

1 Plaintiff requests a court order requiring a further response by Defendant that is not
2 “conditioned” in any manner, and an unequivocal statement that *all* documents have been
3 produced. Absent such a court order, the concealment of relevant information and documents
4 by the Mexican Catholic Church authorities will continue, and will deny justice to the Plaintiff.

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6
7 **DOCUMENT DEMAND NO. 16 :**

8 All DOCUMENTS containing the name “Father Nicolas Aguilar (aka Nicolas Aguilar
9 Rivera)” in any formulation of those words.

10 **RESPONSE:**

11 The Diocese incorporates by reference its General Objections set forth above. The
12 Diocese further objects to this Request because it is overly broad, unduly burdensome and
13 oppressive, and it imposes an unreasonable burden and expense upon the Diocese. Subject to
14 and without waiving its objections, the Diocese responds as follows:

15 The Diocese will produce such relevant, responsive and non-privileged documents as
16 are in its possession, custody or control, which documents have not been produced previously
17 by the Defendants.

18 **LEGAL AND FACTUAL REASONS FOR COMPELLING FURTHER RESPONSE:**

19 A. **Good Cause For Discovery**

20 Code of Civil Procedure Section 2017.010 provides that:

21 Unless otherwise limited by order of the court in accordance with this
22 title, **any party may obtain discovery regarding any matter, not
23 privileged, that is relevant to the subject matter involved in the pending
24 action or to the determination of any motion made in that action, if the
25 matter either is itself admissible in evidence or appears reasonably
26 calculated to lead to the discovery of admissible evidence. Discovery may
27 relate to the claim or defense of the party seeking discovery or of any
28 other party to the action. Discovery may be obtained of the identity and
location of persons having knowledge of any discoverable matter, as well
as of the existence, description, nature, custody, condition, and location
of any document, tangible thing, or land or other property.**

27 While discovery is currently limited to the “jurisdictional” issue pending before the
28 Court, good cause exists for full compliance with this document demand because Father

1 Aguilar sexually molested the Plaintiff, and every piece of paper regarding Father Aguilar must
2 be considered *prima facie* relevant for discovery purposes, as every bit of information about
3 Father Aguilar will assist the Plaintiff in obtaining either admissible evidence, or is reasonably
4 calculated to lead to the discovery of admissible evidence.

5 Obtaining information about Father Aguilar will assist in proving how the Mexican
6 Catholic Church authorities used California as a location to transfer sexual predator priests. It
7 will also assist in proving the extent of cooperation between the Mexican and American
8 Catholic Churches in this regard. Specifically, it will assist in proving how Father Aguilar was
9 concealed from the public authorities both in Mexico and in California as he was transferred
10 from Mexico to California, and then California to Mexico, in advance of criminal arrest. As
11 part of that ongoing concealment of Father Aguilar, all information about the history of his
12 whereabouts would assist in proving the ongoing concealment through the time the Plaintiff
13 was sexually molested, and until the present. Father Aguilar's current location (for deposition,
14 service of process, etc.) may be identified, even if the Defendant will not do so, by having all
15 of that information.

16 Certainly, documents regarding Father Aguilar cannot be considered "privileged"
17 unless they are restricted to communications between the Defendants and their attorneys.

18

19 B. Objections

20 The objections made to this document demand are *too general and/or meritless* and/or
21 frivolous, warranting sanctions.

22 First, the Defendant's use of "General Objections" are improper.

23 C.C.P. § 2031.210(a)(3) and § 2031.240(b), require *separate* objections to document
24 demands, including identification "with particularity" of each document "to which an objection
25 is being made", and further, a clear statement of the "specific grounds" for the objection,
26 including but not limited to any privilege.

27 The dual failures of the Defendant to either defend those "General Objections" and
28 withdraw them during the "meet and confer" process, means the Defendant both conceded they

1 are improper, and it was a bad faith to waste of everyone's time on such "objections".

2 Second, "overbroad" is not a valid objection to an inspection demand unless either
3 undue burden or irrelevance to the subject matter is demonstrated. *California Judges*
4 *Benchbook: Civil Proceedings--Discovery* (Cal CJER 1994), §15.25, p. 243, citing *Perkins v.*
5 *Superior Court* (1981) 118 Cal.App.3d 761, 764-765, and *Durst v. Superior Court* (1963) 218
6 Cal.App.2d 460.

7 Third, the objection of "undue burden" is both meritless and frivolous.

8 There is a "burden" inherent in the discovery process in all lawsuits, and a general
9 "objection" of burden is insufficient to deny a party's discovery rights. *West Pico Furniture*
10 *Co. v. Superior Court* (1961) 56 Cal.2d 418, 417-418.

11 As further noted in *Cal. Prac. Guide: Civ. Pro. Before Trial* (TRG, 2007), § 8:1476, in
12 connection with document demands, responding counsel should:

13 Avoid raising the "burdensome and oppressive" objection unless the facts are
14 *truly unusual* (e.g., very fragile property which could be damaged by any
15 movement, touching, etc.). If you are going to object in such a case, *state the*
16 *reasons* for your objection and *offer* to permit whatever inspection can be
17 allowed under the circumstances. [Italics in original.]

