



BY VIVIAN F. WANG

EVIDENTLY OBJECTIONABLE

Outside of summary judgment or anti-SLAPP motions, there is little guidance for courts and attorneys on evidentiary objections

THE USE OF EVIDENCE in civil motion practice in California state court can raise numerous questions regarding evidentiary objections. These include: 1) whether to object to an opponent's evidence, 2) whether to respond to an opponent's objections, 3) what is the proper time and manner for submitting any objections or responses (i.e., whether to do it in writing before the hearing or orally at the hearing, and whether any written filings should adhere to a particular format), 4) whether the court is required to expressly rule on any objections, and 5) what is the effect on appeal of the trial court's evidentiary rulings, or its failure to make the same.

In the context of summary judgment motions, the Code of Civil Procedure, the California Rules of Court, case law, and secondary authorities collectively provide answers to a number of these questions. There is clear enough guidance as to how and when to make and respond to evidentiary objections. Also, it is well settled that the court

must expressly rule on all evidentiary objections and that in the absence of an express ruling, an objection is deemed overruled but preserved for appeal. With motions to strike under California's anti-SLAPP statute, courts are also obligated to rule on evidentiary objections.

In other contexts, though, the authorities offer little or no guidance on any of these questions. This lack of guidance is surprising and problematic. Among other undesirable effects, it increases the uncertainty of and the burden on litigants, who may, as a matter of caution, feel obligated to submit evidentiary objections or responses thereto, and take an overinclusive approach that courts have criticized in the summary judgment context. Similarly, a litigant may, as a matter of caution, feel obligated to advance its position in writing in a prehearing filing, when doing so orally at the hearing could adequately preserve the position at far less expense. This situation also increases the

burden on courts, as they are the recipients of all this potentially superfluous written material.

The solution, however, is not necessarily obvious. A rule that courts will not entertain evidentiary objections on motions other than those under the summary judgment or anti-SLAPP statutes would be simple and clear, and it would eliminate the burden on parties and courts associated with evidentiary objections. But such a rule would fail to recognize that decisions on other types of motions too should rest on solid evidence and that judges may not want to sort out evidentiary issues without input from the parties. If parties are

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to be entitled to make and respond to evidentiary objections, there should be specific rules, as with summary judgment, governing how and when to do so.

It would pose an undue burden on courts to extend their obligation to rule on evidentiary objections in the summary judgment and anti-SLAPP contexts to all civil motions. The best solution in this regard may be a compromise approach that draws from a recent proposed amendment to California's summary judgment statute, Section 437c of the Code of Civil Procedure, which would require courts to rule only on objections to evidence that are material to the disposition of the motion. Courts should be encouraged to do the same for other kinds of civil motions.

Summary Judgment and Anti-SLAPP Motions

When contemplating what the rules governing evidentiary objections might look like, the natural starting point is the existing body of law governing evidentiary objections on summary judgment. Section 437c(b)(5) and (d) provide that objections must be made "at the hearing" or are deemed waived. Rule 3.1352 of the California Rules of Court provides that a party can make evidentiary objections either in writing or at the hearing as long as a court reporter is present.¹ In *Reid v. Google, Inc.*, the California Supreme Court confirmed that "written evidentiary objections made before the hearing, as well as oral objections made at the hearing are deemed made 'at the hearing'" under Section 437c for purposes of preserving the objection. "[E]ither method of objection avoids waiver" on appeal.² For written objections, Rule 3.1354(a) of the California Rules of Court supplies deadlines, requiring them to be served and filed "at the same time as the objecting party's opposition or reply papers are served and filed." Rule 3.1354(b) describes formatting requirements for written objections. Trial courts "must rule expressly" on evidentiary objections accompanying summary judgment papers.³ *Reid* holds that objections not expressly ruled upon are deemed overruled but preserved for appeal.⁴ Neither the Code of Civil Procedure nor the California Rules of Court addresses responses to evidentiary objections in summary judgment proceedings,⁵ but *Tarle v. Kaiser Foundation Health Plan, Inc.*, holds that "a party who fails to provide some oral or written opposition to objections, in the context of a summary judgment motion, is barred from challenging the adverse rulings on those objections on appeal."⁶

