

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,

No. C-08-4259 MMC (EMC)

v.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

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

**(Docket No. 104)**

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Plaintiff has moved the Court to reconsider its order of September 28, 2009, in which it, *inter alia*, instructed Plaintiff to return to Defendant documents that had inadvertently been produced. See Docket No. 103 (order). The Court hereby **DENIES** Plaintiff's motion.

**I. DISCUSSION**

Motions for reconsideration are governed by Civil Local Rule 7-9. Under that rule, "[n]o party may notice a motion for reconsideration without first obtaining leave of Court to file the motion." Civ. L.R. 7-9(a). To obtain leave of the Court, the

party must specifically show:

- (1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order.
- (2) The emergence of new material facts or a change of law occurring after the time of such order; or

1 (3) A manifest failure by the Court to consider material facts or  
2 dispositive legal arguments which were presented to the Court  
before such interlocutory order.

3 Civ. L.R. 7-9(b).

4 In the instant case, Plaintiff has failed to demonstrate any of the above. The cases cited by  
5 Plaintiff in her motion were all issued prior to the Court's September 28 order, and therefore (1) and  
6 (2) above are not applicable. In addition, Plaintiff did not cite any of those cases in the parties' joint  
7 letter (although she could have), nor did she make any assertion in the joint letter that Defendant had  
8 improperly asserted privilege; therefore, (3) is also inapplicable. Accordingly, Plaintiff's motion to  
9 reconsider must be denied.

10 Even if the Court were to consider Plaintiff's motion on the merits, it would still deny the  
11 motion. First, the cases cited by Plaintiff -- including *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250  
12 F.R.D. 251 (D. Md. 2008) -- are consistent with the case cited by the Court in its September 28,  
13 order (*i.e.*, *Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323 (N.D. Cal. 1985)).<sup>1</sup> Each of the cases  
14 takes a balancing approach as to when there has been a waiver of the attorney-client privilege based  
15 on an inadvertent production. Second, on the facts, *Victor Stanley* is distinguishable from the instant  
16 case. There, the defendant had clearly failed to take reasonable precautions to prevent the disclosure  
17 of privileged information. *See Victor Stanley*, 109 F.R.D. at 254-55, 262-63 (discussing, *inter alia*,  
18 the defendant's decision to locate privileged electronic documents by using keywords, although this  
19 would likely result in the inadvertent production of privileged documents to the plaintiff). Here,  
20 Defendant did take some precautions to prevent the disclosure of privileged information, as  
21 indicated by the fact that it had created a folder (inadvertently produced on the DVD) that was  
22 marked attorney-client privilege. Finally, whether or not Defendant properly claimed privilege over  
23 the documents at issue, Plaintiff has not made any showing that the information inadvertently  
24 provided is actually relevant to her case and therefore improperly withheld by Defendant.

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27 <sup>1</sup> In fact, one of the cases explicitly endorses *Hartford*. *See Alldread v. City of Grenada*, 988  
28 F.2d 1425, 1434 (5th Cir. 1993) ("conclud[ing] that the district court's decision to analyze the issue  
under the *Hartford* test was proper").

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**II. CONCLUSION**

For the foregoing reasons, Plaintiff's motion for reconsideration is denied. Plaintiff is ordered to comply with the Court's September 28 order within three days of the date of this order.

This order disposes of Docket No. 104.

IT IS SO ORDERED.

Dated: September 29, 2009

  
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EDWARD M. CHEN  
United States Magistrate Judge