

2. A decision from the U.S. District Court for the Northern District of Ohio declining to require the Plaintiff to supplement a privilege log with only three entries, where the Defendant had not shown that additional documents withheld on privilege grounds predated the cutoff for privilege logging contained in the discovery order in the case.

In *Ravin Crossbows, LLC v. Hunter's Manufacturing Co.*, No. 23-CV-00598, 2024 WL 1175788 (N.D. Ohio Mar. 19, 2024), U.S. Magistrate Judge Amanda M. Knapp addressed a discovery dispute regarding the assertion of the attorney-client privilege in connection with a privilege log.

In this action, Plaintiff alleged that Defendant had infringed six of its patents. The order governing discovery of ESI addressed privilege logs and stated that “[n]o party is required to list on a privilege log Protected information generated on or after December 17, 2021, absent a showing of good cause.” *Id.* at *4.

Nevertheless, Defendant filed a motion to compel disputed discovery and argued that Plaintiff’s objections to Defendant’s document requests and requests for admission based on claims of attorney-client privilege were improper and did not describe the materials in a way that allowed Defendant to assess the asserted privilege as required by Rule 26(b)(5)(A)(ii). *Id.* at *5. In support of its contention that Plaintiff’s privilege assertions were deficient, Defendant noted that Plaintiff’s privilege log “has a paltry three entries.” Defendant therefore requested that the court order that “all materials encompassed by the requests but not listed on the privilege log have forfeited any such claims of privilege.”

In response, Plaintiff argued that any responsive document withheld as privileged was detailed on the privilege log, and that Defendant “ha[d] not levied any complaints about the sufficiency of [Plaintiff’s] narrative relating to the [privilege logs].” Plaintiff further argued that it had timely objected to Defendant’s discovery requests and complied with its obligations under the Federal Rules of Civil Procedure.

Judge Knapp noted that although Defendant was correct that Plaintiff’s privilege log included only three entries, “it had not cited any authority indicating that the mere length of a privilege log is dispositive as to whether a party has complied with its discovery obligations.” Further, Judge Knapp highlighted that the parties had “stipulated that they [were] not ‘required to list on a privilege log Protected information generated on or after December 17, 2021, absent a showing of good cause.’” As such, Judge Knapp found that Defendant’s “arguments rely on an

unsubstantiated assumption that [Plaintiff was] in possession of a larger number of responsive privileged communications which predate December 17, 2021, and [were] not electronic communications governed by the ESI Order.” She then found that Plaintiff had no obligation to produce, and thus no obligation to list in its privilege log, any privileged electronic communications governed by the ESI order.

Thus, Judge Knapp denied Defendant’s motion to compel and request for an order that “all materials encompassed by the requests but not listed on the privilege log have forfeited any such claims of privilege” based on “the lack of any information suggesting Plaintiff actually withheld additional privileged materials” not encompassed by its privilege log or the ESI order.