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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Petitioner-Appellant,

v.

SANMINA CORPORATION AND
SUBSIDIARIES,

Respondent-Appellee.

No. 15-16416

D.C. No. 5:15-cv-00092-PSG

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Paul S. Grewal, Magistrate Judge, Presiding

Argued and Submitted August 16, 2017
San Francisco, California

Before: O'SCANNLAIN and RAWLINSON, Circuit Judges, and WATTERS,**
District Judge.

The United States (the Government) appeals the district court's denial of its
petition to enforce a summons against taxpayer Sanmina Corporation (Sanmina).

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Susan P. Watters, United States District Judge for the
District of Montana, sitting by designation.

In connection with an investigation into Sanmina's 2009 federal income tax liabilities, Sanmina submitted a valuation report prepared by the law firm DLA Piper to support a claimed deduction. The report referenced memoranda from 2006 and 2009 as support for its conclusion that an asset lacked economic significance and should be disregarded. The Internal Revenue Service (IRS) sought the referenced memoranda via summons. Sanmina refused to provide the memoranda, invoking the attorney-client, work-product, and tax-practitioner privileges.

The Government filed a petition in the federal district court to enforce the summons. Sanmina responded that the attorney-client and work-product privileges shielded the two memoranda from disclosure. The district court declined to review the memoranda *in camera* and ruled in favor of Sanmina, holding that the attorney-client privilege protected both the 2006 and the 2009 memoranda. The court held that Sanmina did not waive the attorney-client privilege when it provided the memoranda to DLA Piper. The district court also ruled that Sanmina's disclosure of DLA Piper's Valuation Report to the IRS did not result in waiver, because "DLA Piper's mere mention of the existence of the memoranda did not summarize or disclose the content of the memoranda."

Our resolution of this case would be greatly facilitated by a more informed analysis from the district court. More specifically, we prefer the district court

review the documents *in camera* and reconsider its ruling on the asserted privileges following its review of the pertinent documents. *See United States v. Richey*, 632 F.3d 559, 568 (9th Cir. 2011) (remanding to the district court to conduct an *in camera* examination of the materials summoned by the IRS in order to determine which data and materials, if any, were protected from disclosure). Accordingly, we vacate and remand this case for the district court to review the 2006 and 2009 memos *in camera* to determine whether the documents requested by the government are privileged to any degree. This panel retains jurisdiction over this appeal.

VACATED AND REMANDED.