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# A shield and a sword

## A GUIDE TO USING OBJECTIONS IN RESPONDING TO INTERROGATORIES

*Author's Note: Almost 15 years ago, I co-authored the article "Effective use of objections in responding to interrogatories" for Advocate. Since there continues to be a positive response to that article, Diana and I decided that it was time for an update.*

Written discovery is arguably the most potent tool in litigation – but, sometimes, the most confusing: do you answer, object, or both? Understanding your options is crucial, and you must carefully consider how your response will impact your ultimate goal of resolving the case to your client's maximum benefit.

You may object because you have legitimate grounds to do so – or, sometimes, as a matter of strategy to avoid damage to your case. It's essential to base your objection on reasonable grounds and assess whether the defense is likely to move to compel.

Risking a motion to compel may result in sanctions against you and your client or mandate production of more information than you would have otherwise disclosed. Take care in your response, because it could easily affect your outcome.

### Object now or forever hold your peace: When must/should an objection be stated?

If an objection is not stated in response to written discovery, that objection is waived. (Code Civ. Proc., § 2030.290; Evid. Code, § 912, subd. (a); *Scottsdale Ins. Co. v. Sup. Ct.* (1997) 59 Cal.App.4th 263, 273 [waiver applies to both complete failure to respond and failure to pose objection in response].) "[A]ny objection" is waived if not timely made – including privileges or work product. (Code Civ. Proc., § 2030.090, subd. (a); see also Code Civ. Proc., §§ 2025.460(a) (depositions), 2031.300(a) (inspection demands), and 2033.280(a) (requests for admissions).)

Preventing waiver is easy: simply stating "attorney-client privilege" or "work product doctrine" will prevent waiver. (*Korea Data Systems Co., Ltd. v. Sup. Ct.* (1997) 51 Cal.App.4th 1513, 1516; *Best Products, Inc. v. Sup.Ct.* (2004) 119 Cal.App.4th 1181, 1189 ["boilerplate" objections sufficient to prevent waiver]; *Motown Record Corp. v. Sup.Ct. (Brockert)* (1984) 155 Cal.App.3d 482, 492 [waiver of privilege cannot be compelled when objection timely made].)

Privacy is special: case law suggests privacy rights cannot be waived by a "technical shortfall." (See *Boler v. Sup.Ct.* (1987) 201 Cal.App.3d 467, 472, fn. 1 [dicta re: third parties]; *County of Los Angeles v. Sup.Ct.* (2021) 65 Cal.App.5th 621, 636 [re privacy rights of third parties].) Another case, *Heda v. Sup.Ct.* (1990) 225 Cal.App.3d 525, 529, held that a privacy objection can be raised later if other timely made objections are overruled. (Don't make this a habit!)

There are times in litigation when it's best to keep your mouth shut – to let that objection go and allow information to flow. This happens most frequently in depositions and trial. But, in written discovery, the best practice is to state all applicable objections in your initial response. If you get caught up in a motion to compel, you'll fare better for erring on the side of over-objecting.

### Should information be provided even if an objection is stated?

Most interrogatories should receive answers, even when accompanied by objections. An answer usually prevents motions to compel.

Objections with no answers usually prompt motions. When faced with an improper question that poses no harm to your case and doesn't infringe on your client's privacy, consider objecting, but still answering. Specify that compliance does not waive your objections: "Subject to and without waiving the foregoing objections, plaintiff responds as follows...."

You're not out to win the Booker Prize – be straightforward. Back up objections with legal authority, mirroring what will be in meet-and-confer correspondence and oppositions to motions to compel. Judges appreciate consistency.

Responding to interrogatories is time-consuming. Below are suggested objections for common discovery issues.

### Objection: Form of the question

***Prefatory instructions and definitions***

Prefatory instructions are not allowed for special interrogatories – the only preface or instruction permitted is for the Official Form Interrogatories. (Code Civ. Proc., § 2030.060, subd. (d).)

Specially defined terms may be used, but the definition must appear in the interrogatory itself and capitalized for each use. (Code Civ. Proc., § 2030.060(e).)

