

1 DOCUMENT DEMAND NO. 26 :

2 All DOCUMENTS containing the policy of YOUR diocese CONCERNING the
3 change in location of a priest from another diocese to YOUR diocese.

4 RESPONSE:

5 The Diocese incorporates by reference its General Objections set forth above. The
6 Diocese further objects to this Request because it is overly broad, unduly burdensome and
7 oppressive, and it imposes an unreasonable burden and expense upon the Diocese. The
8 Diocese further objects to this Request because the term "policy" is vague and ambiguous.
9 Subject to and without waiving its objections, the Diocese responds as follows:

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

13 LEGAL AND FACTUAL REASONS FOR COMPELLING FURTHER RESPONSE:

14 A. Good Cause For Discovery

15 Code of Civil Procedure Section 2017.010 provides that:

16 Unless otherwise limited by order of the court in accordance with this
17 title, **any party may obtain discovery regarding any matter, not**
18 **privileged, that is relevant to the subject matter involved in the pending**
19 **action or to the determination of any motion made in that action, if the**
20 **matter either is itself admissible in evidence or appears reasonably**
21 **calculated to lead to the discovery of admissible evidence. Discovery may**
22 **relate to the claim or defense of the party seeking discovery or of any**
23 **other party to the action. Discovery may be obtained of the identity and**
24 **location of persons having knowledge of any discoverable matter, as well**
25 **as of the existence, description, nature, custody, condition, and location**
26 **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 the Mexican
29 Catholic Church authorities want the Court to believe that Father Aguilar went to California
30 for a vacation, and as part of that nonsense, they have disclosed virtually nothing about the
31 process by which Father Aguilar was transferred *to work as a priest* in Los Angeles. Hence, it
32 has become necessary to compare the process by which other priests are transferred to work in
33 another diocese. How priests are transferred must be considered *prima facie* relevant for

1 discovery purposes, as such information will assist the Plaintiff in obtaining either admissible
2 evidence, or is reasonably calculated to lead to the discovery of admissible evidence.

3 Obtaining information about the process all priests are supposed to follow to get
4 transferred will assist in proving how the Mexican Catholic Church authorities used California
5 as a location to transfer Father Aguilar, and what documentation was generated in order to
6 accomplish the transfer. It will also assist in proving the extent of cooperation between the
7 Mexican and American Catholic Churches in this regard. Specifically, it will assist in proving
8 how priests are supposed to be re-transferred to Mexico. It will also assist in identifying what
9 the documentation is supposed to be for transfers and re-transfers.

10 Certainly, documents regarding priest transfers cannot be considered "privileged"
11 unless they are restricted to communications between the Defendants and their attorneys.

12
13 B. Objections

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Additionally, the objections were frivolous, warranting sanctions.

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

29 C. Substantive Response

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

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

4 The Plaintiff does not know whether *any* documents have been produced regarding the
5 topic of this demand.

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

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

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

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

21 The Response further indicates that only "non-privileged documents" will be produced.
22 That is an improper response unless a privilege log was served as part of the response.
23 Otherwise, there is no identification of the particular documents that are being withheld from
24 production, and there is no identification of the particular privilege that is being invoked.
25 Those failures are violations of the Code. The objections have been waived by this non-
26 compliance with C.C.P. § 2031.240(b).

27 *California Judges Benchbook: Civil Proceedings--Discovery* (Cal CJER 1994, Update
28 2006), §15.25, p. 188, describes the requirement for a privilege log as follows (in part):

All such documents must be listed and described in what is commonly referred to as a privilege log. This description must be sufficiently specific to enable the judge to evaluate the claim. CCP

1 §2031.240(b) (formerly CCP §2031(g)(3)).

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

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

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

21 [Emphasis added.]

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

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

26 [Cal. Practice Guide: *Civ. Proc. Before Trial* (TRG 2004), § 8:1474.5
27 (emphasis added); and see also, *In re Grand Jury Investigation*, 974 F.2d
28 1068, 1071 (9th Cir.1992).]

28 In *OXY Resources California v. Superior Court* (2004) 115 Cal.App.4th 874, 883, the

1 need to give some indication of the content of the communication was demonstrated.

2 In response to document requests served by Calpine, OXY and EOG withheld
3 certain documents and provided Calpine with privilege logs identifying the
4 withheld documents. Among the documents withheld were 204 documents
5 exchanged between OXY and EOG at various times before and after the close
6 of the transaction on December 31, 1999.

