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GAME ON-The Opposition

By Katherine Gallo

You have been served with the Motion to Compel Further Responses with a [Separate Statement of Items in Dispute \(pdf\)](#) the size of your fist and your response is due in two weeks. Now what do you do? First, take a deep breath. This is the time you decide when to [“hold them and when to fold them”](#) because how you respond may end up setting the tone between you and opposing counsel for the entire case.

Look at the [Separate Statement of Items in Dispute \(pdf\)](#) and determine whether or not you have any [garbage objections](#). If you do, offer to respond to those interrogatories, requests for admissions and/or requests for productions of documents by a date no later than when your opposition is due.

If you strongly believe the interrogatories or requests are vague, ambiguous, overbroad and/or burdensome, this is the time to reach out to opposing counsel and explain in detail why you are having trouble responding to the discovery and give suggestions on how they should rewrite the interrogatories and/or requests. ***Do this in writing as soon as possible.*** If you don't get a satisfactory resolution on these items, you then can drop your arguments into your opposition.

Claims of privileges must be protected by the attorney, but remember that they are generally narrowly construed. The work product doctrine and the right of privacy are another story. These objections are not privileges and can be overruled--except for absolute work product--if there is a showing that the discovery is necessary for a fair resolution of the lawsuit. See [Moskowitz v. Superior Court \(1982\) 137 C.A. 3d 313 \(pdf\)](#), 316. Also, the California Supreme Court is reviewing the scope of the work product doctrine in the case of [Coito v. Superior Court \(2010\)182 Cal. App. 4th 758\(pdf\)](#). Consider negotiating a [protective order](#) with opposing counsel as a court most likely would grant one in the cases involving privilege, work product doctrine or the right of privacy.

If all else fails, prepare your opposition. Follow the same advice given in the previous blog [“What Your Discovery Motion Should Look Like.”](#) However, one additional piece of advice—though the code does not require it, you should prepare your own [Separate Statement of Items in Dispute \(pdf\)](#). This document is **GOLDEN** because this will become the first document the court reviews in deciding the motion as it will have all the information the

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court needs in this one document. Your [Separate Statement of Items in Dispute \(pdf\)](#) headings should look like this:

Form Interrogatory #12.1: State the request or interrogatory verbatim.

Response: State your response verbatim.

Supplemental Response (provide dates): State any supplemental response verbatim.

Why There Should Be a Further Response: State moving papers' [Separate Statement of Items in Dispute \(pdf\)](#) arguments verbatim.

Why There Should Not be a Further Response: Do not use conclusory statements. You need to be **very** specific in the law and the applicability of the law to your case if you are not responding to the discovery on claims of privilege, work product and/or privacy. If you are arguing that your objections are not garbage objections, and then explain in detail why.

The final piece is your declaration. Again, the same advice applies as what was given in the previous blog "[What Your Discovery Motion Should Look Like](#)." However, if the moving papers are requesting [sanctions](#) then you must address this full on. Describe how you "**acted with substantial justification**" in objecting to the discovery and opposing the motion. Detail your entire meet and confer efforts (i.e., explained the problems with the interrogatory/request, offered to respond to the discovery if everyone could agree to a [protective order](#), etc.) Don't forget to request [sanctions](#) yourself for all the time you have spent in trying to come to a resolution and in opposing the motion.