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Superior Court of California, County of San Francisco  
Case No. CGC 11 516426  
**Elizabeth Peregrino v. Charles L Moore Jr Et Al**

Document 18



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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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SEPARATE STATEMENT OF FACTS

ELIZABETH PEREGRINO VS. CHARLES L MOORE JR et al

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**FILED**  
Superior Court of California  
County of San Francisco

JUN 19 2012

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

ELIZABETH PEREGRINO,

Plaintiff,

vs.

CHARLES L. MOORE, JR.,

Defendant.

CASE NO.: CGC-11-516426

Action Filed: 12/08/2011

Trial Date: 12/10/2012

**SEPARATE STATEMENT IN  
SUPPORT OF PLAINTIFF'S MOTION  
TO COMPEL FURTHER RESPONSES  
TO FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS  
AND FOR AN ORDER IMPOSING  
MONETARY SANCTIONS ON  
DEFENDANT**

Date: June 22, 2012

Time: 9:30 a.m.

Dept.: 302

This motion seeks to compel further responses to Plaintiff's First Request for Production of Documents ("RFPDs") No. 6, which seeks: "Any and all written, recorded, videotaped or otherwise preserved statements of any witnesses to the Incident, Plaintiff's injuries, any property damage or any other issue in this case."

Defendant's Response and Amended Response to RFPD No. 6 were identical and as follows: "Defendant objects to this request to the extent it appears to call for information in violation of the attorney/client privilege and the attorney client work product doctrine which

1 would not be subject to discovery (Code of Civ. Proc. §2017.010). Without waiving said  
2 objection, Defendant responds as follows: The recorded statement Defendant gave to his  
3 insurance company in anticipation of litigation is privileged information and will not be  
4 produced. Following diligent search and reasonable inquiry, Defendant is unable to locate any  
5 other documents responsive to this request and does not believe any other such documents are or  
6 have been in his possession.”

7 Further responses to RFPD No. 6, including the statement Defendant gave to his insurance  
8 carrier in January 2010, should be compelled because Defendant wholly failed to timely respond  
9 to discovery and has, therefore, waived all objections, including attorney-client privilege and  
10 work product. Code Civ. P. §2031.300(a). Defendant’s failure cannot be characterized as  
11 mistake or excusable neglect. Nor can it be characterized as insignificant. In fact, Defendant  
12 knew of the deadline as evidenced by the fact he previously sought, and Plaintiff granted, a two-  
13 week extension to respond. However, Defendant ignored that deadline and then failed to respond  
14 or object for an additional **30 days**, despite Plaintiff’s repeated follow-up, failing to provide any  
15 justification whatsoever. The relevant procedural history is as follows:

- 16 • On December 8, 2011, Plaintiff Elizabeth Peregrino filed a complaint again  
17 Defendant Charles Moore in San Francisco Superior Court for serious injury  
18 suffered as a result of Defendant’s negligent operation of his motor vehicle.
- 19 • On February 22, 2012, Plaintiff served discovery requests – including RFPD No. 6  
20 at issue here.
- 21 • At Defendant’s request, on March 27, 2012, Plaintiff granted Defendant a two-  
22 week extension (to April 11, 2012) by which to respond to said discovery requests.
- 23 • Defendant failed to respond or object to discovery by April 11, 2012.
- 24 • On April 16, 2012, Plaintiff’s counsel contacted counsel for Defendant, who  
25 acknowledged that Defendant had failed to serve timely discovery responses and  
26 objections, but offered no explanation or justification.
- 27 • On April 16, 2012, Plaintiff was forced to continue her properly noticed deposition  
28 of Defendant Charles Moore due to Defendant’s failure to respond to discovery.

1 In a letter on the same day, Plaintiff advised Defendant by letter that objections  
2 had been waived under the Discovery Act. To mitigate the situation, Plaintiff  
3 asked Defendant to produce all responses by April 20, 2012, and that Defendant be  
4 available to have his deposition taken on April 23, 24 or 25. Defendant did not  
5 respond to this request, however. Nor did he serve any responses.

