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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TARA MARTIN et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

NEOCELL CORPORATION,

Real Party in Interest.

G046938

(Super. Ct. No. 30-2011-00511055)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Luis A. Rodriguez, Judge. Petition granted in part and denied in part.

Gordon & Rees, Douglas Smith, Stephanie P. Alexander and Michael P. Campbell for Petitioners.

No appearance for Respondent.

Callahan & Blaine, Michael J. Sachs and Michael S. LeBoff for Real Party
in Interest.

* * *

INTRODUCTION

Real party in interest Neocell Corporation (Neocell) was represented by Attorney John Clifford in negotiations to terminate a distribution agreement Neocell had entered into with a former Neocell employee, Darren Rude, and his company, Nutrawise Corporation (Nutrawise). Neocell became dissatisfied with the settlement agreement it had reached with Rude and Nutrawise. Neocell sued Clifford and his law firm, Smith Campbell Clifford Kearney Gore (Smith Campbell), on the ground Clifford had failed to adequately disclose that Rude and Nutrawise had been represented during those negotiations by Clifford's fiancée, Attorney Tara Martin, and her law firm, Gordon & Rees LLP. (We refer to Martin and Gordon & Rees LLP collectively as petitioners.)

Neocell served petitioners each with a subpoena seeking the production of, inter alia, "all communications" (capitalization omitted) between Martin and Clifford from May 1, 2011 "to the present." Petitioners moved to quash the subpoenas or, in the alternative, to limit the subpoenas because, inter alia, they sought "to materially violate the privacy rights" of Martin and Clifford. The trial court denied the motion to quash but limited the subpoenas to require the production of documents to communications that occurred in July, August, and September 2011 (a time period covering the negotiations and shortly thereafter) (the discovery order). The trial court denied the request to limit the subject matter of the communications demanded by the subpoenas, and petitioners filed a petition for a peremptory writ of mandate seeking a writ directing the trial court to quash the subpoenas or, alternatively, to further limit them.

We grant the petition in part and deny it in part with directions. We grant the petition on the ground the trial court erred by failing to substantively limit the document requests of the subpoenas to minimize their intrusion on Martin's privacy

rights. The issues in this proceeding relate only to privacy issues; attorney-client privilege and work product doctrine issues are not before us.

On remand, we direct the court to vacate the discovery order and issue a new and different discovery order limiting the production of communications to those that occurred in July, August, or September 2011, relating to Neocell, Nutrawise, or Rude. We deny the petition to the extent it seeks a writ directing the trial court to quash the subpoenas entirely.

ALLEGATIONS OF THE FIRST AMENDED COMPLAINT

Neocell manufactures and sells dietary supplements. As of the date of the first amended complaint, Al Quadri was the 84-year-old owner and president of Neocell. In 2002, Neocell hired Rude as a sales representative. Rude was first promoted to sales director and then to executive vice-president of sales; he was a member of Neocell's board of directors.

According to the first amended complaint, in November 2010, "as part of an elaborate ruse," Rude told Quadri that he wanted to terminate his employment, but wanted to continue his relationship with Neocell as an independent distributor of Neocell products through Rude's company, Nutrawise. In December 2010, Neocell and Nutrawise entered into a distribution agreement; Rude personally guaranteed Nutrawise's obligations under the distribution agreement.

Neocell alleged Rude never intended to comply with the terms of the distribution agreement and only entered into it to defraud Neocell and hide his secret efforts to establish competing companies, solicit Neocell's key employees, and otherwise unfairly compete with Neocell in violation of the terms of the distribution agreement. Nutrawise failed to timely pay for products and failed to devote sufficient resources to marketing, advertising, and demonstrations.

