of Oura Health's legal matters" and advises and 16 consults "with Oura Health's management and Board." Id. During the course of this litigation, 17 Mr. Campinha-Bacote has submitted two declarations: one in support of Defendants' motion to 18 compel arbitration (ECF No. 16-1), and one in support of Defendants' motion to retain their 19 Attorneys' Eyes-Only designation of certain documents (ECF No. 100-7). In his declaration in 20 support of the motion to compel arbitration, Mr. Campinha-Bacote attested: 21 In my capacity as the General Counsel for the Defendants, I am aware that in Plaintiff's Complaint he claims that on February 18, 2019, he 22 signed and sent a copy of a document called "Oura Health Oy/Oura Ring, Inc. Adviser Equity Plan 2018 US Stock Option Agreement" 23 (hereinafter "Draft Agreement") to Defendants. (DKT # 1 - Complaint, ¶ 50). However, I am also aware that the Draft Agreement 24 was never authorized or approved by Oura Health Oy's (or Ouraring Inc.'s) Board of Directors, and was never executed by anyone at either 25 company. 26 ECF No. 16-1 ¶ 14. In his declaration in support of the motion to retain the confidentiality 27 designation, Mr. Campinha-Bacote attested: baselessly accused a Board member of having a conflict of interest, 1 and more generally accused Oura Health or its Board members of engaging in fraud. I and many members of the Board believe that Dr. 2 Attia's accusations caused certain influential shareholders to withdraw support for a major Board initiative, which was detrimental 3 to the company's interests. 4 ECF No. 107-3 ¶ 8. 5 Plaintiff argues that they must be permitted to depose Mr. Campinha-Bacote to question 6 him "about his personal knowledge of these allegations, and his communications with current and 7 former Board members and Oura employees about them," and that Mr. Campinha-Bacote should 8 be compelled to produce his "communications with current and former Board members and Oura 9 employees about these allegations." ECF No. 114 at 3. Defendants counter that there is no legal 10 basis for Plaintiff to depose Mr. Campinha-Bacote or obtain his confidential communications with 11 Defendants' Board. Id.

12 II. LEGAL STANDARD

13 Federal Rule of Civil Procedure 30 provides that "[a] party ... may depose any person." 14 Thus, there is no express prohibition against deposing attorneys. See *Graff v. Hunt & Henriques*, 15 No. C 08-0908, 2008 WL 2854517, at *1 (N.D. Cal. July 23, 2008). Defendants contend that 16 attorney depositions are nonetheless disfavored and urges the Court to apply the three-part test 17 established in *Shelton v. American Motors Corporation*, 805 F.2d 1323 (8th Cir. 1986), to 18 determine whether Mr. Campinha-Bacote's deposition may take place. ECF No. 114 at 3. The 19

Shelton test provides that for a court to allow an opposing trial counsel's deposition, the party seeking to take the deposition must show that: "(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." 805 F.2d at 1327 (citation omitted). This Court has applied Shelton to deny requests to depose opposing trial counsel. See *Serenity Investments v. Sun Hung Strategic Capital*, No. 22-cv-01623, 2024 WL 517870, at *5 (N.D. Cal.

Feb. 9, 2024). Unlike in *Serenity Investments*, here Plaintiff seeks to depose and obtain documents

from Oura Health's Chief Legal Officer, not Defendants' trial counsel in the instant case. Absent a showing that Mr. Campinha-Bacote has particular knowledge of Defendants' trial counsel's

1 No. 15cv1678, 2016 WL 4169128, at *2 (S.D. Cal. Aug. 5, 2016) ("However, the Shelton test is not necessarily applicable in a situation where the attorney sought to be deposed is not litigation counsel in the pending case."); *Mass. Mut. Life Ins. Co. v. Cerf*, 177 F.R.D. 472, 479 (N.D. Cal. 1998) (explaining the Shelton test before determining that it did not apply because the attorney at issue "did not represent [Defendant] in this action").² 6 The Court instead applies the usual standards of Federal Rule of Civil Procedure 26. Rule 26(b)(1) provides: 8 Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the 9 needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to 10 relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense 11 of the proposed discovery outweighs its likely benefit." 12 The court must "limit the frequency or extent of discovery" if it determines that the information 13 sought is "outside the scope permitted by Rule 26(b)(1)" or is "unreasonably cumulative or 14 duplicative, or can be obtained from some other source that is more convenient, less burdensome, 15 or less expensive." Fed. R. Civ. P. 26(b)(2)(C). "The court may, for good cause, issue an order to 16 protect a party or person from annoyance, embarrassment, oppression, or undue burden or 17 expense." Fed. R. Civ. P. 26(c)(1).

