



CITATION QUALITY ASSESSMENT

Lacey v. State Farm

Response Opportunities & Attack Surface Analysis

Filing: Lacey_v_StateFarm_Original_Defective_Brief_ECF119_pp20-31.pdf · 12 pages

Generated: June 18, 2026 · 12:04 p.m.

Coverage: 39 unique citations · 3 models consulted

Public Sample

Fusion Collective

Sentinel Citation Analysis · A Fusion Collective tool

Bottom Line

Attack-surface score: **28/100** — lower scores indicate more attackable citations.

The attack surface is broad and concentrated in the brief's core privilege and billing-redaction authorities, making a targeted citation-by-citation challenge likely to materially weaken the motion.

Narrative

Bottom line: the authority base in this brief is highly attackable. Of 39 unique citations, only 13 came back as solid on composite review, while 14 landed in the vulnerable/mischaracterized bucket and another dozen were only partially verified. That means roughly a third of the cited authority can be directly challenged on accuracy or treatment grounds, and another third invites follow-up scrutiny.

The most exposed citations cluster around the privilege/sword-and-shield and billing-redaction arguments. Both the 'Aetna Cas. & Surety Co. v. Superior Court, 153 Cal. App. 3d 467' citation and a near-duplicate 'Surety Co. v. Superior Court' string scored at or near zero, suggesting the quoted sword-and-shield language and the pin cite cannot be confirmed from the retrieved authority — opposing counsel should force the movant to produce the opinion text and pin cite. The two 'Lincoln General Ins. Co. v. Ryan-Mercaldo LLP, 2015 WL 12672143' entries (including a garbled OCR variant) and the 'Inc. v. EMC Mortg. Corp.' string both scored as misused; the parentheticals attribute specific holdings about redactions and Costco's 'dominant purpose' test that the retrieved record does not support. 'Trout v. Avmed,' 'Cason v. Federated Life,' 'Davis v. City of Santa Ana,' and the malformed 'Vioxx Prods. Liability Litig., 12 La. 2007' all scored zero as well — any of these is a candidate for a 'no retrieved authority supports the proposition cited' challenge, and the Vioxx and EMC Mortg. cites appear facially defective on their face (missing party names, impossible reporters).

On calibration: Claude was the strictest grader (accuracy avg 32, 16 misuse flags), while GPT-5-mini was the most permissive (accuracy 54), with Gemini in between. Where all three converged on 'misused' — as they did on the Aetna, Lincoln, Trout, Cason, and Davis citations — confidence in the attack is highest. For partials, push for the movant to lodge copies; several may collapse under that request alone.

Citation Outcomes

TOTAL 39	SOLID 13 / 27	SOFT 0 / 27	VULNERABLE 14 / 27	INCONCLUSIVE 0 / 27
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Verification

FOUND	PARTIAL	NOT FOUND	UNSUPPORTED	ERROR
15	12	3	9	0

Fabrication Assessment

△ 1 of 3 unverified citations flagged for review (0 likely fabricated, 1 mixed signals).

Fabrication signal across the 3 Not Found citations — three signals scored each: reporter-format heuristic, web footprint, and an LLM judge.

LIKELY FABRICATED 0 / 3	MIXED SIGNALS 1 / 3	PLAUSIBLE 2 / 3	UNSCORED 0 / 3
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Top Response Opportunities

The 10 citations with the lowest Judge composites — attack vectors first. Each entry shows the citation, the filing context, and the Judge's synthesis.

CASE

Lincoln General Ins. Co. v. RyanMercaldo LLP, No. 13 CV 2192-W (DHB), 2015 WL 12672143at *5 27 (casd 2015) (ordering thatplaintiff reduce amount of redactions to billing records to “provide more information about the general nature of the services performed without revealing 28 Riavdegged communications, or attorney thought processes.”)

