

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/Introductory Material

Obtaining Discovery: Initiating and Responding to Discovery Procedures

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Scope of Guide

This Action Guide tells you when and how to initiate or respond to a discovery request. It discusses the effect of the Trial Court Delay Reduction Act (TCDRA) and provides step-by-step procedures for preparing, serving, and responding to deposition notices, written depositions, interrogatories, requests for admissions, demands for documents, including electronically stored information, and demands and motions for examinations. It includes sample objections to discovery requests.

Abbreviations

Civil Discovery	<u>California Civil Discovery Practice (4th ed Cal CEB 2006)</u>
Creating Plan	<u>Creating Your Discovery Plan (Cal CEB Action Guide March 2010)</u>
Depositions	<u>Handling Depositions (Cal CEB Action Guide February 2007)</u>
Handling Expert Witnesses	<u>Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2008)</u>
Judicial Council Forms Man	<u>California Judicial Council Forms Manual (Cal CEB 1981)</u>

About the Author

JEFFREY A. TIDUS (deceased) was a partner with Baute & Tidus in Los Angeles. He specialized in civil litigation and alternate dispute resolution (ADR), with an emphasis on financial institutions, professional negligence, construction defects, and employment matters. He received his J.D. from the University of California, Berkeley, School of Law in 1979.

Acknowledgments

Jeffrey A. Tidus passed away before he completed his work on the current update of this Action Guide. CEB legal staff completed it in his honor. Over the years, Mr. Tidus was an active author and generous contributor to many CEB publications, including the books *California Civil Discovery Practice*, *California Trial Practice: Civil Procedure During Trial*, and the Action Guide *Handling Motions to Compel and Other Discovery Motions*, as well as prior versions of this title. CEB deeply appreciates Mr. Tidus's longtime contributions to its publications and to California attorneys.

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/Recognize Effects of Trial Court Delay Reduction Act on Your Case/STEP 1. DETERMINE WHETHER YOUR CASE IS SUBJECT TO TRIAL COURT DELAY REDUCTION ACT

Recognize Effects of Trial Court Delay Reduction Act on Your Case

STEP 1. DETERMINE WHETHER YOUR CASE IS SUBJECT TO TRIAL COURT DELAY REDUCTION ACT

MOST CASES SUBJECT TO TRIAL COURT DELAY REDUCTION ACT (TCDRA)

Virtually *all* general civil actions and proceedings in the superior court in *all* counties are subject to the Trial Court Delay Reduction Act (TCDRA) (Govt C §§68600-68620) and the differential case management rules (Cal Rules of Ct 3.710-3.715). Govt C §§68605.5, 68608(a); Cal Rules of Ct 3.712(a), 3.720; Cal Rules of Ct, Standards of J Admin 2.2.

DETERMINE WHETHER CASE IS EXEMPT FROM TCDRA

The TCDRA specifically exempts the following actions and proceedings (see Govt C §68608(a); Cal Rules of Ct 1.6(4), 3.712(a)):

- a. Juvenile cases;
- b. Probate actions;
- c. Guardianship and conservatorship actions;
- d. Cases and actions under Divisions 6 through 9 of the Family Code, the Uniform Parentage Act, the Domestic Violence Prevention Act, and the Uniform Interstate Family Support Act;
- e. Small claims proceedings;
- f. Unlawful detainer proceedings; and
- g. Other civil petitions, including, *e.g.*:
 - (1) Petition for writ of mandate;
 - (2) Temporary restraining order;
 - (3) Writ of possession;
 - (4) Appointment of receiver; and
 - (5) Name change.

May Be Subject to Special Rules

- a. A case designated as an uninsured motorist claim is exempt from the TCDRA for the first 180 days to allow time for arbitration of plaintiff's claim. Cal Rules of Ct 3.712(b). See Govt C §68609.5.
- b. Any case included in a petition for coordination is exempt from the TCDRA until the petition is decided. If the court grants the petition, the coordination judge must establish a case progression plan for all the coordinated cases. Cal Rules of Ct 3.712(c).

WHEN TO ASK COURT TO TREAT CASE AS EXCEPTION

Courts are reluctant to exempt cases from the TCDRA, but if your case involves exceptional circumstances that will prevent the court and the parties from meeting case management goals and deadlines—or if it would be in the interests of justice—consider asking the court to exempt the case. See Cal Rules of Ct 3.714(c)(1); see also, *e.g.*, Los Angeles Ct R 7.6(c)-(d). See step 2, below, for further discussion of exceptional cases.

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/Recognize Effects of Trial Court Delay Reduction Act on Your Case/STEP 2. UNDERSTAND DELAY REDUCTION GOALS

STEP 2. UNDERSTAND DELAY REDUCTION GOALS

ELIMINATE DELAY

Local judges have the responsibility to eliminate delay in litigation. Govt C §6860Z.

COURT MUST ESTABLISH PROCEDURES TO ACHIEVE GOALS

Under the TCDRA, courts must adopt procedures, standards, and policies to achieve the goal of eliminating litigation delay by (Govt C §6860Z(c); Cal Rules of Ct 3.714(a)):

- a. Assigning the case to the court's "regular" case management program;
- b. Exempting the case as an exceptional case; or
- c. Assigning the case to the court's plan for uncomplicated cases.

Factors Considered

In making this determination, the court will consider (Cal Rules of Ct 3.715(a)):

- a. The type and subject matter of the action;
- b. The number of causes of action or affirmative defenses alleged;
- c. The number of parties with separate interests;
- d. The number of cross-complaints and the subject matter;
- e. The complexity of the issues, including issues of first impression;
- f. The difficulty in identifying, locating, and serving parties;
- g. The nature and extent of the discovery anticipated;
- h. The number and location of percipient and expert witnesses;
- i. The estimated length of trial;
- j. Whether some or all issues can be arbitrated or resolved through some other alternative dispute resolution process;
- k. The statutory priority for the issues;
- l. The likelihood of review by writ of appeal;
- m. The amount in controversy and the type of remedy sought, including measures of damages;
- n. The pendency of other actions or proceedings that may affect the case;
- o. The nature and extent of law and motion proceedings anticipated;
- p. The nature and extent of the injuries and damages;
- q. The pendency of underinsured claims; and
- r. Any other factor that would affect the time for disposition of the case.

UNDERSTAND CASE DISPOSITION TIME GOALS

Depending on which "program" (see above) your case is assigned to, the court will manage it to achieve specified case disposition time goals.

Unlimited Civil Cases

A court will manage its unlimited civil cases assigned to the court's "regular" case management program so that (Cal Rules of Ct 3.714(b)(1); Cal Rules of Ct, Standards of J Admin 2.2(f)(1)):

- a. 75 percent are disposed of within **12 months** of filing;
- b. 85 percent are disposed of within **18 months** of filing; and
- c. 100 percent are disposed of within **24 months** of filing.

Limited Civil Cases

A court will manage its limited civil cases assigned to the court's "regular" case management program so that (Cal Rules of Ct 3.714(b)(2); Cal Rules of Ct, Standards of J Admin 2.2(f)(2)):

- a. 90 percent are disposed of within **12 months** of filing;
- b. 98 percent are disposed of within **18 months** of filing; and
- c. 100 percent are disposed of within **24 months** of filing.

NOTE

In meeting these case disposition time goals, the court is guided by the factors set out in Cal Rules of Ct 3.715(a).

Exceptional Cases

If, after evaluating a case using the factors listed in Cal Rules of Ct 3.400 and 3.715 (see above), the court finds that it involves "exceptional circumstances" that will prevent it from being disposed of within the case disposition time goals of Cal Rules of Ct 3.714(b), the court may exempt the case from those time goals. Cal Rules of Ct 3.714(c)(1). In such cases, the court must (Cal Rules of Ct 3.714(c)(2)):

- a. Establish a case progression plan to ensure timely disposition;
- b. With the goal of disposing of the case within **3 years**.

NOTE

A case does not become exceptional simply because counsel waited until the last minute to start discovery. Very few cases qualify as such, and most of these can be identified up front. If you believe you have such a case, you should bring it to the court's attention at the earliest opportunity. Also, if you successfully oppose an application to have a case classified as exceptional, you must be ready to try the case, because few judges will give you a continuance later if you ask for an earlier trial date at the outset.

Uncomplicated Cases

A local court may institute a case management plan for uncomplicated cases amenable to disposition within **6 to 9 months** after filing. Cal Rules of Ct 3.714(d)(1). The court will use the factors listed in Cal Rules of Ct 3.715(a) to identify appropriate cases.

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/Recognize Effects of Trial Court Delay Reduction Act on Your Case/STEP 3. DETERMINE HOW YOUR CASE WILL BE MANAGED UNDER TRIAL COURT DELAY REDUCTION ACT

STEP 3. DETERMINE HOW YOUR CASE WILL BE MANAGED UNDER TRIAL COURT DELAY REDUCTION ACT

UNDERSTAND JUDICIAL MANAGEMENT GOALS

Civil case disposition time goals of [Cal Rules of Ct 3.714](#) are guidelines for the court's disposition of cases. To help achieve these goals, the judge will "actively manage" cases (see [Govt C §68607](#); Cal Rules of Ct, Standards of J Admin 2.1(a)-(b)):

- a. *To eliminate all unnecessary delays:* Any elapsed time during litigation, other than reasonably required for pleadings, discovery, preparation, and court events, is unacceptable; and
- b. *To control the pace of litigation:* Judges have the responsibility to achieve a just and effective resolution of each general civil case by actively managing and supervising the litigation to reduce delay and maintain a current docket.

NOTE

Review [Cal Rules of Ct 3.720-3.735](#) and any applicable local rules to determine the subjects to be considered at the case management conference.

Judge May Establish Timetable

At the case management conference, the court may establish a timetable for the litigation, *including discovery deadlines*. See, e.g., Contra Costa Ct R 12.6(B).

PRACTICE TIP

Plan in advance for the case management conference. Contact the court clerk to determine how far out the court sets trials and come prepared to suggest realistic dates for the trial and important pretrial dates. If possible, you should try to reach an agreement about mutually convenient dates with opposing counsel before the conference.

Court to Avoid Continuances

The court must:

- a. Adopt a firm policy against continuances at all stages of the litigation ([Govt C §68607\(g\)](#)); and
- b. Make strong efforts to begin trials when scheduled ([Cal Rules of Ct 3.1332](#)).

RECOGNIZE COURT'S POWER TO SANCTION

Judges have the power to impose sanctions, including dismissing the case or striking pleadings, to achieve delay reduction in litigation. [Govt C §68608\(b\)](#).

Example: Terminating sanction imposed for attempts to derail case through evasive answers to discovery. [Lang v Hochman](#) (2000) 77 CA4th 1225, 92 CR 2d 322; [Collison v Kaplan v Hartunian](#) (1994) 21 CA4th 1611, 26 CR2d 786.

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/Recognize Effects of Trial Court Delay Reduction Act on Your Case/STEP 4. RECOGNIZE LIMITATIONS ON LOCAL RULES IMPLEMENTING DELAY REDUCTION GOALS

STEP 4. RECOGNIZE LIMITATIONS ON LOCAL RULES IMPLEMENTING DELAY REDUCTION GOALS

LOCAL COURTS CANNOT REQUIRE SHORTER TIME PERIODS

In setting up their own procedures to eliminate delay, local courts cannot require shorter time periods than those set forth in Govt C §68616.

Serving Complaint

Local rules cannot require that you serve the complaint in less than **60 days** after filing. Govt C §68616(a).

NOTE

Exceptions for *longer* periods may be granted (Govt C §68616(a)):

- a. By local rule authorization; and
- b. On a showing that service could not reasonably be made with due diligence consistent with amount in controversy.

Responding to Complaint

Local rules cannot require that defendant serve responsive pleadings less than **30 days** after service of complaint (an additional **15 days** is allowed by stipulation). Govt C §68616(b).

NOTE

Local rules may authorize exceptions for *longer* periods of time. Govt C §68616(b).

Serving Notice or Other Documents

Local rules cannot require a shorter period for serving documents than as set by statute (Govt C §68616(c)), *e.g.*:

- a. **16 court days** for notice of motion (CCP §1005(b)); or
- b. **30 days** to respond to summons and complaint (CCP §412.20).

Continuance

Local rules can allow parties to stipulate to a single continuance of up to **30 days**. Govt C §68616(d); see, *e.g.*, Contra Costa Ct R 7(H).

Status Conference

Local rules cannot require a status conference sooner than **30 days** after either (Govt C §68616(e)):

- a. Service of first responsive pleadings; or
- b. If applicable, expiration of stipulated continuance under Govt C §68616(d).

Discovery

Local rules cannot require shorter deadlines for discovery than those set by the discovery statutes. Govt C §68616(f). See CCP §§2016.010-2036.050. See Wagner v Superior Court (1993) 12 CA4th 1314, 1318, 16 CR2d 534 (setting discovery cutoff date before trial date has been set denies party's statutory right under former CCP §2024(a) (now CCP §2024.020(a)) to conduct discovery up to 30 days before initial trial date).

Setting for Arbitration

Local rules cannot order case to arbitration sooner than **210 days** after complaint filed, excluding period of stipulated continuance under Govt C §68616(d) (Govt C §68616(g)), although:

- a. Parties may agree or court may appoint a referee to try some or all issues under CCP §§638 and 639; and
- b. Parties may stipulate to arbitration at any time.

NOTE

The restrictions on early court-ordered arbitration *do not apply* to mediation.

Dismissing Unnamed Doe Defendants

Local rules cannot require plaintiff to dismiss or sever the unnamed Doe defendants before the conclusion of the introduction of evidence at trial, except on stipulation or motion of the parties. Govt C §68616(h).

Challenging Judges

Local rules cannot require parties to challenge a judge (Govt C §68616(i)):

- a. In direct calendar courts, in less than **15 days** after party's *first* appearance; or
- b. In master calendar courts, in less than time set forth in CCP §170.6.

Further Research: See *La Seigneurie U. S. Holdings, Inc. v Superior Court* (1994) 29 CA4th 1500, 35 CR2d 175 (under Govt C §68616(i), special appearance does not begin time to file CCP §170.6 motion; time begins to run when party makes first general appearance).

NOTE

Be aware that the statute is silent on the time limit the court may set for a party to challenge the judge when the case is assigned *more* than 15 days after the party appeared.

IF LOCAL RULE VIOLATES GOVT C §68616

If your local court rules appear to be in violation of the minimum time standards in Govt C §68616, consider the following options:

- a. Comply with the local rule without protest (probably the safest option); or
- b. Comply with the local rule, but bring the time discrepancy to the attention of either:
 - (1) The judge assigned to your case; or
 - (2) The presiding judge, whichever is appropriate in your case; or
- c. Comply with the time standards prescribed by Govt C §68616 rather than the local rules, in which case:
 - (1) You risk sanctions (see Govt C §68608(b)); and
 - (2) You will probably have to challenge the local rule in the appellate court.

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Before Initiating Discovery

STEP 5. PREPARE CASE CALENDAR AND DISCOVERY CALENDAR

CASE CALENDAR

PREPARE CASE CALENDAR

Based on the local rules applicable to your case, immediately prepare a calendar of all relevant dates, *e.g.*:

- a. When the complaint must be served, *e.g.*, 60 days or 90 days after filing;
- b. Status conferences;
- c. Likely trial date, *e.g.*, assume that your case will be resolved within 1 year after complaint; and
- d. Based on the likely trial date, other relevant dates such as payment of jury fees, discovery cutoff, and the date for the demand for exchange of expert witness information.

Purpose

Preparing an overall case calendar will allow you to:

- a. Plan how to schedule your discovery relevant to statutory deadlines; and
- b. Evaluate the nature and extent of discovery necessary in your case.

Practice Tip

Under the new rules courts are unwilling to continue trial dates because discovery has not been completed. You should plan your case so that you do not run out of time to conduct necessary discovery.

DISCOVERY CALENDAR

DEVELOP DISCOVERY CALENDAR

After you have prepared your overall case calendar, prepare a specific discovery calendar to be sure you comply with statutory and court-imposed deadlines.

Further Research: For additional information regarding developing a discovery calendar, see [Creating Your Discovery Plan \(Cal CEB Action Guide March 2010\)](#); [Handling Motions to Compel and Other Discovery Motions \(Cal CEB Action Guide November 2009\)](#). For additional information regarding preparing an overall case calendar, see [Preparing for Trial \(Cal CEB Action Guide March 2006\)](#).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/Before Initiating Discovery/STEP 6. ANALYZE EFFECT OF TRIAL COURT DELAY REDUCTION ACT AND STATUTORY DEADLINES ON POSSIBLE DISCOVERY MOTIONS

STEP 6. ANALYZE EFFECT OF TRIAL COURT DELAY REDUCTION ACT AND STATUTORY DEADLINES ON POSSIBLE DISCOVERY MOTIONS

INCLUDE TIME FOR MOTIONS IN YOUR DISCOVERY PLAN

Part of any discovery plan is to be aware of all applicable deadlines so that you include enough time for any motions to compel that may be necessary.

CHECK LOCAL RULES

For Timing of Discovery Motions

Review current local rules to ascertain effect on discovery motions of time in which to bring a case to trial.

If Assigned to Single Judge

Consult current local rules to determine whether your case will be assigned to a single judge for all matters, and, if so:

- a. Consider your chances of success in light of the particular judge if you move to compel discovery; and
- b. Be especially careful not to appear unreasonable before the judge hearing the motion because he or she:
 - (1) Will also be your trial judge; and
 - (2) Will remember if you acted unreasonably, *e.g.*, insisted on bringing a motion to compel even though opposing party offered to produce some of the requested information.

DEALING WITH PROBLEMS

Consider Meeting With Judge

If discovery is not proceeding smoothly, consider requesting that all counsel meet with judge to establish a schedule compatible with progress toward trial.

Consider Using Referee

If you are having difficulty resolving discovery issues and anticipate a motion to compel, *e.g.*, if the motion is to compel further responses or involves complex privilege issues, consider stipulating to have the motion heard by a mutually acceptable retired judge as a referee, because (see [CCP §638](#)):

- a. Many courts routinely appoint referees for all but the most simple discovery disputes; and
- b. You can save time and money by stipulating to a referee.

NOTE

Note, however, that [CCP §639](#) does not authorize the trial court to appoint a referee over a party's objection for a routine discovery dispute. There should be "a finding of something out of the ordinary before the services of a referee are forced upon a nonconsenting party." [Hood v Superior Court \(1999\) 72 CA4th 446, 449, 85 CR2d 114](#).

Prepare Detailed Order

Be sure to prepare a thoroughly detailed order defining:

- a. The scope of the referee's powers; and
- b. The limitations, if any, on the kinds of discovery disputes to be submitted to the referee.

IF DISCOVERY COMMISSIONER WILL HEAR MOTIONS

- a. If you are appearing in a court that uses commissioners to hear discovery matters (*e.g.*, San Francisco), the commissioners may be less likely to assign discovery referees unless there is a stipulation.
- b. Be prepared to stipulate to the commissioner to hear the matter as a judge pro tem so that you can have your matter heard as soon as possible.

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STEP 7. DEVELOP DISCOVERY PLAN

WHEN TO PREPARE

Prepare a discovery plan at outset of litigation in conjunction with preparing your discovery calendar.

WHAT TO INCLUDE IN PLAN

List in outline format:

- a. What you intend to accomplish with discovery, *e.g.*, obtaining evidence necessary to prove your case at trial;
- b. Types of discovery devices to obtain that evidence (including the names of those that you want to depose); and
- c. A timetable setting out when you plan to initiate each discovery device.

Consider Electronic Evidence

Do not forget about locating electronic evidence, *i.e.*, evidence that exists in digital format:

- a. Some documents exist *only* in electronic format and are never printed. In your discovery plan, be sure to consider a request for production of documents located on network servers and backup units, hard drives, disks, laptops, and backup tapes in storage.
- b. In your discovery plan, be sure to identify the kind of files that might include discoverable information relevant to your case (*e.g.*, word processing, e-mail, database, spreadsheet, scheduling, contact management).
- c. You may want to depose the opposing party's computer manager or network systems operator to find out about procedures for storing and deleting computer files and records. Deleted documents or database records can sometimes be located using electronic recovery techniques and system backups.
- d. A computer expert may be helpful in assisting you in locating and evaluating evidence, especially if you have concerns about data corruption and tampering. Given the complexities of some networks, it may be prudent to consider making a demand for inspection of a party's network to locate evidence of computerized transactions.

NOTE

The cost of translating any data compilations included in an inspection demand into reasonably usable form must be borne by the requesting, rather than the responding, party. CCP §2031.280; *Toshiba Am. Electronics Components v Superior Court* (2004) 124 CA4th 762, 21 CR3d 532.

Further Research: For additional discussion of discovery of electronic evidence, see California Civil Discovery Practice, chaps 4 and 8 (4th ed Cal CEB 2006).

BENEFITS

A discovery plan can help you to:

Efficiency

- a. Pinpoint information you want *before* you start discovery;
- b. Determine the best discovery method to get that information; and
- c. Save your client expense by:

(1) Choosing a less costly discovery method over another (*e.g.*, recorded statement from an independent witness versus a deposition; but see step 8, below, Informal Discovery Methods, for disadvantages of informal interview); and

(2) Narrowing the scope or number of discovery methods used.

Example: Authenticating your opponents' records for use at trial by requests for admission is often less expensive than authenticating during a deposition.

Helps You Comply With Discovery Act

Because the number of special interrogatories, requests for admission, and depositions is limited, you need to plan in advance how to use these limited resources to best prepare your client's case.

HOW TO PREPARE

For specific steps to analyze your client's case and determine best discovery devices to use, see [Creating Your Discovery Plan \(Cal CEB Action Guide March 2010\)](#).

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STEP 8. EVALUATE ALTERNATIVE MEANS OF ACHIEVING DISCOVERY GOALS

INFORMAL DISCOVERY METHODS

CONSIDER METHODS

Based on the facts of your case you may try, *e.g.*:

- a. Interviewing witnesses (you or private investigator can conduct the interview); or
- b. Informally requesting record production from third parties who will sometimes supply documents without using a subpoena.

ADVANTAGES OF INFORMAL INTERVIEW

Avoid Educating Opponent

Obtain information without your opponent being present to learn:

- a. Your legal theories (*i.e.*, opponent is not present to deduce your legal theories from your questions); and/or
- b. Witness's identity.