The rules governing evidentiary objections on summary judgment proceedings also apply to special motions to strike under California's

anti-SLAPP law, codified at Section 425.16 of the Code of Civil Procedure. Under that statute, a defendant who believes he or she has been sued for an act "in furtherance of the...right of petition or free speech under the U.S. Constitution or the California Constitution in connection with a public issue" may file a special motion to strike the offending causes of action.⁷ On such motion, the defendant must first "make a threshold showing that the challenged cause of action is one arising from protected activity."⁸ If he or she does so, the burden shifts to the plaintiff, who, to defeat the motion, must demonstrate a "probability of prevailing on the claim."⁹ In *Gallant v. City of Carson*, the court held that cases concerning evidentiary objections "in the summary judgment context...also govern[] anti-SLAPP motions because the two types of proceedings have similar standards."¹⁰ That is, the trial court must "evaluate[] the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation."¹¹ No published case appears to address whether parties must follow Rules 3.1352 and 3.1354 with anti-SLAPP motions, but at least one practice guide¹² and one unpublished appellate decision¹³ indicate those rules are applicable.

Other Types of Motions

Outside the summary judgment and anti-SLAPP contexts civil litigators basically are left to speculate about how and when to submit or respond to evidentiary objections, whether the court will consider and rule on them, and what it means if the court does not do so. As judges from the Santa Clara County Superior Court have repeatedly noted in their orders, "There is no authority holding that the Court must rule on an evidentiary objection made in connection with a motion other than a motion for summary judgment or an anti-SLAPP motion."¹⁴ Appellate opinions confirm that some trial courts decline to rule on such objections.¹⁵

However, there is also nothing that prohibits trial courts from ruling on objections outside of the summary judgment and anti-SLAPP contexts. Just as there are cases in which trial courts have ignored objections, there are also cases in which they have ruled on them.¹⁶ Indeed, there is anecdotal evidence that in some courtrooms evidentiary objections have been considered and granted and that parties have been deemed to have waived the right to make or respond to objections if they fail to do so in writing before the hearing.¹⁷

Undesirable Uncertainty

That counsel cannot confidently predict how a court will deal with objections on a par-

ticular occasion illustrates how risky it can be for counsel to forego written objections or responses. Doing so can lead to an inference (by counsel, counsel's partners or superiors, or the client) that counsel fell short of the duty to be a zealous advocate, especially if the outcome is unfavorable. Thus, the lack of guiding authority on evidentiary objections outside of the summary judgment and anti-SLAPP contexts has undesirable effects. For one, it encourages litigants to follow an overly cautious approach by filing written objections and responses whenever they can afford to do so. This often wastes litigant resources, as there is evidence that evidentiary objections rarely affect a court's ultimate decision.¹⁸ *Reid* indicates as much in the summary judgment context, condemning the trend of making "blunderbuss objections to virtually every item of evidence submitted"¹⁹ that has turned summary judgment proceedings into an "all-out artillery exchange."²⁰ *Reid* approvingly cites *amicus curiae* comments that "[i]n the real world... most evidentiary objections do not matter very much to the...decision,"²¹ and "[a]ll too often trial courts face a flood of evidentiary objections, objections that may be addressed to matters that are tangential at best, at least given the trial court's view of the critical issues or evidence."²² A recent report jointly published by three committees of the California Judicial Council corroborates *Reid's* point that evidentiary objections are usually inconsequential. The report states that "frequently, the number of objections 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 of objections made by the parties."²³ According to the report, "many objections are unnecessary, and that there is no need for rulings on those objections."²⁴

In addition to causing parties to incur needless time and expense, the lack of governing authority on evidentiary objections is troublesome for other reasons. It exacerbates existing power imbalances in litigation because it tends to favor deeper-pocketed parties, who are less likely to balk at the additional expense that evidentiary sparring entails. It also tends to put attorneys litigating in an unfamiliar county at a disadvantage because they may not be aware of the local bench's predilections regarding objections. The virtually unchecked discretion that trial courts currently have in dealing with evidentiary objections also risks damaging the bar's perception of the judiciary. Absent clear standards, whose application could give a court's decision the imprimatur at least of impartiality if not correctness, counsel are more likely to perceive that a court is acting arbitrarily, adopting whatever stance on the evidence

