

poration. Galland, Kharasch communicated with various consultants to
investigation and possible litigation. Respondents assert that Galland,
which contain mental impressions, conclusions, opinions and/or legal
Motor In consultants provided documents to Galland, Kharasch to
on.

Arts, and National Media Corp
assist in the defense of the FTC
Kharasch prepared documents
strategies of attorneys. Various
assist in the defense of the investigation and possible litigation

ected from discovery. Motor In moves to have the following categories of documents pro
ed by consultants: (1)

cluding the mental impressions, documents given to and reviewed by its consultants; (2) documents prepar
relationships, and/or legal the part of its former attorneys from meetings with its consultants.

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on.

IV.

Documents Prepared by Consultants

Documents including the reports and assessments of testing that were conducted for Motor Up's consultants would ordinarily be shielded from discovery. However, opinion work product is discoverable when mental impressions are at issue and the material is compelling. *Holmeten v. State Farm Mutual Auto Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992) (citations omitted). Further, "a litigant cannot use the work product doctrine to shield documents to prove a point but then, in a later proceeding, to rely on the documents to prove a point." *et al. v. Gorman-Rupp Co., Inc., et al.*, 136 F.3d 695, 704 (10th Cir. 1998).

Respondents have placed such documents at issue by raising defenses which assert reliance on the information contained in these documents. Since Complaint Counsel cannot obtain from any other source the substantiation of the information respondents are

of attorney-client information which

However, Complaint Counsel is not entitled to discovery of

of legal facts or strategies of Respondents' former counsel. Accordingly, Respondents' investigation of requested documents may redact information from the redacted documents.

IT IS SO ORDERED.


Dr. Michael Chappell
Administrative Law Judge