NOTE

Be aware that opposing party may learn the identity of witnesses through formal discovery. CCP §2017.010 (witness with knowledge of any discoverable matter). Written and recorded witness statements, whether produced by the witness and turned over to counsel or taken by counsel, are not protected as attorney work product. Because witness statements are not work product, neither is a list of witnesses from whom counsel has obtained statements. Coito v Superior Court (2010) 182 CA4th 758, 768, 106 CR3d 342. Thus, counsel must provide this information in response to Judicial Council Form Interrogatory nos. 12.2 and 12.3

Obtain More Information

A witness may be more open in an informal setting than during deposition.

Obtain Written or Recorded Statement

- a. You may obtain a more favorable written or recorded statement without having the other side present; and
- b. This statement may be used at trial to impeach or to refresh the witness's recollection (Evid C §§791, 1235-1238).

Save Expense

- a. An informal interview costs substantially less than a formal deposition; and
- b. If you interview a witness first, you may decide a deposition is not warranted.

DISADVANTAGES OF INFORMAL INTERVIEW

Statement Inadmissible

A written or recorded statement (Evid C §§791, 1235-1237):

- a. Is not admissible as evidence at trial; and
- b. May be used only to impeach or to refresh a witness's recollection.

Issue of Bias

If witness gives you a statement but refuses to talk to opposing attorney, trier of fact may view witness as biased in favor of your client.

STIPULATION

CONSIDER STIPULATION

a. Contact opposing attorney to determine whether you can agree on, *e.g.*, discovery methods, number of requests for admission, timing of requests and responses.

b. If you can agree, confirm stipulation *in writing, e.g.*, send opposing attorney letter that states the stipulation. See CCP §2016.030.

Sample Form: For a sample stipulation form, see Appendix E. See also California Civil Discovery Practice §10.83 (4th ed Cal CEB 2006).

Further Research: For additional discussion of the topic of this step, see generally Civil Discovery, chap 2. See also Creating Your Discovery Plan (Cal CEB Action Guide March 2010).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/Before Initiating Discovery/STEP 9. RECOGNIZE SCOPE OF PERMISSIBLE DISCOVERY

STEP 9. RECOGNIZE SCOPE OF PERMISSIBLE DISCOVERY

SCOPE GENERALLY

WHAT MAY BE DISCOVERED

Any party may obtain discovery about any matter that is both (CCP §2017.010):

a. Relevant, *i.e.*, matter either that:

- (1) Is itself admissible in evidence; or
- (2) Appears reasonably calculated to lead to the discovery of admissible evidence; and

b. Nonprivileged.

NOTE

In California, privileges are created exclusively by statute. *Schnabel v Superior Court* (1993) 5 C4th 704, 21 CR2d 200 (citing *Valley Bank*); *Valley Bank of Nevada v Superior Court* (1975) 15 C3d 652, 656, 125 CR 553 (courts may not create a privilege as a matter of judicial policy). See also Evid C §911 ("Except as otherwise provided by statute ... (b) No person has a privilege to refuse to disclose any matter"). As a general rule, privileges are construed narrowly and exceptions to privileges are construed broadly. *People v Sinohui* (2002) 28 C4th 205, 120 CR2d 783.

EXAMPLES

You may discover:

Persons

The identity and location of persons having knowledge of any discoverable matter. CCP §2017.010.

NOTE

In *Gonzales v Superior Court* (1995) 33 CA4th 1539, 39 CR2d 896, the court of appeal affirmed an order compelling disclosure of identity of alleged whistleblower, absent factual showing sufficient to invoke conditional privilege against disclosure of whistleblower's identity.

Things

The existence, description, nature, custody, condition, and location of any (CCP §2017.010):

- a. Document;
- b. Property; or
- c. Tangible item.

Insurance Policy

- a. The existence and contents of an insurance policy under which an insurance carrier may be held liable to satisfy any part of a settlement or judgment (CCP §2017.210); and
- b. Whether that insurance carrier is disputing coverage of claim (but not nature and substance of that dispute) (CCP §2017.210).

NOTE

Even though you may discover existence of insurance coverage, the fact of insurance coverage is not admissible as evidence at trial. CCP §2017.210.

Nonprivileged

Information that is not covered by statutory privileges.

Example: Self-critical analyses prepared by a federal contractor in compliance with equal employment opportunity laws do not fall within any statutory privilege and are discoverable as relevant in action alleging gender-based discrimination. Cloud v Superior Court (1996) 50 CA4th 1552, 1559, 58 CR2d 365.

Sexual Conduct

You may discover information concerning sexual conduct if (CCP §2017.220):

a. The plaintiff alleges:

- (1) Sexual harassment;
- (2) Sexual assault; or
- (3) Sexual battery; and

b. You first obtain a court order on noticed motion by establishing specific facts showing good cause for discovery of plaintiff's sexual conduct with individuals other than the alleged perpetrator.

Further Research: John B. v Superior Court (2006) 38 C4th 1177, 1186, 45 CR3d 316 (limited discovery of defendant's sexual history and HIV status permitted in case alleging that defendant negligently transmitted HIV to plaintiff). For scope of individual discovery methods, see applicable steps below, *e.g.*, for scope of interrogatories, see step 29, below.

LIMITS ON SCOPE OF DISCOVERY

BURDENSOME DISCOVERY

You may not discover information, even if likely to lead to discovery of admissible evidence, if responding to discovery would be overly (CCP §2017.020(a)):

- a. Burdensome;
- b. Expensive; or
- c. Intrusive.

Further Research: See also Calcor Space Facility, Inc. v Superior Court (1997) 53 CA4th 216, 61 CR2d 567, in which the court found that detailed descriptions of categories of items, combined with three pages of definitions and three pages of instructions, constituted a blanket demand that placed an unreasonably great burden on the responding party, which was a nonparty in this action.

ATTORNEY WORK PRODUCT

Absolute Protection

You may not under any circumstances discover *any* writing that reflects an attorney's (CCP §2018.030(a)):

- a. Impressions;
- b. Conclusions;
- c. Opinions; or
- d. Legal research or theories.

Qualified Protection

You may not discover any other work product of an attorney unless:

- a. You convince the court that denial of discovery will (CCP §2018.030(b)):
 - (1) Unfairly prejudice your client; or
 - (2) Result in injustice; or
- b. Work product is relevant to issue of breach of duty in:
 - (1) State Bar disciplinary action if client consents to discovery (CCP §2018.070(a)-(b)); or
 - (2) Action between attorney and client (CCP §2018.080(c)).

Further Research: See generally California Civil Discovery Practice, chap 1 (4th ed Cal CEB 2006).

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When Seeking Oral Deposition

STEP 10. REVIEW GENERAL RULES FOR DEPOSITIONS

ONE DEPOSITION RULE

Generally

Only one deposition may be taken of a natural person by (CCP §2025.610(a)):

- a. The party that noticed the first deposition; or
- b. Any party that had notice of that deposition.

Exceptions

- a. A natural person may be deposed twice if he or she previously testified at a deposition as the designee of an organization under CCP §2025.230. CCP §2025.610(c)(1).
- b. A subsequent deposition of a natural person may also be taken for the limited purpose of discovering the identity, location, and value of property in which the deponent has an interest, under CCP §485.230. CCP §2025.610(c)(2).

Further Research: For further discussion of obtaining more than one deposition, see step 21, below.

WHOSE DEPOSITION YOU MAY TAKE

You may take the deposition of (CCP §§2020.010(a)(1), 2025.010):

- a. A natural person; or
- b. An organization, *e.g.*:
 - (1) Public or private corporation;
 - (2) Partnership;
 - (3) Association; or
 - (4) Governmental agency.

WHERE TO TAKE DEPOSITION

You may take the deposition in:

- a. California (CCP §2025.010; see step 13, below);
- b. Another state, territory, or insular possession subject to United States jurisdiction (CCP §2026.010; see step 15, below); or
- c. A foreign country (CCP §2027.010; see step 16, below).

SCOPE OF DEPOSITION

Relevancy

The scope of relevancy for depositions is the same as for other discovery methods generally. See step 9, above.

Personal Knowledge

You may ask only for information in the deponent's personal knowledge (compare with interrogatories that may ask for knowledge that party possesses or that is reasonably available to responding party). See CCP §2030.220; see step 29, below.

NOTE

A party can be ordered to participate in a demonstration or reenactment during deposition. *Emerson Elec. Co. v Superior Court* (1997) 16 C4th 1101, 68 CR2d 883 (holding that former CCP §2025(o) (now CCP §2025.480) authorizes court to order reenactment at videotaped deposition).

Further Research: For additional discussion of the topic of this step, see generally California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006). See also Handling Depositions (Cal CEB Action Guide February 2007).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 11. REVIEW TIMING FOR DEPOSITIONS

STEP 11. REVIEW TIMING FOR DEPOSITIONS

WHEN TO SCHEDULE DEPOSITION

General Rule

Schedule the deposition at least (CCP §§1013, 2016.050, 2025.270(a)):

- a. **10 days** after you personally serve a deposition notice;
- b. **10 days plus 2 court days** after you serve notice by express mail or other overnight delivery service, or by facsimile transmission (provided the parties agree to such method of service in writing);
- c. **15 days** after you serve notice by mail to California address;
- d. **20 days** after you mail notice to address in another state; or
- e. **30 days** after you mail notice to address in another country.

Exception for Nonparty

If the deponent is a nonparty, serve a deposition subpoena in sufficient time to allow the deponent reasonable time to (CCP §2020.220(a)):

- a. Travel to the deposition location; and
- b. Locate the documents or things sought.

Exception for Consumer and Employment Records

If you seek a consumer's "personal records" under CCP §1985.3 or employee's "employment records" under CCP §1985.6, schedule the deposition at least **20 days** after the subpoena is issued. CCP §2025.270(c).

Exception for Copying Business Records

If you seek only production of business records for copying, schedule a date for compliance by the later of (CCP §2020.410(c)):

- a. **20 days** after you *issue* deposition subpoena; or
- b. **15 days** after you *serve* subpoena.

If Records Only

When the deposition subpoena commands only the production of business records for copying (CCP §2020.430(d)):

- a. Unless the parties, or a consumer as defined in CCP §1985.3, stipulate to an earlier date, the custodian of records cannot deliver the records requested to the deposition officer before the date and time specified in the deposition subpoena.
- b. The following must appear in boldface type on the deposition subpoena immediately *following* the date and time specified for production:

Do not release the requested records to the deposition officer prior to the date and time stated above.

Exception for Unlawful Detainer

If the action is for unlawful detainer, schedule the deposition for a date (CCP §2025.270(b)):

- a. At least **5 days** after service of notice; but

- b. No later than **5 days** before trial.

Exception for Court Order

If you or any other party or deponent move and show good cause, court may (CCP §2025.270(c)):

- a. Shorten or extend time for scheduling a deposition; or
- b. Stay the taking of a deposition until the court determines any pending motion for protective order under CCP §2025.420.

DEADLINE FOR DEPOSITION

Start the deposition no later than **30th day** before *initial* trial date, unless (CCP §§2024.010-2024.020, 2024.050-2024.060):

- a. The court orders otherwise; or
- b. The parties agree in writing to extension.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006); see also Handling Depositions (Cal CEB Action Guide February 2007) and Handling Motions to Compel and Other Discovery Motions (Cal CEB Action Guide November 2009).

NOTE

In the event of a mistrial, order granting a new trial, or remand for a new trial after reversal of a judgment on appeal, discovery is reopened, and the last date for completing discovery is 75 days before the date initially set for the new trial of the action. Fairmont Ins. Co. v Superior Court (2000) 22 C4th 245, 92 CR2d 70.

STEP 12. REVIEW HOW TO OBTAIN DEPOSITIONS IN CALIFORNIA

DEPOSITION OF PARTY

Enter into Stipulation

Agree by *written* stipulation to the timing, location, and manner of depositions (CCP §2016.030); or

Serve Parties

Serve a deposition notice that requires (CCP §§2025.220, 2025.280(a)):

a. The attendance and testimony of any deponent who is:

(1) Party; or

(2) Party's officer, director, managing agent, or employee.

b. The deponent to produce any document or tangible thing for you to inspect and have copied.

DEPOSITION OF NONPARTY

Serve Nonparty

Serve a *deposition subpoena* on nonparty deponent that requires (CCP §§1985.8, 2020.010(a)(1), 2020.020, 2020.030, 2025.280(b)):

a. The attendance and testimony of any nonparty deponent; and/or

b. The deponent to produce any document, electronically stored information (ESI), or tangible thing for inspection, copying, testing, or sampling.

NOTE

A deposition is the only way to obtain discovery from third parties. See CCP §2020.010.

Serve Parties

a. Serve a copy of the subpoena and the deposition notice on all parties (CCP §2025.240(a), (c)); or

b. Serve a copy of the subpoena only (no deposition notice) on parties if you want to obtain business records without testimony from nonparty deponent (CCP §2025.220(b)).

Further Research: For further discussion of deposition subpoenas, see Handling Subpoenas (Cal CEB Action Guide December 2006).

DEPOSITION OF EXPERT WITNESS

Generally, serve the deposition notice on all parties. CCP §2025.240(a). For detailed steps to follow in deposing experts, see Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2008); see also Handling Depositions (Cal CEB Action Guide February 2007).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 13. REVIEW WHERE YOU CAN TAKE DEPOSITION IN CALIFORNIA

STEP 13. REVIEW WHERE YOU CAN TAKE DEPOSITION IN CALIFORNIA

NATURAL PERSON *PARTY* DEPONENT

WHERE TO TAKE

When the deponent is a natural person and a *party*, take the deposition at the most convenient location that is (CCP §2025.250(a)):

Near Deponent's Residence

Within 75 miles of the deponent's residence; or

In Forum County

In the forum county, if within 150 miles of the deponent's residence; or

At More Distant Location

At a more distant location, if you convince the court on noticed motion that the interests of justice will be served (CCP §2025.260(a)-(b)), based on:

- a. Whether the moving party selected the forum;
- b. Whether the deponent will be present to testify at trial;
- c. Convenience of the deponent;
- d. Feasibility of alternative discovery methods;
- e. Number of depositions sought at more distant locations;
- f. Expense involved; and
- g. Whereabouts of the deponent at the time of the deposition.

Further Research: For additional discussion of the topic of this step, see Handling Depositions (Cal CEB Action Guide February 2007) and Handling Motions to Compel and Other Discovery Motions (Cal CEB Action Guide November 2009).

NATURAL PERSON *NONPARTY* DEPONENT

WHERE TO TAKE

When the deponent is a natural person and a *nonparty*, take the deposition (CCP §2025.250(a)):

Near Deponent's Residence

Within 75 miles of the deponent's residence; or

In Forum County

In the forum county, if within 150 miles of the deponent's residence.

ORGANIZATION *PARTY* DEPONENT

WHERE TO TAKE

When the deponent is an organization and a *party*, take the deposition (CCP §2025.250(b), (d)):

Near Principal Office

Within 75 miles of the organization's principal executive or business office in California; or

In Forum County

In the forum county, if within 150 miles of the organization's principal office; or

If No Principal Office in California

If the organization has not designated a principal office in California, take the deposition at convenient location:

- a. In the forum county; or
- b. Within 75 miles of any California executive or business office of the organization.

ORGANIZATION *NONPARTY* DEPONENT

WHERE TO TAKE

When the deponent is a *nonparty* organization (CCP §2025.250(c)):

If Principal Office in California

You must take the deposition within 75 miles of the organization's principal executive or business office in California unless the organization consents to another location.

If No Principal Office in California

If the organization has not designated a principal office in California, take the deposition at convenient location (CCP §2025.250(d)):

- a. In the forum county; or
- b. Within 75 miles of any California executive business office of the organization.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006); Depositions.

STEP 14. SELECT PERSON TO CONDUCT DEPOSITION IN CALIFORNIA

FOR ORAL DEPOSITION

Qualifications of Deposition Officer

Select a person who is (CCP §2025.320(a)):

- a. Authorized to administer an oath;
- b. Not financially interested in action; and
- c. Not a relative or employee of any party or attorney of any party.

Rules for Entities Offering Private Deposition Services

If you use a private firm providing deposition services, you should be sure that (CCP §2025.320(b)-(d)):

- a. Any services or products it offers to one party or attorney are available to all parties or attorneys attending the deposition;
- b. On request, it allows any party to list on the deposition record all services and products made available to any party, attorney, or third party financing all or part of the action;
- c. It does not provide the deposition officer's notations or comments about the demeanor of any witness, attorney, or party present at deposition, to any party, attorney, or third party financing all or part of the action; and
- d. It does not collect any personal identifying information about the witness.

NOTE

Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins, or as soon thereafter as it becomes known or could be discovered by reasonable diligence. CCP §2025.320(e).

Most private reporting services offer a copy of the transcript in electronic form (either by e-mail or diskette) and reduced versions with a key word index.

FOR RECORDS ONLY DEPOSITION

If you want copying of business records only, select a person who is (CCP §2020.420):

- a. A professional photocopier;
- b. Not financially interested in action; and
- c. Not a relative or employee of any party or attorney of any party.

Further Research: See Handling Depositions (Cal CEB Action Guide February 2007).

If Records Only

When the deposition subpoena commands only the production of business records for copying (CCP §2020.430(d)):

- a. Unless the parties, or a consumer as defined in §1985.3, stipulate to an earlier date, the custodian of records cannot deliver the records requested to the deposition officer before the date and time specified in the deposition subpoena.
- b. The following must appear in boldface type on the deposition subpoena immediately *following* the date and time specified for production:

Do not release the requested records to the deposition officer prior to the date and time stated above.

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 15. REVIEW HOW TO PROCEED FOR DEPOSITION IN ANOTHER STATE OR TERRITORY SUBJECT TO UNITED STATES JURISDICTION

STEP 15. REVIEW HOW TO PROCEED FOR DEPOSITION IN ANOTHER STATE OR TERRITORY SUBJECT TO UNITED STATES JURISDICTION

HOW TO OBTAIN

DEPOSITION OF PARTY

Prepare and serve the deposition notice to (CCP §2026.010(b)):

- a. Compel the deponent to attend and to testify; and/or
- b. Produce any document or tangible thing for inspection and copying.

DEPOSITION OF NONPARTY

When the jurisdiction in which deposition will be taken is a state, territory, or possession of the United States, prepare and serve the notice or subpoena required by law in that jurisdiction. CCP §2026.010(c).

NOTE

If you do not take all steps necessary to secure a witness's attendance, you may be subject to sanctions if the witness fails to attend and another party is inconvenienced by your negligence. Rosen v Superior Court (1966) 244 CA2d 586, 596, 53 CR 347.

WHERE TO DEPOSE

DEPOSITION OF PARTY

Conduct the deposition of a party or party-affiliated deponent at location (CCP §2026.010(b)):

- a. In a state, territory, or insular possession of the United States; and
- b. Within 75 miles of the deponent's residence or business office.

DEPOSITION OF NONPARTY DEPONENT

Conduct the deposition of a nonparty deponent at the location prescribed by applicable local laws. CCP §2026.010(c).

WHO CONDUCTS

SELECT APPROPRIATE DEPOSITION OFFICER

Qualifications of Deposition Officer

The deposition officer must be (CCP §§2025.320(a), 2026.010(d)(1)):

- a. Authorized to administer oaths by laws of United States or of the place where deposition is held;
- b. Not financially interested in the action; and
- c. Not a relative or employee of any party or attorney of any party.

Rules for Entities Offering Private Deposition Services

If you use a private firm providing deposition services, you should be sure that (CCP §2025.320(b)-(d)):

- a. Any services or products it offers to one party or attorney are available to all parties or attorneys attending the deposition;
- b. On request, it allows any party to list on the deposition record all services and products made available to any party, attorney, or third party financing all or part of the action;
- c. It does not provide the deposition officer's notations or comments about the demeanor of any witness, attorney, or party present at deposition, to any party, attorney, or third party financing all or part of the action; and
- d. It does not collect any personal identifying information about the witness.

Court Appointed

The deposition officer is appointed by the court to administer oaths and take testimony.

Further Research: For additional discussion of the topic of this step, see Handling Depositions (Cal CEB Action Guide February 2007).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 16. REVIEW HOW TO PROCEED FOR DEPOSITION IN FOREIGN COUNTRY

STEP 16. REVIEW HOW TO PROCEED FOR DEPOSITION IN FOREIGN COUNTRY

HOW TO OBTAIN

DEPOSITION OF PARTY

Prepare and serve a deposition notice to compel a deponent to (CCP §2027.010(a)-(b)):

- a. Attend and testify; and/or
- b. Produce any document or tangible thing for inspection or copying.

DEPOSITION OF NONPARTY

Prepare and serve the notice or other document as required by foreign law. CCP §2027.010(c).

WHO CONDUCTS

SELECT APPROPRIATE DEPOSITION OFFICER

Qualifications of Deposition Officer

The deposition officer must be (CCP §§2025.320(a), 2027.010(d)):

- a. Authorized to administer oaths by laws of United States or foreign country;
- b. Not financially interested in the action;
- c. Not a relative or employee of any party or attorney of any party; and either
- d. Appointed by commission or under letters rogatory; or
- e. Agreed on by all parties.

Rules for Entities Offering Private Deposition Services

If you use a private firm providing deposition services, you should be sure that (CCP §2025.320(b)-(d)):

- a. Any services or products it offers to one party or attorney are available to all parties or attorneys attending the deposition;
- b. On request, it allows any party to list on the deposition record all services and products made available to any party, attorney, or third party financing all or part of the action;
- c. It does not provide the deposition officer's notations or comments about the demeanor of any witness, attorney, or party present at deposition, to any party, attorney, or third party financing all or part of the action; and
- d. It does not collect any personal identifying information about the witness.

NOTE

Be sure that you comply with Hague Convention procedures when taking depositions in foreign countries. See, *e.g.*, Volkswagenwerk Aktiengesellschaft v Superior Court (1973) 33 CA3d 503, 507, 109 CR 219.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 13 (4th ed Cal CEB 2006); Handling Depositions (Cal CEB Action Guide February 2007).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 17. PREPARE NOTICE OF DEPOSITION

STEP 17. PREPARE NOTICE OF DEPOSITION

STATE GENERAL INFORMATION

State:

Logistics

- a. The address where deposition will be taken (CCP §2025.220(a)(1)); and
- b. The date and time of the deposition (CCP §2025.220(a)(2)).

Individual Deponent

- a. If you know the deponent's identity, state (CCP §2025.220(a)(3)):
 - (1) Each deponent's name; and
 - (2) The address and telephone number of any nonparty deponent.
- b. If you do not know the identity of *nonparty* deponent, state general description sufficient to identify the person or class to which the person belongs. CCP §2025.220(a)(3).

Organization Deponent

If a deponent is not a natural person, describe with reasonable particularity matters you intend to ask the deponent. CCP §2025.230.