MCLE Test No. 249

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- The California Rules of Court contain deadlines for filing written objections to evidence in any papers supporting or opposing a civil motion.
True.
False.
- A party wishing to make an oral objection to evidence at the hearing on a summary judgment motion must ensure that a court reporter is present at the hearing.
True.
False.
- A party may file written objections to evidence in the papers on a motion for summary judgment any time before the hearing on the motion.
True.
False.
- A trial court need not rule on objections to evidence in summary judgment papers unless the evidence is material to the disposition of the motion.
True.
False.
- If a trial court does not rule on an objection to evidence in summary judgment papers, the objection is presumed overruled.
True.
False.
- If a party does not oppose an objection to evidence in summary judgment papers, but the court does not rule on the objection, that party may challenge the objection on appeal.
True.
False.
- The California Rules of Court require that oppositions to objections to evidence in summary judgment papers be made in writing.
True.
False.
- The California Code of Civil Procedure does not address how to submit oppositions to objections to evidence in summary judgment papers.
True.
False.
- The California Rules of Court do not address how to submit oppositions to objections to evidence in summary judgment papers.
True.
False.
- If a party making an objection to evidence in summary judgment papers does not obtain a ruling from the trial court on that objection, that party has waived the objection on appeal.
True.
False.
- The California Supreme Court has criticized a trend of parties submitting excessive evidentiary objections with summary judgment papers.
True.
False.
- California's anti-SLAPP statute allows defendants who believe they have been sued for an act in furtherance of their right of petition or free speech under the U.S. or California Constitution in connection with a public issue to file a special motion to strike the offending causes of action.
True.
False.
- When analyzing the merits of a special motion to strike a cause of action under California's anti-SLAPP statute, the first step is to assess whether the plaintiff has demonstrated a probability of prevailing on the claim.
True.
False.
- Cases concerning evidentiary objections in summary judgment proceedings are also applicable to evidentiary objections in anti-SLAPP proceedings.
True.
False.
- Declarations in civil litigation must state that they are made under penalty of perjury.
True.
False.
- The California Judicial Council has recommended amending the summary judgment statute to state that trial courts need not rule on evidentiary objections in summary judgment proceedings.
True.
False.
- There are no appellate cases showing that trial courts have ruled on evidentiary objections with motions beyond summary judgment motions and anti-SLAPP motions.
True.
False.
- There are appellate cases showing that trial courts have ignored evidentiary objections with motions beyond summary judgment motions and anti-SLAPP motions.
True.
False.
- Federal courts have used local rules to specify procedures for making evidentiary objections.
True.
False.
- At least one California state court has used local rules to specify procedures for making evidentiary objections.
True.
False.

MCLE Answer Sheet #249



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- True False

happens to be convenient for the outcome the court desires for the motion at hand.

Potential Solutions

One straightforward response to the current lack of guidance on evidentiary objections would be a rule that courts simply will not consider them in connection with motions other than summary judgment and anti-SLAPP motions. This approach would eliminate the burden on parties of preparing and responding to evidentiary objections and the burden on courts of adjudicating them. There is a colorable argument to support such a rule: that “judges are excellent sifters of proffered materials in support and opposition, are capable of giving due weight to whatever is produced in the record, and, therefore, technical evidence rules need not apply.”²⁵ As one judge put it when faced with a slew of evidentiary objections, “fighting over comments or statements...as to whether or not they’re relevant or...objectionable, you know, this is not a jury for heaven’s sake. I’m a judge...I can sift through this stuff. ... You should be able to rely on the court being able to...eliminate what’s not relevant.”²⁶ This approach also might seem especially attractive given how severely budget constraints have hampered courts’ ability to process civil cases in recent years.²⁷

On the other hand, there are significant, and ultimately more persuasive, arguments against simply doing away with evidentiary objections and rulings. First, motion practice should not be an evidentiary free-for-all that relies entirely on the abilities of judges to sift the wheat from the chaff. After all, the system utilizes other mechanisms to ensure a basic level of reliability in evidence supporting civil motions. For instance, declarations must conform with the requirements of Section 2015.5 of the Code of Civil Procedure, whose purpose is to “enhance the reliability of all declarations used as hearsay evidence by disclosing the sanction for dishonesty”—that “perjured statements might trigger prosecution under California law.”²⁸