18 The statutory test for a protective order on the basis of "burden" is set forth in Code of Civil
19 Procedure Section 2017(c):

20 (c) The court shall limit the scope of discovery if it determines that the
21 burden, expense, or intrusiveness of that discovery *clearly outweighs* the
22 likelihood that the information sought will lead to the discovery of admissible
23 evidence. [Emphasis added.]

24 The California Supreme Court has held that before a trial court may restrict a discovery method
25 for being unduly burdensome, there must be evidence in the record to sustain that conclusion.
26 Indeed, there must be evidence specifically quantifying the burden imposed on the responding
27 party. *West Pico Furniture Co. v. Superior Court, supra*, 56 Cal.2d at 417-419
28 (interrogatories); and *Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 428 (requests for
admission). Here, the Response did not identify any undue burden.

29 All of the objections are patently meritless, and should be overruled.

30 Additionally, the objections were frivolous, warranting sanctions.

1 Accordingly, the Court is requested to overrule all objections, and make a finding that
2 Defendant's refusal to produce the documents, dilatory tactics, and failure to "meet and confer"
3 in good faith constitute discovery misuse, and award sanctions.

4
5 C. Substantive Response

6 As to the Defendant's "substantive" response, it is *evasive*.

7 Again, the Response very ambiguously and conditionally states: "The Diocese will
8 produce such relevant, responsive and non-privileged documents as are in its possession,
9 custody or control, which documents have not been produced previously by the Defendants."

10 The Plaintiff is entitled to an unequivocal statement that all documents responsive to
11 the demand are being produced. C.C.P. Section 2031.220 sets forth the requirements for a
12 "statement of compliance" to a document demand.

13 A statement that the party to whom an inspection demand has been
14 directed will comply with the particular demand **shall state** that the
15 production, inspection, and related activity demanded will be allowed either
16 in whole or in part, and that **all documents** or things in the demanded
17 category that are in the possession, custody, or control of that party and to
18 which no objection is being made will be included in the production.

17 The Defendant's conditional response is completely non-compliant with the Code.
18 Instead of stating that "all" documents will be produced, the Response unilaterally sets
19 conditions or limits on what is being produced.

20 The Defendant's Response first indicates that the Defendant has unilaterally decided
21 what is a "relevant" document. The Response means that documents are being withheld that
22 the Defendant has decided are "not relevant". That is unacceptable under the Code.

23 The Response further indicates that only "non-privileged documents" will be produced.
24 That is an improper response unless a privilege log was served as part of the response.

25 Otherwise, there is no identification of the particular documents that are being withheld from
26 production, and there is no identification of the particular privilege that is being invoked.

27 Those failures are violations of the Code. The objections have been waived by this non-
28 compliance with C.C.P. § 2031.240(b).

1 *California Judges Benchbook: Civil Proceedings--Discovery* (Cal CJER 1994, Update
2 2006), §15.25, p. 188, describes the requirement for a privilege log as follows (in part):

3 All such documents must be listed and described in what is
4 commonly referred to as a **privilege log**. This description **must be**
5 **sufficiently specific to enable the judge to evaluate the claim**. CCP
6 §2031.240(b) (formerly CCP §2031(g)(3)).

7 In his "meet and confer" letter reply of September 6, 2007, defense counsel berates
8 Plaintiffs' counsel about the existence of a "privilege log". See Motion Exhibit "E", hereto.
9 However, the August 21 privilege log is not compliant with the Code because it is not a
10 sufficiently specific description of *any document*. Instead, it provides 3 descriptions of
11 *categories*. No *documents* are described, e.g., with dates, authors, recipients, etc. And, the
12 "descriptions" are designed to obtain the applications of privileges. That is not a real privilege
13 log at all, and defense counsel surely is aware it is not Code-compliant.

14 The basic test for an adequate privilege log is set forth in *Kaiser Foundation Hospitals*
15 *v. Superior Court* (1998) 66 Cal.App.4th 1217, 1228:

16 The law attempts to find a balance between these competing interests in
17 discovery and the assertion of privilege by requiring a party objecting to
18 document production to "identify with particularity" any document as to
19 which it makes an objection, and "set forth clearly the extent of, and the
20 specific ground for, the objection," in accordance with Code of Civil
21 Procedure section 2031, subdivision (f)(3). Here, Kaiser has already produced
22 a privilege log specifying the documents as to which it has withheld
23 production on a claim of attorney-client privilege or work product doctrine
24 protection. **The trial court must review Kaiser's privilege log to determine**
25 **whether the specified documents as to which Kaiser claims the**
26 **protection of either the privilege or the work product doctrine are in fact**
27 **so protected. For this purpose, the information in Kaiser's log must be**
28 **sufficiently specific to permit the trial court to determine whether each**
withheld document is or is not privileged. Should the trial court find the
information in the privilege log insufficiently specific to allow such a
determination, it may order Kaiser to prepare a new privilege log
containing more particularized information about the nature of each
document as to which the attorney-client privilege is claimed.

[Emphasis added.]

Specific identification of the *document* is required for a real privilege log.

A party claiming privilege in response to an inspection demand should
provide a "privilege log" that **identifies each document for which a**
privilege is claimed, its author, recipients, date of preparation, and the

1 specific privilege claimed.

