SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE

SAMUEL A. PERRONI,	)	
PETITIONER,	)	
vs.	)	NO. BS159430
	)	
MARK A. FAJARDO, ET AL.,	)	
RESPONDENTS.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, AUGUST 9, 2016

FOR PETITIONER: SAMUEL A. PERRONI, IN PRO PER

FOR RESPONDENTS: DANIEL P. BARER, ATTORNEY AT LAW and
ANNA L. BIRENBAUM, ATTORNEY AT LAW

BUFORD J. JAMES
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CASE NUMBER: BS159430
CASE NAME: SAMUEL PERRONI VS. MARK FAJARDO
LOS ANGELES, CALIFORNIA TUESDAY, AUGUST 9, 2016
DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE
REPORTER: BUFORD J. JAMES CSR 9296
TIME: 9:30 A.M.
APPEARANCES: (AS NOTED ON TITLE PAGE)

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THE COURT: Perroni versus Fajardo, BS159430, number five on calendar.

Your appearance, please.

MR. BARER: Good afternoon, Your Honor, Daniel Barer for respondents.

MS. BIRENBAUM: Good afternoon, Anna Birenbaum also for respondents.

MR. PERRONI: Good afternoon, Your Honor, Sam Perroni.

THE COURT: Okay. The record should reflect that Mr. Perroni has a court reporter.

You want to identify yourself.

MS. DAVIS: Averol Davis.

THE COURT: Thank you.

Okay. This is here on four motions, three by Mr. Perroni, one by the County and the individual respondent. The first three are to compel answers to interrogatories, to compel deposition answers, and a motion

for a continuance in order for that discovery to take place. Then the County's motion is a motion to withdraw an admission. I'll address them one by one.

The motion to compel answers to interrogatories and the motion to compel answers to deposition are limited by, in my view, the discovery that's available in a California Public Records Act case. And that discovery, I believe, is limited; although this issue is currently before the Second District Court of Appeal.

In my view, the discovery should be limited to sort of two general areas, one, the nature -- where the records are located, how they are maintained, and what inquiry was made to find the documents that were requested; and, two, if there is a privilege or affirmative defense asserted, the facts that support privilege or affirmative defense.

With respect to the interrogatories, the motion fails because Mr. Perroni has not provided an adequate Separate Statement, and that failure in and of itself is a basis to deny. With respect to the substance of the interrogatories, the interrogatories are all objectionable, in part, because he seeks the identities -- he seeks work product, that is, the identities of witnesses that the County would present at trial.

Second, he seeks a privilege log or a log that -- undisclosed documents, which you cannot get in a motion to compel.

Third, he asks for, essentially, the content

of records, meaning -- or information that cannot be obtained, such as the number of autopsy photos of Natalie Wood, a description of the photos, and the number of pages in a particular report.

Finally, he seeks correspondence between the County Coroner's -- the Coroner's office and the Sheriff's department from 1981 to the present. That is a motion to compel production of records, not a motion to compel answers to interrogatories. And it seeks improper discovery, in any event.

The motion to compel further deposition answers -- not further, deposition answers suffers from the same defect with respect to failure to provide an adequate Separate Statement. In addition, although this one is closer because some of the questions do relate to a concrete and definite prospect of enforcement for the investigation, which under the law the absolute privilege for a government investigation or investigatory file applies in that circumstance under Williams versus Superior Court.

And so some of the questions do relate to that issue on whether or not the trail is cold, as petitioner describes it. Nonetheless, they are the type of questions that could never be answered, including the identity of any suspects and interactions with the prosecutor. The motion for continuance must be denied because the first two motions were denied.

And then the County moves to withdraw an

admission that a Paul Miller was a Deputy Medical Examiner for the Coroner's office on November 29th, 1981. The County and Fajardo, Respondent Fajardo, admitted that he was after investigation and then determined subsequently primarily through contact with the retired Coroner at his deposition that occurred on June 1st, 2016, that Mr. Miller was not an employee but, rather, a volunteer for the Coroner's office.

Respondents may withdraw their request for admission if it is the result of mistake, inadvertence, or excusable neglect. In this case records were 35 years old. The respondents relied on the information they had, only to be mistaken, finding out from the retired Coroner that he -- Mr. Miller was not an employee.

Petitioner contends this mistake is inexcusable because respondents had all the information available to them shows they did not, nor will the petitioner be prejudiced by withdrawal of the admission. He filed his opening brief, and the opening brief does not even mention this issue, or at least it does not mention that Miller was an admitted employee.

