

IN THE UNITED STATES DISTRICT COURTS
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al.,

Plaintiffs,

V.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

MARCIANO PLATA, et al.,

Plaintiffs.

V.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

NO. CIV S-90-0520 LKK JFM P

THREE-JUDGE COURT

NO. C01-1351 TEH

THREE-JUDGE COURT

ORDER

20 This matter came on for hearing on March 12, 2008 on plaintiffs' motion to compel
21 production of documents that have been withheld by defendants on various claims of
22 privilege. Lori Rifkin, Esq. and Sara Norman, Esq. appeared as counsel for plaintiffs. Paul
23 Mello, Esq., appeared as counsel for defendants.

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1 BACKGROUND¹

2 The dispute at bar arises in connection with plaintiffs' first request for production of
 3 documents, served in these proceedings on September 5, 2007.² On October 25, 2007,
 4 defendants served responses to plaintiffs' first document production request. Therein,
 5 defendants interposed several general objections, and they asserted various privileges and
 6 interposed objections to each of the specific requests. See Defendants' Responses to
 7 Plaintiffs' First Set of Requests for Production of Documents, filed October 26, 2007.

8 In a stipulation filed November 2, 2007, the parties agreed to a schedule for rolling
 9 production of responsive, non-privileged documents as well as privilege logs. On December
 10 6, 2007, this court heard oral argument on plaintiffs' motion to compel production of
 11 documents withheld pursuant to claims of privilege. At the conclusion of the hearing, the
 12 court issued an oral ruling granting plaintiffs' motion to compel. A written order followed
 13 on December 7, 2007. On the same day, defendants filed a motion for reconsideration or, in
 14 the alternative, for a stay of this court's order.

15 ¹ Additional background relevant to the instant dispute is set forth in this court's
 16 December 6, 2007 order and need not be repeated herein.

17 ² That request contains thirty-eight separate requests for production of documents,
 18 including requests for documents related to: the implementation of Assembly Bill 900 (AB
 19 900); any projected change in California's prison population; the California Department of
 20 Corrections and Rehabilitation's (CDCR) choice of prison sites for construction of additional
 21 prison beds, buildings to treat or house inmates, and reentry program facilities under various
 22 sections of AB 900, including site surveys and Environmental Impact Reports,
 23 communications from or to local community groups and/or government officials, timetables
 24 for the construction of such beds and progress in meeting the timetables; timetables for
 25 transfers of inmates out of state under AB 900; the CDCR's ability or inability to hire and/or
 26 retain medical and mental health staff, including analyses of the effect of AB 900 on medical
 27 and mental health staffing levels; studies or analyses of the effect of AB 900 on medical and
 28 mental health care at the prisons; any measures defendants have considered to reduce prison
 populations other than the measures in AB 900; contingency plans, other than population
 reducing measures, defendants have considered initiating when prisons reach their maximum
 capacity; defendants' determination of the maximum capacity of any prison or the entire
 prison system; timetables for obtaining funding to implement AB 900 and defendants'
 progress therewith; any consideration of placing limits on the prison population; any
 consideration of the effects of sentencing reform, a sentencing commission, and changes in
 parole policies on the prison population; specific matters referenced in the Declaration of
 Scott Kernan filed in opposition to plaintiffs' motion to convene a three judge panel; and
 changes or clarifications of parole discharge policies and parole revocation policies. See Ex.
 F to Declaration of Michael W. Bien in Support of Joint Statement Regarding Discovery
 Dispute, filed October 22, 2007.

1 By order filed December 11, 2007, the three-judge court stayed this court's order.
2 Subsequently, by order filed December 17, 2007, the three-judge court granted defendants
3 additional time to review and revised their privilege logs and the matter was referred back to
4 the undersigned for further proceedings thereon. In accordance with that order, by order
5 filed December 20, 2007, this court directed defendants to serve, inter alia, their revised
6 privilege logs on or before January 28, 2008. That deadline was subsequently extended. See
7 Order filed January 30, 2008. Defendants' final revised privilege logs were filed and served
8 on February 22, 2008.

9 On February 25, 2008, the parties filed a Joint Statement Regarding Discovery
10 Disputes setting forth disputes over defendants' assertions of deliberative process privilege,
11 attorney-client privilege, and attorney work-product doctrine. By order filed February 27,
12 2008, the parties were directed to meet and confer in person concerning all remaining
13 disputes over all assertions of privilege in defendants' revised privilege logs with the
14 exception of the deliberative process privilege and to file thereafter a list of all documents as
15 to which disputes remain over claims of privilege other than the deliberative process
16 privilege and, as appropriate, supplemental briefing relevant to any remaining disputes.