Upon Neocell's discovery of Nutrawise's "continuing and repeated breaches" of the distribution agreement, Neocell, Nutrawise, and Rude began to negotiate

to terminate that agreement. Neocell retained Clifford and Smith Campbell to represent it in those negotiations. (Clifford and Smith Campbell had represented Neocell for several years, and Smith Campbell had also served as general corporate counsel for Neocell.) Nutrawise was represented in the negotiations to terminate the distribution agreement by petitioners. Martin was “at all relevant times . . . engaged to and living with Clifford.” (Underscoring omitted.) Clifford and Smith Campbell allegedly failed to disclose this conflict of interest in writing, as required by California Rules of Professional Conduct, rule 3-320. Neocell alleged Clifford falsely represented to Neocell that Martin would not be representing Nutrawise. Although Clifford said Martin was only nominally involved in the negotiations, she was, allegedly, Nutrawise’s primary counsel in the negotiations.

Neocell also alleged that Clifford, “or somebody very close to him, had a direct or indirect financial interest in Nutrawise in violation of Rules of Professional Conduct, Rule 3-300.” Clifford, however, denied any financial interest in Nutrawise. Neocell further alleged that, “[a]s a result of Rude’s duplicitous conduct and of Clifford’s conflicts of interest, Quadri was induced to and did execute on behalf of Neocell a Stipulation of Settlement.”¹

PROCEDURAL BACKGROUND

I.

NEOCELL FILES THE FIRST AMENDED COMPLAINT.

In November 2011, Neocell filed a first amended complaint against defendants Nutrawise, Nutrawise Health & Beauty Corporation, Rude, Clifford, and

¹ Neocell also alleged that at the time Clifford and Smith Campbell represented Neocell in the negotiations to terminate the distribution agreement, they concurrently represented Neocell and Rude in a trademark litigation matter pending in San Diego, California. Neocell asserted Clifford and Smith Campbell failed to fully and completely inform Neocell as to the nature of the conflict of interest caused by their concurrent representation of Rude and Neocell, and failed to obtain Neocell’s informed, written consent to that conflict of interest, in violation of California Rules of Professional Conduct, rule 3-310.

Smith Campbell. The complaint alleged claims for fraudulent inducement, fraudulent concealment, intentional interference with contractual relationships, and violation of Business and Professions Code section 17200 against Nutrawise, Nutrawise Health & Beauty Corporation, and Rude; claims for breach of contract and rescission against Nutrawise; a claim for breach of guaranty against Rude; a claim for disgorgement of fees against Smith Campbell; claims for professional negligence and violation of section 17200 against Clifford and Smith Campbell; and a claim for breach of fiduciary duty against all defendants.

II.

NEOCELL SERVES PETITIONERS WITH SUBPOENAS CONTAINING DOCUMENT PRODUCTION REQUESTS.

On January 20, 2012, Neocell served petitioners each with a subpoena containing the following requests for production:

“REQUEST FOR PRODUCTION NO. 1:

“All COMMUNICATIONS between YOU and John Clifford from May 1, 2011 to the present, including but not limited to any emails and text messages.

“REQUEST FOR PRODUCTION NO. 2:

“All COMMUNICATIONS between YOU and SMITH CAMPBELL from May 1, 2011 to the present, including but not limited to any emails and text messages.

“REQUEST FOR PRODUCTION NO. 3:

“All COMMUNICATIONS between YOU and NEOCELL from May 1, 2011 to the present, including but not limited to any emails and text messages. [¶] . . . [¶]

“REQUEST FOR PRODUCTION NO. 9:

“All DOCUMENTS that YOU received from NEOCELL and/or its attorneys from May 1, 2011 to the present.

“REQUEST FOR PRODUCTION NO. 10:

“All DOCUMENTS that YOU provided to NEOCELL and/or its attorneys from May 1, 2011 to the present.

“REQUEST FOR PRODUCTION NO. 11:

“All DOCUMENTS that YOU received from SMITH CAMPBELL from May 1, 2011 to the present.

“REQUEST FOR PRODUCTION NO. 12:

“All DOCUMENTS that YOU provided to SMITH CAMPBELL from May 1, 2011 to the present.