2 [Cal. Practice Guide; Civ. Proc. Before Trial (TRG 2004), § 8:1474.5
3 (emphasis added); and see also, *In re Grand Jury Investigation*, 974 F.2d
4 1068, 1071 (9th Cir.1992).]

5 In *OXY Resources California v. Superior Court* (2004) 115 Cal.App.4th 874, 883, the
6 need to give some indication of the content of the communication was demonstrated.

7 In response to document requests served by Calpine, OXY and EOG withheld
8 certain documents and provided Calpine with privilege logs identifying the
9 withheld documents. Among the documents withheld were 204 documents
10 exchanged between OXY and EOG at various times before and after the close
11 of the transaction on December 31, 1999.

12 ****630 As reflected in EOG's privilege log, the privilege claimed as to the
13 withheld documents exchanged between OXY and EOG is either a
14 combination of joint defense and attorney work product, or a
15 combination of joint defense, attorney work product, and attorney-client
16 privilege. EOG's description of each withheld document on its privilege
17 log gives some indication of the content of the communication. For
18 example, EOG described one document as "1- page e-mail, re: Attached
19 draft consent request letter for EOG properties."**

20 **OXY's privilege log is less revealing than EOG's. Although the document
21 description in OXY's privilege log identifies the document's senders and
22 recipients as well as the type of communication (e.g., letter, e-mail, or
23 facsimile cover sheet), the description gives no indication of the purpose
24 or content of the communication. The privilege claimed as to the withheld
25 documents exchanged between OXY and EOG is either just "JDA," referring
26 to the Joint Defense Agreement, or the Joint Defense Agreement combined
27 with the attorney-client privilege and/or the work product doctrine. Roughly
28 70 of the documents on OXY's privilege log were withheld solely on the
ground of the Joint Defense Agreement, without reference to any underlying
privilege, privacy claim, or claim of work product protection.**

Calpine ultimately filed a motion to compel the production of the 204
withheld documents that had been exchanged between EOG and OXY.

[Emphasis added.]

21 The contents are not necessarily privileged because mere transmission to an attorney
22 does not render the communication protected under the attorney-client privilege. *Green &*
23 *Shinee v. Superior Court* (2001) 88 Cal.App.4th 532, 537.

24 At a minimum, there must be an *in camera* inspection for these documents.

25 *OXY Resources California v. Superior Court* (2004) 115 Cal.App.4th 874, 895:

26 Even OXY acknowledges the interests of EOG and OXY in the transaction
27 were "adversarial, common, and at times, a blend of the two." Yet, **OXY
28 apparently expects the court to rely entirely on the conclusory Peterson
and Stevens declarations, which simply state in general terms that EOG
and OXY had a common interest in finalizing their transaction and in**

1 responding to Calpine's inquiries about the Elkhorn Slough. Neither the
2 privilege log nor the declarations reveal the content of any of the
3 communications, so it would be impossible for Calpine to offer evidence
4 refuting OXY's claims that all of the withheld communication involve
5 matters of common interest. Indeed, without more information about the
6 disputed documents, Calpine cannot demonstrate that each
7 communication between OXY and EOG was not reasonably necessary to
8 accomplish **640 the purpose for which a lawyer was consulted.

9 As a practical matter, it is impossible to know whether any of the disclosures
10 of purportedly privileged information between OXY and EOG were
11 reasonably necessary to accomplish the purpose for which a lawyer was
12 consulted without knowing in at least a general sense the communication's
13 content. OXY correctly notes that a privilege claimant is not obliged to reveal
14 the subject matter of a communication to establish a claim of privilege. (See
15 Evid.Code, § 917, Comment of Assembly Committee on Judiciary.) The
16 issue here, however, is not whether the documents contain privileged
17 information. Rather, it is whether any privileges were waived because of
18 disclosure to a third party. Moreover, we do not suggest that OXY must
19 amend its privilege log to describe the content of each document. Instead, **an
20 in camera review of the documents would permit the court to determine
21 whether the disclosures were reasonably necessary to accomplish the
22 lawyer's role in the consultation. OXY argues that the inviolability of the
23 attorney-client privilege prohibits even an in camera review of the
24 communications at issue here. We disagree.**

25 [Emphasis added.]

26 Finally, in this instance, there is no connection between the "privilege log" and the
27 Defendant's written Response to the Plaintiffs' Document Demands. There is no assurance
28 that documents are not being withheld. There is no assurance that if documents are being
withheld, that they would only be included in the purported "privilege log". Hence, both the
Response and the "privilege log" are patently inadequate, and further response is warranted.
The need for a further, straightforward response is demonstrated by the conditional, ambiguous
nature of the Response itself.

An article published in the San Francisco Daily Journal on September 6, 2007, and
authored by Richard M. Coleman, Esq., who is "a full-time neutral with Alternative Resolution
Centers, as well as a discovery referee" in the Los Angeles area, finds that these types of
purported responses that are made with and subject to objections do not comply with the Code.

1. After stating objections in general terms, the respondent
concluded with the following language: "Without waiving these objections
and subject to them, and specifically excluding any communications between
attorney and client, defendant responses as follows: Defendant will produce
all responsive documents."