17 On March 7, 2008, the parties filed a joint list of disputed documents. In that joint
18 statement, the parties represent that their disputes over claims of privilege other than the
19 deliberative process privilege, the attorney-client privilege, and the attorney work product
20 doctrine have been resolved. See Joint List of Disputed Documents, filed March 7, 2008, at
21 5. The list of documents that remain in dispute following the parties' completion of the
22 process required by the court's February 27, 2008 order is attached as Exhibit C to the
23 Declaration of Sara Norman in Support of Joint List of Disputed Documents, filed March 7,
24 2008. By this order, the court resolves disputes concerning claims of attorney-client
25 privilege and attorney work product privilege.³ Ruling on the parties' disputes concerning

26 ³ As noted in footnote 1, supra, the complete list of documents in dispute is attached
27 as Exhibit C to the Declaration of Sara Norman in Support of Joint List of Disputed
28 Documents, filed March 7, 2008. A deliberative process privilege has also been asserted for
many of those documents. Because resolution of the issues related to the deliberative process

1 defendants' claims of deliberative process privilege is deferred pending filing by the parties
 2 of a joint statement of all claims and defenses as required by this court's March 24, 2008
 3 order, as said disputes are integrally related to the claims and defenses raised in this action.

4 ANALYSIS

5 I. General Principles

6 Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that “[p]arties may
 7 obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense
 8 of any party. . . .” Fed. R. Civ. P. 26(b)(1). Defendants' claims of privilege in these
 9 proceedings are governed by principles of federal common law. See Fed. R. Evid. 501; see
 10 also Kerr v. United States District Court for the Northern District of California, 511 F.2d
 11 192, 197 (9th Cir. 1975).

12 It is well-established that the federal “policy favoring open discovery requires that
 13 privileges must be ‘strictly construed.’” Dowling v. American Hawaii Cruises, Inc., 971 F.2d
 14 423, 425 (9th Cir. 1992) (quoting University of Pennsylvania v. EEOC, 493 U.S. 182, 189
 15 (1990)). The United States Supreme Court has made it clear that an evidentiary privilege is
 16 not applied “unless it ‘promotes sufficiently important interests to outweigh the need for
 17 probative evidence. . . .’” University of Pennsylvania, 493 U.S. at 198 (quoting Trammel v.
 18 United States, 445 U.S. 40, 51 (1980). “Inasmuch as ‘[t]estimonial exclusionary rules and
 19 privileges contravene the fundamental principles that ‘the public . . . has a right to every
 20 man's evidence,’” id. at 50 [internal citation omitted], any such privilege must ‘be strictly
 21 construed.’ 445 U.S. at 50.” University of Pennsylvania, id.

22 Rule 26(a)(5)(A) of the Federal Rules of Civil Procedure provides:

23 When a party withholds information otherwise discoverable
 24 under these rules by claiming that it is privileged or subject to
 25 protection as trial preparation material, the party shall make the
 claim expressly and shall describe the nature of the documents,
 communications, or things not produced or disclosed in a manner

26 privilege is deferred pending filing of a joint statement of claims and defenses, defendants
 27 will not be required to produce at time any document for which a claim of deliberative
 28 process privilege has been raised, even if the court has determined that a claim of attorney-
 client privilege and/or attorney work product privilege for the same document has not been
 sustained.

1 that, without revealing information itself privileged or protected,
 2 will enable other parties to assess the applicability of the
 3 privilege or protection.

4 Fed. R. Civ. P. 26(a)(5)(A).

5 The specific “nature” of the notice required by Rule 26(b)(5) “is explicitly left
 6 indeterminate.” Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of
7 Mont., 408 F.3d 1142, 1147 (9th Cir. 2005). “The rule does not attempt to define for each
 8 case what information must be provided when a party asserts a claim of privilege or work
 9 product protection.” Id. at 1147-48 (quoting Rule 26(b)(5) advisory committee’s note (1993
 10 Amendments)). However, it is clear that “the ‘party must . . . provide sufficient information
 11 to enable other parties to evaluate the applicability of the claimed privilege or protection.’”
Id. at 1148 (quoting Rule 26(b)(5) advisory committee note (1993 Amendments)).

