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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CH PROPERTIES, INC.

Plaintiff

v.

CIVIL 13-1354 (FAB) (JA)

FIRST AMERICAN TITLE INSURANCE  
COMPANY

Defendant

OPINION AND ORDER

I. BACKGROUND AND ARGUMENT

On August 5, 2002, plaintiff CH Properties, Inc. became the lessee of a tract of land belonging to the Puerto Rico Development Company, after receiving all leasing rights from Sunshine Isle Inn, LLC, which had originally acquired the leasing rights from Desarrollos Hoteleros de Carolina (Docket No. 17<sup>1</sup>, pp. 2-3, 12-13). CH Properties, Inc. then requested a loan from FirstBank guaranteed by a first mortgage on the leasing rights (Docket No. 17, pp. 3, 13), for which defendant First American Title Insurance Company issued two title policies. One was in favor of FirstBank (Docket No. 17, pp. 3, 13) insuring them the first-rank on the mortgage taken by CH Properties, Inc. (Docket No. 17, pp. 4, 13) and the other in favor of CH Properties, Inc. guaranteeing the validity of the lease

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<sup>1</sup>Joint Case Management Memorandum.

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4 agreement (Docket No. 17, pp. 4, 13), obligating First American to provide legal  
5 defense and coverage regarding all claims in which the invalidity of the lease  
6 agreement was alleged or in which disturbance or invalidation of the possession  
7 and title on the insured lease was sought (Docket No. 17, pp. 4-5).

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9 In April, 2005 a group called Comité de Vecinos de Isla Verde and the  
10 Compañía de Parques Nacionales filed separate complaints, which were  
11 consolidated against CH Properties, FirstBank and other entities, attacking the  
12 validity of the Lease Agreement. Members of the Comité de Vecinos de Isla  
13 Verde also invaded the tract of land in the purported defense of the people of  
14 Puerto Rico, preventing CH Properties, Inc. from entering or using the tract of  
15 land, roughly five acres (cuerdas<sup>2</sup>) (Docket No. 17, pp. 5, 14). First American  
16 provided FirstBank legal representation and coverage according to the terms of  
17 the policy issued (Docket No. 17, pp. 6, 16).

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19 On March 5, 2007, a complaint was filed in the United States District Court  
20 for the District of Puerto Rico against CH Properties, Inc. and other entities by the  
21 Chicago Title Insurance Co. (Docket No. 17, pp. 6-7), after which CH Properties,  
22 Inc. first came to request First American legal defense and coverage in all  
23 pending actions as well as the reimbursement of legal fees already paid (Docket  
24 No. 17, pp. 7, 19). First American only approved the petition in the consolidated  
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28 <sup>2</sup>A cuerda is a unit of land measure which is slightly less than an acre,  
roughly 96.5%.

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3 state actions from that moment on, and not retroactively, because CH Properties,  
4 Inc. had not made its request in a timely manner as required by the policy, thus  
5 exponentially increasing litigation costs and hindering the defense (Docket No. 17,  
6 pp. 8, 19-20). They denied defense for the action in federal court since it  
7 concerned a contractual issue between two other parties that had no effect on CH  
8 Properties's title (Docket No. 17, p. 20).  
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10 The state actions were eventually dismissed in 2011 (Docket No. 17, pp. 8,  
11 21). Regardless, CH Properties, Inc. filed a complaint on April 11, 2013 in the  
12 Puerto Rico Court of First Instance (Docket No. 1-1, ¶1) alleging a breach of the  
13 insurance agreement between the parties under the Puerto Rico Insurance Code,  
14 P.R. Laws Ann. tit. 26, §§ 101 et seq., and the Civil Code of Puerto Rico, P.R.  
15 Laws Ann. tit. 31, §§ 2991 et. seq. (Docket No. 17, p. 8). On May 7, 2013  
16 defendant First American filed a Notice of Removal from the state court to the  
17 federal court, pursuant to 28 U.S.C. § 1441(a) (Docket No. 1, p. 2, ¶2).  
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19 During the process of discovery an impasse occurred in regards to a  
20 Privilege Log presented by defendant, claiming attorney-client communication  
21 and work product privileges (Docket No. 30, p. 1, ¶ 1). Plaintiff claimed that the  
22 information provided was not enough to enable the appearing party to put forth  
23 an informed challenge to the privileges claimed (Docket No. 30, p. 1, ¶2) and  
24 requested an order from the Court directing defendant to supplement the  
25 documents' descriptions (Docket No. 30, p.2, ¶2).  
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3 On April 3, 2014, defendant responded (Docket No. 32) claiming that the  
4 revised descriptions provided for each of the documents withheld were sufficient  
5 under the Federal Rules to allow plaintiff and the Court to determine the grounds  
6 for attorney-client and work product privilege, without divulging confidential  
7 content (Docket No. 32, pp. 1-2).  
8