1 **Did the respondent comply with the statutes? No.** The response
2 “specifically” excludes attorney-client documents, but does not state whether
any in fact exist. If there are privileged documents, they must be identified
with particularity.

3 C.C.P. Section 2031.240(b)(1) provides that the respondent: Identify
4 *with particularity* any document ... to which an objection is being made.
[Emphasis added.]

5 The response is also ambiguous: **“Without waiving these objections
and subject to them.”**

6 **What does that mean?** The documents will be produced but
objections made to them are preserved? Or, any documents to which
objection has been made are being withheld?

7 **The movant is entitled to an unequivocal statement that all the
documents responsive to the request are being produced.** If withheld
8 based on objection, as with claims of privilege, the documents must be
identified with particularity.

9 [Italics in original; bold added.]

10
11 Also very recently, the 9th Circuit Court of Appeals ruled that a responding party must
12 state unequivocally that no documents are being withheld.

13 In *Merrick v. Paul Revere Life Ins. Co.*, --- F.3d ----, 2007 WL 2458503 (August 31,
14 2007), a case venued in Nevada Federal Court, the 9th Circuit Court upheld a trial court judge
15 order *in limine* which barred the defendant from introducing evidence at trial where the
16 documents were withheld during discovery.

17 The insurers also challenge the district court's order suppressing
18 certain evidence placed in the claim file after litigation commenced. The
district court granted this motion upon finding that the insurers withheld
19 evidence that they were ordered to produce regarding their post-litigation
treatment of Merrick's claim. The insurers argue that the court erred in finding
20 that they had withheld any evidence. “Courts need not tolerate flagrant abuses
of the discovery process” and have “inherent power” to exclude evidence as a
21 sanction for such abuses. *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27
(9th Cir.1980). We review the imposition of discovery sanctions for abuse of
22 discretion and the underlying factual determinations for clear error. *Valley
Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1052 (9th Cir.1998). Based
23 upon the record, we cannot conclude that the district court's finding that the
insurers withheld evidence is clearly erroneous. The insurers' pretrial
24 behavior gives rise to such an inference. **The insurers invoked the privilege
in response to a specific document production request, and continued to
do so even after the magistrate judge instructed them not to invoke the
privilege unless the privilege was actually shielding documents. Their
25 responses expressly objected on the basis of privilege and attested that
26 “subject to these objections,” their production was complete. FN3 Only
after the magistrate ordered the privileges waived (in response to
27 Merrick's assertion that defendants were withholding evidence), and
Merrick brought his motion in limine, did the insurers state
28 unequivocally that no documents were withheld on the basis of privilege.**

1 FN4 Even then, counsel's statement at the hearing could be understood as
2 admitting the existence of withheld documents.

3 [Id., at p. 5; bold added.]

4 The 9th Circuit Court of Appeals further held that the paucity of documents actually
5 produced supports an inference that documents are being withheld.

6 In addition, **the existence of withheld documents may be inferred from the**
7 **paucity of material actually produced.** Although the insurers received over
8 3000 pages of documents pertaining to Merrick's claim after litigation began,
9 it produced only three short memos analyzing this material, none of which
10 was generated by the attorneys who were actively managing the case file after
11 Merrick filed his complaint. FN5

12 Against these facts, the defendants offer only their sworn statement that
13 documents were not withheld. While proving a negative is difficult, **the**
14 **defendants' pre-trial conduct and the dearth of documents actually**
15 **produced support an inference that the defendants withheld documents**
16 in violation of the magistrate's order. Given the district court's superior
17 position to adjudge the insurers' culpability, we conclude that the district
18 court did not clearly err in so finding, and did not abuse its discretion in
19 granting Merrick's motion in limine.

20 [Id., at p. 6; bold added.]

21 Here, the Mexican Catholic Church authorities assert they have no idea what happened
22 to Father Aguilar after he returned from molesting children in California in January 1988, and
23 they have produced virtually no discovery for the post-1988 time period. As a result, they have
24 managed to fail to disclose the whereabouts of Father Aguilar in Mexico through today's date.
25 This means that the primary witness in the case has been kept from criminal justice, and justice
26 in a civil forum, in the form of a deposition under oath and a jury trial in California. The
27 failure to disclose much of anything about Father Aguilar after 1988 only inurs to the benefit of
28 the current Defendants in this lawsuit, as they can say anything without fear of contradiction.

As to the pre-1988 time period, the Mexican Catholic Church Defendants have
produced **93 pages of documents for a priest who was ordained in Mexico in 1970**, and
worked as a priest in Mexico except for the time period of March 1987 to January 1988 when
he was in California, until perhaps the present day. The "paltry" production of documents
about Father Aguilar is unbelievable. The lack of credibility to the documents produced thus
far supports an inference that documents are being withheld by these highly evasive

1 "compliance statements".

2 Plaintiff requests a court order requiring a further response by Defendant that is not
3 "conditioned" in any manner, and an unequivocal statement that *all* documents have been
4 produced. Absent such a court order, the concealment of relevant information and documents
5 by the Mexican Catholic Church authorities will continue, and will deny justice to the Plaintiff.