The objection: "This set of discovery utilizes prefatory instructions and definitions in violation of Code of Civil Procedure section 2030.060(d)."

You won't defeat a motion to compel with this objection alone – but, combined with other objections, it will help demonstrate the interrogatory's grossly improper nature.

***Violating the Rule of 35***

A party may not serve more than 35 total special interrogatories without a declaration setting forth the need for the

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additional requests. Even absent the declaration, you are still obligated to respond to the *first* 35 special interrogatories – beyond that, you may object based on the Rule of 5 and refuse to answer. (Code Civ. Proc., §§ 2030.030, subd. (c).)

The Rule of 35 does *not* apply to form interrogatories or "supplemental" interrogatories. (Code Civ. Proc., § 2030.030, subd. (a)(2); Code Civ. Proc., § 2030.070, subd. (a).) A defendant may serve a full set of form interrogatories, 35 special interrogatories, and the allowed sets of "supplemental" interrogatories, all without a declaration.

In multi-party cases, *each party* gets to serve 35 special interrogatories to any other party without a declaration. (Code Civ. Proc., § 2030.030.)

The declaration of necessity must attest to a specific ground for further discovery: *complexity* or quantity of issues; *financial burden* of discovery by deposition; or *expedience* of using interrogatories. The declarant must be familiar with all discovery by all parties to date, have personally examined each question in this set of interrogatories, and state that additional interrogatories are warranted under section 2030.040 (for one of the reasons above), and that these interrogatories are not for an improper purpose. (Code Civ. Proc., § 2030.050.) If these checkboxes are ticked, there's no Rule of 35 objection. (Code Civ. Proc., § 2030.040. subd. (a); *Catanese v. Sup.Ct.* (1996) 46 Cal.App.4th 1159, 1165.)

Check for an appropriate declaration, served concurrently with Special Interrogatory 36 and beyond – if it's not there, your objection is: "This interrogatory exceeds the maximum number of interrogatories permitted by Code of Civil Procedure section 2030.030(b) and is unaccompanied by the required declaration of necessity."

***Repetitive/duplicative discovery***

Some inexperienced attorneys take the adage "If at first you don't succeed, try, try again" literally, propounding the same question repeatedly – but this is not allowed. Always check new sets of written discovery against previous sets. If you find duplicative questions, here is your objection:

"This discovery request has, in substance, been previously propounded – see Interrogatory No.___. The Discovery Act does not permit duplicative discovery. (*Professional Career Colleges, Magna Institute, Inc. v. Sup.Ct.* (1989) 207 Cal. App.3d 490, 493-494 [defendant who failed to timely move to compel first set of interrogatory responses could not propound same interrogatories again].) Continuous discovery into the same matter is harassing, burdensome, and oppressive."

***Subparts, compound, conjunctive, or disjunctive***

Special interrogatories must not contain subparts, nor be compound, conjunctive, or disjunctive. (Code Civ. Proc., § 2030.060, subd. (f).) (This does *not* apply to official form interrogatories.)

A *conjunctive* question joins two independent sentences or clauses, e.g., "Identify all persons who not only observed the cracked sidewalk, but also complained about it to the City." The conjunctions there are "not only" and "but also." Other common conjunctions: "and," "also," "and/or," "either/or," and "neither/nor."

A *disjunctive* question forces a choice between two (or more) things, e.g., "Was the traffic light green or red?" There are two questions there: "Was the traffic light green?" and "Was the traffic light red?" The word "or" is usually the tip off.

Just be on the lookout for a question that covers *more than a single subject* – object there. But a question with "and/or" regarding the *same* subject is probably permissible: "State the name of siblings and their addresses and telephone numbers." The question is compound with subparts, but about the same subject – plaintiff's siblings' identities.

Form objections may be merited, but we recommend answering. Unless you're arguing about a contract, you don't want a grammar battle in court. (See, e.g., *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1291 [urging "practical approach to questions of interpretation" to avoid "cumbersome redrafting of questions and potentially multiple rounds of discovery, undermining the [Discovery] Act's aim of clarity and simplicity…."].)

Your objection: "This interrogatory contains subparts and is compound, conjunctive, and/or disjunctive, in violation of Code of Civil Procedure section 2030.060(f)."