9 On April 21, 2014, plaintiff replied to defendant's opposition to plaintiff's  
10 motion regarding the privilege log (Docket No. 32) by claiming that the privilege  
11 log provided by defendant did not make a prima facie showing of the privileges  
12 claimed (Docket No. 36, p. 1) since the descriptions of the documents or the notes  
13 in the log did not establish they were prepared or authored by an attorney  
14 because of an impending litigation (Docket No. 36, p. 3-4, ¶7), nor did they  
15 specify there was an attorney-client relationship between the identified senders  
16 and identified recipients. There was no reason provided for the creation and  
17 remittance of the documents nor any indication they contained legal advice or  
18 confidential information (Docket No. 36, p. 6-7, ¶13).  
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21 On June 6, 2014, defendant submitted a Second Revised Privilege Log  
22 (Docket No. 49), following a Court order dated April 21, 2014 for in camera  
23 inspection (Docket No. 35). On July 2, 2014, the Court determined that the  
24 description of the documents included satisfied Federal Rule of Civil Procedure  
25 26(b)(5)(A), making a prima facie claim for all ten documents (Docket No. 61, p.  
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27 7).  
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3 The Court also found that documents 1, 2, and 3 were privileged pursuant  
4 to the attorney work product doctrine; documents 5, 6, 7, and 8 were not  
5 attorney-client privileged communications and that there was insufficient  
6 information provided to determine whether documents 4 and 10 were attorney-  
7 client privileged communications and whether document 9 was privileged attorney  
8 work product (Docket No. 61, p. 1). The Court ordered First American to produce  
9 documents 5, 6, 7, and 8 to plaintiffs, and to provide the information necessary  
10 regarding the titles and responsibilities of the persons involved in the  
11 communications and the relationship between their respective entities to  
12 determine the nature of documents 4, 9, and 10 (Docket No. 61, pp. 2, 12, 15).

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14 Defendant complied with the Court's order on July 3, 2014 (Docket No. 63)  
15 but plaintiff filed a Motion for Reconsideration on the same day (Docket No. 64).  
16 It disagreed with the court's determination that First American presented a prima  
17 facie case pursuant to Federal Rule of Civil Procedure 26(b)(5)(A), since more  
18 information was required by the Court to determine whether documents 4, 9 and  
19 10 were protected or not (Docket No. 64, p. 2). Regarding documents 1, 2, and  
20 3 which were deemed to be protected, plaintiff claimed that they were materials  
21 prepared in the ordinary course of business by an insurance company and that in  
22 a first party claim against an insurer they were not protected (Docket No. 64, p.  
23 3). Regarding the documents involving attorney Jose A. Fernández-Jaquete,  
24 plaintiff claimed that since he was going to be a witness for defendant they could  
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3 not "use privileged information as both sword and shield by selectively using the  
4 privileged information to prove a point, but then invoking the privilege to prevent  
5 opposing party from challenging the assertion." (Docket No. 64, p. 4).

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7 On August 5, 2014 defendant replied in opposition to plaintiff's motion for  
8 reconsideration regarding evidentiary privileges (Docket No. 87), claiming that  
9 motions for reconsideration should only be "entertained by Courts if they seek to  
10 correct manifest errors of law or fact, present newly discovered evidence, or when  
11 there is an intervening change in law," citing Silva Rivera v. State Ins. Fund.  
12 Corp., 488 F. Supp. 2d 72, 77 (D.P.R. 2007), which cites Rivera Surillo & Co. v.  
13 Falconer Glass Indus., Inc., 37 F.3d 25,29 (1<sup>st</sup> Cir. 1994). Defendant claimed that  
14 CH Properties's motion "merely seeks to reargue the same legal arguments that  
15 were previously considered by the Court." (Docket No. 87, p. 1).

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18 First American Title Insurance Company argued that the Court's request for  
19 additional information regarding some of the documents was only an overly  
20 cautious measure taken before issuing a final ruling (Docket No. 87, p. 6) and that  
21 given the additional information provided on documents 4, 9, and 10 their  
22 privileged nature should be recognized and kept confidential (Docket No. 87 pp.  
23 7-9).