6
7
8 **DOCUMENT DEMAND NO. 17 :**

9 All DOCUMENTS containing the personnel file of Father Nicolas Aguilar (aka
10 Nicolas Aguilar Rivera).

11 **RESPONSE:**

12 The Diocese incorporates by reference its General Objections set forth above. Subject
13 to and without waiving its objections, the Diocese responds as follows:

14 The Diocese will produce such relevant, responsive and non-privileged documents as
15 are in its possession, custody or control, which documents have not been produced previously
16 by the Defendants.

17 **LEGAL AND FACTUAL REASONS FOR COMPELLING FURTHER RESPONSE:**

18 A. **Good Cause For Discovery**

19 Code of Civil Procedure Section 2017.010 provides that:

20 Unless otherwise limited by order of the court in accordance with this
21 title, **any party may obtain discovery regarding any matter, not
22 privileged, that is relevant to the subject matter involved in the pending
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28 location of persons having knowledge of any discoverable matter, as well
as of the existence, description, nature, custody, condition, and location
of any document, tangible thing, or land or other property.**

26 While discovery is currently limited to the "jurisdictional" issue pending before the
27 Court, good cause exists for full compliance with this document demand because Father
28 Aguilar sexually molested the Plaintiff, and every piece of paper regarding Father Aguilar must

1 be considered *prima facie* relevant for discovery purposes, as every bit of information about
2 Father Aguilar will assist the Plaintiff in obtaining either admissible evidence, or is reasonably
3 calculated to lead to the discovery of admissible evidence.

4 Obtaining information about Father Aguilar will assist in proving how the Mexican
5 Catholic Church authorities used California as a location to transfer sexual predator priests. It
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9 from Mexico to California, and then California to Mexico, in advance of criminal arrest. As
10 part of that ongoing concealment of Father Aguilar, all information about the history of his
11 whereabouts would assist in proving the ongoing concealment through the time the Plaintiff
12 was sexually molested, and until the present. Father Aguilar's current location (for deposition,
13 service of process, etc.) may be identified, even if the Defendant will not do so, by having all
14 of that information.

15 Certainly, documents regarding Father Aguilar cannot be considered "privileged"
16 unless they are restricted to communications between the Defendants and their attorneys.

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18 B. Objections

19 The objections made to this document demand are *too general and/or meritless* and/or
20 frivolous, warranting sanctions.

21 The Defendant's use of "General Objections" are improper.

22 C.C.P. § 2031.210(a)(3) and § 2031.240(b), require *separate* objections to document
23 demands, including identification "with particularity" of each document "to which an objection
24 is being made", and further, a clear statement of the "specific grounds" for the objection,
25 including but not limited to any privilege.

26 The dual failures of the Defendant to either defend those "General Objections" and
27 withdraw them during the "meet and confer" process, means the Defendant both conceded they
28 are improper, and it was a bad faith to waste of everyone's time on such "objections".

1 All of the objections are patently meritless, and should be overruled.

2 Additionally, the objections were frivolous, warranting sanctions.

3 Accordingly, the Court is requested to overrule all objections, and make a finding that
4 Defendant's refusal to produce the documents, dilatory tactics, and failure to "meet and confer"
5 in good faith constitute discovery misuse, and award sanctions.

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7 C. Substantive Response

8 As to the Defendant's "substantive" response, it is *evasive*.

9 Again, the Response very ambiguously and conditionally states: "The Diocese will
10 produce such relevant, responsive and non-privileged documents as are in its possession,
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13 the demand are being produced. C.C.P. Section 2031.220 sets forth the requirements for a
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19 category that are in the possession, custody, or control of that party and to
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20 Instead of stating that "all" documents will be produced, the Response unilaterally sets
21 conditions or limits on what is being produced.

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23 what is a "relevant" document. The Response means that documents are being withheld that
24 the Defendant has decided are "not relevant". That is unacceptable under the Code.

25 The Response further indicates that only "non-privileged documents" will be produced.
26 That is an improper response unless a privilege log was served as part of the response.
27 Otherwise, there is no identification of the particular documents that are being withheld from
28 production, and there is no identification of the particular privilege that is being invoked.

1 Those failures are violations of the Code. The objections have been waived by this non-
2 compliance with C.C.P. § 2031.240(b).

3 *California Judges Benchbook: Civil Proceedings--Discovery* (Cal CJER 1994, Update
4 2006), §15.25, p. 188, describes the requirement for a privilege log as follows (in part):

5 All such documents must be listed and described in what is
6 commonly referred to as a **privilege log**. This description **must be**
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9 In his "meet and confer" letter reply of September 6, 2007, defense counsel berates
10 Plaintiffs' counsel about the existence of a "privilege log". See Motion Exhibit "E", hereto.
11 However, the August 21 privilege log is not compliant with the Code because it is not a
12 sufficiently specific description of *any document*. Instead, it provides 3 descriptions of
13 *categories*. No *documents* are described, e.g., with dates, authors, recipients, etc. And, the
14 "descriptions" are designed to obtain the applications of privileges. That is not a real privilege
15 log at all, and defense counsel surely is aware it is not Code-compliant.

