

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

ANNETTE NAVARRO MCCALL, et)	
al.,)	
)	Case No. 1:17-CV-406-TSB
Plaintiffs,)	
)	Judge Timothy S. Black
v.)	
)	Magistrate Judge Karen L. Litkovitz
)	
THE PROCTER & GAMBLE)	
COMPANY, et al.,)	
)	
Defendants.)	

**DECLARATION OF ROBERT M. ZIMMERMAN
REGARDING JULY 5, 2019 ORDER (ECF 118)**

1. Pursuant to 28 U.S.C. § 1746, I, Robert Zimmerman, submit the following declaration. I have personal knowledge of the facts herein.
2. I am a partner at the law firm Dinsmore & Shohl LLP and represent Defendant and Third-Party Plaintiff The Procter & Gamble Company (“P&G”) in the above captioned litigation.
3. In my capacity as counsel for P&G, I have reviewed the Court’s Order (ECF No. 118) regarding Plaintiffs Annette Navarro McCall and Navarro Photography LLC’s (collectively “Plaintiffs”) Motion to Compel the Production of Privileged Documents (ECF No. 53).
4. In compliance with Judge Black’s Order, I have independently reviewed all documents identified as N3, N6, N10, N11, and N13 entries attached as Exhibits to Plaintiffs’ Motion to Compel (collectively the “Entries”). Along with reviewing the documents, I directed and reviewed the creation of an Index of the documents for the Court’s in-camera review. I was not involved in the production of P&G’s original privilege log.

5. In my review of the Entries, I identified August 28, 2015 as the latest date on which P&G reasonably contemplated a specific threat of litigation from Plaintiffs. This date is based on an email between a P&G brand employee and a P&G in-house counsel. In an email sent to P&G employees on August 28, 2015, Ms. Navarro referenced “the serious nature of Copyright infringement” and said “I could pursue a more aggressive approach.” (F05478-E0015-00028090). After receiving that email, the P&G brand employee requested legal assistance from in-house counsel. As a result, I believe this is the latest date on which work product protection could have arisen.

6. Individually, the following documents contain communications between a P&G employee and a member of the P&G Legal Department, whether in-house counsel or an employee acting at the direction of in-house counsel to facilitate the delivery of legal advice. In these communications, the P&G employee is seeking legal advice from the member of the P&G Legal Department, or the member of the P&G Legal Department is responding to the P&G employee’s request for legal advice, thus invoking attorney-client privilege. The documents are identified by a document identification number and followed by the Entry number that triggered this review.

- F05478-E0006-00158050 (Entry N6)
- F05478-E0006-00158056 (Entry N6)
- F05478-E0006-00158058 (Entry N6)
- F05478-E0006-00158059 (Entry N3)
- F05478-E0006-00158060 (Entry N6)
- F05478-E0007-00236503 (Entry N10)
- F05478-E0015-00029894 (Entries N10 and N13)
- F05478-E0015-00029961 (Entries N10 and N13)

7. Individually, the following documents are internal P&G documents created in response to or reasonably in anticipation of litigation by Plaintiffs, thus invoking the work

product privilege. The documents are identified by a document identification number and followed by the Entry number that triggered this review.

- F05478-E0005-00102052 (Entry N3)
- F05478-E0005-00102060 (Entry N3)
- F05478-E0005-00102543 (Entry N3)
- F05478-E0007-00109088 (Entry N3)
- F05478-E0008-00045962 (Entry N3)
- F05478-E0008-00045963 (Entry N3)
- F05478-E0008-00068136 (Entry N3)
- F05478-E0008-00068167 (Entry N3)
- F05478-E0008-00070329 (Entry N11)
- F05478-E0008-00070371 (Entry N3)
- F05478-E0008-00202703 (Entry N3)
- F05478-E0008-00211638 (Entry N3)
- F05478-E0008-00211643 (Entry N3)
- F05478-E0008-00211667 (Entry N3)
- F05478-E0008-00213320 (Entry N3)
- F05478-E0008-00213341 (Entry N3)
- F05478-E0015-00209636 (Entry N13)
- F05478-E0015-00264591 (Entry N3)

8. Individually, the following documents contain communications and text that implicate both the attorney-client privilege and the attorney work product privilege, as described above. In other words, the following documents were created in response to or in anticipation of litigation by Plaintiffs, and involve legal advice sought from or given by P&G in-house lawyers or P&G's Legal Department. The documents are identified by a document identification number and followed by the Entry number that triggered this review.