12 In Burlington Northern, the United States Court of Appeals for the Ninth Circuit set
 13 forth several factors that a court is to consider in determining whether a particular assertion
 14 of privilege satisfies the requirements of Rule 26(a)(5)(A):

15 the degree to which the objection or assertion of privilege enables
 16 the litigant seeking discovery and the court to evaluate whether
 17 each of the withheld documents is privileged (where providing
 18 particulars typically contained in a privilege log is presumptively
 19 sufficient and boilerplate objections are presumptively
 20 insufficient); the timeliness of the objection and accompanying
 21 information about the withheld documents (where service within
 22 30 days, as a default guideline, is sufficient); the magnitude of the
 23 document production; and other particular circumstances of the
 24 litigation that make responding to discovery unusually easy (such
 25 as, here, the fact that many of the same documents were the
 26 subject of discovery in an earlier action) or unusually hard. These
 27 factors should be applied in the context of a holistic
 28 reasonableness analysis, intended to forestall needless waste of
 time and resources, as well as tactical manipulation of the rules
 and the discovery process. They should not be applied as a
 mechanistic determination of whether the information is provided
 in a particular format. Finally, the application of these factors
 shall be subject to any applicable local rules, agreements or
 stipulations among the litigants, and discovery or protective
 orders.

27 Id. at 1149.

1 Defendants have the burden of proving application of the asserted privileges. See In
 2 re Grand Jury Investigation, 974 F.2d 1068, 1071 (9th Cir. 1992) (attorney client privilege);
 3 Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C.Cir. 1980)
 4 (attorney work product).⁴

5 **II. Attorney-Client Privilege**

6 The attorney client privilege protects what a client tells a lawyer. The privilege
 7 encourages full disclosure between lawyer and client, so that the lawyer may give informed
 8 legal advice. Clarke v. American Commerce Nat. Bank, 974 F.2d 127, 129 (9th Cir. 1992).
 9 The privilege has eight essential elements: “(1) [w]here legal advice of any kind is sought (2)
 10 from a professional legal advisor in his [or her] capacity as such, (3) the communications
 11 relating to the purpose, (4) made in confidence (5) by the client, (6) are at his [or her]
 12 instance permanently protected, (7) from disclosure by him [or her] self or by the legal
 13 advisor, (8) unless the protection be waived.” Admiral Ins. v. U.S. Dist. Court for Dist. of
 14 Ariz., 881 F.2d 1486, 1492 (9th Cir. 1989) (citing In re Fischel, 557 F.2d 209, 211 (9th Cir.
 15 1977)).

16 Several options for establishing the existence of the attorney-client privilege are
 17 available. See Dole v. Milonas, 889 F.2d 885, 890 (9th Cir. 1989). In the instant case,

18 ⁴ Rule 26(b)(5)(B) makes provision for return of material produced in discovery that
 19 is subject to a colorable claim of privilege:
 20

(B) Information Produced. If information produced in discovery
 21 is subject to a claim of privilege or of protection as
 22 trial-preparation material, the party making the claim may notify
 23 any party that received the information of the claim and the basis
 24 for it. After being notified, a party must promptly return,
 25 sequester, or destroy the specified information and any copies it
 has; must not use or disclose the information until the claim is
 resolved; must take reasonable steps to retrieve the information if
 the party disclosed it before being notified; and may promptly
 present the information to the court under seal for a
 determination of the claim. The producing party must preserve
 the information until the claim is resolved.

26 Fed. R. Civ. P. 26(b)(5)(B). In addition, the parties have entered into a “clawback”
 27 agreement that provides for the return of privileged material produced during discovery. See
 28 Ex. O to Declaration of Lori Rifkin in Support of Plaintiff’s Motion to Compel Production of
 Documents, filed November 30, 2007.

1 defendants rely in the first instance on the February 22, 2008 privilege logs. To make an
2 adequate showing of attorney-client privilege, a privilege log “should identify: (a) the
3 attorney and client involved; (b) the nature of the document (i.e., letter, memorandum); (c) all
4 persons or entities shown on the document to have received or sent the document; (d) all
5 persons or entities known . . . to have been furnished the document or informed of its
6 substance; and (e) the date the document was generated, prepared or dated.” Dole, at 888
7 n.3, 890.

