



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

Civil Procedure Efficiencies: Separate Statements

AB 2230
Asm. Marc
Berman

SUMMARY OF THE BILL

AB 2230 (Berman) is a court efficiencies measure that will simplify the current procedure for separate statements. When parties have a discovery dispute, they file a motion to compel the discovery accompanied with a separate statement. Current court rules require so much detail in these separate statements that they often amount to anywhere from fifty pages to entire reams of paper. AB 2230 will promote efficiency by giving judges the option to require either a full separate statement or instead a concise outline of the discovery issues in dispute.

BACKGROUND

Separate statements detail each outstanding discovery request, the response or objection that request, and the reason the requesting party is entitled to the discovery. The format of these discovery requests is detailed in [California Rule of Court 3.1345](#). Rule of Court 3.1345 requires each discovery request to include all the text necessary so that no reference to any other document is needed.

The example to the right is the necessary text for ONE discovery request in a separate statement.

1 **REQUEST NO. 69:**
2 ALL ELECTRONICALLY STORED INFORMATION REGARDING Molina that
3 [REDACTED] keeps in [REDACTED].
4 **WCCUSD'S RESPONSE TO REQUEST NO. 69:**
5 Objection. Defendant objects to this request on the grounds it is vastly overbroad, vague
6 and ambiguous as to time, and vague and ambiguous as to the term "keeps." Defendant further
7 objects to this request on the grounds that pupil records related to the student identified as "Melina"
8 are protected from disclosure by pupil privacy statutes and constitutional rights to privacy under
9 state and federal law. Defendant additionally objects to the extent the request seeks production of
10 documents that are protected from disclosure by the attorney-client privilege and/or attorney work
11 product doctrine.
12 **PLAINTIFF'S ARGUMENT AS TO WHY WCCUSD SHOULD BE ORDERED TO**
13 **FURTHER RESPOND TO REQUEST NO. 69:**
14 This request aims at the same information sought in Request Number 67 in a different way.
15 Authority in California is well settled. The purpose of Plaintiff's lawsuit is to protect children from
16 abuse at school. Disclosure to a "victimized child of the results of any investigation and resulting
17 disciplinary actions taken against an alleged child perpetrator" does not run afoul of any statute
18 either state or federal. (*BRV, Inc. v. Superior Court* supra 143 Cal.App.4th at 751-754). Protecting
19 children from abuse is a compelling reason to require disclosure. (*In re Clergy Cases I* supra 188
20 Cal.App.4th at 1235). Pupil privacy does not prevent disclosure of documents that describe
21 underlying facts about on-campus abuse. (*Poway Unified School Dist. v. Superior Court (Copley*
22 *Press)* supra 62 Cal.App.4th 1496). PowerSchool contains disciplinary and investigatory records
23 that must be produced.
24 Article I, section 1 of the California Constitution protects an individual's reasonable
25 expectation of privacy against serious invasion. (*Pioneer Electronics (USA), Inc. v. Sup. Ct.* supra
26 40 Cal.4th at 370). Yet, it is well settled that information is discoverable if it might reasonably
27 assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Sup.*
28 *Ct.* supra 33 Cal. App. 4th at 1546). When a compelling public interest would be served by
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1 **SEPARATE STATEMENT IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES**
2 disclosure, privacy rights cannot prevent information from being released. (*Britt v. Superior Court*
3 (*San Diego Unified Port Dist.*) supra 20 Cal. 3d at 855-856). Parties may seek and acquire
4 information that implicates privacy of nonparties. (*Alch v. Superior Court (Time Warner*
5 *Entertainment Co.)* supra 165 Cal.App.4th at 1423). Here, the information sought is directly
6 relevant and essential to the fair evolution of this lawsuit. (*Britt v. Superior Court* supra 20 Cal.3d
7 at 859; *Alch v. Superior Court* supra 165 Cal.App.4th at 1427). Courts must balance the compelling
8 public need for discovery against the fundamental right to privacy. (*Valley Bank of Nevada v. Sup.*
9 *Ct.* supra 15 Cal.3d at 657). Here, it is imperative to get the information sought from Defendant
10 WCCUSD through written discovery because it is not available by any other less intrusive means.
11 (*Life Technologies Corp. v. Superior Court (Joyce)* supra 197 Cal.App.4th at 655-656).
12 Defendant's other objections for overbroad, vague and ambiguous as to time are
13 unwarranted, because, upon information and belief, the PowerSchool records sought could only be
14 generated from De Anza High School during the limited period of time both Plaintiff Brennon and
15 Melina have been in attendance. Furthermore, the vague and ambiguous objection to the term
16 "keeps" is abuse of discovery process. While Plaintiff acknowledges privacy rights, the
17 particularized need for the information makes it discoverable, and the records described do not fall
18 in any constitutionally protected privacy zone.
19 General and boilerplate objections are substantial justification for a motion to compel. (Cal.
20 Code Civ. Pro. § 2030.300; *Korea Data Systems v. Superior Court (Amazing Technologies)* supra
21 51 Cal.App.4th at 1516). Objections must identify with particularity the document to which the
22 objection is made with specific grounds. (Cal. Code Civ. Pro. § 2031.240; *Standon v. Superior*
23 *Court (Kim)* supra 225 Cal.App.3d at 901). When privilege is claimed, a privilege log must be
24 produced that allows for determination regarding whether or not the document is privileged. (Cal.
25 Code Civ. Pro. § 2031.240(b); *Hernandez v. Superior Court (Acheson)* supra 112 Cal.App.4th at
26 291-292; *Wellpoint Health Networks v. Superior Court (McCombs)* supra 59 Cal.App.4th at 130).
27 Sufficient factual information must be provided so that the claim of privilege may be evaluated
28 upon its merits. (*Lopez v. Watchtower Bible & Tract Society of New York* supra 246 Cal.App.4th at
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1 **SEPARATE STATEMENT IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES**
2 evaluation of the privilege objections. (Cal. Code Civ. Pro. § 2031.240(b); *Hernandez v. Superior*
3 *Court (Acheson)* supra 112 Cal.App.4th at 291-292; *Wellpoint Health Networks v. Superior Court*
4 (*McCombs*) supra 59 Cal.App.4th at 130; *Lopez v. Watchtower Bible & Tract Society of New York*
5 supra 246 Cal.App.4th at 596-7).
6 Without a privilege log, or any more specific information about what documentation exists,
7 Plaintiff cannot determine whether or not Defendant can comply with the requests. If Defendant
8 cannot comply with the requests because no documents exist, Defendant must clearly attest to that
9 fact in supplemented and verified responses. Any documents that Defendant may have in
PowerSchool must be produced, the privacy objection notwithstanding.

PROBLEM

Plaintiff and defense counsel alike must copy and paste all the text for each discovery dispute, creating one massive separate statement. The objections and arguments are often the same for many if not all of the discovery items in dispute. Nevertheless, counsel must still copy and paste each objection and response for every discovery request. This process is often tedious and ultimately has no benefit for judges that dislike this format.

SOLUTION

AB 2230 gives judges the option to require full separate statements or an outline of the discovery issues in dispute. AB 2230 will allow judges and counsel the flexibility to more efficiently litigate cases.

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