In fact, his theory is it does not matter whether he was an employee or not because the Coroner effectively deputized Mr. Miller. That is the plaintiff petitioner's theory, which may be viable. I don't know. I don't know the context, either, because I haven't read the opening brief.

So the tentative is to deny the discovery

motions; deny the motion to continue; grant the motion to withdraw the admission which, in my view, wouldn't be available discovery in any event in a CPRA case; and award sanctions because I am required to do so but reduce them to a total of $3,000.

That's what the tentative says. Have you seen it?

MR. BARER: Your Honor, I have read everything up to page 10, but I think, with your Honor's explanation from the bench, I'm fully prepared to discuss the motion.

THE COURT: Mr. Perroni, have you seen it?

MR. PERRONI: Yes. I've seen it, Your Honor. The tentative memorandum?

THE COURT: Yes.

MR. PERRONI: Is that what you are asking about?

THE COURT: Yes.

MR. PERRONI: Yes, I have seen it.

THE COURT: Okay. Do you wish to be heard?

MR. PERRONI: Yes, I do.

THE COURT: Go ahead.

MR. PERRONI: All right. First of all, Your Honor, if I might, I would like to go to the last motion that the respondents made to withdraw this sworn answer to this request for admission. Their brief tells you that I asked whether or not them to admit that Paul Miller was employed by the Coroner's office in 1981. I did not ask that. I have never asked whether or not he was employed.

The question was -- is: You are requested

to admit that Paul Miller was a Deputy Medical Examiner. Now, everything in this file that has been stated by Dr. Naguchi in 1981, sworn testimony by him, says that Paul Miller was a Deputy Medical Examiner. I never ever talked about employment. I didn't talk employment at Dr. Naguchi's deposition, and I didn't talk about employment in these requests for admission.

So I urge the Court to look at that again because --

THE COURT: Why would that be important?

MR. PERRONI: Well, it's important for this reason. At the time when this autopsy was prepared in 1981, there were narrative reports that were prepared by members of the Coroner's office by deputies. Dr. Naguchi testified that he had deputy investigators as well as deputy forensic medical examiners. Those deputy investigators prepared narrative reports.

The Coroner's office has conceded, they conceded initially, that I was entitled to those narrative reports, and I have those narrative reports, all of them except for the deputy who was assisting Dr. Naguchi by the name of Paul Miller. That is why I propounded that request for admission.

And I missed something, Your Honor. I forgot to include in my response this: This is a letter that I would like to offer as Exhibit A to this hearing, if I might.

THE COURT: No. Can't do that.

MR. PERRONI: Well. All right.
THE COURT: You are a lawyer. You know you can't do it.
MR. PERRONI: All right. We'll do it this way. It's in the file. It's attached to my petition, and in the request for admission they actually admitted that it was authentic. It's a letter from the Coroner, Dr. Fajardo. He says this in that letter in the file: "The consult report authored by Mr. Paul Miller who was employed by the County of Los Angeles in 1981 at the time of Ms. Wagner's death as a Deputy Prosecutor."
THE COURT: All right.
MR. PERRONI: Now, that's what he said. It's in the file.
THE COURT: Right. That's what they relied on in admitting your request for admission, that very letter. Isn't that right?
MR. PERRONI: No.
MR. BARER: Your Honor, I --
THE COURT: He's wrong. It's undisputed that he's wrong.
MR. PERRONI: The response does not say that. It doesn't say that.
THE COURT: No, you are fighting -- the hypothetical here is the facts support withdrawal because they made a mistake, and it's an excusable mistake. So, yes, they admitted he was a Deputy Medical Examiner. By the way, you use initial caps "Deputy Medical Examiner,"

meaning employee, not deputized volunteer, which would be different.

MR. PERRONI: Your Honor -- I didn't mean to interrupt.

THE COURT: So, yes, the letter says he basically says he was an employee, and it's wrong.

MR. PERRONI: But the man who was in charge in 1981 said he was a Deputy Medical Examiner.

THE COURT: When did he say that?

MR. PERRONI: He said it in his deposition. He said it in his book.

THE COURT: He said he was deputized.

MR. PERRONI: He said it in his book in 1983, and in the deposition I took just a couple of weeks ago he swore under oath that everything in that chapter was true, that he didn't want to change any of it.

THE COURT: I still don't understand why this is important. Your theory is --

MR. PERRONI: Okay.

THE COURT: -- your theory is, consistent with the facts, I believe, because we don't have anything that disputes the retired Coroner -- what's his name, Naguchi, his testimony. So the facts are he was a volunteer, and your position is he was a deputized volunteer, and, therefore, you are entitled to his report. That's your argument; right?