Second, some judges may not want to rely on their own evidentiary sorting abilities, instead subscribing to the view that litigants should not “treat judges as if they were pigs sniffing for truffles.”²⁹ Third, even if it is true that evidentiary objections usually do not affect the ultimate outcome on a motion, there will be cases in which they do matter. Fourth, evidentiary objections are, with good reason, deeply engrained in civil motion practice in a variety of contexts, in which they may be just as vital to the adjudicative process as on summary judgment and anti-SLAPP motions, when objections are not just permitted but required to be ruled upon. By way of illustration, the rationale for requiring

courts to make evidentiary rulings on anti-SLAPP motions is that those motions involve assessing a plaintiff’s probability of prevailing on a claim. Yet various other motions call for the same analysis, including motions for preliminary injunctions,³⁰ to expunge lis pendens,³¹ and for prejudgment attachment orders.³²

Admittedly, unlike summary judgment or anti-SLAPP motions, other motions do not have the potential to be case dispositive as a matter of law. However, depending on the circumstances, preliminary injunction or attachment proceedings could well be case dispositive as a matter of fact. Similarly, when it is not economically feasible to pursue certain claims unless they are aggregated as a class action, denial of a motion for class certification is essentially case dispositive. In these instances and others in which a motion’s outcome will materially affect a lawsuit’s status, there should be procedural constraints on the introduction of evidence that go beyond the “sifting” powers of the judge.³³

Thus, it would be too blunt a remedy to abolish evidentiary objections for all civil motions. A more nuanced approach would be to abolish written objections but allow oral ones. This could substantially reduce the associated burdens on parties and courts. If, however, the objections are numerous or complicated, airing them orally for the first time at a hearing may unduly extend (even derail) the hearing, risking that other parties’ matters would not be heard and that the court, having to make decisions on the fly, could make mistakes.

If evidentiary objections, including written ones, should be permissible, the next question is whether courts should have to rule on them in all instances. The answer seems to be no because such a requirement would impose an undue burden on the courts. For example, the above-referenced California Judicial Council report cites concern by one research attorney that, with summary judgment motions alone, “the court is overwhelmed with work even without having to rule on objections to evidence that, even if sustained, would have no impact on the court’s decision.”³⁴ In that report, the Superior Court of San Diego County also commented: “Quite often it only takes a few documents for the Court to find a triable issue of fact. Ruling on objections to evidence not needed to make that determination is a waste of judicial resources.”³⁵

In response to these considerations, the report recommends amending Section 437c to provide that trial courts “need rule only on objections to evidence that is material to the disposition of the summary judgment motion,” which would displace their current obligation to rule on all objections as recently

reiterated by *Reid*.³⁶ Any objection not ruled upon would be preserved for appeal;³⁷ under *Reid*, such objections are presumed overruled.³⁸

One can imagine a principle that takes a cue from the proposed amendment to Section 437c and encourages, but does not necessarily require, trial courts to rule only on material objections for civil motions generally. To be sure, doing so might call on some judges to perform more work than they currently do. Yet if courts are concerned by such a change, they could promulgate new local rules, general orders, or policy statements discouraging excessive evidentiary objections (such as by imposing numerical or page limits on objections and responses thereto). If parties receive the message that they should be judicious with objections to begin with, and it is clear the trial courts should simply ignore any objections that are inconsequential, the additional burden may not be great. Conversely, a principle assuring trial courts that it is acceptable to rule selectively on objections may actually save other judges some work. In the current vacuum of law, trial courts have sometimes ruled on objections that are ultimately inconsequential to the outcome on the motion. For example, in *Morgan v. Wet Seal*, the trial court, ruling on a class certification motion, denied all the plaintiffs’ objections to the defendant’s evidence, although it also noted that it had not relied on some of the declarations that the plaintiffs found objectionable.³⁹

