

Daily Journal

www.dailyjournal.com

VOL. 129 NO. 34

MONDAY, FEBRUARY 22, 2016

'I object!' Possibly not. Learn new rules for objections

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Only two months in, 2016 has already experienced significant changes to California's statutory and common law. Not to be left out, objections have received their fair share of attention from the Legislature and courts as well. As objections are often required to preserve future rights, being well-versed in the current laws governing them is an imperative for all litigators. This

presents a brief overview of recent developments on the topic.

Objections on motions for summary judgment/adjudication.

Effective Jan. 1, 2016, newly amended Code of Civil Procedure Section 473c allows the trial court to pick and choose which evidentiary objections on a motion for summary judgment/adjudication to rule on. CCP Section 473c(q).

Section 473c(c) requires the court to consider all evidence submitted in support of motion for

summary judgment/adjudication except evidence to which it sustains evidentiary objections. Section 473c(a)(5) says parties must make any such objections on or before the hearing, otherwise the objections are waived. Newly enacted Section 473c(q) provides that "[i]n granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review."

The new subsection codifies the California Supreme Court's decision in *Reid v. Google Inc.*, holding that "if the trial court fails to rule expressly on specific evidentiary objections, it is presumed that the objections have been overruled, the trial court considered the evidence in ruling on the merits of the summary judgment motion, and the objections are preserved on appeal." 50 Cal. 4th 512, 527 (2010).

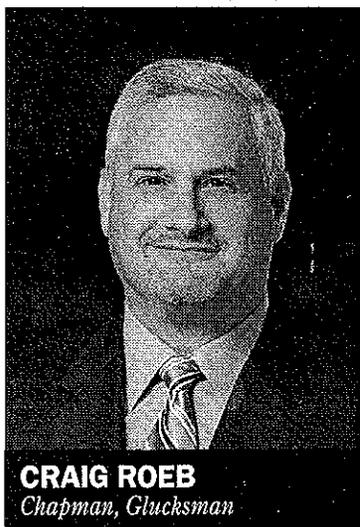
Section 473c(q) was developed in response to the "common practice for litigants to flood the trial courts with inconsequential written evi-

dentiary objections" which results in judges "spend[ing] hours ruling on evidentiary objections for a single summary judgment motion, [even though] the number of objection that pertain to evidence on which a court relies in determining whether a triable issue of fact exists is a small subset of the total number objections made by the parties." (Feb. 25, 2015 Senate Judiciary Committee Report, pp. 2-3).

Nevertheless, the newly amended statute does not provide that parties should only object to material issues. Thus, parties must continue to make all evidentiary objections in order to preserve them on appeal.

Objections to demands for exchange of expert information. Serving objections to demands for the exchange of expert information may no longer be sufficient to excuse a party from disclosing its experts or participating in the exchange, without waiving its rights to present expert testimony later in the litigation or at trial.

In early February 2016, the 2nd District Court of Appeal held that a party's refusal to participate in



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the exchange on the basis of an objection served on the other parties, precludes the refusing party from presenting any expert testimony later in the case. *Perry v. Bakewell Hawthorne LLC*, 2016 DJDAR 1161 (Feb. 2, 2016).

In *Perry*, one defendant served a demand for exchange of expert witness information pursuant to Code of Civil Procedure Section 2034.210. Plaintiff served an objection to the demand on the ground that it was untimely and did not participate in the exchange or designate any expert witnesses. After the two defendants exchanged expert information and designations, one moved for summary judgment. In support of his opposition thereto, the plaintiff submitted two expert declarations. The defendant objected, asserting that the plaintiff's failure to participate in the exchange or designate experts precluded him from using the declarations to oppose the summary judgment.

Citing *Cottini v. Enloe Medical Center*, 226 Cal. App. 4th 401 (2014), the court held that although the plaintiff had served a written objection to the timeliness of the

demand, the objection did not excuse plaintiff from disclosure under Code of Civil Procedure Section 2034.260 because the Legislature does not provide for objections to demands for exchanges of experts. The plaintiff should have instead filed a motion for a protective order. As he did not seek or obtain such an order and did not participate in the exchange, the trial court was authorized to exclude his expert declarations pursuant to Code of Civil Procedure Section 2034.300.

While it is currently unclear whether other appellate districts will follow *Perry*, prudent litigators should be aware that at least one appellate district requires a motion for a protective order be filed when a party objects to a demand for exchange of expert information. Thus, a party solely relying on service of a written objection risks exclusion of its expert testimony, which can significantly impact its overall success in the litigation.

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