MR. PERRONI: Exactly. He prepared --

THE COURT: Doesn't matter whether he's a Deputy

Medical Examiner, initial caps, meaning an employee, or a deputized volunteer, meaning nonemployee. It doesn't matter to you.

MR. PERRONI: It doesn't matter, and that's the point. The point is -- excuse me, it does matter that he was a Deputy Medical Examiner because as a Deputy Medical Examiner he prepared a narrative report, and I'm contending that, under the law, there is no justification for them not giving me that narrative report when they have given me the other narrative reports.

THE COURT: Right. I understand that, but you are saying there is no difference between a Deputy Medical Examiner, meaning an employee, and a deputized volunteer. There is no differentiation for purposes of the County having to give you the report.

MR. PERRONI: There is -- as long as he is an official deputized medical examiner, and that's why I asked that request for admission.

THE COURT: Okay. So --

MR. PERRONI: -- okay, I didn't say --

THE COURT: -- in other words, I don't think it matters.

MR. PERRONI: I didn't ask --

THE COURT: I don't think it matters whether I permit withdrawal or not.

MR. PERRONI: Let me see. Well, that's what I said in my response, I didn't understand why they are bothering the Court with this motion.

THE COURT: All right. So maybe there are other matters, other cases down the road that have nothing to do with you, and they don't want to be stuck with an admission that this fellow was a Deputy Medical Examiner. I don't know. I'm speculating.

MR. PERRONI: I know. They didn't say that, judge. So, really, it's not fair to grant a motion based on, in essence, speculation about what it is they are trying to accomplish.

THE COURT: They don't need to tell you their motive. It's did they make a mistake and is it excusable. Those are the only issues here. They made a mistake. That's undisputed. Is it excusable or isn't it excusable.

MR. PERRONI: But, judge, they didn't make a mistake. He was a Deputy Medical Examiner.

THE COURT: That's not what Naguchi says. He's the one who knows.

MR. PERRONI: No, he did say that, judge. He just said he wasn't paid.

THE COURT: Not an employee, in other words.

MR. PERRONI: He said he was not paid.

THE COURT: I understand your position. Counsel.

MR. BARER: Well, as to why we're doing this, it's for the truth. We don't -- the Coroner's office doesn't want a false response to a request for admission to be out there, and it was made based on a mistake, based on the information we had at the time. Subsequently discovered information showed it was wrong. I think I have

documented that through all the people involved and the evidence from them. Unless I missed it in the many times I've pored over the opening brief, I didn't see any argument like the one that Mr. Perroni makes in his motion or here as to why he is entitled to that report. So it doesn't matter, but the evidence we have is he was an, initial caps, Deputy Medical Examiner. He was an employee of the County of Los Angeles, which is what an, initial caps, Deputy Medical Examiner would be. Instead, he was a volunteer who was called in on ad hoc basis.

THE COURT: Well, okay. I think this is much ado about nothing, personally. So let's go on to the next issue.

MR. PERRONI: All right, your Honor. Let me -- if I might, I'd like to address the motion to compel interrogatories.

THE COURT: Yes.

MR. PERRONI: And at the outset let me say this. This issue about this Statement of Disputed Facts. I reviewed --

THE COURT: You mean Separate Statement.

MR. PERRONI: Yes, the Separate Statement of disputed answers, I'm sorry, and responses.

THE COURT: It's called a Separate Statement. I know you are from out of state. That's what it's called. It is a death knell for a discovery motion not to provide an adequate Separate Statement. Just is. Why, because judges don't like discovery motions, and the whole purpose

of the Separate Statement is to make it easy for the judge to evaluate and decide the discovery motion.

I don't know what you can say about your discovery motions. Aside from their merits or lack of merit, they don't have adequate Separate Statements.

MR. PERRONI: Judge, I think I substantially complied. I have followed the rules as I have read them.

THE COURT: Were you aware of the Rule of Court on Separate Statement?

MR. PERRONI: I didn't find that one. I used some material that I discovered concerning motions to compel. I found the procedure rules, and I have tried to follow all the rules. But irrespective of that, I'm not saying I should be excused because I didn't find the rule, what I am saying is my motion incorporates, not only the Separate Statement, but the Memorandum.

These particular -- if you look at these particular responses, the objections that they make, for me to set forth the facts and the reasons why it should be discovered is basically for me to just rewrite the brief in this Statement of Disputed Answers. And I -- judge, with all due respect, I really think it's putting form over substance, because the motion specifically incorporates the answers, the specific answers, and the responses. I mean, yes, the questions and responses, interrogatories and responses.

So, taken as a whole, I have complied with the rules, and it's -- everything is easily understood by

this Court.

