{{ doc.date }}

*VIA EMAIL ONLY* to abrady@bradyschwartz.com

Mr. Alexander M. Brady

Brady, Schwartz & Kassell LLP

1145 5th Avenue, Suite 120

Houston, TX 34587

Re: Written Discovery Meet-and-Confer

*Jones v. Smith et al*.; Sacramento County Case No. 34-2021-00283458

Dear Mr. Brady,

Please consider this letter our initial outreach in a good faith attempt to meet-and-confer regarding your client’s discovery responses. Please promptly confirm your receipt of this letter{% if propose\_call\_or\_meeting %}, and allow me to suggest a {{ comma\_and\_list(propose\_call\_or\_meeting.true\_values(), and\_string='or').lower() }} to discuss this once you’ve had a chance to review and consider our position. If you’re amenable, please let me know your availability so we can coordinate scheduling{% endif %}.

**Background**

A recap of the timing and service of the discovery methods at issue in this letter now follows:

{%p for method in methods.true\_values() %}

On {{ disco\_svc\_date\_docx\_field }}, {{ propounder\_docx\_field }} propounded {{ method }}, Set {{ objection\_categories[method].set\_no }}, consisting of {{ objection\_categories[method].number\_propounded}} {{ language\_table[method][‘plural’] }} numbered {{ objection\_categories[method].start\_range }} through {{ objection\_categories[method].end\_range }}, on {{ responder\_docx\_field }} via {{ disco\_svc\_method\_docx\_field }}. On {{ responses\_svc\_date\_docx\_field }}, {{ responder\_docx\_field }} served responses by {{ responses\_svc\_method\_docx\_field }} consisting of {{ objection\_categories[method].responses\_type }}.

{%p if objection\_categories[method].responses\_type != ‘objections only’ %}

{%p if objection\_categories[method].received\_verification %}A signed verification accompanied the responses.

{%p else %}

We received *no signed verifications* with these responses.

{%p endif %}

{%p endif %}

{%p if objection\_categories[method].responses\_untimely %}

{{ responder\_docx\_field }}’s responses were due to be served on **{{ responses\_svc\_deadline }}**, and are thus untimely. Unless {{ responder\_docx\_field }} affirmatively moves for relief, the law is clear that all objections, including those based on privilege or work product protection, are deemed waived. (§ 2030.290(a); *Leach v. Super.Ct.* (1980) 111 Cal.App.3d 902, 905-906; *Brown v. Super. Ct.* (1986) 180 Cal.App.3d 701, 712 [“Defendants had ample opportunity to timely raise their Fifth Amendment objection and failed to do so, thereby waiving their privilege.”].)

Please be aware that {{ responder\_docx\_field }} may only obtain relief from waiver by noticed motion. (CCP § 2030.290(a); see also Weil & Brown et al., *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2022) ¶ 8:1032 ["Noticed motion required: A noticed motion for relief from waiver is required. (I.e., such relief cannot be granted ex parte, or where the only motion pending is a motion to compel.)”] [Parenthetical in original.])

{{ responder\_docx\_field }} must immediately serve substantive responses to {{ propounder\_docx\_field }}’s {{ method }} without any objection recited therein.

{%p endif %}

{%p endfor %}

**Discovery Deficiencies**

Your client’s discovery responses fail to comply with the Civil Discovery Act for the reasons detailed below.

{%p for method in methods %}

{%p for ncr in objection\_categories[method].ncr.true\_values() %}

***{{*** ***method }} No. {{ ncr }}***

The {{ language\_table[method][‘singular’] }} read as follows:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

{{ responder\_docx\_field }}’s response to the above was:

yyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyyy

{%p for objection in objection\_categories[method].objections[ncr].selected.true\_values() %}

{{r dataloader.load\_row(to\_int(objection))["Summary"] | inline\_markdown }}

{{r dataloader.load\_row(to\_int(objection))["Blurb"] | inline\_markdown }}

{%p endfor %}

{%p if objection\_categories[method].objections[ncr].add\_custom\_critique %}

{{ objection\_categories[method].objections[ncr].custom\_critique }}

{%p endif %}

{%p endfor %}

{%p endfor %}

**Proposed Resolution**

We have no desire to engage in law and motion, and our firm faithfully adheres to our meet-and-confer obligation to “talk the matter over, compare…views, consult, and deliberate”[[1]](#footnote-1) in a good faith effort to resolve discovery disputes. To that end, if you know of any legal authority or persuasive argument contrary to the positions taken above, please forward it promptly to my attention, and I will thoroughly review and carefully consider it.

{%p if discov.proposal\_list.any\_true() %}

We are earnest in our desire to resolve this matter without wasteful litigation. As long as we can procure the discovery to which our client is entitled, we willing to consider {{ discov.proposal\_list.true\_values() }} or any other solution you may propose.

{%p endif %}

**Meet-and-Confer & Litigation Timing**

We respectfully request that you do the following:

1. Email me back at your next reasonable opportunity to confirm that you’ve received and are reviewing this letter;
2. Not later than **{{ response\_deadline }}**, respond in writing to this letter with specific and on-point legal authority in support of any contrary position you may hold, or else serve verified, code-compliant further responses to {{ discov.propounder\_list }}’s {{ methods.true\_values() }};
3. {%p if request\_to\_extend\_MTC\_deadline %}
4. Confirm an agreement to continue § 2031.310(b)’s 45-day Motion to Compel deadline until **{{ proposed\_MTC\_extension\_deadline }}** in order to give the parties sufficient time to confer on these issues.
5. {%p endif %}

We’re hopeful that reasonable minds will come to an agreement here, and we look forward to a cooperative and successful resolution of this matter.

Cordially,

{%p if doc.sign\_yes %}



{%p endif %}

Daniel R. Franklin

Managing Partner

1. *Ellis v. Toshiba Am. Info. Sys., Inc.* (2013) 218 Cal.App.4th 853, 880 [internal quotation marks, alterations, and ellipsis omitted].) [↑](#footnote-ref-1)