## Objection: Relevance

***Irrelevant***

The scope of discovery is so broad that courts rarely sustain relevance objections. The objection should still be made – particularly since it usually ties in with issues of overbreadth and privacy.

"The requested information is irrelevant to the subject matter of this matter and not reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010.)"

***Social Security information***

In a personal-injury action, there is no reason to disclose your client's Social Security number. The defense usually says they need it for nebulous reporting or tax purposes or to comply with the Medicare, Medicaid, and SCHIP Extension Act. They're wrong: no law or rule exists necessitating disclosure.

Do not provide the SSN – stand on your objection: "A party's Social Security number is "clearly irrelevant to the subject matter of the action." (*Smith v. Sup. Ct.* (1961) 189 Cal.App.2d 6, 9, 13.) This interrogatory also seeks to violate the Plaintiff's constitutional right to privacy. (See Cal. Const. art. I, § 1.)"

***Collateral-source rule***

A plaintiff's compensation from a collateral source, i.e., a source wholly independent of the tortfeasor, is generally inadmissible. This is because of the "substantial danger that the jurors will take the evidence into account in assessing the damages to be awarded to an injured plaintiff." (*Hrnjak v. Graymar, Inc.* (1971) 4 Cal.3d 725, 732-733.) Even where the collateral source provides a windfall, a wrongdoer should not profit from a victim's foresight in obtaining insurance or from the altruism and

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generosity of those providing financial assistance to the victim. (*Helfend v. Southern Calif. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 6.)

The rule applies to your client's health/life/death/dismemberment insurance, employment disability/pension/retirement/welfare benefits, charitable donations, etc.

The Collateral-Source Rule is buttressed by Code of Civil Procedure section 2017.210, which permits discovery only of "insurance...[that] may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Section 2017.210 was created for plaintiffs to discover defendants' liability insurance, not for defendants to dodge their own financial responsibility by pointing at plaintiff's resources. (*Catholic Mut. Relief Soc. v. Sup.Ct.* (2007) 42 Cal.4th 358, 371-373 [Legislature intended section 2017.210 to authorize discovery of *defendant's liability insurance* coverage – no other insurance contemplated].)

Similarly, Insurance Code section 791, et seq. – i.e., the Insurance Information and Privacy Protection Act – "limits the disclosure of information collected in connection with insurance transactions…." (Ins. Code, § 791; see also *Griffith v. State Farm Mut. Auto. Ins. Co.* (1991) 230 Cal.App.3d 59, 65-71.) Under section 791.02, any information that "relates to a claim for insurance benefits" or "is collected in connection with or in reasonable anticipation of a claim for insurance benefits" is privileged. (Ins. Code, § 791.02, subd. (v)(1), (2).)

A privacy objection is also appropriate.

Discovery is permitted of certain relevant information – e.g., if your client has used health insurance to pay for injury treatment necessitated by defendant's negligence, the defendant is permitted to discover the negotiated amount accepted by the healthcare provider(s) as full payment. (*Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, 559.)

There are statutory exceptions to the Collateral-Source Rule: medical-malpractice actions and actions against public entities. (Civ. Code, § 3333.1; Gov't Code, § 985.) For all other cases, use this objection in response to interrogatories regarding Plaintiff's own insurance and other collateral sources: (*Hrnjak v. Graymar* (1971) 4 Cal.3d 725; *Helfend v. SCRTD* (1970) 2 Cal.3d 1.) The requested information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010; Code Civ. Proc., § 2017.210; *Catholic Mut. Relief Soc. v. Sup. Ct.* (2007) 42 Cal.4th 358, 371-373 [finding Legislature intended section 2017.210 to authorize discovery of *defendant's liability insurance* coverage – no other insurance contemplated].) This interrogatory seeks to violate the Plaintiff's constitutional right to privacy. (Cal. Const. art. 1, § 1; see also Ins. Code, § 791, et seq.; *Griffith v. State Farm Mut. Auto. Ins. Co.* (1991) 230 Cal.App.3d 59, 65-71.)"

