

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Howington v. Taiwan Semiconductor Manufacturing Co., Ltd.

Howington · No. 24-cv-05684-VKD · Decided September 8, 2025

SUMMARY

The United States District Court for the Northern District of California addresses a discovery dispute concerning plaintiffs’ claims of attorney-client privilege, work-product protection, and the common interest doctrine. The court finds that the record is insufficient to resolve the dispute and directs plaintiffs to amend their privilege log, while permitting further briefing or in camera review if disagreements remain. The court also orders the parties to propose a briefing schedule and states that no party may resist deposition discovery solely because the privilege dispute remains unresolved.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Virginia K. DeMarchi
JURISDICTION	United States District Court for the Northern District of California
DECIDED	September 8, 2025
DOCKET	24-cv-05684-VKD
DISPOSITION	other
PROCEDURAL POSTURE	The parties submitted an expedited discovery dispute concerning plaintiffs' claims of attorney-client privilege, work-product protection, and the common-interest doctrine in response to defendants' document requests.
STANDARD OF REVIEW	The court applied the burdens governing claims of attorney-client privilege and work-product protection, including the requirement that the asserting party establish the protection and adequately describe withheld materials under Federal Rule of Civil Procedure 26(b)(5)(A). Requests for in camera review are committed to the court's discretion after the requesting party makes the required showing.
PRECEDENTIAL VALUE	Unpublished federal district court discovery order; persuasive value only.

PARTIES

Deborah Howington, et al., Plaintiffs v. Taiwan Semiconductor Manufacturing Co., Ltd., et al., Defendants

TOPICS

discovery dispute

attorney client privilege

work product doctrine

class actions

civil procedure

PRACTICE AREAS

civil procedure

evidence

commercial litigation

QUESTIONS PRESENTED

1. Whether the record was sufficient to determine whether communications among named plaintiffs were protected by attorney-client privilege or work-product protection.
2. Whether communications between named plaintiffs and absent putative class members were privileged or protected, or whether disclosure waived any protection.
3. Whether plaintiffs established that the common-interest doctrine preserved privilege or protection for communications shared with absent class members or other non-parties.
4. Whether the privilege log adequately described the withheld materials as required by Federal Rule of Civil Procedure 26(b)(5)(A).
5. Whether defendants were entitled to immediate in camera review of the disputed communications.

HOLDINGS

1. The court could not fully resolve the discovery dispute because plaintiffs had not supplied sufficient communication-specific information establishing the asserted privilege or protection and the privilege log did not clearly identify all disputed entries.
2. Communications among jointly represented named plaintiffs may be privileged or protected even when counsel did not participate, but only if the communication was privileged or protected in the first instance and concerned the common representation or a common legal interest.
3. Absent putative class members generally are not clients of class counsel merely because they may become members of a certified class; before certification, pre-certification communications with potential class members are generally not privileged unless plaintiffs establish a separate attorney-client relationship.
4. A shared interest in the filing or outcome of litigation, without a demonstrated common legal interest and communication made to further that interest, is insufficient to invoke the common-interest doctrine.
5. Disclosure of work product to a third party does not necessarily waive protection, but waiver occurs when disclosure is made to an adversary or in a manner that substantially increases the opportunity for potential adversaries to obtain the work product; plaintiffs did not make the required showing.
6. The court did not order immediate in camera review; defendants could renew the request after further development of the record, or the parties could stipulate to submission of a representative sample.

KEY QUOTATIONS

“The doctrine does not create a privilege but comes into play only if a privilege or protection already covers the material disclosed to the third party.” (at 2)

“A shared desire to see the same outcome in a legal matter is insufficient to bring a communication between two parties within [the common interest] exception to the ordinary rules of waiver that govern attorney-client privilege.” (at 5)

FACTUAL BACKGROUND

Defendants requested plaintiffs' communications with any person concerning the claims and allegations in the action, including communications among named plaintiffs, with absent putative class members, and with other non-parties. Plaintiffs withheld or redacted some communications, asserting attorney-client privilege, work-product protection, and the common-interest or joint-prosecution doctrine. The privilege log supplied for Deborah Howington contained approximately 56 entries, but it was unclear which entries were disputed and whether the claimed protections applied to each communication.

PROCEDURAL HISTORY

Defendants served requests for communications concerning plaintiffs' claims and allegations. Plaintiffs withheld or redacted communications based on privilege and work-product objections and invoked the common-interest or joint-prosecution doctrine. The court found the record insufficient to resolve the dispute, ordered plaintiffs to amend their privilege log, and allowed further briefing and possible in camera review if the dispute continued.

DISPOSITION

other

CASES CITED

- United States v. Sanmina Corp., 968 F.3d 1107, 1116, 1119, 1121 (9th Cir. 2020)
- United States v. Ruehle, 583 F.3d 600, 607, 612 (9th Cir. 2009)
- United States v. Martin, 278 F.3d 988, 999-1000 (9th Cir. 2002)
- United States v. Richey, 632 F.3d 559, 567 (9th Cir. 2011)
- In re Grand Jury Subpoena (Mark Torf/Torf Environmental Management), 357 F.3d 900, 907 (9th Cir. 2004)
- Admiral Ins. Co. v. U.S. Dist. Ct., 881 F.2d 1486, 1494 (9th Cir. 1989)
- Weil v. Inv./Indicators, Research & Mgmt., Inc., 647 F.2d 18, 25 (9th Cir. 1981)
- In re Pacific Pictures Corp., 679 F.3d 1121, 1129 (9th Cir. 2012)
- Nidec Corp. v. Victor Co. of Japan, 249 F.R.D. 575, 578-579 (N.D. Cal. 2007)
- In re Grand Jury Investigation, 974 F.2d 1068, 1072-1075 (9th Cir. 1992)
- United States v. Zolin, 491 U.S. 554, 572 (1989)
- Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont., 408 F.3d 1142, 1148 (9th Cir. 2005)
- Apple Inc. v. Samsung Elecs. Co., 306 F.R.D. 234, 237 (N.D. Cal. 2015)

- Teletronics Proprietary, Ltd. v. Medtronic, Inc., 836 F.2d 1332, 1338 (Fed. Cir. 1987)
- Parks v. Eastwood Ins. Servs., Inc., 235 F. Supp. 2d 1082, 1084 (C.D. Cal. 2002)
- HBOC, Inc. Sec. Litig., 126 F. Supp. 2d 1239, 1245 (N.D. Cal. 2000)
- In re Apple Inc. Device Performance Litig., No. 18-md-02827-EJD, 2018 WL 4998142, at *4 (N.D. Cal. Oct. 15, 2018)
- In re Lidoderm Antitrust Litig., No. 14-MD-02521-WHO, 2016 WL 861019, at *4 (N.D. Cal. Mar. 7, 2016)
- Gross v. Scottsdale Ins. Co., No. 24-cv-02069-EJD (VKD), 2025 WL 885853, at *3 (N.D. Cal. Mar. 21, 2025)
- RJ v. Cigna Health & Life Ins. Co., No. 20-cv-02255-EJD (VKD), 2023 WL 187565, at *1 (N.D. Cal. Jan. 13, 2023)

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