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Are You Following Up on Your Opponent's Discovery Responses?



By Katherine Gallo

Unlike Federal Rule Civil Procedure 26(e)(1) – (2), California law does not impose a continuing duty on a party to supplement their interrogatory or document responses. *Biles v. Exxon Mobil Corp.* (2004) 124 CA 4th 1315. Instead, the California Discovery Act has two statutes, C.C.P. §§ 2030.070 and 2031.050, that allow the propounding party to ask for updated information “*bearing on answers already made*” and “*later acquired or discovered documents, tangible things, land or other property.*”

These statutes read as follows:

§ 2030.070. Supplemental interrogatory to elicit later acquired information bearing on previous answers; When permitted

(a) In addition to the number of interrogatories permitted by Sections 2030.030 and 2030.040, a party may propound a supplemental interrogatory to elicit any later acquired information bearing on all answers previously made by any party in response to interrogatories.

(b) A party may propound a supplemental interrogatory twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8 (commencing with Section

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2024.010), once after the initial setting of a trial date.

(c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental interrogatories.

§ 2031.050. When supplemental demand may be propounded

(a) In addition to the demands for inspection, copying, testing, or sampling permitted by this chapter, a party may propound a supplemental demand to inspect, copy, test, or sample any later acquired or discovered documents, tangible things, land or other property, or electronically stored information in the possession, custody, or control of the party on whom the demand is made.

(b) A party may propound a supplemental demand for inspection, copying, testing, or sampling twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8 (commencing with Section 2024.010), once after the initial setting of a trial date.

(c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental demands for inspection, copying, testing, or sampling.

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Timing is Everything

The timing of when to serve the supplemental requests is crucial. Many cases are resolved within one or two years and may never need a supplemental response. However, in more complex cases that last years, you will need to determine whether there have been changes in your opponent's theories of liability, defenses, increased damages, declining insurance proceeds, as well as a myriad of other issues that could arise. Some key times to serve the requests for supplemental responses are:

Twice Before Initial Trial Set:

1. The anniversary of the first discovery propounded and every year thereafter, like clockwork.
2. After mediation, to discover whether opposing counsel's position can be substantiated.
3. Prior to the deposition of a party or a person most knowledgeable (qualified).
4. Prior to serving a motion for summary judgment/summary adjudication, so you know whether the opposing party has information that could defeat your motion.
5. When served with a motion for summary judgment/summary adjudication. This must be done as soon as possible so you have the information prior to the filing of your opposition.
6. Just before the trial set conference.

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Once After Trial Set:

1. Serve supplemental interrogatory and demand 100 days before trial so you will have the responses to give your expert before he testifies.
2. If you have a long trial set or your trial date has been continued, consider bringing a motion for additional supplemental interrogatories and requests. See C.C.P. §§ 2030.070(c) and 2030.050(b)

Advantages:

Using the supplemental interrogatories in a timely and efficient matter also avoids your need to serve special interrogatories that could most likely trigger objections if you serve more than 35 and/or are too similar to the initial interrogatories.

If the opposing party responds “*all answers remain the same*” to the supplemental requests then, at trial, you can file a motion with the court to exclude the introduction of any information that was not previously disclosed in discovery. This is extremely helpful when no information was previously disclosed because the party made garbage objections and claims of privileges.

You may find this blog and additional blogs by Katherine Gallo on California Discovery at www.resolvingdiscoverydisputes.com.

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