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November 21, 2011

VIA E-MAIL AND FIRST CLASS MAIL

James Freeman, Esq.
James Freeman, LLP
123 Fake Street,
Santa Ana, CA 92866

RE: Ruiz v. Central Solutions Inc.

Dear Mr. Freeman,

This office represents Legal Aid Society of Orange County ("Legal Aid").

We are responding to your letter dated November 11, 2011, the Notice of Deposition, and Deposition Subpoena for Personal Appearance and Production of Documents and Things ("Subpoena") issued by you and served upon Legal Aid.

Legal Aid objects to the Subpoena on grounds that: 1) the documents sought are not reasonably particularized, 2) the Subpoena was improperly served, 3) the Subpoena seeks information and documents protected by attorney client and work product privileges, 4) the Subpoena requests information protected by statute, and 5) the Subpoena demands information and documents that are not relevant and unduly burdensome.

Accordingly, Legal Aid requests that you voluntarily withdraw your Subpoena and provide written notice to this office of the withdrawal no later than November 25. If we not do not receive written notification by November 25, then we will assume that you will not withdraw your Subpoena, and will be forced to file a motion to quash.

The Subpoena is procedurally defective mandating immediate withdrawal.

The Subpoena is defective on its face because the documents sought are not reasonably particularized and the Subpoena was improperly served.

The documents sought are not reasonably particularized.

Code Civil Procedure § 2020.510 states that a "deposition subpoena that commands the attendance and the testimony of the deponent, as well as the production of business records, documents, and tangible things, shall . . . (2) Designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item."

In this case, the subpoena requests "all DOCUMENTS in your possession, custody or control pertaining to Sarah Ruiz from February 2008 to the present." This request is overbroad, vague, ambiguous, and not reasonably particularized.

The capitalized term "DOCUMENTS" is not defined so it is impossible to ascertain what documents are at issue. Furthermore, the term itself is vague, ambiguous, and overly broad, and could encompass almost anything.

The aforementioned request also fails to specifically describe the documents sought or reference any categories of documents, let alone particular categories. This overly broad request going back several years fails to apprise Legal Aid of the specific documents sought in violation of Code Civil Procedure § 2020.510. As such, the Subpoena is defective and should be withdrawn immediately.

The Subpoena was improperly served.

Code of Civil Procedure § 1985.3(b)(3) and 1985.6(b)(3) require that the Notice of Consumer or Employee be served at least five days before the Subpoena.

In this case, the proof of service attached to the Subpoena shows that the Notice to Consumer or Employee and Objection ("Notice") was served at the same time as the Subpoena. Such facially apparent premature service invalidates the Subpoena because the party whose records are sought does not have an opportunity to object. Failure to comply with the service requirements by itself invalidates the service, so that the custodian is under no duty to produce the records sought by the Subpoena. *See* CCP § 1985.3(k) and 1985.6(j). Lack of proper service further necessitates withdrawal.

The Subpoena is substantively defective and cannot be cured.

Beyond the procedural defects, the Subpoena fails on substantive grounds for numerous reasons.

The Subpoena seeks documents and communication protected by the attorney-client and work product privileges.

Among other things, the Subpoena seeks "all communication between [Legal Aid] and Sarah Ruiz" and "all documents pertaining to Sarah Ruiz." These requests violate attorney-client privilege and attorney work product.

The attorney-client privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity, or any particular circumstances peculiar to the case. *2,022 Ranch, L.L.C. v. Superior Court* (App. 4 Dist. 2003) 7 Cal.Rptr.3d 197.

The lawyer-client privilege is, indeed, so extensive that where a person seeks the assistance of an attorney with a view to employing him professionally, any information acquired by the attorney is privileged whether or not actual employment results. *People v. Canfield* (1974) 12 Cal.3d 699, 704-05.

As stated in *Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1495-96, "while involvement of an unnecessary third person in attorney-client communications destroys confidentiality, involvement of third persons to whom disclosure is reasonably necessary to further the purpose of the legal consultation preserves confidentiality of communication."

