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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et al.,
Plaintiffs,
v.
CRESCENDO BIOSCIENCE, INC., et al.,
Defendants.

Case No. 16-cv-02043-TSH
DISCOVERY ORDER
Re: Dkt. No. 104

United States District Court
Northern District of California

The discovery dispute regarding the withheld documents is now down to six documents, five of which were withheld in full and one of which was redacted. ECF No. 104. The Court has reviewed the documents *in camera*.

In camera review has its limitations, in particular when there is a work product claim that communications between non-attorneys reflect the substance of communications with litigation counsel, which is the claim here. Sometimes the person will say “the lawyer said...,” and then you know work product is being conveyed. But other times the lawyer who is familiar with the context of the communication will know perfectly well whether his or her advice is being parroted, but the reader won’t be able to definitively figure that out just by reading the communication. In short, the context matters.

That seems to be the situation here. Based on the dates and subject matter of these documents, they could be attorney work product, even though they are communications between non-attorneys. Because the claim to work product protection is plausible, the Court sustains it and denies Defendants’ motion to compel as to these documents.

IT IS SO ORDERED.

Dated: April 7, 2021


THOMAS S. HIXSON
United States Magistrate Judge