“REQUEST FOR PRODUCTION NO. 13:

“All DOCUMENTS that YOU received from John Clifford from May 1, 2011 to the present.

“REQUEST FOR PRODUCTION NO. 14:

“All DOCUMENTS that YOU provided to John Clifford from May 1, 2011 to the present.”

The subpoenas contained the following definitions:

(1) “COMMUNICATION” or “COMMUNICATIONS” mean “any transmission or exchange of information, thought or sentiment between two or more persons, orally or in writing, and include[] any conversation or discussion, whether face-to-face or by means of a telephone, telegraph, telex, telecopier, facsimile transmission, e-mail, electronic or other medium”; (2) “YOU” and “YOUR” refer to “Tara Martin, and include his [*sic*] past or present agents, attorneys, employees, representatives or other persons or entities acting on YOUR behalf” in the subpoena served on Martin, and refer to “the law firm of Gordon & Rees, LLP, and shall its [*sic*] include past or present agents, attorneys, officers, directors, shareholders, partners, employees, representatives or other persons or entities acting on its behalf” in the subpoena served on Gordon & Rees; (3) “SMITH CAMPBELL” refers to “the law firm of Smith, Campbell, Clifford, Kearney, Gore, and

shall its [*sic*] include past or present agents, attorneys, officers, directors, shareholders, partners, employees, representatives or other persons or entities acting on its behalf”; and (4) “NEOCELL” refers to “Plaintiff Neocell Corporation, and shall includes [*sic*] its past or present employees, officers, directors, shareholders, agents, representatives, and attorneys.”

III.

PETITIONERS FILE A MOTION TO QUASH OR LIMIT THE SUBPOENAS; THE TRIAL COURT DENIES THE MOTION TO QUASH BUT LIMITS THE SUBPOENAS’ DOCUMENT REQUESTS AS TO TIMEFRAME ONLY.

In February 2012, petitioners filed a motion to quash or limit the subpoenas on the ground they “seek to materially violate the privacy rights of Ms. Martin and defendant John Clifford, seek to violate the attorney-client privilege between Gordon & Rees LLP and multiple current clients, and seek production of documents outside the permissible scope of discovery.” The motion was supported by Martin’s declaration, in which she stated she was employed as senior counsel by Gordon & Rees LLP and had “been in a committed relationship” with Clifford “for approximately twelve years.” She had “lived in the same home as Mr. Clifford for more than 5 years, and [they] have been engaged to be married for more than three years.”

In her declaration, Martin further stated: “I have an adult son and daughter, both of whom spend significant time with me and Mr. Clifford at our home. My daughter is a college student and resides with us when she is not away at school. My son lives in the Southern California area and often spends weekends at our home. Mr. Clifford has two school-aged daughters who also reside with us part of the time. Mr. Clifford and I each play a large role in the lives of each other’s children. We consult each other on all material decisions regarding our children’s health and well-being, including, among other things, their accomplishments, struggles, academics and extracurricular activities, friends, schedules, and all other personal issues which arise as a result of our roles as parents.”

She declared: “In addition to our involvement in the parenting of each others’ children, Mr. Clifford and I regularly discuss every aspect of our lives, including our bills, personal and business finances, personal legal issues, and a variety of private information concerning our physical and emotional health, and our feelings regarding all of these issues. We routinely discuss our relationship, our friends, our personal views and opinions on politics and other societal issues, and share private information about our family members. We exchange cards, letters, and notes on holidays, each others’ birthdays, and sometimes ‘just because.’”