Additionally, the ABA Model Rules Governing Lawyer Referral and Information Service provides for protection under its Rule XIV stating "a disclosure of information to a lawyer referral service for the purpose of seeking legal assistance shall be deemed a privileged lawyer-client communication."

In this case, the Subpoena seeks communication by and between Ms. Valera and members of Legal Aid and documents relating to same. Both the communication and the documents are privileged. Such a request cannot be cured given the privileges involved.

In your letter of November 11, you claim that the attorney-client privilege is not applicable, relying on Evidence Code §952, and an isolated snippet of the *In re Osterhoudt* (9th Cir. 1983) 722 F.2d 591, 594 case, citing *Colton v. United States,* 306 F.2d 633, 637 (2d Cir.1962). Reliance on such authority is misguided.

Your letter states that "we were under the belief that the attorney-client privilege was inapplicable to any such communications between the consumer and [Legal Aid] operators and paralegal staff."

Contrary to your assertion, such a premise fails out of hand. Attorney-client communications in the presence of, or disclosed to, clerks, secretaries, interpreters, physicians, spouses, parents, business associates, or joint clients, when made to further the interest of the client or when reasonably necessary for transmission or accomplishment of the purpose of the consultation, remain privileged. *Zurich American Ins. Co. v. Superior Court* (App. 2 Dist. 2007) 66 Cal.Rptr.3d 833. Therefore, even if the communication was made to an operator or paralegal staff it would still be privileged. This is further memorialized within Evidence Code §952 protecting communication made to "those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship."

You also cite the *Osterhoudt* and *Colton* cases to bolster your position that such communication is not privileged. However, the citation made in your letter conveniently omits the balance of the paragraph where the court goes on to say that "to be sure, there may be circumstances under which the identification of a client may amount to the prejudicial disclosure of a confidential communication, as where the substance of a disclosure has already been revealed but not its source."

Given this caveat, it is not clear based on the Subpoena, whether the information sought, including dates of contact, would not present a prejudicial disclosure of confidential communication.

In your letter, you also seek a privilege log. Given the numerous defects present in the Subpoena, and the utter lack of particularity with regard to the documents sought, it would be premature to provide a privilege log, assuming one is even necessary or proper in this context. Such a request puts the cart before the horse.

The Subpoena seeks information protected by statute.

The Subpoena also seeks "procedures for attorneys to become listed on LASOC's referral list" and "procedures for handling consumer inquires." Requesting such information may contravene the Rules of the State Bar of California as they apply to referral services, such as Legal Aid.

Rule 15.4 of the Rules of the State Bar of California states that "all documents, records, communications, and other materials from or pertaining to a Lawyer Referral Service, including its application for certification, shall become the property of the State Bar and shall be held in confidence and not released except upon prior order of the Board of Governors or by consent of the applicant."

In this case, given that the Subpoena requests communication and documents failing with the ambits of this statute, such information shall be held in confidence and not release except by order or consent, neither of which is present in this case.

The Subpoena seeks information that is irrelevant and unduly burdensome.

The Subpoena seeks information regarding: A) firms or attorneys on the list from February 2008 to the present, B) type of matters handled by Legal Aid in general, and C) types of matters referred out by Legal Aid, among other things. Such demands are irrelevant and are not within the permissible scope of discovery. There is no possibility that such generalized requests could have any meaningful bearing on the case at issue or could lead to the discovery of admissible evidence. Furthermore, any marginal benefit is far outweighed by the burden and expense of gathering and providing such information. Accordingly, the request is improper on relevance and undue burden grounds.

Conclusion

Given that the Subpoena fails both procedurally and substantively on numerous grounds, Legal Aid requests that you withdraw your Subpoena by November 25. If the Subpoena is not withdrawn by November 25, then Legal Aid will assume that you will not cooperate, and will be forced to file a Motion to Quash. Please be advised that if Legal Aid is forced to do so, then it will seek recovery of its attorney's fees and costs reasonably necessary to prepare and argue the Motion as provided in the Code of Civil Procedure. Hopefully, this will not be necessary.

Thank you in advance for your consideration of the foregoing and your anticipated cooperation.

Sincerely,

Stephen R. Solis
Attorney at Law for the Firm

SRS:sbs