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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TESLA, INC.,  
Plaintiff,  
v.  
GUANGZHI CAO,  
Defendant.

Case No. 19-cv-01463-VC (KAW)

**ORDER REGARDING DISCOVERY LETTER**

Re: Dkt. No. 112

United States District Court  
Northern District of California

Plaintiff Tesla, Inc. filed the instant complaint against Defendant Guangzhi Cao, its former employee. (Compl. ¶ 2.) Plaintiff alleges that Defendant provided its proprietary autopilot source code to Defendant’s new employer, Xiapeng Motors Technology Company Ltd. (“XMotors”). (Compl. ¶¶ 2, 6-8.) Pending before the Court is Plaintiff’s and XMotors’s joint discovery letter regarding production of an XMotors’s investigative report. (Discovery Letter, Dkt. No. 112.)

Plaintiff argues that XMotors should be compelled to produce the investigative report because XMotors waived privilege. (Discovery Letter at 2.) “The doctrine of waiver of the attorney-client privilege is rooted in notions of fundamental fairness. Its principal purpose is to protect against the unfairness that would result from a privilege holder selectively disclosing privileged communications to an adversary, revealing those that support the cause while claiming the shelter of the privilege to avoid disclosing those that are less favorable.” *Tennenbaum v. Deloitte & Touche*, 77 F.3d 337, 340-41 (9th Cir. 1996).

In support of arguing waiver, Plaintiff points to a March 30, 2020 declaration, in which XMotors’s CEO, Xinzhou Wu, states: “Based on my knowledge and information, [Defendant] also never provided any other XMotors employees with any Tesla source code materials.” (Wu Decl. ¶ 12, Dkt. No. 45-1.) During a December 3, 2020 deposition, Mr. Wu disclosed that the

1 factual basis for this assertion was an XMotors investigative report. (Discovery Letter at 2.)  
2 XMotors refused to allow Mr. Wu to answer questions about the report based on attorney-client  
3 and work product privilege, and has refused to produce the report. (*Id.*)

4 The Court finds that XMotors did not waive privilege. Courts have declined to find waiver  
5 where, like here, the disclosure was little more than “undetailed conclusions about its  
6 investigation,” and were not used in support of a legal claim. *Mendez v. Saint Alphonsus Regi’l*  
7 *Med. Ctr.*, No. 12-cv-26-EJL-CWD, 2014 WL 3406015, at \*4 (D. Idaho July 10, 2014); *see also*  
8 *Rates Tech., Inc. v. Elcotel, Inc.*, 118 F.R.D. 133, 134 (M.D. Fla. 1987) (finding that a  
9 communication revealing a general, ultimate conclusion, but did not otherwise reveal the essence  
10 of substantive attorney-client privileged communications, did not constitute waiver); *McIntyre v.*  
11 *Main St. & Main Inc.*, Case No. 99-cv-5328-MJJ (EDL), 2000 WL 33117274, at \* (N.D. Cal.  
12 Sept. 29, 2000) (finding no waiver where the defendant stated it would not rely on the  
13 investigation in its defense). Here, Mr. Wu’s statement was conclusory and undetailed.  
14 Furthermore, XMotors is not a party to this case, and Plaintiff has asserted no claims against it.  
15 Mr. Wu’s statement was not made to prove or disprove a claim, or to even defend XMotors  
16 against Plaintiff’s allegations. Instead, it was made in opposition to discovery. (*See* Dkt. No. 45  
17 (Motion to quash subpoena).)

18 Plaintiff’s cases finding waiver are readily distinguishable. In *Manguia-Brown v. Equity*  
19 *Residential*, the defendant relied on the results of evaluations of its in-house legal team to defend  
20 against a summary judgment motion. Case No. 16-cv-1225-JSW (TSH), 2020 WL 3057502, at \*2  
21 (N.D. Cal. June 9, 2020). In so doing, the defendant went into specific descriptions of the legal  
22 advice, including confirming the content of that advice, describing specific issues the in-house  
23 legal team was evaluating. *Id.* at \*2-3. Likewise, in *Apple Inc. v. Samsung Electronics Co., Ltd.*,  
24 the court found waiver where the defendant raised an affirmative defense that put the disputed  
25 documents at issue, thus going “beyond mere denial” of the plaintiff’s claims. 306 F.R.D. 234,  
26 242-43 (N.D. Cal. 2015). Finally, in *Avago Technologies General IP PTE Ltd. v. Elan*  
27 *Microelectronics Corp.*, the court found waiver because the plaintiffs had not only confirmed the  
28 existence of the report, but specified their results and how the results were obtained. Case No. 04-

United States District Court  
Northern District of California

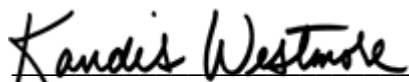
1 cv-5385-JW (HRL), 2006 WL 3290400, at \*2 (N.D. Cal. Nov. 13, 2006). Additionally, the  
2 plaintiffs had relied on the report in defending a prior action. *Id.* In short, each of these cases  
3 involve significant disclosures of privileged information, and the privileged information was used  
4 to assert or defend claims on the merits. None of the cases involve a general statement used by a  
5 third-party to argue against discovery.

6 Plaintiff also argues that Mr. Wu must appear for an additional deposition because  
7 XMotors improperly objected to questions about the investigation during his original deposition.  
8 (Discovery Letter at 4.) Plaintiff contends privilege does not protect the underlying facts about the  
9 investigation. (*Id.*) Plaintiff, however, does not identify the specific deposition excerpts that  
10 Plaintiff believes XMotors made improper objections in regard. It is not the Court's responsibility  
11 to review all of the transcript excerpts and determine which questions are at issue. In any case, the  
12 Court has reviewed the deposition transcripts, and it does not appear Plaintiff asked questions  
13 about the underlying facts. Rather, Plaintiff asked questions about the identity of investigators  
14 selected by counsel and the process of the investigation, which implicate the attorney-client and  
15 work product privileges.

16 Accordingly, the Court DENIES the relief sought by Plaintiff.

17 IT IS SO ORDERED.

18 Dated: January 19, 2021

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20 KANDIS A. WESTMORE  
21 United States Magistrate Judge  
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