Existence: CONFIRMED · p.4 · authority ↗

STATE FARM IS WITHHOLDING RELEVANT, NON-PRIVILEGED 21 DOCUMENTS WITHIN ITS PRIVILEGE LOG 22 A. State Farm Cannot Make a Prima Facie Showing That the “Dominant 23 Purpose” For Its Redacted/ Withheld Documents Is For Legal Advice. 24 25 1 While section 915

*would preclude reviewing the billing records in their entirety, to the extent they 26 disclose privileged information, it does not preclude the review of redacted versions. Lincoln General Ins. Co. v. RyanMercaldo LLP, No. 13 CV 2192-W (DHB), 2015 WL 12672143 at *5 27 (S.D. Cal. July 31, 2015) (ordering that plaintiff reduce amount of redactions to billing records to “provide more information about the general nature of the services performed without revealing 28 Riavdeged communications, or attorney thought processes.”) 3 CASE NO. ...*

JUDGE'S SYNTHESIS — **VULNERABLE · 0**

The filing cites Lincoln General Ins. Co. v. RyanMercaldo LLP, 2015 WL 12672143, at *5 (S.D. Cal. July 31, 2015), for the proposition that the court ordered plaintiff to reduce redactions to billing records to ‘provide more information about the general nature of the services performed without revealing privileged communications, or attorney thought processes.’ The supplied AUTHORITY text, however, is a May 9, 2014 Order Denying Defendants’ Motion to Dismiss in the same case (No. 13-cv-2192-W(DHB)). That order resolves a Rule 12(b)(6) motion on statute-of-limitations grounds under Cal. Civ. Proc. Code § 340.6 in a legal-malpractice action. It contains no discussion of billing records, redactions, privilege logs, attorney-client privilege, or attorney thought processes, and none of the quoted language appears anywhere in the supplied text. Because the supplied text plainly does not correspond to the cited 2015 discovery order, the citation cannot be verified on the materials provided. All three per-model judgements agree on this point and reach the same conclusion. Attack vectors for the response brief: (1) demand the opposing party produce the actual 2015 WL 12672143 order and pinpoint *5, because the supplied/available text from the same docket does not contain the quoted language; (2) note the citation contains apparent OCR or transcription errors (‘Riavdeged communications’), undermining reliability; (3) even if a 2015 discovery order exists, the filing relies on it as persuasive district-court authority only — a footnote concession that § 915 ‘would preclude reviewing the billing records in their entirety’ is a significant give-back the attorney can exploit; and (4) recommend independent verification of the citation before treating it as authority. Do not represent to the court what the cited 2015 order actually holds — the supplied materials do not establish it.

CASE

Lincoln General Ins. Co. v. RyanMercaldo LLP, No. 13 CV 2192-W (DHB), 2015 WL 12672143, at *5 (S.D. Cal. July 31, 2015)

Existence: **CONFIRMED** · p.4 · authority ↗

*STATE FARM IS WITHHOLDING RELEVANT, NON-PRIVILEGED 21 DOCUMENTS WITHIN ITS PRIVILEGE LOG 22 A. State Farm Cannot Make a Prima Facie Showing That the “Dominant 23 Purpose” For Its Redacted/ Withheld Documents Is For Legal Advice. 24 25 1 While section 915 would preclude reviewing the billing records in their entirety, to the extent they 26 disclose privileged information, it does not preclude the review of redacted versions. Lincoln General Ins. Co. v. RyanMercaldo LLP, No. 13 CV 2192-W (DHB), 2015 WL 12672143 at *5 27 (S.D. Cal. July 31, 2015) (ordering that plaintiff reduce amount of redactions to billing records to “provide more*

information about the general nature of the services performed without revealing 28 Riavdeged communications, or attorney thought processes.”) 3 CASE NO. ...

JUDGE'S SYNTHESIS — **VULNERABLE · 0**

The filing cites Lincoln General Ins. Co. v. RyanMercaldo LLP, 2015 WL 12672143, at *5 (S.D. Cal. July 31, 2015), for a discovery proposition: that a court ordered reduction of redactions to billing records so as to ‘provide more information about the general nature of the services performed without revealing privileged communications, or attorney thought processes.’ The supplied AUTHORITY text, however, is an ‘ORDER DENYING DEFENDANTS’ MOTION TO DISMISS’ dated May 9, 2014, addressing whether a legal-malpractice claim is time-barred under Cal. Civ. Proc. Code § 340.6(a). The supplied text contains no discussion of billing records, privilege logs, redactions, section 915, attorney-client privilege, or anything resembling the quoted parenthetical. Although the parties and docket number (13-cv-2192-W(DHB)) match, the supplied opinion is plainly a different ruling in the same case from the one the filing cites. All three per-model judgements concur on this point, and I agree. Because the supplied authority does not correspond to the cited 2015 WL ruling, I cannot verify the filing’s proposition from the text provided. ATTORNEY ACTION ITEM: Independently pull 2015 WL 12672143 to confirm whether the quoted language and the order on billing-record redactions actually appear at *5. If the later discovery order exists and says what the filing claims, the citation may be accurate even though the supplied text is the wrong opinion; if not, the response brief should flag the mischaracterization and the inaccurate parenthetical. Treat as vulnerable pending verification.