7 ****630 As reflected in EOG's privilege log, the privilege claimed as to the
8 withheld documents exchanged between OXY and EOG is either a
9 combination of joint defense and attorney work product, or a
10 combination of joint defense, attorney work product, and attorney-client
11 privilege. EOG's description of each withheld document on its privilege
12 log gives some indication of the content of the communication. For
13 example, EOG described one document as "1- page e-mail, re: Attached
14 draft consent request letter for EOG properties."**

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

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

28 [Emphasis added.]

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

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

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

22 Even OXY acknowledges the interests of EOG and OXY in the transaction
23 were "adversarial, common, and at times, a blend of the two." Yet, **OXY
24 apparently expects the court to rely entirely on the conclusory Peterson
25 and Stevens declarations, which simply state in general terms that EOG
26 and OXY had a common interest in finalizing their transaction and in
27 responding to Calpine's inquiries about the Elkhorn Slough. Neither the
28 privilege log nor the declarations reveal the content of any of the
communications, so it would be impossible for Calpine to offer evidence
refuting OXY's claims that all of the withheld communication involve
matters of common interest. Indeed, without more information about the
disputed documents, Calpine cannot demonstrate that each
communication between OXY and EOG was not reasonably necessary to
accomplish **640 the purpose for which a lawyer was consulted.**

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

17 [Emphasis added.]

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

25 An article published in the San Francisco Daily Journal on September 6, 2007, and
26 authored by Richard M. Coleman, Esq., who is "a full-time neutral with Alternative Resolution
27 Centers, as well as a discovery referee" in the Los Angeles area, finds that these types of
28 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."

Did the respondent comply with the statutes? No. The response
"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.

C.C.P. Section 2031.240(b)(1) provides that the respondent: Identify
with particularity any document ... to which an objection is being made.

[Emphasis added.]

The response is also ambiguous: "**Without waiving these objections**

1 and subject to them.”

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

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

9 [Italics in original; bold added.]

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

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

16 The insurers also challenge the district court's order suppressing
17 certain evidence placed in the claim file after litigation commenced. The
18 district court granted this motion upon finding that the insurers withheld
19 evidence that they were ordered to produce regarding their post-litigation
20 treatment of Merrick's claim. The insurers argue that the court erred in finding
21 that they had withheld any evidence. “Courts need not tolerate flagrant abuses
22 of the discovery process” and have “inherent power” to exclude evidence as a
23 sanction for such abuses. *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27
24 (9th Cir.1980). We review the imposition of discovery sanctions for abuse of
25 discretion and the underlying factual determinations for clear error. *Valley
26 Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1052 (9th Cir.1998). Based
27 upon the record, we cannot conclude that the district court's finding that the
28 insurers withheld evidence is clearly erroneous. The insurers' pretrial
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
responses expressly objected on the basis of privilege and attested that
“subject to these objections,” their production was complete. FN3 Only
after the magistrate ordered the privileges waived (in response to
Merrick's assertion that defendants were withholding evidence), and
Merrick brought his motion in limine, did the insurers state
unequivocally that no documents were withheld on the basis of privilege.**
FN4 Even then, counsel's statement at the hearing could be understood as
admitting the existence of withheld documents.

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

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

1 In addition, **the existence of withheld documents may be inferred from the**
2 **paucity of material actually produced.** Although the insurers received over
3 3000 pages of documents pertaining to Merrick's claim after litigation began,
4 it produced only three short memos analyzing this material, none of which
5 was generated by the attorneys who were actively managing the case file after
6 Merrick filed his complaint. FN5

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

15 [*Id.*, at p. 6; bold added.]

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

24 As to the pre-1988 time period, the Mexican Catholic Church Defendants have
25 produced *93 pages of documents for a priest who was ordained in Mexico in 1970*, and
26 worked as a priest in Mexico except for the time period of March 1987 to January 1988 when
27 he was in California, until perhaps the present day. The "paltry" production of documents
28 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
"compliance statements". Plaintiff and the Court need to inspect the documents that normally
accompany the transfer of Mexican priests to California, and back, in order to evaluate the
reliability of the documents productions concerning Father Aguilar, and to evaluate the
credibility of the Defendant's statements about that process, including their feigned limited
knowledge about anything the priests do, and their feigned lack of communication between the

1 different "jurisdictions" within the Catholic Church.