SPECIFY MATERIALS TO BE PRODUCED

If you want a deponent to produce materials, specify "with reasonable particularity" materials or category of materials. CCP §2025.220(a)(4).

STATE INTENT TO TAPE DEPOSITION

If you intend to make an audio or video recording of the deposition *in addition to* the stenographic record, state your intention in notice, including notice of intent to record the testimony by stenographic method through the instant visual display of the testimony. CCP §2025.220(a)(5).

Action if You Fail to State Intent

If you do not state your intent to tape in the notice (CCP §2025.330(b)-(c)):

- a. Try to enter into a stipulation with other parties to allow taping of the deposition; or
- b. Seek a court order allowing you to tape.

Further Research: For how to tape depositions, see Handling Depositions (Cal CEB Action Guide February 2007).

STATE INTENT TO USE TAPE AT TRIAL

- a. Analyze whether you may want to use at trial the taped deposition of (CCP §2025.220(a)(6)), *e.g.*:
 - (1) A treating/consulting physician; or
 - (2) An expert witness.
- b. State in the notice your intention to reserve the right to use the tape at trial.

Anticipate Delay

If you state that you intend to tape and use the tape at trial, the opposing party may seek to postpone the deposition by moving for a protective order (CCP §2025.420(b)(3)), *e.g.*, if party has not had adequate time to prepare cross-examination of a treating/consulting physician or an expert witness.

PREPARE PROOF OF SERVICE

List in the deposition notice or accompanying proof of service all parties and attorneys that you have served. CCP §2025.240(a).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 18. PREPARE DEPOSITION SUBPOENA FOR DEPOSITION OF NONPARTY DEPONENT

STEP 18. PREPARE DEPOSITION SUBPOENA FOR DEPOSITION OF *NONPARTY* DEPONENT

PURPOSE OF DEPOSITION SUBPOENA

Command deponent to (CCP §§1985.8, 2020.020, 2020.030):

- a. Appear and testify at a deposition;
- b. Produce business records for copying; or
- c. Appear for testimony and produce records, documents, electronically stored information (ESI), or other tangible things.

COMPLETE APPROPRIATE SUBPOENA

For Business Records Only

Complete Judicial Council Form 982(a)(15.2) (Deposition Subpoena for Production of Business Records) (CCP §2020.410):

- a. Designate business records to be produced by either:
 - (1) Specifically describing each individual item; or
 - (2) Reasonably particularizing each category of item; and
- b. Direct the subpoena to the custodian of records or another person qualified to certify records.
- c. When the deposition subpoena commands only the production of business records for copying (CCP §2020.430(d)):
 - (1) Unless the parties, or a consumer as defined in §1985.3, stipulate to an earlier date, the custodian of records cannot deliver the records requested to the deposition officer before the date and time specified in the deposition subpoena; and
 - (2) The following must appear in boldface type on the deposition subpoena immediately *following* the date and time specified for production:

Do not release the requested records to the deposition officer prior to the date and time stated above.

Forms: Judicial Council forms are available in PDF format on the Judicial Council's website at <http://www.courtinfo.ca.gov/forms/>.

For Appearance Only

Complete Judicial Council Form 982(a)(15.3) (Deposition Subpoena for Personal Appearance) (CCP §§2020.310, 2025.220):

- a. Set forth the time and place of the deposition;
- b. Include a summary of the:
 - (1) Nature of the deposition;
 - (2) Rights and duties of the deponent; and
 - (3) Penalties for disobedience of a deposition subpoena contained in CCP §2020.240;
- c. State your intent, if any, to record the deposition using audio or video technology under CCP §2025.340, or to use instant visual display at the deposition; and
- d. If the deponent is an organization, describe with reasonable particularity matters you intend to ask it.

Forms: Judicial Council forms are available in PDF format on the Judicial Council's website, at <http://www.courtinfo.ca.gov/forms/>.

For Appearance and Production of Records

To obtain both appearance and testimony of a nonparty deponent, as well as production of business records, documents, and tangible things, include on Judicial Council Form 982(a)(15.4) (Deposition Subpoena for Personal Appearance and Production of Documents and Things) (CCP §2020.510(a)):

- a. All the information you specify when you want the witness to appear and testify under CCP §2020.320;
- b. A designation of the business records, documents, and tangible things to be produced either by:
 - (1) Specifically describing each individual item; or
 - (2) Reasonably particularizing each category of item; and
- c. A statement of whether you intend to test or sample items you want witness to produce.

Forms: Judicial Council forms are available in PDF format on the Judicial Council's website, at <http://www.courtinfo.ca.gov/forms/>.

For Consumer's Personal Records

If you want production of "personal records" relating to consumer under CCP §1985.3, include with the deposition subpoena either (CCP §2020.510(c)):

- a. A copy of proof of service of CCP §1985.3 notice to consumer; or
- b. The consumer's written authorization for release of records described in CCP §1985.3.

For Employee's Employment Records

If you want production of "employment records" relating to an employee under CCP §1985.6, include with the deposition subpoena either (CCP §2020.510(d)):

- a. A copy of proof of service of CCP §1985.6(e) notice to employee; or
- b. The employee's written authorization for release of records described in CCP §1985.6(c)(2).

For Electronically Stored Information (ESI)

If you want production of ESI under CCP §1985.8:

- a. You may specify in the subpoena the form in which each type of information is to be produced (CCP §1985.8(b)); or
- b. If the subpoena does not specify a form for producing a type of ESI, the deponent must produce the information in the form in which it is ordinarily maintained or in a form that is reasonably usable, unless you and the deponent agree or the court orders otherwise (CCP §1985.8(c)(1)).

NOTE

The deponent need not produce the same ESI in more than one form. CCP §1985.8(c)(2).

Further Research: For additional discussion of the topic of this step, see Handling Depositions (Cal CEB Action Guide February 2007) and Handling Subpoenas (Cal CEB Action Guide December 2006). See also Calcor Space Facility, Inc. v Superior Court (1997) 53 CA4th 216, 61 CR2d 567, for discussion of abusive use of former CCP §§2020 and 2031 (now CCP §§2020.010-2020.510 and 2031.010-2031.320) to discover whether documents exist (detailed descriptions of categories of items, combined with three pages of definitions and three pages of instructions, constituted a blanket demand that placed an unreasonably great burden on the responding party, a nonparty).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 19. SERVE NOTICE AND SUBPOENA

STEP 19. SERVE NOTICE AND SUBPOENA

WHEN TO SERVE NOTICE

If Representing Defendant

Serve the deposition notice without leave of court at any time after the earlier of (CCP §2025.210(a)):

- a. The date the defendant was served with the summons and complaint; or
- b. The date defendant appears in the action.

If Representing Plaintiff

a. *Without leave of court:* Serve the deposition notice on any date that is at least 20 days after earlier of (CCP §2025.210(b)):

- (1) The date the summons and complaint are served on the defendant; or
- (2) The date the defendant appears.

b. *With leave of court:* Plaintiff may move, with or without notice, to serve the deposition notice earlier. CCP §2025.210(b). See Handling Depositions (Cal CEB Action Guide February 2007) and Handling Motions to Compel and Other Discovery Motions (Cal CEB Action Guide November 2009).

WHEN TO SERVE SUBPOENA ON PARTIES

When subpoenaing a nonparty, also serve parties with:

- a. The deposition notice with a copy of the subpoena attached (CCP §§2020.220(a)(1), 2025.240(c)); or
- b. If you are requiring a nonparty to produce *only business records for copying*, serve a copy of the deposition subpoena without the deposition notice (CCP §2025.240(c)).

If Records Only

When the deposition subpoena commands only the production of business records for copying (CCP §2020.430(d)):

- a. Unless the parties, or a consumer as defined in §1985.3, stipulate to an earlier date, the custodian of records cannot deliver the records requested to the deposition officer before the date and time specified in the deposition subpoena; and
- b. The following must appear in boldface type on the deposition subpoena immediately *following* the date and time specified for production:

Do not release the requested records to the deposition officer prior to the date and time stated above.

HOW TO SERVE PARTIES

Serve the notice (and subpoena if appropriate; see above) on all parties to the action by (CCP §§1010, 2025.240(a)):

Personal Service

Having a copy personally delivered to each opposing attorney or to the opposing party if not represented by an attorney; or

Mail

Mailing a copy to each opposing attorney or to the opposing party if not represented by an attorney.

HOW TO SERVE WITNESS

Personally serve the deposition subpoena on a *nonparty* witness. CCP §2020.220(c).

If Seeking Consumer Records

If you seek consumer records under CCP §1985.3, personally serve the witness with a subpoena and either (CCP §2020.410(d)):

- a. A copy of the proof of service showing that you served notice on the consumer; or
- b. The consumer's written authorization to release personal records.

If Seeking Employment Records

If you seek employment records under CCP §1985.6, personally serve the witness with a subpoena and either (CCP §1985.6(c)):

- a. A copy of the proof of service showing that you served notice on the employee; or
- b. The employee's written authorization to release employment records.

NOTE

If only records are requested, see above.

HOW TO SERVE CONSUMER

If you seek personal records of a consumer under CCP §1985.3, personally serve the consumer with (CCP §§1985.3(b)(1), 2025.240(b)):

- a. The notice of deposition;
- b. A CCP §1985.3(e) notice of privacy rights; and
- c. A copy of deposition subpoena.

HOW TO SERVE EMPLOYEE

If you seek employment records of an employee under CCP §1985.6, personally serve the employee with (CCP §§1985.6(b), 2025.240(b)):

- a. A notice of deposition;
- b. A CCP §1985.6(e) notice of privacy rights; and
- c. A copy of the deposition subpoena.

RETAIN ORIGINAL

Retain the original notice and proof of service until 6 months after the final disposition of case. Cal Rules of Ct 3.250(b).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 20. PAY MILEAGE, COSTS, AND WITNESS FEES

STEP 20. PAY MILEAGE, COSTS, AND WITNESS FEES

LAY WITNESS TESTIMONY

Amount

Calculate (Govt C §68093):

- a. \$35 per day to attend; and
- b. \$.20 per mile for travel to and from site.

When to Pay

Pay either (CCP §2020.230(a)):

- a. When you serve deposition subpoena; or
- b. At the deposition.

RECORDS

If you request records from a nonparty witness:

Pay Reasonable Costs

- a. When the records are available for delivery by the witness, be prepared to pay all *reasonable* costs incurred by a nonparty witness in producing records. Evid C §1563(b)(2).
- b. If you do not pay, the witness is not required to deliver records. Evid C §1563(b)(2).

Itemized Statement

Expect the witness to submit an itemized statement with the records listing production and clerical costs. Evid C §1563(b)(3).

If Costs Excessive

You may petition the court to recover or reduce excessive costs paid or charged. Evid C §1563(b)(4).

EXPERT WITNESS

If you wish to depose an expert witness, pay witness's reasonable and customary fee. CCP §2034.430(b). See Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2008).

Paid for Full Time

- a. A designated expert must be paid from the time noticed in the deposition subpoena until dismissed from the deposition "regardless of whether the expert is actually deposed by any party attending the deposition." CCP §2034.430(b).
- b. If any counsel representing the expert or a nonnoticing party is late arriving at the deposition, the late-arriving counsel must pay the expert's fee for the period from the time noticed in the deposition until counsel's late arrival. CCP §2034.430(c).

NOTE

Requirement of payment of expert's customary fees under CCP §2034.430(b) does not require that party pay *unreasonable* fees, despite expert's customary ability to charge that fee. Marsh v Mountain Zephyr, Inc. (1996) 43 CA4th 289, 50 CR2d 493.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal

CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 21. IF NEEDED, OBTAIN MORE THAN ONE DEPOSITION OF NATURAL PERSON

STEP 21. IF NEEDED, OBTAIN MORE THAN ONE DEPOSITION OF NATURAL PERSON

BY STIPULATION

Of Parties

Parties may stipulate to take more than one deposition of a natural person. [CCP §2025.610\(b\)](#).

Of Deponent

If the deponent is nonparty, obtain the deponent's consent. See [CCP §2025.610\(b\)](#).

Form of Stipulation

- a. A written stipulation is preferable; or
- b. An oral stipulation stenographically recorded at the deposition or hearing is probably sufficient.

Sample Form: For a sample stipulation, see [Appendix E](#).

BY COURT ORDER

If you show good cause, the court may grant you leave to take a subsequent deposition. [CCP §2025.610\(b\)](#).

How to Proceed

File moving papers stating facts showing good cause for taking the subsequent deposition of natural person. See [Handling Motions to Compel and Other Discovery Motions \(Cal CEB Action Guide November 2009\)](#).

When to Move

You must serve and file your motion in time for it to be heard on or before the **15th calendar day** before *initial* trial date. [CCP §2024.020\(a\)](#).

NOTE

Notice of motion must be served *at least 16 court days* before the hearing on the motion. [CCP §1005\(b\)](#). If you are short on time, you should request an order shortening time for the hearing on the motion. [CCP §1005\(b\)](#).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Seeking Oral Deposition/STEP 22. OPPOSING ATTORNEY: IF APPROPRIATE, OBJECT TO DEPOSITION NOTICE

STEP 22. *OPPOSING ATTORNEY*: IF APPROPRIATE, OBJECT TO DEPOSITION NOTICE

WHEN APPROPRIATE

Object to a deposition notice if (CCP §2025.410(a)):

- a. The notice does not comply with CCP §§2025.210-2025.280; and
- b. You represent the opposing party.

WHEN TO SERVE OBJECTION

Serve an objection (CCP §2025.410(a)):

- a. "Promptly"; and
- b. No less than **3 calendar days** before the scheduled deposition date.

CONTENT OF OBJECTIONS

Specify any irregularity or error in the deposition notice. CCP §2025.410(a).

WHO TO SERVE

Serve written objections to the deposition notice on (CCP §2025.410(a)):

- a. The party noticing deposition; and
- b. All parties who received notice of the deposition.

HOW TO SERVE

- a. Serve objections early enough to be sure that the opposing attorney has the objections in hand at least **3 calendar days** before the date for which the deposition is scheduled. CCP §§1011, 2025.410(a)-(b).
- b. If the objection is made 3 calendar days before the deposition date, the objecting party must *personally* serve the objections. CCP §2025.410(b).

RETAIN ORIGINAL OBJECTIONS

Do not file objections with the court unless (Cal Rules of Ct 3.250(a)(3)):

- a. They are relevant to issue in law and motion proceeding or other court proceeding; or
- b. The court orders objections filed for good cause.

EFFECT OF OBJECTIONS

After you make a proper objection, you may be able to prevent the deposition from being used at a hearing or trial against your client (the objecting party) by moving for a protective order before the deposition. CCP §§2025.410(b), 2025.420(a). See Handling Motions to Compel and Other Discovery Motions (Cal CEB Action Guide November 2009).

NOTE

You may be able to prevent later use of the deposition by not attending the deposition and asking the court to determine the adequacy of notice at the time of hearing or trial. This approach will succeed only if the court rules that the original objection was valid. Even if the court rules that the transcript cannot be used as a deposition, it can still be used if the statements fall within an exception to the hearsay rule, or as impeachment to refresh recollection. Thus it is usually better practice to seek a protective

order *before* the deposition and, if that is not feasible, to appear at the deposition even when notice was inadequate.

EFFECT OF FAILING TO OBJECT

If you do not promptly object to a defective notice, you waive any objections to irregularities in notice. CCP §2025.410(a).

Further Research: For additional discussion of the topic of this step, or on moving to stay depositions or other motions concerning depositions, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Written Deposition/STEP 23. REVIEW WHEN AND HOW TO OBTAIN DEPOSITION BY WRITTEN QUESTIONS

When Obtaining Discovery by Written Deposition

STEP 23. REVIEW WHEN AND HOW TO OBTAIN DEPOSITION BY WRITTEN QUESTIONS

WHAT IS AVAILABLE

Any party may take the written deposition of any (CCP §2028.010):

- a. Other party; or
- b. Nonparty.

WHEN APPROPRIATE

Take a written deposition as an alternative to an oral deposition, to, *e.g.*:

- a. Save costs;
- b. Obtain limited and specific testimony (*e.g.*, one or two questions on one topic) when you should not have many follow-up questions;
- c. Permit you to formulate clear and unambiguous questions; or
- d. Obtain information from a witness when an oral deposition would be difficult, *e.g.*, the deponent is ill or out of country.

HOW TO OBTAIN

Generally follow the same procedures as for an oral deposition (see CCP §§2025.010-2027.010; see also steps 10-22, above), except:

Notice and Direct Examination Questions

Serve all parties with notice and the direct examination questions (see step 24, below).

Cross-Examination Questions

The opposing party then serves you with questions for cross-examination (see step 25, below).

Redirect Examination Questions

Serve all parties with questions for redirect examination (see step 24, below).

Re-Cross-Examination Questions

The opposing party then serves you with questions for re-cross-examination (see step 25, below).

Questions to Deposition Officer

Send all questions to the deposition officer (see step 27, below).

Setting of Date and Time

The deposition officer may set the date and time for the deponent to answer questions *after* all questions are completed (see step 28, below).

WHEN TO SERVE SUBPOENA

If deposing a nonparty, when the date is set, serve any subpoena (see [step 27](#), below).

PROPOUNDING PARTY DOES NOT ATTEND DEPOSITION

On the date and at time set, the deposition officer asks the written questions and records the deponent's answers to be provided to you (see [step 28](#), below).

Further Research: For additional discussion of the topic of this step, see [California Civil Discovery Practice, chap 5 \(4th ed Cal CEB 2006\)](#).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Written Deposition/STEP 24. PROPOUNDING PARTY: PREPARE AND SERVE NOTICE AND SUBPOENA; PROPOUND QUESTIONS FOR WRITTEN DEPOSITION

STEP 24. *PROPOUNDING PARTY*: PREPARE AND SERVE NOTICE AND SUBPOENA; PROPOUND QUESTIONS FOR WRITTEN DEPOSITION

PREPARE NOTICE OF DEPOSITION

Include in the notice the same information as required for an oral deposition notice. CCP §2028.020; see step 17, above.

Required Information

Include the deposition officer's (CCP §2028.020(a)):

- a. Name or descriptive title; and
- b. Address.

Optional Information

- a. Because questions for direct and cross-examinations are exchanged by mail, you may have difficulty setting a date in advance; but
- b. If you know the date, time, and place of the deposition, include it. If you don't, you may omit it in the notice and leave it to future determination by deposition officer. CCP §2028.020(b).

PRACTICE TIP

The easiest method is to leave the date to be set by the deposition officer after receiving all questions. Make sure you use a deposition officer who is familiar with the written deposition procedure because it is seldom used.

PREPARE DIRECT EXAMINATION

Prepare questions for the deponent.

SERVE QUESTIONS AND NOTICE

Serve direct examination questions and the deposition notice on all parties who are entitled to notice of the deposition. See CCP §§2025.240(a), 2028.020.

PROVIDE TO DEPONENT IF APPROPRIATE

If you want the deponent to review questions *before* the deposition, send a copy to the deponent. CCP §2028.060(a).

RECEIVE CROSS-EXAMINATION

30 days after you serve notice and questions, any party may serve cross-examination questions on all parties receiving notice of the deposition. CCP §2028.030(b).

SERVE REDIRECT EXAMINATION

15 days after you are served with cross-questions, serve any redirect questions. CCP §2028.030(c).

RECEIVE RE-CROSS-EXAMINATION

15 days after you serve redirect questions, any party may serve any re-cross-examination questions. CCP §2028.030(d).

NOTE

Do not send the deponent copies of cross-, redirect, or re-cross-examination questions before the deposition. CCP §2028.060(b).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Written Deposition/STEP 25. OPPOSING PARTY: PROPOUND CROSS-EXAMINATION

STEP 25. *OPPOSING PARTY*: PROPOUND CROSS-EXAMINATION

PREPARE CROSS-EXAMINATION

30 days after you are served with notice and direct examination questions, serve any cross-questions on *all* parties receiving notice of the deposition. CCP §2028.030(b).

RECEIVE REDIRECT EXAMINATION

15 days after you serve cross-examination questions, expect any redirect questions from person noticing the deposition. CCP §2028.030(c).

PREPARE RE-CROSS-EXAMINATION

15 days after you are served with redirect questions, serve any re-cross questions. CCP §2028.030(d).

NOTE

Do not send the deponent copies of cross-, redirect, or re-cross-examination questions before the deposition. CCP §2028.060(b).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Written Deposition/STEP 26. EITHER PARTY: OBJECT TO WRITTEN DEPOSITION QUESTIONS

STEP 26. *EITHER PARTY:* OBJECT TO WRITTEN DEPOSITION QUESTIONS

PREPARE OBJECTIONS

15 days after you are served with any question, object to question, if appropriate, based on (CCP §§2028.040(a), 2028.050(a)):

- a. The form of question; or
- b. The grounds that the question calls for either:
 - (1) Privileged information; or
 - (2) Work product under CCP §§2018.010-2018.080.

Further Research: For proper grounds for objections, see Appendix G. For proper objections to questions at a deposition, see Handling Depositions, Appendix B (Cal CEB Action Guide February 2007).

EFFECT OF FAILURE TO OBJECT

If you do not serve your objection within 15 days, you waive the objection. CCP §§2028.040(a), 2028.050(a).

OBJECTIONS BASED ON FORM OF QUESTION

MOVE COURT TO SUSTAIN OBJECTION BASED ON FORM

"Promptly" file any motion to sustain an objection based on the form of question. CCP §2028.040(b).

Include in Declaration

Include in your declaration a statement that you have made a reasonable and good faith attempt to informally resolve each issue presented by objection and motion. CCP §2028.040(b).

IF OBJECTION BASED ON FORM NOT SUSTAINED

If the court does not sustain your objection (or if, *e.g.*, you fail to bring motion to sustain), the deposition officer shall ask that question, subject to objection. CCP §2028.040(b).

NOTE

If you lose your motion, recognize that you will be subject to sanctions unless the court finds that you acted with substantial justification. CCP §2028.040(c).

OBJECTIONS BASED ON PRIVILEGE OR WORK PRODUCT

EXPECT MOTION TO OVERRULE OBJECTION

The party propounding the question may file a motion to overrule an objection. CCP §2028.050(b).

Include in Declaration

Include in your declaration a statement that you, on behalf of propounding party, have made reasonable and good faith attempt to informally resolve each issue presented by objection and motion. CCP §2028.050(b).

IF NOT OVERRULED

If the court does not overrule your objection (or if, *e.g.*, propounding party fails to bring motion to overrule), the deposition officer shall not ask that question. CCP §2028.050(b).