CASE

Lincoln Gen. Ins. Co. v. Ryan-Mercaldo LLP, No. 13-CV-2192-W (DHB), 2015 WL 12672143 (S.D. Cal. July 31, 2015)

Existence: **CONFIRMED** · p.4 · authority ↗

*STATE FARM IS WITHHOLDING RELEVANT, NON-PRIVILEGED 21 DOCUMENTS WITHIN ITS PRIVILEGE LOG 22 A. State Farm Cannot Make a Prima Facie Showing That the “Dominant 23 Purpose” For Its Redacted/ Withheld Documents Is For Legal Advice. 24 25 1 While section 915 would preclude reviewing the billing records in their entirety, to the extent they 26 disclose privileged information, it does not preclude the review of redacted versions. Lincoln General Ins. Co. v. RyanMercaldo LLP, No. 13 CV 2192-W (DHB), 2015 WL 12672143 at *5 27 (S.D. Cal. July 31, 2015) (ordering thatplaintiff reduce amount of redactions to billing records to “provide more information about the general nature of the services performed without revealing 28 Riavdeged communications, or attorney thought processes.”) 3 CASE NO. ...*

JUDGE'S SYNTHESIS — **VULNERABLE · 0**

The filing cites Lincoln Gen. Ins. Co. v. Ryan-Mercaldo LLP, 2015 WL 12672143 (S.D. Cal. July 31, 2015), for the proposition that the court ordered the plaintiff to reduce redactions to billing records so as to ‘provide more information about the general nature of the services performed without revealing privileged communications, or attorney thought processes.’ The supplied AUTHORITY text, however, is a

different opinion in the same case caption: an ORDER DENYING DEFENDANTS' MOTION TO DISMISS dated May 9, 2014, addressing a Rule 12(b)(6) challenge to a legal-malpractice complaint on statute-of-limitations grounds under Cal. Civ. Proc. Code § 340.6(a). Nothing in the supplied text discusses billing records, privilege logs, redactions, the attorney-client privilege, section 915, or any order directing the reduction of redactions. The quoted language attributed to the court does not appear in the supplied text. Because the supplied authority does not correspond to the cited 2015 order, I cannot verify the filing's proposition from the materials provided. All three per-model judgements agree that the supplied text does not match the citation and does not support the proposition. Attack vectors for the response brief: (1) demand that opposing counsel produce the actual 2015 order being quoted and confirm the pin cite; (2) note that the parenthetical quotation should be checked verbatim against the actual order, as the filing's quotation contains visible OCR-style corruption ('Riavdeged communications'); (3) even if a 2015 discovery order exists in this docket, it would be a non-binding district court discovery ruling entitled to limited weight. The attorney should independently verify the citation before relying on this critique in the response.

CASE

Surety Co. v. Superior Court, 153, 21 Cal. App. 3d 467, 476 (1984) ("Where the evidence sought is directly at issue... a 22 party should not be allowed to use privilege as both a sword and a shield.")

Existence: **CONFIRMED (PINCITE UNVERIFIED)** · p.5 · [authority](#) ↗

the dominant purpose of 13 the relationship was not that of attorney and client, the communications would 14 not be subject to the attorney-client privilege and therefore would generally be 15 discoverable.") *Jd. at 740 (emphasis added).* 16 *As explained by Jvy Hotel San Diego, LLC v. Houston Casualty Co., Case No. 17 10-cv-2183-L, 2011 WL 4914941 (S.D. Cal. Oct. 17, 2011), in the context of a bad 18 faith case, "[t]he attorney-client privilege would not be applicable if [the insurance 19 company's] dominant purpose was to have [the law firm] provide business advice or 20 act as an claims adjuster."* *Jd. at *4; Aetna Cas. & Surety Co. v. Superior Court, 153 21 Cal.App.3d 467, 476 (1984) ("Where the evidence sought is directly at issue... ...*