Martin also stated in her declaration: “Mr. Clifford and I are practicing attorneys and each carry smart phones with email and text message capability. As a matter of convenience, we communicate extensively through the use of email and text messages. The subpoena for production of documents served on me by Plaintiff requests, among other documents, production of ALL communications between Mr. Clifford and me from May 1, 2011 through the present, including emails and text messages. Compliance with this request would involve the production of literally thousands of pages of personal and private documents and communications which have nothing whatsoever to do with the underlying dispute between Plaintiff and Nutrawise.” She further stated: “Mr. Clifford and I have always believed that our communications on the private matters detailed above (and other topics) would remain private. We do not share our private conversations with others outside our immediate family and have never anticipated that our text messages or emails regarding the details of our personal relationship, our children, finances, family issues, and other personal information would ever be subject to discovery in a civil action, or that such private information could potentially be made a part of a public record by being attached to a motion filed with the Superior Court.” (She added that “contrary to the erroneous allegations in the [first amended complaint], the relationship that [she] share[s] with Mr. Clifford was expressly disclosed to all parties involved and any actual or potential conflict was waived.”)

At the hearing on the motion to quash, the trial court found the documents sought by the subpoenas, including private communications, were relevant to the case. The court stated that petitioners had the option of seeking a protective order for particularly sensitive information. The court further stated: “But for the court to start developing categories of communications of that privacy I think would be a difficult burden on the court at this time to do. [¶] So that’s why I did not impose a subject matter [limitation].” The court explained that it was trying to “strike a balance” by creating a “time limitation” as to “how far back . . . you go into these people’s lives as you open them up.”

The trial court denied petitioners’ motion to quash the subpoenas but granted, in part, their request to limit them. The discovery order (as stated in the notice of ruling) explained: “Specifically, the Court limits Requests Nos. 4, 5, 20 and 21 to only those matters concerning or relating to Neocell, Nutrawise, Rude or any other matters at issue in this lawsuit,^[2] and limits Request Nos. 1, 2, 3, 9, 10, 11, 12, 13, and 14, to the extent these requests seek production of private communications between John Clifford and Tara Martin, to the three-month period proposed by plaintiff (July, August and September of 2011). The Court further limits Request No. 19, such that it does not require third-party witnesses to produce communications protected by the attorney-client privilege. [¶] Third-parties are required to produce all documents responsive to the subpoena, as modified above, except for private communications between Martin and Clifford responsive to requests 1, 2, 3, 9, 10, 11, 12, 13, and 14, within twenty (20) days. Third-parties shall produce private communications between Martin and Clifford

² Request Nos. 4, 5, 20, and 21 sought the production of communications between petitioners and Neocell’s customers, Costco Wholesale Corporation and “Sam’s Club/Wal-Mart” (some capitalization omitted) and between petitioners and any other person relating to or referencing Costco or Sam’s Club/Wal-Mart. The trial court limited those requests to communications concerning or relating to Neocell, Nutrawise, or Rude.

responsive to requests 1, 2, 3, 9, 10, 11, 12, 13, and 14 within thirty (30) days, unless production of such documents [is] stayed because of a writ petition.”

IV.

PETITIONERS FILE THE PETITION FOR A PEREMPTORY WRIT OF MANDATE AND SEEK A STAY OF THE DISCOVERY ORDER; THIS COURT ISSUES A STAY OF THE DISCOVERY ORDER.

Petitioners filed a petition for a peremptory writ of mandate from the discovery order and requested an immediate stay of the discovery order. Petitioners seek the issuance of a peremptory writ of mandate directing the trial court to vacate the discovery order and either enter an order granting the motion to quash the subpoenas or limit the scope of the subpoenas to require production of only those documents and communications between Martin and Clifford, which related to the negotiations between Neocell, Nutrawise, and Rude. This court initially ordered all trial court proceedings stayed, but later dissolved the stay as to all trial court proceedings except for the discovery order, which this court ordered would remain stayed pending further order of this court.

DISCUSSION

I.