NOTE

If you oppose a motion and lose, recognize that you will be subject to sanctions unless the court finds that you acted with substantial justification. CCP §2028.050(c).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 5 (4th ed Cal CEB 2006). See also step 9, above, on scope of discovery.

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Written Deposition/STEP 27. PROPOUNDING PARTY: SERVE NOTICE AND SUBPOENA FOR WRITTEN DEPOSITION ON DEPOSITION OFFICER AND DEPONENT

STEP 27. *PROPOUNDING PARTY*: SERVE NOTICE AND SUBPOENA FOR WRITTEN DEPOSITION ON DEPOSITION OFFICER AND DEPONENT

SERVE DEPOSITION OFFICER

After you receive a complete set of questions, serve the deposition officer with the ([CCP §2028.080](#)):

- a. Notice; and
- b. Questions, including:
 - (1) Direct;
 - (2) Cross;
 - (3) Redirect; and
 - (4) Re-cross.

IF APPROPRIATE, SERVE SUBPOENA

If you are taking the deposition of nonparty, serve a deposition subpoena on ([CCP §§2020.220-2020.230](#), [2028.010](#); see [step 19](#), above):

- a. All parties entitled to notice;
- b. The deponent; and
- c. The deposition officer.

When to Serve

- a. You may wait until all questions are complete and the deposition officer sets the date of deposition to serve a subpoena if you leave the time and place blank; but
- b. You must serve the deponent with the subpoena sufficiently before the deposition to provide the deponent with a reasonable opportunity to travel to the place of the deposition.

Further Research: For additional discussion of the topic of this step, see [California Civil Discovery Practice, chap 5 \(4th ed Cal CEB 2006\)](#).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Written Deposition/STEP 28. DEPOSITION OFFICER: CONDUCT DEPOSITION

STEP 28. *DEPOSITION OFFICER:* CONDUCT DEPOSITION

WHAT OFFICER WILL DO

At the time designated by you or chosen by the deposition officer (see [step 24](#), above), the deposition officer ([CCP §2028.080](#)):

- a. Asks all questions served under [CCP §2028.030](#); and
- b. Takes and records testimony of the deponent in response to those questions.

Further Research: For additional discussion of the topic of this step, see [California Civil Discovery Practice, chap 5 \(4th ed Cal CEB 2006\)](#).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Interrogatories/STEP 29. REVIEW GENERAL RULES FOR PROPOUNDING INTERROGATORIES

When Obtaining Discovery by Interrogatories

STEP 29. REVIEW GENERAL RULES FOR PROPOUNDING INTERROGATORIES

WHAT IS AVAILABLE

Any party may propound to any other party written interrogatories to be answered under oath. CCP §2030.010(a).

NOTE

Because interrogatories are limited to *parties*, use written depositions for a nonparty. See steps 23-28, above.

SCOPE OF INTERROGATORIES

Generally

Apply the same scope of relevancy for interrogatories as for other discovery methods generally (see step 9, above), but keep in mind that:

Based on Available Information

Interrogatories are broader than depositions (see step 10, above, for general rules for depositions) because the responding party must answer based on knowledge that (CCP §2030.220):

- a. The party possesses; or
- b. Is reasonably available to the responding party.

Example 1: Information known to a party's attorney, accountant, or other agent is reasonably available (see *Deyo v Kilbourne* (1978) 84 CA3d 771, 782, 149 CR 499, 509; *Smith v Superior Court* (1961) 189 CA2d 6, 12, 11 CR 165).

Example 2: If you are served with interrogatories *after* your expert has been designated as a trial witness, facts known to your expert are reasonably available (see *Sigerson v Superior Court* (1972) 23 CA3d 427, 433, 100 CR 185).

Specific Areas

Interrogatories may ask (CCP §2030.010(b)):

- a. Whether the responding party is making certain contentions;
- b. For support for each contention:
 - (1) In fact;
 - (2) By witnesses; and
 - (3) By writings;
- c. For opinions and contentions concerning legal theories; and
- d. For information obtained in anticipation of litigation or in preparation for trial.

WHEN TO PROPOUND

Without leave of court (CCP §2030.020):

Defendant

The defendant may propound at any time.

Plaintiff

The plaintiff may propound on any date that is at least **10 days** after earlier of:

- a. The date of service of the summons and complaint on the responding party; or
- b. The date the responding party appears in action.

On Motion

The plaintiff may move to propound interrogatories at an earlier time. See CCP §2030.020(d).

Either Party

You may serve supplemental interrogatories to elicit any later-acquired information (bearing on all answers previously made by any party in response to interrogatories) (CCP §§2024.020(a), 2030.070):

- a. *Two times* before the court sets the *initial* trial date;
- b. *Once* after the court has set the initial trial date but before the discovery cutoff of CCP §2024.020, *i.e.*, you must serve supplemental interrogatories at least 60 days before the *initial* trial date to complete discovery by the **30th day** before the *initial* trial date; and
- c. Serve early enough to permit a motion to compel, if necessary, to be heard no later than the **15th day** before initial trial date, unless the court orders otherwise.

NOTE

Two additional court days are allowed for documents served by express mail or other method of overnight delivery, or for service by facsimile transmission (if the parties have agreed in writing to such service). CCP §1013(c), (e).

HOW MANY

You may propound:

- a. An unlimited number of relevant official form interrogatories (CCP §§2030.030(a)(2), 2033.710-2033.740; see Appendix A); plus
- b. Up to 35 specially prepared interrogatories on the *same* party (CCP §2030.030(a)(1)); plus
- c. Supplemental interrogatories to acquire updated responses to previously answered interrogatories (CCP §§2024.020(a), 2030.070; see step 32, below):
 - (1) Twice before *initial* trial date is set; and
 - (2) Once after trial date is set but before discovery cutoff.

When You Can Exceed 35

Propound more than 35 interrogatories if you:

- a. Prepare a declaration showing that additional discovery is warranted because of (CCP §§2030.040-2030.050; see Appendix B):
 - (1) The complexity or quantity of issues;
 - (2) The financial burden that oral deposition would cause; or
 - (3) The inefficiency of any alternative method of discovery; and

b. Serve on each party who has appeared in the action (unless the court relieves you from serving all parties to the action) copies of (CCP §2030.080):

- (1) The interrogatories; and
- (2) The declaration of need.

NOTE

When you need more than 35 interrogatories, you should make your declaration of need as specific and detailed as possible. Some courts will disregard a declaration that contains only the boilerplate statutory language without case-specific language.

IF RESPONDING PARTY OBJECTS

If you serve more than 35 interrogatories (even if you serve a declaration), burden is on the *responding party* to object by seeking a protective order on the ground that your excessive number of interrogatories is unwarranted. CCP §2030.040(b).

Burden Shifts

If the responding party objects, you, as propounding party, have the burden of justifying the number of interrogatories propounded. CCP §2030.040(b).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 7 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Interrogatories/STEP 30. PROPOUNDING PARTY: PREPARE AND SERVE INTERROGATORIES

STEP 30. *PROPOUNDING PARTY*: PREPARE AND SERVE INTERROGATORIES

CHOOSE TYPE OF INTERROGATORIES

Form Interrogatories

- a. Review Judicial Council form interrogatories (see [Appendix A](#)); and
- b. Use them whenever possible because:
 - (1) There are no numerical limits on form interrogatories ([CCP §2030.030\(a\)\(2\)](#); see [step 29](#), above); and
 - (2) The format is already approved and covers most basic information you will need.

Forms: Judicial Council forms are available in PDF format on the Judicial Council's website, at <http://www.courtinfo.ca.gov/forms/>.

Special Interrogatories

If you need information not requested in form interrogatories, prepare special interrogatories using the following instructions.

GENERAL FORMAT

- a. Number each *set* consecutively ([CCP §2030.060\(a\)](#));
- b. Do not include preface or instructions (unless approved under [CCP §§2033.710-2033.740](#)) ([CCP §2033.060\(d\)](#)); and
- c. Number or letter each interrogatory separately ([CCP §2030.060\(c\)](#)).

PREPARE INTERROGATORIES

Opening Paragraph

Immediately below the title of case, identify ([CCP §2030.060\(b\)](#)):

- a. Propounding party;
- b. Set number; and
- c. Responding party.

Each Special Interrogatory

- a. Make each question complete, *e.g.*, do not refer to a preceding question ([CCP §2030.060\(d\)](#));
- b. Do not use ([CCP §2030.060\(f\)](#)):
 - (1) Subparts; or
 - (2) Compound, conjunctive, or disjunctive questions; and
- c. If you specially define terms (*e.g.*, "the term REAL PROPERTY as used in these interrogatories refers to 123 Main Street, Anytown, California"), capitalize all letters in terms whenever you use them ([CCP §2030.060\(e\)](#)).

SERVE INTERROGATORIES

Serve a *copy* of the interrogatories and proof of service on ([CCP §2030.080](#)):

- a. The party to whom they are directed; and
- b. Every party that has appeared in the action unless the court orders otherwise.

RETAIN ORIGINALS

Retain, until 6 months after the final disposition of action, the original (CCP §2030.280(b)):

- a. Interrogatories;
- b. Proof of service; and
- c. Responses you receive from the responding party.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 7 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Interrogatories/STEP 31. RESPONDING PARTY: PREPARE AND SERVE RESPONSE TO INTERROGATORIES

STEP 31. *RESPONDING PARTY*: PREPARE AND SERVE RESPONSE TO INTERROGATORIES

WHEN TO RESPOND

Serve original verified responses (CCP §§1013, 2030.250-2030.260):

If Personally Served

30 days after the propounding party personally serves interrogatories; *or*

If Served by Other Means

- a. **30 days plus 2 court days** if by express mail or other overnight delivery service, or if by facsimile transmission (parties must agree in writing to service by fax);
- b. **35 days** if mailed to you in California;
- c. **40 days** if mailed to you in another state; or
- d. **50 days** if mailed to you in another country.

NOTE

When interrogatories are served by a means other than personal service, the deadline for responding is calculated from the date on which they were sent.

EFFECT OF FAILURE TO TIMELY RESPOND

You waive any objections (including ones based on privilege or work product) if you miss the deadline to respond. CCP §2030.290(a).

Serve Response Anyway

Serve proper response that is in substantial compliance with CCP §§2030.210-2030.250 even though it is late. See CCP §2030.290(a).

Move for Relief From Waiver

Make a motion for relief from waiver when you can show that your failure to serve timely response was result of (see CCP §2030.290(a)):

- a. Mistake;
- b. Inadvertence; or
- c. Excusable neglect.

PREPARE OPENING PARAGRAPH

Immediately below the title of case, identify (CCP §2030.210(b)):

- a. Responding party;
- b. Set number; and
- c. Propounding party.

CHOOSE APPROPRIATE RESPONSES

For each interrogatory, use appropriate method to respond (CCP §2030.210(a)), *i.e.*:

Answer

Answer with requested information (for how to prepare answer, see below); or

Refer to Documents

Refer to documents (see Refer to Documents, below); or

Object

- a. Object to particular interrogatory (see Prepare Objections, below; see also Appendix G); or
- b. Object in part and answer remainder of particular interrogatory.

FORMAT OF RESPONSES

Be sure that each response is (CCP §2030.210(a), (c)):

- a. Identified by number or letter of corresponding interrogatory;
- b. In same order as interrogatories; and
- c. In writing and signed under oath.

NOTE

You are not required to restate text of the interrogatory (CCP §2030.210(c)), but it is more convenient to you and propounding party if you restate the interrogatory and then state the answer.

PREPARE ANSWER

Completely

Provide answer that is as "complete and straightforward as the information reasonably available" permits. CCP §2030.220(a).

To Extent Possible

If an interrogatory cannot be answered completely, answer to the "extent possible." CCP §2030.220(b).

If Client Cannot Respond

If your client does not have personal knowledge sufficient to respond fully to an interrogatory, state that either (CCP §2030.220(c)):

- a. The client made a "reasonable and good faith effort" to obtain information by asking other persons or organizations and still was unable to respond; or
- b. No inquiry was made because information was equally available to the propounding party.

REFER TO DOCUMENTS

When Appropriate

You may refer to documents when *all three elements* below are present (CCP §2030.230):

- a. To provide an answer your client would have to prepare:
 - (1) A compilation;
 - (2) An abstract;

(3) An audit; or

(4) A summary from documents; and

b. The burden or expense of this preparation would be substantially the same for both the propounding party and your client (the responding party); and

c. Your client will allow the propounding party "reasonable opportunity" to:

(1) Examine;

(2) Audit;

(3) Inspect;

(4) Copy;

(5) Compile; and

(6) Make abstracts or summaries of documents.

Format

a. Specify documents in sufficient detail to permit propounding party to locate and identify them (CCP §2030.230); and

b. Cite CCP §2030.230.

Example: "Under CCP §2030.230, the following is a list of documents that are available for propounding party to inspect at the offices of Bush and Wach, 333 State Street: sales invoices from January 1, 2005, to March 15, 2010; canceled checks from January 15, 2005, to present."

PREPARE OBJECTIONS

If appropriate, fully and clearly state the *specific* ground for objection (CCP §2030.240(b)), *e.g.*:

Privilege

State the particular privilege; or

Work Product

Expressly state that you claim work product protection under CCP §§2018.010-2018.080.

Further Research: For list of possible objections, see Appendix G. See also California Civil Discovery Practice §§7.85-7.97 (4th ed Cal CEB 2006).

SIGN AND VERIFY RESPONSE

Attorney

If you make *only* objections, *you*, as responding party's attorney, sign the responses. CCP §2030.250(a), (c). On possible waiver of privilege, see below.

Client

If you are providing any responses other than objections, your client, or officer or agent of client (CCP §2030.250(a)):

a. Must sign under oath; and

b. Should state in their verification that:

(1) Some matters are personally known to the party signing verification; and

(2) Others are being verified on information and belief.

Sample Form: For sample verification, see Civil Discovery §7.146.

RECOGNIZE POSSIBLE WAIVER OF PRIVILEGE

Do not verify a response *on behalf of* client (*e.g.*, if client is corporation), because by doing so you waive attorney-client privilege and work product protection (CCP §2030.250(b)):

- a. During any subsequent discovery; and
- b. Concerning the identity of information sources used to prepare the response.

NOTE

You should try to avoid having an in-house lawyer verify as a corporate officer to avoid waiving any privilege. See CCP §2030.250(b).

SERVE RESPONSE

Serve (CCP §2030.260):

On Propounding Party

The *original* response and verification; and

On Other Parties

A *copy* of the response and verification on *all* other parties who have appeared in the action.

If Burdensome to Serve All Parties

If you can show that it would be unduly burdensome or expensive to serve all parties who have appeared in the action, ask the court to relieve you, as the responding party, from serving all parties. CCP §2030.260(c).

Further Research: For additional discussion of the topic of this step, see Civil Discovery, chap 7.

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Interrogatories/STEP 32. PROPOUNDING PARTY: OBTAIN SUPPLEMENTAL RESPONSES TO PREVIOUSLY ANSWERED INTERROGATORIES

STEP 32. *PROPOUNDING PARTY*: OBTAIN SUPPLEMENTAL RESPONSES TO PREVIOUSLY ANSWERED INTERROGATORIES

WHAT IS AVAILABLE

You may propound an interrogatory to elicit later-acquired information bearing on previous answers. CCP §2030.070(a).

PURPOSE

Use a supplemental interrogatory because the responding party has no continuing duty to update previously answered interrogatories. CCP §2030.060(g); *Biles v Exxon Mobile Corp.* (2004) 124 CA4th 1315, 1328, 22 CR3d 282.

WHEN TO SERVE

Before Trial Setting

You may serve supplemental interrogatories *twice* before the court sets the *initial* trial date. CCP §2030.070(b).

After Trial Setting

After the court has set the initial trial date, you may serve supplemental interrogatories *once* before the discovery cutoff of CCP §2024.020(a), *i.e.*, you must serve supplemental interrogatories at least **60 days** before initial trial date to complete discovery by the 30th day before *initial* trial date. CCP §2030.070(b).

As Court Allows

You may serve additional supplemental interrogatories if the court grants leave (CCP §2030.070(c)):

- a. On motion; and
- b. For good cause shown.

Stipulation

You may serve supplemental interrogatories at any other times when all parties stipulate *in writing* to the additional interrogatories. CCP §2016.030.

PREPARE SUPPLEMENTAL INTERROGATORY

State Nature

Immediately below the case number, state the nature of paper, *e.g.*, Plaintiff's Supplemental Interrogatory. See Cal Rules of Ct 2.111(6).

Include in Opening Paragraph

Immediately below the case title, state (Cal Rules of Ct 3.1000(a)):

- a. Identity of the propounding party;
- b. Identity of the responding party;
- c. Set number; and
- d. That the document is a "supplemental interrogatory."

Include in Interrogatory

Request that the responding party (see CCP §2030.070):

- a. Review previous answers to interrogatories; and
- b. If answers are no longer complete and correct, state:
 - (1) In what manner answers are incomplete and/or incorrect; and
 - (2) The basis for this determination.

SERVE SUPPLEMENTAL INTERROGATORY

Serve supplemental interrogatories in same manner as interrogatories. See step 30, above.

RETAIN ORIGINALS

Retain, until 6 months after the final disposition of the action, the *original* (CCP §2030.280(b)):

- a. Interrogatory and proof of service; and
- b. Sworn response served on you.

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery by Interrogatories/STEP 33. RESPONDING PARTY: AMEND ANSWER TO INTERROGATORY

STEP 33. *RESPONDING PARTY*: AMEND ANSWER TO INTERROGATORY

WHEN ALLOWED

Amend a previous response to interrogatories *without leave of court* when the amendment contains information (CCP §2030.310(a)):

- a. Subsequently discovered;
- b. Inadvertently omitted; or
- c. Mistakenly stated in initial response.

WHEN TO SERVE AMENDMENT

Any time after serving the initial responses. See CCP §2030.310(a).

FORMAT

The format is same as for original responses (see step 31, above) except that the caption should note that the document *amends* responses to specific set of interrogatories, *e.g.*, Defendant's Amended Answers to Plaintiff's First Set of Interrogatories. See CCP §2030.210; Cal Rules of Ct 3.1000(b).

SERVE AMENDMENT

Serve (CCP §2030.260):

- a. *Original* amendments on the propounding party; and
- b. *Copies* to all parties who have appeared in the action.

ANTICIPATE MOTION BY PROPOUNDING PARTY

Be aware that the propounding party may seek an order that the initial response be binding for purpose of the pending action when (CCP §2030.310(b)-(c)):

- a. The propounding party was substantially prejudiced by the initial failure to respond adequately;
- b. You, on behalf of the responding party, fail to justify initial failure to respond adequately; and
- c. Prejudice to the propounding party cannot be cured by continuance for further discovery or by using the initial response at trial (see CCP §2030.410).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Demanding Production of Documents, Electronically Stored Information (ESI), Physical Evidence, and Real Property/STEP 34. REVIEW GENERAL RULES FOR DEMANDING PRODUCTION OF PHYSICAL EVIDENCE

When Demanding Production of Documents, Electronically Stored Information (ESI), Physical Evidence, and Real Property

STEP 34. REVIEW GENERAL RULES FOR DEMANDING PRODUCTION OF PHYSICAL EVIDENCE

WHAT IS AVAILABLE

Any party may demand physical evidence from any other party who has (CCP §2031.010(a)):

- a. Possession of physical evidence;
- b. Control of physical evidence; or
- c. Custody of physical evidence.

PHYSICAL EVIDENCE DEFINED

Physical evidence includes (CCP §2031.010(a)):

- a. Documents;
- b. Tangible things;
- c. Land or other property, including any designated object or operation on it; or
- d. Electronically stored information (ESI).

ACTIVITIES YOU MAY DEMAND

You may demand that the responding party (CCP §2031.010(b)-(e)):

Documents

Produce and permit:

- a. Inspection; and
- b. Copying.

NOTE

Remember that "documents" include all types of electronic data, *e.g.*, e-mail, computer programs, databases, graphics files, cookies and history files, computer logs, computer hard drives, and backup tapes. For a full discussion of the types of electronic data that may be subject to an inspection demand, see California Civil Discovery Practice, chaps 4 and 8 (4th ed Cal CEB 2006).

ESI is "information that is stored in an electronic medium." "Electronic" refers to "technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." CCP §2016.020(d)-(e).

Tangible Things, Objects, or Operations

Produce and permit:

- a. Inspection;
- b. Photographing;
- c. Testing; or

d. Sampling.

Land

Permit entry on land or property for:

a. Measuring;

b. Surveying;

c. Photographing;

d. Testing; or

e. Sampling.

Electronically Stored Information (ESI)

Produce and permit:

a. Inspection;

b. Copying;

c. Testing; or

d. Sampling.

WHEN TO MAKE DEMAND

Without leave of court (CCP §2031.020):

Defendant

The defendant may make a demand at any time (but see "Either Party," below).

Plaintiff

The plaintiff may make a demand on any date that is at least **10 days** after earlier of:

a. The date summons and complaint served on the responding party; or

b. The date that party appears.

NOTE

The plaintiff may make a motion showing good cause to make a demand at earlier time. CCP §2031.020(d).

Unlawful Detainer

In an unlawful detainer action, the plaintiff may make a demand within **5 days** after service of summons. CCP §2031.020(c).

Either Party

Either party:

a. Should serve the demand *at least* (CCP §§1013, 2016.050, 2024.010, 2024.020(a), 2031.260):

(1) **60 days** before the *initial* trial date if personally served (30-day discovery cutoff *before* date of trial, plus 30 days *after* service of the demand for the production date);

(2) **60 days plus 2 court days** if by express mail or other overnight delivery service, or if by facsimile transmission (provided the parties agree to such method of service in writing);

(3) **65 days** before the *initial* trial date if mailed to an address in California;

(4) **70 days** if mailed to an address in another state; or

(5) **80 days** if mailed to an address in another country; and

b. Must serve early enough to permit any motion to compel to be heard no later than **15th day** before the *initial* trial date, unless the court orders otherwise (CCP §2024.020(a)).

HOW MANY

You may propound unlimited demands (CCP §2031.010(a)), but avoid demands that are (CCP §2031.060(b)):

a. Unduly burdensome and expensive; or

b. Annoying, embarrassing, or oppressive.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 8 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Demanding Production of Documents, Electronically Stored Information (ESI), Physical Evidence, and Real Property/STEP 35. PROPOUNDING PARTY: PREPARE AND SERVE DEMAND FOR PRODUCTION OF PHYSICAL EVIDENCE

STEP 35. *PROPOUNDING PARTY*: PREPARE AND SERVE DEMAND FOR PRODUCTION OF PHYSICAL EVIDENCE

FORMAT OF DEMAND

You should (CCP §2031.030(a), (c)):

- a. Make the demand in writing;
- b. Number each set consecutively; and
- c. Identify each demand by number or letter.