- F05478-E0001-00008948 (Entry N10)
- F05478-E0001-00008978 (Entry N3)
- F05478-E0001-00008992 (Entry N10)
- F05478-E0001-00009007 (Entry N10)
- F05478-E0001-00009008 (Entry N10)
- F05478-E0001-00009009 (Entry N10)
- F05478-E0001-00009011 (Entry N10)
- F05478-E0001-00009012 (Entry N6)
- F05478-E0001-00009032 (Entry N10)
- F05478-E0001-00009034 (Entry N10)

- F05478-E0001-00009036 (Entry N10)
- F05478-E0001-00009061 (Entry N10)
- F05478-E0003-00001782 (Entry N10)
- F05478-E0003-00006539 (Entry N6)
- F05478-E0003-00007922 (Entry N3)
- F05478-E0003-00007924 (Entry N3)
- F05478-E0003-00014763 (Entry N10)
- F05478-E0003-00036211 (Entry N10)
- F05478-E0003-00036214 (Entry N10)
- F05478-E0007-00003695 (Entry N3)
- F05478-E0007-00021347 (Entry N3)
- F05478-E0007-00021348 (Entry N3)
- F05478-E0007-00021354 (Entry N6)
- F05478-E0007-00021361 (Entry N3)
- F05478-E0007-00021367 (Entry N3)
- F05478-E0007-00021369 (Entry N3)
- F05478-E0007-00040550 (Entry N3)
- F05478-E0007-00106710 (Entry N6)
- F05478-E0007-00106809 (Entry N10)
- F05478-E0007-00106830 (Entries N10 and N13)
- F05478-E0007-00106832 (Entry N10)
- F05478-E0007-00106833 (Entry N10)
- F05478-E0007-00106857 (Entry N10)
- F05478-E0007-00107089 (Entry N10)
- F05478-E0007-00107304 (Entry N10)
- F05478-E0007-00107309 (Entries N10 and N13)
- F05478-E0007-00107361 (Entry N6)
- F05478-E0007-00107905 (Entry N10)
- F05478-E0007-00107994 (Entry N10)
- F05478-E0007-00108185 (Entry N10)
- F05478-E0007-00108234 (Entry N10)
- F05478-E0007-00108248 (Entry N10)
- F05478-E0007-00108249 (Entry N10)
- F05478-E0007-00108255 (Entry N13)
- F05478-E0007-00108256 (Entries N10 and N13)
- F05478-E0007-00108257 (Entry N10)
- F05478-E0007-00108258 (Entry N10)
- F05478-E0007-00109085 (Entry N6)
- F05478-E0007-00109092 (Entry N6)
- F05478-E0007-00110209 (Entry N6)
- F05478-E0007-00111759 (Entry N3)
- F05478-E0007-00112704 (Entry N3)
- F05478-E0007-00115307 (Entry N3)
- F05478-E0007-00136029 (Entry N13)