18 III. ANALYSIS

19 Plaintiff seeks to question Mr. Campinha-Bacote about his statements that the Stock 20 Option Agreement "was never authorized or approved" by Defendants' Board and that he believes 21 Plaintiff's accusations against a Board member "caused certain influential shareholders to 22 withdraw support for a major Board initiative," as well as his "communications with current and 23 former Board members and Oura employees." ECF Nos. 16-1 ¶ 14, 107-3 ¶ 8, 114 at 3. Plaintiff 24 also seeks Mr. Campinha-Bacote's "communications with current and former Board members and 25 26 2 Although Shelton involved the deposition of the defendants' in-house counsel Rita Burns, Ms. Burns "was assigned specifically to the case at bar" and was involved in

preparing her client's 27 defense in the action. 805 F.2d at 1325, 1328. The Eighth Circuit's holding concerned protecting 1 Oura employees," which Defendants have objected to producing on the basis of attorney-client 2 privilege. ECF Nos. 114 at 3, 114-1 at 3-4. 3 Plaintiff has not shown that Mr. Campinha-Bacote, who joined Defendants in 2020, would 4 have relevant information regarding whether the Board "authorized or approved" the Stock Option 5 Agreement, which Plaintiff alleges he received and signed in early 2019. ECF No. 16-1 ¶ 14; see 6 Second Am. Compl. ¶¶ 49-50. But even accepting that Plaintiff seeks relevant information, 7 Defendants have shown that obtaining discovery from Mr. Campinha-Bacote is otherwise 8 improper under Rule 26. Defendants object that the discovery Plaintiff seeks is protected by 9 attorney-client privilege. See ECF No. 114 at 3; 114-1 at 3-4. Plaintiff does not dispute that the 10 information he seeks is privileged, instead arguing that Mr. Campinha-Bacote waived this 11 privilege by submitting the two declarations. ECF No. 114 at 2. Plaintiff claims: 12 Campinha-Bacote and Oura voluntarily submitted declarations regarding the Board's knowledge as to Attia's option agreement and 13 Oura's accusations that Attia "undermined" and "interfered" with the Board, and caused the failure of a "major Board initiative." These 14 statements go to the heart of Oura's defenses, and Campinha-Bacote has obviously communicated with the Board about these matters. By 15 submitting his declarations, Oura waived its privilege as to those communications. 16 17 Id. As the Court has diversity jurisdiction over this case, California law regarding the existence 18 and scope of attorney-client privilege applies. In re California Pub. Utilities Comm'n, 892 F.2d 19 778, 781 (9th Cir. 1989) ("In diversity actions, questions of privilege are controlled by state 20 law."); Fed. R. Evid. 501 (establishing that in civil cases, "state law governs privilege regarding a 21 claim or defense for which state law supplies the rule of decision"); see Second Am. Compl. ¶ 6 22 (alleging that the Northern District has diversity jurisdiction over this action). The Court 23 accordingly applies California law to determine if there has been a waiver of attorney-client 24 privilege.³ 25 3 In contrast, if the Court determines that there has been a waiver, it would consider federal law to 26 determine the scope of the waiver. See Century Aluminum Co. v. AGCS Marine Ins. Co., 285 F.R.D. 468, 471 n.2 (N.D. Cal. 2012) ("The Federal Rules of Evidence govern the scope of waiver 27 even if state law provides the rule of decision."). Federal Rule of Evidence 502 applies "to 1 Under California law, attorney-client privilege "may be waived impliedly or by disclosure 2 of the subject communication." Transamerica Title Ins. Co. v. Superior Ct., 188 Cal. App. 3d 3 1047, 1052 (1987). California Evidence Code Section 912(a) provides that the right of any person 4 to claim attorney-client privilege "is waived with respect to a communication protected by the 5 privilege if any holder of the privilege, without coercion, has disclosed a significant part of the 6 communication or has consented to disclosure made by anyone." "What constitutes a significant 7 part of the communication is a matter of judicial interpretation." Transamerica, 188 Cal. App. 3d 8 at 1052. "Privileged communications do not become discoverable simply because they are related 9 to issues raised in the litigation." Id. at 1053; see Garcia v. Progressive Choice Ins. Co., No. 11- 10 CV-466, 2012 WL 3113172, at *4

