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Is the Court Correct That There is No Motion to Strike in Discovery?

By Katherine Gallo



Recently I received an e-mail from an attorney who followed my advice regarding General Objections. It went like this:

"I read your article 'Why You Need to Bring a Motion to Strike General Objections,' and filed a 'Motion to Strike Defendants' Preliminary Statement and Unmeritorious Objections.' The Preliminary Statement contained many of the issues you pointed out in your article, and each of defendants' responses to interrogatories and document requests contained the same 28 lines of objections. The court then separated the motions to compel from the motions to strike and refused to rule on the motion to strike stating "There is no such motion." Is the court correct?"

The court is correct that a Motion to Strike pursuant to C.C.P. §435 and C.C.P. §437 is about the pleadings even though the request "Move to Strike" is often used in discovery (i.e., portions of a declaration, objections in a deposition) even though it is not codified. However, I have never seen a court refuse to deal with a discovery issue based on semantics of the notice. In fact, according to Weil and Brown, *Civil Procedure Before Trial* (TRG 2015) 9:2.3 citing *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 CA4th, 187, 192-193 the "**label**" of the motion is not determinative.

Propounding parties are in a "Catch-22" situation. There is no provision allowing the General Objections or a Preliminary Statement in a discovery response so there is no remedy for it. The following is my rationale for recommending the filing of such a request with your motion to compel further responses:

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1. The Code does not allow for general objections or preliminary statements. A party must respond to the individual interrogatory or request and that includes any objection. See my blog article "*What is a General Objection?*"
2. Each written discovery device allows a party to bring a motion to compel further responses if an objection is "*too general.*" See C.C.P. §2030.300 and C.C.P. §2031.310.
3. C.C.P. §2023.010(e) says it is a misuse of the discovery process if a party makes an unmeritorious objection to discovery.
4. C.C.P. §2023.010(f) says it is a misuse of the discovery process for making an evasive response to discovery.
5. C.C.P. §2023.030 gives the court power to issue monetary, issue and evidence sanctions on a party for misuse of the discovery process.

Procedurally speaking the proper motion to bring is a Motion to Compel Further Responses pursuant to C.C.P. §2030.300 and C.C.P. §2031.310 with a Request for Sanctions for violation of C.C.P. §2023.010(e) and C.C.P. §2023.010(f). In that motion, a party should:

- Point out to the court that the General Objections and Preliminary Statements are not proper and ask the court to overrule the objections or strike them from the response as improper.
- Emphasize to the court that responding party's response to interrogatories "*shall be as complete and straightforward as the information reasonably*

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available to the responding party permits" and when responding to a document request a party must do a diligent search and make a reasonable inquiry before responding. See my blog articles "Document Demands—What is a Diligent Search" and "Document Demands—What is a Reasonable Inquiry?"

- Also, point out to the court that it is the burden on responding party to justify objections. See Weil and Brown *Civil Procedure Before Trial* (TRG 2015) 8:1178.1 citing *Coy v. Sup. Ct.* (1962) 58 C2d 210, 220-221 and *Fairmont Insurance Co. v. Superior Court* (2000) 22 C4th 245, 255
- Request the court require a further response with a ruling that responding party is forbidden to use General Objections or Preliminary Statements in any of their responses. See my blog article "*Why You Need to Bring A Motion to Strike General Objections.*"
- Finally, stress to the court that you are entitled to sanctions. See my blog article "*Sanctions Denied.*"

To answer the attorney's question "*Is the Court correct?*" **In my opinion, No!** The court has the "*inherent authority to manage and control its docket*" and should have ruled **on the merits** regarding defendant's improper General Objections and Preliminary Statement.

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