THE COURT: Actually, not. In order to a -- look, the whole purpose of the Separate Statement is so that you say here is what I asked, quote verbatim. Here is what they responded, quote verbatim. Here is why they are wrong for each interrogatory or each deposition question for which you seek to compel an answer.

Why do you have to do that, so that I don't have to look at your brief and figure out what interrogatories are in dispute, find the interrogatories, thumb through them, find what the question was, then go to your exhibit that is the responses, find out what the response was, and then go back to your brief and find out why you think the answer was inadequate. That's the whole purpose of the Separate Statement, and you didn't do that.

MR. PERRONI: Well, all right, judge.

THE COURT: This is standard rule in California.

MR. PERRONI: I didn't do that, but it's discretionary with this Court.

THE COURT: It is. But, look, there is whole other issue. You are asking questions that you can't ask. You cannot ask how many photos there were; give me a description of what the photos of Natalie Wood on Catalina Island looked like and how many pages there are in the Miller report. You cannot ask that.

MR. PERRONI: And may I ask the Court how are you persuaded under the law that I can't ask that.

THE COURT: Because that defeats the entire

purpose of the CPRA, which is intended to be -- CPRA meaning California Public Records Act, which is intended to be an expeditious way of getting documents from a public agency that is relatively painless for the asking party and relatively painless for the government agency, and the trial court's decision is subject to swift review by way of mandamus in the court of appeal. Taking discovery on the merits of the documents, what did they say, their content, how many pages there are, what did they look like, defeats the entire purpose of the CPRA.

The court of appeal has this issue in front of them. They may say I am wrong. But -- and I think this is entirely consistent with the Freedom of Information Act, the federal law which CPRA was modeled after. You cannot take merits discovery in a CPRA case.

MR. PERRONI: May I respond here to that.

THE COURT: You may.

MR. PERRONI: Judge, I didn't ask for many of the things that you said that I couldn't have, but here is why I asked for the number of pages. One of the things that I am contending in this case is they have waived their right not to disclose these documents because of previous public disclosure. In the interrogatories that I propounded, the specific requests that I have propounded for documents, I was provided with a fax cover sheet that showed that in 2000 an author by the name Suzanne Finstad received five pages from the Homicide Bureau of the Los Angeles Sheriff's Department.

Now, Author Finstad had been given access to the filings. And after I filed this lawsuit -- of course, they didn't do it when I made the request and I pointed out that I believed that it was waiver. After I filed this lawsuit, they gave me 241 pages of documents that they said she had access to.

All right. That book was published in 2001. This fax is dated in 2003. The Miller report, I asked for the pages in the Miller report, initially, because I wanted to identify how many pages, how many documents we were talking about. I never asked them to tell me what was in it. I never asked them to tell me what was in any document.

THE COURT: You can't do it. I'm sorry, you can't do it.

MR. PERRONI: Well --

THE COURT: First, you are putting the cart before the horse. First you demonstrate waiver. Then -- at trial you demonstrate waiver, then we decide whether they have complied or not complied, whether they have complied, whether they will comply, and what is out there in the universe of documents that they have waived. That's the way it works.

You do not get to take discovery on these issues. You could take discovery on waiver. I have to believe you can take discovery on waiver, but that's not what you are talking about. You are saying it's been waived, and I want to find out how many pages there are in

the document that I believe should be disclosed. You don't get to do that in discovery.

MR. PERRONI: But, judge, here is the distinction. They admitted. They admitted, after I sued them, that they disclosed 241 pages of documents, this is Finstad. I think I'm entitled to determine whether or not there has been any more waivers. If somebody faxed five pages to Suzanne Finstad, I think I am entitled to know whether or not that was more documentation in the Natalie Wood case that they have not provided -- disclosed to me pursuant to the California Public Records --

THE COURT: I think, you know, the issue of waiver is a legitimate issue. But, hey, it's not even in your opening brief. You filed your opening brief so whatever information you got in this discovery, you couldn't use.

MR. PERRONI: Judge, I filed my opening brief because I couldn't get before the Court before the opening brief was due.

THE COURT: Now all you get is a reply brief, and you can't put it in your reply brief.

MR. PERRONI: I didn't want to disappoint the Court.

THE COURT: Look, if you have shown waiver, then we'll address waiver. So what you do at the hearing or opening brief -- I hope you did this -- you present evidence that some author got a fax that was five pages long in 2003, probably stating the facts wrong, and you

think that all five of those pages are on the report, and that's been waived. That's what you do. And then we fight over that at the trial, but you don't get to take discovery over -- you certainly could have taken discovery on waiver, but not on the nature of the document itself for which you contend there's been a waiver.