- F05478-E0007-00174062 (Entry N3)
- F05478-E0007-00174065 (Entry N3)
- F05478-E0007-00174066 (Entry N3)
- F05478-E0007-00174068 (Entry N3)
- F05478-E0007-00174075 (Entry N3)
- F05478-E0007-00181970 (Entry N13)
- F05478-E0007-00182013 (Entry N13)
- F05478-E0007-00183219 (Entry N10)
- F05478-E0007-00188457 (Entry N3)
- F05478-E0008-00000866 (Entry N3)
- F05478-E0008-00000952 (Entry N6)
- F05478-E0008-00213623 (Entry N11)
- F05478-E0008-00371706 (Entry N6)
- F05478-E0008-00371711 (Entry N3)
- F05478-E0008-00371760 (Entry N3)
- F05478-E0008-00371761 (Entry N3)
- F05478-E0008-00371762 (Entry N3)
- F05478-E0008-00371842 (Entry N3)
- F05478-E0008-00445130 (Entry N3)
- F05478-E0008-00445155 (Entry N3)
- F05478-E0009-00005267 (Entry N10)
- F05478-E0009-00010178 (Entry N10)
- F05478-E0009-00010566 (Entry N10)
- F05478-E0009-00010615 (Entries N10 and N13)
- F05478-E0009-00186427 (Entry N3)
- F05478-E0009-00226831 (Entry N3)
- F05478-E0010-00060569 (Entry N3)
- F05478-E0010-00061669 (Entry N3)
- F05478-E0010-00061691 (Entry N3)
- F05478-E0011-00005158 (Entry N3)
- F05478-E0011-00005171 (Entry N3)
- F05478-E0013-00008782 (Entry N6)
- F05478-E0013-00008784 (Entry N10)
- F05478-E0013-00016494 (Entry N10)
- F05478-E0013-00016534 (Entry N6)
- F05478-E0013-00016666 (Entry N3)
- F05478-E0013-00016667 (Entry N3)
- F05478-E0013-00018244 (Entry N10)
- F05478-E0013-00019408 (Entry N10)
- F05478-E0013-00021507 (Entry N3)
- F05478-E0013-00021747 (Entry N10)
- F05478-E0013-00021784 (Entry N10)
- F05478-E0013-00021991 (Entry N6)
- F05478-E0013-00047667 (Entry N6)

- F05478-E0014-00013959 (Entry N3)
- F05478-E0014-00013961 (Entry N3)
- F05478-E0014-00013962 (Entry N3)
- F05478-E0014-00013963 (Entry N3)
- F05478-E0014-00014069 (Entry N3)
- F05478-E0014-00014093 (Entry N3)
- F05478-E0014-00014159 (Entry N6)
- F05478-E0014-00014754 (Entry N3)
- F05478-E0014-00014877 (Entry N3)
- F05478-E0014-00024741 (Entry N3)
- F05478-E0014-00121783 (Entry N3)
- F05478-E0014-00121853 (Entry N3)
- F05478-E0014-00121952 (Entry N3)
- F05478-E0014-00121956 (Entry N3)
- F05478-E0014-00123839 (Entry N3)
- F05478-E0014-00190907 (Entry N3)
- F05478-E0014-00190915 (Entry N3)
- F05478-E0014-00191021 (Entry N3)
- F05478-E0014-00203991 (Entry N3)
- F05478-E0015-00005801 (Entry N10)
- F05478-E0015-00018492 (Entry N10)
- F05478-E0015-00018499 (Entry N6)
- F05478-E0015-00023285 (Entry N10)
- F05478-E0015-00023286 (Entry N10)
- F05478-E0015-00023289 (Entry N10)
- F05478-E0015-00023290 (Entry N10)
- F05478-E0015-00023291 (Entry N10)
- F05478-E0015-00023292 (Entry N10)
- F05478-E0015-00023314 (Entry N10)
- F05478-E0015-00023315 (Entry N10)
- F05478-E0015-00023328 (Entry N10)
- F05478-E0015-00023329 (Entry N10)
- F05478-E0015-00028090 (Entry N13)
- F05478-E0015-00028433 (Entries N10 and N13)
- F05478-E0015-00037789 (Entries N10 and N13)
- F05478-E0015-00038177 (Entries N10 and N13)
- F05478-E0015-00038178 (Entries N10 and N13)
- F05478-E0015-00038246 (Entry N10)
- F05478-E0015-00040106 (Entry N3)
- F05478-E0015-00048780 (Entry N10)
- F05478-E0015-00070437 (Entry N10)
- F05478-E0015-00070473 (Entry N10)
- F05478-E0015-00070475 (Entry N10)
- F05478-E0015-00070653 (Entry N10)