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. 27 :**

9 All DOCUMENTS containing the policy of YOUR diocese CONCERNING the
10 incardination of a priest from YOUR diocese to another diocese.

11 **RESPONSE:**

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

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18 are in its possession, custody or control, which documents have not been produced previously
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20 **LEGAL AND FACTUAL REASONS FOR COMPELLING FURTHER RESPONSE:**

21 A. **Good Cause For Discovery**

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9 **§2031.240(b) (formerly CCP §2031(g)(3)).**

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

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

19 The law attempts to find a balance between these competing interests in
20 discovery and the assertion of privilege by requiring a party objecting to
21 document production to "identify with particularity" any document as to
22 which it makes an objection, and "set forth clearly the extent of, and the
23 specific ground for, the objection," in accordance with Code of Civil
24 Procedure section 2031, subdivision (f)(3). Here, Kaiser has already produced
25 a privilege log specifying the documents as to which it has withheld
26 production on a claim of attorney-client privilege or work product doctrine
27 protection. **The trial court must review Kaiser's privilege log to determine**
28 **whether the specified documents as to which Kaiser claims the**
protection of either the privilege or the work product doctrine are in fact
so protected. For this purpose, the information in Kaiser's log must be
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.]

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

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

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

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

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

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

24 **OXY's privilege log is less revealing than EOG's. Although the document
25 description in OXY's privilege log identifies the document's senders and
26 recipients as well as the type of communication (e.g., letter, e-mail, or
27 facsimile cover sheet), the description gives no indication of the purpose
28 or content of the communication.** The privilege claimed as to the withheld
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.]

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

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

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

1 Even OXY acknowledges the interests of EOG and OXY in the transaction
2 were "adversarial, common, and at times, a blend of the two." Yet, OXY
3 **apparently expects the court to rely entirely on the conclusory Peterson**
4 **and Stevens declarations, which simply state in general terms that EOG**
5 **and OXY had a common interest in finalizing their transaction and in**
6 **responding to Calpine's inquiries about the Elkhorn Slough. Neither the**
7 **privilege log nor the declarations reveal the content of any of the**
8 **communications, so it would be impossible for Calpine to offer evidence**
9 **refuting OXY's claims that all of the withheld communication involve**
10 **matters of common interest. Indeed, without more information about the**
11 **disputed documents, Calpine cannot demonstrate that each**
12 **communication between OXY and EOG was not reasonably necessary to**
13 **accomplish **640 the purpose for which a lawyer was consulted.**

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

[Emphasis added.]

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

24 An article published in the San Francisco Daily Journal on September 6, 2007, and
25 authored by Richard M. Coleman, Esq., who is "a full-time neutral with Alternative Resolution
26 Centers, as well as a discovery referee" in the Los Angeles area, finds that these types of
27 purported responses that are made with and subject to objections do not comply with the Code.
28

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

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

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

13 The response is also ambiguous: "**Without waiving these objections
14 and subject to them.**"

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

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

22 [Italics in original; bold added.]

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

25 In *Merrick v. Paul Revere Life Ins. Co.*, --- F.3d ---, 2007 WL 2458503 (August 31,
26 2007), a case venued in Nevada Federal Court, the 9th Circuit Court upheld a trial court judge
27 order *in limine* which barred the defendant from introducing evidence at trial where the
28 documents were withheld during discovery.

29 The insurers also challenge the district court's order suppressing
30 certain evidence placed in the claim file after litigation commenced. The
31 district court granted this motion upon finding that the insurers withheld
32 evidence that they were ordered to produce regarding their post-litigation
33 treatment of Merrick's claim. The insurers argue that the court erred in finding
34 that they had withheld any evidence. "Courts need not tolerate flagrant abuses
35 of the discovery process" and have "inherent power" to exclude evidence as a
36 sanction for such abuses. *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27
37 (9th Cir.1980). We review the imposition of discovery sanctions for abuse of
38 discretion and the underlying factual determinations for clear error. *Valley
39 Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1052 (9th Cir.1998). Based
40 upon the record, we cannot conclude that the district court's finding that the
41 insurers withheld evidence is clearly erroneous. The insurers' pretrial
42 behavior gives rise to such an inference. **The insurers invoked the privilege
43 in response to a specific document production request, and continued to
44 do so even after the magistrate judge instructed them not to invoke the
45 privilege unless the privilege was actually shielding documents. Their
46 responses expressly objected on the basis of privilege and attested that
47 "subject to these objections," their production was complete. FN3 Only**

1 after the magistrate ordered the privileges waived (in response to
2 Merrick's assertion that defendants were withholding evidence), and
3 Merrick brought his motion in limine, did the insurers state
4 unequivocally that no documents were withheld on the basis of privilege.
5 FN4 Even then, counsel's statement at the hearing could be understood as
6 admitting the existence of withheld documents.