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22 specific ground for, the objection," in accordance with Code of Civil
23 Procedure section 2031, subdivision (f)(3). Here, Kaiser has already produced
24 a privilege log specifying the documents as to which it has withheld
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26 protection. **The trial court must review Kaiser's privilege log to determine**
27 **whether the specified documents as to which Kaiser claims the**
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withheld document is or is not privileged. Should the trial court find the
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containing more particularized information about the nature of each
document as to which the attorney-client privilege is claimed.

[Emphasis added.]

Specific identification of the *document* is required for a real privilege log.

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2 provide a "privilege log" that **identifies each document for which a
3 privilege is claimed, its author, recipients, date of preparation, and the
4 specific privilege claimed.**

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14 of the transaction on December 31, 1999.

15 ****630 As reflected in EOG's privilege log, the privilege claimed as to the
16 withheld documents exchanged between OXY and EOG is either a
17 combination of joint defense and attorney work product, or a
18 combination of joint defense, attorney work product, and attorney-client
19 privilege. EOG's description of each withheld document on its privilege
20 log gives some indication of the content of the communication. For
21 example, EOG described one document as "1- page e-mail, re: Attached
22 draft consent request letter for EOG properties."**

23 **OXY's privilege log is less revealing than EOG's. Although the document
24 description in OXY's privilege log identifies the document's senders and
25 recipients as well as the type of communication (e.g., letter, e-mail, or
26 facsimile cover sheet), the description gives no indication of the purpose
27 or content of the communication. The privilege claimed as to the withheld
28 documents exchanged between OXY and EOG is either just "JDA," referring
to the Joint Defense Agreement, or the Joint Defense Agreement combined
with the attorney-client privilege and/or the work product doctrine. Roughly
70 of the documents on OXY's privilege log were withheld solely on the
ground of the Joint Defense Agreement, without reference to any underlying
privilege, privacy claim, or claim of work product protection.
Calpine ultimately filed a motion to compel the production of the 204
withheld documents that had been exchanged between EOG and OXY:**

[Emphasis added.]

The contents are not necessarily privileged because mere transmission to an attorney
does not render the communication protected under the attorney-client privilege. *Green &
Shinee v. Superior Court* (2001) 88 Cal.App.4th 532, 537.

At a minimum, there must be an *in camera* inspection for these documents.

OXY Resources California v. Superior Court (2004) 115 Cal.App.4th 874, 895:

Even OXY acknowledges the interests of EOG and OXY in the transaction
were "adversarial, common, and at times, a blend of the two." Yet, **OXY
apparently expects the court to rely entirely on the conclusory Peterson**

1 and Stevens declarations, which simply state in general terms that EOG
2 and OXY had a common interest in finalizing their transaction and in
3 responding to Calpine's inquiries about the Elkhorn Slough. Neither the
4 privilege log nor the declarations reveal the content of any of the
5 communications, so it would be impossible for Calpine to offer evidence
6 refuting OXY's claims that all of the withheld communication involve
7 matters of common interest. Indeed, without more information about the
8 disputed documents, Calpine cannot demonstrate that each
9 communication between OXY and EOG was not reasonably necessary to
10 accomplish **640 the purpose for which a lawyer was consulted.

11 As a practical matter, it is impossible to know whether any of the disclosures
12 of purportedly privileged information between OXY and EOG were
13 reasonably necessary to accomplish the purpose for which a lawyer was
14 consulted without knowing in at least a general sense the communication's
15 content. OXY correctly notes that a privilege claimant is not obliged to reveal
16 the subject matter of a communication to establish a claim of privilege. (See
17 Evid.Code, § 917, Comment of Assembly Committee on Judiciary.) The
18 issue here, however, is not whether the documents contain privileged
19 information. Rather, it is whether any privileges were waived because of
20 disclosure to a third party. Moreover, we do not suggest that OXY must
21 amend its privilege log to describe the content of each document. Instead, **an
22 in camera review of the documents would permit the court to determine
23 whether the disclosures were reasonably necessary to accomplish the
24 lawyer's role in the consultation. OXY argues that the inviolability of the
25 attorney-client privilege prohibits even an in camera review of the
26 communications at issue here. We disagree.**

27 [Emphasis added.]

28 Finally, in this instance, there is no connection between the "privilege log" and the
Defendant's written Response to the Plaintiffs' Document Demands. There is no assurance
that documents are not being withheld. There is no assurance that if documents are being
withheld, that they would only be included in the purported "privilege log". Hence, both the
Response and the "privilege log" are patently inadequate, and further response is warranted.
The need for a further, straightforward response is demonstrated by the conditional, ambiguous
nature of the Response itself.

An article published in the San Francisco Daily Journal on September 6, 2007, and
authored by Richard M. Coleman, Esq., who is "a full-time neutral with Alternative Resolution
Centers, as well as a discovery referee" in the Los Angeles area, finds that these types of
purported responses that are made with and subject to objections do not comply with the Code.

1. After stating objections in general terms, the respondent
concluded with the following language: "Without waiving these objections
and subject to them, and specifically excluding any communications between

1 attorney and client, defendant responses as follows: Defendant will produce
all responsive documents.”

2 **Did the respondent comply with the statutes? No.** The response
3 “specifically” excludes attorney-client documents, but does not state whether
any in fact exist. If there are privileged documents, they must be identified
with particularity.