Encouraging trial courts to rule on significant evidentiary objections is consistent with the idea that it is preferable for trial courts to explain their orders. One of the purposes of written opinions is to “communicate a court’s conclusions and the reasons for them,” and the process of preparing them should help impose “intellectual discipline on the author, requiring the judge to clarify his or her reasoning and assess the sufficiency of precedential support.”⁴⁰ Evidentiary issues could be treated like any other argument in the parties’ briefs. If they affected a court’s rationale in the course of reaching a decision, it is helpful to the parties, attorneys, other observers, and appellate courts if the trial court record indicates as much.⁴¹

The Need for Procedural Rules

Assuming that evidentiary objections are acceptable in proper doses, parties should not have to guess about when and how to assert or respond to them. The California Rules of Court could be amended to incorporate for all motions the procedures that now govern summary judgment motions, or some other set of reasoned and sufficiently clear procedures. Rule 5.111(c) already provides for family court proceedings a set of procedures

akin to those governing summary judgment motions.⁴² Local rules could also fill the void in the current law on a court-by-court basis. For example, before it was superseded in 2013 by Rule 5.111(c), Local Rule 5.8 of the Family Division of the Los Angeles County Superior Court set forth procedures for evidentiary objections for family court proceedings.⁴³ Federal courts have also used local rules to specify procedures for making evidentiary objections with summary judgment motions,⁴⁴ since the Federal Rules of Civil Procedure, unlike the California Rules of Court, do not contain any provisions for doing so.⁴⁵

Attorneys and parties need greater clarity about whether, when, and how to submit and respond to evidentiary objections on civil motions other than summary judgment and anti-SLAPP motions. In the present void of authority on this issue, courts act inconsistently and unpredictably, and both party and judicial resources are wasted. In light of various competing factors, including the need for reliable evidence and courts' heavy workloads, objections should not simply be abolished, but neither should courts always be required to rule on them. Trial courts should be encouraged to address them when they matter. Such a principle leaves the door open for cases that may incrementally expand the requirement for evidentiary rulings in limited, specific situations beyond summary judgment and anti-SLAPP motions. And, if evidentiary objections are not going to be abolished, local rules or rules of court should clearly articulate deadlines for filing objections and responses in writing and specify whether they are permissible at oral argument. At bottom, parties deserve a better sense of what the court expects of them and what they can expect from the court when it comes to an issue that arises as often as this one does. ■

¹ CAL. R. CT. 3.1352.

² Reid v. Google, Inc., 50 Cal. 4th 512, 531-32 (2010).

³ *Id.* (citing Vineyard Springs Estates v. Superior Ct., 120 Cal. App. 4th 633, 642-43 (2004)).

⁴ Reid, 50 Cal. 4th at 534.

⁵ See Tarle v. Kaiser Found. Health Plan, Inc., 206 Cal. App. 4th 219, 227 (2012) (noting that until that decision, that law seems to have "paid little attention to the duties, if any, imposed on a party opposing the evidentiary objections," and "the governing statute (Code Civ. Proc., §437c) and rules of court (Cal. Rules of Court, rules 3.1350-3.1354) do not even provide for a written opposition to written objections.").

⁶ Tarle, 206 Cal. App. 4th at 226.

⁷ CODE CIV. PROC. §425.16(b)(1); see also Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th 728, 733 (2003).

⁸ Jarrow Formulas, 31 Cal. 4th at 733 (quoting Equilon Enters. v. Consumer Cause, Inc., 29 Cal. 4th 53, 67 (2002)).

⁹ *Id.*

¹⁰ Gallant v. City of Carson, 128 Cal. App. 4th 705, 710 (2005); see also Zucchet v. Galardi, 229 Cal. App. 4th 1466, 1480 n.7 (2014) (anti-SLAPP case fol-

lowing Reid with respect to evidentiary objections).

¹¹ Gallant, 128 Cal. App. 4th at 710 (quoting Varian Med. Sys., Inc. v. Delfino, 35 Cal. 4th 180, 192 (2005)).

¹² See 33 CAL. FORMS OF PLEADING AND PRACTICE—ANNOTATED §376.50[4][b] (2015) (With respect to anti-SLAPP motions, "[i]f evidentiary objections exist, consider preparing written objections to the evidence to be submitted to the court in a separate document, reply memorandum or both, similar to the manner for objecting to evidence in papers submitted on a summary judgment motion..." (citing CAL. R. CT. 3.1352, 3.1354)).