PREPARE DEMAND

Opening Paragraph

Identify (CCP §2031.030(b)):

- a. Demanding party;
- b. Set number; and
- c. Responding party.

Time for Production

Specify (CCP §2031.030(c)(2)-(3)):

- a. Date of inspection, copying, testing, or sampling that is:

(1) At least **30 days** (**5 days** in unlawful detainer actions) *after* the demand is *personally* served (add days under CCP §1013 if you serve by mail); and

(2) Reasonable; and

- b. Reasonable place of inspection, copying, testing, or sampling.

NOTE

Two additional court days are allowed for service by express mail or other method of overnight delivery, or for service by facsimile transmission (if the parties have agreed in writing to such service). CCP §1013.

Describe Any Activity

State any inspection, copying, testing, sampling, or related activity to be performed, including (CCP §2031.030(c)(4)):

- a. The manner in which the activity will be performed; and
- b. Whether the activity "will permanently alter or destroy the item involved."

Designate Items

Designate items, or the category of items, to be inspected, copied, tested, or sampled by either (CCP §2031.030(c)(1)):

- a. Specifically describing each item; or

- b. "Reasonably particularizing each category of item."

Specify Form of Electronically Stored Information (ESI)

If you demand ESI:

- a. You may specify the form in which each type of ESI is to be produced. CCP §2031.030(a)(2); or
- b. If you do not specify the form for producing a type of ESI, the responding party must produce the information in the form in which it is ordinarily maintained or in a form that is reasonably usable, unless you and the responding party agree or the court orders otherwise. CCP §2031.280(d)(1).

NOTE

A party need not produce the same ESI in more than one form. CCP §2031.280(d)(2).

SERVE DEMAND

Serve a *copy* of the demand and proof of service on all parties who have appeared in the action. CCP §2031.040.

RETAIN ORIGINAL

Retain, until 6 months after final disposition of the action, the *original* (CCP §2031.290(b)):

- a. Demand and proof of service; and
- b. Response served on you.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 8 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Demanding Production of Documents, Electronically Stored Information (ESI), Physical Evidence, and Real Property/STEP 36. RESPONDING PARTY: PREPARE AND SERVE RESPONSE TO DEMAND FOR PRODUCTION

STEP 36. *RESPONDING PARTY*: PREPARE AND SERVE RESPONSE TO DEMAND FOR PRODUCTION

WHEN TO RESPOND

The responding party must respond:

If Personally Served

Within **30 days** after the propounding party personally serves the demand;

If Served by Other Means

If served by a means other than personal delivery, within (CCP §§1013, 2016.050, 2031.260):

- a. **30 days plus 2 court days** if by express mail or other overnight delivery, or if by facsimile transmission (parties must agree in writing to fax service);
- b. **35 days** if mailed to a California address;
- c. **40 days** if mailed to an address in another state; or
- d. **50 days** if mailed to an address in another country;

NOTE

When the demand is served by a means other than personal service, the deadline for responding is calculated from the date on which it was sent.

If by Stipulation

By date agreed on by propounding and responding party and confirmed in writing (always write a letter confirming the agreement). CCP §2031.270.

Sample Form: See Appendix E for sample stipulation.

EFFECT OF FAILURE TO TIMELY RESPOND

If you miss the deadline to respond, you waive any objections to the demand unless you (CCP §2031.300(a)):

- a. Serve a response that is in substantial compliance with CCP §§2031.210-2031.240 and 2031.280, even though it is late; and
- b. Make a motion for relief from waiver when you can show that your failure to serve timely response was the result of (CCP §473):
 - (1) Mistake;
 - (2) Inadvertence; or
 - (3) Excusable neglect.

NOTE

Even objections based on such privileges as the attorney-client privilege and the work-product privilege may be waived by missing the deadline. CCP §2031.300(a). But see Korea Data Systems Co. v Superior Court (1997) 51 CA4th 1513, 1517, 59 CR2d 925 (forced waiver of attorney-client privilege and work product privilege was not appropriate sanction for failure to file sufficiently specific response to request).

PREPARE RESPONSE

Opening Paragraph

In the first paragraph, immediately below the title of case, identify (CCP §2031.210(b)):

- a. Responding party;
- b. Set number; and
- c. Propounding party;

Statement of Compliance

State that the client will (CCP §2031.220):

- a. Allow the requested production in whole or in part; and
- b. Produce all demanded items:
 - (1) In client's possession, custody, and control; and
 - (2) To which you have no objections; or

Statement of Inability to Comply

State (CCP §2031.230):

- a. That the client is unable to comply despite diligent search and inquiry;
- b. Why the client is unable to comply, *e.g.*, item has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of client; and
- c. If your client knows or believes another person or organization can meet the demand, that name and address, if available.

Further Research: For sample response, see California Civil Discovery Practice §8.124 (4th ed Cal CEB 2006).

PREPARE OBJECTIONS

If a demand is objectionable (CCP §2031.240(b)):

- a. Specify the particular item demanded that you are objecting to; and
- b. Set forth the *specific* ground of objection.

For Electronically Stored Information (ESI) From a Source Not Reasonably Accessible

If you object to the discovery of ESI on the ground that it is from a source that is not reasonably accessible because of undue burden or expense, identify the types or categories of sources of ESI that are not reasonably accessible. CCP §2031.210(d).

NOTE

If a demand is objectionable only in part, "the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category." CCP §2031.240(a).

Further Research: For sample objections to discovery requests, see Appendix G.

SIGN AND VERIFY RESPONSE

Attorney

If you make *only* objections, *you*, as responding party's attorney, sign the response. CCP §2031.250(a), (c). For how to recognize possible waiver of privilege, see step 31.

Client

If you are providing *any* responses other than objections (CCP §2031.250(a)-(b)):

- a. The individual client must sign under oath; or
- b. An officer or agent of the client must verify responses when the responding party is:
 - (1) Corporation;
 - (2) Partnership;
 - (3) Association; or
 - (4) Governmental agency.

NOTE

Make sure you distinguish in the verification between information verified based on client's *personal knowledge* and that verified based on *information and belief*.

RECOGNIZE POSSIBLE WAIVER OF PRIVILEGE

Do not verify responses on behalf of your client (*e.g.*, if client is an organization), because by doing so you waive attorney-client privilege and work product protection (CCP §2031.250(b)):

- a. During any subsequent discovery; and
- b. Concerning the identity of information sources used to prepare the response.

NOTE

You should try to avoid having an in-house lawyer verify as a corporate officer to avoid waiving any privilege.

SERVE RESPONSE

Serve (CCP §2031.260):

- a. The *original* response on the propounding party; and
- b. A *copy* on all other parties who have appeared in the action.

Further Research: For additional discussion of the topic of this step, see Civil Discovery, chap 8.

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Demanding Production of Documents, Electronically Stored Information (ESI), Physical Evidence, and Real Property/STEP 37. RESPONDING PARTY: PRODUCE PHYSICAL EVIDENCE

STEP 37. *RESPONDING PARTY*: PRODUCE PHYSICAL EVIDENCE

DATE OF PRODUCTION OR INSPECTION

The date of production or inspection is:

- a. **30 days** after the propounding party personally serves the demand (plus additional days if served by mail, overnight delivery, or facsimile) (CCP §§1013, 2016.050, 2031.260); and
- b. At least **30 days** before the initial trial date (CCP §§2024.010-2024.020).

PRODUCE DOCUMENTS

If you stated in your response that you would comply, produce documents (CCP §2031.280(a)):

- a. As they are kept in usual course of business; or
- b. Organized and labeled to correspond with demand categories.

PRODUCE ELECTRONICALLY STORED INFORMATION (ESI)

If you stated in your response that you would comply, produce ESI (CCP §2031.280(d)):

- a. In the form specified in the demand; or
- b. In the form you specified in your response, if you and the propounding party agreed to that form; or
- c. If the demand did not specify a form:
 - (1) In the form in which it is ordinarily maintained; or
 - (2) In a form that is reasonably usable.

NOTE

The same ESI need not be produced in more than one form. CCP §2031(d)(2).

TRANSLATE DATA

If necessary, the responding party may translate any data compilations into reasonably usable forms (CCP §2031.280(e)):

- a. Using "detection devices," *e.g.*, computers; and
- b. At reasonable expense to the demanding party (notify the demanding party of the cost you will expect the demanding party to pay). See Toshiba Am. Electronic Components, Inc. v Superior Court (2004) 124 CA4th 762, 772, 21 CR3d 532 (trial court order compelling production of all documents in computer backup tapes, without also requiring demanding party to pay reasonable expenses of translating tapes into usable form, was abuse of discretion).

NOTE

As the demanding party, you may want to consider requesting that data compilations be produced in a computer-readable format so that the information can be searched electronically using available database or text search software and technology.

When Requesting Admission of Facts, Opinions, or Genuineness of Documents

STEP 38. REVIEW GENERAL RULES FOR REQUESTS FOR ADMISSIONS

WHAT IS AVAILABLE

Any party may request that any other party admit (CCP §2033.010):

- a. The genuineness of specified documents; and
- b. The truth of specified:
 - (1) Matters of fact;
 - (2) Opinions relating to fact; or
 - (3) Application of law to fact.

SCOPE OF REQUEST

Generally

Apply the same scope of relevancy as for other discovery methods generally. See step 9, above.

Based on Information Available

The responding party must answer based on knowledge that (CCP §2033.220(a)):

- a. The party possesses; or
- b. Is available to the party from making a reasonable inquiry.

Specifically

The request may relate to any matter in controversy between the parties. CCP §2033.010.

WHEN TO SERVE REQUEST

Without leave of court (CCP §2033.020):

Defendant

The defendant may serve a request at any time (but see "Either Party," below).

Plaintiff

The plaintiff may serve on any date that is at least **10 days** after the earlier of:

- a. The date of service of summons on the defendant; or
- b. The date the defendant appears in the action.

Unlawful Detainer

Serve **5 days** after service of the summons in unlawful detainer actions.

Either Party

Either party:

a. Should serve the request at least **60 days** before the *initial* trial date (plus additional time if served by mail) so that responses are due no later than the 30th day *before* the initial trial date, unless (CCP §§1013, 2016.050, 2024.050-2024.060):

- (1) The parties agree in writing; or
- (2) The court, after your or another party's motion, orders another date.

b. Must serve early enough to permit any motion to compel to be heard no later than **15th day** before the *initial* trial date, unless the court orders otherwise. CCP §2024.020(a).

HOW MANY

You may propound:

a. An unlimited number of requests that relate to the *genuineness* of documents, but avoid subjecting the responding party to (CCP §2033.030(c)):

- (1) Unwarranted annoyance;
- (2) Embarrassment;
- (3) Oppression; or
- (4) Undue burden and expense; plus

b. Up to 35 requests regarding matters *other than the genuineness* of documents (CCP §2033.030(a)).

When You Can Exceed 35

You can exceed 35 requests if you both:

a. Prepare a declaration showing that additional discovery is warranted because issues are complex or numerous (CCP §§2033.040(a), 2033.050; see also Appendix D); and

b. Serve on each party who has appeared in action (unless court relieves you from serving all other parties to action) copies of (CCP §2033.070):

- (1) Requests; and
- (2) Declaration for additional discovery.

BURDEN ON RESPONDING PARTY TO OBJECT

If you serve more than 35 requests for admissions of matters other than genuineness of documents, the burden is on the *responding party* to object. CCP §2033.040(b).

Burden Shifts

If the responding party objects, you, as the propounding party, have the burden of justifying the number propounded. CCP §2033.040(b).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 9 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Requesting Admission of Facts, Opinions, or Genuineness of Documents/STEP 39. PROPOUNDING PARTY: PREPARE AND SERVE REQUESTS FOR ADMISSIONS

STEP 39. *PROPOUNDING PARTY*: PREPARE AND SERVE REQUESTS FOR ADMISSIONS

CHOOSE TYPE OF REQUESTS

Form Requests

Review Judicial Council Form FI-100 (Request for Admissions). See [CCP §§2033.710-2033.740](#).

Forms: Judicial Council forms are available in PDF format on the Judicial Council's website, at <http://www.courtinfo.ca.gov/forms/>.

Special Requests

If form requests are not appropriate for your case, prepare special requests for admissions (see instructions below).

FORMAT OF REQUESTS

You must ([CCP §2033.060](#)(a), (d)-(e), (h)):

- a. Number each *set* of requests consecutively;
- b. Not include a preface or instructions (unless approved under [CCP §§2033.710-2033.740](#));
- c. Not combine requests for admissions in a single document with any other discovery method, *e.g.*, do not combine interrogatories and requests for admissions in one document; and
- d. If you specially define terms, capitalize all letters of terms whenever you use them.

NOTE

Interrogatory 17.1 found on Judicial Council Form FI-120 (Form Interrogatories) was designed as a follow-up to requests for admission and can be used without counting against the limit of 35 special interrogatories.

PREPARE REQUESTS

Opening Paragraph

In the first paragraph, immediately below title of case, identify ([CCP §2033.060](#)(b)):

- a. Propounding party;
- b. Set number; and
- c. Responding party.

Each Special Request

For special requests ([CCP §2033.060](#)(d), (f)):

- a. Make each request complete; and
- b. Do not use:
 - (1) Subparts; or
 - (2) Compound, conjunctive, or disjunctive requests.

SERVE REQUESTS

a. Serve a copy of the requests for admissions and proof of service on (CCP §2033.070):

- (1) The party to whom they are directed; and
- (2) Every party that has appeared in the action; and

b. If you seek admission of genuineness of specified documents, attach copies of those documents to the requests (CCP §2033.060(g)).

RETAIN ORIGINALS

Retain, until 6 months after the final disposition of the action, the *original* (CCP §2033.270(b)):

- a. Request and proof of service; and
- b. Response you receive from the responding party.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 9 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Requesting Admission of Facts, Opinions, or Genuineness of Documents/STEP 40. RESPONDING PARTY: PREPARE AND SERVE RESPONSE TO REQUEST FOR ADMISSION

STEP 40. *RESPONDING PARTY*: PREPARE AND SERVE RESPONSE TO REQUEST FOR ADMISSION

WHEN TO RESPOND

Serve the *original* verified response (CCP §§1013, 2016.050, 2033.250):

If Personally Served

30 days after the propounding party personally serves requests for admissions;

If Served by Other Means

- a. **30 days plus 2 court days** if by express mail or other overnight delivery, or if by facsimile transmission (parties must agree in writing to fax service);
- b. **35 days** if mailed to an address in California;
- c. **40 days** if mailed to an address in another state; or
- d. **50 days** if mailed to an address in another country.

NOTE

When a request is served by a means other than personal service, the deadline for responding is calculated from the date on which it was sent.

If by Stipulation

- a. Respond by the date agreed on and confirmed in writing by the propounding party and the responding party; and
- b. Give notice of your agreement to all other parties.

Sample Form: For sample stipulation, see Appendix E.

EFFECT OF FAILURE TO TIMELY RESPOND

Waiver

If you miss the deadline to respond, you waive all objections (including any based on privilege or work product) unless you (CCP §2033.280(a)):

- a. Serve a response that is in substantial compliance with CCP §§2033.210-2033.230, even though it is late; and
- b. Make a motion for relief from waiver when you can show that your failure to serve timely response was result of (see §2033.280(a)):
 - (1) Mistake;
 - (2) Inadvertence; or
 - (3) Excusable neglect.

Deemed Admitted

If the requesting party moves for an order that requests be deemed admitted, the court (CCP §2033.280(b)-(c)):

- a. Shall make an order that requests are deemed admitted, unless before the hearing you submit a proposed response that is in

substantial compliance with CCP §2033.220; and

b. Must impose monetary sanctions on you, or your client, the responding party.

Court's Discretion

The court has discretion to fashion appropriate relief if a party fails to answer requests for admission, including ordering that the matters contained in the request be deemed admitted. But see Brigante v Huang (1993) 20 CA4th 1569, 1583, 25 CR2d 354 (trial court abused its discretion by granting plaintiff's motion to deem requests admitted; plaintiff knew defendant could not be located when it propounded requests to admit liability in amount of \$500,000), disapproved on other grounds in Wilcox v Birtwhistle (1999) 21 C4th 973, 983 n12, 90 CR2d 260.

NOTE

The court may not shorten time to hear a motion to deem requests admitted if the order shortening time deprives the other party or parties of the opportunity to cure the default as permitted by CCP §2033.280(c). Demyer v Costa Mesa Mobile Home Estates (1995) 36 CA4th 393, 399, 42 CR2d 260, disapproved on other grounds in Wilcox v Birtwhistle (1999) 21 C4th 973, 983 n12, 90 CR2d 260.

PREPARE RESPONSE

Opening Paragraph

In first paragraph, immediately below title of case, identify (CCP §2033.210(c)):

- a. Responding party;
- b. Set number; and
- c. Propounding party.

Answers

Completely respond to the substance of requested admissions (CCP §2033.220), e.g.:

- a. Admit as much of request that is true; or
- b. Admit as much of request that is true, with reasonable and clear qualifications; or
- c. Deny as much of request that is untrue; or
- d. Specify that, although the client made reasonable inquiry about request, the client does not have or cannot obtain enough information to admit the matter.

PREPARE OBJECTIONS

Fully and clearly state specific grounds for objection. CCP §2033.230; see Appendix G.

NOTE

If only part of a request is objectionable, the remainder must nevertheless be answered. CCP §2033.230(a).

CONSIDER EFFECT OF ADMISSION

Carefully consider the effect of making an admission because:

- a. A party may amend or withdraw an admission only with leave of court after making a noticed motion (CCP §2033.300); and
- b. The matter is deemed conclusively established against your client, the responding party, if the court does not allow the party to withdraw the admission (CCP §2033.410).

CONSIDER EFFECT OF DENIAL

An opposing party may request the court to order you and/or the responding party to pay reasonable expenses including attorney

fees incurred if (CCP §2033.420):

- a. Your client fails to admit truth or genuineness when requested to do so; and
- b. The opposing party proves truth or genuineness.

SIGN AND VERIFY RESPONSES

Attorney

If you make *only* objections, *you*, as responding party's attorney, sign the responses. CCP §2033.240(a), (c). On possible waiver of privilege, see below.

Client

If you are providing any responses other than objections (CCP §2033.240(a)-(b)):

- a. The individual client must sign them under oath; or
- b. An officer or agent of the client must verify the responses when responding party is:
 - (1) Corporation;
 - (2) Partnership;
 - (3) Association; or
 - (4) Governmental agency.

Sample Form: See California Civil Discovery Practice §7.146 (4th ed Cal CEB 2006) for sample verification.

NOTE

The statute does not require a party to update a response. Burch v Gombos (2000) 82 CA4th 352, 98 CR2d 119 (response that was accurate when made did not need to be corrected in light of subsequently discovered information).

RECOGNIZE POSSIBLE WAIVER OF PRIVILEGE

Do not verify responses on behalf of your client (*e.g.*, a corporate client), because by doing so you waive attorney-client privilege and work product protection (CCP §2033.240(b)):

- a. During any subsequent discovery; and
- b. Concerning the identity of information sources used to prepare response.

NOTE

You should try to avoid having an in-house lawyer verify as a corporate officer to avoid waiving any privilege.

SERVE RESPONSE

Serve (CCP §2033.250):

- a. An *original* response on the propounding party; and
- b. A *copy* on all other parties who have appeared in the action.

Further Research: For additional discussion of the topic of this step, see Civil Discovery, chap 9.

When Obtaining Medical or Mental Examination of Party

STEP 41. REVIEW GENERAL RULES FOR PHYSICAL OR MENTAL EXAM

WHEN AVAILABLE

When a case involves a controversy over mental or physical condition (including the blood group) of (CCP §2032.020(a)):

- a. Any party to action;
- b. The agent of any party; or
- c. A natural person in the custody or under legal control of a party.

WHAT IS AVAILABLE

Examination

Any party may obtain a mental or physical examination of a person whose mental or physical condition is in controversy. CCP §2032.020(a).

Example: A defendant driver may be ordered to undergo an eye examination. See Harabedian v Superior Court (1961) 195 CA2d 26, 31, 15 CR 420.

Medical Reports

- a. Any party who submits to or produces another for an examination may demand (CCP §2032.610(a)):
 - (1) A copy of the report resulting from the examination; and
 - (2) Copies of reports of all earlier examinations of the same condition made by the same or another examiner.
- b. A party who requests the examination and receives demand for medical reports from the examinee is entitled to receive from the examinee reports concerning the same condition. CCP §2032.640.

CONSIDER EFFECT OF DEMAND FOR REPORTS

If you demand (or stipulate to) exchange of medical reports, recognize that you waive any privilege for your reports, *e.g.*, reports from your doctor-consultants that might be protected by work product. See CCP §§2032.610(c), 2032.630.

Further Research: Grover v Superior Court (1958) 161 CA2d 644, 647, 327 P2d 212.

SCOPE OF EXAMINATIONS

An exam:

- a. Is limited to the condition in controversy (CCP §2032.020(a)), *e.g.*, alleged by the plaintiff in a personal injury action; and
- b. Cannot involve a diagnostic test or procedure that is (CCP §2032.220(a)(1)):
 - (1) Painful;
 - (2) Protracted; or
 - (3) Intrusive.

HOW TO OBTAIN

Agreement

Secure the party's written agreement (CCP §2016.030); or

Demand or Court Order

If parties will not agree:

- a. Demand exam of a plaintiff in a personal injury case (CCP §2032.220(a)); or
- b. Obtain court order for all other exams (CCP §2032.310(a)). See step 44, below.

NOTE

Stipulations are often used for scheduling medical examinations and are encouraged by the Civil Discovery Act. See CCP §2032.310(b).

HOW MANY

- a. The defendant may demand one physical examination of the plaintiff in a personal injury case (CCP §2032.220(a));
- b. X-rays of the same area of the body are limited to one, unless the examinee consents to more than one or the court orders more than one (CCP §2032.520);
- c. All other examinations (including more than one exam of a plaintiff in personal injury case) are granted by the court and are not numerically limited by statute (CCP §2032.310(a)).

WHO CONDUCTS EXAM

The person conducting the exam must be:

Physical Exam

Licensed (CCP §2032.020(b)):

- a. Physician; or
- b. Other appropriate health care practitioner.

