

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. Mark Coulson
UNITED STATES MAGISTRATE JUDGE

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February 19, 2026

LETTER ORDER AND OPINION TO COUNSEL

RE: *Nock v. PalmCo Administration, LLC et al.*
Civil No. 1:24-cv-00662-JMC

Dear Counsel:

Plaintiff, Robert Nock, individually and on behalf of all others similarly situated, brought this case against Defendants, PalmCo Administration, LLC d/b/a Indra Energy, PalmCo Power MD, LLC d/b/a Indra Energy, and PalmCo Energy MD, LLC d/b/a Indra Energy (collectively, “Indra” or “Defendants”) alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”) and the Maryland Telephone Consumer Protection Act, Md. Com. Law § 14-3201, *et seq.* (ECF No. 28). Currently before the Court is a unique dispute between the parties concerning a subpoena to depose Plaintiff’s attorney, Mr. Ethan Preston. (ECF Nos. 154, 155). Plaintiff seeks a protective order for relief from such a deposition under Fed. R. Civ. P. 26(c)(1).¹

The issues have been fully briefed, and no hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2025). For the reasons set forth below, Plaintiff’s requested relief is DENIED, subject to the limitations stated herein.

I. Background

Keeping with their pattern of turning to judicial intervention to resolve their discovery disputes, the parties present again with the instant subpoena dispute. As stated previously, this matter was referred to the undersigned for discovery and all related scheduling by U.S. District Judge Richard Bennett on November 7, 2024. (ECF No. 49). The undersigned addressed various disputes in orders dated November 11, 2024, January 15, 2025, and March 10, 2025. (ECF Nos. 60, 75, and 86). On August 6, 2025, the undersigned issued an Order deferring any further discovery rulings until the Plaintiff’s motion to consolidate had been resolved. (ECF No. 131). Judge Bennett denied Plaintiff’s motion to consolidate on December 17, 2025. Thereafter, the undersigned directed the parties to propose a schedule for remaining discovery and related deadlines and to file a joint status report on January 7, 2026. (ECF No. 138). The parties did so in a joint status report dated January 21, 2026, and alerted the Court of a discovery dispute shortly thereafter. (ECF No. 139). The Court issued a letter Order and Opinion on February 2, 2026, that

¹ The present discovery dispute is unlike many of the parties’ recent disputes, as it involves a challenge to a subpoena. Ordinarily, a challenge to a subpoena would typically go forward where compliance is required under Rule 45(d). Here, that jurisdiction is Texas. On February 10, 2026, the Court directed Mr. Preston to indicate whether he agrees to waive jurisdiction in Texas and consents to this Court’s jurisdiction by the close of business on February 11, 2026. Mr. Preston indicated he “already consented to the Court’s jurisdiction...when he filed his motion for protective order.” (ECF No. 156).

denied the requested relief to the extent it related *Abramson v. PalmCo PA LLC*, 19-cv-1675-MJH (W.D.Pa 2019), but granted the relief regarding the 2019 email and related request for admission. (ECF No. 145) (Docketed on February 3, 2026). The day after the Order and Opinion was docketed, on February 4, 2026, the parties alerted the court to another discovery dispute in a joint correspondence. (ECF No. 147, 148). As usual, they submitted letters to the Court outlining their respective positions. (ECF Nos. 149, 150). The Court issued an Opinion and Order regarding the February 4, 2026 dispute on February 9, 2026. (ECF No. 151).

That same day, the parties alerted the Court of the instant discovery dispute. (ECF No. 152). They submitted their position letters on February 10, 2026. (ECF Nos. 154, 155). The parties indicate that they last met and conferred via video-conference to resolve this dispute over five months ago, on September 4, 2025. (ECF No. 152).

