

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHARLOTTE YEE,  
Plaintiff,

v.

U.S. SECRETARY OF LABOR, HILDA  
SOLIS,  
Defendant.

No. C-08-4259 MMC (EMC)

**ORDER RE JOINT LETTER OF  
SEPTEMBER 18, 2009  
(Docket No. 101)**

The parties have submitted a joint letter, dated September 18, 2009, regarding a discovery dispute. Defendant asks that Plaintiff be compelled to return to Defendant information that was inadvertently produced. In response, Plaintiff states that, “[i]f the material forwarded to her in error has not been requested and is not relevant to her case, she will simply overlook it.” Joint Letter at 3. Having reviewed the joint letter, the Court hereby grants the relief requested by Defendant.

Plaintiff’s contention that she is entitled to any relevant information is incorrect. Privileged information is often relevant, but the mere relevance of information does not mean that the attorney-client privilege is overcome. The issue here is whether Defendant’s inadvertent production of information should be deemed a waiver of the privilege. Considering the factors articulated in *Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323 (N.D. Cal. 1985), the Court concludes that there has been no waiver. *See id.* at 332. Most significant is the fact that Defendant immediately acted to

1 rectify its error. Also, fairness weighs in favor of a finding of no waiver as Plaintiff has not pointed  
2 to any document that was improperly withheld by Defendant.<sup>1</sup>

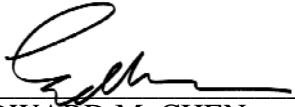
3 For similar reasons, the Court concludes that nonprivileged information provided by  
4 Defendant inadvertently should also be returned. That is, Plaintiff has not made any showing that  
5 any of the nonprivileged information inadvertently provided is actually relevant to her case and  
6 therefore improperly withheld by Defendant.

7 Accordingly, the Court hereby grants Defendant's request for relief. Plaintiff is ordered to  
8 (1) return the DVD at issue and (2) destroy any copies she has made (either copies of the DVD itself  
9 or copies of any of the contents of the DVD). Finally, the Court notes that, should Plaintiff seek to  
10 use any of the information that was inadvertently produced, then it will recommend to the presiding  
11 judge that Plaintiff be barred from doing so.

12 This order disposes of Docket No. 101.

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14 IT IS SO ORDERED.

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16 Dated: September 28, 2009

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19 EDWARD M. CHEN  
20 United States Magistrate Judge

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27 <sup>1</sup> The Court acknowledges that Plaintiff appears to have identified some e-mails that Defendant  
28 agrees should have been produced. However, there is no evidence that Defendant deliberately sought  
to withhold those e-mails. *See* Joint Letter at 2 (explaining that the e-mails did not mention Plaintiff's  
name and therefore did not turn up in Defendant's search of Mr. Holden's e-mails).