{% if sig\_block\_date\_field == ‘Today’ %}September 7, 2023{% elif sig\_block\_date\_field == ‘Different Date’ %}{{sig\_block\_alternate\_date}}{% else %}\_\_\_\_\_\_\_\_\_\_\_\_\_\_{% endif %}

**Via {{addressee\_service\_methods.true\_values()}}**

{{letter\_address\_block}}

Re: *{{case.short\_title}} |* {{court.short\_name}} Case No. {{case.number}}

**{{mc\_ltr.subject\_line}}**

Dear {{addressee.salutation(with\_name=True)}},

Please consider this letter our initial outreach under CCP § 2016.040[[1]](#footnote-1) in a good faith attempt to meet-and-confer regarding your client’s discovery responses. {% if mc\_ltr.include\_separate\_statement %}We’ve enclosed a draft Separate Statement of Items in Dispute detailing our analysis of select responses for your consideration, while the body of this letter will focus on the possibility of informal resolution. {% endif %}Please promptly confirm your receipt of this correspondence{% if mc\_ltr.propose\_call\_or\_meeting %}, and allow me to suggest a {{comma\_and\_list(mc\_ltr.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**

First, a brief recap of the timing and service of the discovery methods at issue.

{%p for method in methods %}

On {{method.requests\_service\_date}}, {{method.propounding\_parties}} ({{method.propounding\_parties\_short\_ref}}) propounded {{method.full\_method}}, Set {{ method.set\_no}}, consisting of {{method.number\_propounded}} {{method.short\_unit\_plural}} numbered {{method.start\_range}} through {{method.end\_range}}, on {{method.responding\_parties}} ({{method.responding\_parties\_short\_ref}}) via {{method.requests\_service\_method}}.

{%p if method.response\_deadline\_extensions.there\_are\_any %}

{%p if method.response\_deadline\_extensions.number() > 1 %}

Our office granted {{method.responding\_parties\_short\_ref}} {{method.response\_deadline\_extensions | length }} extensions to respond to {{method.full\_method}}, Set {{ method.set\_no}}:

{%p endif %}

{%p for extension in method.response\_deadline\_extensions %}

On {{extension.date\_granted}}, we agreed to extend {{method.responding\_parties\_short\_ref}}’s response deadline from {{extension.old\_deadline}} to {{extension.new\_deadline}}.

{%p endfor %}

{%p endif %}

On {{method.responses\_service\_date}}, {{method.responding\_parties\_short\_ref}} served responses by {{method.responses\_service\_method}} consisting of {{method.responses\_type}}.{% if method.responses\_type != ‘objections only’ %}{% if method.verified %}A signed verification accompanied the responses.{% else %}We received *no signed verifications* with these responses, and the law is clear that “[u]nsworn responses are tantamount to no responses at all.” (*Appleton v. Super. Ct.* (1988) 206 Cal.App.3d 632, 636; see also *Allen–Pacific, Ltd. v. Super. Ct.* (1997) 57 Cal.App.4th 1546, 1551 [unverified responses are not in “substantial compliance” with the law], disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973.){% endif %}{% endif %}

{%p if method.responses\_untimely %}

{{method.responding\_parties\_short\_ref}}’s responses were due to be served on **xxx**, and are thus untimely. Unless {{method.responding\_parties\_short\_ref}} 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), 2031.300(a); *Leach v. Super. Ct.* (1980) 111 Cal.App.3d 902, 905-906; *Brown v. Super. Ct.* (1986) 180 Cal.App.3d 701, 712 [even *Fifth Amendment* protection is waived by failure to timely object].)

Please be aware that {{method.responding\_parties\_short\_ref}} may only obtain relief from his/her/their waiver of objections by noticed motion. (§ 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.])

{{method.responding\_parties\_short\_ref}} must immediately serve substantive responses to {{method.propounding\_parties\_short\_ref}}’s {{method.full\_method}}, Set No. {{method.set\_no}} without any objection recited therein.

{%p endif %}

{%p endfor %}

{%p if not mc\_ltr.include\_separate\_statement %}

**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 %}

**{{ method.full\_method }}, Set No. {{ method.set\_no }}**

{%p for ncr in method.ncr %}

**{{ method.short\_unit\_singular | capitalize }} No. {{ ncr }}:**

*{{ncr.question}}*

**Response:**

*{{ncr.answer}}*

**Reasons to Compel Further Response:**

The response fails to comply with the Discovery Act and is deficient for the following reasons:

{%p for deficiency in ncr.deficiencies.true\_values() %}

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

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

{%p endfor %}

{%p if ncr.add\_custom\_critique %}

{{ ncr.custom\_critique }}

{%p endif %}

{%p endfor %}

{%p endfor %}

{%p endif %}

**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”[[2]](#footnote-2) 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 mc\_ltr.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 {{ mc\_ltr.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 **{{mc\_ltr.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 xxxxx;
3. {%p if mc\_ltr.request\_to\_extend\_MTC\_deadline %}
4. Confirm an agreement to continue § 2031.310(b)’s 45-day Motion to Compel deadline until **{{mc\_ltr.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 %}

{%p endif %}

Daniel R. Franklin

Managing Partner

1. . All unspecified statutory citations below are to the California Code of Civil Procedure. [↑](#footnote-ref-1)
2. . *Ellis v. Toshiba Am. Info. Sys., Inc.* (2013) 218 Cal.App.4th 853, 880 [internal quotes and punctuation omitted].) [↑](#footnote-ref-2)