Now, if they have to present a log -- if I decide at trial that they have to present a privilege log, then we'll find out how many pages they are contending they are withholding for each particular document, but we're not there yet.

MR. PERRONI: All right. If I might make a record on a couple of things. I don't want to take up all your time. I know there are other lawyers waiting for cases, but I think this is important because I think that the Court -- I really do believe that you have misunderstood the motion that I have made in connection with a motion to compel and why they are pertinent to the case.

THE COURT: Well, this is the problem with your bringing the motion, you know -- you are right, I may not understand what your theory is completely because I haven't read your opening brief, but that's a merits issue.

MR. PERRONI: All right.

THE COURT: Go ahead. Make your record.

MR. PERRONI: Okay. Can I say a couple things in this regard. Okay. First of all, let me say at the outset, in their responses to my motion to compel, the

respondents -- this is the first instance that's in those responses that the respondents raised this issue of no discovery in California Public Records Act cases or suggested that there was some kind of limited discovery. I don't believe they have even argued that. They have just argued there's no discovery in California Public Records Act cases. All right.

THE COURT: Right.

MR. PERRONI: Well, here is the problem with that. I believe they have waived that issue in this case at this juncture because they have participated in the discovery process. They have answered interrogatories, they have answered requests for admissions, and they have made people available for depositions that participated in these depositions.

They can't come in here now under the law of the State of California in a response to a motion to compel discovery and say Mr. Perroni is not entitled to discovery. They should have raised it before you in a motion to compel, and we should had this discussion before I filed these motions, before I engaged in the discovery and spent all the money and time necessary to come out here and do this.

THE COURT: Didn't anybody ask me before you did all this? I would have told you what my view was on discovery in these kind of cases.

MR. PERRONI: Judge, no one asked you. Not only did no one ask you, this issue has never been raised. It

was not raised in an objection. The only thing that was done was there was some suggestion by respondents that there may be an issue about this. They just kind of danced around out there, but they never did say to you, "Judge, Mr. Perroni is not entitled to discovery, or he is entitled to limited discovery." They never did that until they filed these responses. That's when they cited this court of appeals case that they are talking about and other reasons. But in that they didn't say I was entitled to limited. They said I was entitled to nothing.

THE COURT: Okay. You want to respond.

MR. BARER: Certainly, Your Honor. It sounds like no good deed goes unpunished. Because we responded to discovery and gave Mr. Perroni information that he uses in his case, we should be punished with waiver. The fact is before we filed our oppositions to the motions to compel, the meet and confer which is reflected in the opposition exhibits shows that we did indeed raise, not only the argument that there is no discovery in CPRA actions, but cited to the Anderson-Barker case and gave the address of the website showing the docket in that appellate case.

As to waiver, we certainly did not waive any position. We just provided the information. We opposed the motion, and we opposed it on the merits as well as the issue of whether discovery is available in a CPRA. Even if Anderson-Barker ultimately rules discovery is available, unbridled discovery, Mr. Perroni's motion still fails procedurally and on the merits, as your Honor found.

THE COURT: Mr. Perroni.

MR. PERRONI: All I can say is sending me an email and saying it's discovery and filing something before this court and getting a ruling on it is two entirely different things, and they didn't do that.

THE COURT: Well, you are saying they should have moved for a protective order? Is that what you are saying?

MR. PERRONI: That's exactly what I'm saying. I'm saying that if you they thought that I was not entitled to the propound those interrogatories that they objected to or those requests for admissions that they objected to or the hundreds of times in the deposition where they instructed people not to answer, if they thought that that was because that I was not entitled to discovery under the California Public Records Act, they should have come before this Court before it ever started and they should have said that.

THE COURT: Okay.

MR. PERRONI: They didn't do it.

THE COURT: Okay.

MR. PERRONI: Now, next, these interrogatories again and I know what your feeling is about them, but if you will just indulge me for a second.

THE COURT: All right.

MR. PERRONI: All right. The wholesale use of Haney versus Superior Court in this case by the respondent in these interrogatories was wrong. Haney is a pre-petition case. The holding is set forth in the last

sentence of the case, and here is what the holding is. "We therefore conclude that the court of appeals erred in holding that such inventories or lists must be created as a matter of course as part of an agency's initial response to CPR requests."

There is nothing in that case that talks about what happens after a petition is filed with this Court. And discovery is propounded and objections are made about lists and descriptions. Secondly, I didn't ask for any lists. All I asked for were questions, do you have this. I didn't ask them to describe it. I didn't ask them to list it. All I said was -- and most of them was do you have this or how many pages, how many photographs do you have.