JUDGE'S SYNTHESIS — **VULNERABLE · 0**

The filing cites *Aetna Cas. & Surety Co. v. Superior Court*, 153 Cal.App.3d 467, 476 (1984) for the proposition that '[w]here the evidence sought is directly at issue... a party should not be allowed to use privilege as both a sword and a shield.' The supplied AUTHORITY text, however, is plainly a different opinion — an eminent domain/condemnation appeal involving appellants Carlyle Miller and D.K. Miller, the State of California, and the Rio Del Mar and Rob Roy highway interchanges, addressing 'project enhancement' and just compensation under *Merced Irrigation Dist. v. Woolstenhulme*. The supplied text contains no discussion of attorney-client privilege, discovery, the sword-and-shield doctrine, or insurance bad faith, and the quoted language does not appear anywhere in the supplied text. Under the grounding rules I cannot opine on what *Aetna* actually holds or its status; I can only note that the supplied authority does not match the citation. All three per-model judgements reach the same conclusion and I

agree. Attack vectors for the response brief: (1) the opposing brief quotes language that does not appear in the supplied text of the cited page, raising a verification problem the attorney should flag; (2) recommend the attorney independently verify the citation, pin cite, and quotation before relying on or attacking it on the merits; (3) even if the citation is real, the opposing brief offers no parenthetical tying the sword-and-shield principle to the dominant-purpose/insurer-as-adjuster framework the surrounding paragraphs develop, leaving the citation as a conclusory tag the response can characterize as unsupported makeweight.

CASE

Cason v. Federated 20 Life Ins. Co., Case No. C-10-0792 EMC, 2011 WL 1807427, 2 (2011)

Existence: **CONFIRMED** · p.6 · authority ↗

12 Additionally, other communications were originated from a claims adjuster/handler 13 and were sent directly to "State Farm Claim File" without any indication of how, 14 when or where an attorney communication was involved. 15 16 17 Many courts have explained that while the attorney might be retained to both 18 adjust a claim and provide legal advice, the question of whether the communications 19 are privileged hinges on what purpose predominated. See, e.g., Cason v. Federated 20 Life Ins. Co., Case No. C-10-0792 EMC, 2011 WL 1807427, 2 (N.D. Cal. May 11, 21 2011). Because the test is a holistic one, a few needles of legal advice amongst a 22 haystack of claims adjusting does not turn a predominantly claims adjusting 23 relationship into an attorney-client relationship. ...

JUDGE'S SYNTHESIS — **VULNERABLE · 0**

The supplied AUTHORITY text does not correspond to the cited case. The filing cites Cason v. Federated Life Ins. Co., No. C-10-0792 EMC, 2011 WL 1807427 (N.D. Cal. May 11, 2011). The supplied text is an order in Nalini Kumar, et al. v. Nationwide Mutual Insurance Co., Case No. 22-cv-03852-TLT (LJC), dated May 23, 2023 — a different opinion with different parties, docket number, and date. Although the Kumar order discusses Cason in passing, the Kumar text is not the Cason opinion itself, and I was not given Cason's text. Under the grounding rules, I cannot assess what Cason actually holds or whether the filing's characterization (that the privilege test 'hinges on what purpose predominated' and is 'holistic') is faithful to Cason. The attorney should independently verify the Cason opinion before responding. Models gpt-5-mini and gemini-2.5-flash reached the same conclusion and stopped. The claude-sonnet model went further by relying on Kumar's secondary description of Cason to infer Cason's content; that approach exceeds what the grounding rules permit here, so I do not adopt its substantive characterization. Attack vectors for the response brief: (1) demand the opposing party produce the actual Cason opinion and pinpoint where it supports the 'needles in a haystack' formulation, which appears to be the brief's gloss rather than a quotation; (2) if Cason in fact found the dominant purpose was attorney-client (as Kumar's discussion suggests it may have), the opposing brief is citing a case that reached the opposite outcome on similar facts — a strong distinguishing point; (3) challenge the pincite ('2') and verify the parallel citation; (4) note the filing's parenthetical-free, unquoted paraphrase invites scrutiny of whether the 'holistic' framing is Cason's language or advocacy spin.