THE APPLICABLE STANDARDS OF REVIEW

“Management of discovery lies within the sound discretion of the trial court. Consequently, appellate review of discovery rulings is governed by the abuse of discretion standard. [Citation.] Where there is a basis for the trial court’s ruling and the evidence supports it, a reviewing court will not substitute its opinion for that of the trial court. [Citation.]’ [Citation.] The trial court’s determination will be set aside only when it has been established that there was no legal justification for the order granting or denying the discovery in question. [Citation.]” (*Save Open Space Santa Monica Mountains v. Superior Court* (2000) 84 Cal.App.4th 235, 245-246.)

“Writ relief is appropriate to correct an abuse of discretion by the trial court. [Citation.] Conditions prerequisite to the issuance of a writ are a showing there is no adequate remedy at law (in this case, no right to an immediate appeal) and the petitioner will suffer an irreparable injury if the writ is not granted. [Citation.] Where, as here, an order will effectively undermine a privilege or infringe on privacy rights, review on appeal is deemed inadequate because reversal on appeal will not cure the disclosure of protected information.” (*Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 299-300.)

Here, petitioners have no adequate remedy at law (discovery orders are not immediately appealable) and they stand to suffer irreparable harm in the form of the substantial violation of Martin’s privacy rights if the discovery order unjustifiably required the imminent production of her private communications. Neocell acknowledges that the discovery order impinges on Martin’s privacy as alleged in the petition, and does not otherwise challenge the availability of writ review in this case. Instead, Neocell’s return focuses on the merit of the issue presented in the petition—whether the trial court erred in balancing the privacy interests of Martin and her family against the need for Neocell’s discovery of relevant information. We therefore address that issue.

II.

APPLICABLE LEGAL PRINCIPLES PERTAINING TO BALANCING PRIVACY RIGHTS AGAINST THE NEED FOR DISCOVERY

“The California Constitution ‘creates a zone of privacy which protects against unwarranted compelled disclosure of certain private information. [Citations.]’” (*Los Angeles Gay & Lesbian Center v. Superior Court, supra*, 194 Cal.App.4th at p. 306.) ““Where discovery involves matters encompassed by the right to privacy, courts recognize that ‘judicial discovery orders inevitably involve *state-compelled* disclosure’ [Citation.] Therefore, in reviewing a party’s resistance to a discovery order, based on the claim that it entrenches upon a constitutional right, we treat the

compelled disclosure as a product of state action subject to constitutional constraints. [Citation.]””” (*Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 357 (*Planned Parenthood*).)

“‘The constitutional right to privacy is not absolute and must therefore be balanced against other important interests.’ [Citations.] ‘[W]henver the compelled disclosure treads upon the constitutional right of privacy, there must be a compelling state interest. [Citation.]’ [Citation.] To justify a substantial infringement of First Amendment rights, disclosure must serve a ‘compelling’ state purpose, and that “‘purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.’” [Citation.] Even when ‘an intrusion on the right of privacy is deemed necessary under the circumstances of a particular case, any such intrusion should be the minimum intrusion necessary to achieve its objective.’ [Citation.] In other words, the least intrusive means should be utilized to satisfy the state’s countervailing interest and “[m]ere convenience of means or cost will not satisfy that test for that would make expediency and not the compelling interest the overriding value. [Citations.]” [Citations.]” (*Planned Parenthood, supra*, 83 Cal.App.4th at pp. 357-358; see *Starbucks Corp. v. Superior Court* (2011) 194 Cal.App.4th 820, 828 [“California courts, applying a qualified constitutional privilege for privacy, have intervened to prevent the compelled disclosure of information through discovery orders that unduly impinged upon the privacy rights of innocent third parties”].)