The reason for that is this, judge. Let's say they have 20 photographs, all right. I have said repeatedly and I will say to this Court on the record there are certain photographs that I wouldn't want even if you said you would give them to me. So I'm trying to narrow this down for you, to hone it down so that when I come before you I will be able to say I want these particular photographs.

THE COURT: But it doesn't work that way. I don't know how I -- I can only tell you in the sense of attorney-client privilege which I am sure you are familiar with, and the way it works in Arkansas is probably the way it works in California, which is the way you test whether a document that has been withheld for attorney-client

privilege purposes is the judge orders a privilege log in which the withholding party identifies who wrote it, who received it, the date of it, perhaps the subject matter of it, and then the judge evaluates based on that information whether or not the document is privileged.

You do not get to ask discovery questions about an attorney-client privileged document or a document withheld based on attorney-client privilege how many pages it is, whether there are photographs in it, describe the photographs, you don't get to do that. It is irrelevant to the determination of whether the privilege has been properly asserted, or in this case whether the investigatory privilege exists or the trail has gone cold, as you say, or has somehow been waived.

Only certain facts are relevant to those issues and only those facts. You do not get to take wholesale discovery, even with the motive, a pure motive, of trying to pare down the number or nature of documents that are at issue. You don't get to do that.

MR. PERRONI: All right, judge, but the -- that's not what they objected on. You see, they didn't object on that I couldn't conduct discovery. They objected on the basis of Haney, and Haney is a pre-petition case. It's just that simple. That's all. Not attorney-client privilege or investigatory privilege. They just objected on the basis of Haney and somehow or other me asking for list, which I didn't do.

THE COURT: Okay. Let's get their response.

MR. BARER: Certainly, Your Honor. What Haney says near the end is that there is no right to an inventory under the CPRA. And that raises the question of whether Mr. Perroni can bring an action under the CPRA to compel responses and then bring discovery asking for information that he can't get through the CPRA itself. Our position is, no. And Your Honor's well-reasoned tentative also says no. That should be the law. That is the law.

THE COURT: Well, it's not just -- Haney is about CPRA, but in California you can't ask for a privilege log. Only a judge can order a privilege log. It's been awhile since I have handed an IC case, but that is correct, is it not, counsel? You can ask for it. You can ask for anything you want, but the other side is not required to give you a privilege log unless ordered by the Court.

MR. BARER: I haven't looked at the most recent version 2031 to confirm that.

THE COURT: Okay. Anybody out there disagree? I see him shaking his head. I don't know. Then maybe I'm not right. We're digressing.

MR. PERRONI: Judge, I never asked for a privilege log.

THE COURT: That's what the list is. You are saying you asked whether one exists?

MR. PERRONI: But I didn't ask for a list. I just asked if they had something. That is not asking for a list.

THE COURT: I understand. Okay. Go on to the

next issue while I look this up.

MR. PERRONI: I'll let you look that up here.

THE COURT: Yes. You can go ahead.

MR. PERRONI: Your Honor, the attorney-client privilege objection to some of my interrogatories, first, we need to keep in mind that the interrogatories propounded to respondents and not their attorneys. Second, the interrogatories in question don't ask for attorney work product, and responses have not shown that they do. Last but not least, Snider does not supersede the California Code of Procedure, Section 2017.010, which says discovery may relate to defenses, and California Code of Procedure Section 2030.010, little (b) in parens, discovery may relate to facts and witnesses. And it specifically says in there that it's not objectionable if -- if it's information that the attorneys had received during the course of their over.

All the interrogatories asked for is -- I asked them -- they asserted 21 defenses. I picked the ones out that I thought they were serious about because the rest of them looked to me, in my experience, to be more boilerplate. I asked specific interrogatories about the evidence that they would use and the witnesses that they would use, and I just don't see how Snider and some contingent that it's attorney work product fits. I just don't see how this -- if I am trying to -- all right. You make a Public Records Act request --

THE COURT: See you are way beyond the pale here.

You don't call witnesses in a CPRA case. You are not entitled to know what declarations they are going to provide in a CPRA. You are just way beyond the pale.

Now, I've looked up CCP 2031.240 which is a response to inspection demand which we don't have a motion to compel further responses. It does say, 2031.240(c)(1) says, "If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary -- I don't know what they mean by, if necessary, a privilege log.

It goes on to say it is the intent of the legislature to codify the concept of a privilege log as that term is used in California case law. This was added -- I can't tell whether it was added in 2009 or 2005. But, okay, privilege log does exist by request in California for request for production which we don't have here.