## Objection: Privileged

***Attorney-client privilege***

Attorney-client communications are broadly and absolutely privileged from discovery. This extends to unprivileged "factual information" learned from the attorney. (*Mitchell v. Sup.Ct.* (1984) 37 Cal.3d 591, 601; *Costco Wholesale Corp. v. Sup.Ct.* (2009) 47 Cal.4th 725, 734.) Communications in the presence of another individual whose presence was not essential to further the client's interests are not privileged. (Evid. Code, § 952.)

Your client cannot use an employer-provided email address or computer to communicate with you – that may waive privilege. (*Holmes v. Petrovich, Develop. Co., LLC* (2011) 191 Cal.App.4th 1047, 1051 [no privilege for plaintiff's emails to her attorney from work computer intended exclusively for business purposes, monitored by employer, and for which there was no right of privacy – "emails sent…under the[se] circumstances…were akin to consulting her lawyer in her employer's conference room, in a loud voice, with the door open, so that any reasonable person would expect…[to] be overheard"].)

The objection: "This interrogatory seeks the disclosure of information protected by the attorney-client privilege. (Evid. Code, § 954; Rule of Prof'l Conduct 1.6.) The attorney-client privilege is broadly construed, and extends to "factual information" and "legal advice." (*Mitchell v. Sup.Ct.* (1984) 37 Cal.3d 591, 601; *Costco Wholesale Corp. v. Sup.Ct.* (2009) 47 Cal.4th 725, 734)."

## Objection: Attorney work-product protection

The work-product doctrine is codified in Code of Civil Procedure sections 2018.020 and 2018.030: "A writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories is not discoverable under any circumstances." (Code Civ. Proc., § 2018.030, subd. (a).) Such materials receive "absolute" protection; no circumstances justify discovery. A "writing" includes photographs, video, computer data, etc. (Code Civ. Proc. § 2016.020; Evid. Code § 250.)

Work product that does not fit into the above definition is entitled to "qualified" protection, meaning it's protected from discovery "unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (Code Civ. Proc., § 2018.030, subd. (b).) Good cause is not enough – the moving party must demonstrate injustice or unfair prejudice. (*Curtis v. Sup. Ct.* (2021) 62 Cal.App.5th 453, 474-475.)

This extends to work product of the attorney's employees/agents, including investigators and researchers. (*Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 647-648, disapproved on other grounds by *Coito v. Sup.Ct.* (2012) 54 Cal.4th 480, 499.) It also applies to retained experts – until the expert is designated as a trial witness. (*Scotsman Mfg. v. Sup. Ct.* (1966) 242 Cal.App.2d 527, 530.)

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The doctrine's purpose is to "[p]reserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases," and to "[p]revent attorneys from taking undue advantage of their adversary's industry and efforts." (Code Civ. Proc., § 2018.020, subds. (a), (b).) It "shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case.'" (*People v. Sup.Ct. (Jones)* (2019) 34 Cal.App.5th 75, 81, quoting *United States v. Nobles* (1975) 422 U.S. 225, 238-239.)

Only "derivative" materials are considered work product. These are materials (1) created by or derived from an attorney's work on behalf of a client *and* (2) that reflect the attorney's evaluation or interpretation of the law or facts. Both elements must be satisfied. For example, your legal research and memos are absolutely protected. If you or your investigator take photos that reflect your theories or strategies for trial – e.g., photos from a particular angle, or an enlargement – these are likely protected as derivative. Witness statements are protected if they fulfill both prongs.

"Nonderivative" materials are those that are only evidentiary in character – e.g., black-box downloads, identity/location of witnesses, photos/video of physical evidence (including *sub rosa*), statements prepared independently by witnesses, etc. These are not protected – even if you did a lot of "work" getting them. (*Mack v. Sup.Ct.* (1968) 259 Cal.App.2d 7, 10; *Aerojet-General Corp. v. Transport Indem. Ins.* (1993) 18 Cal.App.4th 996, 1004.)