8 Plaintiffs raise three separate challenges to claims of privilege for specific documents
9 identified in the privilege logs. For the first group of documents, plaintiffs contend that the
10 privilege logs do not identify any attorney as either an author or a recipient of the specified
11 documents. For the second group of documents, plaintiffs contend that the privilege log
12 shows that an outsider to the attorney-client relationship was a recipient of the documents at
13 issue. Finally, for the majority of documents at issue plaintiffs contend that it appears that an
14 attorney was copied on a document that is not privileged.

15 The court has conducted an in camera review of all of the documents in dispute. See,
16 e.g., U.S. v. Zolin, 842 F.2d 1135, 1138-39 (9th Cir. 1988) (“In the Ninth Circuit the rules of
17 evidence with respect to privileges do allow for in camera review: a court undertakes in
18 camera review of documents to decide whether the attorney-client privilege even exists with
19 respect to those documents.”)

20 Fourteen documents are challenged by plaintiffs on the ground that the privilege logs do not
21 identify an attorney as either an author or a recipient of said documents, as follows: E00000613;
22 E00001100; E00003041; E00003179; E00007081; E00014065; E00022699; E00028654;
23 E00044198; E00045366; E00046768; E00084734; E00095838; and E00099404.⁵ In camera
24 review of the fourteen documents reveals the following.

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27 ⁵ Four of the documents have a claim of deliberative process privilege raised in
28 addition to the claim of attorney work product doctrine: E00001100 (attorney-client and
attorney work product); E00003041 (attorney-client and attorney work product); E00007081
(attorney-client); and E00084734 (attorney-client).

1 For five documents in this category, E00001100, E00007081, E00014065,
2 E00022699, and E00084734, in camera review does not show that an attorney was either an
3 author or a recipient of the document.⁶ For that reason, defendants have not met their burden
4 of establishing that these documents are protected by the attorney-client privilege.
5 Defendants will be required to produce at this time documents E00014065 and E00022699,
6 as no claim of deliberative process privilege has been raised for either of those documents.
7 Defendants will not be required to produce documents E00001100, E00007081 or
8 E00084734 at this time due to pending claims of deliberative process privilege.

9 For the remaining nine documents, in camera review does show that an attorney was
10 either an author or a recipient of the document at issue. However, after in camera review of
11 each of the documents the court finds that none of them constitute communications of the
12 type protected by the attorney-client privilege. Defendants will be required to produce eight
13 of these documents at this time. See Attachment A to this Order. The ninth, E00003041, is
14 also subject to a claim of deliberative process privilege. For that reason, defendants will not
15 be required to produce that document at this time.

16 Ten documents are challenged by plaintiffs on the ground that the privilege log shows
17 an outsider to the attorney-client relationship included as either an author or a recipient of the
18 document, as follows: E00020277; E00020512; E00045948; E00046983; E00046988;
19 E00046989; E00082860; E00083812; E00099569; and E00099573.

20 For documents E00020277, E00099569 and E00099573, defendants have raised a
21 claim of deliberative process privilege raised in addition to the claim of attorney-client
22 privilege. After in camera review, the court finds that all of these documents have outsiders

23 ⁶ In an e:mail from Samantha Tama to Lori Rifkin and Sara Norman, defendants
24 assert that document E00014065 is a communication between Lisa Tillman, an attorney, and
25 Doug McKeever, Michael Barks, and Robin Dezember, all non-attorneys. See Ex. A to
26 Declaration of Samantha Tama in Support of Defendants' Position Regarding Discovery
27 Dispute, filed March 7, 2008. Defendants further assert that document E00022699 is a
28 communication between Molly Arnold, an attorney, and Vince Brown and Jaci-Marie
Thompson, both non-attorneys. Id. Those assertions are not confirmed by review of the
document, nor is there any evidence in the record to support the assertions. Ms. Tama's
e:mail is not verified, and her declaration verifies only that the e:mail was sent, not the truth
of the matters contained therein.

1 to the attorney-client privilege identified as authors or recipients and, therefore that the claim
2 of attorney-client privilege is not sustained. However, the documents will not be produced at
3 this time pending resolution of the claims of deliberative process privilege.

4 The privilege log identifies a California state senator and a California assemblyman as
5 the author of document E00020512⁷; and a woman named Susan Turner of an organization
6 called the Center of Evidence-Based Corrections as the recipient of documents E00045948
7 and E00046989 and the author of documents E00046983 and E00046988. Each of these
8 individuals are outsiders to any attorney-client relationship between defendants and their
9 attorneys. For that reason, defendants' claim of privilege for these documents cannot be
10 sustained. Defendants will be required to produce these documents.