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25 The motion for reconsideration (Docket No. 64) was referred to me for  
26 disposition on July 21, 2014. (Docket No. 76).

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3 II. STANDARD OF REVIEW AND ANALYSIS

4 "A motion for reconsideration may be considered as a motion under Federal  
5 Rule of Civil Procedure 59(e)<sup>3</sup>. See Rosario-Méndez v. Hewlett Packard Caribe,  
6 660 F. Supp. 2d 229, 232 (D.P.R. 2009)." Burgos-Yantin v. Municipality of Juana  
7 Díaz, 751 F. Supp. 2d 345, 347 (D.P.R. 2010). For a motion for reconsideration  
8 to be granted, the movant has to meet certain criteria. "A motion to alter or  
9 amend a judgment may be granted... if the movant demonstrates that an  
10 intervening change in controlling law, a clear legal error, or a newly discovered  
11 evidence warrants modification of the judgment." Soto-Padró v. Public Bldgs.  
12 Authority, 675 F. 3d 1,9 (1<sup>st</sup> Cir. 2012) "[...] [A] district court's denial of a motion  
13 to alter judgment [is reviewed] for abuse of discretion." Markel Am. Ins. Co. V.  
14 Díaz-Santiago, 674 F.3d 21, 32 (1<sup>st</sup> Cir. 2012); ACA Fin. Guar. Corp. [v. Advest,  
15 Inc.], 512 F.3d [46,] 55." In re Genzyme Corp. Securities Litigation, 754 F. 3d  
16 31, 46 (1<sup>st</sup> Cir. 2014).

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20 If these criteria are not met, motions for reconsideration are usually denied.  
21 Again, "[f]or such a motion to succeed, 'the movant must demonstrate either that  
22 newly discovered evidence (not previously available) has come to light or that the  
23 rendering court committed a manifest error of law.'" Mulero-Abreu v. Puerto Rico  
24 Police Dep't., 675 F.3d 88, 94-95 (1<sup>st</sup> Cir. 2012), citing Palmer v. Champion  
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28 <sup>3</sup>Motion to Alter or Amend a Judgment.

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3 Mortgage, 465 F.3d 24, 30 (1<sup>st</sup> Cir. 2006). See Torres v. González, 980 F.Supp.  
4 2d 143, 146 (D.P.R. 2013).

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6 In this case, plaintiff has not provided newly discovered evidence, but a  
7 different interpretation from that issued by the Court regarding the Privilege Log  
8 provided by defendant (Docket No. 64, pp. 2-4). Notably, unless there is a clear  
9 abuse of discretion or a manifest error in law, the Court's determination regarding  
10 the privileged nature of documents for evidentiary purposes is usually upheld upon  
11 a motion for reconsideration. See Mississippi Pub. Employees' Ret. Sys. v. Boston  
12 Scientific Corp., 649 F.3d 5, 30 (1<sup>st</sup> Cir. 2011).

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14 Referring to Rule 26(b)(5)(A), Federal Rule of Civil Procedure, the Court  
15 found that defendant complied with the requirements of "expressly claim[ing] the  
16 privilege and sufficiently describ[ing] the documents so that the other parties can  
17 assess the [prima facie privilege] claim." (Docket No. 61, p. 7). According to the  
18 Court, First American Title Insurance Company sufficiently described "the  
19 documents by including the date, document type, author(s), recipient(s), and  
20 subject matter description for each document in the Log." (Docket No. 61, p. 7).  
21 See e.g. Báez-Eliza v. Instituto Psicoterapéutico, 275 F.R.D. 65, 70 (D.P.R. 2011);  
22 Vázquez-Fernández v. Cambridge Coll., Inc., 269 F.R.D. 150, 160 (D.P.R. 2010).  
23 (Docket No. 61, p. 7).  
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3 The Court found that to invoke the attorney-client privilege successfully, a  
4 party must establish by a preponderance of the evidence that a client made a  
5 confidential communication to his attorney for the purpose of securing legal advice,  
6 as codified in Rule 503 (b), Puerto Rico Rules of Evidence (Docket No. 61, p. 9-10).  
7 In Vicor Corp. v. Vigilant Ins. Co., 674 F.3d 1,17 (1<sup>st</sup> Cir. 2012) the Court noted  
8 that:  
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11 “the attorney client privilege ‘extends to all communications  
12 made to an attorney or counselor...and applied to by the party  
13 in that capacity, with a view to obtain his advice and opinions  
14 in matters of law, in relation to his legal rights, duties and  
15 obligations, whether with a view to the prosecution or  
16 defen[s]e of a suit or other lawful object.’ Hanover Ins. Co.,  
17 870 N.E.2d at 1111 (quoting Hatton v. Robinson, 31 Mass.  
18 416, 421 (1834)). The privilege attaches to any communication  
19 between attorney and client in confidentiality for the purpose  
20 of seeking, obtaining or providing legal advice or assistance. In  
21 Re Reorganization of Elec. Mut. Ins. Co., Ltd. (Bermuda), 425  
22 Mass. 419, 681 N.E.2d 838, 840 (1997).”