In *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370-371 (*Pioneer*), the California Supreme Court reiterated the “analytical framework” used by California courts in assessing invasion of privacy claims, as follows: “First, the claimant must possess a ‘legally protected privacy interest.’ [Citation.] An apt example from *Hill* [*v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1] is an interest ‘in precluding the dissemination or misuse of sensitive and confidential information (“informational privacy”)’ [Citation.] Under *Hill*, this class of information is

deemed private ‘when well-established social norms recognize the need to maximize individual control over its dissemination and use to prevent unjustified embarrassment or indignity.’ [Citation.] . . . [¶] Second, *Hill* teaches that the privacy claimant must possess a reasonable expectation of privacy under the particular circumstances, including ‘customs, practices, and physical settings surrounding particular activities’ [Citation.] As *Hill* explains, ‘A “reasonable” expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms.’ [Citation.] ‘[O]pportunities to consent voluntarily to activities impacting privacy interests obviously affect[] the expectations of the participant.’ [Citation.] [¶] Third, *Hill* explains that the invasion of privacy complained of must be ‘serious’ in nature, scope, and actual or potential impact to constitute an ‘egregious’ breach of social norms [Citation.] [¶] Assuming that a claimant has met the foregoing *Hill* criteria for invasion of a privacy interest, that interest must be measured against other competing or countervailing interests in a “balancing test.” [Citations.] ‘Conduct alleged to be an invasion of privacy is to be evaluated based on the extent to which it furthers legitimate and important competing interests.’ [Citation.] Protective measures, safeguards and other alternatives may minimize the privacy intrusion. ‘For example, if intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged.’”

III.

THE TRIAL COURT ERRED BY FAILING TO LIMIT THE SUBJECT MATTER OF THE COMMUNICATIONS SOUGHT BY THE SUBPOENAS.

Here, the discovery order significantly impacted Martin’s privacy interests and those of her family.³ The discovery order requires Martin to produce, inter alia, *all*

³ In its return, Neocell argues petitioners waived the argument that the requested discovery also infringes on Martin’s and Clifford’s children’s privacy rights. Neocell’s argument is without merit. In the motion to quash or limit the subpoenas, petitioners argued the subpoenas would require production of “personal discussions regarding the

communications between her and Clifford from July through September 2011. The discovery order thus requires the production of all the e-mails, text messages, notes, and cards exchanged between them, regardless of the subject matter; nothing is off limits. Hence, Martin was ordered to produce communications touching on virtually every aspect of her personal life, including communications containing information about Martin's and Clifford's children, medical information, and personal thoughts. The discovery order thus mandates the production of “sensitive and confidential information” for which Martin and her children would “possess a reasonable expectation of privacy.” (*Pioneer, supra*, 40 Cal.4th at p. 370.) The discovery order's requirement that all communications between Martin and Clifford be produced without any limit as to content certainly implicates a “serious” invasion of not only Martin's privacy but also that of her children. (*Ibid.*)

Having concluded petitioners have met the *Hill v. National Collegiate Athletic Assn., supra*, 7 Cal.4th 1, criteria of invasion of privacy interests as summarized in *Pioneer, supra*, 40 Cal.4th at pages 370-371, we evaluate the trial court's balancing of Martin's privacy rights against Neocell's need for the requested discovery. (*Planned Parenthood, supra*, 83 Cal.App.4th at p. 367 [“To determine whether the state's interests relating to the promotion of liberal discovery and truth in litigation outweigh the privacy interests in this case, we must balance the privacy interests against the litigants' need for discovery”].)

In its return, Neocell argues that all communications between Martin and Clifford are relevant because “Neocell asserts that Clifford's relationship with and feelings for Martin caused him to abandon his undivided duty of loyalty to Neocell and

raising and disciplining of children” and “discussions regarding Ms. Martin's children's private information.” They further argued, “no good faith argument exists to justify unlimited baseless demands for documents personal to Ms. Martin's and Mr. Clifford's private, financial, and family lives.” Petitioners therefore argued to the trial court that the requested discovery invaded Martin's and Clifford's children's privacy.

work collaboratively with Martin and her client to induce Neocell into signing the stipulation of settlement. Clifford denies that his representation of Neocell was impaired by his personal and intimate relationship with opposing counsel, contending instead that he completely separated his personal life from his professional obligations to his client. There is simply no way the jury can determine this material issue without understanding the nature, depth and circumstances of Clifford's and Martin's relationship." Neocell further argues the trial court properly balanced Martin and her children's privacy interests against Neocell's need for the requested discovery by "severely limit[ing] the time frame in which petitioners must produce the contested documents . . . to only the three months when the most active settlement negotiations took place."

