

1 falls within the attorney-client privilege in that it does not appear to seek any actual legal advice, but
2 reasonable minds could differ and the present circumstances do not warrant any further expenditure
3 of time and resources for additional briefing on the issue. Although the court finds less room for
4 reasonable minds to differ with regard to whether 42 U.S.C. section 3610(d) somehow shields
5 conciliation documents from being produced pursuant to a valid Rule 45 subpoena,¹ the court will
6 accept HUD's representation that it was acting in good faith when it withheld those documents.

7 The court's biggest concern is HUD's failure to provide Plaintiff with *any* response to the
8 August 4th subpoena until after Plaintiff filed her motion to compel, and even then waited until the
9 date its opposition papers were due to produce responsive documents. Again, however, the
10 circumstances do not warrant requiring HUD to make a showing of cause why it did not timely
11 respond to the subpoena. The court cautions HUD, however, that it expects HUD to act more
12 diligently in responding to valid subpoenas from this court in the future.

13 Dated: 9/19/08

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15 PATRICIA V. TRUMBULL
16 United States Magistrate Judge
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¹ Section 3610(d) might, however, justify issuance of a protective order limiting access to such documents to the parties in the pertinent litigation who, if they are the "persons concerned" might ultimately consent to use of the documents in the litigation as allowed by Section 3610(d).

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Counsel automatically notified of this filing via the court's Electronic Case Filing system.

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/s/ Donna Kirchner for
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