CASE Davis v. City of Santa Ana, 51 Cal. App. 5th 1094, 1115 (2020)Existence: **CONFIRMED** · p.7 · authority ↗

508432015.1 5 CASE NO. 2:24-CV-05205-FMO-MAA PLAINTIFF'S BRIEF IN SUPPORT OF OBTAINING RELEVANT, NON-PRIVILEGED DOCUMENTS FROM DEFENDANT STATE FARM GENERAL INSURANCE COMPANY Case 2:24-cv-05205-FMO-MAA Document 119 Filed 05/06/25 Page 26 of 77 Page ID #:4289 Suffice to say, the dominant purpose of State Farm's redacted and withheld communications is to seek business advice and discuss claims handling functions, not legal advice. See Costco, supra, 47 Cal.4th at 735; Davis v. City of Santa Ana, 51 Cal. App. 5th 1094, 1115 (2020), Its privilege log identifies 519 redactions and documents, each uniformly withheld as: "legal communications, oversight, opinions and strategy involving litigation counsel." Approximately 44 entries (color-coded as green) and 248 entries (color-coded as red) are claims ...

JUDGE'S SYNTHESIS — VULNERABLE · 0

The filing cites 'Davis v. City of Santa Ana, 51 Cal. App. 5th 1094, 1115 (2020)' for the proposition that the dominant purpose of State Farm's withheld communications is business advice and claims handling, not legal advice — an attorney-client privilege / dominant-purpose proposition. The supplied AUTHORITY text, however, is captioned 'THOMAS E. DAVIS, Appellant, v. CITY OF SANTA ANA' and reported at '108 Cal.App.2d 669 (1952).' That is a different reporter, volume, page, and year than the citation in the filing. The substance of the supplied opinion concerns a taxpayer suit to enjoin a municipal garbage and trash collection contract, competitive-bidding requirements under former Government Code sections 37901-37903, and municipal council discretion over disposal of city property. Nothing in the supplied text addresses attorney-client privilege, the dominant-purpose test, or insurance claims handling. Because the supplied authority does not correspond to the cited case, per the grounding rules I must stop and decline to characterize what the 2020 opinion actually holds. All three per-model judgements reach the same conclusion and assign zeros; I agree. Attack vector for the response brief: flag the mismatch and require opposing counsel to produce the actual text of 51 Cal. App. 5th 1094, 1115 supporting the dominant-purpose proposition. Until that is done, the citation is unsupported on the record before the court. The attorney should independently verify the 2020 citation (pin cite 1115) before relying on or attacking its substance.

CASE Vioxx Prods. Liability Litig., 12 La. 2007 (2007)Existence: **CONFIRMED** · p.9 · authority ↗

Accordingly, "courts 5 impose a higher burden on in-house counsel to 'clearly demonstrate' that advice was 6 given in a legal capacity." Neuberger Berman Real Estate Innccoommee FFuunndd,, Inncc.. vv.. LLoollaa 7 Brown Trust No. 1B, 230 F.R.D. 398, 411 n.20 (D. Md. 2005) (citation omitted). 8 And the principle applies equally here with regard to State farm's coverage 9 counsel. To justify withholding communications with coverage counsel, the 10 "lawyer's role as a lawyer must be primary to her participation" in the 11 communication. In re Vioxx Prods. Liability Litig., 501 F. Supp. 2d 789, 798 (E.D. 12 La. 2007). Communications with in-house counsel are not

privileged to the extent 13 they “would have been made because of a business purpose,” regardless of whether 14 there may have been ...

JUDGE'S SYNTHESIS — VULNERABLE · 0

The filing cites ‘In re Vioxx Prods. Liability Litig., 501 F. Supp. 2d 789, 798 (E.D. La. 2007)’ for an attorney-client privilege proposition — specifically that ‘the lawyer’s role as a lawyer must be primary to her participation’ in a communication for privilege to attach to in-house/coverage counsel communications. The supplied AUTHORITY text does not correspond to that cited opinion. The supplied text is an MDL order by Judge Federico A. Moreno concerning Takata airbag litigation, addressing direct-filing, claim splitting, personal jurisdiction, and remand under 28 U.S.C. § 1407. It contains no discussion of attorney-client privilege, in-house counsel, coverage counsel, or any ‘primary role’ test. The supplied text does reference ‘In re Vioxx Prods. Liab. Litig., 478 F.Supp.2d 897, 904 n.2 (E.D. La. 2007)’ — a different volume/page — but only for unrelated MDL direct-filing procedural points. Because the supplied AUTHORITY does not match the citation in the filing, I cannot verify the filing’s proposition from the supplied text and must not supply substantive content about the cited 501 F. Supp. 2d opinion from outside knowledge. All three per-model judgements reach the same conclusion (accuracy=relevance=treatment=0, mischaracterizes_holding=true), and I agree. Attorney advocacy guidance: the response brief should (1) flag that the cited reporter/page does not match the supplied text and request the opposing party produce the actual pinpoint passage, (2) independently verify the 501 F. Supp. 2d 789 citation before relying on or attacking its substance, and (3) if verification confirms the citation exists, examine whether the ‘primary role’ language is holding or dictum and whether it has been distinguished — none of which can be assessed from the supplied authority. Recommend independent verification before drafting substantive rebuttal.