- F05478-E0015-00070654 (Entry N10)
- F05478-E0015-00070821 (Entries N10 and N13)
- F05478-E0015-00070830 (Entry N3)
- F05478-E0015-00073336 (Entry N10)
- F05478-E0015-00074709 (Entry N10)
- F05478-E0015-00074710 (Entry N10)
- F05478-E0015-00074711 (Entry N10)
- F05478-E0015-00075345 (Entry N10)
- F05478-E0015-00075513 (Entry N10)
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- F05478-E0015-00075576 (Entry N10)
- F05478-E0015-00076529 (Entry N10)
- F05478-E0015-00076530 (Entry N10)
- F05478-E0015-00087446 (Entry N3)
- F05478-E0015-00150657 (Entry N13)
- F05478-E0015-00150661 (Entry N13)
- F05478-E0015-00150668 (Entry N13)
- F05478-E0015-00153734 (Entry N13)
- F05478-E0015-00156254 (Entry N13)
- F05478-E0015-00156287 (Entry N13)
- F05478-E0015-00161594 (Entries N10 and N13)
- F05478-E0015-00162172 (Entry N10)
- F05478-E0015-00164936 (Entry N3)
- F05478-E0015-00165631 (Entry N3)
- F05478-E0015-00165632 (Entry N3)
- F05478-E0015-00165656 (Entry N3)
- F05478-E0015-00172692 (Entry N3)
- F05478-E0015-00172697 (Entry N3)
- F05478-E0015-00182701 (Entry N3)
- F05478-E0015-00185250 (Entry N3)
- F05478-E0015-00188932 (Entry N3)
- F05478-E0015-00191441 (Entry N3)
- F05478-E0015-00209638 (Entry N13)
- F05478-E0015-00209639 (Entry N13)
- F05478-E0015-00212029 (Entry N3)
- F05478-E0015-00252479 (Entry N3)
- F05478-E0015-00252481 (Entry N3)
- F05478-E0015-00255291 (Entry N3)
- F05478-E0015-00255391 (Entry N3)
- F05478-E0015-00260103 (Entries N10 and N13)
- F05478-E0015-00263623 (Entry N3)
- F05478-E0015-00264590 (Entry N3)
- F05478-E0017-00019719 (Entry N6)
- F05478-E0017-00019724 (Entry N6)

- F05478-E0017-00019730 (Entry N6)
- F05478-E0017-00019735 (Entry N3)
- F05478-E0017-00019923 (Entry N13)
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- F05478-E0017-00022100 (Entry N10)
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- F05478-E0021-00000073 (Entry N6)
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- F05478-E0021-00000173 (Entry N10)
- F05478-E0021-00000174 (Entry N10)

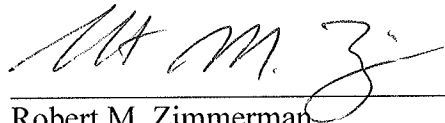
9. I believe that the privileged nature of many of the Entries is readily apparent from the face of the documents. For example, a large number of the Entries involve highly confidential internal discussions with the P&G Legal Department specifically directed to P&G's investigation of Plaintiffs' allegations, development of strategies to respond the litigation or threat of litigation, and other sensitive and privileged information. (See, e.g., F05478-E007-00109085, F05478-E0015-38177, F05478-E0015-150661).

10. Other Entries specifically reference the "Navarro Olay copyright litigation" or "Navarro document collection" and include P&G's litigation tactics or its efforts to gather documents to be used in this litigation. (See, e.g., F05478-E008-00371706, F05478-E008-00000952).

11. During my review I found fourteen documents that have now been removed from P&G's privilege log. Those documents will be produced to Plaintiffs by July 15, 2019.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge at the time of execution.

Executed on July 12, 2019



Robert M. Zimmerman