II. Analysis

Indra seeks to depose one of Plaintiff's lawyers, Mr. Preston, regarding certain call recordings he obtained and upon which Plaintiff bases his and the putative class's claims. (ECF No. 154). "Mr. Preston claims he acquired the recordings in 2021—long before Plaintiff retained him—and concedes no other means of obtaining this information exists." *Id.* Indra asserts that it needs such information to explore "the recordings' authenticity, chain of custody, admissibility, and other important issues, such as who owned and created the recordings and whether Mr. Preston obtained them in violation of any protective order, law, or contract (as, generally, you cannot download thousands of call recordings without permission)." *Id.* Mr. Preston counters that Indra has other means by which it may obtain the same information and that a deposition would "inevitably invade attorney work-product." *Id.*

The Federal Rules of Civil Procedure do not prevent the deposition of another party's lawyer, so long as the deposition seeks relevant, nonprivileged information. *Carr v. Double T Diner*, 272 F.R.D. 431, 435 (D. Md. 2010). Nock correctly points to three factors a defendant must demonstrate to depose a plaintiff's attorney. *Cincinnati Ins. Co. v. Fish*, Civil No.: RDB-19-3355, 2021 WL 1658469, at *1 (D. Md. Apr. 27, 2021). Those include "1) the deposition is the only practical means of obtaining the information; 2) the information will not invade the attorney-client privilege or the attorney's work product; and 3) the information is relevant and its need outweighs the disadvantages of deposing a party's attorney." *Id.* (citing *N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83, 85-86 (M.D.N.C. 1987)). "The moving party bears the burden to prove that the deposition is necessary and because of the significant risks of implicating attorney-client privilege and work-product, the presumption is against permitting the deposition." *Technology Patents LLC v. Deutsche Telekom AG*, Civil Action No.: AW-07-3012, 2010 WL 11556702, at *1 (D. Md. Mar. 29, 2010) (citing *Asbury v. Litton Loan Servicing*, No. 3:07-0500, 2008 WL 973095, at *1 (S.D.W.V. Apr. 9, 2009)).

A. Whether a Deposition is the Only Practical Means of Obtaining the Information Sought

To begin, Indra represents that in an effort to obtain the information sought (the call recordings Mr. Preston obtained prior to his attorney-client relationship with Nock), it "spent

months and considerable resources attempting to resolve this dispute informally. Indra even agreed to, and spent weeks negotiating, a Rule 502(d) order Mr. Preston demanded.” (ECF No. 154 at 2). “Indra also repeatedly narrowed its requests. But Mr. Preston ultimately refused to provide basic factual context, despite confirming he alone has firsthand knowledge about his actions. Mr. Preston insisted that he (a third party) had no obligation to respond while Indra had not (he claimed) satisfied Plaintiff’s discovery demands—many of which the Court has since rejected.” *Id.* In pertinent part, “Mr. Preston alone knows how and under what circumstances he found, acquired, and has preserved the call recordings.” *Id.* at 3. Defendant further posits that Mr. Preston has offered no alternatives.

On that point, Plaintiff counters, “Indra has also made no effort at all to explain why it cannot seek this information via written discovery to Nock, or why the information counsel has already provided about the origin and authentication of the call records is insufficient.” (ECF No. 155). From what the Court understands, Mr. Preston has refused to provide such discovery. And while it is well taken that Indra does not expound in great detail upon why the circumstantial evidence Nock explains is insufficient, it is clear to the Court that Nock’s extrinsic evidence is no replacement for or of equivalent value to direct, factual answers to Indra’s questions. Moreover, Indra makes clear that there are more purposes for the deposition than mere authentication of the calls, as stated above.

Under the first factor, “[t]he standard requires that other means of obtaining the information be exhausted before deposing trial counsel.” *Technology Patents LLC*, 2010 WL 11556702, at *2. Therefore, “if there are other persons available who have the information, they should be deposed first.” *N.F.A. Corp.*, 117 F.R.D. at 86. Considering Indra’s argument that Mr. Preston has admitted that “[he] alone knows how and under what circumstances he found, acquired, and has preserved the call recordings,” and such information is at issue in the instant case, it is unclear how Indra could obtain that information by any means other than directly from Mr. Preston. *Id.*