Mental Exam

Licensed (CCP §2032.020(c)):

- a. Physician; or
- b. Clinical psychologist who:
 - (1) Holds doctoral degree in psychology; and
 - (2) Has at least 5 years of postgraduate experience in diagnosis of emotional and mental disorders.

EXAM LOCATION

Examination must take place within 75 miles of the residence of the examinee unless the demanding party shows good cause to the court for a location further away, *e.g.*, qualified examiner is more than 75 miles from examinee's residence. CCP §§2032.220(a)(2), 2032.320(e).

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 10 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Medical or Mental Examination of Party/STEP 42. DEMANDING PARTY: SERVE DEMAND FOR PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY CASE

STEP 42. *DEMANDING PARTY*: SERVE DEMAND FOR PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY CASE

WHEN AVAILABLE BY DEMAND

The defendant may obtain one physical examination of the plaintiff in any case in which the plaintiff is seeking recovery for personal injury. CCP §2032.220(a).

WHEN TO SCHEDULE EXAMINATION

Schedule the physical examination at least:

- a. **30 days** after you serve the demand (CCP §2032.220(d)); and
- b. Before the discovery cutoff, *e.g.*, at least **30 days** before the *initial* trial date (CCP §§2024.010, 2024.020(a)).

PREPARE DEMAND

Specify (CCP §2032.220(c)):

- a. Time;
- b. Place;
- c. Manner;
- d. Conditions;
- e. Scope;
- f. Nature of exam; and
- g. Identity and specialty, if any, of the physician who will perform the examination.

SERVE DEMAND

Serve a *copy* of the demand for physical examination on (CCP §2032.220(e)):

- a. The plaintiff; and
- b. All other parties who have appeared in the action.

RETAIN ORIGINAL

Retain, until 6 months after the final disposition of the case, the *original* (CCP §2032.260(b)):

- a. Demand with proof of service attached; and
- b. Response you received.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 10 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Medical or Mental Examination of Party/STEP 43. RESPONDING PARTY: PREPARE AND SERVE RESPONSE TO DEMAND

STEP 43. *RESPONDING PARTY*: PREPARE AND SERVE RESPONSE TO DEMAND

WHEN TO RESPOND

Serve a response to the demand (unless you obtain a court order extending time to respond) (CCP §§1013, 2016.050, 2032.230(b)):

If Personally Served

20 days after the requesting party personally serves the demand; or

If Served by Other Means

- a. **20 days plus 2 court days** if by express mail or other overnight delivery, or if by facsimile transmission (parties must agree in writing to fax service);
- b. **25 days** if mailed to an address in California;
- c. **30 days** if mailed to an address in another state; or
- d. **40 days** if mailed to an address in another country.

NOTE

When the demand is served by a means other than personal service, the deadline for responding is calculated from the date on which it was sent.

PREPARE RESPONSE

Prepare a written statement that the plaintiff will either (CCP §2032.230(a)):

- a. Comply with demand as stated;
- b. Comply with demand as you have specifically modified it on behalf of plaintiff; or
- c. Refuse, for reasons that you specify, to submit to the demanded physical exam.

EFFECT OF FAILURE TO TIMELY RESPOND

If you miss the deadline to respond, all objections to the demand are waived unless you (CCP §2032.240(a)):

- a. Serve a late response that is in substantial compliance; and
- b. Make a motion for relief from waiver when you can show that your failure to serve a timely response was result of:
 - (1) Mistake;
 - (2) Inadvertence; or
 - (3) Excusable neglect.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 10 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Medical or Mental Examination of Party/STEP 44. MOVING PARTY: IF APPROPRIATE, PREPARE MOTION TO OBTAIN EXAM

STEP 44. *MOVING PARTY*: IF APPROPRIATE, PREPARE MOTION TO OBTAIN EXAM

WHEN YOU NEED COURT ORDER

A court order is needed when you are seeking (CCP §2032.310(d)):

- a. Mental examination; or
- b. Physical exam other than the one examination of the plaintiff in a personal injury case (see steps 41-42, above), *e.g.*:
 - (1) Exam of someone other than the plaintiff;
 - (2) Exam that is intrusive or protracted; or
 - (3) More than one exam of the plaintiff in a personal injury case.

Further Research: See *Shapira v Superior Court* (1990) 224 CA3d 1249, 1254, 274 CR 516.

WHEN TO SERVE NOTICE OF MOTION

Schedule the motion early enough to allow the exam to be scheduled before the discovery cutoff:

- a. Personally serve notice *at least 16 court days* before the hearing date (plus additional time if you serve by mail, overnight delivery, or facsimile). CCP §1005(b).
- b. If the court grants your motion, the exam must take place before discovery cutoff (*i.e.*, at least **30 days** before the *initial* trial date). CCP §2024.020(a).

PREPARE MOTION

Prepare the notice and motion with a declaration setting forth (CCP §§2032.310(b), 2032.320(a)):

- a. Examination:
 - (1) Time;
 - (2) Place;
 - (3) Manner;
 - (4) Conditions;
 - (5) Scope; and
 - (6) Nature;
- b. Identity and specialty, if any, of person or persons who will perform the examination;
- c. Declaration that you have made a reasonable and good faith attempt to arrange for examination by agreement of the parties; and
- d. Why you need the examination, *i.e.*, good cause.

SERVE NOTICE OF MOTION

Serve the notice of motion for examination on (CCP §2032.310(c)):

- a. The person to be examined; and
- b. All other parties who have appeared in the action.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 10 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Medical or Mental Examination of Party/STEP 45. RESPONDING PARTY: PREPARE AND SERVE RESPONSE TO MOTION

STEP 45. *RESPONDING PARTY*: PREPARE AND SERVE RESPONSE TO MOTION

GROUNDINGS FOR OPPOSITION

Oppose the motion on the grounds that (see [CCP §§2032.020, 2032.320](#)):

- a. The moving party failed to show good cause;
- b. A mental exam is not necessary because your client, as party whose exam is requested, stipulates that he or she:
 - (1) Is not making claim for mental and emotional distress beyond that usually associated with a physical injuries claim; and
 - (2) Will not present any expert testimony at trial regarding mental and emotional distress to support a claim for damages;
- c. Facts show that condition is not in controversy;
- d. The scope of the examination is unreasonable;
- e. Conditions for the exam are too time consuming; and/or
- f. The proposed examiner is not qualified.

Example: A cross-complainant who alleges mental distress occurred during sexual harassment, but does not allege *continuing* mental distress has not placed mental condition into controversy, and cannot be ordered to undergo mental examination. See [Doyle v Superior Court \(1996\) 50 CA4th 1878, 1885, 58 CR2d 476](#).

PREPARE OPPOSITION PAPERS

Prepare your opposition papers with declarations setting forth facts that support your grounds for opposition. See [CCP §2032.320](#).

SERVE RESPONSE

File and personally serve all opposition papers at least **9 court days** before the hearing on motion. [CCP §1005\(b\)](#).

Further Research: For additional discussion of the topic of this step, see [California Civil Discovery Practice, chap 10 \(4th ed Cal CEB 2006\)](#).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Medical or Mental Examination of Party/STEP 46. RESPONDING PARTY: IF CLIENT SUBMITS TO MEDICAL EXAMINATION, OBTAIN MEDICAL REPORTS

STEP 46. *RESPONDING PARTY: IF CLIENT SUBMITS TO MEDICAL EXAMINATION, OBTAIN MEDICAL REPORTS*

WHEN REPORTS ARE AVAILABLE

Reports are available when your client:

Client Examined

Submits to, or produces another person for, physical or mental examination. CCP §2032.610(a).

Waives Privilege

Is prepared to waive any privilege or work product protection under CCP §§2018.010-2018.080, regarding reports and writings (CCP §2032.630):

- a. Concerning past or future exams of examinee's physical or mental condition at issue in pending case; and
- b. Prepared by:
 - (1) Physician;
 - (2) Psychologist; or
 - (3) Licensed health care practitioner.

CONSIDER NOT DEMANDING EXCHANGE

If you have undiscoverable reports that you do not want disclosed, *e.g.*, reports from consultants that are absolutely protected by work product (see CCP §§2018.010-2018.080), do not request an exchange of reports.

Alternative Methods to Obtain Reports

Be aware that you may obtain reports by another procedure, *e.g.*, if:

- a. The examining doctor is designated as an expert and you demand that expert reports be exchanged (see CCP §2034.270); or
- b. The opposing party's expert testifies that he or she relied on the report by the examining doctor to form his or her opinion. See *People v Milner* (1988) 45 C3d 227, 241, 246 CR 713.

Further Research: See Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2008).

IF DEMANDING REPORTS

If you decide to request reports, make written demand for (CCP §2032.610(a)):

Current Report

A copy of the examiner's current detailed written report that sets out:

- a. History;
- b. Examinations;
- c. Findings;
- d. Test results;

- e. Diagnoses;
- f. Prognoses; and
- g. Conclusions; and

Previous Reports

Copies of reports of all earlier exams of the same condition of the examinee made by that examiner or another examiner.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 10 (4th ed Cal CEB 2006).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Medical or Mental Examination of Party/STEP 47. BOTH PARTIES: EXCHANGE REPORTS, IF DEMANDED

STEP 47. *BOTH PARTIES:* EXCHANGE REPORTS, IF DEMANDED

WHEN TO EXCHANGE REPORTS

Exchange reports if the party being examined requests it (see [step 41](#), above):

Demanding/Moving Party

The party who requested the examination must provide reports on the date that is the earlier of ([CCP §2032.610\(b\)](#)):

- a. **30 days** after the demand is served; or
- b. **15 days** before the *initial* trial date.

Responding Party

The party being examined must provide ([CCP §2032.640](#)):

- a. As of the date of the exchange: Any *existing* reports of any examination of the same condition by:
 - (1) Physician;
 - (2) Psychologist; or
 - (3) Licensed health care practitioner.
- b. After the date of exchange: Any later reports of any previous or subsequent examination of the same condition.

Further Research: For additional discussion of the topic of this step, see [California Civil Discovery Practice, chap 10 \(4th ed Cal CEB 2006\)](#).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery in Limited Civil Cases/STEP 48. RECOGNIZE DISCOVERY METHODS PERMISSIBLE IN LIMITED CIVIL CASES

When Obtaining Discovery in Limited Civil Cases

STEP 48. RECOGNIZE DISCOVERY METHODS PERMISSIBLE IN LIMITED CIVIL CASES

WHAT IS AVAILABLE

Civil Discovery Act

Each party may conduct discovery that complies with the notice and format requirements of the Civil Discovery Act (CCP §§2016.010-2036.050), and that is limited to (CCP §94):

a. Any combination of 35:

- (1) Interrogatories (no subparts) under CCP §§2030.010-2030.410;
- (2) Demands to produce documents or things under CCP §§2031.010-2031.510; and
- (3) Requests for admissions (no subparts) under CCP §§2033.010-2033.420;

NOTE

In limited civil cases, Judicial Council form interrogatories do count toward the total of 35.

- b. One oral or written deposition (CCP §§2025.010-2028.080);
- c. Unlimited production of documents if requested by properly serving a subpoena;
- d. Physical and mental exams as provided by CCP §§2032.010-2032.650 (see steps 41-47, above); and
- e. Exchange of identity of expert witnesses as provided by CCP §§2034.010-2034.740. See Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2008).

Economic Litigation Act

- a. The plaintiff may serve and receive a completed case questionnaire (CCP §93; see step 49, below);
- b. Any party may request a statement identifying witnesses and evidence (CCP §96; see step 50, below); and
- c. Additional discovery may be permitted by stipulation or court order. CCP §95.

NO DISCOVERY IN SMALL CLAIMS ACTIONS

Parties cannot conduct any discovery in small claims actions. See Bruno v Superior Court (1990) 219 CA3d 1359, 1362, 269 CR 142.

Further Research: For additional discussion of the topic of this step, see California Civil Discovery Practice, chap 14 (4th ed Cal CEB 2006).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery in Limited Civil Cases/STEP 49. SERVE COMPLETED CASE QUESTIONNAIRE

STEP 49. SERVE COMPLETED CASE QUESTIONNAIRE

WHAT IS AVAILABLE

The Case Questionnaire for Limited Civil Cases facilitates the discovery of fundamental facts (CCP §93(c)), *e.g.*:

- a. Names and addresses of witnesses;
- b. Lists of documents; and
- c. Information about:
 - (1) Damages;
 - (2) Insurance coverage;
 - (3) Injuries; and
 - (4) Treating physicians.

PLAINTIFF

COMPLETE QUESTIONNAIRE

Fill out case questionnaire on behalf of the plaintiff, your client. CCP §93(a).

Forms: See Judicial Council Form 982(a)(21) (Case Questionnaire for Limited Civil Cases). Judicial Council forms are available in PDF format on the Judicial Council's website, at <http://www.courtinfo.ca.gov/forms/>.

SERVE WITH COMPLAINT

The plaintiff serves with the summons and complaint (CCP §93(a)):

- a. A completed case questionnaire; and
- b. A blank copy of the case questionnaire for the defendant to complete and serve with its answer.

DEFENDANT

COMPLETE QUESTIONNAIRE

Fill out case questionnaire on behalf of the defendant, your client. CCP §93(b).

SERVE WITH ANSWER

Serve a completed case questionnaire with the answer. CCP §93(b).

EFFECT OF FAILURE TO SERVE COMPLETED QUESTIONNAIRE

- a. If a defendant on whom case questionnaire has been served fails to timely serve a completed questionnaire, the plaintiff may move (CCP §93(e)):
 - (1) To compel the completed questionnaire; and

(2) For monetary sanctions.

b. If the defendant fails to obey an order compelling response to the questionnaire, the court may make further orders, including, *e.g.*, imposing issue sanctions, evidence sanctions, or terminating sanctions.

Further Research: For additional discussion of the topic of this step, see CCP §§93(e), 2023.010-2023.040. See also Handling Motions to Compel and Other Discovery Motions (Cal CEB Action Guide November 2009).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery in Limited Civil Cases/STEP 50. REQUEST DISCLOSURE OF TRIAL WITNESSES AND EVIDENCE

STEP 50. REQUEST DISCLOSURE OF TRIAL WITNESSES AND EVIDENCE

WHAT IS AVAILABLE

Any party may serve on any other party a request to obtain (CCP §96):

- a. Disclosure of witnesses that opposing party intends to call at trial; and
- b. Description and copies of physical evidence opposing party intends to offer at trial.

Exception

The responding party does not have to (CCP §96):

- a. Disclose witnesses that party intends to call only for impeachment purposes; or
- b. Describe or provide copies of physical evidence opposing party intends to offer only for impeachment purposes at trial.

PREPARE REQUEST

Prepare a request setting forth the items you want disclosed (CCP §96(a)):

Include Warning

Include this warning:

YOU WILL NOT BE PERMITTED TO CALL ANY WITNESS, OR INTRODUCE ANY EVIDENCE, NOT INCLUDED IN THE STATEMENT SERVED IN RESPONSE TO THIS REQUEST, EXCEPT AS OTHERWISE PROVIDED BY LAW.

Consider Using Judicial Council Form

You may use Judicial Council Form 982(a)(22) (Request for Statement of Witnesses and Evidence for Limited Civil Cases). Judicial Council forms are available in PDF format on the Judicial Council's website, at <http://www.courtinfo.ca.gov/forms/>.

WHEN TO SERVE REQUEST

Serve the request for disclosure (CCP §96(b)):

- a. No earlier than **45 days** before the *initial* trial date; or
- b. No later than **30 days** before the *initial* trial date unless the court orders otherwise.

NOTE

If you wait and personally serve demand on the 30th day before trial, the opposing party will not be able to serve a demand on you (assuming the opposing attorney has not already prepared and served the demand).

RETAIN ORIGINAL PAPERS

Unless ordered by the court, do not file the request. CCP §96(e).

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery in Limited Civil Cases/STEP 51. RESPONDING PARTY: RESPOND TO REQUEST FOR DISCLOSURE OF TRIAL WITNESSES AND EVIDENCE

STEP 51. *RESPONDING PARTY*: RESPOND TO REQUEST FOR DISCLOSURE OF TRIAL WITNESSES AND EVIDENCE

WHEN TO RESPOND

Serve response to the request for disclosure (CCP §§96(c), (g), 1013):

If Personally Served

20 days from date the propounding party served request.

If Served by Other Means

- a. **20 days plus 2 court days** if by express mail or other overnight delivery, or if by facsimile transmission (parties must agree in writing to fax service);
- b. **25 days** if mailed to an address in California;
- c. **30 days** if mailed to an address in another state; and
- d. **40 days** if mailed to an address in another country.

PREPARE RESPONSE

Prepare a written response providing the information requested, including (CCP §96(a)), *e.g.*:

- a. List of witnesses you intend to call at trial; and
- b. Description and copies of physical evidence you intend to offer at trial.

NOTE

When the request is served by a means other than personal service, the deadline for responding is calculated from the date on which it was sent.

EFFECT OF FAILURE TO TIMELY RESPOND

If the propounding party objects at trial, the court will not allow you, the responding party, to present undisclosed witness or evidence. CCP §97.

Exception

Even if you fail to timely respond, your client, responding party, still may (CCP §97):

- a. If responding party is an individual, call himself or herself as witness;
- b. Call an adverse party as witness;
- c. Use witnesses or other evidence to impeach;
- d. Offer documents obtained by discovery; or
- e. Offer witnesses or documents as allowed by court because you, on behalf of responding party:
 - (1) Made a good faith effort to comply with the request to disclose trial witnesses and evidence; or
 - (2) Failed to comply because of:

- (a) Mistake;
- (b) Inadvertence;
- (c) Surprise; or
- (d) Excusable neglect.

RETAIN ORIGINAL PAPERS

Unless ordered by the court, do not file the response. CCP §96(e).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/When Obtaining Discovery in Limited Civil Cases/STEP 52. WHEN ADDITIONAL DISCOVERY IS NEEDED

STEP 52. WHEN ADDITIONAL DISCOVERY IS NEEDED

IF ADDITIONAL DISCOVERY NEEDED

If you need additional discovery ([CCP §95](#)):

- a. Consider asking other parties to stipulate ([CCP §95\(b\)](#)); or
- b. File a motion requesting additional discovery ([CCP §95\(a\)](#)).

TO OBTAIN COURT ORDER

The court may authorize additional discovery only if you show that you will be unable to prosecute or defend the action effectively without it.

Court Must Consider

The court must take into account whether:

- a. You have used all applicable discovery in good faith; and
- b. You have attempted to stipulate or obtain discovery informally.

Further Research: For additional discussion of the topic of this step, see [CCP §§93-96](#); see [California Civil Discovery Practice, chap 14 \(4th ed Cal CEB 2006\)](#).

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APPENDIX A
Form Interrogatories—General (Judicial Council Form DISC-001)



DISC-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):	
TELEPHONE NO.:	
FAX NO. (<i>Optional</i>):	
E-MAIL ADDRESS (<i>Optional</i>):	
ATTORNEY FOR (<i>Name</i>):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
SHORT TITLE OF CASE:	
<p style="text-align: center;">FORM INTERROGATORIES—GENERAL</p> <p>Asking Party:</p> <p>Answering Party:</p> <p>Set No.:</p>	CASE NUMBER:

Sec. 1. Instructions to All Parties

- (a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.
- (b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.
- (c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

- (a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds \$25,000. Separate interrogatories, Form *Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is \$25,000 or less; however, those interrogatories may also be used in unlimited civil cases.
- (b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.
- (c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.
- (d) The interrogatories in section 16.0, Defendant's Contentions—Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.
- (e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

- (a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.
- (b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

- (c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.
- (d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.
- (e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.
- (f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.
- (g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
- (h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

- (a) (*Check one of the following*):

- (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

DISC-001

(2) INCIDENT means (insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)"):

(b) YOU OR ANYONE ACTING ON YOUR BEHALF

includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) PERSON includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) DOCUMENT means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) HEALTH CARE PROVIDER includes any PERSON referred to in Code of Civil Procedure section 667.7(e)(3).

(f) ADDRESS means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

CONTENTS

- 1.0 Identity of Persons Answering These Interrogatories
2.0 General Background Information—Individual
3.0 General Background Information—Business Entity
4.0 Insurance
5.0 [Reserved]
6.0 Physical, Mental, or Emotional Injuries
7.0 Property Damage
8.0 Loss of Income or Earning Capacity
9.0 Other Damages
10.0 Medical History
11.0 Other Claims and Previous Claims
12.0 Investigation—General
13.0 Investigation—Surveillance
14.0 Statutory or Regulatory Violations
15.0 Denials and Special or Affirmative Defenses
16.0 Defendant's Contentions Personal Injury
17.0 Responses to Request for Admissions
18.0 [Reserved]
19.0 [Reserved]
20.0 How the Incident Occurred—Motor Vehicle
25.0 [Reserved]
30.0 [Reserved]
40.0 [Reserved]
50.0 Contract
60.0 [Reserved]
70.0 Unlawful Detainer [See separate form DISC-003]
101.0 Economic Litigation [See separate form DISC-004]
200.0 Employment Law [See separate form DISC-002]
Family Law [See separate form FL-145]

1.0 Identity of Persons Answering These Interrogatories

1.1 State the name, ADDRESS, telephone number, and relationship to you of each PERSON who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

2.0 General Background Information—individual

- 2.1 State: (a) your name; (b) every name you have used in the past; and (c) the dates you used each name.
2.2 State the date and place of your birth.
2.3 At the time of the INCIDENT, did you have a driver's license? If so state: (a) the state or other issuing entity; (b) the license number and type; (c) the date of issuance; and (d) all restrictions.
2.4 At the time of the INCIDENT, did you have any other permit or license for the operation of a motor vehicle? If so, state: (a) the state or other issuing entity; (b) the license number and type; (c) the date of issuance; and (d) all restrictions.
2.5 State: (a) your present residence ADDRESS; (b) your residence ADDRESSES for the past five years; and (c) the dates you lived at each ADDRESS.
2.6 State: (a) the name, ADDRESS, and telephone number of your present employer or place of self-employment; and (b) the name, ADDRESS, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the INCIDENT until today.
2.7 State: (a) the name and ADDRESS of each school or other academic or vocational institution you have attended, beginning with high school; (b) the dates you attended; (c) the highest grade level you have completed; and (d) the degrees received.
2.8 Have you ever been convicted of a felony? If so, for each conviction state: (a) the city and state where you were convicted; (b) the date of conviction; (c) the offense; and (d) the court and case number.
2.9 Can you speak English with ease? If not, what language and dialect do you normally use?
2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?