A basic objection is below, with supporting law (remove cites inapplicable to the specific interrogatory):

"This discovery seeks the disclosure of material protected by the attorney work product doctrine. (Code Civ. Proc., §§ 2018.020, 2018.030; *Mack v. Sup.Ct.* (1968) 259 Cal.App.2d 7, 10 ["material of a derivative character, such as diagrams prepared for trial, audit reports, appraisals, and other expert opinions, developed as a result of the initiative of counsel in preparing for trial, are to be protected as work product"]; *Williamson v. Sup.Ct.* (1978) 21 Cal.3d 829, 834 [expert's report is attorney's work product until expert designated as trial witness]; *Coito v. Sup.Ct.* (2012) 54 Cal.4th 480, 502 [list of witnesses whom counsel has chosen to interview may be entitled to absolute or qualified work product protection, depending on circumstances; all witness statements from attorney-directed interviews entitled to at least qualified work product protection, and to absolute work product protection where disclosure would reveal attorney's mental processes]; *Nacht & Lewis Architects, Inc. v. Sup.Ct.* (1996) 47 Cal.App.4th 214, 217 [list of witnesses whom counsel has chosen to interview necessarily reflects counsel's evaluation of the case]; *City of Long Beach v. Sup.Ct. (Henderson)* (1976) 64 Cal.App.3d 65, 73, 80 [holding that a party is not required to disclose in advance of trial which witnesses the party intends to call at trial or substance of expected testimony (except expert witnesses pursuant to C.C.P. § 2034.210, et seq.)].)

## Objection: Legal reasoning and theory

While it is proper to discover a plaintiff's legal contentions, the legal reasoning or theories behind the contentions are not discoverable. A party is not obligated to perform legal research for another party. This objection is typically accompanied by attorney-client privilege, work product doctrine protection, and premature disclosure of expert witness opinion.

Your objection:

"This discovery request seeks the legal reasoning and theories of plaintiff's contentions. Plaintiff is not required to prepare the defendant's case. (*Sav-On Drugs, Inc. v. Sup.Ct.* (1975) 15 Cal.3d 1, 5 [where information was as "readily available" to plaintiff as to defendant, "no purpose…is served by compelling the latter to perform legal research for the former]; *Ryan v. Sup.Ct.* (1960) 186 Cal.App.2d 813, 819 [Discovery Act "does not require one party to, at his expense, prepare the case of his opponent"].)

## Objection: Protected financial information

Tax returns and information that is an "integral part" of the returns are privileged. Records and data relied upon for the tax return are not.

If your client is not making a loss-of-earnings/earning-capacity claim, there is no reason to produce earnings-related information.

Where your client *is* making a loss-of-earnings/capacity claim, his or her earnings history is relevant – and W-2s, 1099s, paystubs, and similar documents may be the best way to prove the claim. Your retained forensic economist will want that information as much as the defense. Avoid using tax returns since they contain unrelated private information (e.g., a spouse's finances); redact similar information from W-2s, 1099s, and paystubs.

Your objection: "This interrogatory seeks the disclosure of information and/or materials protected by the taxpayer privilege and the Plaintiff's right to financial confidentiality; this interrogatory further seeks to violate the Plaintiff's constitutional right to privacy. (Cal. Const. art. I, § 1; Rev. & Tax. Code, § 19542; *Webb v. Standard Oil Co. of Calif.* (1957) 49 Cal.2d 509, 513-514; *Sav-On Drugs, Inc. v. Sup.Ct.* (1975) 15 Cal.3d 1, 6 [purpose of privilege is to facilitate collection of taxes]; *Deary v. Sup.Ct.* (2001) 87 Cal.App.4th 1072, 1078 [privilege applies to all taxes, including income, employment, sales, estate taxes, etc.]; *Brown v. Sup.Ct.* (*Executive Car Leasing*) (1977) Cal.App.3d 141, 142 [privilege applies to documents and information that are "integral part" of tax return; personal injury plaintiff, claiming LOE, could not be compelled to produce W-2s]; *Fortunato v. Sup.Ct.* (2003) 114 Cal.App.4th 475, 481 [confidential financial information given to bank by customer is protected by the right to privacy].)"

