

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Chambers of
Leda Dunn Wettre
United States Magistrate Judge

Martin Luther King Federal Building
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07101
(973) 645-3574

January 6, 2020

To: All counsel of record

LETTER ORDER

Re: Trzaska v. L'Oréal USA, Inc., et al., Civ. A. No. 15-2713 (SDW) (LDW)

Dear Counsel:

This letter order addresses plaintiff Steven Trzaska's application to compel production of three emails which have been withheld as privileged by defendant L'Oréal USA, Inc. and its parent company, defendant L'Oréal, S.A.

Briefly, plaintiff alleges that defendants wrongfully terminated his employment as a patent attorney on December 8, 2014 after he raised concerns about an internal patent quota system, in violation of the New Jersey Conscientious Employee Protection Act. By letters dated August 22, 2019, September 17, 2019, and September 23, 2019, plaintiff sought the production of a November 2014 chain of three emails between Thomas Sarakatsannis, Esq., General Counsel for L'Oréal USA, and Jean-François Pahin, CFO of the Research and Innovation division of L'Oréal, S.A., regarding his termination. The Court held a telephone conference to discuss this discovery dispute with the parties on October 21, 2019 and directed defendants to provide additional detail about the content of the three emails, beyond the notations in their privilege logs, in an attempt to facilitate a consensual resolution of plaintiff's application to compel. Accordingly, defendants explained that the email chain at issue was initiated shortly after plaintiff "threatened to begin legal actions if his concerns were not addressed." (Am. Compl. ¶ 64). Defendants proffer that Messrs. Sarakatsannis and Pahin discuss in the emails severance negotiations and potential legal claims and risks that could arise as a result of the decision to terminate plaintiff's employment. Each of the emails include in the subject line a notation that Messrs. Sarakatsannis and Pahin intended their communications to be "Attorney-Client Privileged."

Despite this additional information, by letters dated November 19, 2019, December 5, 2019, and December 12, 2019, plaintiff renewed his application to compel production of the three emails, or, in the alternative, for the Court to review the emails *in camera*. Defendants maintain that the emails are subject to the attorney-client privilege and that there is no basis for an *in camera* review. The Court agrees.

The attorney-client privilege attaches to any communication between an attorney and client

that is made in confidence and for the purpose of obtaining or providing legal assistance. *In re Teleglobe Commc'ns Corp.*, 493 F.3d 345, 359 (3d Cir. 2007). Here, Mr. Sarakatsannis is an in-house attorney for L'Oréal, and Mr. Pahin, on behalf of L'Oréal, S.A., is his client. Beyond the fact that Mr. Sarakatsannis' job as in-house counsel is to advise members of the L'Oréal corporate family on business and legal matters within his purview, he and Mr. Pahin manifested their understanding of their attorney-client relationship by marking the subject line of the three emails "Attorney-Client Privileged." The communications were made in confidence, as there are no other participants in the email chain and neither defendant has otherwise disclosed their content. And defense counsel proffered that the emails contain legal advice from Mr. Sarakatsannis to Mr. Pahin following plaintiff's threat of legal action against L'Oréal USA and L'Oréal, S.A. Plainly, the attorney-client privilege applies. *See Rowe v. E.I. duPont Nemours & Co.*, Civ. A. No. 06-1810, 2008 WL 4514092, at *7 (D.N.J. Sept. 30, 2008) (the attorney-client privilege applies "to communications between a corporation's employees and in-house counsel, provided that the communications are made while in-house counsel is acting in his professional capacity as a lawyer").

Plaintiff takes the position that there is no attorney-client relationship between Mr. Pahin, an executive employed by the French parent company, and Mr. Sarakatsannis, an in-house counsel employed by the American subsidiary. But "parent companies often centralize the provision of legal services to the entire corporate group in one in-house legal department," and, as a result, "the members of the corporate family are joint clients . . . all represented by the same in-house counsel (whether that counsel typically takes up office with the parent or with a subsidiary)." *Id.* at 369, 372. Such is the case here, and the fact that the attorney and client do not work for the same L'Oréal entity is of no moment.¹ As discussed above, the subject lines of the three emails leave no doubt that the L'Oréal representatives considered themselves to be bound by an attorney-client relationship. To the extent plaintiff is arguing that the attorney-client privilege was waived when the information in the three emails was shared between two distinct L'Oréal entities, *Teleglobe* is squarely to the contrary. *See id.* at 372 (holding that the joint client privilege shields intra-group corporate disclosures from production to third parties). The Court is not aware of any exception to the joint client privilege that could apply here, as neither L'Oréal USA nor L'Oréal, S.A. has waived the privilege, and the parent and subsidiary are not involved in adverse litigation in the case at bar. *See Newsome v. Lawson*, 286 F. Supp. 3d 657, 663 (D. Del. 2017).

Finally, plaintiff's speculation that these emails could be business communications, not legal communications, is insufficient to warrant *in camera* review by the Court. The timing of the creation of these emails, shortly after plaintiff threatened to take legal action against L'Oréal USA and L'Oréal, S.A., is telling, and plaintiff has not put forth any cause to doubt defense counsels' representations that the information contained therein was conveyed for a primarily legal purpose. *Cf. Corbi v. Marina Assocs.*, Civ. A. No. 08-5875, 2009 WL 10727983, at *2 (D.N.J. July 14, 2009) (noting that *in camera* review is "not generally favored" (quotation omitted)).

¹ Plaintiff's reliance of that portion of *Teleglobe* relating to the community of interest privilege, "which comes into play when clients with separate attorneys share otherwise privileged information in order to coordinate their legal activities," is therefore misplaced. *Teleglobe*, 493 F.3d at 359.

For the foregoing reasons, plaintiff's application to compel production of three privileged emails is **DENIED**.



Hon. Leda Dunn Wettre
United States Magistrate Judge