11 The last two documents are e:mail exchanges between Joan Petersilia, Ph.D. and
12 Benjamin Rice. Plaintiffs contend that Dr. Petersilia is a professor at University of
13 California Irvine who works as an independent contractor for defendants. Defendants
14 identify Dr. Petersilia as part of the Governor's Office as the current chair of the
15 Rehabilitation Strike Team. (Preliminary Names List, filed April 14, 2008, at 25.) The
16 document does not contain any communication protected by the attorney-client privilege.
17 Defendants will be required to produce these documents.

18 The final, and largest, group of documents are those which plaintiffs contend an
19 attorney was copied on a non-privileged document. The court's findings after in camera
20 review with respect to the applicability of the attorney-client privilege for each of these
21 documents are set forth on the list attached to this order. Defendants will be required to
22 produce at this time all documents for which a claim of attorney client privilege is not
23 sustained and for which no claim of deliberative process privilege has been made.

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25 ⁷ In the e:mail from Samantha Tama described in footnote 5, supra, defendants
26 contend that document E00020512 is a privileged communication between Deborah Cregger,
27 staff counsel with the California Department of Finance (DOF), and Stephen Benson and Jim
28 Martone, budget analysts with DOF. Defendants do not explain the discrepancy between this
contention and the privilege log entry for this document. In addition, in the same e:mail
defendants for the first time assert a deliberative process privilege for document E00020512.
The assertion of the deliberative process privilege for this document is untimely and will not
be considered by this court.

1 III. Attorney Work Product Doctrine

2 "The work product doctrine was first articulated by the Supreme Court in Hackman v.
3 Taylor, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947). Fed.R.Civ.P.Rule 26(b)(3), which
4 substantially codifies the Hickman decision, provides in relevant part:

5 [A] party may obtain discovery of documents and tangible things
6 otherwise discoverable under subdivision (b)(1) of this rule and
7 prepared in anticipation of litigation or for trial by or for another
8 party or by or for that other party's representative (including the
9 other party's attorney, consultant, surety, indemnitor, insurer, or
10 agent) only upon a showing that the party seeking discovery has
11 substantial need of the materials in the preparation of the party's
12 case and that the party is unable without undue hardship to obtain
13 the substantial equivalent of the materials by other means. In
14 ordering discovery of such materials when the required showing
15 has been made, the court shall protect against disclosure of the
16 mental impressions, conclusions, opinions, or legal theories of an
17 attorney or other representative of a party concerning the
18 litigation.

19 The primary purpose of the work product rule is to 'prevent exploitation of a party's efforts
20 in preparing for litigation.' Admiral Ins. Co. v. United States District Court, 881 F.2d 1486,
21 1494 (9th Cir.1989). Like the discovery process that it limits, the work product doctrine
22 encourages efficient development of facts and issues." Holmgren v. State Farm Mutual Auto
23 Insurance Co., 976 F.2d 573, 576 (9th Cir. 1992) (quoting Fed. R. Civ. P. 26(b)(1)).

24 Defendants have claimed attorney work product protection for twenty-five of the
25 documents for which claims of attorney-client privilege and/or attorney work product
protection are resolved by this order. After in camera review, this court finds that one or
both claims of privilege are valid for six of those documents: E00009615; E00021166;
E00028419; E00028420; E00096636; and E00096637. For the remaining nineteen
documents, the court finds that defendants have not met their burden of demonstrating that
the documents are entitled to protection as attorney work product. Defendants will be
ordered to produce those documents.

26 In accordance with the above, IT IS HEREBY ORDERED that within five business
27 days from the date of this order, defendants shall produce to counsel for plaintiffs for
28 inspection and copying all documents listed in Attachment A to this order, which are all

1 documents for which neither a claim of attorney-client privilege nor a claim of attorney-work
2 product doctrine has been established and for which no claim of deliberative process
3 privilege has been made.