¹³ See Hilsenrath v. Nixon Peabody LLP, Nos. A121271, A121978, 2009 Cal. App. Unpub. LEXIS 8693, at *26 n.6 (Ct. App. Oct. 30, 2009) (approving of defendant's adherence to Rule of Court 3.1354 in the context of an anti-SLAPP motion and noting that plaintiffs "could have responded to those objections at the hearing"); but see Greenstein v. Greif Co., No. B200962, 2009 Cal. App. Unpub. LEXIS 427, at *9 (Ct. App. Jan. 20, 2009) ("On its face, rule 3.1354 applies only to evidentiary objections filed in connection with a motion for summary judgment or summary adjudication, rather than a special motion to strike under section 425.16.").

¹⁴ See, e.g., Longview Int'l Inc. v. Fausto, No. 1-13-CV-251541 (Santa Clara Cnty. Super. Ct. Oct. 16, 2014) (order denying motion for leave to file cross-complaint at 1); Shepard v. Frankel, No. 1-13-CV-257934 (Santa Clara Cnty. Super. Ct. June 9, 2014) (order on demurrer at 2); Sorrento Pavilion, LLC v. East West Bank, No. 1-12-CV-233122 (Santa Clara Cnty. Super. Ct. May 15, 2014) (discovery order at 2 n.4); Department of Fair Employment and Housing v. Hawaiian Airlines, Inc., No. 1-13-CV-243227 (Santa Clara Cnty. Super. Ct. Apr. 15, 2014) (discovery order at 7).

¹⁵ See, e.g., Ashburn v. AIG Fin. Advisors, Inc., 234 Cal. App. 4th 79, 89, 90 (2015) (The trial court declined to rule on "14 pages of objections to evidence."); Bradley v. Networkers Int'l, 211 Cal. App. 4th 1129, 1141 (2012) (trial court declined to rule on the defendant's numerous evidentiary objections spanning 137 pages); Gorman v. Tassajara Dev. Corp., 178 Cal. App. 4th 44, 68 (2009) (trial court did not rule on evidentiary objections in connection with motion for attorney fees and costs); Laborers Pac. Sw. Reg'l Org. Coal. v. Gomez, No. D065958, 2015 Cal. App. Unpub. LEXIS 1971, at *12 n.9 (Cal. Ct. App. Mar. 20, 2015) (trial court declined to rule on evidentiary objections in connection with motion for preliminary injunction); Odell v. Ferrari, No. H034385, 2010 Cal. App. Unpub. LEXIS 8022, at *3 (Cal. Ct. App. Oct. 8, 2010) (trial court did not rule on evidentiary objections in connection with motion for preliminary injunction); In re Providian Credit Card Cases, No. A097482, 2003 Cal. App. Unpub. LEXIS 12000, at *19 n.7 (Cal. Ct. App. Dec. 22, 2003) (trial court did not rule on evidentiary objections in connection with motion for attorney fees).

¹⁶ See, e.g., Calvo Fisher & Jacob LLP v. Lujan, 234 Cal. App. 4th 608, 618 (2015) (trial court overruled evidentiary objections in connection with motion for attorney fees); Carolina Cas. Ins. Co. v. L.M. Ross Law Group, LLP, 212 Cal. App. 4th 1181, 1190-91 (2012) (trial court sustained evidentiary objections in connection with motion to amend judgment).

¹⁷ See, e.g., ValleyOne Inv., LLC v. Sincere Escrow, No. 1-13-CV-255535 (Santa Clara Cnty. Super. Ct. Sept. 16, 2014) (transcript of proceedings at 6:18-7:12).

¹⁸ See JUDICIAL COUNCIL OF CALIFORNIA, JUDICIAL COUNCIL-SPONSORED LEGISLATION: EVIDENTIARY OBJECTIONS IN SUMMARY JUDGMENT PROCEEDINGS 2 (Dec. 12, 2014), available at <http://www.courts.ca.gov> [hereinafter EVIDENTIARY OBJECTIONS].

¹⁹ Reid v. Google, 50 Cal. 4th 512, 532 (2010) (quoting Demps v. San Francisco Hous. Auth., 149 Cal. App. 564, 578-79 (2007) (citations omitted)).