23 The “[a]ttorney-client privilege protects communications made in confidence  
24 by a client and a client’s employees to an attorney, acting as an attorney, for the  
25 purpose of obtaining legal advice. See Upjohn Co. v. United States, 449 U.S. 383,  
26 394-95, 101 S. Ct. 677, (1981). ‘By safeguarding communications between client  
27 and lawyer, the privilege encourages full and free discussion, better enabling the  
28 client to conform his conduct to the dictates of the law and to present legitimate  
claims and defenses if the litigation ensues.’ In Re Keeper of Records[ (Grand Jury  
Subpoena Addressed to XYZ Corp.), 348 F.3d [16] at 22 [(1<sup>st</sup> Cir. 2003)],” cited

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3 in Mississippi Pub. Employees' Ret. Sys. v. Boston Scientific Corp., 649 F.3d 5 at  
4 30.

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6 After analyzing documents 5, 6, 7, and 8, which were four fact sheets  
7 between an employee of Title Security Group, Inc., Iliana Rivera and First  
8 American's counsel, John LaJoie, Esq., the Court found that they did not fall within  
9 the scheme of protected material within the attorney-client privilege since there  
10 was "no motivation to obtain legal assistance", while reserving judgment regarding  
11 documents 4 and 10 until additional information was provided (Docket No. 61, p.  
12 12) regarding the author and recipient of the documents, their titles and  
13 responsibilities and the relationship between their respective clients, to make a  
14 final determination about the privilege claimed. Defendant complied providing the  
15 additional details requested. (Docket No. 63).

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18 José A. Fernández Jaquete, Esq., author of the documents, was engaged by  
19 defendant to provide assistance and legal counsel regarding CH Properties's and  
20 FirstBank's request for legal defense and coverage in the consolidated state court  
21 cases and plaintiff's request for legal defense and coverage in the federal action  
22 (Docket No. 63, pp. 1-2, ¶2). Caroline León Velazco, Esq., recipient of the  
23 documents, was the in-house claims counsel for defendant and was the immediate  
24 contact between Mr. Fernández Jaquete and First American. (Docket No. 63, p.  
25 2, ¶3). Document 4 consists of a cover sheet of a fax between both attorneys.  
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3 Document 10 is a redacted portion of an email with a proposed response to CH  
4 Properties's request for legal defense and coverage in the federal court action  
5 (Docket No. 61, p. 12).<sup>4</sup>  
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7 Defendant alleges that Mr. Fernández Jaquete's legal advice was sought in  
8 his capacity as counsel regarding the course of action defendant should have taken  
9 in regards to CH Properties's and FirstBank's request for legal assistance and  
10 coverage in actions against them. The communications found in the documents  
11 concerned were addressed to defendant's in-house counsel, who was First  
12 American's representative while receiving Mr. Fernández Jaquete's services. See  
13 In re Grand Jury Subpoena (Mr. S.), 662 F.3d 65, 71 (1<sup>st</sup> Cir. 2011). With the  
14 additional information provided by defendant, the nature of Documents 4 and 10  
15 is understood to be protected by the attorney-client privilege and therefore is not  
16 subject to discovery by plaintiff. "[W]hen a client asks a lawyer to analyze a  
17 situation in a manner that would best support his position according to the lawyer's  
18 understanding of the law - the attorney-client privilege is at its zenith. See U.S. v.  
19 Zolin, 491 U.S. 554, 662, 109 S. Ct. 2619, 105 L.Ed.2d 469 (1989)." Baez-Eliza  
20 v. Instituto Psicoterapeutico de Puerto Rico, 275 F.R.D. at 73; see also Lluberes  
21 v. Uncommon Productions, LLC, 663 F.3d 6, 24 (1<sup>st</sup> Cir. 2011).  
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27 <sup>4</sup>Description of documents provided by Court in its Memorandum and Order  
28 (Docket No. 61).