- 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON**? If so, state:
 - (a) the name, **ADDRESS**, and telephone number of that **PERSON**; and
 - (b) a description of your duties.
- 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**? If so, for each person state:
 - (a) the name, **ADDRESS**, and telephone number;
 - (b) the nature of the disability or condition; and
 - (c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.
- 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
 - (a) the name, **ADDRESS**, and telephone number;
 - (b) the nature or description of each substance;
 - (c) the quantity of each substance used or taken;
 - (d) the date and time of day when each substance was used or taken;
 - (e) the **ADDRESS** where each substance was used or taken;
 - (f) the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken; and
 - (g) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information—Business Entity

- 3.1 Are you a corporation? If so, state:
 - (a) the name stated in the current articles of incorporation;
 - (b) all other names used by the corporation during the past 10 years and the dates each was used;
 - (c) the date and place of incorporation;
 - (d) the **ADDRESS** of the principal place of business; and
 - (e) whether you are qualified to do business in California.
- 3.2 Are you a partnership? If so, state:
 - (a) the current partnership name;
 - (b) all other names used by the partnership during the past 10 years and the dates each was used;
 - (c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
 - (d) the name and **ADDRESS** of each general partner; and
 - (e) the **ADDRESS** of the principal place of business.
- 3.3 Are you a limited liability company? If so, state:
 - (a) the name stated in the current articles of organization;
 - (b) all other names used by the company during the past 10 years and the date each was used;
 - (c) the date and place of filing of the articles of organization;
 - (d) the **ADDRESS** of the principal place of business; and
 - (e) whether you are qualified to do business in California.

- 3.4 Are you a joint venture? If so, state:
 - (a) the current joint venture name;
 - (b) all other names used by the joint venture during the past 10 years and the dates each was used;
 - (c) the name and **ADDRESS** of each joint venturer; and
 - (d) the **ADDRESS** of the principal place of business.
- 3.5 Are you an unincorporated association? If so, state:
 - (a) the current unincorporated association name;
 - (b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and
 - (c) the **ADDRESS** of the principal place of business.
- 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
 - (a) the name;
 - (b) the dates each was used;
 - (c) the state and county of each fictitious name filing; and
 - (d) the **ADDRESS** of the principal place of business.
- 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
 - (a) identify the license or registration;
 - (b) state the name of the public entity; and
 - (c) state the dates of issuance and expiration.

4.0 Insurance

- 4.1 At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:
 - (a) the kind of coverage;
 - (b) the name and **ADDRESS** of the insurance company;
 - (c) the name, **ADDRESS**, and telephone number of each named insured;
 - (d) the policy number;
 - (e) the limits of coverage for each type of coverage contained in the policy;
 - (f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
 - (g) the name, **ADDRESS**, and telephone number of the custodian of the policy.
- 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

5.0 [Reserved]

6.0 Physical, Mental, or Emotional Injuries

- 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 6.2 through 6.7).
- 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.



- 6.3 Do you still have any complaints that you attribute to the **INCIDENT**? If so, for each complaint state:
 - (a) a description;
 - (b) whether the complaint is subsiding, remaining the same, or becoming worse; and
 - (c) the frequency and duration.

- 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**? If so, for each **HEALTH CARE PROVIDER** state:
 - (a) the name, **ADDRESS**, and telephone number;
 - (b) the type of consultation, examination, or treatment provided;
 - (c) the dates you received consultation, examination, or treatment; and
 - (d) the charges to date.

- 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**? If so, for each medication state:
 - (a) the name;
 - (b) the **PERSON** who prescribed or furnished it;
 - (c) the date it was prescribed or furnished;
 - (d) the dates you began and stopped taking it; and
 - (e) the cost to date.

- 6.6 Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:
 - (a) the nature;
 - (b) the date;
 - (c) the cost; and
 - (d) the name, **ADDRESS**, and telephone number of each provider.

- 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**? If so, for each injury state:
 - (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
 - (b) the complaints for which the treatment was advised; and
 - (c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

- 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:
 - (a) describe the property;
 - (b) describe the nature and location of the damage to the property;

- (c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
- (d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

- 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:
 - (a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;
 - (b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy of it; and
 - (c) the amount of damage stated.

- 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:
 - (a) the date repaired;
 - (b) a description of the repair;
 - (c) the repair cost;
 - (d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;
 - (e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

8.0 Loss of Income or Earning Capacity

- 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 8.2 through 8.8).

- 8.2 State:
 - (a) the nature of your work;
 - (b) your job title at the time of the **INCIDENT**; and
 - (c) the date your employment began.

- 8.3 State the last date before the **INCIDENT** that you worked for compensation.

- 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

- 8.5 State the date you returned to work at each place of employment following the **INCIDENT**.

- 8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT**.

- 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.

- 8.8 Will you lose income in the future as a result of the **INCIDENT**? If so, state:
 - (a) the facts upon which you base this contention;
 - (b) an estimate of the amount;
 - (c) an estimate of how long you will be unable to work; and
 - (d) how the claim for future income is calculated.

9.0 Other Damages

- 9.1 Are there any other damages that you attribute to the **INCIDENT**? If so, for each item of damage state:
- the nature;
 - the date it occurred;
 - the amount; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.
- 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

10.0 Medical History

- 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? If so, for each state:
- a description of the complaint or injury;
 - the dates it began and ended; and
 - the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.
- 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. (*You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.*)
- 10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:
- the date and the place it occurred;
 - the name, **ADDRESS**, and telephone number of any other **PERSON** involved;
 - the nature of any injuries you sustained;
 - the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and
 - the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims

- 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:
- the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;
 - the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;

- the court, names of the parties, and case number of any action filed;
- the name, **ADDRESS**, and telephone number of any attorney representing you;
- whether the claim or action has been resolved or is pending; and
- a description of the injury.

- 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:
- the date, time, and place of the **INCIDENT** giving rise to the claim;
 - the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
 - the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;
 - the period of time during which you received workers' compensation benefits;
 - a description of the injury;
 - the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who provided services; and
 - the case number at the Workers' Compensation Appeals Board.

12.0 Investigation—General

- 12.1 State the name, **ADDRESS**, and telephone number of each individual:
- who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
 - who made any statement at the scene of the **INCIDENT**;
 - who heard any statements made about the **INCIDENT** by any individual at the scene; and
 - who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).
- 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:
- the name, **ADDRESS**, and telephone number of the individual interviewed;
 - the date of the interview; and
 - the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.
- 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:
- the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
 - the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
 - the date the statement was obtained; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

- 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:
- the number of photographs or feet of film or videotape;
 - the places, objects, or persons photographed, filmed, or videotaped;
 - the date the photographs, films, or videotapes were taken;
 - the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the photographs, films, or videotapes.

- 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) concerning the **INCIDENT**? If so, for each item state:
- the type (i.e., diagram, reproduction, or model);
 - the subject matter; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- 12.6 Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:
- the name, title, identification number, and employer of the **PERSON** who made the report;
 - the date and type of report made;
 - the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the report.

- 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:
- the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310); and
 - the date of the inspection.

13.0 Investigation—Surveillance

- 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:
- the name, **ADDRESS**, and telephone number of the individual or party;
 - the time, date, and place of the surveillance;
 - the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of any surveillance photograph, film, or videotape.

- 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:
- the title;
 - the date;
 - the name, **ADDRESS**, and telephone number of the individual who prepared the report; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

14.0 Statutory or Regulatory Violations

- 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**? If so, identify the name, **ADDRESS**, and telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.
- 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**? If so, for each **PERSON** state:
- the name, **ADDRESS**, and telephone number of the **PERSON**;
 - the statute, ordinance, or regulation allegedly violated;
 - whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered; and
 - the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

15.0 Denials and Special or Affirmative Defenses

- 15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:
- state all facts upon which you base the denial or special or affirmative defense;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
 - identify all **DOCUMENTS** and other tangible things that support your denial or special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

16.0 Defendant's Contentions—Personal Injury

- 16.1 Do you contend that any **PERSON**, other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each **PERSON**:
- state the name, **ADDRESS**, and telephone number of the **PERSON**;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- 16.2 Do you contend that plaintiff was not injured in the **INCIDENT**? If so:
- state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:
- identify it;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:
- identify each service;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:
- identify each cost;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:
- identify each part of the loss;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the **INCIDENT**? If so:
- identify each item of property damage;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:
- identify each cost item;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:
- the source of each **DOCUMENT**;
 - the date each claim arose;
 - the nature of each claim; and
 - the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.
- 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310)? If so, for each plaintiff state:
- the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
 - a description of each **DOCUMENT**; and
 - the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

17.0 Responses to Request for Admissions

- 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
- state the number of the request;
 - state all facts upon which you base your response;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
 - identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 *[Reserved]*

19.0 *[Reserved]*

20.0 How the Incident Occurred—Motor Vehicle

- 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).
- 20.2 For each vehicle involved in the **INCIDENT**, state:
- the year, make, model, and license number;
 - the name, **ADDRESS**, and telephone number of the driver;

- (c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
 - (d) the name, **ADDRESS**, and telephone number of each registered owner;
 - (e) the name, **ADDRESS**, and telephone number of each lessee;
 - (f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder; and
 - (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.
- 20.3 State the **ADDRESS** and location where your trip began and the **ADDRESS** and location of your destination.
- 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.
- 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.
- 20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.
- 20.7 Was there a traffic signal facing you at the time of the **INCIDENT**? If so, state:
- (a) your location when you first saw it;
 - (b) the color;
 - (c) the number of seconds it had been that color; and
 - (d) whether the color changed between the time you first saw it and the **INCIDENT**.
- 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:
- (a) just before the **INCIDENT**;
 - (b) at the time of the **INCIDENT**; and (c) just after the **INCIDENT**.
- 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**? If so:
- (a) identify the vehicle;
 - (b) identify each malfunction or defect;
 - (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
 - (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.
- 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT**? If so:
- (a) identify the vehicle;
 - (b) identify each malfunction or defect;
 - (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and

(d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

- 20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.

25.0 [Reserved]

30.0 [Reserved]

40.0 [Reserved]

50.0 Contract

- 50.1 For each agreement alleged in the pleadings:
- (a) identify each **DOCUMENT** that is part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
 - (b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
 - (c) identify all **DOCUMENTS** that evidence any part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
 - (d) identify all **DOCUMENTS** that are part of any modification to the agreement, and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
 - (e) state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;
 - (f) identify all **DOCUMENTS** that evidence any modification of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.
- 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.
- 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.
- 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.
- 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.
- 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 [Reserved]

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/APPENDIX B Sample Declaration for Additional Discovery (Interrogatories)

APPENDIX B

Sample Declaration for Additional Discovery (Interrogatories)

MARY G. SMITH (SBN #)

10000 West Olympic Boulevard

Los Angeles, California 90064

(213) XXX-XXXX

Attorneys for Plaintiff IMC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IMC,	)	CASE NO. Cxxxxxxx
)	
Plaintiff,)	
)	
vs.)	
)	
MAJOR ASSOCIATION, et al.	)	DECLARATION FOR ADDITIONAL
	)	INTERROGATORIES (<u>CCP</u>
Defendant	)	<u>§2030.050</u>)

I, MARY G. SMITH, declare:

1. I am presently the attorney for IMC, plaintiff in this action.
2. I am propounding to MAJOR ASSOCIATION the attached set of interrogatories.
3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially prepared interrogatories permitted by CCP §2030.030(a)(1).
4. I have previously propounded to this party a total of 43 interrogatories, 31 of which were not official form interrogatories.
5. This set of interrogatories contains a total of 16 specially prepared interrogatories.
6. I am familiar with the issues and the previous discovery conducted by all the parties in the case.
7. I have personally examined each of the questions, including any subparts, in this set of interrogatories.
8. This number of questions is warranted under CCP §2030.040(a) because this is a case that involves several breach of contract allegations. These interrogatories are necessary to obtain further information pertaining to facts discovered in a deposition of an officer of MAJOR ASSOCIATION and documents recently received from a third party witness. The only other method for discovering this information would be another oral deposition (if allowed by the court), and would require travel to another state.
9. None of the questions or subparts in this set of interrogatories is being propounded for any improper purpose, such as to harass

the party to whom it is directed, or the attorney for that party, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on March 1, 2010, at Los Angeles, California.

Mary G. Smith

Attorney for Plaintiff, IMC

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/APPENDIX C Request for Admissions (Judicial Council Form DISC-020)

APPENDIX C

Request for Admissions (Judicial Council Form DISC-020)



ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
<p style="text-align: center;">REQUESTS FOR ADMISSION</p> <input type="checkbox"/> Truth of Facts <input type="checkbox"/> Genuineness of Documents Requesting Party: Answering Party: Set No.:	CASE NUMBER:

INSTRUCTIONS

Requests for admission are written requests by a party to an action requiring that any other party to the action either admit or deny, under oath, the truth of certain facts or the genuineness of certain documents. For information on timing, the number of admissions a party may request from any other party, service of requests and responses, restrictions on the style, format, and scope of requests for admission and responses to requests, and other details, see Code of Civil Procedure sections 94–95, 1013, and 2033.010–2033.420 and the case law relating to those sections.

An answering party should consider carefully whether to admit or deny the truth of facts or the genuineness of documents. With limited exceptions, an answering party will not be allowed to change an answer to a request for admission. There may be penalties if an answering party fails to admit the truth of any fact or the genuineness of any document when requested to do so and the requesting party later proves that the fact is true or that the document is genuine. These penalties may include, among other things, payment of the requesting party’s attorney’s fees incurred in making that proof.

Unless there is an agreement or a court order providing otherwise, the answering party must respond in writing to requests for admission within 30 days after they are served, or within 5 days after service in an unlawful detainer action. There may be significant penalties if an answering party fails to provide a timely written response to each request for admission. These penalties may include, among other things, an order that the facts in issue are deemed true or that the documents in issue are deemed genuine for purposes of the case.

Answers to *Requests for Admission* must be given under oath. The answering party should use the following language at the end of the responses:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

These instructions are only a summary and are not intended to provide complete information about requests for admission. This *Requests for Admission* form does not change existing law relating to requests for admissions, nor does it affect an answering party’s right to assert any privilege or to make any objection.

REQUESTS FOR ADMISSION

You are requested to admit within 30 days after service, or within 5 days after service in an unlawful detainer action, of this *Requests for Admission* that:

1. Each of the following facts is true *(if more than one, number each fact consecutively)*:

Continued on Attachment 1

2. The original of each of the following documents, copies of which are attached, is genuine *(if more than one, number each document consecutively)*:

Continued on Attachment 2

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/APPENDIX D Sample Declaration for Additional Discovery (Requests for Admissions)

APPENDIX D
Sample Declaration for Additional Discovery (Requests for Admissions)

MARY G. SMITH (SBN #)
10000 West Olympic Boulevard
Los Angeles, California 90064
(213) XXX-XXXX

Attorneys for Plaintiff IMC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IMC,	)	CASE NO. Cxxxxxx
Plaintiff,)	
)	
vs.)	
)	
MAJOR ASSOCIATION, et al.	)	DECLARATION FOR ADDITIONAL
Defendant	)	REQUESTS FOR ADMISSIONS
_____	)	(<u>CCP §2033.050</u>)

I, MARY G. SMITH, declare:

1. I am presently the attorney for IMC, plaintiff in this action.
2. I am propounding to MAJOR ASSOCIATION the attached set of requests for admissions.
3. This set of requests for admissions will cause the total number of requests propounded to the party to whom they are directed to exceed the number of requests permitted by CCP §2033.030(a).
4. I have previously propounded a total of 29 requests for admission (including subparts) to this party.
5. This set of requests for admissions contains a total of 9 requests.
6. I am familiar with the issues and previous discovery conducted by all parties in the case.
7. I have personally examined each of the requests in this set of requests for admissions.
8. This number of requests for admissions is warranted under CCP §2033.040(a) because this is a case that involves several breach of contract allegations and numerous affirmative defenses.
9. None of the requests in this set of requests is being propounded for any improper purpose, such as to harass the party to whom it is directed, or the attorney for that party, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on March 1, 2010, at Los Angeles, California.

MARY G. SMITH

Attorney for IMC

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/APPENDIX E Sample Stipulation

APPENDIX E
Sample Stipulation

JASON H. CARREN (SBN #)
DELORES K. MAGEE (SBN #)
O'KEEFE, CARREN & HENRY
1320 Main Street, 7th Floor
San Francisco, California 94199
Telephone: (415) 555-3240
Attorneys for Defendant
CENTRAL STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CENTRAL

JENNIFER SETON	)	No. 555555
Plaintiff,)	
)	
vs.)	
	)	STIPULATION TO OBTAIN
CENTRAL STORES, INC.,	)	UPDATED
and DOES 1 through 25,	)	MEDICAL RECORDS AND TO
inclusive,	)	DECLARE EXPERT WITNESS(ES)
Defendant)	
_____)	

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective counsel, that, under Code of Civil Procedure §2024.060, discovery is reopened for the limited purpose of obtaining plaintiff's additional medical records for medical care incurred after September 1, 2010, and that defendant shall be entitled to complete such discovery on or before the 30th day before the continued date set for the trial of the action.

IT IS FURTHER HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective counsel, that defendant may declare expert witnesses in this action, such declaration taking place on or before the 30th day after the date this stipulation is filed with the court.

DATED: October 16, 2010

LAW OFFICES OF
SANDRA MOORE PERRY
BY _____

SANDRA MOORE PERRY, ESQ.

Attorneys for Plaintiff

DATED: October 16, 2010

O'KEEFE, CARREN & HENRY

BY _____

DELORES K. MAGEE

Attorneys for Defendant

CENTRAL STORES, INC.

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APPENDIX F
Sample Record of Discovery

DISCOVERY

CASE	<u>SETON v CENTRAL STORES, INC.</u>
DATE OF LOSS	11-26-09
COMPLAINT FILED	1-21-10
COMPLAINT SERVED	1-30-10
ANSWER FILED	3-5-10
OUR FILE NUMBER	01-39

DEPOSITIONS

DEPONENT	DATE TAKEN	SUMMARIZED
JENNIFER SETON	7-11-10	8-15-10
LARRY E. SETON	7-19-10	7-22-10
JOHN T. EGAN	9-10-10	11-4-10

MEDICAL RECORDS

FACILITY	DATE RECEIVED	SUMMARIZED
ROBERT Z. BOLONGA, M.D. (I)	9-17-10	9-19-10
ROBERT Z. BOLONGA, M.D. (II)	6-18-10	6-23-10
THOMAS L STEELMAN, M.D.	1-23-11	2-10-11
CENTRAL GENERAL HOSPITAL	9-27-10 (PLUS BILLING FILE)	
CENTRAL GENERAL HOSPITAL	7-13-10 (PLUS BILLING FILE)	
HILL VALLEY PHYSICAL THERAPY	9-17-10	9-19-10
HILL VALLEY PHYSICAL THERAPY	1-23-11	1-24-11

CASE **SETON v CENTRAL STORES, INC.**

PAGE TWO

MARY E. SCANDON, D.C.	12-16-10	
MARY E. SCANDON, D.C.	1-23-11 (No records certif.)	
KAISER	12-16-10	1-24-11
ARMOND WATSON, M.D.	12-16-10	1-24-11

EMPLOYMENT RECORDS

EMPLOYER	DATE RECEIVED	SUMMARIZED
HALL BOOKKEEPING SERVICES	9-17-10	
HALL BOOKKEEPING SERVICES	1-23-11	

DOCTOR	DATE OF EXAM	REPORT REC'D	REPORT TO P
SANDY JEFFREY, M.D.	11-18-10	1-12-11	2-2-11

OTHER

	REQUESTED	RECEIVED
P'S CALENDAR BOOKS FOR 2008, 2009, 2010		

INTERROGATORIES

FROM	TO	SET	PROPOUNDED	RESPONSE SERVED
P	D	1	8-20-10	9-23-10
D	P	1	6-20-10	7-24-10
P	D	2	1-7-11	2-10-11
CASE	<u>SETON v CENTRAL STORES, INC.</u>			

PAGE THREE
REQUEST FOR PRODUCTION OF DOCUMENTS

FROM	TO	SET	PROPOUNDED	RESPONSE SERVED
P	D	1	5-25-10 (MAIL)	6-15-10
P	D	2	9-1-10 (MAIL)	9-25-10

REQUEST FOR ADMISSION

FROM	TO	SET	PROPOUNDED	RESPONSE SERVED
D	P	1	7-6-10 (MAIL)	8-10-10
P	D	1	7-10-10 (MAIL)	8-13-10

OTHER

	PROPOUNDED	RESPONSE SERVED
REQUEST FOR STATEMENT OF DAMAGES		

Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/APPENDIX G Sample Objections to Discovery Devices

APPENDIX G

Sample Objections to Discovery Devices

When factually justified, these objections may be used with any discovery device. In addition, you may object to a particular discovery device if propounding party fails or refuses to follow proper procedures for that device, *e.g.*, does not provide proper notice for deposition (see steps 10-22, above). You should avoid boilerplate objections and provide sufficient information to justify assertion of a particular objection (*i.e.*, if you object on the basis of burden, you should explain in detail why the request is overly burdensome).

NOTE: If court determines that you objected to discovery device without substantial justification, *you will be subject to sanctions*. See CCP §2023.010(e).

OBJECTION	ACTION
1. IRRELEVANT	Object that information sought is not relevant to subject matter of the action, and is neither (<u>CCP §2017.010</u>): a. Admissible; or b. Reasonably calculated to lead to discovery of admissible evidence.
2. OVER NUMERICAL LIMIT <i>Without Declaration for Additional Discovery</i> <i>With Declaration for Additional Discovery</i>	If more than 35 specially prepared interrogatories or requests for admissions are propounded: Object and answer only first 35 (<u>CCP §§2030.030(a)(1), 2030.240(b), 2033.030(a), 2033.230(b)</u>): a. If you believe that additional discovery is not justified, object and attempt to resolve issue with propounding party; b. If you cannot resolve issue informally, seek protective order. <u>CCP §§2030.040(b), 2030.090, 2033.040(b), 2033.080</u> .
3. CONCERNING PLAINTIFF'S SEXUAL CONDUCT	Object when discovery calls for information about plaintiff's sexual conduct with persons other than alleged perpetrator in action for sexual harassment, sexual assault, or sexual battery, unless defendant first obtains court order. <u>CCP §2017.220</u> .
4. OVERLY BURDENSOME OR OPPRESSIVE	Object to discovery when: a. Likelihood that discovery will lead to admissible evidence is outweighed by (<u>CCP §2017.020(a)</u>): (1) Burden; (2) Expense; (3) Intrusiveness; b. Discovery is unreasonably cumulative or duplicative (<u>CCP §2019.030(a)(1)</u>); c. Discovery is obtainable from some other source that is (<u>CCP §2019.030(a)(1)</u>): (1) More convenient; (2) Less burdensome; or (3) Less expensive. d. Party is using discovery in manner or to extent that causes (<u>CCP §2023.010(c)</u>):

5. PRIVILEGED

(1) Unwarranted annoyance, embarrassment, or oppression; or

(2) Undue burden and expense.