Additionally, the Court disagrees with Nock that Mr. Preston’s URL and download data evidence is a sufficient alternative in view of the reasons for which Indra seeks to depose him. The Court similarly rejects Nock’s argument that a copy of call records from Jabbar would provide for the information Mr. Preston has indicated only he knows. Moreover, if there existed better alternatives, such as a written deposition or answers to interrogatories, the Court would expect that in the five months during which the parties were aware of this specific dispute, Mr. Preston would comply with the Court’s informal discovery dispute process and provide such written responses.² It is clear that he has refused to provide any first-hand information he possesses subject to the deposition request. *See* (ECF No. 154 at 2). Here, the Court is satisfied, based on Indra’s reasons

² “Mr. Preston has produced the URLs at which he says he found the recordings, and cryptically claims he obtained them in the context of undisclosed litigation, using a script on his computer, and without a password or payment. But Mr. Preston has refused to answer Indra’s basic questions about how and under what circumstances he identified, obtained, and preserved the recordings. What litigation? What led him to the website? Who owned and operated the website? Did he obtain permission to access and acquire the recordings? Who owned and created them? Were there any records on the same website that authenticated the recordings? Any metadata showing dates the files were created or edited? What documents establish chain of custody? Were the recordings altered? And so on.” (ECF No. 154 at 2).

set forth in its position letter, that a deposition is the only practical means of obtaining the information sought under the present circumstances involving a standstill between counsel. *N.F.A. Corp.*, 117 F.R.D. at 86.

B. Whether the Information Sought Invades the Attorney Client Privilege or Work Product

Indra contends that deposition questions concerning the facts surrounding the recordings at issue are not subject to attorney client privilege or work product because Mr. Preston obtained them “long before he solicited Plaintiff to file this suit in 2022.” (ECF No. 154 at 2). Mr. Preston makes several points to this effect:

Most of the information Indra seeks via the subpoena is work product—information that reveals what documents counsel knows about (and how he knows), which documents counsel selected to download and to keep, and how counsel has used the call records...

Indra tries to justify its invasion of work product by arguing that counsel did not have a client at the time he obtained the call records. As he told Indra, this is untrue: counsel was looking for call records for different clients at the time... It is irrelevant anyways: counsel obtained the call records “in anticipation of litigation,” whether or not Nock had retained counsel by then. Fed. R. Civ. P. 26(b)(3)(A). Work product applies to counsel “gathering of facts to be used to support a lawsuit by a yet-to-be-identified [] class plaintiff [] done in service of the end of [] filing that lawsuit on the named Plaintiffs’ behalf.” *In re Turkey Antitrust Litig.*, No. 19-8318, 2022 WL 797180, *13 (N.D. Ill. Mar. 16, 2022). *See Cohen v. City of New York*, 255 F.R.D. 110, 124 (S.D.N.Y. 2008) (counsel did not need to “have had a formal attorney-client relationship with the arrestees” for work product to apply); *Ennis v. Anderson Trucking Serv., Inc.*, 141 F.R.D. 258, 260 (E.D.N.C. 1991) (“documents generated before the generating party has consulted an attorney [] may be accorded Rule 26(b)(3) protection”)

(ECF No. 155 at 2-3).

Of course, “courts should exercise great care before permitting the deposition of an attorney inasmuch as seemingly innocent questions ... may implicate opinion work product.” *N.F.A. Corp.*, 117 F.R.D. at 86-87. As an initial matter, the Court agrees that there is no justification present under these circumstances that would entitle Indra to Mr. Preston’s opinions, as such work product is almost never discoverable.³ *See id.* Thus, questions concerning

³ Moreover, attorney-client privilege is not at issue. As necessarily implied by Mr. Preston’s argument, he did not have an attorney-client relationship with *Nock* at the time he obtained the calls at issue in the litigation *Nock* pursued a year later. As such, the Court concludes that attorney client privilege is not applicable here. *Allen v. TV One, LLC*, Civil Action No. DKC 15-1960, 2016 WL 7157420, at *3 (D. Md. Dec. 8, 2016) (“The attorney-client privilege applies:... [O]nly if (1) the asserted holder of the privilege is or sought to become a client...”).