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3 To invoke the work product privilege, citing Rule 23.1, Puerto Rico Rules of  
4 Civil Procedure, P.R. Laws Ann. tit. 32, app. III, R. 23.1. the Court ruled that the  
5 party must demonstrate that the document contains mental impressions,  
6 conclusions, opinions or legal theories of an attorney or other representative of a  
7 party concerning a litigation (Docket No. 61, p. 13). The attorney work product  
8 doctrine was "first established in Hickman v. Taylor, 329 U.S. 495, 67 S. Ct. 385,  
9 91 L.Ed. 451 (1947), codified in Fed. R. Civ. P. R[ule] 26(b)(3) for civil discovery,  
10 [and] protects from disclosure materials prepared by attorneys 'in anticipation of  
11 litigation.' Maine v. United States Dep't of Interior, 298 F.3d 60, 66 (1<sup>st</sup> Cir.  
12 2002); see Mullins v. Dep't of Labor of P.R., 269 F.R.D. 172, 174 (D.P.R. 2010)."  
13 Moreno Rivera v. DHL Global Forwarding, 272 F.R.D. 50, 60 (D.P.R. 2011). The  
14 reasoning behind the privilege is straightforward: "[p]roper preparation of a  
15 client's case demands that he assemble information, sift what he considers to be  
16 the relevant from the irrelevant facts, prepare his legal theories and plan his  
17 strategy without undue and needless interference..." U.S. v. Textron Inc. and  
18 Subsidiaries, 577 F.3d 21, 26-27 (1<sup>st</sup> Cir. 2009) citing Hickman v. Taylor, 329 U.S.  
19 at 511, 67 S.Ct. 385.

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24 The Court determined that documents 1, 2, and 3 contained First American's  
25 counsel, Mr. Fernández-Jaquete, mental impressions and legal analysis since they  
26 included his annotations in the margins as he redacted or reviewed their contents  
27 in anticipation of litigation (Docket No. 61, p. 14-15). Regarding document 9, the  
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3 draft of a letter Mr. Fernández-Jaquete later sent to Laura Escalante-Facundo,  
4 FirstBank’s in-house counsel, the Court determined that additional information was  
5 required to determine whether it was protected under as attorney work-product.  
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7 The final version of the draft was made part of the record by the defendant  
8 (Docket No. 63, p. 3, ¶13). However, privilege was claimed by First American Title  
9 Insurance Company in regards to the draft because it contains Mr. Fernández  
10 Jaquete’s “legal analysis and mental impressions that were not made part of the  
11 final letter” regarding FirstBank’s claim and First American’s final decision to  
12 provide defense in the same state court action in which plaintiff was part of  
13 (Docket No. 63, p. 3, ¶16). Defendant identified the recipient of the letter as Vice  
14 President and Compliance Manager for FirstBank, at the time the bank had  
15 requested legal defense from defendant (Docket No. 63, p. 3, ¶15). Since  
16 defendant had obtained Mr. Fernández Jaquete’s services to provide legal  
17 assistance regarding CH Properties’s and FirstBank’s requests for legal coverage  
18 in the actions brought against them, his mental impressions and legal analysis on  
19 the draft of a letter addressed to FirstBank’s representative regarding the suit is  
20 material covered under the attorney work product doctrine. See Vicor Corp. v.  
21 Vigilant Ins. Co., 674 F.3d at 18.  
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26 III. CONCLUSION  
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3 In sum, plaintiff has failed to establish a basis under which a motion for  
4 reconsideration of the Court's order should be granted. "[M]otions for  
5 reconsideration should be granted sparingly because parties should not be free to  
6 re-litigate issues a court has previously decided.' Silva Rivera v. State Ins. Fund  
7 Corp., 488 F. Supp. 2d at 78 (citing Williams v. City of Pittsburgh, 32 F. Supp. 2d  
8 236, 238 (W.D. Pa. 1998))." Colon v. Blades, 268 F.R.D. 137, 141 (D.P.R. 2010).  
9 Defendant has met the burden of showing that the information included in  
10 Documents 4, 9 and 10 should be protected, since it is shrouded by either the  
11 attorney-client privilege or the attorney work product doctrine.<sup>5</sup>  
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14 In view of the above, the motion for reconsideration (Docket No 64) is  
15 DENIED.  
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17 In San Juan, Puerto Rico this 30<sup>th</sup> day of September, 2014.  
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19 S/JUSTO ARENAS  
20 United States Magistrate Judge  
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27 <sup>5</sup>Marielia Isla Torres, a third-year student at University of Puerto Rico  
28 School of Law, provided substantial assistance in researching and preparing this  
opinion and order.