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

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

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

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

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

25 Here, the Mexican Catholic Church authorities assert they have no idea what happened
26 to Father Aguilar after he returned from molesting children in California in January 1988, and
27 they have produced virtually no discovery for the post-1988 time period. As a result, they have
28 managed to fail to disclose the whereabouts of Father Aguilar in Mexico through today's date.
This means that the primary witness in the case has been kept from criminal justice, and justice
in a civil forum, in the form of a deposition under oath and a jury trial in California. The
failure to disclose much of anything about Father Aguilar after 1988 only inurs to the benefit of
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

1 about Father Aguilar is unbelievable. The lack of credibility to the documents produced thus
2 far supports an inference that documents are being withheld by these highly evasive
3 "compliance statements". Plaintiff and the Court need to inspect the documents that normally
4 accompany the transfer of Mexican priests to California, and back, in order to evaluate the
5 reliability of the documents productions concerning Father Aguilar, and to evaluate the
6 credibility of the Defendant's statements about that process, including their feigned limited
7 knowledge about anything the priests do, and their feigned lack of communication between the
8 different "jurisdictions" within the Catholic Church.

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

13
14
15 **DOCUMENT DEMAND NO. 28 :**

16 All DOCUMENTS containing the policy of YOUR diocese CONCERNING the
17 incardination of a priest from another diocese to YOUR diocese.

18 **RESPONSE:**

19 The Diocese incorporates by reference its General Objections set forth above. The
20 Diocese further objects to this Request because it is overly broad, unduly burdensome and
21 oppressive, and it imposes an unreasonable burden and expense upon the Diocese. The
22 Diocese further objects to this Request because the term "policy" is vague and ambiguous.
23 Subject to and without waiving its objections, the Diocese responds as follows:

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

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

28 A. Good Cause For Discovery

1 Code of Civil Procedure Section 2017.010 provides that:

2 Unless otherwise limited by order of the court in accordance with this
3 title, **any party may obtain discovery regarding any matter, not**
4 **privileged, that is relevant to the subject matter involved in the pending**
5 **action or to the determination of any motion made in that action, if the**
6 **matter either is itself admissible in evidence or appears reasonably**
7 **calculated to lead to the discovery of admissible evidence. Discovery may**
8 **relate to the claim or defense of the party seeking discovery or of any**
9 **other party to the action. Discovery may be obtained of the identity and**
10 **location of persons having knowledge of any discoverable matter, as well**
11 **as of the existence, description, nature, custody, condition, and location**
12 **of any document, tangible thing, or land or other property.**

13 While discovery is currently limited to the “jurisdictional” issue pending before the
14 Court, good cause exists for full compliance with this document demand because the Mexican
15 Catholic Church authorities want the Court to believe that Father Aguilar went to California
16 for a vacation, and as part of that nonsense, they have disclosed virtually nothing about the
17 process by which Father Aguilar was transferred *to work as a priest* in Los Angeles. Hence, it
18 has become necessary to compare the process by which other priests are transferred to work in
19 another diocese. How priests are transferred must be considered *prima facie* relevant for
20 discovery purposes, as such information will assist the Plaintiff in obtaining either admissible
21 evidence, or is reasonably calculated to lead to the discovery of admissible evidence.

22 Obtaining information about the process all priests are supposed to follow to get
23 transferred will assist in proving how the Mexican Catholic Church authorities used California
24 as a location to transfer Father Aguilar, and what documentation was generated in order to
25 accomplish the transfer. It will also assist in proving the extent of cooperation between the
26 Mexican and American Catholic Churches in this regard. Specifically, it will assist in proving
27 how priests are supposed to be re-transferred to Mexico. It will also assist in identifying what
28 the documentation is supposed to be for transfers and re-transfers.

29 Certainly, documents regarding priest transfers cannot be considered “privileged”
30 unless they are restricted to communications between the Defendants and their attorneys.

31 B. Objections

32 The objections made to this document demand are *too general and/or meritless* and/or