4 C.C.P. Section 2031.240(b)(1) provides that the respondent: Identify
with *particularity* any document ... to which an objection is being made.
5 [Emphasis added.]

6 The response is also ambiguous: **“Without waiving these objections
and subject to them.”**

7 **What does that mean?** The documents will be produced but
objections made to them are preserved? Or, any documents to which
objection has been made are being withheld?

8 **The movant is entitled to an unequivocal statement that all the
documents responsive to the request are being produced.** If withheld
9 based on objection, as with claims of privilege, the documents must be
identified with particularity.

10 [Italics in original; bold added.]

11
12 Also very recently, the 9th Circuit Court of Appeals ruled that a responding party must
13 state unequivocally that no documents are being withheld.

14 In *Merrick v. Paul Revere Life Ins. Co.*, --- F.3d ---, 2007 WL 2458503 (August 31,
15 2007), a case venued in Nevada Federal Court, the 9th Circuit Court upheld a trial court judge
16 order *in limine* which barred the defendant from introducing evidence at trial where the
17 documents were withheld during discovery.

18 The insurers also challenge the district court's order suppressing
19 certain evidence placed in the claim file after litigation commenced. The
20 district court granted this motion upon finding that the insurers withheld
evidence that they were ordered to produce regarding their post-litigation
21 treatment of Merrick's claim. The insurers argue that the court erred in finding
that they had withheld any evidence. “Courts need not tolerate flagrant abuses
of the discovery process” and have “inherent power” to exclude evidence as a
22 sanction for such abuses. *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27
(9th Cir.1980). We review the imposition of discovery sanctions for abuse of
discretion and the underlying factual determinations for clear error. *Valley*
23 *Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1052 (9th Cir.1998). Based
upon the record, we cannot conclude that the district court's finding that the
24 insurers withheld evidence is clearly erroneous. The insurers' pretrial
behavior gives rise to such an inference. **The insurers invoked the privilege
25 in response to a specific document production request, and continued to
do so even after the magistrate judge instructed them not to invoke the
26 privilege unless the privilege was actually shielding documents. Their
responses expressly objected on the basis of privilege and attested that
27 “subject to these objections,” their production was complete. FN3 Only
after the magistrate ordered the privileges waived (in response to
28 Merrick's assertion that defendants were withholding evidence), and**

1 **Merrick brought his motion in limine, did the insurers state**
2 **unequivocally that no documents were withheld on the basis of privilege.**
3 FN4 Even then, counsel's statement at the hearing could be understood as
4 admitting the existence of withheld documents.

5 [Id., at p. 5; bold added.]

6 The 9th Circuit Court of Appeals further held that the paucity of documents actually
7 produced supports an inference that documents are being withheld.

8 In addition, **the existence of withheld documents may be inferred from the**
9 **paucity of material actually produced.** Although the insurers received over
10 3000 pages of documents pertaining to Merrick's claim after litigation began,
11 it produced only three short memos analyzing this material, none of which
12 was generated by the attorneys who were actively managing the case file after
13 Merrick filed his complaint. FN5

14 Against these facts, the defendants offer only their sworn statement that
15 documents were not withheld. While proving a negative is difficult, **the**
16 **defendants' pre-trial conduct and the dearth of documents actually**
17 **produced support an inference that the defendants withheld documents**
18 in violation of the magistrate's order. Given the district court's superior
19 position to adjudge the insurers' culpability, we conclude that the district
20 court did not clearly err in so finding, and did not abuse its discretion in
21 granting Merrick's motion in limine.

22 [Id., at p. 6; bold added.]

23 Here, the Mexican Catholic Church authorities assert they have no idea what happened
24 to Father Aguilar after he returned from molesting children in California in January 1988, and
25 they have produced virtually no discovery for the post-1988 time period. As a result, they have
26 managed to fail to disclose the whereabouts of Father Aguilar in Mexico through today's date.
27 This means that the primary witness in the case has been kept from criminal justice, and justice
28 in a civil forum, in the form of a deposition under oath and a jury trial in California. The
29 failure to disclose much of anything about Father Aguilar after 1988 only inurs to the benefit of
30 the current Defendants in this lawsuit, as they can say anything without fear of contradiction.

31 As to the pre-1988 time period, the Mexican Catholic Church Defendants have
32 produced **93 pages of documents for a priest who was ordained in Mexico in 1970**, and
33 worked as a priest in Mexico except for the time period of March 1987 to January 1988 when
34 he was in California, until perhaps the present day. The "paltry" production of documents
35 about Father Aguilar is unbelievable. The lack of credibility to the documents produced thus

1 far supports an inference that documents are being withheld by these highly evasive
2 "compliance statements".

3 Plaintiff requests a court order requiring a further response by Defendant that is not
4 "conditioned" in any manner, and an unequivocal statement that *all* documents have been
5 produced. Absent such a court order, the concealment of relevant information and documents
6 by the Mexican Catholic Church authorities will continue, and will deny justice to the Plaintiff.