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| *Examples of Derivative and Nonderivative Materials (not an exhaustive list)* | |
|---|---|
| *Derivative* | *Nonderivative* |
| Legal research, reasoning, or theory(ies) behind party's contention | Identity and location of physical evidence |
| Law firm's interoffice memos that reflecting attorneys' opinions, impressions, etc. | Identity and location of witnesses |
| List of witnesses attorney intends to call at trial [if requested prior to exchange of trial documents]; attorney's notes regarding witness interviews | Statements written or recorded independently by witnesses |
| Photographs/videos of physical evidence taken by attorney or attorney's agents that reflect attorney's impressions, conclusions, or theories, or strategies and tactics in preparation for trial – e.g., photos from particular angles, enlargements, etc. | Photographs/videos of physical evidence taken by the party or their attorney or attorney's agents [unless they reflect attorney's impressions, conclusions, or theories, or strategies and tactics in preparation for trial |
| Expert appraisals, opinions, and reports [until expert is designated as trial witness – then discoverable]<br><br>Expert consultant's "advisory" materials – e.g., materials to assist attorney in preparation of pleadings and discovery requests, cross-examination of opposing expert witnesses [subject to conditional work product protection and *in camera* review - possibly not discoverable even after expert designation if they reflect attorneys' mental processes. *National Steel Products Co. v. Sup.Ct.* (1985) 164 Cal.App.3d 476, 490-488-490] | Sub rosa evidence |
| Charts, diagrams, animations, graphics created for trial | Emergency data recorder ("black box") downloads |

## Objection: Premature disclosure of experts and/or experts' opinions

The defense often uses contention interrogatories to suss out the basis for causation allegations. Causation is usually strictly within the realm of expert knowledge – so expert discovery rules apply. Prior to the mutual expert designation date, experts' identities, opinions, and materials they created are protected.

The objection: "This interrogatory seeks the premature disclosure of expert witness information, in violation of Code of Civil Procedure section 2034.210, et seq. The discovery request calls for a professional opinion from a lay witness. (*Mowry v. Sup. Ct.* (1962) 202 Cal.App.2d 229.) This interrogatory seeks the disclosure of information protected by the attorney-client privilege and work product doctrine. (Code Civ. Proc., § 2018.020, et seq.; Evid. Code § 954; Rule of Prof'l Conduct 1.6; *City & County of San Francisco v. Sup.Ct.* (1951) 37 Cal.2d 227, 238 [expert's reports to attorney regarding client are privileged as communications on behalf of client]; *South Tahoe Public Utilities District v. Sup.Ct.* (1979) 90 Cal.App.3d 135, 138 [interrogatory seeking identities of experts was premature and improper]; *Williamson v. Sup. Ct.* (1978) 21 Cal.3d 829, 834 [expert's report discoverable only upon designation as trial witness].)"

## Objection: Privacy

A person's constitutional right of privacy can shield relevant, unprivileged information from discovery. Privacy provides qualified, not absolute, protection. The court conducts a balancing test, weighing the right to privacy against the need for discovery. (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 557.)

***Medical records/medical history***

A plaintiff suing for personal injuries waives the physician-patient and psychotherapist-patient privileges. (Evid. Code, § 996.) However, even where the privileges are waived, the right to privacy still exists and may preclude discovery.

For example, requiring a plaintiff to disclose their entire medical history violates the plaintiff's right to privacy. The patient-litigant exception to the physician-patient privilege is limited to only those physical or mental conditions that the patient has disclosed are at issue in the lawsuit. (*In re Lifschutz* (1970) 2 Cal.3d 415, 435; *Britt v. Sup. Ct.* (1978) 20 Cal.3d 844, 862-864.) Any conditions not "directly relevant" to those in issue remain privileged. Plaintiffs are "entitled to retain the confidentiality of all unrelated medical or psychotherapeutic treatment they may have undergone in the past." (*Britt v. Sup. Ct., supra,* 20 Cal.3d at 864.)

Privacy protection applies to mental health records in an injury claim where only "garden variety" emotional distress is claimed. (*Davis v. Sup.Ct.* (1992) 7 Cal.App.4th 1008, 1014-1016.)