²⁰ Reid, 50 Cal. 4th at 532 (quoting Mamou v. Trendwest Resorts, Inc., 165 Cal. App. 686, 711-12 (2008)).

²¹ Reid, 50 Cal. 4th at 532 n.9 (quoting amicus curiae California Academy of Appellate Lawyers).

²² Reid, 50 Cal. 4th at 532 n.9 (quoting amicus curiae Association of Southern California Defense Counsel).

²³ EVIDENTIARY OBJECTIONS, *supra* note 18, at 2.

²⁴ *Id.*

²⁵ Linda S. Mullenix, *Putting Proponents to Their Proof: Evidentiary Rules at Class Certification*, 82 GEO. WASH. L. REV. 606, 643 (2014) [hereinafter Mullenix] (citing Frederick Schauer, *On the Supposed Jury-Dependence of Evidence Law*, 155 U. PA. L. REV. 165, 188 (2006)).

²⁶ In re Marriage of Davenport, 194 Cal. App. 4th 1507, 1521 (2011) (quoting Hon. Cerena Wong, Trial Transcript (Oct. 29, 2008)).

²⁷ See, e.g., Hon. Tani Cantil-Sakauye, Chief Justice, California Supreme Court, State of the Judiciary Address (Mar. 17, 2014).

²⁸ Kulshrestha v. First Union Commercial Corp., 33 Cal. 4th 601, 606 (2004).

²⁹ Dzung Chu v. Oracle Corp., 627 F. 3d 376, 386 (9th Cir. 2010) (citing United States v. Dunkel, 927 F. 2d 955, 956 (7th Cir. 1991)).

³⁰ See, e.g., White v. Davis, 30 Cal. 4th 528, 554 (2003).

³¹ CODE CIV. PROC. §405.32 (A lis pendens "shall... be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim" on which the lis pendens is based.).

³² CODE CIV. PROC. §484.090; see also Hobbs v. Weiss, 73 Cal. App. 4th 76, 80 (1999) ("Although it is 'preferable' to make evidentiary objections in writing before the hearing, it is not mandatory to do so.... 'Evidentiary objections to declarations or exhibits offered by the opposition may be presented orally at the hearing.'" (quoting 1 AHART, CAL. PRACTICE GUIDE: ENFORCING JUDGMENTS AND DEBTS ¶ 4:272, 4-58 (1997))).

³³ See, e.g., Mullenix, *supra* note 25, at 609-12, 643-44.

³⁴ See EVIDENTIARY OBJECTIONS, *supra* note 18, at 2.

³⁵ *Id.* at 4.

³⁶ *Id.* at 12; see also Reid v. Google, Inc., 50 Cal. 4th 512, 532 (2010) (citing Vineyard Springs Estates v. Superior Ct., 120 Cal. App. 4th 633, 642-43 (2004) and Tarle v. Kaiser Found. Health Plan, Inc., 206 Cal. App. 4th 219, 227 (2012) (citing Reid, 50 Cal. 4th at 532)) On August 10, SB 470 was signed into law. It specifies which evidentiary objections a court must resolve when ruling on a motion for summary judgment or summary adjudication.

³⁷ See EVIDENTIARY OBJECTIONS, *supra* note 18, at 7.

³⁸ Reid, 50 Cal. 4th at 534; but see Brief of California Academy of Appellate Lawyers at 18, Reid v. Google, Inc., No. S158965 (Cal. July 16, 2008).

³⁹ Morgan v. Wet Seal, Inc., 210 Cal. App. 4th 1341, 1353 (2012).

⁴⁰ FEDERAL JUDICIAL CENTER, JUDICIAL WRITING MANUAL 1 (1991).

⁴¹ See, e.g., Mullenix, *supra* note 25, at 643.

⁴² See CAL. R. CT. 5.111(c).

⁴³ Former L.A. SUPER. CT. LOCAL R. 5.8. (repealed 2013).

⁴⁴ See, e.g., D. OR. LOCAL R. 56; W. DIST. TENN. LOCAL R. 56.1(e), available at <https://www.tnwd.uscourts.gov/local-court-rules-plans.php>.

⁴⁵ See Michael D. Kibler & Michael G. Freedman, *New Forum for Objections Emerges*, THE RECORDER (Feb. 17, 2011), at 2.