7
8

9 **DOCUMENT DEMAND NO. 18 :**

10 All DOCUMENTS CONCERNING the ordination of Father Nicolas Aguilar (aka
11 Nicolas Aguilar Rivera).

12 **RESPONSE:**

13 The Diocese incorporates by reference its General Objections set forth above. The
14 Diocese further objects to this Request because the term "ordination" is vague and ambiguous
15 and, as such, the Request does not designate the requested documents with reasonable
16 particularity as required by California Code of Civil Procedure § 2025.220(a)(4). Subject to
17 and without waiving its objections, the Diocese responds as follows:

18 The Diocese will produce such relevant, responsive and non-privileged documents as
19 are in its possession, custody or control, which documents have not been produced previously
20 by the Defendants.

21 **LEGAL AND FACTUAL REASONS FOR COMPELLING FURTHER RESPONSE:**

22 A. **Good Cause For Discovery**

23 Code of Civil Procedure Section 2017.010 provides that:

24 Unless otherwise limited by order of the court in accordance with this
25 title, **any party may obtain discovery regarding any matter, not**
26 **privileged, that is relevant to the subject matter involved in the pending**
27 **action or to the determination of any motion made in that action, if the**
28 **matter either is itself admissible in evidence or appears reasonably**
calculated to lead to the discovery of admissible evidence. Discovery may
relate to the claim or defense of the party seeking discovery or of any
other party to the action. Discovery may be obtained of the identity and
location of persons having knowledge of any discoverable matter, as well

1 as of the existence, description, nature, custody, condition, and location
2 of any document, tangible thing, or land or other property.

3 While discovery is currently limited to the "jurisdictional" issue pending before the
4 Court, good cause exists for full compliance with this document demand because Father
5 Aguilar sexually molested the Plaintiff, and every piece of paper regarding Father Aguilar must
6 be considered *prima facie* relevant for discovery purposes, as every bit of information about
7 Father Aguilar will assist the Plaintiff in obtaining either admissible evidence, or is reasonably
8 calculated to lead to the discovery of admissible evidence.

9 Obtaining information about Father Aguilar will assist in proving how the Mexican
10 Catholic Church authorities used California as a location to transfer sexual predator priests. It
11 will also assist in proving the extent of cooperation between the Mexican and American
12 Catholic Churches in this regard. Specifically, it will assist in proving how Father Aguilar was
13 concealed from the public authorities both in Mexico and in California as he was transferred
14 from Mexico to California, and then California to Mexico, in advance of criminal arrest. As
15 part of that ongoing concealment of Father Aguilar, all information about the history of his
16 whereabouts would assist in proving the ongoing concealment through the time the Plaintiff
17 was sexually molested, and until the present. Father Aguilar's current location (for deposition,
18 service of process, etc.) may be identified, even if the Defendant will not do so, by having all
19 of that information.

20 Certainly, documents regarding Father Aguilar cannot be considered "privileged"
21 unless they are restricted to communications between the Defendants and their attorneys.

22 B. Objections

23 The objections made to this document demand are *too general and/or meritless* and/or
24 frivolous, warranting sanctions.

25 The Defendant's use of "General Objections" are improper.

26 C.C.P. § 2031.210(a)(3) and § 2031.240(b), require *separate* objections to document
27 demands, including identification "with particularity" of each document "to which an objection
28

1 is being made”, and further, a clear statement of the “specific grounds” for the objection,
2 including but not limited to any privilege.

3 The dual failures of the Defendant to either defend those “General Objections” and
4 withdraw them during the “meet and confer” process, means the Defendant both conceded they
5 are improper, and it was a bad faith to waste of everyone’s time on such “objections”.

6 “Vague and ambiguous” is not a valid objection to an inspection demand unless “the
7 ambiguity precludes an intelligent reply.” *California Judges Benchbook: Civil Proceedings--*
8 *Discovery* (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court* (1961) 56
9 Cal.2d 423, 430 (requests for admissions), and *Standon Co. v. Superior Court* (1990) 225
10 Cal.App.3d 898, 901 (an objection to a request for “any and all bills ... evidencing expenses ...
11 incurred” based on the ground that the request was “vague, ambiguous, and unintelligible”
12 would be untenable and subject to sanction). Also see *Deyo v. Kilbourne* (1978) 84
13 Cal.App.3d 771, 783 (an interrogatory must be answered “if the nature of the information
14 sought is apparent.”).

15 In this instance, ordination comes from the term, “ordain”. The Defendant knows what
16 the word means. The Defendant’s contemporaneous answer (8/17/07) to Plaintiff’s Special
17 Interrogatory No. 55 states that Father Aguilar “was ordained a presbyter on July 12, 1970.”

18 All of the objections are patently meritless, and should be overruled.

19 Additionally, the objections were frivolous, warranting sanctions.

20 Accordingly, the Court is requested to overrule all objections, and make a finding that
21 Defendant's refusal to produce the documents, dilatory tactics, and failure to "meet and confer"
22 in good faith constitute discovery misuse, and award sanctions.

23

24 C. Substantive Response

25 As to the Defendant’s “substantive” response, it is *evasive*.

26 Again, the Response very ambiguously and conditionally states: “The Diocese will
27 produce such relevant, responsive and non-privileged documents as are in its possession,
28 custody or control, which documents have not been produced previously by the Defendants.”