

E-FILED 06-17-2011

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MFORMATION TECHNOLOGIES, INC.,

No. C08-04990 JW (HRL)

Plaintiff,

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL DOCUMENTS**

v.

[Re: Docket No. 497]

RESEARCH IN MOTION LIMITED and
RESEARCH IN MOTION CORPORATION,

Defendants.

Defendants Research in Motion Limited and Research in Motion Corporation (collectively, RIM) move for an order compelling plaintiff Mformation Technologies, Inc. to produce several documents which Mformation previously produced, but then later “clawed back,” asserting that they are protected by the attorney-client privilege. There is no apparent dispute as to the relevance of the information. RIM contends that the documents are not privileged or otherwise protected from discovery. Mformation opposes the motion.¹ The matter is deemed appropriate for determination without oral argument, and the June 21, 2011 hearing is vacated. Civ. L.R. 7-1(b). Upon consideration of the moving and responding papers, this court grants the motion.

¹ Although Mformation’s opposition papers were belatedly filed, this court has considered them. The court does not, however, condone the failure to timely comply with filing deadlines.

1 The instant dispute may overlap somewhat with the issues in Mformation's motion to
2 quash pending in the Central District of California. This court, however, is not persuaded that
3 the two motions are duplicative. RIM convincingly argues that the two motions concern
4 different documents and different asserted legal bases for Mformation's objection to the
5 discovery. Mformation's request to strike the instant motion to compel therefore is denied, as is
6 Mformation's request that this court simply issue an order consistent with whatever ruling
7 issues from the Central District of California on plaintiff's pending motion to quash.

8 With respect to the several documents at issue here, Mformation has redacted portions
9 of two documents and withheld one document entirely on the ground that the information is
10 protected by the attorney-client privilege. Suffice to say that Mformation has made no attempt
11 to substantiate its claim that the privilege applies. It does not deny that the documents and
12 information in question were not authored or received by any attorney. Instead, Mformation
13 simply refers this court to the motion to quash papers filed in the Central District of California
14 in which Mformation argues at length about why the work product doctrine applies to a
15 different set of documents. Moreover, based on the record presented, this court is persuaded
16 that the information in question was generated purely for business purposes. See, e.g., United
17 States v. Richey, 632 F.3d 559, 566 (9th Cir. 2011) ("If the advice sought is not legal advice,
18 but, for example, accounting advice from an accountant, then the privilege does not exist.").

19 As for the attorney work product doctrine, Mformation did not assert that doctrine in its
20 privilege log as a basis for withholding the subject documents. And, plaintiff offers no cogent
21 reason why this court should entertain arguments as to why that doctrine applies here.

22 Accordingly, RIM's motion to compel is granted.² Mformation shall produce the
23 subject documents in unredacted form within 14 days from the date of this order. To the extent
24

25
26 ² RIM also contends that it is entitled to discovery of the subject documents,
27 asserting that plaintiff's damages expert, Roy Weinstein, considered certain information in
28 forming his opinion. Mformation objects that RIM submitted Weinstein's deposition
testimony for the first time only in its reply papers. But, that deposition apparently did not
take place until after the instant motion was filed. In any event, Mformation disagrees with
RIM's assertions as to what Weinstein considered. This court need not resolve this
particular issue because it otherwise finds sufficient reasons to grant RIM's motion.

defendants believe that a further expert report or other discovery is warranted, they will need to address that issue with the presiding judge.

SO ORDERED.

Dated: June 17, 2011



HOWARD R. LEOFF
UNITED STATES MAGISTRATE JUDGE

1 5:08-cv-04990-JW Notice has been electronically mailed to:

2 Aaron D. Charfoos acharfoos@kirkland.com

3 Allen A. Arntsenaarntsen@foley.com, psorensen@foley.com

4 Amardeep Lal Thakur athakur@foley.com, dgrimes@foley.com

5 Christopher R. Liro christopher.liro@kirkland.com

6 Eugene Goryunov egoryunov@kirkland.com

7 Justin E. Gray jgray@foley.com, dgrimes@foley.com

8 Linda S. DeBruin ldebruin@kirkland.com, bridgett.ofosu@kirkland.com,
kathleen.cawley@kirkland.com, margaret.burke@kirkland.com

9 Lisa Marie Noller lnoller@foley.com

10 Marc Howard Cohen marc.cohen@kirkland.com, frank.carlow@kirkland.com,
11 lesley.ahlberg@kirkland.com, mary.nguyen@kirkland.com

12 Maria A. Maras maria.maras@kirkland.com

13 Meredith Zinanni meredith.zinanni@kirkland.com, cassandra.milleville@kirkland.com,
14 kimberly.davenport@kirkland.com

15 Michael Anthony Parks mparks@thompsoncoburn.com

16 Michael Daley Karson michael.karson@kirkland.com

17 Michael S Feldberg michael.feldberg@allenoverly.com

18 Shawn Edward McDonald SEMcDonald@foley.com

19 Tiffany Patrice Cunningham tiffany.cunningham@kirkland.com

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