Object when discovery calls for information falling under evidentiary privilege, *e.g.*:

- a. Self-incrimination (Evid C §940);
- b. Attorney-client privilege (Evid C §§950-952);
- c. Marital privileges (Evid C §§970-980);
- d. Physician-patient privilege (Evid C §992);
- e. Psychotherapist-patient privilege (Evid C §1012);
- f. Clergy-penitent privilege (Evid C §1032);
- g. Sexual assault victim-counselor privilege (Evid C §1035.4);
- h. Domestic violence victim-counselor privilege (Evid C §1037.2);
- i. Official informer (Evid C §1042);
- j. Political vote (Evid C §1050);
- k. Trade secret (Evid C §1060);
- i. Official informer (Evid C §1042);
- j. Political vote (Evid C §1050);
- k. Trade secret (Evid C §1060);
- l. Reporter's privilege regarding unpublished information (Evid C §1070).

6. CALLS FOR TAX RETURNS

Object when discovery calls for either state or federal tax returns. Rev & T C §§19282, 26451. But see Schnabel v Superior Court (1993) 5 C4th 704, 21 CR2d 200 (corporate tax returns of close corporation with two shareholders ordered disclosed to spouse of one shareholder in marital dissolution action).

7. WITHIN WORK PRODUCT PROTECTION

Object when discovery calls for information protected by work product, *e.g.*:

a. Any writing that reflects attorney's impressions, conclusions, opinions, or legal research or theories (CCP §2018.030(a));

b. Other material or information generated by attorney in preparation of case (unless prior court order is obtained) (CCP §2018.030(a)-(b)).

8. CONCERNING DEFENDANT'S FINANCIAL INFORMATION

a. Object when plaintiff seeks to discover financial condition of defendant or profits defendant has gained by conduct allegedly making defendant liable for punitive damages, unless plaintiff first obtains court order permitting such discovery.

b. Personal financial information may also be protected by right of privacy (see 9, below).

9. PROTECTED BY RIGHT OF PRIVACY

Object under both U.S. Constitution (see Griswold v Connecticut (1965) 381 US 479, 85 S Ct 1678, 14 L Ed 2d 510) and Cal Const art I, §1, if discovery calls for information protected by right to privacy, *e.g.*:

a. Financial information about employees and stockholders (Rifkind v Superior Court (1981) 123 CA3d 1045, 1050, 177 CR 82, disapproved to the extent it holds that all tax returns are absolutely privileged in 5 C4th at 723;

Allen v Superior Court (1984) 151 CA3d 447, 453, 198 CR 737);

b. Personnel files (Board of Trustees v Superior Court (1981) 119 CA3d 516, 525, 174 CR 160);

c. Personal financial information (Richards v Superior Court (1978) 86 CA3d 265, 273, 150 CR 77).

d. Confidential settlement agreement executed between third parties who are not involved in current action (Hinsbaw Winkler, Draa, Marsh & Still v Superior Court (1996) 51 CA4th 233, 239, 58 CR2d 791).

**10. OFFICIAL
PROCEEDINGS**

Object when discovery calls for publications or broadcasts made in legislative, judicial, or other official proceeding. CC §47.

**11. PEACE OFFICER
RECORDS**

Object when discovery calls for personnel records and complaints against peace officer except as ordered under Evid C §§1043, 1046. Pen C §832.7.

See California Civil Discovery Practice, chaps 1 and 3 (4th ed Cal CEB 2006); see also California Trial Objections (Cal CEB Annual).

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/TABLE OF STATUTES, REGULATIONS, AND RULES

TABLE OF STATUTES, REGULATIONS, AND RULES

CALIFORNIA

Constitution

Art I, §1: [App G](#)

Statutes

CIVIL CODE

47: [App G](#)

CODE OF CIVIL PROCEDURE

93: [Step 48](#)

93-96: [Step 52](#)

93(a): [Step 49](#)

93(b): [Step 49](#)

93(c): [Step 49](#)

93(e): [Step 49](#)

94: [Step 48](#)

95: [Steps 48, 52](#)

95(a): [Step 52](#)

95(b): [Step 52](#)

96: [Steps 48, 50](#)

96(a): [Steps 50-51](#)

96(b): [Step 50](#)

96(c): [Step 51](#)

96(e): [Steps 50-51](#)

96(g): [Step 51](#)

97: [Step 51](#)

170.6: [Step 4](#)

412.20: [Step 4](#)

473: [Step 36](#)

485.230: [Step 10](#)

638: [Steps 4, 6](#)

639: [Steps 4, 6](#)

1005(b): Steps 4, 21, 44-45

1010: Step 19

1011: Step 22

1013: Steps 11, 31, 34-38, 40, 43

1013(c): Step 29

1013(e): Step 29

1985.3: Steps 11, 14, 18-19

1985.3(b)(1): Step 19

1985.3(e): Step 19

1985.6: Steps 11, 18-19

1985.6(b): Step 19

1985.6(c): Step 19

1985.6(c)(2): Step 18

1985.6(e): Steps 18-19

1985.8: Steps 12, 18

1985.8(b): Step 18

1985.8(c)(1): Step 18

1985.8(c)(2): Step 18

2016.010-2036.050: Steps 4, 48

2016.020(d): Step 34

2016.020(e): Step 34

2016.030: Steps 8, 12, 32, 41

2016.050: Steps 11, 34, 36-38, 40, 43

2017.010: Steps 8-9, App G

2017.020(a): Step 9, App G

2017.210: Step 9

2017.220: Step 9, App G

2018.010-2018.080: Steps 26, 31, 46

2018.030(a): Step 9, App G

2018.030(a)-(b): App G

2018.030(b): Step 9

2018.070(a)-(b): Step 9

2018.080(c): Step 9

2019.030(a)(1): App G

2020 (former): Step 18

2020.010: Step 12

2020.010-2020.510: Step 18

2020.010(a)(1): Steps 10, 12

2020.020: Steps 12, 18

2020.030: Steps 12, 18

2020.220-2020.230: Step 27

2020.220(a): Step 11

2020.220(a)(1): Step 19

2020.220(c): Step 19

2020.230(a): Step 20

2020.240: Step 18

2020.310: Step 18

2020.320: Step 18

2020.410: Step 18

2020.410(c): Step 11

2020.410(d): Step 19

2020.420: Step 14

2020.430(d): Steps 11, 14, 18-19

2020.510(a): Step 18

2020.510(c): Step 18

2020.510(d): Step 18

2023.010-2023.040: Step 49

2023.010(c): App G

2023.010(e): App G

2024.010: Steps 34, 42

2024.010-2024.020: Steps 11, 37

2024.020: Step 29

2024.020(a): Steps 4, 21, 29, 32, 34, 38, 42, 44

2024.050-2024.060: Steps 11, 38

2024.060: App E

2024(a) (former): Step 4

2025.010: Step 10

2025.010-2027.010: Step 23

2025.010-2028.080: Step 48

2025.210-2025.280: Step 22

2025.210(a): Step 19

2025.210(b): Step 19

2025.220: Steps 12, 18

2025.220(a)(1): Step 17

2025.220(a)(2): Step 17

2025.220(a)(3): Step 17

2025.220(a)(4): Step 17

2025.220(a)(5): Step 17

2025.220(a)(6): Step 17

2025.220(b): Step 12

2025.230: Steps 10, 17

2025.240(a): Steps 12, 17, 19, 24

2025.240(b): Step 19

2025.240(c): Steps 12, 19

2025.250(a): Step 13

2025.250(b): Step 13

2025.250(c): Step 13

2025.250(d): Step 13

2025.260(a)-(b): Step 13

2025.270(a): Step 11

2025.270(b): Step 11

2025.270(c): Step 11

2025.280(a): Step 12

2025.280(b): Step 12

2025.320(a): Steps 14-16

2025.320(b)-(d): Steps 14-16

2025.320(e): Step 14

2025.330(b)-(c): Step 17

2025.340: Step 18

2025.410(a): Step 22

2025.410(a)-(b): Step 22

2025.410(b): Step 22

2025.420: Step 11

2025.420(a): Step 22

2025.420(b)(3): Step 17

2025.480: Step 10

2025.610(a): Step 10

2025.610(b): Step 21

2025.610(c)(1): Step 10

2025.610(c)(2): Step 10

2025(o) (former): Step 10

2026.010: Step 10

2026.010(b): Step 15

2026.010(c): Step 15

2026.010(d)(1): Step 15

2027.010: Step 10

2027.010(a)-(b): Step 16

2027.010(c): Step 16

2027.010(d): Step 16

2028.010: Steps 23, 27

2028.020: Step 24

2028.020(a): Step 24

2028.020(b): Step 24

2028.030: Step 28

2028.030(b): Steps 24-25

2028.030(c): Steps 24-25

2028.030(d): Steps 24-25

2028.040(a): Step 26

2028.040(b): Step 26

2028.040(c): Step 26

2028.050(a): Step 26

2028.050(b): Step 26

2028.050(c): Step 26

2028.060(a): Step 24

2028.060(b): Steps 24-25

2028.080: Steps 27-28

2030.010-2030.410: Step 48

2030.010(a): Step 29

2030.010(b): Step 29

2030.020: Step 29

2030.020(d): Step 29

2030.030(a)(1): Step 29, App B, App G

2030.030(a)(2): Steps 29-30

2030.040-2030.050: Step 29

2030.040(a): App B

2030.040(b): Step 29, App G

2030.050: App B

2030.060(a): Step 30

2030.060(b): Step 30

2030.060(c): Step 30

2030.060(d): Step 30

2030.060(e): Step 30

2030.060(f): Step 30

2030.060(g): Step 32

2030.070: Steps 29, 32

2030.070(a): Step 32

2030.070(b): Step 32

2030.070(c): Step 32

2030.080: Steps 29-30

2030.090: App G

2030.210: Step 33

2030.210-2030.250: Step 31

2030.210(a): Step 31

2030.210(b): [Step 31](#)

2030.210(c): [Step 31](#)

2030.220: [Steps 10, 29](#)

2030.220(a): [Step 31](#)

2030.220(b): [Step 31](#)

2030.220(c): [Step 31](#)

2030.230: [Step 31](#)

2030.240(b): [Step 31](#), [App G](#)

2030.250-2030.260: [Step 31](#)

2030.250(a): [Step 31](#)

2030.250(b): [Step 31](#)

2030.250(c): [Step 31](#)

2030.260: [Steps 31, 33](#)

2030.260(c): [Step 31](#)

2030.280(b): [Steps 30, 32](#)

2030.290(a): [Step 31](#)

2030.310(a): [Step 33](#)

2030.310(b)-(c): [Step 33](#)

2030.410: [Step 33](#)

2031 (former): [Step 18](#)

2031.010-2031.320: [Step 18](#)

2031.010-2031.510: [Step 48](#)

2031.010(a): [Step 34](#)

2031.010(b)-(e): [Step 34](#)

2031.020: [Step 34](#)

2031.020(c): [Step 34](#)

2031.020(d): [Step 34](#)

2031.030(a): [Step 35](#)

2031.030(a)(2): [Step 35](#)

2031.030(b): [Step 35](#)

2031.030(c): [Step 35](#)

2031.030(c)(1): [Step 35](#)

2031.030(c)(2)-(3): [Step 35](#)

2031.030(c)(4): [Step 35](#)

2031.040: [Step 35](#)

2031.060(b): [Step 34](#)

2031.210-2031.240: [Step 36](#)

2031.210(b): [Step 36](#)

2031.210(d): [Step 36](#)

2031.220: [Step 36](#)

2031.230: [Step 36](#)

2031.240(a): [Step 36](#)

2031.240(b): [Step 36](#)

2031.250(a): [Step 36](#)

2031.250(a)-(b): [Step 36](#)

2031.250(b): [Step 36](#)

2031.250(c): [Step 36](#)

2031.260: [Steps 34, 36-37](#)

2031.270: [Step 36](#)

2031.280: [Steps 7, 36](#)

2031.280(a): [Step 37](#)

2031.280(d): [Step 37](#)

2031.280(d)(1): [Step 35](#)

2031.280(d)(2): [Step 35](#)

2031.280(e): [Step 37](#)

2031.290(b): [Step 35](#)

2031.300(a): [Step 36](#)

2031(d)(2): [Step 37](#)

2032.010-2032.650: [Step 48](#)

2032.020: [Step 45](#)

2032.020(a): [Step 41](#)

2032.020(b): [Step 41](#)

2032.020(c): [Step 41](#)

2032.220(a): [Steps 41-42](#)

2032.220(a)(1): [Step 41](#)

2032.220(a)(2): Step 41

2032.220(c): Step 42

2032.220(d): Step 42

2032.220(e): Step 42

2032.230(a): Step 43

2032.230(b): Step 43

2032.240(a): Step 43

2032.260(b): Step 42

2032.310(a): Step 41

2032.310(b): Steps 41, 44

2032.310(c): Step 44

2032.310(d): Step 44

2032.320: Step 45

2032.320(a): Step 44

2032.320(e): Step 41

2032.520: Step 41

2032.610(a): Steps 41, 46

2032.610(b): Step 47

2032.610(c): Step 41

2032.630: Steps 41, 46

2032.640: Steps 41, 47

2033.010: Step 38

2033.010-2033.420: Step 48

2033.020: Step 38

2033.030(a): Step 38, App D, App G

2033.030(c): Step 38

2033.040(a): Step 38, App D

2033.040(b): Step 38, App G

2033.050: Step 38, App D

2033.060(a): Step 39

2033.060(b): Step 39

2033.060(d): Steps 30, 39

2033.060(d)-(e): Step 39

2033.060(f): Step 39

2033.060(g): Step 39

2033.060(h): Step 39

2033.070: Steps 38-39

2033.080: App G

2033.210-2033.230: Step 40

2033.210(c): Step 40

2033.220: Step 40

2033.220(a): Step 38

2033.230: Step 40

2033.230(a): Step 40

2033.230(b): App G

2033.240(a): Step 40

2033.240(a)-(b): Step 40

2033.240(b): Step 40

2033.240(c): Step 40

2033.250: Step 40

2033.270(b): Step 39

2033.280(a): Step 40

2033.280(b)-(c): Step 40

2033.280(c): Step 40

2033.300: Step 40

2033.410: Step 40

2033.420: Step 40

2033.710-2033.740: Steps 29-30, 39

2034.010-2034.740: Step 48

2034.270: Step 46

2034.430(b): Step 20

2034.430(c): Step 20

EVIDENCE CODE

791: Step 8

911: Step 9

940: [App G](#)

950-952: [App G](#)

970-980: [App G](#)

992: [App G](#)

1012: [App G](#)

1032: [App G](#)

1035.4: [App G](#)

1037.2: [App G](#)

1042: [App G](#)

1043: [App G](#)

1046: [App G](#)

1050: [App G](#)

1060: [App G](#)

1070: [App G](#)

1235-1237: [Step 8](#)

1235-1238: [Step 8](#)

1563(b)(2): [Step 20](#)

1563(b)(3): [Step 20](#)

1563(b)(4): [Step 20](#)

FAMILY CODE

Divs 6-9: [Step 1](#)

GOVERNMENT CODE

68093: [Step 20](#)

68600-68620: [Step 1](#)

68605.5: [Step 1](#)

68607: [Steps 2-3](#)

68607(c): [Step 2](#)

68607(g): [Step 3](#)

68608(a): [Step 1](#)

68608(b): [Steps 3-4](#)

68609.5: [Step 1](#)

68616: [Step 4](#)

68616(a): [Step 4](#)

68616(b): [Step 4](#)

68616(c): [Step 4](#)

68616(d): [Step 4](#)

68616(e): [Step 4](#)

68616(f): [Step 4](#)

68616(g): [Step 4](#)

68616(h): [Step 4](#)

68616(i): [Step 4](#)

PENAL CODE

832.7: [App G](#)

REVENUE AND TAX CODE

19282: [App G](#)

26451: [App G](#)

ACTS BY POPULAR NAME

Civil Discovery Act: [Steps 41, 48](#)

Domestic Violence Prevention Act: [Step 1](#)

Trial Court Delay Reduction Act (TCDRA): [Steps 1-2](#)

Uniform Interstate Family Support Act: [Step 1](#)

Uniform Parentage Act: [Step 1](#)

Rules

CALIFORNIA RULES OF COURT

1.6(4): [Step 1](#)

2.1(a)-(b): [Step 3](#)

2.2: [Step 1](#)

2.2(f)(1): [Step 2](#)

2.2(f)(2): [Step 2](#)

2.111(6): [Step 32](#)

3.1000(a): [Step 32](#)

3.1000(b): [Step 33](#)

3.1332: [Step 3](#)

3.250(a)(3): [Step 22](#)

3.250(b): [Step 19](#)

3.400: Step 2

3.710-3.715: Step 1

3.712(a): Step 1

3.712(b): Step 1

3.712(c): Step 1

3.714: Step 3

3.714(a): Step 2

3.714(b): Step 2

3.714(b)(1): Step 2

3.714(b)(2): Step 2

3.714(c)(1): Steps 1-2

3.714(c)(2): Step 2

3.714(d)(1): Step 2

3.715: Step 2

3.715(a): Step 2

3.720: Step 1

3.720-3.735: Step 3

CONTRA COSTA COUNTY COURT RULES

7(H): Step 4

12.6(B): Step 3

LOS ANGELES COUNTY COURT RULES

7.6(c)-(d): Step 1

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Source: Civil Litigation/Obtaining Discovery: Initiating and Responding to Discovery Procedures (Action Guide)/TABLE OF CASES

TABLE OF CASES

A

Allen v Superior Court (1984) 151 CA3d 447, 198 CR 737: [App G](#)

B

Biles v Exxon Mobile Corp. (2004) 124 CA4th 1315, 22 CR3d 282: [Step 32](#)

Board of Trustees v Superior Court (1981) 119 CA3d 516, 174 CR 160: [App G](#)

Brigante v Huang (1993) 20 CA4th 1569, 25 CR2d 354: [Step 40](#)

Bruno v Superior Court (1990) 219 CA3d 1359, 269 CR 142: [Step 48](#)

Burch v Gombos (2000) 82 CA4th 352, 98 CR2d 119: [Step 40](#)

C

Calcor Space Facility, Inc. v Superior Court (1997) 53 CA4th 216, 61 CR2d 567: [Steps 9, 18](#)

Cloud v Superior Court (1996) 50 CA4th 1552, 58 CR2d 365: [Step 9](#)

Coito v Superior Court (2010) 182 CA4th 758, 768, 106 CR3d 342: [Step 8](#)

Collisson & Kaplan v Hartunian (1994) 21 CA4th 1611, 26 CR2d 786: [Step 3](#)

D

Demyer v Costa Mesa Mobile Home Estates (1995) 36 CA4th 393, 42 CR2d 260, disapproved on other grounds in Wilcox v Birtwhistle (1999) 21 C4th 973, 983 90 CR2d 260: [Step 40](#)

Deyo v Kilbourne (1978) 84 CA3d 771, 149 CR 499: [Step 29](#)

Doyle v Superior Court (1996) 50 CA4th 1878, 58 CR2d 476: [Step 45](#)

E

Emerson Elec. Co. v Superior Court (1997) 16 C4th 1101, 68 CR2d 883: [Step 10](#)

F

Fairmont Ins. Co. v Superior Court (2000) 22 C4th 245, 92 CR2d 70: [Step 11](#)

G

Gonzales v Superior Court (1995) 33 CA4th 1539, 39 CR2d 896: [Step 9](#)

Griswold v Connecticut (1965) 381 US 479, 85 S Ct 1678, 14 L Ed 2d 510: [App G](#)

Grover v Superior Court (1958) 161 CA2d 644, 327 P2d 212: [Step 41](#)

H

Harabedian v Superior Court (1961) 195 CA2d 26, 15 CR 420: [Step 41](#)

Hinshaw Winkler, Draa, Marsh & Still v Superior Court (1996) 51 CA4th 233, 58 CR2d 791: [App G](#)

Hood v Superior Court (1999) 72 CA4th 446, 85 CR2d 114: [Step 6](#)

J

John B. v Superior Court (2006) 38 C4th 1177, 45 CR3d 316: [Step 9](#)

K

Korea Data Systems Co. v Superior Court (1997) 51 CA4th 1513, 59 CR2d 925: [Step 36](#)

L

La Seigneurie U. S. Holdings, Inc. v Superior Court (1994) 29 CA4th 1500, 35 CR2d 175: [Step 4](#)

Lang v Hochman (2000) 77 CA4th 1225, 92 CR 2d 322: [Step 3](#)

M

Marsh v Mountain Zephyr, Inc. (1996) 43 CA4th 289, 50 CR2d 493: [Step 20](#)

P

People v Milner (1988) 45 C3d 227, 246 CR 713: [Step 46](#)

People v Sinohui (2002) 28 C4th 205, 120 CR2d 783: [Step 9](#)

R

Richards v Superior Court (1978) 86 CA3d 265, 150 CR 77: [App G](#)

Rifkind v Superior Court (1981) 123 CA3d 1045, 177 CR 82: [App G](#)

Rosen v Superior Court (1966) 244 CA2d 586, 53 CR 347: [Step 15](#)

S

Schnabel v Superior Court (1993) 5 C4th 704, 21 CR2d 200: [Step 9](#), [App G](#)

Shapira v Superior Court (1990) 224 CA3d 1249, 274 CR 516: [Step 44](#)

Sigersteth v Superior Court (1972) 23 CA3d 427, 100 CR 185: [Step 29](#)

Smith v Superior Court (1961) 189 CA2d 6, 11 CR 165: [Step 29](#)

T

Toshiba Am. Electronic Components, Inc. v Superior Court (2004) 124 CA4th 762, 21 CR3d 532: [Steps 7](#), [37](#)

V

Valley Bank of Nevada v Superior Court (1975) 15 C3d 652, 125 CR 553: [Step 9](#)

Volkswagenwerk Aktiengesellschaft v Superior Court (1973) 33 CA3d 503, 109 CR 219: [Step 16](#)

W

Wagner v Superior Court (1993) 12 CA4th 1314, 16 CR2d 534: [Step 4](#)

Wilcox v Birtwhistle (1999) 21 C4th 973, 983 90 CR2d 260: [Step 40](#)