Objections based on overbreadth and lack of relevance are also appropriate here. (*Hallendorf v. Sup.Ct.* (1978) 85 Cal.App.3d 553, 557).

Your objection: "The requested information is overbroad and irrelevant to the subject matter of this matter, and is not reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010; *Hallendorf v. Sup. Ct.* (1978) 85 Cal.App.3d 553, 557. This interrogatory seeks to discover medical history and/or treatment unrelated to the issues in this litigation, in violation of

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plaintiff's constitutional right to privacy. (Cal. Const. art. I, §1; *In re Lifschutz* (1970) 2 Cal.3d 415, 435; *Britt v. Sup. Ct.* (1978) 20 Cal.3d 844, 862-864.)"

## Objection: Phrasing

***Argumentative***

It is generally improper to object to an interrogatory on the ground that it assumes facts not in evidence. (*West Pico Furniture Co. of Los Angeles v. Sup. Ct.*, 56 Cal.2d 407, 421.) But any discovery request that requires the adoption of an assumption is objectionable. The classic example is, "When did you stop beating your wife?" This assumes facts that (hopefully) are false but requires that your answer adopt the assumption.

Object, but answer; and your answer can contest the assumption. Interrogatory: "Why did you drive your vehicle into the light pole?" Response: "Objection: As phrased, this interrogatory is argumentative, vague, and ambiguous, and requires the adoption of an assumption, which is improper. This interrogatory seeks the premature disclosure of expert witness information, in violation of Code of Civil Procedure section 2034.210, et seq., and calls for a professional opinion from a lay witness. (*Mowry v. Sup. Ct.* (1962) 202 Cal.App.2d 229.) Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff did not 'drive [her] vehicle into the light pole.' Plaintiff was forcefully rear-ended by Defendant, and the impact pushed Plaintiff's vehicle into the light pole."

Your objection: "As phrased, this interrogatory is argumentative, vague, and ambiguous, and requires the adoption of an assumption, which is improper."

## Objection: Burdensome, harassing, and oppressive

"Oppression" can be a ground for objection, but it's rarely a strong basis for refusing to answer. Try to negotiate a reasonable resolution with opposing counsel. The objection: "This discovery request is so broad and unlimited as to be an unwarranted annoyance, embarrassment, and is burdensome, harassing, and oppressive. To comply would be an undue burden and expense. (Code Civ. Proc., § 2030.090, subd. (b); *Columbia Broadcasting System, Inc. v. Sup.Ct.* (1968) 263 Cal.App.2d 12, 19-21; *Ryan v. Sup. Ct.* (1960) 186 Cal.App.2d 813, 819; *West Pico Furniture Co. of Los Angeles v. Sup. Ct.* (1961) 56 Cal.2d 407, 419.)

## Miscellaneous objections

***Equally available***

A party is obligated to make a reasonable and good-faith effort to obtain requested information, "except where the information is equally available to the propounding party." (Code Civ. Proc., § 2030.220(c).) Where the information is equally available – e.g., through public records – you may object. However, barring undue burden/expense, it's best to answer.

The objection: "The information sought in this discovery request is equally available to the propounding party. (Code Civ. Proc., § 2030.220(c); *Alpine Mut. Water Co. v. Sup.Ct.* (1968) 259 Cal.App.2d 45, 53-54 [where information was equally available, party could not be compelled to compile result of public records search and provide to opponent].)

***Summary/compilation***

Where the question forces you to create a summary or compilation of information from various documents, refer the defendant to the documents themselves. The objection: "Responding to this interrogatory would necessitate the preparation of a compilation, abstract, audit or summary from documents in Plaintiff's possession; because such preparation would be similarly burdensome and/or expensive to both the propounding and responding parties, Plaintiff herewith offers to permit review of the documents identified below, from which Defendant can audit, inspect, copy or summarize. Plaintiff will make said documents available for review upon reasonable request. (Code Civ. Proc., § 2030.230; *Brotsky v. State Bar of California* (1962) 57 Cal.2d 287.)

## Conclusion

Make all applicable objections, and carefully analyze each interrogatory to decide whether to include an answer. Diligence applied during written discovery will always make your case stronger.

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