But, it is undisputed that at the time of the negotiation in question, Martin and Clifford had been in a committed personal relationship, lived together, and were engaged to be married. As it is undisputed they had been in a long-term and committed relationship, Neocell's need for discovery regarding the nature and extent of that relationship was significantly less than it would have been in a case where the nature and extent of the relationship were unclear. (See, e.g., *Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 295, 311 [in a case where the defendants moved to disqualify the plaintiffs' attorneys because one of them "initiated an undisclosed social relationship with a legal secretary" who was employed by the defendants' attorneys and was "familiar with all aspects of the litigation," discovery was permissible to determine the nature of that "social relationship" because "disclosure would be more likely if the two formed a strong emotional bond than if they only engaged in causal social contacts"].) Arguably, Martin's declaration, filed in support of the motion to quash or limit the subpoenas, contains all the evidence Neocell would need to establish the nature and extent of her and Clifford's relationship.

Neocell argues, "communications in which Clifford expresses his feelings about Martin may be direct evidence that the nature of the relationship was such that it

would be unlikely that Clifford could have separated his professional obligations from his personal life. Additionally, domestic issues or arguments may have made Clifford less likely to vigorously assert Neocell's position. Communications about financial problems may further reveal a motive for Clifford to sell-out his client. The mundane and ordinary daily communications may reveal that Clifford and Martin are a 'typical couple,' from which the jury can draw appropriate inferences."

Even assuming Neocell demonstrated a compelling need to discover communications that reflected Clifford's feelings for Martin, the discovery order requires more than that. It requires the production of Martin's expressions of feelings for Clifford, as well as those addressing any other subject, including Martin's and Clifford's respective medical and emotional health, private thoughts, and children. Furthermore, Neocell fails to explain how, in light of the fact that Martin and Clifford have lived together for years, the disclosure of "mundane and ordinary daily communications" between Martin and Clifford would be relevant to proving Neocell's claims.

Balancing the indisputably strong privacy interests impacted by the discovery order against the extraordinarily weak showing of Neocell's need for such broad discovery, particularly in light of the undisputed evidence of the nature and duration of Martin and Clifford's relationship, it is evident the trial court abused its discretion by issuing the discovery order. This is not a close question.

Neocell argues that the issuance of a protective order would adequately protect the privacy interests of Martin and her children. But the discovery order's impact on privacy interests outweighs any countervailing state interest; consequently, there is no justification for the production of all the documents required under the discovery order and cause Martin and her children to suffer the concomitant invasion of their privacy rights. (*Planned Parenthood, supra*, 83 Cal.App.4th at p. 369.) In other words, even with a protective order, the production required by the discovery order is "unnecessarily intrusive" and must be more narrowly tailored to address privacy concerns. (*Ibid.*; *Britt*

v. Superior Court (1978) 20 Cal.3d 844, 856 [“Precision of [compelled disclosure] is required so that the exercise of our most precious freedoms will not be unduly curtailed except to the extent necessitated by the legitimate governmental objective”].)

Accordingly, as set forth fully in the disposition *post*, we direct the trial court on remand to limit the subpoenas’ document requests to communications relating to Neocell, Nutrawise, or Rude for a specific time period.

DISPOSITION

Let a peremptory writ of mandate issue directing the trial court to vacate its May 3, 2012 discovery order. On remand, the court shall issue a new and different order that limits the document requests contained in the subpoenas to communications that occurred in July, August, or September 2011, relating to Neocell, Nutrawise, or Rude.

The stay previously imposed shall remain in effect until the remittitur issues. Costs are awarded to Petitioners.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J