MR. PERRONI: All right. And may I make another point here. And I am asking for a little help here, judge. I mean, I know I'm a lawyer, but I am a pro se litigant --

THE COURT: And you know you don't get that. You don't get that. Pro se litigants, I have to inform them of what their rights are, but -- once I do that, I cannot treat you any differently than I treat any California lawyer. And you would not get anywhere without an adequate Separate Statement in a motion to compel in most courts in

California.

MR. PERRONI: Judge, I'm not asking for any special treatment. What I was going to say is this.

THE COURT: Sorry to interrupt.

MR. PERRONI: I want you to tell me what you believe the procedure is when a person makes a Public Records Act request; the other side says forget it, we're not giving it to you; the petitioner files a petition, a verified petition; the other side responds and asserts an affirmative defense. Now, they have the burden on the affirmative defense.

THE COURT: Right.

MR. PERRONI: All petitioner has to do is make a prima facie case that there are public records and that they are disclosable.

THE COURT: Absolutely right.

MR. PERRONI: Okay. If I'm a petitioner and I do that and they raise a defense, how do I find out whether their defense is viable unless I propound discovery and take depositions of persons that they say are going to support their defense? How do I do that?

THE COURT: I don't know what defense you are talking about.

MR. PERRONI: I'm talking about -- let's take the defense of the investigatory exemption. Let's take that one. I make a records request, they say an investigatory records exemption. How do I test whether -- what it is they are going to present to --

THE COURT: You don't before trial. You do not test it. You do not get to test them. You make your prima facie case. They present their evidence of privilege. I decide at trial whether the privilege exists or not, and then we talk about what is within the scope of that privilege. That's the way it works. You do not get to take discovery before the hearing on the merits on their assertion of privilege. You do not. And we're virtually done here. You need to wind up.

MR. PERRONI: I see. I don't -- what you are saying is I don't get to test the defense. If they assert a defense, I don't get to test it.

THE COURT: An affirmative defense, you know, that -- supported by facts, and you said they asserted 23 or some number of affirmative defenses.

MR. PERRONI: 21.

THE COURT: If they really stand by them -- are you standing by your affirmative defenses?

MR. BARER: We're standing by the ones we asserted in the respondent's brief that we filed at the end of last month.

THE COURT: Okay. I don't know what those are, but all others are waived; right?

MR. BARER: All the ones we don't assert in these procedure are waived, yes.

THE COURT: Yeah. I mean, I don't know how I can say it. In my view the discovery is limited to where did you look, who did you ask for documents, how did your

document gathering occur. And if you are asserting a privilege of some kind or the issue of waiver, which is really you have the burden on, I think you could inquire about facts that would support waiver, "Did you give documents to author so and so in 2001 or -3 or whatever it was. If so, what documents did you give her?" I think that you could take that discovery. Apparently, you already know those facts.

MR. PERRONI: That's the way I asked in depositions. They refused to answer on the basis of privilege.

THE COURT: Can't be privileged that they gave documents to a third party author.

MR. PERRONI: That's what I am trying to say to the Court.

THE COURT: I mean, that's not in front of me now.

MR. PERRONI: I mean, that's exactly what they did.

THE COURT: But you are not precluded from presenting that at trial. So assuming you have real evidence of the fact that they gave documents and then --

MR. PERRONI: Presenting that they refused to answer.

THE COURT: No, presenting that you have evidence, real evidence, not a newspaper article, that they gave documents to an author.

MR. PERRONI: Okay. Well, when they deny my

request and when I file my petition, how is it that I find out the evidence to submit to this Court about whether or not they have done that without --

THE COURT: Well, maybe you contact the author. That might be one way.

MR. PERRONI: Well, I got a stipulation from them on what the author said.

THE COURT: Okay. So you have --

MR. PERRONI: It's in the file.

THE COURT: Okay. So you have evidence.

MR. PERRONI: But am I limited to just what I can scrounge up, or can I test what they are saying? Do I have to except what they say?

THE COURT: Well, I am not going to rule in a vacuum. Your big problem is you have already filed your opening brief. I mean, you are asking for discovery after you have filed your opening brief. You can't stick it in your reply. You can't get a continuance to supplement. You shouldn't have filed your opening brief in the first place if you wanted a continuance.

So I am -- I mean, this is all interesting. It is interesting, but I am confident that the motion has to be denied. And the County's motion, I don't really think it's an important motion, but, you know, I think it's excusable that you don't know what happened 35 years ago. So that motion is granted.

The tentative is adopted as the order of the Court.