CASE Trout v. Avmed Home and Marine Ins. Co., 326 F.R.D. 652 (2018)

Existence: **CONFIRMED** · p.11 · [authority](#) ↗

Second, with regard to communications between State Farm’s claims representatives and coverage counsel, there is also no basis to withhold unless such communications include the request or receipt of “legal advice.” Communications reflecting or containing coverage counsel’s “impressions” or opinions of litigation counsel and/or litigation counsels’ strategy are not privileged. California courts are 10 especially skeptical of overbroad privilege assertions in bad faith insurance litigation, where the insurer’s claims conduct is directly at issue. eee tn wine ll 12 13 14 Here, State Farm has not provided sufficient information for Plaintiff to even 15 evaluate whether its coverage counsel was engaged in anything other than “claims 16 investigation activities.” Indeed, it is hard to imagine ...

JUDGE'S SYNTHESIS — VULNERABLE · 0

The filing cites Trout v. Avmed Home and Marine Ins. Co., 326 F.R.D. 652 (2018), apparently for a proposition about attorney-client privilege and California courts’ skepticism of overbroad privilege assertions in bad-faith insurance litigation. The supplied AUTHORITY text, however, is plainly a different opinion — it begins ‘163 U.S. 537 (1896) PLESSY v. FERGUSON’ and concerns the constitutionality of a

Louisiana statute requiring separate railway accommodations under the Thirteenth and Fourteenth Amendments. Nothing in the supplied text addresses insurance, attorney-client privilege, coverage counsel, bad-faith claims handling, or California discovery law. Because the supplied authority does not correspond to the citation, I cannot assess whether the cited Trout opinion supports the filing’s proposition, and per the grounding rules I must stop short of describing what Trout ‘really’ holds. The attorney should independently verify the citation (including reporter, volume, page, and year — F.R.D. citations typically include a deciding court designation, which is absent here) and confirm whether the cited Trout decision exists and stands for the proposition asserted. All three per-model judgements reached the same conclusion: the supplied authority text does not match the citation, warranting accuracy/relevance/treatment scores of 0 and a finding of mischaracterization. I agree with that consensus.

CASE

Inc. v. EMC Mortg. Corp., Case No. MC 13-80037 SI, 2013, 27 WL 2552360, *3 (cand 2013) (finding that “dominant purpose” of 28 relationship under Costco was not that of attorney-client, ordering production)

Existence: **CONFIRMED** · p.6 · authority ↗

*Because the test is a holistic one, a few needles of legal advice amongst a 22 haystack of claims adjusting does not turn a predominantly claims adjusting 23 relationship into an attorney-client relationship. There are also multiple district court 24 cases in which parties have been ordered to produce communications after a finding 25 that the dominant purpose under the Costco analysis was not attorney-client. See, 26 e.g., Syncora Guarantee Inc. v. EMC Mortg. Corp., Case No. MC 13-80037 SI, 2013 27 WL 2552360, *3 (N.D. Cal. Jun. 10, 2013) (finding that “dominant purpose” of 28 relationship under Costco was not that of attorney-client, ordering production). 508432015.1 5 CASE NO. ...*

JUDGE'S SYNTHESIS — **VULNERABLE · 6**

The filing cites Syncora Guarantee Inc. v. EMC Mortg. Corp., MC 13-80037 SI, for the proposition that the court found the ‘dominant purpose’ of a relationship under the Costco analysis was not attorney-client, and ordered production on that basis. The supplied authority text bears the same case name and docket number (MC 13-80037 SI) but contains no discussion of attorney-client privilege, no reference to ‘Costco,’ and no ‘dominant purpose’ analysis. The supplied opinion is an order compelling re-deposition of a non-party witness and production of documents concerning mortgage underwriting exams, an OCC review, a Clayton audit, and a ‘Strike Force’ team. Production was ordered on Rule 26 relevance grounds (and, as to bank-examination-privilege documents, contingent on OCC’s position) — not on any privilege/dominant-purpose holding. The filing’s parenthetical therefore is not supported by the supplied text. There is also a date discrepancy (supplied opinion dated March 25, 2013; filing cites June 10, 2013), suggesting the WL pin cite may refer to a different order in the same matter that was not supplied. Because the supplied AUTHORITY does not contain the proposition attributed to it, the citation is at minimum vulnerable and likely a mischaracterization on this record. Attack vectors for the