4 Dated: April 14, 2008.

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6 John F. McDonald
7 UNITED STATES MAGISTRATE JUDGE

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1 ATTACHMENT A
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3 DOCUMENTS TO BE PRODUCED PURSUANT TO THIS ORDER-- CLAIM OF
4 ATTORNEY CLIENT PRIVILEGE AND/OR ATTORNEY WORK PRODUCT
5 PROTECTION NOT SUSTAINED
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A) No attorney listed as author or recipient in privilege logs

E00000613
E00003179
E00014065
E00022699
E00028654
E00044198
E00045366
E00046768
E00099404

B) Outsider to the attorney-client relationship included as author or recipient in privilege logs

E00020512
E00045948
E00046983
E00046988
E00046989
E00082860
E00083812

C) Attorney(s) copied on apparently non-privileged communication

E00000270
E00000271
E00000374
E00001408
E00001409
E00001575
E00003172
E00003174
E00003177
E00003178
E00004350
E00004351
E00005322
E00006393
E00006394
E00009517
E00009518
E00009599
E00011245
E00012401
E00012402
E00012403

1 E00012405
2 E00012406
2 E00014163
3 E00016330
3 E00017356
4 E00017357
4 E00017358
5 E00017359
5 E00017360
6 E00017361
6 E00017362
7 E00017388
7 E00017389
8 E00017390
8 E00017391
9 E00018099
9 E00018113
10 E00018116
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11 E00018118
11 E00018119
12 E00018120
12 E00018121
12 E00018122
13 E00018123
13 E00018140
14 E00018141
14 E00018142
15 E00018143
15 E00018144
16 E00018244
16 E00018506
17 E00019023
17 E00019024
18 E00019025
18 E00019066
19 E00019084
19 E00019498
20 E00019559
20 E00019560
21 E00019809
21 E00020511
22 E00020819
22 E00022591
23 E00022592
23 E00022593
24 E00022594
24 E00022595
25 E00022596
25 E00022597
26 E00027889
26 E00028440
27 E00028650
27 E00028651
28 E00028797

1 E00028798
2 E00028948
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3 E00029552
3 E00029553
4 E00029624
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5 E00029626
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14 E00031493
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15 E00037576
16 E00038348
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18 E00044197
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26 E00045608
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27 E00045983
28 E00046148

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5 E00046463
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6 E00046768
E00047050
7 E00047071
E00047253
8 E00047256
E00047271
9 E00047414
E00047453
10 E00047456
E00047489
11 E00047512
E00047820
12 E00048004
E00048065
13 E00048389
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E00050188
19 E00082874
E00083483
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23 E00084449
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E00084574
26 E00084575
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27 E00084577
E00085017
28 E00085393

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10 E00096452
11 E00096622
12 E00097040
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1 ATTACHMENT B

2 DOCUMENTS FOR WHICH CLAIM OF ATTORNEY CLIENT PRIVILEGE AND/OR
3 ATTORNEY WORK PRODUCT PROTECTION IS SUSTAINED

4 A) No attorney listed as author or recipient in privilege logs

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6 B) Outsider to the attorney-client relationship included as author or recipient in privilege
logs

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8 C) Attorney(s) copied on apparently non-privileged communication

9 E00002038

10 E00003064

11 E00004631

12 E00004924

13 E00004925

14 E00006313

15 E00006586

16 E00006635

17 E00006636

18 E00006744

19 E00007081

20 E00007093

21 E00009614

22 E00009615

23 E00017097

24 E00018126

25 E00018527

26 E00018528

27 E00018529

28 E00018543

E00018544

E00018545

E00018916

E00019562

E00019731

E00019861

E00019942

E00020198

E00020358

E00020588

E00020592

E00020601

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E00020632

E00020633

E00020713

E00020760

E00021166

E00021344

1 E00022235
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11 E00085503
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13 E00095859
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15 E00096637

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1 ATTACHMENT C

2 DOCUMENTS FOR WHICH CLAIM OF ATTORNEY CLIENT PRIVILEGE AND/OR
3 ATTORNEY WORK PRODUCT PROTECTION NOT SUSTAINED -- NOT TO BE
4 PRODUCED AT THIS TIME DUE TO PENDING CLAIM OF DELIBERATIVE
5 PROCESS PRIVILEGE

6 A) No attorney listed as author or recipient in privilege logs

7 E00001100
E00003041
E00007081

8 B) Outsider to the attorney-client relationship included as author or recipient in privilege
9 logs

10 E00020277
E00099569
E00099573

11 C) Attorney(s) copied on apparently non-privileged communication

12 E00000375
13 E00000376
14 E00000377
15 E00000847
E00000848
16 E00001099
E00001109
17 E00001111
E00001145
E00001146
E00001147
18 E00001702
E00001703
19 E00001751
E00001752
20 E00002005
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21 E00002111
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26 E00002646
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27 E00006745
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28 E00007103

1 E00007104
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