- 6 • On April 17, 2012, Plaintiff's counsel attempted to contact Defendant's counsel by  
7 phone regarding Defendant's ongoing failure to respond to discovery requests and  
8 his waiver of objections, but to no avail.
- 9 • On May 4, 2012, Plaintiff's counsel again contacted Defendant's counsel by letter  
10 regarding Defendant's absent discovery responses, advising Defendant that  
11 Plaintiff would have no choice but to move to compel if complete responses were  
12 not produced by May 7, 2012.
- 13 • On May 11, 2012, more than **30 days** after the extended deadline to respond to  
14 Plaintiff's discovery requests, Defendant served responses to discovery requests,  
15 improperly seeking to assert a variety of untimely objections, including attorney  
16 client privilege and work product with respect to Defendant's statement given to  
17 his insurance company regarding the incident.
- 18 • After leaving multiple unanswered messages and serving an amended notice of  
19 deposition on Defendant, Plaintiff's counsel contacted counsel for Defendant on  
20 June 11, 2012 by letter and again requested that the statement and any other  
21 documents being withheld on untimely objections be produced forthwith and  
22 before Defendant's twice rescheduled deposition noticed for June 26, 2012.
- 23 • On June 13, 2012, Defendant served amended discovery responses withdrawing all  
24 objections, except those relating to attorney-client privilege, attorney work product  
25 and privilege, and stating that Defendant was refusing to produce the statement in  
26 question and reasserting his untimely objections thereto.

27 The law is unambiguous: "[i]f a party to whom a demand for inspection ... is directed  
28 fails to serve a timely response to it, the following rules shall apply: (a) The party to whom the



1 demand ... is directed waives any objection to the demand, *including one based on privilege or*  
2 *on the protection for work product.*” Code Civ. P. §2031.300 “Where no objections have been  
3 made within the statutorily permitted time, they are deemed waived.” *Leach v. Superior Court*,  
4 111 Cal.App.3d 902 (3d Dist. 1980).

5 While the court may relieve the untimely party from their waiver of objections under  
6 limited circumstances, this is only appropriate where the party has established that their “failure  
7 to serve a timely response was the result of mistake, inadvertence, or excusable neglect.” *Sinaiko*  
8 *Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, 148 Cal.App.4th 390, 404 (2d  
9 Dist. 2007). *See also Mannino v. Superior Court*, 142 Cal.App.3d 776, 780 (4th Dist. 1983)(“A  
10 showing of excusable neglect after counsel has *knowingly* allowed the time to respond to  
11 interrogatories to expire *must* include not only a reasonable excuse for the delay but also a  
12 reasonable explanation for the failure to seek a further extension from counsel or an enlargement  
13 of time from the court.”)(emphasis in original); *City of Fresno v. Superior Court*, 205 Cal.App.3d  
14 1459, 1467 (5th Dist. 1988) (holding that neither “[c]ounsel’s mistake of law” nor “the press of an  
15 attorney’s practice would warrant relief... “[i]f we are going to simply find that being busy, or  
16 not fully understanding the provisions of a code section, or whatever it is, constitutes excusable  
17 neglect, ... we just don’t have any rules.”).

18 Here, Defendant undisputedly failed to timely serve objections for 45 days after they were  
19 initially due, and **30 days** after the parties’ agreed upon extension. Moreover, counsel for  
20 Plaintiff followed up promptly to ask that responses be served, and Defendant continued to ignore  
21 Plaintiff’s requests and his discovery obligations. As a result, Plaintiff was forced to continue  
22 Defendant’s deposition only to receive deficient responses a month later. In short, Defendant’s  
23 failure cannot be justified as mistake, inadvertence, or excusable neglect, and Plaintiff seeks an  
24 order compelling production of Defendant’s statement to his carrier in or around January 2010  
25 and any other responsive documents being withheld by 12:00 p.m. on Monday, June 25, 2012.  
26 Plaintiff also seeks monetary sanctions for costs and expenses incurred in preparing this motion in  
27 the amount of \$5,880.

1 DATE: June 19, 2012

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2  
3 By:

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