response brief: (1) point out that the cited opinion supplied does not contain any ‘Costco’ or ‘dominant purpose’ analysis; (2) flag the date/WL mismatch and demand the movant identify the specific order and pin cite supporting the parenthetical; (3) argue the citation cannot carry the weight assigned to it without a corrected source. Claude and Gemini reached essentially the same conclusion; gpt-5-mini scored relevance higher because the supplied order does compel production, but that production rationale is unrelated to privilege. The attorney should independently verify the WL citation before relying on this attack, because the pin cite may point to a separate order in the docket not supplied here.

CASE Aetna Cas. & Surety Co. v. Superior Court, 153 Cal. App. 3d 467, 476 (1984)

Existence: **CONFIRMED (PINCITE UNVERIFIED)** · p.5 · [authority](#) ✓

the dominant purpose of 13 the relationship was not that of attorney and client, the communications would 14 not be subject to the attorney-client privilege and therefore would generally be 15 discoverable.” Jd. at 740 (emphasis added). 16 As explained by *Jvy Hotel San Diego, LLC v. Houston Casualty Co., Case No. 17 10-cv-2183-L, 2011 WL 4914941 (S.D. Cal. Oct. 17, 2011)*, in the context of a bad 18 faith case, “[t]he attorney-client privilege would not be applicable if [the insurance 19 company’s] dominant purpose was to have [the law firm] provide business advice or 20 act as an claims adjuster.” Jd. at *4; *Aetna Cas. & Surety Co. v. Superior Court, 153 21 Cal.App.3d 467, 476 (1984)* (“Where the evidence sought is directly at issue... ...

JUDGE'S SYNTHESIS — **VULNERABLE · 16**

The filing attributes to Aetna, 153 Cal.App.3d at 476, the quotation: ‘Where the evidence sought is directly at issue... a party should not be allowed to use privilege as both a sword and a shield.’ That language does not appear anywhere in the supplied authority text, including at page 476. Page 476 of the supplied opinion addresses whether Thornton was retained for legal advice versus as a non-attorney agent, applying a ‘dominant purpose’ analysis (citing Montebello), and concludes that ‘Aetna retained Thornton to investigate Pietrzak’s claim and make a coverage determination under the policy,’ which the court called ‘a classic example of a client seeking legal advice.’ The Aetna opinion’s overall thrust is the opposite of the filing’s implied proposition: the court rejected each of the insured’s attempts to pierce privilege (joint client, advice-of-counsel waiver, agent-other-than-attorney, and state-of-mind), and held that ‘the court below erred in denying Aetna’s motions to quash,’ issuing a peremptory writ of mandate in the insurer’s favor. The court expressly called the state-of-mind waiver theory ‘palpably untenable’ and ‘entirely without merit.’ Thus the citation appears to be a fabricated or misattributed quotation, and the authority — to the extent it bears on the filing’s broader ‘sword and shield’ theme — actually cuts against the insured’s position. All three per-model judgments agree the quoted language is absent from the supplied text and that the filing mischaracterizes the opinion; I concur. Attack vectors for the response brief: (1) the quoted language does not appear in Aetna at 476 or elsewhere in the supplied opinion — challenge opposing counsel to identify the pin cite; (2) Aetna actually upheld privilege against bad-faith-driven discovery and rejected state-of-mind waiver, undermining the proposition cited; (3)

Aetna's 'dominant purpose' discussion supports privilege where counsel is retained to interpret a policy and assess coverage. Recommend independent verification of the quotation's true source.

Methodology & Limitations

This assessment is grounded solely in authority text retrieved from public sources (CourtListener, Cornell LII, the eCFR, and Google Scholar). Each citation's use is evaluated against the authority text actually retrieved for it — not against any model's prior knowledge of the cited case. Where an authority could not be retrieved, or where the retrieved authority did not match the cited locator, no characterization of the cited authority's holding, status, or subject matter is offered; such citations are flagged for independent verification rather than described. This report is an analytical aid for the responding attorney, not legal advice, and every finding should be independently verified against the primary source before it is relied upon.