(S.D. Cal. July 30, 2012) (quotation marks omitted) (“[A] 11 waiver under Evidence Code section 912 relates to the particular communication which has been 12 revealed and not to all communications concerning the subject matter of the lawsuit.”). Privilege 13 may be waived by implication if the holder of the privilege “has put the otherwise privileged 14 communication directly at issue and that disclosure is essential for a fair adjudication of the 15 action.” S. Cal. Gas Co. v. Pub. Utils. Comm’n, 50 Cal. 3d 31, 40 (1990). Plaintiff contends that 16 Mr. Campinha-Bacote’s statements in his declarations—that he was “aware” that the Stock Option 17 Agreement was never approved and that he was “informed” and “believed” that Plaintiff had tried 18 to undermine the Board—amount to a waiver of attorney-client privilege regarding his 19 communications with Defendants regarding these topics. ECF No. 114 at 2. Plaintiff’s claim that 20 “Campinha-Bacote has obviously communicated with the Board about these matters” 21 proceeding ... and waived the attorney-client privilege or work-product protection,” privilege as to 22 undisclosed communication or information is also waived if “(1) the waiver is intentional; (2) the disclosed and undisclosed communications or information concern the same subject matter; and 23

(3) they ought in fairness to be considered together.” Rule 502(f) provides that, “notwithstanding Rule 501, Rule 502 applies even if state law provides the rule of decision.” Although Rule 502 24 has been interpreted to establish that “the question of whether [attorney-client privilege] is waived is governed by federal law,” this Court reads Rule 502(a) as limiting the scope of a waiver of 25 attorney-client privilege, not as determining if there has been a waiver in the first instance. AdTrader, Inc. v. Google LLC, 405 F. Supp. 3d 862, 866 (N.D. Cal. 2019). That is, if otherwise 26 privileged material is disclosed, that disclosure would only waive additional, undisclosed communications if the three criteria of Rule 502(a) were met. See Rule 502 (Advisory Committee 27 Notes) (“Subdivision (a) provides that if a waiver is found, it applies only to the information 1 notwithstanding, Plaintiff does not identify any specific “communications” Mr. Campinha-Bacote 2 disclosed or otherwise put at issue that could have waived privilege. Id. Mr. Campinha-Bacote’s 3 general statements that he is aware of Defendants’ main defenses in this action does not constitute 4 a waiver of attorney-client privilege regarding his communications with Defendants. Furthermore, 5 as discussed below, as Plaintiff has or will be deposing several of Defendants’ Board members 6 and will be able to question them about the Stock Option Agreement and Plaintiff’s relationship 7 with the Board, there is no indication deposing Mr. Campinha-Bacote “is essential for a fair 8 adjudication of the action,” particularly in light of Defendants’ agreement not to rely on Mr. 9 Campinha-Bacote’s testimony at summary judgment or trial. S. Cal. Gas Co., 50 Cal. at 40. 10 In addition to determining that Plaintiff has not demonstrated Mr. Campinha-Bacote 11 waived attorney-client privilege with regard to his communications with Defendants’ Board and 12 employees, the Court finds that the discovery Plaintiff seeks from Mr. Campinha-Bacote is not 13 “proportional to the needs of the case” and may be “obtained from some other source that is ... 14 less burdensome.” Fed. R. Civ. P. 26(b). As Defendants argue, Plaintiff has deposed or

will 15 depose two current directors of Oura Health’s Board (both of whom joined the Board before Mr. 16 Campinha-Bacote started working for Defendants), Oura Health’s COO and former acting CEO, 17 and Defendants’ 30(b)(6) witness. ECF No. 114 at 4. Plaintiff has also noticed subpoenas on 18 other former Board members. Id. As Defendants acknowledge, information regarding 19 Defendants’ claim that Plaintiff has allegedly attempted to undermine the Board and whether Oura 20 Health’s Board knew of or approved the Stock Option Agreement are both “certainly important to 21 this case.” Id. at 5. But Defendants will be able to obtain information regarding these “important” 22 issues from other witnesses and there is no indication that Mr. Campinha-Bacote has non- 23 duplicative, non-privileged information that is important to advance the litigation. 24 Plaintiff’s requests to depose Mr. Campinha-Bacote and for Defendants to produce Mr. 25 Campinha-Bacote’s “communications with current and former Board members and Oura 26 employees about” the allegations in Mr. Campinha-Bacote’s declarations are accordingly denied. 27 This denial is without prejudice to Plaintiff renewing his request if subsequent discovery reveals 1 this case and not unreasonably cumulative or duplicative, or if Plaintiff identifies “particular 2 } communication[s]” that waived attorney-client privilege. Garcia, 2012 WL 3113172, at *4. 3 To ameliorate concerns regarding fairness, the Court holds Defendants to their agreement 4 || to “not rely on any testimony from Mr. Campinha-[Bacote] regarding the validity of the [Stock] 5 Option Agreement” or “regarding Plaintiff’s friction with the board at summary judgment or at 6 trial.” ECF Nos. 114 at 5, 114-2 at 2. 7 IT IS SO ORDERED. 8 Dated: October 21, 2025 9 10

J. CIQNBEROS

11 ed States Magistrate Judge a 12 15 16 it Z 18 19 20 21 22 23 24 25 26 27 28