MR. BARER: Thank you, Your Honor.
MS. BIRENBAUM: Thank you, Your Honor.
THE COURT: Mr. Perroni, I don't know what you do in Arkansas. In California lawyers often waive notice of the Court's ruling. You have a right to give notice, to receive notice, or waive notice. Which do you want to do?
MR. PERRONI: Judge, I have one other thing to say. Can I make a record on one other thing?
THE COURT: Yes. In a hurry, yes.
MR. PERRONI: In the tentative ruling you said I didn't have a substantial basis for this.
THE COURT: Right.
MR. PERRONI: All right. Well, if they didn't raise this issue about what kind of discovery I could get in this case before I conducted this discovery, then how is it that it can be said that I didn't have a substantial basis.
THE COURT: You didn't file a Separate Statement that complied with the law. You lacked substantial justification for that reason alone. You cannot come to court on a motion to compel and file an inadequate Separate Statement such that you lose procedurally and expect not to be sanctioned. The sanctions are not personal. It's not that you acted wrongly in the sense of evil intent. It's that you forced the other side to go to the effort of opposing your motion, spending attorneys fees on that, when you lacked substantial justification because you didn't have an adequate Separate Statement.

MR. PERRONI: Well, Judge, lacking substantial justification for filing the motion and not complying with the technical requirements of the local rule are two different things.

THE COURT: It's not a local rule. It's a California Rule of Court.

MR. PERRONI: Well, okay. California rule --

THE COURT: It's a rule that applies across the state.

MR. PERRONI: All right, but the two are different. The substantial basis for filing the motion is whether or not there is a justification for it. The not preparing an adequate Separate Statement is a procedural issue that comes at the time the pleadings are filed. It's two different things.

THE COURT: Okay. I mean, that's a fair argument. What about that?

MR. BARER: Your Honor, Mr. Perroni filed motions that were procedurally defective due to the lack of a Separate Statement and required us to prepare oppositions to motions that were doomed to failure. That is lack of substantial justification. He sought discovery such as questions about whether evidence we could have presented at trial, what witnesses we present at trial that is barred by California law. We told him that in the meet and confer. We told him that in the responses. He still moved to compel.

Our clients spent money for us to prepare

the oppositions. The Discovery Act says in this situation the winning party gets reimbursed for their trouble. That's all we're asking for.

THE COURT: Right. Let me --

MR. PERRONI: Should I respond here to something?

THE COURT: Well, I need to look at one of the provisions. Give me -- cite to me one of the provisions.

MR. PERRONI: At no time did they say to me, Mr. Perroni, you have a deficient statement of disputed interrogatories in response. At no time -- and I gave them an advance copy of these statements. I don't think it's fair to be able to come in and claim that I didn't have a substantial basis when they had the pleadings before I even filed them.

THE COURT: See, it doesn't say -- these sanction provisions don't say anything about at the time you file you have to lack substantial justification. It's the motion that lacks substantial justification, and a procedurally defective motion lacks substantial justification. The tentative is adopted as the order of the Court. So back to notice. You want to waive, give, or receive notice?

MR. PERRONI: I'm not sure I understand. I'm not sure what --

THE COURT: After every hearing where a judge has made a ruling, the statute requires one party or another to prepare a Notice of Ruling, what did the judge rule. Since you were both here, lawyers often waive notice. But you

don't have to waive notice. You can ask for notice from the other side of what my ruling was, or you may give the notice of what my ruling was. You have three choices.

MR. PERRONI: Are you going to put your ruling in an order?

THE COURT: It is in an order. I just adopted the tentative as my order.

MR. PERRONI: You just adopted the tentative.

THE COURT: Yes.

MR. PERRONI: Is that part of the record now?

THE COURT: It is.

MR. PERRONI: Okay. Then I will waive the notice. I know what you said and what was done.

MR. BARER: We waive notice as well, Your Honor.

THE COURT: Okay. Thank you.

MR. BARER: Thank you.

MS. BIRENBAUM: Thank you, Your Honor.

(Proceeding adjourned at 2:24 p.m.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE

SAMUEL A. PERRONI,	)	
PETITIONER,	)	
vs.	)	NO. BS159430
	)	REPORTER'S
MARK A. FAJARDO ET AL.,	)	CERTIFICATE
RESPONDENT.	)	

I, Buford J. James, CSR 9296, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages 1 through 33, inclusive, comprise a full, true, and correct transcript of the testimony and proceedings held in the above-entitled matter on TUESDAY, AUGUST 9, 2016.

Dated this 12th day of SEPTEMBER, 2016.

Buford J. James, Certified Shorthand Reporter