Mr. Preston’s motives for why he sought to obtain the calls and on whose behalf will not be permitted. However, there also exist certain factual questions, distinct from opinion questions, about what Mr. Preston obtained from whom, when, how, in what format, and how the files were preserved thereafter. Courts have recognized that “the line between opinion and non-opinion work product can be a fine one.” *In re Martin Marietta Corp.*, 856 F.2d 619, 626 (4th Cir. 1988). In *Martin Marietta*, the Fourth Circuit made clear that that the work product doctrine strives to protect “mental impressions, conclusions, opinions, or legal theories of an attorney.” *Id.*

Mr. Preston relies on *Nutramax Laboratories, Inc. v. Twin Laboratories Inc.* in support of his proposition that the knowledge only he possesses about the integrity of the calls at issue in this case are protected by the work product doctrine. *See Nutramax Laboratories, Inc. v. Twin Laboratories Inc.*, 183 F.R.D. 458, 466 (D. Md. 1998). However, *Nutramax* considered whether certain deposition questions exploring whether a deponent reviewed any documents before the deposition with the opposing party’s counsel were subject to the work product doctrine, and by extension, whether Fed. R. Evid. 612 entitled them to produce the documents used to refresh the deponent’s recollection. *Id.* at 460-61. Concluding as an initial matter that the documents themselves were discoverable because they did not contain pure expressions of legal theories, mental impressions, and conclusions or opinions of counsel, the remaining portion of the inquiry was governed by Fed. R. Evid. 612. *Id.* at 467. Thus, the Court is not persuaded that *Nutramax* stands for the proposition that Indra cannot ask limited factual questions that are unrelated to the pure mental impressions, legal theories, and impressions of counsel, which only Mr. Preston knows, about how and when he obtained the calls.

Therefore, even assuming that the work product doctrine applies to Mr. Preston’s actions before he had an attorney-client relationship with Nock, the Court is unpersuaded that a factual inquiry as specified herein and limited to the calls Mr. Preston obtained in 2021 are protected work product.⁴ *See id.*

C. Whether the Information is Relevant and its Need Outweighs the Disadvantages of Deposing a Party’s Attorney

Finally, Mr. Preston asserts that the disadvantages outweigh the value of the information sought because he “expects to assert work product objections to most of the questions within the scope of the subpoena, leaving the Court with a deposition transcript littered with assertions of work product.” (ECF No. 155 at 4). However, it cannot be said that Mr. Preston’s intent to assert work product privilege constitutes a disadvantage to him. By contrast, Indra asserts the information’s need outweighs its disadvantages because it will “suffer significant prejudice if Mr. Preston withholds basic information about evidence Plaintiff claims is central to his allegations against Indra.” (ECF No. 154 at 3). The Court agrees.

⁴ Factual work product is discoverable “upon a showing of substantial need and inability, without undue hardship, to obtain the substantial equivalent of the materials by other means.” *Nutramax Laboratories, Inc.*, 183 F.R.D. at 462. Based on the analysis *Supra* Section II.A., the Court concludes that the limited factual inquiry described herein is discoverable.

After thorough review, it is clear to the Court that as it pertains to identifying, obtaining, and preserving the 2021 phone call files that gave rise to the instant litigation, Mr. Preston, by his own admission, is the sole fact witness who can testify to the facts underlying how he identified and obtained them, from whom, when, under what circumstances, and how he preserved them. Therefore, the Court will permit a limited deposition to that effect and will allow limited factual questions that are reasonably related to those enumerated herein. Questions about Mr. Preston's opinions about the recordings, his motivations for obtaining them, and his legal strategy arising therefrom will not be permitted.

III. Conclusion

For the foregoing reasons, Plaintiff's Motion for a Protective Order (ECF No. 155) is DENIED.

Notwithstanding its informal nature, this letter constitutes an order of the Court and should be docketed as such.

Sincerely yours,

/s/

J. Mark Coulson
United States Magistrate Judge